

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Oconee County

Honorable R. Scott Sprouse, Circuit Court Judge

JAIMIE S. OBREGON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-000457

APPENDIX

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S.C. SUPREME COURT

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1 State of South Carolina
 2 County of Oconee In the Court of General Sessions

3
 4 The State of South Carolina,)
 5)
 6 -vs-)
 7 Jaimie Sabio Obregon,)
 8 Defendant.)
 9)

2015-GS-37-00163
 2015-GS-37-00164
 2015-GS-37-00165
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 May 15, 2017
 Volume 1 of 2
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 Transcript of Record

10
11 B E F O R E:

12 The Honorable Thomas L. Hughston, Jr., Judge;
13 and a jury.

14
15 A P P E A R A N C E S:

16 Catherine Wyse, Assistant Solicitor
17 Tenth Circuit Solicitor's Office
18 Attorney for the State

19 Bruce A. Byrholdt, Esquire
20 Attorney for Defendant

21
22 Diane L. Marcengill, RPR, CRR, CRC
23 Circuit Court Reporter
24
25

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For the Defendant:

Marked	Description	I.D.	Admitted
	None offered.		

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1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 10:09 a.m.)

4 THE CLERK: Let me apologize on the front end if I
5 do not pronounce names correctly. I will try my best,
6 but we'll go from there.

7 Okay. Number 2, Richard Alberti. If you would
8 please stand. We just need to know your -- the name of
9 your employer and what you do.

10 PROSPECTIVE JUROR: The company I work for is
11 called MedPoint in Greenville. It's a medical device
12 regulatory consulting firm. I'm the vice president of
13 operations.

14 THE CLERK: Are you married?

15 PROSPECTIVE JUROR: I am.

16 THE CLERK: And your spouse?

17 PROSPECTIVE JUROR: My wife is Susan, and she
18 works for Legacy Republic. It's a home-based sales
19 business for video conversion.

20 THE CLERK: Thank you.

21 Number 3, Paul Alkire.

22 PROSPECTIVE JUROR: Right.

23 THE CLERK: Go ahead.

24 PROSPECTIVE JUROR: Self-employed construction,
25 remodeling.

1 THE CLERK: Are you married?

2 PROSPECTIVE JUROR: No.

3 THE CLERK: Thank you.

4 Number 15, Christine Bolt.

5 PROSPECTIVE JUROR: I work at Walgreens, pharmacy
6 tech and customer service. I'm married. My husband
7 Steve works at Wal-Mart with inventory control.

8 THE CLERK: Thank you.

9 Number 18, Randy Broach.

10 PROSPECTIVE JUROR: I work at Duke Energy in
11 scheduling, and my wife is Penny, and she's an RN with
12 home hospice, Medi Home Hospice.

13 THE CLERK: Number 20, Morgan Bryson.

14 PROSPECTIVE JUROR: Student at Tri-County
15 Technical College. Currently looking for employment,
16 and no, I am not married.

17 THE CLERK: Number 21, Justin Burgess.

18 PROSPECTIVE JUROR: I work for 7Fold Technologies
19 as a technician, and my wife is a chief operations
20 officer -- not legally married, but I guess common law
21 spouse, pharmacy assistant at Ingles.

22 THE CLERK: Number 21, Justin Burgess.

23 PROSPECTIVE JUROR: You just called me.

24 THE CLERK: I'm sorry, I didn't check you off.

25 Number 22, Debra Burton.

1 PROSPECTIVE JUROR: Yes. I'm married. I'm a
2 retired school teacher here in Oconee County, and my
3 husband is a retired director of contracts.

4 THE CLERK: Number 27, Frances Capps.

5 PROSPECTIVE JUROR: I am disabled and divorced.

6 THE CLERK: Thank you.

7 Number 29, Shena Carroll.

8 PROSPECTIVE JUROR: South Carolina State Credit
9 Union, branch manager. I'm married to Chad Carroll,
10 campus pastor at Life Point Church.

11 THE CLERK: Number 30, Tracey Carroll.

12 PROSPECTIVE JUROR: Employed by Sealed Air as a
13 process technician. My wife, Regina, Clemson
14 University as a financial business officer.

15 THE CLERK: Number 31, Erin Cartmell?

16 PROSPECTIVE JUROR: I work for Securitas as a
17 security officer and I'm not married.

18 THE CLERK: Number 32, Sherry Catchings.

19 PROSPECTIVE JUROR: I work at Schneider Electric
20 in order services, and my husband is a fireman for
21 Seneca.

22 THE CLERK: Number 34, Courtney Charles.

23 PROSPECTIVE JUROR: I am employed by Johnson
24 Controls as a product specialist, and my husband is
25 unemployed.

1 THE CLERK: Number 35, Bryan Chirillo.

2 PROSPECTIVE JUROR: Up until last week, I was a
3 full-time student at Clemson University. And this
4 week, Palmetto Air and Water Balance as a technician
5 and not married.

6 THE CLERK: Number 36, Daniel Churukian.

7 PROSPECTIVE JUROR: I work for Michelin and my
8 wife is a stay-at-home mom.

9 THE CLERK: Number 42, Angela Davis.

10 PROSPECTIVE JUROR: I'm a registered nurse for
11 Greenville Health System, and my husband is a regional
12 director of Wal-Mart stores.

13 THE CLERK: Number 43, Brandon Davis.

14 PROSPECTIVE JUROR: Employed with U.S. Foods, and
15 my wife is a stay-at-home mom.

16 THE CLERK: Number 45, Carolyn Dobson.

17 PROSPECTIVE JUROR: I'm retired from Dunlop after
18 34 years, and I'm widowed.

19 THE CLERK: Thank you.

20 Number 47, James Donald.

21 PROSPECTIVE JUROR: I'm employed at Perry Ellis
22 Seneca as a stockman and single.

23 THE CLERK: Number 54, Carlisle Evans.

24 PROSPECTIVE JUROR: I'm a retired radio network
25 engineer, and I'm not married.

1 THE CLERK: Number 66, Janet Gregoire.

2 PROSPECTIVE JUROR: I'm in sales with an Internet
3 company, Millennium Seating, and my husband works for
4 Linos (phonetic), an FAA contractor. He does something
5 with control towers.

6 THE CLERK: Okay. Thank you.

7 Number 82, Joy Howard.

8 PROSPECTIVE JUROR: I'm a stay-at-home mom, and my
9 husband is a consultant for the advisory board.

10 THE CLERK: Number 86, Harold Kanupp.

11 PROSPECTIVE JUROR: Employed at Sandvik
12 Manufacturing, tool and die maker. My wife, Nancy, is
13 unemployed.

14 THE CLERK: Number 89, Nancy King.

15 PROSPECTIVE JUROR: I'm a store manager for Auto
16 Zone and I'm divorced.

17 THE CLERK: Number 90, Sarah King.

18 PROSPECTIVE JUROR: Work at Tri-County as a
19 marketing admin, and my husband works at Publix as a
20 produce clerk.

21 THE CLERK: Number 92, Justin Kokay.

22 PROSPECTIVE JUROR: I work at Parkway Campers as a
23 mechanic.

24 THE CLERK: Number 93, Edward Lamken.

25 PROSPECTIVE JUROR: Retired, 32 years with Exelon

1 nuclear power plant. My wife has been a housewife
2 since....

3 THE CLERK: Number 98, Travis Leeper.

4 PROSPECTIVE JUROR: Professional power lifter,
5 strength coach. I also work part-time at Little Pigs
6 barbecue. My wife is CFO at Blue Ridge Bank.

7 THE CLERK: Number 103, Elyse Ludwig.

8 PROSPECTIVE JUROR: Clemson student, and I am not
9 married.

10 THE CLERK: Number 108, Devin McCarley.

11 PROSPECTIVE JUROR: I'm a college junior at
12 Oberlin College in Ohio, not married.

13 THE CLERK: Number 109, Michael McClung.

14 PROSPECTIVE JUROR: Rogers Stereo in Greenville
15 South Carolina. I volunteer for a family and I'm
16 divorced.

17 THE CLERK: Number 114, John Morris.

18 PROSPECTIVE JUROR: I work for AT&T as a digital
19 technician. And since last Wednesday, I was happily
20 divorced.

21 THE CLERK: Number 115, Brandi Morrow.

22 PROSPECTIVE JUROR: I am an at-home mom and
23 widowed.

24 THE CLERK: Number 122, William -- is it Noel?

25 PROSPECTIVE JUROR: Noel. Self-employed, and my

1 wife is a nurse practitioner at Clemson University.

2 THE CLERK: Number 132, Mark Richardson.

3 PROSPECTIVE JUROR: Disabled. My wife's a
4 stay-at-home mom.

5 THE CLERK: Number 138, Troy Rogers.

6 PROSPECTIVE JUROR: I work at Pioneer Water as an
7 equipment operator. My wife is a stay-at-home mom.

8 THE CLERK: Number 139, Clay Schile.

9 PROSPECTIVE JUROR: My wife and I work at General
10 Electric in engineering.

11 THE CLERK: Number 140, Benjamin Schwall.

12 PROSPECTIVE JUROR: Economist at Clemson
13 University.

14 THE CLERK: Number 145, Donnie Sentell.

15 PROSPECTIVE JUROR: I work at Koyo Bearing in
16 Walhalla as a furnace operator. My wife is a
17 beautician at Tri-County Beauty school in Seneca.

18 THE CLERK: Number 148, Bradley Shirley.

19 PROSPECTIVE JUROR: I work for the city of Seneca
20 as a lineman, vice president of B & M Tree Company,
21 pastor of a church in West Union. My wife works for
22 Wal-Mart in the pharmacy, also a clerk at the church,
23 and she is the president of B & M Tree Company.

24 THE CLERK: Number 152, April Starr Smith.

25 PROSPECTIVE JUROR: I work at Itech South, and I'm

1 separated.

2 THE CLERK: Number 156, Michael Stancil.

3 PROSPECTIVE JUROR: Self-employed. I own a tree
4 service, and my wife is a teacher with the School
5 District of Oconee.

6 THE CLERK: Number 157 Michael, Szumlas.

7 PROSPECTIVE JUROR: I work at Kennmetal as the
8 director of of operational excellence. My wife is a
9 dental hygienist working at Family Dentistry in Seneca.

10 THE CLERK: Number 160, Morgan Todd.

11 PROSPECTIVE JUROR: I'm a full-time student at the
12 University of South Carolina and I'm single.

13 THE CLERK: Number 164, Kimberly Verner.

14 PROSPECTIVE JUROR: I work at Schneider Electric.

15 THE CLERK: What do you do there?

16 PROSPECTIVE JUROR: I work in MCC product lines.

17 THE CLERK: Number 165, Kyle Wagner.

18 PROSPECTIVE JUROR: I work for Borg Warner. I'm a
19 quality engineer, and my wife is a stay-at-home mom.

20 THE CLERK: Number 167, Tonja Watkins.

21 PROSPECTIVE JUROR: I'm disabled, and my husband
22 is the owner/operator of John's Tree Service.

23 THE CLERK: Number 171, Matthew Wilbanks.

24 PROSPECTIVE JUROR: I work at Subway and I'm
25 single.

1 THE CLERK: Is there anyone here whose name I did
2 not call, if you would, please stand.

3 THE COURT: My name is Tommy Hughston. I work as
4 a circuit judge for the State of South Carolina, and
5 I've been assigned by the Chief Justice of the Supreme
6 Court of South Carolina to preside over this week's
7 term of general sessions, what we normally think of as
8 criminal court, here in Oconee County.

9 I believe the clerk has already called the roll of
10 the jury so we know who is here. I need to ask you
11 some additional questions at this point in time to make
12 sure you are qualified serve on the jury.

13 I'm going to ask you a series of about 10 or 12
14 questions to you as a group. If your answer is yes to
15 any of the questions, please stand from where you're
16 seated so that I can see you are answering yes. I may
17 need to follow up with some additional questions to
18 you.

19 As I said, I'm going to ask a series of about 10
20 or 12 questions to you as a group. If your answer is
21 yes to any of the questions, please stand.

22 Is anyone here today to serve on the jury who is
23 not now a resident of Oconee County? You may have
24 lived in Oconee in the past and your name was still on
25 the list, mailing address and so forth and so on, but

1 you have since moved and are not living in Oconee now.

2 So is there anyone here to serve on the jury who
3 is not now a resident of Oconee County? If so, please
4 stand.

5 Yes, ma'am. Tell me your name and number, if you
6 would, please.

7 PROSPECTIVE JUROR: I'm Elyse Ludwig, 103, and I'm
8 in Clemson right now.

9 THE COURT: I'm sorry?

10 PROSPECTIVE JUROR: I'm in Clemson, living in
11 Clemson.

12 THE COURT: I know the lines are real close there.
13 Come on up here. Let's check and make sure about where
14 you live.

15 THE CLERK: Is her permanent address Clemson?

16 THE COURT: We'll find out.

17 Come on up.

18 Are you a student at Clemson?

19 PROSPECTIVE JUROR: Yes, sir.

20 THE COURT: So your home address is still in
21 Oconee; you still consider yourself a resident of
22 Oconee, or have you moved permanently to Clemson?

23 PROSPECTIVE JUROR: Technically, I live in Clemson
24 like full-time, like I live there. I don't, like, live
25 in --

1 THE COURT: Are you a student?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: We're going to excuse her, then.

4 Okay. Thank you for coming. You are free to go.

5 Actually, a full-time student is another reason
6 that I could excuse her.

7 All right. Anyone here to serve on the jury who
8 has less than a sixth grade education or its
9 equivalent? If so, please stand. Anyone with less
10 than a sixth grade education or its equivalent, please
11 stand.

12 No one is standing.

13 Anyone here to serve on the jury who is unable to
14 read, write, speak or understand the English language?
15 If so, please stand.

16 No one is standing.

17 Anyone here to serve on the jury who is under the
18 age of 18 or over the age of 65? If so, please stand.
19 Anyone under 18 or over 65.

20 All right. Yes, ma'am. Where are you, under 18
21 or over 65?

22 PROSPECTIVE JUROR: I'm 68.

23 THE COURT: All right. Well, under the law, you
24 have the option of serving or not serving. We'd be
25 glad to have you stay with us if you would like to, or

1 you can choose to go. Which one would you like to do?

2 PROSPECTIVE JUROR: It doesn't matter. I can
3 stay.

4 THE COURT: Thank you very much.

5 Yes, sir. Your name and number.

6 PROSPECTIVE JUROR: Carl Evans, 54, I think is my
7 number.

8 THE COURT: Which one do you want to do?

9 PROSPECTIVE JUROR: I will stay.

10 THE COURT: Thank you very much.

11 All right. Anyone here to serve on the jury who
12 is a law enforcement officer of any type, has a law
13 enforcement commission of any type, or who works within
14 the walls of any courthouse? If so, please stand.
15 Anyone in law enforcement or works within the walls of
16 any courthouse, if so, please stand.

17 THE COURT: Yes, ma'am. Your name and number.

18 PROSPECTIVE JUROR: My name is Erin Cartmell,
19 number 31. I'm a security officer, unarmed, SLED.

20 THE COURT: Tell me what you are.

21 PROSPECTIVE JUROR: I do security at Electrlux in
22 Anderson.

23 THE COURT: Do you have a law enforcement
24 commission?

25 PROSPECTIVE JUROR: Well, I mean, I wasn't sure if

1 it would be technically under the law.

2 THE COURT: I'm not sure either.

3 THE CLERK: We normally go by power of arrest.

4 THE COURT: Have you ever arrested anybody?

5 PROSPECTIVE JUROR: No. I'm unarmed.

6 THE CLERK: She has to stay.

7 THE COURT: All right. Thank you very much for
8 that information. Tell me your name and number again
9 just to make sure.

10 PROSPECTIVE JUROR: Erin Cartmell, 31.

11 THE COURT: Thank you very much for that
12 information.

13 Anyone here a full-time student or a full-time
14 teacher? If so, please stand.

15 Yes, ma'am. Name and number.

16 PROSPECTIVE JUROR: I'm Morgan Todd. I'm 160.
17 I'm a full-time student at the University of South
18 Carolina.

19 THE COURT: But you happen to be home?

20 PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: All right. Well, what we can do with
22 you is we can transfer you to a later term of court
23 when you won't be involved with going to school and
24 everything. Are you going to plan to be home this
25 summer?

1 PROSPECTIVE JUROR: I'm going to be home this
2 summer.

3 THE COURT: Let's transfer her to a term of
4 court --

5 THE CLERK: She said she could stay today.

6 PROSPECTIVE JUROR: Yeah, that's fine.

7 THE CLERK: They're already out.

8 THE COURT: Thank you very much. We'd be glad to
9 have you stay with us, then. Thank you.

10 Anyone here who has a small child for whom you
11 have the duty of custody and care, and with today, I
12 expand that to be an older person and all, like a
13 parent or grandparent or whatever, anyone who -- a
14 child or an adult for whom you have the duty of custody
15 and care and you have not been able to make
16 arrangements to care for that person while you're
17 serving on the jury this week? Anyone with any type of
18 problem in regard to caring for someone while you're
19 serving on the jury this week?

20 Yes, ma'am. Your name and number.

21 PROSPECTIVE JUROR: Joy Howard, number 82. I'm a
22 stay-at-home mom. My son is going to school in
23 Greenville.

24 THE COURT: I'll excuse you. Thank you very much
25 for coming. You're free to go.

1 PROSPECTIVE JUROR: Thank you, sir.

2 THE COURT: Yes, sir. Your name and number.

3 PROSPECTIVE JUROR: Paul Alkire, number three.

4 Primary caretaker for my mother.

5 THE COURT: Thank you very much for coming.

6 You're free to go.

7 Anyone present for jury duty who has been
8 convicted or pled guilty to a state or federal court to
9 a crime punishable by prison for more than one year and
10 whose civil rights have not been restored by pardon or
11 amnesty? If so, please stand.

12 No one is standing.

13 Anyone here to serve on the jury who has already
14 served on the jury here in circuit court -- I'm not
15 talking about in magistrate's court or city court or
16 federal court, for that matter -- anyone here to serve
17 on the jury who's already served in the circuit court
18 of this state within the last three years? If so,
19 please stand.

20 No one is standing.

21 In addition to those reasons for which I could
22 excuse you from serving on the jury, there may be some
23 particular compelling personal situation such as a
24 problem with your job or family obligation or vacation
25 or whatever that makes it particularly inconvenient for

1 you to serve this week. I cannot excuse you from jury
2 duty on the basis of such a personal reason, but I can
3 consider transferring you to a later term of court when
4 you might be able to make better arrangements to serve
5 on the jury for the week. And it's usually just one
6 week is the normal amount of time that we require for
7 you to serve.

8 Is there anyone who would like to be considered
9 for a possible transfer based on some personal reason
10 that just relates basically to this week? If so,
11 please stand. Anyone like to be considered for a
12 possible transfer? If so, please stand.

13 That might be the first time I have ever had
14 nobody standing in regard to that. So we have a bunch
15 of happy jurors out there ready to serve.

16 All right. I believe that I've completed, then,
17 the qualifications for the jury. Let me tell you a
18 little bit about how we operate.

19 Normally, we work from 9:30 in the morning until
20 about 12:30, 1:00 o'clock, something like that, when we
21 take a break for lunch. Then we come back about 2:00
22 o'clock or 2:30, and we work until about 5:00 o'clock
23 in the afternoon. So those are the hours that you
24 should expect to be with us if you're actually serving
25 on the jury. If you're not one of the people whose

1 actually picked to serve on the jury, 12 sometimes 13
2 people, if you're not one of those people, we'll excuse
3 you and have you come back at a later time and date.

4 You have a call-in system?

5 THE CLERK: Yes, sir.

6 THE COURT: You will be able to call in, get a
7 recorded message about when we want you to come back.
8 So we might need to pick another jury. So if you're
9 not actually on the jury, to be a trial jury for the
10 case, we'll excuse you, ask you to call in, only have
11 you here when it's absolutely necessary for the
12 purposes of picking a jury and get started with the
13 trial of a case.

14 So, do we have the solicitor here? I don't know.
15 Somebody here from the solicitor's office?

16 MS. WYSE: Yes, sir. We have several from the
17 solicitor's office.

18 THE COURT: Good. Anyway, I want to ask you if
19 you're ready to pick a jury.

20 MS. WYSE: Yes, sir, we are ready to pick a jury.

21 THE COURT: Tell me your name.

22 MS. WYSE: Catherine Wyse. I'm from the Anderson
23 County solicitor's office. I'm here this week.

24 THE COURT: Catherine, last name?

25 MS. WYSE: Wyse, Your Honor.

1 THE COURT: W-i-s-e?

2 MS. WYSE: W-y-s-e.

3 It sounds the same, so you just spell it however
4 you want.

5 THE COURT: All right. If you've got the
6 indictment, pass it up.

7 MS. WYSE: Yes, sir. Your Honor, I've also got a
8 list of witnesses.

9 THE COURT: All right.

10 We've got the original here. That's okay.

11 All right. Looks like the case we have for trial
12 today is the case of the State of South Carolina
13 against Jaimie, J-a-i-m-i-e, middle name Sabio,
14 S-a-b-i-o, last name Obregon, O-b-r-e-g-o-n. Jaimie
15 Sabrio Obregon.

16 Is he present?

17 If you would, please, stand and turn so the jury
18 can see you.

19 (Defendant complies.)

20 THE COURT: Thank you. You can be seated.

21 Mr. Obregon is the defendant in this case. The
22 State has brought forth to try four charges in these
23 indictments. These relate to events that occurred on
24 or about February 18, 2014, and March 31, 2014, two
25 charges of what we call criminal sexual conduct in the

1 first degree involving Mr. Obregon and a minor or
2 person under the age of 11, and then another two --
3 that's two indictments, first-degree criminal sexual
4 conduct involving him and a person under the age of 11,
5 and then two charges of criminal sexual conduct in the
6 second degree, same dates, involving him and again the
7 same minor between the ages really of 11 and 14. So
8 four charges altogether, two charges of what we call
9 first-degree criminal sexual conduct and two charges of
10 second-degree criminal sexual conduct involving him
11 during that period of time, February 18, 2014, and
12 March 31, 2014. Actually, it involves, according to
13 the indictment, if I'm reading it correctly, involves
14 the same minor whose initials are **Minor**.

15 Now, the law provides that the person not be named
16 but just the initials, **Minor**, is required to be given in
17 the indictment.

18 So those are the charges that the State has made
19 against Mr. Obregon. And, of course, he has said, "I'm
20 not guilty of those charges." So that's why we're here
21 today, to have a jury trial for you, the jury, to
22 determine whether the State can meet the burden of
23 proof, or proving him guilty of one or all of these
24 charges or more of these charges beyond a reasonable
25 doubt. That's the purpose of us being here today, is

1 for the State to have the opportunity to convince 12
2 jurors of his guilt of one or more of these charges
3 beyond any reasonable doubt.

4 I give you that as background information just in
5 case any of you happen to know anything or may think
6 you know anything at all about any fact or circumstance
7 involved in this case, I would like to know that now.

8 So is there any member of the jury panel who knows
9 anything or think you know anything at all about any
10 fact or circumstance that may be involved in the trial
11 of these cases, these charges against Mr. Obregon? If
12 so, please stand. Anyone on the jury panel have any
13 knowledge of anything at all to do with this case,
14 these cases? If so, please stand.

15 No one is standing.

16 Is any member of the jury panel related by blood
17 or marriage or do you know in any way the defendant in
18 this case, Jaimie Sabrio Obregon? And if I'm not
19 pronouncing that correctly, I apologize.

20 Anyone on the jury panel related by blood or
21 marriage or do you know in any way Mr. Obregon? If so,
22 please stand.

23 No one is standing.

24 All right. Who's going to -- I'll let the
25 solicitors -- whoever is going to be involved in the

1 trial of the case for the State, if you would,
2 introduce yourself to the jury.

3 MS. WYSE: Thank you, Your Honor. May it please
4 the court. My name is Catherine Wyse. Like I said
5 earlier, I am from the Anderson County solicitor's
6 office, and I'm here this week.

7 Seated right here is Mr. -- well, Detective Gentry
8 Hawk with the Oconee County Sheriff's Department. Your
9 Honor, the other witnesses that I've --

10 THE COURT: Why don't you call out the names of
11 the witnesses.

12 Okay. Listen to these names because I want to
13 know if you know them in any way or related to them in
14 any way.

15 Call out the names of of prospective witnesses,
16 people who may be called to testify on behalf of the
17 State.

18 MS. WYSE: Thank you, Your Honor.

19 The first one would be Amy Millspaugh. She is a
20 guidance counselor at Blue Ridge Elementary School.
21 Second would be [REDACTED] Minor .

22 THE COURT: That's spelled [REDACTED] Minor , I
23 believe.

24 MS. WYSE: Yes, sir. The third one would be
25 Crystal Nissen with DSS here in Oconee County. Will

1 Freestate. He is an officer with Anderson County
2 Sheriff's Office. Angie Gilstrap. She is employed by
3 Foothills alliance. Cindy Still, also employed by
4 Foothills Alliance. Gentry Hawk, as I've already
5 stated. Deputy McGowan with Oconee County Sheriff's
6 Department. Dr. Sally Carter with the department
7 mental health. She also works at Foothills Alliance.
8 Dorothy Taylor and Marie Wearing, who works for the
9 South Carolina Department of Motor Vehicles.

10 THE COURT: All right. Anyone on the jury panel
11 related by blood or marriage or do you know in any way
12 the lawyers, the investigator or whoever over here
13 seated with the solicitor, or any of those people whose
14 names she just called out to you who are potential
15 witnesses, anybody on the panel related by blood or
16 marriage or do you know in any way, social, work,
17 whatever any of those people whose names we just called
18 out to you?

19 Yes, ma'am. Your name and number.

20 PROSPECTIVE JUROR: Frances Capps, 27. And I
21 volunteer with the guardian ad litem program.

22 THE COURT: So who do you know on that list?

23 PROSPECTIVE JUROR: I would be familiar with
24 Mr. Hawk and Crystal Nissen.

25 THE COURT: All right. You're familiar with them,

1 but by that do you mean you just know them when you see
2 them, or have you had dealings with them or what?

3 PROSPECTIVE JUROR: Yes. They have been the
4 investigators on cases that I have had.

5 THE COURT: All right. Thank you very much for
6 that information. All right. You can be seated.

7 Yes, sir. Your name and number.

8 PROSPECTIVE JUROR: 109, Michael McClung.

9 THE COURT: Speak up, please.

10 PROSPECTIVE JUROR: 109, Michael McClung. I know
11 Mr. Hawk.

12 THE COURT: I'm sorry?

13 PROSPECTIVE JUROR: I know Mr. Hawk.

14 THE COURT: All right. How do you know him?

15 PROSPECTIVE JUROR: I work with emergency services
16 as a volunteer, and I've met him.

17 THE COURT: Thank you very much for that
18 information. You can be seated.

19 Yes, ma'am, your name and number.

20 PROSPECTIVE JUROR: Shena Carroll, 29. I know
21 Mr. Hawk from where I work.

22 THE COURT: Where do you work?

23 PROSPECTIVE JUROR: South Carolina State Credit
24 Union.

25 THE COURT: South Carolina?

1 PROSPECTIVE JUROR: State Credit Union.

2 THE COURT: Credit union. All right. So I've got
3 to ask you, then, how do you know him as a result of
4 working there?

5 PROSPECTIVE JUROR: He banks with us.

6 THE COURT: Okay. Thank you very much for that
7 information. I thought so, but I wasn't sure. All
8 right. Thank you.

9 Anyone else who has a positive response to knowing
10 any of these people that have just been introduced to
11 you. If so, please stand.

12 No one is standing.

13 All right. You introduce yourself to the jury.

14 MR. BYRHOLDT: May it please the court. I'm Bruce
15 Byrholdt. I've practiced law here for almost 38 years.
16 I represent Jaimie Obregon. I look forward to working
17 with you this week.

18 THE COURT: Anyone on the panel know Mr. Byrholdt
19 in any way? If so, please stand. Related by blood or
20 marriage or know him in any way? If so, please stand.

21 No one is standing.

22 Has anyone on the jury panel formed or expressed
23 an opinion about any issue or matter that may be
24 involved in the trial of this case? If so, please
25 stand.

1 No one is standing.

2 Has any member of the jury panel formed or
3 expressed an opinion about any issue or matter that may
4 be involved in the trial of this case? If so, please
5 stand.

6 No one standing.

7 Is any member of the jury panel aware of any bias
8 or prejudice either in favor of or against either side
9 in this case? If so, please stand.

10 No one standing.

11 Does any member of the jury panel know of any
12 reason why you cannot give both sides a fair and
13 impartial trial in this case? If so, please stand.

14 No one standing.

15 Does any member jury panel know of any reason
16 whatsoever why you should not be picked and serve as a
17 juror in this case? If so, please stand.

18 No one standing.

19 Any additional questions from the State?

20 MS. WYSE: No, Your Honor.

21 THE COURT: From the defense?

22 MR. BYRHOLDT: No, Your Honor.

23 THE COURT: All right. Give us a list, then.

24 THE CLERK: Do we want to have an alternate?

25 THE COURT: Yeah, one alternate.

1 All right. Members of the jury panel, what we're
2 doing now, the clerk of court down here is going to
3 punch the right buttons hopefully on her computer down
4 there, and the computer is going to give us a list of
5 names. We don't need all of you on the list. You
6 won't all be on the list, but a certain number will be
7 picked at random by the computer.

8 I like to tell jurors this kind of shows how times
9 have changed. When I first started practicing law
10 years ago, the process was that we would have a person
11 here in court who either was a small child who hadn't
12 been to school, couldn't read and write, or someone who
13 couldn't see, couldn't see, was impaired, their vision,
14 they couldn't see, and we had a big box or drum or
15 whatever. And everyone's name was on a little piece of
16 paper, and we had that person who couldn't see or
17 couldn't read draw out the names one at a time as far
18 as to put on a list to pick a jury.

19 Now we do it by a computer that can't see your
20 names or whatever. Doesn't know who you are and
21 everything. So that's how we get the list now. So the
22 computer is giving us a list, and I'm going to give
23 that list to the lawyers. And I'm going to give them
24 sufficient time look over the list, and then we have a
25 process where we strike or excuse or remove names from

1 the list until we have those 12 people and one
2 alternate, who will actually be the jury for the trial
3 of this case.

4 So that's the process we're going to go through
5 now. And I'll go ahead and give the list to the
6 lawyers and the court reporter and to me, and we'll
7 give them about 15 or 20 minutes to look over the list,
8 and then when we're finished, we'll pick the jury for
9 the trial of this case.

10 So if you want to leave the courtroom, you can.
11 You don't have to stay in here while -- over the next
12 15 or 20 minutes. It's about ten minutes until 11:00
13 now. I ask you to be back in here at five minutes
14 after 11:00. Hopefully we'll be ready to pick the jury
15 at that time.

16 So if you want to leave the courtroom, you can.
17 Don't go too far. Be back in here five minutes after
18 11:00. Thank you.

19 (WHEREUPON, the prospective jury panel exited open
20 court at 10:47 a.m.)

21 (WHEREUPON, a recess was taken from 10:47 a.m. to
22 11:06 a.m.)

23 THE COURT: It's ten and five, right?

24 MR. BYRHOLDT: Yes, sir.

25 MS. WYSE: Yes, sir.

1 THE COURT: All right. Go ahead.

2 THE CLERK: Ladies and gentlemen, as I call your
3 name, if you would please come forward, bringing your
4 personal belongings. You will come through the gate,
5 come to the bar and turn and face the gallery.

6 Juror number 115, Brandi Morrow.

7 (WHEREUPON, a white female stepped forward.)

8 THE CLERK: What says the State?

9 MS. WYSE: Please excuse Ms. Morrow for the trial
10 of this case only.

11 THE CLERK: Ma'am, you have been excused from this
12 case. You may be seated.

13 Number 22, Debra Burton.

14 (WHEREUPON, a white female stepped forward.)

15 THE CLERK: What says the State?

16 MS. WYSE: Please present Ms. Burton.

17 THE CLERK: What says the defense?

18 MR. BYRHOLDT: Please excuse Ms. Burton from
19 service on this case.

20 THE CLERK: Ma'am, you have been excused from this
21 case. You may be seated.

22 Number 20, Morgan Bryson.

23 (WHEREUPON, a white female stepped forward.)

24 THE CLERK: What says the State?

25 MS. WYSE: Please present Ms. Bryson.

1 THE CLERK: What says the defense?

2 MR. BYRHOLDT: Please swear Ms. Bryson.

3 THE CLERK: Ma'am, if you would, please take a
4 seat in the jury box.

5 Number 32, Sherry Catchings.

6 (WHEREUPON, a black female stepped forward.)

7 MS. WYSE: Please present Ms. Catchings.

8 THE CLERK: What says the defense?

9 MR. BYRHOLDT: Please swear Ms. Catchings.

10 THE CLERK: Ma'am, if you would, please take a
11 seat in the jury box.

12 Number 42, Angela Davis.

13 (WHEREUPON, a black female stepped forward.)

14 THE CLERK: What says the State?

15 MS. WYSE: Please present Ms. Davis.

16 THE CLERK: What says the defense?

17 MR. BYRHOLDT: Please excuse her from service on
18 this case.

19 THE CLERK: Ma'am, you have been excused from this
20 case. You may be seated.

21 Number 35, Brian Chirillo.

22 (WHEREUPON, a white male stepped forward.)

23 THE CLERK: What says the State?

24 MS. WYSE: Please present Mr. Chirillo.

25 THE CLERK: What says the defense?

1 MR. BYRHOLDT: Please swear the gentleman.

2 THE CLERK: Sir, if you would, please take a seat
3 in the jury box.

4 Number 15, Christine Bolt.

5 (WHEREUPON, a white female stepped forward.)

6 THE CLERK: What says the State?

7 MS. WYSE: Please present Ms. Bolt.

8 THE CLERK: What says the defense?

9 MR. BYRHOLDT: Please excuse her from service on
10 this case.

11 THE CLERK: Ma'am, you have been excused from this
12 case. You may be seated.

13 Number 43, Brandon Davis.

14 (WHEREUPON, a white male stepped forward.)

15 THE CLERK: What says the State?

16 MS. WYSE: Please present Mr. Davis.

17 THE CLERK: What says the defense?

18 MR. BYRHOLDT: Please swear the gentleman.

19 THE CLERK: Sir, if you would, please take a seat
20 in the jury box.

21 Number 167, Tonja Watkins.

22 (WHEREUPON, a white female stepped forward.)

23 THE CLERK: What says the State?

24 MS. WYSE: Please present Ms. Watkins.

25 THE CLERK: What says the defense?

1 MR. BYRHOLDT: Please swear Ms. Watkins.

2 THE CLERK: Ma'am, if you would please, take a
3 seat in the jury box.

4 Number 34, Courtney Charles.

5 (WHEREUPON, a white female stepped forward.)

6 THE CLERK: What says the State?

7 MS. WYSE: Please present Ms. Charles.

8 THE CLERK: What says the defense?

9 MR. BYRHOLDT: Please swear Ms. Charles.

10 THE CLERK: Ma'am, if you would, please take a
11 seat in the jury box.

12 Number 2, Richard Alberti.

13 (WHEREUPON, a white male stepped forward.)

14 THE CLERK: What says the State?

15 MS. WYSE: Please swear Mr. Alberti.

16 THE CLERK: What says the defense?

17 MR. BYRHOLDT: Please excuse him from service on
18 this case.

19 THE CLERK: Sir, you have been excused from this
20 case. You may be seated.

21 Number 114, John Morris.

22 (WHEREUPON, a white male stepped forward.)

23 THE CLERK: What says the State?

24 MS. WYSE: Please excuse Mr. Morris for the trial
25 of this case.

1 THE CLERK: Sir, you have been excused from this
2 case. You may be seated.

3 Number 157, Michael Szumlas.

4 (WHEREUPON, a white male stepped forward.)

5 THE CLERK: What says the State?

6 MS. WYSE: Please present Mr. Szumlas.

7 THE CLERK: What says the defense?

8 MR. BYRHOLDT: Please swear the gentleman.

9 THE CLERK: Sir, if you would, please take a seat
10 in the jury box.

11 Number 93, Edward Lamken.

12 (WHEREUPON, a white male stepped forward.)

13 THE CLERK: What says the State?

14 MS. WYSE: Please present Mr. Lamken.

15 THE CLERK: What says the defense?

16 MR. BYRHOLDT: Please swear the gentleman.

17 THE CLERK: Sir, if you would, please take a seat
18 in the jury box.

19 Number 29, Shena Carroll.

20 (WHEREUPON, a white female stepped forward.)

21 THE CLERK: What says the State?

22 MS. WYSE: Please present Ms. Carroll.

23 THE CLERK: What says the defense?

24 MR. BYRHOLDT: Please excuse her from service on
25 this case.

1 THE CLERK: Ma'am, you have been excused from this
2 case. You say be seated.

3 Number 36, Daniel Churukian.

4 (WHEREUPON, a white male stepped forward.)

5 THE CLERK: What says the State?

6 MS. WYSE: Please present Mr. Churukian.

7 THE CLERK: What says the defense?

8 MR. BYRHOLDT: Please seat the gentleman.

9 THE CLERK: Sir, if you would, please take a seat
10 in the jury box.

11 Juror 92, Justin Kokay.

12 (WHEREUPON, a white male stepped forward.)

13 THE CLERK: What says the State?

14 MS. WYSE: Please present Mr. Kokay.

15 THE CLERK: What says the defense?

16 MR. BYRHOLDT: Please seat the gentleman.

17 THE CLERK: Sir, if you would, please take a seat
18 in the jury box.

19 Number 18, Randy Broach.

20 (WHEREUPON, a white male stepped forward.)

21 THE CLERK: What says the State?

22 MS. WYSE: Please present Mr. Broach.

23 THE CLERK: What says the defense?

24 MR. BYRHOLDT: Please excuse him from service on
25 this case.

1 THE CLERK: Sir, you have been excused from this
2 case. You may be seated.

3 Number 21, Justin Burgess.

4 (WHEREUPON, a white male stepped forward.)

5 THE CLERK: What says the State?

6 MS. WYSE: Please excuse Mr. Burgess for this
7 trial only.

8 THE CLERK: Sir, you have been excused from this
9 case. You may be seated.

10 Number 54, Carlisle Evans.

11 (WHEREUPON, a white male stepped forward.)

12 THE CLERK: What says the State?

13 MS. WYSE: Please present Mr. Evans.

14 THE CLERK: What says the defense?

15 MR. BYRHOLDT: Please excuse him from service on
16 this case.

17 THE CLERK: Sir, you have been excused from this
18 case. You may be seated.

19 Number 165, Kyle Wagner.

20 (WHEREUPON, a white male stepped forward.)

21 THE CLERK: What says the State?

22 MS. WYSE: Please present Mr. Wagner.

23 THE CLERK: What says the defense?

24 MR. BYRHOLDT: Please swear Mr. Wagner.

25 THE CLERK: Sir, if you would, please take a seat

1 in the jury box.

2 Number 109, Michael McClung.

3 (WHEREUPON, a white male stepped forward.)

4 THE CLERK: What says the State?

5 MS. WYSE: Please excuse Mr. McClung for this
6 trial only.

7 THE CLERK: Sir, you have been excused from this
8 case. You may be seated.

9 Number 138, Troy Rogers.

10 (WHEREUPON, a white male stepped forward.)

11 THE CLERK: What says the State?

12 MS. WYSE: Please present Mr. Rogers.

13 THE CLERK: What says the defense?

14 MR. BYRHOLDT: Please swear the gentleman.

15 THE CLERK: Sir, if you would, please take a seat
16 in the jury box.

17 THE COURT: That's 12, then?

18 THE CLERK: Yes, sir.

19 THE COURT: We're going to pick one alternate.
20 One and two on the strikes.

21 THE CLERK: Number 45, Carolyn Dobson.

22 (WHEREUPON, a white female stepped forward.)

23 THE CLERK: What says the State?

24 MS. WYSE: Please present Ms. Dobson.

25 THE CLERK: What says the defense?

1 MR. BYRHOLDT: Please excuse her from service on
2 this case.

3 THE CLERK: Ma'am, you have been excused from
4 service on this case. You may be seated.

5 Number 140, Benjamin Schwall.

6 (WHEREUPON, a white male stepped forward.)

7 THE CLERK: What says the State?

8 MS. WYSE: Please present Mr. Schwall.

9 THE CLERK: What says the defense?

10 MR. BYRHOLDT: Please swear the gentleman.

11 THE COURT: Sir, if you would, please take a seat
12 in the jury box.

13 THE COURT: All right. I believe that's our 12
14 jurors and one alternate.

15 The first thing I'm going to ask this jury to do
16 is, if you would follow the deputy or whoever takes
17 you -- takes care of you to a jury room, if you would
18 follow -- you going to do it?

19 THE BAILIFF: Yes, sir.

20 THE COURT: Follow him out of the courtroom to the
21 jury room, I'll be back with you just as soon as I can.

22 (WHEREUPON, the jury exited open court at
23 11:17 a.m.)

24 THE COURT: All right. Any objection to the jury
25 as it's presently constituted from the State?

1 MS. WYSE: No, Your Honor.

2 THE COURT: Defendant?

3 MR. BYRHOLDT: No, Your Honor.

4 THE COURT: All right. Thank you. All right.

5 Wait just a minute, members of the jury. I want
6 to make sure about what instructions I need to give you
7 at this point.

8 I'm going to let the rest of them go, then, and
9 have them call back after 6:00 o'clock?

10 THE CLERK: Yes, sir.

11 As you were checked in this morning, you were
12 given a letter, and I think at the top there was a
13 number highlighted, our jury information line. Does
14 everyone have that?

15 THE COURT: If anybody doesn't have it, raise your
16 hand.

17 Got one over here.

18 THE CLERK: Anyone else?

19 THE COURT: So you want them to call after
20 6:00 o'clock?

21 THE COURT: There will be a message on there after
22 6:00 o'clock this evening telling you what to do, call
23 back, to come back, whatever. You are free to go. You
24 are free to stay with us if you like to observe the
25 trial of this case, but you don't have to. You are

1 free to go.

2 Let the jury get out.

3 (WHEREUPON, the remainder of the prospective jury
4 panel exited the courtroom at 11:20 a.m.)

5 THE COURT: Anything before we bring the jury in
6 and get started with the trial?

7 MS. WYSE: Judge, there is a number of motions
8 that need to be heard and addressed.

9 THE COURT: All right. Speak up. Tell me what
10 you want me to do and why.

11 MS. WYSE: Your Honor, I was hoping that you would
12 be able to hear the motions this afternoon and that we
13 could start the testimony in the morning. I predict
14 there will be a *Jackson v. Denno* as far as the forensic
15 interviewer.

16 THE COURT: So you want to not start the trial now
17 but wait and start it tomorrow morning at 9:30?

18 MS. WYSE: Yes, sir, Your Honor.

19 THE COURT: Why is that?

20 MS. WYSE: We have a number of motions that we
21 need to do in front of you outside of the presence of
22 the jury, and there's also, of course, the murder plea
23 at 3:00 o'clock.

24 THE COURT: I didn't know about that.

25 What do you have to say about that?

1 MR. BYRHOLDT: No objection, Your Honor.

2 THE COURT: All right. As I like to say, we can
3 do anything by consent. So you're consenting to that,
4 and I don't have any objection to it. So that's what
5 we'll do, then, of course.

6 Bring the jury back in.

7 (WHEREUPON, the jury entered open court at
8 11:21 a.m.)

9 THE COURT: Just come in and have a seat anywhere.
10 You're not going to be in those seats very long, I'll
11 tell you why in just a minute. Come in and have a seat
12 anywhere. Go on down. Is he the alternate? Okay.

13 You're the alternate juror. That's Mr. Schwall;
14 is that right?

15 ALTERNATE JUROR: Yes, sir.

16 THE COURT: We do reserve the, however you want to
17 think of it, the first seat, the last seat, whatever,
18 when you come in, however you're counting, from which
19 end you're counting from whether it's the first or the
20 last, but that is the seat that we reserve for the
21 alternate juror. So, if you would, occupy that seat at
22 all times during trial.

23 Other jurors, you are free sit wherever you like
24 in the jury box at such time as you come and go from
25 the courtroom, but I am going to ask whoever the

1 foreperson is to sit in this seat, the first one or the
2 last one, again whichever way you want to look at it.
3 Where that young lady is seated right there, that
4 should be the seat for the foreman.

5 Now, oftentimes I pick the foreman, the foreperson
6 of the jury, but in this case, I'm going to ask you to
7 select your foreperson when you leave. Now, we're not
8 going to get started with the trial of this case,
9 actually the testimony and stuff, until tomorrow
10 morning at 9:30, so I'm going to be releasing you in
11 just a few minutes.

12 But before you go, I would like you to go back to
13 the jury room and talk it over and decide who's going
14 to serve as your foreperson in this case. The
15 foreperson's vote counts no more than anybody else's
16 vote in deciding this case, but we do have one person
17 who's designated as the foreperson of the jury, who is
18 the spokesman for the jury here in court.

19 If you have any reason that you need to talk with
20 me about anything during the course of the trial, the
21 foreperson is the spokesperson for you, as the jury,
22 during the course of the trial. If you want to take
23 breaks more often or whatever, the foreperson is the
24 person that tells me anything that you need to tell me
25 during the course of the trial.

1 Also, at the end of the case, the foreperson is
2 the person who presides over the jury deliberations
3 while you consider your verdict. Again, the
4 foreperson's vote counts no more than anybody else's
5 vote, but it's the foreperson's duty to get the
6 discussion going, keep it on track, and to report to us
7 when you have reached a verdict.

8 So before you leave today, that's the first thing
9 I want you to do, go back to the jury room, talk it
10 over, decide who you want to be the foreperson for you
11 in this case, and then you can let me know, let the
12 bailiff know, let me know either today or tomorrow who
13 that person is so that I know for the rest of the
14 trial.

15 So, you cannot discuss the case with friends,
16 associates, anybody, family members or anything while
17 you're on this trial. That's the first thing, the most
18 important thing that I'm going to tell you this
19 morning. You cannot discuss this case with anybody
20 during the trial. And that means you're not supposed
21 to discuss it even amongst yourselves.

22 The only time you are to discuss it is at the
23 conclusion of the case when you have heard all the
24 testimony, when you have heard the arguments of the
25 lawyers, and when you have heard my instructions to you

1 as far as the law is concerned. That's when you will
2 discuss it. That's when you will decide whether the
3 State has met the burden of proof in this case or not.

4 So remember that throughout the trial. Do not
5 discuss the case. Your family wants to know what
6 you're doing, friends, whatever. Tell them you're
7 involved in the trial of the case, you're actually on
8 the jury that's hearing the case, and the judge --
9 blame it on me if you want to -- the judge specifically
10 told you not to discuss this case. The only time
11 you're to talk about it is at the conclusion of the
12 trial when you've heard everything, and that's when you
13 will make your decision. That's when you talk it over.
14 That's when you will make your decision in this case.
15 So remember that and follow that throughout the trial.

16 I think that's all I need to tell you now at this
17 point in time, so we'll come back tomorrow morning at
18 9:30. Be in the jury room. Not here in the courtroom,
19 not downstairs. The best advice I would give you is
20 when you get to the area of the courthouse tomorrow,
21 don't hang around outside talking or whatever. When
22 you get, here come on in, go directly to the jury room.
23 That way you will avoid any potential contact with
24 people that may be involved in this case in some way or
25 another. Get here, come to the jury room. We'll have

1 coffee, whatever available for you at that time, and be
2 here, as I said, by 9:30 tomorrow morning. We'll get
3 started just as soon as we can after that. So have a
4 nice evening. See you tomorrow morning at 9:30.

5 Let the jury get out.

6 (WHEREUPON, the jury exited open court at
7 11:26 a.m.)

8 THE COURT: All right. Do we want to try to deal
9 with anything as far as motions now, or what do you
10 want to do?

11 MS. WYSE: Judge, this went by a lot faster than I
12 thought it would.

13 THE COURT: I keep things on track.

14 MS. WYSE: Thank you for doing that. I told most
15 everyone to be here at 2:00 o'clock. We do have
16 Detective Hawk here if you want to start the *Jackson v.*
17 *Denno*.

18 Judge, another thing, and I don't know how you
19 feel about this, but almost every single time I try a
20 case, I have jurors who try to run off the rails and
21 look up stuff on the Internet and, you know, research
22 things themselves.

23 THE COURT: I hadn't gotten used to giving that
24 instructions to them, but I'll -- whatever you want me
25 to tell them along those lines, I'll try to do that. I

1 should have done it now, I guess. But, anyway, I told
2 them not to discuss it anyway. Maybe they will have
3 sense enough to carry it over. But, anyway, if you
4 want me to tell them something more than that, I'll be
5 glad to do so.

6 MS. WYSE: If you would just tell them that
7 tomorrow, Your Honor.

8 THE COURT: Remind me tomorrow morning.

9 MS. WYSE: I will. Thank you, Judge.

10 We can start the *Jackson v. Denno*. There were
11 actually two officers that were present, and I've got
12 one of them now in the courtroom. If you want to start
13 now or we can start at 2:00.

14 THE COURT: Let's go ahead and take -- unless
15 y'all want to do something else now, I'd just as
16 soon go ahead and do it now.

17 MS. WYSE: Your Honor, we would call Detective
18 Gentry Hawk to the stand.

19 GENTRY HAWK,

20 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21 MS. WYSE: Judge, are you having trouble hearing
22 me?

23 THE COURT: A little bit. I'm a little bit
24 hard-of-hearing so keep your voice up.

25 MS. WYSE: I'm going to get closer.

1 THE COURT: Good.

2 MS. WYSE: Is that better?

3 THE COURT: Yes.

4 DIRECT EXAMINATION

5 BY MS. WYSE:

6 Q Detective Hawk, where do you work?

7 A The Oconee County Sheriff's Office.

8 THE COURT: Your last name is what?

9 THE WITNESS: Hawk.

10 THE COURT: Spell that for me.

11 THE WITNESS: H-a-w-k.

12 THE COURT: Go ahead.

13 BY MS. WYSE:

14 Q Detective Hawk, how long have you been with the
15 Oconee County Sheriff's Office?

16 A Approximately 19 years.

17 Q All right. And what do you do there?

18 A I'm an investigator -- currently, I'm the
19 lieutenant over investigations. I'm in charge of all
20 the investigators and the evidence techs and some other
21 people at the sheriff's office. And I investigate
22 incident reports that come in to us dealing with
23 children, crimes against person or any that are
24 assigned to me.

25 Q And what was your primary responsibility in 2013

1 and 2014?

2 A I was the child and elder abuse investigator.

3 Q And did you investigate the case with Mr. Obregon?

4 A Yes, ma'am.

5 Q All right. And were you the lead detective in
6 this case?

7 A I was.

8 Q Did anybody else work it with you?

9 A Investigator Freestate that was employed with us
10 at the time.

11 Q And you said he was employed at the time?

12 A Yes, ma'am.

13 Q And he is no longer with the Oconee County
14 Sheriff's Department?

15 A No, ma'am. He's with Anderson County now.

16 Q Okay. And did you have an opportunity to speak to
17 Mr. Obregon?

18 A I did.

19 Q And will you please tell the court the
20 circumstances surrounding that talk that you had with
21 him.

22 A Well, we had gotten the incident report that came
23 up through our investigations, through our system, and
24 from that, Mr. Obregon was listed as a suspect in a
25 molestation case of a child. And from that, we

1 conducted our investigation where we got a forensic
2 interview done of the child, we had a medical exam done
3 on the child, and led into we did a pretext phone call
4 with Mr. Obregon where we had the the child call him
5 and talk to him about the abuse on the phone. And then
6 that led into me and Mr. Freestate going to the -- his
7 residence to see if he would come and talk to us.

8 Q And did you -- you did go to his residence?

9 A Yes, ma'am.

10 Q And where was his residence?

11 A I don't know the exact address.

12 Q Is it [REDACTED] ?

13 A I believe so, yes, ma'am.

14 Q All right. And when you got there, who was at the
15 house?

16 A Mr. Obregon.

17 Q Was anybody else with him?

18 A No, ma'am.

19 Q Did you introduce yourself to him?

20 A We did, yes, ma'am.

21 Q You introduced yourself and, to your knowledge,
22 Will also introduced himself?

23 A Yes, ma'am.

24 Q And you identified yourself as law enforcement?

25 A Yes, sir.

1 Q And did you go inside the home?

2 A We did.

3 Q Do you remember approximately what time of day you
4 went to his house?

5 A I don't remember. It was in the morning.

6 Midmorning, somewhere in there.

7 Q Okay. And did he invite you in?

8 A He did.

9 Q And what nationality is Mr. Obregon?

10 A As far as I know, he's from the Philippines.

11 Q Okay.

12 THE COURT: I'm sorry. What was your answer?

13 THE WITNESS: He's from the Philippines.

14 BY MS. WYSE:

15 Q And did you have any trouble communicating with
16 Mr. Obregon?

17 A No, ma'am. He has an accent, so you just have to
18 listen to him, but there was no problems communicating
19 with him.

20 Q And so you went inside his house?

21 A Yes, ma'am.

22 Q And how long were you there?

23 A Just a few minutes. We asked him -- told him we
24 had allegations and we needed to talk to him about a
25 case and asked him if he would come to the sheriff's

1 office with us, and he did. He talked to us. He had
2 to put -- I don't remember exactly what -- he had to
3 get dressed, he had to to put on a shirt and maybe his
4 shoes, I don't exactly remember, but he was getting
5 dressed while he was talking to us and was telling us
6 information about himself. We just had small talk.

7 Q And what kind of information did he volunteer to
8 you?

9 A He volunteered -- he showed us -- he had a pullup
10 bar in his house and I remember him doing a pullup
11 because he was showing us he could do a pullup. He was
12 in shape, and he made a comment about being
13 Mr. Filipino or Mr. Philippines or something when he
14 was younger and living in the Philippines.

15 Q Did you take him to the sheriff's office?

16 A Yes, ma'am.

17 Q Why did you take him to the sheriff's office?

18 A At the time I believe his license was suspended.

19 Q Okay.

20 A So we gave him a ride up there.

21 THE COURT: I'm sorry. Your answer was what?

22 THE WITNESS: His license was suspended.

23 BY MS. WYSE:

24 Q Okay. And so he sat in the patrol car with you?

25 A In my -- I have a -- I believe at that time --

1 this was several years ago -- I believe I had my Ford
2 F-150 four-door truck. Either that or I had a Chevy
3 Tahoe, what I was driving.

4 Q He wasn't in a police car?

5 A It was a police car, but it's unmarked and it
6 doesn't have cages in it or anything like that.

7 Q Was he in handcuffs?

8 A No, ma'am.

9 Q All right. And did you tell him that it was his
10 choice to come to the sheriff's office?

11 A Yeah. I asked him if he would want to come up
12 there and talk to us.

13 Q Okay. And do you know approximately how long you
14 met with Mr. Obregon at the sheriff's office?

15 A I'd have to look at my notes. Probably an hour,
16 hour and a half at the most. Hour and 15 minutes,
17 somewhere in there.

18 Q And when you got to the sheriff's office, did you
19 read him his rights?

20 A I was present when it was read. Investigator
21 Freestate read him his Miranda rights.

22 Q All right.

23 MS. WYSE: Your Honor, may I approach the witness?

24 THE COURT: Yes.

25 BY MS. WYSE:

1 Q I'm going to hand what's been marked as State's
2 Exhibit Number 2. Will you please identify that for
3 the court.

4 A Yes, ma'am. This is our sheriff's office Miranda
5 rights form that we use.

6 Q All right. And is that a standard Miranda rights
7 form?

8 A It is.

9 Q All right. And what is on the paper?

10 A Well, it has the sheriff's letterhead on it. It
11 has "your rights." It has a place, which is written
12 OLEC. The date is 6/19/2014. Time is 12:17 p.m.
13 that's when we started the -- when Investigator
14 Freestate started reading him his Miranda rights.

15 And at the top, it has written two years of
16 college, two years Tri-County Tech, and a high school
17 diploma.

18 Q Is that your handwriting or is that
19 Mr. Freestate's handwriting?

20 A That's Mr. Freestate's.

21 Q And out to -- are his rights listed on that piece
22 of paper?

23 A Yes, ma'am, they are.

24 Q All right. And beside each set of rights, what
25 does there appear?

1 A They're his initials.

2 Q And do you ask defendants before they are given or
3 questioned, do you give them their rights and then ask
4 them to initial it?

5 A Yes. What we normally do is read each line. And
6 I -- personally, I have them initial them, and I
7 believe that's what Investigator Freestate did. It
8 says, "Before we ask you any questions, you must
9 understand your rights." And we always reiterate, "Do
10 you understand that? If you do, put your initials on
11 this line. If you don't, ask me and I'll explain them
12 to you." We go through each line and have them initial
13 after we're done reading it to them.

14 Q Did you explain or did Mr. Freestate explain his
15 rights to him?

16 A Oh, yes, ma'am.

17 Q Did he have any questions about them?

18 A Not that I remember, no, ma'am.

19 Q And did he sign his initials beside each bullet
20 point?

21 A He did, yes, ma'am.

22 Q And at any point in time did he stop and ask you
23 anything out of the ordinary?

24 A No, ma'am.

25 Q Okay. All right. And then after Mr. Freestate

1 was done giving him his rights, what did you do at that
2 point in time?

3 A Well, he signed it, that he understood his rights
4 and that he was willing to talk to us. He signed it,
5 Mr. Freestate signed it, I signed it, and Mr. Freestate
6 had written the ending time, which was 12:23 p.m.

7 Q Okay. And then you started asking him questions
8 about the case?

9 A Yes, ma'am.

10 Q All right. And was he in handcuffs at this time?

11 A No, ma'am.

12 Q All right. What did he tell you once you began
13 asking him questions?

14 A Well, he -- I'd have to refer back to the notes
15 for everything, but he started talking to us about how
16 he took care of of **Minor** and her family and how he let
17 them live in the home.

18 THE COURT: Took care of who?

19 THE WITNESS: The victim.

20 THE COURT: Well, don't be talking about that.

21 That's to be determined. What's her name?

22 THE WITNESS: I'm sorry. **Minor**.

23 THE COURT: What?

24 THE WITNESS: **Minor**.

25 THE COURT: **Minor** or what?

1 MS. WYSE: [Minor].

2 THE COURT: [Minor]?

3 MS. WYSE: Yes, sir. She's listed as the second
4 witness on the State's potential witnesses.

5 THE COURT: Okay. Don't use the term "victim."
6 Tell what the name is. Okay.

7 Go ahead.

8 BY MS. WYSE:

9 Q All right. Please continue.

10 A We talked about what he had done and how he had
11 done stuff for the family, how he's helped the family,
12 and how he's been friends with the family or known them
13 since, I believe he said 2010, around that time frame
14 with [Minor] and them, and just talked about that. We
15 went into talking about the last time he had spoken to
16 her on the phone, and he had told us that -- I think he
17 said it was the day before and that she had made some
18 allegations against him and he told her it wasn't true,
19 stuff like that. We just had small talk, and that's
20 when I went into telling him that the phone call was
21 recorded, that we had it recorded, and at that time he
22 admitted to us that he had kissed her on her, as he
23 said, her clitoris.

24 THE COURT: I'm sorry, what?

25 THE WITNESS: Kissed her on her clitoris.

1 BY MS. WYSE:

2 Q All right. Now, Detective Hawk, at this point in
3 time, did you video your talks with potential
4 defendants?

5 A No, ma'am.

6 Q All right. And so there is no video. There's no
7 recorded video of this talk?

8 A No, ma'am.

9 Q Did you take notes?

10 A Investigator Freestate did.

11 Q All right. And did you give Mr. Obregon an
12 opportunity to write a statement?

13 A Yes, ma'am, we did.

14 Q All right. I'm going to show you what's been
15 marked as State's Exhibit Number 3. Can you please
16 identify that for the court.

17 A That's one of our voluntary statements, and it was
18 Mr. Obregon's statement.

19 Q All right. And at any point in time when he was
20 writing this statement, did he ask you for an attorney?

21 A No, ma'am.

22 Q All right. And I'm going to hand you what's been
23 marked as State's Exhibit 4. Will you please identify
24 to the court what that is.

25 A That is a drawing that I did, trying to represent

1 the female genitalia for him to identify where he
2 kissed her at.

3 Q All right. And please tell the judge and the
4 court [sic] what's on that piece of paper.

5 A It's a drawing, like I said, of the female
6 genitalia, and I have **Minor** vagina" written on it
7 and "kissed" here and he put an X on it. We pointed to
8 it and he initialed it where he says he kissed her.

9 Q And he wrote that -- he made those Xs himself?

10 THE COURT: I want to make sure I understand. You
11 drew it, but you had him do what?

12 THE WITNESS: I had him put an X on it where he
13 had kissed her.

14 THE COURT: All right.

15 BY MS. WYSE:

16 Q And at any point in time, did Mr. Obregon ask you
17 for an attorney?

18 A No, ma'am.

19 Q Was he free to leave throughout, you know, your
20 talks with him?

21 A He -- we -- I had gotten warrants on him that
22 morning, so he wasn't free to leave. I hadn't arrested
23 him. I hadn't put him under arrest or anything at that
24 point.

25 THE COURT: I'm sorry. I didn't understand your

1 answer.

2 THE WITNESS: I had gotten warrants on him that
3 morning.

4 THE COURT: You had gotten warrants on him?

5 THE WITNESS: Yes, sir, based on the phone call.

6 THE COURT: So he was -- so you had warrants. You
7 could have arrested him at any time?

8 THE WITNESS: Yes, sir, but I didn't.

9 BY MS. WYSE:

10 Q You had not served those warrants on him?

11 A No, ma'am.

12 Q All right. Did you tell him that he wasn't free
13 to leave?

14 A No, ma'am.

15 Q And he never made any request for an attorney?

16 A No, ma'am.

17 Q All right. And did you lock the doors? Was he
18 locked in?

19 A Our doors locked, but we don't -- usually when
20 we're in there, we just push them to. We don't lock
21 them unless we have somebody who's in jail, who's an
22 inmate in the jail.

23 Q All right. And did you make any promises to
24 Mr. Obregon?

25 A No, ma'am.

1 Q All right. And when did you actually serve the
2 warrants on him?

3 A At the conclusion of our interview.

4 Q Okay.

5 MS. WYSE: I beg the court's indulgence for just
6 one minute.

7 I don't have any further questions for this
8 witness at this time.

9 MR. BYRHOLDT: May it please the court.

10 CROSS-EXAMINATION

11 BY MR. BYRHOLDT:

12 Q Did you have the ability to video this statement?

13 A Did I have the ability? We did not video at that
14 time, no, sir.

15 Q I know your procedure was not to. Did you have
16 video equipment where you could have videotaped him?

17 A We had video equipment at the sheriff's office,
18 yes, sir.

19 Q Why wouldn't you videotape him because then
20 everyone would know for sure what was going on, rather
21 than just what you tell us?

22 A We didn't do it at that time.

23 Q Do you think that's good process?

24 A We have videotape now, yes, sir.

25 Q Did you tell Mr. Obregon before you asked him to

1 accompany you to the sheriff's office that you had
2 warrants on him?

3 A No, sir, I did not.

4 Q Why not?

5 A Because I wanted to talk to him and get his side
6 of it.

7 Q His side of it?

8 A Yes, sir.

9 Q Or you wanted to talk to --

10 THE COURT: Remember now, this is nonjury. Of
11 course, this is -- the only thing I have to decide
12 really is the issues that are outlined in the Jackson
13 case, right? I mean, I don't want to cut you off.
14 Just keep that in mind.

15 MR. BYRHOLDT: I understand.

16 Q Did he ever make any corrections to the statement?

17 A No, sir, not that I can see.

18 Q Did you explain to Mr. Obregon what coercion
19 meant?

20 A Yes, sir. It's part of our Miranda rights, if you
21 want me to read it to you.

22 Q I know it says coercion in there. Did you explain
23 what coercion was to Mr. Obregon?

24 A Mr. Freestate read the Miranda rights. What I
25 usually tell them is, when I get to the point that

1 says, "No promises or threats have been made to me; no
2 pressure or coercion of any kind has been used against
3 me," I usually tell them, you know, I haven't promised
4 you a steak dinner. I'm not holding -- you know,
5 making you stay here. I'm not doing that type of stuff
6 to you.

7 Q And you usually get them to initial that little
8 area, too, though, don't you?

9 A Yes, sir. And it's initialed. It's initialed
10 right there.

11 Q All right. He never asked to make any
12 corrections?

13 A No, sir.

14 Q Never asked for a lawyer?

15 A No, sir.

16 MR. BYRHOLDT: Thank you. That's all I have at
17 this point.

18 THE COURT: Let me look at State's Exhibit 2,
19 wherever it is.

20 Let me ask you. I've never looked at this form
21 before. Up here in the right-hand corner at the top
22 where it says "rights form" and so forth and so on,
23 then somebody has written out there "two years
24 college." Do you know who wrote that?

25 THE WITNESS: That's -- Investigator Freestate

1 wrote that. We asked the -- Mr. Obregon if he had any
2 education. That's what he had told us.

3 THE COURT: So he told you that. And it says "two
4 years Trident Tech."

5 THE WITNESS: I believe that's Tri-County
6 Technical College.

7 THE COURT: Tri-County Tech, yeah. Anyway, again,
8 that's what you're saying the investigator wrote that
9 based on answers that Mr. Obregon gave?

10 THE WITNESS: Yes, sir.

11 THE COURT: And then the high school diploma,
12 again, same thing?

13 THE WITNESS: Yes, sir. Yes, Your Honor.

14 THE COURT: Okay.

15 All right. Let me look at State's Exhibit 4.
16 Again, you say the X on there was placed there by
17 Mr. Obregon and everything else on there -- well --

18 THE WITNESS: Except for his initials.

19 THE COURT: Okay. So these down here at the
20 bottom left-hand corner, these are supposedly his
21 initials.

22 THE WITNESS: Yes, Your Honor.

23 THE COURT: And the "kissed here" with the arrow
24 and all, did you write that or did he write that?

25 THE WITNESS: I wrote that.

1 THE COURT: You wrote that. Before or after he
2 put the X?

3 THE WITNESS: I do not remember that, Your Honor.

4 THE COURT: All right. Thank you very much.

5 Any other questions either one of y'all want to
6 ask him now?

7 MS. WYSE: No, Your Honor.

8 THE COURT: You can return to your place in the
9 courtroom, then.

10 All right. Any statements anybody wants to make,
11 Solicitor, as far as what I have to decide about this
12 at this point?

13 MS. WYSE: Your Honor, just the State would
14 contend that the --

15 THE COURT: Speak up.

16 MS. WYSE: Sorry.

17 Your Honor, the State would argue that the
18 statements made by the defendant were freely and
19 voluntarily made and that he was not in custody of the
20 Oconee County Sheriff's Office.

21 When he made those statements, he wasn't in
22 handcuffs. He -- you know, he was free to leave as far
23 as he knew.

24 THE COURT: Anything you want to say?

25 MR. BYRHOLDT: No, Your Honor.

1 THE COURT: All right. All right. Based on
2 what's been presented so far, and I find that this
3 statement -- that the statements he made to the deputy
4 were made after he had been fully informed of his
5 rights under the Miranda case and that the statement
6 was freely and voluntarily made and were lawfully made,
7 and I would allow those to be admitted into evidence
8 during the course of the trial and also the drawing
9 that's been presented as State's Exhibit Number 4. All
10 right.

11 Anything else?

12 MS. WYSE: Your Honor, the other officer that was
13 present had been told to be here at 2 o'clock.

14 THE COURT: Okay. Based on what I've just said, I
15 don't know that -- so far. But you can present him,
16 too, also. That's fine.

17 MR. BYRHOLDT: I don't think you need to. He's
18 already ruled.

19 THE COURT: What?

20 MR. BYRHOLDT: I told her with your ruling --

21 THE COURT: All right.

22 MS. WYSE: Your Honor, the only reason --

23 THE COURT: You go ahead and present him and
24 everything. I might have been a little premature, but
25 based on what I've seen so far, I think it's

1 admissible.

2 MS. WYSE: Thank you, Judge.

3 THE COURT: But you present anything else you want
4 to present. Okay?

5 MS. WYSE: Thank you. We've also got the forensic
6 interviewer coming at 2:00 o'clock because I know that
7 you need to make a ruling on the video.

8 THE COURT: Okay. I do. I guess I will need to
9 look at that first and everything, but they're not
10 going to be here until 2:00.

11 MS. WYSE: Yes, sir, Your Honor.

12 And I know that for the pretrial motion, I'm going
13 to have to show you the entire video. I want to go
14 ahead and let the court know that based upon the
15 rulings in *State v. Anderson*, I'm only going to be
16 playing a small part of the video for the jury to see
17 so that it meets the burden that our supreme court has
18 set forth, but for purposes of the in-camera hearing,
19 Your Honor, I think I have to show you the whole thing.

20 THE COURT: All right. And you mentioned the
21 *Anderson* case?

22 MS. WYSE: Yes, sir.

23 THE COURT: Do you have a copy of that?

24 MS. WYSE: I do not right now, but I can get you
25 one.

1 THE COURT: Let me refresh my memory.

2 MR. BYRHOLDT: I have copies, Your Honor.

3 THE COURT: If you've got an extra copy, if you
4 want to give me yours, that would be fine. I just want
5 to make sure I remember what it says.

6 I'll give these back to you. I guess you need to
7 give these back to the solicitor at this point or the
8 court reporter. I think she's got them marked and so
9 forth.

10 I don't mean to be rushing things. Anything else?

11 MS. WYSE: Your Honor, there is one other motion
12 that we can go ahead and do now so we can get it out of
13 the way.

14 THE COURT: What is that?

15 MS. WYSE: Your Honor, I wrote a motion, and it
16 was clocked on May 5th.

17 THE COURT: I'm sorry?

18 MS. WYSE: I wrote a motion, and it was clocked on
19 May 5th. Your Honor, we have what's called a
20 courthouse facility dog, and I'm going to hand up this
21 motion for you to read. And I'm going to stand close
22 again.

23 THE COURT: Let me read it.

24 MS. WYSE: Okay.

25 THE COURT: All right. Anything you want to say

1 about this motion?

2 MR. BYRHOLDT: Your Honor, I was involved when
3 this -- when the Tenth Circuit obtained this dog. My
4 concern is the preface they use when they try to get
5 permission to have this dog in court was that if
6 someone could not testify because they had
7 psychological problems or were upset, then they would
8 file a motion with the court and allowing the what I
9 call the therapy dog or the courtroom dog to assist
10 with that person.

11 If you look at the video recording of this girl's
12 forensic interview, not once there does she cry, does
13 she get upset. She smiles; she laughs. And I just
14 don't think it's the type of case that needs the
15 assistance of a therapy dog. It's not someone with --
16 when these first started, it was somebody that there
17 was a problem with the ability to communicate in front
18 of other people, and I don't think it applies in this
19 case. Like I said, it's one of the strangest forensic
20 interviews I have ever seen, but at no time does she
21 get upset or have any trouble discussing what happened.
22 She uses words at her age -- I mean, she says she was
23 sexually assaulted. She doesn't say, "Somebody touched
24 me." I mean, she's using the "word sexual assault" and
25 other issues. We just don't think it's needed in this

1 case, Your Honor.

2 THE COURT: Well, I've read the motion. This is
3 what's interesting to me as far as the motion is
4 concerned. Item 11 on it says Roma -- that's the dog's
5 name -- will be brought to the courtroom and placed in
6 the witness box with -- how do you pronounce it?

7 MS. WYSE: **Minor**.

8 THE COURT: Prior to jury entering. I don't know
9 how that's going to be. I mean, I'm not sure how
10 that's going to work because you certainly have to
11 swear the witness. I guess I don't know how you see
12 that working and everything and all, but where is the
13 jury box? I mean, where is the witness stand?

14 MS. WYSE: She's right here. She will be down.

15 THE COURT: You're saying you are going to put the
16 dog down there and call her up or what? Is that how
17 you see it working, you're going to put the dog down
18 there before you call the witness, and then she's going
19 to come up and have a seat next to the dog, and the
20 jury will never see the dog is there?

21 MS. WYSE: Your Honor, we can do it like that or
22 she could already be seated with the dog at her feet.

23 THE COURT: I think it would be better, if it
24 works, so that the jury is not even aware the dog is
25 there.

1 MS. WYSE: Right. No, we don't ever want the jury
2 to see the dog.

3 THE COURT: All right. As long as the jury
4 doesn't know that the dog is there. If you want to
5 bring it out. Of course, on cross-examination or
6 whatever, I don't know. But, anyway, but I think I'll
7 allow that based on the representations that the State
8 has made, you know, that they think that this is an
9 appropriate thing to do and that it would facilitate
10 her giving her truthful testimony. So I'd allow -- as
11 far as I can tell, I would allow the dog to be put up
12 there in such a position the jury wouldn't even know
13 the dog is there, and then you can call her and have
14 her come up and have a seat in the jury box -- I mean
15 the witness stand, and then whatever you want to do,
16 that's up to you. But I think would I allow that under
17 the circumstances. All right.

18 MS. WYSE: Thank you, Judge..

19 THE COURT: So anything else?

20 So the video, you want me to look at the video at
21 2:00 o'clock? Is that -- or when is it that you want
22 me to look at the video to make a determination about
23 the use of it during the trial?

24 MS. WYSE: Yes, sir. Pursuant to the statute, you
25 have to make some determinations, and this is pursuant

1 to 1723-175. The court has to have an in-camera
2 hearing, and you have to make some determinations about
3 the video. And then, of course, we have to watch it.

4 THE COURT: Okay. All right. But when are you
5 going to use that? When are you going to want to put
6 that in?

7 MS. WYSE: Your Honor, as long as you make the
8 determinations that the video meets whatever standards
9 needs to be met, then the video comes in through the
10 forensic interviewer's testimony.

11 THE COURT: When are you going to get to that? Do
12 you think you're going to get to that this afternoon?

13 MS. WYSE: I think that I will be able to get to
14 the forensic interviewer's testimony tomorrow
15 afternoon, but we have to have the hearing -- I just
16 figured it would be easier to do it today as opposed to
17 tomorrow.

18 THE COURT: Okay. When do you want to do it, at
19 2:00? Sometimes the only way -- I mean, the only time
20 I have had a video like that before and all, it's come
21 during the course -- of course, it comes during the
22 trial, and at that time I at least know something about
23 how we got to that point, so to speak, so I think it
24 would be better for me to wait and watch the video when
25 we get to the point in the trial where you want to put

1 it in so that I will at least know more about the case,
2 how exactly we got to where we are, where we got to the
3 place where the video was made and all, rather than
4 just viewing it in isolation, so to speak.

5 So I would prefer to wait and watch the video when
6 you get to that part of the trial where you want to use
7 it.

8 MS. WYSE: Okay, Judge. I thought it would be
9 easier to do it today since the jury is not here. We
10 don't have to make them wait, but --

11 THE COURT: All right. Maybe I'll watch it at
12 that time and that will prepare me to make a decision
13 on it later on maybe.

14 MS. WYSE: Okay.

15 THE COURT: All right. Okay. But it's 1723-175
16 is the code section that deals with that?

17 MS. WYSE: Yes, sir.

18 THE COURT: And I have dealt with that on one
19 prior occasion, at least..

20 MS. WYSE: This is also the video that
21 Mr. Byrholdt handed you up the case law on, *State v.*
22 *Anderson*.

23 THE COURT: Anderson?

24 MS. WYSE: Yes, sir.

25 THE COURT: I'll be sure to read that before that

1 time.

2 Anything else?

3 MS. WYSE: There's nothing that we can do at this
4 time.

5 THE COURT: Anything over here?

6 MR. BYRHOLDT: No, Your Honor.

7 THE COURT: All right. So anything else you want
8 to do this morning, Solicitor?

9 MS. WYSE: No, sir, Your Honor. I don't think
10 there is anything else we can do this morning.

11 THE COURT: Okay. So then we'll be back at 2:00
12 o'clock.

13 Tell me -- you might as well go ahead and tell me
14 what it is we've got on this afternoon, some sort of
15 plea or something.

16 MS. WYSE: Yes, sir, Your Honor. Deputy Solicitor
17 Ms. Simmons is here to tell you about it.

18 THE COURT: Tell me about that.

19 Let's see. Are we through, then, as far as
20 Mr. Obregon is concerned right now?

21 MS. WYSE: Yes, sir.

22 THE COURT: All right.

23 Mr. Obregon, I presume -- has he been out on bond?

24 MR. BYRHOLDT: He's on electronic monitoring, Your
25 Honor.

1 THE COURT: But, anyway, I could keep you here in
2 jail or in custody anytime we're in recess, but I won't
3 do that on your promise to be back here when we want
4 you back here this afternoon or whenever we want you
5 back here to continue with the trial of this case. Do
6 you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Will you be back?

9 THE DEFENDANT: Yes. Yes, Your Honor.

10 THE COURT: Okay. All right.

11 Do you want me to look at the video, then, at 2:00
12 o'clock this afternoon; is that the next thing we're
13 going to do?

14 MS. WYSE: Yes, sir, Your Honor.

15 THE COURT: Okay. All right. Then be back at
16 2:00 o'clock. All right. You are free to go. Be back
17 at 2:00 o'clock.

18 MS. SIMMONS: Your Honor, I'm Lindsey Simmons.
19 I'm a deputy solicitor here. We have a plea scheduled
20 in the matter of Dw'Ntraquis Campbell at 3:00 o'clock
21 today. He's indicted for murder and is pleading
22 straight up to voluntary manslaughter, and I have all
23 the parties notified to be here at 3:00.

24 THE COURT: And who represents him?

25 MS. SIMMONS: Bill Yarborough.

1 THE COURT: Is he here now?

2 MS. SIMMONS: He'll be here at 3:00.

3 And the victims are also represented by Chuck
4 Allen.

5 THE COURT: Okay. All right.

6 MS. SIMMONS: Thank you.

7 THE COURT: All right. Well, I may want to have a
8 little conference with you and the lawyers that are
9 involved before we do that in court, so let's kind of
10 try to do that. I would like to have a little bit more
11 background, if you don't mind. Tell the other lawyers
12 that, then. All right.

13 Anything else before we break, then, and come back
14 at 2:00 o'clock?

15 MS. WYSE: No, Your Honor.

16 MR. BYRHOLDT: No, Your Honor.

17 THE COURT: Be back at 2:00 o'clock, then. Thank
18 you very much.

19 (Lunch recess taken from 12:02 p.m. to 2:09 p.m.)

20 THE COURT: All right. What do you want to do?

21 MS. WYSE: Thank you, Your Honor. Prior to court
22 starting, Mr. Byrholdt told me that he was going to
23 make a motion to sequester witnesses. I told him that
24 I would consent to that.

25 THE COURT: Consent? Okay.

1 MS. WYSE: Yes, sir.

2 THE COURT: No problem with that.

3 MS. WYSE: And, Your Honor, at this point in time,
4 I'm ready to call the forensic interviewer, Angie
5 Gilstrap.

6 THE COURT: What did you say about the second
7 witness that you had that I kind of cut you off on in
8 regard to the statement and so forth, the picture and
9 everything?

10 MS. WYSE: Yes, sir, Your Honor. Will Freestate
11 is here.

12 THE COURT: All right. Do you want to call him?
13 Let me hear from him also. I think I may have jumped
14 the gun there. Let me hear from him also.

15 MS. WYSE: Thank you, Your Honor.

16 WILL FREESTATE,
17 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

18 THE COURT: Tell me your last name.

19 THE WITNESS: Freestate.

20 THE COURT: Spell that.

21 THE WITNESS: F-r-e-e-s-t-a-t-e.

22 THE COURT: All right. Go ahead.

23 DIRECT EXAMINATION

24 BY MS. WYSE:

25 Q Good afternoon.

1 A Afternoon, ma'am.

2 Q Where do you work?

3 A I'm currently employed at the Anderson County
4 Sheriff's Office.

5 Q Can you speak up, please.

6 A I'm sorry. I currently work at the Anderson
7 County Sheriff's Office.

8 Q All right. And where did you work prior to that?

9 A I was -- prior to that, I was a lieutenant at the
10 Walhalla Police Department. Prior to that, I was
11 employed by the Oconee County Sheriff's Office.

12 Q All right. Are you familiar with a man by the
13 name of of Jaimie Obregon?

14 A I am, ma'am.

15 Q All right. And did you investigate this case?

16 A I assisted Lieutenant Hawk in the investigation,
17 yes, ma'am.

18 Q All right. And did you meet with Mr. Obregon on
19 June 19th of 2014?

20 A Yes, ma'am, I did.

21 Q All right. And did you go with Detective Hawk to
22 Mr. Obregon's residence?

23 A I did, ma'am.

24 Q All right. And when you got there, who was at the
25 house?

1 A It was just Mr. Obregon.

2 Q Okay. And did he invite you in?

3 A Yes, he did.

4 Q Okay. And did you talk?

5 A We did. Basically, Lieutenant Hawk did most of
6 the talking for him, you know, spoke to Mr. Obregon. I
7 chatted with him about some pictures he had and
8 whatnot, and from my recollection, Lieutenant Hawk
9 asked if Mr. Obregon would come up and speak to myself
10 and him and he agreed.

11 Q Okay. And did he ride with you or did he go
12 separately?

13 A He rode with us. I believe he had an issue with
14 his driver's license.

15 Q All right. And was he placed in cuffs when he was
16 put in the car?

17 A No, ma'am.

18 Q All right. And did, at any point in time, he ask
19 you for an attorney?

20 A No, ma'am.

21 Q All right. And when you got to the Oconee County
22 Sheriff's Office, what happened?

23 A From the best of my recollection, we walked
24 upstairs to our interview rooms in CID. We sat down.
25 I Mirandized Mr. Obregon with the sheet I have here

1 (indicating). If you like, I can go through that.

2 THE COURT: Go through it. Tell me exactly what
3 you said to him and what was done. Okay? Just do it
4 that way without her asking you questions. Just tell
5 me what you did when you got there. Okay?

6 THE WITNESS: Yes, sir.

7 We sat down. I Mirandize people the same way
8 every time. On the top right corner, I put down the
9 education, which for Mr. Obregon was two years of
10 college, two years at Tri-County Tech and high school
11 diploma. Then I put the time that it started. At each
12 line, where it says all the questions you ask them on
13 Miranda, I read it to him first. I then ask him, "Do
14 you understand" --

15 THE COURT: Read me exactly what you read to him
16 that day.

17 THE WITNESS: Yes, sir.

18 "Before we ask you any questions, you must
19 understand your rights." He then signaled yes and
20 initialed. "You have the right to remain silent." He
21 signaled yes and initialed. "Anything you say can be
22 used against you in court." Again yes and initial.
23 "You have the right to talk to a lawyer for advice
24 before we ask you any questions and to have him with
25 you during questioning." Again he nodded yes and

1 signed. "If you cannot afford a lawyer, one will be
2 appointed for you before any questions if you wish."
3 Again, nodded yes and signed.

4 "If you decide to answer questions now without a
5 lawyer present, you will still have the right to stop
6 answering at any time. I have read this statement of
7 my rights and understand what my rights are. I'm
8 willing to make a statement and answer questions. I
9 understand and know what I'm doing. No promises or
10 threats have been made to me. No pressure or coercion
11 of any kind has been used against me." And then he
12 signs and myself and Lieutenant Hawk witnessed.

13 BY MS. WYSE:

14 Q All right. Did you video this interview?

15 A No, ma'am.

16 THE COURT: Did he what?

17 MS. WYSE: I asked him if he videoed it. He said
18 no.

19 Q How long did the interview with Mr. Obregon last?

20 A To the best of my recollection, maybe an hour. I
21 can't recall, you know.

22 Q Okay. Was he placed in handcuffs during any time
23 during the interview?

24 A No, not during the interview.

25 Q Okay. Did he write a statement?

1 A He did.

2 Q And did you offer him this statement to write on?

3 A Yes, ma'am.

4 Q All right. At what point in the interview did he
5 write the the statement?

6 A After he had signed Miranda, signed and waived
7 Miranda.

8 Q All right. And did you force him to write this
9 statement?

10 A No, ma'am.

11 Q Did you promise him if he wrote this statement,
12 you would give him something?

13 A No, ma'am.

14 Q Okay. And did he ask you any questions while he
15 wrote this statement?

16 A I can't recall if he did or didn't, ma'am.

17 Q Okay. But did he ever say that he didn't
18 understand something? Did he ask you to explain
19 anything to him?

20 A Again, I can't recall, but if he did, I would have
21 surely explained it to him. Since he's writing the
22 statement, if he wanted to add any changes or make any
23 changes, I would have allowed him to do that. It's a
24 voluntary statement.. I wanted him to put exactly what
25 he believes is the truth on that.

1 Q Did you watch him write the statement?

2 A Yes, ma'am.

3 Q I'm going to hand you what's been previously
4 marked as State's Exhibit Number 3. Is this the
5 statement that Mr. Obregon wrote?

6 A It is.

7 Q Has it been altered or changed in any way?

8 A No, ma'am.

9 Q Okay. All right. And what kind of statements did
10 he make to you that you remember?

11 A The one that stands out in my mind was that
12 Lieutenant Hawk was speaking to him in reference to the
13 fact he had denied an act with **Minor**. Then once he
14 admitted to it, after Lieutenant Hawk says he had him
15 on a pretext phone call, I remember he started to say
16 that it was part of the Philippines tradition for men
17 to kiss girls on their vagina, especially their
18 clitoris. And I remember he took his hand and made a
19 motion like this and then made a kissing noise. And
20 that just sticks with me even today. It just -- it
21 kind of -- it, for lack of a better term, made my
22 stomach turn.

23 THE COURT: I'm sorry, for lack of a better term,
24 what?

25 THE WITNESS: It made my stomach turn, Your Honor.

1 THE COURT: Okay.

2 BY MS. WYSE:

3 Q And did Mr. Obregon make a diagram or do any kind
4 of drawing?

5 A Lieutenant Hawk made a drawing, and basically he
6 pointed where he kissed her, Minor, pardon me,
7 on her vagina.

8 Q All right. And did at any point in time you tell
9 him what to say?

10 A No, ma'am.

11 Q And again, did he ask for an attorney?

12 A No, ma'am.

13 Q Was he in handcuffs?

14 A No, ma'am.

15 Q All right. And did you tell him that he couldn't
16 leave?

17 A No, ma'am.

18 Q All right.

19 MS. WYSE: I have no further questions.

20 THE COURT: Cross-examination.

21 MR. BYRHOLDT: Briefly, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. BYRHOLDT:

24 Q Did you take notes during this interview?

25 A I did, Your Honor -- excuse me. Sorry. Sorry.

1 Mr. Byrholdt, yes, sir.

2 Q Did you turn those over to the solicitor?

3 A Yes, sir. These are my notes.

4 Q May I see them?

5 A Yes, sir.

6 (Document handed to Mr. Byrholdt.)

7 BY MR. BYRHOLDT:

8 Q Those are your entire notes from the interview?

9 A Yes, sir.

10 Q Everything important you put in there?

11 A Yes, sir.

12 MR. BYRHOLDT: No other questions. Thank you.

13 THE COURT: Where is the statement, Exhibit 3? I
14 need to look at it.

15 THE WITNESS: Here you go, Your Honor.

16 THE COURT: All right. So I'll give this back to
17 whoever.

18 All right. You can step down, return to your
19 place in the courtroom.

20 All right. So I guess the question is at this
21 point the admissibility of the drawing, which I guess
22 was State's Exhibit 4, and then the admissibility of
23 State's Exhibit 3, correct?

24 MR. BYRHOLDT: Yes, sir.

25 MS. WYSE: Yes, Your Honor.

1 THE COURT: All right. Anything you want to say
2 about that, Solicitor?

3 MS. WYSE: No, sir.

4 THE COURT: Well, I mean, you want to tell me why
5 you think I should admit it?

6 MS. WYSE: I'm sorry, Judge. You're talking about
7 the drawing?

8 THE COURT: Both.

9 MS. WYSE: Your Honor, these are both statements
10 that were made against the party's interest. He made
11 them freely, voluntarily, willingly. He went with the
12 officers. They went to his house. He invited them in.
13 He said he would talk to them. They went down to the
14 station. He was never in handcuffs. He never asked
15 for an attorney.

16 Your Honor, I think this clearest representation
17 of what happened is the statement that he wrote as well
18 as the diagram that he actually signaled where he
19 committed these actions.

20 THE COURT: Anything you want to say on the other
21 side?

22 MR. BYRHOLDT: Not at this time, Your Honor.

23 THE COURT: All right. Well based on what's been
24 presented to me at this time, I feel that the State has
25 presented what it needs to present in order to be able

1 to put those two exhibits into evidence in this case.

2 I think that they were given after he was fully
3 informed of his Miranda rights, the so-called Miranda
4 rights under the Constitution of the United States and
5 of the State of South Carolina, in regard to those
6 statements and that diagram. So I feel that the State
7 has, as I said, met its burden of proof to show that
8 those are legal and that they should be admitted into
9 evidence in this case. So I'll allow them in at this
10 point.

11 All right. Anything else?

12 MS. WYSE: Thank you, Judge. At this time the
13 State would like to call Angie Gilstrap. She was the
14 forensic interviewer.

15 **ANGIE GILSTRAP,**

16 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

17 **DIRECT EXAMINATION**

18 BY MS. WYSE:

19 Q Please state your name for the record.

20 A Angie Gilstrap.

21 Q Can you spell your last name, please.

22 A G-i-l-s-t-r-a-p.

23 Q All right. Ms. Gilstrap, where do you work?

24 A Foothills Alliance Child Advocacy Center.

25 Q How are you employed there?

1 A I'm a counselor.

2 Q How long have you been a counselor there?

3 A I started work there in 2009, and I worked there
4 for about four years, and I went to work for the
5 hospital, and now I'm back for the past year.

6 Q And in 2009, what did you do?

7 A I was a counselor and a part-time forensic
8 interviewer.

9 Q A forensic interviewer?

10 A Yes.

11 Q All right. And where did you go to college?

12 A I have a bachelor's degree from Anderson
13 University, and my master's is at Clemson.

14 Q What is that field in?

15 A Education with an emphasis on community
16 counseling.

17 Q And what kind of training did you do in order to
18 become a forensic interviewer?

19 A In 2012 I went to the forensic interviewing
20 training at the law center in Columbia, South Carolina.

21 Q And what kind of training did you -- do you
22 remember the name of it?

23 A Called Child First in 2012, and then they changed
24 the protocol in 2014, so I went back for an additional
25 training.

1 Q And how long did three trainings last?

2 A The first one was a week. We were there for a
3 whole week, and the second one was three days.

4 Q Okay. And did you get hours or credit for these
5 trainings that you attended?

6 A Yes.

7 Q And what -- the first training that you went to,
8 you said it was called Child First?

9 A U-huh.

10 Q What did it concentrate on?

11 A We went over a lot of statistics about child
12 abuse.

13 THE COURT: Went over what?

14 THE WITNESS: Statistics about child abuse.

15 THE COURT: Statistics?

16 THE WITNESS: Yes, sir. And went over the kinds
17 of questions that you should and shouldn't ask during
18 an interview.

19 BY MS. WYSE:

20 Q Okay. What kind of interview?

21 A Forensic interview.

22 THE COURT: What do you mean by forensic
23 interview? How is that different from any other kind
24 of interview?

25 THE WITNESS: It's a specific interview used by

1 the investigation for children in a nonthreatening
2 environment when there's some questions about alleged
3 abuse.

4 BY MS. WYSE:

5 Q And how is that different from any other kind of
6 interview?

7 A Well, it's videotaped and we -- it's not done at a
8 law enforcement center.

9 Q Now, what kinds of questions do you ask the
10 children?

11 A In the beginning, we just build rapport and we
12 talk about things that are easy for them to answer, and
13 then we ask open-ended questions to find out if they
14 know why they're there. If -- usually they do, if
15 there's been some sort of allegations made, and they
16 understand that they are there to answer some questions
17 about what happened.

18 Q Who asks you to conduct these forensic interviews?

19 A The law enforcement agencies, as a general rule.
20 Sometimes the Department of Social Services will ask us
21 to.

22 Q And you said that you ask open-ended questions?

23 A Yes.

24 Q Are these different from leading questions?

25 A Yes.

1 Q Okay. Are you taught not to use leading
2 questions?

3 A Yes, we are.

4 Q Okay. Now, is it your general practice to record
5 these interviews?

6 A Yes.

7 Q All right. And do you talk to the children that
8 you interview about truthfulness?

9 A We do.

10 Q Tell us how you speak to them about that.

11 A In an age-appropriate way, we talk about what the
12 truth is, what a lie is, and that in this room we only
13 talk about things that are real and true.

14 Q Now, do you remember interviewing a girl by the
15 name of Minor ?

16 A No, I do not remember.

17 Q Okay. Did you receive a subpoena for this case?

18 A I did.

19 Q Okay. And did you receive it from the solicitor's
20 office?

21 A Yes.

22 Q All right. And in May of 2014, were you
23 conducting forensic interviews at the Child --

24 THE COURT: What does forensic mean in a situation
25 like this? I'm looking at the statute. That's not in

1 there anywhere. All it says is investigative
2 interview, is what it says. Why do you want to use the
3 word "forensic"?

4 MS. WYSE: Judge, I'm just asking her --

5 THE COURT: Well, what does it mean?

6 THE WITNESS: It's a fact-finding interview.

7 THE COURT: So you're supposed to testify to
8 facts?

9 THE WITNESS: Yes.

10 THE COURT: Okay. That sounds good.

11 Go ahead.

12 BY MS. WYSE:

13 Q All right. How were you employed at the CAC in
14 May of 2014?

15 A I was a counselor and a part-time interviewer.

16 Q Okay. And did you conduct interviews during this
17 time period?

18 A Yes.

19 Q All right. And when you did these interviews, did
20 you tell the children that they were being videotaped
21 and recorded?

22 A Yes, I do.

23 Q Okay. Now, you said that you don't remember

24 Minor ?

25 A No, ma'am.

1 Q I would like to play a video, and it's of you and
2 [REDACTED] Minor at the CAC.

3 A Okay.

4 Q All right.

5 MS. WYSE: Judge, at this time I'd like to play
6 the video.

7 THE COURT: Go ahead.

8 Before you do that, let me ask her some questions.
9 I want to try to find out a little bit more before we
10 get into the video.

11 I'm not sure -- what is the Foothills Alliance
12 Advocacy Center that you work for? Can you tell me
13 what that is?

14 THE WITNESS: We work with children and adults who
15 have been sexually or physically abused. We do
16 counseling, we do --

17 THE COURT: Wait a minute. Wait a minute. I'm
18 making some notes.

19 THE WITNESS: Okay.

20 THE COURT: Are you working with people who come
21 to you and say that they have been sexually abused; is
22 that correct?

23 THE WITNESS: Yes, sir.

24 THE COURT: What do you do with them once they
25 come to you and they tell you that?

1 THE WITNESS: If it's a child, we make sure that
2 it's been reported to law enforcement, and then law
3 enforcement usually asks us to do an interview to ask
4 specific questions about what happened, and then we
5 offer the children --

6 THE COURT: Which is what you did in this case?

7 THE WITNESS: Yes, sir.

8 THE COURT: Okay.

9 THE WITNESS: And then we offer counseling to the
10 families.

11 THE COURT: Then you offer counseling to them
12 afterwards to help them in whatever way they need help;
13 is that right?

14 THE WITNESS: Yes, sir.

15 THE COURT: All right. And how long is it that
16 you've worked now at the Foothills Alliance Advocacy
17 Center?

18 THE WITNESS: Since 2009.

19 THE COURT: And what do you call your job there,
20 just is it a counselor or what is it called?

21 THE WITNESS: A counselor, yes, sir.

22 THE COURT: All right. You talked about this --
23 what she's told about your education, you have a degree
24 from Anderson College, a BA degree in what?

25 THE WITNESS: In human services.

1 THE COURT: In human services.

2 THE WITNESS: And then a master's in education.

3 THE COURT: Then a master's in education from
4 Clemson?

5 THE WITNESS: Yes, sir.

6 THE COURT: All right. Master's in education from
7 Clemson, what does that involve? What -- tell me more
8 about what that is.

9 THE WITNESS: The emphasis was on community
10 counseling, mental health counseling.

11 THE COURT: Helping people out that have some kind
12 of problem?

13 THE WITNESS: Yes, sir.

14 THE COURT: And then you talked about your
15 training and all as an interviewer, I guess is what I
16 would say.

17 THE WITNESS: Yes.

18 THE COURT: In particular relating to alleged
19 child sex abuse. Where was that training?

20 THE WITNESS: At the law center in Columbia, South
21 Carolina.

22 THE COURT: You said the law center. What do you
23 mean by the law center?

24 THE WITNESS: It's called South Carolina Law
25 Center.

1 MS. WYSE: Your Honor, it's called --

2 THE COURT: I'm just not familiar with that term.
3 I don't know what that is.

4 MS. WYSE: It's called the Children's Law Center,
5 Your Honor, and they train and teach all of the Child
6 Advocacy Centers all throughout South Carolina..

7 THE COURT: The Children's Law Center in Columbia.

8 MS. WYSE: Yes, sir.

9 THE COURT: I just wasn't familiar with that. All
10 right.

11 And so this is an organization or whatever you
12 want to call it. Is it a governmental organization or
13 is it a private organization, or does anybody know what
14 it is?

15 THE WITNESS: It's a nonprofit.

16 THE COURT: It's a nonprofit.

17 THE WITNESS: Yes, sir.

18 THE COURT: So you went down there. When was
19 that?

20 THE WITNESS: In 2012 is this first time.

21 THE COURT: And that was a one-week thing?

22 THE WITNESS: Yes, sir.

23 THE COURT: Tell me about what you did there.

24 Tell me about what you did during that week there. You
25 said something about you -- statistics and so forth.

1 Tell me as much as you can remember about how you spent
2 that week.

3 THE WITNESS: We learned a lot about red flags to
4 look for with child abuse.

5 THE COURT: Red flags. What do you mean by that?

6 THE WITNESS: How it might manifest with children
7 who have been abused, what you might see and how to
8 diagnose and talk to the children about it.

9 THE COURT: Tell me more. I want to know as much
10 as you can tell me. See, the reason I'm asking you
11 these questions is I need to know whether or not you're
12 a good interviewer or not, so I want to know what it is
13 about your training and all, your background, your
14 experience that should lead me to conclude that you're
15 a good person -- I know you're a good person -- but a
16 person who I can trust to do an interview of a child
17 under the circumstances.

18 THE WITNESS: I think most of that training would
19 have come under my master's degree for counseling.

20 THE COURT: Tell me about that.

21 THE WITNESS: We just learned how to speak with
22 children, how to listen, how to understand that they
23 may not -- they may be wanting to tell you something
24 but they don't know how, so you do a lot of things
25 through play therapy. We also learn how abusers pick

1 out children and how they groom them and how to help
2 children see what's -- you know, see that it's not
3 their fault, that they trusted an adult. And even
4 though they may have participated in things, that it
5 wasn't their fault.

6 THE COURT: So this was this one-week training was
7 in 2012?

8 THE WITNESS: Yes, sir.

9 THE COURT: Then you talked about a refresher
10 course, if you want to call it that. I'll call it
11 that.

12 THE WITNESS: Yes, sir.

13 THE COURT: Three-day course that you went to
14 sometime later.

15 THE WITNESS: Yes, sir.

16 THE COURT: When was that?

17 THE WITNESS: In 2014.

18 THE COURT: Tell me about that.

19 THE WITNESS: South Carolina changed their
20 protocol as far as interviewing and went to a more
21 narrative interview. Instead of asking more questions,
22 we were learning ways to teach the child to talk in a
23 narrative way --

24 THE COURT: In a what?

25 THE WITNESS: In a narrative way, to tell a story

1 about what happened to them so that we don't ask
2 questions.

3 THE COURT: Good idea, sounds like.

4 THE WITNESS: Yeah. So we would get them, say,
5 "Well, tell me from the beginning to the end what
6 happened." And we would get them to practice that
7 before they actually went into the alleged offences.

8 THE COURT: You do?

9 THE WITNESS: Yes, sir.

10 THE COURT: So are you telling me that before this
11 video that we're going to see was done, you had a
12 practice session with the child?

13 THE WITNESS: No. Everything that -- the whole
14 time I'm with the child is on the video. What we do is
15 say, "Tell me about your last birth day, everything
16 that happened from the beginning to the end." We take
17 a subject not related.

18 THE COURT: I see what you mean, asking about
19 something else to get them to practice doing a
20 narrative.

21 THE WITNESS: Yes, sir.

22 THE COURT: I'm glad I asked that question because
23 I didn't get the right picture.

24 Okay. So you have them practice giving a
25 narrative before you get to what you really want to ask

1 them about or have them talk about; is that right?

2 THE WITNESS: Yes, sir.

3 THE COURT: Tell me how -- you did a three-day
4 session doing that learning that approach; is that
5 right?

6 THE WITNESS: Yes, sir.

7 THE COURT: Can you tell me anything more about it
8 than just that or not?

9 THE WITNESS: We talked a lot about how the laws
10 changed as far as what we're able to testify to. I
11 can't remember a lot of specifics, but --

12 THE COURT: You're going to depend on us to tell
13 you about that.

14 THE WITNESS: Yes, sir.

15 THE COURT: That's good. Okay. All right. How
16 many -- since you've been doing this, this -- I like to
17 use the word investigative interview. Tell me how many
18 investigative interviews you've done since you've been
19 doing this kind of work?

20 THE WITNESS: I'm guessing about 250.

21 THE COURT: 250?

22 THE WITNESS: Yes, sir.

23 THE COURT: Is that just children or does that
24 include adults?

25 THE WITNESS: No, it's just children.

1 THE COURT: Just children.

2 THE WITNESS: We don't do these interviews on
3 adults.

4 THE COURT: All right.

5 Either one of you want to ask her any questions
6 now that I've had my chance to ask questions?

7 MS. WYSE: No, sir, Judge.

8 THE COURT: Do you want to ask her anything?

9 MR. BYRHOLDT: Just a few.

10 CROSS-EXAMINATION

11 BY MR. BYRHOLDT:

12 Q In your 250 interviews, thereabouts, how many have
13 you found where you made a determination that the child
14 had not been abused?

15 A I do not know that information.

16 Q Have you ever?

17 A I do not know.

18 Q You wouldn't remember in five years whether there
19 was any case where you said, "Wow, this kid is not
20 telling the truth"?

21 THE COURT: Well, go ahead. You ask your
22 question, then I'm going to ask her another question.

23 THE WITNESS: Usually I see that child that one
24 day, and then I don't really hear a follow-up.

25 MR. BYRHOLDT: Nothing further.

1 THE COURT: It's really not part of your job -- or
2 is it? Do you think it's part of your job to determine
3 whether or not the child has been sexually abused or
4 not?

5 THE WITNESS: No, sir; it's definitely not my job.

6 THE COURT: All right. That's all the questions I
7 have for you now, but if you could stay with us, I may
8 need to follow up some later.

9 I'm going to look at the video, I guess, now, and
10 I can talk to you more.

11 MS. WYSE: Judge, do you want her to step down or
12 stay there?

13 THE COURT: However you want to do the video.

14 MS. WYSE: I'm sure she does not want to sit
15 there.

16 THE COURT: Okay.

17 (Witness stepped down.)

18 (Video begins playing at 2:41 p.m.)

19 THE COURT: Crank up the volume as much as you
20 can.

21 Could you stop that just a second.

22 (Video paused.)

23 THE COURT: I'm having a hard time hearing what
24 she's saying. Of course, it's going to be the jury who
25 really wants to hear what she's saying, if it gets

1 played to the jury. So I want to come over here to the
2 jury to see if I can hear it over here.

3 (Judge steps to the jury box.)

4 THE COURT: I'm going to sit kind of in between
5 the two of them and see what I can hear.

6 (Video playing.)

7 THE COURT: You can stop it.

8 (Video stopped playing at 3:04 p.m.)

9 THE COURT: I said that because the solicitor came
10 up and told me she wasn't going to try to introduce
11 anything after that. That was the reason I said stop
12 it.

13 All right. Who wants to go first as far as the
14 statement of position about this?

15 State, I guess you're the one putting it up, so I
16 guess you should go first.

17 What do you want to tell me about why I should let
18 it in?

19 MS. WYSE: Well, Your Honor, for purposes of the
20 in-camera hearing outside of the presence of the jury,
21 I showed you parts of that that I would not show the
22 jury tomorrow. I would start at about the ten-minute
23 marker after she talks to **Minor** about, you know,
24 telling the truth and correcting her because the
25 supreme court has actually been very clear on that,

1 stating they don't want the jury to hear that part of
2 the testimony. So I wouldn't start it until after that
3 was done.

4 THE COURT: I had a question mark about that, you
5 know, about -- let me look at this a second.

6 Before I get into that, you don't happen to
7 have -- did you ever try to do a transcript of what we
8 just listened to?

9 MS. WYSE: No, sir, I did not.

10 THE COURT: I certainly had -- I certainly had a
11 problem understanding everything that was said. And
12 when you've got somebody testifying about -- I mean,
13 talking about something that you want to play to the
14 jury, the first thing is they ought to be able to hear
15 it and understand it.

16 I certainly had a problem understanding everything
17 that she said during the course of that interview. So
18 you might make a note of that in the future, that you
19 might want to try to produce a transcript of some sort
20 the judge could use and perhaps the jury could use to
21 try to understand everything that was said during the
22 course of that interview because I certainly admit that
23 I couldn't understand everything that was said.

24 But let's get beyond that. I had a question mark
25 when she started talking about the part of her

1 instructions to the child about the importance of
2 telling the truth. I have a real question about
3 whether that should be admitted or not.

4 MS. WYSE: Well, first of all, Judge, the
5 in-camera hearing that we just had, we had to show that
6 part --

7 THE COURT: I mean, I agree. I listened to it and
8 everything. But whether I should allow that to be
9 played to the jury -- well, you're talking about just
10 for me to make that determination, first of all, as to
11 whether or not I should let it in at all to be played
12 to the jury.

13 MS. WYSE: I'm not going to play that part for the
14 jury, Judge.

15 THE COURT: You're not?

16 MS. WYSE: No, sir.

17 THE COURT: Okay. Good.

18 MS. WYSE: I wasn't going to start it after that
19 was over with. Otherwise, we'd have a mistrial.

20 THE COURT: I'm glad we agree on that. All right.
21 So what -- do you have a version of this that's
22 just what you're going to play?

23 MS. WYSE: From about the ten-minute marker until
24 the 20-minute marker, so it's about ten minutes.

25 THE COURT: I don't know when that was and

1 everything. This part is just whether or not I should
2 allow that part to be played or not, I guess.

3 MS. WYSE: Yes, sir.

4 THE COURT: Can you do that? I've watched it and
5 listened to it, the whole thing up to the point now
6 that you say you're not going to do it, so let me see
7 what you actually are going to present to the jury.
8 Can you do that?

9 MS. WYSE: Sure thing, Judge. But for purposes of
10 this hearing, the statute requires that the statement
11 was given in response to questioning conducted during
12 an investigative interview of the child. I think we
13 went ahead and established that.

14 THE COURT: Help me out by not using "forensic."

15 MS. WYSE: Okay. I'm just trying to use exactly
16 what's in the statute.

17 THE COURT: It's not in the statute, is it?

18 MS. WYSE: The statement was given in response to
19 questioning conducted during an investigative interview
20 of the child.

21 THE COURT: Right. Right. I'm talking about that
22 word "forensic." It's not in the statute, is it?

23 Okay. We'll look at that later on, but I don't think
24 it is.

25 MS. WYSE: The audio and visual was recorded.

1 It's preserved on film, video, or other electronic
2 means.

3 Now, Judge, this is the part that I can't do
4 today. The child is going to testify tomorrow. So
5 this interview --

6 THE COURT: Well, she is, and if she isn't, then
7 you have got problems.

8 MS. WYSE: Right. This interview cannot be
9 introduced into evidence until the child takes the
10 stand and produces the elements of the case.

11 THE COURT: What it says in the statute, "In
12 determining whether a statement possesses
13 particularized" -- I have a hard time pronouncing that
14 word -- guarantees, whether it's particularly
15 trustworthy, the court may consider but is not limited
16 to the following," and then it goes over those as to
17 whether the statement was elicited by leading
18 questions. And I would say there were some leading
19 questions, but it wasn't too bad or anything really
20 that I would keep it out for that purpose at this
21 point.

22 Whether the interviewer had been trained in
23 conducting investigative interviews of children, and
24 apparently she has had training enough to do this, and
25 she's done, she told me, 250 of these types of

1 interviews, and then whether the statement represents a
2 detailed account of the alleged offense, you know. I
3 think she did give details of it, you know. She said
4 what happened and all, is the way I would -- and
5 pointed out things on the video and so forth, so she
6 gave, I think, a detailed account of it.

7 But whether it had internal coherence, what do you
8 think that means?

9 MS. WYSE: Judge, I think that that is one of
10 those nebulous terms coined by the legislature, and,
11 you know --

12 THE COURT: That doesn't help.

13 MS. WYSE: No, it doesn't. Judge, I think
14 coherence, you know, internal coherence, does the
15 interview flow, does it make sense.

16 THE COURT: Does it make sense.

17 MS. WYSE: Right. As much as an interview like
18 this can make sense, then yes, I believe it did. So
19 that, of course, is up to you to decide.

20 THE COURT: And any other thing that I think --
21 might bear on whether it's really trustworthy or not,
22 you know.

23 MS. WYSE: Judge, the other part of the statute
24 would be that she was under the age of 12 and she
25 testified --

1 THE COURT: I didn't know what the age was. They
2 said something about her date of birth was -- I mean
3 that her birth date was somewhere in [REDACTED].
4 What is her date of birth?

5 MS. WYSE: Your Honor, it's in the indictment.

6 MR. BYRHOLDT: Your Honor --

7 THE COURT: I couldn't figure that out.

8 MR. BYRHOLDT: Your Honor, she was 11 at the time.

9 MS. WYSE: She actually told the interviewer that
10 she was 11.

11 THE COURT: So it's under the age of 12, so that's
12 taken care of. Okay.

13 Anything else you want to say, Solicitor?

14 MS. WYSE: No, Your Honor. I think, based upon
15 what the statute says we have to show and then *State v.*
16 *Anderson*, I believe the State has met its burden to
17 introduce a small portion of the video.

18 THE COURT: All right. And Mr. -- I may have
19 called you by the wrong last name earlier today, and I
20 apologize for that. It's been a long time since I've
21 seen you, Mr. Byrholdt. Now I hope I can remember your
22 name.

23 MR. BYRHOLDT: I just didn't want the court to
24 think that I had been disbarred, Your Honor.

25 THE COURT: I apologize for that earlier. It's

1 been a long time since I've seen you.

2 What would you like to say in regard to this issue
3 about whether I should let this video be shown to the
4 jury?

5 MR. BYRHOLDT: Here is my concern, Your Honor.
6 Before it can be admitted or considered for that, the
7 child has to testify. Once she testifies, I think it's
8 going to be merely cumulative and used by the State to
9 bolster her testimony. It's unnecessary.

10 I think, like I say, when you're going to do this
11 on trustworthiness, it says whether the statement
12 represents a detailed account of the alleged offense.
13 I mean, she pointed to some stuff, you know, he touched
14 me here, here, and all the places. That's not a
15 detailed account, Your Honor. And I think that's
16 what's going to have to be elicited from the stand when
17 the State puts her up.

18 And with that, Your Honor, we'd ask the court at
19 this time take it under advisement until we hear her
20 testimony. I understand they're going to cut --

21 THE COURT: Are you planning on putting her up
22 first before you play the video?

23 MS. WYSE: Yes, sir, I have to.

24 THE COURT: Okay. I didn't know you had to, but
25 anyway. All right. I'm going to think about it some

1 more, then, and if it's not a question of whether it's
2 admissible or not at this point and everything. But
3 this statute and this procedure concerns me greatly.
4 I've had it on at least one prior occasion because
5 it's -- some of it certainly is clear, but when it gets
6 down to the point where it talks about it has evidence
7 of particular trustworthiness, you know, that's not
8 very clear.

9 So I'll not make a determination at this point,
10 then, but I'd ask you to have your video ready for the
11 part that you're going to show to the jury. And I
12 guess, like I say, I don't know if there's any
13 objections. Have you seen the ten minutes that she
14 wants to show the jury.

15 MR. BYRHOLDT: She'll have to tell me where it
16 starts, but I have a copy of it, Your Honor. I know
17 where she wants to end it.

18 THE COURT: Anyway, I didn't know if you had any
19 other objections to the ten minutes that she wants to
20 show other than I shouldn't let it in under this
21 statute.

22 MR. BYRHOLDT: I understand. Like I say, again
23 it's bolstering. The jury gets to hear it twice from
24 the stand. Well, it must be true because she said it
25 before. I don't think that's the issue.

1 THE COURT: Okay. All right.

2 So as I said, I'm going to wait, then, to make a
3 final decision about letting that in. As I understand
4 it, she's going to testify first and then you're going
5 to offer this after that; is that correct?

6 MS. WYSE: Yes, Your Honor, that is correct.

7 THE COURT: So I'm going to leave that to be
8 decided at that point, then, in the trial.

9 All right. What else?

10 MS. WYSE: Judge, as far as I know, this concludes
11 any business that we have prior to court starting in
12 the morning.

13 THE COURT: All right.

14 Anything else?

15 MR. BYRHOLDT: Nothing, Your Honor.

16 THE COURT: All right.

17 All right. Again, Mr. Obregon, I'll let you stay
18 out. I won't put you in jail on your promise to be
19 back here tomorrow morning at 9:30 a.m. when we resume
20 along with the trial. Do you understand that?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And if you're not here, the trial will
23 go on in your absence. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Will you be here?

1 THE DEFENDANT: I'll be here.

2 THE COURT: All right.

3 THE DEFENDANT: I will be here before that time.

4 THE COURT: I'm sorry?

5 THE DEFENDANT: I'll be here before that time.

6 THE COURT: Okay. All right. I will, too. Thank
7 you.

8 (WHEREUPON, proceedings adjourned at 3:18 p.m.)

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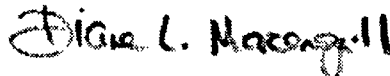
Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Oconee County, South Carolina, on the 15th day of May 2017.

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I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 28, 2018



Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

1 State of South Carolina In the Court of General Sessions
2 County of Oconee

3
4 The State of South Carolina,)
5) 2015-GS-37-00163
6 -vs-) 2015-GS-37-00164
7 Jaimie Sabio Obregon,) 2015-GS-37-00165
8 Defendant.) 2015-GS-37-00166
9) May 16, 2017
) Volume 2 of 2
) Pages 114 - 225
) Transcript of Record

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B E F O R E:

The Honorable Thomas L. Hughston, Jr., Judge;
and a jury.

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

Catherine Wyse, Assistant Solicitor
Tenth Circuit Solicitor's Office
Attorney for the State

Bruce A. Byrholdt, Esquire
Attorney for Defendant

Diane L. Marcengill, RPR, CRR, CRC
Circuit Court Reporter

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For the Defendant:

Marked	Description	I.D.	Admitted
	None offered.		

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 9:45 a.m.)

4 THE COURT: I think I asked you yesterday about
5 did you have a transcript of what you wanted to show as
6 far as the video or the video that you wanted to show
7 to the jury. You said you did not. I would suggest --
8 I don't know if it's possible for you to do that before
9 you get to show it -- get that to that point where you
10 want to show it to the jury or not. But as I
11 indicated, I certainly had a hard time understanding
12 everything that was being said on the video by the
13 child, and I would -- of course, it's very important
14 for the jury to hear and understand what's being said
15 and all. And I think I have -- I know I have in the
16 past had a written version of what was being said on
17 the video that I did allow the jury to read along with,
18 but I gave them an instruction about that that's not
19 necessarily correct. They had to hear and understand
20 based on the video and so forth.

21 So I don't know whether you have the ability to
22 try to produce what I would call a transcript of what
23 you want the show to the jury or not, but it would
24 certainly aid me; I think it would aid the jury in
25 hearing and understanding what's being said. I just

1 give you that for your advice, so you do what you want
2 to do. But as I said, it's very important, of course,
3 for the jury to understand what's said on that video.

4 MS. WYSE: Judge, Ms. Page has agreed that she
5 will do the transcript for us.

6 Now, that might pose some problems on behalf of
7 the defense, but she can do it right now and be done
8 this morning.

9 THE COURT: Go ahead and get it done. We'll see
10 how to deal with it as far as any problems are
11 concerned, but I think it's very important for the jury
12 to understand what's being said during the playing of
13 the video to them.

14 MS. WYSE: Thank you, Judge.

15 THE COURT: Anything else before we bring the jury
16 in? Nothing else? Bring the jury in.

17 (WHEREUPON, the jury entered open court at
18 9:45 a.m.)

19 THE COURT: Edward Lamken has been selected as the
20 foreperson. As I said, your vote counts no more than
21 anybody else's vote in deciding the case, but it's your
22 job to get the discussion going, keep it on track and
23 report to us when reaching a verdict. Also, if there
24 is a need for you, as a jury, to communicate with me
25 about any matter during the course of the trial, you

1 would be the jury spokesperson here in court for that
2 purpose.

3 I'd ask the clerk to swear the jury, please.

4 (WHEREUPON, the jury was impaneled.)

5 THE COURT: Thank you.

6 All right. I believe I can see that most of the
7 members of the jury, except the alternate there, I
8 don't believe he has a notepad and a pen.

9 Did somebody offer you a notepad and a pen?

10 ALTERNATE JUROR: Yes, sir.

11 THE COURT: Where is it? Go get it. Or somebody
12 get it.

13 (Pause in proceedings.)

14 THE COURT: Now, we do have -- the alternate has a
15 notepad and a pen. I do allow jurors to take notes
16 during the course of a trial. Some people don't think
17 that's a very good idea. They think it may distract
18 you from what's being said and done during the
19 presentation of the testimony and the evidence to you
20 during the course of the trial from the witness stand.

21 If you do take notes, do not allow your
22 note-taking to distract you. Notes are to be used only
23 as memory aids. Notes are not entitled to any greater
24 weight than the recollection or the impression of each
25 juror as to what the testimony or evidence actually

1 was. Those are your notes and your notes only. No one
2 will be looking at them, checking to see if you wrote
3 this down or didn't write that down or anything of that
4 sort.

5 At the conclusion of the trial, I'd ask you to
6 tear out any notes you may have made, take them with
7 you, tear them up, whatever you want to do. As I said,
8 those will be your notes and your notes only.

9 Notes are not entitled to any greater weight than
10 the recollection or the impression of each juror as to
11 what the testimony or evidence actually was. If you
12 have not already done so, put your name on the first
13 page there or initials or some identifying mark so that
14 you can easily identify that as your notepad because
15 when you leave, like at the end of the day or lunch or
16 whatever, you won't take that with you. You will leave
17 it in the jury room, or we'll take it from you, lock it
18 up and give it back to you the next day. So put some
19 identifying mark, your name or something there, so you
20 can easily identify that as yours during the course of
21 the trial.

22 The oath that you just took is an oath that you
23 would decide this case based on the testimony and the
24 evidence that will be presented to you from this
25 witness chair here and my instructions to you on the

1 law.

2 I really don't know any more about this case at
3 this point in time than you do. All I know is what I
4 told you earlier before you were selected as the jury
5 in this case. This is a case in which the State of
6 South Carolina has brought certain charges against the
7 defendant, Jaimie Sabio Obregon, O-b-r-e-g-o-n, who I
8 introduced to you yesterday and who is sitting at the
9 table with his lawyer over there, has brought certain
10 charges against him. Two charges of what's called
11 criminal sexual conduct in the first degree and one
12 charge -- and two charges of criminal sexual conduct in
13 the second degree.

14 And I will define what makes up those offenses
15 later on before you consider whether the State has met
16 its burden of proof of proving those charges against
17 him, but those are the charges that the State has made
18 against him, and he has said, I'm not guilty of those
19 charges. That places the burden of proving him guilty
20 on the State.

21 A person is never required to prove himself
22 innocent. The burden of proof remains on the State.
23 The State has to prove him guilty to your satisfaction
24 beyond any reasonable doubt while you're deliberating
25 in the jury room or else he's entitled to a verdict of

1 not guilty. Really that's the question that you will
2 answer when you go back into the jury room at the
3 conclusion of this case is: Has the State met the
4 burden of proof of proving these claims that they have
5 made against him.

6 If your answer is no, then he's entitled to a
7 verdict of not guilty. If your answer is yes, then the
8 State is entitled to a verdict of guilty. So keep that
9 in mind.

10 You are the sole judges of the facts of this case.
11 I don't have anything to do with the facts. My job
12 during the trial is to make sure that the parties
13 follow the rules. We have certain rules of evidence
14 and rules of procedure. I've got a couple books up
15 here, several books up here that are full of rules and
16 regulations and so forth as far as how you go about
17 trying a case. My job is to make sure that they follow
18 those rules.

19 Probably during the course of the trial, one or
20 both of the lawyers may get up and say something like,
21 Your Honor, I object, and hopefully have some reason as
22 to why he or she objected to a question that's been
23 asked or an answer that's been given. When the lawyers
24 do that, they're talking to me. They're not talking to
25 you. They're talking to me. They're calling a

1 possible violation of one of these rules to my
2 attention. Don't you concern yourselves with those
3 objections, whether I overrule it, sustain it, whatever
4 because it has absolutely nothing to do with your job
5 in this case, which is to be the finders or the judges
6 of the facts in this case.

7 Unless the answer to their objection is obvious to
8 me, probably what I'll do is I'll ask you to leave the
9 courtroom, go to the jury room for a little while so
10 that I can discuss the issue, the question, the issue
11 that's been raised by the lawyer with them, let me make
12 a decision about how I think the rule should be
13 applied, and then we'll bring you back in and go along
14 with the presentation of facts to you. We're not
15 trying to hide anything from you by doing that. It's
16 just that we have found over the years that that's the
17 easiest and the best way for me and the lawyers to talk
18 about these rules, let me make a decision about it, and
19 then bring you back in and go on with the trial. So
20 that's the way I anticipate handling any objections
21 that may come, by sending you out, let me discuss it,
22 bring you back in. I may be able to shortcut that in
23 some instances, but in most cases, that's what I'll do.

24 Now, how are we going to go about learning about
25 this case? First of all, I'm going to have to have the

1 lawyer for each side, the State, Ms. Wyse, and then the
2 defense, Mr. Byrholdt, who represents the defendant in
3 this case, they will make opening statements to you.
4 These are not arguments. The arguments will come at
5 the conclusion of the case, but I do allow each side to
6 introduce themselves a little further, tell you who
7 they are, what they're doing, outline their positions,
8 the claims that the State is making in this case
9 against the defendant, and any response to that by the
10 defendant.

11 After those opening statements, then we'd have
12 witnesses. People will come up here and sit in this
13 chair, this witness chair right down there between me
14 and you, and they will tell you the facts that they
15 know that may be involved in this case. The witnesses
16 testify about the facts. You listen to that. You are
17 the judges of the facts.

18 The State will go first, then we'll switch, and
19 the defendant can put up any witnesses he wishes you to
20 consider. After both sides have had a full and fair
21 opportunity to present evidence to you, then we will
22 have summations and arguments from the lawyers, and
23 after that, I'll discuss with you more fully what your
24 role and responsibilities are in a case like this and
25 the law that you should apply in a case like this, and

1 then you will go to the jury room and you will
2 deliberate, you will answer that question: Has the
3 State met the burden of proof of proving the defendant
4 guilty beyond a reasonable doubt by the evidence
5 presented here in court. Keep in mind what your role
6 is going to be at the conclusion of the state of the
7 case.

8 Ms. Wyse, would you like to make an opening
9 statement?

10 MS. WYSE: Yes, Your Honor. Thank you.

11 May it please the court, Mr. Byrholdt.

12 Ladies and gentlemen of the jury, good morning.
13 My name is Catherine Wyse, and I am here today to talk
14 to you about the case.

15 This case has some terrible facts. And it's a
16 terrible thing to talk about, but between the dates of
17 February 18, 2013, and March 31st of 2014, **Minor**
18 **██████████** went to Mr. Obregon's house. She went there
19 because her parents were working, and they dropped her
20 off, thinking that she would be safe.

21 And instead of being kept safe, as a ten-year-old
22 girl, Mr. Obregon would take his fingers, place them in
23 her bottom, and then he would perform oral sex on her.
24 She was ten years old.

25 You don't have to take my word for it because

1 you're going to hear from [Minor], a brave
2 14-year-old girl who's going to walk in this courtroom
3 and tell you exactly what happened to her.

4 You're going to hear from law enforcement,
5 Detective Gentry. You're going to hear from her
6 guidance counselor at school to whom she spoke with.
7 You're going to hear from DSS. You're going to hear
8 from somebody who interviewed her. You're going to
9 hear from Dr. Sally Carter, who examined her about six
10 weeks after the allegations were made.

11 And while you listen to their testimony, I want
12 you to remember the facts, and then I want you to
13 listen to Investigator Hawk and Deputy Will Freestate,
14 who interviewed the defendant. And the defendant told
15 them in his own words that he (indicating) kissed her
16 clitoris. And he even drew on a diagram and marked it
17 with an X in at least two places saying where he kissed
18 her.

19 You're also going to hear a phone call, a phone
20 call between [Minor] and Mr. Obregon, and Mr. Obregon
21 tells her that he thought she liked it, he never meant
22 to hurt her. Please don't tell anybody because you'll
23 get in trouble.

24 Ladies and gentlemen, at the end of this case, I
25 ask that you listen to everything, take into account

1 all the information you hear from the witness stand and
2 find the defendant guilty because he is.

3 THE COURT: All right.

4 Opening statement, Mr. Byrholdt?

5 MR. BYRHOLDT: May it please the court.

6 As I told you when I introduced myself, I'm Bruce
7 Byrholdt. I practice here in the Upstate, been
8 practicing for 38 years.

9 Jaimie Obregon is the one that's on trial today.
10 And as the judge told you, the State has the burden of
11 proof. We don't have to prove anything. What
12 Catherine and I tell you is not evidence. It's
13 argument. Evidence is from the witness stand or
14 documents.

15 Now, Catherine told you what she's going to prove.
16 You took an oath to hold her to that, everything she
17 said she's going to prove beyond a reasonable doubt.

18 Our jury system is the best in the world. When
19 someone has a dispute, we put members of our community
20 to resolve what the facts are, what the State has
21 proven or not proven.

22 Now, reasonable doubt can come from a lack of
23 evidence. It can come from differences in testimony.
24 What we ask you to do is keep an open mind until you
25 hear all the evidence. That's all any citizen can ask

1 that a jury does for them.

2 We look forward to working with you, and we
3 appreciate you taking time out of your busy schedules
4 and away from your families to serve on jury duty.

5 Thank you.

6 THE COURT: Thank you.

7 Call your first witness.

8 MS. WYSE: Thank you, Your Honor. The State would
9 call Amy Millspaugh.

10 **AMY MILLSPAUGH,**

11 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

12 **DIRECT EXAMINATION**

13 **BY MS. WYSE:**

14 Q Good morning.

15 A Good morning.

16 Q Will you state your name for the record.

17 A Amy Millspaugh.

18 Q And where do you work, Ms. Millspaugh?

19 A I'm a school counselor at Blue Ridge Elementary.

20 Q Can you speak up, kind of bring that microphone
21 right to your lips.

22 A Sure. I am one of two school counselors at Blue
23 Ridge Elementary School.

24 Q And where is that located?

25 A Seneca, South Carolina.

1 Q And how long have you been working there?

2 A This is my fifth year there at that school.

3 Q And how are you feeling today?

4 A I'm feeling good.

5 Q Good. Okay. Are you familiar with **Minor**

6 ?

7 A Yes, ma'am.

8 Q And how do you know her?

9 A She was a fifth grade student at the school, at
10 Blue Ridge Elementary.

11 Q And did you ever have any interactions with her?

12 A Yes, ma'am.

13 Q Do you remember roughly when that was?

14 A Well, several -- several times I was in class with
15 her, teaching in her class, talking with her friends
16 and herself. And also we had a very incredible event
17 when we had a conversation in the last weekend of March
18 of 2014.

19 Q Okay. Can you please tell the jury what happened
20 in your own words.

21 A Okay. I was out on March 28th, Friday afternoon,
22 when the school received a call concerning -- a mother
23 was concerned that her daughter was told by --

24 MR. BYRHOLDT: Your Honor, I'm going to object.

25 That's hearsay.

1 THE COURT: Members of the jury panel, I need you
2 to go to the jury room, please.

3 (WHEREUPON, the jury exited open court at
4 10:02 a.m.)

5 THE COURT: All right. I was somewhat concerned
6 when I heard the solicitor, you making a statement
7 about what the guidance counselor was going to say. So
8 let's just go ahead and get it all out right now.
9 Let's see what you wanted her to say.

10 Go ahead ask her the questions.

11 I mean, your objections are a hearsay objection
12 and relevancy and so forth.

13 Go ahead.

14 VOIR DIRE EXAMINATION

15 BY MS. WYSE:

16 Q Please describe in your own words why you had a
17 conversation with **Minor**.

18 A I had a conversation with **Minor** because the other
19 guidance counselor came to me Monday morning when I
20 returned to work, saying they had received a call on
21 Friday afternoon after school that **Minor** had told this
22 mother's daughter that she was being inappropriately
23 touched. So I went to **Minor** and --

24 THE COURT: Now, you contend that's admissible?

25 MS. WYSE: Judge, it's not being offered for the

1 truth of the matter therein.

2 THE COURT: What's it being offered for, then?

3 MS. WYSE: She had a duty as a guidance counselor
4 to talk to a student, and, you know, she's telling the
5 reason why she even got the student out of the
6 classroom in the first place.

7 THE COURT: Well, I appreciate that, but I sustain
8 the objection to that.

9 MS. WYSE: Okay. All right. Well, Judge, is it
10 okay if she says that they received a phone call about
11 an allegation so she spoke to allegation.

12 THE COURT: How would that be anything -- I mean,
13 that doesn't prove anything one way or the other as far
14 as the facts are concerned.

15 MS. WYSE: Okay.

16 Q All right. Did you talk to **Minor** ?

17 A Yes, ma'am.

18 Q Okay. What -- how long was your conversation with
19 her?

20 A It was about approximately 15 minutes.

21 Q Okay. And was anybody in the room with you when
22 you had a conversation with **Minor** ?

23 A No, ma'am.

24 Q It was just the two of you?

25 A Just **Minor** and I.

1 Q All right. And did she share anything with you?

2 A Yes. She shared that she was being
3 inappropriately touched by a family friend that they
4 call Uncle Jimmy, that he was not really an uncle but
5 that he -- they called him uncle, but that he was a
6 family friend. When her mom and her stepdad would be
7 away, he would come and stay with her or she would go
8 and stay with him. Her -- sometimes her by herself and
9 sometimes her and her brother.

10 Q Okay. You can only talk about time and place.

11 THE COURT: I'm sorry, what did you say?

12 MS. WYSE: Judge, she can only talk about time and
13 place. That's all she can testify to.

14 THE COURT: That's what I was saying. That's
15 beyond that.

16 MS. WYSE: Yes.

17 MR. BYRHOLDT: I've got no problem if it's just
18 limited to time and place. If she goes beyond that --

19 MS. WYSE: That's all.

20 THE COURT: She went much beyond that in what she
21 just said.

22 BY MS. WYSE:

23 Q All right. And what did you do as a result of
24 your conversation with Minor ?

25 A I went and found one of my administrators and let

1 them know what had happened, what the allegations were,
2 and that we needed to take action on that and do
3 something about that to keep her safe.

4 Q Okay. And what day was that?

5 A That was March 31st. Monday, March 31st.

6 Q Okay. Did you call anybody else or did anybody
7 call anybody else after this was over with?

8 THE COURT: I couldn't understand.

9 You said you told somebody what she had told you;
10 is that right?

11 THE WITNESS: I told my assistant principal.

12 THE COURT: That's what I didn't understand. You
13 told your assistant principal. And who is that?

14 THE WITNESS: Her name is Shantelle Washington.

15 THE COURT: Washington, okay. Just trying to keep
16 a record of what -- kind of keep it straight as to who
17 did what.

18 THE WITNESS: Sure.

19 THE COURT: Go ahead. Anything else?

20 BY MS. WYSE:

21 Q Who else did you call or who else did the school
22 call?

23 THE COURT: Wait a minute. What was your
24 question? Who else did the school call?

25 MS. WYSE: Yes, sir.

1 THE COURT: Did you hear them call anybody else?

2 THE WITNESS: Yes. I was in the office when
3 Ms. Washington tried to call home to contact either the
4 mother or the father to let them know that this family
5 friend -- that this -- these allegations were given --
6 that --

7 MR. BYRHOLDT: Catherine, you can't shake your
8 head no.

9 MS. WYSE: The jury is not here.

10 MR. BYRHOLDT: You still can't.

11 THE WITNESS: I'm sorry.

12 MS. WYSE: Time and place.

13 THE WITNESS: What **Minor** had told me in my
14 office.

15 BY MS. WYSE:

16 Q Did anybody show up at the school?

17 A Yes. Her mother came to the school.

18 Q Was anyone with her?

19 A Yes. There was a man with her that she had called
20 for a ride.

21 Q Who was that man?

22 A He identified himself as Jimmy.

23 Q Is he present in the courtroom?

24 A Yes, ma'am.

25 Q Okay. Where is he seated?

1 A He's seated next to the lawyer over there.

2 Q Okay. And did you have a conversation with the
3 mother?

4 A Yes, ma'am.

5 Q Was the conversation in private?

6 A It was Ms. Washington, myself and the mother.

7 Q Okay. Was **Minor** present in the room when you had
8 a conversation?

9 A Not at first, but mom wanted to speak with her.

10 Q All right. Did you call law enforcement?

11 A Eventually, yes.

12 Q When?

13 A We called law enforcement the next day, the next
14 afternoon after we had reported to DSS, and...

15 Q All right. Now --

16 A After we reported it to DSS, we called law
17 enforcement.

18 Q Okay. And who was your principal at the time?

19 A Idasa Cobb.

20 Q Is she still the principal?

21 A No, ma'am.

22 Q Why?

23 A She was fired or relieved of her duties.

24 Q Did you get into any trouble for this?

25 A Yes, ma'am. I was put on administrative leave a

1 few days after this event until the end of the year.

2 Q Okay. Was anybody else?

3 A Yes, ma'am. Shantelle Washington was put on
4 administrative leave.

5 Q Okay. But you are still employed there?

6 A Yes, ma'am.

7 MS. WYSE: I have no further questions, Judge.

8 THE COURT: Statement of position.

9 MR. BYRHOLDT: I think it's being offered to
10 bolster their position. If the child is going to
11 testify, she can testify to what happened. My concern,
12 it's going to open up some doors because I think these
13 people were either fired or put on administrative leave
14 because they're mandatory reporters and didn't report
15 it.

16 I've also been provided two statements by this
17 woman undated, unsigned that we don't even know when
18 they were generated.

19 THE COURT: Your first objection is that all this
20 is hearsay.

21 MR. BYRHOLDT: Hearsay and bolstering, Your Honor.

22 THE COURT: Okay. Hearsay. What -- I mean, it's
23 clearly hearsay, right?

24 MS. WYSE: Some of the things that she said, yes,
25 sir; Your Honor, are hearsay.

1 THE COURT: Well, I mean, hearsay or either
2 irrelevant. All this stuff about getting put on
3 administrative leave and fired or whoever and all that
4 stuff is irrelevant to any fact as far as this case is
5 concerned. You agree with that?

6 MS. WYSE: Respectfully, no, Your Honor, I don't,
7 but you're the one who makes the decision.

8 THE COURT: No? Then why do you think it's
9 relevant?

10 MS. WYSE: Judge, you know a lot of people failed
11 this little girl.

12 THE COURT: I'm sorry?

13 MS. WYSE: A lot of people failed this little
14 girl.

15 THE COURT: That's not a fact that's in dispute as
16 far as whether he did it or not. But, anyway. All
17 right. What is your -- you said something about an
18 exception or you said -- you were the first one to
19 mention about that you think she can testify as to time
20 and place of the events. Tell me what that exception,
21 how that exception --

22 MR. BYRHOLDT: I don't think it does apply now.
23 That applies if it's an excited utterance. This is
24 not. I mean, this is somebody questioning somebody
25 about a complaint they got about somebody else.

1 THE COURT: I want to give you every chance to
2 tell me why you think these out-of-court statements
3 that I think are certainly being offered to prove the
4 truth of the matter asserted in the out-of-court
5 statements are not just clearly hearsay and should not
6 be admitted.

7 MS. WYSE: Judge, as far as these kinds of cases
8 are concerned, the supreme court has said over and over
9 again that the child has to testify to the elements,
10 but that any other witnesses that the child may have
11 told, those witnesses can verify time and place. Those
12 are the only things they're allowed to say. They're
13 not allowed to say who the defendant was, who the
14 alleged defendant is, or what happened.

15 All she can -- all she and any of the other
16 witnesses can testify to are time and place.

17 MR. BYRHOLDT: I didn't hear her testify to time
18 and place.

19 THE COURT: Well, there was some reference to it.
20 There was some reference to it. It wasn't very clear.

21 THE WITNESS: I can, Your Honor.

22 THE COURT: But I'm trying to -- I'm looking at
23 the hearsay rules and so forth.

24 Do you have any reference to anything, anything in
25 what you've got there, Solicitor, that speaks to that

1 issue of time and place or not?

2 MS. WYSE: Judge, I can go get a case right now.
3 I just don't have one with me.

4 THE COURT: Go get it. I want to make sure about
5 it before I make a ruling.

6 MS. WYSE: Judge, Deputy Solicitor Lindsey Simmons
7 is getting it for me.

8 THE COURT: All right. We'll wait.

9 MS. WYSE: Judge, we have something else we need
10 to talk to you about.

11 THE COURT: All right. Go ahead.

12 MS. WYSE: Judge, I told you before court started
13 this morning that the mom received messages last night
14 on her phone in Tagalog telling her not to come to
15 court today. Detective Hawk, of course, looked at the
16 phone. They ran the phone number. It came back to
17 Mr. Obregon.

18 THE COURT: Okay.

19 MR. BYRHOLDT: Are you sure it was last night?

20 MS. WYSE: I'm sorry, Judge. It was on the 13th,
21 excuse me. She didn't tell me about it until today.

22 THE COURT: Okay. Just so what was just said is
23 clear, before we started the trial this morning, the
24 solicitor and Mr. Byrholdt approached and talked not on
25 the record, but what was told to me at that time, the

1 solicitor told me that the mother of the alleged
2 victim, the child, had received some phone calls last
3 night, as I understand it -- that was what was said at
4 the time, anyway -- from someone in...

5 MS. WYSE: Tagalog.

6 THE COURT: I'm not sure. Not English, but some
7 language, you know, and that they wanted time to
8 investigate that to see if the phone call came from the
9 defendant. And then what was on the phone was -- what
10 was being said to her in this foreign language was that
11 she should not come to court, and I gave y'all time to
12 check about that. Is that accurate?

13 MS. WYSE: Yes, sir, that is correct.

14 THE COURT: Do you agree with that? Do you want
15 to add anything?

16 MR. BYRHOLDT: The message, I believe, was sent
17 last week.

18 THE COURT: But now it's -- what I was told then
19 was that, and y'all had time, she had some time to
20 check about it, and now it turns out she says it came
21 from the number of the defendant, but it was two days
22 ago rather than last night; is that accurate?

23 MS. WYSE: Yes, Judge.

24 MR. BYRHOLDT: And what the term said was, "Don't
25 go." Didn't say, "Don't come to court." Said, "Don't

1 go."

2 THE COURT: Whatever. I'll deal with that if it
3 comes up during the trial.

4 MS. WYSE: Judge, a condition of the bond was that
5 he not have any contact with her.

6 THE COURT: I'll deal with that whenever you want
7 me deal with it, later on. But right now we're waiting
8 to go on with the trial.

9 So I'll be glad to try to deal with it whenever
10 you want to deal with it, but let's deal with this
11 issue first of the testimony that you want to get in.

12 I do better one thing at the a time.

13 MS. WYSE: Judge, Deputy Simmons tabbed the
14 part --

15 THE COURT: All right.

16 (Judge reviewing the case.)

17 THE COURT: All right. Well, I'm looking at this,
18 the case that you gave me, and I agree with it. And
19 what it says is that a witness such as this witness can
20 testify as to the time and place of the assault but
21 cannot include details or particulars or the identity
22 of the perpetrator. That's what the law is.

23 So if you think that you can limit it to that with
24 this witness, that's what's allowed.

25 MS. WYSE: Thank you, Judge. I think so.

1 Especially since she heard your ruling, Judge, I think
2 she knows how to answer.

3 THE COURT: I want to make sure you understand.
4 So we're going to start over about this and everything.
5 And really, you know, it's really -- what you're going
6 to testify to is, I believe, is that -- don't go into
7 why you talked to her, just that on March whatever date
8 it was, you talked to her at the school, you're a
9 guidance counselor, you talked to her at the school,
10 and that whatever it was that she told you. I don't
11 want to put words in your mouth, but you can only talk
12 about, you know, that she told you that she was --
13 whatever the words were that she used you can use, that
14 she was touched inappropriately, whatever the words
15 were she actually used on that occasion. If you can
16 recall those, that's what you should do is tell us what
17 she said as far as any inappropriate conduct was
18 concerned and when it took place. The time and the
19 place, when it took place, where it took place. Do you
20 understand that?

21 THE WITNESS: Yes, sir.

22 THE COURT: Okay. So try to keep that in mind and
23 only testify that you talked with her, this is what she
24 said happened to her by time and place, not the
25 identity of the person or any of that other stuff or

1 any of that other stuff that came after that okay.

2 THE WITNESS: Yes, sir. Yes, sir. Thank you.

3 THE COURT: All right. Bring the jury back in.

4 (WHEREUPON, the jury entered open court at
5 10:30 a.m.)

6 THE COURT: All right. We do have the jury back
7 with us now.

8 You can continue to examine the witness.

9 MS. WYSE: Thank you, Judge.

10 Q Ms. Millspaugh, again, where do you work?

11 A Blue Ridge Elementary.

12 Q And how are you employed there?

13 A I am a school counselor.

14 Q And for how long have you worked there?

15 A This is my fifth year there.

16 Q And you said that you are familiar with **Minor**

17 **██████████**?

18 A Yes, ma'am.

19 Q Okay. You gave us a date a little while ago. Can
20 you tell me what that date was again?

21 A The day I spoke with her was Monday, March 31st,
22 2014.

23 Q Okay. During your conversation with **Minor**, did
24 she tell you that something happened to her at a
25 certain place?

1 A Yes, ma'am.

2 Q Can you tell us where that place was?

3 A They were two different places.

4 Q Okay.

5 A One at her home and one at a family friend's
6 house.

7 Q Okay. And did she tell you when these things
8 happened to her?

9 A Yes. She said that it had happened four to five
10 times since January of that year.

11 Q Okay. All right. I have no further questions.
12 Please answer any that Mr. Byrholdt has for you.

13 THE COURT: Any questions?

14 CROSS-EXAMINATION

15 BY MR. BYRHOLDT:

16 Q January or February of what year?

17 A Of 2014.

18 Q Thank you, ma'am.

19 Nothing further.

20 THE COURT: Thank you.

21 Thank you very much. You can return to your place
22 in the courtroom, or do you want to excuse her?

23 MS. WYSE: Yes, Your Honor. I would ask that she
24 be released from her subpoena.

25 MR. BYRHOLDT: No objection.

1 THE COURT: Thank you very much for coming. You
2 are free to go.

3 Call your next witness.

4 MS. WYSE: Judge, at this time, I have a matter of
5 law to discuss with you outside the presence of the
6 jury.

7 THE COURT: Members of the jury panel, you need to
8 go back to the jury room, please.

9 (WHEREUPON, the jury exited open court at
10 10:33 a.m.)

11 MS. WYSE: Judge, the State's intention is to call
12 **Minor** next. I would ask that you please
13 clear the courtroom of the members in the audience.

14 THE COURT: Why?

15 MS. WYSE: Judge, she's 14 years old, and she
16 certainly don't want to talk about this in front of
17 anybody, much less a bunch of people she doesn't know.

18 THE COURT: I've never cleared a courtroom before.
19 It's a public trial, and it's open to the public unless
20 there's some compelling reason to close it to the
21 public, and I don't think that that's -- I haven't
22 heard any compelling reason to close it to the public.

23 I'll announce to anybody that wants to leave, you
24 certainly can and all, but I don't know of any reason
25 to close the courtroom at this point.

1 So anybody --- apparently the next witness is going
2 to be the child, and she's going to have to testify
3 about what happened to her. And if you want to leave,
4 you can; but it's a public trial, and the public is
5 welcome to be here.

6 MS. WYSE: Judge, we need to set up with the dog.

7 THE COURT: Let me ask you something about this.
8 Come on back up, let me ask you something.

9 Is this a dog that, like it's her companion
10 outside of the courtroom, or is this just a dog that's
11 being brought into the courtroom to sit up here with
12 her while she testifies?

13 MS. WYSE: Well, Judge, the motion that I gave to
14 you yesterday, Roma is actually a court-certified dog.

15 THE COURT: I've never heard of that before, so
16 you're going to have to educate me. I'm serious. I
17 don't mean that lightly. I've just never heard of that
18 before. And so go ahead and tell me what we're dealing
19 with here.

20 MS. WYSE: Sure thing, Judge. Roma is, what I've
21 said, a court-certified dog. She received training for
22 the first two years of her life basically on how to be
23 quiet and listen to commands, stay still. She is a
24 service dog. She is kept by her handler, who is
25 Ms. Chelsea Moore. Chelsea has also received a lot of

1 training in order to be able to handle her.

2 Judge, she -- Roma also goes to the Foothills
3 Alliance and sometimes sits in on interviews with small
4 children. Your Honor, it's not the victim's dog. She
5 met the dog for the first time this morning.

6 And, anyway, it was Chrissy Adams' idea several
7 years ago, and they petitioned for a trained dog to
8 kind of alleviate nerves and help with general
9 courtroom presence.

10 THE COURT: Anything you want to say about that?

11 MR. BYRHOLDT: No, Your Honor. When they brought
12 this up --

13 THE COURT: I'm sorry?

14 MR. BYRHOLDT: When they brought this up in the
15 Tenth Circuit --

16 THE COURT: I want to know do you object to having
17 the dog up here next to the witness under the --

18 MR. BYRHOLDT: I do, Your Honor, because, I mean,
19 where I've seen it used before is when somebody can't
20 testify; they're either frozen or have mental problems
21 and can't testify. Our supreme court has not addressed
22 this issue. It may go up on appeal. That's my
23 concern. I think if a witness can testify, my problem
24 is with cross-examination. I don't want anything to
25 make it easier for someone not to be forthright, not to

1 tell the truth. That's my concern on whether this
2 gives somebody comfort to be able to say whatever they
3 want.

4 Other courts -- I'll be honest with the court,
5 other courts have approved it. Six states have passed
6 statutes on it. South Carolina has not, and I believe
7 we're the only circuit at this point in this state that
8 has a service dog.

9 MS. WYSE: Yes, that's true, Your Honor. This is
10 what the motion was about yesterday. Also, there is
11 precedent in Anderson County where other judges have
12 allowed the dog to sit with victims.

13 THE COURT: Well, I appreciate that, but unless
14 there's some compelling reason that would indicate to
15 me that the person cannot testify truthfully and
16 accurately without the dog being next to her in the
17 witness box, I don't -- I'm not going to allow it.

18 So I appreciate very much your position, but
19 unless there is something other than just saying we
20 want to do this because we think it would be good and
21 helpful and so forth, you know, I'm not going to allow
22 it.

23 So call your next witness.

24 MS. WYSE: Minor.

25 THE COURT: All right. Come on.

1 MR. BYRHOLDT: Your Honor -- Your Honor, I just
2 saw what they put up. We need take a matter up. They
3 have a couple phone calls that they want to, I take it
4 play, for the jury since it's now up on the screen.

5 THE COURT: What are we dealing with?

6 MR. BYRHOLDT: There's two pretext phone calls
7 that the State had the victim make to the defendant or
8 allegedly to the defendant. My argument would be
9 unless they can authenticate that the defendant is a
10 part of these phone calls under Rule 901, my position
11 would be that they're inadmissible, Your Honor. Rule
12 901 requires them to authenticate --

13 THE COURT: Let me look at what that rule says.

14 All right. It would assume that Rule 901
15 paragraphs five and six dealing with voice
16 identification and telephone conversations would
17 perhaps apply to this.

18 MS. WYSE: Judge, I'm going to --

19 THE COURT: So, I mean, is that what you're going
20 to do right off?

21 MS. WYSE: I mean, is that what you're going to
22 do, put these conversations I hadn't heard --

23 MS. WYSE: Right. Judge, I gave the clerk *Mays v.*
24 *Mays*. Did she hand it to you?

25 THE COURT: Yes.

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1 MS. WYSE: Okay. All right. I'm going to have
2 Minor testify to the fact that she knows
3 Jimmy's voice -- or Jaimie Obregon's voice, and that
4 that is the phone call that she made, and he's the one
5 who's on the other line.

6 MR. BYRHOLDT: As long as they lay that
7 foundation, Your Honor.

8 THE COURT: All right. Sounds good.

9 MS. WYSE: Judge, do you want to get the jury?

10 THE COURT: We'll bring the jury back in.

11 Bring the jury in. Certainly.

12 Thank you for reminding me.

13 (WHEREUPON, the jury entered open court at
14 10:41 a.m.)

15 THE COURT: All right. We have the jury back with
16 us.

17 You may continue. Call your next witness.

18 MS. WYSE: Minor .

19 THE COURT: Ask her to come in, please.

20 Minor ,

21 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION

23 BY MS. WYSE:

24 Q Good morning.

25 A Good morning.

1 Q Minor, can you pull that microphone right in your
2 face. Thank you.

3 How old are you?

4 A I'm 14 years old.

5 Q And are you in school?

6 A Yes, ma'am.

7 Q What grade are you in?

8 A Eighth grade.

9 Q Do you like it?

10 A It's okay.

11 Q What's your favorite subject?

12 A Math.

13 Q Yeah? Good for you.

14 How are you feeling today?

15 A Nervous.

16 Q That's okay. You just take your time. All right?

17 Minor, do you know why we're here today?

18 A For me to testify.

19 THE COURT: I'm sorry, what was your answer?

20 THE WITNESS: For me to testify.

21 THE COURT: Keep your voice up, if you would. Try

22 to talk a little louder maybe than usual. You know, in

23 a voice like you might use out on the playground or

24 something, you were trying to shout to somebody on the

25 other side talk to the person in the back of the room

1 because it's very important for me and everybody else
2 in here to hear what you say.

3 Can you help me with that?

4 THE WITNESS: Yes, sir.

5 THE COURT: By the way, what is your date of
6 birth?

7 THE WITNESS: [REDACTED].

8 THE COURT: [REDACTED]; is that right?

9 THE WITNESS: Yes, sir.

10 THE COURT: Thank you. Keep your voice up like
11 that.

12 MS. WYSE: You're doing well.

13 THE WITNESS: Okay.

14 BY MS. WYSE:

15 Q Minor, so I just asked you a minute ago if you
16 knew why we were here today, right?

17 A Yes, ma'am.

18 Q Okay. And do you know who is sitting over there
19 at that table?

20 A Yes, ma'am.

21 Q Who is that?

22 A That's Jimmy Obregon.

23 Q And how do you know him?

24 A He was a family friend.

25 Q Okay. Minor, did you have a telephone

1 conversation with Mr. Obregon?

2 A Yes, ma'am.

3 Q And was it recorded?

4 A Yes, ma'am.

5 Q Actually, you had more than one, right?

6 A Yes, ma'am.

7 Q Okay. And when you talked to him on the phone,
8 did you recognize his voice?

9 A Yes, ma'am.

10 Q And it was him?

11 A Yes, ma'am.

12 Q All right.

13 MS. WYSE: At this time, Your Honor, I'd like to
14 play those phone calls for the jury.

15 THE COURT: Any objection?

16 MR. BYRHOLDT: No, Your Honor.

17 THE COURT: All right. Go ahead.

18 (Phone call playing.)

19 THE COURT: What is that picture up there?

20 Hold on. Stop it just a second.

21 What is the picture up there?

22 MS. WYSE: I think that's just the device that's
23 playing the phone call on the screen. I can exit out
24 of it.

25 MR. BYRHOLDT: It's a screen saver, Your Honor.

1 THE COURT: I just wanted to make sure that's not
2 anybody in this case or anything. It's just something
3 that comes up. Y'all may know that. I didn't. So
4 that doesn't have anything to do with it, you know. So
5 just don't look -- I guess don't look at the picture,
6 just listen to what's being said.

7 (Phone call playing.)

8 (Second phone call playing.)

9 BY MS. WYSE:

10 Q Minor, in your own words, I want you to tell me
11 and the jury what Mr. Obregon did to you.

12 A Well, he --

13 THE COURT: You might want to move to that side
14 there so the jury can see.

15 THE WITNESS: He -- he put his fingers on my
16 private part. He put his mouth on my private part. He
17 undressed me. That's it.

18 BY MS. WYSE:

19 Q Where did this happen?

20 A This happened at Mr. Obregon's house.

21 Q Do you know where he lives?

22 A No, ma'am.

23 Q Do you know if it's in the city or if it's in the
24 county?

25 A No, ma'am.

1 Q That's fine. When did this start?

2 A Right after my tenth birthday.

3 Q How long did it continue?

4 A For about a year.

5 Q Now, you said that he put his finger and his mouth
6 on your private part. Can you tell me which private
7 parts? Can you be more descriptive for me?

8 A He -- it was the lower half of my body.

9 Q You said he used his fingers and his mouth?

10 A Uh-huh. Yes, ma'am.

11 Q Now, did he put them on top of, inside or
12 somewhere else?

13 A From what I remember, on the inside.

14 Q Okay.

15 MS. WYSE: I don't have any further questions,
16 Judge.

17 THE COURT: Any cross-examination?

18 MR. BYRHOLDT: May it please the court.

19 CROSS-EXAMINATION

20 BY MR. BYRHOLDT:

21 Q **Minor**, who did you tell this to? Did you tell
22 your mom?

23 A I was telling my school counselor in fifth grade.

24 Q Is that the first person you told?

25 A No, sir.

1 Q All right. Who's the first person you told?

2 A My classmate, Laney.

3 (Witness starting to cry.)

4 Q When you talked to your counselor, were you
5 truthful with her?

6 A Yes, sir.

7 THE COURT: Do you want a Kleenex or anything?

8 MR. BYRHOLDT: That's all the questions I have,

9 **Minor**.

10 THE COURT: Anything on redirect?

11 MS. WYSE: No, Your Honor.

12 THE COURT: All right. Thank you very much. You
13 can return to wherever they want you to go in the
14 courtroom.

15 MS. WYSE: Judge, I'd ask that she be released
16 from her subpoena and allowed to leave.

17 THE COURT: Thank you very much.

18 Call your next witness.

19 MS. WYSE: Your Honor, the State would call Will
20 Freestate.

21 WILL FREESTATE,

22 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION

24 BY MS. WYSE:

25 Q Good morning.

1 A Good morning, ma'am.

2 Q What's your name?

3 A My name is Will Freestate.

4 Q And can you pull that microphone really close to
5 you.

6 A Is that this good?

7 Q I think so.

8 A Yes, ma'am.

9 Q Where do you work?

10 A I'm currently employed by the Anderson County
11 Sheriff's Office.

12 Q And where did you work prior to the Anderson
13 County Sheriff's Office?

14 A Prior to the Anderson County Sheriff's Office, I
15 was a lieutenant at the Walhalla Police Department here
16 locally. Prior to that I worked at the Oconee County
17 Sheriff's Office in the criminal investigation
18 division.

19 Q How long have you been an officer?

20 A Oh, goodness. Almost going on ten years.

21 Q And did you have a career before that?

22 A No, ma'am. I mean, I worked in corrections, so.

23 Q Now, are you familiar with Jaimie Obregon?

24 A Yes, ma'am.

25 Q And how are you familiar with that case?

1 A Lieutenant Hawk asked me to assist with, you know,
2 Mr. Obregon's case, just going with him to his house to
3 speak to Mr. Obregon.

4 Q All right. Now, did you, in fact, go to his house
5 to speak to him?

6 A I did. I accompanied Lieutenant Hawk.

7 Q And can you tell me where Mr. Obregon lived or
8 lives?

9 A He lives in the city or the county in Seneca. I
10 believe it's on Morgan Lane. The numerics, I think,
11 are, if I can -- [REDACTED] in Seneca.

12 Q All right. And do you remember what day you went
13 to talk to him?

14 A Oh, goodness. I don't. Again, I would have to
15 reference the paperwork, but it was June 19th. Yes,
16 ma'am.

17 Q Okay. And when you got to the house, who was
18 there?

19 A Just Mr. Obregon.

20 Q All right. Did you go in?

21 A Yeah. He allowed us to come in.

22 Q And what did y'all talk about, if anything?

23 A I talked to him mainly about the fact he works on
24 Volkswagen cars, and I just kind of talked about this
25 and that with him. Lieutenant Hawk, if I can

1 recall asked him if --

2 Q Don't say anything that Lieutenant Hawk said, just
3 what Mr. Obregon said and what you said. Okay?

4 A That was it, basically. I just nothing -- nothing
5 pertinent. Just asked him about his cars and his house
6 and whatnot.

7 THE COURT: About his cars, is that what you said?

8 THE WITNESS: Yes, sir. He fixes up Volkswagens,
9 I believe.

10 BY MS. WYSE:

11 Q Now, did the three of you go to the station?

12 A Yes.

13 Q The sheriff's office, sorry.

14 A Yes, ma'am, we did.

15 Q All right. And how did Mr. Obregon get there?

16 A We gave him a ride in Lieutenant Hawk's truck.

17 Q So it wasn't a patrol car?

18 A No, ma'am. It's unmarked Ford truck, I believe.

19 Q And did you place him in handcuffs?

20 A No, ma'am.

21 Q And did he agree to go with you?

22 A Yes, ma'am.

23 Q So he willingly went?

24 A Yes, ma'am.

25 Q Now, once you got to the sheriff's office, what

1 did you do?

2 A We took him into an interview room and basically
3 Mirandized him, and Lieutenant Hawk began the
4 interview.

5 Q All right. I would like --

6 Judge, may I approach the witness?

7 THE COURT: Go right ahead.

8 BY MS. WYSE:

9 Q Mr. Freestate, I would like for you to look at
10 what's been previously marked as State's Exhibit Number
11 2.

12 A Yes, ma'am.

13 Q All right. Can you tell us what that is?

14 A This is a waiver of Miranda sheet that we have.
15 It's just a standard form that we give to people we're
16 interviewing, and we read it to them. They state they
17 understand each part, and then they sign voluntarily if
18 they wish to waive their Miranda rights.

19 Q Is this something you've done before?

20 A Yes, ma'am. Yeah.

21 Q And have you talked to numerous witnesses and
22 alleged defendants?

23 A Yes, ma'am. There is a way I do it personally
24 every time just to make sure I did it correctly.

25 Q And did you, in fact, give Mr. Obregon -- did you

1 go over his rights with him?

2 A Yes, ma'am, I did.

3 Q Please explain to the jury how and why and, you
4 know, basically what's on that sheet, how you did it.

5 THE COURT: Tell us what you did with him on this
6 occasion. Okay?

7 THE WITNESS: Yes, sir. On this occasion, I gave
8 him this sheet. It was blank when I gave it to him.
9 On each -- you can see there is a line by each place
10 where he's supposed to sign.

11 First I asked him his level of education, and I'll
12 put it in this top corner. For Mr. Obregon, he had
13 gone to two years of college and had a high school
14 diploma.

15 I put the time and place where I start right here,
16 and then I start with each -- each line, I read it
17 first, and then I ask him if he understands each line
18 before he signs it. I want to make sure that he knows
19 what he's doing before he signs it. And I do that with
20 everybody I Mirandize.

21 Q All right. And did you do that on this occasion?

22 A Yes, ma'am.

23 Q And he initialed each line?

24 A He did after acknowledging he understood what I
25 was reading him.

1 Q Okay.

2 MS. WYSE: Judge, at this time I'd like to enter
3 State's Exhibit 2 into evidence.

4 MR. BYRHOLDT: No objection.

5 THE COURT: All right.

6 (WHEREUPON, State's Exhibit Number 2 was admitted
7 into evidence.)

8 THE COURT: I might tell the jury at this point,
9 any physical evidence such as what was just been
10 talking about there, State's Exhibit Number 2, you will
11 have it with you in the jury room at the end of the
12 case when you're considering your verdict. Sometimes
13 they want to show that around now, but other times not.
14 But anyway, you will have it with you in the jury room
15 at the end of the case when you're considering your
16 verdict, so you might bear that in mind.

17 Go ahead.

18 MS. WYSE: All right. Thank you.

19 Q What did you do next?

20 A After he initialed each line?

21 Q Yes.

22 A He then signed it, myself and Lieutenant Hawk
23 witnessed it, and I put the time that we had finished
24 reading him all that stuff. And, basically, Lieutenant
25 Hawk began the interview.

1 Q Okay. Don't tell me anything that Lieutenant Hawk
2 said.

3 A Yes, ma'am.

4 Q Just tell me what you said and what Mr. Obregon
5 said. Okay?

6 A I didn't say anything. My job, basically, was to
7 listen and take notes on a note sheet that we have, a
8 record of interview. And I just basically write notes
9 about what he's saying and his responses to Lieutenant
10 Hawk, to the best of my ability.

11 Q All right. And did -- okay. So tell me what
12 Mr. Obregon said.

13 A From what I can remember, the thing that stands
14 out with me is that --

15 Q Well, just start from the beginning of the
16 interview and kind of just give me an overview, if you
17 can.

18 A Like I said, I remember bits and pieces. It's
19 tough for me. It's been a while. I believe they spoke
20 about **Minor**, and they spoke about, you know, if
21 anything had occurred. I believe that he denied it.
22 Lieutenant Hawk confronted him with a pretext phone
23 call, which is a call that's made and recorded.

24 He then admitted that he had done something, but
25 that it was typical in the Philippines to do that. And

1 I remember one thing that I'll never forget is that he,
2 when he told us that he had touched **Minor**, he took his
3 finger, I guess for her clitoris, and he said, "I just
4 kissed her like this," and made a loud kissing noise
5 where he says he kissed her on her clitoris. And I
6 don't think I could ever forget that. It's just --

7 Q All right. And did he confirm doing anything
8 else?

9 A Not that I can remember. That, what I just told
10 you, I mean, kind of turned my stomach, so that's what
11 I remember.

12 Q All right. And was he given the opportunity to
13 write a statement?

14 A Yes, ma'am, he was.

15 Q Okay.

16 MS. WYSE: Permission to approach the witness.

17 THE COURT: Go right ahead.

18 BY MS. WYSE:

19 Q All right. Will you please identify to the jury
20 what's been previously marked as State's Exhibit Number
21 3?

22 A Yes, ma'am. This is a voluntary statement form.
23 We give it to witnesses or suspects to get, in their
24 words, what exactly occurred on whatever case we're
25 working on. It's basically, as it says, voluntary.

1 You know, we don't force anybody to do it. You know,
2 they -- there is an area up here that's basically
3 reiterating your Miranda rights and the fact that this
4 is freely and voluntarily given. And then here they
5 write whatever they -- you know, whatever they need to
6 write as far as what they believe has occurred.

7 Q Did Mr. Obregon at any point in time ask you any
8 questions or say that he didn't understand something?

9 A Not that I remember, no, ma'am.

10 Q All right. And did he -- you said that that
11 statement is freely and voluntarily given. You know,
12 did he -- he wrote it?

13 A Yes. This is his handwriting.

14 Q Okay. And you didn't tell him what to say?

15 A I can't, no, ma'am.

16 Q All right. And has that statement been changed or
17 altered in any way that you can tell?

18 A No, ma'am.

19 Q Okay.

20 MS. WYSE: At this point in time, Your Honor, I
21 would like to enter State's Exhibit 3 into evidence.

22 THE COURT: Any objection?

23 MR. BYRHOLDT: No objection, Your Honor.

24 THE COURT: All right.

25 (WHEREUPON, State's Exhibit Number 3 was admitted

1 into evidence.)

2 MS. WYSE: Your Honor, at this time I would like
3 to publish to the jury this statement.

4 THE COURT: All right. Go right ahead.

5 You want to let them pass it around and read it
6 before you ask any more questions?

7 MS. WYSE: Yes, sir, if that's okay with you.

8 THE COURT: That's fine.

9 MS. WYSE: Or I can get the officer to read it.

10 THE COURT: As I told the jury, you know, you'll
11 have it with you in the jury room at the end of the
12 case when you're considering your verdict, but she
13 asked to pass it around to you now for you to read it,
14 so that's what we're going to do.

15 MS. WYSE: Judge, I didn't even think about this.
16 I could put it up on that screen.

17 THE COURT: Okay. Get it back.

18 MS. WYSE: All right. Judge, I'm going to give
19 the jury just a minute to read that.

20 (Pause in proceedings.)

21 BY MS. WYSE:

22 Q Officer Freestate?

23 A Yes, ma'am.

24 Q Did Mr. Obregon give you a time frame for when
25 this happened?

1 A Like I said, I don't remember that, ma'am. If
2 it's in the statement, he did.

3 Q Well, it says he said this last February 22nd of
4 '14.

5 A Yes, ma'am. If that's the timeline he gave,
6 that's when it occurred.

7 Q All right. Did he confirm that **Minor** would come
8 to his house on the weekends?

9 A Yeah. He said that he would, I guess, baby-sit
10 her, yes, ma'am.

11 Q All right.

12 MS. WYSE: I have no further questions.

13 THE COURT: Cross-examination.

14 MR. BYRHOLDT: May it please the court.

15 CROSS-EXAMINATION

16 BY MR. BYRHOLDT:

17 Q Officer, you said something stuck in your mind.

18 A Yes, sir.

19 Q Something you will never forget. What was that?

20 A It's when he made a motion with his finger where
21 he kissed her on the clitoris. He said he kissed her
22 right on the clitoris, and he just went (indicating).

23 Q He said this was a Filipino thing?

24 A Yes, he did. He stated that was a tradition in
25 the Philippines, that that was normal behavior.

1 Q And you recall that specifically?

2 A Yes, sir.

3 Q Most important thing. Never forget it?

4 A Yes, sir.

5 Q Can you show me where you wrote that down in your
6 notes?

7 A I didn't.

8 Q Well, if it was so important and you're never
9 going to forget it, why wasn't it in your notes?

10 A Like I said, I can't write down that he kissed his
11 finger. At the time I just took down notes the best I
12 could. Then he said he was going to give a statement,
13 and at that time I allowed him to write his statement.

14 Q So your notes were from before the statement was
15 taken?

16 A Yes, sir. It was during the interview.

17 Q And he said it happened just shortly before this,
18 correct? He said this happened shortly before this?

19 A Yeah. It was during while we were doing it, yes,
20 sir.

21 MR. BYRHOLDT: Nothing further, Mr. Freestate.

22 Thank you. Be careful out there.

23 THE WITNESS: Yes, sir. Thank you.

24 THE COURT: Anything else on redirect?

25 MS. WYSE: No, Your Honor. At this time I would

1 ask that Officer Freestate be released from his
2 subpoena.

3 MR. BYRHOLDT: No objection.

4 THE COURT: Thank you very much for coming.
5 You're free to go. We'll take a short break at this
6 time. We've been out here now for almost two hours. I
7 need to take a short break, let you take a break also.
8 If you want to, get some coffee. They will get that
9 for you.

10 Ten minutes. Be back in about ten minutes.

11 (WHEREUPON, the jury exited open court at
12 11:11 a.m.)

13 (WHEREUPON, a recess was taken from 11:11 a.m. to
14 11:29 a.m.)

15 (WHEREUPON, the jury entered open court at
16 11:30 a.m.)

17 THE COURT: All right. We have the jury back with
18 us.

19 Call your next witness.

20 MS. WYSE: Thank you, Your Honor. May it please
21 the court. The State would call Detective Gentry Hawk
22 to the stand.

23 GENTRY MORRIS HAWK,

24 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

1 BY MS. WYSE:

2 Q Will you please state your name for the record.

3 A Gentry Morris Hawk, II.

4 Q And where do you work?

5 A At the Oconee County Sheriff's Office.

6 Q How are you employed there?

7 A I am currently the lieutenant over the criminal
8 investigations division.

9 Q How long have you worked for the Oconee County
10 Sheriff's Department?

11 A In August it will be 19 years.

12 Q And what various roles have you filled since you
13 were working there?

14 A I started out, I was a school resource officer
15 where I was at West-Oak High School for five years, and
16 then I was promoted into investigations as a sergeant
17 over criminal investigations. We got a grant. I
18 started the criminal investigations unit for our
19 sheriff's office, then a year later we got a grant for
20 a child and elder abuse investigator, and I started
21 that position as well.

22 Q And what did you do prior to being a school
23 resource officer?

24 A I worked at the City of Seneca. I worked there as
25 a school resource officer and as a patrol officer

1 before that.

2 Q And do you have any other law enforcement
3 experience other than those two? That's a lot.

4 A No, ma'am.

5 Q What did you do prior to working in Seneca?

6 A Prior -- I was in the United States Navy.

7 Q And what did you do?

8 A I was a -- it was called a hard hat diver. I was
9 a deep sea diver for about five and a half years.

10 Q And how were you employed back in June of 2014?

11 A I'm not sure when I was promoted. It's kind of
12 flown together of all the years, but I was in
13 investigations. As an investigator, I investigated
14 crimes against children and vulnerable adults.

15 Q And are you familiar with Jaimie Obregon?

16 A Yes, ma'am, I am.

17 Q How do you know him?

18 A I investigated him in this case. I got an
19 incident report through our road officers that --

20 THE COURT: Just tell us -- don't go into what
21 somebody may have told you or whatever.

22 Ask another question.

23 BY MS. WYSE:

24 Q When did you meet with him?

25 A I met with him on June 19, 2014.

1 Q All right. And just to be clear, were you
2 assigned this case from the beginning?

3 A Yes, ma'am.

4 Q Okay. And what was the beginning date for you, if
5 you can remember?

6 A I don't remember offhand.

7 Q Okay. All right. Did you ever meet with **Minor**
8 **[REDACTED]** ?

9 A I did, yes, ma'am.

10 Q How many times did you meet with her, if you can
11 remember?

12 A As far as I remember, it was twice, the first
13 being April 1st, 2014, and then the second time was
14 June 18, 2014.

15 Q Okay. All right. Now, did you meet with **Minor**
16 at the DSS office in Oconee County?

17 A Yes, ma'am, on June 18, 2014, I did.

18 Q And did you direct her to make some phone calls?

19 A Yes, ma'am, I did.

20 Q And were you present in the room when those phone
21 calls were made?

22 A Yes, ma'am.

23 Q And did you record the phone calls?

24 A Yes, ma'am.

25 Q And you heard the phone calls earlier, right?

1 A Yes, ma'am.

2 Q And was that an accurate and fair representation
3 of the phone calls that were made that day?

4 A Yes, ma'am.

5 Q All right. I want to show you what's been marked
6 previously as State's Exhibit Number 1.

7 A Yes, ma'am.

8 Q Has that phone call been kept in your care -- have
9 you been keeping it?

10 A Yes, ma'am. I recorded it, and I downloaded it in
11 my computer, and I made it to CD because it's my
12 handwriting on it that says **Minor** pretext phone calls.

13 Q Okay.

14 MS. WYSE: At this time, Your Honor, I'd like to
15 offer what's been previously marked as State's
16 Exhibit Number 1 into evidence.

17 MR. BYRHOLDT: No objection.

18 (WHEREUPON, State's Exhibit Number 1 was admitted
19 into evidence.)

20 MS. WYSE: Thank you, Your Honor.

21 Q Now, we heard from officer Freestate that there
22 was an interview on June 19th of 2014.

23 A Yes, ma'am.

24 Q Were you present at that interview?

25 A Yes, ma'am, I was.

1 Q All right. How did that interview begin? Like
2 what did you do first?

3 A Well, first I went to his residence, which is, I
4 believe, [REDACTED], and asked -- met with
5 Mr. Obregon and asked him if he would come to the
6 sheriff's office and talk to us about a case that I
7 have involving **Minor**, and he voluntarily came with us.
8 He had to either put on his shoes or shirt or
9 something. He had to put on some article -- I don't
10 remember what exactly, but we had to wait for him to
11 get dressed, and we drove to the sheriff's office.

12 Q And did you drive?

13 A I did, yes, ma'am.

14 Q And were you driving a patrol car?

15 A Well, it's a patrol car, but it's unmarked. It's
16 a -- I don't remember if I had my Ford F-150 because
17 when we get certain miles on our cars, we have to get
18 new cars. It was either -- I had a Chevy Tahoe or it
19 was the Ford F-150.

20 Q And did Mr. Obregon go with you?

21 A Yes, ma'am.

22 Q Okay. All right. Now, when you got to the --

23 (Computer making a sound.)

24 MS. WYSE: I think we got mail.

25 BY MS. WYSE:

1 Q When you got to the sheriff's office, what did you
2 do next?

3 A We went up to -- we have interview rooms in the
4 sheriff's office on the investigative side, and we went
5 into one of them for the interview.

6 Q Okay. And who was present in the room with you?

7 A It was Mr. Obregon, myself and detective at the
8 time, Will Freestate.

9 Q All right. Did you video this interview?

10 A No, ma'am. At that time we didn't have video
11 equipment for -- in the rooms. It wasn't installed
12 with stuff to record it.

13 Q Okay. And I asked Mr. Freestate about the
14 interview earlier, but since you were the one asking
15 Mr. Obregon questions, can you please tell us what
16 questions you asked him.

17 A We started off real basic, you know, getting
18 information about his and **Minor** and her family's
19 relationship, just talking about, you know, how they
20 knew each other, their association, what they did. You
21 know, we talked about how he baby-sat for her when the
22 parents were working. Just kind of getting background
23 about how he knew the family how he was involved with
24 them and just that kind of stuff.

25 Q Did you talk to Mr. Obregon about any allegations?

1 A Yes, ma'am. I asked him, you know, we told him
2 that there's allegations that she had made against him,
3 you know. And the way I do my interview, I start with
4 building, you know, talking about relationships and
5 seeing, you know, what the relationship is. And then
6 we led into the allegations, and I told him that she
7 made allegations that he had touched her and performed
8 oral sex on her, on -- her.

9 Q All right. And what did he say?

10 A He denied it.

11 Q Okay. And did he offer anything else?

12 A He had talked about, you know, I asked him -- a
13 lot of times I ask questions about, did you talk to her
14 on the phone, because I did the pretext phone call the
15 day before. And he said he had talked to her on the
16 phone, that she had made mention that he had touched
17 her, and he says he denied it to her on the phone. And
18 then that's when I informed him that, you know, we had
19 recorded it, and it was part of our investigation. And
20 that's when he admitted -- admitted that he had done
21 that to her.

22 Q Okay. What were his words? What did he say he
23 admitted to?

24 A He admitted to --

25 Q If you remember.

1 A I don't remember all his words, but I remember he
2 did the motion where he kissed his hand and told us he
3 kissed her on her clitoris. And that was his words,
4 clitoris. And that he had touched her on her vagina,
5 you know, her private parts. And then he -- basically
6 he gave us a written statement about what he had done.

7 Q And that's already been marked into evidence as
8 State's Exhibit Number 3 and published for the jury.
9 Did you --

10 MS. WYSE: Permission to approach the witness,
11 Your Honor.

12 THE COURT: Go ahead.

13 MS. WYSE: Thank you.

14 Q Can you please tell me what has been marked as
15 State's Exhibit Number 4?

16 A Yes, ma'am. This is a drawing that I had done in
17 the interview where -- I'm not an artist, but I drew a
18 female genitalia so he could put an X to show me
19 exactly where he had kissed her at. And he initialed
20 it. And I had written **Minor** vagina and kissed here,
21 and he initialed it, and he put the X and the line to
22 it.

23 Q And so that is actually your drawing?

24 A Yes, ma'am.

25 Q Okay. And you said that he placed the X's on

1 there?

2 A Yes, ma'am.

3 Q And that you labeled it?

4 A Yes, ma'am. And he initialed it.

5 Q All right. And is that the original copy of that
6 drawing?

7 A Yes, ma'am.

8 Q Not original copy. Is that the original drawing?

9 A That's the original, yes, ma'am.

10 Q All right. And has it been changed or altered in
11 any way?

12 A No, ma'am.

13 Q Have you kept that in your care?

14 A In my case file, yes, ma'am.

15 MS. WYSE: At this time, Your Honor, I'd like to
16 move what's previously been marked as State's Exhibit
17 Number 4 into evidence.

18 THE COURT: Any objection?

19 MR. BYRHOLDT: No objection, Your Honor.

20 (WHEREUPON, State's Exhibit Number 4 was admitted
21 into evidence.)

22 MS. WYSE: Your Honor, I'd like to publish this to
23 the jury, Your Honor.

24 THE COURT: Go right ahead.

25 BY MS. WYSE:

1 Q Detective Hawk, during your investigation of
2 Mr. Obregon, did you find out how long he's been here?

3 A Yes, ma'am. I contacted the Department of
4 Homeland Security, which is formerly known as ICE, and
5 they had told me he became a naturalized --

6 MR. BYRHOLDT: Object, Your Honor. That's
7 hearsay.

8 THE COURT: Do you want to be heard?

9 MS. WYSE: Your Honor, I think I can ask this in a
10 different way.

11 THE COURT: Go ahead.

12 BY MS. WYSE:

13 Q As a part of your investigation, how long has
14 Mr. Obregon been a citizen of the United States?

15 THE COURT: No, no. That's the same thing.

16 Do you want to be heard in regard to that?

17 MS. WYSE: Well, your Honor, I think --

18 THE COURT: Members of the jury panel, I need you
19 to go to the jury room, please. Leave that exhibit out
20 here, if everybody has looked at it or not.

21 (WHEREUPON, the jury exited open court at
22 11:42 a.m.)

23 THE COURT: All right. Go ahead and ask your
24 question. Let's see what the answer is.

25 VOIR DIRE EXAMINATION

1 BY MS. WYSE:

2 Q As a part of your investigation, did you find out
3 how long Mr. Obregon has been a member -- or a citizen
4 of the United States?

5 THE COURT: Obviously you asked somebody. Who did
6 you ask? How did you ask them? Did you call them up?

7 THE WITNESS: I called a contact that I have with
8 the Department of Homeland Security, and he had put me
9 through to a lady who's over the, from what I
10 understand, is over the naturalization part of the
11 Department of Homeland Security, and she had informed
12 me that he was a naturalized citizen in 1990.

13 THE COURT: Why is that relevant?

14 MS. WYSE: Well, Judge, I can ask him, you know,
15 if he knows when he became a citizen.

16 THE COURT: Why is that relevant?

17 MS. WYSE: Mr. Byrholdt asked Mr. Freestate
18 about --

19 THE COURT: I hadn't heard him ask him anything
20 yet.

21 MS. WYSE: This isn't Freestate. He asked the
22 previous witness if Mr. Obregon said that was something
23 they did in the Philippines, the kissing of the
24 clitoris.

25 THE COURT: Right. And this guy said that, too, I

1 think.

2 MS. WYSE: Yes, sir. The State's argument in
3 response to any argument that may be made by the
4 defense that this is somehow okay to do in the
5 Philippines, I would contend that he's been here a long
6 time and that he knows that you can't do that here.

7 THE COURT: I appreciate that, but I'll sustain
8 the objection. That testimony at this point is being
9 irrelevant to any fact that's involved in the case.

10 All right. Bring the jury back in. You may be
11 able to offer it if it becomes a big point later on, if
12 you want to try to counter it, but at this point it's
13 irrelevant.

14 (WHEREUPON, the jury entered open court at
15 11:44 a.m.)

16 THE COURT: All right. The jury is back with us.
17 Any other questions for this witness?

18 MS. WYSE: I beg the court's indulgence. I don't
19 know if it made it all the way around.

20 Yes? Okay. Thank you.

21 BY MS. WYSE:

22 Q Detective Hawk, how long did you interview
23 Mr. Obregon?

24 A Approximately an hour, from the beginning until he
25 was done with his statement.

1 Q Was there ever a time when he asked for
2 clarification or he asked you what something meant?

3 A Not that I remember. But if he did, we would have
4 explained it to him.

5 Q All right. And did you force him or promise him
6 anything in return for writing a statement?

7 A No, ma'am.

8 Q Okay. I have no further questions. Please answer
9 any that Mr. Byrholdt has.

10 MR. BYRHOLDT: May it please the court.

11 CROSS-EXAMINATION

12 BY MR. BYRHOLDT:

13 Q Why didn't you videotape this statement?

14 A Because at the time at the sheriff's office we
15 didn't videotape our interviews with suspects at that
16 time.

17 Q You had video equipment?

18 A Yes, sir, we do.

19 Q All right. Do you do it now?

20 A Oh, yes, sir, we do.

21 Q So that way the jury can see instead of someone
22 coming in and say what happened; is that right?

23 A Yes, sir.

24 Q Did you have a cell phone back last 2014?

25 A Yes, sir.

1 Q Did it have a camera with it?

2 A Yes, sir.

3 Q So you could have turned that camera on, put a
4 video on, and we could have seen what happened?

5 A Well, that's -- our sheriff's office, at that
6 time, we did not do that.

7 Q Okay. And his statement said this happened, if
8 you take his statement, that it happened February the
9 22nd of 2014?

10 A Yes, sir.

11 Q Did you interview **Minor**?

12 A I did not, no, sir.

13 Q You're the lead investigator, and you didn't
14 interview the alleged victim?

15 A No, sir. I referred her to the Child Advocacy
16 Center. It's a place that's set up to deal with
17 children, and they have people who are trained to --

18 THE COURT: You didn't interview her. You
19 referred her to somebody else.

20 Any other questions?

21 MR. BYRHOLDT: No, sir.

22 THE COURT: Anything you want to add?

23 MS. WYSE: No, Your Honor.

24 THE COURT: Thank you very much.

25 You can return to your place in the courtroom.

1 Call your next witness.

2 MS. WYSE: Judge, at this time my witness is en
3 route, and it will take her at least an hour to get
4 here.

5 THE COURT: Oh, really?

6 MS. WYSE: Well, she's coming from Anderson.

7 THE COURT: Okay. All right.

8 MS. WYSE: This might be a good time --

9 THE COURT: We'll go ahead and take an early lunch
10 break, then.

11 MR. BYRHOLDT: That's fine.

12 MS. WYSE: That sounds good to me. I am a little
13 hungry.

14 THE COURT: All right. Okay. So the next witness
15 is not going to be here for an hour. I just want to
16 make sure.

17 MS. WYSE: Yes, sir, at least.

18 THE COURT: All right. Okay. So it's a little
19 bit before 12:00 o'clock now. So I'm going to say
20 we'll resume, then, at 1:30, give you plenty of time to
21 get here, y'all have a chance to get a little something
22 to eat.

23 So we're going to take our break, then. Leave
24 your notepads in the jury room. Bring them back out
25 with you afterwards. Do not discuss the case over the

1 lunch break with yourselves or amongst yourselves or
2 with anybody else.

3 As I told you, I believe, yesterday, the only time
4 you are to discuss it is when you're together in the
5 jury room after you have heard everything and my
6 instructions to you. That's when you will discuss it.
7 That's when you will talk about it.

8 So certainly do not discuss it over the lunch
9 break with anyone at all. So have a nice lunch. Be
10 back with us in the jury room by 1:30.

11 Let the jury get out.

12 Everybody else stay seated.

13 (WHEREUPON, the jury exited open court at
14 11:49 a.m.)

15 THE COURT: All right. I don't know how long it
16 takes for the jury to clear the courthouse, so we're
17 going to wait here a little while.

18 Anything else?

19 MS. WYSE: Yes, Your Honor. I would like at this
20 time for the court to address the issue of the phone
21 call that was made over the weekend.

22 THE COURT: What do you want me to do?

23 MS. WYSE: Judge, I would ask that you take him
24 into custody. You know, the bond is not in effect now,
25 but it was in effect over the weekend.

1 THE COURT: All right. And tell me what it is
2 that you -- let's just hear from, I guess, maybe this
3 man here, Mr. Hawk, or whoever has done whatever
4 checking in regard to it has been done so I can
5 understand exactly what the situation is.

6 MS. WYSE: Judge, do you want him to come to the
7 witness stand?

8 THE COURT: Were you the one that checked about
9 this?

10 DETECTIVE HAWK: Yes, Your Honor.

11 THE COURT: Come on back up. You're still under
12 oath.

13 (Detective Hawk returns to the witness stand.)

14 THE COURT: All right, Solicitor. Go ahead and
15 ask him some questions.

16 REDIRECT EXAMINATION

17 BY MS. WYSE:

18 Q Detective --

19 THE COURT: I know who he is and everything, now,
20 so get to the point.

21 BY MS. WYSE:

22 Q Detective Hawk, did Ms. Dorothea Taylor talk to
23 you about some messages she received on her phone?

24 A Yes, ma'am, she did.

25 THE COURT: That's the mother of the young girl?

1 THE WITNESS: Yes, Your Honor.

2 THE COURT: All right. Go ahead.

3 BY MS. WYSE:

4 Q And were you aware of the conditions of the
5 bond --

6 THE COURT: When did she talk with you about that?

7 THE WITNESS: This morning before court started.

8 THE COURT: Okay.

9 BY MS. WYSE:

10 Q What did she tell you?

11 A Well, I got -- she told me that she had gotten a
12 text message from a phone number she wasn't familiar
13 with, and it had some stuff in English and in -- I
14 don't know if I say it right --

15 THE DEFENDANT: Tagalog.

16 MR. BYRHOLDT: It's T-a-g-a-l-o-g.

17 THE WITNESS: And she informed me that that said
18 "Don't go," what she's referring to as to court this
19 week.

20 MR. BYRHOLDT: Object to what he's --

21 THE COURT: Just tell me what she said.

22 THE WITNESS: She told me that it was in Tagalog
23 that "Don't go." And what I did is we have what's
24 called Regional Organized Crime Information Center,
25 ROCIC. I had our investigations secretary contact

1 them. And when she ran the phone number through them,
2 which they have a search engine that search -- I don't
3 know exactly how they do it, but they search all the --

4 MR. BYRHOLDT: We don't deny a text message was
5 sent.

6 THE COURT: From the defendant to her?

7 MR. BYRHOLDT: From the defendant to Dorothea.

8 THE COURT: The mother of the young girl?

9 MR. BYRHOLDT: Yes. Last week sometime.

10 THE COURT: All right.

11 THE WITNESS: The date on the text that I saw was
12 on the 13th, which was Sunday.

13 MR. BYRHOLDT: Okay.

14 BY MS. WYSE:

15 Q All right. And do you remember what was said in
16 English?

17 A No, I don't. I looked at it briefly, and she told
18 me what it was in that language.

19 THE COURT: What did she say it said?

20 THE WITNESS: "Don't go."

21 BY MS. WYSE:

22 Q All right. And did Ms. Taylor express to you
23 concerns for her safety prior to today?

24 A Yes, ma'am. And she was extremely fearful for her
25 daughter and her safety today.

1 Q All right. And --

2 THE COURT: Did she explain why, why she's
3 fearful?

4 THE WITNESS: Because of the message she got, and
5 she's fearful of Mr. Obregon.

6 THE COURT: Did she give you anything other than
7 just saying, "I'm afraid of him," any particular reason
8 or anything?

9 THE WITNESS: No, Your Honor.

10 BY MS. WYSE:

11 Q She's expressed fear of him before to you, right?

12 A Not to me directly until this morning.

13 MS. WYSE: Okay. All right. Were the conditions
14 of the bond that neither he nor any of his family --

15 THE COURT: Do we have the bond?

16 MR. BYRHOLDT: I don't. That was done before I
17 was retained, Your Honor.

18 (Clerk provides bond information to the court.)

19 THE COURT: Okay. I'm just asking so I can look
20 at it.

21 The last provision of the bond says that it is
22 further ordered that defendant shall have no contact
23 directly or indirectly with the victim or victim's
24 family.

25 All right. Anything else you want to ask him?

1 MS. WYSE: No, Your Honor.

2 THE COURT: Anything you want to ask,

3 Mr. Byrholdt?

4 CROSS-EXAMINATION

5 BY MR. BYRHOLDT:

6 Q You don't have a copy of the text message or
7 anything?

8 A No, sir, I don't.

9 Q You didn't make a screen shot or anything?

10 A No, sir.

11 MR. BYRHOLDT: No, sir. I mean, I'm kind of at a
12 loss because I don't know what's in the message. The
13 "don't go" could have applied to something else. I
14 don't know.

15 THE COURT: So it's on her phone?

16 THE WITNESS: Yes, sir. It was on her -- the
17 phone she identified as hers. She showed it to me.

18 THE COURT: I'm sorry?

19 THE WITNESS: The phone she said was hers, she
20 showed it to me downstairs, and I looked at it. So I
21 immediately left and went and called to get the number
22 ran to see where it came back to.

23 THE COURT: And what did it come back to?

24 THE WITNESS: It came back, and I can show you.
25 I've got it on my phone what ROCIC sent me. It came

1 back -- there is a lot of stuff in there, but it comes
2 back and it says Jaimie Obregon on a Facebook page is
3 what it came back to. Below it, it says clear search
4 and Jaimie Obregon and M. Davis.

5 THE COURT: I'm not sure I understood that. Tell
6 me that again. You were going kind of fast.

7 THE WITNESS: I'm sorry, Your Honor. I can show
8 it to you, if you want to see it. It might be easier.

9 THE COURT: Show it to me.

10 (Phone handed up to judge.)

11 MS. WYSE: Judge, the defendant admits that they
12 sent the text message?

13 THE COURT: Do you?

14 MR. BYRHOLDT: Yes, sir.

15 MS. WYSE: He just did.

16 THE COURT: That he sent a text message to the
17 mother of the young girl two days ago.

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: That says, what is it, "Don't go to
20 court."

21 THE DEFENDANT: Don't go.

22 MR. BYRHOLDT: No, it doesn't say that. It just
23 says, in Tagalog, says, "Don't go."

24 THE COURT: "Don't go." All right.

25 Anything either side wants to say further about

1 this at this point?

2 Solicitor, anything you want to say?

3 MS. WYSE: Your Honor, it states clearly on the
4 bond to have no contact. It doesn't matter what he
5 said to her. I mean, he could have only been referring
6 to court.

7 THE COURT: I understand your point. Okay.
8 What do you want to say, anything?

9 MR. BYRHOLDT: Nothing further, Your Honor.

10 THE COURT: All right. I do find that he's in
11 violation of it by having sent that text to the mother
12 of the victim, so I revoke the bond. So we'll keep him
13 in custody until further order.

14 I'm looking at the deputy over there, I guess. So
15 you take him into custody and keep him in custody until
16 further order. If you have any problems, let me know.

17 MS. WYSE: Thank you, Judge.

18 THE COURT: 1:30.

19 (Lunch recess taken from 11:58 a.m. to 1:32 p.m.)

20 THE COURT: All right. Anything before we bring
21 the jury in?

22 MS. WYSE: I'm just going to let you know that I'm
23 going to rest.

24 THE COURT: All right. Okay. All right. And so,
25 of course, you do that in front of the jury, you know,

1 and, of course, you will have a motion at that point.

2 MR. BYRHOLDT: Yes, sir.

3 THE COURT: But are you going to then, assuming
4 that I deny the motion, are you going to put up any
5 evidence?

6 MR. BYRHOLDT: I would ask the court to go ahead
7 and -- I met with my client and informed him of his
8 right to testify or not to testify, but I'd ask the
9 court to question my client. The last time I talked to
10 him, he decided he was not going to testify.

11 THE COURT: Come on up here with your client.
12 Right here in front.

13 THE CLERK: Sir, would --

14 THE COURT: No, that's all right. You don't have
15 to swear him.

16 I just want to talk with you, Mr. Obregon.
17 Apparently the State is not going to put up any more
18 evidence. No more witnesses are going to be called.
19 And then, of course, it becomes your opportunity to
20 call witnesses and to testify if you want to, although
21 you don't have to. Nobody can make you testify against
22 yourself. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Speak up.

25 THE DEFENDANT: Yes.

1 THE COURT: All right. And your lawyer has just
2 told me that, based on his last conversation with you,
3 that you told him that you do not want to testify.

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Is that correct?

6 THE DEFENDANT: Yes.

7 THE COURT: All right. It's your decision.
8 You're the one that has to make the decision, and I
9 just want to make sure that you understand and
10 appreciate that you can testify if you want to, but
11 you, on your own, have decided, after talking with your
12 lawyer, of course, but you have decided that you do not
13 want to testify; is that correct?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: All right.

16 Anything else you want me to ask him?

17 MR. BYRHOLDT: No, Your Honor.

18 THE COURT: All right. Thank you. You can return
19 to your place in the courtroom.

20 All right. Well, we'll bring the jury in and then
21 you can rest at that point, and then I'll have to send
22 them back out for the purposes of any defense motions
23 and go from there.

24 So bring the jury in.

25 (WHEREUPON, the jury entered open court at

1 1:35 p.m.)

2 THE COURT: I want to make sure we have everybody
3 back. We do have all the jury with us, and the
4 defendant is present along with his attorney.

5 Solicitor, do you have any more witnesses at this
6 point?

7 MS. WYSE: No, Your Honor. The State would rest.

8 THE COURT: All right. Members of the jury panel,
9 the State has finished with presenting all the
10 testimony and the evidence that it wishes you to
11 consider in this case, and now we'll switch to the
12 defense as far as any witnesses that he wishes to
13 present and any evidence that he might wish to present
14 for you to consider.

15 But before we do that, I have to go -- I have to
16 do some things with the lawyers, so I'm going to
17 need -- I need and I am asking you to return to the
18 jury room for a few minutes, and I'll be back with you
19 just as soon as I can.

20 So if you would go to the jury room.

21 (WHEREUPON, the jury exited open court at

22 1:36 p.m.)

23 THE COURT: All right. Mr. Byrholdt, any motions
24 at this point?

25 MR. BYRHOLDT: May it please the court. Just to

1 protect the record, I would move for a directed verdict
2 of not guilty on the two charges of CSC first, minor
3 child being under 11, based on the fact that the
4 voluntary statement that the State is relying on says
5 this happened February 22nd, 2014, which would make her
6 12 years old -- or not under the age of 11, would make
7 her 11. I also understand that I anticipate the court
8 is going to say it's a question of fact for this jury,
9 and I understand that.

10 THE COURT: Well, I want to make sure I understand
11 about the situation as far as the age is concerned,
12 about the age is concerned as far as these two -- the
13 charges are concerned. Can you educate me on that?

14 MR. BYRHOLDT: Your Honor, she was born
15 February --

16 THE COURT: I got the date of birth -- that's why
17 I asked her about the date of birth and everything,
18 wherever it was.

19 MR. BYRHOLDT: [REDACTED].

20 THE COURT: Right.

21 MR. BYRHOLDT: If this happened on --

22 THE COURT: So February 18, 2003.

23 MR. BYRHOLDT: If the incident happened as
24 reflected in his statement --

25 THE COURT: Says between February 18, 2013, and

1 February 17, 2014, so that's a year in there as far as
2 the first degree is concerned.

3 Do you want to say something, Solicitor?

4 MS. WYSE: Yes, Your Honor. When **Minor** took the
5 stand, she testified that this started occurring right
6 after her tenth birthday.

7 THE COURT: I did make -- yeah, it says right
8 after tenth birthday.

9 MS. WYSE: So that --

10 THE COURT: And it went on for about a year, I
11 believe, is what she said.

12 MS. WYSE: Yes, sir.

13 THE COURT: So that would make her under 11 years
14 old. So that's what is involved as far as the first
15 degree charges are concerned, correct?

16 MS. WYSE: Yes, sir.

17 THE COURT: Okay. All right. Now, anything you
18 want to say about that?

19 MR. BYRHOLDT: No. I agree, that is what's on the
20 record, Your Honor.

21 THE COURT: Okay. All right. And then the other
22 one, as far as the second degree is concerned, what is
23 the difference or what evidence as far as the age in
24 regard to that? February 18th -- that's the next year;
25 is that right?

1 MS. WYSE: Yes, sir. That's when she turned 11.

2 THE COURT: So that's the 11 to 14.

3 MS. WYSE: Yes, sir.

4 THE COURT: So -- yeah, her testimony was, I
5 believe, that it went on for about a year, something
6 like that.

7 MS. WYSE: Yes, sir. That's what I remember as
8 well.

9 THE COURT: So that would be second degree. All
10 right. Okay.

11 Anything else you want to say?

12 MR. BYRHOLDT: No, Your Honor.

13 THE COURT: All right. Well, I appreciate the
14 position, but I deny your motion.

15 All right. Any other motions?

16 MR. BYRHOLDT: No, Your Honor.

17 THE COURT: All right. So now, again,
18 Mr. Obregon, turn to you. And, again, I tell you that
19 this is your chance to present any evidence, any
20 testimony, you, anybody else that you want to testify
21 in regard to these charges that are made against you.
22 Do you understand that?

23 THE DEFENDANT: Yes, Your Honor.

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

25 THE DEFENDANT: No.

1 THE COURT: All right. Thank you. You can be
2 seated.

3 All right. Then as far as, assuming we're going
4 to go ahead and argue and charge the jury -- let me ask
5 you before I get to anything as far as the charge is
6 concerned, after your argument to the jury. Are there
7 any questions either one of you have for me as far as
8 the charges, what I'm going to tell the jury? I'm
9 going to try to define it. I guess I define it by the
10 statute and by the indictment as far as what the
11 charges are and try to make the jury understand the
12 difference between first and second degree as far as
13 the age and when the alleged acts occurred and
14 everything.

15 But any special requests or anything you in
16 particular want me to charge?

17 MS. WYSE: No, sir.

18 THE COURT: How about over here?

19 MR. BYRHOLDT: No, Your Honor. I'm familiar with
20 your standard charge.

21 THE COURT: Okay. All right. But we'll go ahead
22 and argue to the jury, and then I'll take a break and
23 get my charge book out here. I didn't bring it out
24 here. Maybe I'll go back and get it now so maybe I'll
25 be looking at that while we go along.

1 Somebody needs to let me out this door here.

2 (WHEREUPON, a recess was taken from 1:42 p.m. to
3 1:46 p.m.)

4 (WHEREUPON, the jury entered open court at
5 1:46 p.m.)

6 THE COURT: All right. We have the jury back with
7 us.

8 Now, the State has finished. Now we turn to
9 Mr. Byrholdt.

10 Would you like to call any witnesses on behalf of
11 your client?

12 MR. BYRHOLDT: We are not going to offer any
13 defense at this time.

14 The defense would rest.

15 THE COURT: All right. So that finishes all the
16 testimony and the evidence for you to consider in this
17 case.

18 Now, we get to that part of the trial where the
19 attorneys can summarize and argue to you, and these
20 will be true arguments in which they try to persuade
21 you as to which version or view you should take of the
22 facts of this case.

23 Let's see, the order of arguing, then, since you
24 are not putting up any testimony or evidence is --

25 MR. BYRHOLDT: I will have last argument.

1 THE COURT: You agree with that?

2 MS. WYSE: Yes, Your Honor.

3 THE COURT: All right. So the order that we'll
4 hear from the lawyers is the prosecution will argue
5 fully to you first on the facts and how those facts may
6 fit into the law, and then the defendant's attorney
7 will argue to you fully after that. Then after that,
8 I'll discuss with you more fully what your duties and
9 responsibilities are as the jury in this case at this
10 point and the law that may be applied in this case, and
11 then you go to the jury room and you deliberate, and
12 you will answer that question: Has the State met the
13 burden of proof in this case?

14 Go right ahead, Solicitor.

15 MS. WYSE: Thank you, Your Honor. May it please
16 the court, Mr. Byrholdt.

17 Ladies and gentlemen of the jury, thank you for
18 sitting here this morning and part of this afternoon.
19 This morning I told you that I was going to call a lot
20 more witnesses. We made a decision not to do that. I
21 think that you have enough information.

22 I'm going to tell you about what the law states in
23 South Carolina. The code is 16-3-655. I'm sure you're
24 not going to remember that. That's fine. It states
25 that a person is guilty of criminal sexual conduct with

1 a minor in the first degree if the actor, meaning the
2 person who has the allegations against them, engages in
3 sexual battery with a victim who is less than 11 years
4 of age. Or if the actor -- well, I won't go into that
5 because it doesn't apply.

6 A person is guilty of criminal sexual conduct with
7 a minor in the second degree if the actor engages in
8 sexual battery with the victim who is 14 years of age
9 or less but who is at least 11 years of age.

10 The statute also defines what sexual battery is.
11 And the judge is going to read the law on that as well.
12 Sexual battery is defined by our legislature as sexual
13 intercourse, cunnilingus, fellatio, anal intercourse,
14 or any intrusion, however slight, of any part of a
15 person's body or of any object into the genital or anal
16 opening of another person's body, except when you're
17 doing that for medical purposes.

18 So that is the law in the State of South Carolina.
19 That's what our legislature has decided is what a CSC
20 in the first with a minor and CSC in the second with a
21 minor.

22 So today you heard from **Minor**. She took the
23 stand, and she told you this started happening right up
24 to the tenth birthday. Based upon the statute in South
25 Carolina, she told you it started when she was ten, and

1 then she said it happened for about a year. So that
2 would have covered when she was 11. So it happened
3 when she was ten, CSC first, and it happened when she
4 was 11, which is a CSC second with a minor.

5 Ladies and gentlemen, you have been incredibly
6 patient having to get up and leave the courtroom over
7 and over again, and we appreciate that. I told **Minor**
8 **██████████** that she's the bravest young lady I know.
9 She's 14 years of age. She's 14.

10 MR. BYRHOLDT: Judge, I'm going to object.

11 THE COURT: I need to be able to hear you so
12 please keep your voice up.

13 MR. BYRHOLDT: I'm going to object to her
14 reference as being a brave little girl. That calls for
15 prejudice or bias to the jury. I think that's improper
16 argument.

17 THE COURT: I appreciate your position, but I deny
18 any motion regarding that at this point.

19 Go ahead.

20 MS. WYSE: Thank you, Your Honor.

21 She sat back here in this room, and when she was
22 called as a witness, she came out in front of all these
23 people she doesn't know. She came out in front of
24 y'all. She doesn't know you. She knows who I am. She
25 knows who Detective Gentry is. And she knows who the

1 defendant is. Those are the only people that she knew
2 in this courtroom other than her mother. And she sat
3 up there on that witness stand and she told you what
4 happened to her when she was ten and 11. She told you
5 that Mr. Obregon touched her private parts, the front
6 and the back, with his finger and with his mouth.

7 You heard from Officer Will Freestate with the
8 Anderson County Sheriff's Office. He told you he
9 Mirandized the defendant, that he denied the
10 allegations at first, and then once they told him about
11 the phone call, he admitted it. Made that (indicating)
12 motion, how he kissed her on her clitoris.

13 You heard from Gentry Hawk. He told you,
14 basically, the exact same thing. But just in case that
15 wasn't enough, you have his statement: She was dancing
16 and stretching and then she said, "I am tired." She
17 stretched her legs and massaged and touched her private
18 parts and kiss on top of clitoris. Then she said, I'm
19 going to the bathroom. This was last February 22,
20 2014.

21 (Phone call being played.)

22 MS. WYSE: Don't tell anyone you talked to me. I
23 thought you liked it. I'm sorry. Don't tell anyone.
24 You will get in trouble. I love you. Me get in
25 trouble. I treat you like my daughter. Anything you

1 want, I'll buy for you. Don't tell no one, not even
2 your mother.

3 Ladies and gentlemen, [Minor] took the
4 stand and told you this started happening when she was
5 ten. The defendant confessed and stated that he did it
6 when she was 11. There are a lot of similarities
7 between the facts that [Minor] gave as well as the
8 things that the defendant said in his confession.

9 Ladies and gentlemen, Detective Hawk drew that
10 beautiful diagram. He's actually got five kids. I
11 asked you this morning to listen to the testimony, hear
12 what they said and today to find him guilty. I'm not
13 asking you to find him guilty because I tell you he's
14 guilty. He said it. I can't say it better than the
15 way he said it. It's textbook: I'll buy you anything
16 you want. Don't tell anybody. You'll get in trouble.

17 Ladies and gentlemen there's only one verdict that
18 you can return, guilty as to CSC with a minor in the
19 first degree when she was ten and as to CSC with a
20 minor in the second degree when she was 11. Thank you.

21 THE COURT: All right.

22 Mr. Byrholdt.

23 MR. BYRHOLDT: May it please the court.

24 At the start of this case, the judge charged you
25 that you are the finders of the facts and that you have

1 to hold the State to the extremely high burden of proof
2 of beyond a reasonable doubt. I told you that
3 reasonable doubt can come from a lack of evidence, from
4 differences in the evidence that's been put in, and you
5 use your common sense. That's why we selected you to
6 serve on this jury.

7 When you go back to the jury room, you don't give
8 that up. You take your life experiences, but you hold
9 the State to the high burden because that's what makes
10 our system of justice the best one in the world.

11 What is reasonable doubt? It's the kind of doubt
12 that would cause an ordinary person to hesitate to act.
13 It's not beyond any doubt, a reasonable doubt. You
14 don't just weigh the evidence. It's a substantial
15 burden.

16 **Minor** testified. She said, Well, he touched me
17 in my private parts. Which private parts, she didn't
18 say. In his statement that you're going to have back
19 in the jury room, it said it happened in February of --
20 February 22nd. There is a date on there that he signed
21 his own name. Well, that would put her over the age of
22 11, which would make it impossible for it to be a
23 criminal sexual conduct first degree. It may be second
24 degree, if you find it happened. But ask yourself:
25 Have they proved to each one of you -- when you go back

1 there, your jury verdict has to be unanimous, but your
2 decision starts with each one of you individually. You
3 discuss it, review the evidence, but ask yourself:
4 Have they proved to you beyond a reasonable doubt at
5 what age this actually happened and what actually
6 happened and when did it happen? Because that's key.
7 There's age requirement that the State must prove.

8 This is an important day for everybody; important
9 day for Mr. Obregon. He's the person charged with a
10 crime. An important day for the young girl. But you
11 took an oath to bring back a verdict based on the facts
12 as you determine those to be beyond a reasonable doubt
13 and the law that the judge is going to give you. Even
14 if you disagree with what the judge says, you have to
15 follow what the law is at this time. It's not what you
16 think it should be. It's what it actually is.

17 But I've noticed that throughout this trial each
18 of you have paid extremely close attention to what was
19 going on. We appreciate that. We believe the evidence
20 is insufficient to establish criminal sexual conduct
21 first degree because there is no definitive time on
22 when this act or acts took place to make it rise to
23 first degree because you have to have a specific age of
24 under the age of 11. If you find something happened
25 but you don't know when it happened, have they met

1 their burden of proof beyond a reasonable doubt?

2 On Jimmy's behalf, I thank you for the close
3 attention you have paid, and I thank you for your jury
4 service. It's been said it's the highest service
5 somebody can render to their country other than serving
6 in their armed forces during a time of conflict. On
7 Jimmy's behalf, we thank you for your service.

8 Thank you, Your Honor.

9 THE COURT: Thank you. All right. Members of the
10 jury, you have heard and seen the evidence presented to
11 you in this case. It's now my duty and responsibility
12 under the Constitution and Code of Laws of this state
13 to discuss with you what your duties and
14 responsibilities are at this point and the law that
15 applies in a case like this, and then you go to the
16 jury room and you will deliberate and give us your
17 verdict.

18 As you know by now, the State of South Carolina
19 has charged Mr. Jaimie Sabio Obregon, the gentleman
20 seated across on the other side of the room with his
21 lawyer, has charged him with four separate crimes:
22 Criminal sexual conduct with a minor in the first
23 degree, and that involves the question of the age of
24 the alleged victim, the young girl who testified
25 earlier today. First degree -- well, it's defined in

1 the statute -- involves certain acts, and I'll go over
2 those with you later on, but it involves certain acts
3 with a person who is under 11 years of age. That's
4 what's involved as far as first-degree criminal sexual
5 conduct with a minor is concerned. And then the other
6 one is criminal sexual conduct with a minor in the
7 second degree, involves a young female in this case
8 where the State says that she could be 11 years old up
9 to 14 years of age. That's the distinction between
10 first-degree and second-degree criminal sexual conduct
11 in a case like this. It depends on the age of the
12 female who is referred to as a victim in the statute.

13 I'll define for you what that means later on also.
14 But I just wanted to make sure you understand there is
15 a difference in first degree and second degree based on
16 the age of the person that was involved. And -- but
17 the acts that the State claims are the same relative to
18 under 11 and then relative to 11 to 14 years of age.

19 Now, I'll go over that later also with you. But,
20 of course, in this case, Mr. Obregon has said, I'm not
21 guilty of these charges. As I told you earlier, that
22 places the burden of proving him guilty on the State.

23 A person who's charged is never required to prove
24 himself innocent. The burden of proof is on the State
25 throughout the trial until you, the jury, have reached

1 a conclusion when you are considering the case that the
2 State has met the burden of proof. It's a real fact in
3 this case, just as anything that may have been
4 testified to from the witness stand, and it remains
5 with him at all times throughout the trial: From the
6 moment of his arrest, throughout any arraignment,
7 throughout the trial itself, as I said, until you have
8 reached the conclusion in your jury room that the State
9 has met the burden of proof of proving him guilty of
10 these crimes beyond any reasonable doubt.

11 It's necessary for you to evaluate the testimony
12 and the evidence that's been presented to you. You
13 have to decide who and what to believe in regard to the
14 testimony and the evidence in this case. You have to
15 decide who and what to believe. I would suggest you go
16 about doing that much the same way you decide that
17 issue in your everyday life.

18 You and I have to decide every day to believe what
19 someone tells us. It's so much a part of everyday life
20 that we oftentimes don't think about any mental process
21 we may go through in deciding whether to believe
22 someone, but we do it every day, whether at home, at
23 your job, on the street, wherever.

24 When someone comes up to you and makes a factual
25 statement to you and someone says something like,

1 such-and-such just happened or such-and-such is about
2 to happen, or you should do this because, or you should
3 do that because, when a person makes that type of
4 statement to you, you have to decide, Do I believe what
5 that person tells me? How much trust, how much faith
6 do I put in what that person tells me?

7 As I said, I would suggest you go about deciding
8 who and what to believe regarding the testimony and
9 evidence in this case in much the same way you decide
10 that issue in your everyday life. But some of the
11 things that you may want to consider, and this is by no
12 means an exhaustive list, but some of the things you
13 may want to consider in deciding who and what to
14 believe are such thing as the demeanor and manner of
15 the witness who testified, whether the witness had
16 reason to be biased or prejudiced in some way, whether
17 a witness' testimony was contradicted on the one hand
18 or supported and corroborated on the other hand.

19 You certainly do not determine truth or
20 credibility or believability merely by counting the
21 number of witnesses who may have testified in the case
22 or who testified concerning some particular point or
23 fact that may be involved in the trial of this case.

24 You have to decide, as I said, who and what to
25 believe in regard to all the testimony and the evidence

1 that's been introduced in this case.

2 Now, of course, the State was the only party to
3 this action that put up any testimony and, of course,
4 that is perfectly consistent with the fact that the
5 burden of proof remains with the State throughout.
6 There's no burden, as I said, on the defendant to prove
7 his innocence. The burden of proof is always on the
8 State to prove him guilty, and you cannot hold the fact
9 that he did not testify, that he did not present any
10 witnesses against him in any way. That's perfectly
11 consistent, as I said, with the fact that the burden of
12 proof is always on the State. So you shall not
13 consider the fact that he did not put up any evidence
14 against him in any way as you evaluate the testimony,
15 the evidence that's been presented in this case.

16 Now, as I said, the State has the burden of proof
17 of proving him guilty of the charge beyond a reasonable
18 doubt. What do those words mean when we say beyond a
19 reasonable doubt? What is a reasonable doubt? It is
20 not an imaginary or a fanciful doubt or weak doubt.

21 The term reasonable doubt may be best understood
22 by giving it its plain and ordinary meaning. A
23 reasonable doubt is the kind of doubt that would cause
24 a reasonable person to hesitate to act if, after
25 considering all the evidence in this case, you hesitate

1 to convict the defendant on the charge made against him
2 by the State, then he's entitled to a verdict of not
3 guilty.

4 Reasonable doubt may arise from evidence which has
5 been presented or from the lack of evidence presented
6 in this case. You alone must make the determination,
7 must make the decision whether or not reasonable doubt
8 exists as to the guilt of the defendant in this case.

9 Now, as I said, you are the sole judges of the
10 facts of this case. If I have said or done anything
11 during the course of the trial that you have
12 interpreted in any way as an opinion that I might have
13 about the facts, please disregard it, for I've intended
14 to be fair and impartial to both sides in this case.

15 Now, you'll have with you in the jury room the
16 physical evidence that was introduced, and you'll also
17 have with you, Mr. Foreman, these four pieces of paper.
18 These are called indictments. These are the pieces of
19 paper that we require the State to produce to notify
20 someone of what the charges are that are being made
21 against him. You will have these with you in the jury
22 room.

23 You will see on the front, we call it the inside
24 of each of these pieces of paper, the exact charges
25 that the State has made against Mr. Obregon. And as I

1 said, the first two charges have to do with criminal
2 sexual conduct in the first degree. And this is what
3 the State claims.

4 The State claims that between [REDACTED],
5 and [REDACTED] -- that's the date of birth as
6 testified to by the young lady was that her date of
7 birth was [REDACTED] -- excuse me. She was born on
8 [REDACTED]. So these first two charges, the
9 State claims that she was under the age of 11 on the
10 date involved, [REDACTED] to [REDACTED],
11 and the first one says that he did willfully and
12 unlawfully commit the crime of criminal sexual conduct
13 with a minor in the first degree by engaging in a
14 sexual battery.

15 Now, what does sexual battery mean? Let me read
16 that definition to you what it means when we say sexual
17 battery. Sexual battery means sexual intercourse. I
18 don't believe there was any testimony in this case that
19 alleges sexual intercourse, but sexual battery means
20 sexual intercourse, cunnilingus, or any intrusion,
21 however slight, of any part of a person's body into the
22 genital or anal openings of another person's body.

23 So that's what the State claims that he did in
24 this case, that he committed a sexual battery on her by
25 cunnilingus and/or intrusion of any part of a person's

1 body into the genital or anal openings of another
2 person's body. Those are the charges that the State
3 makes against him in regard to criminal sexual conduct
4 with a minor in the first degree. Cunnilingus and then
5 the intrusion of a part of his body into a part of her
6 body, penetration with a digital penetration of her.

7 So those are the two crimes that the State claims
8 that he committed that would constitute criminal sexual
9 conduct in the first degree. And, again, the
10 definition there, I've already given you the definition
11 of sexual battery. And then, of course, it's the
12 actor, and in this case it's him, and then the victim,
13 of course, is her, the minor referred to as **Minor**, who
14 testified today in this trial.

15 And then the other two charges in this case are
16 criminal sexual conduct with a minor in the second
17 degree. And the charges are the same in regard to
18 that, except for the fact that in this case they claim
19 that the act occurred between **████████████████████**, and
20 **████████████████████**, when they claim that she was at least
21 11 years old but not 14 years old yet.

22 So that's the difference between the two charges
23 of first degree and second degree. The same acts
24 involved as far as sexual battery is concerned, but the
25 difference there, as I said, is one of age.

1 Now, as I said, you'll have with you in the jury
2 room these indictments. Mr. Foreman, on the back of
3 the indictments, down here on the bottom left-hand
4 side, you will see the printed word verdict and then
5 some blank lines there, and below that the words
6 foreperson of the petit jury and then a date there. I
7 would ask that you use these to let us know what your
8 verdict is in regard to these cases. Of course, you
9 have got two possible verdicts: Guilty. If the State
10 has proven him guilty of the charge beyond a reasonable
11 doubt as I have defined that for you, then you would
12 write the word "guilty" on one of those lines there and
13 sign your name on the last line there and date it.

14 On the other hand, if the State has not proven him
15 guilty of the charge beyond a reasonable doubt as I
16 have defined that for you, you write the words "not
17 guilty" on that line and sign -- on one of those lines
18 and sign below it.

19 Now, your verdict must be unanimous. All 12 of
20 you must agree on what the verdict is before you can
21 come back in the courtroom and tell us that you have
22 reached a verdict. We don't have any majority verdicts
23 in South Carolina. All 12 of you must agree.

24 You were selected in this case by both the State
25 and the defendant as fair and impartial jurors. You

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1 took an oath to decide this case based on the testimony
2 and the evidence that was presented to you from this
3 witness stand and my instructions to you on the law.
4 When you do that, no one will have a right to criticize
5 your verdict regardless of what your verdict is. You
6 have no friends to reward or enemies to punish. You
7 are to do what you said you would do at the start of
8 this case. And as I said, when you do that, no one
9 will have a right to criticize your verdict regardless
10 of what that verdict might be.

11 Now, I'm going to ask you to go to the jury room
12 for a moment. I need to look over my notes -- I've
13 been referring to some notes make -- sure -- and to
14 make sure that I have told you everything that I need
15 to tell you. If I have, I'll send the indictments
16 along with the physical evidence to you into the jury
17 room and you will know at that time to begin your
18 deliberations. If I've overlooked something, I'll
19 bring you back out and tell you what I overlooked
20 before I let you start your deliberations.

21 So if you would go to the jury room, please.

22 (WHEREUPON, the jury exited open court at
23 2:22 p.m.)

24 THE COURT: All right. The jury is out. The door
25 is closed.

Jury Charge

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1 Any exceptions to the charge from the State?

2 MS. WYSE: No, Your Honor.

3 THE COURT: Any from the defense?

4 MR. BYRHOLDT: No, Your Honor.

5 THE COURT: Thank you very much. All right. Make
6 sure we are just sending back what was introduced into
7 evidence, and I'll bring the alternate out.

8 (Court in recess, pending verdict, from 2:23 p.m.
9 until 2:58 p.m.)

10 THE COURT: All right. We've been told the jury
11 has reached a verdict. Bring them on in.

12 (WHEREUPON, the jury entered open court at
13 2:58 p.m.)

14 THE COURT: Mr. Foreman, bring those over here to
15 me, if you would.

16 Thank you. Have seat there.

17 All right. We have the jury with us, and the
18 defendant is present along with his attorney. The jury
19 has reported a verdict of guilty in regard to all four
20 of the charges.

21 Anything prior to discharge of the jury?

22 Nothing from the State.

23 Anything from the defendant?

24 MR. BYRHOLDT: No, Your Honor.

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

1 finishes you up in regard to this case.

2 I'm never really interested in what a jury's
3 verdict is. I am interested in the way you went about
4 arriving at your verdict. And by that I mean you paid
5 attention during the presentation of the testimony and
6 evidence; you paid attention while lawyers were
7 discussing the case with you, and you paid attention
8 while I was discussing the case with you, and to my
9 observation, you did all three of those things.

10 Thank you very much for your service in this case.
11 I'd ask you to tear out any notes you may have made,
12 take them with you, tear them up, whatever you want to
13 do. And you are free to discuss the case with anyone.
14 If somebody wants to ask you something about it, you
15 are free to discuss it with them now. You cannot
16 discuss what went on in the jury room. That's between
17 the 12 of you. That's for your protection. So you
18 cannot discuss your deliberations, but you can discuss
19 what your impressions were or whatever of the trial
20 during the course of the trial.

21 So with that, I'll let you go. And as I
22 understand it, we want you back tomorrow morning at
23 9:30 when we'll be picking another jury for the trial
24 of another case. So if you would be back -- well, I'm
25 telling you to be back, not if you would, I'm telling

1 you to be back tomorrow morning here in the courtroom
2 at 9:30 when we will be picking another jury.

3 Again, thank you very much. You are free to go.
4 Take any notes, tear them up, whatever you want to do.
5 All right?

6 (WHEREUPON, the jury exited open court at
7 3:00 p.m.)

8 THE COURT: All right.

9 Do you want to present your client for sentencing.
10 So I'll need the sentencing sheets. Somebody will need
11 to prepare those or do you have them or whatever?

12 MS. WYSE: I've got some, Judge.

13 THE COURT: I'm looking at the statute to see what
14 the possible range of punishments is.

15 Solicitor, come on up, if you have that available.
16 I'm looking at it now. Tell me what, I believe --

17 MS. WYSE: It's 25 to life.

18 THE COURT: Yeah, that's what I'm saying.

19 MS. WYSE: And zero to 20.

20 THE COURT: First degree is 25, no part of which
21 may be suspended or probation granted, or imprisoned
22 for life. All right. And then second degree is what?

23 MS. WYSE: Zero to 20, Your Honor.

24 THE COURT: Up to 20. Let me just read it all.

25 Let me get the right sentence sheets with the right

1 indictments and then I'll hear from each of you.

2 All right. Glad to hear from you, Solicitor.

3 Anything that you would like to tell me at this point?

4 Any prior record of the defendant?

5 MS. WYSE: He has no prior record, Your Honor.

6 THE COURT: Be glad to hear anything else that you
7 would like to say. You don't have to, but anything
8 that you would like to tell me.

9 MS. WYSE: Certainly, Judge. I extended an offer
10 to Mr. Byrholdt several months ago, told him that he
11 could plead to a cap of ten years. He turned it down.
12 Your Honor, I would just ask that you go with the
13 guidelines.

14 THE COURT: All right. I don't know what you mean
15 by the guidelines.

16 MR. BYRHOLDT: The 25-year minimum.

17 MS. WYSE: 25 years to life, judge.

18 THE COURT: Okay. All right. I'm with you.
19 Okay. Okay.

20 All right anything -- then we'll switch to the
21 other side.

22 MR. BYRHOLDT: May it please the court. On behalf
23 of Mr. Obregon, he's 71 years old, Your Honor. He has
24 never been in trouble before. The State did give us an
25 offer. I communicated that with Mr. Obregon. I went

1 over the evidence with him, and he declined that. He
2 wanted to exercise his right to a jury trial, Your
3 Honor.

4 He denied doing anything, and I explained that the
5 telephone calls and the confession were going to be
6 overwhelming to attempt to overcome, but I ask the
7 court to take into account that he has no prior record
8 of any kind in passing sentence, Your Honor.

9 Mr. Obregon may wish to address the court.

10 THE COURT: That's the next thing. Mr. Obregon,
11 be glad to hear from you. Anything that you would like
12 to say at this point in time? How old are you now?

13 THE DEFENDANT: 71, Your Honor.

14 THE COURT: 71. All right. I saw some reference
15 earlier to 68, but I do see on the sentence sheet,
16 shows that you're 71 years old now. All right. I will
17 be glad to hear from you anything that you would like
18 to tell me.

19 THE DEFENDANT: Well, Your Honor, if you can give
20 me some consideration that I have -- my family is
21 depending on my support to them.

22 THE COURT: What kind of family do you have?

23 THE DEFENDANT: I have seven grandchildren, and I
24 have family in the Philippines.

25 THE COURT: Any family here in the U.S.?

1 THE DEFENDANT: No. I don't have. I'm by myself.

2 THE COURT: And what family is in the Philippines?

3 I didn't quite understand you.

4 THE DEFENDANT: It was my first wife in the
5 Philippines, and I have two children, and they have one
6 of my -- one boy and one girl. And they have their own
7 children.

8 THE COURT: All right. It's going to take me a
9 few minutes to fill all this out, so just everybody
10 relax while I go through the process of filling this
11 out.

12 Today is the 16th; is that correct?

13 MR. BYRHOLDT: That is correct, Your Honor.

14 THE COURT: All right. I can overhear some
15 discussion between Mr. Obregon and his attorney. I
16 have already marked on each of the sentence sheets that
17 you do get credit for any time that you served in jail
18 prior to my sentencing today, so you do get credit for
19 any time. I don't know how much that was, but the jail
20 will have records of that, and SCDC will be able to
21 access those. The Department of Corrections will be
22 able to access those, and you will get credit for any
23 jail time prior to conviction today.

24 MR. BYRHOLDT: Your Honor, we would ask, he's been
25 on electronic monitoring for almost three years. Under

1 the statute, you can grant that. He's going to get a
2 great amount of time, but he's been on there almost
3 three years, Your Honor. It will be three years in
4 June.

5 THE COURT: I believe that the statute does
6 actually provide that I can give him credit for
7 electronic monitoring, you know, and so I would need to
8 know -- I think I need -- again, I guess I could just
9 state that on the record unless you can provide
10 something to me at this point, or if you want to wait
11 and let me finish this tomorrow morning when you have
12 had a chance to finalize how much time he would be
13 entitled to.

14 MR. BYRHOLDT: I can get that amount and get it to
15 Catherine and get it up here.

16 THE COURT: Tomorrow morning?

17 MR. BYRHOLDT: Yes, sir.

18 THE COURT: If y'all want to do it now.

19 MR. BYRHOLDT: I could probably do --

20 THE COURT: Let's try to do it right now.

21 Just have a seat back over there, Mr. Obregon.

22 MR. BYRHOLDT: Your Honor, we'd stipulate that he
23 gets credit for three years.

24 THE COURT: Do you want to do that?

25 MS. WYSE: That's fine, judge.

1 THE COURT: So I'm going to write on each one of
2 the sentence sheets, where it says give him credit for
3 time served and so forth, I'm going to say three years'
4 jail time credit; is that correct?

5 MS. WYSE: Fine.

6 MR. BYRHOLDT: That's correct, Judge.

7 THE COURT: All right. If there's nothing
8 further, then the sentence on each of these
9 second-degree convictions is 20 years in the
10 penitentiary. Those are concurrent. And then the
11 sentences on the two first-degree convictions is
12 25 years concurrent on each. Good luck to you.

13 (WHEREUPON, proceedings adjourned at 3:15 p.m.)

14 ***END OF REQUESTED TRANSCRIPT OF RECORD***
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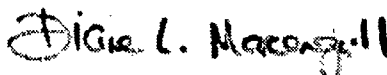
1
2
3 Certificate of Reporter

4 I, Diane L. Marcengill, Official Court Reporter
5 for the Tenth Judicial Circuit of the State of South
6 Carolina, do hereby certify that the foregoing is a
7 true, accurate, and complete transcript of record of a
8 portion of the proceedings had and evidence introduced
9 in the trial of the captioned case, relative to appeal,
10 in the Circuit Court for Oconee County, South Carolina,
11 on the 16th day of May 2017.

12 This transcript may contain quoted material. Such
13 material is reproduced as read by the speaker.

14 I do further certify that I am neither of kin, counsel,
15 nor interest to any party hereto.

16 June 28, 2018

17 

18 _____
19 Diane L. Marcengill, RPR, CRR
20 Circuit Court Reporter
21
22
23
24
25

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 FEB 11 AM 10:41

DOCKET NO. 2014GS37 00163

The State of South Carolina
County of Oconee

COURT OF GENERAL SESSIONS
FEB 09 2015

Term

THE STATE

vs.

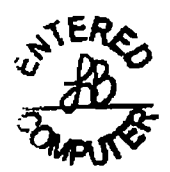
Jaimie Sabio Obregon

KWR

Indictment for

Sex / Criminal sexual conduct with minor -
victim under 11 years of age- First Degree

SC Code: 16-03-0655(A)(1)
CDR Code: 0385



WITNESSES

Gentry Hawk, Oconee Co Sheriff's Dept.

Will Freestute

ARREST WARRANT NUMBER

2014A3710500217

ACTION OF GRAND JURY

true bill

M. Capalun
Foreperson of Grand Jury
Date:

FEB 09 2015

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Oconee)

INDICTMENT

At a Court of General Sessions, convened on FEB 09 2015, the Grand Jurors of Oconee County present upon their oath:

Sex / Criminal sexual conduct with minor - victim under 11 years of age- First Degree

That **Jaimie Sabio Obregon** did in Oconee County, South Carolina between February 18, 2013 and February 17, 2014, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a minor in the first degree by engaging in sexual battery with a minor who was less than eleven (11) years of age, to wit: cunnilingus with a minor, M. D. C., whose date of birth is [REDACTED]. This is in violation of 16-3-655(A)(1) of the South Carolina Code of Laws (1976) as amended.

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


 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF ANDERSON
STATE VS.

JAMIE SABIO OBREGON

AKA: _____
Race: _____ Sex: M Age: 21
DOB: _____ SSN: _____
Address: _____
City, State, Zip: Seneca, SC 29678
DL# _____ SID# _____

INDICTMENT/CASE#: 2015GS1700161
A/W: 2014A3710200212
Date of Offense: 02/18/2013
S.C. Code §: 16-25-65(A)(1)
CDR Code #: 0385

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Criminal Sexual Conduct With A Minor, First Degree
in violation of § 16-25-65(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45

The charge is: As indicated, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, §17-25-45
(CSC w/minor 1st or Lewd Act) _____ (def.'s initials)
 Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST
Catherine A. Wynn 1071
Catherine Wynn, Assistant Solicitor SC Bar # _____ Defendant
Tom O'Phelan 1071
Tom O'Phelan, Attorney for Defendant SC Bar # _____

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 25 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 Service 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. 3 YEARS 11 MONTHS CREDIT.
 The Defendant is to be placed on 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. Waiver Hearing Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED

Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____
May serve W/E beginning _____

Recipient: _____ Substance Abuse Counseling
*Fine: _____ \$ _____ Random Drug/Alcohol Testing
\$14-1-206 (Assessments 107.5%) \$ _____ Fine may be pd. in equal consecutive weekly/monthly
\$14-1-211 (AX1)(Conv. Surcharge) \$100 \$ 100.00 prts. of \$ _____ Beginning _____
\$14-1-211 (AX2)(DUI Surcharge) \$100 \$ _____ \$ _____ Paid to Public Defender Fund
\$36-5-2995 (DUI Assessment) \$12 \$ _____
\$36-1-286 (DUI Breath Test) \$25 \$ _____
Proviso 61.6 (Public Def/Prob) \$300 \$ _____
\$14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
\$14-1-213 (Drug Court Surcharge) \$150 \$ _____
\$50-21-114 (DUI Breath Test Fee) \$50 \$ _____
\$56-5-2942(f) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ \$ 3.75

Other: _____

TOTAL \$ 128.75

Clerk of Court/Deputy Clerk: Brenda H. Whitfield
Court Reporter: Diane Morgan
SCCA217 (07/2016)

Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before any
other fees.
Presiding Judge: J. L. H. [Signature]
Judge Bar ID: 2814 Judge Code: 2002
Sentence Date: 5/16/17

DOCKET NO. 2015GS37 00164

WITNESSES

Gentry Hawk, Oconee Co Sheriff's Dept.

Will Freestate def

The State of South Carolina
County of Oconee

COURT OF GENERAL SESSIONS
FEB 09 2015

Term

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 FEB 11 AM 10 41

ARREST WARRANT NUMBER

2014A3710500218

THE STATE

vs.

Jaimie Sablo Obregon

ACTION OF GRAND JURY

true bill

KWR

W. Cooper
Foreperson of Grand Jury
Date: FEB 09 2015

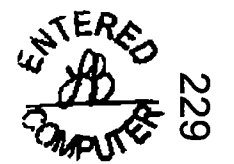
Indictment for

VERDICT

Sex / Criminal sexual conduct with minor -
victim under 11 years of age- First Degree

SC Code: 16-03-0655(A)(1)
CDR Code: 0385

Foreperson of Petit Jury
Date:



STATE OF SOUTH CAROLINA)
)
COUNTY OF Oconee)

INDICTMENT

FEB 09 2015

At a Court of General Sessions, convened on _____, the Grand Jurors of Oconee County present upon their oath:

Sex / Criminal sexual conduct with minor - victim under 11 years of age- First Degree

That **Jaimie Sabio Obregon** did in Oconee County, South Carolina between February 18, 2013 and February 17, 2014 willfully and unlawfully commit the crime of Criminal Sexual Conduct with a minor in the first degree by engaging in sexual battery with a minor who was less than eleven (11) years of age, to wit: digital penetration with a minor, M. D. C., whose date of birth is [REDACTED]. This is in violation of 16-3-655(A)(1) of the South Carolina Code of Laws (1976) as amended.

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



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF ANDERSON
STATE VS.

JAIMIE SABIO OBREGON

AKA: _____
Race: _____ Sex: M Age: 71
DOB: _____ SS#: _____
Address: _____
City, State, Zip: Seneca, SC 29678
DL# _____ SID# _____

INDICTMENT/CASE#: 2013083700164
A/W: 2014A3710500218
Date of Offense: 02/18/2013
S.C. Code §: 16-03-055(A)(1)
CDR Code #: 0385

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was

CONVICTED OF or PLEADS

TO: Criminal Sexual Conduct With A Minor, First Degree
in violation of § 16-03-055(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385

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

The charge is: As indicated, Lesser Included Offense, Defendant Waives Prosecution to Grand Jury, _____ (def.'s initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:
Catherine A Wyse 71802
Catherine Wyse, Assistant Solicitor SC Bar # _____

Bruce J. Holt 1071
Attorney for Defendant SC Bar # _____

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 25 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 Service 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. 3 years sentence credit.
 The Defendant is to be placed on 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 FTUP _____
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED

Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____
May serve W/E beginning _____

Recipient: _____	Substance Abuse Counseling <input type="checkbox"/>
*Fine: _____	Random Drug/Alcohol Testing <input type="checkbox"/>
§14-1-206 (Assessments 107.5%)	Fine may be pd. in equal consecutive weekly/monthly
§14-1-211 (A)(1)(Conv. Surcharge) \$100	priz. of \$ _____ Beginning _____
§14-1-211 (A)(2)(DUI Surcharge) \$100	\$ _____ Paid to Public Defender Fund
§56-5-2995 (DUI Assessment) \$12	
§56-1-286 (DUI Breath Test) \$25	Other: _____
Proviso 61.6 (Public Def/Prob) \$500	
§14-1-212 (Law Enforce. Funding) \$25	
§14-1-213 (Drug Court Surcharge) \$150	
§50-21-114 (BUI Breath Test Fee) \$50	
§56-5-2942(J) (Vehicle Assessment) \$40/ea	
3% to County (if paid in installments) \$	

TOTAL \$ 128.75

Clerk of Court/Deputy Clerk: Beverly H. Whitfield
Court Reporter: Deane Monroig
SCCA/217 (07/2016)

Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before any
other fees.
Presiding Judge: J. H. ...
Judge Bar ID: ... Judge Code: ...
Sentence Date: 5/16/17

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 FEB 11 AM 10:41

DOCKET NO. 2015GS37 00165

The State of South Carolina
County of Oconee

COURT OF GENERAL SESSIONS

FEB 09 2015

Term

THE STATE

vs.

Jaimie Sablo Obregon

KWR

Indictment for

Sex / Criminal sexual conduct with minor -
victim 11 to 14 yrs of age inclusive - Second
Degree

SC Code: 16-03-0655(B)(1)
CDR Code: 0396



WITNESSES

Gentry Hawk, Oconee Co Sheriff's Dept.

Will Freestone

ARREST WARRANT NUMBER

2014A3710500219

ACTION OF GRAND JURY

true bill

McCaughy

Foreperson of Grand Jury
Date:

FEB 09 2015

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Oconee)

INDICTMENT

At a Court of General Sessions, convened on FEB 9 2015, the Grand Jurors of Oconee County present upon their oath:

Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age
inclusive - Second Degree

That **Jaimie Sabio Obregon**, did in Oconee County, South Carolina, between February 18, 2014 and March 31, 2014, willfully and unlawfully commit the crime of Criminal Sexual Conduct With a Minor in the Second Degree by engaging in sexual battery with a minor who was fourteen (14) years of age or less but who was at least eleven (11) years of age, to wit: digital penetration with a minor, M. D. C., whose date of birth is [REDACTED]. This is in violation of 16-3-655(B)(1) of the South Carolina Code of Laws (1976) as amended.

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



 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON
STATE VS.

JAIMIE SABIO OREGON

AKA: _____
Race: _____ Sex: M Age: 21
DOB: _____ SS#: _____
Address: _____
City, State, Zip: Seneca, SC 29678
DL# _____ SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS3700165
A/W: 2014A3710300219
Date of Offense: 02/18/2013
S.C. Code §: 16-03-655(B)(1)
CDR Code #: 0326

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazard Yes No

In disposition of the said indictment comes now the Defendant who was
TO: Criminal Sexual Conduct With A Minor, Second Degree

CONVICTED OF or PLEADS

In violation of § 16-03-655(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0326

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

The charge is: As indicated, Lesser Included Offense, Defendant Waives Presentation to Grand Jury, _____ (def.'s initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Catherine A. Wyse 1071
Catherine Wyse, Assistant Solicitor SC Bar # _____ Defendant Paul C. Brown 1071
Attorney for Defendant SC Bar # _____

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 30 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 Service 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. 3 YEARS SALTINE CREDIT
 The Defendant is to be placed on 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 FTUP _____
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED

Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

*Fine: _____ \$ _____ Substance Abuse Counseling

§14-1-206 (Assessments 107.5%) \$ _____ Random Drug/Alcohol Testing

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____ prats. of \$ _____ Beginning _____

§56-5-3995 (DUI Assessment) \$12 \$ _____ \$ _____ Paid to Public Defender Fund

§56-1-286 (DUI Breath Test) \$25 \$ _____ Other: _____

Proviso 61.6 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____ \$ 8.75

TOTAL \$ 128.75

Clerk of Court/Deputy Clerk: Bronwyn A. Whitfield
Court Reporter: Diane Noriega
SCCA/217 (07/2016)

Presiding Judge: T.L. ...

Judge Bar ID: 2872 Judge Code: 2008

Sentence Date: 5/16/17

FORM 5

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
CLERK OF COURT IN THE COURT OF COMMON PLEAS

County of ANDERSON
JAMIE SABO OBREGON
Full name and prison number (if any) of Applicant

FILED RECORDS COUNTY CLERK DEVENISH HOSFIELD
P 112

v.
State of South Carolina

APPLICATION FOR
POST-CONVICTION RELIEF

2018. CP. 37.178

INSTRUCTIONS - 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 386 REDEMPTION WAY, McCORMICK CORRECTIONAL INST. McCORMICK SC 29899
2. Name and location of Court which imposed sentence ANDERSON COUNTY COURT HOUSE.
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015-GS-3700163 CSC 1st DEGREE 2015-GS-CSC-3700166 CSC SECOND DEGREE
 - (b) 2015-GS-3700164 CSC 1st DEGREE
2015-GS-3700165 CSC, SECOND DEGREE

(c)

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) 3/16/2017 25yrs CSC 1st DEGREE 25yrs 1st DEGREE
- (b) 5/16/2017 20 CSC SECOND DEGREE 20yrs CSC SECOND DEGREE
- (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. A

(b) the result in each such Court to which you appealed:

- i. N/A
- ii. _____
- iii. A

(c) the date of each such result:

- i. N/A
- ii. _____
- iii. A

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. N/A
- ii. _____
- iii. A

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) COUNSEL WAS OBTAINED AND SHOULD HAVE APPEAL IF HE SAID FOR.
- (b) _____

(c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Obtained Attorney was Ineffective Failure to Call witnesses.
- (b) Involuntary Plea Failure to Interview witnesses.
- (c) Counsel failed to Investigate Case.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) There's No Evidence of Charges of CSC 1st Degree or CSC Second Degree
- (b) There was No Probable Cause for Arrest, as Required by the Constitution, 4th Amend.
- (c) AND SEARCH - 22-5-210

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

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. A
 - iv. N/A

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

N/A

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

N/A

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?

- _____
- _____

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

N/A

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

N/A

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) _____ *N/*
- (b) _____
- (c) _____ *H*

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea?
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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. *GUILTY PLEA ATTORNEY -*
BRUCE BYRHOLOTT
 - ii. *2315 - N. MAIN ST.*
ANDERSON, SC 29621
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. *GUILTY PLEA -*
BRUCE BYRHOLOTT
 - ii. *2315 - N. MAIN ST.*
ANDERSON, SC 29621
 - iii. _____

19. State clearly the relief you seek in filing this application:

VACATE SENTENCE.

20. Are you now under sentence from any other court that you have not challenged?

N/A

2018-CP-37-118

STATE OF SOUTH CAROLINA)

County of ANDERSON)

VERIFICATION

I, JAIMIE SANCHEZ OBREGON, 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.

Jaimie Obregon

SWORN to and subscribed before me this 06 day of March, 2018.

Franklin (L.S.)
Notary Public

My Commission Expires: 12-16-2019

FILED
RECEIVED
CLERK OF COURT
2018 MAR 14 PM 4:43

2018 CP 37.178

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, JAMIE SABO ODRESON, 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.

Jamie Sabo Odreson
Applicant

SWORN or affirmed to and subscribed before me this

06 day of March, 2018

[Signature]
Notary Public

My Commission Expires: 12-16-2019

FILED
CLERK OF COURT
2018 MAR 14 P 10 43

STATE OF SOUTH CAROLINA)
 COUNTY OF OCONEE)
)
 Jaimie S. Obregon, #372617,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE TENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-37-178

**RETURN AND PARTIAL MOTION
 TO DISMISS**

Respondent, making its Return to the application for post-conviction relief filed on March 14, 2018, would respectfully show this Court:

I.

Jaimie S. Obregon (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Oconee County Clerk of Court. During its February 2015 term, the Oconee County Grand Jury indicted Applicant for two counts of first-degree criminal sexual conduct with a minor (2015-GS-37-00163; -00164) and two counts of second-degree criminal sexual conduct with a minor (2015-GS-37-00165; -00166). Bruce A. Byrholdt, Esquire represented Applicant on these charges. Assistant Solicitor Catherine A. Wyse, of the Tenth Circuit Solicitor's Office, prosecuted the case. On May 15-16, 2017, Applicant proceeded to a jury trial before the Honorable Thomas L. Hughston, Jr. Following deliberations, the jury convicted Applicant as indicted on all counts. Judge Hughston sentenced Applicant to a term of imprisonment of twenty-five years for each charge of first-degree criminal sexual conduct and twenty years for each charge of second-degree criminal sexual conduct. All sentences were to be

served concurrently. Applicant did not appeal his convictions or sentences.

II.

Applicant was a friend of Victim's family. Tr. 151. Victim would stay with Applicant at his home on the weekends. Tr. 166. When Victim would stay at Applicant's home, Applicant would put his fingers inside of her and perform oral sex on her. Tr. 153-54. This began to occur shortly after Victim's tenth birthday. Tr. 154.

Victim later disclosed the abuse to her school counselor, Amy Millspaugh, on March 31, 2014. Tr. 142. In her disclosure, Victim informed Ms. Millspaugh she had been abused approximately four or five times since January of 2014 at her home and at a family friend's home. Tr. 143.

Thereafter, on June 19, 2014, law enforcement arrived at Applicant's home and took him to the police station for an interview. Tr. 157-58, 170, 172-73. During the interview, Applicant at first denied having abused Victim. Tr. 162, 175. However, after law enforcement confronted him with a pretext phone call, he admitted to "doing something" to Victim, although he claimed it was typical in the Philippines to do that. Tr. 162, 166, 175. Applicant also indicated he had touched and kissed Victim's clitoris. Tr. 163, 166, 176.

III.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on:

1. "Obtained attorney was ineffective;"
 - a. "Failure to call witnesses;"
 - b. "Failure to interview witnesses;"
 - c. "Counsel fail [sic] to investigate case;"

2. "Involuntary Plea;"
3. "There's no evidence of charges of CSC 1st degree or CSC second degree;"
4. "The [sic] was no probable cause for arrest, as required by Constitution. 4th Amend. And Section 22-5-210;" and
5. "State cannot prove the intent to commit criminal sexual conduct first degree."

Attached to this Return and incorporated by reference are the records of the Oconee County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the transcript from Applicant's trial, and the post-conviction relief application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

Additionally, Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief 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), SCRPC. 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, SCRPC. *Pro se* filings will not be considered at the post-conviction relief 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), SCRPC.

IV.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a post-conviction relief action, Applicant bears the burden of proving the allegations in his 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 v. Washington*, 466 U.S. 668 (1984); *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 v. Washington*, 466 U.S. 668. First, the 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 the 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.

Respondent submits Applicant can satisfy neither requirement of the *Strickland* test, particularly in light of Applicant’s complete failure to list any facts to support his general allegations. 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).

V.

Applicant further contends his guilty plea was not voluntarily made. Respondent submits this

allegation should be summarily dismissed as moot. Applicant proceeded to a jury trial before the Honorable Thomas L. Hughston, Jr. on May 15-16, 2017. On May 16, 2017, the jury returned a verdict of all four charges. Tr. 217. Applicant never pled guilty to any of the associated charges, so a guilty plea cannot have been involuntarily entered. Accordingly, Respondent submits this allegation must be summarily dismissed because it is moot.

VI.

Respondent submits Applicant's allegation there was no evidence of the crimes with which he was charged should be dismissed for failure to state a cognizable claim under the Uniform Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. Applicant's allegation is that he is actually innocent. Claims by an applicant that he is actually innocent, is not guilty, or that the evidence against him was insufficient to prove guilt are not cognizable grounds for post-conviction relief absent a claim of ineffective assistance of counsel or newly discovered evidence. S.C. Code Ann. § 17-27-20(a)(6) ("[T]his section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction."); *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1975) (interpreting the statute as barring such claims as inappropriate for consideration under the act); *Dickson v. State*, 247 S.C. 153, 156, 146 S.E.2d 257, 258 (1966) ("The allegation that petitioner is not guilty does not raise a matter for consideration by habeas corpus."). Therefore, this allegation should be dismissed for failure to state a claim cognizable under the Uniform Post-Conviction Procedure Act.

VII.

Applicant further alleges there was lack of probable cause for his arrest, as well as lack of intent to commit these crimes. These allegations should be summarily dismissed. An application for post-conviction relief does not serve as a substitute for direct appeal, and an issue that could have

been raised at applicant's trial or on appeal is not cognizable in an application for post-conviction relief. S.C. Code Ann. § 17-27-20(b); *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1974). Trial court error is not a cognizable claim for post-conviction relief. *Roscoe v. State*, 345 S.C. 16, 546 S.E.2d 417 (2001); *Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997); *Ashley v. State*, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant's allegations of lack of probable cause and lack of intent could have been raised at trial and thereafter on appeal. Therefore, these allegations should be dismissed as not cognizable under the Uniform Post-Conviction Procedure Act.

VIII.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

IX.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of counsel.

[signature block to follow]


Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

KELLY OPPENHEIMER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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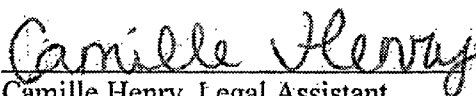
August 15, 2018

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE)	
)	
)	2018-CP-37-178
)	
JAIMIE S. OBREGON, #372617)	
)	
Applicant,)	
)	
vs)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Rodney Wade Richey, Esquire
Richey & Richey, PA
Post Office Box 10916
Greenville, South Carolina 29603-0916

DATED this 15th day of August, 2018.


 Camille Henry, Legal Assistant
 For Respondent

1	STATE OF SOUTH CAROLINA	}	IN THE COMMON PLEAS COURT
2	COUNTY OF OCONEE		
3	Jaimie S. Obregon,	}	TRANSCRIPT OF RECORD
4	Applicant,		
5	-vs-	}	February 19, 2019
6	The State.		

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9

10

B E F O R E :

11

HONORABLE R. SCOTT SPROUSE, JUDGE

12

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14

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

15

RODNEY W. RICHEY, ESQUIRE
Attorney for the Applicant

16

17

KELLY OPPENHEIMER, ESQUIRE
Attorney for the State

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Linda D. Moffitt
Circuit Court Reporter

22

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
R-1	Voluntary statement		14
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1 (Proceedings February 19, 2019)

2 THE COURT: Let's go on the record. State call your
3 first case.

4 MS. OPPENHEIMER: Yes, Your Honor. May it please the
5 Court.

6 This is Jaimie Obregon vs. the State of South
7 Carolina, Docket No. 2018-CP-37-178. During its February
8 of 2015 term the Oconee County Grand Jury indicted
9 applicant for two counts of first degree criminal sexual
10 conduct with a minor and one count of second degree
11 criminal sexual conduct with a minor.

12 Bruce A. Byrholdt represented applicant on these
13 charges.

14 On May 15th through 16th, 2017, applicant proceeded to
15 a jury trial before the Honorable Thomas L. Hughston, Jr.
16 Following deliberations the jury convicted applicant as
17 indicted on all counts and Judge Hughston sentenced
18 applicant to a term of imprisonment of 25 years for each
19 count of first degree C.S.C. and 20 years for second degree
20 C.S.C. Those sentences were to be served concurrently.
21 The applicant did not appeal.

22 On March 14th of 2018 applicant filed an application
23 for post conviction relief alleging ineffective assistance
24 of counsel for failing to call and interview witnesses and
25 failing to investigate, as well as allegations of

Jaimie S. Obregon
Direct examination by Mr. Richey

1 involuntary guilty plea, lack of probable cause to arrest,
2 the state could not prove intent to commit first degree
3 C.S.C., and there was no evidence of first degree C.S.C. or
4 second degree C.S.C.

5 The state made its return and partial motion to
6 dismiss on August 15th of 2018 requesting an evidentiary
7 hearing be held on the allegations of ineffective
8 assistance of counsel only and requesting the remaining
9 allegations be summarily dismissed.

10 Applicant is present today and represented by Rodney
11 Richey.

12 THE COURT: Mr. Richey.

13 MR. RICHEY: Thank you, Your Honor. We are ready to
14 proceed. We'd call Mr. Obregon at this time.

15 JAIMIE SABIO OBREGON, having
16 been first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. RICHEY

18 Q Sir, can you state your name, please? Can you state
19 your name.

20 A My name is Sabio Obregon.

21 Q And are you currently in the Department of
22 Corrections, South Carolina Department of Corrections?

23 A Yes.

24 Q Okay. And -- and what are you there for, what
25 charges?

Jaimie S. Obregon
Direct examination by Mr. Richey

- 1 A Well, the -- I was there through wrongfully charged me
2 for sexual misconduct.
- 3 Q Okay. And who represented you on those cases?
- 4 A Byrholdt was my attorney on that time.
- 5 Q Okay. And you believe that he did not effectively
6 represent you, is that correct?
- 7 A Yes.
- 8 Q Okay. And one of the things you believe, that you had
9 a witness named Steven Taylor, is that correct?
- 10 A Yes.
- 11 Q And at the time of the trial Mr. Taylor was at the
12 Oconee County Detention Center?
- 13 A Yes.
- 14 Q And do you believe he would have helped your case?
- 15 A Yes, sir.
- 16 Q And how would he have helped your case?
- 17 A Because he knows that I did not do this crime to --
18 this is her daughter, step-daughter.
- 19 Q Okay. This was your step-daughter.
- 20 A No. Steven's.
- 21 Q Steven's?
- 22 A Steven Taylor's step-daughter.
- 23 Q Okay. And he -- you believe he could have come to
24 this trial and presented evidence or testimony that you did
25 not commit this crime.

Jaimie S. Obregon
Direct examination by Mr. Richey

1 A Yes, sir, Your Honor.

2 Q Okay. At this time Mr. Taylor is no longer in Oconee
3 County Detention Center, correct?

4 A I do not know. When I went to prison he was in Oconee
5 County Jail.

6 Q Okay. Do you have any information, anybody given you
7 information, where Mr. Taylor would be?

8 A No.

9 Q Okay. But he was available at the time of trial,
10 correct?

11 A Yes, Your Honor.

12 Q Okay. You -- did you have an opportunity to talk to
13 your attorney about the evidence in the case against you?

14 A Yes, sir. I talked to him on the time, but this case
15 that I talked him, he said that he was not a very good
16 allegations to my witness.

17 So this one, Your Honor, when the investigator in -- on
18 June 15th, 2013, he was when at the court by not contacting
19 me on the telephone, because there is no evidence, Your
20 Honor, that trying to get something evidence for my -- for
21 this crime that I did not do.

22 Q So let me -- so we understand, you said that you
23 had -- that your attorney had an investigator?

24 A No. The investigator who investigate the -- the crime.

25 Q Okay. The police investigator.

Jaimie S. Obregon
Direct examination by Mr. Richey

- 1 A Yes. Gentry Hawk.
- 2 Q Okay. And they said that there was no evidence
3 against you.
- 4 A No.
- 5 Q Okay. And so there was no physical evidence against
6 you at all?
- 7 A No, no.
- 8 Q Okay. And did you and your attorney talk about the
9 lack of physical evidence against you?
- 10 A Yes.
- 11 Q And -- and because of the lack of physical
12 education -- physical evidence -- excuse me -- physical
13 evidence -- is that your basis for going to trial on this
14 case?
- 15 A Yes, Your Honor.
- 16 Q Okay. You had called in this case -- the police
17 officer testified that you supposedly admitted to doing
18 this.
- 19 A Yes. But I did not -- I did not -- I admitted that I
20 do it, and that's one reason the -- because there's no
21 evidence, and that's one reason they called me on telephone
22 he -- when retired [sic].
- 23 Q So the -- the discussion or the testimony, the
24 officer's transcript on various pages about what you
25 supposedly said to him, you are saying that was not true.

Jaimie S. Obregon
Direct examination by Mr. Richey

1 A Yes, yes, Your Honor.

2 Q And did you talk to your attorney about that?

3 A Yes. I talked to him on that morning, but he had told
4 me there was nothing credible, allegations on my part.

5 Q Okay. So you didn't give a written statement or
6 anything.

7 A No. And it was nothing recorded, Your Honor, at that
8 time. Also, the telephone call was not recorded either.

9 Q It wasn't recorded. Just the officer saying it.

10 A Yes.

11 Q Okay. And you believe that your attorney did not
12 properly investigate the case?

13 A Yes, Your Honor.

14 Q What do you believe he could have done?

15 A He could ask a question, Your Honor, about the evidence
16 that they bring to the court on that time. It should not
17 be -- he should ask question about the evidence that the
18 recorded-phone recording should not be presented as an
19 evidence against me.

20 Q Okay. So it's your position that he should have
21 suppressed some of the evidence against you and not let it
22 come to court, is that correct?

23 A That's correct.

24 Q Okay. And in terms of the investigation, when you
25 said investigate, do you believe that there was some

Jaimie S. Obregon
Direct examination by Mr. Richey

1 evidence out there that he did not uncover?

2 A No, Your Honor.

3 Q No, no?

4 A No.

5 Q Okay. So his investigation centers around his trial
6 conduct, correct?

7 A Yes.

8 Q Okay. So you're not saying that he didn't go out
9 there and try to interview witnesses. You're just saying
10 his performance at trial was not sufficient.

11 A Yes.

12 Q And at the time this trial occurred were you involved
13 in your church?

14 A Yes. I was involved in the church for 34 years.

15 Q Okay. And did -- did any of the members from the
16 Wesleyan church -- was any one of them -- could they
17 provide any kind of evidence in your case?

18 A Yes, Your Honor.

19 Q They could?

20 A They could witness that I did not do anything on this
21 kind of crime, because of reputation in the church and also
22 in the community.

23 Q So you're saying that they could have come and give --

24 A Gave the testimony.

25 Q Yeah. To your character.

Jaimie S. Obregon
Direct examination by Mr. Richey

1 A Yes.

2 Q Did you testify at trial?

3 A No.

4 Q Is that something you talked to your lawyer about
5 doing and not doing?

6 A Yeah. I talked to my lawyer, and he said I'm not going
7 to testify because if I do it will be against my way,
8 against my -- my part -- if I'm to testify it be against me.

9 Q It would not -- I'm going to characterize this. Tell
10 me if I'm right or wrong. He said -- you testify it would
11 not help you.

12 A Yes, in the matter, yes.

13 Q Okay. And you agreed with that?

14 A I agree with that because I didn't know, Your Honor,
15 what I am to do. He should -- he should know what is the
16 right thing to do. He was my lawyer. So I was depending on
17 him to clearly direct the right thing to do.

18 Q And you're asking that this Court give you a new
19 trial, correct?

20 A Yes, Your Honor.

21 Q Yes. And you believe the things that your lawyer did
22 not do hurt your case.

23 A Yes.

24 Q Okay. Do you recall whether there was a plea offer in
25 this case?

Jaimie S. Obregon
Cross-examination by Ms. Oppenheimer

1 A I don't understand. What's a plea?

2 Q An offer to plead guilty and they'll give you X amount
3 of time if you take it.

4 A Oh, yes, there was a public defender from Greenville
5 that he offered me for five years to plead guilty, but I did
6 not plead guilty because I'm not guilty on these allegations
7 of sexual misconduct.

8 Q Okay. And so how much -- how much -- what's your
9 sentence right now?

10 A Well, my sentence was 25 years.

11 Q Okay. And did you and your lawyer discuss how
12 favorable that 5-year offer could have been, would have
13 been?

14 A No.

15 Q You were not interested in that because you did not do
16 this, correct?

17 A Yes, Your Honor.

18 Q Okay. All right. Answer any questions the attorney
19 general will have for you, please, sir.

20 THE COURT: Yes, ma'am.

21 MS. OPPENHEIMER: May it please the Court, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. OPPENHEIMER

24 Q Now, you said that Steven Taylor was a potential
25 witness for you, correct?

Jaimie S. Obregon
Cross-examination by Ms. Oppenheimer

1 A Yes, ma'am.

2 Q But you also testified that at the time you went to
3 prison you were unaware that he was in the Oconee County
4 Detention Center at the time.

5 A Yes, Your Honor.

6 Q So you didn't know where he was, did you, at the time
7 of your trial?

8 A I know where he was on the trial, but during the trial
9 I did not know that he can give me a witness for my case.

10 Q So you didn't tell Mr. Byrholdt.

11 A No. I did not tell him about that witness.

12 Q And these people from your church, did you ever give
13 Mr. Byrholdt their names?

14 A No, except my pastor which is -- whatever the name of
15 my pastor -- willet -- willet Best [sic].

16 Q All right. And you testified, I believe, that you
17 never gave a written statement, correct?

18 A No, yeah. I'm not -- I do not -- I did not give any
19 written statement.

20 MS. OPPENHEIMER: Your Honor, may I approach the
21 witness?

22 THE COURT: Yes, ma'am.

23 Q Do you recognize this document?

24 A Yes, I recognize this document, but there's a word in
25 there that is not right because when I was writing this I

Jaimie S. Obregon
Cross-examination by Ms. Oppenheimer

1 said I did not do.

2 Q But you wrote that statement, correct?

3 A Yes, I wrote this statement.

4 Q Okay. And you signed it, correct?

5 A Yes, I signed it.

6 MS. OPPENHEIMER: Your Honor, at this time I'd like
7 this marked as State's Exhibit No. 1 or Defendant's Exhibit
8 No. 1. I apologize.

9 THE COURT: Any objection?

10 MR. RICHEY: No objection.

11 THE COURT: It will be the Respondent's Exhibit Number
12 1, will be admitted without objection.

13 (Voluntary statement marked Respondent's Exhibit No.
14 1.)

15 MS. OPPENHEIMER: Beg the Court's indulgence.

16 Q And if you'll see in that second paragraph doesn't it
17 say that you massaged the victim's private part and he
18 kissed her?

19 A No.

20 Q If you'll just take a look at the second paragraph
21 right there.

22 A No. I did not. I did not kiss her. I massaged her
23 stomach because it was hurting, but it's not a crime in the
24 Philippines. What we do with our children is when they're
25 hurting we just do in our own knowing how to massage the

Jaimie S. Obregon
Cross-examination by Ms. Oppenheimer

1 stomach and retire. we -- I didn't have any thinking about
2 molestations about the children because we don't do this in
3 the Philippines.

4 Q But you admit that you wrote that second paragraph,
5 correct?

6 A I don't remember, Your Honor, on this. I don't
7 remember on that second paragraph.

8 Q All right. Now, let's talk about your interview with
9 the police. At first you denied committing these crimes,
10 correct, to the police?

11 A When children investigations, they were already,
12 violated the constitution and stuff by calling me on the
13 telephone before I came to state it -- me.

14 Q Well, that wasn't the police that called you. That
15 was actually the victim, correct?

16 A No. The one that called me was Dr./Mr. Holt and Tyrus
17 [sic]. They were -- and Tyrus was lying that she was at
18 home. When they called me the child told me, she said she
19 was at home. And I asked a question. I said, "why you are
20 at home?" She said, "Because." I said, "Where is your
21 mama?" She said she was at the grocery store, Your Honor.

22 Q So you deny that there was a recording in which you
23 told the victim not to tell anyone what you had been doing
24 to her and that you loved her, correct? You deny that
25 recording existed?

Jaimie S. Obregon
Cross-examination by Ms. Oppenheimer

- 1 A Yes. I deny it.
- 2 Q Even though that that was played at your trial,
3 correct?
- 4 A How do I answer that question?
- 5 Q Do you recall the phone recording being played at your
6 trial?
- 7 A Yes. That was a last recording that they bring to the
8 trial, but it was not all recorded during the telephone
9 call.
- 10 Q All right. And let's also talk about the statement
11 you gave to law enforcement. You heard the law enforcement
12 officers testify at trial, correct?
- 13 A Yes, Your Honor.
- 14 Q And you heard them say that you not only admitted to
15 doing these crimes but you made a motion and a kissing
16 noise to indicate where you had kissed this victim,
17 correct?
- 18 A No.
- 19 Q So you're saying today that the law enforcement
20 officers were lying.
- 21 A Yeah, right.
- 22 MS. OPPENHEIMER: Beg the Court's indulgence.
23 (Pause.)
- 24 MS. OPPENHEIMER: Your Honor, I have no further
25 questions.

Bruce A. Byrholdt
Direct examination by Mr. Richey

1 THE COURT: Any redirect?

2 MR. RICHEY: No questions.

3 THE COURT: Thank you. You can step down.

4 BRUCE A. BYRHOLDT, having been
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. RICHEY

7 Q Sir, can you state your name, please?

8 A Bruce Byrholdt, B-Y-R-H-O-L-D-T.

9 Q And where are you employed?

10 A I'm employed at -- my law firm is Byrholdt Drawdy here
11 in Anderson.

12 Q And you've been practicing law in Anderson County, is
13 that correct?

14 A About 38 years.

15 Q Okay. And as your -- has any of your practice
16 centered around criminal defense?

17 A Probably more than half of my practice is criminal
18 defense.

19 Q Okay. And you represented this gentleman at trial, is
20 that correct?

21 A I did represent Mr. Obregon as retained attorney.

22 Q And I'm going to ask you a series -- I'm going to ask
23 you a series of questions. This statement is Exhibit 1.

24 A Yes, sir.

25 Q You had the statement at the time of trial, correct?

Bruce A. Byrholdt
Direct examination by Mr. Richey

1 A Yes, sir.

2 Q Okay. And the -- also, you had the recording that was
3 played at the time of trial, is that correct?

4 A I had the statement; I had a picture that Mr. Obregon
5 drew; I had the statements from the Julie Valentine Center;
6 and I had the recorded statements. We went through all of
7 that. Not just myself with Mr. Obregon, but on the
8 telephone call I had my law partner, my paralegal come in
9 and listen to it also.

10 Q So would it be safe to say on its face there was a lot
11 of evidence against him?

12 A Overwhelming.

13 Q Okay. And in looking at that Mr. Obregon testified
14 that he had a 5-year plea offer. Do you recall that?

15 A He said from the public defender. There was one plea
16 offer made. It was a written plea offer that I extended to
17 Mr. Obregon for a 10-year cap to a reduced charge. And he
18 signed off on that, that he rejected that and wanted to go
19 to trial. He told me that the girl would never come to
20 court. I said if she doesn't come to court that statement
21 may not come in.

22 Q So the rejection of a plea offer was in anticipation
23 that the victim would not testify.

24 A And I told them that I thought she would show up. But
25 then in the middle of the trial, the second day of trial, he

Bruce A. Byrholdt
Direct examination by Mr. Richey

1 had sent a text message to the victim's mother saying don't
2 bring her to court. The Court found out about that, and
3 that came out at the trial. I mean, Judge Hughston was
4 about ready to try to hit him with a tampering with a
5 witness, didn't do that.

6 Q Okay.

7 A But he was aware. And, like I say, I told him that
8 morning. The plea offer was even extended before the girl
9 testified.

10 Q Okay.

11 A And, I mean, and then he rejected it. And I told him.
12 I said, "The girl is in the courthouse. She's going to come
13 in that courtroom." And she did.

14 Q Did you explain to him all of the benefits that he had
15 in terms of the judge he had, the evidence and all of that?
16 Did y'all go through all of that?

17 A I tried the best that I could to have him accept the
18 plea offer. I mean, with the evidence against him there was
19 no way he was going to walk out of there with an acquittal.

20 Now, if he got a crazy jury, he might get a hung jury,
21 but there was no way that 12 people would say he did not
22 commit this offense, especially with a, like I say, the
23 telephone recording, the written confession. And, I mean,
24 it was just a horrible case.

25 Q Okay. And he's already testified about a culture

Bruce A. Byrholdt
Direct examination by Mr. Richey

1 thing in terms of the Philippines. Did you talk to him
2 about --

3 A He was talking about, you know, rubbing a child's
4 stomach when they're sick. That's fine. But that's -- I
5 mean, the picture he sent where he kissed the young girl on
6 her -- in her vaginal area and in the statement that she
7 gave to the forensic people that he had inserted his finger
8 into her private parts, that was not rubbing somebody's
9 stomach because they're sick.

10 Q Did -- did he talk to you about this witness, any
11 witnesses, that ought to come and testify for him?

12 A He mentioned -- the client -- but, like I say, it -- it
13 was not something that was going to negate everything that
14 they had against him.

15 He was trying to argue that the stepfather owed him
16 some money or something and this was about money. And I
17 said that's not -- the problem is his own written statement
18 and words on that telephone just put a noose around his
19 neck.

20 Q All right.

21 A One of the worst cases I've ever had to try and deal
22 with. And he had a great plea offer.

23 Q And so you believed it was in his best interest to
24 plead in this case?

25 A Without a doubt, without a doubt.

Bruce A. Byrholdt
Cross-examination by Ms. Oppenheimer

1 Q And you conveyed that to him.

2 A And we -- like I said, we even kept it open going into
3 the second day of trial.

4 MR. RICHEY: One moment, Your Honor.

5 (Pause.)

6 Q The picture that was drawn, do you know whether it was
7 Obregon that drew the actual picture?

8 A No, but I think he signed off on it there. I have a
9 copy in my file.

10 Q Okay.

11 A And that picture like -- and like **MINOR**'s vaginal area
12 and then the statement where he said he kissed her, it's
13 written off he kissed her here.

14 Q okay. Thank you.

15 MS. OPPENHEIMER: May it please, Your Honor.

16 THE COURT: Yes, ma'am.

17 CROSS-EXAMINATION

18 BY MS. OPPENHEIMER

19 Q Okay. So just to verify, did Mr. Obregon ever give
20 you any leads or witnesses to investigate?

21 A No, ma'am.

22 Q And his theory was he didn't do this at all?

23 A Even when I played the telephone recording he just did
24 not -- you know, I did not do this. That was -- his entire
25 defense was I did not do this. And I said but you're saying

Bruce A. Byrholdt
Cross-examination by Ms. Oppenheimer

1 you're sorry, you signed the statement.

2 Q And just to be clear, that recording was between
3 Mr. Obregon and the victim?

4 A [REDACTED] MINOR .

5 Q And he apologizes, tells her not to tell, says I love
6 you.

7 A Yes.

8 Q Okay. And then in the written statement he admitted
9 to doing these acts, correct?

10 A Yes, ma'am.

11 Q And there's been some discussion about a plea offer.
12 You said the only offer you had was for a 10-year cap?

13 A Yes. There was a written -- you know, he said it on
14 his direct testimony that the public defender -- I'm not a
15 public defender. I was retained.

16 Q Uh-huh.

17 A The only plea agreement that I'm aware, or offer, is
18 the one that I reduced to writing and had him sign off on
19 that he rejected and wanted to go to trial.

20 MS. OPPENHEIMER: Your Honor, may I approach the
21 witness?

22 THE COURT: Yes, ma'am.

23 Q Do you recognize this document?

24 A Yes, ma'am. That's the offer that I typed up and
25 Mr. Obregon signed and I witnessed.

Bruce A. Byrholdt
Cross-examination by Ms. Oppenheimer

1 Q Okay. So you prepared that document?

2 A I did myself.

3 Q And it is -- it explains the plea offer to him?

4 A Yes.

5 MS. OPPENHEIMER: Your Honor, I apologize. Could you
6 show Mr. Richey real quick?

7 (Pause.)

8 MS. OPPENHEIMER: Your Honor, at this time I'd like to
9 admit this as Respondent's No. 2.

10 THE COURT: Any objection?

11 MR. RICHEY: No objection.

12 THE COURT: Respondent's Exhibit No. 2 will be
13 admitted without objection.

14 (Plea offer marked Respondent's Exhibit No. 2.)

15 Q And so was that prepared during trial or before trial?

16 A That was prepared before trial.

17 Q Okay. So you had ample opportunity to review the
18 offer with him.

19 A Yes. I did it in my office.

20 Q And he said no, I don't want to take that offer.

21 A He said I reject it and I want to go to trial.

22 Q Okay. And the picture that we've discussed a little
23 bit, Mr. Obregon did sign that, correct?

24 A Yes. I've got a copy there.

25 Q And that just indicated where he had kissed the

1 victim?

2 A Yes, ma'am.

3 MS. OPPENHEIMER: Beg the Court's indulgence.

4 (Pause.)

5 MS. OPPENHEIMER: Your Honor, I have no further
6 questions.

7 THE COURT: Any redirect?

8 MR. RICHEY: No questions of this witness.

9 THE COURT: Thank you, Mr. Byrholdt.

10 MR. RICHEY: That's all the witnesses we have.

11 THE COURT: Okay. Does the state have any other
12 witnesses?

13 MS. OPPENHEIMER: The state has no witnesses, Your
14 Honor.

15 THE COURT: All right. I'll allow each attorney to
16 make a summation. I'll let the state go first.

17 And, Mr. Richey, you go last. You've got the burden.
18 I'll give you the last word.

19 MR. RICHEY: Yes, sir.

20 MS. OPPENHEIMER: May it please the Court, Your Honor.

21 You heard Mr. Byrholdt's testimony. Mr. Obregon did
22 not give him any leads or witnesses to investigate.

23 This was a horrible case in which Mr. Obregon was not
24 only recorded on having a phone conversation with the
25 victim telling her I'm sorry, don't tell anyone, you'll get

1 in trouble, I love you, but there was also a written
2 confession where he wrote out exactly what he did to the
3 victim and where he kissed her. And there is also a
4 picture that Mr. Obregon signed indicating where he kissed
5 the victim.

6 There was a plea offer. It was only a 10-year cap.
7 Mr. Byrholdt testified that he thoroughly reviewed that
8 with Mr. Obregon. He typed it up with him and had
9 Mr. Obregon sign that he understood the offer, he did not
10 want to take the offer, he wanted to proceed to trial,
11 which is his prerogative. He decided to exercise that
12 constitutional right and decided to reject the only plea
13 offer in this case.

14 Even the second day of trial I believe the plea was
15 still open. He decided to proceed with the trial.

16 Your Honor, the Steven Taylor person, I think it's
17 been unclear whether or not that information was actually
18 given to Mr. Byrholdt prior to the trial. But, regardless,
19 there's no -- the applicant can't meet his burden.

20 Mr. Taylor did not come here and testify. What
21 Mr. Obregon says he would have said is mere speculation on
22 Mr. Obregon's part. So we would argue that he cannot meet
23 his burden based on that speculation, as well as these
24 other witnesses from the church.

25 I think it's pretty straightforward. I've gone over

1 everything, I think. So we just ask that you deny the
2 application for post conviction relief.

3 THE COURT: Thank you.

4 All right. Mr. Richey.

5 MR. RICHEY: Thank you, Your Honor.

6 Your Honor, my client has testified that he was
7 innocent of these charges. He did exercise his right to a
8 trial. In this particular case I would say from the
9 evidence against him he has indicated that he had people
10 from the church who would come in and testify as to his
11 character, also this Steven Taylor who was connected to the
12 victim.

13 This was a tough case, but in this situation having
14 some mitigation as to his character could have helped him.

15 I'll be frank with the court. It was an uphill
16 battle, but this gentleman believed that if the people from
17 the church and this Steven Taylor was called as a witness
18 it could have helped his case because the way this case was
19 tried with all of this information, the only chance that he
20 may have had was somebody from the church coming in and
21 saying he helped establish, good for the church, he had
22 great character. That would have been the only chance.

23 Now, he testified to some of this stuff he didn't
24 sign, he didn't do it, this kind of stuff. You know, in
25 terms of what he had to offer, he needed somebody to say he

1 was a half way decent guy in light of all of the stuff that
2 was presented by the state. Thank you, Your Honor.

3 THE COURT: Thank you, Mr. Richey.

4 Well, I want to take a little while and read what's
5 been submitted. There's been a transcript and other
6 materials that have been handed up giving me a lot to
7 consider. So I'm going to take this under advisement, and
8 I'll have my law clerk send you an email announcing my
9 decision.

10 So thank you for your preparation and everything
11 submitted.

12 MR. RICHEY: Thank you, Your Honor.

13 END OF REQUESTED 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 Common Pleas Court for Oconee County, South Carolina, on the 19th day of February 2019.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

April 15, 2019



Linda D. Moffitt
Circuit Court Reporter

VOLUNTARY STATEMENT

DATE 6/19/14 PLACE OCSO TH STARTED 13:01pm
I, the undersigned, Jamie S. O'Brien, and years of age, my date and place of
birth being the [redacted] at Philippines
I now live at [redacted] SHELVA SC.
Before answering any questions or making statements, Genny Hawk / w/

a person who identified himself as DNU OCSO.
I have been duly warned and advised me, and I know and understand that I have the following rights: That I have a right to remain silent and I do not have to
answer any questions or make any statements at all that any statement I make can and will be used against me in court or courts of law for the
offense or offenses concerning which the following statement is hereinafter made, that I have the right to consult with a lawyer of my choice before
or at anytime during any questioning or statements I make; that if I cannot afford to hire a lawyer, I may request and have a lawyer appointed for me
at no cost or expense to me; that I can stop answering any questions or making any statements at anytime that I choose, and call for the presence of a lawyer before continuing any more
statements.

I do not want to talk to a lawyer, and I hereby knowingly and purposely waive my right to remain silent, and I choose to have a lawyer present while
I make the following statement to the aforesaid person, knowing that I have the right and privilege to remain silent and I choose to do so.
and have a lawyer present with me before answering any more questions or making any more statements.

I declare that the following voluntary statement is made by my own free will without promise of hope or reward, without coercion, favor or offer of favor, without leniency or offer of leniency, by any persons who have threatened or will threaten to harm me.

MINOR
One afternoon [redacted] I went to my house
then went to work at Bunkerman, then came home
she is watching tv she calls me, I was in my
room watching tv. she said uncle [redacted]
hunting, then I massage to tony + Pat
showed dancing and straighten then
I am tired, that's I straighten her
then touch her private part and kiss
her [redacted] then she said I am going to
this was last Feb 22/14

END OF STATEMENT

I certify I have received a copy of this statement [Signature]
I have read each page of this statement consisting of [redacted] page(s), each page of which bears my signature
and I certify that the facts contained herein are true and correct. I further certify that I made no request for
or during any part of this statement, nor at any time before it was finished did I request that this statement
be stopped, I also declare that I was not
told or prompted what to say in this statement.

This statement was completed at 1:18 P.M. on the 19 day of June, 2014.

Notary Public for S.C.
My Commission Expires
WITNESS: [Signature]
WITNESS: [Signature] #3750



Signature of person giving voluntary statement [Signature]

State of South Carolina vs. Jaime Obregon

Offer: Plead guilty to 2 counts of Criminal Sexual Conduct with Minor 3rd Degree with a cap of 10 years and sex offender registration. You are charged with 4 counts of CSC with minor 1st Degree which carries a sentence of 25 years to life for the first offense and life for second offense or more. You also have 2 counts of CSC2nd which carries a max sentence of 20 years. Any sentence of 20 years or more requires the person convicted to serve a minimum of 85% of the sentence imposed.

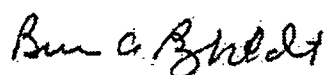
I have been informed of the offer and I Accept _____ or Reject the offer and want to go to trial 

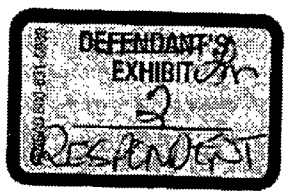
Trial is set for May 2017 in Walhalla, SC.



Jaime Obregon

Date: 3/31/17

Witness: 



STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

FILED IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Jaimie S. Obregon, #372617,

2018 MAR -8 P 3:05 Case No. 2018-CP-37-178

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before this Court by way of an application for post-conviction relief filed March 14, 2018, by Jaimie S. Obregon (Applicant). The State (Respondent) made its return and partial motion to dismiss on August 15, 2018, requesting an evidentiary hearing be held on Applicant's allegations of ineffective assistance of counsel. An evidentiary hearing was convened on February 19, 2019, at the Anderson County Courthouse before the Honorable R. Scott Sprouse. Applicant was present at the hearing and represented by Rodney W. Richey, Esquire. Respondent was represented by Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General's Office.

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations and denies this application with prejudice.

PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Oconee County Clerk of Court. During its February 2015 term, the Oconee County Grand Jury indicted Applicant for two counts of first-degree criminal sexual conduct (CSC) with a minor (2015-GS-

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37-00163; -00164) and one count of second-degree CSC with a minor (2015-GS-37-00165). Bruce A. Byrholdt, Esquire, represented Applicant on these charges. Assistant Solicitor Catherine A. Wyse, of the Tenth Circuit Solicitor's Office, prosecuted the case. On May 15-16, 2017, Applicant proceeded to a jury trial before the Honorable Thomas L. Hughston, Jr. Following deliberations, the jury convicted Applicant as indicted on all counts. Judge Hughston sentenced Applicant to a term of imprisonment of twenty-five years for each count of first-degree CSC with a minor and twenty years for second-degree CSC with a minor. The sentences were to be served concurrently. Applicant did not appeal his conviction or sentence.

CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Obtained Attorney was Ineffective;
 - a. Failure to call witnesses;
 - b. Failure to interview witnesses; [and]
 - c. Counsel fail [sic] to investigate case.
2. Involuntary Plea;
3. There's no evidence of charges of CSC 1st degree or CSC second degree;
4. The [sic] was no probable cause for arrest, as require [sic] by the Constitution 4th Amend. and Section - 22-5-210; [and]
5. State cannot prove the intent to commit criminal sexual conduct in first degree.

At the hearing, Applicant proceeded forward on allegations of ineffective assistance of counsel for: (1) failing to investigate; (2) failing to call witnesses; and (3) failing to convey a plea offer.

STATEMENT OF FACTS ADDUCED AT TRIAL

Applicant was a friend of Victim's family, and Victim would stay with Applicant at his home on the weekends. Tr. 151, 166. When Victim would stay at Applicant's home, Applicant

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would put his fingers inside of her and perform oral sex on her. Tr. 153-54. This began to occur shortly after Victim's tenth birthday. Tr. 154.

Victim later disclosed the abuse to her school counselor, Amy Millspaugh, on March 31, 2014. Tr. 142. In her disclosure, Victim informed Ms. Millspaugh she had been abused approximately four or five times since January 2014 at her home and at a family friend's home. Tr. 143.

Thereafter, on June 19, 2014, law enforcement arrived at Applicant's home and took him to the police station for an interview. Tr. 157-58, 170, 172-73. During the interview, Applicant initially denied having abused Victim. Tr. 162, 175. However, after law enforcement confronted him with a pretext phone call, he admitted to "doing something" to Victim, although he claimed it was typical in the Philippines to do that. Tr. 162, 166, 175. Applicant also indicated he had touched and kissed Victim's clitoris. Tr. 163, 166, 176.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf and presented the testimony of Bruce A. Byrholdt, Esquire (Counsel). This Court also had before it a copy of Applicant's trial transcript, the records of the Oconee County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, and the records from this current post-conviction relief action.

At the evidentiary hearing, Applicant first testified on his own behalf. Applicant testified he was wrongfully charged for sexual misconduct. He also testified Counsel represented him on this case, and Counsel was ineffective. He testified Steven Taylor, who is Victim's stepfather, knows Applicant did not commit these crimes and would have helped had he been called as a witness at trial. Applicant elaborated Taylor was available at the time of trial but has since gone

to prison, and Applicant has no information as to Taylor's whereabouts now. Applicant further elaborated he told Counsel about calling Taylor as a witness at trial, but Counsel told him Taylor would not be a good witness. On cross-examination, however, Applicant testified he did not tell Counsel about Taylor. He further testified he has been involved with his church for thirty-four years, and the members of his church could provide evidence he did not commit these crimes because of his reputation in the church and the community. He explained the members of his church should have been called as witnesses at trial to speak on his good character. Applicant admitted, however, he did not give Counsel the names of anyone from his church, except for his pastor, whose name he could not remember.

He also testified Counsel did not investigate his case, but there was no evidence Counsel did not uncover. He testified there was no physical evidence, which he discussed with Counsel. Applicant explained the lack of physical evidence was his reason for proceeding to trial. He further testified law enforcement officers claimed Applicant admitted to committing these crimes, but there was no evidence Applicant did confess. He elaborated he did not say anything to law enforcement. He further elaborated he told Counsel he did not say anything to law enforcement, but Counsel told him that was not a credible allegation. Applicant denied writing a statement for law enforcement; but after being confronted with his written statement,¹ he acknowledged he did, in fact, write that statement. He alleged, however, the statement was not correct. He testified law enforcement officers violated his constitutional rights during their investigation. He elaborated law enforcement officers called him, not Victim. He denied there was a recording of the phone call between him and Victim, but admitted the recording was played at trial. He testified the law enforcement officers lied at his trial. Applicant also testified

¹ A copy of Applicant's written statement to law enforcement was admitted without objection as Respondent's Exhibit #1.

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he asked Counsel to question the evidence brought to court.

Applicant testified he received a five-year plea offer from a public defender in Greenville County, but he and Counsel never discussed how a plea would be favorable. He further testified he was not interested in a plea. He elaborated he rejected this five-year plea offer because he is not guilty.

He also testified he did not testify at trial. He explained he and Counsel spoke about his right to testify, but Counsel told him not to testify. He further elaborated Counsel told him if he did testify, then it would be "against his part." Applicant testified he agreed with Counsel's advice, but he did not know if it was the right thing to do.

Following Applicant's testimony, Counsel testified. Counsel testified he has been practicing law for thirty-eight years, and more than half of his practice deals with criminal law. He testified he was retained to represent Applicant. He also testified Applicant's entire defense was he did not commit these crimes, even after Counsel played the recording of the phone call between Applicant and Victim, in which Applicant apologized to Victim and told her not to tell and that he loved her. He further testified he reviewed all of the evidence with Applicant, including Applicant's statement, the picture Applicant drew, in which he indicated where he kissed Victim, statements from the Julie Valentine Center, and the recorded call. Counsel explained there was overwhelming evidence against Applicant. He further explained in Applicant's written statement to law enforcement, he admitted to committing these crimes.

Counsel testified Applicant did not provide him with any leads or witnesses to investigate. He testified Applicant did mention Taylor, because Taylor owed Applicant money, but Counsel informed Applicant Taylor would not negate everything the State had against Applicant.

Counsel also testified there was only one plea offer in this case, which offered a ten-year cap for a reduced charge. He explained Counsel had ample opportunity to explain this offer to Applicant, but Applicant rejected the offer, stating Victim would not come to court despite Counsel telling him Victim would be there.² He further explained Applicant sent Victim's mom a text tell her not to bring Victim to court, which came out at the trial. Counsel also testified the offer remained valid through the trial, and Counsel again extended it to Applicant before Victim testified. He testified Applicant again rejected the offer, even though Victim was in the court room and was going to testify. He further testified he tried the best he could to get Applicant to accept the plea offer because there was no way Applicant was going to get an acquittal.

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 further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. This Court finds Counsel's testimony is very credible, whereas Applicant's testimony is not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant's allegations of ineffective assistance of counsel are as follows: (1) failing to investigate; (2) failing to call witnesses; and (3) failing to convey a plea offer.

Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, the applicant

² Counsel had Applicant sign a statement, which explained the offer to Applicant and included Applicant's decision to reject the offer. A copy of this signed statement was admitted without objection at the evidentiary hearing as Respondent's Exhibit #2.

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. 441, 334 S.E.2d 813.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." *Cherry*, 300 S.C. at 117, 385 S.E.2d at 625 (citing *Strickland*). 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.

After careful review based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Counsel's alleged failure to investigate

Applicant alleges Counsel was ineffective for failing to investigate. "Counsel's concern is the faithful representation of the interest of his client and such representation frequently involves highly practical considerations as well as specialized knowledge of the law." *Tollett v. Henderson*, 411 U.S. 258, 267-68 (1973). "Although counsel should conduct a reasonable

investigation into potential defenses, *Strickland* does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client.” *Tucker*, 350 F.3d at 442 (quoting *Green v. French*, 143 F.3d 865, 892 (4th Cir. 1998)). “In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” *Strickland*, 466 U.S. at 691; *Wiggins v. Smith*, 539 U.S. 510, 521-22 (2003). Moreover, “failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result.” *Porter*, 368 S.C. at 385-86, 629 S.E.2d at 357, *abrogated on other grounds by Smalls*, 422 S.C. 174, 810 S.E.2d 836 (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

Here, Counsel testified Applicant did not provide him with any leads or witnesses to investigate. Indeed, Applicant admitted he did not give Counsel any names of any of the members from his church, whom Applicant wanted to testify to his good character. Furthermore, Applicant wavered on whether or not he actually told Counsel about Taylor prior to trial. Applicant also admitted there was no evidence Counsel did not uncover at the time of trial. Because Applicant did not provide counsel with any independent leads or witnesses to investigate, this Court finds Applicant has failed to establish any deficiency on the part of Counsel.

This Court further finds Applicant has failed to establish any resulting prejudice from the alleged deficiency. Applicant did not provide Counsel with any independent information from which he could investigate his case. In addition, Applicant has wholly failed to provide this Court with any additional investigation Counsel should have performed. Indeed, Applicant has

wholly failed to identify what benefit would have been realized from additional investigation by Counsel. Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to call witnesses

Applicant further contends Counsel was ineffective for failing call witnesses on his behalf. Specifically, Applicant alleges Counsel was ineffective for failing to call Taylor and members of his church as witnesses. As aforementioned, Applicant admitted he did not provide Counsel with the names of anyone from his church, nor could he definitively say he provide Counsel with Taylor's name prior to trial. Without specific leads as to potential witnesses that would be beneficial to Applicant, this Court finds Applicant has failed to prove Counsel was deficient.

This Court also finds Applicant has wholly failed to establish any prejudice resulting from Counsel's alleged failures. Prejudice from counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at the post-conviction relief hearing. *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Bassette v. Thompson*, 915 F.2d 932 (4th Cir. 1990), *cert. denied*, 499 U.S. 982 (1991). Applicant's mere speculation as to what a witness's testimony would have been cannot, by itself, satisfy his burden of showing prejudice. *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993); *Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995). An applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the post-conviction relief hearing in order to establish prejudice from the witness's failure to testify at trial. *Bannister v. State*, 333 S.C. 298, 509 S.E.2d 807 (1998). Applicant asserts Taylor knows Applicant did not commit these crimes and further asserts the members of his church could testify as to his good character and reputation within the church and community, therefore establishing he could not have

committed these crimes. However, Applicant wholly failed to present the testimony of any of these witnesses at the evidentiary hearing. Therefore, as Applicant merely speculated as to what these witnesses would have testified to, Applicant has failed to establish any resulting prejudice. Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to convey a plea offer

Applicant alleges Counsel was ineffective for failing to convey a plea offer. In particular, Applicant alleges Counsel never informed him of the State's offer to plead guilty to a reduced charge in exchange for a ten-year maximum sentence. In order to prevail on a claim counsel was ineffective for failing to convey a plea offer, the applicant must show: (1) plea counsel's failure to communicate the State's initial plea offer constituted deficient performance and (2) the applicant was prejudiced by the deficient performance, in other words there was a reasonable probability that but for this deficient performance, the applicant would have accepted the original plea offer. *Davie v. State*, 381 S.C. 601, 675 S.E. 416 (2009).

Applicant testified the only offer he received was for a five-year sentence and was relayed to him by a Greenville County public defender. Counsel, however, testified the only offer they received was for a plea to a reduced charge with a cap of a ten-year sentence. Counsel further testified he had ample opportunity to review the offer with Applicant and conveyed how beneficial a plea would have been to Applicant, but Applicant rejected the offer. This is also reflected in Respondent's Exhibit #2. This Court finds Counsel's testimony very credible, whereas Applicant's testimony is not credible. It is apparent Counsel communicated the offer to Applicant, and Applicant rejected the offer. This Court, therefore, finds Applicant has failed to establish Counsel was deficient.

Similarly, this Court finds Applicant has wholly failed to establish any resulting prejudice from this alleged deficiency. In order to establish prejudice from an alleged failure to convey a plea offer:

[A] defendant must demonstrate a reasonable probability that: (1) he “would have accepted the earlier plea offer had [he] been afforded effective assistance of counsel;” (2) “the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it,” and (3) “the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or sentence of less prison time.”

Collins v. State, 422 S.C. 250, 262, 810 S.E.2d 871, 877 (2018) (quoting *Missouri v. Frye*, 566 U.S. 134, 147 (2012)). Here, Counsel testified Applicant did not accept the plea offer, believing Victim would not appear for the trial. Indeed, Applicant testified he would not have accepted a plea offer and did not accept the alleged five-year offer because he is innocent of these crimes. Based on the foregoing, there is no indication Applicant would have accepted the plea offer. Accordingly, this allegation must be denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to an 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 Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to and remain in the custody of the State

AND IT IS SO ORDERED this 8 day of March, 2019.



R. SCOTT SPROUSE
Presiding Judge
Tenth Judicial Circuit

FILED
2019 MAR -8 P 3:08
CLERK OF COURT
TENTH JUDICIAL CIRCUIT

Waltham, South Carolina