

ORIGINAL

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Hampton County

Honorable Thomas W. Cooper, Circuit Court Judge

RECEIVED

JUL 10 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

LARRY HEYWARD,

APPELLANT

APPELLATE CASE NO. 2016-002033

RECORD ON APPEAL

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State's Exhibit No. 1 (CD)

STATE OF SOUTH CAROLINA
FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF HAMPTON
COURT OF GENERAL SESSIONS
CASE NUMBERS 2013-GS-25-00053
2015-GS-25-00140, 2015-GS-25-00141, 2015-GS-25-00142

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

SEPTEMBER 19, 20, AND 21, 2016
TRANSCRIPT OF PRETRIAL HEARING AND TRIAL
HAMPTON, SOUTH CAROLINA

LARRY HEYWARD

DEFENDANT

B E F O R E:

HON. THOMAS W. COOPER, JUDGE
HON. JEAN H. TOAL, SITTING WITH
AND A JURY

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

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1 DAY ONE, MONDAY, SEPTEMBER 19,

2 2016, 10:19 A.M.

3 PRETRIAL MOTIONS AND RULINGS:

4 BAILIFF: All rise. Court will come to order.

5 THE COURT: Thank you, ladies and gentlemen.

6 Please be seated. Good morning.

7 MR. LEE: I'm going to have to apologize. My
8 client ran out to his truck to get his mom's phone
9 number, but he's coming right back.

10 THE COURT: Okay. All right.

11 MR. LEE: I apologize.

12 SOLICITOR THORNTON: Your Honor, while we're
13 waiting for his client, I've shown these to Mr. Lee.
14 May I approach?

15 THE COURT: Yes, sir.

16 SOLICITOR THORNTON: These are the State's voir
17 dire. I've struck Number 6, your Honor. Mr. Lee's
18 indicated he has no objections to 1 through 5.

19 THE COURT: Okay. Gentlemen, at the outset, let me
20 ask you, Mr. Thornton, please to confirm the indictment
21 numbers that you propose to call at trial. We've had
22 several copies of the indictments. Some are dealing
23 with other situations. And so, I want to be sure that
24 I've got all of the indictments in front of me that you
25 propose to call at trial. If you could go over those

1 with me by number, in fact.

2 SOLICITOR THORNTON: Yes, sir, your Honor. 2013-
3 GS-25-00053, which is misconduct in office.

4 THE COURT: Okay.

5 SOLICITOR THORNTON: Then, you have 2015-GS-25-
6 00140, 00141, and 00142, which are criminal sexual
7 conduct with a minor second degree, and there's actually
8 three counts on that indictment.

9 THE COURT: Right.

10 SOLICITOR THORNTON: Criminal sexual conduct with a
11 minor, which is under the lewd act, under the old law,
12 is 141.

13 THE COURT: Right.

14 SOLICITOR THORNTON: And then, 142 is what would
15 have been lewd act, but it's now criminal sexual conduct
16 with a minor, third degree, because the alleged offense
17 occurred after the change in the law in June of 2012.

18 THE COURT: June the 18th, 2012, right.

19 SOLICITOR THORNTON: Yes, sir.

20 THE COURT: Okay. Is that it?

21 SOLICITOR THORNTON: It is, your Honor. Those
22 would be the indictments that we're going forward on
23 today. And I think your Honor already got this, but I
24 would point out that the misconduct in office was
25 amended, and I believe we sent a copy of that to you,

1 and Mr. Lee got a copy of that when it was done as well.

2 THE COURT: Okay. Good. All right. So, we're on
3 the same page in that regard.

4 SOLICITOR THORNTON: And your Honor, would you like
5 for me to pass these past copies up now, or just wait
6 until I call the case?

7 THE COURT: You can wait until you call the case.
8 I've got those copies.

9 SOLICITOR THORNTON: Yes, sir.

10 THE COURT: Okay. From the proposed voir dire
11 questions that have been sent from the State's proposed
12 voir dire, I will give questions 1 through 5, and I
13 understand without objection. From the defendant's
14 proposed voir dire, the new ones that came down today, I
15 will give questions 1 through 7. I will not give
16 questions 8, 9, or 10. These voir dire will be made
17 court's exhibits after they have been -- after they've
18 been used and the jury has received them.

19 In a chamber's conference a few moments ago, we
20 went over some of the issues regarding pretrial motions.
21 Let me put those on the record at this point in time, in
22 no particular order.

23 The motion to sequester witnesses by Mr. Lee as
24 filed, I will grant that motion. It will be a
25 reciprocal motion. Both State's and Defense witnesses

1 will be sequestered. The sequestration will be in
2 effect at the conclusion of opening statements.

3 We have a motion to determine the admissibility of
4 prior acts under 404(b). At chambers conference, we
5 went over that and resolved as much as we could. Some
6 of the final rulings will have to wait on the
7 foundations which are set and the purposes for some of
8 those things being given.

9 There are two *Jackson v. Denno* statements, which we
10 will go forward with in a few moments.

11 There are no prior convictions the State intends to
12 offer, should the defendant testify.

13 The motion to reveal the deal is another matter
14 that will have to wait to see where the foundation for
15 those things happen to be before we issue a final
16 ruling.

17 The motion to suppress evidence that was dated
18 September the 18th, the State has conceded that it will
19 not seek to introduce the evidence that is under
20 Subparagraph B. Subparagraph A, they intend to offer.
21 That motion will have to be heard at the time it is
22 offered, once we have determined the foundation, once
23 again.

24 The motion to suppress evidence having to do with
25 the videotape, we will deal with that when it is

1 offered.

2 Likewise, the motion on the *Rape Shield Statute*,
3 that will have to be argued completely once the
4 foundation is laid as well.

5 The motion to exclude a written transcript, we'll
6 have to see. First of all, I'll have to see the
7 transcript itself before I rule on that. The transcript
8 itself will not be offered into evidence. If it comes
9 in at all, it will be for demonstrative purposes or for
10 those purposes that enable the jury to better understand
11 what the recording itself actually says. I'll have to
12 hear portions of the recording in any event to determine
13 whether or not the transcript will aid in that regard.

14 The motion to produce evidence regarding a
15 statement connected to a former SLED agent's reason for
16 leaving office, if that is an issue, we will argue it
17 before the agent testifies.

18 The motion to suppress, the State does not intend
19 to offer that motion to suppress having to do with the
20 statement contained in a January the 7th, 2013 statement
21 to SLED.

22 I think that I have touched on all of the things
23 that we could rule on. And those that we cannot, we'll
24 have to wait until they come up at trial.

25 We do have the *Jackson v. Denno* issues matter we're

1 prepared to deal with. Is the State ready to proceed on
2 that?

3 SOLICITOR THORNTON: The State is, your Honor. I
4 would ask the Court to make one change. And this is
5 something Mr. Lee and I discussed out here after getting
6 back from chambers, your Honor.

7 THE COURT: Right.

8 SOLICITOR THORNTON: Which is a motion to suppress
9 evidence. We had already conceded B. I

10 THE COURT: Right.

11 SOLICITOR THORNTON: The State does not need to do
12 A in its case in chief. Obviously, I would reserve the
13 right, depending on what occurs in trial. But at this
14 point, I'll just go ahead and say that the State does
15 not intend to put that in, in its case in chief.

16 THE COURT: Okay.

17 SOLICITOR THORNTON: So, that should resolve that
18 issue.

19 THE COURT: Good.

20 SOLICITOR THORNTON: Your Honor, if I could have a
21 moment with Mr. Lee in reference to the *Denno* hearing
22 that we're about to start.

23 THE COURT: That will be fine.

24 OFF-THE-RECORD DISCUSSION BETWEEN

25 MR. THORNTON AND MR. LEE:

1 JACKSON VERSUS DENNO HEARING:

2 SOLICITOR THORNTON: Thank you, your Honor.

3 State's ready.

4 THE COURT: Okay. You can call your witness.

5 SOLICITOR THORNTON: Jeff Croft.

6 MADAM CLERK: Good morning.

7 SLED AGENT JEFF CROFT: Good morning.

8 MADAM CLERK: Place your left hand on the *Bible* and
9 raise your right hand. Do you swear to tell the truth,
10 the whole truth, and nothing but the truth, so help you
11 God?

12 SLED AGENT JEFF CROFT: Yes, ma'am.

13 SLED AGENT JEFF CROFT

14 DIRECT EXAMINATION

15 BY MR THORNTON:

16 Q Mr. Croft, who do you work for, sir?

17 A I work for the South Carolina Law Enforcement
18 Division, commonly known as SLED.

19 Q And how long have you worked for SLED? And is it
20 okay to call you Agent Croft?

21 A Yes, sir.

22 Q All right. Agent Croft, how long you worked for
23 SLED?

24 A I've worked for SLED for a little over four years
25 now.

1 Q So, were you working for them on or about January
2 of 2013?

3 A Yes, sir, I was.

4 Q Specifically, on January the 4th of 2013, did you
5 receive a call from the sheriff, sheriff's office,
6 Sheriff Smalls, here in Hampton County?

7 A I actually received a call from Captain Neal, who
8 received a call from Sheriff Smalls.

9 Q Did you come out to Hampton County on January the
10 4th of 2013?

11 A Yes, sir, I did.

12 Q And did you speak with the person who's here today,
13 the defendant in this case, Larry Heyward?

14 A Yes, sir, I did.

15 Q Now, how were you dressed when you talked to Mr.
16 Heyward?

17 A I would have been dressed similar to what I am here
18 today.

19 Q All right. Shirt and tie?

20 A Shirt and tie.

21 Q Jacket?

22 A Yes, sir.

23 Q All right. Is that commonly how you work when
24 you're working as an agent with SLED?

25 A Yes, sir, it is.

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DIRECT - AGENT CROFT

1 Q Can you describe for me the place that you we're
2 talking to Larry Heyward in. In other words, was he
3 brought in in cuffs? How did he look when he got there?

4 A Mr. Heyward came in -- actually came in, in his
5 patrol vehicle. He was not in cuffs. He met with
6 myself and another agent at the Hampton County
7 Substation over in Varnville.

8 Q And had he been arrested, or was he in custody at
9 that time?

10 A No, sir, he was not.

11 Q I'm going to hand you, with the Court's permission,
12 --

13 A Yes, sir.

14 ITEM IDENTIFIED AS COPY OF
15 DOCUMENT TITLED SLED *MIRANDA* RIGHTS
16 MARKED COURT'S EXHIBIT NUMBER 1.

17 Q I'm going to hand you what's been marked for
18 identification as Court's Exhibit Number 1. Can you
19 identify that for me, please.

20 A Yes, sir. This is a SLED *Miranda* form, which we
21 provided to Mr. Heyward.

22 Q And is that the form, or a copy of the form, that
23 was used on January the 4th of 2013 with Larry Heyward?

24 A Yes, sir, it is.

25 Q One thing, just so it's clear for the Court and for

1 the record, that you mentioned, you said Larry Heyward,
2 did you say he came up in his patrol car?

3 A He did come up in his patrol vehicle.

4 Q And who was he -- how did he get a police vehicle?

5 A He was employed with the Hampton County Sheriff's
6 Office.

7 Q All right. Now, when you started to talk to Larry
8 Heyward, you referenced a *Miranda* form. Did you read
9 that form to him?

10 A Yes, sir. It was read to him, and then, handed to
11 him for his initials and signature.

12 Q All right. And were you present in the room when
13 that was done?

14 A Yes, sir, I was.

15 Q And in fact, are you one of the witnesses who
16 signed the form?

17 A Yes, sir, I am.

18 Q For record purposes, would you please indicate what
19 rights were read to the defendant in this case, Larry
20 Heyward, prior to him talking to you.

21 A This says: *Miranda Form*. The place is Varnville
22 Substation. Dated 1-4 of 2013. The time is 2342 hours.

23 It says:

24 *Before we ask you any questions, you*
25 *must understand your rights. You have the*

1 right to remain silent. Anything you say
2 can be used in Court as evidence against you.

3 You're entitled to talk to a lawyer
4 now, and have him present now or at any
5 time during questioning. If you cannot
6 afford an attorney, one will be appointed
7 for you without cost.

8 If you decide to answer questions now
9 without a lawyer present, you will still
10 have the right to stop answering at any
11 time. You also have the right to stop
12 answering at any time until you talk to
13 a lawyer.

14 Says:

15 Do you understand these rights, and
16 do you wish to talk to us at this time?
17 And there's a waiver of rights. It says:

18 I have read the statement of my
19 rights, and I understand what my rights are.
20 I am willing to talk now without a lawyer
21 present. I understand and know what I am
22 doing.

23 No promises or threats have been made
24 to me, and no pressure or coercion of any
25 kind has been used against me.

1 Q Now, before asking Mr. Heyward any questions, were
2 those rights on that form read to him?

3 A Yes, sir, they were.

4 Q And is there a space as to each of those rights
5 where there's a blank for someone to initial?

6 A Yes, sir, there is.

7 Q And did Mr. Heyward initial those in your presence?

8 A Yes, sir, he did.

9 Q And did he sign his waiver of rights indicating he
10 wished to speak with you, and I believe was it Agent
11 Ethridge was also with you at that time?

12 A Yes, sir, that's correct.

13 Q Did he, did Larry Heyward, agree to speak with you
14 and sign the waiver?

15 A Yes, sir, he did.

16 Q Did he appear to be under the influence of any
17 alcohol or drugs or anything that would have prevented
18 him from understanding what he was doing?

19 A No, sir, he did not.

20 Q Did he appear to have any trouble understanding you
21 as you read these rights to him?

22 A No, sir, he did not.

23 Q Was he able to communicate effectively with you?

24 A Yes, sir, he was.

25 Q And once you started asking him questions, was he

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DIRECT - AGENT CROFT

1 able to respond?

2 A Yes, sir, he was.

3 Q Now, at any time while he was in the room talking
4 with you, did you or anyone else threaten him in any
5 way?

6 A No, sir, we did not.

7 Q Did you make him any promises of leniency in order
8 to get him to talk to you?

9 A No, sir, we did not.

10 Q Would you tell me -- and obviously you can
11 paraphrase. But would you tell me what the substance of
12 your discussion was.

13 A We -- initially, I followed him around, and we
14 advised Mr. Heyward of the allegations against him,
15 which was misconduct of a sexual nature with a student
16 at school. At that point, Mr. Heyward told us that he
17 was happily married; he was retired from the National
18 Guard; he'd been employed with the Hampton County
19 Sheriff Office for approximately six years at that time.
20 He was currently in the position of school resource
21 officer, which he held for approximately five years.

22 Q Did he indicate to you, when you first started
23 talking to him, whether or not he had had any sexual
24 contact with the victim in this case?

25 A No, he did not. He actually said, after telling us

1 his -- his position, he said that he'd never had any
2 sexual encounter with any child that attended
3 Middle School. He said that he had several children
4 that he had prior encounters with at school that are
5 probably making these allegations or accusations.

6 Q With respect to the victim in this case, Complainant,
7 did he indicate whether or not Complainant had ever been to
8 his house?

9 A He indicated that Complainant had never been to his
10 house.

11 Q And at some point, did that part of his story
12 change?

13 A Yes, sir, it did.

14 Q And what did he say then?

15 A He said that he did remember one occasion that he
16 was taking Complainant home for Complainant's mom, and he had
17 stopped by his house to take care of his dogs, feed his
18 dogs.

19 Q Did he ever indicate whether or not he had had any
20 altercations with Complainant?

21 A Yes, sir, he did.

22 Q And what did he say?

23 A He said that he and Complainant had several verbal
24 altercations in the hallways at the school. He said he
25 had dry-tased Complainant on the butt on several occasions.

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DIRECT - AGENT CROFT

1 He said during one of those occasions, he may have
2 grabbed him inappropriately, which was a mistake. He
3 also said that he had paddled Complainant several times, but
4 only with the mother's permission.

5 Q And did he ask -- did he indicate whether or not he
6 had written up reports or use-of-force reports or
7 documented any of these tasings or paddlings?

8 A He indicated that none of the incidents were
9 documented.

10 Q At some point did you play for him a recording, a
11 recording being a recording that the State is alleging
12 is between him and the victim, Complainant?

13 A Yes, sir, we did.

14 Q And once you played it for him, can you tell me
15 what he said?

16 A The recording was played, and Mr. Heyward asked the
17 agents, or myself and the other agent, who that was
18 supposed to be on the recording. He was advised that
19 one of the male voices on the recording was that of
20 Complainant . He then said, do you think the other
21 person is me.

22 Q And did you respond to him?

23 A We didn't get an opportunity to. Officer Heyward
24 stopped the -- stopped and requested to speak to Sheriff
25 Smalls.

1 Q All right. So, when you say *stopped*, at what --
2 what did he say specifically?

3 A He just said he needed so speak to Sheriff Smalls.

4 Q All right. If you would -- do you have your report
5 with you?

6 A I do, yes, sir.

7 Q All right. If you wouldn't mind, just to refresh
8 your recollection, --

9 A I'm sorry.

10 Q -- would you look at the last, one of the last
11 sentences on that Memorandum of Interview. In other
12 words, I know you've indicated twice now that he asked
13 to speak to the Sheriff.

14 A Yes, sir.

15 Q Did he also say anything else?

16 A Yes, sir. He stopped and said he wasn't going to
17 admit to anything.

18 Q Okay. And is that when he asked to speak with
19 Sheriff Smalls?

20 A And at that -- and at that point, he asked to speak
21 to Sheriff Smalls.

22 Q And again, during this entire procedure, did he
23 ever ask for an attorney or tell you he needed a break
24 or anything like that?

25 A No, sir, he did not.

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1 Q Can you look on there and see about how long you
2 actually talked to him?

3 A Yes, sir. We began -- the *Miranda* was read at
4 2342. We completed that at 2347, which is 11:47 pm.
5 The interview actually concluded at approximately 1:45 .
6 a.m.

7 Q All right. So, about two hours?

8 A Yes.

9 Q In my adding, I know military time sometimes I get
10 wrong. Would it be about two hours?

11 A Roughly two hours.

12 Q Now, were you present in the room? Up until he
13 asked to speak with the sheriff, were you present in the
14 room the entire time that he was being talked to by
15 officers with SLED?

16 A Yes, sir, I was.

17 Q And at any time did anybody threaten him or promise
18 him anything?

19 A No, sir.

20 Q Now, was this recorded either audio or video?

21 A No, sir, it wasn't.

22 Q All right. So, did you then, though, write up a
23 memorandum of interview, or was one written up as part
24 your investigation in this case?

25 A Yes, sir, it was.

1 SOLICITOR THORNTON: Your Honor, Court's
2 indulgence, please.

3 THE COURT: Yes, sir.

4 SOLICITOR THORNTON: I don't have anything else for
5 this witness. Agent, please answer any questions Mr.
6 Lee might have.

7 THE COURT: Mr. Lee, you can cross-examine.

8 MR. LEE: May it please the Court?

9 THE COURT: Yes, sir.

10 SLED AGENT JEFF CROFT

11 CROSS-EXAMINATION

12 BY MR. LEE:

13 Q Agent Croft, did you take any notes on your own
14 during the interview?

15 A A memorandum was prepared based on what Mr. Heyward
16 had given us what would have been documented with notes,
17 yes, sir.

18 Q The question was, did you take any notes, you
19 personally, Agent Croft, did you take any notes during
20 the interview?

21 A No, sir, I did not.

22 Q You did not.

23 A I don't think I did, no, sir.

24 Q Did you, Agent Croft, prepare a memorandum of
25 interview?

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CROSS - SLED AGENT JEFF CROFT

1 A No, sir, I did not.

2 Q Can you independently recall, without aid of
3 Ethridge's memorandum, what was said?

4 A I can recall some of it, but I do have the copy of
5 the report, a copy of the memorandum just to make my
6 recollection.

7 Q Do you know if, when it was going on, whether Agent
8 Ethridge was taking notes?

9 A I don't know, sir.

10 Q You were there, though, right?

11 A I was there.

12 Q Do you know when this Memorandum of Interview was
13 prepared?

14 A I do not know the date that it was prepared, no,
15 sir.

16 Q Okay. Now, words are real important, Agent Croft.
17 Would you agree with that?

18 A Sir?

19 Q Words are real important. Wouldn't you agree with
20 that?

21 A Yes, sir, I would.

22 Q Okay. The thing that Solicitor Thornton handed you
23 to refresh your recollection, even though you didn't
24 prepare it, said Officer Heyward then stopped and said
25 he was not going to admit to anything, right?

1 A That's correct, yes, sir.

2 Q That was a little different than what your
3 testimony was when you said he asked to speak to Sheriff
4 Smalls, right?

5 A Well, when he stopped, he made that comment, and
6 then, asked to speak to Sheriff Smalls.

7 Q He used the phrase: I'm not going to admit to
8 anything? Or that's Agent Ethridge's words?

9 A That is what is documented in this memorandum.
10 That's what I recall.

11 Q I understand. I know what's in it. What was said
12 by Mr. --

13 A That's what I recall, yes, sir.

14 Q You independently recall Mr. Heyward saying he was
15 not going to admit to anything.

16 A Following reviewing this memorandum, yes, sir, I do
17 recall Mr. Heyward saying he wasn't going to admit to
18 anything.

19 Q Between January -- or from when this Memo of
20 Interview was prepared, until today, when was the first
21 time after the interview that you read this Memorandum
22 of Interview?

23 A I'm sorry, sir?

24 Q That's a bad question. When you were getting ready
25 to come to court, did you review the Memorandum of

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CROSS - SLED AGENT JEFF CROFT

1 Interview?

2 A I received a copy of the report, yes, sir, I did.

3 Q Okay. When was that?

4 A I think it -- I think it was on Thursday when I
5 picked it up.

6 Q Last week. Okay. Had you ever seen it before?

7 A Had I ever read it before?

8 Q Yes, sir.

9 A Not that I'm aware of.

10 Q Okay. So, some three-and-a-half years had passed
11 between when you were doing the investigation and when
12 you read this Memorandum of Interview. Is that right?

13 A Roughly, yes, sir.

14 Q Okay. January 2013 to September of 2016.

15 A Yes, sir.

16 Q Okay. And prior to you reading the Memorandum of
17 Interview that another agent prepared, did you remember
18 or did you recall Officer Heyward saying he wasn't going
19 to, quote, *admit to anything*? Or did that come from
20 your review of that?

21 A Following reviewing this memorandum, I can remember
22 Mr. Heyward saying he's not going to admit to anything,
23 yes, sir.

24 Q Can you tell us a little bit about you, real
25 quickly, your involvement in this case.

1 A I was the initial responding agent --

2 Q Okay.

3 A -- on the case, yes, sir. It was my duties to
4 assist the other agents with the investigation.

5 Q Okay. And Ethridge was also a responding agent?

6 A Yes, sir, he was.

7 Q Okay. Was he, at that point, the lead
8 investigator?

9 A Yes, sir, he was.

10 Q And what do you all do? Does Neal just assign it
11 to a certain agent, say this is your case?

12 A Yes, sir, his duty is to assign cases.

13 Q After the interview with Heyward, what was your
14 role in this case? What did you do?

15 A Assisted Ethridge with anything he needed.

16 Q Okay. So, you all always travel as a team?

17 A No, sir. He didn't need me every day.

18 Q Okay.

19 A I assisted him with --

20 Q Okay. What kind of things do you do to assist him?

21 A We conducted a search warrant located at the -- at
22 the school.

23 Q Um-hmm.

24 A We reviewed statements together.

25 Q Okay.

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CROSS - SLED AGENT JEFF CROFT

1 A I mean, whatever he asked me to do for him, I would
2 do.

3 Q Okay. And prior to last Thursday when you got this
4 copy of this Memorandum of Interview, when's the last
5 time you'd done any work on this case?

6 A I don't recall, sir. I don't recall the date.

7 Q The year?

8 A I don't recall. Again, I don't recall.

9 Q Are you aware of anything that happened
10 investigation-wise in 2014 or 2015 or 2016 in this case
11 that you personally know of?

12 A Again, I don't recall any dates, sir.

13 Q Did you conduct any interviews or do anything in
14 this case after Agent Ethridge no longer worked for SLED
15 in August of 2013?

16 A Not that I'm aware. The case -- I think the case
17 was completed at the time.

18 Q Did you assist anyone in doing anything after that
19 point?

20 A Not no more of, no, sir.

21 Q Okay. Can you tell us a little bit about the back
22 and forth at the interview. Were you all asking
23 questions? Did you ask Larry, hey, do you want to talk
24 about something? Exactly how was the interview
25 performed?

1 A We read him *Miranda*.

2 Q Right.

3 A We got that signed; got it initialed.

4 Q Um-hmm.

5 A We advised him of the allegations.

6 Q Okay.

7 A At that point, he began to talk to us. We -- we
8 allowed him to talk.

9 Q Okay. Do you remember what you told him the
10 allegations were?

11 A Which there had been allegations concerning a
12 student at the Middle School; some inappropriate
13 touching.

14 Q Okay. All right. And then, did you ask him if he
15 has anything to say? Did you ask him specific
16 questions? What do you do?

17 A At that point is when he began to tell us he was
18 happily married; he had retired from the National Guard,
19 who he was employed with.

20 Q Um-hmm. Um-hmm.

21 A He -- he volunteered information that he had
22 several students that he had encountered that may be mad
23 at him. He actually names the victim, Complainant ,
24 as one of the students who may make allegations against
25 him. I mean, it wasn't --

1 Q As to Complainant , he denied doing anything,
2 correct?

3 A I'm sorry?

4 Q As to Complainant , he denied the allegations,
5 correct? at the time when he talked to you.

6 A He denied ever having any touching or sexual
7 contact with Complainant .

8 Q All right. At what point did you confront him with
9 this recording that we've talked about?

10 A At the very end of the interview.

11 Q And how did you play it, for lack of a better word?

12 A We talked to him. After he gave us the information
13 that he had provided us, we told him that there was a
14 recording. We asked him if he was willing to listen to
15 it, and he agreed that he would listen to it. We played
16 the recording. And at that point is when he asked who
17 that was supposed to be.

18 Q Did you play it off the actual iPod device?

19 A Now, that, I don't remember how it was played. It
20 was played on a disc on a computer. If we actually had
21 the iPod, I don't remember that.

22 Q It was played on a disc on a computer?

23 A I said I don't remember if we already had it on the
24 disc at that point, or if it was actually played on the
25 iPod itself.

1 MR. LEE: Okay. All right. That's all the
2 questions I have, your Honor.

3 THE COURT: Thank you. Re-direct, Mr. Thornton?

4 SOLICITOR THORNTON: None, your Honor.

5 THE COURT: Thank you. Mr. Croft, you can step
6 down. Mr. Thornton?

7 SOLICITOR THORNTON: The State calls Sheriff T.C.
8 to the stand, please.

9 THE COURT: Sheriff Smalls, come around and be
10 sworn.

11 MADAM CLERK: Do you swear to tell the truth, the
12 whole truth, and nothing but the truth, so help you God?

13 SHERIFF T.C. SMALLS: I do.

14 SOLICITOR THORNTON: Your Honor, Court's
15 indulgence, please, one moment.

16 THE COURT: Yes, sir.

17 SHERIFF T.C. SMALLS

18 DIRECT EXAMINATION

19 BY SOLICITOR THORNTON:

20 Q Good morning, Sheriff.

21 A Good morning.

22 Q Sheriff, who are you currently employed by?

23 A County -- Hampton County Sheriff's Office.

24 Q And are you the sheriff of Hampton County?

25 A Yes, sir.

1 Q Were you the sheriff of Hampton County in January
2 of 2013?

3 A Yes, I was.

4 Q Sheriff, do you know the defendant in this case,
5 Larry Heyward?

6 A Yes, sir.

7 Q And how long have you known him?

8 A I met Mr. Heyward approximately 1984, over a period
9 of time.

10 Q I'm not even going to try to add up how many years
11 that is. Several years.

12 A Several years, yes, sir.

13 Q Sheriff, on or about January the 4th of 2013, did
14 you speak to Larry Heyward?

15 A Yes, sir.

16 Q All right. And let me be more specific.

17 A Um-hmm.

18 Q Obviously, you were sitting in here. There's been
19 testimony that Mr. Heyward, at some point, asked to
20 speak to you. Was that information relayed to you?

21 A Yes, sir.

22 Q And did you go speak with Larry Heyward at the
23 Varnville Substation?

24 A Yes, sir.

25 Q Did you re-Mirandize him or provide him any *Miranda*

1 or anything like that?

2 A No, sir.

3 Q Did you go in and talk to him?

4 A Yes, sir.

5 Q Can you describe for him how that happened. Did
6 you go in and ask him a bunch of questions? Or what
7 exactly happened when you went in to talk -- first of
8 all, let me back up for a second, Sheriff. Were you by
9 yourself in the room with Larry Heyward, or were other
10 agents in there with you?

11 A Upon his request, the agent told me that he wanted
12 to speak with me. One was out of the room, and one was
13 standing at the door when I entered the room.

14 Q Okay. But were you inside the room with Mr.
15 Heyward by yourself?

16 A Yes, sir.

17 Q Once you went in the room, just tell me what
18 happened, and what, if anything, Mr. Heyward said to
19 you.

20 A We was in the conference room at the Substation in
21 Varnville, to where the agents had conducted the
22 investigation. Agent come out and told me that Mr.
23 Heyward wanted to speak to me. So, I entered the room.
24 And at this conference room, we got double doors. The
25 doors were open. And the doors open into the lobby. At

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1 this time, I walked into the room and sat down by Mr.
2 Heyward. He was in a rage. He was using explicit
3 language, saying a lot of stuff that, you know, was
4 unbecoming for Mr. Heyward to me.

5 Q Well, let me ask you a question. During this rage,
6 for lack of better word, what you call it, explicit
7 language, was Mr. Heyward telling you that, you know, he
8 didn't do this; that this was a lie; or was he saying
9 he's not guilty of this; or what was he doing?

10 A For about a few -- some seconds, he did that, and
11 then, he calmed down. He looked at me, and he told me,
12 he said that he was sorry that he brought shame to my
13 office. That he also stated that, at some point, when
14 he kept saying he was sorry, he said that he wanted me
15 to talk to his wife, give his wife a call.

16 Q All right. And what did he want you to tell his
17 wife?

18 A To tell what was happening and what was taking
19 place at this time, at the Substation.

20 Q All right. And as Mr. Lee has indicated, and I'm
21 going to ask you again, Sheriff, it's very important,
22 obviously, specific words are important.

23 A Um-hmm.

24 Q And if I need to refresh your memory, I believe you
25 filled out a statement.

1 A Um-hmm.

2 Q Do you remember specifically about what he said
3 about calling his wife?

4 A To the best of my ability, he said he wanted me to
5 call his wife to tell her what he was being charged
6 with.

7 Q Anything else?

8 A That's all, besides him stating in the part that he
9 wanted -- he was sorry for bringing shame to my office.

10 SOLICITOR THORNTON: If I could, your Honor, I
11 would ask to approach.

12 THE COURT: Yes, sir.

13 BY SOLICITOR THORNTON:

14 Q If you would, look at your statement, which is the
15 -- the only part we're here about today is the very last
16 paragraph. It's actually the last sentence, and the
17 last part of the sentence. Does reading that refresh
18 your recollection to anything else he might have said?

19 A Yes, sir.

20 Q After what he was charged with.

21 A Yes, sir. He said he wanted me to tell his wife
22 about what he was charged with, and that he was sorry he
23 brought shame to my office.

24 Q Sheriff, I hate to keep doing this to you, but what
25 does the last sentence of that say after you re-read it?

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1 A That he was sorry for everything, and he wanted me
2 to tell his wife what he was charged with, and I did.

3 Q Okay. Not you did, the Sheriff, but what he did.

4 A No. What he did.

5 Q All right. So, just to re-cap that, Sheriff, what
6 he told you was he was sorry for everything and to tell
7 his wife what he was charged with and what I did.

8 A I did.

9 Q Meaning him, Larry Heyward.

10 A Yes, sir.

11 Q Now, Sheriff, while you were in the room with him,
12 you said you'd known Larry Heyward a long time. Did you
13 threaten him in any way to try to get him to talk?

14 A No, sir.

15 Q Did you even ask him, really, any questions?

16 A No, sir.

17 Q Did you promise him any leniency to try to get him
18 to talk to you?

19 A No, sir.

20 Q And had you gone in there, your understanding was,
21 at his request to talk to you?

22 A Yes, sir.

23 SOLICITOR THORNTON: Your Honor, I don't have any
24 further questions, Sheriff. Please answer anything Mr.
25 Lee has.

1 THE COURT: Mr. Lee, cross-examine?

2 SHERIFF T.C. SMALLS

3 CROSS-EXAMINATION

4 BY MR. LEE:

5 Q Good morning, Sheriff.

6 A Good morning.

7 Q When did you -- did you type this statement
8 yourself? The one that Mr. Thornton showed you. Did
9 you type it yourself, or did somebody type it for you?

10 A It was handwritten. I wrote it. I wrote a
11 statement.

12 Q How about this typed statement from Mr. Thornton?

13 A No, I did not type that.

14 Q You didn't? Who did?

15 A Solicitor's office. My statement was given to the
16 SLED agents.

17 Q Okay. Did they type it for you?

18 A They typed what I wrote, yes, sir.

19 Q So, you wrote a statement out?

20 A To the best of my knowledge.

21 Q Do you have a copy of that? I mean, do you know
22 where that might be? a written statement from you?

23 A No, sir. That was given to the agents.

24 Q Sheriff, looks like there's a part of a statement.
25 Let me get close to you. We may be talking about the

1 same thing, but a different way.

2 A Okay.

3 Q It looks like there's a part of a statement right
4 here. Says, *see attached statement*.

5 A Okay.

6 Q Does that sound right? And then, you've got the
7 typed statement.

8 A Okay.

9 Q Is that your signature right there?

10 A Yes, sir.

11 Q Okay. But you didn't type this?

12 A No, sir. You probably type as bad as I do.

13 Q You got somebody else to type it for you?

14 A Well, the statement that was given, it was given to
15 the agents that was investigating.

16 Q Okay. Do you know which agents?

17 A I want to say it was --

18 Q Ethridge?

19 A Ethridge.

20 Q And you saw Croft right here.

21 A And Croft, yes.

22 Q Okay. But you don't know which one of them typed
23 it.

24 A No, sir.

25 Q Okay. And then, your testimony is that Mr. Heyward

1 -- what the statement says is he was sorry for
2 everything and he wanted me to tell his wife about what
3 he was charged with, and I did.

4 A Um-hmm.

5 Q Okay. You did call his wife and told her, right?
6 Bonita?

7 A Yes, sir, in his presence, yes, sir.

8 Q Okay. And if you mean that what he was saying was,
9 tell her what Larry was charged with and what Larry did,
10 you wouldn't use he in once sense and I in the other,
11 would you? About what he was charged with and I did?
12 It would say he did, right?

13 A Well, I guess so, but --

14 Q Do you understand what I'm saying?

15 A I understand what you're saying.

16 Q Okay. All right. And I know it was long ago.

17 A Yeah, quite a while ago.

18 Q Okay.

19 A But the statement that -- at his request is what he
20 asked me to do.

21 Q Right.

22 A And asking me to do that, that is what he wanted me
23 to do, tell his wife what took place, what he did.

24 Q All right. Well, tell his wife that he was getting
25 ready to go to the jail and what he had been charged

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1 with, right?

2 A Correct.

3 Q Okay. All right. And so, are you saying that you
4 took -- when he said he was sorry for bringing shame on
5 the sheriff's office, that you took that as an admission
6 that he actually committed the crimes for which he was
7 charged?

8 A At that point in time, when he said that, from his
9 statement that he wanted me to call his wife, I didn't
10 make no decision on whether it was admission or not.

11 Q Okay.

12 A I was just carrying out what his request, what he
13 wanted me to do.

14 Q Right. Right. Because you'd known him a long
15 time, correct?

16 A Correct.

17 Q And you've known Bonita, his wife, for a long time.

18 A Yes.

19 Q Okay. So, is it a pretty reasonable request for
20 Larry to ask you to call Bonita and say, hey, this is
21 what's going on? I mean, you're a friend of his, right?
22 I mean, you all were workers, worked together, and
23 you're his boss, right?

24 A Yeah, but we'd never been in a position to where he
25 wanted me to call his wife.

1 Q Well, he'd never been in this position before, had
2 he?

3 A Correct.

4 Q Okay. All right. So, you were doing it to help
5 him out, and he asked you for a favor to call his wife
6 and let her know, right?

7 A As his supervisor, yes, I was calling.

8 Q Right. Okay. Okay.

9 A He asked me to do it; I was doing it.

10 Q And you took his request as a request, as a
11 supervisor, to call his wife to explain what he is being
12 charged with, what was going to happen, right?

13 A Well, not to say what was going to happen. I just
14 -- he wanted me to --

15 Q Right.

16 A -- as in his presence, he wanted me to tell him --
17 tell her what he was being investigated for.

18 Q Okay.

19 A And where he was going.

20 Q Right Okay.

21 A Okay.

22 Q All right. But you didn't take that as an
23 admission of his that, hey, Sheriff, I did all this
24 stuff; I'm guilty, right? You didn't take it as that,
25 did you?

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1 A I took it on face value, as he said he brought
2 shame to my office. And that being said, as far as
3 knowing him over the period of time, is that something
4 happened; I did something and I brought shame to your
5 office; but we shouldn't be here in this arena tonight
6 these early morning hours because --

7 Q But the getting arrested brings shame on the
8 sheriff's office, right? The simply getting arrested.

9 A Well, yeah.

10 Q An allegation against the sheriff's office makes it
11 look bad, right?

12 A Allegation, correct. Well, correct.

13 MR. LEE: Okay. That's all I have, your Honor.

14 THE COURT: Thank you. Re-direct, Mr. Thornton?

15 SOLICITOR THORNTON: No, sir, not for purposes of
16 this hearing, anyway. Your Honor, again, please,
17 Court's indulgence. I'm done, though, with the Sheriff
18 if he could step down.

19 THE COURT: All right, Sheriff, you can step down.

20 A Thank you.

21 SOLICITOR THORNTON: Judge, the State has no other
22 witnesses as to *Jackson v. Denno*.

23 THE COURT: All right. Good. Mr. Lee, does the
24 Defense wish to offer any evidence or testimony in
25 regard to the statements themselves?

1 MR. LEE: Not with regard to the statements, your
2 Honor, at this time.

3 THE COURT: All right. I'll be glad now to hear
4 argument.

5 ARGUMENT AND RULINGS:

6 MR. LEE: Your Honor, I have no basis on which to
7 say that these are not freely and voluntarily given;
8 that *Miranda* was properly read; and while I can't
9 stipulate to it, I certainly do not have a long-winded
10 argument to. I think he presented what he should have,
11 and that's all I would say.

12 THE COURT: Okay. Good. Notwithstanding whether
13 the statements were custodial, or in the case of Sheriff
14 Smalls, whether they were actually interrogation, I know
15 the level to determine that it was custodial, was
16 interrogation, I find that, before these statements were
17 made, the defendant was fully advised of his rights
18 under the *Constitution*; he was told that he had a right
19 to remain silent; that, if he waived his right to remain
20 silent, that any statement he made could be used against
21 him in court.

22 He was told that he had a right to have a lawyer,
23 and if he could not afford one, one would be appointed
24 to represent him. He had the right to have a lawyer
25 present with him at all times during the interviews.

1 And that he had a right to consult with them before the
2 questions were asked.

3 He signed a waiver acknowledging his understanding
4 of those rights and the fact that he wished to make
5 statements. And so, I find that the law has been
6 complied with; the constitutional safeguards in *Miranda*
7 *versus Arizona* have been complied with; and that the
8 jury's entitled to hear those statements with
9 appropriate charges, of course. The State still has the
10 burden beyond a reasonable doubt to prove the
11 voluntariness of it and the fact that the statements
12 were made. The statements are introduced. Thank you.

13 All right, gentlemen, are there any other --
14 refresh my memory without me going through this litany
15 again. Are there any other pretrial issues that we need
16 to deal with at this juncture, before the taking of
17 testimony and before the foundation is laid for some of
18 these other motions to be ruled on?

19 Mr. Thornton, anything further from the State?

20 SOLICITOR THORNTON: Your Honor, the only thing I
21 can think of is -- and it would take me a minute to set
22 up, but it shouldn't be more than a few minutes -- would
23 be the transcript, if you said you would need to hear
24 that. If you want to go ahead and hear that in the next
25 few minutes, I could get that set up for you.

1 THE COURT: I'll be glad to do that. And I don't
2 have to do that on the record. I can read that in
3 chambers and listen to it in chambers and rule. All of
4 those things will be marked as court's exhibits, in any
5 event, for the Court to review.

6 SOLICITOR THORNTON: Yes, sir. Yes, sir.

7 THE COURT: And then, it's simply a decision
8 whether I feel that the transcript is an aid to the
9 tapes themselves.

10 SOLICITOR THORNTON: Your Honor, I can provide that
11 to you. I'm going to get a disc and a computer for you
12 to play that on right now.

13 THE COURT: Okay. All right.

14 SOLICITOR THORNTON: Other than that, Judge, I
15 don't think there's -- there isn't anything that I'm
16 aware of that we would need testimony for. I think most
17 of the rest of them would, as your Honor indicated in
18 the in-chambers pretrial conference, we'd need to see
19 what foundation was made before you ruled on anything
20 else, at least that's the State's position. I don't see
21 anything else.

22 THE COURT: All right. Mr. Lee, what about from
23 the Defense?

24 MR. LEE: Only thing I can think of is if we need
25 to get any testimony as to the circumstances of Ethridge

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ARGUMENT & RULING

1 leaving SLED, but if Mr. Thornton wants to talk with him
2 during a break, or if I can talk to him, that would --

3 SOLICITOR THORNTON: I'll put Mr. Lee in a room
4 with him, Judge, and he can talk to him. And again, the
5 paperwork, just for the Court's information, we
6 contacted the Academy, and all they had was the fact
7 that it was -- he was not terminated for misconduct; he
8 was terminated under his probation; and it was the sheet
9 that I gave Mr. Lee. I've asked Mr. Neal to pull
10 together whatever information the actual SLED office,
11 the local folks, have. But I'll put Mr. Lee in a room
12 in the back with him.

13 THE COURT: All right.

14 SOLICITOR THORNTON: I don't even know if I'm going
15 to call him. You know, it was mainly for the *Denno*
16 issue, because Agent Croft was in there the entire time.

17 THE COURT: Okay. Mr. Lee, after you've had a
18 chance to talk with him, let me know if we need to put
19 anything further on the record in that regard.

20 MR. LEE: Okay, I will. I will.

21 THE COURT: Okay.

22 MR. LEE: I'll do that, your Honor.

23 THE COURT: All right. Is there anything further,
24 then, before we break?

25 SOLICITOR THORNTON: Nothing, your Honor. And

1 apologies to the Court. I was afraid we might -- after
2 Mr. Lee and I talked, we might burn through a lot of
3 these and still have some time on the clock. But I
4 don't have any other matters for you, obviously, in this
5 case.

6 THE COURT: Well, here's what we can do -- or you
7 all can do, to make use of the time. If you will get
8 your proposed exhibits and have them premarked, please.

9 SOLICITOR THORNTON: Yes, sir.

10 THE COURT: And give them numbers. Those that have
11 objections, mark them simply for identification. It'll
12 save some time once we start the testimony not to have
13 to wait. And Ms. Wanda finds it a lot easier to mark
14 those things now instead of when everybody's looking at
15 her and wondering what she's doing. We'll do it now.

16 SOLICITOR THORNTON: Yes, sir.

17 THE COURT: It'll save some time.

18 MR. LEE: Your Honor, I may have misheard but, as
19 far as the video and audio of the transcript, you want
20 to listen to it first, and then, have us make arguments,
21 or -- I know you're saying -- you're saying your seeing
22 it is going to aid the jury, but I'd at least like to be
23 heard to argue that it takes a little more than just
24 it's helpful to the jury.

25 THE COURT: Okay. I'll give you a few minutes to

1 look up some law in support of that and gave it to me,
2 okay?

3 MR. LEE: Okay.

4 THE COURT: All right. I'll be listening to them
5 in the meantime.

6 MR. LEE: You will? Okay.

7 THE COURT: Yes, I'll be listening to them. I
8 won't rule until you've had a chance to argue further.

9 MR. LEE: All right. Well, I can do that now or do
10 it when we come back. It doesn't matter.

11 THE COURT: Well, if you can, go ahead and do it
12 right now.

13 MR. LEE: Yes, sir.

14 THE COURT: It'd be a good time.

15 MR. LEE: Yes, sir. Your Honor, my first motion
16 is, obviously, introduction of the actual audiotape from
17 the iPod. And again, my position is that, based upon
18 what I believe are records that will come in that
19 demonstrate the call in question was 236 seconds long.

20 THE COURT: All right.

21 MR. LEE: The recording is 116 seconds long, which
22 leaves 120 seconds, or two minutes, that there
23 apparently, was some type of phone call with no
24 recording taking place during that time.

25 THE COURT: I think, now, the record should reflect

1 that the difference in those seconds does not indicate
2 that things were taken out of the middle.. It was pieced
3 together. It was simply the recording did not start at
4 the time the conversation started. Is that what I
5 understand?

6 MR. LEE: That's what it appears to have happened.

7 THE COURT: Okay. All right.

8 MR. LEE: So, our position is that, you know, if it
9 was a -- if all four minutes of the phone call, just
10 rounding it up, if all four minutes of the phone call
11 had been record, and the State erased half of it, or if
12 half of it was inaudible and just a bunch of scratch,
13 then, there certainly would be grounds to call into
14 question the trustworthiness, and also, in fairness, to
15 put everything in the proper context.

16 THE COURT: Right.

17 MR. LEE: You know, you can walk in -- you know,
18 you can walk in on a conversation and hear something and
19 not get the full gist of the conversation. You also
20 can, you know, show up at a football game the second
21 half, and it looks like it's going one way, when it
22 really has not gone that way. So, you know, with fifty
23 percent of it missing, I just think there's real
24 concerns as to what else could or should or might have
25 been there. And obviously, I have no way of

1 establishing that. I think it would be some burden
2 shifting anyway to ask that of me, but it's just more
3 than half the tape doesn't even -- wasn't even recorded.
4 Half the conversation. And so, it's our position that
5 it can't be put in proper context; is, essentially, more
6 prejudicial than probative. And for that reason, we
7 believe that the audio portion should be excluded from
8 evidence.

9 THE COURT: All right. Mr. Thornton.

10 SOLICITOR THORNTON: Your Honor, I would say the
11 State's position to the Court is this: you have a
12 fifteen-year-old kid who gets a phone call from the
13 person he is accusing of sexually assaulting him; oh,
14 and have a sexual relationship with over a course of a
15 couple of years; he starts recording from his cell
16 phone. In other words, the call is to -- I'm sorry, not
17 cell phone -- the call is placed to his, I believe it's
18 his home phone number. He records it on his iPod from
19 the phone call. You can clearly tell, I think Mr. Lee
20 would have to agree, that it appears to pick up mid-
21 conversation, and it ends there. He gets the recording
22 off as the defendant, who we allege the defendant, is
23 continuing to talk. So, there's nothing nefarious here.

24 I understand he was using this as an example, but I
25 don't think anybody's accusing us of deleting parts of

1 the recording. And I think, frankly, once your Honor
2 hears the recording, I think that may satisfy you that
3 there's -- I don't know what other part of the
4 conversation might be relevant, but in essence, the
5 recording is what we have.

6 And there are, as your Honor knows and has seen,
7 numerous instances where there's inaudible things, even
8 in confessions where they're in a room with proper mics
9 and proper camera and what you have to say is it's
10 unintelligent. And that's something he can cross-
11 examine on, obviously. But I think that would be more
12 the weight of it or cross-examination potential, rather
13 than the admissibility of it, Judge. It's a statement
14 that we are attributing to the defendant.

15 THE COURT: All right. Mr. Lee, you've got the
16 last word. It's your motion.

17 MR. LEE: Judge, for once, I don't think -- I mean,
18 I think you've heard everything. I think you've
19 probably dealt with this issue before. We believe that
20 it clearly is unduly prejudicial, and it substantially
21 outweighs any probative value that it may have. And
22 that would be our argument.

23 THE COURT: Okay. Thank you. I have, over the
24 years, consumed a good many headache powders trying to
25 understand some of these tape recordings that I've been

1 asked to hear, from tapes. Drug buys, for example.
2 They're the most famous. But even from some statements
3 that have been made in a more controlled setting, that
4 sometimes some of what was said is not able to be
5 translated to a transcript. Sometimes the word in the
6 transcript says unintelligible. Sometimes it just
7 leaves blanks. But it is not unusual in the context of
8 the admissibility of these types of statements to be
9 dealing with issues that are not completely done in a
10 sound-proof recording room and a recording studio, for
11 example, where everything can be heard and everything
12 can be easily understood.

13 The question here, I think, if the foundation is
14 laid as Mr. Thornton has indicated, if the witness
15 testified that I received a call from the defendant, and
16 some time in the midst of that call, I started recording
17 and here's what I recorded, then, it seems to me the
18 issue is the validity of what was actually heard and
19 whether or not it stands on its own for some probative
20 value, whatever it happens to be

21 As to what was not heard in this case or what was
22 not recorded, of course, he can be cross-examined on
23 those points. He can be asked why he waited until this
24 point in time to begin the recording. He can be asked
25 any relevant questions that would try to explain the

1 two-minute gap and why we don't have the benefit of it
2 all. It, however, does not render what we do have
3 inadmissible, if the proper foundation is laid, as has
4 been said.

5 And so, I think your motion, Mr. Lee, is two-parts.
6 First of all, to exclude the evidence of the recording
7 itself, and then, of the transcript, in addition. Is
8 that right?

9 MR. LEE: Yes, sir. And actually I wasn't arguing
10 about the transcript during that. I thought we were
11 just handling the one. I would have a separate argument
12 for the transcript.

13 THE COURT: Okay. Well, let's --

14 MR. LEE: Yes, sir.

15 THE COURT: In so far as the admissibility of the
16 recording itself, if that's what we're talking about
17 now, right?

18 MR. LEE: Yes, sir.

19 THE COURT: Okay.

20 MR. LEE: The audio.

21 THE COURT: The admissibility of the recording
22 itself and the statements that I just made, I think
23 explain my understanding of it. Obviously, the
24 foundation is to be laid. It has to be authenticated in
25 that regard. And if it is authenticated, then, of

1 course, we still deal with the relevance and all the
2 other things that we deal with, with threshold matters
3 in dealing with the admissibility of evidence. But if
4 this is a statement attributed to a defendant in this
5 case, given to the victim who had recorded it and plays
6 it back, it would seem on its face to be admissible,
7 unless there is some evidence to indicate that it was
8 improperly obtained, or that it is not the testimony of
9 the defendant, or something else that would go to attack
10 its authenticity or its relevance.

11 I don't know we need to argue about the probative
12 nature of it. Depends on what he says, of course. But
13 my inclination is to allow the introduction of the tape
14 itself, once the foundation is properly laid.

15 All right. Now we can talk about the transcript.

16 MR. LEE: Judge, I think that, in looking at the
17 transcript portion of it, a couple things come to mind.
18 One is, I think the State should say whether or not they
19 intend to use the transcript, whether it's cumulative
20 evidence or whether it's corroborative evidence. I
21 think that it's been important for them to make that
22 distinction. If it's cumulative evidence, there's
23 really no reason to have to bring it in.

24 THE COURT: Right.

25 MR. LEE: If it's corroborative evidence, what it's

1 doing, arguably, is improperly bolstering and giving
2 improper credence or weight or emphasis to the
3 recording. Because the recording, the audio recording
4 is what is evidence. The cases are clear about that.
5 It is the audio recording that is the evidence. It is
6 not the transcript that some -- in this case, was
7 transcribed by a woman named Beverly Cook, Notary Public
8 in and for the State of South Carolina. Correct me if
9 I'm wrong, Mr. Thornton, my understanding is that, at
10 least now, Ms. Cook works for SLED. I think she did at
11 the time. I think she's a former court reporter. And
12 then, so, somebody from SLED -- did she work for SLED at
13 the time?

14 SOLICITOR THORNTON: (Nodded head.)

15 MR. LEE: So, SLED is investigating the case, takes
16 this audio recording back to SLED and gets a
17 stenographer or a secretary to say please type out what
18 you hear. And so, she does that. Now, among other
19 things, some of the issues are she filed a certificate
20 at the end saying that she is not --

21 *I certify that I am not of counsel nor*
22 *kin to any of the parties to this action;*
23 *nor am I interested in any manner in its*
24 *outcome.*

25 And that's a certificate. So, essentially, what

1 this is, is an affidavit. She's saying that these sort
2 of things -- well, certainly, certainly, she's employed
3 by SLED who's doing the investigation, you have to
4 question whether or not they're neutral and detached
5 and, you know, independent in what they're doing. So,
6 that's one issue.

7 Judge, I would also point -- and clearly, the audio
8 is the evidence, not the transcript.

9 THE COURT: Right.

10 MR. LEE: So, what the State, I assume, is going to
11 try to do is say we're going to call it demonstrative
12 evidence, but we're going to parade it back and forth in
13 front of the jury, and we're going to publish it to the
14 jury. So, I think the question is: is it admissible
15 into evidence.

16 THE COURT: No.

17 MR. LEE: Okay.

18 THE COURT: I can stop you right there.

19 MR. LEE: So, I won't have to go through --

20 THE COURT: The transcript is not. So, we won't
21 need to argue that.

22 MR. LEE: Okay. I don't have to go into best
23 evidence on that.

24 THE COURT: Okay.

25 MR. LEE: Okay. So, it's not admissible. If

1 they're allowed to use the transcript and blow it up on
2 the big screen, and read what this woman from SLED
3 believes is contained on that tape, the jury can hear
4 just as well as she can. I assume.

5 THE COURT: Sure they can. Well, most of them can.
6 I can't hear myself.

7 MR. LEE: Well, I can't. I'm losing mine, too,
8 but. So, clearly, it's not admissible. What this
9 allows them to do is essentially publish, publish,
10 publish inadmissible evidence to a jury under the guise
11 of saying, oh, it's demonstrative evidence; we're just
12 trying to help the jury out. I guess that's what
13 they'll say. Well, they're not assisting the jury.
14 It's cumulative, but the problem that it raises is
15 similar to the problem in *Gulledge, State versus*
16 *Gulledge*. And that's a 1982 case. But they said that,
17 when a jury took a transcript of a tape back to a jury
18 room, that it unduly emphasized --

19 THE COURT: It did, and that's the reason it's not
20 going to the jury room. Let me tell you what the
21 procedure that I envision we'll follow with this case.

22 MR. LEE: Yes, sir.

23 THE COURT: And at some point in time, the tape is
24 going to be offered into evidence.

25 MR. LEE: Yes, sir.

1 THE COURT: It will have to be offered into
2 evidence. But if it begins to be played, or some time
3 before it begins to be played, all right, if the
4 transcript is going to be used at all, it's going to be
5 used by every juror having a copy of that transcript,
6 and they will follow that transcript as the tape is
7 being played. And of course, you're right, they'll be
8 listening and they'll be reading at the same time. But
9 then, the transcript will then be taken up. It will not
10 go with them anymore.

11 They will receive an instruction at the conclusion
12 of the trial that the transcripts they were given were
13 simply given to them to aid them in their understanding
14 of what has been said. If there are some things that
15 they couldn't hear or otherwise not understood, or for
16 whatever reason, their hearing or their understanding,
17 they have been used for that purpose themselves. They
18 will be told, however, that, if they appear to see some
19 distinction by what they were hearing and what they were
20 reading, they are to disregard what they were reading
21 and pay attention only to what they were hearing, only
22 for the same reason that you just mentioned.

23 MR. LEE: Right.

24 THE COURT: They're doing the same thing that the
25 transcribers do; they're listening.

1 MR. LEE: Yes, sir.

2 THE COURT: And their collective memory and their
3 collective wisdom and their collective hearing will
4 control them over what the transcript says.

5 MR. LEE: Which I would respectfully say, begs the
6 question of what's the purpose of the transcript, unless
7 some of the jurors demonstrate they have hearing
8 problems or something like that. Because the problem is
9 that you can say what you want with all due respect, as
10 far as limiting charges and that sort of thing, but the
11 jury, even though that transcript won't be taken to the
12 jury room, they don't know it's not evidence. And you
13 know and I know and everybody knows that they're going
14 to say that transcript is the holy gospel, and that
15 transcript, which was written down by SLED, who
16 investigated the case, who listened to it, that's what
17 was said on that tape. And I think it completely takes
18 away what the best evidence, the tape -- just depends on
19 what's here. And so, I don't see any probative value at
20 all for actually having them be able to use a written
21 transcript.

22 The Solicitor said you can hear on there where he
23 clicks the button to start recording it. If it's that
24 clear, why do they need a transcript? And again, my
25 concern is that it puts whatever is on here, that's what

1 the jury is going to believe is the evidence. And
2 whether it goes back with them or not, they're going to
3 have those transcripts, they're going to read them, and
4 I see absolutely no probative value at all in giving
5 them that, and I think that the prejudice is clear,
6 particularly in light of the fact that someone from SLED
7 prepared this.

8 THE COURT: Right.

9 MR. LEE: And so, I think that it would place undue
10 emphasis on it. They're not doing transcripts for
11 anybody else. And I mean, essentially, this -- I mean,
12 would you allow the lady from SLED to get on the stand
13 and say I listened to this tape and this is what it
14 said?

15 THE COURT: Not hardly.

16 MR. LEE: And so, if she's just saying it in
17 affidavit, rather than on the stand, what's the
18 difference? If she couldn't testify to that in court
19 and say I listened to this, and this is what it said.
20 She's not an expert, as far as I know. They're offering
21 her as an expert, and she, essentially, is being allowed
22 to give her opinion as to what that tape says.

23 THE COURT: And Mr. Lee, after I've heard the tape,
24 I might agree with everything you say. But after I've
25 heard the tape, if I think that the transcript will be

1 an aid to the jury, then, I'm going to let it in for the
2 reasons I've already mentioned. But if it isn't -- if
3 it is one of those crystal clear things that comes out
4 like a perfect recording, --

5 MR. LEE: Right.

6 THE COURT: -- and it's easily understood, so that
7 anybody can understand it, even somebody with my hearing
8 can understand it, then, you're right, there's no reason
9 for a transcript. That's the reason I want to hear it
10 before I rule.

11 MR. LEE: And obviously, all foundation
12 requirements have to be met before any transcript -- if
13 you let it in, it would have to be done.

14 THE COURT: Oh, that's all the threshold stuff that
15 I talked about earlier. It has to be done before we get
16 there.

17 MR. LEE: All right.

18 THE COURT: Okay? All right.

19 MR. LEE: You've heard my argument. Thank you for
20 hearing me out.

21 THE COURT: Good. Mr. Thornton.

22 SOLICITOR THORNTON: Judge, I'm not going to argue.
23 I'll let you hear it, and if we need further argument, I
24 will. The only thing I did want to clear up --

25 THE COURT: Right.

1 SOLICITOR THORNTON: And I think I've actually had
2 this conversation with you in a previous case. But just
3 so Mr. Lee is clear, he and I have not done one of these
4 where you use the transcript. Beverly Cook does work
5 for the SLED.

6 THE COURT: Right.

7 SOLICITOR THORNTON: She's an admin person. She
8 was in the Lowcountry office. She's since been
9 transferred to Columbia. What we have done, because she
10 is a former court reporter, and frankly, Judge, because
11 she types a lot faster than anybody else in my office
12 does, we would give her these to go ahead and do the
13 initial. There's not going to be -- even if you wanted
14 me to print these out and hand them to the jury, I
15 actually have the words on the screen, as we did in the
16 last trial you did. It's not going to be in the form of
17 an affidavit from anybody, because we then take what
18 she's done and go through it line by line with
19 headphones on to make sure that --

20 THE COURT: Right.

21 SOLICITOR THORNTON: And so, sometimes things are
22 changed. I'm going to give Mr. Lee a copy of it. But
23 it's not -- there's no affidavit that's going anywhere
24 that they're going to see or anything else. It's
25 literally just the audio plays and the words go across

1 the screen. So, I just wanted to make sure he
2 understood. I wasn't trying to get an affidavit or
3 anything up there.

4 THE COURT: You know, I dated myself when I said
5 the procedure we'll follow. Before the electronic age,
6 that's the way it was done. Now we can imagine we show
7 this thing from the screen and the result is the same.
8 But whatever it is, the only thing that will be in the
9 jury room is the recording itself. Not the printed
10 word.

11 SOLICITOR THORNTON: Yes, sir. I have it split.
12 We have a disc that will actually be in evidence. It is
13 the audio only. And then, for purposes of playing it,
14 we have the one that has the words overlaid on top of
15 it.

16 THE COURT: Okay. And what I'll do is, I'll listen
17 to it first without the benefit of the transcript and
18 see if I can understand it.

19 MR. LEE: Your Honor, one thing I'd point out is,
20 the only thing that I've had and had all along is this
21 affidavit of transcription of audio. I haven't seen
22 what he's talking about. You know, no offense, it
23 doesn't make me feel any more comfortable that someone
24 in the solicitor's office, rather than somebody from
25 SLED, is the one who is telling me what that tape says.

1 So, I've filed *Brady* motions, I've filed *Rule 5*. I've
2 never seen any type of change to this transcript. So, I
3 would just put it out there, I think that may be a
4 discovery violation. I just want to put on the record
5 I've never seen what he purports to use.

6 THE COURT: Well, I can assure you, Mr. Lee, that,
7 if there's anything different than that that you have
8 shows up on this screen, they've got a lot more to worry
9 about than getting something before a jury.

10 SOLICITOR THORNTON: Judge, I will tell you,
11 there's be some difference as to the words, but he's got
12 the recording. I mean, the discovery part is the
13 recording. This is just a demonstrative that I'm going
14 to make sure he has.

15 THE COURT: Right.

16 SOLICITOR THORNTON: There are certainly going to
17 be some words that have some difference in them, which
18 is why we go through it. And like I said, I'm going to
19 be happy to give it to him so he has it before I would
20 play it for, you know, in front of the jury.

21 But I know Mr. Lee was -- is not accusing us of
22 anything improper, but my position has always been that
23 the recording is the evidence. The overlay is simply a
24 demonstrative that he'll have before it goes in front of
25 the jury. So, there is going to be some difference

1 between that overlay and what's on the transcript.
2 That's the whole purpose we get that done ahead of time.

3 MR. LEE: Which supports my position that it is
4 someone's opinion as to what something says. And he's
5 made a perfect example that SLED and the solicitor's
6 office apparently have a different opinion through non-
7 expert witnesses about what something says.

8 THE COURT: Okay. All right. At the end of the
9 day, I'll see if I agree with you, Mr. Lee, after I've
10 heard the tape.

11 MR. LEE: Thank you.

12 THE COURT: And I might look at the transcript,
13 too, and see what liberties have been taken typing up
14 something that can't be understood, if it happened at
15 all.

16 MR. LEE: I understand. It's an interesting issue.

17 THE COURT: Oh, it is.

18 MR. LEE: Yes, sir.

19 THE COURT: It is. But it's really not a difficult
20 issue to resolve. I'm the only person, -- apparently,
21 Judge Toal and I are the only people up in the courtroom
22 who apparently have never seen the statement or listened
23 to the tape. So, we'll take care of those things.
24 We'll do that.

25 MR. LEE: Yes, sir.

1 THE COURT: It's not going to be a hard issue to
2 resolve once we've done those things.

3 MR. LEE: Yes, sir.

4 THE COURT: I've just given you a law review lesson
5 in the law as I understand it in this regard. Now,
6 whether it applies to this case or not depends on what
7 the tape sounds like. All right? Anything further?

8 SOLICITOR THORNTON: No, your Honor. We're getting
9 it ready.

10 MR. LEE: No, sir.

11 THE COURT: Okay. All right. Unless you all want
12 to sit here and listen, or watch us listen to two
13 minutes of the tape, we can stand in recess right this
14 -- isn't that right?

15 SOLICITOR THORNTON: Yes, sir.

16 THE COURT: Okay. While that's being taped up, or
17 whatever you're going to do to it and get it to us,
18 let's give Ms. Wanda something to do during the pre-
19 lunch hour marking those exhibits. Okay? Thank you.
20 We'll stand at ease for a while.

21 OFF THE RECORD 11:31 A.M.

22 BACK ON THE RECORD 11:50 A.M.

23 ARGUMENT AND RULINGS:

24 BAILIFF: All rise. This Court will come to order.

25 THE COURT: Thank you, folks. You all can be

1 seated. Solicitor, let me hand you your technology and
2 your transcript back to you.

3 SOLICITOR HOLLEN: Thank you, your Honor.

4 THE COURT: All right. Folks, I've had a chance to
5 listen to the -- first of all, listen to the recording
6 itself without the benefit of the transcript; and then,
7 listen to the recording with the transcript on the
8 screen; and finally, compare the transcript itself to
9 the printed page, which is here. Having done all that,
10 is there any other argument, Mr. Lee, that you wish to
11 put on the record further?

12 MR. LEE: Yes, your Honor. During the break, we
13 were provided a copy of the audio, as well as the
14 transcript that the State had prepared that we've never
15 seen before. And in listening to that, your Honor, I
16 will tell you as an officer of the court, the thing they
17 sent me is a lot easier to hear than what I have in
18 discovery. I've also compared the transcription that
19 SLED -- SLED's opinion of what it said versus the
20 Solicitor's opinion of what it said. And there are
21 substantial differences, and I think it goes to the very
22 heart of the matter showing that these are people's
23 opinions.

24 THE COURT: Right.

25 MR. LEE: And it really doesn't matter what SLED's

1 opinion or the State's opinion.

2 THE COURT: Right.

3 MR. LEE: It depends on what the jury's is. But my
4 concern is that, I don't know if that thing was somehow
5 cleaned up, because the copy that I have does not sound
6 like the copy that is being sought to be introduced.

7 THE COURT: Right.

8 MR. LEE: And I'm concerned about that.

9 THE COURT: Let's deal, first of all, did you note
10 any material differences between the transcript that you
11 have there in your hand, the printed scroll that came up
12 on the screen?

13 MR. LEE: Yes, sir.

14 THE COURT: What were they?

15 MR. LEE: Well, I would have to go ask. They
16 didn't give me a printed copy of that. But there are --
17 I think there are significant changes between,
18 differences between, what the solicitor's office opinion
19 of what it says and their demonstration versus the one
20 that I have from SLED that was given to me three-and-a-
21 half years ago.

22 THE COURT: But let's get more to the point. Since
23 that's not going to be seen by anybody that you're
24 holding in your hand, --

25 MR. LEE: Yes, sir.

1 THE COURT: -- do you note any material differences
2 between what appeared on the screen and what you heard?
3 In other words, what the jury is going to be seeing and
4 hearing, do you see any material differences in those
5 things?

6 MR. LEE: I -- I --

7 THE COURT: Would you like to look at it? You want
8 to go through again to see?

9 MR. LEE: I think that what -- is the question does
10 it fairly and accurately represent what's being played?

11 THE COURT: That's right.

12 MR. LEE: I cannot say that it does not, your
13 Honor, which, again, would be my position is all the
14 more reason that the jury doesn't need it.

15 THE COURT: Right.

16 MR. LEE: Because, and I don't want to shift
17 things, but I mean, I'm real concerned that for three-
18 and-a-half years I had an audio of a very, very, very
19 important piece of evidence that appears to -- and I'm
20 not suggesting they did anything, but the one that
21 they're playing today is a lot different than the one I
22 received as far as quality. The transcript that they're
23 proffering today is significantly different from the one
24 that I've had since January of 2013.

25 THE COURT: Right.

1 MR. LEE: And you know, quite frankly, that
2 concerns me for a lot of reasons. We prepared this
3 trial, you know, in the hopes that we could keep out the
4 audio, and certainly, the transcript.

5 THE COURT: Right.

6 MR. LEE: But also prepared for it, and then, this
7 change. That certainly changes things for us, to be
8 honest with you.

9 THE COURT: Right. There's a difference between
10 altering and enhancing. Would you agree with me on
11 that?

12 MR. LEE: Absolutely, and I'm not suggesting that
13 they've done anything nefarious or whatever.

14 THE COURT: Right.

15 MR. LEE: But if they've done anything to enhance
16 it, clean it up, or whatever, number one, I think we
17 need to know who did it, whether they're qualified to do
18 it, and more importantly, we need to be provided a
19 timely copy of what it is, particularly if it's
20 something important enough for them to publish and
21 introduce in evidence and the audiotape published to the
22 jury in the form of a transcript. I just feel like
23 we've been a little bit blind sided by this. Again, not
24 saying anything nefarious going on, and maybe it was an
25 oversight. I know Mr. Thornton, they've had three

1 solicitors on this, but I'm just real concerned about my
2 client's ability to get a fair trial, if, in fact, the
3 new audio and the new transcript is published, is
4 allowed to be presented to the jury.

5 THE COURT: All right. I'll let you and Mr.
6 Thornton talk about what they've done to make it
7 clearer. Obviously, listening to it, there are parts of
8 it that are very clear. And of course, I haven't the
9 benefit of anything like you have, but it appears to be
10 very clear. And to the untrained ear, it does not
11 appear to be altered in any way in so far as words
12 changed or taped over or anything of that nature. And
13 for the most part, the tape, to my hearing, Mr.
14 Heyward's statements on the tape, if it is his voice,
15 appear to be somewhat clearer in most instances than the
16 victim's in this case. Although, there's some mumbling
17 that goes on in both cases that probably doesn't add a
18 whole lot to the context, if at all. But nonetheless,
19 that could be for a jury to determine.

20 But I don't see any -- I don't see, really, any
21 real deviation at all between what I heard on the audio
22 portion and what I saw on the screen. And the
23 differences between the printed transcript that you have
24 are not material in my view. And even less material as
25 far as the jury's concerned, because they're not going

1 to see that transcript, unless, of course, you choose to
2 cross-examine someone on the basis of the fact that
3 there might be what you think are material differences
4 between those things and try to explore that.

5 But the tape itself, for the most part, is very
6 clear. And those places where it is not clear, the
7 scrolled transcript on the screen seemed to be very
8 helpful in that regard. I'm going to allow the jury to
9 see the scrolled transcript, as well as to hear the
10 tape, as I have previously indicated. I'll let you talk
11 to Mr. Thornton to see if you can get some better
12 explanation of why your copy is not as good as his, or
13 why his copy is good as this is. But, and more to the
14 point, if there's something on your copy that you
15 perceive to be different from the evidence that's being
16 offered, then, we've got another argument to hear.

17 MR. LEE: Well, and of course I'm not in a position
18 right now to make that comparison and be able to do
19 that. I would ask you to consider listening to the
20 discovery disc that I was provided, and then, the Court
21 take a look at the difference in quality between the
22 tape that I've been provided for the last three-and-a-
23 half years versus the one that has shown up today.

24 THE COURT: I'll be glad to do that, and see if, in
25 some way, you're prejudiced by not having the other one.

1 MR. LEE: Yes, sir. The other thing I would ask,
2 Judge, I'd like some type of -- I would request some
3 type of information as far as whether the tape was
4 enhanced, who did it, whose opinion is -- I mean, who
5 did this, this new transcript for the solicitor's
6 office.

7 THE COURT: The one that's on the screen?

8 MR. LEE: Yes, sir.

9 THE COURT: All right. Why don't you ask Mr.
10 Thornton and see if he can't provide that information to
11 you. Okay?

12 DISCUSSION BETWEEN SOLICITOR THORNTON
13 AND MR. LEE.

14 THE COURT: Does that need to be a part of the
15 record?

16 SOLICITOR THORNTON: I'm sorry, judge. I
17 apologize.

18 MR. LEE: I'd like it to be a part of the record,
19 your Honor.

20 THE COURT: Okay.

21 SOLICITOR THORNTON: I asked Mr. Thornton who did
22 the transcript of the audio that was presented in court
23 today.

24 SOLICITOR THORNTON: And my answer, Judge, is that,
25 as far as the supervising person, that would be me.

1 THE COURT: Right.

2 SOLICITOR THORNTON: When preparing for trial in
3 this case, as I do in these cases, I tell them to
4 provide me what they have as the -- I hate to use the
5 word *transcript*, but the transcribed words as what they
6 hear on the audio, and then, I will listen to it.
7 Sometimes I'll take headphones. I've found that that
8 helps. Because, in answer to the other question, we
9 don't have the ability to enhance it. And I'm going to
10 make sure that Mr. Hightower hasn't gone and spent a
11 bunch of money I don't know about. But the only thing
12 we have ever been able to do is sometimes turn the
13 volume up. But there's no -- we don't have any
14 enhancement or any other kind of altering technology
15 that I'm aware of.

16 THE COURT: Right.

17 SOLICITOR THORNTON: I will absolutely call Mr.
18 Hightower and verify that, but if he does, I'm not aware
19 of it.

20 THE COURT: Mr. Hightower your I.T. man?

21 SOLICITOR THORNTON: Among other things, yes, sir,
22 he does a lot of these. And he did the words, actually
23 typed in the words that you see on the screen.

24 THE COURT: Right.

25 SOLICITOR THORNTON: What we have to do is, it's a

1 moving-making program, for lack of a better word. And
2 you have the audio track, and then, you overlay it. The
3 way we used to have to do it is PowerPoint slide. The
4 problem with that was you had to manually -- you could
5 only do this many words, and you'd have to manually go
6 forward. And if you ever had to pause, if the court had
7 an issue or there was an objection, couldn't pause both
8 the words and the audio at the same time. You'd
9 actually have to start the whole thing over. So, we
10 finally found a program that allows us just to put the
11 words on top of the audio tract.

12 THE COURT: Right.

13 SOLICITOR THORNTON: So, that's what you see. But
14 the short answer to that question is, I supervise it.
15 Mr. Hightower typed it, but I was the final word on what
16 it did or did not say.

17 THE COURT: Right. Okay.

18 MR. LEE: Again, I mean, if we're going to rely on
19 something that is the prosecutor's opinion of what
20 something says, I think that is concerning, your Honor.
21 And you've already heard me argue on that.

22 THE COURT: Well, in so far as the tape and the
23 scroll are concerned, it now becomes the Court's opinion
24 that they mirror each other. And so, that's the reason
25 at least on that ruling, it's based upon my own

1 observation and my own hearing. Now, however, if you've
2 got something on the discovery tape that appears
3 different from that, I'll be glad to re-visit that, but
4 I want to hear the discovery tape first.

5 MR. LEE: It differs. And it's a lot more
6 inaudible than what they're publishing.

7 THE COURT: Right.

8 MR. LEE: Which puts me in a bad spot, having
9 listened to that, prepared everything, thinking that was
10 going to be the extent of the testimony that I had to
11 deal with and argue to a jury. You've heard this tape,
12 it's really, really bad, could have been one argument.
13 Now, all of a sudden, not only is the tape better, but
14 we have a brand new transcript that I've never seen
15 before in three-and-a-half years.

16 THE COURT: Right.

17 MR. LEE: And I would respectfully say I think the
18 way to remedy that, your Honor, would be to allow the
19 audio in for what it's worth, but keep out that
20 transcript for a variety of reasons, and I think that
21 would be a proper, just resolution to the entire
22 problem.

23 THE COURT: The audio as it has been presented here
24 on --

25 MR. LEE: Audio, no transcript.

1 THE COURT: All right. You know, I'm going to
2 think about that, to remove, perhaps, one appellate
3 issue from the case, should that become necessary, of
4 course. But before I do it, let me look at the
5 difference between that -- it's not marked for exhibit,
6 but it's the transcript that we've shown today and this
7 transcript that you received earlier.

8 SOLICITOR THORNTON: Yes, sir. Okay.

9 MR. LEE: Yeah, Judge, I guess what I'll do for
10 appellate purposes is ask that the transcription of
11 audio recording date 12-28-2012, that the woman from
12 SLED, Beverly Cook prepared, --

13 THE COURT: Right.

14 MR. LEE: -- I would ask that, for purposes of this
15 motion, I be allowed to introduce this into evidence as
16 Defendant's Number 1.

17 THE COURT: Well, we'll mark it Defendant's Number
18 1 for identification only, Madam Court Reporter.

19 MR. LEE: Okay. And again, for purposes of the
20 record, I would ask that we, at a later date, be able to
21 make a copy, a written copy of what they intend to use
22 as the transcript for the trial.

23 THE COURT: Now, that's on the screen, right?

24 MR. LEE: Yes, sir.

25 SOLICITOR THORNTON: Yes, sir.

1 MR. LEE: Or I can make -- if we get another copy,
2 I would ask to be able to introduce that for making the
3 record. And then, I also would ask that I be allowed to
4 have the Court listen to the C.D. that I got that was
5 the purported version of the statement. And that, at a
6 later time, I'd also be allowed to introduce that as an
7 exhibit for the purposes of this motion.

8 THE COURT: Well, all those could come in as your
9 exhibits for identification only for the purposes of
10 this motion.

11 MR. LEE: Yes, sir.

12 THE COURT: Do you have a copy of the transcript
13 that you were furnished earlier with discovery stuff?

14 MR. LEE: Yes, sir. And that's what I handed up to
15 you.

16 THE COURT: That's this?

17 MR. LEE: Yes, sir.

18 THE COURT: So, there's only one transcript.

19 MR. LEE: Yes, sir.

20 SOLICITOR THORNTON: Right.

21 THE COURT: All right.

22 SOLICITOR THORNTON: Your Honor, that --

23 THE COURT: The way the argument was going, I
24 thought there were two.

25 SOLICITOR THORNTON: No, sir. That -- the --

1 MR. LEE: Well, the scroll version versus this.
2 There's differences between those.

3 THE COURT: Okay. Okay. I've done that, but I'll
4 look at it again.

5 MR. LEE: Yes, sir.

6 THE COURT: But mainly I wanted -- the next thing
7 is the earlier version of the tape that you received or
8 whatever it is, the audio.

9 MR. LEE: Yes, sir. Yes, sir.

10 THE COURT: Call it what you will. The part that
11 the scroll and the audio will actually be a State's
12 exhibit. The record will be preserved in that regard.
13 And if you've got these other things, which will not go
14 to the jury, that you want to preserve for appellate
15 purposes, --

16 MR. LEE: Yes, sir. I do, but I just need -- I'll
17 need to copy those at a later date, but I would just ask
18 that I be allowed to introduce them.

19 THE COURT: All right. So, at this point, Number 1
20 for identification is going to be the transcript, the
21 SLED transcript that's right here.

22 SOLICITOR THORNTON: Yes, sir.

23 ITEM IDENTIFIED AS TRANSCRIPT OF
24 AUDIO RECORDING, DATED 12-28-12
25 MARKED DEFENDANT'S EXHIBIT NUMBER 1

1 FOR IDENTIFICATION; ALSO

2 MARKED COURT'S EXHIBIT NUMBER 5.

3 THE COURT: Defendant's Number 2 for identification
4 will be the earlier audio that you received at some
5 point in time.

6 ITEM IDENTIFIED AS C.D. OF

7 EARLIER AUDIO RECORDING

8 MARKED DEFENDANT'S EXHIBIT NUMBER 2

9 FOR IDENTIFICATION; ALSO

10 MARKED COURT'S EXHIBIT NUMBER 6.

11 MR. LEE: Yes, sir. Yes, sir.

12 THE COURT: All right.

13 MR. LEE: And then, I guess Number 3 would be that
14 -- well, it will already be in the record, but just for
15 identification, 3 would be the proposed scrolling down
16 transcript that they intent to -- they offer and you've
17 looked at.

18 THE COURT: I think that that will be a State's
19 exhibit. Otherwise, if it's not, then, we don't need
20 these others things. They won't mean anything.

21 All right. Mr. Lee, the record will be preserved
22 in that regard. And if you wish for me to listen to
23 that earlier audio, I'll be glad to do it. Otherwise,
24 it will be in the record for appellate review, should
25 that become necessary.

1 MR. LEE: I was going to queue this up for you, if
2 you could listen to it real quick when you have a
3 chance.

4 THE COURT: Well, good. Good. We'll listen to it
5 right now. Whenever you get it queued up.

6 And the, Mr. Thornton, what you showed me a while
7 ago, is that on a disc somewhere?

8 SOLICITOR THORNTON: Yes, sir.

9 THE COURT: Okay.

10 SOLICITOR THORNTON: Would you like a disc of it,
11 your Honor?

12 THE COURT: Let's go ahead and mark that. We'll
13 mark it as a State's exhibit, because it's going to come
14 in anyway, and we don't need it in twice. And so, that
15 will be a State's exhibit that you all can agree on a
16 number. It comes in over objection, of course.

17 SOLICITOR THORNTON: Judge, we'll keep it simple
18 and just put it in as 1. And I can do them out of
19 order, if I need to. So, I'm not sure where, exactly,
20 it would be.

21 THE COURT: State's Exhibit 1, then, Mr. Lee, will
22 be the tape of the scroll.

23 MR. LEE: Yes, sir.

24 THE COURT: Okay? And so, you don't need to offer
25 it again.

1 JUDGE TOAL: And 2 is what you're going to play.

2 MR. LEE: Right. Defendants Number 2. And Judge,
3 if you'd like to play them side by side, I guess we
4 could use maybe Brian's computer and if you wanted to
5 have them side by side.

6 THE COURT: But it ought to be -- first of all, I'd
7 like to just listen to yours. And then, I'll be glad to
8 listen to them side by side.

9 MR. LEE: Okay. Yes, sir.

10 SOLICITOR THORNTON: We'll bringing the computer
11 back, if that's okay, your Honor.

12 THE COURT: All right. Thank you. We'll stand at
13 ease for a few minutes. Okay.

14 OFF THE RECORD 12:09 P.M.

15 BACK ON THE RECORD 12:22 P.M.

16 ARGUMENT AND RULINGS:

17 THE COURT: Thank you, folks. You all can be
18 seated.

19 Okay, folks. We have had a chance to listen to
20 Defendant's Exhibit Number 2 for identification, which
21 was the audio furnished to Mr. Lee in connection with
22 the discovery. Compared it once again to State's
23 Exhibit Number 1, which is the audio provisions. We
24 listened to, this time, both of them. The State's
25 Exhibit Number 1, the tape that has been proffered for

1 use at trial, it's somewhat louder. It is clear.
2 There's no question about it. It's clear. A little
3 more crystal-type sound. However, the Defense Exhibit
4 Number 2, those things were discernable, not as easily,
5 but it could be understood. And we had the volume
6 turned up as loud as it would go on both of them. And
7 it appeared that the volume on State's Exhibit Number 1
8 is higher than the one on Defense's Exhibit 2 for I.D.
9 However, none of those differences appear to be the
10 result of any intentional distortion or an intentional
11 alteration. It just so happens that one of them is
12 louder than the other. And perhaps in the re-recording,
13 as it was handed down, maybe that could possibly account
14 for the difference in the volume and the difference in
15 clarity.

16 It, however, of course, does not change the
17 authenticity, the clarity, and the probative value of
18 State's Exhibit Number 1. And frankly, we don't find
19 that the discovery, Defense Exhibit Number 2 for I.D.,
20 that that distinction was prejudicial.

21 If the argument was going to be that the jury could
22 not hear it as well, and now they're going to be able to
23 hear it better, that doesn't change what was on the tape
24 in the first place and what was discernable by anybody
25 who was listening to it if they were able get in a

1 controlled environment, quiet room, turn it up as it
2 could go.

3 So, once again, I'm going to allow the State's
4 Exhibit Number 1, the tape and the scroll itself, to be
5 introduced into evidence so the jury can hear it. The
6 record is preserved for appellate review, Mr. Lee, if
7 the need should arise, so that a higher court can listen
8 to the same things that we listened to and review the
9 same things we listened to -- or looked at to determine
10 if I should have made a different decision.

11 MR. LEE: I understand, your Honor. If there were
12 any alteration made by the solicitor office, the I.T.
13 guy, would that play any part in your decision? I'm
14 just wondering whether I should ask Sean to let me talk
15 to Mr. Hightower regarding that. Or is your decision,
16 regardless of whether it was tweaked or --

17 THE COURT: If alternation means change the content
18 of it, clearly, it would make a difference. If
19 alteration means simply whether they enhanced it and
20 made it clearer, then, it's not going to make any
21 difference.

22 MR. LEE: Okay. I understand, your Honor.

23 THE COURT: Okay?

24 MR. LEE: Thank you.

25 THE COURT: All right. Anything further? I think

1 the jury's going to be here at 2:00 o'clock.

2 MADAM CLERK: Yes, sir.

3 THE COURT: Okay. We'll stand at ease until 2:00
4 o'clock.

5 MR. LEE: Thank you.

6 THE COURT: Thank you.

7 OFF THE RECORD 12:26 P.M.

8 JUROR QUALIFICATION AND VOIR DIRE

9 ARE NOT CONTAINED IN THIS TRANSCRIPT

10 PURSUANT TO THE REQUESTING PARTY.

11 BACK ON THE RECORD 6:05 P.M.

12 JURY SELECTION:

13 BAILIFF: All rise. The Court will come to order.

14 THE COURT: Ladies and gentlemen go the jury, I
15 want to thank all of you for your cooperation and your
16 patience throughout a long afternoon for you and for us
17 all in working through this process. And your patience
18 has been admirable, and we're grateful for that, as well
19 as for your presence here today.

20 We're now at that point where we've been pointing
21 to since you all got here at 2:00 o'clock today, and
22 that is the selection of a jury in this case. And
23 momentarily, we're going to start that process.

24 When your names are called, if you will follow the
25 instructions that will be given to you by the clerk, and

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JURY SELECTION

1 they will tell you what to do. From that point on, you
2 will simply stand in place, right where you are, if your
3 name is called. And then, you will follow the
4 instructions that will be given to you.

5 Gentlemen, the strikes will be five for the
6 State; ten for the Defense.

7 SOLICITOR THORNTON: Yes, your Honor.

8 THE COURT: We will select two alternates. As to
9 each alternate, the strike will be one for the State and
10 two for the Defense. Is the State ready to strike?

11 SOLICITOR THORNTON: State's ready, Judge.

12 THE COURT: Is the Defense ready?

13 MR. LEE: Yes, your Honor.

14 THE COURT: Madam Clerk, if you'd give us a jury.

15 MADAM CLERK: Judge, two alternates or three
16 alternates?

17 THE COURT: Three alternates. Did I say two?

18 MADAM CLERK: Yes, sir.

19 THE COURT: There will be three alternates. The
20 strikes will be two for the Defense and one for the
21 State.

22 MADAM CLERK: Number 276, Robert Walker. If you'll
23 just stand there for a second, please.

24 What says the State?

25 SOLICITOR THORNTON: Please present this juror.

1 MADAM CLERK: What says the Defense?

2 MR. LEE: Please seat Mr. Walker.

3 MADAM CLERK: Mr. Walker, if you'll come forward
4 and have a seat in the jury box, please.

5 Number 285, Blondell White. What says the State?

6 SOLICITOR THORNTON: Please present this juror.

7 MADAM CLERK: What says the Defense?

8 MR. LEE: Please seat Ms. White.

9 THE COURT: If you'll come forward, please, Ms.
10 White, and have a seat.

11 MADAM CLERK: Number 44, Michelle Connelly. What
12 says the State?

13 SOLICITOR THORNTON: Please present this juror.

14 MADAM CLERK: What says the Defense?

15 MR. LEE: Please excuse Ms. Connelly.

16 THE COURT: Ms. Connelly, you can have a seat.
17 Thank you.

18 MADAM CLERK: Number 3, Christopher Altman. What
19 says the State?

20 SOLICITOR THORNTON: Please present this juror.

21 MADAM CLERK: What says the Defense?

22 MR. LEE: Please excuse Mr. Altman.

23 MADAM CLERK: Have a seat. Number 208, Jeri Post.
24 What says the State?

25 SOLICITOR THORNTON: Please excuse this juror.

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JURY SELECTION

1 MADAM CLERK: You can have a seat. Number 220,
2 Philip Ricks. What says the State?

3 SOLICITOR THORNTON: Please present this juror.

4 MADAM CLERK: What says the Defense?

5 MR. LEE: Please seat Mr. Ricks.

6 MADAM CLERK: Number 227, Jemaine Roberts. What
7 says the State?

8 SOLICITOR THORNTON: Please present this juror.

9 MR. LEE: Please seat Mr. Roberts.

10 MADAM CLERK: Number 122, Roger Harris. What says
11 the State?

12 SOLICITOR THORNTON: Please present this juror.

13 MADAM CLERK: What says the Defense?

14 MR. LEE: Please seat Mr. Harris.

15 MADAM CLERK: Number 88, Tiesha Frazier. What says
16 the State?

17 SOLICITOR THORNTON: Please excuse this juror.

18 MADAM CLERK: Number 267, Wesley Tinsley. What
19 says the State?

20 SOLICITOR THORNTON: Please excuse this juror.

21 MADAM CLERK: Number 9, Tammy Barnes. What says
22 the State?

23 SOLICITOR THORNTON: Please excuse this juror.

24 THE COURT: The State has exercised four strikes.
25 The Defense has exercised two strikes.

1 MADAM CLERK: Number 90, Joseph Galbraith. What
2 says the State?

3 SOLICITOR THORNTON: Please present this juror.

4 MADAM CLERK: What says the Defense?

5 MR. LEE: Please excuse Mr. Galbraith.

6 MADAM CLERK: Number 115, James Hammack. What says
7 the State?

8 SOLICITOR THORNTON: Please present this juror.

9 MADAM CLERK: What says the Defense?

10 MR. LEE: Please excuse Mr. Hammack.

11 MADAM CLERK: Number 160, Karen Strickland. What
12 says the State?

13 SOLICITOR THORNTON: Please present this juror.

14 MADAM CLERK: What says the Defense?

15 MR. LEE: Please excuse Ms. Strickland.

16 MADAM CLERK: Number 160, Infiniti Loadholt. What
17 says the State?

18 SOLICITOR THORNTON: Please present this juror.

19 MADAM CLERK: What says the Defense?

20 MR. LEE: Please seat Ms. Loadholt.

21 MADAM CLERK: Number 66, Jacquelyn DeLoach. What
22 says the State?

23 SOLICITOR THORNTON: Please present this juror.

24 MADAM CLERK: What says the Defense?

25 MR. LEE: Please excuse Ms. DeLoach.

9-19-16 STATE V HEYWARD

JURY SELECTION

1 MADAM CLERK: Number 290, Darin Williams. What
2 says the State?

3 SOLICITOR THORNTON: Please present this juror.

4 MADAM CLERK: What says the Defense?

5 MR. LEE: Please seat Mr. Williams.

6 MADAM CLERK: Number 274, Gordan Walker. What says
7 the State?

8 SOLICITOR THORNTON: Please present this juror.

9 MADAM CLERK: What says the Defense?

10 MR. LEE: Please seat Mr. Walker.

11 MADAM CLERK: Number 270, Rachel Trilling. What
12 says the State?

13 SOLICITOR THORNTON: Please present this juror.

14 MADAM CLERK: What says the Defense?

15 MR. LEE: Please strike this juror.

16 MADAM CLERK: Number 84, Janice Fields. What says
17 the State?

18 SOLICITOR THORNTON: Please present this juror.

19 MADAM CLERK: What says the Defense?

20 MR. LEE: Please seat Ms. Fields.

21 MADAM CLERK: Number 31, Kassie Buchanan. What
22 says the State?

23 SOLICITOR THORNTON: Please present this juror.

24 MADAM CLERK: What says the Defense?

25 MR. LEE: Please seat Ms. Buchanan.

1 MADAM CLERK: Number 124, Andrew Harvey. What says
2 the State?

3 SOLICITOR THORNTON: Please present this juror.

4 MADAM CLERK: What says the Defense?

5 MR. LEE: Please excuse Mr. Harvey.

6 MADAM CLERK: Number 167, Michael Marshall. What
7 says the State?

8 SOLICITOR THORNTON: Please excuse this juror.

9 MADAM CLERK: Number 52, Cory Crews. Does the
10 State have cause to strike?

11 SOLICITOR THORNTON: Please present this juror.

12 MADAM CLERK: What says the Defense?

13 MR. LEE: Please excuse Mr. Crews.

14 MADAM CLERK: Number 184, Leslie Moore. Does the
15 State have cause to strike?

16 SOLICITOR THORNTON: Please present this juror.

17 MADAM CLERK: What says the Defense?

18 MR. LEE: Please seat Ms. Moore.

19 MADAM CLERK: Number 183, Barbara Mood. Does the
20 State have cause to strike?

21 SOLICITOR THORNTON: Please present this juror.

22 MADAM CLERK: Defense? Defense?

23 THE COURT: That's right, they've used nine
24 strikes.

25 MADAM CLERK: What did you say, Mr. Lee? I'm

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JURY SELECTION

1 sorry.

2 MR. LEE: Please seat Ms. Mood.

3 THE COURT: Proceed now to select alternates.

4 We'll select three alternates. As to each alternate,
5 the strikes will be two for the Defense, one for the
6 State.

7 MADAM CLERK: Number 218, Victoria Reynolds. What
8 says the State?

9 SOLICITOR THORNTON: Please present this juror.

10 MADAM CLERK: What says the Defense?

11 MR. LEE: Please excuse Ms. Reynolds.

12 MADAM CLERK: Number 215, Pamela Ramsey. What says
13 the State?

14 SOLICITOR THORNTON: Please present this juror.

15 MADAM CLERK: What says the Defense?

16 MR. LEE: Please seat Ms. Ramsey.

17 MADAM CLERK: Number 21, Beverly Brinson. What
18 says the State?

19 SOLICITOR THORNTON: Please excuse this juror.

20 MADAM CLERK: Number 166, Lewis Manor. Does the
21 State have cause to strike?

22 SOLICITOR THORNTON: Please present this juror.

23 MADAM CLERK: What says the Defense?

24 MR. LEE: Please seat Mr. Manor.

25 MADAM CLERK: Number 256, Nicole Smith. What says

1 the State?

2 SOLICITOR THORNTON: Please present this juror.

3 MADAM CLERK: What says the Defense?

4 MR. LEE: Please seat Ms. Smith.

5 THE COURT: Mr. Thornton, are there any matters of
6 law regarding the jury selection process from the State?

7 SOLICITOR THORNTON: None, your Honor.

8 THE COURT: Thank you. Mr. Lee, anything regarding
9 the jury selection process from the Defense?

10 MR. LEE: No, sir, your Honor.

11 THE COURT: Thank you.

12 Ladies and gentlemen, those of you who were not
13 selected as jurors for the trial of this case, I thank
14 you again for your cooperation and your patience
15 throughout the day. You have survived the day, and I'm
16 going to send you home now. You don't have to come
17 back. You don't come back. We have one case to try
18 this week, and we have a jury in place to try that case.
19 But as you can see, it has taken most of you on that
20 list out there to get this jury in place. So, we have
21 needed all of you, and we're glad that we had you.

22 You're free to go now. Enjoy the rest of your
23 week. Thank you for your service.

24 JURORS NOT CHOSEN LEAVE COURTROOM.

25 SOLICITOR THORNTON: May we approach, Your Honor?

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GENERAL GUIDELINES

1 THE COURT: Does this need to be on the record?

2 SOLICITOR THORNTON: No, sir.

3 OFF-THE-RECORD BENCH CONFERENCE, OUT
4 OF HEARING OF JURORS. PRESENT: THE
5 COURT, SOLICITOR THORNTON, MR. LEE.
6 END BENCH CONFERENCE.

7 GENERAL GUIDELINES FOR JURY SERVICE:

8 THE COURT: Now, ladies and gentlemen, you all have
9 been selected as jurors in the trial of this case. When
10 you leave here, when you come back at 10:00 o'clock
11 tomorrow, --

12 BAILIFF: Order in the court, please, as you're
13 going out.

14 THE COURT: When you come back at 10:00 o'clock
15 tomorrow, you will not come into the courtroom; you will
16 come into the jury room. You recall the bailiff right
17 here. He'll show you the jury room that you'll report
18 to and a way to get to that jury room in the morning.

19 Before we start the trial tomorrow, I'm going to
20 give you some instructions about your role as jurors and
21 some things that you can do and cannot do as jurors
22 while you're serving in this particular case. But to
23 keep you from accidentally and mistakenly doing some of
24 those things overnight you're not supposed to do, let me
25 tell you briefly at this junction that you're not

1 allowed to talk about this case with anybody during the
2 trial of this case. Not even among yourselves. Now,
3 when the trial is over, you take as much time,
4 obviously, as you need to talk about it among yourselves
5 to reach a verdict in this case. But at no time during
6 this trial may you discuss this case with anybody else
7 or try to find out anything about this case on your own,
8 or expose yourself to any publicity that might be
9 generated as a result of this trial.

10 Ever since you got here, and some of you got here
11 at 1:30 this afternoon, and you've been through this
12 whole process like. Every question that's been asked of
13 everyone of you and every answer that's been received
14 has been designed to ensure that once we get fifteen
15 people in that jury box where you're seated right now,
16 we would have people just like you. People that didn't
17 know anything about this case that would keep them from
18 serving fairly and impartially. People who didn't have
19 any connection to the parties who are involved in the
20 trial of this case that would make you feel
21 uncomfortable while serving as a juror. People that
22 didn't have anything in your own background or your
23 family background that would interfere with your ability
24 to be fair and impartial. People who have not read
25 anything about this case that would cause you to have an

1 opinion about this case that you could not set aside as
2 jurors. That's why we asked you all the questions that
3 we have asked you. We needed folks like yourselves,
4 with no connection, with an open mind, with nothing in
5 your background or in your own personal beliefs or your
6 knowledge of these people that would keep you from
7 serving fairly and impartially. You have given us that
8 type of jury.

9 Now, if you start talking to somebody overnight
10 about this, or if you let anybody else talk with you
11 about this case overnight, you'll have undone all that
12 you and I have worked so hard to get done throughout
13 this long afternoon. I'm sure you will not do that. If
14 somebody should ask you about this case, you tell them
15 you can't talk about it; that the judge told you not to
16 talk about it. When the trial is over, you can talk
17 with anybody you want to about it, but not while you're
18 serving as jurors.

19 Everybody understand that?

20 RESPONSES FROM JURORS.

21 THE COURT: Have a safe trip home. I'll see you
22 tomorrow at 10:00 o'clock. You'll report to the jury
23 room. Follow the bailiff. He'll show you where to go.

24 JURORS LEAVE COURTROOM 6:27 P.M.

25 THE COURT: Mr. Thornton, is there anything from

1 the State before we break for the evening?

2 SOLICITOR THORNTON: No, your Honor.

3 THE COURT: Thank you. Mr. Lee, from the Defense?

4 MR. LEE: Nothing, your Honor. Thank you.

5 THE COURT: All right. The trial will resume at
6 10:00 o'clock tomorrow morning. We'll all be here a
7 little before then.

8 SOLICITOR THORNTON: Yes, sir.

9 MR. LEE: Thank you, Judge.

10 END DAY ONE, MONDAY, SEPTEMBER 19,

11 2016, 6:28 P.M.

12 BEGIN DAY TWO, TUESDAY, SEPTEMBER 20,

13 2016, 10:09 A.M.

14 OBJECTIONS, MOTIONS, RULINGS:

15 BAILIFF: All rise. Court will come to order.

16 THE COURT: Thank you, ladies and gentlemen.

17 Please be seated. Good morning.

18 Madam Reporter, would you make this a court's
19 exhibit so the voir dire question will stay with it.

20 COURT REPORTER: Yes, sir. Court's Exhibit Number
21 2.

22 THE COURT: Okay.

23 ITEM IDENTIFIED AS DEFENDANT'S

24 PROPOSED VOIR DIRE

25 MARKED COURT'S EXHIBIT NUMBER 2.

1 THE COURT: Gentlemen, we're advised the jury's in
2 place. I'll bring the jury out. I'll appoint a
3 foreperson. The jury will sworn. I'll make some brief
4 introductory comments and allow opening statements. Mr.
5 Thornton, you'll open for the State?

6 SOLICITOR THORNTON: Yes, your Honor.

7 THE COURT: Mr. Lee, for the Defense?

8 MR. LEE: Yes, your Honor.

9 THE COURT: All right. Thank you. Both sides
10 ready for the jury?

11 SOLICITOR THORNTON: Your Honor, we do have a
12 couple matters. You instructed us yesterday --

13 THE COURT: Right.

14 SOLICITOR THORNTON: -- to go through the exhibits,
15 which we kind of got sidetracked a little bit being here
16 as late as we were, but Mr. Lee was kind enough to get
17 with me this morning. I think we have, if not all of
18 them, Judge, at least all of them that we would seek to
19 introduce before lunch this morning. We've got them
20 narrowed down to two, which would come up pretty early
21 in the process. So, if we needed to argue about them, I
22 thought we might want to do that now.

23 THE COURT: Okay. What do we have?

24 SOLICITOR THORNTON: First, your Honor, is a
25 picture of the victim in this case, Complainant . And

1 I can pass it up. It's been marked for identification
2 as State's 2. And the second one is a note, which is
3 what Complainant wrote and handed it to the principal
4 of the school, Dr. Brown, which kind of set this whole
5 procedure in motion as far as when he first disclosed.
6 And that is exhibit for identification, State's Exhibit
7 Number 4. And I'll pass those up if the Court wants to
8 look at them while we argue them.

9 THE COURT: All right.

10 SOLICITOR THORNTON: Mr. Lee, my understand, is
11 objecting to those two. We've agreed on the rest of
12 them.

13 THE COURT: All right. Mr. Lee, let me hear your
14 objection, first of all, to Exhibit Number 2.

15 MR. LEE: Is that the statement or the picture?

16 THE COURT: It's a photo.

17 MR. LEE: Photo? Your Honor, I figure that's just
18 unnecessary. I think that it is an attempt to arouse
19 sympathy or compassion in the jury by showing some
20 picture, a cute school picture, of Complainant. I don't
21 think it's necessary. I don't think it goes to -- has
22 any probative value whatsoever. I think the prejudicial
23 effect is probably such that it should not be
24 introduced. I think it's merely cumulative and
25 gratuitous and an attempt to curry favor with the jury

1 to show of a cute school picture of Complainant So,
2 for those reasons, I would object to the introduction of
3 that picture.

4 THE COURT: What's the timing of this photo? When
5 was it taken?

6 SOLICITOR THORNTON: Your Honor, it was taken when
7 he was twelve years old. It was a school photo when he
8 was twelve years old, which is the allegations this
9 began. In other words, the defendant -- the sexual
10 contact with the defendant began when he was twelve
11 years old, which is the relevance the State sees.
12 Obviously, your Honor, at this point, he is now eighteen
13 years old. You know, this went on for three years, and
14 then, it's taken us, obviously, through no fault of I
15 would say either the State or the defendant, but
16 certainly not the victim in the case, --

17 THE COURT: Right.

18 SOLICITOR THORNTON: -- it's taken us a while to
19 get this to court. I think it's relevant, Judge. I
20 don't think it's overly prejudicial to show what he
21 appeared when all this first started, which is a twelve-
22 year-old person, as opposed to an eighteen-year-old, as
23 he is now.

24 THE COURT: All right.

25 MR. LEE: Your Honor, it doesn't matter for the

1 statute what age you looked. It's what age you are.

2 THE COURT: Right.

3 MR. LEE: And obviously, mistake of age is not a
4 defense. And again, I think that it's just superfluous
5 and gratuitous to do that. And quite frankly, I think
6 it may open the door to some other things as far as if
7 they're trying to portray him as this young, small,
8 innocent child. It may very well open the door to a lot
9 of things we're seeking to get in for other reasons.

10 THE COURT: I think the fact that it is now six
11 years since these events, or something like six years
12 difference, some of these things are, to where we are
13 today, and the fact that the victim when he testifies,
14 is going to appear to be markedly older, as he is, and
15 different from the photograph, the jury's entitled to
16 know what he looked like at the time these allegations
17 arose. They can use that for whatever purpose they
18 choose to use that. But nonetheless, it is not
19 prejudicial, I think, for the victim to be depicted,
20 allegedly be depicted, as he was at the time these
21 crimes allegedly occurred. There is no prejudice in
22 that.

23 As to whether innocence is a part of this
24 photograph or not, that's going to be for a jury to
25 determine.

1 I note your objection. I find that it is proper
2 for the State to introduce it to depict the victim as he
3 appeared at the time the crimes allegedly occurred.
4 State's 2 in evidence over objection.

5 All right. We'll hear now on the note to the
6 principal. Mr. Lee?

7 MR. LEE: Your Honor, I would argue that that's
8 hearsay; that it is intended to bolster and corroborate
9 what I assume is going to be his testimony here today.
10 And you know, I believe that, you know, if they offer
11 that as a prior consistent statement, I believe that, in
12 order for them to do that, they're going to have to show
13 that some type of motive arose since that letter that
14 would make the prior consistency of it relevant and
15 admissible in court.

16 THE COURT: All right.

17 MR. LEE: So, for that reason, I would ask that --
18 or move that that not be admitted in evidence.

19 THE COURT: Thank you. Mr. Thornton, do you intend
20 to offer this through the testimony of Complainant
21 himself?

22 SOLICITOR THORNTON: I do, your Honor. I was
23 contemplating trying to do it before he testified, with
24 the Court's understanding and Mr. Lee's understanding.
25 Obviously, he is going to be testifying today and

1 subject to cross-examination. The reason the State
2 feels like this is relevant, your Honor, is this. When
3 he went -- I'll try to keep it as quick as possible,
4 Judge. The January the 4th of 2015, when he disclosed
5 this, he was at the house with his mother. He kept
6 telling her he didn't want to go to school.

7 She called Rosemary Choice, who is, for lack of a
8 better word, a guidance counselor, or at least that's
9 what they called them when I was in school. And
10 Rosemary choice basically said, well, if he had -- all
11 he would say is he had a problem with a staff member; he
12 didn't want to go to school. She sends him -- tells
13 them, well, go to the principal's office when you get
14 there. He didn't go. He gets in trouble in class and
15 is sent to Ms. Brown, Dr. Brown, who is his principal.

16 He won't tell her what's going on or what the issue
17 is. And she says, well, why don't you write it down.
18 And that's what he wrote. It helps with context to let
19 everybody know why she then, in turn, does what she
20 does. Because the next thing he says is, would you like
21 proof. And that's when he plays the recording that your
22 Honor's already indicated will be in with the
23 transcript.

24 THE COURT: All right.

25 SOLICITOR THORNTON: So, it just -- it kind of sets

1 the table, Judge, for why she did what she did. My
2 first thought was try to introduce it through her,
3 because he wrote it in front of her. I realize it's a
4 hearsay statement, but he will be testifying very soon
5 after that and would be subject to cross. So, my intent
6 was not to use it as a consistent statement, but just
7 that that's how the ball started rolling.

8 THE COURT: All right. Here's what you can do.
9 You can show this to Ms. Brown, is it?

10 SOLICITOR THORNTON: Yes, sir, Dr. Brown.

11 THE COURT: Dr. Brown, as she's testifying, and ask
12 her if she's seen it and when she got it and who she got
13 it from. She can't testify as to its contents, because
14 it's going to be hearsay in any event, until Complainant
15 testifies. Once he testifies, he's free to talk about
16 it, because it does relate to when a notice was given
17 and how these things, as you say, got started. And if
18 they testify shortly after each other, then, the jury
19 will not have any problem putting these things together.
20 It's hearsay, however, and to introduce it through
21 anybody else, especially because of the accusations
22 accused here.

23 SOLICITOR THORNTON: Yes, sir.

24 THE COURT: All right. Thank you. Number 4 in
25 evidence over objection of defense counsel.

1 SOLICITOR THORNTON: May I approach, your Honor?

2 THE COURT: Yes, sir. All right. Oh, yeah. I'm
3 sorry. Anything further, then, before the jury's
4 brought in?

5 SOLICITOR THORNTON: Nothing from the State, Judge.

6 MR. LEE: Your Honor, just out of an abundance of
7 caution, as you know, when you read the cases every
8 week, there's always people failing to preserve
9 something to finish the record. So, just for the
10 record, I would renew my previous motions that you've
11 ruled on yesterday, most notably, the admission of the
12 audiotape, and specify, the transcript for the reasons
13 stated yesterday. I won't re-argue, but I would just
14 renew that motion. Obviously, I will renew it when they
15 attempt to introduce it.

16 THE COURT: All right.

17 MR. LEE: But just for the purposes of that, I
18 would like to renew all the motions I made yesterday.

19 And one housekeeping matter that I'd like to
20 inquire before. And I try to do this at every trial, is
21 ask you what your intentions charge-wise are on
22 reasonable doubt, whether you intend to do *State versus*
23 *Manning* or *Victor versus Nebraska*, the hesitate to act
24 versus the firmly convinced language, or both, or a
25 hybrid, just so I'll know ahead of time.

1 THE COURT: Good.

2 MR. LEE: Or none.

3 THE COURT: I'll tell you, I always go over that
4 prior to arguments as a part of the charge conference,
5 but I can do it now so that you can get prepared.

6 MR. LEE: Yes, sir.

7 THE COURT: I charge from *Victor versus Nebraska*.
8 The State's counterpoint to that is *State versus Darby*,
9 and that is the firmly convinced argument. Of course,
10 you're free to use any definition that you want to that
11 our Supreme Court has approved as the definition of
12 reasonable doubt in your argument, I just always tell
13 folks I don't want you to tell the jury that the judge
14 is going to say that a reasonable doubt is the type of
15 doubt that would cause a reasonable person to hesitate
16 to act, because that's not what I'm going to tell them.
17 Okay?

18 MR. LEE: I understand. Having heard that, I would
19 at this time ask, make a request, for the *State versus*
20 *Manning* language to be used as well in your charge to
21 the jury.

22 THE COURT: All right. I'll note that. You can
23 hand it up and I'll be glad to take it into account when
24 we do the charge conference. Okay?

25 MR. LEE: Yes, sir.

1 THE COURT: All right.

2 MR. LEE: But I'll obviously keep that out of my
3 opening statement.

4 THE COURT: Sir?

5 MR. LEE: I will keep that language out of my
6 opening statement.

7 THE COURT: Okay. Good.

8 MR. LEE: All right. Thank you.

9 THE COURT: Thank you. And I will, in my opening,
10 will tell them very briefly that a reasonable doubt is
11 the type of doubt -- excuse me -- a reasonable doubt is
12 doubt -- a reasonable doubt -- beyond a reasonable doubt
13 -- I'm sorry, I'll get it straight in a minute -- is
14 proof that leaves you firmly convinced of the
15 defendant's guilt. I'll give the other side of that as
16 well, of course, to balance that.

17 MR. LEE: Yes, sir.

18 THE COURT: All right. Ready for the jury?

19 SOLICITOR THORNTON: State's ready, your Honor.

20 THE COURT: Good. Bring us the jury, please.

21 JURORS ENTER COURTROOM 10:21 A.M.

22 THE COURT: Mr. Harris, I want you to sit in the
23 first chair right there. Ma'am, could you move to the
24 back and let Mr. Harris sit there, please. Thank you.
25 I'll tell you why.

1 Mr. Harris, I've asked you to occupy that chair,
2 sir, because I want you to serve as the foreman of this
3 jury. That means that you'll be the jury spokesperson
4 here in court. When the trial is over, it will be your
5 job to fill out the verdict form for the jury, but I'll
6 tell you more about that before you have to do it. You
7 don't have to remember that right now. Just remember
8 that is your seat. You'll occupy that seat throughout
9 the trial of this case.

10 JUROR NUMBER 122: Okay.

11 THE COURT: Mr. Walker, you had indicated yesterday
12 you had some hearing problems, and you're on the back
13 row. I'll be glad to move you to the front row if you'd
14 like for me to. Or, if you're having difficulty
15 hearing, if you'll raise your hand, I'll make sure that
16 it gets so that you can hear. Okay?

17 JUROR NUMBER 276: Okay. Thank you.

18 THE COURT: The alternate jurors -- Ms. Ramsey?
19 There's Ms. Ramsey. Mr. Manor? Mr. Manor. And Ms.
20 Smith? Okay. That's a good enough place for you all
21 down there at the end. If you can occupy those chairs
22 throughout the trial of the case. The rest of you folks
23 just sit wherever you can as you come in from time to
24 time. You've got general admission tickets. These
25 folks have reserved seats, but the rest of you have

1 general admission.

2 It's always a good idea to move all the way down
3 before you sit down, because, if you leave an open chair
4 beyond you, somebody's going to step on your feet to get
5 to that. And that could be uncomfortable during the
6 course of the trial.

7 You're going to be sworn in now as jurors, ladies
8 and gentlemen. I want you to pay particular attention
9 to the oath that you're about to take. It's a time-
10 honored and it is an artfully worded oath. And it
11 explains to you while concisely, it explains to you very
12 completely what your responsibilities are as jurors in
13 this case. I'm going to be reminding you during this
14 trial, and indeed, after this trial, as to what your
15 responsibilities are as jurors. So, please listen now
16 to the Clerk as she administers the oath.

17 Madam Clerk.

18 JURORS SWORN:

19 MADAM CLERK: Would you stand and raise your right
20 hand, please. Do you solemnly swear or affirm that you
21 shall well and truly try and true deliverance make
22 between the State of South Carolina and the accused at
23 the Bar, and a true verdict give, according to the
24 evidence, so help you God?

25 RESPONSES FROM JURORS.

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GENERAL CHARGE

1 MADAM CLERK: Have a seat.

2 GENERAL CHARGE:

3 THE COURT: Folks, let me take a few moments to
4 explain to you the process that we will be following
5 during the course of this trial and what your role as
6 jurors will be during this trial. In just a moment,
7 when I finish talking to you, Mr. Thornton, on behalf of
8 the State, is going to stand before you and make a brief
9 opening statement. And in that opening statement, he is
10 going to outline for you in something of a preview
11 fashion what this case is all about from the State's
12 point of view. He may even indicate some of what the
13 State intends to offer by way of proof in support of the
14 charges that are brought in these indictments. After he
15 is finished making his opening statement, then, Mr. Lee,
16 on behalf of Mr. Heyward, the defendant, has a right to
17 make an opening statement, but he's under no obligation
18 to do that, and I'll tell you why in just a moment.

19 After the opening statements have been made, then,
20 you will actually begin to see and hear the presentation
21 of evidence in this case. Evidence, for the most part,
22 is going to take the form of testimony of witness who
23 will take an oath, sit right here in this chair, and
24 answer questions that the lawyers from both sides have
25 put to them.

1 Evidence might also take the form of documents or
2 items or photographs or things of that nature. I don't
3 know what the evidence is in this case, because I have
4 not seen it, but that's the sort of evidence that might
5 normally be expected in trials of this nature.

6 The State will put in its evidence and testimony
7 first. And after the State has completed putting in its
8 evidence and testimony, then, the defendant, Mr.
9 Heyward, has a right to offer evidence and testimony.
10 But once again, he is under no obligation to do that.

11 Now, after all of the evidence and testimony has
12 been presented, then, the lawyers will come back before
13 you and present their final arguments, their closing
14 statements, they're sometimes called. And in these
15 statements, they are allowed to summarize the evidence
16 which has been introduced and to submit to you
17 conclusions they claim you ought to draw from that
18 evidence, conclusions which obviously support their side
19 of the argument.

20 And after that has been done, then, I will instruct
21 you or charge you as to what the law is in this case.
22 And then, finally, you'll be able to go to your jury
23 room and start to talk about this case among yourselves.

24 I remind you, as I told you yesterday, you cannot
25 talk about this case among yourselves during the trial

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1 of the case. That might seem kind of funny as a rule.
2 You might hear somebody talk about something out here on
3 this witness and you've got some questions about it, and
4 you go back to the jury room for a break, and you'd like
5 to ask each other what do you think about that, but you
6 can't do it then. And the reason you can't talk about
7 this case during the trial is because, once you start
8 talking about this case and discussing it among
9 yourselves as a jury, as a jury, you're going to start
10 to collectively make up your minds about this case. It
11 could be that, later in the case, you hear somebody tell
12 you something that's decided different from what you've
13 already started to talk about. But you're not likely to
14 receive that later testimony with an open mind, if
15 you've already started to make up your mind based on
16 what you talked about earlier. So, please do not
17 discuss this case among yourselves during the trial.
18 Now, when the trial is over and you start your
19 deliberation, you can take as much time as you want to
20 to talk about it, but not until then.

21 And I remind you again for the reasons that I told
22 you yesterday, I don't need to re-state it, not to talk
23 among yourselves, not to talk with anybody else about
24 this case, and don't let anybody else talk with you
25 about this case, and don't try to expose yourself to any

1 information about this case from any source outside of
2 this courtroom. Everything that you need to know in
3 order to render a verdict in this case, indeed,
4 everything that you are allowed to know in order to
5 render a verdict in this case you will learn from this
6 witness chair right here and from those items and those
7 documents that will come into evidence and from no other
8 sources. {

9 Now, ladies and gentlemen, I told you that the
10 State will make opening statements. The Defense might
11 make opening statements. They might make closing
12 statements. And I told you that you would hear the
13 presentation of evidence in this case. Now, let me tell
14 you what is and what is not evidence. The opening
15 statements are not evidence, and the closing statements
16 are not evidence. And the questions that are asked are
17 not evidence. Now, all of those things are helpful to
18 us, and we would not be able to conduct the very orderly
19 trial without those things, but they, themselves are not
20 evidence.

21 What is evidence is not the question, but the
22 answer, because the answer comes from a person who's
23 supposed to know something about what they're talking
24 about; it comes from a person who is under oath; it
25 comes from a person who's going to be questioned by

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GENERAL CHARGE

1 lawyers on both sides, so that that testimony has to
2 meet the test of proof. That's the evidence.

3 And the reason that it is important, if you
4 understand what is and what is not evidence, is this,
5 when it comes to the matter of evidence, you, ladies and
6 gentlemen actually act as the judges. You're the judges
7 of the evidence. The oath that you just took said that
8 you would well and truly this case and render a true
9 verdict according to the evidence so help you God.

10 Because that's your purview. That's what you do. You
11 act as judges of the evidence. I'm the judge of the
12 law. I've got the easy job. All I've got to do is to
13 decide whether you can hear somebody tell you something
14 from this chair or whether you can look at the item of
15 evidence or not. Once I decide that you can hear the
16 testimony or look at the evidence, from that point on,
17 what you do with it is entirely up to you. You've got
18 the right to believe it or not believe it. You've got
19 the right and the obligation to assign weight to it. In
20 other words, what value do you give to it.

21 Now, you exercise those considerations in deciding
22 what you find to be truthful, whether you believe it or
23 not, by using the same abilities inside this courtroom
24 that you use outside of this courtroom every day of your
25 life. Ever since you have been able to think on your

1 own and make decisions for yourself, you have been using
2 the qualities of common sense and sound judgment that we
3 ask you to bring to this courtroom in raising a family
4 and doing your job and just getting by in life. When a
5 point is in dispute and you try to decide which side
6 you're going to agree with or believe, you use your good
7 common sense, you use your experiences in life, you use
8 your sound judgment. And we expect you to use those
9 very same things in this courtroom that you use outside
10 of this courtroom. And when you've done that, you'll be
11 able to find the truth of this case. And once you have
12 found the truth of this case, you'll apply the law that
13 I give you to the truth of that case, and the result
14 will be a verdict which will speak the truth of this
15 case.

16 Now, ladies and gentlemen, as you know, the
17 defendant in this case has pled not guilty to these
18 charges. When a defendant pleads not guilty to the
19 charges in a criminal case, the effect of that plea of
20 not guilty is to place upon him a presumption of
21 innocence. When we say that somebody is presumed to be
22 innocent, that means he does not have to prove his
23 innocence. He doesn't have to take the stand and try to
24 convince you that he has not done the things he is
25 accused of doing. He does not have to bring other

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1 witnesses into this courtroom to try to make you believe
2 that he did not do the things he is accused of doing.
3 He is presumed to be innocent. That's the reason he
4 doesn't have to make an opening statement. That's the
5 reason he doesn't have to produce evidence if he chooses
6 not to. He's under no obligation to do that, because he
7 has no burden of proof. He is presumed to be innocent.

8 And so, the burden of proof is on the State, not
9 just in this, but in every case of this sort, to prove
10 that he is guilty beyond a reasonable doubt. Now, when
11 the trial is over, I'll tell you in a little bit greater
12 detail what we mean by proof beyond a reasonable doubt.
13 But for our purposes right now at our earlier state of
14 the trial, let me tell you that proof beyond a
15 reasonable doubt is proof that leaves you firmly
16 convinced of the defendant's guilt.

17 So, after you've heard all of the evidence in this
18 case, if you're firmly convinced that the defendant is
19 guilty, the State has met its proof and would be
20 entitled to a verdict of guilty. But on the other hand,
21 after you've heard all of the evidence in the case, if
22 you find that there is a real possibility that he is not
23 guilty, the State has not met its burden of proof, and
24 in that case, the defendant would be entitled to a
25 verdict of not guilty at your hands.

1 So, you're going to be listening and you're going
2 to listen to the lawyers, you're going to listen to the
3 witnesses. And when it's all over, you'll even listen
4 to me as I instruct you on the law. And then, you'll go
5 back to that jury room and you'll start talking about
6 this case among yourselves. And in your joint
7 deliberations, you'll come up with a verdict which will
8 speak your opinion as to whether or not the State has
9 met its burden of proof. And you will express that
10 opinion by writing a verdict that says we find the
11 defendant guilty, if the State has met its burden of
12 proof; or we find the defendant not guilty, if the State
13 has failed to meet burden of proof.

14 Thank you, ladies and gentlemen, for your attention
15 to these remarks. Now please listen to the lawyers as
16 they present their statement.

17 SOLICITOR THORNTON: Thank you, your Honor. May it
18 please the Court?

19 THE COURT: Yes, sir.

20 SOLICITOR THORNTON: Mr. Lee.

21 OPENING STATEMENT ON BEHALF OF

22 THE STATE, BY SOLICITOR THORNTON:

23 SOLICITOR THORNTON: Good morning. Consent is not
24 an issue in this case. This case is about control.
25 Now, from August of 2010 throughout December of 2012,

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1 Complainant , who, at the time, in 2010, was a student
2 at Middle School, right here in Hampton County.

3 Complainant , who will be testifying today.

4 And that's one of the things the Judge talked
5 about, the fact that, what you hear from that stand is
6 evidence. And Complainant is going to testify. And Complainant
7 now is eighteen. But in 2012, Complainant was twelve.
8 That's why consent is not an issue in this case,
9 because, when you're twelve years old, you can't consent
10 to sex. It's not legally possible.

11 What Larry Heyward did in this case and what he's
12 charged with is criminal sexual conduct with a minor.
13 He's charged with multiple counts against Complainant

14 . He's also charged with a count of what we call
15 a lewd act, and criminal sexual conduct in the third
16 degree. And the Judge will instruct you at the end of
17 the trial on what the legal definitions to those crimes
18 are. But in June of 2012, what would have been a lewd
19 act changed into-- basically changed the name to
20 criminal sexual conduct third degree. So, it's the same
21 type of offense. The name changed in June of 2012. And
22 because there was sexual contact and violation by Larry
23 Heyward, both before and after that change in the date,
24 he was charged with both of those offenses, separate
25 instances.

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1 He's also charged with misconduct in office,
2 because, when all of this occurred, Larry Heyward was a
3 school resource officer at Middle School. That's
4 how he knew Complainant. Control but not consent.

5 You will hear several people get up and testify.
6 You're going to hear folks from the school district.
7 You're going to hear from Complainant. You're even
8 going to hear some statements that Larry Heyward made.
9 One of them is a recording. And that's what you have to
10 base your decision on today.

11 Probably the most important thing that any lawyer,
12 prosecutor, or defense lawyer can ask you and urge you
13 as jurors is what the Judge talked to you about. Don't
14 make any decisions until you've heard all the evidence.
15 That's why the Judge will tell you several times, when
16 you go back in your jury room, please don't start
17 deliberating yet; you haven't heard everything yet.

18 So, all we can ask is that you wait and listen to
19 every person that testifies on that stand; look at every
20 exhibit that gets introduced, whether they be
21 photographs or recordings. Whatever evidence the Judge
22 allows in, that's what you have to decide this case on.
23 And you can only decide the case once you've seen
24 everything and all the evidence.

25 Larry Heyward sexually abused Complainant from

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1 the time he was twelve, until about the time he was
2 fifteen. He did it right here in Hampton County, and he
3 did it while he was a school resource officer charged
4 with protecting the very child he abused.

5 Thank you.

6 THE COURT: Thank you, Mr. Thornton. Mr. Lee?

7 MR. LEE: Thank you, your Honor. May it please the
8 Court?

9 THE COURT: Mr. Scott.

10 OPENING STATEMENT ON BEHALF OF

11 THE DEFENDANT, BY MR. LEE:

12 MR. LEE: I'm Scott Lee. I'm a lawyer in Beaufort,
13 and it's my honor and privilege to represent, along with
14 Chris Lempesis, Larry Heyward.

15 Good morning.

16 RESPONSES FROM JURORS.

17 BY MR. LEE:

18 MR. LEE: I'm a one-man operation over in Beaufort,
19 but I always like coming over to Hampton and spending
20 some time over here. I'm over here today for Larry and
21 for all the people back there in the town that know him
22 and support him. And what I think about a lot of times
23 when I get in front of a jury is when I was a child.
24 When I was a child, I loved to read. Kids nowadays do
25 everything on computers and Notepads, iPads, and all

1 that stuff. I used to love to read. And one of the
2 favorite things I used to love to read was Sherlock
3 Holmes stories. He was a detective in Scotland, and it
4 was kind of neat, because the author of the book would
5 take the reader through the story, and at the very end,
6 he would explain it to the reader. And the way that the
7 author did that is, Watson. I mean, Sherlock Holmes had
8 a sidekick named Watson. He was just kind of a bumbling
9 guy who wasn't real smart, and just looked up to Holmes,
10 and thought he was the smartest guy ever. And at the
11 end of every story, Sherlock Holmes would explain to
12 Watson, this is how I figured it out. And so, the
13 reader would say, ah-ha, that's how he -- I didn't get
14 it; that's how he figured it out.

15 So, one of the most interesting and one of my
16 favorite stories was a story where this castle -- all of
17 it takes place in England or Scotland or somewhere over
18 there. This castle had been broken into at night, and
19 some thieves had gone in there and taken some stuff out
20 of the castle, and Sherlock Holmes was sent to
21 investigate. And he goes there, and he keeps asking the
22 people that were around, the two dogs that were out
23 front, did anybody hear them bark? Did the dogs do
24 anything? And the people kept saying, no, the dogs
25 didn't bark. Why do you keep asking us if the dogs

1 barked? Well, the reason was, was because Sherlock
2 Holmes figured out the person who had gone into the
3 castle and stolen something was somebody that the dogs
4 knew. So, the dogs didn't bark at them.

5 And so, Watson couldn't figure that out, and at the
6 end, Sherlock Holmes, in that story said, Watson, most
7 times in finding the truth, what's most important is not
8 what you see or hear, but what you don't see and you
9 don't hear. What you don't see and you don't hear. And
10 little did I know, many years later, I'd be standing in
11 front of a jury in Hampton and talking about Sherlock
12 Holmes. But it's the same thing in a criminal case.

13 The State, as the Judge told you, has charged Larry
14 with a bunch of stuff, bunch of serious stuff. You
15 heard them read it out. We know what the allegations
16 are. But whatever kind of case it is, particularly a
17 very serious case, the State has an absolute burden.
18 Before they can even ask you all to convict somebody,
19 including Larry Heyward, of something, they have to
20 prove their case beyond a reasonable doubt. Beyond a
21 reasonable doubt. And the Judge explained to you that
22 that means a reasonable doubt is a -- beyond a
23 reasonable doubt is the type of proof that leaves you
24 firmly convinced of a defendant's guilt. Firmly
25 convinced.

1 It's also been defined as a reasonable doubt is the
2 type of doubt that would cause a reasonable person, when
3 making one of life's important decisions, to hesitate to
4 act. Hesitate to act. So, you may be thinking, well,
5 gee, I've never been on a jury before for criminal law.
6 That sounds like a pretty high burden for the State to
7 have to go to. You've already said the defendant
8 doesn't have to do anything. We don't have to do an
9 opening statement, but of course, we are. But you're
10 saying firmly convinced beyond a reasonable doubt. That
11 sounds like a really, really high standard for the State
12 to have to meet. Well, it is, and there's a few reasons
13 for it. One is, the State has the ultimate resources to
14 charge people, to investigate a case, to do scientific
15 experiments, to gather evidence, to interview people.
16 They have unlimited ability to do that, means and
17 resources. They have the tremendous advantage.

18 They have time on their side. They have power,
19 everything. The *Bible* says, *to whom much is given, much*
20 *is expected.* It makes sense. To whom much is given,
21 the State, much is expected. You need to use those
22 resources, whichever ones you may need to bring to
23 court, to a jury, who has the job of saying guilty or
24 not guilty as to Larry Heyward. You have the tough job.
25 They are pushing it off on you to do the dirty work; to

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1 say, yep, you've done it; we're going to be the final
2 buffer between Larry Heyward and what happens to him.
3 To whom much is given, much is expected. So, as a jury,
4 as the one being asked to sign off on anything, you have
5 a right to expect a lot from them.

6 The other reason why that standard is so, so high
7 is because of the consequences of a guilty verdict. In
8 any criminal case, people are at risk of losing their
9 reputation, their freedom, their property, their name,
10 everything. So, to whom much is given, much is
11 expected. That's why the standard is as it is.

12 The other reason why it's up there is because it is
13 often, if not always, impossible to prove a negative.
14 And the Judge told you, the defense doesn't have to
15 prove somebody didn't do something. That's really
16 impossible. I mean, could any of us -- I mean, we may
17 think we could -- could any of us prove we've never been
18 to New Jersey? You could prove that you had been to New
19 Jersey if you were sitting there with a picture with the
20 state line sign right there. But could you -- think
21 about it, could you prove you've never been to New
22 Jersey? No. And that's why that the system is set up
23 the way that it is. Say, look, before you can do this,
24 you have to prove everything. Not only prove it, but
25 prove it beyond a reasonable doubt.

1 And so, getting back to what I said when I started,
2 most times, in finding the truth, what's most important
3 is not what you see or hear, but what you don't see and
4 you don't hear.

5 There's going to be a lot of things I can tell you
6 ahead of time that you don't see and that you don't hear
7 coming from the State and coming from their witnesses,
8 and coming from their evidence and in testimony. And
9 they aren't going to tell you some things. They should,
10 but they're not going to. The only way that you're
11 going to hear about a lot of things that you didn't see
12 and didn't hear is almost all on cross-examination, when
13 we get a chance. Because isn't it fair to give you all
14 all the information before you're put in a position on
15 making a decision? I mean, I would think, and maybe --
16 I don't think anybody denies that this is a well-
17 publicized case in a small town, with somebody who's
18 lived here a long time. I don't think that's a secret.

19 And the seriousness of the charges are such that
20 you really have to make sure that, before you do
21 something, you've been given all the facts and you feel
22 comfortable with them; and that you've only, under your
23 oath, come back with a guilty verdict. The State has
24 removed all doubt in your mind and left you firmly
25 convinced of the charges.

1 Now, as you can gather from just hearing what the
2 charges say and what the Solicitor said in his opening,
3 there's going to be some uncomfortable testimony, some
4 uncomfortable things, maybe awkward. I'm just giving
5 you a head's up about that. I mean, you all didn't sign
6 up for this. I understand that. But there's going to
7 be some things that come out, and you're going to be,
8 gollee, I don't need to hear that; I'm embarrassed to
9 hear things like that. And I guess I shouldn't
10 apologize, but I'm just giving you a head's up. There's
11 going to be some stuff, and you know, what's important
12 to realize and understand is, is the State going to
13 present any evidence against Larry. Of course, they
14 are. If they had zero evidence, or if they had nothing
15 to say, we wouldn't be here.

16 But make sure that, when that evidence comes out,
17 whatever it might be, that you say to yourself, there's
18 more to this; and I'm going to hear more about it; and
19 there's things that I don't see and I don't hear. You
20 know, and some of the things that you don't see and
21 don't hear, I may completely miss. You all may go back
22 to the jury room and say, yeah, there the evidence, but
23 what about this, this, and this? That's your job as a
24 juror is to look for those things. I'll try to point
25 out as many as I see, but I'm sure there's ones that you

1 all see. And what are those, and what about this, and
2 what about that? Those are reasonable doubts. And
3 those are the reasonable doubts that you're going to
4 have at the end of this case. And because you're going
5 to have reasonable doubt, because you're not firmly
6 convinced, because the State, with all its ultimate
7 resources, has not convinced you of that, and because to
8 whom much is given, much is expected, you going to have
9 reasonable doubts. And when you have reasonable doubts,
10 the only proper verdict, under your oath, is not guilty.
11 Thank you.

12 THE COURT: Thank you, Mr. Lee.

13 MR. LEE: Thank you, your Honor.

14 THE COURT: Mr. Thornton, you can call your first
15 witness.

16 SOLICITOR THORNTON: Thank you, your Honor. Lessie
17 Johnson.

18 Your Honor, it may take just a moment. We've got
19 them, obviously, together in a room right down the hall.

20 THE COURT: Okay. Ms. Johnson, come forward,
21 please, and be sworn.

22 MADAM CLERK: Place your left hand on the *Bible*,
23 and raise your right hand. Do you swear to tell the
24 truth, the whole truth, and nothing but the truth, so
25 help you God?

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DIRECT - LESSIE JOHNSON

1 LESSIE JOHNSON: I do.

2 MADAM CLERK: Have a seat.

3 LESSIE JOHNSON

4 DIRECT EXAMINATION

5 BY SOLICITOR THORNTON:

6 Q Good morning, Ms. Johnson.

7 A Good morning.

8 Q Ms. Johnson, do you currently live in Hampton
9 County?

10 A Not now.

11 Q Okay. Where do you live now? What city and state?

12 A Jacksonville, Florida.

13 Q And from, say, August of 2010, or basically, 2010
14 through 2000 -- the beginning of 2013, in January, did
15 you live in Jacksonville, or did you live somewhere
16 else?

17 A I lived in Garnett, South Carolina.

18 Q All right. And what county is that in?

19 A Hampton County.

20 Q Do you know who Complainant is?

21 A Yes.

22 Q All right. I know that sounds like a silly
23 question. Are you related to Complainant?

24 A He's my son.

25 Q Complainant is your son. Is he the victim in

1 this case?

2 A Yes.

3 Q You said in 2010 you were living where? What town?

4 A Garnett. Garnett, South Carolina.

5 Q All right. And what school did Complainant attend in
6 2010, in August, the school year of that year?

7 A Middle School.

8 Q And what grade was he in?

9 A Sixth.

10 Q All right. And I'm going to show you, ma'am,
11 what's been marked for identification only as State's
12 Exhibit Number 2, and ask if you can identify that
13 photograph.

14 A Complainant , my son.

15 ITEM IDENTIFIED AS PHOTOGRAPH

16 OF Complainant

17 MARKED STATE'S EXHIBIT NUMBER 2,

18 FOR IDENTIFICATION.

19 Q All right. Is that your son?

20 A Um-hmm.

21 Q Is that a fair and accurate depiction of him when
22 he was attending Middle School in the sixth
23 grade?

24 A Yes.

25 Q Has it been altered or changed in any way?

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DIRECT - LESSIE JOHNSON

1 A No.

2 SOLICITOR THORNTON: Your Honor, at this time, I'd
3 ask that State's Exhibit Number 2 be admitted into
4 evidence.

5 THE COURT: Number 2 in evidence, over objection of
6 defense counsel.

7 MR. LEE: Yes, sir. Thank you.

8 SOLICITOR THORNTON: Thank you, your Honor.

9 ITEM IDENTIFIED AS PHOTOGRAPH
10 MARKED STATE'S EXHIBIT NUMBER 2,
11 ADMITTED AS EVIDENCE.

12 BY SOLICITOR THORNTON:

13 Q All right. I know you can't see around the corner,
14 but I've got a representation of that. So, that's
15 Complainant as he appeared when he was twelve years old. Is
16 that right?

17 A Yes.

18 Q Ms. Johnson? Okay. Ms. Johnson, let me ask you a
19 question. How old is Complainant now?

20 A Eighteen years old.

21 Q From the time when that picture was taken to now,
22 has he grown up and changed a little bit?

23 A Absolutely.

24 Q Okay. Ms. Johnson, do you know the man seated here
25 at Defense table, in the middle?

1 A Yes.

2 Q And do you know his name?

3 A Larry Heyward.

4 Q And how did you -- this is going to sound like a
5 very awkward, weird question, but how did you become
6 acquainted? How did you meet Larry Heyward?

7 A Middle School Resource Officer.

8 Q All right. He was a school resource officer at
9 Middle School?

10 A Yes.

11 Q And was he there when Complainant was enrolled as a
12 student there?

13 A Yes.

14 Q Ms. Johnson, -- and you're going to have to forgive
15 me. We may bounce around a little bit, time frames.
16 So, I'll try to always ask it with a specific date, but
17 on or about January the 4th of 2013, do you remember
18 anything unusual happening that day?

19 A Yes.

20 Q What started out as unusual, if anything?

21 A I went to his room, and he was covered up in the
22 bed.

23 Q All right. Hang on a second and let me stop. You
24 went to whose room?

25 A I went to Complainant room.

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DIRECT - LESSIE JOHNSON

1 Q And you said he was covered up in the bed. Go
2 ahead.

3 A Yes, crying, he said, I'm not going to school
4 anymore; I can't take it; I'm not going to school.

5 Q And did he seem to be upset?

6 A Yes, yes, yes. In pain, yes.

7 Q And did you -- what, if anything, did you do? Did
8 you make any phone calls?

9 A Yes.

10 Q And who did you call?

11 A Mrs. Rose Choice.

12 Q I'm sorry?

13 A Mrs. Rose Choice.

14 Q Rose Choice?

15 A Yes.

16 Q And is she associated with the school that he
17 attended?

18 A Yes.

19 Q What --

20 A District II, social worker.

21 Q Okay. It's been awhile since I've been in school.
22 Would that be kind of like a guidance-counselor-type
23 person?

24 A No, she's like really a social worker.

25 Q A social worker attached to the school?

1 A Yes. Yes.

2 Q Okay. And without telling me what she said, just
3 did you have a conversation with her about Complainant?

4 A Yes.

5 Q And did you tell her basically what you just
6 testified to, that he was upset and said he had a
7 problem and didn't want to go to school?

8 A Yes.

9 Q And after doing that, did she give you -- after you
10 talked to her, did you do anything else that day?

11 A Yes.

12 Q All right. And what did you do right after the
13 phone call?

14 A I told Complainant, Ms. Choice, that she's telling him
15 go to school; get ready to go to school; and once he get
16 to school; immediately to the principal's office; tell
17 the principal what happened; and she would be there as
18 soon as she could.

19 Q And again, without telling me what, specifically,
20 anybody told you, did you, later that day, find out
21 about the allegations that we're here about?

22 A Yes.

23 Q Now, let me ask you this. You said now you live in
24 Jacksonville, Florida. Why did you move?

25 A My son's safety, to be there for him and support

1 him.

2 Q And did you do that after this incident?

3 A Yes.

4 SOLICITOR THORNTON: Court's indulgence, please,
5 your Honor.

6 THE COURT: Yes, sir.

7 BY SOLICITOR THORNTON:

8 Q Do you know -- a couple of things, Ms. Johnson. Do
9 you remember what your phone number was during that
10 time?

11 A Yes.

12 Q All right. And can you tell us what that was.

13 A Area code

14 Q And was that a cell phone or a home phone?

15 A Home phone.

16 Q What is Complainant's date of birth?

17 A 1997.

18 Q And did you, at any time, give Larry Heyward
19 permission to either paddle or -- I know this is going
20 to sound ridiculous -- use a taser on your son?

21 A No.

22 Q Did Complainant get in trouble at school at some point
23 involving a pocket knife?

24 A Yes.

25 Q And do you remember -- do you remember what grade

1 he was in when that happened?

2 A The eighth.

3 Q And can you tell me a little bit about what
4 happened.

5 A I got a letter that came home saying that there's a
6 parent/teacher conference like in a day he's suspended
7 from school. So, I went to the --

8 Q And I'm sorry to interrupt you, Ms. Johnson. Was
9 that in reference to him having some sort -- some pocket
10 knife at school?

11 A Yes, in reference to that pocket knife. Yes.

12 Q Okay. And did you go to the school?

13 A Yes, I did.

14 Q All right. While you were at the school, did you
15 have any conversation with Larry Heyward?

16 A Yes.

17 Q And what, if anything, did he tell you?

18 A He said, Ms. Johnson, I'll take care of it; that
19 your child should be -- he shouldn't be punished for
20 anything; but he said, don't worry, I'll handle this.

21 Q And was Complainant expelled or sent out of school?

22 A No.

23 Q Did you hear any more about the pocket knife
24 incident?

25 A No.

1 Q After that?

2 A No.

3 SOLICITOR THORNTON: Your Honor, at this time, I
4 have nothing further. And I will ask the Court, though,
5 because we do have a lot of out-of-state witnesses, I'm
6 going to keep everybody here, subject to recall, at
7 least for the time being. No further questions at this
8 time.

9 THE COURT: Thank you. Mr. Lee, you can cross-
10 examine.

11 MR. LEE: Thank you, your Honor. It please the
12 Court?

13 THE COURT: Yes, sir.

14 LESSIE JOHNSON

15 CROSS-EXAMINATION

16 BY MR. LEE:

17 Q Ms. Johnson, are you familiar with Complainant's -- how
18 his discipline was at school? Are you familiar with
19 that?

20 A Yes.

21 Q How are you familiar with that?

22 A I'm familiar with that because I'm his mother. I
23 was involved with his teachers, where they had a, I say,
24 career planning session to help from his education by
25 prevent him in trouble.

1 Q I'm sorry, could you say that again?

2 A I said, they held planning sessions to help him to
3 improve his education so he can go to the next grade
4 level.

5 Q Would you agree that Complainant had a pretty bad
6 discipline record in school from 2009 to 2013?

7 A Yes.

8 Q You would? And it was more than just having a
9 pocket knife at school, was it not?

10 A He didn't have a pocket knife at school. The
11 knives weren't at school.

12 Q The knife was found at school?

13 A The knife was at the school. The knife belonged to
14 Officer Heyward.

15 Q Who told you that?

16 A Officer Heyward.

17 Q All right. As far as Complainant's -- I mean, he was
18 constantly getting in trouble at school, wasn't he?

19 A Yes.

20 Q Okay. For a variety of things. It was about 2009,
21 disrupting class, disrespect. Does that sound familiar?

22 A Yes.

23 Q Yelling out inappropriate words at school?

24 A Yes.

25 Q Yelling out sexual words at school? Do you

1 remember that, 2010? Are you familiar with that one?
2 Are you familiar when he stole another student's scarf
3 and gloves yelling penis out loud in class?

4 A I don't recall that.

5 Q You don't recall that? He got in-school
6 suspension. That's 2010. You don't remember that?

7 A I don't.

8 Q Okay. In 2010, that's the same -- that's the same
9 year as that picture they put up there for everybody to
10 see, right? Is that right?

11 A Yes.

12 Q Okay.

13 THE COURT: Ms. Johnson, do you want some water?

14 A Yes. Thank you.

15 BY MR. LEE:

16 Q Remember in 2009 when he got in trouble for abusive
17 language? Went to a teacher's door twice and asked if
18 they had any Kotex and/or panties in class? Do you
19 remember that, when he got suspended?

20 A No.

21 Q You don't?

22 A No.

23 Q Okay. Do you deny that those happen?

24 A I don't recall those happening.

25 Q Okay. But if you were involved in his discipline

1 and stuff, don't you think you'd know about that?

2 A Absolutely would.

3 Q Okay. How did Complainant like living in Garnett, South
4 Carolina?

5 A He liked living in Garnett, South Carolina.

6 Q Complainant liked it?

7 A Yes.

8 Q Okay. Did he have a lot of friends?

9 A Yes.

10 Q Okay. J.T. one of those friends?

11 A Yes.

12 Q Did they spend a lot of time together?

13 A No.

14 Q Were they close?

15 A At school.

16 Q At school? Did Complainant tell you what the extent of
17 their relationship was?

18 A No.

19 Q He didn't? Did he share any of his -- any other
20 friends he had with you? The names of any of them?

21 A Well, his class friends.

22 Q Now, when Complainant was at school, were you at work,
23 or were you at home?

24 A At work.

25 Q You were at work? Where did you work?

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CROSS - LESSIE JOHNSON

1 A The Hampton County Health Department.

2 Q Okay. Is that a nine-to-five job? Was?

3 A Yes.

4 Q Okay. So, when Complainant got out of school, you
5 weren't home for a couple of hours, right?

6 A Correct.

7 Q You and Complainant have a pretty open relationship, as
8 far as talking about things, or not?

9 A We do.

10 Q You do? Does he tell you his secrets and thoughts
11 and stuff like that, or does he kind of keep that to
12 himself?

13 A He keep to himself.

14 Q Kind of keeps to himself? Okay. And you know, we
15 all have parents, and there's some things you just don't
16 want your parents to know, right?

17 A Right.

18 Q Do you agree with that? All right. And some
19 things you don't want your parents to know, because they
20 may get upset about it, right?

21 A Right.

22 Q Some things might be embarrassing?

23 A Right.

24 Q And sometimes, you just want your own secrets,
25 right? Do you agree with that?

1 A Probably. Yes.

2 Q Do you agree that a school resource officer does
3 have the duty to discipline kids at school, if
4 necessary?

5 SOLICITOR THORNTON: Objection, your Honor.

6 A According to the guidelines.

7 SOLICITOR THORNTON: Objection, your Honor. Calls
8 for speculation.

9 THE COURT: Well, if she knows. She appeared to
10 have no equivocation about this, and apparently says she
11 was involved in his discipline, so, I presume that she
12 knows he got --

13 BY MR. LEE:

14 Q And so, you understand, that's what a school
15 resource officer is at school, for discipline and for
16 safety purposes? Is that why we have school resource
17 officers at school?

18 A Yes.

19 Q One more thing. See this gentleman with the purple
20 tie right there?

21 A Yes.

22 Q Who is he?

23 A Attorney Mario Pacella.

24 Q Attorney Mario Pacella. And the reason you know --

25 SOLICITOR THORNTON: Objection, your Honor. May we

1 approach?

2 THE COURT: I'll sustain that objection.

3 SOLICITOR THORNTON: Thank you.

4 THE COURT: Thank you.

5 MR. LEE: That's all the questions I have, your
6 Honor.

7 THE COURT: Thank you.

8 MR. LEE: Can I be heard on the last objection,
9 though?

10 THE COURT: I'll note it for -- I'll note that, and
11 we can take it up out of the presence of the jury.

12 MR. LEE: Yes, sir. All right. Thank you, sir.

13 THE COURT: Thank you. Re-direct?

14 SOLICITOR THORNTON: I have none, your Honor. I
15 would, again, just ask her to have a seat back in the
16 room with the witnesses, subject to recall. And the
17 State's next witness would be Rosemary Choice.

18 THE COURT: All right. Ms. Johnson, you can step
19 down. Thank you.

20 MADAM CLERK: Do you swear to tell the truth, the
21 whole truth, and nothing but the truth, so help you?

22 ROSEMARY PETERSON CHOICE

23 DIRECT EXAMINATION

24 BY SOLICITOR THORNTON:

25 Q Good morning, Ms. Choice. How are you?

1 A I'm fine.

2 Q Would you please give us your full name.

3 A Rosemary Peterson Choice.

4 Q Ms. Choice, in 2013 -- actually, from 2010 through
5 January of 2013, where did you work?

6 A I worked for Hampton County School District II.

7 Q And what was your job on or about January the 4th
8 of 2013?

9 A Pupil services coordinator.

10 Q And pupil services coordinator, tell me what that
11 means.

12 A I am a licensed social worker, and I work with
13 schools and students and children, as it relates to
14 social and emotional issues and concerns.

15 Q On or about January the 4th of 2013, did you
16 receive a call from Lessie Johnson?

17 A I did.

18 Q And without saying specifically what she said, what
19 was the call about, or who was the call about?

20 A The call was about her son, who, according to Ms.
21 Johnson, had lost interest in going to school.

22 Q And subsequent to that phone conversation, did you
23 have another conversation with anybody? And I mean
24 within a few minutes of that call, did you get another
25 phone call?

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DIRECT - ROSEMARY CHOICE

1 A Within a few minutes of that call, I received
2 another call from Mrs. Johnson, who said that her son
3 wanted to talk with me.

4 Q All right. And did you speak with her son?

5 A I did.

6 Q And what is her son's name?

7 A Complainant .

8 Q And did he relate to you anything about what the
9 problem was? Did he give you any specifics, or not?

10 A He said that a staff member was bothering him.

11 Q And is that something that you would handle, or
12 would you normally refer them to someone else?

13 A I asked him if he had shared that information with
14 his principal.

15 Q All right. And who would his principal have been?

16 A His principal was Dr. Raedell Brown.

17 Q And did you tell him anything? Did you give him
18 any instructions as to what to do?

19 A I said that, once you got to school, go and talk
20 with your principal. Share with her what your concerns
21 are, and I would see you once I get to work.

22 Q And without going into any details, later on in the
23 day, were you present at a meeting with, I believe it
24 was Dr. Brown, Dr. Gurley, and Sheriff Smalls?

25 A Yes.

1 Q All right. And do you know the defendant seated at
2 the table with his attorneys?

3 A I do.

4 Q And who is that?

5 A Officer Larry Heyward..

6 Q And was he -- you said *officer* -- was he stationed
7 anywhere in particular? Did he have any particular job
8 back in 2010 to 2013 that you're aware of?

9 A He was assigned as our school resource officer at
10 Middle School.

11 SOLICITOR THORNTON: Court's indulgence, please,
12 your Honor.

13 THE COURT: Yes, sir.

14 SOLICITOR THORNTON: Ma'am, thank you very much. I
15 don't have anything further at this time, your Honor.
16 Please answer any questions Mr. Lee has.

17 THE COURT: Mr. Lee, you can cross-examine.

18 ROSEMARY PETERSON CHOICE

19 CROSS-EXAMINATION

20 BY MR. LEE:

21 Q Good morning.

22 A Good morning.

23 Q Can you hear me okay?

24 A I can.

25 Q All right. How long did you work at Middle

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CROSS - ROSEMARY CHOICE

1 School?

2 A I worked for the school district.

3 Q Okay. How long did you work for the school
4 district prior to 2000 -- January of 2013?

5 A I started in 1989.

6 Q Okay. And so, you kind of went to different
7 schools. You weren't positioned in one school, right?

8 A That's correct.

9 Q Okay. Sorry for the misunderstanding. All right.
10 But you were kind of familiar with the administrators
11 and some of the students and stuff at different schools
12 within Hampton County. Is that right?

13 A That's correct.

14 Q Now, Middle School actually moved in
15 September of 2012. Do you remember that?

16 A Yes.

17 Q They moved from their old location to a new
18 location.

19 A That's correct.

20 Q Okay. And you've been to both?

21 A Yes.

22 Q Okay. Are you familiar with the way that the
23 schools are set up, as far as where people's offices
24 are, the cafeteria, and stuff like that?

25 A I am.

1 Q Okay. Let's talk about the old school first. All
2 right? Do you know where Larry Heyward's office was?

3 A I believe I do, yes.

4 Q You believe you did.

5 A Um-hmm.

6 Q His office was right beside the assistant
7 principal's office, was it not? Sarah Greene Williams?

8 A His office was just around the corner from the
9 assistant principal's office.

10 Q It wasn't right next to it? You sure about that?

11 A Not as I remember.

12 Q Okay. Who was right next to it? Do you know?

13 A Well, directly across from his office was the
14 cafeteria.

15 Q Okay. Obviously, a lot of coming and going in a
16 cafeteria, right? A lot coming and going in a
17 cafeteria?

18 A Yes.

19 Q Okay. That was at the old school. At the new
20 school, are you familiar where his old office was?

21 A I -- I'm not.

22 Q Okay. Do you know where the Media Arts Center was
23 at the new school?

24 A The Media Center?

25 Q Yes, ma'am.

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CROSS - ROSEMARY CHOICE

1 A Yes.

2 Q And did you notice that he just had a desk inside
3 the Media Center with other people, that posed as his
4 office? Does that ring a bell, or not?

5 A That does not.

6 Q Okay. As an educator, Ms. Choice, you are deemed
7 to be what's called a mandatory reporter. Is that
8 right?

9 A That's correct.

10 Q Okay. And what that means is that any allegation
11 involving any type of abuse, neglect, et cetera, as an
12 educator, you are required to send it up the chain, as
13 they say, or contact law enforcement, right?

14 A Correct.

15 Q Okay. And all educators would have to do that as
16 well, right?

17 A Correct.

18 Q Okay. Are you familiar with Complainant's
19 discipline history? Is that something you dealt with,
20 or not?

21 A That's something that I did not.

22 Q You did not. Okay.

23 A Deal with.

24 MR. LEE: Okay. All right. Thank you, ma'am.

25 THE COURT: Mr. Thornton, re-direct?

1 SOLICITOR THORNTON: None, your Honor. And as to
2 this witness, I'd ask that she be excused, and allowed
3 to go back to work.

4 MR. LEE: No objection.

5 THE COURT: Without objection, Ms. Choice, you can
6 go back to work. Thank you for coming.

7 SOLICITOR THORNTON: Dr. Raedell Brown.

8 MADAM CLERK: Place your left hand on the *Bible*,
9 and raise your right hand. Do you swear to tell the
10 truth, the whole truth, and nothing but the truth, so
11 help you God?

12 DR. RADELL BROWN: I do.

13 DR. RADELL BROWN

14 DIRECT EXAMINATION

15 BY SOLICITOR THORNTON:

16 Q Good morning, Dr. Brown.

17 A Good morning.

18 Q Dr. Brown, let me ask you a question. Who do you
19 work for now, today?

20 A Evans County Board of Education.

21 Q All right. And is that who you worked for back in
22 January of 2013?

23 A No.

24 Q Who did you work for then?

25 A Hampton County. Principal.

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DIRECT - DR. RADELL BROWN

1 Q And what was your position? I'm sorry, I didn't
2 mean to interrupt you. Go ahead.

3 A I said principal.

4 Q And you were principal of what school?

5 A At that time, the high school and middle school.

6 Q And are both of those schools by the time --
7 there's been some testimony earlier about the school,
8 the Middle School moving. So, at the time, in
9 2013, you were the principal over the high school and
10 the middle school?

11 A Yes, on the same campus.

12 Q All right. So, they're all located right together?

13 A Yes.

14 Q Were you the principal of the -- did you ever have
15 any connection to the old middle school, the
16 Middle School, before it moved and got on the campus
17 with the high school?

18 A No. It was during that transition.

19 Q Let me ask you this. On or about January the 4th
20 of 2013, did you talk to a student named Complainant ?

21 A Yes.

22 Q And without getting into specifics of what he said,
23 when he was sent to you, did you have a conversation
24 with him?

25 A Yes.

1 Q All right. And what was that conversation about?

2 A My question to him was, why was he being rude to
3 his teacher.

4 Q All right. So, was he sent to you because he was
5 being rude to a teacher?

6 A Yes.

7 Q And you asked him about that.

8 A Yes.

9 Q And would he give you much of a verbal response?

10 A No, he wasn't speaking to me. He was just sitting
11 there.

12 Q Did you make any suggestion to him about trying to
13 get the information as to what was wrong?

14 A Yes. I asked him, I said, well, you know, what's
15 going on; why are you not speaking to me. And he said
16 he had a lot on his mind. And I said to Complainant, I said,
17 well, if you can't tell me, then, write it to me.

18 Q All right. I'm going to show you what's been
19 marked only for identification at this point as State's
20 Exhibit Number 4, and ask you, do you recognize that
21 document?

22 A Yes.

23 ITEM IDENTIFIED AS NOTE

24 FROM Complainant

25 MARKED STATE'S EXHIBIT NUMBER 4

1 FOR IDENTIFICATION.

2 Q All right. And I don't need you to go into the
3 contents of what it is, but where did this note come
4 from?

5 A That note came from Complainant.

6 Q All right. And is that what he wrote to you -- is
7 that what he wrote to you in response to your question
8 about writing it down?

9 A Yes.

10 Q After he wrote that to you, did he do anything
11 else? And let me ask that a little bit better way.
12 Without saying specifically what's in there, are there
13 allegations in that note?

14 A Yes.

15 Q And they are allegations against who?

16 A Officer Heyward.

17 Q All right. And do you see Officer Heyward in the
18 courtroom?

19 A Yes.

20 Q And can you point him out for me.

21 A Yes, he's staying over there.

22 Q Did you work with Officer Heyward often?

23 A Yes.

24 Q Back in 2013, 2012, 2011, back in those years, were
25 you -- did you work with him frequently?

1 A Yes. As the principal of the high school and
2 middle school, daily.

3 Q And would you have conversations with him?

4 A Daily.

5 Q So, after this note, which contains allegations
6 against Officer Heyward, did Complainant say or do anything
7 else in your presence?

8 A. Well, Complainant wrote the note, and I read the note.
9 I said to Complainant, I said, well, is this your problem.
10 And he said, yes. And he said, if you don't believe me,
11 I have proof.

12 Q And what did the proof consist of?

13 A That was either a -- a telephone or iPod,
14 electronic device.

15 Q All right. Some -- an electronic device.

16 A Um-hmm.

17 Q An iPhone or an iPod?

18 A Um-hmm.

19 Q And what did -- what, if anything, did he do with
20 this electronic device?

21 A He played it for me.

22 Q All right. He played something off of it?

23 A Yes.

24 Q And when you heard it, what did it appear to be?

25 A It was a conversation -- a telephone conversation

1 between Complainant and Officer Heyward.

2 Q Okay. And without getting into specifically what
3 was on this conversation, could you describe -- or give
4 the jury an explanation of what the -- not what the
5 specific wording, but what it was about, what the phone
6 call was about.

7 A It had a sexual connotation.

8 Q I'm going to hand you --

9 SOLICITOR THORNTON: Oh, excuse me. I apologize,
10 Judge.

11 OFF-THE-RECORD BENCH CONFERENCE, OUT
12 OF HEARING OF JURORS. PRESENT: THE
13 COURT, SOLICITOR THORNTON, MR. LEE.
14 END BENCH CONFERENCE.

15 BY SOLICITOR THORNTON:

16 Q Ma'am, I am going to hand you what's been marked
17 only for identification as State's Exhibit Number 1. At
18 my request this morning, did you listen to this, to the
19 recording that is on State's Exhibit Number 1?

20 A Yes.

21 Q And is that, in fact, the same recording that you
22 heard Complainant play on his iPod in January of 2013?

23 A Yes.

24 Q All right. And is it accurate as to what was on
25 the recording when you heard it?

1 A Yes.

2 Q All right. You've described it as something that
3 was -- that had -- it was a sexual connota -- or sexual
4 call, I think, is what you indicated.

5 A Yes.

6 Q Now, let me ask you something. You very quickly
7 said earlier when I asked, you said it was between Larry
8 Heyward and Complainant.

9 A Yes.

10 Q Now, how did you know it was Larry Heyward?

11 A I heard the voice on the recording.

12 Q And you said you had frequently talked to Larry
13 Heyward as the school resource officer?

14 A Yes.

15 Q All right. Any doubt in your mind that that's
16 Larry Heyward's voice on that recording?

17 A No.

18 Q And again, you did listen to what will be
19 introduced as State's Exhibit Number 1 this morning?

20 A Yes.

21 Q Now, in fairness, and again, without getting into
22 too much of the contents, the note that Complainant wrote you
23 mentioned Larry Heyward.

24 A Yes, it did.

25 Q So, he did tell you that before you listened to the

1 tape?

2 A Yes.

3 Q But after hearing the tape, -- and again, you
4 played it -- I played it for you this morning -- any
5 doubt in your mind as to who, other than Complainant,
6 who the grown male voice is on that recording?

7 A No, there's no doubt.

8 Q And who is it?

9 A Officer Larry Heyward.

10 Q After hearing this, the explicit recording, what
11 did you do, if anything?

12 A I told Complainant that I needed to keep the recording.
13 I placed him back in his classroom and explained to him
14 not to speak to anybody about it; that someone would
15 come and pick him up shortly; and I went over to call my
16 superintendent, Dr. Gurley. I was told that she was not
17 at the high school -- I mean, she was not in her office,
18 but at the high school, so I met with her at the high
19 school.

20 Q And one of -- something that's -- obviously, you
21 were not in the courtroom. It's something that's been
22 asked. Are there mandatory reporting requirements for
23 any type of abuse or possible abuse of children?

24 A I am -- it is for me. As the position that I work
25 in, I am a mandatory reporter. So, I must report any

1 type of situation that comes to me in that nature.

2 Q And who would be your -- who would be the person
3 you would immediately report this to?

4 A My supervisor, who was Dr. Gurley.

5 Q And what position did Dr. Gurley employ at that
6 time?

7 A She was a superintendent of Hampton County District
8 II Schools.

9 Q All right. And based on what you heard on that
10 recording, did you feel like you needed to report it
11 immediately?

12 A Yes, I did, immediately.

13 Q All right. And I'm sorry, I interrupted you
14 earlier. You called and tried to get a meeting with Dr.
15 Gurley, and where was she?

16 A Well, she was -- I didn't realize she was still at
17 the high school, so I was told that she was still there.
18 So, I placed Complainant back into the classroom, and I went
19 into the conference room where she was, and I explained
20 to her that I needed for her to hear something.

21 Q Now, just --

22 SOLICITOR THORNTON: And your Honor, Court's
23 indulgence, please, just one moment.

24 THE COURT: Okay.

25 BY SOLICITOR THORNTON:

1 Q Let me ask you a quick question. When you were
2 talking with Dr. Gurley, and she's the superintendent,
3 you said, did you tell her anything that referenced
4 Larry Heyward?

5 A No. I said to Dr. Gurley, I need for you to hear
6 something.

7 Q Did not give her -- didn't say, I need you to hear
8 something that has Larry Heyward on it, or anything like
9 that?

10 A No. I said to Dr. Gurley, I need for you to hear
11 something.

12 Q And did you do anything at that point?

13 A I played the recording.

14 Q All right. What happened after that?

15 A After I played the recording, she stated to me --
16 MR. LEE: Your Honor, I object to any hearsay.

17 THE COURT: I sustain the objection. You can't say
18 what Dr. Gurley said.

19 SOLICITOR THORNTON: I apologize.

20 BY SOLICITOR THORNTON:

21 Q After you played the recording for her, did she do
22 -- I obviously will -- I'm sure you saw Dr. Gurley back
23 there; I'll bring her in to say what she said.

24 A Okay.

25 Q What, if anything did -- happened after that?

1 Without saying what she said, what did you all do, if
2 anything?

3 A Okay. She placed a phone call to the sheriff,
4 Sheriff Small.

5 Q All right. And at some point did the sheriff also
6 come out to meet with you all?

7 A Actually, she asked the sheriff to meet her at the
8 district office.

9 Q All right. And did you all meet at the district
10 office?

11 A Yes, we met at the district office.

12 Q And were you present then? In other words, did you
13 go to the meeting with her and the sheriff?

14 A Yes.

15 Q Do you recall whether anybody else was there?

16 A Ms. Choice.

17 Q All right. Is that Rosemary Choice?

18 A Rose Choice, yes.

19 Q At some point, was another law enforcement agency
20 called?

21 A Yes.

22 Q And again, without saying who said anything, what
23 agency was called?

24 A SLED was called in.

25 Q And at some point, did agents with SLED show up?

1 A Yes.

2 Q All right.

3 SOLICITOR THORNTON: Court's indulgence, please,
4 your Honor.

5 THE COURT: Okay.

6 BY SOLICITOR THORNTON:

7 Q When you played the recording for Dr. Gurley, and
8 again, don't tell me what she said; I'll have her
9 testify to that -- did she act like she knew who it was
10 on the phone -- on the recording?

11 A Yes.

12 Q Did she seem to know immediately?

13 A Yes.

14 Q Let me ask you something. In your capacity as a
15 principal, are you familiar with the school resource
16 officer and, generally speaking, what their functions
17 are?

18 A Yes.

19 Q All right. As part of the school resource
20 officer's functions, are they supposed to paddle or use
21 a taser on students?

22 A No.

23 Q Are they supposed to be involved in disciplining
24 students for school code violations?

25 A No.

1 Q Obviously, a school resource officer is supposed to
2 be there for safety. Would you agree with that?

3 A Um-hmm. Correct.

4 Q But are they authorized to give out corporal
5 punishment --

6 MR. LEE: Your Honor, I object to her being able to
7 say they're authorized. It's not for her to say.

8 THE COURT: Okay. I think she's testified as to
9 what they can do. That's leading. You're going to have
10 to rephrase that to get it in.

11 SOLICITOR THORNTON: Yes, sir.

12 BY SOLICITOR THORNTON:

13 Q Is there any school disciplinary action that a
14 school resource officer is allowed to do for school
15 violations?

16 A No.

17 Q In other words, if you get sent to -- if someone --
18 we talked about this earlier. You testified Complainant got
19 sent to your office for talking, being rude to a
20 teacher.

21 A Correct.

22 Q Is that something you would send to a school
23 resource officer for paddling?

24 A No.

25 Q Tasing?

1 A No.

2 SOLICITOR THORNTON: I don't have anything further.
3 Thank you very much.

4 THE COURT: Mr. Lee, you can cross-examine.

5 MR. LEE: Thank you, sir.

6 DR. RAEDELL BROWN

7 CROSS-EXAMINATION

8 BY MR. LEE:

9 Q Ms. Brown, did you keep pretty good dibbs on what
10 Mr. Heyward -- what was going on with Mr. Heyward? You
11 said you talked to him every day?

12 A Dibbs?

13 Q Yes, ma'am.

14 A I'm not sure I understand the question. I saw him
15 daily in our school.

16 Q Are you familiar with -- let's talk about the new
17 school first. His office was -- well, he didn't even
18 have an office. It was in the Media Center, correct?

19 A His office in the new school was in the Media
20 Center, as I remember.

21 Q He had a desk in there, right?

22 A Yes, there was a desk in there.

23 Q And that was at the front office? Okay. And there
24 are other people in there? I mean, other people sharing
25 the office?

1 A Yes. And other people were in the office, yes.

2 Q Okay. And in the old school, are you familiar with
3 the old Middle School?

4 A I didn't serve in any capacity in that school.

5 Q When did you become principal of Estill High School
6 and Middle School?

7 A 2013.

8 Q 2013?

9 A Yes.

10 Q Okay. The new Middle School, isn't it true
11 there's surveillance video in there?

12 A Yes.

13 Q Okay. Are you familiar with the discipline history
14 of Complainant in school?

15 A No. In terms of being a discipline issue, no, sir.

16 Q You do not?

17 A No.

18 Q Are you familiar with an individual named D.B.
19 D.B. ?

20 A Yes, that I -- I recognize that name, yes.

21 Q You recognize it?

22 A Yes, that name.

23 Q You know him very well, though?

24 A As one of the students at the middle school at the
25 time.

1 Q Do you know if he has a reputation as kind of being
2 a jokester or a class clown? Do you know him that well?

3 A No.

4 Q He's not that, or you don't know?

5 A I don't have any information in terms of his
6 behavior, being a jokester.

7 Q The media center in the new school, what other
8 offices or classrooms are around that? Do you know?

9 A I don't remember. When you say *offices* or
10 *classrooms*, I don't remember.

11 Q Well, let's talk about the old school. Wasn't the
12 assistant principal's office right next to Officer
13 Heyward's office in the old school?

14 A I didn't work in the old school.

15 Q You weren't -- you never went there?

16 A Hmm-um.

17 Q Okay.

18 A I been to the old school, but I didn't work in the
19 old school. So, I'm not sure what the layout is.

20 Q Okay.

21 A It was in the time of transition that I was
22 appointed as principal of the middle school. I didn't
23 work in the old school.

24 Q Okay. And your testimony was that **Complainant**
25 said to you, if you don't believe me, I have proof.

1 That was your testimony, right?

2 A Yes.

3 MR. LEE: Okay. That's all I have, your Honor.

4 THE COURT: Thank you. Re-direct, Mr. Thornton?

5 SOLICITOR THORNTON: None, your Honor. I'd ask
6 that she be excused.

7 MR. LEE: No objection.

8 THE COURT: Thank you. Without objection, Ms.
9 Brown, you may be excused. Thank you for coming.

10 DR. RAEDELL BROWN: Thank you, your Honor.

11 SOLICITOR THORNTON: Dr. Beverly Gurley.

12 MADAM CLERK: Place your left hand on the *Bible*,
13 and raise your right hand. Do you swear to tell the
14 truth, the whole truth, and nothing but the truth, so
15 help you God?

16 DR. BEVERLY GURLEY: Yes, ma'am.

17 MADAM CLERK: Have a seat.

18 DR. BEVERLY GURLEY

19 DIRECT EXAMINATION

20 BY SOLICITOR THORNTON:

21 Q Good morning, Dr. Gurley.

22 A Good morning.

23 Q Where are you currently working?

24 A I am retired.

25 Q Okay. And I wish I was. Congratulations, ma'am.

1 Let me ask you a quick question.. Were you retired in
2 January the 4th of 2013?

3 A No, sir.

4 Q All right. Where did you work then?

5 A Hampton County School District II.

6 Q And what was your job with Hampton County School
7 District II?

8 A Superintendent.

9 Q Are you familiar with a Dr. Brown?

10 A Yes, sir.

11 Q All right. And does she work in the same district
12 that you were the superintendent of?

13 A Yes, sir.

14 Q And what was her position?

15 A She was the principal of the high school and middle
16 school.

17 Q On or about January the 4th of 2013, did you have
18 any conversations with Dr. Brown?

19 A Yes, sir.

20 Q All right. And obviously, she's testified, so I'm
21 not going to ask you about what she said. But did she
22 bring -- did she contact you and request a meeting?

23 A Yes, she did.

24 Q And at that meeting, again, without saying what,
25 specifically, she told you, did she do anything in your

1 presence?

2 A She had a device, a phone, and she said, I just
3 need you to listen to something, to hear something.

4 Q Did she give you any indication as to what it was,
5 or who it was about, or who it was in reference to, or
6 anything like that?

7 A No, sir.

8 Q So, what was it, again, without getting into the
9 contents, what was it that she played?

10 A She played a recording on -- from a cell phone.

11 Q All right. And you said a recording from a cell
12 phone. Do you mean a call? Like, the recording of a
13 phone call?

14 A Like a call, a conversation between two people.

15 Q All right. And when she played that, did you
16 recognize any of the voices on the recording?

17 A Yes, I did.

18 Q Who did you recognize?

19 A Larry Heyward's.

20 Q How long had you known Larry Heyward at that time?

21 A I was hired as superintendent of Hampton School
22 District II on June 1st of 2012.

23 Q Okay. And had you worked with Mr. Heyward on a
24 number of occasions?

25 A Yes.

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DIRECT - DR. BEVERLY GURLEY

1 Q Did you talk to him with any regularity?

2 A I -- yes, I talked to him regularly. He was the
3 resource officer at the middle school.

4 Q Upon hearing the recording, can you tell me,
5 without getting into, again, what exactly was said, what
6 type of recording was it? What was the content of the
7 conversation?

8 A It was very sexually explicit.

9 Q All right.

10 A It was very detailed and very graphic.

11 Q And any doubt in your mind as to who the adult male
12 voice is on that tape?

13 A There is no doubt.

14 Q And who is it?

15 A Larry Heyward.

16 Q And I've seen you indicate with your eyes a couple
17 of times. Do you see Larry Heyward in the courtroom?

18 A Yes, I do.

19 Q And could you point him out for me.

20 A He's right there.

21 ITEM IDENTIFIED AS PHOTOGRAPH OF

22 MIDDLE SCHOOL

23 MARKED STATE'S EXHIBIT NUMBER 3

24 FOR IDENTIFICATION.

25 Q I'm going to hand you what's been marked as State's

1 Exhibit Number 3, and ask you if you are familiar with
2 what State's Exhibit 3 depicts.

3 A Yes.

4 Q And what is that, ma'am?

5 A It is the middle school, the Middle School,
6 in Hampton School District.

7 Q Now, there's been some testimony about the old
8 middle school --

9 A Yeah.

10 Q -- versus the new middle school. Which one is
11 this?

12 A That's the old middle school.

13 Q Is this a fair and accurate depiction of how it
14 appeared --

15 A Yes. Um-hmm.

16 Q -- when you were superintendent?

17 A Yes.

18 SOLICITOR THORNTON: Your Honor, I'd ask that
19 State's Exhibit Number 3 be entered into evidence.

20 MR. LEE: No objection.

21 THE COURT: Without objection, 3 in evidence.

22 ITEM IDENTIFIED AS PHOTOGRAPH

23 MARKED STATE'S EXHIBIT NUMBER 3

24 ADMITTED AS EVIDENCE.

25 BY SOLICITOR THORNTON:

1 Q Now, are you familiar -- you said you were
2 appointed as superintendent in June of 2012?

3 A Yes, sir.

4 Q Did you have occasion to visit the middle school as
5 it was at that time?

6 A Yes, sir.

7 Q All right. Are you familiar at all with Mr.
8 Heyward's office in the old middle school?

9 A Yes, sir.

10 OBJECTIONS, MOTIONS, RULINGS:

11 SOLICITOR THORNTON: Your Honor, this actually may
12 be a good time for us to approach on something, if we
13 may.

14 THE COURT: Okay. Do we need to put this on the
15 record?

16 SOLICITOR THORNTON: Yes, sir.

17 THE COURT: All right. Ladies and gentlemen, let
18 me send you to the jury room for a few moments. We've
19 got to take up a matter of law outside of your presence.
20 We'll go ahead and combine this brief recess as a
21 morning recess. It's about time for that. In any
22 event, we'll get you out shortly after we've dealt with
23 this matter, and have had the morning recess ourselves.
24 Please remember not to talk about this case among
25 yourselves. Thank you.

1 JURORS LEAVE COURTROOM 11:34 A.M.

2 ON-THE-RECORD BENCH CONFERENCE, OUT OF
3 HEARING OF JURORS. PRESENT: THE COURT,
4 SOLICITOR THORNTON, MR. HOLLEN, MR. LEE,
5 MR. LEMPESIS.

6 BY THE COURT:

7 THE COURT: All right. Before we get to the matter
8 at hand, Mr. Thornton, let's deal with the matter of Mr.
9 Lee's motion awhile ago. While Ms. Johnson was on the
10 stand, Mr. Lee pointed out some who was in the
11 courtroom, identified him by name. I'm sorry, I
12 couldn't hear the name. And so, to go further with
13 that, at that point in time, objection was raised as to
14 relevance. I sustained the objection. And Mr. Lee,
15 I'll be glad now to hear from you further, and let you
16 document the record that way.

17 MR. LEE: Yes, sir. Thank you, your Honor. Judge,
18 the attorney that I was speaking to, I believe that Ms.
19 Johnson is actually the one that said his name, but.

20 THE COURT: That's right, she did.

21 MR. LEE: His name is Mario Pacella. He is the
22 civil lawyer for the Johnson family.

23 THE COURT: Right.

24 MR. LEE: There has been extensive back and forth
25 between the civil lawyer and law enforcement regarding

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BY THE COURT

1 this case. And more importantly, I think that it goes
2 to potential bias, prejudice, under 608. And the reason
3 that I asked her, rather than asking Complainant , is
4 just because, if Complainant said, hey, I don't know who
5 the lawyer is, you know, my mom's dealing with that;
6 that's why I attempted to do it in that manner.

7 However, I do think that the suggestion of that
8 they had filed suit, they filed suit pretty quickly, and
9 so, he lawyered up very quickly after these allegations
10 were made, are relevant and are proper to go to motive
11 or bias.

12 THE COURT: All right. Mr. Thornton, what says the
13 State?

14 SOLICITOR THORNTON: Your Honor, I think the key
15 phrase in that is *after*. You know, the motive would
16 have to be prior to, in my opinion, to make it even
17 arguably relevant. These allegations were made, and he
18 was arrested, and then, some time after -- and even if
19 it was -- I don't know what the details of it are,
20 Judge, but I'll -- for purposes of this argument, I'll
21 say it was relatively soon thereafter. I still don't
22 think that gives them any motive to make anything up at
23 this point. The charges were already leveled at that
24 point. They had already played the recording for law
25 enforcement, as well as the school district people. And

1 you know, and frankly, Judge, a lot of the people that
2 are going to be up here, he's not going to ask that
3 question to who are also testifying that that's Larry
4 Heyward's voice on the recording. It's actually against
5 their interests, although some of them don't still work
6 for the school district. But whether he asked that of
7 Ms. Johnson or Complainant , I think it's improper. I
8 don't think that shows bias.

9 MR. LEE: Your Honor, the timing thing is, I mean,
10 you have to make the allegation before you can sue
11 somebody.

12 THE COURT: Right.

13 MR. LEE: I mean, so, it's the fact you say it
14 happened after he made the alle -- of course, it was
15 after he made the allegation, because he already
16 initiated the investigation, already had all the reports
17 and everything else in hand before he filed suit. So, I
18 don't think saying it happened afterwards is even an
19 argument. But I think to show that they have sued them
20 for the exact things that are on -- and interestingly
21 enough, they amended their complaint. Went from State
22 court to federal court. They amended it, because I
23 believe they pled themselves out of coverage initially.
24 They amended it to include the taser incident.

25 And lo and behold, about a month ago, the

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BY THE COURT

1 indictment gets amended on the misconduct in office to
2 include taser as part of the misconduct. Originally,
3 misconduct was the sexual allegations. A month ago, the
4 indictment for misconduct was amended to include the
5 fact that he tase -- allegedly tasered Complainant ,
6 which mirrors the portion of the civil suit for which
7 they are suing Larry Heyward, the school district, and
8 the Sheriff's Office. So, I think it's there. I mean,
9 I think it's enough to suggest, and it's a jury question
10 to decide what weight, if any, they want to give it.

11 THE COURT: All right. Let me chop this up in two
12 little pieces, Mr. Lee, and make sure I understand. Are
13 you saying that the charges themselves, that is, the
14 revelation that we have heard today to the school
15 officials, the writing of the note, the conversation
16 with the mother and the school officials, and the
17 playing of the tape, that all of those things were part
18 of a plan to support litigation down the road?

19 MR. LEE: Yes, sir. . \

20 THE COURT: Okay. Do you have any evidence of
21 that, other than the filing of the suit after the fact?

22 MR. LEE: Your Honor, I have an admission from Mr.
23 Complainant that this is -- he made all this stuff up, no,
24 sir, I do not.

25 THE COURT: Okay.

1 MR. LEE: But I think that there is enough smoke
2 there to certainly suggest with the speed in which --
3 his lawyer was speaking to law enforcement a month after
4 the allegations were even made, the investigation was
5 still ongoing.

6 THE COURT: Right.

7 MR. LEE: So, I mean, it shows that they got there
8 and they got there quick. And you know, it is what it
9 is, I guess, and I think that it's certainly admissible.
10 If the jury doesn't want to believe it, that's fine, but
11 you know, as the defense often gets things admitted over
12 objection, it goes to the weight, not the admissibility,
13 I think this goes to the weight, not the admissibility.
14 I don't think there's any prejudicial effect. If they
15 want to say it all happened later, they can get rid of
16 any prejudicial effect, if that's what they believe.
17 So, I believe that it is proper cross-examination and
18 proper impeachment of him and his motives.

19 THE COURT: All right. Almost anything is allowed
20 under the rules to show bias, but in this particular
21 case, I'm not sure that the fact of the lawsuit being
22 brought after the fact, even quickly after the fact,
23 given, primarily, the proof on the tape, for whatever
24 reason it was given, and whether the jury believes it or
25 not, the allegations to the conversation on the tape

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BY THE COURT

1 would, in and of itself, appear to give rise to the
2 complaints that were filed and to the indictments that
3 resulted from those complaints after the investigation.

4 MR. LEE: Your Honor, my response to that would be
5 that I think the Court, with all due respect, is
6 improperly weighing the evidence that we've heard
7 through four witnesses and through some pretrial motions
8 as to that. I mean, Complainant hasn't even testified. We
9 haven't even been able to present anything.

10 THE COURT: Right.

11 MR. LEE: And I think that we certainly -- I mean,
12 if it doesn't go anywhere, it doesn't -- the jury says,
13 well, that's -- I can't believe the defense lawyer is
14 even suggesting that, if it's not worth anything,
15 they'll disregard it. So, I don't see any potential
16 harm as to letting that in, if there is a question as to
17 his motive and as to his credibility, which clearly is
18 going to be an issue.

19 THE COURT: Right. The question, of course, is
20 whether this jury is going to be asked to decide, on the
21 basis of the fact that there's a lawyer involved, if
22 this whole thing is made up out of whole cloth and it
23 really is to get money out insurance companies and
24 things of that nature. And certainly, at the time Ms.
25 Johnson was testifying and you raised that issue, I

1 didn't know whether the issue was being raised to
2 impeach her testimony at the time. And frankly, I saw
3 nothing in her testimony today that would appear to be
4 different than the testimony that had already been given
5 initially, at the time these events occurred. So, I did
6 not think at the time that the bringing of a lawsuit at
7 any time would be evidence of her bias or the scope of
8 the testimony that she was giving. In other words, the
9 evidence of untruthfulness about the things that she was
10 testifying.

11 MR. LEE: I was trying to lay some ground work in
12 case -- I was going to ask her who the lawyer is.

13 THE COURT: Right.

14 MR. LEE: And then, probably, the next one would
15 have been, does your son know who that is. Because I
16 realize -- I wasn't trying -- I wasn't trying to impeach
17 her; I was trying to set the stage later on, in case
18 Complainant said, I don't know who that guy is.

19 THE COURT: Right. Well --

20 MR. LEE: Rather than having to recall her and --

21 THE COURT: I tell you, if it gets to the point
22 where that's -- where I'm going to allow that in, I will
23 see if we can't arrive at a stipulation and everybody in
24 here agrees who he is. And I guess somewhere downstairs
25 in the Clerk's Office, there's a complaint on file.

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BY THE COURT

1 MR. LEE: I have a copy of the --

2 THE COURT: Okay. So, there you go. So, I think
3 that that evidence is beyond the scope. The only
4 question is going to be whether it's relevant or not.
5 And that's an issue that I have yet to decide on the
6 overall admissibility of the evidence of the lawsuit.
7 I'm not sure that this rises to the level of an accident
8 that occurs at the intersection, and then, there's a
9 complaint that the person got in an accident in order to
10 bring a lawsuit. Although, that very well can happen,
11 it is not the ultimate cause, the underlying cause of
12 the accident itself. And so, that's my concern. I'm
13 concerned with the fact that it may confuse this jury as
14 to the issues.

15 MR. LEE: Your Honor, I would just say, my concern
16 number one is asking me to present evidence, or somebody
17 that's going to establish that that -- what was -- that
18 improper thing was in his mind, I think is, number one,
19 burden shifting, with all due respect. And --

20 THE COURT: Okay.

21 MR. LEE: I had a second point. I can't remember
22 what it was, but.

23 THE COURT: All right. I'm not going to rule
24 out of hand at this juncture that you can't give
25 testimony of that somewhere down the road for purposes

1 of showing --

2 MR. LEE: Okay. The second part of that, I just
3 remembered is, we certainly -- his credibility certainly
4 is going to be a very, very central issue in this
5 defense.

6 THE COURT: Right.

7 MR. LEE: Perhaps the primary one.

8 THE COURT: Right.

9 MR. LEE: As you can imagine, from what you've
10 heard so far. And that, I think, if it's kept out,
11 would cut to the vary nature of what we believe is our
12 best and primary defense. And so, the significance of
13 that ruling to us, I would just like to put on record I
14 believe is significant.

15 THE COURT: All right.

16 THE COURT: Well, when you get Complainant on the stand,
17 if you ask him if he knows who the lawyer is, and he
18 says no, then, I'm might allow you to recall the mother
19 to prove that point.

20 MR. LEE: Yeah.

21 THE COURT: But as I say, I'm still not convinced,
22 quite frankly, and I've got a big evidence notebook
23 there that I'm going to look through to see if this is
24 the sort of thing of the circumstances that should be
25 put before the jury at all.

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BY THE COURT

1 MR. LEE: Okay. And I was just, again, trying to
2 make a record here. My concern in doing it that way is
3 that, if I am forced to recall the mother for that
4 purpose, that it would be considered presenting
5 evidence, and I would therefore lose last argument if I
6 otherwise had not put up any evidence. Which, again, is
7 why I did it the way that I did, knowing that that may
8 be a situation.

9 THE COURT: I understand. I'll try to deal with
10 that. I'll drive over that bridge when I get to it.

11 MR. LEE: Okay.

12 THE COURT: Okay?

13 MR. LEE: Appreciate it.

14 THE COURT: All right.

15 MR. LEE: Yes, sir.

16 THE COURT: Now, we've not even talked about the
17 reason you wanted a break to start with, Mr. Thornton.
18 What do you have?

19 SOLICITOR THORNTON: No, sir. And I'm glad I
20 always do try to show this to co-counsel. This is one
21 that he originally had indicated he didn't have a
22 problem with, but on further reflection, he told me
23 ahead of time, before I approached the witness, that he
24 had an issue with it. So, I thought we best bring it
25 up. While you all had the technology issue, I thought

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BY THE COURT

1 it was a good time to ask for us to approach. So, I'll
2 hand it up to the Court, Exhibit 5-B, your Honor. He
3 has indicated -- and I'll let him make the objection.

4 THE COURT: All right.

5 MR. LEE: Your Honor, I'd have to speculate as to
6 what Mr. Thornton is offering that for. I assume it's
7 just to show a layout of Officer Heyward's office at
8 whatever time it was taken. My concern, as you can
9 imagine, is, because of what's on the bulletin board,
10 which says *breaking rules may sting*. And he's alleging
11 that he's been tased, and I'm sure that that will be a
12 nice, cute little thing to argue to the jury, that
13 there's a bulletin board in there, that we don't know
14 how it got created or anything, that says *breaking rules*
15 *will sting*, which is going to be right on with his
16 tasing issue that has been amended and included in the
17 misconduct in office as of a month ago.

18 THE COURT: Yes, sir.

19 MR. LEE: So, I just think there's just so much
20 prejudicial effect to that, that it -- there's plenty of
21 pictures I think he can find that don't include that
22 bulletin board, and I have no reason to think that.

23 THE COURT: Okay.

24 MR. LEE: It may have been unintentional. It may
25 have been -- I don't know.

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BY THE COURT

1 THE COURT: All right. What say you, Mr. Thornton?

2 SOLICITOR THORNTON: It was absolutely not
3 unintentional, Judge. I think it's relevant. I think
4 it depicts how his office was, and it's not just -- I
5 mean, Mr. Lee is exactly right. It does go into what I
6 think that the gravamen of what the offense is. And
7 just to -- I know this has been brought up before --
8 just so the Court is clear, I was the one that directed
9 that the indictment be amended to include the tasing.
10 It had nothing to do with anything in federal court. I
11 don't even currently have a license to practice in
12 federal court. It's been inactive for some time.

13 But the reason I did it is because, in looking at
14 the evidence that I thought I would be able to get into,
15 Mr. Heyward admits to the SLED agents when he's talking
16 to them, he denies the sexual activity, but says, but I
17 did tase him and paddled him with his mama's permission,
18 but never wrote a report. So, he, out of his own mouth
19 -- I know we haven't introduced that yet, but I don't
20 think that's going to be held inadmissible at this
21 point, based on the *Denno* ruling. He is saying he's
22 paddling these people.

23 Mr. Lee asked Ms. Johnson, you know, but you think
24 he's there for discipline, right? And of course, the
25 school people said he wasn't there for discipline. But

1 anyway, it absolutely is what it purports to be. So,
2 the State's position is, it's not overly prejudicial.

3 THE COURT: Right.

4 SOLICITOR THORNTON: It is what he had in his
5 office, and there are several other things that are
6 problematic for him in his office as well that we'll get
7 into.

8 MR. LEE: I think --

9 SOLICITOR THORNTON: But that would be the State's
10 position, Judge.

11 MR. LEE: I think what they're saying without
12 saying is that that goes to his state of mind and that
13 is something in his mind. And I don't think that that
14 certainly proves anything, and I think that the -- when
15 you talk about inferences and conclusions and jumps off
16 of bridges that juries can take, that clearly -- I mean,
17 he -- I guess he'll have to make the argument that's
18 some warning to kids, I'm going to tase you. And it
19 makes -- I just don't see the -- it is so prejudicial,
20 and it can't -- I guess he's offering it for that
21 purpose, is to show his state of mind. We don't even
22 know who made that bulletin board.

23 THE COURT: Right.

24 MR. LEE: I don't know if he has any skills like
25 that. I couldn't make that and cut it out of cardboard

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BY THE COURT

1 or construction paper. We don't know who put it there.

2 THE COURT: Right.

3 MR. LEE: Anything. When it got there, when it was
4 up, when the tasing happened, anything.

5 THE COURT: I take it this is an office. Is this
6 his office?

7 SOLICITOR THORNTON: Yes, sir. It's his office in
8 the old -- and I'll show you 5-A, which is the other one
9 I was going to put in. And I was just going to ask Dr.
10 Gurley if she knew. If she doesn't, I can talk to SLED
11 agents, who did a -- who searched it. But 5-A is the
12 door of the office that says --

13 THE COURT: Right.

14 SOLICITOR THORNTON: -- Larry Heyward's office.

15 THE COURT: Right.

16 MR. LEE: Your Honor, if you'd like me to summarize
17 my client's testimony, maybe I could call him for
18 limited purposes, if you need to hear him. My
19 understanding is that that bulletin board was up and had
20 that message before he even moved into that office.

21 THE COURT: Right. And of course --

22 MR. LEE: And there's nothing to the contrary.

23 THE COURT: Well, that could be an explanation.

24 The bulletin board, as I depict it, shows some
25 bumblebees circling around some plants. And I can't see

1 the printing, beside these little captions by each one
2 of them. It says, *breaking rules will sting*. I take it
3 that maybe these little depictions here are rules that
4 might have been broken. It's quite a leap from sting to
5 taser, as a matter of fact. Although tasers do, in
6 fact, sting. I think that, if this was an office in
7 which students were brought to sit down for whatever
8 purpose, the fact that a warning that breaking rules
9 causes punishment of some sort, the bee sting, I
10 suppose, is emblematic of that, that there's nothing
11 prejudicial. Now, if it's any -- as far as the
12 discipline is concerned. Now, if he was not allowed to
13 do any discipline at all, and there's been some
14 testimony about that, then, this --

15 MR. LEE: A violation of policy, supposedly.

16 THE COURT: Mr. Thornton, how do you address that?
17 If he's not supposed to discipline at all, then, are you
18 saying that this is evidence that he was going to
19 discipline on his own, without some authority?

20 SOLICITOR THORNTON: Yes, and that's what he
21 admitted to.

22 THE COURT: You're saying he admitted to paddling
23 and he admitted to tasing?

24 SOLICITOR THORNTON: He admitted in his -- what the
25 testimony was yesterday, and I know Mr. Lee will correct

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BY THE COURT

1 me if I get this wrong, but what the testimony was from
2 the SLED agent yesterday was that he did not have any
3 sexual contact with Complainant; that he had had problems
4 with him; he had tased him, paddled him, and maybe he
5 inappropriately grabbed him once by accident when he was
6 paddling him. Something to that effect.

7 THE COURT: All right. And given the fact that his
8 testimony is not inconsistent with what the sign says,
9 I'll allow it in evidence, over the objection of
10 Counsel.

11 SOLICITOR THORNTON: Thank you, your Honor.

12 MR. LEE: Your Honor, again, for purposes of the
13 record, could you specifically put on the record what
14 you believe the probative value is of that particular
15 picture. I think you said it has no prejudicial effect.
16 Is that going to be your ruling?

17 THE COURT: I think it's not as prejudicial as it
18 would be if he had not objected to having been paddled
19 and tasered. That's right.

20 MR. LEE: Okay. So, the probative value is as to
21 that picture as well.

22 THE COURT: Well, the probative value actually
23 supports what he said he's done in that factor.

24 MR. LEE: But that's just -- that's against
25 interest, though. That doesn't help him. So, I mean,

1 the probative value of that picture is?

2 THE COURT: The probative value is that this is his
3 office.

4 MR. LEE: Yes, sir.

5 THE COURT: That's an emblem on there that I don't
6 know where it came from, but it's in his office. He is
7 saying, or has admitted, according to the testimony,
8 that he has paddled and he has -- and he has tasered.
9 That is evidence. At least it's not inconsistent, and
10 that's the prejudicial test. It is not inconsistent
11 with what he apparently has admitted to doing.

12 MR. LEE: So then, it would be cumulative.

13 THE COURT: It's also cumulative as to be
14 prejudicial.

15 MR. LEE: Yes, sir.

16 THE COURT: It's not exactly cumulative in the
17 first place.

18 MR. LEE: Okay.

19 THE COURT: It's just it's supported by it.

20 MR. LEE: Yeah.

21 THE COURT: It's not the same evidence.

22 MR. LEE: And just for the record, I can proffer
23 right now what his testimony would be, that that was in
24 existence when he moved into the office; that he did not
25 put that in the office. If that was proffered, would

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BY THE COURT

1 that make any difference, or not?

2 THE COURT: No, he's not --

3 MR. LEE: Okay.

4 THE COURT: I mean, I'll accept that as a proffer.

5 MR. LEE: I would ask that I be able to proffer him
6 in that manner.

7 THE COURT: Right.

8 MR. LEE: Yes, sir.

9 THE COURT: Then, I'll accept it as a proffer that
10 he would testify if he took the stand that he did not
11 put that up there; somebody else did.

12 MR. LEE: And it was there before he moved in the
13 office. Yes, sir.

14 THE COURT: Okay. I'll accept that.

15 MR. LEE: Thank you, your Honor.

16 THE COURT: Okay.

17 MR. LEE: I appreciate your patience with me, too.

18 THE COURT: Well, I'm glad to do it.

19 MR. LEE: Yes, sir.

20 THE COURT: We need to get this record complete.

21 MR. LEE: Yes, sir.

22 THE COURT: Now, we've not had a break.

23 SOLICITOR THORNTON: No, sir.

24 THE COURT: So, let's take about ten minutes.

25 SOLICITOR THORNTON: Just going to ask, Judge.

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CONTINUE DIRECT - DR. BEVERLY HURLEY

1 THE COURT: Okay. You can step down off the
2 witness stand. Do not talk about your testimony with
3 anybody while you're on break.

4 OFF THE RECORD 11:55 A.M.

5 BACK ON THE RECORD 12:01 P.M.

6 BY THE COURT:

7 THE COURT: You all may be seated. Dr. Gurley.

8 SOLICITOR THORNTON: I'm sorry. I did not see that
9 she was in the courtroom. I apologize.

10 THE COURT: Okay. Bring us the jury, please.

11 JURORS ENTER COURTROOM 12:04 P.M.

12 THE COURT: Folks, thank you for your patience in
13 being marched in and out of the courtroom from time to
14 time. I told you earlier in the day that I'm the judge
15 of the law and you're the judge of the evidence.
16 Sometimes, when I'm dealing with matters of law, I have
17 to excuse you and send you back to the jury room, so
18 that we can deal with those matters fully on the record
19 out here. And that's what we're doing.

20 Are we now prepared to continue with the
21 examination of Dr. Gurley. Mr. Thornton?

22 SOLICITOR THORNTON: Thank you, Judge.

23 DR. BEVERLY GURLEY

24 CONTINUE DIRECT EXAMINATION

25 BY SOLICITOR THORNTON:

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CONTINUE DIRECT - DR. BEVERLY HURLEY

1 Q I'm going to hand you what's been marked as State's
2 5-A and 5-B, and ask you if you can identify those two
3 photographs. Do you recognize what's depicted in those
4 pictures?

5 A Yes.

6 Q And what is it that's pictured in 5-A and 5-B?

7 A 5-B is the office.

8 Q And just -- yeah.

9 A Of Officer Heyward.

10 Q All right. The door of Officer Heyward. And 5-B,
11 what is that of?

12 A It's the office.

13 Q All right. And would that be at the new middle
14 school or the old middle school?

15 A The old middle school.

16 Q All right. So, this would be at the old middle
17 school.

18 A The old middle school.

19 Q And are these a fair and accurate depiction of what
20 his office looked like at the time he was school
21 resource officer?

22 A Yes, sir.

23 Q At the old middle school?

24 A Yes, sir.

25 Q And do they look like they've been altered or

1 changed in any way?

2 A No, sir.

3 SOLICITOR THORNTON: Your Honor, I'd ask that 5-A
4 and 5-B be admitted into evidence.

5 THE COURT: 5-B, over objection of defense counsel;
6 5-A, without objection?

7 MR. LEE: That's right, your Honor. Thanks.

8 ITEM IDENTIFIED AS PHOTOGRAPH
9 OF LARRY HEYWARD'S OFFICE
10 MARKED STATE'S EXHIBIT NUMBER 5-A
11 ADMITTED AS EVIDENCE.

12 ITEM IDENTIFIED AS PHOTOGRAPH OF
13 LARRY HEYWARD'S OFFICE
14 MARKED STATE'S EXHIBIT NUMBER 5-B
15 ADMITTED AS EVIDENCE.

16 SOLICITOR THORNTON: And your Honor, for the
17 record, I'm publishing to the jury 5-A.

18 THE COURT: All right.

19 SOLICITOR THORNTON: And now, it would be 5-B.

20 BY SOLICITOR THORNTON:

21 Q Dr. Gurley, and forgive me, I know we kind of took
22 a break, I believe you testified as to who the
23 identification of the person, the voice that you heard
24 on the recording; have you not?

25 A Yes, sir.

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CONTINUE DIRECT - DR. BEVERLY HURLEY

1 Q All right. And who, again, was that?

2 A Officer Heyward.

3 Q And any doubt in your mind?

4 A No, sir.

5 Q Upon playing that, and again, you can't tell me
6 what anybody else told you.

7 A Um-hmm.

8 Q But after you played that, did you play that tape
9 for anybody else?

10 A Yes, I did.

11 Q And who did you play it for?

12 A Sheriff Smalls.

13 Q And did you give him any information prior to that
14 about what he was hearing, or what you wanted him to
15 listen to, or give any names, or anything like that?

16 A No, sir.

17 Q So, in essence, what did you do?

18 A I had called Officer -- I called Sheriff Smalls;
19 said I needed to see him and to meet me in my office.

20 Q All right. And at some point, did he meet you at
21 your office?

22 A He did.

23 Q All right. And at that time, did you play the
24 recording that you've talked about?

25 A Yes, sir.

1 Q And again, did you give -- did you say, this is
2 about Larry Heyward, or, I think you need to listen to
3 this, mention any names whatsoever?

4 A No, sir.

5 Q And once you played it for the Sheriff, did he
6 indicate to you whether or not he knew who it was on the
7 recording?

8 A Yes, sir.

9 SOLICITOR THORNTON: Your Honor, Court's
10 indulgence, please, one moment.

11 THE COURT: Okay.

12 SOLICITOR THORNTON: I don't have anything else.
13 Thank you very much.

14 THE COURT: Mr. Lee, cross-examine.

15 DR. BEVERLY GURLEY

16 CROSS-EXAMINATION

17 BY MR. LEE:

18 Q Dr. Gurley, I've seen you, for lack of a better
19 word, cut your eyes at Mr. Heyward a couple times. Do
20 you have an issue?

21 A No.

22 Q Hard feelings towards him?

23 A No, sir.

24 Q Okay.

25 A No, sir.

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CROSS - DR. BEVERLY GURLEY

1 Q Okay. Now, when were you the superintendent for
2 Hampton 2?

3 A I was hired on June 1, 2012.

4 Q June 1, 2012. Okay. And when was your last day?

5 A I'm sorry, July 1, 2012.

6 Q Okay. And when was your last day?

7 A My last day was -- my contract ended June 30,
8 2015.

9 Q When was your last day?

10 A And my last day was June -- my last day was in
11 2014. I think it was June 2014.

12 Q So, if you didn't retire, your contract was
13 terminated, correct?

14 A My contract was not renewed.

15 Q It was not renewed, but it was supposed to last
16 another year; was it not?

17 A But it was not renewed.

18 Q And this allegation came out during your tenure as
19 the superintendent.

20 A The superintendent.

21 MR. LEE: Right. That's all I have, your Honor.

22 THE COURT: Thank you. Re-direct.

23 SOLICITOR THORNTON: None, your Honor. I ask that
24 she be excused.

25 MR. LEE: No objection.

1 THE COURT: Without objection, Dr. Gurley, you can
2 be excused. Thank you so much for coming.

3 Ladies and gentlemen, during the break, the lawyers
4 have given me something of a schedule, and the next
5 witness that's going to be called is a quite lengthy
6 witness. It would extend well into your lunch hour. We
7 had to deal with a matter of law just a few moments ago,
8 in any event, and so, I had to send you out for that,
9 notwithstanding the fact that the lunch hour is
10 approaching. But rather than start the testimony of
11 that witness at this juncture and having to interrupt it
12 for lunch, I think the best way to spend all of our
13 times, and the best way for you to keep this case
14 together in a cohesive manner in your own minds, is for
15 us to try not to interrupt the testimony of a witness
16 with lunch or an extended break like that. That's the
17 long way of saying I'm sending you to an early lunch.

18 It's 12:10. I'll ask you to be back in the jury
19 room, please, at 1:30. That's about an hour and
20 fifteen, twenty minutes. That should give you enough
21 time to get lunch, and I look to see you back at 1:30.
22 I remind you again, you are not to talk about this case
23 among yourselves or with anyone else while you're in the
24 jury room. Enjoy your lunch, and we'll see you at 1:30.
25 Thank you.

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BY THE COURT

1 JURORS LEAVE COURTROOM 12:10 P.M.

2 THE COURT: All right. Folks, anything further
3 before we break for lunch from the State?

4 SOLICITOR THORNTON: Nothing further from the
5 State. Thank you, your Honor.

6 THE COURT: Mr. Lee, from the Defense?

7 MR. LEE: No, sir, your Honor.

8 THE COURT: 1:30, folks. Thank you.

9 OFF THE RECORD AT 12:11 P.M.

10 BACK ON THE RECORD 1:37 P.M.

11 BY THE COURT:

12 BAILIFF: Come to order.

13 THE COURT: Thank you, ladies and gentlemen.
14 Please be seated. Good afternoon.

15 Gentlemen, are both sides ready for the jury this
16 morning?

17 SOLICITOR THORNTON: We are, your Honor, although
18 there are two matters, one just as a request to remind
19 the Court of something. There are pending motions by
20 both Mr. Lee and myself as to the next two witnesses,
21 the first being the victim in the case, Complainant
22 I believe we are -- I just want to remind the Court, I
23 believe we are still going to have to break in between
24 the direct and the cross for you to rule on motions
25 regarding the iPod that Mr. Lee had earlier in chambers.

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BY THE COURT

1 THE COURT: Okay.

2 SOLICITOR THORNTON: And I have made a motion as to
3 Mr. J.T. ; that the courtroom be cleared for his
4 testimony. And I don't think the Court had ruled on
5 that, and I just wanted to bring that, since -- he's
6 going to be right after Complainant .

7 THE COURT: Okay. All right. We'll deal with that
8 motion. I want to see -- Mr. J.T. is in -- is, of
9 course, in sequestration, obviously, and I'll need to
10 hear from you again on the record as to the reason
11 behind wanting the courtroom to be cleared. In any
12 event, the press will not be excluded. They will be
13 able to remain.

14 SOLICITOR THORNTON: Yes, sir.

15 THE COURT: If the clearing of the courtroom
16 applies, it will apply to spectators and non-court
17 personnel only.

18 SOLICITOR THORNTON: Yes, sir.

19 THE COURT: And we can deal with that in only doing
20 his testimony. All right?

21 SOLICITOR THORNTON: Yes, sir.

22 THE COURT: Now, what do we need to do before you
23 call Complainant to the stand? Do we have a motion
24 pending in that regard?

25 SOLICITOR THORNTON: I don't believe before we --

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BY THE COURT

1 before I call him, Judge. It would just be prior to his
2 cross-examination by Mr. Lee. There were matters that
3 Mr. Lee had made a motion to go into that I objected to.

4 THE COURT: All right. And to refresh my -- I'm
5 looking back through the motions I have here, and tell
6 me what is left un-ruled on, as far as that tape is
7 concerned.

8 SOLICITOR THORNTON: It is not the tape.

9 MR. LEE: Rape shield issues, your Honor.

10 SOLICITOR THORNTON: The *Rape Shield Statute*,
11 Judge, as applies to the information on the iPod.

12 THE COURT: Okay. I see. As to the balance of the
13 information about the images and things of that nature.
14 Okay.

15 SOLICITOR THORNTON: Yes, sir.

16 THE COURT: I understand that. All right. I'm
17 looking at the motion again to refresh my memory. All
18 right. Mr. Lee, tell me, again, the evidence -- the
19 reason behind the evidence that you seek to introduce.

20 MR. LEE: The basis for the rape shield?

21 THE COURT: The basis. That's right. What is the
22 -- it is the evidence or the images; is that right? And
23 the purpose for which you seek to introduce it.

24 MR. LEE: Yes, sir. Just beg the Court's
25 indulgence.

1 I'm looking for my notes I had, Judge, but.

2 Judge, as you know, I mean, on the rape shield, it
3 protects certain stuff coming in.

4 THE COURT: Okay.

5 MR. LEE: And what they want to -- the law was
6 designed to avoid either gratuitous attacks on someone's
7 morality or unchastity or that sort of thing.

8 THE COURT: Right.

9 MR. LEE: And so, my understanding is that, when
10 someone intends to use such evidence -- obviously, we
11 filed the pretrial motion as required. It requires an
12 offer of proof.

13 THE COURT: Right.

14 MR. LEE: I think there's several reasons that this
15 would become relevant, but I think it's going to become
16 relevant primarily after Complainant 's testimony.

17 THE COURT: Right.

18 MR. LEE: And you know, with all due respect, I
19 feel like I should be allowed to argue it at that time,
20 because I --

21 THE COURT: I'll let you do that.

22 MR. LEE: Okay.

23 THE COURT: If that will make it plainér.

24 MR. LEE: It would.

25 THE COURT: Okay.

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BY THE COURT

1 MR. LEE: Okay. Thank you.

2 THE COURT: Because depending upon what he says.
3 All right.

4 MR. LEE: Yes, sir.

5 THE COURT: I understand.

6 MR. LEE: I should have said that a lot more
7 succinct. Thank you.

8 THE COURT: Okay. That's the best way to do it.
9 All right. And insofar as the exclusion of the
10 witnesses in the courtroom, when the other young man
11 seeks to testify, I will deal with that just as you call
12 him, and I want to observe him beforehand. And then, I
13 will grant the motion on the record before his testimony
14 begins.

15 SOLICITOR THORNTON: Yes, sir.

16 THE COURT: All right. Okay. Having settled that,
17 now we're ready for the jury?

18 SOLICITOR THORNTON: State's ready, your Honor.

19 MR. LEE: We're ready, your Honor.

20 THE COURT: Bring us the jury, please.

21 JURORS ENTER COURTROOM 1:41 P.M.

22 THE COURT: Ladies and gentlemen, thank you for
23 your prompt return from lunch. Now we are continuing
24 the case as the State continues to offer evidence and
25 testimony in support of the charges that it's brought.

1 Mr. Thornton?

2 SOLICITOR THORNTON: Thank you, your Honor. State
3 calls Complainant to the stand.

4 MADAM CLERK: Place your left hand on the *Bible*,
5 and raise your right hand. Do you swear to tell the
6 truth, the whole truth, and nothing but the truth, so
7 help you God?

8 Complainant : I do.

9 MADAM CLERK: Have a seat. Speak loudly so
10 everybody can hear you.

11 Complainant : Okay.

12 Complainant

13 DIRECT EXAMINATION

14 BY SOLICITOR THORNTON:

15 Q Good morning, Complainant. How are you?

16 A I'm doing good. Thank you.

17 Q Complainant, where do you live right now?

18 A In Florida.

19 Q Okay. What town or what city?

20 A Jacksonville.

21 Q And did you live in Jacksonville from August of
22 2010 until January of 2013?

23 A Can you repeat the question.

24 Q Yeah. Did you live there in Jacksonville, where
25 you live now, did you live there in 2010 to 2013, or did

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DIRECT - Complainant

1 you live somewhere else?

2 A I lived somewhere else.

3 Q All right. Where did you live then?

4 A In Garnett, South Carolina.

5 Q All right. And what county is that in?

6 A That's in Hampton County.

7 Q Complainant, when you -- in 2010, do you remember what
8 grade you were in, August of 2010?

9 A Sixth grade.

10 Q And how old were you?

11 A Sixth grade.

12 Q And how old were you?

13 A I would have been around eleven.

14 Q All right. I'm going to ask you if you can
15 identify what's been already entered into evidence as
16 State's 3. Do you recognize that, the school that's in
17 that photograph?

18 A Yes.

19 Q All right. And what school is that?

20 A It's the middle school.

21 Q And did you go to Middle School?

22 A Yes.

23 Q Complainant, do you know a man named Larry Heyward?

24 A Yes.

25 Q And do you see him in the courtroom?

1 A Yes.

2 Q And can you point him out for the jury.

3 WITNESS COMPLIES.

4 Q Complainant, when did you first meet Larry Heyward?

5 A At orientation.

6 Q Orientation where at?

7 A At the middle school.

8 Q And what job did Larry Heyward have at
9 Middle School?

10 A He was the school resource officer.

11 Q And Complainant, there's been testimony -- obviously,
12 you weren't in here -- about an old middle school versus
13 a new middle school. The building that you identified,
14 is that where you started out in middle school?

15 A Yes.

16 Q All right. Did Larry Heyward have an office?

17 A Yes.

18 Q What's already been entered into evidence as
19 State's 5-A and State's 5-B, do you recognize those?

20 A Yes.

21 Q What's in 5-A?

22 A That's his office door.

23 Q Okay. And what about 5-B?

24 A That's inside his office.

25 Q And when you say he, who are you referring to?

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DIRECT - Complainant

1 A Larry Heyward.

2 Q Complainant, in the sixth grade, when you were in the
3 sixth grade, did you ever get sent to Larry Heyward's
4 office?

5 A Yes.

6 Q Can you tell me about the first time that you were
7 sent there.

8 A I was talking in class, and my sixth grade English
9 teacher, Mrs. May Lee Buckner, sent me to his office,
10 instead of writing me up for a referral.

11 Q And what happened when you got to Larry Heyward's
12 office?

13 A I came into his office, and I sat down. Then, he
14 went and sat at his desk. Then, a few minutes later, he
15 stood me up, and he started rubbing my penis area.

16 Q Did anything else happen?

17 A Yes.

18 Q What else happened?

19 A Larry placed me on the floor. He was on top of me,
20 and he pulled out my penis, and he started sucking my
21 penis. Then, he agreed to let me go if I sucked his
22 penis.

23 Q What did you do?

24 A I sucked his penis.

25 Q You've testified earlier, I think, he placed you on

1 the floor?

2 A Yes.

3 Q How did he do that?

4 A He put his weight on top of me.

5 Q All right. And I'm sorry I interrupted you. You
6 just testified that he told you -- what did he tell you
7 about you could leave when?

8 A After I sucked his penis.

9 Q All right. And did you do that?

10 A Yes.

11 Q And do you recall if the defendant in this case,
12 Larry Heyward, was he using a condom at the time or not?

13 A No, sir.

14 Q Is that the only time that something like this
15 happened with Larry Heyward?

16 A No.

17 Q Is his office the only -- you've testified it was
18 in his office. Is that the only location?

19 A No.

20 Q What other location did something like this happen?

21 A At his house. At his deceased father's house.

22 Q Do you mean the same house, or is that two
23 different houses?

24 A Two different houses.

25 Q And what county are those houses in?

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DIRECT - Complainant

1 A Hampton County.

2 Q As to the first thing you mentioned, his house, do
3 you remember the first time that something happened with
4 Larry Heyward at his house?

5 A Yes.

6 Q Tell me about it.

7 A It was in the summertime. And I received a call
8 from Larry, and he --

9 Q Let me stop you just a second. You've testified
10 the first time this happened you were in the sixth
11 grade. You just testified this happened in the summer.
12 Was it of that same year? In other words, right after
13 the sixth grade, or some months after?

14 A Yes, months after.

15 Q All right. So, how old would you have been at that
16 time?

17 A Twelve.

18 Q Okay. Go ahead.

19 A He --

20 Q I'm sorry I keep interrupting you, but the jury
21 needs to understand what happened. So, you said he,
22 Larry, --

23 A Um-hmm.

24 Q -- the defendant in the case, called you. What did
25 he say?

1 A He wanted to see me, so, he made an excuse about
2 having a DARE program at his house. So, he called my
3 mother, and she said it was okay, and he picked me up.

4 Q All right. And just, Complainant, as you're talking,
5 try to make sure that you speak clearly, so that
6 everybody can hear you.

7 Let me back up for just a second. When you were in
8 Larry Heyward's office, the first sexual assault you
9 just described, how was Larry Heyward dressed?

10 A He was in his green police officer uniform.

11 Q So, you said that Larry Heyward came and picked you
12 up.

13 A Yes.

14 SOLICITOR THORNTON: Court's indulgence, please,
15 just a moment, your Honor.

16 BY SOLICITOR THORNTON:

17 ITEM IDENTIFIED AS PHOTOGRAPH

18 MARKED STATE'S EXHIBIT NUMBER 11

19 FOR IDENTIFICATION.

20 Q Okay. And I'm going to show you what has been
21 marked for identification as State's 11. Let me just
22 ask you, do you recognize the type of vehicle in that
23 picture?

24 A Yes.

25 Q And again, I'm not introducing that at this time,

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DIRECT - Complainant

1 but what do you call that vehicle?

2 A It's a police vehicle.

3 Q Right. But what -- I think you've referenced it --

4 A It's a Jeep.

5 Q Okay. So, you call it a Jeep.

6 A Um-hmm.

7 Q And when you say a police vehicle, what do you mean
8 by that? In other words, how does it look different
9 from a personal vehicle?

10 A It has the police department logo on it.

11 Q So, it's a marked vehicle?

12 A Um-hmm. Yes, sir.

13 Q So, Larry Heyward comes and he picks you up in his
14 -- you call it a Jeep, but his police vehicle. What
15 happens then?

16 A We go to his house and we go inside. And then, we
17 shower. And then, it progresses to --

18 Q All right. Let me stop you for a second. You said
19 we shower.

20 A Yes.

21 Q Did you shower by yourself?

22 A With Larry.

23 Q What happened then?

24 A Then, it progressed to anal and oral sex.

25 Q All right. And this is all very uncomfortable,

1 Complainant, but you and I have had this conversation before.
2 When you say anal and oral sex, I need you to be as
3 descriptive as you can be. When you say anal sex, what
4 do you mean?

5 A Larry put his penis in my anus.

6 Q And when you say oral sex, what do you mean?

7 A Sucking of each others penis. Me and him sucking
8 each others penis.

9 Q And where did this occur?

10 A At his grandchildren's playroom.

11 Q And was it on the floor, on a bed?

12 A On a air mattress.

13 Q And you've talked about showering and oral and anal
14 sex. Did anything occur after that, at his house?

15 A Yes.

16 Q And what did you do after that?

17 A We showered after that.

18 Q And then, what happened?

19 A He took me home.

20 Q Do you remember if he used a condom at that time?

21 A No.

22 Q Did he use any lubrication?

23 A Yes.

24 Q Were there any other times that you had some sort
25 of sexual intercourse with Larry Heyward?

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DIRECT - Complainant

1 A Yes.

2 Q During those times, did he use any particular kind
3 of lubricant that you recall?

4 A Baby oil.

5 Q Did he ever attempt to use condoms?

6 A Yes.

7 Q Did he have a particular kind that you recall him
8 using?

9 A Cheap Lifestyle condoms.

10 Q All right. Was there a particular -- anything that
11 you could use to describe them as far as color or
12 anything?

13 A Red.

14 Q Now, you mentioned earlier that there was an
15 incident you had with Larry Heyward that occurred at
16 his, I believe you said, deceased father's house.

17 A Yes.

18 Q And would that have been one of the last times?

19 A Yes.

20 Q Do you remember about when that was?

21 A November of 2012.

22 Q Okay. And how old would you have been at that
23 time?

24 A I would have been thirteen, going on fourteen.

25 Q When you -- well, let me back up a second. How did

1 you get to his deceased father's house?

2 A He picked me up.

3 Q And what vehicle did he use?

4 A His police vehicle.

5 Q Was he in uniform or out of uniform?

6 A Out of uniform.

7 Q What happened when he picked you up?

8 A We drove to his deceased father's house, and we had
9 sex. Because his wife was home cooking at the time.

10 Q And when you said you had sex, oral sex, anal sex,
11 what did you have?

12 A Oral and anal sex.

13 Q All right. And so we don't have to re-live every
14 detail, is that the same description as you gave earlier
15 as far as what the occurrences were?

16 A Yes.

17 Q When he picked you up the last time, where was your
18 mom?

19 A She was at church.

20 Q All right. So, do you remember what day it was?

21 A Wednesday.

22 Q Was it morning time, afternoon, night? When was
23 it?

24 A Night time.

25 Q Where, in his father's house, did you have sex?

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DIRECT - Complainant

1 A In the living room area.

2 Q And again, was it on furniture? Was it on the
3 floor? Where was it?

4 A On the floor.

5 Q I've asked you about three specific instances. I'm
6 going to ask you about another one in a second. But
7 were these the only times this occurred?

8 A No.

9 Q Were there other times?

10 A Yes.

11 Q One, or more than one other time?

12 A More than one other time.

13 Q Do you --

14 THE COURT: I'm sorry, could you repeat that? I
15 couldn't hear.

16 BY SOLICITOR THORNTON:

17 A More than one other time.

18 Q Let me ask you about -- there's been -- obviously,
19 you weren't in here -- testimony about you having a
20 pocket knife at school and getting in trouble for it.
21 Do you remember that?

22 A Yes.

23 Q All right. Where did you get the pocket knife
24 from?

25 A Larry Heyward's office.

1 Q And what were you doing with the pocket knife?

2 A I was showing it off to students.

3 Q And did you get caught or told on or whatever?

4 A Yes, and I threw it behind a bookshelf.

5 Q All right. And do you remember where the book
6 shelf was?

7 A In the classroom.

8 Q Okay. Did you get in trouble for that?

9 A Yes.

10 Q And what happened after you got caught with the
11 knife?

12 A I discovered I was going to be sent to DJJ, but
13 Larry Heyward stepped in and nothing happened.

14 Q All right. And as a result of that, Larry Heyward
15 stepping in, did anything else happen as a result of Mr.
16 Heyward stepping in?

17 A Yes.

18 Q What happened?

19 A He took me to his office, and he explained the
20 significance of the knife. And then, it progressed to
21 anal and oral sex.

22 Q At some point, Complainant, --

23 SOLICITOR THORNTON: Your Honor, I apologize. If I
24 could have the Court's indulgence for one moment.

25 THE COURT: Okay.

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DIRECT - Complainant

1 BY SOLICITOR THORNTON:

2 Q Let me ask you a couple of little bit easier
3 questions, Complainant. Do you remember back then what your
4 phone number was?

5 A 4473.

6 Q Okay. I think your mother testified to that
7 earlier. What area code?

8 A

9 Q All right. Complainant, at some point after, you talked
10 about the incident in November. You said that was one
11 of the last times. Could you explain to the jury why
12 you -- well, let me ask a different question first.

13 Around this time, did you want this behavior to
14 continue, or did you want it to stop?

15 A I wanted it to stop.

16 Q And was Larry Heyward, the defendant in this case,
17 was he attempting to, or was he contacting you?

18 A Yes.

19 Q And how would he contact you?

20 A He would call my house.

21 Q Did he ever try to talk to you at school?

22 A Yes.

23 Q On one of the occasions when he called your house,
24 on or about December the 28th of 2012, so, this has been
25 after the November incident, did he try to call you on

1 that date, that you recall?

2 A Yes.

3 Q And did you do anything when he called you?

4 A Yes.

5 Q What did you do?

6 A I recorded the phone call.

7 Q What did you record the phone call on?

8 A My iPod.

9 ITEM IDENTIFIED AS IPOD

10 MARKED STATE'S EXHIBIT NUMBER 6

11 FOR IDENTIFICATION.

12 Q All right. Complainant, I'm going to hand you what's
13 just been marked for identification as Exhibit Number 6,
14 and I've already taken the manila envelop out of the
15 clear plastic. Would you just -- don't take it out.
16 Just look in the envelop, and tell me if you recognize
17 what's inside it.

18 A Yes.

19 Q What is it?

20 A My iPod.

21 Q Is that what you recorded the phone call on?

22 A Yes.

23 Q And at some point, did you turn your iPod over to
24 SLED agents?

25 A Yes.

1 ITEM IDENTIFIED AS C.D. WITH WORD
2 OVERLAY, DATED DECEMBER 28, 2012
3 MARKED STATE'S EXHIBIT NUMBER 1
4 FOR IDENTIFICATION.

5 Q Complainant, I'm going to show you what's been marked
6 for identification as State's Exhibit Number 1. Do you
7 recognize this disc?

8 A Yes.

9 Q And how do you -- well, first of all, what is this
10 disc?

11 A It's a recording of me and Larry Heyward's phone
12 call.

13 Q All right. Is this a copy that you have reviewed
14 at my request?

15 A Yes.

16 Q Is this an accurate copy of the conversation you
17 had with Larry Heyward on December the 28th of 2012?

18 A Yes.

19 Q Has it been altered?

20 MR. LEE: Sorry, Mr. Thornton. For purposes of the
21 record, I would renew my previous objection to that DVD
22 the solicitor's office prepared and intends to use at
23 some point. I would renew my previous objections.

24 THE COURT: Thank you. I note those objections,
25 and I renew my earlier rulings in that regard.

1 MR. LEE: Yes, sir.

2 THE COURT: All right. Thank you. Go ahead.

3 Thank you.

4 SOLICITOR THORNTON: Yes, sir.

5 BY SOLICITOR THORNTON:

6 Q Has it been -- other than that there is a -- and as
7 your Honor noticed in pretrial, other than that there's
8 a transcript attached to it, has it been altered or
9 changed in any way?

10 A No.

11 SOLICITOR THORNTON: Your Honor, at this time I
12 would ask, and with the Court's permission, we have a
13 copy already loaded onto the computer. I would ask to
14 publish to the jury the recorded phone call, with
15 transcription.

16 THE COURT: State's Exhibit Number 1, subject to
17 objection from defense counsel, you can publish it.

18 ITEM IDENTIFIED AS C.D. WITH WORD

19 OVERLAY, DATED 12-28-12

20 MARKED STATE'S EXHIBIT NUMBER 1

21 ADMITTED AS EVIDENCE.

22 SOLICITOR THORNTON: Thank you, your Honor.

23 MR. LEE: Your Honor, may we stop a second? At
24 this point, I think I object to the foundation of the
25 document. He hasn't testified as to who made it, who

1 was the author, and who listened to it to turn it into
2 this. And I think he needs to lay some better
3 foundation before he can -- I mean, he identified a disc
4 he had nothing to do with. So, I don't think he's laid
5 the proper foundation for that being published to the
6 jury.

7 THE COURT: All right. He's indicated that he, of
8 course, heard the recording; that he's played it; that
9 he's turned it over to law enforcement officers, who, of
10 course, have reduced it to the medium that it's in
11 today. This is not the way that it showed up on the
12 iPod to begin with. It had to be reduced to this
13 particular medium. But he has listened to it, and that
14 it accurately represents the telephone call that he had
15 with Mr. Heyward on that particular day. That's
16 appropriate foundation. I think the foundation has been
17 lain for it to be played.

18 MR. LEE: Yes, sir.

19 THE COURT: Thank you.

20 SOLICITOR THORNTON: And your Honor, I would add
21 one other question -- I apologize to the Court -- that I
22 didn't ask.

23 BY SOLICITOR THORNTON:

24 Q How do you know that this is the disc that you
25 reviewed?

1 A I initialed it.

2 Q And did you do that at my request?

3 A Yes.

4 STATE'S EXHIBIT NUMBER 6 PUBLISHED

5 TO JURY.

6 END PUBLISHING STATE'S EXHIBIT

7 NUMBER 6.

8 Q Now, Complainant, based on what we've just heard, did
9 you start recording Heyward as soon as the phone call
10 started, or did it take you some time to start it?

11 A It took me some time to start it.

12 Q And did it -- it appears to end prior to the end of
13 the call. Is that correct?

14 A Yes.

15 Q All right. Were there a lot of calls, either
16 before or after this?

17 A No.

18 SOLICITOR THORNTON: Court's indulgence, please,
19 your Honor, for just one moment.

20 THE COURT: All right.

21 BY SOLICITOR THORNTON:

22 Q Complainant, did Larry Heyward -- you've talked about
23 the sexual encounters that you had over the course of
24 several years. Did Larry Heyward ever discipline you?

25 A Yes.

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OBJECTIONS, MOTIONS, RULINGS

1 Q And what did he use to discipline you?

2 A His paddle and his taser.

3 Q By taser, what do you mean by taser? You mean his
4 -- that police carry?

5 A Yes.

6 SOLICITOR THORNTON: Your Honor, at this time, I
7 would have no further questions for Complainant

8 THE COURT: Thank you. Mr. Lee, you can cross-
9 examine.

10 MR. LEE: I believe we discussed maybe having a
11 matter outside the jury's hearing.

12 THE COURT: All right.

13 MR. LEE: Before cross-examination.

14 BY THE COURT:

15 THE COURT: We can do that.

16 Ladies and gentlemen, before the testimony
17 continues, I've got to take up some matters out of your
18 presence for a few moments. We'll get you out here
19 shortly and continue the afternoon's work. Please do
20 not discuss this case among yourselves while you're in
21 the jury room.

22 JURORS LEAVE COURTROOM 2:07 P.M.

23 OBJECTIONS, MOTIONS, RULINGS:

24 THE COURT: All right. Mr. Lee?

25 MR. LEE: Thank you, your Honor. Judge, my

1 argument is going to have to be based on a lot of what
2 our defense is, and things -- alternatives we're going
3 to offer to the jury. So, you know, a lot of the things
4 that I'm going to have to present to you, I don't have
5 hard and fast proof from a witness who is going to say,
6 yes, he's doing this, this, this, and this. However,
7 his credibility is at the bedrock, the forefront of our
8 defense. And I think the issue of the sexual conduct is
9 important for a couple of reasons. The Solicitor, the
10 first thing he said when he opened was, this is not a
11 case about consent. And then, went on to explain that
12 someone cannot legally consent to having sex when
13 they're underage. I would suggest to you that that, at
14 least, suggests that Complainant is heterosexual, when,
15 in fact, we have reason to believe otherwise.

16 The other issues that are out there, possible
17 source of knowledge, they've showed us this cute --
18 again, this cute school picture that is certainly
19 intended to suggest how young, and arguably, naive Mr.
20 Complainant is, when a lot of the things that we have on the
21 iPod suggest otherwise.

22 We believe, on cross-examination, we will be able
23 to develop some -- and they've brought this up quite a
24 bit, that Complainant did not like being disciplined by
25 Mr. Heyward. They've said a lot about paddling and

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1 tasing and that sort of thing, and that, in our opinion,
2 could be a possible motive for Complainant to say what
3 he said.

4 THE COURT: Now, that's fair game. There's nothing
5 in the *Rape Shield Statute* that says you cannot question
6 Complainant on whether or not he had been disciplined by
7 Mr. Heyward, --

8 MR. LEE: Yes, sir.

9 THE COURT: -- and whether he liked that or did not
10 like that.

11 MR. LEE: Yes, sir.

12 THE COURT: That's fair game, and it does go to
13 credibility.

14 MR. LEE: Right. We also believe that it is a
15 viable defense and suggestion to ask him about his
16 wanting to leave town, go to Jacksonville, which
17 happened almost immediately after the allegation was
18 made.

19 That question was asked of his mother. That's fair
20 game. And in our going along with that, our motive is
21 that Garnett, South Carolina was not a very good place
22 for a fifteen-year-old homosexual male to live; and that
23 that may have been his motive for mis -- for making a
24 false allegation.

25 THE COURT: That's another matter entirely.

1 MR. LEE: Yes, sir.

2 THE COURT: But it does go to the heart of the --

3 MR. LEE: I understand.

4 THE COURT: -- protection sought under the rape
5 shield.

6 MR. LEE: I understand.

7 THE COURT: All right.

8 MR. LEE: And obviously, I feel like I'm at
9 somewhat of a disadvantage having to make these
10 arguments in front of the witness that I am getting
11 ready to question about some of them. He's getting a
12 heads' up on what our -- where we'll be going with this.

13 THE COURT: Right.

14 MR. LEE: I'm talking about what I would like it to
15 show, rather than being able to do it the way that I
16 would like to do it. However, I understand.

17 THE COURT: Right. I would suggest to you that the
18 greatest impediment is not the fact that the witness is
19 here listening to this. The greatest impediment are the
20 restrictions set by the *Rape Shield Statute*.

21 MR. LEE: I understand, Judge. And perhaps the
22 'most important one, or the one that certainly carries
23 some real relevance is -- goes to not an attack on his
24 sexuality or sexual conduct. However, there are dozens,
25 if not hundreds, of pictures and videos on that iPod,

1 the very same iPod that they have just published to the
2 jury, with the very incriminating statement. There are
3 hundreds of photographs and videos on that iPod owned by
4 Complainant , the same iPod that these statements came
5 off of, that show child pornography, which is against
6 the law, whether you're six years old, fifteen years
7 old, or sixty years old. And that was discovered three-
8 and-a-half years ago. When everything else was showed
9 up on this iPod, it was discovered by SLED computer
10 analysts. They made copies of it. They produced it to
11 us for discovery. And yet, they did nothing about
12 clear-cut violation of the law by Complainant .

13 The Solicitor's Office had it. They've done
14 nothing about it, and here he is, testifying on behalf
15 -- in a case prosecuted by the Solicitor's Office.
16 There is not a clearer case that could be -- that it's
17 child pornography. I think the Solicitor would agree
18 the images are of younger-than-eighteen-year-old males
19 engaged in sexual activities.

20 THE COURT: Right.

21 MR. LEE: And they have done nothing. And I think
22 that certainly goes to motive, bias, reason to testify
23 as he does. I'll tell you, his testimony today is
24 somewhat different than what we've been provided what
25 he's said before. There's things that have come up that

1 obviously have either been -- we know he's talked with
2 the Solicitor's Office. It's either been cleaned up;
3 it's either been remembered all of a sudden; but it's
4 clean.

5 And it includes things that were not produced in
6 discovery, things that match up with what the
7 Solicitor's exhibits are. For example, he liked -- he
8 said something about red condoms. There is nothing
9 anywhere, in any statements or anything else, that shows
10 that Complainant said, yeah, he particularly tried to
11 use a red in color condom. Well, lo and behold, guess
12 what color the condom picture is that they're going to
13 show that was seized from Mr. Heyward's truck as part of
14 a search warrant? It's red. First I've heard of this.
15 Now he's tying it together for them.

16 I think there's a suggestion of, you know, not
17 impropriety, but at least an argument for the jury on
18 that. I just think that it presents the whole picture.
19 Plus, we, quite frankly, we're going to challenge how
20 this recording was made. We're going to challenge his
21 knowledge of things that are on his iPod, and certainly,
22 I think, all of those, even though they maybe
23 incidentally contain some sexual images and involve his
24 sexual conduct, I still that it's not offered for the
25 purpose just to impeach his character. So, I think we

1 obviously have to go for his credibility, Judge, and I
2 think that his sexual conduct, the things that are on
3 the iPod, as well as orientation, are relevant to this.
4 They brought up the issue of consent, which arguably
5 could be suggesting he's not.

6 And so, for those reasons, I would respectfully ask
7 you for some leeway to get into some of the things that
8 are on that iPod. It's the very same iPod that they've
9 had for three-and-a-half years, upon which that --

10 THE COURT: Okay. Let me chop up something into
11 smaller pieces.

12 MR. LEE: Yes, sir. I started with a long
13 sentence.

14 THE COURT: First of all, as to the inconsistencies
15 in what he has said earlier the State has provided to
16 you and what he's said today, that's fair game for
17 cross-examination. You can develop that by cross-
18 examination and by confronting him with things about the
19 color of the condom, things of that nature.

20 His mother has said why they left town. That's out
21 there before the jury. You can question him about that.
22 There's no problem with that.

23 Now, as to whether or not he is not being
24 prosecuted because of the images that show up on the
25 iPod, the appropriate individuals to ask about that

1 would be law enforcement or somebody else, not him. And
2 in fact, if those matters are relevant on his
3 credibility in any way, they would be the appropriate
4 ones to ask about that. It wouldn't be appropriate to
5 ask him why he's not being prosecuted for what happens
6 to show up on that iPod.

7 But let's talk about some of the other more
8 specific things. You indicated that the State brought
9 up the issue of consent. Well, it brought up the issue
10 of consent. It's talking about consent is not an issue
11 in this particular case, because it doesn't matter.
12 Whether he gave consent or not at the age of twelve is
13 immaterial to these charges. It is not -- the lack of
14 consent does not have to be proven by the State, and
15 consent is not a defense if mentioned by you. So,
16 consent is really not an issue for this jury's
17 consideration. So, evidence of that consent or lack of
18 that consent is not material, and certainly not relevant
19 on these charges.

20 Now, to the extent that the consent or lack of
21 consent somehow bleeds over into a belief that Complainant is
22 either bisexual or homosexual or something other than
23 completely heterosexual, flies in the face of the
24 restrictions and constraints set by the *Rape Shield*
25 *Statute*. The *Rape Shield Statute*, of course, says that

1 specific instances of a rape victim's sexual conduct are
2 not admissible in rape cases. There are limited
3 sections for that, that you can present evidence of his
4 prior sexual conduct, or proclivities I suppose, in the
5 face of a written motion, which you have filed, but for
6 the limited purpose of showing the source of semen or
7 pregnancy or disease that have been introduced in trials
8 as a way of showing that those did not come from your
9 client; must have come from somebody else.

10 But to be able to present to a jury that, first of
11 all, it is not relevant on the issue of whether or not
12 the defendant is guilty of these charges. And even if
13 he were to admit to having some sexual orientation other
14 than heterosexuality, it is not a defense to the
15 charges. And so, it's not material at all, and
16 certainly not relevant to the issues of the court.

17 The images that are on the iPod for the purpose of
18 showing that he's not being prosecuted for some reason,
19 I've already mentioned that. First of all, the jury, in
20 any event, would not need to see them, because they're
21 not relevant on these issues as well, for reasons I've
22 already mentioned. If they bear on credibility, if they
23 bear on the fact that he's being shown some favoritism
24 because he is not being prosecuted, then, the person to
25 ask that are those who have the power to prosecute, and

1 not he himself. So, I will not allow you to go into
2 those matters, other than what I have mentioned you can
3 go into, that is, the inconsistencies that have been
4 raised, if any, and his reasons for leaving town.

5 MR. LEE: Yes, sir. I understand, your Honor.
6 There is the question as well, about the civil suit that
7 was filed.

8 THE COURT: Thank you for reminding me of that, Mr.
9 Lee.

10 MR. LEE: Yes, sir.

11 THE COURT: That is inadmissible as well. It has
12 no bearing, really, on this particular case. And to
13 indicate at this time that having filed the suit on
14 certain such a date then allows you to go back and try
15 to connect that in some kind of reverse fashion to these
16 charges, the guilt or the innocence of Mr. Heyward will
17 stand on its own, quite frankly. And whether or not the
18 proof that is admitted by the State in the -- as
19 evidence of the charges brought, whether that meets the
20 test of strict proof, the fact that, after the fact, a
21 lawsuit may have been filed has no bearing on that. To
22 the extent that it bears on credibility, which is very
23 limited, quite frankly, once again, if there are
24 inconsistencies in what he testified to earlier, perhaps
25 before the lawsuit arose and after these events were

1 first talked about, and the testimony is offered today,
2 I've already said, you can cross-examine him on those,
3 and try to impeach him on any of those inconsistencies.
4 Otherwise, the images on the iPod will not come in, and
5 certainly not under this rule. Okay?

6 MR. LEE: And Judge, and I assume that my summary
7 of the images that are relevant will be sufficient for
8 an offer of proof, so that I do not need to provide
9 those, which may be a violation of the law itself.

10 THE COURT: Right.

11 MR. LEE: Or I don't have to publish them or submit
12 it to them. I assume, submit.

13 THE COURT: Right. I think the images on the iPod
14 are preserved in some fashion.

15 MR. LEE: Yes, sir.

16 THE COURT: I don't think there's any dispute about
17 that, as I understand what's on there. Is that right,
18 Mr. Thornton?

19 SOLICITOR THORNTON: Yes, sir. Not only is it -- I
20 mean, we have -- well, I -- and I don't want to split
21 hairs.

22 THE COURT: Right.

23 SOLICITOR THORNTON: The images, I think Mr. Lee
24 would agree with this, are younger males, predominantly.
25 I'm not talking about, you know toddlers, and babies.

1 THE COURT: Right.

2 SOLICITOR THORNTON: It was mainly things, as I
3 understand it, exchanged between the victim and other
4 people.

5 THE COURT: Okay.

6 SOLICITOR THORNTON: First of all, you know, just
7 wanted to make that clear. As far as preservation, Mr.
8 Lee has a copy of it. We have a copy. SLED has a copy.

9 THE COURT: Okay.

10 SOLICITOR THORNTON: I mean, it was downloaded by
11 Britt Dove, who is actually going to testify, who also
12 downloaded the --

13 THE COURT: Okay.

14 SOLICITOR THORNTON: -- recording off of the iPod
15 that we just heard played.

16 THE COURT: All right. Unless there's some
17 disagreement as to what those various evidence say, I
18 see no reason in burdening this record with those.

19 MR. LEE: And your Honor, I don't want to do that.

20 THE COURT: That's right.

21 MR. LEE: So, I was happy everybody agreed to it.
22 Right.

23 THE COURT: I don't think that -- I really don't
24 think that part of it is an issue, Mr. Lee.

25 MR. LEE: Yes, sir.

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CROSS - Complainant

1 THE COURT: All right. Thank you.

2 MR. LEE: Thank you, sir.

3 THE COURT: All right. Ready for the jury?

4 SOLICITOR THORNTON: Your Honor, could I have just
5 one or two minutes? I've sent Mr. Hollen to grab a
6 couple of documents real quick. He should be back in
7 the next two minutes.

8 THE COURT: Okay. What? Five, ten minutes? What
9 do you need? There he is, right there.

10 SOLICITOR THORNTON: How about one minute, Judge,
11 for me to ask him if he's located them.

12 THE COURT: That's too much time.

13 SOLICITOR THORNTON: Yes, sir. Your Honor, Court's
14 indulgence, please.

15 THE COURT: All right.

16 SOLICITOR THORNTON: Thank you, your Honor. Ready
17 for the jury.

18 THE COURT: All right. Bring us the jury, please.

19 JURORS ENTER COURTROOM 2:24 P.M.

20 THE COURT: Thank you, folks. We continue now, as
21 Mr. Lee has the opportunity to cross-examine Mr.

22 Complainant. Mr. Lee?

23 MR. LEE: Thank you. Beg the Court's indulgence.

24 Complainant

25 CROSS-EXAMINATION

1 BY MR. LEE:

2 Q Good afternoon, Complainant

3 A Good afternoon, sir.

4 Q Did you like living in Garnett?

5 A It was fine.

6 Q It was what?

7 A It was fine.

8 Q It was fine? Is Jacksonville better?

9 A Yes, sir.

10 Q Okay. And why is that? Why is it better? More
11 people to hang out with, more stuff to do?

12 A It's a better environment.

13 Q A better environment?

14 A Yes.

15 Q Time-wise, right after you made these allegations
16 is when you were allowed to go live with your sister,
17 Patience, right?

18 A Yes.

19 Q Okay. Had you been trying to maybe relocate or
20 move to Jacksonville prior to December of 2012?

21 A Yes.

22 Q Had you kind of wanted to move anyway?

23 A Yes.

24 Q Had you asked your mom about wanting to move?

25 A No, sir.

1 Q You had not?

2 A No, sir.

3 Q Okay. Well, how were you going to move without
4 talking to your mom? Or could you?

5 A It never occurred to me, sir.

6 Q It never occurred to you to ask your mom to say you
7 wanted to move?

8 A Yes, sir.

9 Q Were you going to ask somebody else, or just go?

10 A Yes, sir.

11 Q I shouldn't ask two questions. Were you just going
12 to go?

13 A No, sir.

14 Q You were going to ask somebody else?

15 A Yes.

16 Q Besides your mom?

17 A Yes.

18 Q Who would that be?

19 A My sister.

20 Q Your sister.

21 Q How old is your sister, Patience?

22 A Right now, sir?

23 Q Well, back then.

24 A I'm not sure.

25 Q Well, how old is she now?

1 A She's thirty.

2 Q Thirty. Is it true that, when we look at that iPod
3 thing, you seem to be pretty good with the iPod, as far
4 as -- I mean, you can, what? chat on it. Is that right?

5 A Yes, sir.

6 Q Okay. There was a thing called Kik, K/i/k?

7 A Yes, sir.

8 Q Which is a kind of a chat-room-type deal with lots
9 of people can get on that. Is that right?

10 A Yes, sir.

11 Q Okay. And it obviously has Facetime on it?

12 A Yes, sir.

13 Q But it -- Facebook?

14 A Yes, sir.

15 Q Okay. And then, a thing called iMessage. You were
16 doing that, weren't you?

17 A Yes, sir.

18 Q Okay. And you were iMessaging people all over the
19 country, really, weren't you?

20 A I don't remember, sir.

21 Q You don't remember?

22 A Yes, sir.

23 Q Well, were you using i-Message?

24 A Yes, sir.

25 Q Okay. And who were you i-Messaging?

1 A I don't remember.

2 Q You don't remember? Were there people that you
3 reached out to, to seek to talk to?

4 A Yes, sir.

5 Q Okay. And in general, what were your interests?
6 What kind of people did you reach out and try to talk
7 to?

8 A Can you -- can you explain what you're saying, sir.

9 Q Well, when you reached to talk to people, was it
10 because they were members of a certain club or group,
11 or?

12 SOLICITOR THORNTON: Objection, your Honor. May we
13 approach?

14 THE COURT: Yes, sir.

15 OFF-THE-RECORD BENCH CONFERENCE, OUT OF
16 HEARING OF JURORS. PRESENT: THE COURT,
17 SOLICITOR THORNTON, MR. LEE.

18 END BENCH CONFERENCE.

19 SOLICITOR THORNTON: Thank you, your Honor.

20 THE COURT: All right. Court Reporter, if you'll
21 note a side bar conference, I'll put that on the record
22 out of presence of the jury.

23 BY MR. LEE:

24 Q Complainant , were you proficient at YouTube stuff?
25 These download YouTube content and watch movies and make

1 movies and stuff?

2 A Am I proficient, sir?

3 Q Yeah, did you use YouTube on your iPhone, your
4 iPad?

5 A Yes, sir.

6 Q Okay.

7 A It was an iPod.

8 Q iPod. Okay. Did you have any kind of -- did you
9 personally have any type of computer at the time?

10 A No, sir.

11 Q Okay. So, you had -- everything you had to do, you
12 had to do on your iPod, right?

13 A Yes, sir.

14 Q Okay. And you did Twitter?

15 A Yes, sir.

16 Q iTunes, Snapchat, that sort of stuff?

17 A I didn't have Snapchat arrangements at the time.

18 Q You didn't have Snapchat or iTunes?

19 A I didn't use iTunes.

20 Q You didn't use them. The point is, though, on that
21 little iPod, you were able to do quite a bit of -- quite
22 a lot of things; were you not?

23 A Yes, sir.

24 Q Okay... And then, there's also things called apps
25 where you can -- applications, where you can download

1 certain things on your iPod that allow you to do things,
2 right?

3 A Yes, sir.

4 Q Okay. So, your allegations are that all this stuff
5 happened with Larry Heyward in his office at the old
6 school, in his office at the new school, at his house,
7 and at his deceased father's house?

8 A Yes, sir.

9 Q Okay. And hundreds of times, right?

10 A Yes, sir.

11 Q Okay. Okay. Hundreds of times?

12 A Yes, sir.

13 Q Over a three-year period?

14 A Yes, sir.

15 Q Okay. Do you know who Sarah Greene Williams is?

16 A No, sir.

17 Q Well, Assistant Principal Williams. Is that --

18 A Oh. Yes, sir.

19 Q You know who she is?

20 A Yes, sir.

21 Q Okay. She was the assistant principal at the new
22 school, right?

23 A Yes, sir.

24 Q Okay. And do you remember one time where you had
25 gotten into some trouble and done something, and you

1 were what's called dry-stunned with a taser by Larry
2 Heyward?

3 A Can you explain what dry-stunned is.

4 Q Well, it's not a real tase. It's kind of like a --
5 one without doing the --

6 A I don't remember that, sir.

7 Q You don't remember that?

8 A No, sir.

9 Q Well, you said you -- you talk about getting tased.
10 I mean, didn't Assistant Principal Williams see you get
11 tased one time, and hear you say, I'm going to get you,
12 Larry Heyward?

13 A I do not remember that, sir.

14 Q You don't remember that?

15 A No, sir.

16 Q Okay. You don't remember her being there, or you
17 don't remember threatening to get him?

18 A Both.

19 Q You don't remember.

20 A Yes, sir.

21 Q Okay. But if that happened at the new school, it
22 had to happen between September, after Labor Day of
23 2012, because that's when you all moved to the new
24 school, right?

25 A I believe so, sir.

9-20-16 STATE V HEYWARD

CROSS - Complainant

1 Q Does that sound right? September of 2012 is when
2 you moved to the new school?

3 A Yes, sir.

4 Q Okay. So, that threat that you say you don't
5 remember would have happened between September and
6 December of 2012, when you made the allegation, right?

7 A Yes, sir.

8 Q Okay. Now, in the old middle school, Officer
9 Heyward's office was right beside the assistant
10 principal's office, right?

11 A No, sir, I don't believe so, no.

12 Q Sir?

13 A I said, no, sir.

14 Q It was not?

15 A No.

16 Q Where was his office?

17 A Larry office was right next to the cafeteria.

18 Q It was next to it, or across the hall from it?

19 A Next to it.

20 Q Next to it. Okay. So, usually a lot going on in
21 the cafeteria, I assume, at a school, right?

22 A Yes, sir.

23 Q Okay. You know D.B. ?

24 A Yes.

25 Q Is he a buddy of yours?

1 A He -- what do you mean by that?

2 Q Is he a friend of yours? Was he a friend of yours?

3 A Yes.

4 Q Would you agree that D.B. kind of was the
5 class clown, kind of the little funny guy that people --
6 made people laugh a lot? Do you agree with that?

7 A I don't remember. I never had classes with him.

8 Q You never had class with him?

9 A No, sir.

10 Q You ever seen him in school?

11 A Yes, sir.

12 Q Is he in your grade?

13 A I don't believe so, no, sir, because he was a grade
14 ahead of me.

15 Q He was a grade ahead of you? J.T. , are you
16 friends with him?

17 A Yes.

18 Q Were you all friends at the time in 2012?

19 A Yes.

20 Q Okay. Was he in your grade?

21 A Yeah.

22 Q Okay. Did he ever come over to your house?

23 A No, sir.

24 Q No, sir? Did you ever go to his house?

25 A No, sir.

1 Q Well, where did you all hang out together?

2 A School.

3 Q Just school? And would you consider him one of
4 your best friends at school?

5 A No, sir.

6 Q No? Who are your best friends at school?

7 A I didn't really have a best friend.

8 Q You didn't really have best friends at school?

9 A No, sir.

10 Q Did you ever tell your mom why you wanted to leave
11 Garnett? Am I saying -- is it Garnett or Garnett? I'm
12 from Beaufort. I don't know.

13 A Garnett.

14 Q Garnett, that's what I've got. All right. Did you
15 ever tell your mom why you wanted to leave Garnett?

16 A You mean before or after I made my statement?

17 Q Before.

18 A No, sir.

19 Q After?

20 A Yes, sir.

21 COURT REPORTER: You need to speak up a little for
22 everyone.

23 A Okay.

24 THE COURT: Speak up. Please keep your voice up,
25 if you would.

1 BY MR. LEE:

2 A Okay. Can you repeat the question, sir.

3 Q I said -- I asked you, did you ever ask your mom
4 why you wanted to leave Garnett?

5 A Did I ever ask my mom why I wanted to leave.

6 Q Or I'm sorry, did you ever tell her why you wanted
7 to leave?

8 A No, sir.

9 Q Okay. Without saying anything that's on there, are
10 you aware of what is contained on your iPod?

11 A No, sir.

12 Q You're not?

13 A What do you mean by that? What do you mean right
14 there?

15 Q All the files, the programs, et cetera, on your --
16 those things that you downloaded and put on there, all
17 of them yourself?

18 A Yes, sir.

19 Q Okay. So, you didn't get any weird things showing
20 up on your iPod at any time that you don't know anything
21 about?

22 A No, sir.

23 Q You ever had any problem with any viruses or
24 Spyware on your iPod?

25 A No, sir.

9-20-16 STATE V HEYWARD

CROSS - Complainant

1 Q You never have?

2 A No, sir.

3 Q But you're able to get around, navigate pretty good
4 with an iPod; were you not? Get around it and do that
5 sort of thing?

6 A Do what sort of thing?

7 Q You were pretty competent, able to do things on
8 your iPod, right? We talked about all the Kik, the
9 Facetime, the iMessage, the YouTube, the Twitter. You
10 were able to do a lot with that one device, were you
11 not?

12 A Yes, sir.

13 Q Okay. Did you know how to, like -- would you use
14 that like, to set alarms and stuff sometimes?

15 A No, sir.

16 Q You wouldn't? Well, what else would you use it
17 for?

18 A What do you mean?

19 Q Well, I mean, would you set it, like, to do a
20 reminder, to remind you to go to school or wake up, or
21 do a -- set an alarm clock or anything like that?

22 A No, sir.

23 Q You wouldn't? What else did you use it for?

24 A Just socializing.

25 Q Socializing. Okay. And downloading things, and

1 apps and that sort of thing?

2 A Yes, sir.

3 Q What else have you recorded on there?

4 A I don't know.

5 Q What other supposed phone calls have you recorded
6 on that?

7 A I don't re -- I didn't record any other phone calls
8 on that, sir.

9 Q You didn't record any phone calls on there?

10 A No, sir.

11 THE COURT: I think he said he didn't record any
12 other phone calls. Is that what you said?

13 A Yes, sir.

14 BY MR. LEE:

15 Q You didn't record any other phone calls?

16 A Yes, sir.

17 Q Just one?

18 A Yes, sir.

19 Q The one that we're here today, this --

20 A Yes, sir.

21 Q Only time you ever did it.

22 A Yes, sir.

23 Q How long did you have that iPod? A couple years,
24 at least?

25 A A few months, I guess, at the time.

9-20-16 STATE V HEYWARD

CROSS - Complainant

1 Q A few months?

2 A Yes, sir.

3 Q So, it wouldn't show that you had downloaded stuff
4 from a couple years earlier?

5 A No, sir, it shouldn't.

6 Q And when you went in that morning to school, you
7 had that thing in your pocket, didn't you?

8 A Yes, sir.

9 Q Okay. And you asked, I think it was the principal,
10 if you don't believe me, I got proof, right? Do you
11 remember saying that? If you don't believe me, I got
12 proof. And you had it right there, conveniently, in
13 your pocket?

14 A Do you have that in writing, sir?

15 Q I'm sorry?

16 A Do you have that in writing, me saying that?

17 Q I'm asking you a question. Do I have it writing?
18 No. I'm talking about what somebody else testified to
19 earlier.

20 A No, sir, I don't remember saying that right there.

21 Q You don't remember saying that?

22 A Not here.

23 Q You don't believe me?

24 A No, sir.

25 Q Can you think of any reason they'd have to not

1 believe you? For them to question you at that point?

2 A Question me at that point? What do you mean, sir.

3 Q If the principal said that you told her: if you
4 don't believe me, I have proof, do you have any reason
5 to think why she wouldn't believe you?

6 A I said something along out there of -- I said
7 something along the lines that I have evidence, sir.

8 Q My question was, why would she not believe you
9 initially? Why would she not believe you? Because she
10 actually --

11 SOLICITOR THORNTON: Objection, your Honor. Calls
12 for speculation on someone else's mind.

13 MR. LEE: I was just asking him if he knows, your
14 Honor.

15 THE COURT: All right. It calls for the -- if he
16 knows why she would not believe him, obviously, then, he
17 can answer that, but otherwise, I would call it
18 speculation.

19 MR. LEE: That's all I have, your Honor.

20 THE COURT: All right. Thank you. Re-direct?

21 SOLICITOR THORNTON: Just a couple of things, your
22 Honor.

23 Complainant

24 RE-DIRECT EXAMINATION

25 BY SOLICITOR THORNTON:

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RE-DIRECT - Complainant

1 Q Complainant, a moment ago, Mr. Lee asked you about
2 having a conversation with the principal. Can you
3 identify what's been marked for State's Exhibit -- I'm
4 sorry, let me rephrase that, Complainant. What has been
5 marked for identification as State's Exhibit 4?

6 A Yes.

7 Q And what is that?

8 A That's a note I wrote to Dr. Brown, because I
9 didn't want to say it out loud.

10 SOLICITOR THORNTON: Your Honor, at this time, I
11 would ask that State's -- I'm sorry. Let me ask a
12 couple more.

13 MR. LEE: I would renew my objection to that. It's
14 already been ruled that that's not coming in.

15 THE COURT: Okay. Well, it's not coming in unless
16 he testified. It was not coming in under the other
17 witnesses.

18 MR. LEE: Okay.

19 THE COURT: They could not testify because it was
20 hearsay.

21 MR. LEE: Okay.

22 THE COURT: I allowed him to show it to the
23 principal at the time, or whoever he showed it to, for
24 her to identify it at that particular time as having
25 been given to her by Complainant at the time. It's

1 still hearsay until he testifies that he wrote it.

2 MR. LEE: All right.

3 THE COURT: All right.

4 BY SOLICITOR THORNTON:

5 Q Is that a -- I realize it's a copy -- is that a
6 true and accurate copy of the note that you wrote and
7 gave to Doc Brown?

8 A Yes.

9 Q Has it been -- I realize there's a time stamp at
10 the bottom of it from someone else -- other than that,
11 is that -- has it been changed or altered in any way?

12 A No, sir.

13 SOLICITOR THORNTON: Your Honor, I'd ask that
14 State's Exhibit Number 4 be moved into evidence.

15 THE COURT: Over objection of defense Counsel,
16 Number 4 is in evidence.

17 ITEM IDENTIFIED AS NOTE FROM

18 Complainant

19 MARKED STATE'S EXHIBIT NUMBER 4

20 ADMITTED AS EVIDENCE.

21 BY SOLICITOR THORNTON:

22 Q And Complainant, if you would --

23 SOLICITOR THORNTON: And with Court's permission,
24 I'll have him publish it, your Honor, since it was his
25 note.

1 THE COURT: All right. You can read that, Mr.
2 Complainant. Publishing means you can read it. You can
3 read it into the microphone.

4 BY SOLICITOR THORNTON:

5 A I would like Officer Heyward to be removed
6 from this school. He has been taking
7 advantage of me going on three years now,
8 and now I would like to put a stop -- now,
9 I would like to put a stop to it. He has
10 been molesting me. Complainant .

11 THE COURT: All right.

12 SOLICITOR THORNTON: Your Honor, beg the Court's
13 indulgence, please, one moment.

14 THE COURT: Okay.

15 BY SOLICITOR THORNTON:

16 Q Complainant, earlier, Mr. Lee asked you about J.T.

17 .

18 A Yes, sir.

19 Q You mentioned that you knew him -- or, I'm sorry, I
20 didn't hear exactly what you said. But do you know who
21 he is?

22 A Yes, sir.

23 Q And did he attend the same school as you, or a
24 different school?

25 A The same school as I.

1 Q Was he ever present at any of the things that you
2 described that happened with Larry Heyward and yourself?

3 A Yes, sir.

4 SOLICITOR THORNTON: I have nothing further.

5 THE COURT: All right. Any re-cross on those? The
6 matter of the statement on that last issue was not
7 brought up in direct.

8 MR. LEE: May we approach before I --

9 THE COURT: Okay.

10 OFF-THE-RECORD BENCH CONFERENCE, OUT
11 OF HEARING OF JURORS. PRESENT: THE
12 COURT, SOLICITOR THORNTON, MR. LEE.
13 END BENCH CONFERENCE.

14 BY THE COURT:

15 THE COURT: All right. Mr. Lee, you can re-cross
16 because of those -- any matters that were raised.

17 MR. LEE: Yes, sir. We have no re-cross, your
18 Honor.

19 THE COURT: Madam Court Reporter, note another side
20 bar conference. We will memorialize that when I can.

21 All right. Mr. Lee, you can lead a re-cross
22 because of those new matters that were raised.

23 MR. LEE: Yes, sir. We have no re-cross, your
24 Honor.

25 THE COURT: All right. Thank you. Complainant ,

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RE-DIRECT - Complainant

1 you can step down.

2 SOLICITOR THORNTON: Your Honor, I'd ask Mr.
3 Complainant to just have a seat back in the witness room
4 downstairs.

5 THE COURT: All right. Mr. Complainant, if you'd go
6 back in the room where you came from. Thank you.

7 How long is your next witness going to take?

8 SOLICITOR THORNTON: I only have probably three or
9 four questions, your Honor, and it is the witness that
10 you wanted to observe prior to ruling.

11 THE COURT: All right. Okay. Is it J.T. or
12 D.B. ?

13 SOLICITOR THORNTON: It's J.T. , your Honor.

14 THE COURT: All right. Ask Mr. J.T. to come in,
15 please.

16 SOLICITOR THORNTON: J.T. .

17 SOLICITOR THORNTON: Your Honor, I apologize for
18 the delay. With Court's permission, I'll step out and
19 see what the holdup is.

20 THE COURT: Okay. Thank you.

21 J.T. ENTERS COURTROOM.

22 MADAM CLERK: Mr. J.T. , place your left hand on
23 the *Bible*, and raise your right hand. Do you swear to
24 tell the truth, the whole truth, and nothing but the
25 truth, so help you God?

1 J.T. : Yes, ma'am.

2 MADAM CLERK: Have a seat. Use this so everybody
3 can hear.

4 J.T. , EXAMINATION

5 BY THE COURT:

6 Q Mr. J.T. , how old are you?

7 A Seventeen.

8 Q Where do you go to school?

9 A High School.

10 Q And what grade are you in there?

11 A Twelve.

12 Q You still live in that area, of course?

13 A Yes, I am.

14 Q You know some of these folks who have been
15 testifying in this trial?

16 A Yes, sir.

17 Q On your behalf, I've been asked to allow you to
18 testify before a closed courtroom. Do you understand
19 that?

20 A Yes, sir.

21 Q Do you have some apprehension, some fear, about
22 testifying with all these folks here, or is there some
23 embarrassment that would come to you if you had to
24 testify in front of them? What would it be?

25 A I'm okay.

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BY THE COURT

1 Q You're okay? You're okay with the folks in the
2 courtroom?

3 A (Nodded head.)

4 Q Okay. Thank you.

5 MR. LEE: We'd be happy to consent to that, if he
6 wants to do it.

7 BY THE COURT:

8 Q All right. Well, it's up to Mr. J.T. . If you
9 want me to take everybody out of the courtroom except
10 for court personnel and --

11 A Oh, yes. Yes, sir.

12 Q I can do it. You want it to be done?

13 A Yes, sir.

14 THE COURT: Okay. All right. Thank you. By
15 consent, then, I'm not going to -- I'm not going to --
16 nobody's going to support my part of the argument on
17 appeal, so, I'll just --

18 Ladies and gentlemen, those of you who are
19 spectators out there, I'm going to ask you to step
20 outside. After this witness testifies, we're going to
21 take the afternoon break, so you'll have an early start
22 on your break.

23 News reporters, news media folks, you can stay in
24 here, of course. I'm not closing it to news media. I'm
25 allowing those folks to remain. But spectators, those

1 other than the court personnel, I'm going to ask you to
2 step outside the courtroom before testimony begins.
3 Thank you.

4 Bailiffs, I would like for you to inquire of those
5 folks who are remaining in the courtroom and make sure
6 that they are either court personnel or otherwise. If
7 they're simply spectators, they cannot remain. Press
8 folks, people with the press initials, can remain.

9 All right. You satisfied with that?

10 J.T. : Yes, sir.

11 THE COURT: Okay. Thank you.

12 SOLICITOR THORNTON: Thank you, your Honor. Mr.
13 Lee.

14 J.T.

15 DIRECT EXAMINATION

16 BY SOLICITOR THORNTON:

17 Q J.T. , you said your name earlier was J.T.

18 Is that right?

19 A Yes, sir.

20 Q All right. And I know you and I have talked about
21 this, and I told you it would be just a very few
22 questions from me. So, I just want you to focus on what
23 I'm asking you, and just answer the questions that are
24 asked. Okay?

25 A Okay.

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DIRECT - J.T.

1 Q J.T. , do you know who the defendant in this case
2 is?

3 A Yes, sir.

4 Q All right. Do you recognize him?

5 A Yes, sir.

6 Q And do you know what his name is?

7 A Yes, sir.

8 Q What is it?

9 A Larry Heyward.

10 Q Okay. Do you know who Complainant is?

11 A Yes, sir.

12 Q Has there ever been a time or an instance when you
13 saw anything inappropriate occur between Larry Heyward
14 and Complainant ?

15 A Yeah, I saw a video on the computer. It was porn.

16 Q All right. Let's take it just one step at a time.
17 You said you saw a video on the computer with porn.

18 A Yes, sir.

19 Q Whose computer or where was the computer at?

20 A It was in Larry Heyward's office.

21 Q All right. And when you say porn, do you mean
22 pornography?

23 A Yes.

24 Q And was anybody watching the pornography?

25 A Yes.

1 Q Who?

2 A Everyone that was in the room.

3 Q All right. And who was -- was the defendant --

4 A Larry Heyward, Complainant -- and Complainant.

5 Q All right. Larry Heyward and Complainant. And by

6 Complainant, do you mean Complainant ?

7 A Yes.

8 Q Okay. Did anything happen -- did you see anything
9 happen? other than they watched porn. Did they go
10 anywhere?

11 A The bathroom.

12 Q Did they go by themselves, one at a time, and then,
13 come back?

14 A One at a time.

15 Q Okay. And did they both go in -- did they both end
16 up in the bathroom at the same time?

17 A Yes.

18 Q All right.

19 A Yes, sir.

20 Q Okay. And do you know whether or not the door was
21 locked?

22 A Yes, sir.

23 Q How do you know that?

24 A I checked before I left. Then, I left.

25 Q All right. And do you remember what grade you were

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DIRECT - J.T.

1 in when this happened?

2 A Seventh.

3 Q Seventh?

4 A Yes, sir.

5 Q All right. And so, and you said you're a senior
6 now.

7 A Yes, sir.

8 Q So, this would have been five or six years ago?

9 A Yes, sir.

10 Q And you said you left after that. Did you hear
11 anything while you were -- when you got close to the
12 door?

13 A Water running.

14 Q You heard water running? All right.

15 A Yeah. Yes.

16 Q Did Mr. Heyward ever make any statements to you
17 about he and Complainant that you remember?

18 A He said that they did adult-like things.

19 SOLICITOR THORNTON: All right. Your Honor, I
20 don't have any other questions for Mr. J.T. . Mr.
21 J.T. , please answer any questions that Mr. Lee has.
22 Thank you, sir.

23 THE COURT: Mr. Lee, you can cross-examine.

24 MR. LEE: Thank you.

25 J.T.

1 CROSS-EXAMINATION

2 BY MR. LEE:

3 Q You said that you were in Larry Heyward's office.

4 A Yes, sir.

5 Q And Complainant was there and you were there, and you
6 said that there was porn.

7 A Yes.

8 Q On Larry Heyward's school computer.

9 A Yes, sir.

10 Q Okay. On a school computer. Okay. And when you
11 mean porn, did you, at one point, say it was something
12 called Black Ice or something? Do you remember that?

13 A I can't tell you what it was called.

14 Q Okay. Was it --

15 A But I know it was pornography.

16 Q Okay. I'm trying to think -- ask it the right way.
17 Just in general, what did the pornography depict?

18 A A boy and a girl.

19 Q A boy and a girl?

20 A Yes.

21 Q All right. And you're as sure about that, seeing
22 that pornography, as you are the rest of your testimony.

23 A Say that again?

24 Q You're as sure about the truthfulness of the
25 pornography on his office computer as you are the rest

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DIRECT - J.T.

1 of your testimony.

2 A Yes, sir.

3 Q Why did you decide to see if the door was locked
4 when you were leaving?

5 A Because that's unusual. That's very unusual.

6 MR. LEE: Unusual. Okay. All right. No further
7 questions, your Honor.

8 BY THE COURT:

9 THE COURT: Mr. Thornton, re-direct?

10 SOLICITOR THORNTON: No, your Honor. I'd ask that
11 he be excused.

12 MR. LEE: No objection.

13 THE COURT: Thank you, Mr. J.T. . You can step
14 down and be excused. Thank you.

15 Folks, we'll take the afternoon recess at this
16 time. I'm going to send you to your jury room, and
17 we'll get you back out here about fifteen minutes after
18 the hour. I remind you again not to discuss this case
19 among yourselves while you're in the jury room. Thank
20 you.

21 JURORS LEAVE COURTROOM 2:57 P.M.

22 THE COURT: Madam Reporter, let me memorialize two
23 side bar conferences that were held during the testimony
24 of Complainant , cross-examination by Mr. Lee. There was
25 a line of questioning concerning whether or not Mr.

1 Complainant communicated with various groups on his iPod.
2 Mr. Thornton requested a side bar conference at that
3 time concerning, apparently, about the line of
4 questioning going to talk about homosexual groups or
5 something of that sort. It never got there. Mr. Lee
6 either wasn't going there to begin with, or chose not to
7 go there after the fact. I'm not sure, but it never got
8 beyond that point.

9 Gentlemen, do you all want to put anything else on
10 the record regarding that side bar conference at this
11 time?

12 SOLICITOR THORNTON: Nothing from the State, your
13 Honor.

14 MR. LEE: Nothing, your Honor.

15 THE COURT: Also, there was a question whether or
16 not his relationship with Mr. Brown could be explored a
17 little bit further -- or Mr. J.T. -- could be explored
18 a little bit further as evidence of homosexuality or
19 something along those lines. And I held that that was a
20 bar to the *Rape Shield Statute*. It does not come within
21 any of the noted exceptions to sexual conduct that the
22 *Rape Shield Statute* provides.

23 And Mr. Lee, I'll be glad to hear you further to
24 document the conference in that regard.

25 MR. LEE: I don't think I need to, other than I'll

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DIRECT - J.T.

1 just say I was not trying to circumvent the Court's
2 ruling by getting cute or trying to bootstrap something.
3 I was --

4 THE COURT: I understand.

5 MR. LEE: -- just kind of seeing where it would go,
6 and what kind of -- what the Court ruled.

7 THE COURT: Oh, yes, that's right. We did talk
8 about the admissibility of the civil suit. That was
9 brought up. I think I ruled on the record in that
10 regard that --

11 MR. LEE: Yes, sir.

12 THE COURT: -- I ruled, perhaps not in front of the
13 jury, but on the record for reasons -- or in the record
14 that that would not be dealt with.

15 MR. LEE: And your Honor, what I would like to,
16 real quickly, if I could, just for the record, proffer
17 -- I don't think there's any -- I think you can probably
18 take judicial notice that a document was filed in
19 federal court. John Doe, which, actually, is -- versus
20 Larry Heyward, Civil Action 9:15-cv-04449-DCN, in the
21 United States District Court for the District of South
22 Carolina, Beaufort Division. I can show it to the
23 Solicitor. I would just ask you to take judicial notice
24 that that was filed, and allow his offer of proof, just
25 to supplement the -- I understand your ruling; I just

1 want to supplement.

2 THE COURT: That's fine.

3 MR. LEE: Yes, sir.

4 THE COURT: We can mark that as a proffer --

5 MR. LEE: Yes, sir.

6 THE COURT: -- to memorialize the record in that
7 regard.

8 MR. LEE: And that, in fact, that Mr. Pacella, who
9 is present here today, is on the signature line as far
10 as being Counsel record for Complainant .

11 THE COURT: Okay. Thank you.

12 MR. LEE: Yes, sir.

13 THE COURT: Who are the defendants in the case?

14 MR. LEE: The defendants? Larry Heyward,
15 individually.

16 THE COURT: Okay.

17 MR. LEE: They've sued other -- and there are
18 corresponding -- and correct me if I'm -- they also sued
19 the school district, as well as the Sheriff's Office.

20 THE COURT: All right.

21 MR. LEE: I can introduce that as Number 1, for
22 identification for the purposes of that?

23 THE COURT: Yes, that's right. That will show as a
24 proffer.

25 MR. LEE: Yes, sir.

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DIRECT - J.T.

1 THE COURT: If you need -- whatever you need to
2 mark it for, for protection to preserve the record,
3 Madam Reporter, so that it doesn't go to the jury.
4 Okay? Can it be a Court's exhibit?

5 COURT REPORTER: We can make it Court's Exhibit 4.

6 THE COURT: That's fine.

7 COURT REPORTER: 4, Number 4.

8 ITEM IDENTIFIED AS COMPLAINT FILED

9 IN FEDERAL COURT NUMBERED

10 9:15-cv-04449-DCN

11 MARKED COURT'S EXHIBIT NUMBER 4 PROFFER.

12 THE COURT: Okay. There you go.

13 MR. LEE: Thank you, your Honor.

14 THE COURT: Thank you all.

15 SOLICITOR THORNTON: Thank you, your Honor.

16 OFF THE RECORD 3:04 P.M.

17 BACK ON THE RECORD 3:23 P.M.

18 BY THE COURT:

19 THE COURT: Thank you, ladies and gentlemen. Please
20 be seated. Both sides ready for the jury?

21 SOLICITOR THORNTON: State's ready, your Honor.

22 THE COURT: Mr. Lee?

23 MR. LEE: We're ready, your Honor.

24 THE COURT: Okay. Thank you. Bring us the jury.

25 JURORS ENTER COURTROOM 3:24 P.M.

1 THE COURT: Ladies and gentlemen, we now continue,
2 as the State offers additional evidence and testimony in
3 this case. Mr. Thornton?

4 SOLICITOR THORNTON: Your Honor, Mr. Hollen will
5 have the next witness.

6 THE COURT: Yes, Mr. Hollen.

7 SOLICITOR HOLLEN: Thank you, your Honor. State
8 calls Lieutenant Britt Dove.

9 THE COURT: Lieutenant Dove.

10 BAILIFF: Lieutenant Dove.

11 MADAM CLERK: Good afternoon.

12 LIEUTENANT BRITT DOVE: Good afternoon.

13 MADAM CLERK: Do you swear to tell the truth, the
14 whole truth, and nothing but the truth, so help you God?

15 LIEUTENANT BRITT DOVE: I do.

16 LIEUTENANT BRITT DOVE

17 DIRECT EXAMINATION

18 BY SOLICITOR HOLLEN:

19 Q Lieutenant Dove, good afternoon.

20 A Good afternoon.

21 Q I'm referring to you as Lieutenant. Who do you
22 work for?

23 A I work for the South Carolina Law Enforcement
24 Division, in the Computer Crime Unit.

25 Q All right. And how long have you been with SLED?

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1 A I began my employment with SLED in June of 2008.

2 Q And before that, were you in law enforcement?

3 A Yes, sir, I was. I began my law enforcement career
4 in December of 1999, with the West Columbia Police
5 Department. I've also worked for the Richland County
6 Sheriff's Department; and West Columbia, as an
7 investigator for family violence, sexual assaults, child
8 abuse, and elder abuse investigations.

9 Q And in your position now with the Computer Crime
10 Unit, what are your duties? What do you do on a day-to-
11 day basis?

12 A I am currently the lieutenant of the unit. I
13 handle the day-to-day administrative, approving time,
14 budget requests, assigning cases, answering questions
15 dealing with search warrants or consent to search, and
16 questions about cases. I also do computer forensic
17 examinations, along with cell phones, iPads, other
18 tablets, GPS systems, and do network intrusion
19 investigations.

20 Q All right. So, let's jump to this case. In this
21 case, were you given an iPod, in order to download
22 something off of it?

23 A Yes, sir, I was.

24 SOLICITOR HOLLEN: Your Honor, may I approach?

25 THE COURT: Yes, sir.

1 BY SOLICITOR HOLLEN:

2 Q I'm going to hand you what's been marked for
3 identification as State's Exhibit 6. Do you recognize
4 that?

5 A Yes, sir. It has the bar code label that we place
6 on evidence items, once they're submitted to us. We do
7 our intake process; it prints out a bar code with our
8 case number on it for our tracking purposes. And that
9 is placed on the outside of the envelop if the item's
10 too small to attach to that item.

11 Q And is that the iPod you received in this case?
12 Can you tell?

13 A Yes, sir. It appears to be our evidence label on
14 there. Let me look at that iPod.

15 Q Don't show it to the jury. Just take a look at it,
16 if you don't mind. Look at the actual iPod itself.
17 Again, don't show it to the -- do not show it to the
18 jury.

19 A It is --

20 Q That's all right.

21 A It has --

22 Q Don't show it to the jury.

23 A I'm sorry.

24 Q Is that the iPod that you downloaded things from in
25 this case?

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1 A Yes, sir, it is.

2 Q When you received that iPod, did you receive any
3 kind of information with it?

4 A Yes, sir, I did. When we have items submitted to
5 us as evidence, the case agent, investigator, detective,
6 from the agency will fill out what's called an evidence
7 intake sheet, where they give us a little bit of
8 information of what they're looking for, the type of
9 case it is. We also receive either consent to search or
10 search warrant for each item that we examine. And in
11 this case, we received a consent to search. And on that
12 consent to search, it asked us about an audio recording
13 that was dated for December 28th, and approximate time
14 of the recording to look for.

15 Q And did you download that recording?

16 A Yes, sir, we did.

17 Q At some point, did you listen to that recording?

18 A Yes, sir, I did.

19 Q Can you describe the content of what you heard.

20 A Yes, sir. The recording, it had two male voices on
21 there. They had a conversation. It was sexual in
22 nature, one describing sex acts that had occurred. The
23 end of the conversation asks the male to put on clothes
24 to meet the other male in this recording.

25 SOLICITOR HOLLEN: All right. Your Honor, may I

1 approach again?

2 THE COURT: Yes, sir.

3 BY SOLICITOR HOLLEN:

4 Q Lieutenant, I'm going to hand you what's already
5 admitted in evidence as State's Exhibit 1. Do you
6 recognize that?

7 A Yes, sir, I do.

8 Q At my request, did you review what was on that C.D.
9 earlier?

10 A Yes, sir, I did.

11 Q And is what you heard on that disc a fair and
12 accurate copy of what you downloaded from the iPod on
13 that day?

14 A Yes, sir, it is.

15 Q All right. Now, in downloading information from
16 that iPod, were you able to determine at what point,
17 what time, what date a file was created?

18 A Yes, sir, I was.

19 Q All right. And what was the time and date of that
20 recording that you pulled off the iPod?

21 A The extraction of the recording from the iPod had a
22 file name on there, and the date and time associated
23 with that recording was 2012. Was 12 for the month of
24 December. 28 for the day. And then, at 140116, which
25 is in military time for 2:01 and 16 seconds.

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1 Q And is that Eastern time?

2 A Yes, sir, that would be Eastern time.

3 Q Okay. And is that the time that the recording was
4 begun?

5 A Yes, sir. It appears so.

6 Q All right. Is there another time associated with
7 what you were able to pull off of that iPod?

8 A Yes, sir, there was.

9 Q And what is that?

10 A When we use Cellebrite, was the software and
11 hardware that I used to extract that information, what
12 happens is, it does it in what's called UTC time, which
13 is universal time, which is always set at zero, and it's
14 based on the world's clocks. Each time zone varies from
15 that, either forward or backwards. And then, the
16 Eastern Standard Time is five hours backwards from that,
17 so you would subtract five from that time, which that
18 time was 7:03:16 p.m. So, subtracting five back from
19 that would give the same time as the recording was
20 started, which would have been 2:00 o'clock.

21 Q Okay. So, just to kind of back up a little bit,
22 what time was the recording on that iPod started?

23 A At 14:02:16, which is 2:01 and 16 seconds p.m.

24 Q All right. What time was that recording saved to
25 the iPod?

1 A It was created on the iPod, it says, at 7:03:16
2 p.m. That's UTC. Minus five hours from that would have
3 been 2:03:16 p.m.

4 SOLICITOR HOLLEN: Thank you. Court's indulgence,
5 your Honor.

6 THE COURT: Okay.

7 SOLICITOR HOLLEN: Thank you, Lieutenant Dove. I
8 have no further questions for you. Answer anything Mr.
9 Lee has. All right?

10 A Thank you.

11 THE COURT: Mr. Lee, you can cross-examine.

12 MR. LEE: Thank you, your Honor.

13 LIEUTENANT BRITT DOVE

14 CROSS-EXAMINATION

15 BY MR. LEE:

16 Q Good afternoon, Lieutenant.

17 A Good afternoon.

18 Q How long is the actual what they're calling the
19 recording? Did you look at that?

20 A I didn't time out the actual recording with a
21 stopwatch. It's approximately two minutes.

22 Q Approximately two minutes. So, like an hour -- I
23 mean, a minute and fifty-six seconds? Does that sound
24 about right?

25 A It could be. I -- like I said, I didn't actually

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1 time out the full recording, so I wouldn't know for
2 sure.

3 Q Now, when these things are -- I'm not a computer
4 guy, but when these things are, I guess, date stamped,
5 for lack of a better term, as far as the created time,
6 that is what the computer is telling them whatever the
7 computer is making, it's telling them what time it is,
8 right? It's stamped in something from that computer,
9 right?

10 A It's how the naming convention works on a lot of
11 the programs, yes, sir.

12 Q Okay. Now, isn't it possible to manually go in and
13 alter the time on a device like this, and you can even
14 change the time?

15 A It could be done on --

16 Q Right.

17 A Usually it's done on a computer itself and not a
18 mobile device, but it can be done.

19 Q But you can change it on a mobile device, can you
20 not?

21 A It is possible, yes, sir.

22 Q Okay. So, on a computer or a mobile device, if
23 someone manipulates the time, if something is created on
24 that computer or mobile device, the time that has been
25 -- it has been changed to is going to be the time that

1 you see when you look that up, right?

2 A It depends on what we're looking at with it.

3 Q The time that it says created is the time that the
4 computer or mobile device is telling it is, right?

5 A The created --

6 Q Whether that time is correct or not, it's what it's
7 been -- it is what it's been changed to, right?

8 A Yes, sir, the created time, which could be
9 different than what the file system gives it.

10 Q Right. So, if, for some reason, I wanted my iPod
11 or iPad to do Central time, even though I'm in the
12 Eastern time zone, I could get my iPod to do that,
13 correct?

14 A You could set the time for that, yes, sir.

15 Q Yeah. Now, Lieutenant Dove, you had testified that
16 this file was created December 28th, at 7:03:16. Is
17 that right?

18 A It was -- the file was created at 14:01:16.

19 Q 14:01:16?

20 A Yes, sir.

21 Q Okay. And where are you getting that from?

22 A From the name and convention that the iPod gave the
23 file when it created the file.

24 Q What file number do you have for it?

25 A The file name I have for that one is going to be

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1 20121228_140116.M48.

2 Q Okay. Doesn't it say that it was created at
3 7:03:18 p.m.?

4 A That's by universal time.

5 Q Right.

6 A But by Eastern time, it would have been 2:00
7 o'clock.

8 Q Okay. But you said something about 2:01:16.

9 A Yes, sir. That's when the file name was created.
10 That's when it was created Eastern time was at 2:01:16.

11 Q How can I have two different creation times?

12 A As far as the creation time that's showing on the
13 report, what happens is, when a file is started, that's
14 when it stamps it for a file name.

15 Q Um-hmm.

16 A Which is at 2:01.

17 Q Um-hmm.

18 A Then, what happens is, once it's stopped, or it's
19 paused, and it's actually created and saved on that
20 device is the creation time on that device, which are
21 two different things. So, it was stopped, it appears,
22 at 2:03:16 p.m. Now, the report's got 7:03:16 p.m.,
23 because it's set in universal time, which is different
24 than Eastern Standard Time.

25 Q Yeah. It also has 2:01:16, though, right?

1 A That's when the recording was begun.

2 Q Okay.

3 A And that's when it gave it the file name.

4 Q Okay. So, there's about two minutes' difference?

5 A Yes, sir, approximately.

6 Q Okay. Now, it looks like a lot of your prior
7 training in law enforcement has been computer, child
8 pornography, Internet predator stuff. Would you agree
9 with that, that you've had a lot of training in that?

10 A Along with that, computer forensics and network
11 training, yes, sir.

12 Q Yeah, so, your training has been in Internet crimes
13 against children, sex offender, all that kind of stuff,
14 correct? Finding it all on the computers, right?

15 A Yes, sir.

16 Q Okay. So, you have been trained quite a bit to --
17 and you have plenty of cases that come in that involve
18 alleged child pornography. Is that right?

19 A Yes, sir.

20 Q Okay. And you've worked plenty of those cases in
21 your career?

22 A Yes, sir.

23 Q Okay. Are you what's called a mandatory reporter?
24 If you find something that's child pornography, are you
25 required to report it?

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1 A Yes, sir.

2 Q Okay. Do you always do that?

3 A Yes, sir.

4 Q Okay. Now, this case right here, on Complainant 's
5 iPod, you downloaded --

6 SOLICITOR HOLLEN: Objection, your Honor. May we
7 approach?

8 THE COURT: Are you going to go into the images?
9 Is that where you're headed?

10 MR. LEE: Yes, sir.

11 THE COURT: All right. The only purpose for that
12 is to inquire whether or not if it's against the law --

13 MR. LEE: Right.

14 THE COURT: -- on the issue of whether charges are
15 brought.

16 MR. LEE: I thought you had already said I could do
17 that and just see if charges are being brought or not
18 brought.

19 THE COURT: You can do that. You can do that.

20 MR. LEE: Okay.

21 BY MR. LEE:

22 Q This iPod, you downloaded everything from the
23 memory, correct?

24 A Everything I was able to get, yes, sir.

25 Q Okay. All right. Would you agree or would you not

1 agree that there were dozens, if not hundreds, of images
2 that would be considered child pornography under the
3 laws of South Carolina?

4 A I would have to go back and look at the images
5 again. Because once we do the report, we turn that back
6 over to the agent or investigator that's handling the
7 case, because they're more familiar with the case than
8 we are. We're extracting the information, presenting it
9 to another law enforcement officer for them to follow
10 the investigations and the leads that they're able to
11 find.

12 Q Do you remember the report that you did that talked
13 about items of interest found on the iPod?

14 A Yes, sir.

15 Q And you actually downloaded those particular images
16 and videos that were of interest, and you downloaded
17 them on the same day, and that's how you can search
18 them. Do you agree with that?

19 A Yes, sir.

20 Q Okay. So, you're saying you don't know whether
21 there was child porn on Complainant 's iPod or not?

22 A I'm saying I would have to go back and look at his
23 -- the case was 2013.

24 Q Okay.

25 A I've worked several since, and I could go back and

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1 look and see. Like I said, anything that we found of
2 interest that could be or could not be, we gave back to
3 the investigator to follow up on.

4 Q Who was the investigator?

5 A I'm not sure who the case agent was. At that time,
6 it was turned over to Special Agent Ethridge.

7 Q Okay. So, you turned over everything that you
8 found to Ethridge.

9 A Yes, sir.

10 Q Okay. And you can't independently remember if
11 there were child porn images on Complainant 's phone.

12 A No. I would have to look at it.

13 Q Okay.

14 A It's been two years, and I've worked several cases
15 since then. So, I'm not sure.

16 Q Well, let me jump to something else, and I may have
17 to ask for a short break to be able to refresh your
18 recollection with that. You were also provided two
19 computers to look at, right?

20 A Yes, sir.

21 Q And you did what's called an EnCase.

22 A Yes, sir.

23 Q Okay. You did an EnCase report for those?

24 A Yes, sir.

25 Q And basically, you're going through the whole

1 computer, looking for stuff.

2 A Yes, sir.

3 Q Okay. And even if something has been supposedly
4 deleted, you're still going to find it, right? More
5 than likely.

6 A For the most part, yes, sir.

7 Q Okay. And you did an EnCase analysis or report for
8 both computers that were in Larry Heyward's school
9 resource office. Is that right?

10 A I don't know where the computers came from. They
11 were turned in to us, but I did do two computers.

12 Q Okay. On this case.

13 A Yes, sir.

14 Q Okay. And you looked -- you used the proper
15 software to go through the entire computer, looking for
16 items of interest.

17 A Yes, sir.

18 Q Okay. Now, and this is going to be a very specific
19 question. There was some testimony earlier from an
20 individual saying that he saw someone view pornography,
21 I think he said boys and girls or men and women, on
22 Larry Heyward's office computer. Okay? Did you find
23 male/female porn, pornography, on Larry Heyward's
24 computer?

25 A I found pornography on there.

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BY THE COURT

1 Q Male/female pornography on Larry Heyward's office
2 computer?

3 A I don't remember if it was only male/female, but I
4 know I did -- I do remember finding pornography on
5 there.

6 MR. LEE: Your Honor, may we approach?

7 THE COURT: Yes, sir.

8 OFF-THE-RECORD BENCH CONFERENCE, OUT
9 OF HEARING OF JURY. PRESENT: THE COURT,
10 SOLICITOR HOLLEN, SOLICITOR THORNTON,
11 MR. LEE.

12 END BENCH CONFERENCE.

13 BY THE COURT:

14 THE COURT: Ladies and gentlemen, I'm going to send
15 you out for just a few moments. Once again, a matter of
16 law has arisen that I have to deal with. We tried to
17 deal with it up here at the Bench, but we really
18 couldn't do it. It's a little too involved for that.
19 So, this whispering around here behind your back is not
20 going to get it done. Please step to your jury room for
21 just a few moments. We'll get you out shortly, and
22 continue the afternoon's work.

23 JURORS LEAVE COURTROOM 3:45 P.M.

24 THE COURT: Madam Reporter, a side bar conference
25 arose out of the last questions and answers put to

1 Lieutenant Dove by Mr. Lee. Would you please call those
2 questions back and the answers back. The question, the
3 specific question initially asked by Mr. Lee was: do
4 you recall or did you see any images of male/female
5 pornography on Mr. Heyward's computers? And then, the
6 answer that followed. If you could get back to that
7 question and the answers, please.

8 COURT REPORTER: Yes, sir.

9 Question:

10 Okay. Now, and this is going to be a very
11 specific question. There was some testimony
12 earlier from that individual saying that he
13 saw someone view pornography, I think he said
14 boys and girls or men and women, on Larry
15 Heyward's office computer. Okay? Did you
16 find male/female porn, pornography, on Larry
17 Heyward's computer?

18 Answer:

19 I found pornography on there.

20 Question:

21 Male/female pornography on Larry
22 Heyward's office computer?

23 Answer:

24 I don't remember if it was only male/
25 female, but I do remember finding pornography

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BY THE COURT

1 on there.

2 Your Honor, may we approach?

3 THE COURT: Okay. All right. All right. Mr. Lee?

4 MR. LEE: Your Honor, J.T. -- and you know,
5 I was thinking ahead on this -- J.T. , in his
6 testimony, and he's the only one, said that he observed
7 Larry Heyward and Complainant -- Complainant
8 watching a pornographic video, I think he said, in Larry
9 Heyward's office. He said that. When I cross-examined
10 him, I said, are you sure about the pornography thing?
11 Yes. Are you as sure about that as you are the rest of
12 your testimony? Yes. So, I had that set up, because I
13 knew that there were no pornographic videos on Larry
14 Heyward's office computer before Lieutenant Dove
15 testified.

16 THE COURT: All right.

17 MR. LEE: Okay? What just happened is, not only
18 did I mess up, or am not able to go along with what I've
19 been trying to build with Mr. J.T. in building up his
20 testimony, say the whole thing depends on whether he's
21 telling the truth about pornography, I also, if this is
22 allowed to stand, have essentially bolstered J.T.
23 J.T. 's testimony, who said there was pornography, when
24 the computer guy is now saying that there is. So, not
25 only have I missed out on what we're trying to do, I've

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1 made their case a lot better. And I believe that the
2 question that I asked was fairly spoken; that we know
3 that there were other images on that computer that were
4 not human that could be considered pornography. And
5 that's why I said it in that way.

6 THE COURT: All right.

7 MOTION FOR MISTRIAL AND RULING:

8 MR. LEE: Now, I think their response is, well,
9 there's some other scantily-clad women in lingerie and
10 bathing suits, and that could be considered pornography.
11 I don't think we need to get into an examination of
12 that, but I asked a specific question I thought that
13 they had spoken to who they needed to speak to, to make
14 sure there wasn't a slip-up as far as, well, there were
15 some pictures of horses or whatever the case may be.
16 We've discussed that for weeks.

17 So, at this point, I'm not sure how that can be
18 cured, because it has put an absolute hole into our
19 defense. I don't think it can be fixed, and at this
20 time, I'm asking for a mistrial.

21 THE COURT: All right. Mr. J.T. testified on
22 cross-examination that he saw -- he's, first of all,
23 said porn on the school computer. And then, he said
24 pornography. He said the images were of boys and girls,
25 is what he said, and he was sure of that.

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1 MR. LEE: Right.

2 THE COURT: That's what he said. The question has
3 been played out into the record in this particular
4 instance, and it was narrowly construed, and the answer
5 went beyond the question. I can't say that it was done
6 to undermine any strategy, because I doubt if Lieutenant
7 Dove has any idea of what your strategy is in this case.
8 He just walked in the door a few moments ago. And while
9 it was not responsive, and while it indicates that he
10 saw some porn, and your question was male and female
11 porn, as I recall -- now, I don't know what actually
12 shows up. I don't know whether the actual record
13 reflects that what Mr. J.T. says was there or not.
14 And so, I don't have the benefit of knowing what is
15 actually reflected on the disc. The --

16 MR. LEE: We have those, your Honor. We have those
17 discs.

18 THE COURT: Okay. Well, you all have seen one.

19 MR. LEE: I'm trying to get one to play right now.

20 THE COURT: I'll take your all's word for it. I'm,
21 you know, as to what they are, if I need to. But --

22 MR. LEE: I think they have a printout for two
23 pages on it. Do you know?

24 THE COURT: Okay. But I don't need to go into that
25 right now for the purposes of this. If there's no other

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1 evidence to support the lieutenant's testimony in that
2 regard, we'll try to get that somehow or another, in the
3 form of stipulation or otherwise, before a jury.
4 However, I do not find that the testimony in this
5 particular case is so prejudicial as to taint this
6 process and to require a mistrial in order to correct
7 it.

8 The question, quite frankly, for this jury to
9 determine is not, frankly, whether or not there was porn
10 on there to begin with. The question, I think, was
11 introduced initially through Mr. J.T. to show whether
12 or not Mr. Heyward and the victim in this case were
13 looking at pornographic images together. And of course,
14 Mr. J.T. said they were.

15 The testimony of Lieutenant Dove said he couldn't
16 recall whether it was a male and female or whatever it
17 happened to have been, but it happened to have been
18 pornographic images of some sort. Now, that -- it's not
19 responsive, but I don't think it distorts the record in
20 this regard to the extent that Mr. Heyward is going to
21 be deprived of the right to a fair trial as a result of
22 it. As I say, if the actual record reflects that there
23 are no images of male and female, there are no images of
24 boy and girl pornography on that, if you all can't agree
25 on that, then, by George, I'll look at it to determine

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1 whether what the answer to that question happens to be.
2 I would rather you all save me the anguish of that,
3 because I --

4 MR. LEE: I just --

5 THE COURT: -- I think we all know --

6 MR. LEE: Right.

7 THE COURT: -- what the question is about. And if
8 that's the truth, if it's not there, I'll be glad to
9 entertain a motion that I instruct this jury by
10 stipulation or otherwise that there was no -- I can't
11 comment upon the facts of the case, of course, to a
12 jury. And if you all can agree on what's there, then, I
13 can, under stipulation on your behalf. So, I think
14 that's the only way that I can handle it to correct this
15 record, if, indeed, the record needs to be corrected.

16 The motion for a mistrial, by the way, was
17 respectfully denied.

18 MR. LEE: I guess, in the alternative, I would ask
19 for some type of curative instruction or stipulation, if
20 the State will agree to that. And I would just add to
21 it, your Honor, had -- you know, we're obviously looking
22 at everything we can as far as defenses. Had I known
23 that it would have gone this way, I would have moved --
24 earlier would have moved to keep out the question -- the
25 statement about the pornography.

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1 THE COURT: Right.

2 MR. LEE: Because, quite frankly, I don't think it
3 would have come in, unless it's some kind of res gestae
4 or something like that. I think it would have kept that
5 -- we purposely let it come in, in order to show that --
6 we let one in to say -- to hopefully say, well --

7 THE COURT: Right.

8 MR. LEE: -- that isn't right, so the other stuff
9 isn't right.

10 THE COURT: Right.

11 MR. LEE: So, it is completely, again, for the
12 record, completely undermined what we are trying to do.

13 THE COURT: Well, don't beat up on yourself too
14 much in that regard, Mr. Lee. If it had been offered
15 and you had objected, in all probability, I would have
16 let it in under res gestae. So, but I don't think
17 you've been harmed strategically in that regard. But I
18 can appreciate the fact that the answer was not
19 responsive to the question. And I'll be glad, if you
20 all can agree on a fix, I'll let you all get together
21 and we'll do that. But we won't do it right now, unless
22 you can agree on one right now, and I'll give it to the
23 jury when they come back in.

24 MR. LEE: For the first issue, it appears that the
25 State and I have agreed to have the Court say that the

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1 parties have consented that there is no male/female
2 pornography, there was none found on Larry Heyward's
3 computers.

4 THE COURT: Okay.

5 MR. LEE: Is that --

6 SOLICITOR THORNTON: Yeah, I think it's fair.

7 MR. LEE: Okay.

8 THE COURT: All right.

9 MR. LEE: I guess the other issue we have, Judge,
10 is, he had indicated that he'd have to look to see
11 whether or not there was child pornography on the iPod.
12 I've been trying to pull it up ever since you've been
13 ruling on this thing, and for some reason, it keeps
14 spinning and spinning and spinning. But if Mr. Thornton
15 would agree that it does appear that there is child
16 pornography on the -- based upon the test results, we
17 might be able to do that as well, rather than me having
18 to show him, him being Lieutenant Dove, what my computer
19 and what's on there for the images.

20 THE COURT: I think I previously said that the only
21 relevance to that sort of pornography, which would be a
22 violation of law on its face --

23 MR. LEE: Yes, sir..

24 THE COURT: -- I think everybody agrees with that,
25 would be to ask somebody whether or not charges have

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1 been brought against whoever put it on the computer.

2 MR. LEE: That's all I was going to use it for.

3 THE COURT: And if not, why not?

4 MR. LEE: Right. That's all I was going.

5 THE COURT: And that's the -- we don't even know if
6 -- have to know the specifics of whether there are.

7 MR. LEE: Yes, sir.

8 THE COURT: Only if there is an agreement that
9 there is child pornography of some sort on the iPod;
10 recognizing to be a violation of law; have charges been
11 brought against the owner or whoever put it on there;
12 and if so -- or, if not, why not?

13 MR. LEE: That's as far as I was going to go.

14 THE COURT: As far as that goes.

15 MR. LEE: But if he says he -- somehow, he
16 remembers what's on -- incorrectly a little bit on
17 what's on Larry's computer and glad to throw that out
18 there, but he can't remember the child porn images on
19 the iPod. But that's, again, something we may argue
20 later on. But if I need to show it to him, I'll show it
21 to him and say do you agree. Or, if Sean can agree that
22 there appears to be child pornography; that it was
23 there; and that nothing's been done by SLED; that's
24 where I'm going with that. I'm not trying to get around
25 rape shield again, I promise.

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1 THE COURT: I understand that. He said he turned
2 all these results over to Mr. Ethridge, right? Is Mr.
3 Ethridge going to testify?

4 SOLICITOR THORNTON: Mr. Croft could testify in his
5 stead. Mr. Croft is -- and he's present in the
6 courtroom. He is the case agent once Mr. Ethridge left.

7 THE COURT: All right.

8 SOLICITOR THORNTON: Mr. Ethridge was the original
9 case agent. Mr. Lee hasn't made an issue of that. So,
10 since Mr. Ethridge is no longer employed by SLED, --

11 THE COURT: Right.

12 SOLICITOR THORNTON: -- Mr. Croft would have been
13 the one to turn that over. And Judge, first of all, may
14 I -- I'd like to ask one thing.

15 THE COURT: All right.

16 SOLICITOR THORNTON: Is it okay with the Court that
17 I argue this? I realize Mr. Hollen did it, but I would
18 appreciate the Court allowing me to argue.

19 THE COURT: That's fine.

20 SOLICITOR THORNTON: Your Honor, the only thing
21 that concerns me is this: I understand what the Court's
22 ruling has been with regard to this and what Mr. Lee is
23 going for, but we're getting pretty detailed into, well,
24 there was all kinds of child porn. I'm not going to
25 stipulate that there was child porn on this computer.

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1 What I would stipulate to is that there were a bunch of
2 images found, and I think he could ask, you know, was he
3 ever prosecuted. Because the answer from the SLED
4 agent's going to be, I don't make prosecution decisions;
5 that's the Solicitor's job.

6 THE COURT: But the question is: did anybody look
7 at that who -- these folks who are trained to look at
8 this stuff, --

9 SOLICITOR THORNTON: Yes, sir.

10 THE COURT: -- who are required by law to report
11 any violation of the law that they see on there. As a
12 matter of law, they're required by law to do that.
13 Whether any of those folks who have seen that and done
14 that, observed any violation of the law as a result of
15 those images, that's all I need to know.

16 SOLICITOR THORNTON: Yes, sir.

17 THE COURT: Yes or no.

18 SOLICITOR THORNTON: Yes, sir.

19 THE COURT: If the answer is yes, then, was anyone
20 prosecuted.

21 SOLICITOR THORNTON: Yes, sir. And that's --

22 THE COURT: That's --

23 SOLICITOR THORNTON: I just -- we were -- we seem
24 to be getting a little bit far afield with the
25 questioning of --

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1 THE COURT: Oh, yeah. Well, as I said, the
2 specifics of this are not a concern of me or this jury.
3 The only remotely relevant matter to be gleaned from
4 this testimony about what is or is not on that computer
5 -- on the iPod, I should say -- the iPod is whether or
6 not the victim or somebody who had access to that iPod
7 recorded images that would be in violation of the law.
8 That's it. I don't care whether it's child pornography
9 or whatever else. If it can be a violation of law as a
10 matter of course and whether or not they were
11 prosecuted. That's as far as we need to go.

12 MR. LEE: I agree, and that's where I was trying to
13 go.

14 THE COURT: Okay.

15 MR. LEE: I'm just trying to figure out the best
16 way to do it.

17 THE COURT: Okay. So, I guess the question is
18 whether or not Lieutenant Dove recalls seeing anything
19 on the iPod, because we're not talking about the
20 computer right this minute, right?

21 MR. LEE: Correct.

22 THE COURT: Whether he saw anything on that that
23 appeared to him to be a violation of the law as he
24 understands it in his capacity as one who has to report
25 violations of the law. You know, whatever the answer

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1 is, it will be what it is. And then, if Agent Croft,
2 Lieutenant Croft, has looked at this and has made a
3 determination himself, in other words, he viewed what
4 was turned over to him by Mr. Ethridge or -- then, he
5 can answer questions as well. So, I'm trying to see if
6 we can't do this without having to show the whole
7 whatever it happens to be, all the images, to Lieutenant
8 Dove.

9 MR. LEE: As long as somebody will admit that
10 they're on there, instead of passing the buck, I'm fine.

11 SOLICITOR THORNTON: Your Honor, I think maybe if
12 this Court will allow me one minute to talk to Mr. Lee.

13 THE COURT: Do that.

14 OFF-THE-RECORD DISCUSSION BETWEEN
15 MR THORNTON AND MR LEE.

16 THE COURT: Are we saving time doing this,
17 gentlemen?

18 SOLICITOR THORNTON: Your Honor, what --

19 MR. LEE: I can't believe that nobody will step up
20 and say that appears to be child porn. I think it's as
21 obvious as can be. These kids aren't seventeen and a
22 half; they're more like twelve. I don't want to get
23 into the details. He's offered to say that he had
24 pornography on his iPod. I think that he has to -- if
25 he says he had illegal pornography on his iPod, I can

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1 deal with that. But pornography in and of itself isn't
2 illegal to have on your computer. And particularly when
3 they've just inadvertently said Larry had it on his
4 computer, how does that help me?

5 THE COURT: That's right.

6 SOLICITOR THORNTON: And Judge, I really am trying
7 to do this so we don't have to do that. But you know,
8 one of the things -- well, we've got to admit that it's
9 illegal porn. Well, and not to split hairs, but it
10 wouldn't be considered illegal unless a jury found him
11 guilty of it.

12 THE COURT: Come on, now. Wait a minute. Let's
13 don't go there. Let's don't go there. These folks are
14 trained to do this.

15 SOLICITOR THORNTON: Yes, sir.

16 THE COURT: Lieutenant Dove has said he is trained.
17 He knows it when he sees it. And he reports it because
18 he has to report it. Now, if we have to finish his
19 testimony today, and then, overnight let him look at
20 that thing again, and refresh his memory as to what he
21 saw on there, we'll do that. We're not going to hold
22 that jury back much longer while we engage in this
23 invigorating academic exercise.

24 SOLICITOR THORNTON: Yes, sir.

25 THE COURT: We'll handle it that way.

1 SOLICITOR THORNTON: Judge, I'll have an answer for
2 you in thirty seconds. Let me just confer real quick
3 with what the --

4 THE COURT: Okay.

5 OFF-THE-RECORD DISCUSSION.

6 THE COURT: Gentlemen, is that shielded from the
7 audience out there?

8 SOLICITOR THORNTON: It is.

9 THE COURT: Very good. Thank you.

10 CONTINUE OFF-THE-RECORD DISCUSSION.

11 STIPULATION REGARDING Complainant 'S

12 IPOD; STIPULATION REGARDING DEFENDANT'S

13 COMPUTER.

14 SOLICITOR THORNTON: Your Honor, we might have a
15 stipulation.

16 THE COURT: Wonderful.

17 SOLICITOR THORNTON: It's a little long, but there
18 are -- and I'm not, honestly, Judge, not trying to play
19 semantics, but.

20 THE COURT: Okay.

21 SOLICITOR THORNTON: I think that the State would
22 agree to say that there were -- there are some images on
23 the victim's iPod which are of underage people that are
24 pornographic in nature. And while --

25 MR. LEE: And thereby illegal.

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STIPULATIONS

1 SOLICITOR THORNTON: -- and which could be
2 considered illegal, but he was not prosecuted for it,
3 has never been prosecuted for it, as a stipulation.
4 What I would ask, though, is that it not be gone into
5 any further than that or any more detail than that, if
6 that satisfies the Defense.

7 MR. LEE: Is he going to be prosecuted for it?

8 SOLICITOR THORNTON: I will say no. I'm not going
9 to prosecute him for it. Obviously, I'm not the
10 Solicitor, but as far as I know, no, he is not. We
11 consider him a victim.

12 MR. LEE: Okay.

13 SOLICITOR THORNTON: But there is no deal. There
14 is nothing else that's been discussed with him. No
15 promises were ever made. None of this came up until we
16 started talking about it today. But I'm fine with
17 saying he will -- has not been, nor will he be
18 prosecuted; that the State considers him a victim.

19 THE COURT: All right. Let me go over both of the
20 stipulations as to Mr. Heyward's computer and as to the
21 iPod. The parties can stipulate that there is no
22 male/female pornography on the defendant, Larry
23 Heyward's, computers. Are we okay with that?

24 MR. LEE: Yes, sir.

25 SOLICITOR THORNTON: Yes, sir.

1 THE COURT: And that there were some images on the
2 victim's iPod of under-aged people engaged, which are
3 pornographic in nature, which could be considered
4 illegal, but for which the victim has not been
5 prosecuted.

6 SOLICITOR THORNTON: Yes, sir.

7 MR. LEE: I can live with that.

8 THE COURT: All right.

9 MR. LEE: Thank you, Sean.

10 THE COURT: Good enough. Bring the jury back out.
11 Thank you, gentlemen, for that agreement.

12 SOLICITOR THORNTON: Yes, sir.

13 JURORS ENTER COURTROOM 4:14 P.M.

14 THE COURT: Ladies and gentlemen, I had to send you
15 out to the jury room because there was some discussion
16 about images that may or may not have been on Mr. Larry
17 Heyward's computer; some images that may or may not have
18 been on the iPod, which belonged to Larry -- excuse me
19 -- Complainant , Complainant .

20 Lieutenant Dove was asked about some of those
21 things, and he was not sure about some of the answers.
22 He had turned over some of the file to another agent in
23 this case. He was specifically asked by Mr. Lee as to
24 whether or not, in looking at Larry Heyward's computers,
25 he was able to observe any male and female pornography,

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STIPULATIONS

1 as he had checked through and used all of the computer
2 imagery and scientific information and technology that
3 he has. And at one point, he said he did not recall any
4 male/female pornography. He went beyond that in his
5 answer to that, but his answer in that was not
6 responsive to the question. And so, there was some
7 question at the end of that as to whether there was male
8 and female pornography on Larry Heyward's computer or
9 not.

10 The parties have agreed to this stipulation. A
11 stipulation means that it is an agreement. You can
12 consider it as a fact, because it requires no other
13 proof or no other evidence to support it.

14 Now, you will be enabled at the end of this case to
15 give all these stipulations any weight that you think
16 that they're entitled to, but the stipulations
17 themselves are not in dispute, and there are two.

18 One is, the parties have stipulated that there is
19 no male/female pornography on Larry Heyward's computers.
20 They agree to that. They've also agreed that there are
21 some images on the victim's iPod of under-aged people,
22 which may be pornographic in nature, and which -- or
23 which are pornographic in nature, and which could be
24 considered to be illegal, but for which the victim in
25 this case has not been prosecuted.

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1 Those are stipulations of the parties. You can
2 give those the weight that you think they're entitled to
3 receive according to your view of the evidence at the
4 conclusion of this case.

5 Mr. Thornton, Mr. Lee, gentlemen, have I accurately
6 reported the stipulations?

7 SOLICITOR THORNTON: You have, your Honor.

8 MR. LEE: Yes, sir, your Honor.

9 THE COURT: Okay. Mr. Lee, you can continue.

10 LIEUTENANT BRITT DOVE

11 CONTINUE CROSS-EXAMINATION

12 BY MR. LEE:

13 Q Real quick, Lieutenant Dove, I know you need to get
14 back to Columbia, the time of the what's indicated for
15 the recording is a minute and fifty-six seconds. Is
16 that correct? The duration of the --

17 A Approximately two minutes.

18 Q Approximately two minutes?

19 A Like I said, I didn't time it. I didn't time it
20 out with a stopwatch, so I couldn't tell you exactly.

21 Q Okay.

22 A But approximately two minutes.

23 MR. LEE: Okay. That's all I have. Have a good
24 trip back.

25 THE COURT: Thank you. Re-direct, Mr. Thornton?

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DIRECT - GEORGE FLOYD

1 SOLICITOR HOLLEN: No, your Honor.

2 THE COURT: Thank you, Lieutenant. You can step
3 down and be excused. I think they're going to turn you
4 loose at this time.

5 SOLICITOR HOLLEN: Yes, your Honor, we'd ask that
6 he be excused.

7 THE COURT: Have a safe trip back. Thank you.

8 SOLICITOR HOLLEN: State calls George Floyd.

9 THE COURT: George Floyd.

10 THE COURT: Ladies and gentlemen of the jury, let
11 me tell you is this brief break here. If you're real
12 curious about what we were talking about up here, or
13 what we were whispering about up here at sidebar, when
14 your role as jurors in this case is over, and you really
15 want to know what we were talking about, and if I can
16 remember what we were talking about, if you'll come to
17 me and ask me, I'll try to tell you. Thank you.

18 MADAM CLERK: Place your left hand on the Bible,
19 and raise your right hand. Do you swear to tell the
20 truth, the whole truth, and nothing but the truth, so
21 help you God?

22 GEORGE FLOYD: I do.

23 GEORGE FLOYD

24 DIRECT EXAMINATION

25 BY SOLICITOR HOLLEN:

1 Q Good afternoon, Mr. Floyd.

2 A Good afternoon.

3 Q Who do you work for?

4 A Verizon Wireless.

5 Q And what are your duties? What's your position
6 with Verizon?

7 A I'm a Senior Legal Analyst. I travel throughout
8 the United States, and I represent Verizon Wireless in
9 both criminal and civil cases as a custodian of records
10 or expert witness.

11 Q All right. How long have you done that?

12 A I've been employed by Verizon for eight years. I
13 have done that for roughly four years.

14 Q Okay. In this case, were you asked to pull some
15 subscriber information?

16 A Yes, I was.

17 Q And some phone records?

18 A Yes, I was.

19 Q And what was the phone number for which you pulled
20 those -- well, first of all, let's start with the
21 subscriber information. What was that phone number?

22 A The number in question was area code 3944.

23 Q And to whom is that number registered?

24 A The business name is County of Hampton, address 201
25 Jackson Avenue West, Suite 126, Hampton, South Carolina,

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DIRECT - GEORGE FLOYD

1 299243 [sic]. The contact information is under, last
2 name Jerrell, first name Billy.

3 Q Okay. And you also pulled a number of phone
4 records in this case. Is that right?

5 A Yes, I did.

6 SOLICITOR HOLLEN: Your Honor, may I approach?

7 THE COURT: Yes, sir.

8 ITEM IDENTIFIED AS PHONE CALL RECORDS
9 MARKED STATE'S EXHIBIT NUMBER 7
10 FOR IDENTIFICATION.

11 BY SOLICITOR HOLLEN:

12 Q I'm going to hand you what's been marked for
13 identification as State's Exhibit Number 7. Do you
14 recognize that?

15 A Yes, I do.

16 Q All right. And what is it?

17 A These are commonly known as toll records, and
18 they're basically just phone logs, step logs,
19 incoming/outgoing calls between different phone calls.

20 Q All right. And is that kind of log something that
21 you and Verizon Wireless would keep in the normal course
22 of business?

23 A Yes, it is.

24 Q Do you deal with those on a regular basis?

25 A Yes, I do.

1 Q All right. There was a particular call made that
2 you were asked about on December 28, 2012. Do you
3 recall that?

4 A Yes, I do.

5 Q And do you recall -- what was the number from which
6 the call was made?

7 A It was made from area code -3944.

8 Q All right. And what was the number that was
9 called?

10 A The number that was called was -4473.

11 Q What time was that call made?

12 A That call was made at 1359, which is 1:59 p.m.

13 Q Is that Eastern Standard Time?

14 A Eastern Standard Time, yes, sir.

15 Q And what was the duration of that call?

16 A 238 seconds, which is the equivalent of roughly
17 just about four minutes.

18 Q All right. So, the call started at 1:59, correct?

19 A That is correct.

20 Q And so, it would have ended approximately what,
21 2:03?

22 A Yes.

23 Q All right. You were also asked about a number of
24 calls made from that -3944 number. Do you recall
25 that?

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CROSS - GEORGE FLOYD

1 A Yes, I was.

2 Q And the number of calls made to -4473, what were
3 the number of calls made between -- from that -3944,
4 to the -4473 number in the month of November 2012?

5 A In the month of November, it was twenty-six calls
6 made.

7 Q Okay. All right. Mr. Floyd, just for the record,
8 that call that was made at 1:59 p.m., what was the date
9 on which it was made?

10 A That call was made on December the 28th, 2012.

11 Q All right. So, 1:59 p.m., December 28, 2012.

12 A That is correct.

13 Q What was the duration, again?

14 A 238 seconds, which, again, is the equivalent of
15 just about four minutes.

16 SOLICITOR HOLLEN: All right. Court's indulgence,
17 your Honor.

18 THE COURT: Yes, sir.

19 SOLICITOR HOLLEN: All right. Thank you, Mr.
20 Floyd. Answer any questions Mr. Lee has for you.

21 A You're welcome.

22 THE COURT: Mr. Lee, cross-examine.

23 GEORGE FLOYD

24 CROSS-EXAMINATION

25 BY MR. LEE:

1 Q What time does your plane leave?

2 A Seven -- roughly 7:15, I believe.

3 Q All right. 238-second phone call? according to
4 those records, right?

5 A That is correct.

6 Q Okay. How are those records kept? By computer?

7 A Correct.

8 Q Okay. You don't do anything personally; you just
9 read what the computer says, right?

10 A That is correct.

11 Q So, you really have no way of knowing, under oath,
12 whether they're accurate or not.

13 A They are -- they're accurate, based upon just being
14 electronically kept. We don't manipulate the records or
15 change it in any kind of way.

16 Q You just read what the computer spit out.

17 A Absolutely. Correct.

18 Q Okay. And you don't know from looking at those
19 records who might have used the phone and who might have
20 answered the phone, right?

21 A That is correct. We only refer --

22 Q And you have no idea -- yeah, sorry.

23 A I was going to say, we only refer to the records.

24 Q Right. And you don't know the substance of any
25 phone calls, either, do you?

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CROSS - GEORGE FLOYD

1 A No. No, sir.

2 Q Okay. And 238 seconds is what, three minutes and
3 fifty-eight seconds?

4 A Roughly -- I would just say approximately four
5 minutes.

6 Q 240, yeah, 240 would be four minutes. So, okay.

7 A Yes.

8 Q And that's from when? Dialed to hung up, or pickup
9 to pickup?

10 A Yeah. Soon as it's dialed and hits our cell tower,
11 so to speak, the call is captured and processed.

12 MR. LEE: Okay. All right. That's all I have for
13 Mr. Floyd.

14 THE COURT: Thank you. Re-direct, Mr. Hollen?

15 SOLICITOR HOLLEN: No, your Honor.

16 THE COURT: Thank you. Mr. Floyd, you're free to
17 go. You'll make your plane. Thanks for coming.

18 A Thank you. Have a good evening.

19 ITEM IDENTIFIED AS PHONE CALL RECORDS

20 MARKED STATE'S EXHIBIT NUMBER 7

21 ADMITTED AS EVIDENCE.

22 SOLICITOR HOLLEN: State calls Jim McClary.

23 Captain Jim McClary.

24 MADAM CLERK: Left hand on the *Bible*. Raise your
25 right hand. Do you swear to tell the truth, the whole

1 truth, and nothing but the truth, so help you God?

2 CAPTAIN JIM MCCLARY: I do.

3 MADAM CLERK: Have a seat.

4 CAPTAIN JIM MCCLARY

5 DIRECT EXAMINATION

6 BY SOLICITOR HOLLEN:

7 Q Good afternoon, Captain McClary. I'm referring to
8 you as captain. Who do you work for?

9 A The South Carolina Law Enforcement Division.

10 Q And what is your position with SLED?

11 A I'm the captain over the training unit.

12 Q All right. And as a part of your duties, what do
13 you do, generally?

14 A We conduct all the agent training in-house, and
15 coordinate out-of -- out-of-house training.

16 Q Would that include training on responsible use of a
17 taser?

18 A Yes, sir, it does.

19 Q All right. In this case, were you asked to
20 download some records?

21 A Yes, sir.

22 SOLICITOR HOLLEN: Your Honor, may I approach?

23 THE COURT: Yes, sir.

24 BY SOLICITOR HOLLEN:

25 ITEM IDENTIFIED AS JANUARY 23, 2013

9-20-16 STATE V HEYWARD

DIRECT - CAPTAIN JIM MCCLARY

1 TASER SERIAL NUMBER X00295027
2 DOWNLOAD TASER INFORMATION
3 MARKED STATE'S EXHIBIT NUMBER 13
4 FOR IDENTIFICATION.

5 Q I'm going to hand you what's been marked for
6 identification as State's Exhibit Number 13. Do you
7 recognize that?

8 A Yes, I do.

9 Q All right. And what is it?

10 A It's a taser download that I conducted on January
11 23rd of 2013.

12 Q And are those records downloaded from the taser
13 something that SLED and yourself would keep in the
14 ordinary course of business?

15 A Yes, sir. It's Taser Serial Number X00295027.

16 Q And you'll have to remind me, does that paperwork
17 have any indication of where you received that taser
18 from?

19 A Yes, there's a -- a receipt.

20 Q It's okay if it's not in there.

21 A What's not --

22 Q Yeah, it --

23 A I got it from Agent Ethridge.

24 Q Okay. And what date do those records begin?

25 A The record begins on July 10th of 2007.

1 SOLICITOR HOLLEN: Your Honor, at this time -- I
2 believe Mr. Lee has seen them -- I'd ask to admit
3 State's 13 into evidence.

4 THE COURT: Mr. Lee?

5 MR. LEE: He hasn't done -- I assume that you're
6 going to be able to tie this taser to the taser in
7 question.

8 SOLICITOR HOLLEN: I will, yes.

9 MR. LEE: Okay.

10 THE COURT: Subject to that connection being tied
11 --

12 MR. LEE: Judge, I have no objection.

13 THE COURT: I'll allow it into evidence. Okay.
14 State's 13, subject to being connected and being made
15 relevant.

16 SOLICITOR HOLLEN: Thank you, your Honor.

17 ITEM IDENTIFIED AS JANUARY 23, 2013,
18 TASER SERIAL NUMBER X00295027 DOWNLOAD
19 MARKED STATE'S EXHIBIT NUMBER 13,
20 ADMITTED AS EVIDENCE.

21 BY SOLICITOR HOLLEN:

22 SOLICITOR HOLLEN: All right, Captain McClary,
23 that's all I have for you. Answer any questions Mr. Lee
24 has.

25 THE COURT: Mr. Lee?

9-20-16 STATE V HEYWARD

CROSS - CAPTAIN JIM MCCLARY

1 CAPTAIN JIM MCCLARY

2 CROSS-EXAMINATION

3 BY MR. LEE:

4 Q This printout, I guess, this many pages, is the one
5 we're talking about?

6 A Yes, sir.

7 Q Okay. That talks of -- these -- recorded firing
8 data, every time the trigger's pulled is when it records
9 firing data, right?

10 A Yes.

11 Q Okay. So, on this particular taser, from July 10,
12 2007, until January 23, 2013, 1,421 trigger pulls?

13 A Yes, sir.

14 Q Okay.

15 THE COURT: The dates of that again, Mr. Lee? I'm
16 sorry, I didn't get it down.

17 MR. LEE: I'm sorry. July 10, 2007.

18 THE COURT: Right.

19 MR. LEE: Until January 23, 2013.

20 THE COURT: Thank you.

21 BY MR. LEE:

22 Q There were 1,421 trigger pulls.

23 A Yes, sir.

24 Q Okay. And a trigger pull includes a lot of things;
25 does it not? It includes an actual tasing, initiation

1 of the taser gun; but it also involves testing the
2 battery; does it not?

3 A Yes, sir.

4 Q Okay.

5 A There's a spark test that they're supposed to do,
6 yes, sir.

7 Q Okay. And this doesn't differentiate between the
8 two, does it?

9 A No, sir, it does not.

10 Q Okay. So, it actually -- what you train guys on
11 tasers is, just like in the morning, when you make sure
12 there's a bullet in the chamber, you've got to make sure
13 your taser is charged, correct?

14 A Yes, sir, on -- usually going on shift, --

15 Q Okay.

16 A -- they're trained to spark-test their taser.

17 Q Okay. So, 1,421 trigger pulls over a more than
18 six-year period would kind of jibe with what it should
19 be if someone's reporting for duty and checking their
20 battery correctly, right?

21 A It should work every day. I don't know how many
22 days during that period of time, but yes, sir.

23 MR. LEE: Okay. All right. That's all the
24 questions I have, your Honor.

25 THE COURT: Thank you. Re-direct, Mr. Hollen?

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RE-DIRECT - CAPTIAN JIM MCCLARY

1 SOLICITOR HOLLEN: Briefly, your Honor.

2 CAPTAIN JIM MCCLARY

3 RE-DIRECT EXAMINATION

4 BY SOLICITOR HOLLEN:

5 Q Captain McClary, are there any days that you
6 noticed on those records where the taser was fired
7 multiple times?

8 A Yes, sir. There are a number of days where it was
9 fired more than just your normal test. Some were four,
10 five, six, eight, ten, twelve, thirteen.

11 Q And is that, in your opinion, normal?

12 A No, sir.

13 SOLICITOR HOLLEN: Okay. Nothing further, your
14 Honor.

15 THE COURT: Any followup on that?

16 CAPTAIN JIM MCCLARY

17 RE-CROSS-EXAMINATION

18 BY MR. LEE:

19 Q When the battery goes down low, doesn't it
20 sometimes fire itself, checking it?

21 A No, sir.

22 Q It doesn't?

23 A No, sir.

24 Q Even when it goes down low.

25 A No, sir.

1 MR. LEE: All right. That's all I have, your
2 Honor.

3 THE COURT: Good. Thank you. He's your witness,
4 Mr. Hollen. You've got the last word.

5 SOLICITOR HOLLEN: Your Honor, I have nothing
6 further.

7 THE COURT: Good enough. That's a good last word.
8 Thank you.

9 SOLICITOR HOLLEN: Your Honor, may he be excused?

10 THE COURT: Sure.

11 MR. LEE: No objection.

12 THE COURT: You can be excused. Thank you for
13 coming.

14 CAPTAIN JIM MCCLARY: Thank you, Judge.

15 SOLICITOR HOLLEN: Your Honor, may we approach?

16 THE COURT: Sure.

17 OFF-THE-RECORD BENCH CONFERENCE, OUT

18 OF HEARING OF JURORS. PRESENT: THE

19 COURT, SOLICITOR HOLLEN, MR. LEE.

20 END BENCH CONFERENCE.

21 BY THE COURT:

22 THE COURT: Ladies and gentlemen, I can tell you
23 what we were talking about then. We were planning your
24 immediate future. We're at a point in the trial now
25 where the State has just a few witnesses left. The next

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BY THE COURT

1 witness would, kind of like the witness before lunch
2 today, be a lengthy witness and would run well past the
3 normal stopping time. And so, we're going to stop --
4 we've got a choice. Stopping a little early, thirty
5 minutes ahead, or working past the time. And since
6 stopping a little bit early today is not going to
7 prolong this and push it into another day, we'll stop
8 now, and give you the balance of the day off, and ask
9 that you be back in the jury room tomorrow morning,
10 however, at 9:30. This morning it was 10:00. But be
11 there tomorrow morning at 9:30. We'll start the trial
12 back again.

13 I remind you, as always, not to discuss this case
14 among yourselves when you get back to the jury room
15 tomorrow at 9:30, and don't talk with anybody else about
16 it overnight.

17 Thank you, folks. I'll see you tomorrow morning at
18 9:30.

19 JURORS LEAVE COURTROOM 4:32 P.M.

20 THE COURT: Folks, I know that overnight we'll have
21 some things -- you'll have other things to do, but I
22 want to add something to your list. And that is, I want
23 you to prepare any proposed charges that you would like
24 for me to make. Mr. Lee, specifically the *Manning*
25 charge on reasonable doubt, if you'll give that to me.

1 Any additional charges that might be unusual.

2 Of course, I'll charge my usual charge on
3 credibility of witnesses and the reasonable doubt
4 charge, which I've already told you. I'll charge just
5 the elements of these particular crimes. And the
6 general matters, I don't need help with those. But if
7 there are any unusual issues that you would like for me
8 to consider presenting to the jury of a charge nature,
9 if you will have those before me. And if you get that
10 to me by tomorrow, it will save a little time, in the
11 likely event, looks like we may be able to finish this
12 trial tomorrow. I'm not sure. But if we are going to
13 be able to finish it, it would help us, help me, if we
14 had those charges in the morning. Does that present a
15 problem to anybody?

16 SOLICITOR THORNTON: No, your Honor.

17 MR. LEE: No, sir.

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

19 Everybody good with 9:30 tomorrow morning?

20 SOLICITOR THORNTON: Yes, your Honor.

21 MR. LEE: Yes, sir.

22 THE COURT: Thank you. See in the morning, folks,
23 at 9:30.

24 SOLICITOR THORNTON: Thank you, Judge.

25 END DAY TWO, TUESDAY, SEPTEMBER 20,

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OBJECTIONS AND RULINGS

1 2016, 4:34 P.M.

2 BEGIN DAY THREE, WEDNESDAY,

3 SEPTEMBER 21, 2016, 10:09 A.M.

4 OBJECTIONS AND RULINGS:

5 BAILIFF: Come to order.

6 THE COURT: Thank you, ladies and gentlemen.

7 Please be seated. Good morning.

8 MR. LEE: Good morning.

9 SOLICITOR THORNTON: Good morning, your Honor.

10 THE COURT: I'm advised that we need to hear
11 another motion before the jury is brought in. Who's got
12 the motion?

13 SOLICITOR THORNTON: Your Honor, it would be Mr.
14 Lee. If it's all right with the Court, I'll kind of get
15 it set up. It's as to the next two witnesses, will be
16 testifying at some photographs that we would enter.
17 First, for the record, we have Exhibits 14, 15, 16, 17,
18 and 18. So, 14 through 18. These were items that were
19 removed from Larry Heyward's patrol vehicle that he
20 dropped off at the Varnville Substation when he was
21 interviewed by SLED and the sheriff. And I will
22 identify them individually, if that's all right with the
23 Court. And then, Mr. Lee can obviously make whatever
24 argument he needs to make.

25 14 is a picture of a condom that was found in the

1 vehicle, as is 15. It's a different condom. 16 is two
2 bottles of lubricant that were found. 17 is two
3 different containers with Vaseline or lubricant. And
4 the last picture, 18, is a red Lifestyles condom that
5 was also pulled out of his patrol vehicle. And we can
6 do these as -- there's another set that were out of the
7 office that he had at the old middle school, but I'm
8 happy to do it any way the Court would like. If you
9 want to stop now and address these first, we can.

10 THE COURT: All right. Let's talk about these, and
11 see what else we have. Let me make another purpose note
12 down here.

13 SOLICITOR THORNTON: Yes, sir.

14 THE COURT: Okay. If you'll hand those photographs
15 up, Mr. Lee, so that I can know what we're talking
16 about.

17 All right, Mr. Lee. I'll be glad now to hear from
18 you.

19 MR. LEE: Thank you, your Honor. A couple of
20 different reasons for the different ones. The 14, 15,
21 and 18 are pictures of unopened condoms. Our objection
22 to that simply would be that it's not relevant; that
23 condoms happen -- I mean, he's a grown man. Condoms
24 happened to be found in his vehicle. So, I think the
25 prejudicial effect is such that there's little or no

1 probative value under 403.

2 And as the Court remembers, I mean, you've been
3 very strict, and that's my word, as far as what's coming
4 in, extraneous, as far as sexual conduct and trying to
5 keep some of the superfluous stuff out, and I understand
6 that, particularly with regard to the rape shield, and I
7 realize there's a separate statute on that. But you
8 know, at this point, I think we'll all agree, it's been
9 a pretty clean trial, as far as keeping a lot of
10 extraneous stuff out. And it's our position that
11 publishing these photos of unused condoms in a vehicle
12 is simply meant to inflame the jury, confuse the issues,
13 and they're unduly prejudicial, in light of the limited,
14 if any, probative value that they may have. I don't see
15 the relevance of them, nor the probative value is
16 anywhere close to the prejudicial effect. They've
17 presented plenty of testimony all along, and I think
18 that this should be suppressed. And that's 14, 15, and
19 18. If you want to break it up, I'm happy to.

20 THE COURT: Yes. Let's deal with those.

21 MR. LEE: Okay.

22 THE COURT: All right. Mr. Thornton, tell me what
23 relevance do you glean from those items in that
24 particular segment?

25 SOLICITOR THORNTON: Your Honor, as to 14, 15, and

1 18, it is -- obviously, the defendant in this case is a
2 grown man, but that's also his police vehicle, a vehicle
3 which Complainant testified was used to pick him up
4 to transport him for sexual encounters. Inside that
5 vehicle, and I know we'll get to the other pictures in a
6 minute, are pictures of condoms. Two of them are
7 Lifestyles condoms, and one of them is a red Lifestyle
8 condom, which Complainant said was one of the
9 specific condoms he remembered. I do think that is very
10 relevant. It is indicative of the acts that took place
11 that Complainant, the victim, has testified to. And
12 it does, in some measure, corroborate what he has said.
13 So, I do think that they are relevant, and I do think
14 their probative value, Judge, is that, exactly that,
15 that they do corroborate some of what Complainant has
16 said. And therefore, I do think that the probative
17 value does outweigh any prejudicial effect.

18 THE COURT: I'm jumping to another set of
19 objections that I anticipate in a moment, and that is
20 what was found in his office. What was found in his
21 office? You alluded to those things awhile ago.

22 SOLICITOR THORNTON: In his office, your Honor, are
23 -- and those are the pictures we would go to -- also,
24 there was a bottle of baby oil, which is one of the
25 lubricants that Complainant identified.

1 THE COURT: All right.

2 SOLICITOR THORNTON: Also, red Lifestyles condoms,
3 which were found -- or red, I'm sorry -- a red Lifestyle
4 condom, which was found in his lap drawer, along with
5 another condom; and the paddle, a picture of the paddle,
6 which I also would seek to introduce. Those are the
7 things that we would seek to introduce. And --

8 THE COURT: And so, in other words, from his
9 office, you have virtually the same type of evidence
10 that you have here in these photographs. Is that fair
11 to say?

12 SOLICITOR THORNTON: Yes, sir.

13 THE COURT: Okay. The objection is sustained. The
14 fact that these items were in his vehicle, there has
15 been no allegation of any of these events occurring in
16 the vehicle itself. They all occurred somewhere else.
17 And as I say, an adult carrying these sorts of things,
18 even in a patrol car, I suppose, might be indicative of
19 some sort of misbehavior, but it does not tend to prove
20 the guilt of him on these particular charges, at least.
21 Whatever probative value comes from these things is far
22 outweighed by the prejudicial impact of these
23 instruments discovered in his patrol car, not the scene
24 of the crime, especially when you have the same type of
25 evidence that you have found in or near the scene itself

1 as described. The objection is sustained as to 14
2 through 18. All right?

3 SOLICITOR THORNTON: Yes, sir.

4 THE COURT: Now, let's move on to the next batch.

5 SOLICITOR THORNTON: Your Honor, they are 20 -- and
6 I apologize, Judge, let me -- it's 20, 21, 22, 23, 24,
7 25, 26, and 29.

8 THE COURT: Okay. You want to hand those up?

9 SOLICITOR THORNTON: Yes, sir. Your Honor, I
10 apologize. Mr. Lee has asked if I could list them on
11 the record again as to what they contain, or the Court
12 -- if the Court would rather do that.

13 THE COURT: No, you can do them all, because you
14 know what --

15 SOLICITOR THORNTON: Yes, sir. I apologize, Judge.

16 THE COURT: That's okay.

17 SOLICITOR THORNTON: I should have done that before
18 I handed them up.

19 THE COURT: That's all right.

20 SOLICITOR THORNTON: Thank you, your Honor. Judge,
21 Exhibit 20 is just an overall photograph of Mr.
22 Heyward's office at the old Middle School.
23 That's where this was done. It shows, in general, what
24 his office is.

25 Also, the door to the bathroom. 21 is a different

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OBJECTIONS AND RULINGS

1 view of that office that shows his desk. And in 21 is
2 kind of a, I won't say a distant view, but there is a
3 bottle of salad dressing, and a bottle of baby oil
4 immediately behind that. 22 is a piece of paper that
5 was found on the desk that lists several people's names
6 and phone numbers, one of them being the victim, Complainant
7 Complainant. 23 is a closeup view of the -- although the
8 label's not prevalent, the bottle of baby oil. 24 is a
9 picture of one of the desk drawers, which is opened up,
10 and it has multiple identification cards and pictures of
11 the defendant, Larry Heyward.

12 25 and 26, 25 is a kind of a further-away view of
13 the open-lap drawer of the desk of Larry Heyward, which
14 has the red Lifestyles condom, and then, another condom.
15 26 is a closer view of those two condoms. And 29 is a
16 photograph of the paddle that was found in Larry
17 Heyward's office, and that was seized, and I would seek
18 to introduce that. My intention was to simply introduce
19 the photographs. Although the other stuff was seized,
20 too, I was just going to introduce photographs. The
21 only physical item -- because frankly, the picture is
22 just not very good; it's an edge picture of the paddle -
23 - I was going to introduce the paddle. But that picture
24 doesn't really show where it was located.

25 THE COURT: Okay.

1 SOLICITOR THORNTON: I'll hand these up now, with
2 the Court's permission.

3 THE COURT: All right. Thank you.

4 SOLICITOR THORNTON: Yes, sir.

5 THE COURT: All right. Mr. Lee, let me hear your
6 objection in terms of these.

7 MR. LEE: Your Honor, I'm not sure. Maybe Mr.
8 Thornton can clear this up for me, about the date that
9 the pictures were taken. I assume they were taken
10 pursuant to a search warrant, probably within a week or
11 so of his arrest. I'm kind of thinking middle of
12 January, first of January?

13 SOLICITOR THORNTON: It was a -- it would have been
14 -- it wasn't a search warrant. I think it was actually
15 a consent to search by the school.

16 MR. LEE: Okay. Judge, it appears that these
17 pictures, at earliest, would have been taken the first
18 or second week of January 2013, which is within a week
19 of when Mr. Heyward was arrested and charged with this.
20 As you've heard earlier, there's testimony that they
21 moved schools. Old Middle School was replaced by
22 a new Middle School approximately the first of
23 September 2012. So, what we have here is a four-month
24 gap between the time that Mr. Heyward would have last
25 been at the office in the old high school, which was

1 closed, and when they conducted the search warrant.

2 I don't know how many people have access to that
3 school, to that drawer, to anything there. And you
4 know, there is also a bottle of salad dressing, of Ranch
5 salad dressing, on the desk, which would indicate that
6 someone probably was somehow using that office during
7 this time.

8 So, you have a stale photo from -- that existed at
9 least four months since they've even had -- he's been in
10 that office, and I think it questions the reliability
11 and the trustworthiness of whether those items were
12 there at a time when Complainant -- the time is four
13 months is the number one problem, in my opinion, your
14 Honor.

15 THE COURT: Right.

16 MR. LEE: They can't establish that the school was
17 locked and nobody got in there; that it couldn't have
18 been put in there. I will also testify that -- or argue
19 that -- don't want to testify -- that my recollection of
20 the facts of the case and going through discovery, the
21 voluminous discovery, is, the first time that any
22 mention has ever been made of a red condom was yesterday
23 in Complainant 's testimony. That is the first
24 testimony at all of any red condom. I intend to cross-
25 examine the officer about that, but it just, you know.

1 And now, they're saying, well, it's just a red condom,
2 just like he said it was. But he's never said that
3 until yesterday, and I think there's some real question
4 as to where that testimony may have come from, if and
5 when he first said it, I believe it being yesterday.

6 So, I just think that there's a real issue there as
7 a gatekeeper to the evidence, your Honor. If it was
8 fresher and it had been found, but there's no -- it is
9 very -- obviously, he wants it in. It's very
10 prejudicial to the defendant, particularly when he's
11 somehow lined it up with part of Complainant's story. But
12 the fact that nothing happened in this -- and Larry
13 Heyward had not been in that building in all that time,
14 does not -- it's difficult to trace it back to him. And
15 so, I think, as a gatekeeper, the reliability is in
16 question, the relevance is in question, and certainly it
17 has little -- I mean, just because it's consistent with
18 the State's recent theory doesn't mean that it's
19 probative. It certainly is prejudicial, because they
20 have tried to tie this thing to him. But again, that's
21 the first we've heard of it yesterday. So, Rule 401,
22 402, 403, I think that it may give him some character
23 evidence improper, properly. So, you know, 401 through
24 405, I think all of those prohibit its introduction.

25 THE COURT: All right. Mr. Thornton, let me hear

1 from you.

2 SOLICITOR THORNTON: Thank you, your Honor. I just
3 confirmed this with Mr. Croft. The search was done
4 either the day of or the next day, when Mr. Heyward was
5 arrested. I understand that Mr. Lee is talking about
6 that it was obviously the -- this was some time after he
7 moved. But as the Court will note from the pictures,
8 all of the identifications and everything else are Larry
9 Heyward's. I would also point out -- and I've agreed
10 not to use these at Mr. Lee's request -- there is a
11 locked black file cabinet. Or a file cabinet may be the
12 wrong word. A cabinet with two doors on it. And inside
13 that were a loose bag of marijuana, a marijuana blunt
14 with a lighter that was in an evidence bag, that was
15 supposedly collected by Larry Heyward that was from two
16 years prior to that. So, in other words, it sat in the
17 cabinet for a year and a half. There were brass
18 knuckles, fireworks, a pocket knife, and I've agreed not
19 to put any of that in. But I think that is certainly
20 indicative that Larry Heyward still had stuff in there,
21 and it does --

22 I would clear something else up, your Honor, too,
23 while I'm thinking about it. I do believe that Mr. Lee
24 is right as to the color of the condom. That probably -
25 - or may very well be the first time he's heard that.

1 But I would say that, back in May of 2/20/15, the
2 Solicitor's Office sent him, which he has indicated he
3 did get, sent him an email, and one of the things that
4 came up in the discussion with the victim, with Donnie
5 Hutto and an assistant solicitor with our office, was
6 the fact that he did like to use, or was prevalent in
7 using, Lifestyle brand condoms, and we did let Mr. Lee
8 know that. Red was not in there, but Lifestyle brand
9 condoms was in there.

10 I think, your Honor, that, again, going off of what
11 your Honor just said about the condoms in the vehicle
12 not being probative because no sex acts were stated by
13 the victim to have occurred inside the vehicle, they
14 certainly were indicated that they happened in the
15 office. He specifically identified baby oil. That's
16 there. That was also in the 2015 -- May of 2015 email.
17 There's a bottle of baby oil on the desk. There is a
18 Lifestyle brand condom, and it is red, that are in the
19 lap drawer, along with another condom. And since the
20 acts are alleged to have taken place there, I think that
21 it is probative, Judge. It is corroborating evidence.
22 And certainly, what Mr. Lee says is a valid point that
23 he can bring up on cross-examination of Croft. But I
24 think that goes more to the weight than the
25 admissibility. Thank you, your Honor.

1 THE COURT: All right. Thank you.

2 MR. LEE: If I could add one, your Honor. There
3 are a total, I believe, I believe there was four total
4 condoms found between the car and the -- is that right?

5 SOLICITOR THORNTON: Four or five.

6 MR. LEE: Four or five. Okay. There making a big
7 deal about these Lifestyle condoms. There was also a
8 Trojan condom found, and there's also one that I'm not
9 sure what the brand is. So, you know, if they're trying
10 to say it was his habit or something, you get some kind
11 of *Rule 406* habit or routine procedure, that isn't going
12 to work, because there's other brands of condoms, and
13 they're saying, hey, this is reliable, Judge, and it
14 fits right into what we're saying, because he said that
15 he used Lifestyle condoms. There's two other brands
16 that they've found. There's also a room that's
17 apparently not being monitored that has, as part of a
18 school resource officer, he collected evidence. That
19 stuff, I mean, he took stuff off of students all the
20 time.

21 THE COURT: Right.

22 MR. LEE: And there's no testimony; there's no
23 reliability. I don't know what students were using that
24 room for after he left. I don't know what kind of
25 access there was, but you know, they always offer, well,

1 let it in, and just let them argue and do a great cross-
2 examination. But I think it's -- the admissibility is
3 really at issue, and I think it's something that the
4 Court ought to step in and say, we're not going to go
5 down that road.

6 THE COURT: Well, of course, some of the stuff in
7 the other room is not being offered. I think he was
8 simply offering them to show the conduct or the control
9 of the room and the occupancy of the room during this
10 time. So, it's not going to come in, whatever's in that
11 other room. Whatever's in the other desk or cabinet, I
12 should say.

13 SOLICITOR THORNTON: It was in a cabinet in the
14 room, Judge.

15 THE COURT: Okay.

16 SOLICITOR THORNTON: But no, sir, I'm not offering
17 any of that. We've taken it out of the presentation
18 completely.

19 THE COURT: All right. Number 20 is in evidence.
20 It shows what is the alleged scene of at least one of
21 the crimes, including the bathroom door. Mr. J.T. , I
22 believe, testified about that yesterday. The jury is
23 entitled to see the scene, if they can see it. And so,
24 20 shows that. That's certainly not prejudicial. It's
25 much more probative than prejudicial.

1 Number 21, it shows, from a distance, salad
2 dressing, and also some other paraphernalia in the room.
3 I don't think it's -- quite frankly, I don't think it's
4 probative, because I don't think you can look at that
5 and tell that it is baby oil to begin with.

6 23 is more probative on the point of whether it's
7 baby oil or not, because it is more clear than 23, that
8 that's what is there. The victim has testified about
9 the use of baby oil. I will not allow 21 in, because I
10 don't think it's probative. 23 I'll allow in, because
11 it is certainly more probative than prejudicial on that
12 issue.

13 22 is a list of names. It's dated May of 2011, so
14 without regard to the vacating of the premises at some
15 time thereafter, this list is dated appropriately,
16 assuming it can be tied to the desk. I don't know
17 whether anybody's going to be able to testify that
18 that's Mr. Heyward's handwriting or not, but
19 nonetheless, it can be testified that it came out of his
20 desk, and apparently, was generated in May of 2011, the
21 time period in which these things were occurring.

22 24 is simply a list of or a stack of his
23 identification cards, with his name and photograph on it
24 that he would use, like all other personnel, to gain
25 access to the school. It's not prejudicial. It's

1 probative as to the fact that this, indeed, was his desk
2 at some point in time, and he exercised some control
3 over it.

4 25 is a distant picture of a Lifestyle condom and
5 another condom as well, and I suppose it ties all this
6 to the desk itself 'more accurately than does 26. 26
7 shows the desk drawer. If you had 26 alone, you
8 wouldn't be able to tell anything about it, but the two
9 of those things that go together identify the desk and
10 the condoms from a distance on a more closeup picture of
11 those two things taken together. I think that the fact
12 that it shows two different types of condoms does not
13 defeat the relevancy of it, Mr. Lee. I think the
14 testimony being that he had a tendency to use red
15 Lifestyle condoms is not the same as saying that that's
16 all he ever used. And so, the State is entitled to that
17 as corroborative of the testimony offered in that
18 regard.

19 29, in and of itself is a rather benign photograph
20 of what appears to be a piece of wood in a chair. I
21 suppose the purpose of the photograph is to show that
22 this paddle was in his office, and that the paddle
23 itself will be introduced at some point in time later
24 on.

25 The objection is sustained as to Exhibit Number 21.

1 The objection is denied as to the remaining Exhibits 20,
2 22, 23, 24, 25, 26, and 29. Those are admissible.

3 All right.

4 SOLICITOR THORNTON: Thank you, your Honor. The
5 only remaining thing would be the paddle itself, and I'm
6 not sure if Mr. Lee has an objection to that as well,
7 but I just wanted to go ahead and cover it.

8 THE COURT: Mr. Lee?

9 MR. LEE: I would object to that under the same
10 reasons as the ones earlier, Judge.

11 THE COURT: All right.

12 MR. LEE: As far as the staleness of it. You know
13 the arguments 401 through 405. And then, obviously,
14 when the picture was taken and when it was --

15 THE COURT: Yes, let's re-visit that for a moment,
16 and my ruling on 29 at the same time. It occurs to me
17 that the victim, Complainant , testified he was paddled
18 from at least on one occasion. The indictment says that
19 he was paddled, I think, on --

20 SOLICITOR THORNTON: Yes, sir.

21 THE COURT: -- on one occasion. And I was
22 struggling in my mind, for example, as to the relevance
23 of that. But now I recall the indictment specifically
24 referred to the fact that a part of one of the charges
25 --

1 SOLICITOR THORNTON: It's the misconduct in office,
2 I believe, your Honor.

3 THE COURT: The misconduct in the office indicates
4 that he used -- let's see.

5 MR. LEE: A taser.

6 SOLICITOR THORNTON: Actually, your Honor, I'm not
7 correct. It's taser. It is not paddle.

8 THE COURT: Okay. All right.

9 SOLICITOR THORNTON: I apologize. I was thinking
10 -- but it's taser is what was in the indictment.

11 THE COURT: Okay. I don't think that the paddle
12 adds anything to the general storehouse and the
13 storehouse of knowledge about this. It is not an
14 element of any of the charges. There's testimony, of
15 course, that he was paddled, but that, in and of itself,
16 is not a separate charge and is not a separate offense
17 under the indictments before me. I will renew my -- or
18 re-visit my ruling on Photo Number 29. I will sustain
19 the objection as to that and as to the paddle itself.
20 Whatever probative value in there is far outweighed by
21 the prejudicial impact of it. It tends to prove nothing
22 that is a part of these charges.

23 SOLICITOR THORNTON: Yes, sir.

24 THE COURT: All right. Thank you.

25 SOLICITOR THORNTON: Your Honor, may I approach?

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BY THE COURT

1 THE COURT: Yes, sir, please.

2 SOLICITOR THORNTON: If the Court will allow me a
3 moment, so we can pull these out of the -- all right.

4 THE COURT: I'm sorry.

5 SOLICITOR THORNTON: No, your Honor, I apologize.
6 It's just a scheduling issue. May we approach?

7 THE COURT: Surely.

8 OFF-THE-RECORD BENCH CONFERENCE, OUT
9 OF HEARING OF JURORS. PRESENT: THE
10 COURT, SOLICITOR THORNTON, MR. LEE.
11 END BENCH CONFERENCE.

12 SOLICITOR THORNTON: Thank you, your Honor.

13 THE COURT: Thank you. All right. Now, are both
14 sides ready for the jury?

15 SOLICITOR THORNTON: The State is ready, your
16 Honor.

17 MR. LEE: Yes, your Honor.

18 THE COURT: Bring us the jury, please. Thank you.

19 JURORS ENTER COURTROOM 10:17 A.M.

20 BY THE COURT:

21 THE COURT: Mr. Foreman, ladies and gentlemen,
22 thank you again for your prompt return. I guess you
23 have -- you've been back in that jury room taking up
24 collection to buy me a new watch. I tell you to be here
25 at 9:30, and you're here at 9:30; and I get you out here

1 at quarter after 10:00. I appreciate the offer, but let
2 me tell you that I've got a whole drawer full of new
3 watches that jurors have bought for me over the last
4 twenty-five years for not getting you out here when I
5 said I would, but thank you just the same.

6 We've been here since 9:30, as a matter of fact
7 before that. But we've been dealing with pretrial
8 matters out here. I say pretrial today, and some
9 evidentiary matters that we needed to take care of. If
10 it's any consolation to you, those discussions have
11 eliminated the need for at least one witness who would
12 appear before us. So, it shortened the time somewhat.
13 I hope it will shorten it at least as much time as we've
14 cost you while you were back there. I'm not going to
15 waste any more of your time. We are going to continue
16 the trial at this juncture, as the State continues to
17 offer evidence and testimony. Thank you. Mr. Thornton?

18 SOLICITOR THORNTON: Your Honor, Mr. Hollen will
19 have the next witness.

20 THE COURT: Excuse me. Mr. Hollen?

21 SOLICITOR HOLLEN: Thank you, your Honor. State
22 calls Chief Deputy Billy Jarrell.

23 MADAM CLERK: Good morning.

24 CHIEF DEPUTY BILLY JARRELL: Good morning.

25 MADAM CLERK: Left hand on the *Bible*. Raise your

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DIRECT - CHIEF DEPUTY BILLY JARRELL

1 right hand.

2 Do you swear to tell the truth, the whole truth,
3 and nothing but the truth, so help you God?

4 CHIEF DEPUTY BILLY JARRELL: I do.

5 MADAM CLERK: Have a seat.

6 THE COURT: All right.

7 CHIEF DEPUTY BILLY JARRELL

8 DIRECT EXAMINATION

9 BY SOLICITOR HOLLEN:

10 Q Good morning, Chief Deputy Jarrell. Do you mind if
11 I call you Chief? I think a lot of people call you
12 that.

13 A That's fine.

14 Q All right. Thank you, Chief. Chief Jarrell, how
15 long have you been with the Hampton County Sheriff's
16 Office?

17 A Since 2007.

18 Q And how long have you been in your position as
19 Chief Deputy?

20 A Since 2007.

21 Q All right. And what are some of the things that
22 you do as Chief Deputy? What are your duties?

23 A I maintain the personnel folders of all the
24 deputies. I manage the Sheriff's non-budgetary
25 finances, and assist in major criminal investigations.

1 Q And at some point, was Larry Heyward hired as a
2 deputy with your office?

3 A Yes, he was.

4 Q And when was that?

5 A He began in 2008.

6 Q Okay.

7 ITEM IDENTIFIED AS LARRY HEYWARD
8 OATH OF OFFICE DOCUMENT
9 MARKED STATE'S EXHIBIT NUMBER 8
10 FOR IDENTIFICATION.

11 Q Now, Chief Jarrell, I'm going to hand you what's
12 been marked for identification as State's Exhibit Number
13 8. Will you take a look at that.

14 A Yes, sir.

15 Q Do you recognize it?

16 A I do.

17 Q And what is that?

18 A That's the oath that all the deputies sign and
19 swear to when they're hired as a deputy in the Sheriff's
20 Office.

21 Q And where did that document come from?

22 A Clerk of Court's Office.

23 Q And where did you get that document from to
24 provide?

25 A We -- we provided it. I put it in his personnel

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DIRECT - CHIEF DEPUTY BILLY JARRELL

1 folder after the deputy signs it.

2 Q All right. So, that document came out of Larry
3 Heyward's personnel folder?

4 A That's correct.

5 Q And do you recognize a name on that document, or
6 signature?

7 A Yes, Larry Heyward.

8 Q And you said it came out of the personnel file. Is
9 that a piece of paper that you would keep in the
10 ordinary course of your business?

11 A Yes, I would.

12 SOLICITOR HOLLEN: And your Honor, at this time, I
13 would ask to admit State's Exhibit 8 into evidence.

14 MR. LEE: No objection, your Honor.

15 THE COURT: Without objection. Thank you. State's
16 8 in evidence.

17 ITEM IDENTIFIED AS LARRY HEYWARD

18 OATH OF OFFICE DOCUMENT

19 MARKED STATE'S EXHIBIT NUMBER 8

20 ADMITTED AS EVIDENCE.

21 SOLICITOR HOLLEN: Thank you, your Honor. May I
22 publish?

23 THE COURT: Yes, sir.

24 BY MR. HOLLEN:

25 Q Chief Jarrell, can you do me a favor and publish

1 that document to the jury by reading out what it says.

2 A It's got the printed name. Larry Heyward, Hampton
3 County Sheriff's Office, Deputy/SRO. His mailing
4 address, term to expire, and to serve at the pleasure of
5 the sheriff.

6 THE COURT: Chief, I'm going to ask you to read
7 slowly. You know what it says, because you're reading
8 it, but the jury is depending entirely on hearing what
9 you say. So, if you'll slow it down as you read it to
10 them. Thank you.

11 BY MR. HOLLEN:

12 A *State of South Carolina, County of Hampton.*
13 *First, I do solemnly swear or affirm that I*
14 *am duly qualified according to the*
15 *Constitution of this state to exercise the*
16 *duties of the office to which I have been*
17 *elected or appointed. That I will be --*
18 *that I will, to the best of my ability,*
19 *discharge the duties thereof and preserve*
20 *and protect and defend the Constitution of*
21 *this state and of the United States.*

22 *I further solemnly swear or affirm that,*
23 *during my term of office as County Deputy, I*
24 *will study the act prescribing my duties,*
25 *will be alert and vigilant to enforce criminal*

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1 laws of the state, and to detect and to bring
2 to punishment every violator of them.

3 I will conduct myself at all times with
4 due consideration to all persons, and will
5 not be influenced in any manner on account
6 of personal bias or prejudice, so help me God.
7 And it's signed by the deputy.

8 Q And who is the deputy that signed that?

9 A Larry Heyward.

10 Q Thank you, Chief Jarrell.

11 ITEM IDENTIFIED AS VERIZON PHONE BILL
12 MARKED STATE'S EXHIBIT NUMBER 33
13 FOR IDENTIFICATION.

14 Q I'm now going to hand you what's been marked for
15 identification -- I'm going to be jumping around a
16 little bit -- as State's Exhibit 33. Do you recognize
17 that?

18 A It's a copy of a Verizon phone bill.

19 Q And in his position as a deputy with the Hampton
20 County Sheriff's Office, would Larry Heyward have been
21 issued a cell phone?

22 A Yes, sir.

23 Q And is that record something that you would
24 maintain as Chief Deputy?

25 A At that time, yes, sir.

1 Q All right. And do you see on there a phone number,
2 or a phone that you recognize as being issued to Larry
3 Heyward?

4 A Yes, I do.

5 Q What is the phone number that you see, and how do
6 you recognize it as being Larry Heyward's?

7 A The phone number is 3944, and it's
8 indicated by SRO Phone.

9 Q All right.

10 SOLICITOR HOLLEN: Your Honor, I'd ask to admit
11 State's 33 into evidence at this time.

12 MR. LEE: No objection, your Honor.

13 THE COURT: 33, is it?

14 SOLICITOR HOLLEN: Yes, your Honor.

15 MR. LEE: Yes, sir.

16 THE COURT: Okay. 33 into evidence, without
17 objection.

18 ITEM IDENTIFIED AS COPY OF
19 VERIZON PHONE BILL
20 MARKED STATE'S EXHIBIT NUMBER 33
21 ADMITTED AS EVIDENCE.

22 BY SOLICITOR HOLLEN:

23 Q Chief Jarrell, the phone that that phone number is
24 assigned to, who would have had possession of that phone
25 during Larry Heyward's employment?

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1 A Larry Heyward.

2 Q All right. And when was he terminated from the
3 Hampton County Sheriff's Office?

4 A In 2013.

5 Q So, he was employed from 2008 to 2013? Is that
6 right?

7 A Correct.

8 Q Okay. All right.

9 ITEM IDENTIFIED AS PRINTOUT OF
10 PROPERTY ASSIGNED TO LARRY HEYWARD
11 MARKED STATE'S EXHIBIT NUMBER 9
12 FOR IDENTIFICATION.

13 ITEM IDENTIFIED AS PROPERTY
14 RECEIPT TO SLED
15 MARKED STATE'S EXHIBIT NUMBER 12
16 FOR IDENTIFICATION.

17 Q Chief I'm going to hand you a couple more. Thanks.
18 They have been marked for identification as State's 9
19 and 12. Do you recognize those?

20 A Yes.

21 Q And let's take them one at a time. Okay?

22 A Okay.

23 Q What is State's Exhibit 9?

24 A It's the printout of property assignment to Larry
25 Heyward.

1 Q And what property is that assigned to Larry
2 Heyward?

3 A A taser.

4 Q Is there a date on that of when it was assigned?

5 A It was assigned January the 28th of 2008.

6 Q All right. And as the Chief Deputy, you said you
7 keep personnel files. Is that something that you would
8 have kept in the ordinary course of your business?

9 A Yes, sir.

10 Q All right.

11 SOLICITOR HOLLEN: Your Honor, I would ask at this
12 time to admit State's 9 into evidence.

13 MR. LEE: No objection.

14 THE COURT: Thank you. State's 9 in evidence,
15 without objection.

16 ITEM IDENTIFIED AS PRINTOUT OF
17 PROPERTY ASSIGNED TO LARRY HEYWARD
18 MARKED STATE'S EXHIBIT NUMBER 9
19 ADMITTED AS EVIDENCE.

20 BY SOLICITOR HOLLEN:

21 Q And Chief Jarrell, is there any identification or a
22 serial number on that paper?

23 A Yes, it is.

24 Q And what is it?

25 A X00295027.

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1 Q And that is the taser serial number that was issued
2 to Mr. Heyward.

3 A That is correct.

4 Q And who would have had possession of that taser
5 from January 28, 2008 to the time he was terminated in
6 2013?

7 A Larry Heyward.

8 Q All right. Now, will you take a look at Item 12
9 for me. Do you recognize that?

10 A Yes, I do.

11 Q And what is that?

12 A It is a property receipt that I sign when I handed
13 that taser over to State Law Enforcement Division and
14 investigators.

15 Q All right. Is that a fair and accurate copy of the
16 property receipt that you signed?

17 A Yes, it is.

18 Q Has it been changed or altered in any way?

19 A No, sir.

20 SOLICITOR HOLLEN: All right. Your Honor, I'd ask
21 to admit State's 12 at this time.

22 MR. LEE: No objection, your Honor.

23 THE COURT: Thank you. Without objection, 12 is in
24 evidence.

25 ITEM IDENTIFIED AS PROPERTY RECEIPT

1 TO SLED

2 MARKED STATE'S EXHIBIT NUMBER 12

3 ADMITTED AS EVIDENCE.

4 BY SOLICITOR HOLLEN:

5 Q Chief Deputy Jarrell, is there a description on
6 there of what you handed over?

7 A It's one X-26 taser, serial number X00295027; with
8 a holster and badge.

9 Q All right. And I'm going to hand you what's
10 already been admitted into evidence as State's Exhibit
11 13, and take a look at that.

12 A Yes, sir.

13 Q All right. That has been testified to as taser
14 records that were downloaded from a taser transmitted to
15 SLED. Can you read off the serial number.

16 A X00295027.

17 Q All right. Now, Chief Jarrell, you have three
18 documents up there. Can you take a look at all three of
19 them for me.

20 A Okay.

21 Q Does the serial number on those three documents --
22 all right. First of all, the taser issuance, can you
23 look at that for me.

24 A Yes.

25 Q Does that match the serial number on the property

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1 receipt?

2 A Yes, it does.

3 Q All right. So, State's 9, first of all.

4 A State's 9.

5 Q All right. Does that match the serial number on
6 State's Exhibit Number 12?

7 A Number 12. Yes, it does.

8 Q And does the serial number on State's 9 and 12
9 match the serial number on State's Exhibit 33?

10 A Yes, it does.

11 Q All right. Thank you, Chief. Now, Chief Jarrell,
12 do you recall -- you were employed with the Sheriff's
13 Office on January the 5th of 2013. Is that right?

14 A That's correct.

15 Q And do you recall being present for Larry Heyward's
16 vehicle being turned in?

17 A Yes.

18 Q All right. Where was that vehicle taken to first?
19 Where did where did Larry Heyward bring that vehicle?

20 A Oh, to the Sheriff's Substation at Varnville.

21 Q And after he turned that vehicle in there, where
22 was it taken?

23 A It was taken to the Sheriff's Office on Cemetery
24 Road.

25 Q All right.

1 ITEM IDENTIFIED AS PHOTOGRAPH
2 MARKED STATE'S EXHIBIT NUMBER 10
3 FOR IDENTIFICATION.

4 ITEM IDENTIFIED AS PHOTOGRAPH
5 MARKED STATE'S EXHIBIT NUMBER 11
6 FOR IDENTIFICATION.

7 Q And I'm going to hand you what's been marked for
8 identification as State's 10 and 11. Do you recognize
9 this?

10 A Yes, I do.

11 Q And what are those?

12 A That's the photographs of Larry Heyward's vehicle.

13 Q And are those fair and accurate depictions of the
14 sheriff's vehicle that was issued to Larry Heyward?

15 A Yes, it is.

16 Q And is that the vehicle that you were present for
17 cleaning out or inventorying?

18 A Yes, it is.

19 Q Now, Chief, did you take anything out of the
20 vehicle and keep possession of it?

21 A I took possession of the -- all of his issued
22 equipment.

23 Q Okay. And so, that would be what?

24 A His weapon, wet gear, anything that we issued to
25 him from the Sheriff's Office, including the taser.

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1 Q And you would have kept possession of that taser --

2 A Yes.

3 Q -- until the time you turned it over to SLED?

4 A Yes, I did.

5 Q All right. Now, Chief, at some point, were you
6 played an audio recording in this case?

7 A Yes, I was.

8 Q I'm going to hand you what's already in evidence as
9 State's Exhibit 1. Do you recognize that?

10 A Yes.

11 Q At my request, did you review that exhibit today?

12 A I did.

13 Q And is that the same recording that you heard
14 earlier on in this case?

15 A Yes, it is.

16 Q Can you describe the conversation for us.

17 A A sexually explicit conversation between Larry
18 Heyward and another male subject.

19 Q Chief Jarrell, how long have you known Larry
20 Heyward?

21 A Probably about twenty years. Eighteen, twenty
22 years.

23 Q So, did you know him before he came to work for the
24 Sheriff's Office?

25 A Yes, I did.

1 Q And how did you know him?

2 A We were both employed with the South Carolina Army
3 National Guard as full-time employees.

4 Q Now, in that twenty years, I would imagine you had
5 a couple of conversations with Mr. Heyward.

6 A Quite a few.

7 Q Did you ever have the opportunity to speak with him
8 over the phone?

9 A Yes, I have.

10 Q Have you ever had the opportunity to hear him on
11 the radio?

12 A Yes, I have.

13 Q Chief Jarrell, how are certain are you, or are you
14 certain, that that is the voice of Larry Heyward on that
15 recording?

16 A Yes, I am quite certain. Positive.

17 SOLICITOR HOLLEN: Court's indulgence, your Honor.

18 I have no further questions, Chief Jarrell. Please
19 answer any questions Mr. Lee has for you.

20 THE COURT: Do you wish to offer State's 10 and 11
21 into evidence?

22 SOLICITOR HOLLEN: Oh, Yes, your Honor, please.

23 MR. LEE: Without objection.

24 THE COURT: Without objection.

25 MR. LEE: Without objection.

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CROSS - CHIEF DEPUTY BILLY JARRELL

1 THE COURT: Thank you. 10 and 11 are entered.

2 ITEM IDENTIFIED AS PHOTOGRAPH

3 MARKED STATE'S EXHIBIT NUMBER 10

4 ADMITTED AS EVIDENCE.

5 ITEM IDENTIFIED AS PHOTOGRAPH

6 MARKED STATE'S EXHIBIT NUMBER 11

7 ADMITTED AS EVIDENCE.

8 THE COURT: Mr. Lee, you can cross-examine.

9 MR. LEE: Yes, sir. Thank you.

10 CHIEF DEPUTY BILLY JARRELL

11 CROSS-EXAMINATION

12 BY MR. LEE:

13 Q Good morning, Chief.

14 A Good morning.

15 Q So, the Solicitor asked you about your source of
16 friendship or knowledge of Larry Heyward. Did you
17 retire from the National Guard after twenty-five years,
18 like he did as well?

19 A I did.

20 Q Okay. And then, you came to the Sheriff's Office?

21 A Well, I came to Colleton County Sheriff's Office
22 first.

23 Q Okay. Do you know him from the church where he is
24 a minister, or you just know him from the National
25 Guard?

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CROSS - CHIEF DEPUTY BILLY JARRELL

1 A Just from the National Guard.

2 Q Okay. But you say it's been twenty-some years?

3 A Yes, sir.

4 Q Okay. So, sounds like you had a lot of
5 responsibilities at your job. I'm not sure what non-
6 financial budgetary items are, but it sounds like you
7 wear a lot of hats over at the Sheriff's Office. Is
8 that right?

9 A I do.

10 Q Okay. And so, you're familiar with -- there were
11 some reports passed up about some taser records that you
12 identified?

13 A I wouldn't know. Those were pertaining to SLED.

14 Q Okay. But you matched up the taser assigned to
15 Larry Heyward with these records, right?

16 A That's correct.

17 Q Okay. And --

18 OFF-THE-RECORD DISCUSSION BETWEEN

19 MR. LEE AND SOLICITOR HOLLEN:

20 BY MR. LEE:

21 Q I'm handing you State's -- looks like Number 13,
22 Exhibit 13. And Larry Heyward started in 2008, right?

23 A Yes, sir.

24 Q Okay. Well, when was he issued the taser, Chief?

25 A I think on that thing it's January 28th.

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CROSS - CHIEF DEPUTY BILLY JARRELL

1 Q Two thousand?

2 A 2008.

3 Q Okay. Who had the taser before Larry Heyward?

4 A It was issued new. We'd just obtained the tasers.

5 Q You just obtained the tasers?

6 A Nobody had it before him.

7 Q Okay. All right. Well, this printout that they
8 have up there from Taser International, it goes from
9 July 10, 2007, from when it starts. Is that right?

10 A That's correct.

11 Q On the first page? And then, if you look at the
12 last page, the last date is January 23, 2013, right?

13 A That is correct.

14 Q Okay. And what this document says is, is every
15 time there's what's called a trigger pull on a taser, it
16 counts it the one time, right?

17 A Yes, sir.

18 Q Is that right?

19 A I think so, yeah.

20 Q I'm sorry?

21 A I guess, yeah. I'm not familiar with this type
22 form.

23 Q Okay.

24 A I mean, yeah.

25 Q Okay. Well, I think that this SLED guy said that's

1 what it indicated.

2 A Okay. Well, if he said so.

3 Q So, just from July 10, 2007, which is, I guess,
4 three months before Larry was hired, until January 23,
5 2013, it indicates that there was some type of trigger
6 pull on that taser 1,421 times, right? I mean, is that
7 the last number there? On the left-hand, far column,
8 1,421?

9 A 1,421?

10 Q Yes, sir.

11 A Okay. Yes.

12 Q Okay. So, during that five-and-a-half-year period,
13 it appears that there was a trigger pull that many
14 times, 1,421. Do you agree with that, that's what the
15 record showed?

16 A That's what the record's showing.

17 Q Okay. And Mr. Heyward didn't get the taser, you
18 said, until, at the earliest, the 28th of January of
19 2008, right?

20 A That's what the records indicate, yeah.

21 Q All right. Don't the records also indicate that,
22 before the 28th of January, that there were sixteen
23 trigger pulls on that taser?

24 A That's what it shows.

25 Q Okay. Some of them, like on July 10, 2007, appear

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CROSS - CHIEF DEPUTY BILLY JARRELL

1 to be five in one day, correct?

2 A Is that five, or is that the duration?

3 Q Well, as opposed --

4 A It's the time duration.

5 Q I guess. I mean, it's sequenced one, two, three,
6 four, five, would be five.

7 A Yeah. Well, I'm looking at this column that says
8 *Duration*.

9 Q Yes, sir. I'm looking at the sequence, the first
10 one.

11 A Is that by -- oh, sequence? Yeah. Yeah, okay.

12 Q Okay. And then, it shows on the 23rd of August
13 2007, five months before he was hired, there were three
14 trigger pulls on that taser, right?

15 A One, two, three. Yeah.

16 Q Okay. And then, a couple of days there were two
17 trigger pulls, leading up to the time he got the trigger
18 [sic]. But for a total of sixteen trigger pulls before
19 he even got it, right?

20 A That is correct.

21 Q Okay. And are you aware that every time a taser is
22 tested to make sure the battery is working, that that
23 counts as a trigger pull?

24 A That is correct.

25 Q All right. And would you agree that, similarly to

1 making sure that there is a bullet in your chamber
2 before you go on duty as a police officer, that, if you
3 have a taser, you're supposed to check the battery?
4 Does that make sense?

5 A You check the battery along with the trigger pull.
6 That's correct.

7 Q Right, right.

8 A When you do that, the battery life shows up for
9 you.

10 Q Yeah. Okay. So, this doesn't mean that 1,421
11 times that people have been tased by this taser in a
12 six-year period, does it?

13 A No. Not all of them, no.

14 Q Okay. Which one of these reports shows that
15 someone was actually tased with the taser?

16 A All this report shows is the -- the number of times
17 it was -- the trigger was pulled and that duration of
18 time.

19 Q Right.

20 A From what I'm reading.

21 Q Okay.

22 A I --

23 Q So, nothing in this document can say, hey, taser
24 was used on a subject during the six-year period, right?
25 Nothing in this document can tell you, on such-and-such

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1 date, such-and-such time, this taser was used to -- was
2 deployed against a person or whoever, right?

3 A No.

4 Q Do you agree with that?

5 A I agree with that.

6 Q Okay. So, do you know the significance of this,
7 what the relevance of this is? This document?

8 A It was how many times the trigger was pulled on the
9 taser.

10 Q Okay. And the relevance of how many times the
11 trigger was pulled shows what?

12 A How many times he used it. I guess.

13 Q Okay.

14 A Whatever he did. Whenever he pulled the trigger.

15 Q That's all it shows.

16 A That's what it's showing.

17 Q Okay. It doesn't show that he used it on a certain
18 date, on a certain person, or anything like that?

19 A No, it just shows the date and time, but it doesn't
20 show the -- you can't tell the person.

21 Q Can you point to me on here a time and a date that
22 Larry Heyward used a taser on Complainant , or anybody
23 else for that matter?

24 A I can't show you that on this, no.

25 Q Okay. And this doesn't even mean that -- all of

1 these could be trigger pulls checking the battery,
2 correct? As far as we know? Do you agree with that?

3 A Sure.

4 MR. LEE: Okay. Thanks. That's all I have.

5 THE COURT: Re-direct, Mr. Hollen?

6 SOLICITOR HOLLEN: Court's indulgence, your Honor.

7 THE COURT: Okay.

8 CHIEF DEPUTY BILLY JARRELL

9 RE-DIRECT EXAMINATION

10 BY SOLICITOR HOLLEN:

11 Q Chief Jarrell, Mr. Lee asked you a lot of questions
12 about what would show, or if there was anything on that
13 document to show you when a person was tased. There's
14 nothing on that document, right?

15 A No.

16 Q Is there anything as far as policy for the
17 Sheriff's Office that someone is supposed to do when
18 they tase someone?

19 A When the Sheriff's Department tases somebody, they
20 need to fill out, or supposed to fill out, a use of
21 force report, along with an incident report.

22 Q Now, at my request, did you look and pull the use
23 of force reports that were written by Larry Heyward
24 during his tenure with the Sheriff's Office?

25 A Yes, I did.

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DIRECT - SLED AGENT JEFF CROFF

1 Q And how many did you find?

2 A None.

3 SOLICITOR HOLLEN: Thank you. No further
4 questions, your Honor.

5 THE COURT: Thank you.

6 MR. LEE: Beg the Court's indulgence.

7 THE COURT: Any followup on that, Mr. Lee?

8 MR. LEE: No, sir. Thank you.

9 THE COURT: All right. Chief, you can step down.
10 Thank you.

11 Mr. Thornton?

12 SOLICITOR THORNTON: Thank you, your Honor. State
13 calls Jeff Croft.

14 THE COURT: Mr. Croft, come forward, please, and be
15 sworn.

16 MADAM CLERK: Do you swear to tell the truth, the
17 whole truth, and nothing but the truth, so help you God?

18 SLED AGENT JEFF CROFT: Yes, ma'am, I do.

19 SLED AGENT JEFF CROFT

20 DIRECT EXAMINATION

21 BY SOLICITOR THORNTON:

22 Q Mr. Croft, who do you work for?

23 A South Carolina Law Enforcement Division.

24 Q And what do you do for them?

25 A I'm -- I work in investigative services in the

1 Lowcountry region.

2 Q So, would a correct title for you be agent?

3 A That's correct.

4 Q Agent Croft, were you working for SLED on or about
5 January the 4th of 2014?

6 A Yes, sir, I was.

7 Q And did you have occasion to be assigned to any
8 particular case, or asked to go investigate any
9 particular case?

10 A Yes, sir, I did.

11 Q And what case is that?

12 A The Larry Heyward case.

13 Q And was anyone with SLED, other than you, also sent
14 to look into this case?

15 A Yes, sir, they were.

16 Q And who is that?

17 A Billy Ethridge.

18 Q And who, actually, was the first person, for lack
19 of a better word, on the scene in this investigation?

20 A I was the first person on the scene.

21 Q Were you the case agent?

22 A I was not the lead case agent assigned at the time.

23 Q And who was that?

24 A Billy Ethridge.

25 Q All right, sir. Did you work with Agent Ethridge

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DIRECT - SLED AGENT JEFF CROFF

1 during this case?

2 A Yes, sir, I did.

3 Q And is that common for SLED to have more than one
4 agent assisting each other on a case?

5 A Yes, sir, it is.

6 Q And does Agent Ethridge still work for SLED?

7 A No, sir, he does not.

8 Q And once his employment with SLED was over, who was
9 assigned to take over the case through prosecution?

10 A The case was transferred to Lieutenant Harley,
11 which was mine and Billy's lieutenant, and I was
12 assigned for followup.

13 Q All right, sir. So, you were assigned by
14 Lieutenant Harley, who is your supervisor, before being
15 responsible for the case, once Agent Ethridge left. Is
16 that correct?

17 A That is correct, yes, sir.

18 SOLICITOR THORNTON: All right. Your Honor, I'm
19 sorry. Court's indulgence just for one moment.

20 THE COURT: All right.

21 BY SOLICITOR THORNTON:

22 Q Once you were dispatched out, at any time did you
23 have an opportunity to talk to Larry Heyward?

24 A Yes, sir, I did.

25 Q And can you tell me where that occurred.

1 A Mr. Heyward met myself and Agent Ethridge at the
2 Hampton County Substation, which is located in
3 Varnville, South Carolina.

4 ITEM IDENTIFIED AS *MIRANDA FORM*
5 DATED JANUARY 4, 2013
6 MARKED STATE'S EXHIBIT NUMBER 19
7 FOR IDENTIFICATION.

8 Q I'm going to ask you, Agent Croft, if you can
9 identify for me State's 19.

10 A Yes, sir, I can.

11 Q And what is State's -- I'm sorry, State's 19, for
12 identification. And what is State's Exhibit 19?

13 A State's Exhibit 19 is a SLED *Miranda Form*, which
14 was presented to Mr. Larry Heyward.

15 Q And can you briefly describe for the jury --
16 probably anybody that watches television knows what a
17 *Miranda* is, but what is the *Miranda Form*?

18 A It's an advisement of his rights, given under the
19 *Constitution*.

20 Q And did you go over that form with Mr. Heyward?

21 A Yes, sir, I did.

22 Q And is that a correct copy of the document that you
23 used on January the -- and I don't know if I asked you
24 that -- when did you talk to him?

25 A It would have been on January the 4th of 2013.

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1 Q So, was that the same day you were, for lack of a
2 better phrase, dispatched out to the scene?

3 A That is correct, yes, sir.

4 Q Is that a correct and accurate copy of the *Miranda*
5 *Form* you used with Larry Heyward on January the 4th of
6 2013?

7 A Yes, sir, it is.

8 Q And has it been altered or changed in any way?

9 A No, sir, it has not.

10 SOLICITOR THORNTON: Your Honor, at this time, I
11 ask that State's Exhibit 19 be moved into evidence.

12 MR. LEE: No objection.

13 THE COURT: Without objection, 19 is in evidence.
14 Thank you.

15 ITEM IDENTIFIED AS *MIRANDA* FORM
16 MARKED STATE'S EXHIBIT NUMBER 19
17 ADMITTED AS EVIDENCE.

18 BY SOLICITOR THORNTON:

19 Q Agent Croft, what are the -- would you please go
20 over with the jury what the rights are that you read, or
21 that were read to Larry Heyward in your presence, and
22 what occurred at that time.

23 A Yes, sir, I can. It's a *Miranda Rights Form*. It's
24 got the SLED seal on the top of the page. The place is
25 Varnville Substation. The date is 1/4 of 2013. The

1 time is 2342, or 11:42 p.m. It says:

2 Before we ask you questions, you must
3 understand your rights. You have the right
4 to remain silent. Anything you say can be
5 used in court as evidence against you. You
6 are entitled to talk to a lawyer now, and
7 have him present now, or at any time during
8 questioning. If you cannot afford an attorney,
9 one will be appointed for you, without cost.

10 If you decide to answer questions now
11 without a lawyer present, you will still
12 have the right to stop answering at any time.
13 You also have the right to stop answering at
14 any time until you talk to a lawyer.

15 It says:

16 Do you understand these rights, and do
17 you wish to talk to us at this time?

18 Waiver of all -- Waiver of Rights. I
19 have read this statement of my rights. I
20 understand what my rights are. I am willing
21 to talk now without a lawyer present.

22 I understand and know what I am doing.

23 No promises or threats have been made to
24 me. No pressure or coercion of any kind
25 has been used against me.

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1 It's signed by Mr. Larry Heyward, and it's
2 witnessed by myself and Ethridge.

3 Q All right. And let me ask you a question. Are
4 there spaces, or a space to initial as to each of those
5 rights?

6 A Yes, sir, there is.

7 Q In your presence, did Larry Heyward initial each
8 one of those rights?

9 A Yes, sir, he did.

10 Q And did he sign his waiver, indicating he wished to
11 speak with you?

12 A Yes, sir, he did.

13 Q And did he, in fact, talk to you in reference to
14 this case?

15 A Yes, sir, he did.

16 Q Now, Agent Croft, when you were talking with him,
17 did you make any threats towards him of any kind?

18 A No, sir.

19 Q Did anybody else in your presence?

20 A No, sir, they did not.

21 Q Did you make him any promises of leniency in order
22 to get him to talk to you?

23 A No, sir, we did not.

24 Q And did anyone else in your presence?

25 A No, sir.

1 Q Did he appear to you to be under the influence of
2 any alcohol or drugs, or any other substance that
3 rendered him unable to understand what you were saying?

4 A No, sir, he did not.

5 Q Was he able to talk to you and ask and/or answer
6 questions during this process?

7 A Yes, sir, he was.

8 Q Did he appear to have any impairment to his
9 faculties whatsoever?

10 A No, sir, he did not.

11 Q Can you tell me what the conversation was.

12 A Yes, sir. On January the 4th of 2013, Mr. Heyward
13 met us at the Varnville Substation in Hampton County.
14 He was advised of the *Miranda* rights, which we've gone
15 through. Following the advisement of the *Miranda*
16 rights, he was advised that there had been some
17 allegations made against him concerning a student at
18 Middle School. We described, somewhat, the
19 allegations, but no names were given.

20 At that point, Mr. Heyward advised us that he was
21 happily married; that he had several kids and several
22 grandchildren. He also advised us that he was retired
23 from the Army National Guard, and he had been employed
24 with the Hampton County Sheriff's Office for
25 approximately six years. Five of those years, he said

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1 he was the school resource officer at Hampton County
2 Middle School.

3 He said he had never had -- never touched a child
4 in an inappropriate or sexual manner. He also said that
5 he had never had a sexual encounter with any student or
6 child at the Middle School. He said that there
7 was a number of kids that may be a little upset with him
8 because of his duties as a resource officer that may
9 bring these allegations our for -- against him. At that
10 point, he did name the name of Complainant as being
11 one of the students that may bring these allegations.

12 He said in 2010, he had received a call from Chief
13 White with the Estill Police Department, stating that he
14 had information concerning a young man named Complainant
15 Complainant that -- that had assaulted another -- or
16 molested another young man in the bathroom at
17 Middle School. With that information, he said that he
18 and Assistant Principal Cecil Jenkins had investigated
19 the incident.

20 Q Let me stop you real quick. As part of the
21 investigation in this case, did you attempt to pull any
22 reports to corroborate an investigation into Complainant
23 Complainant of that sort?

24 A Yes, sir, we did.

25 Q And did you find anything?

1 A No, sir, we did not.

2 Q Did you speak to Cecil Jenkins?

3 A Yes, sir, we did.

4 Q And I'm sorry, as part of the investigation, did
5 SLED speak to Cecil Jenkins?

6 A Yes, sir.

7 Q And did he have any information or recollection of
8 an investigation of Complainant ?

9 A He had no recollection.

10 Q All right. Please continue.

11 A At that time, he said that he and Complainant had had a
12 number of altercations, verbal altercations in the
13 hallways. He said had had actually dry-tased Mr. --
14 or I'm sorry -- dry-tased Complainant on his buttocks area,
15 on --

16 Q And let me stop you for a second, because I want to
17 make sure everybody understands what that means. And I
18 probably should have asked you this earlier. How long
19 have you been with SLED?

20 A I've been with SLED for four years now.

21 Q Did you have a law enforcement position before
22 that?

23 A Yes, sir, I did.

24 Q And where did you work?

25 A I worked for Barnwell County Sheriff's Office.

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1 Q And how long were you there?

2 A I was there eight years.

3 Q All right. Are you familiar with what would be a
4 standard issue taser?

5 A Yes, sir, I am.

6 Q All right. And not asking you to be an expert or
7 asking an opinion, but if you dry-tase someone, do you
8 understand what that means to you as an officer who has
9 used a taser?

10 A Yes, sir, I do.

11 Q All right. And could you explain to the jury what
12 the difference is between just tasing someone and dry-
13 tasing, the mechanics of it.

14 A Yes, sir. The taser comes with a cartridge on the
15 end. There's different colored cartridge, blast doors,
16 which indicate the probe or the wire length of the
17 probes. When you dry-tase someone, you actually remove
18 that cartridge from the end. You don't fire the
19 cartridge which shoots out the -- shoots out the prongs.
20 On the end of the taser, there is metal conductors,
21 which fire the cartridge. Those metal conductors
22 actually will produce a shock. You get the same voltage
23 from the taser on a dry stun as you do with the -- with
24 the probes.

25 Q The difference is that the probes you talk about

1 are not shot into you.

2 A The difference is, you don't get the neuro-muscular
3 effect from the probes. It's more of a contact or pain
4 compliance when you dry-stun someone than it is --

5 Q And there's no probes discharged. Is that also
6 correct?

7 A There is no probes discharged.

8 Q Okay. And I'm sorry for interrupting you. So, he,
9 Larry Heyward, told you that he did dry-stun Complainant on,
10 I believe you said, the buttocks area I think is where
11 you stopped. I put words in your mouth, but did he say
12 one time, or did he say on a number of occasions?

13 A Several occasions.

14 Q All right. Please continue.

15 A He also said that he had paddled Complainant at -- at
16 the school. He said he had the -- Ms. Johnson's --
17 which, the mother had given him permission to do. He
18 said on one occasion he may have grab -- touched Complainant
19 inappropriately during one of the paddlings, but that
20 was a mistake.

21 At that point, myself and Major Ethridge played a
22 recorded video of two males.

23 Q Let me stop you. A video?

24 A I'm sorry, I'm sorry. A recording, audio, audio.
25 I apologize.

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1 Q And is the recorded audio that you're talking about
2 what's already been introduced into evidence as State's
3 Exhibit Number 1, the phone call between what's been
4 testified to as Larry Heyward and Complainant ?

5 A Yes, sir, it is.

6 Q All right. Go ahead.

7 A We played the audio and allowed Mr. Heyward to
8 listen to the audio. Following the end of the audio, or
9 the completion of the audio being played, Mr. Heyward
10 asked who is that supposed to be. He was then informed
11 that one of the male voices that was heard on the -- on
12 the audio was that of Complainant . He looked up at
13 us and says, I guess you think the other one is me. At
14 that point, nothing else was said 'til when he --

15 Q And let me stop you real quick. When he said that,
16 did you respond, or did Agent Ethridge? Did anybody
17 respond to it?

18 A No one else -- no one responded to it.

19 Q All right. What, if anything, did he say next?

20 A He stopped. He said, I'm not going to admit
21 anything, and that -- and requested to speak to Sheriff
22 Smalls.

23 Q All right. At that point, now, was Sheriff --
24 Sheriff Smalls, you mean Sheriff Smalls, Hampton County?

25 A Yes, sir. I apologize.

1 Q And had he, had Sheriff Smalls, been in the room up
2 to that point?

3 A No, sir, he was not.

4 Q Who was in the room with you all, or who all was in
5 the room?

6 A It was myself, Mr. Heyward, and Agent Ethridge.

7 Q Just going back for a minute, at any time, did Mr.
8 Heyward say whether or not Complainant had been to his home
9 or not?

10 A He did say that he -- Complainant had not been to his --
11 ever been to his home. He did say that he had taken a
12 number of kids to his house. He attempted to mentor
13 children. He had taken kids to his house to cut grass;
14 I think disassemble a trailer. Following saying that,
15 he advised that, on several occasions, he had -- during
16 -- while taking Complainant home, he remembered one occasion
17 that he had stopped by his house with Complainant, while
18 taking him home. He had stopped by his house to feed
19 his dog.

20 Q As part of your job, Agent Croft, did you conduct a
21 consent search of Larry Heyward's office at the old -- I
22 believe it's the old Middle School?

23 A Yes, sir, I did.

24 Q And I'm going to show you, obviously, what's
25 already into evidence as State's 3. Is that the

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1 building that you did the search on?

2 A Yes, sir, it is.

3 Q All right. And State's 5-A and 5-B, are those
4 photographs of the offices that you searched?

5 A Yes, sir, they are. Or the office that I searched.

6 Q Or excuse me, the office that you searched. I
7 apologize. And the jury has already seen these.

8 ITEMS IDENTIFIED AS PHOTOGRAPHS

9 MARKED STATE'S EXHIBIT NUMBERS

10 20, 22, 23, 24, 25, AND 26

11 FOR IDENTIFICATION.

12 Q I'm going to hand you what's been marked for
13 identification, Agent Croft, as State's Exhibits 20, 22,
14 23, 24, 25, and 26. And we'll just go through them one
15 at a time.

16 MR. LEE: Your Honor, I don't mean to interrupt,
17 but just for the record, I renew my objection to those.

18 THE COURT: Thank you.

19 MR. LEE: I didn't want to interrupt.

20 THE COURT: The record should reflect that, once
21 again, that these, once they have been authenticated,
22 will come in, over objection of defense counsel.

23 MR. LEE: Yes, sir. Thank you.

24 THE COURT: Thank you.

25 BY SOLICITOR THORNTON:

1 Q I'm going to hand you what's -- and I'll go through
2 the numbers again. It's State's Exhibit for
3 identification 22, 23, 24, 25, and 26. If you would,
4 just as a group for these photographs, do you recognize
5 them?

6 A Yes, sir, I do.

7 Q And what, as a collection, what are those
8 photographs of?

9 A They're photographs of the interior of Mr.
10 Heyward's office at the Middle School.

11 Q Is that the old middle school that we've heard
12 testimony about?

13 A Yes, sir, it is.

14 Q And do you recall the date on which you searched
15 this?

16 A It would have been on January the 5th of 2013.

17 Q So, would that have been the day after these
18 allegations were made?

19 A Yes, sir, it would.

20 Q But that would be some time, would it not, after
21 Mr. Heyward and the rest of the people had moved to the
22 new middle school? Is that correct?

23 A Yes, sir.

24 Q All right. If you would, go through -- well, first
25 of all, are those true and accurate depictions of how

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1 the office appeared on the day you searched it on
2 January the 5th of 2013?

3 A Yes, sir, they are.

4 Q Have they been altered or changed in any way?

5 A No, sir, they have not.

6 SOLICITOR THORNTON: Your Honor, I would ask that
7 State's 20, 22, 23, 24, 25, and 26 be entered into
8 evidence.

9 THE COURT: Having been authenticated, they're in
10 evidence now, over objection of defense counsel.

11 MR. LEE: Thank you, your Honor.

12 ITEM IDENTIFIED AS PHOTOGRAPHS

13 MARKED STATE'S EXHIBIT NUMBERS

14 20, 22, 23, 24, 25, AND 26

15 ADMITTED AS EVIDENCE.

16 BY SOLICITOR THORNTON:

17 Q Would you take them one at a time, and please, for
18 the record, identify the photograph, and just describe
19 what it is.

20 A Exhibit Number 20 is going to be a overall picture
21 of the interior of Mr. Heyward's office, which would
22 show an open door. It would be on the right-hand side
23 of -- of the photograph leading to a bathroom.

24 Q Agent Croft, if I could, if you would just hand me
25 the whole stack, we'll do this a little bit differently.

1 I apologize. It probably will be easier for the jury to
2 see this way. All right. What you've just described is
3 his office with the door on the right-hand side, leading
4 to a bathroom. Is that correct?

5 A That is correct, yes, sir.

6 Q All right. I'm going to hand you what's been
7 marked as State's Exhibit 22, or has been entered into
8 evidence as State's Exhibit 22, and ask you to describe
9 that.

10 A This is some -- a paper note or letter which has
11 some names on it. One of the names on it is that of
12 Complainant , with a telephone number. It was located
13 in Mr. Heyward's desk.

14 Q All right. The next one is 23, Exhibit 23. Would
15 you describe that for me.

16 A Yes, sir. This is a picture of the top of Mr.
17 Heyward's desk. It's got a bottle of Ranch dressing,
18 and behind that bottle of Ranch dressing is a bottle of
19 baby oil.

20 Q Exhibit 24.

21 A Exhibit 24 is going to be the pull-out drawer, the
22 top drawer, leg drawer, of Mr. Heyward's desk. In the
23 picture depicts a number of identification cards with
24 the name of Larry Heyward.

25 Q 25.

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1 A This is another picture of a pull-out drawer on Mr.
2 Larry Heyward's desk at old Middle School. In
3 the picture, there's paperwork, brochures. And on the
4 right-hand side appears to be two condoms.

5 Q And 26.

6 A This is a closer picture of the -- of a red-in-
7 color Lifestyle condom and a Trojan condom, which was
8 located within the desk drawer.

9 SOLICITOR THORNTON: Court's indulgence, please,
10 your Honor.

11 THE COURT: All right.

12 SOLICITOR THORNTON: Your Honor, I don't have any
13 further questions at this time. Agent Croft, please
14 answer any questions Mr. Lee has.

15 A Thank you, sir.

16 THE COURT: Mr. Lee, you can cross-examine.

17 MR. LEE: Thank you, your Honor.

18 SLED AGENT JEFF CROFT

19 CROSS-EXAMINATION

20 BY MR. LEE:

21 Q I joke around with all my SLED buddies that all of
22 you all are special agents. Is that true, you all are
23 special agents?

24 A That's our title.

25 Q Okay. All right, Agent Croft, good morning. How

1 are you today?

2 A I'm doing well, sir.

3 Q Good. You've been here, we've heard some pretty
4 graphic testimony and stuff like that amongst all of us.
5 So, this should be fine. The Solicitor said Ethridge
6 left SLED. Tell us what really happened.

7 A I don't know the details behind his departure.

8 Q Are you aware he got fired for cause?

9 A I know he was -- he was terminated.

10 Q For conduct unbecoming.

11 A I'm not sure what the facts are surrounding his
12 departure.

13 STIPULATION REGARDING BILLY ETHRIDGE:

14 SOLICITOR THORNTON: Your Honor, we'll -- I mean,
15 this agent obviously wouldn't have knowledge of that.
16 It would be in internal SLED matter. But to save time,
17 we'll stipulate that the agent in question, Mr.
18 Ethridge, was terminated for conduct unbecoming, but not
19 misconduct or anything criminal. I believe Mr. Lee has
20 been provided that information.

21 SLED AGENT JEFF CROFT

22 CONTINUE CROSS-EXAMINATION

23 BY MR. LEE:

24 Q Do you know when that was? I think August 23rd,
25 maybe, of 2013?

1 A I couldn't tell you the exact date of his
2 departure, sir.

3 MR. LEE: Will you stipulate as to the date of his
4 departure?

5 SOLICITOR THORNTON: Absolutely. Again, he
6 wouldn't have access to that. So, save us another
7 witness, we'll stipulate that that was the date of
8 departure.

9 THE COURT: Okay. August the 13th?

10 SOLICITOR THORNTON: Yes, sir. I believe that's
11 correct.

12 THE COURT: Okay. Thank you.

13 SOLICITOR THORNTON: It is certainly close enough,
14 Judge.

15 THE COURT: All right.

16 MR. LEE: August 21, 2013, that's based on the
17 letter.

18 THE COURT: Thank you.

19 BY MR. LEE:

20 Q And the reason that that's significant, that date's
21 important, is because you went from assisting in an
22 investigation to, I believe, what you all call the lead
23 case officer or lead investigator. Is that right? You
24 kind of got moved? Is that right?

25 A At that time, yes, sir.

1 Q Okay. And then, from that, from August 2013,
2 that's been your designation on this case, correct?

3 A Yes, sir.

4 Q Okay. So, as you, walking into that, you have
5 obviously gone through the file and reviewed it, and
6 you're familiar with it, I assume?

7 A I was familiar with it through my assisting --
8 assistance of Ethridge.

9 Q Okay.

10 A I have since gone through the file, yes, sir.

11 Q Okay. So, you're aware of such things that Agent
12 Ethridge referred Complainant to what's called Hope
13 Haven for a forensic interview?

14 A Yes, sir, I am.

15 Q And would you agree, or I assume you agree, that
16 any time you have a witness or a victim or somebody
17 testifying in court, that credibility is an important
18 thing. Would you agree with that?

19 A Yes, sir.

20 Q And as part of your involvement in this case
21 throughout, did you or someone from SLED obtain the
22 discipline records for Complainant from the school?

23 A Yes, sir.

24 Q Okay. And are you familiar with those?

25 A Yes, sir, I am.

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CROSS - SLED AGENT JEFF CROFT

1 Q You got a copy of them up there?

2 A Yes, sir, I do.

3 Q Okay. I'm not going through all this stuff, but we
4 agree we'll go through a couple of them. So, can you
5 pull that out real quick.

6 A I got it.

7 Q Okay. Can you look at November 13, 2009. See
8 that?

9 A Yes, sir, I do.

10 Q It says, *disrupting education*. Can you read what
11 the description was, as far as what his discipline was
12 for?

13 A November 13, 2009. It says:

14 *Unknown, disruptive -- disrupting*
15 *education. Complainant used something in his*
16 *pants in order to get up and distract the*
17 *other children.*

18 Q Okay. So, that's November of 2009.

19 A Yes, sir.

20 Q Okay. And Complainant's allegation is that, and what's
21 contained in the indictment is after that, right? I
22 mean, August of 2010 --

23 A Yes, sir.

24 Q -- is that what the indictment says? Okay. So,
25 prior to that. Also, prior to that, in March 9th of

1 2010, he was referred. Can you read that, please. It's
2 at the very bottom of Page 1, Agent.

3 A Under *disorder*?

4 Q Um-hmm.

5 A Complainant *continues to say rumors about teachers.*

6 *Conference with Ms. -- Mr. Jenkins.*

7 Q So, he was referred to disciplinary because he was
8 saying rumors about teachers.

9 A According to this disciplinary paper, yes, sir.

10 Q Okay. And again, that's 2010.

11 A Yes, sir.

12 Q Okay. February 14, 2011. Ironically, Valentine's
13 Day.

14 A Okay, sir.

15 Q Can you read the first sentence as to what he was
16 referred for.

17 A *Repeatedly used sexual language and disrupt*
18 *class. Put hot sauce on his penis.*

19 And it's got:

20 *S/H/ -- it's good. Repeatedly refused*
21 *to stop talking. Disrupting other students,*
22 *and refused to listen to the teacher or*
23 *classmates.*

24 Q Okay.

25 A It was, overnight suspension, call parent, went on

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1 *home visit, will call back.* And that's Mrs. Seabrooks.

2 Q And that thing that you read was in quotes, so
3 that's what he was saying, correct?

4 A I didn't prepare this document. I just --

5 Q That's a good point. All right. The way that it's
6 written it's in quotes? That's him saying that, *put hot*
7 *sauce.*

8 A It is in quotation marks, yes, sir.

9 Q Quotation marks. Put hot sauce on his penis,
10 talking about s/h, dot, dot. I guess he wanted to keep
11 that out of there. It's good. End quote. Okay.
12 That's what he was -- that's what it says he was in
13 trouble for?

14 A That is correct, yes, sir.

15 Q Now, let me ask you a little bit, Agent, about
16 SLED. How long have you worked there?

17 A I've been there a little over four years now.

18 Q Okay. Where did you work before that?

19 A I worked for the Barnwell County Sheriff's Office.

20 Q I don't know if the jury knows about it or not, but
21 can you tell us -- let me ask you a little bit about
22 SLED. It's the South Carolina Law Enforcement Division.
23 It's statewide, right?

24 A Yes, sir.

25 Q Okay. And I don't know if you all call them

1 divisions or departments or whatever, but wouldn't you
2 agree that there's lots of different types of law
3 enforcement that work at SLED? People that do a lot of
4 different jobs?

5 A Yes, sir. There are a lot of different job duties
6 at SLED, yes, sir.

7 Q Okay. So, for example, you all have -- do you
8 have, like, a dive team? Do you know that?

9 A Yes, sir, we do.

10 Q Okay. You have scientists that work there, right?

11 A Yes, sir, we do.

12 Q Chemists?

13 A Yes, sir, we do.

14 Q They do drug analysis, right?

15 A Yes, sir, they do.

16 Q DNA, fingerprints.

17 A Yes, sir.

18 Q Ballistics, gunshot residue.

19 A Yes, sir.

20 Q Kind of a one-stop shop. You all can pretty much
21 do everything, and take stuff from throughout the state.
22 That's kind of where stuff is sent to, correct?

23 A That's correct, yes, sir.

24 Q And obviously, there's computer experts up there
25 who go through computers and that sort of thing, right?

1 A Yes, sir.

2 Q Okay. So, particularly, when other jurisdictions
3 have things, a lot of times the evidence gets sent to
4 SLED because of the expertise and the resources at SLED
5 for looking at evidence and having the ability to
6 investigate those things, right?

7 A That's correct, yes, sir.

8 Q And then, obviously, you all have a lot of boots on
9 the ground, like you and Ethridge -- well, used to have
10 Ethridge. You, Lieutenant Harley, you have a lot of,
11 actually, investigators that are going out and doing
12 investigations as well, right?

13 A Yes, sir, we do.

14 Q Okay. As part of -- well, let me see. There was a
15 part in the thing that you were reading when Mr. Heyward
16 was talking to you. I'm going to talk about that in a
17 minute. Part of it was suggested that Mr. Heyward had
18 said that, I guess, maybe the first time that he -- or
19 he saw Complainant because he had to interview him about
20 another case. Is that -- didn't that come up on --

21 A That was one encounter which he had with Complainant,
22 which he told us of, yes, sir.

23 Q Okay. Okay. But then, didn't you say that that
24 didn't pan out, or that didn't -- you didn't see
25 something about that, or what?

1 A There was no evidence to suggest -- attained
2 throughout the investigation to -- to -- to verify that
3 that --

4 Q Okay. Are you familiar with a statement that
5 Complainant gave in this case on January 4, 2013?

6 A Yes, sir, I am.

7 Q Okay. Do you have it up there handy, or do you
8 need me to let you look at mine?

9 A What attachment is it? It'd be easier for me.
10 Yes, sir.

11 Q Okay. That's a statement from Mr. Complainant,
12 Complainant and it talks about the same thing; does it not?
13 Or I could read you the first sentence, and you tell me
14 whether we're talking about the same thing that Larry
15 Heyward talked to you on the night that you talked to
16 him.

17 A It discusses an incident which took place with his
18 cousin, not him.

19 Q Right. And Larry Heyward had said the same thing.
20 He talked to him about a case with his cousin, right?

21 A I don't recall him saying his cousin.

22 Q Okay. But what this says, from Complainant, is
23 that:

24 *It was my sixth grade year. Minor*

25 *Minor was charged for raping his cousin.*

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1 They interviewed him and asked him did he
2 interact with any student. He stated my name --
3 meaning Complainant's --

4 -- at the

5 I guess --

6 -- time I was attending Hampton School.

7 So, when I got back to , I found
8 out what happened. So, Officer Heyward
9 interviewed me, and asked me did I have any
10 interaction with Minor .

11 A Okay.

12 Q Okay. Isn't that what we're talking about?

13 A I said there was no documentation -- documentation
14 prepared by Mr. Heyward or any of the investigating
15 officers.

16 Q Were you suggesting that he was not telling you the
17 truth about talking to Complainant ?

18 A I am not, no, sir.

19 Q Okay. Because even looking at this, even Complainant
20 admits that he questioned him about it, right?

21 A Yes, sir.

22 Q Okay. So, their two stories are the same, right?
23 That Larry talked to Complainant about some case, right?

24 A Yes, sir.

25 Q Okay.

1 A According to Complainant's statement, yes, sir.

2 Q Okay. And I may have misinterpreted. I thought
3 that you were suggesting that --

4 A No, sir.

5 Q -- that story there was made up.

6 A No, sir.

7 Q Okay. All right. Well, I've just wasted five
8 minutes of our life we'll never get back, but I just
9 wanted to clear that up. All right.

10 So, in the statement that Larry gave you, you're
11 saying that you talked -- well, first of all, how long
12 -- well, the conversation that you had with him that
13 night, it was about two hours, right?

14 A Approximately two hours, yes, sir.

15 Q Okay. And you read through all the stuff. He
16 didn't have to talk to you, but he did. And you all
17 talked to him for two hours, right?

18 A Yes, sir. It was a two-hour span, yes, sir.

19 Q From like, 11:30 at night until 1:30 in the morning
20 or so, right? Okay.

21 A It was 1:45, is when the interview completed.

22 Q When did it start?

23 A According to --

24 Q 11:37, I think?

25 A The *Miranda* was given at 11:42.

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CROSS - SLED AGENT JEFF CROFT

1 Q Okay. So, about two hours?

2 A Yes, sir.

3 Q And you read through the *Miranda*, he didn't have to
4 talk to you, but he did. And he could have gone and
5 found a lawyer right then; he didn't do that, right?

6 A That's correct.

7 Q During the time that you were talking to him, I
8 mean, were you yelling at him or throwing things at him
9 or anything like that?

10 A Absolutely not.

11 Q Okay. You were being considerate, polite?

12 A Yes, sir, I was.

13 Q And he was, too?

14 A Yes, sir, he was.

15 Q There were no fisticuffs or fights or anything in
16 there, were there?

17 A No, sir, there was not.

18 Q Okay. Did he seem to be calm, cool, and collected?

19 A Yes, sir, he did.

20 Q Okay. Did he yell at you or threaten you or your
21 job or call your boss or anything like that?

22 A No, sir, he did not.

23 Q Okay. Kind of laid back. He was kind of laid back
24 and calm?

25 A Yes, sir.

1 Q All right. And so, for two hours, you all had kind
2 of a little Q-and-A talk. And then, at almost the end
3 of the two hours, you pull out -- or maybe Ethridge, I
4 don't know -- pull out this recording, right?

5 A That is correct.

6 Q Okay. And play it.

7 A That's correct.

8 Q And so, would you agree at that time that the tenor
9 of the investigation changed a little bit?

10 A Can you explain what you're --

11 Q Well, you were confronting him with something that
12 you believed was evidence, right?

13 A Yes, sir.

14 Q Okay. And you, once you played that, you kind of
15 -- did you say, hey, why don't you just admit it? Why
16 don't you just come clean; why don't you just admit it,
17 anything like that?

18 A We advised him that we were going to play a tape.

19 Q Yeah.

20 A Of a recorded --

21 Q Right.

22 A -- conversation.

23 Q Right.

24 A We never got the opportunity to go any further --

25 Q Um-hmm.

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CROSS - SLED AGENT JEFF CROFT

1 A -- following the last comments that he made.

2 Q Was there any type of request from you, hey, why
3 don't you just admit something?

4 A Again, we never got the opportunity to go any
5 further.

6 Q Okay.

7 A With the questioning.

8 Q He questioned, I think he said to you, do you think
9 that's me on that tape, right?

10 A He did say that.

11 Q Um-hmm.

12 A And at that point --

13 Q Things changed?

14 A -- is when he stopped. Said I'm not going to admit
15 anything. And we stopped the interview at that
16 particular time.

17 Q And that's when he asked to talk to Sheriff Smalls?

18 A He asked to speak to Sheriff Smalls, yes, sir.

19 Q And at that point, did his demeanor seem to change
20 when he quit talking and said I want to talk to Sheriff
21 Smalls?

22 A Following hearing the recording, that's when his
23 demeanor changed.

24 Q Okay. And he had even -- and you say that you all
25 hadn't even told him who the supposed complainant was,

1 right?

2 A We did not name any names.

3 Q Okay. And but, he provided -- he said, look, I
4 discipline these kids at school, and there's some of --
5 some of them saying this; I've probably got some names
6 for you that may be upset at me, right?

7 A He did supply a couple names, yes, sir.

8 Q And so, he said, hey, that Complainant probably
9 would be somebody that would say something, because he's
10 upset at me.

11 A He did provide the name of Complainant .

12 Q And did he, in fact, tell you that one or more of
13 the reasons that Complainant may be upset is because of some
14 discipline in the hall, I think the hallway with a dry-
15 tase?

16 A That is correct, yes, sir.

17 Q Okay. Did you ever talk to the assistant principal
18 and ask her whether or not at that point Complainant said,
19 Heyward, I'm going to get you?

20 A Which assistant principal are you referring to?
21 I'm sorry.

22 Q I think her name's Mary Greene Williams.

23 A Sarah Greene.

24 Q Sarah Greene Williams. Did you ever talk to her as
25 part of your investigation?

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1 A I never spoke to Ms. Williams.

2 Q Okay. Okay. Did you ever follow up on any threat
3 that may have been made like that, or simply --

4 A There was nothing discovered during --

5 Q Yeah.

6 A -- the course of the investigation.

7 Q All right. Now, one of the places that we talked
8 about -- Complainant talked about was Mr. Heyward's
9 grandfather's abandoned house. Is that right?

10 A Mr. Heyward's deceased father's residence.

11 Q Deceased father.

12 A Yes, sir.

13 Q Okay. As part of your investigation, did you ever
14 go there?

15 A We did not obtain a search warrant, no, sir.

16 Q Okay. So, that would be a no?

17 A That would be a no.

18 Q Okay. Did you ever take any pictures of the house?

19 A No, sir.

20 Q Did you ever do any DNA swabs or take fingerprints
21 inside the house?

22 A No, sir.

23 Q Okay. And it's my understanding that this was an
24 abandoned house? I mean, nobody was living there?

25 A It still had power to it.

1 Q It still had power to it. Okay. And in order to
2 get a search warrant, you would have gone -- had to go
3 to a judge and get them to sign something saying we
4 believe that there's probable cause that there may be
5 items of interest; can we go in the house, right?

6 A That is correct.

7 Q And you probably don't do this every day, but
8 you've done plenty of search warrants; have you not?

9 A Yes, sir, I have.

10 Q And all you've got to have is probable cause. It's
11 a one-sided process, and usually pretty successful at
12 getting search warrants, right?

13 A You have to validate your affidavits with probable
14 cause. Yes, sir.

15 Q Right. All right. Now, hypothetically, -- well,
16 do you do any cases involving DNA?

17 A I'm sorry?

18 Q Do you do any cases involving DNA?

19 A Such as? I don't --

20 Q Do any of your cases involve DNA where you have to
21 get a DNA sample or have a DNA swab? You don't take DNA
22 swabs at crime scenes.

23 A I don't personally take --

24 Q Does SLED have somebody that does it?

25 A Yes, they do.

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CROSS - SLED AGENT JEFF CROFT

1 Q Okay. And when you take DNA swabs, they can get
2 DNA off a lot of stuff nowadays, even the skin and
3 everything else; can they not?

4 SOLICITOR THORNTON: Objection, your Honor. I
5 believe he just testified he doesn't even collect DNA.
6 I think it's kind of beyond the scope of what his
7 knowledge would be.

8 THE COURT: Well, if he, as an agent, now in law
9 enforcement now for some time, if he knows these general
10 questions that Mr. Lee is -- he's certainly not an
11 expert, and we're not trying to get that sort of --

12 MR. LEE: Right, not trying to do that.

13 THE COURT: But he's entitled to answer these
14 general questions. I'll let him do it.

15 MR. LEE: I'll try to be more direct.

16 BY MR. LEE:

17 Q Would it be easy to get any DNA, specifically
18 semen, off of a blow-up air mattress? Is that a good
19 surface for which to get DNA off of?

20 A That could be a good surface to get DNA off of,
21 yes, sir.

22 Q It would be much more preferable than a tree or a
23 leaf or some carpet or something like that, right?

24 A Again, it depends on a lot of circumstances.

25 Q But you all didn't get a search warrant and you

1 didn't go to Larry's deceased father's home?

2 A No, sir, we did not.

3 Q Okay. Did you go to Larry's home?

4 A No, sir, we did not.

5 Q Okay. And that's, I guess, another place that
6 there was allegation where there was sex hundreds of
7 times. Did you go to his home?

8 A No, sir, we did not.

9 Q Did you do any DNA testing or try to gather any
10 samples in the old School, middle school?

11 A No, sir, we did not.

12 Q New Middle School?

13 A No, sir, we did not.

14 Q Okay. And these pictures that you talked about and
15 let into evidence were taken January 5th, I think, 2013?

16 A Yes, sir.

17 Q The day after Larry was arrested?

18 A That's correct.

19 Q Okay. And as part of your investigation, you
20 realize that there's an old Middle School and a
21 new Middle School, right?

22 A That is correct.

23 Q Okay. And I believe that there's been testimony
24 that, right around Labor Day, September of 2012, is when
25 the transition was made from old school to new school,

1 right?

2 A Somewhere in that neighborhood, yes, sir.

3 Q Does that sound right? Okay.

4 A Yes, sir.

5 Q The pictures that you introduced, or helped
6 introduce, were from the old school.

7 A That is --

8 Q Right?

9 A That is correct.

10 Q So, they were taken some four months after the last
11 day that the old school had been used as a middle
12 school?

13 A That is correct.

14 Q Yeah. Did you do any investigation to look into
15 that four-month period, that September-to-January
16 period, did you do any investigation? Did you talk to
17 any of these principals that we've heard or school
18 administrators about what was going on at old
19 Middle School between September and January of 2013?

20 A Yes, sir, we did.

21 Q You did? Who had access to it?

22 A Different ones moved in different materials from
23 their offices.

24 Q Um-hmm.

25 A Transferring to the new school.

1 Q Okay. Are you aware there was adult ed going on
2 and night school going on at the old School
3 during that time?

4 A I -- I can't answer that.

5 Q If you didn't investigate that. Okay. Do you know
6 who had access to that room where those pictures were
7 taken, or that desk, between September and January 2013?

8 A I know what the administration gave us. Yes, sir.

9 Q Okay. But you said they were -- were working on it
10 or something, doing some construction, moving -- had
11 movers there, or what?

12 A Different teachers, workers, were moving their --
13 had moved their belongings. All of the belongings had
14 not been moved.

15 Q Okay. And you don't know whether or not they were
16 actually having some adult ed or some night classes
17 there?

18 A I can't answer that. No, sir.

19 Q You don't know?

20 A No, sir.

21 Q There was some testimony yesterday by Complainant ,
22 something about using red condoms. Did you hear that?

23 A Yes, sir, I heard him testify.

24 Q Is that the first time you heard that?

25 A I'm sorry?

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1 Q Is that the first time you heard about the red
2 condoms?

3 A I had never heard red.

4 Q Okay. So, in three-and-a-half years -- more than
5 three-and-a-half years from when he was arrested and
6 this happened, Complainant has never told you, as a
7 investigator, and then, as a lead investigator, he has
8 never said anything that you know of, to you or anybody
9 else, about the color red condom?

10 A No, sir.

11 Q Okay. That came up yesterday.

12 A That's the first time I heard it.

13 Q Okay. Do you know if Complainant has viewed the
14 photos that you put into evidence, that include a condom
15 with a red wrapper?

16 A I don't --

17 Q You don't know?

18 A No, sir.

19 Q Okay. Do you know if Complainant was debriefed
20 prior to his testimony by the Solicitor's Office or any
21 law enforcement officers?

22 A I don't -- I did not debrief him, no, sir.

23 Q Did you hear him testify yesterday where he
24 identified a disc he said he had listened to earlier
25 with the solicitor, and he knew he'd done it because he

1 put his initials on it?

2 A Yes, sir, I did.

3 Q Would that suggest to you that he had met with the
4 Solicitor's Office or investigators prior to his
5 testimony?

6 A Yes, sir.

7 MR. LEE: Okay. That's all I have, your Honor.

8 THE COURT: Thank you. Re-direct?

9 SOLICITOR THORNTON: Briefly, your Honor, if I
10 could have the Court's indulgence.

11 THE COURT: All right.

12 SLED AGENT JEFF CROFT

13 RE-DIRECT EXAMINATION

14 BY SOLICITOR THORNTON:

15 Q Obviously, as the current case agent, Agent Croft,
16 you've been present in court, as well as been assisting
17 in the prosecution of this case. Is that correct?

18 A That is correct, yes, sir.

19 Q As part of the knowledge you have gained during
20 that time, are you aware that Complainant did
21 indicate a brand of condom, that being Lifestyle
22 condoms, well over a year ago, in May of 2015?

23 A Yes, sir.

24 Q And did he do that to folks with the Solicitor's
25 Office?

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RE-CROSS - SLED AGENT JEFF CROFT

1 A I'm sorry?

2 Q Did he do that to folks in the discussion with the
3 Solicitor's Office over a year ago?

4 A Yes, sir.

5 Q All right. But he did not, at that time, identify
6 the color red?

7 A No, sir.

8 SOLICITOR THORNTON: All right. Thank you, sir.

9 MR. LEE: May I have one quick followup?

10 THE COURT: Okay.

11 SLED AGENT JEFF CROFT

12 RE-CROSS-EXAMINATION

13 BY MR. LEE:

14 Q That picture, State's 26. Two condoms found,
15 right?

16 A That is correct, sir.

17 Q Okay. Two different brands?

18 A That is correct, sir.

19 Q One Trojan, one Lifestyle?

20 A Yes, sir.

21 Q Okay.

22 MR. LEE: That's all I have, your Honor.

23 SOLICITOR THORNTON: Nothing further, Judge. Ask
24 that he be allowed to sit down.

25 BY THE COURT:

1 THE COURT: Certainly. Agent Croft, you can step
2 down. Thank you so much.

3 About how long will your next witness take?

4 SOLICITOR THORNTON: I don't think it will be long,
5 your Honor, but if we -- it would be fine with me to
6 take up the morning break if you'd like.

7 THE COURT: Well, let me ask the jury. Folks, the
8 next witness might not be a lengthy witness, and after
9 that, we may be able to take the lunch break. Can you
10 hang with us for about maybe thirty minutes more?
11 Everybody good with that? If you want to stand up a
12 minute where you are and stretch before the next witness
13 comes in. I am. Of course, if you want to, you can.
14 Okay?

15 All right. Folks, if you need a restroom break,
16 we'll have to take that. Let's take about ten minutes,
17 then. Okay. Return to your jury room, and we'll get
18 you out in about ten minutes.

19 BAILIFF: Folks, please stay, please until the jury
20 exit the building, please. Have a seat until the jury
21 exit.

22 THE COURT: Folks, I said ten minutes. I realize
23 that there are fifteen people in there and there is one
24 restroom. It's going to take longer than ten. If
25 they'll inquire as to when they're ready in the ten

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1 minutes. If they're ready, we'll be ready. Okay?

2 SOLICITOR THORNTON: Thank you, your Honor.

3 MR. LEE: Thank you, your Honor.

4 OFF THE RECORD 11:33 A.M.

5 BACK ON THE RECORD 11:53 A.M.

6 THE COURT: Thank you, folks. You all can be
7 seated. All right, folks. Both sides ready for the
8 jury?

9 SOLICITOR THORNTON: State's ready, your Honor.

10 MR. LEE: Yes, sir, your Honor.

11 THE COURT: Bring us the jury.

12 JURY ENTERS COURTROOM 11:53 A.M.

13 THE COURT: Mr. Thornton, you can call your next
14 witness.

15 SOLICITOR THORNTON: Thank you, your Honor.

16 Sheriff T.C. Smalls, please.

17 THE COURT: Sheriff Smalls.

18 MADAM CLERK: Do you swear to tell the truth, the
19 whole truth, and nothing but the truth, so help you God?

20 SOLICITOR THORNTON: Your Honor, I apologize.
21 Court's indulgence one moment.

22 SHERIFF T.C. SMALLS: I do.

23 SHERIFF T.C. SMALLS

24 DIRECT EXAMINATION

25 BY SOLICITOR THORNTON:

1 Q Sheriff Smalls, how are you today, sir?

2 A Doing good.

3 Q Sheriff, obviously, I'm calling you Sheriff Smalls.
4 What is your current job, sir?

5 A Sheriff of Hampton County.

6 Q And how long have you been Sheriff of Hampton
7 County?

8 A Third term, about ten years and some months.

9 Q And did you work in law enforcement prior to being
10 the sheriff?

11 A Yes, sir.

12 Q And what did you do?

13 A Deputy Sheriff, SRO. Deputy Sheriff.

14 Q Were you sheriff, then, on or about January the 4th
15 of 2013?

16 A Yes, I was.

17 Q Sheriff, on January the 4th of 2013, did you
18 receive any phone calls, specifically from
19 Superintendent Dr. Gurley?

20 A Yes, I did.

21 Q And without saying what, if anything, that she
22 said, what did you do after getting the phone call from
23 her?

24 A Went to the district office.

25 Q All right. And did you meet with Dr. Gurley?

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1 A Yes, I did.

2 Q And who else was there? Do you remember?

3 A Dr. Gurley was there, Ms. Choice, and Dr. Brown.

4 Q And is Dr. Brown the -- Dr. Brown was, at that
5 time, the principal of the middle school and the high
6 school?

7 A Yes, she was.

8 Q Or, I'm sorry, I think she was the principal of the
9 middle school, but they were on the same campus.

10 A Same, right.

11 Q And when you got there, Sheriff, when you got to
12 this meeting -- and again, I don't want you to get into
13 anything specifically anybody told you -- but had Dr.
14 Gurley or anyone else provided you any information about
15 why they wanted to meet you, or mention any names, or
16 anything like that?

17 A No, sir.

18 Q When you got there, what did they do, if anything?

19 A When I got to the district office, I went into a
20 conference room there, and she spoke, and then
21 proceeded, and --

22 Q And *she* who?

23 A Dr. Gurley.

24 Q All right. And you said she spoke. Again, did she
25 provide you any names of anybody, or what this was

1 about, or anything else?

2 A No, sir.

3 Q All right. Did they play a recording at some
4 point?

5 A Yes, sir.

6 Q And when they played the recording, just tell me
7 what happened.

8 A Dr. Brown proceeded to play a recording, and I
9 listened to that recording. And then, I --

10 Q And --

11 A -- recognized the voice that was on the recording.
12 And so, I asked them to play the recording again, and
13 she did. I asked them to play the recording again, so I
14 listened to that recording a total of about three times.

15 Q All right. Let me ask you a quick question,
16 Sheriff.

17 A Um-hmm.

18 Q You said she played it the first time, and you
19 recognized the voice.

20 A Um-hmm.

21 Q Whose voice was it on the recording?

22 A Um-hmm. Oh.

23 Q I'm sorry. Whose voice was it on the recording?

24 A Larry Heyward.

25 Q All right. How long have you known Larry Heyward?

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1 A Since about 1983.

2 Q And is he here in the courtroom?

3 A Yes, sir.

4 Q And where is he?

5 A Sitting at the desk right there.

6 Q And Sheriff, have you -- so, you've known him since
7 1983. I'm assuming you've had a lot of conversations
8 with him. Is that fair to say?

9 A Well, I had more conversations with him once he
10 became to work at the Sheriff's Office. But I knew him
11 and his wife, because me and her worked together.

12 Q And since he has been with the Sheriff's Office,
13 and even before, have you talked to him?

14 A Yes, sir.

15 Q Have you heard him on the radio?

16 A Yes, sir.

17 Q Have you talked to him over the phone?

18 A Yes, sir.

19 Q All right. You said that you had them play the
20 recording three times.

21 A Correct.

22 Q Was that because you were unsure of whose voice it
23 was?

24 A No, sir.

25 Q All right. Why did you have them play it three

1 times?

2 A Because of the conversation, the wording, the words
3 that I heard on the recording.

4 Q Was it shocking to you?

5 A It was shocking, coming from him. Never heard him
6 speak like that, never heard him use that kind of
7 language. So, I really wanted to make sure what I was
8 -- what I was listening to I really heard.

9 Q And any doubt in your mind that that's Larry
10 Heyward on that recording?

11 A No, sir, there ain't no doubt in my mind.

12 Q Sheriff, I'm going to ask you -- show you this
13 disc. This was State's Exhibit Number 1. It's already
14 been played for the jury, the recording. Did you review
15 that at my request?

16 A Yes, sir.

17 Q And is that the same recording that was played for
18 you on January the 4th of 2013 by Dr. Brown?

19 A Yes, sir.

20 Q And again, whose adult voice is on that tape?

21 A Mr. Heyward, Larry Heyward.

22 Q Sheriff, at some point later that night, did you
23 have a conversation with Larry Heyward at the Sheriff's
24 Office or the Substation?

25 A Yes, sir.

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1 Q And is that something you -- I hate to use words
2 like *initiated*. But did you seek to talk to him, or how
3 did that happen?

4 A No, sir. SLED was conducting an interview with him
5 at the substation. At some point in time, the interview
6 was over, he let agreement know that he wanted to speak
7 with me, and I was at the Substation.

8 Q And did you talk to him?

9 A Yes, sir.

10 Q And what did he -- what did he tell you?

11 A He wanted to talk with me. I wanted to make sure
12 it was all right, that I could talk to him. They said
13 yes, so I went and sat down by him. And once I entered
14 the room, we was sitting at the conference table, he was
15 -- he was like, in a rage, using all type of language,
16 stuff I never seen out of him, cursing. And he kept
17 doing it for maybe a period of about forty seconds,
18 forty-five seconds, and then, he just calmed down, and
19 he stopped. And he looked at me, because during this
20 time, I was in shock. I was looking at him, because I
21 had never seen him act like this. So, I was just
22 looking at him, so he just stopped, and he changed. And
23 he told me, he said, I'm sorry for bringing shame to
24 your office and everything that I've done. He said,
25 will you call my wife for me, and tell her what I'm

1 going to be charged with and what I did.

2 SOLICITOR THORNTON: Your Honor, Court's
3 indulgence?

4 THE COURT: Yes, sir.

5 SOLICITOR THORNTON: Thank you, Sheriff. I have
6 nothing further.

7 THE COURT: Cross-examine?

8 MR. LEE: Thank you.

9 SHERIFF T.C. SMALLS

10 CROSS-EXAMINATION

11 BY MR. LEE:

12 Q I heard you use the word *shocking* a couple of
13 times.

14 A Yes, sir.

15 Q Those are your words?

16 A Yes.

17 Q To see to -- I mean, that was a lot going on that
18 night that was completely different from the Larry
19 Heyward that you've known --

20 A Correct.

21 Q -- for all that time, right?

22 A Correct.

23 Q Okay. And you all really go way back, because his
24 wife, Bonita, worked at the jail, I think, when you were
25 a deputy?

1 A Correct.

2 Q So, you've known her and Larry and the family for a
3 long time, right?

4 A Correct.

5 Q Okay. And you've seen him in all kinds of
6 different environments?

7 A I've seen him, when you say all kinds of
8 environments, --

9 Q Well, you know he was in the National Guard.

10 A Right.

11 Q I mean, have you ever seen him in that capacity?

12 A Correct.

13 Q Okay. Seen him at work?

14 A Yes.

15 Q Wouldn't you, the Sheriff's Office?

16 A Yes, sir.

17 Q Ever been to his church where he's minister?

18 A No, sir.

19 Q Okay. Ever seen him out socially?

20 A Yes, sir.

21 Q Okay. So, what you're saying is, when you listened
22 to that tape, you were shocked because of what it
23 contained?

24 A Correct.

25 Q Okay. And then, when you went in, after the SLED

1 agents had finished talking with Larry, and he asked to
2 speak to you, when you went in there, it's safe to say
3 that he was angry?

4 A Well, he was, you know, obviously in a rage.. He
5 was --

6 Q Okay.

7 A -- yeah, upset. He was not himself.

8 Q And you never --

9 THE COURT: Let him finish the answer, please.

10 MR. LEE: I'm sorry.

11 BY MR. LEE:

12 A He was not himself.

13 Q Okay.

14 A Um-hmm.

15 Q And that was -- you had never seen him like that in
16 the twenty-three years or so that you've known him.

17 A No, sir.

18 Q Okay. And then, when he was able to -- did it
19 appear to you that he had just been -- learned something
20 or had been told something that just set him off? Would
21 that be consistent with what you observed?

22 A I know he was inside. They was interviewing him.

23 Q Um-hmm.

24 A It appeared that, through the interview, whatever
25 was taking place, I would feel like that that would

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CROSS - SHERIFF T.C. SMALLS

1 cause him to be upset and in the mood that he was in.

2 Q Are you familiar that the last -- one of the last
3 things they did when they interviewed him, right before
4 he went and saw you, was, they confronted him with that
5 tape that you talk about?

6 A No.

7 Q You didn't know that was the last thing he heard
8 before he asked to talk to you?

9 A No, sir.

10 Q And do you agree that Larry then -- or even wanting
11 to talk to you after being accused by SLED of stuff, do
12 you agree that it's typical Larry to then say, well, I'd
13 like to talk to the sheriff to -- because I'm worried
14 about what this might do for the image of the Sheriff's
15 Office? Is that typical Larry? Worrying about
16 something like that?

17 A During the request, when the SLED came to me, he
18 just wanted to talk to me.

19 Q Okay.

20 A Once we started the conversation, and after the
21 rise that was one of the things that he said, that he
22 was ashamed -- he was sorry that he brought shame to my
23 office.

24 Q Because -- well, I'll -- was it your understanding,
25 because obviously, this was going to make news, and was

1 going to make the newspaper, and was going to say, hey,
2 one of Sheriff Smalls' guys got arrested, that would
3 bring shame on the Sheriff's Office, right?

4 A Well, I realize any time there's a law enforcement,
5 in any position that I am in, --

6 Q Right.

7 A -- when deputies mess up, they're going to throw it
8 back downhill to me.

9 Q I understand.

10 A So, I feel like that was his expression for that.

11 Q Okay.

12 A Um-hmm.

13 Q Because he was afraid of what his arrest, that
14 these accusations were going to float downstream to you
15 and to the Sheriff's Office in general, right?

16 A Yes. Um-hmm.

17 Q Okay. And then, he asked you, as a friend, to call
18 Bonita?

19 A Correct.

20 Q Okay. And you did that?

21 A Yes.

22 MR. LEE: Okay. That's all I have, your Honor.

23 Thank you.

24 THE COURT: Thank you. Re-direct?

25 SOLICITOR THORNTON: None, your Honor. I ask

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STATE RESTS

1 Sheriff be excused.

2 THE COURT: Thank you.

3 MR. LEE: No objection.

4 THE COURT: Sheriff, you can step down and be
5 excused. Thank you, sir. Mr. Thornton?

6 STATE RESTS:

7 SOLICITOR THORNTON: Your Honor, at this time, the
8 State rests.

9 BY THE COURT:

10 THE COURT: Thank you. Ladies and gentlemen, the
11 State has rested its case in chief. That means that you
12 have now heard all of the evidence that you will hear
13 from the State in the presentation of its case in chief.
14 Necessarily, at this juncture of every trial like this,
15 I have to send you out of the jury room -- or out of the
16 courtroom, I should say -- to deal with some matters of
17 law that we always take up at this juncture of the
18 trial. It just so happens that this is about lunchtime,
19 a little earlier for our usual lunch; but this is a good
20 time for us to break and send you to lunch.

21 I'm going to ask that you be back in the jury room
22 at 1:15. That's an hour and ten minutes. That's, I'm
23 afraid, a little less than an hour might not be enough.
24 An hour and ten minutes is enough for you to have lunch.

25 I remind you again that it becomes more and more

1 important each time I send you out of this courtroom for
2 you to abide by those instructions that I have given you
3 not to talk to anybody about this case, not to discuss
4 it among yourselves. Please be back in the jury room at
5 1:15. We'll continue the afternoon's work at that time.
6 Thank you.

7 JURORS LEAVE COURTROOM 12:07 P.M.

8 MOTIONS AND RULINGS:

9 THE COURT: Mr. Lee, I'll be glad to hear motions
10 from you under *Rule 19*, and any applicable rule of
11 *Criminal Procedure* at this time.

12 MR. LEE: Thank you, your Honor. Initially, at
13 this point, I would renew all previous motions that have
14 been made and ruled upon. I can go through them
15 verbatim, or I think we all know what they were. I
16 would ask that the record reflect that I placed
17 particular emphasis on the rulings that, in my opinion,
18 substantially curtailed my ability to effectively
19 impeach and cross-examine the complaining witness, Mr.
20 Complainant .

21 THE COURT: All right, sir.

22 MR. LEE: But I would just renew all those at this
23 time.

24 THE COURT: And they have been, I think, argued
25 thoroughly --

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MOTIONS AND RULINGS

1 MR. LEE: Yes, sir.

2 THE COURT: -- and ruled on by this Court, as to
3 the specificity. I will, however, be glad to hear any
4 additional motions, or if there are any other additional
5 grounds of the motions that you have previously put
6 forward, I'll be glad to hear that as well.

7 Hearing none, I'm prepared to --

8 MR. LEE: Yeah.

9 THE COURT: -- renew my rulings on the earlier
10 motions and deny those motions once again.

11 MR. LEE: Yes, sir.

12 THE COURT: Okay.

13 MR. LEE: I think they've been properly argued and
14 heard.

15 THE COURT: Yes, sir.

16 MR. LEE: Multiple times. Judge, also, at this
17 time, the Defense would make a motion for a directed
18 verdict under *Rule 19* of the *Criminal Rules*.
19 Specifically, as you know, -- you have the indictments,
20 I assume, your Honor?

21 THE COURT: Yes, sir.

22 MR. LEE: As you know, the way that they, the
23 State, structured this is, and I haven't seen it in
24 State grand jury; I haven't seen it in circuit court --
25 they have, involving the sexual allegations, they have

1 three numbered indictments, and Number 140 includes
2 three counts. And the way that they did it is, they --
3 each count: Count 1 at Middle School; Count 2 at
4 the defendant's residence; Count 2 at the deceased
5 father's house.

6 THE COURT: Right.

7 MR. LEE: So, I believe, for the purposes of
8 directed verdict motion, that the testimony of Mr.
9 Complainant, for the purposes of this motion, that that
10 testimony satisfies the standard that has to be shown in
11 Rule 19, which is any evidence.

12 THE COURT: Right.

13 MR. LEE: He testified at one, two, three places.
14 Now, the motion that I would have, your Honor, involve
15 Indictment 2015-GS-25-00141, which is indictment for
16 sex/lewd act, committing or attempting a lewd act upon a
17 child, and it covers the period August 10th to June
18 17th, 2012. And then, Indictment ending with 00142,
19 when the law changed, they changed the date, June 18th
20 through November 30, 2012. And that is a CSC Third,
21 which, and they really just changed the nomenclature,
22 semantics.

23 I would respectfully ask for a directed verdict on
24 each one of those charges, your Honor, because I believe
25 that the State, in charging him as they did, with the

1 CSC second, and the indictment says, for those, oral
2 and/or anal intercourse upon the minor victim with
3 initials D.J., that's included in the three-count
4 indictment ending in 00140. These lewd act and CSC
5 third with a minor charges say a certain time, the first
6 one from August 20th to June 17th; the second from June
7 18, 2012 through December 30, 2012. The State, by doing
8 it that way -- and it's a unique situation in the fact
9 that the way the law changed -- the State, by choosing
10 those dates, has an absolute burden. They don't have to
11 say exactly what day it happened, but they certainly
12 have to establish something happened during those dates.

13 The testimony from the State, I believe, from Mr.
14 Complainant, did not include any more testimony that
15 anything else happened during those times. Now,
16 admittedly, on cross-examination, I asked him, and
17 you're saying this happened hundreds of times. And I
18 think that his note that he wrote came in and said, he's
19 been molesting me for the last three years, and I want
20 it to stop, something like that.

21 Those statements, or that statement he wrote in the
22 school, I think on June 4, 2013, simply says, it's been
23 happening over the last three years. It does not say --
24 it does not say when.

25 There is no way that the State has presented

1 sufficient evidence to put any lewd act/CSC with a minor
2 third within the date frames that they have set forth in
3 these indictments. There have been some general things,
4 saying, in the past -- if you say something's happened
5 in the past three years, when you say it on January 4th,
6 it could mean any time prior to that. It could mean
7 January 2nd of that year. That would still be within
8 the last three years. So, it's a unique situation
9 because of the way the indictments were drafted. But I
10 would respectfully suggest that his blanket statement
11 that I got out of him, it's happened hundreds of times,
12 is not sufficient to carry the day for the State, as to
13 those two indictments, the one for lewd act and the one
14 for CSC with a minor third. And that would be our --
15 our directed verdict motion on the indictments.

16 THE COURT: So, you're acknowledging, of course,
17 that he said over a period of time, three years,
18 hundreds of times, and things of that nature?

19 MR. LEE: Yes, sir.

20 THE COURT: But what you're saying is, because he
21 had not divided it as to a specific date, either before
22 or after the magic date of June the 18th of 2012, that,
23 then, both of these indictments should fail, as a matter
24 of law. Is that what you're saying?

25 MR. LEE: That's part of it. Also, the dates end

1 -- the dates end November 30, 2012.

2 THE COURT: Okay.

3 MR. LEE: So, from that, you know, from December
4 1st, forward, to the date it was done, there certainly
5 is that. And again, that, with no more specificity than
6 that, they went to great specifics to establish the
7 times for the one-, two-, three-count indictment, when
8 it happened -- I think one or two was in sixth grade,
9 and then, another one was later on. They did that, but
10 I don't think they've carried the day on establishing
11 the requisite dates that are set forth in the
12 indictments.

13 THE COURT: All right.

14 MR. LEE: The other motion I guess I would have is
15 for purposes of punishment, and maybe even going to the
16 jury is, had the law not changed in -- had the law not
17 changed in two thousand -- June 17, 2012, there would be
18 no need for them to have two separate indictments.
19 Admittedly, that was one of the issues that we talked
20 about, and they re-indicted. And admittedly, I'm sure
21 Mr. Thornton's going to jump up and say any challenge to
22 the indictment but the way that they do it. So, I would
23 also make a motion that, if you do not grant my motion
24 for a directed verdict on those two indictments, that
25 you would consider consolidating those indictments into

1 one, putting a time period from the beginning of the
2 first one to the end of the second one, to submit to the
3 jury.

4 THE COURT: Let's talk about a couple of things.
5 First of all, the need for two indictments. You
6 understand, of course, that, when the law changed, or
7 effective June the 18th, 2012, that it took the old lewd
8 act and did away with it and subsumed into CSC with a
9 minor in the third degree.

10 MR. LEE: Yes, sir.

11 THE COURT: Before that date, a lewd act upon a
12 minor was a lewd act upon a child under the age of
13 sixteen.

14 MR. LEE: Yes, sir.

15 THE COURT: So, would you concede that, if the
16 State intended to bring an allegation of lewd acts prior
17 to June 18, 2012, they would have to indict for lewd act
18 upon a child.

19 MR. LEE: They would.

20 THE COURT: Would you concede that, if they are
21 trying to get a conviction on a similar act after June
22 the 18th, 2012, they would have to indict for criminal
23 sexual conduct with a minor in the third degree, because
24 there was no longer lewd act upon a child?

25 MR. LEE: They would, and the reason they did it is

1 because, two years ago, I argued that exact same thing
2 in Judge Buckner, and I realized that, you know, that
3 was -- I realized I may be taking a different position,
4 but you know, some other things have come to mind once
5 that's done. But I mean, yes, I completely agree, and
6 that was what was done at our request.

7 THE COURT: So, so -- I don't want to cut you off.

8 MR. LEE: No, you're not.

9 THE COURT: So, then, it becomes a matter of proof
10 as to whether or not they have proven these charges
11 occurred within a certain period of time. Is that
12 right?

13 MR. LEE: Yes, sir.

14 THE COURT: Okay. All right.

15 MR. LEE: You say it much better than I did, but
16 yes, sir.

17 THE COURT: Thank you. Mr. Thornton?

18 SOLICITOR THORNTON: Thank you, your Honor. Your
19 Honor, not to go over what Mr. Lee has already said, but
20 I do think that the Court does need to take into account
21 what was said, as far as there had been hundreds -- or a
22 hundred -- hundreds of occasions, which were testified
23 to on cross. In addition to that, Judge, there is the
24 note, again, that Mr. Lee has already brought up. And I
25 would bring up a few other things, also, your Honor.

1 There was also an allegation in testimony by Complainant,
2 both early on, as far as sixth grade occurrence, that he
3 was groped first. That Larry Heyward groped his, I
4 believe he said, penis area, is what the testimony was;
5 that he had groped his penis prior to engaging in oral
6 sex with him. So, I think that, in and of itself, would
7 take care of one of them.

8 And the other thing that he talked about, Judge,
9 was that they had showered together, both before and
10 after sex, at his father's home. In addition to the
11 other things that we've already talked about, I
12 certainly think, as far as the directed verdict
13 standard, Judge, that there is evidence that a jury
14 could reach in deciding both the lewd act and the CSC
15 third degree.

16 THE COURT: The standard is, as you know, Mr. Lee,
17 is not all that hard at this juncture.

18 MR. LEE: Yes.

19 THE COURT: First of all, I have to take all the
20 evidence in the light most favorable to the State.

21 MR. LEE: Yes, sir.

22 THE COURT: And secondly, if I find by looking at
23 that evidence that there is any direct or substan -- no,
24 I'm not going to use the word *substantial* -- if there's
25 any word -- if there's direct evidence or circumstantial

1 evidence with which the guilt of the accused could be
2 determined, then, the motion must be respectfully
3 denied, and I find that there is. And so, I
4 respectfully deny your motions in that regard.

5 MR. LEE: Yes, sir.

6 THE COURT: All right.

7 MR. LEE: Your Honor, as well, it's probably a good
8 time to do this. Mr. Lempesis and myself have spoken to
9 Mr. Heyward numerous times over the last several,
10 several months for trial prep.

11 THE COURT: Sure.

12 MR. LEE: I feel satisfied that we've explained to
13 him the benefits and perils of testifying, and I'm
14 convinced he has not changed at all in his thoughts that
15 he does not want to testify. So, he would like to take
16 that up at this time.

17 THE COURT: Sure.

18 MR. LEE: I think it might be --

19 THE COURT: This is a good time to do it.

20 MR. LEE: Yes, sir.

21 DEFENDANT'S RIGHTS:

22 THE COURT: Thank you.

23 Mr. Heyward, if you will stand where you are,
24 please, raise your right hand. Do you solemnly swear or
25 affirm that you will give truthful answers to the

1 questions I'm about to put to you, so help you God?

2 DEFENDANT HEYWARD: Yes, sir.

3 THE COURT: You can have a seat. Mr. Heyward, you
4 are aware of the fact, I'm sure, if not, I'll inform
5 you, but I know you already know this, that, under our
6 law, no person in a criminal proceeding can be forced or
7 compelled to testify against himself, or to incriminate
8 himself. The *Fifth Amendment* of our *United States*
9 *Constitution*, and a similar counterpart to our state
10 *Constitution*, provides that no person can be forced to
11 admit his guilt or to testify against himself. That is
12 a right that is given only to you. You're the only one
13 who can exercise that right. You're the only one who
14 can give it up. That means that you don't have to take
15 the stand in this case. You cannot be made to take the
16 stand in this case. You do not have to testify. You
17 have heard me tell the jury that on a couple of
18 occasions.

19 If you choose to exercise that right not to
20 testify, to exercise your right under the *Fifth*
21 *Amendment* and our state *Constitution* as well, the jury
22 will be told that they cannot take that into account in
23 their consideration in their deliberations on the
24 question of your guilt or innocence. They will be told
25 that they cannot even mention that in the jury room;

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DEFENDANT'S RIGHTS

1 that they cannot take that into account in their
2 decision in this particular case. You have a
3 constitutional right not to testify. If you choose to
4 exercise that right, that cannot be used against you.
5 Do you understand that?

6 DEFENDANT HEYWARD: Yes, sir.

7 THE COURT: On the other hand, if you choose to
8 give up that right and testify, then, you will assume
9 the role of every other witness that you have seen
10 testify so far in this court. You will take an oath
11 and sit in this chair, and you will be asked questions,
12 not only by your own lawyers, but by the State's lawyers
13 as well. And you can be cross-examined; you can be
14 impeached on any issues that are relevant to this case.
15 Do you understand that?

16 DEFENDANT HEYWARD: Yes, sir.

17 THE COURT: Do you fully understand your rights,
18 Mr. Heyward, either to testify and not to testify?

19 DEFENDANT HEYWARD: Yes, sir, your Honor.

20 THE COURT: Do you have any questions that you want
21 to ask me about your right to testify or not testify?

22 DEFENDANT HEYWARD: No, sir, your Honor.

23 THE COURT: Have you decided as to whether or not
24 you wish to testify in this case or not?

25 DEFENDANT HEYWARD: Yes, sir, your Honor.

1 THE COURT: And what have you decided?

2 DEFENDANT HEYWARD: I've decided not to testify.

3 THE COURT: All right. Thank you. Mr. Lee, you
4 want me to make any further inquiry of your client?

5 MR. LEE: No, sir. As you offer, that's perfect.

6 THE COURT: All right. Thank you very much. All
7 right. I take it, then, that the Defense will not offer
8 any other evidence or testimony. Is that right?

9 MR. LEE: That's right, your Honor.

10 THE COURT: When the jury comes in after lunch, I
11 will give you a chance to rest in the presence of the
12 jury.

13 MR. LEE: Yes, sir.

14 THE COURT: And then, we will be in a position to
15 immediately go to final arguments, and to the charge.
16 All right. You folks have been doing this long enough,
17 I'm sure, not to need any instruction from me about how
18 long you need to take. I never hold a watch over
19 anybody, and I never ring a bell when you take too long.
20 I've never had to do that yet. I do want to get some
21 rough idea from you as to approximately how long you
22 think you will take, primarily for the purposes of my
23 scheduling; whether it's going to be possible for me to
24 go straight from arguments into charge, or whether I
25 need to break up between those two things. It helps me

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CHARGE CONFERENCE

1 to help my schedule. And so, if either of you can give
2 me some idea about how long you think you might take in
3 your final arguments, I'd like to hear that to help me
4 in the afternoon. Mr. Thornton, what do you say?

5 SOLICITOR THORNTON: Judge, I can't imagine it
6 would be over twenty minutes.

7 THE COURT: Mr. Lee?

8 MR. LEE: I'll take I'll say thirty minutes.

9 THE COURT: Okay. Those are certainly reasonable
10 times. And as I say, if you get past that, I'm not
11 going to blow a whistle or anything like that. But I
12 always tell a juror -- or lawyers, I should say, that,
13 if I get the impression that you continue to ramble on,
14 and you have completely forgotten how long you have told
15 me you were going to take, I'll try to find some
16 discreet way to get your attention.

17 CHARGE CONFERENCE:

18 THE COURT: Gentlemen, I may have -- let me see if
19 I brought my -- excuse me -- my charges out here with
20 me. I may have left them back in chambers. Hold on one
21 second. I have more stuff here than I know.

22 Essentially, I can tell you that our charge, of course,
23 is the normal charge on credibility of witnesses, the
24 indictments not being the evidence. The burden of
25 proof, I've already told you what I'll use in that

1 regard. Then, Mr. Lee, you said you were going to
2 present me a proposed *Manning* charge. I'll be glad to
3 take -- to look at that.

4 MR. LEE: Yes, sir. I do have one.

5 THE COURT: I will charge on the fact that the
6 defendant did not testify in this case, and cannot be
7 taken -- held against him. I will charge on direct and
8 circumstantial evidence. I will charge the elements of
9 each of the offenses. I will charge -- I believe that's
10 the essence of what I intend to charge. I will charge
11 on the use of the transcript.

12 MR. LEE: Judge, could you briefly go over that, as
13 far as what you're going to --

14 THE COURT: On the transcript?

15 MR. LEE: -- as far as demonstrative evidence, his
16 use of a transcript.

17 THE COURT: Yes, I've got a copy of it right now,
18 hot off the press. You want to look at it?

19 MR. LEE: I can listen, if you want to just read
20 it. Or whatever you want to do.

21 THE COURT: It says:

22 *You have been provided with what is*
23 *purported to be a transcript of a taped*
24 *conversation. Because of the nature and*
25 *quality of the tape, sometimes the portions*

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CHARGE CONFERENCE

1 are difficult to understand. As a result,
2 the transcript was provided to you to assist
3 you in listening to the tape. Any difference
4 in understanding or meaning of what was
5 said may be caused by such factors as the
6 inflection of a voice or inaccuracies of the
7 transcript. And you should rely upon what
8 you hear, rather than what you read. If you
9 find a difference between the tape and the
10 transcript, the transcript is not to control;
11 the tape recording is to control. The
12 transcript will not be available to you
13 during your deliberations in reaching your
14 verdict.

15 MR. LEE: Yes, sir.

16 THE COURT: Good?

17 MR. LEE: Sounds good. And I did bring -- I do
18 have *Manning*, and I have *Darby*, as far as the reasonable
19 doubt.

20 THE COURT: I've got that.

21 MR. LEE: I'd just go over at least one of them.
22 And so, I would just add, I've had to read transcripts
23 and PCR's, and I know how you usually charge Victor.
24 But I would ask you to consider not just abandoning
25 Victor, but the hybrid charge that we see so often,

1 which initially starts out with the hesitate-to-act
2 language, and then, goes to *Victor versus Nebraska*. And
3 I think that's the -- that's the one I see that most
4 judges use, and I would just respectfully ask to --

5 THE COURT: Okay.

6 MR. LEE: We want *hesitate to act*. If they want
7 *firmly convinced*, then, maybe we can split the baby.
8 So, I would just respectfully ask you to consider doing
9 the hybrid *Manning* and *Victor*, Judge.

10 THE COURT: Well, as a matter of fact, that's how
11 it was done in *Darby*, and in *Victor versus Nebraska*.
12 I'll be glad to look at that and consider that.

13 MR. LEE: Okay. Judge, only other thing that's
14 charge-wise is, if I could look at your charge on
15 defendant not testifying. And the only typical thing I
16 object to is if it's saying failure --

17 THE COURT: I don't use the word -- I don't use the
18 word *failure*.

19 MR. LEE: Okay. You read my mind. All right.
20 Thank you.

21 THE COURT: Never use that word.

22 MR. LEE: Yes.

23 THE COURT: Although, the old form that we have has
24 at the top *failure of defendant to testify*, --

25 MR. LEE: I know. Yes, sir.

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CHARGE CONFERENCE

1 THE COURT: But the jury will not hear that.

2 MR. LEE: Okay. Sounds good.

3 THE COURT: Okay?

4 MR. LEE: Thank you, sir.

5 THE COURT: All right. Mr. Thornton, from the
6 State?

7 SOLICITOR THORNTON: Your Honor, I would just say
8 that I would ask that you charge it the way you normally
9 do, the way I've heard you charge it many times.

10 THE COURT: All right. And I'll look at what is
11 offered in that regard. Folks, let me show a proposed
12 verdict form at this point in time. I want you to look
13 at that, so we can record if there are any problems at
14 this time.

15 Folks, all of the charges are contained within a
16 single verdict form, as you can see. Each one of them
17 is listed separately as to the indictment number and to
18 the charge, with a separate verdict, obviously, to each
19 particular charge. The indictment that you just talked
20 about, Mr. Lee, Number 00140, has three occurrences.
21 There's the three parts. There's three counts. Each
22 one of them will have a separate verdict. And then, the
23 other two, the lewd act before June 18, the CSC with a
24 minor after June the 18th, the burden is on the State in
25 that regard, and the jury will be instructed, as they

1 will on everything that has to do with the burden of the
2 State.

3 SOLICITOR THORNTON: The State is satisfied with
4 the verdict form, your Honor.

5 THE COURT: All right.

6 MR. LEE: I am as well, your Honor. I always see
7 guilty before not guilty. I actually had my first one
8 in front of Judge Nettles that said not guilty first,
9 because you always hear it has to be in some order, and
10 it always ends up being guilty first, but. I'm not
11 going to argue that one, your Honor. But this looks
12 fine.

13 THE COURT: I understand.

14 MR. LEE: Yes, sir.

15 THE COURT: At least you're more understanding than
16 -- I had a public defender one time tell me somewhat in
17 jest over a case that was rather one-sided that he would
18 prefer that I leave the word *guilty* off of the form
19 entirely. But, and I'll poll the jury, just like you've
20 anticipated, Mr. Lee, that that doesn't mean anything.
21 I always give them in the way that I find easiest to
22 explain.

23 MR. LEE: I understand.

24 THE COURT: Okay?

25 MR. LEE: Yes, sir.

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BY THE COURT

1 SOLICITOR THORNTON: Thank you, your Honor.

2 THE COURT: All right. If you'll hand up that
3 *Manning* charge. I'd like to meet with Counsel in
4 chambers on just one sort of housekeeping matter. Other
5 than that, I think the way is clear for us to proceed to
6 closing.

7 SOLICITOR THORNTON: Yes, sir.

8 THE COURT: Anything else, Mr. Thornton, from the
9 State?

10 SOLICITOR THORNTON: No, sir.

11 THE COURT: All right. Mr. Lee?

12 MR. LEE: No, sir.

13 THE COURT: Good. Can you all come back, and I've
14 got one thing I'd like to run by you.

15 OFF THE RECORD 12:45 P.M.

16 BACK ON THE RECORD 1:30 P.M.

17 BY THE COURT:

18 BAILIFF: This court will come to order.

19 THE COURT: Thank you, ladies and gentlemen.
20 Please be seated. Good afternoon.

21 Ladies and gentlemen, the jury is in place. I'm
22 prepared now to bring in the jury. Mr. Lee, you will be
23 allowed to rest in the presence of the jury. Mr.
24 Thornton, you will present the first of the arguments on
25 behalf of the State. Mr. Lee, you will close.

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1 Everybody ready to go?

2 MR. LEE: Yes, sir. I would just ask, have you
3 made a final decision as far as charging *Manning*?

4 THE COURT: I'm going to insert a part of the
5 *Manning* charge in front of my charge on our *Victor*
6 *versus Nebraska*, yes.

7 OBJECTIONS AND RENEWAL OF OBJECTIONS:

8 MR. LEE: Yes, sir. Thank you. Judge, also, --
9 thank you for reminding me of that -- in order to be
10 ultra careful, as you've seen I've had to be, I would
11 ask that I be allowed to, in advance of Mr. Thornton's,
12 in deference to him, in advance of his closing argument,
13 to be able to make sure that there is an objection on
14 the record for his using the transcript on the audio as
15 demonstrative evidence in his closing. I didn't want to
16 have to stand up and object and interrupt him, so I
17 would just ask that I be allowed to do that at this
18 time, so I will not step on his toes as he's --

19 THE COURT: This is a good time to do it, and as
20 far as the record is concerned, it's equally as good as
21 if you stood up in the middle of it.

22 MR. LEE: Yes, sir.

23 THE COURT: I'll note the objection to the use of
24 the transcript during the course of the final arguments.
25 Of course, I don't need to remind you that the record

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1 will reflect that the arguments are not evidence, and
2 neither is a demonstrative to go to the jury.

3 MR. LEE: Yes, sir.

4 THE COURT: But nonetheless, your objection is
5 noted, and he's allowed to use it, subject to that
6 objection.

7 MR. LEE: Yes, sir. Thank you. And I don't think
8 it's necessary for me to do this, but I would ask, too,
9 rather than me having to close, and then, say, I renew
10 all my previous objections, I don't think I need to do
11 that, but I just want to make sure the record was
12 protected.

13 THE COURT: Well, if you need to do it, you've done
14 it.

15 MR. LEE: All right.

16 THE COURT: We are fortunate to have in this
17 courtroom this day the world authority on the
18 preservation of the record.

19 MR. LEE: I understand.

20 THE COURT: And I think whether you need to do it
21 or not, it's been done, and the record is preserved in
22 that regard. I note that, and I renew my earlier
23 ruling.

24 MR. LEE: Yes, sir. Thank you.

25 THE COURT: Thank you.

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1 MR. LEE: I'd rather do it too much than not
2 enough.

3 THE COURT: All right. Thank you.

4 MR. LEE: Thank you.

5 THE COURT: All right. You can bring us the jury.

6 JURORS ENTER COURTROOM 1:33 P.M.

7 THE COURT: Good afternoon, ladies and gentlemen.
8 Thank you once again for your promptness. Ladies and
9 gentlemen, you recall that, before we broke for lunch,
10 the State had rested its case in chief, and we've dealt
11 with some matters of law. The Defense now has the
12 opportunity, but not the obligation, to present evidence
13 and testimony. Mr. Lee?

14 DEFENSE RESTS:

15 MR. LEE: Your Honor, at this time, the Defense
16 rests.

17 THE COURT: Thank you. Now, ladies and gentlemen,
18 the Defense has rested its case as well, and that means
19 that you have now heard all of the evidence and
20 testimony that you will hear in the trial of this case.
21 We proceed at this juncture now to the final arguments.
22 The State will present the first of those final
23 arguments. Mr. Thornton, on behalf of the State, will
24 present the argument for the State. And when he is
25 concluded, Mr. Lee will present the argument on behalf

1 of Mr. Heyward.

2 Folks, you've been attentive throughout the trial
3 of this case. It's important that you pay attention to
4 what has been said throughout this trial, and I trust
5 that you will give the same attention to the lawyers and
6 to the Court as we talk to you, and as I charge you on
7 the law after the lawyers have finished their closing
8 arguments.

9 Mr. Thornton?

10 SOLICITOR THORNTON: Thank you, your Honor. May it
11 please the Court?

12 THE COURT: Yes, sir.

13 SOLICITOR THORNTON: Mr. Lee.

14 CLOSING ARGUMENT ON BEHALF OF

15 THE STATE, BY SOLICITOR THORNTON:

16 SOLICITOR THORNTON: Control is what this case is
17 about. It's not about consent. I told you that in my
18 opening statement. And what I meant by that is this,
19 consent is not relevant in a case like this, and the
20 reason is, because children are not allowed to consent.
21 They're not capable of consenting to sexual activity.
22 Consent doesn't matter. It's not relevant.

23 Larry Heyward is charged with criminal sexual
24 conduct with a minor. He's charged with a lewd act.
25 He's charged with three counts of criminal sexual

1 conduct with a minor second degree, one count of third
2 degree. The Judge is going to go over all of the law on
3 that as to what the elements are and what the State must
4 prove. And if Mr. Lee or I get anything wrong on the
5 law, as opposed to what the Judge says, just like you
6 are the finders of the fact, he's the finder of the law.
7 So, whatever he says controls.

8 If you remember, when I talked to you in my
9 opening, one of the things I asked you to do was not
10 make any decisions in this case until you had heard all
11 of the evidence. When you are deliberating, which the
12 Judge will tell you when, when you're deliberating, if I
13 have said anything, or Mr. Lee has said anything that
14 differs from what you heard -- everything that was
15 testified to was taken down by the court reporter. It's
16 a court of record, and that's why it's done. If there's
17 any testimony that you want re-played, any exhibits,
18 you'll have the exhibits back there, anything that you
19 need re-played, all you have to do is ask.

20 One of the things that's been discussed, it was
21 discussed early on by Mr. Lee, and I don't know what
22 he's going to tell you. Obviously, he gets the last
23 word, as far as the attorneys in this case. One of the
24 things he said is absolutely right. The State has the
25 burden of proof in this case. And the Judge is going to

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CLOSING ARGUMENT - STATE

1 tell you that it's beyond a reasonable doubt. And it is
2 a high burden, and it's that way for a reason. That is
3 the burden in this case, and it is our burden.

4 But beyond a reasonable doubt doesn't mean beyond
5 every shadow of a doubt, every possible doubt, every
6 possible conclusion you could draw. The Judge, again,
7 is going to charge you on what that means. But one of
8 the things I believe he's going to tell you is, it's the
9 kind of doubt, that reasonable doubt is, it doesn't
10 leave you firmly convinced. That's the wording you're
11 going to hear. Also, there might be something about
12 hesitate to act. But firmly convinced. So, after
13 hearing all the evidence, are you firmly convinced of
14 the defendant's guilt? If you are, then, he's guilty.
15 It is no more complicated than that. It doesn't mean
16 it's easy, but it's not that complicated. So, in this
17 case, let's talk about some of the evidence that you
18 have.

19 Complainant was born 1997. So that
20 you know, in 2010, when these allegation had been made,
21 when Complainant, seated right up there, when he got on the
22 stand and told you what happened to him, what Larry
23 Heyward did between 2010 and December of 2012, you know
24 he was between the ages of twelve -- eleven and fourteen
25 years old, which is charged in the indictment. So, you

1 know that's correct. So that, right from the start, is
2 something that's non-controversial that Complainant was
3 certainly a child under the meaning of the law at that
4 time. And not just a child, but a child going to a
5 middle school.

6 You know, one of the reasons why we use exhibits is
7 because things sometimes change, and we had the old
8 middle school versus the new middle school.
9 Middle School, now why is that important? Why is it
10 important for you to know that? Because, as Complainant sits
11 right now, obviously, he doesn't go to middle school
12 anymore. He's eighteen now. But he wasn't eighteen
13 then; he was twelve. And you'll have the photograph
14 that we admitted into evidence of when he was twelve
15 years old and how he appeared.

16 Now, one of the things that's been a little bit
17 confusing is, in this case, is it that Larry Heyward
18 didn't do it, or is it that he did it, but Complainant
19 deserved it, because he's not a good kid, because he had
20 a bad disciplinary record at school. Because once he
21 said that somebody -- he was sent to the office, because
22 he made up a rumor. Well, I wonder how many of those
23 rumors he had on tape?

24 So, is it that Larry Heyward didn't do it, or is it
25 that Complainant deserved it because Complainant, being underage,

1 had pornographic images of other underage people on it
2 and he wasn't prosecuted for it. You remember that
3 stipulation was entered. It was absolutely a fact. He
4 wasn't prosecuted, because he's the victim in this case.

5 Something struck me, one of the questions that was
6 asked by Mr. Lee, was, well, why didn't you think they
7 would believe you? Do you remember that question? He
8 was asking Complainant, because Complainant said, I have proof if
9 you don't believe me. He said, well, why do you think
10 somebody wouldn't believe you? Because Complainant was who
11 you target if you are targeting children. You don't
12 target the straight-A student, who everybody knows, and
13 everybody likes. You remember what Complainant said? He
14 didn't have a whole lot of friends. Had some, but he
15 didn't have a lot of best friends at school. He gets in
16 trouble. Who better to choose if you're a sexual
17 predator of children than the one who gets in trouble?
18 That's who you would pick.

19 After everything that happened to Complainant ,
20 is it shocking to anybody that he might have some
21 pornography on his iPod, that I will point out, he
22 voluntarily turned over to SLED. He didn't try to hide
23 that. He gave it to SLED. That's why, ladies and
24 gentlemen, these cases don't come up as often as they
25 should. I hate that they come up at all, but they don't

1 come up as often as they should, because nobody wants to
2 get on that stand and talk about the things that Complainant
3 had to talk about, and then, get asked about his
4 disciplinary record at school, as if that has some
5 relevance. The argument being, well, it shows he's not
6 credible. So, when you talk about the evidence and you
7 talk about credibility, does the evidence that you have
8 make him more or less credible?

9 Forgive me for the delay, your Honor.

10 THE COURT: Okay.

11 SOLICITOR THORNTON: I wanted to make sure I wrote
12 these down, so I got all the numbers correct.

13 What else did some of the folks testify to? Lessie
14 Johnson, Complainant' mother, got up, and also, Complainant
15 testified to this, what did they say about their phone
16 number? It's -4473.

17 You also heard testimony, Billy Jarrell, Chief
18 Deputy, as to which phone that Larry Heyward had. You
19 remember, we had George Floyd come up from Verizon and
20 talk about phone records. And Larry Heyward's cell
21 phone is -3944. When you are looking, ladies and
22 gentlemen, at these records, you have the Verizon
23 records; you have the Verizon record indicating the SRO
24 cell phone. What did Complainant testify to? What did
25 Complainant tell everybody? After he talked about the

1 incidents, he said, and I have it on tape. We played
2 the tape. You've heard it. You're going to hear it one
3 more time. And I'm going to, Mr. Lee, apologize to you
4 about, you know, it is disturbing, and it is
5 uncomfortable to hear; but nowhere near as uncomfortable
6 as it was for Complainant to live it for three years.

7 But what did he say? He recorded it. On the
8 recording, and you'll hear it in a minute, you remember
9 Complainant said, it's -- Larry Heyward said, it's about 2:00
10 o'clock; Complainant said, it's 2:02. All right? And it's
11 December the 28th of 2012. What did the Verizon cell
12 phone records show for December the 28th, 2012, from
13 1:59, I think it was, to about 2:03, about a four-minute
14 phone call. There was a call placed from Larry
15 Heyward's department-issued, SRO-issued cell phone to
16 Complainant's home at the time that also matches what is said
17 on the recording.

18 In addition to that, there are twenty-six phone
19 calls from Larry Heyward to Complainant, just during
20 the month of November. What is an SRO, this troubled
21 kid that's in trouble all the time that you don't like,
22 and he's got a beef with you, and he's just going to
23 make all this stuff up, why are you calling his house
24 twenty-six times in a month? And it just so happens
25 that the iPod time-stamps it at the exact same time

1 within that four-minute window?

2 You remember the testimony from Agent Dove, Britt
3 Dove, from SLED? He told you the timing started at 1:00
4 -- I believe it was 1:59 and change; that it ended at
5 about 2:03:16, I think is what he said, and that's when
6 it created the file. It matches with what the cell
7 phone records say, which match what is on the audio.

8 Any question in your mind as to what that audio
9 discusses, that that discusses as sex act? It can't be.
10 It can't be any clearer than that. So, if Complainant is
11 making all this up, how do you explain the phone call?
12 How do you explain the twenty-six other phone calls?
13 How do you explain that that coincides exactly with the
14 iPod? So, Complainant has somehow managed to get the cell
15 phone records screwed up from Verizon and make them
16 match the iPod, which he went in and changed the time
17 on, and changed -- remember Britt Dove talked about the
18 UTC, which is timed to the World Clock. You had to
19 subtract five hours, so you would know exactly what time
20 it was. So, he somehow managed to change that time,
21 too. And wait, he also got a voice modulation device,
22 so he could make the voice on that recording match Larry
23 Heyward so well that four people, two of which have
24 known him over twenty years, all agree that it's him.
25 Oh, and wait, it just so happens that it coincides with

1 the time that a phone call was made from Larry Heyward's
2 cell phone to Complainant's house.

3 What else did Complainant say? Complainant said -- and I
4 won't go into the details of each and every act. You've
5 heard him talk about showering together before and after
6 sexual acts. He described to you three very specific
7 locations, one of them being the SRO office, which is
8 depicted in these photographs, and it's a big, wooden
9 door; no visible window; deadbolt on it. You can see
10 the pictures. He said it happened in Larry's father's -
11 - or Larry's house, and then, Larry's deceased father's
12 house. He gave you three different locations, all of
13 which are here in Hampton County.

14 There's also two other charges to deal with, what
15 we call lewd acts, or criminal sexual conduct third
16 degree, which occurs at a later time for lewd and
17 lascivious behavior. Well, what's the first thing that
18 Complainant said happened to him in the sixth grade? Larry
19 Heyward groped him. Remember that? He groped his penis
20 area, and then, they had sex. What about showering
21 together? If that's not lewd and lascivious, why are
22 you showering with a thirteen -- or a twelve-year-old --
23 thirteen-year-old boy that you're not related to? both
24 before and after sex.

25 Complainant, we made him describe for you the

1 penetration, because that's a requirement. We have to
2 prove sexual battery by penetration, so I had to have
3 him describe for you what that meant. How much courage
4 do you think it takes to get up there and do that in
5 front of all these people? You really going to make
6 that up? He doesn't even live here anymore. So, this
7 is all just something he made up in his head, and he's
8 willing to come in here and testify to you. Oh, and by
9 the way, he's also got the Sheriff's Department, SLED,
10 the Solicitor's Office, Verizon, and everybody else in,
11 you know, in on it.

12 What about the school folks? Let's talk about them
13 for a minute. Dr. Brown, you remember Dr. Brown, the
14 principal? What did she say? She heard the tape. Who
15 did she say it was? Larry Heyward. Now, you could make
16 the argument, well, he had already told her it was Larry
17 Heyward. Remember the note? That's an exhibit. That's
18 going to be back there for you. There was a note that
19 says, Larry Heyward's been molesting me. So, she did
20 look at that prior to hearing it. But Dr. Gurley
21 didn't. What did Dr. Gurley testify to? Dr. Gurley
22 said nothing was told to her prior to that tape being
23 played, and what did she say? That's Larry Heyward.

24 Billy Jarrell has known him for over twenty years.
25 I think that's what he said. National Guard, Sheriff's

1 Department. What did Billy Jarrell say? That's Larry
2 Heyward.

3 Sheriff T.C. Smalls, Sheriff Smalls has known him.
4 Knows him so well that the defendant asked him to call
5 his wife, and we'll talk about that in a minute. What
6 did he tell Sheriff Smalls? Or what did Sheriff Smalls
7 say? Played it once, and I knew it was Larry Heyward,
8 but couldn't believe it. Played it again. Knew it was
9 Larry Heyward. Played it again. Knew it was Larry
10 Heyward. Any doubt in your mind that that's Larry
11 Heyward? None.

12 Same question was asked of Billy Jarrell. Same
13 questions was asked of Dr. Gurley. Same question was
14 asked of Dr. Brown. And again, it's not just that they
15 heard it; it's not just that it exists. It's also that
16 it matches up with what's on the audio, what's in the
17 iPod, and what's on the Verizon cell phone records from
18 Larry Heyward's SRO cell phone.

19 Complainant also told you, he tased me and he paddled
20 me, right? How do you know that's true? Because Larry
21 Heyward admitted that when he was talking to SLED. What
22 did he say? He said, well, I've never had any sexual
23 contact with him; matter of fact, and he's never even
24 been to my house. And then, that changed later. Okay.
25 Well, he maybe was at my house one time, but I've never

1 had any sexual contact with him. I have dry-tased him
2 and paddled him, but I did that with his mother's
3 permission. Lessie Johnson testified. Did she give him
4 any permission? She says no.

5 What did Dr. Brown say? He's not supposed to be
6 disciplining kids, anyway. That's not his job. In
7 fact, that's a violation of his job. That's why we had
8 that oath read. He's supposed to be serving and
9 protecting, not tasing and beating.

10 He admitted he tased him. What do the tasing
11 records show? You know, you're going to have them back
12 there, ladies and gentlemen. I'll just go through a
13 couple of them with you. March the 4th of 2011, his
14 taser that he had -- and again, you should consider
15 anything prior to him having it. Mr. Lee pointed out
16 that there were sixteen fire -- well, trigger pulls
17 prior to that. Obviously, he didn't get it until
18 January, I believe of '08.

19 March 4, 2011, twenty-seven trigger pulls on a
20 taser. February 3, 2012, sixteen trigger pulls.
21 February the 10th, eleven trigger pulls. April the 16th
22 and 17th, thirteen each. April the 24th, thirteen
23 trigger pulls. How many times you got to test that
24 battery? And you know he's not just testing the
25 battery. How do you know that? Because he admits to

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1 tasing Complainant on a number of occasions. That
2 specifically goes to the misconduct charge. That's
3 actually in the misconduct allegation in the indictment,
4 along with the sexual battery.

5 What else do you have in this case? What about
6 J.T. ? Remember J.T. ? J.T. got up, and
7 he told you he was a witness. What did he witness? He
8 saw Larry Heyward, he saw Complainant , watching a
9 pornographic movie. He said male and female. And
10 there's a stipulation that, on Larry Heyward's hard
11 drive, his computer, there was no male/female porn
12 found. That was stipulated. I'm no computer genius,
13 but in my time on this earth, there are lots of
14 different ways to watch pornography on a computer, other
15 than just downloading it. There's these nifty things
16 they call DVDs and DVD drives. There's thumb drives.
17 There's watching it off the Internet without downloading
18 it. Just because they didn't find a particular video on
19 that computer doesn't negate what J.T. told you. He
20 said he watched them go into the bathroom. Is there a
21 bathroom in Larry Heyward's office at the old
22 Middle School? Yes, there is. What else did he say?
23 He said, Larry Heyward told me that they do adult
24 things. Does that coincide with the language you heard?
25 It sounded very adult on that tape recording.

1 Complainant says he used Lifestyle condoms. Mr. Lee has
2 pointed out that red Lifestyle is the first time that
3 was ever heard. Okay, fine, Lifestyle condoms. What
4 did they find in his office? A Lifestyle condom. Now,
5 they found another condom as well. Why are there
6 condoms at all in the lap drawer in the SRO of his
7 office at the middle school?

8 What does Larry Heyward tell you himself? He tells
9 you several things. I've already talked about a couple
10 of them. He says he tased Complainant. He says he paddled
11 Complainant. He says something else very important. Well, I
12 might have touched him inappropriately one time while I
13 was paddling him; that was a mistake. So, he's now gone
14 from, I never had any sexual contact with him, anything
15 like that, to, well, I may have done it one time, but it
16 was a mistake.

17 What else does he tell the SLED officers? When
18 they played him the tape, what did they say happened
19 when Mr. Lee asked? His demeanor changed. Wonder why
20 his demeanor changed? Could it be because now he knows
21 that there's evidence that he's done this? He's heard
22 himself on a tape. What does he say? Do you think
23 that's me? Didn't get no response. He says, I'm not
24 admitting to anything, and wants to talk to the Sheriff.

25 What does he tell the Sheriff, ladies and

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CLOSING ARGUMENT - STATE

1 gentlemen? I'm sorry for bringing shame on your office.
2 I'm sorry for everything. Please call my wife and tell
3 her what I'm charged with and what I did. If you
4 haven't done anything wrong, then what are you ashamed
5 of that you did? Not just what you're charged with,
6 what he did.

7 Any one of these things that I've talked about,
8 ladies and gentlemen, by themselves, you might say I
9 need to be firmly convinced. But that's why, when we
10 first started this process, I said, you have to look at
11 everything, every piece of evidence. And again, Judge
12 told you something early on, the questions are not
13 what's important; the answers are. It's what comes from
14 that stand and the exhibits.

15 Mr. Lee is going to talk to you, I'm sure, a lot
16 about, we don't have DNA. We don't. If we did, we'd
17 have brought it to you. And we don't have this or don't
18 have that. And it reminds me a lot of, you know, don't
19 pay any attention to this guy over here; don't focus on
20 what they do have; let's focus on what they don't have.
21 Well, you have to look at everything. And again, it's
22 not beyond all doubt; it's beyond a reasonable doubt.
23 How do you get around the recording? And it's not just
24 the recording. It's the fact that it matches with what
25 Complainant says was going on. It matches with the phone

1 records. It matches with the iPod records that SLED
2 pulled. It matches with all those things. The condoms
3 that were found; the fact that he admits tasing him,
4 paddling him, and touching him inappropriately, but that
5 was a mistake.

6 Sheriff, I'm so sorry I brought shame to your
7 office. I'm sorry for everything. Please call my wife
8 and tell her what I'm charged with and what I did.

9 Something that was mentioned earlier, and Mr. Lee
10 told you about. He got up in his opening and he talked
11 about Sherlock Holmes. And I understood the reference,
12 but this isn't a Sherlock Holmes story. This is real
13 life. Complainant is a real victim, and Larry
14 Heyward is a real predator. And it's time that he faces
15 justice.

16 I would ask you to go back in your jury room and
17 find him guilty of these crimes, because, with all the
18 evidence that we have and the evidence that isn't there,
19 I'd ask that you be firmly convinced of his guilt.
20 Thank you.

21 THE COURT: Thank you, Mr. Thornton. Mr. Lee?

22 MR. LEE: Please the Court?

23 THE COURT: Yes, sir.

24 CLOSING ARGUMENT ON BEHALF OF

25 THE DEFENSE, BY MR. LEE:

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CLOSING - DEFENDANT

1 MR. LEE: I can't believe we started this yesterday
2 morning. It seems like we've been here for a long time.

3 Mr. Thornton said two things in his opening
4 yesterday and came back to them. And he started this
5 isn't a case about consent; this is a case about
6 control. I have not one time said that there was
7 something consensual going on, that anybody deserved
8 anything, that anybody had it coming to them. I never
9 said that one time. And we're not. We're not saying
10 that. Of course, it's not.

11 He said it was about control. I told you, on the
12 other hand, it's about what you don't see and don't
13 hear, and to whom much is given, much is expected.

14 Consent, which we said nothing about, and control.
15 The only way he's right about control is that people at
16 that desk, and all the resources at SLED, the Sheriff's
17 Office, the Solicitor's Office, et cetera, had control
18 over this investigation. They have control over Larry
19 Heyward's future and his life, and they've had it while
20 this thing's been pending for three-and-a-half years.
21 And now, what they're doing is, they are ceding control
22 of the case, finally, to you. So, you're the one who
23 has control. You are the one -- you're the ones who
24 will make a decision, and are the final stop in the
25 process.

1 You know what, I didn't sign up for this; I mean, I
2 came to jury duty, and here I am with this heavy,
3 important decision. Well, that's what jurors do. Is it
4 fair? Well, that's the way the system works. But what
5 isn't fair is them asking you to do that, to take
6 control, to do their dirty work, to convict him, with
7 all the consequences that come with it, and we've talked
8 about that. They want you to do that and say, you know,
9 well, we'll show you how to do it; here. That gets to
10 what I'm talking about. They're asking you to do a
11 very, very difficult, serious, serious, serious thing.
12 And they act like it's a joke that we question anything
13 about their case, the stuff that they did bring, and
14 more importantly, the stuff they didn't bring. Is it
15 too much trouble for them to do a proper investigation?
16 Might take longer; it's inconvenient.

17 Well, let's talk about what you didn't see and you
18 didn't hear. Let's talk about the investigation. And I
19 apologize, this is about as technical as I get. I don't
20 have a big screen and somebody running it for me. I
21 don't have a fireworks show for you or anything like
22 that, but this is -- we don't need one. Okay? This is
23 what I'm going to talk about, what you didn't see and
24 didn't hear.

25 And we've talked about the burden of proof, and

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1 they have such a high burden, and that you deserve as a
2 juror, who's going to be back in the community tomorrow,
3 answering questions, probably, about what you did. You
4 need to feel good about it, and you need to know, I
5 fulfilled my oath. They asked me to do something, and I
6 either decided not to do it, or I decided to do it. But
7 if you decide to do it, you're going to have to live
8 with it. You're going to have to embrace it, and you
9 have to own it.

10 So, in doing your job, let's talk about the
11 investigation first. To whom much is given, much is
12 expected. Well, SLED started out this investigation.
13 We're talking about law enforcement. And they had a
14 lead agent named Billy Ethridge. What does Billy
15 Ethridge look like? How tall is he? How old is he?
16 What's his experience? Why don't we know? The lead
17 investigator for over seven months on this case. And
18 sure, they said Croft was, you know, kind of tagging
19 along with him and doing some things. The lead
20 investigator on a case that's over three-and-a-half
21 years old never set foot in this courtroom. Oh, and
22 they tried to explain a little bit. Well, he left; he
23 left SLED. And then, what you didn't hear and didn't
24 see was when I got, on cross-examination, say, what's
25 this? We're not exactly being subtle this week, so

1 let's talk about this. What do you mean, he left? Oh,
2 he was fired. He was fired for misconduct, for
3 unbecoming conduct. They agreed to that. They had to.
4 They had no choice. On the same paper, they're saying a
5 school resource officer did things improper when he was
6 doing his job disciplining children. Larry Heyward ends
7 up here, on trial, charged, fighting for his future,
8 because they say he didn't do something.

9 This lead SLED agent we've never seen just doesn't
10 bother to come. And he loses his job. So, then, the
11 investigation progresses, so now we have Agent Croft,
12 who had reviewed -- apparently reviewed the file and
13 looked into things. So, I had to ask him, hey, what --
14 kind of tell me what you looked into and what you did,
15 and that sort of thing. And you know, he's reviewed the
16 file and everything else. So, he said he was from SLED,
17 and he talked about all the things that SLED does. They
18 have scientists, they have chemists, they have computer
19 guys, they have DNA, they have fingerprints, they have
20 you name it. It's only limited by your imagination.
21 The tremendous resources that they have at their
22 disposal. To whom much is given, much is expected.
23 Much is given. Much of our tax money is given to SLED
24 to do that. Why? Because people like you need to hear
25 that before you're placed in this horrible position as a

1 juror.

2 And there was some testimony about having sex on a
3 blow-up mattress in the deceased father's home. I'm no
4 DNA guy, but I cannot think of a better surface on which
5 to derive some DNA. What are we -- wouldn't that make
6 you feel a little better; oh, it's DNA. Well, we didn't
7 go there. We didn't go to his father's house. Well, I
8 mean, it's a deserted house. It's not like you're going
9 to be putting anybody out. It's not like the evidence
10 is going to get lost. It's not as if it would have been
11 destroyed. It's not like somebody washed some mattress
12 that -- did you find any fingerprint? We didn't go
13 there. To the supposed crime scene. We didn't go.
14 Take any pictures? No. Take a picture of Larry's
15 house? No. Any DNA? No.

16 How about the resource office where Complainant is
17 saying hundreds of times, had sex, hundreds of times?
18 Did you do any DNA swabs or anything in either the new
19 or the old one? No, we didn't do that. If there's all
20 this sex going on with no condoms and red condoms and
21 whatever, or cheap Lifestyle condoms -- I'm not sure how
22 Complainant knew what cheap Lifestyle condoms are. They
23 showed you the picture and said there. So, anyway, none
24 of that. None of it. Well, and there's plenty of other
25 things that they didn't do; that they could have done;

1 that they should have done that you deserve and you
2 should demand and you should expect.

3 One of the things that I asked -- I asked the
4 investigator, who was here, the one they did bring, I
5 said, when you have a case, isn't the credibility of
6 someone very important. Oh, yes, it is. Of course, we
7 all -- we all know that. The credibility of someone, is
8 it important? Yes, it is. So, the credibility of
9 Complainant is very important. Yeah, it is.

10 Well, we started looking at some things about
11 what's Complainant's deal, what's his credibility. And it
12 kind of started developing because of what you didn't
13 see and didn't hear, but we had to tell you. It started
14 developing. Complainant, according to his discipline record,
15 before these allegations supposedly even started a year
16 before, got in a little trouble at school. Used
17 something in his pants in order to get up and distract
18 the other children. Stole another student's scarf and
19 gloves, yelling *penis*, out loud. That's in January of
20 2010. They claim these things started happening in
21 August of 2010. And they're talking about how
22 vulnerable he is and all that kind of stuff. So, then,
23 even before they allege it started happening, in March
24 9th of 2010 -- we went over his discipline record, part
25 of it -- he got in trouble. Complainant continues to say

1 *rumors about teachers. That's March 2010. Then you*
2 *say, well, he got in trouble for that. Say, well, why*
3 *is that really important? Well, fast forward to Complainant*
4 *talking to Dr. Raedell Brown, and goes in there and*
5 *makes some allegation. And what she says is -- Complainant*
6 *asked Dr. Brown -- after I read the note, Complainant asked*
7 *me if I needed proof. I said, you have proof? She*
8 *didn't trust him. She didn't believe him. He knew he*
9 *wouldn't be believed. He knew he wasn't trustworthy.*
10 *But he was being honest at that point. And so,*
11 *credibility is very, very important.*

12 And we're not gratuitously trying to assault
13 someone's character or anything like that. And I think
14 Ms. Brown said something about, if you don't believe me.
15 He said, if you don't believe me. Well, why would you
16 say something that to somebody initially? He wasn't
17 telling the truth. So, then, we start talking a little
18 bit about motivation, Complainant's motivation to do this, to
19 make it up. And I asked him on the stand, Complainant, do
20 you remember in front of the assistant principal one
21 time when Larry disciplined you, that you said something
22 about you were going to get him? And that's a pretty
23 bold statement. That's pretty strong. What was his
24 response? I don't remember. If somebody -- he'd say,
25 no, I never said that before. I don't remember. We

1 know what that means. He does remember, he just doesn't
2 want to say it on that stand. So, you have a threat.
3 That's also supported by Larry Heyward. We'll talk
4 about his statement in a minute.

5 He knew. He knew from hearing that. He knew when
6 SLED goes in there and starts accusing this stuff that
7 some people were upset. A kid's upset because he's
8 having to discipline him. Well, I'll bet Complainant
9 was one of them. How do we know? Because he's upset
10 the way that he has to get disciplined. You just can't
11 make that up. So, Larry Heyward says that in his
12 statement. Complainant doesn't remember.

13 In three-and-a-half years, more than three-and-a-
14 half years, what investigation did SLED do, with all
15 their resources, to investigate whether or not there was
16 a specific threat by Complainant against Larry
17 Heyward, whenever it was, I'm going to get you. What
18 did they do? Zero. This is supposedly happening at
19 school. If it's in Heyward's office, it's right across
20 from the cafeteria. There's not a single person they
21 can bring in, not a single administrator, nothing they
22 can bring in witness-wise, saying, you ever heard him
23 threaten him? Didn't do that. Didn't do that. Well,
24 that's kind of important, because it goes to somebody's
25 motivation. Back to a reason to do something. And they

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1 didn't look up. They didn't -- they didn't do it.

2 So, what else do we know about Complainant ?

3 Well, we learned he was pretty handy on that iPod, among
4 other things. He had all kinds of stuff on there. He
5 had stuff that, for the rest of us, is illegal and gets
6 prosecuted. But now, for the first time, according to
7 Mr. Thornton, in his close, he was the victim, so we're
8 not going to prosecute him. That sounds like a great
9 way to get out of something. You go in and claim you're
10 a victim, it distracts people from the real issues.
11 Apparently, around here, in the Fourteenth Circuit, if
12 you're a victim, you get out of other things you may
13 have done. You also get to move to Jacksonville, where
14 you've always wanted to go, because there's a lot more
15 to do down there, get out of Garnett. So, there's
16 motivation there, clearly.

17 And these hundreds of times it happened, where was
18 Larry Heyward's office? Right across from the
19 cafeteria, the busiest place in school. Next to the
20 assistant principal's office. Yet, nobody saw anything.
21 Well, other than J.T. . That was the guy, he
22 came in and said, yeah, I was in there, and Larry and
23 Complainant were watching porn on his computer, male/female.
24 So, the expert that they brought, Mr. Dove, the computer
25 forensic guy with a lot of training and a lot of

1 experience, you know, that said, hey, you know, if it's
2 been on there, you can't really hide stuff; you can't
3 just delete stuff.

4 And then, I said, you searched the computers; isn't
5 it true there was no male/female pornography on Larry's
6 computers? And he kind of hemmed and hawed a little
7 bit, and he said, yeah, there was -- there was some kind
8 of pornography. Well, that's when we had to send you
9 all to talk about it. Well, when you came back, he also
10 -- I also asked him about the iPod. Isn't it true that
11 there were images of underage children, illegal underage
12 children, on Complainant's iPod when you searched it? I
13 don't remember is what he said. That's when you all had
14 to go outside, and we had to talk about it. And you
15 remember the first thing when you came out what was
16 done? It's called a stipulation.

17 I don't know if he stipulated anything else. But a
18 stipulation is an agreement between the parties that is
19 taken -- has to be taken as true. There's nothing to
20 dispute. So, the State, when confronted with this guy
21 being wishy-washy or saying that there was some porn,
22 they say, we've stipulated there was no male/female porn
23 on the computer. Their witness wasn't telling the
24 truth. Their expert witness. He also said he wasn't
25 really sure about the stuff on the iPod. He is a

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1 mandatory reporter. It was there. What did he do?
2 Well, if I did find something -- of course, they later
3 stipulated that he did -- if I did find something, I
4 would have just sent it up to who? Billy Ethridge, the
5 lead investigator at the time, whoever he is, whatever
6 he looks like, whatever he didn't do. So, we got a --

7 If the computer guy is saying that, obviously, we
8 know where he's -- where his loyalties lie. And even
9 with that guy up there, the computer guy with all the
10 training, he can pull anything out of any computer; he
11 can go -- he works for SLED, he's a computer forensic
12 examiner, what did he never testify to? And it wasn't
13 even asked. Hey, Lieutenant Dove, this thingamajig, is
14 this iPod thing that the State's been making such a big
15 deal about, is it legit? He never asked him that and he
16 never said that. Look, I'm not a computer guy. I'm
17 having to write on this thing. I don't have all that.
18 I can't tell you how that can be done. But guess what?
19 I don't have to. The Solicitor has to convince you
20 beyond a reasonable doubt that it can't be done and it
21 wasn't done. And I wish I could show how this was done,
22 because everything comes back to that.

23 I know that there's a lot of things that can be
24 done on computers nowadays. My three-year-old or five-
25 year-old are probably a little bit better on the

1 computer than I am, but I know there's a lot of stuff,
2 particularly if you get a little bit older.

3 I went home last night, and I was trying to relax
4 and forget about this trial, which didn't work, and I'm
5 watching some T.V. with my son, and about five minutes
6 in, a commercial came on, and it was for some insurance
7 company or something. And it was the grandparents, oh,
8 you know, the grandkids are coming over. So, the two,
9 like, twelve- and fourteen-year olds come popping up the
10 steps, and there's grandma and grandpa saying, 'we're so
11 glad to see you. And they start handing their computers
12 and remote controls and stuff like that, because they
13 want the young kids to fix them.

14 So, Complainant had the ability to do this. I don't
15 know how it was done. The State can't tell you that it
16 wasn't done; that it couldn't be done. And if anybody
17 can answer that question, it would have been their
18 computer guy. He said, yeah, I've gone through this
19 thing; this thing ain't doctored; this thing doesn't
20 look weird; it doesn't, you know, nobody's changed the
21 time on anything. None of that stuff's come in. They
22 did not say any of that stuff.

23 And the other thing, I mean, well, he never -- he
24 also didn't -- I guess he couldn't. Suppose there's a
25 four-minute phone call, the recording is less than two

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1 minutes. There's two minutes missing there. What does
2 that mean? I don't know. They sure didn't clear
3 anything up. I want to know how he did it. But all of
4 this stuff that the State talks about, all of this has
5 to come back. Well, yeah, well, you know, all this
6 stuff corroborates with what Complainant says. Well,
7 Complainant's saying what he has to say. Complainant's being
8 interviewed. Remember he said something, you know,
9 they're trying to put all these things in his -- and
10 said, hey, there's too many coincidences. There's too
11 many things.

12 Agent said first time he had heard about red
13 condoms was yesterday. First time in three-and-a-half
14 years hearing about red condoms was yesterday.
15 Solicitor's making a big deal about they found a red
16 packaged condom and a blue different brand in his -- he
17 said red, he said red, it's a red one, one red one like
18 this in his desk. What they didn't tell you was, well,
19 there was also a blue one, and that picture of those two
20 condoms that they blew up and put up there and
21 everything, was taken January 5, 2013, at the old
22 Middle School, four months after they moved schools.
23 Well, has anybody gone in his office? We don't know.
24 We didn't really look into that. We didn't ask about
25 that. Did you know they had a night school there?

1 Yeah, I think there's been night school classes and
2 adult ed. Maybe the school resource officer takes the
3 condom off the fifteen-year-old kid that he's
4 supervising, throws it in his desk. It doesn't put it
5 all together. Oh, well, that means it happened. It
6 doesn't mean that.

7 So, again, the computer stuff, if you're talking
8 about stuff, we don't know on an everyday basis. I
9 don't think anybody here is a computer forensic expert.
10 That guy from SLED, they had the perfect opportunity to
11 slam that door. I've never said during anything, oh,
12 this whole thing's -- he knew it was coming. He said in
13 his close, oh, it's just, you know, all these
14 coincidences he manipulates that. I don't know. I
15 don't know how he did it. But they could have shut the
16 door for you easily with that computer guy. This thing
17 was genuine. It hasn't been altered. There's no -- no
18 something called Audacity, where you can change all the
19 tone and treble, and you know, do whatever the case may
20 be. And well, since it sounds like it, it's got to be,
21 it's got to be right. Well, they didn't do that.
22 That's not asking too much, is it? And they didn't do
23 that. And they could have, and they should have, and
24 you deserve that.

25 So, computer stuff is things that we don't know --

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1 we don't really know about. We need help on that,
2 Solicitor. The jury, we need help on that. Sorry,
3 Jury, I want you to do it, anyway. Close enough. Close
4 enough ain't good enough in this courtroom, in this
5 venue. So, the stuff we don't know about is the
6 computer. They didn't even put it up.

7 Well, let's talk about what we do know about it.
8 We don't know about computers, but we know about people
9 and people's experiences, character, reputation, and
10 that sort of thing. And the last thing we come to is
11 Larry. Larry is what we do know about. And how do we
12 know about him? Well, these people over there are
13 supporting him. You live in a small town. Many of you
14 may know who he is.

15 T.C. Smalls has known him for a long time, the
16 sheriff of the County, for a long time, and he said two
17 things that are very important. One is, when I heard
18 that iPod thing, I was shocked; I had never -- never
19 means not once -- I have never heard Larry Heyward say
20 anything like that as long as I have known him.
21 Shocked. He also said that -- and this would have been
22 the same night, shortly after Larry asked to speak to
23 the Sheriff, shortly after they had put on this ipod and
24 accused him of that being him.-- he said that Larry was
25 upset and enraged like he had never seen him in his

1 entire life. Not a single time had T.C. Smalls ever
2 seen Larry that upset. I mean, Larry, for two hours,
3 talking to SLED, said he was calm, collected, just the
4 way he always is. And they had some conversations, and
5 he was able to tell them a lot about the things that --
6 unfortunately, they didn't investigate them, like people
7 that may have a vendetta against him. And you remember
8 all that stuff. But he said Larry was visibly mad and
9 upset. He had never seen Larry get that upset.

10 Well, Larry didn't get upset for two hours while
11 the SLED agents were grilling him. He didn't get upset
12 before or since. He got upset shortly after they stuck
13 an iPod in his face and wanted him to admit doing
14 something that he didn't do. And at that point, he knew
15 he was screwed, because they have this tape, he goes,
16 you think that -- you saying that's me? And all of the
17 sudden, it hit Larry. What is going on? What is going
18 on? He's still composed himself.

19 Told T.C. Smalls, sorry for the what's this bring
20 about on the Sheriff's Office; please call my wife. And
21 there's a discrepancy as to what was said about whether
22 or not T.C. Smalls said tell her what I did, which
23 doesn't make any sense, because he's just denied
24 everything, over and over and over again. He continues
25 to. Whether T.C. Smalls meant tell her what I did, or,

1 if T.C. Smalls did call his wife, and he said that he
2 called her, his wife. So, what's more alive?
3 Electronics or humans? Human emotions, human character,
4 human reaction.

5 The last three days I've driven over here, I've had
6 a light come on in my car that is a circle with an
7 exclamation point over it, and I didn't know what it
8 was. So, I had to get out the thing. It means that one
9 of my tires doesn't have the right amount of air in it.
10 So, it never stayed on. So, I got all five -- I had to
11 reach and go underneath the car and put air in the one
12 underneath, and I put exactly what it's supposed to be,
13 and that thing is still on, and I don't know why. My
14 *check engine* light, as most of your all's, has come on
15 before, and there's been nothing wrong with your car,
16 and I'm sure your car's broken down without the *check*
17 *engine* light coming on.

18 So, are we going to sacrifice what we know in our
19 hearts, what T.C. Smalls knows in his heart, and you all
20 have seen about Larry, in your heart, this isn't him.
21 It doesn't make sense, and it certainly hasn't been
22 proven by a reasonable doubt. Or are you going to
23 accept a halfway investigation job with this big smoking
24 gun of a video that they wanted to play it and play it
25 and play it and play it? Ask yourself, why did they

1 spend all that time on things like -- why did they show
2 you a sixth-grade picture of Complainant ? To try to
3 get you some sympathy for Complainant. That's why. It has
4 nothing to do with the case. It doesn't matter if he
5 looks like he's ten or twenty-two. We never said
6 anything about consent. Those are called red herrings.
7 They're thrown out here to try to get your -- it has
8 nothing to do with the case, just like consent has
9 nothing to do with the case.

10 Now, so, Larry, in here, not having to do anything,
11 as far as they have the burden, we've done everything
12 that's humanly possible to show you he's not like this,
13 he's never done it, from T.C. Smalls. Complainant
14 has some serious issues. He has the motivation, the
15 means, and the opportunity, because this phone call
16 apparently happened on December 28th, when nobody is at
17 school, so there's plenty of time. He said nothing.
18 Six days later, seven days later, is when this thing
19 shows up.

20 Britt Dove said, yeah, you can go in there and
21 change the date, if you need to, on a thing. And I'm
22 not saying it was easy. I'm not saying I could do it.
23 I can't tell you exactly how it was done. But they sure
24 didn't tell you that it couldn't be done, and they had a
25 computer guy right here to do it. And they left out

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1 everything. Okay? So, he's done spread -- he's spread
2 rumors before about teachers; got in trouble, that we
3 know of. He had the motivation. He didn't like being
4 disciplined. And they're going to make a big deal of,
5 oh, well, Dr. Brown said Larry's not supposed to do
6 that; he's not supposed to paddle; he's not supposed to
7 do that. What did Complainant say? I got in trouble for
8 talking, so they sent me to Officer Heyward's office.
9 The school is using him to do discipline. They can't
10 turn around now and say, well, he can't do anything,
11 because he's not supposed to discipline. The handbook
12 says he's not supposed to do that.

13 The school is the one who sets up the rules and
14 sends people there for talking, to the school resource
15 officer. They're doing it, and now they're trying to
16 say, oh, violation, violation, misconduct in office, you
17 can't do that. The school knows that.

18 I'm sure there's something I've left out, but you
19 all took notes along the way, and you all can go back
20 and talk about everything and anything. But I would ask
21 you, when you go to approach your job back there, that
22 the first thing you do, when you -- and you all can
23 handle it however you want to. The first thing I
24 suggest, Jurors, sometimes, is go around and say, each
25 one say this is what -- some reasonable doubts that I

1 have; and these are some things that I question that I
2 don't feel good about that I think we should have heard
3 about that I don't trust that I didn't really like, that
4 really kind of bugged me a little bit, because they want
5 us to do a very, very, very serious job, a very serious,
6 long-term thing, and I wish they would have done this,
7 or why didn't they do this.

8 Go around and talk about what your reasonable
9 doubts are. Because, if you have reasonable doubts, the
10 only verdict under your oath is not guilty. And there's
11 plenty of reasonable doubts. There's plenty of them.

12 And you know, and what I ask you not to go do is
13 say, well, you know, the Defense didn't prove this,
14 that, or the other. Like I told you in the opening, you
15 can't prove a negative. You can't prove you've never
16 been to the State of New Jersey. You can't do it. And
17 that's why it's set up the way it is. Proof beyond a
18 reasonable doubt, the burden is on the Prosecution.
19 Reasonable doubt is the kind of doubt that would cause a
20 reasonable person, in making one of life's important
21 decisions, to hesitate to act. Also, proof beyond a
22 reasonable doubt, the type of proof that leaves you
23 firmly convinced, firmly convinced, that somebody did
24 something. And this isn't close to that. It isn't
25 close to that.

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JURY CHARGE

1 Well, I know you all are ready to move on. I would
2 just share one small story with you. At home, when I
3 cut the grass, my three-year-old, Carter, loves to go
4 out there and push his little toy lawn mower around
5 there, and he sort of stays behind it. When we mow the
6 grass, grasshoppers start jumping everywhere, and Carter
7 loves to chase these grasshoppers. And he's bouncing
8 around, and he's, well, back there trying to push the
9 lawnmower, and he'll come by and catch one. And he'll
10 say, hey. He'll finally catch one, and he'll say, hey,
11 daddy, guess what's in my hand. I'm said grasshopper.
12 And he goes yeah. He goes, but is he dead or is he
13 alive? And I'm like, this might be, you know, never
14 really thought about that, but might be a good teaching
15 moment. So, called him and said, Carter? What? The
16 life of the grasshopper is in your hands. So, too, is
17 the life of my client, in your hands. Thank you.

18 THE COURT: Thank you, Mr.. Lee.

19 MR. LEE: Thank you, your Honor.

20 JURY CHARGE:

21 THE COURT: Ladies and gentlemen, you have been out
22 here for right at an hour, which in and of itself is not
23 all that long. I now have the responsibility of
24 instructing you as to what the law is. My charge on the
25 law is scripted, scripted out. It's going to take about

1 forty minutes to do it. If you all would like, I can
2 send you to your jury room, and let you have a brief
3 break. Or, if you're willing to go forward, I'm willing
4 to go forward at this time. So, let me ask you this
5 way. Do any of you need a brief recess before we begin
6 the charge? If so, will you please indicate by raising
7 your hand or nodding or something. Anybody? Okay.
8 That means everybody's ready to go forward? All right.
9 I take that as a yes, and I appreciate it. Because now,
10 ladies and gentlemen, it is my responsibility under the
11 law to instruct you of the charge is, what the law is in
12 this case.

13 You have followed very patiently and listened very
14 attentively to the arguments that have been presented to
15 you by the lawyers in this case. And now, I have to
16 instruct you, or charge you, on what the law is, because
17 it is your duty as jurors to accept the law, and to
18 apply it as I will now tell you. As jurors, it is your
19 exclusive duty to decide all issues of fact in this
20 case. And for that purpose, you have to determine the
21 effect, the weight, the value, and the truthfulness of
22 the evidence that you have seen and heard.

23 Both the State of South Carolina and this defendant
24 have the right to expect that you will conscientiously
25 consider and evaluate the evidence, and that you will

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1 apply the law of the case to that evidence, so that both
2 the State and the defendant will receive a fair and
3 impartial trial at your hands.

4 Throughout the course of this charge, ladies and
5 gentlemen, as I use the word *defendant*, I am referring
6 to Mr. Larry Heyward. Mr. Heyward has been indicted by
7 the Grand Jury of Hampton County, and charged with the
8 various indictments as follows. This Indictment Number
9 53 charges misconduct in office, and it accuses Mr.
10 Heyward, here in Hampton County, between August of 2010
11 and December of 2012, with unlawfully and intentionally
12 breaching his duty of accountability to the public, as
13 imposed by law, by failing to properly discharge those
14 duties. Specifically, he is charged while employed by
15 the Hampton County Sheriff's Office as a school resource
16 officer at Middle School that he committed sexual
17 battery upon a minor victim, whose initials are Complainant
18 and you all now know it as Complainant , and whose
19 date of birth is 1997. I will tell
20 you later, in the course of this charge, what we mean
21 when we use the words *sexual battery*.

22 He's further charged with using a department-issued
23 taser to unlawfully and willfully assault the minor
24 victim, in violation of the law. He is charged in
25 Indictment Number 140 with sexual conduct with a minor

1 -- criminal sexual conduct with a minor, from age eleven
2 to fourteen years of age, in the second degree. That
3 indictment says that he did, here in Hampton County,
4 between August of 2010 and November of 2012, he
5 committed a sexual battery, as I will define that to
6 you, upon a minor, who was fourteen years of age or
7 less, but who is at least eleven years of age at the
8 time, on three separate locations, as set forth below.
9 Specifically, he's accused in engaging in oral and/or
10 anal intercourse with the minor victim, whose date of
11 birth is 1997, at the Middle
12 School in Count 1; at the defendant's residence in Count
13 2; and the defendant's deceased father's house in Count
14 3, of course, all in violation of the law.

15 Indictment Number 141 charges lewd act on a child.
16 This indictment says that, in Hampton County, between
17 August of 2010 and June the 17th of 2012, the defendant,
18 whose date of birth is 1960, being
19 over the age of fourteen, did willfully and lewdly
20 commit a lewd or lascivious act upon the body of D.J., a
21 minor victim, whose date of birth is
22 1997, with the intent of arousing, appealing to, or
23 gratifying the lust or passions of or sexual desires of
24 himself, that is, Mr. Heyward, or of the child, in
25 violation of the law.

Now, ladies and gentlemen, I remind you again, as I told you before this case started, that the indictments

1 that I just read to you are not evidence, nor are they
2 proof of the charges they contain. They are charging
3 documents, legal documents, that put you and me and
4 anybody else who reads them, including the defendant and
5 the parties of this case, on notice of what these
6 charges are all about. And as you know, Mr. Heyward has
7 entered pleas of not guilty to all of these charges and
8 has asked for the jury trial at your hands, that he is
9 now in the process of receiving.

10 The legal effect of a plea of not guilty to charges
11 in a criminal indictment is to place the burden of proof
12 upon the State of South Carolina to prove, by evidence,
13 the guilt of the accused beyond a reasonable doubt,
14 before you, as a jury, can convict him and find him
15 guilty. Because Mr. Heyward is presumed in law to be
16 innocent of the charges contained in these indictments,
17 it is a fundamental rule of the law of evidence that a
18 defendant, regardless of the nature of the charges, the
19 seriousness of the charges, the number of charges
20 against him, will always be presumed innocent of the
21 crimes for which he has been charged, unless and until
22 his guilt has been proven beyond a reasonable doubt to
23 your satisfaction.

24 Now, the presumption of innocence is not a mere
25 legal theory. It is not an empty legal phrase. The

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1 presumption of innocence is like a robe of
2 righteousness, and it is placed about the shoulders of
3 the defendant, and it assigns that defendant the class
4 known as the innocent. And that presumptive robe of
5 righteousness remains with him until it has been
6 stripped from his person by evidence that satisfies you
7 as a jury of his guilt beyond a reasonable doubt. The
8 presumption of innocence accompanies a defendant from
9 the time of his arrest. It follows him throughout every
10 course of these proceedings. It even continues to exist
11 to his benefit as you go back into the jury room to
12 retire and to deliberate your verdict. The presumption
13 of innocence continues to exist for the defendant unless
14 and until you, the jury, reach the conclusion that the
15 State has proven his guilt beyond a reasonable doubt.

16 So, the State, then, has the burden of proving
17 guilt beyond a reasonable doubt. Some of you might have
18 served as jurors in civil cases before, and if you have
19 served as jurors in civil cases -- excuse me -- you were
20 told by the judge that it was only necessary for the
21 party who has the burden of proof to present evidence to
22 you that is more convincing on that side of the issue
23 than the evidence is on the other side of the issue.
24 But in criminal cases, the State's proof has to be more
25 powerful than that. Here, it has to be proof beyond a

1 reasonable doubt.

2 Now, a reasonable doubt is the kind of doubt that
3 would cause a reasonable person to hesitate to act in
4 the most important of his or her affairs. Reasonable
5 doubt or proof beyond a reasonable doubt is proof that
6 leaves you firmly convinced of the defendant's guilt.

7 Now, there are very few things in this world that
8 you and I know with absolute certainty, and in criminal
9 cases, the law does not require proof that overcomes
10 every possible doubt. And so, if, based on your
11 consideration of the evidence, you are firmly convinced
12 that the defendant is guilty of the crimes charged, you
13 must find him guilty. If, on the other hand, you think
14 there is a real possibility that he is not guilty, you
15 must give him the benefit of the doubt, and find him not
16 guilty.

17 Reasonable doubt could arise from evidence in the
18 case, or it might arise from a lack of evidence in the
19 case. But you, ladies and gentlemen, have to determine
20 whether or not reasonable doubt exists as to the guilt
21 of this defendant.

22 I tell you that he is entitled to every reasonable
23 doubt which arises in the case. And so, if, on any
24 issue of fact which is essential to a conviction and a
25 verdict of guilty, you have a reasonable doubt as to how

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1 that issue should be resolved, it is your duty to
2 resolve that reasonable doubt in favor of the defendant;
3 because the defendant, ladies and gentlemen, is never
4 required to prove his innocence. But the State is
5 required by law to prove every essential element of the
6 offense charged against him by evidence that satisfies
7 you as a jury of his guilt beyond a reasonable doubt
8 before you can convict him and find him guilty.

9 And in that regard, I instruct you now, and I
10 emphasize to you that the fact that the defendant in
11 this trial did not testify on his own behalf is not a
12 factor to be considered by you in any way in your
13 deliberation and in your consideration on the question
14 of his guilt or innocence. It must not be considered by
15 you in any manner whatsoever against the defendant, or
16 militate against him in any respect whatsoever; because
17 a defendant has a constitutional right to remain silent,
18 and if he chooses to exercise that right, that cannot
19 and must not be used by you or considered by you in your
20 deliberations. And so, under your oath, you are to
21 reach no inference and draw no conclusion whatsoever
22 from the fact that this defendant did not, himself,
23 testify. That should not even be discussed by you in
24 the jury room. Because the burden of proof, as I said,
25 is upon the State, the defendant has no obligation to

1 prove his innocence. The burden of proof remains upon
2 the State to prove guilt beyond a reasonable doubt, and
3 the fact that the defendant did not testify is not a
4 factor to be considered by you in determining his guilt
5 or innocence.

6 And so, ladies and gentlemen, if, then, upon the
7 whole case, you have a reasonable doubt as to the guilt
8 or the innocence of the defendant, he is entitled to
9 that reasonable doubt, and would be entitled to an
10 acquittal and a verdict of not guilty. But on the other
11 hand, if, upon the whole case, you find that the State
12 has proven by evidence which satisfies you as a jury of
13 his guilt beyond a reasonable doubt, then, in such
14 circumstances, it is equally your duty to convict him
15 and to find him guilty.

16 Now, during this trial, ladies and gentlemen, each
17 of us, you and I, have our separate duties to perform.
18 As the trial judge, it's my responsibility to rule upon
19 the admissibility of the evidence which has been offered
20 during the course of this trial, and you are to consider
21 only the competent evidence that has come before you.
22 In other words, you are only to consider the testimony
23 which has been offered from this witness stand, and the
24 items and the documents that have come into evidence
25 under the record of this case, and the stipulations of

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1 Counsel that have been explained to you during this
2 trial.

3 Now, I have the additional duty to charge you on
4 what the law is in this case, because, as a presiding
5 judge, I'm made the sole judge of the law, and it is
6 your duty to accept and apply the law as I state it to
7 you now to be the correct law.

8 You may have come into your service this week about
9 some preconceived ideas about what you would like the
10 law to be or what you think the law is. But I tell you
11 now, if your preconceived ideas about the law or your
12 preferences about the law disagree with what I'm telling
13 you now the law actually is, under your oath, you are
14 obligated to forget you preconceived ideas about the
15 law, and abandon your preferences about what you would
16 like for the law to be, because under your oath, you are
17 sworn to accept the law precisely as I now state it to
18 you.

19 Because I am the judge of the law, but you, as the
20 jury, are the judge of the facts, and our *Constitution*
21 has said that a trial judge can't comment upon the facts
22 of the case, that's the reason we sometimes have to
23 hover around each other up here and talk about things or
24 send you back to the jury room, because we might be
25 talking about the facts of the case, and I can't comment

1 upon the facts of the case to you, and I don't have any
2 opinion about the facts of the case. And so, you are
3 not to infer from anything that I have said to you
4 during the course of this trial, or anything that I'm
5 saying to you now in this charge, that I have an opinion
6 about the facts in the case. I am not allowed to have
7 such an opinion, because that is solely a matter for
8 you, ladies and gentlemen, to determine, because, as
9 jurors, it is your duty to determine, as I have told
10 you, the effect, the value, the weight, and the truth of
11 the evidence which has been introduced during the trial.

12 Now, as you determine what the facts of the case
13 are, you necessarily have to pass upon the credibility,
14 that means the believability, of the witnesses who have
15 testified. In other words, what do you believe? Who do
16 you believe? You also have to decide the value and the
17 weight that you will give the testimony that you have
18 heard. You and you alone have to decide the force and
19 the effect and the truthfulness of what you've heard.

20 But we don't expect you to do these things
21 arbitrarily. We don't expect you to do these things
22 without giving you some guidance that will help you
23 along the way, because there are a lot of things that
24 you can take into account when you're trying to decide
25 where the truth lies. For example, you can take into

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1 account the appearance or the manner of the witness as
2 he or she testified here from the witness stand. We
3 sometimes call that the demeanor of the witness. You
4 have a right to ask yourself is that witness hesitant,
5 or was the witness forthright. You have the right to
6 ask yourself, was the testimony of the witness
7 consistent, or did it have discrepancies or
8 inconsistencies within it. You have a right to ask
9 yourself what was the ability of that witness to know
10 the things that he or she was telling you about. Did
11 the witness have an interest to be served by the
12 testimony that the witness has given? You have a right
13 to ask yourself whether the testimony of a witness was
14 made stronger by other evidence, or was it made weaker
15 by other evidence.

16 Because, ladies and gentlemen, as jurors, you've
17 got the right to believe a small portion of the
18 testimony of a single witness, and disregard the larger
19 portion, or vice-versa, the other way around. Or, you
20 can believe everything that a witness tells you; or you
21 can believe none of what a witness tells you.

22 But you don't do those things arbitrarily. There's
23 got to be some reason in the record for doing that,
24 ladies and gentlemen, because what we expect you to do
25 is this. We expect you to use your good common sense,

1 your mental processes. And as you determine what you
2 consider to be true, we require you to exercise your
3 good judgment, your experiences in life, your sense of
4 logic and reason. And you apply those abilities that
5 each of you has to what you have heard in this case, and
6 you will be able to decide where the truth of this case
7 lies. And once you have decided where the truth of the
8 case lies, then, you will take that truth, and you will
9 wrap it in the mantle of the law that I am now giving
10 you, and those two things will come together to result
11 in the truth of this case.

12 Now, ladies and gentlemen, I'm going to instruct
13 you as to the law on the specific charges that are
14 brought in these indictments. I want you to listen. I
15 want you to open those eyes, and I want you to look at
16 me, and I want you to pay attention, because these are
17 extremely important. You are now going to be in a
18 position in a few minutes to go back into that jury room
19 and start talking about this among yourselves, unless
20 you have listened to what I am now telling you.

21 The defendant is charged in the first indictment
22 with misconduct in office. What do we mean by
23 misconduct in office? In order to convict someone of
24 misconduct in office, the State has to prove two
25 essential elements of the charge, each beyond a