

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Kershaw County

Tanya A. Gee, Circuit Court Judge

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THE STATE,

SC SUPREME COURT
RESPONDENT,

V.

JAMES WAYNE MILLER,

APPELLANT

APPELLATE CASE NO 2016-000642

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBIT #46 (CD INTERVIEW REDACTED); STATE’S EXHIBIT #47 (CD
INTERVIEW REDACTED)**

1 decisions. Complainant despite how hard she tried has still
2 been too scared to tell her mom what's been going on.
3 She doesn't have a public school to attend. She can't
4 say go talk to your guidance counselor. Something is
5 going on. Go talk to your teacher that you trust. As
6 her mother at that time considering she has been with
7 James practically her whole life, she did the best she
8 could.

9 She confronted James. Why are you sleeping in
10 Complainant bed? Get out of her bed. What's his response?
11 Oh, it's more comfortable for my back. More comfortable
12 for my neck. What does she do? She switches out the
13 beds. But he still goes up there. What's his response
14 then? Oh, well, what's the big deal? I'm sleeping with
15 my 16 year old, 17 year old daughter. What's wrong about
16 that? He starts to make her feel crazy. Complainant still
17 not telling her what's been going on. She starts to feel
18 crazy. She physically tries to get him out of the bed.
19 Well, go down to the couch. She'll wake up and he'll be
20 right back up there. And you don't have to just take her
21 word for it. He tells Investigator Dill in that second
22 interview that he sleeps with his daughter. And the
23 investigator is like she's not five. She's 16 or 17 and
24 apparently she doesn't want you in there. So you don't
25 have to just take Tammy's word for it.

1 When she says we had a healthy sex life but we
2 stopped when we moved to Camden, he even tells
3 Investigator Dill, yeah, I have been having sexual issues
4 with my wife. But don't just take her word for it. You
5 also have photographs. Take me just a second. These
6 were taken ten days after the allegations came out and
7 Complainant told her mom what had been happening. Tammy
8 testified I even - I couldn't get him out of the bed. I
9 even moved my bed that was in the master bedroom which
10 she pointed out used to be this room upstairs with the
11 kids to try to get him out of Complainant room. So you
12 don't just have to take her word for it. You have the
13 pictures. You have this interview where he said yes, I
14 slept with my daughter in her bed and, yes, I haven't had
15 sex with my wife for a while.

16 When Complainant finally found the courage to tell her
17 mom what was happening on August 11, she goes down there
18 and says, Complainant this has got to be more than you just
19 not being allowed to go to the Harrelson's house. What
20 is happening? She says she directly asked her. She gave
21 her that moment that Complainant needed. Is he touching you?
22 Yes. Everyday. And that was enough. She finally had
23 what she had been - what had been her gut instinct of
24 what was going on. And ever since she knew she did
25 everything she was supposed to do as a mom. She called

1 her sister to call the police because she was so scared
2 he was going to go to her phone and find out she called
3 911. So she called the police through her sister.

4 She took her daughter to the hospital. She took her
5 daughter -- She did everything the investigator told her
6 to do. She took her daughter to the hospital. She took
7 her daughter to the interview. She took her daughter to
8 the medical examination at Dr. Luberoff's office. She
9 moved to Florida to get away from that Camden house.
10 Yes, she sold their items because she didn't have
11 anything. She didn't have anything so she sold the
12 things that she could sell to make a better life for her
13 and her kids and she moved to Florida. She studied to be
14 an insurance agent. She got her license to be an
15 insurance agent. She got her license to be a CNA. She
16 has done everything she was supposed to do as a mom.

17 And again, going back to your common sense. Ms.
18 Good asked a few of the witnesses, well, isn't Tammy the
19 one who called you to come back to the house to look at
20 certain areas? Well, that was within the investigator's
21 responsibility. But, ladies and gentlemen, use your
22 common sense. Her daughter has just disclosed what had
23 been happening for a year to her. Of course they are
24 going to have some conversations about where it happened.
25 How did it happen. How did I miss this. So yes, of

1 course they're going to have a couple conversations and
2 so when **Complainant** tells her where these assaults occurred in
3 the home, is it that unreasonable for her to go look at
4 those places? And you can see from these photos some of
5 the spots that the light reacted on that Melissa Wallace
6 used, you can see for yourself, there are spots on pieces
7 of the furniture where the sexual assaults happened. Is
8 it that unreasonable to ask the investigator to come
9 check those out? No, it's not.

10 You also heard from Breana Miller now Keeter who is
11 **Complainant** twin sister. She told you that she has always
12 been more of a mommy's girl and **Complainant** has been more of a
13 daddy's girl. She likes to do art. She likes to spend
14 time inside. She takes care of the kids. **Complainant** and
15 James have always gone off and done whatever, fishing,
16 hunting, working on the jobs. That's just their thing.
17 Just like Dr. Foster said, the perpetrator is going to
18 choose the person that he has the closest relationship
19 with because they are the most vulnerable person and they
20 are the most likely not to break that bond of secrecy
21 that **Complainant** and her dad have. She says that they argued
22 a little bit. They're 16, 17 years old. They're
23 teenagers. They're twins. They're home schooled.
24 They're around each other all the time. Of course
25 they're going to argue a little bit.

1 But did you see when Ms. Senn asked her, did you
2 notice a change in Complainant behavior? And at that point
3 that's when Breana broke down. She said yes, because now
4 she - at that point they were arguing. They were
5 fussing. She didn't feel like she was there for her
6 sister when she needed to be, and she broke down.

7 She also talked about, again, we go back to some of
8 the times that Complainant said that it happened. She told
9 you that it happened when her sister was across the room
10 sleeping before they got their own bedrooms, but Breana
11 said their beds are on the opposite ends of the bedroom.
12 It happened at night when everybody was asleep. There is
13 a separation in between the rooms. It's not there
14 anymore because the rooms switched after that. But
15 again, this was not some long drawn out romantic sexual
16 intercourse. It took one to two minutes. Complainant said
17 she didn't say anything because she was scared. Breana
18 testified how the room was. It's not just Complainant
19 Breana said the beds are on the opposite side of the room
20 with a separation in between.

21 And yes, after this happened she was placed in an
22 uncomfortable situation with one of her aunts and she did
23 have to see James, but she was forthcoming with that and
24 she did say that he reached out to her in the past month.
25 She has no idea how he got her number. Apparently

1 somebody at the courthouse. And I have apologized to her
2 for that. However, she said she did not want that
3 contact. She felt uncomfortable at the time, but she did
4 see him right after this happened and she was forthcoming
5 about that.

6 Martha Penrod. Ms. Penrod has no dog in this fight.
7 Yes, they had a few disputes over him putting a chain
8 across the driveway and a gate across her driveway. Sure
9 that irritated her, but she didn't sit here and try to
10 portray him as this horrible individual. She said he was
11 fine unless he was drinking with his buddies and then he
12 was - she didn't say he was a nuisance but she basically
13 she said, yes, I was irritated with him for those things.

14 That is completely understandable. She corroborates what
15 Complainant told you and James tells us in the interview, that
16 Complainant and James were by themselves for a couple of weeks
17 before the rest of the family moved in. She says that,
18 and she could tell the difference between the twins, she
19 still can, she saw James with Complainant all the time. She
20 left the house all the time to go to job sites with him.
21 She's their neighbor. She's retired. She saw the twins.
22 She does not live in the household. So you don't have to
23 just rely on the family to tell you about that. And, of
24 course, James also said that, but she noticed it, too.
25 She has been teaching school for 29 years, eighth

1 graders. She has had a lot of opportunities to interact
2 with teenage girls and their parents, but yet she noticed
3 some things that made her extremely uncomfortable between
4 James and Complainant.

5 She testified that there were several occasions that
6 she remembered. One was in the hammock. I'll just take
7 a second here. This is her porch. The hammock used to
8 be in between those trees. These pictures were taken
9 more recently so the hammock has been removed, but she
10 testified that the only person that she ever saw James in
11 the hammock with was Complainant. She saw them spooning in
12 the hammock, not just lying with their heads in opposite
13 directions. Not just lying where you kind of have your
14 legs hanging over the hammock, but literally spooning in
15 the hammock. She also saw them with their arms around
16 each other in the lake. She said was a little
17 inappropriate for her. It wasn't just playing around in
18 the water. And then she testified about a situation that
19 she saw that made her so uncomfortable from her porch she
20 literally had to go back inside because she just couldn't
21 sit there and watch that, and that was when he wrapped
22 his hand around her, put his leg all the way around her
23 to where he's basically straddling his 16 year old
24 daughter.

25 And I also point out to you Investigator Dill wasn't

1 the only one that James had absolutely no response to
2 when he was confronted the first time about him raping
3 his daughter. Martha did. Martha confronted him and
4 said, I know that you have been sleeping with your
5 daughter. And what was his response? Nothing. White as
6 a ghost.

7 Now, we brought several expert witnesses this week
8 and they testified about their specific field and
9 Investigator Wallace did say that she took her light
10 source to the house in hopes of finding bodily fluid,
11 specifically semen that he would have left behind. Now,
12 Ladies and gentlemen, again common sense will tell you
13 that, of course, testing for his DNA as far as touch DNA
14 is not going to be useful in that particular situation
15 because it's his house. So, of course, his touch DNA is
16 gonna be everywhere so they didn't test for that because
17 that wouldn't necessarily be helpful to this case. He
18 lived there. His DNA is gonna be in there.

19 But they did try to detect semen. Now, Courtney
20 Thompson testified, and she's an expert in the field of
21 serology which is the study of bodily fluids, she said
22 that there are certain things that cause degradation of
23 the sample and that just because a bodily fluid was at
24 some point there, just because semen was at some point
25 was there, doesn't mean that that sample she's going to

1 have is gonna test positive. And why did she say that?
2 Degradation. So time. Some of the places they tested
3 were carpet. So, of course, people walk over the carpet.
4 They tested the pillow case. Pillow cases are washed.
5 She testified that that can also degrade the sample. And
6 then **Complainant** said, ladies and gentlemen, after he would
7 ejaculate, most of the times he would do it on her, not
8 in her, but on her most times. But what did she say he
9 would do? Wipe it up with a towel and he would put that
10 towel in the washing machine or either put that napkin in
11 the trash can.

12 Ladies and gentlemen, semen is not like urine.
13 Urine spreads over an area. Semen goes in one spot. You
14 can see it. Just wipe it up. That's what he did. Is it
15 that unreasonable to think that those samples that they
16 took aren't going to be positive? No. However, the
17 expert that did have something to testify to, not that
18 her's wasn't important, but Dr. Susan Luberoff, a child
19 abuse pediatric specialist who has seen over 10,000
20 children over the course of her career, this is the first
21 time **Complainant** has ever had any sort of gynecological exam
22 down there. And what did Dr. Luberoff find? A notch on
23 **Complainant** hymen at the 7:00 position. Combine that with
24 **Complainant** sexual abuse history and that is consistent with
25 penetrating trauma. Ladies and gentlemen, it doesn't get

1 too much straight forward than that.

2 We also called Dr. Foster to the stand. And the
3 elephant in the room, and we're not trying to hide it, is
4 what Complainant thought earlier. People that don't have
5 experience with sexual abuse, and it's not necessarily an
6 unreasonable thought and Dr. Foster testified that the
7 large majority of people, of children do disclose a lot
8 later. Some of them don't even disclose at all. Some of
9 them don't disclose until adulthood. Two-thirds of the
10 population that has been studied relating to sexual abuse
11 child victims come forward later. It is not an uncommon
12 situation.

13 Let's talk about what latent disclosure means and
14 how sometimes when the child finally does tell, that it
15 is partial. That it is very usual that they will have an
16 event that will finally trigger everything to come out.
17 Think about that particular day. Complainant testified for
18 about a month she had been home and she had just started
19 to feel worse. She was 17 at that point. She just
20 really was having a very hard time holding it in anymore.
21 She testified that the last time that he tried to do it
22 when she had mono, she was lying in bed and she pushed
23 him off. She didn't feel like doing it.

24 And, ladies and gentlemen, just to clear this up,
25 mono is considered the kissing disease. I'm sure

1 everybody has heard that. So **Complainant** didn't say that he
2 was sitting there kissing her and exchanging saliva which
3 is how it's transferred to another person. She said it
4 was just one or two minutes and it's done. It's not a
5 romantic encounter. They're not sitting there kissing.
6 And she even said when she had mono, she fought him off.
7 She didn't want him to do it that day. I just wanted to
8 clear that up because that was brought up several times.

9 Back to Dr. Foster though. Partial disclosure.
10 Sometimes there is a triggering event such as her mom
11 finally saying directly, is he touching you? Yes, mom.
12 Everyday. So it's not unusual that that very first time
13 that it all comes out they don't sit there and tell the
14 entire story at that point. They don't tell every single
15 detail that's been happening. It's an overwhelming
16 traumatic situation. So again, the research, the
17 studies, and your common sense and knowledge of human
18 nature will tell you that very first time she's not going
19 to sit there and give it all out there. And Tammy
20 testified to that. **Complainant** testified to that. The first
21 day she told what she needed to tell her. Not unusual.
22 Dr. Foster's been in this field for 30 years. Not
23 unusual.

24 She also testified that the factors that play into
25 that delayed disclosure are things like helplessness and

1 accommodation and the secrecy that comes along with that
2 and what do those mean. Helplessness. The family is all
3 she had. Tammy told you Complainant told you, they have had
4 very few friends. They have moved over 20 times.

5 They're home schooled. They're in that house. Unless
6 Complainant has an opportunity to go to a job site, they are
7 in that house all the time. So when he threatens her,
8 I'm gonna ruin you. You're gonna ruin this family.
9 You're gonna have no one, why wouldn't she believe that?
10 That's all she's ever known is her family.

11 Accommodation. Dr. Foster testified that after the
12 first few times that it happens, and Complainant said she
13 tried to fight him off for several months. She couldn't
14 do it anymore. He wasn't going to stop. She just let
15 him force himself on her and rape her because she could
16 not fight him off after a couple months. She talked
17 about accommodation. What that means is that after the
18 first couple of times that it happened, even if it's
19 against your will, even if you fight it off, but once it
20 happens, you feel like it, she feels like it's something
21 that she has to just succumb to essentially. Blames
22 herself. That is a factor that also comes into play with
23 child sexual abuse of victims.

24 She also testified, you know, that just because as
25 far as who the particular perpetrator chooses, which

1 child the perpetrator chooses has a lot to do with the
2 relationship. Remember, Dr. Foster didn't interview
3 Complainant She didn't review the forensic interviews. She
4 testified as what's called a blind expert. She's talking
5 about her knowledge of the field. But she corroborates
6 everything that everyone has told you, even James.

7 Complainant is the child closest to him. She is the most
8 vulnerable. She is the one most likely to keep a secret.

9 And in that second interview James himself tells
10 Investigator Dill that everyone is scared of him, he
11 says, because when he's talking about the little kiss on
12 the cheek that he finds out about, he says, well, of
13 course, I had to find out about it secondhand because
14 everybody is so scared to tell me anything. He tells
15 Investigator Dill that people are scared of him. That
16 his family is scared of him. When he says, well, when I,
17 I guess -- What did he say? You will have the video, but
18 when I see her say it, then I'll go to jail.

19 Helplessness. He doesn't think she is going to say it.
20 He says that.

21 Ladies and gentlemen, of course, they are going to
22 be scared of him just like he said. Of course they are
23 going to be scared of him. His temper is out of control.
24 His moods are out of control. He's so volatile. He
25 turns moods in a second. Oh, yeah, and he carries a gun

1 around his waist all the time. So yes. Just like he
2 said, they're gonna be scared of him. She's gonna feel
3 helpless.

4 One more thing along the lines of what Dr. Foster
5 testified to. If they are sheltered, that contributes to
6 the helplessness that the victim feels. Even James in
7 the second interview admits, talks about some of the
8 things that show how sheltered they are. You don't have
9 to just take Complainant or Breana's word for it when they
10 say they're sheltered. Listen to some of the things he
11 says when he's talking about his 16 and 17 year old
12 daughter. Even though she's such a wild flower, what
13 reasons does he give? That he heard that a boy kissed
14 her on the cheek. A 17 year old girl. That's what makes
15 her a wild flower? And then also this letter that he
16 found that he cried for days over. I mean, he says, he
17 even admits that they're sheltered.

18 When Investigator Dill asked him about porn, it's
19 like, they're teenagers. We don't. We don't. Mmm-mmm.
20 We don't show them that stuff.

21 Now, I think it's very interesting. Well, let me go
22 right back to Complainant and then go to James, and I promise
23 I'll wrap it up. Dr. Foster testified about the fact
24 that the first memory is often very clear and Complainant has
25 a very clear memory when that first time it happened.

1 They were in the camper together, she woke up with him
2 performing oral sex after he had been drinking with his
3 friend. She fights him off. He apologizes and then he
4 comes back and finishes the job. What's interesting is
5 not only that it's a very clear memory, and that's the
6 first time that she remembers it happening, is that that
7 is the first thing that James says when he comes back
8 that second time. Listen to that second interview.
9 Again, Justin Dill after he reads him his rights, he
10 tells him you don't have to talk to me if you don't want
11 to after he confronts him with what he's been accused of,
12 what **Complainant** told, he doesn't say in that second
13 interview, okay, no, I didn't do it. He doesn't blow up
14 and say, oh, my gosh. What in the world are you talking
15 about? He says, in the second interview he says, well,
16 there was a time in the camper where I woke up and my
17 hand was on her leg. Then he later clarifies, he says,
18 well, it was inside of her leg, on the inside of her leg
19 and that scared us both. We cried and we cried and we
20 went back to sleep. It's very interesting that that is
21 the first time it happened and that's the first thing
22 that he says once he finally starts talking about what
23 happened to Investigator Dill.
24 **Complainant** also testified that after it happened that
25 first time, it was constant. And what did Tammy tell

1 you? When they were gone to Summerville and she talked
2 to her daughter, she had a hard time reaching James on
3 his cell phone, he wouldn't answer which was unusual for
4 him, and she talked to Complainant that one time and she said
5 something about her voice just really concerned me.
6 Really concerned me and I wanted to go back sooner but
7 James wouldn't come get me so we had to stay the whole
8 two weeks without me being able to go back to my
9 daughter. But after that first time Complainant said it
10 happened constantly. I ask you, ladies and gentlemen,
11 that concern that Tammy picked up on after the first time
12 it started happening was real. Again, corroboration.
13 Complainant also said that there were things that she
14 would try to do to get away from him. She would try to
15 go to the dock sometimes because she knew that Ms. Penrod
16 was retired and she spent a lot of time on her porch.
17 Ms. Penrod told you that. She would go there in hopes
18 that it would not happen, to get away from him just for a
19 little bit in hopes that Ms. Penrod would be on that
20 porch. The time that she testified to that it happened
21 in the water Ms. Penrod was gone and James knew that she
22 was gone because he had just seen them leave on their
23 boat. Complainant doesn't try to say that it happened over
24 and over in the water but the one time that it did happen
25 in the water supposedly out in public, the one person

1 that he knew would likely see was gone.

2 And again, I'll just go back to if this is some big
3 conspiracy to get him out of the house, why not make it
4 easy. Why not just say, you know, the times that he came
5 in my room when I was sleeping, that's when he did it.
6 Just make it easy. That gun that he always carried
7 around on his waist, instead of saying that he indirectly
8 threatened me with it, instead of saying, yeah, it was
9 down by his knees when he was raping me, just say he had
10 it to my head. She didn't because that's not what
11 happened. She testified to what happened.

12 Okay. Finally, what did James say to Investigator
13 Dill? Well, we know what he didn't say during the first
14 interview after Investigator Dill gets the basics and you
15 will have both of them in the jury room, you can watch
16 them, but the first interview after he gets all the basic
17 information, and again at this point he already knows
18 because the cops at some point told him after he had a
19 unreasonable response at that scene, but have you been
20 having sexual relations with **Complainant**? Oh, my gosh.
21 Pause, pause, pause. Pause, pause, pause. Nothing,
22 nothing, nothing. I need to know what they are saying.
23 Yeah. Before I say something, I don't want my story to
24 differ from hers. Sure. Sure. In this particular
25 silence after Justin confronts him with the allegations,

1 sure. Investigator Dill is saying a few more things but
2 again his first response to the allegations is I need my
3 story to be the same.

4 All right. So that interview lasts about ten
5 minutes. Then he realizes he probably needs to - well,
6 he wants to say what he wants to say. So he decides to
7 see Investigator Dill and his first response again after
8 they go through the Miranda Warnings and after he
9 indicates that he wants to speak to the investigator, he
10 says, again he doesn't say, no, I didn't do it. He
11 doesn't say, oh, my gosh, I can't believe they're saying
12 this. Well, I woke up in the camper with my hand on her
13 leg. It scared us both. She cried. I cried. You know,
14 my wife always says make sure you don't sleep with her.
15 Okay. So instead of after you wake up, after he wakes up
16 like that, instead of, oh, my gosh, sorry about that.
17 I'm going in the other room and never sleep with her,
18 again because it scared him so much, he continues to
19 sleep in the same bed on a regular basis with his
20 daughter? I did last night. He told the investigator.
21 I did last night.

22 Then he also says when Investigator Dill says, well,
23 I also heard you have been having issues with your wife
24 and in the context of the sleeping arrangements when he
25 asked him that, I haven't been sleeping in the same bed

1 as my wife. He says, yes, it's true. Okay. And again
2 in that second interview he mentions the camper.
3 Corroboration. He admits to sleeping in the same bed on
4 a regular basis with his daughter. Do you remember when
5 Tammy said that one of the things that really, really
6 worried her, a specific memory that she had is when
7 Complainant had mono and he admitted to her that he had felt
8 that lump on her breast? He knows that Tammy knew that
9 so he knows that, you know, that might come up. That's
10 something I actually admitted to my wife doing. So he
11 even says that he slept in the bed with her the other day
12 when she was sick. He admits to that because he knows.
13 He remembers him telling her that he felt that lump on
14 her breast when she had mono so he admits to that.

15 He admits to his reaction when the police show up.
16 He says, no, I didn't go talk to the police. I went
17 straight to my daughter and said, are they here for me?
18 You don't have to just take their word for it. He tells
19 you that he said that I emptied my pockets. I put my
20 hands behind my bed. I didn't ask them, what's going on?
21 Why are y'all here? I did those things before I even
22 knew because he did know. Again, when he said that, he
23 said, yes, whatever she says. Whatever she says. He
24 admits that he was talking about Complainant because he's
25 scared she's going down the wrong path.

1 Again, he tells the investigator, yes. I asked my
2 daughter, just like Complainant said, he came to me and asked
3 me. She said he said, why didn't you warn me? He says,
4 are they here for me? And she says yes. But then he
5 admits to the investigator that she didn't even say
6 anything else. He said she was crying and emotional so
7 he doesn't even say that Complainant said, oh, I told them,
8 dad. I told them what's happening. Mmm-mmm. Even he
9 tells you that she didn't tell him that. Not all my
10 fault when. He told that to Tammy when the police are
11 leading him to the car. It's not all my fault. Why not,
12 what the hell is happening? What's going on? No. No.
13 No. He said it's not all my fault.

14 Again he confirms that he's having sexual issues
15 with his wife. You don't have to just take Tammy's word
16 for that. He told Investigator Dill that they were
17 having problems in the bed. Again, if she says it and I
18 see it, then I'll go to jail. He thinks she's not going
19 to be able to tell but she does. We have already talked
20 about Tammy as far as what James - James even
21 corroborates what the witnesses have testified to and
22 these are a few of the examples with Tammy. He admits to
23 all of the things that she has testified to and - not all
24 of them. A few of them. And again if this is some big
25 conspiracy to finally get him out of the house, why

1 didn't he say that then? He said both of us have been
2 fussing with Complainant. Not, well, Tammy and Complainant have
3 been coming at me. He says both of us have been fussing
4 with Complainant. They have been fighting for a few weeks.
5 Not all my fault. He admits that. He says that as he's
6 being lead away.

7 Okay. And this Henry, Henry Harrelson, this 14 year
8 old prepubescent little boy that they were family friends
9 with, okay? So if this is all about Complainant not being
10 able to go to see Henry, why -- I mean, James says to
11 Investigator Dill, well, I found out secondhand that
12 Henry kissed her on the cheek. Really? And he even says
13 it wasn't that big of a deal. Wasn't that big of a deal.
14 But now it's all about Henry. No big deal. Again, all
15 of that is secondhand information about a kiss on the
16 cheek and, of course, this is all coming from James. I
17 have been fighting to keep her away from him. This is
18 all kids stuff. He cannot have this jealousy. Even he
19 realizes how silly. A 17 year old. Investigator Dill
20 said you are off the chain about Complainant because it's
21 true. He cannot even hide his jealousy in that second
22 interview. He tries to back away from it and says it's
23 all kids stuff, but then he says in the same vein I have
24 been fighting to keep her away from him.

25 A little bit along those lines, let's think about

1 it. He said that Breana had a boyfriend and it was
2 a long distance relationship. It didn't work out. He
3 didn't get all fired up about that. Both girls aren't
4 allowed to date and Breana had this long distance
5 boyfriend for a little while. Why does he all of a
6 sudden get all upset about **Complainant** going down the wrong
7 path over a kiss on the cheek? He doesn't get all fired
8 up about Breana. Again, Dr. Foster said they choose the
9 victim that they don't think are going to tell. He tells
10 Investigator Dill Breana is really close to their mom.
11 They have been reading the Bible together. She is with
12 the kids a lot. He tells you himself. He tells
13 Investigator Dill himself that Breana is the closer one
14 with mom. So you don't have to just take Breana, Tammy,
15 **Complainant**, Tammy, Martha's word for it. He tells
16 Investigator Dill Breana is closer with the mom. So just
17 like Dr. Foster said, he is not going to choose Breana
18 who is the closer one to mom and more likely to tell mom.
19 He chooses the one closer with him. He admits to that.
20 Okay. He also said after finding out secondhand
21 information about that kiss on the cheek that he cried
22 about it. Investigator Dill said, she's 17. Why cry
23 about it? When he's talking about how **Complainant** is a wild
24 flower, again he says himself I have never known her to
25 do anything like this. The only two reasons that he can

1 give for her being the wild flower is the kiss on the
2 cheek by the prepubescent boy with braces and a letter
3 about going to Charleston.

4 So, ladies and gentlemen, I know it's a lot but when
5 you listen to all of those witnesses, when you tie all of
6 those pieces of this nightmare together, and they all
7 fit, all of the pieces of the puzzle fit, and what fits
8 is they fit with what he's charged with, criminal sexual
9 conduct in the second degree and incest.

10 Ladies and gentlemen, you took an oath to follow the
11 law, to listen to the testimony of the witnesses
12 carefully and you have. I have watched you. You have
13 done it. Find this man accountable for what he did to
14 his daughter for that year. Thank you.

15 THE COURT: Okay. Ladies and Gentlemen, you have
16 been listening for about an hour and 15 minutes. We
17 still have another closing argument and instructions from
18 me before you can begin deliberating so I'm going to let
19 you have a break right now for ten minutes. It is 12:40.
20 Let's do a little bit less than ten minutes. Let's get
21 back at ten to one and then we will finish off the trial
22 and when you hear from me that you can begin
23 deliberating, you can begin deliberating but right now
24 just take a quick comfort break and we will be back on
25 the record soon. Thank you.

1 (Whereupon, the jury entered the jury room.)

2 BAILIFF: Come to order.

3 THE COURT: Please be seated. Thank you. All
4 right. Bring in the jury.

5 (Whereupon, the jury returned back to the courtroom
6 at 12:55 p.m.)

7 THE COURT: The jury is seated so, Ms. Good, proceed
8 with your closing argument.

9 MS. GOOD: Good afternoon. Everybody has that
10 friend in their life that they like to listen to their
11 stories and everybody has that friend that goes fishing
12 and they say the first time you hear that story a fish is
13 about this big (indicating.) And then each time you hear
14 them tell it over and over again because they're one of
15 your best friends, you hear them tell that story and it
16 gets exaggerated and exaggerated to the point where the
17 fish is this big (indicating) by the time that the story
18 is done the last time that you hear it. Do you ever say
19 anything about it? No. You just kind of laugh at him
20 and say, oh, he's just telling a story. It's not a big
21 deal.

22 In this case, ladies and gentlemen, the story
23 started about this big (indicating.) The fish was this
24 small (indicating) and today **Complainant** and Tammy are here
25 and the fish is about this big (indicating.) And they

1 are here to finish what they started.

2 Ms. Cavanaugh asked you to look at this like a
3 puzzle. And I suggest that you do that also because it's
4 up to you to find beyond a reasonable doubt that the
5 State proves to you that this occurred. And I submit to
6 you that it didn't occur at all. However, if you take
7 all these puzzle pieces and you try to fit them together,
8 you have to take each one separately and decide if it
9 makes a big picture. In this case it does not.

10 Beyond a reasonable doubt the way I like to explain
11 it is you buy some milk at the grocery store, you put it
12 in your refrigerator and it has a sell by date on it.
13 You don't know if that means you drink it by that date or
14 you just buy it by that date, nobody knows. So you take
15 it out. It's that day and you smell it a little bit and
16 say I'm not quite sure. That's essentially reasonable
17 doubt, ladies and gentlemen. The judge will instruct you
18 what reasonable doubt means. It means a reasonable
19 person hesitates to act and in this case they said you
20 will look at physical evidence and that they have all
21 this physical evidence for you to look at and testimony.
22 I want you to look at what they don't have. I want you
23 to look at all the inconsistencies in the testimony and
24 I'm gonna go through them, but all the inconsistencies
25 that they have. These puzzle pieces do not fit together.

1 I'm gonna start with the DNA evidence. I'm gonna
2 start with the smaller pieces around the outside before
3 we get to the two big pieces which are right in the
4 middle. The DNA evidence. The State says just because
5 it's not there doesn't mean it wasn't ever there. But if
6 you listened to what the serologist said, I want to you
7 think about it. What did **Complainant** say happened? **Complainant**
8 said it happened multiple times every single day and it
9 happened everywhere in the house. Sometimes he would
10 ejaculate on me and sometimes he would ejaculate to the
11 side but he would wipe it up. But if you listen to the
12 serologist, ladies and gentlemen, she says just because
13 somebody wipes something up doesn't mean it's not still
14 there. And if he is having intercourse with her and
15 ejaculated to the side day in and day out it would be
16 somewhere, ladies and gentlemen. But you heard her say
17 it was negative. Everything was negative which indicates
18 that it was never there at all.

19 And they said, well, sometimes it can be degraded.
20 If you listened to what she said, she said it gets
21 degraded because it's cleaned from detergent or vacuuming
22 potentially, but look at the pictures of this home,
23 ladies and gentlemen. Does it look like anything has
24 been vacuumed? Does it look like this house has been
25 cleaned? Investigator Knafelc even said it was

1 cluttered, it wasn't a very clean house. So that
2 argument goes out the window as to why DNA is not
3 evident.

4 And also, how did they get to the house that day?
5 Yes, Investigator Knafelc had a duty to go out there but
6 two weeks later they go out there and it's the day after
7 Tammy Price interjects herself into this and says you
8 need to come look at these spots. I want you to remember
9 how does she know that these are the spots he needs to
10 look at? Look at her testimony and Complainant Complainant
11 says that she never told her mother details about what
12 happened. It was too embarrassing for her. She never
13 spoke to her about it after that first day. But what did
14 Tammy say? Tammy said yeah, we talked about it several
15 times. So who is right? If this has happened to you day
16 in and day out and you told your mother about this, you
17 would remember you've told your mother about the details
18 of what happened but they couldn't even get that part
19 straight. And why, ladies and gentlemen? Because they
20 got their story straight with some things but when
21 questioned about things that they never told people
22 before they don't have the same answers because they have
23 never spoken about it.

24 And another thing about that search warrant. People
25 testified obviously law enforcement is there. Tammy is

1 there. It's her house. Where are the other children?
2 They are not there. Yet she brings Complainant to the home so
3 law enforcement can do a big search warrant on the house
4 for these things. Why would you take a traumatized child
5 who has been sexually abused by her father for a year to
6 where law enforcement is all around to make her even more
7 uncomfortable? You wouldn't, ladies and gentlemen,
8 unless it didn't happen and you wanted to make sure
9 everything stayed straight.

10 And then you look at Dr. Luberoff, this other piece
11 of the puzzle. She testified that there was a notch on
12 the hymen, but she testified in accordance with the
13 history that she had. Where does that history come from?
14 It comes from Complainant. It doesn't come from anybody else.
15 It doesn't come from the witnesses who have seen them
16 having sex. It comes from Complainant. And I will get to
17 Complainant later. However, she said these things can also
18 come from skiing. It's documented incidents where skiing
19 caused these types of things. Where do they live, ladies
20 and gentlemen? On a lake. What did everybody testify to
21 about Complainant? She was an outdoors girl. She liked doing
22 these things. They liked to go skiing. They liked to go
23 hunting. They liked to do all of these things outdoors.
24 That makes sense as to why she would have that there.

25 And then you throw in this whole thing that Dr.

1 Luberoff talks about mono. Complainant says he would lay down
2 in bed with her and she testified that it's not just
3 saliva. That's what most people see it as, but bodily
4 fluids. If you're having sex with your daughter day in
5 and day out, mono doesn't just happen in one day and
6 you're all of a sudden sick. It happens over a course.
7 If you're having sex with your daughter, there's bodily
8 fluids, ladies and gentlemen, everywhere. Vaginal
9 secretions. Ejaculation. Why was he not sick? Why did
10 he not get mono? Why did nobody ever say he got sick
11 at that point? Because it never happened.

12 And then Dr. Foster, I want you to listen carefully
13 to what Dr. Foster said. She used these magical words of
14 helplessness, accommodation, entrapment. Ladies and
15 gentlemen, they brought her here so that you would pay
16 attention to her and not to what Complainant said. But I want
17 you to pay attention to what Complainant said. She used these
18 magical words. I felt helpless. I felt trapped. How
19 did she know to use those words when she was testifying,
20 ladies and gentlemen? You heard her mother testify
21 because they have been through a criminal sexual conduct
22 investigation before. Her little brother was molested by
23 the grandfather and they sent him to jail for it several
24 years before. They know how it works. They know what
25 those magical words are. They know that somebody is

1 gonna come and arrest somebody and that they can go away.

2 And I'll get to the motives for going away.

3 However, if you continue to listen to Dr. Foster, she has
4 30 years and her knowledge in the field these things are
5 seen also in cases where it's been found out somebody
6 says something and they investigate it and find out it
7 never happened at all. So it doesn't just happen in
8 cases of actual sexual abuse. It actually happens in
9 cases where there's no sexual abuse, too. And she says
10 with multiple children in the home it's less likely for
11 the person to be the target if they're the outgoing
12 child, more independent child. And the State argues this
13 because he was with her most of the time. But if you
14 listen to what everybody said including Breana, including
15 Complainant, including Tammy, Breana is the passive child.

16 She is the one that doesn't stand up for herself. She is
17 the one that they had under control. Wouldn't that be
18 the one that you would go for? They're identical twins.
19 They look exactly the same. Wouldn't you go for the
20 passive one? The one you have under control if you want
21 to make sure nobody is going to say something about it?

22 And that in children with chronic abuse especially
23 older children, 17 year old children, you remember the
24 normal things in your life because those are the things
25 that aren't traumatic for you. You remember your

1 teachers growing up in elementary school. You remember
2 your normal everyday hobbies. [Complainant] is home schooled,
3 but she testified, yeah, I went to school a little bit,
4 public school. So she didn't even have that many
5 teachers to remember, ladies and gentlemen. I remember
6 every single teacher I have had from kindergarten. I had
7 Ms. Eastland in kindergarten. I had Ms. Perry in first
8 grade. I had Ms. Wilson in second grade. I had Ms.
9 Murphy in third grade. I has Ms. Sheppard in fourth
10 grade, and I could keep going on. She couldn't remember
11 one name of one teacher. I don't recall. I don't
12 remember.

13 You grew up hunting with your dad? Yeah. How many
14 times have you been hunting? I don't remember. More
15 than once? More than twice? Ten times? I don't
16 remember. Maybe just once. Yet this girl had her own
17 gun. This girl everybody has testified to is skinning
18 foxes, yet she doesn't remember more than one time she's
19 been hunting. She doesn't have to remember exact dates
20 or where she had been hunting, but you would know if you
21 had gone hunting over the course of years. She doesn't
22 remember the types of clothes she wears. She gets up
23 there and she testifies she has all these bruises. She
24 can only go swimming in board shorts and a shirt because
25 she's not allowed to wear anything else. But what did

1 everybody else on that stand say? She wore bikinis all
2 the time when she went swimming. Her aunt even said they
3 wore bikinis. Never saw bruises on her. So why can't
4 she just say that she wore a bikini? Because she's never
5 been questioned about that before. And at this point she
6 doesn't know what to say because that was not part of
7 their story.

8 And Dr. Foster also said which I think this is
9 important, the last time it happens to you is one of the
10 most recalled times that the child of sexual abuse can
11 tell. In this case **Complainant** said it happened every single
12 day most times of the day. The day she finally told
13 August 11th, 2012 and when she was interviewed later she
14 couldn't recall the last time it happened. Wouldn't she
15 know the last time it happened if this traumatic event is
16 finally over?

17 Martha Penrod. They make a big deal that Martha
18 Penrod is this unbiased witness who sees all these things
19 happening. I want you to pay attention to what she said.
20 First off, she said they always had friends around.
21 Well, everybody else testified that they were sheltered.
22 They didn't have friends. Yet there were always friends
23 around. People always outside playing. And she said she
24 could see things on the dock. Two things with this,
25 ladies and gentlemen. First of all, she has been

1 teaching for over 20 years. She knows what to look for.
2 If she saw all these things and it concerned here so
3 much, why didn't she say something? And she said she did
4 say something one time and Tammy was there. Tammy heard
5 it. If Tammy is so concerned that she thinks all this is
6 going on, she's been through it before with her son, red
7 flags are flying, why didn't she do something
8 at that point? Why didn't she say, Martha, why didn't
9 you say something? Why doesn't Martha come forward until
10 four years later? Why didn't she say something to the
11 cops that day when they finally arrived?

12 Look at these pictures, ladies and gentlemen. This
13 is on her deck down to the dock. She states that she can
14 see down to the dock. In this picture you can. But
15 during the summer when people would be outside, think
16 about where the leaves would be. Leaves are scattered
17 all over. Even if these are new trees, that's not four
18 years worth of growth, ladies and gentlemen. Use your
19 common sense. There's leaves everywhere. She can't see
20 down there. Not to mention as she stood right here and
21 she had to look, she had to go like this (indicating) to
22 see which one **Complainant** was. Yet I was standing way in the
23 back of the courtroom and she says that she can see all
24 the way back there, something is happening on the dock
25 and it just looked like she was crying and he was

1 comforting her. That doesn't mean they're having sex
2 when he's comforting a crying child.

3 And there is Breana, ladies and gentlemen. Breana
4 is caught in the middle of this. She is the soft spoken
5 passive one. She testified that they did have tons of
6 rules. It wasn't just **Complainant** that had rules. She had
7 them, too. They weren't allowed to have boyfriends.
8 They weren't allowed to date. And she stated that she
9 would see them on the couch or in the bed. I'll submit
10 this to you. If he's telling **Complainant** every single day
11 don't let anybody know, it will ruin our family. Don't
12 say anything. Why would he do these things in public in
13 front of sisters, mother and everybody else? It doesn't
14 make any sense. They made up this story and used things
15 that he did to put it there and say this is what's
16 happening.

17 And on the day of disclosure Breana said that **Complainant**
18 and James were fighting. Why were they fighting?
19 Because he wouldn't let her go see this boy because
20 they're not allowed to date. And Breana said that she
21 went up and used the computer after this happened. Her
22 dad had been standing in the door just like she had. Why
23 didn't she just go up and get her little brothers and
24 sisters? She didn't think it was so much of a big deal
25 that anything has happened. She's using the computer.

1 And I think this is important, ladies and gentlemen.
2 Breana said after all this happened and James was
3 arrested, mom sent Breana and the other children down to
4 Summerville with her sister. Her and Complainant stayed
5 behind. Now, I'll get to what happened after they stayed
6 behind. But why would you not want to keep all your
7 children with you after something like this has happened?
8 Why would you stay behind with just Complainant? Because
9 y'all are concocting this story and it's only a page and
10 a half at this point, but we have to talk about it before
11 anything else happens. But yet Complainant says they never
12 talked about it. But Tammy says they did in detail.

13 And then within a month everybody moves to Florida
14 and Breana says Tammy had her boyfriend move in. She
15 doesn't remember when, but he moved in, yet Tammy doesn't
16 get a divorce until three years later. She said past
17 year 2015 is when she finally divorced the man who has
18 been sexually abusing her daughter for over a year. And
19 Breana said she seen her father since he was arrested.
20 Where did she see her father? At Tammy's sister's house
21 in Summerville. Why would Tammy's sister let him come
22 around? Why would she text her dad multiple times? She
23 said she didn't want contact with him, yet she continues
24 to text him.

25 Now we get to the big pieces of the puzzle. The two

1 big pieces in the middle. Complainant and Tammy. I think
2 it's very important to listen to their two testimonies,
3 ladies and gentlemen. These two women were sick of the
4 rules. Tammy's been with James since the fifth grade,
5 the entirety of her life. They all stated he was very
6 controlling. They had these rules. They had been
7 fighting. You heard James in the interview, the State
8 tries to say he didn't say anything about that. I want
9 you to listen to that second interview. He says, yeah,
10 Tammy and me been arguing but nothing to do with Complainant.
11 And Tammy has a new boyfriend move in a month and a half
12 later down in Florida, yet she's been with a man for her
13 entire life.

14 I think it's important, ladies and gentlemen, when
15 you listen to Complainant testify, look at her demeanor. She
16 wasn't upset about this. She pretended to cry a couple
17 times. But did you ever see any tears? How did she
18 refer to her father? This has been the man that she has
19 called dad for years and years. What did she call him?
20 James. When she talked about what happened, she didn't
21 say my dad did this to me. My dad this did this to me
22 over and over. She said James did this. James did this.
23 Think about how she all of a sudden is calling him James
24 because her and Tammy have been talking about him. And
25 what does Tammy call him? James.

1 And she talks about this first time it happening in
2 the camper. Again, use your common sense, ladies and
3 gentlemen. She says she woke up to him having oral sex.
4 I asked her what she was wearing. She says I was wearing
5 shorts and a shirt. How do you not feel somebody take
6 your pants off, take your underwear off and start having
7 oral sex with you? And even if you can get past that the
8 first time, okay, she said she never fully fell asleep
9 again after that. She was pretty much awake because she
10 was terrified of what just happened. Yet again she woke
11 up to him having sex with her and her again not fully
12 asleep but she didn't feel him take her pants off and
13 underwear off and stick his penis into her? Ladies and
14 gentlemen, it doesn't make sense.

15 And that two weeks that they were fixing up the
16 house in Camden, and this is when mom says that she
17 starts getting concerned about her, listen to what Complainant
18 said. She said I hardly talked to my mom at all. I
19 talked to her maybe one or two times because my dad
20 wouldn't let me use the phone. What did Tammy say?
21 Tammy said she talked to her a lot more than she talked
22 to James those two weeks. She said she talked to her at
23 least five or six times and she was concerned about what
24 she heard in her voice so they wanted to rush back. So
25 that's a red flag. She's concerned about what she hears

1 in her voice. She's been through this with her son. She
2 knows what her son was feeling and his reaction over that
3 time. But it didn't concern her enough to say anything
4 at that point, push further because it didn't concern her
5 at all.

6 And then it happened all over the house, in job
7 sites. Why again would he do it in public in job sites
8 with people there if he didn't want the family to find
9 out? Where is Ms. Norwood? Is she here to testify about
10 seeing them at her house or anything? No. And they were
11 sleeping in the same bed. I want you to remember Breana
12 said he would sleep in **Complainant** bed, he would sleep on
13 the couch. Here is an important statement. She said he
14 would also sleep with my mother. But they testified that
15 he slept every single night with **Complainant**.

16 And I asked about why she didn't take her to
17 counseling if she was so concerned. She saw all these
18 signs. She's heard Martha Penrod say you're sleeping
19 with your daughter. She's worried about him sleeping in
20 her bed. If she is worried about her concern over her
21 and these behavioral changes, yet remember Dr. Luberoff
22 testified that she got the history and that nobody told
23 her there was any behavioral changes. They said there
24 were no behavioral changes. If you're so concerned, she
25 said we didn't have money for counseling. Again, listen

1 to what she said and what she actually testified to.

2 I asked her about the guns. Complainant had a gun. One
3 of the younger ones had a gun. She had a gun. James had
4 a couple guns. She said she got some money from an
5 inheritance and used some of that to buy the guns. She
6 used a little bit of the money from the inheritance and
7 moved to Florida. Well, if she had this money from an
8 inheritance, she had money to take her to counseling that
9 James would not know about. And she home schools these
10 children. While James goes to work that's a perfect time
11 to take her when he wouldn't know. But she didn't
12 because throughout that year it wasn't happening. She
13 wasn't concerned. It was when they finally got fed up
14 with the rules, her arguing with him Complainant wanting to
15 date boys, that they finally said okay.

16 Something also important was this Kannapolis trip.
17 Complainant testified she went to Kannapolis, North Carolina
18 one time and it happened while they were there. She was
19 terrified there. She knew it would happen. Yet when
20 confronted about it on her Facebook page she posted that
21 she was excited to go to Kannapolis with her dad. I
22 said, well, why would you do that? She said, well, I had
23 to keep up a good appearance. Well, if you're keeping up
24 a good appearance, you don't even have to post a single
25 thing or say anything about it at all. Don't even say

1 anything about it. But instead you want to talk about
2 how excited you are about going to Kannapolis. It
3 doesn't add up. Because nobody ever asked them about
4 Kannapolis before.

5 And this is important, too, ladies and gentlemen.
6 All of a sudden she disclose to her mom on the dock. Mom
7 knows dad is around. Mom says she is scared to call 911
8 so she makes her sister do it. First off, why would you
9 leave your daughter down on the dock by herself with the
10 man who supposedly is sexually abusing her up in the
11 house? You wouldn't leave her alone. You would stay by
12 her side. If you're scared to call 911, ladies and
13 gentlemen, Tammy testified she told James it was about
14 this lost gun. So why are you scared if he looks through
15 your phone and sees 911 when you told him you called them
16 about a lost gun? That doesn't make sense either.

17 Tammy testified that she collapsed on the ground she
18 was so upset about all this happening. All those three
19 officers got up here and testified, they said she was
20 upset. Did any of them testify that she collapsed on the
21 ground? That she was that upset over this? No. Because
22 they were starting to make up a story that keeps going
23 and they are here to finish what they started. And after
24 James was arrested and **Complainant** has gone through this
25 traumatic event, he calls the house. And what does Tammy

1 do? She puts Complainant on the phone with James. Why would
2 you put Complainant on the phone with James if he's just been
3 sexually assaulting her for over a year?

4 Or even better, Complainant says she never talked to her
5 dad again after he was arrested that day. Yet Tammy said
6 she did. They have never been asked these questions
7 before so the answers are different now. And then what
8 happened after James was gone? Within two weeks, they
9 testified to this Complainant got a nose ring. Complainant got a
10 driver's license. Complainant got to start dating boys.
11 24-year-old Mark Stokes spent the night in the house.
12 Would any of that have happened if James was in the
13 house? No. And then what happened, within a month they
14 moved to Florida and mama's got a new boyfriend.

15 MS. CAVANAUGH: Objection. I don't think that was
16 the testimony.

17 THE COURT: Overruled.

18 MS. GOOD: Thank you. Mama's got a new boyfriend.
19 He moves in the house. They can't remember exactly when.
20 But remember when they moved to Florida, Tammy said they
21 lived with a friend for two days and then she got a
22 house. Breana said no, we were there for about a month
23 and a half before we got a new place. Two days and a
24 month and a half is a big difference. And then what
25 happens Complainant and several of the other children move

1 back up to Summerville or Breana and several of the other
2 children. Who stays down in Florida? Complainant and mama,
3 so they could do what they wanted now that James was
4 gone.

5 Finally, I'm going to get to James' statement.
6 Start with the scene. I'm gonna go chronologically for
7 you. On the scene he went down there. Tammy told him
8 it's about the gun so he goes down there to Complainant. She
9 says yeah, they're here for you. What would a reasonable
10 person do if you see three officers coming down towards
11 you on the dock. You have just been told they're here
12 for you. Wouldn't you want to say, hey, look, i'm not
13 trying to fight you or anything. I'm cooperating.
14 Especially, and I have much respect for law enforcement,
15 my brother is law enforcement, but with today's society
16 people are scared. You would want to show, look, I'm not
17 doing anything to make law enforcement comfortable
18 as well. And then whatever she said. Whatever she said.
19 At that point James is watching everybody. The cops have
20 rolled up. No cop has ever gone down to talk with
21 Complainant All the cops are up there with Tammy. So
22 whatever she said. Whatever she said. That doesn't
23 necessarily refer to Complainant. He's saying what Tammy has
24 told him. It's about the gun.

25 Then in this first interview, and all of this is

1 recorded, the question was asked, well, this camera is up
2 here in the corner. I want you to watch those videos.
3 Did James Miller ever look up and see that there is a
4 camera there? No. In those moments that you see in that
5 interview room, he has no idea a camera is there. What's
6 the first thing that you see? Him crying. Moments when
7 no one is around him and these are important moments,
8 ladies and gentlemen.. That's when you see the real
9 person. He's crying and upset. And he says, why would
10 they want to get rid of me? And then Dill comes in and
11 Dill says, yeah, it was very obvious he was overwhelmed.
12 He was crying. He was upset. And he says, did you have
13 sex with your daughter? They make a big deal about this
14 pause, pause, pause. Notice what he's doing during the
15 pause. He's crying. His world has just been turned
16 upside down because his wife and his daughter are
17 accusing him of having sex with her. He has no idea what
18 to do because nobody is ever in this situation. He's in
19 handcuffs. And what is his concern? His concern is for
20 his family. He wants to make sure that they are okay.
21 It's not for himself.

22 And then in the second interview they bring him in.
23 What's the first thing he says? He says I'm confused and
24 I'm hurt. He's still crying at this point. And Dill
25 walks in and lies to him over and over again and tells

1 him we've got a statement that's got elaborate detail in
2 it. We know everything that happened. Well, if that's
3 the case and he wanted to know what their story was, he
4 would have just confessed right there, ladies and
5 gentlemen. But what does he do? He continued to deny it
6 and say, no. I have not had sex with my daughter.

7 And he starts talking about the Harrelson boy.
8 I want you to think about 14 year old boys today, ladies
9 and gentlemen. It's not like when we were growing up
10 when we were younger. My eight year old is up to here on
11 me. 14 year old boys and girls are much more developed
12 now than they were. Just because she was 16 and he was
13 13 or 14 doesn't mean that they were any different in
14 size or development. And he makes the comment that they
15 had Breana under control and Complainant is the wild flower
16 and that even Tammy has been arguing with Tammy. But
17 he's been arguing with Tammy, too, not even anything
18 about Complainant. They try to say that he never brings up
19 that he's been arguing with Tammy but he does. He says
20 we've been arguing about things other than Complainant. And
21 he continues to say it's not fair to his family.

22 And then, ladies and gentlemen, the interview ends.
23 At that point he still does not know there is a camera in
24 the room. You got to see the most intimate moments of
25 the man. When Dill left the room, if he was lying about

1 all this, he would have stopped crying. He would have
2 potentially smirked or smiled or maybe a little smile out
3 the side of his mouth. But what did he do? He started
4 crying harder and then he bowed his head and he preyed to
5 God for his family and for him and to steer **Complainant** on the
6 right path. Please give them all the strength to get
7 through this. He was still concerned for his family, not
8 himself.

9 I grew up in Lexington, South Carolina and I would
10 say I was probably a goody two shoes growing up. Any
11 time I had to make a hard decision, and I was close to my
12 dad, my dad would always tell me, Anna, the right thing
13 to do isn't always the easiest thing to do. Ladies and
14 gentlemen, it's not an easy thing to be sitting in these
15 12 chairs and determine the guilt or innocence of a man,
16 but with the evidence that the State has given you, the
17 inconsistencies, the lack of physical evidence, it's not
18 going to be easy to look over there and say the words not
19 guilty, but in this case and with this evidence they have
20 not proven anything happened beyond a reasonable doubt
21 and I ask that you find James Miller not guilty.

22 THE COURT: Mr. Foreperson and members of the jury,
23 you have heard the testimony, the evidence and the
24 arguments from both sides. I will now explain to you the
25 law that applies to this case.

1 The indictments charged the defendant with criminal
2 sexual conduct in the second degree and incest. I remind
3 you that the fact that the defendant was arrested,
4 charged and indicted in this case is not evidence in the
5 case and cannot be considered by you as evidence of guilt
6 in this case, nor does it create any presumption or
7 inference of guilt. The indictments are simply the
8 formal written instruments which contain the charges made
9 against the defendant. They are the formal documents by
10 which this case is brought into the court.

11 The indictments in this case allege two different
12 offenses against the defendant. The first indictment,
13 number 2012-GS-28-1381 accuses the defendant of criminal
14 sexual conduct in the second degree, and the second
15 indictment 2012-GS-28-1382 accuses the defendant of
16 incest. Each indictment charges a separate and distinct
17 offense. You must decide each indictment separately on
18 the evidence and the law applicable uninfluenced by your
19 decision as to any other indictment. The defendant
20 may be convicted or acquitted on both, one or none of the
21 offenses charged. You will be asked to write a separate
22 verdict of guilty or not guilty for each indictment.

23 I remained you that during this trial you and I have
24 certain duties to perform. As the trial judge it is my
25 responsibility to preside over the trial of this case and

1 I also have the duty to rule on the admissibility of the
2 evidence offered during this trial. You are to consider
3 only the competent evidence before you. If there was any
4 testimony ordered stricken from the record in this case
5 during this trial, you must disregard that testimony.
6 You are to consider only the testimony which has been
7 presented from this witness stand, any exhibits which may
8 have been made part of the record in this case, and any
9 stipulations of counsel.

10 I have the additional duty to charge you the law
11 applicable to this case. As the presiding judge I am the
12 sole judge of the law of this and it is your duty as
13 jurors to accept and apply the law as I now state it to
14 you. If you already have an idea as to what the law is
15 or what the law ought to be and it does not agree with
16 what I now tell you the law is, you must abandon this
17 idea because you are sworn to accept the law and apply
18 the law exactly as I state it to you.

19 In every case tried in this court before a jury, the
20 jury becomes the sole and exclusive judge of the facts of
21 the case. A trial judge cannot state, comment on or make
22 any statement to a trial jury about the facts in the
23 case. Since you the jury are the sole judges of the
24 facts in this, you are not to infer from what I have said
25 during the progress of this trial and the ruling upon the

1 admissibility of evidence or otherwise or anything that I
2 say now during the course of this instruction to you that
3 I have any opinion about the facts in this case. This is
4 a matter solely for you the jury to determine. As jurors
5 it is your duty to determine the affect, value, weight,
6 and truth of the evidence presented during this trial.

7 There are two types of evidence which generally
8 presented during a trial, direct and circumstantial
9 evidence. Direct evidence is the testimony of a person
10 who claims to have actual knowledge of a fact such as an
11 eyewitness. It is evidence which immediately establishes
12 the main fact to be proved.

13 Circumstantial evidence is proof of a chain of facts
14 and circumstances indicating the existence of a fact.
15 Crimes may be proven by circumstantial evidence. The law
16 makes no distinction between the weight or value to be
17 given to either direct or circumstantial evidence.

18 However, to the extent the State relies on
19 circumstantial evidence, all the circumstances must be
20 consistent with each other and when taken together point
21 conclusively to the guilt of the accused beyond a
22 reasonable doubt. If these circumstances merely portray
23 the defendant's behavior as suspicious, the proof has
24 failed. The State has the burden of proving the
25 defendant guilty beyond a reasonable doubt. The burden

1 rests with the State regardless of whether the State
2 relies on direct evidence, circumstantial evidence or
3 some combination of the two.

4 The defendant has pled not guilty to these
5 indictments and that plea puts the burden on the State of
6 South Carolina to prove the defendant guilty beyond a
7 reasonable doubt of every element of the alleged crimes.

8 A person charged with committing a criminal offense
9 in South Carolina is never required to prove himself
10 innocent. I charge you that it is an important rule of
11 the law that the defendant in a criminal trial no matter
12 what the seriousness of the charge may be, he will always
13 be presumed innocent of the crime for which the
14 indictments were issued unless guilt has been proven by
15 evidence satisfying you of his guilt beyond a reasonable
16 doubt. This presumption of innocence does not end when
17 you begin your deliberations but it stays with the
18 defendant throughout the trial unless you reach a verdict
19 of guilt based on the evidence satisfying you of that
20 guilt beyond a reasonable doubt.

21 The presumption of innocence is like a robe of
22 righteousness placed about the shoulders of the defendant
23 which remains with the defendant unless it has been
24 stripped from him by evidence satisfying you of the
25 defendant's guilt beyond a reasonable doubt. The

1 presumption of innocence is not a mere legal theory. It
2 is not just a legal phrase. It is a very important
3 constitutional protection that every defendant is
4 entitled to unless you the jury are satisfied from the
5 evidence of the defendant's guilt beyond a reasonable
6 doubt.

7 What is reasonable doubt? Reasonable doubt has been
8 defined on a number of occasions by our Supreme Court.
9 And it is very simply defined as the kind of doubt that
10 would cause a reasonable person to hesitate to act. The
11 Supreme Court has also explained that proof beyond a
12 reasonable doubt is proof that leaves you firmly
13 convinced of the defendant's guilt. There are very few
14 things in this world that we know with absolute
15 certainty. And in criminal cases the law does not
16 require proof that overcomes every possible doubt. If,
17 based on your consideration of the evidence, you are
18 firmly convinced that the defendant is guilty of the
19 crime charged, then you must find the defendant guilty.
20 However, if on the other hand, you think there is a real
21 possibility that the defendant is not guilty, you must
22 give the defendant the benefit of the doubt and find him
23 not guilty.

24 Necessarily you must determine the credibility of
25 witnesses who have testified in this case. Credibility

1 simply means believability. It becomes your duty as
2 jurors to analyze and to evaluate the evidence and
3 determine which evidence convinces you of its truth. In
4 determining the believability of witnesses who have
5 testified in this case you may believe one witness over
6 several witnesses or several witnesses over one witness.
7 You may believe a part of the testimony of a witness and
8 reject the remaining part of the testimony of that same
9 witness. You may believe the testimony of a witness in
10 its entirety or reject the testimony of a witness in its
11 entirety. You may consider whether any witness has
12 exhibited to you any interest, bias, prejudice or other
13 motive in this case. You may also consider the
14 appearance and manner of a witness while on the witness
15 stand.

16 Ladies and gentlemen, during this trial you have
17 heard from witnesses who were qualified as experts in
18 some field. The rules of evidence ordinarily do not
19 permit witnesses to testify to opinions or conclusions,
20 however, an exception to this rule exists for expert
21 witnesses. A witness who by education and experience has
22 become an expert in some art, science, profession or
23 calling may state an opinion as to relevant and material
24 matter in which the witness claims to be an expert and
25 may also state the reasons for the opinion. You should

1 consider any expert opinion received in evidence in this
2 case and like any other evidence give it the weight you
3 think it deserves. If you decide that the opinion of an
4 expert witness is not based on sufficient education and
5 experience or if you conclude that the reasons given in
6 support of the opinion are not sound or that the opinion
7 is outweighed by other evidence, you may disregard the
8 opinion entirely. An expert witness' testimony is to be
9 given no greater weight than that of other witnesses
10 simply because the witness is an expert. Further, you
11 are not required to accept an expert's opinion even
12 though it's not contradicted.

13 Now let me turn to someone who did not take the
14 witness stand, the defendant. I instruct you and
15 emphasize that the fact that the defendant did not
16 testify is not a factor to be considered by you in any
17 way in your deliberation and in your consideration on the
18 question of the defendant's guilt or innocence. It must
19 not be considered by you in any manner whatsoever. A
20 defendant has the constitutional right to remain silent
21 and the assertion of this right must not be considered by
22 you in your deliberations. I repeat, under your oath you
23 are to draw no conclusion whatsoever from the fact that
24 the defendant in this case did not testify. The fact
25 that this defendant did not testify should not even be

1 discussed in the jury room. The burden of proof as I
2 have stated to you is on the State. The defendant is not
3 required to prove his innocence. The burden of proof
4 remains on the State to prove guilt beyond a reasonable
5 doubt.

6 In order to establish criminal liability criminal
7 intent is required. For example, the mental state
8 required to be proven by the State for a particular crime
9 might be purpose, intent, knowledge, recklessness or
10 criminal negligence. Criminal intent must be proven by
11 the State beyond a reasonable doubt. Criminal intent is
12 always a matter that must be determined by the jury from
13 the circumstances surrounding the situation. There is no
14 way to prove intent to a mathematical certainty. There
15 is no way medical science can dissect a person's brain
16 and determine what the person had in mind so the law says
17 that criminal intent may be inferred from the
18 circumstances shown to have existed. This is how you
19 make a determination of whether or not the element
20 requiring intent was present. It is not necessary to
21 establish intent by direct and positive evidence, but
22 intent may be established by inference in the same way as
23 any other fact by taking into consideration all the facts
24 and circumstances in this case.

25 Criminal intent is a mental state. A conscience

1 wrongdoing. It is up to you to determine what the
2 defendant intended to do based on the circumstances shown
3 to have existed.

4 The defendant is charged with committing criminal
5 sexual conduct in the second degree. In order to prove
6 criminal sexual conduct in the second degree the State
7 must first prove beyond a reasonable doubt that the
8 defendant engaged in a sexual battery with the victim. A
9 sexual battery is sexual intercourse, cunnilingus,
10 fellatio, anal intercourse, or any intrusion however
11 slight of any part of a person's body or of any object
12 into the genital or anal openings of another person's
13 body except when the intrusion is accomplished for
14 medically recognized treatment or diagnostic purposes.
15 If you find that a sexual battery did occur, you must
16 then decide whether the State has proven beyond a
17 reasonable doubt that the defendant used aggravated
18 coercion to accomplish the sexual battery.

19 Aggravated coercion means that the defendant
20 threatened to use force or violence of a high and
21 aggravated nature to overcome the victim or another
22 person if the victim reasonably believes that the
23 defendant had the present ability to carry out the
24 threat. Aggravated coercion may also exist if the
25 defendant threatened to retaliate in the future by the

1 infliction of physical harm, kidnapping or extortion
2 under circumstances of aggravation against the victim or
3 any other person.

4 The defendant is also charged with incest. In order
5 to prove incest the State must prove beyond a reasonable
6 doubt that defendant had sexual intercourse with certain
7 types of relatives. For a male defendant these relatives
8 include the defendant's mother, grandmother, daughter,
9 granddaughter, stepmother, sister, grandfather's wife,
10 son's wife, grandson's wife, wife's mother, wife's
11 grandmother, wife's daughter, wife's granddaughter
12 brother's daughter, sister's daughter, father's sister or
13 mother's sister.

14 Let me say something to you about you're
15 deliberations. The genius of our jury system is that it
16 allows 12 good men and women from 12 different
17 backgrounds, life experiences and perspectives to
18 consider the evidence, talk about it and ultimately reach
19 a verdict. We call them deliberations for a reason. You
20 are to consider the evidence in this case carefully and
21 deliberately and discuss it in a calm thorough and
22 courteous manner. Remember, you are not partizans or
23 advocates for either side favoring one side or the other.
24 You are judges. Judges of the facts. Your sole interest
25 is to find the truth from the evidence you have heard in

1 the courtroom, listen to the views of all of your fellow
2 jurors, consider other people's points and points of view
3 and talk through and discuss the evidence. And remember,
4 if you are doing something deliberately, you are not in a
5 big hurry. This case is very important to both sides and
6 this is their only day in court.

7 When you retire to the jury room, you should discuss
8 the case with your fellow jurors to reach an agreement if
9 you can do so. Your verdict must be unanimous. Each of
10 you must decide the case for yourself but you do so only
11 after you have impartially considered all the evidence,
12 discussed it fully with the other jurors and listened to
13 the views of your fellow jurors. Do not be afraid to
14 change your opinion if the discussion persuades you that
15 you should. But do not come to a decision simply because
16 other jurors think it's right. It is important that you
17 attempt to reach a unanimous verdict but, of course, only
18 each of you can do so after having made your own
19 decision. Do not change an honest belief about the
20 weight and effect of the evidence simply to reach a
21 verdict. In other words, do not change your opinions
22 solely for the sake of reaching a unanimous verdict.

23 On each indictment there are two possible verdicts.
24 You are to decide whether the defendant is guilty or not
25 guilty of criminal sexual conduct in the second degree

1 and whether or not the defendant is guilty or not guilty
2 of incest. There is no significance whatsoever in the
3 order in which I state these possible verdicts. It is
4 simply that I must state one first.

5 Ladies and Gentlemen, your verdict must be a
6 unanimous one. Mr. Foreperson, when the jury agrees on
7 the verdict, you will write the verdict on the verdict
8 form that we will give to you, then you can knock on the
9 jury room door and inform the bailiff that you have
10 reached a verdict. At that time we'll escort you back
11 into the courtroom. I ask that all the jurors now go
12 into the jury deliberation room with the exception of the
13 two alternates. If you could just have them stay out in
14 the hallway and I'll talk with them shortly. Members of
15 the jury, you are still not to deliberate until I give
16 you the verdict form and all of the exhibits in this case
17 so you can go back into the jury room. You may have
18 lunch waiting on you. You're welcome to start eating
19 lunch but don't start deliberating until the bailiff
20 comes to the door with the verdict form and all of the
21 exhibits and says you may begin to deliberate. Is that
22 understood?

23 (Whereupon, the jury acknowledged affirmatively in
24 unison.)

25 THE COURT: All right. Thank you all very much.

1 (Whereupon, the jury entered the jury room at 1:40
2 p.m.)

3 THE COURT: Any objections to the jury instructions?

4 MS. CAVANAUGH: None from the State, Your Honor.

5 MS. GOOD: None from the defense, Your Honor.

6 THE COURT: If you could all just check the exhibits
7 to make sure we have everything in order. I have the
8 verdict form here. Look over that as well.

9 (Whereupon, the exhibits and verdict form were sent
10 back to the jury in the jury room and the jury commenced
11 their deliberations at 1:50 p.m.)

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(Jury question at 2:45 p.m.)

THE COURT: Hold on a second. I have got a jury question. All right. We have received a note from the jury. I'll just go ahead and read the note as it is written. "Could we get a transcript of the mother Tammy and the daughter Complainant Would like, too, Breana copy of testimony. Would like to view the interview videos, State's comments from their closing statements, Officer Dill's testimony, Officer Houser, doctor from The ARC's statement."

So as you all know we do not have a transcript available for any of that testimony, however, if they wish to listen to that testimony again, they are certainly welcome. We can pull that up and they can relisten to all of that testimony. It's a lot of testimony, but I would certainly allow them to do that if that's what they wish. Sometimes in trials when juries find out there is no transcript, they can kind of whittle down their request for what they actually want to hear so we can see what they'll say once they realize that there is no actual transcript.

Of course, the interview videos, those are easy for us to give back to the jurors with a computer so they can watch that at their leisure but otherwise I will just

1 explain to them what I just explained to you, that we do
2 not have transcripts but they are welcome to relisten to
3 any testimony they wish. I'll let them go back out of
4 the courtroom so they can discuss as a group if they want
5 to listen to all this testimony. And again, if they want
6 to listen to all this testimony, I, of course, will let
7 them do it but they may be able to narrow it down. Does
8 anybody have any comments about what I propose to say to
9 the jury? Does that suit everyone?

10 MS. GOOD: Yes, ma'am.

11 MS. CAVANAUGH: Yes, Your Honor.

12 THE COURT: Okay. If you will bring in the jury,
13 please. Let's make that a Court's exhibit.

14 (Whereupon, the jury returned to the courtroom at
15 2:50 p.m.)

16 THE COURT: All right. I have received your note
17 and before I talk about your note, I just wanted to say
18 that I told you before during the trial that sometimes
19 folks are sitting over here. None of these folks have
20 anything to do with this trial that you just heard. I
21 want to make sure there's no confusion about that.

22 Your note asks for the transcript of the mother
23 Tammy and the daughter Complainant testimony. You also wish
24 for Breana's testimony. You would like to view the
25 interview videos. You would like to have the comments

1 from the State during their closing statements, Officer
2 Dill's testimony, Officer Houser's testimony, and the
3 testimony from the doctor from The ARC.

4 Uhm, I just want to let you know we do not have a
5 transcript that I could send back with you. I don't have
6 a written document of everybody's testimony. I have a
7 court reporter here who is recording everything, but he
8 types it all up later. He's got a rough draft but we
9 can't give you the rough draft of any sort of transcript.
10 What we can do for you is we can replay any testimony
11 you want replayed. But it would be y'all coming back
12 into the courtroom and us finding it on the tape recorder
13 or the audio that we have and replaying that testimony.
14 I don't know if you want all of that testimony replayed
15 to you. That would be hours of testimony and that's
16 fine. We can absolutely do it but I didn't know if it
17 made a difference to you once you found out we didn't
18 actually have a transcript you could read.

19 With regard to the interview videos, we can give you
20 a computer to go back there with and you can play those
21 DVD's and watch the interview videos back in the jury
22 room. That's not a problem so I'll make sure you have
23 got a computer back there to watch that.

24 So what I'm going to do is I'll let you as a group
25 discuss what I just told you. If you all want to listen

1 to the audio of all of this testimony, then we will get
2 that prepared for you. We can come back in here and
3 listen to the testimony. If knowing that you don't have
4 a transcript you can just rifle through and read makes a
5 difference to you all, you can let me know that, too.
6 Does that make sense? Does anybody have any questions?

7 (No reply from the jury.)

8 THE COURT: All right. I'll let y'all go back there
9 and discuss that and we'll get a computer back there so
10 you can watch the DVD's at your leisure.

11 (Whereupon, the jury entered the jury room to
12 continue their deliberations at 2:57 p.m.)

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2 (Jury question at 5:05 p.m.)

3 THE COURT: All right. We are back on the record in
4 the State versus Miller. We have received another note
5 from the jury. The note says, "Can we see the laws for
6 reasonable doubt?" Then number 2, "Audio of the mother
7 and Complainant testimony." And number 3 is a little
8 unclear. I'll just say exactly what it says. "3, police
9 testimony." And so there's like a number 3 circled.
10 There are three items. Number 1 was can we see the
11 reasonable doubt laws. Number 2, can we see the audio of
12 Complainant and the mother's testimony. And number 3, and
13 after it says 3, police testimony. So I don't know which
14 three police officers they want to hear the testimony
15 for. I assume that's what they mean. Is that your
16 assumption that that's what they mean? I mean, I don't
17 know. We probably will have to ask them.

18 MS. GOOD: I assume we would ask them, but I would
19 think the three would be the first three.

20 THE COURT: The first three. That's what my law
21 clerk thought as well, the first three.

22 MS. CAVANAUGH: Yes, Your Honor, I agree, but I
23 think we should ask to just clarify it with them.

24 THE COURT: Okay. We will. As far as the can we
25 see the laws for reasonable doubt, I can reread my

1 reasonable doubt. It's a page long. I can also send
2 them back with just this page on reasonable doubt. There
3 is some case law where if you're gonna send the jury
4 charge back to the jury, you're supposed to send the
5 entire thing back to the jury. My entire jury charge is
6 typed up but I have a lot of scratch outs that I would
7 have to go edit if I was going to send the entire charge
8 back, otherwise, I think there's nothing wrong with me
9 rereading the reasonable doubt portion if everybody were
10 to agree to that. But I leave it up to you to tell me
11 what y'all want.

12 MS. CAVANAUGH: I would be fine with just rereading
13 the charge, Your Honor.

14 MS. GOOD: I would, too.

15 THE COURT: And just the reasonable doubt portion of
16 the charge?

17 MS. CAVANAUGH: Yes, Your Honor.

18 MS. GOOD: Yes, ma'am.

19 THE COURT: All right. Well, we will bring the
20 jurors back in here so I can reread the reasonable doubt
21 charge. Let me talk to my court reporter for a minute
22 about the audio of Tammy Price and **Complainant** Maynard and the
23 rest of the testimony. Make that a Court's exhibit.

24 (Whereupon, the jury returned to the courtroom at
25 5:50 p.m.)

1 THE COURT: All right. I received another note from
2 the jury with three items on the note. The first
3 question was, "Can we see the laws for reasonable doubt."
4 As for that question I'm going to reread to you my charge
5 regarding reasonable doubt.

6 The State has the burden of proving the defendant
7 guilty beyond a reasonable doubt. Reasonable doubt has
8 been defined on a number of occasions by our Supreme
9 Court, and it is very simply defined as the kind of doubt
10 that would cause a reasonable person to hesitate to act.
11 The Supreme Court has also explained that proof beyond a
12 reasonable doubt is proof that leaves you firmly
13 convinced of a defendant's guilt. There are very few
14 things in this world that we know with absolute certainty
15 and in criminal cases the law does not require proof that
16 overcomes every possible doubt. If, based on your
17 consideration of the evidence, you are firmly convinced
18 that the defendant is guilty of the crimes charged, then
19 you must find the defendant guilty. However, if on the
20 other hand you think there is a real possibility that the
21 defendant is not guilty, you must give the defendant the
22 benefit of the doubt and find him not guilty.

23 That is the law on reasonable doubt.

24 The second question is that you wanted to hear the
25 audio of the mother and Complainant testimony. We will get

1 that audio ready for you. It will take the court
2 reporter a few minutes to cue that audio up. But let's
3 go on to the third question because I have a question
4 about your question. I believe for item number 3 it just
5 says three police testimony. And I don't know if you
6 mean you want to hear testimony from three of the police
7 officers or --

8 JURY FOREMAN: The first three, ma'am.

9 THE COURT: The first three officers. Okay. There
10 were four officers who testified right in the beginning
11 of the trial. I just want to make sure. The first was
12 Corporal Houser of the Kershaw County Sheriff's Office.
13 The second was Justin Scott also of the Kershaw County
14 Sheriff's Department and Deputy Cody Wilson of the
15 Kershaw County Sheriff's Department. And then there was
16 also Deputy Hathaway of the Kershaw County Sheriff's
17 Department. They were the first four. You want the
18 first three?

19 JURY FOREMAN: The first three.

20 THE COURT: The first three. Okay. All right. I
21 assume that you will hear the police officers' testimony
22 first because they will be first on the audio that we
23 have, then we will cut over to begin with **Complainant**
24 Maynard's testimony followed by her mother Tammy Price's
25 testimony. But that's going to take my court reporter a

1 few minutes to cue up so I'm going to send you back in
2 the jury room and we'll get you out here when we are
3 ready to play the audio. Thank you. And we'll make this
4 a Court's Exhibit. Oh, one other thing before you all
5 go. I'm sorry. I forgot. Someone verbally asked the
6 bailiff how long y'all would be staying here tonight. I
7 wanted to answer that question. You are now in
8 deliberations. We will stay here as long as we need to
9 stay here until you all can come to a verdict. So we are
10 in here for the long haul as long as it takes for y'all,
11 okay? Thank you.

12 (Whereupon, the jury returned to the jury room
13 momentarily.)

14 THE COURT: Okay. Let's bring in the jury to listen
15 to the testimony at this time.

16 (Whereupon, the jury returned to the courtroom at
17 5:55 p.m.)

18 (Whereupon, the audio portion of the testimony of
19 Deputy Brooks Houser, Justin Scott, Deputy Cody Wilson,
20 Complainant and Tammy Price was played for the jury.)

21 THE COURT: Ladies and gentlemen, it's 7:00. Your
22 dinner is here. I will let you go and have your dinner
23 for a few minutes and then we will bring you back in.

24 (Whereupon, the jury returned to the jury room for a
25 dinner recess.)

1 (Dinner recess.)

2 THE COURT: Are we ready to bring the jury back?

3 MS. CAVANAUGH: Yes, Your Honor.

4 MS. GOOD: Yes, Your Honor.

5 THE COURT: All right. Let's bring them back in and
6 we will finish listening to the testimony.

7 (Whereupon, the jury returned to the courtroom to
8 continue listening to the audio portion of the witnesses'
9 testimony at 8:00 p.m.)

10 JURY FOREMAN: Some of the jurors may need a pad of
11 paper to write something on.

12 THE COURT: All right. He will come back in with
13 pads and pens for you. And I just wanted to stop here
14 for a moment. I have another note from a juror. The
15 juror is concerned, what happens if everybody can't come
16 to an agreement? Uhm, that's not unexpected to come at a
17 time when you have been deliberating for so many hours.
18 I'll read the question word-for-word so that everybody
19 knows exactly what the question was. "What if you don't
20 feel persuaded and your decision is final. What is going
21 to happen?"

22 I mean, if it's not going to be an all guilty or an
23 all not guilty, if you can't come to a unanimous verdict,
24 then I would have to declare a mistrial. When I declare
25 a mistrial, nobody wins. It just means that this case is

1 going to have to be retried and 12 other people will be
2 selected from Kershaw County who would sit in the very
3 same seats that y'all are sitting in and they would hear
4 the same testimony and receive the same evidence that
5 y'all have received, and there's no reason to think that
6 they would be 12 smarter people or that they would be 12
7 more capable people to reach a verdict. And so I say
8 that to tell you that I hope that you will continue to
9 deliberate. I understand that some of you may be
10 thinking that it may not be a unanimous verdict. I do
11 want to let you know that you can't be forced into a
12 unanimous verdict.

13 As I told you in your instructions, you are to
14 remain with your convictions and that is okay. But I do
15 want you to keep an open mind, to listen to each other
16 and to continue to try. If y'all want to discuss that in
17 the jury room before coming back out here to hear the
18 remainder of the testimony, I'll allow you to do that.
19 Otherwise, we can hear the remainder of the testimony.
20 And let me just go ahead and tell you that I think that
21 we need to break at about midnight. If y'all think you
22 can have fruitful conversation still and that
23 deliberations are still working, then I would like us to
24 come back tomorrow. We have had a late night tonight, so
25 tomorrow we wouldn't come in until about noon and we

1 would start fresh after everybody has had a good night's
2 sleep. You still wouldn't be able to talk to anybody
3 about the case tonight obviously, but that would give you
4 a chance to have a good night's sleep and start fresh
5 tomorrow if y'all believe that's fruitful. So do y'all
6 think you want to discuss that or would you like to
7 finish hearing this testimony? Let's go ahead. I think
8 I see more people wanting to finish with the testimony so
9 let's go ahead and finish with the testimony and then as
10 I said, I will give you an opportunity to break for the
11 evening. We can go home and all get a good night's sleep
12 and start fresh tomorrow.

13 And again, I want to make it clear that nobody is
14 ever coerced into coming to either a guilty or not guilty
15 verdict. There is a reason why we have juries of 12
16 people. We want you to bring in your experience, but we
17 also want you to discuss with each other and try your
18 very hardest to come to a unanimous verdict because like
19 I said, nobody wins when there's a mistrial, okay? So
20 let's continue with the hearing of the testimony. And
21 let me make this note a Court's exhibit please.

22 (Whereupon, the jury listened to the remainder of
23 the audio portion of the testimony of the witnesses.)

24 THE COURT: All right. Y'all have now heard the
25 testimony that you wished to hear. It's almost midnight

1 and what I would like for you to do now is to gather up
2 your things and go ahead and go home and get a good
3 night's rest. Do not talk about this case with anyone.
4 We will be back here tomorrow at noon to begin
5 deliberating again. Please report here at noon, and I
6 ask that you eat lunch before you get here tomorrow. All
7 right. Have a good night's sleep.

8 (Whereupon, the jury was excused for the evening at
9 12:00 a.m.)

10 THE COURT: All right. Anything before we adjourn
11 for the night?

12 MS. CAVANAUGH: No, Your Honor.

13 MS. GOOD: No, ma'am.

14 THE COURT: We will be back here at noon tomorrow.
15 Thank you.

16 (Whereupon, court was recessed for the evening at
17 12:05 a.m.)

1 March 18th, 2016

2 BAILIFF: All rise.

3 THE COURT: Good morning. Thank you. Please be
4 seated. I don't have any big announcement. I just
5 warned to put on the record that as the jurors came in
6 this morning we told them not to deliberate or talk to
7 each other until all 12 were present in the deliberation
8 room. All 12 are now here. We are getting the exhibits
9 back to them because overnight they were stored in the
10 clerk's office so we are getting them the exhibits and I
11 told them they can begin to deliberate. So we will be at
12 ease as we wait for the jury to come to a verdict.

13 MS. CAVANAUGH: Thank you.

14 MS. GOOD: Thank you, Your Honor.

15 (Court in recess while awaiting jury verdict.)

16 BAILIFF: Come to order.

17 THE COURT: Thank you. Please be seated. We have
18 received another note from the jury. It has four
19 different items on this note. Number 1, request to hear
20 testimony from OB/exam doctor regarding her findings and
21 what the findings say equivocally. So that would be Dr.
22 Luberoff, correct?

23 MS. CAVANAUGH: Yes, Your Honor.

24 THE COURT: All right. The next request is a
25 request for a hard copy of the definitions of the charges

1 against the defendant. Now, for this request the only
2 thing I would be willing to do is to give them the entire
3 charge written, not just a portion of the charge. As I
4 understand the case law the jury can have hard copies of
5 the jury charge so long as it's the entire jury charge.
6 So I will say that I have printed out a clean copy of the
7 jury charge that you all have. I did make one change.
8 There was a heading that said failure of the defendant to
9 testify. I changed that to the defendant not testifying.
10 I just didn't want there to be a connotation that there
11 was a failure on the part of the defendant because
12 obviously he has a constitutional right not to testify.
13 But otherwise you have seen the copy of the jury
14 instructions.

15 The next question. "If a juror wrote notes last
16 night outside of the jury room would that be a mistrial?"

17 Now, for this question I think I need to ask a
18 little bit more to the jurors to understand what kind of
19 notes were made. If there was independent research being
20 done last night, that would be a mistrial. However, if
21 the juror was just writing notes to remind himself or
22 herself of what he or she remembers occurred, if it's all
23 just independent, that it was their notes alone, that
24 would not be a mistrial and that would be appropriate and
25 that's fine if they decided that they wanted to write

1 notes.

2 And then the final question is, "Our instructions on
3 how we determine on how the jurors understand the law on
4 how we interpret the law on deciding guilty or not
5 guilty." I think that again is encompassed by giving
6 them a copy of the written instructions.

7 Anything from the State or the defense about those
8 questions and my proposed answers to those questions?

9 MS. CAVANAUGH: Your Honor, I agree with all of your
10 proposed ways to deal with those.

11 MS. GOOD: I'm a little concerned about number 3
12 regarding the juror notes as to who has written that
13 down, how the information came about, which juror it is.
14 Maybe independently outside the other jurors we could ask
15 them. I would just like a lot more detail about what
16 those notes are, how it came about in the jury room and
17 which juror it is so we can specifically ask that juror.

18 THE COURT: Okay. I agree with that. I think we
19 need more information about those notes. I plan to bring
20 the entire jury out and read the question aloud and just
21 ask questions to the entire jury about -- I don't know
22 that we need to know necessarily specifically which juror
23 wrote the notes, although I don't know if that would be a
24 problem since I need to ask that juror how they came
25 about those notes so I guess the only way to really

1 understand whether those were independent notes or if
2 they were written after, say, doing a Google search about
3 who knows what, that would be a problem, and the only way
4 to get to the bottom of that is to know which juror
5 actually wrote the note. So I agree with that, Ms. Good.
6 We'll get to the bottom of who wrote the notes and what
7 those notes, how those notes were written, how they came
8 about.

9 MS. CAVANAUGH: And then once we determine that, are
10 we going to question that particular juror in the
11 presence of the other jurors or send the rest of the jury
12 out?

13 THE COURT: Why don't we go ahead and send the rest
14 of the jury out just to make sure that juror feels like
15 they can be a little more forthright perhaps without the
16 other jurors listening.

17 MS. CAVANAUGH: I agree.

18 THE COURT: Let's go ahead and get off the record so
19 we can find the testimony from the doctor so when we get
20 the jurors back out here, we can have everything ready to
21 go. Mr. Bailiff, would you bring in the jury. Or just
22 bring in the juror who wrote the notes. Let's make that
23 note a Court's exhibit.

24 (Whereupon, juror Douglas Kirkland entered the
25 courtroom at 12:10 p.m.)

1 THE COURT: All right, sir. Can you tell me your
2 juror number and your name.

3 DOUGLAS KIRKLAND: 84, Douglas Kirkland.

4 THE COURT: Mr. Kirkland, one of the questions from
5 the jury was wondering whether there would be a mistrial
6 because a juror wrote notes last night outside of the
7 jury room so I wanted to just talk to you to understand
8 what notes were written and I thought it would be better
9 to just bring you out rather than you having to talk in
10 front of all the other jurors. Tell me about the writing
11 of the notes. Were they -- What were those notes based
12 on?

13 DOUGLAS KIRKLAND: Would you like to see them?
14 Well, I wanted to come in this morning and say my piece
15 --

16 THE COURT: Right.

17 DOUGLAS KIRKLAND: -- and just get it out there. So
18 this morning I woke up. I was clear. I was ready. And
19 so I sat down and made some notes of some key points and
20 some things that I wanted to talk about in front of
21 everybody.

22 THE COURT: And Those were just your own thoughts.

23 DOUGLAS KIRKLAND: These are just my own thoughts
24 and you're welcome to see them.

25 THE COURT: Okay. Well, I don't need to see your

1 notes. What I need to make sure is that they didn't come
2 from anywhere other than your own brain and what you
3 heard in the courtroom.

4 DOUGLAS KIRKLAND: Yes. These are just my train of
5 thought when I got up in front of everybody and started
6 talking.

7 THE COURT: Okay. And there is nothing wrong with
8 taking notes and writing down your own thoughts so that
9 you have a clear way to communicate with other folks and
10 to remind yourself of what points you wanted to make.
11 But I do want to give the attorneys an opportunity if
12 there are questions that I haven't asked of him that you
13 would like me to ask, now is a good time to ask those
14 questions. My concern and the reason why I brought
15 Mr. Kirkland out here was to make sure that there was no
16 independent research being done. These weren't notes you
17 took after speaking with a family member or someone
18 outside of the courtroom?

19 DOUGLAS KIRKLAND: No, ma'am.

20 THE COURT: That was the key issue which I wasn't
21 clear on from the question whether there was more to the
22 notes than just your own recollection.

23 DOUGLAS KIRKLAND: Okay. And I asked the --

24 THE COURT: Bailiff.

25 DOUGLAS KIRKLAND: -- folks here if I could take

1 them in before I took them in, too.

2 THE COURT: Sure. Right. Again there is absolutely
3 nothing wrong with writing down your thoughts so I don't
4 want you think that you're in trouble in any way. I just
5 wanted to make sure that that was the extent of what
6 those notes were.

7 DOUGLAS KIRKLAND: Yes, ma'am.

8 THE COURT: That it wasn't anything outside of the
9 courtroom. Is everybody satisfied with that?

10 MS. CAVANAUGH: Yes.

11 MS. GOOD: Yes, Your Honor.

12 THE COURT: All right. Let's bring in the rest of
13 the jury so we can answer the other questions.

14 (Whereupon the remaining jurors returned to the
15 courtroom at 12:20 p.m.)

16 THE COURT: Good afternoon, ladies and gentlemen. I
17 have received your note and I'm going to go through each
18 of your questions. Your first was a request and that was
19 to hear testimony from the OB exam doctor regarding her
20 findings and what the findings say equivocally. We will
21 find that testimony on the tape and replay it for you.
22 We need to answer all of your questions first and then
23 give the court reporter an opportunity to go back and
24 find that audio on his equipment and we will play her
25 testimony. The next is a request of a hard copy of the

1 definitions of charges against the defendant. And I'll
2 also go to your last request which was our instructions
3 on how we determine on how the jurors understand the law,
4 on how we interpret the law on deciding guilty or not
5 guilty.

6 For those two requests I'm going to send back
7 with you a copy of my written instructions that I read to
8 you. These are the instructions of law. I want to
9 remind you that you should consider all of the
10 instructions and not just look at some and ignore others.
11 That's why I'm giving you the entire copy of the charge
12 so you can see exactly what I charged you as to the law.
13 But I'm happy to send that back to you in written form.

14 And then there also was a question about if a juror
15 wrote notes last night outside of the jury room, would
16 that be a mistrial? And the answer to that question is
17 no. You all are allowed to put your thoughts onto paper.
18 There is no problem with that even you if put those
19 thoughts on paper to help remind yourself of what the
20 arguments are. What would be a mistrial is if anybody
21 did any outside research. If anybody went on the
22 Internet to look up a question that you thought you
23 wanted answered and it wasn't answered for you here in
24 the courtroom. You're to decide this case solely on the
25 information you have received in this courtroom from the

1 witnesses.

2 Now, again, there is nothing wrong with you
3 processing those thoughts by writing them down when
4 you're at home or when you're in the jury room. That's
5 okay. You just can't get any information from an outside
6 source. I hope that clears up your questions. I will go
7 ahead and I'm going to sign this, the last page of this
8 jury instruction and I'll hand it to the bailiff so he
9 can give it to the foreman and then we will work while
10 you look at these instructions. We will cue up the audio
11 tape and bring you back in the courtroom whenever you're
12 ready to hear that testimony. All right. Thank you.
13 You can go ahead and bring them back and give them those
14 instructions.

15 (Whereupon, the jury returned to the jury room to
16 continue deliberations at 12:40 p.m.)

17 THE COURT: Any objections as to how I instructed
18 the jurors?

19 MS. CAVANAUGH: None from the State, Your Honor.

20 MS. GOOD: No, ma'am.

21 THE COURT: Okay. Wonderful. We will come back in
22 the courtroom when the jurors are ready to hear the
23 testimony of Dr. Luberoff.

24 (Short recess.)

25 BAILIFF: All rise.

1 THE COURT: Thank you. Please be seated. The jury
2 has let us know they are ready to hear the testimony so
3 let's bring the jury back into the courtroom.

4 (Whereupon, the jury returned to the courtroom at
5 3:20 p.m. at which time the audio portion of the
6 testimony of Dr. Susan Luberoff was played.)

7 THE COURT: Okay. Ladies and gentlemen of the jury,
8 please return to the jury room to continue your
9 deliberations.

10 (Whereupon, the jury returned to the jury room to
11 continue their deliberations at 3:45 p.m.)

12 THE COURT: All right. I have just received another
13 note from the jury. Can I have the attorneys come
14 forward first. I would like to first discuss with the
15 attorneys my response and give them an opportunity to
16 weigh in before I answer the question.

17 (Side bar off the record.)

18 (Whereupon, the jury returned to the courtroom.)

19 THE COURT: All right. I have a question from the
20 jury asking, "Can you define cunnilingus and fellatio?"
21 We have a South Carolina Court of Appeals case from 1972
22 that defines cunnilingus and that definition states that
23 the word cunnilingus means stimulation by the tongue or
24 lips of any part of a woman's genitalia. Penetration is
25 not required. As for fellatio, the definition in the

1 dictionary is the oral stimulation of a man's penis.
2 With that you all can return to the jury room and
3 continue with your deliberations.

4 (Whereupon, the jury returned to the jury room to
5 continue their deliberations.)

6 BAILIFF: Come to order.

7 THE COURT: Thank you. Please be seated. Now, I
8 understand that the jury has reached a verdict. I want
9 to just say something to the audience. You all have
10 behaved perfectly throughout this trial. You all have
11 behaved perfectly. When the verdict is read, I don't
12 know what the verdict is, I know this is a case with high
13 emotions, I hope that nobody will be delighted or cry or
14 make any sort of outbursts in the court. Now, I
15 understand how difficult that is so if you think that you
16 aren't going to be able to abide by those rules, I ask
17 that you leave the courtroom now, okay? All right.
18 Mr. Bailiff, please bring in the jury.

19 (Whereupon, the jury returned to the courtroom for
20 the publishing of the verdict at 4:42 p.m.)

21 THE COURT: Mr. Foreperson, I understand that the
22 jury has reached a verdict?

23 JURY FOREMAN: Yes, Your Honor, we have.

24 THE COURT: Is it a unanimous verdict?

25 JURY FOREMAN: Yes, ma'am.

1 THE COURT: All right. If you will pass it to the
2 bailiff please and I'll ask him to pass it to me.

3 (Whereupon, the foreman handed the verdict to the
4 bailiff and the bailiff handed the verdict to the Court.)

5 THE COURT: All right. I will ask the Clerk to
6 please read the verdict.

7 THE CLERK: Thank you, Your Honor. This is the
8 State of South Carolina, County of Kershaw. State of
9 South Carolina versus James Wayne Miller, defendant. For
10 indictments 2012-GS-28-1381 and 1382. We the jury by
11 unanimous consent find the defendant James Wayne Miller
12 as to the charge of criminal sexual conduct in the second
13 degree for indictment 2012-GS-28-1381 guilty. As to the
14 charge of incest, indictment 2012-GS-28-1382 guilty. It
15 is signed by the foreperson Mr. Johnnie Stover. Mr.
16 Stover or Mr. Foreman and ladies and gentlemen of the
17 jury, if this is your verdict, please signify by raising
18 your right hand.

19 (Whereupon, all jurors raised their right hand.)

20 THE COURT: Any motions while the jury is here?

21 MS. GOOD: Your Honor, I would just ask that each
22 juror be polled individually.

23 THE CLERK: All right. Madam Clerk, will you please
24 poll the jury.

25 THE CLERK: Thank you, Your Honor. Yolanda Y. Pate,

1 is this your verdict?

2 YOLANDA Y. PATE: Yes.

3 THE CLERK: Is it still your verdict?

4 YOLANDA Y. PATE: Yes.

5 THE CLERK: Thank you. Michael Brown, is this your
6 verdict?

7 MICHAEL BROWN: Yes.

8 THE CLERK: Is it still your verdict?

9 MICHAEL BROWN: Yes.

10 THE CLERK: Thank you. Danita Chestnut-Blackwell,
11 is this your verdict?

12 DANITA CHESTNUT-BLACKWELL: Yes.

13 THE CLERK: Is it still your verdict?

14 DANITA CHESTNUT-BLACKWELL: It is.

15 THE CLERK: Thank you. Simone S. Middleton, is this
16 your verdict?

17 SIMONE S. MIDDLETON: Yes.

18 THE CLERK: Is it still your verdict?

19 SIMONE MIDDLETON: Yes.

20 THE CLERK: Thank you. David C. Gardner, is this
21 your verdict?

22 DAVID GARDNER: Yes.

23 THE CLERK: Is it still your verdict?

24 DAVID GARDNER: Yes, ma'am.

25 THE CLERK: Thank you. Marvin J. Simon, is this

1 your verdict?

2 MARVIN SIMON: Yes.

3 THE CLERK: Is it still your verdict?

4 MARVIN SIMON: Yes.

5 THE CLERK: Thank you. Crystal B. Williams, is this

6 your verdict?

7 CRYSTAL WILLIAMS: Yes.

8 THE CLERK: Is it still your verdict?

9 CRYSTAL WILLIAMS: Yes.

10 THE CLERK: Thank you. Matthew W. Roach, is this

11 your verdict?

12 MATTHEW ROACH: Yes, ma'am.

13 THE CLERK: Is it still your verdict?

14 MATTHEW ROACH: Yes, ma'am.

15 THE CLERK: Thank you. Reginald J. Weston is this

16 your verdict?

17 REGINALD WESTON: Yes.

18 THE CLERK: Is it still your verdict?

19 REGINALD WESTON: Yes.

20 THE CLERK: Thank you. S. Douglas Kirkland, is this

21 your verdict?

22 DOUGLAS KIRKLAND: Yes.

23 THE CLERK: Is it still your verdict?

24 DOUGLAS KIRKLAND: Yes.

25 THE CLERK: Thank you. Donald E. Branham, Junior,

1 is this your verdict?

2 DONALD E. BRANHAM, JUNIOR: Yes.

3 THE CLERK: Is it still your verdict?

4 DONALD E. BRANHAM, JUNIOR: Yes.

5 TE CLERK: Thank you. Johnnie E. Stover, is this
6 your verdict?

7 JOHNNIE E. STOVER: Yes, ma'am.

8 THE CLERK: Is it still your verdict?

9 JOHNNIE E. STOVER: Yes, ma'am.

10 THE CLERK: Thank you. Your Honor, all the jurors
11 have been polled.

12 THE COURT: Thank you. All right. Ladies and
13 gentlemen, your jury service is over. I appreciate the
14 hard work you gave us this week. I know that you now
15 understand what a sober thing it is to sit on a jury. I
16 can't tell you enough how much I appreciate your
17 attention and your commitment to your jury work. We are
18 about to roll into sentencing now. The sentencing phase
19 is a phase in which the judge determines the sentence of
20 the defendant. You are welcome to stay and listen to the
21 sentencing phase or you are welcome to leave because your
22 jury service is over.. So if you would rather leave, you
23 may leave at this time or you may stay as you wish.

24 MS. CAVANAUGH: Your Honor, I believe I need to get
25 the sentencing sheet.

1 JUROR: If you want to leave, you can leave?

2 THE COURT: If you want to leave, you may leave.

3 Yes. Let's go ahead and prepare the sentencing sheet.

4 THE CLERK: Your Honor, if they wish to get a
5 statement for their employer, Mr. Dowd, if you will take
6 them to the Clerk's office, they will have them ready for
7 them.

8 THE COURT: Mr. Miller, you can stay at the desk or
9 you can come up here where there is a microphone.
10 Usually I like to have folks a little bit closer to me
11 right here.

12 Thereupon,

13 JAMES WAYNE MILLER

14 after having been first duly sworn, testified as follows,

15 THE COURT: All right. Well, I have presided over
16 this trial and listened carefully to the testimony. I
17 will hear from Ms. Cavanaugh first with regard to
18 sentencing and if any of the victims - if the victim or
19 the victim's family would like to speak, I'll hear from
20 them, too, with regard to sentencing. Ms. Cavanaugh.

21 MS. CAVANAUGH: Thank you, Your Honor. I think the
22 trial as far as the facts are concerned speaks for
23 itself. We have been here for, well, there was two days
24 of full testimony so I believe that Your Honor is fully
25 aware of the facts in this case. As far as the

1 defendant's prior record is concerned, he has a 1995
2 conviction for possession of LSD from North Carolina. He
3 has a 1995 conviction for larceny, misdemeanor larceny
4 and then in 1998 he was convicted of possession with
5 intent to distribute marijuana. That's the extent of his
6 prior record. I did ask Complainant if she would like to
7 address the Court and I believe that she said that her
8 testimony, she feels like she already did address the
9 Court and, Your Honor, with the victim's understanding I
10 am - she does not want to address the Court, and I would
11 like to address you at the appropriate time.

12 THE COURT: Go ahead.

13 MS. CAVANAUGH: Yes. I spoke to the victim.
14 Obviously this is someone who was her father and still is
15 her father, but it's a sensitive situation. However, he
16 completely ruined that period of time for her and, of
17 course, she's gonna have to deal with that the rest of
18 her life. I asked her if she -- I, of course, want the
19 maximum sentence in this case. I asked her if she was
20 okay with me asking for that. She indicated that she
21 was. So the Court - so I am asking for the full 20 years
22 in this case, Your Honor.

23 THE COURT: All right. With CSC second degree the
24 maximum sentence is 20 years. With incest it's 10 years.

25 MS. CAVANAUGH: Yes, Your Honor.

1 THE COURT: You are not asking for those to be run
2 consecutively?

3 MS. CAVANAUGH: Yes, I am.

4 THE COURT: Ms. Good.

5 MS. GOOD: Thank you, Your Honor. Mr. Miller is 39
6 years old. As you heard he does construction work. He
7 actually has, I believe, three of his own businesses
8 right now including starting up a welding business that
9 he has just started, and doing construction work around
10 the state on different projects in homes including
11 Greenville, Rock Hill area and around here. I have
12 instructed him, Your Honor, and ask you not hold it
13 against him, not to speak today at the sentencing due to
14 any appeal issues we may potentially have. But I do know
15 his family would like to speak on his behalf at the
16 appropriate time and I will address the Court after that
17 time.

18 THE COURT: All right. I will hear from anyone who
19 would like to speak on his behalf. I just ask that when
20 you stand up, state your name loudly and clearly for the
21 record and then you can say what you wish.

22 UNIDENTIFIED SPEAKER: I am the aunt of James and
23 Complainant.

24 THE COURT: I can't hear you. Why don't you come
25 right up to the bar right there so we can hear you a

1 little better. Thank you.

2 UNIDENTIFIED SPEAKER: I am the aunt to James and
3 Complainant and I have observed what has gone on in the
4 family and the actions of the mother and a history of
5 claiming sexual abuse is throughout our knowing her. She
6 was also accusing people of stuff and I think that in
7 front of the children started a behavior, and I think
8 James was a kind and generous man. A lot of people would
9 starve if he didn't help them, but he was an over
10 protective father. He did not abuse his daughter and it
11 depends on, I think, the evidence was equal and it just
12 depends on which side that you look at or who you want to
13 take sympathy for. But I knew that network inside the
14 family and I believe in his innocence and I will until my
15 dying day.

16 THE COURT: Thank you.

17 UNIDENTIFIED SPEAKER: I even mortgaged my house to
18 help him. At first I helped Tammy and the children, but
19 when I started seeing what was going on and seeing them
20 not acting like victims and the way they were on
21 Facebook, I have it all printed out and I started
22 changing, and I started listening, and I started watching
23 and I decided to help James. And he had a public
24 defender, so I hired Anna at great emotional and
25 financial strain on our family. To my dying day I will

1 not believe that James Miller did this to Complainant

2 [REDACTED].

3 THE COURT: Thank you.

4 JERI MOORE: My name is Jeri Moore. I'm a friend of
5 James Miller's. I have been friends with him for about
6 three years now. The things that this man has gone
7 through in his life since I have known him and how much
8 he has cried and humbled himself to not ever seeing his
9 kids again, to not even seeing -- I mean, even the
10 younger kids that aren't even involved in this they are
11 pretty much gonna be brain washed. He's never gonna have
12 a true relationship again. He has talked so much about
13 how much he loved his wife. He loved his kids. He was a
14 family man. I know this. He is a very hard worker. He
15 has this home business. He has done nothing but provided
16 and looked out for even friends of his. He has taken so
17 many people in to help them in their times of life. He
18 is not a bad man. He has done nothing but prove himself
19 to be the best man that I have ever met. He is not a
20 child molester or a child abuser. This has totally torn
21 him apart. This has corrupted him. This has not only
22 corrupted the life of the family and the kids. This has
23 totally tore him apart to where he cries to me all the
24 time about wanting to see his kids. Wishing he had his
25 family. It's - it's just amazing to see the things that

1 they have put down and torn him apart with. That's all I
2 need to say.

3 THE COURT: Anyone else?

4 MS. GOOD: Your Honor, as you can see, he does have
5 a very --

6 THE COURT: I think we have one more person who
7 would like to speak.

8 DONNA WHITE: I was just going to say --

9 THE COURT: Can you state your name please.

10 DONNA WHITE: Donna White. I'm James' aunt, too. I
11 would just like to say that everybody that knows James
12 does not believe this. I mean, we could have had
13 everybody in Camden that knows him here. There is not
14 one person that knows him that believes this including
15 Tammy's family. Not one person. And I don't think that
16 anybody believes this that knows him. As far as I know
17 and from what I see nobody believes this happened. Not
18 one person believes this that knows this family and the
19 dynamics of it.

20 THE COURT: Ms. Good.

21 MS. GOOD: Thank you, Your Honor. As you can see he
22 has a very supportive family and friend system who stand
23 beside him and behind him. As you heard them state, he
24 will do anything to help anyone, who takes people in,
25 helps provide for them despite the fact that he's having

1 to provide for himself also. He has a very minimum prior
2 record, Your Honor, back from 1995, 1998, essentially 20
3 years ago, and he's been on bond pretty much this entire
4 time these three and a half years and has had no
5 incidents since then. We would ask Your Honor that you
6 be lenient in sentencing even so much as to potentially
7 putting him on probation. He could be on strict
8 probation due to the fact of any sex offender registry
9 he's gonna have to be on there are very strict
10 regulations as to people who are sex offenders. He will
11 have to register for that for the rest of his life and we
12 just ask Your Honor to be lenient and do any time
13 concurrent if you do give him the maximum sentence.

14 THE COURT: All right. I have carefully listened
15 throughout this trial. And I'm not one to really lecture
16 defendants when I'm sentencing them. I think my sentence
17 speaks for itself, but I do want to say one thing that I
18 think is important and that is to Complainant. I believe
19 you. I believe you.

20 Mr. Miller, the sentence of the Court on indictment
21 2012-GS-28-1382 is for you to be committed to the State
22 Department of Corrections for a determinate term of 10
23 years. On indictment 2012-GS-28-1381, that's the charge
24 of criminal sexual conduct in the second degree, the
25 sentence of the Court is for you to be committed to the

1 State Department of Corrections for 20 years. Those
2 sentences are to run consecutively.

3 MS. GOOD: Your Honor, will he get credit for any
4 time served?

5 THE COURT: He will be given credit for any time
6 that he has already served on these charges. The Court
7 will be adjourned.

8 WHEREUPON, THE TRIAL WAS CONCLUDED.

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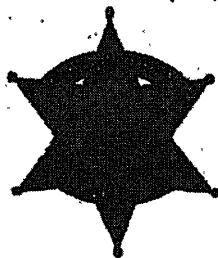
JAMES W. MILLER 12/14/76
168 John G Richards Ro.

8/11/12

J. VILL

@ KLSO

595



CAMDEN SC 29020
843 709 3548

STATEMENT OF MIRANDA RIGHTS

- ☒ 1. You have the right to remain silent.
- ☒ 2. Anything you say can and will be used against you in a court of law.
- ☒ 3. You have the right to talk to a lawyer and have him/her present with you while you are being questioned.
- ☒ 4. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish.
- ☒ 5. You can decide at any time to exercise these rights and not answer any questions or make any statements.

Det. Justin Dill

Officers Name and Title

☒ This is to certify that I have read or have had read to me the above statements of my rights. I understand each of these rights, and having these rights in mind I waive them and willingly make a statement. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

X James Miller

Witnessed by:

Det. Justin Dill

Officers Name and Title

KLSO

Officers Department

8/11/12

Date

347 pm

Time

STATE'S
EXHIBIT

~~#3~~ 3-14-16
2012GS28-1381
1282

JAN 26 Millan @ KCSO

8/11/2012

J. VILL
512 PM



STATEMENT OF MIRANDA RIGHTS

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- ☒ 2. Anything you say can and will be used against you in a court of law.
- ☒ 3. You have the right to talk to a lawyer and have him/her present with you while you are being questioned.
- ☒ 4. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish.
- ☒ 5. You can decide at any time to exercise these rights and not answer any questions or make any statements.

Law. Justin Pell
Officers Name and Title

☒ This is to certify that I have read or have had read to me the above statements of my rights. I understand each of these rights, and having these rights in mind I waive them and willingly make a statement. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

X JM

Witnessed by:
Law. Justin Pell

Officers Name and Title
KCSO

Officers Department

8/11/12 Date
5:15 PM Time

STATE'S
EXHIBIT
3-14-16
2012 GS 28-1381
1382

Page 1 of 1

Julie Taylor

From: Scott Kerns [scottkerns@me.com]

Sent: Wednesday, March 09, 2016 8:42 AM

To: Julie Taylor

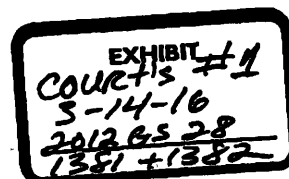
Cc: Suzie Kerns

Subject: MRI lumbar spine DOS 3/8/16

James Miller

1. Left central disc herniation at L4/5, extending behind superior endplate of L5. Causes compression of thecal sac.
2. Right foraminal disc herniation at L5/S1, compressing right L5 nerve root. This is significant. He describes to me a right-sided radiculopathy.
3. Spondylolysis at L5, without spondylolisthesis.
4. Facet DJD at L5/S1 bilaterally. Contributes to compression of L5 nerve root on right. Facet DJD can cause pain in and of itself.
5. Modic type I endplate changes, far right lateral, at L5/S1 in conjunction with #2 above. This is an inflammatory response and can cause pain.

3/9/2016



Could we get a transcript
of the mother Tammy and
the daughter Britney?

Would like to Brianna copy of
testimony.

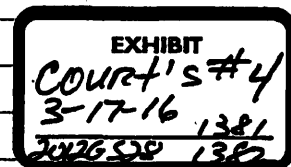
Would like view the interview
videos.

States comments from
their closing statements.

Officer Dills testimony.

Officer Houser.

Dr. Fran the ARC
Statements.

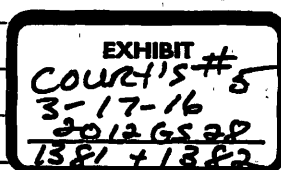


① Can we sep the laws
for ~~presenting~~ reasonable
doubt.

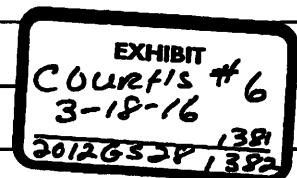
~~7/2/16~~

Audio of the mother
② and Britley testimony

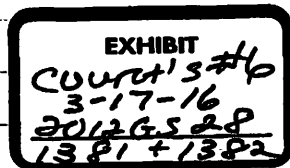
③ & police testimony



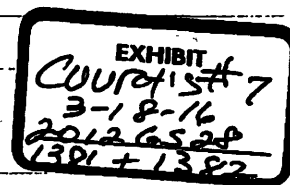
- ① Request to hear testimony from CB/Exam doctor regarding her findings and what the findings say equivoally.
- ② ~~Request to hear testimony from CSI regarding what the materials/ findings of what fluoresces in the light, what types of materials can luminesce?~~
~~Semen, saliva, soap, drinks, etc...~~
- ③ Request a hard copy of the definitions of the charges against the defendant.
- ④ If a juror wrote notes last night outside of the jury room, would that be a mistrial?
- ⑤. ~~How~~ our instructions on how we determine ~~on~~ how the jurors understand the law on how we interpret the law on deciding guilty or not-guilty.



What if you don't feel
persuaded and your
decision is final, what is
going to happen? I
mean it's not going to
be a all guilty



Can you define cunnilingus
and fellatio?



WITNESSES

(S) Lt. S. Knafelc -
Kershaw County Sheriff's Dept.

ARREST WARRANT NUMBER

2012A2810200016

ACTION OF GRAND JURY

TRUE BILL MAR 09 2016

Perry May
Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012-GS-28-1381

AMENDED
The State of South Carolina

County of

Kershaw

COURT OF GENERAL SESSIONS

OCTOBER TERM 2012

K98

THE STATE
vs.

James Wayne Miller

Indictment for
CRIMINAL SEXUAL CONDUCT
2ND DEGREE

SC Code: 16-03-0653
CDR Code: 0161

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED FOR RECORD
2016 MAR -9 PM 3:15
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

INDICTMENT

At a Court of General Sessions, convened on OCTOBER 17, 2012,
the Grand Jurors of Kershaw County present upon their oath:

CRIMINAL SEXUAL CONDUCT
2ND DEGREE

That James Wayne Miller did in Kershaw County between July 1, 2011 and August 11, 2012, engage in sexual battery with the victim, Complainant, using aggravated coercion, in violation of Section 16-03-0653, S. C. Code of Laws, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Kershaw
 STATE VS.
James Wayne Miller

AKA: _____

Race: WHITE Sex: M Age: 39DOB: [REDACTED] SS#: [REDACTED]

Address: _____

City, State, Zip: FORT MILL, SC 29707DL#: [REDACTED] SID#: _____*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Sex / Criminal sexual conduct - Second degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS281381A/W#: 2012A2810200016Date of Offense: 7/1/2012S.C. Code § : 16-03-0653CDR Code #: 0161

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0653 of the S.C. Code of Laws, bearing CDR Code # 0161

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Kathryn Cavanaugh 77690
 Cavanaugh, Kathryn SC Bar#

Defendant

Attorney for Defendant

SC Bar# 77808

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____
 § 14-1-206 (Assessments 107.5 %) \$ _____
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
 § 56-5-2995 (DUI Assessment) \$12 \$ _____
 § 56-1-286 (DUI Breath Test) \$25 \$ _____
 Proviso 47.9 (Public Def/Prob) \$500 \$ _____
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 § 14-1-213 (Drug Court Surcharge) \$150 \$ _____
 § 50-21-114(BUI Breath Test Fee) \$50 \$ _____
 § 56-5-2942(J) (Vehicle Assessment) \$40/ca \$ _____
 Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
 3% to County (if paid in installments) \$ 3.90
 TOTAL \$ 133.90

PTUP _____
 _____ days/hours Public Service EmploymentObtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk: [Signature]Court Reporter: [Signature]

SCCA/217 (03/2011)

Presiding Judge: [Signature]Judge Code: 2756Sentence Date: 3/18/16

WITNESSES

(S) Lt. S. Knafelc -
Kershaw County Sheriff's Dept.

ARREST WARRANT NUMBER

2012A2810200017

ACTION OF GRAND JURY
TRUE BILL MAR 09 2016

[Signature]
Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012-GS-28-1382

AMENDED
The State of South Carolina

County of

Kershaw

COURT OF GENERAL SESSIONS

OCTOBER TERM 2012

K98

THE STATE
vs.

James Wayne Miller

Indictment for
INCEST

SC Code: 16-15-0020
CDR Code: 0090

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED FOR RECORD
2016 MAR -9 PM 3:15
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

INDICTMENT

At a Court of General Sessions, convened on OCTOBER 17, 2012,
the Grand Jurors of Kershaw County present upon their oath:

INCEST

That James Wayne Miller did in Kershaw County, State of South Carolina, between JULY 1, 2011 AND AUGUST 11, 2012, willfully and unlawfully commit the crime of Incest by having carnal intercourse with a person within the following degrees of relationship, to wit: Complainant
[REDACTED], DAUGHTER, in violation of Section 16-15-0020, S. C. Code of Laws, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Kershaw
 STATE VS.
James Wayne Miller

AKA: _____
 Race: WHITE Sex: M Age: 39

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: FORT MILL, SC 29707

DL#: [REDACTED] SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Sex / Incest _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS281382

A/W#: 2012A2810200017

Date of Offense: 7/1/2012

S.C. Code § : 16-15-0020

CDR Code #: 0090

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-15-0020 of the S.C. Code of Laws, bearing CDR Code # 0090

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Kathryn Cavanaugh 77670 Defendant Anna K. Hood 72808 Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 3/18/16 2012GS281381
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

_____ days/hours Public Service Employment
 Obtain GED ☐
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling ☐
 Random Drug/Alcohol testing ☐
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk: [Signature]

Court Reporter: [Signature]

SCCA/217 (03/2011)

Presiding Judge: [Signature]

Judge Code: 2756

Sentence Date: 3/18/16

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,



Susan B. Hackett
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 30th day of June, 2017.