

VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Larry B. Hyman, Circuit Court Judge

ORIGINAL

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

SCOTT RICHARD ROWAN,

APPELLANT

APPELLATE CASE NO. 2018-000813

RECORD ON APPEAL

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1 well. All right.

2 MR. HILLIARD: Yes, sir. Thank you, judge.

3 THE COURT: Thank you very much.

4 (WHEREUPON, the hearing adjourned at approximately
5 4:03 p.m.)

6 (WHEREUPON, the hearing resumed on Thursday, April
7 12, 2018, at approximately 9:39 a.m.)

8 THE COURT: Okay, now, I think on yesterday, as we
9 left the courtroom, we had a couple of evidentiary
10 issues. Let's revisit those; okay? It's my
11 understanding that there are two issues; is that right?

12 MS. WALTER: I believe so, Your Honor.

13 THE COURT: Okay. And the State's motions,
14 restate them for the record, please.

15 MS. WALTER: In the State's mind, the two issues
16 are, number one, whether or not the expert's testimony
17 would be relevant and admissible based on the testimony
18 so far. And then the other issue related to the e-mail
19 from Ms. Herron's former attorney.

20 THE COURT: Okay, all right. First, and wasn't
21 there an issue with another witness, Ms. Houser?

22 MR. HILLIARD: She's here, judge.

23 MS. WALTER: Oh, she's here.

24 THE COURT: Okay. First --

25 MS. WALTER: Although, I'm sorry, Your Honor, I

1 think I did say -- quite frankly, I don't care if she
2 is called, it's fine. So if she is here, that's good.

3 THE COURT: All right, so that's not an issue.
4 All right, let's talk first about your expert.

5 Mr. Hilliard, I would assume that you're calling
6 your expert to say, I tested the Defendant, and he has
7 not had chlamydia in at least five years; right?

8 MR. HILLIARD: Could we bookmark the expert and
9 let's see? Because I'm not certain at this point
10 whether I want to call him or not. So rather than go
11 through the analysis of whether I get to call him --

12 THE COURT: Well, what -- my point is it's very
13 clear at this juncture that no one from the State is
14 saying that your client gave anyone chlamydia or
15 herpes; right, is that right? Where are we?

16 MS. WALTER: Well, I believe that -- yes, as to
17 the chlamydia. **Complainant 1** testified clearly that it
18 was someone else. Ana Herron testified that she
19 believed it was from the Defendant because she had only
20 been with him for ten years. But that's not at issue
21 in this case. That's got nothing to do with the
22 charges, so that's certainly irrelevant.

23 THE COURT: Okay, all right, then. We'll look at
24 that since Mr. Hilliard's not sure. Now, let's talk
25 about the letter.

1 MR. HILLIARD: Ms. Brinson is going to take care
2 of that for us.

3 THE COURT: All right. Let me hear from her.

4 MS. BRINSON: As Your Honor noted yesterday, it is
5 hearsay within hearsay. But as Rule 805 states, if you
6 have an exception for both levels --

7 THE COURT: Right.

8 MS. BRINSON: -- then it can come in. And the
9 first level, if you will, of the mother's statement
10 itself is covered by the 801(d)(1) -- sorry -- (A),
11 it's an inconsistent statement. It's inconsistent with
12 the statement she made on the stand. She said that she
13 did not tell her attorney that Scott gave both her and
14 her daughter an STD. She said she told her attorney
15 that he only gave her an STD, so that is an
16 inconsistent statement.

17 And then as to the second level of the e-mail
18 itself from the attorney, it's covered by the 803(6),
19 records of regularly conducted activity.

20 THE COURT: Let's go back. Let's just take a step
21 back.

22 MS. BRINSON: Okay.

23 THE COURT: A prior inconsistent statement, okay.
24 And you're saying that what we're talking about is the
25 fact that she -- if I remember her testimony, she says,

1 essentially, as far as I know, he gave it to me.

2 MS. WALTER: Yes.

3 THE COURT: Essentially.

4 MS. WALTER: Yes.

5 THE COURT: Essentially, as far as I know. And
6 isn't that precisely what the attorney communication
7 with Mr. Hilliard says; it would be a prior consistent,
8 not inconsistent, statement; would it not?

9 MS. BRINSON: No, Your Honor. She specifically
10 denied on the stand that she told her attorney that
11 Scott gave both her and her daughter an STD, which is
12 what the e-mail from the attorney says. It says that
13 he gave them an STD.

14 MS. WALTER: If I may, Your Honor, I think that
15 there actually three things that you need to look for.
16 Because, number one, it's the admissibility of the
17 e-mail itself. Number two, that statement --

18 THE COURT: And we're not even there yet.

19 MS. WALTER: Right, no, I understand. The e-mail
20 itself, the contents of the e-mail, are actually not a
21 statement of Ms. Herron or anyone in this courtroom,
22 they are a statement of the attorney. So, essentially,
23 what Defense is arguing is that the statement of the
24 attorney is inconsistent with the statement of
25 Ms. Herron.

1 If that e-mail had a little insert from Ms. Herron
2 saying, I think Scott gave me and Complainant 1 an STD, then
3 you might get past that one part. But it's a statement
4 by the attorney, not by Ms. Herron.

5 THE COURT: And how about that? You know, you
6 could look at 801(d)(2), which would be an admission by
7 a party opponent, but --

8 MS. WALTER: She's not a party opponent.

9 THE COURT: -- she's not a party opponent;
10 correct?

11 MS. BRINSON: Yes, Your Honor.

12 THE COURT: Okay. And if it was a statement by
13 someone authorized or standing in her place, that's
14 what 801(d)(2) is all about, a statement by a person
15 representing, essentially, representing -- we see it
16 all the time where we have a corporate officer makes a
17 statement, I think possibly or probably -- I'll give
18 you that, probably -- someone's attorney could make
19 that statement.

20 But 801(d)(2) is limited to a party opponent, and
21 I think that's what we have to look at here, a
22 statement by a party opponent, to make it her
23 statement. And unless we can make it her statement
24 rather than the attorney's statement, I think we have a
25 problem there.

1 Tell me about it. I mean, how do I pass that, how
2 do I -- you know, I understand that it can be
3 admissible as an inconsistent statement on its face;
4 okay? But I also have to meet the -- or you have to
5 meet the burden of showing that it is not a hearsay
6 inconsistent statement.

7 Now, what we have here is an attorney of a
8 nonparty opponent, just a witness, saying that she said
9 this at some time to me. Now, how am I to get past
10 that?

11 MS. BRINSON: Well, respectfully --

12 THE COURT: And what relevance does it even have
13 because -- whether or not she said that? I mean, how
14 can she speak for her daughter? I mean, she says that
15 it was her understanding when the statement was made
16 that that was the truth. Isn't that what she said,
17 that she thought that he had given her herpes, he
18 thought that -- or she thought that he had --

19 MS. WALTER: I don't know that we went that far on
20 the stand. She -- as to [REDACTED] Complainant 1 testified
21 that when she found out that she had herpes, she
22 believed that it was the Defendant because she had only
23 been with him for ten years.

24 THE COURT: Right. But -- and she denies making
25 any statement to the -- such a statement to the

1 attorney. And wouldn't we necessarily need the
2 attorney to verify that?

3 MS. BRINSON: Well, respectfully, Your Honor, I
4 would say that the attorney's statements and the e-mail
5 are one and the same. They don't need two separate
6 exceptions. I mean, the e-mail wouldn't be a thing --

7 THE COURT: But there again, we come back to what
8 the -- and therein lies the problem. The attorney
9 says, she said this to me. She denies that she said
10 that. So, I mean, do you take on its face the
11 attorney's e-mail, Mr. Hilliard?

12 MS. WALTER: The State would say no.

13 THE COURT: As her statement?

14 MS. BRINSON: We would argue yes. I mean, she's
15 an officer of the Court, she is an attorney, and she
16 was representing her client at the time. I can't
17 imagine any reason why she would --

18 THE COURT: Well, unfortunately, sometimes in
19 negotiations, attorneys may take a little stronger
20 stance on certain issues than they should or should
21 not, or maybe things have not been fully investigated.
22 I mean, things like that happen. I don't think -- I'm
23 not saying any attorney does it purposely. I'm just
24 telling you it happens.

25 MS. WALTER: And there is not an exception to the

1 hearsay rule for an officer of the Court.

2 MS. BRINSON: Well, Your Honor was asking if we
3 should take it on its face. But, you know, that's
4 really a question for the jury. If we can get it in,
5 whether or not they believe it, whether or not they
6 think that her attorney is mistaken or not, is a
7 question for the trier of fact. The statement itself
8 of the attorney comes in under an exception to hearsay.

9 THE COURT: But let me ask you this, does it
10 really have much relevance? Because I'm sure
11 Mr. Hilliard did ask her about whether she told her
12 attorney that, was that what she told her attorney.
13 And the jury has heard about this letter, this e-mail,
14 this correspondence, this exchange between she and her
15 attorneys. I mean, they have heard about it; have they
16 not?

17 MS. BRINSON: Yes, Your Honor. But they haven't
18 had the opportunity to see the e-mails themselves,
19 which adds an extra level of credibility to
20 Mr. Hilliard's statement. I mean, he can't testify
21 himself and --

22 THE COURT: And it's offered for the purpose of
23 showing that she did tell the attorney that she thought
24 her daughter had contracted an STD; right?

25 MS. BRINSON: Yes, Your Honor.

1 THE COURT: I mean, to attack her credibility.

2 MS. BRINSON: Credibility, yes, Your Honor.

3 THE COURT: What do you say if it's offered for
4 that purpose, Ms. Walter? I mean...

5 MS. WALTER: Well, Your Honor, I go back to the
6 fact that, first of all, it is the State stands by its
7 argument that it is not an inconsistent statement of
8 our witness because it's actually a statement by the
9 attorney. And as Your Honor has noted, we can't use
10 that sort of agency idea because Ms. Herron is not a
11 party opponent to this case.

12 So, essentially, Defense is seeking to introduce
13 extrinsic evidence of a prior inconsistent statement
14 that's not a prior inconsistent statement, and they
15 have not satisfied anything. They haven't satisfied
16 the foundation for the e-mail, they haven't satisfied
17 that it's hearsay within hearsay or the exceptions to
18 hearsay.

19 THE COURT: I don't think that it meets the burden
20 established by 805. I also have a question as to its
21 relevance under 403. I'm going to exclude it. Thank
22 you.

23 MS. WALTER: Thank you, Your Honor.

24 THE COURT: All right. Now, what do we have next?

25 MR. HILLIARD: Let's be sure that -- it's marked,

1 I think, for identification.

2 THE COURT: It's marked, it's in the record.

3 MR. HILLIARD: All right, sir. And one other
4 part, just to -- a tiny part of that. You're making
5 that decision presuming that, in some way, we could
6 authenticate it, so your decision is based on its
7 relevance and its --

8 THE COURT: Right.

9 MR. HILLIARD: -- otherwise, because we haven't --
10 I don't necessarily want to go through the proffer to
11 show that --

12 THE COURT: Well, I would assume that what you
13 were going to do would be to proffer it by putting up
14 someone from your office and say, this is part of the
15 records you keep.

16 MR. HILLIARD: Yes, sir.

17 THE COURT: That's what it is.

18 MR. HILLIARD: And I don't want to go through that
19 and waste the Court's time because you made your
20 decision on a different issue; am I fair with that?

21 THE COURT: Yes.

22 MR. HILLIARD: All right. Thank you.

23 THE COURT: All right. So where are we now?

24 MR. HILLIARD: I think we're at call a witness,
25 judge.

1 MS. WALTER: We're at the Defense case. My
2 understanding is that the Defense is going to call the
3 Defendant's mother, and so I think I am bound to tell
4 him that apparently she pleaded guilty to what we would
5 say is a crime of falsehood, fraudulent alteration of
6 registration, licensing document other than
7 registration or license plate. We have a certified
8 copy of the conviction.

9 THE COURT: And you're saying that that is a crime
10 of moral turpitude; right?

11 MS. WALTER: Yes, it's a crime of falsehood, crime
12 of moral turpitude that can be used for impeachment.

13 THE COURT: Now, explain the offense to me again.

14 MS. WALTER: I can hand this up to Your Honor.
15 Fraudulent alteration of registration, licensing
16 document other than registration card or license plate.

17 THE COURT: Well, that tells me a lot.

18 MS. WALTER: Well, the fraudulent is the key to
19 that.

20 THE COURT: Does it have to do with like an
21 automobile or something?

22 MS. WALTER: Yes.

23 THE COURT: Pardon?

24 MS. WALTER: Yes.

25 THE COURT: Okay, all right. Let me hear you on

1 that, Mr. Hilliard.

2 MR. HILLIARD: Could I look at the paper you have,
3 judge? Looks like it's a magistrate's level case.

4 Judge Blanton, it looks like, judge. I saw that
5 part.

6 (Discussion off the record.)

7 MS. WALTER: Your Honor, I believe it's Rule 608;
8 isn't it?

9 THE COURT: Yes. It's really 403, but it switches
10 over to 608. All right. It is not in excess of one
11 year, obviously, being in the magistrate's court.
12 Shall be admitted if it involved dishonesty or false
13 statement regardless of punishment.

14 Okay. So tell me about it, Mr. Hilliard, what's
15 your position on that?

16 MR. HILLIARD: I'm looking now to see what the
17 code section is. I never heard of this, which doesn't
18 necessarily mean anything. It says fraudulent in the
19 beginning. I'm looking at 609 and --

20 THE COURT: 609 generally has to be read in
21 conjunction with 403.

22 MR. HILLIARD: Yes, sir. And it says "and."
23 Evidence that any witness has been convicted of a crime
24 shall be admitted if it involved dishonesty or false
25 statements regardless of the punishment.

1 We would object to it, judge, on the basis that
2 the prejudicial value or the prejudicial nature of this
3 would outweigh its probative value.

4 THE COURT: Well, it only goes to credibility.
5 You know, can you show me where that is an exception to
6 609, 403 is an exception to -- I mean, obviously, it's
7 prejudicial, but it only goes -- well, it does say that
8 the Court determines that the probative value admitting
9 this -- and that goes to convictions -- that are under
10 subsection one. But even if I provide an analysis,
11 obviously, any time there is a conviction for false
12 statement, it does have prejudicial value. But it goes
13 to credibility. And that is the main concern of the
14 jury.

15 Now, can you point to any specific prejudice,
16 other than the fact that it reflects on her
17 credibility, or can you show me where it in any way
18 unfairly prejudices your client? And that's the
19 question, whether it's unfairly prejudicial and it
20 outweighs. It doesn't have to significantly outweigh
21 or substantially outweigh, it just says outweighs.

22 MR. HILLIARD: I cannot, Your Honor.

23 THE COURT: That the probative value outweigh.
24 All right. I'm going to admit it; okay?

25 MS. WALTER: Thank you, Your Honor.

1 THE COURT: All right. Let's go ahead. Now, are
2 we done as far as pretrial matters other than my
3 instruction to the Defendant concerning his Fifth
4 Amendment right?

5 MR. HILLIARD: They have not told us, judge, if
6 they have anything on the Defendant that they intend to
7 impeach.

8 THE COURT: Do you have a prior conviction on the
9 Defendant?

10 MS. WALTER: As I've said before, no.

11 THE COURT: Okay. No. They have nothing.

12 MR. HILLIARD: All right. Yes, sir, we're ready.

13 THE COURT: Okay, all right. Would you stand,
14 Mr. Rowan.

15 Place him under oath, please, clerk.

16 SCOTT RICHARD ROWAN, after being duly sworn,
17 testified as follows:

18 THE COURT: Mr. Rowan, at this time I'm going to
19 explain to you certain of your rights. And if you
20 don't understand anything that I am saying, as I do so,
21 just let me know, and I'll be happy to take time to
22 explain it for you --

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: -- in a more detailed fashion; do you
25 understand?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. Now, we've reached the stage in
3 this trial where you may, I made it very clear, I
4 think, during this trial, you may but you are not
5 required to present your defense because you have a
6 presumption of innocence in this trial. And the burden
7 is entirely upon the State to prove your guilt. And
8 I'm sure that you've had conversations in that regard
9 with Mr. Hilliard.

10 Is that right, Mr. Hilliard?

11 MR. HILLIARD: Yes, sir, Your Honor.

12 THE COURT: Okay. You have the right to claim the
13 protections given you by the Fifth Amendment of the
14 Constitution of the United States. That amendment says
15 in part, no person shall be compelled in any criminal
16 case to be a witness against himself. You know, we
17 usually think of the Fifth Amendment as being
18 protections against you. When you are arrested, you
19 don't have to talk to the police. You're probably
20 familiar with that, most people are.

21 However, it does carry over to a trial. It means
22 that, in a trial, no one can compel you to testify.
23 You certainly may if you choose, but no one can make
24 you. Mr. Hilliard can't make you, I can't make you,
25 and the prosecutors cannot call you and require you to

1 testify.

2 This is a decision that you have to make. It is a
3 personal right that you have, and only you can waive
4 it. I think I've made that clear. If you decide to
5 testify in this trial, you'll be subject to the same
6 rules that cover or concern other witnesses, and you
7 may be examined by your attorney and cross-examined on
8 any relevant issue in this case.

9 In addition, if you have any convictions involving
10 dishonesty or false statement or for crimes punishable
11 by imprisonment of more than one year, and this court
12 determines that the probative value of admitting this
13 evidence outweighs its prejudicial effect to you, the
14 solicitor, the prosecutors will be able to introduce
15 your record to attack your credibility. And I will
16 tell you at this time the solicitor has told me, the
17 prosecutors have told me that they know of no such
18 record.

19 And I think that's a consideration for you. I'm
20 not encouraging you to testify, I'm simply telling you
21 that that's my understanding. If you decide to
22 testify, the decision on your part must be freely and
23 voluntarily and intelligently made with knowledge of
24 the protections given you by the Fifth Amendment and
25 the consequences of your decisions.

1 If you decide not to testify, I want you to
2 understand that I will tell this jury that you are
3 exercising your constitutional right, and that they
4 cannot give the fact that you did not testify in this
5 case any consideration whatsoever, and there is to be
6 absolutely no prejudice to you because you did not
7 testify.

8 Now, has Mr. Hilliard explained that to you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you need to ask me any questions
11 about that?

12 THE DEFENDANT: No, Your Honor, I understand.

13 THE COURT: You're clear, okay. It's left
14 entirely up to you whether or not to testify. And you
15 can talk with your attorney, your family, your friends,
16 anyone that might give you good counsel. But the
17 decision, the final decision, is left up to you.

18 Now, do you understand what I told you?

19 THE DEFENDANT: I understand everything, Your
20 Honor.

21 THE COURT: And you've had adequate opportunity to
22 discuss it with your attorney?

23 THE DEFENDANT: Yes.

24 THE COURT: Okay. Have you made a decision at
25 this juncture as to whether or not you will testify?

1 THE DEFENDANT: Yes, I have, Your Honor.

2 THE COURT: And what is that?

3 THE DEFENDANT: I will testify.

4 THE COURT: Okay. Let me tell you that if at any
5 time you should change your mind, you are not bound by
6 what you tell me now. I will allow you to change your
7 mind. I'm not encouraging you to do that, please
8 understand that. I'm just -- I want to make sure that
9 you understand the rules.

10 THE DEFENDANT: I understand, Your Honor.

11 THE COURT: You tell me now you want to testify,
12 but at any time, you can change that.

13 THE DEFENDANT: Sure.

14 THE COURT: Once you testify, that becomes part of
15 the record; okay?

16 THE DEFENDANT: I understand, Your Honor.

17 THE COURT: All right, okay. Anything further,
18 Mr. Hilliard?

19 MR. HILLIARD: No, sir, Your Honor. Thank you.

20 THE COURT: Are you confident that your client
21 understands his Fifth Amendment right?

22 MR. HILLIARD: Yes, sir.

23 THE COURT: All right. Thank you, sir.

24 MR. HILLIARD: Thank you.

25 THE COURT: Okay. Are we ready now?

1 MS. WALTER: I'm ready, Your Honor.

2 MR. HILLIARD: Ready, yes, sir.

3 THE COURT: Okay.

4 (WHEREUPON, the jury came into open court at
5 approximately 10:08 a.m.)

6 THE COURT: Good morning. Looks like we've got
7 everybody here. I apologize for not bringing you right
8 out on time, but we had some other matters we had to
9 take up in this particular case. But we've resolved
10 all those and we're ready to go forward.

11 Okay. As you heard on yesterday, the State has
12 rested. Now we are here to hear from the Defense. As
13 I told you, the Defense has no obligation to put up any
14 witnesses; however, Mr. Hilliard tells me that they
15 will.

16 Mr. Hilliard?

17 MR. HILLIARD: Thank you, Your Honor.

18 THE COURT: Let me say that that does not shift
19 the burden in any way, the burden still remains upon
20 the State.

21 MR. HILLIARD: Call Sabrina Houser. She was in
22 the restroom, judge. We sent for her to see if
23 she's...

24 THE COURT: All right.

25 SABRINA HOUSER, after being duly sworn, testified

1 as follows:

2 THE CLERK: State your full name and spell your
3 last name.

4 THE WITNESS: My name is Sabrina Renee Houser.
5 That's H-O-U-S-E-R.

6 DIRECT EXAMINATION

7 BY MR. HILLIARD:

8 Q Thank you. Are you nervous to be here today?

9 A Yes.

10 Q This will be fine. What age person are you,
11 please, ma'am?

12 A I'm sorry?

13 Q What age person are you, how old are you?

14 A 21 years old.

15 Q And who do you live with?

16 A I live with my mother.

17 Q Do you know Complainant 1 ?

18 A Yes.

19 Q And how do you know Complainant 1 ?

20 A We were friends a couple years back.

21 Q Was there an occasion, if you recall, where Complainant 1
22 came and told you that her stepfather, Scott, had given
23 her a sexually transmitted disease?

24 A Yes.

25 Q After that, did she ever come back and tell you

SABRINA R. HOUSER-CROSS BY MS. WALTER

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1 that she was mistaken about that?

2 MS. WALTER: Objection, Your Honor. Leading.

3 THE COURT: "I'll allow it."

4 MR. HILLIARD: Thank you.

5 Q Did she ever come back and tell you that she was
6 mistaken about that?

7 A She did not.

8 Q Did she ever tell you anything else about that?

9 A No.

10 MR. HILLIARD: Thank you, ma'am. Answer any
11 questions the prosecution has for you, please.

12 CROSS-EXAMINATION

13 BY MS. WALTER:

14 Q Good morning, Ms. Houser. First of all, you
15 indicated that you were friends with Ms. Herron?

16 A Yes.

17 Q That means that you are no longer friends with
18 her?

19 A Yes.

20 Q And when did you have a falling out with her?

21 A About three years ago.

22 Q So that would be in 2015?

23 A Yes.

24 Q Had you -- okay. And during this initial
25 conversation where Ms. Herron told you that the

1 Defendant had given her a sexually transmitted
2 disease --

3 MS. WALTER: Are you okay, Mr. Hilliard? I just
4 want to make sure you don't need to sit down.

5 MR. HILLIARD: I'm fine, thank you. I appreciate
6 it.

7 Q During this initial conversation where Ms. Herron
8 told you that the Defendant had given her a sexually
9 transmitted disease, did she also tell you that she was
10 being sexually abused?

11 A Yes.

12 Q Did your conversation with her about that indicate
13 that the abuse was taking place in her home?

14 A Yes.

15 Q If you recall, do you know the timeframe of the
16 abuse?

17 A I do not.

18 Q You said that you had had a falling out with
19 Ms. Herron in 2015. Do you recall when in 2015?

20 A I do not.

21 Q Were you aware of the fact that Ms. Herron ran
22 away from home?

23 A Yes.

24 Q Was your falling out before or after that?

25 A After.

1 Q And so this conversation that you had with her
2 where she indicated that she was being sexually abused
3 in her home took place before?

4 A Yes.

5 Q Is it fair to say that, other than having been
6 interviewed by Detective Johnson and being subpoenaed
7 here for trial, you have not thought much about this
8 since that conversation?

9 A No.

10 Q Do you recall specific details of your
11 conversation with Ms. Herron that day?

12 A I do not.

13 Q Was that the last time that you talked to
14 Ms. Herron?

15 A No.

16 Q When did you talk to her again?

17 A I talked to her about two years ago.

18 Q And what was that conversation?

19 A I don't really remember much about it.

20 Q So you remember having conversations with
21 Ms. Herron, you remember her telling you that she had
22 been sexually abused in her home, but beyond that, you
23 don't really remember any details of anything?

24 A Yes.

25 MS. WALTER: Nothing further.

1 MR. HILLIARD: A couple based on that, judge.

2 THE COURT: Sure.

3 REDIRECT EXAMINATION

4 BY MR. HILLIARD:

5 Q Back in 2015, you talked to the police about the
6 situation; right?

7 A Yes.

8 Q And today you talked to the investigator from the
9 solicitor's office about this situation; is that
10 correct?

11 A Yes.

12 Q And you appear here today on our subpoena. We
13 sent the sheriff's office with a subpoena to get you to
14 come in here today; is that correct?

15 A Yes.

16 Q And when you answered the questions for the
17 prosecutor about not remembering anything else, you can
18 say that you specifically remember that she never came
19 back and told you that Scott did not give her a
20 disease?

21 A Yes.

22 MR. HILLIARD: That's all I have. Thank you,
23 ma'am.

24 THE COURT: You may step down, Ms. Houser.

25 MR. HILLIARD: We would ask that she be excused,

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1 Your Honor.

2 THE COURT: Any objection from the State?

3 MS. WALTER: No, Your Honor.

4 THE COURT: You're released from the subpoena now,
5 Ms. Houser. Thank you.

6 (Witness excused.)

7 MR. HILLIARD: We call Rebecca Rowan.

8 REBECCA ANN ROWAN, after being duly sworn,
9 testified as follows:

10 THE CLERK: Please be seated, and please state
11 your full name for the Court.

12 THE WITNESS: Rebecca Ann Rowan, R-O-W-A-N.

13 DIRECT EXAMINATION

14 BY MR. HILLIARD:

15 /Q Ms. Rowan, you're nervous about being here today?

16 A Very.

17 Q Okay. This will be fine, all right. You're
18 Scott's mom; is that right?

19 A Yes. And I'm also a grandmother.

20 Q And how many grandchildren do you have?

21 A I have four biological and five
22 step-grandchildren.

23 Q And the grandchildren in this particular case, who
24 are the grandchildren that are connected to this case?

25 A Two of the defendants are my step-grandchildren.

1 They are my step-granddaughters.

2 Q And how many -- when Scott was living in his -- in
3 the house with his wife, do you know who lived in that
4 house?

5 A Yes. Him --

6 Q Who?

7 A -- his wife Anatasya, Complainant 2 Complainant 1, Brother, and
8 Younger Brother.

9 Q Do you know what age person Brother is at this
10 point?

11 A He's 12.

12 Q 12.

13 A Yes. His birthday is [REDACTED]. He'll be 13.

14 Q And what about Younger Brother?

15 A He's ten. Ten -- he might be 11 because his
16 birthday was [REDACTED] -- I mean [REDACTED], so I'm not
17 sure. Right now I'm nervous.

18 Q Very good. Very good. When this all happened
19 back when -- let me ask a better question. Did

20 Complainant 1 -- do you remember when Complainant 1 ran away from
21 home?

22 A Yes.

23 Q What was your reaction to her running away from
24 home?

25 A Very upset. I was scared. I was scared for her

1 safety.. I wanted to know that my granddaughter was
2 okay. It was a grandmother's fear. I felt like my
3 heart was gonna come out of my chest, and I couldn't
4 control the mother and the grandmother in me to not --
5 I love those girls, they are my heart. I've been with
6 them since they were seven and nine, they came into my
7 life. And when they came into my life, they jumped
8 right into my heart.

9 Q On the occasion when -- did you make any attempt
10 to contact --

11 A Yes.

12 Q -- Complainant 1 while she was --

13 A Yes.

14 Q Let me get all the way to the end of my question,
15 please.

16 A Okay.

17 Q When Complainant 1 ran away from home, did you make any
18 attempt to contact her?

19 A Yes.

20 Q And how did you go about that?

21 A I was calling her on her phone. I was texting
22 her. I was Facebook messaging her constantly.

23 Q And did she, at some point, call you back?

24 A It was -- I'm not sure if it was two to three days
25 later, yes, she did.

1 Q Was she still a runaway at that point in time?

2 A Yes.

3 Q And what was that conversation about?

4 A I was at work, and I seen her name come across my
5 caller ID. And I jumped up and ran outside, and I
6 answered the phone. And I asked her if she was okay,
7 and she said yes. And I knew from the letter that was
8 wrote that I had read that she was supposed to have
9 left town.

10 And I told her that I just want to see her, to
11 physically see her, I would be totally by myself, and
12 no one else would know where I was going or anything.
13 She could pick and bring anybody with her or drive by.
14 Because she told me -- I asked her, I said, Complainant 1 I
15 said, I just want to know you're safe. And I said, I
16 don't want to know where you're at. I just want to
17 know if you're local. And she said, yes, Grandma, I'm
18 in Conway.

19 Q Have you seen your granddaughter since that time,
20 your granddaughter Complainant 1 since that time?

21 A No, she hasn't allowed me to see her.

22 Q The days that this was going on, did you and --
23 did you go over to Scott's house?

24 A Yes.

25 Q To meet with him and Anatasya?

1 A Yes.

2 Q What -- tell the folks on the jury what that was
3 about, please.

4 A My son had told me that Complainant 1 had wrote a letter
5 stating things that were done to her allegedly and that
6 she had ran away. She ran away, and she was going to
7 Arizona, and not to try to come find her. And that...

8 Q Let me interrupt you and ask you --

9 A And I'm...

10 Q Take your time.

11 A I have a hard time with my diabetes, and when my
12 sugar goes up, I have a hard time completing sentences.

13 Q It's okay. Let me ask you a different question.
14 Did you have a conversation at Scott and Anatasya's
15 house with Scott and Anatasya?

16 A Yes.

17 Q During that conversation, at any point in time did
18 Scott ever say that he had done anything at all?

19 A No.

20 MS. WALTER: Objection, Your Honor, to the leading
21 nature of these questions.

22 THE COURT: It doesn't suggest the answer. He's
23 asking whether or not she heard that. I'll allow it.

24 MR. HILLIARD: Thank you, Your Honor.

25 THE COURT: Perhaps not the best form, but I'll

1 allow it..

2 Q At any point in time during that conversation, did
3 Scott say that he had done anything of a sexual nature
4 to these -- to his stepdaughters at all?

5 A No.

6 Q And where is Scott living at this point in time?

7 A At my house.

8 Q At any point in time from the day that he turned
9 himself -- or from the day that you learned about this
10 until today, has he ever told you that he has done
11 anything of a sexual nature with his stepdaughters?

12 A No, because if he did --

13 MS. WALTER: Objection, Your Honor. She's
14 answered the question.

15 THE COURT: Move on, Mr. Hilliard.

16 MR. HILLIARD: I didn't ask her another question.
17 She was --

18 THE COURT: I understand.

19 MR. HILLIARD: All right, sir.

20 Q The business that you were in, what kind of
21 business are you in?

22 A It was a tow truck company that we had to close
23 because my husband is now disabled, and I could not run
24 the business on my own. And I have to take care of my
25 husband, he's disabled. He has brain damage, and he

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1 died three times in one night because of the business.

2 Q And in connection with your business, did you
3 plead guilty to a charge in magistrate's court of
4 having to do with some sort of title situation?

5 A Yes. That --

6 Q That's fine. You don't have to go any further.
7 MR. HILLIARD: Excuse me just a second, judge.

8 Q Do you remember when **Complainant 2** moved out?

9 A I don't remember when she had exactly moved out,
10 out. But I know she was not staying at the house. She
11 was staying at her boyfriend's. And the day that Scott
12 and her mother, Anatasya, wanted her to come get all of
13 her stuff, she needed a trailer. And I had a trailer
14 at the time. And I was -- I had talked to her, and I
15 told her that I would go over with her to get it
16 because I wanted to help her in any way I could.

17 Q During that conversation or at any other point in
18 time, has **Complainant 2** ever said anything to you about Scott
19 having any kind of sexual contact with her, has she
20 ever said that to you?

21 A No.

22 Q During that conversation?

23 A No.

24 Q Or at any other point in time?

25 A No.

1 MR. HILLIARD: Thank you, ma'am, please answer any
2 questions that the prosecutor has for you.

3 MS. WALTER: If I may, Your Honor. May I approach
4 the witness?

5 THE COURT: Certainly.

6 CROSS-EXAMINATION

7 BY MS. WALTER:

8 Q You said that you read some letters that Complainant 1
9 had left. I'm showing you State's Exhibits 1, 2, and
10 3. Are those the letters that you saw?

11 A Yes.

12 Q And who showed you those letters?

13 A Scott and Anatasya.

14 Q Did you read the letters?

15 A Yes, a few times.

16 Q And so you read Complainant 1 saying that your son had
17 raped her multiple times?

18 A Yes.

19 Q Despite her screaming at him?

20 A Yes.

21 Q You never talked to Complainant 1 about that; right?

22 A No. She was -- she had ran away, and I had not
23 talked to her on the phone yet.

24 Q And you haven't -- despite the fact that you call
25 yourself their grandmother?

1 A Yes.

2 Q You haven't spoken to them since this incident?

3 A They haven't allowed it.

4 Q Right, because they don't consider you their
5 grandmother.

6 MR. HILLIARD: Objection.

7 THE COURT: The jury will disregard the last
8 remark. It wasn't a question. Thank you.

9 Q Would it surprise you that they don't consider you
10 their grandmother anymore?

11 MR. HILLIARD: Objection.

12 THE COURT: I'll allow it.

13 THE WITNESS: Yes, I would. It would surprise me.

14 Q Now you're saying -- just wait until there's a
15 question -- you're saying that **Complainant 2** never talked to
16 you about Scott touching her inappropriately?

17 A No.

18 Q Conversation never took place?

19 A No.

20 Q Did you know that when she left the home, it was
21 actually because your son kicked her out?

22 A That was --

23 Q That's a yes or no question. Did you know that
24 was because he kicked her out?

25 MR. HILLIARD: Objection.

1 THE COURT: I will let her answer yes or no and
2 then explain it.

3 MR. HILLIARD: Thank you, Your Honor.

4 THE WITNESS: Actually, I heard from both sides,
5 so it was two different versions. And I didn't know
6 which one to believe, but I knew her stuff was still at
7 the house and that she needed to get her stuff. And
8 she didn't want to go there and Scott and her mother be
9 argumentative to her. And I went with her as pretty
10 much somebody to step in and say, hey, that's enough,
11 just let her get her stuff and not to argue.

12 Q Well, if she was moving out with the consent of
13 all parties, why would there be a problem?

14 A Because -- my understanding of why she had to get
15 her stuff --

16 Q Let me just stop you. I'm just asking you why you
17 think there would be a misunderstanding if you believed
18 everyone was okay with this.

19 MR. HILLIARD: Objection.

20 THE COURT: I'll allow it if she has an
21 understanding or --

22 MR. HILLIARD: Thank you.

23 THE WITNESS: Yeah. Her personal items were boxed
24 up in the corner of a bedroom or in a bedroom, and
25 Anatasya wanted to move my step-grandson, my grandson,

1 Brother, up into one of the -- up into her room and turn
2 his room into her office so that each one of the
3 children that were still in the home had their own
4 bedroom, and that she was not able to do that because
5 Ana -- I mean, Complainant 2 stuff was in there.

6 Q I'm going to stop you --

7 MR. HILLIARD: Objection --

8 MS. WALTER: No, this is nonresponsive, Your
9 Honor.

10 Q The question was if -- and I'll repeat it. And if
11 you don't understand a question, feel free to ask me to
12 rephrase it. The question is, if this was all
13 amicable, why would you think that there is a going to
14 be a problem?

15 MR. HILLIARD: And she has answered.

16 MS. WALTER: That's the question. She has not
17 answered.

18 THE COURT: I don't think -- let her continue her
19 answer.

20 Ma'am, do you understand the question?

21 THE WITNESS: I can answer that.

22 THE COURT: The question --

23 THE WITNESS: Yes.

24 THE COURT: -- is simply, why would you think
25 there was a problem?

1 THE WITNESS: Because Complainant 2 had a strained
2 relationship with her mother and my son because my son
3 was a very strict parent.

4 Q And when you say strict parent, are you aware of
5 the physical abuse that he reaped upon your
6 grandchildren?

7 MR. HILLIARD: Objection.

8 THE COURT: I will allow it. If she knows, she --

9 MR. HILLIARD: But I object to the form of the
10 question. She is phrasing things in a way that makes
11 it sound as if that happened.

12 MS. WALTER: There has been testimony that it
13 happened.

14 MR. HILLIARD: That doesn't mean it happened.

15 THE COURT: Well, I think this witness can
16 certainly understand the question and respond
17 appropriately.

18 MR. HILLIARD: Thank you.

19 THE COURT: Okay, let's go.

20 THE WITNESS: If you can tell me what you consider
21 physical abuse.

22 Q Okay, sure. Smacking one of you grandsons across
23 the face so hard that it left a purple mark.

24 A No.

25 Q You weren't aware of that?

1 A No.

2 Q How about grabbing Complainant 1 by the hair and shoving
3 her head into the wall?

4 A No.

5 Q But you would consider that physical abuse?

6 A Yes.

7 Q And what about knocking Complainant 1 down to the ground
8 and choking her, would you consider that physical
9 abuse?

10 A Yes.

11 Q Okay. But you weren't living in the home;
12 correct?

13 A No.

14 Q Would you agree that your son has a bit of a
15 temper?

16 A Yes.

17 Q And you said that your son is a -- was a strict
18 person?

19 A Yes. He got it from me.

20 Q And he wanted things done a particular way?

21 A Yes.

22 Q And if he didn't get things done his way, his
23 temper would come out; correct?

24 A Not his temper. His parenting skills came out.

25 Q And those parenting skills included smacking an

1 infant across the face to the point of a purple bruise?

2 A No. No.

3 Q Did those parenting skills include making Complainant 2
4 wash not only the dinner dishes, but then when they
5 weren't done to his satisfaction, every single dish in
6 the house; is that his parenting skills?

7 A I never saw that.

8 Q Right, because you weren't living in the home.

9 A No, I wasn't living in the home --

10 MR. HILLIARD: Objection. That's not a question.

11 Q Were you?

12 A I was not living in the home.

13 Q So you weren't living in the home when not only
14 did he force her to wash every single dish in the
15 house, but he stood there and ate on new dishes to give
16 her more work to do; you weren't there for that, were
17 you?

18 MR. HILLIARD: Objection to the form of the
19 question.

20 THE COURT: I'll allow her to ask the question if
21 she was there when any of that occurred, if it
22 occurred; okay?

23 MR. HILLIARD: She didn't say if it occurred,
24 judge.

25 THE COURT: All right.

1 Q So you were not there for that instance; correct?

2 A No.

3 Q And you were never present when your son backed
4 Anatasya into a corner?

5 A No.

6 Q Let me touch on something else, actually. I'll
7 get off that subject for a moment. Counsel said you
8 pleaded guilty to a, I think he phrased it a title
9 situation?

10 A Yes.

11 Q That actually was an act of fraud; correct?

12 A Yes.

13 MR. HILLIARD: Objection.

14 THE COURT: She can answer the question.

15 MR. HILLIARD: All right, sir.

16 THE COURT: You've asked the question. The
17 witness can answer.

18 THE WITNESS: Yes.

19 MS. WALTER: I'm just waiting for Mr. Hilliard to
20 sit down.

21 MR. HILLIARD: I'm here talking to my co-counsel.

22 THE COURT: He can stand.

23 MR. HILLIARD: Thank you, judge.

24 Q So that was an act of fraud; correct?

25 A Yes.

1 Q So it wasn't just a title situation, it was an act
2 of dishonesty on your part; is that correct?

3 A Yes, with extenuating circumstances.

4 Q An act of dishonesty?

5 MS. WALTER: Your Honor, I would ask --

6 MR. HILLIARD: Objection. That's not a question.

7 MS. WALTER: -- that this be marked, I think we
8 are at State's-4.

9 THE COURT: All right, the jury will disregard the
10 last remark.

11 MR. HILLIARD: And I object to -- well, let's see
12 what she's doing.

13 MS. WALTER: I'm waiting for the court reporter to
14 be able to take a break.

15 (WHEREUPON, State's Exhibit No. 4 was marked for
16 identification only.)

17 MS. WALTER: May I approach the witness, Your
18 Honor?

19 THE COURT: Please.

20 (WHEREUPON, a bench conference was held off the
21 record in the presence of the jury but out of the
22 hearing of the jury.)

23 MS. WALTER: May I, Your Honor?

24 THE COURT: Yes.

25 MS. WALTER: Thank you.

1 Q I'm showing you what's been marked for
2 identification only as State's Exhibit 4. And do you
3 recognize that's you, Rebecca Ann Rowan?

4 A Yes.

5 Q And this was just last year, August of 2017?

6 A Yes.

7 Q And can you just read the charge, please, that you
8 pled guilty to.

9 A Traffic fraudulent alteration of registration,
10 licensing document other than registration card or
11 license plate.

12 Q Thank you...

13 MS. WALTER: Court's indulgence a moment.

14 (Discussion off the record.)

15 Q Before your relationship with your granddaughters
16 ended, how often would you see them?

17 A Whenever I could.

18 Q How often is that?

19 A Sometimes it could be for a school play. I used
20 to pick Complainant 1 up from her show choir. I would go over
21 and see the kids from time to time. They would come to
22 my home.

23 Q How often would you see them? If you don't
24 understand the question, let me know.

25 A I can't give specific times because there might be

1 one time when I seen them a couple times a week. There
2 might be some time that I didn't see them for a month.

3 Q Did you ever see Complainant 1 with bruises on her body?

4 A Yes.

5 Q Bruises on her legs?

6 A Yes.

7 Q And did she ever tell you what they were from?

8 A No.

9 Q Did you ever see scars on Complainant 1 indicating that
10 she was cutting herself?

11 A No.

12 Q Did you ever see scars on Complainant 2 that she got from
13 cutting herself?

14 A No.

15 Q And yet you saw them on a sometimes frequent
16 basis?

17 A Yes.

18 Q And, ma'am, you love your son; don't you?

19 A Yes, with all my heart.

20 MS. WALTER: Nothing further.

21 MR. HILLIARD: Nothing else, judge. Thank you.

22 We'd like for her -- well, let me ask one question
23 based on all those questions.

24 REDIRECT EXAMINATION

25 BY MR. HILLIARD:

1 Q You have been sequestered throughout this whole
2 process; is that right?

3 A Yes.

4 Q You haven't been able to be in the courtroom?

5 A And I haven't been able to even talk to anyone.

6 MR. HILLIARD: Can she stay in the courtroom at
7 this point, judge? She's testified. Come down.

8 THE COURT: I see no problem with that.

9 MR. HILLIARD: Thank you.

10 MS. WALTER: As long as there is no unwanted
11 contact between her and the victims.

12 THE COURT: And any other witnesses. Thank you.

13 (Witness excused.)

14 THE COURT: All right.

15 MR. HILLIARD: I think the next witness will be a
16 little bit lengthy, judge, so I don't know if you want
17 to take a break.

18 THE COURT: Okay. Well, why don't we do this,
19 let's let the jury take a break. I don't know if the
20 jury needs a break, but I do. So let's just take about
21 ten minutes; all right?

22 (WHEREUPON, the jury exited the courtroom at
23 10:44 a.m.)

24 (WHEREUPON, a brief recess was taken at
25 approximately 10:44 a.m.)

1 THE COURT: Are we ready? Please be seated. Is
2 this going to be your last witness, Mr. Hilliard, or
3 not?

4 MR. HILLIARD: I'm sorry, sir?

5 THE COURT: Is this going to be your last witness
6 or not?

7 MR. HILLIARD: I think it is.

8 THE COURT: Okay, all right. I just wondered
9 about your expert, okay. Chris, could you get the jury
10 for me.

11 (WHEREUPON, the jury came into open court at
12 approximately 10:59 a.m.)

13 THE COURT: All right, Mr. Hilliard.

14 MR. HILLIARD: Thank you, Your Honor. Call Scott
15 Rowan.

16 THE COURT: All right, Mr. Rowan.

17 SCOTT RICHARD ROWAN, after being duly sworn,
18 testified as follows:

19 THE CLERK: Please be seated. Please state your
20 name for the Court, and spell your last name.

21 THE DEFENDANT: Scott Rowan, Jr. R-O-W-A-N.

22 DIRECT EXAMINATION

23 BY MR. HILLIARD:

24 Q How old a person are you, Scott?

25 A I am 33 years old.

1 Q And where have you lived throughout your life?

2 A I lived in Baltimore, Maryland and here in Myrtle
3 Beach, South Carolina.

4 Q When did you move to Myrtle Beach, if you
5 recollect?

6 A I think September 2000, if I'm not mistaken.

7 Q And what kind of -- what brought you to Myrtle
8 Beach?

9 A My parents did when I was 15.

10 Q What kind of business did your parents have?

11 A My father was a mechanic.

12 Q And as you got older, did you graduate from high
13 school?

14 A I got a GED.

15 Q After that, did you get work?

16 A Yes.

17 Q What kind of work did you get?

18 A I've been a manager at McAlister's deli. I've
19 worked at Medieval times as the falconer. I've done a
20 lot of construction. I was also a manager at Sticky
21 Fingers in North Myrtle Beach. I've done a lot of
22 different jobs, plumbing, construction, concrete.

23 Q The last job that you had, what job was that?

24 A Actually, the last job I had, I worked as a cook
25 in Brass Tap. But before that, I was a manager at

1 Sticky Fingers in North Myrtle.

2 Q How long were you a manager at Sticky Fingers in
3 North Myrtle Beach?

4 A I was a kitchen manager for, say, about three
5 years, and then I became an assistant manager for a
6 year, and then I went back to kitchen manager. I
7 worked there for a total of six years.

8 Q And do you recall what period of time that was?

9 A Right at the time all of this was brought to my
10 attention of what I'm being charged with.

11 Q And talking about that, when it was brought to
12 your attention that you were being charged with a
13 crime, did you turn yourself in down at the jail?

14 A Yes.

15 Q And then you got out?

16 A Yes.

17 Q And you've been waiting on this day since then; is
18 that right?

19 A Yes. Been almost three years.

20 Q And have you been able to get a job with these
21 charges pending against you since then?

22 MS. WALTER: Objection, Your Honor. Relevance.

23 THE COURT: I'll allow it.

24 THE WITNESS: Just a job at Brass Tap, but as soon
25 as they actually found out I had these charges, because

1 they never asked me on my initial interview, I was
2 fired.

3 Q Going back to the time of your marriage, how did
4 you meet your wife, Anatasya?

5 A I met her through a friend that she had living
6 with her.

7 Q And did you guys ultimately get married, I
8 imagine?

9 A Yes.

10 Q After you got married, where did you first live?

11 A After we got married, we -- when we got married,
12 we lived at [REDACTED].

13 Q And who lived in that home with you?

14 A Me, [REDACTED] Complainant 1, [REDACTED] Complainant 2, [REDACTED] Brother,
15 [REDACTED] Younger Brother, and Anatasya Herron. And for
16 a brief moment, Anatasya Herron's mother and boyfriend
17 did come and live with us for a little while.

18 Q So moving along to the home where this is alleged
19 to have occurred, do you remember about when you moved
20 into that home?

21 A I couldn't actually tell you exactly, no, Your
22 Honor -- sorry, Mr. Hilliard.

23 Q Are you nervous today?

24 A A little bit.

25 Q All right, sir.

1 A I've been nervous for three years.

2 Q Did you at any point in time have any kind of
3 sexual contact with your stepdaughter, Complainant 2

4 A No.

5 Q Did you at any point in time have any kind of
6 sexual contact with your stepdaughter, Complainant 1

7 A No.

8 Q Complainant 1 Are you a strict disciplinarian?

9 A I am, yes.

10 Q Have you ever struck either of your sons in the
11 face?

12 A No.

13 Q Have you ever knocked either of your daughters
14 into the wall and pushed their head through a wall?

15 A No. That's going way too far.

16 Q You've been here for the testimony, obviously?

17 A Yes.

18 Q Tell us about the event, if you recollect, of the
19 washing of greasy dishes.

20 A Our dishwasher was broken because the kids
21 overpacked it when they were doing their chores of the
22 dishes. So it wind up breaking, so they had to do it
23 by hand. And by doing it by hand, they never fully
24 cleaned the dishes. Some of them did get greasy
25 because they were just dipping it in cold water, and it

1 was just cold grease in there. It was getting all over
2 them. So I did make Complainant 2 redo the dishes. Not all
3 of them, but any of that them that I felt had grease on
4 them.

5 Q And did you eat more off of dishes only to make
6 the dishes dirty?

7 A No.

8 Q Did you harm her in any form or fashion?

9 A No. She is a very good student and everything.
10 I've never -- as a matter of fact, I don't even recall
11 ever actually disciplining her by, you know, busting
12 her rear or anything.

13 Q Talking about the event mixing the cleaner, tell
14 the folks on the jury about the mixing of cleaner
15 event; do you recall that happening?

16 A Complainant 1 was playing around with her mother, you
17 know, trying to be smart and everything. And I just
18 told her to stop getting smart with your mother.

19 Q Did you ever kick the dog?

20 A No.

21 Q Sir?

22 A I actually love my dogs. When I was actually
23 asked to leave, my ex-wife actually sent the dog with
24 me, one of them. I still actually have him to this
25 day.

1 Q Other than this case, have you ever been
2 investigated by the Department of Social Services for
3 any kind of --

4 A No.

5 Q -- child abuse? In the beginning, when you guys
6 were married, did you, in fact, engage in selling some
7 marijuana?

8 A Yes. When I first got with her, before we were
9 married, yes.

10 Q And did you ever stop that?

11 A Yes.

12 Q And when did that happen?

13 A I was charged with possession of cocaine.

14 Q And what happened after that?

15 A I pled guilty to that and did not sell any kind of
16 drug at all.

17 Q All right, sir. Did you smoke pot during the
18 period of time that we're talking about?

19 A Yes.

20 Q Did your wife smoke pot during the time that we're
21 talking about?

22 A Yes.

23 Q Tell us about Complainant 2 moving out. Tell the folks
24 on the jury about Complainant 2 moving out.

25 A When Complainant 2 moved out, she was already not at our

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1 house at all most of the time. She was out -- you
2 know, I gave her a 2:30 curfew once she graduated,
3 2:30 in the morning. You know, I gave her a lot of
4 free will. But when she was asked to get her stuff
5 out, it was because her mother wanted her to actually
6 pick either she is going to stay at the house or she is
7 not. Because we had two boys that are in one room, and
8 they were constantly fighting and arguing. She wanted
9 to separate them. And she didn't want to give up her
10 office. So I asked her to get her stuff out.

11 Q And did that happen?

12 A Yes.

13 Q And tell the folks on the jury about the paying
14 rent situation.

15 A Paying the rent is what I suggested to her to tell
16 her if she wants to just keep her stuff -- (it was
17 basically either pay rent or storage, but she never
18 paid anything. Never made her pay anything.

19 Q Was there a divorce case involved in this
20 situation as well?

21 A I'm actually -- I believe there was a custody
22 case. I actually am not a hundred percent if I
23 actually am divorced or not.

24 Q All right, sir. There was a custody case; is that
25 right?

1 A Yes.

2 Q And in connection with the family court case, did
3 you learn that you were accused of having given your
4 wife and your daughter an STD, a sexually transmitted
5 disease?

6 A Yes. I actually was talking to my wife at the
7 time on the phone, and she said I cheated on her. I
8 said, no, I didn't. And she said, well, then how did
9 me and my daughter get an STD?

10 Q All right, sir. And did you go immediately and
11 get checked for STDs?

12 A Yes, as soon as she told me, sir.

13 Q Did you have herpes?

14 A No.

15 Q Did you have chlamydia?

16 A No. I'm completely STD-free.

17 Q Let me show you Defendant's Exhibit No. 4 and ask
18 if you can identify that as your home.

19 A Yes, that is my home.

20 Q And if you look on there, when it says the living
21 room, do you see where it says the size of the living
22 room? What is the size of the living room?

23 A Oh, living room, 12 by 9.

24 Q 12 feet by 9 feet?

25 A Yes. And that actually sounds a lot bigger than

1 what it felt like.

2 Q And then the total square feet, the heated square
3 feet of the house is -- how much heated square feet of
4 the house?

5 A Total square feet is 1,700.

6 Q And then the heated square feet is right under
7 that. How much is that?

8 A 1,200.

9 Q And let me show you Defendant's Exhibit No. 10 and
10 ask if that's a fair and accurate representation --

11 A Yes.

12 Q -- of the inside of your house. And so the living
13 room is marked with living room; is that right?

14 A Yes. The couch basically took up the whole living
15 room, the whole length of the living room, almost.

16 Q All right, sir. And the couch is marked on here
17 as well?

18 A Yes.

19 Q The TV would have been?

20 A Straight in front of the couch, right against the
21 wall of the stairs.

22 Q And then there has been a great deal of testimony
23 about Ana's office. Did she, in fact, go and stay in
24 that office a great deal?

25 A Yes. When we first moved into the house, her

1 actual -- she actually had her computer right there
2 against the wall of the stairs and the laundry room.
3 That's where she had her computer. She didn't move
4 into that office until after her mother actually moved
5 out of the house at one point.

6 Q All right, sir. And the boys' bedroom, is that
7 both boys stayed in that bedroom?

8 A Yes.

9 Q And that was the boys' bathroom?

10 A Yes.

11 Q In an ordinary evening when you were there, what
12 would be the sort of thing where you guys would watch
13 TV?

14 A You guys, as in who?

15 Q Well, whoever was watching TV, who would be
16 watching TV?

17 A I mean, I watched TV with all the kids. I play --
18 most of the time I play video games with them for the
19 most part, actually.

20 Q And where were the video games played?

21 A The boys actually had one in their room.

22 Q All right, sir.

23 A And I had one set up in the living room. At
24 certain points I actually had one set up in my bedroom.

25 Q All right, sir. And that would be?

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1 A The master bedroom, yes.

2 Q So that the circumstances of living in the home,
3 was there always activity in the home?

4 A Yes, always.

5 MR. HILLIARD: That's good, thank you.

6 Q The idea that you -- well, let me ask a better
7 question. When you were working as the kitchen manager
8 in the Sticky Fingers, did you have to go to work on a
9 regular basis?

10 A Yes.

11 Q Did you smoke pot every day, all day?

12 A Yes, I did.

13 Q Smoke pot every day, all day?

14 A I did smoke pot quite a bit, yes.

15 Q All right, sir. And while you were smoking pot,
16 was that a problem for you at work?

17 A No.

18 Q Did that cause you any difficulties?

19 A No.

20 Q Did you ever get reprimanded or anything for not
21 going to work like you should?

22 A No.

23 Q Did you work and pay all the bills in the
24 household?

25 A I worked and paid bills. I actually just

1 basically put my money in an account, and Anatasya was
2 basically the accountant. She did take care of the
3 bills and everything. She did very well at it.

4 Q When all of this took place, did you voluntarily
5 move out of the house?

6 A Yes.

7 Q And provided enough money for the family to live;
8 is that right?

9 A Yes. We had six months left on our lease. And
10 it's a thousand dollars a month. I had \$5,000 in my
11 bank account in my savings account. I literally went
12 and withdrew it and gave it to her, so that covered
13 five months. And then I was giving her \$300 a month.

14 Q As child support?

15 A Yes. Until the court actually raised it to 466.

16 Q And then you pay the 466?

17 A Yes.

18 Q And do you love your family?

19 A Yes, I did. I absolutely loved my family.

20 Q There has been some testimony about a gun.

21 A About what?

22 Q A gun.

23 A Yes.

24 Q So did you have responsibility connected to your
25 work to carry cash money to the bank?

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1 A Yes, I did.

2 Q And did you keep the gun in the car?

3 A Yes, I did.

4 Q Did you keep the gun in the house when it wasn't
5 in the car?

6 A Yes.

7 Q All right, sir. Did you ever strike your wife?

8 A No, I did not. She had struck me, but I've never
9 struck her.

10 Q All right, sir. And if there was an argument or a
11 disagreement, she would, in fact, fight back; is
12 that --

13 A Yes, she would. She's actually a lot tougher than
14 she looks.

15 MR. HILLIARD: Excuse me just one second.

16 Q Did you ever, at any point in time, say to anyone
17 that you touched either one of your stepdaughters
18 inappropriately?

19 A Absolutely not.

20 Q And have you ever touched either of your
21 stepdaughters inappropriately?

22 A Absolutely not. The only woman I've touched the
23 whole time I was married and before I was married until
24 a year ago has been my wife, Anatasya Herron.

25 MR. HILLIARD: That's all I have. Answer any

1 questions the prosecution has for you.

2 MS. WALTER: Court's indulgence just a moment.

3 CROSS-EXAMINATION

4 BY MS. WALTER:

5 Q You said that when you moved in to the [REDACTED]
6 house -- let me back up. You met Ana through a friend.
7 Was that Allen?

8 A No.

9 Q Okay.

10 A Allen was actually her friend from Tennessee.

11 Q And Allen lived with Ana and the kids for a time
12 at the [REDACTED] Court address?

13 A Yes. And so did a Bruce and Angie. I actually
14 did not know them personally, my brother did. I met
15 them.

16 Q You lived at the [REDACTED] Court address for a little
17 bit; yes?

18 A Yes.

19 Q And you are denying that you and Allen went up to
20 the girls' room -- let me finish -- the girls' room
21 when Complainant 2 was nine and Complainant 1 was seven and stood and
22 stared at them while they were naked begging you to
23 leave?

24 A I do not recall that at all.

25 Q You don't recall it, okay. And you are denying

1 striking either of your sons?

2 A Yes, I am.

3 Q You are denying pushing either of your, and it's
4 stepdaughters -- they are not your daughters -- either
5 of your stepdaughters into a wall; correct?

6 A Yes, I am denying that.

7 Q So then I assume you are also denying knocking
8 Complainant 1 to the ground in front of Ana and choking her?

9 A I would never choke one of the children.

10 Q And so your explanation of the, as your attorney
11 said, mixing the cleaner incident was you simply, as a
12 strict disciplinarian, told Complainant 1 stop being smart
13 with your mother?

14 A Yes.

15 Q That was the sum total of the discipline for that
16 incident?

17 A I am very firm with my words, but I am not very
18 physical.

19 Q When Complainant 2 was already out of the house most of
20 the time, how old was she?

21 A When she moved out of the house?

22 Q No. You said she was already out of the house
23 most of the time, you gave her a 2:30 curfew. How old
24 was she?

25 A 17.

1 Q And she was -- had she graduated from high school
2 at that point?

3 A Yes.

4 Q She had graduated early?

5 A Yes.

6 Q She was a good student; yes?

7 A Yes.

8 Q She was working; yes?

9 A Yes.

10 Q And yet you got mad at her for violating a curfew?

11 A No, I did not get mad at her for violating her
12 curfew. I actually did not get mad at her at all. I
13 was -- I was trying to please her mother by getting her
14 to get her stuff out so that the boys could have their
15 own room so they weren't fighting all the time, and it
16 made her day a lot easier. Because I received a lot of
17 phone calls when I was at work at Sticky Fingers from
18 my wife to yell at my sons to get them to behave.

19 Q During the day when the kids were at school?

20 A When I was at work, after the kids got home from
21 school.

22 Q You said that Ana spent a lot of time in her
23 office. How much time would you say she spent in her
24 office?

25 A At least 75 percent.

1 Q But she came out every once in a while to call you
2 to complain about the children?

3 A I was at work.

4 Q Right.

5 A Her room is right next to the kids' room. She did
6 have to deal with them with homework. I had to yell at
7 my son constantly. Because my son, Younger Brother, he is very
8 difficult sometimes. He -- I, honestly, I had to
9 physically tell him all the time to do his homework
10 over the phone. Tell him that I was coming home early.

11 Q You had to physically tell him?

12 A On the phone. She'd put him on the phone.

13 Q Now, you talked about the dishwasher incident
14 also, and you're saying that the kids broke the
15 dishwasher?

16 A The kids, me, Ana, it could have been any of us,
17 but I'm fairly certain it was the kids, yes.

18 Q Well, the reason why I'm asking is on direct, you
19 said that the kids broke the dishwasher.

20 A I'm fairly certain, yes.

21 Q Did you punish them for breaking the dishwasher?

22 A No. I have yelled, yes, but, no, I did not punish
23 anyone because I couldn't confirm exactly who did it.

24 Q Do you know who Complainant 2 boyfriend was at the time
25 that she moved out?

1 A Yes. His name was Vega.

2 Q Do you see him in court today?

3 A Yes. He is right there with the green hair.

4 Q Sitting next to her, supporting her; yes?

5 A Yes.

6 MR. HILLIARD: Objection. Calls for a conclusion.

7 THE COURT: Well, let's just leave it that he's
8 here, okay.

9 MR. HILLIARD: Thank you, judge.

10 THE COURT: All right.

11 MS. WALTER: May I approach, Your Honor?

12 THE COURT: Yes.

13 MS. WALTER: Mr. Hilliard.

14 MR. HILLIARD: Oh, sure.

15 Q I'm showing you State's Exhibit -- excuse me,
16 Defense Exhibit 4. You've previously identified that
17 as your house; correct?

18 A Yes.

19 Q How many bedrooms was your home? Do need me to
20 hold these up for you?

21 A No. I had my room, Ana's office, boys' room, and
22 the two rooms upstairs, so five bedrooms.

23 Q How many bedrooms does it say on here that this
24 house has?

25 A It says three.

1 Q That's not accurate; correct?

2 A No.

3 Q It also shows pictures of unfinished rooms; do you
4 agree? See those little ones --

5 A Yes, it does.

6 Q And that's not accurate, either; is it?

7 A No. But you look at that little picture on the
8 wall, that is the house, in the corner.

9 Q But it's not a three-bedroom house, as this says?

10 A No, it's not.

11 Q And you did not have areas under construction?

12 A No, not when we moved in, no. But that picture of
13 the shed in the backyard, that shed is there.

14 MS. WALTER: Court's indulgence for one moment.

15 (Discussion off the record.)

16 Q And, now, you've denied ever being physically
17 abusive to any of your children?

18 A Not abusive. I have busted their rears, yes.

19 Q Well, at what point would you say that physical
20 punishment crosses over to being physically abusive?

21 A Well, like I'm being accused of, of choking,
22 slapping in the face. I figure those are points of
23 being physically abusive.

24 Q And you're denying any type of physical abuse --

25 A Yes.

1 Q -- against Complainant 2

2 A Yes.

3 Q Denying it against Complainant 1

4 A Yes.

5 Q Denying it against Brother?

6 A Yes.

7 Q Denying it against Younger Brother?

8 A Yes. And if I'm not mistaken, I even said that I
9 don't even remember correcting Complainant 2 physically at
10 all.

11 Q And you are denying touching Complainant 2 breasts?

12 A Yes. Absolutely.

13 Q On multiple occasions?

14 A Absolutely.

15 Q And you are denying having Complainant 1 give you hand
16 jobs?

17 A Absolutely.

18 Q And you are denying having Complainant 1 give you blow
19 jobs to the point that you ejaculated in a towel that
20 your wife found?

21 A Absolutely denying.

22 Q And you are denying holding Complainant 1 down on the
23 floor, gagging her, placing your knees on her leg and
24 physically, sexually raping her?

25 A I've never got that physical with my wife. There

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1 is no way I would ever do that to anyone.

2 MS. WALTER: Court's indulgence. Nothing further,
3 Your Honor.

4 MR. HILLIARD: Let me just clear up a little bit
5 about the house, judge.

6 REDIRECT EXAMINATION

7 BY MR. HILLIARD:

8 Q Defendant's Exhibit No. 4 with the two unfinished
9 rooms at the time that that was done, can you look at
10 that and see if those are the rooms that got finished
11 as the upstairs, can you look through that window and
12 see that it's an upstairs?

13 A Yes, you can see it through the upstairs, the
14 window, it is an upstairs.

15 Q So when that document was produced, these rooms
16 were unfinished?

17 A Yes, I'm guessing so.

18 Q And then when you moved in, were these rooms
19 finished or unfinished?

20 A They were finished.

21 Q And there's no question that's your house?

22 A Oh, no, not at all.

23 MR. HILLIARD: That's all I have. Thank you, sir.
24 That's all, judge.

25 THE COURT: Ms. Walter?

1 MS. WALTER: Nothing further, Your Honor.

2 THE COURT: All right. You may step down, thank
3 you.

4 THE WITNESS: Thank you, Your Honor.

5 (Witness excused.)

6 MR. HILLIARD: That's the Defense.

7 THE COURT: All right. Defense rests. Will there
8 be rebuttal?

9 MS. WALTER: Yes, Your Honor.

10 THE COURT: All right, very well. Call your
11 rebuttal.

12 MR. HILLIARD: Can we hear about this in...

13 THE COURT: Okay, let's take the jury out a
14 moment; okay? We know the rules of rebuttal.

15 (WHEREUPON, the jury exited the courtroom at
16 11:30 a.m.)

17 THE COURT: All right. All right, Ms. Walter, who
18 have you got and for what purpose?

19 MS. WALTER: Your Honor, we would intend to call
20 at this point Vega Mark Smallin, who is [REDACTED]
21 Complainant 2 fiance now. He was her boyfriend at the time
22 and was -- sorry, I thought you were shaking your
23 head -- he was present --

24 THE COURT: I was just nodding yes, I understand
25 what you're...

1 MS. WALTER: He was present during two different
2 conversations between Complainant 2 and Rebecca Rowan during
3 which Complainant 2 told Rebecca Rowan that the Defendant had
4 been molesting her, which is in direct contradiction to
5 Rebecca Rowan's testimony.

6 THE COURT: What do you say about that,
7 Mr. Hilliard? It came up with the Defense witness. I
8 think it's -- he was there, he was present. I think he
9 can testify in rebuttal.

10 MR. HILLIARD: I'm thinking about it for a second.

11 THE COURT: Can you find a reason not to? I mean,
12 what's your position on it?

13 MR. HILLIARD: I'm processing for a second, judge.
14 So Rebecca Rowan testified that Complainant 2 had never told
15 her, and Complainant 2 testified that she had told her. So
16 they would not have been admissible, or they would have
17 been...

18 THE COURT: The State's witness testified she had
19 this conversation with the grandmother.

20 MR. HILLIARD: And they could have called the --

21 THE COURT: And the grandmother denied it. Now,
22 the State seeks to produce a witness who was present in
23 rebuttal to the grandmother; is that correct?

24 MS. WALTER: Yes, Your Honor.

25 THE COURT: All right.

1 MR. HILLIARD: They could have called that witness
2 in their case in chief.

3 THE COURT: And that would have just been
4 cumulative.

5 MR. HILLIARD: Well, it's cumulative now.

6 THE COURT: Well, not necessarily. There was no
7 conversation -- I mean, no testimony concerning someone
8 else being there or other witnesses to the
9 conversation. And now it's been denied, and I think
10 they have a right to rebut that testimony. I think
11 it's admissible.

12 MR. HILLIARD: That conversation that she
13 testified about was on the phone.

14 THE COURT: Which conversation?

15 MR. HILLIARD: The conversation that, if I'm
16 remembering correctly, and subject to --

17 THE COURT: Well, then it makes it even more
18 important because your witness has testified she never
19 had any conversation, whether it be on the phone or
20 otherwise, is my understanding, right? There was no
21 conversation with her and Complainant 2 never brought to her
22 attention by Complainant 2 or discussed with her by Complainant 2
23 however you want to say that.

24 And now we have a witness who says, yes, on who
25 I -- the State tells me will say that, yes, on a

1 particular occasion, I was present and witnessed the
2 conversation.

3 MR. HILLIARD: Why wouldn't that have been
4 available to them in the beginning?

5 THE COURT: Because it wasn't denied. I don't
6 even know if we're talking about the same conversation.

7 MS. WALTER: Well, additionally, Your Honor, just
8 because we can call a witness in our case in chief does
9 not mean that we have to, nor does it mean that we are
10 precluded from calling them in rebuttal when it is in
11 direct response to something that came up during the
12 Defense case. And as Your Honor pointed out --

13 THE COURT: I don't think there was a need to call
14 it until it was denied.

15 MS. WALTER: Exactly.

16 THE COURT: I'll allow her to do it.

17 MR. HILLIARD: Thank you.

18 THE COURT: All right. Mr. Palmer, let's bring
19 them in. And this should be rather short. All right.

20 (WHEREUPON, the jury came into open court at
21 approximately 11:36 a.m.)

22 THE COURT: All right. We have everyone back in
23 the courtroom now.

24 MS. WALTER: Thank you, Your Honor. The State
25 calls Vega Mark Smallin.

1 THE COURT: In rebuttal; right?

2 MS. WALTER: Yes, Your Honor, in rebuttal.

3 THE COURT: All right.

4 VEGA MARK SMALLIN, after being duly sworn,
5 testified as follows:

6 THE CLERK: If you would state your full name and
7 spell it for the Court.

8 THE WITNESS: Yes, ma'am. My name is Vega
9 Smallin. That's V-E-G-A, S-M-A-L-L-I-N.

10 DIRECT EXAMINATION

11 BY MS. WALTER:

12 Q Good morning, Vega. How are you today?

13 A Fantastic, ma'am. How about you? You having a
14 good one?

15 Q I am, thank you.

16 A Yes, ma'am.

17 Q Can you give us your date of birth, please.

18 A Yes, ma'am. I was born [REDACTED].

19 Q Thank you. And do you know [REDACTED] Complainant 2 ?

20 A Yes, ma'am.

21 Q How do you know her?

22 A She is my fiance.

23 Q How long have you been with [REDACTED] Complainant 2

24 A We're going on to our seventh year now, since
25 2012.

1 Q So do you know how old you guys were when you
2 first started dating?

3 A She was 15, and I was -- it was just after my
4 birthday. I -- actually, it was my birthday wish that
5 she would say yes when I asked her out. It was

6 [REDACTED]: I had just turned 18. Was I 17? I was 17.
7 She was 15. We were -- we had known each other since
8 March. We met at the bus lot at high school. I shook
9 her hand for the first time in March.

10 Q And you've been together since then?

11 A Absolutely.

12 Q And so is it -- were you dating [REDACTED] when she
13 left the home on [REDACTED]

14 A Yes, ma'am.

15 Q Were you present at any time when [REDACTED] had a
16 conversation with -- well, let me back up. Do you know
17 Rebecca Rowan?

18 A Yes, ma'am.

19 Q Have you met her before?

20 A Yes, ma'am.

21 Q Who do you know her to be?

22 A The mother of Scott Rowan.

23 Q And were you present during any conversations
24 around the time that [REDACTED] moved out between [REDACTED]
25 and Rebecca Rowan?

1 A Yes, ma'am.

2 Q Prior to these conversations, did you have some
3 idea of what the conversations would be about from
4 Complainant 2 perspective?

5 A Yes, ma'am, I did.

6 Q And during those conversations, did Complainant 2
7 disclose to Rebecca Rowan that she had been sexually
8 assaulted?

9 A Yes, ma'am.

10 Q Can you tell us about those conversations.

11 A Yes, ma'am. We had gone to lunch, all of us.. She
12 had helped us to get her things out of the home she was
13 living at at [REDACTED] So we went to lunch. And we
14 were sitting at El Patio, was the restaurant we went
15 to, it's in Carolina Forest.

16 And she -- we were just talking about normal
17 things, really nothing different, and then the
18 conversation began. And my fiance, Complainant 2,
19 told her about her experience with Scott Rowan, that he
20 had inappropriately touched her, about his violent
21 outbursts in the house, about his rude behavior, his
22 terrible actions.

23 And Rebecca, you know, she just kind of sat a
24 little bewildered for a moment and then finally spoke
25 and said, and I can't quote directly, but the

1 information was that she herself had similar issues
2 with a member of her family in the past. Her
3 stepfather or her father, I could not recall. And that
4 she still loved that family member to this day and
5 respected them as a father figure, and that Complainant 2
6 should be able to do the same because what she had
7 experienced was no big deal and that should have been
8 easily overcome.

9 Q Had you been aware before this of what Complainant 2 had
10 suffered?

11 A Yes, ma'am.

12 Q Complainant 2 had spoken with you about that?

13 MR. HILLIARD: Objection.

14 THE COURT: This is limited to rebuttal.

15 MS. WALTER: Very well, Your Honor.

16 THE COURT: The issues that we discussed; all
17 right?

18 MS. WALTER: Yes, sir.

19 Q Was that the only conversation that you were a
20 witness to between Complainant 2 and Rebecca Rowan regarding
21 the Defendant's inappropriate behavior towards Complainant 2

22 A That I can recall, yes, ma'am.

23 Q And this was in person?

24 A Yes.

25 Q At lunch. Who paid for lunch?

1 A I did.

2 MS. WALTER: Thank you. Nothing further. Please
3 answer the questions from Mr. Hilliard.

4 THE WITNESS: Yes, ma'am.

5 MR. HILLIARD: At this point, judge, we're waiting
6 on -- let's approach.

7 (WHEREUPON, a bench conference was held off the
8 record in the presence of the jury but out of the
9 hearing of the jury.)

10 CROSS-EXAMINATION

11 BY MR. HILLIARD:

12 Q When did you first learn that Scott had been
13 arrested?

14 A That he had been arrested?

15 Q Yes.

16 A I honestly didn't know he was in custody until we
17 got here.

18 Q Until we got here?

19 A Yes, to the courtroom the first day of the week.

20 Q So your testimony before the jury is the first
21 time that you knew that Scott had been arrested was the
22 day you walked into the courtroom?

23 A The first day, yes, sir.

24 Q So you didn't know he'd been arrested?

25 A Correct.

1 Q Did you know that this case had previously been
2 scheduled for trial months ago?

3 A Yes, sir.

4 Q All right. Well, at the point in time, didn't you
5 figure maybe that he had been arrested if he was going
6 to have a trial?

7 A I'm not entirely aware of how these things
8 proceed. I've never been a part of one before, and I
9 don't really watch any of the television that has been
10 spoken of several times that involves court cases.
11 I've never done this.

12 Q So you don't know anything about arrests?

13 A No, sir. I've never been arrested.

14 Q All right. When was it and -- well, do you
15 remember --

16 THE COURT: Why don't you change the term to
17 charge.

18 MR. HILLIARD: Charge.

19 THE COURT: There you go.

20 Q When did you know that he was charged?

21 A Oh, yes, sir.

22 Q All right, sir. So you don't know what arrest
23 means?

24 A I imagine it's to be detained and constricted to
25 imprisonment by the State or federal law.

1 Q All right. So when did you first learn that he
2 was charged?

3 A Before December. It was when we first learned
4 that this would originally take place, it was in -- it
5 was before December of last year. I wasn't entirely
6 sure of the exact date. But I remember that she, my
7 fiancee, had to come here to Myrtle Beach from our
8 current living location to deal with this in court. I
9 stayed behind because at the time we needed to make
10 more money to cover our expenses, and I stayed to take
11 care of those.

12 Q Well, the government paid for her to come here,
13 right, you didn't have to pay for that?

14 A Correct.

15 Q So, but in any event, you didn't know that he was
16 charged up until the time of that court case?

17 A Yes, sir.

18 Q Just to be clear, there was one conversation that
19 you're talking about, not two; is that right?

20 A That I recall, I was present at one conversation
21 between [REDACTED] Complainant 2 and Rebecca Rowan.

22 Q One?

23 A Yes, sir.

24 Q And when did that take place?

25 A It was when she was moving out of the [REDACTED]

1 address.

2 Q When was that?

3 A I cannot recall the exact date, sir.

4 Q What year was it?

5 A 2015.

6 Q 2015?

7 A I believe. '14, '15, my dates aren't always
8 terribly accurate.

9 Q Right. You have never been sexually assaulted,
10 have you?

11 A No, sir.

12 Q But your dates aren't particularly accurate?

13 A Correct.

14 Q So you don't know whether it was 2014 or 2015;
15 right?

16 A Correct.

17 Q And the occasion of this luncheon, what was the
18 occasion of the luncheon?

19 A She, Rebecca, had helped us to remove Complainant 2
20 things from the [REDACTED] address and take them to my
21 address at the time that I was living with my father.

22 Q So Complainant 2 was moving in with you and your father?

23 A Yes, sir.

24 Q And her grandmother was helping you guys move her
25 belongings?

1 A Yes, sir.

2 Q And after that, y'all went and had lunch?

3 A Yes, sir.. Actually, I cannot recall if it was
4 after or beforehand, but we did have lunch, yes, sir.

5 Q So you're having lunch?

6 A Yes, sir.

7 Q And at that luncheon, how did the subject come up?

8 A I remember **Complainant 2** had wanted to talk about this.
9 She had informed me multiple times prior to the
10 luncheon that she wanted someone else to know and that
11 she felt Rebecca would be a good choice being, you
12 know, a grandmother figure at the time, you know, being
13 someone related to the Defendant, being, you know, a
14 family member, really. She felt comfortable doing so.

15 And she spoke up at several times leading to it,
16 honestly. And when we were having the lunch, it really
17 didn't just like blend into the conversation. The
18 conversation wasn't, you know, anything out of the
19 ordinary.. How is your day, how have you been doing,
20 those sorts of things.

21 I remember we even talked about firearms in
22 particular. My grandfather and I have always really
23 shot guns, I'm a hunter, most of my young life. And
24 she was telling me about she had a pistol, a .357
25 Magnum. And we were talking about that. And I just, I

1 remember that part of the conversation in particular.

2 And I think it was sometime after that part of the
3 conversation that it came up that **Complainant 2** directly
4 stated that she had something that she had on her
5 chest, it was something that she needed to talk about,
6 and she went on to tell Rebecca her tale.

7 Q Her tale?

8 A Yes, sir.

9 Q And what was her tale at that time?

10 A That she had been touched inappropriately by the
11 Defendant.

12 Q And?

13 A That it affected her and her life and how she
14 views things, how she does things, how she -- how she
15 wakes up in the morning, how she talks to other people,
16 how she sees other people, how she -- how she lives her
17 life, how she does anything.

18 Q And this was 2014 or 2015?

19 A Yes, sir, I believe so.

20 Q And what else did she tell her grandmother?

21 A She spoke of how he could be violent in the
22 household, his crass language, his physical abuse
23 towards others, how he had struck **Brother** at a younger
24 age, the handprints that has been spoken of. The, you
25 know...

1 Q You want some water?

2 A No, sir. Thank you, though.

3 Q You're welcome. Go ahead.

4 A He had repeatedly been violent to her sister, that
5 she had known of.

6 Q Been violent to the sister?

7 A Yes, Complainant 1

8 Q All right, sir. Go ahead.

9 A The multiple instances of verbal abuse were
10 brought up as well. I cannot recall all of the
11 language used, all of the phrases or terms used. But I
12 recall that they were terrible things to be said to
13 your family, in particular.

14 Q Terrible things?

15 A Yes, sir.

16 Q And did she talk about Complainant 1 sexual assault?

17 A No, no, sir.

18 Q So she talked about Complainant 1 getting hit and pushed
19 and beat and all that but not about the sexual assault?

20 A Correct, yes, sir.

21 Q And Rebecca's response to that was, that's no big
22 deal?

23 A Yes, sir.

24 Q And that was the end of it?

25 A Yes, sir.

1 Q Did you encourage her, did you encourage Complainant 2 to
2 go to the police?

3 A Yes, sir.

4 Q She just wouldn't do it?

5 A Yes, sir.

6 Q And she talked to her grandmother, and that just
7 sort of shut the whole thing down?

8 A Yes, sir. It was very disheartening for her after
9 approaching Rebecca about these things. She was upset,
10 and she cried on the car ride home. It was her
11 opportunity to speak up on the incident, and it was
12 just ignored, it was unaccepted.

13 She always felt like nobody would care, she told
14 me that, that if she spoke of it with, you know, anyone
15 in the family, what if they didn't believe her, or
16 worse, what if they didn't care. And it wasn't that
17 they didn't believe her, it was that they didn't care.

18 Q Well, they. When you say they, the only person
19 you're talking about is grandma; right?

20 A She. I'm sorry, yes, Rebecca.

21 Q Right. So, but she never told her mother?

22 A Correct, at the time.

23 Q Pardon?

24 A At the time there was never a conversation with
25 her mother about the abuse she had experienced.

1 Q And you didn't go to lunch with her mom to tell
2 her mom about it?

3 A Her mother, Anatasya?

4 Q Yes.

5 A Correct.

6 Q Was there any reason that y'all didn't do that?

7 A The reason why we had the lunch with Rebecca was
8 to sort of say thank you for helping us remove the
9 things from [REDACTED] and bring them to my address. And
10 she had seen it to be also an opportunity to discuss
11 the accounts.

12 Q Well, okay. But, I mean, she had plenty of
13 opportunity, [REDACTED] ^{Complainant 2} had plenty of opportunity to tell
14 her mother about this?

15 A Opportunity and availability are two very
16 different things.

17 Q All right. Well, explain for the folks on the
18 jury, if you will, the difference between opportunity
19 and availability, the two different things.

20 A Well, there were obviously many times that any
21 daughter would see their mother, even in a scenario
22 such as the life she's lived, the seclusion, her mother
23 being in her office, her being in her room or not home
24 or any of these events. There is obviously at least
25 some point in time where she could see her mother.

1 That's expected.

2 Any of those times, to be within just talking
3 distance of your mother would be a time to say, oh, you
4 know, I have something to talk about, I have something
5 on my chest, and these things, you know, they bother
6 me, they affect me.

7 That is believed to be an opportunity. But the
8 availability, i.e., his presence, her mother's
9 willingness to listen, her willingness and ability to
10 overcome her fears to speak with her mother, to speak
11 of her abuse, to speak of these things that have
12 happened to her, those are things that are very
13 difficult for some people to overcome. They are things
14 that not everyone can just buck up, buttercup and do
15 it. What could be easy for one person can be
16 incredibly difficult for another.

17 And I've never been in her shoes, so I can't speak
18 for her. But I've seen her evolve as a person over
19 these years, and it has never affected her any less.
20 To see how she goes about her life, I know that she is
21 strong, I know that she is capable. But that doesn't
22 mean that she was strong and capable at the time
23 opportunities arose to speak. And therein lies the
24 lack of availability.

25 Q Did you receive any instruction about your

1 testimony today, how to testify to the Court?

2 A No, sir.

3 Q You know that the witnesses were sequestered in
4 this case; is that correct?

5 A Sequestered?

6 Q Yes, sir. They were kept out of the courtroom
7 until they testified, do you know that?

8 A Yes, sir.

9 Q But you weren't kept out of the courtroom?

10 A No, sir.

11 Q You were here?

12 A Yes, sir.

13 Q When did you first tell the police about this
14 conversation?

15 A Tell the police about this conversation?

16 Q Yes. Have you ever told the police about this
17 conversation?

18 A No, sir.

19 Q And when you talked to **Complainant 2** you guys have
20 talked about this conversation?

21 A The conversation that we had with Rebecca?

22 Q Yes.

23 A Yes, sir. We have referred to it once before
24 between us.

25 Q One time?

1 A I can't recall if it was just a single time or if
2 we spoke of it before. But, yes, sir, it has been, I
3 think, several times.

4 Q And on this occasion, this was the first time
5 that -- at this luncheon, this was the first time that
6 Complainant 2 had said anything to her grandma about this?

7 A To the best of my knowledge, this was the first
8 time she had spoken to her about it, yes, sir.

9 Q And her grandmother seemed surprised at that
10 point?

11 A Yeah. At the beginning of the conversation, she
12 did seem a bit bewildered. But again, she had informed
13 Complainant 2 that it wasn't a big deal and that she should
14 just get over it and treat him like a father.

15 Q Okay. And this happened, in relation to the
16 moving out of the house, this happened either before --
17 on the day that she moved; is that right?

18 A It was the day that we were retrieving her things.
19 She was moving from the [REDACTED] address to mine.

20 Q All right. Complainant 2 was heavily involved in the
21 drama program in high school; is that correct?

22 A The drama program?

23 Q Yes, sir.

24 A No.

25 Q Stage, what's it called?

1 A Stage. No, sir, not to my knowledge.

2 Q Show choir?

3 A Show choir. Perhaps when she was younger, but she
4 never spoke of it much.

5 Q You don't know that she was heavily involved in
6 show choir?

7 A No, sir.

8 Q All right, sir. And you were here?

9 A Here is where, sir?

10 Q Let me get to the end of my question.

11 A Yes, sir.

12 Q When Complainant 2 testified about talking to her
13 grandmother; correct?

14 A In the courtroom?

15 Q Yes.

16 A Yes, sir.

17 Q And she didn't say anything about this
18 conversation; right?

19 A What conversation, sir?

20 Q The conversation that you're testifying about now.

21 A I believe she did speak of the luncheon, yes, sir.

22 Q So your testimony is that she's already talked
23 about the luncheon?

24 A Yes, sir.

25 Q And I apologize --

1 A Yes, sir.

2 Q -- but recollect for me what she said about the
3 luncheon.

4 A You want me to recall what she said?

5 Q What she said on the witness stand about the
6 luncheon.

7 A She said that she spoke to Rebecca about the
8 incidents that have occurred, and Rebecca told her it
9 was no big deal.

10 Q The same thing that you just said?

11 A I was there.

12 Q Are you sure that she didn't say that that was in
13 a phone call?

14 A Correct, it was at lunch.

15 Q So you're not talking about two separate
16 incidents, you're talking about one incident?

17 A I'm speaking of one incident that I was there for
18 with the two of them, Rebecca and Complainant 2

19 Q And not a phone call?

20 A I was not present for a phone call, no, sir.

21 MR. HILLIARD: That's all I have, subject to the
22 things we talked about at the sidebar.

23 MS. WALTER: And I was correct at sidebar.

24 THE COURT: That is correct, right. Thank you.

25 MS. WALTER: And I have no further questions.

1 THE COURT: Mr. Smallin, you may step down, thank
2 you.

3 (Witness excused.)

4 MS. WALTER: May I have one moment, Your Honor?

5 THE COURT: Um-hum.

6 (Discussion off the record.)

7 MS. WALTER: May we approach, please?

8 THE COURT: Yes.

9 (WHEREUPON, a bench conference was held off the
10 record in the presence of the jury but out of the
11 hearing of the jury.)

12 THE COURT: Ladies and gentlemen of the jury,
13 we're going to break for lunch. I'm going to let you
14 go to lunch. Now, Bobby, let's have them back about
15 1:30, okay.

16 (WHEREUPON, the jury exited the courtroom at 12:05
17 p.m.)

18 THE COURT: Ms. Bautz, could you do a search and
19 find where, in the Defendant's testimony, there was --
20 it was near the end. It was after the testimony
21 concerning, did you ever kick a dog. It was after
22 that. Near the end of the Defendant's testimony, can
23 you locate that for me.

24 We're at ease until she does it.

25 (WHEREUPON, a brief recess was taken at

1 approximately 12:05 p.m.)

2 THE COURT: Ms. Bautz, do you have it? You can
3 read it to me or play it, or what can you do?

4 COURT REPORTER: I didn't put it on the digital,
5 but I can read it to you. I got it right here.

6 THE COURT: You can read it to us, okay.

7 All right, let me just say, my recollection is it
8 was visited one time during direct; is that correct?

9 MS. WALTER: I believe so.

10 THE COURT: Okay, I think that was correct. Okay.
11 So we're looking at one place. If you would, Ms.
12 Bautz.

13 (Record read as follows:

14 "Q Other than this case, have you ever been
15 investigated by the Department of Social Services
16 for any kind of --

17 A No.

18 Q -- child abuse?")

19 THE COURT: It was other than this case.

20 MS. WALTER: Right. And this case involves Complainant 2
21 and Complainant 1 There was a finding by DSS --

22 THE COURT: We're not going to get into any
23 findings by DSS. The question is whether or not that
24 was a truthful answer.

25 Now, was it conducted following the time that this

1 case was brought?

2 MR. HILLIARD: Yes. That's the reason I asked the
3 question the way I asked the question.

4 MS. WALTER: But the question -- sorry.

5 MR. HILLIARD: There was a DSS investigation after
6 the case was brought. They brought the whole thing as
7 a big pack at one time and brought it forward. The
8 question was phrased, specifically connected to this.

9 THE COURT: No.

10 MS. WALTER: The State would disagree with that
11 because the way the question is phrased is, was there a
12 DSS investigation other than this case? And this case
13 is the sex abuse --

14 THE COURT: Yeah, but it was all one
15 investigation; was it not?

16 MR. HILLIARD: Yes, sir.

17 THE COURT: All right, I'm not going to allow
18 that. I think the prejudice far outweighs any possible
19 probative value it might have. It's just iffy as I --
20 I would have answered the question the same way, quite
21 frankly. I believe it was a correct answer. And we're
22 not going to get into rebuttal of that. Okay?

23 MR. HILLIARD: Thank you, judge. If I could add
24 for the sidebar so that the record is clear on that,
25 that the last witness that testified, the prosecution,

1 as I understand it, has checked his national criminal
2 information computer -- criminal history.

3 THE COURT: And they tell us he has no prior
4 record.

5 MS. WALTER: That's correct.

6 MR. HILLIARD: Right.

7 THE COURT: Okay. All right. Very well.

8 Okay. Elizabeth has been working further on the
9 charge. She's has added some things, she's going to
10 give it to you. When we get back from lunch, I want to
11 know what we're going to do with the charge because I
12 want to go right into closings, and then I'm going to
13 charge the jury. I will be giving them a copy of the
14 charge. And we are going to give it to them this
15 afternoon; okay?

16 MR. HILLIARD: Thank you, Your Honor.

17 THE COURT: All right.

18 (WHEREUPON, a luncheon recess was taken at
19 approximately 12:10 p.m.)

20 THE COURT: Thank you, please just keep your
21 seats. Before lunch, I think Ms. Smith sent you my
22 proposed charge. I understand the State has no
23 additions, exceptions.

24 MS. WALTER: That's correct, Your Honor.

25 THE COURT: How about the Defense?

1 MS. BRINSON: Your Honor, we would like to request
2 the portion of our reasonable doubt charge that talks
3 about causing a reasonable person to hesitate to act.

4 THE COURT: Well, the charge that I give I think
5 is more complete than the one you submitted, and it has
6 been approved for use many times, and I'm going to
7 charge that. I think it has everything that you have
8 but even a little bit more. Okay?

9 MS. BRINSON: Yes, Your Honor.

10 THE COURT: All right. No request for, and I
11 don't know if it's appropriate, the notebook request
12 for lesser included?

13 MS. WALTER: No, Your Honor.

14 MR. HILLIARD: No, Your Honor.

15 THE COURT: All right. Very well.

16 MS. WALTER: And, Your Honor, if we can just
17 clarify, I just want to make sure we're all on the same
18 page about the order of openings. Because Defense
19 presented evidence, the State goes last.

20 THE COURT: Right.

21 MR. HILLIARD: The State goes first also.

22 THE COURT: First, second, rebuttal. You must
23 open in full.

24 MS. WALTER: Open in full on first, and then the
25 rebuttal is limited to his closing.

1 THE COURT: That's correct. That's how it goes,
2 or at least my understanding.

3 MR. HILLIARD: Thank you, Your Honor.

4 THE COURT: Mr. Palmer, would you bring the jury
5 in. Have you had a chance to look at the verdict form?

6 MR. HILLIARD: Yes, Your Honor.

7 MS. WALTER: Yes, Your Honor. She e-mailed that.
8 It's fine.

9 THE COURT: Any objections? It's straightforward,
10 simple.

11 (WHEREUPON, the jury came into open court at
12 approximately 1:40 p.m.)

13 THE COURT: All right. We have our jurors and our
14 alternates back in. Ladies and gentlemen, as you heard
15 before we broke for lunch, the case has now closed, or
16 the evidence is closed. Both the State and the Defense
17 have rested. And we're at that part of the case where
18 you will hear final arguments or closing arguments by
19 both the State and the Defense. And that will be
20 followed by my charge on the law.

21 Please remember, as I said at the beginning of
22 this trial, what the attorneys may say in the closing
23 arguments is not evidence, they may not supplement the
24 evidence. The evidence you will consider is the
25 evidence you hear from this witness stand.

1 It is appropriate for them not only to comment on
2 the evidence that's been presented but also comment on
3 the law. But as I told you, again, at the outset of
4 the trial, I would be the sole judge of that, and I'm
5 sure these fine lawyers would not deviate from my
6 interpretation of the law. I've provided them with a
7 copy of my charge. They may inadvertently do it. But
8 even if that happens, you must disregard that and
9 follow the law just as I give it to you.

10 As I said, at the end of my charge, I will give
11 you my charge. Our Supreme Court has approved that
12 process, although it's not widely used. I have done it
13 for ten years, and I must charge you exactly as it's
14 set forth in my transcript. So I'll have to read it to
15 you, and I will be doing that.

16 Please understand that a charge should be taken
17 together, you should consider the whole charge and not
18 just focus on a single sentence or a single paragraph,
19 but consider all parts of my charge together because
20 they are equally important.

21 The way a case progresses often determines the
22 order of argument. And that's part of our rules. But
23 in this particular case, the first argument or closing
24 remark will be made by either Mr. Martin or Ms. --
25 going to be by Ms. Walter. She will open in full.

1 That will be followed, of course, by
2 Mr. Hilliard's opportunity to charge. I understand he
3 is going to argue. He doesn't have to, but I
4 understand that he will. And then the State will have
5 a brief rebuttal, and then I will charge you on the
6 law.

7 Now, Ms. Walter, if you would.

8 MS. WALTER: Thank you, Your Honor.

9 CLOSING ARGUMENT BY THE STATE

10 MS. WALTER: What are some things that every child
11 should have? A roof over their head and food on their
12 plate. Well, **Complainant 2** and **Complainant 1** had that, but at what
13 price? And more importantly, what didn't they have?
14 They didn't have a home, someplace where they were safe
15 and secure. They didn't have a mother who was present
16 and watching over them and protecting them. And they
17 certainly didn't have a father that they could trust
18 not to abuse them physically, mentally, and sexually.

19 In his opening, my partner said the girls were
20 dealt a bad hand. That's a bit of an understatement,
21 don't you think? They never knew their biological
22 father, and then they did have the good fortune to have
23 Billy Eller come into their life, the only positive
24 father figure that they had ever known.

25 And, yet, a month after they moved to South

1 Carolina, Billy was killed, run over by a motorcycle.
2 And it devastated the girls, it devastated the family.
3 And at that point they probably thought life cannot get
4 worse than this.

5 And then they met the Defendant. And that's when
6 the horrors began. That's when life really started to
7 get bad. Now, at that point, Ana was hooked on
8 cocaine, booze, pills, and by her own admission, she
9 retreated into her office. She would be in there 75 to
10 90 percent of the time, headphones on, just escaping,
11 escaping from the dynamics in that household, escaping
12 from the Defendant's rage.

13 But that also took her out of her role of
14 protecting the girls. And you may not be happy with
15 how she was then, but she is supporting them now
16 because as soon as the truth came out, she has done the
17 right thing. She supported them. She's here with them
18 now. And she got on the stand and told you the truth,
19 the good, the bad, and the ugly, with all of her
20 shortcomings.

21 So what is the truth? Well, the truth is that
22 that Defendant preyed on two young girls. He isolated
23 them from their mother, from their brother -- brothers,
24 excuse me, and from each other. So even though they
25 lived in a home, a house, of other people, they were

1 alone. They had no one that they could count on.

2 Having isolated them, he began to groom them. How
3 did he groom them? Well, and some of this you may
4 remember from when Ray Olszewski talked. You begin by
5 trying to normalize or sexualize the relationship. So
6 when Complainant 1 was seven and Complainant 2 was nine, changing in
7 a room with a closed door as they should be able to do,
8 the Defendant and Allen walked in and just stared at
9 them as they frantically tried to cover themselves and
10 begged them to leave. And what did the Defendant do?
11 Stood there and stared at them.

12 And when the girls didn't tell what had happened,
13 the Defendant knew he could go farther. And farther he
14 did go. He supplied them with alcohol and marijuana to
15 lower their inhibitions. He made Complainant 1 out to be a
16 pathological liar so that if she had the courage to
17 tell, no one would believe her.

18 Having groomed them, having put these pieces in
19 place, the abuse escalated even more. When Complainant 2 was
20 14 years old, the Defendant would get her high. And
21 after he got her high, he would reach his hand into her
22 shirt underneath her bra and manipulate her breast. Is
23 that the way a stepfather should act?

24 And that continued on for some time. And Complainant 2
25 at first couldn't say -- couldn't stop it. She

1 couldn't tell her mother. But somehow she was able to
2 get him to stop at one point. And she threw herself
3 into school, and she threw herself into work, and when
4 she wasn't doing one of those two things, she isolated
5 herself in the house as far away from the Defendant as
6 she could get.

7 There were a number of reasons that Complainant 2 did not
8 tell what happened at that point. Number one, she
9 didn't know if anyone would believe her. And even if
10 they believed her, she didn't know if they would care.
11 And we know that when she tested the waters down the
12 road and told her loving grandmother what the Defendant
13 had been doing to her, her fears were realized. Her
14 grandmother believed her but said, it's not that bad,
15 get over it, love your father.

16 So her worst fears came true. That was one reason
17 that Complainant 2 didn't tell at first. She also didn't know
18 until later that she was not the only victim. And I
19 think she testified on the stand, you know what, it was
20 over and done with, it was just me, I figured let's
21 just move on. She didn't know that when she was able
22 to get the Defendant to stop, life became hell for
23 Complainant 1. Because Complainant 1 got it ten times worse, if
24 that's even possible.

25 He started with Complainant 1 in much the same ways,

1 rubbing her breasts, rubbing her leg. And then he
2 quickly escalated to, give me a hand job, give me a
3 blow job, again, things that no stepfather should do.
4 And when Complainant 1 didn't tell, and when Complainant 1 at 14
5 years old, wasn't able to stop him, he took it one step
6 further, and he began to rape her.

7 And I use that word. You know, the title of the
8 crime is criminal sexual conduct. I think that sounds
9 too sterile for what this is. This is rape. Complainant 1
10 told you about the first time that her mother and
11 Complainant 2 had gone to Dillon to pick up her brothers. She
12 was in the house alone with the Defendant. She was
13 upstairs in her room, he was downstairs showering.
14 He came up into her room naked. She screamed, get
15 out, get out. He pinned her to the ground, he shoved a
16 gag in her mouth, he used the force of his weight on
17 her legs, and he raped her. And she laid there and she
18 cried and she prayed that it would just be over.

19 And in the background, while she is laying there
20 crying and praying, she could hear the Defendant's
21 phone ringing. He was too busy raping her. He didn't
22 want to stop that to answer his phone.

23 But when he finally finished, he answered the
24 phone, and it was Ana asking, do you want anything to
25 eat? So what does he do? Just to add insult to

1 injury, yep, get me something, but don't get Complainant 1
2 anything. She's not a good girl. She doesn't want to
3 spend time with me, so she doesn't deserve to eat.

4 And that's criminal sexual conduct with a minor in
5 the second degree. And the judge is absolutely the
6 judge of the law, and he'll explain it, so I'm not even
7 going to go into the legal explanations. But I am
8 telling you that that is what criminal sexual conduct
9 with a minor in the second degree is.

10 And what Complainant 1 told you was corroborated by
11 Complainant 2. Complainant 2 was on that trip with her mother, and
12 she remembered her mother trying to call the Defendant
13 several times and the Defendant not picking up. And
14 she thought that was odd because the Defendant always
15 had several things with him, his video game controller,
16 his bowl to smoke marijuana, and his phone. He never
17 let that phone leave his side, and he was always quick
18 to answer the phone. And she could hear him say, don't
19 get Complainant 1 any food, she doesn't deserve it. So Complainant 2
20 corroborates what Complainant 1 said, if you even needed that
21 corroboration.

22 And that rape didn't happen just that one time.
23 By Complainant 1 estimation, and Lord knows, she's tried her
24 hardest to forget it, it happened at least 12 times.
25 Now counsel is asking her, well, one time you said it

1 was five, one time you said it was five to ten, now
2 you're saying it's 12. Once you get past one, does it
3 matter? Does she need to have been raped five, ten,
4 twelve, a hundred times? One time is enough, and one
5 time is crime enough.

6 So this continued until Complainant 1 was able to escape.
7 And once she was able to escape, she left the letters.
8 And you all read these letters, and you'll have them
9 back in the jury room with you. And she testified that
10 she had written these letters six months before she
11 left. And this -- she was not able to leave these
12 letters until she was safely away from the home.

13 Again, at first, for a very long time, Complainant 1 and
14 Complainant 2 didn't realize that they were suffering the same
15 abuse from the same man. They both kept that secret.
16 They wanted to keep the peace, and they were trying to
17 keep their family, as fractured as it was, together.

18 But one of the several times that Complainant 1 thought
19 her stepfather had impregnated her when he raped her,
20 it all came out. And yet Complainant 1 still tried to keep
21 the peace and not tell. Look, you know what, I think
22 I'm pregnant and I need your help. But it was just
23 some random guy down at the lake, you know, let me pull
24 a description out of the air.

25 She still wasn't ready to tell. And then Complainant 2

1 trying to comfort her sister, said, I'll tell you
2 what's happening to me. And all of a sudden, they
3 realized that they weren't alone, that it had happened
4 to both of them. And they made a plan to tell their
5 mother.

6 There was a day they had a dentist appointment
7 set, and Complainant 2 told you, we knew that we would get the
8 whole day off, we'll go to the dentist, we'd have a
9 nice breakfast. The Defendant was working, so we'd
10 have plenty of time to tell mom. And, lo and behold,
11 the Defendant came home early, and they weren't able to
12 tell her.

13 And so the abuse of Complainant 1 continues. Then
14 Complainant 2 as she is getting older, she's graduated early
15 from high school, says, okay, I'm in a position where I
16 can -- I'm just going to leave the home. But being the
17 smart girl she is, she's Googling what's going to
18 happen if I leave. She wasn't old enough to leave, and
19 she was afraid that the Defendant, who was a tyrant in
20 that household, would have her friends arrested.

21 And then, because she wasn't old enough to leave
22 the home, she would be dragged back to the home, and
23 Lord knows what would happen at that point. So she
24 didn't leave quite yet. She waited, she worked, she
25 saved her money until she was able to leave. And then

1 she told you, once she was able to leave, she left and
2 she never looked back.

3 And I think you saw the pain that that caused her,
4 that she left her sister in that situation. But she
5 had to survive. And once she was able to leave, that's
6 when she turned to someone that she thought she could
7 trust, someone that would believe in her, someone that
8 would help in this situation. And what does that
9 person say? I've been through worse, get over it. Is
10 that an appropriate response when someone tells you
11 that their stepfather has been molesting them?

12 Now, during his cross-examination of Complainant 2
13 counsel seemed to suggest, well, you're just making
14 this up because it was an easy way to get rid of the
15 Defendant. Well, there are a number of problems with
16 that theory. Number one, he was the sole provider, as
17 I said. So if they got rid of him, they would lose the
18 house over their head and also support because,
19 remember, Ana wasn't working. The Defendant was the
20 sole source of support in that family, everything was
21 in his name. So by telling they would have lost
22 everything that they have.

23 Another problem with that, if they wanted so badly
24 to get rid of him, why did they wait until they were
25 away from him? Because at that point they didn't need

1 to get rid of him. They had already escaped.

2 And then, the biggest problem with that theory
3 that this was an easy way to get rid of the Defendant,
4 who thinks that what those girls did, getting up on
5 that stand in front of 14 strangers and telling the
6 most horrific, intimate details of their life, who
7 thinks that was easy? If that's the easy way out, I
8 would hate to see the hard way.

9 Now, let's go back to Ana's testimony for a minute
10 because she also corroborates what Complainant 1 said. You
11 may remember that Ana talked about a time before she
12 knew what was going on, she was cleaning up, and she
13 found a towel and it was covered in semen. And she
14 said something to the Defendant, who said, oh, no, I
15 just masturbated and it went into the towel. Nothing
16 else was said about that until when Ana found out about
17 what was really going on and she confronted the
18 Defendant.

19 And at that point, and at that point only, he told
20 the truth. No, that was actually a blow job from
21 Complainant 1 that went into the towel. He told the truth
22 when he said, I've been touching Complainant 2 breasts. He
23 was telling the truth when he said, I went farther with
24 Complainant 1. He was telling the truth when he said,
25 although he nicened it up, he had sex with her. He

1 raped her, numerous times. Sometimes with a condom,
2 sometimes without. That was the first, last, and only
3 time that the Defendant told the truth.

4 And he also claimed, if you recall from Ana's
5 testimony, that it was consensual sex, and it was all
6 Complainant 1 idea. And I want you to think back to when
7 she was on the stand and ask yourself, did she have the
8 demeanor of someone who was asking her stepfather to
9 rape her? I would suggest not.

10 Most 14-year-olds, which was the age that she was
11 when she was first raped, are dreaming of their first
12 kiss. Who is it going to be with, where is it going to
13 be, when will it be, how will it make me feel. But by
14 the time that Complainant 1 was 14, she already had her first
15 kiss, and it was by the Defendant, and it wasn't
16 romantic, and it wasn't sweet, and it wasn't what she
17 wanted, and it wasn't what she dreamed of.

18 And to make matters even worse, the Defendant not
19 only was her first kiss, he took her virginity.
20 Something that was hers to give, not his to take.

21 Now, defense counsel said a number of things in
22 his opening. He said, I'm just going to point out one
23 thing that I disagree with, because he said this was a
24 "he said, she said" case. But in reality, it's a "he
25 said, she said, she said, and she said" case. They all

1 told you what went on in that house of horrors. They
2 all told you that the Defendant molested Complainant 2 and
3 raped Complainant 1. So that's the one thing I disagree with.

4 But he also said a number of things, surprisingly,
5 that I agreed with. The first one I think I might
6 agree with, it's taken a long time to get here. The
7 other thing that he said is, someone is not telling the
8 truth. Well, the State would submit to you that the
9 someone -- well, besides the grandmother -- the mother,
10 who wasn't telling the truth, the Defendant didn't tell
11 the truth either.

12 And then the last thing that he said that the
13 State agrees with is he said either the Defendant is a
14 monster, or he is not. Well, I think Complainant 2 and Complainant 1
15 know which part of that is right. I know Ana knows
16 which part of that is right. And after hearing all of
17 the testimony, I'm confident that you know what part of
18 that statement is correct. And you can tell us that
19 all by finding the Defendant guilty of both charges.
20 Thank you.

21 THE COURT: Mr. Hilliard.

22 CLOSING ARGUMENT BY THE DEFENSE

23 MR. HILLIARD: Thank you, judge. Thank you, thank
24 you all for going through this process. It's not been
25 easy. It's not been pleasant, and it is

1 extraordinarily important. It's a burden. It's a
2 difficult thing to do, to be where you are. Certainly
3 that's true. We can't have this process without you.
4 It is a responsibility that you have to make a decision
5 in this case and in your special place. You know, the
6 judge has said to use your common sense in making a
7 decision about what's credible and what's not credible,
8 to use your common sense.

9 At the same time, you apply that common sense to a
10 framework that the judge is going to tell you about,
11 which is the constitutional framework of the criminal
12 justice system. And the same things that I told you in
13 the very beginning is that Scott, the Defendant, is
14 presumed to be not guilty. It is a presumption of
15 innocence.

16 And what that does is that places the entirety of
17 the burden, the responsibility of going forward, on the
18 State. They have the job, if they can, and if they do,
19 to show you beyond a reasonable doubt that, in fact,
20 the Defendant committed these crimes. Not beyond any
21 doubt, but beyond a reasonable doubt.

22 So it's not go back into the jury room and see
23 what you believe or see kind of who you think is
24 telling the truth based on an equal determination.
25 They have to prove beyond a reasonable doubt, which is

1 a higher burden than just which side is more likely to
2 be telling the truth.

3 So how do you -- what is it that you have -- and
4 remember, they have the burden of going forward. They
5 are the ones who have to bring the information to you
6 to prove this case. So what do you have from the State
7 to cause you to find the Defendant guilty?

8 Now, the judge is going to tell you and the
9 indictment is going to charge two separate criminal
10 offenses. One of them is criminal sexual conduct in
11 the second degree, one of them is criminal sexual
12 conduct in the third degree. And in order for you to
13 make a decision beyond a reasonable doubt as to those
14 events, there are two parts of that, that is, one part
15 is was there a criminal sexual conduct in the second
16 degree.

17 And the charge is more specific, that is, if you
18 are going to find that criminal activity occurred,
19 which is criminal sexual conduct in the second degree,
20 you're going to have to find that that activity
21 occurred between [REDACTED] the [REDACTED] 2013, and [REDACTED]
22 the [REDACTED] 2015.

23 So you're going to have to search your
24 recollection to go back and decide whether the factual
25 criteria as described by the judge to you occurred

1 between those two dates, [REDACTED] the [REDACTED] 2013, and [REDACTED]
2 the [REDACTED] 2015. And if you don't know the answer to
3 that question, then that is the end of your inquiry.
4 Because that's the charge, which is a big 'ol period of
5 time, but that's still the charge. If you believe
6 something happened before then or after then, that's
7 not what's charged.

8 Criminal sexual conduct in the third degree. And
9 the second degree is as to [REDACTED] Complainant 1. So [REDACTED] Complainant 1
10 is that charge. As to the third degree, as [REDACTED] Complainant 2 and
11 you're going to have to find that that event occurred
12 between [REDACTED] the [REDACTED] 2010, and [REDACTED] the [REDACTED] of 2012. So
13 if you can't answer that question beyond a reasonable
14 doubt, then it's your obligation to find the Defendant
15 not guilty without any further inquiry.

16 Now, you may figure, well, what the heck? How do
17 they come up with those dates? Those are the
18 birthdays, [REDACTED] and [REDACTED]. That's how
19 they came up with those. It's an important inquiry,
20 and that's going to be part of your decision-making.

21 I will submit to you that the information that has
22 been provided to you is so distorted and so
23 inconsistent and so vague that it is impossible to make
24 that decision. But that's not for me to say, that's
25 for you. There are going to be 12 of you when this

1 starts in the jury room, so that's a decision that the
2 12 of you are going to need to make.

3 The next case thing is, and the prosecutor in this
4 case has produced information for you and has told a
5 better story than the witnesses did. One of the things
6 that I'll tell you at the outset is that I'm only one
7 person; right? That's easy. There are 12 of you.

8 Your recollection of what the information -- the
9 information comes from the witness stand. Somebody is
10 not telling the truth, that's for you to decide.
11 Information comes from the witness stand. When I say
12 for you what I recollect the testimony was, it's my
13 best recollection.

14 At the same time, if you recollect it differently,
15 let me say I'm not trying to mislead you, I'm not
16 trying to say something that's outside the record or
17 wrong. If I'm mistaken, I'm mistaken. And I will
18 pledge that to you and use your -- the 12 of you have a
19 better recollection between all of you, obviously, than
20 I would. So if my recollection is different than what
21 yours is, then use your recollection. If there is a
22 question about what the testimony was or something like
23 that, then you can hear it again if that's something
24 that you need to do. If I tell you something or
25 somebody else says something, and y'all have a

1 conversation about it and nobody can agree on what got
2 said, then you can certainly listen to the testimony
3 again.

4 One of the things, the very first time I heard the
5 word "prey" was in the prosecutor's remarks, I don't
6 remember anybody but her saying anything about preying.
7 And, you know, one of the things that is a telltale
8 sign in this case is that everything bad that happened,
9 no matter what it was, everything bad that happened is
10 Scott's fault. Everything bad that they could think of
11 to tell you about him, they have told you, even when
12 the things are not consistent with each other.

13 And, you know, not only did he touch and rape and
14 smoke marijuana all day long and give these
15 stepdaughters marijuana and alcohol and do -- not only
16 did he do all those things, but that wasn't enough. He
17 kicked the dog. Now, what in the world does that have
18 to do with this case, he kicked the dog? How is that
19 even a thing? What has that got to do with this?

20 Now, you know, the prosecutor says, well, they
21 wouldn't want to get rid of him because he was the
22 provider. But, you know, yet at the same time, they
23 described a hundred different -- a hundred is maybe an
24 exaggeration -- but they described a lot of things that
25 would be a good reason to get rid of him if those

1 things were true, a lot of those things.

2 But what did he tell you? He provided for his
3 family, he gave them the money, he provided child
4 support, he upped it when he was ordered by the Court
5 to pay the child support.

6 Now, when the prosecutor is talking about
7 isolation, right, the mom is isolated. And she is --
8 the first part of the conversation is, well, she's --
9 but what about this. Before I get off of that, you
10 know, if the burden of going forward is, again, on the
11 prosecution, right, what did they bring you? What
12 evidence, what -- are you satisfied with the
13 inconsistent, vague, contradictory stories that you've
14 heard?

15 There is not a piece of evidence in this case that
16 wasn't brought by the Defense. The letters, six months
17 ago she wrote -- or six months from the time that she
18 ran away from home, she wrote these letters, and then
19 she left them and ran away from home. And everything
20 else is conversation.

21 There is no way to figure out if it's true or not.
22 And it's internally and externally inconsistent. Think
23 about what everybody has said in connection with this
24 case. Who brought you the evidence? You know what,
25 the Defense doesn't have any burden of going forward.

1 The Defense is the one who says, well, let's look at
2 the house. You know, the testimony is, well, it
3 happened in the living room, and Ana was in her office.
4 And it happened in the bedroom.

5 Well, you know, how can a jury have a framework of
6 understanding of what you're really looking at if you
7 don't have any evidence? Why is the Defense bringing
8 you the evidence in the case? Because we want you to
9 see the truth. We don't have any burden going forward,
10 but this is a scary place to be. Just like the Clerk
11 of Court said, being the Defendant is a scary place to
12 be. We've got to bring you the evidence because they
13 didn't. Whose job was it to show you what happened?
14 Their job. Who's showing you? Us; right?

15 Does it make sense? Years, years in this little
16 tiny house, he's having sex with her. Nobody knows.
17 They are -- you know, and back to where I started, Ana,
18 you know, in the beginning, the prosecutor says, well,
19 Ana, cocaine, high on cocaine, and got a cocaine
20 addiction and then she takes the pills.

21 Well, she didn't start taking the pills until she
22 broke her leg. And then she's drinking alcohol. So
23 she's in her office drinking alcohol, taking pills,
24 doing cocaine. She doesn't know what's happening in
25 the case. She doesn't know any of the things that are

1 going on.

2 But then who -- so, okay, so Ana is all that.

3 Now, who does the isolation? Why, that's Scott's
4 fault. It's Scott's fault somehow that his wife is in
5 the office doing pills and drinking alcohol and smoking
6 marijuana and playing on her video games. That becomes
7 his fault. They are just blaming everything that could
8 possibly come up on Scott.

9 And what's another telltale sign of the
10 prosecution in this case? Defendant's Exhibit No. 4 is
11 a photograph. And you guys have seen this, but it's a
12 photograph of the house with the square footage and
13 those types of things on it. So the prosecutor says,
14 well, there is unfinished rooms in there, there were no
15 unfinished rooms in your house.

16 Is that a fair comment? It's the kids' rooms.
17 Are they being genuine with you? Are they being
18 serious, or are they just trying to blow smoke? The
19 whole thing is smoke. You know, look at this and see
20 unfinished rooms and say, oh, well, I can blow some
21 smoke on this, I can try to say there's something wrong
22 with it. I can get the jury not to look at that and
23 think about it, it's inaccurate, those guys are doing
24 the wrong thing.

25 Who brought the pictures? We brought the

1 pictures. Why did we bring the pictures? Because we
2 are scared, right. The story is that the eldest
3 daughter is upstairs in her room and that Scott is
4 downstairs smoking marijuana, drinking liquor, at the
5 TV, and somehow he hears her on her phone. Defense
6 Exhibit No. 6. She's upstairs. You know what, if the
7 story doesn't make sense, maybe it's not true. If it
8 doesn't make sense, it's not true.

9 And how do you decide? Well, you know, look at
10 the stairs, look at the stairs. Does it make any sense
11 to you that somebody on a phone upstairs in a bedroom
12 is going to be heard by somebody downstairs on the sofa
13 who's drinking liquor and smoking marijuana, and they
14 are at the TV? Does that make any sense? Well, folks,
15 that's just part, that is -- I don't even know that
16 that's the tip of the iceberg.

17 But that's -- when you look, the things that are
18 consistent, the things that are consistent, the things
19 that are out there connected to this case, what do they
20 say? He raped me, he raped me. The first time he
21 raped me was the time with Latta and Dillon, right?

22 Well, there was also that time that I got drunk,
23 and I was in the tub -- Scott got me drunk, I was in
24 the tub, and I had semen all inside of me, and that was
25 the first time. So which time was the first time?

1 Again, if I'm misrepresenting, y'all remember because
2 this is a lot. But which time was the first time?

3 The momma says, I never saw her drunk. The
4 youngest daughter says, I was naked in the bathtub,
5 peeing in the bathtub, I was drunk, and my momma and
6 daddy came in there. Inconsistencies, inconsistencies.

7 What's true and what's not true? The Latta story,
8 the Dillon, Latta story. Specifics, the first part of
9 that story, the younger daughter says when they left,
10 Scott was in the tub or in the shower, and he came
11 upstairs and raped me, [REDACTED] Complainant 1 says, he came
12 upstairs and raped me shortly after they left. Right?

13 He was in the shower when they -- if you remember
14 back, he was in the shower when they left, finished his
15 shower, however long it took, came upstairs, raped me,
16 the phone rang. But then what does the older daughter
17 say? The older daughter says, we were on the way back
18 from Latta. The phone rings.

19 That's the thing, right? The important part of
20 that whole story is that phone ringing, and he's
21 calling or she's calling and he's not answering, that's
22 how they put the rape together. These -- remember when
23 they say they looked up the law or one of them, the
24 elder daughter looked up the law on kidnapping. They
25 put this story together. And you can tell that it's

1 put together by the way that it works and by the way
2 that it fails.

3 The phone call was an important part of that
4 because they want you to believe that that phone call
5 that he didn't answer means that he was doing something
6 else which was raping Complainant 1. They want you to believe
7 he was raping Complainant 1 he didn't answer the phone, he
8 always answered the phone, so that's what happened.

9 The problem with that is that one of them said
10 that it happened right after they left, and the other
11 one said that it happened on the way back. Right?
12 Inconsistencies, inconsistencies.

13 The only thing they want you to look at is, he
14 raped me. Now, I will disagree with the prosecutor. I
15 will say one rape is too many. One rape is not enough,
16 one rape is too many. Any rape is too many. Ain't no
17 question about that. It's too many.

18 The thing is that if you're telling the truth, you
19 know -- let the expert say what the expert will; right?
20 He says -- you know, he's got an answer for everything
21 that might be an inconsistency in the statement or
22 anything that might happen. Let him say what he will.

23 If you're getting raped, then I would submit to
24 you that you would remember whether it's five, whether
25 it's ten, or whether it's twelve. I will agree that

1 one -- well, again, I won't go back. The point is, is
2 it the truth? One's too many, but none, and here we
3 are. Here we are.

4 There's a divorce case, right, you heard about
5 there is a divorce case. So everything bad happens
6 because of Scott. [Complainant 1] goes to the rape crisis
7 center and says, I've been raped. And they do an
8 examination, and they do a test to see if she has a
9 disease, a sexually transmitted disease, and she has
10 chlamydia. And she calls her friend and says, Scott
11 gave me -- of course it's Scott. He gave me chlamydia;
12 right? He gave me chlamydia. Well, he didn't. He
13 never had chlamydia.

14 And then when that comes in, of course, the next
15 thing that she says is, well, it wasn't Scott, it was
16 somebody else. I thought it was Scott, but it wasn't
17 him. But when I found out that it wasn't Scott, I went
18 and told my friend, I apologize. Not I apologize,
19 Scott, because I told people that you gave me
20 chlamydia, I apologize to my friend for mistakenly --
21 well, does that make any sense? Gee, I'm sorry, I told
22 you the wrong person gave me chlamydia. That's crazy;
23 right?

24 And not only that, but we find the witness, we
25 subpoena the witness, the witness comes in here and

1 says, yes, she told me that Scott gave her chlamydia,
2 and, no, she never came back and said anything else.

3 Now, the government didn't bring you that witness;
4 right? They had a statement from her, they talked to
5 her. They didn't bring you that witness because they
6 don't care whether you hear from that witness or not
7 because it doesn't fit their story; right? They don't
8 want you to hear from that witness. We had to get that
9 witness. She had already talked to police way back.
10 We had to get that.

11 Now, remember, then the judge tells you what we
12 got to do, it's nothing. What have they got to do?
13 They got to bring it to you because they are the
14 government. They have a responsibility to do the right
15 thing; right?

16 But they didn't bring you all of the evidence.
17 They didn't bring you any evidence. The witness that
18 told you something inconsistent with their story, they
19 didn't want you to hear that. They don't want you to
20 have that witness.

21 Now, all right. When you're listening and
22 thinking about all of these things -- and this is the
23 one thing that I want to reiterate, that my
24 recollection and your recollection may be different,
25 but, you know, when we had -- we were finished with the

1 case. Remember that, when the witness had said the
2 elder daughter had said, I had called -- this is my
3 recollection. I had called my grandmother because my
4 father was being mean about me moving. And my
5 grandmother, I knew, had a trailer, and so I call my
6 grandmother and said -- and was talking to her, and I
7 told her about this assault.

8 I told her that I had been touched
9 inappropriately, and she said, well, you know, I don't
10 really care about that. But she did help her move, and
11 she did the next day have lunch; right? So that was on
12 a phone call. And remember, again, if you don't
13 remember it the way I do, please remember it the way
14 that you do. But my recollection of the testimony is
15 that the elder daughter says that conversation was on a
16 phone call.

17 Well, they have another witness here, and he's
18 been sitting here the whole time. And suddenly, after
19 we are finished with our case, they call him up to say,
20 well, I was there at the luncheon. And when the elder
21 daughter told grandma that it happened, I was there at
22 that luncheon.

23 Well, folks, did it happen at the luncheon, or did
24 it happen on the phone call? He wasn't on the phone
25 call. Let's talk about that for a minute while we're

1 at this spot. And I know I'm jumping around, but y'all
2 bear with me, please. I promise, I'm doing the best I
3 can.

4 The witness that came and testified at the very
5 last, he's there. Let me find that. Vega; right?
6 Remember Vega? Vega comes. What I want you to think
7 about in this is the context of the demeanor of the
8 witness, Vega. Vega comes, and he comes up here, and
9 he's going to tell you the story, the tale. That's
10 what he called it. He's going to tell you the tale,
11 Vega. How's he doing? Fantastic. Do you remember
12 that? Fantastic. He's doing great, wonderful. How
13 are you doing?

14 Well, and by the time -- you know, and if I was
15 mean to him, then remember that. By the time he
16 finished testifying, he was about melted; right? Is
17 that real? Was that real? Think about it. Think
18 about the demeanor of the other witnesses. You know,
19 and again, you know, the expert says, well, you can't
20 tell what these people are going to do. They are going
21 to cut their self.

22 Well, what about that? Do people that are not
23 sexually assaulted cut themselves? Sure, they do. All
24 right. Well, what does that mean? Nothing, but there
25 it is. The demeanor of the witnesses changed depending

1 on what was happening.

2 The expert witness said, well, you know, that's
3 sexual assault. People, things happen to them. Vega,
4 he's got no sexual assault. But when the government
5 puts up the witness, they are vouching for him. Do you
6 believe what he said? Do you believe -- think about
7 the way that he said it. He was pleased as punch to be
8 up there talking, having a chance to be here telling
9 that story, to benefit his girlfriend. Happy as a
10 clam. That's for to you decide.

11 But -- and remember, everything that I'm saying is
12 in the context of it's not a balance; right? Beyond a
13 reasonable doubt. Not a question of whether you
14 believe one side a little more than another, because
15 again, we don't have to prove anything, they have the
16 burden of proof.

17 There is a lot, and I apologize for the length of
18 time I'm taking, but I just don't want to leave
19 anything out. And there is a lot because there is just
20 a -- you're probably going to remember more
21 inconsistencies than I can tell you about. I did my
22 best to write them down and keep up with them as best I
23 could. But, anyway, one of the things that I believe
24 is important and I'll ask you to recollect is that
25 Anatasya, the mom, testified that she talked to both

1 Complainant 1 and Complainant 2 before any of those folks talked to
2 the police..

3 Now, she says that that was so that, you know, she
4 could get the story, right, from Complainant 1. But what did
5 she have? She already had, according to her -- now, of
6 course, what we say is that Scott never said it. What
7 his momma says is, Scott never said it. If he was
8 going to say it then, why not say it now? Anyway, he
9 says he didn't say it. She says he didn't say it.
10 Anatasya says he confessed, she had the letters, but
11 she wanted to talk to Complainant 1 and she did talk to
12 Complainant 2 before they went to the police..

13 All right. Well, one of the things that we were
14 talking about, because this is going to be in your
15 head, and it's not a part of the proof, but it is a
16 part of human nature, why would these people tell
17 anything other than the truth? You know, why would
18 they do that? Why would they go through this part?

19 Well, one of the things was, as the prosecutor
20 indicated, was that, you know, Complainant 1 went from being
21 the daddy's girl to the one that everybody treated like
22 garbage. Remember when she said that, when she said
23 she was the trashy one? She was the daddy's girl with
24 Billy, Complainant 1 and Billy were inseparable. Complainant 2 says
25 that Complainant 1 was a daddy's girl.

1 A telltale sign of one part of this was when
2 Complainant 1 was running away from home, the first person
3 that she talked to was her grandmother. She had a
4 chance to talk to her mom, and she had a chance to talk
5 to her father, she had a chance to talk to anybody that
6 she wanted to, but the first person she talked to was
7 her grandmother. She was jealous.

8 She tried to be like her sister and make good
9 grades. She was envious of her sister's relationship
10 with her parents. She wanted to feel equal in the
11 house. Sometimes -- again, if you recollect this
12 different, let me know. But sometimes Complainant 2 was the
13 favorite, she said, Complainant 1 said, and sometimes the boys
14 were the favorite, but Complainant 1 was never the favorite.

15 Ana says that Complainant 2 was just a great, mature kid
16 who would do the chores and clean without you asking,
17 got good grades. Complainant 2 graduated from high school
18 early. What does everybody say? Everybody says that
19 Scott is a mean -- and I can only say this in the
20 courtroom with quotation marks -- Scott is a mean
21 asshole.

22 All right. Well, and then they also say that each
23 one of them put up with him, remember this testimony,
24 each one of them put up with him because they thought
25 the others were happy. Is that consistent, they

1 thought the others were happy? When everybody is
2 miserable, everybody runs away from Scott, he's there
3 smoking and drinking and kicking the dog, everybody
4 runs away. But there was testimony that they thought
5 everybody else was happy. Complainant 1 said that she
6 thought, for once, her mom was happy. Anatasya said
7 she put up with Scott because she thought the kids were
8 happy. Well, which is it? You know, inconsistent,
9 inconsistent.

10 On the one hand, she put up with Scott because she
11 thought the kids were happy. On the other hand, he's
12 beating them up against the wall, he slapping them,
13 he's knocking them down. You know, he's going through
14 the house, making them wash all the dishes and dirtying
15 dishes for no reason. He is a terrible, monster guy.

16 She thought the kids were happy? Where did that
17 come from? How could they be happy with their brains
18 getting knocked up against the wall and dragged and
19 choked and all those things? How is that possible?

20 They all avoided him. Complainant 1 is a liar; right?
21 She is known as a liar, she is trying to improve her
22 reputation, she is trying to improve her reputation in
23 her family. Remember when she said that. She is known
24 to be a liar. Well, what do they say about that? Of
25 course, what else could it be? The only thing, the

1 major theme in this case, it's Scott's fault. Scott
2 created the notion that Complainant 1 is a liar.

3 Does that make any sense? I mean, how is that
4 even possible? Complainant 1 says that, well, Scott would
5 say, where were you, when he knew that she was with
6 him. The only place he ever was was the living room.
7 If she was in the living room and he was in the living
8 room, how could he ever say, where were you, because
9 they're in the living room? Does that make any sense
10 to you?

11 Complainant 1 is a manipulator. She, under her
12 testimony, and again, I'm not suggesting that any of
13 the things that they said is true because how do you
14 know? Here's the deal, here's the thing is how do you
15 know? How can you tell if they are telling the truth?
16 What indicia of reliability, what thing can you hang
17 your hat on to cause you to believe that anything they
18 say is true? How is that possible?

19 Complainant 1 goes to her sister and says, I was raped by
20 the pond, and I need a pregnancy test. The sister
21 says, trying to get along with her and show her, that
22 she has got some situation, too. And this is the first
23 time this comes up. Complainant 1 was raped by the pond, and
24 she goes and tells her sister, and her sister says,
25 well, you know, I was molested by our father, and

1 Complainant 1 says, well, I was molested by our father, too.

2 In fact, that's why I need this pregnancy test.

3 The things that she says are not true; how can you

4 believe what she says? How is it possible? The

5 business about when we were going to tell, they were

6 waiting for Complainant 2 to turn 17 and run away, and they

7 couldn't figure that out. They couldn't -- you know,

8 there was kidnapping involved, so they couldn't wait.

9 And then, of course, once Complainant 2 got away, then she

10 just forgot about Complainant 1 but, oh, that's so terrible

11 now. She just forgot about her.

12 And then Complainant 2 and this was the conversation,

13 the testimony that we had regarding Complainant 2 And I know

14 that I'm going through a bunch of this, I just don't

15 have a choice. Complainant 2 says in one part of her

16 testimony, well, I had to do things to get the pot.

17 But then when she realized what she had said, that

18 wasn't what she meant, that she had to do things to get

19 the pot. She wasn't addicted to pot, is what she said.

20 But then on the other hand, instead of having to

21 do things to get the pot, he would give her the pot in

22 order to do things to her. But she didn't say that

23 until she realized how the first thing she said

24 sounded.

25 The stories that you have heard have changed over

1 time and have changed even in this courtroom as how
2 they sounded comes out. She says, Scott never --
3 remember this -- Scott never allowed her to be alone
4 with her mother. But they were always cooking and
5 cleaning when he was gone. I mean, Scott had a job, he
6 worked every day. He had different shifts. He was
7 gone sometimes in the nighttime, sometimes in the
8 daytime. He was gone. But, of course, Scott never
9 allowed her to be alone with her mother. How is that
10 even possible? How is that even possible?

11 She was suspicious about Scott and, in fact, at,
12 you know, depending on which time you're listening to,
13 Complainant 2 is suspicious about Scott, and she has heard
14 from her sister the story. And, yet, when she's
15 talking to the police, she says when Complainant 1 finally
16 tells the police, she didn't believe her at first
17 because she lies a lot. Do you remember that? I was
18 asking her about the spots in the transcript where she
19 said, yes, she lies a lot. She didn't believe her at
20 first.

21 So when Complainant 1 takes the test about sexually
22 transmitted diseases, according to her mom, her mom
23 goes and takes the test. And so Complainant 1 says Scott gave
24 her chlamydia, and her mom says Scott gave her herpes.
25 Well, you know about that, Scott doesn't have either

1 one of them. Whatever bad there is, Scott did it.
2 It's his fault.

3 One of the things that Complainant 2 said at the very
4 conclusion of her testimony that was perhaps one of the
5 most compelling things and something that nobody has
6 disagreed with is that the mom, her mother, was strong
7 and would fight back against Scott. She said that.
8 And we disagree with this, but part of what she said
9 was Scott was abusive, but he never laid hands on the
10 mother, and that the mom was the one that would get in
11 Scott's face first.

12 And, perhaps, the most important thing of all that
13 she said, if you will remember, is that all she had to
14 do to get Scott out of the house is to tell her mom to
15 get him out, and she would do it. Do you remember
16 that? She said that, voluntarily. And I asked her
17 again, I said, is that all you had to do to get Scott
18 out of the house is to tell your mom and she would have
19 got him out? All she had to do was to tell her mom,
20 all she had to do.

21 None of this business about, you know, sneaking
22 out and telling a story, running away and telling a
23 story or any of that other stuff. All she had to do
24 was tell her mom. And then she said, well, I would
25 have had to cry and beg and throw a little fit but,

1 yeah, I could have done that. All she had to do was
2 tell her mom.

3 The gun thing, it's kind of an afterthought;
4 right? I mean, talking about burying the lead in the
5 situation. There is a gun. Nobody hears anything
6 about the gun until the very, very end of everything.
7 The gun's not part of this case. The gun's got nothing
8 to do with this case. Scott said, yeah, I had a gun.
9 I had the gun to carry around some money, and I left --
10 you know, I had it in the car, and I'd bring it in the
11 house. But nobody says a word about the gun anytime,
12 anywhere, anything until at the very, very end, oh,
13 yeah, there was a gun.

14 Why? What does that tell you? Everything
15 including the kitchen sink just like the dog. Oh,
16 yeah, he had a gun. Oh, yeah, forgot about the gun.

17 One of the things that Complainant 2 said, and this is
18 back to the Latta, Dillon thing. One of the things --
19 remember it the way you do -- one of the things that
20 Complainant 2 said was that she knew about this sexual
21 activity with Complainant 1 before the Latta event; right?
22 Because that's the reason the phone call was there. So
23 Complainant 2 says that she knew about it beforehand. At the
24 same time, Complainant 1 says that that was the first event.
25 That's just another example of the inconsistencies, one

1 more thing.

2 Ladies and gentlemen, I have used up too much.

3 Well, I'll take that back. It is impossible for me to
4 overemphasize the gravity of this situation,

5 impossible. Where you sit today, you have the -- I've
6 heard people say it's the greatest responsibility that
7 citizens can have for their country absent wartime.

8 You are the gatekeeper to protect all citizens
9 from situations where they've been accused of things,
10 you're the ones who make a decision whether the
11 government has proved it beyond a reasonable doubt or
12 not. That's your job. If the judge makes a mistake,
13 appeal. If I make a mistake, appeal. If you make a
14 mistake, if you get something wrong --

15 MS. WALTER: Objection, Your Honor.

16 THE COURT: Go ahead.

17 MR. HILLIARD: Thank you. Then there is nothing
18 left for them. So I'll ask you to think carefully,
19 think carefully, recognize how important the decision
20 that each of you makes today is. Recognize that.

21 And when you are thinking about that, think if
22 you're satisfied if the State has brought you -- it's
23 like a mud ball. Throw it up in the air and just see
24 if any mud gets on it anyway. It's a mud pile, that's
25 what they brought you. Thank you for your time.

1 THE COURT: Ms. Walter.

2 MS. WALTER: Thank you. Very briefly, Your Honor.

3 REBUTTAL ARGUMENT BY THE STATE

4 MS. WALTER: First of all, the State does not
5 think you will get this wrong because the State has
6 seen you sitting here, listening and watching the
7 evidence. And I was kind of struck by what
8 Mr. Hilliard said, that they are the only ones that
9 brought evidence.

10 And I don't have anyone standing here holding this
11 for me, but does this tell you that someone got raped?
12 Does this tell you that someone had their breasts
13 fondled by their stepfather? What does this tell you?
14 It tells you nothing. What does this tell you?
15 Nothing.

16 You know what our evidence was. Our evidence was
17 Complainant 2 Our evidence was Complainant 1 and Ana and Vega. And
18 I do want you to look at the demeanor that they had
19 when they testified. Because, you know, it was -- I'm
20 not sure if you laughed, I did, but when Vega was on
21 the stand, and counsel said, well, wasn't Complainant 2 in
22 drama? Wasn't she big in the drama club? I guess that
23 was to plant in your mind that this was all an act.

24 Well, number one, it wasn't, it was choir. And
25 number two, if those two girls acted up there on the

1 stand, if they lied to you on the stand, they deserve
2 an Academy Award. Because from where the State sat,
3 that emotion was real, and it was still raw after all
4 of these years. So do consider their demeanor.

5 And Vega, you know what, I guess, you're polite to
6 me so you must be a liar. A nice young man gets up on
7 the stand and just went, hey, thanks, I'm good, how are
8 you? And then, when he's forced to talk about what
9 happened to the woman that he loves, his fiance,
10 someone he's been with for years, and when he is forced
11 to think about how this affects her to this day, he had
12 the nerve to cry, to start to break down. Wow, that's
13 terrible. I can't believe he did that.

14 That's not the only evidence we brought. See this
15 (indicating), these are evidence. Not inconsistent or
16 vague stories, these are evidence. These are letters
17 that **Complainant 1** wrote long before she ran away, long before
18 the police came in.

19 Do you want to hear some consistencies and why it
20 took so long for these girls to tell? She talks about
21 the rape with the gag in the mouth. And then she says,
22 since that night, he's raped me 12 times. Each time he
23 said there is no way you'd believe me over him. So
24 here I am, mom, telling you all this shit. Question
25 is, are you going to bother to believe me? Because I'm

1 about 90 percent sure you won't.

2 Think of the position that she was in being raped
3 repeatedly by her stepfather. Her sister, in order to
4 survive, abandoned her. She had to. That's not
5 something that we should blame Complainant 2 for. She had to
6 get out to survive on her own. But that left Complainant 1
7 with no one. She was 90 percent sure her mother
8 wouldn't believe her. And so she didn't tell until she
9 was safely away.

10 So the State's brought plenty of evidence for you,
11 more than enough, more than beyond a reasonable doubt,
12 I would submit to you. And I just want to go through a
13 couple of the things that Defense said, and then I've
14 taken up more than enough of your time.

15 The dates on the indictment, yes, they are based
16 off of the girls' birthdays because, essentially, we
17 have alleged that the Defendant fondled Complainant 2
18 breasts when she was 14. That fits that date range.
19 And that he raped Complainant 1 when she was 14, from 14 to 16
20 even. And we don't have to prove a specific day. We
21 don't have to say that it happened on -- and I've lost
22 track of my days -- Thursday, April 12th, 2018, at
23 2:55. We do not have to get that precise.

24 The evidence shows that these girls were assaulted
25 when they were 14 years old, and that fits the

1 indictment.

2 We didn't want Sabrina Houser here? Quite
3 frankly, I don't care that she was here. What did she
4 really add? Yeah, you know, she -- and, quite frankly,
5 yeah, I remember that Complainant 1 told me that she was being
6 sexually assaulted. It was in her home, but I don't
7 really remember much else. That would have been a
8 powerful witness for us to call for you, huh, someone
9 who doesn't remember much.

10 Oh, never said anything about the gun. All of a
11 sudden that was just thrown in. Do you remember who
12 asked the question that brought that in? The Defense.
13 We didn't bring it in because it wasn't important.
14 Even Complainant 2 said, I never really worried that he was
15 going to use that on me. So that's not something that
16 we're throwing up there, hoping it will stick. We
17 didn't care. We didn't introduce it.

18 Counsel has said -- we talked about kicking the
19 dog, why was that thrown in there. Because both girls
20 told you on multiple occasions that they were scared to
21 tell. What would happen to them, what would happen to
22 them if they told and no one believed them? And we
23 know that Complainant 1 thought no one would believe her. And
24 we know that when Complainant 2 told her grandmother, her
25 grandmother believed her but didn't care. And had they

1 said something, they ran the very real risk that the
2 Defendant would turn his physical aggression against
3 them as well.

4 And counsel kept saying the telltale sign in this
5 case is that it's all Scott's fault. It is. It is all
6 Scott's fault. It is all his fault because he is the
7 only one that fondled Complainant 2 breasts, he is the only
8 one that raped Complainant 1 repeatedly. So when you convict
9 him, it's all his fault. Thank you.

10 JURY CHARGE

11 THE COURT: All right. Ladies and gentlemen, I
12 remind you that during this trial, you and I have
13 certain duties to perform. As the trial judge, it's my
14 responsibility to preside over the trial of this case,
15 and I also have the duty to rule on the admissibility
16 of the evidence offered during the trial, and you are
17 to consider only the competent evidence before you.

18 If there was any testimony ordered stricken from
19 the record in this case during this trial, you must
20 disregard that testimony. You are to consider only the
21 testimony which has been presented from this witness
22 stand, any exhibits which have been made a part of the
23 record in this case, and any stipulations, agreements,
24 of counsel. A stipulation is, as I said, an agreement
25 among the parties that a particular fact is true or

1 uncontested.

2 I have the additional duty to charge you the law
3 applicable to this case. As the presiding judge, I am
4 the sole judge of the law of the case, and it is your
5 duty as jurors to accept and apply the law as I now
6 state it to you. If you already have some idea as to
7 what the law is or what the law ought to be, and it
8 does not agree with what I now tell you the law is, you
9 must abandon this idea because you are sworn to accept
10 the law and apply the law exactly as I state it to you.

11 You must assume that I have perfectly explained
12 the law to you. In every case tried in this court
13 before a jury, the jury becomes the sole and exclusive
14 judge of the facts in a case. A trial judge cannot
15 comment on, intimate, state or make any statement to a
16 jury, trial jury, about the facts in a case.

17 Since you, the jury, are the sole judge of the
18 facts in this case, you are not to infer from what I
19 have said during the progress of this trial, in ruling
20 on the admissibility of evidence or otherwise or
21 anything that I say now during the course of these
22 instructions to you that I have any opinion about the
23 facts in this case. The law does not allow me to have
24 an opinion about the facts in this case.

25 This is a matter solely for you, the jury, to

1 determine. As jurors, it is your duty to determine the
2 effect, value, weight, and truth of the evidence
3 presented during this trial.

4 Now, the indictments charge the Defendant with
5 criminal sexual conduct with a minor in the second
6 degree and criminal sexual conduct with a minor in the
7 third degree. I remind you that the fact that the
8 Defendant was arrested, charged, and indicted in this
9 case is not evidence in the case and cannot be
10 considered by you as evidence of guilt in this case,
11 nor does it create any presumption or inference of
12 guilt.

13 The documents are simply the formal written
14 instrument which contain the charges made against the
15 Defendant. It is the formal document by which the case
16 is brought into this court.

17 Now, the Defendant has pled not guilty to the
18 indictments. And that plea puts the burden on the
19 State to prove the Defendant guilty. A person charged
20 with committing a criminal offense in South Carolina is
21 never required to prove himself innocent. I charge you
22 that it is an important rule of the law that the
23 Defendant in a criminal case, no matter what the
24 seriousness of the charge may be, will always be
25 presumed innocent of the crime for which the indictment

1 was issued unless guilt has been proved by evidence.
2 satisfying you of that guilt beyond a reasonable doubt.

3 This presumption of innocence does not end when
4 you begin your deliberations, but it accompanies the
5 Defendant throughout the trial until and if you reach a
6 verdict of guilt based on evidence satisfying you of
7 that guilt beyond a reasonable doubt. The presumption
8 of innocence is like a robe of righteousness placed
9 about the shoulders of the Defendant which remains with
10 the Defendant until it has been stripped from the
11 Defendant by evidence satisfying you of the Defendant's
12 guilt beyond a reasonable doubt.

13 The presumption of innocence is not mere legal
14 theory. It is not just a legal phrase. It is a
15 substantial right which every defendant is entitled to
16 unless you, the jury, are satisfied from the evidence
17 of the Defendant's guilt beyond a reasonable doubt.

18 Now, as I said, the State has the burden of
19 proving the Defendant guilty beyond a reasonable doubt.
20 Some of you may have served as jurors in civil cases
21 where you were told that it's only necessary to prove
22 that a fact is more likely true than not true such as
23 by the greater weight or the preponderance of the
24 evidence.

25 In criminal cases, the State's proof must be more

1 powerful than that. It must be beyond a reasonable
2 doubt. Proof beyond a reasonable doubt is proof that
3 leaves you firmly convinced of the Defendant's guilt.
4 There are very few things in this world that we know
5 with absolute certainty. And in criminal cases, the
6 law does not require proof that overcomes every
7 possible doubt. If, based on your consideration of the
8 evidence, you are firmly convinced that the Defendant
9 is guilty of the crime charged, you must find the
10 Defendant guilty.

11 If, on the other hand, you think there is a real
12 possibility that the Defendant is not guilty, you must
13 give the Defendant the benefit of the doubt and find
14 him not guilty.

15 Now, there are two types of evidence which are
16 generally presented during a trial, direct evidence and
17 circumstantial evidence. Direct evidence is the
18 testimony of a person who claims to have actual
19 knowledge of a fact such as an eyewitness. It is
20 evidence which immediately establishes or proves the
21 main fact to be proven.

22 Circumstantial evidence is proof of a chain of
23 facts and circumstances indicating the existence of a
24 fact. It's evidence which immediately establishes
25 collateral facts from which the main fact may be

1 inferred. Circumstantial evidence is based on
2 inference and not on personal knowledge or observation.

3 Crimes maybe proved by circumstantial evidence.
4 The law makes absolutely no distinction between the
5 weight or value to be given either direct or
6 circumstantial evidence, nor is a greater degree of
7 certainty required of circumstantial evidence than of
8 direct evidence.

9 However, to the extent the State relies on
10 circumstantial evidence, all the circumstances must be
11 consistent with each other and when taken together
12 point conclusively to the guilt of the accused beyond a
13 reasonable doubt. If the circumstances merely portray
14 the Defendant's behavior as suspicious, the proof has
15 failed. You should weigh all of the evidence in the
16 case. After weighing all of the evidence, if you are
17 not convinced of the guilt of the Defendant beyond a
18 reasonable doubt, you must find the Defendant not
19 guilty.

20 Now, necessarily, you must determine the
21 credibility of witnesses who have testified in this
22 case. Credibility simply means believability. It
23 becomes your duty as jurors to analyze and evaluate the
24 evidence and determine which evidence convinces you of
25 its truth.

1 In determining the believability of witnesses who
2 have testified in this case, you may believe one
3 witness over several witnesses or several witnesses
4 over one witness. You may believe a part of the
5 testimony of a witness and reject the remaining part of
6 the testimony of that same witness. You may believe
7 the testimony of a witness in its entirety or reject
8 the testimony of a witness in its entirety.

9 You may consider whether any witness has exhibited
10 to you any interest, bias, prejudice, or other motive
11 in this case. You may also consider the appearance and
12 manner of a witness while on the witness stand. This
13 is sometimes referred to as the witness's demeanor on
14 the witness stand.

15 Now, the rules of evidence ordinarily do not
16 permit witnesses to testify to opinions or conclusions.
17 An exception to this rule exists for witnesses that we
18 call expert witnesses. A witness who by education and
19 experience has become expert in some art, science,
20 profession, or calling may state an opinion as to any
21 relevant and material matter in which the witness
22 claims to be an expert and may also state the reasons
23 for the opinion.

24 You should consider any expert opinion received in
25 evidence in this case, and like any other evidence,

1 give it the weight you think it deserves.

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

12 Now, a person who has a past criminal record is
13 competent to testify during a trial. A past record
14 does not affect the ability of that witness to testify.
15 The past record may only be considered by you, if at
16 all, in determining the witness's believability.
17 Remember, you are the sole judges of the facts in the
18 case and the believability of any and all of the
19 witnesses.

20 There has been evidence presented in this case
21 that witnesses have made prior statements which are not
22 consistent with the witness's present testimony. You
23 may use this evidence to decide whether to believe the
24 witness. You may also use evidence of the earlier
25 contradictory statements to determine the truth of

1 those statements. It's up to you to decide whether to
2 believe the earlier statements or the testimony given
3 at trial.

4 If a witness is shown to have knowingly testified
5 untruthfully concerning any material matter, you may
6 consider this in determining whether to trust the
7 witness's testimony as to other matters. You may
8 reject all of the testimony of that witness or give all
9 or part of the testimony the weight you think it
10 deserves.

11 Now, the indictments in this case allege several
12 different offenses against the Defendant. The charges
13 are, indictment number one, criminal sexual conduct
14 with a minor in the second degree; indictment number
15 two, criminal sexual conduct with a minor in the third
16 degree. Each indictment charges a separate and
17 distinct offense.

18 Pardon me. You must decide each indictment
19 separately on the evidence and the law applicable to
20 it, uninfluenced by your decision as to any other
21 indictment. The Defendant may be convicted or
22 acquitted on any or all of the offenses charged, and
23 you will be asked to write a separate verdict of guilty
24 or not guilty for each indictment.

25 Now, the Defendant is charged with criminal sexual

1 conduct with a minor in the second degree. The State
2 must prove beyond a reasonable doubt that the Defendant
3 engaged in a sexual battery with the victim. A sexual
4 battery is sexual intercourse, cunnilingus, fellatio,
5 anal intercourse, or any intrusion, however slight, of
6 any part of a person's body or of any object into the
7 genitalia or anal openings of another person's body
8 except when the intrusion is accomplished for medically
9 recognized treatment or diagnostic purposes.

10 The State must then prove beyond a reasonable
11 doubt the victim was less than 16 years old but at
12 least 14 years old and that the Defendant was either in
13 a position of familial, custodial, or official
14 authority to coerce the victim to submit, or the
15 Defendant was older than the victim.

16 Now, the Defendant is also charged with criminal
17 sexual conduct with a minor in the third degree. In
18 order to prove third-degree criminal sexual conduct,
19 the State must prove beyond a reasonable doubt that the
20 victim was over the age of 14.

21 Next, the State must prove that the Defendant
22 willfully and lewdly committed or attempted a lewd or
23 lascivious act on or with the body or its parts of a
24 child under the age of 16 with the intent to arouse,
25 appeal to, or gratify the lust, passions, or sexual

1 desire of the Defendant or the child. Willful means
2 voluntarily and intentionally with specific intent to
3 do something the law prohibits. Lewd means obscene,
4 lustful, indecent, lecherous. Lascivious means tending
5 to incite lust, lewd, indecent, obscene, or tending to
6 deprave the morals in respect to sexual relations.

7 Now, there are two possible verdicts which you may
8 find in this case as to each indictment or charge: Not
9 guilty or guilty. And there is no significance
10 whatsoever to the order in which I state these possible
11 verdicts. It's just that I've got to say one before
12 the other.

13 Now, ladies and gentlemen, let me emphasize that
14 your verdict in these cases as to each indictment must
15 be unanimous.

16 Now, Mr. Foreperson, I'm going to have you go into
17 your jury room. I do not anticipate having to bring
18 you out for another charge because, as you know, I have
19 a transcript, and I have provided the attorneys in
20 advance with my charge. But I may have to do that. So
21 I'll ask you not to begin your deliberations. If I
22 need to bring you out, I will.

23 If I send Mr. Ropp back or Mr. Palmer -- he's been
24 with you some -- if I have them bring you the exhibits
25 in this case and a copy of my charge -- and I have

1 prepared two verdict forms, one for each charge -- I
2 did have a verdict form. I'm sure I have them here
3 somewhere, but I will -- I will send in the verdict
4 forms for you to use.

5 And the verdict form is very simple. It simply
6 states: As to the charge of criminal sexual conduct
7 with a minor second degree, we, the jury, unanimously
8 find the Defendant -- and you just circle what your
9 verdict is. And the same as to criminal sexual conduct
10 in the third degree. Again, you just circle your
11 verdict, and then the foreperson will sign it.

12 Once you've reached a verdict, if you would just
13 notify Mr. Ropp that you have reached a verdict, he
14 will then bring you back to the courtroom for that
15 purpose.

16 If you have any questions for me during your
17 deliberations, please, again, simply knock on your
18 door. Mr. Ropp will be there or Mr. Palmer will be
19 there, and write out a note to me, and they will bring
20 it to me and I will address it; okay?

21 Thank you, sir.

22 Now, Mr. Ropp, would you take them in and
23 segregate Ms. Mines and Mr. Godfrey [sic].

24 JUROR #128: Godfrey.

25 THE COURT: Godfrey. I'm sorry, Mr. Godfrey.

1 If you would separate them for right now as our
2 alternates, and I will deal with them in just a minute;
3 okay?

4 (WHEREUPON, the jury exited the courtroom at
5 3:14 p.m.)

6 THE COURT: Ms. Bautz, will you mark my charge as
7 Court's Exhibit...

8 COURT REPORTER: Two.

9 THE COURT: Two. And that will go in.

10 (WHEREUPON, Court's Exhibit No. 2 was marked for
11 identification only.)

12 THE COURT: Counsel, would you please come up and
13 make sure -- well, first, any additions, deletions,
14 Mr. Hilliard?

15 MR. HILLIARD: Judge, let me ask one question
16 because I presume this to be true, and perhaps I made
17 too much of that. You're sending the indictment back;
18 is that right?

19 THE COURT: No, I never send the indictments back.

20 MR. HILLIARD: Well, there is the -- again,
21 perhaps I should have said this before -- the criminal
22 sexual conduct in the second degree is connected to one
23 victim and one victim only?

24 THE COURT: That's correct.

25 MR. HILLIARD: Criminal sexual conduct in the

1 third degree is connected to one victim --

2 THE COURT: One victim, one victim only.

3 MR. HILLIARD: And the dates in those.

4 THE COURT: They must -- the dates are irrelevant.

5 They must make a finding that the child was under --

6 between 12 and 14 or 14 and 16 depending on whenever it

7 was. That's what they have to find. And that's what

8 my charge says.

9 MR. HILLIARD: Yes, sir. But they also -- because

10 of the indictment, they also have to find that the

11 offense occurred between the dates as alleged in the

12 indictment. Anything outside the indictment would not

13 be --

14 THE COURT: What do you say about that?

15 MS. WALTER: It's clear that the dates were by

16 their birthdays. The birthdays are in evidence. I

17 think the way Your Honor has handled it is fine.

18 THE COURT: Well, you know, that's the reason I

19 give you the charge in advance. Tell me what you want

20 me to do.

21 MR. HILLIARD: I want you to send the indictment

22 back.

23 THE COURT: You want the indictments to go into

24 the jury room?

25 MR. HILLIARD: Well, the reason that I say that --

1 and again, judge, I apologize, I presumed that that was
2 happening, the thing that -- the charge is fine -- the
3 thing is that in order for him to be convicted, it has
4 to be -- the first victim in between those dates as
5 alleged in the indictment.

6 THE COURT: But wouldn't they have to find it
7 within those dates to make a finding of guilt at all
8 because the statute requires that these alleged victims
9 have to be 12 to 14 on one and 14 to 16 on the other
10 one? And did I recall it right?

11 MR. HILLIARD: I think it's 14 to 16 and under 16.

12 THE COURT: Yeah.

13 MR. MARTIN: Yes, Your Honor.

14 THE COURT: Well, anyway, they, to make that
15 finding, they have to find it within the range.

16 MR. HILLIARD: Well, under 16 would cover a
17 substantially greater portion of the range than just
18 the two years.

19 THE COURT: But it's not just under 16; isn't it
20 between 14 and 16? Over 14 and?

21 MS. WALTER: CSC with a minor second was between
22 14 and 16.

23 THE COURT: CSC second requires sexual battery
24 with a victim of 14 to 15, and to find in the -- that's
25 what it says, criminal sexual conduct with a minor

1 second degree --

2 MS. WALTER: I'm pretty sure it's 14 to 16.

3 THE COURT: 14 to 15, I'm sorry.

4 MS. WALTER: No, 14 to 16.

5 MR. MARTIN: Up until -- it's under the age of 16,
6 so up until that 16th birthday. So 15 years, 364 days,
7 judge.

8 THE COURT: But what I'm saying is, we all agree
9 those are the dates in which it could have occurred.

10 MS. WALTER: Yes.

11 THE COURT: And meet the statute. I mean, both of
12 you argued that those are the birthdays.

13 MS. WALTER: Yes.

14 THE COURT: So if they cannot find -- or if they
15 find that the child fits the range, it has to be --

16 MS. WALTER: Within those dates.

17 THE COURT: -- within those dates. I mean,
18 Mr. Hilliard, I will --

19 MR. HILLIARD: We could send them. Would there be
20 a problem with sending the indictment back?

21 THE COURT: Well, my problem is they are not
22 marked. I guess, Ms. Bautz, let's make them Court's
23 exhibits. I'll send them back for you.

24 MR. HILLIARD: Thank you, judge.

25 THE COURT: I don't know why it makes a bit of

1 difference. It's exactly the same. You all agree as
2 to what the birth dates are.

3 MR. MARTIN: So long as your handwritten amendment
4 will not cause any confusion with the jury.

5 THE COURT: Well, they are on there, and if the
6 jury has a question about it, they will send it back
7 out to me, I'm sure.

8 MR. HILLIARD: Thank you, Your Honor.

9 THE COURT: All right. Get the indictments and
10 let's send them in. Make sure that you have the
11 exhibits.

12 Mr. Palmer, once you get the exhibits, if you
13 would take it back. I am going to go back and release
14 the alternates, I always do that. I'm not going to
15 interject an alternate after an hour or two of
16 deliberation.

17 So let the record reflect that I'm going to do
18 that right now. Anybody object to my doing so without
19 bringing them back in the courtroom?

20 MR. HILLIARD: No objection.

21 MS. WALTER: No objection.

22 THE COURT: None?

23 MR. HILLIARD: None.

24 MS. WALTER: No, Your Honor.

25 THE COURT: Okay, all right.

1 (WHEREUPON, Court's Exhibit Nos. 3 and 4 were
2 marked for identification only.)

3 (WHEREUPON, the jury begins to deliberate at
4 approximately 3:23 p.m.)

5 THE COURT: I have a note from the foreman. The
6 note says: Complainant 2 testimony on when she told her
7 grandmother about her being abused, specifically
8 whether it occurred on the phone or at lunch.

9 I assume she wants -- they want to hear that
10 testimony. I've already asked Ms. Bautz to try to
11 locate it, but I'll hear you each on that.

12 MR. HILLIARD: I agree with you, judge.

13 MS. WALTER: That's fine.

14 THE COURT: All right. Ms. Bautz, when you get an
15 opportunity, would you mark that.

16 COURT REPORTER: Court's exhibit, sure. Can we go
17 off the record, then?

18 THE COURT: Yeah, we're off the record.

19 (Discussion off the record.)

20 (WHEREUPON, the jury came into open court at
21 approximately 4:02 p.m.)

22 THE COURT: All right, all right, we have all our
23 jurors. Mr. Foreman, I have shared your note with
24 counsel from both sides, and it's our understanding
25 that what you want to hear is that portion of Complainant 2

1 testimony that would indicate whether her disclosure to
2 her grandmother that she described in her testimony was
3 by phone or in person. Is that correct?

4 THE FOREPERSON: Yes, Your Honor.

5 THE COURT: Okay.

6 THE FOREPERSON: And, specifically, at the lunch.

7 THE COURT: Okay. Now, what we have done is I
8 think we have found that. It takes a little bit of
9 time.

10 THE FOREPERSON: Sure.

11 THE COURT: But we have located the recording of
12 what we think is that testimony, and please, we may be
13 entirely wrong. If there was other testimony that you
14 recalled concerning this, let us know, and we will
15 certainly look. But I think we have found the
16 testimony that you are looking for, and Ms. Bautz is
17 prepared to play that.

18 Now, if it's not what you wanted to hear, please
19 let me know. Otherwise, I think it's just a relatively
20 short clip.

21 Ms. Bautz.

22 (WHEREUPON, requested testimony was played back
23 for the jury.)

24 THE COURT: Okay. Was that all you needed?

25 THE FOREPERSON: Yes.

1 THE COURT: Okay, please go with Mr. Ropp.

2 (WHEREUPON, the jury exited the courtroom at
3 4:07 p.m.)

4 THE COURT: Mr. Hilliard?

5 MR. HILLIARD: Nothing other, judge.

6 THE COURT: Ms. Walter?

7 MS. WALTER: Nothing, judge.

8 THE COURT: Okay, we are at ease.

9 (WHEREUPON, the jury continues to deliberate at
10 approximately 4:08 p.m.)

11 (WHEREUPON, Court's Exhibit No. 5 was marked for
12 identification only.)

13 THE COURT: I have received another note from the
14 foreman. I'll ask him, but I think I believe I
15 understand what he wants. Scott Rowan's response
16 during testimony -- I assume that's his testimony --
17 related to Anatasya's and Complainant 1 original STD claims
18 blaming Scott for the STDs.

19 Now, I think what they want is Mr. Hilliard's
20 direct examination of Mr. Rowan concerning whether he
21 had any STDs.

22 MR. HILLIARD: Yes, sir.

23 THE COURT: Do you think that's what they want?

24 MR. HILLIARD: Yes, sir.

25 THE COURT: Ms. Walter?

1 MS. WALTER: I honestly can't tell from that note.

2 THE COURT: Well, I'll ask them, then. I'll just
3 ask the -- Ms. Bautz found that. And if that's what
4 they want, we are prepared to do it; otherwise, I'll
5 send them back out and we will find out what to do.

6 Chris, if you would, bring them in.

7 (WHEREUPON, the jury came into open court at
8 approximately 5:07 p.m.)

9 THE COURT: All right, Mr. Foreman, we have a
10 note, and I think we know what you want. The note,
11 obviously: Scott Rowan's response during testimony
12 related to Anatasya and **Complainant 1** original STD claims
13 blaming Scott for STD.

14 There was a point in his direct examination where
15 Mr. Hilliard asked him, I believe, about whether he had
16 STDs; is that the part that you're --

17 THE FOREPERSON: Yes.

18 THE COURT: -- that you want to hear?

19 THE FOREPERSON: Yes, sir.

20 THE COURT: Okay, all right. I just wanted to
21 make sure. Now, Ms. Bautz already found that.

22 COURT REPORTER: Yeah, I found it in the record.

23 (Discussion off the record.)

24 THE COURT: Well, Ms. Bautz tells me it's like one
25 question. Of course, we could shuffle this around and

1 play it for you. But she has it right there, and she
2 can read the question and response. Would that be
3 okay?

4 THE FOREPERSON: Yeah, that would be fine.

5 THE COURT: All right. Well, let's do that. And
6 if that's not it, if you want more, then we can.
7 But -- and let's make sure this is what you're looking
8 for.

9 Ms. Bautz, if you would, read the question. And
10 this is Mr. Hilliard's question?

11 COURT REPORTER: Yes.

12 THE COURT: Okay.

13 COURT REPORTER: Let me just make sure I have it
14 right.

15 MR. MARTIN: Your honor, will this be the only
16 piece of the testimony that we're covering?

17 THE COURT: I don't know. I know we have that.
18 That's why I want to make sure. When you hear this, if
19 you remember something else, please let us know and
20 give us a little guidance, and we'll try to find it;
21 okay?

22 THE FOREPERSON: Very good.

23 COURT REPORTER: This is in direct examination by
24 Mr. Hilliard:

25 (Record read as follows:

1 "Q And in connection with the family court case,
2 did you learn that you were accused of having
3 given your wife and your daughter an STD, a
4 sexually transmitted disease?

5 A Yes. I actually was talking to my wife at the
6 time on the phone, and she said I cheated on her.
7 I said, no, I didn't. And she said, well, then
8 how did me and my daughter get an STD?

9 Q All right, sir. And did you go immediately
10 and get checked for STDs?

11 A Yes, as soon as she told me, sir.

12 Q Did you have herpes?

13 A No.

14 Q Did you have chlamydia?

15 A No. I'm completely STD-free.")

16 THE COURT: That was what you wanted to hear,
17 everybody satisfied that's what you wanted to hear?

18 THE FOREPERSON: Yes, sir.

19 THE COURT: Okay. Thank you very much.

20 (WHEREUPON, the jury exited the courtroom at 5:10
21 p.m.)

22 THE COURT: Ms. Bautz, mark this as part of the
23 record, please.

24 (WHEREUPON, Court's Exhibit No. 6 was marked for
25 identification only.)

1 THE COURT: Mr. Hilliard?

2 MR. HILLIARD: Nothing other, judge.

3 THE COURT: Ms. Walters?

4 MS. WALTER: Nothing, Your Honor.

5 THE COURT: Very well. We are area at ease.

6 (WHEREUPON, the jury continues to deliberate at
7 approximately 5:11 p.m.)

8 THE COURT: All right. Thank you very much.

9 Please have a seat, I understand we have a verdict.

10 Would you bring the jury in, please, Chris.

11 MR. HILLIARD: The Defendant, Your Honor.

12 THE COURT: Oh, yes, I'm sorry. There he is.

13 MR. HILLIARD: Thank you, judge.

14 THE COURT: We have the Defendant here, all
15 counsel.

16 (WHEREUPON, the jury came into open court at
17 approximately 5:45 p.m.)

18 VERDICT

19 THE COURT: Okay, all right. We have our jurors
20 in the courtroom. Mr. MacNeill, have you reached a
21 verdict?

22 THE FOREPERSON: Yes, we have, Your Honor.

23 THE COURT: And was it a unanimous verdict?

24 THE FOREPERSON: Yes, it was, Your Honor.

25 THE COURT: And were you able to reach a verdict

1 as to each count?

2 THE FOREPERSON: Yes, we were, Your Honor.

3 THE COURT: Would you give the verdict form,
4 please, to Mr. Ropp. Thank you. All right.

5 Madam Clerk, you may read the verdict.

6 THE CLERK: Thank you. Indictment number
7 2016-GS-26-00861 and 2016-GS-26-00862, State of South
8 Carolina, County of Horry, versus Scott Richard Rowan.
9 As to the charge of criminal sexual conduct with a
10 minor second degree, we, the jury, unanimously find the
11 Defendant guilty.

12 As to the charge of criminal sexual conduct with a
13 minor third degree, we, the jury, unanimously find the
14 Defendant guilty. Signed by Foreperson Dale MacNeill,
15 dated April 12, 2018.

16 THE COURT: Will there be a request for individual
17 voir dire?

18 MR. HILLIARD: Yes, sir, Your Honor.

19 THE COURT: Or polling, I'm sorry. Yes, ma'am,
20 would you poll the jury, please.

21 THE CLERK: Yes, Your Honor. Please stand when I
22 call your number. I'll ask you two questions. After
23 you answer them, please be seated. Number 30, is this
24 your verdict?

25 JUROR #30: Yes, ma'am.

1 THE CLERK: Is this still your verdict?

2 JUROR #30: Yes, ma'am.

3 THE CLERK: Thank you. Number 255, is this your
4 verdict?

5 JUROR #255: Yes.

6 THE CLERK: Is it still your verdict?

7 JUROR #255: Yes.

8 THE CLERK: Number 395, is this your verdict?

9 JUROR #395: Yes.

10 THE CLERK: Is it still your verdict?

11 JUROR #395: Yes.

12 THE CLERK: Number 284, is this your verdict?

13 JUROR #284: Yes, ma'am.

14 THE CLERK: Is it still your verdict?

15 JUROR #284: Absolutely.

16 THE CLERK: Number 314, is this your verdict?

17 JUROR #314: Yes.

18 THE CLERK: Is it still your verdict?

19 JUROR #314: Yes.

20 THE CLERK: Number 143, is this your verdict?

21 JUROR #143: Yes.

22 THE CLERK: Is it still your verdict?

23 JUROR #143: Yes, ma'am.

24 THE CLERK: Number 144, is this your verdict?

25 JUROR #144: Yes.

1 THE CLERK: Is it still your verdict?

2 JUROR #144: Yes.

3 THE CLERK: Number 26, is this your verdict?

4 JUROR #26: Yes, ma'am.

5 THE CLERK: Is this still your verdict?

6 JUROR #26: Yes, ma'am.

7 THE COURT: Number 203, is this your verdict?

8 JUROR #203: Yes.

9 THE COURT: Is it still your verdict?

10 JUROR #203: Yes.

11 THE CLERK: Number 250, is this your verdict?

12 JUROR #250: Yes.

13 THE CLERK: Is it still your verdict?

14 JUROR #250: Yes.

15 THE CLERK: Number 230 -- I apologize -- 330, I

16 apologize, is this your verdict?

17 JUROR #330: Yes, it is.

18 THE CLERK: Is it still your verdict?

19 JUROR #330: Yes, it is.

20 THE CLERK: Number 216, is this your verdict?

21 JUROR #216: Yes, ma'am.

22 THE CLERK: Is it still your verdict?

23 JUROR #216: Yes, ma'am.

24 THE COURT: All right. Anything further,

25 Mr. Hilliard?

1 MR. HILLIARD: Nothing further for the jury, Your
2 Honor.

3 THE COURT: All right. Is there any reason why
4 sentencing cannot take place at this time?

5 MS. WALTER: No, there's not, Your Honor. I have
6 someone printing out the sentencing sheets.

7 THE COURT: All right. Before I hear from the
8 Defense, will there be any statement from the victim?

9 MS. WALTER: May I have one moment, please?

10 ((Discussion off the record.))

11 MS. WALTER: I'll speak on behalf of the victims,
12 Your Honor.

13 THE COURT: You may.

14 MS. WALTER: Your Honor, you sat here, you heard
15 the evidence in this case. And you saw the effect that
16 this Defendant's crimes have had on not just those two
17 young girls but on their entire family. To this day,
18 well more than three years later, it brings them to
19 tears, it makes them shake. It has affected their
20 lives in a way that is unimaginable. And while the
21 State recognizes that the Defendant has no prior
22 convictions --

23 THE COURT: I'm confused about that. Does he have
24 a minor drug offense or not?

25 MS. WALTER: It did not show up on our NCIC, Your

1 Honor.

2 THE COURT: Okay, okay, all right.

3 MR. HILLIARD: He was mistaken as to that result.
4 Judge, we have some motions before we get to the
5 sentencing part.

6 THE COURT: And I will allow you to make those.

7 MR. HILLIARD: Thank you.

8 THE COURT: Yes, sir.

9 MS. WALTER: Your Honor, he was, in the truest
10 sense of the word, a predator. He preyed on these two
11 young girls, just as I said in my closing, by isolating
12 them, isolating them from their mother who also
13 isolated herself, but isolating them from their
14 brothers and each other, and violated them in a way
15 that no child should ever be violated. And certainly
16 not by someone that was supposed to be a parental
17 figure.

18 And the State's asking for the maximum sentence on
19 both charges and to run consecutively because it's two
20 different victims, and it was clear that, although he
21 started with both, when he had to stop for God knows
22 what reason, but thankfully he did stop with Complainant 2 he
23 went so much further with Complainant 1. And he does deserve
24 the maximum sentence on both charges to run
25 consecutively.

1 THE COURT: Thank you. Mr. Hilliard.

2 MS. WALTER: And, I'm sorry, Your Honor. May I
3 also --

4 THE COURT: Yes.

5 MS. WALTER: We do want all of the statutory --
6 the child abuse registry for DSS, but the sex offender
7 registry and all the other --

8 THE COURT: That would, I believe, be automatic.

9 All right. Mr. Hilliard.

10 MR. HILLIARD: Thank you, judge. At this time we
11 would move for a verdict of not guilty without regard.
12 We would ask you to set aside the jury's verdict and
13 give us a verdict of not guilty based on the fact that
14 the jury could not reach a verdict of guilty based on
15 the information that they had before them.

16 THE COURT: All right, sir. And I would disagree.
17 I think that there was ample evidence believed by the
18 jury to support their verdict. We have heard directly
19 from the victims, and I think that the evidence would
20 support a finding as to each element as to each
21 offense, and I would therefore deny your motion
22 respectfully.

23 MR. HILLIARD: Thank you.

24 THE COURT: All right, sir. I will hear you on
25 sentencing.

1 MR. HILLIARD: Very well, Your Honor. Judge, I
2 would like to -- well, number one, the jury has found
3 him guilty, so that is conclusion or the end of the
4 inquiry as to that. As the record shows, Scott has no
5 criminal history. I acknowledge and respect the
6 prosecutor's remarks regarding the circumstances of the
7 case.

8 At the same time, we would ask you to take into
9 consideration the other things that you've heard about
10 Scott in terms of the manner in which he supported the
11 family up until this time. And also, judge, I would
12 like for you, if you will, to hear from -- I don't
13 know, let me check and see, judge, if his family wants
14 to say anything.

15 Judge, his mom is here. And, of course, you heard
16 her testify, but she would like to say something on his
17 behalf.

18 THE COURT: You may.

19 MR. HILLIARD: You've heard his age and all the
20 other factors about Scott, his -- you know, the amount
21 of time that he's worked and those kinds of things.
22 His mom would like to say something, judge.

23 THE COURT: I'll hear from her.

24 MS. ROWAN: My son is not perfect. My son is a
25 strict parent, just as I am. And I taught him to be.

1 So I beg you to take into account his strict parenting
2 because I know that is what this is about. And that
3 was the way of getting out. So, please, please, he's
4 got a disabled father that he helps take care of, and
5 we need him.

6 All of his alleged victims live out of state and
7 no longer live here. He chose to come to this court,
8 face his accusers because he knew he was innocent. So
9 please, please, take into account that this is a man
10 coming before you, standing before you in his own, and
11 give him as much leniency as possible.

12 THE COURT: Thank you, ma'am.

13 MS. ROWAN: Thank you.

14 THE COURT: Anything further, Mr. Hilliard?

15 MR. HILLIARD: Excuse me just one second.

16 (Discussion off the record.)

17 MR. HILLIARD: Judge, the circumstances being what
18 they are, let me speak on behalf of Scott. I've worked
19 with him. This case has been pending for a
20 considerable period of time. I've known his family for
21 a substantial period of time, longer than that. And
22 Scott has always been cooperative with me. He's always
23 been respectful. He's appeared at every opportunity to
24 talk with me and do those things necessary to come
25 forward to court.

1 And even before these things occurred, judge, like
2 I say, I've known Scott and his family, they have
3 suffered -- the family has suffered the loss of his
4 business, his father is disabled, their home has
5 burned. And so we would ask you to take those things
6 into consideration and to, based on all the factors
7 involved in the case, give him what mercy you can,
8 judge.

9 THE COURT: All right. It's my understanding that
10 the range on third-degree criminal sexual conduct with
11 a minor is zero to 15; is that correct?

12 MS. WALTER: That's correct, Your Honor.

13 THE COURT: It is classified as a violent felony?

14 MS. WALTER: It is, Your Honor.

15 THE COURT: And on second degree, the sentencing
16 range is zero to 20 years?

17 MS. WALTER: Yes, Your Honor.

18 THE COURT: Is that correct?

19 MS. WALTER: Yes.

20 THE COURT: And it, likewise, is classified as a
21 violent crime?

22 MS. WALTER: And most serious, Your Honor.

23 THE COURT: And most serious, thereby making this
24 un-parolable?

25 MS. WALTER: Yes, Your Honor.

1 THE COURT: And, again, you have no indication of
2 a prior offense?

3 MS. WALTER: Correct.

4 THE COURT: Okay. And he's how old, Mr. Hilliard?

5 THE DEFENDANT: 33, sir.

6 SENTENCE OF THE COURT

7 THE COURT: All right. All right. I take into
8 consideration his background, I take into consideration
9 the fact that he does not have a prior criminal record.
10 But I must also consider these are extremely serious
11 offenses. They are offenses in which children were the
12 victims.

13 I would, therefore, impose the following sentence:
14 As to -- do you have copies of the indictment?

15 (Discussion off the record.)

16 THE COURT: Well, Indictment No. 2016-GS-26-00861,
17 that being an indictment for the offense of criminal
18 sexual conduct in the second degree, the sentence of
19 the Court is 15 years.

20 As to the indictment number 2016-GS-26-00862, an
21 indictment for the offense of criminal sexual conduct
22 with a minor in the third degree, I likewise sentence
23 you to 15 years. These are to run concurrently. Good
24 luck to you, Mr. Rowan. And I do understand that these
25 are non-parolable; is that correct?

1 MS. WALTER: The CSC with a minor second is not
2 parolable.

3 THE COURT: Okay, all right. That's all I need to
4 know.

5 MR. HILLIARD: Thank you, Your Honor.

6 THE COURT: Ladies and gentlemen of the jury,
7 thank you so much. These are very difficult cases.
8 They are hard to listen to. They are hard to sort out.
9 As in many cases of this kind, the jury is put really
10 to a greater task, I think, than some of the cases
11 where we just have hard physical evidence of every
12 element.

13 These cases are heard oftentimes where one person
14 is pitted against the other. And that makes it very,
15 very difficult for a jury. And I think you appreciate
16 the seriousness of these offenses during your
17 deliberations. I noticed that you were all very
18 attentive and took your job seriously, as you should
19 have.

20 I want to thank you for your service. You know,
21 we have so many cases that come before this Court,
22 whether it be the civil side or the criminal side.
23 I've been here for ten years, and it never seems to run
24 out. Before that, I practiced for 32 years, and it
25 never seemed to lessen. We have all sorts of things

1 now to try to avoid having to bring a case to you to
2 avoid having to have you sit in judgment on a fellow
3 citizen. But sometimes it is unavoidable, and we
4 certainly appreciate the stress of these trials. We
5 appreciate your willingness to step up and make a
6 decision that can resolve these cases that we have
7 failed in spite of our efforts to resolve it.

8 Thank you again for your attendance. Thank you
9 again for your service. If you hang around the
10 hardware stores or the feed and seed stores, you may
11 run into me. That's kind of what I do on weekends and
12 all. And I hope that if you do recognize me, that you
13 won't hesitate to speak to me. I always like to hear
14 from people who have been on my juries and have them
15 share the experience with them. I'm very approachable.

16 It's hard for me to remember every juror, but if
17 we do come into contact, I hope that you will take the
18 time to speak to me. I would appreciate it. Again, I
19 thank you for your service.

20 Now, Mr. Ropp, if you would take this jury to
21 their jury room, let them collect their things and make
22 sure that they are safely on their way home; okay?

23 BAILIFF: Yes, sir.

24 THE COURT: Thank you. Thank you, Mr. Ropp. I do
25 have the indictments now. Okay. Again, thank you ever

1 so much for your service.

2 (WHEREUPON, the jury exited the courtroom at

3 6:02 p.m.)

4 THE COURT: All right. Counsel, did you have a
5 sentencing sheet for me?

6 MS. WALTER: Your Honor, we're having an issue
7 with printing it up here, so Ms. Solemno (phonetic) ran
8 downstairs to print it.

9 THE COURT: Okay, all right.

10 MS. WALTER: Can I get my copies of the
11 indictments back?

12 THE COURT: Here are the original indictments. I
13 will be in chambers for that purpose; all right? Thank
14 you.

15 (WHEREUPON, the hearing concluded at approximately
16 6:03 p.m.)

17 (End of Transcript of Record)

18

19

20

21

22

23

24

25

1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)
4 COUNTY OF HORRY)
5

6 I, TERESA J.F. BAUTZ, Official Court
7 Reporter for the Fifteenth Judicial Circuit of the
8 State of South Carolina, do hereby certify that the
9 foregoing is a true, accurate and complete Transcript
10 of Record of the proceedings had and evidence
11 introduced in the trial of the captioned case, relative
12 to appeal, in the Court of General Sessions for Horry
13 County, South Carolina, on the 22nd day of July, 2018.

14
15 I FURTHER CERTIFY that I am neither of
16 kin, counsel nor interest to any party hereto.

17
18
19 *S/Teresa J. F. Bautz*

20 TERESA J.F. BAUTZ, RPR
21 Official Court Reporter
22
23
24
25

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2016-GS-26-00861, 00862

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

December 11, 2017

SCOTT RICHARD ROWAN,)

Defendant.)

B E F O R E:

Honorable Larry B. Hyman, Jr.
Horry County Courthouse
Conway, South Carolina

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

Mary-Ellen Walter, Esquire
Attorney for Plaintiff

John M. Hilliard, III, Esquire
Attorney for Defendant

TAKEN BY:

Dixie C. Eubank
Circuit Court Reporter

PREPARED BY:

Kay H. Richardson
Circuit Court Reporter

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(No exhibits were marked or admitted.)

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1 (DECEMBER 11, 2017)

2 MOTIONS:

3 THE COURT: All right. I have a -- the state's motion to
4 join the case. Ms. Walter, as a preliminary matter, why don't
5 you tell me something about the case.

6 MS. WALTER: I will, Your Honor. I would like to make
7 one correction in the opening paragraph of the facts, the
8 indictment numbers are correct in the parentheticals; however,
9 the charge of second degree criminal sexual conduct relates to
10 Complainant 1 and the third degree relates to Complainant 2. So, the
11 indictment numbers are correct, but the charges got switched.

12 THE COURT: Just the names are changed, right?

13 MS. WALTER: No, the charge. So, Complainant 1 the charge
14 where Complainant 1 is the victim, is in fact indictment ending 861.

15 THE COURT: Is it third degree criminal ---

16 MS. WALTER: It's second degree for Complainant 1 and third
17 degree for Complainant 2

18 THE COURT: Okay.

19 MS. WALTER: So, Your Honor, what the state alleges in
20 this matter is that the defendant was the stepfather to both
21 victims. Complainant 1 and Complainant 2. They're
22 separated by approximately two years each.

23 THE COURT: How old are they?

24 MS. WALTER: Now, they are 18 and 20.

25 THE COURT: Okay.

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1 MS. WALTER: Their dates of birth were '97 and '99.

2 THE COURT: Okay.

3 MS. WALTER: The defendant met and moved in with the
4 victims' mother when they were seven and nine, approximately,
5 respectively. And he began grooming them by giving them
6 marijuana. He would also give them Southern Comfort and Coca-
7 Cola. And as this progressed in -- as to Complainant 2 the oldest
8 stepdaughter it got to the point where, in exchange for the
9 marijuana, he would stick his hand down her shirt and fondle
10 her breasts. For unknown reasons, after one or two months of
11 molesting [REDACTED] -- Complainant 2 excuse me, he stopped, but he ---

12 THE COURT: She's the older?

13 MS. WALTER: She's the older one.

14 THE COURT: Okay. And how old was she at the time of the
15 alleged incident?

16 MS. WALTER: Thirteen-to-fourteen years old.

17 THE COURT: Okay. All right.

18 MS. WALTER: As to Complainant 1 he began plying her with
19 marijuana when she was approximately nine years old. It again
20 progressed to include alcohol and with Complainant 1 even pain pills.
21 Although, he began by simply fondling her, he also forced her
22 to perform oral sex on him and raped her any number of times.
23 All beginning -- I mean, it kind of carried throughout the
24 number of years but definitely between the ages of 14 and 16,
25 he raped her multiple times and forced her to perform oral sex

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1 on him.

2 Complainant 1 the older sister, was able to escape eventually
3 because she was moving out to live with her finance and then
4 the defendant and her mother actually kicked her out.

5 MR. HILLIARD: That's Complainant 2

6 MS. WALTER: Complainant 2 thank you.

7 Complainant 1 ran away and that's where the date in the
8 indictment comes in, September 15th, 2015 is the date that
9 Complainant 1 ran away. And when Complainant 1 ran away, she left two---

10 THE COURT: Now, Complainant 1 was the younger one?

11 MS. WALTER: Complainant 1 is the younger one, correct. She
12 left two notes for her mother detailing the abuse that had
13 occurred essentially saying you think you're such a great
14 mother but this is what's happened to me and this is what
15 happened to Complainant 2. When, when Complainant 1 mother was finally
16 able to speak with her and find out what happened, the mother
17 had a conversation with the defendant wherein he admitted to
18 touching Complainant 2 the older stepdaughter, and to having sexual
19 intercourse with Complainant 1 the younger daughter. He originally,
20 I believe, admitted two different instances of intercourse,
21 but then said three, one with a condom, two without or -- I
22 might have that reversed. But sort of in a nutshell, that's
23 the case.

24 So, our request in the first instance is to be able to
25 try the indictments together. They in fact have been joined

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1 from the moment that the defendant was under arrest and the
2 defense has never filed a motion to sever but just to sort of
3 cover all of our bases, the state filed this motion for
4 joinder. If the Court declines to join the indictments for
5 trial, we are asking that the testimony of each girl be
6 admitted in the trial ---

7 THE COURT: Let's talk about the joinder.

8 MS. WALTER: Okay.

9 THE COURT: Let's talk about the *Sullivan* and the *Jones*
10 factors, character, time, place.

11 MS. WALTER: Right.

12 THE COURT: What common characteristics are there there?

13 MS. WALTER: Well, Your Honor, it starts off with the
14 relationship of the defendant to both victims. Again, he was
15 the stepfather of both victims. The abuse always occurred in
16 the family home. Certain instances in the victims' separate
17 bedroom. The victims had ---

18 THE COURT: In the same house?

19 MS. WALTER: In the same house but also within the
20 victims' separate bedrooms. He plied both girls with
21 marijuana and with alcohol to groom them for their abuse. He
22 threatened both girls not to tell. So, there are a number of
23 similarities. The dissimilarities, we would state essentially
24 are that the abuse against **Complainant 1** was much more egregious
25 because he physically raped her, like vaginal penetration with

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7

1 force raped her, whereas Complainant 2 was lucky to escape with only
2 being fondled.

3 THE COURT: All right. Well, tell me, Mr. -- it would
4 certainly appear to me, Mr. Hilliard, that there are many
5 similarities which -- by which we could make finding that
6 these were certainly connected transactions taking place in
7 the home, the same time, the same M.O. if you will,
8 relationship, the same relationship that he had with each
9 child. I think the state can clearly, can clearly overcome
10 that threshold of showing that these are connected
11 transactions that would allow me to order that the cases be
12 tried together. Now, the caveat there is whether or not there
13 -- you can show a violation of the defendant's substantive
14 rights by my joining these cases. Now, I look at this case
15 and it's sort of a backup position the state has made
16 essentially what we used to refer as a Lyle motion. I think
17 it's now 407 ---

18 MS. WALTER: 404(b), I believe.

19 THE COURT: 404(b), I'm sorry, common scheme, absence of
20 mistake, that sort of thing. Okay?

21 MR. HILLIARD: Yes, sir.

22 THE COURT: If such evidence, the evidence of there being
23 another person in the same family who is undergoing the same
24 treatment or abuse, I think that that would certainly be
25 admissible to show common scheme, design, absence a mistake.

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1 I think it comes under -- we come under 404(b) subject to a
2 403 analysis, that being whether or not it's the, the
3 evidentiary value is outweighed by the -- substantially
4 outweighed, I think, by the prejudicial value. So, I think it
5 would probably come in there. But, how, how -- if that's the
6 case where there's a chance that this evidence may come in
7 anyway, how would your Defendant's substantive rights be
8 violated by trying these cases together? Help me out here.

9 MR. HILLIARD: Thank you, Judge. As a threshold matter,
10 Judge, if we could go backwards a little bit. Our belief and
11 we've had -- we've had two pre-trials in this case prior to
12 today and our belief up until last Friday, I think it was or
13 up until last Friday is that the only case we were coming here
14 to try today was the criminal sexual conduct in the second
15 degree. I had no notion that we were here to try a criminal
16 sexual conduct in the third degree. We have motions to quash
17 the ---

18 THE COURT: So, you were gonna try the more serious one,
19 right?

20 MS. WALTER: If we are forced to do separate trials, we
21 would do the ---

22 THE COURT: You put him on notice that you were gonna try
23 the child who had been ---

24 MS. WALTER: Both cases are on the roster.

25 THE COURT: Okay.

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1 MS. WALTER: Both cases are listed on the roster. My
2 recollection is I never said we would not -- I think my
3 recollection of what I said was that if forced to try them
4 separately, we would do the more serious one first.

5 THE COURT: Okay.

6 MS. WALTER: But both cases are on the roster.

7 THE COURT: And that is the one that involved actual
8 intercourse?

9 MS. WALTER: Yes.

10 THE COURT: All right. Mr. Hilliard, go ahead.

11 MR. HILLIARD: Thank you, Judge. Well, and the joinder
12 motion, Judge, that you have was made -- you got it the same
13 time I got it. And that was the reason that you -- that we
14 have the motion, I believe, Judge, bears out what I said
15 before and that is we have the two -- we had the two meetings
16 about it, we came here today, up until last Friday, to try the
17 CSC second case. We have motions to quash the indictments
18 based on information that's in the indictments and we provided
19 those to you electronically, Judge, I have a hard copies here.
20 But, the motions to quash come in in the same way as the
21 things that you're talking about here now. Number one, to
22 answer the question more specifically, we don't know whether
23 that information is coming in or not. The prosecution has
24 made statements about what she thinks the evidence will be,
25 but we don't know that to be true. And certainly, there is

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10

1 debate about whether that information as relayed by the
2 prosecutor is actually what's gonna come from the witness
3 stand.

4 THE COURT: Well, surely the prosecutor has talked to her
5 witnesses. I mean, she can't say whether it's true or not ---

6 MR. HILLIARD: Yes, sir.

7 THE COURT: --- but she can certainly it's coming.

8 MR. HILLIARD: Well, if there will be ---

9 MS. WALTER: Yes, Your Honor, I did speak with both
10 victims.

11 MR. HILLIARD: But then information that will be provided
12 to the Court regarding the elder, the CSC third, the elder of
13 the two victims will be that over a period of perhaps 30 or 60
14 days that she was fondled on perhaps one or two occasions and
15 that when she told the defendant to stop, he quit. The
16 information that will come from the younger of the two
17 victims, Complainant 1 information will be that she was
18 sexually assaulted some 10 or 12 times and it's just a
19 completely different sort of situation, Judge. The evidence
20 of one is a fondling which was stopped, and the evidence of
21 the other is a full-blown criminal sexual conduct.

22 THE COURT: And certainly that would go to the
23 credibility of the testimony. I mean, you know, something I'm
24 sure you're going to explore in trial.

25 MR. HILLIARD: Yes, sir.

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11

1 THE COURT: There's no question about it.

2 MR. HILLIARD: Yes, sir. No question.

3 THE COURT: I mean, you know, we know that. And I'm sure
4 that Ms. Walter knows that whenever she calls this case that
5 you were going to examine these witnesses in that regard. I
6 mean, that's not a surprise to anyone.

7 MR. HILLIARD: And we challenge whether or not the
8 evidence from the elder sister would be admissible, it being
9 dissimilar in our view from the **Complainant 1** because it doesn't
10 involved criminal sexual conduct through full penetration or
11 oral sex or anything like that.

12 THE COURT: But doesn't it follow -- if we take it for
13 the truth ---

14 MR. HILLIARD: Yes, sir.

15 THE COURT: --- if we take it for the truth that it
16 followed the same pattern, it just stopped short of the
17 intercourse. I mean, I mean, it's similar in the other
18 context; is it not?

19 MR. HILLIARD: Yes, sir. But that is part of the
20 pattern. The pattern is all of the events. The pattern isn't
21 -- you know, the pattern is the whole of the events.

22 THE COURT: Uh-huh, (affirmative response).

23 MR. HILLIARD: Which is -- is the fondling of the one
24 girl and the -- **Complainant 1** says she was fondled. The younger --
25 I'm sorry -- the older the daughter says she was fondled.

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1 However, the older daughter says that when she told him to
2 stop, he stopped. The younger daughter ---

3 THE COURT: They're kind of going parallel are they not
4 at the same time. And then he breaks off one short of --
5 according to the witnesses ---

6 MR. HILLIARD: Yes, sir.

7 THE COURT: --- breaks off one short of having the actual
8 intercourse and does with the other one. You know, I think
9 it's a pretty -- according to that testimony, if Ms. Walter
10 can get that testimony in, that's what they testify to. I
11 think it certainly establishes a pattern.

12 MR. HILLIARD: But we won't know till we get there.
13 That's what I'm saying.

14 THE COURT: Well, if they don't testify to that, where's
15 the harm? She's saying they're gonna testify to that. You're
16 saying if they testify to that it harms my client. If they
17 don't testify to that, what are you talking about?

18 MR. HILLIARD: Well, the harm -- certainly, the harm to
19 my client is that he's being charged with two crimes instead
20 of one. And, up until Friday, we thought we were here for one
21 crime instead of two. We were gonna argue about whether the
22 evidence came in or not. The difference in that is
23 substantial if the evidence -- the question of whether the
24 evidence comes in or not is certainly an important question
25 and we're here to argue about that as well, but ---

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13

1 THE COURT: But don't you reference them on both of these
2 offenses?

3 MR. HILLIARD: Yes, sir.

4 THE COURT: And don't they involve the same witnesses,
5 the same circumstances, the same time, the same place? I
6 mean, would it be a -- was it really a surprise to you to have
7 her say, I'm gonna try them together? I mean ---

8 MR. HILLIARD: Yes, sir. Absolutely, that was a
9 surprise.

10 THE COURT: That was a surprise. Well, tell me how it
11 would violate your defendant's or your client's substantive
12 rights. I mean, how will it be any less fair to him than to
13 try then separately, in light of the fact that this evidence
14 of another girl being involved -- I'm not saying it would, but
15 I'm saying it very possibly could come in in both cases.

16 MR. HILLIARD: Yes, sir.

17 THE COURT: I mean, if she tries the more serious case,
18 the one involving intercourse, and we have corroborating
19 testimony by the other sister, and I hate to even call it
20 corroborating testimony, it's testimony of a common scheme and
21 plan is what it is. It's 403(b) testimony. If that is likely
22 to come in anyway, where are we with that? I mean, it's not
23 the usual case where you have someone -- just for instance,
24 who commits CSC first with one person and goes to the next
25 town and commits CSC first with another person, well, he may

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14

1 have followed the same M.O. and there may be common factors,
2 they may show some connectivity but that case, in my view,
3 would be quite different from this case, because there would
4 be nothing really evidentiary that these people who don't even
5 know each other, who were not even in the same town, would
6 have to add as far as having evidentiary value to the case.

7 MR. HILLIARD: Yes, sir.

8 THE COURT: In the present case, we have two sisters who
9 apparently had knowledge or knew what was going on or at least
10 they do now, they know that during the same period and the
11 same place similar acts were going on. I think that type of
12 testimony is quite different from where you have totally
13 separate acts. These acts are really together. I mean, how
14 more closely would they have to -- could you imagine a case to
15 be to pass a 403(b) test? I mean, how could you craft facts,
16 just make them up that -- where you would have a situation
17 where the evidence would be -- would fit 403(b) better than we
18 have now?

19 MR. HILLIARD: Had the older sister been sexually
20 assaulted as well.

21 THE COURT: Well, I guess that's the only other thing we
22 could add, but ---

23 MR. HILLIARD: Yes, sir.

24 THE COURT: But, I don't think we have to that far.

25 MR. HILLIARD: Yes, sir.

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1 THE COURT: You know, I am of the position -- I mean, I
2 believe that these cases have such transactional similarities.
3 They are so connected that they can be tried together under
4 the circumstances without violating the defendant's
5 substantive rights and I would allow it.

6 Okay. Now you have two motions as well; is that right?

7 MR. HILLIARD: Yes, sir, Judge. We have motions to quash
8 the indictments.

9 THE COURT: Okay.

10 MR. HILLIARD: And I have hard copies, Judge, you want me
11 to just go ahead and pass up this?

12 THE COURT: Yeah, if you would, please. I'd appreciate
13 that. Thank you.

14 MR. HILLIARD: Yes, sir. Thank you.

15 THE COURT: Okay. Mr. Hilliard, let me hear from you
16 now.

17 MR. HILLIARD: As to the criminal sexual conduct in the
18 second degree ---

19 THE COURT: All right. That would be Complainant 1 is that
20 right?

21 MR. HILLIARD: Yes, sir, that's Complainant 1 Judge.

22 THE COURT: Okay.

23 MR. HILLIARD: And Complainant 1 indictment alleges a sequence
24 of events that occurred between [REDACTED] the [REDACTED] of 2013 and
25 September the 8th of 2015.

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16

1 THE COURT: Right.

2 MR. HILLIARD: We believe that to be and we submit to the
3 Court, Judge, that that is overbroad in the amount of time
4 that is involved in the case. And in talking to the
5 prosecutor, they've agreed to limit as to September the 18th
6 and move it back to [REDACTED] the [REDACTED] of 2015. But, at the same
7 time, we believe that that's still overbroad. And the reason

8 ---

9 THE COURT: Wasn't it an ongoing thing? I mean, isn't
10 that the allegation that there were many instances?

11 MR. HILLIARD: Yes, sir.

12 THE COURT: I mean, it's not like a specific instance
13 occurred and we think it occurred within a two-year period.
14 The allegation of the state as I understand it, Ms. Walter, is
15 it was an ongoing process involving multiple acts?

16 MS. WALTER: Instances, correct.

17 THE COURT: --- for a two-year period.

18 MS. WALTER: It actually went on for more than two years
19 but we are confining it to -- per the statute between the ages
20 of 14 and 16.

21 THE COURT: Okay. So, the [REDACTED] has to do with her
22 birthdate?

23 MS. WALTER: That's correct.

24 THE COURT: Okay. Well, I think Mr. Hilliard would've
25 been right there. You know; it couldn't have been after

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2

MS. WALTER: Correct.

3

THE COURT: Okay.

4

MS. WALTER: And that's why we agreed to that amendment on the indictment ending in 61.

6

THE COURT: And that's an agreed amendment; is that right? Something y'all agreed on?

8

MS. WALTER: Yes.

9

THE COURT: Okay. Well ---

10

MR. HILLIARD: So, the indictment as we're asking it be quashed would be from [REDACTED] the [REDACTED] of 2013 to [REDACTED] the [REDACTED] of 2015, recognizing that there's a lot of activity which is alleged to have occurred but those dates are selected based on her age and not based on allegations of what actually occurred.

16

THE COURT: How about that? I mean --

17

MS. WALTER: The state does not have to allege a specific date, especially whereas here there was a course of conduct and the case law is ---

20

THE COURT: And I understand that. I understand that. But you're saying that it occurred all during that period?

22

MS. WALTER: Correct.

23

THE COURT: All right, Mr. Hilliard. I mean, I think she's correct in that. I don't think it -- that the indictment is subject to quash as being overly broad when

25

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18

1 they're alleging a pattern of conduct that continued during
2 the entire process. Of course, it -- it you had to be
3 specific you could've charged him with each, each event.

4 MS. WALTER: He would've had probably about 20 additional
5 indictments, conservatively speaking.

6 THE COURT: So, I -- she's going forward as one count and
7 I think that it's sufficient -- the indictment is sufficient.
8 Okay?

9 MR. HILLIARD: Thank you, Your Honor.

10 THE COURT: What else do we have?

11 MR. HILLIARD: We have also the other indictment, Judge,
12 which alleges the same [REDACTED] the [REDACTED] 2013 through September
13 the 18th of 2015, as to the elder sister and also -- now,
14 that's criminal sexual conduct in the third degree. The
15 fondling, as the information has been indicated to the Court
16 at this point on that sister was for only a couple of months,
17 or for -- right, a couple months -- a couple of times, a
18 couple of months, and we would ask that that be quashed as
19 being over broad because in fact it relates to the birthdate
20 of the younger sister and in no way relates to when the crime
21 has alleged to have occurred.

22 THE COURT: Ms. Walter, Mr. Hilliard, I thought I heard
23 him say earlier that this involved with the older girl one or
24 two instances?

25 MR. HILLIARD: Yes, sir.

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19

1 THE COURT: All right. What's your position on that?

2 MS. WALTER: Well, my position is that I don't think it
3 was ever limited to one or two instances for reasons known
4 only to the defendant, at some point he stopped fondling
5 Complainant 2. No one knows why other than the defendant. We would
6 -- I agree that the dates on the indictment would need to be
7 amended based on my conversations with Complainant 2. Her memory is
8 that this fondling occurred when she was 13 or 14. And so to
9 contain it to that time period, the dates on the indictment
10 would actually be [REDACTED] 2010 to [REDACTED] 2012. But, again,
11 it's a course of conduct. We can't point to one specific
12 instance or, again, he could be charged with multiple
13 indictments.

14 THE COURT: All right. So, as it stands now, it's [REDACTED]
15 the [REDACTED] ---

16 MS. WALTER: 2013.

17 THE COURT: --- 2013 through September the 18th of 2015;
18 is that correct?

19 MS. WALTER: That's how it is written now, yes, Your
20 Honor. We believe that the amendment is permissible at this
21 stage because it doesn't change the nature of the offense.
22 The offense charged is still the same that the defendant
23 fondled his oldest stepdaughter and I think that's supported
24 by the warrant which was provided to defense. We're simply
25 amending the dates.

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1 THE COURT: All right. Mr. Hilliard, what ---

2 MR. HILLIARD: Judge, they're picking dates based on --
3 as I understand it they're picking dates based on information
4 that they got over the weekend and they're moving the dates to
5 an earlier date than it is alleged in the indictment. It's
6 not inclusive in the two parameters of the indictment. It is
7 -- it goes earlier than the indictment. So, on the -- on the
8 one hand, we'd ask that it be quashed and on the other hand,
9 we'd ask for a continuance as to that case, again, because we
10 didn't know when -- you know, we had no notice at all of
11 anything that occurred before [REDACTED] the [REDACTED] of 2013 until
12 today.

13 MS. WALTER: Your Honor, to believe that, then Mr.
14 Hilliard is saying that he did not read one lick of the
15 discovery, didn't listen to any of the victim interviews,
16 because this information has been at his disposal for well
17 over two years.

18 THE COURT: All right. Let me just get things clear in
19 my mind here. The indictment ending in 861 ---

20 MS. WALTER: That relates to the ---

21 THE COURT: --- is the indictment that involved the older
22 daughter, right?

23 MS. WALTER: Younger daughter, Your Honor.

24 THE COURT: The younger daughter, okay. That's second
25 degree?

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1 MS. WALTER: Correct.

2 THE COURT: And by agreement, the amendment is that the
3 dates will be [REDACTED] 2013 to [REDACTED] 2015; is that
4 correct?

5 MS. WALTER: Correct.

6 THE COURT: Is that right?

7 MR. HILLIARD: Yes, sir.

8 THE COURT: Okay. All right.

9 MR. HILLIARD: And so that would limit the testimony ---

10 THE COURT: I am going to amend the indictment right
11 here. Okay. That one is taken care of. Okay.

12 Now, sexual conduct in the third degree, criminal sexual
13 conduct in the third degree, you move to amend, Ms. Walter, to
14 change the date from [REDACTED] the [REDACTED] of 2012?

15 MS. WALTER: It's the same date, so 2013 to September
16 15th, 2015.

17 THE COURT: Okay.

18 MS. WALTER: And we're moving to amend it to [REDACTED]
19 2010 to [REDACTED] of 2012 based off of the oldest stepdaughter's
20 birthday, which was when she was 13 and 14 years old.

21 THE COURT: Okay. And that's a two-year period.

22 MS. WALTER: That's correct.

23 THE COURT: Okay. And it changes it to [REDACTED] 2012 to [REDACTED]
24 2014?

25 MS. WALTER: No, [REDACTED] 2010 ---

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1 THE COURT: Okay.

2 MS. WALTER: --- to [REDACTED] 2012.

3 THE COURT: Okay.

4 MR. HILLIARD: Let me be sure I got that right, Judge.

5 So, that's [REDACTED] of 2 -- [REDACTED] of 2010 until [REDACTED] of 2012?

6 THE COURT: Right. And that gives me some concern, Ms.
7 Walter. The reason it gives me concern is that it is a time
8 period that's outside, totally outside of the original
9 indictment. We have narrowed it as to the criminal sexual
10 conduct in the second degree, we have narrowed the timeframe,
11 but still in the same timeframe, it's just narrower. Which if
12 anything is to the benefit of Mr. Hilliard's client, it
13 narrows it down.

14 This second indictment, the indictment where we take it
15 totally outside of the expressed timeframe gives me some
16 problems. Talk to me about that, Ms. Walter.

17 MS. WALTER: Your Honor, it's ---

18 THE COURT: I mean, what happens when you're saying this
19 happened in 2017 and then when we go to trial and we show it
20 happened in 2015? You know, I know we've got a lot of stuff
21 here in the discovery and all where the defendant is put on
22 notice, he knows exactly who the victims are, he knows exactly
23 where this is supposed have alleged to've occurred, and again
24 these are allegations, but he knows exactly. We're ready for
25 trial now and it would appear that what we're doing is moving

1 it back two years and saying but this occurred two years
2 earlier. Talk to me about that.

3 MS. WALTER: I will, Your Honor. And if this were
4 something where the state were seeking to add a completely
5 different victim who is not similarly situated, if this is
6 something where no information had ever been disclosed to the
7 defense that forms the basis of the charges, I would agree
8 with Your Honor and I would not have moved to amend the
9 indictment, I would've simply had him direct indicted. But
10 here, rather than focusing on the fact that we are shifting
11 the timeframe backwards, what I would ask this Court to focus
12 on is what information has been available to the defense since
13 his arrest in September 2015, well over two years ago. And
14 again, that includes not only the interview with the younger
15 stepsister, but also the interview with the older stepdaughter
16 and the -- still, I think, wife. And all of those interviews
17 cover an extended period of time. And again, the state could
18 very well have alleged from the first day that the defendant
19 met his stepdaughters until the day that they were both able
20 to escape his abuse. We could have done that broad of a
21 timeframe. And the evidence that we have turned over the
22 discovery that we have disclosed to the defense would support
23 that. So, it's not that this is something that they've never
24 heard of before. It is simply almost a scrivener's error on
25 the indictment and my understanding of the case law is that as

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1 long as it doesn't change the nature of the charge against the
2 defendant it can be permitted before trial. The victim is the
3 same, the conduct alleged is the same. Everything is the same
4 but we're just shifting that timeframe.

5 THE COURT: Well, I think in -- from your point of view,
6 the best that we can point to is the fact that he lived with
7 these girls, he was their step ---

8 MS. WALTER: Stepfather.

9 THE COURT: --- stepfather, whatever, but he should've
10 been on notice as to what their ages were. And the indictment
11 says, and as part of the charge, that the child must be less
12 than 16 years of age. And Mr. Hilliard, what do you say about
13 that? The dates don't make any difference really, it's how
14 old the child was is what's the key here.

15 MR. HILLIARD: Well ---

16 THE COURT: Shouldn't he be on notice that when she
17 would've been 16 and when, you know, if this act occurred it
18 had to have occurred before she was 16?

19 MR. HILLIARD: Well, there's no question all of it is
20 before she was 16, the whole thing. But -- and let me say one
21 other, Judge, if I could answer the point. This case has been
22 pending for two years for both sides. They indicted him. And
23 again, we've had two pre-trial -- we've had two pre-trial
24 opportunities to make motions and to modify these cases. And
25 this part of it, I didn't learn about until we walked in the

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1 courtroom today. In fact, I didn't know about those two dates
2 until today. So, that modification and -- that's not in the
3 discovery. Everybody you see, these two young ladies, this
4 young lady and two more people downstairs, and me, have poured
5 over this discovery for all this past week until today. We
6 started last Friday before going through this discovery and
7 that information is not in the discovery.

8 MS. WALTER: But, Your Honor, I would disagree because,
9 A, certainly, the stepdaughter's birthday is in the discovery;
10 B, I would hope that Mr. Hilliard is not saying that they
11 haven't looked at the discovery until last week.

12 THE COURT: This indictment is almost two years old. It
13 would returned in February '16, right?

14 MR. HILLIARD: Yes, sir. And they're asking to modify it
15 today. They could've modified it at any point in time over
16 the past two years and sent it to umpteen grand juries, but if
17 -- you know, I'm not sure exactly how it's incumbent upon me
18 to know what they're doing when they don't have to know what
19 they're doing. They didn't have to -- you know, they didn't
20 have to tell us a week ago, a month ago, a year ago that this
21 is what they're gonna say today because we should've known it,
22 so they didn't have to tell us. The indictment -- the point
23 of the indictment is to tell us what it is that they're gonna
24 do when we get here and what they're gonna put in front of the
25 jury.

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1 MS. WALTER: And, Your Honor ---

2 MR. HILLIARD: So, from our point of view, they're not
3 putting anything in front of the jury that happened before
4 [REDACTED] the [REDACTED] 2013. We can here today prepared ---

5 THE COURT: I know what the issue is.

6 Do you have another motion? I mean, I'm just taking that
7 under advisement for right now.

8 MR. HILLIARD: Yes, sir. I understand they're not
9 attempting to have any testimony from the forensic
10 interviewer. Is that -- am I correct about that?

11 MS. WALTER: Your Honor, perhaps he misread my witness
12 list. When the state proposes a witness list, I include not
13 only names of people who I intend to call as a witness but
14 also names that might come up in testimony.

15 THE COURT: These are grown women, you don't need a
16 forensic interviewer in this, do you?

17 MS. WALTER: She -- I wouldn't be able to call the
18 forensic interviewer in my case in chief because [REDACTED] Complainant 1 was
19 over the age of 12 when she was interviewed.

20 THE COURT: Exactly.

21 MS. WALTER: If, however, it is permissible at some
22 point, as a prior consistent statement ---

23 THE COURT: If she's challenged, you might bring her back
24 as prior consistent statement.

25 MS. WALTER: Right, and that's why I put that name on the

1 witness list in an abundance of caution.

2 THE COURT: All right.

3 MR. HILLIARD: So, we're in agreement on that. And as to
4 Dr. Rahter, we would ask that she not be allowed to testify to
5 anything other than her examination.

6 MS. WALTER: Dr. Rahter is a well-recognized expert in
7 the evaluation of child sexual, physical, and emotional abuse.
8 She performed a medical exam on the younger stepdaughter,
9 found that her hymen was completely transected. She also
10 ordered lab tests and found that the youngest stepdaughter had
11 chlamydia. She is permitted to testify to that. She is also
12 permitted to ---

13 THE COURT: Medical findings.

14 MS. WALTER: Yes. She is also ---

15 MR. HILLIARD: I'm not objecting to that.

16 THE COURT: Subjective -- I mean, objective medical
17 findings.

18 MR. HILLIARD: Yes, sir.

19 MS. WALTER: She is also permitted to testify to what
20 Complainant 1 said to her in the process of the examination.

21 THE COURT: History.

22 MS. WALTER: So, I'm not sure what he's saying she can't
23 testify to.

24 MR. HILLIARD: I'm asking that she not be allowed to
25 testify to whether or not she believes ---

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1 THE COURT: She cannot testify to that.

2 MS. WALTER: She can't.

3 THE COURT: She cannot bolster -- that's clear. She
4 cannot do that.

5 MR. HILLIARD: I know it's clear, Judge. You know it's
6 clear; I just want to be sure everybody knew it was clear.

7 THE COURT: I mean, Ms. Walter knows that. But, she can
8 testify as to objective medical findings and, as I understand
9 it, the history that was taken at the time of the examination.

10 MS. WALTER: Correct.

11 THE COURT: She cannot comment on whether it's true, not
12 true, anything like that.

13 MR. HILLIARD: And history, and history of the
14 examination, Judge, whether or not the person has had sexual
15 activity without identifying the person who engaged in the
16 sexual activity.

17 MS. WALTER: I don't even understand that.

18 THE COURT: Say it again, Mr. Hilliard.

19 MR. HILLIARD: Yes, sir, Your Honor. The medical history
20 is for the purpose of deciding what it is that you want to do,
21 what medical exam you want to do on the individual. So, the
22 medical history would be that she has in fact been penetrated.
23 We're asking Your Honor to limit her and not allow her to say
24 that the ---

25 THE COURT: Who did it.

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1 MR. HILLIARD: Who did it.

2 MS. WALTER: That's clear, I think.

3 MR. HILLIARD: Okay.

4 THE COURT: I mean, I mean, I would grant his motion on
5 that as -- you know, it may come in later. Mr. Hilliard, you
6 challenge her on the stand, you meet the criteria, and she's
7 gonna be able to come back with a prior consistent statement.

8 MR. HILLIARD: Got you.

9 THE COURT: I mean, you understand that?

10 MR. HILLIARD: I do, yes, sir.

11 THE COURT: And that would've been something she may've
12 told Dr. Rahter, she may've told the investigating officer,
13 whatever.

14 MS. WALTER: The forensic interviewer or the
15 investigating officer, her mother, her sister ---

16 THE COURT: Any number of people. But, you know, that's
17 just a double-edged sword that we have here. And we all know
18 the rule on prior consistency.

19 MR. HILLIARD: Got you.

20 THE COURT: Okay.

21 MS. WALTER: Your Honor, I did provide to the defense
22 last week -- you may recall from my factual summary that
23 Complainant 1 the younger stepdaughter left her mother two notes.
24 She had -- also, there was a third note that she had written.
25 The state provided redacted copies of that to the defense.

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1 They've had the originals since the case was opened. I
2 haven't been told of any objections to the redactions. So, it
3 is the state's intention to introduce the redacted versions at
4 trial.

5 THE COURT: I don't even know what we're talking about as
6 far as redactions.

7 MS. WALTER: And I have copies -- the redacted versions
8 that I can show Your Honor. But, essentially, when she wrote
9 these letters, what the state did was take out where she said,
10 Scott has been doing this and there was one statement where
11 she said to her mother, you married a pedophile, we redacted
12 that. So, it's more just her telling why she ran away, what
13 had been happening to her without identifying who did it.

14 MR. HILLIARD: If they're admissible, they're admissible.
15 If they're not, they're not. The redactions, I don't see that
16 they help anything at all, but I -- I don't see that the
17 redactions make them admissible. If they're admissible,
18 they're admissible. If they're not, they're not. But, like
19 what you said earlier, Judge, you know, if the jury gets the
20 statements, they're not gonna have much trouble figuring out
21 who they're talking about.

22 THE COURT: Well, let me just ask you, how do you get
23 those in? I mean, how do you propose to introduce those
24 letters?

25 MS. WALTER: There are a number of ways that we would be

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1 able to get it in, Your Honor. Number one, they are certainly
2 admissible under the South Carolina rules that there can be
3 statements by a victim that they have been sexually assaulted
4 as long as it doesn't include who did the actual assault. So,
5 they would come in under that rationale. They would come in
6 under they're not offered for the truth of the matter
7 asserted. Obviously, that's dependent on whether or not the
8 jury believes Complainant 1 as to what happened. They are admissible
9 to show why she ran away, why the mother confronted the
10 defendant, any number of reasons why they would be admissible.
11 What the state was concerned with was that they named the
12 defendant. So, that's why we redacted anything that would be
13 directly tied to him such as his name or the fact that Complainant 1
14 said to her mother, you married a pedophile. If it's -- if
15 Defense doesn't want them redacted, I'm happy to unredact
16 them.

17 THE COURT: Well, we'll see if they're gonna come in.

18 MR. HILLIARD: Yes, sir, exactly.

19 THE COURT: And there all subject to 403 scrutiny anyway.

20 MR. HILLIARD: Yes, sir.

21 THE COURT: We'll look at them in that context.

22 MR. HILLIARD: Yes, sir.

23 THE COURT: We'll just see what comes up. Okay?

24 MS. WALTER: Would Your Honor like me to make copies for
25 you?

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1 THE COURT: Yes.

2 MS. WALTER: Okay.

3 MR. HILLIARD: And sequestering the witnesses, Judge, is
4 another ---

5 THE COURT: You know, we grant that pretty much as a
6 matter of course.

7 MS. WALTER: Your Honor, I will have the lead
8 investigator here and I will also have ---

9 THE COURT: The victims.

10 MS. WALTER: I don't expect him to -- well, actually,
11 with the victims, what -- and I guess some of this will depend
12 on Your Honor's ruling, but I've agreed with the victims that
13 neither one of them will be present for the other victim's
14 testimony.

15 THE COURT: There you go. Okay. That should take care
16 of it.

17 MS. WALTER: The state is asking that the courtroom be
18 closed. The only person other than our case investigator who
19 will be here will be a -- someone from DSS who is not expected
20 to testify, but we would ask that the courtroom be closed
21 based on the nature of the victims' testimony.

22 THE COURT: You know, ---

23 MR. HILLIARD: I don't have any problem ---

24 THE COURT: That's very difficult to do to keep the
25 public out of a courtroom. That -- what are we supposed to do

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1 when someone shows up and demands to be allowed to enter the
2 courtroom? I mean, under what authority do I close off the
3 courtroom?

4 MS. WALTER: I believe that's within Your Honor's
5 discretion at any time.

6 THE COURT: And its discretion that is very rarely
7 exercised. We'll try it. Okay?

8 MS. WALTER: Okay.

9 THE COURT: All right.

10 MR. HILLIARD: And Your Honor has under advisement the

11 ---

12 THE COURT: Yes.

13 MR. HILLIARD: Thanks.

14 THE COURT: Let's take a quick break.

15 (RECESS.)

16 *****OFF THE RECORD*****

17 (On the Record.)

18 BY THE COURT:

19 THE COURT: Let's talk about the voir dire. Okay?

20 MS. WALTER: I'm sorry, Your Honor. At some point, I'd
21 also like to address scheduling. Dr. Rahter works overnight.
22 So, she would be getting off at 7 o'clock on Tuesday. She
23 would prefer to testify on Wednesday, but I told her if that's
24 possible, she would just come here right from work and testify
25 first thing Tuesday.

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1 THE COURT: Well, it depends on how long the case may go.
2 We may go into Wednesday, we may not. It depends on if we get
3 started, but we'll work around Dr. Rahter as best we can.
4 Okay?

5 MS. WALTER: Okay.

6 THE COURT: Now, the voir dire.

7 MS. WALTER: Yes, sir. And I'm not sure if you were able
8 to print off a copy of the state's, but if not I do have that.

9 THE COURT: Elizabeth said she was not.

10 MS. WALTER: Okay. I have a copy of it.

11 John, were you able to print it off?

12 MR. HILLIARD: Do you have an extra? Thank you.

13 I've passed mine up, also, Judge, as part of that ---

14 THE COURT: John, I don't have yours. I don't see it.

15 MR. HILLIARD: It had a black clip on it. I think it's
16 right over there.

17 THE COURT: There we go.

18 MR. HILLIARD: Thank you. And then you should have one
19 as well. It was attached to ---

20 MS. WALTER: I have one.

21 MR. HILLIARD: Okay. Good. Thanks.

22 THE COURT: Let's look at the defendant's first.

23 MS. WALTER: Would Your Honor like me to address the
24 Defense suggestions in turn?

25 THE COURT: All right. Let me just look at them here.

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1 MS. WALTER: Absolutely.

2 THE COURT: All right. I'll hear from you, Ms. Walter.

3 MS. WALTER: Your Honor, ---

4 THE COURT: Let's look at Number 1.

5 MS. WALTER: Right. The state does not have any
6 objection to that question.

7 THE COURT: Okay.

8 MS. WALTER: Or to Number 2.

9 THE COURT: All right.

10 MS. WALTER: Number 3, my one concern would be addressing
11 that matter in open court. I think that that would make our
12 jury panel kind of somewhat uncomfortable so that two sort of
13 alternate suggestions I have are, one, the state is happy to
14 prepare a written questionnaire that the panel can fill out or
15 if we somehow do it so that it's in private.

16 THE COURT: No. This is what I will ask. I will ask if
17 you or any members of your family or close personal friends
18 that you know of ever been the victim of a sexually-oriented
19 offense.

20 MS. WALTER: That's fine.

21 THE COURT: Okay.

22 MS. WALTER: And I believe that dovetails with ---

23 THE COURT: What don't we ---

24 MS. WALTER: Your Honor, the way I had phrased it in mine
25 was has any member of the jury panel or a close family member

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1 or friend ever ---

2 THE COURT: Been sexually assaulted. How about we just
3 leave it at that.

4 MS. WALTER: That's fine.

5 MR. HILLIARD: And what number was that for the state's
6 voir dire?

7 MS. WALTER: No, it's -- we're on yours, Number 3.

8 MR. HILLIARD: Oh, you're still -- okay.

9 THE COURT: Okay. Number 4, have you ever suspected that
10 someone you know has been or is being -- wouldn't that be sort
11 of taken up in Number 3, if I changed 3 to have you or any
12 member of your family or friends ever been sexually assaulted?

13 MS. WALTER: Your Honor, the state's objection to Number
14 4 is just that it's, quite frankly, too vague, and I'm not
15 sure how that points to whether or not the jury would be
16 impartial.

17 THE COURT: I am a little concerned with suspected that
18 someone you know had been sexually assaulted. You know, in
19 Number 3, we're asking, do you know anybody that's been
20 sexually assaulted.

21 MR. HILLIARD: Yes, sir.

22 THE COURT: And then in Number 4, we're saying, do you
23 know anybody that you suspect might have been sexually
24 assaulted. I mean, isn't Number 3 ---

25 MS. WALTER: The state thinks Number 3 is sufficient. We

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1 object to Number 4.

2 THE COURT: What do you say about that, Mr. Hilliard?

3 MR. HILLIARD: I understand your position, Judge. We're
4 trying to get as much information as ---

5 THE COURT: I understand.

6 MR. HILLIARD: Yes, sir.

7 THE COURT: But when you start letting -- emphasizing the
8 fact that the juror might have suspected someone may have, I
9 -- as opposed to knowing a situation where someone was, I just
10 am not comfortable with Number 4.

11 Okay, let's look at ---

12 MR. HILLIARD: In that regard, Judge, if I could -- and
13 I'm not -- well, I'm certainly -- I understand your ruling as
14 Number 4. I'm just wondering in light of what you just said,
15 when you say knowing, whether Number 3 -- on Number 3 ---

16 THE COURT: Number 3, this is how I'm gonna do it -- I
17 was gonna ask it. I didn't even put knowing in it. Number 3,
18 this is what I was gonna ask, have you, any family members or
19 friends ever been sexually assaulted, period. Not that they
20 know it or anything else, just that ---

21 MR. HILLIARD: I'd ask you to go ahead and on that one,
22 Judge, sexually assaulted without defining the sexual assault,
23 if you could go ahead and add unwanted sexual contact. Would
24 you be willing to -- in other words, that just modifies the
25 sexual assault so that we have unwanted sexual contact,

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1 because that's what this -- that's at least part of what this
2 case is about is unwanted sexual contact.

3 THE COURT: All right. Why don't we say this, have --
4 ever been sexually assaulted or the victim of unwanted sexual
5 behavior?

6 MR. HILLIARD: Yes, sir. Perfect, Judge, thank you.

7 THE COURT: Okay. All right. Number 4, I'm not going to
8 do. Number 5 ---

9 MS. WALTER: Your Honor, 5 and 6, the state has the same
10 objection to both of them and we believe that Your Honor's
11 regular jury questions would cover both of those questions
12 without having to emphasize the nature of the case. I think
13 ---

14 THE COURT: Well, what I'm gonna ask them, I'm gonna tell
15 them about the case, Mr. Hilliard. I'm gonna ask them if
16 there's any reason that they could not be fair and unbiased in
17 this type of case.

18 MR. HILLIARD: Yes, sir. And that ---

19 THE COURT: I mean, that's, that's my general voir dire
20 question. I say can you tell me -- I end my usual by saying,
21 is there any reason -- now, of course, I've covered it
22 earlier, but I also finish up by saying, is there any reason
23 in the world why you could not be fair and impartial in this
24 case.

25 MR. HILLIARD: Yes, sir. And, Judge, I understand that

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1 part. What I'm wondering if you would -- if you would
2 consider asking just the last sentence in Number 5, is there
3 anything about a case involving sexual abuse of a child that
4 would affect your ability to serve as a juror. That at least
5 points out -- I know that you're gonna talk about sexual abuse
6 of a child being a part of the case that we have here. At the
7 same time, that would, that would at least bring it to the
8 jury's attention that those two things could be connected that
9 they could have some concerns about that, the last sentence in
10 Number 5.

11 THE COURT: What if I do, instead of 5 and 6, I said, is
12 there any reason why any potential juror cannot honor the
13 presumption of innocence in a case like this one.

14 MR. HILLIARD: Yes, sir. Yes, sir. Perfect, Judge,
15 thank you.

16 THE COURT: And I think that will cover 5 and -- I don't
17 like to talk about the offense specifically in jury voir dire.
18 I think it just emphasizes is, you know. It seems to give
19 credibility to the state's case, you know. It seems to be
20 bolstering the state's case. I just don't like to talk about
21 the offense or emphasize the nature of the offense. It's like
22 telling the jury, this is a more important case than the usual
23 case, you know.

24 MR. HILLIARD: Yes, sir.

25 THE COURT: And I don't want to do that. But, I would do

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1 what I just said I would do.

2 MR. HILLIARD: Thank you, Your Honor.

3 MS. WALTER: I think we're up to Number 7, which the
4 state doesn't have any objection to.

5 THE COURT: Aren't Number 7 and Number 8 about the same
6 thing?

7 MS. WALTER: Well, Number 8, Your Honor, I believe would
8 be covered, I think one of the standard questions is whether
9 or not any member of the jury panel works for an organization
10 that advocates for victim's rights.

11 THE COURT: I do ask that.

12 MS. WALTER: So, the state's position was that that would
13 certainly cover Number 8.

14 THE COURT: Well, I think it does, but I think 8 is also
15 pretty much covered with Number 7; and I do have a general
16 thing that is anyone a member of any group or contributes to
17 any group such as MADD, SADD, CAV, Citizens Against Violence,
18 that sort of thing ---

19 MR. HILLIARD: Yes, sir.

20 THE COURT: --- that a primary function is support of law
21 enforcement, victims' rights. I already ask them that.

22 MR. HILLIARD: Yes.

23 THE COURT: So, I'll give you Number 7.

24 MR. HILLIARD: Thank you, Your Honor.

25 THE COURT: I think Number 7 pretty much covers it.

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1 MR. HILLIARD: Yes, sir.

2 THE COURT: All right. And these are in addition to my
3 normal charges. Okay.

4 Let's look at the state's proposed voir dire. Mr.
5 Hilliard let's look at -- let's number them -- Number 1 will
6 be, does any member of the jury panel believe that all sexual
7 assaults are reported.

8 MR. HILLIARD: My general objection to all of these,
9 Judge, is that they're ---

10 THE COURT: They're pretty specific.

11 MR. HILLIARD: Well, it's a question of philosophy and
12 sociology and doesn't relate to the law.

13 THE COURT: Well, what ---

14 MS. WALTER: Actually, most of Mr. Hilliard's questions
15 didn't relate to the law either and the jury questions do not
16 have to relate to the law.

17 THE COURT: What if I did this, does any member of the
18 jury panel believe that if a sexual -- that if a sexual
19 assault is not immediately reported, it did not occur?

20 MS. WALTER: Yes, Your Honor. Thank you.

21 MR. HILLIARD: Judge, in that regard, what I meant to say
22 by that and perhaps I ---

23 THE COURT: And I was going to do that in place of 2 and
24 3, Mr. Hilliard.

25 MR. HILLIARD: Yes, sir.

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BY THE COURT

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1 THE COURT: Okay? Fair enough?

2 MR. HILLIARD: Well, I still object to them, Judge, and I
3 understand what you're saying, they're conditioning the
4 questions. They are -- they're designed to imply that that's
5 not the case, that is the way that I read them and perhaps I'm
6 mistaken. But the way that I read them, these questions are
7 designed to condition the jury to ---

8 THE COURT: And, you know, I agree with you to some
9 extent. That's why I wanted to eliminate reference to
10 children and things of that nature. I am inclined to give her
11 a voir dire that says that if any member -- does any member of
12 the jury panel believe that if a sexual assault is not
13 immediately reported, it did not occur. I would give her
14 that, but I don't want to go into 2 and 3, where we're talking
15 about children and children being sexually assaulted. I think
16 those do emphasize the offense and could lead a juror into
17 thinking, well, it did occur or it did not. I'm just not sure
18 about that. I'm not gonna ask 2 and 3.

19 Let's look at 4. Has any member of the jury panel or
20 close family member been accused of a sexually related
21 offense? I think if I give you your -- which one is it?

22 MS. WALTER: 3, Your Honor.

23 THE COURT: If I give you ---

24 MS. WALTER: Number 3 on the defense, I believe.

25 THE COURT: Yeah, Number 1, 2, or 3, that in fairness

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BY THE COURT

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1 that would ---

2 MR. HILLIARD: Yes, sir, Judge.

3 THE COURT: She'd be entitled to that.

4 MR. HILLIARD: I understand.

5 THE COURT: Okay. Number 5, does any member of the jury
6 panel believe that they would be able to tell someone is a
7 sexual predator just by looking at them. I don't think so.
8 I'm not gonna do that one.

9 Does any member of the jury panel believe they know how a
10 rape victim should -- how about, does any member of the jury
11 panel harbor any preconceived notion of how a rape victim
12 should or will react. Okay?

13 MS. WALTER: Thank you, Your Honor. Yes, that's fine.

14 THE COURT: Okay.

15 MS. WALTER: And then the next page just has a follow-up
16 to that question in the event that anyone responds in the
17 affirmative.

18 THE COURT: What I would do is I would ask them if that
19 would affect their ability to be fair and impartial if they
20 responded to that. And I'll ask each one of them.

21 MS. WALTER: That's perfect. Thank you, Your Honor.

22 MR. HILLIARD: Yes. Thank you, Your Honor.

23 THE COURT: All right. Well, let's be back here at 1:30
24 and I'm going to talk to you about the amendment. Okay?

25 MR. HILLIARD: At 1:30?

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BY THE COURT

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1 THE COURT: Yeah. Okay?

2 MR. HILLIARD: Yes, sir.

3 MS. WALTER: Your Honor, just as a matter of scheduling,
4 does Your Honor want us to start today or start fresh in the
5 morning?

6 THE COURT: Well, I've got -- I really don't have -- this
7 is the only case we've got to try this week. Next -- how long
8 do you think this case will take? I mean, Mr. Hilliard,
9 what's your maximum number of witnesses?

10 MR. HILLIARD: Maximum number of witnesses?

11 THE COURT: The maximum. You don't have to tell me how
12 many you're gonna call.

13 MR. HILLIARD: Three.

14 THE COURT: Maximum would be three?

15 MR. HILLIARD: Yes, sir.

16 THE COURT: Okay.

17 MR. HILLIARD: Well, three and three-and-a-half.

18 THE COURT: Well, do you have any experts or anything
19 like that? Do you have any forensics or anything like that,
20 any lengthy ---

21 MR. HILLIARD: No, sir, Judge. It'd be one piece of
22 paper that would might be ---

23 THE COURT: No lengthy witnesses?

24 MR. HILLIARD: I don't have -- the defendant would be the
25 only lengthy witness I'd have.

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BY THE COURT

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1 THE COURT: Okay. All right.

2 MS. WALTER: Your Honor, if the defense is planning on
3 introducing any evidence, we would just ask the opportunity to
4 see it. They've seen all of our ---

5 THE COURT: Discovery under Rule 5, let's get it to them.
6 Okay?

7 MR. HILLIARD: Yes, sir.

8 THE COURT: All right. How many do you think the state's
9 is gonna have?

10 MS. WALTER: It'll be four in our case in chief, and then
11 the only additional witnesses would again be if it comes in
12 ---

13 THE COURT: You have the two victims.

14 MS. WALTER: Two victims, the mother, and Dr. Rahter.

15 THE COURT: Okay. So, that's it for you?

16 MS. WALTER: Unless a prior consistent statement would
17 get to come in and then that could extend it just a bit.

18 THE COURT: All right. Well, let's, let's select a jury
19 this afternoon. We've got the jury coming in.

20 MS. WALTER: Right.

21 THE COURT: Okay. Let's talk about strikes. How many do
22 you think you're entitled to Mr. Hilliard?

23 MR. HILLIARD: I'd like to have 10, Judge.

24 THE COURT: Okay. Is he entitled 10?

25 MS. WALTER: It would -- it depends in part on Your

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BY THE COURT

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1 Honor's ruling on the amendment and ---

2 THE COURT: If I allow you to proceed with both charges,
3 I think he's entitled to 10, isn't he?

4 MS. WALTER: Right. I agree.

5 THE COURT: Okay? He's entitled to 10.

6 MR. HILLIARD: Yes, I agree.

7 MS. WALTER: And if you -- correct, if it's just on one
8 charge at a time ---

9 THE COURT: He gets five.

10 MS. WALTER: Five, correct.

11 THE COURT: Okay: Right?

12 MR. HILLIARD: Yes, sir; yes, sir.

13 THE COURT: All right. So, it'd be five and ten or five
14 and five.

15 MS. WALTER: Yes.

16 THE COURT: All right. Okay.

17 MS. WALTER: I just -- I know I'm being a pest. So, then
18 -- and I'm happy to do whatever Your Honor wants. If Your
19 Honor -- the issue with the ---

20 THE COURT: Let's pull the jury -- we got plenty of time
21 this week. Let's pull the jury and if you want to start fresh
22 on Tuesday morning, that's fine with me. But, I would prefer
23 that if that's the case, you do openings in the morning.

24 MS. WALTER: Yes. And then would Your Honor be amenable
25 to if we -- so we open and we could put on our three

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BY THE COURT

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1 witnesses, the two victims and the mother on Tuesday and break
2 and have Dr. Rahter on Wednesday or I'll just have her here
3 first thing Tuesday -- tomorrow morning and we'll start with
4 her to get her out.

5 THE COURT: That would probably be better because I,
6 quite frankly, don't think that your witnesses are going to
7 take up -- those four witnesses will take up a whole day. I
8 know Mr. Hilliard's gonna be cross examining them but
9 sometimes you, you know, less is more.

10 MR. HILLIARD: Definitely, Your Honor.

11 THE COURT: You know, but it's your case -- do you
12 anticipate doing more than those four witnesses or three
13 witnesses tomorrow?

14 MR. HILLIARD: Maybe, Judge, but at the same time I don't
15 know that I would object to having Dr. Rahter called out of
16 order. I don't know that ---

17 MS. WALTER: Well, it's not something that the defense
18 can object to. It's a matter of what I'm trying to do and ---

19 THE COURT: You can call her anytime you want.

20 MS. WALTER: Right. So, it's -- I'll just call her first
21 and that's -- we'll make it easy.

22 THE COURT: It'd probably be better if we could just get
23 that of the way, that way we don't end up with a delay.

24 MS. WALTER: Right. I'll notify her.

25 THE COURT: I do anticipate us going over into Wednesday,

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BY THE COURT

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1 most assuredly but -- okay, well, I'll ---

2 MR. HILLIARD: I guess the point of that was I'm

3 confident that we'll, that we'll go into ---

4 THE COURT: Wednesday.

5 MR. HILLIARD: --- Wednesday. And so when I said out of

6 order, I didn't mean in the order of her witnesses. What I /

7 meant was that I'd start my case and then ---

8 THE COURT: Okay. Well, let me just tell you how I do
9 it.

10 MR. HILLIARD: Yes, sir.

11 THE COURT: I don't break arguments away from charge.

12 Whatever happens, I always charge -- I mean, let you argue and
13 charge immediately. I don't do this business of you argue in
14 the afternoon and then I bring them back and charge. I don't
15 think that's fair ---

16 MR. HILLIARD: Yes, sir.

17 THE COURT: --- to either side. I don't do it that way.

18 So, however it works out, we may break early on Tuesday or
19 Wednesday or whenever we get to it, but arguments and charge
20 will be together. And y'all know my policy on charge, I will
21 be charging and giving them a copy of it.

22 MS. WALTER: Yes, Your Honor. And I submitted proposed
23 final jury instructions.

24 THE COURT: Yeah, if you have anything you can hand up,
25 that's good. We will be as accommodating as possible as far

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BY THE COURT

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1 as any specific charges, but get them up, that's good. Liz is
2 working on it already.

3 MR. HILLIARD: Thank you, Judge.

4 THE COURT: All right. Thank you.

5 MS. WALTER: Thank you, Judge.

6 THE COURT: 1:30.

7 (RECESS.)

8 *****OFF THE RECORD*****

9 (On the Record.)

10 THE COURT: Let the record reflect that I have not at
11 this point ruled or have not at this point ruled on the matter
12 of the indictment, as to whether or not an amendment should be
13 permitted. I will, for the record, say that I have researched
14 this over lunch. I also discussed with the Chief Admin Judge,
15 Judge John. I have informed the attorneys about that
16 conversation and our joint feeling concerning this matter,
17 it's my feeling that while the indictment in question does
18 sufficiently state the nature of the offense and put the
19 defendant on notice, it does establish jurisdiction. However,
20 the amendment, the proposed amendment is significant in that
21 it changes the dates set forth in the indictments to a time in
22 which the victim, as I understand it, would be less than 16
23 years of age. As it sits now, it alleges a timeframe where
24 she would over 16, making the offense as pled in the
25 indictment impossible.

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BY THE COURT

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1 So, I am of the opinion that amendment is appropriate and
2 -- in this matter. However, if or upon my granting of this
3 amendment, I will offer or entertain from the defense a motion
4 to continue that particular case, leaving as an option for the
5 state to either go forward on the unaffected indictment or at
6 their choice a continuance if I have not granted the defense a
7 continuance, or if I have granted the defense a continuance on
8 the affected indictment.

9 What's your position, Mr. Hilliard? And let me ask you,
10 does that reflect our conversations in chambers?

11 MR. HILLIARD: Absolutely. Yes, sir, Your Honor.

12 THE COURT: All right.

13 MR. HILLIARD: We're seeking the continuance, Your Honor.

14 THE COURT: All right. Now, again, I have granted the
15 amendment of the indictment. Let me go back to the state and
16 ask Ms. Walter, could you tell me specifically how that
17 indictment will be amended. And it is the indictment for
18 sexual conduct in the third degree?

19 MS. WALTER: Yes, Your Honor.

20 THE COURT: Okay. And that would be indictment number --
21 that would be indictment number ---

22 MS. WALTER: I believe it ends in 862.

23 THE COURT: 00862.

24 MS. WALTER: Yes, Your Honor.

25 THE COURT: All right. And the date -- the changes would

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BY THE COURT

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1 be ---

2 MS. WALTER: From [REDACTED] of 2010 ---

3 THE COURT: All right. Let me make that change. [REDACTED]

4 2010. Okay.

5 MS. WALTER: To [REDACTED] 2012.

6 THE COURT: All right. I'm gonna initial that on the
7 indictment.

8 Mr. Hilliard, will you require re-service of this
9 indictment?

10 MR. HILLIARD: No, sir.

11 THE COURT: Okay. All right. That is taken care of.
12 Now, let me hear from the state.

13 MS. WALTER: Your Honor, the state opts to try both
14 charges together.

15 THE COURT: Okay.

16 MS. WALTER: In a joint trial and it's my understanding,
17 I believe you said you would retain jurisdiction?

18 THE COURT: I will retain jurisdiction.

19 MS. WALTER: Your Honor, given that both victims and
20 their mother are coming from three different states, I was
21 hoping that we could get a date certain set.

22 THE COURT: All right. And I would grant that if you
23 would -- first of all, I will grant it with the caveat, I
24 don't know what date certain Judge John may have granted. He
25 is the Admin Judge, of course. And if he has granted a date

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BY THE COURT

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1 certain, there's nothing I can do about that.

2 MS. WALTER: Right.

3 THE COURT: And we don't know right now. I would be
4 willing to entertain a motion for a date certain. Does anyone
5 happen to have ---

6 MS. WALTER: I know when you're sitting for trials, Your
7 Honor.

8 THE COURT: Okay. When am I sitting?

9 MS. WALTER: You're -- the first week that you're sitting
10 is February 12th, then again March 12th, and April 9th.

11 THE COURT: I'm pretty sure that March 12th I have a
12 murder case that has been set by Judge John for that week.
13 So, I know that week is out.

14 MS. WALTER: Okay. So, then it would be February 12th is
15 the first available, then skipping March it would be ---

16 THE COURT: What's wrong with February 12th?

17 MS. WALTER: Nothing. I just -- I was trying to give you
18 all the dates.

19 THE COURT: Is there any problem with February 12th?

20 MR. HILLIARD: We're looking right now, Judge. I don't
21 think so, and I can't imagine that there is, but I ---

22 THE COURT: Okay. I'm setting a date certain now, with
23 the caveat that Judge John may have done otherwise. Okay?

24 MS. WALTER: Yes. So, February 12th.

25 MR. HILLIARD: Let me look and -- give us just a minute,

State v. Rowan - 2016-GS-26-00861 and 00862
BY THE COURT

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1 Judge. I didn't anticipate ---.

2 THE COURT: Okay. All right.

3 If you don't have another date certain that some other
4 judge has claimed you, I don't see a problem with that. Okay?
5 Unless you're gonna be made to report to the Supreme Court?

6 MR. HILLIARD: No, sir. If I'm before the Supreme Court,
7 I don't know about it yet and I don't want to find out, so --
8 February the 12th, Your Honor.

9 THE COURT: February 12th.

10 MS. WALTER: Thank you, Your Honor.

11 THE COURT: Okay. Is that a full week?

12 MS. WALTER: Yes, Your Honor.

13 THE COURT: All right.

14 MS. WALTER: It's the week before President's Day.

15 THE COURT: All right. If you would, make sure that the
16 scheduling clerk who prepares the dockets is aware of this.
17 Okay?

18 MS. WALTER: Yes, Your Honor.

19 THE COURT: All right. Thank you.

20 MS. WALTER: Thank you, Your Honor.

21 MR. HILLIARD: Thank you, Your Honor.

22 THE COURT: All right.

23 (ADJOURNED.)

24

25

State v. Rowan - 2016-GS-26-00861 and 00862
CERTIFICATE OF COURT REPORTER

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina v. Scott Richard Rowan, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on December 11, 2017, as reported by Dixie C. Eubank.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.

Kay H. Richardson

Official Court Reporter

July 5, 2018.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

STATE OF SOUTH CAROLINA

PLAINTIFF.

VS.

SCOTT RICHARD ROWAN

DEFENDANT.

) IN THE COURT OF GENERAL SESSIONS

) Warrant: 2015A2610202746, 2015A2610202747

) Indictment: 2016GS2600861, 2016GS2600862

) Case: 15H05413

)

) MOTION IN LIMINE

) FOR COMPLIANCE

) WITH RAPE SHIELD LAW

)

)

)

)

Now comes the State, with notice to the defendant, by and through counsel for the defendant, John Hilliard, Esquire, that the State of South Carolina moves to ensure compliance with S.C. Code Section 16-3-659.1, the "Rape Shield Statute," which mandates limited admissibility of opinion evidence, reputation evidence, or specific instances of sexual activity by the victims with persons other than the defendant. Furthermore, this law is established pursuant to the S.C. Rules of Evidence, Rule 412.

Please take notice that the State moves to prohibit any reference or line of inquiry by counsel regarding prior sexual knowledge and/or sexual activity concerning the victims, [REDACTED] Complainant 2 and [REDACTED] Complainant 1, with any person other than the defendant. The exclusion of such reference shall include, but is not limited to: any inquiry by counsel and/or any reference by counsel during summation, argument, or witness examination which alleges any specific instance of prior sexual activity or sexual knowledge.

Furthermore, S.C. Code Section 16-3-659.2 requires notice to the State before any such evidence may be proffered before the Court. In addition, the law mandates an *in-camera* review by the Court before any such evidence may be deemed relevant or admissible.

Date: February 22, 2018

RESPECTFULLY SUBMITTED,



MARY ELLEN WALTER
SENIOR ASSISTANT SOLICITOR

Copy delivered on:
February 22, 2018 to:

Honorable Larry B. Hyman
Presiding Judge
15th Judicial Circuit

John Hilliard
Attorney for Defendant

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF GENERAL SESSIONS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,

MOTION TO QUASH INDICTMENTS

vs.

Scott Richard Rowan,

Indictment No's.: 2016-GS-26-861, 862

Defendant.

NOW COMES the defendant in the above-captioned matter and requests that the Court quash the above-captioned indictments on the following grounds:

- 1) As to indictment number 2016-GS-26-861, criminal sexual conduct with a minor second degree, the indictment alleges that Defendant committed sexual battery on the minor

Complainant 1 "on or about or between the dates of [REDACTED], 2013 and September 18, 2015."

- a. Pursuant to S.C. Code §16-3-655, the indictment could only cover alleged conduct that occurred when the minor was at least 14 years of age but less than 16 years of age.
- b. The Complainant 1 turned 16 years old on [REDACTED], and any alleged conduct that occurred after that date is not covered by the relevant statute.
- c. Defendant requests that the Court quash indictment number 2016-GS-26-861 as overbroad, or, in the alternative, amend the indictment to comply with S.C. Code §16-3-655.

- 2) As to indictment number 2016-GS-26-862, criminal sexual conduct with a minor third degree, the indictment alleges that Defendant committed a lewd act on a child, less than 16 years of age, "on or about or between the dates of [REDACTED] 2013 and September 18, 2015."

- a. Although Defendant could assume that indictment number 2016-GS-26-862 relates to the Complainant 1's sister, [REDACTED], the indictment alleges only a lewd act "on

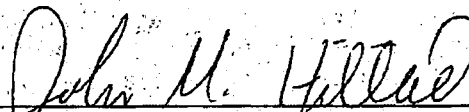
a child." This is unconstitutionally broad, vague, and it would be impossible for Defendant to prepare a defense when the alleged victim is not identified in his charging document.

- b. If indictment number 2016-GS-26-862 relates to the Complainant 1's sister, Complainant 2, the alleged dates in indictment number 2016-GS-26-862 are unnecessarily and unconstitutionally overbroad. Based on the discovery materials provided by the State, the Complainant 2 alleged that Defendant committed a lewd act upon her for a period of one to two months.

Despite this, the State apparently copied and pasted the alleged dates from indictment number 2016-GS-26-861 to indictment number 2016-GS-26-862. If indictment number 2016-GS-26-862 relates to the Complainant 1's sister, Complainant 2, Defendant should not be forced to attempt to defend against charges for alleged acts against an unnamed minor for a time period that the State knows is overbroad based on their own interviews and discovery material.

- c. Defendant requests that the Court quash indictment number 2016-GS-26-862 or, in the alternative, amend the indictment to provide sufficient notice of who he is alleged to have committed a lewd act upon and when he is alleged to have committed the act.

Respectfully Submitted,



John Hilliard, Esq.
Attorney for the Defendant
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December 8, 2017.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF GENERAL SESSIONS
) FOR THE FIFTHTEENTH JUDICIAL CIRCUIT
)

STATE OF SOUTH CAROLINA,

) Motion to Exclude Testimony by Forensic
) Interviewer
)

vs.

Scott Richard Rowan,

)
)
) Indictment No's.: 2016-GS-26-861, 862
)

Defendant.

NOW COMES the defendant in the above-captioned matter and requests that the Court exclude inadmissible testimony that would amount to express or implied vouching for or bolstering of the credibility of the alleged victim in the above-captioned trial.

The State has indicated that they intend to call forensic interviewer Haydee Sencion and Dr. Carol Rahter as witnesses in the trial of this case. For the reasons stated below, Defendant requests that this Court limit the testimony of these witnesses in accordance with the guidelines that have been set forth by South Carolina's appellate courts.

Forensic Interviewer Haydee Sencion

Prosecutors across South Carolina have repeatedly attempted to use the testimony of forensic interviewers and other related professionals to bolster the credibility of child witnesses. This strategy has resulted in a series of appellate opinions where the South Carolina Supreme Court and the South Carolina Court of Appeals have set forth strict guidelines as to what these witnesses can and cannot say to jurors.

Qualification as an Expert Witness

As a preliminary matter, Defendant objects to Ms. Sencion being qualified as an expert witness in this case. If the State intends to offer Ms. Sencion as an expert witness, Defendant requests that this matter be taken up pretrial outside the presence of the jurors.

Because a forensic interviewer's testimony is limited to her personal observations and experience, foundational testimony for the admission of the video when appropriate, and the

content of the videotaped interview with the alleged victim when it is admissible, there is no need to qualify a forensic examiner as an expert witness in "forensic interviewing" or the RATA method. State v. Douglas, 671 S.E.2d 606, 380 S.C. 499 (S.C., 2009) ("We find the testimony given by Herod in the present case simply was not required to be presented by an expert witness. Herod testified only as to her personal observations and experiences, and her interview with the Victim in this case. Accordingly, we find it was unnecessary for the trial court to have qualified her as an expert.")

Admissible Testimony

In State v. Kromah, 737 S.E.2d 490, 401 S.C. 340 (2013), the S.C. Supreme Court specified the types of testimony by a forensic interviewer that are appropriate and admissible which includes:

- 1) "The time, date, and circumstances of the interview." This testimony is admissible and appropriate to lay the foundation for admission of the videotaped interview pursuant to S.C. Code §17-23-175. Per the statute, the video is only admissible if the alleged victim was younger than age 12 at the time of the interview. Because the alleged victim(s) in this trial were over the age of 12, there is no need for a forensic interviewer to lay the foundation for admission of the videotape.

See also State v. Whitner, 399 S.C. 547, 559, 732 S.E.2d 861, 867 (2012) ("[T]he forensic interview of the child and mere foundational trial testimony of the interviewer serve as a model of how the statute is designed to work. Specifically, the forensic interviewer did not improperly lead or influence the victim in any way, and the victim answered the questions on her own accord. Moreover, the forensic interviewer's testimony was for the limited purpose of laying the proper foundation for the admission

of the videotape. It offered no improper testimony, and included no bolstering testimony that would invade the province of the jury.”)

- 2) “Any personal observations regarding the child’s behavior or demeanor.” This testimony would be admissible, for example, to support a professional witness’s diagnosis of the child. If there is no diagnosis to support with the witness’s testimony and in the absence of any other basis for admissibility, this testimony is also not admissible in the trial of this case.

See also State v. Henry, 329 S.C. 266, 277, 495 S.E.2d 463, 468 (Ct. App. 1997)

(Therapist “based her diagnosis and opinion as to PTSD on the history received from Victim, Badger’s personal observations of Victim, Victim’s demeanor, and symptoms exhibited by Victim.”)

- 3) “A statement as to events that occurred within the personal knowledge of the interviewer” consistent with Rule 602. Testimony about the interview would be within the personal knowledge of the interviewer; however, the interview is not admissible in this trial because the alleged victim(s) are over the age of 12.

It is Defendant’s belief that the interviewer in this case does not have information relevant to the alleged events that gave rise to Defendant’s prosecution apart from inadmissible hearsay obtained during the child interview and from law enforcement.

Based upon the discovery materials and interviews provided by the prosecution in this case, it is Defendant’s belief that the forensic interviewer in this case does not have admissible testimony to offer in this trial.

The videotape is not admissible, therefore there is no need to lay a foundation for the admission of the video.

Because there is no diagnosis that needs to be explained to the jurors in this case, personal observations regarding the child's behavior or demeanor could only be offered to bolster the child witness's testimony and to vouch for her credibility. In the absence of another credible basis for the admissibility of personal observations regarding the child's behavior or demeanor, testimony regarding observations regarding the child's behavior or demeanor during the interview is not admissible.

Defendant also is not aware of any events relevant to the prosecution of this case that are within the personal knowledge and experience of the interviewer. The only testimony that Defendant is aware of that could be elicited from the interviewer would consist of hearsay statements recounting the child witness's out-of-court statements or personal observations regarding the child's behavior or demeanor.

Unless the interviewer has additional, admissible personal knowledge of the events that are relevant to this case, Defendant asks that this Court exclude the testimony of the forensic interviewer in its entirety.

Inadmissible Testimony

The S.C. Supreme Court in Kromah expressly prohibits the following types of testimony that are designed to expressly or impliedly vouch for the child witness's credibility or bolster the child witness's testimony:

- Testifying "that the child was told to be truthful."
- Providing "a direct opinion as to a child's veracity or tendency to tell the truth."
- Making "any statement that indirectly vouches for the child's believability, such as stating the interviewer has made a 'compelling finding' of abuse."
- Making "any statement to indicate to a jury that the interviewer believes the child's allegations in the current matter."
- Offering "an opinion that the child's behavior indicated the child was telling the truth."

State v. Kromah, 737 S.E.2d 490, 401 S.C. 340 (2013).

In State v. McKerley, 397 S.C. 461, 466-67, 725 S.E.2d 139, 142-43 (Ct. App. 2012) (cited with approval by Kromah), the S.C. Court of Appeals also identified testimony that lacks "relevance except insofar as it informs the jury [the child interviewer] believes the story told by the victim" including:

- "'We are looking for accuracy of information' given by the victim,"
- "We are going to ... make sure that what the child is telling us is based on something they would have experienced on their own body or that they would have seen or heard, the sensory information;"
- "Those statements have a level of detail that ... they would be able to tell [only] if something were to have happened;"
- "We are also looking at ... are there other possible reasons, are there other possible explanations;"
- "We are looking to see if [this] could ... be explained in another way;"
- "We are looking to be sure it adds up;"
- "We are looking to see if what they tell us throughout the interview is the same from the beginning to the end;"
- "We are also looking at their behavior and the way they are expressing themselves in the interview ... their behavior and their language;"
- "In forming her 'opinion as to whether ... something happened,' she considered whether the victim's statements were 'consistent with the other information' she has on the case;"
- "In forming her 'opinion as to whether ... something happened,' she considered 'does this child appear to be giving statements that are similar to, in my experience, in my

training and what I have learned, similar to what other children with the same experience may have had;” and

- “The compelling findings are the things that we look at, that we talked about looking at earlier in terms of how the disclosure comes about in the interview with me; whether it is detailed, does it have consistency, does it have the sensory level of detail that a child typically wouldn’t have, or *only would have if something had happened to them.*” (emphasis supplied by Court).

Defendant requests that this Court exclude all testimony listed above as well as any similar testimony by a forensic examiner or any State’s witness that vouches for the credibility of the child witness or bolsters the child witness’s testimony whether express or implied.

Defendant requests that this Court exclude any testimony by the forensic examiner unless the State can demonstrate its relevance and admissibility.

Dr. Carol Rahter

Defendant acknowledges that testimony from Dr. Carol Rahter regarding the medical examination of the child witness may be relevant and admissible. However, Defendant moves this Court to exclude any testimony by Dr. Carol Rahter or any other witness that is similar to the examples listed above or that vouches for the credibility of the child witness or bolsters the child witness’s testimony whether express or implied.

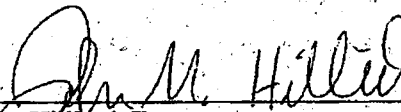
Conclusion

As the series of appellate opinions cited above illustrates and in undersigned counsel’s own experience, the Fifteenth Circuit Solicitor’s Office and other Solicitor’s Offices across South Carolina have consistently attempted to use forensic interviewers and other professional

witnesses to expressly or impliedly vouch for the credibility of child witnesses even after the appellate courts have ruled that it is inadmissible testimony.

Defendant requests that the Court exclude this testimony and require the State to comply with the guidelines that the S.C. Supreme Court and Court of Appeals have provided in the cases cited above. This Court should exclude any testimony by forensic interviewer Haydee Sencion, Dr. Carol Rahter, or any other witness that is similar to the examples listed above or that vouches for the credibility of the child witness or bolsters the child witness's testimony whether express or implied.

Respectfully Submitted,



John Hilliard, Esq.
Attorney for the Defendant
408 Cleland Street
Georgetown, South Carolina 29440
843-527-1500
john@hilliardlawfirm.com

December 8, 2017.

STATE OF SOUTH CAROLINA)
 COUNTY OF HORRY)

IN THE COURT OF GENERAL SESSIONS
 FOR THE FIFTHTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,)

vs.)

Scott Richard Rowan,)

Defendant.)

**DEFENDANT'S REQUEST FOR
 VOIR DIRE**

Indictment No's.: 2016-GS-26-861, 862

NOW COMES the defendant in the above-captioned matter and requests that the Court ask the following questions of prospective jurors in addition to the questions which the Court ordinarily asks:

1. Have you or any relatives or friends ever worked with adults or young people who have been physically or sexually abused?
2. Do you or anyone close to you work in a job where you are mandated to report sexual abuse if you suspect it has occurred?
3. Have you, any family members or friends ever been sexually assaulted or had any unwanted physical or sexual contact, including any sexual behavior that you or they believed was inappropriate?
4. Have you ever suspected that someone you know was being or had been sexually abused?
5. The defendant in this case is charged with criminal sexual conduct and is accused of sexually abusing his step-daughter from age 11. Is there anything about a case involving sexual abuse of a child that would affect your ability to serve as a juror?
6. Under the law every person who is charged with a crime is presumed to be innocent. Are you able to presume innocent a person who is charged with sexual assaulting a child?
7. Have you, any member of your family or any close friends ever worked or volunteered at a job or activity which involved working at a battered woman's shelter, rape crisis center or similar organization?
8. Are you, any member of your family, or any close friends associated in any way with any group or organization whose goal is to support either victims or accused persons in sexual assault situations?

Child sexual abuse is unfortunately prevalent in American society. National statistics from the Bureau of Justice Statistics report that 67% of all sexual assault victims reported to law enforcement agencies were between 12 and 18 years of age. Of the alleged offenders in that age category, 24.3% were family members of their victims; 66% were acquaintances of their victims (Snyder, H., National Center for Juvenile Justice, July 2000, NCJ 182990). Thus, many jurors in the panel can be expected to have personal knowledge of, or experience with, sexual abuse.

Furthermore, persons who have been exposed to, experienced personally, or have advocated for victims of child sexual abuse may, understandably, tend to experience extreme bias towards any person accused of sexually abusing a child.

The defendant is entitled to inquire into the experiences of prospective jurors concerning this subject in order to determine whether they, or persons close to them (including family members), have ever been the victim of sexual misconduct. It is necessary to evaluate juror attitudes and experiences on this subject because of their potential to produce predisposition or prejudice, which could easily affect their ability to decide this case fairly and impartially. This is information that the attorney for the Defendant must have to determine whether prejudice exists which would justify a challenge for cause or, in the alternative, to intelligently exercise peremptory challenges.

Defendant requests that this Court ask the above-listed voir dire questions and that the Court receive jurors' answers out of the presence of all other jurors.

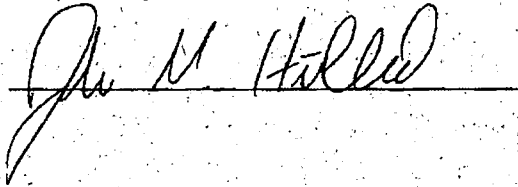
Child sexual abuse and assault is obviously a very private and potentially painful subject. Parents have difficulty talking to their own children about sexual matters in the comfort of their own homes. Many potential jurors will have great difficulty talking candidly about such

experiences in front of other jurors. They are likely to feel embarrassed and possibly resentful if they are compelled to answer such questions in front of others. In fact, some may not be willing to come forward publicly with such information, despite their oath.

Allowing potential jurors to answer the proposed voir dire questions outside of the presence of other jurors without the possibility of being overheard will respect the privacy of potential jurors and, at the same time, meet the needs of the attorneys for the parties.

Respectively Submitted,

Dec. 8, 2017

A handwritten signature in dark ink, appearing to read "John M. Hillel", is written over a horizontal line.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	Warrant: 2015A2610202746, 747
COUNTY OF HORRY	)	Indictment: 2016GS2600861, 00862
	)	Case: 15H05413
STATE OF SOUTH CAROLINA	)	
	)	
PLAINTIFF.	)	STATE'S MOTION TO AMEND
	)	SENTENCING SHEET
VS.	)	
	)	
SCOTT RICHARD ROWAN	)	
	)	
DEFENDANT.	)	

The State of South Carolina, by and through undersigned counsel, hereby moves this Court to amend the sentencing sheet signed by this Court on April 12, 2018 in order to correct a scrivener's error. The error appears on the sentencing sheet for Indictment 2016-GS-26-00861, related to Criminal Sexual Conduct with a Minor, Second Degree. The sentencing sheet correctly notes the title of the criminal statute and the CDR code (0397). It incorrectly lists, however, the statute section. The statute section noted on the sentencing sheet is 16-03-655(C), rather than 16-03-655(B)(2).

Summary of Facts

The defendant was charged, in two separate indictments, with raping his younger stepdaughter ^{Complainant 1} (Indictment 2016-GS-26-00861 charging Second Degree Criminal Sexual Conduct with a Minor) and fondling on his older stepdaughter ^{Complainant 2} (Indictment 2016-GS-26-00862 charging Third Degree Criminal Sexual Conduct) during the same time period of April 2013 to September 2015. The indictments were joined for trial on December 11, 2017. Trial commenced on April 9, 2018. At all times during the trial, it was clear that defendant was charged with the above-mentioned charges. This Court instructed the jury on each charge and the State and defense argued each charge. The defendant was convicted of both charges on April 12, 2018. This Court pronounced sentence on each charge separately. This Court imposed a

sentence of 15 years for the Criminal Sexual Conduct with a Minor, Second Degree charge, and a concurrent 15 year sentence for the Criminal Sexual Conduct with a Minor, Third Degree charge. The State has since realized that the sentencing sheet for Criminal Sexual Conduct with a Minor, Second Degree, contains the scrivener's error noted above.

Legal Analysis

Although usually addressed during a post-conviction relief context, the courts of South Carolina have consistently held that an error in the sentencing sheet will not trump a valid sentencing pronouncement by a judge. This issue was raised in *Boan v. State*, 388 S.C. 272, 695 S.E.2d 850 (2010). In that case, Boan was convicted of Criminal Sexual Conduct with a Minor, First Degree, and two counts of Lewd Act Upon a Child. The trial judge orally sentenced Boan to twenty years for Criminal Sexual Conduct with a Minor, First Degree. The sentencing sheet, however, indicated a sentence of thirty years. Boan filed a direct appeal, which was denied. He also filed a post-conviction relief petition (PCR), which was denied. In denying his petition, the PCR judge held, *inter alia*, that the written sentencing order trumped the oral pronouncement of sentence. Boan then appealed to the South Carolina Supreme Court.

The Supreme Court reversed the PCR court's denial of Boan's petition and remanded the matter for resentencing. In doing so, it noted this was an issue of first impression for the Court. It looked to other jurisdictions, however, which held that an oral pronouncement of sentencing would trump a written sentencing order. The Court then held that "due process requires the judge's oral pronouncement [to] control over a conflicting written sentencing order." *Boan* at 388 S.C. at 277, 695 S.E.2d at 852.

The Court examined a similar issue in *Bordeaux v. State*, 410 S.C. 495, 765 S.E.2d 143 (2014). In that matter, Bordeaux pleaded guilty to two counts of Armed Robbery and two counts of Burglary, First Degree. He was sentenced to twenty-four years for the Armed Robbery

charges, and twenty-five years, suspended to twenty years followed by three years' probation for the Burglary charges. Bordeaux's plea colloquy was conducted at the same time as his co-defendant, who pleaded guilty to two counts of Burglary, Second Degree. Throughout the colloquy, when addressing Bordeaux, the judge clearly indicated that he was pleading guilty to Burglary, First Degree, and Bordeaux agreed. The sentencing sheets, however, listed the charge as Burglary, Second Degree. Further, they included the Criminal Docket Report (CDR) code for Burglary, Second Degree, as well as the statute for that offense. In finding that there was no error in the sentencing, the Court noted that "[a]n unambiguous sentencing pronouncement will control over an ambiguous sentence, whether oral or written, so long as giving effect to that pronouncement does not result in an illegal sentence or a deprivation of a defendant's constitutional rights." *Bordeaux*, 410 S.C. at 500, 765 S.E.2d at 145.

In the instant case, it was clear throughout the trial and sentencing that defendant was charged with and convicted of two separate offenses – Criminal Sexual Conduct with a Minor, Second Degree and Criminal Sexual Conduct with a Minor, Third Degree. Further, at sentencing, this Court made it clear that defendant was being sentenced on those two separate offenses. The oral pronouncement of sentence was unambiguous and should control over the sentencing sheet that contains a scrivener's error¹.

¹ The same scrivener's error appeared in the indictment for this charge, however, defendant did not challenge this aspect of the indictment prior to the jury being sworn, so the issue has been waived. *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005).



9 messages

Tue, Dec 1, 2015 at 9:15 AM

Reply-To: lori@lorijoneslaw.com

To: hilliardlawfirm@frontier.com

Mr. Hilliard,

I hope you are well this morning. I spoke with my client yesterday, and she is willing to waive any potential conflict. She is also interested in discussing an agreement on a temporary basis. She is asking for supervised visitation. She is willing to supervise or he will need to suggest a safe person, i.e., social worker, etc., for supervision. She has no family or friends in SC and is requesting permission to relocate to VA. She is willing to handle transportation to and from SC for the child. She feels this would be a healthy move for her daughter to heal.

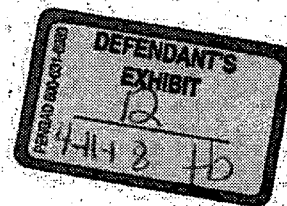
Child support should be established per the guidelines and she is requesting spousal support. I might be able to get her to hold spousal support in abeyance since she knows he lost his job. She does believe he is working under the table for his parents, however.

My client and her daughter were both recently diagnosed with STDs which they allege come from your client. My client is fine with going to court; however, both parties have limited resources at this time and if we can reach an agreement, it would help them financially and probably give them a little more control over how and when visitation will take place.

Talk to Mr. Rowan and let me know your thoughts

Thanks.

A. Lori Jones, Esq.
The Jones Law Firm
PO Box 71207
Myrtle Beach, SC 29572
(843) 602-2340



Admin Desk <info@hilliardlawfirm.com>

Tue, Dec 1, 2015 at 2:49 PM

To: John Hilliard <john@hilliardlawfirm.com>, Jeffrey Morris <jeffrey@hilliardlawfirm.com>

Hilliard Law Firm, LLC
PO Box 658
Georgetown, SC 29442
Ph: (843) 527-1500
Fax: (843) 527-1400
www.hilliardlawfirm.com

quoted text hidden

John Hilliard <john@hilliardlawfirm.com>

Tue, Dec 1, 2015 at 3:33 PM

To: Admin Desk <info@hilliardlawfirm.com>

WITNESSES

Jack Johnson Horry County Police Department

Turner

ARREST WARRANT NUMBER

2015A2610202746

CDR: 0397 16-03-0655(C)

DOA: 11/16/2015

ACTION OF GRAND JURY

TRUE BILL

John M. Hilliard, III
person of Grand Jury

FEB 18 2016

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-26- 00861

The State of South Carolina

County of Horry

Martin D. Spratlin

15H05413

COURT OF GENERAL SESSIONS

FEBRUARY, 2016 TERM

THE STATE

vs.

Scott Richard Rowan

W/ M

Myrtle Beach, SC 29579-6868

DOB:

SSN:

ATTORNEY: John M. Hilliard, III

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A MINOR,
SECOND DEGREE

Jimmy A. Richardson, II, Solicitor

ORIGINAL

FILED
HORRY COUNTY

2016 FEB 23 AM 9: 36

MELANIE HUGGINS-WARD
CLERK OF COURT
DATE RECEIVED FRC:

GRAND JURY

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on February 18, 2016, the Grand Jurors of Horry County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR
SECOND DEGREE

CDR: 0397 16-03-0655(3)

That Scott Richard Rowan did in Horry County, State of South Carolina, on or about or between the dates of [REDACTED] 2013 and September 18, 2015, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a Minor in the Second Degree by engaging in sexual battery with a minor who was at least fourteen (14) years of age but who was less than sixteen (16) years of age, to wit: Complainant 1 whose date of birth is [REDACTED], and the Defendant was in a position of familial, custodial, or official authority to coerce the victim to submit or was older than the victim, in violation of Section 16-3-655(B)(2), S. C. Code of Laws, 1976, as amended.

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


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SO. DIST. JUDGE FOR

WITNESSES

John Johnson Horry County Police Department

[Signature]

3T WARRANT NUMBER

2015A2610202747

CDR: 3661 16-03-0655(C)

JOA: 11/16/2015

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury

FEB 18 2016

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-26- 00862

The State of South Carolina

County of Horry

Martin D. Spratlin

15H05413

COURT OF GENERAL SESSIONS

FEBRUARY, 2016 TERM

THE STATE

VS.

Scott Richard Rowan
W/ M

Myrtle Beach, SC 29579-6868

DOB:

SSN:

ATTORNEY: John M. Hilliard, III

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A MINOR,
THIRD DEGREE

Jimmy A. Richardson, II, Solicitor

FILED
HORRY COUNTY

2016 FEB 23 AM 9:36

MELANIE HUGGINS-WARD
CLERK OF COURT

DATE RECEIVED FROM

GRAND JURY

ORIGINAL

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on February 18, 2016, the Grand Jurors of Horry County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR - 3RD DEGREE
CDR: 3661 16-03-0655(C)

That Scott Richard Rowan being approximately thirty years of age, did in Horry County on or about or between the dates of [REDACTED] 2013 and September 18, 2015, willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body, or its parts, of a child, less than sixteen (16) years of age, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of said defendant or of the victim, in violation of Section 16-03-0655(C), S. S. Code of Laws, 1976, as amended.

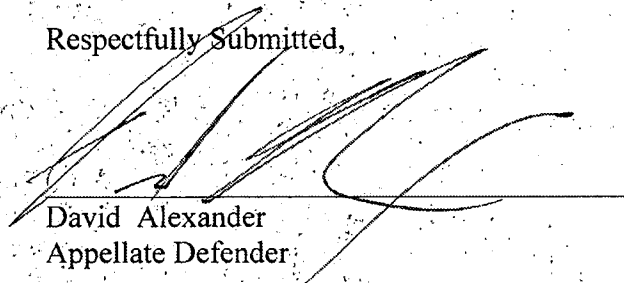
Against the peace and dignity of the State, and contrary to the
made and provided.


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,



David Alexander
Appellate Defender

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

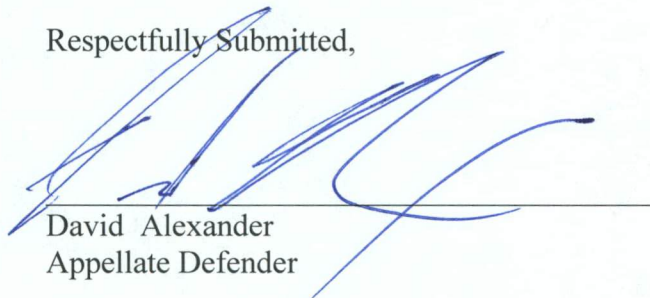
ATTORNEY FOR APPELLANT

This 6th day of March, 2019.

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,



David Alexander
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 6th day of March, 2019.

RECEIVED
MAR 06 2019
SC Court of Appeals