

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Williamsburg County

Honorable D. Craig Brown, Circuit Court Judge

FARON M. CLEMENTS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-002178

APPENDIX

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STATE OF SOUTH CAROLINA))
COUNTY OF WILLIAMSBURG) GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)

STATE,)

V.

TRANSCRIPT OF RECORD
13-GS-45-0247

FARON M. CLEMENTS,)

____ DEFENDANT.)

October 13, 2014
Kingstree, South Carolina

B E F O R E :

THE HONORABLE CLIFTON B. NEWMAN, JUDGE;
AND JURY

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

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EXHIBITS

STATE'S:

No.	Description	I.D./EVD.
1	Surveillance video	3/
2	Photo of ID card	112/120
3	Photo of bill	112/120
4	Photo of GKCU letter	112/120
5	Photo of mail	112/120
6	Photo of ammunition	112/130
7	Photo of contents in drawer	112/130
8	Photo of bathroom with gun	112/130
9	Photo of gun behind door	112/130
10	Photo of handgun	112/130
11	Photo of gun in drawer	112/130
12	Photo of bedroom	112/123
13	Photo of blanket	112/123
14	Photo of blanket	112/123

COURT'S:

1	Note from jury	207
2	Note from jury	218
3	Consent form	264

1 (WHEREUPON, State Exhibit No. 1 was marked
2 for identification only.)

3 THE COURT: Do we have any preliminary
4 matters?

5 MS. BARR: I believe the Defense does,
6 Your Honor.

7 MS. SHULER: Yes, Your Honor. I have two
8 motions, Your Honor.

9 THE COURT: All right.

10 MS. SHULER: Yesterday — I filed a motion
11 to compel. There were some issues that were — that
12 had not been provided to me. There were some
13 pictures and —

14 THE COURT: Let me ask you, which is
15 Mr. Clements?

16 MS. SHULER: Your Honor, he was just here.
17 Somebody told me he was sitting outside.

18 I'm not exactly sure if he's still sitting
19 outside.

20 Will you check?

21 THE COURT: Go ahead.

22 MS. SHULER: There were some pictures that
23 had not been provided to me yet that I previously
24 asked for, and I'd asked for some additional
25 statements from the victim. The victim had been

1 involved in a number of sexual occurrences over this
2 weekend that she was on runaway status, and I'd
3 asked for any additional statements pertaining to
4 her events from that weekend. And I was provided —
5 I was given the opportunity to review her evaluation
6 from her DJJ file. That evaluation from the DJJ
7 file contains inconsistent statements from the
8 statement that she provided law enforcement.

9 The statement itself says that her first
10 consensual sexual encounter was when she was 13
11 years old, says that she always used a condom, and
12 that — and mentions on the weekend of the, this
13 incident, that she did, in fact, have sexual
14 relations with — her statement says seven
15 individuals. The evaluation from DJJ says four or
16 five if I'm not mistaken.

17 I might be misquoting that, but it's a
18 different number. And then it says she was raped by
19 another individual. There's an allegation that she
20 was raped on the weekend that she was on runaway
21 status with Mr. Clements, not by Mr. Clements but by
22 another individual that she did not, does not know
23 who it is. The medical records from Williamsburg
24 Hospital says that she was raped. So Your Honor,
25 for the impeachment value of that record I think

1 that that should be provided to me. I think at that
2 point I should be allowed to get the counselor notes
3 at that point so that I can compare the counselor
4 notes to the records themselves. And Your Honor,
5 that should be provided in accordance with State
6 versus Lang, 403 Southeastern Second 677 inasmuch as
7 it does bring into question the credibility of the
8 victim herself. I have a motion in limine.

9 I don't know if you want to deal with this
10 issue first and then —

11 THE COURT: All right. Ms. Barr.

12 MS. BARR: Judge, I'm not quite sure that
13 I understand or agree with counsel's assertion that
14 there is a inconsistency between the statements that
15 the child gave to Investigator Ballard as part of
16 the police investigation versus the statements that
17 she gave to an evaluator, a psychologist as a part
18 of her DJJ evaluation. I think it's important to
19 put into context that statements that the child gave
20 to an evaluator were in the words of the evaluator.
21 For example, one of the statements that is included
22 in the evaluator's report is that Complainant was gang
23 raped by five different males while on runaway
24 status. The words gang rape were not the child's
25 words. Those were the words of the evaluator.

1 I certainly disagree with the assertion that
2 Complainant, the victim in this case, alleged in either
3 her recorded statement to the police or in the
4 statement to the evaluator that she was raped by
5 another man other than Mr. Clements.

6 Just, I'll give Your Honor a copy of her
7 reported statement to police as well as relevant
8 portions of the evaluator's report. Judge, we take
9 the position that the DJJ evaluation report was in
10 connection with her truancy charge, not truancy
11 charge, incorrigible charge, runaway charge, as a
12 juvenile with Department of DJJ; and as such, it is
13 a medical record. It is a privileged medical record
14 and the Defense ought not be permitted to
15 cross-examine this child about privileged
16 information.

17 There is nothing in there that is exculpatory
18 to the Defense. Moreover, if counsel seeks to get
19 into specific acts that this child had with other
20 individuals while she was on runaway status, we take
21 the position that that evidence is precluded and
22 should be excluded by the rape shield law.

23 And Judge, it's according to that position we
24 cite State versus Michael Williams is a recent Court
25 of Appeals opinion that precluded evidence of the

1 victim's sexual abuse by persons other than the
2 named defendant in a CSC with a minor case.

3 MS. SHULER: Your Honor, in regards to the
4 alleged rape, at some point in time the child has
5 alleged that somebody other than Mr. Clements raped
6 her, that somebody took that — to use her words —
7 somebody took it from her. And that is in her
8 hospital records and that was disclosed to law
9 enforcement. I'm not stating that that appears in
10 her transcribed statement to law enforcement.

11 She told law enforcement that. And the
12 inconsistency comes up where she alleges or she
13 states in her evaluation from DJJ that there was a
14 rape that occurred. So there was — she says that
15 there was a rape and then that there was, she had
16 the consensual or had the sexual encounter with
17 these other individuals over the weekend as well;
18 and so that leaves out where she supposedly had
19 sexual relations with Mr. Clements. And then which
20 is up — which I don't think that counsel can
21 dispute with me that she claims that she always used
22 a condom, in her evaluation with DJJ; but in her
23 statement with law enforcement she claims that she
24 used a condom one time but not the other time.

25 So there is that consistency as well. The —

1 in State versus Lang the Court states that —

2 THE COURT: What year was that?

3 MS. SHULER: 1991. Evidence of specific
4 instance of a sexual activity which would — it
5 states that evidence to impeach the credibility of a
6 witness shall not be included. So if it's evidence
7 that can be used to impeach her credibility I think,
8 number one, it — I should be entitled to that under
9 Brady, but also that it should not be excluded at
10 trial for its impeachment value. And I've got a
11 copy of the case that I can hand up to Your Honor.

12 THE COURT: The issue is victim's prior
13 sexual conduct, is that what you're trying to
14 present evidence to the jury of?

15 MS. SHULER: Yes, Your Honor. Well, Your
16 Honor, she claims at some point in time that she was
17 raped on the same weekend that she allegedly had
18 consensual sexual relations with Mr. Clements.

19 At some point she tells law enforcement that
20 it's noted in her medical records from Williamsburg
21 Regional Hospital. In her evaluation from the
22 forensic or from her DJJ evaluation she tells the
23 counselor about the other individuals that she had
24 relations with, and then at some point in time tells
25 the evaluator that she was raped, but at no — it

1 does not reference any other consensual relations
2 with Mr. Clements. And then it also says that she
3 always used a condom. And in her interview with law
4 enforcement she said that he used a condom one time
5 with Mr. Clements but not with the, not the other
6 time. So it is an inconsistent statement that --
7 it's our position that's inconsistent statement that
8 should be provided to us.

9 THE COURT: Well, your question is what
10 should be provided to you; that's discovery issue.

11 The question is what evidence is admissible at
12 trial is not a discovery issue so. And if you have
13 a problem with the State compliance with discovery,
14 that's what we're talking about then, then I can
15 focus on discovery.

16 MS. SHULER: That is our issue, Your
17 Honor.

18 THE COURT: All right, Ms. Barr.

19 MS. BARR: And Judge, I'll shorten this by
20 just simply saying that it is arguably an
21 inconsistent statement when the victim tells law
22 enforcement that she used protection or that the
23 defendant used protection in one sexual assault and
24 did not use protection during another sexual assault
25 and she later after being evaluated in connection

1 with her DJJ case, says that she always uses
2 protection; that would be inconsistent. Judge,
3 however, the note with regard to the medical record,
4 and this is why it's important to keep the medical
5 record in statements in context, the note in the
6 medical record under the heading Additional Findings
7 reflect that, had sex with seven people in the last
8 week, many of which were adults, would warrant
9 accused rape. And then parentheses it says Sunday.

10 And Judge, I'll hand the Court what I'm
11 talking about here. At that time the hospital
12 records note that she had been interviewed by law
13 enforcement and that the Sheriff's Department was
14 there at the time.

15 Well, Judge, because she was a minor, every
16 sexual encounter she would have had would have been
17 a rape because she doesn't have the capacity to
18 consent because of her age so that's not something
19 that the victim necessarily said that, okay, I had
20 sex with seven people but only one was a rape. That
21 would have been a finding that either law
22 enforcement made or a finding that the hospital made
23 so there is — those particular statements need to
24 be placed in proper context. It's not the child
25 made inconsistent statement; it's law enforcement

1 and medical personnel making that determination and
2 characterizing one as a rape as opposed to all of
3 them. But she wouldn't have had the ability to
4 consent to any form of sexual contact because of her
5 age.

6 THE COURT: Well, if the issue is
7 discovery then why does it matter whether it's
8 inconsistent or not? If the question is whether or
9 not the defendant is entitled to a copy of the
10 statement or record, whatever she's trying to get?

11 MS. BARR: The only thing that she has not
12 been provided of is a copy with is the child DJJ
13 evaluation which we took position that it's
14 privileged. She's been provided with a copy of the
15 child's statement as well as her medical records.

16 THE COURT: And so what is it that you are
17 trying to get that you don't have, Ms. Shuler?

18 MS. SHULER: A copy of the evaluation done
19 by DJJ.

20 THE COURT: On the basis that you believe
21 that the evaluation contains inconsistent
22 statements.

23 MS. SHULER: Inconsistent statements and
24 possible exculpatory information, exculpatory
25 statement, Your Honor.

1 THE COURT: And the State's response is?

2 MS. BARR: Judge, I think if she were to
3 ask the child did you at one point tell law
4 enforcement that one occasion the defendant used
5 condom, on the second occasion he did not; but later
6 tell someone else that on every encounter you always
7 used protection, I think that would be sufficient to
8 impeach her assuming she denies making the statement
9 but to waive all of her rights to privacy as relates
10 not just to this case but to other psychological
11 medical conditions that she has, I think that it
12 goes beyond what the intended purpose is. And from
13 my understanding, Ms. Shuler's argument that's the
14 only impeachment value that that particular record
15 has as it relates to whether or not she used
16 protection, which on the grand scale of things I
17 don't know that that's a huge inconsistency. But,
18 you know, I'm not defending the case but that would
19 be the only inconsistent statement.

20 THE COURT: What about that disclosure of
21 that part of the record only?

22 MS. SHULER: Your Honor, I was given a
23 very short time last night to look at this record
24 for one. And it's my understanding that these
25 reports were generated after the counselor

1 themselves make some notes and then they generate
2 this report. So there's some handwritten notes and
3 they come up with this final report that they come
4 up with these conclusions, and had I known that this
5 report existed prior to last night we probably could
6 have dealt with this prior to last night. But I
7 don't know what else is in there for sure because I
8 had a very short period of time last night to look
9 at it. I do know that it does state that, the part
10 about the condom, it says another report — it has
11 been alleged that she claims that she was raped by
12 some other individual that she does not know who it
13 is. It does not come up in her statement, but it —
14 supposedly she talked to law enforcement about it.
15 So I'm not exactly sure why we're glossing over that
16 issue or if law enforcement even willing to talk
17 about that. But is that the rape that she's talking
18 about in that forensic interview or in that DJJ
19 interview. She claims at one point in time that she
20 was raped by somebody that she didn't know on the
21 same weekend that this contact allegedly occurred
22 with Mr. Clements, and she says that she was raped
23 in this — the counselor said she was raped in this
24 DJJ interview. So I think that in the interest of
25 justice that Mr. Clements would be entitled to look

1 into this issue of this DJJ report.

2 THE COURT: All right. What else, Ms.
3 Barr?

4 MS. BARR: Judge, the only thing that I
5 would add is that unfortunately this child has had a
6 troubled life. She's experiencing things that
7 probably none of us will ever experience in our
8 lifetime; but the reality is, there were a couple of
9 individuals whose names the child did not know.

10 And so to argue that, well, you know, one
11 record she's saying that she was raped by somebody
12 she didn't know but that was never disclosed to law
13 enforcement, that's not an inconsistent statement.

14 I mean, she — there were a couple of
15 individuals who she did not know. But I think that
16 to permit basically the Defense to have total and
17 unfettered access to her medical records that was
18 done for the purpose of treating her, providing care
19 for her, making recommendations to the family court
20 as to what is in her best interest, and allow them
21 to simply go on a fishing expedition, is not what
22 Rule 5 and which Brady was intended to encompass.

23 And I think further to permit them to then
24 bring out certain information in front of this jury
25 would be vital to rape shield law.

1 MS. SHULER: I'm not asking for complete
2 unfettered access to her medical records.

3 I'm asking for one record, and the disclosure
4 —

5 THE COURT: Which is?

6 MS. SHULER: Which is —

7 THE COURT: One record which is?

8 MS. SHULER: The DJJ record, and whatever
9 notes go along with that DJJ record.

10 THE COURT: Well, the DJJ records is
11 psych— a comprehensive psychiatric evaluation?

12 MS. BARR: It is, Your Honor.

13 MS. SHULER: And there — it's my
14 understanding that that was a disclosure to law
15 enforcement that an unknown older black male raped
16 this victim on the same weekend; that that
17 disclosure was made to law enforcement.

18 So I'm not exactly sure —

19 THE COURT: You base that on, what you
20 just state, on what source of information?

21 MS. SHULER: Information that has been
22 provided to me outside of discovery.

23 MS. BARR: Judge, I'm looking at page 11
24 of the child's interview with the police.

25 They asked her, did anybody else come over and

1 have sex with you? No. Was anybody else in the
2 house with y'all when y'all had sex? Yes. Who was
3 it? I don't know the man's name. All I know is he
4 is a constructor and he drives a silver looking car,
5 silver or gray looking car. Question, okay.
6 Answer, he has black and gray hair. Question, did
7 he attempt to have sex with you? Yes, I told him
8 no. He kept touching me and I told him no.

9 And I believe that may be the other gentleman
10 counsel is referring to.

11 MS. SHULER: Your Honor, what's shocking
12 to me is that the information that was provided to
13 me was that it's alleged that this victim was raped,
14 supposedly told Mr. Clements that she was raped, and
15 went so far as to say Mr. Clements response to that
16 was, oh, well, that wasn't worth at least fifty
17 dollars. That's how detailed that information was
18 about the alleged rape of the other individual. So
19 that not coming up in this statement with there
20 being an allegation of one other rape being in that
21 record, the psych record from DJJ, I think that we
22 should be entitled to that and entitled to the notes
23 from the interviewer.

24 MS. BARR: And Judge, I'll just say this
25 and I'll leave the matter alone. I know what

1 Defense counsel is referring to and certainly think
2 that she is free to ask the child about that. I
3 think that will probably explain any concerns or
4 questions that she has regarding this older person
5 that was in the home of the defendant.

6 THE COURT: Portion of the record that
7 referenced whatever she told the interviewer
8 concerning this particular night or day that she
9 allegedly was raped by Mr. Clements, is that
10 something that's confined to a paragraph of the
11 report?

12 MS. BARR: Judge, there are several
13 references to it in the evaluative report, and we
14 certainly could copy and make appropriate redactions
15 if the Court is inclined to require us to turn over
16 that information to the defendant.

17 THE COURT: Well, for discovery purpose it
18 appears that that portion of the report that
19 references the incident in question, if there's
20 any — if it gives any basis to raise any defense
21 concerning the items that may lead to some
22 admissible evidence regarding the source of semen,
23 disease, or something of that nature, or the
24 identity of the perpetrator, then that will be,
25 would be discoverable. But as I stated, questions

1 of discovery and questions of admissibility are two
2 separate things; and whereas, it may be
3 discoverable, it may not be admissible. Whether
4 something is admissible it may depend on the flow of
5 the evidence at the trial.

6 MS. BARR: Yeah.

7 THE COURT: But if the question is some
8 source of conflict perhaps with the identity of the
9 perpetrator or as this rule says that a defendant
10 may not present evidence of the victim prior sexual
11 conduct except under following circumstances:

12 A, for the limited purpose of showing source
13 of semen, pregnancy, or disease. He gives prior
14 notice of such evidence has been introduced at trial
15 if the judge finds such evidence is relevant to
16 material fact and issue in the case and if it's
17 inflammatory or prejudicial in nature, does not
18 outweigh its probative value and it cites code
19 section 16-3-59.1 and rules of evidence 412. So
20 it's saying as if the -- if this whatever portion of
21 the record referencing this specific incident can be
22 extracted from the evaluation and provided to the
23 defense, I think that would be appropriate
24 discovery.

25 It would not be appropriate discovery to turn

1 over its entirety for the complete evaluation of the
2 victim, alleged victim. So how can that be worked
3 out, Ms. Barr?

4 MS. BARR: Judge, I'll make copies of it
5 and redact the relevant portion.

6 THE COURT: All right. How about that,
7 Ms. Shuler?

8 MS. SHULER: Your Honor, it's still — the
9 evaluator still would have notes at some point,
10 seemingly would have notes that she had taken at
11 some point.

12 THE COURT: All right.

13 MS. SHULER: That I — that we would be
14 entitled to that I think —

15 THE COURT: Evaluator's opinion?

16 MS. SHULER: Just about the incident
17 itself, if we can get her notes about the incident
18 itself.

19 THE COURT: Well, that's what the report
20 would be, what she told the evaluator.

21 MS. SHULER: You would think that it would
22 be, or you would hope that it would be but not, not
23 always are what notes that we take end up being
24 typed out in time, end up being what it is in final
25 form. She may write down exactly what the victim

1 said.

2 THE COURT: If she wrote down what the
3 victim said, then that's discoverable.

4 MS. SHULER: Right.

5 THE COURT: And the victim, and whatever
6 the victim otherwise tells her that might relate to
7 the identity of the perpetrator or rape, put any of
8 those facts this issue would be discoverable and
9 that's what the State which is ordered to provide.

10 If you have some question as to whether it's
11 complete disclosure after the State provides it,
12 then the Court can review it in-camera to determine
13 if it has been, if the discovery order has been
14 complied with.

15 MS. SHULER: Thank you, Your Honor.

16 THE COURT: All right. What else do we
17 have? Is that juror here yet?

18 THE BAILIFF: Not yet.

19 THE COURT: Do they plan to come today,
20 tomorrow, tonight? We said 2:30.

21 We'll be at ease for a moment.

22 (WHEREUPON, a recess was taken from the
23 proceedings.)

24 THE COURT: I'm gonna put on record the
25 issue involving this missing juror. Madam Clerk, if

1 you will tell me what the situation is with the
2 juror.

3 THE CLERK: I called in 9-1-1 this
4 morning, Your Honor, about ten, to place, speak with
5 someone in reference to this juror, Ruinetta Green,
6 and had her address given to the 9-1-1 dispatch to
7 have an officer pick her up and this is Ruinetta
8 Green, , Andrews, South Carolina.

9 She was picked up by the Sheriff Department on
10 yesterday and this was supposed to have been done as
11 today.

12 THE COURT: How do we know that she needed
13 a ride?

14 THE CLERK: She called in.

15 THE COURT: Before the term of court?

16 THE CLERK: She did.

17 THE COURT: And said she needed a ride to
18 court?

19 THE CLERK: She spoke with Maurice and he
20 called it in on yesterday.

21 THE COURT: To pick her up yesterday and
22 brought her?

23 THE CLERK: Yes.

24 THE COURT: She was selected on the jury.

25 Jurors were told to come back at 2:30 today.

1 THE CLERK: I called her this morning.

2 THE COURT: And you called her this
3 morning at what time?

4 THE CLERK: 10.

5 THE COURT: For her to be picked up ---

6 THE CLERK: By 2.

7 THE COURT: By 2:00.

8 Now we're at quarter after 3 and she's not
9 here. So what's the story, why isn't she here?

10 THE CLERK: I think Officer Scott was on
11 the phone with someone just now. I'll find out for
12 sure.

13 (Pause.)

14 THE COURT: We need to know where the
15 missing juror is. Why isn't she here?

16 THE OFFICER: Your Honor, I just made
17 contact with my lieutenant. He said that a civil
18 officer, Larry Moore, is in route back to court now
19 with that individual.

20 ETA is five minutes.

21 THE COURT: Now the process with a juror
22 is to be picked up is to contact 9-1-1?

23 THE CLERK: To dispatch, yes.

24 THE COURT: And there is no one designated
25 to pick up jurors when they -- when they don't have

1 a ride?

2 THE CLERK: There are times I use
3 Mr. Frazier. I should have did that in this
4 instance.

5 THE BAILIFF: We're one bailiff short this
6 morning.

7 THE COURT: One bailiff short.

8 We don't need to have court if we can't have a
9 jury, we can just leave and go home. Try it again
10 tomorrow. It's 3, almost 3:20. You had all day to
11 get her here. We can't wait around for jurors like
12 this, forty minutes, and forty minutes late at this
13 point. And there's no system to get the jury here,
14 then either the juror can't serve or we have to have
15 a better system of getting the juror here. What you
16 say about it, Madam Solicitor?

17 MS. BARR: Judge, did I understand the
18 Sheriff's Department to say that the estimated time
19 of arrival is five minutes?

20 THE COURT: Yes, that's what she said one
21 minute ago.

22 MS. BARR: Judge, I didn't know whether or
23 not Ms. Shuler had any other motions. I think she
24 mentioned three. And I don't know if we dealt with
25 all of them or not; but if we haven't, and we need

1 to finish whatever matters, perhaps the juror will
2 be here by then.

3 THE COURT: All right, what else you have,
4 Ms. Shuler?

5 MS. SHULER: Judge, I have a motion in
6 limine. May it please the Court.

7 THE COURT: Yes.

8 MS. SHULER: While executing a search
9 warrant in Mr. Clement's house the law enforcement
10 seized items that they believe to be narcotics and
11 some firearms.

12 The narcotics were tested by SLED and it was
13 determined that they were not drugs. The victim
14 says throughout her statement that she believed that
15 Mr. Clements was selling drugs. She said that he
16 went looking for his weed a number of times in this
17 statement. So we would move that there be no
18 reference at all to any drug, alleged drug use, any
19 drug dealing or anything like that, or any use of
20 firearms or anything like that for fear of confusing
21 the issues, misleading the jury, or things of that
22 nature as to the danger of unfair prejudice to
23 Mr. Clements.

24 THE COURT: All right. Ms. Barr.

25 MS. BARR: Your Honor, we would take the

1 position that the evidence surrounding the seizure
2 of weapons from the defendant's home, the seizure of
3 what was believed to be drugs from the seizure from
4 the defendant's home, is relevant because it makes
5 it more likely than not that the victim's testimony
6 is credible. It corroborates relevant portions of
7 her testimony regarding where guns were seen by her,
8 where alleged drugs were seen by her. Ms. Shuler is
9 right, there are portions of her statement to the
10 police where she talks about her belief that the
11 defendant was selling cocaine. Judge, there were
12 photographs taken of items that were taken from the
13 defendant's home including the weapons, including
14 what appears from the photograph to be cocaine and
15 crack cocaine; and so certainly, Judge, when you
16 have a situation where the credibility of the sole
17 witness to this particular assault is key, we
18 believe that evidence of all the details surrounding
19 the days in which the victim would have been with
20 the defendant are certainly relevant and certainly
21 admissible. Judge, obviously the fact that the
22 items that were believed to be drugs are not to be
23 controlled substance is something that counsel can
24 elicit from the investigation officer, but at the
25 time the child did not know that they were not

1 controlled substance. She had every reason to
2 believe they were controlled substance. They were
3 packaged as controlled substance and they certainly
4 looked like controlled substance. And when you have
5 a situation where defense counsel just argued to the
6 Court how vigorously she intends to impeach the
7 credibility of the victim, we believe that evidence
8 that corroborates her testimony would be just as
9 relevant as any evidence that the Defendant would
10 seek to impeach her testimony.

11 MS. SHULER: Your Honor, there are
12 pictures of things that they claim are crack rocks
13 that are chunks of things that are this thick.

14 I know from my experience as a criminal
15 defense attorney that you don't get chunks of crack,
16 rock, that are this thick, about an inch thick. But
17 inasmuch as if they intend to introduce those
18 pictures and introduce that evidence, then we've got
19 a discovery issue again. I asked a month ago for
20 any and all evidence regarding those drug cases.

21 I was given the opportunity to view the
22 pictures yesterday. I've not given, been given an
23 incident report regarding that stuff. I asked about
24 a month ago and I have yet to be given an incident
25 report regarding that, that information, so we've

1 got another discovery issue. Here we are, we have
2 drawn a jury. We've, have not sworn them in yet,
3 but my client should be given the opportunity to
4 look at that, look at the stuff, look at the
5 evidence against him, and if they intend to use this
6 information against him he certainly is, should be
7 entitled to see the incident report that's there
8 against him. But yet again, we have a SLED -- the
9 only thing that I was given was a SLED report that
10 says that these things were tested and they aren't
11 drugs. And so we're gonna use this only to elicit
12 the emotion of the jury and say, oh, look at
13 Mr. Clements, he had drugs, guns, and now he's
14 raping babies, and so what more are we gonna do to
15 this guy to prevent him from getting a fair trial.

16 We're gonna keep discovery from him too?

17 THE COURT: Ms. Barr.

18 MS. BARR: And Judge, I thought that the
19 motion before the Court was to exclude any testimony
20 regarding finding drugs and weapons in the
21 defendant's home. And Judge, counsel cannot argue
22 to this Court that she had no knowledge of guns and
23 drugs being found in the home. She was provided
24 with copy of the SLED report, plus she was provided
25 a copy of the search warrant and the return. So I

1 don't want it to be represented to the Court that
2 this is something, surprise, that guns and drugs
3 were found in the defendant's home. This is not a
4 surprise to her. It was not my intent to submit
5 photographs of the guns and the drugs, but certainly
6 she requested photographs from, of the guns and of
7 the drugs. I told her that I would get with
8 Investigator Ballard or get with Investigator Wrenn
9 about getting that information to her. I just got
10 the colored photos on yesterday and so I shared
11 those with her on yesterday. Judge, they're not
12 five hundred photographs; there are maybe ten at the
13 most. But if the argument or the motion before the
14 Court is to exclude evidence or testimony regarding
15 finding that material, then Judge, I would, I would
16 argue that those items are, testimony regarding
17 those items are relevant and I don't believe that we
18 have a discovery issue about that because she knew
19 about that well in advance.

20 MS. SHULER: Judge, I have no idea who
21 took those things in. I don't know if anybody field
22 tested them. I don't know who, I assume it would
23 have been Investigator Coker. I'm not exactly
24 positive 'cause I don't have an incident report
25 though asking for it, not only in a Rule 5 Brady

1 motion but also in an email and also in person and
2 also in open court last term of court. So if it's
3 intent to talk about that stuff, then I think that I
4 have the right to bring in the officer and ask the
5 officer, did you field test it. Chances are I don't
6 think he did because if he did, it probably would
7 have come back negative because SLED tested it and
8 it was negative. So I mean, we're here again where
9 there was information in the child's file that I
10 didn't know about. Now we're gonna bring in the
11 evidence about the drugs that I didn't think was
12 really gonna be an issue. And if it is gonna, if it
13 is gonna be an issue and if the Solicitor does
14 intend to bring in that testimony then I'm — I
15 would like a copy of the incident report so that I
16 do know who field tested it, that evidence, who did
17 take it in. And again, it's our position that that
18 is merely to emanate emotions of the jury itself.

19 THE COURT: I find that 95 percent of the
20 time hearing motions in limine is a complete waste
21 of time because it's all based on conjecture and
22 speculation about who is going to attempt to do what
23 during the course of a trial, and the judge is asked
24 to rule upon things without any foundation or
25 information on which to make a ruling. And in the

1 other five percent of the cases where items are
2 excluded then they're — parties seeking to have
3 excluded then poses a question that causes it to be
4 introduced anyway. But generally speaking, based on
5 what I've heard on this issue about evidence of
6 other crimes, one of the accepted bases for the
7 admissibility of evidence of other crimes is when
8 such evidence furnishes a part of the context of the
9 crime or is necessary for the full presentation of
10 the case or is so intimately connected with and
11 explanation of the crime charged, and is such a part
12 of the setting of the case in its environment that
13 the proof is necessary in order to — necessary,
14 appropriate, in order to make a complete story of
15 the crime by showing the context and the other
16 matters be linked, linked into it, such that the
17 items should be, the evidence should be allowed.

18 Now based on what I've heard, that perhaps
19 includes the existence of guns and what appeared to
20 be marijuana. It does not include explanation of
21 selling drugs so I grant the motion in limine
22 regarding testimony that the defendant was actively
23 selling drugs. I deny the motion as to relates to
24 the other things raised by the Defense. What else
25 do you have?

1 MS. SHULER: Your Honor, I move to
2 continue that Mr. Clements' case for Rule 5
3 violations. Number one, I've not been -- I would
4 like to be given the opportunity to fully review the
5 report, and I would like the opportunity to review
6 any report as it pertains to the drug case. And in
7 addition, I gave law enforcement on September the
8 30th subpoenas to serve on two witnesses. Those
9 subpoenas were not served until October the 9th; and
10 then I get a note yesterday afternoon after we have
11 pulled the jury, that one of the witnesses is not
12 available for trial and the excuse was handed to me
13 just a few minutes ago, that he's going to be at the
14 VA for surgery, that he's having -- Mr. Fred Morris
15 is having surgery on October the 14th, which is
16 today. And I might would have known that but my
17 subpoenas were not served until October the 9th.

18 THE COURT: All right. Ms. Barr?

19 MS. BARR: Judge, of course I would have
20 no way of knowing whether or not what these
21 witnesses, what their expected testimony would be.

22 I think there has to be some showing for the
23 Court that their testimony is material to the
24 Defense.

25 Judge, I don't know what other efforts were

1 made to contact these witnesses prior to court. I
2 did notify the Defense more than two weeks ago that
3 this case would be called for trial during this
4 term. Judge, I've had instances where law
5 enforcement has attempted to serve witnesses for me
6 with subpoenas and can't find them, they've moved.
7 I mean, stuff happens; that's just the nature of the
8 beast. But obviously, without any showing that the
9 witness who is unavailable through no fault of
10 anybody's, is material to the Defense, I think that
11 the motion for a continuance ought to be denied. I
12 think the rules of criminal procedure require that
13 there be, that the motion be in writing, that there
14 be some communication to the Court as to the
15 expected testimony and that the Defense cannot
16 safely go forward because of absence of the witness.

17 THE COURT: Ms. Shuler.

18 MS. BARR: I do know one of the witnesses
19 came on yesterday was available, one of the Defense
20 witnesses.

21 MS. SHULER: He was here yesterday and he
22 was available. This is Mr. Fred Morris.

23 He is — was around during the weekend for the
24 majority of the weekend as he's a friend of
25 Mr. Clements. He will testify that the victim used

1 his telephone to contact people throughout the
2 weekend and will corroborate Mr. Clements' story
3 that the victim was present at his home, that he
4 provided her a place to stay and at no point in time
5 did he see any inappropriate contact between
6 Mr. Clements and the victim itself. But apart from
7 that, we still have another basis for my motion to
8 continue is the Rule 5 violation that I was not
9 provided a incident report in connection with the
10 drug case.

11 THE COURT: All right, the — we selected
12 the jury on this case yesterday. We were through
13 with jury selection probably around 3:30 or so, 4:00
14 yesterday. I inquired of the State and the Defense
15 as to whether there are any pending matters that we
16 needed to discuss prior to the jury coming in today.

17 I was informed by the State and of the Defense
18 there are no, there's no pending matters, that
19 everything had been resolved that related to a
20 question of involving pretrial preparation.

21 Then when we appear today then there's an
22 avalanche of matters and issues, motions to limine,
23 now a motion for continuance. The rule regarding
24 continuances is addressed in Rule 7 of the rules of
25 criminal procedure. It states that no motion for

1 continuance of trial shall be granted on the account
2 of the absence of a witness without the oath of the
3 party as counsel or agent to the effect that the
4 testimony of the witness is material to the support
5 of the action or defense of the party moving. The
6 motion is not intended for delay but is made solely
7 because he cannot go safely to trial without such
8 testimony and has made a use of due diligence to
9 procure the testimony of the witness or for such
10 other circumstances as would satisfy the Court that
11 this motion is not intended for delay. When
12 subpoena has been issued the original shall be
13 produced with proof of service or the reason why not
14 served, endorsed thereon. Party applying for such
15 postponement on the account of the absence of a
16 witness shall set forth under oath in addition to
17 the foregoing matter what facts or facts he or she
18 believes the witness presently testified to and the
19 grounds for such belief. And based on all that I've
20 heard, I do not find good cause to continue the case
21 and I deny the motion. What else do you have?

22 MS. SHULER: Your Honor, can I get a copy
23 of at least the incident report from the drug case?

24 MS. BARR: Judge, I'll get that.

25 THE COURT: Did we find the other juror?

1 THE BAILIFF: About ten minutes ago they
2 were turning on 261.

3 THE COURT: Turning on 261.

4 THE BAILIFF: About ten minutes ago.

5 THE COURT: Five or ten minutes ago.

6 (Pause.)

7 THE COURT: All right. The juror who was
8 five minutes away 20 minutes ago is still not here.

9 What says the State about proceeding without
10 the juror?

11 MS. BARR: We're prepared to go forward.

12 THE COURT: What says the Defense?

13 MS. SHULER: Beg the Court's indulgence
14 one moment.

15 (Attorney confers with defendant.)

16 MS. SHULER: Your Honor, we can proceed.

17 THE COURT: All right. We'll take a three
18 minute break. If the juror is not here in that time
19 we will press on.

20 (WHEREUPON, a recess was taken from the
21 proceedings.)

22 THE COURT: Let the record show this juror
23 was produced, just arrived. Supposed to be here at
24 2:00, an hour and 45 minutes late. If you will
25 bring the jury please.

1 (WHEREUPON, the jury was returned to the courtroom
2 at approximately 3:45 p.m., and the following
3 proceedings commenced in open court.)

4 THE COURT: Good afternoon. Ladies and
5 gentlemen, if you will stand now to be sworn.

6 THE CLERK OF COURT: Please raise your
7 right hands.

8 (WHEREUPON, the jury was sworn.)

9 THE COURT: All right. Ladies and
10 gentlemen, thank you for being here as instructed at
11 2:30 and we have been here all day. One of the
12 jurors as you all know were, was missing, and we had
13 to wait for that juror and we can now proceed with
14 this trial. And hopefully we won't have this
15 problem again and have to wait anymore.

16 The defendant in this case is Faron Maurice
17 Clements. He's been indicted by the grand jury and
18 charged with criminal sexual conduct with a minor in
19 the second degree, two counts. He has pled not
20 guilty to the charges contained in this indictment,
21 and the law presumes that he's not guilty of these
22 charges. He cannot be found guilty unless the State
23 presents evidence which convinces each and every one
24 of you of his guilt beyond a reasonable doubt, and
25 that is the purpose of a trial, to determine whether

1 the State can meet that burden. The indictment is
2 simply the document that brings the case into court,
3 and he's pled not guilty to those charges. And the
4 State must prove his guilt, must convince each and
5 every one of you of his guilt beyond reasonable
6 doubt; otherwise, you must find him not guilty. And
7 it's especially important that you perform your duty
8 of making that determination diligently and
9 conscientiously because ordinarily there is no way
10 to correct an erroneous determination by the jury.
11 Now out of all the folks who are summoned to come
12 here for jury duty they are all in those seats back
13 there yesterday, out of all the people who were
14 summoned to be here, out of all the people who live
15 here in Williamsburg County, out of all the people
16 who live in the State of South Carolina, in fact,
17 out of all of the people who live in the world, only
18 twelve of you who will deliberate can decide the
19 facts of this case; so therefore, you hold a very
20 high office. As jurors you hold a very important
21 position because that's the role that you've been
22 called upon to take on this case. Now just as only
23 you can decide the facts of this case as jurors, as
24 the presiding judge I am the sole judge of the law
25 of this case, and you must accept as correct the law

1 as I state it to you at this time during the trial
2 and in greater detail at the end of the trial. And
3 until I advise you to do so, you must not discuss
4 the case with anyone including your fellow jurors,
5 family, friends, or anyone else. You must not
6 engage in any form of independent research or
7 checking any newspaper, internet, Facebook, any
8 other type of research because the oath that you
9 took is to well and duly try this case and render a
10 true verdict based on the law and the evidence so
11 help you God. And all of that law and all of that
12 evidence will be presented here in the courtroom and
13 no place else. Now it's important that you keep an
14 open mind and do not decide any issue in this
15 case -- it's important that you keep an open mind
16 and do not decide any issue in this case until you
17 have heard the entire case, the arguments of the
18 parties, and I have given you the instructions of
19 law. Now in just a moment the Solicitor will make
20 an opening statement, Ms. Barr, in which she will
21 explain to you what she expects the evidence to show
22 in this case. The Defendant will have the right to
23 do so as well through Ms. Shuler. Remember, you are
24 the sole judge of the facts of the case. After
25 hearing opening statements the -- you will hear the

1 testimony from this witness stand and other evidence
2 will be presented. After all the evidence has been
3 presented, then the parties will come and argue what
4 they believe the evidence have shown and I will then
5 give you more detailed instructions of the law. Now
6 later in the process I will appoint one of you to
7 serve as the foreperson of the jury and that person
8 will have responsibility of presiding over the jury
9 deliberation, also serving as the spokesperson for
10 the jury, and also have the responsibility of
11 completing the verdict form representing the
12 unanimous verdict of the jury. Hopefully we can
13 keep this case moving and without needless waste of
14 anyone's time; and as I stated, hopefully we won't
15 have to wait an hour and forty-five minutes for a
16 juror to arrive 'cause you should be here.
17 Designated time and rides are being provided for
18 you. For whatever reason they should be certain to
19 have you here at a designated time. And so with
20 that, we expect that to take place in the future,
21 and we will proceed with opening statements.

22 Ms. Barr.

23 MS. BARR: Thank you, Your Honor, may it
24 please the Court.

25 THE COURT: Yes, ma'am.

1 MS. BARR: Ms. Shuler, Mr. Clements.

2 Ladies and gentlemen of the jury, good
3 afternoon.

4 I had the pleasure, of course, of meeting you
5 all on yesterday, and I want to echo some of the
6 sentiments that Judge Newman expressed to you all
7 and thank you for your service this week. Now I
8 recognize that a lot of times when the lawyers get
9 up and thank the jurors for service, like y'all had
10 a choice to be here, obviously you didn't. I
11 imagine that there are a hundred of other places
12 you'd rather be than sitting right here in this
13 courtroom this week to serve on jury duty. But I
14 wanted to let you all know that defense lawyers and
15 prosecutors don't agree on a whole lot, but one of
16 the things Ms. Shuler and I will agree on is that we
17 thank y'all for your service. You all know when we
18 went through that process on yesterday when we were
19 selecting jurors, there were some people we didn't
20 pick. And you know, I don't know any of you all
21 personally. A lot of times when we're selecting
22 jurors we have to kind of use our gut instinct
23 because we look at you, kind of size you up a little
24 bit. And the question that I always ask myself is
25 do I think this person can be a fair juror.

1 And so I think that Ms. Shuler and I got it
2 right.

3 I think that you all will be fair jurors and
4 you will give the case the kind attention as jurors.

5 Obviously more important than just having you
6 all here is the attention that you pay to the case.

7 For **Complainant** , for the defendant Faron
8 Clements, it's probably the most important day in
9 their lives so for that reason we're gonna ask that
10 you pay very close attention. As Judge Newman told
11 you earlier, the defendant is charged with two
12 counts under this indictment for criminal sexual
13 conduct with a minor.

14 Now under our law criminal sexual conduct with
15 a minor specifically in the second degree, requires
16 that the State prove certain elements of the crime.

17 We have to prove, one, that the defendant
18 engaged in a sexual battery. And at the conclusion
19 of the case the judge is going to explain to you
20 under the law what a sexual battery is. That
21 includes intercourse and that includes oral sex.
22 That the defendant engaged in a sexual battery with
23 a child who was over the age of 11 but less than the
24 age of 14.

25 And of course, the evidence in this case is

1 going to establish that at the time the victim was
2 13 years old and at the time the defendant was 32
3 years old.

4 Now one of the things that I ask you to do is
5 for Complainant, this young lady that's seated at the
6 prosecution's table with me, this is the probably
7 the first time she's ever had to come to court and
8 testify in front of a bunch of strangers, so I'd ask
9 that you just be a little patient with her.

10 She may be a little nervous but please be
11 forgiving and understanding of that. But she's
12 gonna tell you what happened to her. And one of the
13 things that the evidence is gonna show, and I think
14 it's gonna be pretty clear early on is that Complainant
15 has led a troubled life. You will hear testimony
16 that during the relevant period where these crimes
17 occurred — and that would be the end of May,
18 beginning of June of 2013 — Complainant had run away
19 from home and had been on a runaway status for
20 several days.

21 It was during this time that she met the
22 defendant Faron Clements. She will testify and the
23 evidence will show, that he saw her walking down the
24 street, picked her up, took her to his home and
25 engaged in sexual activity with her over the course

1 of two days. Complainant was ultimately picked up by
2 law enforcement and placed into custody with the
3 Department of Social Services, and that brings us
4 here. Folks, it's a -- it will be a difficult case
5 obviously because of the nature of the offense.

6 You may hear testimony that is graphic, but
7 that is a part of the process and that's a part of
8 this case. Once all of the evidence comes in, once
9 I get an opportunity to stand before you all again
10 and give my closing remarks and once the judge has
11 given you the instructions on what the law is in
12 South Carolina, we're gonna be asking you all to do
13 some important work on your case, and that's to
14 deliberate and that's to consider everything that
15 you've heard in the case as far as evidence is
16 concerned. That's to consider everything you've
17 heard from the judge in terms of what the law is and
18 to deliberate amongst yourselves and render a
19 verdict. And ladies and gentlemen, we would submit
20 to you that at the appropriate time and at the
21 appropriate place that the appropriate verdict in
22 this case should be that of guilty, and I will be
23 coming back before you in a day or so 'cause we
24 don't think that the testimony will take long.

25 But I will coming back before you all in a day

1 or so, I'm gonna ask you all to render a fair
2 verdict. I'm gonna ask you all to render appropriate
3 verdict.

4 I'm gonna ask you all to render a truthful
5 verdict, and I will submit to you that that verdict
6 at that time will be that of guilty of both counts.

7 Thank you all for your time. Thank you again,
8 most importantly, for your attention.

9 THE COURT: Yes, Ms. Shuler.

10 MS. SHULER: May it please the Court,
11 Ms. Barr.

12 MS. BARR: Yes, ma'am.

13 MS. SHULER: Good afternoon. Again, I
14 would also like to thank you all for your service
15 today and thank you for showing up this week.

16 Not everybody obeys that jury summons that you
17 get in the mail, and of course, thank you for taking
18 that seriously and thank you for being here today.

19 Today is an important day for Mr. Faron
20 Clements who is seated next to me at the defense
21 table.

22 Today is a very important day for him because
23 today is his day in court. Today is the day that he
24 gets his story told. Ms. Barr is correct that you
25 will hear a story. You'll hear a story about a very

1 troubled young girl. You'll hear a story about a
2 girl that has run away from home who Mr. Clements
3 picked up running on the street, took her to the
4 store, offered her something to eat, offered her a
5 clean shower, and took her to try to find her home.

6 When she wouldn't tell him where her home was
7 and when she would not say where her home was and
8 when Mr. Clements said, look, you've got to tell me
9 where you need to go because you can't continue to
10 stay at my house, was when all of this came back up.

11 Now this is a very serious case. Mr. Clements
12 is alleged to have had sexual relations with a
13 individual between the ages of 11 and 14 years old.

14 And the State must prove its case and each and
15 every element of that charge beyond a reasonable
16 doubt.

17 And the judge is gonna charge you at the end
18 of this case on the law. He's gonna tell you what
19 the law is, and then you got to listen to him on the
20 law.

21 You got to listen to us on the facts. You got
22 to listen to the witnesses on the witness stand
23 about the facts. But reasonable doubt is that doubt
24 that is your hesitation to act, that causes you to
25 hesitate to act. And so what I tell people about

1 that is, you know on Sunday morning you get up and
2 you iron your clothes. You get all your family
3 ready, get your kids ready, put yourself in the car,
4 you crank your car up, put your seatbelt on, and you
5 say to yourself, oh, did I unplug that iron.

6 You get back out and you go in that house and
7 you check that iron to make sure you unplugged it so
8 you don't burn your house down. That is your
9 hesitation to act. So whenever you hear that
10 evidence from the witness stand today and you'll
11 apply it to the law as the judge gives it to you,
12 think about that analogy that I just gave you. When
13 you're laying in bed at night and you say, did I
14 lock that door, did I lock the door before I got in
15 the bed, when you get back up and check that door,
16 that hesitation to stay in the bed or go and check
17 the lock on the door, that's reasonable doubt. So
18 whenever you listen to the facts coming from the
19 witness stand, apply it to the law, think about
20 that, think about that hesitation to act, and apply
21 it to the facts and to the law in this case. This
22 is an important case. It's important case for
23 everybody here today. It's an important case for
24 Mr. Clements. The State has a heavy burden. It's
25 not like it is in a civil case where you just have

SW - Complainant - DIRECT

1 to tip the scales of justice ever so slightly. The
2 State is gonna have to tip those scales of justice
3 in their favor way up in this air just like this
4 because they have a heavy burden. They have to
5 prove their case beyond a reasonable doubt. So you
6 have to leave here firmly convinced of the
7 defendant's guilt in order to convict him. So
8 remember that today, whenever you hear the evidence.
9 We'll ask you to listen today, listen to the facts,
10 apply that fact, apply those facts to the law, and
11 whenever we come back and argue here today I'm gonna
12 ask you to return a verdict of not guilty because
13 that's what you're gonna come back feeling at the
14 end of this case. Thank you.

15 THE COURT: All right, Ms. Barr, call your
16 first witness.

17 MS. BARR: The State calls **Complainant** .

18 THE COURT: Come forward please.

19 THE CLERK OF COURT: Place your left hand
20 on the Bible, raise your right hand.

21 WHEREUPON,

22 Complainant ,
23 having been duly sworn by the Clerk of Court,
24 testified as follows:

25 MS. BARR: May it please the Court.

DIRECT EXAMINATION

1
2 BY MS. BARR:

3 Q Complainant, I want to get you to state your full
4 name for me.

5 A Complainant .

6 Q Okay, I need you to speak up for me, okay. It's
7 important that the court reporter hear you, most
8 important that the jury hear you, okay? Keep your
9 voice up. Complainant ?

10 A Yes, ma'am.

11 Q Complainant, what's your birthday?

12 A 1999.

13 Q 1999?

14 A Yes, ma'am.

15 Q All right. And where were you born?

16 A New Orleans, Louisiana.

17 Q All right. Talk up for me, okay. I know you can
18 talk louder than that. You were born on
19 1999, in New Orleans.

20 A Yes, ma'am.

21 Q Who are your biological parents?

22 A Dominique Carter. I don't know my father.

23 Q You do not know your father?

24 A No, ma'am.

25 Q And do you have any brothers or sisters?

SW -Complainant - DIRECT

1 A A sister.

2 Q Okay, and what's your sister's name?

3 A Younger Sister

4 Q Younger Sister, okay. Now is Younger Sister older
5 than you or younger than you?

6 A Younger.

7 Q Okay. Now you were born in New Orleans in 1999.

8 How in the world did you make it down to

9 Williamsburg County, South Carolina?

10 A I went to foster care and then I got adopted.

11 Q Okay. You went into foster care while you were
12 living in New Orleans?

13 A No, ma'am. They took me out of New Orleans and
14 they placed me in foster care in Texas, and then I
15 got adopted.

16 Q And why did you leave New Orleans?

17 A My mom, she wasn't stable and stuff.

18 Q I'm sorry?

19 A She wasn't stable.

20 Q Your mother, your biological mother was not
21 stable?

22 A No, ma'am.

23 Q Okay. Now were you living in New Orleans during
24 the time of hurricane Katrina?

25 A Yes, ma'am.

1 Q Okay. Were you actually in the city when that
2 happened?

3 A Yes, ma'am.

4 Q Okay. Were you -- well, let me ask you this,
5 were you able to make it out prior to the storm or
6 did you and your momma and your sister were trapped
7 inside New Orleans at the time of the storm?

8 A We were trapped in New Orleans. We eventually
9 got help afterwards.

10 Q Okay. Your voice is leaving me. I need to make
11 sure you keep your voice up. You said you were
12 trapped and eventually got out?

13 A Yes, ma'am.

14 Q All right. And you ended up in Texas?

15 A Yes, ma'am.

16 Q All right. Now do you remember the year that you
17 would have left New Orleans and went to Texas?

18 A 2006 I think.

19 Q Around 2006?

20 A Yes, ma'am.

21 Q Okay. All right, so you went into foster care
22 because you said your mother wasn't stable; is that
23 right?

24 A Yes, ma'am.

25 Q All right. And how long were you in foster care

1 before you came down to South Carolina?

2 A Three years.

3 Q About three years? Okay. And what year did you
4 come to South Carolina?

5 A 2009.

6 Q In 2009, okay. All right. And you were legally
7 adopted here?

8 A Yes, ma'am.

9 Q All right. What is your adoptive mother's name?

10 A Wyanetta Renee Epps.

11 Q Wyanetta Epps?

12 A Yes, ma'am.

13 Q And did she adopt both you and your sister?

14 A Yes, ma'am.

15 Q Okay. Now Complainant, right now are you in foster
16 care?

17 A Yes, ma'am.

18 Q All right. Where is your sister? Where does she
19 live?

20 A She lives with my adoptive mother.

21 Q Okay. So Ms. Epps, Wyanetta Epps, your adoptive
22 mother, still has custody of ^{Younger Sister} of your younger
23 sister?

24 A Yes, ma'am.

25 Q And how old is ^{Younger Sister} now?

1 A 13.

2 Q And you would have just turned 15 years old?

3 A Yes, ma'am.

4 Q Okay. Tell me, Complainant, when was the last time
5 you saw your sister^{Younger Sister?}

6 A Last year in December.

7 Q Last year in December?

8 A Uh-huh.

9 Q When was the last time you would have seen your
10 adoptive mother Ms. Wyanetta Epps?

11 A The same time.

12 Q December of last year?

13 A Yes, ma'am.

14 Q What about your biological mother, when was the
15 last time you saw her?

16 A 2006. I don't remember that much. It was in
17 2006.

18 Q About 2006? Okay. Now Complainant, of course you
19 know why we're here today?

20 A Yes, ma'am.

21 Q All right. You and your adoptive mother had
22 problems last year; is that fair to say?

23 A Yes, ma'am.

24 Q All right. And on May the 30th of last year you
25 ran away?

1 A Yes, ma'am.

2 MS. SHULER: Objection, Your Honor,
3 leading.

4 THE COURT: Don't lead the witness.

5 MS. BARR: Okay.

6 BY MS. BARR:

7 Q On May the 30th of last year did you ever -- did
8 you leave your mother's, your adoptive mother's,
9 home without her permission?

10 A Yes, ma'am.

11 Q All right. Where did you go? Where is the first
12 place you went?

13 A With a boy.

14 Q I'm sorry, I can't hear you.

15 A With a boy.

16 Q Where did you go?

17 A Went to a boy friend's house.

18 Q You went to a boy friend's house?

19 A Yes, ma'am.

20 Q Okay, how long did you stay there?

21 A Maybe like two hours, maybe.

22 Q Okay. And how did you leave your adoptive
23 mother's house? Did you go in a vehicle, did you
24 walk, how did you leave?

25 A I jumped out the window and ran.

1 Q Jumped out the window and ran, okay. How long
2 did you stay at the friend's house?

3 A Two hours, an hour, maybe an hour.

4 Q Maybe an hour or so?

5 A Yes, ma'am.

6 Q Okay. And where was the next place that you
7 went? Just tell me the place that you went to.

8 A His grandmother's house.

9 Q Okay. How long did you stay there?

10 A Until the morning.

11 Q Okay.

12 A Morning time.

13 Q Okay. So you spent the night there?

14 A Yes, ma'am.

15 Q Now did your adoptive mother, that I'm gonna call
16 your mom, did your mother know where you were?

17 A No, ma'am.

18 Q Okay, all right. Tell me the next place that you
19 spent the night. Where was -- where did you
20 actually spend the night?

21 A The same house.

22 Q Okay, all right. At some point did you meet the
23 defendant Faron Clements?

24 A No.

25 Q You didn't meet Faron Clements, the fellow here?

1 A No, not May 30th, no.

2 Q Okay. When did you meet him?

3 A The last time I ran away.

4 Q Say again.

5 A The last time I ran away.

6 Q What was the date? If you remember.

7 A June 2nd I think.

8 Q June 2nd?

9 A Yes, ma'am.

10 Q Of last year?

11 A Yes, ma'am.

12 Q Tell me, how did you meet him? Where were you,
13 where was he, describe to the jury the circumstances
14 by which you met him. And I need you to speak up
15 for me, okay.

16 A Okay.

17 Q Yes, ma'am.

18 A I was walking. I didn't have on any shoes.

19 Q Why didn't you have on any shoes?

20 A 'Cause when I was running from the police because
21 I knew the police was looking for me. I lost my
22 shoes in a ditch.

23 Q Okay. You were running from the police because
24 you knew the police were looking for you?

25 A Yes, ma'am.

1 Q And you lost your shoes in a ditch?

2 A Yes, ma'am.

3 Q All right. So tell me, you're walking down the
4 street, didn't have shoes on, and then what
5 happened?

6 A The first car I seen was a truck and then, like,
7 I panicked and tried to, like, hide from the truck
8 and then it past by and then, like, another car
9 came. It was, I don't really know what kind of car
10 it was and it stopped. And he came out. He was, he
11 was saying, he just kept saying I thought you were
12 my family or something like that.

13 Q Who was saying that?

14 A Faron.

15 Q Say again?

16 A Mr. Faron.

17 Q Is that the gentlemen who's seated next to Ms.
18 Shuler here?

19 A Yes, ma'am.

20 Q All right. Now before that day in the early part
21 of June, had you ever met him before that you know
22 of?

23 A No, ma'am.

24 Q This is the first time you would have seen him?

25 A Yes, ma'am.

1 Q All right. And was he driving the vehicle or was
2 he riding inside a vehicle?

3 A He was driving.

4 Q Okay. Was anybody else in the vehicle with him?

5 A No, ma'am.

6 Q Okay, all right. So he stops and says to you
7 what now?

8 A He thought I was his family walking the road.

9 Q He thought you were his family. And I'm not sure
10 if it's the microphone or me, but I'm having a real
11 difficult time hearing you so I need you to make
12 sure you speak up, okay. When he said to you, I
13 thought you were my family, tell the jury what
14 happened next.

15 A He asked me did I need a ride and I was like, no.
16 And he just, he asked me again. He was, like, just
17 get in the car, something like that. And then I got
18 in. And he was playing music, and he asked me what
19 my name was and I told him Veronica.

20 Q And why'd you tell him your name was Veronica?

21 A 'Cause I didn't want him to know my real name.

22 Q Why didn't you want him to know your real name?

23 A Because I thought he knew who I was, like, 'cause
24 I knew they had, like, on the news or something that
25 I was runaway and stuff like that so I assumed he

1 knew who I was.

2 Q Okay. So you told him that your name was
3 Veronica. And then what happened?

4 A He asked me how old I was; I said 16.

5 Q How old were you really?

6 A 13.

7 Q All right. Why did you tell him you were 16?

8 A I don't know; I just told him. And he told me
9 afterwards that I didn't don't look 16.

10 Q He said you didn't look 16?

11 A Yes, ma'am.

12 Q Did he say whether you looked older or younger
13 than 16?

14 A He didn't say.

15 Q All right. Then what happened?

16 A He brought up something. He was like, he said --
17 I can't remember exactly what led on to why he said
18 it; but he was, like, if you're gonna have sex with
19 somebody you should get paid for it. He had like
20 money in his hand when he said it.

21 Q He had money in his hand?

22 A Yes, ma'am.

23 Q Was it a lot of money or a little bit of money?

24 A It was a lot.

25 Q All right. Then what happened?

1 A He asked me where my shoes was and I said
2 somebody stole them, and he asked me who, and I said
3 my boyfriend Shawn. I made up a name. And he was
4 asking me where he lived, and I said he lives near
5 the track -- up the track, that's what they call
6 it -- in a light blue trailer. And he drove trying
7 to look for the trailer and --

8 Q Now was any of that true that --

9 A No, no, ma'am.

10 Q --Shawn stole your shoes?

11 A No, ma'am.

12 Q Okay. And that's just something that you told
13 him?

14 A Yes, ma'am.

15 Q All right. Then what happened after he starts
16 looking for the trailer?

17 A I told him to forget about it and he drove up
18 to -- I don't know what it was. Or it was some kind
19 of like club looking place, and he said he dropped
20 his weed and he got out of the car looking for it.

21 Q Okay.

22 A And he went back in the car and he drove like
23 going up the track to go to his house. And we went
24 to his house and I seen, like, somebody looking out
25 the window of his house -- no, we went to the gas

1 station.

2 Q Went to the gas station first?

3 A Yea.

4 Q Do you remember which, what the name of the gas
5 station was?

6 A Shell station.

7 Q Was it the one right here on Long Street?

8 A The one with Subway, with the Subway. I can't
9 remember.

10 Q Okay, all right. And why'd y'all go to the gas
11 station?

12 A I don't know why he went but he offered me
13 something in there while we were in there.

14 Q All right. And what -- did he buy anything for
15 you?

16 A Yes, ma'am.

17 Q What did he buy for you?

18 A Some water and gum.

19 Q And some chewing gum?

20 A (No verbal response.)

21 Q Is that a yes?

22 A Yes, ma'am.

23 Q Okay. And tell me what happened after you all
24 left the Shell Station.

25 A We went to his house.

1 Q Okay. And you were mentioning that when y'all
2 went to his house that somebody was looking out of a
3 window?

4 A Yes, ma'am.

5 Q Do you know who that individual was?

6 A No, ma'am.

7 Q Was it a male or female?

8 A Male.

9 Q Okay. Tell me what happened next.

10 A He told me he -- no, he said he was gonna let me
11 wash and stuff. And it was candles lit around the
12 tub and ---

13 Q There were some candles lit around the tub?

14 A Yes, ma'am.

15 Q All right. The bathroom that you went to use,
16 was it a bathroom that was in a hallway or was it
17 like a master bathroom in a bedroom?

18 A Yes, ma'am.

19 Q It was a master bathroom inside a bedroom?

20 A Yes, ma'am.

21 Q All right. And tell me what happened next.

22 A I washed and he gave me his shirt to put on, a
23 white T-shirt to put on.

24 Q Okay.

25 A And then after that he left to go somewhere while

1 the other man was still in the house.

2 Q Okay. Now was this daytime or nighttime when he
3 picked you up from walking out the street?

4 A It was still like morning time.

5 Q Okay, all right. After you took a shower and the
6 defendant left, how long did he stay gone?

7 A Forty-five minutes.

8 Q What did you do while he was gone?

9 A I stayed in the room.

10 Q Okay. What about the other man that you
11 described as being in the house, what did he do?

12 A He...

13 Q If anything?

14 A He, he was watching porn on the TV.

15 Q Okay. Anything else?

16 A He asked me to come here, and I went to him.

17 Then he got -- I can't remember what he kept asking
18 me. He got me -- he just kept asking questions like
19 what was my name and stuff like that, and I told him
20 Veronica. I really didn't tell my right name. And
21 he told me if I give him oral sex he'll pay me fifty
22 dollars.

23 Q Okay. And did you do that?

24 A No, ma'am.

25 Q Okay, all right. Did anything else happen before

1 Mr. Clements returned?

2 A He —

3 Q When you say "he", tell me who you're talking
4 about.

5 A The man that was also in the house; I didn't know
6 his name.

7 Q Okay.

8 A He asked me to have sex with him and I said no.
9 Then he raped me in the living room.

10 Q Okay, all right. When you came into the house —
11 let me ask you this, did you see any photographs of
12 anybody that looked familiar to you?

13 A Yes, ma'am.

14 Q Tell me about that.

15 A It was one photo in the kitchen. It's a little
16 boy that my sister used to go to school with. Can I
17 say his name?

18 Q Yes, please.

19 A K.M. , I think that's his name.

20 Q Okay, all right. And you recognized him as being
21 somebody who went to school with your little sister?

22 A Actually, we all went to school together.

23 Q Okay. And this is a photograph you saw in the
24 defendant's kitchen?

25 A Yes, ma'am.

1 Q All right. Now at any point in time from the
2 time you came to the defendant's house to the time
3 you left, did you know the name of the individual
4 who was in the home who raped you?

5 A No, ma'am.

6 Q Okay, all right. What happened when Mr. Clements
7 got back?

8 A I went back into the room and the TV was on and
9 we ended up having sex.

10 Q When you say "we", who are you talking about?

11 A Me and Mr. Clements.

12 Q The defendant?

13 A Yes, ma'am.

14 Q All right. Now Complainant, you need to tell me
15 specifically, when you say you all had sex what do
16 you mean?

17 A We...

18 Q What did he do to you?

19 A He stuck his penis inside of me.

20 Q Inside of your vagina?

21 A Yes, ma'am.

22 Q Was he wearing any protection at the time?

23 A Yes, ma'am.

24 Q All right. What happened after you all had sex?

25 A He would take a shower.

1 Q Okay. Did you see what happened with the condom?

2 A He flushed it.

3 Q Okay. What did he do after he flushed the
4 condom?

5 A He urinated. He peed in the toilet.

6 Q And then he took a shower?

7 A Uh-huh.

8 Q Is that a yes?

9 A Yes, ma'am.

10 Q And what happened after he took a shower?

11 A He went somewhere. I don't know where he went.

12 Q What did you do?

13 A I went to sleep.

14 Q Okay. Why did you go to sleep?

15 A I was tired 'cause like my knees were hurting
16 from running and I had sores on my leg and cuts.

17 Q Why did you have sores and cuts on your legs?

18 A Because I went through barbed wire.

19 Q You went through barbed wire when you were
20 running from the police?

21 A Yes, ma'am.

22 Q All right. How long did you stay asleep?

23 A Till like that afternoon, maybe like evening.

24 Q Okay. When you woke up do you remember whether
25 it was still daylight, or do you remember whether or

1 not it was nighttime?

2 A Daylight I think.

3 Q Okay. Do you remember what day of the week it
4 was that you met the defendant?

5 A I think it was a Saturday, I think.

6 Q Now when you woke back up was the defendant
7 there?

8 A Yes, ma'am.

9 Q Okay. Did he ever tell you who the other
10 individual was who was in the house with him?

11 A Not that I remember, no.

12 Q Kind of take us through what happened the rest of
13 that day.

14 A I think he went to go get me some shoes.

15 Q Did you go with him?

16 A Yes, ma'am.

17 Q Where did y'all go?

18 A Shoe Show.

19 Q To the Shoe Show?

20 A Shoe Show, yes, ma'am.

21 Q When you all went to go get shoes did the other
22 fella go with you?

23 A No, another man.

24 Q All right, did you get out of the car to go
25 inside Shoe Show to get shoes?

1 A No, ma'am.

2 Q All right, let me go back for just a moment and
3 clarify something. Complainant, do you remember giving
4 a statement to the police after they found you about
5 what all had happened while you had ran away?

6 A Yes, ma'am.

7 Q Okay, all right. And would it would be fair to
8 say that your memory at that time as to the events
9 were more fresh in your mind then as opposed to now?

10 A Yes, ma'am.

11 Q That would be fair to say?

12 A Yes, ma'am.

13 MS. BARR: Permission to approach the
14 witness, Your Honor.

15 THE COURT: Yes.

16 BY MS. BARR:

17 Q I'm gonna refer you to page 3 of your statement.
18 I'm gonna start at line 25, the very bottom of the
19 page, and I'm going to also refer you to the top of
20 page 4, just the highlighted portions. I want you
21 to read that portion to yourself first, okay, and
22 then I'll ask you questions about it.

23 A (Complies.)

24 Q You can hold that.

25 A (Complies.)

1 Q Have you read that to yourself? Is that a yes?

2 A Yes, ma'am.

3 Q Okay. Does that refresh your memory about a
4 statement that you gave to the police?

5 A Yes, ma'am.

6 Q All right. Now you indicated earlier when I
7 asked you whether or not the defendant — when you
8 stated that the defendant said you didn't look like
9 you were 16, you couldn't remember whether he said
10 you looked older or younger. Having read that
11 statement, does that refresh your memory?

12 A Yes, ma'am.

13 Q All right. And when he told you that you had —
14 didn't look 16, did he tell you that you looked
15 older or younger than 16?

16 A Younger.

17 Q So when you woke back up you said that Mr.
18 Clements was there in the house?

19 A Yes, ma'am.

20 Q And what was he doing?

21 A I think he went to his room and played video
22 games or something like that.

23 Q Okay, all right. Did anyone else come to the
24 house other than Mr. Clements and obviously whoever
25 the other man was?

1 A No, ma'am, he was gone when I woke up.

2 Q Who was gone when you woke up?

3 A The other man.

4 Q When Mr. Clements left the first time -- first of
5 all, how many times did he leave the house during
6 that time?

7 A Twice.

8 Q Okay. When he left those times did he give you
9 any instructions about what you should or shouldn't
10 do?

11 A Don't open the door.

12 Q Okay. Don't open the door if someone came?

13 A Yes, ma'am.

14 Q Did he say why?

15 A No, ma'am.

16 Q Did you eat anything while you were at his home?

17 A No, ma'am.

18 Q Did you spend the night inside the home that
19 night, that Saturday night?

20 A Yes, ma'am.

21 Q Where did you sleep?

22 A In his room.

23 Q Where did he sleep?

24 A In the same room.

25 Q Okay, all right. The next morning you all get up

1 are you still the only two people in the house?

2 A Uh-huh, yes, ma'am.

3 Q Okay, all right. Did you eat any food when you
4 got up the next morning?

5 A I didn't eat. He asked me to fix something and
6 wash the dishes and stuff like that.

7 Q Did you do that?

8 A Yes, ma'am.

9 Q Okay. Do you know how many bathrooms were in the
10 house?

11 A Two.

12 Q You know how many bedrooms were in the house?

13 A Two.

14 Q Did you all have sex that Sunday?

15 A Yes, ma'am.

16 Q Okay. And what kind of sex did you all have that
17 Sunday?

18 A Oral and — sex.

19 Q Okay, all right. And just so we're clear, when
20 you talk about sex are you referring to him putting
21 his penis inside your vagina?

22 A Yes, ma'am.

23 Q Tell me what you mean when you say y'all had oral
24 sex.

25 A I put my mouth on his penis.

1 Q Okay. Did he ever give you any alcohol or any
2 substances or anything like that?

3 A Just -- I don't know what it's exactly called.
4 It's like a cigar or something, but I don't know if
5 he maybe, like, unwrapped it and put something else
6 in it or something like that but I didn't feel any
7 different after I smoked it.

8 Q Okay. Whatever he gave you you didn't feel like
9 you were high or under the influence or anything?

10 A No, ma'am.

11 Q Did he ever drink alcohol or take any substances
12 while you were there?

13 A Not that I seen, but he smoked cigarettes.

14 Q Okay. How did he act after he smoked a
15 cigarette?

16 A The same.

17 Q Okay. During those two days did you all talk
18 about your life experiences?

19 A Yes, ma'am.

20 Q Okay. Did he tell you about his upbringing and
21 about his life?

22 A Yes, ma'am.

23 Q What was he telling you about himself?

24 A He said that -- that I can remember -- he said
25 when he was little a friend, hustler or something,

1 used to sell lollipops and stuff and that his --
2 something about his -- I don't know if it was
3 grandfather, his dad or something, wrote a book
4 about his life or something. And he said, he told
5 me about his mom and how he came home from somewhere
6 and she was dead in the kitchen, or something like
7 that.

8 Q Okay. So he's telling you all these things; is
9 that right?

10 A Yes, ma'am.

11 Q Okay. Did you stay there that Sunday night?

12 A Yes, ma'am.

13 Q Okay. Where did you sleep that Sunday night?

14 A In a different room.

15 Q Okay. Where did he sleep that Sunday night?

16 A His room.

17 Q Now was anybody else at the house other than the
18 two of you that Sunday night when y'all went to bed?

19 A Yes, ma'am.

20 Q Okay. And who else was at the house?

21 A He said, he said his girlfriend or baby momma or
22 something like that was coming.

23 Q And so when you say "he said" you're talking
24 about the defendant?

25 A Yes, ma'am.

1 Q And so another woman came to the house while you
2 were there?

3 A Yes, ma'am.

4 Q And you slept in the other bedroom?

5 A Yes, ma'am.

6 Q All right. Now at any point in time did you do
7 what I like to call being nosey or plunder through
8 people's stuff? Did you start going through things
9 in his home?

10 A Yes, ma'am.

11 Q Where was he when you started doing that?

12 A He left the house.

13 Q Do you know where he had gone to?

14 A No, ma'am.

15 Q All right. And when you went through his house
16 or started going through his things what, if
17 anything, of note did you find?

18 MS. SHULER: Objection, Your Honor,
19 relevance.

20 THE COURT: Just a moment.

21 Ladies and gentlemen, we're gonna have you go
22 to the jury room for a few minutes.

23 Please do not discuss the case.

24 (WHEREUPON, the jury was removed from the
25 courtroom at 4:31 p.m., and the following

1 proceedings commenced in open court.)

2 THE COURT: You started plundering.

3 The question is, what did you see?

4 THE WITNESS: A hand -- like a pistol or
5 something like a little old fashioned police gun or
6 something like that.

7 THE COURT: And what else?

8 THE WITNESS: I seen measuring things that
9 look like you could measure for, like, cocaine or
10 something, and it looked like at first.

11 But I flipped it over and it had like the, you
12 know, like how a calculator, the little bar thing at
13 the top and...

14 THE COURT: And what else?

15 THE WITNESS: I looked behind his door and
16 I seen one of those long guns. I say -- that's all
17 I can remember.

18 THE COURT: Any objection? Yes, ma'am.

19 MS. SHULER: The objection is relevance,
20 Your Honor. I don't know how it's relevant to the
21 charge of criminal sexual conduct with a minor in
22 the second degree. And not only that, the relevance
23 of that, I don't see how that's outweighed by the
24 risk of unfair prejudice or the possibilities that
25 it could inflame the emotions of the jury, could

1 confuse the issues in accordance with Rule 4.

2 THE COURT: All right, Ms. Barr.

3 MS. BARR: Judge, I certainly don't
4 believe that the probative value is outweighed by
5 the prejudicial effect. Your Honor, it's not
6 illegal to have a firearm in your home. And
7 certainly as relates to the weapons and the
8 testimony about any drugs that were found in the
9 home, of course Ms. Shuler will be permitted to
10 elicit from law enforcement that there were no
11 controlled substances found in the home. Judge, I
12 think it goes to explain this child's state of mind
13 and, I expect that it will also explain her
14 anticipated testimony regarding her fear at that
15 point. Because she started ---

16 THE COURT: Well, you want to ask her any
17 more questions?

18 MS. BARR: Yes, sir.

19 THE COURT: All right.

20 BY MS. BARR:

21 Q Complainant, you talked about how you found guns in
22 the home and you found what we believe to be a
23 digital scale; is that correct?

24 A Yes, ma'am.

25 Q All right. During the course of those days that

1 you were at the defendant's house, did you see
2 anybody coming and going from the house?

3 A Yes, ma'am.

4 Q All right. And do you recall if you gave a
5 statement to law enforcement saying that you thought
6 he was selling drugs from the house; is that right?

7 A Yes, ma'am.

8 Q Tell the judge why you believe that.

9 A The day we went to get my shoes it was a red
10 truck and the boy — well, the man stepped out of
11 the car and he shook hands like that (indicating),
12 and he grabbed something out of his hand and it was
13 like a little Ziplock bag and it was like white
14 stuff in it.

15 Q Okay. Did you see any Ziplock bag with light
16 stuff in it inside the home while you were there?

17 A No, I seen it one night cleaning it up.

18 Q Okay, all right. And did you then start doing
19 certain things to insure that law enforcement would
20 be able to know that you were at the house if
21 something were to happen to you?

22 A Can you repeat that?

23 Q Yes. Did you start — did you then start doing
24 certain things to make sure that law enforcement
25 would be able to prove that you were inside the home

SW - Complainant - DIRECT

1 after seeing the weapons?

2 A Yes, ma'am.

3 Q Tell the judge about that.

4 A I put my blanket under the bed and like I combed

5 —

6 THE COURT: Put your what under the bed?

7 THE WITNESS: The blanket.

8 THE COURT: Blanket under the bed.

9 THE WITNESS: In the other room, not his
10 room, the other room. And I combed some of my hair
11 into the sink.

12 BY MS. BARR:

13 Q Okay. Did you tell one of the deputies in the
14 Sheriff's Office that you had done that?

15 A Yes, ma'am.

16 Q Did you tell them where the blanket could be
17 found?

18 A Yes, ma'am.

19 Q Okay. And why did you do that? Why did you feel
20 the necessity to do that?

21 A Because I didn't want them to think I was lying
22 about me even being there, stuff like that.

23 Q Okay. What was your reaction when you saw the
24 guns?

25 A I was scared so I called somebody to come pick me

1 up.

2 Q Okay.

3 MS. BARR: And Judge, that would just
4 simply goes to her state of mind, reason why she
5 took the actions that she took. And Judge, we would
6 also anticipate that Investigator Ballard will
7 confirm that he found the blanket where she
8 testified that she left the blanket.

9 THE COURT: All right. She wouldn't be
10 scared from seeing drugs; she might be scared from
11 seeing a gun. And seeing a gun is not, in someone's
12 home is not -- well, that's not a bad act, there's
13 nothing legal about that actually.

14 MS. BARR: Correct.

15 THE COURT: I sustain the objection
16 regarding drugs as I have yet to see any connection
17 between that and the issue of whether he committed
18 rape or not. If she saw guns and because she saw
19 guns she got scared, then that's something else; but
20 there hasn't been any sufficient showing that
21 anything connected with the drugs made her fearful
22 so I sustain that objection as to relevance.

23 We'll take about two minutes and then we'll
24 bring them back in.

25 (WHEREUPON, a recess was taken from the

1 proceedings.)

2 THE COURT: Anything else before the jury
3 comes in?

4 MS. BARR: Not from the State Your, Honor.

5 THE COURT: And Ms. Barr, you got the
6 copies put up here?

7 MS. BARR: Yes, sir.

8 THE COURT: Do you have an extra copy of
9 anything?

10 MS. BARR: Yes.

11 THE COURT: All right. You can bring them
12 back.

13 (WHEREUPON, the jury was returned to the courtroom
14 at approximately 4:45 p.m., and the following
15 proceedings commenced in open court.)

16 THE COURT: All right, the objection is
17 sustained. Ms. Barr, you may proceed.

18 MS. BARR: Thank you.

19 BY MS. BARR:

20 Q Complainant, while you were kind of going through the
21 defendant's home and his belongings, did you ever
22 see any firearms, any guns?

23 A Yes, ma'am.

24 Q All right, where did you see them?

25 A One of his drawers.

1 Q Okay. Did you ever see any shotguns or rifles?

2 You know what those are?

3 A The long ones?

4 Q Yes.

5 A Yes, ma'am.

6 Q Where did you see the long guns?

7 A Behind his door.

8 Q Okay. What did you think or what was going
9 through your mind when you saw firearms in the
10 house?

11 A I was just scared.

12 Q Okay. What did you do at that point?

13 A I called a friend to pick me up.

14 Q Okay.

15 A And I told her where I was. I went outside and
16 to see what road it was, and I told her where I was
17 and she picked me up.

18 Q Okay. Now was this before or after you had the
19 blanket?

20 A After.

21 Q Okay. Tell me about -- tell the jurors about the
22 blanket.

23 A I hid it under one of the -- the other room I was
24 sleeping in, I hid it under the bed.

25 Q And what kind of blanket was it? What color was

1 it, who did it belong to?

2 A I forgot what color it was, but it belonged to
3 me.

4 Q Why did you hide your blanket underneath the bed
5 in the second bedroom?

6 A Because if I were to get caught they would know
7 that I was there and stuff like that and ---

8 Q Did you do anything else to make sure there was
9 proof that you were there inside the home?

10 A I combed out some of my hair and put it in the
11 sink.

12 Q You did what now?

13 A Combed out some of my hair and put it in the sink
14 in the bathroom.

15 Q All right. Did you at any point in time ever
16 have access to the defendant's phone?

17 A Yes, ma'am.

18 Q All right. When did you have access to his
19 phone?

20 A Like any time I was there, like.

21 Q Okay. Did you ever use his phone?

22 A Yes, ma'am.

23 Q Okay. All right. So the -- a friend of yours,
24 the lady came to pick you up; is that right?

25 A Yes, ma'am.

1 Q All right. And where did you all go from that
2 point?

3 A She drove me to Dollar General 'cause I told her
4 my stomach was hurting, and I took a pregnancy test
5 but I took it wrong so. And I didn't want to get
6 another one so we went to one of her friend's house,
7 and we get there while she was getting her hair done
8 and she told me that he called her phone —

9 Q Okay. Can't tell me what somebody told you,
10 okay.

11 A Oh.

12 Q Would that have been the last time you saw
13 Mr. Clements?

14 A Yes, ma'am.

15 Q Okay, all right. And at some point of course law
16 enforcement picked you up?

17 A Yes, ma'am.

18 Q Where were you, physically where were you when
19 law enforcement picked you up?

20 A I was on, kind of near, kind of near the same
21 place he picked me up, like, I was on that same
22 road.

23 Q Okay. And you were placed into foster care at
24 that point?

25 A Yes, ma'am.

1 Q And you remained there since June of last year?

2 A Yes, ma'am.

3 Q And other than in court perhaps and yesterday and
4 in court today, have you seen the defendant Faron
5 Clements since that time?

6 A No, ma'am.

7 Q Beg the Court's indulgence. Tell us about -- you
8 found guns in the home. Did you find any ammunition
9 in the home, any bullets?

10 A Yes, ma'am, I seen them.

11 Q You saw them? How many did you see?

12 A It was a lot. I can't really say how much it
13 was.

14 Q Complainant, that's all the questions that I have.
15 I'm sorry, one more. You were taken into custody by
16 the police later by DSS. Did you tell law
17 enforcement what had happened to you during the four
18 to five day period that you were missing?

19 A Yes, ma'am.

20 Q Please answer any questions that Ms. Shuler or
21 the judge may have for you, okay.

22 **CROSS-EXAMINATION**

23 BY MS. SHULER:

24 Q Miss Complainant, this was the third time you ran
25 away from home, right?

1 A Yes, ma'am.

2 Q Is that right? You ran away from home back in
3 February?

4 A Yes, ma'am.

5 Q And then you ran away from home again at the
6 beginning of May again, right?

7 A Yes, ma'am.

8 Q And so this was the third time you ran away from
9 home, right?

10 A Yes, ma'am.

11 Q Okay. 'Cause you didn't want to live there with
12 your new momma anymore; is that right?

13 A Yes, ma'am.

14 Q So I'm correct in saying that you did not want to
15 live there with her anymore; is that right?

16 A Yes, ma'am.

17 Q Okay. You and your sister were adopted in -- to
18 Ms. Wyanetta Epps' house, right?

19 A Yes, ma'am.

20 Q Okay. And your mom had a good relationship with
21 your little sister?

22 A Yes, ma'am?

23 Q But she didn't have a good relationship with you?

24 A No, ma'am.

25 Q And so this weekend in question you told your

1 grand momma that you didn't wash good, right, and
2 went back into the bathroom; is that right?

3 A No, ma'am.

4 Q No? Which window did you go out of in your
5 house?

6 A My mother's.

7 Q Your mother's window. Would that have been her
8 bedroom window?

9 A Yes, ma'am.

10 Q Okay. And where was your mom when all this was
11 going on?

12 A She went to take my sister to the chiropractor.
13 I can't pronounce it but...

14 Q Okay. And so it was just you and your grand mama
15 in the house?

16 A Yes, ma'am.

17 Q And so whenever you went out this last time you
18 stayed where the first night?

19 A It's a little outhouse where horses, somewhere
20 near a horse track.

21 Q Okay. How many nights did you stay there?

22 A Like two.

23 Q Okay. And so at this point you were, your
24 picture was on the news, right?

25 A Yes, ma'am.

1 Q People are looking for you. And in fact, you
2 were hiding from the police at one point; is that
3 right?

4 A Yes, ma'am.

5 Q The police came by and you were hiding in the
6 ditch at one point. That's how you lost your shoes?

7 A Yes, ma'am.

8 Q And so the day that you met Mr. Clements you ran
9 out in front of his car, right?

10 A No, ma'am, I was just walking.

11 Q Okay, you were walking. Did you walk out in
12 front of his car?

13 A No, ma'am.

14 Q No? Okay. And your legs were all cut up?

15 A Yes, ma'am.

16 Q You had on no shoes?

17 A Yes, ma'am.

18 Q And he offered to give you a ride?

19 A Yes, ma'am.

20 Q And you got in the car, right?

21 A Yes, ma'am.

22 Q And y'all went by the Shell Station that day?

23 A Yes, ma'am.

24 Q Right? And he offered to get you something to
25 eat, right?

1 A Yes, ma'am.

2 Q And he -- you did buy water and some pack of gum,
3 right?

4 A Yes, ma'am.

5 Q And but you didn't get any food?

6 A No, ma'am.

7 Q But he did offer, right?

8 A Yes, ma'am.

9 Q So it wasn't -- you didn't get any food, it
10 wasn't because he didn't offer to buy you any food,
11 right?

12 A Yes, ma'am.

13 Q And that day you lied to him, right?

14 A Can you repeat that.

15 Q You lied to him that day. When you got in the
16 car with him you lied to him, right?

17 A Yes, ma'am.

18 Q You told him your name was Veronica Carter?

19 A Yes, ma'am.

20 Q And you said you told him that you were 16 years
21 old?

22 A Yes, ma'am.

23 Q And you kind of changed your story a little bit
24 about this earlier and so I want to make sure we're
25 clear on this. You told him you were 16 and you

1 said that he said that you didn't look 16.

2 A Yes, ma'am.

3 Q Right? And then you said he didn't say anything
4 after that, the first time we talked about you and
5 Ms. Barr talked about that, right? Do you remember
6 that?

7 A No.

8 Q You don't? Okay. You don't remember him — you
9 saying that he didn't say you looked younger or
10 older the first time she questioned you about that?

11 A Uh-huh.

12 Q And then the second time she questioned you about
13 that after you looked at that your typed up
14 statement she — you said, oh, he said I looked
15 younger than that?

16 A Yes, ma'am.

17 Q Is that right?

18 A Uh-huh.

19 Q Okay. So and this typed up statement that you
20 gave law enforcement, it might be more accurate; is
21 that what you think?

22 A Yes, ma'am.

23 Q Okay. Well, so whenever you talked with law
24 enforcement that first time you think everything in
25 that statement might be more accurate than that first

1 time?

2 A Yes, ma'am.

3 Q Okay. So that first time you talked to law
4 enforcement you think you might want to tell them
5 everything then, right?

6 A Yes, ma'am.

7 Q So you might want to tell them that you had
8 candles around the bath tub when you went in and
9 took the bath, right?

10 A Can you repeat that?

11 Q You would tell them there were candles in the
12 bath tub when and if you took a bath, right?

13 A Yes, ma'am.

14 Q And you would tell them that Mr. Clements gave
15 you a T-shirt, right?

16 A Yes, ma'am.

17 Q If, in fact, all those things happened, right?

18 A Yes, ma'am.

19 Q Okay. But those things aren't in this statement,
20 are they?

21 A No, ma'am.

22 Q They're not? Why is that? They're not in there,
23 are they?

24 A No, ma'am.

25 Q Okay. You didn't tell law enforcement that there

1 were candles around that bath tub when ever they
2 took your statement.

3 A No, ma'am.

4 Q You didn't tell them that Mr. Clements gave you a
5 T-shirt, right?

6 A Right.

7 Q You went into a drawer and got out a T-shirt
8 after he gave you a towel to take, gave you the
9 opportunity to take a shower, right?

10 A No, ma'am.

11 Q No? He gave you a T-shirt?

12 A Yes, ma'am.

13 Q Okay. Whenever you got in the car with Mr.
14 Clements you told him your name was Veronica Carter,
15 right?

16 A I didn't say last name.

17 Q You didn't?

18 A No, ma'am.

19 Q Did you tell him at some point in time your name
20 was Veronica Carter?

21 A No, I just said Veronica.

22 Q Okay. But you told him your name was Veronica

23 —

24 A Yes, ma'am.

25 Q —right? But your name is Complainant?

1 A Yes, ma'am.

2 Q And you told him you were 16?

3 A Yes, ma'am.

4 Q And you told him somebody stole your shoes?

5 A Uh-huh.

6 Q You told him that somebody was Shawn?

7 A Yes, ma'am.

8 Q And you even came up with a story so vivid that
9 you said Shawn lived in a blue trailer up the track,
10 right?

11 A Yes, ma'am.

12 Q And so he, he took you to that trailer to go get
13 your shoes, right?

14 A No, ma'am, he drove around looking for the
15 trailer.

16 Q Trying to find the trailer that you described,
17 right?

18 A Yes, ma'am.

19 Q But since you lied to him there wasn't a blue
20 trailer?

21 A Yes, ma'am.

22 Q Because he was gonna help you out, get the shoes?

23 A Yes, ma'am.

24 Q And so you lied to him at one point and told him
25 your foster mom's name is Stephanie Willis, right?

1 A Yes, ma'am.

2 Q But that's not your foster mom's name. In fact,
3 you weren't in foster care at that time, right?

4 A No, ma'am.

5 Q Now you sat here today and said that you were
6 scared, right?

7 A Yes, ma'am.

8 Q And so you had to figure out something to do?

9 A No, ma'am.

10 Q And you were scared but you found the guns in his
11 house, right?

12 A Yes, ma'am.

13 Q But you saw a gun in his house the first night
14 you were there; didn't you?

15 A No.

16 Q You didn't? You didn't move the door and see the
17 gun behind the door the first night you were there?

18 A No, ma'am.

19 Q You didn't tell law enforcement the first night
20 you stayed there you saw a gun?

21 A I don't remember saying that.

22 Q You don't remember saying that?

23 A No, ma'am.

24 Q But if you told law enforcement you saw a gun
25 behind the door the first night you stayed there,

1 that would be an accurate statement about what
2 happened, wouldn't it, 'cause that was fresh on your
3 mind; is that right?

4 A I guess.

5 Q Beg the Court's indulgence one moment. When
6 y'all went to the Shell Station, after that you went
7 to his house, right?

8 A Yes, ma'am.

9 Q And he dropped you off at the house and he left?

10 A Yes, ma'am.

11 Q Is that right? And you really didn't want to go
12 in the Shell Station, did you?

13 A No, ma'am.

14 Q 'Cause you were afraid you were going to get
15 recognized, right?

16 A Yes, ma'am.

17 Q You wanted to be out of your momma's house,
18 right? You didn't want to be in there, did you?

19 A Yes, ma'am.

20 Q That's a no, I didn't want to be in there?

21 A I mean, yes, ma'am, yea.

22 Q Okay. So he left you at the house so that you
23 could take a shower; is that right? Now I'm gonna
24 show you a copy of a transcribed statement that you
25 gave law enforcement. I'm gonna ask you to read to

1 yourself the bottom of page 5 on to page 6 starting
2 at line 20 and let that refresh your memory.

3 A (Complies.)

4 Q Have you read over to page six as well?

5 A Oh. (Reads.)

6 Q Now when you, when Mr. Clements left that first
7 night and you took a shower, you saw a gun that
8 first night; did you not?

9 A I can't really remember the exact time I seen it.

10 Q You can't remember. But you told law enforcement
11 that; did you not?

12 A Yes, ma'am.

13 Q You told them that in your statement, right?

14 A Yes, ma'am.

15 Q Okay. So you stayed there even though you saw
16 that gun?

17 A Yes, ma'am.

18 Q Okay. So you saw — you told them you saw a gun
19 that first night and you stayed there for at least
20 one night and then another night, right?

21 A I can't really remember 'cause the days are
22 scrambled up like.

23 Q How many nights did you stay at Mr. Clements
24 house?

25 A Three I think.

1 Q Three?

2 A I think.

3 Q You think?

4 A I don't remember.

5 Q Okay. You remember that a man was looking out
6 the window, right?

7 A Yes, ma'am.

8 Q You remember a man was watching pornography on
9 TV? You're not sure how much nights you stayed
10 there?

11 A (No verbal response.)

12 Q Is that a no?

13 A No, ma'am.

14 Q And you're not sure if you saw the gun in the
15 first night or the second night?

16 A I think it was the last night 'cause that's when
17 I called somebody to come pick me up.

18 Q Okay. But you're not disputing the fact that you
19 told law enforcement that you saw it the first time,
20 the first night you stayed there?

21 A Yes, ma'am.

22 Q Okay. Now you said there were how many bedrooms
23 in Mr. Clements house?

24 A Two.

25 Q And that's two bathrooms; is that right?

1 A Yes, ma'am.

2 Q And you said that the first sexual encounter
3 happened in what bedroom?

4 A His.

5 Q Which is in what side of the house?

6 A The left side if you're going through the front
7 door.

8 Q Okay. And you can see the bathroom from that
9 bedroom?

10 A You're talking about like outside of the room?

11 Q Can you see the bathroom?

12 A No, ma'am.

13 Q Okay. But you know he flushed the condom?

14 A I was in his room.

15 Q Okay. But you said he flushed the condom?

16 A Yes, ma'am.

17 Q You saw him do that?

18 A Yes, ma'am.

19 Q Where were you when you saw him flush the condom?

20 A I was in the bedroom, his bedroom.

21 Q And you could see him do that while you were in
22 his bedroom?

23 A Yes, ma'am, his bathroom is in his bedroom.

24 Q And Mr. Clements left after y'all had sexual
25 relations is what your testimony was earlier; is

1 that right?

2 A Yes, ma'am.

3 Q Where did he go?

4 A I don't know.

5 Q So he was going and coming; is that right?

6 A Yes, ma'am.

7 Q And locked you in the house, told you not to let
8 anybody in?

9 A Yes, ma'am.

10 Q And went to Shoe Show and bought you shoes?

11 A Next day.

12 Q What day was that?

13 A Maybe that Sunday. I don't know.

14 Q Who went with you to the Shoe Show?

15 A Me, him, and some other man.

16 Q So he took you and offered to buy you food and
17 bought you shoes and gave you a place to stay and a
18 shower. And did he ever all the while telling you
19 you got to go back to your home, right?

20 A Yes, ma'am.

21 Q He kept telling you got to go home, right?

22 A The last day when I was there, yea, yes, ma'am.

23 Q He only said that the last day?

24 A Yes, ma'am.

25 Q He didn't say that before then?

1 A No, ma'am. He asked me where I lived but...

2 Q Now you said that he gave you a cigar?

3 A Yes, ma'am.

4 Q You told law enforcement he gave you a cigar?

5 A No, ma'am.

6 Q No. That's just something you're talking about
7 here today, right?

8 A Yes, ma'am.

9 Q Okay. What friend came and picked you up?

10 A A girl named Q. (ph).

11 Q Q. ?

12 A Yes, ma'am.

13 Q Q. lives in Kingstree?

14 A Yes, ma'am.

15 Q And she came and picked you up from where?

16 A His house.

17 Q Now Mr. Clements brought you a plate of food on
18 Saturday; did he not?

19 A Yes, ma'am.

20 Q He brought you a plate of fish, right, from his
21 party, his family cookout; didn't he?

22 A Yes, ma'am.

23 Q But you told Ms. Barr earlier that you didn't
24 have anything to eat.

25 A I didn't eat it.

1 Q You didn't eat it?

2 A No.

3 Q Now your legs that you had all the cuts and stuff
4 all over, right?

5 A Yes, ma'am.

6 Q Mr. Clements gave you a first aid kit, right, to
7 clean up your legs; didn't he?

8 A Yes, ma'am.

9 Q So that he had some bandages and stuff to take
10 care of those cuts, right?

11 A Yes, I think.

12 Q Okay. So he took you to the store, offered you
13 something to eat, gave you a shower, gave you some
14 first aid kit to take care of your legs, gave you
15 some food, shelter, all that other stuff during a
16 time when you didn't want to be at your mommy and
17 daddy's house, is that correct, at your momma's
18 house, right?

19 A Yes, ma'am.

20 MS. SHULER: Beg the Court's indulgence
21 one moment. I have no further questions.

22 THE COURT: Any redirect?

23 MS. BARR: Just a few, Your Honor, please.

24 **REDIRECT EXAMINATION**

25 BY MS. BARR:

1 Q Complainant, how do you feel about your mom? When I
2 say your mom, I mean Ms. Epps. How do you feel
3 about her today?

4 A Like she — I feel like she's a good person.

5 Q Okay. Do you want to go back home?

6 A Yes, ma'am.

7 Q You miss your mom and your sister?

8 A Yes, ma'am.

9 Q You remember being charged with running away from
10 home.

11 A Yes, ma'am.

12 Q And is that the reason why you were placed in
13 foster care because you ran away?

14 A No, ma'am, my mom relinquished her rights.

15 Q Okay, all right. The fact that you were placed
16 in foster care really didn't have anything to do
17 with these charges against the defendant, did it?

18 A No, ma'am, she doesn't even know about it.

19 Q Now you were asked whether or not you told
20 certain things to the police and didn't tell certain
21 things to the police. Let me ask you, did any
22 officer ask you whether or not the defendant gave
23 you a T-shirt? Do you remember anybody asking you
24 that specific question?

25 A No, ma'am.

1 Q If someone had asked you whether or not Faron
2 Clements gave you a T-shirt what would have been
3 your answer?

4 A Yes.

5 Q Okay. Did anybody ever ask you whether or not
6 Faron Clements had candles lit around the tub?

7 A No, ma'am.

8 Q If someone had asked you that question what would
9 have been your answer?

10 A Yes, ma'am.

11 Q Okay. Did anybody ever specifically come out and
12 ask you if Faron ever gave you a cigar?

13 A No, ma'am.

14 Q Okay. If they'd asked you that what would have
15 been your answer?

16 A Yes.

17 Q Okay. Now during this time where the defendant
18 is being so kind and being a good Samaritan, did he
19 ever call the police to report that you were at his
20 —

21 A No, ma'am.

22 Q —some girl he believed was 16 years old was at
23 his house?

24 A No.

25 Q Did he ever call DSS to report some young girl

1 —

2 MS. SHULER: Objection, Your Honor.

3 THE WITNESS: No, ma'am.

4 THE COURT: Pardon?

5 MS. SHULER: Relevance and how would she
6 know that?

7 THE COURT: Objection is overruled.

8 BY MS. BARR:

9 Q Complainant, at any point in time did you ever hear
10 the defendant call DSS to report some 16 year old
11 runaway girl was staying at his house?

12 A No, ma'am.

13 Q Now in terms of the things that you were being
14 untruthful about, your age?

15 A Yes, ma'am.

16 Q You admitted on the stand today that you were not
17 truthful about your age when you told that to the
18 defendant?

19 A Yes, ma'am.

20 Q Did you tell the police that you were untruthful
21 about your age? Didn't you tell them that you had
22 lied about your age?

23 A Yes, ma'am.

24 MS. SHULER: Objection, Your Honor,
25 leading.

1 THE COURT: Objection overruled.

2 BY MS. BARR:

3 Q Did you tell them that you had lied about your
4 name?

5 A Yes, ma'am.

6 Q So you weren't trying to hide anything from the
7 police, or were you trying to hide anything from the
8 police?

9 A No, ma'am.

10 Q And when you were asked on cross-examination
11 about how you were able to see the defendant remove
12 a condom and urinate in the bathroom after he had
13 sex with you, how were you able to see that?

14 A I watched him.

15 Q And how was it you were able you to do that?
16 Where was his bathroom in relation to his bedroom?

17 A His bathroom is like right here, and his bed was
18 like right in there. I was just standing right
19 there just looking at him.

20 Q Thank you, ma'am. That's all the questions.

21 THE COURT: Anything further?

22 **RECROSS - EXAMINATION**

23 BY MS. SHULER:

24 Q Miss Complainant, you didn't tell Mr. Clements you
25 were a runaway, did you?

1 A No, ma'am.

2 Q In fact, you didn't want anybody to know that,
3 right?

4 A No, ma'am.

5 Q You were buying yourself time, right?

6 A Yes, ma'am.

7 MS. SHULER: I have no further questions.

8 THE COURT: Thank you, ma'am. You may
9 step down.

10 Ladies and gentlemen, that will do it for
11 today. We're gonna start —

12 MS. BARR: Judge, may we approach.

13 THE COURT: All right.

14 (WHEREUPON, counsel approached the Bench for an
15 off-the-record discussion.)

16 THE COURT: We've got another witness
17 we're going to do today. You may proceed.

18 MS. BARR: The State calls Mr. Patel.
19 Judge, he won't be long.

20 THE COURT: Mr. Patel.

21 THE CLERK OF COURT: Mr. Patel, place your
22 left hand on the Bible, raise your right hand.

23 WHEREUPON,

24 **NAVIN PATEL,**

25 having been duly sworn by the Clerk of Court,

1 testified as follows:

2 THE COURT: If you will come sit right
3 here, sir.

4 **DIRECT EXAMINATION**

5 BY MS. BARR:

6 Q Mr. Patel, good afternoon.

7 A Good afternoon.

8 Q Sir, state your full name for me.

9 A Navin V. Patel.

10 Q Spell your first and last name.

11 A N-A-V-I-N, last name P-A-T-E-L.

12 Q All right. And sir, what's your — where do you
13 work?

14 A I have businesses, like, I have a couple of
15 convenience stores in Kingstree. I have a couple of
16 businesses in Orangeburg. I live in Orangeburg.

17 Q Okay. And do you own the — one of the
18 convenience stores that you own is the Shell gas
19 station?

20 A Yes, Shell Station on 52 with the Subway. I'm
21 the owner. And I have a second one Johnson — I'm
22 sorry, Johnny Wyatt's place.

23 Q And how long have you owned that business?

24 A Since May 2011.

25 Q Okay, all right. And I'm gonna hand what's been

1 marked as State's Exhibit Number 1. Have you seen
2 the video images that are on this DVD?

3 A Yes.

4 Q All right. And did your business provide this
5 DVD to law enforcement?

6 A Yes, they want any time they come they ask me,
7 and I did made a copy recorded and give it to law
8 enforcement.

9 Q All right. And have you had a chance to review
10 it before you testified here today?

11 A Yes.

12 Q And is this the footage that was taken from your
13 store back in ---

14 A That is from my store. That is my employee also
15 there. His name is Bernard Harris.

16 Q His name is?

17 A Bernard Harris.

18 Q Bernard Harris?

19 A Harris.

20 Q All right.

21 MS. BARR: Your Honor, permission to
22 introduce State's Exhibit Number 1.

23 THE COURT: Any objection?

24 MS. SHULER: No objection.

25 THE COURT: It's introduced without

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1 objection.

2 (WHEREUPON, State Exhibit No. 1
3 was admitted into evidence.)

4 MS. BARR: Permission to publish?

5 THE COURT: Yes.

6 BY MS. BARR:

7 Q And while they're loading it, Mr. Patel, what I
8 would ask that you do is not talk while we're
9 playing the video, okay?

10 A Yeah.

11 Q All right.

12 (State's Exhibit No. 1 is played for the jury.)

13 MS. BARR: Can you pause it for just a
14 moment.

15 BY MS. BARR:

16 Q Mr. Patel, can I get you to step down just a
17 moment for me.

18 A (Complies.)

19 Q Do you recognize any of your store employees?

20 A Yes. Yes, ma'am.

21 Q Can you point to it here on this particular
22 screen?

23 A Yea, he's with the cap, you know.

24 Q He's the gentleman with the cap?

25 A With the cap, yea.

1 Q All right. Now you recognize the individual who
2 has the white, we call wife beaters, white T-shirt
3 on?

4 A I don't know the name or anything but I have seen
5 him today, that's all.

6 Q Okay. He's the gentlemen who is seated there?

7 A Yeah, I have seen him today only, that's all.

8 Q All right.

9 (Playing of video continued.)

10 BY MS. BARR:

11 Q You can have a seat.

12 A (Complies.)

13 Q Mr. Patel, that's all the questions I have.

14 Please answer any questions that Defense counsel or
15 the judge may have for you.

16 THE COURT: Ms. Shuler.

17 **CROSS-EXAMINATION**

18 BY MS. SHULER:

19 Q Mr. Patel, is the date that appears on the frame
20 of that video correct?

21 A I don't know the date. I have no date. I don't
22 know the date.

23 Q You don't know if the date is correct?

24 A I don't. I don't know the date. I don't know
25 the date that day.

1 Q The date says 6/1/2013.

2 A It may be. We don't match the date. It may be
3 other date or one date, plus or minus. I cannot
4 guarantee you it will be totally the date of the
5 original. I don't know. I don't remember. I
6 remember that law enforcement came to me. They
7 asked me what, give the recording, see the
8 recording, see the recording, and they said give me
9 a copy of this and I give them. I don't remember
10 the date what it is.

11 Q So you don't know if that date is accurate?

12 A It may be; I don't know.

13 MS. SHULER: I have no further questions.

14 THE COURT: Anything further, Ms. Barr?

15 MS. BARR: No, Your Honor.

16 THE COURT: All right, thank you sir.

17 You may step down. And you're excused, sir.

18 THE WITNESS: Okay, thank you.

19 THE COURT: And we will end this day.

20 We'll start back tomorrow morning at 9:30.

21 Need you in the jury room at that time. Have
22 a good evening. Please do not discuss the case.

23 Y'all have a good evening.

24 (WHEREUPON, the jury was removed from the
25 courtroom at 5:28 p.m., and the following

1 proceedings commenced in open court.)

2 THE COURT: With regard to the person who
3 was at the house, is that the same person who has
4 the VA appointment or is it someone else?

5 MS. BARR: Judge, I don't know who the
6 person is who has a VA appointment.

7 THE COURT: It's not the same one you're
8 trying to get here, is it?

9 Okay.

10 MS. SHULER: Mr. Morris did not rape her.

11 THE COURT: Okay, just want to be sure
12 'cause he'd definitely be an eyewitness if that's
13 the one you're talking about. All right.

14 MS. BARR: Judge, I can do this in the
15 morning.

16 THE COURT: What is it?

17 MS. BARR: Judge, just regarding one of
18 the motions that defense counsel made with regard to
19 the incident report concerning the drug case, I just
20 want to place on the record that I supplied defense
21 counsel with a supplemental incident report of
22 Investigator Wrenn's date June 7, 2013 when I sent
23 her the discovery responses in June of this year.

24 And it references where the drugs or arrest
25 drugs were found, where the guns were found, where

1 the ammunition was found. It references the search
2 warrant, who all was there, that they were there,
3 followup on a complaint of the child rape case.

4 I just wanted the record to be clear that that
5 information has been provided to defense counsel.

6 THE COURT: All right. Is that right?

7 MS. BARR: And that would be my item
8 number 7 on their State's Rule 5 disclosure.

9 THE COURT: Anything else about that then,
10 Ms. Shuler?

11 MS. SHULER: The incident report regarding
12 the drugs was not produced until today, and I did
13 receive that this afternoon, and it does indicate
14 that Investigator Coker received that and it does
15 not indicate that the drugs were field tested but

16 ---

17 THE COURT: They're the same drugs I
18 excluded, right?

19 MS. SHULER: Yes, that's almost a moot
20 issue.

21 THE COURT: All right. Let's roll.

22 How about Mr. Clements and being on bond
23 during the trial? What says the State? Ms. Barr?

24 MS. BARR: Judge, we don't have any
25 problems with him remaining out on bond. I think

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1 he'll be here. Well, I hope he'll be here.

2 THE COURT: Mr. Clements, you understand
3 if you do not appear the trial will proceed in your
4 absence?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And also you'll be in contempt
7 of court for failing to be here and that you can
8 also be charged with failure to appear.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. We need you back
11 at 9:30 in the morning.

12 THE DEFENDANT: Yes, sir, Your Honor.

13 (WHEREUPON, State Exhibit No. 2 through 14 were
14 marked for identification only.)

15 (WHEREUPON, the jury was returned to the courtroom
16 at approximately 9:37 a.m., and the following
17 proceedings commenced in open court.)

18 THE COURT: Good morning. We're here on
19 the State's case. You may call your next witness.

20 MS. BARR: Your Honor, at this time the
21 State calls Investigator Juan Ballard.

22 WHEREUPON,

23 **JUAN BALLARD,**

24 having been duly sworn by the Clerk, testified as
25 follows:

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1 MS. BARR: May it please the Court, Your
2 Honor.

3 THE COURT: Yes.

4 **DIRECT EXAMINATION**

5 BY MS. BARR:

6 Q Good morning, Investigator Ballard.

7 A Good morning.

8 Q Sir, if you would, please introduce yourself to
9 the ladies and gentlemen of the jury, tell them
10 where you work. First of all, tell them your full
11 name. Tell them where you work and what you do for
12 a living.

13 A My name is Juan Ballard with the Williamsburg
14 County Sheriff's Office. I'm an investigator there.

15 Q Okay. And how long have you been employed by the
16 Sheriff's Office?

17 A About 16, almost 17 years.

18 Q All right. And can you just give us a general
19 idea of what it is that an investigator does?

20 A Well, in general investigation what I do is
21 investigate any criminal acts, felony, sometimes
22 misdemeanors, follow it up by being in contact with
23 possibly victims and following up with suspects
24 and/or witnesses.

25 Q All right. And, sir, of course you were one of

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1 the individuals who was involved in the
2 investigation of a runaway report involving Complainant
3 ; is that correct?

4 A Yes, ma'am, I was.

5 Q When was the Sheriff's Office first notified that
6 Complainant had been reported missing?

7 A That 30th. I'm sorry, May the 30th.

8 Q May 30th, all right. And do you remember what
9 day of the week that would have been?

10 A On Thursday.

11 Q On Thursday, okay. And who was the individual
12 who reported her missing?

13 A Ms. Wyanetta Epps, her adopted mother.

14 Q Okay, all right. And once the Sheriff's Office
15 received the initial complaint by Wyanetta Epps that
16 her daughter was missing, tell us what actions the
17 Sheriff's Department and you in particular took to
18 follow up on that initial complaint.

19 A Well, initially, the initial reporting deputy,
20 the patrol deputy respond to the residence, they
21 take the report they do the report, turn it in, and
22 pass it on to our lieutenant of the investigations
23 and then she disseminates that to the individual
24 investigators.

25 Q Okay, all right. And what was done by your

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1 agency to try to find Complainant?

2 A Normally with a missing person, the first thing
3 we do we speak with the complainant, especially when
4 it's juvenile. We talk to them, try to find out as
5 much possible about the juvenile, in particular
6 juvenile, and spoke with Ms. Epps and she advised me
7 the history of Complainant and she told me that Complainant
8 ---

9 Q Wait a minute. You can't tell me what she said.
10 Tell me what you did as a result of what she said.
11 What actions did you do, your agency do, to try to
12 find her.

13 A First of all we placed her on -- we made some
14 flyers with her picture on them, post them all over
15 town in particular stores, posted them at our office
16 and several other locations. Normally what we do we
17 post them on the news, Live 5, all the charleston
18 area being that we're close towards Charleston. And
19 occasionally if they have connection with Lake City
20 or Florence County we'll place them to Florence
21 County news area too.

22 Q All right. Specifically in this instance did you
23 report it to the local media, the news channels,
24 that Williamsburg County had a runaway, ---

25 A I did.

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1 Q —a child missing?

2 A Live 5 and the Kingstree News.

3 Q All right. Now you indicated that initially you
4 talked presumably to the person who was closest to
5 the child, being the parent.

6 A We did.

7 Q All right. And in this case did you also, or
8 other deputies, also try to reach out to friends or
9 neighbors of people who may have known Complainant in an
10 effort to try to find her whereabouts?

11 A They did.

12 Q Okay. Where did you all look, and who did you
13 speak with? Don't tell me what they said, just tell
14 me what you did.

15 A We just got information that she may be up track
16 area where she was residing at. We went up the
17 track area. Followed up most leads, went to several
18 houses and spoke to persons we actually thought that
19 she may have been with and that was negative contact
20 with her then.

21 Q All right. Now obviously we're here so you all
22 ultimately found her. When was it that you all, you
23 being law enforcement in general, found Complainant

24 ?

25 A It was June the 5th.

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1 Q Okay. Do you recall the date when you
2 interviewed her?

3 A I'm sorry, I'm sorry, it was June the 4th, I
4 apologize. It was June the 4th when we found her.

5 Q All right. And who found her? Was it the
6 Williamsburg Sheriff's Office or was it the
7 Kingstree Police Department who found her first?

8 A It was the Kingstree Police Department.

9 Q And when she was found on June 4th when did you
10 interview her?

11 A That night.

12 Q The same night?

13 A Uh-huh.

14 Q Is that a yes?

15 A Yes, ma'am, I apologize.

16 Q No, no, no problem at all. All right, and I
17 won't get into things that she told you, but I need
18 to get into certain things that you did as a result
19 of what she told you. Okay. You had a recorded
20 interview her?

21 A We did.

22 Q All right. And based upon what she told you
23 during that recorded interview what did you do?

24 A Executed a search warrant.

25 Q You executed a search warrant?

1 A Yes.

2 Q For a residence?

3 A A residence at in Kingstree
4 area.

5 Q Okay. You executed a search warrant for
6 residence located at in
7 Kingstree?

8 A Yes, ma'am. Yes, ma'am.

9 Q Is that residence located in Williamsburg County?

10 A Yes, ma'am, it's in Williamsburg County.

11 Q So you went to the Magistrate, got a search
12 warrant, and you then went to that residence?

13 A Yes, we did.

14 Q All right. And tell me what you did as a result
15 of going to the residence.

16 A We entered the residence looking for particular
17 items that Complainant said she left there and saw -- we
18 did that just to corroborate what she told us.

19 Q All right. And in terms of any person in
20 particular, did she gave -- did he give you the name
21 of any individual in particular that was a focus of
22 your investigation?

23 A Faron Clements.

24 Q All right. And as far as Mr. Clements' address
25 where was he known to reside at that time?

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1 A The Road.

2 Q Now what, if anything, did you to do verify that
3 Mr. Clements was, in fact, residing at the
4 address? How did you verify that?

5 A The first thing we did we checked DMV South
6 Carolina Department of Motor Vehicles' web site.
7 His address came up to . Also when we
8 executed the search warrant we saw multiple mail
9 including a light bill from Georgetown Craft
10 information with his name and .

11 Q Okay. And I believe on yesterday I may have
12 understood Complainant to say that the defendant
13 identified himself to her as Maurice.

14 A Yes, ma'am.

15 Q Do you -- did you know Mr. Clements prior to this
16 occasion?

17 A Uh-huh, yes, ma'am.

18 Q All right. And did he have a name or was he
19 known by the name Maurice?

20 A He's known by the name Maurice, Short, Short man.

21 Q Okay. I'm gonna hand you what's been marked for
22 identification purposes as State's Exhibits 2, 3, 4,
23 and 5 and ask you if you recognize what's depicted
24 in those photographs.

25 A Yes, ma'am, I do.

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1 Q How is it that you recognize it?

2 A I took these photos.

3 Q Okay. All right. And why did you take these
4 photographs?

5 A That's just to verify that, first of all, we were
6 at the right address; and second of all, his name
7 was on that, on those bills, those letters, and his
8 ID.

9 Q All right.

10 MS. BARR: Your Honor, we would move at
11 this time to admit State's Exhibits 2 through 5.

12 MS. SHULER: Beg the Court's indulgence
13 one moment, Your Honor. No objection, Your Honor.

14 THE COURT: Admitted without objection.

15 (WHEREUPON, State Exhibit Nos. 2 through 5
16 were admitted into evidence.)

17 MS. BARR: Permission to publish?

18 THE COURT: Yes.

19 MS. BARR: I'm gonna publish what's been
20 admitted as State's Exhibit Number 2.

21 BY MS. BARR:

22 Q Sir, is that the South Carolina identification
23 card for the defendant?

24 A Yes, ma'am, it is.

25 Q All right. And tell us for the record the full

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1 name and address that's depicted on State's 2.

2 A Faron Maurice Clements, ,
3 Kingstree, South Carolina.

4 Q All right. I'm gonna publish now State's Exhibit
5 Number 3. Tell the ladies and gentlemen of the jury
6 what that is.

7 A That is a bill from Santee Electric Cooperative
8 that has Faron Clements, ,
9 Kingstree, South Carolina on it as the person being
10 billed.

11 Q Okay. And if you will, tell us about State's
12 Exhibit Number 4.

13 A That is a letter from Georgetown Craft Credit
14 Union and it has his name on it.

15 Q I'm gonna zoom in just a little bit so we can see
16 it a little better. Is that his name and address
17 here that I'm pointing to?

18 A That's where it's located.

19 Q Okay. And tell us about State's Exhibits, or
20 State's Exhibit Number 5.

21 A It appears to be some miscellaneous mail that was
22 in there. I think it was he had some kind of
23 insurance coverage.

24 Q Yes, sir.

25 A And it has Faron Clements, ,

1 Kingstree, South Carolina.

2 Q All right. You testified that you were looking
3 for items that Complainant told you that she left at the
4 house.

5 A Yes, ma'am.

6 Q And what item in particular were you looking for
7 that Complainant disclosed to you that she had left at
8 the house?

9 A A purple fleece-type blanket, I call a throw,
10 placed under a bedroom on the far, on the right side
11 of the house.

12 Q All right. And I'm gonna hand you what's been
13 marked as State's Exhibits 12, 13 and 14. Do you
14 recognize what's depicted in that particular
15 exhibit, in those exhibits?

16 A Yes, ma'am, I do.

17 Q All right. Are those pictures depicting the
18 bedroom and the blanket that you testified about
19 earlier?

20 A Yes, ma'am, it is.

21 Q And Sergeant Ballard, did you also take those
22 pictures as well?

23 A I did.

24 Q All right.

25 MS. BARR: Your Honor, we would move to

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1 introduce State's Exhibits 12, 13, and 14.

2 MS. SHULER: No objection, Your Honor.

3 THE COURT: Admitted without objection.

4 (WHEREUPON, State Exhibits Nos. 12, 13,
5 14 were admitted into evidence.)

6 MS. BARR: Permission to publish, Your
7 Honor.

8 THE COURT: You can publish anything
9 that's in evidence.

10 MS. BARR: Thank you. I publish now
11 State's Exhibit Number 12.

12 BY MS. BARR:

13 Q And, sir, you indicated that that is the bedroom,
14 that it was on the right side of the house?

15 A Yes, ma'am. If you're facing the residence the
16 front of the door is to the right.

17 Q Okay. Would this have been the master bedroom
18 that we heard testimony about or is this the second
19 bedroom?

20 A That's the second bedroom.

21 Q Okay. And is this where the purple blanket was
22 recovered?

23 A It was.

24 Q I'm gonna publish State's Exhibit Number 13.

25 Tell us what is depicted in that photograph.

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1 A It's the blanket in question. For some reason it
2 looks blue on that; it's actually purple.

3 Q Okay. And where was it found specifically?

4 A Under the bed. The previous photo you shown, it
5 was under that bed.

6 Q All right. Where did Complainant tell you it was?

7 A Right there under the bed.

8 Q You found it exactly where she told you it would
9 be?

10 A In fact, she said the foot end of the bed.

11 Q And State's Exhibit Number 14 is simply a closer
12 up picture of that particular blanket?

13 A It is.

14 Q All right. Now you testified that you
15 interviewed Complainant on the night of June 4th. Do
16 your records, or does your report reflect about what
17 time it was that you interviewed her?

18 A It does.

19 Q Okay. What time was it?

20 A 10:54 p.m.

21 Q Almost 11:00 at night?

22 A Almost 11 clock at night, yes, ma'am.

23 Q All right. Now when you interviewed her, of
24 course, this was face to face. It was not over the
25 phone?

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1 A Yes, it was.

2 Q How long do you think that you actually was with
3 her that night and spoke with her and saw her and
4 had opportunity to observe her?

5 A Total amount of time?

6 Q Yes, sir.

7 A Probably about three hours.

8 Q How much?

9 A Probably about three hours?

10 Q All right. Now I recognize that this has been
11 about a year-and-a-half ago, but during that time
12 did she look like she was 16?

13 A No, no.

14 MS. SHULER: Objection, Your Honor, that
15 calls for opinion testimony.

16 THE COURT: Objection is overruled.

17 BY MS. BARR:

18 Q At that time did she look like a 16 year old
19 child?

20 A No, don't look 16 now.

21 Q And you also mentioned that during the course of
22 the search warrant you were looking for certain
23 items.?

24 A Yes, I was.

25 Q All right. Was firearms, were ammunition one of

1 the things that you were looking for pursuant to
2 search warrant?

3 A In my particular search warrant firearms and that
4 purple blanket.

5 Q All right. I'm gonna hand you what's been marked
6 State's Exhibit 6 through 11, ask you if you
7 recognize those documents.

8 A Yes, ma'am, I do.

9 Q All right. Now those — tell me what's depicted
10 in those photographs.

11 A All of them?

12 Q Yeah, just give us a general idea of what's
13 depicted on them.

14 A Okay. A couple of them, most of them have
15 firearms in it and ammunition in several over
16 pictures.

17 Q Okay. And of course, those were taken by you as
18 well?

19 A Taken by me, that's my handwriting there.

20 Q And I'm sorry, tell me the date that all of the
21 photographs were taken.

22 A June 5th, 2013, at 3:27.

23 Q So this is — those pictures were taken by you
24 day after you interviewed Complainant at night?

25 A Yes, ma'am, it was.

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1 Q Okay. While defense counsel is reviewing those,
2 I'm just gonna ask you couple of questions in
3 followup. You received the information about
4 Mr. Clements in terms of his name and his address.
5 I'm gonna publish again State's Exhibit Number 2,
6 which is his South Carolina ID card. If you will,
7 tell me what is the birth date that's listed for the
8 defendant Faron Maurice Clements.

9 A From here?

10 Q Can you see it from over there?

11 A My eyes ain't like it used to be.

12 Q You can come on down.

13 A I'm sorry, I can see it now. No, I can't see it.
14 Judge, may I approach?

15 THE COURT: Yes, go ahead.

16 THE WITNESS: , 1981.

17 BY MS. BARR:

18 Q , 1981?

19 A Yes, ma'am.

20 Q All right, take a seat. With the birth date of
21 the , 1981, how old would Mr. Clements have
22 been at the time you interviewed Complainant ?

23 A 32, 33.

24 Q 32 years old?

25 A Yeah.

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1 Q Okay. On yesterday Complainant was actually asked
2 whether or not she told the police about any candles
3 that were in the defendant's bedroom. Were you in
4 court when that question was asked of her?

5 A Yeah, I was in court.

6 Q All right. And did she ever mention any candles
7 to you of being in the defendant's bedroom?

8 A No, she never mentioned. I really never asked
9 her.

10 Q Okay. Did it seem important or relevant at the
11 time?

12 A No, ma'am.

13 Q Not — okay. Now when you executed the search
14 warrant did you go into the defendant's bathroom?

15 A The master bathroom, yes, ma'am, I did.

16 Q Okay. And how would you get to the master
17 bathroom?

18 A You had to go through a bedroom.

19 Q Okay. You had to go through the master bedroom?

20 A Master bedroom, yes, ma'am.

21 Q Now when you executed the search warrant did you
22 see any candles in the master bath?

23 A There was a whole bunch of them.

24 Q You did see candles there?

25 A Like Bed, Bath, and Beyond in there.

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1 Q And were they outlined around the tub?

2 A Yeah, it was like I think they call them garden
3 tubs.

4 Q Okay.

5 A Like the deep well. And they were all around the
6 whole entire bath.

7 Q Okay. Now, and I'm assuming you did not
8 photograph the bathtub?

9 A No, I did not.

10 Q And did you believe it to be relevant at the
11 time?

12 A I had no clue it would have been.

13 Q Okay.

14 MS. BARR: Judge, at this time we would
15 move to admit State's Exhibits 6 through 11.

16 MS. SHULER: No objection, Your Honor.

17 THE COURT: It's admitted.

18 (WHEREUPON, State Exhibits Nos. 6 through 11 were
19 admitted into evidence.)

20 BY MS. BARR:

21 Q Investigator Ballard, I'm going to publish what's
22 admitted as State's Exhibit Number 6. Can you tell
23 the jury what's depicted in that exhibit?

24 A Purple Crown Royal bag with shotgun ammunition in
25 it, shotgun shells, excuse me.

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1 Q All right. Tell us about State's Exhibit Number
2 7.

3 A That is a dresser drawer with ammunition in it, a
4 box of ammunition top right Remington, some white
5 items in there, batteries, and a dry cleaning ticket
6 with Faron Clements on it.

7 Q And this part I may need to get you to come down
8 again. Come on down for me please.

9 A (Complies.)

10 Q And if I can get you to stand on that side and
11 I'll stand on this side. Now using my pen point to
12 where the ammunition would be.

13 A This is the box of Remington .45 caliber
14 ammunition. These are three spent rounds of 45
15 ammunition and this is a Highpoint rifle round.

16 Q All right. And you said that there was some type
17 of ticket with the defendant's name on it?

18 A Yes, ma'am. Kingstree Laundry, Clements, Faron.

19 Q Okay. And can you see a date on that ticket?

20 A Yes, ma'am, appears to be June 3rd, 2012, and I
21 can't tell what time it is but it's p.m.

22 Q All right. I'm gonna publish State's Exhibit
23 Number 8. Let me zoom out. If you will, sir, tell
24 us what is depicted in that particular exhibit.

25 A Of course this is the toilet in the master bath.

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1 That's the 22 rifle she described a big old gun to
2 us.

3 Q Okay, all right. Was the gun or the rifle where
4 she told you it would be?

5 A Yeah, behind the door.

6 Q All right. Tell us about State's Exhibit Number
7 9.

8 A That is a single shot shotgun.

9 Q Okay.

10 A And it's behind the door also in the master
11 bedroom.

12 Q Okay. Is that a different, obviously that's a
13 different firearm than what was depicted in State's
14 Exhibit Number 8?

15 A Yes, ma'am, it is.

16 Q Okay. Tell us about State's Number 10.

17 A That's a Highpoint firearm. This is behind the
18 dresser. She did not see that.

19 Q Okay. Tell us about State's Number 11.

20 A This is another one she told us about in the
21 drawer when she was looking for something.

22 She described a silver — she described it
23 yesterday as a weapon gun. It was actually an H and
24 R silver, I think it was .32 caliber, that
25 particular.

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1 Q Okay. Sir, you can take your seat.

2 A (Complies.)

3 Q All right. We talked about the search warrant.
4 We talked about the gun. We talked about the
5 candles. Did Complainant also relay to you where she
6 and the defendant had gone during the point in time
7 she was with him?

8 A Yes, ma'am, she did.

9 Q Okay, all right. Did she tell you one of the
10 places they went was the Shell gas station?

11 A Shell Gas Station, yes, ma'am.

12 Q What, if anything, did you do to corroborate her
13 statement that she and the defendant had gone to the
14 Shell gas station?

15 A She told me that, in fact, she told me at 6:00.
16 And I went to the Shell station and spoke with — it
17 wasn't that Patel from yesterday; it was another
18 gentleman. He said she didn't know how to work it
19 to Mr. Patel, Patel that was here yesterday, called
20 me back and we reviewed 6:00 that hat time I was
21 looking for 6:00 and ultimately we say Complainant and
22 Mr. Clements come in there and I was able to get
23 copy of that corroborate turn it in for evidence.

24 Q All right. Now the date that was listed on that
25 particular exhibit, the disk that contained the

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1 surveillance footage from the Shell gas station —

2 A Yes, ma'am.

3 Q Was June 1st, 2013, was that the correct date?

4 A Yes, ma'am, it was Saturday.

5 Q All right. So you asked for specifically

6 Saturday June 1st, 2013?

7 A I did.

8 Q All right. And that's the information that you

9 received?

10 A Yes, ma'am, information I got.

11 Q Now were you able to identify Mr. Faron Clements

12 in that surveillance footage?

13 A I was.

14 Q And were you able to identify **Complainant** in

15 that footage with him?

16 A I was.

17 Q Did — was there anything noteworthy or did

18 anything stand out to you when you reviewed he

19 footage of the two of them?

20 A Yes. She told me during the interview she didn't

21 have any shoes on, and I made sure the person I saw

22 that I believed that was her didn't have any shoes

23 on. The second thing she told me was she got a

24 bottle of water. And I made sure the bottle of

25 water was purchased and she reached up and told me

1 she got a pack of gum. And in the video a pack of
2 gum was grabbed by Ms. Epps.

3 Q All right. Anything else noteworthy in terms of
4 how the two of them interacted with each other?

5 A By looking at the video it — when she dropped
6 the water she picked it back up and looked like he
7 placed his hand on her butt.

8 Q On her behind?

9 A On her behind, yeah.

10 Q As a result of your investigation in the case you
11 then signed an arrest warrant on Mr. Clements; is
12 that correct?

13 A I did based on information I got.

14 Q All right. And he was charged with criminal
15 sexual conduct with a minor in the second degree; is
16 that correct?

17 A Yes, ma'am.

18 Q Beg the Court's indulgence. And you know — if
19 you know fine; if you don't that's fine as well —
20 but do you know anything about Complainant's case
21 involving her being a runaway? Were you involved
22 at all with any of the court proceedings involving
23 her being a runaway?

24 A In juvenile court?

25 Q Yes.

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1 A No, ma'am, I wasn't.

2 Q Okay. That's all the questions I have. Please
3 answer any questions that defense counsel or Your
4 Honor may have for you.

5 THE COURT: Ms. Shuler.

6 **CROSS-EXAMINATION**

7 BY MS. SHULER:

8 Q Investigator Ballard, you've been with the
9 Sheriff's Department you said 16, almost 17 years,
10 right?

11 A Approximately 16. I started off at the beach.

12 Q You started at —

13 A I did a year in the beach so I was here about 16
14 years.

15 Q But you've been a police officer for some type of
16 —

17 A Yeah, from —

18 Q —law enforcement officer almost 17 years?

19 A Yes, ma'am.

20 Q And so you're very experienced, right?

21 A Steady learning.

22 Q Steady learning, okay. So you've investigated
23 CSC cases before, criminal sexual conduct cases
24 before, right?

25 A Yes.

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1 Q And so you know how important it is to treat
2 those cases particularly carefully, right?

3 A True.

4 Q And so Ms. Epps, when you talked to her she was
5 at the hospital, right?

6 A Correct.

7 Q And so the Sheriff's Department took her to the
8 hospital?

9 A We did.

10 Q And while she was at the hospital y'all did no
11 kind of rape kit, did you?

12 A A rape kit was not performed 'cause the hospital
13 doesn't do rape kits on juveniles.

14 Q And y'all didn't take her to Florence where they
15 could have done a rape kit on her in Florence?

16 A Well, the time we got her was 11:00 at night. Of
17 course the Care House was not open or Durant Center
18 was not open. And they both require three day
19 window of opportunity to do one. By the time we
20 would gotten her there with appointment it'd have
21 been past, three days would have passed.

22 Q So you're telling me the Durant Center or Care
23 House, they won't open up for emergency?

24 A That I can't answer.

25 Q Okay. So y'all didn't take her to the hospital

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1 in Florence that might could have done a rape kit?

2 A We took her to the closest one.

3 Q Okay. And now Ms. Epps told you that she had
4 some sort of sexual relations twice with
5 Mr. Clements, right?

6 A She told us that.

7 Q And she told you on one of those times she used a
8 condom, right?

9 A She did.

10 Q And but on that second time she said she didn't
11 use a condom, right?

12 A Yes, ma'am, she did.

13 Q So the second time no condom was used, correct?

14 A Correct.

15 Q That's what she said. And y'all didn't bother to
16 do a rape kit?

17 A Well, actually with -- the incident happened on
18 June 1st through June the 2nd. When we made contact
19 with her on June 4th she had already bathed several
20 times and there sorry wouldn't have been no evidence
21 anyway.

22 Q You don't think there would have been any
23 evidence?

24 A I'm pretty sure there would not have been any
25 evidence.

1 Q You didn't even bother to check though.

2 A We asked for rape kit. Then they advised us they
3 didn't do rape kits on juveniles.

4 Q Okay. And I'm sure you asked her to give you her
5 panties, right?

6 A Not -- she didn't have the ones on she had that
7 night, that particular time.

8 Q Okay. And so you asked her to bring you those
9 panties, right?

10 A She didn't know where they were at.

11 Q So there's no panties, right?

12 A Not from her.

13 Q No rape kit, right?

14 A No.

15 Q No condom, right?

16 A No, ma'am.

17 Q No condom wrapper was found, right?

18 A We found condoms but they were not used.

19 Q Okay, you found condoms but they weren't used?

20 A Yeah.

21 Q You brought in, brought those here today for us
22 to see?

23 A No, huh-uh. No, ma'am.

24 Q Okay. Now in this -- y'all did a taped interview
25 statement with Ms. Epps, right?

1 A We did.

2 Q And in that taped statement it says nothing about
3 that master bedroom looking like Bed, Bath, and
4 beyond, does it?

5 A No, I didn't ask her that. We didn't know to ask
6 her that.

7 Q Now in that typed statement the only thing that
8 was asked about Mr. Clements was, did you have sex
9 with Mr. Clements, right?

10 A You asking me was that the only thing we asked
11 her about?

12 Q About Mr. Clements, right? Did you have sex with
13 Mr. Clements.

14 THE COURT: Just a moment.

15 Counsel, approach.

16 (WHEREUPON, counsel approached the Bench for an
17 off-the-record discussion.)

18 BY MS. SHULER:

19 Q Whenever you asked Ms. Epps about a sexual
20 encounter with Mr. Clements, you -- the question was
21 phrased, did you have sex with Mr. Clements, right?

22 A I think that's how I asked it.

23 Q Okay. And she said yes; is that correct?

24 A Correct, yes, ma'am.

25 Q And then somebody said where, and she said at his

1 house, right?

2 A Correct.

3 Q There were no details about where in the house in
4 that statement; is that right?

5 A No, ma'am, I don't recall.

6 Q There's no details about where that occurred.
7 There's no details that it occurred in the bathroom,
8 in the bedroom, in the living room, none of that.
9 None of that occurs in that taped statement, right?

10 A No.

11 Q So y'all don't get into any of that in her taped
12 statement?

13 A No, we did not.

14 Q So you just take her word that this happened and
15 so then you get a search warrant and go in to
16 Mr. Clements' house, right?

17 A We did.

18 Q And I'm sure you take pictures of where she said
19 these sexual encounters occur, right?

20 A No, we didn't. When she told us about the throw
21 under the bed we assumed she had sex in that bed.

22 Q Y'all assumed that's where it what happened?

23 A In that bed, yes, ma'am.

24 Q Okay. Now whenever you first got to the hospital
25 to talk to Ms. Epps about this runaway situation,

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1 the first thing she asked you was, am I in trouble,
2 right?

3 MS. BARR: Objection as to hearsay.

4 THE COURT: The first thing the young lady
5 asked him was she was in trouble?

6 MS. SHULER: That's correct.

7 THE COURT: Objection is overruled.

8 THE WITNESS: I don't think — she didn't
9 ask me that. I think a nurse was completing her
10 triage and told her she's not in trouble. I didn't
11 ask. I don't recall that, saying that.

12 BY MS. SHULER:

13 Q Let's look at a copy of her transcribed
14 statement. Let's look at page number 2. Now do you
15 recall Ms. Epps asking if she was in trouble.

16 A She didn't ask me that. And normally when we get
17 a transcribed statement it'll read from this point
18 questions, four questions be posed by Investigator
19 Ballard will be answered by, will be given by
20 **Complainant** . Clearly when it says and you're not
21 in trouble it has woman. I think it was the nurse.
22 So the nurse, she must have asked the nurse; it
23 wasn't me.

24 Q So she asked somebody if she was in trouble.

25 MS. BARR: Objection Judge, as to hearsay,

1 and mischaracterization of the evidence.

2 THE COURT: I overrule the objection.

3 It's yes or no.

4 BY MS. SHULER:

5 Q She asked somebody if she was in trouble; isn't
6 that right?

7 A Yeah. I imagine she would with that answer, that
8 response.

9 THE COURT: You only answer if you know.

10 THE WITNESS: Yes, sir. I don't know.

11 BY MS. SHULER:

12 Q Now, and whenever you talked to her and she took
13 this, she gave you this statement, she told you that
14 she told a number of lies; isn't that right?

15 A Yea, correct.

16 Q She told you that she told Mr. Clements that her
17 name was Veronica, right?

18 A Correct.

19 MS. BARR: Judge, objection as to hearsay.

20 THE COURT: I couldn't decipher what Ms.
21 Shuler was saying.

22 MS. SHULER: My question was, she told you
23 that she told him her name was Veronica.

24 MS. BARR: Yea, she did. And Judge, my
25 objection would be hearsay, lack of proper

1 foundation.

2 THE COURT: I overrule the objection.

3 BY MS. SHULER:

4 Q She also told you that she lied about her age,
5 right?

6 A Correct.

7 Q And she lied, made up this elaborated story about
8 her stolen shoes?

9 A Correct.

10 Q About her boyfriend stealing her shoes and about
11 where her boyfriend lived?

12 A I don't recall it being a boyfriend. She said
13 some boy named Shawn.

14 Q Stole her shoes, and he lived up the track,
15 right?

16 A Yea, yes, ma'am.

17 Q And her story was so detailed that she described
18 a whitish blue trailer that her boyfriend Shawn
19 lived in, right?

20 A Not boyfriend, some boy named Shawn.

21 Q Okay. And with her admittedly telling all those
22 lies y'all didn't take her to go get a rape kit?

23 MS. BARR: Objection, asked and answered,
24 Your Honor.

25 THE COURT: Objection sustained.

1 Not based on being asked and answered, but
2 based on the form of the question.

3 MS. SHULER: Beg the Court's indulgence
4 one moment.

5 BY MS. SHULER:

6 Q Now Investigator Ballard, —

7 A Yes, ma'am.

8 Q —Ms. Epps told you about some shoes, right,
9 that got purchased from Shoe Show?

10 A She did.

11 Q And you went to Shoe Show and asked for their
12 surveillance, right?

13 A We went there, but for some reason they said the
14 surveillance wasn't working or something.

15 Q And y'all followed up on this other rape that
16 happened too?

17 A What other rape?

18 Q The other rape that she told y'all about?

19 A You talking about the guy in the house?

20 Q Yeah.

21 A She never told us about it being rape, just only
22 told us about him asking her to have sex. She never
23 said she was raped.

24 Q And y'all asked her specifically, did anything
25 else happen at Mr. Clements house; didn't you?

1 A We asked her did anybody else have sex with her
2 at the house other than Mr. Clements?

3 Q And she told you, no, didn't she?

4 A She told us no.

5 Q But yesterday on the witness stand she said she
6 was raped?

7 A That's what she said.

8 Q At Mr. Clements' house?

9 A Yeah.

10 Q No further questions.

11 THE COURT: Ms. Barr.

12 **REDIRECT EXAMINATION**

13 BY MS. BARR:

14 Q Investigator Ballard, do you have a copy of
15 Complainant's transcribed statement?

16 A I do.

17 Q Would you turn to page 11 for me?

18 A I got it.

19 Q You there?

20 A Yes, ma'am.

21 Q All right. At the top of page 11 starting on
22 line 1, you asked Complainant what question
23 specifically?

24 A Did anybody else come over and have sex with you?

25 Q Okay. And her answer was what?

SW - J. BALLARD - REDIRECT

1 A No.

2 Q All right. So you asked her did anyone else come
3 over and — come over and have sex with you?

4 A I did.

5 Q And when you say come over, you were talking
6 about where?

7 A From outside the residence who didn't reside
8 there and had sex with her.

9 Q All right. Did Complainant tell you that when she
10 first was brought to Mr. Clements' house that there
11 was an older gentleman already there when she got
12 there?

13 A I don't recall, but she did describe another guy
14 there. I don't know if he was already there when
15 she got there.

16 Q Okay. Were you in court when she testified that
17 the gentleman was already there when she was first
18 brought to Mr. Clements' house?

19 A Yes, ma'am, I heard that yesterday.

20 Q So when you asked her did anybody else come over
21 and have sex with you and her response was no, did
22 anybody else, did she ever -- did you specifically
23 ask did anybody else already in the house have sex
24 with you other than Mr. Clements?

25 A No, I did not, no.

SW - J. BALLARD - REDIRECT

1 Q You didn't ask her that specific question?

2 A I did not.

3 Q Okay, all right. And you — then the next
4 question you posed to her starting on line 4, and it
5 reads how?

6 A Was anybody in the house with y'all when y'all
7 had sex?

8 Q And you're talking about who?

9 A Faron Clements.

10 Q When Faron and the victim engaged in sexual
11 activity you asked, was anybody else in the house
12 when that happened?

13 A Yes, ma'am.

14 Q And what was her response?

15 A Yes.

16 Q And what was your next question to her?

17 A Who was it?

18 Q All right. And what was her response?

19 MS. SHULER: Objection, Your Honor.

20 If he will testify from his memory I think
21 that that is appropriate; but for him to testify
22 from the transcript which is not in evidence which
23 would be inappropriate to admit into evidence, is
24 not proper.

25 THE COURT: I overrule the objection.

1 Question regarding prior consistent, prior
2 inconsistent statements. You may answer.

3 THE WITNESS: The answer is, I don't know
4 the man's name. All I know is he's a constructor
5 and he drives a silver looking car, silver or gray
6 looking car.

7 BY MS. BARR:

8 Q All right. And then what did he say at that
9 point?

10 A Okay.

11 Q All right. Then what did she say?

12 A He has gray and black hair.

13 Q All right. And then what do you ask her?

14 A Did he attempt to have sex with you?

15 Q All right. So you asked her on June 4th, 2013,
16 did the other person with the gray and black hair
17 attempt to have sex with you?

18 A I did, yes, ma'am.

19 Q Right. And what was her response?

20 A Yes, and I told him no. He just kept touching me
21 and I said no.

22 Q She then says, yes, I told him no. He just kept
23 touching me and I said no. Right?

24 A Yes.

25 Q And to be fair, Investigator Ballard?

1 A Uh-huh, yes, ma'am.

2 Q Did you then follow up and ask her the next
3 question happen after you kept touching him and he
4 kept touching you did you follow up with regard to
5 what this older person with the gray and black hair
6 might have done?

7 A On line 16?

8 Q At any other point during this statement?

9 A Yeah, I asked about the other guy, some other
10 guys.

11 Q I'm talking about the guy that was in the house
12 with the gray and black hair?

13 A That, no, ma'am.

14 Q Okay. So again, just to be fair, when you asked
15 her did anybody attempt to have sex with her she
16 says yes?

17 A Uh-huh, yes, ma'am.

18 Q All right. And she tells you that he kept
19 touching me and I said, no.

20 A Yes, ma'am.

21 Q All right. But you never followed up and asked
22 her, did he ever have sex with you?

23 MS. SHULER: Objection, asked and
24 answered.

25 THE COURT: Objection overruled.

1 BY MS. BARR:

2 Q You never, to be fair, you never asked her did
3 the older guy with the gray and black hair inside
4 the house ever have sex with you? You never asked
5 her that?

6 A I never asked her that, no.

7 Q Thank you, sir. That's all the questions I have.

8 **RECROSS-EXAMINATION**

9 BY MS. SHULER:

10 Q Investigator Ballard, you were with her for three
11 hours was your testimony, right?

12 A It approximately three hours.

13 Q And in three hours she never mentioned anybody
14 else that forcibly raped her, right?

15 A No, she didn't.

16 Q No further questions.

17 THE COURT: All right. Thank you, you may
18 step down.

19 MS. BARR: Your Honor, at this time the
20 State would rest.

21 THE COURT: All right, ladies and
22 gentlemen of the jury, that's the State's case.

23 We are gonna have you go to the jury room at
24 this time. Please do not discuss the case.

25 (WHEREUPON, the jury was removed from the

1 courtroom at 10:29 a.m., and the following
2 proceedings commenced in open court.)

3 THE COURT: Any matters of law?

4 MS. SHULER: At this time, Your Honor, the
5 Defense would move for directed verdict. The State
6 has failed to provide any credible evidence
7 whatsoever to tend to suggest that the two -- tend
8 to show the defendant's guilt.

9 THE COURT: All right. The young lady has
10 testified that Mr. Clements had sexual relationship
11 with her. She testified that during that time that
12 she was 13. She was 14, less -- between the ages of
13 11 and 14. That would make him guilty of criminal
14 sexual conduct second degree if the jury believes
15 her testimony so I deny the motion.

16 MS. SHULER: Your Honor, may we have a few
17 moments to talk to my client?

18 THE COURT: All right. Yes.

19 (WHEREUPON, a recess was taken
20 from the proceedings.)

21 THE COURT: Mr. Clements, if you will come
22 right here and stand in front of me please. If you
23 will swear him in.

24 WHEREUPON,

25 **FARON M. CLEMENTS,**

1 having been duly sworn by the Clerk of Court,
2 testified as follows:

3 THE COURT: Mr. Clements, we've reached
4 the stage of the trial in which you can present your
5 defense. You have the right to claim the
6 protections given to you by the Fifth Amendment to
7 the Constitution of the United States which says
8 that no person in any criminal case can be compelled
9 to be a witness against himself. That means that
10 you cannot be required to testify in this case, but
11 you do have the right to testify if you would like
12 to. Whether or not you testify is a personal right
13 and no one can waive that right but you.

14 You understand what I'm talking about?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Now if you decide that you're
17 going to testify you'll be subject to the same rules
18 that control and govern all other witnesses in the
19 case. You have the right to, may be subject to
20 being examined and cross-examined on any relevant
21 issue in this case. In addition, if you have any
22 convictions involving dishonesty or false statement
23 or conviction for crimes punishable by more than one
24 year in prison and I determine the probative value
25 of admitting the evidence, the conviction, outweighs

1 its prejudicial effect to you, the solicitor,
2 Ms. Barr, then will be able to introduce your record
3 to attack your credibility. Now if you decide to
4 testify there must be a freely and voluntarily,
5 intelligent decision made by you with full knowledge
6 of the protections given to you by the Fifth
7 Amendment and the consequences of your decision to
8 testify. If you decide not to testify I will
9 instruct the jurors that they cannot give the fact
10 that you did not testify any consideration
11 whatsoever and that there is to be absolutely no
12 prejudice to you because you did not testify.

13 It's left entirely up to you whether or not
14 you testify. You may talk with Ms. Shuler, family,
15 friends, or anyone else, but the final decision will
16 be left entirely up to you. You understand what
17 I've explained to you? Have any questions about
18 that?

19 THE DEFENDANT: No, sir.

20 THE COURT: Have you talked to Ms. Shuler
21 about whether or not you should testify?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You want to talk to her
24 anymore about that?

25 THE DEFENDANT: No, sir.

1 THE COURT: Do you wish to testify?

2 THE DEFENDANT: No, sir.

3 THE COURT: All right. Ms. Shuler, do you
4 have other witnesses you're gonna present?

5 MS. SHULER: No, Your Honor.

6 THE COURT: All right. Are you all ready
7 for closing arguments?

8 MS. SHULER: I'll leave that up to
9 Ms. Barr. If she's ready to proceed I'll be happy
10 to.

11 THE COURT: You and her, talking to both
12 of you now.

13 MS. BARR: Judge, if Your Honor please, if
14 we could take a break prior to doing closing.

15 THE COURT: All right.

16 How much break you want?

17 MS. BARR: Judge, if we can have the -- I
18 guess the jury --

19 THE COURT: You want to send them out for
20 45 minutes?

21 MS. BARR: Yes, sir, or about an hour,
22 break for lunch, and 12:30, have them come back
23 12:30. That all right with you, Ms. Shuler?

24 THE COURT: We can do that.

25 MS. SHULER: That is fine.

1 THE COURT: I'm gonna have them come in
2 and name a foreperson of the jury, and then I'm
3 gonna let them go for a little while. I'll have you
4 rest in the presence of the jury first and then I'll
5 do that.

6 All right, if you will bring the jury please.
7 (WHEREUPON, the jury was returned to the courtroom
8 at approximately 11:16 a.m., and the following
9 proceedings commenced in open court.)

10 THE COURT: All right, ladies and
11 gentlemen, you have heard the State's case.

12 It's now the Defense's turn. Ms. Shuler.

13 MS. SHULER: Thank you, Your Honor.

14 At this time the Defense rests.

15 THE COURT: All right.

16 Ladies and gentlemen, the Defense has rested.

17 That means you have heard all of the evidence
18 in this case. The next thing will be closing
19 arguments. Before we do that we're going to take
20 a — have you all take a lunch break, early lunch
21 break, and come back at 12:30 for closing arguments.

22 And when you come back at 12:30 Mr. Burgess,
23 Brian Burgess, I'm going to appoint you to serve as
24 the foreperson of the jury.

25 The foreperson will take — you can switch

1 with him right now so Mr. Burgess — give up that
2 number one seat there. All right, as the foreperson
3 you'll sit there, Mr. Burgess, and it will be your
4 responsibility to serve as the spokesperson for the
5 jury, to preside over the jury deliberations, and to
6 complete the verdict form representing the unanimous
7 verdict of the jury once the jury reaches a verdict.

8 But for right now we're gonna have y'all break
9 for one hour to, and come back at 12:30, to be in
10 the jury room at that time. We'll see you then.

11 Please do not discuss the case or allow anyone
12 to discuss it in your presence or around you.

13 If during the hour if you — don't go any
14 place special. Don't hang around the front of the
15 courthouse where other people may be saying
16 something about the case. Just go and come back to
17 the jury room, be back at 12:30.

18 See you.

19 (WHEREUPON, the jury was removed from the
20 courtroom at 11:20 a.m., and the following
21 proceedings commenced in open court.)

22 THE COURT: Well, regarding requests to
23 jury charge if there are any, I'll hear them now or
24 any matters of law at this time.

25 MS. BARR: Your Honor, will you instruct

1 the jury that the victim's testimony in criminal
2 sexual conduct case need not be corroborated?

3 THE COURT: In the context of credibility
4 of witnesses the role of the jury is to evaluate
5 all, the credibility of all witnesses, and in that
6 context the credibility of the victim need not be
7 corroborated. The credibility of all witnesses
8 including the victim whether or not it is
9 corroborated the law does not require corroboration.

10 MS. BARR: Judge, that will be the ---

11 THE COURT: All right.

12 MS. BARR: ---only additional instruction
13 that the State would request other than court
14 standard.

15 THE COURT: All right, Ms. Shuler.

16 MS. SHULER: We have no special requests,
17 Your Honor.

18 THE COURT: All right.

19 MS. BARR: Your Honor, is Mr. Clements in
20 custody?

21 THE COURT: Yes.

22 (WHEREUPON, a recess was taken from the
23 proceedings.)

24 THE COURT: Y'all ready for them?

25 MS. BARR: State's ready, Your Honor.

1 THE COURT: All right, Ms. Barr will go
2 first, then Ms. Shuler. Bring them on.

3 (WHEREUPON, the jury was returned to the courtroom
4 at approximately 12:43 p.m., and the following
5 proceedings commenced in open court.)

6 THE COURT: Mr. Foreman, how is that jury
7 doing?

8 THE FOREMAN: Good.

9 THE COURT: Good, okay. Very good, you
10 all have heard all of the testimony in this case.
11 You've received all of the evidence in this
12 case.

13 It's time now for closing arguments. The
14 State will go first and then the Defense will go
15 second. Ms. Barr.

16 MS. BARR: Thank you, Your Honor, may it
17 please the Court.

18 THE COURT: Yes, ma'am.

19 MS. BARR: Ms. Shuler. Mr. Foreman, good
20 afternoon, ladies and gentlemen of the jury.

21 I told you on, earlier, that I did not expect
22 this case would be a long case and I'm happy to say
23 that I was able to keep my promise to you all.

24 One of the things that I would remind you and
25 caution you is not to assume that because the trial

1 didn't take weeks or months that it's not an
2 important case. Ms. Shuler and I told you when we
3 began our opening statements that for the parties
4 involved in this case, this is the most important
5 case for them in their lives. I am happy to say
6 that I did in this case what I do in lots of cases.

7 Sometimes when witnesses are testifying, what
8 I'll do is periodically look over to the jury 'cause
9 I want to see whether you all are paying attention.

10 I want to satisfy myself that we aren't just
11 boring you to death, and I'm happy and proud to say
12 that we have an attentive jury, that all of you all
13 were listening to the witnesses real closely.

14 You were looking at the evidence very closely,
15 and we thank you for that. That suggests to me that
16 y'all take your job here very seriously, and the
17 Defense and I thank you for that. As I stated, Mr.
18 Clements is charged with criminal sexual conduct
19 with a minor in the second degree. And the judge is
20 gonna read the law to you regarding that particular
21 charge shortly. And what I expect that the judge
22 will tell you is that under our law a person is
23 guilty of criminal sexual conduct with a minor in
24 the second degree if the person engages in sexual
25 battery with a child who is under the age of 14 but

1 who's at least 11 years of age. The judge is also
2 gonna go on to explain to you what is meant by
3 sexual battery. Sexual battery includes sexual
4 intercourse. It includes anal intercourse.

5 It includes cunnilingus, which is when a man
6 performs oral sex on a woman; and it includes
7 fellatio when a woman performs oral sex on a male.

8 In this case you've heard evidence that the
9 forms of sexual battery here include sexual
10 intercourse as well as oral sex. Now one of the
11 things, a couple of things that are interesting
12 about that law is that conspicuously absent from the
13 language of the law that the defendant is charged
14 with violating is the word knowingly, and that's
15 important because you will not hear Judge Newman
16 tell you that a person is guilty of criminal sexual
17 conduct with a minor in the second degree if the
18 person knowingly engages in sexual battery with a
19 child between the ages of 11 and 14. It is not a
20 necessary element of this crime for the State to
21 prove that the defendant knew the victim was under
22 the age of consent.

23 There are some laws where that's the case
24 where the State has to prove the defendant's
25 knowledge.

1 For example, if this were a case where the
2 defendant is charged with assault on a police
3 officer, one of the things that the State has to
4 show is that the defendant knew the person that he
5 assaulted was a police officer or he reasonably
6 should have known that the person was a police
7 officer.

8 In a crime like that the State would have to
9 show beyond a reasonable doubt that the defendant
10 knew that the individual was a police officer.
11 That's not the case here. Now I suspect because
12 I've prosecuted a number of these cases is that some
13 people may say, well, I don't know if I agree with
14 that. You know, in this case you've heard evidence
15 that Complainant told the defendant that she was 16
16 years of age. So some people may say, well, you
17 know, I don't know if that's right because if she
18 told him that she was 16, really 13, and if he
19 didn't know any better then he shouldn't be
20 convicted. And to that I would say to that, one, on
21 yesterday when y'all came in, yesterday morning, and
22 the clerk of court administered the oath to you.

23 Remember everyone raised their hand and the
24 clerk said and you swear that you will well and
25 truly try issues in the case of the State versus

1 Faron Clements and that you'll render a true verdict
2 according to the law and the evidence?

3 Everybody remembers that and everybody took
4 that oath. Well, that means that you can
5 theoretically not agree with what the law is, but
6 you have taken a solemn vow to uphold the law in
7 this case.

8 And everybody in this courtroom including
9 Mr. Clements, wants and expects you all to uphold
10 the law in this case. If you believe that the State
11 has satisfied the burden of proving that, one, what
12 the victim's age was at the time, and that the
13 defendant committed two acts of sexual battery with
14 her, if you believe that and you believe that the
15 State has established that beyond a reasonable
16 doubt, then I submit to you that you have an
17 obligation as jurors to return a guilty verdict.

18 The second thing I would say in response to
19 anyone who has an issue as to how the law is
20 written, is that the law is designed, is written the
21 way that it is to protect children. It's written
22 the way that it is to protect children. The law is
23 designed to protect people like Complainant from people
24 like the defendant. It is written to protect the
25 prey from the predator because you all could very

1 well imagine, if the law were not written that way
2 and every defendant was charged with statutory rape
3 or child rape, what would their defense be?

4 In every case, I didn't know she was under
5 age, I thought she was 17, I thought she was 18.

6 And you would have essentially people getting
7 away with these types of crime and that's not what
8 the law intended. One more thing I'm gonna add on
9 that point. If anybody else is really still kind of
10 bothered about the way the law is written, I would
11 submit to you, ladies and gentlemen, that the
12 defendant did not a bit more believe that that child
13 was 16 years old than I believe in Santa Claus.

14 He knew she was under age. He knew that.

15 He commented to her you look a lot younger
16 than 16.

17 The problem in the case, the sad point about
18 it is, he didn't care. He didn't care. You know,
19 Complainant in her very short time that she's been on
20 this earth, she's gone through a lot. She's
21 probably gone through more in her short time here
22 than most of us will go through in our life time,
23 but I can imagine how she was the first time the
24 defendant saw her. And really, really? She was the
25 perfect prey because she looked like, I imagine, the

1 first time that he saw her like nobody would have
2 cared about her, that nobody would have wanted her.

3 She's walking the streets alone early in the
4 morning before 6 a.m. with no shoes on, knows she's
5 alone, she's bloody, she's bleeding, she's wandering
6 around and no place to go. She looked like the
7 perfect prey. And then when he gets her in the car
8 and they start having this conversation, I believe
9 that it becomes even more obvious that she's the
10 perfect prey; she doesn't want go home. So in her
11 mind, and you've heard her say, I did like him. I
12 told him I was 16 and I told him my name was
13 Veronica.

14 And for a long time I couldn't understand why?

15 I mean, why say you're 16 if you're 13.

16 Why say your name is Veronica when it isn't; I
17 couldn't understand that. And it wasn't until
18 points during her testimony when she kind of was
19 talking, it dawned on me at that point she didn't
20 want the defendant to know her real name and her age
21 because she knew that her mom had reported her
22 missing. She knew that the police were looking for
23 her, and she didn't want anybody going to the police
24 or going to her mom saying, I found the runaway
25 child. I mean, they had had her all on the news and

1 they had pictures all over town of her.

2 She was afraid that the defendant would do
3 what any decent man in that situation should have
4 done, was call DSS or call the police or — that's
5 what she was afraid of happening.

6 But little did she know that's not what she
7 needed to fear. The defendant wasn't trying to help
8 her.

9 And I know, you know, his lawyer made it
10 appear that he's just this good samaritan, he's
11 going out of his way to help this poor homeless
12 child. He wasn't trying to help her. He was trying
13 to take advantage of her and use her. What 32 year
14 old man do y'all who picks up this child this
15 condition that she was in, gets her in the car and
16 starts showing her a wad of money, and saying, if
17 you're gonna have sex you might as well get paid for
18 it.

19 Who does that? Who has good intentions in
20 their heart? You know how does that?

21 You know the type of person who does that? A
22 predator, a child rapist. That's the type of person
23 who would say something like that. Now one of the
24 things I learned in this case is that if you want to
25 find out whether or not somebody is being truthful,

1 a wise man once told me is that the devil is in the
2 details, that you press an individual for details,
3 because if a person really wants to tell a good lie,
4 really good lie, then if you asked him about details
5 they'll be only -- they'll only be able to carry the
6 lie up so far because they hadn't thought it all the
7 way through. They've got about halfway through, but
8 you know, the more you press them for details and
9 then kind of lose their way and kind of -- you can
10 judge that whether or not the person is being honest
11 with you. And so in this case, as Complainant is
12 testifying I'm pressing her for details.

13 You know, the police officer is pressing her
14 for details. Well, Complainant, where'd you go?

15 This guy picks you up in the car, where'd you
16 go?

17 Went to the Shell station, was early in the
18 morning.

19 He bought me some gum and he bought me a
20 bottle of water. How do we know Complainant is telling
21 the truth about that? Because we saw it on video
22 tape.

23 The officer is trying to corroborate, trying
24 to find out whether or not what Complainant is telling
25 him is worthy of belief. And low and behold, we see

1 the surveillance footage at the Shell gas station,
2 and it is just as she said it was. Another thing
3 that's really, really, important about that video at
4 the Shell gas station, and I know -- it's in
5 evidence; you all will be able to see it. That I
6 would submit to you will we be firmly convinced that
7 what she told you on the stand happened to her, is
8 the amount of familiarity that he took with this
9 child.

10 Now mind you now, he had met her not less than
11 an hour ago, complete stranger. Met her less than
12 one hour ago and in the video tape what do you see?

13 His arm around her. He appears to be touching
14 her on the behind. Is that the good Samaritan that
15 the Defense would have you all portray? No. So
16 folks, if he is bold enough and if he is brazen
17 enough to take those kind of liberties and those
18 kind of familiarities with her in public, is it
19 really a giant leap for us to imagine what he's
20 doing with her and to her behind closed doors? I
21 submit to you that it's not. So once they leave the
22 gas station the officer is pressing Complainant for
23 details. I'm pressing Complainant for details in court.
24 What do y'all do when you get home? Complainant talks
25 about how she goes into the house and she sees a

1 picture of someone she recognizes in the kitchen.
2 Y'all remember that? Her testimony that she saw
3 someone — I believe she said the name may have been
4 K.M. or something like that. And she
5 recognized him because he went to school with her
6 and her sister and that he was in the same grade as
7 her sister. Those are details. Those kind of
8 details, those details are indicative of somebody
9 who is telling the truth. As we go on through the
10 day Complainant says that the defendant tells her that
11 she can take a shower, take a bath, or wash up, and
12 what have you. One thing I forgot to mention, when
13 the defendant is in the car with Complainant and he
14 first picks her up and he identifies himself to her,
15 what does he tell her his name is? Y'all remember
16 that? Maurice. Well, we're trying to corroborate
17 truth and we're trying to determine whether or not
18 this girl is telling us the truth, what do we see on
19 his I.D. his middle name is? Maurice. So she goes
20 to in his bedroom and she talks about how his
21 bedroom is inside the bath — his bathroom is inside
22 his bedroom. She goes in there and she sees all of
23 these candles that are lit on the tub. Y'all, we
24 know what that means. When a man is lighting
25 candles and has lit all the way around the tub for a

1 female, he's setting the mood for her.

2 He's setting the scene and wants to get her in
3 the mood. So that's exactly what he did. And
4 again, if we're trying to corroborate whether or not
5 she's telling us the truth, what do we hear from
6 Sergeant Ballard? He goes to execute the search
7 warrant a few you days later. He said there are so
8 many candles in that bathroom it's like Bed Bath and
9 Beyond. See, folks, those are the kind of details
10 that people don't just make up. The fact that she
11 testified and recalls all those things, it's not
12 coincidence. It's not coincidence; it corroborates
13 the truth. So then after she washes up and combs
14 her hair and gets her a T-shirt to put on, she then
15 says that he has on a condom. He — they engage in
16 sexual intercourse; and then once he's done, he gets
17 up, takes the condom off, he urinates, and then he
18 gets in the shower. When she started talking about
19 the locations of the bedroom and bathroom, those
20 kind of details are important too. Remember when
21 she said she came in the house and I believe
22 Ms. Shuler asked her, how many bedrooms are in the
23 house, how many bathrooms, where's the bedroom,
24 where's the bathroom.

25 And she looked up and she said, well, his

1 bedroom is on the left. That's important because
2 when I asked Sergeant Ballard where he got the
3 blanket and he said that was the second bedroom but
4 that one was on the right, again, that's a detail
5 that she's given us that has been corroborated by an
6 independent source. So she talks about how he takes
7 a bath and then he leaves, she's so tired, she goes
8 to sleep.

9 Some point later he comes back. But of
10 course, when she first gets there she notices older
11 gentleman.

12 I remember her saying something to the effect
13 she saw someone looking out the window. She notices
14 the other gentleman; he's in the house. When the
15 defendant leaves and it's just the two of them the
16 guy approaches her. He wants to have sex with her.

17 She does not want to have sex with him and
18 tells him no and he forces himself on her. One of
19 the parts about the trial that I don't like is that
20 our rules of court permit the Defense to give the
21 last closing, and I always like to be the one to
22 give the last closing because when I get to stand up
23 here first -- Ms. Shuler is a good friend of mind,
24 is an excellent trial lawyer, will get to write down
25 everything I say. And of course, she'll have the

1 opportunity — and she will, I strongly suspect,
2 come up here and tell you all reasons why you should
3 discount everything that I say and all reasons why
4 I'm wrong and she's right and should find her client
5 not guilty.

6 Now one of the things I suspect she'll say is,
7 wait a minute, Complainant made all this stuff up about
8 being raped by the older guy who was in the house,
9 that's stuff that never happened, I mean, she didn't
10 tell the police about that. And that's why I really
11 asked a lot of questions of Sergeant Ballard on
12 redirect. And I wanted to be fair to the officer.
13 I wanted to be fair to the child. When he asked her
14 did anybody come over and rape you or had sex with
15 you, she said no. Well, that's a true statement.
16 Nobody came over; the guy was there. I don't know
17 whether he was living there or whether he was a
18 roommate, what; but he was there the entire time.

19 When Sergeant Ballard asked her did that guy
20 ever try to have sex with you, what did she say?
21 She says yes, but I kept telling him no, and he kept
22 touching me. And again, to be fair, Sergeant
23 Ballard may have thought that that was the end of
24 that exchange but he never asked her, well, when you
25 kept saying no and he kept touching you, did it go

1 any further than that?

2 It's not like she's lying or making it up or
3 holding back information, the question was never
4 asked of her. And folks, sometimes — well, not
5 sometimes, all the time, you don't know what you
6 don't know. She would not have known what the
7 officer was looking for, and he may not have known
8 to ask her any further than that. But folks, I
9 submit to you that her testimony in that regard is
10 credible.

11 You saw how emotional she got when she talked
12 about that particular incident, more emotional than
13 I would submit to you than she became when she was
14 talking about what the defendant did to her.

15 I submit to you that she's worthy of your
16 belief.

17 Now after Mr. Clements gets back home I
18 asked Complainant, did you eat anything and she says no.

19
20 And so Ms. Shuler asked her on
21 cross-examination, didn't he bring you back a plate?

22 And she, you know, my first instinct was to
23 say, oh goodness, well, this is something she's
24 gonna try to say she was not being truthful about.
25 She said, yea, he did bring me a plate but I didn't

1 eat it.

2 Ms. Barr asked me did I eat anything. She
3 spent the night in the house that night. The next
4 day she gets up, she cooks, and she says bacon or
5 cooks some sort of breakfast food but she doesn't
6 eat.

7 Later on that next day she testified that the
8 defendant's — then she described the lady as the
9 baby's momma or girlfriend, somebody else came over.

10 Well, at that point in time he told her you
11 can't sleep in my bed with me tonight, you're gonna
12 have to sleep in the second bed, which is what she
13 did.

14 Now during her stay there those couple of days
15 she noticed several guns inside the home. I think
16 at some point it dawned on her, you know, and again,
17 we have to recognize we're dealing with a minor, 16
18 year old. But at some point it dawned on her this
19 situation is probably not a good situation for me to
20 be in, and so she calls a friend to come and pick
21 her up. Now again, we're talking about trying to
22 corroborate what she's saying. The police go to the
23 house and they ask to execute a search warrant.

24 Where do they find the shotgun? Exactly where
25 Complainant said it would be. She says that, well, I

1 wanted to make sure -- and I'm assuming that when
2 she's seen all the guns and after she's raped by the
3 other guy who is in the house, a lot of things are
4 probably going through her mind.

5 So she says, I wanted to make sure that
6 somebody knows that I'm here. And so she starts
7 leaving strands of her hair in the sink, and she
8 takes the blanket she had brought with her and stuck
9 it underneath the bed in that second bedroom.

10 Well, when the police come out there and do
11 the search warrant where is the blanket? Exactly
12 where Complainant told them it would be. Folks, I bring
13 all this up not just to recite the entire case to
14 you.

15 I bring it up for the very specific purpose,
16 do we believe, do we earnestly believe in our hearts
17 of heart that this girl would get all those very
18 minute details right, down to the date, the day of
19 the week, the time, the location, everything about
20 where she was, where she puts stuff, where other
21 things were found, when she went plundering she got
22 all that wrong -- or got all that right?

23 We believe she got all that right because the
24 police were able to corroborate it. But the most
25 important fact in this case, whether or not the

1 defendant engaged in sexual intercourse with her she
2 was mistaken, she must be confused about that part?

3 Do we really believe that? Now that's a
4 story, I submit to you, that is not credible, that's
5 not worthy of belief.

6 Another thing that I found interesting
7 about her testimony, and I'll be five more minutes
8 and I'll sit down. She describes having
9 conversations with Mr. Clements, and she talks about
10 how he had told her that his granddad or his dad was
11 a writer and had written a book and he had shared
12 with her that, you know, he was a hustler even as a
13 child, he was selling candy, lollipops, then one day
14 he and his sister had come in, found his mom
15 deceased. That's a lot of detail. But you know
16 what that was? That was pillow talk. That was
17 pillow talk. That was a man who had been intimate
18 with a female and afterwards he's laying in the bed
19 kind of just telling his life story. We call that
20 pillow talk.

21 I call that corroboration of truth. Here's
22 another question I would ask you and I ask the
23 Defense too.

24 What's her reason to say all these things
25 happened that the defendant committed sexual battery

1 against her on two separate occasions if it didn't
2 happen?

3 Why pick Faron Clements, this gentleman, out
4 of everybody in the entire world to say that he
5 engaged in sexual acts with her? Why him?

6 Now mind you, this girl is missing or on
7 runaway status for four or five days. Imagine
8 that -- she testified at some point some couple of
9 nights she spent at a horse track or barn. I
10 imagine she came in contact with a lot of folks but
11 she picks him? The Defense will submit to you to
12 lie on. I don't know, maybe they'll tell you, well,
13 she's just making all that stuff up. She didn't
14 want to go home. Well, you know, Complainant had ran
15 away from home at that point. She was already away
16 from home.

17 And I got a secret to tell y'all, when a child
18 is raped by a stranger DSS doesn't take the kid away
19 from momma 'cause the child was raped by a stranger.

20 So if that's the theory that she's lying on
21 Mr. Clements so that she doesn't have to go back
22 home, that theory doesn't make a whole lot of sense.

23 Now she had said that perhaps momma was doing
24 something to her, yeah, maybe that might be a
25 grounds to get her out of the house because she

1 doesn't want to go back home again. There is no
2 reason other than simple truth, other than simple
3 fact, that this child would have to name this
4 defendant. And all you have to do is look at that
5 video tape and know that she's telling you the
6 truth.

7 There is a former prosecutor who shared
8 a story with me. He was talking about how he had
9 tried a case and he was feeling really good about
10 the case. He thought that he would be able to get a
11 conviction, and the jury came back and found the
12 person not guilty. And so after the case was over
13 he asked a couple of the jurors, do you mind if I
14 talk with you to kind of share with me the
15 deliberations and why you voted the way you voted,
16 if I did something wrong maybe I can do better next
17 time or what. And he shared with me that a couple
18 of the jurors said, yeah, we believe the guy was
19 guilty, we know he was guilty, but the State didn't
20 prove it. And so I started thinking about that
21 notion. Well, if the jury believes that the guy is
22 guilty, the only way the jury could believe that the
23 guy was guilty was based on the evidence that came
24 out into the case. So if the jury knew and those
25 were the words, we knew he was guilty, that the guy

1 was guilty, then how was it that the verdict came
2 out the way that it did? And I suspect that it's
3 because a lot of different reasons. Sometimes
4 because of television because we expect with
5 forensic files and CSI and Law and Order that there
6 is supposed to be a whole bunch of stuff that you're
7 supposed to hear about and see in a case before you
8 can find the defendant guilty. Folks, that's not
9 the case. If you believe, if you are firmly
10 convinced that defendant did the acts that he's
11 accused of doing, then you should find him guilty.
12 Would I have liked to have DNA? Oh, absolutely,
13 absolutely. I would have loved to have DNA.

14 Would I have loved to have an eyewitness who
15 actually saw him do this in here? Yeah, I would
16 have loved to have that. But we never knew who the
17 third person was in the house, never knew who that
18 person was. And I got another secret to tell you.

19 Most people when they're having sex with a
20 kid, they don't do it in front of a whole lot of
21 people.

22 You're not going to have an eyewitness on a
23 case like that. You don't have a whole lot of DNA
24 on cases like that, particularly when days go by
25 before the victim is actually recovered and before

1 evidence can be recovered. My last thing, I would
2 tell you that if Complainant really wanted to cook his
3 goose and make up a lie and really just put his tail
4 in the coffin, she certainly could have come up with
5 a better way to do it. Is she'd just really wanted
6 to just get him and tell a lie, she could have got
7 up here on said, well, you know, I told him I was 13
8 and he said I don't care. She could have got up
9 here and said, you know, he had all these guns in
10 the house, he pulled one on me, put it to my head
11 and threatened to kill me if I didn't have sex with
12 him. If she wanted to just really create a story,
13 believe you me, she would have done it and she could
14 have done it. She got on the stand and she admitted
15 some things that didn't help her; but folks, that's
16 a part of truth telling. You take the good with the
17 bad. But we do not, as a society, reward the
18 conduct of the defendant and let him go free if we
19 believe that he committed these acts against this
20 child. We do not do that. A trial is a search for
21 the truth. The truth in this matter, the truth in
22 this case, is on June 1st he committed sexual
23 battery against Complainant . The truth of the
24 matter is, the truth in this case is on June 2nd he
25 committed a sexual battery against the defendant —

1 against the victim **Complainant** .

2 And ladies and gentlemen of the jury, Mr.
3 Foreman when you sign that verdict card your verdict
4 should reflect the truth. The only way that your
5 verdict can reflect the truth in this case is that
6 you all by unanimous verdict find the defendant
7 guilty.

8 I ask you, I implore you, I urge you all to do
9 just that. Thank you again.

10 THE COURT: Ms. Shuler.

11 MS. SHULER: Thank you, Your Honor, may it
12 please the Court, Ms. Barr. Mr. Foreman, ladies and
13 gentlemen, thank you so much for your attention over
14 the last couple of days. We appreciate y'all being
15 here and appreciate your paying close attention to
16 us today. It is -- it's important that you listen
17 to what comes from the witness stand because as I
18 told you as I stood before you yesterday, that the
19 State has a high burden of proof in this case.

20 They have to prove their case beyond a
21 reasonable doubt. And you didn't hear Ms. Barr talk
22 about that at all because she doesn't want you to
23 know about that. She doesn't want you to hear about
24 that because she does not want for you all to
25 understand how important that is because that prove

1 beyond a reasonable doubt is a high burden. It's a
2 burden that they have to carry. It's a burden that
3 leaves you all firmly convinced that Mr. Clements
4 did what he's accused of doing beyond a reasonable
5 doubt.

6 It's that tipping of the scale not ever so
7 slightly, but way up in the air. Now I know that
8 you all have heard this expression before, and it's
9 one that I don't like and I don't like it but it's
10 the truth.

11 But no good deed goes unpunished, and I'm sure
12 you all have heard that. And that's what I'm sure
13 Mr. Clements is feeling today is that no good deed
14 goes unpunished because what you have heard is
15 Miss Epps got up on that witness stand and she said
16 that Mr. Clements picked her up, tried to help her
17 find her shoes. Whenever she told him that very
18 colorful story about the boy named Shawn taking her
19 shoes and now he lived in a bluish white trailer up
20 the track. And whenever they couldn't find the
21 trailer she said don't worry about it. Then they
22 went to the Shell station. He offered to buy her
23 something to eat; she admitted that.

24 She got water and gum. She took — he took
25 her to his house, offered her a shower, gave him —

1 gave her a, first aid kit to fix her cuts on her
2 legs, first aid kit, gave her, offered her food that
3 she said she didn't eat, gave her a place to sleep
4 when she wouldn't tell where her home was.

5 And for days she stayed there.

6 For days she stayed there until Mr. Clements
7 told her you got to find a place to go. You heard
8 her say that. You heard Miss Epps say on Sunday he
9 told me I had to find a place to go. Now you heard
10 her story, how she said, well, I saw the guns and I
11 got scared. Well, that story is a little bit
12 questionable. She's told law enforcement on the
13 night she gave a recorded statement that she saw the
14 guns the first night. Then she came in here and
15 said, well, on the third day I saw the guns and got
16 scared and called my friend. Well, where is her
17 friend? And where's that real fear that she said
18 she had. She said she got raped on the first day.
19 Where is that fear? She stayed there for three
20 days. She said two or three days. I'm not firmly
21 convinced that she was scared. Now you heard
22 Investigator Ballard say that he spent three hours
23 with her. For three hours he was with her at the
24 hospital. For three hours he sat there and talking
25 to her about this. And you heard Ms. Barr say the

1 devil is in the details. And you're right, the
2 devil is in the details. Investigator Ballard
3 didn't get details about any alleged sexual assault.

4 You heard him say, we assumed the sexual
5 encounter occurred in the room with the blanket
6 under the bed.

7 Now let's talk about Miss Epps. Now I do have
8 compassion in my heart for her; I do. You have a
9 troubled girl. You have a young girl who was in
10 foster care for some time and then she was adopted
11 by her mom here in Kingstree, her and her sister
12 were, and then apparently had some troubles here.
13 This was her third runaway. And her mom has
14 apparently just turned her back on her. And she
15 kept her sister. Yeah, you have a girl who
16 admittedly doesn't tell the truth on sometimes;
17 sometimes he does maybe, we're not so sure.

18 How can we be sure that she knows when she's
19 telling the truth and when she's not telling the
20 truth.

21 She can remember that she's told the truth
22 about the story that she lost her shoes, that Shawn
23 took her shoes and he lives in this whitish blue
24 trailer up the tracks. It's a pretty elaborated
25 story with some pretty good details, and Ms. Barr

1 says the devil is in the details and that's how you
2 know somebody tells the truth? Now Investigator
3 Ballard said that he's got 17 years experience in
4 law enforcement. And he was so careful that he went
5 and got a search warrant and executed the search
6 warrant on the house, but he wasn't so careful to
7 take Miss Epps to get a rape kit done. And they
8 want you to believe that days went by, but let's
9 talk about that time line. Miss Epps ran away on
10 May the 30th and then she showed up at the hospital
11 on June 4th. That was a Tuesday. She left, by her
12 own testimony, left Mr. Clements' house on Sunday.
13 From Sunday to Tuesday. She testified that this
14 alleged sexual assault happened, last sexual
15 assault -- remember, the sexual assault that
16 supposedly occurred without a condom happened on a
17 Sunday. Days didn't go by. You had a period of
18 maybe 36 hours that went by, y her testimony.
19 That's not days; that's a matter of hours. And you
20 have a law enforcement officer with 17 years
21 experience that couldn't drive this girl to Florence
22 to go get a rape kit done, couldn't find her
23 panties, couldn't assist her going around finding
24 her panties. And I'm not talking about CSI
25 evidence. I'm talking about something that is an

1 easy technology, something that has been around for
2 years now, something, that's easy to accomplish.
3 Those things can be done. We can take it, send it
4 off to SLED, and it comes back. And if it's there,
5 that's wonderful for the prosecution, their case is
6 made. But we don't even have an attempt at that.

7 We don't even have an attempt at — for law
8 enforcement to get the details. Now I want you to
9 remember about Miss Epps' demeanor from the witness
10 stand. Now I always say that I know when somebody
11 is telling the truth whenever I ask them a question
12 if I get an immediate response like that, I know I'm
13 getting a truthful answer. If you remember
14 yesterday whenever Ms. Barr was questioning her,
15 there were lots of oblong pauses. She had to really
16 think before you got an answer out of her, and it's
17 because she had to think about before the answer
18 came out. And again, Ms. Barr wants you to say,
19 well, why would she lie, would she just set this up.

20 And it all goes back to, this girl is a
21 troubled young girl. She's now been in foster care.

22 She was in foster care, one. She came back here
23 she was in foster care again. She didn't want to
24 live in the house that she was in. She was worried
25 that she was in trouble. She asked somebody at the

1 hospital, am I in trouble. She tried to get the
2 heat off of her.

3 And Mr. Clements patiently said, you got to
4 find a place to go, and he put her out and she's mad
5 because she had somewhere to stay; she was covered.

6 She didn't have to be at her mom's house as
7 long as she was had a shelter there where nobody
8 could find her. Put her out on the street. She was
9 mad that she wasn't getting help anymore. So
10 there's a reason to lie. So Ms. Barr says, well,
11 why him, why Mr. Epps — or why Mr. Clements, why
12 not anybody else? What other man's name have you
13 heard today?

14 Nobody else. There was nobody else. She
15 couldn't call anybody else's name. She said that
16 she came and there was some unknown man's name, or
17 some unknown man there when she pulled up. There
18 was somebody in the car there when they went to the
19 Shoe Show. When she was plundering through the
20 house you know what she could find? She could find
21 a whole bunch of stuff with Mr. Faron Clements' name
22 on it:

23 A power bill, mail from the credit union, some
24 more mail, all of it, that had Mr. Clements name on
25 it.

1 Now let's also talk about this master
2 bathroom. Now she said that she knew that he
3 flushed the condom in the master bathroom after they
4 got done having sex because she could see it.
5 There's the master bathroom. There's the toilet in
6 the master bathroom. That door had been open. That
7 toilet is going to be covered up. That door is
8 closed she's not going to be able to see it either.

9 So if that young lady is in that bedroom she's
10 not gonna be able to see him flushing that condom
11 down the toilet. Let's also talk about this firearm
12 right here. You heard her testimony she didn't see
13 the gun until the third day. That's when she got so
14 scared. There's a firearm right behind that door.

15 If she was in there having sex with
16 Mr. Clements and he flushed that condom down the
17 toilet and she said she saw him do it, and she
18 didn't see that long firearm until the third day,
19 we're missing something. And what we're missing is
20 the truth.

21 Ms. Epps lied about her name, she lied about
22 her age. She made up an elaborate story about her
23 shoes, about a young man that stole her shoes.

24 She lied about seeing or not seeing the
25 firearms.

1 She said she was scared when she found the
2 firearms and had to leave so she called her friend
3 to come and get her.

4 I want you to sit here and assess her
5 credibility, assess the story, and think about that.

6 Take all of that into that jury room with you.

7 Take your common sense back there with you and
8 think about all of that. Now you may want to ask
9 yourself, well, Mr. Clements didn't take the stand
10 and why didn't he take the stand. Well, that is
11 something that you cannot consider at all.

12 Mr. Clements does not bear any burden at all
13 in this case. He has a constitutional right not to
14 take the witness stand at all. He does not have to
15 bear witness against himself, and you all cannot
16 consider that at all. That cannot be a factor in
17 your deliberations. In fact, y'all can't even
18 discuss it all. That's not something that you all
19 can talk about because it all goes back to the
20 State.

21 The State has to prove their case. The State
22 has to prove each and every element of this crime
23 beyond a reasonable doubt, and that all starts with
24 law enforcement. And that's where it's important
25 for law enforcement to do their job, and law

1 enforcement failed to do their job in this case. It
2 would have not been anything for them to take that
3 girl to Florence and had a rape kit done. It would
4 have not been anything for them to help her locate
5 her panties because if this actually would have
6 happened, there could have been DNA evidence there.

7 But I'll submit to you that it didn't happen
8 and that's why they didn't do those things.
9 Whenever you go back into that jury room I'll ask
10 for you all to just think about some of the things
11 that Ms. Barr said. That story that she said that
12 this is pillow talk, I'm gonna go back to her theory
13 that the devil is in the details. Did you find out
14 where that story took place, where she found out
15 those details about Mr. Clements' father,
16 grandfather, supposedly writing a book or his mom's
17 supposedly dying? Where did Miss Epps supposedly
18 find out all that information? The devil is in the
19 details.

20 Don't you think that would be important for
21 her to — for me to say, well, Miss Epps, where did
22 that story take place, where did that conversation
23 take place. Well, you didn't hear that. You didn't
24 hear where that came from. So think about all those
25 things. Think about what's missing in case, about

1 what has not been shown here today. There's a lot
2 of pieces of the puzzle that are missing, and with
3 all of that I will ask for you to think about it.

4 And whenever you come back I'll ask for you to
5 return a verdict of not guilty. Thank you.

6 THE COURT: Mr. Foreman and members of the
7 jury, you have heard the testimony, received the
8 evidence, and heard the arguments of the State and
9 of the defendant. I will now explain to you the law
10 that applies to this case. Under the constitution
11 and laws of South Carolina you are the finders of
12 the facts in this case. I do not have the right to
13 pass upon the facts or to even express any opinion
14 that I might have as to them because this is a
15 matter solely for you, the jury, to determine.

16 As jurors then, it is your duty to determine
17 the effect, the value, the weight, and the truth of
18 the evidence presented during this trial.

19 Now as the trial judge it is my
20 responsibility to preside over the trial of the case
21 and to rule upon the admissibility of the evidence
22 offered during the trial. You are to consider only
23 the testimony which has been presented from this
24 witness stand, together with any exhibits which have
25 been made part of the record. Additionally, I have

1 the duty to charge you the law applicable to this
2 case, and as the presiding judge I am the sole judge
3 of the law of this case. You must accept as correct
4 and apply the law as I now state it to you and then
5 reach your verdict. And finally, I charge you in
6 this regard that you should not be concerned with
7 what you think the law ought to be, but rather, what
8 I charge you that the law is. You are also the
9 judges, the sole judges of the credibility, that is,
10 the believability of the witnesses who have
11 testified and of the evidence which has been
12 presented during this trial. You must evaluate the
13 credibility and the testimony of the alleged victims
14 regardless of whether or not it is corroborated,
15 understanding that the law does not require
16 corroboration. In evaluating credibility you may
17 take into consideration many things such as the
18 demeanor or manner of testifying, whether the
19 witness had reason to be biased or prejudiced, or
20 whether the testimony of a witness was contradicted
21 on the one hand or supported and corroborated on the
22 other hand. All these things you will consider
23 bearing in mind that you should give the defendant
24 the benefit of any reasonable doubt. It becomes
25 your duty as jurors to analyze and to evaluate the

1 evidence and determine that evidence which convinces
2 you of its truth.

3 Now I instruct you and emphasize that
4 the fact that the defendant did not testify is not a
5 factor to be considered by you in any way in your
6 deliberations and in your consideration on the
7 question of the guilt or the innocence of the
8 defendant. It must not be considered by you in any
9 manner whatsoever. A defendant has the
10 constitutional right to remain silent, and the
11 assertion of this right must not be considered by
12 you in your deliberations. So I repeat, under your
13 oath you are to draw no conclusion whatsoever from
14 the fact that the defendant in this case did not
15 testify. The fact that this defendant did not
16 testify should not even be discussed in the jury
17 room. The burden of proof as I have stated to you
18 is on the State. The defendant is not required to
19 prove himself innocent. The burden of proof remains
20 on the State to prove guilt beyond a reasonable
21 doubt. The fact that the defendant Faron Maurice
22 Clements was charged and indicted in this case is
23 not evidence in this case and cannot be considered
24 by you as evidence of guilt in this case; Nor does
25 it create any presumption or inference of guilt.

1 This indictment is simply the formal written
2 document which contains the charges made against the
3 defendant. The indictment is the formal document by
4 which this case is brought into this court.

5 The defendant has pled not guilty to the
6 charges alleged against him. The burden is on the
7 State to prove the defendant guilty. A person
8 charged with committing a criminal offense in South
9 Carolina is never required to prove himself
10 innocent.

11 I charge you that it is important rule of the
12 law that the defendant in a criminal trial, no
13 matter the seriousness of the charges, will always
14 be presumed to be innocent of the crime for which
15 the indictment was issued unless guilt has been
16 proven by evidence satisfying you of that guilt
17 beyond a reasonable doubt. This presumption of
18 innocence does not end when you begin your
19 deliberations, but it accompanies the defendant
20 throughout the trial until you reach a verdict of
21 guilt based on evidence satisfying you of that guilt
22 beyond a reasonable doubt. The presumption of
23 innocence is like a robe of righteousness placed
24 about the shoulders of the defendant which remains
25 with the defendant until it has been stripped from

1 the defendant by evidence satisfying you of the
2 defendant's guilt beyond a reasonable doubt. The
3 presumption of innocence is not a mere legal theory;
4 it's not just a legal phrase. It is a substantial
5 right to which every defendant is entitled unless
6 you, the jury, are satisfied froth evidence of the
7 guilt of the defendant beyond a reasonable doubt.
8 The State must prove the defendant guilty beyond a
9 reasonable doubt.

10 So what is a reasonable doubt in the
11 law?

12 A reasonable doubt is a doubt which makes an
13 honest, sincere, conscientious juror in search of
14 the truth to hesitate to act. Proof beyond a
15 reasonable doubt must therefore be proof of such a
16 convincing character that a reasonable person would
17 not hesitate to rely and act upon it in the most
18 important of his or her own affairs. Proof beyond a
19 reasonable doubt can also be described as proof that
20 leaves you firmly convinced of the defendant's
21 guilt. There are very few things in this world that
22 we know with absolute certainty, and in criminal
23 cases the law does not require proof that overcomes
24 every possible doubt. If based on your
25 consideration of the evidence you are firmly

1 convinced that the defendant is guilty of the charge
2 or charges against him, you must find him guilty.
3 If on the other hand you think there's a real
4 possibility that he is not guilty, you must then
5 give him the benefit of a doubt and find him not
6 guilty. The defendant is charged with criminal
7 sexual conduct with a minor in the second degree.

8 The State must prove beyond a reasonable doubt
9 that the defendant engaged in a sexual battery with
10 the victim.

11 A sexual battery is sexual intercourse,
12 cunnilingus, fellatio, and intercourse, or any
13 intrusion, however slight, of any part of a person's
14 body or of any object into the genital or anal
15 openings of another person's body except when the
16 intrusion is accomplished for medically recognized
17 treatment or diagnostic purposes. The State must
18 then prove beyond a reasonable doubt that the victim
19 was at least 11 years old, but not more than 14
20 years old at the time of the sexual battery.
21 Consent, willingness, indifference, or ignorance on
22 the part of the minor, if any, as to what was taking
23 place does not in any way effect the charge of
24 criminal sexual conduct with a minor because an
25 unmarried woman under the age of 14 cannot legally

1 consent to sexual intercourse. Now while argument
2 of counsel is a beneficial part of every trial, you
3 should remember that the statements made by counsel
4 are not evidence. In presenting arguments counsel
5 often refer to the evidence; however, you should
6 base your verdict on the evidence as you remember
7 it. Therefore, if there are any conflicts between
8 the recollection of counsel about the evidence and
9 your own recollection, you should rely on your own
10 understanding of the evidence.

11 Now you have been chosen and sworn to
12 give the parties in this case a fair and impartial
13 trial.

14 When you have done so you will have complied
15 with your oath and no one will have a right to
16 criticize your verdict. You must not be influenced
17 by opinions or expressions of opinion you may have
18 heard outside of the courtroom; but rather should
19 base your verdict solely on the testimony of the
20 sworn witnesses who took the stand, the exhibits
21 received into evidence, and the law which I have
22 stated. You should not be swayed by caprice,
23 passion, prejudice, or improper sympathy for or
24 against anyone in this case. Remember, you have no
25 friends to reward or enemies to punish, and all

1 parties are entitled to a fair and impartial trial.

2 It is your duty as jurors to consult with one
3 another and to deliberate in an effort to reach an
4 agreement. Each of you must decide this case for
5 yourself, but only after impartial consideration of
6 all the evidence with your fellow jurors. In the
7 course of your deliberations do not hesitate to
8 re-examine your own views and change your opinion if
9 you become convinced that it is erroneous.

10 However, do not surrender your honest
11 conviction as to the weight or effect of the
12 evidence solely because of the opinion or of your
13 fellow jurors or for the mere purpose of returning a
14 verdict.

15 As I stated earlier, you are the judges,
16 judges of the facts. Your sole interest is to seek
17 the truth from the evidence in this case. Your
18 verdict must represent the considered judgment of
19 each of you. In other words, your verdict must be
20 unanimous. Now you may have noticed that I have
21 read these instructions. I do so to give you the
22 law as accurately as possible. I will give you a
23 copy of these instructions to have in the jury room.

24 You may refer to these instructions to assist
25 you in your deliberations. You must consider the

1 instructions as a whole and may not follow some and
2 ignore others. Mr. Foreman, it will be your duty to
3 preside over the deliberations of the jury. If
4 during your deliberations you should desire to
5 communicate with the Court, please reduce your
6 message or question to writing signed by your
7 foreperson and pass the note to the bailiff who will
8 bring it to my attention. I will then respond as
9 promptly as possible either in writing or bringing
10 you or having you return to the courtroom. I
11 caution you, however, with regard to any message or
12 question you might send, that you should never state
13 or specify your numerical division at the time.
14 You've heard the evidence and now you have heard the
15 law. Whatever your verdict as to each count, guilty
16 or not guilty, Mr. Foreman, you will indicate it on
17 the verdict form. You will then sign and date the
18 verdict, and the verdict form is the indictment
19 itself. And there are two counts. Count one, you
20 write the verdict guilty or not guilty. Count two,
21 not guilty or guilty. And certainly there are no --
22 there's no order in which I state one. One has to
23 be stated first. But you have count one, count two,
24 and you will write the verdict, sign and date the
25 verdict for me. Remember now that although the

1 foreperson is the only person who writes the
2 verdict, it is not his alone. The verdict has to be
3 unanimous. And Mr. Foreman, you're not authorized
4 to write the verdict until all of you have agreed on
5 the verdict.

6 Now ladies and gentlemen, I'm going to
7 send you to your jury room, all of you except the
8 last two jurors who were selected, but do not begin
9 deliberations until you have received a copy of this
10 jury charge which is the verdict form and the
11 exhibits. Once you receive these things — I'm
12 sorry, the jury charge, the indictment which is the
13 verdict form, and the exhibits if any. And the
14 exhibits are over here. Once you receive these
15 things that will be your signal to begin your
16 deliberations. Once you begin deliberations you
17 will deliberate until you have reached a verdict.

18 After you have reached a verdict you will
19 knock on the door, advise the bailiff, and we will
20 bring you out to receive your verdict. So if all of
21 you will go to the jury room except for the last two
22 jurors who were selected.

23 (WHEREUPON, the jury was removed from the
24 courtroom at 1:51 p.m., and the following
25 proceedings commenced in open court.)

1 THE COURT: And the last two jurors who
2 were selected were?

3 THE CLERK: Mr. Carson and Ms. McCullough.

4 THE COURT: Mr. Carson and Ruinetta
5 McCullough, if you all will stay. We picked 24, but
6 we can only use 12. And since everyone made it
7 we — yesterday we were about to plug in one of you
8 and the girl showed up at the last second. And
9 everyone showed up today so we can't use either of
10 you to participate in the jury deliberations, but
11 certainly we appreciate your service and being here
12 and willing and able to serve. So we will have you
13 call back after 6 to see if you have to come back
14 tomorrow. We'll let the two of y'all go since
15 you've put in your time here on this case. We'll
16 excuse you from jury duty. Thank you all very much.

17 (Alternates excused.)

18 THE COURT: Well, any additions or
19 exceptions to the charge?

20 MS. BARR: Not from the State.

21 MS. SHULER: None the Defense, Your Honor.

22 THE COURT: All right. Well, the jury can
23 have at it.

24 (Attorneys review exhibits.)

25 THE COURT: I've given many speeches on

1 the national and local scene about the introduction
2 of evidence in a form which the jury can use it in
3 the jury room because jury deliberation is supposed
4 to be private in the jury room. And when evidence
5 is offered but there is no means for the jury to
6 view the evidence, then they often want to come back
7 into the courtroom to view the evidence, but that
8 has the effect of having the jury view the evidence
9 in open courtroom or it handicaps them during
10 deliberation because they should be able to play,
11 pause, stop, rewind, focus, do whatever they want to
12 do with evidence because it's in evidence. So we
13 have a video in evidence in this case that I'm not
14 sure if the jury would want to see it or not want to
15 see it; but typically what should happen, is that
16 counsel should anticipate it in advance of
17 introduction and get some kind of stipulation or
18 agreement during the course of the trial with
19 opposing counsel as to how it would be presented to
20 the jury or what will be presented to the jury so
21 that they can see it. Now I'm just — they may not
22 have any questions or may not even want to see it;
23 I'm just raising that as a general proposition.
24 What do you say about it, Ms. Barr?

25 MS. BARR: Judge, we would have a means of

1 taking either the computer or the screen back there
2 for them to view if they want to do that.

3 THE COURT: All right. You just have a
4 blank computer that you roll in there and they'll
5 punch a button, play it, and use it?

6 MS. BARR: Yes.

7 THE COURT: Or it's supposed to become —
8 I know you call on Tyler to use it, play it
9 sometime, use it sometime. You're anticipating that
10 they'll be able to do that?

11 MS. BARR: Judge, I think we can just have
12 them to view it on a computer screen. We would have
13 to take that back. We can just bring the laptop in
14 —

15 THE COURT: So that's part of the
16 introduction is that a judge get a stipulation
17 typically is the best way that for deliberation
18 purposes we're gonna use this laptop which is clean
19 and no other videos, evidence, or anything on it.

20 And counsel agrees with that and that's how it
21 will be handled. Go ahead, Ms. Shuler.

22 MS. SHULER: I don't have a problem with
23 that as long as the WI-FI is disabled on the
24 computer.

25 THE COURT: All right. So you're saying

1 that back initially with the jury, Ms. Barr, or only
2 if they request it?

3 MS. BARR: Judge, only if they request it.

4 THE COURT: All right. So they can have
5 all of that and they can get, they can have at it.

6 And all these issues are going to become more
7 and more prevalent because in almost every case you
8 have some form of something presented that the
9 jurors will be asked to utilize such as, you know,
10 all kinds of video and various things.

11 (Jury began deliberations at 2:02 p.m.)

12 THE BAILIFF: They want to know what they
13 can view it on.

14 THE COURT: That should be — all of that
15 should be anticipated in advance of the trial
16 basically because when they're viewing it they're
17 deliberating so that's all — and they shouldn't
18 have to be in open court with everybody staring at
19 them, they're just looking. They should be able to
20 use it in any form or fashion because it is
21 evidence. So you all — so they've asked the
22 question already. So what do you have?

23 MS. BARR: I think he went to go get the
24 laptop.

25 (WHEREUPON, a recess was taken from the proceedings)

1 and video, along with a laptop, was sent to the jury
2 room.)

3 THE COURT: We have a note from the jury
4 that says that the one juror, Ms. Green, the one
5 picked up by law enforcement, is sick. This is not
6 actually from law enforcement; it's from somebody
7 who rode there. This is a note from the bailiff
8 Ms. Johnnie Canty — a message from Mr. Frazier and
9 Ms. Canty that the juror is sick. Is it flu?

10 THE BAILIFF: It's some kind of allergy.
11 Flu like symptoms.

12 THE COURT: She's got some kind of
13 problem. What do y'all want to do, Ms. Barr?

14 MS. BARR: I'm not sure.

15 THE COURT: Send her home, let them come
16 back tomorrow, declare a mistrial?

17 MS. BARR: We would not want to declare a
18 mistrial if it would help to send her home.

19 THE COURT: Contact those jurors who we
20 cut loose?

21 MS. BARR: Yes. Perhaps bring them back
22 in assuming that this juror doesn't feel any better
23 in the morning, just resume deliberations. I guess
24 we start anew and bring in an alternate, but then
25 their deliberations in the morning.

1 THE COURT: All right, Ms. Shuler.

2 MS. SHULER: Judge, I don't know. You
3 know, with the two alternates that were let go
4 there's no telling what they have looked at, what
5 they -- I mean, if they've pulled up something on
6 the internet. I mean, I'm sure they thought their
7 service was done.

8 THE COURT: I told them not to at least
9 one lady, Collins, Ruinetta Collins, not to talk to
10 anyone until she hears there's a verdict; and the
11 other guy, Mr. Carson, was part of hearing that.
12 What's your proposal?

13 MS. SHULER: I guess we could send them
14 home and see if she feels better in the morning; but
15 I mean, I wouldn't be comfortable bringing the
16 alternates back, having them been gone overnight and
17 having access to the world and no telling what else
18 they've seen or looked at or heard or...

19 THE COURT: We can ask them about all
20 that.

21 MS. SHULER: Well --

22 THE COURT: Whether they've seen, looked
23 at, heard anything.

24 MS. SHULER: The problems is, you can ask
25 them all you want, but the problem is they never

1 tell the truth, just like when you go through jury
2 questioning. They never -- thankfully when you live
3 in a rural county you know, you know the people and
4 you know what they've been through, you know, who to
5 sit down. But I don't know what they've done
6 whenever they got home.

7 THE COURT: If she's sick with flu-like
8 symptoms I would think that not only would the --
9 she most likely not feeling any better tomorrow but
10 the other jurors would not want to be locked up in a
11 room with her.

12 MS. SHULER: Probably gonna have jurors
13 with flu like symptoms tomorrow too.

14 THE COURT: Especially if she comes and
15 joins in the jury room.

16 MS. SHULER: Did she -- has she left?

17 THE COURT: No, she's in there with them.

18 MS. BARR: Judge, might I add that the
19 possibility of contacting the alternate jurors this
20 evening, letting them know that their services may
21 be needed, that to admonish them not to discuss the
22 case but to report back at 9:30?

23 THE COURT: First thing we'll do is let
24 this juror panel go overnight and have them to
25 return at 9:30. We'll have the juror who is not

1 feeling well to return at 9:30 if she is, feels
2 better and can come. And the other two, to come to
3 be prepared to serve at 9:30, and then we can make
4 final determination at that time. How about that,
5 Ms. Shuler?

6 MS. SHULER: That will work.

7 THE COURT: All right. So let's bring —
8 let's first bring Ms. Green in and let her stand
9 right there at the door.

10 (Juror Green is brought in.)

11 THE COURT: Ms. Green, how are you doing?
12 Are you sick?

13 THE POTENTIAL JUROR: Yes, sir.

14 THE COURT: You need to go home?

15 JUROR GREEN: Yes, sir.

16 THE COURT: All right. We'll let you go
17 home and if you feel better tomorrow — you have a
18 telephone at home?

19 JUROR GREEN: Yes, sir.

20 THE COURT: All right. We'll have the —
21 Ms. Canty will take you home, and she'll have your
22 phone number, then we'll talk to you later make
23 sure, see how you're doing. What's going on with
24 you?

25 THE POTENTIAL JUROR: My sinus.

1 THE COURT: Sinus?

2 JUROR GREEN: Yes, sir.

3 THE COURT: How long has it been bothering
4 you?

5 JUROR GREEN: Since yesterday.

6 THE COURT: Oh. All right, well, thank
7 you. We'll let you go and we'll have Ms. Canty,
8 someone in touch with you to see if you're able to
9 come back tomorrow.

10 JUROR GREEN: Okay.

11 THE COURT: So you can go straight home.
12 Sinus, you might be better tomorrow. Let's have the
13 rest of the jurors come in. Do y'all want to
14 stipulate to deliberate with 11, to think about it?

15 MS. BARR: Judge, I'm gonna let you do
16 that.

17 (Court's Exhibit Number 1 was marked
18 and made a part of the record.)

19 (WHEREUPON, the jury was returned to the courtroom
20 at approximately 5:00 p.m., and the following
21 proceedings commenced in open court.)

22 THE COURT: Ms. Shuler?

23 MS. SHULER: Mr. Clements will stipulate
24 to 11, Your Honor.

25 THE COURT: Mr. Foreman, one of the

1 jurors, Ms. Green, is not feeling well as you all
2 well know so we're releasing her from the jury, and
3 the parties have agreed for the jury to proceed with
4 deliberating with 11 in her absence. So do you all
5 want to continue deliberating today or you want to
6 go home, into the night or, do you want to go home
7 and get a fresh start tomorrow morning? You can
8 consider that and send a note back out telling me
9 what the decision of the jury is, whether you're
10 gonna stay into the night or prefer to leave and
11 come back 9:30 tomorrow morning. Okay.

12 THE FOREMAN: Okay.

13 THE COURT: All right.

14 (WHEREUPON, the jury was removed from the
15 courtroom at 5:00 p.m., and the following
16 proceedings commenced in open court.)

17 THE COURT: At this point we have eleven
18 jurors and Ms. Shuler, with regard to the defendant
19 agreeing to have the jury deliberate with eleven
20 jurors rendering a unanimous verdict being the
21 decision in this case, what's the Defendant's
22 position?

23 MS. SHULER: Your Honor, he indicated to
24 me that he will stipulate to eleven jurors so long
25 as they will continue to deliberate this evening.

1 This is a qualified stipulation.

2 THE COURT: Well, what if they send out a
3 note saying they want to go home?

4 MS. SHULER: Then he would like one of the
5 alternates to come in or either Ms. Green to come
6 back tomorrow.

7 THE COURT: All right. Ms. Barr?

8 MS. BARR: Judge, I think everybody's
9 hopeful that we'll get a verdict tonight; but if
10 that does not happen, then obviously I would not
11 want a situation to force the eleven jurors there to
12 stay here tonight if they elected to, made a
13 decision prefer to come back in the morning.

14 THE COURT: We'll see what they say and
15 then we'll address it at that point.

16 MS. BARR: Yes, sir.

17 (Pause.)

18 THE COURT: We have a note from the jury
19 that says that, Judge, we need to come back tomorrow
20 morning. That's what they say. Under Rule 14 of
21 the rules of criminal procedure says a jury shall be
22 composed of 12 members; but at any time before
23 verdict parties may agree in writing with the
24 approval of the Court that the jury shall consist of
25 any number less than 12 or that a valid verdict may

1 be returned by a jury of less than 12 should the
2 jury, should the Court find it necessary to excuse
3 one or more jurors for any just cause after trial
4 commences. So before I bring these people out what
5 is the stipulation, if any, by the parties?

6 MS. BARR: The State was, is prepared to
7 have the 11 jurors to continue to deliberate in the
8 case. My understanding from Defense counsel earlier
9 was that should the jury elect not to continue
10 deliberations this evening, that they would insist
11 upon the alternates coming back. With that being
12 said, if that's still their position, then we would
13 ask that the clerk contact the alternates and have
14 them to report in the morning. I believe that Your
15 Honor has already instructed the sick juror to come
16 back tomorrow if she's capable of doing so.

17 THE COURT: All right. Ms. Shuler.

18 (Ms. Shuler confers with her client.)

19 THE COURT: Renee Collins, where is she
20 from? Renee Collins. What we'll do, really, the
21 way that it's done is that we pick by lot.

22 We just bring the one back, not all, both the
23 ones that are selected.

24 THE CLERK: Ruinetta McCullough is from
25 Hemingway and Mr. Carson, he's from Kingstree.

1 THE COURT: Kingstree?

2 THE CLERK: Virginia State.

3 MS. SHULER: Judge, we would like to have
4 the fifth alternate come back, or both alternates
5 come back, whatever you choose.

6 We would like to have 12.

7 THE COURT: We'll put the two alternates
8 in a box, in a hat, and we'll pick by lot is how you
9 do it. Put the two names in and randomly pick one
10 out the hat. Do you want to pick it or do you want
11 some of those fellas over there to pick or the girl
12 —

13 MS. SHULER: That doesn't matter, Judge.

14 THE COURT: All right. We'll let the
15 court reporter do the picking.

16 (Court reporter pulls name.)

17 THE COURT: Okay. The next juror up is
18 Ruinetta McCullough, Hemingway. They want to come
19 back. She's got to come back. I instructed her not
20 to discuss it with anyone until she hears that
21 there's a verdict so we're gonna call her. What's
22 her address in Hemingway? Anybody knows her? She
23 lives on Cowhead Road. Johnsonville or Brunson's
24 across the road. All right. Well, Madam, we need
25 to get her on the phone, tell her she's got to come

1 back after all. We need her here. Tell her 9, 9:15
2 so we can talk to her before the rest of the folks
3 come. All right, with that I'll bring the jury out
4 and so we can let them go. Any objection to that
5 that, Ms. Shuler?

6 MS. SHULER: No, Your Honor.

7 THE COURT: All right. Any objection to
8 that Mr. ---

9 THE DEFENDANT: No, sir, Your Honor.

10 THE COURT: ---Mr. Clements? Bring them
11 on. They can come whenever they're ready, if they
12 get ready. They can come when they are ready.

13 (Note was tendered to the Court.)

14 THE COURT: One juror has a question about
15 an adult receiving oral sex from a minor. Is this
16 example -- in this example would the adult be guilty
17 of criminal sexual conduct with a minor in the
18 second degree. One juror has a question about an
19 adult receiving oral sex from a minor. In this
20 example would the adult be guilty of criminal sexual
21 conduct with a minor second degree? All right.

22 So the first note was they want to come back
23 tomorrow and the second note is the one I just read.

24 What says the State?

25 MS. BARR: I'm curious to know which order

1 those notes came in?

2 THE COURT: It came in the note in which I
3 presented them to you. The second note just came.

4 The first note was, we need to come back
5 tomorrow.

6 When the bailiff went to get them to come in
7 for me to tell them to come back tomorrow they
8 passed a second note with this question.

9 MS. BARR: Judge, I would ask the Court to
10 re-read 16-3-655(b) S.C.2d and also read the
11 definition section for sexual battery and make sure
12 that the jury understands that sexual battery would
13 include intercourse between parties, cunnilingus
14 between parties, fellatio — assuming that the —
15 because there was testimony that the victim
16 performed oral sex on the defendant, there may be a
17 question in a juror's mind as to whether or not that
18 would be sexual battery or would it have to be that
19 the actor performed oral sex on the victim.

20 THE COURT: All right.

21 Ms. Shuler?

22 MS. SHULER: Your Honor gave the jury a
23 copy of the charge, sent that back with them.

24 I think they can refer to the charge that was
25 sent back with them; that will be sufficient.

1 I think to re-read the charge would be
2 inappropriate emphasis on that single charge itself.

3 THE COURT: What y'all want me to tell
4 them?

5 MS. SHULER: To refer to the charges that
6 was sent back.

7 THE COURT: Well, the Court said sexual
8 battery is sexual intercourse, cunnilingus,
9 fellatio, or any intrusion, however slight, of any
10 part of a person's body or of any object into the
11 genitals or anal openings of another person's body.

12 So the Court did not define the meaning of
13 cunnilingus and fellatio.

14 Which one is -- and which of those is oral
15 sex?

16 MS. BARR: Fellatio is oral sex on a man.

17 THE COURT: Fellatio.

18 So the adult receiving oral sex is fellatio,
19 is that right?

20 MS. BARR: Adult male receiving oral sex,
21 yes, sir.

22 THE COURT: So the question then is
23 whether or not the Court should define fellatio.

24 MS. BARR: I submit that the Court should.

25 THE COURT: What you say about that,

1 Ms. Shuler?

2 MS. SHULER: I think that the charge that
3 was offered to the jury is sufficient.

4 MS. BARR: Of course I believe that the
5 note, the juror has a question about it.

6 THE COURT: So you want me to tell the
7 jury that an adult receiving oral sex from a minor
8 is fellatio as defined in the jury charge?

9 MS. BARR: Judge, I would ask the Court to
10 read 63-3-655 (b) and to re-read the definition of
11 sexual battery and to instruct the jury that
12 fellatio as referenced in the statute concerning
13 sexual battery, words to the effect that it's the
14 giving of oral sex on a male, words to that effect.

15 And cunnilingus, that is the giving of oral
16 sex on a female, to a female.

17 MS. SHULER: If it's a matter of not
18 knowing what the definition of fellatio or
19 cunnilingus is, then why not provide them the
20 definition of those two words.

21 THE COURT: All right. So Defense wants
22 me to define fellatio and cunnilingus. Let's look
23 at the — typically in the code — does the code
24 define that?

25 MS. BARR: Judge, I don't think it does.

1 It talks about intimate parts and sexual battery,
2 but it does not define fellatio or cunnilingus. And
3 I was looking at 16-3-651.

4 THE COURT: Fellatio is defined in Webster
5 as the act of stimulating a man's penis with -- the
6 act of stimulating a man's penis with the mouth for
7 sexual pleasure. That's the Webster dictionary.

8 The same dictionary defines cunnilingus as the
9 act of stimulating a woman's sexual organs with the
10 mouth for sexual pleasure. Ms. Shuler, what you
11 want me to do?

12 MS. SHULER: I still believe that the
13 charge is sufficient, Your Honor, that you can ---

14 THE COURT: They've asked me a question so
15 you want me to tell them that the charge is
16 sufficient?

17 MS. SHULER: I think that you can instruct
18 them --

19 THE COURT: I can't answer the question?

20 MS. SHULER: I think that you could tell
21 them refer to the charge that you provided them.

22 THE COURT: Well, the -- certainly there
23 are cases in which the terms have been defined. It
24 will take some time for me to locate those cases
25 probably.

1 MS. SHULER: State versus Morgan which is
2 352 South Carolina 359, it's a 2000-- Court of
3 Appeals case. 2002 Court of Appeals case.
4 Cunnilingus in its plain and ordinary meaning is
5 defined as oral stimulation of the vulva or clitoris
6 with lips or tongue. Cunnilingus is medically and
7 legally accomplished by licking or kissing the vulva
8 or clitoris. It is the type of oral, genital,
9 sexual activity. We rule the sexual offense of
10 cunnilingus is complete when the cunnilingualist are
11 kissing female genitalia. That covers one.

12 There's one.

13 THE COURT: Here's one case, Doe v. Doe,
14 1985, a Court of Appeals case where in Oconee County
15 where the husband is appealing the wife getting a
16 divorce on the ground of one year continuous
17 separation awarding alimony. In the Court of
18 Appeals, Chief Judge Sanders held that even if a
19 single act of fellatio by wife upon another man
20 constituted adultery, for purposes of the statute
21 which says you can't give alimony if you were
22 committing adultery If the act was condoned by the
23 husband, therefore, could not be a basis for giving
24 or denying alimony. In the body of the opinion the,
25 Judge Sanders defines alimony and then goes on to --

1 I'm sorry, adultery. Then goes on to say with
2 regard to fellatio. It says the definitions of
3 fellation available from a number of sources but not
4 this opinion. It says, see State versus Warren
5 which references 1982 North Carolina case, and
6 Webster's 9th New Collegiate Dictionary. So that is
7 a case in which it defined. The court State v.
8 Warren 59 North Carolina 264, 296 Southeast Second
9 671. Actually, we used to define those terms in
10 cases and I think as time passed we sort of assumed
11 that people knew what we were talking about.

12 MS. SHULER: Seems like one of the eleven
13 would know what that means.

14 THE COURT: Yea, you'd think so but, you
15 know, sometimes a juror has asked the question.

16 Sometimes they asked questions not because
17 they don't understand but to satisfy — to hammer in
18 a point when someone asks a question.

19 MS. BARR: Your Honor, I would propose
20 that the Court instruct the jury on the — I'm not
21 sure if Your Honor will read Webster's definition or
22 some other definition but as relates to fellatio,
23 that the Court read that as part of the sexual
24 battery charge.

25 THE COURT: All right, I think that I'm

1 gonna do that. I'm gonna refer them to that portion
2 of the charge and define the term as used in
3 Webster. We'll take a couple of minutes and then
4 we'll proceed.

5 MS. BARR: Yes, Your Honor.

6 (Court's Exhibit Number 2 was marked
7 and made a part of the record.)

8 (WHEREUPON, a recess was taken from the
9 proceedings.)

10 THE COURT: Fellatio is defined by Webster
11 as the oral stimulation of the penis. Dorland
12 Medical Dictionary defines the term as oral
13 stimulation or manipulation of the penis.

14 Webster defines oral as the given through or
15 taking with the mouth. These definitions could be
16 read as requiring some form, some penetration into
17 the mouth or at least stimulation orally or by the
18 mouth area. As a result we find that the crime
19 against nature is properly submitted as a lesser
20 included offense of second degree sexual -- this is
21 the North Carolina case, but the -- and the Court
22 looked up the ordinary meaning of the word fellatio;
23 and in so doing it said, it is proper for a court to
24 look to dictionaries for definitions. And that was
25 most recently done by Judge Norton in State versus

1 Hinson trial in Columbia where they were trying to
2 define a number of terms. He's the South Carolina
3 State Board chair, former chair on the SC board and
4 was on trial for various charges, and he resorted to
5 Webster to define some terms for the jury. And that
6 case is at, that I just cited, and there are many
7 South Carolina cases which do the same so I think
8 I'll define the term through the dictionary.

9 We're gonna take a couple of minutes.

10 (WHEREUPON, a recess was taken from the
11 proceedings.)

12 THE COURT: We used to tell the jury the
13 definition of what it was. It seems as if we assume
14 now since the terms have gotten to have a little
15 more common usage that people understood what you're
16 talking about. But the charge that we used to give
17 is what is sexual battery, our state law defines
18 sexual battery as sexual intercourse, oral sex, anal
19 intercourse, or any intrusion however slight, of any
20 part of a person's body or any object into the
21 genital or anal openings of another person's body.

22 So with regard to the question, one juror has
23 a question about an adult receiving oral sex from a
24 minor, is this — would that be — that adult be
25 guilty of criminal sexual conduct with a minor?

1 Of course I cannot give any instruction.

2 I think that to say, yes, the person would be
3 guilty, using an example and saying based on that
4 example that person would be guilty, I think I would
5 say the State must prove sexual battery and that the
6 child was under 14, between 11 and 14, and sexual
7 battery includes oral sex. How about that?

8 MS. BARR: Judge, that works for me.

9 THE COURT: Sexual battery includes
10 fellatio, which is oral sex.

11 MS. SHULER: Your Honor, again, I think
12 that your charge is sufficient.

13 But if, again, if the problem is the term
14 fellatio, then, I mean, you can define the term
15 fellatio.

16 THE COURT: All right.

17 MS. SHULER: I think that a hypo— to
18 answer a hypothetical question, I don't think that's
19 proper.

20 THE COURT: All right. Well, let's bring
21 the jury.

22 (The bailiff approaches the Bench.)

23 THE COURT: Now they're taking a quick
24 vote.

25 (Bailiff approaches the Bench.)

1 THE COURT: I understand now the jury has
2 a verdict. Parties ready to receive the verdict?

3 MS. BARR: Yes, Your Honor.

4 MS. SHULER: Yes, Your Honor.

5 THE COURT: All right. If you will bring
6 them in.

7 (WHEREUPON, the jury was returned to the courtroom
8 at approximately 6:24 p.m., and the following
9 proceedings commenced in open court.)

10 THE COURT: All right, Mr. Foreman, if
11 you'd stand for us. Mr. Foreman, have you reached a
12 verdict?

13 THE FOREMAN: We have, sir.

14 THE COURT: Is it unanimous?

15 THE FOREMAN: Yes, sir.

16 THE COURT: All right, if you will pass it
17 up, and you may be seated. The defendant will
18 stand.

19 Madam Clerk, you may publish the
20 verdict.

21 THE CLERK: On behalf of the State versus
22 Faron Clements, indictment 2013-GS-45-247, count
23 one, guilty; count two, guilty.

24 THE COURT: All right, ladies and
25 gentlemen, if that's the verdict of each and every

1 one of you please let it be known by raising your
2 right hands.

3 (All jurors complied by raising their hand.)

4 THE COURT: All hands are raised. Thank
5 you very much. Any additional polling requested or
6 individual polling requested by the Defense?

7 MS. SHULER: Please, Your Honor.

8 THE COURT: Mr. Clements, you may be
9 seated. You may poll the jurors individually asking
10 them, each one of them, is this your verdict and is
11 it still your verdict?

12 THE CLERK: Belinda Jenkins, is this your
13 verdict and it's still your verdict, raise your
14 hand, right hand.

15 (Juror Jenkins raised her hand.)

16 THE CLERK: Christine Lyon.

17 THE COURT: Just a moment. You must
18 affirmatively state yes or no.

19 THE CLERK: Is this your verdict, is it
20 still your verdict, okay?

21 THE COURT: Yes.

22 THE CLERK: Christine Lyons, is this your
23 verdict and it's still your verdict? Yes or no.

24 JUROR LYON: Yes, ma'am.

25 THE CLERK: Corey McCray, is this your

1 verdict and it's still your verdict?

2 JUROR MCCRAY: Yes, ma'am.

3 THE CLERK: Gilbred Redding, is this your
4 verdict and it's still your verdict?

5 JUROR REDDING: Yes, ma'am.

6 THE CLERK: Brian Burgess, is this your
7 verdict and it's still your verdict?

8 JUROR BURGESS: Yes, ma'am.

9 THE CLERK: Ruth B. Rutledge, is this your
10 verdict and it's still your verdict?

11 JUROR RUTLEDGE: Yes, ma'am.

12 THE CLERK: Justin R. Johnson, is this
13 your verdict and it's still your verdict?

14 JUROR JOHNSON: Yes, ma'am.

15 THE CLERK: Dottie A. Morris, is this your
16 verdict and is still your verdict?

17 JUROR MORRIS: Yes, ma'am.

18 THE CLERK: Betty B. Davis, is this your
19 verdict and it's still your verdict?

20 JUROR DAVIS: Yes, ma'am.

21 THE CLERK: Aneshia Williams, is this your
22 verdict and it's still your verdict?

23 JUROR WILLIAMS: Yes, ma'am.

24 THE CLERK: Ms. Ella M. Fulton, is this
25 your verdict and it's still your verdict?

1 JUROR FULTON: Yes, ma'am.

2 THE COURT: All right. The verdict
3 appears to be the unanimous verdict of the jury and
4 it's the order of the Court. Any post-trial
5 motions?

6 MS. SHULER: Your Honor, may I have ten
7 days to file post-trial motions?

8 THE COURT: Madam Solicitor?

9 MS. BARR: Judge, I don't have any
10 objection to that.

11 THE COURT: Post-trial motions may be
12 filed with within ten days but will not defer
13 position of sentencing.

14 MS. SHULER: May we have sentencing in the
15 morning?

16 THE COURT: Yes, ma'am.

17 MS. SHULER: Thank you, Your Honor.

18 THE COURT: All right. The defendant will
19 be remanded to the custody of the Williamsburg
20 County Sheriff's Department. We'll have sentencing
21 tomorrow morning at around 10:00 or 1030. Ladies
22 and gentlemen, you didn't volunteer, you were
23 drafted, but you responded to the call of duty.

24 I want to thank you for your jury service.

25 It's certainly not easy for one or two people

1 to agree sometimes so especially when you bring 12,
2 11, 12 people together who really don't know each
3 other and then have 12 people, or 11 people do it,
4 it is especially difficult. But I want to thank you
5 for your service. This is a very serious offense.
6 The possible penalty for criminal sexual conduct
7 with a minor is up to 20 years in prison. And we
8 have the various degrees. If a child is less than
9 11 years old the minimum sentence is 25 years. For
10 a child less than 11 years -- is it less than 11 or
11 less than 10?

12 MS. BARR: Less than 11.

13 THE COURT: Between 11 and 14 it's 20
14 years. And if the offense involves force or threats
15 or other things of that nature, it can be up to 30
16 years.

17 Of course, there's a third degree criminal
18 sexual conduct based on relationships, solely based
19 on relationship, where the penalty would be up to
20 ten years so it's a very serious offense. And I
21 want thank you for your service in rendering this
22 jury verdict. This child, as you might imagine, has
23 gone through quite an ordeal in her life. We
24 reviewed her history and noted that she was trapped
25 on the top of a roof in a house in Hurricane Katrina

1 for three days, said she saw dead bodies floating by
2 and was rescued and sent to Houston, Texas. And
3 then family problems which resulted in her being
4 adopted and brought here. And she had various
5 problems and issues with the family that who adopted
6 her here, which resulted in her running away from
7 home many times, several times. During this
8 particular incident when she was a runaway is when
9 she encountered Mr. Clements, and that's what
10 brought us here, activities that occurred while she
11 was with him. And we'll do sentencing tomorrow and
12 I'll hear any post-trial motions that Ms. Shuler
13 might want me to consider and anything else that she
14 wants me to consider or Mr. Clements wants me to
15 consider tomorrow in deciding a sentence. Ladies
16 and gentlemen, when you all raised that question I
17 had to pull out the big books to define the
18 definition of fellatio. And you know, at one
19 time -- I pulled out the big book, the way the
20 judges used to define the term which is in our state
21 law defined sexual battery as sexual intercourse,
22 oral intercourse -- I'm sorry, oral sex, anal
23 intercourse, and any other intrusion. So as the --
24 at some point in time the definition, rather than
25 being just simply oral sex, the definition was, the

1 words were substituted to be cunnilingus and
2 fellatio. And cunnilingus means oral sex involving
3 or being received by a woman; and fellatio, oral sex
4 being received by a man. But I think that we
5 stopped just saying oral sex; and when the
6 legislature put those two words in there, I was
7 debating whether I was going to read the definition
8 from Webster's Dictionary for those two terms or go
9 back to the old law and tell you that it simply
10 means oral sex being received by a man or just oral
11 sex, period. You all got a verdict so I guess you
12 all figured out what it was, or the meaning of it.
13 We figured some of you know what it is anyway.
14 We've got nurses and various people on the jury and
15 grown folks. Thank you all.

16 I want to speak with the foreperson before you
17 leave. The rest of you all are good to go.

18 (WHEREUPON, the jury was removed from the
19 courtroom at 6:34 p.m., and court was
20 adjourned, then resumed on October 16,
21 2014.)

22 MS. BARR: May it please the Court, Judge,
23 the first matter before you is State versus Faron
24 Maurice Clements. This is indictment number
25 2013-GS-45-247. Your Honor, we're before the Court

1 following a jury trial in the case. We're here for
2 the defendant's sentencing and defendant is here
3 with his lawyer, Ms. Shuler. I've prepared
4 sentencing sheets. Judge, I also wanted to simply
5 place on the record that on yesterday we had a juror
6 to fall I believe she was excused. The Court gave
7 the lawyers and the defendant the option of
8 proceeding with deliberations with eleven jurors or
9 coming back on today and having one of the
10 alternates to replace the ill juror; and the parties
11 agreed that if the jury could reach a verdict,
12 finish their deliberation on yesterday, that all of
13 us would agree to proceed with the trial and with
14 the deliberations with the eleven jurors. And
15 Judge, I've submitted to the Court a written
16 agreement signed by me and by Mr. Clements' attorney
17 to that effect. And then, Judge, we're prepared to
18 go forward with sentencing.

19 THE COURT: Is that right, Ms. Shuler?

20 MS. SHULER: That's correct, Your Honor.

21 THE COURT: All right. I have before me
22 this document that's part of the record in the case
23 reflecting consent by both parties to allow less
24 than twelve jurors to deliberate, we'll file that.

25 MS. BARR: Mr. Clements, will you come up

1 please. Your Honor, you've heard all of the facts
2 in this case through the course of the trial.

3 I will note that the minor child and her case
4 manager are not present in court this morning.

5 She had missed three days of school; and
6 Judge, I told her that unless she absolutely wanted
7 to be present for sentencing, that I would just
8 allow her just to go to school today so those are
9 the reasons that she is not here. And I do not
10 believe that she wished to express any sentiments
11 one way or the other regarding sentencing. I would
12 note to the Court that the defendant's rap sheet
13 includes arrests in 1998 for malicious injury to
14 real property, an arrest and conviction in 1998 for
15 failure to stop for blue light. He was sentenced on
16 that charge to three years suspended to 18 months
17 probation, an arrest in 1999 of use of vehicle
18 without owner's permission, an arrest in 2000 for
19 simple possession of marijuana, an arrest in 2001
20 for driving under suspension second, failure to stop
21 for blue light and siren and seatbelt violation.
22 For the failure to stop for a blue light charge he
23 was sentenced to three years suspended to a
24 300-dollar fine and three years of probation. He
25 was arrested in December of 2001 for lynching in the

1 second degree. He was convicted of assault and
2 battery of a high and aggravated nature under the
3 common laws in July of 2002. He received a sentence
4 of five years suspended to 90 days and five years
5 probation. In January of 2002 he was arrested and
6 subsequently convicted of unlawful carrying of a
7 pistol. His sentence was one year and a thousand
8 dollar fine suspended to one year probation. And in
9 December of 2003 he was convicted of either
10 distribution of crack cocaine or PWID crack cocaine.
11 He received a sentence not to exceed six years. In
12 2005 he was convicted of a violation of some town
13 ordinance. It appeared to have been some sort of
14 plea as he was originally arrested for simple
15 assault and battery for the violation of town
16 ordinance. The rap sheet reflects that the sentence
17 was unknown. He was arrested in August of 2006 for
18 failure to stop for blue light and siren and either
19 distribution or PWID cocaine. He was subsequently
20 convicted of the drug charge and failure to stop for
21 a blue light offense for the drug PWID or
22 distribution offense, received ten years suspended
23 to 190 days which was the time he had served in jail
24 awaiting trial, followed by two years probation.
25 And the sentence was the same on the failure to stop

1 blue light charge. September of 2006 he's arrested
2 for driving under suspension. I don't know what the
3 disposition was. He was arrested again in October
4 of 2007 for simple assault and battery, pointing and
5 presenting a firearm. I do know that pointing and
6 presenting a firearm charge was nol prosed. I'm not
7 sure of the disposition of the simple assault and
8 battery. And in all of 2009 he was charged with
9 driving under suspension second offense and habitual
10 traffic offender. He was convicted of the habitual
11 traffic offender on January 6th of 2010. He
12 received a sentence of five years suspended to the
13 payment of a 750-dollar fine and two years of
14 probation. On July 5th of 2010 he was convicted of
15 ABHAN under the common laws offense, and the
16 sentence was that he was given five years provided
17 that upon the service of 37 days the balance would
18 be suspended to five years of probation. He was
19 further ordered as a condition of that probation to
20 pay restitution in the amount of 6,109-dollars.
21 Ms. Lee, I believe, was his probation officer.
22 Judge, he is still on a probationary sentence now;
23 and with the jury's verdict of guilty on yesterday,
24 that would be a violation of the terms and
25 conditions of his probation. Ms. Lee has asked that

1 that matter be addressed as well today along with
2 his sentence.

3 THE COURT: All right, Ms. Shuler,
4 regarding probation violation.

5 MS. SHULER: Your Honor, my client would
6 enter a plea of no contest to the violation.

7 THE COURT: Is that right, Mr. Clements?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. Ms. Lee, I'll hear
10 the details of the, any other details regarding
11 probation violation, make a determination of whether
12 he's willfully violated probation or not based on
13 the conviction or anything else you may have.

14 PROBATION OFFICER: May it please the
15 Court.

16 THE COURT: Yes, ma'am.

17 PROBATION OFFICER: This indictment is
18 2010-GS-45-182. Again, as Ms., Attorney Barr
19 stated, it's for ABHAN, was sentenced before Your
20 Honor on October 19th, 2010. He's basically been
21 complying with the conditions. Most violations that
22 have occurred with this particular case were
23 financial. He did inform me of his involvement with
24 law enforcement every time something happened. The
25 victim in this case, William Singletary, was called

1 and earlier this morning, and I don't know whether
2 he's here. He said it would take him about, until
3 about 11 about to come to the courthouse.

4 THE COURT: All right.

5 PROBATION OFFICER: He does have a
6 restitution balance in this case. He appeared
7 before Your Honor again on May 12th, 2014, and all
8 other financial obligations were exempted except for
9 the restitution. He did have a balance of
10 restitution to pay.

11 THE COURT: How much?

12 PROBATION OFFICER: The balance after that
13 restitution is three thousand — 3,564-dollars and
14 95 cents.

15 THE COURT: All right. This violation
16 would be this conviction by not complying with, not
17 abiding by the laws of the state?

18 PROBATION OFFICER: Yes, sir. This
19 violation is on the new conviction of guilty, on the
20 verdict that was rendered on yesterday.

21 THE COURT: All right. I find a willful
22 violation based on the willful act of his
23 conviction. All right, Ms. Barr, what else you got?

24 MS. BARR: The only other thing I would
25 add beyond that, you made aware of during the trial

1 ask that the defendant gave a statement to the
2 police that they interviewed them, asked him, he
3 knew **Complainant** , and he of course said that he did
4 not know her by that name. He knew that she gave
5 him the name of Veronica Carter. He also stated
6 that she told him that she was 17 years old. He
7 acknowledged seeing her and picking her up, says he
8 picked her up on Oakland Avenue, said that it was
9 raining. It was about 5:00 in the morning, not
10 wearing any shoes. He questioned her as to why she
11 was not wearing any shoes, where she was from, who
12 her people were, that sort of the thing. And they
13 started asking him about whether or not he had taken
14 the child to his house, and he maintained that it
15 was not his house. And so when they began to
16 question him as to why it was they found mail at the
17 house with his name on it, he says, well, you know,
18 he was doing somebody a favor by allowing one of the
19 utility services to be placed in his name. I think
20 it was evidence, light bill or something like that
21 was in his name. And then they started asking him
22 why would you be having your bank statements from
23 Georgetown Craft Credit Union coming to somebody
24 else's house and that when he says I think I need to
25 talk with a lawyer and then questions ceased at that

1 point. But Judge, there's —

2 THE COURT: What address do you have for
3 him, Ms. Lee?

4 PROBATION OFFICER: The last address he
5 was living at , last address was
6 his mother's address on Cypress Avenue right here in
7 town.

8 THE COURT: And the incident location here
9 was what?

10 MS. BARR: .

11 THE COURT: Okay. And that's the — is
12 that the address you said prior to getting the
13 mother's address?

14 PROBATION OFFICER: The address that I
15 have on his — let me — the address that I have,
16 Your Honor, on his standard conditions of probation
17 is .

18 THE COURT: Okay.

19 PROBATION OFFICER: His mother's address
20 I think, or it's on Cypress
21 Avenue. I'm not sure of the number.

22 THE COURT: , the plea
23 form on the sentencing sheet. All right, what else,
24 Ms. Barr?

25 MS. BARR: Judge, that would be all.

1 THE COURT: Ms. Shuler.

2 MS. SHULER: Thank you, Your Honor, may it
3 please the Court. In terms of what Ms. Barr said
4 about Ms. Clements — or Mr. Clements' statement to
5 law enforcement, what the questioning was, was so
6 you didn't buy any shoes for this 13 year old girl,
7 and Mr. Clements said not nobody named Complainant, no.

8 And then the questioning was, what name did
9 she give you, the girl that was at your house. And
10 he said a girl named Veronica Carter. I met a girl
11 named Veronica Carter to help. All along Mr.
12 Clements has maintained that he helped this girl
13 that he found walking down the street. He's
14 maintained that he had never had any sexual
15 encounter with her. He's maintained his innocence
16 with me. He has said all along that he had no
17 inappropriate conduct with her whatsoever. Your
18 Honor, he's got four children. Their ages are 14,
19 9, 7 and 4. His family is here with him today in
20 support. He's got his youngest daughter here and
21 his 14 year old daughter is here as well. I don't
22 know if they want to address the Court or not; but
23 they're certainly here, if they would like to. What
24 made this case particularly difficult for me was
25 that certain things could have been done by law

1 enforcement that were not done.

2 There was no forensic interview that was
3 conducted by -- for this child. The child's
4 statements were, or the child's statement was rather
5 inconsistent.

6 And I understand where Ms. Barr's questioning
7 was, and it just really never really added up to me
8 as why there were different accounts of the stories
9 and why there was no forensic interview done, why
10 they did not take that extra step of having the
11 child evaluated at a Florence hospital, which is
12 something that certainly could have been done. And
13 I think that that was Mr. Clements' problem as well.
14 Again, Your Honor, he does stand here and he
15 maintains his innocence and he says -- he's told me
16 that he has regretted the day that he met her and he
17 regrets helping her out. He bought her shoes and
18 fed her and gave her a shower and a place to stay
19 when she wouldn't tell him where her home was.

20 THE COURT: Of course he's not here for
21 any of those things, for meeting her and helping her
22 out, buying shoes. He's not here for any of that.

23 MS. SHULER: Right. Your Honor, in terms
24 of the prior history that was read by Ms. Barr,
25 there's the conviction that was the drug conviction

1 that was read from 2006 in Lane, I'm not sure where
2 that came from. I tried to find that on the public
3 index and couldn't find it. Mr. Clements tells me
4 he does not believe that's him, does have one prior
5 drug conviction but not — he tells me that he does
6 not have two prior drug convictions. But we'd ask
7 that Your Honor consider running everything
8 concurrently and consider that he does have a family
9 that he needs to provide for and be as lenient as
10 possible.

11 THE COURT: How does he provide for them?

12 MS. SHULER: Your Honor, he works odd
13 jobs. The last job that he worked was for John
14 McGill at McGill Farms and he does some brick
15 masonry work. Would anybody like to address the
16 Court from Mr. Clements family?

17 PROBATION OFFICER: Your Honor, may I
18 clarify something. The address
19 that I gave earlier was an address where Mr.
20 Clements lived initially when he started probation.

21 He later moved from that address to
22 .

23 THE COURT: Okay. And may I also find out
24 about the restitution in this matter, civil
25 judgment, the restitution. So I'm pondering all

1 that. You said that Mr. Singletary wanted to be
2 here and he'd be here by 11 so I'm just ---

3 PROBATION OFFICER: Yes, sir, thank you.

4 THE COURT: ---pondering all that, parts
5 of everything else.

6 PROBATION OFFICER: Yes, sir.

7 THE COURT: Yes, ma'am, Ms. Shuler.

8 MS. SHULER: Your Honor, he's got some
9 family members that would like to address. Just
10 state your name for the record.

11 DAUGHTER OF MR. CLEMENTS: I am Faron's
12 oldest daughter of Faron. I would just like to say
13 I really do need my father, I really do.

14 My mother isn't here with me right now and my
15 father was the only thing I had, last thing I had.
16 I really do need him. So Your Honor, please, I'm
17 begging you please, I really do need him. He
18 provides me anything I asked for. He do help me,
19 give it to me, and I really do miss him.

20 THE COURT: All right, thank you.

21 SISTER OF MR. CLEMENTS: I'm his sister,
22 Daney McCrae. This is my only brother I have left
23 around. He's a good person. I feel like he wasn't
24 represented properly due to the fact of the charges.

25 There was no ---

1 THE COURT: You were here during the
2 trial?

3 SISTER OF MR. CLEMENTS: Yes. There was
4 no real evidence. No one presented anything at the
5 time. And when the juror decided that she wanted to
6 leave and I thought I heard you say it was a
7 mistrial; no one accepted that. I don't think his
8 lawyer accepted that at the proper time so I think
9 that this needs to be appealed. He does have a
10 family that loves him. We do care about him.

11 This really does need to be appealed; and if
12 there is a sentence, please be lenient because he
13 had, had a hard life. I know that doesn't excuse
14 the fact at hand, but he does have people that love
15 him.

16 THE COURT: All right. You — we all have
17 someone who loves us. Everyone has someone who
18 loves them. Regarding the issue of mistrial, you
19 know, I read the rulings that the parties can agree
20 for a — you have a right to have a jury and the
21 jury is comprised of 12 except that one person can
22 no longer deliberate. The parties can agree for
23 eleven to make the decision, and they conferred and
24 they agreed for eleven to make the decision, and
25 that's per the rules which I recited. Also requires

1 that the recognition of that agreement be in
2 writing, and that's what was presented in the record
3 this morning. But with regard to the — evidence is
4 testimony, testimony is evidence. And evidence can
5 be testimony, evidence can be pictures, evidence can
6 be many things. In a criminal sexual conduct case
7 the law is that the evidence need not be
8 corroborated because of many instances there are no
9 eyewitnesses to the evidence. Ms. Shuler argued to
10 the jury, well, there was no forensic, no DNA, there
11 was no — there was no this, there was no that. The
12 law does not require all those things. When there
13 aren't those things it makes it much more difficult
14 many times for a jury to make decision. In this
15 case the jury took a long time deliberating on all
16 of that before deciding the case. And so as far as
17 the facts are concerned, the jury has spoken on
18 that. As to what occurred during those three days,
19 two or three days of this child was at with
20 Mr. Clements at his home.

21 SISTER OF MR. CLEMENTS: I feel like the
22 charges were inappropriate charges, like they
23 weren't the correct charges also.

24 THE COURT: Criminal sexual conduct with a
25 minor is sex between adult and a minor. A minor is

1 between 11 and 14 and she was 13 at the time.

2 That's what the law is and that's what — if
3 that happens that's the crime, criminal sexual
4 conduct with a minor. But you know, I'm just
5 answering your questions. I'm not criticizing
6 anything that you've said or certainly I understand
7 your sentiments concerning your thing.

8 THE SISTER: Thank you.

9 THE COURT: Yes, ma'am, thank you.

10 Ms. Shuler, anything else?

11 MS. SHULER: We just ask that Your Honor
12 consider a sentence that is lenient as possible so
13 that Mr. Clements can provide for his family, and
14 consider that the child's testimony was that the
15 sexual encounter was consensual.

16 THE COURT: We probably have many, many,
17 many 12 and 13 year olds and 14 year olds who would
18 love to be able to consent to sex. Unfortunately,
19 the law says that it's not theirs; they can't
20 consent.

21 MS. SHULER: Right.

22 THE COURT: And you know, one time they
23 called it jail bait — well, still do, I mean, and
24 adults have to have that recognition and
25 unfortunately too many take that risk. And you

1 know, week after week after week I just throughout
2 the state I handle these cases. Over in
3 Bennettsville we had the preacher who had sex
4 with -- the child was placed with him by DSS. He
5 was a minister and he had started having sex with
6 and fell in love with her and he was, you know,
7 he -- I think the girl was 12. And we had a trial
8 and he pled guilty during the middle of the trial
9 and confessed and said I sin before God and all of
10 that. He really started doing a sermon as part of
11 his presentation but he ended up with a 25 year
12 sentence. It wasn't that he wasn't a good man,
13 wasn't that he wasn't a good person, kids -- even
14 the child was a member and her parents were members
15 of his congregation so it reaches all demographics.
16 That's just Bennettsville. Bennettsville to Camden.

17 A fella had sex with a child six and raped the
18 child 6 and the child's mother caught him laying on
19 the floor, called 9-1-1, my husband is raping my
20 daughter and he's in the background trying to get
21 her to hang up the phone. All that played to the
22 jury and he sexual affair raping the child for over
23 a year. And I can go from this side of the state to
24 that side of the state over and over just the
25 enticement of adults to abuse children. It's not

1 just in this state; it's throughout the country.

2 That's why we have predator laws and all the
3 other things going on so it is what it is.

4 Mr. Clements, go ahead.

5 THE DEFENDANT: Yes, sir. I just want to
6 say that I've never been that type of predator.

7 I've never done anything like that. You know,
8 this — these charges that are against me, I didn't
9 do none of these things. None of the stuff adds up.

10 I only saw somebody in need and I would have
11 did it for anybody like, any male, female, whoever I
12 saw, somebody needed help I would have helped them
13 regardless of that. And Mr. Ballard, he knew me
14 better than that. They say my house was like Bed,
15 Bath and Beyond because I kept a lot of supplies.

16 But not one burnt candle was in my bathroom
17 but they didn't have a picture of that. They didn't
18 have a condom. They didn't have anything. They
19 found condoms but they wasn't even used condoms.
20 I'm being charged with something that I did not do.

21 If somebody —

22 THE COURT: You're not being charged at
23 this point. The charges, the charges are over.

24 THE DEFENDANT: Found guilty by a jury.

25 THE COURT: Yes, sir.

1 THE DEFENDANT: For something I did not
2 do. One of my jurors had mental problems; I didn't
3 know this. And now I'm being sent to prison, taken
4 away from my family for something I didn't do. None
5 of this stuff adds up. It is totally different than
6 the stories that were told at hand. It was a whole
7 new line of stories yesterday or this week, over sex
8 that's never was mentioned. But it was created; it
9 got me to this point. It's a very creative story, a
10 very led story. And I hate that I'm being
11 prosecuted for it, you know. I help somebody and
12 this is what I get when I should have just took the
13 stand, even though I know Ms. Barr would have done
14 her job well, bring up my record, bring up all the
15 stuff I ever done in my life but I should have took
16 the stand to defend my own innocence other than just
17 leaving it in the hands of somebody else when I know
18 I didn't do anything wrong. I should have said
19 something; I wanted to. But in a situation like
20 this, I've never been to law school so I listened to
21 someone who has; and even though I may not like what
22 they say or want to do more even to defend myself, I
23 can, you know. I went with what was asked of me,
24 what was told to me when I should have just, you
25 know, spoke up and I really felt like I should have

1 spoke up. My witnesses who were, who could testify,
2 I felt like they should have been here or they were
3 subpoenaed; but my counsel, it was not necessary.

4 So I mean, I really felt like my witnesses
5 should have been here and should have been able to
6 talk for me because they were witnesses to what
7 happened.

8 They were witnesses and around during those
9 times when some of this stuff that supposedly had
10 happened, they could have contest to the fact that
11 how it could have happened if I was there or I was
12 around and I mean, Your Honor, it's a situation I
13 guess I just fell in a bad situation.

14 THE COURT: All right. Anything else you
15 think I should know?

16 THE DEFENDANT: A lot I could say, Your
17 Honor, but really wouldn't make much of a difference
18 now. A jury —

19 THE COURT: Our jury system is an amazing
20 system, you know. It's not — in some parts of the
21 world, you know, you have back in history had a king
22 and the king came before the king and whatever the
23 king said that was it. And chop his hand off, chop
24 his leg off, chop off his penis, whatever the king
25 said that was it. So this country was formed, they

1 had a change of government, change of —

2 THE DEFENDANT: Yes, sir.

3 THE COURT: —means of doing things.

4 Rather than a king decreeing this or that
5 we'll have a jury, a jury of a person's peers,
6 picked from their own community and let them listen
7 to the evidence, and the verdict that they speak
8 must be a unanimous verdict. And as I told this
9 juror, the jury in my jury instructions, that they
10 are the finders of the facts. I'm not allowed to
11 have an opinion of the facts. And because this is a
12 matter of solely for them to determine the facts of
13 the case, and they listen to both sides. The State
14 presented its evidence. The Defense was recognized
15 and given the opportunity to present evidence.

16 I put you under oath and told you about your
17 right to testify and not to testify, and you opted
18 not to testify and the case was argued to the jury
19 and they deliberated and they decided. They decided
20 guilt beyond a reasonable doubt. And of course, you
21 know, they — their role is to evaluate the
22 credibility, believability of the witnesses who
23 testified. And I think that they would have
24 considered the fact that you have a child who pops
25 up at five a.m. and somebody takes them in and keeps

1 them in their home for three days and takes them out
2 and buys them things, and the child testified, and
3 leaving the child with another adult in the home,
4 and the child testified as to what occurred between
5 the two of you and the jury believed her. And
6 that's for the jury's; that's their prerogative.

7 You know, it's not even if I believed her,
8 it's —

9 THE DEFENDANT: Exactly.

10 THE COURT: She testified and the jury
11 believed her, and the jury has spoken so that's why
12 I said we're not here talking about charges. We're
13 talking about a fact based on the law of what you
14 did. You had sex with a minor.

15 THE DEFENDANT: Didn't.

16 THE COURT: That carries up to 20 years in
17 prison, carries up to 20 years in prison. And the
18 whole idea behind it is, you know, of course in many
19 instances in cases I've had, children who get abused
20 they are never, they never have normal
21 relationships. They are often become abusers
22 themselves. They often have psychiatric and
23 psychological problems. Some of them commit
24 suicide. Out of all the women that I have standing
25 where you're standing who've done crazy wild things

1 and they're in jail themselves invariably, they tell
2 me about their own abuse when they were children.
3 So it's a devastating crime and that's why it is
4 what it is. It's up to 20 years if the child is
5 between 11 and 14. If the child is under 11 it's
6 mandatory 25 years. The fella I was mentioning over
7 in Camden that we tried whose wife caught her on top
8 of her daughter, he got 45 years. I gave him 45
9 years; and of course, he appealed. And he was
10 writing and professing his innocence before and
11 after, before, during, and after the trial; but the
12 jury spoke and the evidence is clear, and he got
13 himself 45 years. Had to do 85 percent of 45 years
14 so the book is closed on him.

15 THE DEFENDANT: Might I add one thing,
16 Your Honor?

17 THE COURT: Anything you want to say, this
18 is your opportunity —

19 THE DEFENDANT: I mean —

20 THE COURT: —regarding sentencing.

21 Of course, you had your opportunity during the
22 trial as well, but this is your opportunity during
23 sentencing. I know out of all these cases you've
24 seen, you've seen emotion come from those folks.
25 Like, if something traumatize me or something bad

1 happen to me, you know, it's something I can never
2 forget how it happened, when it happened, or where
3 it happened. And there was something like that
4 traumatize me, you know, you would see emotion from
5 me. A man hit me with a baseball bat years ago, I
6 can never forget how it happened, where it happened,
7 and when it happened. I could tell that story from
8 the day, from now till the day I die even though I
9 was in cold for 7 days afterwards. And I believe
10 you're familiar with it. You sentenced the man to
11 prison who done it to me. But if someone was ask me
12 that story, the same way the police wrote it up 10,
13 13 years ago when it happened the same way I could
14 explain that story now because that story can never
15 change. When you re-live something like that every
16 single night you sleep, the story will never change.
17 I think she was pretty clear as to how it happened,
18 when it happened, and where it happened in relation
19 to you. Now of course, the strategy of Ms. Shuler
20 was not only attacked her credibility as to you, but
21 also to attack the lack of clarity in relation to
22 the other man who was there, but that guy is not on
23 trial. Of course his day may yet come.

24 THE DEFENDANT: And the other seven dudes
25 ain't on trial neither, but her story wasn't —

1 THE COURT: They're not on trial either.

2 But the other one in your who was, she said in
3 your house, he may yet -- he's standing right there
4 in the future.

5 THE DEFENDANT: The police never came
6 asked me about that.

7 THE COURT: Yeah, well, you know.

8 THE DEFENDANT: Wasn't like I wouldn't
9 have said, well, this the person who was at my house
10 and I was never told anything like that.

11 THE COURT: As long as he's living and
12 breathing that opportunity still may present itself
13 that he may be right, you know, in the situation
14 himself. But the State didn't have any burden to
15 prove beyond a reasonable doubt that that man was
16 guilty yesterday 'cause that person wasn't on trial;
17 it was in relation to you.

18 THE DEFENDANT: All Ms. Barr did was show
19 how good she knows her job because that wasn't no
20 proof.

21 THE COURT: She's good; I tell you.

22 THE DEFENDANT: There wasn't no proof.

23 THE COURT: What else you want to tell me,
24 Mr. Clements? You know, I understand your point
25 about trama and maybe the child was not traumatized.

1 You know, the things that that girl been
2 through, if she -- I can imagine, you know, we had
3 Hurricane Hugo, I guess you remember that. I was
4 trying to tell my clerk about it and she said she
5 didn't think she come out yet. She was born in
6 1988. Hugo was in September of '89. But they
7 didn't get the low country like we did here. And
8 but this girl was in Katrina and was trapped on a
9 roof of a house for three days until she was rescued
10 and taken to Texas and said she saw dead bodies
11 floating around in the water while she was on the
12 roof hoping that someone rescued her. And she came
13 from a broken family whose mother was not stable,
14 and that added on to that problem from a broken home
15 on top of that. Here she comes, lands up in a place
16 like Kingstree which is a great place, but you know,
17 she had issues there. She didn't leave the problems
18 behind. And so she's a troubled child. And then
19 she encounters a man after man, situation after
20 situation, then she encountered you. So and the man
21 before you and I agree with you, it didn't appear
22 that she was just overly traumatized by the
23 experience. Considering all that she's been through
24 in her life, those sexual experiences, she might
25 have had trouble remembering any of the details as

1 far as because there wasn't anything that eventful.
2 It wasn't like the 80 something year old lady we had
3 on trial in here when she said the guy turned her
4 around and root, you know, just explained how he
5 penetrated her anally. I mean, she, you know,
6 someone who is traumatized, you know, we had that;
7 we've had that.

8 So it's not about this particular child being
9 so traumatized. That's a rather unique feature of
10 this case because she's, she was already
11 traumatized.

12 Who knows what the future will hold for her,
13 but the law does not create a special law for
14 special types of victim. The law says that's why
15 the age of the child in the matter, if the child
16 tries to consent it doesn't matter because she can't
17 consent.

18 The law just says if we have a person who have
19 sex with a child that person should go to prison for
20 that period of time. That's the vice you're in
21 right now.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now you know the victim rights
24 are important, and the probation violation is just
25 as important as this current sentence 'cause I think

1 I sentenced you in that probation violation.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Sentence by Mr. Singletary, I
4 forgot what that was about, but he wants — if he's,
5 he got a restitution order how much money, 6
6 thousand something dollars?

7 MS. BARR: 6,100.

8 THE COURT: What year was that?

9 PROBATION OFFICER: 2010, Your Honor.

10 THE COURT: So four years later, 6,000
11 dropped down to 3500. That's not him right there,
12 is it? I don't know him. That's not him, is it?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: That's him?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: There he is. So he has a
17 right to be heard so I'm gonna give him that
18 respect. We're looking for a fella named Mr.
19 Singletary who is the victim in this Clements case.
20 Come on, Mr. Singletary.

21 (Mr. Singletary comes forward.)

22 THE COURT: Mr. Singletary.

23 MR. SINGLETARY: Yes, sir.

24 THE COURT: Mr. Singletary, we had a trial
25 here yesterday where Mr. Clements was on trial with

1 having criminal sexual conduct with a minor 13 year
2 old child, two counts, and he was found by guilty by
3 the jury of committing that crime and he's here for
4 sentencing. The fact that he committed that crime
5 also makes him guilty of willfully violating the
6 probation that he was placed on when I sentenced him
7 for assaulting you. And Ms. Lee, who has been
8 keeping track of him and this whole order of
9 restitution that I made him to pay says that he
10 still owes 3,500-dollars of restitution and that she
11 notified you that he'd be coming up before the court
12 today and that you had a right and opportunity to be
13 here and we've been — said you'd be here by 11 or
14 so and here you are and here we are and I wanted to
15 bring you up to date on all of that and then give
16 you an opportunity to say anything that you want to
17 say about this probation violation of Mr. Faron
18 Clements. Anything else you want to say?

19 All right, now just remind me though,
20 however, I know I did the case back in 2010 whenever
21 it was, what happened between you and Mr. Clements
22 that resulted in him being convicted of assault.

23 MR. SINGLETARY: Well, I approached him.

24 I approached him at the State McBride Club,
25 and I had this cane here. He say I had a knife in

1 his hand which you so he reached back trunk of the
2 car. I don't know why he grab a pistol or something
3 and when he hit me I just fell on the ground. I was
4 knocked out. I ain't know nothing else. They
5 robbed me. He continually hitting me.

6 THE COURT: Who was hitting you?

7 MR. SINGLETARY: Him.

8 THE COURT: He was hitting you? And who
9 robbed you?

10 MR. SINGLETARY: Two fellas that been with
11 me.

12 THE COURT: All right. And how badly hurt
13 were you?

14 MR. SINGLETARY: My head was swell up. My
15 eyes was swell up. I had a big cut right here. My
16 whole face was swell up.

17 THE COURT: You went to the hospital?

18 MR. SINGLETARY: Yes, sir, I did.

19 THE COURT: How long you stay there?

20 MR. SINGLETARY: In and out, transfer back
21 and forth to Florence to the eye doctor.

22 THE COURT: I remember, you know, you were
23 telling me all about that. You were having problems
24 with your eyes back then.

25 MR. SINGLETARY: Yes, sir.

1 THE COURT: So now four or five years
2 later, how are you doing now?

3 MR. SINGLETARY: Pretty good. I'm still
4 having problems with the eye though.

5 THE COURT: All right. That was assault
6 and battery of a high and aggravated nature?

7 MR. SINGLETARY: Yes, sir.

8 THE COURT: All right. So you know, when
9 people come before me and, you know, maybe I
10 sentence them, maybe I give them probation, I was
11 saying yesterday how some people really need to be
12 in jail to protect themselves from themselves
13 because they can't handled freedom. In many
14 instances if the person is doing time for the crimes
15 then they won't have the opportunity to be out to
16 commit another crime. If he was still doing time
17 for your crime he wouldn't be in this situation of
18 this crime, would he?

19 MR. SINGLETARY: That's right.

20 THE COURT: So, I mean, of course, had he
21 been sentenced then, chances are he'd been released
22 by now anyway. He could have over the don't have to
23 do the full time anymore. All right, anything else
24 you want to tell me?

25 MR. SINGLETARY: No, sir.

1 THE COURT: All right. Thank you, Mr.
2 Singletary.

3 MR. SINGLETARY: Thank you.

4 MS. BARR: Judge, may I say something?

5 THE COURT: Yes, ma'am, Ms. Barr.

6 MS. BARR: Your Honor, a couple of things
7 if the Court will indulge. I certainly don't know
8 that I'm as good a prosecutor as Mr. Clements seems
9 to think that I am. I remember prosecuting him for
10 a rape a few years back and the jury found him not
11 guilty. We had an eyewitness there to testify, and
12 so I say that only to say that each case is unique,
13 each case is different, each jury is different. And
14 so oftentimes it just depends on the witnesses, how
15 they testify and so forth. To the contrary of what
16 some of the character witnesses stated to the Court,
17 you know, having tried cases against Ms. Shuler in
18 the past and having experience of trying this case
19 against her, she certainly did not make my job easy.
20 She didn't stipulate to anything. She did in this
21 case what she does in most cases, she doesn't give
22 you any heads up about what her pretrial motion will
23 be and then she comes and does four and five at one
24 time and really the intent I suspect is to gain an
25 advantage so that you're not prepared to argue them.

1 This is what every good defense lawyer should do.

2 I recognize that the facts of this case were
3 tough and were unique, and I think that reflected in
4 the amount of the time that it took a jury to
5 deliberate. I think they deliberated for four or
6 five hours. I believe they got the case maybe
7 somewhere between 1:30 and 2 and didn't come back
8 with a verdict until about 6. But one of the things
9 that I think is important and bears repeating is the
10 fact that this child was and still is a child and
11 she has the mind set of a child, and oftentimes
12 people lose that there is the inclination to blame
13 her based upon her actions; and a lot of times
14 people don't know the whole picture. And when Your
15 Honor talked about how she was a survivor of
16 Hurricane Katrina, there are other facts in her life
17 that the Court does not know, that people in this
18 courtroom do not know and shouldn't know; but they
19 need to understand that when Mr. Clements makes the
20 comment that when she testified she didn't seem to
21 be all that traumatized by an alleged rape, and you
22 imagine that a child who was raped would show
23 emotions it would be tearful. Your Honor is exactly
24 right, that her experiences with Mr. Clements was
25 probably one of the least traumatic things that have

1 happened to her at her young 13 years in life. It
2 wasn't merely a situation where her home life was
3 unstable in New Orleans, her home life was -- not to
4 get into any of the facts -- but some of the things
5 that she experienced while living in New Orleans
6 pale in comparison to her experience with
7 Mr. Clements. Ms. Shuler mentioned that her medical
8 records at the hospital here only reference one rape
9 and reference sexual activity with seven people
10 within a span of a week. And I don't know, Judge,
11 if you caught this, but when the young lady was
12 testifying, the only time that I actually saw
13 emotion from her is when she talked about the
14 forceable rape, if you will, that happened with the
15 other man who was at the defendant's house. And
16 Judge, that kind of gives you some idea of some of
17 the experiences that she's been through.

18 I think she's just got kind of got
19 desensitized to it all.

20 And the challenge for me was when I
21 first met her a year ago, she would talk about her
22 experiences in a matter of fact type tone, and I had
23 never met a child who was the victim of a sexual
24 assault or even statutory rape who had that type of
25 effect. I mean, it was, it was off putting and just

1 could not imagine somebody been through what she'd
2 been through would speak about it as if we're
3 talking what we ate for dinner last night. But that
4 was, that's just who she was and that's what her
5 life experiences made her. And so with Mr. Clements
6 not having the benefit of knowledge about how it was
7 that she came to be the person she came to be, it's
8 easy to understand why he would look at her and say,
9 well, why isn't she crying or why isn't she upset.

10 When I read about and heard about and spoke
11 with her about some of the things that she went
12 through, it seemed to bother me more than it
13 bothered her. But at the end of the day we do have
14 to be mindful that this is a child. I don't think
15 that she appreciated then -- hopefully she'll
16 appreciate it now -- that some of the decisions that
17 she made when she was younger puts her at a great
18 risk, not just for common things like unwanted
19 pregnancies and STD's, but the risk of having
20 somebody hurt her, physically hurt her, or take her
21 life. And I think that's a part of the counseling
22 and therapy that she's receiving now, but I think
23 that if we just put in proper perspective why she
24 testified in the manner that she did, you have to
25 understand her whole story and her whole life. And

1 I'm not saying that what happened between her and
2 Mr. Clements will make her any worse or any better,
3 but you have to understand and appreciate what she's
4 been through. And I think that the law places the
5 burden on the adult to behave like adults, and the
6 law also understands that children are gonna be
7 children.

8 THE COURT: All right, thank you.

9 Final words, Ms. Shuler.

10 MS. SHULER: I think Your Honor heard
11 everything. We would, again, Mr. Clements maintains
12 that he did not have any sexual encounter with Ms.
13 Epps, and we would ask that Your Honor be as lenient
14 as possible in sentencing.

15 THE COURT: All right. And Mr. Clements.

16 THE DEFENDANT: Yes, sir, Your Honor, the
17 same thing she said. I just ask that you'll be
18 lenient with me on time 'cause I want to keep my
19 innocence. I'm never gonna admit to something I
20 didn't do. I'm never gonna do that. And this girl,
21 you know, she played with my sympathy. She played,
22 you know, she telling me her story and how, you
23 know, her suicide and all of that. And you know, I
24 only saw to help somebody and I would have did that
25 if it was male, female, or adult child. If somebody

1 need my help I'm gonna help them, I mean, if I can.

2 If I'm in a position to help I will. I won't
3 see you with a flat tire and knowing I'm able to get
4 out there and help you get it, put the spare on, I'm
5 not just gonna pass by. And I would do that for
6 anybody and that's what got me here today.

7 MS. SHULER: Your Honor, he's been — he's
8 done 189 — well, 190 days now on this charge.

9 THE COURT: All right. Mr. Clements, with
10 regard to the probation violation we're going to
11 terminate the probation and enter a civil judgment.

12 PROBATION OFFICER: Thank you, sir.

13 THE COURT: As to these offenses you're
14 facing sentence of up to 20 years on each count,
15 facing 40 years in prison. These offenses are
16 classified in the law, these offenses are classified
17 in the law as being most serious offenses so if you
18 are convicted of any additional most serious
19 offenses, you can be sentenced to life without
20 possibility of parole. You know, my responsibility
21 in this case is to do justice by all parties
22 involved. And as I indicated, the impact of these
23 types offenses have on children are just devastating
24 and that's why the penalties, exposure, is as great
25 as it is. My sentence to you on each offense is 11

1 years and the sentences will run concurrent.

2 Good luck to you. Give him credit for 190
3 days.

4 (Court's Exhibit Number 3 was marked
5 and made a part of the record.)

6
7 (WHEREUPON, the proceedings were concluded.)

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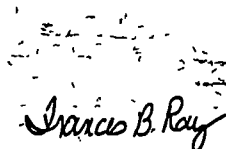
C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 23rd day of January, 2015.



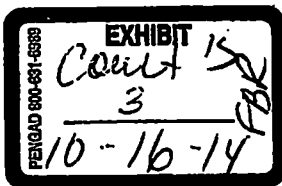
FRANCES BAKIS-RAY, RPR

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF WILLIAMSBURG)
The State,)
Ind. No.: 2013-GS-45-237
v.)
Faron Clements,)
Defendant)

SHARON W. STAGG
CLERK OF COURT
KINGSTREE, S.C.

2014 OCT 16 AM 11:30
SHARON W. STAGGERS
CLERK OF COURT
KINDERGARTEN, S.C.

NOW COMES the State of South Carolina, represented by Assistant Solicitor Kimberly V. Barr, and the Defendant, represented by Assistant Public Defender Amanda Shuler, to consent to the allowing of eleven jurors to continue deliberations in the above case. The record reflects that after deliberations began, and after the alternates were released, one juror reported feeling sick and unable to continue deliberating. All parties consented to allowing the remaining eleven jurors to continue deliberating in hopes that a verdict could be reached. Pursuant to the South Carolina Rules of Criminal Procedure, both parties now give written consent to this agreement that was placed on the record.




Clifton Newman
Presiding Circuit Court Judge

This, the 15th day of October, 2014

I SO MOVE:


Kimberly V. Barr
Assistant Solicitor

I CONSENT:


Amanda Shuler
Assistant Public Defender

FORM 5

STATE OF SOUTH CAROLINA)

County of Williamsburg)Faron M. Clements 298780)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

16 CP45 266

APPLICATION FOR

POST-CONVICTION RELIEF

CLERK OF COURT
KINGSTREE, SC

2016 JUN 22 AM 10:38

FILED

INSTRUCTIONS - READ CAREFULLY

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

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Evans Correctional Institution
2. Name and location of Court which imposed sentence Williamsburg County Court
house 125 West Main Street Kingstree, SC 29556
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-45-0247
 - (b) _____

SCANNED
6/30/16

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Oct. 16, 2014 11 years State Department of Corrections
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Submitted January 1, 2016 - Filed March 30, 2016
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Prosecutorial Misconduct
- (b) Ineffective Assistance of trial counsel
- (c) Tainted, Contaminated, and Prejudice jury or jurors
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Prosecutor violated (5th) and (14th) Amend. and doctrine of Brady. Transcript pg. 178-181
- (b) Counsel failed to pursue and use testimony of key witness that were subpoena
- (c) Counsel without explaining to me what stipulate to deliberate with 11 jurors meant, she choose to go forward.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

~~NO~~ yes

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

(a) which grounds have been presented:

- i. Prosecutorial Misconduct
- ii. Ineffective Assistance of trial counsel
- iii. Tainted, Contaminated, and Prejudice jurors

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

- i. In my pro se ANDERS Brief of Appellant
- ii. Same
- iii. Same

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) _____
 (b) _____
 (c) _____

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

(a) your arraignment and plea? _____
 (b) your trial, if any? yes _____
 (c) your sentencing? yes _____
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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. M. Amanda Shuler Post Office Box 980
Kingstree, S.C. 29556
 ii. Susan B. Hackett Post Office Box 11589
Columbia, S.C. 29211-1589
 iii. _____

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

i. M. Amanda Shuler for the trial and sentencing.
 ii. Susan B. Hackett for the appeal.
 iii. _____

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

Respectfully a reverse of my conviction and remand
for a new trial.

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

No

STATE OF SOUTH CAROLINA)

County of Williamsburg)

VERIFICATION

I, Faron M. Clements, 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.

Faron Clements

SWORN to and subscribed before me this 20
 day of June, 2016

J. Outlaw

Notary Public

(L.S.)

My Commission Expires: 2/17/24

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Faron Clements, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this

20 day of June, 2014


Notary Public

My Commission Expires: 2/17/24

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS
 THIRD JUDICIAL CIRCUIT

CASE NO.: 2016-CP-45-0266

Faron M. Clements, #298780

Plaintiff,

vs.

State of South Carolina

Defendant.)

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Plaintiff's Attorney:

Lance S. Boozer, Bar No. _____

Address:

1400 Laurel Street, Ste 4A Columbia, SC 2921

Phone: _____ Fax: _____

E-mail: _____ Other: _____

Defendant's Attorney:

Julie A. Coleman, Bar No. 102214

Address:

PO Box 11549 Columbia, SC 29211-1549

Phone: 803-734-3737 Fax 803-734-4113

E-mail: _____ 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: _____

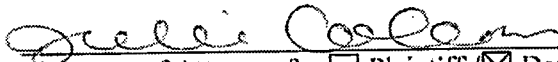
Court Reporter Needed: ☐ YES/☐ NO

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

February 28, 2017

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, SCRPC)

☐ 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
COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

Faron M. Clements, #298780,

2016-CP-45-266

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on June 22, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Williamsburg County. Applicant was indicted by the October 2014 term of the Grand Jury for Williamsburg County for two counts of Criminal Sexual Conduct with a Minor – 2nd degree (2013-GS-45-0247). Applicant was represented at trial by M. Amanda Shuler, Esq. Applicant was convicted on both counts and was sentenced on October 16, 2014 by the Honorable Clifton Newman to eleven years' imprisonment for both counts, to be served concurrently.

Applicant filed a timely notice of appeal. An Anders brief was submitted, and the South Carolina Court of Appeals affirmed Applicant's conviction in an opinion filed March 30, 2016. State v. Clements, Op. No. 2016-UP-145 (S.C. Ct. App. 2016). The Remittitur was returned on April 29, 2016.

Attached herewith and incorporated herein by reference are the records of the Williamsburg County Clerk of Court regarding the subject convictions, the transcript from

Applicant's trial, Applicant's appellate records, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel
 - a. "Counsel failed to pursue and use key testimony of witnesses who were subpoena[ed]."
 - b. "Counsel without explaining to me what stipulate to deliberate with eleven jurors meant, she chose to go forward."¹
2. Prosecutorial Misconduct
 - a. "Prosecutor violated 5th and 14th Amendments and doctrine of Brady."

III.

Applicant claims ineffective assistance of counsel in his application. Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result."

¹ Respondent interprets this to be a claim of ineffective assistance of counsel, though Applicant labeled this allegation as "Tainted, contaminated, and prejudice jury or jurors" in his application. Eleven jurors deliberated at Applicant's trial after one fell ill and could no longer participate. All parties consented to allowing the eleven jurors to continue deliberating.

Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, 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, 88 L.Ed. 2d 203 (1985).

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

IV.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). 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). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

Moreover, as to post-trial Brady claims, Applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id., 434 S.E.2d at 268. Respondent submits that Applicant fails to present any evidence to satisfy the requirements of a post-trial Brady claim, and therefore all of Applicant's allegations of prosecutorial misconduct should be dismissed.

V.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

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.

VII.

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

VIII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claims of ineffective assistance of counsel.

[signature page to follow]

Respectfully submitted,

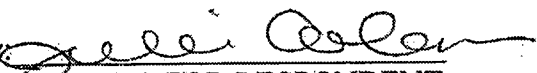
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By: 
ATTORNEYS FOR RESPONDENT

February 28 2017

STATE OF SOUTH CAROLINA)

COUNTY OF WILLIAMSBURG)

FARON M. CLEMENTS, #298780)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

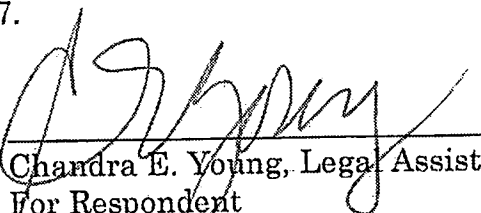
IN THE COURT OF COMMON PLEAS

2016-CP-45-0266

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Lance S. Boozer
 1400 Laurel Street, Suite 4A
 Columbia, SC 29201

DATED this 28th day of February, 2017.


Chandra E. Young, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA
2 COUNTY OF WILLIAMSBURG

IN THE CIVIL COURT

5 FARON M. CLEMENTS,
6 Applicant,
7 -vs-
8 STATE OF SOUTH CAROLINA,
9 Respondent.

TRANSCRIPT OF RECORD
16-CP-45-00266

March 31, 2017
Sumter South Carolina

14 | B E F O R E:

15 HONORABLE D. CRAIG BROWN, Judge.

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

19 | LANCE S. BOOZER, Esquire
Attorney for the Applicant

JULIE A. COLEMAN, Asst. Attorney General
Attorney for the State

23 L. COCONUT PANTSARI, R.P.R.
24 Circuit Court Reporter

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6 ~~M. AMANDA SHULER~~

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19 NO. DESCRIPTION ID. EV.

20 1 Counsel's file notes 36

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25

1 (The following proceedings are reported on
2 March 31, 2017.)

3 THE COURT: All right. Is the State ready to
4 proceed?

5 MS. COLEMAN: Yes, Your Honor.

6 THE COURT: Defense counsel?

7 MR. BOOZER: Yes, Your Honor.

8 THE COURT: Call your case, please.

9 MS. COLEMAN: Thank you. May it please the
10 Court.

11 THE COURT: Yes.

12 MS. COLEMAN: This is Faron M. Clements
13 versus the State of South Carolina, Docket Number
14 2016-CP-45-266. The applicant is presently confined in
15 the South Carolina Department of Corrections pursuant to
16 orders of commitment of the Williamsburg County Clerk of
17 Court.

18 Applicant was indicted by the October 2014
19 term of the Williamsburg Grand Jury for two counts of
20 criminal sexual conduct with a minor second degree.
21 Applicant was represented at trial by Ms. Amanda Shuler,
22 Esquire.

23 Applicant was convicted on both counts and was
24 sentenced on October 16, 2014, by the Honorable Clifton
25 Newman to 11 years imprisonment for both counts to be

1 served concurrently.

2 Applicant filed a timely notice of appeal. An
3 Anders brief was submitted and the South Carolina Court
4 of Appeals affirmed the applicant's conviction in an
5 opinion filed March 30, 2016. Remittitur was returned
6 April 29, 2016.

7 Applicant subsequently filed a timely
8 application for post conviction relief on June 22, 2016,
9 alleging that he was being held in custody unlawfully
10 based on the following allegations: Ineffective
11 assistance of trial counsel and prosecutorial
12 misconduct.

13 The State filed its return on February 28,
14 2017; and he is present today and represented by
15 Mr. Lance Boozer.

16 THE COURT: Mr. Boozer, are you ready to
17 proceed?

18 MR. BOOZER: I am, Your Honor.

19 THE COURT: All right. Let's go.

20 MR. BOOZER: I will go ahead and call
21 Mr. Clements to the stand.

22 (The witness comes forward.)

23 FARON M. CLEMENTS, being
24 first duly sworn, testifies as follows:

25 CLERK: State your name for the record and

FARON CLEMENTS -- DIRECT -- MR. BOOZER

1 spell your last, please.

2 THE WITNESS: My name is Faron Clements,
3 C-L-E-M-E-N-T-S.

4 DIRECT EXAMINATION

5 BY MR. BOOZER:

6 Q Mr. Clements, how are you doing today?

7 A I'm okay.

8 Q Do you know why you are here?

9 A Yes, sir.

10 Q And we are here, of course, because you filed an
11 application for post conviction relief?

12 A Yes, sir.

13 Q And what are you currently incarcerated for?

14 A CSC second.

15 Q All right. And did you have a trial?

16 A Yes, sir.

17 Q And what type of sentence did you receive as a
18 result of the trial?

19 A Eleven years, run consecutive -- run -- yeah, run
20 consecutive.

21 Q Let me ask you this: When is your max-out date?

22 A 2023.

23 Q 2023?

24 A Yes, sir.

25 Q And you and I have certainly discussed this, but

1 you understand that the only thing that this Court
2 can do for you is grant you a new trial on your
3 original charges that you went to trial on?

4 A Yes, sir.

5 Q And you understand that this Court can't reduce
6 your sentence, cut your time, modify your sentence,
7 or anything like that?

8 A Yes, sir.

9 Q And you also understand that if you are successful
10 in your PCR application and you go back and face
11 these charges again, there is a chance, if you are
12 convicted, you could face significantly more time
13 than what you received at trial the first time or
14 you could face more time than what you have left to
15 serve on your sentence? Do you understand that?

16 A Yes, sir.

17 Q And knowing that do you still wish to go forward
18 with your PCR application?

19 A Yes, sir.

20 Q Okay. Who was your trial lawyer?

21 A Amanda Shuler of Williamsburg County.

22 Q And before we get to your allegations, let's give a
23 little bit of background. When were you first
24 arrested on the charges?

25 A Something like June 12th, something like that,

1 close to that area.

2 Q Of what year?

3 A 2013.

4 Q When did Ms. Shuler -- well, was Ms. Shuler hired
5 or was she appointed on your case?

6 A Appointed.

7 Q She was appointed?

8 A Yes, sir.

9 Q Make sure you keep your voice up.

10 A Yes, sir.

11 Q When did you first speak or meet with Ms. Shuler?

12 A It had to have been like maybe three months after I
13 was originally arrested.

14 Q Do you know about how many times you met with
15 Ms. Shuler before your trial?

16 A Yeah, I think it was four times.

17 Q Four times. And just if you could give sort of a
18 little bit of background into what the State
19 alleged you had done.

20 A Well, they alleged that a runaway girl was at my
21 home; and the runaway girl, when they caught up
22 with her, said that we had sexual contact,
23 something sexual of some kind during the course of,
24 I guess, the two days she was at the house.

25 Q Okay. And did you deny that?

1 A Yes, sir.

2 Q And you still deny that?

3 A Yes, sir.

4 Q All right. Was there ever a plea offer in the
5 case?

6 A Not anything on paper. I recall my public defender
7 at the time telling me about something, you know,
8 some kind of offer or something she had spoke to me
9 about.

10 When she told me about it, I was like -- you
11 know, I shrugged it off because it sounded like a
12 deal; but I wasn't looking for a deal if I didn't
13 do anything wrong.

14 Q When you say your public defender, are you
15 referring to Ms. Shuler?

16 A Ms. Shuler.

17 Q Okay. Do you recall the specifics of the plea --

18 A Yes.

19 Q Let me get the question out because Madame Court
20 Reporter has to type everything out.

21 A Yes, sir.

22 Q Let me get my question out before you respond.

23 A Yes, sir.

24 Q All right. Do you recall the specifics of the plea
25 offer?

1 A Yes, sir.

2 Q What were those specifics?

3 A She came in -- well, we went to her office. I went
4 to her office to see her, and this was in
5 October of 2015, and she wasn't in her office. It
6 was another public defender up there by the name of
7 Mr. Darryl Harvey, but he told me that she was
8 downstairs at the Solicitor's Office.

9 So he was about to leave the office for the
10 day, I guess, because it was around 5:00 that
11 afternoon. So he offered to walk me down to the
12 Solicitor's Office to meet with Ms. Shuler.

13 When we walked down, he walked in first and I
14 came in behind him; but I guess they didn't saw me.
15 But when she saw me, then she got up. She was
16 talking to Ms. Barr. Then she got up and came out
17 to me and walked me back, I guess, upstairs to her
18 office.

19 When we got there, we talked about the case
20 for a second. Then that's when she said something
21 about -- something about if I was to tell about
22 this other guy who allegedly raped this victim at
23 my house, she could talk to -- something about talk
24 to the judge or the prosecutor or whatever, and it
25 was a zero to four plea.

1 I think it was because someone during that
2 time had the same charge as mine, and it was a
3 lady. She had kind of like the same charge as
4 mine, but she pled guilty to it, and that's what
5 they gave her. I think -- well, I remember that's
6 what was said to me.

7 I was like, you know, I was like nah. I
8 couldn't -- because for one I wasn't guaranteed to
9 get the zero to four even if I pled to something or
10 tell on somebody.

11 Because the simple fact of the matter, the
12 lady who pled to that case that day, her record
13 wasn't nothing close to mine. So I figured that
14 that right there would put me in a bad spot anyway.

15 Q So the offer was what though, time wise, for a
16 recommendation?

17 A A recommendation of zero to four.

18 Q All right. And you declined that?

19 A Yes, sir.

20 Q And is that because you wanted the trial because
21 you claim you didn't do this?

22 A Yeah. I mean, my mother told me. I feel like if I
23 didn't do anything, why should I plead to something
24 if I didn't do it, if I didn't do anything wrong.

25 Q Were there any other plea offers?

FARON CLEMENTS -- DIRECT -- MR. BOOZER

11

1 A That was the only thing that I ever heard about.

2 Q Okay. Let's go through your allegations and I will
3 skip around a little bit. One of your allegations
4 is that you have alleged in your original PCR
5 application is prosecutorial misconduct. Is that
6 one of your allegations?

7 A Yes, sir.

8 Q And if you would --

9 MR. BOOZER: Your Honor, just for the Court's
10 reference, he is going to be referring to -- and I am
11 looking at trial transcript, page numbers -- page 178,
12 beginning at 178.

13 THE COURT: All right.

14 BY MR. BOOZER:

15 Q Mr. Clements, if you would, explain to the Court
16 why you believe there was a prosecutorial
17 misconduct or that your lawyer didn't object to
18 certain statements made by the solicitor.

19 A I mean, it was clear that certain things that were
20 said, I felt it shouldn't have been said because it
21 would give the jurors a reason to kind of look at
22 me differently anyway.

23 And when she told the jurors that -- well, one
24 thing I really remember is when she told the jurors
25 that, you know, this ain't TV. This ain't *Law and*

1 *Order* and this and that there.

2 And, you know, if you feel like a person is
3 guilty, you should find that person guilty. I felt
4 like that was, like, okay, not based on evidence;
5 but if you feel like a person is guilty, you should
6 find them guilty.

7 By her telling those 11 people that, I mean, I
8 didn't feel like that was -- that was the wrong
9 thing to do, that that would probably persuade
10 their minds to go on their thoughts instead of just
11 going on the facts of the case.

12 Q And you have indicated to me in reviewing your
13 transcript that on page 178 is one particular
14 instance you are referring to. Do you recall the
15 solicitor stating on page 178, she is telling a
16 story about a former prosecutor?

17 A Oh, yes.

18 Q Sharing a story with them.

19 A Yes, sir.

20 Q If you would tell the Court what it is specifically
21 with regard to that statement.

22 A Okay, yeah. During the course of, I think, the
23 closing arguments, the prosecutor, you know, she
24 brought up a case. She brought up a case saying
25 that she talked to a former prosecutor, and he told

FARON CLEMENTS -- DIRECT -- MR. BOOZER

1 her a story about a case that they had tried
2 before.

3 The jury came out and found that the person
4 was -- the jury came out and found the person not
5 guilty. She said that the person -- well, they
6 asked the jurors after the trial was over and
7 everything, they asked the jurors after the trial
8 was over and everything, they asked the jurors,
9 "What made you come up with the decision to find
10 the person not guilty?"

11 Q Let me stop you there. Is this the passage you
12 recall? This is the solicitor speaking in closing.
13 "So after the case was over, he asked a couple of
14 jurors, 'Do you mind if I talk with you to kind of
15 share with me in the deliberations and why you
16 voted the way you voted? If I did something wrong,
17 maybe I can do better next time or what.'"

18 "He shared with me that a couple of jurors
19 said, 'Yeah, we believe the guy was guilty. We
20 know he was guilty, but the State didn't prove it.'
21 I started thinking about that notion."

22 "Well, if the jury believes that the guy is
23 guilty, the only way the jury could believe that
24 the guy was guilty was based on evidence that came
25 out in the case."

1 Is that what you are referring to?

2 A Yes, sir.

3 Q Did your lawyer make any sort of objection during
4 that statement?

5 A No, sir.

6 Q And do you feel that that prejudiced your case?

7 A Yes, sir.

8 Q Is there anything else that you have alleged under
9 that allegation about prosecutorial misconduct that
10 you want to bring to the Court's attention?

11 A Like I said, that was kind of like the main thing
12 that kind of bothered me. Being that, you know, I
13 never been to law school, I really don't know too
14 much about the law, other than personal experience.

15 That was one thing that kind of stood out that
16 I felt like the jury shouldn't have been persuaded
17 to go either way, not just go off no gut instinct.
18 They should have been -- you know, they should have
19 been more about the evidence than when the
20 statements was made, like, on page 179, line 3
21 through 8.

22 "Sometimes because television" -- at least
23 that's what I'm reading from -- "Sometimes because
24 television -- because we expect *Forensic Files*
25 and *CSI* and *Law and Order* -- they are supposed to

1 be a whole bunch of stuff that you are supposed
2 to hear about in seeing the case before you can
3 find the defendant guilty. Folks, that's not the
4 case."

5 This is the solicitor saying that. "If you
6 believe, if you are firmly convinced that the
7 defendant did the acts he is accused of doing, you
8 should find him guilty."

9 That was kind of one of the main things that
10 stuck out to me.

11 Q And did your lawyer make any objection?

12 A No, sir.

13 Q Let's move on to some of your other allegations.
14 Are you done with that allegation?

15 A Yes, sir.

16 Q Okay. You have indicated in your application that
17 your lawyer failed to present witnesses at your
18 trial?

19 A Yes, sir.

20 Q All right. Now, who was a witness that you wanted
21 to testify at your trial?

22 A Well, one of the main witnesses was a man named
23 Mr. Willie Fred Morris.

24 Q Okay. Is that someone that you told your lawyer
25 about?

1 A Yes, sir.

2 Q And what did you tell your lawyer? How did you
3 tell your lawyer that Mr. Morris may have been able
4 to assist you?

5 A Well, during the course of that Saturday morning to
6 that Monday, Mr. Morris was there, even when I
7 wasn't.

8 Q When you say there, where is there?

9 A At the trailer, at the house, my home, I guess.

10 Q Okay. Keep going.

11 A Yes, sir. Like, he was there when I wasn't there.
12 Like, whatever I needed, you know, him to do or him
13 to go some place, like, he was there pretty much
14 the whole weekend.

15 Not only him, there was other folks that I
16 mentioned, but he was, like, the main one, being
17 that he was the one of the ones that this girl used
18 his phone to call people and get on Facebook. Some
19 of this stuff was done when I wasn't there, but
20 this is some of the stuff that I witnessed.

21 Q Was the girl who was the alleged victim, was she
22 staying at your house?

23 A Not really. There was never -- just at the time
24 when I almost ran her over that morning, you know,
25 I tried to take her around. I tried to take her

1 wherever she could possibly go.

2 But she kept lying about where she lived, you
3 know, she kept lying about where she lived or where
4 she needed to go to. At the time I was kind of
5 busy that morning.

6 So I was like, "Well, I could drop you off
7 here and can you figure out what you need to do?"
8 Because I saw that she was in a bad situation.
9 Okay?

10 Q And Mr. Morris observed her being at the trailer?

11 A No. At the time there was another man. At the
12 time there was another man, the one who they said
13 raped her. He was at the house during the time
14 when I dropped her off there.

15 Q All right. Going back to Mr. Morris, was he
16 someone that was either under subpoena or that you
17 thought would be present at your trial?

18 A Yes, sir, he was under subpoena.

19 MR. BOOZER: Your Honor, page 45 I will be
20 referencing in the transcript.

21 THE COURT: Thank you.

22 BY MR. BOOZER:

23 Q Was there some discussion by your lawyer where she
24 asked for a continuance because Mr. Morris was not
25 present?

1 A Yes, sir.

2 Q And that was denied?

3 A Yes, sir.

4 MR. BOOZER: Excuse me, Your Honor. It's page
5 45 in the record on appeal.

6 THE COURT: Yes, sir.

7 BY MR. BOOZER:

8 Q Along with what she felt were some Rule 5
9 violations?

10 A Yes, sir.

11 Q Now, you have also got an allegation that your
12 lawyer, without explaining to you what "stipulate
13 to deliberate with 11 jurors meant." She choose to
14 go forward.

15 Tell the Court a little bit about how many
16 jurors ended up deliberating in your case.

17 A Well, there was 12 at the beginning. But during
18 the process, shortly after they called for the
19 deliberations, one of the jurors said that she
20 wasn't felling well.

21 She sent a note out to the judge, and the
22 judge asked some questions. Then he called for her
23 to come out. She said she didn't feel well enough
24 to go forward with the trial or whatever.

25 Q And this is on page 221, the record on appeal

1 numbers. If you recall, is that where all this is
2 starting to occur?

3 A Yes, sir.

4 Q The Court asked the juror, Ms. Green, how she was
5 doing. She says she needs to go home. The judge
6 says yes. So he allows her to leave?

7 A Yes, sir.

8 Q And then on page 222, do you recall there being
9 what appears to be a break? Then your lawyer tells
10 the Court that Mr. Clements will stipulate to 11.
11 Do you recall that?

12 A Yes, sir, I recall reading that.

13 Q You recall reading that?

14 A Yeah.

15 Q Do you recall what discussion you were having with
16 Ms. Shuler at the time about this, if any?

17 A It was no discussion at the time. Like, I think we
18 spoke briefly when the judge -- I mean, I kind of
19 had a problem when the judge said something about,
20 "Do y'all want to go for a mistrial?"

21 I was kind of looking for her to, you know,
22 kind of go with that. Because really from the way
23 the trial was going, like, I didn't feel, like, me
24 or my lawyer was 100 percent prepared for that
25 trial.

1 Because by witnesses not being questioned, it
2 was some more surveillance tapes that should have
3 been retrieved, you know. Their statements should
4 have been taken at least, if not by police, at
5 least, you know, me and my lawyer at the time.
6 Because we got a statement from my witnesses that
7 would have better explained my case during the
8 course of trial.

9 Q And did you want your lawyer to stipulate to having
10 11 jurors or did you want her to ask for a
11 mistrial?

12 A For the mistrial. I was looking for the mistrial.

13 Q Did y'all have any discussion about a mistrial?

14 A Yeah. I said -- I mentioned it to her. I was,
15 like, you know, "Let's go for the mistrial."
16 Because, like I said, we weren't prepared.

17 Q What was her response to that?

18 A I don't recall the words but it just -- nothing
19 happened.

20 Q Okay. Now, on page 223 -- again, this is the
21 record on appeal, beginning at line 23 -- your
22 attorney says "Your Honor, he" -- meaning you --
23 "has indicated to me that he will stipulate to 11
24 jurors so long as they will continue to deliberate
25 this evening. This is a qualified stipulation."

1 So do you recall what that may have been
2 about?

3 A Yeah, I recall what it was about. But even that
4 seemed like "Okay. I'm rushing y'all to come up
5 with a decision. I am rushing y'all to judge my
6 life in a day right now."

7 I felt like that was kind of crazy too, to
8 rush them people to come to a decision if they
9 didn't have one. I wouldn't agree to go forward to
10 rush those folks to come up with a decision that
11 day because, like I said, it was bad, man. It was
12 a bad trial.

13 Q Okay. Mr. Clements, I think that we have covered
14 all of your allegations as they have been alleged
15 in your PCR application.

16 Is there anything -- this is certainly your
17 day in court -- is there anything that we have not
18 been over or that you want to bring to the Court's
19 attention that we have not covered?

20 A Like I said, you know, during that trial, you know,
21 like I said, it was bad. Referring back to
22 page 178, you know, when the prosecutor spoke to
23 the jury about questioning the jurors in the case
24 that they had before or whatever, even I knew that
25 that were talking about a case that I had.

1 They were actually talking -- she was actually
2 talking about me. She was actually talking about a
3 case that I had already had with them in 2005, and
4 the jurors found me not guilty. She was actually
5 -- I mean, it was clear as day.

6 Q What you are talking about now, you are talking
7 about when we discussed earlier where the solicitor
8 was stating that another solicitor came to her
9 about talking to the jury after the case had
10 been --

11 A Yes, sir.

12 Q -- someone had been acquitted. Do you think that
13 was you that they were talking about?

14 A I pretty much knew that was me. I knew that was me
15 they were talking about.

16 Q Did you have any discussion with Ms. Shuler about
17 that?

18 A I mentioned that to her too.

19 Q What was her response?

20 A It was little words said.

21 Q Other than that, is there anything we have not
22 covered?

23 A No, sir.

24 Q Thank you. Please answer any questions the State
25 may have.

CROSS EXAMINATION

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BY MS. COLEMAN:

Q Good morning Mr. Clements. How are you?

A All right.

Q Did the jury know that the prosecutor was talking about another one of your cases --

A No, sir.

Q She never said your name?

A No, she never said my name.

Q Now, you have alleged in your application a Brady violation and you say prosecutorial misconduct, a violation of the Fifth and Fourteenth amendment, and the doctrine of Brady.

Were there any other issues that you had besides that comment in her closing argument?

A No, sir -- no, ma'am.

Q And did she turn over all discovery that you know of?

A Yes. Some of it was late but, yes.

Q So you had everything you needed by the time you got to trial?

A Well, some of it was given to me during trial.

Q Okay. Now, you mentioned a witness that your trial counsel should have called, Mr. Morris. Is he here today to testify?

1 A No, ma'am.

2 Q Now, you stated that he was in your apartment or
3 your house that entire weekend; is that right?

4 A Yes.

5 Q Was this the same man that was alleged to have
6 raped the victim?

7 A No, ma'am.

8 Q That was a different person?

9 A Yes, ma'am.

10 Q And did the Court ever know or did the jury ever
11 know the identity of the man who was alleged to
12 have raped her?

13 A No, ma'am. They never really -- like, the police
14 never really questioned me about that. I mean, if
15 that incident happened at my house, man, I would
16 have been have willing to give them the information
17 on him, just cause.

18 I mean, if she had even said that, I would
19 have been willing to tell them right then exactly
20 what -- as a matter of fact, I probably would have
21 called the cops on him myself.

22 Q Did you do that?

23 A No, I didn't knew anything about that.

24 Q But by the time you got to trial --

25 A Oh, yeah. By the time I got to trial, I knew about

1 it.

2 Q Did you ever tell anyone then who it was?

3 A No. I thought that my lawyer could have used that
4 as some sort of leeway.

5 Q Thank you. No further questions.

6 MR. BOOZER: No redirect, Your Honor.

7 THE COURT: Sir, you may step down.

8 (Witness leaves the witness stand.)

9 THE COURT: Call your next witness.

10 MR. BOOZER: No further witnesses, Your Honor.

11 MS. COLEMAN: The State calls Ms. Amanda
12 Shuler.

13 M. AMANDA SHULER, being
14 first duly sworn, testifies as follows:

15 CLERK: State your name for the record and
16 spell your last name, please.

17 THE WITNESS: M. Amanda Shuler, S-H-U-L-E-R.

18 **DIRECT EXAMINATION**

19 BY MS. COLEMAN:

20 Q Hi, Ms. Shuler. Thank you for being here today.

21 A Thank you.

22 Q How long have you been practicing law?

23 A I was admitted to practice in 2008. After I
24 graduated law school, I did a one-year judicial
25 clerkship in Anderson with G. Ross Anderson and

1 began private practice in 2009.

2 Q Do you recall when you were appointed to this case?

3 A I looked up the date in my file, and I was
4 appointed on October 26, 2013.

5 Q And how many times did you meet with the applicant
6 prior to his trial?

7 A My notes indicate five or six occasions; however,
8 Mr. Clements would periodically drop by my office.
9 I didn't write down every time he came by, but I
10 met with him several times.

11 Q Did the applicant cooperate with you during the
12 course of your representation?

13 A He did.

14 Q Did you file any Brady or Rule 5 motions?

15 A I did.

16 Q And did you review the discovery with the
17 applicant?

18 A Yes, ma'am.

19 Q Were there any issues with getting discovery
20 material in this case?

21 A There were some things left out of the discovery
22 that I felt like should have been disclosed. One
23 of -- Mr. Clements also had a drug charge that
24 stemmed from the execution of the search warrant in
25 this case.

1 They charged him with various drug offenses.
2 Those were ultimately dismissed. I received the
3 notice -- or I think I have the warrants on that,
4 the SLED report, and the tracking sheet indicating
5 that that case had been dismissed; but I don't
6 think that I got the incident report until later on
7 in the case.

8 There was also some records where the victim
9 had some medical treatment and made statements to
10 that to those medical providers. I felt like that
11 those should have been disclosed. Ultimately, that
12 was disclosed but it was right at trial if I'm not
13 mistaken.

14 Q So you did have all those materials by the time the
15 trial started?

16 A It might have been during, but that's based on my
17 memory.

18 Q And was all this discussed in a pre-trial hearing
19 in the transcript?

20 A Yes.

21 Q Do you believe that getting these materials right
22 before the trial or maybe during the trial, did
23 that change the outcome of the case or affect your
24 ability to try this case?

25 A No.

1 Q As far as the prosecutor's closing argument in this
2 case, the applicant has alleged today that she made
3 an improper statement to the jury about a story of
4 another case that they had.

5 Did you believe that this was objectionable at
6 the time it was made?

7 A No.

8 Q And if you had objected, do you think you would
9 have been successful in that objection?

10 A No.

11 Q Do you believe that it changed the outcome of the
12 trial?

13 A No.

14 Q Do you believe that she was talking about the
15 applicant and another one of his previous cases?

16 A No.

17 Q So that wasn't an issue you thought you needed to
18 raise?

19 A No, ma'am.

20 Q What was your defense strategy in this case?

21 A The victim had made several, several inconsistent
22 statements. She admittedly lied to law enforcement
23 several times and had run away on several
24 occasions.

25 So the trial strategy was to bring out all

1 those inconsistencies and to show the jury that law
2 enforcement did not investigate the case as
3 thoroughly as I believe they should have.

4 Q And will you tell us the facts of what the State
5 alleged against the applicant here?

6 A The State alleged that Mr. Clements had sexual
7 relations with a -- I believe she was a 13-year-old
8 minor. It was alleged that he picked her up and
9 gave her a ride, took her to the gas station to get
10 some food, gum, water, I believe it was.

11 He took her back to his house, allowed her to
12 shower; and she stayed there for several days. And
13 during that time, they had sexual contact with one
14 another.

15 Q And did he admit doing this to any of you?

16 A No.

17 Q Were any parts of that story true according to the
18 applicant?

19 A Yes.

20 Q Which parts?

21 A The facts surrounding how -- he admitted that he
22 came in contact with the victim and met her as she
23 was -- he said she was running across the road and
24 he almost ran over her and then picked her up and
25 helped her out.

1 Q So he told you that he did take her to his
2 apartment or his home that weekend; is that right?

3 A Yes.

4 Q He just alleged that he did not have sex with her?

5 A Right.

6 Q Okay. Did you know anything about the identity of
7 the man that was claimed to have raped her while he
8 was at his house that weekend?

9 A I believe Mr. Clements told me his name, but I
10 couldn't tell you what his name is today. I looked
11 through my notes. I may have wrote it down. I
12 don't remember.

13 Q Did you do any investigation into this man?

14 A I did.

15 Q And what were the results of that investigation?

16 A I wasn't able to locate him on my own or find him.

17 Q Did you investigate Mr. Morris?

18 A I did.

19 Q And was that a witness that you planned to use at
20 trial?

21 A We subpoenaed him to be present. I obtained the
22 subpoenas from the Clerk's Office, turned them over
23 to the Sheriff's Department for service. They were
24 served, but I believe they were served late.

25 So at some point in time, I was told that

1 Mr. Morris was not going to be able to be present
2 at the trial because he was having surgery. That's
3 whenever I requested a continuance. Mr. Morris's
4 testimony was going to be to corroborate
5 Mr. Clements's statement that he was there just to
6 help the victim out.

7 Q Did you have enough time to prepare for trial?

8 A I did.

9 Q Would you briefly describe the State's evidence
10 against the applicant?

11 A There was the victim's statement, and the victim's
12 statement was corroborated by -- she stated that
13 she put a blanket -- I think that she couldn't
14 recall the cover, but she put a blank underneath
15 the bed and took her hair out of her head and put
16 it in the sink.

17 She was able to corroborate what the house
18 looked like, some locations of firearms that were
19 in the house. There was no forensic evidence.
20 There was no DNA evidence on the items collected.

21 There wasn't a rape kit that was done, and I
22 don't think that there was a forensic interview
23 done. So the State's evidence was pretty much the
24 victim's allegations that the sexual encounter
25 occurred.

1 Q In your opinion do you think that this victim's
2 testimony and the evidence corroborating it was
3 strong against the applicant?

4 A I don't know that I can really answer that
5 question.

6 Q Okay. Now, at the page where the juror was excused
7 and you stipulated to going forward short one
8 juror, why did you choose to stipulate to that?

9 A I didn't make that choice.

10 Q Who made that choice?

11 A Mr. Clements.

12 Q And you discussed this with him?

13 A We had an extensive conversation about it that
14 occurred during the break. I discussed with him
15 the implications of the jury deliberating with only
16 11 people, that there was one less person that the
17 State had to convince. We discussed all of that,
18 and he ultimately made the decision to allow the
19 case to continue with 11 jurors.

20 Q Did you see any reason to request a mistrial at
21 that point in the trial?

22 A Mr. Clements and I discussed that, and I let him
23 make the decision.

24 Q Thank you. Nothing further.

25 THE COURT: Mr. Boozer?

1 MR. BOOZER: Thank you, Your Honor.

2 CROSS EXAMINATION

3 BY MR. BOOZER:

4 Q Ms. Shuler, how are you?

5 A Doing well. Thank you.

6 Q Good. You actually requested a continuance because
7 Mr. Morris was not available?

8 A That's correct.

9 Q And you had indicated earlier that it was your
10 belief that he would corroborate certain aspects of
11 Mr. Clements's story.

12 What were the details of what his testimony
13 would have been at that time?

14 A That he was present at Mr. Clements's house and
15 that the victim was there and used the phone and
16 could come and go as she pleased. I believe that
17 to be the substance of what he was going to testify
18 to.

19 Q And that he didn't observe any sort of sexual
20 contact between the victim and Mr. Clements?

21 A Correct.

22 Q Was he someone you were going to actually put on
23 the stand or were you going to make that decision
24 as the trial progressed?

25 A Typically I would wait and make that decision as

1 the trial progressed. I don't recall in this
2 situation what -- if I would have called him or
3 not, but he was not available because he was having
4 surgery.

5 Q Going into the trial, was Mr. Clements under the
6 impression that Mr. Morris would be testifying?

7 A Yes.

8 Q Okay.

9 A We both were.

10 Q In this case -- and Mr. Clements, he was out on
11 bond while the charges were pending?

12 A Yes. He was out on bond and then got the new
13 charge and was in jail at some point for those
14 charges, but I'm not exactly sure when exactly that
15 was. But he was out on bond.

16 Q Do you recall if there was a plea offer in the
17 case?

18 A If I am not mistaken, there was a plea offer of ten
19 years. I don't recall a conversation of an offer
20 of zero to four years. I do recall discussing with
21 him that it might be beneficial if he would
22 disclose the gentlemen's name that actually
23 forcibly raped the victim, but there was no plea
24 offer contingent on that information I don't
25 believe.

AMANDA SHULER -- CROSS -- MR. BOOZER

1 Q Did he offer you that name?

2 A As I testified before, I believe he did.

3 Q Did you do anything with that information?

4 A That would not be mine to do anything with.

5 Q Well, would that assist in maybe negotiations with
6 the solicitor if he can bring in someone else in
7 the case? It may help his case out?

8 A I did tell the solicitor that he knew who the
9 person was that forcibly raped -- or he believed he
10 knew who the person was that forcibly raped the
11 victim.

12 Q At that point did you -- well, what was the
13 solicitor's response to that?

14 A I don't know. I don't remember.

15 MR. BOOZER: Your Honor, may I approach the
16 witness?

17 THE COURT: Yes.

18 BY MR. BOOZER:

19 Q Ms. Shuler, my client has handed me a handwritten
20 notation from his case file. If you would take a
21 moment and just look at that and tell me if you
22 recognize it.

23 A (Pause.) Yes, it appears to be my handwriting and
24 some notes that I made in this case.

25 Q Is there a date on it?

1 A 7/30/2014.

2 Q And just taking a moment in reviewing that, is that
3 a -- are those notes relating to Mr. Clements's
4 case that we are here on today?

5 A Yes.

6 Q And is that a true and accurate copy of your notes?

7 A Yes.

8 MR. BOOZER: Your Honor, I only have one copy.

9 May I am mark it as an exhibit, Applicant's 1?

10 THE COURT: Any objection?

11 MS. COLEMAN: No objection.

12 (Applicant's Exhibit Number 1 is received into
13 evidence.)

14 THE COURT: Mr. Bailiff, would you make a copy
15 or copies of that, sir?

16 (Pause.)

17 BY MR. BOOZER:

18 Q Ms. Shuler, in looking at this Applicant's Exhibit
19 1, which you have indicated are notes that you made
20 while representing Mr. Clements, does the name
21 Haskell -- I think that's what it is -- Haskell
22 McAlister that is underlined, does that name ring a
23 bell at all or do you know who that may have been?

24 A That, I believe, is the name of the individual that
25 Mr. Clements told me was the assailant.

1 Q The one that the young woman alleged had also raped
2 her?

3 A That's correct. I believe that's the gentlemen,
4 but right off right now, there is another name on
5 there; and I'm not sure what the other name is
6 written down for.

7 Q Is that the Presley name?

8 A Furman Presley, yes.

9 Q But with regard to the McAlister name, did you know
10 if you took that over to the Solicitor's Office and
11 said, "Hey, here is the other guy"?

12 A I wouldn't have told the solicitor his name, but I
13 would have said that he claims to have known that.
14 That would not be my information to provide to
15 them.

16 Q Do you think that could assist in plea negotiations
17 though, that you are providing some more
18 information that may help them in the case?

19 A I told them that he knew his name. It was his
20 information to provide. It's certainly not mine to
21 provide. If I'm not mistaken, he didn't want me to
22 say the name. He wanted me to keep that under our
23 hat.

24 Q Okay. Was he fairly adamant about proceeding to
25 trial and not accepting a plea?

1 A Yes.

2 Q And he denied the entire time you were representing
3 him that he had committed this crime?

4 A He denied committing the crime the entire time I
5 represented him.

6 Q And you had been asked a little bit earlier by
7 Madame Attorney General about some statements made
8 by the solicitor in closing on the record on
9 appeal, page number 191, where she is conveying to
10 the jury a story about another solicitor who had
11 spoken with the jury after they got done on the
12 case that the State had lost.

13 Basically the jury conveyed to them, "Well,
14 the guy was guilty. We knew he was guilty, but the
15 evidence didn't show it," or something to that
16 effect. Do you recall that?

17 A Yes.

18 Q But the State didn't prove it is what they were
19 saying. Do you recall that?

20 A Yes.

21 Q Do you think that was sort of -- do you think there
22 was any way that the jury could convey that to
23 mean, "Well, if you think he's guilty, even though
24 we didn't prove it, you need to go ahead and find
25 him guilty"?

1 A No.

2 Q You don't see that as being a possible
3 interpretation?

4 A No, especially whenever the judge charges the jury
5 that the comments made by attorneys are not
6 evidence and that he charges them on the law of
7 reasonable doubt.

8 Q And going back to the stipulation, did you have any
9 discussion -- if you only had 11 jurors, what were
10 the possible outcomes? Could you have made a
11 motion for mistrial at that point or what could you
12 have done?

13 A I could have moved for a mistrial.

14 Q Would it probably have been granted?

15 A Yes.

16 Q Okay.

17 A Well, I will say, that I can't tell you. Because
18 there were two alternate jurors. The two alternate
19 jurors had already been released. The judge said
20 that he would bring them back in the morning. So I
21 can't tell if he would have granted a mistrial at
22 that time or not.

23 Q Do you recall having any discussion with
24 Mr. Clements about you could make a motion for
25 mistrial?

1 A Yes.

2 Q Do you recall the specifics of that discussion?

3 A I know we discussed our options, and an option that
4 we had at that time was a mistrial, moving for a
5 mistrial.

6 Q In moving for a mistrial, you obviously didn't have
7 your one witness there, Mr. Morris. Would that
8 have allowed y'all -- if you did make a motion and
9 if it were granted, that would allow you a little
10 more time to possibly get Mr. Morris there?

11 A Yes, it would have. But also keep in mind that
12 Mr. Morris was under subpoena one other time and
13 also failed to show. Well, he was unable to show
14 at that other time because of his health.

15 Q Okay. Thank you, ma'am. That's all the questions
16 I have.

17 THE COURT: Anything further?

18 MS. COLEMAN: Just briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. COLEMAN:

21 Q You testified a moment ago that the applicant --
22 you believe that the applicant did not want to
23 disclose the identity of the man who raped or who
24 was alleged to have raped the victim in this case.

25 Do you know why he didn't disclose that

1 identity?

2 A He wanted to use that to his advantage at some
3 point should it need to be brought up.

4 Q Do you think that it would have been more or less
5 helpful to you to have an identified man? Would
6 that have been helpful to you in this trial
7 representing this client?

8 A No, I don't think so. It possibly -- I mean, I
9 used it in plea negotiations, that "you and I know
10 that he didn't commit the offense." But would it
11 have exonerated him from his charge? No.

12 Q Thank you. Nothing further.

13 MR. BOOZER: Nothing further, Your Honor.

14 THE COURT: Ma'am, you may step down. Thank
15 you.

16 THE WITNESS: Thank you, Your Honor.

17 (The witness leaves the witness stand.)

18 MS. COLEMAN: Your Honor, the State calls
19 Kimberly Barr.

20 (The witness comes forward.)

21 KIMBERLY BARR, being
22 first duly sworn, testifies as follows:

23 CLERK: State your name for the record and
24 spell your last name, please.

25 THE WITNESS: Kimberly Barr, B-A-R-R.

1 DIRECT EXAMINATION

2 BY MS. COLEMAN:

3 Q Good morning, Ms. Barr. Thank for being here.

4 A Good morning. Thank you.

5 Q Are you familiar with the case of State versus
6 Faron Clements?

7 A Yes, very familiar.

8 Q And how were you involved in this case?

9 A I prosecuted Mr. Clements for CSC with a minor.

10 Q Were there Rule 5 or Brady motions filed in this
11 case?

12 A Yes.

13 Q Did you turn over discovery material?

14 A I did.

15 Q Was there -- was there any issue with turning over
16 discovery materials in this case?17 A No. It looks like from my records that the Rule 5
18 material was disclosed in June of 2014. Also, we
19 submitted supplemental discovery material to
20 counsel.21 My recollection is the only piece of -- and
22 I'm not going to call it evidence, and I'm not
23 going to call it Rule 5 material because I don't
24 believe that it was subject to Rule 5 disclosure.

25 The only point of contention was a DJJ

1 psychological report of the victim in this case.
2 She had had a charge in family court as a juvenile
3 for being incorrigible and running away from home.

4 So we had her evaluated as a part of that
5 process. As part of that process, she was seen by
6 a psychologist obviously to make certain
7 recommendations for her.

8 I did not believe that that was subject to
9 disclosure, and I think that was the only thing
10 that was really a point of contention during the
11 trial.

12 Q Okay. And was there discussion about that specific
13 document on the record before the trial?

14 A It was, yes.

15 Q Were there any documents that you believe were
16 exculpatory to the applicant that were not turned
17 over?

18 A No.

19 Q Now, the applicant has alleged today that you told
20 a story, a story from another prosecutor in this
21 closing argument; and you commented on this to the
22 jury.

23 A Yes.

24 Q Was this a proper argument for you to make?

25 A I certainly thought so. I have done it in several

1 cases, at least half a dozen cases.

2 Q If trial counsel had objected to this statement by
3 you, what would you have said in response to her
4 objection?

5 A Well, the argument that I was making to the jury is
6 oftentimes in criminal cases, because of
7 television, there is a belief by jurors that you
8 have to have DNA evidence. You should have DNA
9 evidence.

10 Obviously, we want to have it in cases like
11 this; but the reality is oftentimes we don't.
12 Criminal sexual conduct with a minor cases often
13 occur in isolation, in private.

14 They are probably -- in 15 to 20 cases I have
15 handled -- there is maybe one or two cases where
16 there is an eyewitness. It's very rare that there
17 are eyewitnesses in sexual assault cases. And when
18 there is a delay in the reporting, it's very rare
19 that you get DNA evidence.

20 So the argument to the jury was -- and I
21 believe the transcript reflects it -- if the jurors
22 are firmly convinced that a defendant is guilty
23 based on the evidence, that they should find him
24 guilty. So I would argue that would be an
25 appropriate argument to make before the jury.

1 Q And did the judge explain to the jury the State's
2 burden of proof?

3 A He did.

4 Q Do you believe that this comment by you in your
5 closing argument solely changed the jury's verdict
6 in this case?

7 A No.

8 Q Thank you. Nothing further.

9 THE COURT: Mr. Boozer.

10 MR. BOOZER: Beg the Court's indulgence.

11 (Pause.)

12 CROSS EXAMINATION

13 BY MR. BOOZER:

14 Q Ms. Barr, how are you?

15 A I'm great. How are you?

16 Q I'm doing fine. Thank you. When Madame Attorney
17 General was asking you about the particular closing
18 and a fellow prosecutor's story that was shared
19 with you, do you have any knowledge whether that
20 particular case that that solicitor was sharing
21 with you related in any way to Mr. Clements?

22 A No. I had previously prosecuted Mr. Clements in
23 Williamsburg County for CSC in the first degree.
24 He is correct. The jury returned a not guilty
25 verdict in his case.

1 The story that I referenced was a story that I
2 actually had heard from now the Honorable Ferrell
3 Cothran. He was a prosecutor in Clarendon County
4 before he was elected to the circuit court.

5 It was a story that he shared with me in a
6 case that he prosecuted in Clarendon County where a
7 jury returned a not guilty verdict. It didn't have
8 anything to do with Mr. Clements.

9 Q Do you recall in this case that the victim had
10 alleged that there was another male who had raped
11 her?

12 A Yes.

13 Q Was that something you guys were interested in at
14 the Solicitor's Office?

15 A Yes.

16 Q Do you recall if you had any discussions with
17 Ms. Shuler, who represented Mr. Clements at the
18 time, about the identity of that individual?

19 A I know I wanted to know who it was. Just by way of
20 explanation, the victim was 13 years old at the
21 time that she met Mr. Clements. She had, in her
22 words, engaged in consensual sex with Mr. Clements
23 and other individuals who are not connected at all
24 with his crimes.

25 She also described, while she was at the

KIMBERLY BARR -- CROSS -- MR. BOOZER

1 defendant's house, Mr. Clements's house, that an
2 older gentlemen had forcibly raped her. So in her
3 mind she did not view her interactions with
4 Mr. Clements as being a forcible rape.

5 Because she, in her mind, consented, although
6 she was not of legal age to consent. But she was
7 very upset and became emotional. Curiously, the
8 only time she became emotional during the trial was
9 when she talked about the forcible rape by the
10 other person at Mr. Clements's house. So, yes, I
11 did want to know that information.

12 Q Do you recall what -- did you tell Ms. Shuler that,
13 that you wanted to know who this was?

14 A Yes.

15 Q And what did Ms. Shuler tell you?

16 A I don't remember. I know that we had conversations
17 about that individual. I know that I conveyed to
18 her that I wanted to know who that individual was.
19 I do recall that she never gave me a name, but she
20 did disclose that Mr. Clements knew who that person
21 was.

22 Q Had you been provided with the identity of who that
23 person was with a name, is that something y'all
24 then would have investigated?

25 A Yes.

1 Q Do you believe that you would then have made a very
2 favorable offer to Mr. Clements based on that
3 information?

4 A Favorable might be in the eye of the beholder. I
5 would have made a plea offer to him. Based upon
6 his criminal history, it would have included a
7 recommendation of jail time, prison time.

8 But I would have -- and I don't know that
9 anyone who received a recommendation of prison time
10 from the State would necessarily believe that that
11 was favorable.

12 But I did think that the information had
13 value, and I would have taken that into
14 consideration with regard to any plea negotiations
15 or recommendations from the State.

16 Q Do you know what plea offers were made to
17 Mr. Clements prior to his trial?

18 A I don't have a recollection of the specific nature
19 of the plea offers. I know that I conveyed to
20 Ms. Shuler that if he were willing to tell me who
21 that person was, that it would be of benefit to
22 him.

23 Q Okay. Thank you, Ms. Barr. That's all the
24 questions I have.

25 MS. COLEMAN: Very briefly.

REDIRECT EXAMINATION

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BY MS. COLEMAN:

Q If he had revealed the identity of this man who forcibly raped the victim, would you still have prosecuted the case against Mr. Clements?

A Absolutely.

Q Thank you. Nothing further.

THE COURT: You may step down.

(The witness leaves the witness stand.)

MS. COLEMAN: The State has no further witnesses, Your Honor.

THE COURT: Anything by way of argument?

MR. BOOZER: We will let the testimony stand, Your Honor.

MS. COLEMAN: Nothing from the State, Your Honor.

THE COURT: Very well. I will let you all know my decision.

*** END OF REQUESTED TRANSCRIPT OF RECORD ***

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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Third Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal, in the Civil Court for Williamsburg County, South Carolina, on the 31st day of March, 2017.

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

December 12, 2017

L Coconut Pantsari

Court Reporter

7/30/14

While looking for her family he
ran into

Javaris Thomas

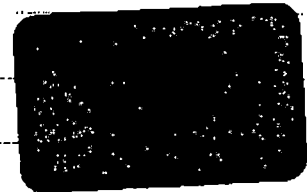
Darnell McCrea aka Jordan Fish

Fred Morris - around that weekend
708 Lauretown Rd
Kingstree SC 29556

Dascal McArthur + Furman Pressley

Client Wants Case Called in October

Copy of discovery given to client



STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

Faron M. Clements, #298780,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

2016-CP-45-266

ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on June 22, 2016. Respondent submitted its Return on February 28, 2017. An evidentiary hearing was convened on March 31, 2017, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial attorney, M. Amanda Shuler, Esquire, and Solicitor Kimberly Barr also testified. The Court had before it a copy of the trial transcript, the records of the Sumter County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Williamsburg County. Applicant was indicted by the October 2014 term of the Grand Jury for Williamsburg County for two counts of Criminal Sexual Conduct with a Minor – 2nd degree

DCB
8-10710

(2013-GS-45-0247). Applicant was represented at trial by M. Amanda Shuler, Esq. Applicant was convicted on both counts and was sentenced on October 16, 2014 by the Honorable Clifton Newman to eleven years' imprisonment for both counts, to be served concurrently.

Applicant filed a timely notice of appeal. An Anders brief was submitted, and the South Carolina Court of Appeals affirmed Applicant's conviction in an opinion filed March 30, 2016. State v. Clements, Op. No. 2016-UP-145 (S.C. Ct. App. 2016). The Remittitur was returned on April 29, 2016.

II. ALLEGATIONS

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

1. Ineffective Assistance of Trial Counsel
 - a. "Counsel failed to pursue and use key testimony of witnesses who were subpoena[ed]."
 - b. "Counsel without explaining to me what stipulate to deliberate with eleven jurors meant, she chose to go forward."¹
2. Prosecutorial Misconduct
 - a. "Prosecutor violated 5th and 14th Amendments and doctrine of Brady."

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

¹ Respondent interprets this to be a claim of ineffective assistance of counsel, though Applicant labeled this allegation as "Tainted, contaminated, and prejudice jury or jurors" in his application. Eleven jurors deliberated at Applicant's trial after one fell ill and could no longer participate. All parties consented to allowing the eleven jurors to continue deliberating.

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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 that he was arrested for these crimes on June 12, 2013, and he first met with Trial Counsel three months after his arrest. He stated that they met four times before the trial. He stated that the State made him a plea offer for a recommended 0-4 year sentence, but Applicant rejected it because he did not do anything wrong and did not want to plead guilty and wanted a trial.

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Applicant testified that in the State's closing argument to the jury, the Solicitor told a story about a former prosecutor that he believed was about him. ROA 178. He stated that she should not have told this story because it was an inappropriate comment about him and his case, but the jury did not know that the story was about him. He stated that Solicitor Barr persuaded the jurors to decide the case based on their minds, not the facts of the case. He stated that there were no issues obtaining discovery in this case.

Applicant testified that Trial Counsel failed to present witnesses at trial, like Mr. Willie Fred Morris, who was at his house during the time that the victim was there, and the victim used his phone. He stated that he told Trial Counsel about this witness, whom she subpoenaed, and requested a continuance when Mr. Morris was not at the trial. ROA 45. Applicant stated that Trial Counsel also failed to present testimony from the other man who raped the victim while she was at his house.

Applicant testified that Trial Counsel stipulated to continuing the trial with only eleven jurors when one juror was out sick and did not return, and she did not explain to him what it meant to make this stipulation.

Trial Counsel testified that she made a motion before the trial to obtain the victim's medical records, and the medical report was given to her right before the trial. She stated that she believed they were entitled to this information under Brady, but the Solicitor did not. She stated that receiving these documents at the last minute did not affect the outcome of the trial.

Trial Counsel testified that her trial strategy was to bring out inconsistencies in the testimony of the victim and law enforcement's investigator. She stated that Applicant admitted to her that he had picked up the minor victim on the side of the road and she did stay with him at his house, but he did not have sex with her. She stated that Applicant told her the name of the

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man who was alleged to have raped the victim at Applicant's house, but she could not find him. She stated that Mr. Morris was having surgery during the trial and could not be there to testify, so she requested a continuance. However, her request was denied.

Trial Counsel testified that Applicant made the decision to allow the jury to deliberate with one less juror; they discussed it extensively before stipulating, and Applicant decided that he did not want to request a mistrial. Trial Counsel stated that she had enough time to prepare for trial and was prepared to go forward. Trial Counsel testified that she does not think the Solicitor's comments to the jury swayed them because the trial judge charged them on reasonable doubt. She stated that she did not believe that any of the Solicitor's comments were objectionable.

Trial Counsel testified that she does not remember a 0-4 year plea offer from the State. She stated that there was a plea offer of ten years that Applicant rejected. She stated that she told Applicant it might be helpful to him to disclose the identity of the man who raped the victim to the Solicitor, but he did not want to do so. She stated that she told the Solicitor that Applicant knew who the man was, but he did not want to say who it was. She stated that she would not have told the Solicitor because it was not her information to tell.

Solicitor Kimberly Barr testified that she turned over discovery in this case in the beginning of June, 2014, and submitted supplemental discovery, including the DJJ psychological report of the victim, about which there was a discussion on the record before the trial. Solicitor Barr stated that in her opinion, there were no Brady violations, and she does not believe that her closing argument was inappropriate or objectionable. She stated that the trial judge explained the burden of proof to the jury and her comments did not change the jury's verdict.

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Solicitor Barr testified that she had previously prosecuted a case against Applicant in Williamsburg County, and he was found not guilty. She stated that the story she told in closing argument was not about Applicant, but was a story that Judge Cothran told her when he was in the Solicitor's Office in Clarendon County. She stated that she was very interested to know the identity of the man who forcibly raped the victim while at Applicant's home, and Trial Counsel told her that Applicant knew who it was but did not want to disclose it. She stated that if he had told her this information, she would have taken that into consideration when contemplating a plea offer. However, she stated that the plea offer would still have included prison time based on his record, and she still would have prosecuted this case.

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 does not find Applicant's testimony and assertions to be 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 raises several allegations arguing that Trial Counsel was ineffective in her representation surrounding his trial. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-

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Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). This Court finds that the testimony presented at the PCR hearing does not satisfy either prong of the Strickland test; Applicant can show neither ineffectiveness nor prejudice, thus these allegations should be denied and dismissed with prejudice.

Failure to present witness testimony at trial

Applicant alleges that Trial Counsel was ineffective for failing to present witness testimony at trial, including the testimony of Mr. Morris and of the man who was accused of raping the victim at Applicant's home. This allegation is meritless.

Trial Counsel credibly testified that she subpoenaed Mr. Morris to testify at trial, but he was having surgery during the trial and could not attend the trial. The record of the trial transcript indicates that Trial Counsel requested a continuance in order to have Mr. Morris present at the trial, but her continuance request was denied. Therefore, Trial Counsel was not deficient in not presenting Mr. Morris's testimony. Trial Counsel further testified that she investigated the man who allegedly raped the victim at Applicant's home but was unable to find him. Trial Counsel's investigation was reasonable within professional norms, and her inability to locate the witness does not render her deficient.

Furthermore, Applicant has failed to meet his burden of proving that he was prejudiced by the lack of these witnesses' testimony because he did not present either witness at the evidentiary hearing. The South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). "The

applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Applicant did not present any testimony from Mr. Morris or the man who raped the victim to show how their testimony would have changed the outcome of the trial, thus he cannot prove prejudice.

Accordingly, because Applicant has failed to prove either prong of the Strickland test, this allegation is denied and dismissed with prejudice.

Failure to explain stipulation to eleven jurors

Applicant alleges that Trial Counsel was ineffective for failing to explain to him what it meant to stipulate to proceeding with trial with only eleven jurors after one fell ill. This allegation is meritless.

The trial transcript indicates that Trial Counsel consulted with Applicant over the decision to stipulate to an eleven member jury. ROA 210-211. Trial Counsel credibly testified that she discussed this decision and all the possible outcomes he could choose during the trial, and it was his decision to proceed with only eleven jurors. This Court finds that Trial Counsel was not ineffective in this manner, and this allegation is denied and dismissed with prejudice.

PROSECUTORIAL MISCONDUCT

Applicant alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). 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). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on

appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). Applicant has not carried his burden of proving actual prosecutorial misconduct; therefore, this allegation must be dismissed.

While Trial Counsel testified that there were some items she believed should have been turned over to her in discovery, Solicitor Barr credibly testified that everything Applicant was entitled to in discovery was given to Trial Counsel. Furthermore, the trial court heard Trial Counsel's motion to obtain the DJJ report and allowed her to obtain it right before the trial. Trial Counsel credibly testified that receiving this document right before the trial did not affect the outcome of the trial. Finally, this Court finds that nothing in Solicitor Barr's closing statement to the jury was improper or objectionable, and her argument does not constitute prosecutorial misconduct.

This Court finds that Applicant has failed to prove any actions or inactions that amounted to prosecutorial misconduct, and Applicant has failed to prove that he was prejudiced by any of the Solicitor's actions that should result in a new trial. Therefore, this allegation is denied and dismissed with prejudice.

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.

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VII. CONCLUSION

Based on all the foregoing, this Court finds and concludes that 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 Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 21 day of June, 2017.


D. CRAIG BROWN
Presiding Judge
Third Judicial Circuit

Florence, South Carolina

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STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR IN
THE SECOND DEGREE (2 COUNTS)

~~At a Court of General Sessions, convened on October 9, 2014 the Grand Jurors~~
of WILLIAMSBURG County did present upon their oath:

**COUNT ONE - CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE SECOND
DEGREE**

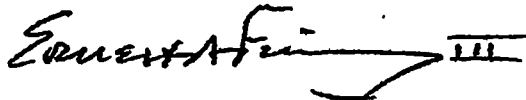
That the defendant, Faron Maurice Clements, did in Williamsburg County, South Carolina on or about June 1, 2013 willfully and unlawfully commit the crime of criminal sexual conduct with a minor in the second degree by engaging in a sexual battery with the victim, Complainant (D/O/B: '1999), a minor child who was with a minor who was over the age of eleven (11) years but less than fourteen (14) years, in violation of §16-3-655(B), South Carolina Code of Laws (1976, as amended).

**COUNT TWO - CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE SECOND
DEGREE**

That the defendant, Faron Maurice Clements, did in Williamsburg County, South Carolina on or about June 2, 2013 willfully and unlawfully commit the crime of criminal sexual conduct with a minor in the second degree by engaging in a sexual battery with the victim, Complainant (D/O/B: '1999), a minor child who was with a minor who was over the age of eleven (11) years but less than fourteen (14) years, in violation of §16-3-655(B), South Carolina Code of Laws (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Solicitor



WITNESSES

Sgt. Juan Ballard
Williamsburg County Sheriff's Office

ARREST WARRANT NUMBER

2013A4510100506

ACTION OF GRAND JURY

TRUE BILL

Date 10/19/14

Shelley Dwyer
Foreperson of Grand Jury

Date: 10/19/14

VERDICT

Count ONE: Guilty

Count Two: Guilty

Foreperson of Petit Jury

Date: 10/15/14

AMENDED
DOCKET NO. 2013-GS-45-0247

The State of South Carolina

County of WILLIAMSBURG

COURT OF GENERAL SESSIONS

OCTOBER

TERM

2014

THE STATE

vs.

FARON MAURICE CLEMENTS

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A MINOR
IN THE SECOND DEGREE (2 COUNTS)

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

FILED

2014 OCT -9 AM 10:59

SHARON W STAGGERS
CLERK OF COURT
KINGSTREE, S.C.