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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No: 2017-001177

Terry L. McCarrell, #171323. Petitioner,

v.

State of South Carolina. Respondent.

APPENDIX

William G. Yarborough, III, Esquire
522 North Church Street
Greenville, SC 29601
(864) 331-1616
Attorney for Petitioner

Julia Amanda Coleman, Esquire
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
Attorney for Respondent

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The South Carolina Court of Appeals

Terry Lemore McCarrell, #171323, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-001177

ORDER

This case is transferred to the Supreme Court of South Carolina pursuant to Rule 204(a) of the South Carolina Appellate Court Rules.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

William G. Yarborough, III, Esquire

Julie Amanda Coleman, Esquire

The Honorable Daniel E. Shearouse

FILED

5/19/17 

for twenty years for the count of Criminal Sexual Conduct, First Degree, fifteen years for the count of a Lewd Act Upon a Child, three years for the count of Contributing to the Delinquency of a Minor, and five years for the count of Grand Larceny. The sentences are set to run concurrently.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v California, 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal after review. State v. McCarrell, Op. No. 2016-UP-005 (filed on January 13, 2016). Remittitur was issued on January 29, 2016.

II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

1. "All of the charges were tried together, the trial should have been severed to separate the Grand Larceny charges from the others. His attorney failed to sever the trial." (sic)
 - a. "Because the Defendant pled guilty to Grand Larceny, his guilt of that charge spilled over into the jury's perception and assessment of his innocence of the charges he did not plead guilty to."
2. "The victim of Grand Larceny was shown a photographic line up, and his identification was tainted by law enforcement's use of unnecessarily suggestive identification procedure. Additionally, this line up was introduced at trial and was prejudicial to the Defendant. His attorney failed to prevent the admission of this evidence and testimony."
 - a. "The line up included photographs that were clearly mugshots and the other mens' appearance in regard to skin tone, age, weight and hair style (including facial hair), varied widely. Therefore, the Grand Larceny victim and witness only had to choose from two photographs to identify the Defendant, instead of six. The admission of this line up at trial was also prejudicial to the Defendant because the mugshots of the Grand Larceny charge spilled over into the jury's perception and assessment of his innocence of the charges he did not please guilty to."
3. "His attorney failed to object at various instances of prejudice to the Defendant at trial."
 - a. "Evidence and testimony were introduced that were unduly prejudicial to the Defendant."

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

V. SUMMARY OF RELEVANT TESTIMONY

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from Trial Counsel, Alex Stalvey, and Brooklin Pollard.

Trial Counsel testified at the hearing that he works in private practice, and at the time he represented Applicant, he was a contract Assistant Public Defender who was appointed to the case. He stated that he met with Applicant at least once before the trial, and he believed they met three times. He stated that Applicant maintained his innocence and wanted a trial and would not accept a plea offer. Trial Counsel testified that he visited Applicant on June 28, 2014, ten days before the trial, but he recalled having the case longer than just ten days because he spent time having significant conversations with the Solicitor about plea negotiations. He stated that Brian Johnson previously represented Applicant before he took the case, but he never met with him to discuss the file.

Trial Counsel testified that he did not have much of a relationship with Applicant. He stated that he felt fully prepared for trial and that there was no reason to request a continuance; if he had felt like he needed more time, he would have asked for a continuance. Trial Counsel stated that Applicant was tried in his absence; he chose to leave the courthouse right before they picked a jury for trial and did not return. He stated that he does not recall being given any reason why Applicant left the trial.

Trial Counsel testified that the minor Victim in this case had a juvenile record, but he would not have been able to get any of her prior convictions in at trial on cross-examination because they were inadmissible. However, he testified that the Victim testified about her prior convictions and all the trouble she had been in on the stand at trial.

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Trial Counsel testified that he chose not to move to sever the charges into two separate trials because his strategy was to attack the credibility of the Victim, which he could not have done unless all the charges were tried together. He stated that the Victim was involved in the Grand Larceny, and his defense was that the Victim fabricated the Criminal Sexual Conduct allegations so that she would not be blamed for the theft of the stolen rings. He stated that the Victim admitted on the stand at trial that she lied about being pregnant with Applicant's child to avoid blame for the stolen rings.

Trial Counsel testified that he moved to suppress the photo lineup in a Neil v. Biggers hearing before the trial began. He stated that he challenged the reliability of the lineup based on the skin tones, facial hair, and ages of the men in the photographs, but his motion was denied and the lineup was found to be admissible. Trial Counsel testified that, even if the photographs in the lineup had been different, he does not believe that it would have changed the outcome of the case because the minor Victim and the theft Victim had spent significant amounts of time with Applicant and both identified him multiple times.

After Trial Counsel's testimony, Applicant took the stand. Applicant testified that he was arrested for grand larceny for the theft of a pair of rings on December 20, 2011. He stated that he bonded out, but he was arrested again for criminal sexual conduct around January, 2012. He stated that Brian Johnson was appointed to represent him after he was arrested again, and he was released again on bond in April of 2012. Applicant stated that he had a good relationship with his first attorney and they met several times. He stated that on June 27, 2014, he received a letter from Trial Counsel telling him that he now represented him on his case and Mr. Johnson had been relieved.

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Applicant testified that he showed up for court on July 7, 2014, ready and knowing that he was going to trial that day. He stated that he talked to Trial Counsel about his case, but he did not know that Trial Counsel was his lawyer at that point; he still thought Mr. Johnson was his lawyer. He stated that he told Trial Counsel about some facts of his case that he believed would help him, but Trial Counsel was not listening, so he became frustrated, which is why he left. He stated that he did not have enough time to talk to Trial Counsel before the trial, but he did not ask for a continuance or file a motion to have counsel relieved because he did not know that he could do so.

Applicant testified that he met the minor Victim through her mother, and he had no relationship with her. He stated that he was a close friend of the family and he spent time around the Victim four or five times while her mother was at work, and they watched television together. He stated that he did not have a sexual relationship with the Victim or her mother.

Applicant testified that he was indicted of grand larceny only two weeks before the trial, and he was surprised, because the whole time they were preparing for trial, he thought it was just over the CSC charges. However, he stated that he was arrested for the grand larceny charge.

Finally, Applicant presented testimony from witness Brooklin Pollard. Ms. Pollard testified that she is Applicant's daughter. She stated that she testified at trial for the State about the text messages used as evidence at trial. She stated that they were her messages and they came from her cell phone.

VI. 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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their



testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant has asserted several allegations of ineffective assistance of counsel. This Court finds these claims to be meritless and they should be denied and dismissed with prejudice. Each allegation presented at the evidentiary hearing is addressed below.

Generally

In general this Court finds that Trial Counsel was adequately prepared for Applicant's trial and did not fall below the standards of professional norms in any manner. Trial Counsel credibly testified that he had enough time to prepare for trial and did not have any reason to request more time. He communicated properly with Applicant and reviewed all discovery materials with him. Based on this testimony and the record before the court, this Court finds that Trial Counsel's representation was not ineffective in any regard.

Failure to move to sever the charges into separate trials

Applicant alleges that Trial Counsel was ineffective for failing to move to sever the Grand Larceny charge into a separate trial from the Criminal Sexual Conduct charges. This allegation is meritless.

Trial Counsel testified that he had a very specific trial strategy in choosing not to sever these charges. He stated that he wanted to attack the credibility of the minor Victim, and he



would not have been able to do that for any charge without trying all of them together. Trial Counsel's strategy was to suggest to the jury that the minor Victim fabricated her story about the criminal sexual conduct in order to escape punishment for stealing the rings, which were the subject of the grand larceny.

Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland v. Washington, 466 U.S. 668, 688-689 (1984). "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. Id. at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992).

This Court finds that Trial Counsel articulated a valid trial strategy in choosing not to sever the trials, and thus his choice was not deficient. Furthermore, Applicant has failed to show any prejudice resulting from his choice not to sever. Because Applicant failed to prove either prong of the Strickland test, this allegation is denied and dismissed with prejudice.

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Failure to prevent the admission of the photo lineup

Applicant alleges that Trial Counsel was ineffective for failing to prevent the admission of the photo lineup. This allegation is meritless.

Trial Counsel did, in fact, object to the photo lineup and challenged its admissibility in a pre-trial hearing. He argued to the trial court that the differences in skin tone, facial hair, and age between the men in the photographs made it unreliable, but the trial court found the lineup admissible after considering his argument. There was nothing further Trial Counsel could have done in order to prevent its admission. Therefore, this Court finds that Trial Counsel was not deficient in any manner with regard to this allegation, and Applicant can show no prejudice resulting from any inaction. This allegation is denied and dismissed with prejudice.

Failure to challenge text messages from cell phone

At the evidentiary hearing, Applicant attempted to raise an allegation of ineffective assistance of counsel based on Trial Counsel's failure to challenge the cell phone records admitted at trial, which he alleged were text messages that came from a phone that was used by people other than Applicant. Respondent objected, claiming this allegation was outside the scope of his original application. Respondent noted that it had filed a Return and Motion for More Definite Statement, and no amended application was filed regarding this allegation. This Court sustained Respondent's objection and held that Applicant could not raise any additional allegations regarding the cell phone records.

This Court finds that any allegation regarding the text messages or cell phone records shall not be considered as they were not properly raised, and thus are denied and dismissed with prejudice.

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ALL OTHER ALLEGATIONS

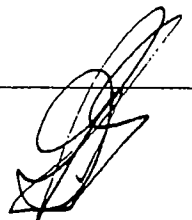
As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

VII. CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

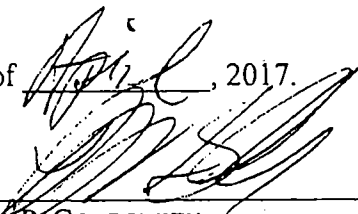
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IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 20 day of April, 2017.



BROOKS P. GOLDSMITH
Presiding Judge
Thirteenth Judicial Circuit

 , South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Terry Lemore McCarrell,)
S.C.D.C. No. 171323,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
2015-CP-23-4291

**ORDER OF DISMISSAL
WITHOUT PREJUDICE**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2015 AUG 18 AM 10 11

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 6, 2015. The Respondent filed a Return, requesting the application be summarily dismissed because of the Applicant's pending direct appeal.

The Applicant was indicted at the February 2013 term of the Greenville County Grand Jury for second-degree criminal sexual conduct (CSC) with a minor (2012-GS-23-0967) and lewd act upon a child (2012-GS-23-0968) and at the June 2014 term for contributing to the delinquency of a minor (2012-GS-23-1662) and grand larceny (2012-GS-23-2622). He was represented by Alex Stalvey, Esquire.

After the State called the case to trial, the Applicant was found guilty. On July 10, 2014, the Honorable Robin B. Stilwell sentenced the Applicant to concurrent terms of 20 years for second-degree CSC with a minor, 15 years for lewd act upon a child, 3 years for contributing to the delinquency of a child, and 5 years for grand larceny.

A timely Notice of Appeal was filed on the Applicant's behalf on with the South Carolina Court of Appeals. Susan B. Hackett, Esquire of the South Carolina Office of Appellate Defense

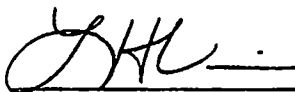
JS 13

has filed a brief of appellant pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967) with the Court; however, this appeal is still pending.

As the matter is presently pending on appeal, jurisdiction is in the South Carolina Court of Appeals. In accordance with Rule 243, SCACR, and S.C. Code Ann. § 17-27-20(b) (1985), this Court finds that at the present time, post-conviction relief is not available to the Applicant because the direct appeal is pending in the South Carolina Court of Appeals. See Al-Shabazz v. State, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000). Therefore, this Court finds this PCR application must be summarily dismissed without prejudice until such time as the direct appeal is resolved. The Applicant may file a PCR application within one (1) year after the resolution of his direct appeal. See S.C. Code Ann. § 17-27-45(a) (Supp. 2003).

IT IS THEREFORE ORDERED that the application filed on July 6, 2015 be denied and dismissed without prejudice.

AND IT IS SO ORDERED this 13 day of Aug., 2015.



Letitia H. Verdin
Chief Administrative Judge/General Sessions
Thirteenth Judicial Circuit

Greenville, South Carolina.

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Terry Lemore McCarrell, 171323

☐ Plaintiff

v.

State Of South Carolina

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2015-CP-23-4

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

FILED
CLERK OF COURT
GREENVILLE CO. S.C.
PAUL WICKENS
2015 AUG 10 10:31 AM

Plaintiff's Attorney:

William G. Yarborough, Iii, Bar No. 10271

Address:

522 North Church Street Greenville SC 29601

phone: (864) 331-1612 fax:

e-mail: wgyarborough@gmail.com other:

Defendant's Attorney:

Karen C. Ratigan, Sadag, Bar No. 6831

Address:

Post Office Box 11549 Columbia SC 29211-1549

phone: (803) 734-3737 fax: (803) 734-4113

e-mail: KRatigan@scag.gov other:

☐ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)

☒ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

August 10, 2015

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:

☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status

☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act

☒ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication

☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed:

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TERRY L. MCCARRELL,

APPELLANT

APPELLATE CASE NO. 2014-001586

ANDERS BRIEF OF APPELLANT

SUSAN B. HACKETT
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 AUTHORITIES

Cases

<u>Manson v. Brathwaite</u> , 432 U.S. 98 (1977)	10, 11
<u>Neil v. Biggers</u> , 409 U.S. 188 (1972)	7, 9, 10, 11, 12
<u>State v. Brown</u> , 356 S.C. 496, 589 S.E.2d 781 (Ct. App. 1967)	10
<u>State v. Moore</u> , 343 S.C. 282, 540 S.E.2d 445 (2000)	9, 10
<u>Stovall v. Denno</u> , 388 U.S. 293 (1967)	10

Other Authorities

<u>Identifying the Culprit: Assessing Eyewitness Identification</u> , National Research Council of the National Academies, 23 (2014)	11

STATEMENT OF THE CASE

On February 19, 2013, a Greenville County grand jury indicted Appellant for criminal sexual conduct with a minor in the second degree (2012-GS-23-967) and lewd act upon a child (2012-GS-23-968). On June 24, 2014, a Greenville County grand jury indicted Appellant for grand larceny (2012-GS-23-2622) and contributing to the delinquency of a minor (2012-GS-23-1662). R. 315; R. 318; R.321; R. 324. The state, represented by Lisa A. Bentley and Andrew Culbreath, called all four cases to trial before the Honorable Robin B. Stilwell and a jury on July 7, 2014. Alex Stalvey represented Appellant. R. 1. Appellant was not present for his trial. R. 4, lines 8-14; R. 23, line 16 – R. 24, line 25; R. 45, line 22 – R. 47, line 5.

At the conclusion of the trial, the jury found Appellant guilty as charged. R. 305, line 14 – R. 306, line 2. Judge Stilwell placed the sentences under seal in light of Appellant's absence. R. 306, line 12 – R. 310, line 23. On July 10, 2014, Judge Stilwell unsealed the sentences and imposed them on Appellant. Specifically, he sentenced Appellant to three years' imprisonment for contributing to the delinquency of a minor, to five year's imprisonment for grand larceny, to fifteen years' imprisonment for lewd act, and to twenty years' imprisonment for criminal sexual conduct with a minor in the second degree. R. 311, line 9 – R. 312, line 24; R. 317; R. 320; R. 323; R. 326.

Appellant filed a timely notice of appeal. This brief follows.

Deputy Brian Lovelace responded to the call on November 14, 2011. He met with the Woodards in their home shortly after 10 p.m. R. 103, line 7 – R. 105, line 7. When Lovelace learned of Minor's and Appellant's presence in the home earlier in the evening, he went to Minor's home and obtained permission to pat down Appellant and Minor. Lovelace did not find the rings on them. R. 105, lines 8-22; R. 107, lines 7-20.

Nevertheless, Appellant was arrested for theft of the rings based on Jesse's statements. R. 114, lines 15-19. Shortly after the arrest, Appellant's daughter, Brooklin Pollard, called the Investigator Brady Maschak on the case. During a meeting, Pollard gave Maschak one of the missing rings. R. 115, line 4 – R. 116, lines 17. Additionally, Pollard provided Maschak with text messages from her phone to show how Pollard came to be in possession of the ring. R. 117, lines 19-23. While reviewing the text messages, Maschak became alarmed when a message indicated Minor was willing "to take the fall" because she thought she was pregnant by Appellant. R. 123, line 11 – R. 124, line 20.

Maschak contacted Investigator Robert Perry for help with investigating a potential criminal sexual conduct case. R. 124, lines 18-22. The two then met with Minor at her home. R. 125, lines 2-13. When Minor admitted she had possession of the rings and knew that Appellant had stolen them, Minor was charged with receiving stolen goods. R. 125, line 22 – R. 127, line 17. Minor disclosed to Perry that she and Appellant had engaged in a sexual relationship for several months prior to his arrest. R. 228, line 19 – R. 229, line 1. At trial, Minor claimed she saw Appellant steal the rings and that she and Appellant engaged in a sexual relationship for several months. R. 154, line 20 – R. 165, line 24; R. 168, lines 16-22; R. 173, lines 8-22.

Q. Okay. About how far away from him were you at times? Arms length [sic], close to handshake?

A. Yes, sir.

R. 10, line 13 – R. 11, line 8.

Subsequently, on December 19, 2011, he met with the police for a photographic line-up. R. 9, lines 4-22. Jesse testified that the police wanted him to “circle or point out one of the six pictures that were on the piece of paper.” R. 9, line 23 – R. 10, line 2. The officer asked if Jesse “recognize[d] anybody from the case” in the photos. R. 10, lines 3-6. However, Jesse claimed no one pressured or coerced him to make a particular selection. R. 10, lines 7-9. Prior to making his selection, he looked “each picture over carefully.” R. 11, line 24 – R. 12, line 1. Jess indicated to the investigator that he “recognized someone” by circling one of the photographs. R. 12, lines 2-9; (State’s Exhibit #6). Jesse saw only one line-up, but he was confident that he “had selected the correct individual.” R. 13, lines 18-25.

Investigator Brady Maschak conducted the photographic line-up with Jesse. Maschak was aware that Appellant was a suspect based on Deputy Brian Lovelace’s report. Using Lovelace’s information, Maschak created a line-up with Appellant’s photograph as number five and then he “picked all the other ones out of the photographs” the sheriff’s office had. All of the photographs were in black and white. R. 15, lines 1-15; R. 16, lines 13-24; R. 19, lines 13-19. To prepare the line-up, Maschak selected individuals who had similar physical characteristics: “[a]ge, race, of course, sex, similar characteristics. So, of course, they were different people, but they all have similar features.” Maschak used a computer system to acquire the additional photographs. He explained that the system would

Also, in looking at the five enumerated factors in Neil v. Biggers, I find that the identification is at a threshold admissible. Certainly, the weight to be given to any identification should be an issue for the jury, ultimately to determine.

R. 22, line 19 – R. 23, line 4.

During the trial, Jesse testified regarding the police showing him a line-up on December 19, 2011, and his identification of Appellant as the person who entered his house with Minor on November 14, 2011. There was no objection to the testimony or the introduction of the line-up. R. 94, line 7 – R. 97, line 25. Similarly, there was no objection to Maschak's testimony regarding the photographic line-up. R. 112, line 3 – R. 114, line 9.

Discussion

A defendant may be deprived of his due process rights through an identification procedure that is unnecessarily suggestive and encourages irreparable mistaken identification. State v. Brown, 356 S.C. 496, 502, 589 S.E.2d 781, 784 (Ct. App. 1967)(citing Stovall v. Denno, 388 U.S. 293 (1967)). "An in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a significantly substantial likelihood of irreparable misidentification." Id. at 502-03, 589 S.E.2d at 784. If a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification, the in-court identification is not admissible. Manison v. Brathwaite, 432 U.S. 98 (1977); Moore, 343 S.C. at 286, 540 S.E.2d at 447.

In Neil v. Biggers, 409 U.S. 188, 198 (1972), the United States Supreme Court articulated a set of factors by which a trial court judge should evaluate both out-of-court identifications and their subsequent use by a witness in court. Those factors include: (1) the opportunity of the witness to view the criminal at the time of the crime, (2) the

regarding the exact length of time and how much of his time was occupied with other observations. It is unlikely that Jesse spent an hour memorizing the contours of Appellant's face during their social visit. The record contains no evidence of Jesse's degree of attention to Appellant's appearance. However, an examination of the circumstantial evidence reveals the significant likelihood that Jesse was pre-occupied. Jesse testified that he was showing books, photos, and magazines of tattoos. Presumably, these books showed numerous photos of people and other faces for which Jesse could easily confuse Appellant's facial characteristics. Minor testified that Jesse "touched up" her tattoo. Thus, it is clear that Jesse was distracted. Jesse gave no description to law enforcement; thus, his subsequent identification of Appellant could not be compared to a description to determine accuracy. Although Jesse testified that he was certain, his high degree of certainty alone cannot outweigh the other factors. Finally, Jesse made the identification almost a month after the encounter. This lengthy delay weighs against the reliability of Jesse's identification of Appellant.

In light of the unnecessarily suggestive identification procedure employed by police and the Biggers factors weighing heavily against reliability of the identification, the trial judge erred in permitting testimony concerning the out-of-court and in-court identifications by Jesse of Appellant. Jesse's identification of Appellant concerning the grand larceny and contributing to the delinquency of a minor charges tainted the evidence in the lewd act and criminal sexual conduct cases as well. When the prosecutor chose to try the cases together, the prosecutor assumed the risk that errors affecting the grand larceny case would infect the unrelated case. The jury could not compartmentalize the evidence in one case from the evidence in the other case. Thus, this Court should reverse

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and remand for a new trial.

Respectfully submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of May, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TERRY L. MCCARRELL,

APPELLANT

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Trial Transcript dated July 7, 8, 10, 2014;
- (2) State's Exhibit #6 (line-up and affidavit);
- (3) True-billed indictments;
- (4) Sentence sheets.

I certify that this designation contains no matter which is irrelevant to this appeal.

May 21st, 2015

Susan B. Hackett
Susan B. Hackett
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

24

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TERRY L. MCCARRELL,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Terry L. McCarrell, #171323 at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 21st day of May, 2015.

Susan B. Hackett
Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 21st day of May, 2015.

[Signature] (L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

**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.

Terry L. McCarrell, Appellant.

Appellate Case No. 2014-001586

Appeal From Greenville County
Robin B. Stilwell, Circuit Court Judge

Unpublished Opinion No. 2016-UP-005
Submitted November 1, 2015 – Filed January 13, 2016

APPEAL DISMISSED

Appellate Defender Susan B. Hackett, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Interim
Senior Assistant Deputy Attorney General John
Benjamin Aplin, both of Columbia, for Respondent.



RECEIVED

FEB - 3 2016

ATTORNEY GENERAL

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 29, 2016

The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

REMITTITUR

Re: The State v. Terry L. McCarrell
Lower Court Case No. 2012GS2300967, 2012GS2300968,
2012GS2301662, 2012GS2302622
Appellate Case No. 2014-001586

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: Terry L McCarrell, 171323
Alan McCrory Wilson, Esquire
Susan Barber Hackett, Esquire
John Benjamin Aplin, Esquire
The Honorable Robin B. Stilwell

27

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

TERRY LEMORE McCARRELL

Plaintiff(s)

vs.

THE STATE OF SOUTH CAROLINA

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015-CP-23CP - 04791

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKLUND
2015 JUL 6 PM 3

Submitted By: William G. Yarborough, III
Address: 522 N. Church Street
Greenville, SC 29601

SC Bar #: 10271
Telephone #: 864-331-1612
Fax #: 864-370-0022
Other:
E-mail: wgyarborough@gmail.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply).

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts	Torts - Professional Malpractice	Torts - Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	Previous Notice of Intent Case #	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)	20 -NI- -	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)	☐ Notice/ File Med Mal (230)	☐ Personal Injury (350)	☐ Possession (450)
	☐ Other (299)	☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☐ Other (399)	☐ Other (499)
Inmate Petitions	Administrative Law/Relief	Judgments/Settlements	Appeals
☒ PCR (500)	☐ Reinstate Drv. License (800)	☐ Death Settlement (700)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Judicial Review (810)	☐ Foreign Judgment (710)	☐ Magistrate-Civil (910)
☐ Habeas Corpus (530)	☐ Relief (820)	☐ Magistrate's Judgment (720)	☐ Magistrate-Criminal (920)
☐ Other (599)	☐ Permanent Injunction (830)	☐ Minor Settlement (730)	☐ Municipal (930)
	☐ Forfeiture-Petition (840)	☐ Transcript Judgment (740)	☐ Probate Court (940)
	☐ Forfeiture-Consent Order (850)	☐ Lis Pendens (750)	☐ SCDOT (950)
	☐ Other (899)	☐ Transfer of Structured Settlement Payment Rights Application (760)	☐ Worker's Comp (960)
Special/Complex /Other		☐ Confession of Judgment (770)	☐ Zoning Board (970)
☐ Environmental (600)	☐ Pharmaceuticals (630)	☐ Petition for Workers Compensation Settlement Approval (780)	☐ Public Service Comm. (990)
☐ Automobile Arb. (610)	☐ Unfair Trade Practices (640)	☐ Other (799)	☐ Employment Security Comm (991)
☐ Medical (620)	☐ Out-of State Depositions (650)		☐ Other (999)
☐ Other (699)	☐ Motion to Quash Subpoena in an Out-of-County Action (660)		
	☐ Sexual Predator (510)		

Submitting Party Signature:

William G. Yarborough

Date:

7/06/15

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

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FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Terry Lemore McCarrell
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2015-CP-23-04291

APPLICATION FOR

POST-CONVICTION RELIEF

FILED-CLERK OF COURT
GREENVILLE, S.C.
PAUL D. WICKLE
2015 JUL 6 PM 3 20

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 McCormick Correctional Institute
2. Name and location of Court which imposed sentence 13th Judicial Circuit, Greenville County, SC
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) Criminal Sexual Conduct with a Minor, 2nd Degree -2012GS2300967
 - (b) Sex/Lewd Act, committing or attempting lewd act upon a child under the age of 16-2012GSS3000968
 - (c) Contributing to the Delinquency of a minor -2012GS2301662
 - (d) Grand Larceny, value more than \$2,000 but less than \$10,000- 2012GS230622

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) Sentence was imposed on 07/08/14 on all counts: CSC - 20 years
- (b) Sex/Lewd act on a child- 15 years
- (c) Contributing to the delinquency of a minor- 5 years
- (d) Grand Larceny- 5 years

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty to Grand Larceny
- (b) after a plea of not guilty to CSC, Lewd Act, Contributing to the Delinquency of a

Minor

- (c) after a plea of nolo contendere N/A

7. Did you appeal from the judgment of conviction or the imposition of sentence?

No

8. If you answered "yes" to (7), list:

- (a) the name of each Court to which you appealed:

i. N/A

ii. N/A

iii. N/A

- (b) the result in each such Court to which you appealed:

i. N/A

ii. N/A

iii. N/A

- (c) the date of each such result:

i. N/A

ii. N/A

iii. N/A

- (d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. N/A

iii. N/A

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) Attempted to, but Appellate Defender Susan Hackett filed and Anders brief and

withdrew

(b) N/A

(c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) All of the charges were tried together, the trial should have been severed to separate the Grand Larceny charges from the others. His attorney failed move to sever the trial.

(b) The victim of Grand Larceny, was shown a photographic line up, and his identification was tainted by law enforcement's use of unnecessarily suggestive identification procedure. Additionally, this line up was introduced at trial and was prejudicial to the Defendant. His attorney failed to prevent the admission of this evidence and testimony.

(c) His attorney failed to object at various instances of prejudice to the Defendant at trial.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Because the Defendant pled guilty to Grand Larceny, his guilt of that charge spilled over into the jurors' perception and assessment of his innocence of the charges he did not plead guilty to.

(b) The line up included photographs that were clearly mugshots and the line up's other mens' appearance in regard to skin tone, age, weight and hair style (including facial hair), varied widely. Therefore, the Grand Larceny victim and witness only had to choose from two photographs to identify the Defendant, instead of six. The admission of this line up at trial was also prejudicial to the Defendant because the mugshots of the Grand Larceny charge spilled over into the the jury's perception and assessment of his innocence of the other charges that he was being tried.

(c) Evidence and testimony were introduced that were unduly prejudicial to the Defendant.

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? N/A

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A

(c) any petition in the United States Supreme Court for certiorari other than petitions,

if any, already specified in (8)? N/A

(d) any other petitions, motions or applications in this or any other Court? N/A

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. N/A

iii. N/A

iv. N/A

(b) the name and location of the Court in which each was filed:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

(b) the proceedings in which each ground was raised:

i. N/A

ii. N/A

iii. N/A

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) N/A

(b) N/A

(c) N/A

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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. Alex Stalvey- Bannister, Wyatt & Stalvey, Attorneys at Law, 401 Pettigru Street
Greenville, SC 29601

ii. N/A

iii. N/A

(b) the proceedings at which each such attorney represented you:

i. See section 17

ii. N/A

iii. N/A

19. State clearly the relief you seek in filing this application:

New trial in which the Grand Larceny is severed from the other charges.

20. Are you now under sentence from any other court that you have not challenged?

N/A

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Terry Lemoire McCarrell, 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.

s/ Terry L. McCarrell
(attorney William D. Yarborough)

SWORN to and subscribed before me this
day of _____, 2_____.

Notary Public (L.S.)

My Commission Expires: _____

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Terry Lemore McCarrell,
S.C.D.C. No. 171323,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
2015-CP-23-4291

RETURN AND MOTION TO DISMISS

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 AUG 18 AM 10 10

The Respondent, making its Return to the application for post-conviction relief filed July 6, 2015 would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. The Applicant was indicted at the February 2013 term of the Greenville County Grand Jury for second-degree criminal sexual conduct (CSC) with a minor (2012-GS-23-0967) and lewd act upon a child (2012-GS-23-0968) and at the June 2014 term for contributing to the delinquency of a minor (2012-GS-23-1662) and grand larceny (2012-GS-23-2622). He was represented by Alex Stalvey, Esquire.

After the State called the case to trial, the Applicant was found guilty. On July 10, 2014, the Honorable Robin B. Stilwell sentenced the Applicant to concurrent terms of 20 years for second-degree CSC with a minor, 15 years for lewd act upon a child, 3 years for contributing to the delinquency of a child, and 5 years for grand larceny.

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The Applicant filed a notice of appeal at the South Carolina Court of Appeals. On May 21, 2015, Susan B. Hackett, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, filed a brief of appellant pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967). As such, the direct appeal in this case is pending.

II.

In the application for post-conviction relief, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "All of the charges were tried together, the trial should have been severed to separate the Grand Larceny from the others. His attorneys failed to move to sever the trial."
2. "The victim of Grand Larceny, was shown a photographic line up, and his identification was tainted by law enforcement's use of unnecessarily suggestive identification procedure. Additionally, this line up was introduced at trial and was prejudicial to the Defendant. His attorney failed to prevent the admission of this evidence and testimony."
3. "His attorney failed to object at various instances of prejudice to the Defendant at trial."

III.

Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). "An application for post-conviction relief cannot be made **while an appeal from the conviction or sentence is pending** or during the time in which an appeal may be perfected." Rule 71.1(b), SCRPC (emphasis added). Accordingly, post-conviction relief is unavailable to the Applicant at this time. Since the Applicant's direct appeal is currently pending, the Court should deny and dismiss the post-conviction relief application without prejudice.

IV.

WHEREFORE, having made its Return and Motion to Dismiss, the Respondent requests that the matter be summarily dismissed without prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

August 10, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2015-CP-23-4291

TERRY LEMORE MCCARRELL, 171323)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

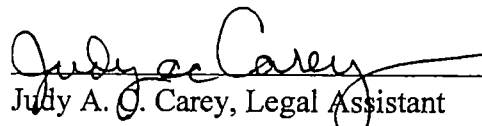
AFFIDAVIT OF SERVICE

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS
2015 AUG 18 AM 10:10

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** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

William G. Yarborough, III, Esquire
522 North Church Street
Greenville SC 29601

DATED this 10th day of August, 2015.


Judy A. Carey, Legal Assistant
For Respondent

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Terry Lemore McCarrell)

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2016-CP-23- 01089

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

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2. Name and location of Court which imposed sentence 13th Judicial Circuit, Greenville County, SC
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:
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 - (b) Sex/Lewd Act, committing or attempting lewd act upon a child under the age of 16-2012GSS3000968
 - (c) Contributing to the Delinquency of a minor -2012GS2301662
 - (d) Grand Larceny, value more than \$2,000 but less than \$10,000- 2012GS230622

41

5. The date upon which sentence was imposed and the terms of the sentence:
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 - (b) Sex/Lewd act on a child- 15 years
 - (c) Contributing to the delinquency of a minor- 5 years
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6. Check whether a finding of guilty was made:
- (a) after a plea of guilty to Grand Larceny
 - (b) after a plea of not guilty to CSC, Lewd Act, Contributing to the Delinquency of a

Minor

- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (b) the result in each such Court to which you appealed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (c) the date of each such result:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. N/A
 - iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Attempted to, but Appellate Defender Susan Hackett filed and Anders brief and

withdrew

(b) N/A

(c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) All of the charges were tried together, the trial should have been severed to separate the Grand Larceny charges from the others. His attorney failed to sever the trial.

(b) The victim of Grand Larceny, was shown a photographic line up, and his identification was tainted by law enforcement's use of unnecessarily suggestive identification procedure. Additionally, this line up was introduced at trial and was prejudicial to the Defendant. His attorney failed to prevent the admission of this evidence and testimony.

(c) His attorney failed to object at various instances of prejudice to the Defendant at trial.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Because the Defendant pled guilty to Grand Larceny, his guilt of that charge spilled over into the jurors' perception and assessment of his innocence of the charges he did not plead guilty to.

(b) The line up included photographs that were clearly mugshots and the other mens' appearance in regard to skin tone, age, weight and hair style (including facial hair), varied widely. Therefore, the Grand Larceny victim and witness only had to choose from two photographs to identify the Defendant, instead of six. The admission of this line up at trial was also prejudicial to the Defendant because the mugshots of the Grand Larceny charge spilled over into the the jury's perception and assessment of his innocence of the charges he did not please guilty to.

(c) Evidence and testimony were introduced that were unduly prejudicial to the Defendant.

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? N/A

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A

43

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A

(d) any other petitions, motions or applications in this or any other Court? N/A

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. N/A

iii. N/A

iv. N/A

(b) the name and location of the Court in which each was filed:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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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?
N/A
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (b) the proceedings in which each ground was raised:
 - i. N/A
 - ii. N/A
 - iii. N/A
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) N/A
 - (b) N/A
 - (c) N/A
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
 - (b) your trial, if any? Yes
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A
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. Alex Stalvey- Bannister, Wyatt & Stalvey, Attorneys at Law, 401 Pettigru Street Greenville, SC 29601
 - ii. N/A

iii. N/A

(b) the proceedings at which each such attorney represented you:

i. See section 17

ii. N/A

iii. N/A

19. State clearly the relief you seek in filing this application:

New trial in which the Grand Larceny is severed from the other charges.

20. Are you now under sentence from any other court that you have not challenged?

N/A

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Terry Lemoire McCarrell, 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.

William G. Harborough
attorney of record

SWORN to and subscribed before me this _____
day of _____, 2____.

Notary Public (L.S.)

My Commission Expires: _____

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

TERRY LEMORE McCARRELL

IN THE COURT OF COMMON PLEAS

FILED-CLERK OF COURT
GREENVILLE, S.C.
Plaintiff(s)
PAUL B. WILSON, JR.

CIVIL ACTION COVERSHEET

-CP-

vs.

2016 FEB 23 PM 1 03

THE STATE OF SOUTH CAROLINA

Defendant(s)

2016-CP-23- 01089

Submitted By: William G. Yarborough, III
Address: 522 N. Church Street
Greenville, SC 29601

SC Bar #: 10271
Telephone #: 864-331-1612
Fax #: 864-370-0022
Other:
E-mail: wgyarborough@gmail.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -NI- - ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☒ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature:

William G. Yarborough

Date:

2/17/16

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et seq.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Terry Lemoire McCarrell, #171323,

2016-CP-23-1089

Applicant,

v.

**RETURN AND MOTION FOR A
MORE DEFINITE STATEMENT¹**

State of South Carolina,

Respondent.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS IMR
2016 JUN 23 PM 2:10

In response to the post-conviction relief application filed on February 22, 2016, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. Applicant was indicted by the February 2013 term of the Greenville County Grand Jury for one (1) count of Criminal Sexual Conduct, First Degree (2012-GS-23-00967) and one (1) count of a Lewd Act Upon a Child (2012-GS-23-00968). Applicant was indicted by the June 2014 term of the Greenville County Grand Jury for one (1) count of Contributing to the Delinquency of a Minor (2012-GS-23-01662) and one (1) count of Grand Larceny (2012-GS-23-02622). Alex Stalvey, Esquire, represented him. On July 7, 8, and 10, 2014, Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted on all charges. The Honorable Robin B. Stilwell sentenced Applicant to confinement for twenty (20) years for the count of Criminal Sexual Conduct, First Degree, fifteen (15) years for the count of a Lewd Act Upon

¹ Applicant has retained William G. Yarborough, III, Esquire, as PCR counsel.

a Child, three (3) years for the count of Contributing to the Delinquency of a Minor, and five (5) years for the count of Grand Larceny. The sentences are set to run concurrently.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal after review. State v. McCarrell, Op. No. 2016-UP-005 (filed on January 13, 2016). Remittitur was issued on January 29, 2016.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "All of the charges were tried together, the trial should have been severed to separate the Grand Larceny charges from the others. His attorney failed to sever the trial." (sic)
 - a. "Because the Defendant pled guilty to Grand Larceny, his guilt of that charge spilled over into the jury's perception and assessment of his innocence of the charges he did not plead guilty to."
2. "The victim of Grand Larceny was shown a photographic line up, and his identification was tainted by law enforcement's use of unnecessarily suggestive identification procedure. Additionally, this line up was introduced at trial and was prejudicial to the Defendant. His attorney failed to prevent the admission of this evidence and testimony."
 - a. "The line up included photographs that were clearly mugshots and the other mens' appearance in regard to skin tone, age, weight and hair style (including facial hair), varied widely. Therefore, the Grand Larceny victim and witness only had to choose from two photographs to identify the Defendant, instead of six. The admission of this line up at trial was also prejudicial to the Defendant because the mugshots of the Grand Larceny charge spilled over into the jury's perception and assessment of his innocence of the charges he did not please guilty to."
3. "His attorney failed to object at various instances of prejudice to the Defendant at trial."
 - a. "Evidence and testimony were introduced that were unduly prejudicial to the Defendant."

Respondent denies Applicant is entitled to relief on any of these claims and demands strict proof thereof. Applicant must specify any claims he intends to raise at the PCR trial. Any claims not **specifically** laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing. For the purpose of this Return, Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections' records, the trial transcript, and applicant's appellate records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent construes Applicant's allegations to be claims of ineffective assistance of counsel. Respondent asserts that Applicant's allegation of ineffective assistance of trial counsel is without merit, and that Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. Applicant

must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent also moves for a more definite statement with respect to Applicant's third allegation. Rule 12(e) provides

If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired.

Applicant's allegation that counsel "failed to object at various instances" is too vague to put Respondent on notice as to what Applicant is actually alleging. A PCR application must "specifically set forth the grounds upon which the application is based, and clearly state the relief desired." S.C. Code § 17-27-50 (2016). Applicant has merely made a general claim of ineffective

assistance, without reference to specific actions by counsel that constituted deficient performance. Applicant has also failed to raise any specific prejudice suffered as a result. Respondent therefore requests that either Applicant amend his application to bring it into compliance with the requirements of section 17-27-50, or this allegation be stricken from his application.

[Signature follows]

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V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

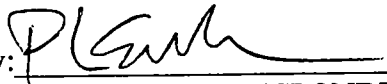
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

PATRICK SCHMECKPEPER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

August 16, 2016

54

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
TERRY LEMORE McCARRELL, 171323,)
)
Applicant,)
)
vs)
)
STATE OF SOUTH CAROLINA,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

2016-CP-23-1089

AFFIDAVIT OF SERVICE BY MAIL

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2016 AUG 23 PM 2 40

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 for a More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

William G. Yarborough, III, Esquire
522 North Church Street
Greenville SC 29601

DATED this 16th day of August, 2016.


Judy A.C. Carey, Legal Assistant
For Respondent

213
RECEIVED

MAY 22 2017

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

POST CONVICTION RELIEF APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Brooks Goldsmith, Circuit Court Judge

PCR Case Number: 2016-CP-23-01089

RECEIVED

MAY 18 2017

SC Court of Appeals

Terry Lemoire McCarrell, Applicant

v.

The State of South Carolina, Respondent.

NOTICE OF APPEAL

Counsel of Record:

Alan Wilson, South Carolina Attorney General

Benjamin Aplin, Senior Assistant Deputy Attorney General

Julie A. Coleman, Assistant Attorney General
Assistant Attorney General
PO Box 11549
Columbia, SC 29211-1549

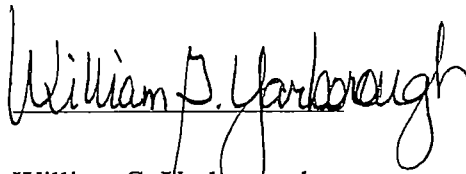
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Applicant Terry Lemore McCarrell appeals the decision of the Thirteenth Judicial Circuit's Court of Common Pleas, taken from the attached Order (*See Order*) and respectfully requests that this Honorable Court allow him the opportunity to file an appeal.

Applicant's counsel has requested a copy of the transcript from the Court Reporter and is currently awaiting the delivery. A copy of this Notice has been served upon Attorney General Alan Wilson, Senior Assistant Deputy Attorney General Benjamin Aplin, and Assistant Attorney General Julie A. Coleman by U.S. Mail.

THEREFORE, the Applicant, Terry Lemore McCarrell, respectfully moves this Honorable Court to grant the appeal.

Respectfully submitted,

A handwritten signature in black ink that reads "William G. Yarborough". The signature is written in a cursive, flowing style.

William G. Yarborough
Attorney for the Applicant
522 North Church Street
Greenville, SC 29601
(864) 331-1612
SC Bar No.: 10271

Greenville, SC
May 15, 2017

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED
MAY 22 2017

POST CONVICTION RELIEF APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Brooks Goldsmith, Circuit Court Judge

RECEIVED

PCR Case Number: 2016-CP-23-01089

MAY 18 2017

SC Court of Appeals

Terry Lemoire McCarrell, Applicant

v.

The State of South Carolina, Respondent.

AFFIDAVIT OF SERVICE

I, Traci Trouton-Burr, certify on this date, May 15, 2017, I served a Notice of Appeal in this action, dated May 15, 2017, on Alan Wilson, South Carolina Attorney General, Benjamin Aplin, Senior Assistant Deputy Attorney General, and Julie A. Coleman, Assistant Attorney General by mailing it to him/her at his/her work address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Alan Wilson, South Carolina Attorney General
Benjamin Aplin, Senior Assistant Deputy Attorney General
Julie A. Coleman, Assistant Attorney General
Assistant Attorney General
PO Box 11549
Columbia, SC 29211-1549

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STATE OF SOUTH CAROLINA	)	
	)	GENERAL SESSIONS COURT
COUNTY OF GREENVILLE	)	2012-GS-23-00967
	)	2012-GS-23-00968
	)	2012-GS-23-01662
	)	2012-GS-23-02622
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
TERRY L. MCCARRELL,	)	
DEFENDANT.	)	
_____	)	

July 7, 8, 10, 2014
Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, JUDGE.

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

LISA A. BENTLEY, ESQ.
ANDREW CULBREATH, ESQ.
Attorney for the Plaintiff

Alex STALVEY, ESQ.
Attorney for the Defendant

PENNY M. JOHNSON
Official Court Reporter

I N D E X

(PW) - Denotes Plaintiff's Witness
(DW) - Denotes Defense Witness

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All Exhibits were retained by the Clerk of Court for Greenville County.

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P R O C E E D I N G S

Monday, July 7, 2014

THE COURT: Okay. We will call to bar the State of South Carolina vs. Terry L. McCarrell. And we have just qualified the jury, so I know there are outstanding motions and I will be happy to hear those motions. And I'll defer to counsel.

MS. BENTLEY: May it please the Court. Does Mr. McCarrell need to be present?

MR. STALVEY: Well, technically, no, he doesn't need to be present, but he was here this morning and I talked to him. His daughter tells me he was out smoking a cigarette. I told her that he needs to be in the courtroom as soon as possible. So that's all I know.

THE COURT: Okay.

MR. STALVEY: We can go forward without him being present.

THE COURT: Okay. Go ahead and tell me what your motions are and we can set it up procedurally and he may be here by the time we start arguing substantively.

MOTIONS

MS. BENTLEY: All right. Your Honor, the first one, I believe, is a stipulation between the parties. There was a cell phone downloaded in this case. And once the State lays a proper foundation, instead of working with a

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1 disk, we've printed off a report. I believe Mr. Stalvey's
2 agreed that that is acceptable to him. And I'll hand this
3 up to the Court.

4 MR. STALVEY: That's correct.

5 THE COURT: Okay, good enough, I'll accept the
6 stipulation. And that's a stipulation as to admissibility
7 and foundation. There's no stipulation that needs to be
8 presented to the jury, right?

9 MR. STALVEY: That's correct, Your Honor.

10 THE COURT: Okay, good enough.

11 MS. BENTLEY: Second, Your Honor, we have two motions
12 in limine. The first is prohibiting the Defense from
13 discussing the possible sentence for any of these crimes.
14 Just a matter of relevance.

15 THE COURT: Mr. Stalvey, you intend to try to do
16 that?

17 MR. STALVEY: I don't intend to, Judge. I mean, I --
18 you know, I'm not intending on doing it. But --

19 THE COURT: Okay.

20 MR. STALVEY: -- you never know what's going to
21 happen in the heat of the moment, but I, certainly, do not
22 intend to do that. I never intended to do it. It has
23 come out in my last trial. They objected, the objection
24 was sustained and, you know.

25 THE COURT: Okay. Well, generally speaking, it's not

1 relevant.

2 MR. STALVEY: Sure.

3 THE COURT: As a matter in limine, we'll offer the
4 opinion that the sentencing is a matter of law left to the
5 Court and not a matter of evidence for the jury.

6 MR. STALVEY: Judge, I understand. And there's some
7 case law on it, too. I can't talk about a specific
8 sentence, but in my argument, I can, certainly, talk about
9 the significance of the penalty and just speak about it in
10 general terms. But that's all in the case law, so -- I
11 mean, I know what they're talking about and I won't be
12 mentioning any specific sentences.

13 THE COURT: Okay. Good enough.

14 MS. BENTLEY: Yes, ma'am.

15 Finally, Your Honor, the standard rape shield
16 compliance motion. There will be testimony that the
17 victim did have a child that was not the Defendant's. The
18 State will be talking about that, but we don't believe
19 that it opens the door for discussion of any other sexual
20 activity except for that that we're in court for today.

21 THE COURT: Okay.

22 All right, Mr. Stalvey?

23 MR. STALVEY: Judge, I mean, I was going to talk
24 about the child as well. So I understand that's open for
25 disclosure to the jury. I understand the rape shield law

1 and I'm not going to violate it.

2 THE COURT: Okay. You're not going to ask any
3 questions with respect to promiscuity related to a --

4 MR. STALVEY: Absolutely not.

5 THE COURT: -- previous child. Okay.

6 MR. STALVEY: I don't plan on doing that.

7 THE COURT: That sounds like y'all are in agreement.
8 Generally speaking, I grant the motion with respect to the
9 rape shield.

10 MS. BENTLEY: Thank you, Your Honor.

11 The State did have some requested voir dire. And,
12 finally, we do have a Neal V. Biggers. There was an
13 out-of-court identification photo lineup in this case.

14 THE COURT: Okay.

15 MS. BENTLEY: I don't know if you'd like to do that
16 now?

17 THE COURT: Yeah, we can do that. I'm looking at
18 what you've given me. I see your voir dire.

19 Have you had a chance to look at that voir dire, Mr.
20 Stalvey?

21 MR. STALVEY: Yes, sir, Your Honor. I don't have any
22 objection.

23 THE COURT: Okay. Good enough.

24 All right. Looks like we do have a little bit of
25 time if you want to swear your witness for the Biggers

1 hearing. Do you think we can do that in 10 minutes?

2 MR. CULBREATH: We can, certainly, try, Your Honor.

3 THE COURT: Okay, let's tee it up then.

4 MR. CULBREATH: Your Honor, the State would call
5 Jesse Woodard.

6 (Whereupon, State's Exhibit No. 6 marked for
7 identification.)

8 THE CLERK: Please come forward. Please pause at the
9 end of the bench and place your left hand on the Bible.
10 WHEREUPON,

11 JESSE WOODWARD,

12 after having been duly sworn, testified as follows:

13 THE CLERK: Have a seat. Would you please state your
14 name for the record?

15 THE WITNESS: Jesse David Woodward.

16 DIRECT EXAMINATION

17 BY MR. CULBREATH:

18 Q Mr. Woodard, good morning.

19 A Good morning.

20 Q My name is Andrew Culbreath, we met earlier?

21 A Right.

22 Q I'm going to ask you some questions about the
23 out-of-court identification that you made.

24 A Okay.

25 Q Now, you and your wife were a victim in this case

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1 regarding the theft of some rings from your home back on
2 November 14th, 2011; correct?

3 A Yes, sir.

4 Q And following the report of that theft to law
5 enforcement, you met with an investigator with the
6 sheriff's office. You were shown a lineup of photos,
7 correct?

8 A Yes, sir.

9 Q Do you remember that being on about December 19th,
10 2011?

11 A Yes, sir.

12 Q Do you remember where that was?

13 A The command place up there above University Square.

14 Q All right. Did you go up there alone?

15 A I think I went up there with my wife.

16 Q Was anybody else other than you shown a lineup that
17 day that you know of?

18 A Honestly, I can't remember if they showed it to me
19 and Tamila or if it was just me.

20 Q Okay. All right. Do you recall the investigator
21 presenting you with a photographic lineup?

22 A Yes, sir.

23 Q Did he give you any instructions when he presented
24 that to you?

25 A If I remember correctly, I think he wanted me to

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1 circle or point out one out of six pictures that were on
2 the piece of paper.

3 Q Did he tell you that there was a person in that
4 lineup that was definitely a suspect in this case?

5 A I believe the question was asked did I recognize
6 anybody from the case in these photos.

7 Q Right. All right. Did he pressure you or coerce you
8 to pick anyone in particular?

9 A No, sir.

10 Q Did he give you any instructions about how to mark or
11 identify the individual if you recognized one?

12 A I think he told me to circle one.

13 Q Okay. All right. Now, let me take you back to the
14 time when you first observed the suspect in this case.
15 How long did you get a chance to observe him from where
16 were you?

17 A It was -- I mean, we spent a little bit of time in my
18 house together, so it wasn't like just a flash. We had
19 probably an hour or so maybe.

20 Q Okay. So you, actually, met him?

21 A Right, yes, sir.

22 Q He was in your home?

23 A Formal agreement, shake hands, how you doing.

24 Q You spent some time with him inside?

25 A Yes, sir.

1 Q Did you have a good chance to get to look at him
2 while he was inside?

3 A Yes, sir.

4 Q Was the lighting okay in your home?

5 A Yes, sir.

6 Q Okay. About how far away from him were you at times?
7 Arms length, close to handshake?

8 A Yes, sir.

9 Q All right. And, ultimately, you called law
10 enforcement out that night and law enforcement got in
11 contact with this individual that was at your home;
12 correct?

13 A Yes, sir.

14 Q Did you lead law enforcement over to this particular
15 individual at the time? Take them next door?

16 A Yes, sir.

17 Q Is that when you were able to identify to law
18 enforcement who was in your home earlier?

19 A Yes, sir.

20 Q Okay. Now, when you were shown the lineup, did you
21 see the person who came to your home and took the rings on
22 November 14th?

23 A Yes, sir.

24 Q Did you look each picture over carefully before
25 making the selection?

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1 A Yes, sir.

2 Q Did you tell the investigator that you recognized
3 someone and were able to select them?

4 A Yes, sir.

5 Q And what did you then do? Did you make any markings
6 on the photo lineup?

7 A If I remember correctly, I circled one of the photos.

8 Q Okay.

9 A On the paper.

10 MR. CULBREATH: Your Honor, if I may?

11 THE COURT: Yes, sir.

12 MR. CULBREATH: We had pre-marked State's Exhibit 6,
13 a two-page document. If I may approach the witness?

14 THE COURT: Yes, sir.

15 BY MR. CULBREATH:

16 Q Mr. Woodard, I'm going to let you take a look at
17 that. It's a two-page document. Do you recognize that?

18 A Yes, sir.

19 Q Okay. What is that? What is Exhibit 6 that I've
20 shown you?

21 A That's the lineup that they showed me up there.

22 Q Does that look like it's in the same condition as it
23 was when they showed it to you on December 19th, 2011?

24 A Yes, sir.

25 Q On that first page with the photographs, there's some

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1 markings and a circle, do you recognize those?

2 A Yes, sir.

3 Q All right. Have there been any additional markings
4 on there that are not yours other than the original stamp
5 that is on there?

6 A No, sir.

7 Q And on page two, there's an affidavit or a statement,
8 does that bear your signature?

9 A Yes, sir.

10 Q Okay. And it indicates that you made this
11 identification at about 4:30 on December 19th, 2011;
12 correct?

13 A Yes.

14 Q Were you able to make that identification freely and
15 voluntarily and not being coerced by anyone there in the
16 room?

17 A Yes, sir.

18 Q Were you confident that you had selected the correct
19 individual in that?

20 A Yes, sir.

21 Q Did you ever -- were you ever shown any other photo
22 lineups other than that one?

23 A That was the first one.

24 Q Did you have any subsequent after you saw that one?

25 A No, sir.

1 Q Okay.

2 MR. CULBREATH: That's all I have. Answer any
3 question that counsel may have.

4 THE COURT: Mr. Stalvey.

5 MR. STALVEY: I don't have any questions, sir.

6 THE COURT: Thank you, sir. I appreciate you being
7 here. Just leave that there. Step down.

8 MR. CULBREATH: I call Investigator Brady Maschak.
9 WHEREUPON,

10 BRADY MASCHAK,

11 after having been duly sworn, testified as follows:

12 THE CLERK: Please state your name for the record.

13 THE WITNESS: It's Investigator Brady Maschak.

14 DIRECT EXAMINATION

15 BY MR. CULBREATH:

16 Q Investigator Maschak, I'm sorry, I think I
17 mispronounced your name.

18 A That's fine.

19 Q You're working with the sheriff's office now?

20 A Yes, sir.

21 Q Back in November and December of 2011, were you also
22 working with the sheriff's office?

23 A Yes, sir.

24 Q In what capacity were you working with them then?

25 A I was an investigator in the property crimes unit.

1 Q Okay. Do you recall on December 19th with regard to
2 this case preparing and providing a photographic lineup to
3 Mr. Jesse Woodard?

4 A Yes, sir.

5 Q Where were you at that time?

6 A Our office at -- command.

7 Q Were you the one that prepared that particular
8 lineup?

9 A Yes, sir.

10 Q Would you tell the Court how you did that?

11 A There was six photos, Deputy Lovelace already -- when
12 he responded out there, he received the name Terry
13 McCarrell, so that one was used as number five, and I
14 picked all the other ones out from the photographs that we
15 have.

16 Q Okay. Now, the other five, were you selecting
17 individuals with similar physical characteristics?

18 A Age, race, of course, sex, similar characteristics.
19 So, of course, they were different people, but they all
20 have similar features.

21 Q You did that in this particular case?

22 A Yes, sir.

23 Q As far as facial hair, you tried to match that as
24 close as possible?

25 A Yes, sir.

1 Q Hairstyle as well?

2 A Yes, sir.

3 Q Now, who all -- do you remember who was with you when
4 you showed this to Mr. Woodward?

5 A If I can look. Investigator Perong.

6 Q Okay. All right. And there was at Northern Area
7 Command?

8 A Yes, sir, at my office.

9 Q The document, the affidavit that we talked about
10 earlier indicates about 4:30 in afternoon on
11 December 19th?

12 A Yes, sir.

13 Q Now, tell us how you became to learn that
14 Mr. McCarrell was the individual and using his photograph
15 along with the other five. What did the other
16 investigator indicate?

17 A Detective Lovelace responded out there. Tamila
18 Woodward contacted the sheriff's office about the
19 incident. Department Lovelace, actually, met with the
20 Defendants in the case and received names. And Jesse
21 Woodard was introduced to the Defendant and stated his
22 name was Terry. And later, when the deputy responded out
23 there, he got face to face with Mr. McCarrell. So that's
24 how I have the name.

25 Q So when Mr. Woodard sat down, what instructions did

1 you give him before providing him with photographic
2 lineup?

3 A Tamila came, she was asked to stay in our lobby area.
4 Brought Jesse back. Told him that -- just the standard,
5 how we always do it. Talked to him, the person may or may
6 not be in the photo lineup. If you're not 100 percent
7 sure, let us know, and not to just pick one just to pick
8 one because, of course, there's cases where you may have a
9 name, but it might not match who we're talking about. So
10 I told him the person that was in his residence may or may
11 not be in the photo. He said he understood. I told him
12 carefully look over the photos. He said he understood. I
13 put it on the table, he looked at them and stated number
14 five was the person that was there.

15 Q So did he have a clear understanding based on your
16 instructions that he didn't have to pick somebody?

17 A Yes, sir.

18 Q As far as confidence, how confident did he appear?

19 A Very confident. Because I asked, Are you 100 percent
20 sure? Yes, sir, I am.

21 Q Whose photograph did he select?

22 A The Defendant, Terry McCarrell.

23 Q As a normal course of your business, when you present
24 an out-of-court photographic lineup and they make a
25 selection, do you execute the affidavit that goes along

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1 with it?

2 A Yes, sir.

3 Q Is that what's page two of State's Exhibit 6 there?

4 A It is.

5 Q That bears your signature?

6 A Yes, sir, it does.

7 Q Now, taking another look at State's Exhibit 6, where
8 did you get that? Did you bring that to court today?

9 A I did.

10 Q And on December 19th, after it was initialed and
11 circled, what did you do with it?

12 A After I met with Jesse, I took a statement from him.
13 After he left, I filled out a property and evidence form.
14 It was then turned over to property and evidence.

15 Q Is that where you received it for court today?

16 A Yes, sir.

17 Q Does it appear to be in the same or substantially the
18 same condition as it was when you placed it into property
19 and evidence?

20 A Yes, sir.

21 Q Are there any other marks other than the original
22 stamp that bears an identification of this document other
23 than those placed by Mr. Woodward on that day?

24 A No, sir.

25 Q And which was the -- if you could point out for us

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1 the photograph that was identified by Mr. Woodard?

2 A Number five.

3 Q Number five. And did he -- was Mr. Woodard provided
4 any other photographic lineups other than this one?

5 A No, sir.

6 Q Did he identify anybody other than number five?

7 A No, sir, just number five.

8 MR. CULBREATH: Investigator, thank you. That's all
9 the questions I have.

10 MR. STALVEY: Can I see the exhibit up there?

11 CROSS-EXAMINATION

12 BY MR. STALVEY:

13 Q So this is original that you presented to
14 Mr. Woodard?

15 A Yes, sir.

16 Q Do y'all ever do color photos?

17 A We do.

18 Q But you did a black and white in this case?

19 A Yes, sir.

20 Q Why was that?

21 A Because different clothing and all that stuff, plus
22 we only have a black and white printer.

23 Q Who do you mean by clothing?

24 A Instead of -- if there were inmates or anything like
25 that, so they're focused on facial, not clothing.

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1 Q Okay. Do you see their clothing in these six photos?

2 A At the top.

3 Q Okay. When you go to search -- well, tell me -- I
4 know you testified that you try to determine who's going
5 to be in this photo lineup by their age, sex, race. How
6 do you figure out that? I mean, how do you search that?

7 A We do it in the system, the computer system. Put in
8 his name and it goes up white male, black male, Hispanic,
9 all that stuff. Height, weight, age, approximate age, age
10 range. It gives us, basically, however many people that
11 have been arrested with that type of description.

12 Q Okay. Does it give you six just randomly?

13 A No. You sift through to pick which means are a more
14 closer resemblance.

15 Q So you get a group of -- a large --

16 A Hundreds of photos.

17 Q So you had a hundred --

18 A I mean, I don't know how many it is, but there's some
19 cases that range and you have to some time sift through.

20 I can't remember how many photos were given. It was
21 definitely a lot more than five or six pictures.

22 Q You don't remember how many you got to choose from in
23 this particular case?

24 A No, I don't.

25 Q Do you ever look at the complexion of the individual

1 in making your determination of who's going to be included
2 in the lineup?

3 A Yes, sir.

4 Q And in this lineup, tell me what you did as far as
5 the complexion of these individuals. How did you decide?

6 A Basically, I just look at the pictures and see who's
7 similar to the Defendant. And that's how I put them in
8 there.

9 Q Okay. And out of all the photos that you looked at,
10 these five were the ones that most resembled the
11 Defendant?

12 A Yes, sir.

13 Q Okay.

14 MR. STALVEY: I don't have any further questions.

15 THE COURT: Okay. Any questions, Mr. Culbreath?

16 MR. CULBREATH: No follow up, Your Honor.

17 THE COURT: Okay.

18 Hand me that exhibit. Thank you, I appreciate that.

19 Mr. Culbreath, anything additional?

20 MR. CULBREATH: No, Your Honor. Based on the
21 testimony presented in light of the holding in Neil V.
22 Biggers and as to current case law, we ask the Court to
23 render an opinion regarding the liability and
24 admissibility of the out-of-court identification.

25 THE COURT: Mr. Stalvey, any arguments, sir?

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1 MR. STALVEY: Judge, just briefly. You've got the
2 exhibit. It appears that there are two individuals -- and
3 I don't have the -- I guess the one in the top or the one
4 on the top in the middle or the one on the bottom right
5 appear to be -- have a darker complexion than the other
6 individuals, which would narrow to choices down, in my
7 opinion, making it more suggestive that it should be. I
8 mean, Judge, I know he testified that all these people
9 were the same age, but they, certainly, don't look it to
10 me.

11 Your Honor, he's also testified that he had -- I
12 mean, these weren't the only six people he had to chose
13 from. They may be the same age, but they, certainly,
14 don't look it. I think that would be clear from just a
15 brief review of these six photos. Your Honor, I think
16 it's overly suggestive and I ask that you rule that it not
17 be admissible.

18 THE COURT: Okay. All right. Thank you.

19 Okay. I do find that in accordance with Neil V.
20 Biggers and State V. Moore that the photo lineup and
21 identification is not unduly suggestive. I have in my
22 hand Plaintiff's -- or excuse me, State's Exhibit No. 6,
23 which has the six individuals. I do find that they are
24 similar in age, complexion, facial hair and otherwise.

25 Also, in looking at the five enumerated factors in

1 Neil V. Biggers, I find that the identification is at a
2 threshold admissible. Certainly, the weight to be given
3 to any identification should be an issue for the jury,
4 ultimately, to determine. All right.

5 Any additional motions?

6 MS. BENTLEY: Nothing from the State, Your Honor.

7 MR. STALVEY: None from the Defense, Your Honor.

8 THE COURT: Okay. All right. I think I may be
9 correct that the jury is here.

10 Mr. Stalvey, you want to take a few minutes to see if
11 you can find your client while I have them file in?

12 MR. STALVEY: Are they out there?

13 THE COURT: I don't know.

14 THE CLERK: They're supposed to be on their way up.

15 (Brief pause.)

16 THE COURT: Okay. Let's go back on the record.

17 Mr. Stalvey, I believe you've indicated that your
18 client was here earlier this morning, you had a
19 conversation with him subsequent to jury qualification,
20 told him to be in the courtroom and he's not materialized?

21 MR. STALVEY: That's correct, Judge.

22 THE COURT: And if I'm recounting what you stated
23 earlier, he was outside smoking according to his family?

24 MR. STALVEY: Yes, sir, Your Honor.

25 THE COURT: Okay. And since we've had our hearings,

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1 I know that you have exited the courtroom and attempted to
2 find or call or send somebody for him, is that correct?

3 MR. STALVEY: Yes, sir, Your Honor.

4 THE COURT: So there's no question but that he was
5 advised of the hearing today and knew of the same and,
6 also, knew the courtroom in which the proceeding was going
7 to take place?

8 MR. STALVEY: Yes, sir, Your Honor. Just for the
9 record, his daughter and his -- I assume, it's his mother,
10 looks like his mother, are here and were in that room with
11 me earlier when I was talking to him about the case. His
12 daughter has just told me that she is going to try to call
13 him to figure out where he is. So he, certainly, is aware
14 of what's going on today, where he needs to be.

15 THE COURT: Okay. Well, I have a jury waiting and I
16 don't want them to have to wait any longer than possible.
17 So I find that at this point, he's made a knowing,
18 volitional election not to be in the courtroom during
19 either these motions or for jury selection. I'm going to
20 move toward with it. I'm not going to say anything to the
21 jury about it, just proceed as though everything is
22 proceeding in accordance with the norm. And then as we
23 proceed in the case if it becomes apparent that he decides
24 not to be with us, then I may address it after
25 consultation with both parties. Okay?

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1 MR. STALVEY: Okay, Judge.

2 THE COURT: All right. So, we're ready to bring the
3 jury in?

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

5 MS. BENTLEY: Yes, sir.

6 THE COURT: Mr. Stalvey, I have a witness list here.
7 Do you have any additional witnesses that you would like
8 me to announce to the jury?

9 MR. STALVEY: No, sir, Your Honor.

10 THE COURT: Okay, good enough. Bring them in.

11 (WHEREUPON, the jury venire came into open court.)

12 THE COURT: All right. Ladies and gentlemen, welcome
13 upstairs. We are about to pick a jury for the trial of
14 the State vs. Terry Lamar McCarrell.

15 Now, ladies and gentlemen, before we get started with
16 the jury selection, I'm going to remind you that you
17 continue under the oath that you took downstairs. I'm
18 going to ask you questions again. They are not the
19 questions that I asked you earlier, those were designed to
20 determine whether you were qualified to serve a jurors
21 generally in the State of South Carolina in the County of
22 Greenville. The questions that I'm going to ask you now
23 are specific to this case and designed to determine
24 whether it's suitable that you preside on a jury in this
25 particular case.

1 Now, understand that in the State of South Carolina
2 and in the United States of America that every defendant
3 is presumed innocent until proven guilty beyond a
4 reasonable doubt. The State has the burden of proving
5 each and every element of each offense beyond a reasonable
6 doubt. Now, the reason I tell you that is not only
7 because it's important and it's not just a legal theory
8 and it's the cornerstone of our criminal justice system,
9 but because, also, I am going to read for you the
10 allegations that appear on the indictments that were
11 prepared by the State.

12 Now, these indictments are charging papers. I don't
13 want you to get the impression that because I am reading
14 them for you that I am telling you that these are the
15 facts in this case. I am not. These are the allegations
16 that have been made by the State of South Carolina.

17 Now, ultimately, 12 impaneled jurors, 12 deliberating
18 jurors will decide what the facts are in the case and will
19 decide whether the State has met its burden of proving
20 each and every element of the offense beyond a reasonable
21 doubt. At this stage, however, it's important for me to
22 tell you what the allegations are so that you can
23 intelligently answer the questions that I pose to you to
24 determine whether it's suitable that you are a juror on
25 this case.

1 So, ladies and gentlemen, we will start with indictment
2 number 2012-GS-23-2662, the State vs. Terry Lamar McCarrell,
3 indictment for grand larceny. In this indictment, ladies
4 and gentlemen, the State would allege that Mr. McCarrell did
5 in Greenville County on or about November 14th, 2011, take
6 and carry away the personal property of Tamila Woodard,
7 specifically, jewelry with a value of greater than \$2,000,
8 with the intent to deprive the owner permanently of such
9 property.

10 Ladies and gentlemen, the next indictment is
11 2012-GS-23-1662, and that is an indictment for contributing
12 to the delinquency of a minor. And the State would allege
13 that Mr. McCarrell did in Greenville County on or about
14 November 14th, 2011, knowingly and willfully encourage, aid
15 or cause KCO, a minor, to do an act which caused or
16 influenced KCO to deport herself in a manner so as to
17 willfully injure or endanger her morals or health or the
18 morals or health of others.

19 Ladies and gentlemen, the next indictment is indictment
20 number 2012-GS-23-968, indictment for a lewd act upon a
21 child. In this indictment, the State would allege that Mr.
22 McCarrell did in Greenville County on or about one May,
23 2011, and the 27th of day of December, 2011, being over the
24 age of 14, did willfully and lewdly commit or attempt a lewd
25 and lascivious act upon the body or the body parts of KCO, a

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1 child under the age of 16 years, with the intent of
2 arousing, appealing to or gratifying the lust, passions or
3 desires of himself or such child.

4 Ladies and gentlemen, the last indictment before the
5 Court is indictment number 2012-GS-23-967, an indictment for
6 criminal sexual conduct with a minor. Ladies and gentlemen,
7 the State would allege that Mr. McCarrell did in Greenville
8 County between the days of May 1st, 2011, and December 27th,
9 2011, commit a sexual battery on KCO, who was 14 years of
10 age or less, but who was, at least, 11 years of age.

11 Jury Voir Dire

12 Now, ladies and gentlemen, the reason I read that for
13 you is so you can answer the next question. And that is
14 this, is there anyone among you who has knowledge of, any
15 opinion regarding or any previous position whatsoever
16 regarding the allegations of the parties in this case?

17 (There was no response.)

18 THE COURT: All right. Let the record reflect no
19 affirmative response.

20 Ladies and gentlemen, the Defendant in this case is
21 Mr. Terry L. McCarrell. Is there anyone among you who has a
22 personal or professional or family relationship with
23 Mr. McCarrell?

24 (There was no response.)

25 THE COURT: All right. Let the record reflect no

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1 affirmative response.

2 Ladies and gentlemen, Mr. Alex Stalvey with the firm of
3 Bannister, White and Stalvey?

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

5 THE COURT: Okay. I didn't know if y'all had added
6 anybody else.

7 MR. STALVEY: We've added one more person.

8 THE COURT: All right. Mr. Stalvey is an attorney in
9 the Greenville County bar with the firm of Bannister,
10 Wyatt and Stalvey. Is there anyone among you who has a
11 personal or professional or family relationship with
12 Mr. Stalvey or any of his partners?

13 All right. Yes, ma'am?

14 PROSPECTIVE JUROR: I have a family member that's
15 previously used the services of that firm.

16 THE COURT: I'm sorry. When you stand up, state your
17 name and your juror number and then give me the response
18 to the question, please.

19 PROSPECTIVE JUROR: I'm Mercedes Bartow, Juror No. 9.
20 I have a family member has previously used legal services
21 from the firm, but not from this attorney.

22 THE COURT: Okay. Do you think given that fact that
23 you could still be a fair and impartial juror in the trial
24 of this case?

25 PROSPECTIVE JUROR: Yes.

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1 THE COURT: Thank you for letting me know, I do
2 appreciate it.

3 All right, ladies and gentlemen, this case is being
4 prosecuted by the 13th circuit solicitor's office.
5 Ms. Lisa Bentley, an assistant solicitor with the
6 Greenville County solicitor's office, will be representing
7 the State. Is there anyone among you who has a personal,
8 professional or family relationship with Ms. Bentley or
9 her second chair, Mr. Andrew Culbreath of the solicitor's
10 department, or any other employee of the Greenville County
11 Solicitor's Office?

12 (There was no response.)

13 THE COURT: All right. Let the record reflect no
14 affirmative response.

15 Ladies and gentlemen, I'm going to read to you a list
16 of potential and perspective witnesses in this case.
17 Those are as follows: Jesse Woodard; Tamila Woodard;
18 Deputy Brian Lovelace; Investigator Brady Maschak, I know
19 I mispronounced that, I'm sorry; Investigator -- excuse
20 me, Master Deputy Robert Perry; Minor [REDACTED] Jamey
21 O'Neill; Brooklin Pollard; Master Deputy Michael Rainey.

22 Ladies and gentlemen, is there anyone among you who
23 has a professional, personal or family with any of those
24 perspective witnesses?

25 (There was no response.)

1 THE COURT: Ladies and gentlemen, is there anyone among
2 you who has been accused, charged with, or convicted of a
3 crime against a child?

4 (There was no response.)

5 THE COURT: Ladies and gentlemen, is there anyone among
6 you who has an immediate family member or close friend who
7 has been accused of, charged with, or convicted of a crime
8 against a child?

9 (There was no response.)

10 THE COURT: Ladies and gentlemen, is there anyone among
11 you who has been accused of, charged with, or convicted of a
12 sex crime?

13 (There was no response.)

14 THE COURT: Ladies and gentlemen, does anyone have a
15 family member or close friend who has been accused of,
16 charged with, or convicted of a sex crime?

17 (There was no response.)

18 THE COURT: Ladies and gentlemen, is there anyone among
19 you who has been a violent or -- excuse me, a victim of a
20 violent crime?

21 (There was no response.)

22 THE COURT: Ladies and gentlemen, is there anyone among
23 you who is a member of or contributor to an organization
24 which advocates for victim's rights or prosecution? When I
25 say that, what I mean, organizations like MADD, Mothers

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1 Against Drunk Driving; SADD, Students Against Drunk Driving,
2 or any other like organization that advocates for
3 prosecution and/or victim's rights.

4 (There was no response.)

5 THE COURT: All right. Let the record reflect no
6 affirmative response.

7 Ladies and gentlemen, is there anyone among you who has
8 an immediate family member who is employed by law
9 enforcement?

10 (There was no response.)

11 THE COURT: All right. Let the record reflect no
12 affirmative response.

13 Ladies and gentlemen, is there anyone else or any other
14 person among you who for any reason cannot render effective
15 jury service in the trial of this case?

16 (There was no response.)

17 THE COURT: All right. Let the record reflect no
18 affirmative response.

19 Ladies and gentlemen, we're going to move to jury
20 selection in this case now. What we're going to pick is 12
21 main jurors, then we're going to pick two alternates. It's
22 important that we pick alternates because we must have 12
23 jurors to come to a conclusion and to deliberate on a case.
24 Oftentimes, during the trial of a case, jurors, for whatever
25 reason, cannot continue, whether it be because of sickness,

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1 because of some immediate family member sickness, whether it
2 be because they discover during the course of a case that
3 they know someone who is testifying or someone who is
4 related to the case. So it's very important that we have
5 alternates. Oftentimes, it's true that the alternates
6 become deliberating jurors. So we'll pick 12 jurors and two
7 alternates.

8 What will happen is the clerk of court has generated a
9 random list by computer, and she will call out those names.
10 When she calls out your name, what I need you to do is stand
11 up right where you are. Just stand up right where you are.
12 The attorneys will then have the opportunity to make strikes
13 or preemptory challenges. Now, the attorneys have great
14 discretion and latitude in exercising preemptory strikes,
15 preemptory challenges. They can strike you for virtually
16 any reason. And I would not try to deduce or define why, in
17 fact, they have stricken you from this case or why they may
18 have put you on this jury. I tell people all the time don't
19 try to get in the head of a lawyer because you may become as
20 crazy as we.

21 So what you will hear when your name is announced, you
22 will hear, first of all, the State will make it's strike.
23 They will say either please seat the juror or please swear
24 the juror, or they will say please excuse the juror from the
25 trial of this case. Then the defense has the opportunity to

1 exercise a strike. Again, they will say either seat the
2 juror, or swear the juror, or excuse the juror from the
3 trial of this case. If you hear from either side, please
4 excuse the juror from the trial of this case, then you sit
5 down because you will have been stricken as a juror.
6 However, if you hear from both sides please swear the juror
7 or please seat the juror, then please bring all your
8 belongings and come have a seat in the jury box. You will
9 have been selected for the juror in this case.

10 Now, ladies -- or excuse me, counsel, I believe that
11 the strikes are ten and five. Am I correct in that regard?

12 MS. BENTLEY: Yes, sir, Your Honor.

13 THE COURT: All right. Good enough.

14 All right. Having said that, ladies and gentlemen,
15 we'll begin with the strikes.

16 Jury Selection

17 THE CLERK: Juror 11, Jessie Betten.

18 (Jessie Betten, a white female, came forward.)

19 THE CLERK: What says the State?

20 MS. BENTLEY: Please present Ms. Betten.

21 THE CLERK: What says the Defendant?

22 MR. STALVEY: Please seat the juror.

23 THE CLERK: Ma'am, please bring your things, have a
24 seat in the jury box.

25 Juror No. 38, Irina Danescu.

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1 (Irina Danescu, a white female, came forward.)

2 THE CLERK: What says the State?

3 MS. BENTLEY: Please present the juror.

4 THE CLERK: What says the Defendant?

5 MR. STALVEY: Please seat the juror.

6 THE CLERK: Ma'am, please have a seat in the jury
7 box.

8 Juror No. 90, Catherine McLean.

9 (Catherine McLean, a white female, came forward.)

10 THE CLERK: What says the State?

11 MS. BENTLEY: Please present the juror.

12 THE CLERK: What says the Defendant?

13 MR. STALVEY: Please seat the juror.

14 THE CLERK: Ma'am, please have a seat in the jury
15 box.

16 Juror No. 88, Remi McCrary,

17 (Remi McCrary, a black female, came forward.)

18 THE CLERK: What says the State?

19 MS. BENTLEY: Please present Ms. McCrary.

20 THE CLERK: What says the Defendant?

21 MR. STALVEY: Please seat the juror.

22 THE CLERK: Ma'am, please come have a seat in the
23 jury box.

24 Juror 153, Joann James.

25 (Joann James, a white female, came forward.)

1 THE CLERK: What says the State?

2 MS. BENTLEY: Please present Ms. James.

3 THE CLERK: What says the Defendant?

4 MR. STALVEY: Please excuse the juror from this case.

5 All right, ma'am, please be seated.

6 Juror No. 53, Francena Grant.

7 (Francena Grant, a black female, came forward.)

8 THE CLERK: What says the State?

9 MS. BENTLEY: Please present Ms. Grant.

10 THE CLERK: What says the Defendant?

11 MR. STALVEY: Please seat the juror.

12 THE CLERK: Ma'am, please come have a seat in the
13 jury box.

14 Juror No. 132, Denny Stone.

15 (Denny Stone, a white male, came forward.)

16 THE CLERK: What says the State?

17 MS. BENTLEY: Please excuse Mr. Stone from the trial
18 of this case.

19 THE CLERK: All right, sir, please be seated.

20 Juror No. 151, Lisa Greenway.

21 (Lisa Greenway, a white female, came forward.)

22 THE CLERK: What says the State?

23 MS. BENTLEY: Please present Ms. Greenway.

24 THE CLERK: What says the Defendant?

25 MR. STALVEY: Please excuse the juror from this case.

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1 THE CLERK: All right, ma'am, please be seated.

2 Juror No. 92, Joshua Mendez.

3 (Joshua Mendez, a Hispanic male, came forward.)

4 THE CLERK: What says the State?

5 MS. BENTLEY: Please excuse the juror from the trial
6 of this case.

7 THE CLERK: All right. Please be seated, Mr. Mendez.

8 Juror No. 30, Nora Coker.

9 (Nora Coker, a white female, came forward.)

10 THE CLERK: What says the State?

11 MS. BENTLEY: Please present Ms. Coker.

12 THE CLERK: What says the Defendant?

13 MR. STALVEY: Please excuse the juror from this case.

14 THE CLERK: All right, ma'am, please be seated.

15 Juror No. 99, Michael Newkirk.

16 (Michael Newkirk, a white male, came forward.)

17 THE CLERK: What says the State?

18 MS. BENTLEY: Please present Mr. Newkirk.

19 THE CLERK: What says the Defendant?

20 MR. STALVEY: Please seat the juror.

21 THE CLERK: Sir, please have a seat in the jury box.

22 Juror No. 36, Margaret Dacko.

23 (Margaret Dacko, a white female, came forward.)

24 THE CLERK: What says the State?

25 MS. BENTLEY: Please present Ms. Dacko.

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1 THE CLERK: What says the Defendant?

2 MR. STALVEY: Please excuse the juror from this case.

3 THE CLERK: All right, ma'am, please be seated.

4 Juror No. 116, Jennifer Saucier.

5 (Jennifer Saucier, a white female, came forward.)

6 THE CLERK: What says the State?

7 MS. BENTLEY: Please present the juror.

8 THE CLERK: What says the Defendant?

9 MR. STALVEY: What was the last name?

10 THE CLERK: Saucier, 116. What says the Defendant?

11 MR. STALVEY: Please seat the juror.

12 THE CLERK: All right, ma'am, please bring your
13 things and have a seat in the jury box.

14 Juror No. 91, Miles McMullen.

15 (Miles McMullen, a white male, came forward.)

16 THE CLERK: What says the State?

17 MS. BENTLEY: Please excuse Mr. McMullen.

18 THE CLERK: All right, please be seated, sir.

19 Juror No. 61, Tomika Henderson-Simpson.

20 (Tomika Henderson-Simpson, a black female, came
21 forward.)

22 THE CLERK: Stand up, please. What says the State?

23 MS. BENTLEY: Please present the juror.

24 MR. STALVEY: Please swear the juror.

25 THE CLERK: All right, ma'am, come have a seat in

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1 jury box.

2 Juror No. 130, Sarah Stalmaker-Ratchford.

3 (Sarah Stalmaker-Ratchford, a white female, came
4 forward.)

5 THE CLERK: What says the State?

6 MS. BENTLEY: Please says the State?

7 MS. BENTLEY: Please present the juror.

8 THE CLERK: What says the Defendant?

9 MR. STALVEY: Please excuse the juror.

10 THE CLERK: All right, ma'am, please be seated.

11 Juror No. 138, Terri Thornburgh.

12 (Terry Thornburgh, a white female, came forward.)

13 THE CLERK: What says the State?

14 MS. BENTLEY: Please present the juror.

15 THE CLERK: What says the Defendant?

16 MR. STALVEY: Please excuse the juror.

17 THE CLERK: All right, ma'am, please be seated.

18 Juror No. 141, Robert Tutterow.

19 (Robert Tutterow, a white male, came forward.)

20 THE CLERK: What says the State?

21 MS. BENTLEY: Please present Mr. Tutterow.

22 THE CLERK: What says the Defendant?

23 MR. STALVEY: Please swear the juror.

24 THE CLERK: Sir, please have a seat in the jury box.

25 Juror No. 24, Deborah Carter.

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1 (Deborah Carter, a white female, came forward.)

2 THE CLERK: What says the State?

3 MS. BENTLEY: Please present Ms. Carter.

4 THE CLERK: What says the Defendant?

5 MR. STALVEY: Please excuse the juror.

6 THE CLERK: All right, ma'am, please be seated.

7 Juror No. 9, Mercedes Bartow.

8 (Mercedes Bartow, a white female, came forward.)

9 THE CLERK: What says the State?

10 MS. BENTLEY: Please present Ms. Bartow.

11 THE CLERK: What says the Defendant?

12 MR. STALVEY: Please seat the juror.

13 THE CLERK: Ma'am, please have a seat in the jury
14 box.

15 Juror No. 15, Robert Bowhall.

16 (Robert Bowhall, a white male, came forward.)

17 THE CLERK: What says the State?

18 MS. BENTLEY: Please excuse Mr. Bowhall from the
19 trial of this case.

20 THE CLERK: All right, sir, please be seated.

21 Juror No. 28, David Chrisfield.

22 (David Chrisfield, a white male, came forward.)

23 THE CLERK: What says the State?

24 MS. BENTLEY: Please present the juror.

25 THE CLERK: What says the Defendant?

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1 MR. STALVEY: Please seat the juror.

2 THE CLERK: Sir, please have a seat in the jury box.
3 Mr. Chrisfield.

4 THE COURT: I don't know if that was wishful thinking
5 or you were so excited. I thought you were excited, you
6 just needed to sit down and rest for a second.

7 THE CLERK: Juror No. 44, Leola Evans.

8 (Leola Evans, a white female, came forward.)

9 THE CLERK: What says the State?

10 MS. BENTLEY: Please present Ms. Evans.

11 THE CLERK: What says the Defendant?

12 MR. STALVEY: Please excuse the juror?

13 THE CLERK: All right, ma'am, please be seated.

14 Juror No. 134, James Stulting.

15 (James Stulting, a white male, came forward.)

16 THE CLERK: What says the State?

17 MS. BENTLEY: Please present Mr. Stulting.

18 THE CLERK: What says the Defendant?

19 MR. STALVEY: Please seat the juror.

20 THE CLERK: Sir, please have a seat in the jury box.

21 All right, for alternate one, Juror No. 121, Kristin
22 Shevick.

23 (Kristin Shevick, a white female, came forward.)

24 THE COURT: Strikes are two and one for the
25 alternates.

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1 THE CLERK: What says the State?

2 MS. BENTLEY: Please present the juror.

3 THE CLERK: What says the Defendant?

4 MR. STALVEY: Please excuse the juror.

5 THE CLERK: All right. Please be seated.

6 Juror No. 5, Betsy Atkins.

7 (Betsy Atkins, a white female, came forward.)

8 THE CLERK: What says the State?

9 MS. BENTLEY: Please present Ms. Atkins.

10 THE CLERK: What says the Defendant?

11 MR. STALVEY: Please excuse the juror.

12 THE CLERK: All right, ma'am, please be seated.

13 Juror No. 82, Kenneth Maccallum.

14 (Kenneth Maccallum, a white male, came forward.)

15 THE CLERK: What says the State?

16 MS. BENTLEY: Please present Mr. Maccallum.

17 THE CLERK: What says the Defendant?

18 MR. STALVEY: Please seat the juror.

19 THE CLERK: Mr. Maccallum, please have a seat in the
20 jury box.

21 Juror No. 123, Michael Sijon.

22 (Michael Sijon, a white male, came forward.)

23 THE CLERK: What says the State?

24 MS. BENTLEY: Please seat the alternate.

25 THE CLERK: What says the Defendant?

1 MR. STALVEY: Please seat the juror.

2 THE CLERK: Sir, please have a seat in the juror box.

3 THE COURT: Okay. Counsel, any matters of law or
4 motions to take up with respect to qualification and/or
5 selection of this jury?

6 MS. BENTLEY: Nothing from the State.

7 MR. STALVEY: Nothing from the Defense, Judge.

8 THE COURT: Okay. Good enough.

9 All right. Ladies and gentlemen, those of you who
10 either weren't called or were stricken, I extend my
11 condolences to you. I promise you there will be
12 opportunities this week for you to get on a jury. Right
13 now, I'm going to send you back downstairs. Ms. Olsen is
14 probably going to dismiss you for lunch and then ask you
15 to come back and sit through another selection process
16 with Judge Hill after lunch. But if you'll report back to
17 her. Thank you for your service this morning and with any
18 luck, I'll see you later in the week.

19 (WHEREUPON, the jury venire was excused at
20 approximately 11:51 a.m.)

21 THE COURT: Counsel, y'all want to come up real
22 quick.

23 (WHEREUPON, bench conference was held in the presence
24 of the jury, but outside the hearing of the jury.)

25 THE COURT: All right, ladies and gentlemen, if

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1 condolences are due to the people who weren't selected,
2 then congratulations are due to you. We're going to break
3 for lunch. What I was just discussing with the attorneys
4 was scheduling to determine whether we wanted to go ahead
5 and begin now or whether we wanted to take a break for
6 lunch. Oftentimes, it's necessary for the Court to take
7 up certain matters of law with the attorneys before we
8 actually begin the trial of the case and before the jury
9 takes its oath in this specific case.

10 So what we're going to do is release y'all for lunch.
11 And then we'll be back at 1:00. 1:00. Please be on time.
12 Not out of respect for the Court or to the parties, but
13 out of respect for your fellow jurors. Because if 13 of
14 you show up and we're simply waiting on one, then your
15 being inconsiderate of your fellow jurors and you will
16 have to enter into a jury room with 13 people looking at
17 you, glaring at you. So don't subject yourself to that,
18 please.

19 Also, during your lunch, please don't discuss the
20 case. I recognize that you don't know anything about the
21 case other than the allegations that were read from the
22 indictment, but it's not appropriate that you begin to
23 consider or to discuss the case in any way, shape or form.
24 The only thing that is appropriate for your consideration
25 in this case is the evidence which is presented in

1 accordance with the law and the rules of evidence. Please
2 don't get on your smart phone or your computer and look up
3 this case and see if you can find out any information
4 about it. I don't think you could, but don't even try.
5 Because if you do, you will have tainted your
6 deliberations because you will have considered something
7 outside of what has been presented in court. Also, don't
8 discuss it with your spouse or your significant other or
9 your kids or your parents or your friends. What happens
10 is, invariably, they begin to ask you questions about the
11 case and they invite you to make qualitative
12 determinations about what you've already seen or heard.
13 And that, in effect, is a form of deliberations. So if
14 anyone offers to discuss it with you, just tell them I
15 can't do it now. When it's over, we'll have plenty of
16 time to discuss it in as much length as we care to, but
17 for the immediate time being, don't discuss it.

18 So if you'll be back, please, at 1:00 and we'll begin
19 the case then. I hope you enjoy lunch.

20 (WHEREUPON, the jury left the courtroom at
21 approximately 11:55 a.m.)

22 THE COURT: All right. Ladies and gentlemen, we're
23 going to retire for lunch. Be back at one. I will just
24 state for the record that the Defendant has not yet
25 appeared. This lunch period will be the opportunity for

1 Mr. Stalvey to find him, if, in fact, he wishes to be
2 found. And we'll be back at 1:00. All right, y'all have
3 a good lunch.

4 MR. STALVEY: Judge, before we break, I don't know if
5 you're going to give the jury any kind of qualifying
6 instructions prior to getting started on the fact that he
7 may not be present, which I don't expect him to be
8 present. I'd like to know if you're going to do that
9 prior to my opening statement.

10 THE COURT: Do you want me to?

11 MR. STALVEY: I do.

12 THE COURT: Just for your information, what I'll say
13 is, ladies and gentlemen, it's obvious that the Defendant
14 is not here with us today. Understand that that changes
15 this proceeding in absolutely no way. Under the
16 constitution, under the law, the State has the burden of
17 proof. So the fact that he may not be here in court today
18 is absolutely irrelevant to what you will be asked to do
19 in this trial. Then at the end of the case, I'll give
20 them the charge on his failure to testify if, in fact, he
21 doesn't show up and doesn't testify. Okay?

22 MR. STALVEY: Okay.

23 THE COURT: But that's the way I'll set it up in the
24 opening charge to the jury. Okay?

25 MR. STALVEY: Okay. Thank you, Judge.

1 THE COURT: Okay.

2 (State's Exhibit Nos. 1 through 5 were marked for
3 identification.)

4 THE COURT: No luck, Mr. Stalvey?

5 MR. STALVEY: No, Your Honor.

6 THE COURT: I'm advised the jury is here. Y'all
7 ready to receive the jury?

8 MS. BENTLEY: Yes, sir.

9 MR. STALVEY: Ready.

10 THE COURT: Okay, bring them in.

11 (WHEREUPON, the jury entered the courtroom at
12 approximately 1:05 p.m.)

13 (State's Exhibit Nos. 7 through 8 were marked for
14 identification.)

15 THE COURT: All right. Good afternoon, ladies and
16 gentlemen. Thank you for being on time. I appreciate
17 that. I note it for the record and I thank you. We will
18 go forward a lot more efficiently if y'all continue to be
19 on time.

20 I'm standing up, I'm walking around. I'm just going
21 to apologize to you in advance. If during the course of
22 this trial you see me stand up and kind of pace back here,
23 it's not because I'm impatient, it's not because I'm
24 trying to move anyone forward, it's because my knee hurts
25 like the dickens and moving around just makes it feel

1 better. So you might see me moving around and I tell the
2 attorneys that, too, so you don't think I'm trying to send
3 any kind of message by pacing back here. If I want to
4 send a message, I'll send it more directly than that, I
5 promise you.

6 Ladies and gentlemen, it's always helpful, I find,
7 before beginning a case for me to give you some
8 indication, first of all, what your duties are as jurors,
9 what your role is, what you're tasked with doing, and
10 then, also, to talk about the process and procedure that
11 we'll follow so that you won't be in the dark and
12 wondering what's next.

13 So let's go ahead and start by talking about what
14 your role is as jurors and distinguish that from my role
15 as the judge. Ladies and gentlemen, your role as jurors
16 is to be the finders of fact. You will determine what the
17 facts are in this case based on the evidence that's
18 presented in trial. Now, as I told you when we first
19 began, the State has the burden of proving the Defendant
20 guilty beyond a reasonable doubt. The State has the
21 burden of proving each and every element of the offense
22 beyond a reasonable doubt.

23 Now, what you will do in your deliberations,
24 ultimately, at the end of the case is determine whether
25 the State has met that burden of proof. And you will

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1 determine that by, first of all, analyzing the evidence
2 and determining what the facts are in the case. And you
3 will apply the law as I give it to you to the facts as you
4 find them to be and determine whether the State has met
5 its burden of proof.

6 Now, you will determine what the facts are by
7 analyzing the evidence as presented in this case.
8 Evidence comes in many different forms. And I don't know
9 as we stand here what the evidence will be in this case
10 because I haven't seen any of the witnesses or heard any
11 of the testimony. I'm in the same position that you are.
12 But I can tell you, generally speaking, that evidence can
13 be witness testimony, it can be documents that are entered
14 into the record, it can be audio tapes, videotapes. It
15 can be physical objects that are presented into the
16 record. You will look at all of the evidence in the
17 aggregate and you will determine what has value and what
18 doesn't. You will determine who is credible and who may
19 not be credible. And you will determine from that what
20 the facts are in the case.

21 You have the sole and exclusive authority to
22 determine what the facts are in the case. The attorneys
23 can't tell you and I can't tell you. If at any point
24 during this trial you hear me say anything that suggests
25 to you that I have an opinion about what the facts are or

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1 an opinion about the ultimate resolution of this case, you
2 may disregard that because I truly do not have any
3 opinion, any bias, any preference. The only thing that
4 I'm concerned with is that both parties get a fair trial,
5 and, by extension, that y'all get a fair trial. You're
6 going to commit some deal of time to this trial. So it's
7 important that I make sure that it's fair to everyone, to
8 include you.

9 Now, in making sure that it's fair to everyone, I
10 will acquit my role of being the judge of the law. And
11 I'll make sure that we're following the appropriate
12 procedure, that we're following the rules of evidence, and
13 that we're following the law. Essentially, what I am is
14 the objective umpire or referee, just calling balls or
15 strikes, making sure that it's fair to everyone.

16 During the course of this trial, the attorneys may be
17 making objections or making motions before the Court. It
18 will be my role to rule on those objections to determine
19 whether, in fact, based on my interpretation of the law
20 and the rules of evidence whether evidence is admissible
21 or not admissible or whether one's side's motion should be
22 granted or not granted.

23 Now, understand, when I rule for one side, then I
24 necessarily must rule against the other. Don't take from
25 that that I have a preference or a bias either way, I,

1 certainly, don't. I must rule for one side or the other.
2 But understand that that decision is made, basically, in
3 the context of that one legal issue and it's just an
4 objective and sterile decision based on my understanding
5 of the law. Also, don't hold it against the attorneys
6 when and if they object or when and if they make motions.
7 That's their job, that's what they're here to do, to
8 represent their client's respective side.

9 At the end of the case, after you've heard all of the
10 evidence, I will give you a charge on the law. The reason
11 I give you a charge on the law at the end of the case is
12 because I don't really know at this point what law is
13 going to be applicable to the evidence that's presented in
14 the case. Just like you, I'm hearing it for the first
15 time. So it's important for me to wait until the end to
16 see what law will be applicable to the evidence that's
17 presented.

18 Now, the process that we will follow in this case is
19 we will begin with opening statements from the attorneys.
20 Now, opening statements from the attorneys are just that,
21 opening statements. It's not evidence. It's not evidence
22 to be considered by you in your deliberations. The
23 attorneys are charged with advocating their respective
24 positions, advancing their client's interest. So,
25 understand that when they argue to you, they are,

1 essentially, trying to persuade you.

2 Now, in opening arguments, what the attorneys are
3 doing, essentially, is introducing themselves and their
4 case. It should be very brief. After they've both given
5 you opening statements, then the State will have the
6 floor. That is, the will have the ability to put evidence
7 into the record. And, usually, what happens is the State
8 calls their first witness to the stand. That witness
9 takes the stand, the State examines the witness and the
10 Defense has the opportunity to cross-examine that witness.
11 After all the questions have been asked, then that witness
12 will be excused, the next witness comes up. After the
13 State has put up all the witnesses that it intends to
14 introduce and by introducing those witnesses, introduces
15 the evidence that it intends to introduce, then the State
16 will rest.

17 After the State rests, the Defense has the option,
18 and it's in his discretion, to present evidence and
19 present witnesses as well. If and when the Defense has
20 put up all of the evidence that it intends to put up, then
21 the Defense will close or rest and we will proceed to
22 closing arguments. Again, closing arguments from counsel
23 is not evidence, just arguments trying to convince you of
24 their positions. After you've heard closing arguments
25 from both sides, then I'll give you the charge on the law,

1 as I've already explained to you. After I've given you a
2 charge on the law, then I will direct you to return to
3 your jury room and begin your deliberations.

4 Now, it's important to know that you shouldn't start
5 your deliberations until we get to that stage of the
6 trial, that is beyond all the evidence and beyond the
7 charge on the law. And I suspect that by and through your
8 common sense you know why that is, but at the risk of
9 insulting your intelligence, I'm going to tell you anyway.
10 You recognize that it's not fair to make a decision on any
11 important subject until and unless you've heard all of the
12 facts that bear upon that particular issue. You know in
13 your own personal life that at some point in time, either
14 a brother, or a child, or friend has come to you and told
15 you you're not going to believe what happened, and they
16 tell you one side of the story. And you may be entirely
17 convinced of that side of the story. And then you hear
18 the other side, and it changes the complexion and the
19 context of that entire story.

20 Well, the same is true in a trial in court, that is,
21 you need to hear the whole story before you begin making
22 any considerations or any deliberations. So understand
23 that when we break, and we will take some breaks, don't
24 discuss the case among each other, wait until I give you a
25 very clear signal to begin your deliberations. And I

///

1 promise you that it's going to be a clear signal. If you
2 have to ask yourself did he say we could start
3 deliberating, the answer will be no because it will not
4 have been as clear as it will be.

5 Also, know that during the course of this trial, as I
6 suggested to you earlier, we'll be taking breaks. I like
7 to take a break about every hour to an hour and a half.
8 And it always depends on the witnesses, who's on the
9 stand, how much more time do they have to go, and is it a
10 convenient and appropriate time to take a break. But I
11 will tell you that if at any time during this trial you
12 need to take a break, you let me know. You are the 14
13 most important people in the courtroom and it's very
14 important that you're paying attention to the evidence
15 that's being presented. So I would much rather you raise
16 your hand and get my attention or the bailiff's attention
17 and say I need to take a break, even if it's only five
18 minutes after we come back into the courtroom because I
19 would prefer that you're paying attention as opposed to
20 saying I wish these people would sit down and shut up so I
21 can take a break. So you let us know, you let us know and
22 I will be more than happy to do that.

23 Ladies and gentlemen, we're going to begin now with
24 opening statements from the attorneys in this case. But
25 before we do that, I'm going to ask the clerk of court to

1 swear you in. Earlier, you took a break to tell the
2 truth. This oath is a little bit different and specific
3 to the case wherein you will swear to truly and verily try
4 the case in this instance.

5 Yes, ma'am.

6 THE CLERK: Okay, please, stand and raise your right
7 hand for the oath. The proper response is, I will.

8 (WHEREUPON, the jury was sworn.)

9 THE CLERK: Thank you, please be seated.

10 MS. BENTLEY: May it please the Court?

11 THE COURT: Yes, ma'am.

12 Opening Statements

13 MS. BENTLEY: Mr. Stalvey. In October 2011, Minor
14 [REDACTED] was getting her life back on track. You will hear
15 that Minor [REDACTED] did not have an easy upbringing. Her mother
16 had previously lost custody of her and her brother and she
17 spent several years in foster care. In October of 2011,
18 Minor [REDACTED] brother decided to remain out of the home and
19 live with friends. Minor [REDACTED] mother worked two fast food
20 jobs to support her family. In October of 2011, Minor [REDACTED]
21 had been in trouble with the law. She was on house
22 arrest. She had a newborn daughter that she named Zoe.
23 And she was completing her schoolwork with the help of a
24 teacher who came to her home. In October 2011, Minor [REDACTED]
25 [REDACTED] was 13 years old. She had a lot of responsibility

1 on her shoulders. And her background made her the perfect
2 target.

3 You will hear that [Minor] and her mother met Terry
4 McCarrell in early October 2011. They were taking
5 [Minor] daughter, Zoe, for a walk around the
6 neighborhood and ran into one of [Minor] classmates, a
7 boy she went to middle school with, a boy who was at the
8 gas station with Terry McCarrell. In October 2011, Terry
9 McCarrell was 48 years old. He had 22-year-old daughter,
10 he had grandchildren.

11 Ladies and gentlemen, you are here today because the
12 State alleges that a few weeks after that initial meeting
13 in October of 2011, Terry McCarrell began a sexual
14 relationship with 13-year-old [Minor]

15 My name Lisa Bentley. Andrew Culbreath and I are the
16 prosecutors in today's case. We will be presenting
17 evidence that Terry McCarrell committed the four crimes
18 that he's been accused of. I want to talk to you a little
19 bit about those crimes and the evidence that needs to be
20 proven.

21 First, Mr. McCarrell has been charged with criminal
22 sexual conduct with a minor in the second degree and lewd
23 act upon a child. Those are based on his sexual
24 relationship with [Minor] In South Carolina, the
25 law is clear, no adult can have any sexual contact with

1 any child under the age of 15. There are no exceptions to
2 that law. Criminal sexual conduct and lewd act are
3 slightly different. Criminal sexual conduct requires that
4 a sexual battery have occurred between the parties. The
5 sexual battery is defined as either traditional penile
6 vaginal intercourse or oral sex. The State will show that
7 Minor and Terry engaged in both traditional sexual
8 intercourse and oral sex.

9 A lewd act. What is a lewd act? A lewd act, on the
10 other hand, is merely inappropriate touching, touching,
11 rubbing, fondling, any action by the Defendant on the body
12 of the victim that is meant to arouse either himself or to
13 arouse the child. You will hear that on, at least, one
14 occasion Terry rubbed Minor whole body in an effort to
15 get her to acquiesce to sexual intercourse.

16 Mr. McCarrell is also on trial today for grand
17 larceny and contributing to the delinquency of a minor.
18 These are also based somewhat on his relationship with
19 Minor. The evidence will show that on
20 November 14th, 2011, Minor and Terry were spending time
21 together and they ran into Minor neighbor, Jesse
22 Woodard, her next door neighbor. Jesse was talking to
23 Minor and Terry about tattoo work and he offered to show
24 them some pictures. The testimony will show that Minor
25 and Terry both entered Mr. Woodard's home, his wife was

1 not present, and that while inside, Terry took Mrs.
2 Woodard's wedding set, her engagement ring and her wedding
3 ring, both of which she accidentally left at home that
4 day.

5 [Minor] will talk to you about her involvement in
6 that. She will tell you that she knew Terry took the
7 rings and that when he asked her to, she agreed to help
8 him cover up that crime. By accepting that stolen
9 property, that made [Minor] break the law, which is the
10 basis for the contributing to the delinquency of a minor
11 charge.

12 Now that you know what this case is about, what the
13 charges mean and what I have to prove, I'm going to tell
14 you a little bit about what you can expect from the
15 State's case. You're going to hear from a number of
16 witnesses. You will hear from both Jesse and Tamila
17 Woodard, [Minor] neighbors who had their rings stolen.
18 You will hear from the investigator of that larceny case,
19 who, while investigating for larceny, came upon some text
20 messages indicating the sexual relationship between
21 [Minor] and Terry. You will hear from Mr. McCarrell's
22 daughter, whose cell phone was used in some of that
23 communication. You will hear from [Minor] and her mother
24 and additional police officers.

25 Keep in mind that real life crime does not get the

1 benefit of television editing or script writers. And sex
2 crimes, most of all, are secret crimes. They are not
3 committed out in the open. They are not committed with
4 witnesses around. They are kept behind closed doors.
5 Because of that, the testimony of the victim is of the
6 upmost importance in this case. Minor is the only
7 person that was there. She is the only person that can
8 give you the details of the crime, the details of her
9 sexual relationship with Terry McCarrell. And when you
10 listen to Minor testimony, keep in mind what I told
11 you at the very beginning, she was the perfect target.
12 She was not perfect, she was the perfect target for a man
13 like Terry McCarrell.

14 At this time, Mr. Culbreath and I thank you. We
15 thank you for your attention. We thank you for your
16 patience during the trial process. And we thank you for
17 giving justice a chance today.

18 THE COURT: Yes, sir.

19 MR. STALVEY: Ladies and gentlemen, as you heard,
20 Minor certainly, grew up a troubled child.
21 When she was in middle school, she was expelled, charged
22 with several juvenile offenses, some involving getting
23 into fights at school, some involving threats with other
24 students at school. She ran away from home when she was
25 either 11 or 12. She has been before the Family Court

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1 here in Greenville County several times. And ladies and
2 gentlemen, while she has grown up troubled, there's,
3 certainly, no doubt about that, and while she has grown up
4 with a very unfortunate family situation, there's no doubt
5 about that, throughout the course of her life, there's
6 always been somebody else to blame for Minor actions.

7 When she went before the Family Court back in 2010,
8 she admitted to the Judge that she was on drugs or had
9 used drugs, specifically methamphetamine. At that time,
10 the Judge said, Well, we need to find out who's giving her
11 this methamphetamine. It was somebody else's fault. You
12 know, she had a child when she was 12 years old. At that
13 time, again, that wasn't her fault. At this time, she was
14 investigated for stealing some rings. And my client,
15 Terry McCarrell, was involved in that investigation. And,
16 again, as you'll see during this trial, that wasn't
17 Minor fault either. This is a pattern, ladies and
18 gentlemen. And you're going to see during the course of
19 this trial that what we're here seeing today is a
20 continuation of that pattern.

21 Ladies and gentlemen, all that I ask you to do is
22 forgot about what has happened in the past and I want you
23 to focus on what's happened in this case. Because who's
24 really responsible for what we're here for today? The
25 State's going to say it's my client. The State's going to

1 say what has been said throughout Minor life, her
2 actions are the product of another's wrongdoing.

3 Well, that's not the case. You'll see that when she
4 committed this act, when she stole these rings, or took
5 part in stealing these rings, she knew what she was doing.
6 And when she implicated my client and when she was
7 pressured by the police into telling them something about
8 my client that, in fact, was not true, she did it. And
9 why did she do it? Because, again, she's trying to shift
10 the blame to another individual for her actions. That's
11 what happened in this case, she's done that all of her
12 life.

13 I just ask that you pay attention to the facts, you
14 pay attention to the testimony that you hear during this
15 case. You look at all the evidence that's presented to
16 you. And at the end of this case, it will be clear, this
17 is just another example of Minor shifting the blame to
18 another person to get out of whatever trouble she's in.
19 It will be clear from the evidence, clear from the
20 testimony that that's what's happening in this case.
21 Thank you.

22 THE COURT: Hold on, Mr. Culbreath.

23 Ladies and gentlemen, it may be obvious to you that
24 the Defendant, Mr. McCarrell, is not with us here in the
25 courtroom today. I can tell you honestly that I don't

1 know why he's not with us in the courtroom today. But I
2 can tell you as well that it doesn't matter. The fact
3 that he's not here doesn't change anything about these
4 proceedings in any way. What you are charged with doing
5 is determining whether the State meets its burden of
6 proving each and every element of the offenses beyond a
7 reasonable doubt. It doesn't change by virtue of the fact
8 that he's not with us today. I can tell you that I will
9 not conduct myself as the judge of the law in this case
10 any differently and I charge you that you shouldn't
11 conduct yourself as judges of the facts in any different
12 way as consequences of him not being here.

13 So having said that, Mr. Culbreath, I think you were
14 beginning to call your first witness, sir.

15 MR. CULBREATH: Thank you, Your Honor.

16 MR. STALVEY: Judge, I'm sorry to interrupt you. I'd
17 ask the State's witnesses be sequestered prior to the
18 presentation of the case.

19 THE COURT: Okay. All right. Any objection to that,
20 sir?

21 MR. CULBREATH: No.

22 THE COURT: All right. There shall be an order of
23 sequestration. If you will take care of that before you
24 call your first witness, sir.

25 MR. CULBREATH: The State's first witness will be Ms.

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1 Tamila Woodard.

2 THE COURT: Ladies and gentlemen, just so you know, I
3 don't have any secrets, when either party makes a motion
4 for sequestration, what that means is they're asking that
5 the parties who are going to testify not be present in the
6 courtroom while the other witnesses are testifying, which
7 means that they couldn't, essentially, corroborate each
8 other's testimony as a consequence of listening to each
9 other's testimony. So I've granted the order of
10 sequestration. What you see now is the witnesses
11 physically leaving the courtroom. And they will come back
12 in one by one. All right.

13 WHEREUPON;

14 TAMILA WOODARD,

15 after being duly sworn, testified as follows:

16 THE CLERK: Thank you. Please be seated. Please state
17 your name for the record.

18 THE WITNESS: Tamila Kathleen Woodard.

19 DIRECT EXAMINATION

20 BY MR. CULBREATH:

21 Q Ms. Woodard, good afternoon.

22 A Good afternoon.

23 Q My name is Andrew Culbreath, I'm going to ask you a
24 few questions.

25 A Okay.

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1 Q I'm going to stand over here so you can kind of look
2 at me and look at the jury as well and they can see you.

3 You've given us your name. Tell us a little bit about
4 yourself. Tell us about your age. Are you married?

5 A Yes, I'm married. I have been married for seven
6 years. Me and my husband have been together for 10. I'm
7 28 years old. I have two daughters. I have a
8 four-year-old and a six-year-old. I currently am
9 employed. I work as a peer support specialist at Faces &
10 Voices of Recovery in Greenville. It's a form of drug and
11 alcohol counselor. And I also work at Brushy Creek Custom
12 Doors building cabinets and countertops.

13 Q Is that out of Greer, Brushy Creek?

14 A Yes, out of Greer.

15 Q You mentioned you were married, is that Jesse?

16 A Yes, Jesse Woodard.

17 Q Did you go to school around here?

18 A I did.

19 Q Where did you go?

20 A I went to Riverside-Jenkins and Traveler's Rest High.

21 Q So you did?

22 A Yes.

23 Q What do you do at Brushy Creek?

24 A I build cabinets, countertops, we do crown molding,
25 base boards, a variety of different packages we do.

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1 Q Okay. You mentioned Faces & Voices of Recovery. I
2 think they also call it FAVOR?

3 A Favor, yes.

4 Q Tell us about that. What got you interested in
5 counseling?

6 A I grew up kind of almost in a rough situation like
7 Minor to be honest. I was introduced to drugs at a
8 very, very young age. I was a meth addict for over 10
9 years. I finally got clean. I have been clean for four
10 years today. And so I went through Pickens Behavioral
11 Health Services and completed intensive outpatient rehab.

12 After I completed that, I got asked if I would like
13 to join the board over the drug and alcohol commission in
14 Pickens County. And I still currently do that. That's
15 how I got introduced to my first peer support specialist
16 and I found out what they do. You know, part of the
17 qualifications for that job is you had to have been a
18 prior addict and, actually, gone through and completed
19 treatment successfully and had, at least, two years
20 underneath your belt clean time. So then I got my
21 certification November 11th last year.

22 Q How often do you go out there every week?

23 A To FAVOR? Most of my work is, actually, done over
24 the telephone from home. I meet clients on the weekends,
25 but I work out there on Fridays.

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1 Q Are you living here in Greenville?

2 A I live -- I, actually, live in Pickens County.

3 Q Okay.

4 A I live right on the Greenville County/Pickens County
5 line in Caesar's Head.

6 Q Well, with the past history of drug use, did you have
7 any issues with law enforcement?

8 A Yes.

9 Q Please tell us about that.

10 A Yes. 2007, I was, actually, convicted, if my
11 recollection is correct. It was illegal use of a driver's
12 license, obtaining property under false pretense. I had a
13 grand larceny charge. But those -- drug paraphernalia,
14 possession of drugs. And then -- I think that's about it.
15 But it was all stemming from my drug use.

16 Q Is that when you hit rock bottom?

17 A Yes.

18 Q Let me ask you a question or two about and direct
19 your attention to November 14th of 2011?

20 A Okay.

21 Q You told us now where you're working and where you
22 live. Where did you live back then?

23 A I lived in Greenville County right off Parker Road.

24 Q Was that 1105 --

25 A West Parker Road.

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1 Q -- [REDACTED] ?

2 A [REDACTED]

3 Q Okay. In Greenville County?

4 A Yes.

5 Q All right. For the jury, tell us a little bit about
6 where that is. Isn't that off West Blue Ridge?

7 A Yeah, it's on the corner of Parker Road and West Blue
8 Ridge. It's right outside of City View, right up behind
9 Berea, kind of behind the Wal-Mart.

10 Q How long -- as of November 14th, about how long had
11 you lived there?

12 A Just a couple of weeks.

13 Q Who were you living there with?

14 A Me and my husband.

15 Q Okay. All right. So I'll take you back, where were
16 working at the time on November 14th?

17 A I was working at Domino's as an assistant manager,
18 and I was also working at Yellow Cab as the lead
19 dispatcher. I had two jobs.

20 Q Well, tell this jury about the series of events that
21 led to your involvement in this case on November 14th,
22 2011, how did that start off?

23 A Okay. I had gotten ready for work that day. I went
24 in approximately about four p.m. Before I got ready, I
25 was going my hair and I had put gel in it. Any time I put

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1 gel in my hair, I always take my rings off because it gets
2 caked in my rings. And I set them down on a desk that I
3 have. It's kind of like -- it was a very small trailer
4 that we lived in and there's a desk that kind of sat in
5 the entryway right next to where my kitchen was. And I
6 washed my hands and ran out the door because I didn't want
7 to be late. Then I worked until about 8:00, 8:30ish p.m.
8 that day and then came home.

9 Q Now, when you walked into your residence there, is it
10 laid out in a such a way that the living room is off to
11 one side and the kitchen is the other?

12 A Yes, and it's opened.

13 Q It's an open area.

14 A Yes, it's an open area.

15 Q Okay. You mentioned a desk, where was the desk?

16 A When you walk in the front door, the living room is
17 like -- you're walking directly into my living room. And
18 to the right -- I mean, to the left is a small, tiny
19 little closet. Then right after that is a wall where the
20 closet ends and that's where my desk was. And then if you
21 just kind of walked around the desk, that immediately
22 leads into my kitchen. It's a very, very tiny kitchen.
23 And then I had a small little round kitchen table. And
24 then there's a small hallway and that's where I had my
25 washer and dryer. Then there was a bathroom and a

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1 bedroom. Then if you walk in to the right, there was one
2 bedroom that stemmed off of the living room.

3 Q So when you're walking in, can you get into your
4 kitchen without first passing the desk?

5 A You have to pass the desk to get to the kitchen.

6 Q You mentioned this was [REDACTED]

7 A [REDACTED]

8 Q Is that called Shady Oaks?

9 A Yes.

10 Q Is that a mobile home park?

11 A Mobile home park.

12 Q All right. Tell a little bit about the layout of the
13 park, the homes and such.

14 A Whenever you pull in directly off of Parker Road,
15 there is a white two-story house that sits right in front.
16 Well, then, you have a bunch of trailers that starts on
17 the left-hand side. And after you pass the house, you
18 know, dead lined up with the house is the first trailer.
19 And then they are very, very close. I mean, there's not
20 much distance between the trailers at all. Then it goes
21 around in a circle and comes out the other side of the
22 house. It was just a big circle.

23 Q So it makes like a half circle?

24 A Yes.

25 Q And I kind of interrupted you. You were explaining

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1 you had taken your rings off.

2 A Yes. I took them off while I was doing my hair and
3 set them down on the desk and washed my hands and then I
4 just grabbed my stuff and ran out the door.

5 Q You were headed off to work at where, Domino's?

6 A Yes, Domino's.

7 Q Okay. All right. So take us from there. Well,
8 first, let me ask you this. Describe the rings.

9 A Okay. I had a gold tulip ring that had red rubies in
10 the top of it. I, actually, got it for my graduation
11 present from my mom. Then my wedding set was a white gold
12 band that had the diamonds, small diamonds that went all
13 the way around it. And my engagement ring was also white
14 gold, but it had two smaller stones on the side and then
15 one large stone in the middle. And then it had -- each
16 prong was -- it was like twisted, like the metal was
17 twisted in it. It had like -- it had a really pretty
18 design on it.

19 Q Okay. And about how long had you had those about
20 this time? You got married in 2007?

21 A Yes, that's the year we got them was 2007.

22 Q And as for the -- I know you mentioned three rings,
23 but your wedding band, the white gold, and, also, the
24 engagement ring, what is the value of those two rings?

25 A \$2,470.

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1 Q That's pretty specific, how do you --

2 A Yes. Because I made payments on it for a long time
3 to get those.

4 Q Okay. Yes. So based on that 2470, that's the value
5 of those two rings?

6 A Yes. And after I had purchased them -- because, you
7 know, I didn't get to pick them up until we completely
8 paid them off. I took them up to Lee Jewelers because I
9 wanted to have the clarity checked on them because there
10 was a lot of cubic zirconia that was going around that
11 really looked real. So I took them up to Lee Jewelers
12 right there at Cherrydale and she told me that was the
13 estimated value of the rings.

14 Q Okay.

15 MR. CULBREATH: Your Honor, if I may approach the
16 witness? I'd like to show the witness what's been
17 premarked as State's Exhibits 7 and 8.

18 THE COURT: Yes, sir.

19 BY MR. CULBREATH:

20 Q Ms. Woodard, let me show you what's been premarked as
21 State's Exhibits 7 and 8. Do you recognize those?

22 A Yes, I do.

23 Q What are those photographs of?

24 A That one is my wedding band.

25 Q When you say that one, which one in particular?

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1 A Both of them are, that's turned to the side and this
2 is laying flat down.

3 Q Exhibit No. 7, what view is that giving you of your
4 --

5 A This is a side view. Like if it was sitting on my
6 finger, you could see the top view.

7 Q And then No. 8, what is that view?

8 A Lying flat down on a surface.

9 Q And do you recognize that ring?

10 A Yes, I do.

11 Q Does that look to be the exact same ring that you had
12 that date?

13 A Yes, it is.

14 Q Any alterations or changes to that?

15 A Not that I can see.

16 MR. CULBREATH: Your Honor, I'd like to go ahead and
17 move these in evidence as State's 7 and 8.

18 THE COURT: Any objection, sir?

19 MR. STALVEY: No objection.

20 THE COURT: All right. Without objection, the same
21 is moved into evidence.

22 MS. BENTLEY: Thank you, Your Honor.

23 (WHEREUPON, State's Exhibit Nos. 7 and 8 were admitted
24 into evidence.)

25 BY MR. CULBREATH:

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1 Q Ms. Woodard, tell us what happened after you got off
2 work. Did you come home or did you come home early, how
3 did that happen?

4 A Yeah, I -- the whole reason why I went in is I filled
5 in. I was doing a fill-in, so I only had to go in for a
6 couple of hours. When I came home -- most of the time
7 when I come home, you know, I'll sit down and kind of wind
8 down. I just don't like going directly in and taking a
9 shower. So I sat down and was winding down for a minute.
10 I was in the kitchen -- I was doing something in the
11 kitchen, I can't remember if it was washing dishes or
12 getting something to drink and my husband had bent down
13 and he's like, Tamila, your ring's on the floor, and
14 handed me my red tulip ring. And I was like, Where's my
15 other two at? He was like, Which ones? And I'm like, My
16 wedding bands. I was like, I left them all sitting on the
17 desk, where are they? And that's when -- excuse my
18 language, but that's when he said, Oh, shit --

19 MR. STALVEY: Objection, Your Honor. We're getting
20 too much into the hearsay. He's here and he can testify.

21 THE COURT: Okay. Well, specifically, with respect
22 to that, I'll overrule. It's not intended for the truth
23 of the matter asserted.

24 Go ahead.

25 MR. CULBREATH: Thank you, Your Honor.

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1 BY MR. CULBREATH:

2 Q All right. Now, let me ask you to just back up one.
3 second. You came home, went through your usual routine?

4 A Yeah.

5 Q Who was home -- who else --

6 A Just my husband.

7 Q Okay. Only the two of you lived there, correct?

8 A Yes.

9 Q Okay. So at some point when you came home, there was
10 a realization that two of your three rings were gone?

11 A Yes, sir.

12 Q Then you had a conversation with your husband?

13 A Yes.

14 Q Based on that, what did -- what did you do and what
15 did he do?

16 A He said, I think I know what happened to them. And
17 he explained to me, you know, that **Minor** and Terry had
18 come over to the house.

19 MR. STALVEY: Objection, Judge. Again, hearsay.

20 THE COURT: Okay. All right.

21 What's your position on that, sir?

22 MR. CULBREATH: Well, she's just describing why
23 somebody took the particular action that they did, not
24 necessarily for the truth. She's giving us the complete
25 picture.

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1 THE COURT: With respect to that statement, that is
2 that he said that they had been there, then I overrule
3 because I don't think that's admitted to prove the fact
4 asserted. Now, going beyond that, I think it's
5 questionable. Okay. And that is, essentially,
6 establishing the scene. Go ahead.

7 BY MR. CULBREATH:

8 Q Let me ask you about -- we talked a little bit about
9 Minor and Terry. When you say Minor where do they
10 live in relation to you?

11 A If you walked out my front door, they lived in a
12 trailer directly in front of me.

13 Q And when we're talking about distance, how far as we
14 talking?

15 A I could stand on my bottom step and lean forward and
16 like with the tip of my fingers touch the trailer.

17 Q So we're talking close?

18 A Very close.

19 Q So you and your husband had a discussion after you
20 realized these rings were gone?

21 A Yes.

22 Q And he left the residence and went next door to
23 Minor house?

24 A Yes.

25 Q Did you step outside or go over there?

1 A Yes, I was standing on the porch.

2 Q Did you have a view of what was going on?

3 A No.

4 Q Could you overhear what was going on?

5 A Yes.

6 Q And your husband, Jesse, did he speak with Minor
7 over at the residence?

8 A Yes, he called Minor outside. Minor stepped
9 outside and they spoke at the end of the trailer.

10 Q Okay. So what is your recollection after the
11 conversation that he had with Minor What action was
12 taken next?

13 A Minor went back into the house and was going, I
14 guess, to talk to Terry about, you know, what had
15 happened, if he had them. She said she didn't know
16 anything about it.

17 Q Okay. When your husband came back, did the two of
18 you make a decision to contact law enforcement?

19 A Yes. Well, that's when me and my husband were out
20 there and I told him, you know, if I didn't have the rings
21 back within a very short period of time that I would be
22 calling the law out there.

23 Q Did you, ultimately, have to do that?

24 A Yes.

25 Q All right. Did you give anybody permission or

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1 authority to take your rings on that date?

2 A No, sir.

3 Q Did you ever get a phone call after that from a
4 Brittany or a Brooklin Pollard?

5 A Yes.

6 Q Who is Brooklin Pollard?

7 A Terry's daughter.

8 Q After you met with law officer, did you have to take
9 -- review any photo ID's or photo lineups or anything like
10 that?

11 A No.

12 Q But you at some point got a call from Brooklin, what
13 was that conversation about?

14 A Was asking if she was able to find the rings and give
15 them back if I was willing to drop charges.

16 Q So she was proposing to you that if she found rings
17 and got them back to you --

18 A Yes, sir.

19 Q She was asking if you would drop charges?

20 A Yes.

21 Q Do you know how she got in touch with you to start
22 with?

23 A I have no idea how she got my number.

24 Q In response to that, what did you tell her?

25 A I told her that if she was to find them and she could

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1 get them that she needed to turn them into law enforcement
2 and then I would go pick them up from them.

3 Q Was that --

4 A Since the law was already involved.

5 Q Okay. To avoid contact with her directly?

6 A Yes.

7 Q All right. And did you ever, ultimately, receive any
8 of your rings?

9 A One of them, the band.

10 Q Would that be Exhibit 7 and 8 here that we've seen?

11 A Yes. I did not receive the engagement ring back,
12 though.

13 Q And was Terry McCarrell authorized or permitted to
14 take your rings?

15 A No.

16 MR. CULBREATH: Ms. Woodward, thank you for your
17 time. Please answer any questions defense counsel may
18 have for you.

19 CROSS-EXAMINATION

20 BY MR. STALVEY:

21 Q Ms. Woodard, you testified that you've had some
22 issues with drugs before, correct?

23 A Yes, sir.

24 Q I believe you testified that you have been clean four
25 years today, is that correct?

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1 A Yes, sir.

2 Q So you haven't done any drugs since July 6th of 2010?

3 A July 7th, 2010.

4 Q Is that correct?

5 A That's correct.

6 Q All right. Haven't smoked any marijuana?

7 A Nothing.

8 Q Did your husband, Jesse, also have some issues with
9 drugs?

10 A Yes.

11 MR. CULBREATH: I object, Your Honor, as far as
12 relevance with this witness.

13 THE COURT: All right. I'll let you ask that
14 question. I don't know how far you're going to go with
15 it, but with respect to that specific question, I
16 overrule.

17 MR. STALVEY: Okay.

18 THE WITNESS: Yes, we both did.

19 BY MR. STALVEY:

20 Q All right. Has he gotten sober like you?

21 A Yes, he has.

22 Q Do you know if he's been sober for a particular
23 amount of time?

24 A Same time as me.

25 Q So y'all both got sober --

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1 A Together.

2 Q Together July 7th, 2010?

3 A Yes.

4 Q And to your knowledge, he hasn't had any kind of
5 relapse or anything like that?

6 A No.

7 MR. CULBREATH: Your Honor, I renew my objection. I
8 think we've run this line of questioning down as far as
9 it's relevant.

10 THE COURT: All right. I overrule. You can ask the
11 question.

12 THE WITNESS: No, he has not.

13 BY MR. STALVEY:

14 Q To your knowledge?

15 A To my knowledge, correct.

16 Q Did you ever have any suspicions that he may have
17 relapsed?

18 A No.

19 Q And --

20 A We had our children taken in 2010.

21 Q Okay.

22 A A couple months after that is when we buckled down
23 and we got clean. 2011, April 15th, if I'm not mistaken,
24 is the date we got our children back.

25 Q Okay.

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1 A That's when we were staying in that trailer. We were
2 under DSS's custody. At that time, we were under court
3 orders. We were both in inpatient services. We were
4 going to Pickens Behavioral Health Services at the time.
5 And we were forced to do hair strand tests, drug tests
6 randomly through them and through the Pickens County court
7 system during the time that the theft of the rings had
8 happened.

9 Q Never failed any of the drug tests?

10 A Never, not one.

11 Q What about your husband?

12 A No, never did.

13 Q When was the -- when was the last -- if you remember,
14 when was the last hair strand test that you took?

15 A The last one that I took was, actually, when I went
16 to -- right before I got my state certification as a peer
17 support specialist. I had to submit one more hair strand
18 test.

19 Q Was that in 2011?

20 A Last year, 2013.

21 Q Oh, okay.

22 A November. It was, actually -- I want to say it was
23 the end of October is when I had to submit it.

24 Q All right. And you said you had the rings appraised?

25 A Yes.

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1 Q What year was that?

2 A That was the year that I paid for them, so 2007.

3 Q Was that the last value that you got for the rings?

4 A Yes..

5 Q In 2007, the rings were valued at just over \$2,000?

6 A Yeah, 2000 -- it was almost 2500. It was 2004 --
7 they said, roughly, it was like 2400 like 80 something
8 bucks is what the lady had given me.

9 Q And that was in 2007, right?

10 A Yes.

11 MR. STALVEY: Thank you. No further questions.

12 THE COURT: Sir?

13 MS. BENTLEY: No redirect, Your Honor.

14 THE COURT: All right.

15 Ma'am, I appreciate you being here. You may step
16 down.

17 You may call your next witness.

18 MR. CULBREATH: Your Honor, the State would call
19 Jesse Woodard.

20 THE CLERK: Mr. Woodard, please come forward. If you
21 will please pause at the end of the bench, place your left
22 hand on the Bible and raise your right hand.

23 Whereupon;

24 JESSE WOODARD,

25 after being duly sworn, testified as follows:

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1 THE CLERK: Please be seated. Please state your name
2 for the record.

3 THE WITNESS: Jesse David Woodard.

4 THE CLERK: Thank you.

5 DIRECT EXAMINATION

6 BY MR. CULBREATH:

7 Q Good afternoon, Mr. Woodard.

8 A How you doing?

9 Q Good. Tell this jury -- we know your name, you've,
10 obviously, given us your name. Tell this jury a little
11 bit about your background, your age, marital status, tell
12 us a little bit more about you.

13 A I'm 30 years old, turned 30 in May. When I was
14 young, I was in trouble, too. I got in trouble for purse
15 snatching when I was in my teens. Then I had my bat with
16 drugs and alcohol and stuff. Tamila and I got married, we
17 had some kids. We have two beautiful girls.

18 Q Tamila here, that's -- when did you get married?

19 A We got married seven years ago, so.

20 Q You've got some children?

21 A Yes, sir, we've got two little girls, six and four.
22 After we had our girls, we had our last little bat with
23 drugs. Both of us got in trouble. We have cleaned up
24 now, you know. Basically, just living life, loving life
25 now.

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1 Q Well, back in November of 2011, were you still having
2 troubles with drugs or were you trying to get things
3 straightened out?

4 A When?

5 Q November 14th, 2011, when this occurred?

6 A We were clean by then.

7 Q Well, tell us a little bit more. Where are you
8 working now?

9 A I'm working at -- doing commercial roofing. Me and
10 my buddy of mine, Travis, we do commercial roofing
11 together.

12 Q Well, let me steer your attention now to the events
13 that occurred on November 14th, 2011, that got you
14 involved in this case. [REDACTED] do you
15 recognize that address?

16 A Yes, sir, Tamila and I had a little trailer back
17 there in the back.

18 Q Is that [REDACTED]

19 A Yes, sir.

20 Q And that's in Greenville County?

21 A Yes, sir.

22 Q When had you first moved in there, if you remember?
23 Or let me ask that a different way. How long had you and
24 Tamila lived there together when this incident arose?

25 A Probably about a month or so.

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1 Q Okay. All right. Tell us a little bit about what
2 had been going on earlier that day, November 14th. Tell
3 us how you got in contact with the Defendant, Terry
4 McCarrell, and what occurred after that?

5 A I walked outside to smoke a cigarette and him and
6 Minor -- Terry and Minor were standing outside. And
7 we just got to talking about tattoos and stuff, which I
8 had a bunch of tattoo books and stuff inside my house.
9 And I was like, If y'all want to, we can go in here and
10 look at these books or whatever. They were talking about
11 wanting to get some tattoos and I was like, Y'all can look
12 at them and get some ideas or whatever out of these books.

13 Q Let me stop you right here. You mentioned Terry and
14 Minor who is Minor

15 A Um --

16 Q Is that Minor

17 A Yes, sir.

18 Q Now, where did she live in relation to your house?

19 A Like our trailer is right here and then their trailer
20 was right there in front of ours, so they were next door
21 neighbors to us.

22 Q And you had mentioned Terry. When you first saw the
23 two of them that evening, did you know who Terry was at
24 that time?

25 A No, that was the first time I had ever met him.

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1 Q Okay. And could you describe him for us?

2 A Terry?

3 Q Right.

4 A He's probably about six or eight inches shorter than
5 I am. At the time, he was, I'd say, about 220 pounds,
6 black guy. He had gray hair. Not all the way gray, kind
7 of like just a little bit gray in it.

8 Q About what time of night when you met him?

9 A It was about 7:00, 7:30 when I met him.

10 Q Was it dark?

11 A Yeah, yeah, it was getting there.

12 Q Okay. All right. Did you -- when you first met him,
13 did he introduce himself?

14 A Actually, Minor introduced him. She was like, This
15 is my friend, Terry, or whatever.

16 Q Okay. Did they come inside?

17 A Yeah, I invited them to come into inside the house.

18 We all walked into the living room and we sat down. I was
19 going on -- looking at some magazines and whatnot.

20 Q Tell us about the layout of your house and where they
21 were?

22 A Okay. So when you first walk in the house, my living
23 room is right here and my kitchen is right here. And
24 there's like a -- it's like a half wall in between the two
25 separating the two. And then there's a desk sitting right

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1 down there at the end of the half wall. So it kind of
2 made like a little hallway going in between the kitchen
3 and the living room.

4 Q Okay.

5 A So we all came in and we sat down in the living room.
6 And we were all sitting talking about doing tattoos and
7 stuff, getting tattoos. And I was telling them a little
8 bit of our life story and about us getting clean, off of
9 drugs and stuff and why we're doing it and showing them
10 pictures of our girls and stuff. I had pictures all
11 around the house and all.

12 Q So do you like tattoos?

13 A Yes, sir.

14 Q Is that something you and your wife are interested
15 in?

16 A Yes, sir, we got a whole pile of them.

17 Q All right. So you've got artwork and photographs as
18 well in your house?

19 A Yes, sir.

20 Q Is that what you were talking to them about?

21 A Yes, sir.

22 Q Okay.

23 A So I was telling Terry a little bit about our life
24 story and whatnot. I walked him around showing him
25 pictures of my girls and all and all of us as a family and

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1 everything. We walked into the kitchen and then I started
2 walking out of the kitchen. He was following me out of
3 the kitchen and I heard something, like something hit the
4 floor or I just heard like a tink. It was like I heard
5 something that I shouldn't have heard. Then I turned
6 around real quick like that and like he was moving kind of
7 quick, but it was like a little -- like I just caught him
8 out of the corner of my eye, but I didn't really see
9 anything, though. It was just like he kind of like moved,
10 like straightened up real fast, but that was it. And I
11 didn't really think anything about it. I just figured
12 something might have fallen off the desk or something. I
13 looked around real fast like that and I didn't see
14 anything, so we just came back in the living room and we
15 all sat down or whatever.

16 Q So you had gone into the kitchen area with Terry?

17 A Yes, sir.

18 Q Where was **Minor** at the time?

19 A She was sitting on the couch in the living room.

20 Q And did she ever go into the kitchen at all?

21 A No, sir.

22 Q Okay. Was she ever in the proximity or near that
23 desk that you talked about?

24 A No, sir. Like the couch she was sitting on -- I had
25 one couch against the far wall over here and another couch

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1 right here. She was sitting on the couch against that far
2 wall. So she was like probably 10, 11 feet from where the
3 desk is.

4 Q So when you heard that sound of something hitting the
5 floor, it didn't quite register with you at the time?

6 A No, I didn't really quite know what it was at the
7 time, but, I mean, I just like turned around. I didn't
8 see anything right offhand, just glanced really quick, but
9 I just kept on moving and sat down. I didn't really think
10 anything about it.

11 Q Well, how long were they over at your house?

12 A Probably like 30 minutes to an hour at the most.

13 Q Since about 4:00 at day, had there been anybody else
14 over at your house?

15 A No, sir.

16 Q And when they left -- about how long after they left
17 was it before your wife came home?

18 A It wasn't too long at all. I mean, it might have
19 been 30 minutes tops.

20 Q Tell the jury about when your wife came home and you,
21 ultimately, realized that the rings were missing.

22 A All right. Whenever she came in the door, I was
23 sitting there watching TV. I stood up, gave her a kiss.
24 She walked in the door. She went walking through to the
25 back of the house. I think I was -- we might have even

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1 been having a conversation about how our day went or
2 whatever. And I happened to look down -- I was walking by
3 the desk and just happened to look down and I saw her
4 tulip ring on the floor. And I was thinking well, that's
5 weird. And I picked it up and I went to go hand it to
6 her. And then it just kind of started to register in my
7 mind right then like that might have been what fell on the
8 floor or whatever. So I handed it to her and then she was
9 like, Where did you find this? I'm like, It was on the
10 floor. Then she said, Well, where is the other two rings
11 at? And I was like, What other two rings? And she was
12 like, Well, I had all three rings sitting right here on
13 top of the desk, where the other two rings at? And I was
14 like, Hold up one minute. And then I went running out the
15 front door, went over to Minor house, knocked on the
16 door. She came to the door --

17 Q Now, when you say "hold on" and you realized and ran
18 out, what did you tell your wife?

19 A I told her, I said, Minor and this guy was over
20 here -- she didn't know who Terry was at the time. She
21 had never met him. And I was like, Minor and this guy
22 was over here. I said, He must have took the rings or
23 something, you know, he must have took the rings. Let me
24 go check it out right quick. So I ran out the door,
25 knocked on their door. She came to the door, Minor came

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1 to the door. I told her, I said -- I told her, I said, I
2 know that Terry must have stolen those two rings, he had
3 to have, you know, but if you'll tell him that -- if he
4 gives them back to me right now, I won't call the law or
5 anything. There won't be no more trouble. There won't be
6 none of this right here, you know. If he just gives them
7 back to me, there won't be nothing else to worry about. I
8 won't hold it against him or nothing like, you know. And
9 she was like, Well, hold on a minute, let me talk to him
10 about it. And she shut the door and all, walked back
11 inside. I walked back over there with Tamila and we
12 waited on her to come around the corner. She come around
13 the corner back towards our house and she said --

14 Q She who now?

15 A Minor

16 Q Okay.

17 A She said, He said he didn't know anything about it.
18 He didn't have anything to do with it, like that. And I
19 was like, Well, you see what I've got to do now, I've got
20 to call the law because something's missing out of my
21 house and he was the only person that was anywhere near
22 them, so, I mean, I'm going to have to call the law.

23 Q When you're saying anywhere near them, what do you
24 mean? As far as when he and Minor was he the one --

25 A I mean, like, he was the only person besides me that

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1 was, you know, right there by the desk where they were at.
2 He had to take them.

3 Q Did you call law enforcement?

4 A Yes, sir, I called Greenville County. And they came
5 out about 15 minutes later and we explained to them what
6 happened -- well, I explained to them what happened. And
7 they walked over next door and got Minor and Terry out
8 of the house and searched Terry. He didn't have the rings
9 on him or anything.

10 Q When you say searched Terry, how did you identify
11 Terry to the sheriff's deputy?

12 A They asked me was that him, was that the guy that was
13 in my house and I was like yes, sir, it was.

14 Q And that was the one that introduced himself as Terry
15 to you?

16 A Yes, sir.

17 Q So they searched Terry and didn't find the rings?

18 A That's correct.

19 Q What happened next?

20 A They searched him, he didn't have them on him. The
21 police officer came over and got a statement from me. And
22 then they told us if he went to go leave at all to call
23 them directly back out there. Because more than likely,
24 if he went to go leave the house, he would probably have
25 them on him then. So we waited around outside for a

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1 little bit.

2 Q Who's the we?

3 A Me, myself, Tamila and one of our neighbors, Bo. He
4 was standing out there with us. He just saw the police
5 out there and was like, What's going on? So he came out
6 there and was talking to us about it. I was telling him
7 what happened. And Terry came out of the trailer and
8 started walking on down like he was going to leave out the
9 trailer park and he turned around and said, Fucking law
10 callers, like that.

11 Q He was saying that to who, to you?

12 A I guess to me, Tamila, everybody that was out there,
13 Me, Tamila, Bo. I guess me because I was the one that
14 called the law. Then Bo hollered back at him, No, you're
15 a fucking thief, and they got into it. But I wasn't going
16 to get into it with him because it had already escalated
17 to where we already called the law one time. I just
18 wasn't going to get into it with him. I started to call
19 them back -- call the law back over there because -- to
20 try to search him again to see if he had them on him.

21 Q Well, those rings -- did you authorize at any point
22 in any way for Terry or anybody else to take those rings
23 out of that house?

24 A Absolutely not.

25 Q Do you know what the value of those rings were,

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1 roughly?

2 A Yeah, roughly, it was like \$2,500, the value of those
3 rings. We could have got rid of them for right at \$2,500.

4 Q Okay. And you said you gave a statement to law
5 enforcement?

6 A Yes, sir.

7 Q Okay. And this was November 14th, 2011. Did you at
8 some point, a couple of weeks later, get contacted by law
9 enforcement and meet with them again?

10 A Yes, sir.

11 Q All right. Tell us about that. Where did you go?

12 A They called us back up and we had to go meet up with
13 them at the Northern Command Center, right there above --
14 I'm drawing a blank, at University Square. And we met
15 with them up there. They showed me a lineup -- or,
16 actually, they brought in a little white piece of paper
17 that had six photographs on it. The officer told me to
18 circle -- the officer told me if I saw the guy that was in
19 my house to circle his picture. So I recognized Terry on
20 the lineup and circled it.

21 Q All right. Well, let me ask you this just to kind of
22 back up just a little bit. How long had Terry been in the
23 house that night of November 14th?

24 A Like 30 minutes to an hour.

25 Q Did you have an opportunity to get a good look at

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1 him?

2 A Yes, sir.

3 Q Were you at some point only an arm's length away from
4 him?

5 A Yes, sir.

6 Q Then you were able to select this individual's
7 photograph out of six different photographs that law
8 enforcement showed you?

9 A Yes, sir.

10 Q And how long -- how did you identify which individual
11 you thought it was?

12 A I could recognize him by his eyes.

13 Q I mean on the paper, did you make any marks on the
14 paper?

15 A Well, I mean, I recognized the eyes. I mean, his
16 face was Terry when I saw him.

17 Q All right. If I can, let me show you what we have.

18 MR. CULBREATH: Your Honor, may I approach?

19 THE COURT: Sure.

20 BY MR. CULBREATH:

21 Q Mr. Woodard, let me show you what's been previously
22 marked as State's Exhibit No. 6, which is a two-page
23 document. Will you tell the jury what that is or what
24 those two pages are?

25 A This is the photo lineup that the officer down at the

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1 Northern Command gave me. And that's where I circled --
2 on number five, that's where I circled that's Terry.

3 Q All right. What did the officer give you as far as
4 instructions before he turned that six photo array over
5 and let you take a look at it?

6 A He told me that he was going to show me some
7 photographs and that if I recognized the person that was
8 in my house that day to circle that photograph.

9 Q Did he tell you there was definitely somebody in that
10 photo lineup that was the suspect in the case?

11 A No. Actually, he said -- he was like, Now, he might
12 not even be in one of these photos. We want you to look
13 at them right quick and if you just happen to notice the
14 guy that was in your house that day, then circle it.

15 Q Any pressure put on you to pick any particular one,
16 pick anything at all?

17 A No, sir, not at all.

18 Q Page two of that looks like a statement that's signed
19 by both you and the investigator in this case that showed
20 you that lineup. Does that have your signature on it?

21 A Yes, sir.

22 Q Does it have the date that you made that selection?

23 A Yes, sir.

24 Q What date is that?

25 A The 19th of December in 2011.

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1 Q Okay. So a little over a month after it occurred?

2 A Yes, sir.

3 Q Does that document appear to be in substantially the
4 same condition as it did that night when you signed it?

5 A Yes, sir.

6 Q All right. How about the photographic lineup, those
7 marks that are on there, the circle and the initials, are
8 those your markings?

9 A Yes, sir.

10 Q Okay. Aside from the stamp that says original in red
11 on it, are there any other marks on there other than yours
12 that you can tell?

13 A No, sir.

14 Q Okay. Does that then appear to be the same form that
15 was presented to you on December 19th when you made your
16 identification?

17 A Yes, sir.

18 Q Has it been altered in any way?

19 A No, sir.

20 MR. CULBREATH: Your Honor, at this time, the State
21 would like to move State's Exhibit 6 into evidence.

22 THE COURT: Any objection?

23 MR. STALVEY: No objection.

24 THE COURT: All right. Without objection, the same
25 is entered into evidence.

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1 (WHEREUPON, State's Exhibit No. 6 was admitted into
2 evidence.)

3 BY MR. CULBREATH:

4 Q Mr. Woodard, when I first began talking with you
5 today you touched on some legal issues you had in the
6 past?

7 A Yes, sir.

8 Q Both you and your wife?

9 A Yes, sir.

10 Q I didn't want to cut you off on that, I want to give
11 you an opportunity to talk about that and how that, if at
12 all, has changed your life. You had some run-ins with the
13 law when you were younger?

14 A Yes, sir.

15 Q Could you tell this jury about that?

16 A Well, I got in trouble when I was 17 for purse
17 snatching. I ended up doing about a year and a half. I
18 did a YOA for that. Then I --

19 Q What's a YOA?

20 A A YOA, that's a youthful offender act. They give you
21 one to six. And they, also, call it -- to some people,
22 it's also considered a mini-life sentence because you do
23 like a year and some change, depending on good behavior
24 and whatnot whenever you're in lock up, and then you do --
25 you're paroled when you get out, but you've got to do --

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1 it's like a program you've got to run through, but then
2 you do five years of parole after that. And if you ever
3 mess up that parole, they can start your one to six all
4 over again. So you can be on like your last year and
5 it'll start over again, the program will start over again.
6 There's like -- I think it's like 17 through 25 that you
7 can get into the system, but there are some guys that are
8 40 that are still doing their YOA's. I ended up doing my
9 year, then I did five years on parole and I got off of
10 that.

11 Q Did your life start to turn around when you got
12 married?

13 A Well, when we first got married, life was turned
14 around a little bit, but we got back into drugs right
15 after that, after we had our girls. Then DSS got involved
16 in the situation. Both of our girls got taken from us.
17 And we got in that next little bit of trouble right then
18 and there and we both got locked up for a little bit.
19 When we got out, we decided we wanted to do the right
20 thing and get our girls back. DSS told us there was a 99
21 percent chance we would never get custody of our daughters
22 ever again, that people that was in our situation, they
23 didn't make it, you know, and they never got custody back
24 again. Well, we fought long and hard and that was --
25 while we were living in that trailer, we were fighting.

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1 That was about -- we were about six months, eight months,
2 six or eight months clean when we were living in that
3 trailer. And it took us all of about a year to finally
4 win custody back of our girls.

5 Q But you made it back as you sit here today?

6 A Yes, sir.

7 Q Did Terry McCarrell steal those rings out of your
8 house back on November 14th, 2011?

9 A Yes, sir.

10 MR. CULBREATH: Please answer any questions defense
11 counsel may have.

12 CROSS-EXAMINATION

13 BY MR. STALVEY:

14 Q Mr. Woodard, so you were clean you say six to eight
15 months or you had been clean six to eight months when this
16 incident occurred?

17 A Yes, sir.

18 Q And tell me, during your problems with drugs, was it
19 primarily methamphetamine?

20 A Yes, sir.

21 Q Okay. And while you were addicted to
22 methamphetamine, did you ever trade any of your personal
23 property for drugs?

24 A Yeah, I'd have to say I did, you know. But I traded
25 for stuff and then -- I mean, there's a lot of trading

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1 that goes around.

2 Q Sure. You ever traded anybody else's property for
3 drugs?

4 A No. It's pretty much all mine.

5 Q All right.

6 MR. STALVEY: No further questions.

7 THE COURT: Any further questions, Mr. Culbreath?

8 MR. CULBREATH: Just briefly.

9 REDIRECT EXAMINATION

10 BY MR. CULBREATH:

11 Q Mr. Woodard, when you did in the past trade your
12 property for drugs, did you then contact law enforcement
13 and report it stolen?

14 A No, sir. That was a done deal trade, you know.

15 MR. CULBREATH: Thank you.

16 THE COURT: Any further questions?

17 MR. STALVEY: No, sir, Your Honor.

18 THE COURT: All right, sir, appreciate you being
19 here. You may step down.

20 MR. CULBREATH: Your Honor, may the Woodards be
21 excused?

22 THE COURT: Any objection, sir?

23 MR. STALVEY: No, sir, Your Honor.

24 THE COURT: All right. Then no worries, they can be
25 excused.

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1 Y'all have a great day.

2 Anyone on the jury need to take a break at this
3 point? One? Okay.

4 Let's go ahead and take a brief break. We'll come
5 back in when y'all are ready to resume. Please don't
6 discuss the case.

7 (WHEREUPON, the jury left the courtroom at
8 approximately 2:15 p.m.)

9 THE COURT: All right. Counsel, we'll be in recess
10 until the jury is ready to resume.

11 (WHEREUPON, a short break was taken.)

12 (WHEREUPON, the jury entered the courtroom at
13 approximately 2:30 p.m.).

14 THE COURT: All right. Call your next witness.

15 MS. BENTLEY: The State calls Brian Lovelace.

16 THE CLERK: Sir, please place your left hand on the
17 Bible and raise your right hand.

18 WHEREUPON;

19 BRIAN LOVELACE,

20 after being duly sworn, testified as follows:

21 THE CLERK: Thank you. Please be seated. Please state
22 your name for the record.

23 THE WITNESS: Brian Lovelace.

24 DIRECT EXAMINATION

25 BY MS. BENTLEY:

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1 Q Deputy Lovelace, where are you employed and in what
2 capacity?

3 A I'm employed with the Greenville County Sheriff's
4 Office and I'm currently with uniform parole.

5 Q How long have you been in law enforcement?

6 A About three and a half years.

7 Q Were you working with the sheriff's office in
8 November of 2011?

9 A That's correct.

10 Q Were you working on November 14th, 2011?

11 A I was.

12 Q At some point -- do you recall what shift you were
13 working that day?

14 A We were working night shift, which is seven p.m. to
15 seven a.m.

16 Q And were you asked to respond to West Parker Road at
17 any point during your shift?

18 A I was.

19 Q Approximately what time did you get that call?

20 A I believe it was around 10:00, 10:09, 10:10,
21 somewhere around there.

22 Q Do you know the nature of the call?

23 A It was for a grand larceny.

24 Q All right. And what happened when you responded to
25 West Parker Road?

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1 A I met with the victim, Ms. Woodard and Mr. Woodard.
2 They advised that -- or Ms. Woodard advised that while she
3 was getting ready for work, which she had to be at at
4 4:00, she had taken her rings off and had accidentally
5 left them there. When she got home, I believe around
6 8:30, she noticed them missing. And then they started
7 backtracking to where they were and who had been in the
8 house and that's when they realized that Minor
9 and Terry McCarrell, I believe it was, were in their
10 residence. And I believe they said they confronted them
11 --

12 Q Let me stop you right there if you don't mind.

13 A Okay.

14 Q Were both Tamila Woodard and Jesse Woodard at home
15 when you arrived?

16 A That's correct?

17 Q Where were they located? What trailer was it, do you
18 recall?

19 A I don't recall the trailer number.

20 Q Okay. Is it the Shady Oaks trailer park?

21 A It is.

22 Q What county is that in?

23 A It's in Greenville County.

24 Q Okay. Did they tell you where the rings were located
25 inside the residence the last time they saw them?

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1 A From what I recall, it was either on a dresser or a
2 desk. I can't remember exactly what she uses.

3 Q Did she tell you the last time she had seen the
4 rings?

5 A Right before work when she was getting ready.

6 Q Okay. And when did they notice they were missing?

7 A When she arrived -- when she got home.

8 Q And you mentioned Minor and Terry. Did either Mr.
9 or Ms. Woodard give you those names or did they just tell
10 you someone came over?

11 A Mr. Woodard did. He said Minor and her friend,
12 Terry, had come over.

13 Q Okay. Did he tell you where you could locate either
14 Minor or Terry?

15 A He did, he said next door, which he pointed out.

16 Q Okay. How close were those two mobile homes?

17 A From what I remember, right next to each other.

18 Q What did you do after speaking with the Woodards?

19 A I made contact with Minor and then Terry, who was
20 at that residence, and explained to them what I was
21 investigating. Then I asked Terry if I could pat him down
22 for the rings.

23 Q Did you determine whether or not Terry lived with
24 Minor

25 A I believe they said he was a family friend. It's

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1 been a while. I believe that's what -- the relationship
2 we established, that he was friends with Minor mom and
3 Minor

4 Q All right. I want to show you -- first of all, how
5 did you determine who Terry was?

6 A Mr. Woodard. Yeah, he had met them and said that the
7 guy's name is Terry and he was with Minor

8 Q When you went next door, did you -- what did you do,
9 did you ask for Terry?

10 A Yeah, I asked for Terry and Minor

11 Q And did they --

12 A They then came forward. They were the only two
13 there.

14 Q Do you recall if Mr. McCarrell had any identification
15 on him?

16 A He did. That is the first thing I asked, you know,
17 for South Carolina ID, which he provided. I got his South
18 Carolina driver's license number and, also, his date of
19 birth off of that.

20 Q His name was, in fact, Terry McCarrell?

21 A That's correct.

22 Q I'm going to show you what's been marked State's
23 Exhibit 6. Do you see Mr. McCarrell's picture on here?

24 A Yes.

25 Q Which one is it?

164

1 A Number five.

2 Q Okay. Is that what he looked like when you
3 encountered him that day?

4 A Yes.

5 Q Okay.

6 A Same facial features.

7 Q So you were saying you encountered and spoke with
8 Minor and Terry. Tell me what happened while you were
9 speaking with them.

10 A I explained to them why I was investigating them,
11 that they were the only ones in the house that Mr. Woodard
12 said and then the rings, obviously, had gone missing. I
13 asked Terry if I could pat him down to make sure he didn't
14 have them on his person, which he complied and allowed me
15 to. I didn't discover them on him. I did the same thing
16 with Minor I spoke with both of them at that point,
17 just got their information. And then that concluded my
18 investigation.

19 Q Did you find the rings that evening?

20 A I did not.

21 Q Did either of them indicate they knew where the rings
22 were?

23 A No, they did not.

24 Q What was your next step as far as -- did that end the
25 case or did you pass it along?

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1 A No, I just do the initial report and then it goes on
2 to a property crimes investigator.

3 Q Do you know what the reason for that is?

4 A Just so they can give a more in-depth investigation
5 and start looking back at pawn files in case the rings
6 ever get pawned. They just have, honestly, more time to
7 put into the investigation than we do on the road because
8 we're going from call to call.

9 Q Would you have provided some type of report for your
10 actions?

11 A I did. We always provide the victim a form with the
12 case number and they sign.

13 Q Did you put Mr. McCarrell's information in your
14 report that you forwarded on?

15 A I did.

16 MS. BENTLEY: I have no further questions. Please
17 answer any questions Mr. Stalvey may have.

18 THE WITNESS: Yes, ma'am.

19 CROSS-EXAMINATION

20 BY MR. STALVEY:

21 Q Deputy Lovelace, I'm going to show you the report
22 that you took.

23 A Yes, sir.

24 Q Do you recognize that as being your report?

25 A I do.

1666

1 Q All right. What was the value of the items stolen as
2 it's reflected in your report?

3 A Valued at \$2,000.

4 MR. STALVEY: Thank you. I don't have any further
5 questions.

6 THE COURT: Any additional questions?

7 MS. BENTLEY: Briefly.

8 REDIRECT EXAMINATION

9 BY MS. BENTLEY:

10 Q How did you determine the value?

11 A I asked Ms. Woodard and Mr. Woodard the value of the
12 rings.

13 MS. BENTLEY: Okay.

14 THE COURT: Anything further?

15 MR. STALVEY: No, sir.

16 THE COURT: Okay. I appreciate it. You may step
17 down.

18 MS. BENTLEY: Your Honor, may the deputy be excused?

19 THE COURT: Any objections?

20 MR. STALVEY: No objections, Your Honor.

21 THE COURT: Good enough.

22 You may call your next witness.

23 MS. BENTLEY: The State calls Investigator Brady
24 Maschak.

25 THE CLERK: Sir, please come forward. If you would

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1 please place your left hand on the Bible and raise your
2 right hand.

3 WHEREUPON;

4 BRADY MASCHAK,

5 after having been duly sworn, testified as follows:

6 THE CLERK: Thank you. Please be seated. Please state
7 your name for the record.

8 THE WITNESS: Investigator Brady Maschak.

9 DIRECT EXAMINATION

10 BY MS. BENTLEY:

11 Q Investigator Maschak, how long have you been with the
12 sheriff's office?

13 A July of 2006, about eight years this month.

14 Q And how long have you been a property crimes
15 investigator?

16 A I was a property crimes investigator for two and a
17 half and a year in auto theft now.

18 Q What was your position in the fall of 2011?

19 A Property crimes investigator.

20 Q Did you investigate -- or were you assigned a case
21 regarding a theft at West Parker Road in Greenville
22 County?

23 A Yes, ma'am.

24 Q When did that case become assigned to you?

25 A December 12th, 2011.

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1 Q Okay. And who had taken the initial report in that
2 investigation?

3 A Deputy Lovelace.

4 Q Okay. What information did you have from Deputy
5 Lovelace's report?

6 A From the report, it says that Jesse Woodard, Tamila
7 Woodard's husband, was in the trailer and Minor
8 and the Defendant had come over and stayed at the
9 residence for approximately 30 to 45 minutes. And during
10 that time, two rings were stolen.

11 Q Can you tell me the date that the rings were
12 allegedly stolen?

13 A November 14th, 2011.

14 Q And what rings are you talking about?

15 A It was Tamila Woodard's wedding set, wedding ring and
16 engagement ring.

17 Q Was there a suspect provided in that initial report?

18 A Two, Minor and Terry McCarrell, the
19 Defendant.

20 Q Okay. What was your first step in furthering the
21 investigation into this larceny?

22 A I talked to Tamila and Jesse.

23 Q Where did you first speak to them?

24 A Over the phone. I went to their house, they weren't
25 there. I left a business card.

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1 Q Did they return your call?

2 A Yes, Tamila called me.

3 Q What did you do after speaking with them on the
4 phone?

5 A I told Tamila that I needed to talk to Jesse and get
6 a written statement from him and to view a photo lineup.

7 Q Okay. Did you arrange a time to do that?

8 A Yes.

9 Q When did you arrange to do that?

10 A I believe they came December 19th, 2011.

11 Q Okay. When you spoke to the Woodards, did they know
12 Terry's last name?

13 A They did not. Deputy Lovelace, actually, got that
14 and it was in the report.

15 Q So what did you do in preparation for your meeting
16 with the Woodards?

17 A I created a photo lineup.

18 Q I'm going to show you what's been marked as State's
19 Exhibit 6. Do you recognize this?

20 A Yes, ma'am.

21 Q What is it?

22 A It's a photo lineup I created.

23 Q And how do you know that's the photo lineup you
24 created?

25 A I recognize it and my stamp original with that case

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1 number. That's the case number that I was assigned.

2 Q Is that the photo lineup that you showed Jesse
3 Woodard?

4 A Yes, ma'am.

5 Q Please tell me a little bit about the process of
6 compiling a photo lineup.

7 A Of course, the Defendant was the suspect in the case.
8 You create -- get photographs and you put five photographs
9 that are similar to the Defendant.

10 Q Similar meaning?

11 A Race, of course, sex, approximate ages, facial hair,
12 length of hair, like that.

13 Q Okay. Were you able to find five people that you
14 determined looked similar to Mr. McCarrell?

15 A Yes, ma'am.

16 Q Did you have reason to believe that Jesse Woodard
17 would be able to identify Mr. McCarrell from the photo
18 lineup?

19 A I did.

20 Q What was that based on?

21 A Well, in the report, it said the Defendant was at his
22 residence for 30 to 45 minutes. They met face to face,
23 was introduced to Jesse, and he had ample amount of time
24 to view the Defendant.

25 Q Okay. Did you present that photo lineup to Jesse

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1 Woodard?

2 A I did.

3 Q Did he have any trouble at all recognizing Mr.
4 McCarrell?

5 A No, ma'am.

6 Q Did you have him fill out an affidavit as well?

7 A Yes, ma'am.

8 Q Is that on page two of State's 6?

9 A Yes, ma'am.

10 Q Okay. After speaking with Jesse Woodard and have him
11 fill that out, what was your next step?

12 A Got a written statement from Jesse of the incident
13 that occurred. That was placed in -- the photo lineup and
14 the affidavit were placed in property and evidence.

15 Q Okay. What was your next step?

16 A I obtained a warrant for the Defendant for grand
17 larceny. The warrant was -- after I obtained it, I
18 contacted Deputy [undiscernible] and advised him of the
19 active warrant and he was later arrested for that warrant.

20 Q Did you determine whether charges should be brought
21 against Minor [REDACTED]

22 A At that time, no. Per Jesse's statement, he said the
23 only person that was in that room where the rings were was
24 Mr. McCarrell.

25 Q Okay. Did you attempt to speak with Mr. McCarrell?

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1 A I did.

2 Q Were you able to speak with him?

3 A He didn't want to talk to me.

4 Q Did you speak to any members of his family?

5 A I received a phone call from the Defendant's
6 daughter.

7 Q What is her name?

8 A Brooklin Pollard.

9 Q When did you receive a phone call from Brooklin?

10 A I believe it was two days after he was arrested.

11 Q Okay.

12 A The 22nd of December, I believe.

13 Q Okay. And what did Ms. Pollard want?

14 A She stated that she had one of the rings --

15 MR. STALVEY: Objection, hearsay.

16 MS. BENTLEY: And, Your Honor, this is to explain his
17 next course of action, it's not for the truth of the
18 matter.

19 MR. STALVEY: Judge --

20 THE COURT: Sustained as to what she said.

21 MS. BENTLEY: Okay.

22 BY MS. BENTLEY:

23 Q Based on your conversation with Ms. Pollard, what did
24 you do?

25 A I met with her.

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1 Q Where did you meet with her?

2 A At the Defendant's address.

3 Q Do you recall what address that was?

4 A ... It was on West Parker Road.

5 Q Was it in the same complex as Minor and the
6 Woodards?

7 A No, it was down the road.

8 Q Okay. Who was present when you met with Ms. Pollard?

9 A I believe her grandmother.

10 Q Okay. And did Ms. Pollard provide you with anything
11 on that date?

12 A A ring.

13 Q I'm going to show you what's been marked as State's
14 Exhibits 7 and 8. Do you recognize these photographs?

15 A Yes, ma'am.

16 Q What are those photographs of?

17 A The ring I got from Ms. Pollard.

18 Q Okay. Did Ms. Pollard tell you -- without telling us
19 what she said, did Ms. Pollard indicate where she had
20 obtained that ring?

21 A From Minor I'm sorry.

22 Q Okay. So she did tell you where she got it from?

23 A Yes.

24 Q Okay. Did Ms. Pollard indicate that she had had any
25 type of -- don't elaborate, just yes or no. Did

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1 Ms. Pollard indicate whether she had conversations with
2 anyone else in this case?

3 A Yes.

4 MR. STALVEY: Judge, I'm going to object again at
5 this point. I mean, he's testifying to what Ms. Pollard
6 stated to him. She's asked the question did she indicate
7 it. I mean, it's the same thing. I don't know if it's
8 for the truth of the matter asserted or not, but we're
9 getting into a situation where -- Ms. Pollard's here, she
10 can testify. I mean, I'm familiar with what she's
11 probably going to say, but it hearsay, so I just object to
12 it.

13 THE COURT: As to what she said, specifically, I
14 sustain. And I sustained it previously as well. I think
15 she can ask did she indicate, but he can't testify as to
16 what she said or what she indicated.

17 So go ahead.

18 BY MS. BENTLEY:

19 Q Okay. Yes or no response, please. Did Ms. Pollard
20 try to provide you with other evidence at that time?

21 A Yes, ma'am.

22 Q What type of evidence did she try to provide you?

23 A Text messages.

24 Q Was she able to provide those to you directly?

25 A I asked her to e-mail them to me, send texts to my

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1 e-mail, that didn't work.

2 Q What was your next course of action?

3 A I asked her if she would come with me to the county
4 square to speak to one of our computer guys as far as
5 getting the text messages off her phone.

6 Q Did she comply?

7 A Yes, ma'am.

8 Q Did you pressure her in any way?

9 A No, ma'am.

10 Q I'm going to show you what's been marked as State's
11 Exhibit 1, do you recognize this document?

12 A Yes.

13 Q How do you recognize it?

14 A It's a consent to search the computers/cell phone
15 devices.

16 Q Is that a form you use in your day-to-day
17 investigations?

18 A Yes.

19 Q Is your signature on that form?

20 A Yes, ma'am.

21 Q Who else's signature is on that form?

22 A Brooklin Pollard and Investigator Rainey.

23 Q And aside from the writing that you recognize and the
24 signatures you indicated, has that form been altered or
25 changed in any way?

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1 A No, ma'am.

2 Q Is it in the same condition it was in when you signed
3 it?

4 A Yes, ma'am.

5 Q Okay.

6 MS. BENTLEY: Your Honor, at this time, the State
7 wishes to admit Exhibit 1 into evidence.

8 THE COURT: Any objection?

9 MR. STALVEY: No objection.

10 THE COURT: All right. Without objection, the same
11 is admitted into evidence.

12 (WHEREUPON, State's Exhibit No. 1 was admitted into
13 evidence.)

14 BY MS. BENTLEY:

15 Q What does this form give you the right to do,
16 Investigator?

17 A The cell phone -- I'm not a computer wizard by no
18 means. It allows, in that case, Investigator Rainey, he
19 hooks it up to a machine that pretty much makes a copy of
20 her phone and puts it on different files so they can be
21 viewed.

22 Q Do you know about how long that whole process took?

23 A I'm not exactly sure, maybe an hour, hour and a half.

24 Q And did Ms. Pollard ask to leave at any point in
25 time?

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1 A No, ma'am.

2 Q Did she have any trouble at all with y'all looking
3 through her phone?

4 A No, ma'am.

5 Q I'm going to show you what's been marked as State's
6 Exhibits 2 and 3. Do you recognize State's Exhibit No. 2?

7 A Yes, ma'am.

8 Q How do you recognize that?

9 A That's a CD of the text messages that we downloaded.

10 Q How do you know that? What identifying marks are on
11 that CD?

12 A It's my handwriting and it has the case number and it
13 says text messages on there.

14 Q Are your initials on there?

15 A Yes, ma'am.

16 Q What do those indicate?

17 A That I viewed it and it was text messages.

18 MS. BENTLEY: Your Honor, at this time, the State
19 wishes to admit Exhibit 2 into evidence.

20 THE COURT: Any objection?

21 MR. STALVEY: No objection to two or three.

22 BY MS. BENTLEY:

23 Q Tell me what Exhibit 3 is.

24 A It's all the text messages, copies of all the text
25 messages.

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1 Q From Brooklin Pollard's phone?

2 A From that phone, yes, ma'am.

3 Q And did you review these messages as a part of your
4 investigation?

5 A Yes, ma'am.

6 Q Did you review them that day?

7 A No, ma'am.

8 Q Tell me what you did after you finished downloading
9 Ms. Pollard's phone -- cell phone.

10 A I'm sorry?

11 Q Pardon me, cell phone, not telephone?

12 A I brought it back to the residence that I picked it
13 up at.

14 Q Was that the end of your communication with Ms.
15 Pollard?

16 A Yes, ma'am.

17 Q Tell me what you did as the next step in your
18 investigation?

19 A I reviewed all the text messages to see if there was
20 any other evidence in reference to my case.

21 Q Okay. The case of larceny?

22 A Yes, ma'am.

23 Q Did you find messages pertaining to the larceny?

24 A Yes, ma'am.

25 Q Tell me what date those started on.

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1 A Started December 21st.

2 Q Okay. Who were the messages between?

3 A Ms. Pollard and Minor [REDACTED]

4 Q Did that match up with what Ms. Pollard had
5 previously told you?

6 A Yes, ma'am.

7 Q And when you were looking through those, did anything
8 catch your attention?

9 A It mentions the rings in the text messages.

10 Q What made you think those were actual messages from

11 Minor [REDACTED]

12 A When it starts, it says, Brook, question mark,
13 question mark, this is Minor [REDACTED] I need to talk to you.

14 And then on the end of it, it has a signature and says

15 Zoe's mom. And I knew Minor [REDACTED] had a child named Zoe.

16 Q When you were going through those messages, did
17 anything else pop out to you?

18 A Yes.

19 Q Tell me -- if you would look at the message, tell me
20 what it was -- it's going to be towards the back.

21 A Do you want me to read the text messages?

22 Q Yes, please.

23 A It says, Brook, three question marks, this is

24 Minor [REDACTED] I would like to talk to you before court in

25 person. And the signature is three Zoe's mommy. And then

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1 it says, Sent, which was sent from Ms. Pollard's, says,
2 Now. Then incoming from Minor That would be great.
3 And then sent says, On my way. So, like, she went to
4 Minor residence.

5 Q May I ask how long those messages go? Do you know
6 how long they spoke? Are there a number of messages?

7 A It started at 3:31, is when it says Brook and the
8 question marks. And then 3:33, it says, Now. And then at
9 3:34, it says, That would be great. And then 3:34, On my
10 way. And then there's a text message from somebody else.

11 Q Was there anything else in those messages that you --
12 that stood out at you?

13 A Yes. It says, Did you do it, question mark. Then
14 the sent message, Do you know where the things are? Then
15 Minor states, Why? And it says, I mean, you just be
16 honest so I can get these charges dropped. I need to know
17 where they are. And then it says, I don't know where they
18 are. Do you think he going to get out tomorrow? Does he
19 have a good, I think must be lawyer. And sent says, Don't
20 know. We trying to avoid a lot by just coming up with the
21 rings, that's why I'm asking if you know. Then it says by
22 Minor They were flushed. Then sent was, Why? Then,
23 also, from Ms. Pollard, it says, Well, she said she would
24 drop the charges if she get it back. Then it says from
25 Ms. O'Neill, it says, He only left me one. I swear to

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1 God, put it on my life. The other was flushed. Talking
2 about the ring.

3 Q Okay.

4 A It says, I need to get it ASAP. Then [Minor] says,
5 Where are you going to say you got them? And Ms. Pollard
6 says, What do you want me to say? And then it continues
7 from [Minor] it says, I have no idea, but not from me.
8 Sent from Ms. Pollard, I'm giving to her so I won't have
9 to talk to the police and let her -- and I'll tell her to
10 drop it. And then Ms. Pollard says, I won't say you,
11 though, because you will be in trouble. And then from Ms.
12 O'Neill, it says, I wouldn't really care to take the fall
13 because I think I'm pregnant and then, By Terry.

14 Q And then after you saw that message, what did you do?

15 A Well, I was a little shocked because after that, it's
16 -- there wasn't anything like you're having sexual
17 relations with my dad or anything like that. It was like
18 it was common knowledge it seemed like. Due to her being
19 13 and the Defendant being 48, I contacted Investigator
20 Perry.

21 Q And why did you contact Investigator Perry?

22 A Because he works those types of cases.

23 Q Okay. And what did you do upon speaking with
24 Investigator Perry? Was he in the office that day?

25 A Yes. I met him at his office, showed him the text

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1 messages, sort of gave him a brief synopsis of what I've
2 done so far and we went to Ms. O'Neill's residence.

3 Q Okay. So that was the same day that you first saw
4 these messages?

5 A Yes, ma'am.

6 Q And who was home when you went to Minor house?

7 A Just Minor and her child.

8 Q Okay. Did you speak to Minor right away?

9 A We told her she needed to contact her mother.

10 Q Did she do that?

11 A Yes, ma'am.

12 Q Was she cooperative?

13 A Yes, ma'am.

14 Q Tell me -- how long did it take for her mother to get
15 home?

16 A Maybe 15, 20 minutes, somewhere around there.

17 Q Did you and Investigator Perry wait in or out?

18 A We just waited. We didn't ask her questions without
19 her mother being there.

20 Q Did she speak to you once her mother was present?

21 A Yes.

22 Q What questions did you particularly ask her?

23 A I spoke to her first about this situation and she
24 advised that she did, indeed, get them from the Defendant.

25 Q I'm going to ask you to be a little bit more specific

1 about the situation and then you can be more specific
2 about --

3 A I'm sorry.

4 MR. STALVEY: Judge, I'm going to object to hearsay,
5 again, and based on the clarification of what the question
6 was. She, basically, asked for him to clarify and be more
7 specific as to what another individual told him.

8 THE COURT: Okay. All right. Can you restate the
9 question?

10 MS. BENTLEY: Sure.

11 BY MS. BENTLEY:

12 Q What questions, specifically, did you ask Minor
13 about? What did you ask Minor about?

14 THE COURT: I'll allow that question.

15 THE WITNESS: I advised her that I had text messages
16 that she sent of her being in possession of these rings
17 and that I knew where the rings came from and asked her to
18 be truthful about how she obtained the rings.

19 BY MS. BENTLEY:

20 Q Did she admit that she was, in fact, in possession of
21 those rings?

22 A She did.

23 Q Did she indicate she knew they were stolen?

24 A Yes.

25 Q Did she tell you what she did with the -- or did she

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1 tell you how the rings came to be in her possession?

2 A She got them from the Defendant.

3 Q Okay. Did she tell you -- without answering, did she
4 tell you what she did with the rings? Yes or no?

5 A Yes.

6 Q Okay. Did she indicate whether she still had the
7 rings in her possession?

8 A No.

9 Q Do you know whether **Minor** was charged with any
10 crimes after you spoke with her?

11 A I summons and released her to her mother. She was
12 charged with receiving and possession of stolen goods.

13 Q And to your knowledge, was she -- was that charge
14 ever reduced or dismissed?

15 A It was not.

16 Q She was prosecuted for that?

17 A Yes, ma'am.

18 Q While you were speaking with her, did she try to
19 paint herself as a victim in this?

20 A No, ma'am.

21 Q Were you present when Investigator Perry questioned
22 her?

23 A I was.

24 Q Was she similarly cooperative with Investigator
25 Perry?

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1 MR. STALVEY: Objection, Your Honor.

2 MS. BENTLEY: It's a yes or no answer.

3 MR. STALVEY: How is he going to know how to respond
4 unless he's going to respond to what he stated to him?

5 THE COURT: I think he can testify as to whether he
6 knows she was cooperative. He can answer yes or no to
7 that question.

8 MR. STALVEY: Okay.

9 THE COURT: Overruled.

10 THE WITNESS: No.

11 BY MS. BENTLEY:

12 Q Okay. Without -- can you tell us how she was not
13 cooperative without telling us what she said?

14 A It was -- on my case, she was very cooperative,
15 forthcoming with answers. On Investigator Perry's, it was
16 the complete opposite.

17 Q Okay. Hold on just a second.

18 MS. BENTLEY: I have no further questions. Please
19 answer any questions that Mr. Stalvey may have.

20 THE COURT: Before you start, Mr. Stalvey, just a
21 housekeeping matter on the record.

22 MR. STALVEY: Yes, sir.

23 THE COURT: I believe that State's Exhibits 2 and 3
24 were offered into evidence without objection. I didn't
25 officially accept those. It's okay, you started going and

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1 I just didn't say anything. So for the record, they're
2 admitted.

3 MR. STALVEY: Thank you, Judge.

4 (WHEREUPON, State's Exhibit Nos. 2 and 3 were
5 admitted into evidence.)

6 MR. STALVEY: Judge, I don't have any questions for
7 Investigator Maschak.

8 THE COURT: Okay. Thank you, sir. I appreciate you
9 being here.

10 you may call your next witness.

11 MS. BENTLEY: The State calls Brooklin Pollard.

12 THE CLERK: Ms. Pollard, if you'll please come
13 forward. If you'll please pause at the end of the bench,
14 place your left hand on the Bible and raise your right
15 hand.

16 WHEREUPON;

17 BROOKLIN POLLARD,

18 after having been duly sworn, testified as follows:

19 THE CLERK: Thank you, please be seated. Please state
20 your full name for the record.

21 THE WITNESS: Brooklin Pollard.

22 DIRECT EXAMINATION

23 BY MS. BENTLEY:

24 Q Ms. Pollard, how old are you?

25 A I'm 24.

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- 1 Q You work, are you in school?
- 2 A I work.
- 3 Q Where do you work?
- 4 A [Undiscernible].
- 5 Q How long have you worked there?
- 6 A A little over two years.
- 7 Q Okay. Do you have any children?
- 8 A Yes, ma'am.
- 9 Q How many children do you have?
- 10 A Two.
- 11 Q How old are they?
- 12 A I have a three-year-old and a four-year-old.
- 13 Q What do they do when you're at work?
- 14 A Right now, they're with their father.
- 15 Q And you know the Defendant in this case, correct?
- 16 A Correct.
- 17 Q What is his name?
- 18 A Terry McCarrell.
- 19 Q How do you think him?
- 20 A That's my father.
- 21 Q Okay. I want to take you back to the fall of 2011.
- 22 Where was your father living at that time?
- 23 A With my grandmother.
- 24 Q Were you living in that residence as well?
- 25 A No, I had my own place, but I would spend the night.

1 Q And did your father work?

2 A He did like general labor, like off and on, but he
3 did baby-sit my kids while I worked.

4 Q Okay. So did he work a full-time job that he
5 reported to daily?

6 A Huh-huh.

7 Q Okay. So it sounds like y'all were in pretty regular
8 contact, he would baby-sit your boys?

9 A Yes, ma'am.

10 Q Do you remember when he was arrested for the larceny
11 charge?

12 A Yes, ma'am.

13 Q Did you try to help him when you found out about that
14 arrest?

15 A Well, when I found out about it, I, actually --

16 Minor [REDACTED] actually, told me what happened.

17 Q You say Minor [REDACTED] who?

18 A I think her last name is O'Neill. I'm not sure. And
19 that's when she told me that she had the rings and gave me
20 -- I'm not sure of the lady that was here, but she gave me
21 her number to call.

22 Q Minor [REDACTED] provided you with Ms. Tamila Woodard's
23 number?

24 A Yes, ma'am.

25 Q Do you remember when that was?

189

1 A I, actually, don't.

2 Q Okay. How did [Minor] contact you?

3 A Well, they called my grandmother first and told that
4 he was arrested. We asked where. And by that time,
5 [Minor] called me and told me what happened.

6 Q Okay. And to your knowledge at that time, what was
7 [Minor] relationship with your father?

8 A Honestly, I have no idea. Because I know the guy
9 that was here, Jesse, he done tattoos, so I know she had
10 set it up for me and him to go get a tattoo before.

11 Q With Jesse?

12 A Uh-huh.

13 Q When you were talking to [Minor] after your father
14 was arrested, what was the main method that you used to
15 communicate?

16 A At first, she was texting, so it was a text back and
17 forth.

18 Q And you had a cell phone?

19 A Yes, ma'am.

20 Q What kind of cell telephone did you have?

21 A It was a Galaxy -- I'm not sure of the name. I know
22 it was a Galaxy.

23 Q Was it a Samsung?

24 A Yes, ma'am.

25 Q Do you recall what your phone number was?

190

1 A I'm sorry, I don't.

2 Q Okay. If I gave you the number 283-1818, does that
3 sound familiar?

4 A That sounds familiar.

5 Q Ms. Pollard, after you came into possession of the
6 rings from **Minor** what did you do?

7 A Well, I called -- I talked to -- is it Tamika?

8 Q Tamila.

9 A Tamila. I talked to her and she told me she would
10 feel comfortable if I just gave them to the officer in
11 charge. So the next day, he met me at my grandmother's
12 house and wrote a statement and took the rings.

13 Q Okay. And --

14 A Well, it was only one ring, I'm sorry.

15 Q That's okay. And did you try to provide him with
16 other evidence aside from the ring at that time?

17 A Yes, ma'am. Because she sent me a message saying --
18 well, the night that we went, she said, I would have --
19 I'm sorry.

20 Q I'm going to ask you to not say what she said. But
21 could you just tell me yes or no, did you try to
22 provide --

23 A Yes, ma'am.

24 Q What evidence did you try to provide him?

25 A The text message history.

191

1 Q And how did you initially try to give that to him?

2 A Well, he sent an e-mail, but I wasn't sure how to get
3 it off of my e-mail, so he said we could hook it up to a
4 -- if I come to his office, he could hook it to a machine
5 and it would just print it off.

6 Q Okay. I'm going to show you -- and did you agree to
7 do that?

8 A Yes, ma'am.

9 Q Did you have any problem doing that?

10 A No, ma'am.

11 Q Did you do it because you thought you were going to
12 help your dad?

13 A I mean, I did it because she openly said she did take
14 the rings.

15 Q Okay. That's fair enough. I'm going to show you
16 what's admitted as State's Exhibit 1. Do you recognize
17 that?

18 A Yes, ma'am.

19 Q Is your signature on it?

20 A Yes, ma'am.

21 Q And to your knowledge, what did signing that form
22 give the police the right to do?

23 A Get the messages off the phone.

24 Q Okay. And have you previously had a chance to look
25 through these printed off messages?

192

1 A Some of them.

2 Q Well, I want you to look at them now as long as you
3 need to.

4 A All right. Yes, ma'am I did look at a lot of these.

5 Q And did those messages appear to be messages you had
6 either sent or received?

7 A Yes, ma'am.

8 Q For the most part?

9 A Uh-huh.

10 Q Okay. And on the last few pages, are those the
11 messages that you exchanged with Minor

12 A Yes, ma'am.

13 Q Okay. Does it look like anyone added in, took away
14 messages or anything like that?

15 A No, ma'am.

16 Q Okay. Ms. Pollard, in the fall of 2011, did your
17 father -- well, actually, I'll start with -- I'm going to
18 show you what's been marked as State's Exhibit 4. I've
19 already previously shown counsel. Do you recognize those
20 message?

21 A Yes, ma'am.

22 Q How do you recognize those messages?

23 A These were the messages -- these were the messages
24 about the rings when she wanted to meet with me to tell me
25 what happened.

193

1 Q When you say she, who do you mean by she?

2 A Minor

3 Q And do those appear -- except for the highlighting,
4 do those appear to be altered in any way from what they
5 were?

6 A No.

7 MS. BENTLEY: Your Honor, at this time, the State
8 wishes to admit excerpt four into evidence.

9 MR. STALVEY: No objection.

10 THE COURT: Without objection, the same is admitted
11 into evidence.

12 (WHEREUPON, State's Exhibit No. 4 was admitted into
13 evidence.)

14 BY MS. BENTLEY:

15 Q Ms. Pollard, during the fall of 2011, did your father
16 have trouble with his cell phone?

17 A Yes, ma'am.

18 Q What was the problem?

19 A Well --

20 Q To your knowledge?

21 A Well, the phone, it was, actually, my phone. It was
22 used as my grandmother's house phone because she didn't
23 have a phone. The phone was stolen from the house. We
24 tried to get it back. We, actually, had no luck. With it
25 -- with it being a prepaid phone, we couldn't track it or

194

1 turn it off, so they just put money on it.

2 Q So was there a period of time that your father was
3 and, I guess, your grandmother was without a cell phone?

4 A Well, she had her -- like a food stamp phone, so
5 that's the phone she did have.

6 Q And what about your dad?

7 A He didn't have a phone.

8 Q Would he ever use your phone?

9 A Sometimes, he would.

10 Q If you were over there?

11 A Yes, ma'am.

12 Q Okay. I'm going to show you what's been previously
13 marked as State's Exhibit 5. Do you recognize that
14 excerpt of messages?

15 A Yes, ma'am.

16 Q Are those also from your cell phone?

17 A Yes, ma'am.

18 Q The highlighted messages, did you send those?

19 A No, ma'am.

20 Q But if they were on your phone, would you argue they
21 were not sent?

22 A No, ma'am.

23 Q All right.

24 MS. BENTLEY: Your Honor, at this time, the State
25 wishes to admit State's Exhibit 5 into evidence.

195

1 MR. STALVEY: No objection.

2 THE COURT: All right. Without objection, the same
3 is admitted.

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

6 BY MS. BENTLEY:

7 Q Would you say that your father was possibly using
8 your phone on December 5th, 2011?

9 A Yes, ma'am.

10 Q Okay. Would you read the messages that he sent on
11 December 5th?

12 A First one says, This Terry WYE. Looks like you have
13 an incoming. I miss you, baby. And then it was a send
14 that says, I call you. Incoming message, Yeah. Then
15 another incoming that says, When can I see you?

16 Q And who are those incoming messages from, if you can
17 tell?

18 A Minor

19 Q And how do you know those are coming from Minor

20 A Because I remember her signature.

21 Q Okay. Which was the Zoe's mommy?

22 A Yes, ma'am.

23 Q Please continue reading those.

24 A Just the highlighted ones?

25 Q Yes, ma'am.

196

1 A Incoming, Hello, are you going to just ignore me
2 today? Zoe's mommy. Outgoing says, No, I'm going to see
3 about my phone -- I'm sorry, I'm going to see about my
4 phone. I see you when I get back. Incoming, Okay, then,
5 I love you, Zoe's mommy. Sent message -- I'm sorry,
6 outgoing, I love you, too. Incoming, TWK2 me when you
7 can.

8 Q And those messages, presumably, were sent by your
9 father to Minor

10 A I'm assuming.

11 MS. BENTLEY: I have no further questions. Please
12 answer any questions Mr. Stalvey may have.

13 MR. STALVEY: I don't have any question, Judge.

14 THE COURT: All right. Thank you, ma'am. I
15 appreciate you being here. Thank you.

16 Next witness.

17 MS. BENTLEY: Your Honor, the State's next witness is
18 Minor

19 THE CLERK: Ms. O'Neill, please come forward. If you
20 would please pause at the end of the bench. Please place
21 your left hand on the Bible and raise your right hand.

22 WHEREUPON;

23 Minor

24 after being duly sworn, testified as follows:

25 THE CLERK: Please be seated. Please state your name

197

1 for the record.

2 THE WITNESS: Minor [REDACTED]

3 DIRECT EXAMINATION

4 BY MS. BENTLEY:

5 Q Minor [REDACTED] how old are you?

6 A Sixteen.

7 Q When is your birthday?

8 A [REDACTED].

9 Q Do you go to school?

10 A Yes.

11 Q Where do you currently go to school?

12 A Traveler's Rest.

13 Q Traveler's Rest High?

14 A Yes.

15 Q How long have you been there?

16 A Probably three months.

17 Q What grade are you going to be in next year?

18 A I'll be a junior.

19 Q What do you do in your free time?

20 A Take care of my little girl.

21 Q How old is your daughter?

22 A Three almost.

23 Q What is your daughter's name?

24 A Zoe.

25 Q When was Zoe born?

198

- 1 A. [REDACTED].
- 2 Q Do you have any brothers or sisters?
- 3 A Yes.
- 4 Q What do you have?
- 5 A I have an older brother.
- 6 Q Does he live with you?
- 7 A No.
- 8 Q Where does he live?
- 9 A With a friend.
- 10 Q And do you live with your mom and dad?
- 11 A I live with my mom.
- 12 Q Okay. And do you work?
- 13 A I do.
- 14 Q Where do you work?
- 15 A McDonald's.
- 16 Q When did you get that job?
- 17 A Yesterday.
- 18 Q Congratulations.
- 19 A Thank you.
- 20 Q You said you lived with your mom?
- 21 A Yes, ma'am.
- 22 Q Have you always lived with your mom?
- 23 A No, ma'am.
- 24 Q Do you remember the first time that you went to
- 25 foster care?

- 1 A Yes, I do.
- 2 Q About how old were you?
- 3 A I was probably six.
- 4 Q Okay. How long were you gone?
- 5 A Almost three years.
- 6 Q Okay. What was it like to live away from your mom
- 7 when you're that young?
- 8 A It was hard.
- 9 Q What was hard about it?
- 10 A Being away from my family. I was confused.
- 11 Q Okay. And do you remember about how old you were
- 12 when you returned to your mom's house?
- 13 A I think I was nine.
- 14 Q Were you in school?
- 15 A I was.
- 16 Q What grade were you in?
- 17 A Fifth.
- 18 Q Okay. What was it like when you came back to your
- 19 mom's house?
- 20 A It was a good feeling, it was just really different.
- 21 Q Why was it different?
- 22 A Well, my dad wasn't in the home. I don't know how,
- 23 it was just completely different.
- 24 Q How -- did you change schools when you went back to
- 25 live with your mom?

- 1 A I did.
- 2 Q How was it to change schools? Did you have friends
- 3 in your new school?
- 4 A I do have one there, yes.
- 5 Q Was it an easy transition?
- 6 A Definitely not.
- 7 Q Why not?
- 8 A I was picked on a lot.
- 9 Q What were you picked on about?
- 10 A Being a foster kid.
- 11 Q Okay. How did that make you feel?
- 12 A Little.
- 13 Q Okay. What did you do when you were picked on?
- 14 A Nothing for a while.
- 15 Q Then what did you do?
- 16 A Spazzed on somebody.
- 17 Q Did you get in trouble in school?
- 18 A From then on, yes.
- 19 Q When did that trouble start?
- 20 A I want to say middle of sixth grade.
- 21 Q Okay. So you were about how old then?
- 22 A I don't know, 11 or 12.
- 23 Q Okay. And what kind trouble did you get in?
- 24 A Mainly, fights at school.
- 25 Q What would cause you to fight in school?

- 1 A Anything.
- 2 Q Okay. Were you angry?
- 3 A Yes, very.
- 4 Q What were you angry about?
- 5 A I don't know. I guess seeing my struggle.
- 6 Q Did your mom work?
- 7 A Uh-huh.
- 8 Q Where did your mom work?
- 9 A She worked at the Waffle House.
- 10 Q How long did she work at the Waffle House?
- 11 A Five years.
- 12 Q Where did she work after the Waffle House?
- 13 A Wendy's and McDonald's.
- 14 Q Did she make a good income working at the Waffle
- 15 House, Wendy's and McDonald's?
- 16 A I mean, we were making it, but barely.
- 17 Q And you understood that?
- 18 A Uh-huh.
- 19 Q What was that time in your life like when you're
- 20 getting in trouble in school?
- 21 A It was hard. I mean, I was just rebelling. I mean,
- 22 I knew what I was doing.
- 23 Q Were you arrested?
- 24 A Yes, ma'am.
- 25 Q What were you arrested for?

202

1 A Multiple things.

2 Q Did you get arrested for assault and battery?

3 A Yes, ma'am.

4 Q Did you get arrested for disturbing schools?

5 A Yes, ma'am.

6 Q Did you get arrested for running away?

7 A Yes, ma'am.

8 Q Okay. After you were arrested for running away, what
9 happened?

10 A Actually, I believe I was pregnant, and I turned
11 myself in.

12 Q Okay. When did you find out you were pregnant?

13 A I think it was beginning of January 2010.

14 Q 2011?

15 A Yeah, I meant 2011.

16 Q How did that make you feel?

17 A I didn't feel anything.

18 Q Okay. After you turned yourself in -- why did you
19 turn yourself in?

20 A Because I was pregnant and I knew that was best for
21 my child. I didn't want to spend time with my child,
22 like, continuing to be on the run while I was pregnant and
23 knew they would eventually catch me and they were going to
24 take my baby from me.

25 Q Okay. I want to ask you briefly, how old was your

203

1 child's father?

2 A Fifteen.

3 Q Okay. Did y'all go to school together, how did you
4 know him?

5 A Actually, we met through a friend that I went to
6 school with.

7 Q Did he encourage your rebellious behavior?

8 A Probably, yes.

9 Q But you said that you knew what you were doing, too?

10 A Yes, I did.

11 Q Tell me about how things went after you turned
12 yourself in from being a run-away?

13 A Well, when I found out I was pregnant, I didn't
14 really know what to do. I mean, I stopped doing drugs
15 right then. I mean, that wasn't, actually, that hard
16 because I was doing it for not just myself, but my baby.
17 I, actually, had a reason. Because before, I was living
18 my life for myself. It didn't seem important. But after
19 I turned myself in, I went to jail the very next day
20 because I had court. I went to Willow Lane.

21 Q What is Willow Lane?

22 A DJJ.

23 Q Okay. It is a coed facility, girls' facility, boys'
24 facility?

25 A Both.

204

1 Q So it's coed?

2 A Yes.

3 Q Tell me about Willow Lane?

4 A It's different from regular DJJ.

5 Q Had you previously been to regular DJJ?

6 A Yes.

7 Q When was that?

8 A I'm not sure. Maybe six months before that. I
9 honestly don't know.

10 Q So before you went to Willow Lane, you went to a
11 regular DJJ facility?

12 A Yes.

13 Q Tell me how Willow Lane was different.

14 A We didn't really have -- I mean, we had cells, but it
15 was -- I don't know, they wore uniforms that were
16 camouflaged and they were all about military, which is,
17 you know, great, you know, but different. It was a lot
18 harder.

19 Q Was it stricter?

20 A A lot more strict.

21 Q What kind of things did you have to do at Willow
22 Lane?

23 A Well, I didn't have to do anything because I was
24 pregnant. They would do like a bunch of workouts and
25 stuff.

205

1 Q But you didn't have to do the physical stuff because
2 you were pregnant?

3 A Right.

4 Q Were you made to go to school?

5 A Yes, ma'am.

6 Q What about drug treatment and drug classes?

7 A Yes.

8 Q Anything else you had to do?

9 A Parenting classes.

10 Q How long were you at Willow Lane?

11 A I'm not sure, I think it was three months.

12 Q Okay. And after Willow Lane, where did you go?

13 A I went back to my mom.

14 Q Did you have any restrictions when you were returned
15 home to your mother? Were you on probation?

16 A I was on house arrest.

17 Q Okay. And what were the terms of house arrest?

18 A Sit at the house.

19 Q And how did that make you feel?

20 A I was pregnant. I was just getting fat and I was
21 fine with that.

22 Q Okay. How would you describe your attitude after you
23 left Willow Lane versus before?

24 A I have a different perspective in life for sure.

25 Q Tell us about it.

206

1 A Like I said, I was just living for myself before I
2 got pregnant. I didn't really care, rebellious, you know,
3 doing whatever. But when I got pregnant, my entire life
4 changed.

5 Q Tell me how.

6 A My daughter is my life.

7 Q I can't hear you.

8 A She's my life. She's the reason I wake up every
9 morning.

10 Q Okay. Do you remember what month it was when you
11 returned home from Willow Lane?

12 A I think it just got to be summer.

13 Q Okay. And when was Zoe born?

14 A [REDACTED]

15 Q Okay. You were on house arrest still, is that
16 correct?

17 A No.

18 Q You were not on house arrest anymore?

19 A No, ma'am.

20 Q When did you get off house arrest?

21 A In August.

22 Q Were you on probation or anything?

23 A Yes.

24 Q Okay. Tell me, had DSS previously been involved in
25 your life?

207

- 1 A Yes.
- 2 Q As far as foster care and everything?
- 3 A Yes, ma'am.
- 4 Q Did they know that you were pregnant?
- 5 A Yes.
- 6 Q Did they come and check on you?
- 7 A They did. They -- after they found out I was
- 8 pregnant, they -- you know, they didn't open a case, but,
- 9 you know, they looked into it and decided that wasn't
- 10 needed.
- 11 Q That it wasn't needed, meaning what?
- 12 A Like, I should stay with my child and my mom.
- 13 Q DSS let you keep your baby?
- 14 A Yes, ma'am.
- 15 Q Okay. In your own words, I want you to tell us why
- 16 we're here today?
- 17 A To decide if Terry McCarrell is guilty or not.
- 18 Q Guilty of what?
- 19 A The charges that he's got.
- 20 Q Okay. Those charges involve you?
- 21 A Yes, ma'am.
- 22 Q Do you remember when you first met Terry?
- 23 A Yes, ma'am.
- 24 Q I want you to tell us about that meeting.
- 25 A Okay. We were on the sidewalk.

208

1 Q What had you been doing?

2 A What had I been doing or him?

3 Q What had you been doing?

4 A I was taking my daughter on a walk in her stroller
5 with my mom.

6 Q Okay.

7 A We were going to the gas station.

8 Q Where was the gas station in relation to your house?

9 A Right down the street.

10 Q Okay. So you were going on a walk to the gas station
11 and?

12 A I seen someone that I knew. And we were kind of like
13 hi and he introduced me to the guy he was with, which was
14 Terry. And I introduced him to my mom and my daughter.
15 And that was really it.

16 Q Who was it that you saw that you knew?

17 A I believe his name is Majay. We met at school.

18 Q What school?

19 A Berea Middle.

20 Q Okay. Did he tell you who Terry was?

21 A I don't remember if he did or not.

22 Q But they were definitely together?

23 A Yes, ma'am.

24 Q Okay. How long did y'all chat?

25 A Not -- like five minutes.

209

1 Q Okay. What did you do after that?

2 A I continued to walk to the gas station and back.

3 Q Could you see your house from the gas station?

4 A Sort of.

5 Q Okay. Do you remember the next time you saw Terry
6 McCarrell?

7 A Not really.

8 Q Tell me the next time you do remember seeing Terry
9 McCarrell.

10 A Okay. I believe the next time I seen him was,
11 actually, at my house with Majay. And we was just sitting
12 outside having a conversation.

13 Q Who was outside having a conversation?

14 A Me and them two.

15 Q Okay. Did Terry live in the same complex that you
16 did?

17 A He lived down the street.

18 Q Had you seen him prior to those two meetings?

19 A No, ma'am.

20 Q Okay. Do you remember what you and Terry and Majay
21 talked about that day?

22 A Not really.

23 Q Okay. Do you remember how long after that initial
24 meeting it was that he came over?

25 A It was probably in the next few days.

210

1 Q Okay. Did Terry ever come back after that time with
2 Majay?

3 A Yes.

4 Q When was that?

5 A Probably a couple days after that.

6 Q Okay. So what month do you think this was?

7 A I don't know.

8 Q Okay. How often did Terry start coming over?

9 A He started coming around just about every day.

10 Q Okay. When he first started coming over, who would
11 be home?

12 A Me and my mom and my daughter.

13 Q Okay. And did that ever change?

14 A Yes. He started coming around after my mom would go
15 to work. He could see when my mom would leave. My mom
16 had to pass his house to go to work in the morning. And I
17 guess he would just come after he seen her leave.

18 Q Do you remember the first time he came over when your
19 mom wasn't there?

20 A I do.

21 Q Tell me about that time.

22 A We just hung out.

23 Q Did you ask why he was there without your mom there?

24 A Not really. Back then, I wasn't -- I didn't respect
25 my mom.

1 Q Had your mom ever had a conversation with you and
2 Terry about when it was appropriate for him to come over?

3 A She had a conversation with Terry that he didn't need
4 to be at our house while she wasn't there.

5 Q Okay. Did he respect that rule?

6 A Not at all.

7 Q Did you respect that rule?

8 A Not at all.

9 Q Okay. After that first time he came over when your
10 mom wasn't there, how often did he start coming over?

11 A Every day.

12 Q Would he return when your mom came home?

13 A Yeah, he would like leave and then whenever she would
14 come in, he would like walk up or something.

15 Q Okay. So how many days a week would you say that
16 Terry was over at your house when your mom was not there?

17 A Four or five days out the week.

18 Q What about when your mom was there?

19 A He was usually there.

20 Q Okay. Did your relationship with Terry become sexual
21 immediately?

22 A No.

23 Q How long did it take before the first move was made?

24 A Not long.

25 Q You say not long?

212

1 A Two weeks, not even that probably.

2 Q Okay. Tell he me how it happened.

3 A Like when he first tried to make a move?

4 Q Well, tell me what happened during the two weeks that
5 nothing sexual happened. What did y'all do?

6 A We just sat around watching TV. I was taking care of
7 my daughter. He just really sat there. You know, we
8 would have conversations, talk about whatever. He made me
9 feel like I could trust him.

10 Q How did he do that?

11 A He would be very open with me about a lot of things,
12 about his past.

13 Q Okay. I'll let you leave it at that. Did you have
14 an attraction to Terry?

15 A No, not at all.

16 Q Okay. Tell me what happened the first time he made
17 an advance towards you. Where were you?

18 A In my mom's room.

19 Q Why were you in your mom's room?

20 A Because her bed is big and I was asleep.

21 Q Tell me what happened.

22 A Well, I was asleep, like I said, and Terry came in
23 the back door.

24 Q Was your back door locked?

25 A No. My back door then was broke.

1 Q Tell me what happened when Terry came in.

2 A He sat on the bed. He was trying to touch me and
3 stuff.

4 Q I want to talk with you a minute about Zoe. What
5 kind of delivery did you have with Zoe?

6 A Vaginal.

7 Q Was Zoe a healthy baby?

8 A She was, she was 10 pounds.

9 Q How did you feel after giving birth?

10 A Well, awful. Like my ribs were still separated.

11 Q Okay. Were you under a doctor's care for a period of
12 time after giving birth?

13 A I was supposed to be on bedrest.

14 Q Do you know for how long?

15 A I don't remember.

16 Q Okay. You were young when you had Zoe?

17 A (Witness nodded head.)

18 Q What was your feeling -- what were your feelings
19 about sex after you gave birth?

20 A I didn't want to have sex.

21 Q Why not?

22 A I was -- well, I had stitches, for one. For two,
23 that was like the furthestest thing from my mind.

24 Q So you were sleeping in mom's room, what happened?

25 A Terry came in, sat on the bed. He was trying to

214

1 touch me, trying to pull my pants down, I pulled them back
2 up.

3 Q Do you want to be here today?

4 A No, not at all.

5 Q Why not?

6 A Because this really brings back memories.

7 Q Okay. Tell me why you were sleeping in your mom's
8 bed?

9 A My daughter was sleeping in the other room and my
10 mom's bed was bigger than mine. I just went to sleep in
11 there.

12 Q Had Terry previously been in a bedroom with you?
13 Like, where would y'all watch TV?

14 A Usually in the living room.

15 Q Okay. Did it concern you at first that Terry went in
16 your mom's room?

17 A You could tell something was different, like in his
18 face.

19 Q Okay. Did he say anything to you?

20 A Not really. No.

21 Q Tell me what you meant he was touching on you and
22 stuff?

23 A Like sexually, like he was trying to take my pants
24 off.

25 Q Do you remember what kind of pants you were wearing?

215

1 A Yeah, I was wearing sweat pants.

2 Q Did you say anything to him?

3 A I don't recall if I told him no or to stop, but I
4 mean, I stopped him.

5 Q Did he stay after that?

6 A I don't think so. I honestly don't remember.

7 Q Okay. When was the next time you saw him again?

8 A At that point, we were hanging out like every day.
9 It was like two or three days until I seen him again.

10 Q How was it when he came over?

11 A He acted completely normal.

12 Q And how did you act?

13 A Completely awkwardly normal.

14 Q Did you bring up what happened the last time you saw
15 him?

16 A I did not.

17 Q Why not?

18 A Because that was awkward.

19 Q Did you tell your mother about what happened?

20 A I did not.

21 Q Why not?

22 A I don't know, I just didn't.

23 Q Did you have a good relationship with your mom at
24 that time?

25 A I mean, we had somewhat of a good relationship. I

216

1 mean, I could talk to her and stuff, but I just didn't.

2 Q The next time Terry came over, what did y'all do?

3 A It was one of those regular days, we were just
4 watching TV. I'm playing with Zoe and not doing anything.

5 Q Okay. Did he make any advances towards you at that
6 time?

7 A No.

8 Q Tell me about the next time he -- well, pardon me,
9 was there another time when he did make an advance towards
10 you?

11 A Yes.

12 Q Tell me about that.

13 A Well, I don't remember how much longer this was after
14 all this happened, but I was in my room on my bed watching
15 TV.

16 Q Where was Zoe?

17 A She was asleep.

18 Q Was she in your room?

19 A No. She was, actually, in her car seat.

20 Q Okay.

21 A And I was sitting at the end of my bed watching TV
22 and he like started fondling me trying to have sex with
23 me.

24 Q Tell me how that started.

25 A Him getting in my face.

217

1 Q How did he get in your face?

2 A Okay, I was sitting on the edge of my bed. He walks
3 in like on me, walks up on me and just trying to touch me
4 and --

5 Q You said trying to touch you, did he touch you?

6 A Yes.

7 Q Where did he touch you?

8 A Everywhere.

9 Q On top of your clothes, under your clothes?

10 A On top of my clothes. And then he started trying to
11 kiss me and stuff. Then he leaned me back where I was
12 laying down, just my feet were off the bed. Then I
13 realized that his pants were halfway down.

14 Q Was he wearing underwear?

15 A Probably.

16 Q Were they on at that time?

17 A No.

18 Q How did that make you feel?

19 A Creeped out, I guess. I mean, I wasn't that creeped
20 out, but.

21 Q Okay. Did it bother you that his pants were down?

22 A I mean, yeah, I think.

23 Q Did you say anything?

24 A Uh-huh.

25 Q What did you say?

218

1 A I said, What's on your dick?

2 Q And what were you referring to?

3 A A sore.

4 Q Where was it?

5 A Like towards his stomach.

6 Q Okay. And did he respond?

7 A Yeah. He said, It's from where I been rubbing
8 against your pants.

9 Q Had he been rubbing against your pants?

10 A Yes.

11 Q What kind of pants were you wearing?

12 A Blue sweat pants, like running pants.

13 Q Okay. Did y'all talk about that anymore, about the
14 sore?

15 A Not really.

16 Q Okay. What happened next?

17 A I noticed there was something wet and green on my
18 pants and I asked him what that was and he said it was
19 pre-cum and that it's only green because it was on my
20 pants.

21 Q How did that make you feel?

22 A Disgusted, like I was going to throw up, like he had
23 herpes or something.

24 Q Did you push him off?

25 A No, I didn't.

- 1 Q Why not?
- 2 A I couldn't tell you because I don't know.
- 3 Q Okay. What happened after y'all talked about that?
- 4 A We had sex.
- 5 Q On your bed?
- 6 A Yes, ma'am.
- 7 Q Did you remove your clothes?
- 8 A No, he did.
- 9 Q Did he remove your pants and your shirt?
- 10 A No, I believe it was just my pants.
- 11 Q Okay. Did he speak to you during sex?
- 12 A No.
- 13 Q Did you speak to him?
- 14 A No.
- 15 Q How long did y'all engage in sexual intercourse?
- 16 A I don't know, couple of minutes.
- 17 Q Okay. What happened when you were finished?
- 18 A I pulled my pants up and went to the bathroom.
- 19 Q What did he do?
- 20 A I have no idea. I really don't remember. I've tried
- 21 to block all this out. I mean, this was three years ago.
- 22 Q Was he still there when you got out of the bathroom?
- 23 A I don't remember.
- 24 Q Okay. When was the next time you saw him after that?
- 25 A I think it was the next day.

1 Q Okay. How was that interaction?

2 A Normal.

3 Q What do you mean by normal?

4 A Normal as in, like, he wasn't all over me like a
5 couple would be or anything, it was just like one of those
6 days where we were conversating and playing with Zoe.

7 Q Okay. Did you discuss having sex with him?

8 A No.

9 Q Did he discuss it with you?

10 A No, ma'am.

11 Q Did you kiss, hug, have any intercourse the next time
12 you saw him?

13 A No, ma'am.

14 Q Okay. Was that the only time that you had sex with
15 Terry?

16 A No, ma'am.

17 Q When was the next time that you had sex with Terry?

18 A I'm not sure, maybe a couple days.

19 Q Okay. What happened during that time?

20 A When we had sex?

21 Q Yeah. Where were you?

22 A At my house.

23 Q Okay. Do you remember what room you were in?

24 A I don't.

25 Q Okay. What do you remember?

221

1 A I remember that eventually it got to be an everyday
2 thing.

3 Q Okay. Would you ever talk about it?

4 A No.

5 Q Did he ever talk about it?

6 A No.

7 Q How would y'all go from talking to having sex?

8 A I don't know. He was a -- he has a different
9 personality. He's one that wants you to trust him and
10 really get to know the fake him. And then -- I don't
11 know, I think he tried to make me believe that he loved me
12 because he would tell me he loved me all the time. It got
13 to the point where I did trust him.

14 Q Did you care about him?

15 A I thought I did.

16 Q Did you think that you loved him?

17 A I didn't know what love was.

18 Q To the best of your knowledge, did you ever tell him
19 you loved him?

20 A I did.

21 Q How often did y'all talk?

22 A All the time.

23 Q Okay. How did you talk to him?

24 A If he wasn't with me, then over a text.

25 Q Did he have a phone?

222

1 A I believe so. I believe that's his phone.

2 Q Okay. Minor did you ever feel like Terry forced
3 you to have sex?

4 A Honestly, no.

5 Q Why not?

6 A I mean, the first time he was trying to have sex, he
7 was a little aggressive and forceful, but, I mean, I got
8 him off me and he didn't do anything. It wasn't like he
9 just done it and I'm screaming no. It wasn't like that.
10 The second time, yeah, he was definitely forceful, a lot
11 more -- not more aggressive, he was -- he was forceful,
12 but I did not say no. Yeah, I was kind of like pushing
13 him away a little bit, but I didn't like, you know, say
14 no.

15 Q In your mind, was your relationship with Terry
16 consensual?

17 A What does that mean?

18 Q It means that you were okay with it?

19 A Oh, like I gave him permission? Yeah, I did.

20 Q Okay. Did his advances ever become less forceful,
21 was it just a routine?

22 A Yeah, it was more like whatever he wanted, he got it.

23 Q Okay. And in your mind that was okay?

24 A Yes, ma'am.

25 Q Okay. Were there ever times that you would not have

223

1 sex with Terry when he came over?

2 A No, I think we had sex like every time.

3 Q Okay. Did you ever tell him no?

4 A No.

5 Q Why not?

6 A I'm not sure.

7 Q Okay. Did you consider Terry to be your boyfriend?

8 A No.

9 Q What did you think of him as?

10 A I have no idea.

11 Q Okay. Did you ever talk to anyone about your
12 relationship with Terry?

13 A No.

14 Q Why not?

15 A I have no idea.

16 Q Excuse me, I couldn't hear the last part?

17 A I have no idea.

18 Q Were you proud of being with Terry?

19 A No.

20 Q Why not?

21 A Well, I didn't know this at the time, but --

22 Q I'm going to stop you because I don't know what
23 you're going to say. How old did you think Terry was?

24 A I didn't know.

25 Q Okay.

224

1 A Well, no, actually, he told me he was like 30.

2 Q Did you believe him?

3 A Yes.

4 Q Did he ever change his story on that?

5 A Yes, he changed his story about three or four times.

6 Q Did Terry tell you whether or not he had children?

7 A Yes.

8 Q What did he say?

9 A He said that his -- he was showing me pictures in his
10 phone of some kids. They were little boys. And he told
11 me that he would watch his kids.

12 Q So he told you that he had two little boys?

13 A I think it was two little boys. I honestly don't
14 remember. He told me that his daughter, Brook, that was
15 his kids' mom.

16 Q Did you ever meet Brook?

17 A At that time, whenever I believed that story?

18 Q Right.

19 A No, I didn't.

20 Q Okay. So he told you that Brook was his children's
21 mother?

22 A Yes.

23 Q And that his grandchildren were, actually, his
24 children?

25 A Right.

225

1 Q When did you find out that wasn't true?

2 A It wasn't that -- it was right before he got
3 arrested -- I mean, not right before, but it wasn't that
4 long.

5 Q How did it make you feel when you found out that he
6 had not been truthful about that?

7 A When I found out that, like it was kind of obvious to
8 me that he was lying about a lot more. I felt really
9 stupid.

10 Q Why did you feel stupid?

11 A Because I believed everything he said.

12 Q Why did you believe that made you stupid?

13 A I don't know, it just made me feel really dumb. I
14 believed everything this man said to me. I just felt like
15 I was used and played with.

16 Q Okay. Did you every engage in other types of sexual
17 activity with Terry?

18 A Yes.

19 Q What kind?

20 A Oral.

21 Q Okay. Did you give or receive?

22 A Both.

23 Q Okay. Prior to -- tell me when that first started.

24 A Well, he didn't really ask me to do anything. He
25 just kind of showed me what to do without words.

226

1 Q What do you mean?

2 A Like he pushed my head down.

3 Q To?

4 A His penis.

5 Q And did you know what to do?

6 A I mean, I knew what to do, but I didn't.

7 Q Okay. Was that something you had done previously?

8 A No.

9 Q Okay. Had you every received oral sex before?

10 A I don't believe so, no.

11 Q Okay. How did that make you feel?

12 A It was different.

13 Q Did that become part of your routine with Terry, your
14 sexual routine?

15 A Not really.

16 Q How often would you give or receive oral sex with
17 Terry?

18 A I mean, not that often.

19 Q Okay. Did you ever tell him that you didn't want to
20 do that?

21 A No.

22 Q Did you just do everything that he wanted you to?

23 A Kind of, yeah.

24 Q When did your sexual relationship with Terry stop?

25 A After he was arrested.

227

1 Q Okay. I want to show you what's been marked as
2 State's Exhibits 4 and 5. I want you to look these over
3 and tell me if you recognize what these are?

4 A Text messages between -- this is mine and Brook's
5 texts.

6 Q What number is that at the top?

7 A Four.

8 Q Okay.

9 A And this is texts between me and Terry.

10 Q And what number is that?

11 A Five.

12 Q And how do you know that those are messages that you
13 sent and received -- or that you sent?

14 A Well, my signature's on it, Zoe's mommy.

15 Q Okay. And do you remember sending those messages?

16 A I don't remember it, but I text like that.

17 Q You text like -- it's a combination of letters and
18 numbers?

19 A Yes.

20 Q Okay. Can you read me those messages that you sent
21 to Terry and that he sent back?

22 A Sure. This is Terry, what you doing? I miss you,
23 BB. I call you, yeah. When can I see you? Hello? Are
24 you just going to ignore me today? No, I'm going to see
25 about my phone. I see you when I get back. Okay. Okay,

228

1 then, I love you.

2 Q What about the next page?

3 A I love you, too, smiley face. Talk to me when you
4 can.

5 Q What date were those sent?

6 A December 5th, 2011.

7 Q Did you and Terry text each other that you loved each
8 other often?

9 A Yes, ma'am.

10 Q How often would you say that he told you he loved
11 you?

12 A Everyday.

13 Q Okay. What about you telling that to him?

14 A Same.

15 Q Okay. I want to take you back to a few weeks before
16 that, November 14th, 2011?

17 A Okay.

18 Q Do you remember who your neighbors were?

19 A Yes.

20 Q Who were your neighbors?

21 A Jesse and whatever her name is Woodard.

22 Q Okay. Did you go inside the house on November 14th,
23 2011?

24 A I don't remember the date, but I did go inside of
25 their house one time.

229

1 Q So you only went inside the house one time?

2 A Yes.

3 Q Who was with you that day?

4 A Terry.

5 Q Tell me how it happened that you went inside the
6 Woodards' house. How did that transpire?

7 A Jesse was talking about some tattoos or something --
8 I don't remember why he came to my door. He came to knock
9 on the door, anyway, for -- I think it was he asked for a
10 cigarette or something from Terry. Then he was showing us
11 tattoo work that he does or that he has done. And I was
12 showing him my tattoo. And I asked him to touch it up
13 because it looked really sloppy, and he said he would. He
14 had a pack of cigarettes -- Terry had half a pack of
15 cigarettes, gave him that and that's --

16 Q Agreed to touch up your tattoo?

17 A Yes.

18 Q Had you been to his house previously?

19 A Had not.

20 Q Did you go after this date?

21 A I have not.

22 Q Tell me what happened when you went inside Jesse's
23 house, who was there?

24 A Just me, Jesse and Terry.

25 Q Where did you go?

230

1 A I sat on the couch.

2 Q Where was the couch?

3 A Right in front of the door.

4 Q Okay. How many couches were there?

5 A Two.

6 Q Okay. Where did Terry go?

7 A On the other couch.

8 Q Okay. At any point, did either you or Terry leave
9 the living room?

10 A Yes. The living room was right beside the kitchen
11 and whenever Jesse went to go get a razor to shave my neck
12 so he could do the tattoo, Terry was -- he stood up -- I
13 don't remember why he went in the kitchen, but he was in
14 the kitchen. The rings were right there, like, on the
15 table.

16 Q Did you know the rings were in that house before you
17 got in there?

18 A No, ma'am.

19 Q Okay. So continue.

20 A And then he took them.

21 Q Okay. Did you see Terry take the rings?

22 A Yes, I did.

23 Q Okay. Did you say anything at that time?

24 A No.

25 Q Did Jesse see him take the rings?

231

1 A No, but Jesse did see that one of the -- a ring, I
2 don't know if it was one of those rings, but he seen that
3 a ring had dropped on the floor.

4 Q Okay. Did he say anything about it?

5 A I don't think so. I think Terry just picked it up
6 and put it back on the table.

7 Q How did you feel when you saw Terry take the rings?

8 A I didn't care.

9 Q Why not?

10 A I wasn't doing it.

11 Q Okay. How long were you at Jesse's house?

12 A Not long, maybe -- don't ask me because I don't know.

13 Q Okay. That's fine. What did you do when you were
14 finished getting your tattoo touched up?

15 A I went home.

16 Q Okay. Did Terry go with you?

17 A He did.

18 Q Was your mother there?

19 A She was.

20 Q Okay. Did you see Jesse again that night?

21 A Yes.

22 Q What happened?

23 A He came to my door and asked about the rings.

24 Q And what did you tell him at that time?

25 A I didn't know anything about any ring.

232

1 Q Was that true?

2 A No.

3 Q Were the rings in your possession at that time?

4 A They were not.

5 Q Was that the end of rings? What happened?

6 A No. I believe, I believe it was that night Jesse
7 called the police about the rings and -- after Tamila got
8 home from work. And the police came out, then whenever
9 Terry seen the police, he immediately told me to go flush
10 them down the toilet. I tried, wouldn't flush, one
11 didn't. I hid the other ring.

12 Q Where did you hide it?

13 A Under the bathtub.

14 Q How did you get it under there?

15 A Put a hole in it.

16 Q Okay. Did you know that by taking the stolen rings
17 you were breaking the law?

18 A I didn't.

19 Q You didn't?

20 A No, I didn't.

21 Q Okay. If you had known that you'd be breaking the
22 law, would you have done it anyway?

23 A Yes.

24 Q Why?

25 A To save Terry.

233

1 Q Okay. Did you want Terry to get in trouble?

2 A I didn't.

3 Q How big a part of your life was Terry at that point?

4 A He definitely wasn't my everything.

5 Q Okay.

6 A But I cared about him -- or I thought I did.

7 Q Were you in school at that time?

8 A I was on home bound.

9 Q What is home bound?

10 A Like, I had a teacher that come to my house.

11 Q Aside from the teacher and Terry, did you have a lot
12 of other friends?

13 A No. I lost all my friends whenever I got pregnant
14 and moved.

15 Q Okay. Was he pretty much the only company that you
16 had?

17 A Yes, the only.

18 Q Okay. How long after the police first asked you
19 about the rings did someone come to your house again?

20 A I don't know about how long.

21 Q Okay. Let me ask you another question. At some
22 point after Terry was arrested for the ring theft, did you
23 meet Brooklin Pollard?

24 A I did.

25 Q At any point -- or did you already know that was

234

1 Terry's daughter at that point?

2 A I believe I did know before I met her.

3 Q Okay. Did you arrange to give her the one ring that
4 did not flush?

5 A Yes.

6 Q Did she -- how did you exchange that with her?

7 A She met me at my house.

8 Q And how did you arrange for her to meet at your
9 house?

10 A Through text messages.

11 Q Were those the text messages that I showed you?

12 A Those are.

13 Q Okay. Did you give Brooklin the ring?

14 A I did.

15 Q Did you think that was going to be the end of it?

16 A I was hoping so.

17 Q Okay. Do you remember texting Brooklin about being
18 pregnant by Terry?

19 A I do.

20 Q Tell me why you said that.

21 A I lied so I wouldn't get in trouble. I was on birth
22 control.

23 Q So you knew you weren't pregnant?

24 A I knew for a fact I couldn't be pregnant.

25 Q Did you lie to anyone else about the rings?

235

1 A Yeah, everybody.

2 Q Meaning?

3 A Anybody that asked, my mom, the police, neighbors.

4 Q Okay. After you gave Brooklin the ring, how soon was
5 it that you heard from the police again?

6 A I'm honestly not sure.

7 Q Do you remember the police coming to your house
8 again?

9 A Yes.

10 Q Do you remember how many officers came?

11 A I think it was three cars of undercover police.

12 Q Okay. Was your mom present when they first got
13 there?

14 A No, ma'am.

15 Q Did they ask you to call her?

16 A Yes.

17 Q Did you?

18 A Yes.

19 Q When the police arrived, what did they first talk to
20 you about?

21 A I'm not sure.

22 Q Okay. Did they talk to you about the rings?

23 A All I remember is when they were asking me about
24 Terry and they showed me text messages.

25 Q What text messages did they show you?

236

1 A A really big stack of them.

2 Q Okay. I'm going to show you what's been marked as
3 State's Exhibit 3. Does this seem like a similar stack?

4 A Yes.

5 Q Did they highlight any text messages or point out any
6 text messages to you?

7 A I don't recall them highlighting any text messages or
8 pointing them out.

9 Q What did they say about text messages?

10 A I'm not sure. They were asking me questions and all
11 I remember is that I lied about everything, not only to
12 cover for him, but myself as well. And then they pulled
13 out the text messages and told me I was lying.

14 Q What happened when you saw them pull out those text
15 messages?

16 A I shut up.

17 Q Why?

18 A Because I was caught.

19 Q You were caught?

20 A (Witness nodded head.)

21 Q How did you feel when you realized you were caught?

22 A Pretty dumb.

23 Q Did you then decide to tell the truth?

24 A I think I still lied.

25 Q What would you have lied about? Did you lie about

237

1 taking the rings?

2 A No, I might have told them the truth on that.

3 Q About --

4 A Afterwards.

5 Q After they showed you the text messages?

6 A Yes.

7 Q And what would you have told them if you told them
8 the truth?

9 A I would have told them what happened.

10 Q Which was?

11 A Terry took the rings and I took them from him
12 whenever he asked me to go flush them to get rid of them.

13 Q Okay. Did you end up getting charged with anything
14 for your part in the ring theft?

15 A I did, receiving stolen goods. And I did, I think,
16 it was three months in DSS for that.

17 Q Did you go through the trial process? What happened?

18 A No, ma'am, we went to court and I pled guilty.

19 Q Why?

20 A Because I was guilty.

21 Q Okay. Did anyone offer you a reduced sentence for
22 testifying today?

23 A No, ma'am.

24 Q Did you tell anybody about your relationship with
25 Terry to get a lesser sentence?

238

1 A No, ma'am.

2 Q You said you went to jail for receiving the stolen
3 goods?

4 A Yes, ma'am.

5 Q Did you lose custody of your daughter?

6 A No, ma'am.

7 Q Did you get to take her with you to DJJ?

8 A No, ma'am.

9 Q So what happened?

10 A I went to jail, my daughter was with my mom. And
11 when -- yeah, that's when I got out, then they put me in
12 DSS custody with my daughter.

13 Q Okay. Going back to the text messages and the police
14 interview, what was it that you maintained lies about?

15 A Can you ask me that question again?

16 Q Sure. You said that when you met the police and they
17 showed you the text messages, you still lied. What were
18 you still lying about?

19 A The whole Terry and me situation.

20 Q Why?

21 A Because he could get in trouble.

22 Q You knew that he could get in trouble?

23 A Yes.

24 Q Why did you think that he could get in trouble?

25 A He's over 18 and I'm not.

- 1 Q Okay. Why did you care about that?
- 2 A Because he would probably go to jail for a long time.
- 3 Q And you did not want him to get in trouble?
- 4 A No, I didn't.
- 5 Q Why not?
- 6 A I cared about him, or I thought I did.
- 7 Q Okay. Did you ever tell the truth about your
8 relationship with Terry?
- 9 A Right now.
- 10 Q Okay. Did you -- did they ask you to give a written
11 statement?
- 12 A They did. One of the police officers wrote it and I
13 signed it.
- 14 Q Do you remember what it said?
- 15 A I don't.
- 16 Q Okay. You said that after you pled guilty for your
17 part in taking the rings, you went to DJJ and then you
18 went back into DSS custody?
- 19 A Yes, ma'am.
- 20 Q What does DSS custody mean?
- 21 A I was taken from my mom, like state custody.
- 22 Q Who did you go to live with?
- 23 A A foster parent.
- 24 Q And how did that make you feel?
- 25 A I hated it.

240

1 Q Okay. At any point, did you think about saying
2 anything to get out of foster care?

3 A There wasn't anything to say to get out of foster
4 care or I would have.

5 Q Okay. How did being truthful about your relationship
6 with Terry change your life?

7 A All of this has caused me a lot of trouble.

8 Q Like what?

9 A Like going into DSS custody for two more years and
10 this whole going back to jail thing. That wasn't anywhere
11 in my plans either.

12 Q Was there anything positive that came out of
13 disclosing your relationship with Terry?

14 A Absolutely nothing.

15 Q If you could do it over again, would you?

16 A No.

17 Q Okay. I'm going to show you what's been marked as
18 State's Exhibit 6. Do you recognize anyone in these
19 pictures?

20 A Terry.

21 Q Terry's in there? Which picture is he?

22 A Number five.

23 Q Okay.

24 MS. BENTLEY: I have no further questions. Please
25 answer any questions Mr. Stalvey may have.

241

1 THE COURT: Before you start cross-examination, let's
2 take a short break. I think we've been at it for a while.

3 Ladies and gentlemen, we're going to take a break for
4 five or ten minutes and then we'll come back in and resume
5 cross-examination. Please don't discuss the case.

6 (WHEREUPON, the jury left the courtroom at
7 approximately 4:10 p.m.)

8 THE COURT: Ms. O'Neill, you can take a break, too,
9 but you can't discuss your testimony with anybody and
10 nobody can discuss it with you either. So you take a
11 break, use the restroom, get some water, whatever it is
12 you need to do. You can't discuss your testimony. If
13 anybody offers to discuss it with you, you let me know.

14 THE WITNESS: Yes, sir.

15 THE COURT: We'll be in recess for about 10 minutes.

16 (WHEREUPON, a short break was taken.)

17 THE COURT: All right. Bring them in, please.

18 (WHEREUPON, the jury entered the courtroom at
19 approximately 4:25 p.m.)

20 THE COURT: Ladies and gentlemen, what I'm thinking
21 is we will complete the examination of Ms. O'Neill and
22 then we will call it a day. We'll come back tomorrow
23 morning and resume testimony.

24 If I'm not mistaken, after Ms. O'Neill testifies, the
25 State will have three additional witnesses, am I correct?

242

1 MS. BENTLEY: That's right.

2 THE COURT: So as of right now, I don't know if the
3 Defense intends to call any witnesses, but the way we're
4 looking right this second, right this second based on
5 everything I know, it may be that we can argue and charge
6 tomorrow afternoon. I don't know that for sure because I
7 don't know what's going to happen between now and then.
8 However, know that that's what I'm anticipating right now.
9 Okay. If that changes, I'll let you know.

10 Mr. Stalvey, I believe it's your cross-examination,
11 sir.

12 MR. STALVEY: Judge, I don't have any questions for
13 this witness.

14 THE COURT: Well, good then, we'll end a little bit
15 earlier than I thought we would.

16 Ms. O'Neill, thank you for being here. I appreciate
17 it. You may step down.

18 Ms. Bentley, I know you have three additional
19 witnesses, do you have a witness who may take less than a
20 half an hour?

21 MS. BENTLEY: Yes, sir. I can call Investigator
22 Robert Perry to the stand.

23 THE COURT: You anticipate that will be a short
24 witness?

25 MS. BENTLEY: Yes, Your Honor.

243

1 THE COURT: Okay.

2 Well, ladies and gentlemen, like I said, I don't
3 always know what's going to happen, so let's take one more
4 witness.

5 Yes, sir?

6 MR. STALVEY: My cross-examination for Investigator
7 Perry may be significantly longer than my previous
8 witnesses, just to let you know.

9 THE COURT: All right. Good enough.

10 Let me ask you this, ladies and gentlemen, we can
11 take a witness now and we could potentially go beyond
12 5:00, and I don't mind going beyond 5:00 personally. My
13 objection to it is I haven't y'all we're going past 5:00.
14 And in order to be respectful and considerate of y'all, I
15 don't want to go beyond a normal business day because you
16 haven't had the opportunity to call your kids, your
17 spouses and other people with whom you may have had plans
18 or for whom you may have responsibilities. So if we're
19 going to go past five any given day, I want to give you a
20 heads up before the fact so that you can make
21 arrangements. I haven't done that today. In some
22 instances, I ask you and I go with the majority rules, but
23 there may be one person who really can't stay late today.

24 So what I'm going to do is I'm just going to adjourn
25 for this afternoon. If you'll be back tomorrow at nine,

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1 please, we will resume testimony in this case. As I
2 suggested to you earlier, what I hope is that we can argue
3 and charge tomorrow. And I will tell you if I get any
4 additional information that changes that tomorrow morning.

5 So please don't discuss the case. I recognize that
6 you've heard some testimony now, but it's not appropriate
7 for you to begin any deliberations yet. When we left this
8 morning, I told you not to discuss it with friends or
9 spouses or any significant others. And that's even more
10 important now because you've been sworn in and you've
11 heard a portion of the testimony. As I told you this
12 morning, if somebody invites you to discuss it, you start
13 analyzing the evidence so that you can respond to even
14 simple questions. So when somebody ask you, just say I
15 can't discuss it now, we'll discuss it at the end of the
16 case.

17 In the meantime, I hope y'all have a great evening
18 and I'll see you back here tomorrow morning at nine.
19 Thank you.

20 (WHEREUPON, the jury left the courtroom at
21 approximately 4:30 p.m.)

22 THE COURT: All right. Counsel, anything additional
23 for the record this afternoon?

24 MS. BENTLEY: Nothing from the State.

25 THE COURT: Okay.

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1 Mr. Stalvey?

2 MR. STALVEY: I don't have anything right now. I may
3 have something in the morning, Judge.

4 THE COURT: Okay. Good enough.

5 Have you prepared a bench warrant for the Defendant
6 in this case? I know you've had a lot going on.

7 THE CLERK: I have.

8 THE COURT: Okay. If you will hand that up, I will
9 sign it.

10 MS. BENTLEY: Can everyone else be excused, Your
11 Honor?

12 THE COURT: Yes, ma'am, absolutely.

13 Everyone else can be excused.

14 All right. Here's this bench warrant.

15 (WHEREUPON, Court was adjourned for the day to be
16 reconvened on Tuesday, July 8, 2014.)

17 TUESDAY, JULY 8, 2014

18 THE COURT: All right. All the jurors have not arrived
19 quite yet because of a traffic issue. I believe there may
20 be a motion that needs to be taken up before we bring the
21 jury in in any event.

22 I'll be happy to hear from you.

23 MR. STALVEY: Judge, I beg the Court's indulgence. Let
24 me put this one thing up.

25 May it please the Court.

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1 THE COURT: Yes, sir.

2 Motion

3 MR. STALVEY: Judge, we spoke in chambers briefly
4 about a situation that arose yesterday. The testimony of
5 Minor specifically, relating to the reason that
6 she went to the neighbor's house, I believe his name is
7 Jesse Woodard. Mr. Woodard had testified that earlier in
8 the day that Minor and Terry, my client, were over at
9 the house for the reason of looking at tattoo magazines.
10 Mr. Woodard also said they were looking at photos of his
11 children. And, Judge, Mr. Woodard gave a statement to
12 police indicating the same.

13 Yesterday, for the first time that I became aware of
14 it, this is the first time I became aware of it, Ms.
15 O'Neill testified that the reason they were going over to
16 Mr. Woodard's house was not just to look at magazines, but
17 to, actually, have her neck tattooed or, to put it in her
18 words, to have it touched up. It was sloppy. That's what
19 she said. Not only did she testify that was the reason
20 that she went over there, she further testified that
21 somebody went and got a razor to shave her neck to do the
22 tattoo procedure and that's when the rings went missing.

23 Judge, her reason for going over there and Jesse
24 Woodard's reason, the reason he gave that they came over
25 there are completely different. And not only -- well, it

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1 is a difference in their stories, but it's a credibility
2 issue based on the fact that Jesse Woodard, who came in
3 here, testified that he was a recovering drug addict, that
4 he had cleaned up his life, that he no longer, you know,
5 was breaking the law, that he was taking care of his kids.
6 It turns out, based on Ms. O'Neill's testimony and the
7 information that I received just yesterday that that was
8 not entirely true.

9 The fact is, if you believe Ms. O'Neill, Mr. Woodard
10 was getting ready to engage in two unlawful acts,
11 according to our state law. He was about -- and one I'm
12 not sure, but if he has to be a licensed tattoo artist to
13 do that procedure here in this state, which I don't think
14 he has a license. Two, and more importantly, he's about
15 to give a tattoo to a 13-year-old girl, which is a clear
16 violation of the tattoo statute. It's illegal and carries
17 up to a year in jail.

18 Your Honor, if I knew about that, I could have
19 cross-examined Mr. Woodard on his credibility. His
20 credibility is important because, as you've already seen
21 in this trial, they're testifying that these rings are
22 worth \$2,500. You've got an officer who's come up here
23 and testified that they're only worth \$2,000. When asked
24 on redirect by the State where did you get that
25 information, he said from Jesse and Tamila Woodard.

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1 So, I know that's the minor issue that we're dealing
2 with in this case, but you're talking about petit larceny
3 and grand larceny. That's a difference in 30 days and
4 going to prison for five years. And, you know, if he is
5 found not guilty of the criminal sexual conduct and lewd
6 act, he could be looking at going to jail for 30 days or
7 going to jail for five years. So that's significant.

8 Your Honor, I spoke with the prosecutors, they've
9 been forthright with me. They knew that Minor [REDACTED]
10 was going to testify that the reason she went next door
11 was to get a tattoo. So they had that information. They
12 never provided that to me. I'm sure it was an oversight
13 and I'm, certainly, not accusing them of intentionally
14 hiding it from me. I just think it was something they
15 didn't think about. Nevertheless, I didn't get the
16 information until yesterday. And that's after the fact of
17 Mr. Woodard testifying.

18 Now, I think it fits Brady. Judge, I understand the
19 proposition has been made that I recall these witnesses.
20 Judge, that puts me at a disadvantage as well because now
21 I'm losing my opportunity to have last argument. So, in
22 my opinion, I think it is grounds for a mistrial.
23 According to Brady, this evidence would have been
24 favorable to my client and it was known by the
25 prosecution. It was suppressed by the prosecution,

1 inadvertently, but it was suppressed. And it would be
2 material to guilt as far as the petit larceny versus the
3 grand larceny. Like I said, we've already got
4 contradicted testimony on that issue. So based on those
5 factors, I ask that you declare a mistrial based on a
6 Brady violation.

7 THE COURT: Okay. Thank you.

8 I'll be happy to hear from the State.

9 MS. BENTLEY: Your Honor, I respectfully understand
10 everything that Mr. Stalvey is saying regarding that it
11 does create a credibility issue. However, it is not --
12 first and foremost, it is not material to any of the
13 crimes charged. Mr. Woodard testified consistently with
14 his statement. He's never been inconsistent in any
15 meetings with the prosecution. He wasn't inconsistent on
16 the stand. He maintains that they went over there to look
17 at tattoo magazines and to look at photographs of his
18 children.

19 Ms. O'Neill does have a slightly different story in
20 that in addition to the tattoo magazines and photos of the
21 children that Mr. Woodard did touch up an existing tattoo
22 that she had. We don't have any evidence to support that.
23 It's her testimony versus his testimony. That goes to the
24 weight and credibility of the witnesses. Witnesses give
25 inconsistent testimony frequently. But in this case,

1 whether or not Mr. Woodard touched up a preexisting
2 illegal tattoo, thereby, him breaking the law himself, it
3 has nothing to do with anything else in this case. It has
4 nothing to do with the case of criminal sexual conduct, of
5 contributing to the delinquency of a minor, or the grand
6 larceny.

7 Additionally, his credibility on that issue versus
8 the credibility of his wife testifying as to the value of
9 the rings, I don't see how that comes into play at all. I
10 think it's an issue for the jury and it can be addressed
11 to the jury at the appropriate time in closing argument
12 that witnesses give inconsistent testimony. It's not a
13 Brady violation.

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

15 All right. I'll respectfully deny the motion for
16 mistrial.

17 The reason why they may have gone over to the home in
18 the first place is merely incidental to the substantive
19 issues to be resolved in this case. I don't think that it
20 is a Brady violation. It's a question as to whether it
21 was discoverable under Brady. I don't think it's a fact
22 that it's either favorable or disfavorable or exculpatory
23 or inculpatory as to the standard of Brady.

24 Also, as a practical matter, I don't think it
25 prejudices the Defense because I don't know what you would

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1 have done differently. Because given the posture of the
2 case now and the evidence that's been presented, I don't
3 know that you could make it any more clear through
4 additional questioning that there's an inconsistency in
5 the testimony of the victim and -- or the two victims, let
6 us say, the competing testimony of the two victims why
7 they may have come to the home. You may have asked
8 additional questions, but it wouldn't have become any more
9 clear that their testimony was inconsistent. You are in
10 the exact same posture that you would have been, which is
11 you would have been able to point out inconsistent
12 testimony in closing argument.

13 Now, if Defense feels that that's not sufficient to
14 demonstrate that there are inconsistencies and there is a
15 credibility issue, then you may call either of those
16 witnesses or additional witnesses in your case in chief.
17 Having to call witnesses is not prejudicial. It's simply
18 a tactical decision that each defendant makes in every
19 case that comes before the Court. It's not prejudicial.
20 It has consequences, but it's not prejudicial.

21 So for all those reasons, I respectfully deny the
22 motion for a mistrial. And, again, if you need any
23 assistance in issuing subpoenas to witnesses who may have
24 been excused, the Court will assist you in doing so.

25 MR. STALVEY: Judge, brief request to be heard. I

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1 mean, you just raised a point that I didn't mention.

2 THE COURT: Okay.

3 MR. STALVEY: I'll make it two sentences long.

4 THE COURT: Sure.

5 MR. STALVEY: Your Honor, if I would have known this
6 information and under Brady -- I mean, this is considered
7 under Brady, I could have done further investigation. I
8 could have gotten in touch with Jesse Woodard and said do
9 you realize that she's saying you were giving her an
10 illegal tattoo. I mean, the further investigation is a --
11 I'm sure you will correct me if I'm wrong, but it's my
12 understanding that's part of the analysis, which I didn't
13 get to do because I didn't have the information.

14 THE COURT: I understand. And I understand exactly
15 what you're saying. And just to make it clear for the
16 record, I don't think that you're suggesting that you
17 could have intimidated the witnesses by telling him that
18 he's subject to criminal profession for his testimony.

19 MR. STALVEY: Judge, I was not saying that.

20 THE COURT: I said I understand you're not saying
21 that.

22 MR. STALVEY: Right.

23 THE COURT: But the fact of the matter is he took the
24 stand and he raised his right hand and he testified. And,
25 you know, whether he would have in a hypothetical set of

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1 circumstances isn't relevant to whether it's prejudicial
2 or not. Again, you find yourself in the exact same
3 position that you would have been had you known of any
4 inconsistencies.. And the fact of the matter is I don't
5 think that what happened violates Brady in any event.
6 Okay.

7 Okay. Y'all ready for the jury?

8 MR. STALVEY: Yes, sir, Your Honor.

9 THE COURT: Okay. Bring them in.

10 (WHEREUPON, the jury entered the courtroom at
11 approximately 9:25 a.m.)

12 THE COURT: All right. Good morning, ladies and
13 gentlemen, welcome back. I think we can go ahead and get
14 started.

15 Ms. Bentley, you may call your next witness.

16 MS. BENTLEY: May it please the Court. The State
17 calls Jamey O'Neill.

18 THE CLERK: Ma'am, if you would please stop at the
19 end of the bench, place your left hand on the Bible and
20 raise your right hand.

21 WHEREUPON,

22 JAMEY O'NEILL,

23 after having been duly sworn, testified as follows:

24 THE CLERK: Thank you. Please be seated. Please state
25 your name for the record.

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1 THE WITNESS: Jamey O'Neill.

2 DIRECT EXAMINATION

3 BY MS. BENTLEY:

4 Q Ms. O'Neill, how old are you?

5 A Thirty-nine.

6 Q Do you have any children?

7 A Yes.

8 Q How many children do you have?

9 A Two.

10 Q How old are they?

11 A 19 and 16.

12 Q What are their names?

13 A David and Minor

14 Q And Minor is 16?

15 A Yes, ma'am.

16 Q Minor is the victim that we've already met in this
17 case, is that correct?

18 A Yes, ma'am.

19 Q Does Minor live with you?

20 A She does.

21 Q How long has she lived with you?

22 A Right around 13 years.

23 Q Okay. How long has she lived with you -- she's been
24 in and out of your care, is that correct?

25 A That's correct.

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1 Q Most recently, how long has she been back with you?

2 A [Undiscernible.]

3 THE COURT: Would you speak up just a little bit, Ms.
4 O'Neill?

5 THE WITNESS: I'm sorry.

6 THE COURT: That's all right.

7 THE WITNESS: About, I would say a year and a half,
8 two years.

9 BY MS. BENTLEY:

10 Q Okay.

11 A It's been almost three years.

12 Q She's been with you consistently since she was 13?

13 A Yeah -- no, no, I'm sorry. I'm sorry. I'm sorry.
14 She had the baby at 13 and she was taken out.

15 Q When was she taken away?

16 A Pardon me?

17 Q When was she taken away the second time?

18 A She was 13, after she had the baby.

19 Q Okay. Let me ask it a different way.

20 A Okay.

21 Q When did you first lose custody of Minor how old
22 was she?

23 A She was seven.

24 Q And how long did she stay out of your car?

25 A Almost three years.

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1 Q And she came back to you?

2 A Yes.

3 Q How old was she when she came back?

4 A She was about 11.

5 Q Okay. And she stayed with you consistently. She had
6 a baby?

7 A She did.

8 Q And how long was it after she had the baby that you
9 lost custody of her again?

10 A The baby was about three months, if I'm not mistaken.

11 Q So she was still 13 when you lost custody of her?

12 A Yes.

13 Q How long did she stay out of your care that second
14 time?

15 A I'm thinking it was a little over a year.

16 Q Okay. But she's back with you now?

17 A She is.

18 Q And her daughter is back with you now?

19 A Yes.

20 Q Okay. Where is your son, David?

21 A He lives around the corner with a family friend.

22 Q Okay. And were you okay with his decision to stay
23 out of the home?

24 A David?

25 Q Uh-huh.

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1 A Yes, that was fine.

2 Q Are you employed?

3 A I am.

4 Q Where are you employed?

5 A I work for Wendy's and I work for McDonald's.

6 Q What shifts do you typically work?

7 A I work first shift at Wendy's and second shift at
8 McDonald's.

9 Q And how long have you worked at Wendy's and
10 McDonald's?

11 A Wendy's will be August, three years, and McDonald's,
12 October will be two years.

13 Q Did you work anywhere prior to McDonald's?

14 A I did. I worked at Waffle House for five years.

15 Q And what shift did you work at Waffle House?

16 A Third shift.

17 Q Third shift?

18 A Uh-huh.

19 Q How far did you go in school, Ms. O'Neill?

20 A I went to the ninth grade. Then I went back when my
21 son started K4.

22 Q Okay.

23 A I went back with continuing education and I was the
24 graduating class of that year. I also got a certified
25 nursing assistant degree.

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1 Q Wonderful. In addition to knowing Minor
2 you also know Terry McCarrell, is that correct?

3 A I do.

4 Q Can you tell me -- or do you remember when you met
5 Terry McCarrell?

6 A The month, no, but I do remember -- in my mind, I
7 remember the day.

8 Q Okay. Tell me, if you can, do you remember the
9 approximate range in time? The season? The year?

10 A It was around October, if I'm not mistaken.

11 Q Of what year?

12 A Honestly, I don't remember.

13 Q Okay. Well, tell me what you were doing when you met
14 Terry?

15 A Me and Minor were walking the baby and we came upon
16 a friend of hers from school, who was walking between our
17 place and the gas station, which is not really far. We
18 were walking, they were walking, her friend and Terry
19 McCarrell. And they seen each other --

20 Q They seen each other, meaning who?

21 A Her friend from school.

22 Q And Minor

23 A And Minor seen each other. And hey, what's up and
24 they introduced us. And that's how we met.

25 Q And how long did that initial chatting last?

1 A Four or five minutes.

2 Q Where was Minor in school at that time or was she
3 enrolled in school?

4 A She was going -- she had a home bound teacher.

5 Q What does that mean?

6 A That means a teacher was coming to the home to teach
7 her while she was on maternity leave.

8 Q Okay. Where had she previously been enrolled in
9 school?

10 A Berea, Lake View.

11 Q Those are middle schools?

12 A They are.

13 Q Do you remember the next time you saw Terry?

14 A I do. He came to my house.

15 Q When was that? Can you remember about how long it
16 was between that initial meeting and the next time you saw
17 him?

18 A A few days, a week, something like that. And he had
19 that boy with him.

20 Q Okay. Do you remember the boy's name?

21 A No, I don't.

22 Q Okay. And were you present when he and the boy
23 arrived?

24 A I was.

25 Q Okay. Do you remember what time of day it was that

2400

1 he came over?

2 A It was after one. Because I got off at one, so it
3 was after one.

4 Q All right. Did they -- tell me how that visit went.

5 A We all just sat in the living room and watched TV.

6 Q Okay. Did Terry ever come to your home without that
7 little boy with him?

8 A Yes.

9 Q When did that begin?

10 A It wasn't long. I don't recall exactly the proximity
11 of the time, but it wasn't long after.

12 Q Okay. And how often did Terry start coming over to
13 your home to your knowledge?

14 A He was coming like every day.

15 Q Okay. When would he come over?

16 A That I knew of, he was coming after I got off of
17 work.

18 Q Right. Okay. Would he knock on the door? Did he
19 have permission just to enter?

20 A He would knock.

21 Q Was there ever a time that you discovered that Terry
22 was coming over when you were not at home?

23 A Yes. I don't recall if it was I was coming home from
24 work or if I was on break, but I drove up and he was
25 walking in the door.

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1 Q He was walking in the door?

2 A Yes.

3 Q Did you see Minor at the door?

4 A She was inside the door.

5 Q Okay. What did you do when you saw that?

6 A I flipped.

7 Q What do you mean by you flipped?

8 A You do not come to my house when I'm not here.

9 You're not welcome here when I'm not here. If you want to
10 come here, you come here after I get home. There's no
11 reason for you to be here when I'm not here.

12 Q Okay. How did he respond to that?

13 A I just come to wait on you. I said, There's no
14 reason to wait on me. We're just going to watch TV. I
15 said, You've got a TV at your house.

16 Q Okay. Did you question Minor about that?

17 A Yes, I did.

18 Q Okay. Did she indicate that this had been happening
19 before?

20 A No.

21 Q Okay. Did you question Terry as to whether or not he
22 had been over previously without your knowledge?

23 A I don't recall. I think I did. I think I did.

24 Q Okay. What did he say, do you recall?

25 A I recall him just saying that I just come to see you.

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1 I said, There's no reason for you to be here without me
2 here. If my car's not here, you don't come here.

3 Q You would drive to work?

4 A Yes.

5 Q Was there only one car at your home?

6 A (Witness nodded head.)

7 Q Okay. Did you know how old Terry McCarrell was?

8 A I did.

9 Q How old?

10 A Forty-eight.

11 Q Okay. Did he tell you that at the beginning?

12 A Yes.

13 Q Okay. What would happen when Terry would come over
14 and you and Minor and the baby were there?

15 A We would sit in the living room. We would watch TV.
16 I would cook. We would just hang out. We went to the
17 store together.

18 Q Okay. Was there any romantic relationship between
19 yourself and Terry McCarrell?

20 A Oh, no.

21 Q Why not?

22 A I had a boyfriend.

23 Q Okay. Did you see any outward signs of interest
24 between Terry and Minor

25 A It showed that he was interested in her after a

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1 while.

2 Q What do you mean by that?

3 A It just means that he would want to sit with her, he
4 would want to go back to her bedroom. I'm like, no, no,
5 no, no, back in here. He was like, I'm just going to
6 watch TV. I said, There's a TV in here. You sit here and
7 watch TV. You don't go back to my daughter's room.
8 There's no reason for you to go back there.

9 Q Was there ever a time that you thought you should end
10 your friendship with Terry McCarrell?

11 A I did. I told him don't come back to my house.

12 Q When was that?

13 A Shortly after that. I can't pinpoint a date, but it
14 was shortly after that.

15 Q Okay. I want to talk to you a little bit about
16 **Minor** growing up. You lost custody of **Minor** for a
17 period of time, correct?

18 A I did.

19 Q And she was approximately 10 or 11 when she came
20 back?

21 A She did.

22 Q How did she readjust returning to your home?

23 A She was a sweet little girl when she come home. And
24 she just -- in my opinion, it was being at the schools and
25 no offense to anybody who has children, but the horrible

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1 kids in Greenville County. It's just --

2 Q What do you mean?

3 A Peer pressure, I would say.

4 Q Okay. Did [Minor] ever complain about being bullied
5 to you?

6 A (Witness nodded head.)

7 Q When was that?

8 A In Berea.

9 Q Berea where?

10 A Middle, Berea Middle.

11 Q And how did she react to that bullying?

12 A Fight back.

13 Q She'd fight back?

14 A (Witness nodded head.)

15 Q Was [Minor] arrested for fighting in school?

16 A She was.

17 Q Was she arrested for disturbing school?

18 A She was.

19 Q Was she arrested for running away?

20 A She was.

21 Q Did [Minor] ever use drugs to your knowledge?

22 A Yes.

23 Q Did [Minor] get a tattoo?

24 A She did.

25 Q When was that?

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1 A I was at work when she got it. I don't know who put
2 it on her.

3 Q How old was she?

4 A Thirteen.

5 Q Was it before or after she had Zoe?

6 A After.

7 Q Okay. Did you question her about it?

8 A I did.

9 Q Did you pressure her about it?

10 A I did.

11 Q And how did she react?

12 A Nothing. She didn't want to talk about it.

13 Q So you let it go?

14 A Couldn't get anything out of her.

15 Q Okay. I want to take you to November 14th, 2011.

16 Who were your neighbors at that time?

17 A Behind me, it was Jesse and his wife, Tamila, I think
18 his name is Woodard.

19 Q Okay. And what about your other neighbors?

20 A There was a trailer full of Mexicans.

21 Q Do you recall whether or not Terry and Minor ever
22 went over to the Woodards' house?

23 A They did.

24 Q Were you home that day?

25 A I was.

Hele

1 Q And what time of day did they go over?

2 A It was daylight, that's all I remember. I don't
3 remember what time it was. I remember I was cooking.

4 Q You were cooking?

5 A Yes.

6 Q So you did not go over?

7 A No.

8 Q How long were they gone?

9 A Thirty minutes maybe.

10 Q Okay. Did anything happen that evening out of the
11 ordinary?

12 A Yes.

13 Q Tell me what happened.

14 A His -- Tamila, I believe is her name, she came to the
15 door and said some rings were missing and just give them
16 back and she won't call the cops. I said, I'll ask. I
17 asked them --

18 Q Them who?

19 A Terry and Minor about the rings. And Terry said he
20 never had any rings. Minor said she didn't. So I said
21 Well, they said they didn't have anything. She said,
22 Well, I'm calling the cops. I said, Okay.

23 Q And did you question Terry and Minor further?

24 A I asked.

25 Q And that was it?

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- 1 A That was it.
- 2 Q Okay. Did the police come back to your home at all?
- 3 A They did.
- 4 Q And when was that?
- 5 A It was like right after. She went and called the
6 cops and the cops came.
- 7 Q Okay.
- 8 A They came in, they searched him, they searched her,
9 nothing.
- 10 Q Okay. And did police ever return to your home?
- 11 A They did.
- 12 Q How long after the initial police encounter was that?
- 13 A I don't recall to be honest with you.
- 14 Q Okay. Was it that same day?
- 15 A No.
- 16 Q Was it that same week?
- 17 A Possibly.
- 18 Q You just don't remember?
- 19 A I just don't remember.
- 20 Q Okay. What happened the second time the police came
21 over? Were you home?
- 22 A I was home.
- 23 Q Okay. Had you been home the whole time?
- 24 A I don't remember to be honest with you.
- 25 Q What do you remember?

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1 A I do remember them coming back and, essentially, they
2 pressed charges on him and took him to jail.

3 Q Okay. Was there a time the police came to
4 investigate Minor

5 A They did.

6 Q When was that?

7 A Don't remember.

8 Q Okay.

9 A I'm sorry.

10 Q That's okay. What do you remember about that
11 encounter?

12 A Nothing really. I just remember them coming there
13 and questioning her outside. And what brings back the
14 memory so much is because Minor had an attitude with the
15 cop.

16 Q Okay. Do you remember what -- what do you mean by
17 she had an attitude with the cop?

18 A She was being disrespectful.

19 Q How was she being disrespectful?

20 A She was just coming off with an attitude.

21 Q Okay.

22 A And that was it. And that's what brought out what I
23 remember about that.

24 Q Okay.

25 A But I don't remember much else, just the attitude.

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1 Q Do you remember [Minor] being charged with a crime?

2 A Yes.

3 Q Do you remember what she was charged with?

4 A Well, there's the school problems.

5 Q I'm talking about this most recent time related to
6 the ring theft?

7 A Well, she got -- that there, she did three months, if
8 I'm not mistaken.

9 Q Okay. So you remember that she was, in fact, charged
10 for her part in the ring theft?

11 A Yes.

12 Q And she went to jail for that?

13 A She did.

14 Q Juvenile jail?

15 A Yes.

16 Q Do you remember the investigation into [Minor]
17 relationship with Terry?

18 A I do.

19 Q What do you remember about that?

20 A (No response.)

21 Q Were you surprised?

22 A Yes, I was.

23 Q How did you react when you heard about that?

24 A Actually, I was at work and I got a phone call, The
25 police are at the house. I left work. I came home. The

270

1 investigators were there. And they go into telling me
2 about this because of the cell phone.

3 Q Okay.

4 A And --

5 Q Go ahead.

6 A And they said that there was a relationship between
7 Minor and Terry.

8 Q Did you ask Minor about that?

9 A I did after the fact, after that day.

10 Q Would she talk to you about it?

11 A No.

12 Q Did Minor confide in you about anything?

13 A No.

14 Q We heard about Minor before she gave birth to Zoe,
15 she was in a lot of trouble, she had been at DJJ
16 previously. How did Minor act with the baby?

17 A She was a great mother.

18 Q Tell me about it.

19 A Anything she was doing before, she stopped. She was
20 a great mother. She took care of herself, made sure she
21 had a good healthy baby.

22 Q Okay.

23 A And she was -- she was a good child.

24 Q Did DSS check in on your family periodically?

25 A They did.

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1 Q Did they check in on you as well as Minor

2 A They did.

3 Q And you, subsequently, lost Minor after the
4 investigation into Terry, correct?

5 A I did.

6 Q One moment.

7 A Okay.

8 MS. BENTLEY: I have no further questions. Please
9 answer any questions Mr. Stalvey may have.

10 CROSS-EXAMINATION

11 BY MR. STALVEY:

12 Q Ma'am, you just testified that you believed after
13 Minor had the baby that in your opinion, she was a great
14 mother?

15 A I do.

16 Q Okay. And she had the baby in September, correct?

17 A She did.

18 Q All right. And you're aware that the rings were
19 stolen in November, correct?

20 A Yes, sir.

21 Q So two months after the child was born, she was
22 stealing other people's property, correct?

23 A Allegedly.

24 Q Well, she pled guilty to it, didn't she?

25 A It's a possibility.

272

1 Q It's a possibility that she pled guilty to it?

2 A Yes, she did.

3 Q Okay. What do you think she went to juvenile jail
4 for for 90 days?

5 A Her part in it.

6 Q Okay. So she accepted responsibility for being
7 involved in the theft of these rings, correct?

8 A Yes, sir.

9 Q And that occurred two months after she had this baby?

10 A Yes, sir.

11 Q Okay. And you just testified that she went out and
12 got a tattoo after the baby was born?

13 A She did.

14 Q And she was 13 when this happened?

15 A Yes.

16 Q Do you understand that's another violation of the law
17 here in South Carolina?

18 A Yes.

19 Q Okay. You understand that when she was approached by
20 the police the first time -- well, actually, you testified
21 that she was disrespectful to the police and she lied to
22 the police about being involved in the theft of the rings,
23 correct?

24 A I'm not really sure that she lied about it.

25 Q Okay. Well, did they ask her about the rings?

273

1 A They asked me about the rings, if they stole them.

2 They asked Terry if he stole them. He said no.

3 Q Okay. But they talked to Minor too, right?

4 A I don't recall that they talked to her. I just
5 remember they talked to Terry.

6 Q Okay. Did they -- when was she being disrespectful
7 to the police?

8 A It was a different time. They were outside. They
9 had came a different time and they were talking to her.

10 Q When was that?

11 A I -- honestly, I don't remember. It was maybe a week
12 later.

13 Q Okay.

14 A I believe it was when they called about the cell
15 phone because it had been stolen. And they had called
16 Terry or the daughter one had called to have it reported
17 stolen. And the cop then arrived for that reason.

18 Q Okay. Which the cell phones were involved in the
19 theft, right, that's how they found out about Minor
20 being involved?

21 A Uh-huh.

22 Q So they went out there and talked to her about
23 something relating to that, right?

24 A Yes, sir.

25 Q And she was disrespectful, right?

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1 A (Witness nodded head.)

2 Q And she wasn't arrested that day, correct?

3 A Right.

4 Q So if there was any information that she gave about
5 her involvement with the rings, it, certainly, was not
6 true, correct?

7 A Yes.

8 Q So it's fair to say she provided false information to
9 the police on that day, correct?

10 A Yes.

11 Q And you understand that's another violation of the
12 law here in South Carolina?

13 A Yes.

14 Q Did you let her smoke cigarettes in your house?

15 A No.

16 Q Did you know she smoked cigarettes?

17 A No. Let me explain. I had seen her around some
18 friends, her friends were smoking. I seen smoke. I tried
19 to educate her on the bad things about cigarettes and I
20 got mouth from her. I went and bought her a pack of
21 cigarettes. I said you can smoke everyone of these until
22 you make yourself sick.

23 Q Okay. You did that when she was 13?

24 A Yes.

25 Q Okay. After she had Zoe?

275

1 A Yes.

2 Q You know that her being in possession of cigarettes
3 is another violation of the law here in South Carolina?

4 A I was just trying to teach her a lesson.

5 Q Well, how old do you have to be to possess cigarettes
6 here in this state?

7 A Eighteen.

8 Q And how old was she?

9 A Thirteen.

10 Q So it was a violation of the law here in South
11 Carolina, correct?

12 A Yes.

13 Q You say when the police came to speak with **Minor**
14 and Terry, if I remember your testimony correctly, you
15 said that you were cooking dinner?

16 A I was cooking. I don't recall if it was dinner, but
17 I was cooking.

18 Q You were cooking. Terry and **Minor** were in the
19 house?

20 A Right here in the living room right beside me.

21 Q And that was, I guess, in November of 2011?

22 A I don't recall what time it was, what month it was.

23 Q Well, it was close to the time that the rings went
24 missing, right?

25 A Yes.

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1 Q Okay. And you know that Terry -- I think it was
2 maybe a month later, maybe December, that's when Minor
3 was -- admitted to being involved in it, that's when Terry
4 was arrested for the rings. So a month passed when,
5 basically, all hell broke loose and everybody got
6 arrested, right? Is that fair to say?

7 A Something like that.

8 Q So in November, before all that happened, you
9 described Terry's interactions with Minor And you said
10 that you told him never to be over there, right?

11 A Right.

12 Q You told him if you don't see my car there, don't
13 come inside, correct?

14 A Don't come at all.

15 Q Don't come at all. So you said you didn't want him
16 over there period?

17 A If you don't see my car, you don't come to my house
18 period.

19 Q Okay. When did you see Terry try to go back to her
20 bedroom? Was that before the night that y'all were
21 cooking?

22 A I think it was a little after.

23 Q Did you continue to let him come into the house while
24 you were there after that?

25 A After I was there as long as he stayed in the living

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1 room.

2 Q But you had seen him try to go to the bedroom
3 previously?

4 A Well, the bathroom is right there next to the
5 bedroom. And I told him you don't go back into that
6 bedroom. No reason for you to go back there.

7 Q But you had seen him try to go back in the bedroom?

8 A (Witness nodded head). To talk to Minor

9 Q Even after that -- and I acknowledge the fact that
10 you told him not to do that, you still allowed him to come
11 back to your house, while you were there, but you allowed
12 him to come back to your house, right?

13 A Right, while I was there.

14 Q The reason that you lost Minor the first time was
15 because you allowed her to be exposed to her biological
16 father who had been found to be abusive, correct?

17 A Yes.

18 Q Okay. And you lost your child for two years?

19 A Almost three.

20 Q Almost three. Minor and her brother, right?

21 A Yes.

22 Q So you would never want that to happen again, right?

23 A Right.

24 Q And if there was any potential for abuse of any kind
25 to be taking place involving your child, you would do

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1 anything to stop it, correct?

2 A Yes.

3 Q And you still allowed Terry to come into your house
4 while you were there, correct?

5 A Yes.

6 MR. STALVEY: All right. I don't have any further
7 questions.

8 THE COURT: Any redirect, ma'am?

9 MS. BENTLEY: No redirect.

10 THE COURT: Thank you, Ms. O'Neill. I appreciate you
11 being here, ma'am. You may step down.

12 You may call your next witness.

13 MS. BENTLEY: The State calls Investigator Robert
14 Perry.

15 THE CLERK: Sir, please come forward. If you would
16 please place your left hand on the Bible and raise your
17 right hand.

18 WHEREUPON;

19 INVESTIGATOR ROBERT PERRY,
20 after having been duly sworn, testified as follows:

21 THE CLERK: Thank you. Please be seated. Please state
22 your name for the record.

23 THE WITNESS: Investigator Robert Jay Perry with
24 Greenville County Sheriff's Office.

25 DIRECT EXAMINATION

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1 BY MS. BENTLEY:

2 Q Investigator Perry, how long have you been in law
3 enforcement?

4 A Since February of 1986.

5 Q Would you give us a little bit about your background?

6 A I started law enforcement in Florida, moved to
7 Georgia, worked for the sheriff's office there for many
8 years. I was a sergeant with their division for a short
9 period of time. I moved back to Florida, went to work for
10 another department in Florida. Ended up being promoted in
11 Florida, worked in investigations, primarily, violent
12 crimes unit. Retired out of Florida, came to South
13 Carolina, went to work for the sheriff's office in 2006.

14 Q Okay. So you enjoy law enforcement?

15 A Been there a long time, yes.

16 Q In multiple states?

17 A Yes.

18 Q What is your position at the Greenville County
19 Sheriff's Office?

20 A I, currently, am assigned to the special victims unit
21 for crimes committed against children.

22 Q How long have you been with that unit?

23 A Since August 16th of 2001.

24 Q So that unit was in existence in November of 2011?

25 A Yes.

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1 Q Do you recall how you became involved in the case
2 investigating Terry McCarrell?

3 A I received a call from another investigator,
4 Investigator Brady Maschak. And he stated that he had
5 some type of investigation going on dealing with some
6 stolen items, I believe they were rings. He had recovered
7 text messages and in the text messages, he said some of
8 the conversations between a girl he had identified as
9 Minor [REDACTED] who was 13 years old, and the suspect, who was 48
10 years old, were very concerning and he just asked me to
11 take a look at them. So I did.

12 Q I'm going to show what's been marked as State's
13 Exhibits 3, 4 and 5. Do you recognize what these are?
14 I'll let you look at them first.

15 A They look like printouts of the text messages. I
16 know there were literally hundreds of them. And I didn't
17 go through each and every one of them. He just had the
18 ones highlighted that pertained to me. Looks like those
19 are probably what 4 and 5 were.

20 Q And looking at State's Exhibits 4 and 5, did you
21 review those with Investigator Maschak that day?

22 A I think he showed them to me. I don't know if we
23 went through every single one. He just showed me where
24 she was talking to Terry. And in my opinion, it kind of
25 looked like it was a boyfriend/girlfriend kind of

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1 conversation in the text messages.

2 Q What did you do after seeing those text messages?

3 A Well, we got together and we decided we were going to
4 go over there and talk to Minor And we ended up
5 meeting at her house.

6 Q Where was her house?

7 A It was a mobile home.

8 Q Do you know the address of her home?

9 A I don't.

10 Q So can you tell me what county it was in?

11 A Yeah, it was in Greenville County. Greenville County
12 on Parker Road.

13 Q Okay.

14 A So we ended up meeting at her house, knocked on the
15 door, she came to the door. We kind of identified
16 ourselves and why we were there. She invited us inside,
17 very gracious. Investigator Maschak talked to her about
18 what he was dealing with that dealt with the rings.

19 Q Was her mother at home?

20 A No, she just had her little baby in a little car seat
21 thing rocking on the floor.

22 Q Okay. At any point, did you ask her to have her
23 mother come over?

24 A We did. I think she called her mom and her mom came
25 over shortly thereafter.

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1 Q Okay. Did either of you advise Minor of her rights
2 at that time?

3 A No.

4 Q Why not?

5 A Didn't really apply. She wasn't under arrest, she
6 wasn't in our custody. We were, actually, in her home,
7 so.

8 Q Okay. Talk to me about what you recall about her
9 demeanor with Investigator Maschak?

10 A Like I said, she seemed to be very friendly, very
11 gracious. She answered all his questions without
12 hesitation. She seemed to be a pretty blunt, you know, up
13 front kind of young lady.

14 Q Did she initially admit her involvement with the
15 rings or knowing they were stolen?

16 A You know, I was probably standing a little bit
17 farther off because I think I was kind of playing more
18 with the baby and letting them do their investigation, so
19 I'm not sure exactly all their conversation that occurred.
20 I do remember her saying that she had received them and
21 either two got flushed or one got flushed and one didn't
22 flush, you know, all this kind of just -- you know, it
23 didn't really involve why I was there so much.

24 Q Okay. Tell me about your interaction with Minor

25 A My interaction kind of came in when he was kind of

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1 concluding what he was investigating. And I said, you
2 know, [Minor] I said, the reason that Investigator
3 Mashack asked me to come along is a part of my job is
4 making sure that kids of all ages are safe. And I kind of
5 went into a conversation that I had with young people and
6 kind of a protocol, just to kind of identify myself and
7 tell them why I want to talk to them. I've talked to
8 hundreds and hundreds of kids over the years. You can't
9 really tell me anything that's going to shock me. But I
10 do want to make sure that when we talk, we talk about
11 truth. We talk about things that really occurred, really
12 happened. And I'm always honest with you and I ask that
13 you be honest with me. And she was -- I think she
14 understood what I was saying. I mean, she acknowledged.
15 And I said, The reason I want to talk to you, basically,
16 you know, is because of the text messages.

(17) Q Did y'all have the text messages printout with you?

(18) A I think Investigator Maschak had the messages.

19 Q Okay.

20 A I didn't physically have them in my hand. He was the
21 one that, actually, had them in his folder. And for lack
22 of a better term, you could kind of see her just shut down
23 a little bit when I mentioned the messages. I said that
24 was concerning to me because, you know, I identified Terry
25 as being a 48-year-old gentleman and you're 13. And the

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1 state law says 13-year-olds can never even consent to
2 having sex period and I'm not even talking about the fact
3 that you already have a child. That's not what we're here
4 about. We're talking about the relationship you're having
5 with this gentleman.

6 Q And how did she react to that?

7 A Somewhat defensive.

8 Q Okay.

9 A She didn't really want to come forward with any
10 information about the relationship. She stated things
11 like I don't want to get anybody in trouble. I was never
12 forced to do anything. And I kind of talked to her, I
13 said, Look, I'm not trying to get you in trouble. All I
14 want to know is the truth. The fact is the law says
15 you're 13 and you can't consent to have sex. I mean, this
16 is not a boyfriend/girlfriend relationship that you can
17 have with a 48-year-old.

18 Q Did she seem to understand that?

19 A I think she did. We talked for quite a while.

20 Q Okay. Describe her demeanor with you versus her
21 demeanor with Investigator Maschak from what you could
22 tell from where you were in the room.

23 A Maybe a little bit more stand offish. Holding back
24 information, not wanting to tell anything, not wanting to
25 get anybody in trouble --

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1 Q Did she --

2 A Pardon me. Go ahead.

3 Q Did she tell you right off that she was in a
4 relationship, sexual relationship with Terry McCarrell?

5 A No.

6 Q Okay. How did you speak to her to the point that she
7 did disclose that information?

8 A We kind of covered a whole gamut of areas in the
9 conversation building a rapport. And I said, You know,
10 **Minor** my concern is, you know, your conversations that
11 you're having with these text messages. To me, as an
12 outsider, kind of looking in, it kind of looks like a
13 boyfriend/girlfriend-type relationship. Maybe I'm wrong,
14 but that's what it looks like to me. And at that kind of
15 point, I think she started going, No, it's not quite like
16 that. I said, Well, tell me more about that. And she
17 began to open up a little bit more about her relationship
18 with Mr. McCarrell.

19 Q And at some point, did she disclose a sexual
20 relationship?

21 A She did. And I kind of asked her, I said, Look, how
22 did this even begin or how did his happen.

23 Q And I don't want you to tell too much about what she
24 said there. Did she tell you how long the relationship
25 had been going on?

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1 A A few months.

2 Q Okay. Did she tell you where sexual intercourse
3 would take place?

4 A Yeah, she said she would -- or Terry would come over
5 to her house after her mom left for work.

6 Q So at her house?

7 A Happened at her house.

⑧ Q Okay. Did Minor agree to provide a written
⑨ statement?

⑩ A Yeah, I mean, it was kind of reluctant. She was kind
⑪ of if I do this, does that mean he's going to get in
⑫ trouble and go to jail. And, you know, I told her I
⑬ wasn't going to lie to her, it's a possibility. And she
⑭ did, she wrote down like four little short lines on the
⑮ statement.

16 Q Did she provide any details in the statement?

17 A Not so much. She said --

18 Q I don't want you to tell us what she said, I'm sorry.
19 But it was not a detailed statement?

20 A Correct.

21 Q Did she provide more details regarding the ring theft
22 than she did with you?

23 A I think she did.

24 Q Okay. One moment, please.

25 MS. BENTLEY: I have no further questions. Please

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1 answer any questions Mr. Stalvey may have.

2 CROSS-EXAMINATION

3 BY MR. STALVEY:

4 Q Investigator Perry, how long have you been a child
5 crimes investigator over at the sheriff's office?

6 A Since we first started that particular unit, August
7 16th of 2011.

8 Q Okay. And would you agree with me that one of the
9 most important factors in all of these cases is whether
10 the allegation being made by the child is credible?

11 A Correct.

12 Q Would you agree that that is the most important
13 factor?

14 A It's one of the factors that we take into
15 consideration, obviously.

16 Q Okay. And in determining credibility, is one of the
17 things that you look at the victim's previous
18 misrepresentations of fact? And that's an overcomplicated
19 way of saying do you ever look and see if they've lied
20 before about certain things?

21 A Well, I imagine we go through a whole gamut of
22 conversation building rapport. But that would, certainly,
23 come into effect if they had lied to us in the past if
24 that's what you're asking.

25 Q Sure.

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1 A Yeah.

2 Q What about if they lied and said -- one thing would
3 be if they had lied to the police or investigators in the
4 past, right?

5 A Correct.

6 Q That would affect their credibility or the
7 credibility of their accusation, right?

8 A It can.

9 Q Okay. And what about if they had lied to their
10 parents about important things, would that affect their --
11 would that make you look at the accusation with a little
12 bit more scrutiny?

13 A I don't know if -- it depends on what the
14 conversation was. I don't think there's a person on the
15 face of the earth that hasn't told some sort of
16 exaggeration or lie to their parents about something or
17 another.

18 Q I totally agree with you. All right. But, I mean,
19 when you're establishing the credibility of an accusation,
20 definitely, whether they've told the truth in the past,
21 especially figures in authority, police officers, being
22 I'd say about as high authority as a kid can see, if they
23 lied to the police in the past, wouldn't you agree with me
24 that that should -- I guess, that deserves a little bit
25 more scrutiny than if they had lied to their parents,

1 possibly?

2 A Yeah. And that occurs a lot. In a situation like
3 that, I wouldn't primarily just use someone's statement.
4 I would try to corroborate by some other means, such as is
5 it possible these people even know each other. So you try
6 to corroborate some stuff that they were stating to see
7 whether or not it was valid.

8 Q Okay. And now you mentioned corroborating what they
9 say. When you -- as part of your investigation, we've got
10 the statement made by Minor correct?

11 A Yes, sir.

12 Q We've got the text messages between Minor and
13 Brooklin Pollard's phone, correct?

14 A Correct.

15 Q And those text messages were, actually, taken from
16 Brooklin Pollard's cell phone, correct?

17 A Yes, sir.

18 Q Did you ever get a search warrant or get consent to
19 search Minor cell phone?

20 A No.

21 Q Wouldn't information that could have been on
22 Minor cell phone possibly corroborate the allegations
23 she had made involving Terry?

24 A I think the question that we spoke about back then
25 was what information are we going to find on her phone,

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1 which I think was only a text message on the phone. I
2 don't think she had any minutes on there to talk. How
3 would that vary any different than what we would find on
4 his phone.

5 Q Okay, did you --

6 A If that makes sense.

7 Q I'm not sure yet, but let me ask you another
8 question. So you didn't search **Minor** phone?

9 A We did not.

10 Q You could have searched --

11 A I didn't do it.

12 Q Right. Well, you're not aware of any? You didn't do
13 it personally, correct?

14 A Right.

15 Q And did you ever search Terry's phone?

16 A I think when I spoke to him, he lost his phone. He
17 didn't have a phone, so he used Brooklin's.

18 Q But he had a phone number, correct?

19 A Obviously, I'm not really sure. I had to look at
20 different numbers that he called or texted her on to see
21 whether that was his phone number or that was Brooklin's.

22 Q But you could have gotten a search warrant for his
23 phone, correct?

24 A That's possible.

25 Q Okay. And you could have gotten a search warrant for

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1 consent to search Minor phone, correct?

2 A That's possible, also.

3 Q All right. And those things weren't done, correct?

4 A Not that I know of. So either Investigator Maschak
5 or I -- I didn't do it personally, so I don't know if he
6 did or not.

7 Q But he didn't do it?

8 A Okay, so it was not --

9 Q It was not done?

10 A That's correct.

11 Q All right. And wouldn't the best evidence through
12 text messaging be -- as far as a relationship between two
13 people be those person's actual phones?

14 A That's part of it. I mean, that's like one piece of
15 pizza when you're trying to put together a whole pizza, so
16 we did get one side of that and that was the information
17 we used to go elsewhere.

18 Q Okay. Where is the elsewhere?

19 A Such as speaking to her mom, verifying the fact that
20 there were times that she was home alone and the
21 possibility of -- you know, possibility that Terry
22 McCarrell could come to the house and no one would see
23 them. The fact that she did know he had been to their
24 house before, things like that.

25 Q Right.

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1 A So those are all other things that we encompassed.

2 Q Okay. Let me show you -- I don't want to move off
3 these text messages too quickly. Let me see. All right,
4 State's Exhibit 5, did you have a chance to review this?
5 I can't remember if you testified to this or not, but this
6 is a text exchange between Terry and Minor on
7 December 5th, 2011. Did you have a chance to look at
8 that?

9 A It may be the one that I saw here. I'm not exactly
10 sure what's involved in that.

11 Q Okay. Well, do you recall there being two sets of
12 text messages that gave law enforcement some idea that
13 there may be something inappropriate going on?

14 A I was thinking there was just one set that I can
15 recall. I don't remember another set.

16 Q Let me refresh your recollection. I'm going to show
17 you what's marked as State's 5. This is a conversation
18 between Terry and Minor starting on line 717. If you
19 could take a look at that.

20 A (The witness complies.) Okay.

21 Q All right. Do you remember that being one of the
22 text messages -- text exchange that you looked at when you
23 were investigating this case?

24 A I do remember the one specific one saying I miss you,
25 baby. I remember talking to her specifically about that

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1 one.

2 Q Okay. And she was the one who was saying I miss you,
3 baby, right?

4 A Correct.

5 Q Can you tell from looking at that what message coming
6 from Mr. McCarrell gave you concern?

7 A I guess the fact that he was talking to her
8 immediately before and she was communicating back.

9 Q So he initiated the communication?

10 A Right, saying this is Terry. Then the very text was
11 from her, I miss you, baby. And then I think he says, I
12 call you or I'll call you. So that was what was giving an
13 indication there might be some type of relationship
14 between them.

15 Q But there's, certainly, nothing explicit in here?

16 A Oh, that's correct.

17 Q As far as a sexual relationship?

18 A That's correct.

19 Q And there's, certainly, nothing in this exchange, at
20 least, as far as messages coming from Terry that would
21 indicate any type of sexual relationship, correct?

22 A I think that is correct.

23 Q I mean, this could have been a family member,
24 correct?

25 A As far as him talking to a family member?

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1 Q Yeah, sure.

2 A Possibly, I guess.

3 Q I mean, it doesn't say anything about I want to have
4 sex with you, I want to see you without your clothes on, I
5 want to do other sexual things to you, correct?

6 A That's correct.

7 Q He says, This is Terry, what you doing? And then he
8 says, -- at the end, she says, Okay, I love you, and he
9 says, I love you, too. I mean, that could be between two
10 family members, correct?

11 A Sure.

12 Q Two family members that were not involved in a sexual
13 relationship, correct?

14 A That's correct.

15 Q This next set of text messages -- now, just from
16 reviewing your report -- I don't even know if this is in
17 your report, but as part of this case, I'm going to show
18 you this to see if it refreshes your recollection.

19 This -- just to give you an idea, this may help you narrow
20 it down, your focus. This was an exchange between **Minor**
21 and Brooklin Pollard, who is Terry's daughter, about
22 flushing the rings down the toilet and all that. I'm
23 assuming that you saw this. This may be some concern. If
24 you could, just take a look at line 1029 right there.

25 A Let me pull out the glasses on that one. It's way

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1 too small. Yes, sir, I do remember reading that. I don't
2 think I saw that that particular day, but I do remember
3 reading that before trial.

4 Q All right. And she's saying in that text message
5 that -- she says, I think I'm pregnant with Terry's child?

6 A That is correct.

7 Q We all know that that was a lie today? You don't
8 know that?

9 A I don't know that. I never asked.

10 Q All right. Okay. So when you go to meet with her,
11 she has -- as you testified before, she was
12 confrontational and not forthright with the police as far
13 as the rings being missing, is that correct?

14 A I don't think that she had any issues talking with
15 Investigator Maschak. Like I said before, she really
16 don't have any issues talking about that particular
17 incident. She had issues talking about her relationship
18 with Terry.

19 Q Well, she's already come in here and testified that
20 she lied to Maschak, denied taking the rings until Maschak
21 showed her those text messages. I know you were on the
22 other side of the room, so maybe you didn't hear that.
23 Were you aware that she had been approached by the police
24 about a month prior to this incident about the rings?

25 A No, sir.

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1 Q Okay. And so you wouldn't be aware that she provided
2 false information to the police when they initially
3 investigated this a month prior, correct?

4 A That's correct.

5 Q I know you testified that you hadn't reviewed all the
6 text messages, but I'm going to ask you to look at a
7 particular exchange that took place on December 22nd,
8 2011. You know what, I'm going to let you have my copy.
9 I'll be reading from State's 3. Do you see where it
10 starts line 1078?

11 A Yes, sir.

12 Q Okay. You'll agree with me that the ones that are
13 signed or the ones that have three Zoe's mommy, those are
14 from Minor right?

15 A That is correct.

16 Q So starting at line 1078, Minor says, Miss him,
17 but, yeah, I got it. Then this other number is Brooklin
18 Pollard. Pollard says, Okay, I guess it's just the two of
19 us for now. I miss him, too. Then Minor says, That's
20 okay. I'm going to do what I've got to do. Frown symbol.
21 But that's messed up. Brooklin says, Yeah, it is, but I'm
22 going to make sure my daddy's home before Christmas. And
23 then on 1085, again, from Zoe, Last night, he asked for a
24 quarter. I'm going to go get a dime and sell it as a
25 quarter. And she, two lines later, explains that a dime

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1 is 10, a quarter is five. Do you see those?

2 A Yes, sir.

3 Q And up at line 1083, it says, Yeah, for real, I'm
4 trying to get home ask the dude next door. He wants some
5 green. MD ripped him off. Do you see that?

6 A Yes, I do.

7 Q Okay. And based on your experience in law
8 enforcement, you'll agree with me they're talking about
9 selling marijuana, correct?

10 A Correct.

11 Q Do you know if **Minor** was ever investigated into
12 selling marijuana in the neighborhood?

13 A I never did. But I don't know if she was
14 investigated by anybody else.

15 Q You're not aware of any investigation?

16 A I am not.

17 Q Okay. Now, when she was -- when she admitted to
18 Investigator Maschak during the interview that y'all both
19 had when -- I can't remember what day it was, but she
20 wasn't taken into custody, wasn't she?

21 A That's correct, she was not.

22 Q Okay. Are you familiar with the sheriff's office
23 policy on when you're supposed to or when you have the
24 opportunity to take juveniles into custody?

25 A Yeah, I've read it a few times.

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1 Q Okay. Well, you're familiar with the fact that a
2 juvenile should be taken into custody if they have
3 committed a felony and they're also under a current
4 juvenile probation?

5 A I believe the word is can.

6 Q Can be. But that's something that, actually -- I
7 don't know if you'll agree with me or not. I've got it
8 right here, we can look at it. But whether to release
9 them home and not take them into custody, one of the
10 factors to consider is whether they are on juvenile
11 probation and whether they've just been -- or just
12 committed a felony, correct?

13 A That is a factor.

14 Q Okay. And she had just admitted to you receiving
15 stolen goods greater than 2,000, correct?

16 A (There was no response.)

17 Q You don't know?

18 A I don't know the value of the rings. I don't think I
19 ever asked the value of the rings.

20 Q Let's assume that's what she did. Which is a felony,
21 correct?

22 A That would be a felony.

23 Q And you know she was on juvenile probation, right?

24 A I don't think I even asked her if she was -- I think
25 I asked her why she was home and she told me that she was

1 home because she had a child. I don't remember her ever
2 telling me she was on probation or anything.

3 Q Did you ever look at her Department of Juvenile
4 Justice records?

5 A Before we went?

6 Q At any time?

7 A No. I know I didn't, definitely didn't before went
8 and talked to her.

9 Q Have you done so afterwards?

10 A I don't know. It's been several years, it's
11 possible. I didn't find it in my file. Usually, if I do
12 look at something like that, I'll make a copy of it and
13 put it in my file. So I would say I probably did not.

14 Q So you're unaware -- or you were definitely unaware
15 at the time you made these charges against Mr. McCarrell
16 that **Minor** had several, I guess, several encounters with
17 police prior to this incident?

18 A Well, I mean, I was aware that she had had contact
19 with law enforcement before because she told me. I don't
20 think she ever told me that she was on probation with DJJ
21 or anything like that. I think that would have stuck in
22 my head if she had said something like that.

23 Q Okay. Because, usually, when people are on probation
24 and they get arrested for a new crime, what, typically,
25 happens?

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1 A They get violated or put back in jail or arrested.

2 Q Okay. And she didn't go to jail that day, correct?

3 A That is correct.

4 Q Investigator Perry, on your report -- that's your
5 report, correct? That's the last page of it?

6 A Yes, sir, dated 12/28/2011.

7 Q And in that report, you indicate that you tried to
8 contact the Julie Valentine Center, but they were closed
9 for Christmas break, correct?

10 A That is correct.

11 Q And the Julie Valentine Center is something in South
12 Carolina that is, actually, under the South Carolina law
13 that is considered a children's advocacy center, is that
14 correct?

15 A That's correct.

16 Q And one of the services that a children's advocacy
17 center provides is a qualified person that conducts
18 forensic interviews, correct?

19 A Juvenile forensic interviews.

20 Q And if you could, define what a juvenile forensic
21 interview is?

22 A Basically, what a -- in layman's term, it's a
23 friendly way of talking to kids, basically, under the age
24 of 11 or below without giving them any indication of who
25 you're talking about. You use nonleading questions, you

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1 use open-ended questions.. If the child says something,
2 you say something to the effect of can you tell me about
3 that or can you tell me more. You don't use names unless
4 the child uses names back towards you. So I think
5 juvenile forensic interviews usually are conducted by
6 somebody that's gone to forensic interview training. They
7 use kind of a strict protocol. There's a couple different
8 courses on that, Safety First, Child First. And you go
9 through three or four days of training where you're,
10 actually, interviewing children, interviewing actors and
11 things like this. Then you apply that to your
12 conversations with kids, especially younger kids. So
13 that's somebody who's trained on how to properly talk to
14 somebody under the age of 11 or below.

15 Q But it can apply to kids older?

16 A It, certainly, can.

17 Q And one of the -- I guess, from a legal perspective,
18 isn't one of the main -- or isn't one of the most
19 important factors of these forensic interviews, isn't it
20 to establish the credibility of the allegation?

21 A No, I think it's -- one of the very first things they
22 do in a forensic interview is make sure they're talking
23 about things that happened. Right now, we're talking
24 about truths and things that occurred.

25 Q So it's to make sure that the truth is being told,

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1 right?

2 A Correct.

3 Q And the person that is making sure the truth is being
4 told is qualified, correct?

5 A Correct.

6 Q Trained, correct?

7 A Correct.

8 Q Educated? Yeah. I mean, it's a strenuous curriculum
9 to be qualified as one of these forensic interviewers,
10 correct?

11 A It is.

12 Q Okay. And the forensic interviewer comes to court,
13 correct?

14 A Sometimes.

15 Q Okay.

16 A I guess it depends on what the case would be.

17 Q Right. But in child sex abuse cases, based on your
18 experience, there's usually a forensic interviewer here to
19 testify in court, correct?

20 A That is correct.

21 Q Okay. And there was never a forensic interview
22 conducted on Minor [REDACTED] correct?

23 A As far as going to the child advocacy center, that is
24 correct. But being a forensic interviewer myself, that
25 was sufficient at the time. Does that make sense?

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1 Q It makes sense. Did you follow all the protocol that
2 you would normally follow as a forensic interviewer when
3 you were talking to her?

4 A Well, you adjust the protocol for the age of the
5 child. So if they're over the age of 11, I'm not going to
6 sit down and talk to her about a picture and identify
7 things in a picture.

8 Q How about videotaping?

9 A Not necessarily with a victim over 11. That's kind
10 of an officer's discretion.

11 Q What about as a forensic interviewer working at the
12 children's advocacy center?

13 A Yeah, they're going to audio and videotape it.

14 Q This wasn't audio or videotaped, correct?

15 A That's correct.

16 Q So you were really not acting in your role as a
17 forensic interviewer in this case, you were acting in your
18 role as a investigator with the sheriff's office, correct?

19 A Well, they kind of intertwine when you talk to a
20 juvenile, especially a young lady. So I don't think you
21 can separate the two.

22 Q I understand, but you still were going to send her to
23 the Julie Valentine Center, correct?

24 A Yeah. When I talked to her mom about that, that was
25 more for future medical exam, make sure she didn't have

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1 anything that was contagious and for counseling and
2 therapy.

3 Q Okay. Do you know if she had a future medical exam?

4 A She did.

5 Q And that was in June of 2012, correct?

6 A I know it was several months later. I don't remember
7 the exact date.

8 Q And she had a forensic medical examination, correct?

9 A Yeah, it's by one of the doctors, either Dr. Croswell
10 or Dr. Henderson with the Julie Valentine Center.

11 Q And that was seven months after this occurred?

12 A I really don't know.

13 Q Okay.

14 MR. STALVEY: I don't have any further questions.

15 MS. BENTLEY: Brief redirect.

16 THE COURT: Okay.

17 REDIRECT EXAMINATION

18 BY MS. BENTLEY:

19 Q Investigator Perry, we didn't get into this, but
20 you've taken all the forensic interviewer required
21 classes?

22 A I took the basic forensic interview class probably
23 within a month or two after joining the unit, even though
24 back in maybe '91, '92, I went to one of the very first
25 original interviewing courses being taught in State of

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1 Florida. But I went back through the one offered by the
2 child advocacy center called the ARC in Columbia. Then I
3 completed the very first advanced class they offered in
4 South Carolina maybe a year or so later.

5 MR. STALVEY: Judge, I hate to interrupt. I have an
6 objection I think we need to take up outside the presence
7 of the jury.

8 THE COURT: All right. Ladies and gentlemen, what
9 I'm going to ask you to do is retire to your jury room for
10 just a few moments. Please don't discuss the case. I'll
11 bring you back in shortly.

12 (WHEREUPON, the jury left the courtroom at
13 approximately 10:32 a.m.)

14 THE COURT: Judge, I'm sorry to interrupt the
15 redirect, but I just want to make sure -- I mean, if we're
16 -- and I don't know where Ms. Bentley is headed with this,
17 but if she's going to qualify him as an expert and he's
18 now going to turn into a --

19 MS. BENTLEY: Your Honor, I'm not in any way going to
20 try to qualify him as an expert.

21 THE COURT: I wouldn't begin to even entertain the
22 notion of qualifying him as an expert.

23 MR. STALVEY: I understand. Okay. I just didn't
24 want all that to blow up.

25 MS. BENTLEY: If you prefer, I'm happy to proffer the

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1 redirect.

2 THE COURT: Well, no, I don't need that. I believe
3 the objection was to an expert qualification. And again
4 --

5 MS. BENTLEY: I'm not going near that.

6 THE COURT: -- I would begin to even entertain the
7 notion based on the case law that's outstanding.

8 Okay. Well, since we let the jury out, they may be
9 taking a break. Let's take a break and we'll come back in
10 in about 10 minutes.

11 Officer, please don't discuss the case. You're still
12 under oath. You can take a break as well, but don't let
13 anybody else invite you to discuss the case either.

14 Okay. Good enough.

15 (WHEREUPON, a short break was taken.)

16 THE COURT: Ready for the jury?

17 MR. STALVEY: Yes, sir.

18 THE COURT: Okay. Bring the jury in, please.

19 (WHEREUPON, the jury entered the courtroom at
20 approximately 10:55 a.m.)

21 THE COURT: All right. Ms. Bentley, you may proceed.

22 BY MS. BENTLEY:

23 Q Investigator, we were discussing your training that
24 led you to become a forensic interviewer. You went
25 through classes as early as 19 -- the early 1990's, you

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1 said?

2 A Correct.

3 Q Then you took refresher courses or subsequent
4 training?

5 A Correct.

6 Q What other training and experience did you have on
7 the forensic interviewer side?

8 A I personally think the best training and best
9 experience that I have for doing forensic interviews is
10 being a school resource officer for many, many years and
11 talking to the kids in a normal setting rather than any
12 other type of, you know, anything going on. And then
13 talking to those same children most of times when
14 something is going on, a theft or somebody broken into
15 lockers or something like that. And then you end up
16 talking to hundreds and hundreds of kids. And you're
17 talking to the kids -- I mean, you're not trying to get
18 information from them, you're not trying to do anything
19 other than have conversations with them. I think that's
20 benefited me in just having conversations with the people.

21 Q Okay. Did you use those techniques with Minor when
22 you were speaking with her?

23 A Certainly.

24 Q You said ou spoke to Minor for a long time. Why
25 was that?

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1 A Probably because I'm old and like to talk a little
2 bit too much. But I tried to build a rapport with her and
3 make her feel like she could trust me. She did say that
4 she had had other contacts with law enforcement. I wasn't
5 sure whether that was positive or negative, but I wanted
6 to make sure that when she was talking to me she realized
7 that I was going to try to be upfront with her and be
8 honest with her and take her for her word.

9 Q Okay. I want to talk a little bit about Minor
10 past. If you had known about her prior assault and
11 battery convictions, run away convictions, disturbing
12 school convictions, how would that have affected her
13 credibility in determining what she was saying in regards
14 to the sexual relationship with Terry McCarrell?

15 A I don't think that would have had too much influence
16 on it. Not as if she had reported a similar incident and
17 it was totally false. That would have had a whole lot
18 more impact on me rather than her having what I would call
19 juvenile issues at school or whatever issues she was
20 having.

21 Q Okay. Take us through -- you said putting together
22 one of these cases is like a pizza. Talk to me about the
23 pieces you put together in this investigation against
24 Terry McCarrell?

25 A Basically, when I kind of use that analogy, the first

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1 piece I always look for is does the child have contact
2 with the suspect? I mean, does the child even know the
3 suspect? So if child doesn't have contact with the
4 suspect, doesn't know the suspect, it's doubtful anything
5 happened to the child by this suspect. So that is a piece
6 that is very important where I'll start to make sure there
7 was some type of contact. Also, was there a time or a
8 place that the child was alone with the suspect. So
9 there's another portion. The text messages, there's
10 contact with the suspect. The contact may be in my
11 opinion a little bit out of the ordinary, so that's a
12 concerning piece to me. Then talking with the victim and
13 really, truly talking with the victim and kind of getting
14 a little empathy for her in certain areas and a little
15 irritated with her in certain other areas, just a normal
16 feeling that she was telling me the truth. And then, you
17 know, tried to make contact with the suspect.

18 Q Okay. And you did not search **Minor** phone?

19 A That's correct?

20 Q You did not -- you believed Terry's phone was stolen,
21 is that correct?

22 A I want to say that's what he told me.

23 Q But he did not have a cell phone of his own to use?

24 A That's correct.

25 Q And he was using other people's phones?

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1 A That is correct.

2 Q Okay. How did the fact that you found these messages
3 on a third party's phone affect your determination in this
4 case? What impact did that have, if anything?

5 A I mean, it was a little concerning towards me that
6 maybe the suspect might be trying to hide some of the
7 conversations that he was having, but when I looked at the
8 conversations, they weren't so -- I mean, I've seen so
9 many conversations that were very illicit and sexual in
10 nature and these were more like a boyfriend/girlfriend
11 stuff. It wasn't really too terrible.

12 Q Okay. And I want to talk to you about -- we heard a
13 little bit about forensic interviewers in court. And
14 you're here as a police investigator?

15 A That's correct.

16 Q Does the law determine at what age a forensic
17 interview is no longer admissible in court?

18 A It does.

19 Q What age is that?

20 A Eleven.

21 Q Okay. So --

22 A The cut off is 11. So 11 and below -- truly, 11 and
23 below is -- I may talk to the child, but I will not do a
24 complete forensic, what we call a forensic interview. I
25 will set the child up for a forensic interview at Julie

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1 Valentine Center or other child advocacy center that's
2 close to where they live and I will allow the third party
3 outside source to do the forensic interview.

4 Q So a forensic interview would not have been
5 admissible in this case regardless of whether Minor had
6 one?

7 A That is correct.

8 Q You testified that you -- excuse me, referred her to
9 the Julie Valentine Center for a medical exam and
10 counseling?

11 A That is correct.

12 Q Whose responsibility is it to take her for that exam
13 and counseling?

14 A Mom.

15 Q Okay. If, in fact, she did wait seven months to take
16 her, what evidence, if any, would there have been from
17 this case, medical evidence?

18 MR. STALVEY: Hold on. I think that calls for
19 speculation, Judge. I think it's an improper question.

20 MR. STALVEY: I'll rephrase it.

21 THE COURT: Okay. Good enough.

22 BY MS. BENTLEY:

23 Q Would you have expected DNA seven months later?

24 A No.

25 Q Okay. We've heard a lot about Minor having a

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1 troubled past, run-ins with the law. Does that make her
2 any less likely to be a victim of sexual abuse?

3 A No, not at all. Probably heightened.

4 MS. BENTLEY: I have no further questions.

5 RECROSS-EXAMINATION

6 BY MR. STALVEY:

7 Q Does the fact that she has been charged with the
8 petit larceny, has a history of running away, has a
9 history of lying to the police, admitted to -- or there's
10 some indication she was selling marijuana, does that --
11 does any of those things possibly affect the credibility
12 of what she says?

13 A I don't know that that affects her credibility of her
14 statements as much as some other things that could happen.
15 That's -- unfortunately, a lot of juveniles we deal with
16 have issues very similar to that. Maybe it's related to
17 family, personality or demographics, who knows.

18 Q All right. Let me ask you this way. Would you be
19 more likely to believe a child that had never lied before,
20 had no issues with lying in the past, would you be more
21 likely to believe that child or would you be more likely
22 to believe a child that had lied, had broken the law and
23 lied to police, lied to police the day that they told you
24 some information, which of those children would you be
25 more likely to believe?

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1 A I think you would definitely want your perfect child
2 as the victim, that way you would never question anything.
3 But --

4 Q That child would be more credible, correct?

5 A That would be a better victim. But as far as
6 credibility, it depends on that particular day.

7 Q Considering just what I told you, wouldn't that child
8 seem like a more credible witness?

9 A Correct.

10 MR. STALVEY: Thank you, sir.

11 MS. BENTLEY: No further redirect.

12 THE COURT: All right. Thank you. I appreciate you
13 being here. Yeah, just leave that right there. Thank you
14 very much.

15 You may call your next witness.

16 MR. CULBREATH: Your Honor, the State would call
17 Master Deputy Mike Rainey.

18 THE CLERK: Sir, please come forward. If you would
19 please place your left hand on the Bible and raise your
20 right hand.

21 MASTER DEPUTY MICHAEL RAINEY,

22 after having been duly sworn, testified as follows:

23 THE CLERK: Thank you. Please be seated. Please
24 state your name for the record.

25 THE WITNESS: Investigator Michael Rainey.

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DIRECT EXAMINATION

BY MR. CULBREATH:

Q Investigator Rainey, good morning.

A Good morning.

Q Would you tell this jury about how long you've been with the sheriff's office?

A Twenty years.

Q And what is your current job?

A I'm one of the forensic -- computer forensic and phone analysis with the sheriff's office.

Q Back in December of 2011, same job?

A Yes, sir.

Q Can you tell this jury a little bit about what that means? What does forensic examination of a cell phone mean?

A We have several different computer devices that we can take a cell phone and download the data off the phone, contacts, phone logs, voice mails, text messages, pictures, videos.

Q Now, did you get any specialized training to be able to do that?

A Yes, I have.

Q Tell us a little bit about that.

A I have been to the National White Collar Crime Computer Forensics, United States Secret Service Forensic

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1 Institution in Alabama, In-Case Forensics, Cellebrite
2 Forensics, Cell Phone Forensics. My training started in
3 2007 and I average two to three classes a year.

4 Q And what type of equipment, if any, do you use when
5 you do a cell phone examination?

6 A We have a particular device that's called Cellebrite.
7 It is designed by Cellebrite Forensics for cell phone
8 extraction.

9 Q And in doing so, does it -- what type of information
10 are you able to take off of a cell phone?

11 A It depends on the make and model of the cell phone.
12 Each cell phone is different because of the operating
13 system in the phone and the software version. But each
14 cell phone -- it varies from cell phone to cell phone, the
15 carrier. Text messages, call logs, photos, videos,
16 incoming/outcoming, geo location of the photographs,
17 e-mails.

18 Q Let me first show you something. What I'm giving you
19 is State's Exhibit 1. Let me ask you a couple of
20 questions about that. It's been pretty well established
21 thus far as to who was sending and receiving text messages
22 in the case that we're involved in today. Do you recall
23 how you first became involved in this particular case?

24 A I received a phone call from Investigator Maschak
25 advising me that he needed a cell phone analysis performed

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1 and that he had the phone and a consent from the subject
2 to access the phone.

3 Q Is that fairly routine? When one of these matters
4 comes to your attention, they're brought to you to do an
5 examination, is it usually through an officer who's been
6 conducting an investigation?

7 A Yes.

8 Q Do they come to you one of two ways, either with a
9 warrant to search a particular device or with a consent to
10 search?

11 A Yes.

12 Q And in this case, do you recall December 22nd,
13 Investigator Maschak came to you?

14 A Yes, sir.

15 Q And did he, in fact, have the individual who owned
16 the phone with him as well?

17 A Yes, sir.

18 Q Do you recall if that would have been a Ms. Brooklin
19 Pollard?

20 A Yes, sir.

21 Q Okay. I want to show you State's Exhibit 1. That's
22 been admitted into evidence. Please tell the jury what
23 that is.

24 A It's a consent to search cell phone or computer
25 device, basically, stating that the person in question,

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1 Brooklin Pollard, gave Investigator Maschak permission for
2 us to download the device in question, which is a cell
3 phone in this case.

4 Q Okay. And we've talked extensively about what's come
5 off that phone, so I just want you to kind of explain to
6 the jury the process, a little bit about that using that
7 Cellebrite technology. Do you have the ability to
8 manipulate any of the information you take off the cell
9 phone?

10 A No, sir. The phone is, actually -- you base the
11 Cellebrite off of the make and model. So we plug the make
12 and model of the phone into the Cellebrite device. It
13 tells me which cable the Cellebrite needs to connect to
14 the phone. I connect the phone to the Cellebrite device,
15 tell it to do the download. I follow the steps on the
16 computer screen for Cellebrite. Once the download is
17 complete, it puts it into a report generated by
18 Cellebrite. The device itself, I cannot manipulate. I
19 transfer it off and put it onto a disc and turn it over to
20 the investigator.

21 Q So the ultimate product is a computer file that you
22 put on a disc?

23 A Correct.

24 Q And while you're running the Cellebrite, it either
25 works or it doesn't?

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1 A Correct.

2 Q And as far as the scope of the search of the phone or
3 the download of information, do you have control over that
4 or does it simply take all of the information off of the
5 phone?

6 A The only information I can tell it if I want text or
7 not text or pictures or not pictures. I cannot go in and
8 tell it that I only want a specific picture or a specific
9 text. If I select a text, I get all the texts that are in
10 that phone, or all the pictures. I cannot manipulate
11 those.

12 Q This is what's admitted as State's 2. Do you
13 recognize that?

14 A Yes, sir.

15 Q And what is that?

16 A It's the disc that was created for this case.

17 Q Now, have you had an opportunity, either then or
18 recently, to go through and review all of the text
19 messages that were taken off of Ms. Pollard's phone?

20 A I do not look at the text messages.

21 Q Would it be fair to say that the process was they
22 showed up at your office with a cell phone and Ms.
23 Pollard's consent to search, you conducted the search, put
24 it on a CD and gave it back to them?

25 A Yes, sir.

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1 Q Well, with regards to Exhibits 4 and 5, and 3 as
2 well, they're in evidence, let me show them to you. Just
3 for the jury's benefit, I'll show you 4 and 5. In reading
4 through these cell phone records, there are a number of
5 columns of information, is that correct?

6 A Yes, sir.

7 Q Off to the left-hand side is the actual number of the
8 texts in sequence that's been pulled off?

9 A Yes, sir.

10 Q And a few more columns in, there's telephone?

11 A Correct.

12 Q Would it be fair to say that in that column or in any
13 one of those columns, the actual phone that you're
14 examining, the number of that phone is not going to show
15 up in any incoming or outgoing texts, is that fair to say?

16 A That is correct.

17 Q So this phone, you looked at a text line that says,
18 Hey, this is Terry, wyd, and that is incoming call --
19 outgoing text message, that phone number that is showing
20 is the number where that text is going, correct?

21 A Correct.

22 Q And then if you get a corresponding text from that
23 same number, that is that individual writing a text back
24 to Ms. Pollard's phone?

25 A Correct.

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1 Q The reason I ask you that is sometimes people look at
2 records and look and try and see one individual's phone
3 number and another individual's phone and expect to see an
4 exchange back and forth with the two phones numbers, when,
5 in fact, we'll always see the same number -- or only the
6 number of the individual who's corresponding with that
7 phone?

8 A That's correct.

9 Q In looking at those and the familiarity that you have
10 with the records in this case, any reason to believe the
11 downloaded information is in any way inaccurate?

12 A No, sir.

13 Q Manipulated in any way?

14 A No, sir.

15 Q Fair and accurate representation of what was on Ms.
16 Pollard's phone?

17 A Yes, sir.

18 MR. CULBREATH: Thank you. Please answer any
19 questions Defense counsel may have for you.

20 MR. STALVEY: I don't have any questions.

21 THE COURT: Thank you, sir. I appreciate you being
22 here. You may be excused.

23 Anything further from the State?

24 MS. BENTLEY: Nothing further from the State, Your
25 Honor.

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1 THE COURT: All right.

2 Ladies and gentlemen, we've reached a stage in the
3 trial where the State will rest. At this point, I need to
4 hear some legal arguments and I need to take a short
5 break. What we'll do is I'll hear those arguments and
6 then we'll come back into the courtroom and I'm going to
7 do one of two things, we're either going to move forward
8 with testimony or we are going to move forward potentially
9 with argument and charge. Now, it may be, it may be I'll
10 release you for lunch and then come back and do argument
11 and charge. Not because I want to take a pause, but
12 because the attorneys have to have a little bit of time to
13 get ready for their closing statements and I have to have
14 a little bit of time to discuss with them the potential
15 charges I will give you at the conclusion of the case.

16 So at this point, I'm going to hear arguments from
17 counsel and then I'm going to give you further direction
18 after we've resolved those arguments. And we're either
19 going to come back in and keep going forward or we're
20 going to take a break for lunch. So please don't discuss
21 the case quite yet.

22 (WHEREUPON, the jury left the courtroom at
23 approximately 11:15 a.m.)

24 THE COURT: Any motions?

25 Motions

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1 MR. STALVEY: Judge, I move for a direct verdict on all
2 charges at this time. Your Honor, the lewd act, criminal
3 sexual conduct and contributing to the delinquency of a
4 minor, I just argue there's not been credible evidence
5 presented to the Court for you to allow the jury to consider
6 these issues. Making that motion, I'd like you to consider
7 the motion for directed verdict on the grand larceny. We
8 need to speak about that a little bit more in detail.

9 Judge, what we've got is testimony from two witnesses
10 that -- the Woodards that say these rings were worth \$2,500.
11 The testimony from, I believe, Ms. Woodard, she later said
12 she got that value from having the rings appraised in 2007.
13 Your Honor, this occurred in 2011. And, Judge, when Deputy
14 Lovelace went out there and spoke with them and asked them
15 the value of the rings, he testified that they told him
16 \$2,000. So, Your Honor, we've got a value that is four
17 years old of 2500, that the deputy went and was told and he
18 testified to it, because they asked, where did you get that
19 amount and he said from them, \$2,000.

20 Your Honor, I don't think there's anything credible --
21 there's no issue of credibility as far as what the rings
22 were valued -- or what the value of the rings were in
23 November of 2011. They told the police \$2,000. Now,
24 they're coming into court saying something else, but they
25 really don't have any evidence other than a four-year-old

1 appraisal to support that. So based on that, I'd ask you to
2 direct a verdict on the grand larceny. As far as all the
3 other charges, that's just my stock for a directed verdict
4 motion, which usually is denied.

5 THE COURT: Ms. Bentley, I'll be happy to hear from
6 you.

7 MS. BENTLEY: First, Your Honor, as to the grand
8 larceny, the law states that victims are generally qualified
9 to provide an estimated value of their property. Ms.
10 Woodard did testify regarding not one, but two estimates of
11 her property. She paid approximately \$2,470 for the rings.
12 She testified that she recalled it because she made numerous
13 payments. She finally got them in 2007. She then testified
14 that she was concerned that they were maybe not worth that,
15 she had them appraised by someone else, Lee Jewelers in
16 Cherrydale, and they told her they were worth about that
17 much money. I think it's up to the jury to decide if
18 they're still worth that. Precious metals and gemstones do
19 not typically decline in value. We're not trying to say
20 they're worth more than that, but we're claiming that's what
21 it would cost to replace them. And she was qualified enough
22 to give that evidence. It's a question for the jury as to
23 whether or not that's good enough.

24 As to the others, there has been evidence presented of
25 a sexual battery and a lewd act. There's been evidence that

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1 Mr. McCarrell asked Minor to hide the rings, thereby
2 aiding and abetting her in breaking the law herself, which
3 is contributing to the delinquency of a minor charge. We do
4 believe evidence has been presented and it's proper to be
5 submitted to the jury at this time.

6 THE COURT: I'm going to respectfully the motions on
7 all charges. Obviously, the standard is to view the
8 evidence in the light most favorable to the nonmoving party.
9 Again, not to determine weight and sufficiency of the
10 evidence, but the existence of the evidence. In this
11 instance, certainly, there's evidence in the record which
12 supports all the State's charges.

13 With respect to the value of the rings, that's a jury
14 decision. It's up to the jury to determine who is
15 believable and to judge the sufficiency and weight of the
16 evidence in determining the value.

17 I believe the testimony in this case -- I just want to
18 make sure, everybody's in agreement that the testimony from
19 Mr. Woodard was that he originally said it was \$2,000 when
20 the police asked him? Am I right about that?

21 MS. BENTLEY: I believe so, Your Honor, that's what
22 Deputy Lovelace said.

23 THE COURT: I believe you said the same thing, Mr.
24 Stalvey?

25 MR. STALVEY: I don't remember it that way, Judge.

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1 THE COURT: What do you think he said?

2 MR. STALVEY: No, I think Mr. Woodard said 2500. I
3 think the first time we heard that it was something other
4 than 2500 was when Deputy Lovelace got up there.

5 THE COURT: Yeah, but what I was saying was the only
6 evidence I heard about a value of \$2,000 was when Mr.
7 Woodard was on the stand and recounted that in his original
8 statement to police he said the value was \$2,000. Is that
9 what you remember?

10 MR. STALVEY: No, sir.

11 THE COURT: What do you remember?

12 MR. STALVEY: I remember Deputy Lovelace -- I don't
13 remember 2,000 ever being mentioned -- and my memory, please
14 don't hold me to it, but --

15 THE COURT: I know that Mr. Woodard said that, I know
16 that. Because the question I had at the time is that he
17 said -- he was kind of mealy mouth and I couldn't determine
18 whether he said a thousand or two thousand, but upon further
19 questioning, I found out that, in combination with the
20 testimony and the police report, he said 2,000 at the time.

21 MR. STALVEY: Okay.

22 THE COURT: But I don't remember the officer stating
23 that he thought the value was 2,000, just that someone had
24 told him that.

25 MR. STALVEY: That's right, Judge, the Woodards.

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1 THE COURT: Exactly. Exactly.

2 All right. Good enough.

3 Do you intend to put any evidence in the record, Mr.
4 Stalvey?

5 MR. STALVEY: No, sir.

6 THE COURT: Okay. Do you want to rest on the record in
7 front of the jury or is that a formality you'll forego? It
8 doesn't matter to me one way or the other.

9 MR. STALVEY: No, I'll forego that.

10 THE COURT: So we can proceed now to argument and
11 charge. Are y'all prepared to argue and charge at this
12 time?

13 MS. BENTLEY: Yes, Your Honor.

14 MR. STALVEY: Yes, sir.

15 THE COURT: Okay.

16 Any specific requests for charge?

17 MS. BENTLEY: Yes, sir, Your Honor.

18 THE COURT: Okay.

19 MS. BENTLEY: Mr. Stalvey, what's your position with
20 respect to requests for charge?

21 MR. STALVEY: Your Honor, I would like to know what you
22 normally charge in these cases if I've got a choice between
23 this and --

24 THE COURT: You know, I'm not worried about the precise
25 language in it. I will tell you what I will charge. With

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1 respect to subsection two, which is consent is not a valid
2 defense, essentially, consent, willingness, indifference or
3 ignorance on the part of the minor, if any, as to what was
4 taking place does not in any way affect the charge of
5 criminal sexual conduct with a minor because an unmarried
6 woman under the age of 14 cannot legally consent to sexual
7 intercourse. That's what I'm going to charge and,
8 substantively, it's the exact same thing.

9 MR. STALVEY: I'm definitely not -- I don't even think
10 we need to charge that.

11 THE COURT: Okay. And then with respect to subsection
12 number one, I do intend to charge just the simple
13 proposition that the testimony of a victim in a criminal
14 sexual conduct prosecution need not be corroborated by other
15 testimony or evidence. I think that clearly is the law.

16 So, in essence, I'm accepting the requests for charge.
17 I'm charging it substantively, if not verbatim.

18 MS. BENTLEY: Thank you.

19 THE COURT: Mr. Stalvey, any requests for charge?

20 MR. STALVEY: No, sir.

21 THE COURT: Are you requesting lesser included petit
22 larceny in this case, sir, based on the testimony of \$2,000?

23 MR. STALVEY: Yes, sir.

24 THE COURT: Any position on that?

25 MS. BENTLEY: None, Your Honor.

1 THE COURT: Good enough.

2 If y'all would come up, I want you to take a look at my
3 verdict forms just to make sure that you don't have any
4 issues with the forms themselves because I do intend to give
5 those to the jury.

6 (WHEREUPON, the jury entered the courtroom at
7 approximately 11:42 a.m.)

8 THE COURT: The Defense has rested without presenting
9 testimony, which is the right of the Defendant to do.

10 So what we will do is we will proceed to closing
11 arguments and a closing charge on the law. As you know,
12 what I did was go ahead and get the bailiffs to give you a
13 menu so that you could order something so that, hopefully,
14 when we finish here, your food will be waiting for you and
15 you can begin your deliberations and you can talk over
16 lunch. That's my hope.

17 Mr. Tutterow, I have appointed you as Foreperson of the
18 jury. Congratulations. It's because of your demonstrating
19 excellence as a juror.

20 THE FOREPERSON: Do I have more pay?

21 THE COURT: Yes, sir, you do. We're going to give you
22 a box of paperclips. The duties of a Foreman are fairly
23 ill-defined, but what I can tell you is that it's your
24 responsibility to make sure that everybody has the
25 opportunity to be heard in the jury room, that everyone has

1 a voice. I can't tell you how to conduct deliberations
2 because it's unlawful for me to even go in your jury room.
3 It would be an automatic mistrial. So as a consequence,
4 I've never been in a jury deliberation, so I don't know what
5 you do. However, I can tell you that you can -- y'all
6 collectively can determine how to conduct your
7 deliberations. And the important thing again, Mr. Tutterow,
8 is that everyone has the opportunity to be heard and have a
9 voice. When and if there are questions, and, hopefully,
10 there won't be, but if there are questions during
11 deliberations, Mr. Tutterow, you can write those down just
12 in your handwriting and hand them to the bailiff and he will
13 give them to me. And if I can respond, I will. Sometimes I
14 get questions from juries that I can't respond to for any
15 number of reasons. But to the extent that I can respond, I,
16 certainly, will.

17 Now, we're going to go to closing arguments. I told
18 you at the very beginning of the trial that closing
19 arguments, opening statements are not evidence to be
20 considered by you. That's simply the attorneys advocating
21 for their respective sides. So you take that as advocacy
22 and not as evidence. You have already received all of the
23 evidence that you will receive in the trial.

24 Before we get started, I want to tell you a few things.
25 As I've told you before, the State has the burden of proving

1 the Defendant guilty beyond a reasonable doubt. The State
2 has the burden of proving each and every element of the
3 offenses beyond a reasonable doubt.

4 Now, you see in this case that the Defendant wasn't
5 here. And I've already told you that that's not relevant to
6 what you're doing in this case today. The fact that he is
7 not here cannot be considered in any way. Also, you know
8 that the Defendant didn't testify. Well, that happens in
9 cases. The Defendant elects to exercise a constitutional
10 right to remain silent. All of the citizens of the United
11 States have the right to remain silent, which means that a
12 Defendant cannot be compelled to testify. That is a
13 constitutional right that he enjoys, just like the rest of
14 us. Therefore, you can't hold it against him that he
15 elected not to testify in this case. Also, it is such a
16 sacred constitutional right that it's not even appropriate
17 for you to discuss that fact in your jury deliberations.

18 So, ladies and gentlemen, having said that, I'm going
19 to defer to the attorneys and let them begin their
20 arguments. I believe Ms. Bentley will open with her
21 argument and then Mr. Stalvey will have the opportunity to
22 close.

23 Ms. Bentley.

24 Closing Arguments

25 MS. BENTLEY: May it please the Court, Mr. Stalvey.

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1 Ladies and gentlemen, you've heard a lot of testimony
2 and seen a lot of evidence about a number of crimes during
3 the course of this trial. I want to take this opportunity
4 to discuss the testimony, and discuss the crimes and discuss
5 what everything means so that you can help organize your
6 thoughts for deliberations.

7 First and foremost, what the Judge led off with, which
8 is Mr. Culbreath and I had to prove this case, had to prove
9 each and every crime beyond a reasonable doubt. Proving
10 crime beyond any reasonable doubt is the foundation of our
11 criminal justice system.

12 What is a reasonable doubt? The Judge will define it
13 for you as part of his charge at the end of the trial, but
14 it boils down to this, are you firmly convinced of the
15 Defendant's guilt? None of you -- no one was in the
16 Woodards' home on November 14th, 2011. Nobody was in
17 **Minor** home when Terry McCarrell was there. None of you
18 can know for an absolute certainty what happened. You
19 weren't present. That doesn't mean that the State cannot
20 meet the burden of beyond a reasonable doubt. If the
21 evidence has left you firmly convinced of the Defendant's
22 guilt, then you must find him guilty. If after you go back
23 in the jury room and you deliberate, you discuss the
24 testimony, you discuss the witnesses, you discussed what you
25 liked, what you didn't like, what you believed, what you

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1 didn't believe, if after all of that, you don't hesitate to
2 sign your name to a guilty verdict, then the burden has been
3 met.

4 If on the other hand, you go back, you discuss the
5 testimony, you look at the text messages and you think there
6 is a real possibility that Terry McCarrell did not steal
7 Tamila Woodard's rings, that he did not ask Minor to help
8 him cover up the crime, that he was not engaged in an
9 inappropriate sexual relationship with her, then you must
10 find him not guilty. That is what beyond a reasonable doubt,
11 means.

12 So let's review the crimes and the evidence from
13 within. First, grand larceny. On November 14th, 2011, it
14 is uncontested that Terry McCarrell and Minor went
15 inside Jesse and Tamila Woodard's home. They were the only
16 people that were inside that day. They were in there 30 to
17 45 minutes. That's a lot of time. So Jesse and Minor
18 testified that it was Terry who took the rings. Jesse says
19 he knows this because Terry was the only person that went to
20 the part of the house where the rings were. Minor was on
21 the couch the whole time. And that's what Minor told you,
22 too. She's not casting the blame on Terry McCarrell to take
23 the blame off herself. They're putting the blame on Terry
24 McCarrell because he stole the rings. He was the only
25 person there.

1 Now, Jesse Woodard didn't try to exaggerate what he
2 saw. He didn't try to make it sound better. He said he
3 heard a clink, a tink, I think is what he said, he turns
4 around and Terry just kind of made a movement. He didn't
5 try to say that he saw him take those rings and put them in
6 his pocket. He didn't, but he knows that Terry was the only
7 one in that part of the house.

8 The value of the rings. Value is an element of grand
9 larceny. We had to prove the rings were valued over \$2,000.
10 So \$2,001, \$2,000 and a penny, that's what makes it grand
11 larceny. You heard from Tamila Woodard. She remembered the
12 value of the rings because she paid for her own rings. She
13 paid for years. \$2,470. She didn't get to pick them up
14 until 2007 when they were paid off. And then she was
15 worried they may not be worth that. She paid for a long
16 time, she wanted to make sure she had what she paid for, so
17 she went to Lee Jewelers over at Cherrydale. And they
18 appraised the rings and they said yep, about \$2,500, \$2,400
19 and some change. That was back in 2007. I submit to you
20 that precious metals, diamonds do not depreciate greatly in
21 value. If anything, they may increase. We submit to you
22 the value of the rings stolen by Terry McCarrell was over
23 \$2,000.

24 Second, contributing to the delinquency of a minor.
25 You heard a lot about Minor [REDACTED] past. She had a

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1 hard life. She had been in a lot of trouble before. She
2 had been adjudicated a delinquent by the Family Court. She
3 had pled guilty to being a run away, to disturbing schools,
4 to assault and battery. She had been to DJJ twice. We're
5 not trying to hide that fact. She was still a child. She
6 was 13 years old. If you find that Terry McCarrell asked
7 her to hold those rings, to lie for him, to help him cover
8 up his actions, then he is guilty of contributing to the
9 delinquency of a minor. She was on somewhat of the right
10 path. She kept her child. She was trying to do her best
11 until Terry McCarrell came along. He asked her to aid and
12 abet him in committing a crime, which makes him guilty of
13 contributing to the delinquency of a minor. It doesn't
14 matter that she had been in trouble before. If he asked her
15 to commit another crime, he made her guilty of another crime
16 in and of itself.

17 This brings us to the relationship between Terry and
18 **Minor** Terry McCarrell was 48 years old in the fall of
19 2011. That's been established by his driver's license
20 Deputy Lovelace looked at. His daughter told you his
21 approximate age. **Minor** was 13. You heard her
22 birthday. That's not contested.

23 I told you at the beginning of the trial that real-life
24 crimes do not get the benefit of television writers, of
25 editing. We take real life out of this. **Minor**

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1 was not the perfect victim. Mr. Stalvey brought that out
2 through Investigator Perry. Would you rather have a victim
3 that had never lied to police, had never lied to her
4 parents, that was otherwise squeaky clean? Sure. That
5 would be ideal from a police investigator's standpoint, but
6 that's not real life. And that does not make her any less
7 of a victim today.

8 The Defense at the beginning and through the trial has
9 tried to shift the focus onto **Minor** past. They have
10 talked about her prior crimes, her prior bad acts. Despite
11 the fact at the beginning, Mr. Stalvey told you to forget
12 the past and to focus on the evidence presented in the
13 trial. But that's okay. It's okay that we know what
14 **Minor** had done in her past because it doesn't affect her
15 being a victim right now. We didn't hide the ball. **Minor**
16 did not hide or shy away from anything she had done
17 previously. She had no reason to. Was she proud of it?
18 No. But she was honest. She was brutally honest about
19 everything she had done.

20 I told you at the beginning that the testimony of the
21 victim is of the utmost importance. Her credibility is
22 important in this case. She's the only one that was there.
23 She's the only one that can provide you details of her
24 sexual relationship with Terry McCarrell. And that's why
25 she was so honest. She knows that.

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1 What did [Minor] tell you? What words did [Minor] use
2 when talking about the relationship with Terry McCarrell?
3 Well, she told you that it didn't start off sexually. It
4 didn't start off that way right away, that they were just
5 friends for a few weeks. Why would a 48-year-old man
6 befriend a 13-year-old girl? She didn't understand what was
7 going to happen, but he knew. He knew she was home alone
8 all day unsupervised.

9 Which brings us to her mother, Jamey O'Neill. You
10 heard from her today. She lost custody of [Minor] before
11 this happened and after this happened. What else did she
12 tell you? Well, she gave you some background and some
13 insight into [Minor] life, into [Minor] home life. She
14 was doing the best she could. Was her best good enough?
15 No, it wasn't. She had a 13-year-old daughter that had been
16 through the Department of Juvenile Justice, that had
17 numerous convictions, that had tried drugs, that had a baby,
18 DSS had been involved, but she was doing the best she could.
19 She works two jobs to support her family. She worked first
20 shift, second shift, third shift, whatever it took. But,
21 unfortunately, she wasn't home much of the day. She would
22 come home on break and she would bring her some lunch and
23 check on her day.

24 And what happened that one day when she came home on
25 break? Well, she saw Terry McCarrell walking in her house.

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1 She wasn't there. Her car wasn't there. There was no
2 reason for him to believe that she was there. He knew
3 [Minor] was in there alone and he was going to see [Minor]
4 Ms. O'Neill confronted him about that. She told you that
5 she flipped out, that she yelled at him, that she told him
6 that he had no business being there when she wasn't there.
7 Would another parent have taken the next step? Would they
8 have prohibited him from coming over? Would they have hired
9 someone to come over and keep watch? Maybe. But she did
10 the best she could. So we know Mr. McCarrell had the
11 opportunity. He was alone with [Minor] Investigator Perry
12 told you that was important to know that he had access to
13 her.

14 What else did [Minor] tell you? Well, you heard about
15 her past. You heard about everything regarding her past.
16 And then she told you the details of her sexual relationship
17 with Terry. They started off as friends. And then one day,
18 she was in her mom's bed taking a nap and he walked in. And
19 on this day, he decided to attempt to have sexual
20 intercourse with her. She said he rubbed all over her body.
21 He was trying to take off her pants. And she was able to
22 push him away.

23 And we talked a little bit about why it was she pushed
24 him away. She had given birth to a baby girl. You saw
25 [Minor] She's 16 today, but she was three years younger at

1 the time. A 13-year-old girl, who had just given birth to a
2 10-pound baby. She told you that her ribs were still
3 separated. Her body was messed up. She had stitches. She
4 was bleeding. Sex was the last thing on her mind. She was
5 able to push Terry away that day.

6 He came back a few days later and she said he acted
7 normal and she tried to act normal, but it was kind of
8 awkward. And then one day, they were in her room. She was
9 watching TV and he tried the same thing. But this time when
10 she pushed him away, she noticed that his pants were down
11 and his penis was exposed. What language did she use when
12 she was talking to you about that? She said that the first
13 words out of her mouth were, What's that on your dick?
14 That's not scripted. And she said that she saw a sore and
15 she was disturbed by it and she asked him about it. She
16 told you where it was. She told you the conversation about
17 how it was just there because he had been rubbing against
18 her and the semen appeared green because she was wearing
19 those blue jogging pants. Those are not details of a
20 romantic fantasy encounter. Those are real life, dirty,
21 truthful details. She said after that, she went in the
22 bathroom and that's all she wanted to remember.

23 She said after that, it progressed. They didn't have
24 sex everyday, but he came over everyday. She told you that
25 he told her he loved her. And you can see that in black and

1 white through the text messages we have. Why would a
2 48-year-old man tell a 13-year-old girl I love you? Mr.
3 Stalvey said, Well, would this not be conversations that you
4 could have with a family member? I don't know what
5 13-year-old family member would call an adult man baby, or
6 say I miss you, baby, but I guess that could be if they were
7 relatives. They're not relatives. Terry McCarrell and
8 Minor [REDACTED] were not relatives. They had known each
9 other about four weeks when these messages were exchanged,
10 December 5th, maybe five weeks. There is no, no reasonable
11 explanation for Terry McCarrell, a 48-year-old man, to be
12 texting Minor [REDACTED] a 13-year-old girl, that he loves
13 her. And these messages are uncontested. His own daughter
14 told you that they're authentic. He would use her phone,
15 his was stolen. Minor [REDACTED] told you that that was her
16 signature, Zoe's mommy.

17 So you have Minor [REDACTED] words, you have the opportunity,
18 you have the evidence in black and white. What else would
19 you like? Well, ideally, you have, I don't know, a
20 videotape or confession. We don't have that in this case.
21 Medical evidence. Well, it took seven months for Minor [REDACTED]
22 mother to get her to the Julie Valentine Center. There's
23 not going to be medical evidence at that time. Evidence of
24 sexual activity. She had already had a baby. That's clear.

25 What else is clear is Terry McCarrell's mindset during

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1 this whole time that he knew Minor He met
2 Minor through a relative of his, another middle school
3 student. And he used that boy to go over to Minor house
4 for the first time. In those two meetings, he learned a
5 lot. He learned that Minor was home alone a lot, that
6 Minor had a baby. And then he came over on his own. And
7 as Minor told you -- well, what did you do? What did you
8 do with this 48-year-old man when you weren't engaged in
9 sexual activity? We talked, watched movies. We talked
10 about our past. You know about Minor past and Terry
11 McCarrell knew about her past, too. And he thought that
12 even if he was caught, you wouldn't believe this less than
13 perfect victim. And if you did, maybe you wouldn't care.
14 She wasn't perfect, but she was the perfect target.

15 I'm asking you to care, to hold Terry McCarrell
16 accountable for his actions for victimizing a 13-year-old
17 girl in Greenville County. I'm asking you to find him
18 guilty of grand larceny, for contributing to the delinquency
19 of a minor, of criminal sexual conduct of a minor in the
20 second degree and of committing a lewd act upon a child.

21 MR. STALVEY: What else would you like -- to use Ms.
22 Bentley's term, what else would you like? Ladies and
23 gentlemen, you sit in a position that whether you want
24 something, whether you would like something additional, that
25 doesn't matter. That doesn't matter. What else would you

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1 like? It's not what else would you like. It's what else
2 are you entitled to because the State, according to our
3 constitution, the State has the burden of proof. What else
4 would you like? It's their job to present a thorough
5 investigation. It's their job to answer all the questions
6 that you may have.

7 The questions of whatever happened to another thing in
8 black and white -- again, to use the prosecutor's terms,
9 whatever happened to the investigation of Minor [REDACTED] who had
10 changed her life after her baby was born. I think it was
11 born in September. In December, she was talking about
12 selling drugs, selling marijuana to a neighbor to get Terry
13 McCarrell out of jail. What else would like? How about,
14 what else are you entitled to?

15 You heard me asking the investigator, has anybody
16 looked into this? No. No. Okay. That's not important.
17 Consider the fact that they didn't even bring that up. They
18 say they're not trying to hide the ball. Well, then
19 why am I the one that has to bring that up? Why am I the
20 one who had to ask Investigator Perry why he didn't send
21 this child, this child who had a history of lying to the
22 police, to the Julie Valentine Center for a forensic
23 interview?

24 He gave you some reasons. But remember what he
25 testified to as far as what a forensic interview was? That

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1 is an interview that is conducted by a professional whose
2 primary purpose is to determine whether a victim's story is
3 credible. Did she go to the Julie Valentine Center? No.
4 Did he consider sending her to the Julie Valentine Center?
5 To use their terms, it's in black and white, it was in his
6 report. He said yes, but, you know what, they were closed
7 for Christmas break. So, you know, you've got some time in
8 January. She could have gone then. She could have gone in
9 February. The fact of the matter is she never went and they
10 never sent her there because they took what she said that
11 day, on December 27 of 2011, as the end of the case. No
12 follow-up investigation. No Julie Valentine Center. She,
13 actually, got a medical examination six months later.

14 You know, this girl that had a 10-pound baby in
15 September starts a sexual relationship with a grown man that
16 last, according to the State and according to these
17 indictments up here, up until December. Her ribs were
18 separated, that's her testimony. She was having major
19 physical problems. And I can see why, she's a little girl,
20 and a 10-pound baby is a big baby. I know that. But hey,
21 you know, wouldn't it be maybe a good idea for the police or
22 the investigators to try to get her to that medical
23 examination within 30 days after finding out about this?
24 How about 60 days? Is 90 days reasonable? What is
25 unreasonable and what is unacceptable is six months. But

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1 what else would you like? You don't care about that. I
2 mean, that doesn't make any difference. They want you to
3 ignore that.. They want you to take the word of Minor
4 just like everybody else in this case did. They
5 want you to take her word for it.

6 Well, what about the text messages between Minor and
7 Terry McCarrell? Did they ever get Minor phone? She
8 got up there and testified -- I clearly remember this, that
9 Terry and her had texted through their own phones, so that
10 means she had a phone and was texting from it, which we got
11 all of her text messages. And I think she said that Terry
12 had shown her some pictures on his phone of his kids or
13 something like that. So we know Terry had a phone. Did
14 they get a search warrant for Terry's phone? No. They
15 didn't even try to. Did they get Minor consent to
16 search her phone? No. They didn't even try to.

17 Ladies and gentlemen, what we have here is an
18 incomplete investigation that when the solicitor's office
19 gets it, there's only so much they can do. And, really, the
20 only thing they could do is come in here, tell y'all how bad
21 y'all should feel for this girl and then say something like
22 well, what else do you want. They're hoping that you just
23 ignore your duty as jurors. They're hoping that you forget
24 about anything the Judge tells you as far as them proving
25 their case beyond a reasonable doubt. Because if you do

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1 that, if you don't have any questions about this
2 investigation, if you don't have any questions about Minor
3 credibility, then you don't have reasonable doubt.

4 But if you do have a question about how this
5 investigation was conducted, if you do have a question as to
6 the credibility of Minor that causes you to
7 hesitate, when y'all are back there deliberating, that
8 causes y'all to hesitate and say maybe I'm not sure about
9 this, then you check not guilty because that's your duty.
10 Everybody got up here, they threw up their hand, they swore
11 an oath. If you have any hesitation that anything you've
12 heard during the State's presentation of their case doesn't
13 quite add up to you, if you do want more, if you do want
14 more, like the solicitor said, that's a hesitation. And if
15 you have that hesitation, that's reasonable doubt and that's
16 not guilty.

17 Now, what could cause you to have some hesitation in
18 this case? I'm not going to spend a lot of time going over
19 it. We just talked about the investigation, or lack
20 thereof. What about the fact that the neighbor, Mr.
21 Woodard, got up there -- now, the Judge will tell you,
22 you're here to judge the credibility of these witnesses.
23 You don't have a background check on them. You don't have
24 their Facebook page. You don't have their prior criminal
25 history. You don't what they've done in their past. All

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1 y'all have got to make the determination on as far as their
2 credibility is what they do when they get up here and sit in
3 this witness stand and they put their hand on this Bible and
4 they swear to tell the truth, okay? Just like y'all swore
5 an oath to uphold the law.

6 So Jesse Woodard, I thought he was pretty credible. I
7 mean, I believed his story about him being addicted to
8 drugs, them losing their kids, them staying clean. I mean,
9 you know, I was going to ask him some questions about that,
10 but I believed him. So he gets off the stand, Minor gets
11 up there -- and remember, he says they were over there
12 looking at pictures and tattoo magazines and pictures of my
13 kids. Hey, that sounded good to me. He seemed credible to
14 me. But then Minor got up there and told you that she was
15 over there because he was going to touch up a tattoo on her
16 neck. Okay, remember, she's 13. That's illegal. You can't
17 be putting tattoos on 13-year-old's necks. Right? I mean,
18 everybody knows that, right? In fact, she said that one of
19 them had gone upstairs or gone somewhere to get the razor to
20 shave her neck to work on the tattoo.

21 Now what do you think about his credibility? You think
22 he's as squeaky clean as he presented himself on that
23 witness stand? Or she's lying. The same person that's
24 telling you everything that the State wants you to believe
25 about Terry McCarrell. One of them is lying. I mean, this

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1 isn't -- I mean, they clearly told two different versions of
2 what happened. And they clearly -- one of them had a motive
3 to lie because he was doing something illegal. And he's
4 been through all this before.

5 Why is that important? Why do we care what Jesse
6 Woodard said? Well, when y'all go back there, y'all get to
7 decide whether Terry McCarrell is guilty of grand larceny.
8 Grand larceny is stealing something that's worth more than
9 \$2,000. I'm sure the legal definition is more complex, but
10 that's it. If you steal something and it's worth more than
11 \$2,000, it's grand larceny. If it's less than \$2,000, it's
12 petit larceny. Okay.

13 It's interesting that Mr. Woodard and his wife, they
14 said it was \$2,500. 2007, we got it appraised for \$2,500.
15 But when Deputy Lovelace got up there and I asked him what
16 did you put in your report the value of this property, he
17 said 2,000. Ms. Bentley then asked to clarify where he got
18 that information from and what did he say? I got it from
19 the Woodards. So they told police 2,000 and then they told
20 police and somebody else 2,500 when they came back to do a
21 little further investigation. The credibility of these
22 witnesses is what this all boils down to and that takes us
23 to the credibility of Minor [REDACTED]

24 Ladies and gentlemen, you know, it's not my position to
25 ask you to not feel sorry for her, to feel sorry for her.

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1 There's no doubt she's had a hard life. There's no doubt
2 that she has grown up in a house that was dysfunctional, to
3 say the least. But that's not why we're here today. We're
4 not here to correct the things that have happened in Minor
5 past. What you're here today to do is decide if
6 based on what she says, my client, Terry McCarrell, is going
7 to be convicted of one of the most serious crimes in this
8 state. That's what we're here for. We're not here to feel
9 sorry for her, even though we may should. We're here to
10 determine the guilt of Terry McCarrell. We're here to
11 determine whether the State has given you all you need to do
12 that.

13 And what have they given you? Her testimony. Her
14 testimony. She said when she had her baby that her life
15 changed. All right, well, let's see what she did after she
16 had her baby. The baby was born in September. In November,
17 the rings were stolen. The rings were stolen when she went
18 over there to get her neck tattooed by her own admission.
19 Two months after her baby is born, two months after her baby
20 is born, the police come and talk to her about it. She's
21 changed her life, right? That's what she wants you to
22 believe, she's changed her life. What did she tell the
23 police about these rings? She lies. She says she didn't
24 have anything to do with it. A month later, three months
25 after her baby is born and her life has changed, the police

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1 come back. They say, We want to talk to you some more about
2 these rings. By her own admission, her own testimony, she
3 said, I lied again and I kept lying until they showed me the
4 text messages. Then I told the truth because I knew I was
5 caught.

6 You'll see in these text messages on December 22nd,
7 which, you know, the State, they gave you the ones they
8 wanted you to see, they highlighted them right here, but
9 y'all have the whole thing. Look at this. They were hoping
10 you wouldn't find this part in here. You know, you'd have
11 to sift through all of that. Y'all aren't going to waste
12 time doing that. Well, I'm telling you where it is.

13 December 22nd, 2011, Yeah, for real, I'm trying to get home
14 to ask that dude next door if he wants some green. Somebody
15 ripped him off, we need to get him out. Last night he asked
16 for a quarter, but I'm going to give him a dime. A dime
17 equals 10, a quarter is 25. That's December 22nd, 2011, so
18 that's three months after she has the baby, after her life
19 has changed, she's admitting to trying to sell marijuana.
20 Who knows if she's sold any in the past. I mean, who knows,
21 if she's talking about selling marijuana to a neighbor, Mr.
22 Woodard's a neighbor. We thought he was credible, you know.
23 He didn't tell the truth about why she was over there, to
24 get a tattoo. Was he telling the truth about drugs? Was he
25 telling the truth about the rings going missing? I asked

1 him if he ever traded personal property for drugs, he said
2 yes. Mr. Culbreath said, Well, you never filed a police
3 report to get your property back? Well, here's the question
4 that wasn't asked, how about when you sell your wife -- or
5 when you trade your wife's personal property for drugs.
6 That's a different dynamic right there, you know.

7 Ladies and gentlemen, reasonable doubt is defined as
8 causing a reasonable person to hesitate to act. And if all
9 of these things that I've told you about today don't give
10 you any hesitation, don't cause you any pause when you're
11 back there considering what to do in this case, then you've
12 done your job. You've considered all the evidence. I just
13 ask that you pay close attention to what you've heard during
14 this trial. I ask that you consider, and everybody be
15 involved in the deliberations, the testimony that you've
16 heard, the evidence that's been presented. And I'm talking
17 about all the evidence, not just the evidence the State
18 wants you to look at, but all the evidence. Once you've
19 done that, you've done your jobs. And that's all myself or
20 Mr. McCarrell can ask. Thank you.

21 THE COURT: It's going to take me about 15 to 20
22 minutes to give the charge, anybody need to take a break?

23 (There was no response.)

24 THE COURT: Okay. Good.

25 Charge of the Court

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1 Ladies and gentlemen, when we started the case, I told
2 you what your role was as the jury and what my role was as
3 the Judge. You are the finders of fact. You have the sole
4 and exclusive authority and responsibility to determine what
5 the facts are in this case. And I am the judge of the law,
6 which means that under the oath that you have previously
7 taken at the beginning of this trial, you must accept the
8 law as I give it to you. If you come into this courtroom
9 with any previous disposition or any opinion about what the
10 law is, about what the law should be, I charge you to
11 disregard that and accept the law as I give it to you as
12 you're required to do under your oath.

13 Now, I noticed that during the trial some of you were
14 taking notes and that's okay. Just remember that one
15 person's notes are not preferred over another person's
16 recollection of the testimony and what happened. Sometimes
17 when people go into the jury room and begin deliberations,
18 they may defer to someone's notes because they're there in
19 black and white, but, understand, those notes are no better
20 than recollections. From time to time when you're taking
21 notes, you miss something like facial expressions, body
22 language, or other things that may lend to a person's
23 credibility or lend to the testimony in some way. So just
24 keep that in mind as you're going forward. With respect to
25 notes during the charge, you don't need to take notes

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1 because I'm going to explain it to you. To the extent you
2 have any questions about the law, you ask me and I'll be
3 happy to further -- not to further define it for you, but to
4 recharge that particular aspect of the law for you. Just
5 sit back and relax and listen.

6 Now, some of this charge, I'm going to end up reading
7 to you. And I don't like to read and I try to avoid reading
8 to you because I know it's boring and it's dry and it also
9 gives you the suggestion that either I'm too lazy to
10 memorize the law or I'm too dumb to memorize it. Some
11 people might argue one or both. But I will tell you, this
12 has been a long trial and it's an important trial to the
13 parties and to you. So when something needs to be defined
14 precisely, it's important that I define it precisely. So if
15 I read it it's because I want to make sure that a precise
16 definition is given to you precisely.

17 Now, as we started the case, I told you the Defendant
18 is presumed innocent. The Defendant is, indeed, presumed
19 innocent. The State has the burden of proving the Defendant
20 guilty beyond a reasonable doubt. The State has the burden
21 of proving each and every element of the offense beyond a
22 reasonable doubt. Until such time as 12 deliberating jurors
23 has determined the State has met that burden of proof, the
24 Defendant retains a cloak of innocence. It's as though he's
25 wearing a robe just like I am, which protects him and which

1 cannot be overcome unless and until 12 deliberating jurors
2 determine that the State has met its burden of proof.

3 Now, ladies and gentlemen, you have several charges in
4 this case. You've got grand larceny, lewd act, contributing
5 to the delinquency of a minor, and second degree criminal
6 sexual conduct with a minor. Now, you must consider all of
7 those charges independently, independently of one another.

8 What you will do is you will take the facts and the law
9 and you will deliberate on each separate charge
10 independently. When I give you your verdict forms, there
11 will be four different verdict forms for you to consider,
12 which, of course, means that you will be considering them
13 all separately and without respect to the others. You can
14 find the Defendant not guilty on all of the charges or
15 guilty on all of the charges. You may find him not guilty
16 on two, three or one and find him, perhaps, guilty on two,
17 three or one. It doesn't matter. It's entirely up to you.
18 Just because you find him guilty or not guilty on one
19 doesn't mean you have to find him guilty or not guilty on
20 another. So consider them separately and independently.

21 Also, ladies and gentlemen, as I've already told you
22 and it's important to state it again, the Defendant, as you
23 know, is not here and you can't hold that against him. He
24 didn't testify, but it's his constitutional right not to
25 testify, so not only can you hold the fact that he did not

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1 testify against him, you can't even discuss it in your jury
2 room.

3 Now, ladies and gentlemen, we have batted about this
4 term reasonable doubt, so I find that it's helpful for me to
5 define it to you. Reasonable doubt is the type of doubt
6 which would cause a reasonable person to hesitate to act.
7 Now, said another way, a reasonable doubt is proof that
8 leaves you firmly convinced of the Defendant's guilt. Now,
9 there's very little on the face of this earth that can be
10 proven beyond any absolute doubt. And there's very little
11 that you can know with absolute certainty. But after your
12 review of the evidence, if you find that you are firmly
13 convinced of the Defendant's guilt, then you must under your
14 oath find him guilty. However, understand, that after your
15 review of all of the evidence you believe that there is a
16 real possibility that the Defendant is not guilty, then you
17 must find him not guilty of the offense.

18 Now, ladies and gentlemen, you will determine whether
19 the State has met its burden of proof by reviewing and
20 analyzing the evidence. You will decide what weight should
21 be put on the evidence. You will decide what's important
22 and what's not important. You will also decide if witnesses
23 were credible, if they were believable. You will decide
24 whether part of their testimony was believable and part may
25 not have been believable. You can look at a witness's

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1 testimony and you can look at any piece of evidence that was
2 introduced in the case and determine what weight or value it
3 has. Now, understand, you can decide that one part of a
4 witness's testimony is very credible and value and then find
5 that another part may not have been credible and valuable.
6 It's entirely up to you. It's entirely in your discretion
7 as the finders of fact.

8 Now, ladies and gentlemen, you heard witnesses who may
9 have had a prior record. Now, that does not disqualify a
10 witness from testifying. All that does is it may lend upon
11 or bear upon a witness's credibility. And you can consider
12 a witness's prior record for purposes of believability and
13 for believability alone.

14 Ladies and gentlemen, ordinarily, you are going to
15 receive evidence in one or two different ways. It falls
16 into two classifications, direct evidence and circumstantial
17 evidence. Now, direct evidence is evidence that immediately
18 establishes a fact to be proven. Circumstantial evidence is
19 proof of collateral facts or a chain of facts when taken
20 together proves the fact to be proven. Now, that's kind of
21 a sterile definition. It may not be meaningful to you and
22 it's not helpful in conceptualizing the difference between
23 direct and circumstantial evidence. So I'm going to give
24 you an example, which I hope helps you conceptualize it a
25 little better.

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1 Let's say one January evening you're going to bed and
2 you walk past your front door or your front window and you
3 look at your front yard and you see that there's no
4 precipitation on the ground, none. You go to bed. You come
5 back the next morning and you walk past that very same
6 window or door and you see on your front lawn a blanket of
7 snow. You also see in your front lawn in that snow
8 footprints which lead to your front door and then lead away.
9 Now, you're got direct evidence that it snowed last night
10 because you've got the snow in front of you. You can see
11 it, you can taste it, you can smell it, you can pick it up.
12 It's direct evidence. It's directly established. But you
13 have circumstantial evidence that sometime early that
14 morning or late that night that somebody walked to your door
15 and walked away. You don't see that person. You can't
16 touch them, you can't smell them, but you know as a
17 consequence of the time period in which the snow fell and
18 the footsteps that come to your door and lead away that they
19 must have necessarily come to your door that night or early
20 morning. That's circumstantial evidence.

21 Now, ladies and gentlemen, the law does not prefer
22 circumstantial evidence over direct evidence or direct
23 evidence over circumstantial evidence. The law makes no
24 distinction, has no preference whatsoever. You decide what
25 value you give direct or circumstantial evidence. However,

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1 I will tell you that to the extent that the State relies on
2 circumstantial evidence, all of the circumstances must be
3 consistent with each other and when taken together points
4 conclusively to the guilt of the accused beyond a reasonable
5 doubt. If the circumstances merely portray the Defendant's
6 behavior as suspicious, the proof has failed.

7 Now, ladies and gentlemen, I'm going to read for you
8 the law as it pertains to each of the charges that are
9 before you. The first charge that's before you is lewd act
10 on a minor. The State must prove beyond a reasonable doubt
11 that the Defendant was over the age of 14. Next, the State
12 must prove that the Defendant willfully and lewdly committed
13 or attempted an lewd or lascivious act on or with the body
14 of its parts of a child under the age of 16 years with the
15 intent to arouse, appeal to, or gratify the lust, passions
16 or sexual desires of the Defendant or the child. Willfully
17 means to voluntary and intentionally with the specific
18 intent to do something the law forbids. Lewd means obscene,
19 lustful, indecent or lecherous. Lascivious means tending to
20 incite lust, lewd, indecent, obscene or tending to deprave
21 the morals in respect to sexual relations.

22 Ladies and gentlemen, the next charge you will be
23 considering is second degree criminal sexual conduct with a
24 minor. Sexual battery is sexual intercourse, cunnilingus,
25 fellatio, anal intercourse or any intrusion, however slight,

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1 of any part of a person's body or of an object into the
2 genital or anal openings of another person's body except for
3 the intrusion as accomplished for medically recognized
4 treatment or diagnostic purposes. The State must then prove
5 beyond a reasonable doubt that the victim was, at least, 11
6 years old, but not more than 14 years old at the time of the
7 sexual battery. Consent, willingness, indifference, or
8 ignorance on the part of the minor, if any, as to what was
9 taking place does not in any way affect the charge of
10 criminal sexual conduct with a minor because an unmarried
11 woman under the age of 14 cannot legally consent to sexual
12 intercourse. Again, the State must prove beyond a
13 reasonable doubt that the Defendant engaged in a sexual
14 battery with the victim. Ladies and gentlemen, I charge
15 that the testimony of a victim in a criminal sexual conduct
16 prosecution need not be corroborated by other testimony or
17 evidence.

18 Ladies and gentlemen, the third charge that you have to
19 consider is contributing to the delinquency of a minor. The
20 Defendant is charged with contributing to the delinquency of
21 a minor. A minor is a person who is less than 18 years old.
22 The State must first prove beyond a reasonable doubt that
23 the Defendant was over 18 years of age. The State must then
24 prove beyond a reasonable doubt that the Defendant knowingly
25 and willfully encouraged, aided, or caused the minor to do

1 any act which caused or influenced the minor to behave in a
2 way which would willfully injure or endanger the minor's
3 morals or health or the morals or health of others.

4 Ladies and gentlemen, the last charge that you will be
5 considering is for grand larceny. The State must prove
6 beyond a reasonable doubt that the Defendant is guilty of
7 carrying away the property of another against the will or
8 without the consent of the other person. The slightest
9 removal of the property or the complete possession of the
10 property even for an instant by the Defendant is enough to
11 show a taking and carrying away of the property. The State
12 must also prove beyond a reasonable doubt that the Defendant
13 intended to permanently deprive the owner of the property.
14 Finally, the State must prove that the value of the thing
15 taken was more than \$2,000.

16 Now, ladies and gentlemen, when you look at your
17 verdict form for grand larceny, you will see that there is
18 an option there for you to consider the lesser included
19 offense of petit larceny. Now, understand, that the
20 elements for petit larceny are the exact same as grand
21 larceny with the exception of the value of the objects or
22 the property alleged to have been taken. With grand
23 larceny, the value is greater than \$2,000. If you find that
24 the value of the property was not greater than \$2,000, then
25 you may consider whether the State has met its burden of

1 proof with respect to petit larceny. And that is that the
2 value of the property was \$2,000 or less. Otherwise, the
3 elements for grand larceny and petit larceny are the exact
4 same.

5 Now, ladies and gentlemen, I'm going to show you these
6 verdict forms. There are four separate and distinct verdict
7 forms as I told you because you have to consider them
8 separately and distinctly. In all instances, on each form
9 on each charge, your verdict must be unanimous, which means
10 you must all agree. There must be 12 people agreeing on the
11 verdict. It can't be 11 to 1 or 10 to 2 or any other
12 combination of numbers which add up to 12. It must be
13 unanimous. Your verdict must be based on the evidence that
14 was presented in trial and must be based on the law as I
15 have given it to you. It cannot be the product of any
16 passion or sympathy or caprice or bias or prejudice. It
17 must be based on the evidence and the law that you have
18 received in trial.

19 So I'm just going to go over one of these for you so
20 that you will have some idea of what you will be receiving
21 in your jury room. And here's the first one, to the charge
22 of criminal sexual conduct with a minor in the second
23 degree, we, the jury, unanimously find the Defendant, Terry
24 McCarrell, two choices, not guilty or guilty. It's very
25 simple. Now, understand, I don't put this in any particular

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1 order. There are two choices. I have to put it in some
2 order. Don't think that I have any preference one way or
3 the other as to what your verdict is by virtue of how I have
4 placed these verdict options. But if you find that the
5 State has not met its burden of proving the Defendant guilty
6 beyond a reasonable doubt as to criminal sexual conduct with
7 a minor in the second degree, check not guilty. If you find
8 that they have, you will check guilty.

9 And then, sir, you will check and sign that's the
10 verdict of the jury.

11 The same is true of all the respective charges. The
12 only difference that you will see on any of these verdict
13 forms is with respect to grand larceny where you have three
14 choices and you must elect among the three. And that is not
15 guilty, guilty of grand larceny, or guilty of the lesser
16 included charge of petit larceny.

17 Now, ladies and gentlemen, I'm going to send you back
18 to your jury room now. I'm not going to instruct you to
19 begin your deliberations quite yet. I'm going to give the
20 attorneys the opportunity to take exception to my charge, to
21 correct something that I may have said, or to advise me of
22 something that I may have failed to say. After I've had the
23 opportunity to have that hearing with these attorneys, then
24 I'll do one of two things. I'll either bring you back out
25 and I'll correct something that I've said or add something,

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1 or I will instruct the bailiff to give you these verdict
2 forms to go with all the evidence that has been introduced
3 in this case and tell them to instruct you to begin your
4 deliberations. Don't start quite yet. Give me a few
5 minutes before you do, okay? Thank you.

6 (WHEREUPON, the jury left the jury room at
7 approximately 12:42 p.m.)

8 THE COURT: Counsel, any exceptions to the charge?

9 MS. BENTLEY: Nothing from the State.

10 MR. STALVEY: No, sir, Your Honor.

11 THE COURT: Good enough. If y'all would do a quick
12 inventory of the exhibits and then when you are satisfied
13 that they are there, hand them to Mr. Ford.

14 And, Mr. Ford, when they give them to you, you can
15 instruct the jury to begin their deliberations. And, Mr.
16 Ford, I need the two alternates. Would you bring them up to
17 my office. And that's Mr. Maccallum and Mr. Sijon. Go
18 ahead and tell them to come up.

19 All right, Counsel, thank you. Y'all did a great job
20 and I appreciate it.

21 (WHEREUPON, the jury began deliberations at
22 approximately 12:45 p.m.)

23 THE COURT: I've been advised that the jury has a
24 verdict. Are we ready to receive the verdict?

25 MS. BENTLEY: Yes, sir, Your Honor.

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1 MR. STALVEY: Yes, sir, Your Honor.

2 THE COURT: Okay. All right.

3 (WHEREUPON, the jury enters the courtroom at
4 approximately 3:08 p.m.)

5 THE COURT: All right. Ladies and gentlemen, I have
6 been advised that the juror has reached unanimous
7 verdicts, Mr. Foreman?

8 THE FOREPERSON: That is correct.

9 THE COURT: Can you pass the verdict forms to the
10 bailiff, please, sir.

11 THE COURT: All right. Madam Clerk, if you publish
12 these, please, ma'am.

13 Verdict

14 THE CLERK: Thank you. Your Honor in the case of
15 2012-GS-23-1662, State vs. Terry L. McCarrell, to the
16 charge of contributing to the delinquency of a minor, we,
17 the jury, unanimously find the Defendant, Terry L.
18 McCarrell, guilty. In the case of 2012-GS-23-2622, to the
19 indictment, we, the jury, unanimously find the Defendant,
20 Terry L. McCarrell, guilty of grand larceny. In the case
21 of 2012-GS-23-968, to the charge of lewd act upon a child,
22 we, the jury, unanimously find the Defendant, Terry L.
23 McCarrell, guilty. In case of 2012-GS-23-967, to the
24 charge of criminal sexual conduct with a minor in the
25 second degree, we, the jury, unanimously find the

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1 Defendant, Terry L. McCarrell, guilty. These are all
2 signed by our Foreperson, Robert N. Tutterow.

3 Ladies and gentlemen, if you agree these are the
4 verdicts you reached in your deliberation room, would you
5 please raise your right hand.

6 (WHEREUPON, all members of the jury panel raised
7 their right hand.)

8 THE COURT: All right. Counsel, anything further
9 from this jury?

10 MS. BENTLEY: Nothing from the State, Your Honor.

11 MR. STALVEY: No, sir, Your Honor.

12 THE COURT: Okay. All right. Ladies and gentlemen,
13 thank you. I appreciate your service on this case. What
14 I'm going to do now is I'm going to have a very brief
15 sentencing hearing. Both the attorneys are going to come
16 forward and give me information that's important for me to
17 know with respect to sentencing. Now, I'm not going to
18 announce the sentence today. The Defendant is not here.
19 A bench warrant has been issued for his arrest. I will
20 enter a sentence. However, I will seal the same and it
21 will be published in open court when he is found and
22 delivered to the Court again.

23 So what I ask you to do is just hold tight for just a
24 few seconds. I'm going to go through the sentencing
25 hearing. Then I'm going to go back to the jury room with

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1 you and let you ask me any questions you may have
2 regarding this jury trial or jury service in general and
3 then I'll dismiss you after that. This sentencing hearing
4 should not take very long. Sometimes I find, though, that
5 it's very enlightening for the jury to hear, at least,
6 that portion of it and, perhaps, some additional factors
7 that weren't introduced into evidence. I don't know if
8 they are because I haven't heard them either. We're about
9 to see.

10 So if y'all would approach, please, for sentencing.

11 MS. BENTLEY: Your Honor, I have three of the four
12 sentencing sheets. I apologize, I did not bring one for
13 contributing to the delinquency of a minor, but I'll get
14 one as soon as possible.

15 THE COURT: All right. I just want to make sure that
16 I am correct, Madam Solicitor, that for criminal sexual
17 conduct with a minor second degree, the maximum possible
18 penalty is 20 years?

19 MS. BENTLEY: Yes, sir, Your Honor.

20 THE COURT: And that's a most serious and violent
21 offense?

22 MS. BENTLEY: Yes, sir.

23 THE COURT: For grand larceny is five years, I
24 understand.

25 MS. BENTLEY: He has prior property crimes, Your

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1 Honor, that would make it 10 years.

2 THE COURT: All right. So, under the enhancement,
3 it's up to 10 years for the lewd act. And I believe
4 that's 10, am I right?

5 MS. BENTLEY: 15, Your Honor, zero to 15.

6 THE COURT: Is that serious and violent?

7 MS. BENTLEY: It is, Your Honor.

8 THE COURT: All right. And With respect to
9 contributing to the delinquency of a minor, what's the
10 maximum possible penalty?

11 MS. BENTLEY: It's three years, Your Honor.

12 THE COURT: All right. Good enough.

13 Is there anything else the State needs to put on the
14 record with respect to sentencing?

15 MS. BENTLEY: Just the prior record, Your Honor. We
16 have a malicious injury to personal property. This is
17 from 2007. He has a federal counterfeiting, Judge, from
18 2007. He has an unlawful drug conviction from 1994. He
19 has a strong armed robbery conviction from 2001. And a
20 failure to return rental property from 2007 as well. And
21 I have all those certified convictions, Judge.

22 THE COURT: Anything further from the State?

23 MS. BENTLEY: Your Honor, I think the facts spoke for
24 themselves. We would ask that the sentence reflect as
25 such.

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1 THE COURT: Okay.

2 Mr. Stalvey, anything from the Defense, sir?

3 MR. STALVEY: Judge, first of all, I would ask -- I'm
4 not even sure what the indictment says on that grand
5 larceny. I don't know if it mentions or reflects a third
6 or subsequent property offense. And I'm pretty sure that
7 has to be indicted, but whether it is or is not, I would
8 ask that you consider a five-year sentence on that or
9 something less just to make it as clean as possible.

10 Your Honor, as far as everything else, Judge, I think
11 you heard a little bit about Mr. McCarrell during the
12 testimony. During the trial, his family has been seated
13 behind defense table. His sister, his mother, his
14 mother-in-law has been here. Of course, you heard from
15 his daughter, Brooklin Pollard, who cares very much for
16 her father. Judge, you know, he's not here. I will tell
17 you that the last conversation I had with him was on
18 Monday morning. And as an officer of the Court, I will
19 honestly tell you, Judge, that he said, I didn't do this.
20 I'm not going to plead guilty to it and I want a trial.
21 So he's had a trial and the jury has come back with their
22 decision and I, certainly, and on behalf of Mr. McCarrell,
23 we respect the jury's decision.

24 He has worked -- he's got a criminal history. He's
25 been in and out of prison most of his adult life. He has

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1 worked -- when he was released most recently, he worked at
2 BMW. He does some construction. Your Honor, he's had a
3 part-time jobs, but helps with his family, takes care of
4 Ms. Pollard's two young kids. They care very much about
5 him. Judge, it is what it is and I'm sure your sentence
6 will reflect what he's been convicted of. I just ask you
7 to take all that into consideration. Certainly, a
8 concurrent sentence would be appreciated, but that's at
9 the discretion of the Court.

10 THE COURT: Thank you, Mr. Stalvey.

11 I've taken into consideration what each of you have
12 said. I've taken into consideration the jury's verdict
13 and the evidence that was entered in trial. I have
14 entered this sentence on here.

15 I'm going to give you the sentencing sheets so you
16 can make sure that I have met all the formalities and
17 issues that I need to correct before this is sealed.
18 Also, I need to get the sentencing sheet on the --

19 MS. BENTLEY: Yes, sir, we're getting it right now.

20 THE COURT: Okay. On the contributing. Now, after
21 you've reviewed these and I've signed the same, I would
22 appreciate you sealing it. But in the meantime, I would
23 appreciate you not letting anyone see it.

24 THE CLERK: No one will see it, I promise.

25 Thank you very much. I appreciate it.

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1 All right. Ladies and gentlemen, if you will retire
2 to your jury room, I'll be back there in just a second.
3 I'm not going to hold you long, I promise you.

4 (WHEREUPON, the jury left the courtroom and excused
5 for the day at approximately 3:20 p.m.)

6 (WHEREUPON, Court was adjourned for the day.)

7 THURSDAY, JULY 10, 2014

8 Sentencing

9 THE COURT: All right. We're back on the record in
10 the case of State vs. Terry L. McCarrell.

11 Good morning, Mr. McCarrell, welcome back. The jury
12 trial was conducted in your absence this week, as I'm sure
13 you know. The jury returned a verdict for guilty on each
14 and every count that was presented by the State. I
15 entered a sentence at the time. However, I sealed it and
16 I didn't publish it because under the standard procedures
17 promulgated by the Court, the sentence is not read until
18 the Defendant shows back up in court. So I've already
19 rendered the sentence. I have no intention of changing
20 the sentencing that I have given before, but I will give
21 you the opportunity to address the Court if you would
22 like. Certainly, you're not compelled to and I'm not
23 excepting you to, but you may and I will afford you that
24 opportunity at this time if you would like to.

25 MR. MCCARRELL: Just things gone on that -- you know,

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1 it ain't what it seemed. I'm a good man. I've had little
2 stuff going on. It ain't really, you know what I'm
3 saying, I put my whole life against this right here. I
4 just want to say, you know, I ain't that kind of guy that
5 they portrayed me to be.

6 THE COURT: That may or may not be true,
7 Mr. McCarrell, and I don't take a position one way or the
8 other. I just wish you had decided to show up at your own
9 trial so that you could have told the jury that. It may
10 have affected things.

11 The sentence of the Court, sir, is that in the case
12 of 2012-1662, for contributing to the delinquency of a
13 minor, the sentence of the Court is that you be committed
14 to the Department of Corrections for a period of three
15 years. On the grand larceny, indictment 2622, five years.
16 On the lewd act, indictment 968, 15 years in the
17 Department of Corrections. On the sexual criminal conduct
18 second degree with a minor, indictment 967, the sentence
19 of the Court is 20 years. All of those are concurrent.
20 You may have credit for any time that you have served on
21 these charges. Also, with respect to the criminal sexual
22 conduct with a minor, you are placed on the central
23 registry for sex offenders in the State of South Carolina
24 pursuant to the statute. Good luck to you, sir.

25 MR. STALVEY: Thank you, Your Honor.

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1 MS. BENTLEY: Thank you.

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CERTIFICATE OF REPORTER

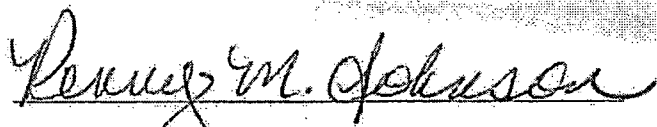
STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

I, PENNY M. JOHNSON, Official Court Reporter for the
Second 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 the
evidence introduced in the trial of the captioned case,
relative to appeal, in Court of General Sessions for
Greenville County, South Carolina, on the 7th, 8th and 10th
of July, 2014.

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

November 26, 2014



Penny M. Johnson Court Reporter

My Commission Expires: 06/16/2018

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STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

) COURT OF COMMON PLEAS
) 2016-CP-23-01089
)
)
)

ORIGINAL

TERRY L. MCCARRELL)

APPLICANT)

vs.)

) TRANSCRIPT OF RECORD
)

THE STATE OF SOUTH CAROLINA)

RESPONDENT)

February 23, 2017
Greenville, South Carolina

B E F O R E :

THE HONORABLE BROOKS P. GOLDSMITH, Judge.

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

WILLIAM G. YARBOROUGH, III, ESQ.
Attorney for the Applicant

JULIE COLEMAN, ESQ.
Attorney for the Respondent

APRIL HERRON
Official Court Reporter

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1 THE COURT: Whenever y'all are ready, I'm ready.

2 MS. COLEMAN: May it please the Court. This is

3 Terry McCarrell vs. The State of South Carolina,

4 2016-CP-23-1089. The Applicant is currently

5 incarcerated with the South Carolina Department of

6 Corrections pursuant to the Greenville County Clerk

7 or Court's Orders of Commitment. The Applicant was

8 indicted by the February 2013 term of the Greenville

9 County Grand Jury for criminal sexual conduct first

10 degree and lewd act upon a child. Applicant was

11 subsequently indicted by the June 2014 term of the

12 Greenville County jury for contributing to the

13 delinquency of a minor and grand larceny. Alex

14 Stalvey, Esquire represented him.

15 On July 7th, 8th and 10th, 2014, Applicant

16 proceeded to a jury trial at which he was found

17 guilty as indicted on all charges. The Honorable

18 Robin B. Stilwell sentenced Applicant to confinement

19 for 20 years for CSC first, 15 years for lewd act

20 upon a child, three years for contributing to the

21 delinquency of a minor and five years for grand

22 larceny. The sentences were set to run concurrently.

23 A notice of appeal was filed on Applicant's behalf

24 and a Anders brief was filed. The South Carolina

25 Court of Appeals dismissed Applicant's appeal after

1 review. The remitter was issued on January 9th,
2 2016.

3 Applicant filed a timely application for
4 Post-conviction Relief on February 22, 2016, alleging
5 ineffective assistance of counsel. The State filed
6 its return and motion for more definite statement on
7 August 16th, 2016. And I don't believe that an
8 amendment was ever filed but we're going forward on
9 the original -- or allegations in his application
10 today. And he is present today and represented by
11 Mr. Yarborough.

12 THE COURT: Mr. Yarborough.

13 MR. YARBOROUGH: Your Honor, if the Court
14 please, I think she's correctly outlined the issues
15 before the Court. I would start -- you ready to
16 proceed I can call Mr. Salvini [verbatim].

17 MR. STALVEY: Stalvey.

18 MR. YARBOROUGH: Stalvey. I was trying to
19 pronounce his last name. I would call Alex Stalvey.

20 THE COURT: All right.

21 THE CLERK: Mr. Stalvey.

22 MR. STALVEY: Yes, ma'am.

23 THE CLERK: Please place your left hand on the
24 Bible and raise your right hand.

25 ALEX STALVEY, after being duly sworn,

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ALEX STALVEY-DIRECT BY MR. YARBOROUGH

1 testified as follows:

2 THE CLERK: Thank you. Please state your full
3 name for the record.

4 THE WITNESS: Alexander Rollinson Stalvey.

5 THE CLERK: Thank you, you may be seated.

6 DIRECT EXAMINATION

7 BY MR. YARBOROUGH:

8 Q Alex, state your name for the record.

9 A Alexander Rollinson Stalvey.

10 Q You practice law in Greenville?

11 A Yes, sir.

12 Q And did you at some point become the
13 representative of Mr. McCarrell, Terry McCarrell?

14 A Yes, sir.

15 Q Do you remember how that happened or how that --
16 how you became his attorney?

17 A Yes, I was -- at the time I was practicing -- I
18 was in private practice and I was also on a part-time
19 public defender contract with the Greenville County Public
20 Defender's Office. As part of that contract I was
21 appointed several cases, one of which was Mr. McCarrell's.

22 Q Okay. And can you recall having met -- what day
23 you first were appointed or when you met Mr. McCarrell?

24 A I can't remember specific dates. I remember
25 meeting with Mr. McCarrell at least once before our trial.

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1 And discussing the offer that The State had made.
2 Mr. McCarrell, I remember him telling me that he didn't do
3 what they were accusing him of doing. And that he wanted
4 a trial on the charges. So, after that meeting the next
5 time we saw each other was for the trial.

6 Q Okay.

7 A When that started.

8 Q Okay. If this helps your recollection, do you
9 recall that's when you were appointed sometime around
10 June 28th or that's when you would have come to see him at
11 the jail?

12 A Yes, sir.

13 Q Okay. And that's like nine days, ten days
14 before the case actually went to trial, if I'm correct?

15 A I can't remember if it was that short of a time.
16 I mean, I feel like I had the case for longer than that.
17 Because I did have some significant discussions with the
18 prosecutor, Lisa Bentley, in the case as far as trying to
19 negotiate something.

20 Q Right. Well, if the trial was held June 7th and
21 8th and 9th -- or July 7th, 8th and 9th; correct?

22 A Correct.

23 Q Okay. And do you have any recollection of
24 meeting with Mr. McCarrell on the 28th of June? Do you
25 know if he came to your office?

ALEX STALVEY-DIRECT BY MR. YARBOROUGH

1 A I remember our last meeting would have been
2 about that time. Would have been about a week before the
3 trial.

4 Q Right.

5 A And I do remember him coming to the Public
6 Defender's Office and us meeting in the conference room
7 there.

8 Q Are you familiar that prior to that, Brian
9 Johnson, a lawyer in Greenville, was representing
10 Mr. McCarrell?

11 A I remember another lawyer was representing him
12 that was on the public defender contract. And if you say
13 it was Brian Johnson then I have no doubt that it was.

14 Q Okay.

15 A I just can't remember.

16 Q Do you have any recollection of meeting with
17 Mr. Johnson or talking with Mr. Johnson?

18 A No, sir.

19 Q Okay. And so, basically, you're given a pretty
20 significant case sometime in June that's going to trial
21 sometime in July? I mean, that's the nature of being a
22 public defender?

23 A Yes, sir.

24 Q And did you have much of a relationship with
25 Mr. McCarrell at that point?

1 A No, sir.

2 Q Okay. Did you feel a need to ask for a
3 continuance?

4 A Mr. Yarborough, if I didn't ask for it, then I
5 didn't feel a need to.

6 Q Okay. Yeah.

7 A I can't remember if I did or not to be totally
8 honest with you. But if I did not ask for a continuance,
9 then I didn't think I needed one.

10 Q All right. Well, there was -- there was a girl
11 that was -- the alleged victim, do you recall her?

12 A I do recall her.

13 Q Okay. And are you familiar that she had a
14 pretty significant juvenile history?

15 A Yes, sir.

16 Q All right. Were you able to get that
17 information?

18 A I may have, I can't remember if I had that
19 information. I know that I probably wouldn't have been
20 able to get into that during the trial. But I do remember
21 her having a juvenile record. I do remember her -- one of
22 the main issues in the trial is she was accused of
23 stealing some jewelry from the nextdoor neighbor. So, I
24 remember knowing that that wasn't her first time
25 potentially committing a crime, was stealing the jewelry.

ALEX STALVEY-DIRECT BY MR. YARBOROUGH

1 I know she had done some stuff in the past.

2 Q Okay. And I think that's what I was trying to
3 get to is that not only is there a case going on where
4 there's a lewd act charge and a CSC second with a minor,
5 but there's also this grand larceny case going on at the
6 same time?

7 A Yes, sir.

8 Q Okay. And did you -- did you move to sever that
9 grand larceny case?

10 A No, sir.

11 Q Okay. Why? Why didn't you move to sever?

12 A Well, my thinking was with the grand larceny,
13 with that still being in the case, and the victim being
14 involved in the grand larceny, it really -- I mean, that
15 was part of my defense was that the only reason that the
16 victim made up these allegations was to try to save
17 herself or give herself some excuse to get out of the
18 grand larceny charge. You know, she was -- her whole
19 story, if I remember correctly was, that she was with
20 Mr. McCarrell, Mr. McCarrell influenced her in some way to
21 steal these items from the neighbor. And that's why she
22 stole the items.

23 When they caught her, you know, they
24 basically caught her red handed. And that's when the
25 whole relationship with Mr. McCarrell came out. So, I

1 basically figured, you know, the grand larceny was her way
2 of -- she was charged with grand larceny and in order to
3 get out of it, she had to accuse Mr. McCarrell of these
4 acts. So, she looked like the victim. It was not
5 actually the Defendant in a grand larceny case.

6 Q Right. But I mean, didn't that, at trial,
7 didn't that tend to tie Mr. McCarrell to something that he
8 said he wasn't involved in?

9 A It did. But I thought that was -- that was less
10 significant than what he was accused of, which was a lewd
11 act.

12 Q Right. But they would have clearly been
13 severable?

14 A Sure. Absolutely.

15 Q All right. And did you discuss with
16 Mr. McCarrell that he had an opportunity to have that case
17 severed?

18 A I can't remember discussing that with him.

19 Q Okay. Now, were you able to talk to
20 Mr. McCarrell's mother, who is seated in the courtroom?

21 A I can't remember speaking with her.

22 Q Okay. How about a Ms. Pollard, the woman that
23 owned the phone, do you remember the phone being involved
24 in this case?

25 A I do remember a phone being involved in the case

1 but I don't remember being able to speak to whoever had
2 the phone.

3 Q Right. Did Mr. McCarrell tell you that it
4 wasn't his phone?

5 A I can't remember what he told me about the
6 phone. The phone, if I'm remembering right, I thought the
7 phone belonged to the victim. She was saying there was
8 some text messages between she and Mr. McCarrell. I can't
9 remember if they actually found anything on a phone
10 belonging to Mr. McCarrell or not but. So, I -- I don't
11 know if that answers your question but.

12 Q Okay. Did you feel like you had enough time to
13 prepare for this case to being -- having it -- being
14 appointed and then going in about a nine or ten day period
15 or a couple week period?

16 A I felt like I was well prepared. I did not feel
17 like I needed more time to do anything. I mean, the
18 decision not to sever the cases was certainly a decision
19 that I made. And I didn't -- and I'll tell you right now,
20 even if I would have talked to Mr. McCarrell, he would
21 have said, No, I want you to sever them, I probably still
22 would have gone forward with not severing them. Because
23 that would have been a trial strategy that was my decision
24 and not his.

25 Q Right.

1 A And if that was a mistake, then that would have
2 been my mistake alone.

3 Q Okay. I mean, we all -- I'm not trying to
4 criticize you, we all make decisions. I'm just -- my --
5 do you have any recollection how many times you had a
6 chance to talk to Mr. McCarrell?

7 A I know we talked that one time before trial.
8 And I feel like we talked maybe two times prior to that.
9 For some reason, and I can't, it's been a long time, but I
10 feel like Mr. McCarrell was in jail for our previous two
11 discussions. And then he got released. I think he made
12 bond prior to trial. And that's when I met with him over
13 at the Public Defender's Office.

14 Q Okay. But when he was in jail, wasn't
15 Mr. Johnson, Brian Johnson, representing him?

16 A At some point, yes, sir.

17 Q Okay.

18 Just a second, Your Honor.

19 And so, you don't recall about the
20 severance? That that was a -- what about -- there was a
21 photo lineup that was done during the trial, did you move
22 to suppress the admission of the photo lineup?

23 A Yes, sir.

24 Q Okay. What -- can you tell us about that?

25 A I'd have to review the transcript to tell you

1 exactly what my argument was on that. But I mean, I
2 vaguely remember challenging it. Based on, you know, I
3 guess, standard challenges to a photo lineup. That, you
4 know, the other photos in the lineup were not -- that
5 Mr. McCarrell's photo was more distinguishable than the
6 other photos that were included in the lineup. I remember
7 something about -- there was something about the facial
8 hair.

9 Q Right.

10 A In the photo lineup that that made Mr. McCarrell
11 stand out more than the other people that were in there, I
12 do remember that.

13 Q Sure. Did argue that or do you recall?

14 A I thought I did.

15 Q Yeah. Okay. But the record would speak for
16 itself?

17 A Yes, sir.

18 Q Did -- did you feel like -- I mean, what
19 happened where Mr. McCarrell wasn't there? I guess, do
20 you recall that?

21 A I definitely recall that.

22 Q Yeah. So, did you ask Judge Stilwell at that
23 point to grant a continuance and not try him in his
24 absence?

25 A I don't remember if I asked for a continuance.

1 I mean, I remember -- I was meeting with Mr. McCarrell in
2 one of the conference rooms behind the courtroom. And the
3 was -- the jury panel was walking down the hall. And the
4 jury panel walked through the doors and were seated. And
5 we were getting ready to pick the jury. So, I walked
6 through the door into the courtroom and I expected
7 Mr. McCarrell to be walking right behind me and that
8 didn't happen. Then I went back to look for Mr. McCarrell
9 and he was gone. So, again, I can't remember if I asked
10 for a continuance or not, the record would speak for
11 itself.

12 Q Right.

13 A But, obviously, it was not. If I did, it was
14 not granted and we went forward.

15 Q Did Mr. McCarrell tell you at that point that he
16 just didn't -- he didn't know -- he didn't know you well
17 enough or didn't feel like you knew enough about the case
18 to try it?

19 A No, he didn't tell me that.

20 Q Did his mother tell you that?

21 A I don't remember her saying that. I don't
22 remember there being any reason given to me why
23 Mr. McCarrell left.

24 Q Okay. Do you remember how Mr. Johnson got out
25 of the case? Or I guess I'm. . .

ALEX STALVEY-DIRECT BY MR. YARBOROUGH

1 A I don't recall. I mean, I don't want to assume
2 but I will. Usually down in the Public Defender's Office
3 on these part-time contracts, if one lawyer leaves, which
4 Mr. Johnson may have done at that time, then all that
5 lawyer's cases are transferred to other lawyers in the
6 office. So, I never talked to Brian Johnson about
7 Mr. McCarrell's case. It probably just got reassigned to
8 me.

9 Q Right.

10 A And I got the file.

11 Q Well, if -- couldn't that have been a place to
12 start to kind of get, since you were running out of time
13 getting ready for trial, wouldn't that have been a place
14 the start to talk to Mr. Johnson about what his trial
15 strategies were and any evidence that might be available
16 or?

17 A Mr. Yarborough, I felt like I had a good enough
18 trial strategy, I didn't need to ask anybody else.

19 Q Well, what was that trial strategy, do you
20 remember?

21 A Well, I mean, the not severing the cases would
22 have been one.

23 Q Right.

24 A But -- and I can't remember exactly what it was.
25 Challenging the credibility of the victim certainly was

1 one.

2 Q Sure.

3 A I mean, I think she had lied about the stolen
4 jewelry items. And she had a reason to try to throw
5 Mr. McCarrell under the bus, for lack of a better term.
6 So, she had a motive to lie. She had lied in the past. I
7 think I had got some of that out on cross-examination. I
8 didn't ask her about the juvenile record but I did ask her
9 about some prior credibility issues. So, I had enough, I
10 thought, that would establish reasonable doubt with a
11 couple of the jurors. Based on the victim's prior
12 credibility issues. And based on the fact that the victim
13 had a motive to lie and to implicate Mr. McCarrell in this
14 case.

15 Q Okay. Do you recall what that motive to lie
16 was?

17 A Well, that she, you know, she got caught
18 stealing this jewelry from the neighbor.

19 Q Right.

20 A And she was with Mr. McCarrell, so she says, you
21 know, he made me do it. Which was completely untrue. She
22 did it, you know, she did it under her own freewill. I
23 remember that clearly. You know, it was just a young
24 teenager that knew exactly what she was doing, got caught
25 and was blaming it on somebody else to get out of trouble.

1 Which she had done her entire life.

2 Q I guess that's where my question becomes is, I
3 mean, hindsight is 20/20, but do you think now that a
4 severance motion maybe would have helped?

5 A Maybe there could have been a way, now that I
6 think back about it and I thought about it, there could
7 have been a way to raise all those issues even if the
8 grand larceny had been severed, maybe. But if there was
9 any -- if there was any mistake that I made in the case,
10 that could have been it, trying to figure out a way to
11 raise all those issue without -- with the case being
12 severed, with the grand larceny being severed, so.

13 Q Now, and that brings up -- there were a couple
14 of -- there were photo lineups that were done that we
15 talked about before with the grand larceny. Do you recall
16 those photo lineups during the trial? Would they speak
17 for themselves?

18 A They would speak for themselves.

19 Q Okay. And did -- your recollection, did you
20 challenge the different appearance from the different
21 people placed in the lineup? There were six people put in
22 the lineup originally and they all, except for
23 Mr. McCarrell, were darker skin and he's lighter skin; do
24 you recall that?

25 A Mr. Yarborough, I can't recall that. If I

1 raised it as an issue in challenging the photo lineup,
2 again, the record would have to reflect that. But I can't
3 recall exactly that being an issue. I mean, that would be
4 certainly an issue that I would have raised if you had
5 five individuals of darker complexion than the Defendant.

6 Q Right. And that photo lineup was done during
7 the -- looking into the criminal sexual conduct case,
8 right?

9 A Right.

10 Q Okay. Then there was another lineup that was
11 done that had to do with the grand larceny or was it just
12 two mug shots that were shown? Do you recall that?

13 A I can't recall if -- I think -- I think because
14 he wasn't there, they had a mug shot of him that the
15 victim identified, maybe.

16 Q Okay.

17 A As being the person who did it.

18 Q And so, that's what I'm saying, did that kind of
19 spillover into there were two things going on at the same
20 time. There was this grand larceny and this CSC with a
21 minor and they're both kind of snowballing at the
22 Defendant. And if the cases would have been severed,
23 would you agree that that might not have happened?

24 A I would agree with that.

25 Q Okay. And that was a trial strategy you

1 deplored?

2 A Yes, sir.

3 Q Okay. Do you recall, was there an appeal done
4 in this case, do you know? Is it your practice to file
5 appeals back then in the or?

6 A I may have filed a Notice of Appeal but I can't
7 remember if I did in this case.

8 Q Okay. What was the common practice in the
9 Public Defender's Office?

10 A The common practice is always to file a Notice
11 of Appeal, then the Office of Appellate Defense takes the
12 case over.

13 Q Okay. And then they take it. And you have no
14 recollection of meeting with Mr. McCarrell -- said you
15 think you might have met with him at the jail?

16 A Prior to the trial, yes, sir.

17 Q Okay. Do you know how he ended up getting out?
18 I mean, if you met with him at the jail?

19 A He would have had to have made bond.

20 Q Okay. But I'm just -- between the time you were
21 appointed on the 28th and then the trial began on the 5th
22 of July 5th, I think that's right, 5th, 6th and 7th of
23 July. Let me double check those dates. Do you recall how
24 that would have happened?

25 A No, sir. But I feel like I was appointed a

ALEX STALVEY-CROSS BY MS. COLEMAN

1 little bit sooner than that. But I. . .

2 Q Okay. And you don't -- you don't recall asking
3 for a continuance after Mr. McCarrell wasn't there?

4 A I don't, no, sir.

5 Q Okay.

6 I don't think I have any further questions
7 at this time, Your Honor. I may ask to be able to recall
8 him later.

9 THE COURT: Certainly.

10 Cross-examination.

11 MS. COLEMAN: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. COLEMAN:

14 Q Good morning, Mr. Stalvey.

15 A Good morning.

16 Q Can you just tell us, and you probably have a
17 little bit, but will you please tell us the facts of this
18 case as The State presented them?

19 A Yeah, I'll try to. If I'm remembering
20 correctly, they came out originally to investigate a
21 larceny involving the victim. They went over and met with
22 the victim. And for some reason looked at the victim's
23 phone. I think that had something to do with the victim
24 being a suspect in stealing some jewelry or a watch or
25 something like that from a neighbor. Then they looked on

1 her phone and they found some text messages between she
2 and another individual who she said was Terry McCarrell.
3 And they were messages that would indicate a relationship
4 between the two.

5 So, at that point they asked her some more
6 questions about that, that led them to their investigation
7 into Mr. McCarrell for the lewd act or the CSC. Which the
8 victim told them about. Told the investigators about.
9 And that's how the case came about.

10 Q Okay. Thank you. So, the Applicant was tried
11 in his absence, correct?

12 A Yes.

13 Q Okay. Did you file any Rule 5 or Brady motions?

14 A I did.

15 Q Did you review the discovery material with the
16 Applicant?

17 A I did.

18 Q Yes. Did you discuss the elements of the
19 charges and what The State was required to prove with the
20 Applicant?

21 A Yes, ma'am.

22 Q Did you discuss the Applicant's versions of the
23 facts?

24 A Yes, ma'am.

25 Q What were those?

1 A That he didn't do what the victim said he did.
2 That he had never touched her inappropriately or had any
3 kind of sexual relationship with her.

4 Q Okay. Did he tell you that he was involved at
5 all in the grand larceny?

6 A I believe he denied being involved in that too.

7 Q Would you briefly describe The State's evidence
8 against the Applicant.

9 A It was pretty much just the testimony of the
10 victim. And I can't remember. There was, obviously,
11 there was a photo lineup involved that may have been one
12 of the neighbors who described him, Mr. McCarrell, being
13 with the victim over at the house that day. So, I think
14 there was some testimony from other witnesses who had seen
15 Mr. McCarrell with the victim. And I think if I remember
16 correctly Mr. McCarrell made have had a relationship or
17 been friends with the victim's mother. So, there was --
18 there would have been some testimony or evidence that
19 established there was some connection between
20 Mr. McCarrell and the victim. But the only evidence that
21 there was any kind of inappropriate relationship or
22 contact between Mr. McCarrell and the victim would have
23 been based on the victim's testimony and that's it.

24 Q Okay. And the victim of criminal sexual
25 conduct, she was 13 years old at the time of this crime;

1 is that right?

2 A I can't remember. She was a minor.

3 Q Okay.

4 A I can't remember how old she was.

5 Q Okay. Do you remember much else about her
6 background?

7 A I do remember she had a troubled background. I
8 do remember that she -- when she was being investigated
9 for a grand larceny, that it was not the first time that
10 she had been in trouble or a suspect in a criminal
11 investigation. She had a troubled past. And I believe
12 she had lied to authorities prior to this time, so.

13 Q And she had a daughter at the age of 12; is that
14 right?

15 A She may have, I can't remember.

16 Q And all of this was brought out at trial by the
17 victim herself, wasn't it?

18 A It could have.

19 Q And if you want to see the transcript I'm happy
20 to refresh your recollection at any point just stop me if
21 you'd like to see it.

22 A Yes, ma'am.

23 Q But would you agree with me if I said that in
24 the transcript the victim took the stand and testified
25 about her troubled past and all of the crimes that she had

1 been convicted of previously?

2 A Sure.

3 Q Okay. Do you recall how old the Applicant was
4 at the time of the alleged crime?

5 A I don't, no, ma'am.

6 Q Would you agree if I said that the transcript
7 reflected that he was 48 years old?

8 A Sure.

9 Q And the victim testified about her friendship or
10 whatever kind of relationship that she had with this 48
11 year old man, correct?

12 A Yes, ma'am.

13 Q Okay. Now, as far as the grand larceny goes,
14 the victim of the larceny, she accused Mr. McCarrell of
15 stealing her wedding rings; is that correct?

16 A Correct.

17 Q And so, the victim -- or actually, I guess, the
18 victim's husband, who was present at the house when it
19 happened, he identified Mr. McCarrell from the photo
20 lineup?

21 A Correct.

22 Q Okay. And do you recall how long he said he had
23 gotten to know Mr. McCarrell before or while this incident
24 was happening?

25 A I don't.

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1 Q Okay. Would you agree with me that if I said
2 that the transcript reflects that he had invited them into
3 his home for somewhere from 30 minutes to an hour and he
4 had spoken to him and met him and knew his name?

5 A That is correct.

6 Q Okay. And he identified him to the police
7 immediately after the event happened; is that correct?

8 A Yes, ma'am.

9 Q And then he later, a couple of weeks later, came
10 in and picked him from the photo lineup?

11 A Yes, ma'am.

12 Q Okay. The victim also identified the Applicant,
13 didn't she?

14 A She did.

15 Q Okay. And she identified him by name and --
16 well she identified him by his name?

17 A That's correct.

18 Q Okay. And she claimed to have spent quiet a bit
19 of time with Mr. McCarrell, correct?

20 A Correct.

21 Q Okay. And was there a Neil vs. Biggers hearing
22 before the trial?

23 A I can't remember.

24 Q Okay.

25 A I'm not good with -- I should know what a Neil

1 vs. Biggers is, what that's supposed to challenge. But
2 I've never been good about remembering those types of
3 things.

4 Q Well, that's fine. Would you agree with me if
5 the record stated that there was a hearing over the photo
6 lineup where you disputed that?

7 A If a Neil vs. Biggers is challenging a photo
8 lineup up then that's what I did, yes, ma'am.

9 Q Okay. Thank you. And the Judge denied your
10 motion to suppress this photo lineup?

11 A Yes, ma'am.

12 Q Okay. In your opinion, if there had been
13 another photo lineup with different photographs of other
14 suspects, do you believe that the victims in this case
15 still would have been able to identify Mr. McCarrell?

16 A Definitely. I mean, the victims would have
17 definitely been able to identify him because they knew him
18 from, I mean, from being around, so.

19 Q So, do you believe that this photo lineup
20 changed the outcome of the case?

21 A No.

22 Q Okay.

23 A I mean, I don't think identifying the Applicant
24 was an issue in the case. I think it was more of a
25 credibility issue as far as what the victim was saying. I

1 mean, I still don't know if the victim was telling the
2 truth when she testified.

3 Q Okay.

4 A Obviously, the jury thought that she was.

5 Q Okay. The minor victim pled guilty to grand
6 larceny; is that correct?

7 A I don't have any idea, I can't. . .

8 Q Okay. What kind of investigation did you do for
9 the Applicant?

10 A Well, I spoke with him. As far as -- I never
11 went out to the scene. I don't know if that would have
12 done much good. I do remember pulling her juvenile
13 records or maybe her DSS records. So, I looked into some
14 of that. As far as trying to figure out some previous
15 times that she had lied. So, I looked into some of the
16 victim's history in Family Court.

17 Q Did the Applicant give you any potential
18 witnesses to investigate?

19 A No, ma'am.

20 Q Okay. One of the stolen rings was turned into
21 law enforcement after the Applicant was arrested, do you
22 recall who turned the ring over?

23 A I can't remember.

24 Q Okay. Would you agree with me if the transcript
25 states that it was Ms. Pollard, I believe, who was the

1 daughter of the Applicant?

2 A That's right, yes.

3 Q Okay.

4 A I do agree with that.

5 Q Okay. Do you recall how it got into her
6 possession?

7 A I do. It was -- the victim gave Ms. Pollard the
8 ring and Ms. Pollard called the people and said -- or
9 called the owner of the ring and basically said, I've got
10 this ring for you. The actual victim of the CSC did not
11 want to hand over the ring. They wanted a intermediary to
12 do that. I remember that part of it. Which, I mean, kind
13 of goes to show you that the victim was at least smart
14 enough or intelligent enough to try to create a buffer
15 between her and the larceny of the ring.

16 Q Okay. And all of that was discussed at trial,
17 right?

18 A Yes, ma'am.

19 Q Okay.

20 MS. COLEMAN: Beg the Court's indulgence one
21 moment, please.

22 THE COURT: Certainly.

23 BY MS. COLEMAN:

24 Q I might have already asked you this but the
25 victim's juvenile record was all discussed at the trial,

ALEX STALVEY-REDIRECT BY MR. YARBOROUGH

1 correct?

2 A Well, I doubt that I would have been able to --
3 well the record will show, I can't remember. I'm sure
4 they objected to me actually asking the juvenile about her
5 record, specifically. I probably asked some credibility
6 questions as far as the background of her juvenile record
7 but I don't --

8 Q But she -- sorry, go ahead.

9 A Well, I mean, I just -- well you've read the
10 transcript more recently than I have, so.

11 Q Okay. She testified about her own personal
12 background.

13 A Okay.

14 Q And last question, she -- the victim admitted on
15 the stand that she lied about being pregnant to avoid the
16 blame for these rings, correct?

17 A Correct.

18 Q Okay, thank you.

19 No further questions.

20 THE COURT: Redirect?

21 MR. YARBOROUGH: Yes, sir, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. YARBOROUGH:

24 Q Talking about the Jackson Biggers hearing.

25 THE COURT: Neal Biggers.

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ALEX STALVEY-REDIRECT BY MR. YARBOROUGH

1 MR. YARBOROUGH: May I approach?

2 THE COURT: Certainly.

3 BY MR. YARBOROUGH:

4 Q Okay. Does that refresh your -- you recognize
5 that?

6 A Yes, sir.

7 Q Do you know what that is?

8 A This would be a photo lineup that was introduced
9 at the trial.

10 Q Okay. Was that part of the, what you're talking
11 about, the Biggers hearing?

12 A Yes, sir.

13 Q Okay. Does that fairly and accurately represent
14 the photo lineup that was presented at trial?

15 A Yes, sir.

16 Q Okay.

17 Your Honor, I move this into evidence as
18 Defendants -- I'm not defense I'm --

19 THE COURT: You're the Applicant.

20 MR. YARBOROUGH: The Applicant -- Applicant's
21 Exhibit No. 1.

22 THE COURT: Without objection?

23 MS. COLEMAN: Without objection, Your Honor.

24 MR. YARBOROUGH: Thank you.

25

ALEX STALVEY-REDIRECT BY MR. YARBOROUGH

1 (WHEREUPON, Applicant's Exhibit No. 1 was marked
2 for identification and received into evidence.)

3 BY MR. YARBOROUGH:

4 Q I show you Applicant's Exhibit 1.

5 A Yes, sir.

6 Q Did you feel like that fairly -- was a fair
7 photo lineup?

8 A No, sir.

9 Q Okay. And do you recall the hearing on that?

10 A Vaguely.

11 Q Okay. I mean, I guess my question is did you
12 object to the -- to the people looking so much like -- or
13 Mr. McCarrell looking so different than everybody else in
14 there?

15 A I can't remember if I did or not. I mean, I'd
16 have to look at the transcript. If I did. I mean, if I
17 didn't, I should have.

18 Q Okay. But it would -- that's it. That's what
19 you recall?

20 A Right, yes, sir.

21 Q And if you -- if you review it, now that you've
22 reviewed it, does it -- does it appear to be a fair photo
23 lineup? In your opinion?

24 A I would say no. It appears that one of or two
25 of the individuals are darker complexion than

1 Mr. McCarrell. It appears Mr. McCarrell has a mustache
2 while four out of the six individuals have goatees. Those
3 would be the two things that stand out to me right now.

4 Q Do you know if you had an opportunity to review
5 that with Mr. McCarrell before trial?

6 A When we met we would have reviewed it. I mean,
7 that would have been something that we would have gone
8 over.

9 Q Okay. But do you have any independent
10 recollection of meeting with him?

11 A I definitely met with him. I can't specifically
12 remember viewing this.

13 Q Do you recall, and I think she asked you about
14 the cell phones, do you recall getting the cell phone
15 records as far as the discovery when she asked you about
16 the Rule 5 discovery; do you recall getting the cell phone
17 records?

18 A No, I don't recall getting the cell phone
19 records.

20 Q Okay. Do you recall the cell phone records
21 being admitted into evidence during the trial?

22 A I can't recall if they were or not.

23 Q Okay. If I show you these, would that help?

24 A Yes, sir.

25 Q Your recollection?

1 A Yes, sir.

2 Q Okay. And that is -- what is that that you're
3 looking at?

4 A It's a consent to search computers, slash cell
5 phone devices that is issued by the Greenville County
6 Sheriff's Office. And it appears that the consent has
7 been signed by Brooklyn Pollard, who was the victim in the
8 case. Which would have given her -- given law enforcement
9 permission to search her cell phone. It appears it was a
10 T-Mobile Samsung Galaxy cell phone, has the model number
11 here.

12 Q Okay. And --

13 Without objection? Can I move those in?

14 THE COURT: Without objection?

15 MS. COLEMAN: Without objection.

16 MR. YARBOROUGH: I'll have that marked as
17 Applicant's Exhibit 2. And I will be quiet.

18 (WHEREUPON, Applicant's Exhibit No. 2 was marked
19 for identification and received into evidence.)

20 MR. YARBOROUGH: Your Honor, for the record, I'm
21 marking Applicant's Exhibit 2, which is the consent
22 to search and the records themselves.

23 THE COURT: Okay.

24 BY MR. YARBOROUGH:

25 Q Let me hand you back Applicant's Exhibit 2. Do

1 you recall having those prior to trial?

2 A Mr. Yarborough, I do -- I do have some
3 recollection of having these prior to trial. If they were
4 in the discovery then I certainly had them.

5 Q Well, I guess my question is, not only was it
6 not in the discovery but was it also admitted into
7 evidence as far as the Rule 5 discovery? Well, first it
8 was given to you in Rule 5 discovery, which she asked you
9 about, then I'm asking you to look at the front of it, was
10 it also admitted into evidence?

11 A Yes, sir.

12 Q Okay. It was admitted into evidence during the
13 trial?

14 A Yes, sir.

15 Q And was it referred to at length during the
16 trial of the case?

17 A Yes, sir.

18 Q Okay. And it was -- it was -- between the ring
19 getting tide in with the -- into the case, bringing the --
20 connecting the Applicant to the alleged victim, but those
21 phone records also tide him to her, is that?

22 A Yes, sir.

23 Q Allegedly. Now, did you have a chance to talk
24 to the Applicant about those phone records?

25 A I can't remember if I talked to him about the

1 phone records or not.

2 Q Okay. And I guess my -- my next question is,
3 are you aware that someone else used that -- was using
4 that phone throughout this -- prior to the Applicant being
5 arrested?

6 A No, I was not aware that someone else was using
7 that phone.

8 Q Okay. Do you recall the Applicant or his mother
9 telling you that?

10 A I can't recall that now that I'm trying to --

11 Q I know it was a long time ago.

12 A It was a long time ago. And I'm looking through
13 these and I am starting to remember. Maybe they did tell
14 me that somebody else had access to this phone. Because
15 as I'm going through them, I'm starting to remember them
16 possibly telling me. But I can't remember if he -- if he
17 says that that's what he told me, then I have no reason to
18 doubt that he's telling the truth. And I'm referring to
19 the Applicant.

20 Q And it's safe to say that Mr. Johnson would have
21 had those records with him for 18, 19 months prior to this
22 trial, right?

23 A Yes, sir.

24 Q Okay. And the bulk of the original work, with
25 the Rule 5 discovery, would have been done between

1 Mr. Johnson and Mr. McCarrell?

2 A Yes, sir.

3 Q Okay. And if one of the -- the text messages
4 were admitted at different times during the trial,
5 correct?

6 A Yes, sir.

7 Q Okay. And one of those text messages tide
8 Mr. McCarrell to the alleged victim; is that right?

9 A Yes, sir.

10 Q Okay. And did you know that at the time of that
11 text message, Mr. McCarrell was actually -- had been in
12 jail for the rings?

13 A I didn't know that.

14 Q You did or did not?

15 A I did not.

16 Q Okay. And that would have -- if that was the
17 case, that would have effected whether or not you would
18 have objected to the -- to the text messages coming in or
19 not, right?

20 A It could have. And I'll tell you that because
21 it was so long ago, if I raised it in my
22 cross-examination, which the transcript would reflect,
23 then I did know about it and it is an issue. If I didn't
24 raise it, then I -- it was -- was not -- I was not aware
25 of it.

ALEX STALVEY-REDIRECT BY MR. YARBOROUGH

1 Q Sure. Well, it would have been hard with --
2 to -- with everything rushing towards trial, it would have
3 been hard to have been aware of everything; is that fair?

4 A Sure.

5 Q Okay. And at some juncture your hands were
6 somewhat tied in this case because of the case getting
7 dropped in your lap from Mr. Johnson who left and you
8 picking it up and it's on the trial docket against
9 Ms. Bentley. And Ms. Bentley is notorious for not
10 consenting to the cases off the trial docket, would you
11 think that's fair?

12 A I definitely think that's -- I mean, that's the
13 policy of the Solicitor's Office, so.

14 Q Well--

15 A Nothing particularly to Ms. Bentley.

16 Q Nothing particular to her but just in general--

17 A Once it's on the trial docket their policy is
18 not to negotiate any further and that it's usually a plea
19 straight up.

20 Q Or agree to a continuance, right?

21 A Oh, absolutely correct.

22 Q Right. And so, you were kind of -- you were
23 boot strapped by that policy and by the fact that
24 Mr. Johnson left and you got this file to -- you had to
25 give it the 100 percent public defender good try?

1 A That is correct.

2 Q And that's what you did, you tried to do your
3 best at that point?

4 A Yes, sir.

5 Q Okay. Now, at that point also, the grand
6 larceny and the CSC, they're all on the trial docket.
7 It's not just one case. They're all called for trial at
8 the same time?

9 A Correct.

10 Q Okay. And as you said it was -- it was hard to
11 go through all those records to try to piece out where
12 Mr. McCarrell was or where he wasn't at that time?

13 A Well, I can't remember that being a difficulty.
14 If Mr. McCarrell feels like we didn't spend enough time
15 going through these cell phone records, then I -- I can't
16 remember. So, I think that would be something that
17 Mr. McCarrell, if that's his opinion, then he certainly
18 would have to provide that opinion. I just can't -- I
19 can't testify to that. Because I really have no
20 recollection of that being an issue.

21 Q All right. And referring back to Applicant's
22 Exhibit 1, let's see, which one is Mr. McCarrell?

23 A Number five.

24 Q Number five. And now that you look at it, he
25 looks -- he looks somewhat different than the rest of

ALEX STALVEY-REDIRECT BY MR. YARBOROUGH

1 them?

2 A Yes, sir.

3 Q Okay. And did that surprise you at trial when
4 they -- or had you seen it? Had you seen the photo lineup
5 at that point?

6 A I would have had -- again, it was a long time
7 ago --

8 Q Sure.

9 A -- but I would have had to, if they were going
10 to introduce this at trial, I would have had to have seen
11 it before it was actually introduced at trial. And I
12 was -- I mean, I had maybe tried two or three cases as a
13 defense attorney at this point, but I'd at least had
14 enough experience to know to object to something like
15 that, a photo lineup, being introduced at trial without it
16 being provided to my prior to trial by the solicitor's
17 office. So, the transcript, if I would have objected to
18 it -- or if I would have been provided it for the first
19 time at trial, I would have objected to it. I feel very
20 confident in that.

21 Q Okay. You don't have any recollection if that
22 photo lineup was used to figure out the grand larceny or
23 if it was for the CSC?

24 A I can't remember, Mr. Yarborough, I'm sorry.

25 Q And the -- I don't want to move this in but do

1 you recognize this picture?

2 A I do.

3 Q And that's a picture of the ring?

4 A One of the rings that was recovered, yes, sir.

5 Q Okay. And there was one of the rings. How
6 many -- how many rings were there?

7 A There were two.

8 Q There were two?

9 A I believe.

10 Q And one of them was recovered -- one of them
11 Mr. McCarrell helped them get back?

12 A Correct.

13 Q And then the other one was -- they never found?

14 A Right. I think that got flushed down the
15 toilet.

16 Q By the girl?

17 A By the victim.

18 Q By the girl?

19 A Yes, sir.

20 Q Okay. And, I guess, with that -- again, with
21 that -- the ring getting flushed down the toilet, wouldn't
22 that have been helpful to have severed that case?

23 A In hindsight maybe. I don't -- I mean, if we
24 could have severed it and still -- again, back to what I
25 testified to before, if we could have severed it and kept

ALEX STALVEY-RE CROSS BY MS. COLEMAN

1 the jury from hearing that my client was -- the Applicant
2 was charged or a suspect in a grand larceny case, then
3 that would have been a better way to go. As far as trial
4 strategy.

5 Q Right. Thank you.

6 I don't have any further questions.

7 THE COURT: Recross?

8 MS. COLEMAN: Just briefly, Your Honor.

9 RE CROSS-EXAMINATION

10 BY MS. COLEMAN:

11 Q Mr. Stalvey, you testified a moment ago that
12 regarding the photo lineup, just looking at it, you
13 believe that some of the -- two of the individuals have a
14 darker complexion than the Applicant; is that correct?

15 A Yes, ma'am?

16 Q And would you agree with me that on Page 22 of
17 the trial transcript you made that argument to the Judge
18 in the Neil vs. Biggers hearing?

19 A Yes, ma'am.

20 Q Thank you. And regarding the text messages, you
21 just testified about these text megasses from Ms. Pollard.
22 Would you agree with me that on Page 177, the minor victim
23 admitted on the stand, testified on the stand, that she
24 lied in these text messages about being pregnant by
25 Mr. McCarrell?

ALEX STALVEY-RECROSS BY MS. COLEMAN

1 A Let me just -- let me look at the transcript.

2 Q Yeah, sure.

3 May I approach?

4 THE COURT: Yeah, certainly.

5 BY MS. COLEMAN:

6 Q This is Page 177. I'm looking at Line 17
7 through 21, I believe.

8 A Yes, ma'am.

9 Q Okay. Does that refresh your recollection?

10 A It does refresh my recollection and the victim
11 did admit to lying.

12 MS. COLEMAN: Thank you, no further questions.

13 MR. YARBOROUGH: Nothing further.

14 THE COURT: All right, thank you, sir, you may
15 step down.

16 THE WITNESS: Thank you, Judge.

17 MS. COLEMAN: May he be excused?

18 MR. YARBOROUGH: Yeah, certainly.

19 THE COURT: Sir, you may be excused.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: Yes, sir.

22 Call your next witness.

23 MR. YARBOROUGH: I call Mr. McCarrell.

24 THE COURT: Mr. McCarrell, if you would come
25 around, please, sir.

TERRY MCCARRELL-DIRECT BY MR. YARBOROUGH

1 THE CLERK: Mr. McCarrell, please place your
2 left hand on the Bible, raise your right hand.

3 TERRY MCCARRELL, after being duly
4 sworn, testified as follows:

5 THE CLERK: Thank you, please be seated. State
6 your name for the record.

7 THE WITNESS: Terry McCarrell.

8 THE CLERK: Thank you, you may be seated.

9 DIRECT EXAMINATION

10 BY MR. YARBOROUGH:

11 Q Mr. McCarrell, you're the Applicant in this
12 case?

13 A Yes, sir.

14 Q All right. And are you incarcerated?

15 A Yes, sir.

16 Q How long have you been incarcerated?

17 A Going on about three years now.

18 Q How many?

19 A Going about -- I have been about three years.

20 Q Three years. Can you recall back what happened
21 when you got arrested with all this?

22 A Yes. I got arrested.

23 Q Originally arrested so we're going way back.

24 A All the way back. I got arrested for the grand
25 larceny first.

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TERRY MCCARRELL-DIRECT BY MR. YARBOROUGH

1 Q Okay. And that was grand larceny of what?

2 A Some rings.

3 Q Okay. And tell me about getting arrested for
4 the grand larceny of the rings.

5 A Well, they came arrest me for the rings. And I
6 was in jail. While I was in jail, the rings -- she, the
7 victim, called my daughter. My daughter was telling her
8 about the rings and stuff.

9 Q Well let's -- what's you're daughter's name?

10 A Brooklyn Pollard.

11 Q Is she in the courtroom?

12 A Yes.

13 Q Okay. She's back there. Okay. So, do you
14 recall about when you were arrested for these rings?

15 A I got arrested December the 20th, 2011.

16 Q Okay. Do you know how long you were in jail?

17 A Maybe a day and a half.

18 Q Okay. And at that point you're in jail for
19 grand larceny. And does your mom come down and help you
20 bond out?

21 A Yes, sir. They come bond me out and everything.

22 Q Okay. And then where did you go after that?

23 A I went home. That's when my daughter and my
24 mother was telling me about the situation with the rings.
25 That Kristin was texting her about she had the rings.

TERRY MCCARRELL-DIRECT BY MR. YARBOROUGH

1 Q Okay. And did you take steps to get those rings
2 back to police?

3 A My daughter did. She -- I was locked up at the
4 time. She--

5 Q Okay, so before you got out of jail you got the
6 ring--

7 A She got the one back.

8 Q Okay, got the one back and you don't know
9 anything about that ring?

10 A Yeah, I didn't know anything about the other.

11 Q Did you know anything about the two rings being
12 stolen?

13 A Not until they came -- the initial time they
14 came -- call about the rings.

15 Q And a when they came and arrested you?

16 A No, they came and -- came nextdoor and asked me
17 did I have the rings?

18 I said, No.

19 And they searched me and stuff. And
20 officer said nobody seen nobody take no rings. He said if
21 you have the rings just put them back on the steps or
22 something. They said nothing can be done about the rings.

23 Q Okay. Well let me ask you this, at that point,
24 did you do anything to get those rings back for the
25 police.

1 A I didn't do nothing. My daughter did most of
2 everything to give them back.

3 Q So, you just passed on the information and that
4 was it?

5 A Yeah.

6 Q Okay. Now, you got out of jail a day and a half
7 later ?

8 A I got out probably right before Christmas.

9 Q Late December of 2011?

10 A Uh-huh.

11 Q Okay. And at that point, were you charged with
12 anything else?

13 A No, I wasn't charged with nothing else.

14 Q Okay. So, you -- you got out, you went spent
15 Christmas at home. And did the police come and talk to
16 you again?

17 A No, they didn't come talk to me until about, it
18 was after Christmas. I came home and -- well, my mother
19 called me and said, Come to the house, somebody came by
20 and left a card with her. Saying need to talk to you.

21 Q You saying somebody came by, you're talking
22 about a investigator?

23 A Yeah, it was a investigator.

24 Q So, at that point do you have a lawyer?

25 A Uh?

TERRY MCCARRELL-DIRECT BY MR. YARBOROUGH

1 Q At that point had you asked for a lawyer from
2 the Public Defender's Office?

3 A No, they hadn't gave me a lawyer yet.

4 Q Yeah, but had you asked for one?

5 A Yeah.

6 Q You'd gone down and applied for one. So, you --
7 and were you appointed a lawyer when you got arrested?

8 A I got appointed a lawyer after I got arrested
9 for the CSC.

10 Q Okay.

11 A Brian Johnson became my attorney.

12 Q Okay. So, Brian Johnson was your attorney. And
13 that is in January of 2012?

14 A Yeah, he come to see me. He me came to see me
15 January of 2012. He sat down, I asked for my -- could I
16 get my motion discovery stuff. He came back -- he came
17 back about a day later or something and brought me -- a
18 couple days later and brought me my motion discovery.

19 Q Okay. And so, he was your lawyer?

20 A Yeah, he was my lawyer.

21 Q Okay. And did there come a time that you got
22 out of jail on those charges?

23 A I got out of jail on those charges because he
24 took me up for a bond hearing.

25 Q Mr. Johnson did?

1 A Mr. Johnson. Got me a bond. I bond out April,
2 sometime April of 2012.

3 Q Okay. So, you sat there for about three or four
4 months?

5 A Yeah, four months.

6 Q Four months.

7 A Yeah.

8 Q And then when you got out of jail, did you go
9 see Mr. Johnson again?

10 A Yes, I saw -- he told me once I got out come see
11 him. I came down to see him everything.

12 Q Okay. And did you have a relationship with him
13 as your lawyer?

14 A Yeah because every time we had roll call, I
15 would see him at roll call.

16 Q And y'all had talked about the discovery and
17 worked on the case?

18 A Yeah, we talked about discovery, we talked about
19 talked about the CSC charge. He said they didn't have
20 no -- there was no evidence on the charge. He said what I
21 was going to do, he wait and see what the solicitor was
22 going to do.

23 Q Right.

24 A She would drop the charge or what she was going
25 to do.

1 Q Okay. And that was on the CSC, what about on
2 the grand larceny?

3 A We never talked about the grand larceny.

4 Q Okay.

5 A Every time I went to roll call, we never --
6 there was nothing about no grand larceny.

7 Q All right. So, how many -- how many times you
8 think you met with Mr. Johnson?

9 A I met with Mr. Johnson probably about three --
10 three -- about three, four times.

11 Q Okay. All right. And did you feel comfortable
12 with him?

13 A Yes, because he would call me in -- the last
14 time -- the last time I talked to him was at the Public
15 Defender office.

16 Q Okay. So, he would call you up, you'd go over
17 and talk to him?

18 A Yeah. He had told me he was -- he was -- he
19 kept my case because he was -- he went to a private firm
20 or something. But he had some cases still with the Public
21 Defender Office.

22 Q And so, he kept your case?

23 A Yeah, he gave me his business card too so I
24 could call him.

25 Q Right. And did you go meet with him over at 522

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TERRY MCCARRELL-DIRECT BY MR. YARBOROUGH

1 North Church Street --

2 A Yeah.

3 Q -- where he had moved his office?

4 A Yeah.

5 Q Okay. So, he, as far as you're concerned, he's
6 your lawyer?

7 A He was my lawyer.

8 Q And you're doing everything you can to meet with
9 him and get information to him?

10 A Get information to him and all the
11 information -- every time he needed to me see I would go
12 down and see him.

13 Q Right. And how -- did y'all discuss trial
14 strategies and?

15 A Yeah, he was discussing like -- last time we
16 talk he said he was wanting to go talk to the victims,
17 like, Kristin mother and her and stuff.

18 Q Okay.

19 A And that was the last I talked to him about it.

20 Q And you told him you didn't have anything to do
21 with this?

22 A I told him, I say I -- he said, Did you do it?

23 I said, No. I said, I didn't do it.

24 And we was going with that.

25 Q All right. And about how long did Mr. Johnson

1 represent you?

2 A He represented me always, I thought he was still
3 my lawyer. I got a phone call from my bonds man.

4 Q You got a phone call from your bonds man, do you
5 remember about when that was?

6 A It was -- I got the phone call June the 27th.

7 Q Okay. All right. And that's the June 27th of
8 2014?

9 A Yes, sir.

10 Q Okay. And based on that phone call, what did
11 you do?

12 A When she called she said come down to my office,
13 you got a letter down at my office.

14 I said, Okay.

15 So, I got in the car, went to the office.
16 Got the letter and it had Alex Stalvey name and said come
17 to see him ASAP.

18 Q That's Alex Stalvey, the lawyer that was just
19 here?

20 A Yeah. Said come see him ASAP. The letter said
21 I need to see you ASAP.

22 Q Okay. And so, you got that letter on the 27th
23 and you saw him when?

24 A I saw him the next day, the 28th. It was on a
25 Friday.

TERRY MCCARRELL-DIRECT BY MR. YARBOROUGH

- 1 Q Okay. And were you in -- were you in jail?
- 2 A I was out then.
- 3 Q All right. And so, did Alex ever see you at the
- 4 jail?
- 5 A No, I got locked up August at the jail for back
- 6 pay child support. I had some back pay. And I was in
- 7 there for 120 days. So, I got out February the 26th of
- 8 2014.
- 9 Q Right. And that's when Mr. Johnson was
- 10 representing you?
- 11 A Mr. Johnson was representing me then. And like
- 12 I say, I didn't know -- I didn't know --
- 13 Q Right, you didn't know who Alex Stalvey was
- 14 until--
- 15 A I didn't know who he was until I got that
- 16 letter.
- 17 Q All right. And when you got the letter you
- 18 didn't know who he was until you went the next day and met
- 19 him?
- 20 A Yeah, until I went and met him.
- 21 Q All right. And so, that's 11 days before the
- 22 trial?
- 23 A Yes.
- 24 Q All right. And did you know how much time you
- 25 were facing?

1 A No.

2 Q Well, do you know now?

3 A Yeah, I know now.

4 Q All right. And what did -- did Alex tell you
5 that he had an offer for you from the public defender
6 [verbatim]?

7 A Well, when he called me -- when I went down to
8 see him, I sat down at the table, he came in with a folder
9 in his hand.

10 He said, I got her -- Kristin juvenile
11 record.

12 I'm trying to see if she made any statement
13 like that. And I was telling him that it was -- it's a
14 statement claiming that she did something like that
15 before. I was telling him about it. But he was still
16 looking in his thing. I was, you know, telling him stuff
17 that could help me.

18 Then he said, I know you said you innocent
19 but there's a plea on the -- there's a plea, a whole plea.
20 He said, If I get the plea will you take it?

21 I said, No, I'm innocent, I'm not going to
22 take no plea.

23 He said, Think about it over the weekend
24 and give me a call Monday if you change your mind.

25 Q Okay. And so, that's Monday before the trial

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1 goes on the--

2 A Monday before the trial.

3 Q Okay. And did you go see him then or did you
4 call him?

5 A No, I didn't call him. I told him I wasn't
6 going to take the plea, there was no need in me calling
7 him.

8 Q Right. And then did you show up at the
9 courthouse?

10 A Yeah. That Monday, July the 7th, I showed up at
11 the courthouse and stuff.

12 Q All right. And so, that's Monday, July the 7th
13 of 2014?

14 A Uh-huh. Me and my mother and my daughter did.

15 Q Okay. And you had met the lawyer that was going
16 to try that case for you one time?

17 A Yeah, it was that one time, the 28th when I seen
18 him.

19 Q Okay. Did you have -- who would have to drive
20 you around? Your mom would have to drive you around?

21 A Or my daughter or sometimes my friends or
22 something.

23 Q Okay. But nobody else took you down there to
24 see him?

25 A Huh-uh.

1 Q All right. And were you nervous when you showed
2 up at the courthouse on that Monday?

3 A No, I wasn't nervous. It just -- at the time I
4 came in and I was talking to him about the case--

5 Q Talking to who?

6 A Alex Stalvey, I was talking to my lawyer about
7 my case.

8 Q That's on that Monday?

9 A That was on that Monday. And I was telling him
10 stuff that would help me. And I was telling him about on
11 my motion of discovery that the investigator was saying
12 that he was saying I was guilty. He felt I was guilty
13 about the pause on the phone when he was talking to me on
14 the phone.

15 Q Okay, let's talk -- let's finish your
16 conversation with Mr. Stalvey right then and then let's
17 talk about this investigator too, okay?

18 A All right.

19 Q So, at that point, were you -- did you want
20 Mr. Stalvey to represent you?

21 A At this point I didn't know he was -- I didn't
22 know he was my lawyer. I didn't know what was really
23 going on. I thought Brian Johnson was my lawyer.

24 Q Okay. And was Mr. Johnson at the courthouse?

25 A No, he wasn't at the courthouse.

TERRY MCCARRELL-DIRECT BY MR.. YARBOROUGH

1 Q Okay. And let's back up. You were talking
2 about going and talking to an investigator -- or talking
3 to an investigator on the phone, what are you talking
4 about?

5 A Yeah, the date that I said that he brought --
6 the investigator dropped the card off, my daughter--

7 Q Okay, now, let's --

8 A -- my daughter --

9 Q Hold --

10 A My daughter, Brooklyn Pollard--

11 Q Okay, hold on for a second, let's make the
12 record clear. Okay. So, the investigator drops the card
13 off at your daughter's house and where?

14 A In Berea. West Parker Road.

15 Q Okay. That's what you were talking about a
16 minute ago when you said that your -- somebody called and
17 told you you got a card here?

18 A Yeah.

19 Q Okay. And who did you call based on getting
20 that card?

21 A I called my mother and came to the house.

22 Q Okay. And what happened when you called the
23 number on the phone?

24 A I didn't call the number. My daughter said she
25 had called, tried to call.

1 Q Okay. So, you never called that number?

2 A No, I never called it.

3 Q Okay. So, what were you talking about the
4 investigator saying?

5 A So, my daughter -- they, you know, trying to
6 find out what they want you for.

7 Q Right.

8 A So, my daughter tried to call.

9 He said -- Investigator Perry, Investigator
10 Perry said that--

11 Q Robert Perry?

12 A Robert Perry. He said he wanted to talk to me.
13 So, my daughter said she hung up, called back, my cousin
14 got on the phone, was trying to find out something else
15 about it. And him and Robert Perry was talking. And then
16 he was talking, he think he talking to me but he not
17 talking to me, he's talking to my 13 year old cousin.

18 Q Okay. Well, how do you know all that now?

19 A Because my -- my -- after I seen my motion
20 discovery, then I knew that my daughter had told me that
21 my cousin had called back trying to find out what they
22 looking -- what he wanting me for.

23 Q Okay. So, did you ever have a chance to tell
24 Mr. Johnson that?

25 A No, I ain't never tell Mr. Johnson that.

1 Q Did you ever have a chance to tell Mr. Stalvey
2 that?

3 A I told Alex Stalvey that in the conference room
4 the day -- that Monday. He told me in front of me and my
5 mother and my daughter, that what that got to do with
6 anything? That's what got me -- started getting me
7 nervous --

8 Q Sure --

9 A About the trial.

10 Q Is it safe to say you didn't feel like you had
11 gone through the discovery with Alex, that you had done
12 all that work with Mr. Johnson?

13 A Yeah. Because when I got the motion discovery
14 from Mr. Johnson, it was -- it was no evidence. I never
15 seen the text messages, the photo lineup. I ain't -- the
16 only way I seen that when I got my Rule 5 -- Rule 6 when I
17 was at McCormick.

18 Q And that's after you've been sentenced.

19 A I've been sentenced. I got out, they sent all
20 this to me. That's when I seen all the text messages and
21 stuff.

22 Q Well, I'm sure that this Judge would like to
23 know, why did you leave?

24 A Because I was -- my lawyer, I wasn't comfortable
25 with him. I didn't know what he -- everything I was

1 trying to talk to him about my case, he was basically
2 telling me to plea, it's a plea. Even when I got through
3 talking -- me and my mother and my daughter walk, to leave
4 out of the room, he stated the same thing again about the
5 plea.

6 Q Right. And so, you didn't -- how much education
7 do you have?

8 A I dropped out of school like in the 10th but I
9 got my GED now.

10 Q You've gotten that since you've been in
11 McCormick?

12 A Yeah.

13 Q But at that point you had a 10th grade
14 education?

15 A Yes.

16 Q Okay. And did you think that you could go talk
17 to Judge Stilwell and tell Judge Stilwell that help, I
18 don't feel comfortable being here?

19 A I didn't -- I didn't know that I could just. . .

20 Q Okay. Did -- were you able to tell Alex about,
21 or Mr. Stalvey, about the phone records? Were you able to
22 go over those with him?

23 A No. He showed me one text message.

24 Q Right. And did you try to tell him that that
25 wasn't you?

TERRY MCCARRELL-DIRECT BY MR. YARBOROUGH

1 A Yeah, I would tell him, I say, that's not even
2 my phone. I said -- and he got confuse himself when he
3 was reading the text messages, he started reading my
4 daughter's text messages because it's her phone. It was
5 text messages from other people on the phone.

6 And my daughter said, What you talking
7 about?

8 And he said, Oh, I'm sorry.

9 Then he had to start looking again to see
10 where the text messages were.

11 Q Right. And those are the -- some of the text
12 messages that you heard referred to a minute ago in court?

13 A Uh-huh.

14 Q And you've got -- have you looked at these text
15 messages since then?

16 A I seen them when I got them, when I was at
17 McCormick.

18 Q Right. And is this your phone records?

19 A That's not even my phone records, that's my
20 daughter's phone records.

21 Q Right. And these were the phone records that
22 were used against you at--

23 A Yes, sir.

24 Q And if you would have had -- and this is
25 Applicant's Exhibit No. 2. If you would have had a chance

1 to explain that to Mr. Salvini [verbatim] --

2 I'm butchering his name, I apologize, Your
3 Honor.

4 Would you have been able to tell him that
5 that wasn't your phone?

6 A Yes.

7 Q Okay. So, did you feel like you had enough time
8 to talk to your lawyer?

9 A No, I didn't feel I had enough time. Because
10 like I say, when I seen him that was just the second time
11 I seen him. It was -- he was like -- he like he didn't
12 know what he was -- like he was confused or with the case,
13 like, he didn't -- he was rushing me, trying to get it
14 together.

15 Q Well, it is kind of complicated because you got
16 the rings and then you got the criminal sexual conduct,
17 right?

18 A Yes. But he never -- I never -- I never once,
19 either one of us talked about the rings, the grand larceny
20 and the contributing to the delinquency of a minor, I
21 never been discuss with that.

22 Q You never discussed that with who?

23 A With Brian Johnson or Mr. Stalvey. They never
24 did brought it up.

25 Q So, you told Mr. Johnson you're weren't guilty,

TERRY MCCARRELL-DIRECT BY MR. YARBOROUGH

1 right?

2 A Yeah. The only thing we talked about with the
3 CSC charge every time we went.

4 Q Okay. I think that's -- that's fair. They were
5 more concerned about the criminal sexual conduct --
6 Mr. Johnson wasn't going to try the criminal sexual
7 conduct with the rings anyway, was he?

8 A No, he wasn't going to try it with the rings.
9 He never brought that up. Because--

10 Q Right. But he told you they wouldn't get tried
11 together?

12 A Yes.

13 Q Okay. Just for the record, do you know this
14 girl?

15 A Uh.

16 Q The alleged victim?

17 A I met her through her mother. And my sister,
18 she -- my sister, she was -- we were helping her mother
19 get the car started. And that's when I first met her.

20 Q You first met her mother?

21 A Yeah, I met her mother. And that was the first
22 time, I just really met her.

23 Q Right. Did you have any kind of relationship
24 with this girl?

25 A No, I had no kind of relationship. As a matter

1 of fact, the mother, after we -- when we jumped her car
2 off, the battery was dead. Me and my sister, we started
3 the car.

4 Q Right.

5 A And my sister left. And I was about ready to
6 leave too and the mother said could -- would I do her a
7 favor? And her daughter fixing to go nextdoor to get a
8 tattoo. Asked would I go over there and make sure because
9 she didn't know the guy --

10 Q Right --

11 A --. she didn't trust the guy.

12 Q -- make sure-- right.

13 A And that's how I end up met her. That's the
14 first time I ever been down there.

15 Q Okay. And did you try to explain that to?

16 A Tried to explain it.

17 Q Right. And did you tell Mr. Johnson about the
18 guy with the tattoo?

19 A Yes.

20 Q Okay. And so, when you showed up for court you
21 thought all this stuff had been dealt with?

22 A Yeah, I thought it had been dealt with. Because
23 me and Brian Johnson, you know, been talking. Like every
24 time we had roll call, he call me or I call him and check
25 on the case.

TERRY MCCARRELL-DIRECT BY MR. YARBOROUGH

1 Q So, you met with Mr. Johnson three times and
2 then one time at his new office?

3 A Yes.

4 Q And then, you met with him at roll call--

5 A At roll call.

6 Q All right. Which was coming up every month or
7 two?

8 A Yes, sir.

9 Q And y'all would talk. And so, were you shocked
10 when. . .

11 A Yeah, I was shocked when I seen him. Because
12 like I said, it was -- I never knew who he was. When I
13 got the letter from my bonds man.

14 Q Right. You don't have anything personal against
15 him, you just didn't know him and he wasn't trying to help
16 you with your case?

17 A He wasn't trying to help me. Because Brian
18 Johnson had all my information and everything. My phone
19 number and all that.

20 Q Right. And did -- if you didn't know -- you
21 went to Alex Salvini's [verbatim] office one time, right?

22 A I went that one time. And it was the 28th.

23 Q Okay.

24 Just a second, Your Honor.

25 And not to go back over the same thing, but

1 you would not have wanted the ring charge tried with this?

2 A No, if I knew about it, I wouldn't want the ring
3 charge.

4 Q Right. And so; you would have -- you would have
5 asked him to. . .

6 A I would have asked him to sever it, if we could
7 got it out.

8 Q All right. Is there anything else you want the
9 Judge to know about your case?

10 A Just that it was misunderstanding whatever was
11 going on. Like I said, it was about -- it started with
12 them rings. And just like something just blowed out of
13 proportion. I was one that fell on top of it.

14 Q Right. And do you wish that you could have had
15 time to spend more time with your lawyer?

16 A Yes, I do--

17 Q -- Mr. Johnson tried the case?

18 A Yeah, I wish I had much time to spend with him
19 and tell him everything that he needed to know. With
20 Mr. Johnson I sat there and talked to him -- with him. I
21 didn't even have a chance to talk to him and get to know
22 who he was or what kind of lawyer he was or none of that.

23 Q And so, you went to him on 28th and then court
24 started the 5th and that was over a holiday weekend; is
25 that. . .

TERRY MCCARRELL-DIRECT BY MR. YARBOROUGH

1 A Uh-huh. Like I say, I didn't never know about
2 the grand larceny, though. Even when it was -- when I got
3 the indictments on the Rule 5, it was grand jury indicted
4 the 28th. The 24th of 2014. I wouldn't never had that
5 put together.

6 Q Right. And so, you were shocked when you found
7 out all that right?

8 A Yeah. When I stood in front of the Judge when
9 he read out the sentence, it shocked me that he sentenced
10 me with the grand larceny and contributing to the
11 delinquent [verbatim] of a minor because I knew they was
12 unrelated charges.

13 Q Right. Well, let's -- how -- tell the Court how
14 all that happened?

15 A How what?

16 Q How did you end up getting sentenced?

17 A By --

18 Q By Judge Stilwell. You were picked up and then
19 they brought you back?

20 A I was picked up the next day at the house.

21 Q So, you don't run far you just went. . .

22 A I just -- I called my kids mother and I was
23 talking to her. Telling her that I wun't [verbatim]
24 comfortable with the lawyer. And she saying I don't know
25 why you didn't get you a paid lawyer. And so, I sat

1 outside for a minute, started talking and I just went
2 home. Just decided -- trying to get my thoughts on what
3 was going on.

4 Q Right. And you realized it was mistake to have
5 left?

6 A Yeah, I know it was mistake.

7 Q Right. But you did that because of fear?

8 A Yes.

9 Q And that fear was that you had a lawyer that you
10 didn't know?

11 A Yeah, because I was -- I came in, putting
12 everything -- putting everything on the line. I came all
13 in with it. And I'm coming to fight for my life, my
14 freedom and he ain't -- he ain't riding wit [verbatim] me.
15 He just -- I just feel like he didn't have my best
16 interest. He just kind of -- kind of scared me up a
17 little bit.

18 Q Right. And after reviewing the transcripts and
19 stuff, you realize that some glaring stuff that you had no
20 idea, like those phone records?

21 A Yes.

22 Q That wasn't even your phone?

23 A No, it wun't even my phone or nothing like that.
24 They talking something -- somebody else phone, none of
25 that's mine.

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TERRY MCCARRELL-DIRECT BY MR. YARBOROUGH

1 Q Right. And it's admitted against you at trial?

2 A Yeah, it's admitted against me at trial.

3 MS. COLEMAN: Your Honor, I'd like to object.

4 Just at this time, I know we've gone -- we've had a
5 lot of discussion about the phone records, but I'd
6 like to point out that was not an original
7 allegation. So, to any extent that he's alleging
8 that he was ineffective for allowing in these phone
9 records, I don't think that that was properly in his
10 application.

11 MR. YARBOROUGH: Your Honor, I think it's
12 covered under the ineffective assistance of counsel
13 argument that during the course of his investigation,
14 if he would have known that the phone records were
15 not Mr. McCarrell's phone, if he'd had more time with
16 the case, those phone records wouldn't have been
17 admitted at trial.

18 THE COURT: Let me ask you something about that.
19 Am I missing something? I thought that during the
20 trial it was admitted that the phone records were the
21 Applicant's daughter's.

22 MR. YARBOROUGH: Your Honor, I think what we're
23 talking about is that they talked about the -- during
24 the course of the trial, they said that the
25 information that was on here were actually texts that

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TERRY MCCARRELL-DIRECT BY MR. YARBOROUGH

1 were made from Mr. McCarrell to the daughter -- or to
2 the alleged victim. And that somehow or another he
3 had use of that phone. And I think that's
4 incorrect--

5 THE COURT: But it was acknowledged that it
6 wasn't his phone?

7 MR. YARBOROUGH: Yeah, they acknowledged that it
8 wasn't his phone but they implied that those were his
9 phone records. And I think that -- they implied that
10 they were his texts, let me make that clear. They
11 implied or argued that those were texts from
12 Mr. McCarrell to the alleged victim.

13 THE COURT: That he used the phone?

14 MR. YARBOROUGH: He used the phone. Yeah,
15 that's the easiest way to put it. I'm sorry.

16 MS. COLEMAN: Your Honor, I would just argue
17 that The State filed a motion for a more definite
18 statement to clarify this allegation of ineffective
19 assistance of counsel and nothing else was filed or
20 raised concerning these phone records.

21 THE COURT: I'll sustain the objection.

22 MS. COLEMAN: Thank you, Your Honor.

23 BY MR. YARBOROUGH:

24 Q Did you allege in your application that in
25 Section 10, that you were being -- that your -- Section

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1 10, Part C, that your attorney failed to object at various
2 incidents that prejudiced the Defendant at trial?

3 A (The witness nods.)

4 Q Okay. And when you were -- or when you were
5 discussing that, one of those issues was the fact that the
6 phone records that were your daughter's, were used against
7 you at trial; is that correct?

8 A Yes, sir.

9 Q Okay. And so, when you're talking about being
10 prejudiced at trial, there were a number of areas that you
11 felt like you were prejudiced by because you didn't have a
12 chance to speak at length with your lawyer, would that be
13 a specific instance?

14 A Yes, sir.

15 Q And would it also be the instance of not going
16 over the photo line up with him?

17 A Not going over the photo lineups. I never seen
18 none of that stuff right there.

19 Q Right.

20 A Until I got -- until I requested from the Clerk
21 of Court.

22 Q Right. So, you didn't know what that
23 information was?

24 A That's the first time I ever seen it. So, when
25 I -- when I put the Clerk of Court -- wrote the Clerk of

1 Court for my Rule 5 and Rule 6.

2 Q Okay. Had you ever reviewed the phone records?

3 A I neither reviewed the phone records, none of
4 that.

5 Q Okay. And so, that's what you're talking about
6 in Section 10, Part C?

7 A Yeah.

8 Q Okay. And those phone records are not yours?

9 A They're not mine.

10 Q All right. And the texts on there are not
11 yours?

12 A Ain't none of it mine.

13 Q And so, if your lawyer would have asked you
14 that, would you have told him that?

15 A Yes, I would have told him that. I was trying
16 to tell him a lot of stuff. He was just -- he was so
17 much, to me, trying to get me to plea. That's all, you
18 know, he was just trying to--

19 Q Did you tell Mr. Johnson that?

20 A Yeah, I told Mr. Johnson. You know, that
21 that -- all the stuff was going on. He was taking a lot
22 of stuff down. But he -- the last time I seen him, he was
23 waiting on the prosecutor to see what she was going to do.

24 Q Right. That's what you -- that's one of the
25 allegations that you're objecting to at this time?

TERRY MCCARRELL-CROSS BY MS. COLEMAN

1 A Yes, sir.

2 Q Okay. Now, I don't know if I asked you but I
3 think you were starting and I might have cut you off, but
4 are there other things that you can recall that you're
5 upset with about this?

6 A Just the -- all the evidence and stuff, how they
7 put together. You know, one case to the other one. And
8 basically, it's just -- not my lawyer just knowing what he
9 was doing. I'm not saying nothing, he just wasn't
10 familiar with this case.

11 Q Right.

12 I don't think I have anything further, Your
13 Honor.

14 THE COURT: Cross-examination.

15 MS. COLEMAN: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. COLEMAN:

18 Q Good morning, Mr. McCarrell?

19 A Good morning.

20 Q Do you remember -- do you recall reviewing
21 discovery with Mr. Stalvey?

22 A Never did discovery. I did it with Brian
23 Johnson.

24 Q Okay. But you never reviewed discovery with
25 Mr. Stalvey?

TERRY MCCARRELL-CROSS BY MS. COLEMAN

1 A No, ma'am.

2 Q Okay. He never showed you the photo lineup
3 or --

4 A He never showed me none of that.

5 Q Did you give Mr. Stalvey any potential witnesses
6 or lead to investigate?

7 A No, because he came -- like I say, the next time
8 I seen him, we was in trial. And we was ready to go to
9 trial. It was July 7th. I seen him the 28th. And then
10 the 27th -- July the 7th we was ready to go the trial.

11 Q So, you knew on July the 7th when you came to
12 court that day that you were going to trial?

13 A Yeah.

14 Q And you left?

15 A (The witness nods.)

16 Q Did you know that the trial was going to be
17 tried without you, even if you weren't there?

18 A No.

19 Q Okay. Did you ever discuss testifying at trial
20 with Mr. Stalvey?

21 A Yeah, I said, I want to testify and he said he
22 wun't going to let me testify.

23 Q Okay.

24 A That's one of things that, you know, that was,
25 if I couldn't talk, that's kind of made me look shaky

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TERRY MCCARRELL-CROSS BY MS. COLEMAN

1 then.

2 Q Did you know that if you -- if you left the
3 trial you would not have had an opportunity to testify if
4 you weren't there?

5 A Uh-huh.

6 Q But you weren't there to take the stand,
7 correct?

8 A No.

9 Q Okay. Did you ever ask your attorney to sever
10 the charges into two separate trials?

11 A I never know -- I never knew that I was getting
12 tried for the grand larceny.

13 Q Okay.

14 A If I would have knew I would have asked him to
15 sever it, though.

16 Q Okay. You testified a moment ago that you were
17 shocked by your sentence, but you weren't there to say
18 anything to the Judge on your behalf during the
19 sentencing, correct?

20 A I told him at the end when I got sentenced that
21 I didn't do it. I said, I got kids of my own and a
22 stepdaughter I raised. I said, told him that I wouldn't
23 do nothing like that. I wouldn't.

24 Q But you weren't at the trial to tell him that at
25 the time.

1 A No.

2 Q The photo lineup was raised as an issue on your
3 appeal, correct?

4 A Yes.

5 Q Okay. Did you get either of your attorneys any
6 proof that you were not the one who sent the text messages
7 from your phone?

8 A I didn't -- I didn't never brought it up about
9 the phone.

10 Q Do you have any proof that you were not sending
11 those text messages?

12 A I was in the county jail when the text messages
13 were sent.

14 Q Okay. But do you have any kind of documents or
15 anything that you could have presented as evidence to
16 prove that?

17 A No.

18 Q Okay. Did you make a motion to have Mr. Stalvey
19 relieved as your attorney?

20 A Did I make a motion?

21 Q Uh-huh.

22 A No.

23 Q But you testified earlier that you didn't know
24 that was something you could do?

25 A (The witness shook his head.)

TERRY MCCARRELL-CROSS BY MS. COLEMAN

1 Q Okay. You testified early that you did not have
2 any kind of relationship with the minor victim; is that
3 correct?

4 A Yes, ma'am.

5 Q And you knew her through her mother?

6 A Yeah. I just do stuff for her mother. Like
7 around the house and stuff. She like -- like the last
8 time helping her car, getting her car running. Because
9 she was working a lot. And we just became friends.

10 Q Did you have any kind of romantic relationship
11 with her mother?

12 A No, we was just real close friend. She even
13 said in motion to discovery that we was close, you know,
14 close like family friends.

15 Q So, you're a close family friend. How many
16 times were you ever around the minor victim?

17 A The only time I come during the evening, like,
18 her mother call, we would sit, like do something for her
19 or something, she would sit, watching TV or something like
20 that.

21 Q So, that was a regular occurrence?

22 A Nah, it wasn't regular, just every now then.

23 Q How many times would you guess?

24 A Probably about four, five times.

25 Q And the incident where you went nextdoor for the

1 tattoo and then they claim the rings was stolen, that was
2 one of those times?

3 A That was -- yeah, that was probably about the
4 second time I had -- yeah, about the second time that I'd
5 been down there. But I never been inside the house. The
6 first time was her -- her cable or something was -- the
7 guy nextdoor -- her cable was messed up and found out the
8 guy nextdoor that took the cable off and put on their
9 cable.

10 Q Okay.

11 Thank you, no further questions.

12 MR. YARBOROUGH: Just one second, Your Honor.

13 THE COURT: All right, sir.

14 REDIRECT EXAMINATION

15 BY MR. YARBOROUGH:

16 Q Do you -- you met with Mr. Salvini [verbatim] on
17 the 28th?

18 A Yes, sir.

19 Q Of June? Did -- do you recall when you were
20 indicted for the grand larceny?

21 A The grand larceny was indicted June the 24th,
22 2014.

23 Q Okay. I'm going to --

24 Can I have this marked as 3 -- Applicant's
25 3?

TERRY MCCARRELL-REDIRECT BY MR. YARBOROUGH

1 (WHEREUPON, Applicant's Exhibit No. 3 was marked
2 for identification only.)

3 BY MR. YARBOROUGH:

4 Q I'm going to show you Applicant's 3. Do you
5 recognize that? Can you read?

6 A Yeah.

7 Q Can you see this indictment for grand larceny?

8 A Uh-huh.

9 Q Did -- you just told the Court when you were
10 indicted?

11 A Yeah.

12 Q Okay. Do you see a Court of General Sessions
13 June term 2014?

14 A Yes, sir.

15 Q Okay. Are you familiar with that at all?

16 A Like I said, I just seen it when I -- I'm
17 familiar with it when I got it from the Clerk of Court.

18 Q Okay, you got this and --

19 A I got all the indictments.

20 Q From the Clerk of Court?

21 A Clerk of Court, yes. I asked for Rule 5, Rule
22 6, they gave me everything.

23 MR. YARBOROUGH: I'd like to move the indictment
24 for grand larceny, I think, without objection, Your
25 Honor.

TERRY MCCARRELL-REDIRECT BY MR. YARBOROUGH

1 MS. COLEMAN: I have no objection to it being
2 entered because it's already part of the record, the
3 Judge's packet. I'm not sure where he's going with
4 this. But I might object to the relevancy to his
5 specific allegations. But I can object at the time.

6 THE COURT: All right, we'll see where it goes.

7 (WHEREUPON, Applicant's Exhibit No. 3 was
8 admitted into evidence.)

9 BY MR. YARBOROUGH:

10 Q Do you see what day the grand jury met?

11 A June the 24th, 2014.

12 Q Okay. And when were you tried?

13 A July the 7th, 2014.

14 Q So, that indictment for grand larceny was
15 returned two weeks before you went to trial?

16 A Yeah, two weeks before I went to trial.

17 Q All right. And did you know when you went to
18 trial that the grand jury had returned an indictment
19 against you for grand larceny?

20 A I never knew they returned -- like I said, every
21 time I went to roll call, it was for CSC.

22 Q Okay. What about the -- did you ever talk to
23 anybody about that indictment or?

24 A Like I said, I didn't talk to -- even the July
25 the 7th, it never brought up about the -- about the grand

TERRY MCCARRELL-REDIRECT BY MR. YARBOROUGH

1 larceny. Me and my mother and my daughter set there
2 talking to him in the conference room, it never was
3 brought up.

4 MS. COLEMAN: Your Honor, I object to any extent
5 that this is being used for an argument for a lack of
6 subject matter jurisdiction. Again, this was outside
7 the scope of his allegations.

8 MR. YARBOROUGH: Your Honor, I think that are
9 allegation was that it was not -- it was never moved
10 to sever. And that indictment actually wasn't
11 returned, you know, until just right prior to trial.
12 And so, I think that that shows why it wasn't moved
13 to sever because, I mean, everything was just kind of
14 snowballing on the case at one point. So, that the
15 indictment is returned 13 days before. So, I think
16 that speaks for itself as to why it wasn't a motion
17 to be severed.

18 THE COURT: But the Attorney General was arguing
19 that she's objecting if you are arguing that it's a
20 issue of jurisdiction.

21 MR. YARBOROUGH: I'm not arguing --

22 THE COURT: I didn't think you were.

23 MR. YARBOROUGH: -- issue of jurisdiction.

24 THE COURT: So, she withdraws her--

25 MR. YARBOROUGH: Oh yeah, I'm sorry, no, I'm

1 not.

2 MS. COLEMAN: I apologize.

3 MR. YARBOROUGH: Yeah, no, I--

4 THE COURT: I see where you're going.

5 MR. YARBOROUGH: No, I mean, I think
6 jurisdictionally it's okay. It goes to what's going
7 on, you see what I'm trying to say?

8 THE COURT: I understand your argument.

9 MR. YARBOROUGH: Okay.

10 BY MR. YARBOROUGH:

11 Q So, you never had a chance to?

12 A No, I never had a chance to even see it. Like I
13 say, it was -- it was a surprise to me when I got
14 sentenced, when he read out the sentence.

15 Q That you were even charged with the grand
16 larceny?

17 A Yeah. It was a surprise that I was charged with
18 it. Because I was thinking the whole time that I was
19 going to court for CSC.

20 Q Right. And what about the -- now, you also
21 brought up the lewd act when you were talking to her. You
22 didn't know you're going to trial on that either?

23 A No. Because he told -- matter of fact, he said
24 something about that my first meeting with him. He said
25 it's nothing in the motion of discovery about a lewd act.

TERRY MCCARRELL-RECROSS BY MS. COLEMAN

1 And he said that -- he was saying it was nothing.

2 Q Are you talking about him or you talking about--

3 A Mr. Stalvey.

4 Q Okay.

5 A I'm sorry, Mr. Stalvey.

6 Q Okay. So, when you met with him on that day, he
7 said there wasn't anything in there about--

8 A He said there was nothing in the motion
9 discovery saying nothing about the lewd act.

10 Q Okay. So, at that point did you know you were
11 going to trial on the lewd act?

12 A No, CSC charge.

13 Q Okay.

14 I don't think I have any others questions.

15 MS. COLEMAN: Just briefly.

16 THE COURT: All right.

17 RECROSS-EXAMINATION

18 BY MS. COLEMAN:

19 Q You testified that you didn't know -- you were
20 surprised by the indictment for grand larceny; is that
21 right?

22 A Yes.

23 Q But you were arrested for that charge, weren't
24 you?

25 A I was arrested for it but like I said, I never

BROOKLYN POLLARD-DIRECT BY MR. YARBOROUGH

1 even talked to anybody about it. I never even talked to
2 either Brian Johnson or Alex Stalvey about this.

3 Q Didn't you testify earlier that you spoke -- you
4 spoke about this with Mr. Johnson?

5 A No. We ain't never talked about the -- we
6 talked about the CSC.

7 Q Didn't you say that Mr. Johnson was planning to
8 sever the trials?

9 A No, I said if he would have talked, I would have
10 asked him to sever the trials.

11 MS. COLEMAN: Thank you, no further questions.

12 THE COURT: All right, thank you, may step down,
13 sir.

14 All right, thank you, we'll be in recess for
15 five minutes.

16 (WHEREUPON, a short break was taken.)

17 THE CLERK: All right, please place your left
18 hand on the Bible, raise your right hand.

19 BROOKLYN POLLARD, after being duly
20 sworn, testified as follows:

21 THE CLERK: State your name for the record.

22 THE WITNESS: Brooklyn Pollard.

23 THE CLERK: Thank you, you may be seated.

24 DIRECT EXAMINATION

25 BY MR. YARBOROUGH:

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BROOKLYN POLLARD-DIRECT BY MR. YARBOROUGH

1 Q Ms. Pollard, are you related to Mr. McCarrell?

2 A Yes.

3 Q Who is he?

4 A My father.

5 Q He's your father?

6 A (The witness nods.)

7 Q Is that your grandmother?

8 A Uh-huh.

9 Q As well in the courtroom?

10 A Yes, sir.

11 Q And did -- were you around when all this stuff
12 was going on back in 2014?

13 A Yes.

14 Q Okay. Did you ever meet with the lawyers about
15 the phone records that we're talking about in here?

16 A No.

17 Q Whose phone is that?

18 A Mine.

19 Q Okay. And were you called as a witness during
20 the trial?

21 A No.

22 Q Okay.

23 A Well, I was subpoenaed for, I think, the
24 prosecutor.

25 Q By the prosecutor?

BROOKLYN POLLARD-DIRECT BY MR. YARBOROUGH

1 A Yeah.

2 Q Did you testify?

3 A She just asked me one question, Was it my phone?

4 Q Was it your phone?

5 A Uh-huh.

6 Q Was it your phone?

7 A Yes.

8 Q Okay. Did anybody talk to you about the texts

9 and stuff that were in that phone?

10 A Well she called me--

11 Q Who is that?

12 A I can't remember her name.

13 Q Lisa Bentley.

14 A Blond hair.

15 Q Yeah, Lisa Bentley, the prosecutor?

16 A Yeah, Bentley, I do remember her last name.

17 Q Okay.

18 A She showed me the messages in like a meeting we

19 had.

20 Q Right.

21 A But the message that she highlighted, I mean,

22 that's the only thing she showed me.

23 Q Okay. And was that your message?

24 A Yes.

25 Q It wasn't your--

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BROOKLYN POLLARD-DIRECT BY MR. YARBOROUGH

1 A It wasn't --

2 Q It wasn't your father's message?

3 A And I told her that. And she wrote it down.

4 Q Okay. And did you want to come and testify to
5 try to help your dad out with those other records?

6 A Yes. But I was told I wasn't going to be able
7 to.

8 Q Okay. Who told you that?

9 A Because I got -- they said that I wouldn't be
10 able to testify because we had the same co-defendant
11 before. Mines was dismissed.

12 Q The same what, I'm sorry?

13 A We had the same -- the victim in his, was also
14 the one who put a charge on me.

15 Q Okay. So, you never talked to Mr. Salvini about
16 these records?

17 A No.

18 Q Okay. And that phone was for your use and for
19 your mother's use?

20 A Correct.

21 Q Right. It wasn't for your father's use.

22 A No.

23 Q No. And so, he wouldn't have been using the
24 telephone.

25 A No, because he had his own phone, so. He

1 wouldn't have to use mine.

2 Q Okay. And did you want to tell the lawyers
3 that?

4 A Yes, but I never met any of his lawyers.

5 Q Okay.

6 I don't have any further questions, Your
7 Honor.

8 MS. COLEMAN: No questions for this witness.

9 THE COURT: All right, thank you, ma'am, you may
10 step down.

11 THE WITNESS: Thank you.

12 MR. YARBOROUGH: Your Honor, that's our case.

13 MS. COLEMAN: State has no witnesses.

14 THE COURT: Be glad to hear argument.

15 MR. YARBOROUGH: Your Honor, if the Court
16 please, the threshold here is ineffective assistance
17 of counsel. And I'm certainly not trying to jump on
18 Mr. Salvini about -- oftentimes public defender's get
19 appointed to do cases at the last minute. That
20 appears to be what happened here. I think the
21 records replete with the small amount of time that he
22 would have had to prepare. There's some glaring
23 issues that Mr. McCarrell raised about whether or not
24 he was involved in this. And the, you know, just
25 starting with the phone records, and then -- then you

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1 get to the point where both the charge for criminal
2 sexual -- I mean, lewd act on a minor, which is part
3 of the Court packet, so I didn't put it in because I
4 didn't realize you had both of them, but that charge
5 and the charge for grand larceny, those indictments
6 were returned on the 24th of June. Look at them,
7 both were returned by the grand jury on the 24th of
8 June, 2014; and the trial starts, and there's a
9 fourth of July weekend over that, that period, the
10 trial starts, you know, within two weeks.

11 And so, Mr. Salivin just didn't have -- he
12 didn't have enough time to prepare. And it is a
13 complex case. I mean, this man is sitting in jail,
14 doing a very long sentence and charged with a
15 significant crime. And, you know, you never want to
16 see a Defendant walk away from the courthouse, but
17 you kind of wonder, you got a guy with a 10th grade
18 education and he's had one lawyer for two years. And
19 he shows up at the courthouse with having just met a
20 lawyer and the lawyer's trying to tell him that he
21 needs to take a plea of 12 or 13 years, whatever the
22 testimony was. And he's going, well what about all
23 my evidence, what about all my records, what about
24 all the things that were done?

25 I mean, it seems like that point, you know, a

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1 can continuance, at least, should have been sought.
2 I don't know how, in the best of cases, even, you
3 know, I have been fortunate in my career, you know,
4 to try 100's of criminal cases. And I'd be at a loss
5 to try to get ready for a CSC in, you know, eight or
6 nine days. And I'm not criticizing him. I think
7 it's what happened with the system. The system broke
8 down. And with the system breaking down,
9 Mr. McCarrell was kind of run over. Just like
10 Mr. Salivin said -- like Mr. McCarrell said, it just
11 all kind of ended up on him. You know, I don't know
12 that -- that there's any one piece of glaring
13 evidence, except the lack of time to prepare, the
14 fact that those indictments were returned, the fact
15 that the witnesses could have been interviewed for
16 the phone records. And that might have made a
17 difference in the subject significant charge he was
18 convicted of.

19 Now, I cannot imagine any situation where a
20 Court would not have entertained and granted a motion
21 to sever a grand larceny case and a case charging
22 criminal sexual conduct in the first degree. When
23 one case has absolutely no particular glaring
24 connection, except for that connection being that the
25 alleged victim in the criminal sexual conduct is a

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1 defendant in the case of the grand larceny. So,
2 you've got, all of a sudden, The Court looking at --
3 I mean, the jury looking at there's a connection here
4 between these people and the connection is a criminal
5 charge. And you've got a juvenile where the
6 juvenile's court records aren't necessarily
7 admissible. And, you know, Your Honor, that case
8 should have been severed. And I think and I don't
9 understand, you know, why that didn't happen. You
10 know, but at least a motion to sever.

11 But I think what happened is he probably was
12 appointed and then the indictments are returned and,
13 you know, it's just like Mr. McCarrell said, when he
14 got there and he got sentenced, he said, I didn't
15 even know they charged me with grand larceny -- not
16 charge him but indicted him with grand larceny or
17 were trying him with grand larceny or that he was
18 charged with lewd act or being tried with lewd act.
19 Because he was always advised by previous counsel,
20 Mr. Johnson, that, you know, the case on that was
21 not -- was not significant.

22 And I want to go to this next issue. And I'm
23 careful because I was a public defender at one point.
24 And I understand how difficult it can be. But I
25 can't imagine a situation, Your Honor, where I'm

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1 appointed to represent a Defendant, within a month or
2 two. I don't care whatever day you want to say he
3 was appointed to represent Mr. McCarrell, give him
4 the benefit of the doubt that it's six weeks. I
5 can't not imagine a situation where I don't pick up
6 the phone and I call Mr. Johnson and I say, Hey,
7 Brian, what's going on with this thing? I know you
8 left but I've got to try this thing. And then all of
9 a sudden there's a wealth of information that comes
10 in from Mr. Johnson.

11 And I think that that in itself was a mistake.
12 And that's, you know, I didn't specifically think
13 that's what the testimony was going to show but
14 that's exactly what it was. Is that, you know, he
15 didn't -- he didn't reach out. And if would have
16 reached out, he would have found other evidence that
17 could have gone to Mr. McCarrell's particular
18 innocence in this case.

19 And, you know, Mr. McCarrell, you know, from the
20 time he was charged with criminal sexual conduct,
21 going through Mr. Johnson and then going through
22 Mr. Salivin, he always maintained his innocence. So,
23 there was a tremendous amount of time that -- I know
24 the Public Defender's Office is busy, but there was
25 all kind of information that was collected. And that

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1 information should have been provided to counsel.
2 And it wasn't. And so, I didn't understand the
3 situation where you've got a -- I'd say young, but
4 he's young compared to me. Where he decides he's
5 going to walk away from the courthouse.

6 I mean, I think that's a mistake. You know, if
7 you stay in there I think Judge Stilwell could have
8 done some stuff. But we're not, you know, you and I
9 are both trained in the law and have been around it.
10 So, that we understand it differently than he does
11 but he did not have the protection that could have
12 availed him in a case like this. You know, a
13 continuance should have been sought, it wasn't
14 sought. Somebody should have looked at what had gone
15 on for the last two years, that didn't happen.

16 A motion should have been sought because the
17 grand jury had just returned indictments two weeks
18 before that would have caused a significant issue for
19 severance. That severance was not sought. The
20 information was not taken and looked at about the
21 particular phone records. You know, the thought of
22 what the tie is between the rings is of some
23 question. But the real question becomes there is if
24 there was some kind of tie between the rings, why in
25 the world wasn't there a severance motion filed? And

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1 they shouldn't have been tried together under those
2 circumstances. Thank you.

3 THE COURT: All right. Thank you.

4 MS. COLEMAN: Thank you, Your Honor. In
5 response to his argument about not being prepared, I
6 think that Mr. Stalvey, in my opinion, was a very
7 credible witness, credibly testified that he was
8 prepared for this trial, he said he had plenty of
9 time to prepare himself. He did not see a reason to
10 request a continuance. He -- he testified that he
11 did review the discovery with the Applicant. Whether
12 or not the Applicant remembers it, he says he went
13 over it, they discussed all of their strategies. He
14 said that there wasn't much evidence for them to
15 discuss. Which is probably one reason why he was
16 prepared on such short notice. There wasn't much
17 physical evidence to investigate, not many witnesses
18 to talk to. And basically came down to their
19 witnesses words against, you know, who the jury
20 believed. If they believed this minor victim or not.

21 Mr. Stalvey -- and Applicant himself testified
22 that Mr. Stalvey sent him a letter informing him that
23 he was representing him. He testified that he had --
24 excuse me, Mr. Stalvey testified that he had met with
25 him at least once. He seemed to think it was more

4666

1 like three times before the trial and they had
2 discussed the trial. He knew he was ready for trial
3 that day he came and he left. He showed up, he left
4 the trial. He was not there to argue on his behalf.

5 As far as the photo lineup goes, I would argue
6 that, first of all, this was not deficient, nothing
7 by trial counsel was deficient for the photo lineup.
8 There was a Neil v. Biggers hearing. He argued to
9 The Judge that this was prejudicial against him, it
10 wasn't very well put together. He argued that the
11 differences in skin tone and the age differences
12 between the people in the photo lineup. And The
13 Judge denied his motion and found that it was
14 admissible.

15 And I would argue that there's no prejudice
16 regarding the photo lineup because he was identified
17 by the minor victim. She knew him, she obviously had
18 a relationship with him. The Applicant testified
19 they hung out at least four or five times. She knew
20 his name and what he looked like. She was able to
21 pick him out of the photo.

22 And the victim of the grand larceny, whose
23 wedding rings had been stolen, he was the one who
24 identified him in the photo lineup. And he said that
25 he had come over to his trailer and they had hung out

467

1 for up to an hour. Sometime around 30 minutes to an
2 hour. He knew his name and he knew what he looked
3 like. And he identified him several times to law
4 enforcement and in the courtroom on the photo lineup.
5 There's no doubt about the identity of Mr. McCarrell.
6 The only question, really, was whether or not they
7 believed the testimony of these two victims.

8 Again, I ask that you don't consider the
9 allegation of the phone records, as it was not
10 originally brought up. But to any extent that it is
11 considered, the Applicant has not met his burden of
12 proof. He has no physical evidence, nothing proving
13 that he is not the one that sent these text messages.
14 He says that he did not bring this to the attention
15 of either of his attorneys. He didn't ask them to
16 argue that. He says he would have if he had had more
17 time,, but he never brought it to their attention.
18 And that probably wouldn't have been something worth
19 disputing at trial anyway. I don't know that it's
20 prejudicial is my point there.

21 As far as severance goes, Mr. Stalvey clearly
22 testified that this was a very conscious trial
23 strategy not to sever the charges. He said he wanted
24 to be able to attack the credibility of the witness
25 and he couldn't do that if she weren't there to

1 testify about the rings. And that was his reasoning
2 for that. That he wanted to place the blame on her.
3 She had stolen the rings, his theory was, and she
4 wanted to blame it on Mr. McCarrell. And he wouldn't
5 have had that opportunity if he had moved to sever.

6 I believe that's everything. So, we ask that
7 you deny his application for positive conviction
8 relief. Thank you.

9 THE COURT: I want the attorneys to tell me if
10 I'm missing something here, but I'm looking at the
11 transcript dealing with the phone records. And on
12 Page 137, Lines 6 through 9, the witness, Brooklyn
13 Pollard, says that her dad did not have a phone and
14 that he did use her phone. Which is different than
15 what she said here today.

16 And on 138, Lines 7 through 9, she was asked,
17 whether her father was possibly using the phone on
18 December the 5th?

19 And she said, Yes.

20 At any rate, The Court agrees with the position
21 and arguments set forth by the Attorney General. And
22 therefore, denies the Application for Post-conviction
23 Relief. I'll ask the Attorney General if she would
24 prepare an Order.

25 MS. COLEMAN: Yes, sir, Your Honor.

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THE COURT: Thank you.

MS. COLEMAN: How many days would like that, in
30 days or?

THE COURT: Ten.

MS. COLEMAN: Would 30 days be okay?

THE COURT: Thirty days would be okay.

MS. COLEMAN: Thank you, Your Honor.

(WHEREUPON, the proceedings were concluded.)

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STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

Terry Lemoire Mccarrell

AKA:

Race: BLACK Sex: M Age: 49

DOB: -1963 SS#:

Address:

City, State, Zip: GREENVILLE, SC

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive - Second deg.

in violation of § 16-03-0655(B) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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:

Bentley, Lisa

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 20 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.☒ 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 ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ <u> </u>
§ 56-5-2995 (DUI Assessment)	\$12	\$ <u> </u>
§ 56-1-286 (DUI Breath Test)	\$25	\$ <u> </u>
Proviso 47.9 (Public Def/Prob)	\$500	\$ <u> </u>
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u> </u>
§ 50-21-114(BUI Breath Test Fee)	\$50	\$ <u> </u>
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ <u> </u>
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u> </u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter: A. Neron

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS2300967

A/W#: M991579

Date of Offense: 9/1/2011

S.C. Code § : 16-03-0655(B)

CDR Code #: 0396

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0655(B) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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:

Bentley, Lisa

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 20 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.☒ 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 ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ <u> </u>
§ 56-5-2995 (DUI Assessment)	\$12	\$ <u> </u>
§ 56-1-286 (DUI Breath Test)	\$25	\$ <u> </u>
Proviso 47.9 (Public Def/Prob)	\$500	\$ <u> </u>
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u> </u>
§ 50-21-114(BUI Breath Test Fee)	\$50	\$ <u> </u>
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ <u> </u>
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u> </u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter: A. Neron

SCCA/217 (03/2011)

Presiding Judge

Judge Code: Sentence Date: 8 JUL 14

473

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR 2ND DEGREE
(11-14)

At a Court of General Sessions, convened on

FEB 19 2013

the Grand Jurors of Greenville

County present upon their oath:

That TERRY LEMORE MCCARRELL did in Greenville County, between the 1st day of May, 2011 and the 27th day of December 2011, commit a sexual battery on K.C.O., who was fourteen years of age or less but who was at least eleven years of age. This is in violation of § 16-3-655(B)(1) [formerly § 16-3-655(2)] of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

474

Lisa Bentley
SOLICITOR

WITNESSES

Robert Joseph Perry

Greenville County Sheriffs Office

12/28/2011

ARREST WARRANT NUMBER
M991579

ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-23-000967

BSD

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

February

TERM 2013

THE STATE

vs.

TERRY LEMORE MCCARRELL

Indictment for

0396 ✓

CRIMINAL SEXUAL CONDUCT WITH A MINOR
2ND DEGREE (11-14)

VIOLATION § 16-3-655(B)(1) [formerly § 16-3-655(2)]

ENTERED
ACCT.

475

ARREST WARRANT

M-991579

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

THE STATE
against

2011-194633

Terry Lemore Mccarrell

Address:

Greenville, SC 29617-

Phone: SSN: [REDACTED]
Sex: M Race: B Height: 5 9 Weight: 190DL State: SC DL #: [REDACTED]
DOB: [REDACTED]/1963 Agency ORI #: SC0230000Prosecuting Agency: Greenville County Sheriff's Office
Prosecuting Officer: Robert Joseph Perry - 1039Offense: Sex / Criminal sexual conduct with minor - victim
11 to 14 yrs of age inclusive - Second deg.

Offense Code: 0396

Code/Ordinance Sec: 16-03-0655(B)

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant on *Terry Mccarrell*
*12/28/11**D. Skuett* 535 X115
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Greenville General Sessions
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601-2120*Garrett*

ORIGINAL

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ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Personally appeared before me the affiant Robert Joseph Perry

being duly sworn deposes and says that defendant Terry Lemore Mccarrell

did within this county and state on or about 09/01/2011

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville
in the following particulars:

DESCRIPTION OF OFFENSE Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive - Second deg.

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:Affiant has a statement from the 13-year old victim, that between the dates of September 2011 and December 2011, the defendant
did engage in penile sexual intercourse with the victim. The victim stated the defendant would come to her home at [REDACTED]
[REDACTED], where they would have sexual intercourse on a regular basis. The defendant was also aware of the victims age at the
time of these incidents. The above described incident occurred in Greenville County, SC.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 4 Mcgee Street
Greenville, SC 29601-
Affiant's Telephone (864)467-4141

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 9/1/2011

defendant Terry Lemore Mccarrell

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenville

) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive - Second deg.

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me

on 12/27/2011

Signature of Issuing Judge

Leila Foster

Judge Code: 5762

(L.S.)

Judge's Address 4 Mc Gee Street Room 116-A
Greenville, SC 29601-2256

Judge's Telephone (864)467-5315

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

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Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

AFFIDAVIT

who

violate the criminal laws of the

)

476

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.Terry Lemore Mccarrell

AKA:

Race: BLACK Sex: M Age: 49DOB: -1963 SS#: Address: City, State, Zip: GREENVILLE, SCDL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)in violation of § 16-15-140of the S.C. Code of Laws, bearing CDR Code # 2468☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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:

Bentley, Lisa77787
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 15 days/months/years or ☐ under the Youthful Offender Act not to exceed — years
and/or to pay a fine of \$ —; provided that upon the service of — days/months/years and/or payment
of \$ —; plus costs and assessments as applicable*; the balance is suspended with probation for —months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ 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.☐ 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 ☐ OrderedTotal: \$ — plus 20% fee: \$ —Payment Terms: —☐ Set by SCDPPPS —Recipient: —

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 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	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS2300968A/W#: M991580Date of Offense: 9/1/2011S.C. Code § 16-15-140CDR Code #: 2468

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

PTUP

— days/hours Public Service EmploymentObtain 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 FundOther: —☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: A. Herring

SCCA/217 (03/2011)

Presiding Judge —Judge Code: 21581Sentence Date: 8 JUL 14

477

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on

FEB 19 2013

the Grand Jurors of Greenville

County present upon their oath:

That TERRY LEMORE MCCARRELL did in Greenville County, between the 1st day of May 2011, and the 27th day of December 2011, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of K.C.O., a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-15-140 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

478

Lisa Bentley
SOLICITOR

WITNESSES

Robert Joseph Perry

Greenville County Sheriffs Office

12/28/2011

ARREST WARRANT NUMBER

M991580

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-23-000968

BSD

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

February

TERM 2013

THE STATE

vs.

TERRY LEMORE MCCARRELL

Indictment for

2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-140

**ENTERED
ACCT.**

677

ARREST WARRANT

M-991580

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

THE STATE
against

2011-194633

Terry Lemore Mccarrell

Address:

Greenville, SC 29617-

Phone: SSN: [REDACTED]
Sex: M Race: B Height: 5 9 Weight: 190DL State: SC DL #: [REDACTED]DOB: 1963

Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: Robert Joseph Perry - 1039

Offense: Sex / Lewd Act, committing or attempting lewd act
upon child under 16 (June 4, 1996)

Offense Code: 2468

Code/Ordinance Sec: 16-15-0140

This warrant is CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant
on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Greenville General Sessions
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601-2120

Garrett

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

Personally appeared before me the affiant Robert Joseph Perry

being, duly sworn deposes and says that defendant Terry Lemore Mccarrell

did within this county and state on or about 09/01/2011

State of South Carolina (or ordinance of ☒ County/☐ Municipality of

Greenville

in the following particulars:

DESCRIPTION OF OFFENSE Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:Affiant has a statement from the 13-year old victim, that between the dates of September 2011 and December 2011, the defendant
did engage in a sexual relationship with the victim. The victim stated the defendant would come to her home at [REDACTED]
[REDACTED], where the defendant would touch her breast and vagina area with his hands. The defendant was also aware of the victims age
at the time of these incidents. The above described incident occurred in Greenville County, SC.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

Affiant's Address 4 Mcgee Street
Greenville, SC 29601-
Affiant's Telephone (864)467-4141

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 9/1/2011

defendant Terry Lemore Mccarrell

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Greenville

) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me

on 12/27/2011

Signature of Issuing Judge
Leila Foster

Judge Code: 5762

(L.S.)

Judge's Address 4 Mc Gee Street Room 116-A
Greenville, SC 29601-2256

Judge's Telephone (864)467-5315

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

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ORIGINAL

Form Approved by
S.C. Attorney General
Apr 21, 2003
SCCA 518

AFFIDAVIT

who

violate the criminal laws of the

)

1487

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.Terry Lemore Mccarrell

AKA:

Race: Sex: M Age: 51DOB: -1963 SS#: Address: City, State, Zip: GREENVILLE, SC.DL#: SID#: *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

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS2301662A/W#: 1509496Date of Offense: 11/14/2011S.C. Code § : 16-17-0490CDR Code #: 0048

SENTENCE SHEET

☒ CONVICTED OF or ☒ PLEADSin 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 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:

Bentley, LisaSC Bar# 77787

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.☐ 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 ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 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	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (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)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

PTUP days/hours Public Service EmploymentObtain 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 FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: A. Heron

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2158Sentence Date: 7-8-14

481

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CONTRIBUTING TO THE DELINQUENCY OF A MINOR

JUN 24 2014

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That TERRY LEMORE MCCARRELL did in Greenville County, on or about the 14th day of November, 2011, knowingly and willfully encourage, aid, or cause K.C.O., a minor, to do any act which caused or influenced K.C.O. to deport herself in a manner so as to willfully injure or endanger her morals or health or the morals or health of others. This is in violation of §16-17-490 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

482

Bryna S. Seay
SOLICITOR

WITNESSES

Brady Mashak

Greenville County Sheriffs Office

12/28/2011

Handwritten signature

ARREST WARRANT NUMBER

1509496

**ACTION OF GRAND JURY
TRUE BILL**

Nancy M. Ellis
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-23-
BSD

001662

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June

2014
TERM 2012

THE STATE

vs.

TERRY LEMORE MCCARRELL

Indictment for

0048

**CONTRIBUTING TO THE DELINQUENCY OF A
MINOR**

VIOLATION § 16-17-0490

**ENTERED
ACCT.** *JCP*

RECEIVED

MAR 15 2012

Clerk of Court
Greenville County

483

ARREST WARRANT

7003
1-31-12

1-509496

Entered On

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

THE STATE

11-173750

against

Terry Lemore Mccarrell

Address:

Greenville, SC 29617-

Phone:

SSN:

Sex: M Race: B Height: 5 9 Weight: 190

DL State: SC DL #:

DOB: /1963

Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: Brady Mashak - 1025

Offense: Minor / Contributing to the delinquency of a minor

Offense Code: 0048

Code/Ordinance Sec: 16-17-0490

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

COMPUTER ENTERED

Signature of Judge

Date:

DEC 28 2011

RETURN

A copy of this arrest warrant was delivered to
defendant onGREENVILLE COUNTY
SHERIFF'S OFFICE

on or about 11/14/2011

defendant Terry Lemore Mccarrell

☒ County/ ☐ Municipality of Greenville) as set forth below.

DESCRIPTION OF OFFENSE: Minor / Contributing to the delinquency of a minor

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable
Sworn to and subscribed before me

on 12/27/2011

Signature of Issuing Judge

Matthew B Hubbard

Judge Code: 7003

RETURN WARRANT TO:

Bates Township Summary Court
114 North Poinsett Hwy
Travelers Rest, SC 29690

ORIGINAL

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ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Personally appeared before me the affiant Brady Mashak

being duly sworn deposes and says that defendant Terry Lemore Mccarrell

did within this county and state on or about 11/14/2011

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville)

in the following particulars:

DESCRIPTION OF OFFENSE Minor / Contributing to the delinquency of a minor

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

AFFIANT HAS DOCUMENTED EVIDENCE WHICH IMPLICATES THE DEFENDANT AS THE PERSON WHO KNOWINGLY CONTRIBUTED TO THE DELINQUENCY OF A MINOR BY GIVING STOLEN PROPERTY TO A CO-DEFENDANT WHO IS 13 YEARS OF AGE. THIS OFFENSE DID OCCUR IN GREENVILLE COUNTY, SC.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 4 Mcgee Street

Greenville, SC 29601-

Affiant's Telephone

ARREST WARRANT

ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

defendant Terry Lemore Mccarrell

do violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenville) as set forth below.

DESCRIPTION OF OFFENSE: Minor / Contributing to the delinquency of a minor

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable
Sworn to and subscribed before me

on 12/27/2011

Signature of Issuing Judge

Matthew B Hubbard

Judge Code: 7003

Judge's Address 114 N. Poinsett Hwy

Travelers Rest, SC 29690-

Judge's Telephone (864)834-6910

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

Terry Lemoire Mccarrell

AKA:

Race: BLACK Sex: M Age: 49

DOB: -1963 SS#

Address:

City, State, Zip: GREENVILLE, SC

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Larceny / Grand Larceny, value more than \$2,000 but less than \$10,000

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS2302622

A/W#: I509492

Date of Offense: 11/14/2011

S.C. Code § : 16-13-0030(B)

CDR Code #: 3420

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-13-0030(B) of the S.C. Code of Laws, bearing CDR Code # 3420

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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:

Bentley, Lisa

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 5 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.☐ 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 ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS* Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 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	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL		\$133.90

PTUP

 days/hours Public Service EmploymentObtain 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 FundOther:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: A. Hiram

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2158Sentence Date: 8 JUL 14

485

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

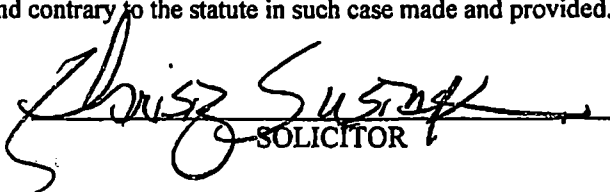
INDICTMENT FOR
GRAND LARCENY

At a Court of General Sessions, convened on **JUN 24 2014** the Grand Jurors of Greenville
County present upon their oath:

That TERRY LEMORE McCARRELL did in Greenville County, on or about the 14th day of November
2011, feloniously take and carry away the personal property of TAMILA WOODARD to wit:
JEWELRY, with a total value of more than Two Thousand Dollars with the intent to deprive the owner
permanently of such property. This is in violation of §16-13-0030 of the South Carolina Code of Laws
(1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

486


SOLICITOR

WITNESSES

Brady Mashak

Greenville County Sheriffs Office

12/20/2011

[Handwritten signature]

ARREST WARRANT NUMBER
1509492

ACTION OF GRAND JURY
TRUE BILL

Nancy M. Ellis
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012-GS-23-
BSD

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June

TERM 2012

2014

THE STATE

vs.

TERRY LEMORE McCARRELL

3420

Indictment for

GRAND LARCENY

VIOLATION §16-13-0030

ENTERED
ACCT.

LCP

002622

487

RECEIVED

APR 13 2012

Clerk of Court
Greenville County

ARREST WARRANT

1-509492

7003

12-22-11

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

THE STATE

11-173750

against

Terry Lemore Mccarrell

Address:

Greenville, SC 29617-

Phone: SSN: [REDACTED]

Sex: M Race: B Height: 5 9 Weight: 190

DL State: SC DL #: [REDACTED]

DOB: [REDACTED]/1963 Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: Brady Mashak - 1025

Offense: Larceny / Grand Larceny, value more than \$2,000 but less than \$10,000

Offense Code: 3420

Code/Ordinance Sec: 16-13-0030(B)

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Terry Lemore Mccarrell
on 12-22-11

C. McCalman #948/CIB

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Greenville General Sessions
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601-2120

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Personally appeared before me the affiant Brady Mashak

being duly sworn deposes and says that defendant Terry Lemore Mccarrell

did within this county and state on or about 11/14/2011

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Greenville

In, the following particulars:

DESCRIPTION OF OFFENSE Larceny / Grand Larceny, value more than \$2,000 but less than \$10,000

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

AFFIANT HAS A REPORT OF A GRAND LARCENY THAT OCCURRED AT [REDACTED] GREENVILLE, SC 29617 WHICH THE VICTIM, TAMILA WOODARD STATES THAT TWO DIAMOND RINGS VALUED AT \$2500 WAS STOLEN. THE AFFIANT HAS DOCUMENTED EVIDENCE WHICH IMPLICATES THE DEFENDANT AS THE PERSON WHO DID TAKE, STEAL, AND CARRY AWAY THE LISTED PROPERTY WITH THE INTENTIONS OF PERMANENTLY DEPRIVING THE VICTIM OF THE SAID ITEMS. THIS OFFENSE DID OCCUR IN GREENVILLE COUNTY, SC.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 4 Mcgee Street
Greenville, SC 29601-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 11/14/2011 defendant Terry Lemore Mccarrell

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenville) as set forth below:

DESCRIPTION OF OFFENSE: Larceny / Grand Larceny, value more than \$2,000 but less than \$10,000

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 12/20/2011

Signature of Issuing Judge

Matthew B Hubbard

Judge Code: 7003

Judge's Address 114 N. Poinsett Hwy

Travelers Rest, SC 29690-

Judge's Telephone (864)834-6910

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

484



Sheriff

Steve Loftis
Greenville County Sheriff's Office

11 - 173750

CONSENT TO SEARCH COMPUTER(S)/ CELL PHONE DEVICES

I Brooklyn Pollard, have been asked by Inv. Mastek
of the Greenville County Sheriff's Office to permit a complete search by the Greenville County Sheriff's
Office or its designees of any and all computers, any electronic and/or retrieval system or medium, and any
related computer peripherals, to include cell phone devices, described below:

1 mobile Samsung GALAXY S model: SGH-F59V
CPU Make, Model & Serial Number (If available)

Storage or Retrieval Media, Computer Peripherals

and located at 301 University Ridge ; Suite 5200 ; Greenville, SC 29601
which I own, possess, control, and/or have access to, for any evidence of a crime or other violation of the
law. The required passwords, logins, and /or specific directions for computer entry are as follows:

I have been advised of my right to refuse to consent to this search, and I give permission for this search,
freely and voluntarily, and not as the result of threats or promises of any kind.

I authorize those Agents to take any evidence discovered during this search, together with the medium
in/on which it is stored, and any associated data, hardware, software and computer peripherals.

12/22/11
Date

12/22/11
Date

Brooklyn Pollard
Signature

By Mlt #1025/4150
Signature of Witness

M/S #280/607
Signature of Witness

301 University Ridge ; Suite 5200
Location



An Accredited Law Enforcement Agency
4 McGee Street, Greenville, SC 29601 / (864) 467-5280 / Fax (864) 467-5299 Email: sloftis@greenvillecounty.org

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IPB

489

ORIGINAL

27 07 23

490

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Brooks P. Goldsmith

Appellate Case No.:2017-001177

Terry McCarrell,

Petitioner,

v.

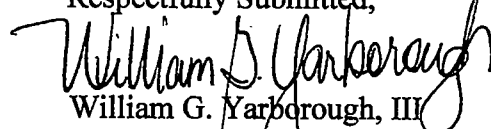
The State of South Carolina,

Respondent.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Appendix contains all material proposed to be included by any of the parties and not any other material pursuant to Rule 210(g) SCACR.

Respectfully Submitted,



William G. Yarborough, III

Attorney for Petitioner

522 N. Church Street

Greenville SC, 29601

Telephone (864) 331-1612

Fax (864) 370-0022