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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

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Edward B. Cottingham, Circuit Court Judge

AUG 6 8 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TALMADGE LEROY ROWELL

APPELLANT

APPELLATE CASE NO. 2013-002398

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2011-GS-26-3762, 3763, 3765, 3766

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

November 4-6, 2013

TALMADGE LEROY ROWELL,)

Defendant.)

B E F O R E:

Honorable Edward B. Cottingham
Horry County Courthouse
Conway, South Carolina

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

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Kay H. Richardson
Circuit Court Reporter

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MOTIONS

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1 (November 4, 2013)

2 MOTIONS:

3 THE COURT: All right. Solicitor, what's before me,
4 please?

5 MR. SPRATLIN: Thank you, Your Honor. This is the matter
6 of the State of South Carolina, County versus Talmadge Rowell.
7 I have a witness list with the case caption on your desk, Your
8 Honor, for your review for spelling or names. He is charged
9 in the indictment 2011-GS-26-03762 with criminal sexual
10 conduct with a minor involving Minor1 . He also charged in
11 indictment 2011-GS-26-03765, with lewd act upon a minor, also
12 involving minor, Minor1 . He is also charged, Your Honor,
13 in indictment 2011-GS-26-0363 with criminal sexual conduct
14 with a minor involving Minor2 . He is also charged
15 indictment 2011-GS-26-03766, with lewd act upon a minor
16 involving a minor Minor2 .

17 THE COURT: How many of these indictments do you purpose
18 to charge at the same time?

19 MR. SPRATLIN: We are going to try to try all four at
20 once, Your Honor. The State is relying on joinder on the
21 basis of the fact that these are two minor children. They
22 were both his stepdaughters. They lived in the house with
23 him. The events occurred around the same time, about the same
24 time and over the same course of conduct. We believe it shows
25 one continuous course of conduct and it's appropriate that

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1 they be joined. The State would rely on State v. McGaha, 404
2 S.C. 289, which states in relevant portion, for purposes of
3 joinder analysis, two counts of criminal sexual conduct with a
4 minor and two counts of lewd act of a child involving two
5 victims arose from the same chain of circumstances where
6 molestation ---

7 THE COURT: I'm familiar with the case.

8 What say you, Mr. ---

9 MR. FLOYD: I object to them being tried together, Judge,
10 again on it's on the prejudicial effect to the children
11 testifying in front of the jury. I find -- I would think that
12 that would be way more prejudicial.

13 THE COURT: He is saying to me, though, that the
14 allegations and factual basis fall straight within the case
15 that he just supported. Can you agree with that?

16 MR. FLOYD: Yes, sir, Judge. And I'm -- my argument
17 hinges on the prejudicial effect of them going forward with
18 that ---

19 THE COURT: Well, that was an argument in that case, too,
20 as I recall.

21 MR. FLOYD: Yes, sir.

22 THE COURT: I note your objection, but in my view, the
23 case that he just cited, that I'm familiar with supports the
24 position of the State. And, given that case and the facts in
25 this case as you indicted, I think a joinder is appropriate

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MOTIONS

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1 and it will be allowed.

2 MR. SPRATLIN: Yes, sir, Your Honor.

3 THE COURT: All right, sir.

4 MR. SPRATLIN: And there's also the matter, Your Honor,
5 of amendments to the indictment. There is a defect as to form
6 of the indictment regarding the dates listed on the
7 indictment. The dates listed on the indictment involving
8 Minor 1 state that it occurred on or -- it occurred in Horry
9 County between the dates of January 1st, 2010 and June 1st,
10 2011. For Minor 2, the dates are between January 1st
11 2009 and June 27th, 2011. The correct dates for all four
12 indictments, Your Honor, should be January 1st, 2009 --
13 between the dates of January 1st, 2009 and July 26th, 2011.
14 The State would rely on amending that -- these indictments on
15 the Statute 617-19-100 which does allow an amendment as to
16 form. If it does not material or substantially change the
17 charge the defendant is charged with. The State would also
18 rely on State v. Quarles, in which case, it stated -- the
19 relevant portion, Your Honor, where time is not of the essence
20 of a crime, an erroneous or defective allegation as to the
21 time of the commission of the offense is a matter of form,
22 which may be corrected. The State does not feel that time is
23 of the essence of the crime. There's been alibi notice.
24 There's been no other allegations. All of the discovery
25 documents ---

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MOTIONS

8

1 THE COURT: Is the timeframe included in the erroneous
2 allegation and the correct allegation?

3 MR. SPRATLIN: I'm sorry, Your Honor?

4 THE COURT: Is the timeframe now alleged included in the
5 incorrect allegation?

6 MR. SPRATLIN: No, Your Honor. It would be going back
7 from 2010 which is in the indictment to 2009. All the
8 discovery documents prepared, all the discovery documents
9 provided to the Defense attorney and Defendant do state 2009
10 being a range of the time. We don't ---

11 THE COURT: Mr. Floyd, if you've received all the
12 discovery documents, surely you would understand, and the
13 offense, we're talking about 2009.

14 MR. FLOYD: Judge, the indictment -- the purpose of the
15 indictment is to inform the accused of what he's on trial for
16 and part of that is date and time. If there's any amendment
17 as to the dates involved, I would think that would be the
18 Grand Jury's problem to correct, by amendment. Especially
19 where in this particular -- he's expanding the time, not ---

20 THE COURT: I understand. It concerns me a little bit
21 but -- what does that case hold ---

22 MR. SPRATLIN: Your Honor, I have a copy for the Court,
23 if I could approach with it. State v. Quarles, basically --
24 the essential ---

25 THE COURT: Why hadn't you moved for change of the

State v. Rowell - 2011-GS-26-3762, 3763, 3765, 3766
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9

1 indictments before today?

2 MR. SPRATLIN: Your Honor, honestly, I did not prepare
3 these indictments and -- these were prepared before I took
4 over this caseload and I had looked at one of the indictments
5 and say January 1st, 2009 to June 27th, 2011 and assumed that
6 they all had the same dates on them since the same incidents
7 were being referenced.

8 THE COURT: Did any of them have 2009?

9 MR. SPRATLIN: Yes, Your Honor, two of them did.

10 THE COURT: Well, I asked you a while ago and you said,
11 no.

12 MR. SPRATLIN: No, Your Honor, I was thinking you were
13 talking about the ones we're moving to amend. Two of the
14 indictments, Your Honor, the ones involving the minor Minor 2
15 , stated clearly that Talmadge LeRoy Rowell, being fifty-
16 one years of age did, in Horry County, between January the
17 1st, 2009 ---

18 THE COURT: So, some of the indictments have the
19 appropriate ---

20 MR. SPRATLIN: Yes, sir. The ones involving the minor
21 victim Minor 2 .

22 THE COURT: Well, the erroneous indictments allege that
23 these events occurred sometime when the others occurred?

24 MR. SPRATLIN: Your Honor, the erroneous indictments
25 stated that they occurred between January 1st, 2010 and June

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MOTIONS

10

1 1st ---

2 THE COURT: The erroneous indictment relate to what
3 victim?

4 MR. SPRATLIN: Minor 1 .

5 THE COURT: And the other indictments are correct with
6 2009?

7 MR. SPRATLIN: Yes, sir.

8 THE COURT: And all of your discovery as to this
9 erroneous indictment relate to the correct time?

10 MR. SPRATLIN: Yes, sir. The minor victim in her
11 statement references the timeframe that would've been in 2009
12 and in ---

13 THE COURT: I would suggest that this is a scrivener's
14 error. The fact that the other Codefendant's time is correct
15 and the fact that all discovery relates to the correct time
16 would indicate to me that the Defendant is put on notice as to
17 what he's charged and as to when it allegedly happened. Given
18 the totality of the circumstance, particularly since the
19 Codefendant was charged correctly, I am going to permit the
20 amendment to the indictment concluding it was a matter of form
21 and probably a scrivener's error.

22 MR. SPRATLIN: Yes, sir. They just put 2010 instead of
23 2009. So, indictments 2011-GS-26-03762 will be ready to go --
24 will be read to be that Talmadge LeRoy Rowell, being fifty-one
25 years of age, did in Horry County between January 1st, 2009

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1 and June 27th, 2011 and that same language, Your Honor, will
2 apply for Indictment 2011-GS-26-3765 as well. Is that
3 correct?

4 THE COURT: I'll permit that and note for the record, Mr.
5 Floyd's objection.

6 All right, sir. What's next, sir?

7 MR. SPRATLIN: Your Honor, the next matter for the Court
8 would be a competency evaluation pursuant to State v Blair, an
9 order was done Judge Hyman back on ---

10 THE COURT: Before we -- is Donna in the courtroom.

11 MR. FLOYD: Who you looking for, Judge?

12 THE COURT: Donna Elder. I was wondering if they had
13 that -- let me see ---

14 MS. ELDER: No, sir, Your Honor. Mr. Taylor is still
15 outside with the people.

16 THE COURT: All right. Let me know then -- I tell you,
17 if it develops, I'll do it immediately after this competency
18 hearing.

19 MS. ELDER: Yes, sir.

20 THE COURT: And prior to the Jackson v. Denno.

21 MS. ELDER: Thank you, Your Honor.

22 THE COURT: All right, sir. Proceed.

23 MR. SPRATLIN: Thank you, Your Honor. Pursuant to State
24 v. Blair, back on October -- October 11, 2012, Judge Larry B.
25 Hyman, Circuit Court Judge ordered an evaluation of the

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1 Defendant for competency. The basis of this evaluation was
2 that the Defendant claimed to have suffered a head injury on
3 October 2nd, 2012, the night before his trial was to begin.
4 He received treatment at Grand Strand Regional Medical Center.
5 The Defendant is complaining of memory deficits and/or
6 amnesia. An evaluation was conducted by Dr. Monica Wright
7 with the Department of Disability and Special Needs of South
8 Carolina. And at this time, the State would call her to the
9 stand.

10 THE COURT: What did the initial reference refer --
11 report?

12 MR. SPRATLIN: The initial evaluation, Your Honor, came
13 back that the Defendant was in fact competent to stand trial.

14 THE COURT: Has that been provided to the Defendant and
15 Mr. Floyd?

16 MR. SPRATLIN: It has been.

17 THE COURT: May I have a copy?

18 MR. SPRATLIN: Yes, sir, Your Honor. I have a copy I can
19 hand up to the court.

20 THE COURT: And when was this evaluation made?

21 MR. SPRATLIN: The date of the report, Your Honor, is
22 August 12th, 2013.

23 THE COURT: And what do you have the doctor's report
24 before me now?

25 MR. SPRATLIN: I'm sorry, Your Honor?

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13

1 THE COURT: What do you have now before me on this issue?

2 MR. SPRATLIN: Your Honor, the State would intend to rely
3 on the testimony of the expert witness, Dr. Monica Wright who
4 conducted -- who helped to conduct the evaluation of the
5 Defendant to testify about his competency.

6 THE COURT: He conducted the initial examination, too?

7 MR. SPRATLIN: Your Honor, she conducted the -- she was a
8 part of the examination that was conducted back in May 9th,
9 2013. And she also conducted an examination of the Defendant
10 this morning before trial.

11 THE COURT: Well, I assume you're relying on -- not only
12 the testimony today but the -- this document that I have?

13 MR. SPRATLIN: Yes, sir, Your Honor. The State does
14 intend on moving that document into evidence pursuant to ---

15 THE COURT: Well, let's take the testimony first.

16 All right. Call your witness.

17 MR. SPRATLIN: Yes, Your Honor. The State would call
18 Dr. Monica Wright to the stand.

19 MONICA WRIGHT, HAVING BEEN DULY

20 SWORN, TESTIFIES AS FOLLOWS:

21 THE COURT: Good morning, Doctor.

22 DR. WRIGHT: Good morning.

23 THE COURT: We appreciate your presence.

24 DR. WRIGHT: Thank you.

25 CLERK: State your full name and spell your last name.

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MONICA KIM WRIGHT - DIRECT BY SPRATLIN

1 DR. WRIGHT: Okay. My name is Dr. Monica Kim Wright, W-
2 R-I-G-H-T.

3 DIRECT EXAMINATION OF MONICA KIM WRIGHT BY MR. SPRATLIN:

4 Q: Good morning, Dr. Wright. Where are you currently
5 employed?

6 A: I work for the South Carolina Department of Disabilities
7 and Special Needs.

8 Q: What's your job there?

9 A: I'm a clinical psychologist. I do competency to stand
10 trial evaluations for individuals who are accused of crimes
11 who may have intellectual deficits or head injuries that would
12 impair their competency.

13 Q: What exactly is a clinical psychologist?

14 A: Well, a clinical psychologist is someone who has doctoral
15 training from an APA approved program who does a supervised
16 internship and is licensed.

17 Q: What type of education have you had for this position?

18 A: I have a Master's Degree in clinical psychology. I have
19 a Doctorate in clinical psychology and I'm licensed by the
20 State of South Carolina.

21 Q: All right. And how long have you been doing this -- how
22 long have you been a forensic psychologist?

23 A: Approximately ten years.

24 Q: And in that time, how many evaluations of defendants for
25 competency in court do you think you've done?

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MONICA KIM WRIGHT - DIRECT BY SPRATLIN

15

- 1 A: About five hundred.
- 2 Q: Five hundred?
- 3 A: Uh-huh (affirmative response).
- 4 Q: How long have you worked for the Department of
5 Disabilities and Special Needs?
- 6 A: Ten years.
- 7 Q: Ten years? Your Honor, at this time, the State would
8 qualify the witness as an expert in forensic psychology?
- 9 THE COURT: You care to examine her on that issue?
- 10 MR. FLOYD: Just one question. How many times have you
11 testified in court, Dr. Wright?
- 12 A: Probably about ten to fifteen.
- 13 MR. FLOYD: Thank you.
- 14 THE COURT: I find that based on her experience and
15 training, she is highly qualified in this area. Thank you.
- 16 MR. SPRATLIN: Thank you, Your Honor.
- 17 BY MR. SPRATLIN:
- 18 Q: Now, Dr. Wright, you testified a little bit about you've
19 done over five hundred evaluations for competency to stand
20 trial, what is involved in the evaluation for competency to
21 stand trial?
- 22 A: Well, typically, what we do is we have a file with a
23 court order, the arrest reports, any statements available and
24 we review those before. And at the Department of Disabilities
25 and Special Needs, and also Department of Mental Health, we do

1 a structured interview where we take a history and do a mental
2 status evaluation to evaluate the Defendant's thinking and
3 cognition, alertness, concentration and any mental health
4 symptoms. Then we talk to them about the roles of various
5 court personnel. We assess their understanding of their
6 charges and the possible penalties and we also assess their
7 ability to work with their attorney.

8 Q: What is the standards that you use in determine if
9 someone is competent to stand trial?

10 A: Well, after we perform the structured interview, we --
11 based on how well the Defendant answers.

12 Q: And what are you looking for as far as if a defendant is
13 competent to stand trial?

14 A: If he's alert or -- if he or she is alert and oriented
15 and is able to provide information regarding their own charges
16 and is able to -- if they don't know what is exactly going on
17 in the courtroom, is able to retain information that we give
18 them because there is an educational process within the course
19 of the evaluation.

20 Q: What, if anything, do you do in regards to determining if
21 the Defendant is able to communicate with his lawyer?
22 Anything?

23 A: Yeah. We ask them if they feel that their lawyer is
24 working in their best interest. What they do if they had a
25 disagreement with their attorney? We ask them if they are

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MONICA KIM WRIGHT - DIRECT BY SPRATLIN

1 forced to comply with their attorney. And all those things
2 give us a picture of that.

3 Q: Okay. And what does it mean to be competent to stand
4 trial?

5 A: Well, it means that you have a rationale and factual
6 understanding of the charges against you, the possible
7 penalties and the roles of various courtroom personnel.

8 Q: Now, Dr. Wright, did you have a chance to conduct or be a
9 part of an evaluation for competency to stand trial on the
10 Defendant here today, Mr. Talmadge Rowell?

11 A: Yes, I did.

12 Q: All right. How did you come to conduct a competency
13 evaluation on Mr. Rowell?

14 A: His case, initially, went only to the Department of
15 Mental Health but when he was seen by Dr. Gasson (spelled
16 phonetically) and a social worker there, because of the head
17 injury, it was referred Department of Disabilities and Special
18 Needs for a joint evaluation with Department of Mental Health.

19 Q: Are head injuries or head trauma such as what the
20 Defendant was complaining of the kind of thing the Department
21 of Disabilities and Special Needs deals with?

22 A: Yes.

23 Q: So, y'all would've been the appropriate agency to conduct
24 the evaluation?

25 A: Yes.

1 Q: Okay. Now, Doctor, we'll get to the results of the
2 evaluation in a minute, but were you able to make an opinion
3 as to the Defendant's competency to stand trial?

4 A: Yes.

5 Q: And what was that opinion?

6 A: That he was competent to stand trial.

7 Q: Okay. Now, when you were conducting the evaluation, what
8 all information did you rely upon during the whole -- the
9 total of the competency evaluation?

10 A: Well, we had medical records from the hospital where I
11 believe he stayed for a few days after the head injury and
12 then we had our interview and Ms. Wetstone, the social worker
13 who was involved in the first evaluation, did a background
14 interview with his parents, I believe. I don't know if it was
15 one or the other or both. And then we also had a neurological
16 consult done to rule out any other possible cognitive deficits
17 that might've been going on.

18 Q: And so you said that you did an interview with the
19 Defendant, when did that occur?

20 A: That was May 9th, 2013.

21 Q: And where did it occur at?

22 A: It was at the Department of Mental Health in Columbia.

23 Q: Who all was present for the evaluation -- for that
24 interview?

25 A: Dr. Michael Gasson and myself.

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MONICA KIM WRIGHT - DIRECT BY SPRATLIN

19

- 1 Q: And who is Dr. Michael Gasson?
- 2 A: He is a forensic psychologist with the Department of
3 Mental Health. He has since left. He actually authored the
4 report. And he has since left the Department of Mental Health
5 and has gone -- moved to Boston.
- 6 Q: How long was your forensic -- how long was the interview
7 with the Defendant?
- 8 A: Mine was about an hour. And Dr. Gasson and Ms. Wetstone
9 saw him for about two hours prior to that.
- 10 Q: And you're relying on that prior interview as well in
11 making your decision for ---
- 12 A: I consulted with Dr. Gasson and he filled me in on that
13 interview as well.
- 14 Q: Now, at the time of your interview of the Defendant what,
15 if anything, was he able to tell you about his background,
16 education and employment history?
- 17 A: Not much. He typically would say that he didn't remember
18 various parts of his background.
- 19 Q: And were you able to obtain some of that information from
20 other sources?
- 21 A: Yes.
- 22 Q: All right. If you know, what did the Defendant attribute
23 his memory issues to?
- 24 A: To the fall that he had from the porch.
- 25 Q: And you stated that you -- what all tests or procedures

1 did you rely on in assessing whether or not the Defendant --
2 I'm sorry -- let me rephrase the question. What if any tests
3 or procedures did you rely on in assessing the Defendant's
4 claims of memory loss?

5 A: Well, we also gave him a test called the test of
6 malingered memory, which is not a standard part of
7 evaluations.

8 Q: What is that test?

9 A: The test of malingered memory is a fairly simply test in
10 which a subject is presented with black-and-white pictures,
11 drawings of simple objects such as books, pens. And then
12 they're presented with two objects, one that was seen before
13 and one that wasn't and they're asked to determine which one
14 was seen before. Now, that's done over three trials. The
15 first trial and the second trial they're given the correct
16 information if they're right or wrong about what they choose
17 because they have to choose one, it's a forced choice
18 instrument. And on the third trial, they're just shown
19 objects and they're not given any correct -- and the
20 expectation -- there's fifty items for each trial. The
21 expectation is that by chance alone, just guessing, that one
22 would get at least twenty-five of them or fifty percent
23 correct. And then by the third trial, the expectation of even
24 people who have severe head injuries and even intellectual
25 impairment, the expectation is that they would get up to

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MONICA KIM WRIGHT - DIRECT BY SPRATLIN

21

1 forty-five correct.

2 Q: And how did the Defendant perform?

3 A: His performance was under chance. In other words, he got
4 less than twenty-five on both of the two trials and then, I
5 think, twenty-nine on the third.

6 Q: And what did that tell you about his claims of a head
7 injury involving memory loss?

8 A: Well, that told us that it was likely that he may be
9 exaggerating those deficits.

10 Q: And what other tests or procedures did you rely on?
11 Anything else that you relied on to evaluate the head injury?

12 A: The consult with the neurologist, and I can't recall his
13 name right now. I think it's in the sources of information on
14 the report.

15 Q: Uh-huh (affirmative response).

16 A: And basically, there were no significant findings from
17 that MRI and CT scan done in July, I think.

18 Q: If you didn't see -- from that information -- that's the
19 kind of information that you and the doctor would normally
20 rely on in making a competency evaluation?

21 A: Well, not normal -- if there was a head injury, yes.

22 Q: Okay. And so, in this situation, then you did rely on
23 ---

24 A: Right, right. And if the issue was intellectual, you
25 know, disability, not so much.

1 Q: With a head injury ---

2 A: Yeah, that would be important to know.

3 Q: Okay. Now, back to -- Now, Dr. Wright, back to your
4 evaluation of the Defendant, did he have a head injury that
5 would interfere with his ability to be competent to stand
6 trial?

7 A: No.

8 Q: Based on your examinations and all the information
9 available to you, what is your expert opinion on the
10 Defendant's claim that he has amnesia or memory loss?

11 A: That he doesn't.

12 Q: Okay. And you've mentioned the word malingering earlier,
13 what exactly does that mean?

14 A: Malingering is the intentional production or exaggeration
15 of symptoms, either physical or psychological. And typically,
16 there is some sort of secondary gain. Someone can get
17 financial compensation, get out of criminal proceedings and
18 things of that nature.

19 Q: Okay. And Dr. Wright, did you have a chance to examine
20 the Defendant here today?

21 A: I did.

22 Q: When did that occur?

23 A: That occurred right before this hearing, approximately
24 9:30.

25 Q: All right. How long were you able to spend with the

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MONICA KIM WRIGHT - DIRECT BY SPRATLIN

23

1 Defendant?

2 A: About twenty minutes.

3 Q: How did that interview differ, if at all, from the prior
4 interview with the Defendant?

5 A: He was able to answer a lot more questions about his
6 personal history. He was able to tell me briefly about the
7 roles of his -- the courtroom personnel and he was able to
8 provide much more information in general than he did on May
9 9th.

10 Q: Did he seem to have any problems during that interview
11 remembering what was going on?

12 A: No.

13 Q: Now, Dr. Wright, based on your examinations of the
14 Defendant, and to a reasonable degree of medical certainty
15 were you able to determine if the Defendant was competent to
16 stand trial?

17 A: Yes.

18 Q: And was he competent to stand trial?

19 A: Yes.

20 Q: To a reasonable degree of medical certainty, does the
21 Defendant understand the nature of the charges against him?

22 A: Yes.

23 Q: Does he understand the penalties he's facing?

24 A: Yes.

25 Q: Does he -- is he able to assist his counsel with his own

1 defense?

2 A: Yes.

3 Q: Does he understand the various courtroom officers and
4 their jobs and responsibilities?

5 A: Yes.

6 Q: Was he able to appropriately respond to questions?

7 A: Yes.

8 Q: Is there any reason, Dr. Wright, in your medical opinion
9 that the Defendant would not be competent to stand trial here
10 today?

11 A: No.

12 Q: Thank you, Doctor. Now, you said that there was a report
13 done in this case. We said that Dr. Gasson, actually,
14 authored the report.

15 A: He did.

16 MR. SPRATLIN: Your Honor, permission to approach and
17 have it marked?

18 THE COURT: Yes, sir. That will be identified as
19 Court's Exhibit Number One and is made a part of the record.

20 COURT'S EXHIBIT NUMBER ONE

21 MARKED FOR IDENTIFICATION

22 BY MR. SPRATLIN:

23 Q: Dr. Wright, let me show you what's been marked Court's
24 Exhibit Number One for identification purposes. Excuse me.

25 A: That's okay.

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MONICA KIM WRIGHT - DIRECT BY SPRATLIN

25

1 Q: Do you recognize that item?

2 A: Yes, I do.

3 Q: What is it?

4 A: It is the report of Competency to Stand Trial prepared by
5 Dr. Gasson.

6 Q: All right. Did you join in that report?

7 A: I did.

8 Q: Did you join in that report in its whole entirety?

9 A: I did.

10 Q: Is it a fair and accurate copy of the report as you
11 recall it?

12 A: Yes.

13 Q: Have there been any material additions or deletions to
14 your knowledge?

15 A: No.

16 MR. SPRATLIN: At this time, Your Honor, I would move the
17 Court's Exhibit into evidence.

18 THE COURT: Is that the same exhibit that I hold in my
19 hand ---

20 MR. SPRATLIN: It is, Your Honor.

21 THE COURT: --- executed by Dr. Gasson in October --
22 August ---

23 MR. SPRATLIN: Yes, sir, it is.

24 THE COURT: --- where one Elizabeth Wetstone was also
25 involved? The document indicates that she was.

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MONICA KIM WRIGHT - CROSS BY FLOYD

26

1 A: She was in the first one, so ---

2 THE COURT: Oh, I see. That is entered in the record and
3 made Court's Exhibit Number Two.

4 MR. SPRATLIN: No, Your Honor, that's the same -- that's
5 Number One, still. I was just entering it into evidence
6 formally.

7 THE COURT: I got you. All right.

8 MR. SPRATLIN: Identifying it and entering it into
9 evidence.

10 COURT'S EXHIBIT NUMBER TWO

11 ADMITTED INTO EVIDENCE

12 MR. SPRATLIN: Your Honor, I have no further questions at
13 this time.

14 Dr. Wright, please answer any questions Mr. Floyd might
15 have.

16 THE COURT: Mr. Floyd?

17 CROSS EXAMINATION OF MONICA KIM WRIGHT BY MR. FLOYD:

18 Q: What did you call the test that you did with the photos?

19 A: It's the test of Malingered Memory, the TOMM.

20 Q: And you have a chance -- by chance there would be twenty-
21 five percent, did you say?

22 A: Actually, chance is fifty-percent.

23 Q: And Talmadge was under that?

24 A: Yes.

25 Q: And that may be because of exaggeration?

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MONICA KIM WRIGHT - CROSS BY FLOYD

27

- 1 A: Yes.
- 2 Q: It may also be because of impairment?
- 3 A: Not typically. That test is normed on individuals who
4 are impaired. And even individuals who are impaired score
5 close to chance.
- 6 Q: So, the amount of impairment would affect that?
- 7 A: Yes.
- 8 Q: So, it could be some impairment present that caused him
9 to come in under chance?
- 10 A: No.
- 11 Q: It's not?
- 12 A: By the third trial, the individual is given -- in the
13 first trial, they're given information about whether they're
14 correct or not. The second trial, they're also shown the
15 pictures before they're asked to choose. They're shown each
16 of the pictures that they're going to see again. The second
17 trial they're given feedback about the correctness of their
18 performance. So, by the third trial, they've had two chances
19 to learn the simple pictures. The third trial, they're shown
20 the -- they're just given the test without the preview of the
21 pictures.
- 22 Q: And that's what I'm getting about, the level of
23 impairment could cause them to perform under chance?
- 24 A: You're correct when you say that.
- 25 Q: Thank you. I have no further questions.

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MONICA KIM WRIGHT - CROSS BY FLOYD

1 THE COURT: All right, sir, you may come down. Any
2 further witnesses?

3 MR. SPRATLIN: No, Your Honor, the State would rest in
4 regards to the issue of competency.

5 THE COURT: Mr. Floyd, any witnesses?

6 MR. FLOYD: Not in regard to competency.

7 MR. SPRATLIN: Your Honor, may Dr. Wright be excused?

8 THE COURT: She may. And thank you so much, Dr. Wright.

9 DR. WRIGHT: Thank you very much.

10 THE COURT: We appreciate your presence and attendance.

11 All right. I've reviewed the report of Dr. Gasson of
12 August and have heard the existing testimony of Dr. Wright and
13 I certain conclude beyond a reasonable doubt based on both of
14 those factors that this Defendant is competent and prepared to
15 stand trial. The report of Dr. Gasson is in the record and
16 adopted as the findings of the Court in toto on this issue in
17 connection also with the additional testimony today of Dr.
18 Wright. So, on that issue, he's obviously competent to stand
19 trial.

20 Now, I'd like to move forward on the next issue.

21 MR. SPRATLIN: Yes, sir, Your Honor. I believe we have a
22 Jackson-Denno matter to be addressed.

23 THE COURT: Let's proceed at this time.

24 MR. SPRATLIN: Yes, sir, Your Honor. In regards to the
25 Jackson v. Denno motion, the State would call Detective Todd

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TODD COX - DIRECT BY SPRATLIN

1 Cox to the stand.

2 TODD COX, HAVING BEEN DULY SWORN,

3 TESTIFIES AS FOLLOWS:

4 CLERK: Please state your name and spell your last name.

5 MR. COX: Todd Cox, C-O-X.

6 DIRECT EXAMINATION OF TODD COX BY MR. SPRATLIN:

7 Q: Mr. Cox, were are you currently employed?

8 A: I'm employed with the Horry County Police Department.

9 Q: How long have you been employed at the Horry County
10 Police Department?

11 A: For seventeen years.

12 Q: Were you working there back in July of 2011?

13 A: Yes, sir, I was.

14 Q: What was your position with the Horry County Police
15 Department back in July of 2011?

16 A: I was a senior detective assigned to the violent crimes
17 section.

18 Q: What does it mean to be a senior executive?

19 A: It's a position -- it's somewhat of a leadership
20 position. In the violent crime section, we had ten
21 detectives, three of whom were senior detectives and basically
22 it involved training the new detectives, some limited
23 supervisory roles and that pretty much sums it up.

24 Q: Officer Cox, what if any involvement did you have in the
25 case involving the Defendant here today, Talmadge Rowell?

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TODD COX - DIRECT BY SPRATLIN

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1 A: I was called out on the evening of July 26th, 2011 to the
2 North Precinct of the Horry County Police Department which is
3 in the Mt. Olive section in regards to criminal sexual conduct
4 with a minor complaint. Actually, there was two minor
5 victims. So, I responded to that location, did some
6 interviews of the victims as well as a couple of witnesses and
7 then I went to the Defendant's residence, placed him under
8 arrest and transported them to J. Reuben Long where I sat down
9 and interviewed them.

10 Q: Okay. Do you know what time of night it was that this
11 interview took place?

12 A: The interview occurred, as I recall, shortly after
13 midnight; so, it would've been the early morning hours, maybe
14 12:30 in the morning on the 27th.

15 Q: Who all was present for the interview?

16 A: Myself and the Defendant.

17 Q: Was it recorded in any way?

18 A: It was digitally recorded, audio.

19 Q: Audio recorded?

20 A: Uh-huh (affirmative response).

21 Q: Now, Officer Cox, if you know, how old was the Defendant
22 at the time of this interview?

23 A: He was in his fifties, as I recall.

24 Q: Did he appear to understand the English language, to your
25 knowledge?

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TODD COX - DIRECT BY SPRATLIN

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- 1 A: Yes, sir.
- 2 Q: Did he appear to respond appropriately to the questions
3 that you asked?
- 4 A: He did.
- 5 Q: Was he able to communicate with you effectively?
- 6 A: Yes, sir.
- 7 Q: Officer Cox, how long have you been in law enforcement
8 again?
- 9 A: A total of twenty years.
- 10 Q: Twenty years?
- 11 A: Seventeen with Horry County.
- 12 Q: And in the twenty years of law enforcement experience,
13 have you had the chance to come in contact with people who are
14 under the influence of drugs or alcohol?
- 15 A: Yes, I have.
- 16 Q: What are some of the symptoms or signs that someone under
17 the influence shows?
- 18 A: Glassy, blood-shot eyes, slurred speech and an unsteady
19 gait would be really the three predominant.
- 20 Q: How many, if any, did the Defendant show that day?
- 21 A: None.
- 22 Q: Did you inquire about whether or not the Defendant was
23 under the influence of alcohol or drugs?
- 24 A: I did.
- 25 Q: And what was his response?

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TODD COX - DIRECT BY SPRATLIN

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1 A: No, he wasn't.

2 Q: Did the Defendant do anything that gave you the
3 impression that he might be under the influence of drugs or
4 alcohol that day?

5 A: No, sir.

6 Q: Officer Cox, when you question a suspect, what if
7 anything do you tell them in regards to their Miranda Rights
8 or their rights under the law?

9 A: I read them their rights and then I ask them if they
10 understand it. I begin -- and we have a standardized form
11 that we use and the first thing that I ask them is, what's the
12 highest grade level they went through in school?

13 THE COURT: Did you use that standardized form at that
14 time?

15 A: I did, Your Honor.

16 THE COURT: That's fine. Go ahead.

17 BY MR. SPRATLIN:

18 Q: And how do you go about the procedure of discussing with
19 the Defendant his Miranda Rights?

20 A: After I asked him the highest grade level he went through
21 is school, is he capable of reading and writing. And then I
22 ask him if he's under the influence of any drugs or alcohol at
23 this time and then I go through each right, individually with
24 them and ask them after I read each right, I ask them, Do you
25 understand that right?

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TODD COX - DIRECT BY SPRATLIN

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1 Q: What was the Defendant's response to the highest grade of
2 education he completed?

3 A: Tenth Grade.

4 Q: Tenth Grade. And what was his response to can he read
5 and write.

6 A: That yes, he could.

7 Q: All right. Now, when you say you go over each right,
8 what exactly do you tell them about each right?

9 A: I simply read to them verbatim what's on the form.

10 Q: Okay. Let me show you what's been marked for
11 identification purposes as State's Exhibit Number One. Do you
12 recognize that item?

13 A: Yes, sir.

14 Q: What is it?

15 A: That's the Advisement of Miranda Rights Form that I read
16 the Defendant on the night in question.

17 Q: Is it a fair and accurate copy of the Miranda Right's
18 Form as you recall?

19 A: Yes, sir, it is.

20 Q: Has there been any material additions or deletions to
21 that document?

22 A: No, sir.

23 MR. SPRATLIN: At this time, Your Honor, I would tender
24 State's Exhibit Number One into evidence.

25 THE COURT: It is admitted.

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TODD COX - DIRECT BY SPRATLIN

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STATE'S EXHIBIT NUMBER ONE

ADMITTED INTO EVIDENCE

BY MR. SPRATLIN:

Q: Now, Officer Cox, if you would, can you tell me what -- can you tell me exactly what you would've read the Defendant regarding his right to remain silent?

A: Yes, sir. You have the right to remain silent; anything you say can and will be used against you in a court of law.

Q: Can you tell me exactly what you would've read about his right to have an attorney or a lawyer?

A: You have the right to talk to with a lawyer and have him present with you while you're being questioned.

Q: Will you tell me exactly what you would've told him in addition -- anything additional about having a lawyer?

A: If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you so desire.

Q: What, if anything, did you tell the Defendant about his right to terminate the interview?

A: If you make a statement or answer any questions, you have the right to stop at any time.

Q: Now, the -- Officer Cox, when you read this form to him, is there anything that you do -- did with the Defendant to get him to state that he understood his rights?

A: Yes, sir. At the end of each of those rights, I asked

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TODD COX - DIRECT BY SPRATLIN

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- 1 him if he understood that right, that individual right.
- 2 Q: And what was his response?
- 3 A: Yes, he did, each time.
- 4 Q: And is there anything regarding the form that you asked
- 5 him to do in regards to if he understood all of his rights?
- 6 A: Yes, sir. After we go through those four, there's a
- 7 question printed out there, Do you understand your rights as I
- 8 have read them to you?
- 9 Q: And what did the Defendant do?
- 10 A: He initialed the -- next to the yes, the affirmative
- 11 response.
- 12 Q: And is there anything -- is there any place on the form
- 13 where the Defendant signed stating that he understands all of
- 14 his rights?
- 15 A: He does. He then prints his name and signs his name and
- 16 then I date it, I put the time, our location, and then I
- 17 witness it.
- 18 Q: And did the Defendant do all that?
- 19 A: Yes, sir.
- 20 Q: At any point during the interview, prior to or during it,
- 21 did the Defendant state that he wished to not talk to you?
- 22 A: No, sir.
- 23 Q: That he wished -- did he do anything that insinuated to
- 24 you that he wished to invoke his right to remain silent?
- 25 A: No, sir.

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TODD COX - DIRECT BY SPRATLIN

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1 Q: Did the Defendant do anything or make any requests,
2 however vague, for an attorney to be present?

3 A: No, he didn't.

4 Q: Did he in any way insinuate to you that he wanted an
5 attorney to be there?

6 A: No, sir.

7 Q: Did the Defendant do anything during the course of that
8 interview or prior to that interview that gave you the
9 impression that he did not wish to speak with you that day?

10 A: Not at all.

11 Q: Now, Officer Cox, prior to or during the interview, did
12 you or anyone in your presence threaten the Defendant with any
13 kind of harm?

14 A: No, sir.

15 Q: Did you or anyone in your presence make any specific
16 promises of leniency in exchange for the Defendant's
17 statement?

18 A: No, sir.

19 Q: Was the Defendant's free will forborne in any way by any
20 promises of leniency made in front of you?

21 A: In no way.

22 Q: Was his free will overcome by any kind of threats that
23 were made, however made, towards him?

24 A: Not at all.

25 Q: Was the Defendant in any way forced or coerced into

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TODD COX - DIRECT BY SPRATLIN

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1 making that statement?

2 A: No, sir.

3 Q: Officer Cox, let me show you -- Your Honor, I'd ask the
4 Court's impression on this -- would the Court like to hear the
5 statement during this Jackson v. Denno hearing?

6 THE COURT: Just briefly identify it so the record will
7 reflect what statement he's referring to.

8 MR. SPRATLIN: Yes, sir. Well, me and Mr. Floyd have
9 actually prepared redacted versions of the statement. There's
10 some stuff in there that Mr. Floyd does not want ---

11 THE COURT: Just read the redacted version. You may read
12 it for -- if you or Mr. Floyd have agreed on it.

13 MR. SPRATLIN: Well, sir, it's actually an audio CD
14 that's -- that's ---

15 THE COURT: Just ask him generally about it such that he
16 can identify the statement. You don't need the whole
17 statement.

18 Is that suitable to you, Mr. Floyd?

19 MR. FLOYD: Yes, sir.

20 THE COURT: Just ask him generally what issues is it in
21 the statement that he's referred to.

22 MR. SPRATLIN: Yes, sir.

23 BY MR. SPRATLIN:

24 Q: Now, Officer Cox, in that statement of the Defendant, did
25 the Defendant -- what did the Defendant state about the

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TODD COX - DIRECT BY SPRATLIN

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1 allegations against them -- let me back up. What did you tell
2 the Defendant about the allegations against him?

3 A: I basically told them the nature -- vaguely, I told him
4 the nature of the investigation that I was conducting. And
5 through the course of that -- the interview, I certainly made
6 attempts to elicit any kind of admissions or confessions that
7 may be pertinent to those allegations.

8 Q: And what, if anything, did the Defendant say in regards
9 to those allegations?

10 A: He made admissions that confirmed that he had in fact
11 engaged in the alleged actions.

12 MR. FLOYD: May we approach real quick, Judge?

13 THE COURT: No, sir. Just ask him -- I need to know for
14 the record, what are the allegations, the subject of the
15 alleged confession -- I just want to identify that we're
16 talking about the same thing.

17 MR. SPRATLIN: Yes, sir.

18 BY MR. SPRATLIN:

19 Q: What were the actual allegations in the confession?

20 A: That he had molested his two stepdaughters and they were
21 juveniles.

22 Q: And by molestation, what exactly did the girls claim that
23 the Defendant had done to them?

24 A: That he had digitally penetrated their vaginal areas and
25 one of them that he had sucked on their breasts. Another

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TODD COX - DIRECT BY SPRATLIN

1 allegations was that he had performed oral sex on one of the
2 juveniles.

3 Q: And what did the Defendant state in regards to those
4 allegations?

5 A: That they were correct; that they in fact occurred.

6 THE COURT: That's sufficient for -- I just needed the
7 identification of the statement to which he has referred.

8 Do you agree with that, Mr. Floyd?

9 MR. FLOYD: Judge, I think we need to play the statement.
10 Some of the things that he just said he admitted to, he did
11 not admit to.

12 THE COURT: Go ahead and play it then.

13 MR. SPRATLIN: Yes, sir, Your Honor. The State will play
14 the unredacted version for the Court. I have a redacted
15 version that me and Mr. Floyd discussed that will be played
16 during court, during the actual in front of the jury. Just
17 for the record ---

18 THE COURT: Does the version that you play indicate his
19 Miranda Rights were given to him?

20 MR. SPRATLIN: Yes, sir, Your Honor.

21 THE COURT: Well, let's play it.

22 MR. SPRATLIN: Yes, sir. I'd ask that we mark this as
23 State's Number Two.

24 STATE'S EXHIBIT NUMBER TWO

25 MARKED FOR IDENTIFICATION

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TODD COX - DIRECT BY SPRATLIN

1 THE COURT: Do you agree to play the redacted version?

2 MR. FLOYD: I think we're playing the full version right
3 now for the Court for the purpose of this hearing and the
4 redacted version will be used during the trial, Judge.

5 THE COURT: All right, sir. That's fine. Prior to doing
6 that, do you have any testimony at this time, Mr. Floyd?

7 MR. FLOYD: Not at this time, no, sir.

8 THE COURT: All right. And is this your only witness on
9 this issue?

10 MR. SPRATLIN: Yes, sir, Your Honor.

11 THE COURT: All right. Well, let's go ahead and hear the
12 video.

13 MR. SPRATLIN: Your Honor, if the Court's ready, I can
14 proceed.

15 THE COURT: Proceed, please.

16 *****OFF THE RECORD*****

17 (REPORTER'S NOTE: State's Exhibit Number Two played for the
18 court.)

19 **(On the Record.)**

20 BY MR. SPRATLIN:

21 Q: Mr. Cox, was that the full and complete interview of the
22 Defendant that occurred that day?

23 A: Yes, sir.

24 Q: Were there any additions or deletions to that interview?

25 A: No, sir.

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TODD COX - CROSS BY FLOYD

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1 Q: Thank you.

2 MR. SPRATLIN: Thank you, Your Honor. That's all the
3 questions I have at this point in time.

4 THE COURT: Mr. Floyd?

5 CROSS EXAMINATION OF TODD COX BY MR. FLOYD:

6 Q: Now, this interview started about 12:30 at night,
7 correct?

8 A: Yes, sir.

9 Q: And you went over drugs and alcohol, with Talmadge?

10 A: I did.

11 Q: Did he display any sense of disorientation about him that
12 evening?

13 A: No, sir.

14 Q: What time did y'all get to the jail?

15 A: Right then, it was within five or ten minutes of the
16 initiation of that interview.

17 Q: So, y'all went straight into an interview room before you
18 went through booking process?

19 A: We went into the booking area and I think they patted him
20 down just to make sure that he didn't have any contraband on
21 him and then I took him into the -- he wasn't actually booked-
22 in, he was just patted down to make sure that he didn't have
23 contraband and then we went into the interview room.

24 Q: You arrested him at his home, correct?

25 A: I did.

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BY THE COURT

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1 Q: Was anybody else at the home?

2 A: Yes, sir.

3 Q: Who else was at the home?

4 A: There was two other police officers that accompanied me
5 there.

6 Q: Outside of the police officers ---

7 A: No, sir; huh-uh (negative response).

8 Q: Thank you, sir. I've got no further questions.

9 MR. SPRATLIN: Nothing further, Your Honor. The State
10 would just move into evidence State's Exhibit Number Two
11 feeling it is the voluntary and free confession. A redacted
12 copy will be used for the trial in this case.

13 THE COURT: Let me here any further testimony before that
14 ruling. Is there any other witnesses on this issue?

15 MR. SPRATLIN: No, sir, Your Honor. The State would rest
16 ---

17 THE COURT: You may come down.

18 Mr. Floyd, do you have any issues?

19 MR. FLOYD: No, sir.

20 BY THE COURT:

21 THE COURT: All right. Let the record now reflect that I
22 have had a hearing on this matter and I find beyond a
23 reasonable doubt that the statement given by the Defendant was
24 freely, voluntarily, knowingly made without any threats,
25 promises, hope or reward. I further find beyond a reasonable

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BY THE COURT

1 doubt that he was given his various constitutional rights and
2 waives those rights under the Fifth and Sixth Amendment. It's
3 clear to me that, first, he was advised that he had a right to
4 remain silent. He was further advised that he could stop the
5 questioning at any time. He was advised that he had a right
6 to an attorney at this interrogation and subsequent trial,
7 that that attorney would be given to him free of charge if he
8 could not afford one. It is clear to me that he had the
9 capacity to understand and know the consequences of his waiver
10 of his Constitutional rights and that he voluntarily,
11 knowingly and intelligently waived such rights. And I
12 conclude therefore that that statement is admissible for the
13 consideration of the jury under further instructions as
14 finders of the facts. You may permit that introduction in the
15 trial of the case.

16 MR. SPRATLIN: Yes, sir, Your Honor. May I introduce at
17 this point in time the unredacted copy for a full and complete
18 record?

19 THE COURT: You and Mr. Floyd, with the consent of the
20 Defendant, have redacted certain portions of this thing.

21 MR. SPRATLIN: Your Honor, actually, can we introduce the
22 unredacted portion just for the completeness of the record
23 that was played in Court earlier. We have the redacted
24 version to ---

25 THE COURT: The unredacted portion will be a Court's

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BY THE COURT

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1 exhibit.

2 MR. SPRATLIN: Yes, sir.

3 THE COURT: Mr. Floyd, you reviewed the redacted version?

4 MR. FLOYD: Actually, we've gone over what was taken out.

5 I hadn't actually listened to it yet. If we could, maybe, Mr.

6 Spratlin and I could, over the lunch break, sit down and

7 listen to that rather than putting it into evidence right now.

8 THE COURT: Okay. You don't want it into evidence yet?

9 MR. FLOYD: If we could do that after lunch, Judge?

10 THE COURT: That's fine.

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

12 THE COURT: I just want -- I just want to agree -- you

13 want to tell me why you redacted certain portions?

14 MR. SPRATLIN: Your Honor, we redacted some information

15 that was inappropriate for the Jury's consideration by

16 agreement. The fact that the Defendant discusses about that

17 him and his wife were arrested for a CDV charge; I don't

18 believe that's appropriate.

19 THE COURT: That is redacted appropriately. You agree

20 with that?

21 MR. FLOYD: Yes, sir.

22 MR. SPRATLIN: Additionally, Your Honor, there were some

23 discussion of a prior criminal sexual conduct charge the

24 Defendant was facing in the 80s, that portion has been

25 redacted. As well as any portions regarding the three-year-

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BY THE COURT

1 old child, AR as the State is not going forward with any
2 charges regarding AR . Additionally, Your Honor, the State
3 and Mr. Floyd agree to redact the part where he discussed
4 where this -- where Detective Cox and the Defendant discuss
5 talking down to your wife, as it is completely irrelevant to
6 the matter.

7 THE COURT: That's fine. Well, y'all -- you two agree as
8 to what was redacted, so there'd be no question about it?

9 MR. SPRATLIN: Yes, sir.

10 THE COURT: All right, sir. Is there anything -- other
11 pretrial matters we need to deal with at this time?

12 MR. SPRATLIN: None from the State, Your Honor.

13 THE COURT: All right.

14 Heather, is my jury ready down there?

15 CLERK: Yes, sir. I think so. I think they've got them
16 pulled out, waiting on us.

17 THE COURT: Bring them up.

18 MR. FLOYD: Can we have about ten minutes, Judge? We've
19 been at it now for about two hours.

20 THE COURT: Sure, we'll take a ten-minute break.

21 Heather, hold them up for ten minutes and I'll take a
22 break too.

23 (RECESS - 11:58 A.M.)

24 *****OFF THE RECORD*****

25 (On the Record - 12:57 P.M.)

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BY THE COURT

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1 (REPORTER'S NOTE: The jury pool enters courtroom. 12:57
2 P.M.)

3 BY THE COURT:

4 THE COURT: Deputy, are all my jurors here? Did you
5 bring in all the jurors who were selected?

6 DEPUTY: The Bailiff says yes.

7 BAILIFF: Yes, sir.

8 THE COURT: If the Bailiff says, I accept it. Thank you.

9 Good morning, ladies and gentlemen. I'm Judge Cottingham
10 from Bennettsville, South Carolina. This is my law clerk John
11 McCleod from Chesterfield. We've been assigned here as trial
12 judge this week and I look forward to working with all of you
13 in this case and subsequent cases to be tried this week. I
14 join in the Judge who met with you this morning in thanking
15 you and giving you my appreciation for your services. I
16 understand that you're here at considerable inconvenience to
17 your families, to your personal lives, to your jobs and to you
18 daily pursuits.

19 Under our system of justice, we say and properly so that
20 an individual shall not be deprived of his or her liberty not
21 for one day unless and until a jury in a criminal court have
22 found him guilty beyond a reasonable doubt. That concept
23 protects your liberty and with equal importance it protects
24 mine. So, I thank all of you for being here to serve as a
25 juror in a General Sessions Criminal term of Court.

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BY THE COURT

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1 Please call your case, Solicitor.

2 MR. SPRATLIN: Yes, sir, Your Honor. The State would
3 call the State of South Carolina, County of Horry, versus
4 Talmadge LeRoy Rowell charged, first, in indictment 2011-GS-
5 26-03762 with one count of criminal sexual conduct with a
6 minor second degree. He is also, Your Honor, charged in
7 indictment 2011-GS-26-03763 with criminal sexual conduct with
8 a minor, second degree. Additionally, Your Honor, he is
9 charged in indictment 2011-GS-26-03765, with lewd act upon a
10 minor. And lastly, Your Honor, charged in indictment 2011-GS-
11 26-03766, with again lewd act upon a minor.

12 He is represented by Attorney Tom Floyd, Your Honor. The
13 State is ready to proceed for trial.

14 THE COURT: Please give -- for the record, give me the
15 name of the minors involved in each indictment.

16 MR. SPRATLIN: Yes, sir, Your Honor. Regarding
17 indictment number 2011-GS-26-03762 and 2011-GS-26-03765. The
18 minor involved in that, in those two indictments, Your Honor,
19 is Ms. Minor 1 , . As far as indictments 2011-GS-
20 26-03763 and 2011-GS-26-03766, the minor involved in that case
21 is Ms. Minor 2 , same spelling.

22 THE COURT: Ladies and gentlemen, let me have your
23 attention, please. You heard the Solicitor state the nature
24 of the indictments by two alleged victims as against this
25 Defendant. To these indictments, this Defendant specifically

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VOIR DIRE

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1 pleads not guilty. Now, an indictment is simply the
2 allegations made by the State. Allegations in those
3 indictments are no evidence. Evidence comes from this witness
4 stand, from testimony under oath and from such other matters
5 as may be introduced during the trial of this case.

6 Now, Mr. Floyd, is the Defendant ready for trial?

7 MR. FLOYD: Yes, sir.

8 VOIR DIRE:

9 THE COURT: Ladies and gentlemen, the State of South
10 Carolina and the Defendant desire from your number twelve
11 folks, twelve folks with no friends to reward, no enemies to
12 punish. Twelve people who can say under their oath, if I am
13 selected, I will base my verdict on the law and evidence in
14 this courtroom and from no other source.

15 Now, I'm going to ask of you several questions. But the
16 first is this, In our life's experiences, whether we like to
17 or not, we develop certain biases and prejudices. And this
18 case that we will try today involves allegations of criminal
19 sexual conduct with a minor. There may be some folks for
20 various reasons who feel that they cannot be either fair to
21 the State of South Carolina or the Defendant in a case
22 involving criminal sexual conduct. Let me give you an example
23 and an example only. In a courtroom several years ago, I was
24 trying a young man for felony DUI. It being alleged that
25 while drunk-driving, he killed a young girl. I asked the jury

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VOIR DIRE

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1 as I just did you, Does anybody have any special biases or
2 prejudices and could not give him a fair trial. A lady stood
3 up and said, Judge, I can't be fair to him. My daughter was
4 killed by a drunk driver a year ago. I can't be fair. In the
5 same courtroom a gentleman got up and said, Judge, I can't be
6 fair to the prosecution, they prosecuting my son three times
7 for the same thing until the jury found him not guilty the
8 first two times eleven to one for innocence. I can't be fair
9 to the State of South Carolina. Those are instances having
10 nothing to do with this case that involves perceived
11 prejudices. So, this case now involves allegations of
12 criminal sexual conduct by the two victims against this
13 Defendant. Do any of you have any real bases to feel like
14 that you could not be fair to the State or fair to the
15 Defendant in a case involving allegations of criminal sexual
16 conduct. If so, I asked that you stand and come forward and
17 I'll discuss it with you in private.

18 (REPORTER'S NOTE: No response.)

19 THE COURT: All right. Now, the Defendant -- well, I'll
20 -- let me -- the alleged victims in this case are Minor 1 -- is
21 that pronounced ?

22 MR. SPRATLIN: I believe its pronounced , Your
23 Honor.

24 THE COURT: . And Minor 2 is the other one.

25 MR. SPRATLIN: That's correct. Your Honor.

1 THE COURT: Are any of you related by blood or marriage
2 to either of these young folks or their families, Eaker
3 family. If so, please stand.

4 (REPORTER'S NOTE: No response.)

5 THE COURT: Do any of you know these two individuals and
6 immediate in any capacity whatsoever, whether it's church
7 workers, workers, neighbors, friend? Anybody?

8 (REPORTER'S NOTE: No response.)

9 THE COURT: Do any of you know either one of these
10 alleged victims or their immediate family in any capacity
11 whatsoever; please, stand.

12 (REPORTER'S NOTE: No response.)

13 THE COURT: The Defendant -- I would ask that he stand
14 and face the Jury, please -- is Talmadge LeRoy Rowell. Any of
15 you related by blood or connected by marriage with Mr. Rowell
16 who stands in front of you? Any of you have any close
17 connections with him such as neighbors, friends, church
18 workers, employment? Do any of you know Talmadge Rowell in
19 any capacity whatsoever? Please stand.

20 (REPORTER'S NOTE: No response.)

21 THE COURT: (To Defendant.) You may be seated

22 It is not likely, but would any of you had any discussion
23 or any knowledge of any of the allegations involved in this
24 alleged event? Please stand.

25 (REPORTER'S NOTE: No response.)

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VOIR DIRE

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1 THE COURT: The State of South Carolina is represented by
2 the Solicitor's office. Are any of you related -- any of you
3 have any relatives associated with the Solicitor's office of
4 the Fifteenth Circuit? Anybody got any kinfolk working in
5 that office or anything?

6 (REPORTER'S NOTE: No response.)

7 THE COURT: Mr. Tom Floyd represents the Defendant, of
8 the Public Defender's office. Any of you have any connection
9 with the Public Defender's office in any way whatsoever?

10 (REPORTER'S NOTE: No response.)

11 THE COURT: As I've indicated now, these events allegedly
12 deal with criminal sexual conduct upon a minor, which charges
13 are denied. Given the nature of these allegations, do any of
14 you have such biases or prejudices that you cannot give both
15 the State and the Defendant a fair trial? If so, please stand
16 and I'll excuse you.

17 (REPORTER'S NOTE: No response.)

18 THE COURT: All right. Other than the witness list, is
19 there any other inquiry requested by the State?

20 MR. SPRATLIN: No, sir, Your Honor.

21 THE COURT: By the Defendant?

22 MR. FLOYD: Judge, I'd ask for any affiliations with any
23 law enforcement support groups such as MADD, CASA ---

24 THE COURT: I will grant that. Do any of you have any
25 affiliation with those type of law enforcement groups or

1 public interest groups such as Mad Mothers?

2 JUROR 155: I'm a Guardian ad Litem.

3 THE COURT: May I have your name?

4 JUROR 155: Donna Hein.

5 THE COURT: You're a -- you're in the Guardian ad Litem
6 Program?

7 JUROR 155: I'm a Guardian ad Litem in Horry County.

8 THE COURT: Thank you, ma'am. I accept that as
9 information.

10 MR. FLOYD: What was the name, again, Judge?

11 THE COURT: May I have your name again, please?

12 JUROR 155: Donna Hein, H-E-I-N.

13 THE COURT: Do you have your jury number, please, ma'am?

14 JUROR 155: 155.

15 THE COURT: Thank you so much.

16 All right. Mr. Floyd, any other questions? That was the
17 only response.

18 MR. FLOYD: That's all, Judge.

19 THE COURT: All right. Ladies and gentlemen, I'm going
20 to now have my associate and law clerk read names of potential
21 witnesses that may or may not be called by one side or the
22 other. If any of you have any close connections with any of
23 these potential witnesses, I respectfully request that you
24 stand and give me your name and jury number.

25 Proceed with the State's first.

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JURY SELECTION

1 LAW CLERK: Nicole Herring, Minor 1 , Minor 2 ,
2 Todd Cox, Sierra Bullard, Jeff Gause, Dr. Monica Wright ---

3 THE COURT: Any of you clients of Dr. Wright?
4 (REPORTER'S NOTE: No response.)

5 LAW CLERK: Tim Fike, Shelby Rowell, Gail Gasque, Nancy
6 Stanley, Hugh Rowell. .

7 THE COURT: No one has responded to any of the potential
8 jurors.

9 All right. Solicitor, any further requests?

10 MR. SPRATLIN: No, sir, Your Honor. We're ready to
11 begin.

12 THE COURT: Defendant?

13 MR. FLOYD: No, sir, Judge.

14 THE COURT: All right. Let's have twelve jurors and two
15 alternates, please. Strikes are five and ten.

16 JURY SELECTION:

17 CLERK: When I call your name and juror number, if you'll
18 please come to the front of the courtroom, stand on the little
19 square here, turn around and face the back of the courtroom
20 and bring any belongings that you have with you, please.

21 77, Robert Comecheck.

22 What say the State?

23 MR. SPRATLIN: Please present this juror.

24 CLERK: Defense?

25 MR. FLOYD: Seat the juror.

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JURY SELECTION

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1 CLERK: Please be seated in the jury box.

2 267, Diane Norton,

3 What say the State?

4 MR. SPRATLIN: Please present this juror.

5 CLERK: Defense?

6 MR. FLOYD: Please excuse the juror from the trial of

7 this case.

8 CLERK: You're excused from this particular case.

9 116, Christine Foreman.

10 What say the State?

11 MR. SPRATLIN: Please present this juror.

12 CLERK: Defense?

13 MR. FLOYD: Please excuse the juror from the trial of

14 this case.

15 CLERK: You are excused from this particular case.

16 240, Marietta McEachern.

17 What say the State?

18 MR. SPRATLIN: Please present this juror.

19 CLERK: Defense?

20 MR. FLOYD: Seat the juror.

21 CLERK: Please be seated in the jury box.

22 324, Joseph Smith.

23 What say the State?

24 MR. SPRATLIN: Please present this juror.

25 CLERK: Defense?

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JURY SELECTION

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1 MR. FLOYD: Seat the juror.
2 CLERK: Please be seated in the jury box.
3 256, Brenda Moser.
4 What say the State?
5 MR. SPRATLIN: Please present this juror.
6 CLERK: Defense?
7 MR. FLOYD: Seat the juror.
8 CLERK: Please be seated in the jury box.
9 131, Susan Gore.
10 What say the State?
11 MR. SPRATLIN: Please present this juror.
12 CLERK: Defense?
13 MR. FLOYD: Seat the juror.
14 CLERK: Please be seated in the jury box.
15 105, Patricia Duncan.
16 What say the State?
17 MR. SPRATLIN: Please excuse the juror from the trial of
18 this case.
19 CLERK: You are excused from this particular case.
20 157, Stacy Heniford.
21 What say the State?
22 MR. SPRATLIN: Please present this juror.
23 CLERK: Defense?
24 MR. FLOYD: Please excuse the juror from the trial of
25 this case.

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JURY SELECTION

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1 CLERK: You are excused from this particular case.
2 138, Celeste Griffin.
3 What say the State?
4 MR. SPRATLIN: Please excuse this juror.
5 CLERK: You are excused from this particular case.
6 244, Chrystal Medley.
7 What say the State?
8 MR. SPRATLIN: Please present this juror.
9 CLERK: Defense?
10 MR. FLOYD: Seat the juror.
11 CLERK: Please be seated in the jury box.
12 395, Cheryl Wise.
13 What say the State?
14 MR. SPRATLIN: Please present this juror.
15 CLERK: Defense?
16 MR. FLOYD: Seat the juror.
17 CLERK: Please be seated in the jury box.
18 255, Elizabeth Morrell.
19 What say the State?
20 MR. SPRATLIN: Please present this juror.
21 CLERK: Defense?
22 MR. FLOYD: Please excuse the juror from the trial of
23 this case.
24 CLERK: You are excused from this particular case.
25 384, Guy Wells, Jr.

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JURY SELECTION

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1 What say the State?
2 MR. SPRATLIN: Please present this juror.
3 CLERK: Defense?
4 MR. FLOYD: Seat the juror.
5 CLERK: Please be seated in the jury box.
6 181, James Infield?
7 What say the State?
8 MR. SPRATLIN: Please present this juror.
9 CLERK: Defense?
10 MR. FLOYD: Seat the juror.
11 CLERK: Please be seated in the jury box.
12 330, Sondra Spawn.
13 What say the State?
14 MR. SPRATLIN: Please present this juror.
15 CLERK: Defense?
16 MR. FLOYD: Please excuse the juror from the trial of
17 this case.
18 CLERK: You are excused from this particular case.
19 212, Valerie Lester.
20 What say the State?
21 MR. SPRATLIN: Please present this juror.
22 CLERK: Defense?
23 MR. FLOYD: Please excuse the juror from the trial of
24 this case?
25 CLERK: You are excused from this particular case.

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JURY SELECTION

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1 137, Louise Graves.
2 What say the State?
3 MR. SPRATLIN: Please present this juror.
4 CLERK: Defense?
5 MR. FLOYD: Seat the juror.
6 CLERK: Please be seated in the jury box.
7 162, Kenneth Hilburn.
8 What say the State?
9 MR. SPRATLIN: Please present this juror.
10 CLERK: Defense?
11 MR. FLOYD: Seat the juror.
12 CLERK: Please be seated in the jury box.
13 188, Kent Jenkins.
14 What say the State?
15 MR. SPRATLIN: Please present this juror.
16 CLERK: Defense?
17 MR. FLOYD: Seat the juror.
18 CLERK: Please be seated in the jury box.
19 THE COURT: All right. That's the twelve jurors. We
20 will now select two alternates. The strikes are one and two
21 as to each alternate.
22 You may proceed.
23 CLERK: 155, Donna Hein.
24 What say the State?
25 MR. SPRATLIN: Please present this juror.

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JURY SELECTION

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1 CLERK: Defense?

2 MR. FLOYD: Please excuse the juror from the trial of
3 this case.

4 CLERK: You are excused from this particular case.

5 51, Jack Hawley.

6 What say the State?

7 MR. SPRATLIN: Please present this juror.

8 CLERK: Defense?

9 MR. FLOYD: Seat the juror.

10 CLERK: Please be seated in the jury box.

11 48, James Britt.

12 What say the State?

13 MR. SPRATLIN: Please present this juror.

14 CLERK: Defense?

15 MR. FLOYD: Seat the juror.

16 CLERK: Please be seated in the jury box.

17 BY THE COURT:

18 THE COURT: All right. I ask that the Jury and the
19 alternates please -- Mr. Bailiff, take them to the jury room.
20 I'm gonna be bringing them back out in just a minute.

21 BAILIFF: Okay, sir.

22 THE COURT: Thank you.

23 (REPORTER'S NOTE: The Jury exits courtroom. 1:20 P.M.)

24 THE COURT: All right. For the State, any motions
25 regarding the composition of this Jury?

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JURY SELECTION

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1 MR. SPRATLIN: None, Your Honor. There is one matter,
2 though, if me and Mr. Floyd could approach real fast on it.

3 THE COURT: Wait a minute. Let me deal with this matter,
4 too. Any motions regarding the composition of the Jury?

5 MR. FLOYD: No, sir.

6 THE COURT: All right. Come forward.

7 (REPORTER'S NOTE: A bench conference was held off the record
8 in the presence of the jury pool but out of hearing of the
9 jury pool.)

10 THE COURT: Ladies and gentlemen, they need you back
11 downstairs now; you may leave. Go back downstairs, please;
12 thank you.

13 (REPORTER'S NOTE: Remaining Jury Pool exits courtroom. 1:20
14 P.M.)

15 Mr. Ragsdale, bring in the jury for me. Please have the
16 alternates sit in the alternates' chair.

17 (REPORTER'S NOTE: The jury enters courtroom. 1:24 P.M.)

18 THE COURT: Ladies and gentlemen, when you return from
19 lunch -- I'm going to ask you to be back at 2:45. That'll
20 give you, we think, sufficient time to have lunch.

21 When you return, instead of me designating a foreperson,
22 I see a lot of competent talent out there who can serve as the
23 foreperson of this Jury. A foreperson will handle the
24 deliberations in the jury room and be the spokesman in the
25 courtroom. I, of course, will keep the foreperson fully

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JURY SELECTION

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1 advised of his or her duties and at the appropriate time will
2 be preparing a verdict form for your consideration. And so
3 when you return at 2:45, please select among your group a
4 person who desires to serve as foreperson and who you want to
5 be your leader.

6 Now, there are several things by way of admonitions I
7 need to talk to you about. First, do not discuss this case
8 with anyone, let no one discuss it with you. It's not likely
9 but if someone attempts to discuss any issue of this case in
10 your presence, wear that jury badge at all time, and if that
11 occurs, it's unlikely, report that fact to me. Now, you must
12 not even discuss this case among yourselves until I have given
13 it to you for your deliberation. And the reason is simply
14 this, your deliberation encompasses all of the witnesses and
15 all of the testimony and the law of the case. Consequently,
16 you will not have that available to you until I have said to
17 you, you may now begin your deliberations.

18 Another thing that's now important, it was not when I
19 went on the bench some thirty years ago and that's the iPhone
20 or the aPhone or the internet. Please stay off of that. You
21 must not make any independent inquiries on any issue in this
22 case on the internet. Your verdict must be based on the law
23 and evidence heard in this courtroom. Last May we were
24 involved in the second week of a serious trial. The Bailiff
25 came to me and said, Judge, we got a real problem. I said,

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JURY SELECTION

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1 what is it? He said, one of the jurors approached me a moment
2 ago and showed me questions that she had gotten off the
3 internet and wants to share them with the Jury. Fortunately,
4 she had not discussed this with the rest of the Jury. Had she
5 done so, I would've had to declare a two-week trial a
6 mistrial. But she had not done that so I was able to
7 discharge her and put another in her place. So, I say to you,
8 it is against your oath to make any independent inquiry
9 regarding this case. Please keep that in mind.

10 You are now discharged to be back at 2:45 and the first
11 thing you do is select a foreperson for me. Thank you so
12 much.

13 Mr. Bailiff, let me know who the foreperson will be.

14 All right. See you at 2:45. Thank you.

15 (REPORTER'S NOTE: The Jury exits courtroom. 1:28 P.M.)

16 THE COURT: All right. From the State, anything further
17 before we ---

18 MR. SPRATLIN: Your Honor, there is one matter, as soon
19 as the Jury is out.

20 THE COURT: All right, sir.

21 MR. SPRATLIN: Your Honor, the case has been called, the
22 Defendant's bond is up. The State would just ask that the
23 Defendant be kept in custody pending resolution of this trial.

24 THE COURT: The Defendant will be kept in custody. Leave
25 him here for lunch so you'll have full opportunity to talk to

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JURY SELECTION

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1 him.

2 Given the seriousness of the case and the victims, too, I
3 prefer that he remain in custody, Mr. Floyd. Thank you.

4 MR. SPRATLIN: Thank you, Your Honor.

5 THE COURT: All right. Thank you.

6 Be back at 2:45.

7 (RECESS - 1:29 P.M.)

8 *****OFF THE RECORD*****

9 (On the Record - 2:58 P.M.)

10 THE COURT: Is the State ready to proceed?

11 MR. SPRATLIN: State's ready, Your Honor.

12 THE COURT: Defendant ready?

13 MR. FLOYD: Yes, sir.

14 THE COURT: Bring the Jury in, please.

15 (REPORTER'S NOTE: The Jury enters courtroom. 2:58 P.M)

16 THE COURT: Mr. Bailiff?

17 BAILIFF: Yes, sir.

18 THE COURT: Has the jury selected a foreperson?

19 BAILIFF: They have, Your Honor.

20 THE COURT: May I have it, please? And have the
21 foreperson take the foreman's chair for me.

22 BAILIFF: She is there, sir.

23 THE COURT: Okay. The Jury has selected Susan Gore as
24 foreperson of this Jury.

25 Congratulations, Ms. Gore. Thank you for agreeing to

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1 serve in this position. As I indicated you will be the Jury's
2 spokesman in the courtroom and preside during deliberations.
3 I will keep you and your distinguished Jury fully advised
4 during the course of the trial.

5 COURT'S EXHIBIT NUMBER THREE

6 MARKED FOR IDENTIFICATION

7 THE COURT: Swear the jurors, please.

8 CLERK: Please stand and raise your right hand.

9 (REPORTER'S NOTE: Jury is duly sworn.)

10 THE COURT: Madame Foreman and ladies and gentlemen,
11 first, good afternoon. Recognizing that for some of you, this
12 may be, or all of you, the first time you've had the
13 opportunity to serve as a juror in a criminal case. Let me
14 tell you how we'll begin. As you were told, the estate is
15 bringing these two charges against the Defendant upon an
16 indictment. To this indictment and the allegations it
17 contains, this Defendant specifically pleads not guilty,
18 thereby placing the burden of proof upon the State of South
19 Carolina of proving him guilty if they can by evidence to your
20 satisfaction unanimously beyond a reasonable doubt.

21 We'll begin this case with the State of South Carolina,
22 through their Solicitor, will make an opening statement to you
23 as to what his case is about. That's a guideline to help you
24 follow the introduction of the testimony. The Defendant,
25 represented by the Public Defender's office will give you a

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1 statement as to his position. We will then take testimony of
2 various witnesses who may be called and accept such documents
3 as may be introduced into the trial of this case.

4 Now, there are several things that you need to know even
5 now. From this moment on, there is nobody in this wide world
6 that can tell you twelve what the facts are in this case. You
7 may say to me, well, Judge, we just got here, how are we to
8 know what the facts are? Well, during the trial of the case,
9 there will be witnesses called by various individuals, there
10 may be documents introduced in the trial of the case. As
11 these witnesses are called, you will judge their credibility,
12 you will judge their believability. As to a witness'
13 testimony, you may accept all of that testimony or none; you
14 may accept a small portion, disregard the latter; or you may
15 accept one witness against that of many. You and you alone
16 are the sole and only finders of the facts and you are the
17 sole and only judges of the credibility and believability of
18 the witnesses.

19 In this case, as in all criminal cases, this Defendant
20 comes into court under the presumption of innocence. And that
21 presumption remains with this Defendant throughout the trial
22 until you, the Jury, if at ever, have found him guilty of
23 these charges beyond a reasonable doubt.

24 Now, there are several indictments involving alleged
25 different victims. As to those several indictments, you will

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OPENING BY SPRATLIN

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1 consider the evidence separately as to each one. You may find
2 the Defendant not guilty on all of them or guilty on some and
3 not guilty on the other or guilty of all of them. The point I
4 make is this is your decision but you will consider each
5 indictment and the evidence thereabouts separately in each
6 instance. The State of South Carolina has the burden of
7 proving its issues beyond a reasonable doubt and to these
8 charges, this Defendant has pled not guilty.

9 You may have your opening.

10 MR. SPRATLIN: Thank you, Your Honor.

11 OPENING BY MR. SPRATLIN:

12 MR. SPRATLIN: Ladies and gentlemen of the Jury, secrets
13 hurt; that's a lesson we all learn in grade school. When
14 something is kept quiet that shouldn't be kept quiet, there
15 are consequences. And unfortunately, for the Defendant's
16 secret, the consequence was that Minor and Minor 2
17 sitting right there, were molested by him, sexually molested
18 by him for several years.

19 Ladies and gentlemen, as the Judge told you, I'm Martin
20 Spratlin and I'm an Assistant Solicitor here in Horry County.
21 I work within the state. My job today is to present enough
22 evidence to -- it to present enough evidence to prove the
23 Defendant guilty beyond a reasonable doubt.

24 Now, as the Judge also stated, this is the part of the
25 trial called opening statements. This is a chance for me and

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OPENING BY SPRATLIN

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1 Mr. Floyd, to come up and tell you what we expect the evidence
2 will show you. Now, as the Court said, nothing I say is
3 evidence; nothing Mr. Floyd says is evidence. As the Judge
4 stated, the only evidence you will hear is from that witness
5 stand and from exhibits and statements that are entered into
6 evidence as appropriate.

7 Now, you all heard what the Defendant is charged with.
8 He is charged with two counts of lewd act or improper sexual
9 touching, one for Minor2 and one for Minor1 He's also
10 charged with two counts of criminal sexual conduct with a
11 minor, second degree. That being that when those two girls
12 were between the ages of eleven and fourteen, he committed a
13 sexual battery upon them. In this case, the evidence will
14 show you that the Defendant digitally penetrated one of the
15 girls and performed oral sex on the other one constituting
16 criminal sexual conduct.

17 Now, the charges that we're dealing with here today
18 obviously concerns very delicate matter. It's a subject that
19 most probably don't want to talk about, don't want to hear and
20 certainly don't want to discuss in a room full of strangers.
21 To that end, you're gonna hear some things that you may want
22 to shy away from today. You're gonna hear phrases, you're
23 gonna hear words that you would rather not hear. But, it's
24 important that each and every one of you not shy away from
25 those phrases, not shy away from those words but rather pay

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OPENING BY SPRATLIN

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1 attention to the testimony as it's presented because only then
2 does the Defendant's secrets all come out, only then are these
3 two girls vindicated.

4 Now, I said a minute ago, this is merely a chance -- the
5 opening statement is a chance to tell you what I expect the
6 evidence will show. To that end, I expect to call four
7 witnesses. I will call the mother of Minor and Minor 2
8 Nicole Herring. I will call Minor 1 ; I will call Minor 2
9 ; and I will call Detective Cox with the Horry County
10 Police Department. Now, Nichol Herring, the mother of the two
11 girls at issue in this case and also the Defendant's ex-
12 husband -- ex-wife, she never witnessed any of the Defendant's
13 secrets. She wasn't privy to that. She never saw him molest
14 the girls, she never saw him touch them inappropriately. What
15 she will provide for you today, though, is the framework of
16 how the Defendant came into their lives, how old the girls
17 were, how old the Defendant was, how she went to work for
18 sometimes twelve-hour shifts leaving the Defendant, who was a
19 disabled fire fighter, home to care for the kids. He had
20 access to those two little girls, ladies and gentlemen, and
21 that's what she will share. What he did what the access that
22 he had, we'll they're gonna tell them themselves because Minor
23 is going to testify and Minor is going to tell you how at first
24 the father -- the Defendant was like a father figure to her.
25 He married her mother, came in the house, did things for her,

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OPENING BY SPRATLIN

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1 took care of her, helped her out. But at some point, that
2 father figure began to stick his hands down her pants. At
3 some point, that father figure began to touch her breasts
4 inappropriately. At some point, that father figure began
5 kissing her inappropriately. And at some point, that father
6 figure performed oral sex on her. And Minor2 is gonna
7 testify too. She is gonna testify pretty much the same kind
8 of story you're gonna hear from Minor1 She's a little younger,
9 two years younger than Minor when the Defendant came into their
10 lives. She's gonna tell you pretty much the same way, he was
11 a father figure towards her and one day, that father figure
12 began to stick his hands down her pants and that father figure
13 stuck his finger inside of her.

14 Lastly, ladies and gentlemen, you're gonna hear from
15 Detective Todd Cox, Horry County Police Department, who will
16 tell you a little bit about the investigation. He'll tell you
17 how he picked the Defendant up when these charges came to
18 light, brought him in for questioning. You're gonna hear the
19 Defendant's statement. The Defendant admitted to a lot of
20 what he did to those two girls in that statement. He didn't
21 admit to all of it but he admitted to touching them
22 inappropriately. He admitted to molesting those two girls and
23 you're gonna hear that statement. Now, did he come clean on
24 everything? No. But he came clean on enough. He
25 corroborated those girls' statements and that, ladies and

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OPENING BY FLOYD

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1 gentlemen, is why it is important for you not to shy away.
2 Because you may want to crawl under your seat from some of the
3 testimony you're gonna hear today, but don't, pay attention,
4 look at the witnesses, listen to them, because only then are
5 all the Defendant's secrets out. And only then will you be
6 convinced beyond a reasonable doubt of the Defendant's guilt.

7 Thank you.

8 THE COURT: Mr. Floyd?

9 MR. FLOYD: May it please the Court, Judge?

10 OPENING BY MR. FLOYD:

11 MR. FLOYD: Ladies and gentlemen and of the Jury, good
12 afternoon. I am Thomas Floyd and I represent Talmadge here.
13 I'm not going to stand up here and talk a whole long time
14 right now, because right now there is no evidence. Just as
15 Mr. Spratlin said, what we're standing here telling you isn't
16 evidence, that's gonna come from the witness stand.

17 Talmadge has entered a plea of not guilty to these
18 charges and with that, it placed the burden, as the Judge has
19 told you, on the State of South Carolina to prove it beyond a
20 reasonable doubt to each and every one of you. They say the
21 burden of proof is like a robe that wraps around them and
22 embraces them and that robe, unless and until the State of
23 South Carolina completely removes, they have not met their
24 burden of proof beyond a reasonable doubt to each and every
25 one of you.

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BY THE COURT

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1 Now, as Mr. Spratlin said, there's not gonna be a whole
2 lot of witnesses called but all the witnesses that testify are
3 important and t's up to you to judge the credibility of the
4 witnesses, their believability. I ask you to be diligent in
5 that job in judging the credibility of the witnesses because
6 this case is important to everybody in the courtroom. I ask
7 you to do your duty as a juror and judge the evidence
8 presented in this courtroom.

9 Thank you.

10 BY THE COURT:

11 THE COURT: Mr. Bailiff, before we start, please have the
12 forelady sit in the foreman's chair and the alternates will
13 sit in their chair and move them accordingly, please. Please
14 swap -- the alternate needs to sit back in the alternate's
15 chair and that juror needs to sit next to the foreman. Move
16 them around, please.

17 BAILIFF: She's the foreman, is that where she needs to
18 sit?

19 THE COURT: She needs to sit in the first chair, in the
20 foreperson's chair, and the alternates need to sit back at the
21 back. Now, that juror who's back there, let him come around.

22 All right. Ladies and gentlemen, our seating
23 specifically requires that the foreperson will always occupy
24 that chair, the alternates will always occupy the alternates'
25 chairs. The rest of you, of course, may sit as you chose.

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NICOLE HERRING - DIRECT BY SPRATLIN

1 Thank you, Mr. Bailiff. I apologize the inconvenience,
2 Madame Foreman.

3 Call your first witness.

4 MR. SPRATLIN: Your Honor, the State would call Nicole
5 Herring to the stand.

6 NICOLE HERRING, HAVING BEEN DULY
7 SWORN, TESTIFIES AS FOLLOWS:

8 CLERK: Would you state your full name and spell your
9 last name.

10 MS. HERRING: My name is Nicole Herring, H-E-R-R-I-N-G.

11 DIRECT EXAMINATION OF NICOLE HERRING BY MR. SPRATLIN:

12 Q: Ms. Herring, where do you live?

13 A: In Green Sea.

14 Q: What part of -- what county is Green Sea in?

15 A: Horry County.

16 Q: All right. How long have you lived in Green Sea?

17 A: In Green Sea, approximately for the last ten years
18 between the Green Sea/Nichols area but still in Horry County.

19 Q: Okay. So, you lived in -- how long have you lived in
20 Horry County?

21 A: Ten years.

22 Q: Okay. All right. How old are you, ma'am?

23 A: I'm thirty-five.

24 Q: Thirty-five. And how many children do you have?

25 A: I have five.

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NICOLE HERRING - DIRECT BY SPRATLIN

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- 1 Q: Five children. All right. What are their names?
- 2 A: Minor 1 , Minor 2 , JR , AR and
3 ZR .
- 4 Q: Now, you mentioned AR and ZR , are
5 they any relation to the Defendant?
- 6 A: Yes.
- 7 Q: What relation?
- 8 A: That's -- they're his children.
- 9 Q: Okay. What is the Defendant to you?
- 10 A: An ex-husband.
- 11 Q: Okay. When was the first time you ever met the
12 Defendant?
- 13 A: The first time I met him was maybe twenty years ago. My
14 mom used to babysit his son.
- 15 Q: Okay. Now, sometime later on, did you run into him
16 again?
- 17 A: I did. I was in a vehicle accident in 2004 and he was
18 one of the firefighters on the scene. And then later on I saw
19 his sister and they talked me into joining the fire
20 department, so I joined in 2005.
- 21 Q: So, the Defendant worked at the fire department?
- 22 A: Yes. He was District Fire Chief.
- 23 Q: So, you said you met him again in -- 2004 was when the
24 vehicle accident was?
- 25 A: Yes.

1 Q: And then you began working at the fire department as what
2 again?

3 A: Support services.

4 Q: What is that?

5 A: We just help out on fire calls as far as taking water to
6 the fire fighters, you know, assisting on the fire fighters or
7 police or victims in any way we could.

8 Q: Okay. Now, at some point, you and the Defendant began
9 kind of a romantic relationship?

10 A: Yes.

11 Q: When was that?

12 A: In 2005, the end of 2005.

13 Q: And you said he was your ex-husband; so, I assume you two
14 were eventually married?

15 A: Yes.

16 Q: When was that?

17 A: May 19th, 2007.

18 Q: And he mentioned that you had five children, focusing
19 particularly on Minor and Minor2 , when is Minor1 s birthday?

20 A: .

21 Q: And who is her father?

22 A: Jason Aker.

23 Q: And that was 1996?

24 A: '6.

25 Q: All right. And Minor2 , when is her birthday?

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NICOLE HERRING - DIRECT BY SPRATLIN

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- 1 A: , .
- 2 Q: of . All right. So, in 2005, how old would
3 Minor 1 have been?
- 4 A: Nine.
- 5 Q: And how old would Minor 2 have been?
- 6 A: Seven.
- 7 Q: And that's when you started dating the Defendant?
- 8 A: Yes.
- 9 Q: Okay. And when you married, you married on May 19th,
10 2007?
- 11 A: Correct.
- 12 Q: And how old would Minor have been then?
- 13 A: She would've been almost eleven.
- 14 Q: And what about Minor 2 ?
- 15 A: Almost nine. Their birthdays were in August and we were
16 married in May.
- 17 Q: All right. As the ex-wife of the Defendant, do you know
18 how old he is or when his birthday is?
- 19 A: the , .
- 20 Q: So, he's well above ---
- 21 A: Yeah, I believe he's fifty-four.
- 22 Q: Fifty-four, okay. Now when -- how long did you work at
23 the fire department as an assistant or paid or whatever?
- 24 A: The Support Service ---
- 25 Q: Yes.

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NICOLE HERRING - DIRECT BY SPRATLIN

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1 A: Probably for about two or three years and then Horry
2 County Fire and Rescue decided to do away with Support
3 Services but I would still, like on the weekends when I was
4 off or my days off, I would still assist.

5 Q: Now, when you and Defendant were married, did y'all live
6 together?

7 A: Yes.

8 Q: Who all lived with you?

9 A: It was just him, myself and the five children.

10 Q: Your five children that you mentioned earlier?

11 A: Yes.

12 Q: And so' Minor 2 and Minor were two of those five children?

13 A: Yes.

14 Q: Okay. Now, when you were married, were you working?

15 A: Yes.

16 Q: What were you doing?

17 A: I was working at the beach. I started out at Sands
18 Resort and then I moved the Bay View Resort. I started out as
19 housekeeper and then I was Assistant Director.

20 Q: What kind of hours did you work?

21 A: I would leave home anywhere between 5:30 and 6:00, 6:30
22 at the latest, and then I would get home between 7:00 and 9:00
23 at night during the summertime. In the winter, you know,
24 months, I would get home a little earlier because it was the
25 off-peak season.

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NICOLE HERRING - DIRECT BY SPRATLIN

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- 1 Q: Now, when you were working these almost twelve-hour
2 shifts, who was taking care of the children at home?
3 A: Talmadge.
4 Q: Was he working?
5 A: No, he was on disability.
6 Q: What for?
7 A: He got hurt on the job at the City of Conway.
8 Q: If you know, what kind of injury did he have?
9 A: A back injury to my knowledge.
10 Q: So, he would stay home with the children?
11 A: Yes.
12 Q: Again, Minor 1 and Minor 2 , were they your oldest children?
13 A: Yes.
14 Q: So, all the other children were younger?
15 A: Yes.
16 Q: How old, if you know, was JR when y'all got married?
17 A: When we got married, JR was five.
18 Q: Five? And what about AR ?
19 A: AR wasn't born when we got married.
20 Q: And ZR , I assume wasn't born either?
21 A: Right
22 Q: Okay
23 A: I'm sorry, JR might've been -- I don't know, he was
24 born in '01.
25 Q: Born in '01?

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NICOLE HERRING - DIRECT BY SPRATLIN

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1 A: Yeah.

2 Q: All right. Now, what kind of activities, if any, would
3 the Defendant do with Minor 1

4 A: If he went to, you know, the store or -- she would go
5 hunting with him. He would ask her to go hunting, they would
6 go hunting together. You know, she would ride with him
7 sometimes to go to a fire call. You know, if he went to the
8 store, you know, she would go with him to the store.

9 Q: When he would go hunting with Minor , did anybody else go
10 along that you knew of?

11 A: No.

12 Q: Okay. What about Minor 2 ? What kind of activities, if
13 any, did he do with Minor 2 ?

14 A: About the same with her. You know, I mean, they -- we
15 would all ride the four-wheelers, you know, but you know,
16 sometimes one of them would be riding with him, one would be
17 riding with me, you know.

18 Q: About how old was Minor 1 when she started going hunting
19 with the Defendant?

20 A: I'm not sure. It was shortly after we got together
21 because we would all go hunting. But when I was at work, you
22 know, they would go.

23 Q: Okay. Do you remember how old Minor 2 was when she
24 starting going hunting with the Defendant?

25 A: I'm not sure.

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NICOLE HERRING - DIRECT BY SPRATLIN

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1 Q: Okay. Now, Ms. Herring without going into what the girls
2 actually told you, at some point did they disclose to you that
3 there was inappropriate touching going on in the house?

4 A: Correct.

5 Q: All right. And what did you do when you found that out?

6 A: When they told me they had picked me -- I had picked them
7 up. I was on my way home from work and I picked them up and
8 that's when they told me. I called about every number in my
9 phone because I didn't think calling 911 was safe because he
10 was the Fire Chief and, you know, his son was a police
11 officer. So, he had access to a scanner and I knew if he
12 heard it over the scanner -- so I got in touch with a police
13 officer, you know, a friend and I told him of the situation.
14 He told me, do not go home, you know, so I met him -- well, I
15 went to Dollar General, he told me he would meet me there and
16 then he called me and told me to go to the precinct out in Mt.
17 Olive, to the Magistrate's office and that's where I went.
18 And when I got there, Officer Gause, and there was another
19 police officer there.

20 Q: All right. So, as soon as they told you, you basically
21 went to the police department?

22 A: Yes.

23 Q: All right. Ms. Herring, that's all the questions I have.
24 Please answer any questions that the defense attorney may
25 have.

1 A: Okay.

2 CROSS EXAMINATION OF NICOLE HERRING BY MR. FLOYD:

3 Q: Ms. Herring, what time was it that you picked the girls
4 up from the party that night?

5 A: I picked the girls up maybe around 1:00 or 1:30.

6 Q: In the afternoon?

7 A: Yes.

8 Q: And Minor and Talmadge, they argued a little bit, didn't
9 they?

10 A: At the end they did.

11 Q: Butted heads, I think are the words that have been used.

12 A: Uh-huh (affirmative response).

13 Q: And I think you even said at one point the girls didn't
14 like him.

15 A: I asked him why didn't the girls like him.

16 Q: And at some point in time, the girls went and lived with
17 your parents, didn't they?

18 A: With my parents?

19 Q: Wasn't it your parents that they lived with?

20 A: My children went to stay with my momma at one point in
21 time.

22 Q: What year was that?

23 A: That was 2006.

24 Q: And when all this came to light and you went and I
25 believe you talked with Detective Cox, right?

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NICOLE HERRING - CROSS BY FLOYD

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- 1 A: Yes.
- 2 Q: And when you talked with him, you said that Minor had lied
3 to you before.
- 4 A: They're children. All children lie to their parents a
5 time or two.
- 6 Q: That was a specific answer you gave to him, correct?
- 7 A: I don't remember but ---
- 8 Q: All right. And when Talmadge bonded out of jail, you
9 went and visited him at his parents' house, didn't you?
- 10 A: He was not there. I did take the children to see his
11 parents.
- 12 Q: You didn't go over there and stay in a trailer with him
13 one night?'
- 14 A: No.
- 15 Q: All right. And when you got Talmadge out the house, you
16 moved in someone with you, didn't you?
- 17 A: No.
- 18 Q: Brandon Crawford didn't move in with you?
- 19 A: No.
- 20 Q: And right now Minor 2 is not living with you, is she?
- 21 A: That's correct.
- 22 Q: Where is Minor 2 ?
- 23 A: She is in Georgetown.
- 24 Q: Thank you.
- 25 MR. SPRATLIN: Your Honor, redirect?

1 THE COURT: Yes.

2 REDIRECT EXAMINATION OF NICOLE HERRING BY MR. SPRATLIN:

3 Q: Ms. Herring, on cross examination, you stated that
4 Talmadge and the girls didn't get along very well. What was
5 the relationship like with the girls when Talmadge and you
6 first got married?

7 A: It was like a father/daughter relationship; they got
8 along really good.

9 Q: And at some point, did that change?

10 A: It did.

11 Q: About how old were the girls when that started changing?

12 A: It was maybe in 2010. So, they would've been fourteen
13 and twelve.

14 Q: Okay. Now, Minor2 is in Georgetown, correct?

15 A: Correct.

16 Q: She's actually in foster care right now?

17 A: Correct.

18 Q: And why is she in foster care?

19 A: Because she ran away from home.

20 Q: Okay. Thank you, Ms. Herring, that's all the questions I
21 have.

22 A: Thank you.

23 THE COURT: All right, sir.

24 You may come down. Thank you.

25 A: Thank you.

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Minor 1 - DIRECT BY SPRATLIN

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1 THE COURT: Next witness.

2 MR. SPRATLIN: The State would call Ms. Minor 1 to the
3 stand.

4 Minor 1, HAVING BEEN DULY SWORN,

5 TESTIFIES AS FOLLOWS:

6 CLERK: Please state your full name and spell your last
7 name.

8 MS. Minor 1 : Minor 1 , .

9 DIRECT EXAMINATION OF Minor 1 BY MR. SPRATLIN:

10 Q: Ms. Minor 1 , is it all right to call you Minor ?

11 A: Yes, sir, it is.

12 Q: All right. Minor , how old are you?

13 A: Seventeen.

14 Q: Who do you currently live with?

15 A: My mom and Minor 2 , JR , AR and ZR .

16 Q: Is Minor 2 in the home right now?

17 A: No, sir.

18 Q: When did she leave the home? When did she quit living in
19 the house with you? How long ago?

20 A: About a month ago.

21 Q: A month ago, okay. Now, back in 2011, who all lived in
22 the house with you?

23 A: My mom, Minor 2 , T.L., me, JR , AR and ZR .

24 Q: Who is T.L.?

25 A: The Defendant.

1 Q: What's his full name?
2 A: Talmadge LeRoy Rowell.
3 Q: Why do you call him T.L.?
4 A: I have no clue why I called him that.
5 Q: Who else calls him T.L.?
6 A: JR and Minor 2
7 Q: Okay. What does AR call him; do you know?
8 A: Daddy.
9 Q: And what about ZR, if you know?
10 A: Daddy.
11 Q: All right. Now, when was the first time you ever met the
12 Defendant Talmadge Rowell?
13 A: It was at one of my birthday parties.
14 Q: Do you remember about how old you were?
15 A: I think it was my eighth birthday party.
16 Q: When were you born?
17 A: , .
18 Q: , . All right. Now, do you remember what
19 year your parents got married -- I mean, what year your mom
20 and Talmadge Rowell got married in?
21 A: 2007.
22 Q: 2007? How old were you when they got married?
23 A: About to be eleven.
24 Q: About to be eleven. All right. So, in 2007, 2008, you
25 would've been about to be twelve. In 2009, you would've been

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Minor 1 - DIRECT BY SPRATLIN

1 about to be thirteen. And 2011, you would've been about to be
2 fourteen -- I'm sorry, I missed one -- 2010, you would've been
3 about to be thirteen.

4 A: Fifteen, 2011.

5 Q: Okay. All right. But in 2007 when they got married in
6 May, you were about to be eleven because your birthday is in
7 August.

8 A: (Indicates affirmatively.)

9 Q: Okay. Now, when your mom -- when you first met T.L., the
10 Defendant Talmadge Rowell, what was your relationship like
11 with him?

12 A: A daddy/daughter relationship.

13 Q: What did y'all do?

14 A: We did everything together.

15 Q: Like what?

16 A: Like we went deer hunting, we went to the store.

17 Q: What if any kind of things would he do for you?

18 A: Like give me money when I needed it.

19 Q: Would he do anything else for you?

20 A: Give me candy.

21 Q: All right. Now, when y'all would go deer hunting, who
22 all would go with you?

23 A: Just me and him.

24 Q: Whose idea was it for you to go deer hunting?

25 A: His.

1 Q: Now, Minori, if you can remember, at any point did the
2 relationship between you and T.L., Talmadge Rowell, did it
3 kind of change?

4 A: Yes, it did.

5 Q: What made it change?

6 A: When he started molesting me.

7 Q: Let me ask you, when was the first time that you remember
8 the Defendant improperly touching you?

9 A: When I was -- when I was twelve.

10 Q: All right. If you could, tell the Jury what happened.

11 A: I was taking -- I was in the bathtub and he walked in on
12 me. I was washing my hair and he just came and started
13 touching me inappropriately on my vagina.

14 Q: Okay. Let me back up for a second and ask you some
15 details about that incident. You said you were in the
16 bathroom, what were you doing in there?

17 A: Washing my hair.

18 Q: Okay. Were you taking a shower, taking a bath ---

19 A: A bath.

20 Q: I'm sorry; what was that?

21 A: A bath.

22 Q: You were taking a bath. You said you were washing your
23 hair?

24 A: Yes, sir.

25 Q: This may seem like a stupid question but were you clothed

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Minor 1 - DIRECT BY SPRATLIN

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- 1 or unclothed?
- 2 A: Unclothed.
- 3 Q: Did you have any clothes on whatsoever?
- 4 A: No, sir.
- 5 Q: Okay. When -- when you said the Defendant came in there,
6 when was the first time that you realized the Defendant was
7 coming into the bathroom?
- 8 A: When I looked up and I saw him in there.
- 9 Q: Did he say anything to you when you first saw him?
- 10 A: No, sir.
- 11 Q: Did you say anything to him?
- 12 A: No, sir.
- 13 Q: What did he do when he came into the bathroom?
- 14 A: Like he walked to the bathtub and starting touching my
15 vagina area.
- 16 Q: What did you do?
- 17 A: I told him to stop.
- 18 Q: Did he stop?
- 19 A: No, sir.
- 20 Q: How long did he touch your vagina area for?
- 21 A: Two to three minutes.
- 22 Q: How was he touching it? I mean, was he grabbing it,
23 squeezing it, rubbing it, what was he doing?
- 24 A: Rubbing it.
- 25 Q: He was rubbing it? Now, Minor, how old are you now?

- 1 A: I'm seventeen.
- 2 Q: Okay. Did he ever go inside your vagina at that point in
3 time?
- 4 A: Not all the way in.
- 5 Q: Did he go in at all?
- 6 A: No, sir.
- 7 Q: Okay. Did he just rub at that point in time?
- 8 A: Yes, sir.
- 9 Q: All right. How did this eventually stop?
- 10 A: I told him that if he didn't get off me, I was gonna go
11 tell my mom.
- 12 Q: Did he say anything to that?
- 13 A: He just walked out.
- 14 Q: Did you tell your mom?
- 15 A: No, sir.
- 16 Q: Why not?
- 17 A: Because I was too scared to tell my mom.
- 18 Q: Why were you scared?
- 19 A: I just didn't think she would believe me.
- 20 Q: Did the Defendant ever touch you inappropriately again?
- 21 A: Not that same year he didn't.
- 22 Q: Not that same year? How long was it until he did it
23 again, if at all?
- 24 A: When I turned twelve.
- 25 Q: What happened when you turned twelve?

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Minor 1 - DIRECT BY SPRATLIN

1 A: I think it was the first year I went deer hunting with
2 him.

3 Q: What happened when you went deer hunting?

4 A: Like we got in the stand and he pulled down my pants.

5 Q: Let me back up for a second, was anyone else gone with
6 you deer hunting?

7 A: No, sir.

8 Q: Where, if you know, were y'all going deer hunting at?

9 A: I don't remember where it was.

10 Q: Do you remember where he used to hunt at all?

11 A: I know he had some land but I don't remember if it was on
12 his land or somebody else's land.

13 Q: Okay. Do you remember if you were in Horry County?

14 A: Yes, sir, I was.

15 Q: You were? Let me back up for a second. The first
16 incident you described, were you living in Horry County at
17 that point in time?

18 A: Yes, sir.

19 Q: And did all these events occur in Horry County?

20 A: Yes, sir.

21 Q: St. Now, when you were going deer hunting, what happened
22 -- what happened again?

23 A: He pulled down my pants.

24 Q: All right. Let me back this up for a second. Now, where
25 were y'all going deer hunting at and what kind of -- you were

- 1 going to a stand, did you say?
- 2 A: Yes, sir.
- 3 Q: All right. How did you go to be in the stand?
- 4 A: Like it was a tripod and we had to climb up the ladder to
5 get into the stand.
- 6 Q: Who went in first?
- 7 A: I don't remember who went first.
- 8 Q: How many seats were in the stand?
- 9 A: Just one.
- 10 Q: Where -- were y'all both in the stand at the same time?
- 11 A: Yes, sir.
- 12 Q: All right. How were you positioned in the stand?
- 13 A: I was standing and he was sitting.
- 14 Q: All right. How did he come to pull your pants down?
- 15 A: He pulled me into his lap.
- 16 Q: And what did he do when he pulled you into his lap?
- 17 A: He started fingering me.
- 18 Q: How did his hand go in your pants?
- 19 A: He put it in there.
- 20 Q: Okay. Now were you -- what kind of pants were you
21 wearing; do you remember?
- 22 A: I don't remember.
- 23 Q: Okay. Do you remember if you were wearing underwear?
- 24 A: Yes, sir.
- 25 Q: All right. When his hand went in your pants, did it go

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Minor 1 - DIRECT BY SPRATLIN

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- 1 over or under your underwear?
- 2 A: Under.
- 3 Q: And what was he -- what did his hand do when it was in
4 your pants?
- 5 A: He started rubbing on my vagina.
- 6 Q: Okay. Where was he rubbing in regards to your vagina?
7 Was there a particular area he was rubbing or just all over?
- 8 A: All over.
- 9 Q: Okay. Again, you're seventeen, right?
- 10 A: (Indicates affirmatively.)
- 11 Q: Did he go inside your vagina that day?
- 12 A: No, sir.
- 13 Q: How long was he rubbing your vagina for?
- 14 A: A couple of minutes.
- 15 Q: What, if anything, made it stop?
- 16 A: My momma was calling and he stopped and then we had to go
17 home.
- 18 Q: Did anything else happen in the deer stand that day?
- 19 A: No, sir.
- 20 Q: Now, you said he pulled your pants down. How did he come
21 to pull your pants down?
- 22 A: What do you mean?
- 23 Q: You said he pulled your pants down.
- 24 A: Yes, sir.
- 25 Q: How did he come to pull your pants down? How did that

1 happen?

2 A: Like I'm sitting in his lap and then he just pulled them
3 down.

4 Q: Okay. Did anything else happen that day?

5 A: No, sir.

6 Q: All right. And you said that your mom called and y'all
7 went home?

8 A: Yes, sir.

9 Q: All right. Was that the last time that the Defendant
10 inappropriately touched you?

11 A: No, sir.

12 Q: When did it happen again?

13 A: When -- after the age of thirteen.

14 Q: What happened when you were thirteen?

15 A: The kids were outside and my mom was at work and it was
16 just me and him in the house cause I had to -- I was taking a
17 nap and when I woke up and I went in the living room and he
18 was sitting in there.

19 Q: What did he do?

20 A: He took me to him and my mom's bedroom.

21 Q: Let me ask you, Where were you taking a nap at?

22 A: In my bedroom.

23 Q: And when he took you into his and your mom's bedroom,
24 what happened?

25 A: He put me on the bed and he got on the bed and pulled my

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Minor 1 - DIRECT BY SPRATLIN

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- 1 pants down.
- 2 Q: What happened when he pulled your pants down?
- 3 A: He started licking my vagina.
- 4 Q: Did he say anything to you at this point in time?
- 5 A: No, sir; he did not.
- 6 Q: Did you say anything to him?
- 7 A: I just told him to stop.
- 8 Q: Did he stop when you said stop?
- 9 A: (Indicates negatively.)
- 10 Q: How long do you think he was licking your vagina?
- 11 A: Maybe about a minute and a half.
- 12 Q: Was anybody else around to see this?
- 13 A: No, sir.
- 14 Q: Did you tell anybody about what happened?
- 15 A: No, sir.
- 16 Q: Why not?
- 17 A: Because I was scared that mom wouldn't believe me; that
18 she'd still believe him over me.
- 19 Q: How did this incident stop? How did he stop what he was
20 doing?
- 21 A: I forced to tell on him. I forced to call the law on
22 him.
- 23 Q: I'm sorry?
- 24 A: I forced to call the law on him.
- 25 Q: You forced to call the law on him? What do you mean by

1 that?

2 A: Like I told him I would call the cops.

3 Q: You told him you would call the cops?

4 A: (Indicates affirmatively.)

5 Q: Did you call the cops?

6 A: (Indicates negatively.)

7 Q: What did he say, if anything, when you told him you would

8 call the cops?

9 A: Nothing. He just said that they wouldn't believe me.

10 Q: Okay. Was this the last time he inappropriately touched

11 you?

12 A: (Indicates negatively.)

13 Q: I'm sorry. You'll have answer yes or no.

14 A: No, sir.

15 Q: When was the next time?

16 A: I was fourteen and he, like, I was laying down -- it was

17 on a weekend, on my bed and he came in there and started

18 playing with my boobs.

19 Q: Where were you laying down at?

20 A: On my bed, watching TV.

21 Q: Okay. You said he was playing with your boobs?

22 A: Yes, sir.

23 Q: What was he doing?

24 A: Like, he was playing with them like feeling them and then

25 he just ---

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Minor 1 - DIRECT BY SPRATLIN

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- 1 Q: I'm sorry. What was that?
- 2 A: He was playing with them.
- 3 Q: Like how?
- 4 A: Squeezing them.
- 5 Q: Okay.
- 6 A: And then he started sucking on them.
- 7 Q: Let me ask you, were you wearing a bra at this point in
8 time?
- 9 A: Yes, sir.
- 10 Q: Do you remember what kind of shirt you were wearing?
- 11 A: No, sir.
- 12 Q: Was it a t-shirt, was it long shirt, sweater; any idea?
- 13 A: No, sir.
- 14 Q: Okay. Do you remember how he got to your boobs? Did he
15 go under, over or something else?
- 16 A: Under both my shirt and bra.
- 17 Q: Did he take your bra off?
- 18 A: No, sir.
- 19 Q: Okay. How did he get to your breasts underneath your
20 bra?
- 21 A: He pushed it up.
- 22 Q: Okay. And you said he put his mouth on your breasts?
- 23 A: Yes, sir.
- 24 Q: What did you do?
- 25 A: I was just pushing him away and then he got off.

- 1 Q: What did he do when you were able to push him off?
- 2 A: He walked out of the room.
- 3 Q: Did he say anything or do anything?
- 4 A: No, sir.
- 5 Q: Okay. And how old were you when this happened?
- 6 A: Fourteen.
- 7 Q: All right. Do you remember, was this the last time that
- 8 he touched you?
- 9 A: This was -- the -- this was the first part of the year.
- 10 Q: The first part of what year?
- 11 A: When I was fourteen.
- 12 Q: Okay. So, it was close to your fourteenth birthday?
- 13 A: It was like January.
- 14 Q: You would've been fourteen in about 2011 -- 2010 you
- 15 would've turned fourteen, right?
- 16 A: (Indicates affirmatively.)
- 17 Q: So, it would've been the first part of January of 2011?
- 18 A: Uh-huh (affirmative response). It was after I was
- 19 fourteen.
- 20 Q: All right. And again your birthday is ---
- 21 A: th.
- 22 Q: ; all right. Was this the last time
- 23 that the Defendant touched inappropriately?
- 24 A: No, sir. But I told somebody that same year it happened.
- 25 Q: Did you tell an adult or who did you tell?

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Minor 1 - DIRECT BY SPRATLIN

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- 1 A: I told my best friend. We were passing notes back and
2 forth and I told her I had something important to tell her and
3 then she said, What? And I told her that T.L. had molested me
4 and her jaw just dropped and she started crying.
- 5 Q: Did you tell any adults or anything like that?
- 6 A: (Indicates negatively.)
- 7 Q: Why not?
- 8 A: Cause I was too scared to.
- 9 Q: I'm sorry?
- 10 A: I was scared to.
- 11 Q: Scared to? All right. Let me ask you, when you used to
12 go to sleep at night, did anybody used to tuck you in, go
13 upstairs to say goodnight to you or anything like that?
- 14 A: Yes, sir, he did. Yes.
- 15 Q: Who did?
- 16 A: T.L.
- 17 Q: Okay. How often would he do that?
- 18 A: Every night.
- 19 Q: What would happen -- what if anything would happen when
20 he would do that?
- 21 A: Well, he'd tuck me in and then he started kissing me.
- 22 Q: Was this -- did this happen every time he did it?
- 23 A: Yes, sir.
- 24 Q: What would he do?
- 25 A: Like kiss me on my neck and stuff.

- 1 Q: Would you kiss you anywhere else?
- 2 A: No, sir.
- 3 Q: Just your neck?
- 4 A: Yes, sir.
- 5 Q: Would he say anything to you?
- 6 A: He'd say, goodnight, love you. And I'd tell him,
7 goodnight, love him.
- 8 Q: Okay. All right. The incident you told me about in
9 January, was there anything after that? Any other times that
10 he was ---
- 11 A: It was a couple of months before.
- 12 Q: Couple of months before what?
- 13 A: Before I told the police.
- 14 Q: Okay. What happened?
- 15 A: Me and him got into a huge argument because of -- I
16 forgot what it was about and I was laying on my bed watching
17 TV and then he started touching me inappropriately again.
- 18 Q: What do you mean touching you inappropriately?
- 19 A: Touching my vagina.
- 20 Q: All right. Were you wearing clothes at this point in
21 time?
- 22 A: Yes, sir, I was.
- 23 Q: All right. Were you wearing -- do you remember what kind
24 of pants you were wearing?
- 25 A: No, sir.

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Minor 1 - DIRECT BY SPRATLIN

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- 1 Q: All right. Do you remember if you were wearing
2 underwear?
- 3 A: Yes, sir.
- 4 Q: All right. Do remember if he was touching you on top of
5 or under your underwear or something else?
- 6 A: Under.
- 7 Q: Under. You said he was touching you; how was he touching
8 you?
- 9 A: Like rubbing.
- 10 Q: Again, you're seventeen. Did he go inside your vagina at
11 that point in time?
- 12 A: No, sir.
- 13 Q: How did this incident come to an end?
- 14 A: I threatened to call the police on him.
- 15 Q: What did he do when you threatened to call the police?
- 16 A: He threatened to kill me if I told.
- 17 Q: Did you tell?
- 18 A: I did.
- 19 Q: You did?
- 20 A: I went to my friend's house a couple of weeks after and I
21 told my friends and then that's who Detective Cox also got
22 statements from and they told my mom when she got there, they
23 called her and said, when you get here, the kids got something
24 to tell you. And on the way home, we told my mom.
- 25 Q: And what happened when you told your mom?

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Minor 1 - DIRECT BY SPRATLIN

1 A: She called another police officer -- the same police
2 officer she was talking about earlier -- she called him and he
3 told her to go meet her at the Dollar General and then to the
4 Magistrate's office.

5 Q: Is that when you got a chance to speak with Detective Cox
6 back there?

7 A: Yes, sir. And we also talked with the Sergeant Gause.

8 Q: Okay. Minor, you're seventeen; you know the difference
9 between the truth and a lie, correct?

10 A: Yes, sir.

11 Q: All right. Is everything you told us here today the
12 truth ---

13 A: Yes, sir.

14 Q: --- as best you can recall?

15 A: Yes, sir.

16 Q: Thank you, Minor; that's all the questions I have. Oh,
17 let me just ask one more question. All the events you
18 described today, did they occur in Horry County?

19 A: Yes, sir.

20 Q: And do you see the person you know as Talmadge Rowell
21 here in the courtroom today?

22 A: Yes, sir.

23 Q: Could you point him out and identify an article of
24 clothing he's wearing? All you got to do is point at him.

25 A: (Indicating.)

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Minor 1 - CROSS BY FLOYD

1 Q: What kind of clothes is he wearing?

2 A: He's wearing stripped shirt, khaki pants and boots.

3 MR. SPRATLIN: Please let the record reflect that witness
4 had identified the Defendant.

5 THE COURT: It will so reflect.

6 BY MR. SPRATLIN:

7 Q: Thank you, Minor . Answer any questions Mr. Floyd may
8 have.

9 A: Yes, sir.

10 CROSS EXAMINATION OF Minor 1 BY MR. FLOYD:

11 Q: Now, Minor , your mother was working at this time, correct?

12 A: Yes, sir; she was.

13 Q: And Talmadge was taking care of you at the house?

14 A: Yes, sir.

15 Q: And he was the primary disciplinary person in the house,
16 correct?

17 A: Yes, sir.

18 Q: And he expected you to do things like clean up the house,
19 wash dishes?

20 A: Yes, sir.

21 Q: And he would get mad when you wouldn't do that?

22 A: Yes, sir. But I was -- I already finished my chores
23 whenever he told me that stuff.

24 Q: What that there was stuff that still needed to be done?

25 A: No, sir; there wasn't.

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Minor 2 - DIRECT BY SPRATLIN

1 Q: If he asked you to wash dishes -- and maybe I
2 misunderstood, I thought you just said that he would ask you
3 to do those dishes and that kind of thing and y'all would have
4 an argument about it.

5 A: Yes, sir; we would.

6 Q: So, he was the primary discipline person in the house,
7 correct?

8 A: Yes, sir.

9 Q: And you didn't like to do the chores that he told you to
10 do, did you?

11 A: No, sir.

12 Q: Thank you. I've got no further questions.

13 MR. SPRATLIN: No redirect, Your Honor.

14 THE COURT: You may come down. Thank you.

15 Next witness, please.

16 MR. SPRATLIN: The State would call Minor 2 to the
17 stand.

18 Minor 2, HAVING BEEN DULY

19 SWORN, TESTIFIES AS FOLLOWS:

20 CLERK: State your full name and spell your last name.

21 Minor 2 : Minor 2 , .

22 DIRECT EXAMINATION OF Minor 2 BY MR. SPRATLIN:

23 Q: Minor 2 , is it okay if I call you Minor 2 ?

24 A: Yes, sir; it is.

25 Q: All right. How old are you?

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Minor2 - DIRECT BY SPRATLIN

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- 1 A: I'm fifteen.
- 2 Q: When's your birthday?
- 3 A:
- 4 Q: ?
- 5 A: Uh-huh (affirmative response).
- 6 Q: All right. Where are you currently living?
- 7 A: I'm living in Georgetown.
- 8 Q: Who are you living with?
- 9 A: I'm living with my foster parents.
- 10 Q: How did you come to be in foster care?
- 11 A: I ran away from home and I was placed in a -- I'm
- 12 guessing it's called a DJJ removal.
- 13 Q: Minor2 a, we need you to talk up just a little bit and
- 14 speak into that microphone if you can.
- 15 A: Yes, sir.
- 16 Q: Why did you run away from home?
- 17 A: Me and my mom, we were not getting along well and the guy
- 18 I was dating, she didn't like. And, you know, I made that
- 19 decision.
- 20 Q: Well, back in 2011, were you living at home?
- 21 A: Yes, sir, I was.
- 22 Q: All right. Who all were you living with back in 2011?
- 23 A: 2011, I'm believing Talmadge was still in the home?
- 24 Q: Uh-huh (affirmative response).
- 25 A: Then I was living with my mom and my brothers and

1 sisters.

2 Q: All right. How many brothers and sisters you got?

3 A: I have two sisters and two brothers that were living in
4 the home, Minor 1 , AR , ZR and JR
5 .

6 Q: All right. So, you're one of five?

7 A: Yes, sir.

8 Q: Okay. And y'all were all living in the home together?

9 A: Yes, sir.

10 Q: And who else was living there?

11 A: He was -- the Defendant was and my mother.

12 Q: And what name did you call the Defendant?

13 A: T.L.

14 Q: Is that pretty much what all you -- you called him all
15 the time?

16 A: Yes, sir.

17 Q: All right. How old -- when -- do you remember when your
18 mom married T.L.?

19 A: In May of 2007.

20 Q: May 2007? How old were you when they got married?

21 A: I was nine.

22 Q: Nine?

23 A: Or about to be nine.

24 Q: About to be nine?

25 A: Yes, sir.

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Minor 2 - DIRECT BY SPRATLIN

1 Q: Okay. Now, in 2011, when all this kind of came to light,
2 how old were you then?

3 A: 2011, I would've been thirteen or going on thirteen.

4 Q: Twelve going on thirteen?

5 A: (Indicates affirmatively.)

6 Q: Okay. Do you remember when the first time you met the
7 Defendant was?

8 A: I was about maybe seven, if I recall correct.

9 Q: You were about seven?

10 A: Yes, sir.

11 Q: What was your relationship like with the Defendant when
12 you first met him?

13 A: We were close, I mean -- my mom's ex-husbands, they would
14 always leave and, you know, he was around for a while so I
15 thought that was gonna be you know, a permanent thing. I
16 didn't ever expect anything to change.

17 Q: What sort of things would y'all do together?

18 A: We did go hunting, but that wasn't really my thing. I
19 would have school events and he would go. I would cheer and
20 he would go to the football games that I would cheer at cause
21 he was known in the area so he would always, you know, go out
22 there to the school.

23 Q: Was there ever a time when Talmadge was inappropriate
24 towards you?

25 A: There was a bunch of times.

1 Q: Let me ask you, how old were you when you first -- when
2 Talmadge first inappropriately -- acted inappropriate towards
3 you, I guess, is the best way to put it?

4 A: If I recall correctly, I was going on -- I was probably
5 ten going on eleven.

6 Q: Ten going on eleven, so right around that time?

7 A: (Indicates affirmatively.)

8 Q: What's the first thing you remember happening?

9 A: I guess the first thing that started happening, well, he
10 would tuck us in every night and things kind of started from
11 there, I guess, I mean ---

12 Q: What would he do when he was tucking you in at night?

13 A: Well, he would kiss me inappropriately.

14 Q: How would he kiss you?

15 A: He would always try to stick his tongue in my mouth and
16 lip lock and all that stuff and, you know, I'm eleven, ten.

17 Q: Did you say anything to him?

18 A: I would always yell at him and push him away and he would
19 always claim that it was a joke.

20 Q: Was this the only kind of times that he would get
21 inappropriate with you?

22 A: Huh-uh (negative response).

23 Q: When else would he?

24 A: Like during the day when my mom was at work.

25 Q: Do you remember how old you were the first time that

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Minor 2 - DIRECT BY SPRATLIN

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1 happened during the day?

2 A: I was still eleven.

3 Q: You were eleven?

4 A: Uh-huh (affirmative response).

5 Q: Okay. Again, you were twelve, going on thirteen when all
6 this kind of came to light, right?

7 A: Uh-huh (affirmative response).

8 Q: So, when you were eleven, what happened?

9 A: Well, my mom, she told you guys that she was working from
10 6:00 until about 8:00 or 9:00. And he would be at the house
11 with us and we did have chores, we had to clean and we had to
12 do dishes and that was kind of my thing that I had to do. And
13 sometimes when I would be standing at the counter washing the
14 dishes, he would come behind me and stick his hands down my
15 pants.

16 Q: Do you remember what kind of pants you were normally
17 wearing when this would happen?

18 A: I don't remember exactly but I do know that there would
19 be times where I would walk around with, you know, like
20 elastic, you know.

21 Q: These times when you were doing dishes and he would come
22 and stick his hand down your pants, were you wearing
23 underwear?

24 A: Yes, sir.

25 Q: All right. Did he stick his hands on top or under your

1 underwear or something else?

2 A: Under.

3 Q: All right. When he would stick his hand in your pants,
4 what would he do with his hand, if anything?

5 A: He would rub his hand up and down on my vaginal area.

6 Q: How often would this happen?

7 A: It happened a lot, I mean, I'm not sure exactly how much.

8 Q: Was anyone else around when this would happen?

9 A: No.

10 Q: Did you do or say anything when he would do this?

11 A: I would always yell at him and tell him to stop and it
12 always come back as a joke to him, I guess.

13 Q: Would he say anything to you?

14 A: Not while he was doing it but after I would, you know,
15 yell at him for doing it, he would say it was a joke or he was
16 just playing around.

17 Q: And when his hand would go in your pants, what if
18 anything would his fingers do?

19 A: Well, when it first started, it was just rubbing and then
20 throughout the next couple of months, it kind of got to the
21 point where he would eventually start fingering me.

22 Q: What do you mean by fingering you?

23 A: Sticking his finger inside my vagina.

24 Q: Actually inside?

25 A: Yes, sir.

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Minor2 - DIRECT BY SPRATLIN

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- 1 Q: And by that you mean inside your hole.
- 2 A: Yes, sir.
- 3 Q: How'd that feel when he did that?
- 4 A: Uncomfortable.
- 5 Q: Was there any blood or anything?
- 6 A: No, sir.
- 7 Q: What would you say or do when he would do that?
- 8 A: I would tell him to stop.
- 9 Q: Would he stop?
- 10 A: No, sir. I'm sorry.
- 11 THE COURT: Get her a glass of water, please.
- 12 MR. SPRATLIN: Yes, sir, Your Honor. We're also getting
13 some tissues.
- 14 THE COURT: Minor2 , you take your time now and relax.
- 15 A: Yes, sir.
- 16 THE COURT: If at any time you need to take a break, you
17 let me know. Okay?
- 18 A: Yes, sir.
- 19 BY MR. SPRATLIN:
- 20 Q: Minor2 , do you want to take a couple of minutes or do
21 you want to continue?
- 22 A: I'm fine.
- 23 Q: Okay. Again, how would it feel when he would put his
24 finger inside of you?
- 25 A: It hurt, I mean, it was uncomfortable.

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Minor 2 - DIRECT BY SPRATLIN

1 Q: How many times do you think he put his finger inside of
2 you?

3 A: About five or six at the most, I mean, that I can
4 remember.

5 Q: Okay. How often would this occur?

6 A: Well, he would stick his hands in my pants a lot but, I
7 mean, he would never -- I mean, he did finger me a couple of
8 times but like the whole rubbing thing happened a lot more.

9 Q: Most of the time it was just rubbing but occasionally ---

10 A: Yes, sir.

11 Q: All right. Did he ever put his mouth on you?

12 A: There was one morning when my mom, when she -- she left
13 to go to work, and usually he would wake us up in the morning
14 after he fixed breakfast. And that morning, I slept in and he
15 didn't wake me up, and I woke up and he was kissing me on my
16 stomach and my quickest reaction was to slap him and that's
17 what I did. And I pushed him off my bed and I went in the
18 hallway and I was at the door and I had my cell phone and I
19 was gonna call my mom, you know, because I was -- to me that
20 was like the final straw, you know, I was done with it. And
21 he came in the hallway and he was like, oh, like it was a joke
22 and I'm sorry, it won't happen again.

23 Q: Did you call your mom?

24 A: I didn't.

25 Q: Why didn't you tell anybody?

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Minor 2 - CROSS BY FLOYD

1 A: I was scared and I was embarrassed.

2 Q: What were you scared of?

3 A: Well, my mom, whenever she was younger she was molested
4 and she wasn't believed and just the thought that, you know,
5 that I could've not been believed and I could've been looked
6 at bad; it hurt.

7 Q: The entire time these incidents were happening, were you
8 living in Horry County?

9 A: Yes, sir, I was.

10 Q: And did all the incidents you just described occur in
11 Horry County?

12 A: Yes, sir.

13 Q: And they occurred on or between -- based on your
14 birthday, between January 1st, 2009 and June 26th, 2011?

15 A: Yes, sir.

16 Q: Based on your age and what we were talking about, they
17 all occurred between the ages of eleven and roughly twelve,
18 going on thirteen?

19 A: Yes, sir.

20 Q: All right. Minor 2, I think that's all the questions I
21 have. Please answer any questions Mr. Floyd might have.

22 A: Yes, sir.

23 CROSS EXAMINATION OF Minor 2 BY MR. FLOYD:

24 Q: Minor 2 ---

25 A: Yes, sir.

1 Q: Going back to what you said you ran away, it was your
2 boyfriend that your mother didn't like?

3 A: Yes, sir.

4 Q: All right. And so you're now living in a home over in
5 Georgetown?

6 A: Yes, sir.

7 Q: All right. And as you said a little while ago, you were
8 expected to do chores?

9 A: Yes, sir, I was.

10 Q: And Talmadge would get mad when y'all didn't do the
11 chores?

12 A: Yes, sir, but I was a really big help around the house
13 and I did do chores.

14 Q: And y'all argued about that?

15 A: We did argue.

16 Q: And y'all didn't like Talmadge doing that?

17 A: I didn't like arguing.

18 Q: But you didn't like Talmadge telling you to get off the
19 couch and do your chores?

20 A: Well, they had to be done and I understood that.

21 Q: One time, I think you were talking on the phone and you
22 got mad because he asked you to get up and do your chores.
23 You told Detective Cox he was treating us like we were adults
24 rather than kids.

25 A: Well, there was -- I do recall one time I was on the cell

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Minor 2 - CROSS BY FLOYD

1 -- I was on my cell phone and I was sitting in our living room
2 at -- not at the house that we're staying in Green Sea now but
3 it was somewhere in Nichols, I believe, and I was talking on
4 the phone and I was supposed to be doing chores and I did get
5 mad when he told me to get off the phone and he snatched me
6 onto the floor by my hair.

7 Q: And y'all wanted to get rid of Talmadge?

8 A: Not for any other reason except for this.

9 Q: He was making you do chores that you didn't want to do.

10 A: Well, chores have to be done and I understand that.

11 Q: And that's why y'all would argue?

12 A: We would argue over ---

13 Q: Over chores not being done.

14 A: Yes, sir.

15 Q: Thank you. I've got no further questions.

16 MR. SPRATLIN: No redirect, Your Honor.

17 THE COURT: You may come down. Thank you.

18 A: Thank you.

19 MR. SPRATLIN: Your Honor, the State would next call

20 Detective Todd Cox to the stand.

21 THE COURT: All right, sir.

22 TODD COX, HAVING BEEN DULY SWORN,

23 TESTIFIES AS FOLLOWS:

24 CLERK: State your full name and spell your last name.

25 MR. COX: Todd Cox, C-O-X.

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TODD COX - DIRECT BY SPRATLIN

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1 DIRECT EXAMINATION OF TODD COX BY MR. SPRATLIN:

2 Q: Mr. Cox, where are you currently employed?

3 A: The Horry County Police Department.

4 Q: All right. How long have you been with Horry County
5 Police Department?

6 A: I've been employed there for seventeen years.

7 Q: So, you were working back there in July of 2011?

8 A: Yes, sir.

9 Q: All right. What was your position back in July of 2011?

10 A: I was a senior detective assigned to the violent crime
11 section.

12 Q: What are some of the duties as a senior detective.

13 A: A senior detective, a lot of the duties are the same as
14 just a regular detective. I was assigned cases, violent crime
15 cases, crimes against people, to investigate. There were
16 additional responsibilities associated with that position such
17 as training detectives that came into the unit and then we
18 would have to pick up some of the supervisory responsibilities
19 in the absence of the unit supervisor.

20 Q: Okay. What if any involvement did you have in the case
21 against Talmadge Rowell?

22 A: I was -- I believe it was July 26th, 2011, I was the on-
23 call violent crime detective and I was home eating dinner,
24 just finishing up eating dinner, and I got called out to Green
25 Sea section of Horry County, to the West Precinct. It's

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TODD COX - DIRECT BY SPRATLIN

1 actually the Magistrate's office in Mt. Olive in reference to
2 a criminal sexual conduct with a minor case. And it was
3 through that subsequent investigation that I came into contact
4 with the Defendant.

5 Q: Okay. What all did you do in the course of your
6 investigation of this case?

7 A: When I responded to the precinct, I spoke with the patrol
8 uniform officers that were there and got briefed on what they
9 had done up to that point. And then I met with Ms. Herring; I
10 got a statement from her. And I met with the two girls, with
11 Minor and Minor2 , and got statements from them and any other
12 witnesses that were associated with the case.

13 Q: All right. What, if anything, after doing that did you
14 do with regards to the Defendant?

15 A: I went to his house and placed him under arrest.

16 Q: And what did you do after placing him under arrest?

17 A: I took him to J. Reuben Long Detention Center here in --
18 just outside of Conway, the county jail.

19 Q: And when you took him to jail, what, if anything, did you
20 do?

21 A: We went into the booking area and they patted him down
22 and made sure that he didn't have any weapons or any kind of
23 contraband and then we went into an interview room. I read
24 him his rights and conducted an interrogation with him.

25 Q: Okay. Let me ask you specifically about some of the

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TODD COX - DIRECT BY SPRATLIN

1 circumstances surrounding the interrogation. What time of
2 night was it that you were questioning the Defendant?

3 A: It was about 12:30 at night. It had just -- just about
4 an half an hour after midnight.

5 Q: Who all was present for the interview?

6 A: Just he and I.

7 Q: Was it recorded in any way?

8 A: Yes, sir, audio, digital audio recording.

9 Q: Okay. Now, Mr. Cox, if you know, how old was the
10 Defendant at the time of this interview?

11 A: I don't know exactly; he was in his fifties, I believe.

12 Q: Did you inquire into how much education the Defendant
13 had?

14 A: I did.

15 Q: And what did he tell you?

16 A: Tenth grade.

17 Q: Tenth grade? Did it appear to you, based on your
18 conversations with the Defendant that the Defendant understood
19 the English language?

20 A: Absolutely.

21 Q: Did he respond to your questions appropriately?

22 A: Yes, sir.

23 Q: And did -- were you able to understand him?

24 A: Yes, I was.

25 Q: And did he appear to understand you?

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TODD COX - DIRECT BY SPRATLIN

1 A: Absolutely.

2 Q: Now, we mentioned this earlier, Detective Cox, how long
3 have you been in law enforcement?

4 A: I've been in law enforcement for going on almost twenty
5 years.

6 Q: In this twenty years as a law enforcement officer, have
7 you had a chance to come in contact with people who are under
8 the influence of drugs or alcohol?

9 A: Certainly.

10 Q: And what kind of symptoms or signs do they show to let
11 you know that they're under the influence of alcohol or drugs?

12 A: They're just the traditional symptoms like glassy,
13 bloodshot eyes, slurred speech and maybe not the balance that
14 they would -- they walk with a little gait, I guess you could
15 say.

16 Q: How many, if any, of those symptoms did the Defendant
17 exhibit?

18 A: None.

19 Q: Did you inquire of the Defendant as to about whether he
20 was under the influence of drugs or alcohol?

21 A: I did.

22 Q: And what was his response?

23 A: No, he wasn't.

24 Q: Did the Defendant do or say anything that gave you the
25 impression he was under the influence of drugs or alcohol?

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TODD COX - DIRECT BY SPRATLIN

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1 A: No, sir; he didn't.

2 Q: All right. Now, you said earlier that you read the
3 Defendant his rights; what are the Defendant's rights?

4 A: They're his Miranda Rights, you hear them on TV all the
5 time. You have the right to remain silent. Anything you say
6 can and will be used against you in a court of law. You have
7 the right to have an attorney present with you while you're
8 being questioned. And if you cannot afford to hire an
9 attorney, one will be appointed to represent you before any
10 questioning if you so desire.

11 Q: Now, Detective Cox, how were those rights presented to
12 the Defendant?

13 A: They were read to them. There is a standard form that we
14 used in investigations that had it all -- it's in writing, so
15 I read it to him but it's also there for him to read with his
16 own eyes as well.

17 MR. SPRATLIN: Your Honor, permission to approach? Your
18 Honor, permission to approach?

19 THE COURT: Yes, sir.

20 BY MR. SPRATLIN:

21 Q: Officer Cox, let me show you what's already been marked
22 for identification purposes as State's Exhibit Number One. Do
23 you recognize that document?

24 A: Yes, sir; I do.

25 Q: What is it?

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TODD COX - DIRECT BY SPRATLIN

1 A: That is the Miranda form, the Advisement of Miranda
2 Rights form that I presented to Mr. Rowell on that night in
3 question.

4 Q: All right. Now, how do you present that form to the
5 Defendant? How did you present that form to the Defendant?

6 A: I just read it step-by-step. I tell him, you know, this
7 is something I have to do before we have a conversation and I
8 ask him first of all is he under the influence of any drugs or
9 alcohol; he replied no. I asked him his education level; he
10 said tenth. I asked him if he can read and write; and he
11 replied yes to both of those. And then I go through each
12 right individually. So, for example, the first one is, You
13 have the right to remain silent -- and I hold the paper so
14 that the other party can read it -- and I say, You have the
15 right to remain silent, anything you say can and will be used
16 against you in a court of law; do you understand that? And
17 then once I got a verbal reply from him, which was yes, to the
18 affirmative, then I went on and read the next right. You have
19 the right to talk with a lawyer and have him present with you
20 while you're being questioned; do you understand that? And he
21 replied yes. So on and so forth...

22 Q: Okay. Is that the original -- is this the copy, a true
23 and accurate copy of the form used with the Defendant that
24 night?

25 A: It is.

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1 Q: How do you know that?

2 A: I know it because his initials are on it, it's written in
3 my handwriting the response to the influence, education and
4 writing -- or the ability the read and write questions, and
5 I've signed it and it bears his signature as well.

6 Q: Does it appear to be a true and accurate copy in every
7 way?

8 A: Yes, sir; it is.

9 Q: Have there been any additions or deletions to your
10 knowledge?

11 A: No, sir.

12 MR. SPRATLIN: At this time, I would tender into
13 evidence, Your Honor, State's Exhibit Number One, the Miranda
14 Rights form.

15 THE COURT: You may do so.

16 STATE'S EXHIBIT NUMBER ONE

17 ADMITTED INTO EVIDENCE

18 BY MR. SPRATLIN:

19 Q: Now, Detective Cox, you said that you read him the right
20 about he may have a lawyer present with him. Were there any
21 other rights regarding a lawyer that were read to the
22 Defendant that day?

23 A: Yes, sir. If you cannot afford to hire a lawyer, one
24 will be appointed to represent you before any questioning, if
25 you so desire.

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TODD COX - DIRECT BY SPRATLIN

1 Q: And what, if anything, was told to the Defendant about
2 his ability to stop the interrogation if he wished to?

3 A: The final right is, If you make a statement or answer any
4 questions, you have the right to stop at any time.

5 Q: Now, what did you ask the Defendant to do to acknowledge
6 that he understands all those rights that he was just read?

7 A: Above all those rights, there's a spot where it says, Do
8 you understand your rights as I have read them to you and then
9 they initial either yes or no.

10 Q: And is there anywhere that the Defendant is required to
11 acknowledge the form in its entirety?

12 A: Yes, sir.

13 Q: Where is that?

14 A: That's just below that where he prints and signs his
15 name.

16 Q: And who signs as the witness or fills out the other
17 information on the form?

18 A: Whoever is there. In this case, I was the only
19 investigator there, so I filled out the remainder of the form.

20 Q: Okay. All right. If you would, Detective Cox just sit
21 that to the side, State's One.

22 Now, after reading the Defendant all of his rights, did
23 the Defendant at any point state that he wished to remain
24 silent?

25 A: No, sir.

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1 Q: Did he do anything at all that indicated to you that he
2 wished to not speak with you?

3 A: No, he didn't.

4 Q: All right. Did the Defendant at any point during the
5 interview or prior to the interview request a lawyer?

6 A: No, sir.

7 Q: Did he do anything that indicated to you that he wished
8 to assert his right to have an attorney present?

9 A: No, he did not.

10 Q: At any point during the interview, did the Defendant in
11 any way insinuate to you that he wished to terminate the
12 interview or end the questioning?

13 A: No, sir.

14 Q: Now, Detective Cox, did you or anyone in your presence
15 threaten the Defendant with any sort physical harm in exchange
16 for that statement?

17 A: No, sir.

18 Q: Did you or anyone in your presence, make any promises of
19 leniency to the Defendant in exchange for him providing that
20 statement?

21 A: No, sir.

22 Q: In any way, was the Defendant's freewill overcome by any
23 threats, coercion or promises?

24 A: Absolutely not.

25 Q: Now, Detective Cox, before we get to the interview

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1 itself, let me just ask you, what are some of the interview
2 techniques that you, as a detective use in interviewing a
3 suspect such as Mr. Rowell?
4 A: Interview and interrogation, to me it's a fascinating
5 aspect of law enforcement, my favorite part of law
6 enforcement. Typically, one would think that it's simply
7 asking a question and getting a response. You know, like, I
8 think it was Dragnet or one of those old police series back in
9 the 60s where they said, the facts, ma'am, just the facts.
10 Well, that's not an effective interview and interrogation
11 technique. You know, especially given the circumstances with
12 which I would be in an interview room with a defendant, such
13 as Mr. Rowell. My -- the way that I go about it is I always
14 try to establish some sort of rapport with the person whom I'm
15 talking with. And it's -- really, that's the only way to get
16 somebody to talk with you is to establish a rapport with them.
17 So, in order to accomplish that, in cases such as this for
18 example, you -- you're going into a conversation or trying to
19 elicit information in regards to something that just isn't
20 your normal topic of conversation. And so, in order to do
21 that, as an investigator or as an interrogator, you have to
22 put yourself on the level of the person whom you are trying to
23 interview as best as you possibly can. So, what does that
24 require? That requires the interrogator to do a lot of things
25 that aren't within their normal personality, use language,

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TODD COX - DIRECT BY SPRATLIN

1 actual words that certainly they don't use on a day-to-day
2 basis, to use dialect or use improper English in a manner
3 which they don't use on a daily basis, and really sympathize
4 with people or appear to sympathize with people with whom they
5 really lack and any all sympathy with. And, so, in a way,
6 it's almost an act. It's akin to acting.

7 Q: Detective Cox, let me show you what's been marked for
8 identification purposes as State's Exhibit Number Three. Do
9 you know what this item is?

10 A: Yes, sir. That's a -- I think it's a DVR, whatever, it's
11 a digital recording of the interview that I did with the
12 Defendant.

13 Q: To your knowledge, is it a fair and accurate
14 representation of that interview?

15 A: Yes, sir.

16 MR. SPRATLIN: Your Honor, at this time, I would tender
17 State's Exhibit Number Three into evidence.

18 MR. FLOYD: Subject to our pretrial.

19 THE COURT: Sir?

20 MR. FLOYD: I said subject to our pretrial hearing.

21 THE COURT: I will admit it.

22 MR. SPRATLIN: Thank you, Your Honor.

23 STATE'S EXHIBIT NUMBER THREE

24 ADMITTED INTO EVIDENCE

25 MR. SPRATLIN: Permission to publish this exhibit to the

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TODD COX - DIRECT BY SPRATLIN

1 Jury at this point in time.

2 THE COURT: One moment.

3 Madame Foreman and ladies and gentlemen, I am admitting
4 into evidence an alleged video statement said to have been
5 made by this Defendant. Before you may consider that alleged
6 statement for any reason, you first must find beyond a
7 reasonable doubt that this Defendant made such a statement.
8 If you conclude he did not, you would not consider it for any
9 reason whatsoever. If -- and I say that advisedly -- if you
10 conclude beyond a reasonable doubt that this Defendant made
11 that statement, then you next consider whether or not it was
12 freely, voluntarily and intelligently made without any hope or
13 reward of any kind. You must find beyond a reasonable doubt
14 in order to consider it at all that the statement was made
15 freely and voluntarily without any hope or reward. If you do
16 not find that you must stop there any disregard the statement
17 for any reasons. If you conclude that he made it, that it was
18 freely and voluntarily made, then your next consideration
19 would be whether or not he was advised of his constitutional
20 rights sometime known as the Miranda Rights. The State must
21 prove that he was given the right to remain silent. The State
22 must prove that if he elected to make a statement, he could
23 stop at any time. The State must prove that he was afforded
24 an attorney at that interrogation if he wanted one. The State
25 must prove that they told him that if he wanted a lawyer and

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1 couldn't afford one that it would be provided to him without
2 any payment. Then the State must prove that this statement
3 was freely, intelligently and voluntarily made. The State
4 must prove all of these Miranda Rights beyond a reasonable
5 doubt. And the State must prove to your satisfaction beyond a
6 reasonable doubt that he understood these Miranda Rights and
7 that he knowingly waives such constitutional rights. You then
8 may consider the statement in whole or in part or none as you
9 determine as finders of the facts such weight should be given.
10 All right.

11 MR. SPRATLIN: Thank you, Your Honor.

12 BY MR. SPRATLIN:

13 Q: One additional question, Detective Cox, was the statement
14 in any way videotaped?

15 THE COURT: Let me do this, that statement is gonna last
16 a little while. I'm gonna let the Jury go out just a moment
17 and then bring them back.

18 Mr. Foreman -- Mr. Bailiff, let me know when the Jury is
19 ready to come back. I want to come back as soon as they can.

20 MR. BAILIFF: Okay, sir.

21 THE COURT: I'll let you take a short break. Thank you.
22 And you can set up your video -- audio.

23 (REPORTER'S NOTE: The jury exits courtroom. 4:19 P.M. The
24 following takes place outside the presence of the jury.)

25 THE COURT: Mr. Floyd, in my charge, I will give a

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TODD COX - DIRECT BY SPRATLIN

1 further detailed explanation with regards to the introduction
2 of a confession. Is there any exceptions or additions to the
3 preliminary charge that I just made?

4 MR. FLOYD: No, sir. I'm familiar with your charge.

5 THE COURT: All right. Set up the video. The reason I
6 took the jury -- a break, even redacted, it's gonna take about
7 thirty minutes.

8 MR. SPRATLIN: Twenty-five minute video -- or audio, Your
9 Honor.

10 THE COURT: Well, I wanted the Jury to take a short
11 break. Do y'all need to take a break? If so, do so.

12 MR. FLOYD: About five minutes?

13 THE COURT: Yes, sir. I'll wait on you.

14 MR. SPRATLIN: Thank you, Your Honor.

15 Your Honor, may the officer step down?

16 THE COURT: Sure.

17 MR. SPRATLIN: I will tell him that he can't talk to
18 anybody.

19 THE COURT: That officer knows the rules. I know Mr.
20 Cox. He's a dedicated officer.

21 MR. COX: Yes, sir.

22 THE COURT: And this is outside the presence of the Jury.

23 (RECESS - 4:20 P.M.)

24 *****OFF THE RECORD*****

25 (On the Record - 4:33 P.M.)

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1 (REPORTER'S NOTE: The jury enters courtroom. 4:33 P.M.)

2 THE COURT: All right, sir.

3 BY MR. SPRATLIN:

4 Q: One more question before we play the audio, Detective
5 Cox, is there any video recording of this interview?

6 A: No, sir.

7 Q: What's -- how was the recording saved?

8 A: It's saved as an audio recording.

9 Q: It's audio only?

10 A: Yes, sir.

11 MR. SPRATLIN: Your Honor, permission to publish what's
12 already entered into evidence.

13 THE COURT: You may do so and you publish it subject to
14 my instructions to the Jury regarding alleged confessions.

15 MR. SPRATLIN: Yes, sir, Your Honor.

16 THE COURT: Thank you.

17 *****OFF THE RECORD*****

18 (REPORTER'S NOTE: State's Exhibit Number Three played for the
19 Jury. Not transcribed herein.)

20 **(On the Record.)**

21 MR. SPRATLIN:

22 Q: Detective Cox ---

23 THE COURT: One further statement, at the beginning of
24 this audio/video, I gave you a general charge regarding the
25 admission of an alleged statement. At the conclusion of all

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TODD COX - DIRECT BY SPRATLIN

1 the testimony, I will give you more of a detailed statement
2 regarding the admissibility of confessions. In my charge, I
3 discuss with you the Miranda Rights. I tell you now that an
4 additional Miranda Right is that the Defendant be advised that
5 this statement can and will be used against you, if necessary.
6 Even before you consider that, of course, you must consider --
7 you must find beyond a reasonable doubt that this Defendant
8 made such a statement. You must further find that such a
9 statement was freely, voluntarily given without hope of reward
10 and without any threat or duress.

11 You may proceed with your examination.

12 MR. SPRATLIN: Thank you, Your Honor.

13 BY MR. SPRATLIN:

14 Q: Detective Cox, who was on the other end of that
15 interview?

16 A: The Defendant.

17 Q: Would you point him out and identify an article of
18 clothing he's wearing?

19 A: Yes, sir. A striped shirt and khaki pants and boots,
20 sitting at that table right there.

21 Q: And you two were the only ones in that interview room?

22 A: Yes.

23 Q: Thank you. That's all the questions I have.

24 THE COURT: Mr. Floyd?

25 CROSS EXAMINATION OF TODD COX BY MR. FLOYD:

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TODD COX - CROSS BY FLOYD

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1 Q: Detective Cox, when you went to Talmadge's house that
2 night, who all went with you?

3 A: Myself and two uniformed police officers.

4 Q: Was there anyone else at the house?

5 A: No, sir. Not that I saw.

6 Q: What about the other children?

7 A: I didn't see anybody there. And the Defendant told me
8 that there was nobody there.

9 Q: Okay. And you didn't have a video, just audio?

10 A: Just audio; yes, sir.

11 Q: Now, your car, is it equipped with the video and audio?

12 A: No, sir.

13 Q: You were in an unmarked?

14 A: An unmarked Chevy Impala; yes, sir.

15 Q: Thank you, sir. I don't have any further questions.

16 MR. SPRATLIN: No redirect, Your Honor.

17 THE COURT: You may come down.

18 A: Thank you, Your Honor.

19 THE COURT: Any further witnesses from the State?

20 MR. SPRATLIN: No, Your Honor, at this time, the State
21 would rest.

22 BY THE COURT:

23 THE COURT: The State would rest and that would conclude
24 all of the testimony of the State. We're going to recess at
25 this time. We'll begin with the Defense first thing in the

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BY THE COURT

1 morning. Everybody remain seated in the courtroom.

2 Madame Foreman, ladies and gentlemen, I thank you for
3 your patience today. I'm impressed with the fact that each of
4 you intently listened to all of the testimony in this case.
5 That's simply the sign of a good jury, intent on following
6 their oath of office and I appreciate that as do the
7 litigants.

8 Remember my admonitions. Don't discuss the case, let no
9 one discuss it with you, and make no independent inquiry on
10 the iPads or aPads or internet. You know, you may wonder why
11 in the world can't we discuss this case even now while we're
12 in the testimony. The reason is this, any judgment that you
13 make has got to be in the presence of all twelve of you. And,
14 of course, you shouldn't make a judgment until you've heard
15 all of the testimony and all the exhibits from everybody.
16 Obviously, it might be that the last witness was something
17 that you needed to hear, so it is for that reason that we say
18 don't do it. Sometimes, jurors, two or three, will at break
19 or going to the car at lunch or at supper, they may want to
20 discuss some issue in the case. You are -- if you do that,
21 you are depriving your fellow jurors of your thought process
22 and they're entitled to it. Particularly when, whatever your
23 verdict is, either guilty or not guilty, it's got to be the
24 unanimous verdict for all twelve of you. So, Madame Foreman,
25 let no discussion take place in the jury room regarding this

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1 issue -- you can talk about the weather or anything else --
2 this issue in the jury room. And I'm asking that you be here
3 ready to go at 9:30. You might come a few minutes early. Ms.
4 Heather is gonna have some ham biscuits and hot coffee for
5 you. So, I'll see you in the morning. Thank you. About
6 9:15; we're gonna start at 9:30. Thank you.

7 As soon as I recess, I want the 403 to come to my office,
8 please and we'll discuss some issues.

9 (REPORTER'S NOTE: The Jury exits courtroom. 5:17 P.M. The
10 following takes place outside the presence of the jury.)

11 THE COURT: The Jury has departed. Any motions on behalf
12 of the defense?

13 MR. FLOYD: Judge, we'd move for a directed verdict at
14 this time based upon rulings made and pretrial motions
15 regarding joinder as well as the amending of the indictments.
16 As well as move for directed verdict on the sufficiency of the
17 evidence.

18 THE COURT: Well, I have ruled on the first two issues
19 and conclude that we are going forward. With regards to the
20 last motion, obviously, there is adequate evidence based on
21 the testimony, not only of the two alleged victims but his own
22 statement which is in the record, sufficient for the Jury as
23 finders of the facts to go forward with the case. So, that
24 motion is respectfully denied.

25 MR. FLOYD: Yes, sir.

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TALMADGE LEROY ROWELL - BY THE COURT

1 THE COURT: Now, let me ask you this, will you want to
2 wait till in the morning for me to examine the Defendant as to
3 whether he desires to testify or not?

4 MR. FLOYD: Judge, we can do that real quick right now,
5 if you want to. I mean, I -- I've advised him of his right to
6 testify or to not testify but if you want to go ahead and
7 address him now, we can do that.

8 THE COURT: I think it's appropriate. Have him stand.
9 Mr. Defendant, the State has now --
10 (To Clerk) Swear him as to this issue only.

11 TALMADGE LEROY ROWELL, HAVING BEEN
12 DULY SWORN, TESTIFIES AS FOLLOWS:

13 THE COURT: Mr. Defendant, We are at that stage of the
14 case where you may present such witnesses as you care to. You
15 also have the absolute right to testify in your own behalf.
16 You understand that?

17 MR. ROWELL: I do, sir.

18 THE COURT: In addition to that, I charge you that you
19 are presumed innocent. You don't have to prove a thing. I've
20 already told the Jury that and I'll tell them again. You have
21 the absolute right not to testify; you understand that?

22 MR. ROWELL: Yes, sir.

23 THE COURT: If in the event, and I use this advisedly,
24 you elected not to testify, I would charge the Jury that that
25 fact must not, cannot, be used against you in any way. I

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TALMADGE LEROY ROWELL - BY THE COURT

1 would charge the Jury that if you elected not to testify, that
2 fact can't even enter into their deliberations in the jury
3 room; do you understand that?

4 MR. ROWELL: Yes, sir.

5 THE COURT: Now, listen very carefully, the question as
6 to whether you testify or not rests solely with you.
7 Obviously, you would discuss it with distinguished counsel but
8 you cannot be heard to say that whatever your decision is was
9 your lawyer's and not yours. It's got to be yours and yours
10 alone. Obviously, you would consult with him.

11 Now, are you prepared to tell me whether or not you
12 desire to testify or not testify?

13 MR. ROWELL: I do.

14 THE COURT: You do what?

15 MR. ROWELL: Desire to testify.

16 THE COURT: I will certainly grant that.

17 Anything further, Mr. Thomas -- Mr. Floyd?

18 MR. FLOYD: No, sir. If something changes in the morning
19 before we get started, I'll let you know.

20 THE COURT: Sir?

21 MR. FLOYD: I'll let you know if he changes his mind in
22 the morning.

23 THE COURT: If he desires to change his mind, I will
24 avail him of that opportunity.

25 MR. FLOYD: Yes, sir.

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1 THE COURT: But I -- unless I hear differently, he will
2 be permitted to testify.

3 MR. FLOYD: Yes, sir.

4 THE COURT: All right, sir.

5 Will there be any additional witnesses for the Defense or
6 are you prepared to say at this time?

7 MR. FLOYD: There may be, Judge. I'll know first thing
8 in the morning and advise you then.

9 THE COURT: I think by any imagination, we'll be able to
10 argue and charge this Jury sometime around 11:00 or 11:30,
11 wouldn't you agree with that?

12 MR. FLOYD: Yes, sir.

13 THE COURT: So, make arrangements to do that. It's my
14 plan to continue -- finish the testimony, argue and charge and
15 final summation probably 1 o'clock so I can start the second
16 case at 2:30. So, everybody be advised accordingly.

17 MR. FLOYD: Yes, sir.

18 THE COURT: All right. The young lady taking the 403,
19 come forward, please.

20 Mr. Bailiff, escort her to my chambers, please.

21 BAILIFF: Yes, sir.

22 THE COURT: Thank you.

23 All right. Anything further from the State?

24 MR. SPRATLIN: No, sir, Your Honor.

25 THE COURT: All right. From the Defense?

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1 MR. FLOYD: No, sir, Judge.

2 THE COURT: See you at 9:30 in the morning

3 MR. FLOYD: Yes, sir.

4 MR. SPRATLIN: Yes, sir.

5 THE COURT: Thank you.

6 (RECESS - 5:24 P.M.)

7 *****OFF THE RECORD*****

8 November 5, 2013

9 (On the Record - 9:59 A.M.)

10 THE COURT: Do I need to make further inquiry as to his
11 right to testify or not to testify?

12 MR. FLOYD: Yes, sir. I think we do need to go into that
13 and make sure it's Talmadge's decision on what he wants to do.

14 THE COURT: All right, sir. Have him stand.

15 You will recall on yesterday, quite extensively, I
16 discussed with you your right to testify or not testify. You
17 understand that?

18 MR. ROWELL: Yes, sir.

19 THE COURT: Sir?

20 MR. ROWELL: Yes, sir.

21 THE COURT: You have to talk a little louder for me.

22 Now, we're at that stage where you will have that opportunity
23 if you want to. I have discussed it and your attorney has
24 discussed it with me, pretrial a moment ago and he seemed to
25 think that there was some question about whether you wished to

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1 or not. So, he has asked me to inquire again in an abundance
2 of precaution to make sure that this Court does for you that
3 which you want. Do you understand?

4 MR. ROWELL: Yes, I do.

5 THE COURT: You understand your full right to testify and
6 to present any witnesses, you understand that?

7 MR. ROWELL: Yes.

8 THE COURT: You understand your absolute right not to
9 testify?

10 MR. ROWELL: Yes.

11 THE COURT: Do you understand that that decision,
12 whatever it is, is yours. You can confer with your lawyer but
13 you cannot be heard to say, well, my lawyer made me do it.
14 You understand that?

15 MR. ROWELL: Yes.

16 THE COURT: Sir?

17 MR. ROWELL: Yes, sir.

18 THE COURT: You'll have to talk loud so my court reporter
19 can hear you.

20 Now, the Jury is back there, we're ready to start. What
21 is your desire? To testify or not to testify?

22 MR. ROWELL: I'm not gonna testify.

23 THE COURT: You are not going to testify?

24 MR. ROWELL: I am not, no, sir.

25 THE COURT: You fully understand, now, what I told you

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1 yesterday?

2 MR. ROWELL: Yes, I do.

3 THE COURT: It's your absolute right?

4 MR. ROWELL: Yes, sir.

5 THE COURT: That I would advise the Jury that they
6 couldn't use -- I will advise the Jury that they cannot use
7 that against you; you understand that?

8 MR. ROWELL: Yes.

9 THE COURT: You are saying it is your decision not to
10 testify and not to produce any evidence; is that correct?

11 MR. ROWELL: Yes, sir.

12 THE COURT: Mr. Floyd, of course, you will have the last
13 argument.

14 MR. FLOYD: Yes, sir.

15 THE COURT: All right, sir.

16 MR. FLOYD: Judge, could -- at this time rather than
17 bringing the Jury in and sending them right back out, the
18 Defense will rest now and make its motions and then we'll
19 formally rest when the Jury comes out and ---

20 THE COURT: Correct. Let's hear that -- I'll let you
21 rest and I'll -- that's to keep it -- I thank you, that's to
22 keep the Jury coming back out.

23 MR. FLOYD: Yes, sir. Bring them out just for one minute
24 and send them back out.

25 THE COURT: Okay.

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1 MR. FLOYD: Judge, we do rest at this time. We would
2 renew the motions we made yesterday at the time of the State's
3 case in regards to the joinder of the indictments, the
4 statement, the amendment to the indictment. We'd also move
5 for directed verdict on the sufficiency of the evidence.
6 Thank you.

7 THE COURT: For the same reasons I expressed to you
8 yesterday at the conclusion of the State's case, your motions
9 are noted for the record and are respectfully denied. My
10 ruling will stand as to the other issues until the last issue.
11 There is obviously sufficient evidence for the Jury to make a
12 determination as finders of the facts.

13 All right, sir. Are we ready for the Jury? What says
14 the State?

15 MR. SPRATLIN: Yes, sir, Your Honor.

16 THE COURT: Are you ready for your closing statement?

17 MR. SPRATLIN: Yes, sir, Your Honor. The State is ready
18 to proceed with closing arguments.

19 MR. FLOYD: Yes, sir. And I'll rest for the Jury when
20 they come in.

21 THE COURT: Okay. And by consent of counsel, as I
22 usually do, I'm going ahead and have -- we're gonna -- Josh
23 and I are gonna charge the Jury before summation; you
24 understand that?

25 MR. FLOYD: Yes, sir.

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1 THE COURT: Okay. Bring the Jury in.

2 (REPORTER'S NOTE: The jury enters courtroom. 10:07 A.M.)

3 THE COURT: Good morning. Madame Foreman, ladies and
4 gentlemen, I trust that you enjoyed your ham biscuit as much
5 as I did mine. That's a little nicety that the Clerk of Court
6 and Heather here does for the jurors of Horry County. Just
7 another idea or expression of appreciation of this Court and
8 the Clerk of Court's office for your services on your behalf
9 and on behalf of the people of the State of South Carolina.
10 Your services are deeply appreciated.

11 At the conclusion of court on yesterday, the State had
12 completed its presentation of evidence and witnesses and
13 rested. Thus, moving the case to the Defense. What now says
14 the Defense, Mr. Floyd?

15 MR. FLOYD: Judge, the Defense rests.

16 THE COURT: The Defense rests.

17 MR. FLOYD: Yes, sir.

18 THE COURT: All right, sir.

19 Ladies and gentlemen, the Defense has rested, has elected
20 not to call any witnesses and has elected not to testify. In
21 that connection, I charge you that this Defendant and every
22 Defendant in South Carolina is always presumed innocent until
23 the State has proven him guilty, if they can, by evidence
24 beyond a reasonable doubt. This Defendant and any defendant
25 comes into this courtroom under the cloak of innocence and

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1 that remains with him until a jury unanimously has found him
2 guilty if they can by evidence beyond a reasonable doubt.
3 Now, I charge you as a matter of law that a defendant and this
4 Defendant under our Constitution has an absolute right not to
5 testify. He's presumed innocent and he doesn't have to prove
6 a thing. The State has the burden of proof. In that
7 connection, now, I charge you that there is absolutely no
8 adverse inference to be derived from the fact that this
9 Defendant exercised his Constitutional right not to testify.
10 The fact that he did not testify must not even enter, Madame
11 Foreman, into your deliberations in the jury room. That is
12 his absolute right, it is mine and it is yours. So,
13 absolutely no inference is to be derived from the fact that he
14 elected to exercise his Constitutional rights not to testify.

15 Now, I have prepared the charge on the law in this case.
16 Ordinarily, we give the law after summation of counsel.
17 Jurors in the past few years have said to me, Judge
18 Cottingham, I wish you'd have told me what the law was even
19 before they argued. I believe I could've followed their
20 positions better. And that made sense to me so for the last
21 twelve or fifteen years, with consent of parties, I've done
22 that and proposed to do it in just a minute. After summation,
23 however, I will be back with you with some additional remarks.

24 Now, I have prepared these remarks last evening and this
25 morning and I am going to ask my associate and law clerk, John

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1 McLeod, to read these to you. Please accept his rendition of
2 mine as coming from me. I have prepared them and just simply
3 asked that John read them on my behalf for your consideration.

4 You may proceed, Mr. McLeod.

5 CHARGE TO THE JURY:

6 LAW CLERK: The indictments in this case allege several
7 different offenses against the Defendant. The charges are,
8 indictment number one, as to Minor 1 , criminal sexual
9 conduct with a minor, second degree; indictment number two, as
10 to Minor 2 , criminal sexual conduct with a minor, second
11 degree; indictment number three, as to Minor 1 , lewd act on
12 a minor child; indictment number four, as to Minor 2 ,
13 lewd act on a minor child. Each indictment charges a separate
14 and distinct offense. You must decide each indictment
15 separately on the evidence and the law applicable to it
16 uninfluenced by your decision as to any other indictment. The
17 Defendant may be convicted or acquitted on any or all of the
18 offenses charged. You will be asked to write a separate
19 verdict of guilty or not guilty for each indictment. The
20 Defendant has pled not guilty to this indictment and that plea
21 puts the burden on the State to prove the Defendant guilty. A
22 person charged with committing a criminal offense in South
23 Carolina is never required to prove himself innocent. I
24 charge you that it is an important rule of the law that the
25 Defendant in a criminal trial, no matter what the seriousness

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1 of the charge may be, will always be presumed to be innocent
2 of the crime for which the indictment was issued unless guilt
3 has been proven by evidence satisfying you of that guilt
4 beyond a reasonable doubt.

5 This presumption of innocence does not end when you begin
6 your deliberations but it accompanies the Defendant throughout
7 the trial until you reach a verdict of guilt based on evidence
8 satisfying you of that guilt beyond a reasonable doubt. The
9 presumption of innocence is like a robe of righteousness
10 placed about the shoulders of the Defendant which remains with
11 the Defendant until it has been stripped from the Defendant by
12 evidence satisfying you of the Defendant's guilt beyond a
13 reasonable doubt. The presumption of innocence is not a mere
14 legal theory, it is not just a legal phrase. It is a
15 substantial right to which every Defendant is entitled unless
16 you the Jury are satisfied from the evidence of the
17 Defendant's guilt beyond a reasonable doubt.

18 The State has the burden of proving the Defendant guilty
19 beyond a reasonable doubt. Some of you may've served as
20 jurors in civil cases where you were told that it is only
21 necessary to prove that a fact is more likely true than not
22 true such as by the greater weight or preponderance of the
23 evidence. In criminal cases, the State's proof must be more
24 powerful than that; it must be beyond a reasonable doubt.
25 Proof beyond a reasonable doubt is proof that leaves you

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1 firmly convinced of the Defendant's guilt. There are few
2 things in this world that we know with absolute certainty.
3 And in criminal cases, the law does not require proof that
4 overcomes every possible doubt. If based on your
5 consideration of the evidence, you are firmly convinced that
6 the Defendant is guilty of the crime charged, you must find
7 the Defendant guilty. If on the other hand, you think there
8 is a real possibility that the Defendant is not guilty, you
9 must give the Defendant the benefit of the doubt and find him
10 not guilty.

11 I remind you that during this trial, you and I have
12 certain duties to perform. As the Trial Judge, it is my
13 responsibility to preside over the trial of this case and I
14 also have the duty to rule on the admissibility of the
15 evidence offered during this trial. You are to consider only
16 the competent evidence before you. If there was any testimony
17 ordered stricken from the record in this case during this
18 trial, you must disregard that testimony. You are to consider
19 only the testimony which has been presented from this witness
20 stand, any exhibits which have been made a part of the record
21 in this case and any stipulations of counsel.

22 I have the additional duty to charge you the law
23 applicable to this case. As the presiding judge, I am the
24 sole judge of the law of this case and it is your duty as
25 jurors to accept and apply the law as I now state it to you.

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1 If you already have any ideas as to what the law is or what
2 the law ought to be and it does not agree with what I now tell
3 you the law is, you must abandon this idea because you are
4 sworn to accept the law and apply the law exactly as I state
5 it to you.

6 In every case tried in this court before a jury, the jury
7 becomes the sole and exclusive judge of the facts in a case.
8 A trial judge cannot comment, intimate, state or comment on
9 any or make any statement to a trial jury about the facts in a
10 case. Since you, the Jury, are the sole judge of the facts in
11 this case, you are not to infer from what I've said during the
12 progress of this trial in ruling upon the admissibility of
13 evidence or otherwise or anything that I say now during the
14 course of this instruction to you that I have any opinion
15 about the facts in this case. The law does not allow me to
16 have an opinion about the facts in this case. This is a
17 matter solely for you, the Jury, to determine. As jurors, it
18 is your duty to determine the effect, value, weight and truth
19 of the evidence presented during this trial.

20 Necessarily, you must determine the credibility of
21 witnesses who have testified in this case. Credibility simply
22 means believability. It becomes your duty as jurors to
23 analyze and to evaluate the evidence and determine which
24 evidence convinces you of its truth. In determining the
25 believability of witnesses who have testified in this case,

1 you may believe one witness over several witnesses or several
2 witnesses over one witness. You may believe a part of the
3 testimony of a witness and reject the remaining part of the
4 testimony of that same witness. You may believe the testimony
5 of a witness in its entirety or reject the testimony of a
6 witness in its entirety. You may consider whether any witness
7 has exhibited to you any interest, bias, prejudice or other
8 motive in this case. You may also consider the appearance and
9 manner of a witness while on the witness stand.

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

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1 consideration the acts of the parties and all the facts and
2 circumstances of the case. Criminal intent is a mental state,
3 conscious wrongdoing. It is up to you to determine what the
4 Defendant intended to do based on the circumstances shown to
5 have existed. Criminal intent can arise from action or a
6 failure to act. It may arise from negligence, recklessness or
7 an indifference to duty or to consequences that is considered
8 by the law to be the equivalent of criminal intent.

9 A statement alleged to have made by the Defendant has
10 been admitted into evidence in this case. While the Court has
11 determined that the statement is admissible, I instruct you
12 that you make the ultimate decision of whether or not the
13 Defendant made the statement. If the Defendant did make the
14 statement, you must determine whether the statement was made
15 by the Defendant voluntarily and of his own free will. This
16 means that the statement was not caused by pressure, force,
17 fear, threats, coercion or intimidation or by hope or a
18 promise of leniency or a reward of any kind. In determining
19 whether the statement was voluntary, you should consider both
20 the characteristics of the Defendant and the details of the
21 questioning. Some of the factors that you must consider are:
22 The age of the Defendant; the Defendant's education or lack of
23 education; the Defendant's mental ability of capacity; the
24 Defendant's IQ or intelligence; the Defendant's background and
25 environment; the place and length of detention; the nature of

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1 the questioning and the advice or lack thereof to the
2 Defendant of his Constitutional rights including but not
3 limited to the right to remain silent, that any statement
4 could be used against him in a court of law, the right to have
5 a lawyer present, that if he could not afford a lawyer, a
6 lawyer would be appointed to represent him without any costs,
7 and that he could stop making a statement at any time. You
8 must carefully consider all of the surrounding circumstances
9 before you give any weight to an alleged statement.

10 The State has the burden of proving beyond a reasonable
11 doubt that the alleged statement was voluntary. If you
12 determine it was, you may give the statement any further
13 consideration that you deem proper. You must decide what
14 weight, if any, should be given to the alleged statement. If
15 you determine the alleged statement was not the free and
16 voluntary statement of the Defendant, you should not consider
17 the statement at all.

18 I instruct you and emphasize that the fact that the
19 Defendant did not testify is not a factor to be considered by
20 you in any way in your deliberation and in your consideration
21 of the question of the guilt or of the innocence of the
22 Defendant. It must not be considered by you in any manner
23 whatsoever. A defendant has the Constitutional right to
24 remain silent and the assertion of this right must not be
25 considered by you in your deliberations. I repeat, under your

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1 oath, you are to draw no conclusion whatsoever from the fact
2 that the Defendant in this case did not testify. The fact
3 that the Defendant did not testify should not even be
4 discussed in the jury room. The burden of proof as I have
5 stated to you is on the State. The Defendant is not required
6 to prove his innocence. The burden of proof remains on the
7 State to prove guilt beyond a reasonable doubt.

8 The Defendant is charged with the second degree criminal
9 sexual -- is charged with second degree criminal sexual
10 conduct with a minor. The State must prove beyond a
11 reasonable doubt that the Defendant engaged in a sexual
12 battery with the victim. A sexual battery is sexual
13 intercourse, cunnilingus, fellatio, anal intercourse, or any
14 intrusion, however slight, of any part of a person's body or
15 of any object into the genital or anal openings of another
16 person's body except when the intrusion is accomplished for
17 medically recognized treatment or diagnostic purposes. The
18 State must then prove beyond a reasonable doubt that the
19 Defendant was at least eleven years old but not more than
20 fourteen years old at the time of the sexual battery.
21 Consent, willingness, indifference, or ignorance on the part
22 of the minor, if any, as to what was taking place does not in
23 any way affect the charge of criminal sexual conduct with a
24 minor.

25 The Defendant is charged with committing a lewd act on a

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1 minor. A minor is a person under the age of eighteen. The
2 State must first prove beyond a reasonable doubt that the
3 Defendant was over the -- I'm sorry -- A minor is a person
4 under the age of eighteen.

5 Next, the State must prove that the Defendant willfully
6 and lewdly committed or attempted a lewd or lascivious act on
7 or with the body or as parts of a child between the ages of
8 eleven and fourteen years with the intent to arouse, appeal to
9 or gratify the lust, passions or sexual desires of the
10 Defendant or the child.

11 Willfully means voluntarily and intentionally with the
12 specific intent to do something the law forbids.

13 Lewd means obscene, lustful, indecent or lecherous.

14 Lascivious means tending to incite lust, lewd, indecent,
15 obscene, or tending to deprave the morals in respect to sexual
16 relations.

17 There are two possible verdicts which you may find for
18 each indicted charge, guilty or not guilty. There is no
19 significance whatsoever in the order in which I state these
20 possible verdicts. It is simply that one must be stated
21 first.

22 Ladies and gentlemen, your verdict must be a unanimous
23 one. Madame Forelady, when the Jury agrees on the verdict,
24 you will write the verdict on the back of the indictment and
25 sign your name as foreperson. Then, knock on the jury room

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1 door and inform the Bailiff that you have reached a verdict.

2 At that time, we will receive you back into the courtroom.

3 I ask that you now return to your jury room but do not
4 begin deliberations until you are told by the Clerk of the
5 Bailiff to do so.

6 THE COURT: All right. Madame Foreman, ladies and
7 gentlemen, please accept the foregoing as my charge to you on
8 the law in this case.

9 Now, Madame Foreman, if during your deliberations any
10 member of your jury has any questions regarding the law, there
11 will be pencil and paper provided, please write that question
12 down and let the Bailiff know and I will be delighted to
13 answer it for you if I can. Remembering now, that you are the
14 finders of the facts. I cannot discuss with you the facts;
15 that's your job. I tell you this because of an incident that
16 occurred sometime ago when I was trying a young lady for
17 arson, it having been alleged that she had burned a mobile
18 home down. The jurors sent me a question, Did she smoke or
19 not? Well, I knew she smoked because I saw her smoking
20 outside the courtroom during lunch hour but that question was
21 never asked on the record and never answered. Consequently, I
22 could not tell the jury anything. I say that to tell you, you
23 will base your verdict on the law and evidence heard in this
24 courtroom.

25 Now, Madame Foreman, I will go over this with you again

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1 after summation but there will be four verdict forms. As to
2 each victim, there are two charges. So, you will have two
3 verdict forms as to one victim, alleged victim, and two
4 verdict forms as to the other one. They are easily designated
5 and you won't have any problem understanding them.

6 When you return -- do not begin your deliberations yet,
7 of course, I'm going to ask you to take a short break so that
8 we can go ahead when you return, we're gonna have final
9 arguments by both sides at which time I then will give you the
10 case for your deliberation. So, please go to the jury room
11 just a moment and I'll be calling you back. Thank you.

12 (REPORTER'S NOTE: The Jury exits courtroom. 10:30 A.M. The
13 following takes place outside the presence of the jury.)

14 THE COURT: The Jury is outside the courtroom, any
15 exceptions or additions to the charge?

16 MR. SPRATLIN: Yes, sir, Your Honor. Regarding the CSC
17 with a minor second degree charge, I believe there was a
18 misstatement in the charge which could prove very confusing to
19 the Jury. During the reading of the charge, the Law Clerk,
20 Your Honor, stated that the statements were beyond a
21 reasonable doubt that the Defendant was between the ages of
22 eleven and fourteen years old. Obviously, that is the victim
23 is between the ages of eleven and fourteen years old.

24 THE COURT: The victim.

25 MR. SPRATLIN: We would just ask that that charge be

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1 basically recharged to the Jury.

2 THE COURT: I will read the whole charge back to them.

3 MR. SPRATLIN: And I would also ask, Your Honor, I think
4 here was some confusion regarding the lewd act charge. I
5 would just ask that that charge be recharged as well.

6 THE COURT: Well, what was the confusion on the lewd act?

7 MR. SPRATLIN: I think there was some pausing and some
8 stopping and some of the jurors appeared to be confused during
9 it. Just that it's unlawful for a person over age of fourteen
10 years of age, that being the Defendant, over the age of
11 fourteen years or age, to lewdly attempt or commit a lewd or
12 lascivious act upon a body of a child under the age of sixteen
13 years of age. I think there may've been the mention of
14 fourteen during that lewd act charge, Your Honor. I think
15 just for clarification for the Jury's sake, I think you need
16 to recharge it.

17 THE COURT: Well, what's the problem? I'm not -- come
18 around and let's get it straight.

19 (REPORTER'S NOTE: A bench conference was held off the record
20 outside the presence of the Jury.)

21 THE COURT: Do you have any further additions for the
22 record?

23 MR. FLOYD: Judge, if you're gonna recharge two offenses,
24 then I would like reasonable doubt and presumption of
25 innocence recharged.

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1 MR. SPRATLIN: No objection, Your Honor.

2 THE COURT: I've given them that at the beginning, at the
3 start, and was given to them in the charge. I don't think I
4 need to do that again. Particularly, since I did it before we
5 began. Let me see the problem ---

6 LAW CLERK: I just want to make sure I get it right this
7 time.

8 THE COURT: What was wrong?

9 LAW CLERK: I think I said Defendant instead of victim.

10 THE COURT: Why -- the charge says ---

11 LAW CLERK: I just screwed up.

12 MR. SPRATLIN: He just made a mistake, Your Honor. It
13 happens.

14 THE COURT: Nothing wrong with that. Go ahead. All
15 right. That takes care of that charge.

16 LAW CLERK: That's the one with that. And the other one,
17 I just -- I got it in my head, when I saw over the age of
18 fourteen, I was thinking victim and ---

19 MR. SPRATLIN: I think that kind of got messed up and
20 confused the Jury, Your Honor, and so that's why we would just
21 that both be recharged.

22 THE COURT: It won't be that lengthy. I'll go --
23 recharge them. Go ahead. All right. We got them right now?

24 LAW CLERK: Yes, sir.

25 THE COURT: That fourteen was the Defendant over ---

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1 LAW CLERK: The Defendant and that's what ---

2 THE COURT: And that's when I told you ---

3 LAW CLERK: That's what throwed me off.

4 THE COURT: All right. Bring the Jury back, please.

5 All right. I'm not -- I'm gonna recharge the Jury as to
6 those two issues.

7 MR. SPRATLIN: Yes, sir, Your Honor.

8 THE COURT: They were just scrivener's errors, really.

9 MR. SPRATLIN: Yes, sir, Your Honor. It's just a
10 misstatement and I just want to make sure the Jury is clear.
11 Thank you.

12 (REPORTER'S NOTE: The Jury enters courtroom. 10:34 A.M.)

13 THE COURT: Ladies and gentlemen, at this time, I'm going
14 to recharge you the law with regards to the two offenses. In
15 the initial charge, we made a scrivener's error here and I
16 want to correct it. Please take this charge in the context of
17 all the other charges including reasonable doubt and the facts
18 that you are the finders of the facts and the credibility of
19 the witnesses. I'm gonna ask that my associate and Law Clerk
20 recharge -- we just interposed the Defendant and the victim
21 erroneously in our charge to you. So, we'll do it again as to
22 both charges. Thank you.

23 LAW CLERK: The Defendant is charged with second degree
24 criminal sexual conduct with a minor. The State must prove
25 beyond a reasonable doubt that the Defendant engaged in a

1 sexual battery with the victim. A sexual battery is sexual
2 intercourse, cunnilingus, fellatio, anal intercourse, or any
3 intrusion, however slight, of any part of a person's body or
4 of any object into the genital or anal openings of another
5 person's body, except when the intrusion is accomplished for
6 medical recognized treatment or diagnostic purposes. The
7 State must then prove beyond a reasonable doubt that the
8 victim was at least eleven years old but not more than
9 fourteen years old at the time of the sexual battery.
10 Consent, willingness, indifference, or ignorance on the part
11 of the minor, if any, as to what was taking place does not in
12 any way affect the charge of criminal sexual conduct with a
13 minor.

14 The Defendant is charged with committing a lewd act on a
15 minor. A minor is a person under the age of eighteen. The
16 State must first prove beyond a reasonable doubt that the
17 Defendant was over the age of fourteen. Next, the State must
18 prove that the Defendant willfully and lewdly committed or
19 attempted a lewd or lascivious act on or with the body or its
20 parts of a child under the age of sixteen years with the
21 intent to arouse, appeal to, or gratify the lust, passions, or
22 sexual desires of the Defendant or the child.

23 Willfully means voluntarily and intentionally with the
24 specific intent to do something the law forbids.

25 Lewd means obscene, lustful, indecent, or lecherous.

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1 Lascivious means tending to incite lust, lewd, indecent,
2 obscene, or tending to deprave the morals in respect to sexual
3 relations.

4 THE COURT: I think that corrects our original
5 misinterpretation.

6 MR. SPRATLIN: Yes, sir, Your Honor.

7 THE COURT: Thank you, Mr. Floyd.

8 All right, sir. We'll now have the final closing
9 arguments. And, under our rules, the prosecution will go
10 first.

11 MR. SPRATLIN: Thank you, Your Honor.

12 THE COURT: Thank you.

13 CLOSING BY MR. SPRATLIN:

14 MR. SPRATLIN: When I got up here for closing argument --
15 or opening statement, excuse me, yesterday, I told you how
16 sometimes secrets hurt. For far too long, the Defendant's
17 secrets have been hurting Minor 1 and Minor 2 . Today,
18 ladies and gentlemen, all the secrets out and it's time for
19 the Defendant to start paying the consequences for his own
20 secrets.

21 Now, this is has been a very -- a relatively simple but
22 serious case. Simple in that the facts of this case are very
23 straightforward. The evidence the State has relied on to
24 prove the Defendant guilty is the testimony from the people
25 who were there, the people who experienced what he did and the

1 people who corroborate what he did. Serious, in that the
2 Defendant is charged with molesting people under sixteen years
3 old.

4 Now, there's no DNA in this case. There's no complex
5 scientific test for you to debate over back there. It's a
6 simple, straightforward case. We're relying on testimony and
7 we're relying on the Defendant's statement to law enforcement
8 officers. If you're fans of CSI, Crime Scene Investigation,
9 that show that comes on, you may be a little bit disappointed
10 but don't be because that's not real. This is what real court
11 cases are and this is what real court cases have always been.

12 Now, as the Judge told you, the Defendant pled not guilty
13 which places the burden on the State. He is presumed to be
14 innocent. The burden is on me to bring enough evidence
15 forward to convince all of you beyond a reasonable doubt that
16 the Defendant is guilty. Now, there's no magical amount of
17 evidence that has to be seen. I don't have to call two
18 witnesses, three witnesses, four witnesses, five witnesses. I
19 have to call -- I have to present enough evidence to convince
20 all of you that the Defendant is guilty and I have to convince
21 you beyond a reasonable doubt. As the Judge just told you,
22 beyond a reasonable doubt is a doubt that leaves you firmly
23 convinced that the Defendant is guilty.

24 I submit to you, ladies and gentlemen, based on the
25 evidence you've heard, you should be perfectly convinced that

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1 the Defendant is guilty.

2 Now, criminal intent, as the Judge said -- I wanted to
3 talk about that very briefly because I think he did a fine job
4 explaining to you what that is. Intent is just that you do --
5 you don't necessarily have to intend to commit a crime, per
6 se, you don't have to intend to commit a CSC with a minor,
7 second, or commit a lewd act on a minor but rather you have to
8 intend to do the act which constitutes the crime.

9 If you hit somebody, you don't intend to commit a
10 battery, just have to intend to hit them. In this case,
11 ladies and gentlemen, that man intended to do those girls like
12 he did.

13 Now, the Defendant is charged with two separate charges
14 for each girl, four in total. I'm gonna talk to you about
15 lewd act first because that's by far the simpler charge. Lewd
16 act is -- the State has to prove, as the Judge stated, we had
17 to prove that the Defendant is over fourteen years of age. We
18 presented evidence of his birthday; he's in his mid-fifties.
19 We have to prove that he committed a lewd and lascivious act
20 on a minor under the age of sixteen. You heard how old
21 Minor 2 and Minor 1 were. The mother testified to birthdates,
22 ladies and gentlemen. Minor 1 was born ;
23 Minor 2 was born . Between the dates in issue
24 in this case, that being January 1st, 2009 and June 26th,
25 2011, they were at all times between -- under sixteen years of

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1 age, during that time between the ages of eleven and sixteen
2 -- I mean, eleven and fourteen, excuse me. So, for lewd act
3 upon a minor, he just has to do a lewd or lascivious act which
4 as the Judge told you is an obscene act, an indecent act,
5 sexual act. Ladies and gentlemen, the evidence presented to
6 you showed you that he put his hands down each of those two
7 girls' pants. He rubbed their vagina. Minor 1 he put his mouth
8 on her breast. Minor 2 , tried to stick her tongue in -- tried
9 to stick his tongue in her mouth, kissed her stomach. That's
10 all lewd and lascivious. He's guilty of that charge, no
11 questions asked.

12 CSC with a minor, second degree, is a little bit more
13 complex. This is why I have a couple of exhibits. Now,
14 first, I want to tell you -- just kind of reiterate what the
15 Judge already instructed you on. Criminal sexual conduct with
16 a minor second degree, a person is guilty of criminal sexual
17 conduct with a minor in the second degree when the actor
18 engages in a sexual battery, which we'll get to in a second,
19 with a victim who is fourteen years of age or less but who is
20 at least eleven years of age. As I said, dates of birth,
21 ladies and gentlemen, you can do the math back there if you'd
22 like, , Minor -- August -- I mean,
23 is Minor 1 is Minor 2 . At all
24 times between January 1st, 2009 and June 26th, excuse me,
25 2011, they were between the ages of eleven -- Minor 2 was

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1 twelve going on thirteen and Minor 1 was fourteen. She was gonna
2 be fifteen in August but she didn't get there before all this
3 came out. So, we've proven that the Defendant -- that the
4 victims were between the ages of eleven and fourteen. We have
5 to prove that the actor engaged in a sexual battery with them.
6 And the Judge told -- he defined sexual battery for you; I
7 want to go over it a little bit with you. Sexual battery
8 defined -- sexual battery means any of the following, sexual
9 intercourse, which is pretty self-explanatory; cunnilingus,
10 which is oral sex on a female; fellatio, which is oral sex on
11 a male; anal intercourse, pretty self-explanatory -- and we'll
12 get to this part in a minute.

13 In regards to Minor 1 you heard her testimony. The
14 Defendant licked her vagina. Now, the Defendant wouldn't
15 admit that he licked her vagina, he wouldn't tell you that.
16 We'll get to credibility in a minute and we'll get to why I
17 believe he wouldn't come clean on that part in a second. It
18 doesn't matter that he wouldn't because she did. She was
19 there. She felt it. She experienced it. She knows what the
20 Defendant's mouth did to her because she lived it and she told
21 you. That's how you know it happened. Now, this part we were
22 just talking about I said I would get to in a second, any
23 intrusion -- sexual battery may also be proved by showing that
24 the Defendant did any intrusion, however slight, any part of a
25 person's body, and finger counts, or of any object into the

1 genital or anal openings of another person's body except when
2 such intrusion is accomplished for medically recognized
3 treatment or diagnostic purposes. Forget about all this
4 exception part, he's not a doctor and there's no examination
5 here; there's nothing.

6 So, that means we need to show that there was an
7 intrusion, however slight of a part of his body into the
8 genital openings of Minor 1 and Minor 2 . We've already got that
9 Minor showed that he committed sexual battery by oral sex on
10 her. With Minor 2 , Minor 2 told you he put his finger inside
11 of her. He told you that on his statement. I remember one of
12 the things that stood out to me in his statement -- and we're
13 gonna talk about the statement more in depth in a minute. But
14 one of the things that stood out to me is when Detective Cox
15 says she told me he put it in; how many times did it happen?
16 How many times did it happen, T.L.? If I did it, it was only
17 once. She say twice? If someone asked you if you put your
18 finger into a twelve-year-old girl's vagina and you're answer
19 is anything other than no, absolutely one hundred percent not,
20 it's a yes and it happened.

21 Now, ladies and gentlemen, I also want you to think about
22 this in regards to Minor 1 this provision -- so, we know he did
23 that Minor 2 . Let's talk about Minor 1 Again, going back to
24 the statement, in the words of the statement, put his fingers
25 between her lips and rubbed.

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1 Ladies and gentlemen, it doesn't have to be a full
2 finger, it doesn't have to go up to the first knuckle, it
3 doesn't have to do anything other than any little bitty part
4 of his finger. I submit to you, ladies and gentlemen, it's
5 impossible for him to be rubbing the way he told you in the
6 statement he was, the way they told he was, not to have a
7 slight little bit of his finger go inside of her, however
8 slight. But again, ladies and gentlemen, we don't even have
9 to get there with Minor¹ because we know he licked her vagina
10 because she told you.

11 Ladies and gentlemen, I'm gonna again apologize if I'm
12 making phrases that make you uncomfortable, if I'm using
13 phrases that make you want to crawl underneath your seat and
14 just shy away, I apologize but this is the evidence that's
15 presented to me and I've got to talk about it frankly and
16 openly with you. And all I ask is that you continue paying
17 attention.

18 Now, the Judge told you that you were the judge of the
19 credibility. That's one of the things I like best about jury
20 trials is that twelve people -- I'm sorry, fourteen; I don't
21 want to forget about the alternates -- come before the Court
22 as jurors. Maybe you have a little bit of knowledge of the
23 law, maybe you know a little bit here and there, but
24 typically, don't know a whole lot about the law and how court
25 goes, maybe you've never even seen a trial before. But

1 credibility is one of those things that you, as jurors, do
2 better than anyone else in this courthouse because it's just
3 using common sense, which each and every single one of you
4 have. It's something that you do every day whether you
5 realize it or not. The best example I've ever heard and I'm
6 stealing this from somebody else from a long time ago, you're
7 in Best Buy looking at a television and the another customer
8 comes up to you and says, that's a really good TV, I've got it
9 in my house. I like it a lot. You give that a little bit of
10 credibility. He doesn't have any reason to lie to you. He
11 doesn't have any reason to tell you it's a good TV unless it
12 really is. If you've got a commission salesman comes up to
13 you and says, well, that TV is nice but this TV, which is
14 about \$1,000 more, is a whole lot nicer; I think you're gonna
15 like this one in your house a little bit better. You've got
16 reason to hesitate. You have a reason to disbelieve that
17 person because he has a stake in the game basically, he has a
18 reason to deceive you. And that's all determining credibility
19 is, determining who has a reason to deceive you. Those girls
20 don't have a reason to deceive you. Those girls did not want
21 to be here. Those girls did not want to testify and those
22 girls did not want to have to tell you how their stepfather
23 molested them. The only reason they were here is because it
24 happened.

25 Now, the Defendant's statement, like we talked about --

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1 again, we're gonna talk a little bit more about that statement
2 in a minute -- but several times he said, I'm not gonna lie to
3 you, Mr. Cox, and he went ahead and lied to him. He would
4 come clean a little bit more. At one point, for example, one
5 of the things he said, I believe in his statement, he said --
6 Detective Cox asked him, When is the last time it happened
7 with Minor 1 A long time ago, long time ago. And then later on
8 in that same statement, a couple of weeks ago. That's not a
9 long time. He's being deceitful in that statement; he's being
10 dishonest. He knew he couldn't deny everything and he's
11 trying to give enough hoping that he'll get some kind of
12 benefit from it. Hoping that maybe y'all believe that he
13 didn't lick the girls. He has a reason to lie, ladies and
14 gentlemen. He knows what he's facing. He knows the
15 difference between lewd act and CSC, that's why he so adamant
16 that he didn't. That's why he's so adamant he rubbed around
17 and not in.

18 Now, let me talk to you a little bit about the
19 Defendant's statement. Before we get into more specifics on
20 it, I want to talk to you about what it means for you to
21 consider the statement. First off, as the Judge said, you're
22 gonna have to determine that the Defendant actually made the
23 statement. Detective Cox told you the only other person in
24 the room with him was the Defendant, the Defendant is the one
25 who made that statement. You know the Defendant made that

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1 statement; that's something you shouldn't have any doubt on.

2 Next, you have to determine that statement was freely and
3 voluntarily given. You've all seen movies from back in the
4 40s or 30s when -- or even like some of these movies where the
5 officers says I'm gonna beat this confession out of him.
6 That's not what happened here. Nobody beat a confession out
7 of him. No one tricked him; no one coerced him. He wanted to
8 come clean on his secrets to a certain extent, ladies and
9 gentlemen. And that, you can listen to the statement. You
10 can, again, use your common sense as jurors. Do you think
11 Officer Cox was sitting there twisting his arm to make him
12 talk or do you think he just started answering questions?
13 Listen to the way he responded to the questions. Listen to
14 the questions that Officer Cox asked. Several times all
15 Officer Cox says is, Come on now, T.L. Come on. Did it
16 happen two or three times? And then he comes clean. He
17 wasn't coercing him. He wasn't threatening him. He gave a
18 voluntary and free statement. And ladies and gentlemen, he
19 knew about all his rights before he gave that statement.

20 This is going to go back in the jury room. You'll have a
21 chance to read it and look over it. This is a Waiver of
22 Rights form, it's the one that Detective Cox showed the
23 Defendant and how he showed it to him. Also, all of this was
24 on the recording. Detective Cox read to the Defendant that,
25 you have the right to remain silent; anything you say can and

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1 will be used against you in a court of law; you have the right
2 to talk with an attorney and have him present with you while
3 you are being questioned. If you cannot afford to hire a
4 lawyer, one will be appointed to represent you before any
5 questioning if you so desire. If you make a statement or
6 answer any questions, you have the right to stop at any time.
7 Initialed by him, signed by him. He knew his rights. He
8 voluntarily waived them and he gave a statement.

9 How do we know -- going back to the credibility issue a
10 little bit, like I said, the Defendant has had a reason to
11 deceive Detective Cox, not tell him all the truth. In part,
12 because maybe new charges would be coming. Also, in part,
13 that nobody wants to admit that they performed oral sex on a
14 thirteen-year-old girl. No one wants to say that. And if
15 you'll listen to his statement, which you can listen to again
16 if you'd like to. We can bring you back out here and play it
17 for you if you request. A couple of things in the statement
18 that got my attention and just want to talk to you a little
19 bit about it, confirmed a lot of what the girls were saying,
20 he didn't take their bra off. They told you he didn't take
21 their bra off; he went under the bra.

22 One of the things that kind of bothered me a lot about
23 the statement is when they never said no, they never said
24 stop, they're -- they never said no, they never said stop.
25 They're fifty-year-old stepfather is sticking their hands down

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1 their pants and he wants you to believe they never once said
2 stop, never once said no. Now, maybe eventually they quit,
3 maybe after it happened for the fifteenth, sixteenth,
4 seventeenth time, maybe after every night of him putting them
5 to bed, maybe then they quit saying no. Maybe then they quit
6 saying stop because they knew it wouldn't do anything. I
7 submit to you, ladies and gentlemen, that at one point in
8 time, those girls were saying stop and those girls were saying
9 that. It's human nature. He won't tell you that because it
10 would make him look bad. It would make him look worse than he
11 already was.

12 Even at the end of his statement, he wants his family
13 back. He wants those two girls to go back home again at the
14 end of his statement. What does that tell you about his
15 criminal intent?

16 Ladies and gentlemen, this has been a simple case. We
17 presented testimonial evidence. There are simple facts.
18 Those facts show that that man over there for several years
19 molested those two girls. And all that is left, all that is
20 left is for you, the twelve of you, to make a simple decision
21 that the Defendant is guilty and needs to be held accountable
22 for what he did to those two girls. And that's all I ask.
23 Find him guilty on all four counts, ladies and gentlemen.
24 Thank you.

25 THE COURT: Thank you, counsel.

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CLOSING BY FLOYD

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1 Mr. Floyd?

2 MR. FLOYD: May it please the Court?

3 CLOSING BY MR. FLOYD:

4 MR. FLOYD: Ladies and gentlemen of the Jury, what we --
5 what I say here to you today is not evidence in this case in
6 any fashion. Our opening statements is not evidence. You've
7 the evidence in this case, you've heard from the witnesses.
8 Now, I'm here and I'm standing here for Talmadge Rowell, who
9 is fifty-four years old. Talmadge Rowell has many years in
10 this community. Got married and all of a sudden had a full
11 family, a family that he took care of eleven hours a day. And
12 then the girls and him started butting heads. They were asked
13 to do chores. He was asking them to be responsible, do what
14 they were told, and that caused arguments. And they didn't
15 like that. They wanted Talmadge gone; that's what went on.
16 And they knew how to do it.

17 This isn't a simple decision; it's a difficult decision.
18 And burden of proof is on the State of South Carolina. They
19 have to prove beyond a reasonable doubt that a crime was
20 committed. I ask you to go to jury room, to think about this
21 case and return with your verdict, one that finds Talmadge
22 Rowell not guilty verdict.

23 Thank you.

24 THE COURT: Thank you.

25 BY THE COURT:

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1 THE COURT: Madame Foreman, ladies and gentlemen, you've
2 now heard all of the testimony in this case. I have given you
3 the instructions of the law and you will apply my
4 instructions. You will apply the facts as you find them to be
5 to such instructions as are applicable that I have given you
6 and thereafter reach the unanimous verdict of either not
7 guilty or guilty. It cannot be a verdict of the majority,
8 obviously it would not be one of the minority.

9 Now, Madame Foreman, as I indicated earlier, I hold in my
10 hand four sheets of paper. Two relate to the case involving
11 the alleged victim Minor and the other two involves the alleged
12 victim Minor2 . As you look at these charges, the first
13 charge will be criminal sexual conduct with a minor. The
14 verdict is either not guilty or guilty. You then will go to
15 the second page and consider the lewd act on a minor with
16 reference to Minor1 and again the verdict is either not guilty
17 or guilty. The same would apply to the alleged victim
18 Minor2 . You would consider, first, the criminal sexual
19 conduct charge of not guilty or guilty and sign your name.
20 Thereafter, you will go to the second charge involving the
21 alleged victim Minor2 , which is the lewd act. Again, the
22 verdicts are either not guilty or guilty and you would sign
23 your name.

24 As I've indicated to you, if you have any questions about
25 the law that I have charged to you, please write that question

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BY THE COURT

1 down on a piece of paper and let me know and I'll be glad to
2 answer it.

3 I'm gonna send you to the jury room. Do not begin your
4 deliberations until these verdict forms come in and they'll be
5 coming in in just a moment. Thank you.

6 You are now -- you may go to your jury room.

7 (REPORTER'S NOTE: The Jury exits courtroom. 11:02 A.M.)

8 THE COURT: Come forward and let's agree on what's going
9 into evidence. And look at the verdict forms.

10 (REPORTER'S NOTE: Counsel confers on exhibits and verdict
11 forms.)

12 THE COURT: Kay, let the record reflect, they've agreed
13 on the verdict form.

14 All right. Give it to the Bailiff and tell them to begin
15 deliberations.

16 Wait a minute now. Bring the alternate back out, both of
17 them.

18 MR. FLOYD: Are we at ease, Judge?

19 THE COURT: Will be in a minute as soon as I -- Bring the
20 alternates out.

21 Mr. Bailiff, do you have a place that we can leave the
22 alternates safely. I think everybody is okay but sometimes
23 things happen. You got a room you can put the alternates in?

24 JUROR: I'm not the Bailiff, sir, I'm an alternate.

25 THE COURT: I know. Where's the Bailiff?

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BY THE COURT

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1 BAILIFF: We've got a room; yes, sir.

2 THE COURT: Put the someplace and let them be
3 comfortable.

4 Let me say this to the alternates: I wish that -- you
5 have sit here very patiently. I wish our rules permitted you
6 to participate in deliberations but they do not. You may
7 wonder why am I holding you. Over the years, things happen;
8 on one occasion, I was trying a murder case and I let the
9 alternates go and ten minutes later somebody had an epileptic
10 attack. In Florence, one time, I let the alternates go and we
11 got word that one of the juror's children were in the
12 emergency room in a bad wreck; things happen. So, let me -- I
13 want to keep them for a while, anyway.

14 JUROR: Yes, sir.

15 THE COURT: One of you, if something happens, I'm gonna
16 call one of you back to sit as a juror. Thank you.

17 Heather?

18 CLERK: Yes, sir.

19 THE COURT: Take the verdict form and the evidence back
20 and get it back there and tell them to begin the
21 deliberations.

22 CLERK: Okay.

23 (REPORTER'S NOTE: Deliberations begin at 11:06 A.M.)

24 MR. SPRATLIN: Your Honor, are we at ease?

25 THE COURT: Yes, we are now.

State v. Rowell - 2011-GS-26-3762, 3763, 3765, 3766
VERDICT OF THE JURY

173

1 (RECESS - 11:05 A.M.)

2 *****OFF THE RECORD*****

3 (On the Record - 11:36 A.M.)

4 THE COURT: Mr. Floyd, I'm advised that the Jury has
5 reached a verdict.

6 Let the record reflect that all attorneys are present as
7 is the Defendant in the courtroom. Bring the Jury in.

8 (REPORTER'S NOTE: The Jury enters courtroom. 11:36 A.M.)

9 VERDICT OF THE JURY

10 THE COURT: Madame Foreman, have you and your
11 distinguished Jury reached a unanimous verdict with regards to
12 the issues in this case?

13 JUROR 131: Yes, Your Honor.

14 THE COURT: If this verdict or verdicts be the unanimous
15 verdict, please so signify by raising your right hand.

16 The Jury has so signified.

17 Heather, please accept the verdict forms and present them
18 to me, please.

19 Please publish the verdicts.

20 Thank you.

21 CLERK: Indictment Number 2011-GS-26-3763, State of South
22 Carolina, County of Horry versus Talmadge LeRoy Rowell, We,
23 the Jury, unanimously find the Defendant Talmadge LeRoy Smith,
24 guilty of criminal sexual conduct with a minor, second degree.

25 Indictment Number 2011-GS-26-3766, State of South

State v. Rowell - 2011-GS-26-3762, 3763, 3765, 3766 174
BY THE COURT

1 Carolina, County of Horry versus Talmadge LeRoy Rowell, We,
2 the Jury, unanimously find the Defendant Talmadge LeRoy
3 Rowell, guilty of lewd act on a minor child.

4 2011-GS-26-3762, the State of South Carolina versus
5 Talmadge LeRoy Rowell, We, the Jury, unanimously find the
6 Defendant Talmadge LeRoy Rowell guilty of criminal sexual
7 conduct with a minor, second degree.

8 Indictment Number 2011-GS-26-3765, State of South
9 Carolina, County of Horry versus Talmadge LeRoy Rowell, we,
10 the Jury, unanimously find the Defendant Talmadge LeRoy
11 Rowell, guilty of lewd act on a minor child.

12 Dated November 5, 2013, signed by foreperson Susan Gore,
13 Juror Number 131.

14 Ladies and gentlemen of the Jury, if this is your
15 verdict, so signify by raising your right hand.

16 Thank you.

17 BY THE COURT:

18 THE COURT: For the State, anything further before I
19 dismiss the Jury?

20 MR. SPRATLIN: Nothing further for the Jury, Your Honor.

21 THE COURT: Mr. Floyd, anything further?

22 MR. FLOYD: No, sir.

23 THE COURT: All right.

24 Heather, what instructions for this Jury, please?

25 CLERK: Judge, I know we are gonna pick a panel at 2:30

State v. Rowell - 2011-GS-26-3762, 3763, 3765, 3766 175
BY THE COURT

1 but I'm not for sure if they've actually pulled a panel yet or
2 not.

3 THE COURT: Well, if they -- if I don't need them, I'd
4 rather let them call in after 6 o'clock tonight.

5 CLERK: Okay. Yes, sir. They've pulled us a panel
6 already of thirty-five; so they can call after 6:00.

7 THE COURT: For something tomorrow if necessary.

8 CLERK: Yes, sir.

9 THE COURT: The docket is moving rather fast, so we don't
10 know whether we'll need you tomorrow or not but I'm certainly
11 not going to ask you start back working this afternoon.
12 You've been a very diligent Jury.

13 I have nothing to say about the case except that as
14 finders of the facts, the evidence certainly justified your
15 verdict.

16 You know, none of you asked to be in court this week and
17 none of you, of course, particularly asked to sit as jurors in
18 a criminal sexual conduct case but you've done that and you've
19 done your duty and the State of South Carolina and these
20 victims, you have their gratitude, thanks and appreciation.
21 This sort of conduct is the sort of thing that's got to come
22 to light and be dealt with in open court. And you, by your
23 verdict have done that and I deeply appreciate your services.

24 I'm gonna excuse you now for the day. Please call in
25 after 6 o'clock tonight.

State v. Rowell - 2011-GS-26-3762, 3763, 3765, 3766
MOTIONS

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1 Thank you so much.

2 LAW CLERK: They need to come back at 2:30.

3 THE COURT: 2:30?

4 CLERK: 2:30; yes, sir.

5 THE COURT: I'm sorry. I was trying to get you out of it
6 but they caught me. Be back at 2:30.

7 I thought you said they had a jury?

8 CLERK: They do but they need one for Hyman.

9 THE COURT: Okay. They've got one for me. But I enjoyed
10 working with all of you. Thank you.

11 (REPORTER'S NOTE: The Jury exits courtroom. 11:42 A.M.)

12 THE COURT: All right. Solicitor, anything further,
13 prior to sentencing?

14 MR. SPRATLIN: Yes, sir, Your Honor. My victims would
15 like to speak at sentencing.

16 THE COURT: They may do so at this time.

17 MR. FLOYD: Judge, motions?

18 THE COURT: Sir?

19 MR. FLOYD: Motions.

20 THE COURT: Let me hear motions. Go ahead.

21 MOTIONS:

22 MR. FLOYD: Judge, we would move for an order in arrest
23 of judgment, the equivalent of a JNOV. We'd in the
24 alternative move for a mistrial. We've made those motions
25 based upon prior objections that we made regarding the

State v. Rowell - 2011-GS-26-3762, 3763, 3765, 3766
SENTENCE OF THE COURT

177

1 indictments, joinder and insufficiency of the evidence.

2 THE COURT: What's your mistrial motion?

3 MR. FLOYD: One the same basis as -- that's the
4 alternative of a JNOV.

5 THE COURT: No, sir. I respectfully deny that for the
6 reasons stated.

7 All right, sir. What you say, counsel?

8 MR. SPRATLIN: Yes, sir, Your Honor. I'd first like to
9 hear from Minor 1 . She has a statement she would like to
10 read to the Court.

11 SENTENCE OF THE COURT:

12 THE COURT: All right. Tell her to read into the
13 microphone for us so my court reporter can hear her.

14 And I thank you for being here. I know -- let me say
15 this to you. I know these proceedings would have been
16 extremely difficult for you but you handled it very well and I
17 thank you for that.

18 Let me hear what you say.

19 Minor 1 : I'd like to thank you for letting me come
20 and testify. My life through this was very uncomfortable. I
21 thought my life with him would be better because he treated me
22 like a daughter, better than my real daddy has.

23 THE COURT: Slow it down a little bit, please.

24 Minor 1 : But I realized what he had -- what he has
25 done is what I have to live with for the rest of my life and

State v. Rowell - 2011-GS-26-3762, 3763, 3765, 3766 178
SENTENCE OF THE COURT

1 he don't have to live with this forever. And my question is,
2 What type of person that you are close with would do this to
3 you? So, I would like to thank you again for letting me do
4 this.

5 THE COURT: Thank you, ma'am.

6 Would the other victim wish to be heard?

7 MR. SPRATLIN: Yes, sir, Your Honor. Ms. Minor2
8 would like to be heard by the Court.

9 THE COURT: Ms. Minor2 , I'll say to you the same thing.
10 This has been very difficult for you and you've handled it
11 splendidly and I thank you for that. Be glad to hear from
12 you.

13 Minor2 : I didn't write anything but I do want to
14 say that I will never forget what happened but my mom always
15 told me that in order to move on you have to forgive and I do
16 forgive him for what he did. And I, and I'm gonna have to
17 carry this for the rest of my life but I'm glad that he was
18 found guilty because now I feel so much better, I feel
19 believed. And the way I felt while it was happening, it was
20 killing me inside. I felt like no one was gonna believe me.

21 THE COURT: Well, you can tell the Jury took about thirty
22 minutes.

23 Minor2 : Yes, sir. And I'm glad.

24 THE COURT: Well, twelve people unanimously agreed that
25 you were telling the truth.

State v. Rowell - 2011-GS-26-3762, 3763, 3765, 3766
SENTENCE OF THE COURT

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1 Minor2 : Yes, sir. But I do want to let him know
2 that I forgive him.

3 THE COURT: Well, I -- I know as to both of you this has
4 been very difficult but I do hope now that having it brought
5 to light and explain it to the Jury and they agreeing with
6 you, it will be a moment of beginning of closure and I hope
7 so.

8 MR. SPRATLIN: Your Honor, the mother of the minor
9 children would also like to give a very brief statement.

10 THE COURT: The world clearly views your testimony as
11 absolutely truthful. Okay?

12 I'll be glad to hear from the mother of the victims.

13 MR. SPRATLIN: Yes, sir. Nicole Herring for the record.

14 THE COURT: All right. Yes, ma'am.

15 MS. HERRING: Your Honor, I just want to thank everybody
16 again today. It's been a long time waiting. It has affected
17 our lives tremendously. You know, it tore our family apart.
18 As my daughter said, I have always told them you don't have to
19 forget but you have to forgive in order to move on. And I
20 think all three of us, you know, it's brought us closer
21 together. And we do forgive him but we'll never forget it.

22 And thank you again for letting us be here today.

23 THE COURT: I was very -- I know you were proud of your
24 daughters and the manner in which they handled a very
25 difficult subject.

1 MS. HERRING: I am very proud of them. They are very
2 strong.

3 THE COURT: They did wonderful under difficult
4 circumstances.

5 MS. HERRING: Thank you.

6 THE COURT: Anything further, Solicitor?

7 MR. SPRATLIN: Your Honor, the State would just ask for
8 consecutive sentences in this case. The Defendant over the
9 course of several years molested two separate individual
10 victims in this case. These are scars and caused problems
11 that these girls will have to live with for the rest of their
12 lives. I feel the Defendant should pay for each and every
13 single one of his crimes and should be sentence consecutively
14 in this case.

15 Thank you, Your Honor.

16 THE COURT: Mr. Floyd?

17 MR. FLOYD: May it please the Court? Talmadge is fifty-
18 four years old, Judge. He's a lifetime resident here in Horry
19 County. Members of his family are on the first row here. He
20 is presently married. He, as you've heard, during the course
21 of the trial, he was a firefighter. He's disabled. He
22 actually trained other firefighters. He does have some
23 medical problems, Judge, and I have a list of doctors that
24 he's currently seeing as well as medications that he's on that
25 I would like hand up for the Court.

State v. Rowell - 2011-GS-26-3762, 3763, 3765, 3766 181
SENTENCE OF THE COURT

1 THE COURT: I can accept -- you're an Officer of the
2 Court and I can -- I will accept what you tell me as being
3 truthful.

4 MR. FLOYD: Yes, sir. There are numerous doctors that
5 he's seeing with numerous problems, urology, prostrate, back
6 problems, which was the start of the disability that he's on.
7 He's also been under psychiatric care since this has taken
8 place.

9 Judge, we ask for what leniency and mercy you can give.
10 These are serious charges as you're aware of. And he is
11 fifty-four years of age.

12 Thank you.

13 THE COURT: Is there anybody who wishes to speak on his
14 behalf?

15 MR. FLOYD: I don't think so, Judge. I think they're
16 pretty upset right now.

17 THE COURT: All right. Anything you care to tell me, Mr.
18 Defendant?

19 MR. ROWELL: Your Honor, this has been hard on everybody
20 but I still say I did not do this to these girls; I didn't.

21 THE COURT: I'm confused. You saying that but I heard
22 you confess.

23 MR. ROWELL: I understand ---

24 THE COURT: And you're standing there telling me you
25 didn't do it but I heard you ---

State v. Rowell - 2011-GS-26-3762, 3763, 3765, 3766 182
SENTENCE OF THE COURT

1 MR. ROWELL: I understand you heard that; I understand
2 that. But I have a reason for that.

3 THE COURT: I find it absolutely amazing that you
4 standing there taking that position with, first, you testify
5 that you did it. These two girls under difficult
6 circumstances testified that you did it. Twelve disinterested
7 citizens of Horry County took less than forty-five minutes to
8 unanimously say you did. And you're standing there telling
9 you didn't. I'm amazed. But that's your position and you're
10 entitled to it.

11 What else do you care to tell me?

12 MR. ROWELL: Your Honor, I -- I know it's gonna be a
13 burden on my momma and daddy because they're -- they're not in
14 good health. I, myself, am not in good health. Since I've --
15 I'm having a nervous breakdown, Your Honor.

16 THE COURT: Hand me the verdict form, please, Heather.
17 Anything further?

18 MR. ROWELL: I just -- I do want to be able to go to some
19 kind of mental hospital or doctor; I do need some help, if you
20 would find it ---

21 THE COURT: Anything further?

22 MR. ROWELL: No, sir.

23 THE COURT: All right. You may be seated.

24 Mr. Floyd, anything further?

25 MR. FLOYD: No, sir.

State v. Rowell - 2011-GS-26-3762, 3763, 3765, 3766 183
SENTENCE OF THE COURT

1 THE COURT: The record in this case and the evidence
2 produced in my view was totally adequate for the Jury to find
3 you guilty on all four charges beyond a reasonable doubt. Not
4 only did you confess to it, but those two children who
5 suffered the indignities inflicted by you upon them testified
6 truthfully and openly under difficult circumstances. You by
7 your notorious conduct affected the lives of those two lovely
8 young girls for the rest of their lives. Unquestionably, you
9 did it knowingly, you did it deliberately and I am absolutely
10 amazed that you still stand here today in their presence
11 confessing -- expressing your total innocence in the light of
12 overwhelming testimony. In the thirty years I've been on the
13 bench, I've tried many criminal sexual conduct with a minor
14 and in all those years, I've never seen a stronger case
15 presented by the State of South Carolina than what I've heard
16 yesterday and today. Absolutely no excuse for a man of your
17 intelligence, standing in the community, to inflict such a
18 horrible injury upon two innocent young children of the age of
19 eleven and thirteen.

20 This sentence is concurrent as to all four charges. It
21 is the sentence and judgment of this Court that you be
22 confined in the State Penitentiary for a period of fifteen
23 years. That as to each charge and as to each victim, all of
24 which is concurrent. This Court is now in recess.

25 Thank you.

State v. Rowell - 2011-GS-26-3762, 3763, 3765, 3766
SENTENCE OF THE COURT

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1 MR. FLOYD: Thank you, Judge.

2 MR. SPRATLIN: Thank you, Your Honor.

3 (RECESS - 11:54 A.M.)

4 *****OFF THE RECORD*****

5 November 6, 2013

6 (On the Record - 10:20 A.M.)

7 THE COURT: Let the record reflect that we are here
8 involving an issue regarding the four cases tried yesterday,
9 State of South Carolina versus Talmadge LeRoy Rowell. Let the
10 record further reflect that the Solicitor who handled the case
11 is present as is Defense attorney, Tom Floyd. Mr. Floyd
12 waives the presence of the Defendant.

13 The verdict form unfortunately had a scrivener's error in
14 that instead of using Talmadge LeRoy Rowell, the four verdict
15 forms used Talmadge LeRoy Smith. In the publishing of the
16 verdicts the correct name of Talmadge LeRoy Rowell was used by
17 the Clerk of Court with the exception of the first charge
18 regarding Minor 2 and the name was unfortunately
19 published as Smith. The rest of them were published
20 correctly. The captions of the verdict form are correct and
21 this is obviously a scrivener's error but the record will
22 reflect that in reading the verdicts, the Clerk of Court said
23 in all four cases, the State of South Carolina versus Talmadge
24 LeRoy Rowell and other than the first verdict, the correct
25 name was published in the rendition of the verdict forms of

State v. Rowell - 2011-GS-26-3762, 3763, 3765, 3766
SENTENCE OF THE COURT

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1 guilty.

2 My Law Clerk missed the scrivener's error, I missed it
3 and both attorneys missed it when I showed them the verdict
4 prior to presentation to the Jury.

5 MR. SPRATLIN: Yes, sir.

6 THE COURT: Do you have any further comments on that?

7 MR. SPRATLIN: No, sir, Your Honor, just for the record,
8 if I could put the indictment numbers at issue here.

9 THE COURT: Please.

10 MR. SPRATLIN: Indictments number 2011-GS-26-3762, 3763,
11 3765, and 3766, State of South Carolina, County of Horry
12 versus Talmadge LeRoy Rowell.

13 THE COURT: The Clerk of Court gave the correct
14 Defendant's name in all of the verdict forms except the
15 verdict form involving 3763 which was the criminal sexual
16 conduct verdict. The rest of the other three were published
17 correctly.

18 Mr. Floyd, do you have anything to say to that, sir?

19 MR. FLOYD: No, sir.

20 THE COURT: Everybody understands it was obviously a
21 scrivener's error; can't we agree with that?

22 MR. SPRATLIN: Yes, sir.

23 MR. FLOYD: Yes, sir.

24 THE COURT: And the Clerk of Court, you have told me that
25 the record will reflect that in publishing the verdicts of all

State v. Rowell - 2011-GS-26-3762, 3763, 3765, 3766
SENTENCE OF THE COURT

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1 four. In each instance you -- and the record will reflect
2 this that you said the State of South Carolina versus Talmadge
3 LeRoy Rowell; can you assert to that too, Madame Clerk?

4 CLERK: Yes, sir.

5 THE COURT: All right. Then I, with permission of
6 counsel, I am substituting Smith for Rowell and giving my
7 initials to it.

8 MR. SPRATLIN: Yes, sir.

9 THE COURT: Incidentally, by both of you, the case was
10 professionally tried by the Solicitor and the Defendant and I
11 thank both of you for a case well tried.

12 MR. FLOYD: Yes, sir.

13 MR. SPRATLIN: Thank you, Your Honor.

14 THE COURT: The record will reflect that Mr. Floyd
15 accepts the fact that the Defendant is not here for the
16 correction of the scrivener's error.

17 **(ADJOURNED - 10:24 A.M.)**

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State v. Rowell - 2011-GS-26-3762, 3763, 3765, 3766
CERTIFICATE OF COURT REPORTER

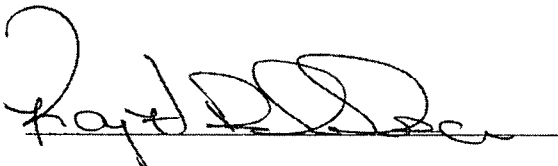
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C E R T I F I C A T E

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 versus Talmadge LeRoy Rowell, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on November 4-6, 2013.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson
Official Court Reporter

February 20, 2014.

WITNESSES

Todd Cox Horry County Police Department

C
H

DOCKET NO. 2011-GS-26-03702

**The State of South Carolina
County of Horry**

Nancy Livesay

11H03160

COURT OF GENERAL SESSIONS

October, 2011 TERM

ARREST WARRANT NUMBER

M509485

CDR: 0396 16-03-0655(B)

DOA:

THE STATE

vs.

Talmadge Leroy Rowell
W/M

ACTION OF GRAND JURY

TRUE BILL

Brandon Cannon

Foreperson of Grand Jury

Date:

OCT 27 2011

ATTORNEY: Floyd, W. Thomas

VERDICT

Indictment for

**CRIMINAL SEXUAL CONDUCT WITH A
MINOR SECOND DEGREE**

ORIGINAL

Gregory Hembree, Solicitor

Foreperson of Petit Jury

Date:

CLERK OF COURT
HORRY COUNTY
Melanie Huggins-Ward

NOV - 6 PM 12:30

CERTIFIED COPY

MELANIE HUGGINS-WARD
CLERK OF COURT

2013 NOV - 6 AM 11:23

FILED
HORRY COUNTY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT

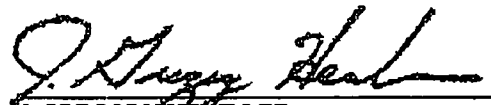
At a Court of General Sessions, convened on October 27, 2011, the Grand Jurors of Horry County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR
SECOND DEGREE

CDR: 0396 16-03-0655(B)

That Talmadge Leroy Rowell did in Horry County, State of South Carolina, between January 1, 2009, and June 27, 2011, 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 or less but who was at least eleven (11) years of age, to wit: B.E., whose date of birth is _____, in violation of Section 16-3-655(B) [formerly Section 16-3-655(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.


 J. GREGORY HEMBREE
 FIFTEENTH CIRCUIT SOLICITOR

WITNESSES
Todd Co. Horry County Police Department

ARREST WARRANT NUMBER
M509486
CDR: 0396 16-03-0655(B)
DOA: 7/27/2011

ACTION OF GRAND JURY
TRUE BILL

Brandon Cannon
Foreperson of Grand Jury
Date: OCT 27 2011

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011-GS-26-03703

The State of South Carolina
County of Horry

Nancy Livesay 11H03160

COURT OF GENERAL SESSIONS

October, 2011 TERM

THE STATE

vs.

Talmadge Leroy Rowell
W/M

ATTORNEY: Floyd, W. Thomas

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR SECOND DEGREE

ORIGINAL

Gregory Hembree, Solicitor

CLERK OF COURT
HORRY COUNTY

NOV - 6 PM 12:30

CERTIFIED COPY

FILED
HORRY COUNTY
2013 NOV - 6 AM 11:23
MELANIE HUGHES-WARD
CLERK OF COURT

WITNESSES

Todd Cox, Horry County Police Department

G

DOCKET NO. 2011-GS-26-03765

The State of South Carolina
County of Horry

Nancy Lylesay

11H03160

COURT OF GENERAL SESSIONS

October, 2011 TERM

ARREST WARRANT NUMBER

2011GS2603765

CDR: 2468 16-15-0140

DOA. 7/27/2011

THE STATE

vs.

Talmadge Leroy Rowell
W/ M

ACTION OF GRAND JURY

TRUE BILL

Brenda Lewis
Foreperson of Grand Jury

Date

OCT 27 2011

ATTORNEY: Floyd, W. Thomas

VERDICT

Indictment for

LEWD ACT ON A MINOR CHILD

Clerk of Court
Horry County

ORIGINAL

Gregory Hembree, Solicitor

2011 NOV -6 PM 12:30

CERTIFIED COPY

Foreperson of Petit Jury

Date:

MELANIE HUBBINS-WARD
CLERK OF COURT

2011 NOV -6 AM 11:23

FILED
HORRY COUNTY

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on October 27, 2011, the Grand Jurors of Horry County present upon their oath:

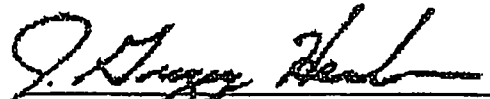
LEWD ACT ON A MINOR CHILD

EMC

CDR: 2468 16-15-0140

That Talmadge Leroy Rowell, being fifty-one (51) years of age, did in Horry County between January 1, 2010, and June 1, 2011, willfully and lewdly commit a lewd or lascivious act upon or with the body of a child, less than sixteen (16) years of age, to wit: L.E., age 14, 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 16-15-0140, 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.


J. GREGORY PEMBREE
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES
Todd Cox Horry County Police Department

ARREST WARRANT NUMBER
2011GS2603766
CDR: 2468 16-15-0140
DOA: 7/27/2011

ACTION OF GRAND JURY
TRUE BILL

Brandon Cannon
Foreperson of Grand Jury
Date: **OCT 27 2011**

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011-GS-26-03766

The State of South Carolina
County of Horry

Nancy Livesay 11H03160

COURT OF GENERAL SESSIONS
October, 2011 TERM

THE STATE

vs.

Talmadge Leroy Rowell
W/M

ATTORNEY: Floyd, W. Thomas

Indictment for

LEWD ACT ON A MINOR CHILD

ORIGINAL

J. Gregory Hembree, Solicitor

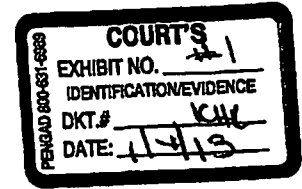
Melanie Huggins-Ward
CLERK OF COURT
HORRY COUNTY

2013 NOV -6 PM 12:30

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FILED
HORRY COUNTY
2013 NOV -6 AM 11:23
MELANIE HUGGINS-WARD
CLERK OF COURT

C



Report on Competency to Stand Trial

Name: Rowell, Talmadge

Date of Birth (Age):

Dates of Interviews: 03/05/2013 & 05/09/2013

Date of Report: 08/12/2013

Examiners: Michael D. Gassen, Psy.D. (DMH Examiner)
 Monica Wright, Psy.D. (DDSN Examiner)
 Elizabeth Whetstone, LISW-CP (second examiner on 03/05/2013)

The opinions in this report are those of the above psychologist examiners.

Referral Information

Mr. Rowell is a 54-year-old male who is charged with Criminal Sexual Conduct with a Minor – 2nd Degree (2 counts), Criminal Sexual Conduct with a Minor – 1st Degree, and Lewd Act on a Minor (3 counts). The State of South Carolina, County of Horry, Court of General Sessions issued an order to evaluate his competency to stand trial. Pursuant to this order, Mr. Rowell was seen by DMH examiners on 03/05/2013. During that interview, he reported a history of sustaining a head injury and subsequent cognitive deficits. Since it appeared possible that those deficits could adversely affect his competency, a joint evaluation with DDSN was requested. Mr. Rowell was seen again with a DDSN examiner on 05/09/2013. At the time of the most recent evaluation, Mr. Rowell was on bond and was seen at this facility on an outpatient basis.

Notification

Prior to the interviews, Mr. Rowell read aloud a form that explains he was being seen for an evaluation of his competency to stand trial, and the information he provided would be communicated to the defense counsel, the solicitor, and the judge. This information was reiterated to him by this examiner, and he did not subsequently display an understanding of the purpose of the evaluation or of the limits to confidentiality. He was therefore reminded that he is being seen for a court-ordered evaluation and that the information he provided could be shared with the court.

Sources of Information

- State of South Carolina, County of Horry, Court of General Sessions order for competency to stand trial evaluation (dated 10/11/2012)
- County of Horry Indictments and Arrest Warrants for the alleged offenses
- Horry County Police Department records for case number 11072817
- Records from Grand Strand Regional Medical Center (from 10/03/2012 to 10/04/2012)
- Records from McLeod Loris/Seacoast Hospital (from 10/05/2012 to 01/29/2013)
- Records from the South Carolina Department of Mental Health Department of Inpatient Services (DIS) Specialty Clinic (dated 07/01/2013)
- Records from Palmetto Health Richland (dated 07/30/2013)

- Records from MOFDAPS Comprehensive Behavioral Health Services (from 01/08/2013 to 03/06/2013)
- A Forensic Evaluation Service Social Work Admission Assessment, completed by Ms. Whetstone, with information provided by Gail Gassley (on 02/28/2013)
- A medical consultation with Richard Frierson, M.D. (on 08/08/2013)
- Psychological Testing: Test of Memory Malinger (on 03/05/2013)
- Clinical/Forensic interviews of Mr. Rowell on 03/05/2013 (approximately 2 hours) and 05/09/2013 (approximately 1 hour)

Background Information

The following information that is based on Mr. Rowell's self-report is limited, as he reported a lack of memory for many events from his past. Information obtained from records and other collateral sources are also summarized below to corroborate or supplement Mr. Rowell's self-report.

Family History

Mr. Rowell stated he was born in Horry County, SC, and he said he was raised by "my mom and daddy." He stated he had two brothers and three sisters. When asked to describe his childhood, he responded, "I don't remember a whole lot of the past. I have certain things I've been told. I'm trying to remember."

Mr. Rowell reported he does not know how many times he has been married, but he stated he is currently married. When asked if he has any children, he replied, "My mom and daddy told me I had three." He was also asked where he currently lives, and he responded, "I don't know." However, at another point in the interview, he stated he currently lives with his parents.

Educational History

Mr. Rowell reported he does not know how many grades he completed in school, and he added, "I know it's hard for me to tell you I don't remember, but I don't." Information provided by Gail Gassley during a telephone interview conducted by Ms. Whetstone indicates Mr. Rowell completed his GED and was never in special education classes.

Employment History

Mr. Rowell was asked about his past employment, and he replied, "They told me I was a firefighter." When asked if he had other positions, he stated, "I don't know." He indicated he currently receives disability benefits but denied knowing the diagnosis or condition that qualifies him for that assistance. Gail Gassley informed Ms. Whetstone that Mr. Rowell receives disability benefits due to a back injury.

SD

Medical History

Mr. Rowell was asked if he has any medical conditions or current health concerns, and he replied, "Yes, I have heart problems and back [problems] and see some doctor . . . a psychiatrist." On questioning about whether he has ever had a seizure, he stated, "I think so . . . my brother and momma and them told me I have seizures." Mr. Rowell said he has also been told that he sustained a head injury that required he be taken to the hospital by helicopter.

According to records from Grand Strand Regional Medical Center (from 10/03/2012 to 10/04/2012), Mr. Rowell was admitted to that facility due to "altered mental status and fall." He presented as "mildly confused" and disoriented, and his girlfriend provided staff with his personal information. She reported that he had been experiencing confusion prior to that date. A CT scan his brain during that admission revealed "no acute intracranial pathology," and an MRI of his brain "was within normal limits for age." On discharge, he was diagnosed with "altered mental status likely secondary to transient global amnesia – improving."

Records from McLeod Loris/Seacoast Hospital (from 10/05/2012 to 01/29/2013) indicate Mr. Rowell was seen at that facility after he reportedly "fell . . . and hit left temple with porch object." His family told staff he was "having amnesia." Staff documented symptoms of dizziness, headache, weakness, altered mental status, and left temporal abrasions. A CT scan of his brain was completed on admission. The radiologist's report lists the following impressions: "1. No evidence of acute intracranial abnormality. Clinical follow up is recommended. 2. Minimal ethmoid and frontal sinus retained secretion or mucosal thickening, unchanged." A CT scan of his head on 10/08/2012 also noted there was "no sign of mass, acute hemorrhage or ischemia." On 10/29/2012, he underwent an EEG. The impression from that exam is listed as, "This is normal EEG. There is no evidence for seizure on this EEG." He was diagnosed with "transient Global Amnesia" and "minor head Injury."

According to records from the South Carolina Department of Mental Health Department of Inpatient Services (DIS) Specialty Clinic (dated 07/01/2013), Mr. Rowell underwent a neurology evaluation with Miroslav Cuturic, M.D. His score on a mini-mental status examination was 27/30. The impression from the exam is listed as, "Normal neurological exam with hx (history) of normal MRI and EEG – no structural or physiologic basis for described deficits of long term memory." Dr. Cuturic also recommended that labs ("B12, TSH, RPR & Thiamine) be completed to rule-out metabolic causes of Mr. Rowell's reported memory deficits. Records from Palmetto Health Richland (dated 07/30/2013) indicate Mr. Rowell's lab work for his vitamin B12, folate, thyroid stimulating hormone (TSH) levels and an RPR were completed on 07/30/2012. These results were reviewed by this examiner with Richard Frierson, M.D., on 08/08/2013. According to Dr. Frierson, those results were within normal limits and would not be a likely cause of memory impairment.

Substance Use History


Mr. Rowell stated he does not know if he has a history of alcohol consumption or illicit substance use. He denied abusing medications. Information provided by Gail Gassley indicates Mr. Rowell does not have a history of substance abuse. TD

Mental Health History

Mr. Rowell denied a history of receiving treatment at an inpatient psychiatric hospital, but he stated that his doctor "wants to send me to one in Conway." He reported his treating physician is Dr. Oduwole, a psychiatrist. In regards to mental illness symptoms, Mr. Rowell reported a history of hearing voices. More specifically, he stated he will often "hear people call out to me, but they're not there." He said they whisper, "T.L." He stated this occurs "maybe twice a week" and that this type of experience began "maybe a few months" ago. Mr. Rowell reported he also sees snakes, bugs, and spiders that are not actually present. He said the snakes are "big black snakes . . . as long as this table." He stated he sees the snakes two or three times per week, and he added that, on one occasion, he felt the snake "wrapped around me." He also said he feels spiders crawling on him "all the time" and sees them "on the wall." When asked about medications, he presented pill bottles to these examiners. He stated he is taking busiprone "for depression," trazodone "to help me sleep," ranitidine "for my stomach," and mirtazapine "to help me sleep too." He said he is taking generic acetamenophin "for pain," and aspirin "for blood thinner." He indicated he is also taking Atenolol and risperidone, but he noted he does not know why he is taking the latter. Information provided by his sister indicates that he has seen people die during his work as a firefighter, and, on the date of his hospitalization at Grand Strand Regional Medical Center, he was talking about needing to save a child. She denied a history of Mr. Talmadge reporting or appearing to respond to hallucinations (e.g., hearing voices or seeing things not actually present).

Records were obtained from MOFDAPS Comprehensive Behavioral Health Services (from 01/08/2013 to 03/06/2013). Some of the notes are illegible, but the following is a summary of the information contained in those records about Mr. Rowell's treatment at that facility. He reported a history of memory problems for past events. Specifically, it is noted, "He is not sure he can remember anything [from] his remote past." His presentation has been considered consistent with depression, and he reported difficulties sleeping, low energy levels, concentration problems, and hearing "his name called." No visual hallucinations were reported. A history of being diagnosed with posttraumatic stress disorder and major depressive disorder, recurrent, with psychotic features is noted. He was prescribed Remeron, Risperdal, Trazodone, Cymbalta, Seroquel, and Buspar.

Current Presentation

The following information is based on observations made during both interviews with Mr. Rowell. Mr. Rowell presented as a 53-year-old Caucasian male of average height and build who appears his age. He presented for the interviews in casual attire. His grooming and hygiene were adequate, and no physical abnormalities were observed. His motor activity was within normal limits. He offered a normal amount of eye contact, and he was generally alert and attentive throughout the interviews. On tasks used to assess concentration, his performance was variable. Specifically, he presented with difficulties in completing very basic serial subtraction tasks (e.g., counting backwards from 10 to 0), but he correctly spelled his middle name forwards and backwards. His speech was of normal rate, rhythm, and volume, and, aside from occasionally displaying minor stammering, no difficulties in articulation or other language disturbances were noted. On questioning, Mr. Rowell accurately stated his name, the date, and the city and state of 

his current location. On 05/09/2013, he said he was born on August 9th, but stated he does not know the year he was born. On requesting that he guess, he replied, "1960." Mr. Rowell repeated a list of three words, but he denied recollection of any of the words after approximately five minutes had elapsed. After clues were provided, he recalled two of the words. He denied recollection of most events from his recent and remote past. He was asked to describe his mood, and he responded, "OK, I guess." His affect (i.e., outward expression of emotions), aside from occasionally being tearful, was generally normal and consistent with the content of his speech. His thought processes appeared clear and coherent with no evidence of thought disorganization. Mr. Rowell reported a history of experiencing hallucinations (e.g., hearing voices), but he did not appear to be responding to internal stimuli. He also did not voice any beliefs that would be indicative of a delusion (i.e., rigidly and irrationally held false beliefs). He denied any current suicidal or homicidal ideation or intent.

Psychological Testing

As part of the evaluation, Mr. Rowell completed a psychological test (on 03/05/2013) which is used to assess feigning of memory impairment. Although Mr. Rowell presented as though he was trying to answer questions correctly, his score was far below what is typically obtained by individuals with conditions that cause significant memory impairment (e.g., traumatic brain injury and dementia patients). Such results are indicative of an attempt to feign memory deficits.

Diagnostic Impressions

Mr. Rowell reported and presented with difficulties in comprehending simple questions, remembering most events from his past, and recalling new events and information. A review of his records, a neurology consultation, and a medical consultation reveal that there is no indication of physiological or medical issues that would account for his purported memory impairments. While there are diagnoses which involve a psychological basis for memory impairments (e.g., dissociative amnesia), the memory impairments reported and presented by Mr. Rowell are not consistent with any known diagnostic entity. As such, he was administered a test designed to assess feigning of memory impairment, and the results indicate he was attempting to feign memory deficits. Given that there is little reliable information to suggest Mr. Rowell has genuine memory impairments, no cognitive disorder or other diagnosis involving memory impairments is warranted at this time. Similarly, Mr. Rowell reported he hears voices and sees things that are not present, and his records indicate he has reported flashbacks and been diagnosed with posttraumatic stress disorder. Mr. Rowell's description of his purported hallucinatory experiences was inconsistent with symptoms experienced by individuals with genuine psychotic disorders, and there is currently little information from records or collateral contacts to suggest he has a psychotic, mood, or anxiety disorder. Therefore, no mental illness diagnosis is given at this time.

As noted above, Mr. Rowell reported and presented with unlikely memory deficits, and his description of his hallucinatory experiences was highly atypical. Psychological testing indicated he was feigning memory deficits, and records and other collateral information do not reveal indications of a clear history of psychosis or other severe mental illness symptoms. Moreover, some of the symptoms he reported to these examiners were denied by Mr. Rowell during interactions with other mental health professionals. The discrepancies between Mr. Rowell's self-report and collateral information, the implausibility of his symptoms, and psychological

testing support a diagnosis of malingering. The essential feature of malingering is the intentional production of false or grossly exaggerated psychological symptoms motivated by external incentives, which in this case would likely involve gains related to his legal situation (e.g., avoiding or delaying prosecution).

Competency to Stand Trial

During both interviews, an attempt was made to assess Mr. Rowell's understanding of the criminal legal process and his legal situation as well as his ability to assist in his own defense. On both dates, he said de does not know the names of his charges or the nature of the alleged criminal acts. On 05/09/213, he displayed an understanding of pleading *guilty* and *not guilty*, appropriate courtroom behavior, and roles of the judge, jury, defense attorney, solicitor, and witnesses. He was also able to identify potential evidence in a hypothetical criminal case. Despite providing him with the names and descriptions of his charges, approximately five minutes later, he denied recollection of his charges. When subsequently asked what he had been told about the names of his charges, he replied, "I have no idea." When asked what the examiners told him minutes before, he said, "I don't' remember; I really don't." He was then asked what he had been told about the accusations against him, and he replied, "I don't remember what you said." Given the implausibility of these reported deficits, an accurate assessment of his understanding of criminal legal proceedings, his particular legal situation, and his ability to assist in his own defense could not be completed. The interview was therefore discontinued.

As noted above, there is little evidence that Mr. Rowell has a cognitive disorder, psychotic disorder, or other mental disorder. As such, it appears unlikely he has a mental disease or defect that would render him incompetent to stand trial. While he presented as being unable to remember the names or the nature of his charges, this appeared part of his attempt to appear cognitively impaired. Indeed, there is little basis for his reported memory impairments, and psychological testing indicates he has been feigning memory deficits, rendering his self-report and presentation of memory impairments unreliable. Moreover, even if he has memory deficits, he has been able to learn and retain other information about his history others have told him (e.g., the number of children he has) as well as new information (e.g., the reasons for taking his medications). It therefore appears that, even if he has some memory deficits, he would be able to learn and retain information pertinent to his case if he so chooses. He was also able to reason about evidence that could be used in a hypothetical criminal case and interact appropriately with the examiners, suggesting he would be able to work with his attorney on his own defense. Given this information, it is opined that Mr. Rowell does *not* have a mental disease or defect that would result in a lack of capacity to understand the proceedings against him or to assist his attorney in his own defense.

Michael Gassen, Psy.D. 8/12/2013
Michael Gassen, Psy.D. Date
Chief Psychologist

MD



HORRY COUNTY POLICE DEPARTMENT

Dedicated to Providing Comprehensive, Quality Law Enforcement

Johnny E. Morgun
Chief of Police

2560 North Main Street, Suite 7 -- Conway, SC 29526 -- Tel: 843-915-5350 -- Fax: 843-248-1886

Advisement of Miranda Rights

Under the Influence?: DA
Education?: N/A
Read & Write?: Y/Y

YOU HAVE THE RIGHT TO REMAIN SILENT. ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW.

YOU HAVE THE RIGHT TO TALK WITH A LAWYER AND HAVE HIM PRESENT WITH YOU WHILE YOU ARE BEING QUESTIONED.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONING, IF YOU SO DESIRE.

IF YOU MAKE A STATEMENT OR ANSWER ANY QUESTIONS, YOU HAVE THE RIGHT TO STOP AT ANYTIME.

Do you understand your rights as I have read them to you?
Yes: TLR No: _____

Talmadge L Rowell
(Print Name)

Talmadge L Rowell
(Signature)

Case #: _____
Date / Time: 7/27/11 0030
Location: Recken Long
Witness: [Signature]



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."

August 8th, 2014

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

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