

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Lancaster County

Honorable R. Markley Dennis, Circuit Court Judge

JOSEPH BRADLEY LOFTIN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000667

APPENDIX

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1 State of South Carolina
2 Court of General Sessions
3 County of Lancaster
4 2008-GS-29-00206, 2012-GS-29-00494

5
6 State of South Carolina
7 VS.
8 Joseph Bradley Loftin

9
10 Lancaster, South Carolina
11 February 14-16, and 22, 2012
12 The Honorable Brooks P. Goldsmith

13
14 APPEARANCES
15 For the State: Curtisha Mingo
16 For the Defendant: Frances Bell
17 REPORTED BY: Michael C. Watkins
18 Official Court Reporter

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25

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VOIR DIRE

1 MS. MINGO: Your Honor, the State calls indictment
2 number 2008-GS-29-484, the State versus Joseph Bradley
3 Loftin, the indictment is for criminal sexual conduct with a
4 minor second degree. The State also calls indictment number
5 2012-GS-29-206, the State versus Joseph Bradley Loftin,
6 indictment is for committing a lewd act upon a child.

7 THE COURT: Mr. Bell, you represent Joseph Bradley
8 Loftin?

9 MR. BELL: I do, Your Honor.

10 THE COURT: Are you prepared to go forward?

11 MR. BELL: Yes, sir.

12 THE COURT: Well, let me ask this question, ladies and
13 gentlemen, this process is going to take a little while and
14 I say a little while, it may take 45 minute or so, does
15 anybody need to take a break before we begin the process?
16 Because if -- we once we start it it is going to be
17 difficult to take a break. I see some hands going up.
18 Let's take a ten minute recess, ladies and gentlemen, ask
19 you to try to get back in the room here.

20 (A recess was taken.)

21 THE COURT: Ladies and gentlemen, as you heard we are
22 about to begin the trial in the State of South Carolina
23 versus Joseph Bradley Loftin who is charged by way of two
24 indictments, one for committing a lewd act upon a child, the
25 other criminal sexual conduct with a minor second degree.

VOIR DIRE

1 Both indictments allege that the events occurred between
2 August of 2007 and December 31st of 2007, in that the
3 victim, Minor , was born . The
4 specifics of these charges will be given to you at a later
5 date, I just wanted to tell you the nature of the charges
6 and the kind of case we are involved in because in a few
7 minutes I am going to begin asking you questions to
8 determine whether you should serve on a jury if selected.
9 Before I do that I'm going to ask the attorneys involved in
10 the case if they will stand, identify themselves, identify
11 to you also any witnesses that may be called in the case,
12 and we will begin with the solicitor. Ms. Mingo?

13 MS. MINGO: Good morning. My name is Curtisha Mingo,
14 I'm an assistant solicitor. The witnesses in this case are
15 as follows: Minor , I believe she is in the back
16 of the courtroom. Shakesha S. , Mike Adams of the
17 Lancaster County Sheriff's Office. Margo Dixon of Palmetto
18 Citizens Against Sexual Assault. Dr. Shawne Singleton,
19 Virginia Threatt, Melissa Skipper Wallace of SLED. Mary
20 Anne Boehm of SLED. Sandra Burton, Ricki Voyer Reece, Robin
21 Hunter. Dr. Wilbur Livingston, Larry Higgins from Founders
22 Federal Credit Union, Amy Smith, Mike Graham, Abigail
23 C. , Dawn Fields Chavis. Jan Bryson from SLED. Nikki
24 Hughes of SLED. Selena Kinard from SLED, Patty Roof of
25 SLED, and Amy Stevens from SLED. Those are the witnesses.

VOIR DIRE

1 THE COURT: Thank you, Ms. Mingo. Mr. Bell?

2 MR. BELL: Thank you, Your Honor. May it please the
3 Court? I am Frances Bell, the law firm when this young man
4 hired us was Bell, Tindal and Freeland, we've now gone and
5 reorganized where the law firm is called Frances Bell Law
6 Firm. This is my client, you will meet him later on
7 tomorrow probably, Mr. Loftin. His mother and father,
8 Mr. and Mrs. John Loftin, they have the potential to be
9 witnesses. His wife, Tabetha who will probably not be a
10 witness. And I have got a grandmother whose name a Mary Lee
11 Lipscomb who will probably be a witness.

12 THE COURT: Thank you, Mr. Bell.

13 MR. BELL: Yes, sir.

14 THE COURT: First question, ladies and gentlemen --

15 MR. BELL: I put the original of my voir dire and gave
16 a copy to the solicitor, she has not made a comment about it
17 but I just wanted to make sure you had the original.

18 THE COURT: I do. First question, ladies and
19 gentlemen, is anyone related by blood or related by marriage
20 to first of all any of the attorneys involved in the case or
21 any of the witnesses that have been identified to you or to
22 the defendant himself? If so, please stand. If you or any
23 member of your immediate family have ever been related by
24 blood or marriage to any of those individuals please stand.
25 Has any member of the jury panel ever had a close personal

VOIR DIRE

1 or social relationship with any of the attorneys involved in
2 the case, any of the witnesses that have been identified to
3 you, or with the defendant himself? If so, please stand.

4 And give us your name and number.

5 THE JUROR: Brandon Post, juror 111.

6 THE COURT: Hold on just one second.

7 THE JUROR: I used to work with Ms. Threatt. I worked
8 for Davis Neon at some point in time back in 2008 so I
9 worked with Ms. Threatt.

10 THE COURT: And that would have been for how long?

11 THE JUROR: It was back in 2008, I don't remember the
12 exact time. I was there about a year, we worked in the same
13 department, graphic communications.

14 THE COURT: Now, other than that relationship, have you
15 had any other relationship with that witness,
16 Mrs. Threatt --

17 THE JUROR: No, sir.

18 THE COURT: -- during that period of time?

19 THE JUROR: I know of this case, though, from hearing
20 from her, so I know of this case.

21 THE COURT: I may talk to you about that in just a few
22 minutes then, Mr. Pope. And yes, ma'am?

23 THE JUROR: I have a social and personal -- Deborah
24 Baker, I don't remember the number, I think six.

25 THE CLERK: Number six, Ms. Baker.

VOIR DIRE

1 THE JUROR: I have a personal relationship with
2 Mr. Bell and his wife and family.

3 THE COURT: All right. Social relationship?

4 THE JUROR: Social.

5 THE COURT: Over what period of time?

6 THE JUROR: Twenty-five years.

7 THE COURT: Continuing?

8 THE JUROR: Continuing.

9 THE COURT: Now, would that fact interfere with your
10 ability to be fair and impartial in this case?

11 THE JUROR: No.

12 THE COURT: You think that the fact that you've had a
13 social relationship with Mr. Bell and his wife over a period
14 of 25 years would not influence your ability to serve as a
15 fair and impartial jury?

16 MR. BELL: No, it would not.

17 THE COURT: Thank you, Ms. Baker. Yes, ma'am, the lady
18 in the back?

19 THE JUROR: My name is Tammy Kenya, I am juror number
20 77. I worked for Palmetto Against Sexual Assault and I
21 worked with Margo Dixon, and I'm familiar with Mr. Adams and
22 I just wanted to let you know that.

23 THE COURT: I will talk to you about that in just a few
24 minutes. Your name and number?

25 THE JUROR: I am 21, Carol Cauthen.

VOIR DIRE

- 1 THE COURT: Ms. Cauthen?
- 2 THE JUROR: And I work with Sherry Loftin.
- 3 THE COURT: Now, you say you do or did?
- 4 THE JUROR: I do.
- 5 THE COURT: And what period of time?
- 6 THE JUROR: Seven or eight years, I'm not sure exactly,
- 7 I've been there 25 years. I'm not sure exactly when she
- 8 came.
- 9 THE COURT: I hate to admit this, I don't recall what
- 10 it is you do.
- 11 THE JUROR: I work at Mackey Family Practice, I'm a
- 12 clinical manager.
- 13 THE COURT: Does that bring you in contact with her on
- 14 a regular daily basis?
- 15 THE JUROR: Yes, sir.
- 16 THE COURT: Out of an average we'll call it an eight
- 17 hour day, how much time do you spend in or around her?
- 18 THE JUROR: Well, she works from 8:00 to about 2:00, so
- 19 out of that time, I would say maybe four hours on a given
- 20 day we are in and out of her area.
- 21 THE COURT: So you're spending four hours a day with
- 22 her, five days a week for some number of years?
- 23 THE JUROR: Yes, sir.
- 24 THE COURT: Would that relationship then cause you a
- 25 problem in serving as a juror in this case?

VOIR DIRE

1 THE JUROR: I'm familiar with the case with talking
2 with Sherry so I feel like that would not be a wise decision
3 for me.

4 THE COURT: All right. Thank you, ma'am. And yes,
5 ma'am, your name and number?

6 THE JUROR: My name is Kayla Collins, my number is 27.
7 I am friends with Mr. and Ms. Loftin.

8 THE COURT: Now, tell me what that means that you were
9 raised --

10 THE JUROR: No. They are friends with my boyfriend's
11 parents so I've been around them for a couple of months, and
12 I know about the case and everything through his parents.

13 THE COURT: Because of that.

14 THE JUROR: Uh-huh. And I've been with my boyfriend
15 for four years but I've only known them for a couple months.

16 THE COURT: Make sure I understand. If -- I'm not
17 trying to put words in your mouth, but through your
18 boyfriend's family you've heard I'm going to say discussions
19 about the case?

20 THE JUROR: Yeah.

21 THE COURT: From people who are close to the case?

22 THE JUROR: Yes, sir.

23 THE COURT: You believe that would give you a problem
24 in serving as a juror in this case?

25 THE JUROR: Yes, sir.

VOIR DIRE

1 THE COURT: All right. Thank you, Ms. Collins. Anyone
2 else? Has any member of the jury panel or member of your
3 immediate family ever been represented by any of the
4 attorneys involved in this case or their firm? If so,
5 please stand. And give us your name and number. Yes, sir?

6 THE JUROR: Number four, Tommy Bailey. I was
7 represented by Mr. Bell.

8 THE COURT: Let me ask you a couple of questions about
9 that. How long ago?

10 THE JUROR: Five years probably.

11 THE COURT: Now, is that your only relationship with
12 Mr. Bell?

13 THE JUROR: Yes, sir.

14 THE COURT: He represented you one time approximately
15 five years ago. Over what period of time in like one day or
16 six months or --

17 THE JUROR: Probably six months.

18 THE COURT: Would the fact that he represented you five
19 years ago interfere with your ability to be fair in this
20 case?

21 THE JUROR: No, sir.

22 THE COURT: Thank you, Mr. Bailey. And yes, ma'am,
23 your name and number?

24 THE JUROR: Judy Lizenby, 87.

25 THE COURT: Ms. Lizenby?

VOIR DIRE

- 1 THE JUROR: Mr. Bell represented my son.
- 2 THE COURT: Okay. Similar questions, how long ago was
- 3 that?
- 4 THE JUROR: Eight or ten years.
- 5 THE COURT: Eight or ten years ago?
- 6 THE JUROR: Yeah.
- 7 THE COURT: During the period of time he represented
- 8 your son, how many times did you see Mr. Bell?
- 9 THE JUROR: Maybe four or five.
- 10 THE COURT: Is that your only connection to Mr. Bell?
- 11 THE JUROR: Yes, sir.
- 12 THE COURT: Would that fact interfere with your ability
- 13 to be fair in this case?
- 14 THE JUROR: No, sir.
- 15 THE COURT: Ms. Collins?
- 16 THE JUROR: Mr. Bell represented my brother about four
- 17 years ago and I seen him about three times.
- 18 THE COURT: Thank you, ma'am. Yes, ma'am?
- 19 THE JUROR: Patricia Mills, 92, Robin Freeland. I had
- 20 got a divorce, she was my attorney. Does that matter?
- 21 THE COURT: Well, I need for you to tell me about it,
- 22 hold on just one second. You are Helms now?
- 23 THE JUROR: Yes.
- 24 THE COURT: How long ago was that?
- 25 THE JUROR: 2006.

VOIR DIRE

1 THE COURT: During that period of time did you have any
2 direct contact with Mr. Bell?

3 THE JUROR: No.

4 THE COURT: Would that fact then interfere with your
5 ability to be fair?

6 THE JUROR: No.

7 THE COURT: Thank you, ma'am. And, yes, sir,
8 Mr. Whitaker?

9 THE JUROR: Does family court count? It has been a
10 long long time ago.

11 THE COURT: I think it does. And Mr. Whitaker, just to
12 make sure I have got it right, 143?

13 THE JUROR: Yes, sir.

14 THE COURT: Mr. Bell represented you?

15 THE JUROR: One time, yes, sir.

16 THE COURT: A long time ago?

17 THE JUROR: Mr. Barfield did too.

18 THE COURT: Let me start with Mr. Bell. How long ago
19 did he represent you?

20 THE JUROR: It has been so long ago I want to forget.

21 THE COURT: You want to forget me, too, don't you?

22 THE JUROR: Yeah, against you.

23 THE COURT: And Mr. Barfield represented you also?

24 THE JUROR: Yes, sir, one time.

25 THE COURT: How long ago was that again?

VOIR DIRE

1 THE JUROR: About the same period of time.

2 THE COURT: Would those facts that you've just
3 described interfere with your ability to be fair and
4 impartial in this case?

5 THE JUROR: It wouldn't make any difference.

6 THE COURT: All right. Thank you, Mr. Whitaker.
7 Anyone else? Any member of the jury panel or member of your
8 immediate family related by blood or related by marriage to
9 any law enforcement officers whether it be city, county,
10 state or federal or have you ever been related to a law
11 enforcement officer, you any member of your family ever been
12 related to any law enforcement officer? I'm going to
13 broaden this question, or have any of you ever served as a
14 law enforcement officer? If so, please stand. And you
15 stood first, ma'am. I forgot your name and number.

16 THE JUROR: Mary Scott, I don't know my number. My
17 brother works for the sheriff's department.

18 THE COURT: Your brother works for the Lancaster County
19 Sheriff's Department?

20 THE JUROR: Uh-huh.

21 THE COURT: At the present time?

22 THE JUROR: Yes, sir.

23 THE COURT: Do you know what he does?

24 THE JUROR: He is a detective.

25 THE COURT: What is his name?

VOIR DIRE

- 1 THE JUROR: Douglas Deese.
- 2 THE COURT: Let me ask you another question, how long
3 has he worked for the sheriff's department, any idea?
- 4 THE JUROR: Twelve or 13 years, somewhere along there.
- 5 THE COURT: Ms. Scott, let me ask you this: Would that
6 fact interfere with your ability to be fair in this case?
- 7 THE JUROR: No, sir.
- 8 THE COURT: And I forgot your name and number.
- 9 THE JUROR: Eugene Kennington, 78.
- 10 THE COURT: Mr. Kennington?
- 11 THE JUROR: Yes, sir.
- 12 THE COURT: You stood why?
- 13 THE JUROR: I'm a retired state trooper.
- 14 THE COURT: Thank you, Mr. Kennington. And yes, sir, I
15 forgot your name and number.
- 16 THE JUROR: Robert Cauthen, I'm not sure about my
17 number.
- 18 THE COURT: Twenty-two I believe it is.
- 19 THE JUROR: My brother is a reserve officer for
20 Lancaster County, been a reserve for several years.
- 21 THE COURT: All right. Would that fact interfere with
22 your ability to be fair and impartial in this case?
- 23 THE JUROR: No.
- 24 THE COURT: Thank you, Mr. Cauthen.
- 25 THE JUROR: Leonard Harris, 53. I worked for the

VOIR DIRE

1 department of corrections probably in the -- around '88 or
2 '90.

3 THE COURT: How long did you work for them?

4 THE JUROR: About a year.

5 THE COURT: Okay. What was your duty or obligation
6 there?

7 THE JUROR: Just supervising criminals, inmates.

8 THE COURT: Any other law enforcement experience?

9 THE JUROR: Do what now?

10 THE COURT: Did you have any other law enforcement
11 experience?

12 THE JUROR: No, that is it.

13 THE COURT: Would that fact interfere with your ability
14 to be fair in this case?

15 THE JUROR: No.

16 THE JUROR: Jennifer Daugherty, 32. I have two
17 brother-in-laws, one is a sheriff, one is a retired
18 corrections officer but they are in Buffalo, New York.

19 THE COURT: Would that fact affect your ability to be
20 fair in this case?

21 THE JUROR: No, sir.

22 THE COURT: Has any member of the jury panel or member
23 of your immediate family ever filed a complaint about
24 unwanted or uninvited sexual encounters? If so, please
25 stand. Has any member of the jury panel or any member of

VOIR DIRE

1 your family ever been a complaining witness in a case
2 involving a crime of a sexual nature, whether it be
3 testifying for an accused or for the State? If so, please
4 stand. And yes, ma'am, your name and number?

5 THE JUROR: Eighty-eight, Kay Long.

6 THE COURT: Yes, ma'am.

7 THE JUROR: I was a witness in a sexual harassment but
8 I'm not sure if that qualifies, it was at Clemson, it has
9 been awhile.

10 THE JUROR: Was anybody involved in that case a close
11 personal friend of yours?

12 THE JUROR: No. Well, I worked with them.

13 THE COURT: Coworker?

14 THE JUROR: Coworker and the student.

15 THE COURT: And what?

16 THE JUROR: The coworker and the student, I was a
17 witness in that case.

18 THE COURT: So this involved a student and a coworker.
19 Was the coworker in a supervisory position?

20 THE JUROR: It was an administrative.

21 THE COURT: Would that interfere with your ability to
22 be fair and impartial in this case?

23 THE JUROR: No, it would not.

24 THE COURT: Has any member of the jury panel or member
25 of your immediate family ever been employed by or performed

VOIR DIRE

1 volunteer work for any organization or center whose is the
2 primary person treating the complaining witness in sexual
3 assault cases? Any member of the jury panel or member of
4 your immediate family ever been employed by, worked for or
5 volunteered for any organization whose purpose is to treat
6 or deal with complaining witnesses of sexual assault? If
7 so, please stand. And give us your name and number.

8 THE JUROR: 139, Connie Tooly.

9 THE COURT: Ms. Tooly.

10 THE JUROR: My sister is a clinical psychologist who
11 deals with mediation and sometimes involves instances of
12 abuse, et cetera.

13 THE COURT: And what location was your sister working
14 in?

15 THE JUROR: She's in Indiana.

16 THE COURT: Would that fact interfere with your ability
17 to be fair and impartial?

18 THE JUROR: No, sir.

19 THE COURT: And I've forgotten your name and number,
20 ma'am.

21 THE JUROR: Tammy Caine, 77.

22 THE COURT: You have already answered that question for
23 me, haven't you?

24 THE JUROR: I just wanted to stand up.

25 THE COURT: Thank you for standing, though. Anyone

VOIR DIRE

1 else? Has any member of the jury panel formed or expressed
2 an opinion about any matter or any issue involved in this
3 case? If so, please stand. Is there any member of the jury
4 panel who is aware of any bias or any prejudice that they
5 may have towards either the State or towards the defendant?
6 If so, please stand. Is there any member of the jury panel
7 who is a member of or a contributor to any group which has
8 as its primary concern the promotion of law enforcement or
9 promotion of victims' rights? And these groups would
10 include but not be limited to MADD or SADD or CAVE or any
11 such similar groups. If so, please stand. Does any member
12 of the jury panel know of any reason why he or she should
13 not serve as a juror in this case with particular emphasis
14 being placed on your ability to be fair and impartial to
15 both the State and to the defendant? If so, please stand.
16 Ms. Mingo, Mr. Bell, let me see both of you at a quick side
17 bar.

18 (Bench conference on the record.)

19 THE COURT: Seventy-seven, I will just go ahead and
20 tell y'all now 77 is not on the list.

21 MR. BELL: The lady works with my client at Mackey
22 Medical. Twenty-seven is the little girl who is the friend
23 of -- she has discussed the case with my people is what she
24 said.

25 THE COURT: Kayla Collins. You agree with that?

VOIR DIRE

1 MS. MINGO: Yes, sir.

2 THE COURT: That's the only ones I've got marked.

3 (Back in front of the panel.)

4 THE COURT: Ladies and gentlemen, in just a minute we
5 are going to begin selecting a jury in this case. Five and
6 ten?

7 MR. BELL: I believe that's correct.

8 MS. MINGO: Yes, sir.

9 (Break in proceedings.)

10 THE CLERK: Juror 92, Patricia Mills Helms. What says
11 the State?

12 MS. MINGO: Please present the juror.

13 THE CLERK: Defendant?

14 THE JUROR: Swear the juror.

15 THE CLERK: Juror 106, Amy Overcash. What says the
16 State?

17 MS. MINGO: Please excuse the juror.

18 THE CLERK: Juror 140, William Trull. What says the
19 State?

20 MS. MINGO: Please excuse the juror.

21 THE CLERK: Jury 51, Roy L. Haile. What says the
22 State?

23 MS. MINGO: Please present the juror.

24 THE CLERK: Defendant?

25 MR. BELL: Swear him.

VOIR DIRE

1 THE CLERK: Juror 28, Bradford Cook. What says the
2 State?

3 THE JUROR: Please present the juror.

4 THE CLERK: Defendant?

5 MR. BELL: Your Honor, this juror did not stand up as I
6 remember. Of course, on his sheet he works at Davis Neon
7 where one time it was announced that the mother worked so I
8 don't know if he has got any connection or not before I make
9 a decision.

10 THE COURT: Well, we've already gone through that
11 process, Mr. Bell.

12 MR. BELL: I understand but he didn't stand up, Your
13 Honor, and I move for cause.

14 THE COURT: Under what cause?

15 MR. BELL: He works for Davis Neon where the mother of
16 the child works.

17 THE JUROR: In a different department. She didn't work
18 in the department that I did, I was in the assembly and I
19 think she was in the drafting or something. I have seen her
20 but never spoke.

21 THE COURT: Motion for cause denied.

22 MR. BELL: We will excuse.

23 THE CLERK: Juror 141, Manuel Villa. What says the
24 State?

25 MS. MINGO: Please present the juror.

VOIR DIRE

1 THE CLERK: Defendant?

2 MR. BELL: Swear the juror.

3 THE CLERK: Juror 23, Tracy Cauthen. What says the
4 State?

5 MS. MINGO: Please present the juror.

6 THE CLERK: Defendant?

7 MR. BELL: Swear the juror.

8 THE CLERK: Juror nine, Russell Barrineau. What says
9 the State?

10 MS. MINGO: Please present the juror.

11 THE CLERK: Defendant?

12 MR. BELL: Swear the juror.

13 THE CLERK: Juror 114, Ana Resnik. What says the
14 State?

15 MS. MINGO: Please present the juror.

16 THE CLERK: Defendant?

17 MR. BELL: We'll excuse.

18 THE JUROR: Juror 69, Charlene Hunter. What says the
19 State?

20 MS. MINGO: Please present the juror.

21 THE CLERK: Defendant?

22 MR. BELL: Swear the juror.

23 THE CLERK: Juror 82, Deborah Kyle. What says the
24 State?

25 MS. MINGO: Please present the juror.

VOIR DIRE

1 THE CLERK: Defendant?

2 MR. BELL: We'll excuse.

3 THE CLERK: Juror six, Deborah Baker. What says the

4 State?

5 MS. MINGO: Please excuse the juror.

6 THE CLERK: Juror 78, Eugene Kennington. What says the

7 State?

8 THE COURT: The Court is going to require you to not

9 sit on the jury for reasons you know nothing about. Please

10 be seated.

11 THE CLERK: Jury number 12, Robert Blair. What says

12 the State?

13 MS. MINGO: Present the juror.

14 THE CLERK: Defendant?

15 MR. BELL: Swear the juror.

16 THE CLERK: Juror 118, Mary Scott. What says the

17 State?

18 MS. MINGO: Please present the juror.

19 THE CLERK: Defendant?

20 MR. BELL: We'll excuse.

21 THE CLERK: Juror 50, Shelby Haggins. What says the

22 State?

23 MS. MINGO: Please present the juror.

24 THE CLERK: Defendant?

25 MR. BELL: We'll excuse.

VOIR DIRE

1 THE CLERK: Juror 135, Lisa Thomas. What says the
2 State?

3 MS. MINGO: Please present the juror.

4 THE CLERK: Defendant?

5 MR. BELL: Swear the juror.

6 THE CLERK: Juror 119, Jennifer Blackmon. What says
7 the State?

8 MS. MINGO: Please present the juror.

9 THE CLERK: Defendant?

10 MR. BELL: Swear the juror.

11 THE CLERK: Juror 131, Jo Ellen Story. What says the
12 State?

13 MS. MINGO: Please present the juror.

14 THE CLERK: Defendant?

15 MR. BELL: We'll excuse.

16 THE CLERK: Juror 89, James Marchand. What says the
17 State?

18 MS. MINGO: Please present the juror.

19 THE CLERK: Defendant?

20 MR. BELL: Swear the juror.

21 THE CLERK: Juror 148, Thomas Woller. What says the
22 State?

23 MS. MINGO: Please excuse the juror.

24 THE CLERK: Juror 100, Tiffany Nguyen. What says the
25 State?

VOIR DIRE

- 1 MS. MINGO: Please present the juror.
- 2 THE CLERK: Defendant?
- 3 MR. BELL: We'll excuse.
- 4 THE CLERK: Juror 116, Theoron Robinson. What says the
- 5 State?
- 6 MS. MINGO: Please present the juror.
- 7 THE CLERK: Defendant?
- 8 MR. BELL: Swear the juror.
- 9 THE CLERK: Juror 32, Jennifer Daugherty. What says
- 10 the State?
- 11 MS. MINGO: Please present the juror.
- 12 THE CLERK: Defendant?
- 13 MR. BELL: We'll excuse.
- 14 THE CLERK: Juror 134, Linda Telmanik. What says the
- 15 State?
- 16 MS. MINGO: Present the juror.
- 17 THE CLERK: Defendant?
- 18 MR. BELL: Swear the juror.
- 19 THE CLERK: One alternate?
- 20 THE COURT: I think two.
- 21 THE CLERK: Juror 41, Amanda Funk.
- 22 MR. BELL: So I have two total or four total? You
- 23 know, I will take anything I can get, but --
- 24 THE COURT: You get two as to each alternate.
- 25 MR. BELL: So I have got technically four strikes

VOIR DIRE

1 total.

2 MS. MINGO: Present the juror.

3 MR. BELL: I'm sorry, I didn't even hear the name.

4 THE CLERK: Juror 41.

5 MR. BELL: Swear the juror.

6 THE CLERK: Juror four, Tommy Bailey. What says the

7 State?

8 MS. MINGO: Excuse the juror.

9 THE CLERK: Juror 139, Constance Tooly. Any challenge

10 for cause?

11 MS. MINGO: No challenge.

12 MR. BELL: We'll excuse.

13 THE CLERK: Juror 136, Jennifer Thompson. Any

14 challenge for cause?

15 MS. MINGO: Present the juror.

16 THE CLERK: Defendant?

17 MR. BELL: Swear the juror.

18 THE COURT: Any matters of law the Court needs to

19 consider concerning the composition or selection of the jury

20 from the State?

21 MS. MINGO: Not from the State, Your Honor.

22 THE COURT: From the defense?

23 MR. BELL: None, Your Honor.

24 (The remaining panel was excused.)

25 THE COURT: Mr. Bell, you have some motions?

VOIR DIRE

1 MR. BELL: Yes, sir. I need the jury sworn before I
2 proceed.

3 THE COURT: Without telling me the nature of the
4 motions?

5 MR. BELL: Yes, sir. I have to make sure the jury is
6 sworn, Your Honor, before I can --

7 THE COURT: You refuse to tell me the motions?

8 MR. BELL: Yes, sir. Because you've got to realize
9 certain things in this, I don't want to put my client in a
10 different position he is in right now. I've got to have
11 jeopardy, Your Honor.

12 THE COURT: You have already told me what the motions
13 are.

14 MR. BELL: I understand, Your Honor, and you want me to
15 have the --

16 THE COURT: Mr. Bell, I have never had an attorney tell
17 me that.

18 MR. BELL: Well, I've got --

19 THE COURT: We have these motions all of the time
20 before the jury is sworn, we do them all of the time.

21 MR. BELL: I understand, Your Honor, I need jeopardy.

22 THE COURT: Let's bring the jury in.

23 (The jury returned to the courtroom.)

24 THE COURT: Welcome back, ladies and gentlemen. The
25 first thing I need to do is have the clerk give to you your

VOIR DIRE

1 oath.

2 (The jury was sworn.)

3 THE COURT: As you've heard, ladies and gentlemen,
4 we're about to begin the case of State versus Joseph Bradley
5 Loftin, but before we do that I need to say a few things to
6 you about what we're going to do and how things are going to
7 proceed. Earlier I mentioned to you that the defendant was
8 charged by way of two indictments, one charging him with
9 criminal sexual conduct with a minor in the second degree,
10 and the other with committing a lewd act upon a child. The
11 elements of these crimes will be explained to you at a later
12 date, but I need to tell you this, the indictment is -- the
13 indictment is simply the charge by which this case is
14 brought to the court. The fact that the defendant was
15 arrested and charged is not evidence and is not to be
16 considered by you. The indictment just brings the case to
17 court. The defendant has pled not guilty to these
18 indictments and therefore the State has the burden of
19 proving each and every elements of the indictments beyond a
20 reasonable doubt, and it will be your duty, ladies and
21 gentlemen, to determine whether the State meets that burden.
22 Your purpose as jurors is to find and determine the facts.
23 You are the sole judges of the facts, and if at any time I
24 do anything or make any comment that causes you to believe
25 that I have an opinion about the facts you must disregard

OPENING STATEMENTS

1 that. Under the law I am prohibited from commenting on the
2 facts in your presence. You are to determine what the facts
3 are, you are to determine that from what happens in this
4 courtroom primarily based on testimony from witnesses that
5 will be introduced or brought to the witness stand under
6 oath subject to any cross examination and any exhibits or
7 documents that might be introduced into evidence. The same
8 law that makes you the judge of the facts of the case makes
9 me the judge of the law of the case. And my duty is to
10 preside over the trial, to determine what evidence is
11 admissible and you are to consider the evidence that is
12 admitted into court, and as I said a moment ago, the
13 testimony of sworn witnesses. The law as I tell it to you
14 and as I rule from time to time in trial of the case must be
15 accepted by you, and at the end of the case I will tell you
16 about what each of the elements of these charges are as well
17 as tell you about the law that applies in this case, and you
18 must accept that law even if you disagree with it, even if
19 you think it is wrong, even if you think the law is or
20 should be something different you must take the law as I
21 tell you it is. You can decide the facts, I tell you what
22 the law is, you apply the facts to the law and reach a just
23 verdict in the case. Couple of more things. From time to
24 time as I'm sure you have seen in the movies on TV, the
25 attorneys may ask to see me at a side bar and we go over and

OPENING STATEMENTS

1 I turn the microphone off and whisper to them or they
2 whisper to me, sometimes it may even require us to step out
3 of the room while we discuss the matters. For the most part
4 when that is happening it's requiring me to discuss with the
5 attorneys a matter of law, and in doing so it may require me
6 to discuss the facts of the case. As I told you earlier I
7 am prohibited from discussing the facts in your presence.
8 So the reason we have these conferences is not to try to
9 keep secrets from you, it's to help me fulfill any
10 obligation and that is not discuss the facts in your
11 presence. The way that the case is going to proceed is when
12 I finish speaking with you the attorneys will make opening
13 statements to you if they wish to and tell you about what
14 they think the case will show or the facts will show or the
15 evidence will show or what the facts and evidence will not
16 show. These are the opening statements they make to you,
17 then we will be receiving evidence in the case. At the
18 conclusion of the case, at the conclusion all of the
19 evidence the attorneys will make to you their arguments
20 where they try to convince you to see things the way they
21 see them, and then I will tell you about the law that
22 applies in the case, you will then retire to the jury room
23 and begin your deliberations. But until that happens, until
24 the case is completely over I guess three rules; number one,
25 you cannot let anybody talk to you about the case and you

OPENING STATEMENTS

1 can't talk to anybody about the case. You can't let anybody
2 even innocently even during a lunch break today who might be
3 sitting at the table next to you talk to you about the case,
4 you cannot let that happen. You don't let anybody talk to
5 you about the case or about the case in your presence, you
6 don't talk to anybody about the case, and not even among
7 yourselves in the jury room until the case is over can you
8 even discuss the facts of the case not even in the jury
9 room. I'm going to ask our alternate jurors to please pay
10 attention. The mere fact that you are an alternate today
11 does not mean when the case is over with you'll still be an
12 alternate. There are family emergencies that occur, health
13 problems come up and you may be required to step in at the
14 last minute to serve as a juror. If you are not paying
15 attention to what went on in the case and you were sitting
16 there with the fellow jurors in the table in the jury room
17 and they're discussing what they saw or heard or believe
18 about the evidence in the case, if you haven't been paying
19 attention you may be embarrassed by not paying attention and
20 not know what they're talking about, so I ask you to please
21 pay attention. Now we will hear opening statements and
22 begin with the solicitor. Ms. Mingo.

23 MS. MINGO: May it please the Court? I am Curtisha
24 Mingo, I'm an assistant solicitor. I want to begin by
25 thanking you for your time and attention here today in this

1 case. So what is the trial about? Why are you here? As
2 you know, Mr. Loftin has been charge with criminal sexual
3 conduct with a minor and committing a lewd act upon a minor,
4 and at a later date the Judge will instruct you on the law
5 and what these things mean. The long and short of it is he
6 is accused of having sex with a 12 year old girl. The child
7 at the center of all of this is Minor .
8 Minor s mom, Nikki Threatt, and the defendant, Mr.
9 Loftin, at one time were engaged in a romantic relationship
10 that lasted several years, and Mr. Loftin actually lived
11 with Ms. Threatt and her children out on which is
12 in the Buford Community. Some time, roughly August of 2007,
13 Mr. Loftin began to engage in various sex acts with
14 Minor , at the time she was only 12 years old. The sexual
15 abuse continued until Minor finally disclosed to
16 officials at Buford Middle School what had been happening.
17 You will hear from Minor and she'll tell you in greater
18 detail exactly what those sexual acts were, what he did and
19 how long it went on. You will hear from several witnesses
20 through the course of this trial, and I will go ahead and
21 tell you, none of the other witnesses are going to be able
22 to say, "I saw Mr. Loftin do something sexually to
23 Minor ." These are private crimes, people don't molest
24 children in front of other people. But you will hear from
25 other witnesses and they all in some fashion collaborate

1 what Minor is going to tell you when she testifies on the
2 stand. This is a very important case for the State of South
3 Carolina, very important for Mr. Loftin, that's why I ask
4 that you pay close attention. I think the Judge illuded
5 that the burden is on the State to prove Mr. Loftin is
6 guilty beyond a reasonable doubt, that is a burden I think
7 we will meet once you consider all of the evidence and
8 listen to all of the testimony that comes out through this
9 trial. Again, I want to thank you for your time and your
10 attention.

11 THE COURT: Thank you, Ms. Mingo. Mr. Bell?

12 MR. BELL: First of all remind you it's Valentine's Day
13 so whatever time you're going to be out of this courtroom go
14 take care of your significant other. That young man over
15 there has pled not guilty to these charges and that puts the
16 burden on the State to prove him guilty, and the standard is
17 guilty beyond a reasonable doubt. He doesn't have to prove
18 or disprove anything. He will testify unless between now
19 and whenever it is his time and he falls out for any reason,
20 and he has been denying this since the get-go. Now, a short
21 history, which is the charging papers, he was arrested and
22 charged with criminal sexual conduct with a minor which
23 technically makes it criminal sexual conduct second degree
24 some time in January of '08 for this crime that allegedly
25 took place some time in '07. And the State returned an

1 indictment right here that says on April 3rd of '08, the
2 grand jurors of Lancaster County said that Joseph Bradley
3 Loftin did in Lancaster County on or about August of '07
4 through December of '07 engage in sexual battery with
5 Minor , a minor of 14 but at least 11 in violation
6 of the sexual laws, so we knew that was out there. Then the
7 State in its wisdom -- they won't ask me to, we simply have
8 to react to whatever the government does -- the State in its
9 wisdom amended the indictment in October of last year, and
10 what they did they still said the same thing on or about
11 August of '07 but they put ending date through December 31
12 of '07. But then last Thursday they decided to charge him
13 with another crime, November 8th of 2012 -- excuse me,
14 February 9th of 2000 -- I've got so many dates I can't keep
15 them straight -- February 9th of 2012 the State didn't take
16 my client, took his name before the grand jury and for the
17 first time brought up, "Well, let's charge him with lewd
18 act," almost five years after the crime was committed. So
19 are they worried about this old crime and they brought the
20 new crime? I don't know. Because I can assure you as his
21 lawyer who has represented him since '08 I didn't call
22 Ms. Mingo and say, "Ms. Mingo, let's charge him with another
23 crime." But the State decides to do that and we've got some
24 technicality we've got to work out with all of this. But
25 what do I ask of you at this point? Well, His Honor has

1 already told you, don't discuss. What that means is don't
2 even think, that means don't discuss it with yourself.
3 You've got to sit there and listen to probably two and a
4 half days of testimony, a lot of technical stuff, all of
5 this DNA stuff and all of that stuff is going to come in and
6 I'm not going to be fighting much of that, and you have got
7 to listen to all of that stuff, you're going to have
8 exhibits you have got to keep up with it. And don't think
9 about it, take a break, don't think about it. His Honor has
10 already said don't discuss it with anybody and here is the
11 reason why: The minute you start thinking plus or minus for
12 the State or plus or minus for the defense you start to form
13 opinions, and you cannot form an opinion until the case is
14 over with. You've got to keep that in neutral and
15 remembering everything you can about the evidence and the
16 first time you're going to think about it is when it is over
17 with. The second thing is even more important, I know your
18 time is valuable, they don't pay -- I can assure you I am
19 being paid a lot more money than you to be up here today
20 defending this guy. I know the county ain't been paying you
21 much but we can't solve these problems when the State
22 accuses somebody of violating the law without juries and you
23 14 got picked, now, number 13 and 14 may not serve if all or
24 none of you 12 fall out, so be patient with us. It's going
25 to be a slow meticulous process. There's no way to get

1 around that because the State has a lot of evidence, but
2 you're going to have to decide eventually what does that
3 evidence mean. And subject to my cross examination of the
4 evidence and subject to my client testifying -- again, he is
5 not required to prove anything but he wants to tell his side
6 of the story. So be patient with us, we'll move this as
7 quickly as we can. Thank you.

8 THE COURT: Thank you, Mr. Bell.

9 MR. BELL: Your Honor, at this point I would have some
10 matters of law.

11 THE COURT: Ladies and gentlemen, we are getting ready
12 to take a lunch break until 1:30. We will ask you to be
13 back in the jury room at 1:30. Between now and then we have
14 some legal matters that we have to attend to and hopefully
15 we will be able to also have lunch. I remind you during the
16 lunch break don't let anybody discuss the case with you and
17 you don't discuss the case with anybody. See you back at
18 1:30, ladies and gentlemen.

19 (The jury left the courtroom.)

20 THE COURT: And Mr. Bell, you have some motions?

21 MR. BELL: Well, the first motion, Your Honor, is my
22 client is charged with one offense, it goes from August of
23 '07 to December 31, '07, criminal sexual conduct and then he
24 was indicted last Thursday with a new crime of lewd act, it
25 covers the same time frame. So I would move that the State

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1 have to elect one event as to whether this so called
2 criminal sexual conduct occurred instead of being faced with
3 a shotgun of 100 pellets or whatever that goes from August
4 until December as to one criminal sexual conduct.

5 THE COURT: I'm missing it, you want them to elect
6 what?

7 MR. BELL: One event, one date.

8 THE COURT: You want to restrict them to proving one
9 date?

10 MR. BELL: Yes, sir.

11 THE COURT: All right. I'll deny the motion.

12 MR. BELL: Same thing as to the lewd act, Your Honor.

13 THE COURT: Same motion, same grounds?

14 MR. BELL: Yes, sir.

15 THE COURT: Then I deny that motion.

16 MR. BELL: Secondly, Your Honor -- I don't know if it's
17 a motion yet, I'm asking the State to have to put on the
18 record what -- I'm not asking Ms. Mingo to explain what she
19 did or why, it doesn't matter, I think I can make a comment
20 about it as I did in my opening but I'm waiting so late.
21 But anyway, is the State's position that I'm guilty of one
22 or the other, is that the State's position?

23 MS. MINGO: The State's position is that he is guilty
24 of both.

25 MR. BELL: Well, I understand. But are you saying to

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1 the Judge that the jury can find him guilty of the CSC on
2 whatever date they think the penetration occurred, but at
3 the same time another date with just a touching that they
4 could find him guilty of the lewd act?

5 MS. MINGO: That's correct.

6 MR. BELL: So technically I'm facing two full charges
7 based on what, the sentence went from 20 to 30 years?

8 MS. MINGO: CSC is 20, lewd act is 15.

9 MR. BELL: 15? Well, Your Honor, I then move for the
10 State to elect whether or not to go forward with the CSC
11 only or with the lewd act.

12 THE COURT: And the grounds -- I understand the motion,
13 the grounds for the motion?

14 MR. BELL: Well, the grounds would be, Your Honor, that
15 it's unfair for me to face the CSC allegations that covers
16 all of these time frames, and in addition saying that I'm
17 also guilty of a lewd act because it confuses the jury as to
18 what they've got to consider factual wise. Because normally
19 you don't see a CSC and a lewd act necessarily tried
20 together normally, I don't. So I'm just making a motion
21 that they have to try me on either one or the other.

22 THE COURT: Tell me why, though, I just missed it.

23 MR. BELL: Well, it's a matter that the State's
24 position until last Thursday has always been this is a CSC
25 case, a criminal sexual conduct. But they decided the last

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1 Thursday to indict him for an additional crime, I thought
2 their theory was going to be if the jury doesn't believe
3 it's a CSC they might believe it was a lewd act, one or the
4 other. But now the State takes the position that they want
5 this jury to find him guilty of both of them.

6 THE COURT: Do you want a continuance?

7 MR. BELL: No, sir.

8 THE COURT: Is that what you mean?

9 MR. BELL: No, sir. I'm just saying they can't do what
10 they're trying to do.

11 THE COURT: I'll deny that motion. All right.

12 MR. BELL: Now, as to substantive motions, Your Honor,
13 of course, I did a Rule 5 way back in -- some time in '08, I
14 have continuously been receiving stuff as late as yesterday,
15 that's not the issue, I didn't -- the issue, Your Honor, is
16 in reference to the Palmetto Sexual Assault matter, I may be
17 mispronouncing who they are -- I know that they did an
18 interview on or about January 9th of '08 and I have the
19 application paperwork and I have the -- what they call a
20 case file, I have the case file which is basically questions
21 and answers that Ms. Dixon did. I am also aware of
22 supposedly that they videotaped that the State has never
23 allowed me access to the videotaping that occurred on the
24 first interview of January 9th of '08 which I am entitled to
25 see and use as I deem proper in reference to either defense

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1 or credibility or whatever the other issues that come up.
2 As His Honor remembers, we had a mistrial back sometime last
3 year and Ms. Dixon on the stand was being asked by me -- I
4 doubt if you remember this or not -- but I asked her on the
5 stand did a videotape exist, and her sworn testimony was,
6 yes. So after that jury mistrial I then continually pushed
7 Ms. Mingo to deliver the evidence. I'm entitled to see that
8 thing in some fashion, either I go to them or they come to
9 me or I go buy CD's or I go buy something, and it's never
10 been delivered. Now, Ms. Mingo is telling me that -- and if
11 I am misquoting her I will let her see real quick -- I
12 remember on the last conversation on this piece of evidence
13 was they're telling her it does exist as far as they know
14 but they can't find it and it has been misplaced or
15 something. Well, that is a crucial piece of evidence from
16 two regards; one, to properly prepare a defense; two, to
17 properly prepare for a variety of issues of cross
18 examination. You can have something that can be called
19 exculpatory, I've got no idea because I don't know where it
20 is and they won't let me see it so then -- I'm going to keep
21 going, Your Honor. So then I think -- don't hold me to the
22 date, Ms. Mingo will correct me, but I think my memory is
23 that some time after the first interview I think the Deputy
24 Sheriff Adams may have come to the solicitor, may have had
25 some kind of conversation and a second interview was set up

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1 that took place on or about February 14th of '08, I think
2 I'm right on the date. Now, I have not been provided
3 anything from that interview and it involved Ms. Dixon and
4 them, I have got no case file, no notes, no nothing. And,
5 of course, I've been pushing her to see what exists there, I
6 really don't have an answer to that. And then I'm also
7 informed that -- don't hold me to this date because I don't
8 know the date either, late February or early March, there
9 was a third interview that even the deputy sheriff wasn't
10 there for that one, I don't know who was there, but I've
11 been given nothing on that one way or the other. And, of
12 course, I've been pushing for that, because when we had the
13 last trial is when the issue of maybe -- well, not maybe --
14 a video exists for the first thing and we find out through
15 other discovery about the second or third visit and I have
16 been pushing the State -- I didn't refile motions, Your
17 Honor, all I've got to do is file Rule 5 one time -- I have
18 been pushing the State to give me something, give me an
19 answer. I don't have an answer, I don't have anything. So
20 the first motion is they denied my client a fair trial, the
21 right to properly defend himself, the right to confrontation
22 of other witnesses that may or may not be discovered based
23 on what we don't know exists, they're denying me a right of
24 a fair trial on confrontation and the right to see if
25 there's any exculpatory evidence in there, I can't say if it

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1 is or not, I have no idea, I have never seen it. And then
2 I've got an interview two and interview three, I'm pretty
3 sure I'm right, the other two interviews, they've given me
4 nothing on that so I move to dismiss on that.

5 THE COURT: All right. Ms. Mingo?

6 MS. MINGO: All right, Your Honor. I spoke with Ms.
7 Dixon from Palmetto Citizens Against Sexual Assault about
8 the video situation. It is their protocol that they make a
9 video of the forensic interview. There is a transcript that
10 I have and Bell has of the victim's interview in this case.

11 THE COURT: Is that the January 9th interview?

12 MS. MINGO: Yes, sir, January 9th. And she indicates
13 Ms. Dixon does say in her interview, she tells the child,
14 "I'm making a video of you right now so speak loudly, audio
15 and video." Your Honor, I've asked her about this, they
16 simply can't locate it. Nothing has been destroyed or we
17 are not hiding anything in bad faith, they've never been
18 able to give me anything and therefore I haven't been able
19 to provide that to Mr. Bell. That's really all I have on
20 that. I have asked for this many times --

21 THE COURT: Now, wait a minute. I understand the
22 missing videotape, what about the interview on the 14th and
23 the one that may have been in March?

24 MS. MINGO: That's what I'm getting to next.

25 THE COURT: I'm sorry.

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1 MS. MINGO: No, that's fine. This is the first time
2 I've heard about subsequent videos. I have no knowledge of
3 videos after January 9th, that is the only forensic
4 interview that I'm aware of so this is new to me. I don't
5 know if I missed something, I don't see how, but I'm not
6 aware of any other videos or any other interviews besides
7 the one on January 9th of 2008.

8 THE COURT: In other words you don't have any
9 recollection of Mr. Bell asking for those interviews?

10 MS. MINGO: I do not.

11 THE COURT: Mr. Bell?

12 MR. BELL: Well, their cops know about it, Your Honor.
13 I have January 14th of '08, Investigator Adams attended a
14 forensic interview at PCASA with this child.

15 THE COURT: I thought a minute ago that you said you
16 haven't had any response to your request for those.

17 MR. BELL: Well, I haven't, but she's saying she don't
18 remember that incident. Well, I have --

19 THE COURT: She says she doesn't remember you asking
20 about it. She said two things, one is she doesn't recall
21 such interviews, and the second is she doesn't recall you
22 asking for those.

23 MR. BELL: Well, it's a broad Rule 5, Your Honor.

24 THE COURT: I understand. So there wasn't a separate
25 request. I thought you meant there was a separate request

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1 and they wouldn't answer.

2 MR. BELL: No, sir. It's a broad Rule 5 that they have
3 not complied with as allowed by the Rule 5. But there
4 was --

5 THE COURT: Have you specifically asked them for the
6 tapes or the interview times? In other words you knew or
7 know at some point that there were these interviews that the
8 solicitor says she doesn't recall anything about and you
9 have asked her specifically for others.

10 MR. BELL: I have not filed but one Rule 5.

11 THE COURT: But I thought you said before you asked
12 repeatedly that you asked for the missing videotapes from
13 January 9th.

14 MR. BELL: I did since the last trial, it's not been in
15 writing.

16 THE COURT: But you have not asked about the other two.

17 MR. BELL: Well, I have, Your Honor, because of the
18 fact that -- she's catching me offguard by saying she wasn't
19 aware of the second interview. I think it came out at the
20 preliminary hearing that after the first interview -- and
21 I'm trying to help refresh her memory -- after the first
22 interview Mr. Adams went to the solicitor's office and they
23 took the little child to the second interview to clear up
24 some matters, the second interview based on the incident
25 report occurred on January 14th. Now, I've never been given

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1 anything on that interview.

2 THE COURT: I thought you meant that was a PCASA
3 interview.

4 MR. BELL: I did.

5 THE COURT: I thought you said Mr. Adams took her
6 somewhere.

7 MR. BELL: He did.

8 THE COURT: Oh, to PCASA?

9 MR. BELL: Yes, sir. They had a second forensic
10 interview that I've been given nothing on, nothing, and the
11 State today is saying they don't know nothing about it.
12 Well, Your Honor, their cop did it, Mr. Adams, he's the main
13 cop in this case and he testified at preliminary that he
14 talked to the solicitor's office and lined up the second
15 interview. Now, the third interview, Mr. Adams wasn't even
16 involved in it, but for some unknown reason somebody took
17 the child back to the PCASA people for a third interview and
18 even Adams don't know about that, I don't know if the State
19 does. But I've been talking to Ms. Mingo about all of this
20 since we had the last trial, I thought I had, I didn't know
21 she went for a second interview.

22 MS. MINGO: Your Honor, as I stated, I am not aware of
23 a second and third -- may I see what you're referring to?

24 MR. BELL: Yeah. I may be wrong then, Your Honor. I'm
25 pretty sure I thought there was a second interview with the

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1 young lady involved in this. Well, Your Honor, I could be
2 wrong. But the point is I'm still back to the interview,
3 number one.

4 THE COURT: All right. Well, let's go back to number
5 one. It's my understanding from what you said, or Ms. Mingo
6 has said, is that the people at PCASA, A, typically tape
7 such interviews, number one. And number two, B, it may be
8 that they did in this case tape the interview, and number
9 three, they can't find it, that's what I understand.

10 MR. BELL: That's what the State is telling me, yes,
11 sir.

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

13 THE COURT: And based on that you want the charges
14 dismissed?

15 MR. BELL: Yes, sir.

16 THE COURT: All right. I'll deny that motion.

17 MR. BELL: Well, then based on that I want to limit the
18 introduction of that interview.

19 THE COURT: We didn't have it last time, did we?

20 MR. BELL: Yes, sir.

21 THE COURT: We had the video last time?

22 MR. BELL: No.

23 MS. MINGO: We didn't have the video.

24 MR. BELL: But people from that agency did testify.

25 MS. MINGO: Your Honor, we do not have the video but

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1 there is a transcript of the interview that Mr. Bell has had
2 since early on, the video just provides the visual. But as
3 far as the content of the interview he has that, that is
4 something he has had plenty of opportunity to look at and I
5 do intend to call Ms. Dixon as a witness in this case.

6 MR. BELL: I don't dispute, Your Honor, I've received
7 the transcript in the course of discovery. I can probably
8 look at it and determine when I got it, but obviously I had
9 it before the last trial so I don't dispute that. I'm not
10 rehashing that.

11 THE COURT: All right. And I'll deny that motion, the
12 motion being to limit -- or prohibit the testimony of the
13 PCASA concerning the January 9th of 2008 interview.

14 MR. BELL: Yes, sir. The next motion, Your Honor, I
15 filed yesterday was an earlier motion filed in the last
16 trial, I refiled, I need to refile it in the Court, you've
17 got, it's under 16 -- apologize, Your Honor, I should have
18 put it in a motion but I didn't -- 16-3-659.1 which is what
19 we call the Rape Shield Statute. You already heard part of
20 that, Your Honor, but I've got to make sure it was on the
21 record. We're asking that in reference to the CSC charge,
22 which I believe is covered, that we be allowed to delve by
23 questions and direct testimony that the fact we have
24 evidence that young^{Minor} or others were discovered
25 having pornographic material in their clubhouse on or about

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1 , which was her birthday. Minor
2 Minor also without permission slipped out of the house to
3 meet someone of the opposite sex, in particular one named
4 Wallace fellow. And, of course, we've got the ongoing issue
5 of the unidentified male semen found in the house that
6 Minor occupied. And I have since the last trial
7 pushed as best I could without any formal motion for the
8 State to cross that bridge and try to figure out who that
9 semen belongs to, and I gave them two names to go check and
10 of course they didn't do it, there's nothing I can do about
11 that. I'm sure -- I don't know if His Honor remembers or
12 not, but we've got some unidentified male semen that SLED
13 found and cataloged and all of that stuff. And then, of
14 course, we're guessing some time in March of '08 that
15 Minor became pregnant and we think those are
16 issues that we should be allowed to delve into with cross
17 examination and possible names from other witnesses, which
18 is not attacking character or morality but it is dealing
19 with credibility and believability of the witnesses in
20 case -- and my client's right to be able to confront the
21 witnesses properly through the cross examination so the jury
22 can determine whether or not or what the verdict should be.
23 As His Honor remembers in this case unless something has
24 changed I'm unaware of there's absolutely no direct evidence
25 to my client except young Minor saying it occurred.

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1 There's no witness, there's no forensic evidence of any kind
2 that connects him with this child. In fact, His Honor
3 remembers, there's a lot of semen everywhere, some of which
4 belongs to my client, some that belongs to an unidentified
5 male, some of which belongs to the mother of Minor but
6 there's no semen belonging to the child that's been
7 identified. So -- excuse me not semen, no discharge of
8 the -- vaginal discharge or DNA. So that's why we think
9 it's important for us to be able to bring up the issues I've
10 set out through cross examination or either direct
11 examination in our case in chief and should not be
12 prohibited by 16-3-659.1, and I said the broad statute.

13 THE COURT: Ms. Mingo?

14 MS. MINGO: Your Honor, I don't believe anything that
15 Mr. Bell says --

16 THE COURT: You don't believe anything he says?

17 MS. MINGO: No, I don't, but I was going to continue.
18 None of what he stated provides an exception to the Rape
19 Shield Statute, I'm looking at 16-3-659. It looks like the
20 only exceptions to pierce the shield, Your Honor, evidence
21 that relates to the victim's sexual conduct with the
22 defendant or evidence of specific instances of sexual
23 activity with persons other than the defendant introduced to
24 show source or origin of semen, pregnancy or disease. Your
25 Honor, we are not in any way going to argue Minor became

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1 pregnant and he's the father, we're not trying to attribute
2 that unidentified semen to Mr. Loftin. The only thing we
3 are attributing to him is the semen that the SLED DNA
4 analyst will say is his. Your Honor, just looking at the
5 statute I don't see how her sexual activity comes in, I
6 don't believe it's relevant. There's nothing at all to
7 connect the semen to Minor in any way. It's semen on the
8 sofa in the living room. She's not the only person living
9 there, the brother lived there, the mother lived there,
10 there's previous owners. There's nothing to connect her to
11 that semen.

12 THE COURT: Mr. Bell, tell me this: Why is it relevant
13 that Minor was discovered having pornographic material in
14 a clubhouse, what has that got to do to this case?

15 MR. BELL: We think it goes to the credibility of
16 whether or not this actually existed.

17 THE COURT: I'm sorry, what?

18 MR. BELL: The credibility and believability of this
19 witness as to whether or not what she's claiming by my
20 client actually occurred. Just like all of them, Your
21 Honor, all of them go to credibility and believability as to
22 the issue at hand which would be has my client committed CSC
23 with a minor and/or a lewd act.

24 THE COURT: The fact that she slipped out of the home
25 to meet somebody?

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1 MR. BELL: What I say, Your Honor, is except who she
2 met.

3 THE COURT: What has that got to do with this case?

4 MR. BELL: Well, the boy she met was the father of her
5 child.

6 THE COURT: What has that got to do with the
7 allegations in this case?

8 MR. BELL: It has nothing to do with the allegations,
9 Your Honor. It goes to the -- my client's right to have a
10 fair trial, it goes to her credibility and believability
11 based on other acts that she committed. It's not to bring
12 up her morality or anything even though she had a child at
13 the age of 13, somebody should have been arrested for that
14 but they weren't but I'm not questioning that, Your Honor,
15 from a morality standpoint. It is simply being allowed to
16 use these items -- that I'm allowed to use for purposes of
17 impeachability of her testimony, the credibility and
18 believability.

19 THE COURT: How does that statement that she slipped
20 out of the house affect her credibility?

21 MR. BELL: I'll have to expand it, Your Honor, from the
22 standpoint of what she was doing and who she was meeting and
23 why. I can only give you a bare bones assertion in the
24 motion but it is something I have got to get out of her if
25 she will admit she did it.

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1 THE COURT: If she admitted that she -- I can't see
2 that any of these matters contained in your motion are, A
3 relevant, and B, would be an exception to the Rape Shield
4 Statute, and I therefore deny the motion.

5 MR. BELL: Well, other than this Your Honor, I'm also
6 indicted on a lewd act. A lewd act does not fall into the
7 Rape Shield Statute.

8 THE COURT: All right. Solicitor?

9 MR. BELL: I'm not asking you to prejudge, Your Honor,
10 that's going to be a case by case basis based on what
11 questions I ask.

12 THE COURT: I didn't understand what you just said.

13 MR. BELL: I'm not asking you to judge or pre-rule.
14 I'm simply stating that the Rape Shield Statute does not
15 protect a crime of lewd act, it's not within the purview of
16 the Rape Shield Statute.

17 MS. MINGO: Your Honor, I believe that is correct, I
18 looked at that. However, there is -- there's no relevancy
19 to -- and I'm looking at Mr. Bell's motion point A, B, C or
20 D, he's still got to show this is relevant information. It
21 has nothing to do with this case, her looking at
22 pornographic material, slipping out of the house,
23 unidentified semen, it has nothing to do with the
24 allegations in this case. There has still got to be some
25 type of showing of relevancy and I don't think he has

PRETRIAL MOTIONS

1 established that.

2 THE COURT: Isn't that correct, Mr. Bell?

3 MR. BELL: I haven't asked the question yet, Judge.

4 THE COURT: Isn't she correct?

5 MR. BELL: No, sir.

6 THE COURT: Why isn't she correct?

7 MR. BELL: Because you're going to have to rule on that
8 on a question by question basis if I ask it and she objects.

9 THE COURT: Well, she's asking me to rule on it as you
10 do with motions in limine.

11 MR. BELL: Well, I don't know what questions I'm going
12 to ask yet, Judge, I don't know. I may or may not ask this
13 little girl if she was pregnant, if she got pregnant. I may
14 or may not ask this little girl concerning the spring thing,
15 concerning the other thing. I don't know what I'm going to
16 ask her. I don't know what I'm going to ask her until I
17 hear her testimony.

18 THE COURT: Well, I'm ruling you can't ask her those
19 questions.

20 MR. BELL: Those questions.

21 THE COURT: That's correct.

22 MR. BELL: I understand, but they may come up with some
23 others.

24 THE COURT: Mr. Bell, these are issues of relevancy.
25 If you think you're getting ready to go in the back door of

PRETRIAL MOTIONS

1 these questions I want you to ask for a side bar and we will
2 talk about it.

3 MR. BELL: Well, I may, Your Honor. I've got to do
4 what I think is necessary to defend my client.

5 THE COURT: Within the rules.

6 MR. BELL: Yes, sir, within the rules, I understand
7 that. I don't want His Honor to get mad at me and tell the
8 sheriffs to lock me up. But when they indicted my client
9 with a new charge they opened the door, they got rid of the
10 Rape Shield Statute, now we're just on relevancy.

11 THE COURT: Right. None of these issues that you
12 pointed out in this motion I find are relevant to the issues
13 before the Court.

14 MR. BELL: Well, is that going to be a pretrial ruling
15 and you haven't heard the question yet?

16 THE COURT: Well, it is. It's just like a motion in
17 limine, it's the same thing as a motion in limine.

18 MR. BELL: Well, I would like to cross that bridge when
19 I get to it, Your Honor, once I start cross examination.

20 THE COURT: Don't ask her about the clubhouse
21 pornographic --

22 MR. BELL: I understand what you're telling me.

23 THE COURT: What other motions?

24 MR. BELL: I've got no more.

25 THE COURT: Now, what about this: I think that each

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1 side needs to talk to their respective witnesses and tell
2 them they should not be referring to the last trial, it's
3 real easy to do. I don't think you should be referring to
4 another trial at all.

5 MS. MINGO: I agree, it should not be mentioned.

6 MR. BELL: I'm not going to bring it up.

7 THE COURT: Any other motions.

8 MR. BELL: No, sir.

9 THE COURT: Ms. Mingo?

10 MS. MINGO: I have one other thing, I'm not sure if it
11 is a motion. The victim was 12 years old at the time of
12 these incidents. I have been provided a photo that I copied
13 for Mr. Bell several weeks ago, maybe a month ago.
14 Actually -- Your Honor, this is a school photo from
15 2007/2008 when the victim was 12 years old, the State would
16 like some direction from the Court on our ability to use
17 this to show to the jury what she looked like at the time of
18 the alleged crime. Age is an element of the crime, it shows
19 who she was then and we believe it's relevant.

20 THE COURT: Mr. Bell?

21 MR. BELL: If the little girl or her mama says that's
22 her photograph I don't know any way that I can keep it out
23 of evidence, Your Honor. Somebody has got to identify it.

24 THE COURT: Yeah. Somebody has to identify it
25 certainly. Anything else?

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1 MS. MINGO: Nothing else, Your Honor.

2 THE COURT: You will be ready with a witness at 1:30?

3 MS. MINGO: I'll be ready.

4 THE COURT: Court is in recess until 1:30.

5 (Lunch break was taken.)

6 THE COURT: State ready?

7 MS. MINGO: State is ready, Your Honor.

8 THE COURT: Defense ready?

9 MS. MINGO: Yes, sir.

10 THE COURT: All right, let's bring the jury in.

11 (The jury returned to the courtroom.)

12 THE COURT: Welcome back, ladies and gentlemen. I
13 believe we are ready to begin with the testimony in the
14 case. Solicitor?

15 MS. MINGO: Your Honor, the state calls Shakesha
16 S to the stand.

17 The witness, SHAKESHA S , was first duly
18 sworn and testified as follows, on:

19 DIRECT EXAMINATION

20 BY MS. MINGO:

21 Q How are you doing?

22 A Good.

23 Q State your name for the record, please.

24 A Shakesha S .

25 Q How old are you, Shakesha?

TESTIMONY OF SHAKESHA S

- 1 A Seventeen.
- 2 Q Do you go to school anywhere?
- 3 A Buford High School.
- 4 Q What grade are you in?
- 5 A The 12th.
- 6 Q Do you know Minor ?
- 7 A Yes, ma'am.
- 8 Q Were you friends at some point?
- 9 A Yes, ma'am.
- 10 Q Did y'all go to school together?
- 11 A Yes, ma'am.
- 12 Q Where did y'all go to school together?
- 13 A Buford Middle School.
- 14 Q Are the two of you still in contact together?
- 15 A No.
- 16 Q Back on January 4th of 2008, did you go to the
- 17 principal's office at Buford Middle School?
- 18 A I don't remember the date, but, yes, I went to the
- 19 office.
- 20 Q Do you remember what you went there in reference to?
- 21 A Yes, ma'am.
- 22 Q What did you go to the office in reference to?
- 23 A Because I had a friend, which was Minor , she told me
- 24 she was raped by her stepdad.
- 25 Q So you were both students at Buford Middle School

TESTIMONY OF SHAKESHA S

1 during that time?

2 A Yes, ma'am.

3 Q Now, when you were reporting this, were you just
4 finding out or was it something you held on to for awhile?

5 A I had knew it a few months.

6 Q What made you tell it?

7 A I wanted to get her some help.

8 Q Did Minor know that you were going to the office on
9 that day? Did you tell her?

10 A No. I just went on my own because I just wanted her to
11 get some help, because that's nothing that you keep inside
12 without letting anyone know.

13 MS. MINGO: Answer anything Mr. Bell has.

14 THE COURT: Mr. Bell, cross examination.

15 MR. BELL: Yes, sir.

16 CROSS EXAMINATION

17 BY MR. BELL:

18 Q How are you, Ms. ^s This is your senior year?

19 A Yes, sir.

20 Q Well, congratulations. When are you going to graduate,
21 this coming May?

22 A May 18th.

23 Q Do you want to go any place further?

24 A I want to go to Atlanta for mortician training.

25 Q Well, best of luck to you. So you don't remember the

TESTIMONY OF SHAKESHA S

1 date, but some time you went to the principal; is that
2 correct?

3 A Yes, sir.

4 Q Or the office?

5 A Yes, sir.

6 Q And Ms. Mingo asked you did you just find out about
7 this on the day you went and I believe your answer was no.

8 A No, sir. Right.

9 Q And that you had some knowledge according to Minor
10 before whatever date you went to the principal's office.

11 A Yes, sir.

12 Q How long had you had that knowledge?

13 A A few months. I don't know exact, but just a few
14 months.

15 Q Well, could it have been back as early as August of
16 '07?

17 A I'm not sure.

18 Q Could have been or you're not sure?

19 A Yes, sir, it could have been.

20 Q Could it have been September of '07?

21 A It could have been.

22 Q Could it have been October of '07?

23 A It could have been.

24 Q Could it have been November of '07?

25 A Maybe.

TESTIMONY OF SHAKESHA STRATFORD

1 Q Could it have been December of '07?

2 A May have.

3 Q But not remembering the date, do you remember the month
4 that you went to the office?

5 A No, sir.

6 Q Do you remember the year?

7 A It was 2007 -- or -- 2007 or 2008.

8 Q And you didn't have any personal knowledge of anything.

9 In other words, you never saw anybody do anything to anybody
10 in reference to young ^{Minor}
or

11 A No, sir.

12 Q And I understand your answer was you wanted to get her
13 some help, but if she -- and I apologize, back up. The only
14 way you had any knowledge is she, being young ^{Minor}
or
15 saying something to you.

16 A Yes, sir.

17 Q And if she said something to you in August why didn't
18 you get her help at that time?

19 A I'm sorry?

20 Q If she said something to you in August about somebody
21 touching her or -- and you used the word rape.

22 A Yes, sir.

23 Q About somebody raping her or touching her, if she told
24 you that in August, why didn't you react at that time?

25 A Because I don't remember what time she had told me, but

TESTIMONY OF SHAKESHA S

1 I knew she had told me that her stepdad had been doing these
2 things to her.

3 Q But if she told you in September, why didn't you react
4 at that time?

5 A I'm not sure what month it was.

6 Q I understand. If she told you in October, how come you
7 didn't react that time?

8 A Once again, I was not paying attention to the month.

9 Q If she told you in November how come you didn't react
10 that day?

11 A I wasn't paying attention to the month.

12 Q If she told you in December, how come you didn't react
13 at that time?

14 A I wasn't aware of the month.

15 Q Young lady, you remember being under oath and saying
16 that you knew about it from day one?

17 A I'm sorry?

18 Q Do you remember being under oath and saying that you
19 knew about this in August of '07?

20 A I do not remember the month.

21 Q So on an unknown date, unknown month, it may have been
22 in '07, could have been in '08 -- well, let me ask you this:
23 On whatever date you went to the office, do you remember any
24 conversation with young ^{Minor} on that day?
or

25 A No, sir.

TESTIMONY OF SHAKESHA S

1 Q Well, on whatever date, whatever month and whatever
2 year you went to the office, do you remember any event --
3 and you've got to remember I'm old, I think my youngest kid
4 calls it drama -- do you remember any drama going on on
5 whatever day you went to the office that would precipitate
6 you going to the office?

7 A No, sir.

8 MR. BELL: Thank you, ma'am.

9 THE COURT: Any redirect?

10 MS. MINGO: Briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MS. MINGO:

13 Q Ms. Stratford, I think you indicated that when you went
14 to the office you had known this information for a few
15 months.

16 A Yes, ma'am.

17 Q But you also indicated that possibly January of 2008?

18 A It could have been.

19 MR. BELL: Your Honor, this is redirect, she's trying
20 to lead the witness. I'm going to object. And she -- you
21 know, again, she brought this out on direct examination, she
22 can't now retry her case because I didn't bring out anything
23 new in reference to any day of what she tried to get out of
24 the witnesses initially, so I'm going to object to her
25 trying to retry her case based on any problem she thinks she

TESTIMONY OF SHAKESHA S.

1 is having with this witness.

2 THE COURT: Overruled. Go ahead.

3 Q You indicated you had known it a few months; is that
4 correct?

5 A Yes, ma'am.

6 Q And I think Mr. Bell asked you when you went to the
7 office some time in January of 2008, was it possible that
8 you just found out?

9 MR. BELL: Your Honor, that's a misrepresentation. I
10 never suggested --

11 THE COURT: Hold on just one second.

12 MR. BELL: I never suggested what month she went, I
13 never suggested that, she's the one, she couldn't tell the
14 jury what month. I never suggested to the jury what month
15 she went. I'm going to object to the question.

16 THE COURT: Rephrase the question.

17 MS. MINGO: I'll rephrase the question, Your Honor.

18 Q When you went to the office it was old information; is
19 that correct?

20 A It was information that I had known for awhile, I'm not
21 sure what month I had went to the office and told.

22 MS. MINGO: Thank you. That's all, thank you.

23 MR. BELL: I've got nothing further, Your Honor.

24 THE COURT: You may step down.

25 MR. BELL: State calls Minor .

TESTIMONY OF Minor

1 The witness, Minor , was first duly
2 sworn and testified as follows, on:
3 DIRECT EXAMINATION
4 BY MS. MINGO:
5 Q State your name, please, ma'am.
6 A Minor .
7 Q How old are you, Minor ?
8 A Seventeen.
9 Q When is your birthday?
10 A : .
11 Q Where do you live?
12 A .
13 Q Is that here in Lancaster County?
14 A (Nods head yes.)
15 Q Do you have any siblings?
16 A Three.
17 Q What are their ages?
18 A Fifteen, 13 -- well, four siblings; 15, 13, six and
19 one.
20 Q Let me ask you this: Do you live with your siblings
21 and your mother?
22 A No, ma'am.
23 Q What do you do for fun?
24 A Nothing.
25 Q Nothing? Okay. Let me ask you this: How do you know

TESTIMONY OF Minor

- 1 the defendant, Mr. Loftin?
- 2 A He was my mother's boyfriend.
- 3 Q Was he married to your mom?
- 4 A I don't think so.
- 5 Q Do you remember how old you were when he came into your
- 6 life?
- 7 A Eight.
- 8 Q Did he live with you guys or did he live somewhere
- 9 else?
- 10 A He lived with us.
- 11 Q How old were you when he moved in, do you remember
- 12 that?
- 13 A Around eight.
- 14 Q Around eight? Okay. Did he have any children with
- 15 your mom?
- 16 A Yes, one.
- 17 Q When you were eight years old and he initially started
- 18 dating your mom, how many siblings did you have at that
- 19 time?
- 20 A Two.
- 21 Q And who were they?
- 22 A Tyler B. and Kaylee P.
- 23 Q Is Tyler your mom's child?
- 24 A And Kaylee is my father's child.
- 25 Q So when she met Mr. Loftin she had you and she had

TESTIMONY OF Minor

- 1 Tyler.
- 2 A Yes, ma'am.
- 3 Q Did he -- you said he lived with you guys at some
4 point, where did you live?
- 5 A The same address as I live now.
- 6 Q And do you remember how long he stayed there?
- 7 A We moved from house to house all of the time.
- 8 Q Well, between August and December of 2007, where were
9 you living? Were you living at that residence?
- 10 A Yes.
- 11 Q What was your relationship with Mr. Loftin like
12 initially?
- 13 A Like a father/daughter relationship.
- 14 Q Were the two of you pretty close?
- 15 A Very.
- 16 Q Did you call him dad?
- 17 A No, but my brother did. I looked at him as my daddy.
- 18 Q Did you maintain that father/daughter relationship with
19 him?
- 20 A No.
- 21 Q Do you remember when things changed?
- 22 A When I was 12.
- 23 Q When you were 12. Okay. What happened that made it
24 change?
- 25 A He started giving me alcohol and touching me and saying

TESTIMONY OF Minor

- 1 stuff to me.
- 2 Q You said he gave you alcohol?
- 3 A (Nods head yes.)
- 4 Q When did that happen?
- 5 A That was the first thing he ever done was gave me
- 6 alcohol and that's when I realized something wasn't right.
- 7 Q Tell me how that happened. What were you doing that
- 8 day that led up to him giving you some alcohol?
- 9 A Me and my friend, Abby, were at my house and he came
- 10 home from work with the alcohol and gave it to us and we
- 11 drank it, and I don't remember anything after that.
- 12 Q So he came home after work. Do you remember what type
- 13 of alcohol it was? I know it was --
- 14 A It was a fruity drink, it was in bottles.
- 15 Q How long did he offer you -- and you said your friend
- 16 was there?
- 17 A Yes.
- 18 Q What's her name?
- 19 A Abby C. .
- 20 Q How old are you at this time?
- 21 A Twelve.
- 22 Q How old was Abby?
- 23 A Like nine.
- 24 Q What did he say about the alcohol, or how did he end up
- 25 offering you alcohol?

TESTIMONY OF Minor

- 1 A He just brought it in the house and said, "Do y'all
2 want to drink this?"
- 3 Q Did you?
- 4 A Yes.
- 5 Q Did Abby drink some?
- 6 A Yes.
- 7 Q Were you all -- did he drink?
- 8 A I don't remember.
- 9 Q Do you remember what room you were in when you were
10 drinking this alcohol?
- 11 A The living room.
- 12 Q Were you and Abby in the living room together drinking?
- 13 A Yes.
- 14 Q Where was Mr. Loftin when you were drinking?
- 15 A In the living room.
- 16 Q He was in the living room as well. Do you remember
17 anything else about that day?
- 18 A The last thing I remember is I was sitting on his lap
19 on the couch and everything went blank.
- 20 Q Do you remember how much he gave you to drink?
- 21 A No.
- 22 Q How old were you when this happened?
- 23 A Twelve.
- 24 Q Did anything -- where was your mom on this incident?
- 25 A She was working.

TESTIMONY OF Minor

- 1 Q So it was just you, Abby and Mr. Loftin in the house?
- 2 A Yes, ma'am.
- 3 Q Do you remember if it was daytime or nighttime?
- 4 A Daytime.
- 5 Q Had you been to school that day?
- 6 A I think so.
- 7 Q At some point does Abby leave the residence?
- 8 A Yes.
- 9 Q Once she is gone, do you remember anything happening?
- 10 A No.
- 11 Q Can you tell me if anything happened after the alcohol
- 12 incident?
- 13 A That day?
- 14 Q Any --
- 15 A I don't remember anything after he gave me alcohol.
- 16 Q You don't remember anything else from that day?
- 17 A No.
- 18 Q You said things started to change when you turned 12
- 19 years old, or when you were 12. Did anything unusual --
- 20 anything else unusual happen with you and Mr. Loftin after
- 21 the alcohol incident?
- 22 A He offered me \$20 to make out with him and he touched
- 23 me in my private area.
- 24 Q And where were you when this happened?
- 25 A I think I was at the computer desk.

TESTIMONY OF Minor

- 1 Q In what house?
- 2 A The same house.
- 3 Q In the same house? What room is the computer desk in?
- 4 A It was in the den, it was a living room and a den.
- 5 Q Okay. He offered you \$20 for sex, is that what you're
- 6 telling us?
- 7 A No, just to kiss him.
- 8 Q What was your reaction?
- 9 A I walked straight to my bedroom.
- 10 Q At that point did you think something strange was going
- 11 on?
- 12 A Yes.
- 13 Q Up until that point or up until -- well, let me ask you
- 14 this: How much time had elapsed between the day he gave you
- 15 alcohol and the day he offered you \$20 for some sex? Or for
- 16 a kiss, I'm sorry.
- 17 A Just a few days.
- 18 Q Up until that point, was everything normal between the
- 19 two of you, it was a father/daughter thing?
- 20 A Before then, yes.
- 21 Q Does he say anything else to you about offering you
- 22 money or giving him a kiss after you walked to go to your
- 23 room?
- 24 A I don't remember.
- 25 Q Do you remember any unusual events after that?

TESTIMONY OF Minor

- 1 A He had sex with me.
- 2 Q Okay. Where did he have sex with you?
- 3 A In a deer stand.
- 4 Q You said in a deer stand?
- 5 A Uh-huh.
- 6 Q And where is this deer stand?
- 7 A Fort Lawn.
- 8 MR. BELL: Your Honor, I'm not being tried for anything
9 in Chester County, I have never been charged with anything
10 in Chester County, and I'm going to object to any
11 allegations of criminal activity in Chester County. This
12 jury can't find me guilty of anything in Chester County,
13 this is Lancaster.
- 14 MS. MINGO: My response is this Lyle evidence as part
15 of common scheme, this is continued intercourse between the
16 same parties.
- 17 THE COURT: The Court overrules the objection. You may
18 proceed.
- 19 Q Tell me roughly when you think the incident at the deer
20 stand happened.
- 21 A It was in August or September, it was still hot
22 outside.
- 23 Q Of what year?
- 24 A '07.
- 25 Q So you're up in Fort Lawn at a deer stand?

TESTIMONY OF Minor

- 1 A Yes, ma'am.
- 2 Q Who else is present?
- 3 A No one. My mama and my brother were like way far away
- 4 from us in another deer stand.
- 5 Q At another deer stand?
- 6 A Uh-huh.
- 7 Q And y'all went there to hunt that day?
- 8 A Yes.
- 9 Q Did you have on camouflage?
- 10 A Yes.
- 11 Q Did you have guns?
- 12 A Yes, he did.
- 13 Q How did the two of you get -- how did you end up
- 14 getting away from your mother and your brother?
- 15 A We dropped them off at their deer stand and then we
- 16 went to ours.
- 17 Q Tell me what happened once you got into the deer stand.
- 18 What do you remember?
- 19 A Sat there for a minute and then he pulled a condom out,
- 20 asked me if I knew what it was, I said "Yeah." He told me
- 21 to stand up and he pulled my pants down.
- 22 Q So he pulled your pants down in the deer stand. And
- 23 you indicated you had sexual intercourse in the deer stand?
- 24 A Yes.
- 25 Q Did anyone ever walk up? Did anyone see anything that

TESTIMONY OF Minor

- 1 you're aware of?
- 2 A No.
- 3 Q Was he saying anything to you, or did he say anything
- 4 after he pulled your pants down or while he was pulling your
- 5 pants down?
- 6 A No.
- 7 Q Did you say anything to him?
- 8 A No. I was just in shock, I didn't know what to do.
- 9 Q Did you tell your mom?
- 10 A (Shakes head no.)
- 11 Q Was there a reason you didn't tell your mom?
- 12 A He told me not to and I didn't know what would happen
- 13 if I did.
- 14 Q So after the sex act is completed, what happened after
- 15 that?
- 16 A It happened every single day.
- 17 Q Well, I'm talking specifically about the deer stand
- 18 right now. Once that event was over did the two of you
- 19 continue to hunt?
- 20 A No. We left and went and got mom and my brother.
- 21 Q And you left Fort Lawn?
- 22 A Yeah.
- 23 Q Were there any other times that he had intercourse with
- 24 you after that?
- 25 A Yes.

TESTIMONY OF Minor

- 1 Q Where did the intercourse happen?
- 2 A My mother's house in her bed, my bed, my brother's bed,
3 the couch bed, her car, and the deer stand.
- 4 Q What kind of residence -- the address was
5 ?
- 6 A Yes.
- 7 Q What kind of residence was this?
- 8 A It was a trailer.
- 9 Q How many bedrooms?
- 10 A Three.
- 11 Q How many baths?
- 12 A Two.
- 13 Q Double wide, single wide?
- 14 A Single wide. Well, it was basically a double wide.
- 15 Q Did you have your own room?
- 16 A Yes.
- 17 Q Where would you normally sleep? Did you sleep in your
18 room?
- 19 A In the living room on the couch bed.
- 20 Q What about Mr. Loftin?
- 21 A He slept in there with me every night.
- 22 Q Now, I think you said you were around eight when -- do
23 you remember how old you were when you moved into the house
24 on ?
- 25 A I have been living there basically all of my life.

TESTIMONY OF Minor

- 1 Q Had he always slept with you on the couch bed?
- 2 A No.
- 3 Q Do you remember at what point he started sleeping with
- 4 you on the couch bed?
- 5 A When he started having sex with me.
- 6 Q Was it soon after the incident in the deer stand?
- 7 A Yes.
- 8 Q Now, you mentioned that one of the places that he had
- 9 sex with you was on this couch bed in the living room?
- 10 A Every night.
- 11 Q Every night?
- 12 A Every night.
- 13 Q And tell me, who all was living in that house at the
- 14 time.
- 15 A My brother, my mom and my baby sister and me and him.
- 16 Q You said it happened every night?
- 17 A Uh-huh.
- 18 Q Where was your mom?
- 19 A Asleep. She had -- she has seizures a lot and she was
- 20 on a lot of medication and she would go to the room and go
- 21 to sleep.
- 22 Q Would he actually sleep there on the bed all night with
- 23 you, lay down at night and wake up in the morning with you
- 24 on the couch?
- 25 A Yes.

TESTIMONY OF Minor

1 Q The times that he had sex with you on his couch bed at
2 night your mom was asleep?

3 A Yes.

4 Q How about Tyler?

5 A Yes.

6 Q Did he ever show or express any concern about your mom
7 waking up and walking in there?

8 A He would make sure she was asleep before he would do
9 anything.

10 Q How would he make sure she was asleep?

11 A He would go back there or just listen.

12 Q Okay. How about your room? Was there -- you said you
13 had -- Mr. Loftin had sex with you in your bedroom. Is
14 there any particular time that stands out?

15 A All of the time.

16 Q When -- you slept on the couch bed, when did the
17 incidents happen in your bedroom?

18 A All of the time. I can't -- there is no one just
19 certain time, it was five months he did this.

20 Q Okay. What about your brother's room, any particular
21 incidents in there?

22 A It happened in there a lot.

23 Q And again, where would your mother be when he had sex
24 with you in your room and your brother's room?

25 A She would be working.

TESTIMONY OF Minor

- 1 Q Do you remember what hours she was working at that
2 time?
- 3 A It was 8:00 to 5:00 or 9:00 to 5:00.
- 4 Q Do you remember where she was working?
- 5 A Davis Neon.
- 6 Q So your mom was at work when some of the incidents
7 happened in the daytime?
- 8 A Yeah.
- 9 Q Were you going to school during that time?
- 10 A Yes.
- 11 Q Where were you going to school?
- 12 A Buford Middle School.
- 13 Q What time did you get out of school roughly?
- 14 A I got home around 4:00.
- 15 Q Did you ride the bus home?
- 16 A Yes.
- 17 Q What about Tyler?
- 18 A When he got home he went to my grandmom's or next door.
- 19 Q So when you would get off the bus you went home.
- 20 A Yes.
- 21 Q Would anyone be there?
- 22 A Sometimes Brad would be there and sometimes he
23 wouldn't.
- 24 Q Did these incidents happen after school?
- 25 A Yes.

TESTIMONY OF Minor

1 Q Did Tyler ever come home and see anything?

2 A No.

3 MR. BELL: Objection, Your Honor, she can't speak for
4 any other person seeing something.

5 MS. MINGO: Your Honor, I believe she can answer if she
6 saw him see something.

7 THE COURT: Overrule the objection.

8 Q Did he ever do anything to you sexually other than
9 sexual intercourse?

10 A Yes.

11 Q And what was that?

12 A Oral sex.

13 Q Did you perform oral sex on him or did he perform oral
14 sex on you?

15 A He did it on me.

16 Q Do you remember the last time that Mr. Loftin had
17 sexual intercourse with you?

18 A Late December, like the end of December of '07.

19 Q And do you remember where that was?

20 A I don't remember.

21 Q Was that here in Lancaster County?

22 A I'm pretty sure.

23 Q Do you remember the last time there was sexual contact
24 period?

25 A I think it was New Years Day.

TESTIMONY OF Minor

1 MR. BELL: Your Honor, again, I'm going to object
2 because the indictment cuts off the time as of December 31.

3 MS. MINGO: Again, Your Honor --

4 MR. BELL: The State initially says did something no
5 date, they amended last October and said December 31, I'll
6 object to anything after December 31 under any condition --

7 THE COURT: I'll sustain the objection.

8 Q Did Mr. Loftin ever use any objects on you?

9 A Yes. He pulled a paper bag out of my mama's drawer one
10 day and said he bought me something, it was a vibrator ring.

11 Q Can you describe what it looked like?

12 A It was a ring.

13 Q It was green?

14 A No, it was just -- it was a ring.

15 Q Okay. At any point while all of this was going on did
16 you think about telling your mom?

17 A No. Me and her didn't -- I didn't look at her, I
18 didn't go her direction. I had nothing to do with her
19 because he made me think that he wanted to be with me and
20 not her and she was this horrible person.

21 Q Tell me what he said regarding that.

22 A He told me when I was 18 years old we would run away
23 together and he didn't love my mama and he wanted to be with
24 me.

25 Q Did you believe him?

TESTIMONY OF Minor

- 1 A Yes.
- 2 Q Do you remember at what point he started telling you
3 that?
- 4 A It was around when he started having sex with me.
- 5 Q Well, let me ask you this: He told you these things,
6 did you want to run away with him?
- 7 A Yes. He made me want to.
- 8 Q Is that how you felt initially when he had sex with you
9 in a deer stand?
- 10 A No.
- 11 Q It was over a course of time --
- 12 A Yeah. It took time before I actually thought it was
13 okay for him to do this.
- 14 Q In your mind was it a boyfriend and girlfriend type
15 thing?
- 16 A Yes. That's what he made me think it was, he said
17 that's what it was.
- 18 Q Did you think you were in love with him?
- 19 A Yes.
- 20 Q But you indicated because of this this is why you
21 weren't close to your mama?
- 22 A Yeah.
- 23 Q Is it fair to say you were jealous of her?
- 24 A No. It was just -- I don't know. I literally thought
25 I hated her, hated her.

TESTIMONY OF Minor

- 1 Q Did he tell you things about your mom?
- 2 A Yes. He would say bad stuff about her all of the time.
- 3 Q And you indicated he had sexual intercourse with you on
- 4 his couch in the living room. Was it like a sofa bed?
- 5 A Yes.
- 6 Q He had sex with you almost every night?
- 7 A Yes.
- 8 Q Were you concerned about your mom walking in and seeing
- 9 anything?
- 10 A Yes. Sometimes I would pray that she would, other
- 11 times I wouldn't care.
- 12 Q Some times you wanted her to?
- 13 A Uh-huh.
- 14 Q Why?
- 15 A Because I felt like I was going crazy. I couldn't eat,
- 16 I couldn't sleep.
- 17 Q Okay. Did use protection?
- 18 A No.
- 19 Q Did he ever use protection?
- 20 A Like the first two times.
- 21 Q When he had sex with you -- are you okay -- did he
- 22 ejaculate?
- 23 A (Nods head yes.)
- 24 Q When he had sex with you on the couch bed in particular
- 25 did he ejaculate?

TESTIMONY OF Minor

- 1 A Yes.
- 2 Q Where?
- 3 A Most of the time in me and sometimes out of me.
- 4 Q How about on your bed?
- 5 A He would usually just get it all over my bed.
- 6 Q Do you remember about in your brother's room?
- 7 A He would get it on his blankets and stuff.
- 8 Q Had you already reached puberty at this time? Were you
- 9 on your period?
- 10 A Yeah.
- 11 Q Were you on any type of birth control at this time?
- 12 A No.
- 13 Q Were you concerned -- well, I know you were only 12,
- 14 but were you concerned about getting pregnant?
- 15 A No. He was.
- 16 Q He was? How do you know he was?
- 17 A Well, first he went and -- we went to CVS and he went
- 18 in there and bought me a pregnancy test and I took it and it
- 19 was negative. And then --
- 20 Q Well, let's talk about that. You said he took you to
- 21 CVS and bought you a pregnancy test?
- 22 A Yes.
- 23 Q Which CVS?
- 24 A Right there beside Hardees.
- 25 Q In Lancaster?

TESTIMONY OF Minor

- 1 A On Main Street.
- 2 Q You're talking about on the bypass beside Hardees?
- 3 A Yes.
- 4 Q Who else went to CVS that day?
- 5 A Just me and him.
- 6 Q Did you go in the store?
- 7 A No.
- 8 Q Do you know the exact day he purchased that pregnancy
9 kit?
- 10 A I know my mama was shopping -- Christmas shopping that
11 day.
- 12 Q Was it around Christmas time?
- 13 A Yes.
- 14 Q Do you know what month it was?
- 15 A It was December.
- 16 Q You didn't go in the store with him?
- 17 A No.
- 18 Q How do you know he bought the test?
- 19 A Because he told me he was going in there to get it and
20 he came out with it.
- 21 Q And made you take it that day?
- 22 A Yes. And then he told me to go throw it in the woods.
- 23 Q And did you do that?
- 24 A Yes.
- 25 Q So you left CVS. Where did you go after you left CVS?

TESTIMONY OF Minor

- 1 A Home.
- 2 Q Is that where you took the test?
- 3 A Yes.
- 4 Q Was anybody else there at the residence when you took
- 5 the test?
- 6 A No.
- 7 Q Just you and Brad?
- 8 A Yes.
- 9 Q Were there anymore pregnancy tests after that?
- 10 A No. But he told me he didn't want to get me pregnant
- 11 so he was going to go get a vasectomy.
- 12 Q Did you know what a vasectomy was at 12 years old?
- 13 A Yes.
- 14 Q And his explanation for getting it is he didn't want to
- 15 get you pregnant?
- 16 A Yes.
- 17 Q Do you remember when Mr. Loftin and your mother broke
- 18 up?
- 19 A Yes.
- 20 Q Do you remember about -- about when was that?
- 21 A It was right after Christmas. And I remember the exact
- 22 date he left, and he left and that was it. And I went to
- 23 his house -- we got together on New Years Eve and then New
- 24 Years Day I went to his house.
- 25 Q You said they broke up right after Christmas?

TESTIMONY OF Minor

- 1 A Yes.
- 2 Q Of 2007?
- 3 A Yes.
- 4 Q And on New Years Day '08 you went to his house?
- 5 A Yes.
- 6 Q Did you eventually tell your mom what had happened?
- 7 A After she found out by the school.
- 8 Q Well, how did you come -- I want to ask you this, did
- 9 you ever -- I know you said you didn't tell your mom while
- 10 it was going on, not at first anyway, the school informed
- 11 her, did you tell any friends?
- 12 A I told Shakesha S. and Abby C.
- 13 Q So you told them about some of the things that had been
- 14 happening?
- 15 A Yes.
- 16 Q Do you remember at what point you told them?
- 17 A I told Shakesha, it was like -- it was like right after
- 18 it happened. It wasn't right after it happened but it was
- 19 like a month maybe after.
- 20 Q Pretty early on?
- 21 A Yeah. And I told Abby like the first time we had sex.
- 22 Q And Abby is the little girl who was at the house when
- 23 you had alcohol?
- 24 A Yeah.
- 25 Q Okay. Tell me how you ended up telling some people at

TESTIMONY OF Minor

1 your school -- or telling your principal. Did you tell your
2 principal?

3 A No. Shakesha went and told the principal and the
4 principal called me in her office and asked me if my
5 stepfather had been touching me and I lied and said no
6 because I didn't want to get him in trouble. And I finally
7 just had to let it out to -- and everybody knew.

8 Q So initially you denied it.

9 A Yeah.

10 Q Since that day have you had any contact with him?

11 A No.

12 Q After he broke up with your mom, or they broke up, I
13 don't know who broke up with who, but after the break up in
14 2007, he moved out; is that right?

15 A Yes.

16 Q Did you have any phone conversations with him?

17 A A few days after they broke up he called her asking her
18 if she could go on a date with him and asked her if they
19 would work things out, so I overheard them and I went crazy,
20 and I went over there and snatched the phone with mama and
21 telling her to let him talk to me. So I got on the phone
22 with him and he was telling me he wasn't going to go out
23 with her and everything was okay. That's the last I heard
24 of him.

25 Q You didn't want her going out with him?

TESTIMONY OF Minor

- 1 A No.
- 2 Q Why is that?
- 3 A Because he made me think that we were together.
- 4 Q So you told your principal and law enforcement comes to
- 5 the school.
- 6 A Well, yeah, after I -- well, law enforcement was
- 7 already there before I told her.
- 8 Q At what point did you realize that what had been
- 9 happening was wrong?
- 10 A It took me awhile.
- 11 Q I'm going to show you what has been marked as State's
- 12 Exhibit 17. Do you recognize that?
- 13 A Yes. That's the exact one he bought.
- 14 Q The exact what he bought?
- 15 A Pregnancy test.
- 16 Q Where did you -- did you at some point recover this
- 17 from the woods?
- 18 A Yes. After mama found out we went home that day and I
- 19 let her know everything, took her out to the woods and I
- 20 picked it up and gave it to her.
- 21 Q Do you remember what type of comforter was in your
- 22 bedroom during this time frame?
- 23 A I think it was purple, that's all I remember about it.
- 24 Q Do you remember what size bed you had?
- 25 A It was a full.

TESTIMONY OF Minor

1 Q It was a full bed? Do you remember what size bed was
2 in your mom's room?

3 A Queen.

4 Q Do you know how many times you and Mr. Loftin had sex
5 in your bedroom?

6 A No.

7 Q Countless?

8 A It was so many times I could not tell you the number.

9 Q Minor , I'm going to show you what has been marked as
10 State's Exhibit 22. I'm not going to take it completely out
11 of the bag.

12 A I can see it and tell you that's what was on my bed.

13 Q Do you recognize what this is?

14 A Yes, that's my -- that was on my bed.

15 Q Okay. You and Mr. Loftin had intercourse on this
16 comforter?

17 A Yes.

18 MR. BELL: Your Honor, I'm at a loss right now as to
19 whether or not these exhibits are being offered by the State
20 into evidence. I mean, marking them and talking about them
21 is one thing but I need to know if they are now being
22 offered.

23 MS. MINGO: Your Honor, I will offer the exhibits into
24 evidence.

25 MR. BELL: The comforter I've got no objection to. The

TESTIMONY OF Minor

1 other things I don't remember her identifying that properly
2 so I'm going to object to that whatever is in that bag up
3 there. But the comforter I have got no objection to that.

4 THE COURT: The comforter is admitted without
5 objection.

6 (The comforter was received as State's 22.)

7 Q And the pregnancy kit. Is this the pregnancy kit that
8 you took at the request of Mr. Loftin?

9 A Yes.

10 Q The one purchased from CVS?

11 A Yes.

12 Q Is this the same one you recovered from the woods, is
13 that what it looked like?

14 A Yes.

15 MS. MINGO: Your Honor, at this point the State would
16 move to admit State's Exhibit 17 into evidence.

17 THE COURT: Any objection to that?

18 MR. BELL: I'll just have to cover it on cross.

19 THE COURT: All right. Entered without objection.

20 (The pregnancy kit was received as State's 17.)

21 Q Just a few more questions, Minor . Once you reported
22 what had happened to school officials, once you told them
23 about this relationship, did you -- do you remember speaking
24 to Officer Mike Adams or any deputies?

25 A Yes.

TESTIMONY OF Minor

1 Q Do you remember having any interviews or talking to
2 people about what happened?

3 A Yes.

4 Q Do you remember who you spoke with?

5 A I don't remember her name. Margo?

6 Q From Palmetto Citizens Against Sexual Assault?

7 A Yes.

8 Q What were your feelings -- I think you indicated at
9 some point you thought Mr. Loftin was your boyfriend. You
10 couldn't consent, you were under age, were you a willing
11 participant?

12 A Yes.

13 Q You said it took some time to realize that it was
14 improper.

15 A Yes.

16 Q What are your feelings now about the situation?

17 MR. BELL: Objection Your Honor.

18 MS. MINGO: I will move on, Your Honor.

19 THE COURT: Sustained.

20 Q What are your feelings towards your mother now? I know
21 you indicated that you hated her at some point or you
22 thought you did, what's your relationship with her now?

23 A Fine, everything is fine. After he was gone everything
24 was fine.

25 Q Did it take months after he was gone?

TESTIMONY OF Minor

- 1 A Yeah.
- 2 Q I'm going to show you a photo, it's State's Exhibit 23.
- 3 MR. BELL: I've got no objection, Your Honor.
- 4 Q This is --
- 5 MS. MINGO: Is it admitted into evidence at this point
- 6 then, Your Honor?
- 7 THE COURT: Have her explain it?
- 8 Q Can you identify what this is I'm showing you?
- 9 A Yes.
- 10 Q Tell me what it is.
- 11 A A picture of me when I was 12.
- 12 Q And do you remember where you took this picture?
- 13 A Buford Middle School.
- 14 MS. MINGO: Your Honor, the State moves to introduce
- 15 Exhibit 23 into evidence.
- 16 THE COURT: It will be admitted without objection.
- 17 (The picture was received as State's 23.)
- 18 Q And you indicated you were 12 when you took this
- 19 picture?
- 20 A Yes.
- 21 MS. MINGO: Beg the Court's indulgence, Your Honor.
- 22 THE COURT: All right.
- 23 (Break in proceedings.)
- 24 MS. MINGO: Answer anything Mr. Bell has.
- 25 THE COURT: Cross examination, Mr. Bell?

TESTIMONY OF Minor

1 MR. BELL: Give me just a minute, Your Honor.

2 THE COURT: All right, sir.

3 (Break in proceedings.)

4 CROSS EXAMINATION

5 BY MR. BELL:

6 Q Minor , you told the jury in August of '07 unknown
7 date in Chester County on a deer stand am I correct so far?

8 A Yes.

9 Q And that y'all were in hunting clothes and that you had
10 guns?

11 A Uh-huh.

12 Q What kind of guns?

13 A I mean, shotgun or rifle or something like that.

14 Q Do you know the difference between a black powder gun
15 and a gun that shoots a fixed cartridge?

16 A No.

17 Q Well, the gun is loaded?

18 A Yes.

19 Q Did you ever see -- young lady, I don't expect you to
20 remember the caliber -- do you remember seeing the shells
21 that was ready to go into the shooting part?

22 A No.

23 Q I'm assuming you thought they were loaded because you
24 were going to shoot at a deer.

25 A Yes.

TESTIMONY OF Minor

1 Q And on that unknown date, August, Chester County, you
2 told the jury that my client pulled a condom out, "Asked me
3 if I knew what it was;" is that correct?

4 A Uh-huh.

5 Q And you said, "Yeah."

6 A Uh-huh.

7 Q Well, how many times had you seen a condom before that
8 August date?

9 A I watched TV my whole life.

10 Q They have got condoms on TV that you watched?

11 A I've never been -- before then I was never handed a
12 condom or I've never touched a condom before then.

13 Q Well, did he hand it to you?

14 A No.

15 Q But are you telling the jury that when you were
16 answering the question, "He asked me if I knew what it was
17 and I said yeah," you were telling the jury that your
18 knowledge of condoms prior to that date was TV?

19 A What 12 year old wouldn't know what a condom is?

20 Q I'm asking you, young lady.

21 A Yes, I knew what a condom was.

22 Q Now, my question was had you seen one in the raw and in
23 the flesh before that day?

24 MS. MINGO: Objection, Your Honor.

25 MR. BELL: I think it's proper, Your Honor.

TESTIMONY OF Minor

1 THE COURT: I'll sustain the objection.

2 MR. BELL: Your Honor, may we discuss this outside the
3 presence of the jury?

4 THE COURT: At a later time.

5 MR. BELL: Sir?

6 THE COURT: At a later time.

7 Q So your testimony is while in a deer stand dressed to
8 hunt with guns and so forth is when a condom was inserted
9 inside of you?

10 A Yes, sir.

11 Q I think the solicitor asked you if you had reached
12 puberty. And tell the jury roughly what age you had reached
13 puberty.

14 A I started my period when I was like ten.

15 Q And after this act in Chester County, what happened to
16 the condom?

17 A I don't know, I guess he threw it in the woods.

18 Q No. If you don't know I don't want you to guess, do
19 you know what happened to the condom?

20 A No.

21 Q And how were you dressed?

22 A In hunting clothes.

23 Q I'm sorry?

24 A Camouflage.

25 Q I understand that, but anything can be camouflage, you

TESTIMONY OF Minor

1 didn't have on a dress.

2 A No. I had on a T-shirt and some pants and some boots.

3 Q Some pants? Okay. After this event you said occurred
4 your mama and your brother were in close proximity
5 somewhere.

6 A No, they were not close to us at all. They were pretty
7 far away from us.

8 Q Okay. Well, after this event occurred according to
9 what you're telling the jury, did y'all get up with your
10 mama and your brother that day?

11 A Yes.

12 Q And for whatever reason you said nothing to mama?

13 A No.

14 Q But you did say something about that event to the young
15 lady who testified right before you whose name was Shakesha
16 S.

17 A Yes.

18 Q And when did you tell Ms. Stratford about the condom
19 and the sex and took place in Chester and all of this stuff?

20 A Like a month -- it wasn't like right after it happened,
21 it was like a month after it happened.

22 Q Some time in September then.

23 A I guess, I don't know the exact date.

24 Q Well, I understand that. But you're telling the jury
25 and you told law enforcement that the first event as far as

TESTIMONY OF Minor

- 1 criminal sexual conduct took place in August of '07?
- 2 A Yes.
- 3 Q Is that correct?
- 4 A Yes.
- 5 Q So you don't know the date and I understand you're not
6 but -- 17 now, you weren't but 12 then, but within a month
7 that would be some time in September as you best remember
8 you confided in Ms. ^s.
- 9 A Uh-huh.
- 10 Q And then somewhere in there did I understand that you
11 also confided in somebody else?
- 12 A Yes, sir.
- 13 Q What was her name?
- 14 A Abby.
- 15 Q Well, let's back up. Unknown date. Is it before the
16 Chester event or after the Chester event that you say my
17 client brought into the house something that you called a
18 fruity drink or fruity bottle or something like that?
- 19 A That was before the incident in August.
- 20 Q That's what I'm trying to tie it down, don't expect you
21 to remember the exact date. And you became aware somehow
22 that that fruity bottle had alcohol in it?
- 23 A Yes.
- 24 Q Is that correct? And you're telling this jury that on
25 that date whenever it was that my client offered you a sip,

TESTIMONY OF Minor

- 1 a cup or a whole bottle?
- 2 A A bottle.
- 3 Q What are we talking about?
- 4 A A bottle.
- 5 Q And your little friend, what is her name?
- 6 A Abby.
- 7 Q She was there?
- 8 A Yes.
- 9 Q Did she drink?
- 10 A Yes.
- 11 Q Do you remember mentioning to other people the word
- 12 gin, g-i-n?
- 13 A I don't know.
- 14 Q Well, if you did mention the word gin, did you know
- 15 what gin was from an alcoholic standpoint?
- 16 A I don't remember.
- 17 Q Had you ever seen gin in any form prior to whatever
- 18 date this was?
- 19 A Yes, because he drank a lot I've seen it. I had seen
- 20 all kinds of alcohol because he drank so much.
- 21 Q I'm interested in gin.
- 22 A I'm not sure about gin.
- 23 Q So on this date, whatever it was, the fruity drink came
- 24 out and you drank one?
- 25 A Uh-huh.

TESTIMONY OF Minor

- 1 Q And you're telling the jury after you drank that you
2 remember nothing else about that day.
- 3 A No. Except for sitting on his lap in our living room.
- 4 Q Okay. I'm assuming you had done that before that day.
5 Had you ever sat on his lap before the fruity drink day?
- 6 A Yeah, but it was different that day.
- 7 Q Well, were y'all fully clothed whenever you sat on his
8 lap on the day of the fruity drink?
- 9 A Yes.
- 10 Q Were you fully clothed whenever you sat on whatever day
11 it was or however many times it was before the fruity drink?
- 12 A Yes.
- 13 Q Clothed?
- 14 A Uh-huh.
- 15 Q Meaning him and you?
- 16 A Yes.
- 17 Q So again, you've told the jury that State's Exhibit 22
18 which is this one right, was on your bed back in '07?
- 19 A Yes.
- 20 Q Had it ever been anywhere else in the house?
- 21 A No.
- 22 Q And of course, you don't know what was on this, do you?
- 23 A I'm pretty sure I know what was on it.
- 24 Q Well, I understand that. But you don't know what was
25 on this. Some other people may but you don't know what was

TESTIMONY OF Minor

- 1 on this.
- 2 A Yes, I do.
- 3 Q You know what was on it?
- 4 A Yes.
- 5 Q What was on it?
- 6 A Brad's semen.
- 7 Q Well, how about anything from you?
- 8 A Okay. Can I explain that part?
- 9 Q Well, I'm going to let you say what you want to say --
- 10 let me back up. I'm no sex expert, I have got three
- 11 children but all I did was plant the seed, I didn't bring
- 12 them here, I didn't deliver even though the last one I did
- 13 have lamas. But anyway -- and young lady, I do apologize
- 14 for me having to -- for you having this old man to ask you
- 15 questions of a sexual nature but I've got to do what I've
- 16 got to do. So you had reached puberty, therefore you have
- 17 28 days to go through whatever you ladies have to go
- 18 through. Y'all didn't have any sex when you were --
- 19 A On my period?
- 20 Q Yes.
- 21 A Yes.
- 22 Q You had sex while you had your period? Okay. If he
- 23 ejaculated in you it had to go somewhere.
- 24 A Uh-huh.
- 25 Q Normally it comes out somewhere. So did you ever leak

TESTIMONY OF Minor

- 1 anything on the bed that would be you if you know?
- 2 A I don't know.
- 3 Q Well, I know. Okay. You made mention -- and again,
- 4 some of these other things are going to get into evidence,
- 5 that one day he pulled out something what you called a ring,
- 6 or r-i-n-g?
- 7 A Yes.
- 8 Q It wasn't a hand ring, it was a ring that fit on
- 9 something else, a vibrator ring?
- 10 A It was very obvious what it was.
- 11 Q Well, I don't know, I don't got no sex toys. It was
- 12 green in color?
- 13 A No. It was --
- 14 Q That's what I thought you said, it was green.
- 15 A No, I said it was a ring.
- 16 Q I understand it was a ring, but it didn't have any
- 17 color?
- 18 A It was like see-thru, I guess.
- 19 Q And you're telling this jury that he utilized that
- 20 device in some type of contact with you?
- 21 A Yes.
- 22 Q Was that what properly is called intercourse?
- 23 A Yes.
- 24 Q And in reference to Ms. Stratford and the other lady,
- 25 Abby, did you tell them every time something took place?

TESTIMONY OF Minor

- 1 A No.
- 2 Q Every other time?
- 3 A I told Shakesha a lot.
- 4 Q Told her more than you did Abby?
- 5 A Yeah.
- 6 Q Now, somewhere in there you were involved in at least
- 7 hearing from somebody that my client got a vasectomy.
- 8 A He told me he was getting a vasectomy.
- 9 Q Told you he was getting one. Well, did you ever know
- 10 if he ever got it?
- 11 A What?
- 12 Q The procedure, did you know if he underwent the
- 13 procedure?
- 14 A Yes.
- 15 Q You were told that by him or your mama?
- 16 A Him.
- 17 Q Do you remember when that was?
- 18 A I don't remember when it was.
- 19 Q Ma'am?
- 20 A I don't remember when it was.
- 21 Q Well, I think they're going to bring the doctor in here
- 22 to tell about his vasectomy.
- 23 A Okay.
- 24 Q And you young-uns back even when you are 12 were a lot
- 25 smarter than we are because you've got the internet and

TESTIMONY OF Minor

1 stuff, did you at the age of -- well, you turned 13 November
2 of '07; is that correct?

3 A Uh-huh.

4 Q And did you know medically or whatever way you want to
5 put it what a vasectomy supposedly does to the male animal
6 that undergoes that treatment?

7 A He told me.

8 Q He told you? Well, what did he tell you?

9 A It would cause him to not have babies anymore.

10 Q And I'm assuming you hadn't gone online anywhere to
11 look up a better definition as to exactly what a vasectomy
12 does.

13 A I didn't look up.

14 Q But you're telling the jury that Exhibit Number 17,
15 which was purchased by my client for you some time around
16 Christmas of '07?

17 A Yes.

18 Q Now, you're telling the jury that some time shortly
19 after Christmas, in fact, either the 25th or 26th of
20 December is when -- it doesn't matter, I'm not throwing
21 rocks at anybody, but a breakup occurred between my client
22 and your mama?

23 A Uh-huh.

24 Q Am I correct?

25 A Yes.

TESTIMONY OF Minor

- 1 Q And do you remember anything between maybe even you and
2 your baby brother about leaving the Tradesville area and
3 moving into his mother and dad's house that they bought over
4 in Fort Lawn, do you remember anything about that
5 conversation?
- 6 A Yeah, but my mama wouldn't move there.
- 7 Q I understand that. But didn't that conversation occur
8 prior to this so-called breakup of either the 25th or the
9 26th about moving over there?
- 10 A I don't know.
- 11 Q But it's like you said, your mama wouldn't move.
- 12 A Nuh-uh.
- 13 Q But at that point when your mama said she wouldn't
14 move, she didn't know anything about this stuff you are
15 telling the jury, did she?
- 16 A No.
- 17 Q So breakup occurs either the 25th or 26th, and the next
18 thing we know somebody -- well, Ms. ^s says she did
19 on a date that she couldn't remember, it's eventually going
20 to get into evidence, but do you remember the date of when
21 you got called to the office based on Ms. Stratford telling
22 them something?
- 23 A I'm pretty sure it was January 4th.
- 24 Q Of what year?
- 25 A '08.

TESTIMONY OF Minor

1 Q So on January 4th of '08 we now know, you may not have
2 known she went in, but you now know Ms. ^s went to
3 the office and said something to somebody and the next thing
4 you knew you're being told to come to the office.

5 A Yes.

6 Q And when being told to come to the office you talked to
7 the principal?

8 A Yes.

9 Q Whoever that was?

10 A Ms. Wells.

11 Q And after being questioned by Ms. Wells you said no.

12 A Yeah.

13 Q N-o.

14 MR. BELL: Thank you.

15 THE COURT: Redirect? Any additional questions of the
16 witness?

17 MS. MINGO: Nothing, Your Honor.

18 THE COURT: You may step down. You may call your next
19 witness.

20 MS. MINGO: Your Honor, the State calls Abigail C.

21 The witness, ABIGAIL C. , was first duly

22 sworn and testified as follows, on:

23 DIRECT EXAMINATION

24 BY MS. MINGO:

25 Q State your name, please.

TESTIMONY OF ABIGAIL C.

- 1 A Abigail C.
- 2 Q How old are you?
- 3 A Thirteen.
- 4 Q You go to school?
- 5 A Uh-huh.
- 6 Q Where do you go to school?
- 7 A Buford Middle School.
- 8 Q What grade are you in at Buford Middle?
- 9 A Eighth grade.
- 10 Q Do you know Minor ?
- 11 A Uh-huh.
- 12 Q How do you know her?
- 13 A She used to be my best friend forever.
- 14 Q At one point were the two of you neighbors?
- 15 A Uh-huh.
- 16 Q Where do you live?
- 17 A .
- 18 Q So you're still neighbors.
- 19 A Uh-huh.
- 20 THE COURT: Let me step in for a minute. What you need
- 21 to do is respond to the questions and say yes or no, I do
- 22 the same thing, sometimes I say uh-huh and nuh-uh but we
- 23 need for you to respond yes or no.
- 24 Q Did you at times visit Minor ?
- 25 A Yes, ma'am.

TESTIMONY OF ABIGAIL C.

- 1 Q And when was that?
- 2 A Almost everyday.
- 3 Q Do you remember how old you were then?
- 4 A We was just constantly through the years, we've always.
- 5 Q Because you were friends for as long as you can
- 6 remember?
- 7 A Yes, ma'am.
- 8 Q Do you remember the last time you visited with her at
- 9 that residence at
- 10 A A few years.
- 11 Q It has been a few years since the last time you've been
- 12 there? Do you remember how old you were the last time?
- 13 A About 11 -- ten or 11.
- 14 Q You said you visited with her frequently. At some
- 15 point did it stop?
- 16 A Well, we still see each other, I just don't go over
- 17 there a lot. But she comes over and we hang out sometimes.
- 18 Q But when you were younger you said when you were very
- 19 little the two of you were good friends?
- 20 A Yes, ma'am.
- 21 Q You went over there on a regular basis?
- 22 A Yes, ma'am.
- 23 Q At some point did you stop going over there everyday?
- 24 A Well, we -- I didn't go over there everyday, we just --
- 25 I stayed with her a lot. It was just on and off, I guess.

TESTIMONY OF ABIGAIL C.

- 1 Q When you went to visit her who else would generally be
2 there?
- 3 A Her mom, her brother and her sister and Brad used to be
4 there.
- 5 Q Were there times where it would be just Minor and
6 her mom and you there?
- 7 A Yes, ma'am.
- 8 Q What about Minor , Mr. Loftin and you?
- 9 A Yes, ma'am.
- 10 Q Do you remember the last time you, Minor and
11 Mr. Loftin, just the three of you were there?
- 12 A The last time was when he gave us alcohol.
- 13 Q Just the three of you?
- 14 A Yes, ma'am.
- 15 Q Do you remember what you were doing that day, what you
16 and Minor were doing that day prior to getting some
17 alcohol?
- 18 A No, ma'am.
- 19 Q Was he there from what you remember the entire time you
20 were there? Did he come at some later point?
- 21 A I don't remember.
- 22 Q What do you remember about him giving you alcohol?
- 23 A We were all sitting in the living room and he just
24 asked us if we wanted alcohol and we said yes.
- 25 Q And you were how old at this time?

TESTIMONY OF ABIGAIL C.

- 1 A About eight or nine.
- 2 Q Did you drink it?
- 3 A Yes, ma'am.
- 4 Q Did you see Minor drink anything?
- 5 A Yes, ma'am.
- 6 Q Do you remember what it was? Do you know what it was?
- 7 A I am pretty sure it was Smirnoff.
- 8 Q So he offered it, you said yes. Do you remember how
- 9 much of it you had?
- 10 A No, I don't.
- 11 Q Do you remember if he drank anything?
- 12 A No, ma'am.
- 13 Q What happened after you and Minor started to consume
- 14 this alcohol?
- 15 A We were sitting in the living room and I remember him
- 16 sitting in the den playing poker on the computer, and we
- 17 were just sitting there watching TV and drinking and he
- 18 asked her to come in there and I went with her. And --
- 19 well, he asked her to make out with him for \$20, and I went
- 20 back in the living room and then two went in her room and I
- 21 seen him shut the door and I could hear them making out.
- 22 Q You could hear them making out? What did you hear?
- 23 A Like kissing noises.
- 24 Q Did you ever -- what room did they go in?
- 25 A In her bedroom.

TESTIMONY OF ABIGAIL C.

- 1 Q Did you go in the bedroom?
- 2 A No, ma'am.
- 3 Q You never went in the bedroom?
- 4 A No, ma'am.
- 5 Q You're still sitting in the living room?
- 6 A Yes, ma'am.
- 7 Q At some point did you leave?
- 8 A Yes, ma'am.
- 9 Q Why did you leave?
- 10 A He came back out and he gave me Cheezeits I guess so I
- 11 could sober up and then he said --
- 12 MR. BELL: I'm sorry, Your Honor, I can't -- I missed
- 13 that.
- 14 THE COURT: I need for you to get a little bit closer
- 15 to that microphone, some people are having trouble
- 16 understanding you.
- 17 A He came out of the bedroom, I was sitting on the couch
- 18 and he gave me Cheezeits so I could sober up and he told me
- 19 to go home.
- 20 MR. BELL: Cheezeits, is that what she said?
- 21 A Cheezeits. It was like crackers.
- 22 Q So he gave you some crackers?
- 23 A Yes, ma'am.
- 24 Q Did he tell you eat these so you can sober up?
- 25 A He had told me to sober up, but that's what I'm

TESTIMONY OF ABIGAIL C.

- 1 guessing.
- 2 Q Did you eat the Cheezeits?
- 3 A Yes, ma'am.
- 4 Q And you went home?
- 5 A Yes, ma'am.
- 6 Q Did Minor ever come out of the room?
- 7 A No, ma'am.
- 8 Q And you were only nine. Did you know what you were
- 9 drinking?
- 10 A Well, I remember when he gave it to us I remember just
- 11 seeing it as a six pack and I was considering it a Smirnoff
- 12 now that I think back.
- 13 Q I'm assuming that was your first time having some type
- 14 of alcohol?
- 15 A Yes, ma'am.
- 16 Q Did you tell your parents about it?
- 17 A No, ma'am.
- 18 Q Did you ever tell your mother about it?
- 19 A No, ma'am. Not until the cops came to Minor s house
- 20 and everybody found out about it I finally told my mom.
- 21 Q So you told your mom after he was being investigated
- 22 already?
- 23 A Yes, ma'am.
- 24 Q Is there a reason you didn't tell immediately?
- 25 A I don't know.

TESTIMONY OF ABIGAIL C.

1 Q Did you think there was anything to tell?

2 A No, I didn't think about it. And I probably should
3 have but I was so young I didn't know what to do.

4 Q Did you go back to Minor s house anymore after that?

5 A No, ma'am. I seen her -- well, I seen her once or
6 twice after that night but I never really went and stayed
7 with her at her house.

8 Q Why not?

9 A Well, she told me one day that she was on restriction
10 and I figured he was telling her to say that so I wouldn't
11 go over there.

12 MR. BELL: Your Honor, I'm going to object to that as
13 being pure speculation and ask that it be stricken from the
14 record.

15 THE COURT: Well, I sustain the objection. Ladies and
16 gentlemen, disregard the last response of the witness, it
17 will be stricken from the record.

18 Q Okay. You stated eventually you did tell your parents.

19 A Yes, ma'am.

20 Q You told your mom?

21 A Yes, ma'am.

22 MS. MINGO: Beg the Court's indulgence for just a
23 second.

24 (Break in proceedings.

25 MS. MINGO: Answer anything Mr. Bell has.

TESTIMONY OF ABIGAIL C.

1 THE COURT: Mr. Bell?

2 CROSS EXAMINATION

3 BY MR. BELL:

4 Q How are you, Ms. C.

5 A I'm good.

6 Q I'm not going to bite you, the Judge will stop that,
7 I've got all of these officers in here, they've all got guns
8 so don't worry about that. Thirteen. What grade are you
9 in?

10 A Eighth grade.

11 Q Still at Buford?

12 A Yes, sir.

13 Q Well, good. So on an unknown date unknown month but
14 '07 is when this occurred?

15 A I'm pretty sure.

16 Q The Judge don't want you to have uh-huh, you don't have
17 to say sir if you don't want to, you can say yes or no and
18 you can go on if you want to.

19 A Okay.

20 Q And at the age of -- you are 13 now?

21 A Yes, sir.

22 Q Have you already had your birthday this year?

23 A No, not this year.

24 Q So you will be 14 some time this year?

25 A Yes, sir.

TESTIMONY OF ABIGAIL C.

- 1 Q Back up five years you were 11. When is your birthday?
- 2 A April 9th.
- 3 Q So if this happened some time in '07 you're at
- 4 Ms. Threatt's house as far as you know, my client is still
- 5 living there; is that correct?
- 6 A Yes, sir.
- 7 Q I'm trying to tie this down datewise and one day this
- 8 is -- was it during a school day, do you remember?
- 9 A I don't remember.
- 10 Q But one day whenever it was my client comes in with
- 11 this alcohol, you saw him bring it into the house?
- 12 A I don't remember.
- 13 Q Well, was it hot or cold whenever you got a hold of it?
- 14 A I don't remember.
- 15 Q Was it given to you in a container of any kind as in a
- 16 cup or --
- 17 A Yes, ma'am.
- 18 Q A bottle?
- 19 A Yes, sir.
- 20 Q So a bottle. Do you remember the color not on the
- 21 bottle but on the liquor?
- 22 A Clear I'm sure.
- 23 Q And did it have a fruity taste to it, do you remember?
- 24 A Yes, sir.
- 25 Q Even at 13, but I'm having to back you up four and a

TESTIMONY OF ABIGAIL C.

1 half years, you know the word Smirnoff, where did you learn
2 that word?

3 A Well, my parents, they sometimes drink, I have seen
4 other of my friends' parents drink.

5 Q That's fine. And to what do you associate the word
6 Smirnoff with, what type of alcohol?

7 A I don't know, like a drink.

8 Q Vodka, gin, scotch, do you remember?

9 A Like a drink that you can buy in a store. I don't
10 know.

11 Q And you're telling this jury that my client offered
12 you -- well, if I wrote it down correctly -- "He asked if we
13 wanted alcohol and we said yes," is that what you told the
14 jury just a minute ago?

15 A Yes, sir.

16 Q So you got your own bottle?

17 A Yes, sir.

18 Q And did you pop the top off of it or he did?

19 A I don't remember.

20 Q You drank it straight from the bottle?

21 A Yes, sir.

22 Q Drank all of it?

23 A I don't remember.

24 Q Well, one sip. Have you got any idea how much you
25 consumed?

TESTIMONY OF ABIGAIL C.

- 1 A I'm pretty sure it was one or two sips.
- 2 Q Describe any feelings you had, physical, mental after
- 3 sip one or sip two or however much you drank?
- 4 A Woozy.
- 5 Q And with this woozy feeling nobody kissed you or
- 6 touched you or offered you any money or anything like that?
- 7 A No, sir.
- 8 Q And with this woozy feeling you eventually went home?
- 9 A Yes, sir.
- 10 Q And you didn't tell anybody at home that my client had
- 11 given you alcohol, did you?
- 12 A No, sir.
- 13 Q And you didn't tell anybody at home anything about the
- 14 \$20 or the bedroom or anything like that, did you?
- 15 A No, sir.
- 16 Q Well -- and I think the next witness is going to be
- 17 your mama and I've got a copy of when the cops was called,
- 18 they were called January the 6th of '08. So did you fess up
- 19 after the cops showed up on January the 6th of '08 to your
- 20 mama about something that had happened earlier the preceding
- 21 year?
- 22 A I was at home with my brother and my parents were
- 23 working and Minor s grandmom came over and she talked to
- 24 me and she said --
- 25 Q Hang on now, you can't quote people. Here is my

TESTIMONY OF ABIGAIL C.

1 question, again, I apologize, on -- let me make sure I'm
2 right on this date -- yep, January 6, '08 -- I've got cops
3 coming to your mama's house. Now, on that date or after did
4 you fess up to at least your parents about something going
5 on?

6 A Yes, sir.

7 Q But the word beer was used. Do you know the difference
8 between a beer and a Smirnoff as you want to call it?

9 A No, sir.

10 Q You never seen a beer?

11 A Yes, sir.

12 Q I don't mean alcoholic difference, but do you
13 understand a beer and hard liquor is two different things?

14 A Yes, sir.

15 Q All right. Thank you, ma'am.

16 THE COURT: Redirect?

17 MS. MINGO: Nothing else, Your Honor.

18 THE COURT: Thank you, ma'am, you may step down.

19 MR. BELL: Your Honor, I understand the witness is
20 under subpoena, I have no objection to her being released.

21 THE COURT: Next witness is going to be awhile,
22 Solicitor, or have you got a short witness?

23 MS. MINGO: A short one. Your Honor, may Shakesha
24 S. also be released from her subpoena?

25 MR. BELL: Yeah, no objection, Your Honor.

TESTIMONY OF DAWN FIELD

1 THE COURT: You both may be released.

2 MS. MINGO: Your Honor, the State calls Dawn Field to
3 the stand.

4 The witness, DAWN FIELD, was first duly sworn
5 and testified as follows, on:

6 DIRECT EXAMINATION

7 BY MS. MINGO:

8 Q State your name for the record, please.

9 A Dawn Field.

10 Q Where do you live, Ms. Field?

11 A , Lancaster.

12 Q And how long have you lived there?

13 A Sixteen years.

14 Q What do you do for a living?

15 A Advertising consultant.

16 Q Are you married?

17 A Yes, ma'am.

18 Q Do you have children?

19 A Yes, ma'am.

20 Q How many children do you have?

21 A Four.

22 Q Is Abigail C. one of your children?

23 A Yes, she is.

24 Q Back on January 6th of 2008, did you file a police
25 report with the sheriff's office?

TESTIMONY OF DAWN FIELD

- 1 A Yes.
- 2 Q In reference to what?
- 3 A Incident of her being fed alcohol.
- 4 Q Did you make your report the same day you found out?
- 5 A Yes.
- 6 Q Do you remember how you found out, or how did this come
- 7 up?
- 8 A I got a phone call and Abigail said -- we were working
- 9 that day, it was a Saturday, and she said, "I need you to
- 10 come home, the police are headed this way, I have something
- 11 very serious to tell you." So we turned around and went
- 12 back home.
- 13 Q Did your daughter go to Minor house pretty
- 14 often?
- 15 A They grew up together. Abigail was born on
- 16 and Minor had been living there periodically, so --
- 17 Q Did you know Mr. Loftin?
- 18 A I knew the name, had seen his face from across the
- 19 street but I never really personally met him, not really.
- 20 Q Did you know Minor mother, Virginia Threatt?
- 21 A Yes.
- 22 Q So you indicated she went over there pretty regularly.
- 23 At some point did that stop?
- 24 A Periodically it stops. When the kids are on
- 25 restriction or they're fighting is usually how it happens.

TESTIMONY OF DAWN FIELD

- 1 Q So you went to -- did you go to the sheriff's office to
2 make your report?
- 3 A No, the police were there.
- 4 Q What do you mean they were there?
- 5 A They were already there when I believe we came in from
6 working, or arrived. I don't remember exactly how that day
7 went, I know they either came there that day or when we
8 pulled in they were there.
- 9 Q At your residence or at --
- 10 A They were across the street.
- 11 Q At Minor residence?
- 12 A Correct.
- 13 Q Did you go to her residence to give this information?
- 14 A Correct.
- 15 Q You made your report. Did you pursue what you
16 reported?
- 17 A No, I did not.
- 18 Q Was there a reason you didn't?
- 19 MR. BELL: I'm sorry, Your Honor, I missed it. She
20 made a report, what did you ask the question?
- 21 MS. MINGO: I asked her if she made a report and did
22 she pursue what she reported to the sheriff's office.
- 23 MR. BELL: Oh, follow-up.
- 24 A I was given the option, and in speaking with the
25 officer it basically was stated to me that for the charges

TESTIMONY OF DAWN FIELD

1 that he was going to be charged with --

2 MR. BELL: Your Honor, I'm going to object now to that
3 as hearsay. She can say --

4 THE COURT: I will sustain the objection.

5 Q You can't say what anyone said, but why did you make
6 the decision to not follow-up with charges?

7 A Based on my understanding --

8 MR. BELL: Well, Your Honor, I still object. She can't
9 get through the back door what she can't get through the
10 front door, I still am going to object.

11 THE COURT: I sustain the objection.

12 Q At any rate, you decided you didn't want to participate
13 further?

14 A No. I didn't want to put Abigail through the situation
15 like this.

16 Q And when you say situations like this, what do you
17 mean?

18 A Being in court facing somebody being accused of saying,
19 being cross examined. I've been through it and I didn't
20 want her to go through it as well.

21 MS. MINGO: Thank you, ma'am.

22 THE COURT: Mr. Bell.

23 CROSS EXAMINATION

24 BY MR. BELL:

25 Q Ms. Field, I didn't mistreat your daughter today, did

TESTIMONY OF DAWN FIELD

- 1 I?
- 2 A No, sir.
- 3 Q And I'm not known as a nice guy all of the time. Well,
4 let me ask you this: On the 6th of January of '08 you find
5 out and eventually talk to an officer, I doubt if you
6 remember his name, but it was Mike Miller.
- 7 A No, I don't.
- 8 Q But before you talked to him you had to have a
9 conversation with your daughter.
- 10 A Yes.
- 11 Q Lovely child you've got.
- 12 A Thank you.
- 13 Q I hope her grades are good.
- 14 A She's straight A's.
- 15 Q Good for her. And this child on January 6th of '08
16 made mention to you, did she not, that either August or
17 September of '07 she was given a beer.
- 18 A I don't remember what she said she drank, I don't
19 remember if it was beer, I don't recall.
- 20 Q You don't remember?
- 21 A No, other than she was given alcohol.
- 22 Q And that was the bulk of the conversation between you
23 and she and that's what you reported to the officers.
- 24 A Uh-huh.
- 25 MR. BELL: Thank you, ma'am.

TESTIMONY OF DAWN FIELD

1 THE COURT: Anything else?

2 MS. MINGO: Nothing else, Your Honor.

3 THE COURT: Thank you, ma'am, you may step down.

4 MR. BELL: I assume this witness is under subpoena, no
5 objection to her being released.

6 THE COURT: You're excused from your subpoena. Time
7 for a break, Solicitor, or have you got another one?

8 MS. MINGO: This would be a good time for a break.

9 THE COURT: Ladies and gentlemen, let's take a ten
10 minute recess and remind you it's too early to begin
11 discussing the case and ask you to retire to the jury room.

12 (The jury left the courtroom and a recess was
13 taken.)

14 THE COURT: State ready for the jury?

15 MS. MINGO: Yes, sir.

16 THE COURT: Defense ready?

17 MR. BELL: Defense is ready, Your Honor.

18 THE COURT: Bring the jury in.

19 (The jury returned to the courtroom.)

20 THE COURT: Welcome back once again, ladies and
21 gentlemen, I believe we are ready to resume testimony in the
22 case. Solicitor, you may call your next witness.

23 MS. MINGO: Your Honor, the State calls Virginia
24 Threatt to the stand.

25 The witness, VIRGINIA THREATT, was first sworn

TESTIMONY OF VIRGINIA THREATT

- 1 and testified as follows, on:
- 2 DIRECT EXAMINATION
- 3 BY MS. MINGO:
- 4 Q State your name for the record, please.
- 5 A Virginia Threatt.
- 6 Q And Ms. Threatt where do you live?
- 7 A I live in the Buford area on.
- 8 Q Do you work anywhere?
- 9 A I do, Davis Neon.
- 10 Q And how long have you been working at Davis Neon?
- 11 A It's almost six years now.
- 12 Q And what are your duties there?
- 13 A Right now I'm human resources and accounting.
- 14 Q Are you from Lancaster originally?
- 15 A I am.
- 16 Q Where did you go to school?
- 17 A Buford.
- 18 Q Are you married?
- 19 A No.
- 20 Q How many children do you have?
- 21 A I have four.
- 22 Q And tell me how old your children are.
- 23 A Seventeen, 15, six and one.
- 24 Q Is Minor one of your children?
- 25 A She is.

TESTIMONY OF VIRGINIA THREATT

- 1 Q Where were you living between August 2007 and December
2 of 2007?
- 3 A On .
- 4 Q What was the address?
- 5 A
- 6 Q Do you remember who you were living there with?
- 7 A Yes. It was myself, Brad, Minor , my son Tyler, our
8 daughter Aralyn and occasionally his daughter, Kensey.
- 9 Q You said our daughter Aralyn.
- 10 A Mine and Brad's daughter.
- 11 Q When was she born?
- 12 A '05.
- 13 Q In '05?
- 14 A Uh-huh.
- 15 Q Was she born when you -- okay. All right. Did you
16 live somewhere prior to moving to ?
- 17 A Yeah. We -- well, we actually swapped a couple of
18 places and then came back there.
- 19 Q When did you meet Mr. Loftin?
- 20 A It was '02, '03.
- 21 Q And do you remember how old Minor would have been
22 when you met Mr. Loftin?
- 23 A I think she was around eight.
- 24 Q She was around eight years old?
- 25 A I believe so.

TESTIMONY OF VIRGINIA THREATT

- 1 Q Can you give the layout of this residence at
2 ? Just kind of describe the interior of it.
3 A As like if you walk in the door and all of that?
4 Q Yes.
5 A There was a den, a bedroom, a step down living room,
6 then another bedroom, kitchen area was this way, and then my
7 bedroom and bathroom was on the far end.
8 Q On the far end. So if I'm walking to the front door of
9 the trailer you're master bedroom is on my left?
10 A Uh-huh.
11 Q And there were two other bedrooms on the right?
12 A Right.
13 Q Between August and December of 2007, were you working
14 anywhere?
15 A I was.
16 Q You were at Davis Neon?
17 A I was.
18 Q Do you remember what hours you were working?
19 A It was typically 8:00 to 5:00, sometimes I would have
20 to work over since it was an office job.
21 Q Where was Minor attending school back then?
22 A At Buford Middle.
23 Q Do you remember how she got to and from school?
24 A I took her in the morning typically on my way to work
25 and then she rode the bus home.

TESTIMONY OF VIRGINIA THREATT

- 1 Q Do you remember roughly what time school would let out?
- 2 A It let out 3:00, 3:15 and then she had the bus ride
- 3 home.
- 4 Q Do you remember how -- or what hours Mr. Loftin was
- 5 working during this time?
- 6 A Really his hours weren't set. He did heating and air,
- 7 some days they wouldn't really have work, others they would
- 8 have ten or 12 hours so it was kind of sporadic.
- 9 Q And you said he did heating and air. Was he working
- 10 for a particular company?
- 11 A Yeah, Ricks Heating and Air.
- 12 Q Would he at times have the children while you were at
- 13 work and they got out of school?
- 14 A Yes.
- 15 Q Minor and Tyler?
- 16 A Typically Tyler went to my mom's, which was right like
- 17 next door, normally he would go there and play on the
- 18 computer.
- 19 Q What about Aralyn.
- 20 A Aralyn would be with my mom, she stayed with her all
- 21 day.
- 22 Q Can you describe what your relationship with Minor
- 23 was like during this time?
- 24 A During that time?
- 25 Q Yes. Well, prior to August/September of 2007.

TESTIMONY OF VIRGINIA THREATT

- 1 A Prior to --
- 2 Q Your relationship with her. Were you close?
- 3 A Yeah, we were really close. I was the one she came to
- 4 when she was having a bad day and I was the one she talked
- 5 to when one of her friends at school had an argument. She
- 6 depended on me and I depended on her.
- 7 Q Did mother/daughter things together?
- 8 A Uh-huh.
- 9 Q Did it remain that way?
- 10 A No.
- 11 Q Do you remember when you started to notice a change?
- 12 A I would say it was late summer in '07, it was right
- 13 around the time school started back.
- 14 Q How did she change?
- 15 A She was really distant at first and then it was almost
- 16 like she just hated me. She never wanted to do anything
- 17 with me, she wouldn't talk to me. When I would get home
- 18 from work she would lock herself in her room and everyone
- 19 told me it was just her age.
- 20 MR. BELL: Objection, Your Honor, to what everyone told
- 21 her, that's purely hearsay.
- 22 MS. MINGO: Your Honor, I don't think she's saying it
- 23 for the truth.
- 24 THE COURT: Well, I overrule the objection. Go ahead.
- 25 A Typically in teenagers I guess you would say the age

TESTIMONY OF VIRGINIA THREATT

1 may have a difference in how their behavior is or how it
2 changes so that's what I thought was going on.

3 Q It was growing pains?

4 MR. BELL: Your Honor, at this point I'm going to
5 object to anything else, it's totally irrelevant to the
6 claims that my client is facing.

7 MS. MINGO: Your Honor, I'm asking her about her
8 daughter's behavior, the timeframe that the child says she
9 was being molested, I think it's relevant.

10 MR. BELL: But the answer she just gave over my
11 objection is that everybody says it's teenagers and growing
12 up and all of that stuff, that's the answer that she just
13 gave the Court, nothing after that is relevant. I'm going
14 to object to everything.

15 THE COURT: I understand. Overruled. Go ahead.

16 Q She was distant with you. How was her relationship
17 with Brad?

18 A They actually seemed to get closer, a lot closer. She
19 would talk to him, she wouldn't talk to me. He has an
20 errand to run, she would go to him and then I would ask her,
21 "Hey, do you want to go to mall? No." And it kind of -- so
22 it was sort of like the house got split. It was me and my
23 youngest daughter and my son and then Brad and Minor , it
24 was honestly like we just divided into team's. She wouldn't
25 tolerate any of us and he was all on her side with it.

TESTIMONY OF VIRGINIA THREATT

- 1 Q Where would Minor normally sleep?
- 2 A She normally slept in her own room in her bed, but then
3 there came a time when she was sleeping on the couch a good
4 bit.
- 5 Q Do you remember when she started sleeping on the couch
6 bed instead of her room?
- 7 A It wasn't long after he started sleeping on the couch
8 bed because we were having problems.
- 9 Q So the two of them slept on the couch bed together?
- 10 A Yeah.
- 11 Q And again, do you remember roughly when you started to
12 notice that?
- 13 A It was probably a little after school started in '07.
- 14 Q She's 12 at the time?
- 15 A Yeah.
- 16 Q He's not her natural father.
- 17 A No.
- 18 Q Did that concern you that they were sleeping together
19 on this couch every night?
- 20 A No, it didn't. I see now it should have. They had a
21 very -- he was very affectionate to all of the children.
22 They would cuddle on the couch to watch TV, hugs, you know,
23 we would all play in the bed on Saturday morning together,
24 you know, just really affectionate. So I didn't really put
25 anything bad towards it.

TESTIMONY OF VIRGINIA THREATT

1 Q Right. Okay. How was your relationship with Brad
2 Loftin, the defendant, during this timeframe?

3 A Horrible. We couldn't speak to each other, we could
4 rarely be in the same room. When I came in from work it was
5 best we didn't even look at each other.

6 Q Did this start around late summer, too?

7 A Yeah. Because we had taken a vacation Labor Day
8 weekend, I could tell then something just wasn't there
9 anymore that used to be.

10 Q You had had breakups prior to, correct? Prior to
11 August and September of 2007 you had your problems?

12 A Yeah, we did.

13 Q I think you could tell something was wrong. Was there
14 anything unusual going on at this time?

15 A Yeah, that week, yeah. We had a very healthy sexual
16 relationship and that weekend it was different, it was a lot
17 different. The first night when nothing happened between us
18 I knew then something is going on, something is not right.

19 Q When did the relationship end?

20 A It was right after Christmas. We had agreed to stay to
21 go through Christmas for the children, we wanted to just get
22 through that so we didn't ruin Christmas and then go our
23 separate ways.

24 Q Is anything specific that led to the breakup?

25 A Just arguing. Like I said, I was -- it seemed like it

TESTIMONY OF VIRGINIA THREATT

1 was continuously a battle between him and Minor and then
2 me. We couldn't speak to each other, it's hard to explain.
3 It's just -- she acted like she hated me and he sided with
4 her on it like it was okay.

5 Q So you broke up late December of 2007. Did he move out
6 upon breaking up upon the relationship ending?

7 A Yes.

8 Q How did you first learn of the allegations that brings
9 us all here today?

10 A I was at work and got a phone call from the principal
11 of the school telling me that I needed to get to the school
12 immediately with something regarding Minor.

13 Q What was your reaction?

14 A I was scared. My first thought was is she hurt, you
15 know? Yeah. I was told she was okay, she wasn't
16 necessarily hurt, I remember those words. Then I asked if
17 she was in trouble, if she had done something, no, she
18 hadn't done anything. But they couldn't tell me anything
19 further, I just need to hurry up.

20 Q You go to the school, get information. Did you ever
21 confront Mr. Loftin about these allegations?

22 A No. My phone rang several times while I sat in the
23 office with those people telling me and I just didn't
24 answer, and I got -- I asked the police to call and tell him
25 to stop calling.

TESTIMONY OF VIRGINIA THREATT

1 Q Did you have a conversation with your daughter after
2 you left the school about what you learned?

3 A Yeah.

4 Q Did she indicate to you the places the sexual incidents
5 occurred?

6 A She did. I was informed that SLED would be coming in
7 so I asked her to go through the house, you know, let me
8 know where anything occurred, that way when they came she
9 would be at school, I could say, "You may want to check here
10 and there." She told me about a pregnancy test, we went and
11 got that out of the woods. She told me about a lot of
12 things. She told me about a particular thing that he and I
13 used in the bedroom together, they referred to it as a ring
14 but she went and got that out of my drawer and showed it to
15 me and asked if he had used that on me because he had used
16 that on her.

17 Q Were there -- did she show you places in the house that
18 it occurred?

19 A Yes.

20 Q Do you remember what those places were?

21 A Her bed, my son's bed, the couch, the couch bed, my
22 bed, and she also told me there was an incident in my car
23 while they were going to Blockbuster.

24 Q Now, you stated that y'all got this pregnancy kit. Was
25 it from the woods?

TESTIMONY OF VIRGINIA THREATT

- 1 A Yes.
- 2 Q Behind the house? Okay. And that you turned that over
3 to Investigator Adams?
- 4 A I did. Well, I'm not sure if it was him or the SLED
5 agents, but yeah, I took it over to authorities.
- 6 Q Did you provide Investigator Adams of the sheriff's
7 office any information as to when that was purchased, the
8 pregnancy kit?
- 9 A Yeah. I don't know how to word it without him saying
10 it's hearsay, it was the day that I was shopping in Monroe
11 for Christmas gifts.
- 12 Q Do you remember specifically what day that was?
- 13 A It was December 9th of 2007.
- 14 Q Where did you go shopping?
- 15 A In Monroe. I went to the mall, I went to Target,
16 Wal-Mart, the Dollar Tree, there were several places. I was
17 Christmas shopping.
- 18 Q Did Minor ever give you any information as far as a
19 timeframe when these sexual incidents occurred?
- 20 A Yeah. She told me she thought they may have started
21 some time between late August and early September until
22 2008.
- 23 Q Were you on any type of birth control during this time?
- 24 A I was, I had a IUD in place.
- 25 Q And I know you're not a doctor, but can you --

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1 A Intrauterine device.

2 Q Can you kind of briefly explain that in laymen's terms?

3 A Yes. It's inserted into the uterus, some types give
4 off hormones, some types don't. But it's basically to keep
5 you from producing eggs.

6 Q Was that pretty effective for you?

7 A Very.

8 Q When did you get that in place?

9 A I got that in place I think two months after I had
10 my -- our daughter, which would have been in 2005.

11 Q Did you have any problems with it?

12 A No.

13 Q So you were on birth control. Did he undertake any
14 measures to prevent a baby being born or you becoming
15 pregnant?

16 A Yeah. He actually went and had a vasectomy.

17 Q Do you remember about when that was? I know it has
18 been a long time.

19 A November or December of '07.

20 Q Did the two of you discuss having this procedure done?

21 A Yeah, about two days before he had it done. It came as
22 a big shock to me, I didn't understand why he would have it
23 done and I asked him, you know, "Do I need to come with you?
24 No. How are we going to pay for it? My parents are." That
25 just -- I didn't understand it.

TESTIMONY OF VIRGINIA THREATT

- 1 Q Kind of came out of the blue?
- 2 A Yeah.
- 3 Q Let me ask you, did you ever go hunting with Mr. Loftin
- 4 and your kids?
- 5 A Yes.
- 6 Q How often did y'all go hunting?
- 7 A Just whenever we got the chance.
- 8 Q When?
- 9 A Every other weekend or so usually, like I said, when we
- 10 have time when we had the kids.
- 11 Q When you say hunting, were you hunting with bow or
- 12 arrow or gun?
- 13 A Guns, rifles, long guns.
- 14 Q Did you hunt yourself?
- 15 A I do.
- 16 Q Do you know roughly when deer hunting season starts?
- 17 A Usually in mid-October.
- 18 Q That you're allowed to hunt with guns?
- 19 A Yes, with rifles.
- 20 Q Did you wait until mid-October every time?
- 21 A Not every time, no.
- 22 Q You're not going to get in trouble. How soon would you
- 23 go?
- 24 A We normally would go up a couple of months ahead of
- 25 time not necessarily just to hunt, but it was I was told

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1 illegal to hunt over the top of corn, salt blocks and that
2 kind of thing. So we would go out a couple of months before
3 hunting season started, clean out the deer stands, make
4 repairs, throw out corn, salt blocks, that kind of thing to
5 attract the deer in and make sure everything would be ready
6 when we started using the stands on weekends.

7 Q Did you ever actually hunt before October?

8 A Yes.

9 Q Do you remember the last time you and Mr. Loftin
10 actually had a conversation on the phone?

11 A Yeah. It was January 3rd, it was the day before I
12 found out what was going on.

13 Q What did that conversation consist of?

14 A That he missed me and the kids. He asked me to go to
15 dinner that following night, which was a Friday night --

16 Q I hate to interrupt you. He said he missed you and the
17 kids?

18 A Uh-huh.

19 Q Y'all had broken up a week or so before?

20 A Uh-huh.

21 Q Where was he living?

22 A He was living in Fort Lawn.

23 Q So he moved out of your house and moved to Fort Lawn?

24 A He did.

25 Q Who did he live with in Fort Lawn, do you know?

TESTIMONY OF VIRGINIA THREATT

1 A I'm not sure if his parents were still living there, I
2 don't know. I don't think they were, I think they moved
3 out.

4 Q I'm sorry, back to January 3rd. He said he missed you
5 and the kids?

6 A Right. He asked me to go out to dinner with him Friday
7 night to try to work things out, if nothing else figure out
8 an arrangement for the kids to go between us.

9 Q Did you take him up on it or did you tell him you
10 would?

11 A I did.

12 Q Was Minor home when you had this conversation with
13 him?

14 A She was.

15 Q Did she speak with him that day?

16 A She did. She overheard the conversation, it was like
17 she came out of nowhere screaming at me, "Mama, you're not
18 going out with him. Mama, you're not going on a date with
19 him," and screaming and yelling and trying to jerk the phone
20 away. And he's telling me, "Just let me talk to her, I'll
21 calm her down." So I gave her the phone and she walked in
22 her bedroom and came out a minute later and she was fine.

23 Q Did you ask her what all of that was about?

24 A I did, but she never really gave me a straight answer.

25 Q And the following day is when you found out what had

TESTIMONY OF VIRGINIA THREATT

1 happened?

2 A Right.

3 Q And no more conversation since then?

4 A No.

5 Q I'm going to show you what has been marked as State's

6 Exhibit Number 21. Do you know what that is?

7 A I do.

8 Q What is it?

9 A It's a Target receipt.

10 Q And is there a date on the receipt?

11 A Yes, December --

12 MR. BELL: Your Honor, it's not in evidence yet.

13 THE COURT: Have you shown it to Mr. Bell?

14 MS. MINGO: He has seen it. I'm asking her if she
15 recognized it.

16 MR. BELL: I understand that, she can't ask any
17 particular on it. I'm objecting to the document, I just
18 recently got that within the last week. Secondly, there's
19 nothing on the document that connects her with that
20 document, no signature or anything. I'm going to object to
21 that document.

22 MS. MINGO: That's fine, Your Honor. We can introduce
23 it at a later time.

24 Q But is this your receipt?

25 A It is.

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1 Q Is this the receipt that you received when you went
2 shopping in Monroe on December 9th of 2007?

3 A It is.

4 Q I'm going to show you also what has been marked as
5 State's Exhibit 10. Can you tell me what that is?

6 A Yeah, it's a vibrator ring.

7 Q And who did this belong to?

8 A Me and Brad used that. I brought it home one day.

9 Q Is this the vibrator ring that Minor went in your
10 room in your drawer to pull out?

11 A Yes.

12 THE COURT: Your Honor, at this time I would move to
13 introduce State's Exhibit 10 into evidence.

14 MR. BELL: Well, SLED has got the ring. Somebody --
15 are you bringing the document itself -- the gizmo itself to
16 court?

17 MS. MINGO: Yes.

18 MR. BELL: Tomorrow?

19 MS. MINGO: Yes.

20 MR. BELL: Your Honor, because the best evidence rule
21 is not a picture but the document itself, with the State
22 assuring me -- and I say document, whatever you call that
23 thing -- with the State assuring me and therefore the Court
24 that an item I'm assuming is in control of SLED or the
25 sheriff's department -- somebody has got it, that it's going

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1 to be brought and introduced tomorrow, I have no objection
2 to the picture today substituting for the other item once it
3 gets here.

4 THE COURT: I'm not sure I understood that. Have you
5 got an objection to the picture?

6 MR. BELL: Well, I'm going to object to the picture
7 when the best evidence is the item itself and they plan to
8 bring that tomorrow as far as I know.

9 MS. MINGO: Your Honor, it was my plan to actually
10 introduce the photo into evidence. We do have access to the
11 actual ring but she's identified that she recognizes what
12 this is. This is the photo of what she has described, what
13 her daughter got from her room, I think this is sufficient
14 at this point.

15 MR. BELL: I understand, Ms. Mingo. We have got SLED
16 analysis on there that's beneficial to my client and I want
17 to make sure we're not trying to skirt anything with your
18 evidence trying to convict my client, that's why I'm raising
19 the objection I'm raising, Your Honor.

20 THE COURT: I've got you. Overruled, I'll admit it.

21 (The photo was receive as State's Exhibit
22 Number 10.)

23 MS. MINGO: Answer anything Mr. Bell has.

24 THE COURT: Mr. Bell?

25 CROSS EXAMINATION

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- 1 BY MR. BELL:
- 2 Q In response to a question by the solicitor you made the
3 comment that he, meaning my client, was very affectionate to
4 all of the children, do you remember that?
- 5 A I do.
- 6 Q So we've got Minor who today is 17; is that correct?
- 7 A She is.
- 8 Q How old are you?
- 9 A I'm sorry?
- 10 Q How old are you?
- 11 A I'm 32.
- 12 Q So you had her at a very young age.
- 13 A I did.
- 14 Q And the second oldest child is who?
- 15 A My son, Tyler.
- 16 Q How old is he?
- 17 A He's 15.
- 18 Q Now?
- 19 A Yes, sir.
- 20 Q So four years ago he would have been 11?
- 21 A Right.
- 22 Q And the next one is who?
- 23 A She's six.
- 24 Q Is that his child?
- 25 A Biologically, yes, he has.

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- 1 Q Well, young lady, please don't play games with me. The
2 question was --
- 3 A Sir, I'm not playing games --
- 4 Q The question was is that his child, that is the
5 question. Is that his child?
- 6 A His biologically, yes.
- 7 Q And then you've got another child, and that child was
8 how old?
- 9 A He is one.
- 10 Q Now, the gentleman that fathered Minor , did you ever
11 marry him?
- 12 A No, I did not.
- 13 Q Do we have a different father for the 15 year old?
- 14 MS. MINGO: Objection.
- 15 THE COURT: I sustain the objection.
- 16 Q We've got my client, the father of the six year old.
- 17 A That's right.
- 18 Q Well, did you marry any of these gentlemen including my
19 client, married nobody?
- 20 A Yes, I have been married.
- 21 Q No. Did you -- you didn't marry my client, right?
- 22 A That's kind of iffy.
- 23 Q Iffy?
- 24 A Yeah.
- 25 Q You mean you're going to try to say some kind of common

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1 law marriage?

2 A Right. We had our taxes done together --

3 Q Okay. But you didn't go to the probate court or get a
4 marriage license or anything like that.

5 A No. But we were in the understanding that we were
6 married.

7 Q You didn't go to any church or any courtroom and recite
8 the oath and sign anything like that.

9 A No, we did not.

10 Q The father of the one year old, are you married to him?

11 MS. MINGO: Objection, Your Honor, what is the
12 relevance of this?

13 THE COURT: I sustain the objection as to the grounds
14 of relevance.

15 MR. BELL: Your Honor, can I be heard on this?

16 THE COURT: No, sir. I know what the objection is.
17 Have you got relevance? Is it relevant?

18 MR. BELL: Yes, sir. It goes to credibility of the
19 witnesses if nothing else.

20 THE COURT: Step over at a side bar.

21 (Bench conference was held.)

22 Q So y'all, meaning you and my client, started going
23 together some time in '02?

24 A '02 or '03.

25 Q And where did you meet?

TESTIMONY OF VIRGINIA THREATT

- 1 A We actually met at his house at a party.
- 2 Q His house where?
- 3 A His house.
- 4 Q Where? Where was his house?
- 5 A It was on .
- 6 Q So he was living on . Were you aware that he
- 7 was previously married?
- 8 A I was.
- 9 Q And are you aware that had he a child by that marriage?
- 10 A Yes, sir, I was.
- 11 Q So back in '02 or '03 you met my client at his house?
- 12 A Uh-huh.
- 13 Q A party going on that you were invited or you just
- 14 showed up one day? I mean, how did y'all get together, by
- 15 just meeting?
- 16 A His ex-wife's cousin introduced us.
- 17 Q You just lost me. His ex-wife's cousin introduced you
- 18 to him?
- 19 A Uh-huh.
- 20 Q And y'all went together how long before you started
- 21 living together?
- 22 A It wasn't long actually.
- 23 Q And where did you start living together, at
- 24 ?
- 25 A No, .

TESTIMONY OF VIRGINIA THREATT

1 Q So you never lived with him at ?

2 A I did while I was pregnant with Aralyn, the third
3 child.

4 Q And that's his child.

5 A Yes.

6 Q You can say biological if you want to but that's his
7 child. So in '02, '03 we meet, date a little while and live
8 together, which is fine, I ain't the preacher, I ain't going
9 to tell anybody about morals. And you started living
10 together out in Tradesville?

11 A That's right.

12 Q At , is that the right address or have I
13 got the wrong address?

14 A No, .

15 Q I'm across the street. And this is a modular home that
16 may have some additions to it, but it was owned by your
17 parents or your grandparents, which one?

18 A My parents.

19 Q And when y'all first moved in your parents were still
20 occupying that residence, weren't they?

21 A They were.

22 Q And they stayed there for how long with -- now they're
23 in there, you're in there, Brad is in there, Minor is in
24 there and the younger son is in there. We've got five
25 people in there.

TESTIMONY OF VIRGINIA THREATT

- 1 A Uh-huh.
- 2 Q Six people in there. Where did y'all stay?
- 3 A We -- Brad and I shared a bedroom, Minor and Tyler
- 4 shared a bedroom and my parents shared a bedroom.
- 5 Q How long did that go on?
- 6 A A few months, I'm really not sure.
- 7 Q I'm sorry?
- 8 A I said a few, I'm not sure.
- 9 Q Few what?
- 10 A Few months.
- 11 Q Then your mama and daddy then built or either had
- 12 another home brought in or something on some land that was
- 13 right out the back door?
- 14 A That's right.
- 15 Q And going out of the house that you occupied the back
- 16 door, was there a built up sundeck or whatever you want to
- 17 call it out there?
- 18 A There was.
- 19 Q And then right beyond that, give me the distance to a
- 20 door at mama and dad's new house roughly.
- 21 A I don't know, 25 yards maybe.
- 22 Q Yards. That's 75 feet.
- 23 A Yeah, about a quarter of a football field.
- 24 Q Okay.
- 25 A I don't know exactly.

TESTIMONY OF VIRGINIA THREATT

- 1 Q That's fine. So your mama and daddy moved into the new
2 abode back there, so you and Brad started occupying what in
3 the house y'all were in?
- 4 A We went to the master bedroom.
- 5 Q And therefore that gave each of the two kids a bed?
- 6 A That's right.
- 7 Q Now, the baby was born -- his and your baby was born
8 when?
- 9 A '05, July.
- 10 Q And where was it staying in the '05, '06 and '07, where
11 was that baby staying?
- 12 A I'm sorry?
- 13 Q The female child, your third child, the female child,
14 he's the father, '05 it was born, '06 it lived in the house
15 and '07 it lived in the house, where was it staying?
- 16 A When she was born we were in the home on Cimmeron, and
17 then a few months after she was born we moved back over to
18 .
- 19 Q Okay. I apologize, you did tell me that. So some time
20 before his child was born of you y'all left and
21 went to .
- 22 A Right.
- 23 Q Everybody?
- 24 A Right.
- 25 Q Is that before or after your mama and daddy had moved

TESTIMONY OF VIRGINIA THREATT

1 there?

2 A It was before they had moved out in the home.

3 Q The reason for that?

4 A I'm sorry?

5 Q The reason for leaving your mama and dad's house and
6 going to ?

7 A Because we were going to establish our own home. He
8 was on the title of that home with his ex-wife and she
9 wasn't making the payments so it was being foreclosed on and
10 so I put up a substantial amount of money --

11 Q You did?

12 A -- to keep it -- well, my mother gave me inheritance,
13 yes, to keep it from going into foreclosure, and we moved
14 into it to save his credit so we could buy our own home.

15 Q How long did we stay there?

16 A Maybe a year, I'm not really sure.

17 Q So all three children were there, which is his child
18 and the other two, and then we moved again?

19 A Uh-huh.

20 Q And went back to the trailer?

21 A Well, actually we split up and I moved back to
22 Tradesville.

23 Q Well, when did y'all -- this is going to be number one
24 split up?

25 A No, it's not actually.

TESTIMONY OF VIRGINIA THREATT

- 1 Q We had had split-ups before living in Tradesville after
2 starting living together and before we moved to ?
- 3 A Really I'm not sure.
- 4 Q Again, I'm trying to get you to --
- 5 A Sir, it has been a long time ago.
- 6 Q Well, I understand that. So if we met in '02 or '03,
7 we started living together, we lived at initially,
8 did we have any split-ups before we left for the
9 first time if you can remember?
- 10 A I'm sorry, I don't understand the question. After I
11 had my third child you mean?
- 12 Q No. Y'all didn't -- y'all start living together in
13 02/03?
- 14 A Uh-huh.
- 15 Q Didn't y'all first start living together at ?
- 16 A No.
- 17 Q Okay. Then I'm confused, I apologize. '02 and '03 we
18 start living together and we're living in Tradesville.
- 19 A That's right.
- 20 Q And then we moved to some time in '05 when the
21 baby was born.
- 22 A Uh-huh.
- 23 Q Well, 02, '03, that would be '04 and '05. Did we split
24 up any when we were living in Tradesville before the female
25 child was born?

TESTIMONY OF VIRGINIA THREATT

- 1 A Yeah. I think we did have a split between.
- 2 Q How many times?
- 3 A I don't know.
- 4 Q Was it a friendly split-up or one of those kind of
- 5 rough ones?
- 6 A We had spats.
- 7 Q Had what?
- 8 A Spats. We had arguments, fights.
- 9 Q Oh, spats. Any physical stuff?
- 10 A No.
- 11 Q Any calling of cops?
- 12 A No.
- 13 Q So no weapons, no guns, no knives, no baseball bats, no
- 14 kitchen utensils, no bottles, no bricks?
- 15 A No.
- 16 Q But it was spats, meaning verbal?
- 17 A Yeah. We were not happy with each other.
- 18 Q We weren't happy with each other?
- 19 A No, not at all.
- 20 Q Well, was it sexual, financial? Why were we not happy
- 21 with each other?
- 22 A I think really it centered around financial reasons.
- 23 Q Meaning you were making more than him or you wouldn't
- 24 let him spend the money the way he wanted to do it or he
- 25 wouldn't let you? What do you mean financial?

TESTIMONY OF VIRGINIA THREATT

- 1 A We didn't have enough.
- 2 Q Enough?
- 3 A Yeah, to do what we needed to do with it.
- 4 Q So we broke up at least once, we obviously got back
5 together because you got pregnant.
- 6 A Uh-huh.
- 7 Q By him.
- 8 A That's right.
- 9 Q And we then left Tradesville at and moved to
10 ; is that correct?
- 11 A That is.
- 12 Q See, I don't know if these people have ever been to
13 Tradesville, probably none of them know where is.
- 14 A Probably not.
- 15 Q But is off of 522 which is off Rocky
16 River Road as you head south of Buford Crossroads.
- 17 A Right.
- 18 Q Down there and take a right and turn in south, that's
19 one entrance. Other entrance of is off Potter
20 Road as you're heading south to what we call --
- 21 A Antioch.
- 22 Q -- Antioch Crossroads.
- 23 A Uh-huh.
- 24 Q Your road where you lived originally was way out in the
25 country right near the Chesterfield line, isn't it?

TESTIMONY OF VIRGINIA THREATT

- 1 A I'm not sure about the Chesterfield line.
- 2 Q Well, Number 9 goes across Paul Burch Bridge.
- 3 A It was like ten minutes from Pageland.
- 4 Q Well, Chesterfield, do you know where Lynches River is,
5 got a brand new bridge that says Paul Burch Bridge, that's
6 the Chesterfield line.
- 7 A Then it was right near the line.
- 8 Q So after the baby is born, after y'all's child is born
9 we're living in Cimmeron Road we have another breakup; is
10 that correct?
- 11 A Right.
- 12 Q How long was the first breakup before the baby was
13 born? How long? Was it one day, one week or one month, one
14 year?
- 15 A Maybe couple of weeks, I think.
- 16 Q How long was the second breakup?
- 17 A Couple of weeks.
- 18 Q Was he the one that left both times, in other words he
19 left your mama and dad's place or did he leave Cimmeron?
- 20 A No, he made me leave Cimmeron.
- 21 Q So you left Cimmeron?
- 22 A Uh-huh.
- 23 Q But y'all kissed, hugged and made up. Well, you're
24 giving me that face, what's the answer?
- 25 A Yes, we did.

TESTIMONY OF VIRGINIA THREATT

- 1 Q And then we start living -- when did we leave
2 and go back to Brady?
- 3 A I did after a few weeks after our daughter was born.
- 4 Q All right. I'm sorry. So when the breakup occurred
5 with the residence being you never went back to
6 to live again.
- 7 A Right.
- 8 Q If he was going to resume something with you he had to
9 come to Tradesville.
- 10 A No. We started working things out.
- 11 Q I understand, but he came back to .
- 12 A He did because he lost that home.
- 13 Q I understand, but he came back to .
- 14 A He did, yeah.
- 15 Q Now, once we're back at , the baby is born we
16 have gone through at least two spats that led to a
17 separation, how many separation do we go through before
18 Christmas of '07?
- 19 A Really that was the last one.
- 20 Q Okay. Well, you've told the jury that y'all were
21 talking about some type of separation, maybe the third time,
22 before Christmas that you made the decision to stay at least
23 through the 25th for the children's sake, isn't that what
24 you just told the jury?
- 25 A That's right.

TESTIMONY OF VIRGINIA THREATT

- 1 Q Well, when did this latest episode commence? Was it
2 the 24th, the 23rd, December 22nd, 21st? Can you answer
3 that?
- 4 A Episode? You mean as when he moved out?
- 5 Q Yeah.
- 6 A It was couple of days after Christmas.
- 7 Q No, I realize that. But I'm assuming y'all had been
8 discussing separating again because y'all made the decision
9 to not leave each other until the 25th or some days after
10 that?
- 11 A Right.
- 12 Q So when did we have this discussion about you are going
13 to separate again but let's don't do until after Christmas.
14 When did that discussion take place?
- 15 A Honestly, I don't remember, maybe November.
- 16 Q November. Okay. And was there any in and out by him
17 before December as far as living there?
- 18 A No.
- 19 Q Well, let me ask you this: Do you remember -- and
20 correct me if I'm wrong because I don't remember the date --
21 but do you remember being involved in a conversation with my
22 client, his mama and daddy about a house that they had
23 bought and becoming available in Fort Lawn that my client
24 wanted you and the family to move over there with him?
- 25 A Nothing was ever made like a final decision.

TESTIMONY OF VIRGINIA THREATT

- 1 Q That ain't what I asked you.
- 2 A Yes --
- 3 Q That's wasn't the question --
- 4 A I don't remember his parents --
- 5 MR. BELL: I'm sorry.
- 6 THE COURT: Nobody talk. Let's regroup. Here is the
- 7 way it works.
- 8 Q My question was --
- 9 MR. BELL: I'm sorry, Your Honor.
- 10 THE COURT: Attorney asks the question, attorney asks
- 11 one question at a time, the witness answers one question at
- 12 a time and we can't talk over each other because the court
- 13 reporter then will not have any idea who said what. Start
- 14 all over again, Mr. Bell.
- 15 Q Listen to the question. Do you remember being involved
- 16 in some type of communications, conversations in person
- 17 maybe between my client and his mama and his daddy who is
- 18 sitting in this courtroom concerning him and y'all, meaning
- 19 you and all of these kids, coming to live in Fort Lawn?
- 20 A He and I had the conversation, I do not remember having
- 21 the conversation myself with his parents.
- 22 Q But were you shown the house?
- 23 A They lived in the house.
- 24 Q Okay. But were you shown the house that he was going
- 25 to occupy and wanted you to come occupy?

TESTIMONY OF VIRGINIA THREATT

1 A We visited frequently, it was the house his parents
2 lived in.

3 Q You saw the house, you knew about the house.

4 A Right.

5 Q And did that conversation not commence some time in the
6 fall of '07?

7 A Yeah, I believe so.

8 Q And you were not interested in that about moving with
9 him and the children to the house in Fort Lawn?

10 A That's right.

11 Q Why?

12 A Because we were not on good terms. Our relationship
13 was very rocky and I did not want to uproot my children,
14 move them to another county with the chance of them having
15 to move right back because we were not on good terms at the
16 time.

17 Q Is it also not true that in discussing with his mama
18 and daddy you found out that your name was not going to be
19 on any deed, that also came into play, didn't it?

20 A Sir, if I may? My name was not on the deed to the
21 Cimmeron location either and I did put money on that so that
22 has nothing to do with it.

23 Q I understand, but you still didn't answer my question.
24 Did you not react to -- part of the reason for not wanting
25 to go to Fort Lawn was because you found out that his mama

TESTIMONY OF VIRGINIA THREATT

1 and daddy were not going to put your name on the deed.

2 A No. That wasn't what made my final decision, no.

3 Q I understand that. But what I want to know is is that
4 a truism that you got upset when you found out that your
5 name wasn't going to be put on the deed of the property in
6 Fort Lawn?

7 A I didn't get upset. I just stated that I didn't think
8 I should uproot my children and chance that he could throw
9 us back out on the street like had he at Cimmeron.

10 Q Wait a minute. He threw you out on the street in
11 Cimmeron?

12 A That's right, uh-huh. We were made to leave.

13 Q Is it not true that after my client got arrested that
14 you called -- let me back up. The solicitor asked you, you
15 basically said you never confronted the defendant. Is it
16 not true you made a phone call with him reaching you at the
17 hospital after he was arrested when something was wrong with
18 yours and his child?

19 A No, I did not call him.

20 Q Did you call anybody?

21 A I called his mother. DSS informed me that I should
22 call his mother because anytime a child is under anesthesia
23 is dangerous and risky.

24 Q Didn't you ask him to come to the hospital because the
25 kid was undergoing some kind procedure?

TESTIMONY OF VIRGINIA THREATT

1 A I was told that I should inform them and let them know
2 that there would be a security officer available and we
3 would be in separate rooms if they wanted to appear at the
4 hospital for her.

5 Q So you did call and ask them to come to the hospital?

6 A I spoke with his mother.

7 Q I understand that. But you told them to tell him to
8 come to the hospital, didn't you?

9 A No. I said she could, I said the family could. When I
10 said I had no contact, I had no contact with him.

11 Q Do you have any evidence that in anyway collaborates
12 what the daughter has said? Have you got any evidence -- I
13 understand she's talked to you -- you never saw anything,
14 you never witnessed anything --

15 A No, I never witnessed anything.

16 Q So other than what people have told you, you don't have
17 any evidence other than what your daughter told you, right?

18 A Besides common sense, no.

19 Q Common sense?

20 A Common sense.

21 Q Well, that ain't evidence. Okay. And see, I don't
22 know if they're going to put you back on the stand or not.
23 Are you aware that SLED found unidentified semen in your
24 house?

25 A I'm aware.

TESTIMONY OF VIRGINIA THREATT

- 1 Q Male semen in your house?
- 2 A I'm aware.
- 3 Q Can you explain that? Because you're also aware that
- 4 SLED found my client's semen, meaning DNA stuff, in your
- 5 house.
- 6 A I'm aware of that.
- 7 Q And, of course, y'all did have sex.
- 8 A Of course we did.
- 9 Q Y'all had one baby, right?
- 10 A We did.
- 11 Q I'm not going to sit here and ask you how many times
- 12 y'all had sex, but more than once.
- 13 A Yes.
- 14 Q You never -- once you became aware that there was -- by
- 15 DNA there was unidentified male semen in your house, you
- 16 never asked the solicitor in any way for her to clean that
- 17 up by trying to find out who it belonged to?
- 18 MS. MINGO: Objection, Your Honor. I don't believe
- 19 that's a proper question.
- 20 MR. BELL: I think it's proper, Your Honor.
- 21 THE COURT: I sustain the objection.
- 22 MR. BELL: I've got nothing further, Your Honor. The
- 23 witness can step down as far as I'm concerned.
- 24 MS. MINGO: Redirect, Your Honor?
- 25 THE COURT: Certainly.

TESTIMONY OF VIRGINIA THREATT

1 CROSS EXAMINATION

2 BY MS. MINGO:

3 Q Ms. Threatt, I think Mr. Bell asked you who occupied
4 the residence on when you initially moved in.

5 A Right.

6 Q Did you say it was your parents?

7 A Right.

8 Q They had the master bedroom?

9 A They did.

10 Q Remind me again, if I walk into the front door of the
11 trailer, the master bedroom is on the left?

12 A That's right.

13 Q Two other bedrooms is on the right?

14 A Right.

15 Q Parents were in the master bedroom, what bedroom are
16 you in on the opposite side of the house? If I'm standing
17 in the hallway is your bedroom on the left or is your
18 bedroom on the right?

19 A On the right.

20 Q And where did Minor , Tyler and Aralyn sleep?

21 A Aralyn wasn't there yet, Minor and Tyler slept in
22 the bedroom on the left.

23 Q They had bunk beds in there?

24 A They did.

25 Q You and Mr. Loftin shared the bedroom on the right.

TESTIMONY OF VIRGINIA THREATT

- 1 A Right.
- 2 Q At some point your parents moved out?
- 3 A They did.
- 4 Q Did they take their bed with them when they moved out?
- 5 A They did.
- 6 Q What type of bed did you and Mr. Loftin sleep on in
- 7 this house?
- 8 A A queen sized bed.
- 9 Q A queen bed?
- 10 A Uh-huh.
- 11 Q You moved that queen bed into the master bedroom when
- 12 your parents left?
- 13 A That's right.
- 14 MR. BELL: Your Honor, this is beyond any redirect. I
- 15 didn't get into all of those details about moving beds and
- 16 all of that, she's retrying her case. Again, she's limited
- 17 on redirect to what I brought out new, I didn't bring out
- 18 anything about the beds being moved or anything so I object.
- 19 MS. MINGO: Your Honor, he asked a general question
- 20 about the sleeping arrangements where people were and I'm
- 21 digging further.
- 22 THE COURT: All right. Overruled. Go ahead.
- 23 Q You moved your queen bed into the master bedroom that
- 24 your parents had occupied?
- 25 A That's right.

TESTIMONY OF VIRGINIA THREATT

1 Q Who occupies the bedroom that you just left, that
2 bedroom on the right?

3 A Minor .

4 Q Minor moved into that bedroom?

5 A She did.

6 Q Did she have a bed that she put in there?

7 A Right. We got her a full-sized bed to put into that
8 room.

9 Q And Tyler remained in the bedroom on the left?

10 A Right.

11 Q Was the full bed purchased -- that was after your
12 parents had moved out; is that correct?

13 A Yes.

14 Q Do you remember what type of comforter Minor had on
15 her bed?

16 A Yeah. It was purple and I think it had flowers.

17 Q Let me show you State's 22.

18 MR. BELL: Now, Your Honor, again, the State don't get
19 two bites at the apple. She put the witness up, she could
20 have asked her about that thing in her case in chief,
21 nothing. I didn't get near that thing other than I had to
22 stand up there, so she's going too far in my opinion. This
23 is redirect. She can't go back and -- then I'm going to get
24 up and cross her for another hour but that ain't the way
25 it's supposed to work. She's limited on redirect to what I

TESTIMONY OF MICHAEL ADAMS

1 brought out.

2 THE COURT: Overruled. Continue.

3 Q Ms. Threatt, is this the bedding that Minor had on
4 her bed? Was this the comforter that you're referring to?

5 A It is, yeah.

6 Q You and Mr. Loftin never used that comforter, correct?

7 A No. We had our own bedroom.

8 Q And it wouldn't have fit your queen bed, correct?

9 A Correct.

10 MS. MINGO: Thank you, ma'am.

11 MR. BELL: I've got nothing further, Your Honor.

12 THE COURT: You may step down. You may call your next
13 witness.

14 MS. MINGO: Your Honor, the State calls Officer Mike
15 Adams to the stand.

16 The witness, MICHAEL ADAMS, was first duly
17 sworn and testified as follows, on:

18 DIRECT EXAMINATION

19 BY MS. MINGO:

20 Q State your name, please.

21 A Michael Adams.

22 Q Where do you work?

23 A Lancaster County Sheriff's Office.

24 Q How long have you been employed at the sheriff's
25 office?

TESTIMONY OF MICHAEL ADAMS

1 A A little over eight years now.

2 Q What are your duties at the sheriff's office?

3 A Investigator.

4 Q Were you an investigator back in January of 2008 in the
5 sheriff's office?

6 A Yes, ma'am.

7 Q At that time were you involved in the investigation
8 that led to the arrest of Joseph Bradley Loftin that led to
9 the charge of criminal sexual conduct?

10 A Yes.

11 Q What's the name of the minor in this case?

12 A Minor's name is Minor .

13 Q And when was this case initially reported to law
14 enforcement?

15 A We received the original incident report on January 4,
16 2008.

17 Q And who was the complainant?

18 A The complainant is listed as the mother, we received it
19 from the school when we got a call that day.

20 Q Did you arrive at the school that day?

21 A No, ma'am.

22 Q How did your involvement begin in the case?

23 A They contacted me about the case and let me know about
24 what was going on, and then I -- after the initial report
25 was taken I took over and scheduled interviews with the

TESTIMONY OF MICHAEL ADAMS

1 victim and followed up on what the allegations were.

2 Q During the course of your investigation, did you learn
3 through the victim -- did you learn through the victim where
4 the sexual incidents took place?

5 A Yes, ma'am, I did.

6 Q Where was those places?

7 A Various places. One is out of our jurisdiction in Fort
8 Lawn, the victim's home here in Lancaster, the mother's van
9 here in Lancaster, different places inside of the home.

10 Q Do you know what those places were inside of the home.

11 A Yes, ma'am.

12 Q What were those locations in the home?

13 A The main thing was the child was saying was her room,
14 the brother's room and the couch in the living room area.

15 Q You indicated she had a forensic interview at PCASA?

16 A Yes, ma'am. They did have a forensic interview a few
17 days after the incident report.

18 Q You say forensic interview, you don't have to give any
19 great detail, but what is that?

20 A It's a controlled interview that limits the way you ask
21 questions to a victim, especially children of victims to
22 insure that you do not lead them at any place, it asks very
23 open questions that aren't intimidating. It's a child
24 friendly atmosphere. Forensic interviews are usually
25 recorded and documented with a transcript.

TESTIMONY OF MICHAEL ADAMS

1 Q And was that done here in Lancaster?

2 A Yes, ma'am.

3 Q Upon receiving this information, learning what the
4 allegations were and where the incidents took place, what
5 did you do?

6 A After the interview we actually confirmed that the
7 incident was in our jurisdiction --

8 MR. BELL: I'm going to object to the word confirm
9 because that's not a proper word, I don't know where he is
10 going with this but I'm going to object to him using the
11 word confirm. He can say what he did next but I don't like
12 the use of the word confirm, that kind of means something
13 positive, absolute and that's why I'm objecting to that
14 word.

15 THE COURT: I thought that he said that the event
16 occurred in the jurisdiction of the sheriff's department?

17 MR. BELL: Your Honor, once I heard the word confirm I
18 started objecting.

19 THE COURT: Is that what he said?

20 MS. MINGO: That's what he said.

21 THE COURT: Overruled.

22 A After I answered the jurisdiction question I contacted
23 SLED, secured a search warrant and met up with Ms. Threatt
24 and the victim at the residence and conducted a search
25 warrant with SLED.

TESTIMONY OF MICHAEL ADAMS

- 1 Q Okay. Do you know when that occurred?
- 2 A It would have been January 10th of 2008.
- 3 Q SLED agents came to the residence?
- 4 A Yes, ma'am.
- 5 Q What was it that you requested them to do?
- 6 A To process the scene, to photograph the incident
- 7 location and do testing to see if there were DNA or anything
- 8 to either confirm or refute what the victim was saying to
- 9 us.
- 10 Q Did Ms. Threatt consent to the search, Virginia
- 11 Threatt?
- 12 A Yes, ma'am, she did consent to a search.
- 13 Q Did you yourself collect any evidence in this case?
- 14 A No, ma'am. Everything was turned over to SLED. They
- 15 did release a little bit of the evidence with us as some
- 16 burnt clothes and they turned it over to us since it didn't
- 17 require processing and it was secured at the sheriff's
- 18 office.
- 19 Q You indicated there was some DNA testing in this case.
- 20 A Yes, ma'am.
- 21 Q Prior to the DNA testing, did you have to collect
- 22 anything from Mr. Loftin, a sample from him?
- 23 A I did, but it was not prior to the DNA testing.
- 24 Q But you collected what type of sample from him?
- 25 A I collected a buccal swab, which is basically skin

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1 tissue inside of your mouth that provides a DNA sample of
2 whoever you're talking to.

3 Q How about with Minor ?

4 A Yes, ma'am.

5 Q Did you take a swab of her?

6 A I believe I was there but I'm thinking it was our CSI,
7 crime scene investigator, that actually completed this
8 buccal swab.

9 Q Where did that take place? Was that done at the
10 sheriff's office?

11 A It was both the mother and the child came to the
12 sheriff's office.

13 Q Did you take Mr. Loftin's swab at the sheriff's office
14 as well?

15 A Yes, ma'am, at the detention center.

16 MR. BELL: No objection to State's 15 and 16.

17 Q I'm going to show you what has been marked as State's
18 15.

19 MR. BELL: Again, in the interest of time once I say
20 there's no objection she can tell him what they are, they
21 are in evidence as far as I know.

22 MS. MINGO: Your Honor, I have to hand it to him so he
23 could identify it.

24 THE COURT: Go ahead.

25 Q What is State's Exhibit 15?

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1 A This is the four buccal swabs we received from Joseph
2 Loftin.

3 Q Okay. And State's 16?

4 A These are the buccal swabs from the victim, Minor
5 Minor , and her mother, Virginia Threatt.

6 Q Okay. Investigator, what is a rape kit? Are you
7 familiar with that term?

8 A Yes, ma'am. It's just a generalized term where a rape
9 victim is victimized, within the use of 72 hours you try to
10 secure as much evidence on a person's body that is
11 available, anything from DNA tissue to semen, whatever you
12 can get. And like I said, usually it's done within 72
13 hours, you take them to the emergency room or around here we
14 do have Palmetto Citizens Against Sexual Assault and
15 sometimes I can arrange for the doctor to meet us there and
16 perform the actual examination.

17 Q But this has to be done within 72 hours?

18 A Yes, ma'am.

19 Q Do you know why it has to be done within 72 hours?

20 A Usually after 72 hours SLED has said they can't take
21 them. Primarily people take baths, the evidence is so
22 comprised at that time it affects taking the kit itself.

23 Q Were you able to do a rape kit in this case?

24 A No, ma'am.

25 Q Is that the reason due to the time lapse?

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1 A Yes, ma'am.

2 MS. MINGO: Your Honor, I understand there's no
3 objection but I want to formally introduce, or move to
4 introduce State's Exhibits 15 and 16 into evidence.

5 THE COURT: Motions is granted.

6 (The buccal swabs were received as State's 15
7 and 16.)

8 MS. MINGO: Answer anything Mr. Bell may have.

9 THE COURT: Cross examination?

10 CROSS EXAMINATION

11 BY MR. BELL:

12 Q So your involvement commenced on the 7th and 8th of
13 January of '08?

14 A Excuse me? I didn't understand the question.

15 Q Your involvement?

16 A Started about January.

17 Q 7th or 8th?

18 A Yes, sir. That's when I received the first call in the
19 case, the 7th.

20 Q Because you didn't respond to Buford school or high
21 school or wherever it was.

22 A No, sir.

23 Q Detectives get called in because the street troopers or
24 street deputies aren't going to handle it, you're called in
25 when they aren't going to do anything.

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- 1 A Right. A report is taken and assigned to an
2 investigator.
- 3 Q Well, what I'm saying is the report initially was taken
4 by Mike Miller who was a deputy sheriff on the road.
- 5 A Yes, sir.
- 6 Q They don't do follow-ups on these type of incidents.
- 7 A No, sir.
- 8 Q So you get called in, or you've got a system where
9 somebody gets assigned a case, you get assigned a case and
10 you met with mama, Ms. Threatt, met with the daughter,
11 correct?
- 12 A Yes, sir.
- 13 Q Got the general location of the house and everything,
14 you then went to this interview at the Palmetto place over
15 there at York Street?
- 16 A Yes, sir.
- 17 Q It was video recorded?
- 18 A It was videotaped.
- 19 Q Okay.
- 20 A Video and audio.
- 21 Q I understand. Video, picture?
- 22 A Uh-huh.
- 23 Q And then you get search warrants.
- 24 A Yes, sir.
- 25 Q Because you're the lead investigator for Lancaster

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1 County. And the search warrant is to -- probably got them
2 over there somewhere -- and you go through and you're
3 looking for stuff in their house.

4 A Yes, sir.

5 Q But you also -- did you go to Chester County and get a
6 search warrant for there?

7 A No, sir. I called Chester County and advised them of
8 this information and turned that part over to them if they
9 wanted to.

10 Q You're never involved in anything over there.

11 A No, sir.

12 Q But you're aware he ain't never been arrested in
13 Chester, aren't you?

14 A Sir?

15 Q He's never been arrested in Chester, you know that.

16 A I don't remember.

17 Q You don't know whether or not he has been arrested in
18 Chester?

19 A It has been five years, I haven't looked at his rap
20 sheet in five years.

21 Q Look at it before you come tomorrow. So we do the
22 search warrant and I'm assuming tomorrow -- this is when you
23 brought in SLED, right?

24 A Yes, sir.

25 Q This is going to be CSI Miami/Lancaster, right?

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- 1 A We bring in crime scene specialists.
- 2 Q SLED. And they send a bunch of people up here and they
- 3 are in here looking for stuff -- you're there, and I think
- 4 they took a cutting off of this thing and other things,
- 5 right?
- 6 A Yes, sir.
- 7 Q And they went back to Columbia with it, right?
- 8 A Yes, sir.
- 9 Q And then finally they came up with some DNA stuff,
- 10 didn't they?
- 11 A Yes, sir. They did send us a DNA report.
- 12 Q And, of course, you're familiar with all of that but
- 13 we're going to let them testify tomorrow. Okay. So you
- 14 went and got a warrant. When did you get the warrant?
- 15 A The arrest warrant or the search warrant?
- 16 Q The arrest warrant. Wasn't it about the 18th or --
- 17 A February 12th of 2008.
- 18 Q Was it that late, February?
- 19 A Yes, sir.
- 20 Q Before -- and, of course, this is considered
- 21 biohazard -- when did you get this from my client?
- 22 A His buccal swab was collected after he was arrested.
- 23 Q Well, was it a search warrant or voluntarily given?
- 24 A Search warrant.
- 25 Q That was pre my involvement?

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1 A I believe he had -- he told me during the search
2 warrant that he had retained you because he didn't want to
3 answer any questions at the time.

4 Q But neither he nor I objected to the search warrant of
5 putting the cotton swabs in his mouth.

6 A No, sir.

7 Q The only warrant that's been issued is the one for
8 criminal sexual conduct with a minor; is that correct?

9 A Yes, sir.

10 Q And, of course, by statute if you have got a certain
11 age thing it actually is the same thing as criminal sexual
12 conduct second degree, do you remember?

13 A It's similar.

14 Q Right. And the timeframe in the warrant -- and I
15 apologize, Mike, I can't find my copy -- but the timeframe
16 in the warrant, is it identical to the original indictment
17 that was returned by the grand jury on April 5th of 2008 in
18 that it read on or about August of '07 through December of
19 '07, is that what the warrant said?

20 A I believe so. I don't have a copy of it in front of
21 me.

22 Q But the warrant wasn't in anymore detail than this as
23 far as a timeframe.

24 A No, sir. It was over a six or seven month time period.

25 Q But the problem is even in interviewing the little girl

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- 1 who is the only witness, you cannot tie her down as to a
2 date, we just had to start with a month; is that correct?
- 3 A She started with end of the season.
- 4 Q I understand. But listen to my question, you could not
5 through your investigation with her and whoever else talked
6 to her, you could not tie her down to a day such as Monday,
7 Tuesday, Wednesday, Thursday or Friday, or a day such as
8 August 1st, August 2nd, August 3rd? You could not tie her
9 down to a day.
- 10 A No, sir.
- 11 Q The best you could get out of her was a month.
- 12 A Yes, sir.
- 13 Q And the way y'all put it was some time in August of
14 '07, correct?
- 15 A I believe but I'm not sure.
- 16 Q And then we couldn't tie it down in December either
17 because the warrant in the first indictment said some time
18 in December of '08 -- excuse me, '07, right?
- 19 A Well, it was many times during this time.
- 20 Q I understand, but we couldn't get an ending date,
21 that's what I am trying to say. We couldn't get an ending
22 date on the warrant on the first indictment; is that
23 correct?
- 24 A Right, no exact date and time.
- 25 Q I understand. Well, on this indictment witness, Adams

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- 1 LCS00800317, is that the case number?
- 2 A I'm not sure.
- 3 Q Well, look in your file. Have you got it up there?
- 4 A What is the number again?
- 5 Q 0800317.
- 6 A Yes, sir, that's our case number.
- 7 Q And this is the back side of indictment, it shows
- 8 Adams, I'm assuming that was you.
- 9 A Yes, sir.
- 10 Q You went to the grand jury.
- 11 A No, I didn't go to the grand jury.
- 12 Q You didn't testify?
- 13 A No, sir.
- 14 Q Okay. Well, who went to the grand jury to get my
- 15 client indicted?
- 16 A I'm not sure.
- 17 Q Your name is on there, that's a copy of what had to be
- 18 served on my client April 8th of '08. And the State amended
- 19 the indictment, and it was presented to the grand jury on
- 20 October 13th of 2011, again I've got your name on here. Did
- 21 you go to the grand jury on April -- October 13th of 2011?
- 22 A I don't remember.
- 23 Q Well, were you in any way as the chief investigating
- 24 officer and the officer who signed the warrant arresting my
- 25 client for CSC? Were you involved in whoever made the

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1 decision to amend it by giving a stop date of December 31st
2 of '07? Were you involved in that?

3 A I don't believe I was ever at any grand jury
4 proceedings.

5 Q You weren't involved in that in any way?

6 A I don't believe so.

7 Q So in reference to this brand new indictment that just
8 got true billed last Thursday, February, where the State
9 came up with an additional charge, you weren't involved in
10 that either?

11 A No, sir.

12 MR. BELL: All right. Thank you.

13 MS. MINGO: That's all for this witness, Your Honor.

14 THE COURT: Thank you, Mr. Adams, you may step down.
15 Short witness or do you want to call it a day?

16 MS. MINGO: No, sir, I think that's it.

17 THE COURT: All right. Is 9:00 going to be okay to
18 come back in the morning? If it's not I need to know if
19 anybody has a problem with 9:00. We're getting ready to
20 recess for the day and I need to talk to you about
21 something, though, I'm getting ready to ask you to do
22 something that actually is going to be really hard. I told
23 you you can't talk to anybody about the case, can't let
24 anybody talk to you about the case. See, that applies not
25 just to strangers, it applies to family members, and you

1 know they're going to want to know about why are you here,
2 why are you coming home, why haven't I heard from you or
3 you've already told them that you got picked. But both
4 sides in this case have picked the 14 of you as to what they
5 believe to be fair and impartial jurors, if they were to
6 later find out -- and I've had it happen -- if they were to
7 later found out that you were talking to somebody and they
8 told you what they heard about the case or these kinds of
9 cases and what they think about these kinds of cases, then
10 at the end of the day -- first of all at the end of the day
11 it's very likely that one side or the other is going to be
12 unhappy with what you do, that's why you're here. If they
13 were -- one side or the other were later to learn that one
14 or more of you talked to other people about this case or let
15 other people talk to you about the case they're going to
16 think they got a raw deal and they're going to think that
17 those conversations influenced your decision, whether they
18 did or not that's what the belief will be that they did,
19 then they will think they didn't get a fair shake, one side
20 or the other. So I'm going to ask you to tell your family,
21 friends and loved ones that you will tell them everything
22 they want to know and more once the case is over. Ladies
23 and gentlemen, I'm going to excuse you for the evening, see
24 you at 9:00 in the morning. Thank you so much.

25 (The jury left the courtroom.)

1 THE COURT: Anything we need to talk about, take care
2 of today before we call it a day?

3 MS. MINGO: Not from the State, Your Honor.

4 MR. BELL: The State hadn't said anything that my
5 client continue on bond, he's been here, he's been here
6 every time he has done anything.

7 THE COURT: We continued him out on bond last time,
8 didn't we?

9 MR. BELL: He hadn't gone anywhere and he will come
10 back to court anytime.

11 THE COURT: Mr. Bell, explain to your client if he is
12 not going to show up tomorrow for whatever reason we will
13 continue the case without him.

14 (Court adjourned for the day and resumed on
15 Wednesday, February 15, 2012.)

16 THE COURT: Are we ready for the jury?

17 MS. MINGO: Your Honor, I went over the witness list,
18 we had a witness whose name was Larry Higgins of Founders
19 Federal Credit Union. Your Honor I found out yesterday he
20 is not coming to court, there is a replacement, her name is
21 Anna Epps so I would ask the Court to I guess voir dire the
22 jury as to Anna Epps from Founders Federal Credit Union as
23 opposed to Mr. Higgins who can't be here.

24 THE COURT: Mr. Bell?

25 MR. BELL: I'm trying to think how to respond Your

1 Honor. I object.

2 THE COURT: You have to have a ground.

3 MR. BELL: It's their fault that that witness is not
4 available this late in the game, I don't think they can
5 substitute their own witness without the grounds -- without
6 knowing they subpoenaed the other person, because I remember
7 them. If you don't subpoena them and they didn't show up
8 then you have got to live with that and therefore that's my
9 objection, Your Honor. And we have got the possibility that
10 we've got the additional matter that that witness was not
11 listed in front of the jury.

12 MS. MINGO: Your Honor, he was subpoenaed. I do not
13 see the issue, if he's not going to be here someone from his
14 department is going to be here and the jury can hear the
15 name today.

16 MR. BELL: Would the State state on the record why
17 they're not making him honor the subpoena? Is he dead? Is
18 he in the hospital? What is stopping him from, you know --
19 Your Honor, subpoenas are issued by the clerk of court, they
20 haven't got around the rule yet to let us or you sign them,
21 but if a subpoena was served they can't just walk away from
22 it and if the subpoena was served and the State announced
23 that person as the witness yesterday I think they have to go
24 through a procedure to get that witness excused, they just
25 can't forgive them. Because I don't know why he is not

1 here, why he is not on the subpoena and the State is not
2 telling you he is dead or in the hospital or can't be up
3 there.

4 MS. MINGO: Your Honor, I don't know the specifics. He
5 is the founders Federal Credit Union attorney, he told me he
6 would be here, if he couldn't he would send someone in his
7 place, that was the -- I had no other name at the time that
8 I issued the subpoena but Larry Higgins.

9 THE COURT: All right. I will bring the jury in and
10 voir dire the jury and if he -- if you want any additional
11 questions let me know. Let's bring the jury in. Anything
12 else besides that?

13 MS. MINGO: Nothing else, Your Honor.

14 (The jury returned to the courtroom.)

15 THE COURT: Good morning and welcome again, ladies and
16 gentlemen. Before we begin this morning, I need to ask you
17 some questions. There is a witness who may be called today
18 whose name was not given to you or announced in the jury
19 assembly room when I asked all of those questions. I need
20 to ask you some questions about this witness to make sure
21 there is no conflict. The witness' name is Anna Epps as I
22 understand it who is employed at Founders Federal Credit
23 Union in Lancaster I guess it is.

24 MS. MINGO: Yes, sir.

25 THE COURT: So my first question is are any of you

1 related by blood or related by marriage to the witness, Anna
2 Epps? If you are would you raise your right hand? And the
3 next question is have any of you ever had a close personal
4 or social relationship with that witness, the witness being
5 Anna Epps? And if so would you raise your right hand? Let
6 the record reflect that none of the jurors raised their
7 hands to either of these questions. Any additional
8 questions, Solicitor?

9 MS. MINGO: Not from the State, Your Honor.

10 THE COURT: From the defense?

11 MR. BELL: No, sir, Your Honor.

12 THE COURT: Thank you so much, ladies and gentlemen.
13 You may call your first witness.

14 MS. MINGO: Your Honor, the State calls Margo Dixon.

15 MR. BELL: Your Honor, I object to this witness in her
16 totality based on the previous motions we've made. I've got
17 to put it on the record that supposedly there's a video that
18 they can't find and I've never been provided with a copy of
19 it or view it in any way.

20 THE COURT: I understand that motion.

21 MS. MINGO: And my continuing objection, Your Honor.

22 THE COURT: I think it's a matter of cross examination.
23 You may proceed.

24 The witness, MARGO DIXON, was first duly sworn
25 and testified as follows, on:

1 DIRECT EXAMINATION

2 BY MS. MINGO:

3 Q State your name, please.

4 A Margo B. Dixon.

5 Q Where are you employed?

6 A Palmetto Citizens Against Sexual Assault, the
7 Children's Advocacy Center.

8 Q Can you give the Court a little bit of your educational
9 background and any training you might have?

10 A I can. I attended Benedict College where I majored in
11 english and psychology. I am currently in Catherine
12 University majoring in forensic psychology for my master's
13 which will be completed on March 12th. I have been doing
14 forensic interviews since 2000. I went through Finding
15 Words of South Carolina, the first class as well as advanced
16 training. I've received training from Huntsville, Alabama;
17 San Diego, California; Columbia, South Carolina; Charleston,
18 all through the University of South Carolina as well as the
19 National Children's Alliance.

20 Q You stated that you're employed at Palmetto Citizens
21 Against Sexual Assault?

22 A I am.

23 Q What services do you provide there?

24 A I'm Children's Advocacy Center director as well as lead
25 forensic interviewer for the 6th Judicial Circuit where I

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1 conduct forensic interviews.

2 Q How long have you been conducting forensic interviews?

3 A Since 2000.

4 Q And about how many do you think you have done roughly?

5 A Over 1,000.

6 Q Can you tell the jury what a forensic interview is?

7 A In laymen's terms it's a fact finding interview, it's
8 non-biased. It's where we don't solicit or work for law
9 enforcement nor do we work for DSS or any other state
10 agencies, but rather we work for the child to allow them the
11 opportunity to express their feelings or the scenario as to
12 what took place from their point of view. It's not leading
13 and it's factually based.

14 Q And how are the forensic interviews conducted to assess
15 possible child abuse?

16 A It's conducted by closed circuit, it's a one on one
17 interview in a child friendly setting. An example would be
18 that the child is in the room with the forensic interviewer
19 and we use a RATAC protocol where we determine the repour,
20 we develop a repour with the child, we determine as far as
21 what they're capable of doing for that age, we base it on
22 their age range. I wouldn't interview a six year old the
23 same way I would interview a 12 or 13 year old.

24 Q What rules or guidelines, if any, are set forth in the
25 interview?

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- 1 A We do have guidelines, and our guidelines are that if I
2 ask a question and they don't know the answer, it's okay
3 that they don't know the answer. They don't have to make up
4 something to appease me. If I ask them a question and they
5 don't understand, they can let me know they don't understand
6 and I will ask something else. If at any given time I say
7 something that's not right they do have a right to stop me
8 and correct me. I would never put them in a position as a
9 child to call me a liar as an adult.
- 10 Q Is the child informed of those guidelines?
- 11 A They are.
- 12 Q Are the child's parents or any guardians present for
13 the interview?
- 14 A No. Children -- no parents or guardians are present
15 for the interview. The only ones that are allowed to
16 observe the interview are the investigating officer as well
17 as any other agency that is involved at that time.
- 18 Q And where is the interview conducted?
- 19 A In Lancaster they're conducted in our office at 106
20 North York Street.
- 21 Q And you indicated that the investigating officer is the
22 only other person who would observe this interview?
- 23 A Correct.
- 24 Q In what manner is he able to observe the interview?
- 25 A We have two options, we have a two-way mirror where

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1 they are on the opposite side of the mirror observing the
2 interview, as well as closed circuit TV, and they can
3 observe from the television as well.

4 Q But not in the room with the actual child?

5 A They are not in the room.

6 Q Do you use any measures to assess the child's
7 competency?

8 A When I spoke earlier about the RATAC protocol as far as
9 building repour, within that repour setting we will
10 determine from does the child know their make-up, their
11 family make-up, who is in the home, who is not in the home,
12 what schools do they attend as far as their grade level,
13 their classes, things of that nature. We also do a
14 situation where we do anatomy with certain ages and with the
15 anatomy pieces the way they identify the body parts so they
16 can educate me to know they call their body parts. If they
17 call their penis a tootsie roll I know they're talking about
18 their penis and not a piece of candy.

19 Q And what type of questioning format is used during the
20 interview?

21 A They're non-leading questions. We ask who, what, when,
22 where and why without being direct to those exact questions.

23 Q Are you familiar with the term delayed report?

24 A I am.

25 Q And what does that mean?

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1 A A delayed report or delayed disclosure is when a child
2 does not tell abuse when it first happens. Most children
3 are abused not by strangers but somebody they love and
4 trust, so often times when the child is sexually or
5 physically abused, they don't run right back and tell
6 because a lot of times there's no injuries of sexual abuse
7 right off. So it's hard to pretty much tell on someone who
8 they trust and feel as though that person loves them or they
9 feel as though they are a part of the actual incident they
10 initiated it themselves, so to tell on that person would be
11 like telling on themselves as well.

12 Q Are there any factors that commonly play a role in the
13 child's delayed reporting?

14 A The child's age can be an issue, the person themselves
15 who are the alleged abuser could play a major roll as to why
16 the delayed disclosure did not come about. Various
17 situations in the home could be reasons as to why there was
18 a delayed disclosure.

19 Q Well, during a forensic interview, do children
20 necessarily disclose all details of past abuse?

21 A They don't.

22 Q Do you know why or why not?

23 A It's various reasons. A lot of times it could be that
24 they aren't sure whether or not it is okay to tell because
25 I'm someone that they just met and we have 25 to 30 minutes

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1 together and I want them to trust me, a stranger that they
2 really don't know, about something that happened to them due
3 to someone else that they really trusted, that could be an
4 issue. Their age could be an issue. The way the initial
5 outcry came about could be a major issue.

6 Q Do they necessarily recall the chronological order of
7 events in cases of chronic ongoing sexual abuse?

8 A They don't. A lot of times they may circle it around
9 in an event that took place in their life, a holiday,
10 something that happened in the family, it just -- is various
11 reasons why they won't recall exactly what the chronological
12 stage is. And what we may consider to be major may not be
13 as major to them in asking questions.

14 Q On what date did you conduct a forensic interview with
15 Minor ?

16 A January 9, 2008.

17 Q And what agency referred the child for a forensic
18 interview?

19 A Lancaster County Sheriff's Department Investigator Mike
20 Adams.

21 Q In your opinion did she appear to be competent?

22 A She did.

23 MR. BELL: Objection, Your Honor, she's not qualified
24 to answer that. She has not -- one, she hadn't been
25 declared as an expert in the field. And two, I think that

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1 would take somebody that has got some training as a
2 psychiatrist or a psychologist or even a medical doctor.

3 THE COURT: Solicitor?

4 MS. MINGO: Your Honor, I disagree. She's stated she
5 takes measures to assess the child's competency, she's
6 talked about what steps she takes to do that. I don't think
7 she has to necessarily be qualified as an expert to
8 determine if a child is competent to answer questions.

9 THE COURT: I'll sustain the objection.

10 MR. BELL: Ask it be stricken from the record and the
11 jury.

12 THE COURT: I'm sorry?

13 MR. BELL: Ask it be stricken from the record and the
14 jury be told to forget it.

15 THE COURT: I agree. The jury will disregard the last
16 statement from the witness in response to the last question
17 and I order it be stricken from the record.

18 Q Let me ask you this, Ms. Dixon: What, if any,
19 safeguards were used when you were interviewing this
20 particular child?

21 A As far as --

22 Q To prevent any type of influence? Were the questions
23 open-ended?

24 A The questions were open-ended but the child was also in
25 a room we say three doors locked away from the actual family

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1 members or anyone who could be become emotional or would
2 have any influence as to whether or not she would disclose
3 or withhold any information.

4 Q And did she make a disclosure to you?

5 A She did.

6 Q And what, if anything, did Minor relate to you
7 concerning the time or timeframe of sexual assaults?

8 A She stated that it happened on more than one occasion,
9 that it happened in her home as well as in another county in
10 Fort Lawn, it happened in her mom's room and various areas
11 of the house.

12 Q Did she give you a timeframe?

13 A She stated that it took place the first year in his
14 bedroom, September, and the first time he touched her was
15 around August. So the beginning of August was the first
16 time that he ever touched her.

17 Q Do you know what year we're talking about?

18 A The previous year.

19 Q 2007?

20 A 2007, I'm sorry.

21 MR. BELL: Your Honor, bear with me. If the statement
22 she just made, the first statement she made, one the
23 solicitor started to ask her about times --

24 THE COURT: I can't understand you.

25 MR. BELL: I'm sorry, I'm having to think this through.

TESTIMONY OF MARGO DIXON

1 The first statement that she made was a result of the
2 solicitor's questions about what the child said, she said
3 the first year in the bedroom, now, then she backed up to
4 August and the solicitor asked her what year was that, it
5 was in '07. So if the State through this witness is trying
6 to illicit something that occurred in '08 and then you've
7 agreed with me that the cutoff is December of '07 for this
8 jury to consider anything, so I'm objecting to her assuming
9 she's saying the first year in the bedroom. I'm not clear
10 if she's saying '08 or '07 and I understand you're going
11 to --

12 THE COURT: I thought she just said '07.

13 MR. BELL: No. She backed up to '07 when we talked
14 about August. But the first incident was the first year she
15 gave in the bedroom and I don't know what year she's talking
16 about.

17 THE COURT: Okay. That's a matter of cross
18 examination, overruled.

19 Q So again, Ms. Dixon, she said it started around August
20 or September of '07.

21 A '07.

22 Q And I think you commented on the places that she said
23 it occurred?

24 A Yes.

25 Q Did you say various places in her mom's house?

TESTIMONY OF MARGO DIXON

1 A Yes.

2 Q Do you know specifically what those places were in the
3 house?

4 A The bedroom, the living room, her bedroom, her
5 brother's bedroom.

6 MS. MINGO: Answer anything Mr. Bell has.

7 THE COURT: Cross examination?

8 MR. BELL: Yes, sir.

9 CROSS EXAMINATION

10 BY MR. BELL:

11 Q Ms. Dixon, where is the so called video?

12 A The video I could not tell you, Mr. Bell. I have
13 looked for the video personally myself.

14 Q In other words it's lost.

15 A It's lost, that's the best way I can put it, it's lost.
16 But we have a transcript of it that's done.

17 Q I understand, I have a copy of the transcript but I
18 haven't got a video. So your guidelines under all of these
19 names you gave under something called American Professional
20 Society Under the Abuse of Children guidelines, and that's
21 all APSAC?

22 A APSAC.

23 Q That's the main people in the country that issue these
24 guidelines, kind of like America Medical Associations and
25 the bar association?

TESTIMONY OF MARGO DIXON

- 1 A Correct.
- 2 Q And these guidelines require you to do certain things,
3 do they not?
- 4 A Those guidelines as well as another set, yes, sir.
- 5 Q As well as what?
- 6 A As well as another set of guidelines, yes, sir.
- 7 Q What are they called?
- 8 A I have guidelines set forth from my board, but those
9 are the national guidelines, you're absolutely correct.
- 10 Q These are the national guidelines?
- 11 A Correct.
- 12 Q Then you've got some local guidelines that are set by
13 your board?
- 14 A Yes.
- 15 Q Do any of your local guidelines conflict with these
16 federal guidelines?
- 17 A They do not.
- 18 Q Wrong word, that's not federal, with whoever these
19 people are guidelines?
- 20 A The association, yes. They do not.
- 21 Q And the guidelines require you to do what you told the
22 jury, but videotaping, in other words picture and sound.
- 23 A Uh-huh.
- 24 Q Picture and sound?
- 25 A Yes.

TESTIMONY OF MARGO DIXON

- 1 Q And you're supposed to keep that, aren't you?
- 2 A I'm to keep a copy of it, yes, sir.
- 3 Q Well, whoever -- but you're not supposed to misplace it
- 4 and you're not suppose to lose it.
- 5 A Right.
- 6 Q Look at this. Is this your stuff or is this going to
- 7 be the medical doctor?
- 8 A That's medical.
- 9 Q So Ms. Dixon, all of this writing here is going to be
- 10 civilians and/or the medical doctor?
- 11 A The medical doctor, yes, sir, none of that is mine.
- 12 Q Yes, ma'am. I just want to make sure that's all of the
- 13 medical doctor's.
- 14 A Yes, sir.
- 15 Q This young lady on January 9th of '08, you asked her a
- 16 question -- and I don't want to put out the name, okay?
- 17 A Okay.
- 18 Q Look on page -- I think it's page two, I think, I'm
- 19 sorry -- page two of the case file.
- 20 A Okay.
- 21 Q Help you refresh your memory.
- 22 A All right.
- 23 Q See about a little over half down where the question
- 24 is, "Do you have a best friend at school before this
- 25 happened?"

TESTIMONY OF MARGO DIXON

- 1 A Yes.
- 2 Q And her answer was yes --
- 3 A Yes.
- 4 Q -- or yeah. Who is your best friend? I don't want
- 5 to --
- 6 A She called a name --
- 7 Q But don't give a name because this child is not a
- 8 witness.
- 9 A Right.
- 10 Q And then you asked her, and then skip the name, and so
- 11 and so told on you and the answer was no; is that correct?
- 12 A Correct.
- 13 Q But she's not your friend anymore and the answer was
- 14 uh-huh, that's how y'all typed it up, of course we don't
- 15 have the video to look at it. And you answered her, "Why
- 16 not?" And the answer by Minor was, "She cuts herself and
- 17 she tried to kill herself all of the time over boys and I
- 18 don't like her;" is that correct?
- 19 A That was her answer.
- 20 Q Yes, ma'am. And then this thing about the drinking
- 21 incident she said she drank a Budweiser.
- 22 A What page are you referring to?
- 23 Q I am on page five.
- 24 A Okay.
- 25 Q About a third of the way down what he gave me a beer --

TESTIMONY OF MARGO DIXON

1 she says, "He gave me a beer and alcohol. What kind of beer
2 did he give you? A Budweiser." Do you see that?

3 A Yes, sir.

4 Q "Can or bottle. Bottle. How many Budweisers did you
5 drink? I only drank a little bit of one." And then you
6 asked, "What kind of alcohol it? It was this green fruit
7 drink. And the question was, "What color was it?" It
8 was -- the gin was just see-thru;" is that correct?

9 A Correct.

10 Q Okay. Now, the -- go to page seven about two-thirds of
11 the way down because you don't have any lines numbered.

12 A I sure don't.

13 Q That's okay, we're going to get through it. See where
14 the question is okay about two thirds of the way down?

15 A Uh-huh.

16 Q And this is your question, "Okay. The first time he
17 touched you in your private area, where were you?" Her
18 answer?

19 A "We were hunting."

20 Q "Who was hunting with you?" Her answer?

21 A "Just me and him."

22 Q "When was that?"

23 A "I'm not sure."

24 Q "Was it still in August?"

25 A "No. It was like starting in September."

TESTIMONY OF MARGO DIXON

1 Q "What, daytime or nighttime?"

2 A "It was daytime, it was around 4:00."

3 Q And then your answer was, "It was just "-- you're as
4 bad as me, you give more than one question -- "And it was
5 just you and him? Where were you and him hunting at?" Next
6 page, what is the answer?

7 A "In Fort Lawn where his -- this woman he knows, she's
8 dead now, her name is Abby and she had a bunch of land, we
9 would hunt on that land and that is where we were."

10 Q And then skipping on down. See the question right
11 above the line in the page about a third of the way down?

12 A Okay.

13 Q "Did you have sex with him anymore after that?" And
14 her answer was "Uh-huh;" is that correct?

15 A Yes.

16 Q "Where was the next time you had sex? I think we were
17 hunting again;" is that correct?

18 A Correct.

19 Q "Where? Deer stand, same place;" is that correct?

20 A That's correct.

21 MR. BELL: Thank you.

22 THE COURT: Any redirect, Solicitor?

23 MS. MINGO: That's all from this witness, Your Honor.

24 MR. BELL: Assuming the witness is under subpoena no
25 objection to her being released from her subpoena.

TESTIMONY OF MICHAEL GRAHAM

1 THE COURT: You may be released from your subpoena.

2 Call your next witness.

3 MS. MINGO: Your Honor, the State calls Mike Graham.

4 The witness, MICHAEL GRAHAM, was first duly

5 sworn and testified as follows, on:

6 DIRECT EXAMINATION

7 BY MS. MINGO:

8 Q State your name for the record, please.

9 A Michael Graham.

10 Q Where do you work, Mr. Graham?

11 A I work for Target Corporation.

12 Q What do you do for Target?

13 A I'm an assets protection business partner.

14 Q How long have you worked for Target?

15 A Fourteen years in March.

16 Q I'm going to show you what has been marked as State's

17 Exhibit 21. I will let you take a look at that. Do you

18 know what that is? Can you identify it?

19 A Yes, ma'am, it's a Target receipt.

20 Q From what store?

21 MR. BELL: Your Honor, it's not in evidence yet and

22 therefore --

23 THE COURT: I couldn't understand you.

24 MR. BELL: I apologize, Your Honor. The document is

25 not in evidence, she asked the witness, "Do you know what it

TESTIMONY OF MICHAEL GRAHAM

1 is?" And he said, "Yeah, I know what it is." We can't get
2 into particulars off that document because he's not going to
3 have any independent knowledge other than reading that piece
4 of paper and it is not in evidence.

5 THE COURT: Solicitor?

6 MS. MINGO: Your Honor, I believe Ms. Threatt has
7 already testified she went to Target, received the receipt,
8 stated that's the receipt she received. I'm asking
9 Mr. Graham to authenticate the receipt.

10 MR. BELL: No, sir, Your Honor. It doesn't matter,
11 Your Honor, the document is not in evidence. It was not put
12 into evidence through that witness because I objected at
13 that point and I don't think -- it's not in evidence.

14 THE COURT: It's not in evidence.

15 MS. MINGO: Your Honor, at this time I would move to
16 introduce State's Exhibit 21 into evidence.

17 MR. BELL: And I object, Your Honor. That's not his
18 document and it's a document that may have been generated by
19 Target but it ain't his document, it belongs to the person
20 for whom it was generated for.

21 MS. MINGO: Your Honor, Ms. Threatt testified that is
22 the document that she received when she went shopping,
23 Mr. Graham is a witness with knowledge -- I believe the rule
24 is 901 on authentication, he can authenticate the Target
25 receipt as a valid receipt, that that came from the store.

TESTIMONY OF MICHAEL GRAHAM

1 THE COURT: Proceed further down that trail, we'll see
2 where it goes. But for the present time I'm sustaining the
3 objection.

4 Q Is that a Target receipt?

5 A Yes, ma'am.

6 Q How are you able to identify it as a Target receipt?

7 A First it's identified with the Target logo on the back.
8 On the back it has our return policy, and then based on the
9 receipt ID I can validate what store this receipt was from.

10 Q What store is that?

11 A It would be the Monroe Target located on 2901 West
12 Highway 74.

13 Q Do all Target stores have a --

14 A It has a store number.

15 Q It has a store number?

16 A Yes, ma'am.

17 Q And that's for the Monroe location on that receipt?

18 A Yes, ma'am?

19 MS. MINGO: Your Honor, at this time I move to
20 introduce State's Exhibit 21 into evidence.

21 MR. BELL: Still objecting, Your Honor.

22 THE COURT: Overruled, I'll admit it.

23 (The receipt was received as State's 21.)

24 Q Were there purchases made according the receipt? You
25 don't have to tell me what they were.

TESTIMONY OF MICHAEL GRAHAM

1 A Yes, ma'am.

2 Q Are you able to tell by the receipt what form of
3 payment was used?

4 A Yes, ma'am.

5 Q What form of payment was used?

6 A It appears to be a debit card.

7 Q Does the receipt include a day, the date?

8 A It does, December 9th of 2007.

9 Q Is there a time reflected on the receipt?

10 A There is, 2:39 p.m.

11 Q And I apologize if I asked you this already,

12 Mr. Graham, what is your store address in Target?

13 A The store address is 2901 West Highway 74 in Monroe.

14 MS. MINGO: Answer anything Mr. Bell has.

15 THE COURT: Mr. Bell?

16 CROSS EXAMINATION

17 BY MR. BELL:

18 Q No customer signature on that?

19 A No, sir.

20 MR. BELL: The witness may be excused, Your Honor.

21 MS. MINGO: Nothing else from the State, Your Honor.

22 THE COURT: Thank you, sir, you may step down.

23 MS. MINGO: Anna Epps.

24 The witness, ANNA EPPS, was first duly sworn

25 and testified as follows, on:

TESTIMONY OF MICHAEL GRAHAM

1 DIRECT EXAMINATION

2 BY MS. MINGO:

3 Q State your name, please.

4 A Anna Epps.

5 Q And where do you work, Ms. Epps?

6 A Founders Federal Credit Union.

7 Q For how long have you worked for Founders Federal
8 Credit Union?

9 A Twenty years.

10 Q What were your duties there?

11 A I'm a compliance officer, I work in the legal
12 department. I oversee the rules and regulations as well as
13 subpoenas and any other type of legal process that's served
14 at Founders.

15 Q Okay.

16 MR. BELL: Your Honor, I've got to raise another
17 objection, this is in correspondence to the objection I made
18 in Exhibit 21 that you just made in evidence. The
19 corresponding objection on this document is that Ms. Threatt
20 could have testified about that and she didn't, therefore I
21 am going to object to anybody else testifying about it. And
22 you haven't seen the document so it's kind of hard for me --

23 THE COURT: I don't know what you're talking about.

24 MR. BELL: I understand that, Your Honor, because you
25 haven't seen the document.

TESTIMONY OF ANNA EPPS

1 THE COURT: Let me have a side bar then.

2 (Bench conference was held.)

3 THE COURT: The objection is overruled.

4 Q I'm going to show you what has been marked as State's
5 Exhibit 24. You don't have to get into the particulars of
6 it, but can you just tell the Court what that is?

7 A It is a periodic statement that we send out monthly
8 from Founders Credit Union that shows all of the
9 transactions that occurred for a particular month, and this
10 month is December. It has the transactions that occurred
11 for the period on this particular document from 12-9-07 to
12 12-15-07.

13 Q And I'm sorry, what was the term that you used to
14 categorize, it's a monthly financial report?

15 A It was -- what we call it is a periodic statement.

16 Q Excuse me. Are periodic bank statements kept in the
17 normal course of business at Founders Federal Credit Union?

18 A Yes, ma'am, they are.

19 MR. BELL: Your Honor, at this time I would move to
20 introduce State's Exhibit 22 (sic) into evidence.

21 THE COURT: Admitted.

22 Q Can you tell the Court whose statement that is?

23 A Virginia Nichole Threatt.

24 MS. MINGO: And I apologize, Your Honor, I misspoke.
25 According to the court reporter it's actually State's

TESTIMONY OF ANNA EPPS

1 Exhibit 24 that I am moving into evidence, it's not 22.

2 THE COURT: All right.

3 (The document was received as State's 24.)

4 Q Virginia Threatt?

5 A Yes, ma'am.

6 Q And what's her address according to that statement?

7 A , Lancaster, South Carolina.

8 Q Were there any purchases made on December 9th of 2007
9 according to that statement?

10 A Yes, ma'am, there were debit card purchases.

11 Q Can you tell us where they were made?

12 A There was a debit card transaction at 2901 West
13 Highway 74 Monroe, North Carolina, the amount -- do you need
14 that?

15 Q You can give us that.

16 A In the amount of \$266.83. There was also a debit card
17 transaction at 2401 West Rossevelt Boulevard in Monroe in
18 the amount of \$35.23?

19 MS. MINGO: Answer anything Mr. Bell may have.

20 THE COURT: Cross examination?

21 MR. BELL: I've got no questions, Your Honor. No
22 objection to the witness be excused.

23 THE COURT: You may step down and you're excused from
24 your subpoena. You may call your next witness, Solicitor.

25 MS. MINGO: The State calls Melissa Wallace.

TESTIMONY OF MELISSA WALLACE

1 The witness, MELISSA WALLACE, was first duly
2 sworn and testified as follows, on:

3 DIRECT EXAMINATION

4 BY MS. MINGO:

5 Q State your name for the record, please, ma'am.

6 A Melissa Skipper Wallace.

7 Q By whom are you employed?

8 A I'm employed by the South Carolina Law Enforcement
9 Division, commonly known as SLED.

10 Q How long have you been employed there?

11 A I've been employed at SLED for approximately six and a
12 half years.

13 Q And to what department are you assigned at SLED?

14 A I am assigned to the crime scene and latent print
15 department.

16 Q And how long have you been assigned to that department?

17 A For all six and a half years.

18 Q And you process crime scenes?

19 A That's part of my job, yes.

20 Q What do you normally do when you process a crime scene?

21 A We discuss the case with investigators prior to
22 responding to the scene upon initial call for service. We
23 discuss anything that might need to be processed, any search
24 warrants that need to be obtained and things like that,
25 background information. Once we get to the scene we meet

TESTIMONY OF MELISSA WALLACE

1 the investigators again, we are briefed again, insure that
2 the paperwork is in order, search warrants or consent, we
3 get updates on any case information and then we proceed to
4 begin processing the scene.

5 Q What is it that you're looking for when you're
6 processing the crime scene?

7 A Any physical evidence related to the crime.

8 Q And how do you do it? Do you use any particular tools
9 or special light sources to look for evidence?

10 A It varies case by case. But generally speaking we
11 photograph the scene, we mark evidence for collection,
12 photograph it again and then we collect the evidence.
13 Depending on the type of case we may use additional tools to
14 process the scene, it just varies case by case.

15 Q Were you requested to process evidence in SLED case
16 number 08-00685?

17 A I was.

18 Q By whom, do you know?

19 A If I can refer to my notes. The original call for
20 assistance came from Investigator Mike Adams with the
21 Lancaster County Sheriff's Office.

22 Q And what location did he ask you to respond to to
23 process evidence?

24 A We met originally at the sheriff's office.

25 Q Did you process -- you did process evidence in the

TESTIMONY OF MELISSA WALLACE

- 1 case?
- 2 A We did, yes.
- 3 Q Was it a residence?
- 4 A That was, two of the scenes, yes.
- 5 Q Where was this residence?
- 6 A The first residence was at in
- 7 Lancaster.
- 8 Q In this particular case while you were at
- 9 in Lancaster, tell me what you were looking for.
- 10 A We were looking for any evidence related to the
- 11 criminal sexual conduct of a minor that had been reported,
- 12 and in this case we photographed the residence. And
- 13 typically with sexual assault cases we will use what we call
- 14 alternative light sources, it's just light sources that are
- 15 a different wave length than the eye, it uses filters to
- 16 view those. It causes bodily fluids commonly known to as
- 17 flores but it's also luminesce, it causes bodily fluids to
- 18 be produced by the white light.
- 19 Q Did any items flores in this case?
- 20 A We have several areas that we searched. We searched
- 21 the victim's bedroom, there was a brother that lived there
- 22 as well as searched his room, and the sleeper sofa and the
- 23 living room with those alternative light sources. We had
- 24 some areas that luminesced, it was the purple comforter from
- 25 the victim's bed, a light colored comforter, a fitted sheet

TESTIMONY OF MELISSA WALLACE

1 from the bed and pillow case, those were all collected from
2 the victim's bedroom. From the living room we collected two
3 cuttings from an egg crate mattress topper, and one from a
4 sofa cushion. And from the brother's room there was a dark
5 green pillow and two cuttings taken from the bed.

6 Q You indicated you took photos, correct?

7 A That's correct.

8 Q Well, let me ask you about something else: Did you at
9 any point go to Fort Lawn, South Carolina to process a deer
10 stand?

11 A I did.

12 Q Did you -- anything luminesce, is that the correct
13 term, at the deer stand?

14 A Being that the deer stand was outside it's hard to make
15 it dark enough to actually use those lights. We just did a
16 physical search of that for any evidence and we didn't
17 locate anything there.

18 MR. BELL: Your Honor, I think -- well, I don't know
19 what she wants to, but the State has shown me a series of
20 photographs, no objection whenever she wants to introduce
21 them.

22 THE COURT: All right.

23 Q How do environmental factors play a role -- I'm trying
24 to decide how to word the question. Do environmental
25 factors affect how DNA may be compromised?

TESTIMONY OF MELISSA WALLACE

1 A Environmental factors can affect any type of evidence.
2 Anything that's not protected is going to degrade over time.
3 Things that are more protected we have a better likelihood
4 of collecting over a long period of time, but anything
5 that's exposed to the elements is going to breakdown; DNA,
6 trace evidence, fingerprints or anything like that is going
7 to degrade over time.

8 Q How about a pregnancy kit, did you locate that at the
9 residence, ?

10 A It was provided to me in a bag from the mother of the
11 victim.

12 Q Did you attempt to get any type of prints or evidence
13 from that pregnancy kit?

14 A It was processed for fingerprints.

15 Q Did you find anything?

16 A No, ma'am.

17 Q And again, do you know where the pregnancy kit came
18 from?

19 MR. BELL: Your Honor, the question has already been
20 asked and Agent Wallace was -- it was given to her by her
21 mother, so the answer --

22 THE COURT: Is that the objection?

23 MR. BELL: Well, the next question is do you know where
24 it came from, she has already answered the question, it was
25 given to her by Minor s mother so I'm objecting to the

TESTIMONY OF MELISSA WALLACE

1 question, yes, sir.

2 THE COURT: Overruled. Go ahead.

3 Q Did you receive any information as to where it was
4 retrieved from by the mother?

5 MR. BELL: Objection, Your Honor, that's now getting
6 into hearsay.

7 THE COURT: I'll sustain that objection.

8 Q I will move on. Let me show you some photos. This is
9 State's Exhibit 13. Do you recognize that?

10 A I do.

11 Q Can you tell us what that is?

12 A State's Exhibit 13 is a photograph of the living room
13 area inside the residence on . It's a
14 photograph of the sofa and one of the doors and the area
15 leading towards the kitchen.

16 Q I'm also going to show you State's 12, do you recognize
17 that?

18 A I do.

19 Q And what is that?

20 A State's 12 is a photograph of the bed in the brother's
21 room at the residence.

22 Q This is State's Exhibit 11. Do you recognize that?

23 A I do.

24 Q What is that?

25 A It is a photograph of the victim's bed in her bedroom.

TESTIMONY OF MELISSA WALLACE

- 1 Q This is State's Exhibit 9. Do you recognize that?
- 2 A I do.
- 3 Q What is that?
- 4 A State's Exhibit 9 is another photograph of the victim's
- 5 bedroom.
- 6 Q This is the last one, State's Exhibit 8. Do you
- 7 recognize that?
- 8 A I do.
- 9 Q What is it?
- 10 A State's Exhibit 8 is a photograph of the bed in the
- 11 master bedroom of the residence.
- 12 MS. MINGO: Your Honor, at this time I would move to
- 13 introduce State's Exhibits 8, 13, 12, 11 and 9 into
- 14 evidence.
- 15 THE COURT: And they are admitted without objection.
- 16 (The photos were received as State's 8, 9, 11,
- 17 12, and 13.)
- 18 Q And I know I just asked you about those, but can you
- 19 explain to the jury or tell the jury what this is a photo
- 20 of?
- 21 A Yes. State's Exhibit 8 is the photograph of the bed in
- 22 the master bedroom of the residence.
- 23 Q And what was it that you took -- did you say you took
- 24 the comforter from this bed?
- 25 A I don't have in my notes that I collected from the bed.

TESTIMONY OF MELISSA WALLACE

1 Q This is State's Exhibit 13. Can you tell the jury what
2 this is a photo of?

3 A State's Exhibit 13 is the photograph of the sofa in the
4 living room area of the residence.

5 Q And did you take a cutting from that sofa?

6 A We did from one of the cushions on the sofa.

7 Q And this is State's 12. Can you tell the jury what
8 this is?

9 A State's Exhibit 12 is the photograph of the brother's
10 room and the bed in his room.

11 Q Did you indicate you took a cutting from his mattress?

12 A I did.

13 Q And these last two photos, State's Exhibit 11?

14 A State's Exhibit 11 is a photograph of the victim's bed
15 in her bedroom.

16 Q And did you retrieve the comforters from the bedroom?

17 A We collected the purple comforter which is kind of
18 bunched up against the wall. There was also a light colored
19 comforter on the bed, the fitted sheet and the pillow case.

20 Q What do you do with these items of evidence after you
21 collect them?

22 A They are packaged on the scene and then they are
23 submitted to our forensic laboratory and they go to our DNA
24 department for further analysis.

25 Q Can I ask you how they're packaged?

TESTIMONY OF MELISSA WALLACE

1 A They are packaged in purple bags and sealed up,
2 typically they are packed individually for submission to the
3 laboratory.

4 Q Are they marked in any way?

5 A Yes. They are marked on the outside of the package,
6 typically they're marked with the date and time of
7 collection and what they are, and then they're sealed, we
8 seal tape the date and my initials are placed on the seal.

9 Q And you take them directly to SLED?

10 A I do.

11 MS. MINGO: Answer any questions Mr. Bell may have.

12 THE COURT: Mr. Bell?

13 CROSS EXAMINATION

14 BY MR. BELL:

15 Q How are you, Agent Wallace?

16 A I am fine, thank you.

17 Q Good to see you again. Agent Wallace, this is Exhibit
18 9 again, Exhibit 12, Exhibit 8, Exhibit 11, and Exhibit 13.
19 Okay. Because you don't have the photographs and I'm not
20 used to using this stuff so I'm going to keep them right
21 here, I may talk to you about them. Those photographs were
22 taken by you or either your partner because there were two
23 of you up there.

24 A That's correct.

25 Q I think it was Agent Chin or Win?

TESTIMONY OF MELISSA WALLACE

- 1 A Din.
- 2 Q Okay. And y'all work as a tandem, as a team?
- 3 A That's correct.
- 4 Q And somebody took the photographs and they were taken
5 on -- what day did y'all respond?
- 6 A We responded on the 10th of January.
- 7 Q Yeah, there you go, 10th of January of '08, I
8 apologize. You met at the sheriff's department, then were
9 obviously taken to the Daugherty (sic) Road address.
- 10 A I'm sorry, what road?
- 11 Q The one out in the country, wasn't is Daugherty Road?
- 12 A I have
- 13 Q I'm sorry, I've got too many roads,
14 And you went in and this is the condition that the house was
15 in, you took of the bedrooms and they were unmade, stuff
16 just strung around and everything, that's how you found
17 them?
- 18 A That's a true and accurate representation, yes, sir.
- 19 Q And was Ms. Threatt the adult expecting y'all to come,
20 had that been arranged? Was she there?
- 21 A I don't know, I don't remember.
- 22 Q Was she there? Somebody had to let you in the house.
- 23 A Yeah, she was there.
- 24 Q Now, we're assuming that Mr. Adams had called her or
25 something. In other words, y'all didn't just pop in

TESTIMONY OF MELISSA WALLACE

- 1 unexpected, did you?
- 2 A Mr. Adams arranged all of that.
- 3 Q Good. And do you have any idea when did Mr. Adams call
- 4 her? Was it the day before, 15 minutes before you showed
- 5 up, have you got any idea?
- 6 A No, sir.
- 7 Q So you show up, and -- I'm not going to do this in
- 8 sequence -- one of the things you did is took these pictures
- 9 and then you pulled out your light, right?
- 10 A Yes, sir.
- 11 Q And the purpose of the light is that under the right
- 12 lighting conditions -- it has got to be dark; is that right?
- 13 A It has to be dark. It doesn't have to be completely
- 14 black but it has to be dark, yes, sir.
- 15 Q And using light that's got some filters on it or
- 16 something like that.
- 17 A Well, we use filters, they're like safety glasses.
- 18 Q And you shine on something?
- 19 A That's correct.
- 20 Q And you can shine it on anything.
- 21 A Yes, sir.
- 22 Q You can shine it on my coat and see if I've got
- 23 something on there that -- you're not going to know what it
- 24 is but you can see if something shows up.
- 25 A That's correct, yes, sir.

TESTIMONY OF MELISSA WALLACE

1 Q Because your job is not to identify what it is, your
2 job is to use this piece of equipment to see if it finds
3 something.

4 A That's correct.

5 Q What can it find?

6 A Any bodily fluids. And it also causes certain trace
7 evidence to flores.

8 Q Any bodily fluids, that would be tears?

9 A Any bodily fluids, yes, sir.

10 Q Spit?

11 A Yes, sir.

12 Q Tee tee?

13 A Yes, sir.

14 Q Back end, can it identify number two?

15 A I don't know if you would call that bodily fluids.

16 Q I know, but can it identify it.

17 A I don't know, I've never seen that.

18 Q Semen?

19 A Yes, sir.

20 Q What bodily -- can it identify all bodily fluids
21 produced by a female? Of course, it doesn't differentiate
22 between sex or gender.

23 A It doesn't identify the sex.

24 Q I'm sorry, you correct me, please, ma'am. It detects,
25 and therefore if a female -- well, I don't know how to

TESTIMONY OF MELISSA WALLACE

- 1 gracefully say this, I'm not going to use street talk but I
2 am trying to -- if a female in her female area produces
3 whatever they produce it can pick that up if it is sitting
4 on something; is that correct?
- 5 A Yes. It will cause vaginal fluids to flores.
- 6 Q Thank you, so you're doing better than me. So the
7 light doesn't know what it is, it just says that it shows up
8 and therefore it has got to be a bodily fluid, right?
- 9 A If I see something that luminesces I collect it, I
10 cannot determine what it is.
- 11 Q But what you're telling the jury is the light detects
12 bodily fluids.
- 13 A Yes, sir.
- 14 Q So if it shows up as bodily fluid -- you mentioned that
15 it could also pick up other trace evidence, what is the
16 definition of other trace evidence?
- 17 A Things like hairs and fibers.
- 18 Q So y'all shine the light at the house in Lancaster and
19 you then clipped or cut -- if something was identified you
20 cut it off the object it was on?
- 21 A Certain things, yes, that were too large for most.
- 22 Q And they were then tagged by you, sealed by you in
23 evidence -- you say an evidence bag.
- 24 A They're just paper bags, yes, sir.
- 25 Q Or just regular -- they're not just sealed up, just

TESTIMONY OF MELISSA WALLACE

1 regular paper bags?

2 A Well, they're sealed but just regular paper bags.

3 Q But then they were transported by you to SLED.

4 A That's correct.

5 Q Now -- and, of course, the DNA person is coming,
6 supposed to be coming. Let me ask you this getting ready
7 for the next witness, when I got on the DNA stuff and all of
8 that -- they're going to come into evidence, this is my
9 spreadsheet -- when they come into evidence as item number
10 one and two, 2.1, who started that numbers system? You? Or
11 is that a number system that the lab actually did? I want
12 to make sure I understand that.

13 A It depends on the submission. If I'm the first one to
14 submit it then it generates it based on what is already in
15 the case file, so if my submission sheets say one through
16 three and there's already 15 items of evidence submitted to
17 the lab mine will start with 16, so the computer system
18 actually assigns each individual item number.

19 Q But did they get a number in the field?

20 A No, sir.

21 Q All right. Because again, I'm not asking you, but
22 there's an item one that somebody is going to say was a
23 comforter and -- but I just want to make sure that item one,
24 how do we know that's the same comforter you seized if you
25 didn't put a number on.

TESTIMONY OF MELISSA WALLACE

- 1 A I marked the packing with my initials and the date.
- 2 Q But no number?
- 3 A That's correct. And it included an item description as
- 4 well.
- 5 Q So once we hear about all of these numbers here that's
- 6 going to be a lab number or generated by the computer in the
- 7 lab?
- 8 A That's correct.
- 9 Q Okay. I'm trying to get myself ready for the next
- 10 witness. So you did what you did in Lancaster, and then you
- 11 have got statewide jurisdiction, you then went across the
- 12 Catawba River into Chester County?
- 13 A That's correct.
- 14 Q Do you remember the name of the officer that you met --
- 15 did Mr. Adams go with y'all to Chester?
- 16 A I don't recall if he did or didn't.
- 17 Q Do you remember the name of the officer that you met
- 18 within Chester?
- 19 A Bill Murray.
- 20 Q Murray or Murphy?
- 21 A Murphy, I'm sorry.
- 22 Q Now, in reference to Chester you flores -- you used a
- 23 blue light on items in a house that my client was occupying.
- 24 A That's correct.
- 25 Q And you collected some things from there.

TESTIMONY OF MELISSA WALLACE

- 1 A That's correct.
- 2 Q And you went to a deer stand.
- 3 A That's correct.
- 4 Q And my client wasn't there. Who -- you didn't know
- 5 where the deer stand was, who told you where a deer stand
- 6 was or the deer stand was? How did that come about?
- 7 A By the investigators that we were working with.
- 8 Q Well, wasn't my -- okay. And in checking the deer
- 9 stand you found nothing of evidentiary value.
- 10 A That's correct.
- 11 Q Particularly you didn't find any original condoms and
- 12 you didn't find any packaging that they come in or anything
- 13 like that.
- 14 A That's correct.
- 15 Q And then you took an item of clothing from my client,
- 16 did you not, wasn't it a camouflage something?
- 17 A We collected a camouflage shirt from the residence.
- 18 Q Anything else, clothing from my client?
- 19 A No, sir.
- 20 Q So after all of that shining the light and collecting
- 21 this and collecting that, basically what you were doing is
- 22 then package it under the SLED approved procedure and
- 23 eventually transport it to the headquarters and turn it in
- 24 to somebody at the lab.
- 25 A That's correct.

TESTIMONY OF MELISSA WALLACE

- 1 Q Because you don't work in the lab, you're a field
2 agent, you get to carry a gun and all of that stuff, right?
- 3 A No, sir. I am a field agent, I'm assigned to the lab,
4 I have to collect and process evidence.
- 5 Q I understand but you don't check it and test it and all
6 of this stuff.
- 7 A Actually I do for latent fingerprints and tire tread
8 and all of that stuff.
- 9 Q I'm glad you brought that up. You were shown what the
10 State says -- you didn't bring your gloves, did you? It has
11 been marked as State's Exhibit 17, I'm not going to ask you
12 to touch it, but look at it.
- 13 A I don't mind touching the packaging.
- 14 Q And that's what is in evidence.
- 15 A Okay.
- 16 Q Assuming that's what -- is there any way we can tell if
17 that's what was given to you?
- 18 A I can.
- 19 Q Is that what was given to you?
- 20 A Yes, sir. It was marked with the lab number that my
21 initials should be on there.
- 22 Q Is that the paper bag?
- 23 A My initial is on the paper bag.
- 24 Q This was checked by you or somebody at the lab?
- 25 A It was processed by me.

TESTIMONY OF MELISSA WALLACE

1 Q Was it checked for the fingerprint stuff and all of
2 that stuff by you or somebody else?

3 A It was processed by me.

4 Q So when you process you did whatever procedure you go
5 through to see if there's fingerprints on there.

6 A That's correct.

7 Q No fingerprints were found.

8 A That's correct.

9 Q Did anybody try to DNA that document that you know of?

10 A No, sir.

11 Q And were the contents of that State's 17 removed in any
12 fashion by you at least to check them separately?

13 A Yes, they were.

14 Q And they were subject to what type of checking?

15 A I processed them for fingerprints.

16 Q This thing is sealed, we ain't going to tear it open,
17 and I haven't ever been involved in a pregnancy test so I
18 don't even know what is in there. Tell the jury what is in
19 there. What comes from the manufacturer in this box, what's
20 in there?

21 A I'm not sure what is still in it. I know there were
22 paper instructions in there that were processed, I don't
23 remember if there was anything else in there.

24 Q Well, that's what I was going to ask you, you're
25 telling the jury that you processed the inside of it and

TESTIMONY OF MELISSA WALLACE

1 that the only thing that was in there was paper that you're
2 calling instructions.

3 A Yes, sir.

4 Q Well, assuming the manufacturer packaged it like it
5 said it's in there, it had two tests in there, you didn't
6 find an unused test?

7 A I don't recall.

8 Q Well, it would be in your notes, wouldn't it, if you
9 found anything on the inside other than the directions,
10 right?

11 A Should be, yes, sir.

12 MR. BELL: Thank you, Agent Wallace. Please have a
13 safe trip back to Columbia.

14 A Thank you.

15 THE COURT: Any other questions, Solicitor?

16 MS. MINGO: No redirect, Your Honor.

17 THE COURT: Thank you, ma'am, you may be excused from
18 your subpoena.

19 MS. MINGO: State calls Jan Bryson.

20 The witness, JANICE BRYSON, was first duly
21 sworn and testified as follows, on:

22 DIRECT EXAMINATION

23 BY MS. MINGO:

24 Q State your name for the record, please.

25 A My name is Janice Bryson.

TESTIMONY OF JANICE BRYSON

1 Q Where do you work?

2 A I'm employed by the South Carolina Law Enforcement
3 Division.

4 Q How long have you been employed by the South Carolina
5 Law Enforcement Division?

6 A I've been at SLED for 22 years.

7 Q What is your title?

8 A I'm a forensic technician.

9 Q And what are your duties as a forensic technician?

10 A Whenever items -- larger items of evidence are
11 submitted to the lab with requests to look for hair fiber
12 blood and semen, it's my responsibility to process the
13 evidence, collect any evidence that I find and make sure
14 that it's routed to the appropriate department.

15 Q And what kind of education and training do you have as
16 a forensic technician?

17 A While at SLED I trained under court qualified forensics
18 experts in the areas of trace, serology and DNA. And SLED
19 is nationally accredited by the American -- it's ASCLAD,
20 American Crime Laboratory Directors, and it's a requirement
21 of ASCLAD that each analyst and technician be certified.
22 And I have been certified in the collection of hair, fiber,
23 blood and semen.

24 Q Did you process some items of evidence in SLED case
25 number L08-685?

TESTIMONY OF JANICE BRYSON

- 1 A Yes, ma'am.
- 2 Q Can you tell me what items you processed in that case
3 number?
- 4 A I processed item one, which is the comforter. Do you
5 want me to go through the whole --
- 6 Q You can do that, yes, ma'am.
- 7 A Item one, which was a comforter, item two a comforter,
8 item three was a fitted sheet, item four is a pillow case,
9 item seven a vibrator ring, item eight was portions from an
10 egg crate mattress from a section on marker one. Item nine
11 is a portion from an egg crate mattress on sofa marker
12 number two. Number ten is a portion of sofa marker number
13 three. Item 11 is items from portion number four. Item 12
14 is portion from egg crate mattress marker five. Item 13 is
15 a pillow, item 14 is a flat sheet, item 15 is portion from
16 mattress, item 16 is portion from mattress, item 17 is
17 portion from mattress, item 18 is portion from mattress.
18 And item 19 is long sleeved shirt.
- 19 Q When and how did you receive those items for testing?
- 20 A I received the items on May 15th of 2008, and I
21 retrieved the evidence from our evidence storage room.
- 22 Q Were they packaged a certain way?
- 23 A Yes, ma'am, they were.
- 24 Q How were they packaged?
- 25 A In a box.

TESTIMONY OF JANICE BRYSON

1 Q Do you know who collected those items?

2 A According to my paperwork they were collected by
3 Melissa Skipper Wallace.

4 Q How do you know what to look for when you're processing
5 evidence?

6 A Whenever they bring items of evidence into SLED they
7 fill out a packing slip and they left the request that we
8 are to look for and the request was to look for semen.

9 Q And how do you process for semen?

10 A When I process for semen I use an alternate light
11 source, the room is dark and I wear protective eye wear and
12 I circle the areas that flores under the alternate light
13 source. And then I go back and do a spot test on each
14 individual area that I circle, it's a screening for semen,
15 and if I get a positive from that screening test I make a
16 cutting and send it to DNA for further analysis.

17 Q Did you get a positive presumption for semen on some of
18 these items?

19 A Yes, ma'am, I did.

20 Q Can you tell me what they were?

21 A Item two, I took a cutting -- item two was a comforter.
22 I took a cutting that was positive for the presumptive test
23 of semen.

24 Q Do you know where that comforter came from? Do you
25 have that information?

TESTIMONY OF JANICE BRYSON

1 A The information that was provided to me from the
2 victim's bedroom.

3 Q Okay. I'm sorry to interrupt you.

4 A That's okay.

5 Q What other items?

6 A I took a cutting from item eight which was the egg
7 crate mattress. I took a cutting from item nine, the egg
8 crate mattress. I took a cutting from item 12 egg crate
9 mattress. I took three cuttings from item 14 which was a
10 flat sheet. And those are the items I collected that were
11 positive for the presumptive test of semen.

12 Q Again once you made those cuttings, did you package
13 them in some form?

14 A Yes, ma'am, I did. I placed each individual cutting on
15 a gold point envelope, I sealed, labeled the envelope and
16 initialed it, then I placed my cuttings into a heat sealed
17 pouch, seal and initial the seal.

18 Q I'm going to show you --

19 MR. BELL: Your Honor, the State is getting ready to
20 introduce these little envelopes with this witness
21 pertaining to cuttings that she has testified about the
22 items are in there, we're not going to open them for
23 biohazard reasons. No objection.

24 Q Ms. Bryson, are these the gold pointed envelopes that
25 you referred to?

TESTIMONY OF JANICE BRYSON

1 A Yes, ma'am.

2 Q I'm going to show you State's 1. Do you recognize that
3 by any markings or labeling on the package?

4 A Yes, ma'am. I have the SLED number, item number and a
5 description of where I got the cutting and my initials and
6 the date on the back of the envelope.

7 MR. BELL: Your Honor, in the interest of timing since
8 I don't have any objection, if the State would go ahead and
9 introduce them then she won't have to ask all of these
10 questions of the witness because they are in evidence
11 without objection.

12 MS. MINGO: Well, Your Honor, at this time I would move
13 to enter State's 2 -- State's Exhibit 1, State's Exhibit 2,
14 State's Exhibit 3, State's Exhibit 4 and State's Exhibit 6
15 into evidence.

16 THE COURT: Admitted without objection.

17 (The envelopes were received as State's 1, 2,
18 3, 4, and 6.

19 MS. MINGO: Thank you, ma'am. Answer anything Mr. Bell
20 may have.

21 CROSS EXAMINATION

22 BY MR. BELL:

23 Q Good morning, Ms. Bryson, how are you?

24 A I am fine, how are you?

25 Q Good. State has to give me a copy of everything. Is

TESTIMONY OF JANICE BRYSON

- 1 this part of your report?
- 2 A No, sir.
- 3 Q What does your report look like? Not trying to trick
4 you, is that report your --
- 5 A That appears to be a copy of the sheet.
- 6 Q That's it, isn't it, right? I wanted to be sure I got
7 it, I thought I did. I'll be as short as I can. So what
8 you're telling the jury is that somebody like Agent Wallace
9 is in the field, they use the light and you know the light
10 picks up bodily fluids, right?
- 11 A I don't know how Melissa processes evidence out in the
12 field.
- 13 Q Well, do you know how she identifies what she's going
14 to bring, what she's going to seize?
- 15 A No, sir. I don't know how she works a crime scene.
- 16 Q Well, that's fine, it shows up to you through the
17 normal course of getting checked in and everything. And
18 your job is to use a chemical -- this is going to be the
19 first time we use a chemical approach or is it a microscopic
20 approach to see if that item can be identified, is it
21 chemical or microscopic?
- 22 A It's chemical.
- 23 Q So they show up with all of these items, cuttings, big
24 items, small items and you're trained to chemically look at
25 them. Now, I'm doing it simple, but you're trained to

TESTIMONY OF JANICE BRYSON

1 chemically look at the item.

2 A We do the screening.

3 Q And item one is the comforter that's beige in color; is
4 that correct?

5 A That's correct.

6 Q And I'm not asking you to comment, but for whatever
7 reason either Ms. or Mrs. Wallace, SLED Agent Wallace seized
8 that item and sent it to you and you didn't find nothing.

9 A That's correct. It was numerous areas negative for
10 APS?

11 Q All right. And then item three, which was a fitted
12 sheet beige in color, it was seized in the field by the
13 agent, am I reading it right, numerous areas are negative
14 for APS?

15 A That's correct.

16 Q And APS stands for?

17 A Acid phosphate spot test.

18 Q And that's in my semen?

19 A It tests for acid phosphate which is found in semen.

20 Q Yes, ma'am. That's what you use it, to test it if is
21 semen.

22 A Our test is not confirmatory, we send it to DNA for
23 further examination.

24 Q I understand that. And please, I'm not questioning
25 your qualifications, Ms. Bryson, or what you did. But we

TESTIMONY OF JANICE BRYSON

- 1 now know you use something called APS, if you put it on a
2 spot and it reacts some way you think it's semen, then it
3 goes from you on into the DNA people; is that correct?
- 4 A That's correct.
- 5 Q Item four was a pillow case navy blue in color?
- 6 A That's correct.
- 7 Q It was seized in the field, negative.
- 8 A That's correct.
- 9 Q Did you -- item seven is this vibrator ring. Did you
10 do any testing on it?
- 11 A No, sir. I just swabbed the entire item and collected
12 possible hair.
- 13 Q Well, I'll come back to that. Did you collect any DNA
14 off that or was that done by the lab?
- 15 A Mary Ann Boehm is the DNA analyst and she does the
16 further testing on the swabs that I collected.
- 17 Q So anything that was collected off of the vibrator ring
18 was collected by you.
- 19 A That's correct.
- 20 Q And then you send it on further into the system to
21 actually be analyzed DNA wise.
- 22 A That's correct.
- 23 Q Item ten, portions from sofa cushion mark three, two
24 negative areas for APS.
- 25 A That's correct.

TESTIMONY OF JANICE BRYSON

1 Q So again, they were seized in the field and sent to
2 you. Item 11, egg crate mattress marker 4, two negative
3 areas negative for APS.

4 A That's correct.

5 Q Item 13, pillow, dark green in color, numerous areas
6 negative for APS.

7 A That's correct.

8 Q Item 15, portion from mattress blue in color marker one
9 through three, numerous areas negative for APS.

10 A Yes, sir.

11 Q Item 16, portions from mattress blue in color markers
12 four and five, two areas, negative for APS.

13 A Yes, sir.

14 Q Item 17, portions from mattress blue in color marker
15 six, two areas negative for APS.

16 A Yes, sir.

17 Q And am I guessing that those are cuttings that are in
18 all of these little envelopes when it talks about the
19 portions from the mattress? I'm not trying to trick you
20 because they didn't bring you the whole mattress, did they?

21 A No, sir. They didn't bring me the whole mattress.

22 Q So these little bags here could be some of the
23 cuttings?

24 A Those gold colored envelopes are what I generate when I
25 took a cutting I take from the item.

TESTIMONY OF JANICE BRYSON

- 1 Q They didn't bring the mattress so the cutting came from
2 the field, right?
- 3 A According to my paperwork it was brought in from the
4 field.
- 5 Q Item 18, portion of a mattress, blue in color marker
6 seven through ten, numerous areas negative for APS.
- 7 A Yes, sir.
- 8 Q Item 19, long sleeved shirt camouflage, the brand is
9 Pella, P-e-l-l-a, size XL, Johnston Supply logo on shirt,
10 numerous areas negative for APS.
- 11 A Yes, sir.
- 12 Q Now, look at your sheets, have we covered everything?
- 13 A Yes, sir.
- 14 Q With item one through item 19?
- 15 A Yes, sir.
- 16 Q Now, some of these items were positive APS.
- 17 A That's correct.
- 18 Q And once you get a positive reading at your station of
19 the item, do you collect more from that or do you send the
20 item you just tested on in the DNA people?
- 21 A The area that I circled on the comforter, I cut around
22 the circling and send the item up to DNA.
- 23 Q But is that -- what you send up has already been
24 subject to your test.
- 25 A That's correct.

TESTIMONY OF JANICE BRYSON

1 Q Your test does not in any way enhance or degrade what
2 is on there that you're going to send to DNA to say, "Hey,
3 go see if you can match this."

4 A That's correct. Because I don't put the chemical test
5 on the spot, I use a swab and swab the area that I circled
6 and then I test the swab and if the swab turns a purple
7 color, that's an indication that it is positive for the
8 presumptive test of semen.

9 Q Fine. You're teaching us how to do this CSI stuff,
10 takes longer than an hour. So you swab whatever was sent to
11 you as part of it, hope the swab picks it up and you test
12 what you just found on the swab.

13 A Yes, sir.

14 Q So the item itself is not degraded in any way and then
15 sent on in for DNA.

16 A That's correct.

17 Q Who checked the hair? Did you do that? Did you
18 analyze the hair or is the next witness going to tell me
19 about the hair?

20 A I believe Ms. Boehm did.

21 Q So the only thing you found -- your test said was in
22 existence, you don't know who it belongs to, that is going
23 to be the next witness, the only thing that your test showed
24 was everything was semen.

25 A It was positive presumptive for semen.

TESTIMONY OF JANICE BRYSON

1 Q I understand. Did anything else show up? Did you test
2 all of these items or other spots, what you had for anything
3 else?

4 A No, sir. The request was for semen.

5 Q Well, if you're looking for a female vaginal fluid, is
6 there another test for that?

7 A Not that I'm aware of. You would have to ask the DNA
8 analyst that question.

9 Q No. Can you test that? Can you first find if any of
10 these things came out of a female?

11 A No, sir. I can't tell using the alternate light source
12 what a stain from the rest. I don't know if the stain is
13 semen, I don't know if the stain is saliva, urine, feces,
14 things of that nature that will flores under that light.

15 Q I want to make sure the jury understands and make sure
16 I understand. So when you're saying that everything was
17 presumptive -- correct me if I'm wrong -- what you send on
18 into DNA after your test was presumptive positive for semen?

19 A Yes, sir.

20 Q Actually it could be another liquid other than semen
21 and that's -- that's the wrong word -- it could be another
22 bodily fluid other than semen.

23 A You will have to ask the DNA analyst that question.

24 Q Well, I will, because she found some stuff that wasn't
25 male. Okay. But your test just really says it's at least

TESTIMONY OF JANICE BRYSON

1 semen, is that a correct statement?

2 A It's a presumptive test for semen, it's positive.

3 Q Presumptive test for positive semen.

4 A My test does not confirm semen.

5 Q I understand that, I'm not trying to put you on the
6 spot. I want to make sure we have covered everything. So
7 all of the things that you -- well, the things that you
8 didn't have the presumptive positive indication you didn't
9 forward them onto DNA.

10 A That is correct.

11 Q Okay.

12 MR. BELL: Thank you, ma'am. Your Honor, no more
13 questions. If the State has no more reply testimony the
14 witness may be excused from the subpoena.

15 MS. MINGO: Nothing from the State, Your Honor.

16 THE COURT: You may step down and you're released from
17 your subpoena.

18 MS. MINGO: May we approach, Your Honor?

19 (Bench conference was held.)

20 THE COURT: Let's take a ten minute recess, ask you to
21 step into the jury room.

22 (The jury left the courtroom and a recess was
23 taken.)

24 THE COURT: Are we ready for the jury? Bring in the
25 jury.

TESTIMONY OF JANICE BRYSON

1 (The jury returned to the courtroom)

2 THE COURT: Welcome back again, ladies and gentlemen.

3 I believe we are ready to resume testimony in the case.

4 Solicitor, call your next witness.

5 MS. MINGO: State calls Mary Ann Boehm to the stand.

6 The witness, MARY ANN BOEHM, was first duly

7 sworn and testified as follows, on:

8 DIRECT EXAMINATION

9 BY MS. MINGO:

10 Q Please state your name.

11 A My name is Mary Ann E. Boehm.

12 Q Where are you employed?

13 A The South Carolina Law Enforcement Division commonly
14 known as SLED.

15 Q How long have you been employed by SLED?

16 A Approximately six years.

17 Q What is your job at SLED?

18 A I'm assigned to the DNA and serology department.

19 Q What is your educational background?

20 A I received a Bachelor of Science from James Madison
21 University, it's in Harrisburg, Virginia, in integrated
22 science and technology with a concentration in biological
23 technology.

24 Q Do you have any prior professional experience working
25 in laboratories?

TESTIMONY OF MARY ANN BOEHM

1 A Yes. For approximately two and a half years I worked
2 at a private forensic company in Germantown, Maryland.

3 Q And what specialized training have you had in the area
4 of forensics?

5 A I have been trained in the proper techniques and skills
6 we you use in our laboratory. I have also attended outside
7 training on specific instrumentation use in our lab.

8 Q Have you been qualified as an expert in the fields of
9 forensic serology and DNA analysis before?

10 A Yes, I have.

11 Q How many times?

12 A Approximately 25 times.

13 MS. MINGO: Your Honor, at this time I would offer
14 Ms. Boehm as an expert in the fields of DNA analysis.

15 MR. BELL: I have been to court with Ms. Boehm before,
16 she's extremely qualified to testify.

17 THE COURT: The Court will grant that motion and so
18 qualify the witness.

19 Q What is serology?

20 A Serology is the identification of bodily fluids such as
21 blood, semen and saliva.

22 Q And what is DNA?

23 A DNA stands for deoxyribonucleic acid. It's a chemical
24 found in all of the cells in our body except for red blood
25 cells. It's important for giving us our features like our

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- 1 hair color and our eye color. It's also important in
2 passing along traits from generation to generation. We get
3 half of our DNA from our mother and half from our father.
4 With the exception of identical twins no two individuals
5 have the exact DNA. We are interested in forensic science
6 in those portions of DNA that differ between individuals.
7 We test 15 different locations and the combination of those
8 test results make up a DNA profile.
- 9 Q Did you receive some evidence in case number L08-685?
- 10 A Yes, I did.
- 11 Q Can you tell the Court what you received?
- 12 A Sure. I received a cutting from a comforter, a swab
13 from a vibrator ring, a hair from a vibrator ring, three
14 cuttings from an egg crate mattress, two cuttings from -- or
15 three cuttings from a flat sheet, and buccal swabs from
16 Joseph Loftin, Minor and Virginia Threatt.
- 17 Q From whom did you receive these items?
- 18 A I believe the evidence was submitted by Melissa Skipper
19 Wallace to the lab, and the buccal swab from Joseph Loftin
20 was submitted by Mike Adams from the Lancaster County
21 Sheriff's Office. And the buccal swabs from Minor
22 and Virginia Threatt were also submitted by the
23 Lancaster County Sheriff's Office.
- 24 Q Can you tell the Court how the items were packaged when
25 you received them, not necessarily the swabs but the other

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1 evidence?

2 A They're all sealed in a heat sealed pouch, evidence
3 pouch.

4 Q Did you detect semen in this case?

5 A Yes, I did.

6 Q Can you tell the Court what items you detected semen
7 on?

8 A Semen was identified on the cutting from the comforter,
9 the cutting from the egg crate mattress, two of the cuttings
10 from the flat sheets. That's it.

11 Q Now, at this time I'm going to show you what has been
12 marked as State's Exhibit Number 25. Do you recognize that?

13 A This is a copy of my first report that I created.

14 Q And can you tell the Court what your results were?

15 MR. BELL: I'm not sure I'm going to object, Your
16 Honor. But my understanding first off is she's going to be
17 reading from the document that the solicitor gave her which
18 I have not seen and therefore it has not been introduced
19 into the record, or is she going to read from her own file?
20 Because she just handed me a document that I haven't seen,
21 it was marked, I didn't see it first I don't think.

22 MS. MINGO: That's fine. I can show it to Mr. Bell,
23 Your Honor.

24 THE COURT: Please show it to Mr. Bell.

25 MR. BELL: I want to make sure I had a copy. I think

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1 she's calling this State's Exhibit Number 25, and no
2 objection.

3 Q Can you identify State's Exhibit Number 25?

4 A Yes. This is the first report I wrote for this case.

5 Q You generated that report?

6 A Yes, ma'am.

7 Q And can you tell the Court the results of your DNA
8 analysis in this case as reflected in that report?

9 A Okay. The DNA profile developed from the semen on
10 items 2.1, which was a cutting from the comforter; 9.1,
11 which was a cutting from the egg crate mattress; and item
12 12.1, which was another cutting from an egg crate mattress
13 matches the DNA profile of Joseph Loftin. The probability
14 of randomly selecting an unrelated individual having a DNA
15 profile matching the semen on these items is approximately
16 one in 45 quadrillion.

17 Q Let's go back so you can clarify to the jury what that
18 means.

19 MR. BELL: Did you produce that?

20 MS. MINGO: I haven't formally introduced it yet, Your
21 Honor. I would move to introduce State's 25 into evidence.

22 MR. BELL: It's without objection, I'm sorry.

23 (The report was received as State's 25.)

24 Q You stated the items that you detected semen on was
25 2.1, 9.1, and 12.1; is that correct?

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- 1 A I also detected semen on items 8.1, 14.2 and 14.3.
- 2 Q Item 2.1, did you say that was a cutting from a
- 3 comforter?
- 4 A Yes, ma'am.
- 5 Q Do you know based on your notes where that comforter
- 6 came from?
- 7 A Based on the log-in sheets that were submitted to SLED
- 8 the comforter was from the victim's bedroom.
- 9 Q Item 9.9 -- excuse me, 9.1, you indicate it was an egg
- 10 crate mattress?
- 11 A Yes, ma'am.
- 12 Q And do you know what mattress we're talking about?
- 13 A That is a cutting from item nine which was an egg crate
- 14 mattress found on the living room sofa.
- 15 Q 12.1, what is that?
- 16 A That is another cutting from an egg crate mattress,
- 17 that egg crate mattress was found in the brother's room.
- 18 Q 14.2. Can you tell me what we're talking about?
- 19 A That was a cutting from a flat sheet, and that flat
- 20 sheet was collected from the suspect's bed.
- 21 Q And how about 14.3?
- 22 A That was an additional cutting from that same flat
- 23 sheet collected from the suspect's bed.
- 24 Q So we've got Mr. Loftin's DNA on the victim's
- 25 comforter, a cutting from the sofa in the living room, and a

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- 1 cutting from a mattress in the brother's bedroom?
- 2 A Yes, ma'am.
- 3 Q A cutting, which is 14.1, from a sheet in his room?
- 4 A Item 14.1 I didn't identify semen on.
- 5 Q I apologize. 14.2.
- 6 A Semen was identified on that item, yes. It was a
- 7 partial DNA profile developed from 14.2 also matches the
- 8 profile of Joseph Loftin.
- 9 Q Okay. Let's me ask you this: What is your comparison
- 10 analysis?
- 11 A That's basically we compare DNA profiles developed from
- 12 evidence and we compare that to known standards submitted
- 13 for that case.
- 14 Q Did you do another analysis in that case?
- 15 A I issued a second report once I received standards from
- 16 Minor and Virginia Threatt.
- 17 MR. BELL: The State is getting ready to introduce
- 18 Exhibit 26, the defense has no objection.
- 19 THE COURT: Twenty-six admitted without objection.
- 20 (The report was received as State's 26.)
- 21 Q Ms. Boehm, was this report done after your initial
- 22 report?
- 23 A Yes, ma'am.
- 24 Q At the time of your first report, did you have a
- 25 standard from the victim in this case?

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1 A No, ma'am, I did not.

2 Q What do you mean by standard, can you tell the jury
3 that?

4 A A standard is a known swab of DNA, in this case there
5 were buccal swabs that swabs from the inside of the mouth.
6 The person who collected that will write down the
7 individual's name and we'll treat it as that individual's
8 DNA profile.

9 Q And can you tell the jury what your results were as a
10 result of that, or what's reflected in that second report?

11 A The DNA profile developed from the female fraction of
12 item 14.2, which was a cutting from the flat sheet, is a
13 mixture of at least two individuals. The DNA profile
14 developed from the major contributor to this mixture also
15 matches the DNA profile of Joseph Loftin. Virginia Threatt
16 cannot be excluded as a possible minor contributor to this
17 mixture. Minor can be as excluded as a possible
18 minor contributor to this mixture.

19 Q Let's clarify, these are sheets on Mr. Loftin's bed?

20 A Yes, ma'am. The DNA developed from item 7.1 which was
21 a swab from the vibrator ring is a mixture of at least two
22 individuals. The DNA developed from the major contributor
23 to this item matches the DNA profile of Virginia Threatt.
24 The probability of randomly selecting an unrelated
25 individual having a DNA profile matching the major

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1 contributor in this mixture is approximately one in 990
2 trillion. No conclusive statement can be made regarding
3 inclusion or exclusion of Minor or Joseph Loftin
4 as a possible minor contributors to this mixture.

5 Q That's on the vibrator ring.

6 A Yes, ma'am.

7 Q Is it possible for one person's DNA to mask another
8 person's DNA?

9 A Yes, ma'am. If there is an individual who has
10 contributed a lot of DNA sometimes it will mask or hide
11 somebody else's DNA that could possibly be there.

12 Q If that individual has had more contact with the item?

13 A Most of the time that would be the case.

14 MS. MINGO: Beg the Court's indulgence for a second.

15 (Break in proceedings.)

16 MS. MINGO: Answer anything Mr. Bell may have.

17 THE COURT: Mr. Bell?

18 CROSS EXAMINATION

19 BY MR. BELL:

20 Q How long -- a fluid that contains DNA, how long can it
21 last outside of the body?

22 A It depends on the conditions its exposed to. If its in
23 a temperature controlled secured area it will last forever,
24 if its exposed to extreme heat or moisture, that destroys
25 DNA so it won't last as long.

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- 1 Q And would washing sheets degrade DNA?
- 2 A It could wash away the DNA, it really depends on the
3 factors like how well it was washed, what kind of soap was
4 used, factors like that.
- 5 Q I understand. You've got a lot of sheets out there
6 that has got stuff on it, right? We assume they haven't
7 been washed?
- 8 A I can't assume that.
- 9 Q Can you assume they've been washed?
- 10 A No, sir.
- 11 Q Now, in all this stuff you looked at and I'm sure
12 properly examined and did all of your little tests and came
13 up with some ungodly odds, that's worse than buying a
14 lottery ticket, do you agree? Did you find DNA belonging
15 with Minor on any of this stuff you tested?
- 16 A No. There is one item where I couldn't make a
17 conclusive statement whether she could be included or
18 excluded but that's the only item.
- 19 Q Well, I'm going to get back to that. But did you with
20 these odds -- what's the odds on my guy, one on quadrillion,
21 is that what you told us?
- 22 A Approximately one in 45 quadrillion.
- 23 Q I can't even put the zeros on there. What are the odds
24 on Mrs. Threatt, Mama Threatt, what are the odds on her?
- 25 A One in 990 trillion.

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- 1 Q So the question again is did you find DNA on those odds
2 or whatever odds you're going to come up with that belonged
3 to Minor , that is the question. Did you find
4 any?
- 5 A No, sir.
- 6 Q Now, you only examined what got past Ms. Bryson.
- 7 A Yes, sir, as well as the buccal swabs.
- 8 Q I understand that. The swabs, we're not arguing about
9 that, I'm talking about this evidence. Swabs are not
10 evidence to me, they are a basis for your sample to start
11 with, they're the standard, is that the right word?
- 12 A Yes, sir.
- 13 Q I'm talking about evidence. All of the evidence that
14 was seized in the field that goes to -- Ms. Wallace brings
15 it in after she does her blue light thing and it goes to
16 Ms. Bryson who then does a presumptive test I think we've
17 learned today.
- 18 A Yes, sir.
- 19 Q And then once it gets past her it comes to you.
- 20 A Yes, sir.
- 21 Q So all of this stuff that she told us she found nothing
22 on, no need to list them all again, but all of the stuff she
23 found nothing on nobody forwarded it on in to you to see if
24 you could find anything.
- 25 A That is correct.

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1 Q So what was forwarded to you passed Ms. Bryson and
2 therefore it met the qualification that it was presumptively
3 something was there.

4 A Yes, sir.

5 Q I'm not a chemistry major so I won't mix words with you
6 on that. So this is my SLED sheet my staff provided that's
7 easier to read than yours. The first item you want to talk
8 about that got to you is this number system that was set by
9 the computer somehow we've learned?

10 A Right. When the evidence is brought to SLED it is
11 logged in and given a unique item number with that case
12 number.

13 Q And item 2.1, please refer to your paperwork, I'm sure
14 you don't remember this off the top of your head -- item 2.1
15 is a cutting from a comforter that my client's DNA showed up
16 on.

17 A Yes, sir.

18 Q You don't know how many hits the blue light found in
19 that comforter, do you?

20 A No, sir.

21 Q Your next item is 7.1; is that correct?

22 A Yes, sir.

23 Q 7.1 is the vibrator ring which I thought we were going
24 to get in evidence but we've got a picture somewhere. Of
25 course, you didn't see the ring, somebody swabbed it and all

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1 you got was a swab.

2 A That's correct.

3 Q So the vibrator ring, major contributor Virginia
4 Threatt.

5 A Yes, sir.

6 Q Now, when you use the word major -- we all understand
7 what the word means, but what does it mean in your
8 scientific field, major contributor, what does the word
9 major mean?

10 A Sometimes if there's a mixture we can tell if someone
11 contributed more DNA than another person, or more people.
12 In this case Virginia Threatt contributed more and that's
13 the main contributor.

14 Q Okay. Because you did have something else there that
15 you couldn't identify; is that correct?

16 A Can you rephrase the question?

17 Q Did you have some other fluid there that you couldn't
18 identify who it belonged to, is that what you're telling us?

19 A Well, for item 7.1 I didn't do any serology on that
20 item so I don't know what kind of body fluid was there.

21 Q I'm not asking you for the body fluid. Whatever was
22 there you couldn't identify it to whoever it belonged to by
23 DNA, could you?

24 A Right. Both Minor and Joseph Loftin -- no
25 conclusive statement could be made regarding them as minor

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1 contributors.

2 Q I understand. So the point is whatever was there you
3 cannot DNA it to attach it to whoever?

4 A I did not make a match, no.

5 Q How do you tell -- because see, the State is asking the
6 question, she brought up the word masking because -- ain't
7 got but one DNA on that and she ain't the complaining
8 witness -- how can you sit here and to a reasonably degree
9 of scientific certainty in your field and most probably
10 say -- that's the standard I think we have got to meet --
11 say anything was masked?

12 A I'm saying that there's a possibility that there could
13 be a mask. I know there's another person there but since
14 there's a major contributor it kind of masks or hides the
15 minor contributor's profile a little bit.

16 Q How can it hide it? Meaning there is not enough there?
17 How can it hide something -- see, I'm not the scientific
18 guy -- how can it hide something? Meaning it's underneath
19 it? Are we talking about layers of stuff? Like my wife
20 cooks a cake we make two or three layers and the top layer
21 is Virginia Threatt and we don't know who the next layer is
22 because the top layer is on top of it and we can't get
23 around that layer, is that what you're saying?

24 A Well, in DNA analysis we target a certain amount of DNA
25 for our testing, and in this test I believe I made a

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1 dilution of that sample so I may have diluted out some of
2 that minor contributor because there's so much DNA from that
3 major contributor.

4 Q Are you telling this jury that you made an error?

5 A No, sir.

6 Q Well, you just told them you may have diluted it out,
7 you're not supposed to do that, are you?

8 A Yes. We are supposed to target a certain amount of DNA
9 and I don't know what profile I'm going to get, that's how
10 science works.

11 Q I understand. But I'm always interested in how you
12 would say in your report that's in evidence, and I didn't
13 object, you say no conclusive statement can be made
14 regarding the inconclusion or exclusion of Minor
15 and Joseph Loftin as possible minor contributors to this
16 mixture. Why would you say that when you've got no
17 evidence, you've got no scientific test of who may have been
18 a minor contributor? Why would you put that in there?

19 A Because there is not enough information to either
20 include that individual or individuals or exclude them.

21 Q But why would you put that in there? My client is on
22 trial for supposedly messing with this little girl, they
23 don't need a match on that, why would you put their names in
24 there about the vibrator, why would you put that in there?

25 A Because I needed to make a comparison to that sample to

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1 all of the samples submitted.

2 Q Well, did you come up with a comparison other than
3 Virginia Threatt?

4 A Yes. My comparison was basically I can't make an
5 inclusion or exclusion on those two individuals.

6 Q Well, why didn't you just keep silent, I've got
7 Virginia Threatt, I have got no one else sitting there and
8 because I identify them?

9 A Because part of my job is to compare all three
10 standards with the evidence.

11 Q But what -- see, you're losing me, this jury is a lot
12 smarter than I am. The only thing you can compare is -- I
13 understand all three standards meaning the swabs, but the
14 other two didn't show up, did they? The other two swabs, my
15 client and the young lady back there did not show up on the
16 ring.

17 A I can't make that determination.

18 Q But then how can you make the determination that it may
19 have been there? See, that's the problem I've got, you're
20 saying it ain't them but it may be them. Which one is it?

21 A I don't know and that's why I say I can't include or
22 exclude. I can't make that determination based on the DNA
23 from those samples.

24 Q In other words you don't know.

25 A Basically, yes.

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- 1 Q You don't know?
- 2 A I can't make that determination, yes.
- 3 Q No ma'am. The question is you don't know, do you?
- 4 A No, sir.
- 5 Q Thank you. Next item 7.2, did you do a DNA on the
- 6 hair?
- 7 A Yes, sir.
- 8 Q What did you find?
- 9 A No human DNA was obtained from item 7.2.
- 10 Q No human DNA?
- 11 A Yes, sir.
- 12 Q Did you find any animal DNA?
- 13 A We don't perform animal testing. What we're looking
- 14 for is human since it was -- no DNA was detected so we refer
- 15 to it as no human DNA because that's what we are interested
- 16 in.
- 17 Q The next item is 8.1; is that correct?
- 18 A Yes, sir.
- 19 Q That is a cutting from an egg crate mattress that came
- 20 from the Threatt home; is that correct?
- 21 A Yes.
- 22 Q What did you find?
- 23 A Semen was identified.
- 24 Q Wait, semen was what?
- 25 A Identified.

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- 1 Q I know, but what did you find DNA wise?
- 2 A The DNA profile I developed from the semen 8.1 is from
3 an unidentified male individual.
- 4 Q Somebody in that house is putting out semen and he's
5 unidentified, is that what that is telling me? Unidentified
6 male semen found in the Threatt house.
- 7 A It didn't match any of the standards submitted in this
8 case.
- 9 Q I understand that. I'm the only male that you got to
10 test on, the other two are female.
- 11 A That's correct.
- 12 Q We've got unidentified male semen and therefore
13 unidentified male DNA in the Threatt house.
- 14 A Yes, sir.
- 15 Q What's the next item?
- 16 A Item 9.1, which is a cutting from an egg crate
17 mattress.
- 18 Q Is that the same mattress? I'm not trying to trick
19 you.
- 20 A I don't believe it is.
- 21 Q Is it two egg crates? Because I don't know.
- 22 A It's another egg crate mattress from the living room
23 sofa.
- 24 Q All right. Well, let's back up. The egg crate
25 mattress with the unidentified male semen, therefore you've

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- 1 got a DNA off of it but you can't match it to anybody
2 because you don't have the sample.
- 3 A That's correct.
- 4 Q That egg crate was where?
- 5 A The living room.
- 6 Q No. The unidentified male was in the living room, too?
- 7 I am getting confused myself.
- 8 A Yes, sir. They're both in the living room.
- 9 Q And this egg crate mattress which you've already told
10 them my client's DNA was, where was it?
- 11 A 9.1 was from the living room sofa.
- 12 Q We're assuming it was the same mattress then, aren't
13 we? Of course, you ain't never been in the house, you don't
14 know if they had two egg crate mattress or not.
- 15 A Right. They were just submitted as two separate
16 cuttings so I don't know.
- 17 Q I understand that. But both cuttings are from the egg
18 crate mattress in the living room; is that correct?
- 19 A Yes.
- 20 Q You weren't there, I understand that, we are just going
21 on what you examined. Number 14.1, did you identify it?
- 22 A That was a cutting from a flat sheet.
- 23 Q Where did it come from?
- 24 A The flat sheet was collected from the suspect's bed.
- 25 Q My bed?

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- 1 A It just says the suspect's bed.
- 2 Q What location?
- 3 A It's just logged in as flat sheet from suspect's bed, I
4 don't know.
- 5 Q Well, at one time he had two beds, he had a bed up
6 there and we know he had a bed in Fort Lawn. You don't know
7 which bed it came from?
- 8 A No, sir.
- 9 Q Well, did we find anything?
- 10 A No semen was identified.
- 11 Q If I suggest to you the flat sheet under 14.1 and 14.2
12 is from Fort Lawn, that's the bed they're talking about --
13 see, you don't know he moved.
- 14 A Yes, sir.
- 15 Q They do, they know he moved but you don't know he
16 moved.
- 17 A No, sir.
- 18 Q I'm sorry. 14.2 is the same -- it's a cutting from the
19 same flat sheet that I will submit to you came from Fort
20 Lawn.
- 21 A Yes, sir. It's a cutting from the same flat sheet.
- 22 Q What did we find there?
- 23 A The partial DNA profile developed from the semen of
24 item 14.2 also matches the DNA profile of Joseph Loftin.
25 And the DNA profile developed from the female fraction on

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- 1 item 14.2 is a mixture of at least two individuals. The DNA
2 profile developed from the major contributor to this mixture
3 also matches the DNA profile of Joseph Loftin. Virginia
4 Threatt cannot be excluded as a possible minor contributor
5 to this mixture, Minor can be excluded as a
6 possible minor contributor.
- 7 Q So what you're telling the jury is this is a flat sheet
8 that I think we have established that this is a bed over in
9 Fort Lawn, his DNA is on it, the defendant's.
- 10 A Yes, sir.
- 11 Q You are satisfied that the other thing there is a
12 female, correct?
- 13 A I don't think I understand the question correctly.
- 14 Q Well, if I understand you right you said the DNA
15 profile developed from the female fraction, so that's the
16 other part of the stuff sitting there.
- 17 A Right. Let me explain that a little bit.
- 18 Q Wait a minute, I ask the questions, you give the
19 answers once I ask the question. You said female fraction,
20 I'm assuming that means that what don't belong to Mr. Loftin
21 belongs to a female; is that correct?
- 22 A No, sir. Can I explain it now?
- 23 Q Well, go on and explain it now. I'm just reading your
24 notes, female fraction, what is that?
- 25 A When we have a sample that has semen we try to separate

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1 it through a laboratory process into non-sperm cells and
2 sperm cells. So the female fraction that we label, it
3 contains any kind of cells from skin cells or anything other
4 than the sperm cells. So the female fraction can be from a
5 female, it can also be from a male, it's any DNA that came
6 from non-sperm cells.

7 Q Meaning we men can be called a female if you check
8 something that ain't sperm, is that what you just told this
9 jury?

10 A No, sir. I described a female fraction as DNA other
11 than sperm cells. Males can also contribute DNA through
12 skin cells and blood and semen and saliva.

13 Q But again, I'm interested in your language, I call them
14 the female fraction, that ain't no female sitting there.
15 Okay. So female fraction means somebody other than him; is
16 that right?

17 A No, sir, it's just a name of the item.

18 Q All right. And so the female fraction item that you
19 decided to name, it belonged to who?

20 A It was a mixture of at least two individuals.

21 Q Okay. Well, who did it belong to?

22 A The DNA developed from the major contributor also
23 matches the DNA profile of Joseph Loftin.

24 Q I'm passed that, young lady. I'm now on the female
25 fraction, ain't that what the other test was?

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- 1 A I'm reading the results of the female fraction.
- 2 Q Well, what does it say? Go ahead.
- 3 A Like I said, the DNA profile developed from the female
4 fraction from item 14.2 is a the mixture of at least two
5 individuals. The DNA profile from the major contributor to
6 this mixture also matches the DNA profile of Joseph Loftin.
7 Virginia Threatt cannot be excluded as a possible minor
8 contributor to this mixture, Minor can be
9 excluded as a possible minor contributor to this mixture.
- 10 Q So again, is it not true what you just told us is that
11 you found my client's DNA through semen, am I reading that
12 right?
- 13 A I found them in both fractions.
- 14 Q You found them first through semen, right?
- 15 A I don't know if you want to say first, it was done at
16 the same time.
- 17 Q Okay. So you found him because his semen was there,
18 meaning it had sperm in it, or it didn't have sperm in it?
- 19 A Yes, it had sperm.
- 20 Q Then you found this other part that you're calling the
21 female fraction, that was composed of at least two people;
22 is that right?
- 23 A That's correct.
- 24 Q And one of them two people was once again my client?
- 25 A Yes, sir.

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1 Q The other person scientifically may have been
2 Mrs. Threatt.

3 A I cannot exclude her from that minor contributor.

4 Q See, that's what I'm saying, I make my living on words,
5 you make your living with words interpreting your stuff.
6 You can't exclude her but you affirmatively said in your
7 report kind of a negative, you said she cannot be excluded
8 as a possible minor contributor. Well, can the report also
9 say she can be included as a minor contributor or is it a
10 matter of how you're using them words?

11 A The inclusion would be a match and anytime we had a
12 match we have to do a statistic. In this case I was unable
13 to do a statistic on the minor contributor because of our
14 strict guidelines, that's why I say it can't be excluded
15 versus a match.

16 Q Let's make sure that the jury understands this. When
17 you say it cannot be excluded then it means that it may be
18 her, that's the easiest word I can come up with, that it may
19 be her? Is that what you're telling the jury?

20 A Right. I cannot exclude her --

21 Q I understand, but does that mean --

22 THE COURT: Mr. Bell, you're going to have to stop
23 interrupting the witness and let her start finishing
24 answering the question.

25 MR. BELL: I apologize, I thought she was through.

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- 1 Q My question is does that mean that it may be her?
- 2 A That's correct. I cannot exclude her from that minor
3 contributor.
- 4 Q But you wrote in your report, did you not, as to these
5 sheets Minor can be excluded as a possible minor
6 contributor?
- 7 A Yes, for the female fraction in item 14.6.
- 8 Q So is it definitely ain't her, she can be excluded?
9 That's pretty absolute to me.
- 10 A Yes, sir.
- 11 Q Is that absolute to you in your scientific world?
- 12 A Yes, sir.
- 13 Q Okay. 14.3, what is that? Is that another flat sheet,
14 another cutting from a flat sheet?
- 15 A Yes, sir.
- 16 Q Same flat sheet that we talked about 14.1 and 14.2?
- 17 A Yes, that's from the same sheet.
- 18 Q And you could only develop a partial DNA profile, is
19 that what I'm reading?
- 20 A Yes, sir.
- 21 Q Meaning there wasn't enough there to use or what -- or
22 examine, whatever words you use?
- 23 A There is enough there to use and make a comparison.
24 However, like I said before, we test 15 different locations,
25 I didn't get results from all 15 locations.

TESTIMONY OF MARY ANN BOEHM

1 Q Meaning locations in your testing procedure.

2 A Right, on the DNA strand.

3 Q That's what I'm talking about, DNA strand. Do you do
4 fingerprints?

5 A No, sir.

6 Q Do you know anything about they got points you have got
7 to meet?

8 A I don't know much about that.

9 Q On your system whenever you start testing it has got to
10 hit 15 positive or 15 something for you to say this belongs
11 to somebody else, so and so.

12 A No, sir. We can do matches on partial profiles.

13 Q I'm sorry?

14 A We can do matches on partial profiles.

15 Q Of course, I know you did the DNA on the swabs so again
16 I think we've covered everything on this. Did the Lancaster
17 County Sheriff's Department or the solicitor's office ever
18 contact you for any assistance in clearing up this
19 unidentified semen spewing male that was somewhere in that
20 house?

21 A No, sir. I didn't receive any additional standards,
22 male standards.

23 MR. BELL: All right. Thank you. If the State doesn't
24 have anymore questions no objection to her being excused
25 from the subpoena.

TESTIMONY OF MARY ANN BOEHM

1 MS. MINGO: Your Honor, I have a brief redirect.

2 THE COURT: Certainly.

3 REDIRECT EXAMINATION

4 BY MS. MINGO:

5 Q Ms. Boehm, I just want to make sure I understand
6 something, and I'm sure Mr. Bell covered this with you.

7 MR. BELL: I object, Your Honor, if she's bringing up
8 something. Again, she can't retry her case.

9 MS. MINGO: I want clarification on something he
10 brought up, Your Honor.

11 THE COURT: Overruled. Go ahead.

12 Q Mr. Bell asked you about item 14.2 which was a mixture
13 of two individuals.

14 A Yes, from a female fraction.

15 Q Help me understand -- and, of course, I know you found
16 semen, the male fraction, correct?

17 A That's correct.

18 Q Female fraction, what does that consist of? Are we
19 talking about fluid? What are we talking about?

20 A It's any other cells than sperm cells, so it could be
21 from vaginal secretions or skin cells, it could be a
22 combination of cells.

23 Q So we're talking about maybe vaginal secretions or skin
24 cells, something as simple as a skin cell?

25 A It's possible.

TESTIMONY OF MARY ANN BOEHM

1 Q And how are skin cells left in the location, merely by
2 being there?

3 A Yeah, by contact.

4 Q Let me ask you this: Are those things generally left
5 on a surface such as a bed sheet or comforter merely by
6 being there?

7 A It's possible. Any time you touch an object there's
8 the possibility that you're going to leave some DNA behind.

9 Q There's a possibility you can make contact with
10 something or touch a surface such as a sheet or comforter
11 and nothing be picked up?

12 A That's also possible.

13 Q In fact, you analyzed the victim's comforter; is that
14 correct?

15 A Yes, ma'am.

16 Q And on her comforter that she slept on?

17 MR. BELL: Your Honor, again, she's going over what she
18 went over on direct and it is patently unfair for her to
19 have a second bite at the apple.

20 THE COURT: Overruled. Go ahead.

21 Q On her own comforter, did you find any mixture from her
22 or any type of cells from her, from Minor ?

23 A No, ma'am, I did not.

24 Q Is that uncommon?

25 A No.

TESTIMONY OF MARY ANN BOEHM

1 MR. BELL: Answer anything Mr. Bell may have. Thank
2 you.

3 THE COURT: Recross, Mr. Bell?

4 RECROSS EXAMINATION

5 BY MR. BELL:

6 Q Well, what item did she ask you about, 14.2. When she
7 got up on redirect, did she ask you about 14.2?

8 A Yeah, she talked about 14.2 as well as 2.1.

9 Q 14.2 is the flat sheet from Fort Lawn. What did she
10 ask you about 14.2?

11 A I believe she asked me what kind of cells or body fluid
12 that that DNA could come from.

13 Q Well, what were you examining that contained my
14 client's DNA? What did you examine? I understand it was
15 fluid, but what was it.

16 A For that item or for all of the items submitted?

17 Q Yeah, 14.2.

18 A The request was for semen. And like I said before,
19 when we analyzed samples that I have seen we separate out
20 the non-sperm DNA and the sperm DNA.

21 Q I understand, you told us that. But my client's DNA
22 was developed, the sperm, semen?

23 A Well, he is actually in both fractions.

24 Q You told us that, too, I forgot, you're teaching me
25 more than I'm teaching you. But you also said that you

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1 cannot exclude Virginia Threatt, that she was in the
2 non-sperm segment of that sample?

3 A Yes, sir.

4 Q Then what else did she talk to you about?

5 A The cutting from the comforter, item 2.1.

6 Q And that was just semen?

7 A Yes, sir.

8 Q No female fraction in it.

9 A There was a female fraction there as well, and it was
10 the same as the semen male fraction so I didn't see a need
11 to report that.

12 Q Well, you definitely didn't report it because that's
13 brand new to me. All right. You're telling us on the
14 comforter -- look at Exhibit 25, comforter, 2.1, this report
15 certainly didn't tell me -- and tell me if I read it
16 wrong -- it ain't in this report so --

17 A It's not in my results section, but if you look at page
18 four in the tables it is listed there as 2.1F which stands
19 for female, it is in the table.

20 Q Page what of your tables?

21 A It's page four, it's the first page of the table.

22 Q And tell me what it says.

23 A 2.1F, comforter.

24 Q Okay. I see it. What's all of them numbers going out
25 to the right mean?

TESTIMONY OF MARY ANN BOEHM

- 1 A That's the DNA profile developed from that item of
2 evidence.
- 3 Q Well, you've got to decipher it for me, darling, all I
4 see is numbers.
- 5 A Those numbers, that's the test results, that's what we
6 call a DNA profile. There's a string of 15 numbers going
7 across, it is the same at item below the 2.1M or the sperm
8 cells, it is the same profile, it is the same set of
9 numbers.
- 10 Q So it means the same person.
- 11 A Yes, sir.
- 12 Q All right. You didn't check the whole comforter one
13 way or another, did you?
- 14 A I just received one cutting.
- 15 MR. BELL: Thank you, ma'am.
- 16 MS. MINGO: Nothing else, Your Honor.
- 17 THE COURT: Thank you, ma'am, you may step down, and
18 you are excused from your subpoena. Solicitor?
- 19 MS. MINGO: Your Honor, this may be a good time to take
20 a lunch break.
- 21 THE COURT: All right. Ladies and gentlemen, we will
22 take a lunch break until 1:00. Do you think we can have a
23 witness by 1:00?
- 24 MS. MINGO: 1:15.
- 25 THE COURT: When you come back I want you to select a

TESTIMONY OF MARY ANN BOEHM

1 foreperson, it can anybody but our two alternates. Don't
2 get in a fight about it, if you can't agree I can pick
3 somebody. I will see you back at 1:15, remind you not to
4 talk to anybody about the case, don't let anybody talk to
5 you about the case. See you back at 1:15, ladies and
6 gentlemen.

7 (The jury left the courtroom and a lunch break
8 was taken.)

9 THE COURT: Jurors are all here. State ready?

10 MS. MINGO: Yes, sir.

11 THE COURT: Mr. Bell?

12 MS. MINGO: Yes, sir.

13 THE COURT: Let's bring the jury in.

14 (The jury returned to the courtroom.)

15 THE COURT: Welcome back once again, ladies and
16 gentlemen. The bailiff handed me a note indicating that he
17 believes the jury has selected as foreperson of the jury
18 Jennifer Blackmon, number 119. Is that correct, Ms.
19 Blackmon?

20 THE JUROR: Yes, sir.

21 THE COURT: All right, a wise decision, ladies and
22 gentlemen. I agree with your decision. I believe we are
23 ready to resume testimony. Solicitor?

24 MS. MINGO: Your Honor, the state calls Dr. Shaunese
25 Singleton.

TESTIMONY OF SHAUNESE SINGLETON, M.D.

1 The witness, SHAUNESE SINGLETON, M.D., was
2 first duly sworn and testified as follows, on:

3 DIRECT EXAMINATION

4 BY MS. MINGO:

5 Q State your name, please.

6 A Shaunese D. Singleton.

7 Q Can you give the Court your educational background and
8 training?

9 A Yes. I am a general certified pediatrician. I did my
10 medical school training at New York Medical College.
11 Following that I did my pediatric internship and residency
12 at the University of Texas-Houston. While in my pediatric
13 residency training I did several extra courses in the area
14 of child abuse and neglect. And since graduating from my
15 pediatric residency I have been both practicing as a general
16 pediatrician as well as serving as a physician for child
17 abuse and neglect for the last ten years.

18 Q Can you tell the Court any special training you have
19 concerning child sexual assault examinations?

20 A Yes. As a pediatric resident we actually had a child
21 assessment center in our facility, so as a second year
22 resident we were introduced into the information of child
23 abuse and neglect for a couple of months. And then as a
24 pediatric senior resident I took several more months in the
25 area of child sexual abuse and child physical abuse. Since

TESTIMONY OF SHAUNESE SINGLETON, M.D.

1 graduating I have been practicing as -- providing services
2 for child abuse and neglect. And since being in South
3 Carolina I am part of the SCAMA, which is the South Carolina
4 Medical Response Team, which is a consortium of several
5 other physicians in the state who provide child abuse and
6 neglect services, as well as annually attending child abuse
7 and neglect conferences and sitting on its membership board
8 every three months, as well as we do peer reviews and
9 education.

10 Q When you say child abuse, does that include sexual
11 abuse?

12 A Sexual abuse, physical abuse and neglect, yes.

13 Q How many years do you have in that area?

14 A It would be since 2001, 11 years since graduating from
15 residency.

16 Q Have you been previously qualified as an expert in the
17 field of child sexual assault examination and testified in
18 court?

19 A Yes, ma'am.

20 Q How many times roughly?

21 A I will say between seven and ten times if you talk
22 about testify.

23 MS. MINGO: Your Honor, at this time I offer
24 Dr. Singleton in the field of child sexual assault
25 examination.

TESTIMONY OF SHAUNESE SINGLETON, M.D.

1 THE COURT: Mr. Bell, any objection?

2 MR. BELL: I'm trying to think what she's been offered
3 as a child expert for -- again, Ms. Mingo, you said child
4 sexual assault examination?

5 MS. MINGO: Yes.

6 MR. BELL: Your Honor, I object to that. I don't think
7 she is going to be able to qualify as to whether or not any
8 exam is a result of an assault or not. The exam itself --
9 she can testify as to what she found. I don't think in this
10 case or any case she can testify as to what caused it,
11 therefore being identified as a child sexual assault exam is
12 a misnomer to that and therefore I'm going to object to
13 that.

14 THE COURT: Would you like to voir dire the witness?

15 MR. BELL: No, sir, because there's no need to voir
16 dire the witness. She's not going to be able to tell this
17 jury what -- well no, sir, I'm just going to object to --
18 well, I can ask her.

19 BY MR. BELL:

20 Q In this case or any case you have no direct evidence
21 you're going to give anybody as to who did what, no direct
22 evidence.

23 A No direct evidence.

24 Q Because you don't -- somebody may have told you
25 something but you don't have any direct evidence as to who

TESTIMONY OF SHAUNESE SINGLETON, M.D.

1 did what. You can only tell this jury what your exam
2 revealed on or about January 9th or 10th -- what day was the
3 exam?

4 A I don't have my -- the forms with me at this point in
5 time.

6 Q Are they in the courtroom?

7 A Yes, I believe it is.

8 THE COURT: Mr. Bell, aren't you going to need to
9 examine her on her qualifications?

10 MR. BELL: It's not the qualifications -- well --

11 Q I understand you are a medical doctor, correct?

12 A Yes.

13 Q And I understand that you examine people that may have
14 a problem in the female area.

15 A Both male and female, yes.

16 Q Both male and females. Okay. And other than telling
17 the jury what you find, you cannot tell the jury what caused
18 it, can you?

19 A I can tell the jury based on the medical history and
20 based on mechanism of injury whether something is consistent
21 with a particular injury or whether it is not consistent
22 with that injury.

23 MR. BELL: I'm still objecting to that terminology,
24 Your Honor.

25 THE COURT: I'll overrule the objection and qualify the

TESTIMONY OF SHAUNESE SINGLETON, M.D.

1 witness as an expert in the area of the child sexual abuse
2 examination.

3 MS. MINGO: Your Honor, may I approach the witness?

4 THE COURT: Certainly.

5 BY MS. MINGO:

6 Q Dr. Singleton, what is the hymen.

7 MR. BELL: Excuse me, Your Honor.

8 (Break in proceedings.)

9 Q What is the hymen?

10 MR. BELL: I'm sorry, Your Honor --

11 THE COURT: Go ahead, Solicitor. Have you got an
12 objection?

13 MR. BELL: Yes, sir. I apologize, I know you want me
14 over here but I'm having to think quickly on things. She
15 doesn't have her file, I'm going to object to her using
16 anything other than her original file.

17 THE COURT: Overruled. Proceed, Solicitor.

18 Q Dr. Singleton, what is the hymen?

19 A The hymen is an anatomical location in a female
20 genitalia that is present from birth throughout the woman's
21 lifetime. Typically that is the entrance point of where the
22 outer portion of what we call the vagina is to the internal
23 canal on the vagina. On my photos -- can I use that? So
24 what I'm showing here is basically the female genital area.
25 Typically when you're looking at the female genitals this is

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1 going to be a front-on view and I have a side-view for you.
2 But there are several different structures that we commonly
3 refer to as the vagina but there are distinct areas. The
4 hymen itself is the small layer of tissue here that behind
5 which is the vaginal canal, in front of which is still
6 considered the genitals is going to be your labia which is
7 the outer lips which typically has hair, the smaller of the
8 two lips which is the part of the female genitals that does
9 not have hair, and then you have what we call a vestibule
10 which is the open area. But your hymen is the small rim of
11 tissue here that marks of entranceway to the female vagina.

12 Q How does it normally allow for penetration, can you
13 explain that?

14 A Typically what it comes to, what is considered
15 penetration, anything that goes past to the external portion
16 of your female genitals. So again, when looking at girls or
17 female genitals again your labia, which is this outer most
18 portion here is still considered your genitals. The hymen
19 itself is actually several millimeters recessed or closer
20 into your body from your labia. So when you're looking
21 again from the side-view usually you will have the lip here
22 or the outer portion where the hair is, you will have your
23 inner labia, then you get to her hymen which is here. So
24 penetration is really anything that goes past this internal
25 portion, you have to go several millimeters to get in

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1 contact with the hymen, and then you can go past that area
2 or penetrate past that to get into the vagina. But
3 penetration is anything that goes past that external
4 portion, which is her genitals.

5 Q Did you have an opportunity to examine Minor
6 Minor ?

7 A Yes, I did.

8 Q Do you know what day you conducted that exam?

9 A Yes. This exam was performed on January 9th of 2008.

10 Q Can you explain to the jury what type of exam was
11 performed and for what purpose?

12 A The purpose of examination was to provide an evaluation
13 for a possible sexual assault. When I performed my
14 examination I typically do an overall assessment of her
15 genital health as well as a regular physical, which we are
16 most familiar with which is looking at the eyes, ears and
17 upper portions of her exam. In addition to that I will take
18 a closer look at the genitals using a specific technique so
19 I will be able to take a look at her hymen as well as her
20 anal area.

21 Q And what are the specific areas of anatomy that you
22 examined?

23 A Again, in addition to doing a general pediatric
24 physical, which is taking a look at her genital development,
25 skin, eyes, lungs, heart, skeletal system and rules of her

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1 neurological system, I also took a look at the various areas
2 of her genitals which includes the external, the labia
3 majora all of the way to the vaginal area and her anal area.

4 Q What were your findings during Minor exam?

5 A For Minor what I found is that she had -- it
6 was -- she had kind of a ragged but not very smooth area
7 between three and nine o'clock, but she had more
8 significantly a deep cleft at six o'clock of her hymen.

9 Q Can you explain to the jury what a cleft is?

10 A Yes. When doing an examination there's several areas
11 of the hymen if we're looking to see if anything perpetrated
12 past the hymen that are considered clinically significant,
13 meaning that if there's any type of disruption or basically
14 what we would call a cleft or a tear in that hymen would be
15 considered clinically significant. In the literature those
16 areas -- those areas in the literature are considered
17 anywhere between the three o'clock position, again imagining
18 this to be a clock -- but from the three o'clock position to
19 the six o'clock and the nine o'clock position. So where she
20 had a deep cleft, which is again considered significant for
21 considering her history, was in this portion here.

22 Q But that's where you found the deep cleft.

23 A Yes.

24 Q Are there any other injuries that you noted?

25 A Again, I notice that the hymen itself was a little bit

TESTIMONY OF SHAUNESE SINGLETON, M.D.

1 irregular on the three o'clock and nine, but the most
2 significant findings is going to be at that six o'clock
3 position.

4 Q Can you tell us how that differs from a normal exam in
5 a child?

6 A Yes. Typically -- they have found again in the
7 literature that girls who have a slight cleft, meaning even
8 if there is a little indentation between three and six and
9 nine o'clock, if it's less than half of this diameter. So
10 instead of -- consider this the rim and this here is the
11 base of the hymen, halfway between the two that is not
12 considered necessarily indicative of there being a
13 penetration, meaning that when they've done studies in both
14 normal females who do not give a history of sexual assault
15 that they can have some cleft but typically it is less than
16 half of this ring. For those girls that gave a history of
17 having any type of sexual assault most of their cleft or
18 their transection actually were more than half of in a
19 diameter. So that is what a deep cleft would be considered
20 is more than half of that diameter is.

21 Q And that's what you found in Minor .

22 A Yes, I did.

23 Q Now, would that type of injury be consistent with
24 masturbation or self injury?

25 A No. Actually typically, that's not a finding that you

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1 would find in masturbation or any other type of manipulation
2 as far as tampon use or again just fondling of one's self.

3 Q Did you obtain a medical history of Minor ?

4 A I did.

5 Q And why is the medical history necessary for your
6 diagnosis and treatment?

7 A Because when you're taking a look at a person's
8 physical exam, what you're doing is taking a look at that
9 person at one segment in time, but it's also important to
10 get a history so that way you know what mechanism might have
11 influenced the affect of that particular area. So when I
12 take my history from the child typically I start with an
13 open-ended type of question for her to give me unprompted
14 information, and then I might ask for more significant
15 questions so that way when I do my medical assessment there
16 might be other information as a physician I need to do to
17 make sure health-wise in the long term she's healthy. But
18 it's more so to get information about what the mechanism
19 that has occurred on that person was and then correlate to
20 to what we're seeing on exam, and again based on the medical
21 history is that more likely versus not likely.

22 Q In speaking with Minor , don't give me details as to
23 what she said, but did she indicate where any sexual assault
24 may have taken place?

25 A I'm sorry, can you clarify that?

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1 Q Yes. Did she indicate where she was sexually
2 assaulted?

3 A As far as location?

4 Q Yes.

5 A It was at her house that she indicated to me.

6 Q Did she give you any particular places in the house?

7 A I don't have in my documentation here any particular
8 location in the house.

9 Q You indicated that you take a medical history. Was
10 there anything significant about her medical history, her
11 physical symptoms?

12 A From her statements I don't have any other
13 significant -- physically I did not have any other system
14 complaints as far as her physical complaints. But there was
15 some behavioral indication that sometimes can indicate that
16 there were some type of trauma in her life.

17 Q What were those behavioral indications?

18 A Some of her behavioral indication was difficulty
19 sleeping, being sad and crying more frequently and
20 difficulty making friends. Since disclosing this
21 information, again, with having difficulty she was not doing
22 well in school so she had not returned to school. And she
23 had some incidents of cutting herself, complaining about her
24 body itching generally, and then also having nausea and
25 vomiting.

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1 MS. MINGO: All right. Answer anything Mr. Bell may
2 have.

3 THE COURT: Mr. Bell?

4 CROSS EXAMINATION

5 BY MR. BELL:

6 Q Any particular reason you don't have your file up here?

7 A Pardon me?

8 Q Any particular reason you don't have your medical file
9 up here?

10 A I actually was on my way from one of the South Carolina
11 Medical Response quarterly meetings. I was just coming from
12 one of the South Carolina sexual assault type meetings that
13 we just had.

14 Q Did the State serve you a subpoena?

15 A I believe she did.

16 Q And did that subpoena tell you to bring your records?

17 A I don't recall what was on the specifics on that
18 subpoena, I know I was requested to be here.

19 Q When were you served the subpoena?

20 A The exact date I don't know.

21 Q It wasn't yesterday?

22 A It was several weeks ago.

23 Q It was several weeks ago, wasn't it?

24 A Yeah, it was several weeks ago.

25 Q Are you telling these 12 people, or 14, that only a

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- 1 penis can cause what you found in this little girl?
- 2 A That I'm not saying. They have found other things that
3 could do it but typically those type of injuries are found
4 in those people that are in motor type vehicle accidents or
5 velocity, high volume type incidents.
- 6 Q Okay. But you are not telling these people that only a
7 penis can cause the injury you're talking about, well,
8 whatever you're describing that stuff.
- 9 A Uh-huh.
- 10 Q You're not telling them that only a penis can do it.
- 11 A I'm saying based on her history it's consistent with
12 her history.
- 13 Q I understand that, doctor, I understand.
- 14 A Sure.
- 15 Q But please answer my question, can only a penis cause
16 what you told me you found? Answer either yes or no.
- 17 A I cannot provide you with a yes or no because there are
18 qualifying circumstances that based on the literature would
19 indicate to the jury what it would be consistent with and in
20 what information based on the literature.
- 21 Q Let me ask the question another way. Can other --
22 object may be the wrong word, that's the only way I know to
23 ask it -- can other objects cause what you described you
24 found on February (sic) 9th?
- 25 A I have not read anything in the medical literature that

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1 has indicated that in this type of exam another object has
2 incurred based on the history.

3 Q I understand that, but you're the expert that I
4 objected to, but you're the sexual abuse expert. And I
5 don't care about literature, in your opinion as the expert
6 can other -- and perhaps I'm using the wrong word, can
7 anything else, man made albeit -- can anything else cause
8 what you're telling the jury you found?

9 A There are other things that can cause, and as the
10 expert of the person reading the medical literature I can
11 indicate that is not in this situation.

12 Q I understand, you're already opinionated, I understand
13 that. Well, let's look at this. I don't know what the
14 solicitor gave you but I'm assuming they gave you what they
15 gave me as they're required to give me. We have got
16 evaluation date 1/9/08, correct?

17 A Yes.

18 Q On the family history -- is this your writing I'm
19 reading?

20 A Under pertinent family history page six?

21 Q Well, that's what I'm saying -- page six of 12.

22 A Yes.

23 Q Somebody in the family has got a hearing problem.

24 A Yes.

25 Q Developmental time delays, somebody in the family has

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- 1 got some type of mental problem.
- 2 A Yes.
- 3 Q History of domestic violence, it has got -- read that.
- 4 A Ex-husband. Minor was three years old when he left,
- 5 the mother, this was not the biological father.
- 6 Q History of substance abuse, what does it say?
- 7 A Under history of substance abuse it says, "Both mother
- 8 and father, that substance was alcohol."
- 9 Q Now, is that the child's mother and father that history
- 10 is about?
- 11 A This history was obtained from the mother so when I
- 12 indicate mother and father I believe that's what I'm
- 13 indicating is the child's mother.
- 14 Q History of mental illness, what is written in there?
- 15 A Biological father, bipolar, ADHD, obsessive,
- 16 schizophrenia and bipolar and a distant maternal relation.
- 17 Q Sensitive on what, is that medicine? What is the MED.
- 18 A On medication.
- 19 Q Biofather bipolar, ADHD, is that the attention deficit
- 20 disorder?
- 21 A Yes.
- 22 Q Obsessive on medical, schizophrenia and bipolar. What
- 23 is the last three words again?
- 24 A Distant maternal relation.
- 25 Q So under what you're calling review of systems read the

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1 box one history of explosive temper, read that to the jury.

2 A Under the review of systems on history of explosive
3 temper starting with flipping moods or moods flipping at
4 about age eight or nine.

5 Q Now, we're talking about Minor , talking about the
6 child.

7 A Yes.

8 Q Now, I don't read into what is a flipping mood. What
9 is a flipping mood?

10 A This is a quotation that I put in quotes so this is
11 something that the mother stated to me and that's why I put
12 that in quotation marks. But as far as flipping moods, what
13 I indicated that is as her going from a calm manner with the
14 explosive temper being part of that from one calm manner to
15 an explosive type temper.

16 Q Well, I don't want to get the jury mad at me, there's
17 a -- one of the things you can do when you flip somebody the
18 finger, we're not talking about that type of word, we're
19 talking about something emotional?

20 A Yes.

21 Q This started when the child was eight or nine?

22 A That's what was indicated to me, yes.

23 Q And I realize you're not a psychiatrist or a
24 psychologist, but what is that indicating to you about this
25 child's mental state?

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- 1 MS. MINGO: Objection, Your Honor. I don't think she
2 is a mental health expert.
- 3 MR. BELL: Well, she's not, but she's a family doctor,
4 Your Honor.
- 5 MS. MINGO: I don't believe she can speculate as to
6 these things, she's not specifically trained in that area.
- 7 MR. BELL: I'm not asking her to speculate. This is
8 her patient that she interviewed and saw and met.
- 9 THE COURT: I will overrule the objection.
- 10 A What was the question?
- 11 Q As the medical person and based on talking to mama and
12 the child and everything you did -- because you didn't see
13 her but one time, that day.
- 14 A Right.
- 15 Q How did you evaluate what you were being told and what
16 you saw as far as fitting under your quotations, "flipping
17 mood," how did you evaluate that?
- 18 A When taking the history it was not necessarily an
19 evaluation, it was trying to take an inventory of any other
20 type of behavioral or any other physical changes that the
21 child has had throughout her lifetime especially since
22 considering the history that I was provided are there any
23 other behavioral type of changes along with the physical
24 changes.
- 25 Q So at eight or nine years old she was having some type

TESTIMONY OF SHAUNESE SINGLETON, M.D.

1 of behavioral type problems?

2 A I'll say at eight or nine she was, what was indicated
3 was she was demonstrating changes in her mood and her
4 temper.

5 Q Was that a behavioral problem?

6 A I did not indicate whether that was actually causing
7 any other types of behavioral problems in her other areas of
8 life.

9 Q Well, what about this what I call self mutilation, that
10 is a recognized medical word, isn't it, self mutilation?

11 A Yes.

12 Q Because you've got it written down as cutting herself
13 on the arm.

14 A Yes.

15 Q That's also called self mutilation.

16 A Yes, you can. She was cutting herself, yes.

17 Q That's not normal behavior, is it?

18 A It is behavior that you do see but it is something that
19 typically is coming from something.

20 Q My question was is that normal behavior, that's the
21 question.

22 A Again, that's a statement that has to be qualified as
23 to whether it's normal or not normal depending on the
24 children, the situation and what they're doing. So can you
25 see cutting in a normal child? Yes, people do tattoo

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1 themselves.

2 Q Wait a minute, you used the word tattoo?

3 A Yes.

4 Q Let's make sure -- if I get this ink pen and start
5 punching here I'm going to get a tattoo, but is that also
6 cutting?

7 A If the question is is it self mutilating or cutting
8 then, yes, that is.

9 Q Well, did this child have any self made tattoos on her
10 person or was it a pure cutting, meaning some instrument --
11 well, it could be a fingernail -- some instrument broke the
12 skin and caused it to bleed, that's a cutting. So has she
13 got tattoos or has she got cuts on her?

14 A Again based on the history she was stating it was --

15 Q No ma'am.

16 MR. BELL: Your Honor --

17 THE COURT: You've got to let her finish answering the
18 question.

19 MR. BELL: Well, she's not answering my question.

20 A The first question in whether or not it is normal or
21 not normal depends on the child and the situation and what
22 they're doing now --

23 MR. BELL: Your Honor, I'm going to object when this
24 witness is just running, I didn't ask her about normal. I
25 asked her about the difference between a tattoo and cutting

TESTIMONY OF SHAUNESE SINGLETON, M.D.

1 and asked her what that child had.

2 THE COURT: Now, ask her the question again.

3 Q My question was in reference to that young lady that
4 you examined, was it a tattoo -- and I'm using the hand --
5 was it a tattoo cutting or was it just a cutting? That's
6 what I am asking.

7 A For this patient it was cutting.

8 Q On page seven of 12 under physical ROS, which I'm
9 assuming this is dealing with her question and answer.

10 A Yes.

11 Q D-y-s-u-r-i-a, see I flunked Latin in high school,
12 hated it.

13 A Dysuria, difficulty with urination.

14 Q And you've got no, so she's not having trouble going to
15 the bathroom.

16 A Right.

17 Q Bed wetting, no change of appetite, not eating as much;
18 is that correct?

19 A Yes.

20 Q Frequent headaches; is that correct?

21 A Yes.

22 Q You have got genital itching, somebody wrote no; is
23 that correct?

24 A Yes.

25 Q Anal inching, somebody wrote no.

TESTIMONY OF SHAUNESE SINGLETON, M.D.

- 1 A Yes.
- 2 Q Anal pain, is that a check meaning yes or no? What
3 does that mean? It looks like somebody checked it and then
4 scratched it out, am I looking at that correctly?
- 5 A Yes, you are. That was -- I checked it being that she
6 was not having any anal pain.
- 7 Q The point is she wasn't having any anal pain.
- 8 A Right.
- 9 Q Genital bleeding, you first wrote no but then you
10 scratched that out; is that correct?
- 11 A Yes.
- 12 Q Occurred the first -- read that for us.
- 13 A Genital bleeding, again I put no again because I'm
14 taking a history of the child at the time, so no, she was
15 not having genital bleeding. But she indicated it occurred
16 the first three times after intercourse.
- 17 Q Anal bleeding no; is that correct?
- 18 A Yes.
- 19 Q Vaginal bleeding discharge no; is that correct?
- 20 A Yes.
- 21 Q What's the next one age of what, m-e-n-a-r-c-h-e, what
22 does that stand for?
- 23 A Menarche, that's the onset of her cycle.
- 24 Q Onset of what?
- 25 A Of her menstrual cycle.

TESTIMONY OF SHAUNESE SINGLETON, M.D.

1 Q Meaning the first time?

2 A Yes.

3 Q You got that she became -- began November of '07, is
4 that what you have written down?

5 A Yes, I did.

6 Q So are you telling the jury that she -- or somebody
7 told you that the first time she had her menstrual cycle,
8 which I'm assuming for us uneducated people is the beginning
9 of puberty, occurred in November of '07?

10 A No, sir. Actually the age of your menstrual cycle is
11 not the beginning of puberty, it's more so -- it is along
12 and continuing puberty. But the beginning of her menstrual
13 cycle was in 2007.

14 Q All right. Well, I'm not a female so you've got to
15 help me, don't explain the menstrual cycle, but what are you
16 telling me and the jury and the Judge with that comment?
17 Help educate us ignorant laymen, age of the word I can't
18 pronounce began November of '07. What began November of
19 '07?

20 A Her menstrual cycle began November of 2007.

21 Q Well, is that her first one or her last one? What are
22 you telling us? I'm not sure I understand.

23 A On the protocol there is a line that states age of
24 menarche which means the age that she starts her menstrual
25 cycle, the age that a girl starts her menstrual cycle is on

TESTIMONY OF SHAUNESE SINGLETON, M.D.

1 a continuum of puberty. So puberty particularly begins when
2 a child develops breasts -- that's as puberty begins,
3 breasts will development -- then pubic hair, that also means
4 that her hymen has become estrogenized or under the
5 influence of estrogen and there's starting to be changes,
6 continuing on that continuum there's going to then be your
7 cycle. So typically as girls we start with the breasts,
8 then we develop hair, and then after development of time
9 then we start our periods. So this question that says age
10 of menarche is the age that she started her menstrual cycle.

11 Q November of '07.

12 A Yes.

13 Q What's the next one, date of LPN, what is that?

14 A Date of last menstrual period, I wrote nine years old.

15 Q See, maybe all of these people understand but I don't.

16 Well, in November of '07 she was either -- it depends on
17 when you're talking about November because her birthday is
18 in November, okay, if she was born in '94. So in November
19 of '07 she was 12 getting ready to turn 13. So my question
20 is this: Date of LPN, what happened at nine years old to
21 this young girl?

22 A I do see what you're saying. On this particular form
23 those two lines actually were reversed. So her age of
24 menarche should have been at nine, the beginning of November
25 of 2007 should have been under the date of her last

TESTIMONY OF SHAUNESE SINGLETON, M.D.

1 menstrual period.

2 Q Okay. So are we now back to where through history she
3 started having menstrual cycles when she was nine?

4 A Yes.

5 Q And when you saw her in -- January the 9th she told you
6 her last menstrual cycle began or ended in November of '09
7 (sic)?

8 A The date of her last menstrual period was in the
9 beginning of November of 2007.

10 Q Now, as a doctor who deals with female children anyway,
11 but all females are basically the same they just grow up on
12 us and sexually mature.

13 A Right.

14 Q You didn't question -- and I'll back up. As ignorant
15 men have always been taught there is a moon phase or
16 whatever you want to call it, it's about every 28 days, is
17 that roughly true?

18 A Yes.

19 Q No inquiry as to you as to why we don't have a December
20 menstrual cycle, I don't see anything in the notes. Now
21 that we cleared up what we're talking about, no inquiry
22 about that? Because we don't have nothing showing December,
23 do we?

24 A No, I do not.

25 Q And depending on when it starts, you've got her saying

TESTIMONY OF SHAUNESE SINGLETON, M.D.

- 1 the first nine days of January that she could be in the
2 beginning, middle or the end of a period because everybody
3 doesn't start on the same day, the menstrual cycle, do they?
- 4 A Right.
- 5 Q Well, normally except for February you have got at
6 least 30 days in each month, they can start on the first,
7 the second, third, fifth, whatever, depends on when it
8 started when they became into puberty.
- 9 A Right.
- 10 Q Because it normally follows the same cycle for the rest
11 of their life.
- 12 A Particularly unless that person is irregular.
- 13 Q I understand that, that's why I'm saying normal.
- 14 A Right.
- 15 Q And she was vomiting.
- 16 A Yeah. She was complaining of skin inching at times,
17 also she was vomiting and there was a history of having some
18 weight loss.
- 19 Q And again, other than the menstrual cycle claim that
20 ended some time in November of '07 -- well, is it normal for
21 females once they reach puberty to miss a month?
- 22 A Actually they can miss a month, yes.
- 23 Q Can they miss longer than a month?
- 24 A Yes, they can.
- 25 Q So that didn't concern you one way or the other.

TESTIMONY OF SHAUNESE SINGLETON, M.D.

1 Again, as a general practitioner -- I'm sorry, your
2 specialty is pediatrics, which is children's doctor,
3 correct?

4 A Yes.

5 Q So again as a general practitioner specializing in
6 pediatrics, that didn't give you any concern one way or the
7 other about this length of no menstrual cycle?

8 A At the time I saw her she would have been at least a
9 month from the last cycle, she would have come on in
10 December and I was seeing her in January. So there is, yes,
11 a time delay but that's part of why I took the history as to
12 when she was having her cycle.

13 Q I understand that. But, again, as a doctor first -- I
14 understand you're looking at her because somebody is
15 alleging that she got assaulted, I understand that, but
16 you're a doctor first and a pediatric doctor on top of that
17 first, this wasn't a regular patient but the length of
18 whatever that unknown time is but it's more than a month --

19 A Right.

20 Q -- when she had her last period, medically that didn't
21 give you any problem?

22 A I cannot state what I was at at that time because it
23 was in 2008, but typically that would, yes, raise a
24 question.

25 Q But you weren't treating her for that?

TESTIMONY OF SHAUNESE SINGLETON, M.D.

1 A I was doing an overall evaluation for that.

2 Q Yes, ma'am. But you weren't treating her for any
3 potential problems she might or might not have because she's
4 past due for the period.

5 A No. Based on everything that has happened plus I am
6 treating the person based on pretty much a general medical
7 survey and, yes, this particular type of event.

8 MR. BELL: Thank you, ma'am.

9 THE COURT: Redirect.

10 MS. MINGO: Nothing further, Your Honor.

11 THE COURT: Thank you, Doctor, you may step down and
12 you are excused from your subpoena.

13 MS. MINGO: Call Sandra Burton.

14 The witness, SANDRA BURTON, was first duly
15 sworn and testified as follows, on:

16 DIRECT EXAMINATION

17 BY MS. MINGO:

18 Q State your name for the record, please.

19 A Sandra C. Burton.

20 Q Ms. Burton, are you employed at CVS Pharmacy?

21 A Yes, ma'am.

22 Q Which location?

23 A Highway 9 Bypass.

24 Q How long have you been employed there?

25 A Six years.

TESTIMONY OF SANDRA BURTON

1 Q I'm showing you State's Exhibit 17. Can you tell me
2 what it is just by looking at it?

3 A Yes, I can.

4 Q What is it?

5 A Pregnancy test.

6 Q What type?

7 A First Response.

8 Q Did your store carry this type of pregnancy test back
9 in December of 2007?

10 A Yes, we did.

11 Q I'm also going to show you what has been marked as
12 State's Exhibit 18.

13 (Break in proceedings.)

14 Q State's Exhibit 18, do you recognize that?

15 A Yes, I do.

16 Q What is it?

17 A It's a computer picture of a transaction from our
18 store.

19 Q Is it a receipt?

20 A Yes, ma'am.

21 Q Are those receipts generally kept in the normal course
22 of business at CVS?

23 A Yes, they are.

24 Q Are you able to generate those at your store?

25 A Yes, I am.

TESTIMONY OF SANDRA BURTON

1 MS. MINGO: Your Honor, at this time I would move to
2 introduce State's 18 into evidence.

3 THE COURT: Any objection?

4 MR. BELL: Well, my -- at this time if they're trying
5 to connect that to my client they can't do it through this
6 witness, she can't say who did that. So my objection is the
7 relevancy to that document as to my client in this case.

8 THE COURT: What is the relevancy of the document
9 period?

10 MS. MINGO: Your Honor -- we may need a side bar, Your
11 Honor.

12 (Bench conference was held.)

13 Q Does the receipt have a date on it?

14 A Yes, it does.

15 Q What is the date of that receipt?

16 A December 5th of 2007.

17 Q Can you tell by looking at the receipt what form of
18 payment was used?

19 A A Visa credit card.

20 Q And what is the credit card number?

21 A

22 MS. MINGO: Answer anything Mr. Bell may have.

23 CROSS EXAMINATION

24 BY MR. BELL:

25 Q How are you, Ms. Burton?

TESTIMONY OF SANDRA BURTON

1 A I am doing fine.

2 MR. BELL: I don't think I've got any questions, Your
3 Honor. I had to think about it real quick.

4 THE COURT: Thank you, Ms. Burton, you are excused from
5 your subpoena.

6 (A bench conference.)

7 MS. MINGO: Your Honor, the State recalls Sandra Burton
8 to the stand.

9 CONTINUED DIRECT EXAMINATION

10 BY MS. MINGO:

11 Q See anything on your screen, Ms. Burton?

12 A No, not yet. Yes, it is.

13 Q And can you tell the jury what this is?

14 A That is a copy of the receipt.

15 Q For the pregnancy kit that I just asked you about?

16 A That's correct.

17 Q And again, I'm going to ask you about the date on
18 there. What date does it reflect?

19 A December 9, 2007.

20 Q Okay.

21 MR. BELL: Your Honor, I hate -- well, I don't
22 apologize for having to do what I've got to do. Well, of
23 course, for the record I objected to that witness being
24 recalled.

25 THE COURT: I understand.

TESTIMONY OF SANDRA BURTON

- 1 MR. BELL: For the record, I'm objecting to her now
2 doing more with her than what -- she re-called her to
3 correct a mistake that she made not on the exhibit but I
4 think the witness said 12/5 instead of 12/9 and now she
5 wants to -- I'm objecting, Your Honor. Again, it's a matter
6 when the State calls a witness --
- 7 THE COURT: I understand the objection, overruled.
- 8 MR. BELL: Yes, sir.
- 9 Q Ms. Burton, can you tell me what that is, State's
10 Exhibit 27?
- 11 A This is a computerized generated copy of what the
12 transaction was from the purchase.
- 13 Q Are those type forms kept in the regular course of
14 business at CVS?
- 15 A No, they're not, these are from corporate.
- 16 Q Is that something you're able to generate from your
17 store?
- 18 A No. This would have to come from the corporate office.
- 19 MR. BELL: Still objecting, she's not the proper person
20 to identify it.
- 21 MS. MINGO: Well, Your Honor, my argument would be she
22 works for CVS, this comes from the corporate office and
23 she's a proper person.
- 24 THE COURT: You haven't finished tying it up.
- 25 Q You're able to identify what this is?

TESTIMONY OF SANDRA BURTON

1 A Yes.

2 Q Can you explain again what it is?

3 A This is a computerized --

4 MR. BELL: Your Honor, I don't want her talking about
5 something that's not in evidence yet.

6 MS. MINGO: She's not talking about the contents of the
7 document, she's talking about the document.

8 MR. BELL: I don't know that, Your Honor, I always have
9 to anticipate.

10 THE COURT: I haven't heard about the document, just
11 about the details.

12 A It's a computerized copy of the transaction from the
13 purchase.

14 Q Okay. And again, you indicated these are generated
15 from CVS corporate office?

16 A Correct.

17 MS. MINGO: Well, Your Honor, at this time as an
18 employee of CVS I would offer State's Exhibit 27 into
19 evidence through Ms. Burton.

20 THE COURT: Mr. Bell?

21 MR. BELL: I still object, Your Honor, because -- I
22 don't think she can meet the evidence business rule.

23 THE COURT: I sustain the objection.

24 MS. MINGO: That's all from Ms. Burton, Your Honor.

25 MR. BELL: I've got nothing on recross.

TESTIMONY OF AMY SMITH

1 THE COURT: You may call your next witness.

2 MS. MINGO: Your Honor, the State calls Amy Smith to
3 the stand.

4 The witness, AMY SMITH, was first duly sworn
5 and testified as follows, on:

6 DIRECT EXAMINATION

7 BY MS. MINGO:

8 Q State your name for the record, please, ma'am.

9 A Amy Bruce Smith.

10 Q And where do you work?

11 A Davis Neon, Incorporated.

12 Q And how long have you worked for Davis Neon?

13 A Just short of 11 and a half years.

14 Q And what is your title or duties there?

15 A I'm the office manager. I'm responsible for all
16 aspects of office management, larger portions of accounting
17 and human resources.

18 Q Is Virginia Threatt an employee there?

19 A Yes, she is.

20 Q I'm going to show you what has been marked as State's
21 Exhibit 28. Can you identify what that is?

22 A Yes. It is a copy of a time sheet for a weekly pay
23 period as well as a copy of a weekly pay stub.

24 Q And can you generate those forms?

25 A I can generate probably the -- I can print -- okay.

TESTIMONY OF AMY SMITH

- 1 Ask me again. Like could I replicate it?
- 2 Q Yes. Are you able to generate those type forms in your
3 office?
- 4 A To duplicate, no. As far as the time sheet, it's done
5 at the time of the pay period that the work week is -- I'm
6 sorry, I have social anxiety, I apologize -- the time sheet
7 could be replicated, the paystub could not. So once it's
8 closed we can't go back in and change anything.
- 9 Q I'm not concerned with the stub, just the sketch.
- 10 A The time form?
- 11 Q The time form, yes. How are time forms kept? Or how
12 do you keep up with the hours that employees work?
- 13 A Daily time sheets such as this for Ms. Threatt and a
14 couple of other office employees and a time clock for our
15 shop employees.
- 16 Q And do they clock in with a card or something when
17 employees come to work at Davis Neon?
- 18 A The shop employees do, several of our office employees
19 do not.
- 20 Q What about Virginia Threatt, is she an office employee?
- 21 A Yes, she is.
- 22 Q And how is her time kept?
- 23 A It is kept by a handwritten time sheet.
- 24 Q And are you her supervisor?
- 25 A I am.

TESTIMONY OF AMY SMITH

1 Q Do you have to sign off on time sheets?

2 A I do on hers.

3 Q And is that a valid time sheet of Virginia Threatt at
4 Davis Neon?

5 A Yes, it is.

6 MR. BELL: Your Honor, I'm not playing games but I
7 object to the word valid time sheet. I don't think -- she
8 can say is that a time sheet, I don't think this witness can
9 verify for any of this is, it is not her time sheet.

10 THE COURT: Solicitor?

11 Q Does it appear to be a time sheet from Davis Neon, is
12 that what they look like?

13 A This is the time sheet that I paid Mrs. Threatt's
14 payroll from that particular -- yes.

15 THE COURT: I'll admit it.

16 MR. BELL: I didn't say anything about the form, Your
17 Honor, I was just talking about the wordage.

18 MS. MINGO: Your Honor, at this time I move to
19 introduce State's Exhibit 28 into evidence.

20 THE COURT: So admitted.

21 (The time sheet was received as State's 28.)

22 Q Ms. Smith, let me ask you about the particular days on
23 that time form, specifically November 26th of 2007.

24 A Yes.

25 Q Did Virginia work that day?

TESTIMONY OF AMY SMITH

1 A According to this time card, yes.

2 Q And what hours did she work?

3 A 8:00 until 5:00 with a one hour lunch from 12:00 until
4 1:00.

5 Q So she worked from 8:00 a.m. until 5:00 p.m.?

6 A Correct.

7 Q And left from 12:00 to 1:00 p.m.?

8 A Correct.

9 MR. BELL: Thank you, ma'am. Answer anything Mr. Bell
10 has.

11 CROSS EXAMINATION

12 BY MR. BELL:

13 Q Ms. Smith, the time clock is for the people that work
14 where?

15 A In our shop area.

16 Q In the shop. And that's some type of gizmo that there
17 is actually a card punched in and punched out by that
18 employee?

19 A Swipe card, but yes, sir.

20 Q Swipe card. But it time stamps the item to swipe or if
21 you're doing like you do a credit card and everybody has got
22 one that identifies them and they swipe it and it timestamps
23 it somewhere in a computer somewhere; is that correct?

24 A Correct.

25 Q But Mrs. Threatt don't have to do that.

TESTIMONY OF AMY SMITH

- 1 A Correct.
- 2 Q So she's on the honor system, meaning that everyday or
3 every week she writes down when she came to work, when she
4 left for lunch and when she came back from lunch and when
5 she then left home.
- 6 A Correct.
- 7 Q And I'm assuming once a week that form is given to you.
- 8 A I have to verify it, yes. So I am also -- I am not
9 necessarily honor system but I am responsible for validating
10 that she was out of work on the days specified.
- 11 Q I understand that. But you're not sitting there and
12 seeing if she leaves early or comes back late for lunch or
13 anything like that, are you?
- 14 A Yes, sir. Her office is directly beside mine.
- 15 Q I understand that. But you watch her on any particular
16 day, you know if she left early and you mark her down
17 anywhere so she can be docked.
- 18 A Yes.
- 19 Q Does she normally leave early and if she gets docked?
- 20 A If she leaves early -- what are you asking me?
- 21 Q I'm asking you could she leave early and get docked and
22 not get docked?
- 23 A If she left early she would be docked.
- 24 Q If she was late she would be docked.
- 25 A Yes.

TESTIMONY OF AMY SMITH

1 Q And how long has she been an employee?

2 A She has been an employee I believe since 2006.

3 Q And you and she are friends?

4 A I would say so, yes, sir.

5 Q Well, that's fine. But still, she's got to report to
6 you when she comes to work, when she leaves for lunch and
7 when she comes back from lunch and when she then leaves to
8 go home.

9 A Correct.

10 MR. BELL: All right. Thank you.

11 MS. MINGO: Nothing else from this witness, Your Honor.

12 THE COURT: Thank you, Ms. Smith, you may be excused
13 from your subpoena. You may call your next witness.

14 MS. MINGO: Your Honor, the State calls Robin Hunter to
15 the stand.

16 The witness, ROBIN HUNTER, was first duly sworn
17 and testified as follows, on:

18 DIRECT EXAMINATION

19 BY MS. MINGO:

20 Q State your name for the record, please.

21 A Robin Brackett Hunter.

22 Q Where are you employed?

23 A Ricks Heating and Air Conditioning, Incorporated.

24 Q What do you do there?

25 A I'm vice president.

TESTIMONY OF ROBIN HUNTER

- 1 Q How long have you worked for Ricks Heating and Air?
- 2 A Since December of 2004.
- 3 Q Do you know Brad Loftin, the defendant?
- 4 A Yes, I do.
- 5 Q How do you know him?
- 6 A He was one of our employees.
- 7 Q Can you provide the dates that he worked there?
- 8 A Yes. He worked from September 1st of 2006 when we
- 9 hired him, and he quit on August 25th of 2009.
- 10 Q Okay. December of 2007 --
- 11 A Yes.
- 12 Q -- did your company purchase any gift cards for your
- 13 employees?
- 14 A Yes, we did.
- 15 Q What was the purpose of that?
- 16 A It was an employee bonus, we give our employees
- 17 bonuses.
- 18 Q For Christmas?
- 19 A Every Christmas, yes.
- 20 Q How many did you purchase in December of 2007?
- 21 A I believe there were three purchased, I'm not really
- 22 sure but -- I am positive there were three purchased.
- 23 Q Do you know who received the three gift cards?
- 24 A I received one, Brad Loftin received one and I believe
- 25 it was Phillip Cato received the third.

TESTIMONY OF ROBIN HUNTER

1 Q So three given out total?

2 A Yes.

3 Q Did you purchase any pregnancy kit with your card?

4 A No.

5 MS. MINGO: Answer anything Mr. Bell may have.

6 THE COURT: Mr. Bell?

7 MR. BELL: No questions, Your Honor.

8 THE COURT: Thank you, Ms. Hunter, you may be excused.

9 Call your next witness.

10 MS. MINGO: Your Honor, I believe I am out of
11 witnesses.

12 THE COURT: Does that mean out of witnesses forever?

13 MS. MINGO: For today, for today.

14 THE COURT: Let me see the attorneys at a quick side
15 bar, I will be right back with you.

16 (A bench conference was held.)

17 THE COURT: It appears we're going to have to wrap
18 things up for the day, ladies and gentlemen. The State has
19 two more witnesses that they tell me will not be long
20 witnesses, one of them is a physician, he has been
21 subpoenaed and can't get here before tomorrow morning. I
22 have been often proved wrong when I told a jury here is what
23 I think about where we are going and how long it is going to
24 take, but we think we're going to finish this case in the
25 morning and either complete everything that has to be

TESTIMONY OF ROBIN HUNTER

1 done -- in case you've forgotten what has to be done, once
2 all of the testimony is received then the attorneys will
3 make to you their closing arguments where they try to
4 convince you to see the case the way they see it, then I
5 will tell you about the law in the case, then you can go to
6 your jury room and begin deliberations. There's a chance
7 all of that could be finished by in the morning, in other
8 words there's a chance that by lunchtime you will have the
9 case and will be in the jury room deliberating, it could
10 also be just after lunch. But unless something really goes
11 wrong we are going to finish this case, when I say finish
12 it, give it to you by late morning or early afternoon, so
13 for planning purposes that's where we are. I think
14 everybody wishes they could have gotten all of the witnesses
15 here today and try to complete it, although probably then
16 would have gotten the case maybe 5:00 or so today. So
17 ladies and gentlemen, 9:00 in the morning. I remind you
18 don't talk to anybody about the case, you don't talk to
19 anybody about the case. See you tomorrow morning at 9:00,
20 ladies and gentlemen.

21 (The jury left the courtroom.)

22 THE COURT: Is there anything anybody knows of we need
23 to take care of today? I need to -- is there any reason I
24 couldn't talk to your client today, Mr. Bell, about his
25 right to testify?

TESTIMONY OF ROBIN HUNTER

1 MR. BELL: Will be glad to, Your Honor.

2 THE COURT: And we'll have to revisit this tomorrow.

3 MR. BELL: Right. Your Honor, my client as he did the
4 last time we were in front of you has indicated to me that
5 he understands his rights to either testify or not testify
6 and unless he changes between today and tomorrow his
7 decision, not my decision nor have I suggested to him what
8 his decision needs to be, it is -- his decision is to
9 testify assuming once the State rests and assuming --

10 THE COURT: Assuming?

11 MR. BELL: -- that we are unsuccessful in my motions.

12 THE COURT: This is assuming that the State's case goes
13 forward.

14 MR. BELL: That's right.

15 THE COURT: Well, let me go ahead -- I realize that you
16 have advised him and I realize that I previously advised him
17 a few months back about his right to testify but just so
18 there is not any misunderstanding let me go ahead and
19 discuss with him his rights. You heard me tell the jury
20 that it looks like tomorrow morning we're going to reach the
21 stage in the proceedings where you have the right to present
22 your defense. But I need to tell you you also have the
23 right to claim the protections given to you by the 5th
24 Amendment to the Constitution of the United States of America
25 which states in part as follows, and that is that no person

TESTIMONY OF ROBIN HUNTER

1 can be compelled to be a witness against himself. And this
2 means you can't be required to testify, you have a right to
3 testify but no one can make you testify. This is a personal
4 right that you have and no one can waive this right except
5 you. If you decide to testify you will be subject to the
6 same rules that govern other witnesses. You may be examined
7 and cross examined on any relevant issue in this case. In
8 addition -- and my recollection is this does not apply
9 unless something has changed -- but in addition if you have
10 any convictions involving dishonesty or false statement or a
11 conviction for crimes punishable by imprisonment for more
12 than one year and the Court determines that the probative
13 value of admitting the evidence outweighs its prejudicial
14 effect to you, the solicitor would be able to use your
15 record to attack your credibility. If you decide to testify
16 this decision on your part must be made freely and
17 voluntarily with the knowledge of the protections given to
18 you by the 5th Amendment. If you decide not to testify I
19 will instruct the jurors that they cannot give that fact any
20 weight whatsoever, they cannot consider that at all because
21 there is to be no prejudice to you absolutely given the fact
22 that you might not testify. And, of course, you can talk to
23 your attorney about this as well as your family, friends or
24 anyone else, but you must make up that decision on your own.
25 Do you understand?

TESTIMONY OF ROBIN HUNTER

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. It's my understanding right now your
3 attorney believes you wish to testify but you don't have to
4 actually make that decision yet because we aren't there yet
5 and so we'll address this if necessary tomorrow. Thank you.

6 (Court adjourned and resumed on February 16,
7 2012 at 9:00 a.m.)

8 MS. MINGO: Your Honor, I am asking for some
9 clarification, at the beginning of the trial you stated
10 there shouldn't be any reference to the prior trial and
11 we've pretty much avoided that. I just want to make sure,
12 does that in any way limit my ability to impeach him if
13 there is a prior inconsistent statement?

14 THE COURT: No, I don't think it was.

15 MS. MINGO: That's what I was trying to figure out.

16 THE COURT: Mr. Bell, what do you say?

17 MR. BELL: I don't think there's going to be any prior
18 inconsistent statements, I'll wait until that comes up and
19 see how I'll respond to it because --

20 THE COURT: I think it just depends on how you phrase
21 the question.

22 MS. MINGO: I was going to refer to it as a prior court
23 proceeding.

24 MR. BELL: Fine.

25 THE COURT: Here is what I don't want unless both of

TESTIMONY OF ROBIN HUNTER

1 y'all agree to it, but I don't think we ought to have this
2 jury know that this case has been tried here before and had
3 a mistrial.

4 MS. MINGO: I agree with that.

5 MR. BELL: I agree with that.

6 THE COURT: So figure out a way to ask the question
7 without bringing it out.

8 MR. BELL: I think we both have done everything we can
9 to avoid that, Your Honor.

10 THE COURT: Yeah, I think both sides have. Mr. Bell,
11 are you ready for the jury?

12 MR. BELL: Yes, sir.

13 THE COURT: Let's bring our jury in.

14 (The jury returned to the courtroom.)

15 THE COURT: Welcome back, ladies and gentlemen. I
16 believe we are ready to resume testimony in the case. Ms.
17 Mingo?

18 MS. MINGO: Your Honor, the State calls Dr. Wilbur
19 Livingston.

20 The witness, WILBUR LIVINGSTON, was first duly
21 sworn and testified as follows, on:

22 DIRECT EXAMINATION

23 BY MS. MINGO:

24 Q State your name, please.

25 A Wilbur Livingston.

TESTIMONY OF WILBUR LIVINGSTON, M.D.

1 Q Where do you work?

2 A I work in at Carolina Urology Partners and we have
3 offices in Lancaster, Rock Hill and Fort Mill.

4 Q Can you tell the Court a little bit about your
5 educational background?

6 A I went to Wofford College and I went to the Medical
7 University of South Carolina, and then I did my urology
8 training at Wofford Hall Medical Center in San Antonio,
9 Texas.

10 Q So what is your specific field of expertise?

11 A Urology.

12 THE COURT: Your Honor, at this time I would move to
13 qualify Dr. Livingston as an expert in the field of urology.

14 MR. BELL: They are my urologist whenever my kidney
15 stones show up so I'm well aware of them. No objection.

16 THE COURT: The witness is so qualified.

17 Q Dr. Livingston, did you perform a vasectomy on Joseph
18 Bradley Loftin?

19 A Yes, I did.

20 Q And when did you perform that procedure?

21 A I did this on the 6th of December in 2007.

22 Q Where was this performed?

23 A The Lancaster office.

24 Q Is this an outpatient procedure?

25 A Yes, done in the office.

TESTIMONY OF WILBUR LIVINGSTON, M.D.

- 1 Q Can you tell the jury what a vasectomy is? What does
2 that mean?
- 3 A You remove a small portion of the vas deferens on each
4 side of a patient and you interrupt the flow of sperm.
- 5 Q So it's a form of birth control?
- 6 A It's a -- yes, it's a sterilization for birth control.
- 7 Q Does it require any follow-up care?
- 8 A It does.
- 9 Q And what is that?
- 10 A We instruct the patients to after 20 ejaculations or
11 six weeks, whichever comes first, they're supposed to come
12 back in and give us a semen sample and we would like to have
13 negative samples before we declare them sterile.
- 14 Q So nothing about the vasectomy prevents the patient
15 from excreting fluid from the body if there's an
16 ejaculation?
- 17 A You still have ejaculent but eventually the ejaculent
18 won't have sperm in it.
- 19 MS. MINGO: Thank you very much.
- 20 THE COURT: Cross examination.
- 21 CROSS EXAMINATION
- 22 BY MR. BELL:
- 23 Q Is it illegal to undergo a vasectomy in this state?
- 24 A Can you come a little closer? I'm having trouble
25 hearing you.

TESTIMONY OF RICKI VOYER REECE

1 Q I'm sorry, I've been known to yell. But it's not
2 illegal to undergo a vasectomy in this state as long as you
3 are of age.

4 A It's the patient's choice.

5 Q Right, it is purely voluntarily. Okay. Thank you.

6 THE COURT: Thank you, Doctor, you may step down and
7 you are excused from your subpoena. Call your next witness.

8 MS. MINGO: Your Honor, the State calls Ricki Voyer
9 Recree to the stand.

10 The witness, RICKI VOYER REECE, was first duly
11 sworn and testified as follows, on:

12 DIRECT EXAMINATION

13 BY MS. MINGO:

14 Q State your name for the record, please, ma'am.

15 A Ricki Voyer Recree.

16 Q Ms. Voyer Recree, are you employed anywhere?

17 A Not at this time, no.

18 Q What did you do previously?

19 A I was a fraud investigator for Wachovia Wells Fargo for
20 24 years.

21 Q Back in January of 2008 were you employed at Wells
22 Fargo Wachovia?

23 A Yes, ma'am.

24 Q And were you contacted by the Lancaster County
25 Sheriff's Office investigator Mike Adams around that time?

TESTIMONY OF RICKI VOYER REECE

- 1 A I was.
- 2 Q In reference to what?
- 3 A He requested some information regarding a Wachovia
4 issued Visa gift card.
- 5 Q Did he provide a credit card number to you?
- 6 A Yes, he did.
- 7 Q And you were to confirm that it was from Wachovia; is
8 that correct?
- 9 A That it was issued through Wachovia.
- 10 Q And were you able to determine based on that card
11 number he gave you whether it was a Wachovia gift card or
12 not?
- 13 A I was.
- 14 Q Can you tell the Court who purchased the gift card?
- 15 A It was purchased by Ricks Heating and Air Conditioning,
16 Incorporated.
- 17 Q And how were you able to determine that?
- 18 A Through bank records.
- 19 Q And did you generate -- I'm going to show you State's
20 Exhibit 19. Do you recognize State's Exhibit 19?
- 21 A I do.
- 22 Q What does it show?
- 23 A It shows a profile of an account, it's a checking
24 account that was opened in 2004 by Ricks Heating and Air
25 Conditioning, Incorporated, then it shows transactions on

TESTIMONY OF RICKI VOYER REECE

1 that account from December 7th of 2007.

2 Q Are you able to determine how many cards were purchased
3 by Ricks Heating and Air?

4 A I can, yes, I did.

5 Q How many cards were purchased?

6 A Three.

7 MS. MINGO: Your Honor, at this time I would move to
8 introduce State's Exhibit 19 into evidence.

9 MR. BELL: No objection.

10 THE COURT: Admitted without objection.

11 (The bank document was received as State's 19.)

12 Q Is this showing on your screen?

13 A No.

14 MS. MINGO: Your Honor, may I publish to the jury?

15 Q Just to give the jury a visual aide of what we're
16 talking about, this shows three gift cards; is that correct?

17 A Correct.

18 Q Which ones are you particularly interested in inquiring
19 information about?

20 MS. MINGO: Objection, Your Honor. I don't know where
21 this is going, I believe she's now retired from Wachovia --
22 I believe she's now retired from Wells Fargo. I'm going to
23 object. Where is the relevancy going as to which one she's
24 concerned about? She's here simply to identify the three
25 cards.

TESTIMONY OF RICKI VOYER REECE

1 THE COURT: That wasn't the entire question I don't
2 think. The question was?

3 MS. MINGO: Well, Your Honor, I'm asking her which of
4 the credit cards numbers did she inquire -- which card was
5 she interested in acquiring further information about, what
6 was she investigating.

7 THE COURT: I'll overrule the objection, go ahead.

8 A The third card number which is in bold slightly darker
9 than the others.

10 Q So once you determined that this card number was
11 purchased by Ricks Heating and Air, did you do anything else
12 at the request of law enforcement as far as obtaining
13 transaction information?

14 A Yes. I was provided with a subpoena for records, and I
15 obtained through Visa transaction information involving the
16 card number . It was a card in the amount
17 of \$400 with a \$3.95 fee associated with that purchasing the
18 card.

19 Q Okay. I'm going to show you State's Exhibit 20.

20 MR. BELL: No objection, Your Honor.

21 Q Is that the transaction summary that you're talking
22 about?

23 A Yes, ma'am.

24 Q And it shows the transaction on the card you just gave
25 us the number for?

TESTIMONY OF RICKI VOYER REECE

1 A Yes, ma'am.

2 MS. MINGO: Your Honor, at this time I would move to
3 introduce State's Exhibit 20 into evidence.

4 THE COURT: Granted without objection.

5 (The document was received as State's 20.)

6 Q All right. Ms. Voyer Reece, according to this
7 transaction summary, were any purchases made on this card on
8 December 9th of 2007?

9 A Yes, ma'am.

10 Q And what were those purchases?

11 A There was a transaction on the 9th at CVS Pharmacy 7005
12 in Lancaster, and at K-Mart number 7351 in Lancaster.

13 Q And there are several other transactions on the card.

14 A Yes, ma'am.

15 Q Are the transactions -- this first column that we are
16 looking at -- well, the first column on the form, does that
17 consist of the transactions themselves?

18 A That is a transaction date.

19 Q The transaction dates. Okay. Do they read in a
20 particular order?

21 A Yes, it reads from bottom to top. On the bottom item
22 that you see on 12/7 is when the card was actually loaded,
23 purchased and loaded.

24 Q So the next transaction would have been December 9,
25 2007?

TESTIMONY OF RICKI VOYER REECE

- 1 A Correct, at CVS and followed by K-Mart.
- 2 Q And there were a couple of other purchases, I know you
- 3 can't see the one -- what is that date directly above
- 4 December 9th K-Mart, is it December 14th?
- 5 A Correct.
- 6 Q And then there was a transaction on December 17th of
- 7 2007?
- 8 A Yes, ma'am.
- 9 Q What does the second column indicate, I believe it says
- 10 posting date.
- 11 A Correct. That's the posting date of the transaction.
- 12 Q And the third column, does that indicate the locations
- 13 that the purchases were made?
- 14 A Yes, ma'am.
- 15 MS. MINGO: Answer anything Mr. Bell may have.
- 16 THE COURT: Mr. Bell?
- 17 CROSS EXAMINATION
- 18 BY MR. BELL:
- 19 Q I have been informed that you are now retired.
- 20 A Excuse me?
- 21 Q I have been informed you are now retired?
- 22 A Yes, sir.
- 23 Q Enjoy your retirement.
- 24 MR. BELL: No objection to the witness being excused.
- 25 THE COURT: Thank you. You are excused from your

TESTIMONY OF VIRGINIA THREATT

1 subpoena. Call your next witness.

2 MS. MINGO: Your Honor, the State recalls Virginia
3 Threatt.

4 The witness, VIRGINIA THREATT, remained under
5 oath and testified as follows, on:

6 DIRECT EXAMINATION

7 BY MS. MINGO:

8 Q Ms. Threatt, two simple questions. , is
9 that in Lancaster County?

10 A It is.

11 Q The second question, how old was Mr. Loftin when you
12 initially started dating him?

13 A Twenty-one or 22, I'm not really sure it has been so
14 long ago, but early twenties.

15 MS. MINGO: That's all I have. Thank you, Your Honor.

16 MR. BELL: No questions.

17 THE COURT: Thank you, ma'am, you may step down. You
18 may call your next witness.

19 MS. MINGO: State rests, Your Honor.

20 MR. BELL: Matters of law then, Your Honor.

21 THE COURT: Ladies and gentlemen, the State has now
22 rested. I am now required to discuss with the attorneys
23 some matters of law which I don't think is going to take
24 very long so I'm going to ask you to step back into the jury
25 room, I will be with you shortly. Thank you.

TESTIMONY OF VIRGINIA THREATT

1 (The jury left the courtroom.)

2 THE COURT: And Mr. Bell?

3 MR. BELL: The first thing -- I'm going to make, Your
4 Honor earn his pay, Your Honor, the first thing -- and the
5 first thing, I did some research last night, I can't find
6 anything and I'm not sure I know how to craft what I'm going
7 to come up with. But I'm aware of the law that says if you
8 attack an indictment on the face of it and all of that stuff
9 you've got to bring it up before the jury is sworn. But
10 Tuesday Detective Adams said he never went to the grand jury
11 on the initial indictment, the amended indictment or the
12 brand new indictment and I have never heard that before.
13 Somebody had to go to the grand jury and the only witness
14 listed on the copies that I've been provided is Mr. Adams.

15 THE COURT: Well, in my experience lots of people go --
16 one person often times goes on numerous indictments and just
17 reads out the information.

18 MR. BELL: I understand that. But in this case all I
19 see is his name, he didn't go, that's going to make me at
20 least make inquiry of the Court as to whether or not that's
21 an issue -- I know it's an issue I can raise, whether or not
22 it means anything and I think it does so I'm raising that as
23 an issue that the case ought to be dismissed due to
24 impropriety in reference to the grand jury.

25 THE COURT: I understand the motion and deny it.

MOTION FOR DIRECTED VERDICT

1 MR. BELL: Yes, sir. The second motion would be -- and
2 it speaks to both charges, no need to discuss the charges
3 separately -- is there sufficient evidence of a crime, one
4 or both, being committed in Lancaster County. The only
5 details of any kind other than a broad allegation by the
6 complaining witness particularly dealing with penetration in
7 the CSC is the initial event as I remember the time frame as
8 best I can from this case of what I took to be some time in
9 August of what we would call full blown intercourse that
10 occurred in Chester County. And there's nothing in the
11 record other than again some broad allegations covering any
12 criminal sexual conduct dealing with penetration anywhere in
13 Lancaster County. And then I think the same thing would
14 apply to the lewd act in that there's nothing specific --
15 and I'm not talking about dates, Your Honor, I understand
16 they don't have to prove a date, but there's nothing
17 specifically enough in the record as to this lewd act,
18 meaning no details of any kind to go forward beyond you to
19 the jury on either one of the charges, or particularly the
20 CSC with the fact they've got to prove penetration and
21 therefore I would move that the charges be dismissed.

22 THE COURT: Solicitor?

23 MS. MINGO: Your Honor, the victim testified that
24 Mr. Loftin had sex with her on numerous occasions.

25 THE COURT: Sexual intercourse I think she said.

MOTION FOR DIRECTED VERDICT

1 MS. MINGO: Sexual intercourse in Lancaster County,
2 , that was her address. Your Honor, the lewd
3 act has also been established. Of course, that doesn't
4 require penetration, it is just lustful contact with a child
5 under the age of 16 and I think there's sufficient evidence
6 in the record to support both charges.

7 THE COURT: I agree, and I deny the motion.

8 MR. BELL: Yes, sir. Can His Honor give me at least 15
9 minutes? I've got a couple of matters I need to discuss
10 with my client before we bring the jury back in. There
11 hasn't been a change of anything but I've got a couple of
12 things I need to discuss with him.

13 THE COURT: Are you through with your motions?

14 MR. BELL: Yes, sir. I don't have any other motions, I
15 just asked that you dismiss everything, you have denied
16 that.

17 THE COURT: All right. Ten minutes. Go ahead, we will
18 be in recess for ten minutes.

19 MR. BELL: Let me ask you this: Before we start do you
20 want to go ahead and discuss this?

21 THE COURT: This would probably be a good time, sure.

22 MR. BELL: Of course, as to the lewd act I know this is
23 a -- this shouldn't have been printed but it was malicious
24 injury charge on the second page.

25 THE COURT: Well, no, that's not going to be charged.

MOTION FOR DIRECTED VERDICT

1 MR. BELL: I just want to make sure, that came out on
2 my page.

3 THE COURT: Well, and the first part on page 166 is not
4 going to be charged.

5 MR. BELL: Well, I was going to come back to that, yes,
6 sir, I understand, I just want to make sure. But on page --
7 what is numbered as 233, I think that's a proper statement
8 of the law and it ends on page 234 with the word relations.

9 THE COURT: Right.

10 MR. BELL: I think that is proper. Now, on 166 I was
11 going to ask that if you're going to charge that paragraph,
12 the first paragraph that it shouldn't be charged twice
13 because on 167 I've got the same language again at the
14 bottom.

15 THE COURT: Say it one more time.

16 MR. BELL: Well, what the court provided us, it's on
17 page 166 I've got the first paragraph about consent,
18 willingness, difference or ignorance, bla, bla, bla. In
19 other words, it's on my pages.

20 THE COURT: No, on 166 -- that's what I said a minute
21 ago, on 166 that first paragraph is not part of the charge.

22 MR. BELL: Well, you've got it incorporated again on my
23 copy on page 167.

24 THE COURT: Right. But what I'm saying is that above
25 on page 166 of what you have everything above the bold

MOTION FOR DIRECTED VERDICT

1 second degree criminal sexual conduct with a minor is not
2 going to be charged in that location.

3 MR. BELL: Right, sir.

4 THE COURT: But it's going to be charged in the
5 location you have it on 167.

6 MR. BELL: Right. And I understand that, I can't
7 dispute that's the proper charge, my concern is I wanted to
8 make sure you weren't going to do it twice.

9 THE COURT: No, I was not.

10 MR. BELL: And I don't have any other specific charges
11 other than the ones I was going to give the usual charges of
12 reasonable doubt and credibility and all of that stuff.

13 THE COURT: Yeah, all of the standard charges. Let me
14 ask you this: What about, Solicitor, on page 167, bracket
15 parenthesis one and bracket parenthesis two, are you asking
16 the charges on both or either?

17 MS. MINGO: Your Honor, I asked for a charge just on
18 bracket one. I don't think bracket two necessarily applies
19 in this case, she wasn't 14 so I ask for a charge on bracket
20 one.

21 THE COURT: Do you agree, Mr. Bell?

22 MR. BELL: Yes, sir.

23 THE COURT: All right. So bracket two on page 167 will
24 not be charged.

25 MR. BELL: Yes, sir.

MOTION FOR DIRECTED VERDICT

1 THE COURT: Now, what about the form of the proposed
2 verdict?

3 MS. MINGO: Your Honor, I don't take any issue with the
4 verdict form.

5 MR. BELL: I don't either, Your Honor.

6 THE COURT: And obviously if -- well, y'all help me out
7 on this, I don't believe that the defendant has any criminal
8 record that would be --

9 MR. BELL: Well, that was an issue I was going to bring
10 up, Your Honor, and I wanted to see how Ms. Mingo would
11 handle this. He has -- His Honor is aware of that because
12 he set bond -- some time after the first trial he was
13 accused of and arrested for CDV high and aggravated in
14 Chester, and I know you don't remember because you see many
15 cases.

16 THE COURT: Well, I vaguely remember.

17 MR. BELL: You did set bond, that's when the wife was
18 up there not wanting to pursue it and you allowed them to
19 live together and I was going to have a talk with Ms. Mingo
20 if she plans to try to use that in any way because I'm not
21 going to bring it up and I don't know if she is or not
22 because he does not have any criminal convictions of any
23 kind. So I don't know what the position the State is going
24 to take on that for something that occurred after the last
25 trial which ended in a mistrial.

MOTION FOR DIRECTED VERDICT

1 MS. MINGO: Your Honor, if he wasn't convicted of it I
2 don't think I can use it.

3 THE COURT: She can't use it.

4 MR. BELL: I agree, I just want to make sure.

5 THE COURT: She's not going to use it.

6 MR. BELL: I understand. I reckon that's my motion in
7 limine.

8 (A recess was taken.)

9 THE COURT: Mr. Loftin, is that correct, you do wish to
10 testify?

11 THE DEFENDANT: Yes, sir.

12 (The jury returned to the courtroom.)

13 THE COURT: And welcome back again, ladies and
14 gentlemen. As you heard before we recessed the State has
15 rested and the presentation of the State's evidence the
16 defendant is now entitled to present evidence should the
17 defendant decide to do so. Mr. Bell?

18 MR. BELL: The defendant wants to take the stand, Your
19 Honor, so I call the defendant.

20 The witness, JOSEPH BRADLEY LOFTIN, was first
21 duly sworn and testified as follows, on:

22 DIRECT EXAMINATION

23 BY MR. BELL:

24 Q Mr. Loftin, tell the jury your full name.

25 A Joseph Bradley Loftin.

TESTIMONY OF JOSEPH BRADLEY LOFTIN

- 1 Q And how old are you?
- 2 A I'm thirty.
- 3 Q And where do you live?
- 4 A I live in Fort Lawn.
- 5 Q Anybody living with you?
- 6 A Yes, sir, my wife and our kids.
- 7 Q When did you marry -- is your wife in court?
- 8 A Yes, sir, that's her right there.
- 9 Q When did y'all get married?
- 10 A We've been married for going on eight months now.
- 11 Q Any children by her?
- 12 A Yes, sir, we have two boys.
- 13 Q Are they yours?
- 14 A No, they're not mine.
- 15 Q They're hers.
- 16 A Yes, sir.
- 17 Q You've got children that are biologically connected to
- 18 you.
- 19 A Yes, sir.
- 20 Q How many?
- 21 A Two.
- 22 Q I don't necessarily need the name, but what's the
- 23 gender of the oldest one?
- 24 A She's a female.
- 25 Q How old is she?

TESTIMONY OF JOSEPH BRADLEY LOFTIN

- 1 A Ten.
- 2 Q And that baby came as a result of being married to
3 somebody?
- 4 A Yes, sir.
- 5 Q Again, we're not going to use any names because they
6 are not involved in this case. And during the marriage to
7 the lady that produced your ten year old female child. Did
8 y'all live on ?
- 9 A Yes, sir.
- 10 Q And when y'all went through a divorce and all of that
11 stuff, did you occupy after the divorce?
- 12 A No, sir.
- 13 Q She did?
- 14 A Yes, sir.
- 15 Q But eventually you got back in the house after the
16 divorce.
- 17 A Well, we were going to try to get back over there,
18 yeah. The house -- they were taking the house from her
19 because she couldn't afford to pay for it.
- 20 Q Now, you have one other child that is a female child,
21 and how old is she?
- 22 A She should be six right now.
- 23 Q And, of course, her mother is Virginia Threatt.
- 24 A Yes, sir.
- 25 Q And people also call Virginia Threatt Nikki.

TESTIMONY OF JOSEPH BRADLEY LOFTIN

1 A Yes, sir.

2 Q You and Virginia Threatt were never married.

3 A No.

4 Q The State wants to make an issue that you got a
5 vasectomy, so -- and you got a vasectomy.

6 A Yes.

7 Q Well, tell the jury why you got a vasectomy.

8 A Me and Virginia were in a relationship at the time, we
9 had four kids, didn't want anymore kids and that's why we
10 got it -- that's why I got it.

11 Q Was she having any health problems, Virginia Threatt?

12 A Yes, sir. She was having headaches and seizures and
13 things like that.

14 Q Any comments between you and she about removal of the
15 IUD?

16 A Yes, sir. She thought it was messing with her hormones
17 making her gain weight.

18 MS. MINGO: Objection, Your Honor, that's hearsay. He
19 can't quote what she said.

20 MR. BELL: I can quote the witness, Your Honor, that's
21 already been on the stand, can't I?

22 THE COURT: No, I sustain the objection.

23 Q Well, did you -- okay, that's fine. Well, the point is
24 this: Did you do a vasectomy so you could continue messing
25 with that little girl out there?

TESTIMONY OF JOSEPH BRADLEY LOFTIN

- 1 A No, sir.
- 2 Q Well, let's get to that. I've got -- it doesn't matter
3 what it is, but I've got an '07 calendar. And August of '07
4 there are 31 days, same thing this year but I'm using '07
5 calendar. Do you agree with that?
- 6 A Yes, sir.
- 7 Q September of '07 had 30 days, October of '07 had 31
8 days, do you agree with that?
- 9 A Yes, sir.
- 10 Q November of '07 had 30 days and December of '07 had 31
11 days. Now, I haven't tried to add them up, now that's 150
12 plus days. Now, you are a hunter?
- 13 A Yes, sir.
- 14 Q And were you a hunter back in '07?
- 15 A Yes, sir.
- 16 Q And you were licensed?
- 17 A Yes, sir.
- 18 Q To your knowledge did game wardens actively check
19 people that are hunting out of season?
- 20 A Yes, sir.
- 21 Q Well, tell this jury back in '07 what was the timing
22 for hunting season in Chester County?
- 23 A Well, there is three different types of hunting that
24 you can do, one starts in September.
- 25 Q What does that involve?

TESTIMONY OF JOSEPH BRADLEY LOFTIN

- 1 A That's hunting with a bow.
- 2 Q A bow?
- 3 A Yes, sir, a bow and arrow.
- 4 Q All right.
- 5 A The other starts around the first of October.
- 6 Q What's that for?
- 7 A That's for black powder rifle, black powder gun.
- 8 Q That means one of those old muzzle type guns.
- 9 A Yes, sir. The other starts around October 11th for a
- 10 rifle and shotgun.
- 11 Q Okay. One of the accusations is that some time in
- 12 August, which is out of hunting season, right?
- 13 A Yes, sir.
- 14 Q That you in a deer stand in Chester County with a
- 15 weapon, a rifle, dressed to hunt and that's when she said
- 16 you had sexual intercourse with her. Did that occur in any
- 17 way?
- 18 A No, sir.
- 19 Q Have you ever been arrested in Chester County for any
- 20 of these allegations against you by young ^{Minor} as to
or
- 21 this sexual contact in Chester County?
- 22 A No, sir, I haven't.
- 23 Q Have you ever been -- you understand Tuesday before
- 24 this jury was drawn and before this jury -- the whole panel
- 25 was qualified they brought you out of the courtroom -- out

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1 of the jury assembly room and we had to serve you with this
2 brand new indictment, do you remember that procedure
3 Tuesday?

4 A Yes, sir.

5 Q Since you haven't been arrested for anything you
6 haven't been directly indicted by the State for any alleged
7 criminal activity in Chester County concerning ^{Minor}
or

8 A No, sir.

9 Q Who else do we have in the courtroom? Identify
10 everybody else, please, sir.

11 A That's my mom and dad and my grandfather.

12 Q And they live in Chester County?

13 A Yes, sir.

14 Q Did you graduate from high school?

15 A Yes, I did.

16 Q Where was that?

17 A I graduated from Lewisville High School.

18 Q Any education after that?

19 A No, sir.

20 Q What have you normally been doing working wise?

21 A Well, for most of the time I've been out of school I've
22 been doing heating and air.

23 Q Where are you working now?

24 A Now I'm working for a company out of Chester, JRS
25 Custom Fabrications.

TESTIMONY OF JOSEPH BRADLEY LOFTIN

- 1 Q Are you located in Chester or they send you to other
2 parts of the state?
- 3 A It's in Chester.
- 4 Q When did you and -- as you best recollect, when did you
5 and Virginia start residing together?
- 6 A The best I can remember some time in '02, that's the
7 best I can do.
- 8 Q I understand. And she brought with her how many
9 children?
- 10 A Two.
- 11 Q And one is young ^{Minor} , the other is a son?
or
- 12 A Yes, sir.
- 13 Q And where did y'all take up residing together first, do
14 you remember?
- 15 A At her mom and dad's house.
- 16 Q Were her mama and daddy living there?
- 17 A Yes, sir.
- 18 Q And therefore mama and daddy occupied -- her mama and
19 daddy occupied the bedroom?
- 20 A Yes, sir.
- 21 MR. BELL: Is the system on, Your Honor?
- 22 THE COURT: Yes.
- 23 Q This is Exhibit 8. Can you see it?
- 24 A Yes, sir.
- 25 Q This is called Exhibit 8. Do you recognize that bed?

TESTIMONY OF JOSEPH BRADLEY LOFTIN

- 1 A Yes, sir.
- 2 Q And when you were last residing at the house, who
- 3 occupied that bed?
- 4 A Virginia and I.
- 5 Q And do you recognize the room that it's in?
- 6 A Yes, sir.
- 7 Q When you first moved out there who occupied that room?
- 8 A Her mom and dad.
- 9 Q Did they also have the same bed or did they have a
- 10 different bed?
- 11 A They had a different bed.
- 12 Q Now, this picture was taken on or about January 9th and
- 13 10th of '08. When did you last sleep in that house?
- 14 A I want to say New Years Eve.
- 15 Q When did you consider you and Virginia technically
- 16 breaking up for lack of a better word?
- 17 A Right around the week after Christmas.
- 18 Q And neither the jury and I need all of the details but
- 19 why? What was going on? Why did y'all -- whether it was
- 20 her -- I don't want throw rocks -- whether it was her fault,
- 21 your fault, why did you break up?
- 22 A Just wasn't getting along, just wasn't going anywhere,
- 23 the relationship, we wasn't going anywhere, we weren't
- 24 getting along anymore. We just decided to part ways.
- 25 Q Was there an attempt by you to move -- of course, your

TESTIMONY OF JOSEPH BRADLEY LOFTIN

1 child came about I think in '05; is that right?

2 A Yes, sir.

3 Q So from '05 forward you had three children in the
4 house.

5 A Yes, sir.

6 Q Was an attempt made by you to take up residence with
7 them in the Fort Lawn area?

8 A Yes, sir.

9 Q And that didn't -- and where was going to be the
10 building? Tell me about that.

11 A The lady had passed away and she left her house to my
12 mom and dad and they were moving into her house and offered
13 me the house that they were living in that I grew up in in
14 Fort Lawn.

15 Q Were they actually going to deed it to you?

16 A Yes, sir, they were going to sell it to me.

17 Q Well, I don't need to know the terms, but they were
18 going to do a deed.

19 A Yeah.

20 Q I understand they weren't going to give it to you but
21 they were going to do a deed.

22 A Yes, sir.

23 Q And when did that talk come about, do you remember, at
24 least a month and a year?

25 A I want to say late summer, early fall.

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- 1 Q Of '07?
- 2 A Of '07.
- 3 Q And did Virginia get upset because her name wasn't
- 4 going to be on the deed?
- 5 A Yes, sir. That's the one reason she didn't want to
- 6 move over there.
- 7 Q So were there ongoing discussions between -- I've never
- 8 lived with a woman unless I've been married to her and
- 9 that's complicated, probably more complicated when you're
- 10 not married to her. You're not married to her, you could
- 11 just walk away anytime, do you agree with that?
- 12 A Yeah.
- 13 Q You didn't have to go through a divorce.
- 14 A Yeah.
- 15 Q But evidently -- well, y'all had separated how many
- 16 times before the last one in December of '07?
- 17 A A handful of times.
- 18 Q Sir?
- 19 A A handful of times.
- 20 Q And was there some discussion between you and she over
- 21 this last impending separation to delay it until after
- 22 Christmas?
- 23 A Yes, sir.
- 24 Q And your thoughts on that was what?
- 25 A We just didn't want to ruin the kids' Christmas. We

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1 already had their Christmas bought and just wanted to keep
2 everything the same for them through the holidays and then
3 afterwards we were going to go our separate ways.

4 Q I think I forgot to ask you, it doesn't matter, but
5 what type of gun do you hunt with?

6 A I hunt with a 30 ought six.

7 Q So when Virginia's mom and daddy moved out, where did
8 they move to?

9 A They had a house built directly behind the house on
10 .

11 Q How close would you say?

12 A Maybe -- I don't know, maybe 25 or -- 20 or 25 yards or
13 so.

14 Q And then looking at Exhibit 8 again. This bed --
15 before Virginia's mama and daddy moved out, this bed was in
16 the house?

17 A Yes, sir.

18 Q And the mattress was in the house?

19 A Yes, sir.

20 Q Can you tell the jury if you know any secrets of
21 purchasing sheets or anything like that?

22 A I don't remember ever purchasing any. There were
23 sheets already there and --

24 Q Okay. The jury is probably going to get mad at me, but
25 this bed when they took this picture looks kind of messed

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- 1 up, did the bed normally stay like that or was it made up
2 from time to time?
- 3 A Not really. Most of the time it was just slept in and
4 got out of and slept in again.
- 5 Q Okay. I'm going to put up State's 12. Do you
6 recognize that?
- 7 A Yes, sir.
- 8 Q And whose room is that?
- 9 A That was Tyler's room.
- 10 Q Whose room was that before Virginia's mom and daddy
11 moved out?
- 12 A Tyler and Minor shared that bedroom.
- 13 Q And how old was Tyler back in '07, do you remember?
- 14 A I want to say he was eight, something like that.
- 15 Q Do you remember what I'm calling an egg crate -- see
16 that gray looking -- that tan looking thing there?
- 17 A Yes, sir.
- 18 Q What do you call that?
- 19 A I guess that would be the egg crate mattress.
- 20 Q Do you remember them being in the house?
- 21 A I remember one on the sofa bed and that's the only one
22 I remember.
- 23 Q Well, I'm going to come back to that in a minute. When
24 you were last there, did Tyler's room look like that often?
25 Of course, he's a little boy, but did Tyler's room look like

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1 that?

2 A I don't know. They were kids and they kept their room
3 in a mess.

4 Q I don't remember the difference, same photograph, I'm
5 going to put up number 11, State's Exhibit 11. Do you
6 recognize that?

7 A Yes, sir.

8 Q Whose room was that?

9 A That was Minor s room.

10 Q Whose room was that before the mama and daddy --
11 Virginia's mama and daddy left?

12 A Mine and Virginia.

13 Q The State is paying particular attention to in that
14 color (sic) is a purple looking object.

15 A Yes, sir.

16 Q That they're saying is this the purple object. You
17 don't dispute you have ever seen this before, do you?

18 A No, sir.

19 Q Where was it in the house?

20 A At times it was on her bed, at times it was on the
21 couch, sometimes it was in there at the computer, and just
22 wherever she wanted to wrap up in her blanket.

23 Q I'm going to show you State's Exhibit 13. I may have
24 to move it around. Let me ask you this: Is this picture
25 kind of cut off in that there's more sofa -- looking in the

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- 1 picture, is there more sofa on this way to the right?
- 2 A Yes, sir, there is.
- 3 Q Does all of the furniture shown on State's 13 become a
- 4 bed or only part of it?
- 5 A Only part of it.
- 6 Q Is it the part we see or the part that's not in there?
- 7 A It's the part that's not in the picture. Well, this
- 8 little corner over here is -- that's part of it.
- 9 Q The jury can't see you pointing up there.
- 10 A The point on the right side of the picture, the part of
- 11 it would be a little piece of it.
- 12 Q In other words, once the curve is made looking at the
- 13 sofa that is the beginning of the bed?
- 14 A Yes, sir.
- 15 Q Or what could be a bed?
- 16 A Yes, sir.
- 17 Q That's where you remember the egg crate thing being?
- 18 A Yes, sir, it was on the pullout.
- 19 Q Well, from time to time did you sleep on that thing?
- 20 A Yes, sir.
- 21 Q From time to time did anybody else sleep out there?
- 22 A No, sir.
- 23 Q Did you before you left go somewhere and purchase what
- 24 I call a sex toy, probably the wrong definition, something
- 25 called a vibrator ring.

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- 1 A Virginia and I purchased it together.
- 2 Q Y'all were together when it was bought.
- 3 A Yes, sir.
- 4 Q I don't need to know the name of the place, but was it
- 5 bought in Lancaster County, Charlotte or what?
- 6 A I think I remember Wal-Mart.
- 7 Q In Lancaster?
- 8 A Yeah.
- 9 Q Well, I'm old school but I'm an old guy, old school.
- 10 Okay. Now, I don't want to embarrass anybody, but how do
- 11 you use that thing?
- 12 A You've got a little button on the side, you turn it on
- 13 and it -- just put it on and have sex with it on.
- 14 Q All right. And did you use it?
- 15 A Yes, sir.
- 16 Q Did you use it with Virginia?
- 17 A Yes, sir.
- 18 Q Did you use it with Minor ?
- 19 A No, sir.
- 20 Q You use it more than once?
- 21 A Yes, sir.
- 22 Q It hadn't got anything to do with the rigidity of your
- 23 male original, does it?
- 24 A No, sir.
- 25 Q It's simply importing a feeling to the female?

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- 1 A Yes, sir.
- 2 Q So based on the evidence of SLED, DNA stuff found,
3 Virginia's DNA on the vibrator ring, that doesn't surprise
4 you, does it?
- 5 A No.
- 6 Q If SLED had found your DNA on the vibrator ring that
7 wouldn't surprise you either, would it?
- 8 A No, sir.
- 9 Q Did SLED seize some bedding from your house in Fort
10 Lawn?
- 11 A Yes, sir.
- 12 Q Also seized some clothing?
- 13 A Yes, sir.
- 14 Q Did you ever get the clothing back?
- 15 A No.
- 16 Q So if your DNA is on the -- let me ask you this: The
17 bedding in Fort Lawn, the linen sheets in Fort Lawn, did
18 they come from Lancaster when y'all separated, or where did
19 they come from?
- 20 A They were already there, it was some that my mom and
21 dad had had in the house.
- 22 Q And I think again the evidence talked about the flat
23 sheet, said she found some of your semen and therefore DNA
24 on a sheet over there. Anything unusual about that?
- 25 A Not that I know of.

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1 Q Also do you remember the testimony said that Virginia
2 can't be excluded as having sex with you or somehow being
3 involved in something going on in Fort Mill (sic), anything
4 unusual about that?

5 A No, sir.

6 Q But the evidence does say that Minor can be
7 excluded. So again, have you ever had any sex with
8 Minor ? We've already talked about nothing to do with her
9 in a deer stand, anywhere else in Chester County?

10 A No, sir.

11 Q I have in my hand sealed evidence called State's
12 Exhibit 17 and this is a pregnancy test kit. Again, I have
13 never been personally involved in how you use that thing.
14 Did you buy this?

15 A No, sir.

16 Q Did you have any conversation with Minor as to
17 taking a pregnancy test?

18 A No, sir.

19 Q Well, let me ask you this: In reference to this credit
20 card stuff we can't dispute and you don't dispute, do you,
21 that you were given a credit card as a Christmas bonus back
22 in '07?

23 A Yes, sir.

24 Q And you don't dispute that you made use of it.

25 A Yes, sir, I did.

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- 1 Q Where did you make use of it?
- 2 A I used it at K-Mart.
- 3 Q And what did you buy?
- 4 A I bought Virginia's Christmas prèsent.
- 5 Q Which was what?
- 6 A She wanted a video camera and I got her a video camera.
- 7 Q And used that card for it?
- 8 A Yes, sir.
- 9 Q Who was with you?
- 10 A Me and Minor .
- 11 Q And where had y'all come from to go to K-Mart?
- 12 A Sunday dinner at my grandparent's house.
- 13 Q In what county?
- 14 A In Fort Lawn in Chester County.
- 15 Q Was hunting season still open?
- 16 A Yes, sir.
- 17 Q Once the camera was bought, what happened to the child?
- 18 A I was going back to Fort Lawn to go hunting because we
- 19 had to hunt whenever we could and whenever I got a chance.
- 20 They were going shopping -- Minor and her mom was going
- 21 shopping and I don't know if anybody else was going with
- 22 them or not. I took her to her mom and I went back to Fort
- 23 Lawn and went hunting.
- 24 Q Concerning the vasectomy even though you weren't
- 25 married to Virginia, were there any discussions between you

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1 and her of your decision to get one?

2 A Yes, sir.

3 Q And on the day it occur who paid for it?

4 A My mom and dad did.

5 Q Did they come to the clinic on the date it was being
6 performed and pay that bill?

7 A Yes, sir, I think my dad did.

8 Q No insurance to cover that?

9 A My insurance wouldn't cover it.

10 Q I'm assuming the doctors wanted insurance up front.

11 A I think so.

12 Q But you didn't pay it.

13 A No, I didn't pay it.

14 Q How did -- well no, let me backup. Have you got any --
15 now that we have all of this DNA analysis stuff and part of
16 what's in evidence that I can ask you about is one cutting
17 from an egg crate mattress on the living room sofa, that's
18 where you say it was every time you were there.

19 A Yes, sir.

20 Q It's got unidentified male semen on it. Have you got
21 any -- and if you don't know you don't know but I don't want
22 you to guess, but is anybody else to your knowledge that you
23 either saw -- have you got any idea how somebody put male
24 semen on that egg crate mattress in the house?

25 A No, sir.

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- 1 Q For some people that vibration ring is considered
2 kinky, wasn't no kinky crap going on out there, was there?
- 3 A No, sir.
- 4 Q No threesomes and foursomes and swappings and all of
5 that kind of crap?
- 6 A No, sir.
- 7 Q Anything else you want to tell you jury?
- 8 A Nothing I can think of.
- 9 Q Understand these people are going to have to decide
10 whether you are guilty or not now, did you do anything that
11 breaks the law in this state in reference to Minor
12 Minor ?
- 13 A No, sir, I didn't.
- 14 Q All right.
- 15 MR. BELL: Solicitor, your witness.
- 16 THE COURT: Cross examination, Ms. Mingo.
- 17 CROSS EXAMINATION
- 18 BY MS. MINGO:
- 19 Q Mr. Loftin, let's go back to the August through
20 December of 2007, you were employed at Ricks Heating and Air
21 during at that time, correct?
- 22 A Yes, ma'am.
- 23 Q What hours were you working?
- 24 A Normally 8:00 to 5:00, Monday through Friday.
- 25 Q Was your work kind of sporadic, is that not the case in

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1 the heating and air business?

2 A Not really. Sometimes we worked a little more than
3 others, we generally try to stick to a 40 hour week.

4 Q It's your testimony you were working 40 hours during
5 that time.

6 A I wouldn't say 40 hours, I had overtime, some days I
7 would get off early, some days I would get off late.

8 Q Were you ever alone with Minor during that time?

9 A Yes, ma'am.

10 Q And what times were those?

11 A Just times whenever I would get home and she would be
12 there or her mama wouldn't be there.

13 Q So you did have some alone time together?

14 A Yes, ma'am.

15 Q You had a vasectomy December 6th of 2007?

16 A Yes, ma'am.

17 Q Is that correct?

18 A Yes, ma'am.

19 Q Is it fair to say you and Virginia struggled
20 financially?

21 A Yes, ma'am.

22 Q Who paid for the vasectomy?

23 A My mom and dad.

24 Q So you went to your parents so you could afford this
25 vasectomy procedure?

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- 1 A Well, we had talked to the insurance company to start
2 off with and found out that insurance wasn't going to pay
3 for it, so I was telling my mom and dad that I wanted to
4 have it done and they offered to pay for it if that was what
5 I wanted.
- 6 Q If that was what you wanted.
- 7 A Well, we had discussed it.
- 8 Q Do you agree she had a IUD at that time?
- 9 A Yes, ma'am.
- 10 Q Did you ever go deer hunting with Minor ?
- 11 A Yes, ma'am.
- 12 Q With Minor and who else?
- 13 A There were times I took Minor and her brother, there
14 were times that I took her brother and there were times that
15 me and her mom went, and there were times where all four of
16 us would go and hunt together.
- 17 Q And is it illegal to be in a deer stand before October?
18 In October, excuse me.
- 19 A It's illegal to be in a deer stand with a gun and
20 bullets.
- 21 Q But not to be in a deer stand in August of any given
22 year.
- 23 A I guess you can go out and climb a tree any time you
24 want to.
- 25 Q Back when you were living at , where did

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- 1 Minor sleep?
- 2 A In her bed.
- 3 Q She slept in her bed?
- 4 A Yes, ma'am.
- 5 Q Did she ever sleep on this sofa in the living room?
- 6 A Every once in a while.
- 7 Q You agree this is her comforter?
- 8 A Yes, ma'am, it looks like it.
- 9 Q That comforter wouldn't have fit in your queen-sized
10 bed in your bed in that house, correct?
- 11 A No, ma'am.
- 12 Q And you indicated that -- let's talk about the credit
13 card. You don't dispute that Ricks Heating and Air gave you
14 a credit card as a Christmas bonus back in December of 2007.
- 15 A They did.
- 16 Q I think Mr. Bell hit on this, but tell me, what did you
17 purchase with your credit card?
- 18 A A video camera.
- 19 Q Where was that?
- 20 A K-Mart.
- 21 Q What else?
- 22 A I don't think I got anything else that I remember. I
23 know I got a video camera because that's what she wanted for
24 Christmas.
- 25 Q You indicated you bought this on a Sunday.

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- 1 A Yes, ma'am.
- 2 Q What did you do after you purchased the video camera?
- 3 A Took Minor to her mama and went hunting.
- 4 Q Took her to her mama where?
- 5 A After we left K-Mart I went up -- because the CVS is
6 right there on 9 and right there at 200, her mom was going
7 up there to go shopping, I took Minor to her mom at CVS,
8 and they went to Monroe.
- 9 Q So it's your testimony you went to K-Mart, bought a
10 camcorder with Minor, left K-Mart and went to CVS with
11 Minor.
- 12 A Yes, ma'am. I went there to meet her mom there.
- 13 Q You did not go into CVS?
- 14 A No, ma'am.
- 15 Q And what did you do with the card?
- 16 A Her mom had it. Because she was going shopping and she
17 asked for a card just in case she needed it for anything and
18 it was for Christmas so I gave her the card.
- 19 Q So you gave Virginia the gift card and she went to
20 Monroe?
- 21 A I don't remember which -- I don't know if I handed it
22 to Minor or her or when Minor was getting in the car
23 with her, but the card was supposed to be given to her
24 either way.
- 25 Q Now, your residence in Fort Lawn, what is that address?

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1 A

2 Q And that's where you were living back in January of
3 2008?

4 A Yes, ma'am.

5 Q And I believe you testified SLED agents took some
6 cuttings from your bedding?

7 A Yes, ma'am.

8 Q Minor didn't sleep in that bed, did she?

9 A No, ma'am.

10 Q So would it make sense for her DNA not to be in that
11 bed?

12 A I guess so.

13 Q I believe you indicated there was a home in Fort Lawn
14 you were going to purchase some time November of 2007,
15 December of 2007?

16 A Yes, ma'am. Some time in the later part of that year
17 we were offered that.

18 Q Did you eventually purchase the home?

19 A I moved over there and rented it from my mom and dad
20 for awhile, but I moved out of it now.

21 Q But you never actually bought the home.

22 A No, ma'am.

23 Q And you indicated Virginia wanted this home in her
24 name; is that correct?

25 A She didn't want it in her name. It was offered to us

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- 1 to buy from them and my mom and dad -- it was on land that
2 my grandpa owns and they didn't want -- if we were to split
3 up, because we split up as I said numerous times in the
4 relationship and they didn't want to put her name on the
5 house in the middle of my grandpa's land and us split up and
6 then there's a house that's got to be sold with the house
7 and land in somebody else's name.
- 8 Q Was this some time early January of 2008 you were
9 arrested on these charges that brings us here today?
- 10 A Yes, ma'am.
- 11 Q Prior to finding out you were under arrest or you were
12 being investigated, when was the last time you had contact
13 with Virginia Threatt?
- 14 A I want to say some time around New Years, maybe a day
15 or two after.
- 16 Q Did you not talk to her the day before on the phone and
17 inquire about getting back together?
- 18 A We talked about going out to dinner one night, you
19 know, after New Years, I don't remember the night or
20 whatever.
- 21 Q Did she agree?
- 22 A Yes, ma'am.
- 23 Q So you wasn't angry with each other or anything.
- 24 A No.
- 25 Q Your relationship with Minor , she was around eight

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1 when you met her?

2 A Yes, ma'am.

3 Q And can you describe what the relationship was like?

4 A Just a normal relationship, I treated her just like she
5 was my own daughter.

6 Q And she looked up to you as a father, didn't she?

7 A Yes, ma'am, I thought so.

8 Q Did something change?

9 A Not in my eyes.

10 Q Well, at the time of your arrest did you consider
11 yourselves on good terms with Minor ?

12 A Up until they called and told me not to call out there
13 I didn't have a clue what was going on.

14 Q So there wasn't any fallouts between you and Virginia,
15 or you and Minor ?

16 A No, ma'am.

17 Q Did you at times go up to these deer stands before
18 October?

19 A Not really.

20 Q You didn't bait the field?

21 A No. My dad usually takes care of that, he will go
22 out -- my dad goes out and cleans up the stands, we don't do
23 any baiting or anything.

24 Q So you were never in a deer stand before October of any
25 given year for any reason?

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1 A No, ma'am.

2 MS. MINGO: Thank you, Mr. Loftin.

3 THE COURT: Redirect.

4 MR. BELL: Come back over here and sit by me. Defense

5 rests, Your Honor.

6 THE COURT: Solicitor, the defense rests. Anything in

7 reply?

8 MS. MINGO: No reply, Your Honor.

9 MR. BELL: Matter of law then, Your Honor.

10 THE COURT: This is another one of those occasions,

11 ladies and gentlemen, I'm going to have to ask you to step

12 out of the room, probably will be five to ten minutes after

13 which I expect that the attorneys will make to you their

14 closing arguments and then I will tell you about the law and

15 you will get the case and begin, but not until then can you

16 discuss the case. Please go to the jury room.

17 (The jury left the courtroom.)

18 THE COURT: Mr. Bell?

19 MR. BELL: Your Honor, without rearguing the same

20 matter, all of the evidence is in, the defense feels that

21 the evidence is totally lacking to get beyond you to the

22 jury as on the issue of CSC with a minor, that the only

23 penetration of a very broad generalization supposedly by the

24 witness occurred in Chester County, and secondly as to the

25 lewd act case, as to the lewd act the same thing about the

1 evidence, that it's simply insufficient to go from you to
2 the jury.

3 THE COURT: I understand the motions. I believe there
4 is sufficient evidence to go to the jury and will deny the
5 motion.

6 (Recess was taken.)

7 THE COURT: Twenty minutes each, what do you think? Do
8 y'all have a --

9 (Break in proceedings.)

10 MR. BELL: Defense is ready, Your Honor.

11 THE COURT: State ready?

12 MS. MINGO: State is ready.

13 THE COURT: Bring in the jury.

14 (The jury returned to the courtroom.)

15 THE COURT: Welcome back again, ladies and gentlemen.
16 As I mentioned to you before the last recess you've received
17 all of the evidence that's going to be presented in the
18 case, there will be no more testimony, no more documents.
19 What remains is for the attorneys to make their closing
20 arguments and then I will tell you about the law that
21 applies and then you will begin your deliberations in the
22 jury room. Beginning with the solicitor.

23 MS. MINGO: Your Honor, the State will waive at this
24 time.

25 THE COURT: Mr. Bell?

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1 MR. BELL: Quarter 'til by that clock, Your Honor? All
2 right.

3 THE COURT: I've told Mr. Bell he had to limit -- as
4 well as told the solicitor they both have limits on how long
5 they can address you. In other words, I'm not talking about
6 these two lawyers, but some lawyers like to hear themselves
7 talk and I did when I was a lawyer and it's probably good
8 that the judges put limitations on my ability to talk
9 sometimes longer than I should. Mr. Bell, go ahead.

10 MR. BELL: I know I've got a captive audience and I
11 know that y'all have heard all of this. Let me give you a
12 little story. In May of 1970 I reported to Fort Benning to
13 go through infantry officer class. I came in as a first
14 lieutenant, I was in law school three years so I got
15 promoted, and there was a little thing going on called
16 Vietnam. And part of your officer stuff is they set up this
17 scenario and this scenario, tell you how to handle this and
18 how to handle this and get through booby traps and all of
19 this stuff. And one day we walked in there and some major
20 was giving us a class in there and all the sudden he said
21 nuke them, and everybody agreed because everybody in that
22 room was probably going to Vietnam. And the moral of that
23 story is the State is trying to nuke me in that I got
24 arrested in January of '08 and I was charged with CSC with a
25 minor and it said from August unknown date until December of

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1 unknown date. Then I got indicted, the same thing. Then
2 the State amended the indictment and said well, wait a
3 minute, they said unknown date in August and now it's
4 December 31, and then last Thursday they brought the brand
5 new charge and said, "Well, we got this CSC, maybe we're
6 worried about it a little bit because we ain't got these
7 dates and stuff" -- I'm going to get back with that in a
8 minute -- so let's also indict him." At the same time he
9 didn't have a CSC, it was a lewd act, or if he's a CSC he's
10 also a lewd act, so I'm getting nuked. Now, the decision
11 that you 12 have got to make is not on the quantity of the
12 evidence, but the quality of that quantity of evidence.
13 Whenever the government comes after you, any government,
14 this case is the sheriff's department, it can be the federal
15 people, it can be the city people, it can be SLED, whoever,
16 they have got unlimited power because we pay them out of our
17 pocket, it's called taxes. And they say we think you did
18 this so let's get a warrant. And then they go to the grand
19 jury, that's 18 people meeting in secret. And Mr. Adams
20 said -- he was the main officer, he said he went there, I
21 don't know who went to the grand jury. But the grand jury
22 indicted them, and what that does is it starts a legal
23 process and His Honor is going to tell you about it in his
24 charge, but basically that young man I represent over there,
25 the minute he was arrested a presumption came in existence

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1 and its called a presumption of innocence and it attaches
2 just like this coat on my back and it stays with him and
3 it's on him right now. And the burden is on this table to
4 remove it through competent evidence by proving him guilty
5 beyond a reasonable doubt, and you 12 are going to be going
6 back there and finally start discussing and finally hitting
7 the button and get your mind from neutral to where you're
8 going to start thinking about this stuff. And you've got to
9 first talk to yourself and then you've got to be prepared to
10 turn to the other 11, because you're only going to be given
11 two choices on the verdict, either guilty or not guilty,
12 CSC, lewd act, and it takes all 12 of you to say guilty or
13 not guilty. That's the law he's going to tell you. He's
14 also going to tell you about the crimes themselves, listen.
15 Basically criminal sexual conduct -- the reason it slipped
16 my mind here is because of the age thing of the young
17 lady -- but basically criminal sexual conduct deals with
18 penetration. And the statute says penetration however
19 slight, and then it goes on to the statute except for a
20 recognized medical procedure, because if it wasn't in there
21 somebody could say the doctor did something and that could
22 be called criminal sexual conduct. And lewd act is simply a
23 touching or something to arouse the person doing the
24 touching or the person that's getting touched. I make no
25 comment about what happened because I wasn't there and I'm

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1 being asked to make a comment, I can't, just like the
2 solicitor can't and the Judge can't. You notice we made
3 opening statements two days ago but these are what you call
4 closing arguments and this is when I get to challenge stuff
5 or whatever, and I did that a little bit during the trial
6 with some witnesses. But we're now discussing, and
7 Solicitor Barfield (sic) is going to be discussing all of
8 the reasonable inferences that come out of this evidence and
9 obviously some of it is in dispute, and the biggest dispute
10 is she said he did it, he said he didn't do it. Part of
11 your job -- and His Honor is going to tell you that -- is
12 that you have the right to decide credibility and
13 believability, and you can believe all that a witness says,
14 you can believe zero of what a witness says and you can
15 believe anything in between; 90/10, 80/20, 60/40, whatever,
16 that's your job. So what we've got is this young lady --
17 and y'all have got to realize as an old man -- and she may
18 think of me as a dirty old man -- but this ain't personal.
19 I'm up here representing my client going over and giving him
20 a defense and challenging what he's being presented and
21 therefore what I'm arguing is what you have heard. I've got
22 a young lady who reached -- and my younger brother has the
23 only female child in the family, he told me one day several
24 times because all I've got is boys that I have missed the
25 pleasure of raising a female child, and I don't really know

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1 what he meant by that but I'm assuming raising a female
2 child can be different than raising a male child. I've got
3 this young lady who at eight years old if I remember the
4 facts correctly, became a woman, she went in to puberty, I
5 don't know if that was before or after, and that at the same
6 time according to the doctor who examined her, she went
7 through according to mama these flips moods and mood changes
8 and all of that stuff. And again, it's there, I had to know
9 what it meant, you had to know what it meant. And that she
10 in August claims while hunting -- my client said you don't
11 hunt in August, not legally, Chester starts in September bow
12 and arrows, in October black powder guns, and I'm not a
13 hunter, I've got guns but I'm not a hunter. Black powder is
14 when you actually load the cartridges with black powder and
15 I think he said in the middle of October is when you
16 actually hunt with a regular weapon, that's what he says.
17 He had been hunting with her, don't dispute that. But she
18 says that he pulled out a condom and supposedly said, "You
19 know what this is?" And she said, "Oh yeah." And that
20 peeked my interest -- because that's the way she said it --
21 and that peeked my interest as to that wasn't the first time
22 she had seen a condom somewhere, she had seen one before
23 somewhere, now where I don't know, but that's the first time
24 she said he did it. We've got the event that maybe in
25 August occurred with this alcohol. We've got the little

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1 friend over there who claims she drank part of a beer if I
2 remember correctly. We've got the little friend over there
3 who claims my client was at the computer with that young
4 girl. And whenever she testified she said she was at the
5 computer and that something went on that the little girl
6 never saw and she didn't tell nobody until I'm assuming on
7 that January date when the cops showed up and somebody
8 confronted her in some way to where she told her mama and
9 her mama talked to the cops, and then the mama knew.
10 Because she didn't testify about it yesterday, and mama
11 didn't know because she didn't say she told anybody until
12 almost four years ago about all of this other stuff. The
13 only thing mama talked to her about -- and the only thing
14 that the mama talked to her about was my client gave her
15 alcohol but none of the other stuff that supposedly
16 happened. So that witness didn't tell anybody, didn't tell
17 her mama, didn't tell the cops. But then she wants to come
18 in here yesterday and said something -- or the other day --
19 you've got to resolve that. It ain't something I planned
20 it, it's just the way it developed. But then we go back to
21 Fort Lawn and that's the trouble with this type case, you
22 can't convict him for -- if you say okay, we believe he did
23 it beyond a reasonable doubt in Fort Lawn, that ain't part
24 of your verdict. Chester has never arrested him, Chester
25 has never indicted him and this is the 6th Circuit, the 6th

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1 Circuit is Lancaster, Chester and Fairfield County. Both of
2 these are solicitors for the 6th Circuit, so you can't
3 convict him. In Chester you can't convict him because it
4 ain't in the jurisdiction of this court. The only evidence
5 that I remember if you believe it of any type that ties in
6 this penetration thing is the Chester matter. The child
7 never told you any other details. They don't have to give
8 you a date. A date that it occurred is not a de novo
9 defense, I will be the first to tell you that, that's why
10 they've got the broad stuff, but they've got to tell you
11 something more than he had sex with her. What is the
12 definition of sex? Different people have got different
13 ideas. She never again over in Chester talked about
14 penetration at all but she says it occurred. It broke on
15 the 4th of January of '08, this first little young lady that
16 testified -- I can't remember all of the names without
17 having my file up here, but the very first young lady who
18 told on her to me -- and it's conceivable that somebody
19 knows knowledge like this if it occurred starting in August
20 or September and don't tell nobody? And then what brought
21 it about on the 4th, and she really didn't give us an answer
22 to where she then went to, the principal had to call the
23 little girl in and asked and she said, no, nothing happened.
24 And they called the cops in, DSS is out there, called in
25 mama and then it goes downhill from there in reference to my

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1 client. SLED gets brought in. This is the CSI stuff. And
2 see, it's a little more complicated than what if any of
3 y'all watch that stuff on TV. Most lawyers don't watch
4 stuff on TV, they're not realistic, they know it can't get
5 solved in an hour. They came in with that blue light, and
6 my God, I hope they don't ever come to my house with a blue
7 light, they found stuff everywhere. What does that mean?
8 The fact they found stuff -- they found fluids, does that
9 mean that he is guilty of something? No. Half of the stuff
10 they found didn't pan out, so that blue light ain't got very
11 good reliability saying this is something we need to grab.
12 Because they grabbed it and then the second lady who
13 testified who did the little chemical test ruled this out,
14 ruled that out to where only certain things went to the DNA.
15 And I want y'all to understand, I'm dealing with cops and
16 cops ain't never going to try to help me or my client and
17 that's why you did see me -- I didn't lose my temper, I did
18 it on purpose -- you did see me have to lean on the DNA lady
19 because she wouldn't answer the questions, or she was
20 answering the questions trying to get it all the way back to
21 the State's favor and that's the way the report reads. But
22 they found my client's DNA out of semen, how long it had
23 been there, when it was deposited there we will never know.
24 They found Virginia Threatt's DNA. How long it was there or
25 when it got deposited we'll never know, but they were

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1 consenting adults and they were having sex and they had a
2 baby. Somewhere in here we've got a picture of this little
3 toy, and this is probably the old man talking -- I'm not as
4 dumb as I think but I swear to God I wouldn't want to use
5 them things, it looks too complicated -- they found DNA on
6 there. Whose? Virginia's. He used it on her. No DNA on
7 there as to this young girl who said it was used on her.
8 The only other possible DNA on there was him, and the State
9 is going to get up here and say, "Well, it could have been
10 there but it has been masked." But ladies and gentlemen,
11 don't convict this boy that it could have been there. Proof
12 beyond a reasonable doubt. Then we've got all of this stuff
13 going on, the big surprise is who -- the Judge is probably
14 going to lock me up -- who in the hell was spewing semen in
15 that house that they can't identify? I don't know. They
16 could have found out maybe, we've got a kid out there, did
17 they test him? You know, here I am facing DNA and I've got
18 an unidentified male leaving semen on the egg crate mattress
19 that is out there in the floor of the living room or
20 whatever you want to call it but because his is out there
21 convict him. So I don't know what's going on in that house,
22 I don't know who is at fault. Then this thing, it had two
23 tests in it, little girl only said if you believe her story,
24 "I used only one." But where is the second test? Because
25 when the SLED agent came up here and said, that was

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1 Ms. Wallace, Skipper-Wallace, that I got this and the only
2 thing in there was the instructions I said low and behold it
3 says two tests, you can use it twice. The little girl said,
4 "He made me use it one time." That don't jive either.
5 Y'all got all of this stuff in evidence most of which I
6 didn't object to. We've been involved in this case since
7 '08 meaning I got hired in '08 and we go through all of this
8 discovery and I file Rule 5, that's a criminal motion saying
9 to the State you've got to give me everything you've got, so
10 I knew what was out there because they've got to give it to
11 me. They were piece milling me information last week but I
12 didn't make an issue out of it because I was ready for
13 trial. Margo Dixon, nice lady. She don't know what was
14 going on, she simply interviewed her, lost the tape or
15 misplaced it, I would like to have seen that but they can't
16 find it. Says she didn't want to lead her. Well, you know,
17 the little girl is saying what she was saying on the 4th of
18 January, but there was some differences in there about a
19 beer. She had a friend that she was no longer a friend with
20 because she didn't get along with boys and she was cutting
21 herself. Again, I didn't bring that out to embarrass
22 anybody but I knew that she cut herself. Why? Well, nobody
23 told us. And I'm not a psychiatrist, I'm not a
24 psychologist, I don't know when it occurred but that is some
25 type of disorder of some kind. Now, what brought it about?

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1 I don't know. But it's called mutilation, it's called self
2 mutilation and it ain't normal. Because when I got the
3 little lady -- and again, I had to lean on the doctor a
4 little bit as you remember, she was talking about -- of
5 course, we didn't put in the picture, but the female organ
6 looks like such and it has got this layer and that layer and
7 she saw a cleft at number six which is straight down and
8 something between three and six. When did it occur? How
9 did it occur? That's when you heard me start asking her can
10 it be done other than with a penis? And I didn't mean to
11 embarrass anybody but that was the only way I could ask a
12 question. Well, she hemmed and she hawed and she wanted to
13 talk about this book and that book. But I kept pushing her
14 can it be done other by than with the penis and the answer
15 is yes. I don't know how it was done, don't know when it
16 was done, don't know if it was done the day before
17 examination or a week before the examination or nine months
18 before the examination or a year before or two years, I
19 don't know when it was done and you don't either. But the
20 State is saying we use this evidence to convict my client.
21 So that's it. Proof beyond a reasonable doubt. You
22 determine the facts, that is your job. Credibility to
23 believe who you believe, what you believe and be prepared to
24 discuss with anybody else why you believe it, and then
25 decide. As horrendous as this potential crime is he's still

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1 innocent until proven guilty. And you, if proven guilty
2 beyond a reasonable doubt by this table, you take the cloak
3 of innocence off of him and write guilty, that's the way the
4 system works. But if he has not been proven guilty beyond a
5 reasonable doubt -- and he don't have to convince you of
6 nothing, he didn't have to testify if he didn't want to, and
7 had he not testified the Judge would have said you can't use
8 that against him because he has a right not to testify, he
9 doesn't have to convince you of anything but he wanted to
10 take the stand to tell you he didn't do it. And that's all
11 he could say, he didn't do it. And we went into a little
12 bit more background but basically he said he didn't do it.
13 She said he did and the State should -- the Judge is going
14 to hit me in a minute -- they even brought up the fact that
15 he went through a vasectomy and you're to use that to
16 convict him. Solicitor, your argument.

17 MS. MINGO: May it please the Court?

18 THE COURT: Ms. Mingo.

19 MS. MINGO: Ladies and gentlemen, I want to thank you
20 for your obvious attentiveness through this trial. You've
21 heard a lot of testimony and now we're at a point in the
22 proceedings where you've got to decide what is the truth,
23 what do you believe really happened, and when you make these
24 determinations use your common sense. This case as much as
25 all of the evidence you've got to go through, it's pretty

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1 simple and very straight forward when you consider what the
2 evidence is. First of all, let me tell you this:
3 Mr. Loftin has been charged and indicted for two crimes;
4 criminal sexual conduct with a minor second degree. That
5 basically consists of two elements, a victim between the
6 ages of 11 and 14 years old -- Minor was 12 -- and some
7 type of penetration or sexual battery. She indicated he had
8 sex with her on almost a daily basis. Lewd act, that's the
9 more broad -- more broad charge. And it pretty much
10 consists of any type of lustful contact with the body of a
11 child under the age of 16, doesn't necessarily require any
12 type of penetration, and the Judge will give you some
13 definitions of law in just a few minutes. If you believe
14 Minor then her testimony satisfies the elements of both
15 of those charges. Now, ask yourselves, why should you
16 believe Minor ? Consider what she did on the
17 stand on Tuesday. Does anybody think that was fun for her
18 to come in this courtroom to talk about some of the most
19 intimate details of her life? Something that most adults
20 would have trouble talking about, sexual details, intimate
21 details, she didn't want to share that. This was not easy
22 for her. And this started when she was 12. You see her
23 today, she's 17, almost an adult. This started as a 12 year
24 old. She had to talk to a forensic interviewer who she did
25 not know and give her all of these details, a male officer,

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1 Mike Adams whom she did not know and give all of these
2 details. She had to submit herself to an uncomfortable
3 medical exam at 12 years old. Why is she doing all of that?
4 She's not getting a kick out of this. She's telling you
5 this stuff, everything she told you on the stand I submit to
6 you because that's what happened. And I want you to also
7 consider the many ways her testimony was collaborated
8 throughout this trial. And the first thing I want you to
9 think about is the medical evidence. You heard from
10 Dr. Singleton, she had an abnormal medical exam at 12 years
11 old, her hymen was not normal. I believe the medical
12 terminology was a deep cleft at six o'clock. And I asked
13 the doctor, "Was that significant with masturbation or play
14 injury or sports injury?" And she said no. Mr. Bell
15 cross-examined her, tried to shake her a little bit. "Well,
16 is the penis the only thing that can cause that type of
17 injury?" And what did she tell you? The only thing she
18 could really compare it to was the type of injury a person
19 might receive if they're in a violent car accident, some
20 type of high impact situation, that's the only thing she
21 compared that type of damage to a hymen to if I remember her
22 testimony correctly. What else collaborates Minor
23 testimony? Let's talk about the pregnancy kit. Minor
24 told you some time in December of 2007 Mr. Loftin took her
25 to CVS and purchased a pregnancy kit, she didn't know the

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1 exact day, she just knew it was Christmas time,
2 December 2007. The only reference point she had was she
3 knew her mom was shopping in Monroe, North Carolina on that
4 same day doing some Christmas shopping. You heard Virginia
5 Threatt testify she did her Christmas shopping on
6 December 9, 2007, that is confirmed by the bank records,
7 that's in evidence, you can look at that. Also further
8 confirmed by the receipt she got from Target in Monroe on
9 that day. And what do you know? The pregnancy kit was
10 purchased on December 9th, the same day. What ties
11 Mr. Loftin to that pregnancy kit? We know the pregnancy kit
12 that was purchased on December 9th came from a card issued
13 by Ricks Heating and Air, that's where the credit card came
14 from. We know he received a credit card from Ricks Heating
15 and Air December of 2007, he can't deny that. That was his
16 credit card. And you'll get a chance to look at the
17 evidence. Look at the credit card number on the receipt
18 from CVS and look at the number on Ms. Voyer Recree's
19 printout from Wells Fargo, that connects that number to
20 Ricks Heating and Air. You'll have all of that evidence
21 back with you. And what else collaborates her testimony in
22 this trial? Let's talk about the vasectomy. Minor told
23 you Mr. Loftin told her, "I don't want to worry about
24 anymore babies." We know in December she was late for her
25 period. The doctor testified her last menstrual cycle began

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1 early in November, by December 9th he's buying a pregnancy
2 kit. What does that tell you? You also know his partner,
3 Virginia Threatt, had a IUD at the time. For what purpose
4 would he need a vasectomy? That's his sexual partner, his
5 only sexual partner and she's got a reliable birth control
6 devices already implanted. That was not for Virginia, I
7 submit to you that was to keep Minor from getting
8 pregnant. What else? The physical evidence in this case
9 collaborates her testimony. She told you he had sex with
10 her in her room on her purple comforter that you have got in
11 evidence. His semen is there, no doubt about that. If you
12 look at the report I believe it says the likelihood of that
13 semen belonging to someone else is one in 45 quadrillion.
14 His semen is on her comforter. Where else did she say they
15 had sex? In her brother's bedroom. He never used that
16 room, what's his semen doing in the brother's bedroom?
17 There is no reasonable explanation as to why his semen is in
18 that little brother's bedroom unless you believe Minor
19 testimony that he had sex with her in that bed, that's why
20 his semen is on that mattress. There's absolutely no reason
21 why Mr. Loftin -- if you don't remember anything else I say,
22 no reason why Mr. Loftin's semen should be on that comforter
23 that he admits belonged to Minor or in her brother's
24 bedroom. He didn't share that room with Ms. Threatt. What
25 else? You remember the DNA analyst from yesterday, Mr. Bell

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1 kind of harped on her a little bit about her analysis and
2 the mixture of the DNA, Minor wasn't in that mixture and
3 it was from a flat sheet of the bed, Mr. Loftin's bed. The
4 bed however was not the bed in the residence on ,
5 this was his personal bed in Fort Lawn. Not one time did
6 Minor say throughout this trial she had sex with
7 Mr. Loftin in Fort Lawn. That's the reason her DNA is not
8 on that flat sheet. I asked him, "Was she ever in your bed
9 in Fort Lawn? No, ma'am." That's the end of that, not an
10 issue. What about the vibrator? I asked the DNA analyst
11 yesterday if multiple people have access to an object one
12 person is the primary user, has a lot more contact with an
13 item, then another person, how does that affect your ability
14 to get DNA from the minor contributor? She said it's easily
15 masked, easily. We know that Mr. Loftin had contact with
16 the vibrator, he says he purchased it. Excuse me, he
17 purchased the vibrator, he's a minor contributor to the
18 mixture. So is Minor . What does that tell you?
19 We know he touched it, minor contributor; she says she
20 touched it, minor contributor. Of course, Virginia Threatt
21 is going to be the major contributor, it was her vibrator,
22 it was purchased for her. She had more contact than
23 anybody. Doesn't that make sense? Mr. Bell also mentioned
24 some unidentified semen in the house. I submit to you it
25 does not matter. First of all nothing, nothing at all in

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1 evidence ties any type of unidentified male semen to
2 Minor in this case, it's on the living room sofa.
3 We don't know how long it had been there, we don't know who
4 had access to the sofa before they moved in the residence or
5 before they owned the sofa, we don't know that. Was it
6 tested? No. It does not matter. There is one suspect in
7 this case, that's Mr. Loftin. He's the only person accused,
8 he's the only person charged, he is the only person Minor
9 Minor has accused of committing -- that she's accused of
10 violating her sexually in that residence on . I
11 don't care if there's 50 random semen samples in that house,
12 that does nothing to excuse his semen from being in her bed.
13 They're not going to touch that with a 50-foot pole. Now,
14 as jurors you get to determine the credibility of witnesses.
15 You get to determine what you believe, whether this person
16 told the truth, did they tell you some of the truth and lie
17 about the rest. You determine the credibility in its
18 entirety. Think about Mr. Loftin's testimony and ask
19 yourselves, do you think he told you the truth? I want you
20 to think about some of the things he said. First of all he
21 tries to put obviously the gift card that was purchased by
22 Rick's Heating and belonged to him purchased a pregnancy
23 kit, he cannot get out of that one, his card purchased it.
24 So the best he can tell you is, "Well, I went to K-Mart that
25 day and when I left K-Mart I met Virginia Threatt at CVS and

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1 I gave her the card, maybe she bought the pregnancy kit."
2 Well, you've got the CVS receipt in evidence and you'll get
3 to look at this, please look at it, time of purchase, 2:42.
4 We also know that Virginia Threatt without a doubt was
5 shopping in Monroe, North Carolina on December 9th, the same
6 day of this receipt, December 9, 2:42 p.m, Target,
7 December 9, 2:39 p.m. How in the world is she going to be
8 in Monroe and Lancaster CVS within a matter of three
9 minutes? He's not telling you the truth. What else did he
10 tell you? He said well -- I asked him what did he purchase
11 with his card? He said, "I went to K-Mart and I bought a
12 camcorder, and then CVS." How do we know that's not true?
13 Look at this transaction summary, take it back in the jury
14 room with, you will look at it and it clearly shows --
15 remember Ms. Voyer Recce who testified from Wells Fargo, she
16 is retired now, the transaction summary reads from bottom to
17 top. CVS came first, CVS, followed by K-Mart. If he had
18 that card at K-Mart there is no doubt he had it at CVS.
19 Look at it when you take it back there. Another thing I
20 want you to consider in this case when you're determining
21 the credibility, consider the consistency of her. This
22 isn't a new story, she's been telling this for four years.
23 Mr. Loftin was arrested four years ago, she has been telling
24 the same thing ever since. You remember the testimony of
25 Margo Dixon from PCASA, and she told you Minor told her

CLOSING ARGUMENTS

1 the locations of sex were in her mother's room, in her
2 bedroom, on the sleeper sofa in the living room, which
3 contains his semen by the way, in her brother's room and in
4 a car, told Investigator Adams the same thing, and she came
5 up here and told you the same thing. Virginia Threatt told
6 you those were the locations she told her. She hasn't
7 wavered in that. Now, of course, it has been four years,
8 there's some things she may not be exactly consistent about.
9 She's not going to remember every single detail in
10 chronological order about every -- he had sex with her
11 almost every day, some things may be a little cloudy. For
12 the most part she has been very, very consistent throughout
13 for the past four years. And ladies and gentlemen, I want
14 you to consider this: You know, Minor -- of course, you
15 see her now, she's 17 years old, this started at the age of
16 12. This was 12 year old Minor , this was 12 year old
17 Minor The person she loved as a father figure, that she
18 looked to him as dad suddenly had sex with her in the deer
19 stand one day, turned her life upside down. She was
20 shocked, she didn't know what to do, she didn't tell
21 anybody, she didn't know how to process it. And then he
22 continued to abuse her not just sexually but mentally and
23 psychologically, "It's okay, I'm not dad, I'm really your
24 boyfriend. When you turn 18 we're going to run away and be
25 together. I don't love your mom." Perhaps that's why she

CLOSING ARGUMENTS

1 hated her mom during that time period. And ask yourselves,
2 I want you to remember Dr. Singleton's testimony, during
3 this time cutting herself, weight loss, loss of appetite,
4 headaches, don't you think that's consistent with the
5 behavior of a 12 year old who has experienced something this
6 traumatic? Maybe that's why she is doing these things,
7 maybe that's why she's having these physical symptoms.
8 Something was going on with Minor during this time.
9 Mr. Bell said it wasn't normal, but I submit to you it was
10 normal for a child who has been sexually abused, for a child
11 who had to process dad becoming boyfriend within a matter of
12 months. I'm going to sit down in just a few minutes.
13 You've heard all of the evidence. You heard her say the
14 first time anything happened -- or the first thing that gave
15 her any concern was an incident where he gave her some
16 alcohol. You heard Abigail C. come in here the other day
17 and say, "I remember when that happened, he gave me
18 alcohol." Did she report it immediately? She was nine
19 years old, she didn't know what to do with that information.
20 Once the investigation got underway she told the mother and
21 the police report was filed and you heard the mother
22 testify, "I didn't want to get my daughter involved, I
23 didn't want her to come to court, I didn't want her subject
24 to any cross examination, he had other problems to deal
25 with." Abby reported it, it happened. Again, ladies and

CLOSING ARGUMENTS

1 gentlemen, I thank you for your time and your attention.
2 It's not a complicated case. You heard Minor s
3 testimony, the only thing you need to ask yourselves is did
4 she tell you the truth? And I think when you consider all
5 of the evidence in this case and the medical evidence, the
6 DNA evidence, the other collaborating witnesses you will be
7 convinced beyond any reasonable doubt that he is guilty of
8 these charges, he's guilty as charged in the indictment.
9 Take a look at all of the documents, compare the times on
10 the receipts and you clearly will see what he's told you was
11 a complete fabrication, and Minor who has no reason to
12 come up here and make any of this up and testify in front of
13 14 strangers and all of this court personnel just to do it,
14 she's telling you what happened. And that's the only other
15 explanation as to why she told you these things. Again, I
16 want to thank you for your time and attention in this case.
17 I ask you to return verdicts of guilty in criminal sexual
18 conduct with a minor and lewd act upon a minor. Thank you.

19 THE COURT: Thank you, Ms. Mingo. Ladies and
20 gentlemen, I remind you that the fact that the defendant was
21 charged by way of these indictments, that the defendant was
22 arrested and charged is not evidence in the case and it
23 cannot be considered by you as evidence of guilt in this
24 case, nor does it create any presumption or inference of
25 guilt. These documents are simply the formal written

JURY CHARGE

1 instruments that contain the charges made against the
2 defendant. They're the formal documents by which the case
3 is brought in court. The defendant has pled not guilty to
4 these indictments, and the plea puts the burden on the State
5 to prove the defendant guilty. A person charged with
6 committing a criminal offense in South Carolina is never
7 required to prove himself innocent. I charge you that it is
8 an important rule of law that the defendant in a criminal
9 trial no matter what the seriousness of the charge may be
10 will always be presumed to be innocent of the crime for
11 which an indictment is issued unless guilt has been proven
12 by evidence that satisfies you of that guilt beyond a
13 reasonable doubt. This presumption of innocence does not
14 end when you begin your deliberations but it accompanies the
15 defendant throughout the trial until you reach a verdict of
16 guilt based on evidence that satisfies you of that guilt
17 beyond a reasonable doubt. The presumption of innocence is
18 like a robe of righteousness placed about the shoulders of
19 the defendant which remains with the defendant until it has
20 been stripped from the defendant by evidence that satisfies
21 you of that guilt beyond a reasonable doubt. The
22 presumption of innocence is not just a mere legal theory, it
23 is not just a legal phrase, it is a substantial right to
24 which every defendant is entitled unless you, the jury, are
25 satisfied by the evidence that the defendant is guilty

JURY CHARGE

1 beyond a reasonable doubt. A reasonable doubt has been said
2 to be the kind of doubt that would cause a reasonable person
3 to hesitate to act. Some of you may have served on juries
4 in civil cases where you were told that it was only
5 necessary to prove a fact -- that the fact is more likely
6 true than not such as by the greater weight or by the
7 preponderance of the evidence. But in criminal cases the
8 State's proof must be more powerful than that, it must be
9 beyond a reasonable doubt. Proof beyond a reasonable doubt
10 is proof that leaves you firmly convinced of a defendant's
11 guilt. Of course, there are very few things in this world
12 that we know of with absolute certainty, and in criminal
13 cases the law does not require proof that overcomes every
14 possible doubt. If based on your consideration of the
15 evidence you are firmly convinced that the defendant is
16 guilty of the crime charged you must find the defendant
17 guilty. If on the other hand you think there's a real
18 possibility that the defendant is not guilty you must give
19 the defendant the benefit of the doubt and find the
20 defendant not guilty. I remind you that during this trial
21 you and I have had different responsibilities and
22 obligations. One of my obligations has been to rule on the
23 admissibility of evidence and tell you that you are only to
24 consider the competent evidence before you. As to any
25 evidence that was ordered stricken from the record during

JURY CHARGE

1 this trial you are to disregard that testimony. You are to
2 consider only the testimony which has been presented from
3 this witness stand and any exhibits which have been made
4 part of the record in this case. I also have the additional
5 duty to charge or tell you about the law that applies in
6 this case. I am the sole judge of the law in this case and
7 it is your duty as jurors to accept the law as I now state
8 it to you, and if you already have any idea of what the law
9 is or what the law should be and it does not agree with what
10 I tell you the law is you must abandon that idea and put it
11 out of your mind because under your oath you are obligated
12 to accept the law as I state it to you. Now, in every case
13 tried before a jury the jury becomes the sole and exclusive
14 judge of the facts of the case. The trial judge such as
15 myself cannot intimate, state, comment on or make any
16 statement to a trial jury about the facts of the case.
17 Since you, the jury, are the sole judges of the facts you
18 are not to infer from anything that I have done during the
19 progress of this trial concerning the admissibility of
20 evidence or otherwise that I have an opinion about the facts
21 of this case. The law does not permit me to have an opinion
22 about the facts of this case, this is a matter solely for
23 you. It is your duty, ladies and gentlemen, to determine
24 the effect, the weight, the value and the truth of the
25 evidence presented during the trial. Generally speaking

JURY CHARGE

1 there are two types of evidence submitted during a trial,
2 direct evidence and circumstantial evidence. Direct
3 evidence is the testimony of a person who claims to have
4 actual knowledge of a fact such as an eye witness, it is
5 evidence which immediately establishes the main fact to be
6 proved. Circumstantial evidence is proof of a chain of
7 facts and circumstances indicating the existence of a fact.
8 It is evidence which immediately establishes collateral
9 facts for which a main fact may be inferred. Circumstantial
10 evidence is based on inference and not on personal knowledge
11 or observations. The law, though, makes no distinction
12 between the weight or the value to be given to either direct
13 or circumstantial evidence, nor is a greater degree of
14 certainty required of circumstantial evidence than of direct
15 evidence. You should weigh all of the evidence in this case
16 and after weighing all of the evidence if you're not
17 convinced of the guilt of the defendant beyond a reasonable
18 doubt you must find the defendant not guilty. Necessarily,
19 ladies and gentlemen, you must determine the credibility of
20 the witnesses who have testified in this case, and this
21 simply means the believability. It becomes your duty as
22 jurors to analyze and evaluate the evidence and determine
23 which evidence convinces you of its truth. In determining
24 the believability of the witnesses who have testified you
25 may believe one witness over several witnesses, or several

JURY CHARGE

1 witnesses over one witness. You may believe part of the
2 testimony of a witness and reject the remaining part of the
3 testimony of the same witness, you may believe the testimony
4 of a witness in its entirety or reject the testimony of a
5 witness in its entirety, and you may consider whether the
6 witness has exhibited to you any interest, bias, prejudice
7 or other motive in the case. And you, of course, may
8 consider the appearance and the manner of a witness while on
9 the witness stand. The defendant is charged with second
10 degree criminal sexual conduct with a minor. I tell you
11 that the State must prove beyond a reasonable doubt that the
12 defendant engaged in a sexual battery with the victim.
13 Sexual battery is sexual intercourse, cunnilingus, fellatio,
14 anal intercourse however slight of any part of a person's
15 body or of any object into the genital or anal opening of
16 the person's body except when the intrusion is accompanied
17 for medically recognized purposes. The State must also
18 prove beyond a reasonable doubt that the victim was at least
19 11 years old but not more than 14 years old at the time of
20 the sexual battery. Consent, willingness, indifference or
21 ignorance on the part of the minor, if any, as to what was
22 taking place does not in any way affect the charge of
23 criminal sexual conduct with a minor, because an unmarried
24 woman under the age of 14 cannot legally consent to sexual
25 intercourse. The defendant is also charged with committing

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1 a lewd act on a minor. A minor is a person under the age of
2 14. To prove that the defendant committed a lewd act upon a
3 minor the State must first prove, though, beyond a
4 reasonable doubt that the defendant was over the age of 14.
5 Next the State must prove that the defendant willfully and
6 lewdly committed or attempted a lewd or lascivious act on or
7 with the body or with the parts of a child under the age of
8 16 years with the intent to arouse, appeal to or gratify the
9 lust, passion or sexual desires of the defendant or the
10 child. Willfully means voluntarily and intentionally with
11 the specific intent to do something that the law forbids.
12 Lewd means obscene, lustful, indecent or lecherous.
13 Lascivious means tending to insight lust, lude, indecent
14 obscene or tending to deprave the morals in respect to
15 sexual relations. As to the two indictments and two
16 different charges, ladies and gentlemen, each charge
17 constitutes a separate and distinct offense. You must
18 decide each indictment separately on the evidence and the
19 law applicable to it uninfluenced by your decision on any
20 other indictment. The defendant may be convicted or
21 acquitted on any or all of the offenses charged. Ladies and
22 gentlemen, in just a few moments you will retire to the jury
23 room and you will begin your deliberations. When it is time
24 for you to do that -- I'm going to ask you not to begin your
25 deliberations until I send to the jury room a verdict form

JURY CHARGE

1 which I will discuss a little bit more in just a minute, and
2 the exhibits. For there to be a -- well, excuse me, the
3 verdict form will ask you to decide the defendant's guilt or
4 innocence on both of these charges, the criminal sexual
5 conduct with a minor in the second degree and the other
6 charge of committing a lewd act upon a child, either guilty
7 or not guilty. For there to be a verdict of either guilty
8 or not guilty the verdict must be unanimous, meaning all 12
9 jurors must agree. And when the jury reaches such an
10 agreement I'm going to ask our foreperson if she would
11 circle either guilty or not guilty and then sign her name
12 and date the document, presumably it will be today's date.
13 Now, ladies and gentlemen, I'm going to ask you to retire to
14 the jury room including our alternate jurors but don't begin
15 deliberations until I send to the jury room a verdict form
16 and the exhibits, and when you do reach a verdict I'll ask
17 you if you would please knock on the door and advise the
18 bailiff that you've reached a verdict in the case. So if
19 you would please retire to the jury room I hope to be in
20 touch with you shortly.

21 (The jury left the courtroom.)

22 THE COURT: Any exceptions from the State?

23 MS. MINGO: No exceptions from the State, Your Honor.

24 THE COURT: From the defense?

25 MR. BELL: None, Your Honor.

1 (Break in proceedings.)

2 THE COURT: All exhibits seem to be straight, Mr. Bell?

3 MR. BELL: Yes, sir.

4 THE COURT: Solicitor?

5 MS. MINGO: Yes, sir.

6 THE COURT: I'm going to ask the bailiff to take the
7 exhibits to the courtroom and ask the alternate jurors to
8 step back in the courtroom.

9 (At this time the alternate jurors were
10 dismissed and the jury began deliberations.)

11 THE COURT: As you may have heard by now we have a note
12 from the jury that reads as follows, "Was the transcript
13 from the forensic interview admitted into evidence?" Next,
14 "If not we can't see it, can we?" And I think the answer to
15 those are both no. I can either send this back to no with
16 both of them on there or bring the jury out. What does the
17 State wish to do?

18 MS. MINGO: Whatever the Court wishes.

19 THE COURT: Defendant?

20 MR. BELL: Writing no on it and put Judge Goldsmith and
21 send the note back there.

22 THE COURT: Are you okay with that?

23 MS. MINGO: Yes, sir.

24 (The jury resumed deliberations.)

25 THE COURT: Bailiff has handed me a question from the

1 jury, they are requesting the transcript of Mr. Loftin's
2 testimony. Of course, the court reporter doesn't have a
3 transcript. The court reporter tells me that he could
4 transfer the audio recording that he made to a zip drive,
5 thumb drive or something like that, put it on another
6 computer and play it over the sound system here if we want
7 to try to do that or if we want to tell the jury that.
8 Solicitor, what do you say?

9 MS. MINGO: Your Honor, I say let them hear it.
10 They're inquiring about Mr. Loftin's testimony, if we can
11 provide it let's give it to them.

12 THE COURT: Mr. Bell?

13 MR. BELL: Perhaps the Court needs to inquire of the
14 jury then that there is no typed transcript and let them
15 know the only option is to come back in and listen to it on
16 the sound system, I don't know if they may change their mind
17 plus or minus.

18 THE COURT: Well, they may. Also -- and I was going
19 to -- this is where I was going next with it. As best as I
20 could tell it's about an hours worth of testimony including
21 cross, and so let's suppose -- I can bring them in and ask
22 them -- ask the foreperson tell them the deal and ask the
23 foreperson if she believe the jury would like to hear the
24 testimony. Now, that's going to take about an hour. What
25 do y'all think about this, what if we give them the right or

1 option of them saying we've heard enough, we've heard what
2 we want to hear, meaning instead of hearing -- it may be for
3 all I know something they want to hear that was in the first
4 five minutes of the testimony, I guess that there's
5 something they want to hear, that somebody says I think I
6 heard this, somebody says I don't think I heard that, I
7 don't know. We can tell them to raise their hand when
8 they're through.

9 MR. BELL: I agree. I think you've got to make an
10 inquiry -- first of all you've got to tell them the only way
11 they're going to hear that is in here, you're not really
12 sending it back to them on the computer.

13 THE COURT: No. I was talking about playing it in
14 here, in this system.

15 MR. BELL: I thought you meant send it to the jury
16 room.

17 THE COURT: No.

18 MR. BELL: Well, I think you need to let them
19 understand that as modern and technical and enhanced as we
20 are it's still audio only right now and then maybe -- I
21 trust the Court to direct the questions to the foreman as to
22 did they want to hear all of it, however you want to do
23 that. I'll leave it up to you.

24 THE COURT: All right.

25 (The jury returned to the courtroom.)

1 THE COURT: Ladies and gentlemen, I have another note
2 asking if the jury could see the court reporter's transcript
3 from the defendant's testimony I think is what this note is
4 referring to. The transcript to me means something that is
5 typed in printed form, we don't have that. We could
6 potentially get it, although it may take several hours for
7 the court reporter who actually has to type this out. We
8 could let you listen to the testimony if that's what the
9 jury desires. So do y'all need to go talk about it or do
10 you think, you know, it's like --

11 FOREPERSON: I think the jury would like to hear it.

12 THE COURT: Now, as best I can tell the testimony is
13 about an hours worth of testimony. We don't know -- maybe
14 you don't even know -- but we don't know whether what you
15 need to hear or want to hear is only a part of the testimony
16 or all of the testimony, so without you telling me what you
17 want to hear, do you know whether or not the jury wants to
18 hear the entire testimony, do you know?

19 FOREPERSON: No, I don't.

20 THE COURT: Then I think we will hear all of the
21 testimony. It's going to take a few minutes, we have been
22 trying to do it with the laptop that we have here, we are
23 not going to be able to do it with that laptop, we sent
24 somebody for another laptop and we're going to transfer it
25 to a USB and then put it into the sound system and we think

1 that's going to work. It should take just a few minutes.

2 (The testimony was replayed.)

3 THE COURT: I hope you could hear all of that, ladies
4 and gentlemen, or most of it. I ask you now to go back to
5 your jury room and resume your deliberations.

6 (The jury left the courtroom and resumed
7 deliberations.)

8 THE COURT: Anything from the State?

9 MS. MINGO: Not from the State.

10 THE COURT: Anything else from the defense?

11 MR. BELL: Nothing.

12 (The jury returned with a verdict.)

13 THE COURT: Solicitor, the bailiff informs me the jury
14 has reached a verdict. Are you ready to receive the
15 verdict?

16 MS. MINGO: State is ready to receive the verdict.

17 THE COURT: Is the defense ready to receive the
18 verdict?

19 MR. BELL: Yes, sir.

20 THE COURT: Bring in the jury.

21 (The jury returned to the courtroom.)

22 THE COURT: Welcome back once again, ladies and
23 gentlemen, perhaps for the last time. I understand,
24 Ms. Blackmon, let me ask you as foreperson of the jury, has
25 the jury reached a verdict in the case?

JURY VERDICT

1 FOREPERSON: We have.

2 THE COURT: I need to ask you some more questions. Did
3 you reach a verdict as to each of the charges?

4 FOREPERSON: We have.

5 THE COURT: And were both of the verdicts unanimous,
6 meaning all 12 of you agree?

7 FOREPERSON: They were.

8 THE COURT: Did you circle the appropriate guilty or
9 not guilty portions of the verdict as to each charge?

10 FOREPERSON: I did.

11 THE COURT: And did you sign the verdict form?

12 FOREPERSON: I did.

13 THE COURT: Would you please pass it forward? And
14 Mr. Clerk, would you please publish the verdict?

15 THE CLERK: Yes, sir. We, the jury, as to indictment
16 number 2008-GS-29-494, criminal sexual conduct with a minor
17 second degree, unanimously find the defendant, Joseph
18 Bradley Loftin, guilty. We, the jury, as to indictment
19 number 2012-GS-29-206, committing a lewd act upon a child
20 unanimously find the defendant, Joseph Bradley Loftin,
21 guilty. Signed, Jennifer Blackmon, foreperson, dated
22 February 16, 2012, Lancaster, South Carolina. Ladies and
23 gentlemen of the jury, if this be your verdict so say you
24 all by the raising of your rights hands. Let the record
25 reflect all jurors raised their right hands.

JURY VERDICT

1 THE COURT: Anything further before the jury is
2 discharged, Mr. Bell?

3 MR. BELL: Request individual polling as to each
4 charge.

5 THE CLERK: Yes, sir. Madam forelady, Jennifer
6 Blackmon, is this your verdict, is this still your verdict?

7 THE JUROR: It is.

8 THE CLERK: Patricia Helms, is this your verdict and is
9 this still your verdict?

10 THE JUROR: It is.

11 THE CLERK: Roy Hail, is this your verdict and is this
12 still your verdict?

13 THE JUROR: Yes, sir.

14 THE CLERK: Manuel Villa, is this your verdict and is
15 this still your verdict?

16 THE JUROR: It is.

17 THE CLERK: Tracy Cauthen, is this your verdict and is
18 this still your verdict?

19 THE JUROR: Yes, it is.

20 THE CLERK: Russell Barrineau, is this your verdict and
21 is this still your verdict?

22 THE JUROR: Yes, sir.

23 THE CLERK: Charlene Hunter, is this your verdict and
24 is this still your verdict?

25 THE JUROR: Yes, sir.

JURY VERDICT

1 THE CLERK: Robert Blair, is this your verdict and is
2 this still your verdict?
3 THE JUROR: It is.
4 THE CLERK: Lisa Thomas, is this your verdict and is
5 this still your verdict?
6 THE JUROR: Yes, sir.
7 THE CLERK: James Marchand, is this your verdict and is
8 this still your verdict?
9 THE JUROR: It is.
10 THE CLERK: Ron Robinson, is this your verdict and is
11 this still your verdict?
12 THE JUROR: It is.
13 THE CLERK: Linda Telmanik, is this your verdict and is
14 this still your verdict?
15 THE JUROR: Yes, it is.
16 THE COURT: Thank you, Mr. Hammond. Anything further
17 before the jury is discharged?
18 MS. MINGO: No, sir.
19 MR. BELL: No, sir.
20 (The jury was dismissed.)
21 MR. BELL: Post trial?
22 THE COURT: Absolutely.
23 MR. BELL: I believe the proper motion would be for a
24 new trial, again based on all of the issues I raised
25 particularly the issues that I raised in reference to the

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1 pretrial matters under the denial by the Court to allow me
2 to get beyond the Rape Shield Statute, and in particular on
3 the matter in limine where once the State had indicted my
4 client for lewd act, which is not covered by the Rape Shield
5 Statute, His Honor limited my attack on that issue also.
6 And then the other matter would be just insufficient
7 evidence to go to the jury as we raised earlier.

8 THE COURT: Mr. Bell, we've already discussed each of
9 these issues before and I do think I understand the reasons
10 for your motion but I am going to deny it.

11 MR. BELL: Can you give me one minute?

12 THE COURT: Sure.

13 (Break in proceedings.)

14 THE COURT: And Mr. Bell, the defendant is ready to
15 proceed with sentencing?

16 MR. BELL: Under the circumstances, Your Honor, he has
17 no choice, I understand. Your Honor, of course, in the
18 courtroom has been his new wife, his mother and father,
19 actually his mother and father are the ones that hired me
20 because he doesn't have the money to hire me. And the grand
21 daddy has been here, grandmom has been in and out, the
22 preacher was up here today. It's a -- you know, I'm not
23 going to retry the case in front of His Honor, we've tried
24 it twice, basically the same evidence the first time as it
25 was the second time, not really much of a different twist, a

SENTENCING HEARING

1 little bit of a different presentation. And as I told my
2 client after the first verdict because I had six people
3 wanting to convict him and six wanting to turn him loose,
4 that gave me a little bit of trouble as to what may happen
5 during these last three days. But the decision was made by
6 him and his family that he wouldn't plead to anything
7 because, again, for what it's worth to His Honor, he has
8 never admitted to me he has done anything wrong and my
9 client has got to tell me what to do, it was a trial. No
10 record, he has been found guilty of what we don't know if
11 they thought it happened once or more, all it took was one
12 time. Now, what do you do with him? Well, you're going to
13 lock him up, I told him that, I told the family that, that
14 if we lost he was going to jail, the part is how long and
15 His Honor in his wisdom has got to make that decision. The
16 more serious offense was a CSC which carried the time it
17 carried and then the State, of course, added on the lewd
18 act. I would ask you first of all to consider -- since
19 you've got to give separate sentences to consider them
20 running concurrent understanding that the more severe crime
21 would be the CSC, and I'm assuming that whatever sentence
22 His Honor is going to give him the more severe sentence is
23 going to be on the CSC, I would ask you to consider running
24 it concurrent. Your Honor, I can't explain anything,
25 it's -- we didn't go through any psychoanalysis or anything

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1 because he's always been competent to stand trial. It's
2 just a tragedy for everybody, unfortunately that doesn't
3 help this young man with me standing in front of you. So no
4 record that the Court has been told about. You know, I'm at
5 a loss as to what else I can say. This is his second time
6 His Honor has met my client in trial and he knows almost as
7 much about the facts as I do, and my client has been found
8 guilty so all I can do is ask you to be as lenient as you
9 can with him. Two things, Your Honor. One, he did not hire
10 me, the family did, I would ask -- he has no assets, I would
11 ask the Court to make the determination of indigency at this
12 point so in the event he may want to appeal -- of course, I
13 would have to file the notice of appeal but it could be
14 turned over to indigent defense. Secondly, if I remember
15 the law correctly he has got ten days from today to instruct
16 me whether or not to file a notice of appeal. I made no
17 comments about him as far as the future being the appeal
18 because I can't. I always tell my clients whenever they are
19 going to jail don't ask me how long they're going to be
20 there because I can't tell them. My computer is not hooked
21 up to DOC's computer and it is all of this stuff about work
22 credits if he's eligible for anything. So he fully
23 understands that, I can assure you he doesn't want to be
24 standing here but here he stands. And I have told my client
25 that he has the right to tell you nothing, he has the right

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1 to tell you whatever he wants to tell you, so at this point
2 I'll let him tell you whatever he wants to tell you.

3 THE DEFENDANT: Your Honor, I still say I didn't do
4 this, I did not do this, with everything in my heart I
5 didn't. I have a good job and a family that I'm trying to
6 take care of that need me. And I did not do this.

7 THE COURT: I'm sure you understand, Mr. Loftin, that
8 whether you did it as I told the jury is not up to me to
9 decide, it's for the jury to decide and they have decided --
10 for all practical purposes they decided that you had -- as I
11 understand and interpret their decision that you had sexual
12 relations with in essence a stepdaughter who was 12 years
13 old. There is somebody else I think in the family that
14 might want to speak, Mr. Bell.

15 MR. BELL: The father, Your Honor, Mr. Loftin.

16 THE COURT: Yes, sir.

17 THE WITNESS: I just ask you to be lenient. I know my
18 son didn't do this and I know the jury says he did, I just
19 pray for your leniency, he is my only son.

20 THE WITNESS: Your Honor, I know my husband wouldn't do
21 anything like that. He is a great father and he is a
22 wonderful husband, please just be lenient on him. I need
23 him and my kids need him.

24 THE COURT: Well, let me -- the criminal sexual conduct
25 carries, is that a max of 20?

SENTENCING HEARING

1 MS. MINGO: Twenty.

2 MR. BELL: Yes, sir.

3 THE COURT: And the lewd?

4 MS. MINGO: Fifteen.

5 THE COURT: And solicitor?

6 MS. MINGO: Your Honor, I think this is one of the more
7 disturbing cases of criminal sexual conduct I think I've
8 ever seen. The victim in this case was sexually manipulated
9 on a daily basis by someone she looked up to, her caregiver,
10 and Mr. Loftin took some pretty extreme steps to continue
11 that abuse. Your Honor, Minor has been suffering with
12 that for a long time. Your Honor, I believe in this case --
13 this is one of the cases where I believe a maximum sentence
14 is warranted. The victim's -- well, Minor's mother is
15 here, Virginia Threatt, I know she wants to address you if
16 you will hear from her.

17 THE COURT: Certainly.

18 THE WITNESS: Your Honor, as you've heard he was the
19 male figure in my daughter's life, she trusted him, she
20 looked up to him. He has made her believe that in order to
21 get affection from a man it takes that to get it, she must
22 please him sexually. It's impossible for her to trust
23 people now. She had to be hospitalized four times for
24 attempted suicides because of what he did to her and she did
25 not want to live with it anymore. She will suffer with this

SENTENCING HEARING

1 for the rest of her life and I feel that he should have to
2 as well.

3 THE COURT: Thank you, ma'am.

4 MR. BELL: Your Honor, again, I don't dispute the
5 egregious of this case, but he was found guilty of one
6 offense which could be any time between August and
7 September, so I disagree with the solicitor's office thing
8 about it being most egregious, all of them are egregious,
9 Your Honor, but the jury found him guilty because that was
10 the option they were given only one time. It doesn't
11 necessarily mean that he did something everyday, that was
12 the finding, but they did find him guilty. So I don't think
13 he needs to be maxed out on that just because of that, Your
14 Honor. It's a matter in your wisdom as to what is enough
15 time punishment wise and also enough time for rehabilitation
16 and enough time for whether or not it should be used as a
17 deterring or something, but I don't think he ought to be
18 maxed. I think you ought to give this young man -- of
19 course, he's going to be on the registry when he gets out
20 and I just think it ought to be a sentence that tries to get
21 all three of those conditions of punishment, the deterrent
22 and rehabilitation, kind of wrapped into one. And that's
23 the whole part of being a Judge because I don't have an
24 answer. It's rare I get down here and I'm not in this case
25 suggesting what the punishment could be, the only thing I

SENTENCING HEARING

1 can answer the question is what is the max. That's the
2 hardest part of being a Judge is trying to correlate what is
3 the best not only from the State and the victim but for my
4 client.

5 MS. MINGO: And, Your Honor, not to belabor the point,
6 I stated that it happened almost everyday not based on the
7 timeframe in the indictment but based on the child's
8 testimony that it happened nearly everyday.

9 THE COURT: Mr. Bell, you referred to the sex offender
10 registry, there is also -- isn't he also on the central
11 registry on child abuse and neglect as a result of the lewd
12 act?

13 MS. MINGO: Yes, sir, Your Honor.

14 MR. BELL: I'm not following you, Your Honor, if it --

15 THE COURT: It is a separate registry.

16 MR. BELL: Yes, sir. That will be when he gets out of
17 prison.

18 THE COURT: Well, Mr. Loftin, the legislature has
19 decided that if the Court thought it was proper then the
20 Court could not send you to jail at all, there's no minimum
21 mandatory sentence. I don't believe probation is
22 prohibited. And under some circumstances some judges might
23 consider a probationary sentence with your lack of a prior
24 record. But the age of the child, the circumstances under
25 which it occurred prohibits me from doing this. I'm not

SENTENCING HEARING

1 going to give you a maximum sentence primarily because of
2 your lack of a prior record, however I cannot give you a
3 light sentence either. On the committing a lewd act upon a
4 minor, case 2012-GS-29-206, I sentence you to the department
5 of corrections for a period of ten years, that will be
6 concurrent with the criminal sexual conduct with a minor
7 second degree in case 2008-GS-29-494, in that case I
8 sentence you to the department of corrections for a period
9 of 12 years. They will be concurrent and central registry
10 of the child abuse and neglect, your name will be recorded
11 there.

12 MR. BELL: My request for determination of indigency,
13 Your Honor?

14 THE COURT: And I do find that you are indigent.

15 MR. BELL: I need it in writing, Your Honor.

16 (End of trial proceedings.)

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MOTION FOR RECONSIDERATION

1 (Motion for reconsideration hearing.)

2 THE COURT: And solicitor?

3 MS. MINGO: Your Honor, standing before you is Joseph
4 Bradley Loftin, along with his attorney, Mr. Francis Bell.
5 As Your Honor probably recalls Mr. Loftin was tried and
6 convicted last week on two charges, lewd act upon a minor,
7 2012-GS-29-206, and CSC with a minor second degree,
8 2008-GS-29-494. This is Mr. Bell's motion for sentence
9 reconsideration.

10 THE COURT: Mr. Bell?

11 MR. BELL: Well, Your Honor, of course, my client is
12 here, and Your Honor, that whole row over there -- I didn't
13 know that many people were coming -- that whole row over
14 there now contains friends, family, coworkers, church
15 members, mother and father is here, wife is here that sat
16 throughout the trial. Grace -- Your Honor, you remember --
17 I didn't know that lady was coming, you remember Grace
18 Clanton that used to work for us years ago?

19 THE COURT: I could not forget her.

20 MR. BELL: Well, she's here because she knows him
21 through the church activity and everything. Your Honor, I
22 also have -- I would like to introduce two handwritten
23 letters from his stepchildren that are from his current
24 marriage. I also was shown, Your Honor, a letter from his
25 natural daughter, the one that is the oldest, the daughter

MOTION FOR RECONSIDERATION

1 of his very first marriage, that letter was really addressed
2 to her daddy, I reviewed it. But -- and she says some
3 things in there about her daddy being locked up and
4 everything, I'm not making it an exhibit, I gave it back to
5 the grandfather and told him the way you do it is just give
6 it to the son who is my client standing here. Your Honor,
7 unfortunately I don't have any words of wisdom to give you
8 necessarily, anything new. But in -- and the way we do
9 things, and I don't remember exactly what time the jury came
10 out, I know it was after three or something in the afternoon
11 and you gave me time to talk to my client. Of course, we
12 went through the sentencing procedure and therefore I
13 purposely didn't do anything that day because of the
14 lateness of the hour, and I also wanted to do it by written
15 motion, but the next morning, Friday of last week, is when I
16 filed my motion. You read it, obviously it doesn't have
17 anything new on it, but it's just a matter of looking at it
18 from my perspective and looking at it in the perspective
19 again of what is best for the State of South Carolina. Your
20 Honor, he's been locked up in the sheriff's department since
21 last Thursday, due to time constraint we had to put this
22 thing off until today, I thank the sheriff's department for
23 keeping him here so we didn't have to worry about
24 transportation orders and all of that. Now, this is the
25 hardest thing that a lawyer goes through. Once you go to

MOTION FOR RECONSIDERATION

1 trial if you lose, you lose, if you win, you win. When you
2 go to trial -- you notice when I got up in front of you last
3 Thursday that I didn't bring up asking for probation because
4 I knew that wasn't going to be on the table and I told my
5 client that. His Honor, and it is part of the record,
6 mentioned that he was eligible but you weren't going to give
7 it to him and I had my client prepared for that. I knew he
8 was going to get an active sentence but question of His
9 Honor in your wisdom of being the judge, I am just the
10 lawyer, is to what is a fair sentence? I understand the
11 facts, Your Honor, I'm not here arguing the case, I
12 understand what the case is about, I understand that the
13 jury returned its verdict, I'm not arguing that at all.
14 It's a matter of as bad as it was as to whether or not he
15 should be sentenced the way you sentenced him, meaning is it
16 good enough for the State, or proper for the State who we
17 all -- and you, solicitor, represent but you speak for the
18 State as far as punishment, and then looking into what is
19 possibly best for the defendant not in the past but in the
20 future of punishment, what it means to him, what it's going
21 to mean to his family meaning length of time in jail as to
22 whether or not the Court should reconsider particularly the
23 12 years in some fashion. But I'm asking you to reconsider
24 both of them for a lesser active time, but in particular to
25 reconsider the larger of the two as to make them more

MOTION FOR RECONSIDERATION

1 compatible with each other as to being a more fair sentence
2 to the defendant and that's part of the criteria that His
3 Honor looks at, once again what is fair to the State of
4 South Carolina. And then secondly -- because we talked
5 about rehabilitation, we talk about punishment, we're
6 talking about those issues as to how they apply to this
7 client. I'm not necessarily a big believer that this crime
8 carrying this punishment is a deterrent to other people even
9 from a death penalty standpoint. If that was so then every
10 time we had somebody put to death we shouldn't have a crime
11 increase but we seem to do that. So it's not a matter of
12 whether or not it's a deterrent to other people, so
13 basically it is just a fiscal argument with nothing really
14 to give His Honor because you're the ultimate person to set
15 sentences. And as you told my client last week the max is
16 20, the minimum is zero and you can go anywhere in between
17 what you gave last week. As I've told my client it is not
18 an illegal sentence in any fashion, it is just whether or
19 not it was fair and just to anybody involved, and the two
20 parties involved are the State and my client and I would ask
21 you to reconsider in some fashion to make lower. Now, I
22 don't know if the State is going to ask you to come back and
23 give him 20. Judge, this is my motion and I am simply
24 asking you to reconsider it from a lowering standpoint of
25 some kind. If you want to speak, come up to the mic. and

MOTION FOR RECONSIDERATION

1 tell them who you are.

2 THE WITNESS: My name is John Loftin. I just want to
3 ask you to please reconsider this and his family needs him
4 at home. He has got three children that love him very much.
5 He has got a mother and father here that love him very much.
6 He has got a job that needs him very badly, and his
7 daughter, Lord, she really needs him right now and the two
8 boys are torn apart. We would just ask you to reconsider
9 the sentence, Lord -- sir, and I'm just nervous. And I just
10 really ask you to reconsider, his family needs him at home.
11 We all love him.

12 THE COURT: Thank you sir.

13 MR. BELL: I think just one more, Your Honor.

14 THE WITNESS: Your Honor, my name is Gerald Starnes, I
15 pastor the church that Bradley and his family attend. I
16 have known Bradley a number of years now, and what I know
17 about him -- I know nothing but character and he has been a
18 very big help to us at the church. And I have seen him with
19 his family as well as him with his children, and his
20 children love him, they love being around him. And I just
21 humbly ask you to consider a reduction of sentence on his
22 behalf. Just like his father said, he is a very much need
23 of his family. As far as the conviction that came down last
24 Thursday, I personally believe in his innocence but I know
25 that's not an issue here. I personally believe in this

MOTION FOR RECONSIDERATION

1 young man, I have been around him and I know his character
2 and I believe in him. And I just humbly ask you to
3 reconsider, sir.

4 THE COURT: Thank you, sir.

5 THE WITNESS: My name is Amanda Hinson, I am his
6 sister. And I wasn't able to be here last week because of
7 my children, and I just ask you that you will reconsider
8 because we need him at home. We've been through a lot
9 including my girls, they love their Uncle Brad and it is
10 hard for them looking up the road and not being able to see
11 their Uncle Brad. They love him with all of their hearts so
12 I just ask you to reconsider.

13 THE COURT: Thank you, ma'am.

14 MR. BELL: I think that's all, Your Honor. I've got
15 grandparents and other people there but they're here as a
16 matter of support. So that's all we've got to present, Your
17 Honor. Again, as I told you last Thursday and explained to
18 my client that it's not easy being a judge, and therefore
19 you in your wisdom as to what is best for the State and best
20 for my client has to decide what the sentence is and you did
21 it Thursday, we are asking you to reconsider.

22 THE COURT: Thank you, Mr. Bell. Solicitor?

23 MS. MINGO: Your Honor, the State is opposed to any
24 reduction of Mr. Loftin's sentence. He was convicted of CSC
25 second with a minor which carries 20 years, a lewd act which

MOTION FOR RECONSIDERATION

1 carries 15, his sentences were ran concurrently and he got
2 12. We believe that's more than fair given the
3 circumstances in this case. The victim is in the courtroom
4 as well as her grandmother and her mother and I believe they
5 want to address you as well, Your Honor.

6 THE COURT: Certainly.

7 THE WITNESS: I am Virginia Threatt, I am Minor s
8 mother. I am just asking you to leave everything as it
9 stands. To me I feel like he deserves far worse punishment
10 than he got. My little girl is going to have to live with
11 this for the rest of her life. And no matter what he has
12 done, how he has been for the past four years, what he did
13 to her four years ago cannot be undone. No matter who he
14 tries to be now he is still that person that was raping my
15 little girl.

16 THE COURT: Thank you, ma'am.

17 THE WITNESS: My name is Minor . This man
18 deserves far worse than he is getting. He did this to me.
19 I would not come here again just to lie about something like
20 this. He took my innocence from me and I have to deal with
21 this for the rest of my life. He did this to me and has
22 probably done it to other little girls. I would not get up
23 here and do this to myself if he didn't do this to me. He
24 did this, he did this to me. He deserves far worse than you
25 have given him. He deserves life in prison because I have

MOTION FOR RECONSIDERATION

1 to deal with this for of the rest of my life.

2 THE COURT: All right. Thank you, ma'am. Yes, ma'am?

3 THE WITNESS: Sir, I am Bonnie Powers, I am Minor s
4 grandmother. And I ask that the sentence be left as it is.
5 I have seen and been with Minor all through these years
6 that she has been through this, she has been hospitalized
7 four different times for the emotional scars that she will
8 have to carry for the rest of her life and I just pray that
9 the sentence stay as it is. Thank you.

10 THE COURT: Thank you, ma'am.

11 MS. MINGO: That's all from the State, Your Honor.

12 THE COURT: Anything else, Mr. Bell?

13 MR. BELL: No, sir.

14 THE COURT: When I imposed sentence on Mr. Loftin last
15 week I mentioned the fact that I was considering the fact
16 that he did not have a prior record. But the evidence in
17 this case indicates that the jury believed the victim's
18 testimony, and the victim's testimony shows that this is not
19 just a lapse of judgment on one occasion and actually
20 indicates that it was a crime that was repeated numerous
21 times over a period of months. And I understand why -- and
22 his family and friends might think that the sentence is too
23 severe, but one of the other reasons that the Court imposes
24 sentences is to also act as a deterrent to others who might
25 be inclined to commit similar acts. For all of those

MOTION FOR RECONSIDERATION

1 reasons, Mr. Bell, I am going to deny your motion.

2 MR. BELL: Thank you, Your Honor.

3 (End of the hearing.)

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1 I, the undersigned, Michael C. Watkins, Official
2 Court Reporter for the Sixth Judicial Circuit of the State
3 of South Carolina, do hereby certify that the foregoing is
4 a true, accurate and complete transcript of record of the
5 proceedings had and evidence introduced in the trial of
6 the captioned case, relative to appeal, in the Court of
7 General Sessions for Lancaster County, South Carolina, on
8 the 14-16th, and 22nd days of February, 2012.

9 I do further certify that I am neither of kin,
10 counsel, nor interest to any party hereto.

11

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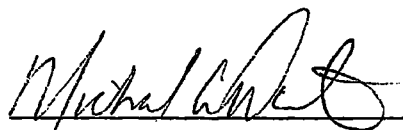
June 28, 2012.

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Michael C. Watkins
Court Reporter

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THE STATE OF SOUTH CAROLINA
Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of General Sessions

Honorable Judge Brooks P. Goldsmith

Appellate Case No. 2012-209191
Case No. 2008-GS-484 and 2008-GS-29-206

The State,

Respondent,

v.

Joseph Bradley Loftin,

Appellant.

FINAL BRIEF OF APPELLANT

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

1. The Trial Court erred in ruling that an incident for which the Petitioner was not being tried possessed a sufficiently close amount of similarity to the incidents Petitioner was being tried for to constitute a common scheme.
2. The Trial Court erred in not allowing the Petitioner to inquire into Complainant's prior sexual activity.

STATEMENT OF THE CASE

The Petitioner, Joseph Loftin, was indicted in Lancaster County on October 13, 2011, for one (1) count of Criminal Sexual Conduct (CSC) with a Minor in the 2nd Degree, indictment number 2008-GS-29-494. [CSC Indictment]. A jury tried Petitioner on October 18-20, 2011, before the Honorable Brooks P. Goldsmith. After the jury was unable to announce a unanimous verdict, the trial judge granted Petitioner's motion for a mistrial. Petitioner was then indicted in Lancaster County on February 9, 2012, for one (1) additional count of Lewd Act on a Minor Child (Lewd Act), indictment number 2008-GS-29-206, arising from the same incident. [Lewd Act Indictment]. Petitioner was again tried by a jury February 14-16 and 22, 2012, before the Honorable Brooks P. Goldsmith and found guilty on both counts. Petitioner properly served a Notice of Appeal on February 28, 2012.

FACTS

The Petitioner began dating the Complainant's mother, Virginia Threatt, in or around 2002. (R. p. 130, line 20). Between 2005 and December 2007, Petitioner and Threatt lived together at _____, Lancaster, South Carolina (_____.) (R. p. 137, line 5; R. p. 153, lines. 10-15). Three children also lived in the household: one child belonging to both Petitioner and Threatt and two children belonging only to Threatt. (R. p. 129, line 24- p. 130, line 8). While two of the children were not biologically related to the Petitioner, the Petitioner treated all three of the children as his own. (R. p. 135, lines. 20-25). Indeed, the Complainant viewed Petitioner as a father figure. (R. p. 72, line 13).

In December 2007, Petitioner and Threatt ended their relationship and Petitioner moved out of the Brady House. (R. p. 137, lines 5-7-). On January 4, 2008, the Complainant, Threatt's twelve (12) year old daughter, made a disclosure to her school principal in which she alleged that Petitioner had been sexually abusing her between August 2007, and December 2007. (R. p. 92, lines 3-7-). The Complainant alleged that the first time the Petitioner sexually assaulted her was during a hunting trip in August 2007, in Chester County, South Carolina. (R. p. 77, lines. 6-7-). The Complainant testified, under objection, that herself, the Petitioner, Threatt, and Threatt's other child were hunting in deer stands. (R. p. 78, lines. 3-16). Threatt and the other child were in one deer stand while the Complainant and Petitioner were in another stand, some distance away. Id. The Complainant stated that the Petitioner then had vaginal intercourse with her in the deer stand, with a condom. (Id., lines. 19-24).

The Complainant testified that after the incident in Chester County, the Complainant and Petitioner began a romantic relationship. (R. p. 86, lines 14-19). The Complainant alleged that she and Petitioner had vaginal intercourse in the Brady House every day until December 2007,

when the Petitioner moved out of the household. (R. p. 81, lines 8-12). The Complainant testified that the Petitioner had vaginal intercourse daily with the Complainant in every room in the house, but mostly at night in a pull out couch in the living room. (R. p. 80, lines. 2-3).

Shortly after the Complainant made the allegation in January 2008, she became pregnant and eventually gave birth to a child who was fathered by the Complainant's underage boyfriend, not the Petitioner. (R. p. 57, lines 4-18). Moreover, evidence was introduced during the trial that unidentified male semen was located inside the Brady Home during the execution of a search warrant on January 10, 2008. (R. p. 54, lines. 4-5; R. p. 172, line 22; R. p. 173, line 2; R. p. 260, lines. 2-3). The Petitioner has testified at both trials and denied any inappropriate contact with the Complainant. Petitioner was not charged with the alleged incident in Chester County.

ARGUMENT

I. The Trial Court erred in ruling that the alleged Chester County incident possessed a sufficiently close amount of similarity to the remaining alleged incidents at the Brady House to constitute common scheme.

While evidentiary rulings by the trial judge are generally given deference, a ruling may be reversed if there was an abuse of discretion. State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

Over objection, the trial court admitted testimony regarding the alleged incident of sexual abuse in Chester County. (R. p. 77, lines. 8-18). The trial judge ruled that although the Petitioner had not been charged with the incident in that county, the testimony was admissible as a common scheme under State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923), and Rule 404, SCRE. Id.

Evidence of other bad acts is not admissible to prove the Defendant’s guilt except to show motive, identity, existence of a common scheme or plan, absence of mistake or accident, or intent. Rule 404(b), SCRE; *see also* Lyle, 125 S.C. 406, 118 S.E. 803; State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009). A showing of a common scheme through bad acts is generally allowed and viewed as relevant because proof of one act is strong proof of the other. Wallace at 433, 118 S.E.2d. at 277. However, “a close degree of similarity or connection between the prior bad act and the crime for which the Defendant is on trial is necessary.” State v. Weaverling, 337 S.C. 460, 468, 523 S.E.2d 787, 791 (Ct. App. 1999) (*citing* State v. Cutro, 332 S.C. 100, 504 S.E.2d 324 (1998)).

The Supreme Court of South Carolina has pointed out specific factors to consider when deciding whether an act of child sexual abuse is sufficiently similar to another to constitute a common scheme. Wallace at 433-34, S.E.2d at 278. These factors include: (1) the age of the complainants when the abuse occurred; (2) the relationship between the complainants and the perpetrator; (3) the location where the abuse occurred; (4) the use of coercion or threats; and (5) the manner of the occurrence, for example, the type of sexual battery. Id.

This Court had the opportunity to apply these factors in a case that involved allegations of multiple incidences of sexual conduct by one complainant and one Defendant. State v. Taylor, 399 S.C. 51, 731 S.E.2d 596 (Ct. App. 2011). In that case, the Defendant was accused of abusing a child on two different occasions. Id. at 55-56, S.E.2d at 598. The incidents were nine (9) months apart and the Defendant was the complainant's pastor. Id. at 60, S.E.2d at 601. The incidents occurred at different locations but both were during Church outings. Id. Moreover, both incidents involved nearly identical threats directed at the child. Finally, the type of sexual battery was the same. This Court held that these similarities were sufficient to establish a common scheme. Id. at 55-56, S.E.2d at 598.

The facts presented in this case are meaningfully distinguishable from those in Taylor and do not establish a common scheme. The only similarity between the Chester County incident and the incidents that occurred at the Brady House is that the Complainant was the same age during both incidents. However, consideration of the other factors set forth in Taylor establishes that there were strong dissimilarities between the first incident in Chester County and the rest of the incidents of alleged abuse.

The relationship between the Petitioner and Complainant is alleged to have changed between the time of the Chester County incident and the incidents at the Brady House. The

Complainant testified that at the time of the Chester County incident, she saw the Petitioner as a father figure. However, according to the Complainant, during the time the rest of the incidents occurred, a romantic relationship between the Complainant and the Petitioner had begun.

Furthermore, the locations of the events were dissimilar. The Chester County incident occurred in a different county, outdoors, and in an area designated for hunting in a tree stand. The rest of the incidents occurred inside the rooms of the Brady House.¹ Moreover, this case is dissimilar to Taylor because the circumstances involving the locations were different. One happened during a hunting trip while the Brady House incidents allegedly happened inside the Petitioner and Complainant's home on a daily basis. The incidents at the Brady House were not dependent on a trip or event such as hunting.

Moreover, although the Complainant did not testify she was ever threatened, the nature of the alleged coercion differed in these events. The Complainant testified that the Chester County incident happened without any specific coercion or threats. However, she testified during the Brady House incidents that Petitioner made promises to run away with the Complainant to pursue their romantic relationship. (R. p. 85, lines. 22-24).

Finally, the nature of the sexual battery differed between the Chester County incident and the remaining incidents. While both involved vaginal intercourse with a condom, the Brady House incidents also allegedly involved oral sex, use of sexual devices, and unprotected sex. (R. p. 84, lines 12 – R. 85, line 10). This changed the nature of the alleged sexual activities. Merely having vaginal intercourse is itself alone insufficient to establish a common scheme.

Accordingly, because the dissimilarities between the Chester County incident and the rest of the

¹ While the Complainant referenced having sexual intercourse with Petitioner in Threatt's car, the location of the event was not elaborated on. R. p. 80, lines 2-3).

incidents at the Brady House are far outweighed by any similarities, a common scheme had not been established.

Because the event in Chester County was not similar to the remaining events at the Brady House, the trial judge erred in allowing testimony regarding Chester County.

II. The Trial Court erred in not allowing Petitioner to inquire about the Complainant's prior sexual activity after the State introduced a pregnancy test and medical testimony into evidence.

Complainants of sexual abuse are protected from inquiries into their previous sexual conduct by S.C. Code Ann. § 16-3-659.1 (herewithin Rape Shield Statute):

(1) Evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct is not admissible in prosecutions under Sections 16-3-615 and 16-3-652 to 16-3-656; however, evidence of the victim's sexual conduct with the defendant or evidence of specific instances of sexual activity with persons other than the defendant introduced to show source or origin of semen, pregnancy, or disease about which evidence has been introduced previously at trial is admissible if the judge finds that such evidence is relevant to a material fact and issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value. Evidence of specific instances of sexual activity which would constitute adultery and would be admissible under rules of evidence to impeach the credibility of the witness may not be excluded.

(2) If the defendant proposes to offer evidence described in subsection (1), the defendant, prior to presenting his defense shall file a written motion and offer of proof. The court shall order an in-camera hearing to determine whether the proposed evidence is admissible under subsection (1). If new evidence is discovered during the presentation of the defense that may make the evidence described in subsection (1) admissible, the judge may order an in-camera hearing to determine whether the proposed evidence is admissible under subsection (1).

S.C. Code Ann. § 16-3-659.1 (Supp. 1994).

Petitioner filed a pretrial motion, as required by the Rape Shield Statute, requesting permission to question the Complainant about specific instances of prior sexual conduct. [Motion to Allow Evidence]. The sexual conduct in question included instances of the Complainant leaving the Brady House at night and without permission to meet with an underage boyfriend. (*Id.*; R. p. 54, lines 1-4). The boyfriend is the father of the Complainant's child with which she became pregnant shortly after making the allegations against the Petitioner. [Motion to Allow Evidence]; (R. p. 57, lines 4-5). Moreover, unidentified male semen was discovered at the Brady House at the time of the disclosure indicating that other sexual activity had occurred in the household. (R. p. 54, line 5; R. p. 260, lines. 1-3). Petitioner requested to inquire about any sexual activity the Complainant may have been engaged in before the January 2008 disclosure. [Motion to Allow Evidence]. Petitioner's basis for the inquiry was not to attack the Complainant's character but for the purposes of impeachment, Petitioner's right to a fair trial, and the Petitioner's right to confront witnesses. (*Id.*; R. p. 54, lines. 18-21; R. p. 57, lines. 10-17).

The judge denied the motion as to the CSC with a Minor indictment stating that it was irrelevant evidence and also did not fall within any exception in the Rape Shield Statute. (R. p. 58, lines. 1-4). He also stated that although the Rape Shield Statute did not apply to the Lewd Act, he would not allow inquiry into the Complainant's sexual activities as to that indictment as it was irrelevant. (R. p. 59, lines. 18-24). However, the State relied on two material pieces of evidence during the trial where inquiry into the Complainant's previous sexual conduct would have been relevant and not barred by the Rape Shield Statute.

The first is a pregnancy test kit that the Petitioner allegedly bought for the Complainant in November of 2007. The Complainant testified that the Petitioner bought her a pregnancy test

kit from a local store because of Petitioner's fear that he may have impregnated the Complainant. (R. p. 88, lines. 13-18). The Complainant stated that after the pregnancy test gave a negative result, she was instructed by the Petitioner to throw it in the woods behind the Brady House. (R. p. 88, line 19 - R. p. 89, line 24). During the trial, the State introduced into evidence the pregnancy test found in the woods and receipts from the local store where it was bought. (R. p. 95, lines. 12-16; R. p. 206, lines. 19-22).

The second piece of material evidence introduced by the State was the expert testimony of Shaunese Singleton, M.D. Dr. Singleton testified that after the Complainant made the disclosure about the sexual abuse, Dr. Singleton gave the Complainant a medical exam on January 9, 2008. (R. p. 281, line 9). Dr. Singleton testified that during the exam, she found a deep cleft and slightly irregular hymen. (R. p. 282, line 5 – R. p. 283, line 3). Moreover, Dr. Singleton testified that the deep cleft found was large and indicative of a sexual assault. (R. p. 283, lines 6-22). Dr. Singleton indicated that the vaginal penetration required to cause this injury in a child would not be consistent with masturbation or the insertion of a tampon. (R. p. 283, line. 22 – R. p. 284, line 2). Moreover, on cross-examination, Dr. Singleton indicated that other things besides vaginal penetration could cause the injury but “typically those type of injuries are found in those people that are in motor type vehicle accidents or velocity high volume type incidents.” (R. p. 287, lines. 2-5).

a. Petitioner should have been allowed to inquire into the Complainant's sexual activities under the Alternative Explanation Theory.

While the Rape Shield Statute lists certain exceptions allowing inquiry into a Complainant's sexual activities, South Carolina's appellate courts have carved out exceptions to the statute that are not included in the statute's text. See State v. Finley, 300 S.C. 196, 387 S.E.2d 88 (1989) (Evidence offered for a purpose other than to attack the complainant's

morality); State v. Lang, 304 S.C. 300, 403 S.E.2d 677 (Ct. App. 1991) (Impeachment); State v. Grovenstein, 340 S.C. 210, 530 S.E.2d 406 (2000) (Alternative source of a child complainant's sexual knowledge).

The South Carolina Supreme Court has considered whether evidence showing that the complainant engaged in sexual conduct with another man is admissible. Finley at 198, S.E.2d at 88-89. In that case, the Defendant contended "that he did not physically assault the complainant; that they argued over her sexual activity with the neighbor, and that the complainant falsely accused him of attempted criminal sexual conduct out of anger and fear that he would publicly disclose information of her sexual activity." Id. at 198, S.E. 2d at 89. The Court held that the trial court erred in excluding the evidence. Id. at 200, S.E.2d at 90. The Court stated that:

The unique facts of this controversy, coupled with the appellant's right to confront and cross examine witnesses against him and to present a full defense to the charges makes relevant evidence which tends to establish motive, bias, and prejudice on the part of the prosecuting witness. Since the proffered evidence is essential to a full and fair determination of appellant's guilt and was offered for purposes other than to attack the complainant's character by revelation of her sexual activity with a third party, we conclude that such evidence does not come within the purview of the Rape Shield Statute.

Id.

Secondly, this Court stated in Lang that evidence relating to a complainant's sexual orientation was admissible for the purposes of impeachment. Lang, at 300, S.E.2d at 677. This court went on to state that Finley stood for the proposition that "the Rape Shield Statute did not bar evidence of a victim's sexual conduct if the evidence was offered for a purpose other than to attack the victim's morality." Lang at 301, S.E.2d at 678.

Finally, this Court carved out a third exception to the Rape Shield Statute for the purposes of showing an alternative source of a child complainant's sexual knowledge.

Grovenstein at 219, S.E.2d at 411. This Court agreed with the majority of other jurisdictions that inquiries into a complainant's sexual experiences are admissible if the purpose is to give an alternative source for a complainant's sexual knowledge other than the alleged acts that the Defendant is on trial for. Id. This Court stated that "in light of the Finley and Lang decisions, we hold that evidence of a child victim's prior sexual experience is relevant to demonstrate that the defendant is not necessarily the source of the victim's ability to testify about alleged sexual conduct." Id. Specifically, the evidence is "relevant to rebut the inference that a child victim could not describe the sexual acts unless the defendant had committed the alleged acts."

Accordingly, the appellate courts in South Carolina have created exceptions to the Rape Shield Statute outside of what the text of the statute permits. These exceptions are required to allow the Defendant, among other things, to have a fair trial, to confront witnesses, and to present a full defense. Because this case presents similar unique facts to the previously mentioned South Carolina cases, an exception here is warranted.

i. Alternative Explanation Theory as to Dr. Singleton's Testimony

Inquiry into the Complainant's prior sexual activities should have been permitted to rebut the implication created by Dr. Singleton's testimony. Dr. Singleton's testimony amounted to an expert opinion that the Complainant had been vaginally penetrated during a sexual act. Dr. Singleton indicated that she could not verify that a penis had penetrated the Complainant, but that, ordinarily, the only other cause would have been high velocity trauma. Indeed, during closing arguments, the Solicitor stated that other than penetration by a penis, "[t]he only thing [Dr. Singleton] could really compare [the injury] to was the type of injury a person might receive if they're in a violent car accident, some type of high impact situation, that's the only thing she compared that type of damage to a hymen to if I remember her testimony correctly." (R. p. 378,

lines. 17-22). Accordingly, the inference made to the jury is that someone had vaginally penetrated the Complainant. Moreover, like in Grovenstein, because of the young age of the Complainant, the jury was left to infer that she was not engaging in sexual conduct with a person other than the Petitioner. Accordingly, the jury had to assume that Petitioner would have been the only person that could have committed the abuse.

Petitioner should have been permitted to inquire into whether the Complainant was indeed sexually active with another person prior to the giving of the medical exam by Dr. Singleton. If it were shown that the Complainant was sexually active with another person, there would have been an alternative explanation, other than the allegations against the Petitioner, which would explain the results of the exam. This type of inquiry was essential to providing the Petitioner his right to a fair trial, a full defense, and to confront the witnesses against him.

Other jurisdictions have recognized similar exceptions to their Rape Shield Statutes. North Carolina recognized this exception in a case closely resembling the facts here. State v. Wright, 98 N.C.App. 658 (Ct. App. 1990). In that case, the eleven (11) year old complainant made an allegation of sexual abuse and was evaluated by a physician. Id. at 659. The “[p]hysician testified that during a pelvic examination of prosecutrix, she again found chronic internal and external irritation of prosecutrix’s vagina and decreased muscle tone for a child of prosecutrix’s age.” Id. The “[p]hysician’s testimony was that repeated acts of intercourse, penetration or masturbation could create the degree of irritation that prosecutrix suffered.” Id. at 662. The trial court excluded testimony that the Grandmother “observed prosecutrix masturbate with a washcloth and with her fingers on several occasions.” Id. The court reversed the trial court’s decision to limit testimony regarding the complainant’s sexual activities that could have offered an alternative explanation for her injuries. Id.

The Fourth Circuit Court of Appeals has also recognized an exception to a Rape Shield Statute regarding medical results, Barbe v. McBride, 521 F.3d 443 (4th Cir. 2008). In that case the complainant alleged sexual abuse up until the age of twelve (12). Id. at 446. During trial, a physician testified that the young complainant's psychological profile matched that of a complainant of sexual abuse. Id. The Fourth Circuit stated that evidence that other men had abused the complainant should have been admitted as an alternative explanation to the physician's findings. Id. at 460. The court continued:

When the state circuit court barred Barbe from questioning the prosecution's expert concerning J.M.'s abuse by others, its Rape Shield Ruling undercut and effectively scuttled his defense on the J.M. offenses. The jury was thus left with only one permissible inference – that J.M.'s psychological profile resulted from her abuse by Barbe, and that Barbe, consequently, was guilty of having abused J.M.

Id.

North Dakota also recognizes the alternative source exception. State v. Reinart, 440 N.W.2d 503 (1989). A physician testified that during a medical examination of a fourteen (14) year old complainant, he found physical evidence of sexual abuse. Id. at 504-505. The court found it was not harmless error for the trial court to deny cross-examination about the young complainant's sexual experiences after the physician testified and stated sexual abuse had occurred. Id. at 506. The court found that the ruling violated the Defendant's right to confront witnesses when it did not allow him to show an alternative source explaining the results of the examination. Id. at 506-07.

Because the State introduced medical evidence showing the Complainant in this case had been sexually abused, the Petitioner should have been permitted to introduce evidence to show

an alternative source explaining the results of the examination. Accordingly, the trial judge erred in excluding this evidence.

ii. Alternative Explanation Theory as to the Pregnancy Test

Inquiry into the Complainant's prior sexual activities should have been permitted to rebut the implication created by the pregnancy test evidence. The State did not attempt to show that the Petitioner had actually impregnated the Complainant. (R. p. 55, line 24 – R. p. 56, line 2). Indeed, the pregnancy test was negative. (R. p. 88, line. 19). However, the jury was left to prejudicially infer that the Complainant would have only taken the test because there was a possibility of her being pregnant. Moreover, like in Grovenstein, because of the Complainant's young age, the jury was left to infer that the Complainant was not having sex with anyone other than the Petitioner. Indeed, during closing arguments, the Solicitor hit this point when she stated, "There is one suspect in this case, that's Mr. Loftin. He's the only person accused, he's the only person charged, he is the only person [the Complainant] has accused of committing – that she's accused of violating her sexually in that residence on . ." (R. p. 382, lines. 6-10). Accordingly, the jury was left to infer that the only reason that the Complainant would use a pregnancy test is because of the Petitioner and his fear that he had impregnated the Complainant.

However, inquiry into the Complainant's sexual activities around the time of the pregnancy test may have shown the jury that there was an alternative source that caused the Complainant to be concerned about being pregnant. This type of inquiry was, again, essential to providing the Petitioner his right to a fair trial, a full defense, and to confront the witnesses against him.

While South Carolina and no other jurisdictions have considered this unique set of facts, allowing an exception would fall clearly within South Carolina law. To be clear, this inquiry into the Complainant's sexual activities around the time of the pregnancy test is being offered for a purpose other than to attack the Complainant's morality. See Finley, at 200, S.E.2d at 90; Lang, at 301, S.E.2d at 678. Moreover, it is offered to rebut an inference caused specifically because of the child's age. See Grovenstein, at 219, S.E.2d at 411. Its sole purpose is to show an alternative reason as to why the young Complainant would be using a pregnancy test.

Because the State introduced evidence showing there was concern about the Complainant being pregnant, the Petitioner should have been permitted to introduce evidence to show an alternative source explaining the reason for that concern. Accordingly, the trial court erred in excluding this evidence.

b. Petitioner should have been allowed to inquire into the Complainant's sexual activities under the Rape Shield Statute's exception regarding source of pregnancy.

When questions of statutory construction arise, they are to be answered as a matter of law. Charleston County Parks & Recreation Comm'n v. Somers, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995). Furthermore, "all rules of statutory construction are subservient to the one that the legislative intent must prevail if it reasonably can be discovered in the language used, and the language must be construed in the light of the intended purpose of the statute." Sumter Police Dep't v. Blue Mazda Truck, 330 S.C. 371, 375, 498 S.E.2d 894, 896 (Ct. App. 1998). "In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect." TNS Mills, Inc. v. S.C. Dep't of Revenue, 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998). "It is well settled . . . that statutes should be construed that no word, clause, sentence, provision, or part shall be rendered surplusage, or superfluous." Abraham v. Palmetto Unified Sch. Dist. No. 1,

343 S.C. 36, 538 S.E.2d 656, 662 (Ct. App. 2000) (citing Matter of Decker, 322 S.C. 215, 417 S.E.2d 462 (1995)).

In the instant case, the trial judge also refused inquiry into the Complainant's sexual activities prior to January 2007, finding the inquiry did not fall within the textual exceptions contained in the Rape Shield Statute. (R. p. 58, lines. 1-4). The Rape Shield Statute provides, "evidence of specific instances of sexual activity with persons other than the defendant introduced to show source or origin of . . . pregnancy . . . is admissible . . ." SC Code Ann. § 16-3-659.1. The Rape Shield Statute requires this evidence to be relevant to a material fact or issue and its inflammatory or prejudicial nature not outweigh its probative value. Id.

Neither Petitioner nor the Solicitor introduced evidence that the Complainant's pregnancy test prior to January of 2007 came back positive. (R. p. 55, line 24 – R. p. 56, line 2). Indeed, the Complainant was not pregnant during that time. (R. p. 88, line 19). However, after the State introduced the November pregnancy test as evidence, Petitioner should have been allowed to inquire about the Complainant's prior sexual activity.

The Rape Shield Statute allows evidence that is relevant to a material fact or issue concerning source of pregnancy. Because the Complainant was not pregnant at the time the pregnancy test was used, there is no issue concerning the source of pregnancy. However, the Legislature clearly intended the statute to cover evidence that concerned pregnancy in general. Here, the issue is what caused the need for the pregnancy test. Accordingly, inquiry into the possible sources of a pregnancy at that time would be highly probative and clearly within the intent of the Rape Shield Statute.

While the text of the Rape Shield Statute does not specifically address this issue, the Legislature could not have foreseen an issue concerning this unique set of facts. Indeed, a failed

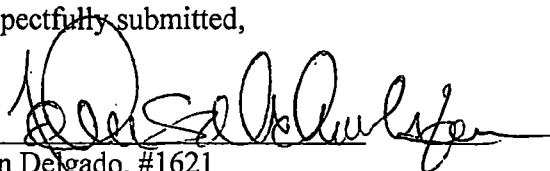
pregnancy test is usually highly irrelevant in proving sexual contact or lack thereof. However, here, further inquiry into why the Complainant felt it was necessary to use the pregnancy test at that time was highly relevant. If the Petitioner could have presented an alternative reason for why the Complainant would have used a pregnancy test at that time, the jury would not have been left to infer that the allegations against the Petitioner were true. Moreover, its probative value is of equal weight to any prejudicial effect.

Accordingly, because there was evidence in this trial concerning the use of a pregnancy test and that evidence was relevant to a material fact, the trial judge erred in excluding evidence of the Complainant's prior sexual activities.

CONCLUSION

Giving the jury an alternative source for the State's evidence would have prevented the Petitioner from being the only person that could have created that evidence. Because the trial court erred in prohibiting Petitioner from inquiring about the Complainant's sexual activities prior to the January 2008, disclosure, Petitioner's conviction should be reversed. Furthermore, because the trial court erred in ruling evidence of sexual conduct in a separate county admissible as a common scheme, Petitioner's conviction should be reversed.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of General Sessions

Honorable Judge Brooks P. Goldsmith

Appellate Case No. 2012-209191
Case No. 2008-GS-484 and 2008-GS-29-206

The State Respondent,

v.

Joseph Bradley Loftin, #349868, ... Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Respondent with three copies of Appellant's Final Brief via United States Mail, postage pre-paid, this 12 day of November, 2013, to the following:

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Respectfully submitted,



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SC Court of Appeals

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Lancaster County
Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

Respondent,

vs.

JOSEPH BRADLEY LOFTIN,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL**I.**

The trial court did not err in admitting an instance of uncharged sexual misconduct by Appellant with Victim where it was part of the common scheme or plan to groom and establish a sexual relationship with Victim and where the testimony would otherwise be admissible as res gestae of the charged conduct; further, any error is harmless beyond a reasonable doubt.

II.

The trial court did not err in excluding evidence that Victim met boys or that she became pregnant three months after Appellant stopped having sexual intercourse with Victim where there was no allegation Appellant impregnated Victim and where there was no evidence that Victim had sexual intercourse with other individuals before or during the time period Appellant was sexually abusing Victim.

STATEMENT OF THE CASE

Appellant Loftin was indicted for Criminal Sexual Conduct with a Minor in the Second Degree (CSC) and Lewd Act on a Child. Loftin was tried on February 14-16, 2012 and found guilty as charged. The Honorable Brooks P. Goldsmith sentenced Loftin to twelve years imprisonment for CSC and ten years imprisonment for Lewd Act. Following a motion to lower the sentence on February 22, 2012, Loftin filed a notice of appeal.

STATEMENT OF FACTS

Victim was repeatedly sexually assaulted from August to December 2007 by Appellant Loftin, who had assumed the role of her stepfather. The events came to light in January 2008, when Victim's friend, Shakesha, decided to tell the principal because she thought Victim needed help. ROA. pp. 63-64.

Victim testified Loftin lived with Victim and her mom since Victim was eight years old until he moved out in December 2007. She was twelve years old when a normal father/daughter relationship turned into a sexual relationship instead. The grooming process started when Loftin gave alcohol to Victim and her friend Abby. Loftin gave her some kind of fruity drink and she was sitting on his lap. That was the last thing Victim remembered that day. Another day, Loftin offered Victim twenty dollars to make out with him and he touched her private area. ROA. pp. 71-76.

This conduct escalated to intercourse for the first time in a deer stand in Fort Lawn, Chester County. Loftin showed Victim a condom and asked her if she knew what it was. Victim indicated she did. Then Loftin pulled down her pants. Victim was shocked and did not know what to do. Loftin had intercourse with her and told her not to tell her mom. She did not tell her mom because she did not know what would happen if she did. ROA. pp. 76-79.

After that, Loftin and Victim had intercourse every day. The sex would occur in Mother's house in Lancaster County in Mother's bed, Victim's bed, her brother's bed, the couch bed, Mother's car and also the deer stand. Loftin started sleeping with Victim on the couch bed every night where they had sex. At this time, Mother was having seizures,

was on a lot of medication, and slept a lot. Loftin also had sex with Victim in the brother's bedroom while Mother was at work. The brother was not present in the house when this occurred because he went to his grandmother's next door when he arrived home from school. ROA. pp. 79-83.

Loftin also performed oral sex on Victim. Additionally, one time Loftin used a vibrator ring with Victim. Loftin told Victim that he did not love Mother and when Victim turned eighteen years of age, they would run away together. Loftin also said bad things about Mother. Victim believed Loftin and Victim wanted to run away with him. The sexual conduct kept occurring until December 2007, when Loftin and Mother broke up. ROA. pp. 84-87.

Victim testified Loftin ejaculated during intercourse with Victim on her bed and her brother's bed. One time, Loftin bought her a pregnancy test and after she used it, Loftin made her throw it out in the woods. Loftin also told her he was getting a vasectomy. Loftin and Mother ended their relationship after Christmas in 2007 and Loftin moved out of the residence. ROA. pp. 88-90.

Later, after Mother and Loftin broke up, Mother and Loftin were on the phone together talking about getting back together when Victim became enraged and took the phone away from Mother. Victim had told Shakesha and Abby about the abuse. Victim was called to the principal's office at school and initially denied the abuse, but then admitted that it occurred. She would also recover the pregnancy test from the woods with Mother. ROA. pp. 90-93.

Abby testified at trial that Loftin gave her and Victim alcohol. Abby was eight years old at the time. Abby also testified that Loftin asked Victim to make out for twenty

dollars. Loftin and Victim went into Victim's bedroom and Abby heard kissing noises from Victim's room. Abby never told her mother about what happened. ROA. pp. 113-116.

Mother testified that Loftin and Mother started having a relationship when Victim was eight years old. Mother had a good relationship with Victim until late summer in 2007, when Victim became distant. "Then it was almost like she hated me." ROA. p. 133. In contrast, Loftin and Victim seemed to become closer. "She would talk to him, she wouldn't talk to me." ROA. p. 134, lines 18-25.

Mother verified that Loftin and Victim started sleeping on the couch together, which at the time did not concern her, but in retrospect she recognized it should have concerned her. ROA. p. 155, lines 20-25.

Mother testified she was speaking with Loftin on the telephone about getting back together when Victim snatched the phone from her and got upset. Then Victim calmed down after she spoke with Loftin. ROA. p. 143. Mother testified that Victim's bedding was never used on Mother's bed. ROA. p. 169.

A Target receipt from the Target store in Monroe was introduced into evidence. ROA. pp. 204-207. A receipt from the CVS pharmacy in Lancaster was also put into evidence, which showed the purchase of a pregnancy test. ROA. pp. 301-302. Evidence proved that the pregnancy test was purchased with a gift card given to Loftin at a company Christmas party. ROA. pp. 308-314; pp. 323-324.

Evidence was presented that Loftin had a vasectomy in December 2007. ROA. p. 140.

Semen detected on Victim's comforter was a one in forty-five quadrillion match

with Loftin. Semen on an egg crate mattress from the couch was also a match. Additionally, semen on an egg crate mattress from the brother's bedroom was a match with Loftin's DNA. ROA. pp. 247-249.

Dr. Singleton testified she examined Victim on January 9, 2008, and Victim had a deep cleft at the six o'clock position of the hymen that was consistent with sexual abuse. Dr. Singleton also testified that Victim reported issues indicative of trauma: Victim had difficulty sleeping, was sad and crying frequently, was having difficulty making friends, was not doing well in school, and was cutting herself. She also had nausea and vomiting. ROA. pp. 281-285.

Loftin testified he had the vasectomy because Loftin already had four children. He denied any sexual activity with Victim. He denied he slept on the couch with Victim. He claimed he gave Mother the gift card after he purchased an item the same day the pregnancy test was purchased, but he denied purchasing the pregnancy test. ROA. pp. 340-353, p. 359.

ARGUMENT

I.

The trial court did not err in admitting an instance of uncharged sexual misconduct by Appellant with Victim where it was part of the common scheme or plan to groom and establish a sexual relationship with Victim and where the testimony would otherwise be admissible as *res gestae* of the charged conduct; further, any error is harmless beyond a reasonable doubt.

Loftin sexually assaulted Victim on a daily basis from sometime in August until December 2007, but the first time he had sexual intercourse with Victim was in a deer stand in Chester County, which was an integral moment in Loftin's grooming process of transforming his father/daughter type of relationship with Victim into a sexual relationship in which Victim was groomed for a dysfunctional relationship in which she became his regular sexual partner and underage girlfriend. Loftin complains it was error to admit evidence of the deer stand incident, but it clearly is proper common scheme or plan evidence and admissible as the *res gestae* of the crime as well. The trial court did not err. Further, any possible error is harmless beyond a reasonable doubt, especially in light of the fact that it was one of approximately a hundred sexual assaults.

Evidence of other bad acts is not admissible to prove the defendant's guilt except to show motive, identity, existence of a common scheme or plan, absence of mistake or accident, or intent. Rule 404(b), SCRE; see also, State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). When there is a close degree of similarity between the crime charged and the prior bad act, both this Court and the South Carolina Supreme Court have held prior bad acts are admissible to demonstrate a common scheme or plan. See e.g., State v. Gaines, 380 S.C. 23, 30, 667 S.E.2d 728, 731 (2008). "When determining whether evidence is

admissible as common scheme or plan, the trial court must analyze the similarities and dissimilarities between the crime charged and the bad act evidence to determine whether there is a close degree of similarity.” State v. Wallace, 384 S.C. 428, 433, 683 S.E.2d 275, 277-78 (2009). “When the similarities outweigh the dissimilarities, the bad act evidence is admissible under Rule 404(b).” Id.

The South Carolina Supreme Court further explained:

[T]he trial court should consider the following factors when determining whether there is a close degree of similarity between the bad act and the crime charged: (1) the age of the victims when the abuse occurred; (2) the relationship between the victims and the perpetrator; (3) the location where the abuse occurred; (4) the use of coercion or threats; and (5) the manner of the occurrence, for example, the type of sexual battery.

Id. at 433-34; 683 S.E.2d at 278 (citing State v. Hallman, 298 S.C. 172, 379 S.E.2d 115 (1989); State v. McClellan, 283 S.C. 389, 323 S.E.2d 772 (1984)). Evidence of prior bad acts must logically relate to the charged offense, and the probative value of the evidence must outweigh any danger of unfair prejudice. State v. Holder, 382 S.C. 278, 293, 676 S.E.2d 690, 698 (2009). “The acid test of admissibility is the logical relevancy of the other crimes.” State v. Cutro, 332 S.C. 100, 103, 504 S.E.2d 324, 325 (1998).

“Even if prior bad act evidence is clear and convincing and falls within an exception, it must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice to the defendant.” State v. Clasby, 385 S.C. 148, 150, 682 S.E.2d 892, 896 (2009) (citing Rule 403, SCRE; Gaines, 380 S.C. at 29, 667 S.E.2d at 731; State v. Gillian, 373 S.C. 601, 609, 646 S.E.2d 872, 876 (2007)). “The determination of the prejudicial effect of the evidence must be based on the entire record

and the result will generally turn on the facts of each case.” Id. (citing State v. Fletcher, 379 S.C. 17, 24, 664 S.E.2d 480, 483 (2008)).

In State v. Richey, 88 S.C. 239, 70 S.E.2d 729 (1911), Richey was charged with carnal knowledge of a girl under fourteen years of age. The Supreme Court found evidence that he continued this relationship beyond the age of fourteen years of age admissible, holding: “acts prior and also subsequent to the act charged in the indictment, when indicating a continuousness of illicit intercourse, are admissible in evidence as showing the relation and mutual disposition of the parties.” Id., 88 S.C. at 242 70 S.E. at 730.

In State v. Whitener, 228 S.C. 244, 89 S.E.2d 701 (1955), our Supreme Court noted that the common plan or scheme exception “is generally applied in cases involving sexual crimes, where evidence of acts prior and subsequent to the act charged in the indictment is held admissible as tending to show continued illicit intercourse between the same parties.” Whitener, 228 S.C. at 265, 89 S.E.2d at 711. The Supreme Court quoted Whitener in McClellan and found the prosecutrix’s testimony regarding prior bad attacks admissible with no further analysis. McClellan, 283 S.C. at 392, 323 S.E.2d at 774.

In State v. Weaverling, 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999), the Court of Appeals addressed a case involving the admissibility of testimony regarding the prior sexual abuse of the victim. The victim, Doe, testified Weaverling, his uncle, began performing oral sex on him almost every time he saw him beginning around the time Doe was seven or eight years old. Id., 337 S.C. at 465, 523 S.E.2d at 789. This continued at a variety of locations for approximately five to six years. Id. Additionally, Weaverling had Doe view pornographic magazines and movies and also showed him nude

photographs of his wife. Id. In December of 1994, Weaverling performed oral sex on Doe in Doe's tree house. Id., 337 S.C. at 465, 523 S.E.2d at 790. One to two weeks later, Weaverling touched Doe inappropriately several times. Id., 337 S.C. at 466, 523 S.E.2d at 790. Approximately one and half years passed without any sexual abuse before the abuse resumed. Id. In July of 1996, Weaverling performed oral sex on Doe twice while he was asleep in Weaverling's house. Id. Following Doe's revelation of the abuse, Weaverling was charged for the December 1994 incident and the two July 1996 incidents. Id., 337 S.C. at 465, 523 S.E.2d at 789. The trial court admitted Doe's testimony regarding all of the prior abuse, and the Court of Appeals affirmed. Id., 337 S.C. at 471, 523 S.E.2d at 793. The Court found the prior bad acts showed the sexual abuse of the same victim under similar circumstances spread out over a period of several years. Id. The Court found the testimony to be "quintessential common scheme or plan evidence." Id., 337 S.C. at 469, 523 S.E.2d at 791.

In State v. Kirton, 381 S.C. 7, 671 S.E.2d 107 (Ct. App. 2008), Kirton was convicted of criminal sexual conduct with a minor. Kirton was charged after his thirteen-year-old victim indicated Kirton took off her pants and inserted his penis into her crotch. Id., 359 S.C. at 15, 671 S.E.2d at 111. At trial, the victim was permitted to testify about incidents of sexual abuse that began when she was six or seven years old. Id., 359 S.C. at 13, 671 S.E.2d at 110. The Court of Appeals affirmed the admission of the prior bad act evidence, finding "a clear pattern of escalating sexual abuse" satisfying the requirements of the common scheme or plan exception. Id., 359 S.C. at 36, 671 S.E.2d at 122. Specifically, the Court of Appeals found the following:

All of Kirton's alleged activity was directed toward the

same victim. The six to seven year pattern of escalating abuse of Victim by Kirton is the essence of grooming and continuous illicit activity. Kirton began by rubbing the minor victim's breasts, proceeded to make her touch his penis, began touching her vagina as she got older, and finally culminated the sexual abuse by engaging in the intercourse for which he was charged. The prior sexual acts did not take place just once or twice, six or seven years ago. Victim indicated they happened several times a month for years. While the prior sexual acts are not the same as the exact crime for which Kirton was charged, Victim detailed a clear pattern of escalating sexual abuse and not a few isolated, unrelated incidents.

Id., 359 S.C. at 36, 671 S.E.2d at 121-22.

In State v. Clasby, 385 S.C. 148, 150, 682 S.E.2d 892, 893 (2009), the Supreme Court considered the admissibility of prior bad acts in a case involving repeated acts directed at the same victim, Clasby's daughter. Clasby was indicted after her daughter alleged Clasby digitally-penetrated her vagina as they were lying on the floor of Clasby's sister's bedroom. Id., 385 S.C. at 153, 682 S.E.2d at 894. At trial, the victim was permitted to testify about several earlier occasions of sexual abuse suffered at Clasby's hands. Id. The victim detailed several incidents: (1) Clasby touched and rubbed the victim's vagina while they were in a bathtub together; (2) Clasby rubbed the victim's vagina inside of her underwear while they watched a movie together under a blanket; (3) Clasby inappropriately touched the victim while they slept together in the victim's father's bed; and (4) Clasby rubbed the victim's vagina and sucked on her breasts while at Clasby's father's home. Id., 385 S.C. at 152-153, 682 S.E.2d at 894. The Court affirmed the admission of the prior bad acts, finding the prior incidents "established a pattern of escalating abuse which ultimately culminated in Clasby's digital penetrations of [Clasby's daughter]. The four prior incidents of sexual misconduct by Clasby reveal

the same illicit conduct with [daughter] during periods of visitation prior to [the indicted offenses].” *Id.*, 385 S.C. at 156, 682 S.E.2d at 896.

In the instant case, the deer stand incident represents the same illicit conduct between Loftin and his victim. It involved the same victim, during the same time period as the charged conduct, and involved sexual intercourse like the incidents which would occur afterwards at the house in Lancaster County. Accordingly, testimony about the deer stand incident is admissible under the common plan or scheme exception.

Further, the evidence would be properly admissible under the *res gestae* theory. “Evidence of other crimes is admissible under the *res gestae* theory when the other actions are so intimately connected with the crime charged that their admission is necessary for a full presentation of the case.” *Anderson v. State*, 354 S.C. 431, 581 S.E.2d 834 (2003) (defendant’s assault on defendant’s former girlfriend and his threat to shoot her or the other man provides the context of subsequent shooting of the other man and is admissible as *res gestae*). A prior bad act may be admissible under the *res gestae* theory where it is “an integral part of the crime with which the defendant is charged or may be needed to aid the fact finder in understanding the context in which the crime occurred.” *State v. Owens*, 346 S.C. 637, 652, 552 S.E.2d 745, 753 (2001) *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). In the instant case, the deer stand incident is integral to establishing the context of the crime, it represents the step in the grooming process where the illicit relationship graduated to regular sexual intercourse and set the precedent for more sexual intercourse as the relationship changed from a father/daughter relationship to an illicit emotional and sexual relationship manipulated by Loftin so that Loftin’s confused victim was ready to cast

away her relationship with her mother and run away with Loftin.

Further, it is difficult to articulate how Loftin might be prejudiced, given that following the deer stand incident, the sexual assaults occurred every day from August to December 2007. Accordingly, this incident would be only one of approximately a hundred instances of sexual assault. The possible incremental prejudice from this one incident with the same victim, in the same relationship, and the same time period, would be negligible. The “materiality and prejudicial character of the error must be determined from its relationship to the entire case.” State v. Thompson, 352 S.C. 552, 575 S.E.2d 77, 83 (2003). Error is harmless when it could not reasonably have affected the result of the trial. State v. Reeves, 301 S.C. 191, 194, 391 S.E.2d 241, 243 (Ct. App. 1990). Accordingly, any possible error is harmless beyond a reasonable doubt.

II.

The trial court did not err in excluding evidence that Victim met boys or that she became pregnant three months after Appellant stopped having sexual intercourse with Victim where there was no allegation Appellant impregnated Victim and where there was no evidence that Victim had sexual intercourse with other individuals before or during the time period Appellant was sexually abusing Victim.

Loftin alleges the trial court erred in not allowing Loftin to inquire about an alleged instance where Victim left the house without permission and met a boyfriend. Loftin also alleges he should have been allowed to inquire about her being impregnated by this boyfriend in March 2008. Loftin, on appeal, but not to the trial court, claims he would have sought to inquire as to whether Victim was sexually active with this boy during August to December, 2007. However nothing in the record indicates that Victim was sexually active during this timeframe with anyone other than Loftin. The trial court properly excluded this evidence on the rape shield statute and as irrelevant.

Further, the trial court's ruling was preliminary, as discussed by Loftin's counsel and the trial court. ROA. p. 60. Loftin made no further effort to introduce the line of questioning at trial, although the trial court instructed Loftin to approach the bench if he would inquire on the matters outlined in his pre-trial motion. ROA. p. 60. A ruling *in limine* is not a final ruling on the admissibility of evidence. State v. Griffin, 339 S.C. 74, 528 S.E.2d 668 (2000); State v. Hughes, 336 S.C. 585, 521 S.E.2d 500 (1999). Generally, a motion *in limine* seeks a pre-trial evidentiary ruling to prevent the disclosure of potentially prejudicial matter to the jury. See State v. Floyd, 295 S.C. 518, 369 S.E.2d 842 (1988). A pre-trial ruling on the admissibility of evidence is preliminary, and is

subject to change based on developments at trial. Id. Accordingly, a final ruling from the trial court during trial was necessary to preserve the issue for review. State v. Smith, 337 S.C. 27, 32, 522 S.E.2d 598, 600 (1999).

Additionally, this issue is not preserved for review because no *in camera* testimony was taken to determine what testimony would be elicited from this line of questioning. The reviewing court may not consider alleged error in excluding testimony unless the record show fairly what the rejected testimony would have been. State v. Roper, 274 S.C. 14, 20, 260 S.E.2d 705, 708 (1979).

Further, on the merits, the line of questioning was properly excluded, as the evidence was irrelevant. In Loftin's Motion to Allow Evidence, four items were proposed. The third item, evidence of semen from an unknown male found in the residence, was discussed at trial. ROA. p. 260. The first item, that Victim and friends may have had pornographic materials in a clubhouse, is not discussed in Loftin's brief. The two remaining items that are challenged on appeal are that (1) Loftin should have been allowed to examine Victim about her leaving the house without permission in November 2007 and (2) Loftin should have been allowed to examine Victim about becoming pregnant in March 2008. There was no relevance to either line of questioning.

"The relevance, materiality, and admissibility of evidence are matters within the sound discretion of the trial court and a ruling will be disturbed only upon a showing of an abuse of discretion." State v. Shuler, 353 S.C. 176, 184, 577 S.E.2d 438, 442 (2003). Thus a trial court's decision regarding the comparative probative value and prejudicial effect of relevant evidence will be reversed only in exceptional circumstances. State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003). Relevant evidence may be

excluded where its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE; State v. Pagan, 369 S.C. 201, 210, 631 S.E.2d 262, 266 (2006).

“If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal.” State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 598 (Ct. App. 2001) *overruled on other grounds by* State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) .

The right to present a defense is not unlimited, but must “bow to accommodate other legitimate interests in the criminal trial process.” Rock v. Arkansas, 483 U.S. 44, 55 (1987). While defendants are entitled to a fair opportunity to present a defense, that right does not encompass the right to present any evidence regardless of its admissibility under the rules of evidence. Hamilton.

First, the trial court did not err in excluding evidence that Victim left the house without permission and met a boy. Based on Appellant’s motion, it does not even appear that Victim was alone with the boy. The motion states Victim, “along with others without permission slipped out of her home to meet with some members of the opposite sex.” ROA. p. 4. Nothing in the record indicates Victim engaged in sexual activity at this time. Accordingly, evidence of Victim leaving the house had no relevance to the trial.

When asked the relevancy of the fact that Victim allegedly left the house without permission, Loftin’s counsel had the following discussion with the trial court:

Court: The fact that she slipped out of the home to meet somebody?

Counsel: What I say, Your Honor, is except who she met.

Court: What has that got to do with this case?

Counsel: Well, the boy she met was the father of her child.

Court: What has that got to do with the allegations in this case?

Counsel: It has nothing to do with the allegations, Your Honor. It goes to the – my client's right to have a fair trial, it goes to her credibility and believability based on other acts that she committed. It's not to bring up her morality or anything even though she had a child at the age of 13, somebody should have been arrested for that but they weren't but I'm not questioning that, Your Honor, from a morality standpoint. It is simply being allowed to use these items – that I'm allowed to use for purposes of impeachability of her testimony, the credibility and believability.

Court: How does that statement that she slipped out of the house affect her credibility?

Counsel: I'll have to expand it, Your Honor, from the standpoint of what she was doing and who she was meeting and why. I can only give you a bare bones assertion in the motion but it is something I have got to get out of her if she will admit she did it.

ROA. p. 56, line 24 – p. 57, line 25.

Note Loftin now argues for the first time on appeal that Victim's rendezvous with another male provides an alternative explanation for the pregnancy scare. This argument for admission was not raised to the trial court. Accordingly, the argument is not preserved for review. The ground raised in support of a claim of error on appeal must be the same ground offered in support of the objection at trial. State v. Smith, 337 S.C. 27, 34, 522 S.E.2d 598, 601 (1999).

However, the trial court did not err as the evidence was completely irrelevant to the trial. The allegation of a rendezvous fails to establish a reasonable basis to inquire as to Victim's sexual activity prior and during the time she was being assaulted by Loftin. Nothing in the record suggests Victim was sexually active prior or during the period of time Loftin was having intercourse with Victim. The trial court did not abuse his discretion in excluding this irrelevant line of questioning which would be prejudicial to the state. See State v. McGuire, 272 S.C. 547, 550, 253 S.E.2d 103, 104 (1979) ("Merely asking a question that has no basis in fact may be prejudicial").

Further, Victim's subsequent pregnancy has no relevance to the case. While her pregnancy is proof that Victim was sexually active in March 2008, it does not indicate that she was sexually active at any time before the disclosure in the first week of January 2008 or her examination by Dr. Singleton on January 9, 2008. So contrary to Loftin's arguments, her pregnancy does not provide an alternative explanation for the purchase of the pregnancy test or for the results of Dr. Singleton's examination. Therefore, the trial court did not err in excluding testimony in this regard under the rape shield statute (S.C. Code §16-3-659.1) and on the grounds of relevancy.

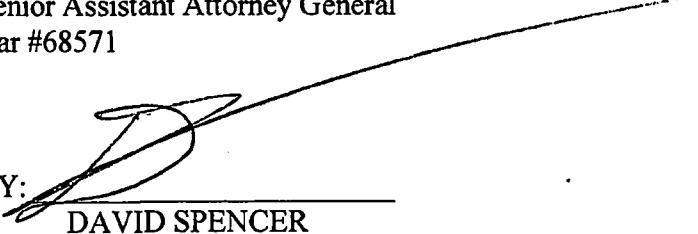
CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

December 2, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Lancaster County
Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

Respondent,

vs.

JOSEPH BRADLEY LOFTIN

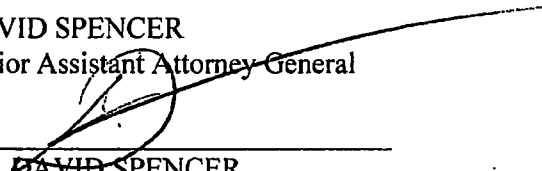
Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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December 2, 2013

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THE STATE,

RESPONDENT,

vs.

JOSEPH BRADLEY LOFTIN,

APPELLANT.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, John D. Delgado, Esquire, 1614 Taylor St., Columbia, SC 2921.

I further certify that all parties required by Rule to be served have been served.

This 2nd day of December, 2013


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DEC 02 2013

SC Court of Appeals



ALAN WILSON
ATTORNEY GENERAL

December 2, 2013

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: **The State v. Joseph Bradley Loftin**
Appellate Case No: 2012-212342

209/91

Dear Ms. Kitchings:

Enclosed please find the original and fourteen (14) copies of the **Final Brief of Respondent** in the above matter for filing in your office. By copy of this letter we are serving John D. Delgado, Esquire with this brief today.

Sincerely,

David Spencer
Senior Assistant Attorney General
Bar No: 68571

DS/nb
Enclosures

cc: John D. Delgado, Esquire (2 copies enclosed)
Trisha Allen, Victim Services (1 copy enclosed)

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SC COURT OF APPEALS

THE STATE OF SOUTH CAROLINA
Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of General Sessions

Honorable Judge Brooks P. Goldsmith

Appellate Case No. 2012-209191
Case No. 2008-GS-484 and 2008-GS-29-206

The State Respondent,

v.

Joseph Bradley Loftin, ... Appellant.

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SC COURT OF APPEALS

THE STATE OF SOUTH CAROLINA
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<u>State v. Tutton</u> , 354 S.C. 319, 580 S.E.2d 186 (Ct. App. 2003).....	1, 2
<u>I'on, L.L.C. v. Town of Mt. Pleasant</u> , 338 S.C. 406, 526 S.E.2d 716 (2000).....	2
<u>State v. Passmore</u> , 363 S.C. 568, 583, 611 S.E.2d 273, 281 (Ct. App. 2005).....	3
<u>State v. Forrester</u> , 343 S.C. 637, 541 S.E.2d 837 (2001).....	3, 4, 5
<u>State v. Muller</u> , 319 S.C. 266, 460 S.E.2d 409 (Ct. App. 1995).....	3, 5
<u>State v. Tennant</u> , 383 S.C. 245, 678 S.E.2d 812 (Ct. App. 2009).....	4

STATUTES AND OTHER AUTHORITIES

S.C. Code Ann. § 16-3-659.1	5

ARGUMENT

I. The Trial Court erred in ruling that the Chester County incident possessed a sufficiently close amount of similarity to the remaining incidents at the Brady House to constitute common scheme.

The Respondent relies on several cases to support its position that the Chester County incident is sufficiently similar to constitute a common scheme (*see* Resp. Br. p. 9-12). The Petitioner notes, however, the several distinctions between the Respondent's legal authority and the facts and allegations set forth in the Petitioner's case. First, the Court in State v. Richey, 88 S.C. 239, 70 S.E.2d 729 (1911), fails to give a substantive analysis explaining how the acts at issue were sufficiently similar. Moreover, the separate acts discussed in State v. Whitener, 228 S.C. 244, 89 S.E.2d 701 (1955), occurred less than two hours apart in time, and the Court again failed to give a substantive analysis of the similarities between the acts. Thirdly, unlike the allegations in the Petitioner's case, State v. Weaverling, 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999), involved an ongoing and consistent relationship between the Defendant and the Complainant, similar locations of where the abuse occurred, continuing use of coercion, and similar sexual acts. Finally, unlike Petitioner's case, the decisions in State v. Kirton, 381 S.C. 7, 671 S.E.2d 107 (Ct. App. 2008) and State v. Clasby, 385 S.C. 148, 682 S.E.2d 892 (2009) involved patterns of escalating abuse that evolved over time. The alleged acts at issue in this case, however, are distinctly different acts that did not evolve into a pattern until after the Chester County incident.

The Petitioner contends that the analysis provided in State v. Fonseca, 383 S.C. 640, 681 S.E.2d 1 (Ct. App. 2009)(*aff'd by* State v. Fonseca, 393 S.C. 229, 711 S.E.2d 906 (2011)) and State v. Tutton, 354 S.C. 319, 580 S.E.2d 186 (Ct. App. 2003), are more

closely aligned with the facts and testimony in this case. This Court in Fonseca found an earlier alleged act committed against the same Defendant and against the same Complainant to not be sufficiently similar to constitute a common scheme. Fonseca at 649, 681 S.E.2d at 6. Likewise, this Court found in Tutton insufficient similarities between alleged acts to constitute a common scheme. Tutton at 328, 580 S.E.2d at 191. Most importantly, this Court went on to point out that cases such as Weaverling “do not lower the bar for admissibility under Lyle simply because sexual crimes are involved.” Id.

Finally, the Petitioner finds it necessary to address the Respondent’s new claim that, regardless of common scheme, the evidence of the Chester County incident would have been admissible under *res gestae* theory, and the Respondent’s alternative position regarding harmless error. Resp. Br. p. 12-13.

The Supreme Court of South Carolina has addressed a Respondent’s duty to preserve arguments at the trial level. P’on, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000). Specifically the Court stated:

While the current rules do not require the respondent to present an issue to the lower court in order to raise it as an additional sustaining ground, an appellate court is less likely to rely on such a ground when the respondent has failed to present it to the lower court. In such cases, the appellate court likely would perceive it as being unfair or unwise to resolve a case on a ground never mentioned by the respondent prior to appeal. Stated another way, the respondent may raise an additional sustaining ground that was not even presented to the lower court, but the appellate court is likely to ignore it. Id. at 421, 526 S.E.2d at 724.

Here, the Respondent failed to raise the theory of *res gestae* at trial, and this Court should accordingly not give weight to the argument now.

Additionally, this theory should be given no consideration as the Respondent cannot seem to determine whether the Chester County incident was “an integral part of the crime” under the theory of *res gestae* or “negligible” under a harmless error analysis. Resp. Br. p. 12-13.

Therefore, the Petitioner contends that the trial court erred in allowing any testimony regarding the Chester County incident, which caused significant prejudice to the Petitioner. As noted in the Petitioner’s initial brief, the Chester County incident was not sufficiently similar to the charged Brady House incidents so as to constitute a common scheme, and in any event, would not have adequate probative value so as to sufficiently outweigh the danger of unfair prejudice.

II. The Trial Court erred in not allowing Petitioner to inquire about the Complainant’s prior sexual activity after the State introduced a pregnancy test and medical testimony into evidence.

As an initial matter, the Petitioner contends that his objection has been preserved. “The general rule of issue preservation states that if an issue was not raised and ruled upon below, it will not be considered for the first time on appeal.” State v. Passmore, 363 S.C. 568, 583, 611 S.E.2d 273, 281 (Ct. App. 2005). Accordingly, if a party is ruled against in a motion in limine, he must generally raise the issue again during the trial to adequately preserve it. Id. “Nevertheless, the rule that an unpreserved issue will not be considered on appeal does have its exceptions.” Id. at 584, 611 S.E.2d at 282. These exceptions include futility. Id.

Moreover, an exception is warranted when a pre-trial ruling is indeed a final ruling. State v. Forrester, 343 S.C. 637, 541 S.E.2d 837 (2001); State v. Muller, 319

S.C. 266, 460 S.E.2d 409 (Ct. App. 1995). This Court in Muller found an issue to be preserved in a situation similar to the Petitioner in trial:

Because no evidence was presented between the ruling and [the] testimony, there was no basis for the trial court to change its ruling. Thus, . . . [the] motion was not a motion *in limine*. The trial court's ruling in this instance was in no way preliminary, but to the contrary, was a final ruling. Accordingly, [the defendant] was not required to renew her objection to the admission of the testimony in order to preserve the issue for appeal. Muller at 268-69, 460 S.E.2d at 410.

Likewise, in Forrester, the Court found that because no evidence was taken in between a pre-trial ruling admitting evidence and that evidence's introduction into trial, a second objection was not required. Forrester at 642-43, 541 S.E.2d at 840. The Court found that the circumstances of the case had not changed between the trial court's initial ruling and the introduction of evidence, and therefore, the issue was properly preserved. Id.

The scenario presented in this case is somewhat unusual. It is common for evidence to be *excluded* in a motion in limine and natural for a contemporaneous objection to be made at that evidence's introduction. However, here, the pre-trial motion was regarding the scope of cross examination by a Defendant. Accordingly, it is not quite as apparent when a subsequent objection is appropriate. Indeed, this Court faced a similar situation and found the issue to be preserved in State v. Tennant, 383 S.C. 245, 678 S.E.2d 812 (Ct. App. 2009). There, a motion in limine regarding the scope of cross was denied. Id. at 258, 678 S.E.2d at 818-19. However, this Court addressed the issue on the merits even though the issue was not raised again during cross examination. Id. This Court, nonetheless, found no error on the merits. Id. However, the Supreme Court of South Carolina found the Defendant's claims to be meritorious, but without prejudice,

apparently finding adequate preservation. State v. Tennant, 394 S.C. 5, 714 S.E.2d 297 (2011).

The Petitioner adequately preserved his issue here. First, the Petitioner clearly argued in a pre-trial motion his intention to cross examine the Complainant regarding possible alternative explanations to explain the medical examination and the presence of a pregnancy test. (R. p.62-69). The Petitioner filed a written motion in accordance with S.C. Code Ann. § 16-3-659.1 and argued the point extensively as evidenced by the record. (Id.; Motion to Allow Evidence). Moreover, the trial judge was clear in his ruling that Petitioner would not be allowed to cross examine the Complainant regarding alternative explanations to the medical exam and presence of a pregnancy test, finding the subjects barred by S.C. Code Ann. § 16-3-659.1 and, in any case, not even reaching the low standard of relevance. Id.

Furthermore, similarly to Forrester and Mueller, the cross examination of the complainant occurred almost immediately after the trial court's ruling. In fact, there was only one witness in between the ruling and the testimony of the Complainant. (R. p. 62-69. Moreover, that intervening witness's testimony did not relate to this issue and consisted of a total of seventeen questions on the initial direct examination. Id. The substance of the testimony consisted of the witness testifying that she told a school official of the Complainant's disclosure. Id. It in no way affected the trial judge's ruling regarding Petitioner's motion to explore possible alternative explanations for the Complainant's medical examination and the Complainant's possession of a pregnancy test. Accordingly, the pre-trial motion was not a motion in limine, but a final ruling.

Moreover, even if it were not a final ruling, any subsequent objection would have been futile.

As to the merits, the Petitioner finds it necessary to address several points. First, to be clear, the Petitioner has not argued that the Complainant's subsequent pregnancy should have been a subject for cross examination. Rather, the Petitioner contends that the pregnancy itself gave the Petitioner a good faith basis for questioning the Complainant about any sexual activity she may have been engaged in before the medical examination or around the time she was in possession of the pregnancy test. Indeed, the pregnancy was close in time to the medical examination.¹ Moreover, the pregnancy was the result of a sexual relationship between the Complainant and a male friend with whom she had met without permission multiple times before the medical examination and around the time she was in possession of the pregnancy test.

Cross examination regarding her relationship with the male friend around this time would have been highly relevant as it would have provided an alternative explanation as to why the medical examination produced the results that it did and explained why the Complainant was in possession of a pregnancy test. The Petitioner was entitled to question the Complainant about these alternative explanations provided the questioning is not for the purpose of attacking the Complainant's morality. As has been stated in Petitioner's initial brief, an attack on morality was not the purpose. Rather, the purpose was to be able to provide an alternative reasoning as to the existence of certain pieces of material evidence in this factually unique case. When the Respondent's

¹ It appears from the Record that approximately two months had passed between the medical examination and the Complainant's pregnancy. (R. p. 54, line 14; R. p. 278, line 2).

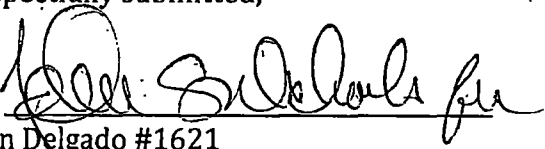
motion in limine was denied, he was left to defend against material evidence such as an expert witness's opinion as to the physical condition of a young Complainant with no opportunity to confront, thus securing a conviction against him.

Accordingly, Petitioner's objection regarding the introduction of evidence for the purposes of cross-examination was properly preserved. Moreover, the substance of the proposed cross examination was not only relevant, but crucial to the Petitioner's right to cross examine the witnesses against him, to have a full defense, and to have a fair trial, as argued by the Petitioner at trial.

CONCLUSION

Giving the jury an alternative source for the State's evidence would have prevented the Petitioner from being identified as the only person that could have created that evidence. Because the trial court erred in prohibiting Petitioner from inquiring about the Complainant's sexual activities prior to the January 2008, disclosure, Petitioner's conviction should be reversed. Furthermore, because the trial court erred in ruling evidence of sexual conduct in a separate county admissible as a common scheme, Petitioner's conviction should be reversed.

Respectfully submitted,

By: 

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THE STATE OF SOUTH CAROLINA
Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of General Sessions

Honorable Judge Brooks P. Goldsmith

Appellate Case No. 2012-209191
Case No. 2008-GS-484 and 2008-GS-29-206

The State Respondent,

v.

Joseph Bradley Loftin, #349868, ... Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Respondent with three copies of Appellant's Final Reply Brief via United States Mail, postage pre-paid, this 12 day of November, 2013, to the following:

David Spencer
South Carolina Attorney General's Office
1000 Assembly Street
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Respectfully submitted,



Charlene Wallace
Paralegal to John Delgado
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SC Court of Appeals



ALAN WILSON
ATTORNEY GENERAL

September 5, 2014

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SEP 05 2014

SC Court of Appeals

The Honorable Jenny A. Kitchings
Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211
Via hand delivery

Re: State v. Joseph Bradley Loftin, Appellate Case No. 2012-209191

Dear Ms. Kitchings:

Oral argument is scheduled in the referenced case for Tuesday, September 9; at 12:00 p.m. Pursuant to Rule 208(b)(7), SCACR, I would refer to the following as additional authority:

Rule 220, SCACR (as to Issue I and the need for a respondent to preserve an issue on appeal);

Armstrong v. Atlantic Coast Line R. Co., 137 S.C. 113, 133 S.E.826 (1926) (on when the court's ruling makes clear the ruling is not final);

State v. Atieh, 397 S.C. 641, 725 S.E.2d 730 (Ct. App. 2012) (discussing in limine rulings, whether a judge's ruling is final, and limiting application of the Forrester rule).

Sincerely,

David Spencer
Senior Assistant Attorney General

cc: John Delgado, Esquire
1614 Taylor Street
Columbia, SC 29201
Email to jdelgado@bntdlaw.com



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September 8, 2014

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SC Court of Appeals

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: *State v. Joseph Bradley Loftin*
Appellate Case No. 2012-209191

Dear Ms. Kitchings:

Pursuant to Rule 208(b)(7), SCACR, Appellant responds to the State's letter of Friday, September 5, 2014, as follows:

(A) *Armstrong v. Atlantic Coast Line R. Co.*, 137 S.C. 113, 133 S.E. 826 (1926) (in case not cited since 1938, Supreme Court narrowly held that where judge admits evidence subject to revisiting the evidence after the proponent has connected the evidence to the case, and the judge clearly states such a limited ruling, then the failure to renew the objection after the line of inquiry is complete operates as a waiver of the issue).

(B) *State v. Forrester*, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001) (Court found exception to the requirement to renew objection following in limine ruling because there was no evidence presented between ruling and proffer and thus nothing to persuade judge to change ruling).

(C) *State v. Wiles*, 383 S.C. 151, 157, 679 S.E.2d 172, 175 (2009) (explaining Forrester rule and expanding it to case where judge, by actions, clearly indicates ruling is final rather than preliminary).

(D) State v. Ateih, 397 S.C. 641, 725 S.E.2d 730 (Ct. App. 2012) (insofar as State contends this Court in Ateih "limit[ed]" application of the Supreme Court's Forrester rule, under Const. art. V, Sec. 9, this Court is bound by the Supreme Court precedent of Wiles and Forrester and may not "limit" or otherwise apply that ruling in a more narrow manner that the Supreme Court instructs).

Yours very truly,



John Delgado

JDD/cw

cc: David Spencer (via email only dspencer@scag.gov)

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Joseph Bradley Loftin, Appellant.

Appellate Case No. 2012-209191

Appeal From Lancaster County
Brooks P. Goldsmith, Circuit Court Judge

Unpublished Opinion No. 2014-UP-472
Heard September 9, 2014 – Filed December 17, 2014

AFFIRMED

John Dennis Delgado, of Bluestein, Nichols, Thompson
& Delgado, LLC, and Robert Louis Bank, Jr., both of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Deputy Attorney General David A. Spencer, both of
Columbia, for Respondent.

PER CURIAM: Joseph Bradley Loftin was indicted for criminal sexual conduct (CSC) with a minor in the second degree and lewd act upon a child. He was convicted as charged and sentenced to imprisonment for concurrent terms of

twelve years and ten years, respectively. On appeal, Loftin contends the trial court erred in (1) admitting evidence of an incident that allegedly occurred in another county as common scheme or plan evidence based upon its similarity to the alleged indicted incidents and (2) refusing to allow him to inquire about Victim's prior sexual activity after the State introduced evidence concerning a pregnancy test and medical testimony regarding Victim. We affirm.

1. In regard to the admission of evidence concerning the deer stand incident, which occurred in another county, we find no error. "When determining whether evidence is admissible as common scheme or plan, the trial court must analyze the similarities and dissimilarities between the crime charged and the bad act evidence to determine whether there is a close degree of similarity." *State v. Wallace*, 384 S.C. 428, 433, 683 S.E.2d 275, 277-78 (2009). "When the similarities outweigh the dissimilarities, the bad act evidence is admissible under Rule 404(b)[, SCRE]." *Id.* at 433, 683 S.E.2d at 278. Though not an exhaustive list and other factors may also be relevant in determining whether the similarities outweigh the dissimilarities, the following should be considered in determining whether there is a close degree of similarity between the bad act and the crime charged: "(1) the age of the victims when the abuse occurred; (2) the relationship between the victims and the perpetrator; (3) the location where the abuse occurred; (4) the use of coercion or threats; and (5) the manner of the occurrence, for example, the type of sexual battery." *Id.* at 433-34, 683 S.E.2d at 278. "A close degree of similarity establishes the required connection between the two acts and no further 'connection' must be shown for admissibility." *Id.* at 434, 683 S.E.2d at 278.

In reviewing the specific factors set forth in *Wallace*, the similarities between the crime charged and the other bad act evidence here include (1) the age of Victim when the abuse occurred; (2) the relationship between Loftin and Victim;¹ (3) the

¹ Although Loftin urges this court to consider this a dissimilarity, arguing the relationship at the time of the deer stand incident was one of father/daughter while the acts for which he was charged occurred during an alleged romantic relationship between him and Victim, we find no merit to this argument. First, under Victim's testimony, the emotional change in their relationship could have occurred at the time of the deer stand incident. More importantly, it is clear that during this entire time Loftin was acting in a parental role of the family unit comprised of Loftin, Mother, Victim, Brother, and the young biological daughter of Loftin and Mother.

use of coercion;² and (4) the type of sexual battery, which included Loftin's sexual intercourse with Victim during the deer stand incident and the continued engagement in sexual intercourse between the two on a daily basis thereafter. The only dissimilarity under these specific factors is the location of the abuse, with the deer stand incident occurring outdoors and in a different county, and the majority of the other incidents occurring indoors and at their home. Additionally, there were other similarities, including that the prior bad act was directed toward the same victim and was close in time, having occurred within the period of time of the crimes charged. Further, the deer stand incident was part of a pattern of escalating abuse and was not an unrelated incident. *See State v. Clasby*, 385 S.C. 148, 156, 682 S.E.2d 892, 896 (2009) (holding the trial court properly admitted evidence of four incidents of uncharged sexual misconduct committed by Clasby on the victim prior to the offenses for which she was indicted and tried, noting all of Clasby's alleged sexual misconduct was directed at the same victim and finding the alleged prior bad act evidence revealed a close degree of similarity to the facts of the indicted charges); *id.* at 157, 682 S.E.2d at 896 (citing *State v. Whitener*, 228 S.C. 244, 265, 89 S.E.2d 701, 711 (1955) as "recognizing that the common scheme or plan exception 'is generally applied in cases involving sexual crimes, where evidence of acts prior and subsequent to the act charged in the indictment is held admissible as tending to show continued illicit intercourse *between* the same parties' (emphasis added)"); *State v. Kirton*, 381 S.C. 7, 27, 671 S.E.2d 107, 117 (Ct. App. 2008) ("The degree of remoteness between the other crimes and the one charged is one factor to be considered in determining the connection between them."); *id.* ("When a criminal defendant's prior bad acts are directed toward the same victim and are very similar in nature, those acts are admissible as a common scheme or plan."). Here, the similarities clearly outweigh the dissimilarities, and the alleged deer stand incident tends to show continued illicit intercourse between the same parties. Additionally, Victim's testimony concerning the deer stand incident establishes a progression and pattern of the continuing illicit sexual

² Assuming, as Loftin contends, that evidence he told Victim he wanted to run away with her to pursue their romantic relationship amounted to coercion, there is evidence in the record that Loftin began the romantic relationship with Victim around the time he began engaging in sexual intercourse with her. Victim's testimony establishes the first incident of sexual intercourse occurred at the deer stand. Therefore there is evidence this "coercion" was present at the time of the deer stand incident as well as the later incidents at home.

activities between Loftin and Victim, and its probative value outweighs any danger of unfair prejudice to Loftin.

2. We find no error in the trial court's refusal to allow Loftin to inquire into Victim's sexual activities under either the "Alternative Explanation Theory" or the Rape Shield Statute's pregnancy exception. We agree with the State this issue is not preserved for our review.

First, it is clear from the record that the trial court's ruling on Loftin's pretrial motion was a ruling in limine and not a final ruling on the issue. Further, no other mention was made of this matter after the trial court's preliminary ruling.

"Generally, a motion in limine seeks a pretrial evidentiary ruling to prevent the disclosure of potentially prejudicial matter to the jury." *State v. Smith*, 337 S.C. 27, 32, 522 S.E.2d 598, 600 (1999). "[A]n in limine ruling is not final and does not preserve the issue for appeal." *State v. Griffin*, 339 S.C. 74, 77, 528 S.E.2d 668, 669 (2000). "Merely raising an argument in *limine* (sic) does not preserve the issue for appellate review." *State v. Stokes*, 339 S.C. 154, 163, 528 S.E.2d 430, 434 (Ct. App. 2000). Loftin does not dispute that the matter was not subsequently addressed during the trial but contends there are exceptions to the rule requiring an issue to be raised again after an in limine ruling, including when such a ruling is actually final or further discussion would be futile. However, the trial court specifically informed trial counsel that its ruling was a pretrial ruling "just like a motion in limine," and the trial court did not indicate it would deny counsel the opportunity to raise the matter again when counsel then stated to the court that he would "like to cross that bridge when [he got] to it . . . once [he] start[ed] cross [-] examination." Further, the trial court specifically instructed trial counsel he was to ask for a sidebar so they could discuss the matter before he asked any of the questions he sought to include on this matter. Accordingly, the trial court's in limine ruling was not a final ruling on the matter, and it would not have been an exercise in futility for counsel to raise the matter during the trial. Loftin also argues the scenario presented is unusual inasmuch as it is common for there to be a motion to *exclude* evidence in a motion in limine and natural for a contemporaneous objection to be made when the evidence is ultimately offered, but this case involved the scope of cross-examination by a defendant and it was not quite as apparent when a subsequent objection would have been proper. Our court has specifically determined, in situations involving a trial judge ruling against a defendant's in limine request for the admission of evidence, the issue is not preserved when the defendant fails to thereafter raise the matter during trial. *See id.* 339 S.C. at 163, 528 S.E.2d at 434 (holding, when appellant unsuccessfully sought to impeach the victim's mother and the record reflected the issue was only

raised and ruled on in limine, appellant's failure to raise the issue again at any time during the trial rendered the issue unpreserved); *State v. Peay*, 321 S.C. 405, 409, 468 S.E.2d 669, 671-72 (Ct. App. 1996) (holding, when the State sought to introduce a videotape taken of appellant into evidence without the accompanying audio and appellant sought to require the State to play the audio portion as well, appellant should have renewed his request that the State present the full context of the videotape because the trial court's initial ruling that the State was not required to play the audio portion was made in limine and was not final).

Further, it is not clear exactly what testimony would have been elicited from the line of questioning Loftin sought to ask, and Loftin failed to make many of the arguments he now raises on appeal. Loftin did not clarify whom he wished to question on these matters or what conclusive questions he might seek to ask. Loftin never argued, as he does on appeal, that he should be permitted to inquire into whether Victim was sexually active with another person during the relevant time period. No motion was ever made by Loftin to question any witnesses specifically concerning whether Victim was sexually active with anyone besides Loftin during this time. As well, though Loftin argues on appeal that the questions were relevant to show an alternative explanation for the results of Victim's medical exam and the reason she would be concerned with taking a pregnancy test, he never made this argument to the trial court and the first time he mentions the "Alternative Explanation Theory" and related law on such is in his appeal. Additionally, when the solicitor argued to the trial court the questions Loftin sought to ask were precluded by the Rape Shield Statute because they did not fit within one of the three exceptions, Loftin failed to argue, as he does on appeal, that our courts recognize exceptions beyond those specifically enumerated in the statute. Accordingly, these arguments are not preserved on appeal. *See State v. Byers*, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011) (holding, for an objection to be preserved for appellate review, the objection must be made with sufficient specificity to inform the trial court of the point being urged by the objector); *State v. Freiburger*, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005) (holding an argument advanced on appeal but not raised and ruled on below is not preserved); *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("Issues not raised and ruled upon in the trial court will not be considered on appeal."); *id.* at 142, 587 S.E.2d at 694 ("A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground."). Finally, because no testimony was ever proffered on the matter, it is impossible for this court to discern what the excluded testimony would have been and whether the denial of admission of such evidence was in error. *See State v. Roper*, 274 S.C. 14, 20, 260 S.E.2d 705, 708 (1979) ("It is well settled that a

reviewing court may not consider error alleged in exclusion of testimony unless the record on appeal shows fairly what the rejected testimony would have been."); *State v. Santiago*, 370 S.C. 153, 163, 634 S.E.2d 23, 29 (Ct. App. 2006) ("[A] proffer of testimony is required to preserve the issue of whether testimony was properly excluded by the trial judge, and an appellate court will not consider error alleged in the exclusion of testimony unless the record on appeal shows fairly what the excluded testimony would have been.").

As to Loftin's assertion the evidence was admissible under the Rape Shield Statute's pregnancy exception, Loftin never made this argument to the trial court, and, therefore, it is not preserved for our review either. *See Byers*, 392 S.C. at 444, 710 S.E.2d at 58 (holding, for an objection to be preserved for appellate review, the objection must be made with sufficient specificity to inform the trial court of the point being urged by the objector); *Freiburger*, 366 S.C. at 134, 620 S.E.2d at 741 (holding an argument advanced on appeal but not raised and ruled on below is not preserved). Additionally, even assuming the argument was sufficiently raised by trial counsel's general argument regarding the admissibility of evidence concerning Victim's sexual activity, the trial court clearly articulated its ruling was in limine. Therefore, this argument is not preserved on that basis. *Griffin*, 339 S.C. at 77, 528 S.E.2d at 669 ("[A]n in limine ruling is not final and does not preserve the issue for appeal."); *Stokes*, 339 S.C. at 163, 528 S.E.2d at 434 ("Merely raising an argument in *limine* (sic) does not preserve the issue for appellate review.").

For the foregoing reasons, Loftin's convictions are

AFFIRMED.

HUFF, SHORT, and KONDUROS, JJ., concur.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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January 06, 2015

The Honorable Jeff L. Hammond
PO Box 1809
Lancaster SC 29721-1809

REMITTITUR

Re: The State v. Joseph B. Loftin
Lower Court Case No. 2012GS2900206
Appellate Case No. 2012-209191

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,


CLERK

Enclosure

cc: John Dennis Delgado, Esquire
David A. Spencer, Esquire
Alan McCrory Wilson, Esquire
Robert Louis Bank, Jr., Esquire

STATE OF SOUTH CAROLINA

County of LANCASTERJoseph Bradley Loftin, #349969*Full name and prison number (if any) of Applicant.*

vs.

State of South Carolina*Name of Respondent.*

In the Court of Common Pleas

2015 CP 29 619

APPLICATION FOR
POST-CONVICTION RELIEFFILED
OFFICE OF CLERK
OF COURT
2015 MAY -8 PM 1:15
CLERK OF COURT
LANCASTERINSTRUCTIONS — READ CAREFULLY

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

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Allendale Correctional Institution
P.O. Box 1151, Fairfax, SC 29927
2. Name and location of Court which imposed sentence Lancaster County Court of General Sessions
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2009-GS-20-494- 2009-GS-20-206
 - (b) Criminal Sexual Conduct With A Minor Second Degree and Committing a Lewd Act
 - (c) Upon a Child.
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) February 14, 2012
 - (b) _____
 - (c) _____

5. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
- (b) after a plea of not guilty Yes _____
- (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence?
- Yes _____
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeal _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. December 17, 2014 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- ~~has not preserve the issue for appellate review.~~ _____
- ii. _____
- iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- N/A
- (a) _____
- (b) _____
- (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See Attach Amended And Supplemental Application for PCR. _____
- (b) _____
- (c) _____
10. State concisely and in the same order the facts which support each of the grounds set out in (9):
- (a) See the same attachment. _____
- (b) _____
- (c) _____

11. Prior to this application have you filed with respect to this conviction

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

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

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? N/A

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

N/A

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
 ii. _____
 iii. _____
 iv. _____

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

- i. N/A
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. N/A
 ii. _____
 iii. _____
 iv. _____

(d) the date of each such disposition:

- i. N/A
 ii. _____
 iii. _____
 iv. _____

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

- i. N/A
 ii. _____
 iii. _____
 iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) The PCR Application is the First Application

(b) _____

(c) _____

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

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

(c) your sentencing? Yes

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

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Francis L. Bell, Jr, Attorney for Defendant
P.O.Box 967- Lancaster, SC 29721

ii. _____

iii. _____

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

i. Francis L. Bell, Jr Trial

ii. John Delgado- Appeals

iii. _____

18. State clearly the relief you seek in filing this application.

Motion to Vacate

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

No

STATE OF SOUTH CAROLINA

LANCASTER

County of _____

VERIFICATION

I, Joseph Bradley Loftin, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this _____

day of _____, 19 ____

Notary Public (L.S.)

My Commission Expires: _____

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Joseph Bradley Loftin, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Joseph B. Loftin
Applicant

SWORN or affirmed to and subscribed before me this

_____ day of _____, 19 ____

Notary Public

My Commission Expires _____

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LANCASTER) IN THE COURT OF COMMON PLEAS
)
) SIXTH JUDICIAL CIRCUIT

Joseph Bradly Lofton, #349865)

Applicant,)

vs.)

State of South Carolina,)

Respondent.)

2015 CP 29 619

**AMENDED AND SUPPLEMENTAL APPLICATION
 POST-CONVICTION RELIEF**

" EVIDENTIARY HEARING REQUESTED"

This matter comes before the Court by way of a Post-Conviction Relief (PCR) Application file May 8, 2015, pursuant to S.C.Code Ann. §17-27-20 Sec.(A) (1)(2)(4) and this case be heard within 90 days pursuant to Rule 12 (a), SCRPC.

ALLEGATION

in this Amended Application the Applicant alleges he is being held in custody unlawfully for the following reasons:

GROUND A. " Did the Solicitor committed (sic) a "procedural error" by unlawfully impaneling its grand jury outside the statute in S.C.Code Ann. § 14-5-700 (3)?"

SUPPORTING FACTS AND ARGUMENT

The Applicant contends it is well established by the Statute 14-5-700 (3), that the Solicitor Barfield unlawfully impaneled its grand jury outside the Statute and jurisdiction of the Court of General Sessions, and then willfully printed and published false and misleading information in its indictment in order to deep secret its violations of Statutory Law.

In the case at hand, the indictment reads as follows:

° At a Court of General Sessions, convened on October 13, 2011, the Grand Jurors of Lancaster County present upon their oath:

Nowhere in S.C.Code Ann. § 14-5-700 (3) does the legislature provide for a "Term of Court" for the Second [Thursday] in "February 2012" South Carolina Statutory Law provides the following:

- ° Term of Court in Sixth Circuit;
- ° The Court of the Sixth Judicial Circuit shall be held for a Term of one week, unless otherwise specified as hereinafter provided; and
- ° Sec. (3) Lancaster County.- The Court of General Sessions for Lancaster County shall be held at Lancaster on the First Monday in February for a two-week term, the Fourth Monday in April the Third Monday in September and the Second Monday in November for a two-week term.

Additionally, there is an argument to be made that the solicitor Barfield made a "procedural errors" by deliberately impaneling its grand jury outside the Statutory Law. As set forth, the February Term 2012 is overbroad and vague, the original indictment reads [2008-GS-29-206]. As a result, it does appear someone tamper with the original indictments by adding [2012-GS-29-206]. Here, the Solicitor Barfield committed fraud upon the court, by altering the original indictment.

The indictment had been deliberately tamper with and changes were made to the original indictment. Changes occurred on the indictment, and many instances were seen where the indictment was alter. R.Tr.p. 10 lines 1-6. The February Term of Court did not have the original docket Number (2008-GS-29-206) on the indictment. The Applicant trial counsel alleges on R.Tr.p.39 lines 12-25 and R.Tr.p.40 lines 1-25, its states that the Applicant wa indicted on April 3rd, 2008. The February indictment was presented to the Applicant on the day of his trial before the jury was sworn in on February 14, 2012.

Both due process and common sense dictate the Applicant was indicted on February 9, 2012, it was insufficiently to apprised the Applicant of what he must be prepared to meet on February 14, 2012. It is the Applicant's position that the Asst. Solicitor Mingo, presented to the Applicant another indictment the date of the trial. The Applicant did not received prior [Notice] of the new indictment. Thus, this action violated the Applicant's Sixth Amendment Rights to a fair Trial, his Fourteenth Amendment Rights of Due Process and his Fourteenth Amendment Rights to Equal Protection of the Laws.

I. The Solicitor Barfield unlawfully impaneled its Grand Jury outside Statute on October 13, 2011.

However, in this case, the Solicitor Barfield impaneled its grand jury outside the Statute.

In the case at hand, the indictment reads as follows:

° At a Court of General Sessions, convened on October 13, 2011, the Grand Jurors of Lancaster County present upon their oath:

Accordingly, to Section 14-5-700 (3), the General Assembly did not make a provision in the above Statute for a "Term of Court" for [October] in the Court of General Sessions. It appears Solicitor Barfield impaneled its Grand jury in the Court of Common Pleas.

S.C. Code Ann. § 14-5-700 (3), which provides:

° The Court of Common Pleas shall be held in Lancaster beginning on the third Monday in January, the Third Monday in March, the First Monday in April, the Second Monday in May, the Second Monday in September, the Fourth Monday in October and the Second Monday in November.

Thus, under those requirements, no rules can be made or established for process and return of indictments, unless it comports with section 14-9-210. Otherwise, it would be unconstitutional and null, being without binding legal effect.

Additional, it should be noted that the Court of Common Pleas is vested with No authority to take any action on matters pertaining to return of true-bill criminal indictments. "The Court is made up of the Court of Common Pleas which hears Civil Actions and the Court of General Sessions which hears criminal cases..." Dove v. Gold Kist Inc., 314 S.C. 235, 442 S.E.2d 598-600 (S.C. 1994); see also S.C. Constitution Article V. §1.

Thus, there is no grant of concurrent jurisdiction, and therefore No true-bill criminal indictments can be lawfully issued through grand jury proceedings held before a Court of Common Pleas.

Simply put, the first trial, the Applicant went on trial for indictment [2008-GS-29-494]. Here, the Applicant was never given a prior [Notice] by Asst. Solicitor Mingo of indictment [2008-GS-29-206]. As set forth, there was no advance notice of this charge.

Such is a substantive disadvantage and procedural disadvantage. Both an indictments constitute a [Structural Constitutional Error], defect, language and/or charge contained within the indictment(s) the Applicant's most basic, fundamental and most sacred Rights to be viewed as innocent until proven guilty and to have the State bear the burden of production on the critical elements of dispute has been clearly taken away. This is a serious price to pay for the sake of obtaining a conviction.

In addition, Asst. Solicitor Mingo, acted with intent to deceive and to defraud Court by means of deliberately planned and carefully executed scheme. Here, fraud has been perpetrated upon Court by Asst. Solicitor Mingo in their bogus indictments they filed with the Court.

The South Carolina Supreme Court Rule in State v. Baker, 2015 WL 543493, that the New indictments that notified defendant that alleged offenses of Criminal Sexual Conduct With A Minor and Committing A Lewd Act upon a minor occurred at an unspecified time over a sixth-year period, rather over three summers, as alleged in the original indictments were unconstitutionally overbroad and vague in violation of defendant's due process rights, because that lacked specificity as to when the alleged acts occurred; defendant was taken by surprise and significantly limited in his ability to combat the charges against him, as there was no way for defendant to know whether he could plead an acquittal and due to the State's belated presentation of the New Indictments, defendant was given a mere two week to complete the task of researching events that occurred over a continuous sixth-year period. [The Supreme Court, Beatty J. held that New Indictments were unconstitutionally overbroad and vague]. The South Carolina Supreme Court Supreme Court's decision in State v. Baker Supra, which analyzed an indictment issue very similar to the one involved here. As a result, the true test of the sufficiency of an indictment is not whether it could be made more definite and certain; rather, the Court must look at the indictment with a practical eye in view of all the surrounding circumstances.

The Fifth Amendment requires that persons charged with crimes shall be indicted. The Sixth Amendment provides that in all criminal prosecutions the accused shall be informed of the nature and cause of the accusation. In the leading Russell case, decided in 1962, the Supreme Court set out the two criteria by which the sufficiency of an indictment is to be tested. See Russell v United States, 369 U.S. 749, 763-64, 82 S.Ct. 1038, 1043, 8 L.Ed.2d 240 (1962).

GROUND B. Was the Applicant's Fourteenth Amendment Rights of the United states Constitution and his Rights of Due Process violated because there was a "procedural defect" by failure to comply with rule requiring Solicitor to take action on warrant within 90 days after its receipt by him would subject a Solicitor to contempt proceedings?

SUPPORTING FACTS AND ARGUMENT

"Action on warrants: Within Ninety (90) days after receipt of an arrest warrant from the Clerk of Court, the Solicitor "shall" taken action on the warrant by one (1) preparing an indictment for presentment to the Grand Jury, which indictment "shall" be filed with the Clerk of Court, assigned a criminal case number and presented to the Grand Jury; (2) formally dismissing the warrant, noting on the face of the warrant the action taken; or (3) making other affirmative disposition in writing and filing such action with the Clerk of Court." Here, the Asst. Solcitor Mingo, waited five years in bring this subject matter before the Court.

S.C.Code Ann. Section 1-7-730 and S.C.Code Ann. Section 17-13-150 require that the prosecution fulfill and see that all the duties, requirements, and rules of criminal procedure related to Due Process are adhered to and completed within the Court. The Asst. Solicitor Mingo, has a Judicial obligation to uphold the Constitution.

In order to understand the meaning of any Statute or phrase of law, it is necessary to determine the meaning of the language as it is used in the particular context; Robinson v. Shell Oil Company, 117 S.Ct. 843,846 (1997), Article 12 Section 2 utilizes the words, "shall provide." In this context "shall" is mandatory. See United States v. Meyers, 106 F.3d 936,941 (CA 10 1997). In order to understand the meaning of any word, phrase or sentence "the words should be given their plan and ordinary meaning unless something in the text requires a different meaning and or interpretation".

In the present case the Asst. Solicitor Mingo "Doctored up" the indictment, that was issued in 2008 by the Solcitor Office. Here, the Asst. Solclitor Mingo, alter these indictments [2008-GS-29-206] and [2008-GS-29-494], these indictments was falsify by allowing the [Foreperson Grand Jury] signing off on the indictment in 2011 and 2012. As set forth, this allege crime occurred in February 12,2008.

Here the facts and evidence will establish that the Solicitor and Asst. Solicitor Mingo also conspired with several other State Judicial personnel in order to mislead the Court and in order to impanel a grand jury outside the authority of the Court of General Sessions, to complete return of an illegal true bill and to print and publish false indictment information.

II. THE FIRST TRIAL IN 2011 ENDED IN A HUNG JURY.

On October 19, 2011, the Applicant went on Trial for Criminal Sexual Conduct With A Minor In Second Degree. As set forth, the petit jury could not reach a verdict after a reasonable length of time, the Trial Judge declare a mistrial. Here, common sense dictate in this case, it were not foreseeable that the Solicitor Barfield would indict on October 13, 2011, and the Applicant was put on Trial October 19, 2011. Here, the Applicant five (5) days to prepare his defense. The indictment was not properly resubmitted and, because of the discrepancies, this Court should hold that this indictment is wholly invalid.

The Applicant contends in pursuant to Article V Section 4 of the South Carolina Constitution: It is ORDERED that all criminal cases beyond (180) days by Written Order if the Court determines that exceptional circumstances exist in the case this Order does not create or define a Right of Defendant to a speedy Trial. Here, the Solicitor Office failure to comply with the requirements set forth in Article V. Section 4 of the South Carolina Constitution. Here, the Solicitor Office take three (3) years bring this case to court.