

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable J. Mark Hayes, Circuit Court Judge

RICHARD T. STRIBLING,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000153

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 Richard Todd Stribling,) 2015-GS-42-5243
7 Defendant.) July 10 - 13, 2017
8) Spartanburg, South Carolina
9
10
11 B E F O R E :
12 HONORABLE J. DERHAM COLE, JUDGE
13
14
15 A P P E A R A N C E S :
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Circuit Court Reporter

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1 (Proceedings July 10, 2017)

2 (Copy of sentence sheet in case No. 2009-GS-42-5794
3 marked Court's Exhibit No. 1.)

4 THE COURT: All right. State vs. Richard Todd
5 Stribling. Are y'all ready?

6 MS. OVERBY: Yes, sir, Your Honor, we are.

7 MR. SHEALY: Yes, sir.

8 THE COURT: Any matters we need to address prior to
9 jury selection?

10 MS. OVERBY: Yes, sir, Your Honor, if I may. May it
11 please the Court.

12 The defendant is charged in Indictment 15-5243 with
13 criminal sexual conduct with a minor in the first degree.
14 That's under subsection 16-3-655(A)(2).

15 The allegations in this case involve a sexual assault
16 of the defendant's minor biological daughter. She was 15
17 years of age at the time of the incident.

18 The penalty for that provision is between 10 to 30
19 years.

20 I first would like to place on the record that on
21 June 29th the state did extend a plea offer to the
22 defendant to recommend a sentence of 30 years suspended
23 upon the service of 20 years followed by five years
24 probation.

25 This offer was conveyed to counsel on that day. It

1 has since been conveyed to the defendant. We were at a
2 hearing before Judge Hayes last Friday, July the 7th, in
3 which we, again, ensured that the defendant was conveyed
4 that offer. It was rejected. I just wanted to inform the
5 Court of that and place on the record that an offer was
6 extended. It was rejected on the record.

7 If I may move on to motions, Your Honor --

8 THE COURT: Well, let's talk about that for just a
9 minute.

10 MS. OVERBY: Okay.

11 THE COURT: Mr. Shealy, you heard what Ms. Overby told
12 me about the plea offer she made.

13 MR. SHEALY: I did, Your Honor.

14 THE COURT: Is that accurately stated?

15 MR. SHEALY: It is, Your Honor.

16 THE COURT: Did you convey that to Mr. Stribling?

17 MR. SHEALY: I did. I received the offer on
18 June 29th and went across to the annex and met with him on
19 June 29th with that offer.

20 I also met with him several times last week to discuss
21 the offer, what the -- the penalties that he'd be looking
22 at at trial, as well as the likelihood of what those
23 penalties would be after trial, as well as what he'd be
24 looking at at a plea.

25 We brought him over in front of Judge Hayes on Friday,

1 last Friday, and he told him -- Judge Hayes -- that he did
2 not want to accept that offer.

3 It's my understanding, and he's conveyed to me today,
4 that he wants to have a trial. And so that's what we're
5 here for.

6 THE COURT: All right. Mr. Stribling, did you hear
7 what Ms. Overby told me?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Did you hear what Mr. Shealy told me?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand? Is what they've stated
12 accurate?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Do you understand that any
15 time that you're charged with a crime you've got
16 basically -- well, you've got a number of choices.

17 You can plead not guilty and have a jury determine
18 whether or not you're guilty, or you can plead guilty. You
19 can plead no contest; you can plead guilty pursuant to
20 Alford vs. North Carolina.

21 Did you discuss those options with Mr. Shealy?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand that the state has made
24 an offer to you? Mr. Shealy has conveyed that offer to
25 you. Ms. Oglesby tells me and Mr. Shealy tells me that you

1 rejected that offer. Is that true?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand that once this case
4 begins with me that there won't be any more offers to be
5 accepted by the Court?

6 Even if the state wants to make another offer, I
7 decide whether or not I wish to accept it. And if I don't
8 want to accept it, it won't be accepted, the point being is
9 if you want to take advantage of anything the state has to
10 offer you have to do that before this trial begins. Once
11 the trials begins all of those options are off the table.
12 It's under my control then, and of course the jury.

13 If the jury finds you not guilty that's the end of it.
14 If the jury finds you guilty, I decide the sentence. No
15 recommendations need to be made. Do you understand?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Understanding that, do you
18 still wish to reject the state's offer, or do you need to
19 talk to Mr. Shealy about it some more?

20 THE DEFENDANT: I reject it.

21 THE COURT: You reject the offer.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. All right. What about the motions?

24 MS. OVERBY: Thank you, Your Honor.

25 First, the state's filed a motion to exclude any

1 third-party guilt or any reference to it by the defense
2 during the trial. This somewhat goes hand in hand with the
3 state's next motion, which is pursuant to the rape shield
4 statute.

5 But, basically, the state is moving that there be no
6 reference, questioning, statement made by counsel alleging
7 that any other person was the perpetrator of the offense
8 that the accused is charged with.

9 I don't -- I don't imagine that we will envision that,
10 but I just want to confirm compliance that there won't any
11 third-party-guilt questioning.

12 THE COURT: All right. Mr. Shealy, what about
13 third-party guilt?

14 MR. SHEALY: Well, Judge, obviously, we deny the
15 charge, and so somebody, certainly somebody else, did this,
16 and we would argue that somebody else did this if, in fact,
17 a criminal act occurred.

18 We do not intend to point to any particular individual
19 as having done this. I believe that that's what this
20 third-party-guilt standard is. If we're going to argue
21 that person A committed the crime, then we would have to be
22 able to show some kind of reasonable belief that person A
23 did it.

24 But I believe it does not abridge our ability to say,
25 well, somebody else did these things if, in fact, these

1 things were done, because we have pled not guilty. .
2 Obviously, it's our position that somebody else must have
3 done those things if, in fact, they were done.

4 THE COURT: Okay.

5 MS. OVERBY: Just to go into the facts a little bit
6 further, Your Honor, this case involves the pregnancy of
7 this MINOR. If -- maybe I'm not understanding what
8 Mr. Shealy is arguing. But if he's attempting to suggest
9 that some other person pregated this MINOR that flies
10 directly in the face of the rape shield law.

11 I have not been notified of any offer of proof that
12 there was any other source of that pregnancy as the law
13 would require. That would require an in-camera hearing
14 regarding that evidence, and I haven't been served with
15 anything.

16 THE COURT: He's not intending to offer any evidence.
17 He's just saying -- it's not that complicated. What he's
18 saying is I didn't do it and therefore if it occurred
19 somebody else must have. He's not trying to prove that
20 somebody else did it.

21 MS. OVERBY: Okay. I think I understand what you're
22 saying. I mean, if the defense is just to poke holes at
23 the state's case, that's one thing, but if he's suggesting
24 that there's some another person anonymous or X-Y-Z person
25 who this then he's --

1 THE COURT: well, that's what he's suggesting, because
2 he's suggesting his client did not do it. So he's
3 suggesting that if his client did not do it and it did, in
4 fact, happen, then it must have been someone else who did
5 it. He's not trying to identify someone else.

6 MS. OVERBY: Right. I understand that. I understand
7 he's not saying that the source of the pregnancy is some
8 other named person or -- but to say that he didn't -- he
9 didn't impregnate her is suggesting that someone else did.

10 THE COURT: well, that would have to be the case if
11 she were impregnated.

12 MS. OVERBY: Okay. I -- and of course the state
13 intends to offer evidence that she was impregnated.

14 THE COURT: I understand that's the state's evidence,
15 but he denies it. You still have to prove it.

16 MS. OVERBY: Okay. I will, Your Honor.

17 THE COURT: Okay. I think we understand each other on
18 third-party guilt.

19 MS. OVERBY: Okay. And also I did -- I filed a motion
20 pursuant to State vs. Boyder regarding any prior false
21 allegations of a sexual assault made by this MINOR. The
22 state is aware of none. To this date still not aware of
23 any.

24 So I don't think -- I don't anticipate that being an
25 issue, but I'm just confirming that there will be no

1 questioning of this MINOR or other -- any other witness
2 about any supposed false allegation of sexual abuse that
3 doesn't exist.

4 MR. SHEALY: I don't know of any, Judge. I mean, I
5 do -- I've done this before. I know that I'm not supposed
6 to ask about things that don't exist.

7 THE COURT: Okay.

8 MS. OVERBY: The state also filed --

9 THE COURT: Well, we're in agreement on that one too.

10 MS. OVERBY: Okay. Your Honor, the state also filed a
11 motion back in the beginning of June to produce expert
12 witness information.

13 It's my understanding based on conversations with
14 Mr. Shealy that while the defense has consulted with an ex
15 parte witness regarding the D.N.A. results in this case
16 they do not intend to offer an expert. I just want to
17 confirm that on the record as well. There was no
18 information regarding any expert witness that's been
19 provided to me.

20 MR. SHEALY: We do not intend to call any expert
21 witness.

22 THE COURT: Okay. We're all in agreement.

23 MS. OVERBY: And, lastly, Your Honor, any defense
24 motions regarding quashing the indictment, I would request
25 that those be heard before the jury is sworn. That's

1 pursuant to statute 17-19-90. I don't know if the defense
2 intends to ask that those be heard, but I would ask that
3 any motions to quash the indictment be heard now.

4 MR. SHEALY: I think that the law is pretty clear that
5 I would have to make those arguments prior to the jury
6 being sworn.

7 I don't have any arguments for this particular
8 indictment because it appears to allege the things it needs
9 to allege.

10 THE COURT: All right. We're in agreement.

11 MS. OVERBY: That concludes the state's motions.

12 I do believe we have one motion the defense would like
13 to present regarding -- we do intend to introduce evidence
14 of the defendant's prior conviction for indecent exposure.

15 An element of this offense, criminal sexual conduct
16 with a minor in the first degree, requires that the state
17 prove beyond a reasonable doubt that the defendant either
18 pled or had been -- or pled to a charge that required him
19 to register or was otherwise ordered to be included on the
20 sex offender registry pursuant to 23-4 -- 23-3-430(D).
21 It -- just putting everyone on notice the state does intend
22 to elicit that testimony.

23 THE COURT: And the state's position is that he has
24 been convicted of a crime. He has been convicted of a
25 crime that is set forth in Section 23-3-430(C), and further

1 that he was ordered to be placed on the sex offender
2 registry by the Court pursuant to 23-3-430-(D).

3 MS. OVERBY: One thing I want, just want, to clarify,
4 Your Honor. The C.S.C. with a minor statute says that the
5 person either be convicted of an offense listed in
6 subsection (C) or has been ordered to be included in the
7 sex offender registry pursuant to subsection (D). I
8 believe you said "and". I just want to clarify.

9 The state's position is he has been convicted of an
10 offense listed in 23-3-430(C), which is indecent exposure.

11 THE COURT: So you're saying the Court didn't order it
12 pursuant to subsection (D) also?

13 MS. OVERBY: The sentencing sheet that Your Honor is
14 referencing, I believe all it says is must register as a
15 sex offender in the bottom --

16 THE COURT: Right.

17 MS. OVERBY: -- right-hand corner of the indecent
18 exposure indictment.

19 THE COURT: Well, that's an order, isn't it?

20 MS. OVERBY: It is an order. I just wanted to clarify
21 that we're talking about statutory language of what's
22 required from his prior conviction. It's not that it -- it
23 be pursuant to subsection (C) and (D). It's "or".

24 THE COURT: Well, I know that.

25 MS. OVERBY: Okay.

1 THE COURT: I'm saying you take the position that
2 he -- that -- that both are satisfied.

3 MS. OVERBY: That's correct, but I don't -- I don't
4 think they both have to be satisfied but I take the
5 position --

6 THE COURT: It requires one or the other. But in this
7 case you contend it was two both.

8 MS. OVERBY: Yes, sir, Your Honor.

9 THE COURT: Right.
10 Okay. Mr. Shealy.

11 MR. SHEALY: Well, I believe that they intend to offer
12 that proof. I'm sorry. I was a little confused as to the
13 conversation we were having.

14 THE COURT: What were you confused about?

15 MR. SHEALY: I was confused as to if the state is
16 picking one of those two causes --

17 THE COURT: No. They're not.

18 MR. SHEALY: -- to --

19 THE COURT: No. They're not.

20 MR. SHEALY: I was going to move to strike those.

21 THE COURT: No. They're not.

22 The indictment alleges or, but I understood, because
23 I've seen the sentencing sheet and the indictment, that
24 they contend that both are satisfied. Both are not
25 required to be proven under the law. One or the other will

1 suffice. But in this case they contend both had been
2 satisfied and intend to show that.

3 MR. SHEALY: Yes, sir. We have argued at various
4 times, I believe, that there's been some discussion about
5 how they would go about proving that prior offense.

6 THE COURT: Well, let's find out. Let's find out how
7 she's going to prove that.

8 How are you going to prove that?

9 MS. OVERBY: I intend to call the clerk of court
10 record and use the certified conviction that's been -- that
11 we all reviewed regarding that indictment for indecent
12 exposure.

13 THE COURT: Do you intend to offer just the sentencing
14 sheet itself?

15 MS. OVERBY: I mean, I offer the -- I believe the
16 indictment and the sentencing sheet are the order of the
17 court. I mean, they're incorporated. Whenever someone
18 pleads guilty to an offense the indictment and the
19 sentencing sheet are incorporated together.

20 THE COURT: All right. So doesn't the sentencing
21 sheet have all of the information that's set forth in the
22 indictment that's relevant to your proof?

23 MS. OVERBY: It does, Your Honor. I mean, the only
24 thing -- the only thing that differs in -- would be that
25 the indictment lists the elements of the offense and

1 your -- and for my purposes that need not be proven in this
2 case by the state. I need not prove the elements of the
3 offense on indecent exposure, just that --

4 THE COURT: So you're just going to be offering the
5 sentencing sheet?

6 MS. OVERBY: Yes, sir.

7 THE COURT: All right. Mr. Shealy, she's going to
8 offer the sentencing sheet.

9 MR. SHEALY: Yes, sir. I believe that we've already
10 redacted out the sentencing information from that
11 sentencing sheet. I believe that's what would be used when
12 they endeavor to prove that prior conviction.

13 THE COURT: All right. Let me -- let me have y'all
14 look at that sheet and see if that's -- you're satisfied
15 with it.

16 (Bench conference held off the record.)

17 MR. SHEALY: I've got a couple of other motions,
18 Judge.

19 Judge, there is discussion throughout the case about a
20 pistol and a bullet. The incident where the pistol is
21 discussed does not have anything to do with the rape
22 allegation. It was ultimately -- a pistol was seized from
23 the property where my client had lived at some point in the
24 past. There was also a bullet recovered from the alleged
25 MINOR.

1 Now, again, nowhere in there does she say that he
2 threatened her with a pistol. I think she says that he had
3 threatened to kill himself. She said don't do that, and he
4 unloaded the pistol and kept one of the bullets.

5 I don't see how any of that would be relevant that
6 there's a -- in this case there's a pistol and a bullet.
7 My understanding is the incident with where the pistol and
8 the bullet came up is an incident where my client allegedly
9 had threatened to kill himself. The alleged MINOR said
10 don't do that, unloaded the pistol. He agreed. He
11 unloaded the pistol. She got one of the bullets. I think
12 she actually kept the other bullets but returned those
13 either to him or to the house. And that bullet is
14 recovered from her.

15 I don't know how that's relevant to anything. Again,
16 it has no bearing on the alleged sexual acts in this case.
17 There's no allegation that he used a pistol, threatened her
18 at any point. And, again, there's a -- a bullet certainly
19 is not relevant to any kind of alleged sexual act. Thank
20 you.

21 THE COURT: Ms. Overby.

22 MS. OVERBY: Your Honor, there wasn't -- the pistol
23 itself was recovered from a flower pot outside of the
24 Woodruff residence.

25 The MINOR will testify that during the few-weeks stay

1 she was with her father he took her to Myrtle Beach.
2 During that trip to Myrtle Beach he brought a gun with him
3 and he did threaten to use it on himself while in Myrtle
4 Beach.

5 She will also -- she will testify that she talked him
6 out of it and unloaded the gun. But apparently she kept
7 one of the bullets in her wallet. That's where this bullet
8 was recovered, from the girl's wallet.

9 She will testify that he also threatened to use the
10 gun on her in Myrtle Beach. Now, whether it was that
11 pistol in the flower pot, I -- I don't think she'll be able
12 to say that, whether the pistol itself that was recovered
13 from his residence is the one she's talking about. She
14 won't be able to say that, but she will be able to say he
15 went to Myrtle Beach, brought a gun and threatened me.

16 THE COURT: And when was that in relation to the
17 events alleged in the indictment?

18 MS. OVERBY: Regarding the timeframe, Your Honor, the
19 MINOR came to stay with the defendant around Valentine's
20 Day of 2015.

21 The allegations began about one and a half to two
22 weeks after she arrived in South Carolina, is when the
23 sexual acts began.

24 They went to Myrtle Beach a couple of weeks before the
25 report to law enforcement was made. The law enforcement

1 report was made April the 3rd of 2015. So a few -- a few
2 weeks before the report to law enforcement is when they
3 went to Myrtle Beach for a few days.

4 And then she went to stay with a maternal aunt for
5 about a week or a week and a half before her mother came to
6 get her in South Carolina and reported this to law
7 enforcement on April the 3rd. So they went to Myrtle
8 Beach, I guess, sometime around late March.

9 THE COURT: All right. And what does that have to do
10 with the allegations here?

11 MS. OVERBY: The -- the -- the fact that -- well,
12 she'll maintain that this was a continuing pattern of
13 sexual conduct that occurred both in Spartanburg and Myrtle
14 Beach. But she will also say that while there he continued
15 if she told anyone about what happened that he would kill
16 her, is what she says.

17 THE COURT: Okay.

18 MS. OVERBY: So she -- she maintains he verbalized
19 those threats to her after the allegations had begun.

20 THE COURT: Okay. I note your objection, Mr. Shealy.
21 But assuming that testimony is rendered, then that would
22 make it admissible or relevant.

23 MR. SHEALY: Thank you, Your Honor.

24 We have -- I've got a motion to suppress.

25 There are some photos in this case. There was an

1 abortion. There's fetal tissue. There are some photos
2 that are very graphic of separation of the fetus into -- by
3 Dr. Wren.

4 I don't know that the state intends to elicit those
5 photos, but I would make it -- I would move to suppress
6 them, again, being unfairly prejudicial. It would, quite
7 frankly, play on the passions of the jury.

8 THE COURT: Okay. And have -- have y'all not shared
9 whatever it is you want to introduce during the trial?

10 MS. OVERBY: I haven't -- I have not, but that has
11 been provided to him. But, yes, I do intend to introduce
12 the jar of the fetal tissue and the photos that were taken
13 during the separation of the fetal tissue by the
14 pathologist.

15 I'm going to use those to explain where all of this
16 material went, what was done to it and the accompanying
17 chain of custody with it. So I do intend to offer those
18 photos.

19 I don't think that they are unduly prejudicial and
20 graphic. They are directly relevant to the procedure that
21 was performed in this case and what was done to this
22 tissue.

23 THE COURT: Okay. Well, let me see the photos.

24 MS. OVERBY: Okay. There are several groups of them,
25 Your Honor.

1 THE COURT: Show -- show Mr. Shealy the ones you want
2 to introduce and then I'll look at it.

3 MS. OVERBY: Okay.

4 (Pause.)

5 MS. OVERBY: Would Your Honor like to see these or
6 would you -- I mean, I'm going to mark them at some point.
7 I have not yet. But the photos that Mr. Shealy is
8 objecting to seems to be only the ones that came from
9 the -- from what Dr. Wren, the pathologist in Spartanburg,
10 did to the items before it was sent to SLED.

11 Basically, he took the fetal tissue from a jar, placed
12 it onto a metal container as depicted in this picture. And
13 he is attempting to spread the fetal tissue and separate
14 what belongs to the mother and what belongs to the fetus
15 before this tissue was submitted to SLED for analysis.

16 They -- I mean, they're directly relevant to explain
17 what he did with them, when he separated them. He then
18 further jarred the material into two different containers,
19 container A and container B, which were ultimately
20 submitted, along with the chain of custody, before they
21 were eventually put on a slide to be analyzed.

22 I mean, they -- they show exactly what Dr. Wren did
23 with it and I -- I don't see -- really can't see
24 everything, just the material. I don't think -- to the
25 naked eye you wouldn't know what it is anyway.

1 MR. SHEALY: Except for it's a mass of bloody tissue,
2 Your Honor, if we may approach with them.

3 (Bench conference held off the record.)

4 THE COURT: We will be at ease for ten minutes.

5 (Whereupon, a recess was taken.)

6 (Photographs marked State's Exhibits 1 through 7 for
7 Identification; one paraffin block marked State's Exhibit
8 No. 8 for Identification; photographs marked State's
9 Exhibits Nos. 9 through 31 for Identification; photograph
10 marked Court's Exhibit No. 2.)

11 THE COURT: All right. Any matters we need to address
12 before the jury panel is brought around?

13 MR. SHEALY: Judge, I think we were -- whenever we
14 broke for lunch we were talking about some photos. I
15 believe the state has decided at this point at least not to
16 enter those photos. So I think that that motion is moot,
17 at least at this point.

18 THE COURT: Okay.

19 MR. SHEALY: The only other issue that I had, Judge,
20 is my client was served with a search warrant back on
21 April 17th. Judge, I'm going to hand up the relevant part
22 of the indictment.

23 It would be our position -- we would request that his
24 D.N.A. standard be suppressed.

25 Judge, whenever you're getting nontestimonial evidence

1 you have to comply with the statute 17-13-140, as well as
2 Schmerber and Bacus cases. Part of that requires that the
3 retrieval of the D.N.A. be in the least intrusive manner
4 possible. Judge, if I may hand up, I believe the state
5 already has it.

6 THE COURT: How was the standard obtained in this
7 case?

8 MR. SHEALY: Judge, the state got a search warrant.
9 They went, I believe, it was to Kirkland Correctional and
10 retrieved a buccal swab.

11 They take a, or they took, my understanding is, a
12 Q-tip that was in paper or plastic. They opened that Q-tip
13 with a glove. They take that toothpick and rub it on the
14 inside of my client's cheek or rubbed it on the inside of
15 my client's cheek.

16 So it'd our position that that was not the least
17 intrusive manner possible because his D.N.A. was already in
18 CODIS.

19 I understand that SLED requested that they get that
20 buccal swab, but, unfortunately, I mean, SLED doesn't drive
21 that particular train. The statutes and the cases do.

22 And so, Judge, it would our position that they failed
23 to comply with 17-13-140. And, again, I can hand up the
24 relevant portion of the indictment -- or not the
25 indictment -- excuse me -- the search warrant, Judge, if I

1 may approach. They actually retrieved it from Regional --
2 excuse me -- Spartanburg Regional.

3 THE COURT: Is there some other method that's less
4 intrusive than the buccal swab?

5 MR. SHEALY: Well, Judge, it would be our position
6 that it would be less intrusive for them to have pulled it
7 out of the CODIS system.

8 THE COURT: In other words, you're saying a less
9 intrusive method would have been to use one that had
10 already been obtained previously.

11 MR. SHEALY: Yes, sir.

12 THE COURT: Okay. Ms. Overby.

13 MS. OVERBY: May it please the Court.

14 This -- this sample was collected pursuant to a valid
15 search warrant. It lays out the probable cause for the
16 collection of it in the affidavit portion of the search
17 warrant. It's a valid search warrant and the collection --
18 there are two -- was proper as well.

19 I mean, Judge, just to say that there was possibly an
20 easier way to have gotten it isn't necessarily more -- it's
21 nonintrusive.

22 SLED did have a conversation with the investigator,
23 Tracy Moss, in this case. They -- during the collection of
24 evidence in this case. And they advised her that -- that
25 they wouldn't be able to use what was in CODIS and that she

1 needed to get a new sample, and that's what she did.

2 MR. SHEALY: We would, again, just say that they
3 should have gotten it through CODIS.

4 THE COURT: All right. Well, it appears to me that
5 the sample was taken appropriately pursuant to 17-13-140
6 and the relevant cases that have interpreted that statute
7 in this context; and therefore your motion to suppress is
8 denied.

9 MR. SHEALY: Thank you, Your Honor.

10 Just for the purposes of the record, in this case a
11 number of cellular phones were seized. I don't believe
12 that there was any analysis done on those cell phones.

13 I don't have any information from Lindsay McGraw who
14 does their cell phone examinations.

15 I also wanted to put on the record that apparently
16 some facebook information was retrieved by a search
17 warrant. Again, I don't have that, but I've asked the
18 solicitor about it, and she said there wasn't anything
19 between my client and the MINOR so there was no reason why
20 I would need it, I believe. So that would be for the
21 purposes of the record.

22 I do have information that stuff was taken, but it was
23 either not analyzed or not relevant, and that's why it was
24 not given to me. So that's what I would -- I wanted to
25 place that on the record.

1 MS. OVERBY: I want to clarify just two things, Your
2 Honor.

3 There was -- the MINOR's cell phone was taken and it
4 was analyzed. And there were text messages. Nothing
5 between the defendant and the MINOR I just wanted to
6 make sure that he did receive the records. I'm going to
7 look through my affidavits and discovery to make sure that
8 this evidence was provided. I believe they were.

9 THE COURT: What records were?

10 MS. OVERBY: The phone records from the MINOR's phone
11 which -- I thought I understood him to say he didn't have
12 any, and there are some, and I believe they were provided.

13 THE COURT: Well, is there anything in those records
14 that's relevant to this case?

15 MS. OVERBY: Your Honor, the bulk of it is
16 conversations between the MINOR and her mother during the
17 course of her stay with her father. I don't -- I think
18 maybe she texted -- sent some text messages to a friend
19 back in Alabama, but nothing between the MINOR and the
20 defendant regarding --

21 THE COURT: Well, not -- not just the MINOR and the
22 defendant. But was there anything in those records that's
23 relevant to this case?

24 MS. OVERBY: Her -- the timeline yes, Your Honor.
25 It's pretty apparent when the MINOR leaves it's dated.

1 You can tell when she's leaving Alabama to come to South
2 Carolina, when she goes to that trip to Myrtle Beach.
3 She's texting with her mother.

4 THE COURT: Well, are you going to use those records?

5 MS. OVERBY: I don't plan to use the records. I plan
6 to talk generally about the timeline and that she was in
7 communication with her mother, what the MINOR's testimony
8 would be. But I don't plan to introduce the text messages
9 between she and her mother.

10 THE COURT: All right. But you say those -- whether
11 you use them or not, all of those phone records have been
12 provided to Mr. Shealy?

13 MS. OVERBY: That's what I'm trying to confirm, Your
14 Honor. I didn't -- I did not realize that he did not have
15 those until this moment. That's what I'm trying to
16 determine.

17 Also, there was a -- there was a facebook preservation
18 request made on the MINOR's account and there is a -- also
19 a disc with the facebook information on it.

20 Again, no contact. I don't believe there's any
21 correspondence between she -- the defendant and the MINOR.
22 I don't intend to offer any of the facebook information,
23 but there is a disc of that information from the MINOR's
24 account. I just want to --

25 THE COURT: Which has been provided?

Jury qualification

1 MS. OVERBY: That's what I'm trying to confirm, Your
2 Honor, through this discovery. There's several that I'm
3 working through.

4 (Pause.)

5 (Bench conference held off the record.)

6 THE COURT: Are we ready for the jury now?

7 MS. OVERBY: Yes, sir, Your Honor.

8 MR. SHEALY: Yes, Your Honor.

9 THE COURT: All right. Bring the jury around, please.

10 (The following takes place in the presence of the jury
11 venire.)

12 THE COURT: Good afternoon, ladies and gentlemen.

13 My name is Derham Cole. I am a resident judge here in
14 the seventh Judicial Circuit, and I will be presiding over
15 a term of general sessions court, criminal court, here in
16 this courtroom during the course of this week.

17 The first case that we have for trial here that's
18 going to require some of your participation is the case of
19 the State vs. Richard Todd Stribling.

20 Mr. Stribling has been accused by the prosecutor by
21 way of this indictment -- an indictment is simply the
22 charging paper. It's the means by which a person accused
23 of a crime is brought into this court for that trial. And
24 it serves to put the defendant on notice as to what crime
25 the state claims they have committed. But they're simply

Jury qualification

1 allegations. The state has to prove a person's guilt in
2 court to the satisfaction of a jury beyond a reasonable
3 doubt.

4 But in this case the state accuses Mr. Stribling of
5 having committed the crime of criminal sexual conduct with
6 a minor in the first degree.

7 The state alleges in this indictment that the
8 defendant, Richard Todd Stribling, did here in Spartanburg
9 County between the dates of February the 11th of 2015 and
10 April the 3rd of 2015, did commit the offense of criminal
11 sexual conduct with a minor in the first degree in that he
12 did commit a sexual battery upon a minor, that minor being
13 MINOR [REDACTED] who was less than 16 years of age at
14 the time of the event, and the defendant has previously
15 been convicted of, pled guilty to or adjudicated guilty of
16 an offense listed in a particular code section, or he has
17 been ordered to be included in the sex offender registry
18 pursuant to a different code section.

19 Now, as to those allegations and as to that charge the
20 defendant has entered a plea of not guilty. A plea of not
21 guilty places upon the state the burden of proving the
22 allegations that they have made by way of the indictment,
23 the burden of proving each of the essential elements of the
24 crime they have alleged against the defendant; and
25 therefore the burden is upon the state to establish the

Jury qualification

1 defendant's guilt to the satisfaction of 12 jurors beyond a
2 reasonable doubt before any verdict of guilty could be
3 returned.

4 And so we're going to be selecting 14 of you.
5 There'll be 12 primary jurors, and two additional jurors
6 will be selected to serve as alternate jurors.

7 By way of your participation you're simply going to be
8 called upon to listen to testimony that will come from the
9 witness stand, to consider any other evidence that might be
10 introduced during the trial of the case.

11 At the trial's conclusion the jury will go back to
12 deliberate the case to determine the facts as they relate
13 to these allegations. Upon determining the facts the jury
14 will apply the law that I will have provided you, and the
15 jury will determine whether or not the defendant's guilt
16 has been proven beyond a reasonable doubt.

17 Before we begin with jury selection I've got some
18 people to introduce to you, and I've got some other
19 questions to ask of you in order to determine your ability
20 to be fair and impartial if you were called upon to serve
21 as a juror in this particular case.

22 So as these folks are introduced to you I need to find
23 out if you have any connection by way of blood or marriage
24 to any of these individuals or any members of their
25 respective families.

Jury qualification

1 Do you have any other connection with them; do you
2 attend church with them; do you work at the same place that
3 they may be employed; do you go to school with them; do you
4 socialize with them; or do you simply know them, have you
5 met them in some fashion and some context.

6 So if, as these people are identified if, you know any
7 of these people or have any kind of connection with them or
8 any members of their respective families, I'll ask that you
9 please stand and inform me as to that connection. And of
10 course I'll ask you if that would in any way impair your
11 ability to be fair and impartial if selected in the case,
12 notwithstanding you may have some connection.

13 After that I'll ask you some additional questions in
14 order to determine your ability to be fair and impartial if
15 called upon to serve.

16 So, first of all, as I told you, the defendant, the
17 person who is accused of having committed the crime of
18 criminal sexual conduct with a minor in the first degree,
19 is Richard Todd Stribling.

20 Mr. Stribling, if you will, stand and face the jury
21 panel, please, sir.

22 (Whereupon, the defendant stood.)

23 THE COURT: Thank you. You may be seated.

24 Mr. Stribling is represented by Matthew Shealy. He is
25 a lawyer employed in the Seventh Judicial Circuit Public

Jury qualification

1 Defender's Office. He'll be assisting Mr. Stribling in the
2 trial of this case.

3 (Whereupon, Mr. Shealy stood.)

4 THE COURT: The person who is alleged to be the MINOR
5 of the event is MINOR Ms. Stribling is not
6 presently in the courtroom, but her mother is, and her
7 mother's name is Karen Zuniach.

8 Ms. Zuniach, did I pronounce that correctly?

9 KAREN ZUNIACH: Yes, sir.

10 THE COURT: If you will, please stand and face the
11 jury panel so that they can see who you are. And by seeing
12 who you are they may know whether or not they have any
13 connection with MINOR -- MINOR
14 being the biological child of Ms. Zuniach and the
15 defendant, Richard Todd Stribling.

16 (Whereupon, Ms. Zuniach stood.)

17 THE COURT: Thank you, ma'am. You may be seated.

18 Presenting the case on behalf of the state are Lindsey
19 Overby and Jennifer Jordan. They are each assistant
20 circuit solicitors for the Seventh Judicial Circuit.
21 They'll be presenting the case on behalf of the state.

22 (Whereupon, Ms. Overby and Ms. Jordan stood.)

23 THE COURT: Other persons who are potential witnesses
24 to be called during the trial -- and I'm going to recite a
25 comprehensive list. All of these may not be called, but

Jury qualification

1 all are potential witnesses should someone feel the need to
2 have them come to court and testify.

3 In addition to MINOR [REDACTED] and Karen Zuniach
4 who've already been introduced, I also have Sandra Fowler.
5 And all of these persons may not be in the courtroom. In
6 fact, most of them are not. So if you know somebody that
7 has that name, when I call it out and you're not sure if
8 it's the same person, please stand and let me know of that
9 fact, and we'll try to narrow down the identification so
10 that we can be certain to determine whether or not you have
11 any connection with this particular individual that may be
12 called as a witness.

13 The next three witnesses are employed by the
14 Spartanburg County Sheriff's Department. And they include
15 David Reaves, Tracy Moss and Tony Brown.

16 We also have Kelli Clune who was formerly employed at
17 Spartanburg Regional Medical Center; Donna Hardin employed
18 at Spartanburg Regional Medical Center; Lisa Haddad,
19 physician, employed at the Emory University, Atlanta
20 Women's Center.

21 We have Mila Reznick employed at the Atlanta Women's
22 Center; Maricca Stuckey employed at the Atlanta Women's
23 Center; and some records custodian from the Atlanta Women's
24 Center; J.P. Creasy with the Atlanta Police Department;
25 John David Wren, pathologist, Spartanburg Regional Medical

Jury qualification

1 Center; Anita Mullinax also employed with the Spartanburg
2 County Sheriff's Department; Doris Yarborough, employed by
3 the state law enforcement division; Jennifer Aycock,
4 formerly employed with the Spartanburg -- excuse me -- the
5 South Carolina Law Enforcement Division; Laura Hash
6 employed at the South Carolina Law Enforcement Division;
7 Michael Ward, physician, pathologist, Greenville County
8 Medical Examiner; Jill Cramer, Bode Cellmark Forensics;
9 Wayne Hoffman. He has a Ph.D. Formerly with Bode Cellmark
10 Forensics. He's now retired.

11 Anthony Knighton with the Spartanburg County Sheriff's
12 Department; Rhonda Johnson, Martin Army Community Hospital;
13 Joe Clarke, Richland County Sheriff's Department; John
14 Harrison, Spartanburg Regional Medical Center; Deborah Few,
15 Spartanburg Regional Medical Center; Robin Dawson.

16 What's Robin's connection?

17 MS. OVERBY: She is affiliated with the defendant's
18 father, Jack Stribling. She gave a statement.

19 THE COURT: All right. Lauren Phetaso.

20 What's her connection?

21 MS. OVERBY: Lauren is Robin's daughter.

22 THE COURT: Okay. Jack Stribling which is --

23 MR. SHEALY: Defendant's father.

24 THE COURT: The defendant's father.

25 Rebecca Patz, Spartanburg Regional Medical Center;

Jury qualification

1 Sarah Kruger, Spartanburg County Sheriff's Office; Gail
2 Moffitt, Spartanburg County Clerk of Court; Debra Blanton,
3 Spartanburg County Sheriff's Department.

4 That appears to be all of the potential witnesses.

5 Any others to be called by the state?

6 MS. OVERBY: I just believe you skipped No. 16, Your
7 Honor, Amy Stephens.

8 THE COURT: Oh, I'm sorry. All right. Amy Stephens,
9 South Carolina Law Enforcement Division.

10 Any other potential witnesses on behalf of the
11 defense?

12 MR. SHEALY: No, Your Honor.

13 THE COURT: Okay. All right. Does anybody on the
14 jury panel know anybody who's just been identified for your
15 benefit?

16 And let me -- let me do this. Not only those -- you
17 can go ahead and stand up -- not only those who've already
18 been introduced, but I also need to know if any juror has
19 any connection with anybody else who is employed with the
20 Seventh Judicial Circuit Solicitor's Office, the
21 Seventh Judicial Circuit Public Defender's Office, the
22 Spartanburg County Sheriff's Department, the state law
23 enforcement division and the Spartanburg Regional Medical
24 Center.

25 All right. If you know anybody who has been

Jury qualification

1 identified, as well as anybody else in the solicitor's
2 office, the public defender's office, the sheriff's
3 department, the office of SLED and Spartanburg Regional
4 Medical Center. If so, please stand.

5 All right. I'm going to start to my right. I'll work
6 my way back. I'll go row by row. Then I'm jump the aisle
7 and I'll start the front and work to the back.

8 All right. You, sir. If you will, give me your name
9 and number, please, sir.

10 JUROR NO. 20: John Bragg, No. 20.

11 THE COURT: All right. How does that question relate
12 to you?

13 JUROR NO. 20: I know Officer Moss.

14 THE COURT: You know Officer Moss?

15 JUROR NO. 20: Yeah, from years ago. I had a little
16 incident with my son. It's over now, but years and years
17 ago. I think it was 2004, something like that.

18 THE COURT: Okay. And would that experience or that
19 connection have any bearing upon your decision in this case
20 if you were selected?

21 JUROR NO. 20: Not at all.

22 THE COURT: Okay. Thank you. Be seated.

23 Yes, ma'am.

24 JUROR NO. 97: I'm 97. Did you say state your name?

25 THE COURT: Yes, ma'am.

Jury qualification

1 JUROR NO. 97: Barbara Jurs. My husband is a
2 physician with Spartanburg Regional Medical Center. He's
3 often an expert witness in child abuse cases. But I don't
4 know any of those cases.

5 THE COURT: All right. And your husband's name is
6 what?

7 JUROR NO. 97: Dr. Dennis Jurs.

8 THE COURT: Okay. And do you have any connection with
9 any of the other witnesses that were identified personally?

10 JUROR NO. 97: No, sir. But you're aware he's not
11 allowed to discuss any of that with me.

12 THE COURT: I know. But I'm saying you -- not
13 about -- not about any cases but about any of these folks
14 that were identified at the Regional Medical Center. Do
15 you have any personal contact?

16 JUROR NO. 97: No, no, I do not. I do not have any
17 interaction with them, or I cannot think if I've ever met
18 any of them.

19 THE COURT: Okay. Good. Thank you. You may be
20 seated.

21 Yes, ma'am.

22 JUROR NO. 135: 135, Brittany Prince.

23 THE COURT: You said 135?

24 JUROR NO. 135: Yes.

25 THE COURT: Okay.

Jury qualification

1 JUROR NO. 135: Kelli Clune who works at Spartanburg
2 Regional.

3 THE COURT: How do you know her?

4 JUROR NO. 135: I grew up with her daughter.

5 THE COURT: All right. Would that have any bearing in
6 your decision?

7 JUROR NO. 135: No.

8 THE COURT: Thank you. Be seated.

9 Yes, ma'am.

10 JUROR NO. 163: No. 163, Tena Tillotson. I know
11 several of the Spartanburg County deputies -- Anita
12 Mullinax. I know her. She works in the warrants
13 department. You named her as a witness.

14 THE COURT: Right.

15 JUROR NO. 163: My mother just retired from
16 Spartanburg County Sheriff's Department. So that's how I
17 know the officers.

18 THE COURT: All right. And is there anything about
19 any connection that you have with any of the officers or
20 anybody else at the sheriff's department that would in any
21 way interfere with your ability to be fair and impartial in
22 this case if you were selected to serve as a juror?

23 JUROR NO. 163: I told our first judge --

24 THE COURT: Well, is that a yes or a no?

25 JUROR NO. 163: Yeah, it would -- it would.

Jury qualification

1 THE COURT: Okay. That's all you need tell me. Thank
2 you. We'll excuse you from service in this case. But
3 don't leave yet.

4 JUROR NO. 163: Okay.

5 THE COURT: Juror 163 is excused.

6 All right. Next.

7 JUROR NO. 81: John Hodge, No. 81. School
8 administrator. I worked with Officer Brown and Officer
9 Moss before.

10 THE COURT: All right. And would that fact have any
11 bearing upon your decision in the case?

12 JUROR NO. 81: No, sir.

13 THE COURT: Thank you. Be seated.

14 Yes, ma'am.

15 JUROR NO. 111: 111, Laurie Mahaffey. I know several
16 of the Spartanburg Regional employees. I just know their
17 names.

18 THE COURT: And how do you know them?

19 JUROR NO. 111: I worked there for 25 years.

20 THE COURT: Okay.

21 JUROR NO. 111: So I -- in passing -- Dr. Wren, Kelli
22 Clune. I know she worked in our emergency room. I went to
23 high school with her. Was not friends with her. And very,
24 very, very distant related by marriage to Randy Hollifield,
25 but I don't even know him.

Jury qualification

1 THE COURT: To who?

2 JUROR NO. 111: Randy Hollifield.

3 THE COURT: With the sheriff's department?

4 JUROR NO. 111: Yes, sir.

5 THE COURT: Okay. Would any of those connections have
6 any bearing upon your decision in the case if you were
7 selected?

8 JUROR NO. 111: No, sir.

9 THE COURT: Thank you. Be seated.

10 All right.

11 JUROR NO. 124: Juror 124, Michael Moton. I went to
12 school with a Sandra Fowler. I don't know if it's the same
13 one. That was junior high and high school.

14 THE COURT: All right. And what school would that
15 have been?

16 JUROR NO. 124: Whitlock and Spartan High.

17 THE COURT: Okay. And did you grow up in the
18 neighborhood with her, or just school?

19 JUROR NO. 124: Just school.

20 THE COURT: Okay. Well, can y'all narrow down the
21 identification?

22 MS. OVERBY: Give me just a moment, Your Honor.

23 (Pause.)

24 MS. OVERBY: That doesn't appear to be the same Sandra
25 Fowler.

Jury qualification

1 THE COURT: Okay. That's not the same one. But you
2 let me know if it turns out to be.

3 okay. Next.

4 JUROR NO. 26: No. 26, Larry Burns. Is the
5 defendant's father, Jack Stribling, is this the same
6 Stribling that runs the mortuary in Duncan?

7 THE COURT: Yes, sir.

8 JUROR NO. 26: I'm related to them by marriage.

9 THE COURT: All right. And tell me how that -- what's
10 that connection? who are you married to that's connected
11 with them?

12 JUROR NO. 26: A niece of Jack's.

13 THE COURT: All right. You're married to a niece of
14 Jack Stribling?

15 JUROR NO. 26: Yes, sir.

16 THE COURT: Okay. would that have any bearing in your
17 decision in this case if you were selected?

18 JUROR NO. 26: No, sir.

19 THE COURT: Okay. Thank you. Be seated.

20 Anybody else?

21 (No response.)

22 THE COURT: All right. This is a case, as I told you,
23 wherein the state alleges Mr. Stribling committed a sexual
24 battery with a child under the age of 16 years, that being
25 MINOR [REDACTED] his biological child. And the state

Jury qualification

1 alleges that this event occurred back in -- between
2 February and April of 2015. It is also alleged to have
3 occurred at a residence of Mr. Stribling.

4 MS. OVERBY: Yes, sir. Mr. Jack Stribling.

5 THE COURT: At the residence of Jack Stribling which
6 is located on the [REDACTED] in the Woodruff community of
7 Spartanburg County.

8 Does anybody on the jury panel think that you might
9 have heard, seen or read something about the facts that
10 relate to this particular case? In other words, have you
11 been exposed to facts that relate to the case from any
12 person or any other source? If so, please stand.

13 (No response.)

14 THE COURT: Is there anything about the nature of the
15 charge itself, that is what the allegations that are
16 made -- is there anything about the nature of the charge
17 itself that would prevent any juror from being able to be
18 fair and impartial if you were called upon to serve as a
19 juror in this particular case? If so, please stand.

20 All right.

21 JUROR NO. 85: Could I speak with you privately?

22 THE COURT: Yes, ma'am. Let me get -- before you do
23 that let me get your name and number first, and then I'll
24 do that.

25 JUROR NO. 85: Brenda Hufstetler, No. 85.

Jury qualification

1 THE COURT: Eighty-five?

2 JUROR NO. 85: Yes.

3 THE COURT: Okay. All right. You can step down here.

4 Let me say this for the benefit of all of the jurors.

5 I'm going to let you step down here, but understand we've

6 got microphones hanging from the ceiling. I'm going to

7 turn mine off. But the ones from the ceiling sometimes

8 still pick up. So just be sure and keep your voice low

9 when you speak with me.

10 (Bench conference held off the record with Juror No.
11 85 and counsel.)

12 THE COURT: Juror 85 is excused from service in the
13 trial of this case.

14 THE BAILIFF: Juror No. 86.

15 THE COURT: Okay.

16 (Bench conference held off the record with Juror No.
17 86 and counsel.)

18 THE COURT: Juror 86 is excused from service in the
19 trial of the case.

20 THE BAILIFF: Juror No. 43.

21 THE COURT: Forty-three?

22 THE BAILIFF: Forty-three.

23 (Bench conference held off the record with Juror No.
24 43 and counsel.)

25 THE COURT: Juror 43 is excused from serving in the

Jury qualification

1 trial of this case.

2 THE BAILIFF: Juror No. 72.

3 (Bench conference held off the record with Juror No.
4 72 and counsel.)

5 THE COURT: Juror 72 is excused from service in the
6 trial of the case.

7 What's your name and number?

8 JUROR NO. 83: Michelle Howard, 83.

9 THE COURT: All right.

10 (Bench conference held off the record with Juror No.
11 83 and counsel.)

12 THE COURT: Juror 83 is excused from serving in the
13 trial of this case.

14 Anyone else that needs to talk to me about that?
15 Okay.

16 JUROR NO. 157: 157.

17 THE COURT: All right.

18 (Bench conference held off the record with Juror No.
19 157 and counsel.)

20 THE BAILIFF: Juror No. 167.

21 THE COURT: Okay.

22 (Bench conference held off the record with Juror No.
23 167 and counsel.)

24 THE COURT: Juror 167 is excused from service in the
25 trial of this case.

Jury qualification

1 Anyone else?

2 (No response.)

3 THE COURT: Does anybody on the jury panel have any
4 business or family relationship or close personal
5 friendship with any person employed by Stribling Funeral
6 Home? And that's located in Duncan, on Main Street in
7 Duncan. Anyone have any business, family or close personal
8 connection to anybody working at the Stribling Funeral
9 Home? If so, please stand.

10 (No response.)

11 THE COURT: All right. Now, my next couple of
12 questions are going to refer to you and/or a family member
13 and the family member -- I mean an immediate family member,
14 and I'm going to define an immediate family member as a
15 parent or a spouse or a child or a sibling -- a parent,
16 spouse, child or sibling. Have you or any members of your
17 immediate family as I just described it ever been the
18 victim of any type of an assault involving sexual abuse or
19 otherwise? Have you ever been involved in any type of an
20 assault, as well as have you ever been the victim of any
21 type of crime that involved harm to a minor child?

22 So I need to know if you or any members of your
23 immediate family have ever been the victim of such. I also
24 need to know whether you or any members of your immediate
25 family have ever been accused of having committed such,

Jury qualification

1 that is any type of an assault or any other crime involving
2 harm to a minor child. If so, please stand.

3 All right. I've got seven jurors standing. So here's
4 my question. If you can tell me your personal experience
5 from where you are, that's fine. If you prefer to step
6 down here as some others have already done, then that's
7 fine too.

8 So if you want to step down here just move to the
9 center aisle. If you want to stay where you are, just stay
10 where you are.

11 THE BAILIFF: Juror No. 20.

12 (Bench conference held off the record with Juror No.
13 20 and counsel.)

14 THE COURT: Next.

15 THE BAILIFF: Juror 176.

16 (Bench conference held off the record with Juror No.
17 176 and counsel.)

18 THE COURT: Juror 176 is excused.

19 THE BAILIFF: Juror No. 99.

20 (Bench conference held off the record with Juror No.
21 99 and counsel.)

22 THE COURT: Next.

23 THE BAILIFF: Juror 157.

24 (Bench conference held off the record with Juror No.
25 157 and counsel.)

Jury qualification

1 THE COURT: Next.

2 THE BAILIFF: Juror 100.

3 (Bench conference held off the record with Juror No.
4 100 and counsel.)

5 THE COURT: Next.

6 THE BAILIFF: Juror 124.

7 (Bench conference held off the record with Juror No.
8 124 and counsel.)

9 THE COURT: Next.

10 THE BAILIFF: Juror 27.

11 (Bench conference held off the record with Juror No.
12 27 and counsel.)

13 THE COURT: Juror 27 is excused from service in the
14 case.

15 THE BAILIFF: Juror 65.

16 (Bench conference held off the record with Juror No.
17 65 and counsel.)

18 THE COURT: Does anyone else need to respond to that
19 question?

20 (No response.)

21 THE COURT: Has any member of this jury panel or any
22 members of your immediate family as I previously defined it
23 ever been employed in any capacity as a law enforcement
24 agent in any department of any kind? You or a family
25 member ever been employed as a law enforcement officer? If

Jury qualification

1 so, please stand.

2 I've got three. I've got four.

3 Any more?

4 All right. I'll start with you, ma'am.

5 JUROR NO. 99: I'm Juror 99. My cousin was employed
6 at the jailhouse. He's no longer with them.

7 THE COURT: Okay. Would that have any bearing in your
8 decision?

9 JUROR NO. 99: No, sir.

10 THE COURT: Thank you. You may be seated.
11 Yes, ma'am.

12 JUROR NO. 163: You already excused me, so.

13 THE COURT: You are 163?

14 JUROR NO. 163: Yes, sir.

15 THE COURT: Thank you.

16 Yes, ma'am.

17 JUROR NO. 111: 111. My brother was a police officer.

18 THE COURT: Would that have any bearing in your
19 decision?

20 JUROR NO. 111: No, sir.

21 THE COURT: Thank you. Be seated.

22 Yes, sir.

23 JUROR NO. 105: 105. My step-father was a Cincinnati
24 detective. It would not have.

25 THE COURT: Would that have any bearing in your

Jury qualification

1 decision?

2 JUROR NO. 105: No, sir.

3 THE COURT: Thank you. Be seated.

4 Yes, ma'am.

5 JUROR NO. 134: 134. My uncle was employed with --

6 currently employed with Spartanburg County Sheriff's
7 Office.

8 THE COURT: With the sheriff's department?

9 JUROR NO. 134: Uh-huh.

10 THE COURT: Would that have any bearing in your
11 decision?

12 JUROR NO. 134: No.

13 THE COURT: Thank you.

14 JUROR NO. 100: My wife's dad, he's a sheriff up in
15 North Carolina.

16 THE COURT: Tell me what your number is again.

17 JUROR NO. 100: One hundred.

18 THE COURT: One hundred?

19 JUROR NO. 100: Yes.

20 THE COURT: Would that have any bearing in your
21 decision?

22 JUROR NO. 100: No, sir.

23 THE COURT: Thank you. Be seated.

24 All right. Now, in this case, as I have told you,
25 these are allegations the state has made that accuse

Jury qualification

1 Mr. Stribling of having committed a sexual battery against
2 his biological child, that being MINOR

3 As a result of that event the state will also allege
4 that MINOR became impregnated and subsequently and
5 because of the circumstances had an abortion. So I need to
6 find out if any member of the jury panel is opposed to any
7 woman having an abortion regardless of the circumstances.
8 And that would include if they were -- if the pregnancy was
9 the result of a sexual -- an unlawful sexual assault and/or
10 a product of incest.

11 So is any member opposed to a woman having an abortion
12 even where the pregnancy is caused by an unlawful sexual
13 assault or incest? If so please stand.

14 All right. I have got one here.

15 Your number please, sir.

16 JUROR NO. 182: 182.

17 THE COURT: 182. And would the opinion that you hold
18 prevent you from being able to be fair and impartial if you
19 were selected to serve as a juror in this particular case?

20 JUROR NO. 182: No, sir.

21 THE COURT: All right. Thank you. Be seated.

22 Yes, ma'am.

23 JUROR NO. 78: Seventy-eight.

24 THE COURT: Seventy-eight?

25 JUROR NO. 78: Yes, sir.

Jury qualification

1 THE COURT: All right. And you are opposed to anyone
2 having an abortion under any circumstances?

3 JUROR NO. 78: Yes, sir, I am.

4 THE COURT: And would that opinion in any way
5 interfere with your ability to be fair and impartial in
6 this particular case?

7 JUROR NO. 78: It would not.

8 THE COURT: All right. Thank you, ma'am. You may be
9 seated.

10 Anyone else?

11 (No response.)

12 THE COURT: All right. Further, does any member of
13 the jury panel have any religious or moral objection to a
14 woman having an abortion under any circumstances? If so,
15 please stand.

16 Yes, sir.

17 JUROR NO. 150: 150.

18 THE COURT: One what?

19 JUROR NO. 150: 150.

20 THE COURT: 150. All right. And does the opinion
21 that you hold -- would that have any bearing upon your
22 decision, upon your ability to be fair and impartial in
23 this case if you were selected?

24 JUROR NO. 150: No, sir.

25 THE COURT: Thank you. Be seated.

Jury qualification

1 182.

2 JUROR NO. 182: Yes, sir.

3 THE COURT: Same as before? It would not affect your
4 ability to be fair?

5 JUROR NO. 182: No, sir.

6 THE COURT: Thank you. Be seated.

7 Yes, sir.

8 JUROR NO. 104: 104.

9 THE COURT: 104. You have an opinion opposed to
10 abortion under any circumstances?

11 JUROR NO. 104: Yes, sir.

12 THE COURT: would that have any bearing upon your
13 decision or upon your ability to be fair and impartial in
14 this case?

15 JUROR NO. 104: No, sir.

16 THE COURT: Thank you. Be seated.

17 And 78?

18 JUROR NO. 78: Yes, sir.

19 THE COURT: And same response as before, you could
20 still be fair and impartial although you do oppose
21 abortion?

22 JUROR NO. 78: Yes, sir.

23 THE COURT: All right. Thank you, ma'am. Be seated.
24 Yes, ma'am.

25 JUROR NO. 134: 134.

Jury qualification

1 THE COURT: 134. You are opposed to abortion. And
2 would that have any -- would that impair your ability to be
3 fair and impartial if selected in this case?

4 JUROR NO. 134: No, sir.

5 THE COURT: Okay. Thank you. Be seated.

6 Has any member of the jury panel already formed an
7 opinion as to how you think the case ought to be decided
8 based upon what you heard up to this point or based upon
9 any other consideration?

10 I need to know if any juror has already made up your
11 mind as to the ultimate outcome. If you have, I would ask
12 that you please stand.

13 (No response.)

14 THE COURT: None have responded.

15 I've introduced the potential witnesses to you; I've
16 introduced the defendant to you; I've introduced the mother
17 of the alleged MINOR; I've introduced the potential
18 witnesses to you; and I've told you just basic facts about
19 what the allegations are that are made against the
20 defendant.

21 So I need to know if any juror knows of any reason
22 whatsoever why you believe that you could not be fair and
23 impartial if you were called upon to serve as a juror in
24 this particular case. If you have any reason whatsoever
25 why you think you could not be fair and impartial, I would

Jury qualification

1 ask that you please stand.

2 All right. And your number please.

3 JUROR NO. 173: 173.

4 THE COURT: 173?

5 JUROR NO. 173: Yes.

6 THE COURT: And you have a reason satisfactory to you
7 as to why you believe you could not be fair and impartial
8 in the case?

9 JUROR NO. 173: Yes, sir.

10 THE COURT: All right. We'll excuse Juror 173 from
11 service in the case.

12 Anyone else?

13 (No response.)

14 THE COURT: All right. None have responded.

15 Any other questions requested by the state?

16 MS. OVERBY: None from the state, Your Honor.

17 THE COURT: By the defendant?

18 MR. SHEALY: Your Honor, we request No. 2 on our
19 request for voir dire, victim's rights organizations.

20 THE COURT: Oh, okay. I overlooked one.

21 Has any -- is any member of the jury panel a
22 contributor to or a member of any type of organization that
23 might be characterized as law enforcement support or
24 victims support or advocacy groups?

25 Do you contribute money to those; do you belong to

Jury qualification

1 those; or do you contribute time to those?

2 And those might be described as organizations like
3 Mothers Against Drunk Drivers, Citizens Against Violent
4 Crime, a rape crisis, the troopers' association, the
5 honorary sheriffs' association, the police benevolence
6 society, the fraternal order of police, the children's
7 shelter, the Children's Advocacy Center, any organization
8 that might be characterized as one that supports victims
9 and/or law enforcement? If you belong to any or contribute
10 time or money to any, I would ask that you please stand.

11 All right. Let me start with Juror No. 20. Then I'll
12 go to 78, and then I'll work my way back.

13 All right. Twenty.

14 JUROR NO. 20: Ever so often they send me a
15 troopers-association request for donations. Sometimes I
16 contribute and sometimes I don't. Other than that --

17 THE COURT: Ever given you anything back?

18 JUROR NO. 20: No.

19 THE COURT: Don't give you any jelly or anything like
20 that?

21 JUROR NO. 20: I really need to work on that, but no.

22 THE COURT: They used to give jelly, but then I found
23 out it wasn't the troopers calling. So I lost interest in
24 it. Anyway, would that have any bearing in your decision?

25 JUROR NO. 20: No, sir.

Jury qualification

1 THE COURT: Thank you. Be seated.

2 Juror 78.

3 JUROR NO. 78: I've given some money to the police
4 officers fund a couple of times and sent some to homeless
5 shelters and things like that.

6 THE COURT: Okay. Thank you. Be seated.

7 Yes, ma'am.

8 JUROR NO. 134: 134. Carolina Pregnancy Center. Our
9 church is very active in supporting them financially, as
10 well as volunteering.

11 THE COURT: Okay. Thank you. Be seated.

12 Yes, ma'am.

13 JUROR NO. 97: Ninety-seven. My husband and I, we
14 contribute to a number of those organizations -- rape
15 crisis, Child Advocacy Center, children's shelter, rape
16 crisis. Those are the ones I can think of.

17 THE COURT: Okay. Thank you. Be seated.

18 Yes, ma'am.

19 JUROR NO. 42: Forty-two. I contribute to the
20 children's shelter.

21 THE COURT: Thank you. Be seated.

22 Yes, sir.

23 JUROR NO. 104: 104. Contribute to Children's
24 Advocacy Center and Hopes are Joy.

25 THE COURT: Okay. Thank you. Be seated.

Jury qualification

1 Anybody else?

2 (No response.)

3 THE COURT: Any other questions?

4 MR. SHEALY: None, Your Honor.

5 THE COURT: All right. We're going to select a jury,
6 and the way that's done is your names are going to be
7 selected by the computer in some random order. But as your
8 names are selected you'll be asked to come forward.

9 The bailiff will be standing out there in the floor in
10 a minute.

11 Just come forward and stand next to the bailiff. Each
12 side has an opportunity to have you excused from serving in
13 the case, or they both may agree to have you accepted for
14 service in the case.

15 If either side asks that you be excused you can simply
16 go back and have a seat where you are now.

17 If both agree to have you accepted for service in the
18 case you'll be having a seat in that jury box to your right
19 and to my left.

20 So please come forward as your name is called, and
21 you'll be instructed as to whether you have been excused or
22 accepted for service in the case.

23 MS. JORDAN: Your Honor, may we approach with
24 Mr. Shealy?

25 THE COURT: Okay.

Jury qualification

1 (Bench conference held off the record.)

2 THE CLERK: As I call your names will you please come
3 forward and stand facing the attorneys' tables.

4 No. 47, Margaret Delaney.

5 What says the state?

6 MS. OVERBY: Please present the juror.

7 THE CLERK: What says the defense?

8 MR. SHEALY: Please seat this juror.

9 THE CLERK: No. 96, Theresa Jaurez.

10 What says the state?

11 MS. OVERBY: Please present the juror.

12 THE CLERK: What says the defense?

13 MR. SHEALY: Please seat this juror.

14 THE CLERK: No. 60, Amanda Garrett.

15 What says the state?

16 MS. OVERBY: Please present the juror.

17 THE CLERK: What says the defense?

18 MR. SHEALY: Please excuse this juror.

19 THE CLERK: No. 94, Scott Jones.

20 What says the state?

21 MS. OVERBY: Please present the juror.

22 THE CLERK: What says the defense?

23 MR. SHEALY: Please seat this juror.

24 THE CLERK: Twenty, John Bragg.

25 What says the state?

jury qualification

1 MS. OVERBY: Please excuse the juror from the trial of
2 this case.

3 THE CLERK: 62, Robert Gilleo.
4 What says the state?

5 MS. OVERBY: Please present the juror.

6 THE CLERK: What says the defense?

7 MR. SHEALY: Please seat this juror.

8 THE CLERK: No. 157, Stewart Strickland.
9 What says the state?

10 MS. OVERBY: Please present the juror.

11 THE COURT: What says the defense?

12 MR. SHEALY: Please excuse this juror.

13 THE CLERK: No. 111, Laurie Mahaffey.
14 What says the state?

15 MS. OVERBY: Please present the juror.

16 THE COURT: What says the defense?

17 MR. SHEALY: Please excuse this juror.

18 THE CLERK: No. 97, Barbara Jurs.
19 What says the state?

20 MS. OVERBY: Please present the juror.

21 THE COURT: What says the defense?

22 MR. SHEALY: Please excuse this juror.

23 THE COURT: No. 16, Cheryl Blackwell.
24 What says the state?

25 MS. OVERBY: Please present the juror.

Jury qualification

1 THE CLERK: What says the defense?
2 MR. SHEALY: Please seat this juror.
3 THE COURT: No. 50, Denise Dufresne.
4 What says the state?
5 MS. OVERBY: Please present the juror.
6 THE CLERK: What says the defense?
7 MR. SHEALY: Please seat this juror.
8 THE CLERK: No. 116, Tresea McDaniel.
9 What says the state?
10 MS. OVERBY: Please present the juror.
11 THE CLERK: What says the defense?
12 MR. SHEALY: Please seat this juror.
13 THE CLERK: No. 105, Boyce Lawton.
14 What says the state?
15 MS. OVERBY: Please present the juror.
16 THE CLERK: What says the defense?
17 MR. SHEALY: Please excuse this juror.
18 THE CLERK: No. 120, Edwin Medford.
19 What says the state?
20 MS. OVERBY: Please present the juror.
21 THE CLERK: What says the defense?
22 MR. SHEALY: Please seat this juror.
23 THE CLERK: No. 134, Angela Peake.
24 What says the state?
25 MS. OVERBY: Your Honor, may we approach?

Jury qualification

1 THE COURT: Yes.

2 (Bench conference held off the record.)

3 MS. OVERBY: Please excuse the juror from the trial of
4 this case.

5 THE CLERK: Sixty-five, Ricky Gosnell.

6 What says the state?

7 MS. OVERBY: Please excuse the juror from the trial of
8 this case.

9 THE CLERK: No. 155, Cindy Stevens.

10 What says the state?

11 MS. OVERBY: Please seat the juror.

12 THE CLERK: What says the defense?

13 MR. SHEALY: Please excuse this juror.

14 THE CLERK: Twenty-six, Larry Burns.

15 What says the state?

16 MS. OVERBY: Please excuse the juror from the trial of
17 this case.

18 THE CLERK: No. 123, Tonya Mosley.

19 What says the state?

20 MS. OVERBY: Please present the juror.

21 THE CLERK: What says the defense?

22 MR. SHEALY: Please seat this juror.

23 THE CLERK: No. 42, Linda Crocker.

24 What says the state?

25 MS. OVERBY: Please present the juror.

Jury qualification

1 THE CLERK: What says the defense?
2 MR. SHEALY: Please excuse this juror.
3 THE CLERK: No. 7, Cory Authement.
4 What says the state?
5 MS. OVERBY: Please present the juror.
6 THE CLERK: What says the defense?
7 MR. SHEALY: Please seat this juror.
8 THE CLERK: No. 135, Brittany Prince.
9 What says the state?
10 MS. OVERBY: Please present the juror.
11 THE CLERK: What says the defense?
12 MR. SHEALY: Please excuse this juror.
13 THE CLERK: No. 68, Mary Grooms.
14 What says the state?
15 MS. OVERBY: Please present the juror.
16 THE CLERK: What says the defense?
17 MR. SHEALY: Please excuse this juror.
18 THE CLERK: No. 5, Randall Apa.
19 What says the state?
20 MS. OVERBY: Please present the juror.
21 THE CLERK: What says the defense?
22 MR. SHEALY: Please seat this juror.
23 THE CLERK: No. 9, Lori Axelrod.
24 What says the state?
25 MS. OVERBY: Please present the juror.

Jury qualification

1 THE CLERK: What says the defense?
2 MR. SHEALY: Please excuse this juror.
3 THE CLERK: No. 171, Lynn Waddell.
4 What says the state?
5 MS. OVERBY: Please present the juror.
6 THE CLERK: What says the defense?
7 MR. SHEALY: Please seat this juror.
8 THE COURT: This will be for the first alternate.
9 THE CLERK: No. 39, Lyle Coleman.
10 What says the state?
11 MS. OVERBY: Please present the juror.
12 THE CLERK: What says the defense?
13 MR. SHEALY: Please seat this juror.
14 THE CLERK: No. 34, Angela Cavicchio.
15 What says the state?
16 MS. OVERBY: Please excuse the juror from the trial of
17 this case.
18 THE CLERK: No. 98, James Keesler.
19 What says the state?
20 MS. OVERBY: Please present the juror.
21 THE CLERK: What says the defense?
22 MR. SHEALY: Please excuse this juror.
23 THE CLERK: No. 12, Barry Belcher.
24 What says the state?
25 MS. OVERBY: Please present the juror.

Jury qualification

1 THE CLERK: What says the defense?

2 MR. SHEALY: Please seat this juror.

3 THE COURT: Those who were selected, I'll ask you to
4 please go with the bailiff to a jury room, and I'll bring
5 you back shortly.

6 (The following takes place outside the presence of the
7 jury.)

8 THE COURT: Are there any matters that need to be
9 addressed regarding jury selection by the state?

10 MS. OVERBY: Nothing from the state, Your Honor.

11 THE COURT: By the defendant?

12 MR. SHEALY: No, Your Honor.

13 (Whereupon, the remaining members of the jury venire
14 were excused.)

15 THE COURT: All right. Prior to jury selection
16 actually taking place counsel for the state and for the
17 defense approached the bench to request that the Court
18 excuse five jurors for cause. Those jurors were Jurors
19 150, 182, 104, 78 and 134.

20 Jurors 182, 78 and 134 actually did appear on the
21 strike sheet prior to jury selection. The list had already
22 been prepared before counsel approached.

23 Based upon the agreement of counsel, I granted the
24 request to have those jurors removed from consideration.

25 Is that a correct statement and did I -- is that what

1 was requested?

2 MS. OVERBY: Yes, sir, Your Honor, that's --

3 MR. SHEALY: Yes, sir, Your Honor.

4 THE COURT: All right. And, Mr. Stribling, you agreed
5 with your lawyer's decision to have those jurors removed?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. Because of the hour we're going to
8 recess for the afternoon. We'll excuse the jury and start
9 back in the morning at 9:30.

10 Any objection?

11 MS. OVERBY: No, sir.

12 MR. SHEALY: No, Your Honor.

13 THE COURT: All right. Bring the jury back, please.

14 (The following takes place in the presence of the
15 jury.)

16 THE COURT: Ladies and gentlemen, because of the time
17 we're going to recess for the day. We'll begin with the
18 trial in the morning starting at 9:30.

19 Please understand that during the overnight recess you
20 can't talk about the case. You can't discuss it with
21 anybody in any fashion whatsoever. You can't do your own
22 research; you can't do your own investigation into any
23 issue that might arise.

24 A jury's decision always has to be based strictly upon
25 what is presented during the trial of the case. You can't

1 supplement your wealth of knowledge by conducting any
2 outside research.

3 So no television, no radio, no newspaper, no internet
4 search. No type of investigation whatsoever.

5 We will begin with the trial at 9:30 in the morning.
6 So please report to your jury room not later than that
7 time.

8 Have a good evening. We'll see you at 9:30 in the
9 morning.

10 (The following takes place outside the presence of the
11 jury.)

12 MS. OVERBY: Your Honor, I meant to mention earlier
13 that in chambers we discussed some photos that were taken
14 of the fetal tissue involved in this case.

15 There were photos taken during Dr. Wren's handling of
16 the evidence, his separation of the evidence. We had a
17 in-chambers discussion regarding those photos.

18 The state does not intend to offer those as evidence
19 in its case in chief. However, I've asked the Court to
20 make that a court's exhibit for purposes of the record and
21 to document our discussion of those photos. And also
22 should there be any issue during testimony of Dr. Wren that
23 those -- that the state have leave to possibly use those
24 photos in his testimony.

25 THE COURT: And you say they're just being introduced

1 for purposes of the record. So I'll ask the obvious
2 question. What purpose for the record are they being
3 introduced?

4 MS. OVERBY: For -- for today they are marked as
5 court's exhibits to reference our conversation about them.
6 That is what I mean.

7 THE COURT: Well, how do those pictures reference our
8 conversation? You just referenced it.

9 MS. OVERBY: I did. I just wanted it to be very clear
10 which photos we were discussing.

11 THE COURT: Okay. All right. Court is in recess
12 until 9:30 in the morning.

13 END OF PROCEEDINGS JULY 20, 2017
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1 (Proceedings July 11, 2017)

2 (The following takes place outside the presence of the
3 jury.)

4 (Property report marked State's Exhibit Nos. 32 for
5 Identification; property report marked State's Exhibit No.
6 33 for Identification; buccal swab marked State's Exhibit
7 No. 34 for Identification; property report marked State's
8 Exhibit No. 35 for Identification; SLED report marked
9 State's Exhibit No. 36 for Identification; property report
10 marked State's Exhibit No. 37 for Identification; Cellmark
11 report marked State's Exhibit No. 38 for Identification.)

12 THE COURT: All right. Any matters we need to address
13 before the jury is brought in?

14 MS. OVERBY: None from the state, Your Honor.

15 MR. SHEALY: Just, Judge, that I had received those
16 two discs, one with facebook information and one of a cell
17 phone analysis.

18 They were a bit more lengthy than I thought they would
19 be. I did review them.

20 The facebook pages came to something like 1,931 pages.
21 I did get through. It appears that they were peaked maybe
22 three times. I got through all of that. It doesn't appear
23 that there was any conversation between the alleged MINOR
24 and my client. There was some information that I gathered
25 from those though, as well as there were some 2,000 or so

1 text messages. But, again, I was able to go through those.
2 I think I'm prepared to go forward with the trial and I
3 maybe provide those to my client. But I think he can still
4 at this point.

5 THE COURT: Okay. Thank you.

6 All right. Bring the jury in and ask Ms. Delaney,
7 that's Juror 47, Ms. Delaney. Ask her to take the
8 foreperson's seat.

9 (The following takes place in the presence of the
10 jury.)

11 THE COURT: Good morning, ladies and gentlemen.

12 We are ready to begin with the trial of the case for
13 which each you have been selected.

14 Ms. Delaney, I'm going to ask you to serve as the
15 foreperson of the jury. As the foreperson you're going to
16 have three specific duties that none of the other jurors
17 will have.

18 First of all, you'll be asked to serve as the
19 spokesperson for the jury. And that just means that if
20 something arises during the course of the trial that needs
21 to be brought to my attention -- you or one of your fellow
22 jurors has some difficulty, problem or question -- you'll
23 be the person to let me know of that fact. And you'll do
24 that directly if you're in the courtroom or through the
25 bailiff if you're outside of the courtroom.

1 Secondly, you'll be called upon to preside over jury
2 deliberations when that time comes at the trial's
3 conclusion after all of the evidence has been received and
4 I've instructed you on the law that's applicable in the
5 case.

6 When you are asked to go back to begin jury
7 deliberations you will preside over that process in the
8 jury room simply to ensure that those deliberations are
9 carried out in some orderly fashion.

10 And, thirdly, you'll be called upon to actually write
11 the verdict or the decision of the jury. You'll do that on
12 a verdict form that I'll provide you when you go back to
13 begin deliberations on which you will indicate the jury's
14 unanimous decision.

15 Now, the foreperson has those specific duties that
16 I've just indicated. That doesn't mean that she is any
17 more important than any of you other jurors, because, as
18 I've said, the decision of a jury is the unanimous and
19 consensus opinion of all 12 jurors. And so each of you and
20 all of you will have an equal say and equal vote in what
21 the ultimate decision will be in the case.

22 Someone simply has to be delegated those
23 responsibilities that I've just indicated, and I have
24 delegated those to Ms. Delaney in appointing her as the
25 foreperson. But all of you jurors are equally important so

1 far as the ultimate decision in this case is concerned,
2 because, as I've said, the verdict has to be unanimous.
3 All of you must be in agreement.

4 Mr. Coleman and Mr. Belcher, each of you have been
5 selected as alternate jurors.

6 The function of an alternate juror is to take the
7 place of one of the original 12 jurors. If during the
8 trial for some reason one of these original 12 are unable
9 to continue and participate in the trial, then one or both
10 of you would be called upon to take that juror or those
11 jurors' places. If that occurs, then you become the
12 12th juror. And in that event you participate throughout
13 the trial including the jury deliberations at the trial's
14 conclusion.

15 If however when the time does come for jury
16 deliberations, if each of the original 12 are able to
17 participate in that process, then your service ends and you
18 don't participate any further. And that's because the
19 decision of a jury is that of 12, and no more than 12 are
20 permitted to engage in that deliberation process.

21 But it is important that you pay just as careful
22 attention as we ask of all of the jurors in the case
23 because it does occur from time to time for one reason or
24 another one or two of these jurors may be unable to
25 continue. In that event one or both of you would be called

Jury sworn

1 upon to become the twelfth.

2 So we do appreciate your participation as alternate
3 jurors, just as we appreciate the participation of each of
4 you jurors who have been selected for the purpose of
5 deciding the verdict in this particular case.

6 You may swear the panel.

7 (Whereupon, the jury was duly sworn.)

8 THE COURT: Ladies and gentlemen, as you know, you
9 have been selected to decide the verdict in the case of the
10 State vs. Richard Todd Stribling.

11 As you also know, Mr. Stribling has been accused by
12 the prosecutor by way of this indictment with having
13 committed the crime of criminal sexual conduct with a minor
14 in the first degree.

15 The state alleges by way of this indictment that
16 Mr. Stribling did here in Spartanburg County between
17 February the 11th of 2015 and April the 3rd of 2015 commit
18 the offense of criminal sexual conduct with a minor in the
19 first degree in that he did commit a sexual battery upon a
20 minor child, being MINOR [REDACTED] who was less than 16
21 years of age at the time of the event.

22 As to that charge and as to those allegations he's
23 entered a plea of not guilty, and a plea of not guilty
24 places upon the state the burden of proving the allegations
25 that they have made in the indictment, the burden of

1 proving each of the essential elements of the crime alleged
2 against the defendant; and therefore the burden is upon the
3 state to establish the defendant's guilt to the
4 satisfaction of you 12 jurors beyond a reasonable doubt
5 before any verdict of guilty could be returned.

6 The indictment, as I told you I believe before you
7 were selected, is the means by which any person charged
8 with a crime where the jurisdiction lies in this court,
9 they are brought here by way of an indictment. It's like a
10 warrant. It's a charging paper.

11 The indictment serves no purpose so far as you jurors
12 are concerned. It's not evidence of anything; it's not
13 proof of anything. It just simply sets forth the
14 allegations, and it puts a defendant or a person charged
15 with a crime on notice as to what crime the state claims
16 they committed. And in this case, of course, it's
17 Mr. Stribling and it's criminal sexual conduct with a minor
18 in the first degree.

19 The indictment will be in the jury room when you go
20 back to begin deliberations, but it will be there solely to
21 serve as the verdict form.

22 In other words, on the back of the indictment, Madam
23 Forelady, you're going to indicate the jury's decision as
24 to the charge. But other than serving as the verdict form
25 the indictment serves no purpose so far as you jurors are

1 concerned.

2 As I've said, the defendant has entered a plea of not
3 guilty. The burden is on the state to prove his guilt
4 beyond a reasonable doubt.

5 Every person who is accused of a crime -- and it
6 doesn't matter how serious the offense might be for which
7 that person stands charged -- any person accused of a crime
8 is always presumed innocent of the charge.

9 That presumption of innocence remains with any
10 defendant, as it does with this defendant, from the time
11 that he is placed under arrest and throughout the course of
12 the criminal process and even throughout the course of the
13 actual trial in the case.

14 That presumption of innocence will be with
15 Mr. Stribling throughout this trial, and it'll be with him
16 at the time that you go back into your jury room to begin
17 with your deliberations in the case.

18 It will be with in that jury room, and it'll be with
19 him forever unless you 12 jurors determine that he's no
20 longer entitled to that presumption of innocence.

21 In other words, after you've considered all of the
22 evidence introduced during the trial of the case, and from
23 that evidence you have determined where you can what you
24 believe to be the facts that relate to the allegations made
25 against him, and after you decide those facts you then

1 apply the law that I will have provided you, if you 12
2 jurors unanimously determine that his guilt has been proven
3 beyond a reasonable doubt, then he would no longer be
4 entitled to that presumption of innocence. But it is only
5 if, unless and until you are satisfied of his guilt beyond
6 a reasonable doubt that the presumption of innocence would
7 no longer be applicable.

8 Now, the way the trial will proceed is that in a
9 moment the lawyers are going to address you in what are
10 called opening statements.

11 There are two occasions in the trial where lawyers are
12 permitted to address the jury, and that is at the beginning
13 of the trial before any evidence has been introduced, then
14 again at the conclusion of the trial after all of the
15 evidence has been received.

16 But keep in mind, as I've just indicated, the evidence
17 upon which you will base your decision comes during the
18 time that evidence is introduced during the trial. That's
19 between the opening and the closing statements of the
20 lawyers.

21 And therefore you are not to consider the lawyers'
22 statements as being any evidence upon which you will base
23 your decision, and that's because the lawyers don't know
24 anything about this case of their own personal knowledge or
25 perception like witnesses will be testifying to when

1 they're called to the witness stand.

2 The lawyers aren't going to be placed under oath and
3 they're not going to take the witness stand. They're not
4 going to be subjected to direct and cross-examination like
5 each of the witnesses will be.

6 And so what they tell you in those statements is not
7 to be considered by you as any evidence upon which you will
8 base your decision, but you should listen to what they have
9 to say because the statements do serve a purpose.

10 The opening statements serve to provide you with a
11 basic understanding as to what this case is about from both
12 the perspective of the state and the defense so that you'll
13 have some context in which to place the evidence that we
14 will be receiving shortly thereafter.

15 The closing statements occur after all of the evidence
16 has been received. Again, while those statements are not
17 evidence, it does afford the lawyers an opportunity to
18 discuss with you the evidence that has been introduced
19 during the trial of the case. And through that discussion
20 each will have an opportunity to try to persuade you or to
21 convince you that the evidence in the case does or does not
22 support a particular decision.

23 And it's in between those opening and closing
24 statements that we actually receive the evidence upon which
25 you will base your decision.

1 As I've said, the state has brought the charge. The
2 state has made the accusation. The state has the burden of
3 proving the defendant's guilt beyond a reasonable doubt.
4 So they'll go forward first in their presentation of
5 evidence.

6 once they have concluded any person charged with a
7 crime has an opportunity to testify or call witnesses or
8 introduce evidence, but a defendant is never under any
9 obligation to take the witness stand or to call any witness
10 or produce any evidence because the burden is not upon a
11 person charged with a crime to prove that he or she is not
12 guilty or to prove that he or she is innocent because in
13 some cases that might not be possible.

14 The burden is always on the state to prove their guilt
15 beyond a reasonable doubt. But the defense has no burden
16 in the case and therefore may not take the witness stand
17 and may not call any witness, may not produce any evidence.

18 And if that occurs that's not something that the jury
19 may consider in any way during your deliberations or in
20 your determination as to whether or not his guilt has been
21 proven beyond a reasonable doubt. And you could not allow
22 such a fact to weigh in the slightest degree against the
23 defendant. But every defendant is afforded an opportunity
24 to present evidence should he or she wish to do so.

25 After the evidence has been received and after you've

1 heard the final summations of the lawyers, I will then
2 instruct you fully on the law as it relates to the criminal
3 law generally and as it relates to this particular crime
4 specifically.

5 Then you'll be asked to go back and to begin with your
6 deliberations. And through that process you're going to be
7 called upon through the exercise of good judgment and
8 common sense to carefully evaluate each witness' testimony,
9 examine all of the evidence introduced during the trial,
10 determine what you believe to be the most credible
11 evidence, and that's the evidence you'll accept. Determine
12 any evidence that you find not to be credible. That's the
13 evidence that you will reject. In so doing you're simply
14 called upon to render a fair and impartial decision based
15 upon the evidence and the law that's applicable.

16 Now, it's important that you give each witness the
17 same degree of attention as they testify. That doesn't
18 mean that you have to give every witness' testimony the
19 same degree of weight. You'll judge the credibility of
20 witness testimony.

21 But it's important that you give each witness the same
22 degree of attention as they testify so that when you do go
23 back to begin your deliberations you'll be a proper
24 position to be able to fairly examine and determine the
25 credibility and the believability of witness testimony

Opening statements

1 based upon not just that witness' testimony but based upon
2 all of the testimony and all of the evidence received
3 during the course of the trial.

4 And of course it's important that you keep an open
5 mind throughout the course of the trial, and that just
6 means that you should not begin making up your minds or
7 formulating your opinions as to what you think the ultimate
8 decision ought to be in this case until all of the evidence
9 has been received, until I've instructed you on the law and
10 until you've been asked to begin with your deliberations.

11 That is the process that has been designed over the
12 last 241 years to ensure that you can arrive at a fair
13 decision in any case, and specifically now in this case.

14 So I do want to thank you in advance for your
15 participation, as well as for your careful attention. I
16 would ask that you please give the lawyers your attention
17 now as they give you their opening statements.

18 Ms. Overby.

19 MS. OVERBY: May it please the Court, Your Honor.

20 In February of 2015 MINOR VICTIM was a typical
21 teenager. She lived in Alabama with her mother, her
22 stepfather and her step-siblings.

23 Her biological father, Ricky Stribling, lived in South
24 Carolina. Prior to 2015 MINOR VICTIM hadn't seen him since she
25 was four years old.

Opening statements

1 He made contact with her, invited her to come to South
2 Carolina. And she left her Alabama home and came to live
3 with him.

4 That was the beginning of her worst nightmare, a
5 nightmare that started in the back bedroom of his Woodruff
6 home, continued to a women's clinic in Atlanta, Georgia,
7 and continues today.

8 Within a few weeks of her arrival in South Carolina,
9 MINOR [REDACTED] father began to sexually assault her. Hundreds
10 of miles away from her mother, she kept a huge secret about
11 what her father was doing to her.

12 She was eventually able to get out of her father's
13 home. She went to stay with her maternal aunt in the
14 Spartanburg area.

15 Her mother came from Alabama to pick her up. When her
16 mother got there MINOR [REDACTED] revealed that big secret about
17 what her father had done to her.

18 MINOR [REDACTED] mother went to the police. Shortly after
19 going to the police MINOR [REDACTED] learned the unimaginable. She
20 was pregnant with her father's child. Faced with the
21 decision no 15-year-old should ever have to make, MINOR [REDACTED]
22 underwent a procedure to terminate that pregnancy.

23 During the course of this trial you will hear
24 testimony from MINOR [REDACTED] about what happened to her. I ask
25 that you be patient with her. She is reliving this

Opening statements

1 nightmare in front of a room full of strangers. She is
2 reliving this nightmare in front of the very person who did
3 this to her.

4 In addition to MINOR [REDACTED] you will also hear testimony
5 from the doctor who performed the procedure and collected
6 the fetal tissue from MINOR [REDACTED] body, the evidence of
7 sexual assault in this case.

8 You will hear testimony from various people who
9 handled that fetal tissue. You will hear from Investigator
10 Tracy Moss with the Spartanburg County Sheriff's Office who
11 went to Atlanta and collected that evidence after that
12 procedure. You will hear testimony from a pathologist in
13 Spartanburg County who prepared that fetal tissue to be
14 submitted to our state's crime lab, SLED. You will hear
15 testimony from persons at SLED that analyzed the evidence.

16 You will also hear testimony from a second pathologist
17 in Greenville who further examined the fetal tissue; and
18 you'll also hear testimony from D.N.A. experts in a private
19 laboratory in Texas who performed paternity testing on the
20 unborn child. Those experts will testify about what they
21 did taking the fetal tissue, comparing it to a profile from
22 MINOR VICTIM [REDACTED] and from the defendant in this case to determine
23 paternity.

24 One of the most difficult aspects of my job is to show
25 people like you that these kinds of things happen at all.

Opening statements

1 we don't want to think that they could. We feel better
2 about the world we live in if we choose to accept that this
3 doesn't happen. It doesn't make anyone feel good to think
4 about anyone doing this to someone else, much less their
5 own daughter.

6 But I'm asking you at the outset of this trial to
7 accept that this happens. And after you've done that I ask
8 that you decide this case on its merits.

9 The defendant in this case is charged with criminal
10 sexual conduct with a minor in the first degree. As His
11 Honor has told you all this morning, at the conclusion of
12 this trial he will instruct you fully and completely on
13 what that means.

14 But in South Carolina it's against the law under this
15 code section to -- for a person to commit a sexual battery,
16 which includes sexual intercourse, with a minor under the
17 age of 16 years old where the person has previously been
18 ordered to register as a sex offender. You will also hear
19 testimony that Ricky Stribling had been ordered to register
20 as a sex offender.

21 Lastly, I want to thank you all for your service this
22 week. I know we have taken you away from your jobs, your
23 families, other aspects of your life, and asked you to be
24 here. But it's not without a purpose. This is a very
25 important case for both the state and the defense.

Opening statements

1 I ask that you do three things during the course of
2 this trial. Listen closely to what's presented with an
3 open mind. Second, fairly evaluate the credibility of the
4 witnesses and the evidence that's presented before you.
5 And, third, use your common sense. Your common sense did
6 not escape you when you walked through that door this
7 morning.

8 If you do those things -- listen to what's presented,
9 fairly evaluate it and use your common sense -- you will
10 return a verdict of guilty in this case.

11 THE COURT: Mr. Shealy.

12 MR. SHEALY: Thank you, Your Honor. May it please the
13 Court.

14 My name is Matthew Shealy. I represent Ricky
15 Stribling. And let me first say nothing she said is
16 evidence. I've been doing this for a while now, and
17 prosecutors often promise to show all kinds of things. So
18 hold them to their promise, because at the end of this I
19 don't know that ultimately they will have fulfilled.

20 Now, we're going to be using a number of words that
21 ordinarily you don't use in polite society, you don't use
22 around people you don't know. And I understand that that's
23 going to be difficult and I understand that this is going
24 to be an emotionally charged case for everybody, but you've
25 got to use your reasoning, not your feelings -- you have to

MINOR [REDACTED]

Direct examination by Ms. Overby

1 use your reasoning, not your feelings, because it is going
2 to be emotionally charged. But you have to listen to the
3 evidence. And you can't allow your passions to take you
4 away from giving Mr. Stribling a fair trial.

5 Now, you have heard her. She has promised to prove
6 all kinds of things. And, again, I'm not sure that all of
7 those things will be proven, because at the end of this
8 case I expect you to find my client not guilty. Thank you.

9 THE COURT: Ms. Jordan.

10 MS. OVERBY: May we approach?

11 (Bench conference held off the record in the presence
12 of the jury but out of the hearing of the jury.)

13 MS. OVERBY: The state calls MINOR [REDACTED]

14 MINOR [REDACTED] having
15 been first duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MS. OVERBY:

17 Q Will you please introduce yourself to the jury?

18 A MINOR [REDACTED]

19 Q You have a very soft voice. I may need you to speak
20 up just a little for the court reporter.

21 A My name is MINOR [REDACTED]

22 Q MINOR [REDACTED] can you tell me how old you are?

23 A Seventeen.

24 Q And can you tell me what your date of birth is?

25 A [REDACTED]/99.

MINOR [REDACTED]

Direct examination by Ms. Overby

1 Q And where do you live?

2 A Fort -- Fort Benning, Georgia.

3 Q Who do you live there with?

4 A My mom.

5 Q Do you know the defendant in this case, Ricky
6 Stribling?

7 A Yes.

8 Q How do you know him?

9 A He's my biological father.

10 Q Was there a time in 2015 when you came to stay with
11 him in South Carolina?

12 A Yes.

13 Q Before you came to stay with him in 2015, how old were
14 you the last time you saw him?

15 A Four.

16 Q When you came to stay with him in South Carolina where
17 did you live?

18 A With -- it was me, Jack and him.

19 Q Who is Jack?

20 THE COURT: Excuse me just a minute.

21 Ms. Stribling, I know this is a different situation
22 you're in today. You don't ordinarily do this, but you're
23 going to have to speak up louder because everybody's got to
24 hear.

25 That black microphone that's in front of you, you

MINOR [REDACTED]

Direct examination by Ms. Overby

1 might need to get a little bit closer to it. But you've
2 got to speak out louder so we can be sure to hear what you
3 say.

4 The jury has to hear everything, and the court
5 reporter is over here and she's got to hear everything too.
6 So be sure you speak loud enough so we can pick it up.
7 Okay?

8 THE WITNESS: Yes, sir.

9 Q And who did you tell me that you lived with in South
10 Carolina?

11 A It was Jack, me and him.

12 Q And who is Jack?

13 A It's my grandfather.

14 Q What first brought you out to South Carolina?

15 A He had gotten in contact with me through facebook.

16 Q And when you came out and stayed with him in South
17 Carolina, did he do something here to hurt you?

18 A Yes.

19 Q And what did he do to you?

20 A He assaulted me sexually.

21 Q And when you say he sexually assaulted you, what part
22 of his body was involved?

23 A His private area.

24 Q And what part of your body?

25 A My private area.

MINOR [REDACTED]

Direct examination by Ms. Overby

- 1 Q And what did he do to you?
- 2 A He raped me.
- 3 Q Can you tell me where this happened?
- 4 A In Jack's house.
- 5 Q Where at in Jack's house?
- 6 A In the room.
- 7 Q What type of room?
- 8 A The bedroom.
- 9 Q Whose bedroom was it?
- 10 A It was the room that I was staying in.
- 11 Q Before that happened, what had you been doing?
- 12 A Watching T.V.
- 13 Q Where were you watching T.V.?
- 14 A In the living room.
- 15 Q Where was he?
- 16 A In the bathroom.
- 17 Q What -- when is the first time -- did you see him come
- 18 out of the bathroom?
- 19 A Yes.
- 20 Q What was he wearing?
- 21 A A towel.
- 22 Q How did you get to that bedroom?
- 23 A I went back. I just walked back there.
- 24 Q About how long after you got to South Carolina did
- 25 this happen?

MINOR

Direct examination by Ms. Overby

- 1 A Maybe two weeks.
- 2 Q Was this something that happened one time or more than
- 3 one time while you were there?
- 4 A It was more than once.
- 5 Q About how soon after the first time it happened did it
- 6 happen again?
- 7 A Maybe two days.
- 8 Q And where did -- where did it happen again?
- 9 A In the same room.
- 10 Q Did you say in the same room? Was anyone home when
- 11 that happened?
- 12 A No.
- 13 Q Do you know where Jack was?
- 14 A He was at the funeral home.
- 15 Q Is that where he worked?
- 16 A Yes.
- 17 Q At some point after coming to Spartanburg did your dad
- 18 take you somewhere else?
- 19 A To Myrtle Beach.
- 20 Q And how long did you go to Myrtle Beach?
- 21 A It was a few days.
- 22 Q Where did you stay when you were there?
- 23 A I don't remember.
- 24 Q When you were in Myrtle Beach did he say anything
- 25 about what might happen if you told anyone?

MINOR [REDACTED]

Direct examination by Ms. Overby

- 1 A That he would hurt me.
- 2 Q Did he have any type of weapon with him in Myrtle
- 3 Beach?
- 4 A A gun.
- 5 Q Did you see that gun?
- 6 A Yes.
- 7 Q Did he threaten to use it in any way?
- 8 A Yes.
- 9 Q On who?
- 10 A On himself and I.
- 11 Q Were you afraid when you were in Myrtle Beach with
- 12 him?
- 13 A Yes.
- 14 Q Were you able to get away from his custody?
- 15 A Yes.
- 16 Q Where did you go?
- 17 A With my aunt.
- 18 Q What's your aunt's name?
- 19 A Sandra Fowler.
- 20 Q And where does she live?
- 21 A In Spartanburg.
- 22 Q How did you get back to Spartanburg?
- 23 A She -- we came back in the car, and she met me at
- 24 Jack's house.
- 25 Q Was that the last time that you saw your dad?

MINOR [REDACTED]

Direct examination by Ms. Overby

1 A No.

2 Q When is the last time you saw your dad?

3 A When he brought me the stuff, a bag of stuff from my
4 mom.

5 Q Was this a bag of your stuff?

6 A Yes.

7 Q When you were in his custody did he ever buy you a
8 pregnancy test or give you a pregnancy test to take?

9 A Yes.

10 Q And did you take it?

11 A Yes.

12 Q And at that time did you see what the results were?

13 A It was negative.

14 Q Did you later -- let me ask you this. When you were
15 staying with your Aunt Sandra did you get in touch with
16 your mother to come and pick you up?

17 A Yes.

18 Q Did she come to South Carolina?

19 A Yes.

20 Q When -- who's the first person you told about what
21 happened?

22 A I told my aunt that he had hurt me bad, told my mom
23 what happened.

24 Q And was -- when you told your mom where were you?

25 A We were in the car.

MINOR [REDACTED]

Direct examination by Ms. Overby

- 1 Q Were you in South Carolina still?
- 2 A Yes.
- 3 Q Did your mom go to the police?
- 4 A Yes.
- 5 Q Did you later take a pregnancy test?
- 6 A Yes.
- 7 Q Where were you when you took that?
- 8 A At the mall.
- 9 Q And did you learn that you were pregnant?
- 10 A Yes.
- 11 Q Did you ultimately have an appointment and a procedure
- 12 in Atlanta?
- 13 A Yes.
- 14 Q Do you remember about what time of year it was when
- 15 you first came to South Carolina?
- 16 A It was around Valentine's Day.
- 17 Q And this was when you said you were 15 years old?
- 18 A Yes.
- 19 Q About how long -- do you remember about when you went
- 20 to stay with your Aunt Sandra?
- 21 A I think it was around April or --
- 22 Q When you talked about what your dad did to you, do you
- 23 remember what you were wearing?
- 24 A It was -- I believe it was sweatpants and a t-shirt.
- 25 Q When you went to that bedroom, where did you go in

MINOR

Direct examination by Ms. Overby

1 that room?

2 A Into a corner.

3 Q Into the corner. And did he come into that room?

4 A Yes.

5 Q And did -- what did he do to you when he came in that
6 room?

7 A He grabbed my ankle.

8 Q Did he move you anywhere?

9 A To the edge of the bed.

10 Q Did you say to the edge of the bed?

11 A He drug me to the edge of the bed.

12 Q Is that where this happened?

13 A Yes.

14 Q Did it happen anywhere in the house other than the
15 bedroom that you described?

16 A No.

17 Q After he did that to you, where did he go?

18 A I don't know.

19 Q Where did you go?

20 A I didn't move.

21 Q Before you went into that room did you do anything?

22 Did you shut the door or anything behind you?

23 A I shut and locked the door.

24 Q Was he able to get in?

25 A Yes.

MINOR [REDACTED]

Cross-examination by Mr. Shealy

1 MS. OVERBY: No further questions for this witness,
2 Your Honor.

3 Q Please answer any questions Mr. Shealy may have for
4 you.

5 CROSS-EXAMINATION

6 BY MR. SHEALY

7 Q All right. Ms. Stribling, why did you come to stay
8 with your father?

9 A I figured it would be an opportunity to get to know
10 him.

11 Q So it wasn't because you had gotten into a fight with
12 your mother?

13 A No.

14 Q That wasn't why?

15 A No, sir.

16 Q Do you remember speaking with Investigator Moss?

17 A Yes, sir.

18 Q And do you remember telling her that it was because
19 y'all had gotten into some kind of argument and you had
20 overreacted and left?

21 A No, sir.

22 Q You don't remember telling her that?

23 Okay. And how did you get to South Carolina?

24 A In my mom's car.

25 Q All right. Did your mother allow you to drive that

MINOR

Cross-examination by Mr. Shealy

1 car?

2 A No.

3 Q So you had taken her car.

4 A Yes, sir.

5 Q Okay. Had you let your mother know that you were

6 going to stay with your father?

7 A Yes.

8 Q Yes? She did?

9 A Yes.

10 Q She just didn't know that you were going to take her

11 car.

12 A Yes.

13 Q Now, you've testified that you got to South Carolina

14 February -- around about February the 11th, is that

15 correct?

16 A Yes.

17 Q Okay. How long did it take for you to drive from

18 Alabama to South Carolina?

19 A I don't remember. Maybe five -- four or five hours.

20 Q Okay. So you were able to make that trip all in one

21 go. You didn't have to stop anywhere or anything?

22 A No.

23 Q Okay. And you've testified also that the first time

24 that this happened, it happened two weeks after you got to

25 South Carolina, is that correct?

MINOR

Cross-examination by Mr. Shealy

1 A Yes, sir.

2 Q So that would have been somewhere around March the
3 2nd, is that right?

4 A Yes.

5 Q Now, do you remember the layout of this house?

6 A Yes, sir.

7 Q You've testified that you were in the back bedroom.

8 A Yes, sir.

9 Q But you had started out in the living room, I guess,
10 watching television.

11 A Yes.

12 Q Okay. And the layout of this house, my understanding
13 is -- and so correct me if I'm wrong -- is there is kind of
14 a central hallway, and the living room is kind of a lower
15 level. Do you have to go down some steps to get to it?

16 A Yes.

17 Q Is that right? Okay. And the kitchen is right next
18 to that room, is that correct?

19 A No.

20 Q No?

21 A No.

22 Q Okay. Where is the kitchen?

23 A It's when you first walk in.

24 Q When you first walk in the front door?

25 A No. It's -- it's on the other side of the living

MINOR

Cross-examination by Mr. Shealy

1 room. It's completely opposite from the hallway.

2 Q Okay. So it's opposite the hallway.

3 A Yes.

4 Q Now, where is the bathroom that he came out of?

5 A It is the first or second door on the left in the
6 hallway.

7 Q All right. So as you're walking down the hallway on
8 your left there's the living room and then there's a
9 bathroom, is that correct?

10 A Yes.

11 Q Okay. And then you continue down the hallway. And
12 then you said that your -- the bedroom that you were using
13 was the last bedroom. Is it on the right or the left?

14 A It's on the right.

15 Q It's on the right.

16 Now, where those steps are before the hallway, is that
17 hallway a -- does it have walls on either side or is it
18 open?

19 A There's walls.

20 Q There's walls. So there's a wall, the opening for the
21 steps. Then there's the bathroom, and then there's a
22 bedroom, is that correct?

23 A There's the stairs and then the living room. And you
24 can -- the stairs aren't connected to the hallway.

25 Q Okay. So when you were on the couch, the testimony is

MINOR

Cross-examination by Mr. Shealy

1 you saw him come out of the bathroom?

2 A Yes.

3 Q And then you went into the back bedroom.

4 A Yes. I walked around. I saw him through the
5 reflection of the T.V.

6 Q I'm sorry?

7 A I saw him through the reflection of the T.V., and I
8 got up and walked around.

9 Q When you say you walked around, how did you walk
10 around? Did you have to go -- you had to go up the steps
11 and right past him, I suppose.

12 A No. There's two sets of steps in the living room.
13 There was one that led to the kitchen and then one that was
14 on the other side of the living room. And I got up and
15 walked around it.

16 Q So did you go up the steps into the kitchen?

17 A Yes.

18 Q Okay. And then you went into the kitchen and then you
19 went into the hallway?

20 A And there's the living room, and then the bars, and
21 then another room. And I walked all the way around to
22 avoid him.

23 MR. SHEALY: If I may have just a moment.

24 (Pause.)

25 Q So while you were walking around through the

MINOR

Cross-examination by Mr. Shealy

1 kitchen -- and then I guess you would have had to go
2 through the dining room. Is that my understanding? And
3 through the door from the dining room. How would you have
4 gotten to your bedroom, I guess is my question, without
5 using the hallway?

6 A No. I went through the hallway. He wasn't standing
7 in the hallway. He was on the stairs in front of the
8 hallway.

9 Q Okay. All right. Now, again, you testified you
10 remembered speaking with Investigator Moss. And you
11 also -- I guess you testified that you -- you told your
12 mother that this happened.

13 A Yes.

14 Q And that was around about April the 3rd, is that
15 right?

16 A Yes.

17 Q Now, whenever you spoke with your mother and
18 Investigator Moss did you tell them about the second time
19 that it happened?

20 A Yes.

21 Q You did tell them that, ma'am?

22 A Yes.

23 Q Yes?

24 THE COURT: Ma'am, you're going to have to speak up.

25 I can't hear you. Did you answer the question?

MINOR

Cross-examination by Mr. Shealy

1 THE WITNESS: What was the question?

2 Q If you had told them about the second time that this
3 had happened.

4 A Yes.

5 Q Now, you've also testified that you went to Myrtle
6 Beach. Did that happen after the first time or after the
7 second time?

8 A After the second time.

9 Q Okay. And you've testified that he threatened you.
10 So about what time or what day did y'all go to Myrtle
11 Beach?

12 A I don't remember the exact date.

13 Q All right. Beginning of March, end of March, any
14 idea?

15 A I don't remember.

16 Q You don't remember.

17 Okay. Now, you had a telephone throughout this period
18 of time, correct?

19 A Yes.

20 Q And you were in pretty constant contact with your
21 mother, is that correct --

22 A Yes.

23 Q -- through text messages and things?

24 A Yes.

25 Q Do you recall -- now, I guess -- let me rephrase that

MINOR

Redirection examination by Ms. Overby

1 question. So you were able to call out of the house, is
2 that correct?

3 A Yes. But he was always right there and it was on
4 speaker phone.

5 Q Okay. But Ms. -- and your mother, I guess, had
6 also -- was also in contact with Mr. Stribling, is that
7 correct?

8 A Yes.

9 Q In fact, she kind of acted as an intermediary between
10 the two of you at times. You would ask her to ask him to
11 let you do something, is that correct?

12 A (No response.)

13 MR. SHEALY: That's all I have for this witness.

14 MS. OVERBY: Thank you, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. OVERBY

17 Q MINOR when you went to the beach, was that after
18 he began to sexually assault you?

19 A Yes.

20 Q You testified he was always around when you were on
21 the phone. Were you scared of him?

22 A Yes.

23 Q Is that why you locked the door when you went to that
24 back bedroom?

25 A Yes.

MINOR [REDACTED]

Recross-examination by Mr. Shealy

1 Q And you said that he was always right there. Was he
2 ever working?

3 A He did monuments every now and then, but it wasn't
4 every day.

5 Q So for the most part he was at the house.

6 A Yes.

7 MS. OVERBY: No further questions.

8 THE COURT: Okay. You may step down.

9 MR. SHEALY: Judge --

10 THE COURT: Yes, sir.

11 MR. SHEALY: If I may have just one moment.

12 RECROSS-EXAMINATION

13 BY MR. SHEALY

14 Q Do you recall on facebook messenger
15 March 19th messaging your mother? I believe it's you
16 messaging your mother. "He's got some ugly fat girl with
17 him and I'm literally about to shoot his" --

18 MS. OVERBY: Object, Your Honor. Relevance.

19 MR. SHEALY: Judge, she said --

20 MS. OVERBY: And outside the scope of redirect.

21 THE COURT: Sustained.

22 MR. SHEALY: Judge, she says that she was scared --

23 MS. OVERBY: Objection.

24 MS. JORDAN: May we approach?

25 THE COURT: Yes.

MINOR

Recross-examination by Mr. Shealy

1 (Bench conference held off the record in the presence
2 of the jury but out of the hearing of the jury.)

3 Q Do you remember having sent that message?

4 A No, I don't.

5 Q You don't remember having sent that message. You
6 don't remember.

7 MR. SHEALY: If you'll bear with me one moment, Judge,
8 I wasn't able to print these out.

9 (Pause.)

10 MR. SHEALY: I apologize, Your Honor. I just got
11 this.

12 (Pause.)

13 Q Do you remember sending your mother a text message on
14 3/26 of 2015, "I told him off"?

15 A Yes.

16 Q Do you remember saying that?

17 A Yes.

18 Q Do you remember getting angry that he wouldn't bring
19 you your stuff?

20 A Yes.

21 Q And saying that you wished you could smack his face?

22 A Yes.

23 Q Yes.

24 MR. SHEALY: Okay. All right. That's all I have for
25 this witness.

Dr. Lisa Haddad
Direct examination by Ms. Overby

1 MS. OVERBY: We ask this witness be excused, please.

2 THE COURT: You may step down.

3 MR. SHEALY: No objection.

4 (whereupon, the witness was excused.)

5 MS. OVERBY: Next, Your Honor, the state would call

6 Dr. Lisa Haddad.

7 DR. LISA HADDAD, having been
8 first duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MS. OVERBY

10 Q Can you start by introducing yourself to the jury,
11 please?

12 A Good morning. I'm Lisa Haddad.

13 Q Dr. Haddad, what do you do for a living?

14 A I'm an O.B.G.Y.N.

15 Q And where are you currently employed?

16 A I'm currently employed at Emory University.

17 Q In April of 2015, could you tell me where you were
18 employed?

19 A So I was still employed at Emory University.

20 Q Can you tell us a bit about your educational
21 background, what degrees you hold?

22 A So I have an M.D. I have also a master's in science,
23 and I also have an M.P.H. as well, a master's in public
24 health.

25 Q And are you a board certified physician?

Dr. Lisa Haddad
Direct examination by Ms. Overby

1 A I am a board certified O.B.G.Y.N. And I also have
2 additional fellowship training in family planning.

3 Q Where did you complete your residency?

4 A At Brigham -- at Brigham and Women's Mass. General
5 Hospital, Harvard.

6 Q And part of your work in April of 2015 included work
7 at the Atlanta Women's Center?

8 A Yes.

9 Q Can you tell me exactly, is that your primary place of
10 employment, or where all did you work at?

11 A So I am faculty at Emory University, and I'm
12 contracted out to be medical director and also work as a
13 clinician at Atlanta Women's Center.

14 Q Did you treat MINOR [REDACTED] in April of 2015?

15 A Yes.

16 Q Can you just tell us generally about the type of
17 procedure she underwent at Atlanta Women's Center?

18 A She had a first trimester surgical abortion procedure.

19 Q And have you performed those types of procedures on
20 other occasions?

21 A Yes.

22 Q Might you be able to give some approximation of about
23 how many types of procedures like that that you've done?

24 A I have done a lot of those procedures. Over a
25 thousand.

Dr. Lisa Haddad
Direct examination by Ms. Overby

1 MS. OVERBY: At this time, Your Honor, we would ask
2 that Dr. Haddad be qualified as an expert in the field of
3 O.B.G.Y.N.

4 MR. SHEALY: No objection.

5 THE COURT: She is so qualified.

6 Q As part of the protocol at Atlanta Women's Center was
7 an ultrasound performed prior to that procedure?

8 A Yes.

9 Q And can ultrasounds determine the gestational age or
10 the aging or dating of a fetus?

11 A Yes.

12 Q And can you -- first let me ask you just to confirm if
13 I may. Did you see the patient on April the 17th of 2015?

14 A I believe so, yes.

15 Q And what was the approximate gestational age at that
16 point?

17 A I believe it was eight weeks. If I could see that
18 chart that would be helpful for me to confirm.

19 Q One second.

20 (Pause.)

21 Q Would having your report records refresh your memory
22 or --

23 A Yes. That would be helpful.

24 MS. OVERBY: May I approach the witness, Your Honor?

25 THE COURT: Sure.

Dr. Lisa Haddad
Direct examination by Ms. Overby

1 Q I am handing you -- just to confirm, the date of the
2 procedure was what day?

3 A It was April 17th of 2015.

4 Q Okay. And I asked you about the approximation of the
5 gestational age of the fetus. Can you tell us what that
6 was?

7 A It was 8.5 weeks by ultrasound.

8 Q Okay.

9 A And so 8.5 weeks. There's a little bit of margin of
10 error, so it could be plus or minus three or four days of
11 that.

12 Q You said the margin error was plus or minus about --

13 A So we estimate in the first trimester. There's a
14 1-week margin of error around an ultrasound dating, but
15 eight weeks is an earlier part. And so there's even a
16 smaller margin of area of that eight weeks. So the
17 gestational age is two weeks after -- two weeks more than
18 the date of conception is estimated.

19 Q Can you generally describe the procedure that was done
20 on MINOR what it entails?

21 A So a first trimester surgical abortion procedure the
22 patient is taken into the operating room where an exam is
23 done. She is -- in this case she received general
24 anesthesia or deep sedation for the procedure.

25 Her cervix is gently dilated and a suction curette, a

Dr. Lisa Haddad
Direct examination by Ms. Overby

1 small 8-millimeter suction, is entered through the cervix.
2 And the products of conception is removed through the
3 electric vacuum.

4 Q So was tissue or products of conception collected from
5 MINOR body on that day?

6 A Yes. The tissue is put directly into a canister at
7 that time.

8 Q And are you familiar with -- generally with the
9 procedures regarding what's done with those products of
10 conception after they're collected from a patient?

11 A Yes.

12 Q And can you tell me once the products of conception or
13 fetal tissue are removed from a patient's body, where does
14 it go next?

15 A So the canister is taken into a room right next door
16 where we look at it. The -- we have somebody who is
17 assigned to pathology that day who looks at it just to
18 confirm that the tissue is actually there and consistent
19 with what the gestational age is so that we feel confident
20 that we've performed the procedure appropriately.

21 And then in this case it's put into a -- into a
22 container where it is given to the detectives.

23 Q Okay. So the products of conception go from the
24 patient to pathology, and then from pathology to law
25 enforcement, is that correct?

Dr. Lisa Haddad
Cross-examination by Mr. Shealy

1 A Yes, correct.

2 Q And is there somebody by the name of Ms. Reznick who
3 works at Atlanta Women's Center?

4 A Yes.

5 Q Where does she work within the facility?

6 A She was, I believe, that day in the pathology.

7 Q Can you tell me when law enforcement is involved --
8 how many operating rooms does the clinic have?

9 A The clinic has two operating rooms.

10 Q And when law enforcement is there are both of those
11 rooms or both of those operating rooms operating?

12 A So there's only one clinician, and so that clinician
13 is the only clinician there that day. And so only one
14 operating room is going on at one time.

15 MS. OVERBY: I have no further questions of this
16 witness.

17 Q Please answer anything Mr. Shealy may have for you.

18 CROSS-EXAMINATION

19 BY MR. SHEALY

20 Q Ms. Haddad, so, now, you did not do the pathology, is
21 that correct? Is that what you just testified to?

22 A Yes.

23 Q So you did not verify whether the gestational age of
24 the tissue matched the gestational age assumed by the
25 ultrasound. Is that what you're testifying to?

Dr. Lisa Haddad
Cross-examination by Mr. Shealy

1 A So I did not look at the pathology. The ultrasound --
2 the procedure itself was done under ultrasound guidance.
3 So I visualized the gestational age roughly while I was
4 doing the procedure by seeing the ultrasound. I also can
5 visualize the tissue as it is coming out through the
6 suction, and I can confirm that it's -- I would know if it
7 was not consistent with the gestational age.

8 Q All right. So it would appear to be consistent.

9 A It is. It would be appear -- it would appear to be
10 consistent, yes.

11 Q All right. So, and eight and a half weeks from
12 April 17 would be roughly February 17th or 18th. Is that
13 accurate?

14 A So eight and a half weeks would be the date of her
15 last menstrual period. The date of conception is roughly
16 two weeks after the date of her last menstrual period, so
17 roughly six and half weeks before the procedure was
18 performed.

19 Q So the fetus would have -- six and a half weeks after
20 or --

21 A It would be --

22 Q Explain that to me.

23 A I'm sorry. Gestational age dating is quite
24 complicated, I understand. So we -- we date a pregnancy
25 based on the date of the last menstrual period. So eight

Maricca Stuckey
Direct examination by Ms. Overby

1 and a half weeks from the last menstrual period. But it
2 was actually conceived two weeks after, roughly two weeks
3 after. And all of this is a little bit inexact. So I'd
4 say plus or minus a week around all of those datings, so.

5 Q Okay.

6 MR. SHEALY: That's all I have for this witness.

7 MS. OVERBY: I have no additional questions for her.
8 I'd ask that Dr. Haddad be excused.

9 THE COURT: Okay. You may step down.

10 (Whereupon, the witness was excused.)

11 MS. OVERBY: The state would next call Maricca
12 Stuckey.

13 MR. SHEALY: Judge, may we approach?

14 (Bench conference held off the record in the presence
15 of the jury but out of the hearing of the jury.)

16 MARICCA STUCKEY, having been
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MS. OVERBY

19 Q Would you please introduce yourself to the jury?

20 A My name is Maricca Stuckey.

21 Q And, Ms. Stuckey, where do you currently work?

22 A Atlanta Women's Center in Atlanta, Georgia.

23 Q And what do you do there?

24 A A certified medical assistant.

25 Q In April of 2015 what was your position there?

Maricca Stuckey
Direct examination by Ms. Overby

1 A Certified medical assistant.

2 Q Are you generally familiar with the procedures of --
3 of collection at the Atlanta Women's Center?

4 A Yes, ma'am.

5 Q I'm going to hand you a document if I may. I'm going
6 to hand you what's been premarked as State's Exhibit 33 and
7 ask you to look at this.

8 MS. OVERBY: If I may approach the witness.

9 Q Does this appear to be a chain of custody form that
10 was maintained by law enforcement in the treatment of a
11 MINOR

12 A Yes, ma'am.

13 Q Okay. Down at the bottom of the page, is that your
14 signature there?

15 A Yes, it is.

16 Q Okay. And after you took -- this item that it relates
17 to is a white container, is that correct?

18 A Yes.

19 Q Okay. And after you took a white container, to whom
20 did you give that to?

21 A We always go give it to pathology.

22 THE COURT: Excuse me just a minute.

23 I need for you to use that microphone because you've
24 got your back to the court reporter.

25 THE WITNESS: Okay.

Maricca Stuckey
Direct examination by Ms. Overby

1 A We give it to pathology.

2 Q And do you give it to pathology -- when you say that
3 do you mean once it's collected from a patient it goes to
4 pathology?

5 A Yes, ma'am.

6 Q Okay. And then pathology -- as Dr. Haddad testified
7 -- pathology reviews the material?

8 A They -- what did you ask me, ma'am?

9 Q They review the -- that --

10 A Yes, ma'am. They review the material.

11 Q And do they -- do they seal the item, the container,
12 back in pathology?

13 A Yes.

14 Q And does pathology -- when law enforcement is involved
15 does pathology place it in an envelope to be given to the
16 officer?

17 A Yes.

18 Q And that document in front of you after you -- did --
19 after you received that item did you sign that you gave it
20 to another person?

21 A Yes.

22 Q And to whom did you give that to?

23 A I give it to the woman that works in pathology.

24 Q Okay.

25 A And she gives it to the...

Maricca Stuckey
Cross-examination by Mr. Shealy

1 Q The document that I'm referring you to right there
2 that you signed --

3 A Uh-huh.

4 Q -- who was the next person to sign it after you? who
5 took that from you?

6 MR. SHEALY: Objection, Your Honor. She doesn't have
7 any personal knowledge as to -- doesn't sound like.

8 THE COURT: We've got two problems with that. That
9 document is not in evidence, number one, and, number two,
10 if she didn't see her sign it, then she doesn't know who
11 signed it.

12 Q But that is your signature.

13 A Yes, ma'am.

14 Q Okay.

15 MS. OVERBY: No further questions for this witness.

16 CROSS-EXAMINATION

17 BY MR. SHEALY

18 Q You testified you had a white container. Where did
19 you get the white container from?

20 A It's always in the room to collect evidence, I mean,
21 to collect the material.

22 Q So somebody else puts the white container there, and
23 you go and get it and take it to pathology?

24 A No. I put it there.

25 Q Oh, you put it there.

Maricca Stuckey
Redirect examination by Ms. Overby

1 A Correct.

2 Q Okay. But where did you get the white container from
3 originally?

4 A It's already in the room. We set it up. I set the
5 room up.

6 Q Okay. So you set the room up. Presumably, you get
7 the supplies from the supply closet or pharmacy or
8 something. You set the room up.

9 A I did from path.

10 Q Okay. And then the -- I think Ms. Haddad testified
11 the products of conception, I guess, go into that white
12 container.

13 A Yes.

14 Q Okay. And then you take the white container to
15 pathology.

16 A Correct.

17 Q And that's the extent of your involvement.

18 A Of my job, correct.

19 MR. SHEALY: That's all of this witness.

20 REDIRECT EXAMINATION

21 BY MS. OVERBY

22 Q Whenever evidence is given to law enforcement is it
23 placed sometimes in a plastic bag?

24 A Yes, ma'am, it is.

25 Q Was that done in pathology?

Maricca Stuckey
Redirect examination by Ms. Overby

1 MR. SHEALY: Judge, she doesn't have any personal -- I
2 mean, she's not --

3 THE COURT: I don't know whether she does or not.
4 Let's lay that foundation.

5 Does she have knowledge about what's going on in
6 pathology.

7 Q Whenever you said --

8 MS. OVERBY: I'm sorry, Your Honor.

9 Q Whenever items are collected from a patient and you
10 leave the room do you -- you walk to pathology. And where
11 is pathology located in comparison to the operating room?

12 A It's right in the hallway.

13 Q Okay. And is that done in your presence? Do you see
14 what pathology is doing?

15 A Not in this particular case, no.

16 MS. OVERBY: No further questions.

17 MR. SHEALY: I've got nothing else, Judge.

18 THE COURT: You may step down.

19 MS. OVERBY: May I ask this witness be excused, Your
20 Honor?

21 THE COURT: Okay.

22 MR. SHEALY: No objection.

23 MS. OVERBY: We'd actually like a break if we could.

24 THE COURT: All right. Do you want to excuse her?

25 MS. OVERBY: No, not at this point.

Tracy Moss
Direct examination by Ms. Overby

1 THE COURT: Just have a seat.

2 We'll take a short break. Let me ask the jury to
3 please go to your jury room.

4 Don't talk about the case. You can't talk about it
5 until you are involved in deliberations.

6 After that break we will bring you back to continue.

7 (The following takes place outside the presence of the
8 jury.)

9 THE COURT: We'll be at ease for 15 minutes.

10 Let me see the lawyers in chambers.

11 (Whereupon, a recess was taken.)

12 THE COURT: All right. Bring the jury in, please.

13 (The following takes place in the presence of the
14 jury.)

15 THE COURT: All right. Ms. Oglesby.

16 MS. OVERBY: Your Honor, the state would call Tracy
17 Moss.

18 TRACY MOSS, having been first
19 duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MS. OVERBY

21 Q Would you please introduce yourself to the jury?

22 A My name is Tracy Moss.

23 Q And what's -- where are you currently employed?

24 A Spartanburg County Sheriff's Office.

25 Q And what's your title there?

Tracy Moss
Direct examination by Ms. Overby

1 A I am currently the sergeant over the special victims
2 unit.

3 Q In April of 2015, in what capacity were you employed
4 with the Spartanburg County Sheriff's Office?

5 A I was an investigator within the special victims unit.

6 Q And as part of that unit did you investigate sexual
7 crimes involving minor victims?

8 A Yes, ma'am.

9 Q And did you become involved in the investigation
10 involving the defendant in this case, Richard Stribling?

11 A I did.

12 Q Can you tell us how this report initially came to the
13 Spartanburg County Sheriff's Office?

14 A The report initially came to us by the mother Karen.
15 She came to the Spartanburg County Sheriff's Office and
16 filed a report in reference to a sexual assault involving
17 her daughter MINOR [REDACTED]

18 Q And on what date was that?

19 A April 3rd of 2015.

20 Q Where did MINOR [REDACTED] mother, Karen, live at the time?

21 A They lived in Alabama.

22 Q Did you learn that the incidents that were reported
23 occurred in Spartanburg County?

24 A Yes.

25 Q And was this case assigned to you after the report

Tracy Moss
Direct examination by Ms. Overby

1 came in?

2 A It was.

3 Q Did you follow up with the MINOR?

4 A I did.

5 Q And where did you first speak with her?

6 A It was on April 16th. I met with the MINOR in
7 Atlanta, Georgia.

8 Q Prior -- prior to going to Atlanta and meeting with
9 MINOR [REDACTED] did you have a conversation with her mother?

10 A I did.

11 Q And when was that?

12 A That was on April 8th. I spoke with the mom.

13 Q And did you learn that MINOR [REDACTED] was pregnant at that
14 time?

15 A I did.

16 Q And did you then arrange for a time to meet with
17 MINOR [REDACTED] in Atlanta?

18 A I did.

19 Q And, again, tell me that date.

20 A Met with MINOR [REDACTED] on April 16th.

21 Q Was she in Atlanta for purposes of a scheduled
22 procedure there?

23 A She was.

24 Q And when was that procedure scheduled to take place?

25 A April 17th.

Tracy Moss
Direct examination by Ms. Overby

1 Q Where did you meet with MINOR

2 A I met with her at their hotel room.

3 Q And was anyone else present when you spoke with her?

4 A No, ma'am.

5 Q Did she disclose incidents of sexual offenses to you?

6 MR. SHEALY: Objection, Your Honor. That calls for
7 hearsay.

8 THE COURT: Overruled.

9 MS. OVERBY: Your Honor, may we approach for a minute?

10 THE COURT: Okay.

11 (Bench conference held off the record in the presence
12 of the jury but out of the hearing of the jury.)

13 Q Let me ask you then again, Detective Moss. Did she
14 disclose incidents of sexual offenses to you?

15 A Yes, ma'am.

16 Q While it doesn't have to be exact as to everything she
17 told you, but did she say when these incidents happened?

18 A Yes, ma'am.

19 Q And when was that?

20 A MINOR VICTIM had told me that the -- the first incident
21 occurred a week -- a week and a half to two weeks after she
22 arrived at her father's house.

23 Q And did she give you any kind of reference, the month
24 in which that was?

25 A It was February. It was around Valentine's Day when

Tracy Moss
Direct examination by Ms. Overby

1 she arrived at her father's house. And her father lives at
2 [REDACTED] in Woodruff, which is in Spartanburg
3 County.

4 Q Did she -- did she tell you about more than one
5 incident that had occurred?

6 A She did.

7 Q And the second incident, did she tell you about how
8 soon in time after the first it happened?

9 A Three to four days after the first incident.

10 Q Okay. The second incident occurring three to four
11 days after the first?

12 A Yes, ma'am.

13 Q Okay. And did she tell you about where these
14 incidents occurred?

15 A She did.

16 Q And where was that?

17 A It was in the back bedroom, the last bedroom on the
18 right going down the hallway.

19 Q Both of those incidents?

20 A Yes, ma'am.

21 Q Later on in the investigation of the defendant did
22 you -- did you visit the residence?

23 A I did.

24 Q I'm going to hand you what's been...

25 MS. OVERBY: I'm sorry, Your Honor. May we approach?

Tracy Moss
Direct examination by Ms. Overby

1 (Bench conference held off the record in the presence
2 of the jury but out of the hearing of the jury.)

3 Q Detective Moss, I'm going to hand you what's been
4 marked as State's Exhibits 19 through 31. Hold on one
5 second for me.

6 (Pause.)

7 Q Hand you State's Exhibit 19 through 31 and ask you to
8 look at these items.

9 (Pause.)

10 Q Do those photos I have handed you, do they truly and
11 fairly and accurately represent the residence that you
12 visited at [REDACTED]?

13 A They do.

14 Q And that was the residence in which -- where the
15 defendant lived?

16 A Yes, ma'am.

17 MS. OVERBY: At this time, Your Honor, we'd move
18 State's 19 through 31 into evidence with permission to
19 publish to the jury.

20 MR. SHEALY: Judge, I guess I have no objection.
21 She's not testified as to when they were taken. I'm not
22 sure how they're relevant.

23 MS. OVERBY: And I can lay just a bit more foundation.

24 THE COURT: Well, do you object or not?

25 MR. SHEALY: I would ask that we get that foundation.

Tracy Moss
Direct examination by Ms. Overby

1 THE COURT: Okay.

2 Q Did the Spartanburg County Sheriff's Office execute a
3 search warrant at the residence?

4 A We did.

5 Q And what date was that?

6 A That was on April 17th.

7 Q Were photos taken as part of that visit to his
8 residence?

9 A Yes, ma'am.

10 Q And are these the photos from that visit?

11 A Yes, ma'am.

12 Q And you said you went through the house as well?

13 A Yes, ma'am.

14 Q And it accurately reflects the layout and what the
15 house looked like on that day?

16 A Yes, yes.

17 MS. OVERBY: At this time we would move State's 19
18 through 31.

19 MR. SHEALY: No objection.

20 THE COURT: All right. They're admitted.

21 (Photographs marked State's Exhibits Nos. 19 through
22 31.)

23 Q First, I'm going to hand you State's Exhibit 19 and
24 ask you what that depicts.

25 A This is the -- the back of the residence.

Tracy Moss
Direct examination by Ms. Overby

1 Q And State's Exhibit 20, what room does that depict?

2 A This is going to be the kitchen looking out into the
3 living room.

4 Q Twenty-one. Does this appear to be part of the
5 kitchen and then part into the living room area?

6 A Yes, ma'am.

7 Q And is -- are there stairs that go from the kitchen
8 into the living room area?

9 A There is.

10 Q okay. About how many -- how many stairs are there?

11 A I'd say maybe two.

12 Q State's Exhibit 22. Is this also a photo of the
13 living room?

14 A This is.

15 Q And this a photo of a television. Is this within the
16 living room?

17 A Yes, ma'am.

18 Q And State's 23. Is this the same living room area?

19 A It is.

20 Q State's 24. Please tell me what is in that. What's
21 depicted there?

22 A This is part of the living room going into looking
23 into the hallway.

24 Q And there was some testimony earlier about the layout
25 of the residence. From the living room is there -- or how

Tracy Moss
Direct examination by Ms. Overby

- 1 many bedrooms were in this residence?
- 2 A I believe I recall there was three.
- 3 Q Are they all located -- I'm sorry. Say that again.
- 4 A The three bedrooms were on the -- the same hallway.
- 5 Q Okay. So a single hallway where all of the bedrooms
- 6 were located.
- 7 A Yes, ma'am.
- 8 Q State's Exhibit 25. Does that appear to be that
- 9 hallway?
- 10 A That is the hallway.
- 11 Q Okay. And the second down this narrow hallway, second
- 12 door on the left, what -- what kind of room does that
- 13 appear to be?
- 14 A That is the bathroom.
- 15 Q State's 26 is also that hallway. What -- is there --
- 16 the room all the way down the hall on the left, what type
- 17 of room is that?
- 18 A I believe that was Jack Stribling's bedroom.
- 19 Q Did you determine which room was the defendant's at
- 20 the time he was living there?
- 21 A Yes, ma'am.
- 22 Q And I'm going to hand you State's Exhibit 27. Again,
- 23 it's another photo of this hallway, of the right side of
- 24 it. Which -- how many doors are depicted in this picture?
- 25 A There's two.

Tracy Moss
Direct examination by Ms. Overby

1 Q And were -- what types of rooms were these?

2 A They're bedrooms. Not sure whose bedroom the first
3 bedroom is, but the second bedroom, which is the last one
4 on the right, it was the bedroom that Richard Stribling
5 occupied when he was there.

6 Q And when you had your interview with **MINOR VICTIM** and she
7 told you about where things happened, did she refer to that
8 as the back bedroom?

9 A She did.

10 THE COURT: Excuse me just a minute.

11 Can you come around to the front so that the witness
12 doesn't have her back to the court reporter? Well, now,
13 you can't stand between them.

14 MS. OVERBY: I'm sorry.

15 THE COURT: Now the jury can't see her.

16 MS. OVERBY: I'm sorry, Your Honor. I'm having
17 technical difficulty.

18 Q I'm going to hand you quickly State's Exhibits 28 and
19 29. Can you tell me what those depict?

20 A This is a door and a doorframe.

21 Q And what room -- the photos of this doorframe, what
22 room is that?

23 A This would have been the second bedroom on the right,
24 Richard Stribling's bedroom.

25 Q And 30 and 31, these photos, can you tell me what --

Tracy Moss
Direct examination by Ms. Overby

1 what room is depicted in them?

2 A This is going to be that same bedroom, the last one,
3 second bedroom on the right, the one that Richard Stribling
4 occupied at the time.

5 Q Those are both the defendant's bedroom at the time?

6 A Yes, ma'am.

7 Q Okay. In your meeting with -- when you met with
8 MINOR VICTIM in Atlanta, can you just generally describe her
9 demeanor?

10 A When I was talking to her she immediately would break
11 down crying and would become emotional.

12 Q The incidents that MINOR disclosed, I believe you
13 talked about the address. What was the address of the
14 location of her father's residence?

15 A It was [REDACTED] in Woodruff, South
16 Carolina.

17 Q And is that in Spartanburg County?

18 A Yes, ma'am, it is.

19 Q Did you also when you met with MINOR in Atlanta in
20 April, did you photograph her?

21 A I did.

22 Q I'm going to hand you what's been marked as State's
23 Exhibit 1 and ask you to look at this. Is this the photo
24 of MINOR VICTIM that you took when you met with her at the
25 hotel in Atlanta?

Tracy Moss
Direct examination by Ms. Overby

1 A Yes, ma'am, it is.

2 Q And does that appear the way she looked physically and
3 emotionally on that day?

4 A Yes, ma'am.

5 MS. OVERBY: At this time I move State's Exhibit 1
6 into evidence as well.

7 MR. SHEALY: Judge, I'm going to object. She's
8 testified. They've seen her. There is no relevance to a
9 picture taken two years ago.

10 THE COURT: Let me see the picture.

11 (Bench conference held off the record in the presence
12 of the jury but out of the hearing of the jury.)

13 THE COURT: Overrule the objection.

14 (Photograph marked State's Exhibit No. 1.)

15 MS. OVERBY: I believe I already moved to admit that.

16 Q When you met with **MINOR VICTIM** in Atlanta did you also
17 collect a D.N.A. swab from her body?

18 A Yes, ma'am.

19 Q Okay. And tell me about how generally that's done.

20 A I brought a sample with me. Can I show?

21 Q You can. You've got it. Use it to describe what you
22 did.

23 A Yeah. What we use to obtain D.N.A. from -- from a
24 person is we take this what we call buccal swab, and it's
25 basically a long Q-tip on a stick. And all we do is we

Tracy Moss
Direct examination by Ms. Overby

1 swab the inside cheeks, the interior cheeks of the mouth,
2 one on each side.

3 Once we are done swabbing we have a box that we fill
4 out the person's name, date of birth, case number. And we
5 will put those swabs in the box, place this into a sealed
6 envelope and place it in our evidence.

7 Q I'm going to hand you what's been previously marked
8 for I.D. as State's Exhibit 34. I'm sorry about that.
9 State's Exhibit 2 or 3. Excuse me. Can you tell me what
10 that item is?

11 A This is the buccal swab from MINOR

12 Q And that sample was collected from her when you met
13 with her on April the 16th in Atlanta.

14 A Yes, ma'am.

15 Q By you.

16 A Yes, ma'am.

17 Q Once -- once you collected that -- and we're going to
18 go back to tell a little bit about the procedure you
19 described. Once you collected those samples from her did
20 you place it into an envelope?

21 A I did. I placed it into this envelope, the yellow
22 envelope, and then sealed it with evidence tape.

23 Q And on the outside of that envelope, is that your
24 handwriting regarding what the item is?

25 A Yes, ma'am.

Tracy Moss
Direct examination by Ms. Overby

1 MS. OVERBY: At this time we move State's Exhibit 3
2 into evidence.

3 MR. SHEALY: Judge, may we approach?

4 (Bench conference held off the record in the presence
5 of the jury but out of the hearing of the jury.)

6 Q That item three, that's what you collected from
7 MINOR VICTIM in April.

8 A Yes, ma'am.

9 Q Whenever you -- after collecting that item from her,
10 what did you do with it?

11 A After collecting the item I placed it into the yellow
12 envelope.

13 Q Right. What did you do with that yellow envelope?

14 A I kept it in my possession the rest of the time I was
15 in Atlanta. And once I got back to my office I placed it
16 into evidence.

17 Q And where did -- when you say you placed it into
18 evidence, where is that?

19 A The Spartanburg County Sheriff's Office.

20 Q After you collected it from her and placed it in that
21 envelope, is that envelope sealed?

22 A Yes, ma'am.

23 Q Was it ever opened or tampered with in any way by you
24 after you collected it?

25 A No, ma'am.

Tracy Moss
Direct examination by Ms. Overby

- 1 Q The procedure that [MINOR VICTIM] was in Atlanta to undergo,
2 where was that procedure scheduled to take place?
- 3 A Atlanta Women's Center.
- 4 Q Did you arrange to collect the evidence from that
5 procedure?
- 6 A I did.
- 7 Q Did you visit the Atlanta Women's Center on the date
8 of the appointment?
- 9 A I did.
- 10 Q And were you present during the procedure?
- 11 A Yes.
- 12 Q Where were you when the procedure was going on?
- 13 A Outside in a hallway, outside of the operating room
14 down the hallway.
- 15 Q Were you with anyone in that hallway?
- 16 A I was with an Atlanta police officer by the name of
17 Officer Creasy.
- 18 Q Who did you understand performed that procedure that
19 day?
- 20 A Dr. Haddad.
- 21 Q And did the Atlanta Women's Center release the fetal
22 tissue once it was collected from [MINOR] body?
- 23 A Yes, ma'am.
- 24 Q I'm going to what's been marked as State's Exhibit 33
25 and ask you to look at this. Can you tell me what this

Tracy Moss
Direct examination by Ms. Overby

1 item is?

2 A This is a property sheet.

3 Q And who is -- you say it's a property sheet. What
4 agency maintains the sheet?

5 A Spartanburg County Sheriff's Office.

6 Q Okay. And what was the item that was collected at the
7 Atlanta Women's Center?

8 A It was one white container containing fetal tissue.

9 Q When you received that white container, from whom did
10 you receive it?

11 A From -- I received it from Maricca Stuckey and then
12 from Officer Creasy.

13 Q Okay. Tell me a little bit about -- you describe
14 being in the hallway outside of the operating room while
15 the procedure was going on. Where were you when the
16 evidence was given to you?

17 A Outside another room, which was right outside the
18 operating room. Everything was like centrally located
19 right there at the operating room.

20 Q Okay. So you were in a separate room?

21 A I was in the -- in the hallway outside another room --
22 what I was told -- was like a lab where the evidence went
23 from the operating room to that room, to the lab. I was
24 right outside there.

25 Q And you said there was another individual. You

Tracy Moss
Direct examination by Ms. Overby

1 received it from Maricca Stuckey. Have you seen her today?

2 A Yes, ma'am.

3 Q Okay. Does she appear to be the same person that you
4 saw that day at the center?

5 A Yes, ma'am.

6 Q Okay. When the evidence was -- when it changed from
7 Atlanta Women's Center to you, what involvement did officer
8 Creasy have?

9 A Officer Creasy was there due to it being his
10 jurisdiction in Atlanta. He took possession of it, and
11 then from there he turned over the evidence to me.

12 Q Okay. Tell me a little about the condition of the
13 evidence when you received it. What did it appear like?

14 A It was fetal tissue in a small clear container with a
15 label on it, had a white lid. That container was then in a
16 clear -- clear bag with yellow tape, security tape or
17 evidence tape, that was sealing that bag with the container
18 inside of it.

19 MR. SHEALY: Judge, I believe that -- if we may
20 approach.

21 (Bench conference held off the record in the presence
22 of the jury but out of the hearing of the jury.)

23 Q Detective Moss, I'm going to hand you what's been
24 premarked as State's Exhibit 4, 5 and 6 and ask you to look
25 at these.

Tracy Moss
Direct examination by Ms. Overby

1 (Pause.)

2 Q Those photos that I handed you, did you take those
3 photos?

4 A I did.

5 Q And where did you take those photos?

6 A Atlanta Women's Center.

7 Q Do they depict the item that was given to you at the
8 Atlanta Women's Center on April the 16th or -- excuse me --
9 April 17th of 2015?

10 A Yes, ma'am.

11 MS. OVERBY: At this time we move State's 3 through 5
12 into evidence.

13 A It's actually 4, 5, 6.

14 MS. OVERBY: I'm sorry. Four through six.

15 MR. SHEALY: Judge, I object. I don't think they have
16 laid a proper foundation for this evidence. I also don't
17 think they've completed a chain of custody yet. I object
18 to the pictures being entered.

19 THE COURT: overrule the objection.

20 (Photographs marked State's Exhibits 4, 5 and 6.)

21 Q Specifically, State's Exhibit 4, you describe the way
22 in which -- what the item looked like when you received it.
23 Can you just give us a description of that item?

24 A It's a clear container containing fetal tissue with a
25 white label on it with writing, and it's in a white bag in

Tracy Moss
Direct examination by Ms. Overby

1 this picture. You can't see the yellow tape, but it's in a
2 white bag.

3 Q So it's a container within a bag.

4 A Yes, ma'am.

5 Q And that bag is taped.

6 A Yes, ma'am.

7 Q I point you to State's Exhibit 5. Is that a picture
8 of the same item that we're talking about in State's
9 Exhibit 4?

10 A Yes, ma'am.

11 Q And in State's Exhibit 5 the item appears to be on
12 ice. Is that fair to say?

13 A Yes, ma'am.

14 Q Okay. And prior to collecting the evidence in Atlanta
15 did you consult with anyone about how to store and maintain
16 it?

17 A I did.

18 Q And who was that?

19 A I spoke with somebody with the Atlanta Women's Center
20 who advised that in order to transport the fetal tissue it
21 needs to be kept cold.

22 Q So when you received the bag that's sealed with yellow
23 tape did you place that on ice?

24 A I did.

25 Q And State's Exhibit 6. What does that depict?

Tracy Moss
Direct examination by Ms. Overby

1 A It's a cooler.

2 Q Is that the cooler that you placed the ice in, that
3 item into once you collected it?

4 A Yes, ma'am.

5 Q Once you received it rather.

6 A Yes, ma'am.

7 Q The item that's shown in those pictures, the baggie
8 you received from the Atlanta Women's Center, was it sealed
9 at all times when you had it in your possession?

10 A Yes, ma'am.

11 Q And what did you do with that item once you collected
12 it?

13 A Once I collected it I immediately put it into the
14 cooler on ice.

15 Q Right. What did you do after you left Atlanta? What
16 did you do with this item?

17 A Came back to the Spartanburg County Sheriff's Office.
18 Well, came back to Spartanburg County and went straight to
19 Dr. Wren who is a pathologist with Spartanburg Regional
20 Medical Center.

21 Q So you went directly from Atlanta with the cooler with
22 the container in it and went to Dr. Wren in Spartanburg.

23 A Yes, ma'am.

24 Q And you said Dr. Wren is a pathologist.

25 A Yes, ma'am.

Tracy Moss
Direct examination by Ms. Overby

- 1 Q Prior to going to visit Dr. Wren had you consulted
2 with anyone about what needed to be done to the material
3 before it was submitted for analysis?
- 4 A Yes, ma'am.
- 5 Q And who did you speak to about that?
- 6 A I spoke with Laura Hash with SLED.
- 7 Q And based on what she told you, is that why you took
8 it to Dr. Wren?
- 9 A Yes, ma'am.
- 10 Q What was the general purpose in taking it to Dr. Wren?
- 11 A To separate -- in the term, separate the mother from
12 the baby.
- 13 Q So separate some portion of the tissue from some other
14 portion of the tissue? Is that how you understood it?
- 15 A Yes, ma'am.
- 16 Q And did Mr. Wren attempt to do that?
- 17 A He did.
- 18 Q And when you brought -- when you brought the items to
19 Dr. Wren, did he open the bag, or did you?
- 20 A He opened the bag.
- 21 Q And tell me about it. He did that in your presence?
- 22 A Yes, ma'am.
- 23 Q Okay. Once he opened the bag, what did he do
24 generally with the material?
- 25 A Once he --

Tracy Moss
Direct examination by Ms. Overby

1 MR. SHEALY: Objection, Your Honor. She's not a
2 doctor. I don't think she can testify to what Dr. Wren did
3 with the tissue.

4 THE COURT: Well, she can't testify medically, but she
5 can testify to what she saw him do with the material.

6 Q What did you see Dr. Wren do with the material
7 generally?

8 A He -- he opened the container and he took out the
9 fetal tissue. He began separating the fetal tissue, placed
10 part of the fetal tissue in the two additional containers
11 that had orange lids in which they were labeled A and B.
12 And then the remaining fetal tissue he put back into the
13 original container with the white lid that I received from
14 Atlanta Women's Center.

15 Q Okay. So Dr. Wren took the single container from the
16 Atlanta Women's Center --

17 A Uh-huh.

18 Q -- spread the material and then separated it into two
19 additional containers.

20 A Correct.

21 Q And you said those had orange lids?

22 A Yes, ma'am.

23 Q Did those containers come from Spartanburg Regional?

24 A They did, yes, ma'am, they did.

25 Q Okay. And you said the remaining tissue he put back

Tracy Moss
Direct examination by Ms. Overby

1 in that original jar.

2 A Yes, ma'am.

3 Q And that original jar was the one with the white lid,
4 is that correct?

5 A Yes, ma'am.

6 Q Okay. So you took one jar to Dr. Wren, but you left
7 Dr. Wren's office with how many jars?

8 A With three.

9 Q After Dr. Wren separated the tissue, what did you do
10 with the items?

11 A They were taken to our evidence room at the
12 Spartanburg County Sheriff's Office where they were placed
13 in the freezer.

14 Q Actually, I'm going to hand you. I'm going to refer
15 back to State's Exhibit 33. Tell me what day you took
16 the -- first tell me about the date and time you took that
17 to Dr. Wren.

18 A Dr. Wren. It was April 17th, 2015, at 6:05 p.m.

19 Q And then you said from Dr. Wren you put it into
20 evidence at the Spartanburg County Sheriff's office.

21 A Yes, ma'am.

22 Q When was that?

23 A That was on April 17th of 2015 at 7:05.

24 Q And to whom did you give it, the evidence, to at the
25 sheriff's office?

Tracy Moss
Direct examination by Ms. Overby

1 A It was given to -- I'm sorry. Can I back up on that?

2 Q Something you need to correct?

3 A Yes. Because Dr. Wren, once I gave it to him, he gave
4 it back to me at 6:05.

5 The evidence was then turned over to Anita Mullinax,
6 officer in evidence at the Spartanburg County Sheriff's
7 Office. It was turned over to her April 17th at 7:40.

8 Q So Anita Mullinax with the sheriff's office met you
9 there, and you turned over the three jars to her.

10 A Correct.

11 Q Okay. Did you ultimately submit the fetal tissue to
12 SLED, the state crime lab, for analysis?

13 A I did.

14 Q Tell me about the items that you first sent to SLED.
15 What were they?

16 A I took down there the original container with the
17 white lid, the two containers with the orange lid that Dr.
18 Wren had separated, along with the buccal swab from

19 MINOR VICTIM

20 Q And what date was that?

21 A That was on April 20th.

22 Q And when you picked up -- I think you said you picked
23 up those items from the Spartanburg County Sheriff's Office
24 and you transported them to SLED. And where is that
25 located?

Tracy Moss
Direct examination by Ms. Overby

- 1 A That's located in Columbia, South Carolina.
- 2 Q And you yourself took those items down there.
- 3 A Yes, ma'am. I did.
- 4 Q The condition of those items when you received them
- 5 from evidence, were they all sealed?
- 6 A They were.
- 7 Q And did they maintain or did they stay that way from
- 8 when you took them from the sheriff's office all the way to
- 9 when you arrived at SLED?
- 10 A Yes.
- 11 Q And to whom -- the three items we're talking about --
- 12 the fetal tissue containers and the -- and MINOR swab
- 13 from her cheek -- who did you give those items to at SLED?
- 14 A Her name was Amy Stephens.
- 15 Q And did you ask or did you request SLED to attempt
- 16 D.N.A. analysis of the fetal tissue?
- 17 A Yes, ma'am.
- 18 Q Was a D.N.A. swab or sample collected from the
- 19 defendant in this case?
- 20 A Yes, ma'am.
- 21 Q And who did that?
- 22 A Officer Tony Knighton.
- 23 Q And that item -- did you transport a swab from the
- 24 defendant also to SLED?
- 25 A I did.

Tracy Moss
Direct examination by Ms. Overby

1 MR. SHEALY: Object, Your Honor. I'm going to object
2 and move to strike all of this. It's not clear. I mean,
3 Officer Knighton hasn't testified that he gathered any
4 buccal swabs.

5 So she may have transported an envelope with something
6 in there, but the characterization of it as a swab from my
7 client is at this point not evidence.

8 THE COURT: Where is that exhibit? Let me see y'all.

9 (Bench conference held off the record in the presence
10 of the jury but out of the hearing of the jury.)

11 Q Detective Moss, I'm going to hand you what's been
12 marked as State's Exhibit 34 and ask you to look at this
13 item as well.

14 (Pause.)

15 Q Can you tell me? Does that envelope appear to be the
16 envelope that you collected from evidence and transported
17 to SLED?

18 A Yes, ma'am.

19 Q And what is that item?

20 A It is a buccal swab from Richard Stribling.

21 Q And I asked this earlier, but who collected that item?

22 A Officer Tony Knighton.

23 Q And where was that item collected?

24 A Spartanburg Regional Medical Center.

25 Q Were you present when that was collected? I

Tracy Moss
Direct examination by Ms. Overby

1 understand Knighton -- excuse me -- Deputy Knighton or
2 officer Knighton collected it himself, but were you there
3 when he did that?

4 A Yes, ma'am.

5 Q And you also testified when you went to SLED on the
6 first trip you submitted MINOR [REDACTED] buccal swab as well.

7 A Yes, ma'am.

8 Q The fetal tissue that was sent to SLED, you requested
9 that they perform D.N.A. analysis on that item, is that
10 correct?

11 A Yes, ma'am.

12 Q Okay. Was SLED able to do that?

13 A They were not.

14 Q Did they return those items to you?

15 A They did.

16 Q And on what date did SLED return the fetal tissue?

17 A It was on May 7th of 2015.

18 Q And when you received those items back from SLED did
19 you go collect them or were they brought to the sheriff's
20 office or how was that?

21 A I went down and brought them back.

22 Q What did you do with those items once you received
23 them back from SLED?

24 A Once I got them back from SLED I placed them back into
25 our evidence room at the Spartanburg County Sheriff's

Tracy Moss
Direct examination by Ms. Overby

1 office.

2 Q And after placing them into evidence at the sheriff's
3 office, what did you do with those items?

4 A I took them back out of evidence the next day on May
5 8th and transported them to Greenville Hospital System to
6 Dr. Ward who is a pathologist for Greenville Health --
7 Health system.

8 Q What items -- what items did you bring to Dr. Ward?

9 A I took him the original container with the white lid
10 and the two containers that Dr. Wren had separated into A
11 and B with the orange lids.

12 Q And did he look at those items?

13 A He did.

14 Q Were you present when he initially opened and looked
15 at those items?

16 A He did, or I was. I'm sorry.

17 Q I know this isn't your area of expertise, but did he
18 recommend an additional type of procedure to be performed?

19 MR. SHEALY: Objection. Hearsay.

20 THE COURT: Overruled.

21 A Yes, he did.

22 Q And just generally, what type of procedure did he
23 recommend?

24 A He recommended a formalin -- it's a formalin fixed
25 paraffin embedded tissue D.N.A. isolation.

Tracy Moss
Direct examination by Ms. Overby

- 1 Q Did you understand that would require some -- is more
2 in-depth of a process?
- 3 A Yes, ma'am.
- 4 Q And did he complete that process?
- 5 A He did.
- 6 Q And when Dr. Ward's part with the evidence was
7 complete, did he return items of evidence back to you?
- 8 A He did.
- 9 Q And tell me about the condition of the items he
10 returned back to you. What -- what did he give you?
- 11 A Are you asking after or --
- 12 Q I'm sorry. I'm not -- when you -- when I said I'm not
13 sure -- after what you do you mean?
- 14 A On the --
- 15 Q After -- after Dr. Ward completed the process that he
16 recommended what -- when he -- did he give you the items
17 back?
- 18 A He gave me the three containers back.
- 19 Q Okay. In addition to the three containers did he give
20 you anything else?
- 21 A On that first day, no.
- 22 Q Okay. On another day did he give you something else?
- 23 A He did.
- 24 Q Okay. And what was that?
- 25 A He gave me a paraffin block.

Tracy Moss
Direct examination by Ms. Overby

1 Q Okay. I'm going to hand you what's been premarked as
2 State's Exhibit 7 and ask you look at the outer envelope of
3 that. Is that the paraffin block that Dr. Ward gave you?

4 A It is.

5 Q And I remind you again what date that was?

6 A That was on May 13th of 2015.

7 Q When you received that item back from Dr. Ward, what
8 did you do with it?

9 A I brought it back into our office and placed it into
10 our evidence room at the Spartanburg County Sheriff's
11 Office.

12 Q And after you placed it into evidence at the sheriff's
13 office -- first, let me ask you this. Did he give you any
14 kind of storage instructions or how to -- how to keep it or
15 maintain it?

16 A He did tell me that it does not need to be
17 refrigerated as long as it stays at room temperature.

18 Q Okay. So he told you that paraffin block did not need
19 to be refrigerated.

20 A Correct.

21 Q Did you send that paraffin block elsewhere for
22 testing?

23 A I did.

24 Q And where was that?

25 A I sent the paraffin block to Cellmark, which is

Tracy Moss
Direct examination by Ms. Overby

- 1 LabCorp/Cellmark in Texas.
- 2 Q And before sending it to Texas did you consult with
- 3 any other types of laboratories about whether they were
- 4 able to conduct testing on an item that had undergone this
- 5 formalin fixed embedding process? Did you consult with
- 6 places about whether they could analyze that?
- 7 A Numerous labs, yes, ma'am.
- 8 Q And did you understand that Cellmark could perform
- 9 that kind of testing?
- 10 A Yes, ma'am.
- 11 Q When you sent the block to Cellmark, tell me about how
- 12 you sent it out there.
- 13 A I sent it overnight through FedEx.
- 14 Q What kind of container? What that -- that -- was it
- 15 in that envelope?
- 16 A It was.
- 17 Q Okay. And then how did you transport -- how did you
- 18 submit that envelope to the lab in Texas?
- 19 A It was -- it was packaged in a box.
- 20 Q Did you -- when we say box, do you mean like a
- 21 commercial shipping kind of box?
- 22 A Yes, ma'am.
- 23 Q Did you use FedEx, for instance?
- 24 A Yes, ma'am.
- 25 Q And how quickly did you send it out there?

Tracy Moss
Direct examination by Ms. Overby

1 A It was overnighted.

2 Q And did you confirm with Cellmark that they had
3 received the item that you sent them?

4 A Yes, ma'am.

5 Q Did you request Cellmark to conduct analysis on that
6 block to determine paternity if they could?

7 A I did.

8 Q And did you understand that they did that, did
9 testing?

10 A Yes, ma'am.

11 Q Did you later receive a report from them?

12 MR. SHEALY: Objection, Your Honor.

13 Anything about the report Cellmark's got to testify
14 to.

15 THE COURT: I understand. Overruled.

16 She just asked if they received the report.

17 overrule the objection.

18 Q Did you receive a report from the lab in Texas --
19 Cellmark?

20 A I did on June 19th of 2015.

21 Q Did you also -- we talked earlier about the -- the
22 inner cheek swab that was submitted that you sent to
23 SLED --

24 A Yes, ma'am.

25 Q -- from the MINOR. Did you understand that SLED was

Tracy Moss
Direct examination by Ms. Overby

- 1 able to develop a profile from that?
- 2 A Yes, ma'am.
- 3 Q Did you ask SLED to send that to Cellmark?
- 4 A I did.
- 5 Q And what items did you ask SLED to send to Cellmark?
- 6 A The D.N.A. profiles from MINOR and
- 7 Richard Stribling.
- 8 Q And let me just be clear. We're not talking about
- 9 what SLED sent to Cellmark. They didn't send the actual
- 10 items. They sent a report.
- 11 A Correct.
- 12 Q But that was at your request. You asked SLED to send
- 13 those profiles out to the lab in Texas --
- 14 A Yes, ma'am.
- 15 Q -- for comparison.
- 16 A Yes, ma'am.
- 17 Q Let me hand you first what's been marked as State's
- 18 Exhibits 8 and 9. I asked you earlier about how the
- 19 paraffin block was sent to the lab in Texas. Photos 8 and
- 20 9, can you look at those and tell me what they represent?
- 21 A It is the packaging of the paraffin block.
- 22 Q Are those photos taken by you?
- 23 A Yes, ma'am.
- 24 Q And are those -- do those photos depict the way the
- 25 item was sent out to Cellmark in Texas?

Tracy Moss
Direct examination by Ms. Overby

1 A Yes, ma'am.

2 MS. OVERBY: At this time we'd move State's Exhibit 8
3 and 9 into evidence.

4 MR. SHEALY: No objection.

5 THE COURT: They're admitted.

6 (Photographs marked State's Exhibits Nos. 8 and 9.)

7 Q I'm also going to hand you a set of photos, exhibits,
8 State's Exhibit 11 through 17, and ask you to look at
9 these.

10 (Pause.)

11 Q Did you have a chance to look at those items?

12 A Yes.

13 Q Can you tell me what's depicted in those photos?

14 A Those are photos where I received the paraffin block
15 back from Cellmark.

16 Q And those photos were taken by you when you received
17 the material back from Cellmark.

18 A Yes, ma'am.

19 MS. OVERBY: At this time we move State's Exhibits 11
20 through 17 into evidence.

21 MR. SHEALY: No objection.

22 THE COURT: They're admitted.

23 (Photographs marked State's Exhibits Nos. 11 through
24 17.)

25 MS. OVERBY: May I approach the witness?

Tracy Moss
Direct examination by Ms. Overby

1 Q Specifically, photo 17, the material that was sent
2 back to you from the Texas lab, is that all that was
3 contained in the yellow envelope?

4 A Yes.

5 Q While the -- the swab that was taken from the MINOR
6 in Atlanta, while it was with you did you ever tamper or
7 alter with it in any way?

8 A No.

9 Q When you transported the defendant's swab from
10 property and evidence to SLED did you ever open or tamper
11 with that item in any way?

12 A No.

13 Q And the paraffin block that we talked about after Dr.
14 ward did his analysis of the item, did you ever tamper with
15 that or open the envelope that's presented right there
16 beside you in any way when you had it in your custody?

17 A No.

18 Q I handed you had a set of photos at the beginning of
19 your testimony about the residence. I just want to hand
20 you -- I'm going to hand you State's Exhibit 18. This went
21 along with the photos of the residence.

22 You said you visited the defendant's house. Does that
23 photo accurately represent the exterior of that house?

24 A Yes, ma'am.

25 MS. OVERBY: I'd also move State's Exhibit 18 along

Tracy Moss
Cross-examination by Mr. Shealy

1 with that into evidence.

2 MR. SHEALY: No objection.

3 THE COURT: What number is that?

4 MS. OVERBY: That's No. 18. It belonged with the set
5 beginning with 19.

6 (Photograph marked State's Exhibit No. 18.)

7 Q I have no further questions of you. Please answer any
8 questions Mr. Shealy may have.

9 CROSS-EXAMINATION

10 BY MR. SHEALY

11 Q Officer Moss, just a couple of questions.

12 who did you speak with in order to properly preserve
13 the fetal tissue? Was it a Ms. Hash?

14 A To -- from the transporting from Atlanta?

15 Q Right. Right after the -- I'll point it to you. Page
16 eight. Have you got a list that it was April the 15th of
17 2014 at 1224 hours?

18 A No. That was transportation. That was how to package
19 it sending it to SLED.

20 Q Okay.

21 A Transporting it from Atlanta back home I spoke with --
22 I believe her name was Beonca with Atlanta Women's Center.

23 Q Okay. And what did Beonca say?

24 A Advised that I would need to bring a container to
25 place the evidence in and have a way to keep -- keep it

Tracy Moss
Cross-examination by Mr. Shealy

1 cool.

2 Q And did they tell you that those containers needed to
3 be sanitized, or did anything need to be done to the
4 container?

5 A Not that I recall.

6 Q Not that you're aware of.

7 okay. Do you recall Ms. Hash telling you that the --
8 whenever you're transporting it from Dr. Wren to -- I'm
9 sorry -- transportation gets complicated, so I'm just
10 trying to get it all straight in my mind. When you were
11 transporting it from Dr. Wren to SLED that formaldehyde was
12 not to be used. Is that accurate? Again, it's in your
13 report. You can reference that.

14 A From Dr. Wren?

15 Q It's from Ms. Hash. Again, it was within that
16 April 15th.

17 A Yes, yes.

18 Q All right. Whenever you were -- so after you get it
19 from SLED and you bring it back to Dr. Ward, you testified
20 that you were in the room when he opened the container, is
21 that right?

22 A Dr. Ward?

23 Q Dr. Ward.

24 A Yes, sir.

25 Q Okay. And then he said that he couldn't -- that --

Tracy Moss
Redirect examination by Ms. Overby

1 well, did you see him do anything with the tissue?

2 A Yes, sir.

3 Q What did you see him do with the tissue?

4 A I saw him separate the tissue and place them into what
5 they call cassettes or little slide type things. I don't
6 know the proper word for it but...

7 Q Okay. And then you left. You left with the rest of
8 the tissue, is that correct?

9 A The tissue that he did not use I took with me, yes,
10 sir.

11 Q So that same day.

12 A Yes, sir.

13 Q Okay.

14 MR. SHEALY: That's all I have for this witness.

15 MS. OVERBY: Briefly, Your Honor.

16 REDIRECT EXAMINATION

17 BY MS. OVERBY

18 Q We talked about the packaging from the Atlanta Women's
19 Center, the jar that was in the single jar within the bag
20 that was sealed. That jar, was that -- I know you were
21 prepared with your own jars. Did you use the jars that you
22 brought, or was that from the clinic?

23 A That was from the clinic.

24 Q Okay. And just to clarify, Mr. Shealy asked you about
25 what you had -- what you left with Dr. Ward in Greenville.

Tracy Moss
Redirect examination by Ms. Overby

1 He said he put the tissue into a cassette. You watched him
2 do that.

3 A Yes, ma'am.

4 Q And you took back the containers. That was the wet
5 tissue that you took back that was in the jars, is that
6 correct?

7 A Yes, ma'am.

8 MS. OVERBY: Nothing further.

9 MR. SHEALY: I have no further questions.

10 THE COURT: You may step down.

11 MS. OVERBY: May we approach for scheduling purposes,
12 Your Honor?

13 THE COURT: Yes, ma'am.

14 (Bench conference held off the record in the presence
15 of the jury but out of the hearing of the jury.)

16 THE COURT: All right. Ladies and gentlemen, we're
17 going to break for lunch.

18 Keep in mind my caution. No discussion about the
19 case, no research, no investigation into any issue.

20 Do have a good lunch. Please report to your jury room
21 this afternoon at 2:15, 2:15 this afternoon. Have a good
22 lunch.

23 (The following takes place outside the presence of the
24 jury.)

25 THE COURT: Court is in recess until 2:15.

Dr. John David Wren
Direct examination by Ms. Overby

1 (Whereupon, a recess was taken.)

2 THE COURT: Are we ready for the jury?

3 MS. OVERBY: Yes, sir, Your Honor.

4 MR. SHEALY: Yes, Your Honor.

5 THE COURT: Bring them in.

6 (The following takes place in the presence of the
7 jury.)

8 THE COURT: Good afternoon.

9 As you know, when we recessed the state was in the
10 midst of their presentation. So we will continue with that
11 this afternoon.

12 MS. OVERBY: Thank you, Your Honor. The state would
13 call Dr. Wren.

14 DR. JOHN DAVID WREN, having
15 been first duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MS. OVERBY

17 Q Can you please introduce yourself to the jury?

18 A Pardon?

19 Q Can you please introduce yourself to the jury?

20 A My name is John David Wren.

21 Q Dr. Wren, what do you?

22 A I'm a pathologist. I'm the laboratory medical
23 director at Spartanburg Regional, Spartanburg Hospital for
24 Restorative Care, Northgrove complex, and several other
25 places in the hospital that are separately clear certified

Dr. John David Wren
Direct examination by Ms. Overby

1 for testing.

2 I've been a board certified anatomic and clinical
3 pathologist since November of 1987.

4 I also do forensic cases for the county.

5 And I was assistant medical examiner in Charleston
6 County from July of 1979 until the end of January of 1982
7 when I came to work in Spartanburg.

8 Q For those of us who may not know, what generally does
9 a pathologist do?

10 A Pathology is the study of disease processes of the
11 body.

12 As such, a pathologist is a graduate of a medical
13 school that specializes in pathology in usual -- usually a
14 5-year residency.

15 Depending on the -- which subdiscipline of pathology
16 one wants to specialize in, if they want to, it's
17 usually -- most pathologists or the general pathologists,
18 which is what all of them here in Spartanburg are, although
19 some have some board certifications in other areas, it's
20 three years of anatomic pathology doing anything connected
21 with anatomic pathology, which is studying tissues that are
22 removed in a doctor's office or either in surgery for a
23 diagnosis which the doctor can use to treat that patient
24 further or doing autopsies for the purpose of determining
25 the extent of diseases, effective treatment on the

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1 diseases, anything that does -- handles tissue, whereas, a
2 clinical pathologist, which is the other two years that a
3 person does, is laboratory evaluations of blood removed
4 from the body for C.B.C.s or chemical tests or tissues that
5 are removed and cultured for organisms and microbiology,
6 blood transfusions, blood banking and special chemistry, as
7 well as -- well, sitology is under anatomic pathology.
8 Those are the two general classifications, is anatomic and
9 clinical pathology.

10 There are subspecialties of anatomic being forensic
11 pathology, which I did residency in Charleston for that. I
12 never took my board exams, but I've done over 6,000
13 forensic autopsies. I've testified numerous places in this
14 state. I'm not sure I've ever gone anywhere else to
15 testify. And those are the parts of anatomic pathology and
16 what I did when I was at the medical university.

17 Q Let me ask you this, Dr. Wren. Were you asked by
18 Investigator Tracy Moss of the Spartanburg County Sheriff's
19 office to examine fetal tissue that was collected from the
20 body of the MINOR?

21 A Yes.

22 Q I'm going to hand you what's been marked for
23 identification as State's Exhibit 33 and ask you to look at
24 this item. Does this appear to be a chain of custody form
25 maintained by the Spartanburg County Sheriff's Office?

Dr. John David Wren
Direct examination by Ms. Overby

1 A Yes, it does. I was contacted sometime before the
2 tissue was removed from the patient in Atlanta and asked if
3 I could isolate basically fetal parts or placental tissue
4 for a genetic study on the mother and father, biological
5 mother and father.

6 Q And did Investigator Tracy Moss bring you that
7 material from Atlanta?

8 A Yes, she did on April the 17th of 2015.

9 Q Okay. I'm going to hand you what's already been
10 admitted as State's Exhibits -- State's Exhibits 4 and 5
11 and ask you to look at these for me, please. Does this
12 appear to be the container that Tracy Moss initially
13 brought to you on that date in April?

14 A Yes, as well as I can tell, yes.

15 Q And State's Exhibit 5 as well. Does that appear to be
16 the jar within the sealed baggie the way it was presented
17 to you?

18 A Yes.

19 MS. OVERBY: These have already been admitted, Your
20 Honor. May I publish them to the jury now that I have?

21 THE COURT: You may.

22 Q And this is the packaging in which it was in when
23 Tracy Moss brought it to you, is that correct?

24 A Yes.

25 Q And State's Exhibit 5. You looked at this and said --

Dr. John David Wren
Direct examination by Ms. Overby

1 it's the jar within the baggie. That's the way in which it
2 was presented to you.

3 A Yes, ma'am.

4 Q Dr. Wren, can you tell us generally what you did with
5 this item whenever you received it from Investigator Tracy
6 Moss?

7 MR. SHEALY: Judge, can we approach?

8 (Bench conference held off the record in the presence
9 of the jury but out of the hearing of the jury.)

10 Q Dr. Wren, can you tell us a little bit about your
11 background? I know you said you testified numerous times
12 before.

13 MS. OVERBY: At this juncture the state would offer
14 Dr. Wren as an expert in the field of pathology.

15 MR. SHEALY: No objection.

16 THE COURT: He is so qualified.

17 MS. OVERBY: Thank you.

18 Q Now, back to what I asked you.

19 When Tracy Moss brought you this material, can you
20 tell us what you did with it?

21 A Yes. This is routine in pathology and anatomic
22 pathology where the pathologist is trained based on his
23 residency and experience to sample tissues that are
24 abnormal.

25 If someone has a large breast mass and they take out

Dr. John David Wren
Direct examination by Ms. Overby

1 breast, for instance, the pathologist from experience can
2 tell which places are more likely to be cancer.

3 Now, there's variations of the presentation of these
4 tissues in that sometimes there's -- if everybody knew
5 exactly what to do by looking at it, then we wouldn't have
6 to do it under -- look at it under the microscope.

7 But, for instance, from -- if a woman -- if a female
8 has an ectopic pregnancy that means that the fetus has
9 implanted in the Fallopian tube or somewhere else beside
10 the uterus. And, as such, as the conceptus grows and
11 becomes larger it will actually rupture that Fallopian tube
12 if it's implanted in the tube and the person will bleed
13 considerably.

14 If any of that tissue is left after trying to remove
15 it, then it can continue to grow. So a pathologist if they
16 do a -- if one does an evacuation of a tube they send it to
17 pathology. And by experience we can tell most of the time
18 what tissue is most probably the -- the fetal tissue or the
19 placental tissue that's there.

20 So we take that tissue and put it through a fixing
21 process to where we can mount it on a slide and look at it
22 under the microscope and then confirm that that is indeed
23 fetal tissue or placental tissue.

24 In this case the conceptus evidently was implanted in
25 the uterus and the female decided that she wanted to have

Dr. John David Wren
Direct examination by Ms. Overby

1 an abortion. So it was taken out. And when that happens a
2 lot of blood accompanies it too.

3 So as the blood clots the placental tissue actually
4 looks a lot like the blood. So a pathologist has -- there
5 are certain ways we can -- if we can't tell exactly what --
6 whether it is placental tissue or fetal tissue we will
7 sample it and put in several cassettes, we call it, which
8 are blocks of tissue, to make that sure that we do have a
9 valid diagnosis.

10 In this case I did -- I took the container that had a
11 considerable amount of blood in it, and I divided. I took
12 out parts that I thought were probably placental tissue and
13 I divided it into two parts, one which I wasn't quite sure
14 whether there was some there, and others which I was more
15 sure. And so I did two containers with tissues that they
16 wanted me to isolate to see if there was placental tissue
17 there, which I did and forwarded it to -- I released it
18 to -- I can't read her name -- Lyons. Is that it?

19 Q The detective -- did you give the material back to
20 Detective Tracy Moss after you --

21 A Oh, yes, Moss. T. Moss, right, yes, ma'am.

22 Q So you talked to me about -- about separating. Is
23 this -- you -- you mentioned or alluded to processes of
24 putting tissue onto slides.

25 A Yes.

Dr. John David Wren
Direct examination by Ms. Overby

1 Q But that is not what you did in this case.

2 A No. In this case I just -- I took out tissues that I
3 was pretty sure were probably placental tissue.

4 I did not see any fetus because it was such an early
5 pregnancy and sometimes it's macerated and it's in that
6 blood clot. And you have to separate the clot out.

7 And we have sometimes, depending on how much of tissue
8 is, we have to take the blood clot and pull it apart. And
9 when that happens you see little strings of tissue that
10 actually sticks to both sides of the blood clot.

11 And you can be pretty sure in that case that it is
12 placental tissue and not just fiber and/or other blood
13 products that would be in that blood or even just the part
14 of the uterine lining of the uterus, which if the placenta
15 is not there it'd just be mother's tissue that's in that
16 evacuation, which is called a suction apparat evacuation.
17 It's like a D.N.C. in most people's terms.

18 Q And you reference when you separated that material
19 into what you believe to be the mother versus what you
20 believe to be the fetus. You place them into two separate
21 jars?

22 A Yes. I did.

23 Q Okay. So what was brought to you as one jar then
24 became what?

25 A Pardon?

Dr. John David Wren
Direct examination by Ms. Overby

1 Q It was brought to you as a single jar from Atlanta.

2 A Right.

3 Q But when it left you, it left in what form?

4 A It left in the original jar, what I thought was just
5 mainly blood, and then two portions of tissue, one for
6 possible backup in case the first one didn't work of
7 suspected placental tissue. That's not unusual. We have
8 to do that a lot of times in just routine surgical cases
9 where someone has a D.N.C.

10 And in that case if there's a suspected pregnancy we
11 have to as part of the procedure to -- it's like a quality
12 control in one respect in that it ensures the doctor didn't
13 do something that was unnecessary in another case to try to
14 give -- to try to give a diagnosis of whether it is a --
15 just a benign pregnancy that aborted for some reason.

16 As a matter of fact, 25 percent of pregnancies
17 spontaneously abort without anything happening. That's why
18 some people miss periods. Some females miss periods or
19 they might bleed later. It's an abnormal pregnancy and the
20 body rejects itself.

21 So when a person has a D.N.C. we look at the uterine
22 lining and determine whether it's just an abnormal
23 physiological process or whether there's an abnormal
24 process that needs to be treated like a malignancy or
25 what's called a hydropic pregnancy or even a

Dr. John David Wren
Direct examination by Ms. Overby

1 choriocarcinoma which is a malignancy that can metastasize.

2 Q The two containers that you described after the
3 separation, they were labeled containers A and B, is that
4 correct?

5 A Yes.

6 Q Okay. And were they placed -- before you placed that
7 material into those containers, A and B, was there some
8 type of solution or liquid that was placed into those jars
9 first?

10 A I think there was some formalin in there, yes.

11 Q Okay. And what is that?

12 A It's just a fixative to keep tissues from -- it helps
13 to fix the tissues, because once tissue is removed from the
14 body it starts degrading and autolyzing. And it destroys
15 the details of cells to where if it goes on long enough
16 it's actually decomposition after it's removed from the
17 body unless we have a fixative there that's -- that tissues
18 are put in to help fix them in the state they're removed so
19 when they're processed we don't lose a lot of detail.

20 Q So is it fair to say that that acts as a preservative?

21 A Yes. It's actually formaldehyde vapor bubbled through
22 water. And you get a 37 percent solution at saturation of
23 formaldehyde in water. That's called concentrated 37
24 percent formic acid formaldehyde.

25 And then because it is -- has a high acidity -- a low

Dr. John David Wren
Cross-examination by Mr. Shealy

1 acidity rather -- and it will burn the tissues, we dilute
2 that to ten percent. And that's -- over the years has been
3 found to be an ideal fixative to fix tissue to where we
4 preserve the detail as it's further processed for looking
5 at it under a microscopic slide.

6 We take that tissue and run it overnight. But once
7 it's put in the formaldehyde it's good for months, and even
8 years in some cases. I've seen some tissue that was fixed
9 that was -- had been, like, well over a hundred years old
10 that was -- had been kept in formaldehyde to where it
11 didn't degrade because of the preservative effect of
12 formalin.

13 Q And once you separated that material and put it in the
14 jars did you return it back to Tracy Moss?

15 A Yes.

16 Q I have no other questions for you. Please answer any
17 questions Mr. Shealy may have for you.

18 CROSS-EXAMINATION

19 BY MR. SHEALY

20 Q Dr. Wren, you testified that you placed it in two
21 separate containers. Where did you get those two separate
22 containers?

23 A We -- it's standard pathology material. We have -- we
24 have containers that we receive that are sterile. They're
25 sealed with a sterile label. And when we get that or when

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Cross-examination by Mr. Shealy

1 a doctor or if it's necessary to have it sterile, then we
2 break the seal, put it in there, put the seal back on.

3 In this case we had clean containers and we used
4 formalin that is purchased from -- we purchase it now. It
5 used to be made by the hospital because of the economy, but
6 now it's purchased from a supplier. And it's in a plastic
7 container that is purchased by the gallons.

8 Q Okay. So those two containers didn't come from Ms.
9 Moss? Those came from your --

10 A Pardon?

11 Q Those containers didn't come from Detective Moss.

12 A No, no.

13 Q They came from your --

14 A No. They came -- they came from our supply, which is
15 they hold 90 milliliters of -- about 90 milliliters of
16 liquid. And, ideally, when you -- when you sample tissue
17 you're supposed to be put ten times as much liquid as you
18 do tissue. But that's usually not the case because it
19 takes a lot of liquid to make ten percent of a piece of --
20 a large piece of liver or lung. It takes a big 55-gallon
21 drum or something like that.

22 Q Sure, sure.

23 All right. You also tested. Now, you -- obviously,
24 I'm not a doctor, so you've talked about formalin and
25 formaldehyde.

Dr. John David Wren
Cross-examination by Mr. Shealy

1 A Yes.

2 Q What's -- is there a difference between the two of
3 them? Are they synonyms? Explain that to me, please.

4 A Formaldehyde is actually a gas in the -- in its
5 natural state. It's carbon, hydrogen and oxygen. Once
6 it's bubbled through -- through distilled water it becomes
7 a solution of formaldehyde in water. And that's called --
8 that's also called formaldehyde or 37 percent formalin.

9 It's a saturated solution. It's as much gas as you
10 can get dissolved in that liquid. It reaches an
11 equilibrium. That is usually the way -- sometimes that's
12 the way it's shipped.

13 If we -- for instance, if we take a brain out at an
14 autopsy you don't want to distort that brain. And it so
15 happens that the density of the 37 percent solution, you
16 can drop the brain down in there and it will float. You
17 can actually dilute the liquid up to close to ten percent
18 solution, and then when it gets to ten percent it'll sink
19 to the bottom.

20 So we just put it in there, put a little bit more
21 water in there and let it fix like it's just floating in
22 the -- in the cranial vault itself to where it doesn't
23 distort it by lying on the bottom or being up against
24 something else.

25 So we take the 37 -- they take the 37 percent

Anthony Knighton
Direct examination by Ms. Overby

1 formalin, which is a saturated solution, and dilute it to
2 ten percent. And that's the -- that's the concentration we
3 use.

4 Q Okay. So it would be --

5 A Those -- those terms are often used interchangeably,
6 but formaldehyde is a gas that's just carbon, hydrogen and
7 oxygen.

8 Q All right.

9 A Bound together, of course.

10 Q Sure.

11 A It's actually CH₂O.

12 Q That's all the questions I have for you.

13 MS. OVERBY: No further questions, Your Honor.

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

15 MS. OVERBY: State would next call Anthony Knighton.

16 ANTHONY KNIGHTON, having been
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MS. OVERBY

19 Q Would you please introduce yourself to the jury?

20 A I'm Deputy Anthony Knighton, Spartanburg County
21 Sheriff's Office.

22 Q Deputy Knighton, where do you currently work?

23 A Spartanburg County Sheriff's Office, school resource
24 officer division.

25 Q In April of 2015 were you employed with the sheriff's

Anthony Knighton
Direct examination by Ms. Overby

1 office?

2 A Yes, ma'am. Crime scene unit.

3 Q I'm sorry?

4 A With the crime scene unit.

5 Q Can you tell us just a little bit about your duties
6 and responsibilities as a member of the crime scene unit?

7 A We respond at the request of uniform patrol or the
8 criminal investigative division to crime scenes to process
9 the scene, to collect evidence and to document the scene,
10 investigate through photographs or drawings.

11 Q And were you asked to assist in the investigation of a
12 Richard Stribling in April of 2015?

13 A Yes, ma'am.

14 Q And were you asked to collect a D.N.A. sample from
15 him?

16 A Yes, ma'am, I was.

17 Q And did you do that?

18 A Yes, ma'am.

19 Q I'm going to hand you what's been marked for I.D. as
20 State's Exhibit 34 and ask you to look at that item. The
21 Manila envelope in that item, can you tell me what that
22 contains?

23 A It's a buccal swab collected from Richard Stribling.

24 Q Was that collected by you?

25 A Yes, ma'am.

Anthony Knighton
Direct examination by Ms. Overby

1 Q And what date was that?

2 A 4/20/2015.

3 Q Can you tell me generally how you collect that item?

4 A I respond to the scene. I take a sterile buccal swab
5 or sterile swab that's in a -- already wrapped in a paper
6 container.

7 I unseal it. I swab the person's cheek, inside of
8 their cheek. I do the left side and the right side so I
9 get a -- a good sample. I package it in a sterile
10 cardboard box, put it in the evidence envelope and seal the
11 envelope and place it into evidence.

12 Q And is that what you did in this case in collecting
13 the sample with Richard Stribling?

14 A Yes, ma'am.

15 Q And you said after -- after the sample is collected
16 and you put it in that envelope, you seal it, is that
17 correct?

18 A Yes, ma'am.

19 Q And then you said you place it into evidence.

20 A Yes, ma'am.

21 Q I'm going to hand you what's been marked as State's
22 Exhibit 35. Does this appear to be a property sheet
23 maintained by the sheriff's office?

24 THE COURT: That was a question to you.

25 A Oh, yes, yes, ma'am.

Laura Hash
Direct examination by Ms. Overby

1 Q And you said you put that -- placed that item into --
2 to evidence. Can you tell me to whom the Spartanburg
3 County Sheriff's Office received that item?

4 A We have a locked evidence container at the sheriff's
5 office. I worked on the night shift at that time,
6 overnight. And it's a lock box that I placed it in. And
7 it was received the next day from an evidence technician.

8 Q Okay. After you sealed that item and before you
9 placed it into that lock box was it ever opened by you?

10 A No, ma'am.

11 MS. OVERBY: That's all the questions I have for this
12 witness.

13 Q Please answer anything Mr. Shealy might have for you.

14 MR. SHEALY: I have no questions for this witness.

15 THE COURT: Step down.

16 MS. OVERBY: The state next calls Laura Hash.

17 LAURA HASH, having been first
18 duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MS. OVERBY

20 Q Please introduce yourself to the jury.

21 A My name is Laura Hash.

22 Q And, Ms. Hash, where do you currently work?

23 A I currently work as a D.N.A. analyst at the South
24 Carolina Law Enforcement Division, more commonly referred
25 to as SLED.

Laura Hash
Direct examination by Ms. Overby:

1 Q And did you work there in April and May of 2015?

2 A Yes, I did.

3 Q Can you tell us a little bit about your educational
4 background?

5 A Sure. I have a bachelor's degree in chemistry, which
6 I received from Clemson University. I also have a Ph.D.
7 decree in basic pharmaceutical sciences, which I received
8 from the University of South Carolina.

9 Q As part of your employment as a D.N.A. analyst at SLED
10 do you undergo continuing education with that and receive
11 trainings and certifications regarding that?

12 A Yes. All D.N.A. analysts are required to complete a
13 minimum of eight hours of continuing education per year.
14 We are also proficiency tested at least two times a
15 year.

16 Q Have you ever testified in a court before?

17 A Yes, I have.

18 Q Have you ever been offered as an expert before?

19 A Yes, I have.

20 Q In what fields?

21 A Forensic and D.N.A. analysis.

22 MS. OVERBY: At this time the state would offer
23 Ms. Hash as an expert in D.N.A. analysis.

24 MR. SHEALY: Judge, if I may, I just have one
25 question.

Laura Hash
Voir Dire by Mr. Shealy
Direct examination by Ms. Overby

1 VOIR DIRE EXAMINATION

2 BY MR. SHEALY

3 Q How many times have you been qualified as an expert?

4 A I'm not sure of the exact amount, but it's at least
5 20, I would say.

6 MR. SHEALY: I have no objection.

7 THE COURT: She is so qualified.

8 MS. OVERBY: Thank you, Your Honor.

9 CONTINUED DIRECT EXAMINATION BY MS. OVERBY

10 Q Were you asked to assist in the investigation of a
11 Richard Stribling?

12 A Yes, I was.

13 Q And did SLED receive items of evidence in this case?

14 A Yes, we did.

15 Q And can you tell me what items SLED received?

16 A Yes. And I'm going to be referring --

17 MR. SHEALY: I'm going to object at this point because
18 I don't believe she's the one that received those items.

19 MS. OVERBY: May we approach for a moment?

20 THE COURT: Uh-huh.

21 (Bench conference held off the record in the presence
22 of the jury but out of the hearing of the jury.)

23 Q Ms. Hash, are you familiar with SLED's policies and
24 procedures regarding intake of evidence?

25 A Yes, I am.

Laura Hash
Direct examination by Ms. Overby

1 Q And as to SLED as -- as an agency received items of
2 evidence in this case, can you tell me whom first received
3 it?

4 A I would need to refer to a chain of custody.

5 Q Okay. Would that help refresh your memory?

6 A Yes.

7 MR. SHEALY: Judge, I'm going to object on the same
8 basis that I just objected. I don't think she can testify
9 that somebody else received these items. I think some --
10 whoever received the items has to testify how they received
11 the items.

12 THE COURT: Well, is this a business record? Can you
13 establish it is a business record? I --

14 MS. OVERBY: Yes, sir, Your Honor. She is familiar
15 with the policies and procedures about who and what would
16 occur.

17 THE COURT: Lay the foundation then.

18 MS. OVERBY: May I approach the witness?

19 Q What I am handing you is a -- is this your SLED's
20 chain of custody form regarding items of evidence that are
21 received?

22 A Yes, for this particular case.

23 Q Okay. And are you familiar with an Amy Stephens at
24 SLED?

25 A Yes.

Laura Hash
Direct examination by Ms. Overby

1 Q Can you tell me what she does?

2 A She is a forensic technician and she is in the
3 evidence control department. And they are the first people
4 at the time of this case that they would actually get the
5 evidence from the investigator who is bringing the items of
6 evidence to SLED.

7 She would watch them log it in. She would take an
8 inventory of what they were bringing, and then she would
9 watch the investigator put these items of evidence into a
10 heat-sealed pouch, seal the pouch and initial the pouch.

11 Q Does Amy ever -- excuse me -- does Ms. Stephens, does
12 she ever open any of the pouches and perform any kind of
13 analysis on those items?

14 A No.

15 MR. SHEALY: Objection, Judge. She -- she can't
16 testify to what Ms. Stephens does or doesn't do all of the
17 time.

18 THE COURT: Well, she knows what Ms. Stephens' job is
19 at SLED. I mean, the custodian can't test material. So if
20 she knows what she does, she can testify to it.

21 MR. SHEALY: Judge, she's testifying that she always
22 does these particular things and those particular things --

23 THE COURT: She was asked if she opened the envelopes
24 and tested anything, was the question.

25 MR. SHEALY: Again, Judge, I don't know that she can

Laura Hash
Direct examination by Ms. Overby

1 testify as to whether Ms. Stephens opened the envelopes or
2 didn't open the envelopes.

3 THE COURT: Okay. Well, we'll see. Let's listen to
4 her testimony and we'll find out.

5 Q Before I move on, the document that I handed you, is
6 that a document that's kept routinely in the course of
7 business within SLED?

8 A Yes, it is.

9 Q Okay. And so you talked briefly about what
10 Ms. Stephens does -- did. Before you received -- did you
11 receive items of evidence in this case?

12 A Yes, I did.

13 Q Okay. Before you received those items where did you
14 get that from?

15 A Before I received the items of evidence they were
16 located in the evidence control department.

17 Q And who placed them there?

18 A From the record, they were placed on a D.N.A. intake
19 shelf by Amy Stephens.

20 MR. SHEALY: Again, Judge, I'm going to object. I
21 don't believe --

22 THE COURT: Sustained.

23 Q I'm sorry.

24 A And that was for one item. Another item or two items
25 were placed into the --

Laura Hash
Direct examination by Ms. Overby

1 THE COURT: I sustained that objection. She --

2 MS. OVERBY: I'm sorry, Your Honor.

3 THE COURT: She doesn't know what Ms. Stephens did
4 unless she saw her do it.

5 Q What did you do in this case?

6 A When I was notified that I had this case for analysis
7 I would go down to the evidence control department and I
8 would request the items of evidence so that I could take
9 them up to the D.N.A. laboratory and begin analysis on
10 them.

11 Q Can you tell me about the condition of those items
12 when you received them?

13 A Yes. They were in a heat-sealed pouch. They were not
14 broken. The pouch was not broken into or I would have
15 noted -- noted it on my evidence worksheet.

16 If we receive items of evidence that look like they
17 have been tampered with or opened in any way, shape or form
18 we always stop analysis and call the investigating agency.

19 Q So when you received the items from the shelf in this
20 case it appeared that none of them had been tampered with.

21 A Correct.

22 Q Can you tell me what items you retrieved?

23 A Yes. I received item one, which were buccal swabs
24 from MINOR I received item two, which was a
25 heat-sealed pouch containing miscellaneous body fluid that

Laura Hash
Direct examination by Ms. Overby

1 was described as a plastic container containing fetal
2 tissue; I also received a second container of fetal tissue;
3 and I received another buccal swab from Richard Stribling
4 labeled as item four.

5 Q We talked about -- can you tell me when the -- when
6 items one through three -- can you tell me on what date
7 SLED received them?

8 A Yes. Item one --

9 MR. SHEALY: Again, Judge, I'm going to object. This
10 is more hearsay. She doesn't know when they received them
11 because Ms. Stephens apparently received them.

12 MS. OVERBY: May we approach, Your Honor?

13 THE COURT: Okay.

14 (Bench conference held off the record in the presence
15 of the jury but out of the hearing of the jury.)

16 THE COURT: Let me ask the jury to step out just a
17 minute, please.

18 I'll address an issue and bring you right back.

19 (The following takes place outside the presence of the
20 jury.)

21 THE COURT: On what date is this supposed to be,
22 April 17th? I mean -- excuse me. Yeah. April 17th. Is
23 that when it was supposed to have been received at SLED?

24 MS. OVERBY: Well, there were two -- there were two
25 trips to SLED, one on April the 20th and one on April the

Laura Hash
Direct examination by Ms. Overby

1 21st. The first three items went on April the --

2 THE COURT: Okay. Well, which one do you contend that
3 Ms. Moss has already testified today is when she took those
4 and when they were received by SLED?

5 MS. OVERBY: She testified as to both.

6 THE COURT: Okay.

7 MR. SHEALY: Judge, I believe that I was incorrect.
8 She -- what I meant to say that she has not testified to
9 was what they did with it, what Ms. Stephens did to this,
10 the -- there's all of this testimony about heat-sealed
11 pouches and putting it on --

12 THE COURT: Well, I understood that was in the
13 presence of Ms. Moss. Is that not true?

14 MS. OVERBY: The heat sealing of --

15 THE COURT: Yes, ma'am.

16 MS. OVERBY: Yes, sir.

17 MR. SHEALY: But she didn't testify to any of that.

18 MS. OVERBY: I can recall her again, Your Honor.

19 THE COURT: We're going to take a short break, and I
20 want y'all to get this chain of evidence organized so that
21 we don't have to stop every five seconds because of an
22 objection.

23 We need to have the -- what happened to these items,
24 we need to have that organized as to who did what with it
25 and when they did it.

Laura Hash
Direct examination by Ms. Overby

1 If the chain is established, as near as practical,
2 every person in the chain doesn't have to testify, but
3 Ms. Moss -- you say she said it and you say -- the state
4 says she said something. The defense says she didn't.

5 So I don't -- I have not memorized the testimony of
6 every witness. I'm assuming y'all know what these
7 witnesses are to testify to and y'all have a list of
8 questions you want to ask them.

9 If I need to take all of this down verbatim, I will.
10 I can get the court reporter to give me a transcript. But
11 that shouldn't be necessary, quite frankly.

12 Let's take a few minutes.

13 You can step down. Don't discuss your testimony.

14 And I want y'all to be certain what we have going here
15 with organization of this chain of evidence. Okay.

16 (Whereupon, a recess was taken.)

17 THE COURT: All right. Ms. Hash you can come back and
18 take your seat on the stand, please, ma'am.

19 You can bring the jury in.

20 THE BAILIFF: Yes, sir.

21 (The following takes place in the presence of the
22 jury.)

23 THE COURT: Ms. Overby.

24 BY-MS. OVERBY

25 Q Ms. Hash, the items that we were describing that you

Laura Hash
Direct examination by Ms. Overby

1 received, items one through four, when you received them
2 were they in a heat-sealed pouch?

3 A Yes, they were.

4 Q And is that -- if I may hand you State's Exhibit 3 and
5 ask you to look, when we say heat-sealed pouch are we
6 talking about that plastic baggie?

7 A Yes. It's a SLED laboratory bag. When an
8 investigating officer puts the items of evidence into the
9 heat-sealed pouch, they put it in, and then they would seal
10 it across the top and initial the seal.

11 Q And are your initials on the outside of that
12 heat-sealed pouch as having received that item?

13 A We don't actually initial the seal when we receive it.
14 When we cut into the pouch to retrieve the items of
15 evidence, when we go to seal the pouch back we seal it and
16 then we put our initials across it -- L.H.H. -- and the
17 date. And then at the top in the yellow is the case number
18 corresponding to this particular case.

19 Q Okay. And that's item, State's Item 3. I also hand
20 you State's -- State's Exhibit 34. Also, that is SLED's
21 item four, the defendant's buccal swab. Again, when you
22 received that item was it in the heat-sealed pouch, plastic
23 baggie which we see it in?

24 A Yes.

25 Q And had either of those items been opened prior to you

Laura Hash
Direct examination by Ms. Overby

1 receiving them?

2 A No. The only other heat seal was the officer that
3 brought it in, her initials and date, and then my initials
4 and date when I closed the heat-sealed pouch back.

5 Q And items -- those are SLED's items one and four.
6 Regarding SLED's items two and three, that was wet tissue
7 that was presented to SLED.

8 A Yes. It was described as frozen fetal tissue.

9 Q And are those items -- what condition were they in
10 when you received them?

11 A They would have been in the same type of pouch with
12 the same initials and date, or whoever brought the items of
13 evidence to SLED. Their initials and date when they closed
14 the heat-sealed pouch.

15 MR. SHEALY: Judge, I am going to just renew my
16 objection regarding the foundation.

17 THE COURT: I understand.

18 MR. SHEALY: Thank you.

19 Q And you are the one who handled all four of those
20 items, correct?

21 A Correct.

22 MS. OVERBY: At this time we move State's Exhibit 3
23 and 34 into evidence.

24 MR. SHEALY: Which numbers?

25 MS. OVERBY: Three and 34.

Laura Hash
Direct examination by Ms. Overby

1 MR. SHEALY: Judge, subject to my prior objections.

2 THE COURT: Okay. They're admitted.

3 MS. OVERBY: Thank you, Your Honor.

4 (Buccal swab marked State's Exhibit No. 3; buccal swab
5 marked State's Exhibit No. 34.)

6 Q First, let's talk about -- we'll talk about the
7 analysis on SLED's items two and three. Were you asked to
8 analyze the fetal tissue in this case?

9 A Yes.

10 Q And what were you -- tell me about the process that's
11 involved with that.

12 A I would compare the tissue that I received in two and
13 three. It was a lot of tissue. So I was trying to
14 visually see if there was an area that looked different so
15 that I could differentiate the fetal tissue from the
16 maternal tissue.

17 I attempted to develop a fetal profile from that
18 tissue. We would extract the D.N.A. We would quantify the
19 D.N.A., which is a process to determine how much D.N.A. is
20 there.

21 We would then amplify that D.N.A. or make millions and
22 millions of copies of the D.N.A., and then we would attempt
23 to develop a D.N.A. profile from that tissue.

24 Q And that was done on items two and three.

25 A Yes, it was.

Laura Hash
Direct examination by Ms. Overby

1 Q And did you prepare a report for the analysis done on
2 those items?

3 A Yes, I did.

4 MS. OVERBY: May I approach, Your Honor?

5 Q I'm going to hand you what's been marked as State's
6 Exhibit 36 and ask you to look at this item. Is this a
7 copy of the report that you prepared in this case?

8 A Yes, this appears to be a copy of the D.N.A. report
9 that I generated.

10 Q When we talked about that you attempted to analyze
11 the -- the fetal tissue samples, items two and three, did
12 you also -- were you also asked to perform analysis on
13 items, SLED items, one and four of the swabs from the
14 cheeks of the MINOR and defendant?

15 A Yes, I was.

16 Q And did you develop D.N.A. profiles from those items?

17 A Yes, I did.

18 Q And are all of your findings maintained in that
19 report?

20 A Yes, they are.

21 MS. OVERBY: At this time we move State's Exhibit 36
22 into evidence with permission to publish to the jury.

23 MR. SHEALY: Again, subject to my objection
24 regarding --

25 THE COURT: It's admitted subject to the foundation

Laura Hash
Direct examination by Ms. Overby

1 being established.

2 MR. SHEALY: Thank you, Your Honor.

3 (SLED report marked State's Exhibit No. 36.)

4 Q Ms. Hash, are you able to read those words, or would
5 you prefer that I hand it to you?

6 THE COURT: Don't you have an extra copy?

7 A I have an extra copy of mine too in the case file.

8 Q I'll hand you this report. I'm sorry.

9 A Okay.

10 THE COURT: What I'm saying is if y'all have an extra
11 copy you can put one on the machine over there and she can
12 look at one. That way she doesn't have to break her neck
13 looking at it.

14 Q This is the first page of the report. This first page
15 lists the items that were analyzed?

16 A Yes, they do.

17 Q And what are those items?

18 A Item one was buccal swabs from MINOR
19 item two was a plastic container inside a plastic bag
20 containing fetal tissue, and it was labeled container A;
21 item three was a plastic container inside a plastic bag
22 containing fetal tissue labeled B; and item four were
23 buccal swabs from Richard Todd Stribling.

24 Q Okay. Let's first start with the results as to items
25 two and three. Is this page two of your report. Can you

Laura Hash
Direct examination by Ms. Overby

1 tell -- SLED's item two, which was container A, can you
2 tell me about what you were able to determine from that
3 item?

4 A Yes. There was no D.N.A. profile foreign to the
5 MINOR from this item, which led me to believe that it was
6 maternal tissue and not the fetal tissue.

7 Q So, in summary, item two was attributable all to the
8 alleged mother --

9 A Correct.

10 Q -- and none to the fetus.

11 A Correct. It was all the MINOR's profile.

12 Q And SLED's item three, can you tell me about the
13 results as to that item?

14 A Yes. It was a mixture of at least two individuals,
15 but the profile that was foreign to the MINOR was
16 insufficient for reliable interpretation. It just meant
17 that there was not enough of that profile there for me to
18 accurately determine whose D.N.A. that was.

19 Q SLED's item three, which was container B, it was a
20 mixture of at least two individuals.

21 A Yes.

22 Q It was not all attributable to the alleged mother.

23 A Correct.

24 Q What does it mean to say something is insufficient
25 for -- for reliable interpretation?

Laura Hash
Direct examination by Ms. Overby

1 A It just means that there's not enough of the D.N.A.
2 profile there for us to determine whose D.N.A. it belongs
3 to.

4 Q Did you also -- were you able to develop D.N.A.
5 profiles from SLED's items one and four of the cheek swabs?

6 A Yes. I was able to develop a full D.N.A. profile for
7 both items one and four.

8 Q Please tell me what this page three of your report,
9 what are we looking at?

10 A This is the D.N.A. profile table. On the left you
11 will see the items that were analyzed -- one, two, three
12 and four -- and then across the right is the D.N.A. profile
13 for each one of those items.

14 Q What are the columns that are across the -- the top of
15 the page? What are those?

16 A The numbers that are across are the locations on the
17 D.N.A. that we actually test for. So there would be
18 different locations along the region of D.N.A. that we are
19 looking for. The last column tells if it is a female or a
20 male. X would be female; XY would be male.

21 Q And all of these numbers that we see along this chart
22 in relation to items one and four, what are they?

23 A I'm sorry. Can you repeat that?

24 Q The numbers that we see on --

25 A The numbers are the D.N.A. profile of that particular

Laura Hash
Direct examination by Ms. Overby

1 individual. So you can see in item one and two they're the
2 same, which is why I said no D.N.A. profile foreign to the
3 MINOR, because it was all consistent with her profile.

4 Q All the way across the board.

5 A All the way across the board.

6 Q Okay. Is the process for obtaining a D.N.A. profile
7 on a buccal swab any different than what you did in
8 analyzing the fetal tissue?

9 A No.

10 Q And, again, that's a -- can you just give us a recap
11 of how you developed the D.N.A. profiles from the buccal
12 swabs?

13 A So I would take a small cutting from the buccal swab
14 and I would extract it, which means that I need to pull out
15 the D.N.A. and make it into a liquid form.

16 From that step I then go on to quantify the D.N.A. to
17 determine how much D.N.A. is present in that item. The
18 analyst can then make dilutions from that because we have
19 to go forward in the process with a particular amount of
20 D.N.A.

21 Once we know how much we have, we then amplify the
22 D.N.A., which means that we make millions and millions of
23 copies of this particular sequence.

24 And then we put it onto an instrument known as a
25 genetic analyzer. And from this we develop the D.N.A.

Laura Hash
Direct examination by Ms. Overby

1 profile that you see across the board. It's a series of
2 numbers that are generated.

3 Q The D.N.A. profiles that were developed as to items
4 one and four, were you asked to submit those anywhere else
5 once they were created?

6 A Once the analysis of this case was complete they were
7 sent to a different laboratory for comparison to the
8 fetal-tissue profile that was developed.

9 Q So SLED or you sent the profiles for one and four to
10 another lab --

11 A Yes.

12 Q -- who compared the fetal tissue.

13 A That's correct, yes.

14 Q Are you familiar with the -- as a D.N.A. analyst at
15 SLED are you familiar with the protocols and the types of
16 evidence that SLED is able to analyze?

17 A Yes.

18 Q Have you heard ever or are you familiar with a fixed
19 formalin embedded process?

20 A I have heard of the process. At SLED we are not
21 validated to do that process, which means that we are not
22 allowed to attempt that process on evidence.

23 Q So SLED does not have the appropriate protocols to --
24 to analyze under the fixed embedded -- fixed formalin
25 embedded tissue.

Laura Hash
Direct examination by Ms. Overby

1 A Correct.

2 Q But what was submitted in this case, was that fixed
3 formalin tissue, or was that some other type of tissue?

4 A No. It was fetal tissue that was frozen in a buffered
5 solution that would not have affected the D.N.A.

6 Q After -- after your completion of the analysis of
7 these items, what did you do with them?

8 A They were resealed in the containers in which they
9 came. They were placed back into the heat-sealed pouch and
10 returned to the submitting agency.

11 Q I asked you earlier about sending these D.N.A.
12 profiles for items one and four to another laboratory. Do
13 you know what laboratory that was?

14 A Yes. They were sent to Cellmark.

15 Q And where is that located?

16 A In Dallas, Texas.

17 Q Was that at the request of the investigator in this
18 case?

19 A Yes.

20 MS. OVERBY: I have no further questions of this
21 witness.

22 Q Please answer anything Mr. Shealy might have for you.
23
24
25

Laura Hash
Cross-examination by Mr. Shealy

1 CROSS-EXAMINATION

2 BY MR. SHEALY

3 Q Ms. Hash, do you remember speaking with Tracy Moss
4 regarding the preservation of the tissue when Dr. Wren
5 separated it?

6 A I am not aware of who separated it first, but I do
7 remember the conversation asking that it not be fixed in
8 formaldehyde or formalin or anything that would destroy the
9 D.N.A.

10 Q Okay. So you asked specifically that it not be put in
11 formaldehyde.

12 A Correct.

13 Q Okay. Now, I'm going to hand you -- I believe it was
14 generated by your office. It's a duo-quantitation
15 worksheet 4.23.15.

16 MR. SHEALY: If I may approach the witness. I
17 apologize.

18 Q Now, where it says operators, it lists you.

19 A Correct.

20 Q And then it lists a Jennifer Clayton.

21 A Yes.

22 Q Who is Jennifer Clayton?

23 A Jennifer Clayton would be another D.N.A. analyst that
24 works at SLED. She has the exact same qualifying
25 credentials that I do to become a D.N.A. analyst.

Laura Hash
Cross-examination by Mr. Shealy

1 Oftentimes on pieces of equipment we share equipment
2 to cut down on costs, or if we are both working a case that
3 needed to be prioritized it saves time. And so she was an
4 operator handling her own samples on her own cases on this
5 particular day in which we shared the equipment.

6 Q Okay. So that just signifies that you shared
7 equipment with Ms. Clayton, not that Ms. Clayton took part
8 in the analysis.

9 A Correct. She did not handle any of my samples.

10 Q Okay.

11 MR. SHEALY: If I may approach, Your Honor.

12 Q I'll get that out of your way. Thank you, ma'am.

13 Now, you testified as to the -- in-depth as to what
14 you do whenever you extract the D.N.A. Then I believe you
15 said you dilute the D.N.A. and then you amplify it.

16 A Correct.

17 Q Okay. And you do all of those steps yourself?

18 A Yes, I do.

19 Q Okay. And then you put it on this genetic analyzer
20 and it spits out the results that you just saw.

21 A We have a program that will analyze the results from
22 the genetic analyzer. The analyst will have to interpret
23 the data and make some conclusions from it to get the
24 series of numbers that you saw.

25 Q Okay. And you testified that items number two and

Laura Hash
Cross-examination by Mr. Shealy

1 three on that report, I suppose -- so on this graph that we
2 have that two, three and three -- I'm sorry. Put it up
3 there wrong. So two meant that it was not -- that there
4 was nothing foreign from the MINOR, correct?

5 A Correct.

6 Q And then three. And then you've got three, and then
7 R-E, which I assume means a retest.

8 A 3-R-E means a re-extraction. After I developed the
9 profile from three and saw that it was a mixture I
10 attempted to go back and try to get a better separation of
11 the fetal tissue and maternal tissue. So I attempted the
12 extraction again.

13 Q Okay. And that, ultimately, was not able to be
14 interpreted? Is that what you testified to?

15 A The 3-R-E was consistent with the profile of the
16 MINOR, so it was no foreign profile developed from that
17 one, the re-extraction, at which time I did stop the
18 analysis and make a phone call to see if we could get the
19 fetal tissue separated out a little bit better for
20 analysis.

21 Q Okay. But, ultimately, the conclusion, the scientific
22 conclusion you drew from item No. 3, was that it was
23 insufficient for reliable interpretation.

24 A It was a mixture, and the profile of the contributor
25 foreign to the MINOR I could not interpret.

Laura Hash
Redirect examination by Ms. Overby

1 Q okay. If you will, bear with me just one moment.

2 (Pause.)

3 MR. SHEALY: That's all I have for this witness.

4 REDIRECT EXAMINATION

5 BY MS. OVERBY

6 Q Ms. Hash, the analysis that you did on the fetal
7 tissue -- again, was that in -- what kind of format was the
8 tissue in when you analyzed it?

9 A It was frozen tissue in just a solution that would
10 keep the tissue from drying out.

11 Q It had not gone through the fixed formalin embedded
12 process when you analyzed it.

13 A No, it had not or I would not have attempted to do the
14 analysis.

15 MS. OVERBY: No other questions.

16 THE COURT: Step down.

17 MR. SHEALY: I have no questions.

18 MS. OVERBY: The state would call Jill Cramer.

19 MR. SHEALY: Judge, I'm objecting to this witness
20 subject to -- well, based on a lack of foundation regarding
21 the chains of custody. I don't believe she's ripe to be
22 called at this point.

23 THE COURT: Well, I don't know what she's going to
24 testify to, but I'll determine that once she starts
25 testifying. But in the event it's simply a foundation

Jill Cramer
Direct examination by Ms. Overby

1 matter, then I will allow her testimony subject to the
2 proper foundation having been laid.

3 MR. SHEALY: Thank you, Your Honor.

4 JILL CRAMER, having been first
5 duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MS. OVERBY

7 Q Would you please introduce yourself to the jury?

8 A Hi. My name is Jill Cramer and I work at Signature
9 Science in Austin, Texas.

10 Q In April of 2015, Ms. Cramer, where were you employed?

11 A I was employed at Cellmark Forensics in Dallas, Texas.

12 Q And also in May of 2015 as well?

13 A Yes.

14 Q Is Cellmark an accredited laboratory?

15 A Yes. At that time we were accredited by a Texas
16 department of public safety, AABB, and ASCLD Lab, which is
17 the American Crime Laboratory Directors Board.

18 Q And is Cellmark a private laboratory, meaning it's not
19 owned or operated by the state? Is that correct?

20 A Yes.

21 Q How long were you employed with Cellmark?

22 A I started there in 1998. They were called GeneScreen
23 at the time. And I was there until November of 2015. So
24 almost 17 years.

25 Q What was your position with Cellmark?

Jill Cramer
Direct examination by Ms. Overby

1 A I had multiple positions. My position at the time of
2 this case was senior D.N.A. forensic analyst.

3 Q And how long had you held that position?

4 A I would say probably about seven years.

5 Q What does that entail?

6 A The job itself would entail looking at items of
7 evidence for bodily fluids, taking cuttings of that
8 evidence, extracting D.N.A. from the evidence, quantitating
9 the D.N.A., amplifying, and then genetically testing --
10 genetically testing the evidence to get a D.N.A. profile to
11 compare.

12 Q And can you tell us briefly about your educational
13 background, what degrees you hold?

14 A My educational background is a bachelor's of science
15 in biology. And I also have the required course work in
16 order to be a D.N.A. analyst, which includes genetics
17 class, biochemistry and molecular cell biology.

18 Q Have you ever been qualified and accepted as an expert
19 witness in the courts of any state?

20 A Yes, in several states including Texas, New Mexico,
21 California, Washington state, Washington, D.C.,
22 Pennsylvania, Maine, Massachusetts, Florida, Mississippi,
23 and probably other ones that I've forgotten at this time.

24 Q You ever testified in South Carolina?

25 A No.

Jill Cramer
Direct examination by Ms. Overby

1 Q Are you a member of any group or society or
2 association within the scientific area?

3 A Yes. I'm a member of A.A.F.S., which is the American
4 Academy of Forensic Sciences, and also AFDAA, which is the
5 American Association of Forensic D.N.A. Analysts and
6 Administrators.

7 Q I don't think, believe, I asked you this, but
8 regarding your qualifications as an expert in other courts,
9 in what fields have you testified?

10 A I've also testified for criminal casework, which
11 includes sexual assaults or homicides, and forensic
12 paternity cases. And that's about it.

13 Q And Cellmark, you described earlier, is a private lab,
14 is that correct?

15 A That's correct, yes.

16 Q And are you being -- or was Cellmark provided payment
17 for you to appear in court today?

18 A Yes.

19 MS. OVERBY: At this time, Your Honor, I'd submit
20 Ms. Cramer as an expert in the field of D.N.A. analysis.

21 MR. SHEALY: No objection regarding qualifications in
22 D.N.A. analysis.

23 THE COURT: All right. She is so qualified.

24 Q Ms. Cramer, can you tell us generally, what does
25 D.N.A. stand for?

Jill Cramer
Direct examination by Ms. Overby

1 A D.N.A. stands for deoxyribonucleic acid, and it's a
2 blueprint of your body.

3 You have D.N.A. in every nucleus of every nucleated
4 cell in your body. You get half of your D.N.A. from your
5 father and half of your D.N.A. from your mother. And
6 everyone's D.N.A. profile is unique to them with the
7 exception of identical twins, which would have the same
8 D.N.A. profile.

9 Q What is D.N.A. profiling or D.N.A. analysis?

10 A D.N.A. analysis is where you take an item of evidence
11 and you get the D.N.A. profile from that piece of evidence
12 and you compare that to a reference or a known sample.

13 D.N.A. analysis can also include a paternity test
14 where you would take reference samples from three
15 individuals and compare them to see if someone could be a
16 father or a mother to a child.

17 Q Are you familiar -- in your profession are you
18 familiar the phrase P.C.R.? What does that mean?

19 A Yes. P.C.R. is the type of testing that we do, and it
20 stands for polymerase chain reaction, and it's basically
21 our amplification step where we take a very small amount of
22 D.N.A. and we make millions of copies of that D.N.A. so
23 that we have enough for our testing.

24 Q And how long has this process been used or been in
25 existence?

Jill Cramer
Direct examination by Ms. Overby

1 A P.C.R. testing has been around since the 1980s.

2 Q And in what fields and areas is that type of testing
3 used?

4 A It's used for medical diagnostics and paternity
5 testing and criminal casework.

6 Q Are you also familiar with short tandem repeat
7 testing?

8 A Yes. S.T.R. or short tandem repeat testing is a type
9 of P.C.R. testing and it's where you take -- you look at
10 different sections of the genome. So you're targeting
11 specific areas of the genome to look at for variability
12 from person to person.

13 Q And the two types of procedures that you've testified
14 about -- preliminary chain reaction and short tandem
15 repeat -- are those types of testing that are performed by
16 Cellmark where you worked in 2015?

17 A Yes.

18 Q And are you familiar with whether other labs also
19 performed this type of testing?

20 A Yes. This is the most common type of testing for
21 D.N.A. testing. It's used at private laboratories such as
22 Cellmark and public laboratories. And the F.B.I. also uses
23 this type of testing.

24 Q Are there -- is there a standard technique or
25 generally accepted protocol used with this type of testing?

Jill Cramer
Direct examination by Ms. Overby

1 A Yes. In accordance with our accreditations we have to
2 follow a certain standard or protocols to do this type of
3 testing.

4 Q Let's go back for just a moment to the preliminary
5 chain, the P.C.R. analysis. Can you briefly describe that
6 procedure and what is accomplished by performing that test?

7 A The P.C.R. analysis -- I kind of have to go back a
8 couple of steps to show you the whole process.

9 So what happens is I start by taking a cutting that's
10 going to move forward for D.N.A. extraction. And at that
11 point in time I'm purifying the D.N.A. in liquid form.

12 Then I need to know how much D.N.A. is present in the
13 liquid. So I do what's called a quantitation step. And
14 that tells me how much D.N.A. is present in that liquid.

15 The next step is the P.C.R. or amplification step
16 where I make the millions of copies of the D.N.A. so that
17 there's enough D.N.A. for the test.

18 The step after that is to load that sample onto a
19 genetic analyzing instrument. The data comes off of that
20 instrument, and it's analyzed by me with software. And
21 then I can actually view the D.N.A. profiles at that time
22 and do a comparison of the D.N.A. profiles.

23 Q And this type of procedure that you're describing, is
24 this something that you have -- you perform regularly?

25 A Yes.

Jill Cramer
Direct examination by Ms. Overby

1 Q About how many times approximately?

2 A Thousands of times.

3 Q Did Cellmark have any controls in place to ensure the
4 quality of that procedure and the credibility of the
5 results?

6 A Yes. We have multiple controls over the entire
7 procedure that I just went through just now starting at the
8 D.N.A. extraction procedure where you take the cutting and
9 you're extracting the D.N.A. into a purified liquid form.

10 We have what's called a reagent blank that goes along
11 with that sample, and it's run alongside the sample in a
12 separate tube. And included in that reagent blank are all
13 of the same chemicals that you're using for your actual
14 sample with the cutting in it.

15 So if there were any contamination in your sample it
16 would show up in that reagent blank. And if we did have
17 any contamination that shows up in that reagent blank we
18 would not use that test.

19 Q How is a sample or specimen normally received at
20 Cellmark?

21 A Normally things were received via a tracked carrier
22 like FedEx or U.P.S., or sometimes we would have things
23 hand delivered to the laboratory. And then when they were
24 received they were handed over to the evidence technician
25 who would move them to our secure restricted access

Jill Cramer

Direct examination by Ms. Overby

1 evidence room and input the information into LIMS, sticker
2 the item of evidence with one of our LIMS numbers to start
3 tracking it in our system and then put it on a shelf in our
4 evidence room.

5 Q You said it's placed on a shelf in the evidence room.
6 Is that where it's stored until you receive the item?

7 A Yes.

8 Q Let's turn specifically to -- to this case if we can.
9 Was your assistance requested in this case?

10 A Yes.

11 Q And did you or Cellmark receive samples with regard to
12 this particular case?

13 A Yes.

14 Q And what samples did Cellmark receive?

15 A Cellmark received a formalin fixed paraffin embedded
16 fetal tissue sample.

17 Q So the item -- items seeking Cellmark had undergone
18 the formalin fixed embedded process.

19 A Correct.

20 Q And how -- how was this item received?

21 A The item was received via FedEx.

22 Q And once it -- can you tell me about the condition at
23 its receipt?

24 A Yes. It was properly sealed when we received it when
25 it came in the door. Everything looked normal. It looked

Jill Cramer
Direct examination by Ms. Overby

1 completely sealed.

2 Q Does Cellmark maintain an internal chain of custody as
3 well --

4 A Yes.

5 Q -- whenever an item is received?

6 A Yes, we do.

7 Q You mentioned earlier there was -- the first person
8 who has any interaction with an item when it comes in --
9 what's their title?

10 A I believe it's evidence -- evidence technician.

11 Q And do you know who that evidence technician was in
12 this case, who received this item?

13 A Yes. At the time this case came in it was received by
14 Maria Chavis.

15 Q And what does she do with the item?

16 MR. SHEALY: Objection. She can't testify to what she
17 did with it unless she was there and saw her do it.

18 THE COURT: Does she know?

19 MS. OVERBY: Can I rephrase my question, Your Honor?

20 THE COURT: Yes.

21 Q The contents of -- the item came to Cellmark in a
22 Fed-Ex box.

23 A Correct.

24 Q Okay. The contents that were in that box, did you
25 retrieve those contents at some point?

Jill Cramer
Direct examination by Ms. Overby

1 A Yes.

2 Q Okay. Tell me. When you retrieved them, tell me
3 about the condition they were in when you accessed them.

4 A When I accessed them they were in a sealed FedEx box.
5 The evidence was in a sealed FedEx box.

6 Q And you say it was sealed. What was it sealed with?

7 A It was sealed with clear tape that was put there after
8 the evidence technician had opened, taken out the paperwork
9 and resealed the package in order to be able to input it
10 into our LIMS system, put a sticker on it with our case
11 number and put it on the shelf.

12 Q I'm going to hand you what's been placed up here,
13 what's been marked as State's Exhibit 12 and ask you to
14 look at this item. This box in the middle, is this the
15 FedEx box that you're talking about Cellmark received?

16 THE WITNESS: Can I refer to my case notes?

17 THE COURT: You may.

18 THE WITNESS: Okay. Thank you. I just want to make
19 sure that the package numbers match what I have in my case.

20 (Pause.)

21 A I can't really see the number of the packing slip on
22 that FedEx.

23 THE COURT: Can you hand her a photograph so she can
24 just look at it?

25 MS. OVERBY: Yes. I will.

Jill Cramer
Direct examination by Ms. Overby

1 A Sorry about that.

2 (Pause.)

3 A Yes, this is the same FedEx box that the evidence was
4 received in it at my laboratory.

5 Q Does Cellmark maintain when -- when a package comes
6 into Cellmark does Cellmark maintain an inventory of that
7 item?

8 A Yes.

9 Q Okay. And whenever you do anything with the item do
10 you document that as part of that inventory?

11 A Yes.

12 Q Can you tell me on what date you retrieved the white
13 box that you described earlier?

14 A Yes. I checked the evidence out from the evidence
15 room on June the 8th of 2015.

16 Q And when you checked it out was that box sealed?

17 A Yes.

18 Q Did you have to cut through that box to open it?

19 A I cut through a seal to enter that box, yes.

20 Q When you opened the box, what were the contents of it?

21 A There were several layers of packaging to get down to
22 the final content. Would you like for me to describe each
23 one?

24 Q If you would, please.

25 A Okay. So, first of all, you have the outer FedEx

Jill Cramer
Direct examination by Ms. Overby

1 envelope or FedEx box. Within that was a white cardboard
2 box that was also sealed, so I cut through that seal to
3 enter that white cardboard box which contained a large
4 Manila evidence envelope which contained a white box. And
5 that white box contained a formalin fixed paraffin embedded
6 fetal tissue block.

7 Q And what did you do with that block?

8 A I took a photo of it and described in my case
9 inventory.

10 Then I take -- then to take a sample of the block I
11 wiped the top of the block of tissue with some 70 percent
12 isopropanol. And this is to get rid of any kind of
13 contaminate that might be on the out -- the outer portion
14 of the block.

15 Then I used a sterile scaffold to cut out a portion of
16 the tissue that was embedded in the paraffin which is kind
17 of like a waxy substance. So I cut it out of the wax and
18 put it into a tube for D.N.A. extraction.

19 Q And you said you took a photo of the slide that was
20 submitted as part of the block, is that correct?

21 A Yes.

22 Q If I may hand you what's been marked as State's
23 Exhibit 10 and ask you to look at this item for me, can you
24 tell me generally what's depicted in that item?

25 A Yes. This is the photo that I took of the paraffin --

Jill Cramer
Direct examination by Ms. Overby

1 the formalin fixed paraffin embedded block with a ruler and
2 our case identifying sticker. And I also note on this
3 photo the cutting that I took. And this is actually part
4 of the case file.

5 Q So you took this photo that you're describing to us.

6 A Yes.

7 Q You also mentioned you took a cutting from the slide
8 that was submitted.

9 A Yes.

10 Q Did you designate that on the item?

11 A Yes. I designated that cutting as 01.01.1.

12 Q Did you also estimate its approximate size? And what
13 was that?

14 A The approximate size was .02 centimeter by 0.2
15 centimeter.

16 Q There's also a label if I may approach -- a label
17 that's affixed onto the slide. Are those your initials
18 that are placed right there on that label?

19 A Yes.

20 Q And is that the date you received or you handled this
21 item?

22 A Yes. That's the date that I handled and took the
23 cutting. And this is our case identifying number from our
24 LIM system. It's FR15-0018.

25 Q There's also -- there's a note down there at the

Jill Cramer
Direct examination by Ms. Overby

1 bottom. Did you write that note?

2 A Yes.

3 Q Okay.

4 MS. OVERBY: At this time we move State's Exhibit 10
5 into evidence with permission to publish to the jury.

6 MR. SHEALY: Judge, I'm just renewing my objection as
7 far as foundation.

8 THE COURT: It's admitted.

9 (Photograph marked State's Exhibit No. 10.)

10 Q So you received this item that's in a plastic type
11 cassette?

12 A Yes. It's a plastic base, and then there's like maybe
13 half an inch of wax, hard wax, substance, kind of like the
14 consistency of a crayon. And embedded in that clear wax is
15 this pink tissue.

16 Q And you said you took a cutting from this item.

17 A Yes.

18 Q How did you do that?

19 A Using a sterile scaffold. I cut out basically a
20 little chunk or a little block of that pink tissue.

21 Q And, again, you took that tissue and did what with it
22 next?

23 A I put it into a microcentrifuge tube for D.N.A.
24 extraction.

25 Q Did you prepare -- excuse me -- did you prepare a

Jill Cramer
Direct examination by Ms. Overby

1 report in this case that reflects your D.N.A. finding, your
2 analysis?

3 A Yes.

4 Q I'm going to hand you what's been marked as State's
5 Exhibit 38. Is this a copy of the report that you
6 generated in this case?

7 A Yes, it is.

8 MS. OVERBY: At this time we move State's Exhibit 38
9 into evidence with permission to publish to the jury.

10 MR. SHEALY: Continue my objection for the -- for the
11 foundation. Excuse me.

12 THE COURT: It's admitted.

13 (Cellmark report marked State's Exhibit No. 38.)

14 Q what date did you generate this report?

15 A On June the 19th of 2015.

16 Q And the only item that you analyzed or how -- did you
17 only analyze one item?

18 A Yes.

19 Q And tell me about the -- this physical analysis
20 maintained in item No. 3 here at the bottom of the page.
21 What are we seeing, this chart?

22 A This chart for the paternity index? Is that what
23 you're --

24 Q Right. Is item three listed on this report, is that
25 the statistical analysis that was generated after your

Jill Cramer
Direct examination by Ms. Overby

1 work?

2 A Yes.

3 Q Can you tell me why was -- I'm going to point to page
4 two -- what your ultimate conclusion was after your
5 analysis?

6 A The ultimate conclusion was that the alleged father,
7 Richard Todd Stribling, cannot be excluded as the
8 biological father of the fetal tissue. And based on these
9 results the probability of paternity is 99.9999 percent as
10 compared to an untested, unrelated male of the North
11 American Caucasian population. The combined paternity
12 index of all 15 genetic systems is 4,248,941 to one.

13 Q Can you describe what you did with the -- the fetal
14 tissue? Did you compare or were you able to develop a
15 profile from the cutting from the fetal tissue?

16 A Yes.

17 Q Okay. And did you compare that D.N.A. profile with
18 some other D.N.A. profile --

19 A Yes.

20 Q -- submitted to Cellmark?

21 A Yes.

22 Q Did SLED or South Carolina's Law Enforcement Division,
23 did they submit to you the profiles that had been made from
24 the MINOR and the defendant's cheek swabs?

25 A Yes.

Jill Cramer
Direct examination by Ms. Overby

1 Q And are those profiles what you compared to the
2 profile developed from the fetal tissue?

3 A Yes.

4 Q Tell me about how that's done, how they're compared.

5 A Okay. Well, we would get -- first of all, we would
6 test the fetal tissue and get a D.N.A. profile from that,
7 which is what you see on page one in the middle column,
8 which would be under the child.

9 And then the other two profiles from the mother and
10 the alleged father we received through e-mail from SLED or
11 South Carolina Law Enforcement. And they were able to
12 get -- we were able to compare the profiles that they
13 were -- they were able to generate from those buccal swabs
14 or cheek swabs from the mother and alleged father. I was
15 able to compare those to the D.N.A. profile that we got
16 from the child or the fetal tissue in order to compare to
17 see if there was a paternal relation.

18 Q And you determined a probability of paternity.

19 A Yes.

20 Q And, again, I believe you said earlier it was 99.99 --
21 refer you back to the results. Hold on one second. Again,
22 the conclusion of probability of paternity is
23 99.9999 percent?

24 A That's correct.

25 Q Earlier I showed -- I showed you this -- excuse me --

Jill Cramer
Direct examination by Ms. Overby

1 refer to the inventory sheet maintained by Cellmark. You
2 told me you cut through the white box and entered that on
3 -- on June 8th. Were you the -- the only person to have
4 cut the seal on that item?

5 A The item was -- was previously opened, not all the way
6 down to the level that I did to take the cutting, but the
7 item that -- the outermost layers were previously opened in
8 order to retrieve paperwork and enter the item of evidence
9 into our LIM system. But going down to the level that I
10 did and opening up that white box at the very end, I was
11 the only one that opens that white box.

12 Q So the evidence technician opened the outer box and
13 retrieved the paperwork. But there was another box
14 contained within, and you were the only person to open that
15 box.

16 A Yes.

17 Q And that's what this item that we viewed earlier --
18 this -- that was contained within the box that only you
19 opened.

20 A Correct.

21 MS. OVERBY: No further questions for this witness.

22 Q Please answer any questions Mr. Shealy may have for
23 you.

24

25

Jill Cramer
Cross-examination by Mr. Shealy

1 CROSS-EXAMINATION

2 BY MR. SHEALY

3 Q All right. Ms. Cramer, are you looking at that
4 inventory, the chain of custody?

5 A There are two different sheets. There's one for chain
6 of custody and then there was another for inventory.

7 Q Okay. I'm looking at inventory of FR15-0018.

8 A Okay.

9 Q And it's got an item description there.

10 A Yes.

11 Q And it says that the large FedEx box was opened on
12 5/19 by M.A.C., correct?

13 A Correct.

14 Q Who is M.A.C.?

15 A She is the evidence technician.

16 Q Okay. And then the next level is a white cardboard
17 box, which says sealed. And my understanding is that was
18 also sealed with clear tape by M.A.C.

19 A Correct.

20 Q Correct?

21 A Yes.

22 Q Okay. And, now, you've testified that that white box
23 nobody else opened, is that right?

24 A Correct.

25 Q But you also list that it was not sealed, is that

Jill Cramer
Cross-examination by Mr. Shealy

1 correct?

2 A The white box itself is not sealed, but, as you can
3 see one level above that, the large Manila evidence
4 envelope is sealed.

5 Q Okay. All I have is, "See photocopy for labeling
6 detail."

7 A If you look in the tree that's above where it says
8 item description and you go up one, two, four lines -- you
9 can see in the tree it says large Manila evidence envelope.
10 And then opened parenthesis, 657420, closed parenthesis.
11 15040149-19, and then it says in parenthesis sealed.

12 Q Okay.

13 A That's an indication that that was sealed.

14 Q All right. But all of the other ones say the same
15 thing. So -- so you've testified that M.A.C. did not open
16 that large Manila envelope?

17 A No. She did not open that envelope because it doesn't
18 have the same verbiage as the other two seals, and that's
19 additionally why I did not put an additional comment saying
20 that I cut through a seal, because it was already sealed.
21 And Maria did not have to go into that.

22 Q Okay. But you testified that she had to inventory all
23 of the items, correct?

24 A She only inventories down to the paperwork. And once
25 she grabs the paperwork she knows what's in that evidence.

Jill Cramer
Cross-examination by Mr. Shealy

1 she doesn't need to go any further. So she would enter
2 into our LIM system at that time and put one of our numbers
3 on it and then close it back up and put it on the shelf
4 until the case is actually worked.

5 Q Okay. Now, throughout this case though, I mean, you
6 don't sit there and watch her do all of these things, do
7 you?

8 A No.

9 Q I mean, that's her job. And she does, presumably she
10 does, what she's supposed to do, correct?

11 A Yes, yes.

12 Q Now, you've testified in your report -- well, you
13 testified and in your report there's mention of some fairly
14 powerful statistics. Do you make those statistics?

15 A The statistics I put into a calculator, and the
16 numbers come out of the calculator.

17 I cannot testify to anything regarding the statistics.
18 That would be something that Dr. Hoffman that also signed
19 the report with me, he would have to testify to. I -- I
20 can't testify to any of the statistical analysis and how it
21 comes about.

22 Q So when you testified that that was the statistical
23 analysis, you probably shouldn't have testified to that.
24 Is what that you're saying?

25 A No. I can testify to it. Dr. Hoffman can explain the

Jill Cramer
Cross-examination by Mr. Shealy

1 numbers behind and what it means.

2 Q Okay. So you don't know how they get to that number.

3 Is that what you're -- I'm just trying to understand what
4 you're testifying to.

5 A I'm testifying for doing the work, putting together
6 the report, generating the statistical sheet. And then Dr.
7 Hoffman would examine that sheet and interpret it. And we
8 come up to the conclusion that we have at the end together.

9 Q Okay. Now, I'm going to hand you -- and this was
10 provided to me by the solicitor's office. I'm going to
11 hand you an EZ1 D.N.A. extraction sheet.

12 A Okay.

13 Q It's really four pages. And if you could, look over
14 those just to -- you can familiarize yourself with what
15 I'm...

16 A Okay. Yes.

17 Q Now, up in the corner it says prepared by R.G. who is
18 R.G.?

19 A R.G. is Rebecca Gomez, and she was another analyst
20 that was working on my team that I worked on at Cellmark.

21 Q Okay. In fact, she did several of those steps, is
22 that accurate?

23 A She actually started the extraction, and I finished
24 the extraction for her because she was not able to finish
25 the extraction the following day.

Jill Cramer
Redirect examination by Ms. Overby

1 Q Okay. But it's fair to say that she apparently did
2 some kind of work on this particular case, is that right?

3 A Yes. Correct.

4 Q And it says that she started the extraction. I think
5 it's steps one through three. Is that accurate?

6 A Yes.

7 Q Okay.

8 MR. SHEALY: And if I may approach the witness, that's
9 all I have for this witness.

10 REDIRECT EXAMINATION

11 BY MS. OVERBY

12 Q Is the EZ1 D.N.A. extraction form that Mr. Shealy
13 handed you, you said -- you pointed that it was performed
14 by an R.G. Are your initials also on those documents?

15 A Yes, they are.

16 Q Okay. So it was performed and handled?

17 A Correct.

18 Q Again, can you tell me what Ms. Gomez did?

19 A She was also on my team. We were -- we were split
20 into teams at Cellmark, and so she worked along with me.

21 We have a team approach on most of our cases. Most of
22 our cases weren't handled by the same person from beginning
23 to end. They were handled by multiple people because we
24 were a high-through-put laboratory. And in order to get
25 things out the door that's how we had to process things.

Jill Cramer
Recross-examination by Ms. Shealy

1 So she started this extraction, probably had every
2 intention of finishing the extraction at the end, which
3 would not be abnormal, but I believe from what I can
4 recollect she called in sick the next day. So I had to
5 take over the extraction and finish it for her.

6 Q So you completed the extraction and reviewed that
7 process.

8 A Yes. I did the majority of the work in the
9 extraction, most of the manipulations in the extraction.

10 When you just start an extraction you're basically
11 taking the cutting that I put in the tube and you're
12 putting chemicals in it to go to put in an incubator
13 overnight. So it's not very labor intensive to do that
14 very first three steps.

15 Q Were you present when that was done?

16 A No. She started that by herself.

17 Q And you completed it.

18 A Yes.

19 MS. OVERBY: No further questions for this witness.

20 MR. SHEALY: Just one other question.

21 RECROSS-EXAMINATION

22 BY MR. SHEALY

23 Q But steps one through three presumably are important.
24 Otherwise, they wouldn't be steps one through three, right?

25 A Yes.

Dr. Wayne L. Hoffman
Direct examination by Ms. Overby

1 MR. SHEALY: That's all I have.

2 THE COURT: You may step down.

3 MS. OVERBY: The state would call Dr. Wayne Hoffman.

4 DR. WAYNE L. HOFFMAN, having
5 been first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. OVERBY

7 Q Please state your full name for the jury, please.

8 A Wayne L. Hoffman.

9 Q Okay. Dr. Hoffman, where do you live?

10 A Dallas, Texas.

11 Q And where were you employed in April or May of 2015?

12 A Cellmark Forensics in Dallas, Texas.

13 Q How long were you employed by Cellmark?

14 A Over 17 years.

15 Q Can you explain to us what -- generally what Cellmark
16 does?

17 A It was originally -- did primarily paternity for child
18 support and some forensics. And it gradually changed into
19 a company after six years that did forensics testing for
20 crime labs, various and sundry police departments,
21 sheriffs' departments around the country, probate courts,
22 medical examiners, defense attorneys and various innocence
23 projects around the country.

24 Q Is Cellmark an accredited lab to perform forensic
25 D.N.A. testing?

Dr. Wayne L. Hoffman
Direct examination by Ms. Overby

1 A Yes.

2 Q And by whom is it accredited?

3 A We have four, or had four, forensics accreditations.
4 We had American Society of Crime Lab Directors; we had
5 accreditation with the New York State Department of Health;
6 we had accreditation with the department -- Maryland
7 Department of Health and Human Hygiene; and forensics
8 accreditation with Texas Department of Safety.

9 Q Do these accrediting agencies require audits and
10 proficiency testing as part -- to maintain the
11 accreditation?

12 A Yes.

13 Q What is the purpose of that?

14 A The purpose is we had seven in the five
15 accreditation -- or four accreditations with forensics. We
16 had seven -- six or seven accreditation standards like the
17 F.D.A. has accreditation standards that they follow. And
18 those purposes, along with proficiency testing and visits
19 from state crime labs, were to assure that our company was
20 functioning and that the reports were accurate.

21 Q Can you describe for us about your educational
22 background as well?

23 A I have a B.S. in zoology from Houghton College,
24 Houghton, New York; I have an M.A. in biology from Temple
25 University, Philadelphia, Pennsylvania; I have a Ph.D. in

Dr. Wayne L. Hoffman
Direct examination by Ms. Overby

1 the biological sciences from Case Western Reserve,
2 Cleveland, Ohio; and I did postdoctoral studies at the
3 University of Texas Southwestern Medical School in Dallas.

4 Q Prior to working for Cellmark, can you tell me what
5 your work experience was before that?

6 A After -- after I did my postdoctoral studies I worked
7 for a year as a senior research associate, and then I took
8 a research faculty position at the University of Texas
9 Southwestern Medical School, and I was there approximately
10 19 years in a research faculty position.

11 Q And your -- your title at Cellmark in 2015 was what?

12 A I was associate lab director and I was also quality
13 manager.

14 Q What does that entail?

15 A As associate lab director I was responsible for -- I
16 was part of the management team. I supervised employees.
17 I interacted with customers. And as the quality manager I
18 interacted with our customers in that sense. And I managed
19 the five accreditations that we had.

20 Q About how long have you been scientifically reviewing
21 D.N.A. testing results?

22 A Over 17 years.

23 Q Can you estimate the approximate number of cases that
24 you reviewed in the area of D.N.A. paternity testing?

25 A Over 50,000.

Dr. Wayne L. Hoffman
Direct examination by Ms. Overby

1 Q Have you ever been called upon to testify as an expert
2 witness in the courts of any state?

3 A Yes.

4 Q And what -- about how many times?

5 A Over 35 times.

6 Q In about, approximately, how many states?

7 A Thirteen states, plus I testified for the government
8 in Saipan, U.S. government.

9 Q And in what fields have you testified?

10 A Forensics, D.N.A. and relationship testing.

11 Q Have you testified in the field of D.N.A. test results
12 relevant to paternity issues?

13 A Yes.

14 MS. OVERBY: At this time the state would offer Dr.
15 Hoffman as an expert in the field of D.N.A., specifically
16 paternity and relationship testing.

17 MR. SHEALY: I have no objection.

18 THE COURT: He is so qualified.

19 Q Dr. Hoffman, can you tell the jury again what -- what
20 D.N.A. is generally?

21 A Okay. D.N.A. is basically a blueprint of what you
22 will become when you're -- when the sperm fertilizes the
23 egg. It has information for your hair color and your eye
24 color and how tall you're going to be and for your
25 personality.

Dr. Wayne L. Hoffman
Direct examination by Ms. Overby

1 But the blueprint also has information in how to make
2 you in three dimensions. That D.N.A. molecule, which is a
3 linear molecule, knows where to put your heart and your
4 lungs and your circulatory system. All that information is
5 there, and it's a wonderful molecule.

6 Q Where does one get their D.N.A. from?

7 A We can test D.N.A. from biological sample -- organ,
8 blood, buccal swab, bone. The only sample that we cannot
9 test is the red blood cell.

10 Q Does D.N.A. differ from person to person?

11 A Except for identical twins, yes.

12 Q And we're talking about the proposition of a person's
13 D.N.A. where is that -- where do they inherit or get that
14 from?

15 A Okay. Half your D.N.A. comes from your mother and
16 half comes from your father. And when you obtain that
17 information, you get it randomly.

18 Q What do you mean by that, when you get it randomly?

19 A Randomly means that you don't get the same section as
20 your siblings.

21 So if you look at a family with 20 children, the same
22 biological parents, all of those kids are different --
23 different personalities. They don't all look the same.
24 That's because when they get the half of the D.N.A. from
25 each parent they get it randomly. It's mixed up.

Dr. Wayne L. Hoffman
Direct examination by Ms. Overby

1 Q Can you analyze the D.N.A. of a mother, a child and an
2 alleged father to provide genetic evidence about the
3 paternity of that child?

4 A Yes.

5 Q And what genetic principles are involved in paternity
6 testing?

7 A Well, it's the -- it's the same principles that you
8 get half from your mother and half from your father. So
9 when you're looking at a paternity trio, which we call,
10 which would be mother, child and alleged father, that child
11 will get half of their D.N.A. from their mother and half
12 from their biological father.

13 Q When you're testing a -- a child to determine
14 paternity is that testing process designed to be neutral
15 concerning the possible paternity and the alleged father?

16 A Okay. The question we're trying to answer is can the
17 alleged father be excluded as the biological father of the
18 child. So therefore there's only two answers -- he is
19 excluded or he cannot be excluded.

20 Q And if you cannot exclude the alleged father, what's
21 the next step in determining paternity?

22 A We then do calculations to determine the significance
23 of the genetic information.

24 Q Did Cellmark test a sample submitted by the
25 Spartanburg County Sheriff's Office in a case involving the

Dr. Wayne L. Hoffman
Direct examination by Ms. Overby

1 [REDACTED], MINOR [REDACTED] and the alleged father, Richard
2 stribling?

3 A Yes.

4 Q And what item was received by Cellmark?

5 A We --

6 MR. SHEALY: I'm going to object based on no
7 foundation.

8 THE COURT: Overruled.

9 Q What item did Cellmark receive for analysis?

10 A It was a fetal tissue sample.

11 Q And tell me about your role in that analysis.

12 A My role was two-part. I reviewed the entire case file
13 as the technical reviewer, which is the second review. So
14 therefore I reviewed all of the data in the file, all of
15 the scientific data, and the conclusion of the report. And
16 when I agreed with the conclusion and the data in the
17 report and the accuracy of the report I signed it as the
18 technical reviewer.

19 And I also reviewed the file as the director designee
20 for our relationship testing accreditation with AABB, and
21 that required me or one of two other individuals who had
22 been approved by AABB relationship testing to sign the
23 report and approve it for the paternity results.

24 Q And who was the analyst who performed the analysis at
25 Cellmark in this case?

Dr. Wayne L. Hoffman
Direct examination by Ms. Overby

1 A Jill Cramer signed the report as the reporting analyst
2 and did -- did -- did studies or did analysis in the
3 report.

4 Q Okay. I'm going to point you to what's been marked
5 and admitted as State's Exhibit 38 and ask you to look at
6 this item.

7 THE COURT: Would you give him a copy of it?

8 THE WITNESS: Yes.

9 Q I'm also going to hand you a copy of the same.

10 A Okay.

11 Q You testified Cellmark received the evidence --
12 received fetal tissue. Is that reflected in the first
13 subpart of this report?

14 A In the item description.

15 Q Okay. And step two -- or excuse me -- item two, the
16 results from this, can you tell me what type of analysis
17 was done, the type of analysis that was done?

18 A Okay. Well, we did P.C.R., polymerase chain reaction,
19 where we amplified the D.N.A. using the Identifiler plus
20 kit.

21 Q And were profiles received from the MINOR and the
22 alleged father in this case, Richard Stribling, from the
23 state crime lab for comparison?

24 A Yes. Those samples are indicated in the second
25 paragraph where we compared our D.N.A. profile to those

Dr. Wayne L. Hoffman
Direct examination by Ms. Overby

1 samples.

2 Q Okay. I'm going to point you down to the statistical
3 analysis -- subpart three, the statistical analysis to
4 sample compared. What are we looking at here?

5 A Okay. We list under the samples compared. We list
6 the three samples -- the two samples that we received
7 profiles from SLED and the sample that we did, which was
8 FR15-0018, the child. And the way this test was set up --

9 THE COURT: Excuse me just a minute.

10 Let me ask the witness if you'll turn sideways so the
11 court reporter can at least see your profile.

12 THE WITNESS: Okay. I was trying to talk with the
13 jury.

14 THE COURT: I understand, but you've got a microphone
15 there.

16 A Okay. The -- the way this chart is set up -- would
17 you like me to discuss the chart?

18 Q Yes, sir, please.

19 A The genetic systems are the 16 genetic systems that
20 are normally tested in our forensics report that are part
21 of the Identifiler kit.

22 And then the next three columns are what they call the
23 alleles or the fragments that were obtained from the
24 mother, child and alleged father that we tested.

25 And then if there was a match, meaning, say, the

Dr. Wayne L. Hoffman
Direct examination by Ms. Overby

1 fourth system down, CSF, 12, and the mother, 11,12 and
2 11,12 in the alleged father, we know that the mother gave
3 the child the 12. The 11 came from the biological father.

4 If there's a match, like, in that system we would
5 calculate a paternity index. If there was not a match in
6 that system where the allele or the fragment that the
7 mother gave to the child, the second fragment did not match
8 the alleged father, we would give a zero in the paternity
9 index because there was not a match. And if we obtained
10 three zeroes out of these 15 systems we would say that the
11 alleged father was excluded.

12 Q Okay. So the genetics systems you're talking about
13 are all enumerated down this column, correct?

14 A Yes.

15 Q And so you're taking the -- what's analyzed as to the
16 mother right here. This is her buccal swab sample.

17 A The profile that we obtained from SLED.

18 Q Okay. And the child in this column, this is what was
19 developed after analysis at Cellmark, is that correct?

20 A Yes.

21 Q Okay. And in the alleged-father column, that profile
22 was one that was developed from SLED.

23 A Yes.

24 Q Okay. And so what I'm understanding you to say is
25 you're comparing -- the numbers that are listed for each

Dr. Wayne L. Hoffman
Direct examination by Ms. Overby

1 genetic system here, you're looking at the child and
2 comparing where that child received this assignment of
3 D.N.A.

4 A The way that paternity test is done is that you put
5 your fingers over the alleged father's column, and you look
6 for an allele or both alleles which are shared with the
7 mother. The allele that is not shared with the mother is
8 called the obligate allele and came from the biological
9 father.

10 Q So the -- all of the alleles of the child are
11 attributable to either the mother or the alleged father.

12 A The mother or the biological father.

13 Q The paternity index you alluded to on the right-hand
14 column, can you give me just a description of what that is
15 again?

16 A It's a likelihood ratio where you're check --
17 comparing the likelihood that the alleged father and the
18 mother produced the child versus the likelihood that
19 another man of the same racial group unrelated and that
20 mother produced that child.

21 Q What's the significance of the paternity, the combined
22 paternity, index?

23 A The combined paternity index at the bottom of the
24 table is obtained from multiplying all of the individual
25 paternity indexes. So you multiply 2.60 times 1.92 times

Dr. Wayne L. Hoffman
Direct examination by Ms. Overby

1 1.20, etc, and then you obtain the combined paternity
2 index.

3 Q So all of the items from this column --

4 A Are multiplied.

5 Q -- are multiplied to the combined paternity index.

6 I'm going to refer you to page two of this report and
7 the conclusion that was reached.

8 Jill Cramer's testified about what it says, but you
9 said you also reviewed this case file with her to reach
10 that conclusion. Can you, again, tell me what it is?

11 A I -- if I -- I would have to read the conclusion.

12 Q And I'm referring you to page two of that report.

13 A Yes.

14 Q Do you have a page two?

15 A Yes, I do.

16 Q Okay. Yes. Could you read that conclusion for me?

17 A Yes. "The alleged father, Richard Todd Stribling,
18 (L15-05249-4) cannot be excluded as the biological father
19 of the fetal tissue (F15-0018-01.01.1). Based on these
20 results the probability of paternity is 99.9999 percent as
21 compared to an untested, unrelated male of the North
22 American Caucasian population (prior probability = .05).
23 The combined paternity index of all 15 genetic systems is
24 4,248,941 to one."

25 Q And subitem six there, is that your signature at the

Dr. Wayne L. Hoffman
Direct examination by Ms. Overby

1 bottom of the page as to how you reviewed these results?

2 A Yes.

3 Q Okay. You -- you testified about that conclusion,
4 statement and the probability of paternity being
5 99.9999 percent. Can you ever obtain a probability of
6 paternity a hundred percent?

7 A No.

8 Q And why is that?

9 A The way we do the calculation with a .45 prior
10 probability, you can go out to more nines, but you can't
11 reach a hundred percent. And that's because we do not --
12 this is this -- the -- most of that probability of
13 paternity is done -- is due to the genetic portion of it.
14 And we are neutral on the nongenetic information. So it's
15 a reflection primarily of the genetic information.

16 Q I'm going to refer you back to -- actually I'm going
17 to take you to page three of this document. Can you tell
18 me what this is?

19 A That's called an allele table.

20 Q And what is that?

21 A Those are the alleles or the fragments, D.N.A.
22 fragments, that we obtained. And those are reflected in
23 the chart on page one when we did the paternity
24 calculations.

25 Q I'm going to turn you back to that, to the page one of

Dr. Wayne L. Hoffman
Direct examination by Ms. Overby

1 the paternity calculations if I may. It's a simple table
2 at the bottom.

3 If we're talking about a situation where an alleged
4 child -- or excuse me -- a child -- were assessing
5 paternity in the alleged father, what would be the
6 significance if the alleged father was also the grandfather
7 of that child?

8 A You would expect some sharing of alleles.

9 Q To what degree?

10 A The mother gives half of her D.N.A. to the child and
11 the father gives half of the D.N.A. to the daughter. So if
12 you're going from a grandfather to a granddaughter you
13 would expect 25 percent of the grandfather's D.N.A. to be
14 reflected in the child's D.N.A.

15 Q If you're talking -- and let me make sure I understand
16 this. You would expect 25 percent of that if you're
17 talking about just a grandfather and a child.

18 A Yes.

19 Q But if you're talking about an instance where a
20 grandfather is also the alleged father would you expect
21 those alleles to match the degree that they do in this
22 report?

23 A I don't understand fully the question. We're -- we
24 would expect some matching with the grandfather and the
25 grandchild tested alone.

Dr. Wayne L. Hoffman
Cross-examination by Mr. Shealy

1 Q You would expect some, you said, to the degree of,
2 like, 25 percent.

3 A 25 percent.

4 Q But you wouldn't expect that each allele listed in
5 this -- as in the child's genetic system would match
6 both -- all of those numbers would match both the mother
7 and the alleged father.

8 A I would not expect that.

9 MS. OVERBY: I have no further questions.

10 Q Please answer any questions Mr. Shealy might have for
11 you.

12 THE WITNESS: May I have a glass of water, please?

13 THE COURT: There's a pitcher right behind you there
14 with cups.

15 THE WITNESS: Okay. Thank you.

16 (Pause.)

17 CROSS-EXAMINATION

18 BY MR. SHEALY

19 Q All right. Ready?

20 A I'm ready. Which microphone is the active one?

21 THE COURT: Well, that black one is supposed to be
22 working, but I'm not sure it is. It goes out about half
23 the time, I think.

24 Q All right. Dr. Hoffman, now, just so that we're
25 clear, you did the review of all of this information,

Dr. Wayne L. Hoffman
Cross-examination by Mr. Shealy

1 correct?

2 A I did the technical review.

3 Q So you didn't sit and watch Ms. -- I think it's

4 Ms. Cramer. It may be Dr. Cramer.

5 A Ms. Cramer.

6 Q Do -- I mean, you didn't sit and watch over her
7 shoulder as she did the analysis presumably.

8 A No.

9 Q All right. Okay. And the other questions that I had
10 for you regarded the sharing of alleles. Does this

11 paternity index take into account that? Does it -- or not?

12 A The -- the paternity -- we are doing the paternity
13 test with an alleged father. We are comparing that to an
14 unrelated tested man, as we stated in the conclusion. So
15 we are just checking. If there is a match we calculate the
16 paternity index.

17 Q Okay. So the untested, unrelated male of the North
18 American Caucasian population in your conclusion means an
19 unrelated male to the alleged father.

20 A Correct.

21 Q Is that my understanding?

22 A Yeah.

23 Q Okay.

24 MR. SHEALY: I have nothing further, Judge.

25 MS. OVERBY: I have no other questions for this

1 witness.

2 THE COURT: You may step down. Thank you.

3 All right. We're going to recess for the afternoon.

4 Keep in my mind my caution provided you earlier. No
5 discussions, no research, no investigation, no media
6 exposure should there be some.

7 Do have a good evening. Please report to your jury
8 room at 9:30 in the morning -- 9:30 in the morning.

9 (The following takes place outside the presence of the
10 jury.)

11 THE COURT: I am informed that the clerk of court has
12 made arrangements for an interpreter to be here at 9:30 in
13 the morning.

14 MR. BARNETTE: That's correct, Your Honor.

15 THE COURT: So the witness will be available then.

16 MR. BARNETTE: That's correct, Your Honor.

17 THE COURT: Okay. Any other matters we need to
18 address before we recess?

19 MS. OVERBY: Just about our scheduling. I do plan to
20 call Tracy Moss tomorrow if that's okay. We discussed
21 calling her in between and I actually called these
22 witnesses to get them back to Texas. So I anticipate
23 calling Investigator Moss tomorrow as well.

24 THE COURT: Okay.

25 MR. SHEALY: I have nothing.

1 THE COURT: All right. Court is in recess until
2 9:30 in the morning.

3 END OF PROCEEDINGS JULY 11, 2017
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1 (Proceedings July 12, 2017)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: All right. Any matters to address before
5 the jury is brought in?

6 MS. OVERBY: Your Honor, we did discuss in chambers
7 there were two witnesses who were not on the state's
8 initial potential witness list. I have those two names to
9 give Your Honor if you wish to inquire of the jury if they
10 know these people.

11 THE COURT: Okay. Who are they?

12 MS. OVERBY: Would you like for me to tell you?
13 Robert Rosenberg.

14 THE COURT: All right. And Kurt Nauss?

15 MS. OVERBY: Yes, sir, N-A-U-S-S.

16 THE COURT: Kurt Nauss is employed at Greenville
17 Pathology?

18 MS. OVERBY: Pathology Associates that's located in
19 Greenville.

20 THE COURT: And Rosenberg is employed by the sheriff's
21 department?

22 MS. OVERBY: Yes, sir.

23 THE COURT: Anything else?

24 MS. OVERBY: We did on Monday -- we went through the
25 redaction of the certified conviction placing the defendant

1 on the sex offender registry. I'd like to go ahead and
2 mark that if I may. I don't have that --

3 THE COURT: Let me ask y'all to look that over and be
4 sure you're satisfied with it.

5 (Pause.)

6 (Bench conference held off the record.)

7 (Copy of Indictment No. 2009-GS-42-5794 marked State's
8 Exhibit No. 39 for identification.)

9 MR. SHEALY: Judge, I believe the original sentencing
10 sheet was made a court's exhibit. If it wasn't --

11 THE COURT: Well, an original certified copy has
12 been -- or a certified copy of the original has been made a
13 court's exhibit.

14 MR. SHEALY: I just wanted to be sure of that.

15 THE COURT: Do you want to introduce that?

16 MR. SHEALY: No, sir, no, sir. I just wanted to make
17 sure it was a court's exhibit.

18 THE COURT: All right. Bring the jury in, please.

19 (The following takes place in the presence of the
20 jury.)

21 THE COURT: Good morning, ladies and gentlemen.

22 I apologize for the delay in having you brought in,
23 but we've been dealing with some witness scheduling issues.
24 And some of those have been resolved, and some have not.
25 But, nevertheless, we are ready to continue with the

Mila Reznick
Direct examination by Ms. Overby

1 state's presentation right now.

2 There are two additional witnesses that are going to
3 be called to testify. They were not on the witness list
4 prior to your selection when I recited the list. So I'm
5 going to give you those two names. And I need to know if
6 any juror has any connection or familiarity or contact with
7 either of these witnesses.

8 And the two witnesses are Robert Rosenberg who is a
9 deputy sheriff employed by the Spartanburg County Sheriff's
10 Office. And the other witness is Kurt E. Nauss. That's
11 N-A-U-S-S. And Kurt Nauss is employed with Pathology
12 Associates located in Greenville, South Carolina.

13 Does any juror know either of those additional
14 witnesses?

15 (No response.)

16 THE COURT: None responding. Okay.

17 MS. OVERBY: The state would call Mila Reznick.

18 JULIA MEDVEDEV, INTERPRETER,
19 having been first duly sworn, interpreted as follows:

20 MILA REZNICK, having been
21 first duly sworn, testified as follows:

22 THE COURT: Ladies and gentlemen, so you know, this
23 witness is Russian. She speaks Russian, not English. And
24 the lady standing next to her is an interpreter, and she'll
25 be providing the questions to the witness and providing the

Mila Reznick
Direct examination by Ms. Overby

1 witness' responses, be interpreting those for our benefit.

2 All right.

3 DIRECT EXAMINATION BY MS. OVERBY

4 Q Ma'am, can you start by telling us your name?

5 A My name is Mila.

6 Q And what's your last name?

7 A Reznick.

8 THE COURT: You can stay seated.

9 Q Ms. Reznick, where do you work?

10 A I work in the Atlanta Woman Medical Center.

11 Q And what do you do there?

12 A I do tissue after abortion. I do tissue.

13 THE COURT: I take it she does speak English, but
14 perhaps there were some words that she cannot understand
15 and that's why we have the interpreter here.

16 Is that what I'm understanding?

17 MS. OVERBY: Yes, sir, Your Honor. It's limited.

18 THE COURT: I see.

19 MS. OVERBY: There's some loss in translation.

20 THE COURT: Okay.

21 Q If I may, Ms. Reznick, I'm going to hand you two
22 items, State's Exhibit 4 and State's Exhibit 5. You
23 testified that you take tissue after --

24 A Abortion.

25 Q Right. Did you take a sample in the case of MINOR VICTIM

Mila Reznick
Direct examination by Ms. Overby

1 Stribling, date of birth [REDACTED]/99?

2 A Yes, yes.

3 THE COURT: Excuse me just a minute.

4 Y'all are all in front of the witness, and the jury is
5 being blocked. So we'll need to move back so they can see
6 the witness and hear what she says.

7 Q And is this -- when you take the item after the
8 abortion procedure, did you place this label on it?

9 A Yes, container, yes. I write name, patient, write
10 date of birth and the Atlanta Women's Medical Center and
11 Dr. Haddad.

12 Q Okay. And you said you put the item into this
13 container.

14 A Yes, yes, ma'am.

15 Q Okay. What do you do with that container after it is
16 collected?

17 A I close it and put tape at every single name,
18 birthday, a few things.

19 Q Did you --

20 A And put ice in it.

21 Q Do you put this jar into this plastic bag?

22 A Yes, yes, and close, zip it, yes.

23 Q Okay. Let me point you to this other picture, State's
24 Exhibit 5. The tape that's placed on this, did you do
25 that?

Mila Reznick
Cross-examination by Mr. Shealy

1 A Uh-huh, yes, yes, I did zip and put ice for policeman.

2 Q Okay. And you said in this case you -- you prepared
3 this sample to be given to the police, is that correct?

4 A Yes. On this date, very close with me I did give for
5 him.

6 MS. OVERBY: I have no further questions of this
7 witness.

8 Q Please answer anything Mr. Shealy may have. Stay
9 seated, please.

10 CROSS-EXAMINATION

11 BY MR. SHEALY

12 Q Yes, ma'am. I still have some questions for you.

13 You said you prepared the sample for the policeman?

14 A Yes.

15 Q Okay. And did you give the sample to the policeman?

16 A Yes, I give for policeman.

17 Q well, you say you gave it for the policeman. But did
18 you give it to him? Did you actually physically deliver it
19 to that person?

20 A Yes, I did and wrapped for policeman, yes, yes.

21 THE INTERPRETER: From hand to him.

22 A Yes. I wrapped everything and give for policeman.

23 Q okay. But you did not give it to Maricca Stuckey who
24 then gave --

25 A No, no. Maricca -- she bring for me. I did after.

Anita Mullinax
Direct examination by Ms. Overby

1 Policeman stay across door. Okay. And she bring for me.

2 I did and give for police.

3 Q And you gave it. Okay.

4 A Uh-huh.

5 MR. SHEALY: That's all I have of this witness.

6 MS. OVERBY: No further questions, Your Honor.

7 THE COURT: Okay. Thank you, ma'am. You may step
8 down.

9 MS. OVERBY: Next the state will call Anita Mullinax.

10 ANITA MULLINAX, having been
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MS. OVERBY

13 Q Will you please state your name for us?

14 A Anita Mullinax.

15 Q And, Ms. Mullinax, where are you currently employed?

16 A Spartanburg County Sheriff's Office.

17 Q In April of 2015 were you employed with the sheriff's
18 office?

19 A Yes, I was.

20 Q And in what capacity?

21 A Evidence custodian.

22 Q Did you receive items of evidence related to

23 Spartanburg County Sheriff's Case 1504149 [sic], Richard
24 Stribling?

25 A Yes, I did.

Anita Mullinax
Direct examination by Ms. Overby

1 Q And did you receive what has previously been admitted
2 as State's Exhibit 3, a buccal swab from the minor?

3 A Can I look at the property sheet?

4 Q Hold on one second, please.

5 (Pause.)

6 Q I'm going to hand you what's been premarked as State's
7 Exhibit 32. Is this the property sheet on the item I
8 referred to, the buccal swab of the minor MINOR

9 A Yes, it is.

10 Q Okay. And can you tell me, did you receive that item
11 into evidence?

12 A Yes, I did on April 17th of 2015.

13 Q And at what time?

14 A 1940.

15 Q From whom did you receive that item?

16 A Tracy Moss.

17 Q And the condition of that item that you received, was
18 it in a sealed envelope?

19 A Yes. We only receive -- when we take things into
20 evidence we only take them in if they are sealed.

21 Q And what did you do with that item once you received
22 it?

23 A I entered it in the computer, put a label on it and
24 then filed it on the shelf.

25 Q When it's filed on the shelf, is that essentially

Anita Mullinax
Direct examination by Ms. Overby

1 storage until it goes somewhere else?

2 A Sexual assault cases we -- we just have a terminology
3 S.A.S. It's just sexual assault shelf. And so any things
4 that have to do with a sexual assault, we actually put them
5 together. And so we'll put it on the property sheet where
6 we're putting the item. So on the property sheet itself I
7 put S.A.S.

8 Q And that remained -- that item remained sealed at all
9 times within the sheriff's office.

10 A Yes. It does.

11 Q I'm also going to hand you what's been premarked as
12 State's Exhibit 33 and ask you. Is this another property
13 sheet related to a different piece of evidence?

14 A Yes.

15 Q And did you also receive the three items that are
16 listed on that sheet -- a jar with a white lid and two
17 other jars with orange lids labeled container A and B? Did
18 you receive those items?

19 A Yes. I did on the same day.

20 Q And from whom did you receive those?

21 A Tracy Moss.

22 Q What did you do with those items once you received
23 them?

24 A Those items were also entered into the computer and
25 labeled, and they were put in the refrigerator. So I've

Anita Mullinax
Direct examination by Ms. Overby

1 also labeled this as R.E.F. for refrigerator.

2 Q Okay. And those are the items of the fetal tissue
3 that were placed in the refrigerator.

4 A Yes.

5 Q At all times within your custody once you received it
6 did those items remain sealed?

7 A Yes. We never unsealed them.

8 Q I hand you one last property and evidence sheet. This
9 is what's been marked as, premarked as, State's Exhibit 37.
10 Is that a property and evidence sheet that relates to a
11 paraffin block item?

12 A Yes.

13 Q Did you receive that item into evidence?

14 A Yes. I received this item on May 13th of 2015 at
15 11:25 from Tracy Moss.

16 Q I'm sorry. From whom?

17 A Tracy Moss.

18 Q And what did you do with that item once you received
19 it?

20 A That was put with the other items for this case in --
21 on the sexual assault shelf.

22 Q I have no further questions for you. Please answer
23 any questions Mr. Shealy might have for you.

24 MR. SHEALY: I have nothing for this witness.

25 THE COURT: You may step down.

Robert Rosenberg
Direct examination by Ms. Overby

1 MS. OVERBY: Next the state will call Robert
2 Rosenberg.

3 ROBERT ROSENBERG, having been
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MS. OVERBY

6 Q would you please give us your full name?

7 A Robert Rosenberg.

8 Q And, Mr. Rosenberg, where are you currently employed?

9 A Spartanburg County Sheriff's Office.

10 Q In April of 2015, what was your title at the sheriff's
11 office?

12 A Evidence custodian.

13 Q Do part of duties include the receipt of items of
14 evidence into intake at the Spartanburg County Sheriff's
15 office?

16 A Yes, ma'am.

17 Q Did you receive items of evidence in the case of
18 Spartanburg Case No. 15040149, Richard Stribling?

19 A Yes, I did.

20 Q Did you receive an item, the buccal swab of the
21 defendant?

22 A Yes, I did.

23 Q From whom did you receive that?

24 A That -- I don't know if I receipted by the officer or
25 by the drop box.

Robert Rosenberg
Direct examination by Ms. Overby

1 Q Can you tell me about your procedure if you were to
2 receive it from the drop box?

3 A Okay. We -- after hours we have a secure area. We
4 have lockers and a device that looks like a mailbox. It's
5 reinforced steel with a slot. The only people that has
6 keys to this is the evidence custodian. It stays secure
7 until we open it.

8 officers will drop items into it. We'll come in the
9 next morning, take them out, take them to the evidence
10 office and then catalog them in the computer and store
11 them.

12 Q And did you receive that item in a yellow envelope,
13 Manila envelope?

14 A I -- I should, yes, yes.

15 Q And is that item, that envelope, sealed?

16 A Yes.

17 Q What did you do with that item?

18 A I entered it into the computer, put a label on it.
19 And apparently there was already a box set up for -- on the
20 sexual assault shelf. And I just entered it in the box
21 with the other items.

22 Q While in -- while on that shelf and in the possession
23 of the sheriff's office did it remain sealed at all times?

24 A Yes, it did.

25 Q Was that item ultimately taken from the -- that shelf

Robert Rosenberg
Direct examination by Ms. Overby

1 that you mentioned?

2 A Yes.

3 Q And by whom?

4 A By Tracy Moss.

5 Q And where did she take it?

6 A To SLED.

7 Q Did you also receive items labeled as fetal tissue --
8 containers A, container B that were returned from SLED?

9 A Yes, I did.

10 Q Okay. From whom did you receive those items?

11 A SLED.

12 Q Who? Who at SLED?

13 A Let me see. Amy Stephens.

14 Q Can you tell me when you received those?

15 A I received them on May 7th of 2015 at 4:00 o'clock.

16 Q And what did you do with those items?

17 A Transported them back to the Spartanburg County
18 Sheriff's Office. And I believe they were supposed to be
19 refrigerated. So I would have reentered them into the
20 computer as removing them from SLED and bringing them back
21 to the sheriff's office. And then I would have placed them
22 in the refrigerator.

23 Q And were those containers -- containers A and B that
24 you took from SLED -- were they sealed at all times in your
25 custody?

Robert Rosenberg
Cross-examination by Mr. Shealy

1 A Yes.

2 Q Ever opened or tampered with in any way by you?

3 A No.

4 Q And were they later taken -- after you took them back
5 to the sheriff's office from SLED were they later taken
6 from the sheriff's office?

7 A Yes.

8 Q By whom?

9 A Investigator Moss.

10 Q And where did she take those items?

11 A Transported them to Greenville.

12 Q What date?

13 A On May 8th of 2015 at 8:36 in the morning.

14 MS. OVERBY: I have no other questions for this
15 witness.

16 Q Please answer anything Mr. Shealy may have for you.

17 CROSS-EXAMINATION

18 BY MR. SHEALY

19 Q Officer Rosenberg, now, this is important about the
20 defendant's buccal swab.

21 You testified that you received it. You aren't sure
22 if it was through the drop box or through the officer,
23 correct?

24 A Yes, sir.

25 Q Okay. And you testified that -- or I believe

Robert Rosenberg
Redirect examination by Ms. Overby

1 Mr. Overby asked you did you receive it in a Manila
2 envelope, and you said I should have. And then you said
3 yes, and then you said it was sealed. When you say I
4 should have, does that mean you did?

5 A It would have came in -- yes. It would have been
6 separated. It would've been in a Manila envelope and
7 marked evidence -- in a sealed Manila envelope.

8 Q Well, I understand that that's the way it's supposed
9 to be done. Is that the way it was done in this case?

10 A Yes. We would not accept it any other way.

11 Q All right. That's -- but you remember that in 2015
12 when you received this that that's the way you received it.

13 A That's the way we received it, yes, sir.

14 Q Okay. I wanted to be clear.

15 A Yes, sir.

16 MR. SHEALY: That's all I have for this witness.

17 REDIRECT EXAMINATION

18 BY MS. OVERBY

19 Q You mentioned regarding that sample from the defendant
20 that you received. You said you labeled that item once you
21 took it into evidence.

22 A Yes.

23 Q Would you have labeled it if it were not sealed?

24 A No, I would not have labeled it. I wouldn't have
25 accepted it.

Tracy Moss
Direct examination by Ms. Overby

1 Q You would not have accepted it altogether.

2 A Yes.

3 Q okay.

4 THE COURT: You may step down.

5 MS. OVERBY: The state would call Tracy Moss.

6 THE COURT: Can Mr. Rosenberg and Ms. Mullinax be
7 excused?

8 MS. OVERBY: Yes, Your Honor. I would ask that they
9 would be.

10 MR. SHEALY: I have no objection.

11 (Whereupon, the witnesses were excused.)

12 TRACY MOSS, having been
13 previously duly sworn, testified as follows:

14 THE COURT: Ms. Moss, you've previously been placed
15 under oath. So you're still under oath for the purpose of
16 these questions.

17 THE WITNESS: Yes, sir.

18 DIRECT EXAMINATION BY MS. OVERBY

19 Q Investigator Moss, you previously testified about an
20 item that you transported to SLED for analysis. You
21 testified that included State's Exhibit 3, the minor's
22 buccal swab and the defendant's buccal swab, as well as
23 those containers labeled A and B, is that correct?

24 A Yes, ma'am.

25 Q Regarding State's Exhibit 3, this is MINOR -- the

Tracy Moss
Direct examination by Ms. Overby

1 swab you described taking from MINOR cheek. Can you
2 tell me at -- when you took that item to SLED?

3 A When -- when I took the item to SLED on April 20th of
4 2015, I take just the Manila envelope, which is sealed from
5 our evidence room.

6 Once I take it to SLED and turn it over to them, they,
7 in turn, place it into this plastic envelope in front of
8 me. And once they place an envelope they heat seal it.
9 It's a little machine that they just press down on it to
10 heat seal it.

11 I initial that I've witnessed it, sealed it. That way
12 there's no tampering with it. And once that is -- once
13 that's signed by me they take it from me and they place it
14 in their evidence room.

15 Q So you're pointing to your initials and the date on
16 that outer envelope.

17 A Yes, ma'am.

18 Q Okay. So and you said you initial it after you
19 witness that process in the presence of the SLED person who
20 took it from you.

21 A Correct.

22 Q Along with the minor's buccal swab, you also talked
23 about those two items of fetal tissue that were submitted
24 to SLED on the same day. To whom did you give those two
25 items, containers A and B?

Tracy Moss
Direct examination by Ms. Overby

1 A They went to SLED. They -- A and B went to Amy
2 Stephens, is the one that took those as well. And the same
3 process with the envelope.

4 Q Okay. So she took. That was done in your presence.
5 she took those items from you.

6 A Yes, ma'am.

7 Q Were they placed in separate envelopes, containers A
8 and B?

9 A I believe they were.

10 Q And those, when they were placed in those envelopes,
11 they were what you call heat sealed into that package in
12 your presence.

13 A Yes, ma'am, the same way this one was. And I initial
14 it after it's sealed.

15 Q And you were also present in the courtroom yesterday
16 when the SLED analyst, Laura Hash, testified. She
17 testified about the items and analysis she was able to do.
18 Did she return those items, the containers, to the
19 sheriff's office?

20 A She did.

21 Q And I'm going to hand you what's, I believe, in front
22 of you, State's Exhibit 33. Can you tell me after those
23 items went back to the sheriff's office returning from
24 SLED, what did you do with those items?

25 A After they came back from SLED on May 7th I signed

Tracy Moss
Direct examination by Ms. Overby

1 them out on May 8th at 8:36 in the morning. And I took the
2 items to Greenville.

3 Q And does that include -- does that include all of the
4 items listed, both A and B, as well as the original
5 container?

6 A Correct.

7 Q Okay. Also I'm going to hand you state's Exhibit 34.
8 This is the defendant's sample. Did you take this item to
9 SLED?

10 A I did.

11 Q And what date was that?

12 A This was April 21st, 2015.

13 Q Okay. The day after you took the other items we
14 talked about.

15 A Yes, ma'am.

16 Q Okay. And, again, when you gave that item to SLED, to
17 whom did you give this item to?

18 A This one went to Jennifer Aycok.

19 Q And did you -- did she undergo the same kind of
20 process we've described earlier when she took that inner
21 envelope from you? What did she do with it?

22 A She placed it into this clear envelope and then, in
23 turn, sealed it with the same type machine that I explained
24 where it heat seals it. I initialed and put the date.

25 Q And your initials and the date are on that outer

Tracy Moss
Direct examination by Ms. Overby

1 envelope there?

2 A They are.

3 Q You testified yesterday also about the submission of a
4 paraffin block that was ultimately sent to the lab in
5 Texas. Do you recall?

6 A Yes.

7 Q Okay. Let me ask you to look at State's Exhibit 37.
8 The paraffin block, did it have a specific identifier as a
9 number that identified that item?

10 A It did.

11 Q And what was that?

12 A It was A as in alpha and then number three.

13 Q And was that item labeled that way? Who labeled it
14 that way?

15 A Dr. ward would have, or, yeah, I believe Dr. ward.

16 Q And that paraffin-block item, that was what you
17 received from Dr. ward after he completed the process he
18 did.

19 A Yes, ma'am.

20 MS. OVERBY: I have no further questions for this
21 witness.

22 Q Please answer anything Mr. Shealy has for you.

23 MR. SHEALY: I have no questions for this witness.

24 THE COURT: You may step down.

25 MS. OVERBY: The state will call Gail Moffitt.

Gail Moffitt
Direct examination by Ms. Overby

1 GAIL MOFFITT, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MS. OVERBY

4 Q Will you please state your full name for the jury,
5 please?

6 A Gail Moffitt.

7 Q And, Ms. Moffitt, where do you currently work?

8 A Clerk of Court's office.

9 Q And what do you do there?

10 A I'm administrative assistant, but we are custodian of
11 all records -- civil, criminal, family.

12 Q So the clerk -- does the clerk of court's office
13 maintain criminal records as part of its regular course?

14 A We do.

15 Q I'm going to hand you if I may what's been premarked
16 as State's Exhibit 39 and ask you to look at this item.
17 Does that appear to be an order that was generated in
18 criminal court?

19 A It does.

20 Q And does that relate to Indictment No.
21 2009-GS-42-5794?

22 A It does.

23 Q And does it involve the defendant in this case,
24 Richard Stribling?

25 A It does.

Gail Moffitt
Direct examination by Ms. Overby

1 Q And is that document maintained by the clerk's office
2 as part of its maintenance of criminal records?

3 A Yes, it is.

4 MS. OVERBY: At this time we move State's Exhibit 39
5 into evidence. Permission to publish.

6 MR. SHEALY: No objection.

7 THE COURT: It's admitted.

8 (Copy of Indictment No. 2009-GS-42-5794 marked State's
9 Exhibit No. 39.)

10 Q Ms. Moffitt, can you just tell us? You talked about
11 the indictment number. If you may, just tell me what the
12 involved charge is.

13 A Indecent exposure.

14 Q And I'm going to direct you to the bottom right-hand
15 portion of that order. As part of that sentence was the
16 defendant ordered to register as a sex offender?

17 A He was.

18 Q And can you tell me on what date that was ordered by
19 the judge?

20 A January the 4th of 2011. It's hard -- that's not the
21 correct date?

22 Q And the signature that's on the bottom right-hand
23 portion of that document, are you familiar with whose
24 signature that is?

25 A Yes.

Gail Moffitt
Cross-examination by Mr. Shealy

1 Q And is that a circuit court judge?

2 A Yes, it is.

3 Q And is -- that document is his order?

4 A That is his order.

5 MS. OVERBY: If I may hand that, may I publish this to
6 the jury?

7 THE COURT: You may.

8 Q I just wanted to point you when I was asking you about
9 where the -- the area where he was ordered to register as a
10 sex offender. Is this right down there?

11 A That's correct.

12 Q Okay.

13 MS. OVERBY: No further questions for this witness.

14 Q Please answer anything Mr. Shealy might have for you.

15 CROSS-EXAMINATION

16 BY MR. SHEALY

17 Q Ms. Moffitt, just a couple of questions.

18 Are you aware that that's a misdemeanor?

19 A I wasn't --

20 MS. OVERBY: Objection. Relevancy.

21 THE COURT: Sustained.

22 MR. SHEALY: They admitted this document.

23 Q I'm going to hand this back to you. Would you tell us
24 what it says right next to indecent exposure?

25 A Zero to three years are in parenthesis.

1 Q Okay. That's all I have for this witness.
2 THE COURT: You may step down. Thank you.
3 MS. OVERBY: I'd ask that this witness be excused.
4 MR. SHEALY: I have no objection.
5 THE COURT: She may be.
6 (Whereupon, the witness was excused.)
7 MS. OVERBY: Your Honor may we approach -- scheduling?
8 (Bench conference held off the record in the presence
9 of the jury but out of the hearing of the jury.)
10 THE COURT: Ladies and gentlemen, as I told you, we've
11 got some witness-scheduling issues based upon the next
12 witness' professional schedule. It's a medical doctor and
13 he can't be here until 2:30 this afternoon.
14 So we're going to recess now. We'll resume then at
15 2:30.
16 Keep in mind you still can't talk about the case.
17 Don't discuss it with anybody, even among yourselves. No
18 research, no investigation.
19 Have a good morning and lunch, and I'll see you at
20 2:30 this afternoon.
21 (The following takes place outside the presence of the
22 jury.)
23 THE COURT: Court is in recess until 2:30.
24 (Whereupon, a recess was taken.)
25 THE COURT: All right. Are we ready for the jury?

Dr. Michael Ward
Direct examination by Ms. Overby

1 MS. OVERBY: Yes, sir, Your Honor.

2 MR. SHEALY: Yes, sir.

3 THE COURT: Bring them in.

4 (The following takes place in the presence of the
5 jury.)

6 THE COURT: Good afternoon.

7 We are going to continue with the state's
8 presentation.

9 MS. OVERBY: The state would call Dr. Michael Ward.

10 DR. MICHAEL WARD, having been
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MS. OVERBY

13 Q Please state your name for the record.

14 A Michael Eugene Ward.

15 Q And, Dr. Ward, where are you employed?

16 A I'm employed at Greenville by Pathology Associates of
17 Greenville and also by Greenville County as the chief
18 medical examiner.

19 THE COURT: Excuse me just a minute.

20 Dr. Ward, that black microphone is that the one you're
21 going to use. Now, it doesn't work very well, so you've
22 got to speak into it pretty good.

23 THE WITNESS: Yes, sir.

24 Q And were you employed in that capacity in 2015 as
25 well?

Dr. Michael Ward
Direct examination by Ms. Overby

1 A Yes, I was.

2 Q Can you tell us just -- just briefly about what your
3 work at Pathology Consultants entails?

4 A Well, I'm a forensic pathologist, and so my
5 responsibilities are to perform death investigations of
6 deaths that occur in Greenville County, as well as the
7 counties that we support, which are Laurens and Pickens
8 County.

9 Q And can you tell the jury about your educational
10 background, what degrees you have?

11 A I received my bachelor's degree in biology from the
12 University of Alabama. I have a master's degree in
13 forensic science from the University of Alabama in
14 Birmingham. I received my medical degree from the
15 University of South Alabama, which is in Mobile. I did a
16 4-year anatomic pathology residence at the Medical
17 University of South Carolina in Charleston and a 1-year
18 fellowship in forensic pathology at the University of New
19 Mexico in Albuquerque.

20 I am certified by the American Board of Pathology in
21 both anatomic and forensic pathology.

22 THE COURT: Let me ask.

23 Dr. Ward, let me ask you to do this. I know you're
24 talking to the jury, but we've -- we don't have a very good
25 setup here, but we've got to work with what we have.

Dr. Michael Ward
Voir dire by Mr. Shealy

1 THE WITNESS: Yes, sir.

2 THE COURT: The court reporter is right behind you.
3 So she needs to see at least your profile as you provide
4 your testimony.

5 THE WITNESS: Yes, sir.

6 Q I believe you -- I believe you testified that you
7 completed your residency where?

8 A At the Medical University of South Carolina in
9 Charleston.

10 MS. OVERBY: At this time the state would offer Dr.
11 Ward as an expert in pathology.

12 MR. SHEALY: Just a few questions, Judge.

13 THE COURT: Okay.

14 VOIR DIRE EXAMINATION

15 BY MR. SHEALY

16 Q Have you ever been qualified as an expert in the State
17 of South Carolina?

18 A Yes, I have.

19 Q About how many times?

20 A Well over a hundred times.

21 Q That's all I have.

22 MR. SHEALY: We have no objection.

23 THE COURT: All right. He is so qualified.

24 DIRECT EXAMINATION BY MS. OVERBY

25 Q Dr. Ward, can you tell the jury basically what

Dr. Michael Ward
Direct examination by Ms. Overby

1 pathology is?

2 A Pathology is the study of disease and disease
3 processes and how those diseases affect man.

4 Q And does that include -- do pathologists analyze the
5 forms of tissue?

6 A They do. It's part of their responsibility, is to
7 analyze and evaluate tissues that are either removed in the
8 doctor's office, in the operating room or at the autopsy
9 table.

10 Q Are you familiar with a process called the formalin
11 fixed embedding process? Are you familiar with that?

12 A Yes, I am.

13 Q Can you give the jury a general description of what
14 that process entails?

15 A In order to histologically or to be able to look at
16 tissues under the microscope they first have to be prepared
17 in such a way to be able to cut them thin enough to be able
18 to look at them under the microscope.

19 So tissues as they're removed at autopsy are what we
20 call fresh tissue. This fresh tissue is placed in
21 formalin, which is a fixative which cross reacts the
22 proteins to help keep those tissues from breaking down any
23 further. So that's the first step, is fixation in
24 formalin.

25 They are then processed in a manner that takes the

Dr. Michael Ward
Direct examination by Ms. Overby

1 formalin out and replaces any water in the tissue
2 eventually with paraffin or wax.

3 After the processing step is the embedding step which
4 takes the tissue, which is a small, usually a small, flat
5 piece of tissue and places it. It's in a cassette, and it
6 encases that tissue in paraffin so that it can be cut.

7 The next step is the cutting step where a microtome,
8 which is a very, very sharp blade, cuts very, very thin
9 sections of this tissue which are laid out on a water bath
10 and then scooped up onto a glass slide.

11 This glass slide is then stained with different color
12 dyes to help us evaluate these tissues.

13 And then finally it's coverslipped with a thin piece
14 of either glass or plastic material to protect it. And
15 then we can evaluate it under the microscope.

16 Q Okay. So the general purpose of or the end result of
17 this process is to take this wet tissue through what you've
18 just described and in the end result you're going to have a
19 slide.

20 A That is correct.

21 Q Okay. And were you approached by Detective Tracy Moss
22 with the Spartanburg County Sheriff's Office regarding
23 examining a certain item of fetal tissue that was in her
24 possession?

25 A Yes, I was.

Dr. Michael Ward
Direct examination by Ms. Overby

1 Q And did she bring items of evidence to you for
2 analysis?

3 A Yes, she did.

4 Q And when did she first do that?

5 A We met on May 8th of 2015.

6 Q What items did she bring to you?

7 A There were three plastic containers, screw-top
8 containers. Each of them was labeled 15-040149.

9 One top was labeled A; one top was labeled B; and the
10 third was a white top, which had no other labeling except
11 for the number.

12 Q And you described those containers as being with screw
13 tops. Were those items sealed upon your receipt?

14 A Yes, they were.

15 Q Can you tell me generally what was in each of those
16 containers that she brought to you?

17 A In each of the containers was a small amount of pink
18 tissue -- excuse me -- pink tissue, which was in a liquid
19 which was not formalin. So it was fresh tissue. So this
20 was probably saline, which is water mixed with a little bit
21 of salt. And so each -- I'm sorry -- each container
22 contained a small amount of that pink tissue. And we had
23 looked at it, evaluated it in an attempt to establish which
24 of that may be fetal parts or products of conception, and
25 which was not.

Dr. Michael Ward
Direct examination by Ms. Overby

1 Q So when you first viewed the tissue and what you're
2 describing, you're talking about what you saw with your
3 naked eye.

4 A That is correct.

5 Q Were you able to see any distinguishing characteristic
6 between which tissue was the mother and which tissue was
7 the fetus?

8 A No, I was not.

9 Q And can you tell me just a little bit about the
10 difficulty in -- were any difficulties presented when
11 looking at what may be attributable to the mother or the
12 fetus with the naked eye?

13 A Certainly. At this gestational age, which was
14 described to me as being approximately eight weeks, the
15 fetus or actually might be embryo at this stage, is very
16 small. The placenta that supports the fetus is also very
17 small.

18 The process of extracting that from the endometrial
19 cavity disrupts tissue. So anything that may have been
20 formed into a disc shape, which it would be the placenta,
21 is now disrupted.

22 So distinguishing between what will be placenta and
23 what is endometrial lining or the lining of the uterus with
24 the naked eye is basically impossible to do at that
25 gestational age.

Dr. Michael Ward
Direct examination by Ms. Overby

1 Q Did you -- each of the containers that you were
2 presented with, did you take a portion of the wet tissue
3 from each of those items?

4 A Yes, I did. I took approximately half of each of
5 those -- half of the tissue from each of those containers
6 and placed them into a -- what we call a cassette, which is
7 a little plastic container that has been labeled with a
8 unique number. And in this case it was A15-233. So each
9 one of these cassettes had that number and was then labeled
10 A1 through A7. So I took tissue from each one of these and
11 put them in those seven cassettes.

12 Q Let's start first with the tissue that you took from
13 container B.

14 You took that wet tissue and you put it into what you
15 described as a cassette, the little plastic piece. Were
16 those cassettes labeled with what you took from container
17 B? Which corresponding numbers?

18 A From container B approximately half of that tissue was
19 placed in cassettes A1 and A2.

20 Q And what about container A? Did you again take wet
21 tissue from container A and put it into respective
22 cassettes?

23 A Yes, I did.

24 Q What were those labeled?

25 A Approximately half of container B was placed in

Dr. Michael Ward
Direct examination by Ms. Overby

1 cassettes A3 through A5.

2 Q Let me make sure. I believe you said -- you said
3 container B was A3 through A5 or container A was A3 through
4 A5?

5 A I misspoke, I believe. Container A for some reason
6 was evaluated second. I'm not sure why. Would have been
7 easier if A had been first. B was A1 and A2; container A
8 is A3, A4 and A5.

9 Q And what about the -- the container that was presented
10 with the white lid? Did you take any tissue from that and
11 place it into the plastic cassette?

12 A Yes. From the white-top jar the tissue went into
13 cassettes A6 and A7.

14 Q And so these cassettes you've described -- A1 through
15 A7 -- did you submit them for histolytical analysis?

16 A I submitted them for processing and I did the
17 histological analysis, yes.

18 Q Excuse me. Okay. And where did you submit those
19 cassettes first for processing?

20 A To our private lab, which is Pathology Associates of
21 Greenville.

22 Q And when -- when that is sent to the lab, how is it
23 submitted?

24 A So each of these cassettes following placement of the
25 tissue into the cassette is then placed into a screw-top

Dr. Michael Ward
Direct examination by Ms. Overby

1 jar which has formalin. And the formalin begins that
2 fixation process so that the tissues don't break down any
3 further. Placed into the jar, labeled with this unique
4 number, A15-233, my name and the date.

5 And it is then transported by one of our couriers from
6 the hospital to the lab where it is then processed and
7 subsequently becomes a glass slide for evaluation.

8 Q And what you just described -- so you are describing
9 the process when it goes to the lab, is when it goes
10 through the steps you described earlier -- the -- the
11 embedding into the wax, the cutting, the staining and the
12 placement onto the slide. That's done at the lab.

13 A That is correct.

14 Q Did you receive slides A1 through A7 back from
15 Pathology Consultants?

16 A Yes, I did.

17 Q And how did you receive those back?

18 A They come, again, by way of courier from the lab to
19 the pathologist. They are -- I'm sorry -- seven separate
20 glass slides labeled A15-233, A1 through A7. And then they
21 are evaluated under the microscope.

22 Q And these glass slides, are you familiar or can you
23 tell us what a cover slip that step is in making these
24 slides? What does that entail?

25 A Certainly. After the tissue is -- after the blocks

Dr. Michael Ward
Direct examination by Ms. Overby

1 have been cut the tissue is placed on a glass slide. The
2 slide is stained with a purple and a pink dye to help us
3 evaluate the cellular differences within the tissue.

4 Then a thin plastic cover slip is placed over that --
5 the top part of the slide to protect it. Otherwise, the
6 tissue would dry out and potentially be scratched off.

7 Q And so when you receive these from Pathology
8 Consultants those slides had that cover slip on them
9 protecting the tissue, is that correct?

10 A Yes, they did.

11 Q Did you -- when you received those slides back did you
12 observe what was on them?

13 A Yes, I did.

14 Q Specifically, what did you observe on cassette three?

15 A On slide labeled A3, which is from cassette A3, there
16 was tissue which we call decidua, which is from the lining
17 of the endometrium. So that's from mom.

18 But there are also tissues that represented or were
19 chorionic villi. The chorionic villi are the working
20 components, if you will, of the placenta. It's just where
21 gas exchange occurs between mom and fetus. It's at the
22 placental level. And that happens at the chorionic villi.
23 Identifying chorionic villi on slide three indicated to me
24 that there were products of conception within these
25 tissues.

Dr. Michael Ward
Direct examination by Ms. Overby

1 Q And did you compare slide A3 with the remainder of
2 that block?

3 A Yes. After -- after the block has been cut -- so only
4 a very, very thin section of tissue is removed from the
5 block so that the rest of the issue remains in that same
6 block.

7 So I could take block A3 and slide A3 and hold them up
8 and just to oppose them or lay one on top of the other, and
9 then I could take -- I took a magic marker, if you will,
10 and circled the area of the block that contained the
11 chorionic villi on the slide. So now I knew what tissues
12 in block A3 represented chorionic villi.

13 Q If I may, Dr. Ward, I'm going to put up what's been
14 entered as State's Exhibit 10 and ask you to look at this.
15 You said you circled the area, the designation, of the
16 chorionic villi.

17 A That is correct.

18 Q Is this area --

19 THE COURT: Do you have a copy of that to give to him?

20 MS. OVERBY: I do.

21 THE COURT: Do that.

22 MS. OVERBY: May I approach the witness?

23 Q Is this area --

24 THE COURT: You've got to tell what you're looking at.

25 MS. OVERBY: I'm sorry?

Dr. Michael Ward
Direct examination by Ms. Overby

1 THE COURT: He is looking at the document in his hand.
2 So identify what you want him to look at. The purpose of
3 him having that document is so that he doesn't have to
4 strain to look at the screen.

5 Q Okay. Can you -- can you identify on the slide what
6 area you circled?

7 A Certainly. On this photograph it shows a metal ruler,
8 and then up in the top left-hand corner is a plastic
9 cassette which has some paraffin on the top of it.

10 Within that paraffin is some pink tissue. There are
11 two pieces of pink tissue within that -- within that
12 cassette.

13 To the right was decidua; to the left was the area
14 that contained the chorionic villi. That is what has been
15 somewhat circled by the black magic marker.

16 Q The area that we see on the left.

17 A That's correct.

18 Q After you -- after these slides were generated and you
19 looked at slide A3 which had the areas of chorionic villi
20 that you've described, what did you do with slide A3?

21 A On May 13th block A3 was receipted to Detective Tracy
22 Moss of the Spartanburg County Sheriff's Office.

23 Q And that was a coverslip slide?

24 A No. It was a paraffin block.

25 Q Okay. With the slides. Describe the paraffin block

Dr. Michael Ward
Direct examination by Ms. Overby

1 for me that you gave to Tracy Moss.

2 A The paraffin block was what you were looking at within
3 the photograph at the top left-hand corner of the
4 photograph.

5 A representation of it is here that I have today.
6 This would be a paraffin block. This is the cassette. It
7 would have its unique number here.

8 And the tissues are embedded within this paraffin.
9 The paraffin is then cut to generate a histologic slide.
10 The remainder of that tissue is still within this paraffin.

11 I circled the part of the tissue that was
12 representative of the chorionic villi and receipted
13 this block -- not this block -- but block A3 to Detective
14 Moss.

15 MR. SHEALY: Judge, could I see that? That's the
16 first time I --

17 THE COURT: Sure.

18 THE WITNESS: Certainly.

19 THE COURT: It's just a demonstrative item, but you're
20 welcome to look at it.

21 MR. SHEALY: I can't see it from back there, and
22 that's the first time.

23 MS. OVERBY: I have no further questions of this
24 witness.

25 Q Please answer any questions Mr. Shealy might have for

Dr. Michael Ward
Cross-examination by Mr. Shealy

1 you.

2 CROSS-EXAMINATION

3 BY MR. SHEALY

4 Q Okay. Dr. Ward, just a few questions.

5 Now, you testified that you got the jars from
6 Ms. Moss, is that correct?

7 A That is correct.

8 Q All right. And I'm a little confused because Ms. Moss
9 has already testified. My understanding of her testimony
10 was that slides one and two came from container A. You're
11 saying that they actually came from container B?

12 A The way I dictated my note at that time is that the
13 jar labeled B was from the container -- I'm sorry -- the
14 jar labeled B went into cassettes A1 and A2.

15 Q Okay. All right. And when you received those jars
16 they did not have formalin in it.

17 A They did not.

18 Q And you then separated them out into cassettes. Now,
19 are those the demonstrative piece of evidence that you just
20 had -- is that what you separated it out into or did you
21 separate it out into something else?

22 A They were separated into -- this -- this is a
23 cassette. So tissue from each of the jar was placed into a
24 case it.

25 Q Like that. That's kind of -- for the record, it's

Dr. Michael Ward
Cross-examination by Mr. Shealy

1 like a plastic cage type thing?

2 A It is. It's a plastic container that has multiple
3 holes to allow fluids to mix back and forth.

4 Q Okay. And then my understanding is those cassettes --
5 what did you do with those cassettes after that?

6 A After the tissue is placed into this cassette, which
7 is labeled with that unique number, it was placed into a
8 jar which contained formalin and labeled again with that
9 number, my name and the date and couriered over to our
10 private lab where it was processed and subsequently
11 developed into a glass slide.

12 Q So you put it in a jar, presumably, of some size
13 because you had to fit all of the cassettes in it.

14 A Yes.

15 Q And it's a screw top. Does it -- is it sealed in any
16 way?

17 A It is not.

18 Q Okay. Does it go in some kind of evidence bag or
19 something?

20 A It does not.

21 Q Okay. And so it's then couriered to the private lab.
22 And, now, you can't testify as to what they did at this
23 time, but generally are -- they're supposed to be the ones
24 who put it in the paraffin? Is that my understanding?

25 A Yes. It starts the process of it eventually becoming

Dr. Michael Ward
Cross-examination by Mr. Shealy

1 a paraffin block, yes.

2 Q so when does it actually become a paraffin block?

3 A So this process happened on -- during the day on May
4 8th. The process, the tissues, is then picked up by a
5 courier and transported over to the -- to our private lab
6 where that afternoon they would have been removed from that
7 jar and placed into a rack where they're lined up and then
8 placed into the processor that evening. So they would have
9 processed overnight and then been placed into and become a
10 paraffin block the next morning.

11 Q Okay. But you wouldn't have -- I mean, you weren't
12 there for that, this particular process. That's just what
13 generally should happen, is that right?

14 A That is correct.

15 Q And then whenever it is delivered back to you by a
16 courier -- is it a large paraffin block, is it a small
17 paraffin block? Is it seven paraffin blocks?

18 A So, on a routine case, which this initially was, there
19 are seven of these that are generated from the tissue that
20 we submitted, and they were labeled A1 through A7.

21 From each one of these a glass slide is generated. So
22 I receive back from Pathology Associates seven glass slides
23 with a very, very thin piece of tissue from each one of
24 these blocks on that slide that I can then evaluate under
25 the microscope.

Dr. Michael Ward
Cross-examination by Mr. Shealy

- 1 Q Okay. And, now, I'm going to show you State's
2 Exhibit 10. You were already shown State's Exhibit 10, and
3 hopefully you've still got that.
- 4 A Yes, sir.
- 5 Q Well, I'm not going to ask you to identify anything.
6 Now, did you make that cassette? Did you -- did you
7 make this slide or this cutting?
- 8 A I put the tissue into the cassette. I did not process
9 it; I did not embed it; I did not cut it or stain the
10 slides.
- 11 Q Okay. But you've testified that you drew this. On
12 the upper left-hand corner there's a circle drawn in hand.
13 Did you draw that?
- 14 A Yes, I did.
- 15 Q You did. Okay. All right. And then you had -- so
16 you outputted seven glass slides that you then gave to
17 Tracy Moss. Is that my understanding?
- 18 A No. I gave block A3 to Detective Moss.
- 19 Q Okay. What did you do with the glass slides?
- 20 A The glass slides are retained at our private lab along
21 with blocks A1 and 2 and 4 through 7.
- 22 Q Okay. And when you say block, do you mean paraffin,
23 that little paraffin block?
- 24 A The paraffin block, yes. I'm sorry. We have a
25 parlance, and we just throw them back and forth. I

Kurt Nauss
Direct examination by Ms. Overby

1 apologize for that.

2 Q Sure. I understand. Lawyers do the same thing.

3 MR. SHEALY: That's all I have for this witness.

4 MS. OVERBY: I have no further questions, Your Honor.

5 THE COURT: You may step down.

6 MS. OVERBY: May this witness be excused, Your Honor?

7 THE COURT: He may.

8 (Whereupon, the witness was excused.)

9 MS. OVERBY: The state would call Kurt Nauss.

10 KURT NAUSS, having been first
11 duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MS. OVERBY

13 Q Please start by giving your name to the jury.

14 A My name is Kurt Nauss.

15 Q And, Mr. Nauss, where are you currently employed?

16 A Pathology Consultants or Pathology Associates.

17 Q And where were you employed in May of 2015?

18 A Pathology Associates.

19 Q Did you receive cassettes from Dr. Michael Ward to
20 perform a formalin fixed embedding process?

21 A Yes.

22 Q Did that include cassettes A15233 A1 through A7?

23 A Yes.

24 Q And when you received those cassettes were they --
25 just generally the description when you received them into

Kurt Nauss
Direct examination by Ms. Overby

1 the lab.

2 A They are received in a plastic jar with a screw cap in
3 formalin with the label with the patient -- with the
4 autopsy number, the name of the pathologist that submitted,
5 which was Dr. Ward in this case, and the date it was
6 submitted.

7 Q And did you process those cassettes that were
8 submitted?

9 A Yes.

10 Q Did that include cassette A3?

11 A Yes. They were all submitted together.

12 Q And was the end result of the process that you
13 conducted, was to place tissue that was submitted in those
14 cassettes onto slides --

15 A Yes.

16 Q -- for examination? And once that processing was
17 complete did you return those items to Dr. Ward?

18 A Yes, the slides. The blocks go in a file that we keep
19 indefinitely. And the slides went back to Dr. Ward.

20 MS. OVERBY: I have no further questions for this
21 witness.

22 Q Please answer anything Mr. Shealy has for you.

23 A Yes.

24

25

Kurt Nauss
Cross-examination by Mr. Shealy

1 CROSS-EXAMINATION

2 BY MR. SHEALY

3 Q Well, Mr. Nauss, you keep saying blocks. So you
4 outputted a paraffin block. Is that my understanding?

5 A Yes. That's what we put the tissue in to make a block
6 to get a section -- a slide.

7 Q And how do you send it back to Dr. Ward?

8 A The slides are sent in a folder with his name on it.
9 And they're clipped and sealed. Not sealed but clipped so
10 they don't fall out.

11 Q Okay. But you don't send the blocks.

12 A No. The blocks stay in the laboratory, yes.

13 Q In the laboratory.

14 A Unless requested by Dr. Ward or something.

15 Q Okay. Do you know if it was requested in this case?

16 A I didn't know at the time because I'm not the only one
17 in the lab. But they said block three was requested, and
18 it was sent to him.

19 Q Right. So who else in your office touched this slide?

20 A None of them touched the slides after they went out,
21 but the blocks are there in the office in the laboratory.
22 There is 10 or 12 technicians. So he could have requested
23 it in the afternoon after I'd gone home and they put in the
24 system that Dr. Ward requested this block and it was sent
25 over by courier.

Kurt Nauss
Redirect examination by Ms. Overby

1 Q Okay. So you're not the one that sent it over by
2 courier.

3 A Not that I know of. It was two years ago. I can't
4 remember. I may have but...

5 Q It would have been some other technician --

6 A It could have been.

7 Q -- that we don't know about or we don't know who it
8 was.

9 A Right. It could have been. I don't -- because it was
10 two years ago. I don't remember. I can go look in the
11 computer and check.

12 Q And do you know who the courier was by chance?

13 A No.

14 Q No.

15 MR. SHEALY: I have no further questions for this
16 witness.

17 REDIRECT EXAMINATION

18 BY MS. OVERBY

19 Q Is it routine practice with Pathology Consultants to
20 send those finished products to Dr. Ward by courier?

21 A The blocks?

22 Q Yes.

23 A Yes. If requested we put them in the system as the
24 block is being sent out to whomever -- Dr. Ward in this
25 case -- and it's sent with a courier with a -- we have a

1 slip to show that he gets it.

2 MS. OVERBY: No further questions, Your Honor.

3 THE COURT: You may step down.

4 MS. OVERBY: May this witness be excused, Your Honor?

5 THE COURT: Sure.

6 (Whereupon, the witness was excused.)

7 MS. OVERBY: At this time the state would rest, Your
8 Honor.

9 THE COURT: All right. Ladies and gentlemen, that is
10 all of the testimony or evidence to be offered by the
11 state, at least in their case in chief.

12 Before we go any further I've got some matters I'll
13 need to address with the lawyers. And so I'll address
14 those, and then I'll bring you back.

15 So please retire to your jury room, but do not begin
16 deliberations yet, or discussions.

17 (The following takes place outside the presence of the
18 jury.)

19 THE COURT: All right. Any motions or other matters
20 to address?

21 MS. OVERBY: Nothing from the state, Your Honor.

22 MR. SHEALY: Judge, I guess at this point I'll move
23 for a mistrial.

24 I don't believe that the state has adequately
25 established either chain of custody.

1 Well, they've done several things wrong with respect
2 to this fetal tissue. I don't believe they have
3 established a reasonable chain of custody that was
4 suggestive that the -- the integrity of this chain of
5 custody.

6 We've just heard from Kurt Nauss who says he doesn't
7 know how the block got from his office to Dr. Ward. He
8 doesn't know how long it took; he doesn't know who sent it.

9 He can't testify as to what kind of packaging it was
10 in, if it was in any packaging at all. We have testimony
11 that it was sent over in an unsealed capacity from Dr. Ward
12 to the pathology department or the private pathology
13 company.

14 We have -- again, he doesn't -- he just doesn't know,
15 and he can't testify to it. And Dr. Ward can't testify to
16 it, and so we don't know what happened to this paraffin
17 block -- if somebody rubbed something on it, if it was just
18 setting there, if it was thrown all around, if it was
19 handed around the Clemson-Carolina game. We don't know
20 because it's not sealed and it just -- we just don't know.

21 Once it gets out of Dr. Ward's custody and into
22 Ms. Moss' custody, I guess at that point is wrapped up and
23 FedExed to Texas. And once it gets to Texas, Ms. Cramer
24 testified that she opened the final level of security, I
25 guess. A Ms. Shados who did not testify had opened two

1 levels to get to the paperwork, which wasn't introduced
2 here. So and then there's no issue with that.

3 She did testify that there was a white box with slides
4 instead of seals, but I believe it was her testimony that
5 that was within a Manila envelope that was sealed. And we
6 will take her testimony at its face value. She says she
7 took it out. She made that cutting that we see in State's
8 Exhibit No. 10. She then also made some other notations
9 apparently on State's Exhibit No. 10. And then she
10 testified she analyzed it.

11 Well, the problem is that on cross she didn't analyze
12 it or she didn't do the complete analysis. It sat for some
13 period of time. We don't know how long between when she
14 took it out, the paraffin block out, of that white box.
15 And for someone with the initials R.G., I thought it was
16 Roberta Gomez. I have been told it might be Rebecca Gomez.
17 I'm not sure what her name was. But this Gomez lady is the
18 one that did three things to it.

19 There's a protocol that they have to follow in order
20 to extract the D.N.A. They testified to that. Ms. Cramer
21 testified to that.

22 And she and Ms. Gomez or Garcia or R.G. did one
23 through three. Ms. Cramer testified one through three were
24 important. Otherwise, they wouldn't have been part of the
25 protocol.

1 when somebody has done something within the testing, I
2 would submit that person has to be here to testify for two
3 reasons; one, to establish a chain of custody, to show a
4 possession of these items all the way through the gathering
5 to the completed analysis portion.

6 Also, Judge, we have the Sixth Amendment right to
7 confront your accusers, and Bullcoming vs. New Mexico talks
8 about the fact that people who are preparing testimonial
9 documents like lab reports have to come in and testify to
10 those lab reports.

11 Now, Bullcoming is a little bit different because in
12 Bullcoming they're dealing with a blood alcohol level. And
13 that blood alcohol level is certified by an individual who
14 didn't do anything within the analysis. They didn't call
15 the person who signed the analysis at all.

16 In this case the state did call somebody who did part
17 of the analysis. But, Judge, I would submit to you that
18 both of those people have to come. Both of the people who
19 have taken part in the analysis have to come so that we can
20 ask them questions about whether they did everything
21 correctly.

22 They had a worksheet, a protocol, that they were
23 supposed to follow. We don't know if Ms. R.G. did that
24 protocol or not. Ms. Cramer can say, well, I think she
25 did, but that's the same as what Bullcoming says you can't

1 do. That's what -- I believe his name was Razatos. It was
2 an odd name, a difficult name. He came in and said, well,
3 it looks fine.

4 You can't do that. That's not sufficient. You have
5 to have the person who actually did part of the analysis.

6 Judge, I understand that the state is going to -- now,
7 there are other problems with the chain. I believe that
8 case law is going to make those problems not missing chain
9 pieces but weak chain pieces where, for instance, they
10 didn't have Ms. Aycock or Ms. Stephens from SLED to testify
11 who received the buccal swabs as well as the tissue.

12 But I believe that Hatcher allows them to have had Ms.
13 Moss say I witnessed them heat seal this envelope. That
14 envelope was then opened by Ms. Hash who testified that it
15 was -- it appeared to be untampered with.

16 That's what Hatcher is for, is where there are people
17 who are purely transportation. Those people don't
18 necessarily have to come in and testify because that
19 becomes -- there'd be a lot of people at that point. And
20 that's not practical. But where someone has actually done
21 things to the evidence that person needs to come.

22 Now, I'll point the state in Hatcher, they cite to
23 South Carolina Department of Social Services vs. Cochran.
24 In Cochran they didn't have a courier who transported the
25 samples from the collection site to the testing facility.

1 But they got there sealed and intact. But in Cochran
2 this -- the Court is very clear to say that all of the
3 people who took part in processing and testing this
4 evidence were present and testified.

5 THE COURT: What's the cite?

6 MR. SHEALY: Judge, I have a copy of it for you. I
7 also have a copy for counsel if I may approach. Judge, I
8 also have a copy of Hatcher if you would like that.

9 THE COURT: I would.

10 MR. SHEALY: And I'm also going to go ahead and hand
11 up a copy of Bullcoming if I may approach.

12 In Hatcher, Judge, evidence is the -- quoting Hatcher,
13 "Evidence is still required as to how the item was obtained
14 and how it was handled to ensure that it is, in fact, what
15 it is purported to be."

16 And while it need to only be established as far as
17 practicable, they don't have to show everybody. But,
18 again, they do have to show what happened to the evidence
19 and that it was handled properly. And they also have to
20 produce the person who was part of the analysis.
21 Otherwise, we have no confrontation right.

22 Lastly, Judge, I point to Benton vs. Pelham, which is
23 also cited in that case, in the Hatcher decision.

24 In that case there was a missing link, that a
25 chemist's secretary was the missing link, because the

1 technologist who drew the samples mailed those items to a
2 chemist. There was no evidence that those things were not
3 tampered with, that there were any precautions taken
4 against tampering.

5 We've heard something similar to that by Dr. Ward.
6 There was no -- there were no measures taken against
7 tampering with those slides in that screw-top jar. We
8 don't really know if there were any measures against
9 tampering with respect to the -- when it was shipped back
10 to Dr. Ward.

11 We don't know how long. In that case once the samples
12 were delivered they sat on a desk for some period of time.
13 In this case this sample sat on a desk apparently for some
14 period of time. We don't know how long after Ms. Cramer
15 took the cutting because Rebecca or R.G. -- we don't know
16 how long she had them. We don't know what she did to them,
17 that she could have, again, had them for a week. She could
18 have had them for an hour. She could have had them for a
19 day. She could have done any number of different things
20 with them.

21 We don't know because she didn't testify. We couldn't
22 cross-examine her on whether she did that extraction
23 correctly or whether she began that extraction correctly or
24 not. So, Judge, and that also is cited approvingly in
25 Hatcher.

1 Now, and that was Benton vs. Pelham if I may approach.

2 So, Judge, in sum, that D.N.A. conclusion is simply
3 not reliable and that D.N.A. conclusion denied us -- or,
4 well, the way that the state presented their case denied us
5 the right of cross-examination of that analyst.

6 So, in sum, I believe that that D.N.A. ought to have
7 been excluded. Now, problem is the way that the state
8 tried their case.

9 They assured you that -- well, they assured the court
10 that they would be able to complete the chain, they
11 wouldn't create any of those problems, that this was going
12 to be straightforward. I submit to you it hasn't been.
13 And so it was allowed in. And we can't unring a D.N.A. --
14 this D.N.A. match bell.

15 We can't -- a jury cannot be reasonably expected to
16 not think or to not think about this D.N.A. match or the
17 D.N.A. match that has been testified to. It's just -- we
18 just can't do that.

19 So, Judge, I believe that that evidence should be
20 coming out of this trial, should be removed and that, as
21 such, a mistrial should be declared. Thank you.

22 THE COURT: Ms. Jordan.

23 MS. JORDAN: Thank you, Your Honor.

24 Your Honor, what went throughout most of the -- a
25 majority of all of the chain-of-custody cases are the -- is

1 the underlying fact that it's not an abuse of discretion
2 for the trial court to admit the evidence in the absence of
3 proof of tampering, bad faith or ill motive. None of that
4 has been alleged here or anything in regards to this case.

5 As to when --

6 THE COURT: No. Now, these cases stand for the
7 proposition that you have to show bad faith or ill motive
8 or tampering before they have to be excluded?

9 MS. JORDAN: Your Honor, they reference, they do
10 reference, that within the case law that we have.

11 THE COURT: Okay.

12 MS. JORDAN: Your Honor, we -- the identity of the
13 persons who were handling specimen, it has been
14 established, although we did not have Gomez to testify, we
15 did have Ms. Cramer who testified as to the handling of the
16 items and the general course and nature in which they do
17 things that are there.

18 THE COURT: Ms. Gomez was -- she tested it. She --
19 she began the testing of items. She wasn't just somebody
20 who handled the item.

21 MS. JORDAN: Yes, sir. She -- she began the testing
22 after the cutting was made from the block that Jill Cramer
23 took and then passed on to her.

24 THE COURT: She did the first three steps, that's
25 right.

1 MS. JORDAN: Your Honor, it's our position that it
2 would go to the credibility of the evidence and not to the
3 admissibility of the evidence, or the weight of the
4 evidence for the jury to give and not to the admissibility
5 of the evidence.

6 The -- as far as that weak link, that is right there.

7 And, Your Honor, in this case Cramer testified about
8 what she did before and what she did after Gomez dealt with
9 this. And then they also had this review by Dr. Hoffman
10 who also testified before the jury in this case.

11 THE COURT: I know. But nobody -- nobody said
12 anything about what Ms. Gomez did. Nobody -- nobody
13 testified to the integrity of what she did and that's why
14 they continued. Nobody -- in fact, she wasn't even
15 mentioned other than the fact that they finally said that
16 she's the one who performed the first three steps of
17 extraction.

18 MS. JORDAN: Yes, sir.

19 THE COURT: I mean, I didn't even know she was
20 involved until Ms. Cramer testified that she's actually the
21 one who did the first three steps of the extraction.

22 Did y'all know she was involved in the testing?

23 MS. JORDAN: There are -- there are initials on the
24 sheet that was contained in the --

25 THE COURT: I know. But, you know, we discussed

1 establishing this chain. And did y'all know that she was
2 involved and just thought she wasn't a necessary person? I
3 mean, y'all decided she wasn't necessary to establish in
4 this chain or the integrity of this evidence? Is that what
5 I'm understanding?

6 MS. JORDAN: The -- we felt that we could establish
7 the chain with using Cramer and then using Hoffman.

8 THE COURT: Okay. All right. What else would you
9 like to tell me?

10 MS. JORDAN: I'm sorry?

11 THE COURT: What else would you like to tell me?

12 MS. JORDAN: Your Honor, we just feel that the
13 evidence presented before the Court would allow for the
14 admission of the evidence to the jury and just the argument
15 as far as the credibility of that to the jury there.

16 THE COURT: What about Dr. Ward? He said that he put
17 the items that he wanted processed into an envelope and the
18 courier picked them up unsealed, un -- there was no -- no
19 precaution taken to protect the integrity of those items
20 that were picked up by a courier who Mr. Nauss said was
21 in the computer. We could find out who he is, but he
22 doesn't know who it was.

23 They took them over to his place, and he did the
24 processing, but he doesn't know who else might have been
25 involved. There were other people there, but he thinks he

1 did it. But he doesn't know who took it back. But if we
2 looked in the computer we might could find out. Nothing
3 there was sealed or put in any sort of container to ensure
4 the integrity of the items when they go back.

5 MS. JORDAN: I believe he did testify --

6 THE COURT: What are we to assume about that?

7 MS. JORDAN: I believe he testified that he placed it
8 inside of a jar and the jar was closed.

9 He did testify that it was not sealed but that it was
10 closed. There was no mention that when Mr. Nauss got the
11 items that there was any spoilage or anything along those
12 lines to that item when he received it from the courier.

13 THE COURT: Okay.

14 MS. JORDAN: Your Honor, may we approach?

15 THE COURT: Sure.

16 Let's take a break here. We're going to have a
17 discussion in chambers.

18 (Whereupon, a recess was taken.)

19 THE COURT: Bring the jury in, please.

20 (The following takes place in the presence of the
21 jury.)

22 THE COURT: Ladies and gentlemen, the matters that I
23 have to address have taken longer than I expected that they
24 would. So rather than have you stay back there any longer
25 I'm going to excuse you for the balance of the afternoon.

1 I'll conclude with those other matters and then we'll
2 resume in the morning at 10:00 o'clock, at 10:00 o'clock in
3 the morning.

4 So have a good afternoon. Remember my cautions. No
5 discussions, no research, no investigation.

6 Do have a good evening. Report to your jury room at
7 10:00 o'clock in the morning.

8 (The following takes place outside the presence of the
9 jury.)

10 THE COURT: Court is in recess until 10:00 o'clock in
11 the morning.

12 END OF PROCEEDINGS JULY 12, 2017
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1 (Proceedings July 13, 2017)

2 (The following takes place outside the presence of the
3 jury.)

4 MR. SHEALY: I've reviewed the cases.

5 THE COURT: Sir?

6 MR. SHEALY: I've reviewed the cases.

7 THE COURT: Okay. I'm going to let y'all argue them.
8 Then if you need additional time to look them over after
9 they've been presented, I'll provide you that opportunity.

10 MR. SHEALY: Yes, sir.

11 THE COURT: Okay. Who wants to go first?

12 MR. BARNETTE: Your Honor, I guess I will.

13 Your Honor, I know Ms. Jordan sent you a couple of
14 cases. Your Honor, one of them, the State vs. Brockmeyer,
15 is the one I wanted to talk about, Your Honor.

16 Basically, in this case --

17 THE COURT: What issue are you addressing with
18 Brockmeyer?

19 MR. BARNETTE: A couple of issues, Your Honor.

20 The first one is, obviously, talking about the chain
21 of custody itself, Your Honor, from there, it talks about
22 the -- basically, the trial court's role is merely to act
23 as a gatekeeper for the jury and the proponent of the
24 evidence need only make a prima facie showing of its
25 showing, Your Honor.

1 And basically establishing a strict chain of custody
2 is not an ironclad requirement and the fact of the missing
3 link does not prevent the admissibility of parole evidence
4 as long as there's sufficient proof that the evidence is
5 what it purports to be and has not been altered in any
6 material respect.

7 Your Honor, a lot of the cases I noticed in talking
8 the chain of custody, it talks about drug cases. We're
9 actually talking about, obviously, fetal tissue in this
10 case.

11 The chain has been presented. There has been no -- no
12 evidence of tampering whatsoever from that standpoint. And
13 what's the odds of this material going all the way from
14 South Carolina to Texas and coming back to being this
15 defendant being the father of that fetus?

16 If you look at the odds all the way across the board
17 from that standpoint it's impossible.

18 What they do, they go get a fetus over in Texas to
19 match this up? There's no way.

20 And, like I say, drug cases, you know, gun cases,
21 bullets, things like that, obviously, there's other types
22 of that that are all across this country. You can find
23 crack cocaine; you can find bullets, shell casings, guns.

24 But this fetal tissue is only unique to one individual
25 or two individuals -- the mother and the father in this

1 case. And I think it's shown through all of the testimony
2 and everything that this is it.

3 I mean, there's -- the defense has made an argument
4 that the chain hasn't been proven, but, basically, the
5 situation, this is what it is. It's purported to be and
6 it's been shown to be that. And the chain has proven that
7 and shown that from that standpoint.

8 And I think Hatcher vs. Nolan, which is actually State
9 vs. Hatcher, but since it's a federal case -- federal under
10 2012, Westlaw, 527, 610, Your Honor, talking that case,
11 Your Honor, Judge McDonald talks about the trial judge's
12 exercise of discretion must be viewed in light of the
13 following factors: The nature of the article, the
14 circumstances surrounding the preservation, the custody
15 that -- and likely both, you know, people tampering with
16 it.

17 There is no -- with this chain there is no question
18 there hadn't been any tampering with it. I mean, there's
19 no way it can be shown to him.

20 If there was tampering it'd be the hugest conspiracy
21 in the world. It can't -- I mean, there's no way. There's
22 no evidence of that; there's no showing of that.

23 It shows that the chain was kept as solid as it could
24 be. I understand there's possibly a missing link in it, or
25 two, from that standpoint. But the couriers from that

1 standpoint, the doctor in Greenville basically testified,
2 Dr. Ward, that he'd sealed the jars, that this had been
3 waxed in the back. The materials was sent to Texas from
4 that standpoint.

5 Now I'd like to talk about the confrontation clause if
6 I could from that standpoint.

7 That is a situation. This is a person that merely did
8 phone protocol from this standpoint. It was a situation
9 where to me if you look at Brockmeyer, and I know they're
10 talking about T.V. stations. I understand that. That's
11 there too.

12 But basically it says seventh -- "Sixth Amendment does
13 not by its terms grant a criminal defendant the right to
14 secure the attendance and testimony of any and all
15 witnesses. Rather, to demonstrate" -- must show -- must --
16 some plausible showing how the testimony of absent witness
17 would have been most material and favorable to his defense.

18 There's no way this could have been favorable to this
19 defense. I think the evidence shows that from that
20 standpoint. That's footnote two in Brockmeyer, Your Honor,
21 in that.

22 And I think in my opinion, and what I would argue, is
23 the evidence is consistent. This fetus -- he's the father
24 of it from that standpoint. There is nothing that's
25 showing anything contrary to that to this Court, trying to

1 disprove that chain or anything from that standpoint.

2 So I would argue you basically State vs. Brockmeyer
3 which is five -- 751, S.E. 2d, 625, 406, South Carolina,
4 324, Your Honor. It's a 2013 South Carolina Supreme Court
5 case.

6 And all that Judge McDonald's basically showing
7 that -- I know it's up to the Court's discretion. I know
8 it's not an easy decision from that standpoint. But I
9 think in this case we have -- there's no -- no other
10 explanation. This is -- he is the father of this child.
11 And there's no evidence that's showing anything different
12 from that.

13 There's not been shown -- basically, no mailing with
14 it. It is consistent. It would be a huge -- it's
15 impossible to say that anything else would have happened in
16 this case from that standpoint.

17 I'd ask you not to declare a mistrial in this case
18 based off the evidence and based off these cases. Thank
19 you, Your Honor.

20 THE COURT: All right. Anything further on behalf of
21 the state?

22 MR. BARNETTE: Your Honor, the other thing would be
23 the DSS case that was, I believe, handed up to the Court,
24 South Carolina Department of Social Services vs. Cochran,
25 364 S.E., 621. It's a 2005 case, Your Honor.

1 Basically, it's talking about the identity of a
2 courier who transported samples from the collection site to
3 testing facility is unknown. "We conclude the absence of
4 testimony from these persons and the unknown identity of
5 the courier fails to render the chain of custody
6 incomplete."

7 However, they basically said that it doesn't matter in
8 this case from that standpoint. So we would argue that
9 also, Your Honor.

10 THE COURT: All right. Mr. Shealy.

11 MR. SHEALY: Judge, I think from Cochran and in
12 several of the other cases, Judge, I believe the state has
13 submitted -- I've got five cases -- the State vs. Carter,
14 State vs. Taylor, State vs. Tapp, the Hatcher vs. Nolan
15 case, which is the habeas corpus -- habeas action from the
16 defendant in the State vs. Hatcher -- and State vs.
17 Brockmeyer.

18 Now, in Cochran the reason that the identity of the
19 courier was not necessary was because the items were
20 themselves tamper evident. So we would of -- so if the
21 chemist who had opened those slides or those tubes had seen
22 some kind of tampering he would have been able to testify
23 to that.

24 In this case Mr. Barnette is incorrect as to the
25 testimony. He's simply incorrect as to Dr. Ward's

1 testimony. That is not what Dr. Ward testified to.

2 I asked him specifically did you seal the jars. He
3 said no. He said he placed them in a screw-top container.
4 So that has all the security of a pickle jar. This isn't
5 taped closed; it was not sealed closed. It was secured as
6 one would secure a lawsuit. So, Judge --

7 THE COURT: Secure what?

8 MR. SHEALY: Lawsuits. Those are a type of thing.

9 That's the problem with not knowing who these couriers
10 were. We also don't know who the technician is who turned
11 the block over to a courier to give it to Dr. Ward after
12 the process was complete of paraffinization.

13 And, Judge, State vs. Carter, which, again, the state
14 presented, all of the custodians in that case testified.
15 Didn't happen here.

16 They were cross-examined in that case. They -- they
17 had taken some blood and saliva. Some saliva had
18 inexplicably gone missing within that. But the tubes
19 appeared to still have integrity. There was no evidence
20 that the tubes had been tampered with.

21 Further, all of the custodians had testified, were
22 subject to cross-examination. And that's what we have
23 cross-examination for, is to try and figure out, well, what
24 happened to this chain.

25 And that's why, Judge, in that case it was held to be

1 a weight issue as opposed to an admissibility issue.

2 All of those people could be cross-examined. All of
3 those things could be argued. And the integrity of the
4 blood tubes, which is what was tested, the D.N.A. from the
5 blood was tested, was not questioned because, again,
6 apparently it was in some kind of tamper-evident tube. And
7 everyone testified that that was not tampered with, did not
8 appear to be tampered with.

9 State vs. Taylor, again, one of the cases that they've
10 offered where there is evidence to establish the identity
11 of those who handle the evidence and the manner in which it
12 was handled. A weakness in the chain merely raises the
13 question of credibility as opposed to admissibility.

14 well, again, we don't have either of those things. We
15 don't know who the custodians are. We don't know at least
16 three of them. And I say at least because Dr. Nauss
17 couldn't testify as to which of those 11 people, those 11
18 technicians, messed with this D.N.A.

19 It was apparently in his computer. Heck, all 12 of
20 them could. They could have tossed it back and forth for
21 all we know before they gave it to the courier in some form
22 of packaging or -- well, presumably in some form of
23 packaging. They may have said, here, have the cassette.
24 We don't know.

25 And that leads to the second point of we don't know

1 how the evidence was handled. We don't know how Ms. Gomez
2 who we do -- have at least identified -- how she handled
3 that evidence.

4 We know she did things to it. We know that those
5 things were important. We know that because Dr. or
6 Ms. Cramer testified that those three steps she did outside
7 of Ms. Cramer's presence, or that she presumably did
8 outside of Ms. Cramer's presence, were important.
9 otherwise, they wouldn't be part of the protocol. She
10 testified to that, because I asked her those questions.
11 Didn't even know about Ms. Gomez until I asked her who R.G.
12 was.

13 In State vs. Tapp, again, all of the people who tested
14 the evidence testified.

15 In Brockmeyer -- I don't think that that is applicable
16 because, Judge, throughout Brockmeyer it says that the
17 issues or the items in evidence were a t-shirt and a bullet
18 and other items that the Court said were not fungible.

19 Tissue -- and it has long been held so far as I can
20 tell. I've never seen a case that doesn't say that tissue
21 and blood are fungible.

22 In fact, those are the paradigmatic cases of fungible
23 items, that and drugs, cocaine, things of that nature.
24 Those are the paradigm cases of fungible items. So
25 Brockmeyer pays the state not at all.

1 Now, as to the confrontation-clause argument, and,
2 again, I think that the state has misread Brockmeyer,
3 because Brockmeyer -- what was argued about was this common
4 turf or something that in Brockmeyer apparently there was a
5 news story and a comment or made a comment and they
6 attempted to subpoena that comment and basically they
7 couldn't.

8 My understanding of the confrontation-clause argument
9 in Brockmeyer was that there were items, particularly
10 evidence logs, that were held to be nontestimonial.

11 Now, that, again, throughout the chain-of-custody
12 cases is true. They have long been held to not be
13 testimonial items.

14 The primary purpose, according to the courts, of these
15 evidence logs and things of that nature is to maintain an
16 inventory of the items so that everybody knows what we've
17 got and what we don't have. So that's the primary purpose,
18 which is one of the -- which is what we look at for
19 testimonialness of items.

20 The primary purpose of those things is not
21 testimonial, is not to be put into court.

22 Whereas, here we're not talking about evidence logs.
23 We're talking about a text. We're talking about reports --
24 reports that everybody knew were aimed at going to court.
25 We know they were aimed at going to court because Tracy

1 Moss basically took all of this evidence all over the State
2 of South Carolina, sent the evidence to Cellmark in Texas.
3 The county paid for it to be sent to Texas, paid for the
4 analysis.

5 All of these things were done for court. The analysis
6 was done for court, and that's why Bullcoming matters. And
7 I understand, and I believe Mr. Barnette at one point
8 yesterday said, well, Bullcoming deals with the blood
9 alcohol level, and that's true. But in that case they're
10 looking at blood alcohol levels. But it's the test that
11 gets to the blood alcohol level that matters and the
12 ultimate conclusion of the blood alcohol level that
13 matters.

14 In this case it was the testing that led to the report
15 that led to the ultimate conclusion that they claim my
16 client is one in 4.9 million or whatever. I believe it's
17 99 with four nines after it.

18 Now, we don't have to -- and, finally, Mr. Barnette
19 has made some kind of argument that this has got to be some
20 kind of oral conspiracy and all of that.

21 Judge, we don't have to prove anything here. They've
22 got to prove that they did it right. They've got to prove
23 their chain of custody.

24 We don't have to explain why they screwed it up. We
25 just have to say they did screw it up. And they've got to

1 show why they didn't or how they didn't. And they failed
2 miserably to do that.

3 There are at least four holes in this chain. Not just
4 holes, not just weak links. It's completely missing links.

5 People just -- there are three we don't even know who
6 they are. And, again, that's at least three. It could be
7 as many as 14, because he testified there were 12
8 technicians in his laboratory. Mr. Nauss did. And then
9 those two couriers. So it could be as many as 14 people.
10 We don't know that.

11 And Ms. Gomez who, again, didn't testify and did all
12 kind -- did apparently some things. We don't know how long
13 she had it. We don't know the manner in which she handled
14 the evidence. We don't if she did those three things
15 right. They can say, well, we assumed she did those things
16 right. But we're in court. We don't make these --
17 assumptions are not applicable in the court of law. They
18 just aren't.

19 Judge, so we're going to renew -- well, we're going to
20 make our motion for a mistrial. We also, Judge, would like
21 you to make a finding that this mistrial was caused by
22 the prosecutorial -- by the prosecution. And I would like
23 to put that on the record if I may.

24 Judge, when they decided, when the solicitor decided,
25 to induce Your Honor to allow them to place in the D.N.A.

1 ultimate conclusion without having completed this chain of
2 custody we were placed in a position that either they would
3 be able to complete that chain of custody and they would be
4 able to go to the jury with that D.N.A. evidence or I would
5 be forced to move for this mistrial if they failed.

6 what that had the effect of doing is it rendered all
7 of their, presumably, tactical decisions on who to call.
8 That'd be Ms. Cramer, Mr. Hoffman or Dr. Hoffman, all these
9 other witnesses that they have called.

10 And, more importantly, the people they chose not to
11 call -- Ms. Gomez, these unnamed technicians who sent the
12 block to Dr. Ward, various unnamed couriers who transported
13 that evidence rendered those, again, presumably tactical
14 decisions riskless.

15 They had no down side. Either they were going to be
16 able to take this case to the jury based on Your Honor's
17 rendering, saying that those people weren't necessary for
18 this chain and allow that case to go to the jury or Your
19 Honor order a mistrial that I would have to ask for because
20 I can't unring that D.N.A. bell.

21 I can't -- I don't think that there's a curative
22 instruction in the world that would be sufficient to unring
23 this claim that it's one to 5 million that it's my client.
24 And at that point they get a mistrial and they would be
25 able to get another bite at Mr. Stribling's apple.

1 I consistently objected that this chain hadn't been
2 established. I consistently argued it was going to be
3 different.

4 They consistently assured you that they would be able
5 to complete, consistently made repeated representations
6 that they would be able to do this. And in my opinion they
7 failed. They did not deliver on those representations.

8 These were choices that they made, Judge. They were
9 intentional choices made by these prosecutors. And these
10 are not -- and, look, I don't enjoy making -- I don't
11 relish making this argument because I work with these
12 people every day.

13 But these are not new prosecutors. Ms. Jordan was a
14 senior prosecutor when I started and Ms. Overby started a
15 couple of years after I did. Mr. Barnette, obviously, is
16 the high solicitor. I think he's been a lawyer probably
17 roughly as long -- well, maybe a little bit less than I've
18 been alive.

19 And I believe that because of the choices that they
20 made, who to call and how to call them and how to conduct
21 this case and the inducements that they made to Your Honor
22 in order to get them to bring this D.N.A. ultimate
23 conclusion forward in their case, I've been rendered -- I
24 have no choice but to request a mistrial. And so I believe
25 I can go to the end of the request just as much as I would

1 have been had they made some other argument that was
2 improper if they had done some other thing that was
3 improper.

4 All of this could have been avoided had the Cellmark
5 witnesses not testified when they did. But by allowing
6 them to do that it put us in this position.

7 So, Judge, we would ask that you render a verdict --
8 well, we would ask for a mistrial. We would ask that you
9 find that it's based on -- unfortunately, it's got to be
10 called prosecutorial misconduct. And the jeopardy is
11 attached to my client. Thank you.

12 THE COURT: Reply?

13 MR. BARNETTE: Yes, sir.

14 First thing on the prosecutorial misconduct, Your
15 Honor, we presented this case, the state did, totally with
16 expecting all of these pieces to go into.

17 It was not -- the reason why we had to call a witness
18 out of order, obviously, is bringing people from Texas,
19 Atlanta, everything, from different areas trying to
20 minimize the time they were here from that standpoint. I
21 mean, there was expenses involved and things like that.

22 There was nothing intentional about this. And we try
23 cases like this all of the time, bringing witnesses out of
24 order because of different situations. And this case is
25 just like any other case from that standpoint.

1 So to say that we intentionally did this, no, believe
2 me, we didn't go through this whole exercise of bringing
3 people from Texas, Atlanta, everywhere else just for the
4 fun of it or just for intentionally. There was nothing
5 intentional about it. That's the reason why it was done.

6 Like I said, we've done this -- I've done it numerous
7 times in my case when I'm trying cases from that
8 standpoint.

9 Talking about -- he said that misquoting -- if I
10 remember, what I understand Dr. Ward's testimony is, he
11 seals the jar.

12 Now, he didn't seal it in a bag; he didn't seal it
13 with anything. He, obviously, twisted the jar in there.
14 The stuff would have fell out from that standpoint.

15 Dr. Nauss, the second doctor, got this substance. He
16 went ahead and treated it. He actually encases it, and he
17 explained that procedure. I think even Dr. Ward even shows
18 it to the jury, what the thing was put into. So this is
19 secured in there from that standpoint.

20 He makes a big deal first about the couriers, about
21 who the technician is. It was sealed in that block that
22 was sent back to Dr. Ward. He actually draws on it and
23 then actually sent onto Cellmark from that standpoint after
24 he, obviously, does what he needs to do from that
25 standpoint.

1 He keeps arguing about these things from that
2 standpoint. Now, I'm not saying that the defense has to
3 show anything, but there's no way that this would have
4 been -- I mean, through all of the procedures it's been
5 consistent from that standpoint.

6 I know he keeps arguing about missing people. The
7 couriers just merely took it over. The jar was sealed.
8 The wax was put -- the paraffin wax was put on the
9 substance when it came back to Dr. Ward.

10 So if he would've saw any kind of evidence tampering,
11 either one of the doctors would have testified to that or
12 would have noticed that, obviously, from that standpoint.
13 There wasn't any showing of that from that standpoint.

14 Even the folks in Texas didn't say there was any
15 tampering or anything from that. Sure. Ms. Gomez did not
16 testify. We didn't know of her identity. But, obviously,
17 and it was reviewed by the second doctor from Texas. Did
18 not see anything irregular about anything in the testing
19 and everything from that standpoint.

20 So I would argue against the mistrial. I definitely
21 argue against any finding of prosecutor misconduct from
22 that standpoint, because that was never the intent of the
23 state. The intent of the state was to prosecute this
24 gentleman for what he did in this case.

25 THE COURT: All right. Well, as y'all are all aware,

1 the appellate courts have long held that a party offering
2 fungible items into evidence must establish a complete
3 chain of custody as far as practicable, and the courts have
4 said that where the substance to be analyzed, and which has
5 been analyzed, has passed through several hands the
6 evidence must not lead to conjecture as to who had it and
7 what was done with it between the time that it was first
8 taken and the time that it was analyzed.

9 However, the courts have also said testimony from each
10 custodian of the fungible evidence is not a prerequisite to
11 establish a chain of custody sufficient for its
12 admissibility.

13 The Supreme Court has said that where other evidence
14 establishes the identify of those who have handled the
15 evidence and reasonably demonstrates the manner of handling
16 the evidence the courts have been willing to fill in the
17 gaps in the chain of custody due to an absent witness.

18 Proof of a chain of custody need not negate all
19 possibility of tampering so long as the chain is complete,
20 but completeness does not require that every person
21 associated with a procedure be available to testify or
22 identified personally depending upon the facts of the case.

23 Establishing a chain of custody as far as practicable
24 does not require a negation of the most remote possibility
25 of substitution, alteration or tampering with the evidence,

1 but rather it must be established that there is a
2 reasonable probability that the item is the same and not
3 substantially different from the item as it existed at the
4 beginning of the chain or any link in the chain.

5 with the exception of the receiving clerk at Cellmark
6 Laboratories and the couriers transporting the evidence
7 between the pathologist, Ward, and the technician, Nauss,
8 it appears that all others who have come in contact with
9 the evidence have been identified. With the exception of
10 Ms. Gomez at Cellmark, all of those who have been
11 identified have also testified.

12 And regarding the receiving clerk, the integrity of
13 the evidence was established by witness Cramer who stated
14 that the evidence was -- when received by her for testing
15 was still sealed in an envelope that was prepared by Tracy
16 Moss.

17 Witness Cramer also stated that while Ms. Gomez began
18 the testing procedure that Ms. Cramer completed most of
19 that task. And there is no indication that proper protocol
20 was not followed or that the testing procedure was
21 compromised in any way.

22 The fact that Ms. Gomez participated in the testing
23 procedure in its initial stage is not fatal to the
24 admission of the final result when the person responsible
25 for its conclusion -- that being Ms. Cramer -- participated

1 in that analysis, completed most of that task, testified
2 during the trial and vouched for the integrity of the
3 procedure and its results and was subject to examination
4 regarding it.

5 Therefore, there is no confrontation clause violation.
6 The absence of Gomez in the trial does go to the weight of
7 the evidence but not to its admissibility.

8 With regard to the delivery of the evidence between
9 the pathologist, Ward, and the technician, Nauss, the
10 testimony does reveal that standard protocol was followed,
11 and there is no indication that the integrity of the
12 evidence was compromised while it was in their custody.

13 Whereas, here the integrity of the evidence has been
14 established to a reasonable probability, it's admission
15 need not be excluded absent some indication of tampering,
16 bad faith or ill motive on the part of the state or of any
17 custodian of that evidence, which does not appear to be a
18 factor in this case.

19 So in this case the chain of evidence at issue has
20 been established to a sufficient degree that there is a
21 reasonable probability that the integrity of the evidence
22 has not been compromised, and therefore this Court finds
23 that the chain of evidence as to each of the items admitted
24 into evidence has been established to the degree necessary
25 to establish the integrity of the items sufficiently to

1 allow its admission as evidence in the case; and therefore
2 the motion for exclusion and for mistrial based upon that
3 admission is denied.

4 And, Mr. Shealy, you have additional motions?

5 MR. SHEALY: I do, Your Honor. I have a motion for a
6 directed verdict based on my prior objections. I would
7 renew those objections regarding the chain of custody. I
8 don't believe -- I believe that that chain of custody was
9 insufficiently established.

10 THE COURT: All right. Motion for a directed verdict
11 as to the failure of the establishment of the chain of
12 custody is denied.

13 Do you have other grounds for the motion for a
14 directed verdict?

15 MR. SHEALY: If I may have one moment, Your Honor.

16 (Pause.)

17 MR. SHEALY: No.

18 THE COURT: Okay. Does the defendant intend to
19 testify or do you intend to call any other witness?

20 MR. SHEALY: I do not, Your Honor, and he does not.

21 THE COURT: All right. Mr. Stribling, Mr. Shealy says
22 that you do not intend to take the witness stand and
23 testify during the trial of this case. Is that true?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Has he discussed with you your right to

1 testify, as well as not testify?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand that right?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand it's your choice, only
6 you can decide whether or not you will testify?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand that if you choose to
9 take the witness stand and testify you will have to answer
10 not only the questions asked of you by your lawyer but
11 you'll also have to answer any questions asked of you by
12 the prosecutors to the extent that they're relevant even if
13 the responses to those questions might tend to prove you
14 guilty of the crime they claim you committed.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you also understand that if you elect
17 not to take the witness stand and testify that I'm going to
18 instruct the jury, as I already have, that they can't hold
19 that against you, they can't consider it in any way, they
20 can't allow it to enter in their deliberations and they
21 cannot consider it in any fashion whatsoever in their
22 determination as to whether or not the evidence in the
23 case, in this case, establishes your guilt beyond a
24 reasonable doubt? Do you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And you understand the choice as to
2 whether or not you'll testify is solely yours but you have
3 an absolute right to remain silent or testify. It's up to
4 you.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Have you and Mr. Shealy discussed the
7 advantages and disadvantages of your testifying, as well as
8 not testifying?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And do you appreciate what those
11 advantages and disadvantages are?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And have you had time to reflect upon your
14 decision as to whether or not you will testify?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And have you reached a decision?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: What is that decision?

19 THE DEFENDANT: I'm not going to testify.

20 THE COURT: And have you reached that decision of your
21 own free will and accord?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Has anybody forced you into it?

24 THE DEFENDANT: No, sir.

25 THE COURT: Pressured you into it?

1 THE DEFENDANT: No, sir.

2 THE COURT: Have you made that decision yourself after
3 careful reflection upon it?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Are you satisfied with that decision?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you have any other witness you wish for
8 Mr. Shealy to call?

9 THE DEFENDANT: No, sir.

10 THE COURT: Okay. Do y'all have instruction requests?

11 MS. OVERBY: I do have one, Your Honor, some standard
12 ones you may have and specific ones as well.

13 The state -- I have Mr. Shealy a copy of this.

14 May I approach, Your Honor?

15 THE COURT: Yes.

16 MS. OVERBY: In addition to -- I know Your Honor will
17 charge the elements of the offense. I would ask that the
18 definition of sexual battery be defined to the jury, as
19 well as what I just handed up, which comes from State vs.
20 Shumpert.

21 The cite -- sorry, Your Honor. Basically, just
22 requesting that time is not the essential element of the
23 offense.

24 The state doesn't have to prove that as an element of
25 the offense that the sexual battery occurred on one

1 specific day during that allegation time period. It just
2 has to present it -- include -- or excuse me -- it just has
3 just to prove that it occurred at some point during that
4 allegation time period. So I would ask specifically for
5 that.

6 MR. BARNETTE: Your Honor, can we take like a 5-minute
7 break?

8 THE COURT: Oh, yeah, we'll take a break before.
9 Any other requests by the state?

10 MS. OVERBY: Just Your Honor's standard charges on
11 credibility, expert witnesses, a --

12 THE COURT: I'm talking about standard -- a standard
13 deviation from the usual.

14 MS. OVERBY: Okay. No. The only -- the only specific
15 one is the one that I handed up.

16 THE COURT: Okay.

17 MR. SHEALY: Judge, if I may hand up, I did not put it
18 in the form of a pleading. I provided the state with my
19 request. I don't know why I didn't put it in the form of a
20 pleading, but I did not. It's a limiting charge regarding
21 the indecent exposure.

22 THE COURT: Okay. Anything else?

23 MR. SHEALY: No, sir.

24 THE COURT: All right. We'll take ten minutes before
25 we conclude.

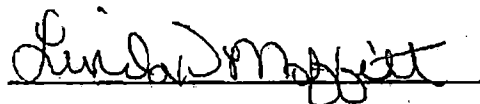
1 (Whereupon, a recess was taken.)
2 (Remainder of proceedings in separate transcript.)
3 END OF REQUESTED PORTION OF TRANSCRIPT OF RECORD
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 10th through 13th days of July 2017.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

August 3, 2018

A handwritten signature in cursive script, appearing to read "Linda D. Moffitt", is written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

Spartanburg Co. Courthouse

RANDOM STRIKE SHEET

JUDGE NAME : Cole Derham J.

TRIAL TYPE : Criminal

PANEL ID : 2015-5243

COURTROOM WA

DESCRIPTION : State vs. Richard Stribling

Sorted by: Random Nbr

Trial

1	Delaney, Margaret W	47	W	F	(✓)	(✓)	()	_____
2	Juarez, Theresa C	96	B	F	(✓)	(✓)	()	_____
3	Garrett, Amanda E	60	W	F	(✓)	(X)	()	_____
4	Jones, Scott J	94	W	M	(✓)	(✓)	()	_____
5	Bragg, John H	20	W	M	(X)	()	()	_____
6	Gilleo, Robert K	62	W	M	(✓)	(✓)	()	_____
7	Strickland, Stewart E	157	W	M	(✓)	(X)	()	_____
8	Mahaffey, Laurie J	111	W	F	(✓)	(X)	()	_____
9	Jurs, Barbara M	97	W	F	(✓)	(X)	()	_____
10	Blackwell, Cheryl A	16	W	F	(✓)	(✓)	()	_____
11	Dufresne, Denise C	50	W	F	(✓)	(✓)	()	_____
12	McDaniel, Tresea	116	W	F	(✓)	(✓)	()	_____
13	Lawton, Boyce M III	105	W	M	(✓)	(X)	()	_____
14	Medford, Edwin C	120	W	M	(✓)	(✓)	()	_____
15	Peake, Angela B	134	W	F	(X)	()	()	_____
16	Gosnell, Ricky E	65	W	M	(X)	()	()	_____
17	Stevens, Cindy L	155	W	F	(✓)	(X)	()	_____
18	Burns, Larry Dean	26	W	M	(X)	()	()	_____
19	Mosley, Tonya D	123	W	F	(✓)	(✓)	()	_____
20	Crocker, Linda J	42	W	F	(✓)	(X)	()	_____
21	Authement, Cory M	7	W	M	(✓)	(✓)	()	_____
22	Prince, Brittany R	135	W	F	(✓)	(X)	()	_____
23	Grooms, Mary A	68	W	F	(✓)	(X)	()	_____
24	Brewton, Bradley R	182	W	M	()	()	()	_____

Spartanburg Co. Courthouse

RANDOM STRIKE SHEET

JUDGE NAME : Cole Derham J.

TRIAL TYPE : Criminal

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COURTROOM WA

DESCRIPTION : State vs. Richard Stribling

Sorted by: Random Nbr

Trial

25	Apa, Randall L	5	W	M	(✓)	(✓)	()	_____
26	Axelrod, Lori K	9	W	F	(✓)	(X)	()	_____
27	Waddell, Lynn F	171	W	F	(✓)	(✓)	()	_____
28	Coleman, Lyle	39	W	M	(✓)	(✓)	()	_____
29	Higginbotham, Darlene M	78	W	F	()	()	()	_____
30	Cavicchio, Angela M	34	W	F	(X)	()	()	_____
31	Keesler, James M Jr.	98	W	M	(✓)	(X)	()	_____
32	Belcher, Barry K	12	W	M	(✓)	(✓)	()	_____
33	Ridings, Charles H Jr.	141	W	M	()	()	()	_____
34	Williams, Sade A	179	B	F	()	()	()	_____
35	Skinner, William T	150	W	M	()	()	()	_____

Total Number of Jurors:

35

** END OF REPORT **

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Richard Todd Stribling,) 2015-GS-42-5243
6 Defendant.) July 13, 2017
7) Spartanburg, South Carolina

8
9
10 B E F O R E :

11 HONORABLE J. DERHAM COLE, JUDGE
12
13

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

15 LINDSEY H. OVERBY, ESQUIRE
16 JENNIFER A. J. JORDAN, ESQUIRE
17 Attorney for the State

18 MATTHEW W. SHEALY, ESQUIRE
19 Attorney for the Defendant
20
21

22 Linda D. Moffitt
23 Circuit Court Reporter
24
25

INDEX

1

2 Guilty plea -- page 5.

3 No sworn testimony.

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<u>EXHIBITS</u>			
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EV.</u>
1			
2	S-1	Photograph	
3	S-2	Photograph	
4	S-3	Buccal swab	
5	S-4	Photograph	
6	S-5	Photograph	
7	S-6	Photograph	
8	S-7	One Paraffin block	
9	S-8	Photograph	
10	S-9	Photograph	
11	S-10	Photograph	
12	S-11	Photograph	
13	S-12	Photograph	
14	S-13	Photograph	
15	S-14	Photograph	
16	S-15	Photograph	
17	S-16	Photograph	
18	S-17	Photograph	
19	S-18	Photograph	
20	S-19	Photograph	
21	S-20	Photograph	
22	S-21	Photograph	
23	S-22	Photograph	
24	S-23	Photograph	
25			

1	<u>EXHIBITS</u>		
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EV.</u>
3	S-24	Photograph	
4	S-25	Photograph	
5	S-26	Photograph	
6	S-27	Photograph	
7	S-28	Photograph	
8	S-29	Photograph	
9	S-30	Photograph	
10	S-31	Photograph	
11	S-32	Property and evidence sheet	
12	S-33	Property and evidence sheet	
13	S-34	Defendant's buccal swab	
14	S-35	Property and evidence sheet	
15	S-36	SLED report	
16	S-37	Property and evidence sheet	
17	S-38	cellmark DNA report	
18	S-39	Copy of Indictment 2009-GS-42-5794	
19			
20			
21			
22			
23			
24			
25			

1	<u>EXHIBITS</u>		
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EV.</u>
3	C-1	Copy of Indictment 2009-GS-42-5794	
4	C-2	Photograph	
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1 (Portion of proceedings July 13, 2017)

2 (The following takes place outside the presence of the
3 jury.)

4 (Whereupon, a recess was taken.)

5 THE COURT: All right. Are we ready?

6 MR. SHEALY: Yes, sir. I believe we are.

7 THE COURT: You are Richard Todd Stribling.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Mr. Stribling, I've been informed by your
10 lawyer and the prosecutors that you have changed your mind
11 about your entry of a plea of not guilty to this charge and
12 wish to enter a plea of guilty to criminal sexual conduct
13 with a minor in the first degree in violation of Section
14 16-3-655-(A)(2). Is that what you wish to do?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You're 37 years old.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: How far did you go in school?

19 THE DEFENDANT: Tenth grade.

20 THE COURT: Why did you drop out?

21 THE DEFENDANT: I started working.

22 THE COURT: All right. Have you gotten your G.E.D.?

23 THE DEFENDANT: No, sir.

24 THE COURT: But you're able to read and write. You're
25 literate.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Have you ever been married?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: To who?

5 THE DEFENDANT: My last one was Debra Pace.

6 THE COURT: How many times have you been married?

7 THE DEFENDANT: Twice.

8 THE COURT: Are you divorced now, each time?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you have children from either of those
11 marriages?

12 THE DEFENDANT: Just the first one.

13 THE COURT: And that's **Minor**.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And what kind of work have you done?

16 THE DEFENDANT: I do monument work. I take monuments
17 to the cemetery and set them all over Spartanburg County,
18 Greenville, Laurens.

19 THE COURT: And how long have you done that?

20 THE DEFENDANT: Since I was 15.

21 THE COURT: Who are you working for?

22 THE DEFENDANT: My dad and my sister.

23 THE COURT: This is a family business?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Have you ever been treated for any type of

1 substance abuse or addiction?

2 THE DEFENDANT: No, sir.

3 THE COURT: Do you suffer from any such a condition
4 today?

5 THE DEFENDANT: No, sir.

6 THE COURT: Have you ever been treated for any type of
7 mental illness or emotional disturbance?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And what have you been treated for?

10 THE DEFENDANT: Bipolar.

11 THE COURT: And how have you been treated for that?

12 THE DEFENDANT: I've been in and out of hospitals.
13 I've been outpatient and inpatient and on medication.

14 THE COURT: Are you taking medication now?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And what are you taking?

17 THE DEFENDANT: Seroquel 100 milligrams --
18 200 milligrams at night and 40 milligrams of that in the
19 morning.

20 THE COURT: And are those medications designed to
21 alleviate the effects of your mental condition?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Bipolar disorder?

24 THE DEFENDANT: Yes.

25 THE COURT: And do those drugs actually enhance your

1 ability to understand fully what you're doing and to
2 function in society?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And do you understand what you're -- fully
5 what you're doing here today?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And do you wish to withdraw your plea of
8 not guilty and to enter a plea of guilty to the charge in
9 the indictment, which is criminal sexual conduct with a
10 minor in the first degree?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand that if I accept that
13 plea of guilty that you could receive a sentence of not
14 less than 10 years and not more than 30 years?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And anything in between.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand that you have an
19 absolute right to remain silent?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And of course that means you don't have to
22 say anything about these charges.

23 When you're charged with a crime, as you are, you
24 don't have to take the witness stand and testify; you don't
25 have to make any statements; you don't have to answer any

1 questions from anybody, including myself, unless you want
2 to enter this plea of guilty.

3 Because if you want to plead guilty you have to give
4 up your right to remain silent because I have questions
5 that I have to ask you in order to determine whether or not
6 your decision to plead guilty is freely and voluntarily
7 made, that you understand the consequences of that decision
8 and that nobody has forced you into it or coerced you into
9 that decision or pressured you in any fashion, that it's a
10 decision you've made of your own free will and accord.

11 So do you understand that in order to plead guilty you
12 have to give up your right to remain silent so that I can
13 ask you those questions?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand that you have an
16 absolute right to remain silent?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you wish to give that right up in order
19 to plead guilty?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you also understand, as you've already
22 experienced, that you have a right to examine all the
23 witnesses that have testified during the trial as
24 Mr. Shealy has examined those witnesses? And you've had
25 your right to counsel, which you do under the constitution.

1 And you have a right to have a jury trial, which you've
2 had. And of course you have a right for that to continue
3 and for the jury to make the decision in this case.

4 All that's left is for the lawyers to present their
5 final summations, for me to instruct the jury and for them
6 to begin deliberations. And of course if you plead guilty
7 the jury is going to be discharged. They won't make a
8 decision in this case.

9 Do you understand that you have a right to continue
10 with this trial and for the jury to determine whether or
11 not you're guilty of any crime the state claims you
12 committed?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand that if you plead guilty
15 and I accept that plea of guilty that the jury is going to
16 be discharged and they won't make any decision in your
17 case?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And you fully understand your right to
20 have them determine the verdict?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And do you wish to give that right up in
23 order to plead guilty?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Has anybody promised you anything that

1 induced your decision to plead guilty?

2 THE DEFENDANT: No, sir.

3 THE COURT: Well, they agreed to make a
4 recommendation, didn't they?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Well, did that induce your decision, or
7 were you going to plead guilty anyway?

8 THE DEFENDANT: That induced my decision.

9 THE COURT: Okay. So somebody did promise you
10 something that induced your decision to plead guilty.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And what were you promised?

13 THE DEFENDANT: Fifteen years.

14 THE COURT: So you were promised that they would
15 recommend 15 years as the sentence in your case?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you understand that's their
18 recommendation. But I don't have to follow it.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: I could give you 30 years if I thought
21 that was more appropriate.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Or anything from 10 to 30. Do you
24 understand?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Has anybody other than that recommendation
2 as to the 15-year sentence, has anybody else promised you
3 any other thing that induced your decision?

4 THE DEFENDANT: No, sir.

5 THE COURT: Did you expect that anything else would be
6 done for you other than that recommendation?

7 THE DEFENDANT: No, sir.

8 THE COURT: Has anybody forced you into pleading
9 guilty?

10 THE DEFENDANT: No, sir.

11 THE COURT: Has anybody threatened you in any fashion?

12 THE DEFENDANT: No, sir.

13 THE COURT: Anybody coerced you in any way?

14 THE DEFENDANT: No, sir.

15 THE COURT: Has anybody put any pressure upon you of
16 any kind that caused you to make a decision to plead guilty
17 that you otherwise would not have made but for that
18 pressure?

19 THE DEFENDANT: No, sir.

20 THE COURT: Are you pleading guilty freely and
21 voluntarily?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Was it your decision?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Are you satisfied with that decision?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Listen to what the solicitor
3 tells me if she has any additional information to provide.

4 MS. OVERBY: Your Honor, regarding the facts, you've
5 heard everything from the witnesses who testified. I just
6 have a few other things to add for the record.

7 I just move to incorporate the exhibits from the trial
8 into today's plea.

9 I'd ask that this defendant have no contact with the
10 **Minor** in this case, **Minor**.

11 This criminal sexual conduct with a minor in the first
12 degree under this subsection is a mandatory discretionary
13 G.P.S. offense under 23-3-540(B). The state is requesting
14 that --

15 THE COURT: What do you mean, it's a mandatory
16 discretion?

17 MS. OVERBY: Excuse me. It is a discretionary -- it
18 is not mandatory. It is a discretionary consequence
19 of pleading under this subsection. But the state is
20 requesting that he be placed on a G.P.S. monitor after
21 release from any active sentence.

22 The **Minor** mother in this case, we were able to
23 speak with her in between this morning's proceedings and
24 now. It's not the outcome that she would have preferred,
25 but she is in agreement with the state's recommendation.

1 THE COURT: So you've discussed the state's
2 recommendation with [Minor] mother.

3 MS. OVERBY: I have.

4 THE COURT: And you discussed it with [Minor]

5 MS. OVERBY: [Minor] is still -- we discussed it with
6 her mother.

7 THE COURT: [Minor] doesn't know what's going on?

8 MS. OVERBY: I can't say how much her mother has
9 shared with her.

10 THE COURT: Well, let's find out.

11 I mean, she's the [Minor] She's got to be involved.

12 MS. OVERBY: She's still a minor. That's why I've
13 contacted her, but I don't --

14 THE COURT: Well, she's 17 years old.

15 MS. OVERBY: My cell phone is upstairs just so you
16 know.

17 (Pause.)

18 THE COURT: While they're talking to her,
19 Mr. Stribling, do you understand and has Mr. Shealy
20 discussed with you the fact that this crime that you're
21 pleading guilty to is designated and classified as a
22 violent offense under the law?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand the significance of that
25 designation and classification?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Did Mr. Shealy also explain to you and
3 discuss with you the fact that this crime is also
4 designated and classified as a most serious offense under
5 the law?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand the significance of that
8 designation and classification?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Did Mr. Shealy also explain to you and
11 discuss with you the fact that this crime is also
12 designated and classified as a no-parole offense under the
13 law?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand the significance of that
16 designation and classification?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Has anybody indicated to you or expressed
19 any opinion as to the possibility of you obtaining parole
20 for any sentence you receive today?

21 THE DEFENDANT: No, sir.

22 THE COURT: Do you understand that if you have thought
23 about parole or anyone has provided you with any
24 information about parole that you can't rely upon that
25 information in order to make your decision to plead guilty,

1 that in making your decision to plead guilty you have to
2 assume that you will have to do 15 years in jail if I go
3 along with the recommendation or less or more if I don't go
4 along with the recommendation? But you have to assume that
5 you'll have to serve the entire sentence when you make a
6 decision to plead guilty.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And is that what you wish to do?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: while we're waiting on **Minor** input
11 we'll go ahead and hear from you, Mr. Shealy and
12 Mr. Stribling.

13 MR. SHEALY: Thank you, Your Honor.

14 This is Richard Stribling. He does have one child
15 other than **Minor** that his family does have visits with.
16 I believe they have shared custody.

17 THE COURT: Well, I misunderstood. I thought he said
18 he had one child and that was **Minor**

19 MR. SHEALY: One child from those marriages. I
20 believe that child was not within the bounds of matrimony.

21 Your Honor, Ms. Godfrey has been here all week. She's
22 also been very active in discussing his case with me
23 throughout my representation of Mr. Stribling.

24 As he's told you, he works for his father. He works
25 at Jack Stribling's mortuary essentially. They do -- he

1 does the monuments. He goes. He takes the monuments. He
2 erects the monuments. He does not make the monuments, but
3 he and his sister drive around and do that kind of thing.

4 As for the G.P.S., Judge, we would ask that you not
5 order the G.P.S. because, again, there's no --

6 THE COURT: Let me stop you right there. Excuse me.
7 I meant to go over that with him.

8 Mr. Stribling, do you understand also as a result of a
9 guilty plea here today that the law provides that it's in
10 the Court's discretion -- so I get to make that decision --
11 as to whether or not you should be monitored with an active
12 electronic monitoring device after your and upon your
13 release from custody? Do you understand?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: So Mr. Shealy is going to address that,
16 but that's going to be my decision.

17 Understanding that I may order it, or may not -- I
18 don't know yet -- do you still wish for me to accept your
19 plea of guilty?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay.

22 MR. SHEALY: Judge, as to the G.P.S. monitoring, so
23 far as I can tell he's pretty stationary within Woodruff.

24 The allegations actually did not lead him to go into
25 anybody. She came to his house. He is not so far as we

1 can tell roaming around. And I don't believe that G.P.S.
2 monitoring of Mr. Stribling would be helpful in any way,
3 because, again, he's been in Woodruff and he seems to have
4 stayed in Woodruff. Now --

5 THE COURT: Well, they went to Myrtle Beach according
6 to the testimony.

7 MR. SHEALY: Well, Judge, they went to -- within the
8 State of South Carolina. Excuse me.

9 Now, the alleged victim, it's my understanding,
10 resides now, I guess, in Georgia but did live in Alabama.

11 There's just no compelling public interest served by
12 placing him on G.P.S. monitoring. It's simply at this
13 point, would be cumulative, because, again, there's no
14 evidence that he really goes anywhere, again, outside of
15 the State of South Carolina.

16 He does from time to time, I suppose, go to the beach
17 just like most people who live in the State of South
18 Carolina. But other than that we've got no -- that's where
19 he's been.

20 Judge, I have explained to him the sexually violent
21 predator act.

22 I explained to him that that's a decision that will be
23 made down the road. That's a civil issue, to get an
24 attorney and that that's -- that is something that may
25 happen. I've explained to him the way that that works is

1 that they could in theory hold him for an indefinite period
2 of time should a judge decide that that is something that
3 should happen based on a petition by the attorney general
4 and that he would have recourse against that.

5 I have explained to him that he does get credit for
6 time that he has served pretrial because the statute allows
7 it. I told him I'm not entirely sure how long that is,
8 because he was serving -- he was served a warrant while he
9 was still serving a sentence. And that statute does not
10 allow for -- the statute appears to not allow for that
11 credit to be given.

12 So I've told him I think it's somewhere around 560
13 days or so but that that's going to be determined almost
14 certainly by the Department of Corrections and that if he
15 has an issue with the Department of Corrections' way of
16 calculating that that he would have to go through the
17 grievance process and then, ultimately, he would have the
18 recourse through the administrative law courts and that
19 there are people in the Department of Corrections who can
20 explain to him how to do that.

21 I've also explained to Mr. Stribling that by entering
22 this plea he's not able to appeal the decisions of Your
23 Honor during the trial.

24 He waives those appeals and those appellate issues.
25 Judge, and I've explained to him that whether I think those

1 are good appeals or not, things like that. So he
2 understands what we would be giving up or what we would not
3 be -- what he is giving up in order to enter this plea, by
4 agreeing to enter this plea. And I believe he understood
5 those conversations I had with him.

6 I've explained to him he does have the right to appeal
7 but those appeals would come from the procedure of the
8 guilty plea as opposed to anything that happened during the
9 trial and that he would have ten days from today's date to
10 enter that appeal, again, regarding the guilty plea.

11 So, Judge, we have met a number of times. I mean,
12 I've discussed this case with him over and over and over
13 again.

14 I believe there was a case the answer -- I believe
15 that we put up a pretty good trial. Otherwise, it wouldn't
16 have taken four days.

17 Again, I think that the record will defend our
18 decision to have gone to trial.

19 So we would ask that you accept the recommendation of
20 the state of 15 years. That is a fair sentence given the
21 difficulties that the state had, the difficulties regarding
22 the proof in the case, the percentages of what a jury may
23 come back with, things of that nature. So we would ask --
24 and we would also ask that you not place him on G.P.S.,
25 again, because I don't believe there's any public interest

1 and I don't believe the state has shown any public interest
2 that would compel placing him on -- justify placing him on
3 a G.P.S. monitor. Thank you.

4 THE COURT: Mr. Stribling, Mr. Shealy has told me that
5 he also has discussed with you fully the application of the
6 sexually violent predator act and the fact that at or near
7 the time of your release that there may be a decision that
8 you be declared to be a sexually violent predator. That's
9 something that occurs much later. It doesn't occur here.
10 But do you understand the significance of the application
11 of that act?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Mr. Shealy has gone over that with you and
14 answered any questions that you have?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And he also has related to the Court that
17 he discussed with you the fact that when you plead guilty
18 you give up your right to challenge any decisions that have
19 been made during the course of this trial by the Court.

20 Specifically, you give up your right to challenge the
21 decision I made to allow the admission of D.N.A. evidence
22 and testimony regarding that, and that if I am wrong -- and
23 of course Mr. Shealy made a very persuasive argument that
24 it should have been excluded -- I reviewed the cases and I
25 considered all of the arguments and I determined that based

1 upon my assessment that there was a reasonable probability
2 that the integrity of the evidence had been established I
3 allowed its admission and denied the motion for exclusion
4 and for a mistrial. But if I'm wrong about that, when you
5 plead guilty you give up your right to challenge that
6 ruling. Do you understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Is that what you wish to do?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Have we heard from --

11 MS. OVERBY: We have not yet, Your Honor.

12 MR. BARNETTE: I'm trying -- mom called her and is
13 calling her daughter to talk to us. So we're trying to get
14 that right now, Judge.

15 (Pause.)

16 THE COURT: And let me say this too, Mr. Stribling.

17 Of course aside from the admission or exclusion of
18 evidence, which I decided that you give up your right to
19 appeal that decision or to challenge that decision, but you
20 also give up your right to challenge any search or seizure
21 that occurred subsequent to your arrest that resulted in
22 evidence being gathered and used against you during the
23 trial of this case.

24 So if there was anything unlawful about any search or
25 seizure of that evidence that you'd also be giving up your

1 right to challenge those searches or seizures even if they
2 were unlawful. Do you understand?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you still wish for me to accept your
5 plea of guilty?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you have anything you'd like to add to
8 what Mr. Shealy has told me?

9 THE DEFENDANT: No, sir.

10 (Pause.)

11 MS. OVERBY: Your Honor, it's my understanding the
12 **Minor** mother spoke with the **Minor** who relayed her
13 thoughts back to Ms. Jordan. And she shares the same
14 sentiments as her mother that I expressed earlier.

15 THE COURT: So she agrees and consents to the
16 recommendation?

17 MS. OVERBY: Yes, sir.

18 THE COURT: All right. I'll accept your plea of
19 guilty.

20 On Indictment 2015-5243, Sentence of the Court is you,
21 Richard Todd Stribling, be confined to the South Carolina
22 Department of Corrections for a period of 15 years.

23 The defendant to be given credit for any time he's
24 entitled to pursuant to 24-13-40.

25 Also, no contact with the **Minor** and active electronic

1 monitoring pursuant to Section 23-3-540(B) and (G).

2 (Whereupon, the trial jury was returned and excused
3 outside the presence of the defendant.)

4 MS. OVERBY: Thank you, Judge.

5 MR. SHEALY: Thank you, Your Honor.

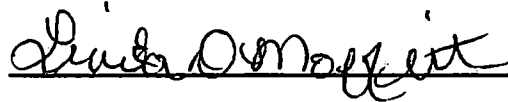
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 10th day of July 2017.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

March 29, 2018

A handwritten signature in cursive script, appearing to read "Linda D. Moffitt", is written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

WITNESSES

Spartanburg County Sheriff's Office

2. REPORTED

3. CASE FILED

ARREST WARRANT NUMBER

2015A4210102213

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

DEC 04 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

15-GS-42-5243

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

DEC 14 2015

TERM

THE STATE
vs.

Richard Todd Stribling

Indictment for
CRIMINAL SEXUAL CONDUCT WITH A
MINOR, FIRST DEGREE

SC Code: 16-3-0655(A)(2), 16-3-655(D)(2)
CDR Code: 3022
Class: FEL/A

FILED
CLERK OF COURT
2015 DEC -9 PM 2:51
M. HOPE BLACKLEY

cur

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

DEC 04 2015

At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

That the Defendant Richard Todd Stribling, did in Spartanburg County, on or between the dates of February 11, 2015 and April 3, 2015, commit the offense of Criminal Sexual Conduct with a Minor in the First Degree, in that the Defendant did commit a sexual battery upon the minor MINOR _____, who was less than sixteen (16) years of age at the time of the said incident, and the Defendant has previously been convicted of, plead guilty or nolo contendere to, or adjudicated delinquent for an offense listed in Section 23-3-430(C) or has been ordered to be included in the sex offender registry pursuant to Section 23-3-430(D).

Said incident occurred in Spartanburg County, South Carolina, in violation of §16-3-655(A)(2), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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

Lindsey H. Orally
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.

Richard Todd Stribling

AKA:

Race: WHITE Sex: M Age: 37
DOB: 1979 SSN: [REDACTED]

City, State, Zip: Spartanburg, SC 29301

DL#: [REDACTED] SID#: [REDACTED]

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

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor - victim under 16 years of age and offender w/previous record under 23-03-0430(c) or (d) (10-30 years)

in violation of § 16-03-0655(A)(2) of the S.C. Code of Laws, bearing CDR Code # 3022

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45 w/minor 1st or Lewd ActThe charge is ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials, 15The plea is ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State. YKLindsey H. Overby, 79869 SC Bar# Defendant
OVERBY, LINDSEY H. SC Bar# Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed ___ years

and/or to pay a fine of \$ ___; provided that upon the service of ___ days/months/years and/or payment of \$ ___ plus costs and assessments as applicable*, the balance is suspended with probation for ___

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

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

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

SPECIAL CONDITIONS:

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

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

Payment Terms: ___

☐ Set by SCDPPPS

Recipient: ___

*Fine: \$

§ 14-1-206 (Assessments 107.5%) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/cv \$

3% to County (if paid in installments) \$ 2.5

TOTAL \$ 197.50

Clerk of Court/ Deputy Clerk [Signature]

Court Reporter: [Signature]

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS4205243

A/W#: 2015A4210102213

Date of Offense: 2/11/2015 - 4/3/2015

S.C. Code § 16-03-0655(A)(2)

CDR Code #: 3022

SENTENCE SHEET

ALCORO

☐ CONVICTED OF or ☒ PLEADS☐ § 23-03-0430(c) or (d) (10-30 years)

in violation of § 16-03-0655(A)(2) of the S.C. Code of Laws, bearing CDR Code # 3022

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45 w/minor 1st or Lewd ActThe charge is ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials, 15The plea is ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State. YKLindsey H. Overby, 79869 SC Bar# Defendant
OVERBY, LINDSEY H. SC Bar# Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed ___ years

and/or to pay a fine of \$ ___; provided that upon the service of ___ days/months/years and/or payment of \$ ___ plus costs and assessments as applicable*, the balance is suspended with probation for ___

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

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

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

SPECIAL CONDITIONS:

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

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

Payment Terms: ___

☐ Set by SCDPPPS

Recipient: ___

*Fine: \$

§ 14-1-206 (Assessments 107.5%) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/cv \$

3% to County (if paid in installments) \$ 2.5

TOTAL \$ 197.50

Presiding Judge [Signature]

Judge Code: 2053

Sentence Date: July 13, 2017

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Spartanburg)Full name and prison number (if any) of Applicant.)
Richard T. Strickling 263959)

v.)

State of South Carolina)

2018CP4200507
IN THE COURT OF COMMON PLEASAPPLICATION FOR
POST-CONVICTION RELIEFRECEIVED
JUL 12 AM 11:03INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Spartanburg County detention center
2. Name and location of Court which imposed sentence Spartanburg County Circuit Court
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015GS4205243
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) July 13th, 2017 15 years, No contact with victim,
 - (b) active electronic monitoring.

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
 No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) I Thought that the time limit is 10 Days for an appeal. And From Kirkland Reception and Evaluation, it would have been almost impossible for me to do an appeal by myself. We were locked in our cell 24 hours a day 7 Days a week.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Answer to this question is on an additional page Due to not enough room.

2016 FEB 12 AM 11:03
 KIRKLAND RECEPTION AND EVALUATION

- (a) _____
 (b) _____
 (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10): Answer to question is on an additional page.
 (a) Due to not enough room.
 (b) _____
 (c) _____
12. Prior to this application have you filed with respect to this conviction:
 (a) any petition in a State Court under South Carolina Law? No
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
 (a) the specific nature thereof:
 i. N/A
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. N/A
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. N/A
 ii. _____
 iii. _____

RECEIVED
 FEB 12 AM 11:03

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. Motion for a mistrial

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. Jury trial

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) No(b) N/A(c) N/A

17. Were you represented by an attorney at any time during the course of:

FILED
2012 FEB 12 PM 11:03
CLERK OF COURT

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Matthew Shealy
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Motion from state for a Bond modification
- ii. Jury Trial
- iii. Guilty Plea
19. State clearly the relief you seek in filing this application:
Sentence Vacated and over-turned
New trial Granted
20. Are you now under sentence from any other court that you have not challenged?
NO

2006 FEB 12 AM 11:03
 FILED

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Re. Stelly

SWORN to and subscribed before me this 7th
day of FEBRUARY, 2018.

John K. B. (L.S.)
Notary Public

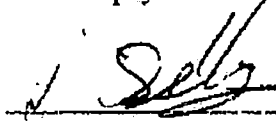
My Commission Expires: 6-20-26

FILED
2018 FEB 12 AM 11:03
CLERK OF COURT

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Applicant

SWORN or affirmed to and subscribed before me this

7th day of February, 2018


Notary Public

My Commission Expires: 6-20-26

2018 FEB 12 AM 11:04
NOTARY PUBLIC

I am being held in Custody unlawfully for several Reasons. The grounds on which I am basing my allegation are as follows.

- Ineffective assistance of Counsel

- 1.) Counsel had a conflict of interest.
- 2.) Counsel failed to investigate, or perform certain pretrial functions.
- 3.) Counsel failed to properly select a jury.
- 4.) Counsel failed to pursue defenses available to Defendant.
- 5.) Counsel failed to use important evidence at trial.
- 6.) Counsel prejudiced the outcome of my case.

- I am also being held unlawfully because I was Improperly denied a motion to mistrial at trial by Judge Durham Cole.

20FEB12 11:11:03
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FBI - JAIL

ANSWER 11/11/11 11/11/11
The facts that support each of the grounds that I set ³⁶⁷ in question No. 10

- Ineffective assistance of Counsel

1) Counsel had a conflict of interest

During Jury selection Counsel allowed a juror to be seated on the jury for my trial. He knew this juror personally he also knew this juror's husband and in fact was friends with this couple. This juror was later made foreman of the jury. The juror's husband was or is an Attorney. How do I know the true nature of the relationship between my counsel and this juror and this juror's family?

2) Counsel failed to investigate, or perform certain pretrial functions.

Without the DNA evidence the state couldn't even get an arrest warrant. At an attorney client meeting between counsel and myself at the Spartanburg County Jail, Counsel informed me that it looked as if the DNA evidence in my case was contaminated and counsel said that he was in the process of locating an expert to prove that the DNA was contaminated. MY DNA was said to have matched a fetus from the victim in my case. But the victim in my case was my ~~daughter~~ ^{RS} Daughter. So if there was a match with my DNA then it could have been a match with my Daughter's DNA not with the fetus tissue. If there was contamination then of course my DNA would have matched my own Blood Daughter. It doesn't mean that it actually matched the fetus tissue. The DNA actually passed through more hands than can be counted. For example it started at an abortion ~~center~~ center in Atlanta GA. then to Spartanburg SC. Spartanburg regional Hospital, SLED, Greenville Hospital back to Spartanburg County Sheriff's office and then to an independent DNA center in Texas. Before a match could be made. The only thing my counsel did was he got someone to look at the results of the private DNA place in ~~the~~ Texas.

If Counsel would have investigated the DNA evidence by hiring a DNA expert to retest or look to see if there was any contamination instead of just looking at the results of the states expert results. Counsel also failed to look into the victims past allegations against her uncle in the state of Alabama which resulted in the uncle being sent to prison.

3.) Counsel failed to properly select a jury.

The fact that counsel allowed a friends ~~of his~~ wife to be seated on my jury had a major effect on my Decision not to go ahead and let the jury get charged and begin deliberations. I had no idea what kind of relationship my counsel had with this juror and her husband and this juror was the jury foreman. This is one of the main reasons I took the 15 year plea instead of trusting the jury with my life. What if the juror or her husband had a grudge or felt vindictive toward my counsel for something I couldn't trust that. So I ended up doing something that I didn't want to do plead Guilty.

4.) Counsel failed to pursue defenses available to defendant. If counsel would have pursued an independent DNA expert to redue the whole DNA process the truth would have been clear and the states case would have folded. Contamination could have been proved.

I signed 5 medical releases for my mental Health records because I'm Bipolar. Counsel failed to pursue any defense in my case and just wanted me to plead Guilty even though I said since the very beginning that I went a jury trial.

2016 FEB 12 AM 11:03
JAMES C. GOSSETT

(5.) Counsel failed to use important evidence at trial.

The allegations made against me by the victim amounts to forced rape. I gave counsel my cell phone which has photos of me and the victim, this cell phone also has text messages as well as facebook messages on it between me and the victim and me and the victims mother. This phone with the photos and messages would have been great for the jury to see, and to be able for the jury to read these messages back and forth between me, the victim and the victims mother. It's clear in the photos and messages that the victim was not in distress. The dates show that these photos and messages was after the date that I was suppose to have raped this victim. All you see is smiles, happy and happy people and the messages tells a different story than the allegations the victim made about the rape. Also the floor plan at the ~~times~~ house makes the victim's statement impossible. I pointed this out and showed this to counsel deep in mind please that given how serious this allegation was and even with my criminal record the Head Solicitor and the investigators still would not charge me with a crime until months later when the DNA came back. I think they knew that the victims statement was a lie.

(6.) Counsel prejudiced the outcome of my trial and my case.

By not investigating the DNA evidence, and by not using important evidence counsel made it impossible for me to win my case. The DNA matched mine because the fetus issue was contaminated with my biological Daughters DNA after an abortion of the fetus. If Counsel would have used evidence that I gave him it would have been easy for him to prove that the victim was ~~was~~ telling complete lies in her statement.

Counsel offered absolutely zero Defense in my case. And lied to me about being ready for trial. By the time the prosecution rest it's case based off my counsels performance before and during trial and with a jury foreman who may or may not have had vindictive feelings for my counsel played a major part in me pleading guilty even though for over 2 years All I Wanted was a fair and just Jury Trial.

Judge Cole who presided over my trial Improperly Denied a motion to mistrial.

1.) After the state rests there case my attorney requested a mistrial because the state had multiple complete missing links in the chain of Evidence not just breaks but whole missing links. These missing links had to do with the DNA process. For an example of one of the missing link the employee or (expert) that actually did the first 3 steps of the process of testing the DNA evidence wasn't at my trial and couldn't be located. The state struggled for over 2 Days trying to fix these problems they were flying people in but they still couldn't fix it there where way too many missing links and breaks. Spartanburg County Sheriffs Office picked up the fetus tissue along with all the after Birth from the Victim at an abortion clinic, Spartanburg County investigator then took the evidence to a Doctor at Spartanburg Regional Hospital to get the Fetus tissue separated from the Mothers tissue. Then after this the County investigator shipped the evidence to Sled for testing for a match to my DNA.

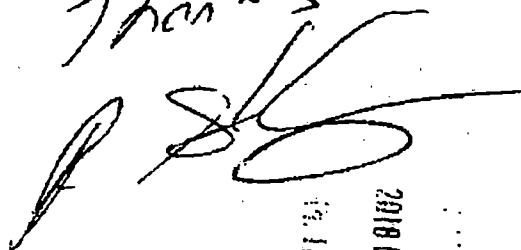
But the expert at Sled couldn't get a match because the separation was done so badly the expert couldn't tell what was the tissue of the fetus and what was the tissue of the Victim. This was said at my trial so it's on record. Sled shipped the evidence back to the County investigator and the investigator took the tissue to a different Doctor at the Greenville Hospital. The Doctor at Greenville attempted to separate the tissue again. Then the Evidence was shipped to a privately run independent DNA testing institution in Texas this place isn't even in Business anymore. But through this whole process many many people worked and worked with and actually did things to this DNA Evidence. And many of these people can't be found so therefore they can't testify to what they actually did to this DNA Evidence. And a lot of the stuff these missing people did to the evidence was said by other experts who were unable to testify testified where very important to the process of testing the DNA. This certainly would constitute a mistrial in any court. If it would have been any other Judge it would have been ruled a mistrial. During all this handling of the DNA it was contaminated! The DNA from the mother which is my Biological Daughter got contaminated with the DNA of the fetus tissue that's why there was a match for my DNA!

2012 FEB 12 AM 11:03
OFFICIAL

Dear Clerk

Please file this intire PCR application. The instructions state that I can use additional pages if I need extra room. There are 6 additional pages with answers to question on the PCR. Please send me a clock stamped copy of the PCR for my records

Thanks

A handwritten signature in black ink, appearing to be 'P. S. G.' or similar, written over the 'Thanks' text.

2018 FEB 12 AM 11:03
FBI/DOJ LABORATORY

Richard Stirling 263959
LCI Wendo - 0286
P.O. Box 205
Ridgewill SC. 29472

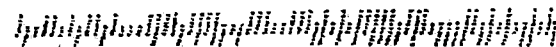
M. Hope Bleckley
Clerk of Court, Spartanburg County
P.O. Box 3483
Spartanburg SC. 29304-3483

SCDC

FEB 17 2018

MAIL ROOM

0483483 8030



STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Richard Stribling,
S.C.D.C. No. 263959,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE SEVENTH JUDICIAL CIRCUIT
)

Case No.: 2018-CP-42-00507

**RETURN AND PARTIAL MOTION TO
DISMISS**

In response to the application for post-conviction relief filed by Richard Stribling (Applicant) on February 12, 2018, Respondent would show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. During its December 2015 term, the Spartanburg County Grand Jury indicted Applicant for first-degree criminal sexual conduct with a minor (2015-GS-42-5243) stemming from a report made April 3, 2015, by Minor 's mother alleging her daughter had disclosed that her ex-husband had sexually assaulted the Minor on March 2, 2015 during a period of time in which the Minor was visiting Applicant.

Matthew W. Shealy, Esquire, represented Applicant. Assistant Solicitors Lindsey H. Overby and Jennifer Jordan of the Seventh Circuit Solicitor's Office prosecuted the case. On July 13, 2017, Applicant appeared in the Spartanburg County Court of General Sessions before the Honorable J. Derham Cole, circuit court judge, where he pled guilty as indicted. Judge Cole sentenced Applicant to imprisonment for fifteen years. Applicant did not appeal his conviction or sentence.

II.

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Ineffective assistance of counsel"
 - a. "Counsel had a conflict of interest."
 - b. "Counsels failed to investigate, or perform certain pretrial functions."
 - c. "Counsel failed to properly select a jury."
 - d. "Counsel failed to pursue defenses available to defendant."
 - e. "Counsel failed to use important evidence at trial."
 - f. "Counsel prejudiced the outcome of my case."
2. "I am also being held unlawfully because I was improperly denied a motion to mistrial at trial by Judge Derham Cole."
 - a. "Judge Cole who presided over my trial improperly denied a motion to mistrial."

Attached to and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the plea transcript and his application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

III.

Applicant's allegations of ineffective assistance of counsel are without merit. The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process

that [it] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent requests that the claim of "Judge Cole who presided over my trial improperly denied a motion to mistrial" be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20.

"Judge Cole who presided over my trial improperly denied a motion to mistrial" is not a claim cognizable under the act. Applicant is not collaterally attacking his guilty plea or sentence, but rather seeks to collaterally attack his previous collateral attack. Applicant's contention that such a ground is impliedly created by S.C. Code Ann. § 17-27-90 is meritless, as that section does not pertain to *what* may be raised, but *how* valid grounds must be raised.

Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). These issues are improper for post-conviction relief

because they could have been raised on direct appeal and are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief.

For these reasons and pursuant to Rule 12(b)(6), SCRCP, the Court should dismiss the Application for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP; Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments ^{to} this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests

that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI.

Respondent denies each allegation not expressly admitted, qualified, or explained.

VII.

WHEREFORE, Respondent respectfully requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

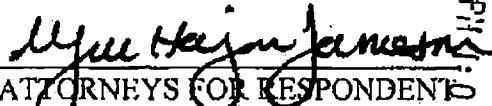
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

April 24, 2018



ALAN WILSON
ATTORNEY GENERAL

April 24, 2018

The Honorable M. Hope Blackley
Spartanburg County Clerk of Court
Post Office Box 3483
Spartanburg, South Carolina 29304-3483

Re: Richard Stribling, #263959, v. State of South Carolina
2018-CP-42-00507

Dear Ms. Blackley:

Enclosed please find the original **Return and Partial Motion to Dismiss** in the above-captioned case for filing in your office.

Sincerely,


for

Megan Harrigan Jameson
Senior Assistant Deputy Attorney General

MHJ/lm
Enclosure

cc: Rodney W. Richey, Esquire

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No: 2018-CP-42-00507

Richard Todd Stribling,

Applicant,

AMENDMENTS TO POST CONVICTION RELIEF APPLICATION

vs.

The State of South Carolina

Respondent.

CLERK OF COURT
SPARTANBURG COURT
2018 OCT 25 PM 1:12
M. HOPE BACKLIE

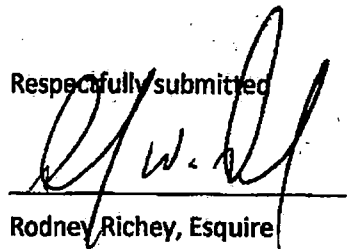
The Applicant by and through his undersigned counsel amends his Post-Conviction Relief

Application filed on February 12, 2018 as follows:

- 1) Trial Counsel was ineffective for failing to contest the chain of custody of the DNA Sample relied upon by the State's Experts and;
- 2) By failing to contest the State's evidence regarding the DNA test, results and the method in which the test was performed and;
- 3) By failing to argue that the DNA sample was contaminated;
- 4) Trial Counsel was ineffective for failing to argue prior false allegations or allegations of sexual abuse by the alleged victim and;
- 5) By failing to argue third party guilt or that the minor had sexual relation with another individual;
- 6) By failing to argue the gestational age of the fetus and;
- 7) By failing to argue and admit prior contact the allege victim had with the defendant through phone records, facebook and;
- 8) The Applicant guilty plea was not knowingly and intelligently made.

Wherefore, the applicant respectfully submits the above amendments to his Post-Conviction Relief Application.

Respectfully submitted


Rodney Richey, Esquire
RICHEY AND RICHEY, P.A.

Post Office Box 10196
Greenville, SC 29603
864-467-0503

October 25, 2018

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

RICHARD T. STRIBLING,

APPLICANT,

-VS-

STATE OF SOUTH CAROLINA,

RESPONDENT.

2018-CP-42-00507

TRANSCRIPT OF RECORD

NOVEMBER 9, 2018
SPARTANBURG, SOUTH CAROLINA

BEFORE:

THE HONORABLE J. MARK HAYES

APPEARANCES:

ATTORNEY FOR APPLICANT:

RODNEY W. RICHEY, ESQ.

ATTORNEY FOR RESPONDENT:

JORDAN A. COX
ASSISTANT ATTORNEY GENERAL

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>

(No Exhibits Were Presented During This Hearing)

1 **MR. COX:** Your Honor, may it please the Court? The
2 case before you currently is Mr. Richard Stribling versus
3 the State of South Carolina. The case number is 2018-CP-42-
4 0507. We are here on Mr. Stribling's application for post
5 conviction relief, which he filed on February 12th, 2018.

6 Mr. Stribling is confined to the South Carolina
7 Department of Corrections pursuant to orders of commitment
8 of the Spartanburg County Clerk of Court. During it's 2015
9 term the Spartanburg County Grand Jury indicted Mr.
10 Stribling for first degree criminal sexual conduct with a
11 minor stemming from a report made on April 3rd, 2015 by the
12 Minor 's mother alleging her daughter had disclosed that her
13 ex-husband had sexually assaulted the Minor on March 2nd,
14 2015 during a period of time in which the Minor was
15 visiting the applicant.

16 Mr. Stribling was represented by Mr. Matthew Shealy.
17 Assistant solicitor was Lindsey Overby and Jennifer Jordan
18 of the Seventh Circuit Solicitor's Office that prosecuted
19 the case.

20 On July 13th, 2017 the applicant appeared in the
21 Spartanburg County Court of General Sessions before the
22 Honorable J. Derham Cole, Circuit Court Judge, where he pled
23 guilty as indicted. Your Honor, this case did start out as
24 a trial, and a significant portion of the trial had been
25 completed. And then Mr. Stribling made the decision to

1 plead guilty. Judge Cole sentenced the applicant to
2 imprisonment for 15 years. He did not appeal his conviction
3 or his sentence.

4 In his application for post conviction relief the
5 applicant alleges the following; Trial counsel was
6 ineffective for failing to contest the chain of custody of
7 the DNA sample relied upon by the State's experts.

8 Number two, by failing to contest the State's evidence
9 regarding the DNA test, results and the method in which the
10 test was performed.

11 Number three, by failing to argue that the DNA sample
12 was contaminated.

13 Number four, trial counsel was ineffective for failing
14 to argue prior false allegations or allegations of sexual
15 abuse by the alleged Minor .

16 Five, by failing to argue third party guilt or that the
17 minor had had sexual relation with another individual.

18 Six, by failing to argue the gestational age of the
19 fetus.

20 Seven, by failing to argue and admit prior contact the
21 alleged Minor had with the defendant through phone records,
22 Facebook.

23 And, number eight, the applicant -- the applicant's
24 guilty plea was not knowingly and intelligently made.

25 Your Honor, at this time I would turn it over to Mr.

RICHARD STRIBLING - DIRECT EXAMINATION BY MR. RICHEY

6

1 Richey, who represents this applicant in the PCR matter.

2 MR. RICHEY: Thank you, Your Honor. We call Mr.

3 Stribling.

4 THE COURT: Mr. Stribling, just come right up here.

5 Just stand right up here and place your left hand on the

6 Bible and raise your right hand and let me swear you in.

7 You solemnly swear that the testimony you're about to give

8 the Court will be the truth, the whole truth and nothing but

9 the truth?

10 MR. STRIBLING: Yes, sir.

11 THE COURT: Thank you. And watch your step as you're

12 stepping up. But just have a seat in that red chair. And

13 pull the red chair up to the microphone.

14 **Direct Examination by Mr. Richey:**

15 Q. Sir, would you state your name, please?

16 A. Richard Stribling.

17 Q. And, Mr. Stribling, are you currently in the Department
18 of Corrections?

19 A. Yes, sir.

20 Q. And what are -- you'll have to speak up. What are you
21 in the Department of Corrections for?

22 A. Criminal sexual conduct with a minor.

23 Q. And what type of sentence did you receive?

24 A. 15 years.

25 Q. And did you have a guilty plea, or a trial or both?

RICHARD STRIBLING - DIRECT EXAMINATION BY MR. RICHEY

7

1 A. Both.

2 Q. Okay. And who represented you at those proceedings?

3 A. Mr. Shealy.

4 Q. Okay. And it's your position that you filed an
5 application for post conviction relief, is that correct?

6 A. Yes, sir.

7 Q. And -- you're going to have to speak up.

8 A. Yes, sir.

9 Q. And you filed this application because you believe that
10 he did not effectively represent you, is that correct?

11 A. Yes, sir.

12 Q. And I'm just going to get -- I'm just going to go over
13 with you some brief facts of what was alleged. This was
14 alleged to be a criminal sexual conduct with your daughter,
15 correct?

16 A. Yes, sir.

17 Q. And these allegations were made by her mother, correct?

18 A. Yes, sir.

19 Q. And you proceeded to trial initially, correct?

20 A. Yes, sir.

21 Q. And the State -- after the State's case there was a
22 directed verdict motion made, is that correct?

23 A. Yes, sir. I think it was a ---

24 Q. A mistrial.

25 A. There was a mistrial, yes, sir.

RICHARD STRIBLING - DIRECT EXAMINATION BY MR. RICHEY

8

1 Q. Yeah. And after that mistrial ---

2 A. An exclusion, too, I think.

3 Q. --- the motion was denied, you pled sometime after
4 that, correct?

5 A. Yes, sir.

6 Q. Okay. And you pled under North Carolina versus Alford,
7 is that correct?

8 A. Yes, sir.

9 Q. The facts of what happened was the child -- the child
10 made the allegation that she was pregnant, is that correct?

11 A. Yes, sir.

12 Q. And she had went to Georgia to get an abortion, is that
13 correct?

14 A. Yes, sir.

15 Q. And when the allegations were made against you what did
16 law enforcement do?

17 A. They came looking for me and they took me to the
18 hospital and did a swab, a buccal swab of my DNA.

19 Q. And do you know what they did in Georgia?

20 A. From the discovery and from trial, yes, sir.

21 Q. Did they go -- they went to Georgia because the child
22 had an abortion, correct?

23 A. Yes, sir.

24 Q. And they took -- somehow they found the fetus',
25 whatever, placenta in Georgia, is that correct?

RICHARD STRIBLING - DIRECT EXAMINATION BY MR. RICHEY

9

1 A. Yes, sir.

2 Q. And did they bring that back to South Carolina for
3 testing?

4 A. Tracy Moss did. Detective Moss was down there when the
5 abortion took place. And she brought it back to
6 Spartanburg. And I think it went from Spartanburg to SLED
7 -- over there from -- to Spartanburg Regional Hospital to be
8 separated to begin with and -- by Dr. Wren.

9 And after he did the separation, she took it to
10 Columbia to SLED. And the lady told them -- the lady from
11 SLED told them that the separation was done so badly that
12 she couldn't do the test.

13 Q. Okay. When you say separation, what do you mean by
14 separation?

15 A. It was a blood clot. It was a bloody -- blood clot.
16 And it had to be separated to try to find the fetal tissue.
17 It wasn't a fetus, it was too -- it wasn't grown into a
18 fetus yet, it was just all tissue. And they had to separate
19 it trying to find the fetal tissue from the mother's tissue.
20 And the lady at SLED said it was done so badly that she
21 couldn't do the test and sent it back. So Tracy Moss, she
22 took it somewhere else to get it done again.

23 Q. And was it tested by Cellmark?

24 A. At the last person -- that was the last people to get
25 it after -- there was several other people that -- through

RICHARD STRIBLING - DIRECT EXAMINATION BY MR. RICHEY

10

1 the chain that had contact with it and did things with it,
2 but in between that, the two, though.

3 Q. And when you talked to your lawyer prior to going to
4 trial did y'all have discussions about pleading guilty or
5 anything?

6 A. The week before trial, the whole week, every day that
7 week Mr. Shealy came to the annex asking me to plead guilty,
8 and sometimes two times a day. And before that I always
9 told him no.

10 And the Friday before trial he brought me up in front
11 of Judge Hayes and turned down the guilty plea in front of
12 him on record. And then again in front of Judge Cole before
13 the trial started Monday morning.

14 Q. Okay. And so you were brought up to say, hey, you have
15 to plead or go to trial?

16 A. Right.

17 Q. Okay. And there was no rulings made in your case at
18 that point? It was just plead or go to trial?

19 A. Right.

20 Q. Okay. So this test that was supposedly took in and
21 divided and all that, what were you told the results of it
22 were?

23 A. It was positive or it matched mine.

24 Q. Okay. And did you have discussions with your lawyer
25 about the results of this test?

RICHARD STRIBLING - DIRECT EXAMINATION BY MR. RICHEY

11

1 A. He told me that it matched.

2 Q. Okay. Did you -- did y'all discuss any issues with the
3 test? Whether it was contaminated or anything of that
4 nature?

5 A. No. We did it -- he come to see me at the annex in
6 February of 2016. And he told me there may be some
7 contamination issues and the State may have some problems
8 with the chain of custody. And before that I knew something
9 was wrong, but I didn't know what it was.

10 And it just made sense to me that's the only thing it
11 could have been, contamination or either the way I told you
12 last about when they -- how she cut the sample on A3 slide
13 and how she cut it out. It had the mother's tissue and the
14 ...

15 Q. When you say she, who are you referring to?

16 A. The lady at Cellmark, Jill Cramer. She cut -- there
17 was a slide, a glass slide. And it had the mother's tissue
18 and the -- and it's supposed to been the fetal tissue in it.
19 And the doctor circled it, made a circle around the -- where
20 the fetal tissue was supposed to been at.

21 But when she testified, she didn't testify to no
22 directions or where she was supposed to cut it at. She
23 didn't testify to nothing about the circle that the doctor
24 drew for her. She didn't testify where she cut it at or
25 anything like that. And if she'd cut the wrong piece of the

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1 slide -- of the tissue, it would have been my daughter's and
2 it wouldn't matched mine.

3 Q. Okay. And so you believe that your own lawyer was
4 ineffective by not bringing that out?

5 A. Right.

6 Q. Let's talk about -- did you all talk about any other
7 allegations the child had made against other family members?

8 A. I told him about she had her uncle, her mother's
9 brother, locked up in Alabama for it. Steven Shaw is his
10 name.

11 Q. And you discussed that with your lawyer?

12 A. Yes, sir. I told him about it in February of 2016.

13 Q. When you say third party guilt, what are you referring
14 to, third party guilt?

15 A. When she showed up -- what happened is her mother
16 called me on the cell phone and told me that she's ---

17 **MR. COX:** Objection, Your Honor.

18 **THE COURT:** I'll sustain the objection.

19 **MR. RICHEY:** Okay.

20 Q. Did you -- did you learn that she was in a relationship
21 with someone else?

22 A. Yes. She -- when she came to the house, she told me
23 that ---

24 **MR. COX:** Objection.

25 Q. No, no. You can't tell me what somebody told you. Did

RICHARD STRIBLING - DIRECT EXAMINATION BY MR. RICHEY

13

1 you learn that she was involved in a relationship ---

2 A. Yes.

3 Q. --- at that time?

4 A. Yes.

5 Q. And was that relationship -- did it take place -- was
6 it taking place at the time this allegation was made?

7 A. Yes.

8 Q. And did you -- did you want your lawyer to argue that
9 that was the source of this pregnancy, not you?

10 A. Right.

11 Q. And ---

12 A. He was 20 years old -- he was 20 years old. And I
13 think she was trying to protect him now -- after I've had
14 time to think about it all.

15 Q. Okay. So you believe the lawyer should have said that
16 you were not the source of the pregnancy?

17 A. Yes, sir.

18 Q. Okay. And did you tell him about that?

19 A. Yes, sir. I told him his name was Justin Massengil.

20 Q. And that's -- that leads into the gestational period --
21 you believe that that was important in terms of gestational
22 period of the fetus?

23 A. Yes, sir. It was -- it was, you know, testified to at
24 trial that it was a margin error. Two weeks before or two
25 months -- two weeks after with the margin of error and

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1 everything. It could be -- it was two days before she
2 showed up and he was in the time-line as far as the
3 gestational age.

4 The lady that did the abortion, Dr. Haddock, testified
5 that she's not the one that confirms the gestational age,
6 that somebody in pathology does that. And when the lady in
7 pathology testified, nobody asked her did she confirm the
8 gestational age. The State didn't or Mr. Shealy didn't.
9 They didn't -- didn't ask to confirm the gestational age and
10 -- of the -- of the fetal tissue.

11 Q. Okay. And also there were contact that the alleged
12 Minor had with you after this incident occurred?

13 A. Sir?

14 Q. There was -- there were -- the child had contact with
15 you after the incident supposed to have occurred, right?

16 A. Right.

17 Q. And those contacts were made through text messages and
18 all that?

19 A. Text messages.

20 Q. And Facebook?

21 A. Facebook messages.

22 Q. And where were those records at?

23 A. At -- I'd give Mr. Shealy my cell phone with those --
24 with those text messages on it.

25 Q. And did those messages relay any tension between you or

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1 the child?

2 A. Just when I wouldn't bring her what she wanted. She
3 wanted me to bring her my ---

4 MR. COX: Objection, ---

5 A. --- food stamp card.

6 MR. COX: --- Your Honor.

7 THE COURT: I'll sustain the objection as far as the
8 hearsay.

9 Q. That was -- there were positive contacts between you
10 and the child?

11 A. Right. Yes, sir.

12 Q. And there was no contact that law enforcement was
13 alerted to to your knowledge? You don't ---

14 A. No. She give me her new address. She went to her
15 aunt's house and she gave me her address and told me to
16 bring her ---

17 MR. COX: Objection, Your Honor.

18 THE COURT: I'll sustain the objection.

19 Q. Okay. Based on these conversations you had with her,
20 you don't believe that anything was inappropriate about the
21 conversations?

22 A. No, sir.

23 Q. Okay. And the conversations were cordial and of a
24 parent/daughter relationship, correct?

25 A. Yes, sir.

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1 Q. And there was -- from your observation there was no
2 conversation in them that warranted any follow-up by law
3 enforcement?

4 A. No, sir.

5 Q. And you believed -- based on what you believed, the
6 conversations were positive and beneficial to you?

7 A. Yes, sir.

8 Q. And did you discuss that with your lawyer?

9 A. Yes, sir.

10 Q. And is that -- did you want him to use that
11 information?

12 A. I wanted him to use that information that was on my
13 cell phone and all the prior messages and texts. There was
14 thousands of them between me and Karen, which is the mother,
15 and the alleged MINOR..

16 Q. Okay. And let me make sure I got this on the record.
17 You wanted him to argue that the sample was contaminated?

18 A. Yes, sir.

19 Q. And why do you believe that?

20 A. Because it was -- it was all mostly the alleged
21 Minor 's tissue. It was just a very small bit of the fetal
22 tissue in it. And it was all blood and tissue that -- the
23 majority of the tissue wouldn't matched mine because it was
24 my daughter's.

25 Q. And did you express any concerns about the handling of

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17

1 the sample?

2 A. Yes. It went -- it went through many hands. Nobody
3 knows how many hands it was. And a lot of people don't even
4 know whose name it was or who actually did what or how long
5 they had it. I mean, it's just nobody knows how many hands
6 it passed through.

7 Q. And the -- you believe that your lawyer -- he did argue
8 the chain of custody, is that correct?

9 A. He did. He did a good job on that.

10 Q. And -- but it's your position that he should have
11 attacked more of the missing spots of it, correct?

12 A. Right. That's the only -- if he'd put up a defense in
13 front of the jury, give the jury something else to think
14 about, I would have most definitely give it to the jury
15 instead of taking a plea.

16 Q. Well, let's talk about your guilty plea. You
17 ultimately pled guilty, correct?

18 A. Yes, sir.

19 Q. Okay. At the time -- tell me why -- you felt like you
20 had a good case on the chain of custody, correct?

21 A. Yes, sir.

22 Q. Tell me why then in the -- toward the end of it you
23 decided to plead guilty.

24 A. Well, Mr. Shealy was telling me that they was going to
25 find -- they was going to find me guilty, and I was going to

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18

1 get 30 years. He told me that in the beginning -- right
2 after Judge Cole denied the mistrial, he leaned over to me
3 and told me, he's just wrong, he's dead wrong, you're going
4 to get an appeal, you're going to come back, it'll be about
5 a year or so, but you'll be back on an appeal and we'll do
6 it all over again or whatever.

7 And then a few minutes later he comes back and tells me
8 they had 15 years on the table and his whole tune had
9 changed on the appeal. He said it's going to take five
10 years before we come back and you're not going to get no
11 credit for the time that you was doing. And he told me that
12 they was going to find me guilty.

13 And I asked him about the Alford plea. And he said we
14 could do the Alford plea and maintain your innocence. Well,
15 by doing that, I had in my mind I was protecting my rights
16 on appeal. I thought I'd still be able to appeal. And I
17 didn't realize my mistake until I was in front of Judge Cole
18 and he was telling me that I couldn't appeal -- I couldn't
19 appeal.

20 And he kept asking me all the questions, did I
21 understand it. And I was scared to say anything in front of
22 Judge Cole because I was scared he'd give me 30 years anyway
23 because it was a recommendation and not a negotiated
24 sentence, I mean, plea.

25 Q. Okay. So you did not want -- you wanted to have the

RICHARD STRIBLING - DIRECT EXAMINATION BY MR. RICHEY

19

1 appellate rights restored?

2 A. I did. Yes, sir.

3 Q. Okay. And you didn't tell Judge Cole because -- I'm
4 sorry, I didn't understand the second part.

5 A. I was scared that he would go ahead and give me the 30
6 years on the spot. I didn't know what to do. I didn't know
7 what to do at that time. I didn't realize my mistake until
8 I was already going through the guilty plea. And I didn't
9 -- I didn't know what to do. I didn't want to plead guilty.
10 If I could have backed up, I would have give it to the jury
11 again. I didn't know what to do, though.

12 Q. And you believe that your chain of custody argument
13 made by the lawyer was effective? I mean, the argument
14 itself about the chain of custody, you believe that it was
15 effective enough that you could have won on appeal?

16 A. Yes, sir.

17 Q. Okay. Your attorney, he hired an expert, is that
18 correct?

19 A. He told me he did. And he came that Friday and he had
20 some paperwork. I never actually got to see it, but I
21 think, to my understanding, that all they did was check the
22 Cellmark, the way the Cellmark did the test. They didn't
23 actually have the samples or actually retest or anything
24 like that. They just looked that over of how Cellmark did
25 their test and came up with their result.

RICHARD STRIBLING - DIRECT EXAMINATION BY MR. RICHEY

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1 Q. It's your position today that you -- that you want the
2 Court to grant you a new trial, correct?

3 A. Yes, sir.

4 Q. And that -- and that you believe your lawyer's
5 performance prejudiced you, correct?

6 A. Yes, sir.

7 Q. And you would like this Court to grant you the right to
8 go back and have another trial?

9 A. Yes, sir.

10 Q. Looking at this guilty plea did you believe that it was
11 made freely and voluntarily?

12 A. No, sir.

13 Q. And why not?

14 A. I didn't understand. I thought that by doing the
15 Alford plea, maintaining my innocence, that I was protecting
16 my rights to an appeal. I didn't -- I didn't realize I
17 wasn't. I thought I still had a right to appeal.

18 Q. And after Judge Cole went through that and told you you
19 did not, at that point why didn't you say something to the
20 court?

21 A. I was afraid that Judge Cole would give me the 30 years
22 anyway. I mean, that's -- because he'd had so much trouble
23 with this trial back and forth, like the objections, all the
24 sidebars. He'd done hollered at the solicitor about the
25 breaks in the chain of custody. And I didn't -- I was

RICHARD STRIBLING - CROSS-EXAMINATION BY MR. COX

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1 scared he was fed up with the whole trial.

2 Q. Because in this trial -- go ahead. I'm sorry. Excuse
3 me.

4 A. You could see that he was fed up with the whole trial.
5 He'd -- I think the State had promised -- promised him that
6 -- Judge Cole that there would be a complete chain of
7 custody, and they didn't do it. And he was just tired of
8 it. So I was scared to say anything to him.

9 Q. So you're telling this Court today you're completely
10 innocent of the charge?

11 A. Yes.

12 Q. That you never did anything to your daughter?

13 A. No.

14 Q. Thank you. Answer any questions the State has for you.

15 Cross-Examination by Mr. Cox:

16 Q. Mr. Stribling, can you hear me okay?

17 A. Yes.

18 Q. All right.

19 **MR. COX:** Your Honor, may it please the Court?

20 Q. Mr. Stribling, you were charged with criminal sexual
21 conduct with a minor, correct?

22 A. Yes.

23 Q. Mr. Shealy represented you at trial?

24 A. Yes.

25 Q. And you're here today challenging your guilty plea?

RICHARD STRIBLING - CROSS-EXAMINATION BY MR. COX

22

1 A. Yes.

2 Q. Now you remember when you entered -- when you entered
3 your guilty plea before Judge Cole? That was after most of
4 the trial had occurred, correct?

5 A. Yes.

6 Q. Your attorneys had not or the attorneys had not made
7 closing arguments yet, correct?

8 A. No.

9 Q. This was after ---

10 A. It was right after he denied the mistrial.

11 Q. Okay.

12 A. Directly after it pretty much.

13 Q. Okay.

14 A. They told me I only had -- I had from the time that the
15 bailiff went to go get the jury -- to come back with the
16 jury to make my mind up.

17 Q. Now you didn't plead guilty until the State changed
18 their offer to 15 years, right?

19 A. They had offered that before that day. They had
20 offered a 15 throughout the trial.

21 Q. Okay. But that was the plea offer that you pled to,
22 correct?

23 A. Yes.

24 Q. During that guilty plea do you remember having a pretty
25 good conversation with Judge Cole? He asked you a lot of

RICHARD STRIBLING - CROSS-EXAMINATION BY MR. COX

23

1 questions?

2 A. Yes.

3 Q. Correct?

4 A. Yes.

5 Q. You gave him a lot of answers?

6 A. Yeah.

7 **THE COURT:** Sir, if you would, give verbal responses.

8 She's taking everything down.

9 A. Yes.

10 **THE COURT:** Thank you, sir.

11 Q. And I can slow down, Mr. Stribling. That might be able
12 to help with the answers. I want to go over some of those
13 questions that Judge Cole went over with you during the
14 guilty plea, okay?

15 A. (No response).

16 Q. He went over with you you understood what you were
17 doing there today, correct?

18 A. Yes.

19 Q. Let me back up one second. You were put under oath
20 before pleading guilty, correct?

21 A. Yes.

22 Q. So when you gave those answers to Judge Cole you were
23 -- you had taken an oath to tell the truth, right?

24 A. Yes.

25 Q. Okay. So you understood that you were pleading guilty,

RICHARD STRIBLING - CROSS-EXAMINATION BY MR. COX

24

1 correct?

2 A. An Alford plea, I wasn't -- I'm not all the way clear
3 on all that or I wouldn't have done it. I thought I was
4 maintaining my innocence. I didn't -- I didn't think it was
5 the same thing as pleading guilty.

6 Q. Right. And you -- part of that guilty plea you
7 understood that the State had enough evidence that could
8 possibly lead to your conviction, correct?

9 A. Right. Yes.

10 Q. But you never -- you never admitted your guilt?

11 A. No.

12 Q. Okay. Judge Cole asked you or you confirmed to Judge
13 Cole that you wanted to withdraw your earlier plea of not
14 guilty. You wanted to end the trial and enter your guilty
15 plea under Alford, correct?

16 A. Yes.

17 Q. Okay. Now you understood when you pled guilty that was
18 under a recommendation to the judge, correct?

19 A. Yes.

20 Q. You understood that he did not have to sentence you to
21 that recommendation, correct?

22 A. Yes.

23 Q. He went over with you the sentencing range that he
24 could sentence you to?

25 A. Yes.

RICHARD STRIBLING - CROSS-EXAMINATION BY MR. COX

25

1 Q. You understood that pleading guilty under this law you
2 were already facing a mandatory minimum of ten years, right?

3 A. Yes.

4 Q. And you could get up to 30 years?

5 A. Yes.

6 Q. And Judge Cole went over several of your constitutional
7 rights that you had, correct?

8 A. I don't remember that.

9 Q. Okay.

10 A. I know -- I remember Mr. Shealy's speaking about my
11 constitutional rights, Sixth Amendment, the right to
12 confront my accuser during the -- a motion for mistrial
13 because they didn't put everybody on the stand that should
14 have been there.

15 Q. Okay. Do you remember Judge Cole asking you if you
16 understood that you had an absolute right to remain silent?

17 A. Yes.

18 Q. You remember him asking you that you don't have to say
19 anything about these charges?

20 A. Yes, sir.

21 Q. Tell you you don't have to testify at trial, right?

22 A. Yes.

23 Q. And you made that decision not to testify at trial?

24 A. Right.

25 Q. Okay. And Judge Cole also went over with you that by

RICHARD STRIBLING - CROSS-EXAMINATION BY MR. COX

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1 pleading guilty you would be waiving that right to remain
2 silent? Correct?

3 A. Yes.

4 Q. He went over with you that you would be waiving the
5 right to examine witnesses, correct?

6 A. Right.

7 Q. He went over with you -- and forgive me, Mr. Stribling,
8 I'm going to go through each of these questions, okay, if I
9 sound a little repetitive. He went over with you your right
10 to counsel, that you would be waiving that, correct?

11 A. Yes.

12 Q. Went over with you that you would be waiving the right
13 to a jury trial, correct?

14 A. Yes.

15 Q. And that you would be waiving the right to send the
16 case to the jury and for them to bring you back a verdict,
17 correct?

18 A. Yes.

19 Q. And you would be doing that because you were pleading
20 guilty?

21 A. Right.

22 Q. And you understood all that?

23 A. I understood that.

24 Q. Okay.

25 A. It was starting -- it was starting to come clear to me

RICHARD STRIBLING - CROSS-EXAMINATION BY MR. COX

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1 that I'd made a mistake at around when he started asking me
2 all them questions. I thought Alford would protect me the
3 right to plea, I meant, to appeal.

4 Q. To appeal it?

5 A. To appeal.

6 Q. Okay.

7 A. I thought I could still appeal the chain of custody
8 issue through the Court of Appeals after -- after the guilty
9 plea. I'd just started realizing I wasn't going to be able
10 to do that.

11 Q. Okay. At that point when Judge Cole was going through
12 what you would be waiving?

13 A. Right. I didn't know what to do. I didn't know what
14 to say to him. I was scared that I'd gone too far and he
15 would give me the 30 years. I didn't know what to do.

16 Q. Okay. No one threatened you to plead guilty, correct?

17 A. Threatened me? What you mean like?

18 Q. No one promised or caused you any kind of harm ---

19 A. No.

20 Q. --- by pleading guilty?

21 A. No, no, no.

22 Q. Okay. They never promised you any money or anything
23 like that in exchange for your guilty plea?

24 A. No.

25 Q. Okay. You understood that this would be your decision?

RICHARD STRIBLING - CROSS-EXAMINATION BY MR. COX

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1 A. Yes.

2 Q. Okay. You mentioned during your direct testimony just
3 now that you believed that under Alford you would have the
4 right to still appeal the chain of custody issue?

5 A. Yes.

6 Q. Okay. Judge Cole did go over the fact that you would
7 not be able to appeal those issues during the guilty plea,
8 correct?

9 A. Yes.

10 Q. Okay. He explained that when you plead guilty you are
11 giving up that right to challenge the evidence against you
12 at trial, correct?

13 A. Yeah. I wish I would have backed up right then and
14 give it to the jury because the chain of custody was that
15 bad. I believe I'd have had a good chance at appeal to
16 getting it excluded, and getting it overturned, and getting
17 the evidence excluded, and come back for another trial or
18 either to not being able to have a trial or whatever the
19 case may be.

20 Q. Now Mr. Shealy explained to you that you do have the
21 right to appeal the guilty plea, but it would only be
22 procedurally, correct?

23 A. That's what he was saying.

24 Q. It would have nothing to do with what happened at the
25 trial, correct?

RICHARD STRIBLING - CROSS-EXAMINATION BY MR. COX

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1 A. (Affirmative nod).

2 Q. Okay. Did you ever -- you never told Judge Cole that
3 you didn't understand that, did you?

4 A. No, sir.

5 Q. Okay. And you understood that Judge Cole would be the
6 one who would be accepting your guilty plea?

7 A. No.

8 Q. You -- you did not understand ---

9 A. Oh, yeah, I understood.

10 Q. Okay. As far as the DNA evidence, Mr. Stribling, Judge
11 Cole, during your guilty plea, explained to you that by
12 pleading guilty you are giving up the right to challenge the
13 DNA evidence, correct?

14 A. Yes, sir.

15 Q. He asked you if you understood about that, that you
16 would be giving that up?

17 A. He asked me, yeah.

18 Q. Okay. And he asked you if you still wanted to plead
19 guilty?

20 A. Yes.

21 Q. Knowing that you would be giving up that right?

22 A. He asked me.

23 Q. And you told him yes, sir?

24 A. Yes, sir.

25 Q. You didn't tell him that's not what I want to do,

RICHARD STRIBLING - CROSS-EXAMINATION BY MR. COX

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1 right?

2 A. I made a mistake. I was scared not -- I mean, I was
3 scared to say anything. I should have backed up and just
4 told him I'd rather give it to the jury, but I didn't.

5 Q. Okay.

6 A. I was scared -- I should have -- I should have told him
7 all that. I should have told him that I -- but I was scared
8 that he would give me the 30 years.

9 And if you would have been there, you would know what I
10 was talking about. He was so fed up with the whole
11 situation that I was just scared that he would -- I'd just
12 seen him holler at the solicitors before they went out to
13 the judge's chambers, he and Mr. Shealy and all the
14 solicitors. I didn't -- I didn't -- I was scared he'd give
15 me the 30 years anyway. So that's why I didn't. I didn't
16 know what to do.

17 Q. So you would agree with me, Mr. Stribling, that even
18 through what had happened and you did not understand you
19 would be giving up that right to appeal, you had the
20 opportunity to let Judge Cole know that?

21 A. Yes.

22 Q. And it's your testimony here today that you made a
23 mistake in telling him that you understood?

24 A. I did.

25 Q. Okay. And that was your mistake, correct?

RICHARD STRIBLING - CROSS-EXAMINATION BY MR. COX

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1 A. Yes.

2 Q. Now, Mr. Stribling, you mentioned Mr. Shealy arguing at
3 trial about the chain of custody of that evidence, right?

4 A. Yes.

5 Q. You said he did a good job?

6 A. He did.

7 Q. He just -- he just didn't win the motion, correct?

8 A. He didn't win the motion. I believe he might have won
9 the motion, though, if he would have -- if he would have
10 argued a lot more about the -- what we was talking about
11 with Mr. Richey a while ago. If that would have been more
12 involved in it, it might have been more weight ---

13 Q. Okay.

14 A. --- on the issue. Might would have helped to win a
15 mistrial or whatever, or exclusion part of it.

16 MR. COX: Your Honor, that's all the questions I have
17 for Mr. Stribling.

18 THE COURT: Any redirect limited to what he went into?

19 MR. RICHEY: No, Your Honor.

20 THE COURT: Sir, you may step down. Watch your step as
21 you're stepping down.

22 MR. RICHEY: We'd call Matthew Shealy.

23 THE COURT: Sir, just come right up here and let the
24 Court swear you in, please. You solemnly swear that the
25 testimony you're about to give the Court will be the truth,

MATTHEW SHEALY - DIRECT EXAMINATION BY MR. RICHEY

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1 the whole truth and nothing but the truth?

2 MR. SHEALY: I do, Your Honor.

3 THE COURT: Thank you, sir. Just have a seat in the
4 red chair and pull the red chair up to the microphone.

5 MR. SHEALY: Judge, and if I may, can I get my
6 computer? That's got the ---

7 THE COURT: Um-hum (affirmative).

8 MR. SHEALY: --- transcript of the case on it.

9 THE COURT: And if you need water, there's some right
10 behind you.

11 MR. SHEALY: Yes, sir. Thank you.

12 **Direct Examination by Mr. Richey:**

13 Q. Would you state your name, please, sir.

14 A. Matthew Shealy.

15 Q. And, Mr. Shealy, are you an attorney?

16 A. I am, yes, sir.

17 Q. And where do you practice at?

18 A. I'm in private practice.

19 Q. Okay. And did you recall representing Mr. Stribling?

20 A. I do, yes, sir.

21 Q. Were you retained or appointed to represent him?

22 A. I was appointed. I was with the Public Defender's
23 Office at the time.

24 Q. Okay. At the time of this case your employment was
25 with the Public Defender's Office?

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1 A. Yes, sir.

2 Q. Okay. And I'm just going to ask you some questions in
3 kind of little segments. This chain of custody issue, do
4 you believe that was a viable issue, that was a triable
5 issue?

6 A. Yes, sir.

7 Q. And from reading the transcript, it was an issue that
8 you felt like you had a good opportunity to win?

9 A. Yes, sir.

10 Q. And ultimately Judge Cole ruled against you all in that
11 motion, correct?

12 A. Correct.

13 Q. From a legal -- from your understanding of the law and
14 with the caveat the judge has the final say-so, do you
15 believe that that's a motion you should have prevailed on?

16 A. I did believe that. I do believe that.

17 Q. And was what -- tell me why you believe that.

18 A. Because, as Mr. Stribling said, there were a number of
19 problems with that chain of custody. And it's a very
20 complicated case because there were several different chains
21 that mattered. There was his buccal swab that mattered.
22 There was also the fetal tissue that mattered.

23 And that fetal tissue -- the abortion happened in
24 Georgia, which, obviously, added some complexity because
25 there was a doctor, there was a pathologist, there was a

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1 person who walked it from various places and then gave it to
2 Tracy Moss. So I thought they would have some problems
3 there.

4 Once it got back to Spartanburg, they had Dr. Wren do
5 the initial separation because, obviously, there was both
6 maternal and fetal tissue in all kind of in a clump. And we
7 got that -- there were actually pictures of it. And that
8 was one of the things I moved to exclude, a picture of that
9 bloody mass.

10 So they put it in two different jars, jar A and jar B,
11 sent it down to sled. And, I think, Dr. Wren sent it with
12 instructions that you need to use jar A. So the SLED DNA
13 person used jar A and could not -- now there were three
14 jars, I suppose. There was also a leftover, just other
15 material.

16 She used this -- she made a slide out of jar A and all
17 she saw was maternal tissue. She couldn't find any fetal
18 tissue. So that tells us a couple of things. One, that,
19 obviously, it was not separated properly by Dr. Wren.

20 But, two, that you can tell the difference between
21 maternal DNA and fetal tissue or tissue, excuse me, maternal
22 tissue and fetal tissue. So they sent it back to
23 Spartanburg and went and talked -- spoke with the
24 pathologist in Greenville, who did a special kind of
25 separation technique that involves a paraffin block, I've

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1 forgotten exactly what it's called, formal and fixed
2 paraffin block.

3 So they encase the tissue in this paraffin block and
4 then sent it to Cellmark. And then Cellmark, for some
5 reason, had two different people do the analysis. Nobody
6 knew that until I'd figured it out the weekend before the
7 trial.

8 They provided us about a thousand pieces of discovery
9 regarding how Cellmark does their job. And it was buried in
10 a thick-paged 800 and something where there was a worksheet
11 that had the initials that weren't the person who tested,
12 who ultimately testified. And that was a pretty serious
13 problem because she did the first three steps.

14 And, obviously, the first three steps of any protocol
15 are very important. So I thought that that was a very good
16 issue particularly given we had no other issues.

17 I had the DNA reviewed by an expert. So far as I can
18 tell, there are two labs that would do this kind of work.
19 One is Cellmark and one -- it's in my notes, but I don't
20 remember who I used, but -- and this other lab. So there
21 was nowhere else to go.

22 And I asked her if it looked good. And she said, yeah,
23 I think your guy's in trouble, basically. And that's why we
24 didn't call her as a witness.

25 Q. Okay. And so your issue with the chain was if all the

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1 people who actually handled the stuff were not -- were not
2 there to testify what -- how they handled the stuff, and
3 what they did, and they passed it off, that type of deal,
4 right?

5 A. Correct. And there were also some problems of how well
6 sealed it was with respect to the pathologist because the
7 pathologist had it sent to -- from Greenville Hospital to
8 his office and then from the office to the hospital. They
9 had no evidence as to who that courier was. It was not
10 sealed.

11 I think at one point I said that it had all the
12 security of a Claussen pickle jar because it was --
13 literally that's what they testified to. It was a screw top
14 and that's it. There were a number of problems regarding
15 how that sample got from place to place, who did what to it.

16 Q. And would you agree out of, I guess, phrase it out of
17 interest of fairness that issue should have been reviewed?

18 A. Well, I mean, that's up to my client.

19 Q. Right.

20 A. I mean, ---

21 Q. I'm saying aside from this decision he made, if we're
22 just looking at it with that -- with that being an issue --
23 let me rephrase like this. If you could stop the trial and
24 have that reviewed and come back, would you think that would
25 be a fair ---

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1 A. Yes.

2 Q. Okay.

3 A. Yes.

4 Q. But it was his decision to plead guilty, is that
5 correct?

6 A. Correct.

7 Q. Okay. And did you discuss with him the chances he had
8 to succeed on appeal?

9 A. I did.

10 Q. And what was that discussion?

11 A. Okay. There were two things going here as well. And,
12 I'm sorry, it was just a complicated case. We had the
13 mistrial motion, whether a mistrial should have been granted
14 because they didn't provide all those people.

15 And then we had a secondary issue of if it was
16 prosecutorial misconduct or not. And I explained to him
17 that I thought hands down, we win, that it should have been
18 a mistrial. I just -- I felt that he should have granted a
19 mistrial in this case. But the issue is whether jeopardy
20 attaches to that mistrial.

21 Now I made as good an argument as I could as to why I
22 think it -- it may not have been misconduct, but it was
23 certainly gross incompetence. And I explained to my client
24 that I thought that the appeals court would have a lot to
25 say about how poorly this case was tried by the State. But

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1 I didn't think they were going to find that jeopardy
2 attached, which means it would just come back here for
3 another trial, which is fine, but that would have taken some
4 time. And then we would have had to go to trial again.

5 And ultimately either they were going to fix that DNA
6 problem or they weren't, but that -- the whole DNA issue is
7 separate from whether they can get a conviction because even
8 without all that DNA, they've still got her testimony. Now
9 that may make it a worse case and more difficult case for
10 them to win, but the DNA is, I think my dad once said, is a
11 red herring. I mean, it's the -- because she can just
12 testify that it happened and maybe you get convicted and
13 maybe he doesn't. And that was all going to take some time
14 as well.

15 Q. And I think you just said this, but I want to make
16 sure. But the case will be -- the case would be harder
17 without the DNA?

18 A. Yes.

19 Q. Okay. And in terms of the DNA, the State basically
20 told the judge that we're going to fix all this in the end,
21 correct?

22 A. Correct.

23 Q. And so the thing kept going on and going on. And that
24 stoppage, that they would guarantee the judge that we're
25 going to fix it, we're going to fix it, we're going to fix

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1 it. And then at the end their fixing was -- they kind of
2 turned it on the defensive end, is that correct? Like the
3 contamination, y'all can't prove it was contaminated,
4 correct?

5 A. There was some of that. And I think I told the judge
6 or pointed out to the judge, we don't have to prove that
7 there was contamination, but that ---

8 Q. Right.

9 A. --- they have to prove that they did it correctly. And
10 ultimately, I mean, they did try to fix it. They
11 helicoptered people in and they bussed people up from
12 Georgia, but, I mean, ultimately I don't think that fixed
13 all of their problems.

14 Q. I'm going to go into -- were you told by Mr. Stribling
15 of any other allegations that this child had made
16 previously?

17 A. I don't recall that honestly. I do know that in the
18 transcript they made their Boiter motion about not going
19 into prior false allegations. And I know my answer was --
20 let me see if I can find it.

21 I did a third party guilt motion. I apologize, Your
22 Honor. Oh, my answer was that I didn't know of any false
23 allegations, and that I'd done this before, and I know that
24 I'm not supposed to ask about things that don't exist.

25 Now at that point -- whenever I'm trying a case, my

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1 client always has a pad of paper and a pen. And I tell
2 them, anything you remember, I mean, you were there, you
3 know more about the facts than I do, write it down. And
4 that would have been an excellent time for him to suggest,
5 no, no, you do know of something. Remember, I told you.

6 So I'm not going to say he didn't. I don't recall that
7 conversation if he did. But I would have liked him to
8 remind me at that point.

9 Q. Okay. Do you recall getting his cell phone and getting
10 these messages?

11 A. I did get his cell phone. It's still in my file here.

12 Q. And do you recall any Facebook messaging between him
13 and the child?

14 A. I don't think I found any Facebook messages. What he'd
15 asked me to do is find the pictures on it. And I looked at
16 the pictures on it.

17 I don't know that I went through the text messages or
18 the Facebook messages. I don't know that I would have known
19 how to do that, frankly. But I did get his phone. I did go
20 through his phone. And I didn't think anything was
21 particularly helpful in it.

22 Q. When you discussed with him this Alford plea what were
23 your discussions about his ability to plead after that --
24 after -- his ability to appeal the DNA stuff?

25 A. Well, I don't recall my exact conversation with Mr.

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1 Stribling. I will tell you that my habit is that I tell
2 anybody who's pleading guilty that an Alford plea is treated
3 just like a guilty plea and that you waive any defenses that
4 you were asserting at that guilty plea. And so he waives
5 any defenses in an Alford plea.

6 I told him that -- or at least I recall telling him he
7 couldn't appeal it. Because if he had said -- if he had
8 said, no, I want to appeal it, I would have said, well, I
9 got a jury, let me go and close because that was literally
10 where we were was we were right at closing. I had prepared
11 a limiting charge. I mean, we were ready to go.

12 Q. Okay. Was it fair to say that at the -- all the way up
13 until the actual -- all the way up until he actually pled
14 that he had been very resistant to pleading guilty?

15 A. He had. But I think it was always because 20 years was
16 too much time. It was not I didn't do this. It was 20
17 years is too much.

18 Q. Okay. So he didn't express to you that he didn't do
19 it?

20 A. I mean, I -- my conversations with him did not take
21 that turn, no. That was -- that was not the conversation
22 that we had.

23 Q. So y'all were more concerned with the time?

24 A. That was what he was concerned with, yes, sir.

25 Q. So it's your position if he had have gotten a better

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1 deal quicker he would -- he would -- was it your observation
2 of him he would have accepted that?

3 A. That's -- that was my understanding. That's why --
4 that's where 15 years came from. Because 20 was too much.
5 So I asked him, well, what do you want? He said -- and I --
6 he said 15 before trial. They weren't going to 15.

7 And you'll see Judge Cole actually when they have him,
8 stand up to reject the offer, Judge Cole tells him, well,
9 you're not going to get anymore offers. He says, well,
10 that's fine. It's because he was holding out, my
11 recollection was for 15.

12 Because throughout the entire trial every time we went
13 back in the back and they got yelled at, I said, well, you
14 know, give him 15 and we might be able to put this to bed.
15 And finally they did, and we did. So ...

16 MR. RICHEY: No other questions.

17 **Cross-Examination by Mr. Cox:**

18 Q. Mr. Shealy, how ---

19 MR. COX: Your Honor, may it please the Court?

20 Q. Mr. Shealy, how long have you been practicing criminal
21 law?

22 A. Now, ten years.

23 Q. Prior to Mr. Stribling's case had you ever handled any
24 CSC with a minor case?

25 A. Yes.

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1 Q. Okay. So you were familiar with some of the issues
2 that come up in these cases?

3 A. I am.

4 Q. If you -- did you receive discovery in this case?

5 A. I did.

6 Q. Did you go over that with Mr. Stribling?

7 A. I did.

8 Q. Okay. Did you discuss with Mr. Stribling what his
9 understanding of what happened -- well, let me do it this
10 way. Based on discovery, what was the State's case against
11 your client?

12 A. Well, his daughter claimed that he had raped her in
13 their home -- well, in his -- the home that I believe he
14 lived with in his -- with his father. Miss Stribling had
15 traveled from Alabama to here. She claimed that he had
16 raped her in that home.

17 They went to Myrtle Beach later on. And their position
18 was that he had impregnated her, basically, that he had
19 caused her pregnancy. And she was below the age of 16. And
20 he was on the Sex Offender Registry for a prior indecent
21 exposure.

22 Q. Okay. So the Minor and Mr. Stribling did not live
23 together?

24 A. They lived together briefly. I mean, when she traveled
25 from Alabama to here she had, my understanding, had gotten

MATTHEW SHEALY - CROSS-EXAMINATION BY MR. COX

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1 in some kind of fight with her mother.

2 Q. Okay. Based off of what -- and did you review that
3 with Mr. Stribling that's what the State's case against him
4 was?

5 A. Yes, sir. I mean, it was -- obviously there's a lot
6 more discovery in there, but that was the gist of it.

7 Q. And what was his response to that story from the State?

8 A. Again, I think we're getting into some -- some
9 confidential stuff. It was that that didn't happen, that he
10 did not rape her.

11 Q. Okay. How did you prepare for trial?

12 A. I went over the case with Mr. Stribling. We hired a
13 DNA expert because I thought that there might be some issues
14 with respect to contamination because of the obvious link
15 between a mother and -- or a daughter and father. I thought
16 that there may be some contamination issues there. So we
17 did a lot of investigation there.

18 Ultimately, as I said, the DNA expert said that there
19 wasn't, that there didn't appear to be any problems with the
20 way someone did their job. And then we also reviewed the
21 discovery. We tried to figure out some holes.

22 I believe we -- we ultimately got the text messages
23 that were made between Miss Stribling and her mother from
24 the State. I believe I used some of those in cross with
25 her.

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1 My investigator went out, I think, and drove past the
2 house in question. That's one of the things I generally do
3 with my investigator, that kind of thing, as well as
4 prepared our arguments for arguing the chain of custody.

5 Q. One of the allegations against you today is maybe
6 failed to argue a DNA sample was contaminated. You had the
7 DNA sent or you had the DNA examined by an expert, correct?

8 A. I had the results from Cellmark. What happens is all
9 of this gets put into a computer system.

10 Q. Okay.

11 A. So it's all computerized. And so they get particular
12 files and they run it through their computer and make sure
13 that -- and then they also review the protocols that were
14 done by Cellmark. And so they said the protocols were
15 appropriate.

16 And the reason, again, they review the protocols is
17 because this is a very specific kind of testing. This
18 paraffin block is a specific way of doing things, at least
19 as far as I can tell. Two labs do it in the country. They
20 have to make sure those protocols are appropriate. Then
21 they also had to review the match from SLED or the buccal
22 swab from SLED, excuse me.

23 Q. Do you -- but you don't believe you had a winning
24 argument for DNA contamination at trial, did you?

25 A. No.

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1 Q. Okay. And that would be why you didn't argue for ---

2 A. Correct.

3 Q. --- contamination?

4 A. And, again, you can -- if Cellmark had -- if the -- the
5 concern that Mr. Stribling had testified to, that Cellmark
6 used the wrong tissue were true, I mean, you can tell what
7 maternal tissue is versus fetal tissue. Otherwise SLED
8 would have done an examination. So I don't -- I just
9 couldn't argue that because it wouldn't have worked. Now in
10 my initial conversations with Mr. Stribling, we talked about
11 that as a possibility, but it fell by the wayside once we
12 got that DNA expert.

13 Q. Okay. So you did have conversations with Mr. Stribling
14 on that issue, but based on your preparation for trial and
15 the investigation of the case, that was not a viable issue,
16 right?

17 A. Correct.

18 Q. Okay. Did Mr. Stribling ever -- he came to you with
19 some possible allegations against this Minor about prior
20 false allegations against another person, right?

21 A. Well, again, I don't recall him having brought those to
22 me.

23 Q. Okay.

24 A. I don't -- I don't recall that.

25 Q. Do you -- would you have been able to use that at

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1 trial?

2 A. Probably not as an Alabama case. I mean, I would have
3 had an issue getting that in. I also would have had an
4 issue with the rape shield law regarding sex with other
5 partners. But if we could have, I mean, if we could have
6 shown that sex with other partner may have presented --
7 produced this fetus, that would have been great. But DNA is
8 ---

9 Q. Right.

10 A. --- kind of kills us.

11 Q. If -- you said you don't remember specifically that
12 conversation. If Mr. Stribling, your client, had brought
13 you this information you would have investigated that lead?

14 A. I would have.

15 Q. And had anything come from that, you would have used
16 that at trial?

17 A. Yes, sir. I try to win my cases. Particularly if
18 we're going to do it for four days.

19 Q. So how far into trial did this case get?

20 A. It got all the way to closing. We had had a charge
21 conference.

22 Q. Now this was Mr. Stribling's decision to go to trial,
23 correct?

24 A. It was.

25 Q. He had a plea offer from the State?

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1 A. He did.

2 Q. And what was that plea offer?

3 A. Thirty suspended to 20 with five years probation.

4 Q. And you explained to him what that offer would entail?

5 A. I did.

6 Q. Did you explain to him that that offer -- that he would
7 have to -- if you refuse that offer, he would go to trial?

8 A. Yes. And actually various other judges had explained
9 that to him at various times.

10 Q. Now you mentioned that he was -- he did seem resistant
11 to pleading guilty, correct?

12 A. Yes.

13 Q. But based on your conversations with him, you believed
14 that if the offer had been different he would have pled
15 guilty?

16 A. Yes.

17 Q. Okay. Going into trial -- after Mr. Stribling had made
18 the decision to go to trial could you describe what your
19 trial strategy was? How to win this case?

20 A. I mean, it was to attack that chain of custody as well
21 as attacking the Minor 's credibility. Now, you know, those
22 kind of went hand-in-hand. If we couldn't exclude the DNA,
23 it was going to be a tough road to hoe. But, you know, you
24 just got to throw it at the wall and see what sticks.

25 Q. Well, now I think -- we went through testimony today

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1 and you've been here in the courtroom. You challenged the
2 chain of custody of the evidence?

3 A. I did.

4 Q. And, you know, today you believe that was a winnable
5 issue?

6 A. Yes, sir.

7 Q. Did you explain to Mr. Stribling that that was an issue
8 he could appeal?

9 A. Yes, sir.

10 Q. Okay. That was before he pled guilty?

11 A. Yes, sir.

12 Q. Did you explain to him that he would need to be
13 convicted by a jury and then appeal that issue?

14 A. Yes, sir. And to be fair to Mr. Stribling, I also told
15 him that I expected him to be convicted by the jury.

16 Q. Why did you tell him that?

17 A. Because I thought that we were going to lose. I mean,
18 we had a DNA evidence -- DNA match with ninety-nine point
19 nine nine nine (99.999) percent. It was something like one
20 in four hundred and twenty-five trillion or quadrillion was
21 the statistical likelihood. And as I stated in the mistrial
22 motion, you can't un-ring that bell. I mean, that's --
23 that's very difficult to beat.

24 But I also explained to him that I thought that on
25 appeal I thought he would win. I think the problem is going

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1 to be that jeopardy -- I don't think that the Appeals Court
2 would have found jeopardy attaching.

3 Q. So when you say that you mean even if he had won on
4 this appeal he would have only gotten a new trial?

5 A. Correct.

6 Q. All right. You gave him this advice based on your
7 prior criminal defense history?

8 A. Yes, sir.

9 Q. Okay. I think you said you've experienced these trials
10 before?

11 A. I've tried a lot of cases, yes, sir.

12 Q. When did the State bring the offer to you, 15 years?

13 A. They made that offer at the end. We took a ten minute
14 recess. And I -- because Barry was arguing a lot -- Mr.
15 Barnette, the Solicitor here, was arguing the chain of
16 custody issue. At the recess, I believe that's when he made
17 the offer.

18 Q. Okay. Did you understand that as part of that plea
19 your client could plead under Alford?

20 A. Yes, sir.

21 Q. Did you explain that to your client?

22 A. Yes, sir.

23 Q. Did you explain to him that by pleading under Alford he
24 would not be admitting his guilt?

25 A. Yes, sir.

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1 Q. Did you explain to your client that even though he
2 would not be admitting his guilt he would still be waiving
3 all the rights he would had he pled guilty under any other
4 situation?

5 A. I believe that I did. Again, I don't necessarily
6 remember the conversation with Mr. Stribling, but I always
7 do. So I can't imagine that I would have altered my
8 ordinary habit, particularly in a case where I think we have
9 a good appeals issue. I want to make sure he knows that
10 he's waiving that appeal.

11 Q. That's your standard practice?

12 A. It is.

13 Q. Okay. At the guilty plea did Judge Cole go over the
14 fact -- or Judge Cole went over the fact that he would be
15 waiving his right to appeal any possible or he would be
16 waiving any defenses he had to this case?

17 A. Yes, sir.

18 Q. Okay. And you also went over that with him?

19 A. Yes, sir.

20 Q. Well, Judge Cole also specifically went over the fact
21 that by pleading guilty at this time he would be waiving his
22 ability to challenge the DNA evidence?

23 A. Yes, sir.

24 Q. Okay. And during the guilty plea I believe you also
25 informed the judge that you had explained that to your

MATTHEW SHEALY - CROSS-EXAMINATION BY MR. COX

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1 client?

2 A. Yes, sir, I believe so. And I don't -- I only have the
3 transcript for the actual trial.

4 MR. COX: Your Honor, what I'm referring to in the
5 transcript is the -- transcript of the record from -- is the
6 transcript of the record, July 13th, 2017. This is the
7 guilty plea transcript. I am referencing page 20, line 21
8 through 25. And then on page 21, lines 1 through 5.

9 Q. Mr. Shealy, you also explained to Mr. Stribling that he
10 would have a right to appeal the guilty plea, but it would
11 only be procedurally, ---

12 A. Yes, sir.

13 Q. --- correct? It would have nothing to do with what
14 happened at trial?

15 A. Correct.

16 MR. COX: Your Honor, that is in the transcript on page
17 21, lines 6 through 10.

18 Q. Mr. Shealy, who made the decision to plead guilty?

19 A. Mr. Stribling.

20 Q. Did Mr. Stribling, during the guilty plea, ever turn to
21 you and say, I'm scared, I don't know what I'm doing?

22 A. No, sir.

23 Q. As a defense attorney had Mr. Stribling turned to you
24 and expressed any concern about what he was doing would you
25 have paused to proceed?

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1 A. Yes, sir. And Judge Cole is pretty good about letting
2 us stop, particularly -- he wasn't frustrated with us. So
3 he was, I think, more than willing to give us some time if
4 we had needed it. It's one of the few times I can say Judge
5 Cole was not frustrated with me.

6 Q. Judge Cole gave the -- excuse me. Judge Cole gave Mr.
7 Stribling, during the guilty plea, a chance to add anything
8 at the very end, correct?

9 A. Yes, sir.

10 Q. That's typical of guilty pleas?

11 A. Yes, sir.

12 Q. And the defendant said, I don't have anything to add,
13 correct?

14 A. Correct.

15 MR. COX: Your Honor, that's on page 24 of the
16 transcript, lines 7 through 9.

17 Q. Mr. Shealy, this would have been an opportunity for Mr.
18 Stribling to discuss any confusion of the guilty plea,
19 correct?

20 A. Correct.

21 Q. So it would have been an opportunity for him to express
22 I'm scared, I think I've made a mistake?

23 A. Yes, sir.

24 Q. At that point the guilty plea had not been finalized,
25 correct?

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1 A. I don't believe that it had been.

2 MR. COX: Your Honor, may I have just one moment?

3 (Pause)

4 Q. Mr. Shealy, there's an allegation that you failed to
5 argue the gestational age of the fetus. Did Mr. Stribling
6 ever bring this -- bring the issue of the gestational age of
7 the fetus to you?

8 A. I don't recall him bringing an issue. And I'm not --
9 I'm not entirely sure how I could have argued that or what I
10 should have argued there. I can't speak to that.

11 Q. Based on your experience with these cases and your view
12 of the case against Mr. Stribling you had -- you believed
13 that you had the best strategy ---

14 A. Yes.

15 Q. --- to obtain an acquittal, correct?

16 A. Yes, sir.

17 MR. COX: Your Honor, I have -- I have no further
18 questions, Your Honor.

19 THE COURT: Any redirect?

20 (Pause)

21 MR. RICHEY: No other questions, Your Honor.

22 THE COURT: Thank you, sir. You may step down. Watch
23 your step as you're stepping down.

24 MR. COX: Your Honor, I ask that Mr. Shealy be released
25 from subpoena.

1 MR. RICHEY: Without objection.

2 **THE COURT:** Without objection, sir. Thank you for
3 coming. You may be excused. The applicant have anything --
4 any other witnesses?

5 MR. RICHEY: That's all, Your Honor.

6 **THE COURT:** The State intend to call any other
7 witnesses?

8 **MR. COX:** No, Your Honor. No witnesses from the State.

9 **THE COURT:** All right. We'll take a look at it. Thank
10 you very much.

11 **MR. COX:** Thank you, Your Honor.

12 **THE COURT:** Good luck to you, Mr. Stribling.

13 (Hearing Ended at 10:59 am)

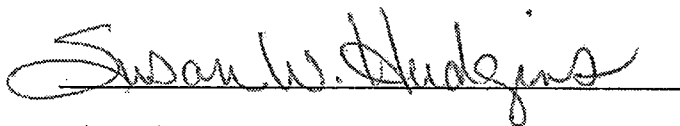
14 (End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Spartanburg County, South Carolina, on the 9th day of November 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 19, 2019

A handwritten signature in cursive script, reading "Susan W. Hudgins", is written over a horizontal line.

Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Richard T. Stribling, #263959
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2018-CP-42-0507

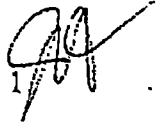
ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief filed on February 12, 2018, by Mr. Richard T. Stribling (Applicant). Respondent made its Return on or about April 24, 2018, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on November 9, 2018, at the Spartanburg County Courthouse in Spartanburg, South Carolina.

Applicant was present and represented by Rodney W. Richey, Esquire. Respondent was represented by Jordan A. Cox, Esquire, of the South Carolina Attorney General's Office. At the evidentiary hearing, Applicant testified on his own behalf. Respondent called Matthew W. Shealy, Esquire, ("Counsel") as a witness at the hearing. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies the application.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of confinement of the Spartanburg County Clerk of Court. In December 2015, the Spartanburg County Grand Jury indicted Applicant for possession with criminal sexual conduct with a minor, first degree (2015-GS-42-5243). Matthew W. Shealy, Esquire, represented Applicant. Assistant Solicitors Lindsey H. Overby and Jennifer



A.J. Jordan of the Seventh Circuit Solicitor's Office represented the State.

On July 13, 2017, Applicant proceeded to trial before the Honorable J. Derham Cole in Spartanburg County, South Carolina. Prior to a verdict by the jury, Applicant entered a guilty plea pursuant to North Carolina v. Alford. Following the State's recommendation, Judge Cole sentenced Applicant to fifteen years of incarceration. Applicant did not appeal his guilty plea or sentence.

FACTUAL HISTORY

During February 2015, around Valentine's Day, Applicant was living in Spartanburg County, South Carolina. Applicant's daughter ("MINOR") lived in Alabama at the time with her mother. Applicant had not seen MINOR for eleven years, but made contact with her through Facebook. MINOR visited Applicant in South Carolina during February 2015 and stayed for several weeks. MINOR testified at trial that after being with Applicant for two weeks, Applicant sexually assaulted her in a bedroom of her grandfather's house. MINOR testified Applicant sexually assaulted her a second time within two days of the first incident.

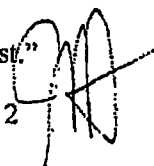
MINOR was able to get away from Applicant and stayed with her aunt in Spartanburg County following the beach trip. After her mother picked her up, MINOR told her mother what had occurred with Applicant. MINOR's mother went to law enforcement with the allegations against Applicant. MINOR received a positive pregnancy test and traveled to Georgia for an abortion procedure.

ALLEGATIONS

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Ineffective assistance of counsel"
 - a. "Counsel had a conflict of interest."

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- b. "Counsels failed to investigate, or perform certain pretrial functions."
 - c. "Counsel failed to properly select a jury."
 - d. "Counsel failed to pursue defenses available to defendant."
 - e. "Counsel failed to use important evidence at trial."
 - f. "Counsel prejudiced the outcome of my case."
2. "I am also being held unlawfully because I was improperly denied a motion to mistrial at trial by Judge Derham Cole."
- a. "Judge Cole who presided over my trial improperly denied a motion to mistrial."

On October 25, 2018, Applicant amended his application for post-conviction relief as follows:

- 1) Trial counsel was ineffective for failing to contest the chain of custody of the DNA Sample relied upon by the State's Expert and;
- 2) By failing to contest the State's evidence regarding the DNA test, results and the method in which the test was performed and;
- 3) By failing to argue the DNA sample was contaminated;
- 4) Trial counsel was ineffective for failing to argue prior false allegations or allegations of sexual abuse by the alleged victim and;
- 5) By failing to argue third party guilt or that the minor had sexual relation with another individual;
- 6) By failing to argue the gestational age of the fetus and;
- 7) By failing to argue and admit prior contact the allege victim had with the defendant through phone record, facebook and;
- 8) The applicant guilty plea was not knowingly and intelligently made.

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SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant

At the evidentiary hearing, Applicant testified on his own behalf. Applicant testified he was represented by Counsel following his arrest. Applicant testified it was his decision to proceed to trial after the State offered a twenty-year sentence. Applicant testified that Counsel tried to convince him to plead every day of the week leading up to trial. Applicant wanted Counsel to argue that he was not the source of the pregnancy. Applicant wanted Counsel to argue that the pregnancy was caused from MINOR's boyfriend. Applicant wanted Counsel to use text messages

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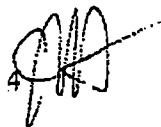
from MINOR showing their conversations were not inappropriate. Applicant wanted Counsel to argue against the chain of custody, concerning the fetal tissue evidence.

Applicant testified that Counsel did a good job arguing the chain of custody procedure at trial. Applicant accepted the plea offer from the State after the offer was changed to five years less than originally offered. Applicant testified that he wanted to keep his appellate rights, but understood when Judge Cole explained he could not challenge the evidence at trial when he pleaded guilty. Applicant testified that he was worried he would get thirty years if convicted at trial. Applicant was scared to speak truthfully at the guilty plea proceeding, but understood the questions from Judge Cole.

Counsel

Counsel testified he has practiced law since 2008. Counsel believes the chain of custody issue was a viable defense at trial. Counsel believes Applicant could have won at trial on this issue. After reviewing the evidence, Counsel testified that an expert witness said "[Applicant] is in trouble." Counsel does not recall being told about prior false allegations of sexual misconduct by MINOR. Counsel believed that had the case been retried, the State would have corrected the chain of custody issue.

Counsel testified that MINOR appeared sympathetic to the jury and made a strong witness for the State. Counsel believes that even if the chain of custody argument was successful, the jury would likely have convicted Applicant based upon MINOR's testimony. Counsel felt well prepared for trial and believes he made a good argument on his motion for a mistrial. Counsel explained to Applicant his chances of winning on appeal from the denial of his motion for a mistrial, as well as what a new trial would mean for Applicant. Counsel did not believe the case was defensible, aside from the chain of custody issue.



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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 at

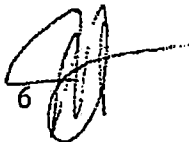


688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, an applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant has failed to carry his burden of proof and has not established any ineffectiveness of counsel. Below are the findings in regards to each specific allegation of ineffective assistance of counsel raised by Applicant:

"Trial Counsel was ineffective for failing to contest the chain of custody of the DNA sample relied upon by the State's Experts"

Applicant alleges Counsel rendered ineffective assistance of counsel by failing to contest the chain of custody of the DNA sample relied upon by the State's expert witnesses at trial. Applicant has failed to meet his burden of proof. While Applicant seemed sincere at the hearing, his testimony was not credible when placed in contrast with the transcript of the plea hearing. Applicant acknowledged and praised his attorney's work during his trial. The record clearly shows that not only did Counsel argue against the chain of custody evidence, but it appears from the testimony presented during the PCR hearing that due to the efforts of Counsel, enough damage was done to the State's presentation of the DNA evidence that the offer of a fifteen year sentence was made by the State just prior to closing arguments. Prior to that point, the State had only offered an active time sentence of twenty years.



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Counsel appeared credible during his testimony at the evidentiary hearing. Counsel detailed his arguments against a proper chain of custody for the DNA evidence by the State. Although his motion for a mistrial was denied, Counsel testified that the issue would likely have been successful on appeal. Applicant has failed to meet his burden of proof. This allegation is denied and dismissed with prejudice.

"By failing to contest the State's evidence regarding the DNA test, results and the method in which the test was performed"

Applicant alleges Counsel was ineffective for failing to contest the State's evidence regarding his DNA test, results and method in which the test was performed. Applicant has failed to show Counsel rendered deficient performance. Applicant testified that he wished Counsel had argued that the results of the DNA testing showed he did not impregnate the MINOR. Applicant testified he wanted Counsel to argue MINOR's boyfriend was involved in the crime, rather than himself. Applicant testified that he wanted Counsel to challenge the method in which the DNA testing was performed at trial.

Counsel testified credibly as to his defense strategy concerning the DNA test. The record clearly shows Counsel effectively challenged the chain of custody of the DNA evidence, as well as effectively cross-examined the State's expert witnesses as to their methodology. Specifically, Counsel was able to obtain testimony from the State's expert that one of the DNA samples was inconclusive. Counsel testified credibly that by arguing that another person was responsible for the crimes, it would have shifted the burden onto Applicant to prove his claim at trial. Counsel testified that this was not a viable defense, based upon the evidence in the case. "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629,

632 (2010). Applicant has failed to meet his burden of proof. This allegation is denied and dismissed with prejudice.

"By failing to argue that the DNA sample was contaminated"

Applicant alleges Counsel was ineffective for failing to argue the DNA evidence was contaminated prior to trial. Applicant has failed to show Counsel rendered deficient performance. Applicant testified that he wanted Counsel to argue that the chain of custody for the DNA evidence was mishandled, thus contaminating the evidence. Applicant failed to provide any further testimony or evidence to support this allegation.

Counsel testified credibly at the evidentiary hearing and effectively challenged the chain of custody for the DNA evidence. For the same reasons outlined above, the record clearly shows the DNA evidence was challenged by Counsel at trial. Applicant has failed to meet his burden of proof. This allegation is denied and dismissed with prejudice.

"Trial Counsel was ineffective for failing to argue prior false allegations of sexual abuse by the alleged victim"

Applicant alleges Counsel was ineffective for failing to present evidence of previous false allegations of sexual abuse made by MINOR. Applicant has failed to show Counsel rendered deficient performance. Applicant provided no further testimony or evidence to support this allegation. Counsel testified that the only viable issue for Applicant's defense was the chain of custody argument. Counsel testified there was no admissible evidence to support a claim of prior false allegations by the MINOR. Based upon Counsel's credible testimony and the record, Counsel was not deficient in his representation. Applicant has failed to meet his burden of PROOF. This allegation is denied and dismissed with prejudice.

"By failing to argue third-party guilt or that the minor had sexual relation with another individual"

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Applicant alleges Counsel was ineffective for failing to argue that a third-party was at fault or that MINOR was involved in a sexual relationship with another individual at the time of the pregnancy. This Court interprets this allegation as the same as Allegation 2 and would make the same findings. Applicant has failed to meet his burden of proof. This allegation is denied and dismissed with prejudice.

"By failing to argue gestational age of the fetus"

Applicant alleges Counsel was ineffective for failing to argue the gestational age of the fetus. This Court interprets this allegation as failing to challenge the DNA evidence and results at trial. As previously stated, Counsel testified credibly as to his trial strategy and to the DNA evidence issues facing Applicant. Counsel was well-prepared for trial and was able to enact enough damage to the State's presentation of the evidence, the State offered a plea recommendation of five years less than the original offer. Applicant has offered no evidence to show the argument of the gestational age of the fetus would have been a viable defense at trial and Counsel testified credibly that the only viable defense Applicant had was the chain-of-custody issue. Applicant has failed to meet his burden of proof. This allegation is denied and dismissed with prejudice.

"By failing to argue and admit prior contact the alleged victim had with the defendant through phone records, facebook"

Applicant alleges Counsel was ineffective for failing to argue and admit prior contact with MINOR and himself via text messages and Facebook. Applicant alleges he turned over text messages and Facebook messages between himself and MINOR to Counsel prior to trial. Applicant testified he wanted Counsel to use these messages during trial to show his communication with MINOR was not inappropriate. Applicant has failed to show Counsel rendered ineffective assistance.

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Counsel testified that Applicant's defense was to challenge the handling of the DNA and fetal tissue evidence. Counsel testified that the strategy to not present a case-in-chief was a strategic decision, as was the decision for Applicant not to testify. Applicant has not presented any evidence to show Counsel's decision not to present evidence of past communications between MINOR and Applicant fell below the reasonable norms of criminal representation. Applicant has failed to meet his burden of proof.

In the event that Counsel's decision was deficient, Applicant has failed to show he was prejudiced by this alleged deficiency. Applicant did not testify that he would not have pleaded guilty had Counsel presented the text message communications at trial. To the contrary, Applicant pleaded guilty because of the offer of fifteen years made by the State during his trial. Applicant testified that he was afraid if he was convicted, he would receive a thirty year sentence. Applicant has failed to meet his burden of proving prejudice. This allegation is denied and dismissed with prejudice.

"The Applicant's guilty plea was not knowingly and intelligently made"

Applicant alleges that he did not enter his guilty plea knowingly and intelligently. Applicant alleges he never wanted to enter a guilty plea. Applicant has failed to meet his burden of proof.

A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130,137, 654 S.E. 2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). An applicant may attack the voluntary, knowing, and intelligent character of a guilty plea entered on advice of counsel by demonstrating that counsel's representation was below an objective standard of reasonableness. Porter v. State,

368 S.C. 378, 629 S.E. 2d 353 (2006). To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Roddy v. State, 339 S.C. 29 (2000).

The plea transcript clearly reflects Applicant was advised of all of his rights, including the guilty plea's limited right of appeal. Counsel testified credibly at the evidentiary hearing. Counsel testified he advised Applicant that the jury was likely to convict him, but he may have a viable appellate issue for the chain-of-custody evidence, specifically the denial of his motion for a mistrial. Counsel cautioned Applicant that although he could win on this appellate issue, it would result in a new trial where he would likely be convicted based upon the corrected chain-of-custody evidence. Applicant testified that he made the decision to enter his guilty plea, in part, based upon the offer of fifteen years. Applicant testified that he was scared of facing a thirty year sentence if convicted at trial. The plea transcript reflects a thorough colloquy with Applicant and his understandings of the plea proceeding. The record establishes Applicant had a full understanding of the consequences of his plea and the charges against him. Applicant has failed to meet his burden of proof. This allegation is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, the allegations are denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an



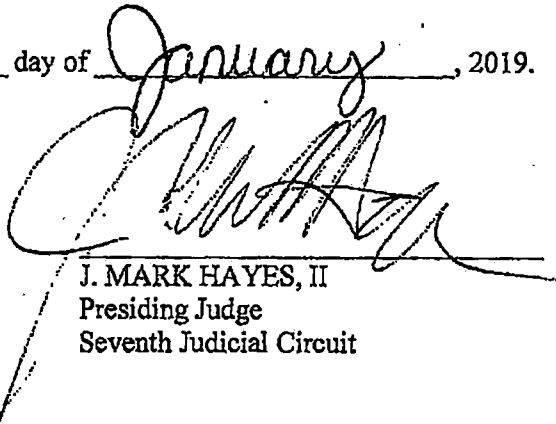
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appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 29th day of January, 2019.


J. MARK HAYES, II
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina

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