

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County

Honorable Edgar W. Dickson, Circuit Court Judge

RECEIVED

JAN 22 2018

S.C. SUPREME COURT

BENJAMIN PAUL GREEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001388

APPENDIX

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JULIE COLEMAN
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRANSCRIPT – JUNE 15 – JUNE 17, 2009	1
TRANSCRIPT – SEPTEMBER 15, 2009	1
APPLICATION FOR POST-CONVICTION RELIEF	312
RETURN	321
POST-CONVICTION RELIEF HEARING TRANSCRIPT – SEPTEMBER 11, 2015	328
TRANSCRIPT – JUNE 30, 2016	410
EXHIBIT RECEIPT - SEPTEMBER 11, 2015	456
PLAINTIFF’S EXHIBIT #7 – TEXT MESSAGES	457
COURT’S EXHIBIT #1 – HANDWRITTEN PCR ISSUES	459
ORDER OF DISMISSAL	471
MOTION TO RECONSIDER	481
INDICTMENTS	486

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

CIRCUIT COURT
2007-GS-02-190 & 191

STATE OF SOUTH CAROLINA,

-vs-

TRANSCRIPT OF RECORD

BENJAMIN PAUL GREEN IV,
Defendant.

HEARD ON MONDAY, JUNE 15, 2009

TUESDAY, JUNE 16, 2009

WEDNESDAY, JUNE 17, 2009

BEFORE:

THE HONORABLE DOYET A. EARLY III

AND A JURY

APPEARANCES:

Counsel on behalf of the State:

Susanna Ringler, Esq.
Susan O. Porter, Esq.

Counsel on behalf of the Defendant:

Michael D. McMullen, Esq.

Cheri L. Young, RPR
Official Court Reporter
P O Box 1154
Aiken, SC 29802-1154

EXAMINATION INDEX

TOMMY PLATT

(Jackson vs Denno Hearing)

DIRECT BY MS. RINGLER 7

CROSS BY MR. McMULLEN 11

(Proffered)

DIRECT BY MS. RINGLER 81

CROSS BY MR. McMULLEN 83

DIRECT BY MS. RINGLER 98

CROSS BY MR. McMULLEN 143

REDIRECT BY MS. RINGLER 177

WILLIAM SHAWN ZEIGLER

DIRECT BY MS. RINGLER 178

CROSS BY MR. McMULLEN 182

JASON FEEMSTER

DIRECT BY MS. RINGLER 189

LYNDA WILLIAMSON

DIRECT BY MR. McMULLEN 223

CROSS BY MS. PORTER 232

REDIRECT BY MR. McMULLEN 234

EXHIBIT INDEX

		MAR	/	ADM
1	State's:			
2				
3				
4	1	Photograph	81	127
5	2	Photograph	81	127
6	3	Yahoo LittleMandy14SC profile	102	102
7	4	Archived chat		114
8	5	Poster		128
9	6	Cell phone text blow-up		138
10	7	Directions		138
11	8	Photograph		141
12	9	Photograph		141
13	10	Herbal supplement		181
14	11	Cell phone		197
15	12	Herbal supplement		197
16	13	Trojans		197
17	14	Two DVDs		197
18	15	Bacardi liquor		197
19	16	Encase report		201
20	17	Chat printout		188
21	18			
22				
23				
24				
25				

1 Defendant's:

2	1	Photograph - North Augusta High School 1994	229
3	2	Photograph - North Augusta High School 1995	230
4	3	Yahoo member photo	226
5	4	Photograph meetup.com	227
6	5	Photograph - North Augusta High School 1996	228
7			
8			
9			

10 Court's:

11	1	Defendant's Requested Voir Dire of Jury	67
12	2	Stipulation	200
13	3	Note from the jury	279
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 ON MONDAY, JUNE 15, 2009 AT 2:36 P.M.:

2 THE COURT: Ms. Ringler? Let me have order,
3 please. Ma'am, you want to have a seat? Thank you.

4 MS. RINGLER: Thank you, Your Honor.

5 This is State versus Benjamin Paul Green the
6 Fourth, indictment number 2007-GS-02-190 and 191. The
7 State has a motion before -- a pretrial motion today, Your
8 Honor, a motion to amend the indictment. I have a copy of
9 it for you, Your Honor.

10 THE COURT: No, sir. Mr. Mert, he's the lawyer.
11 Let him come.

12 (Pause.)

13 THE COURT: All right. Madam Court Reporter, did
14 you get the two indictments?

15 THE COURT REPORTER: Yes, sir.

16 THE COURT: Do we have Mr. Benjamin Paul Green
17 the Fourth present?

18 MR. McMULLEN: Right here, sir.

19 THE COURT: Thank you. You're represented by
20 Mr. Michael McMullen of the Richland County Bar?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. Ms. Ringler.

23 MS. RINGLER: Thank you, Your Honor. In the
24 motion -- excuse me. In the indictment there's a line
25 that says, from his residence in the State of Georgia.

TOMMY PLATT - DIRECT

1 The Defendant is in fact a resident of Columbia, South
2 Carolina.

3 So the State is moving under South Carolina Code
4 17-19-100 to strike that phrase from the indictment. That
5 it was -- it doesn't change the underlying offense, and it
6 is not prejudicial to the Defendant so the State would
7 move to strike that phrase at this time.

8 THE COURT: Thank you. Any opposition to that,
9 Mr. McMullen?

10 MR. McMULLEN: No, sir, Your Honor.

11 THE COURT: So granted.

12 MS. RINGLER: Thank you, Your Honor.

13 THE COURT: All right. What else does the State
14 have?

15 MS. RINGLER: Just that, Your Honor, we have the
16 case agent here, Your Honor, to go ahead and get the
17 Jackson V. Denno hearing over with before the trial
18 tomorrow, and I believe the defense has several motions.

19 THE COURT: All right. Call your first witness.

20 MS. RINGLER: Thank you, Your Honor, the State
21 calls Investigator Tommy Platt.

22 TOMMY PLATT, having been duly sworn, was examined
23 and testified as follows:

24 THE COURT: Please come forward. Have a seat in
25 the witness box. State your full name for the record,

TOMMY PLATT - DIRECT

1 spelling your last.

2 THE WITNESS: Tommy Platt, P. L. A. T. T.

3 DIRECT EXAMINATION

4 BY MS. RINGLER:

5 Q. Thank you. Investigator Platt, where do you presently
6 work?

7 A. Aiken County Sheriff's Office.

8 Q. And what do you do at the Aiken County Sheriff's
9 Office?

10 A. I'm a polygraph examiner.

11 THE COURT: Hold on one second. Let us know when
12 you're ready.

13 MR. McMULLEN: Yes, Your Honor. Thank you,
14 Judge.

15 THE COURT: Thank you.

16 BY MS. RINGLER:

17 Q. Were you working as a polygraph examiner in October of
18 2006?

19 A. No. I was a juvenile investigator then.

20 Q. What did you do as a juvenile investigator?

21 A. We investigated crimes involving criminal sexual
22 conduct with minors, child abuse cases, homicide by child
23 abuse.

24 Q. At that time, were you conducting any online,
25 proactive investigations online through the ICAC task

TOMMY PLATT - DIRECT

1 force?

2 A. Yes.

3 Q. Internet Child Abuse Task Force?

4 A. Yes.

5 Q. Did you conduct one on October 13th, 2006?

6 A. I did.

7 Q. Did you make an arrest as a result of that
8 investigation?

9 A. We did.

10 Q. Could you talk a little bit about the arrest that
11 occurred in that case?

12 A. That afternoon on that date myself, Investigator Jason
13 Feemster and Investigator Shawn Zeigler were online
14 working proactive cases. The suspect was, started --
15 initiated a chat with us which he continued to talk about
16 having sex with what he appeared to be or what he believed
17 to be a 14-year-old girl.

18 Later on that evening he traveled to a predetermined
19 location in Aiken County.

20 Q. And what happened when he approached that
21 predetermined location?

22 A. When he pulled into the area that we talked about
23 meeting, we approached him, ID'd him, verbally Mirandized
24 him, which he agreed to talk with us. We talked.

25 Q. Did you use a card when you read him his Miranda

TOMMY PLATT - DIRECT

1 warnings?

2 A. I did.

3 Q. Do you have that card on you today?

4 A. I do.

5 Q. Would you mind showing it to the Court?

6 A. (Complying.)

7 Q. I see you're holding a card in your hand. Those were
8 the warnings that you read him that night?

9 A. Yes.

10 Q. What happened -- where was the Defendant when you read
11 him his warnings?

12 A. Standing outside of his vehicle at the end of Magnolia
13 Court.

14 Q. Was he in handcuffs at the time?

15 A. He was not.

16 Q. Was he placed in handcuffs?

17 A. Yes, he was.

18 Q. When was that?

19 A. It was after he was Mirandized and we ID'd him,
20 Mirandized him, talked to him a little bit. After talking
21 with him, I asked him if he wanted to write a statement.
22 He stated no. I asked him if he wanted to go back to the
23 sheriff's office to talk on video. He said no. So we
24 called for a road unit.

25 Q. And that's the point when he was placed in handcuffs?

TOMMY PLATT - DIRECT

1 A. Yes.

2 Q. So while you were asking him some questions there at
3 the scene he was not in handcuffs?

4 A. No.

5 Q. But he was standing outside of his car or was he --

6 A. Standing outside of his car.

7 Q. Okay.

8 A. And then we walked to my car to talk.

9 Q. While he's standing outside of your car, did he --
10 excuse me, outside of his car, did he make any statements?

11 A. Yes. We asked why he was there. He told us he came
12 to meet Mandy. He also stated -- there was a bottle of
13 alcohol, I believe in the back seat of the car, the seal
14 was broken which I can't remember if it was Investigator
15 Zeigler or Investigator Feemster made a comment about that
16 and I asked him. He said that he had taken a sip of it
17 but he wasn't drunk or driving impaired.

18 Q. So you said he made a few statements by his car and
19 then you went to your patrol -- were you in a patrol car
20 or were you in an unmarked car?

21 A. Unmarked.

22 Q. So you went to your unmarked car. What happened at
23 that point?

24 A. We sat down in the front seat. And we talked about
25 it, about what happened, why he was there. I asked him

TOMMY PLATT - CROSS

1 where his computer was, which he stated was at his
2 residence. When he started talking with who he believed
3 was Mandy, he stated that day. He, Mr. Green, got a
4 little emotional, stated that his wife had just had a baby
5 two weeks prior to him coming down.

6 And he stopped talking a little bit after that. Told
7 me where he worked, what he did, where he worked.

8 Q. Did the Defendant -- excuse me. Did Mr. Green ask for
9 an attorney at any time?

10 A. No.

11 MS. RINGLER: Nothing further from the State,
12 Your Honor.

13 THE COURT: Cross?

14 MR. McMULLEN: May it please the Court.

15 CROSS-EXAMINATION

16 BY MR. McMULLEN:

17 Q. Agent Platt -- is it agent or deputy?

18 A. Investigator.

19 Q. Investigator. Good afternoon.

20 A. Good afternoon.

21 Q. You -- were you in the cul-de-sac yourself when this
22 happened?

23 A. Yes, I was.

24 Q. Were you in a vehicle?

25 A. Yes, I was.

TOMMY PLATT - CROSS

1 Q. Was anyone in the vehicle with you?

2 A. No.

3 Q. Were you -- was anybody in another vehicle with you?

4 A. Yes.

5 Q. Who were they?

6 A. Investigator Jason Feemster and Investigator Shawn
7 Zeigler.

8 Q. Who approached Mr. Green first?

9 A. I would say it would be me and Investigator Zeigler.

10 Q. And did Mr. Green get out of his car at that point or
11 did you approach his car and ask him to get out?

12 A. I approached the car and asked him to get out.

13 Q. And then, what was it that you said to him at that
14 point, sir?

15 A. I think that's when we asked for his identification.

16 Q. And when he produced it, at that point is it fair to
17 say that you motioned for the other officers to delay
18 handcuffing him? At that point you didn't put him in
19 handcuffs?

20 A. I don't think we put him in handcuffs until we got him
21 back out of my car.

22 Q. Did you make some sort of signal, like, this guy's not
23 dangerous, you guys don't have to throw him to the ground?

24 A. No. We did a pat down for weapons.

25 Q. Yes, sir.

TOMMY FLATT - CROSS

1 A. But, no, I don't think we handcuffed him right then.

2 Q. And at that point did you -- did you begin a search of
3 the vehicle then?

4 A. What we did was inventoried it for the tow truck.

5 Q. Was that when it happened, right then at the pat
6 down?

7 A. Yes.

8 Q. So at that point were you aware that he was getting
9 arrested or he was in custody or --

10 A. Yes.

11 Q. -- not free to leave at that point?

12 A. No. He was not free to leave at that point.

13 Q. And then did you ask him at that point whether he was
14 there to meet a 14-year-old girl?

15 A. He told me, the was there to meet Mandy. And I asked
16 him if he was Black Slider and he said yes, which Black
17 Slider is the screen name he was using.

18 Q. So what did you ask him that led him to say, I'm here
19 to meet a 14-year-old girl?

20 A. We asked him what he was doing there.

21 Q. And at that point you already knew what kind of
22 vehicle he would be driving up in?

23 A. He told us what type of vehicle he would be driving.

24 Q. Were you the person posing as LittleMandy on the other
25 end of the computer?

TOMMY PLATT - CROSS

1 A. Yes, sir.

2 Q. Were you doing that from your office at the sheriff's
3 department?

4 A. Yes.

5 Q. How far is that from the predetermined location?

6 A. Oh, 10, 15 miles.

7 Q. So, he said -- when you said, what are you here for he
8 said, I'm here to meet a 14-year-old girl?

9 A. I believe he said that he was there to meet Mandy.

10 THE COURT: Well, what did he say? Meet a
11 14-year-old girl or meet Mandy; or do you know?

12 THE WITNESS: Your Honor, I can't be 100 percent
13 sure if he said meet a 14-year-old girl or meet Mandy.

14 BY MR. McMULLEN:

15 Q. Now, is this -- let me just -- Your Honor, may I hand
16 up a copy of the discovery packet just for your reference
17 in this?

18 THE COURT: Yes, sir. Let's move along. This is
19 just a Jackson V. Denno.

20 MR. McMULLEN: Yes, sir. Here's the packet, Your
21 Honor.

22 THE COURT: Thank you.

23 MR. McMULLEN: Do you want to look at it?

24 MS. RINGLER: I should have it. Thank you.

25 MR. McMULLEN: Yes, ma'am.

TOMMY PLATT - CROSS

1 BY MR. McMULLEN:

2 Q. In your statement, sir, you say, initiated a chat,
3 during the chat you posed as a 14 year old and then when
4 you got there at -- at what time of day was this?

5 A. It was in the evening. When Mr. Green arrived?

6 Q. Yes, sir.

7 A. It was in the evening. I would say nine, 10 o'clock
8 at night.

9 Q. Okay. And -- your predetermined location with him,
10 and he provided ID, you say in your report. Do you have
11 your report with you?

12 A. Uh-huh.

13 Q. And then what is the statement? Is it in here?

14 A. What is what statement?

15 Q. The statement that you're trying to get in that
16 Mr. Green said. I mean, this is kind of what the case is
17 about. What statement did he say that --

18 THE COURT: Let me ask the question. You just
19 testified that he said, I'm here to meet Mandy or I'm here
20 to meet a 14-year-old girl. Where is it in your report
21 that you say he says that? Isn't that what you're trying
22 to ask him?

23 MR. McMULLEN: Yes, sir.

24 THE WITNESS: Requested to meet what he believed
25 to be a 14-year-old girl at a predetermined location.

TOMMY PLATT - CROSS

1 That's what I have in my report that Green stated, that he
2 was the person using the screen name Black Slider and
3 requested to meet what he believed to be a 14-year-old
4 girl at the predetermined location.

5 BY MR. McMULLEN:

6 Q. Are those his exact words?

7 A. That's what I put in my report so --

8 Q. Yes, sir.

9 A. -- I would say that's what he said to me.

10 Q. And that was before or after the Miranda warnings?

11 A. I Mirandized him as soon as we got his ID out.

12 Q. And then you said, what are you here for; is that
13 correct?

14 A. That's correct.

15 Q. And I guess I'm just trying to know the exact words
16 that the man used that are going to be used against him.
17 Do you have those written down anywhere, his exact words
18 or --

19 A. No, I just have in my report that --

20 Q. The substance of it; is that right?

21 A. Yes, sir.

22 MR. McMULLEN: Your Honor, I'm a little bit at a
23 loss because I'm not sure of the exact statement that
24 they're --

25 THE COURT: You're what?

TOMMY PLATT - CROSS

1 MR. McMULLEN: I'm at a loss because I'm not
2 certain what exact statement they're trying to admit. Am
3 I going to hear it for the first time in front of the jury
4 or can he tell me?

5 THE COURT: You've already asked him three or
6 four times. He's answered you three or four times. I
7 don't know what else he can tell you.

8 MR. McMULLEN: All right.

9 THE COURT: They're here doing a Jackson V.
10 Denno. That's exactly what he's testifying about, whether
11 or not they Mirandized the guy and what he said. He's
12 testified that he said what he's saying.

13 MR. McMULLEN: I'm sorry. I missed that part.

14 BY MR. McMULLEN:

15 Q. Would you just say it one more time for me so I can
16 know?

17 A. What part do you want me to say?

18 Q. The words that the man used.

19 A. From my report: I verbally Mirandized the subject in
20 which he agreed to talk with us. Green stated that he was
21 using the screen name Black Slider and requested to meet
22 what he believed to be a 14-year-old girl at the
23 predetermined location.

24 Q. So, did he use the words, I believed to be 14?

25 A. That's what I have in my report.

1 Q. Is that what you -- are those your words or his?

2 THE COURT: Let me ask him: What is your best
3 recollection as to what the man said? How about that
4 that?

5 THE WITNESS: That he was there to meet a
6 14-year-old girl.

7 THE COURT: Thank you.

8 BY MR. McMULLEN:

9 Q. All right. He didn't use the word Mandy?

10 A. I'm reading it right now from my report. That's what
11 I wrote down.

12 MR. McMULLEN: All right. No further questions.
13 I'm going to ask that that statement be kept out since
14 there's no real precision as to what the words are. And I
15 have not been provided, you know --

16 THE COURT: No, I don't know.

17 MR. McMULLEN: Sir?

18 THE COURT: You said, you know; I don't know.

19 MR. McMULLEN: I have not been provided -- I
20 still don't understand what, what words were used. What
21 statements --

22 THE COURT: I'm sorry you don't understand. I
23 don't know how we can make you understand it any more.

24 MR. McMULLEN: All right. I was just looking for
25 the exact words of the statement and that's the only

1 reason that I object to its admission at this point.

2 The statement is just -- I have -- I think it's
3 not reliable that he would say, I'm here at this
4 predetermined location.

5 THE COURT: Sir, we're here on a Jackson V. Denno
6 hearing. We're not here to determine reliability. We're
7 here to determine whether or not by the preponderance of
8 the evidence the statement, he was issued his Miranda
9 warnings and whether or not it was voluntary. That's what
10 we're here for.

11 MR. McMULLEN: All right.

12 THE COURT: But I'll be glad to hear from the
13 solicitor's office, I mean, the AG's Office.

14 MS. RINGLER: Your Honor, the State contends that
15 he was given his warnings. He voluntarily waived those
16 rights and his statement was voluntarily given.

17 THE COURT: Absolutely. Of course I'm just
18 acting as the gatekeeper at this point in the game. I
19 have to determine whether or not they've proven by the
20 preponderance or the greater weight of the evidence
21 whether he was given his Miranda warnings or whether or
22 not it was voluntary. And I find by the preponderance of
23 the evidence that is.

24 That simply means it will be presented to the
25 jury. They have to find by beyond a reasonable doubt

1 those two things happened and whether or not it was
2 reliable.

3 You can argue that, as my grandmother used to
4 say, until the cows come home as to whether or not it's
5 reliable or whether or not they value what he said. That
6 all goes to the weight, not the admissibility.

7 MR. McMULLEN: Yes, sir.

8 THE COURT: Thank you. Anything else?

9 MS. RINGLER: I think that's all from the State,
10 Your Honor.

11 THE COURT: You may step down.

12 THE WITNESS: Thank you, sir.

13 THE COURT: Mr. McMullen, I need to know what
14 motions you filed that you want me to hear this afternoon.

15 MR. McMULLEN: I'm making all these motions, you
16 know, in open court. First, Your Honor, would be the
17 Section 16-15-342, criminal solicitation of a minor
18 statute, is unconstitutional because it's a first
19 amendment protected speech.

20 THE COURT: All right. What else do you want to
21 move for? That's number one. What's next?

22 MR. McMULLEN: That it's vague.

23 THE COURT: No, sir. No, sir.

24 MR. McMULLEN: Okay.

25 THE COURT: You want to move that 16-15-342 is

1 unconstitutional for a litany of reasons?

2 MR. McMULLEN: Yes, sir.

3 THE COURT: That's your first motion.

4 MR. McMULLEN: Yes, sir.

5 THE COURT: What's your next motion going to be?

6 MR. McMULLEN: Next motion is --

7 THE COURT: Just take a deep breath and get
8 organized.

9 MR. McMULLEN: Yes, sir. Can I get these other
10 people's stuff...

11 THE COURT: Wallis, please come up here and just
12 move your stuff that seems to be in the way.

13 MS. ALVES: Yes, sir.

14 (Pause.)

15 THE COURT: Thank you. Ms. Alves, I apologize.

16 MS. ALVES: That's all right.

17 MR. McMULLEN: Thank you, sir.

18 Your Honor, pretrial motions would be Rule 106
19 was violated. Rule 1002, Rule 1004. This is not
20 competent evidence, the chat that's used.

21 THE COURT: All right. Rule 106. 1002, 1004 are
22 all violated.

23 MR. McMULLEN: Yes, sir.

24 THE COURT: What other motions do you have?

25 MR. McMULLEN: Motion to -- I'm sorry. There was

1 no present ability to carry out the criminal sexual
2 conduct with a minor.

3 THE COURT: Is that unconstitutional? That's
4 something else. No present ability.

5 MR. McMULLEN: There's no overt, there's no overt
6 act in furtherance of this.

7 THE COURT: All right. What else?

8 MR. McMULLEN: Entrapment. And then to keep out
9 any conversations subject of any prior bad acts under Lyle
10 that might be elicited by the prosecution.

11 THE COURT: Lyle argument.

12 MR. McMULLEN: And then I would respectfully make
13 a motion about the discovery that's been provided or the
14 lack of it. I can go into that whenever you like.

15 THE COURT: No, sir. I'm trying to get a handle
16 on what all you're going to argue this afternoon.

17 MR. McMULLEN: That's it.

18 THE COURT: Then you got a discovery argument,
19 motion.

20 MR. McMULLEN: Uh-huh. Brady and Rule Five.

21 THE COURT: Beth Ann Young, how many cases do you
22 got? How many do we got signed up? What kind of cases?
23 Short ones or long ones? Drugs?

24 MS. YOUNG: Simple possessions.

25 MS. STURGIL: And breach of trust.

1 THE COURT: That's three drugs and breach trust.

2 MS. STURGIL: And ABHAN and unlawful neglect of
3 children.

4 MR. WEEKS: There are some back there that aren't
5 physically signed up yet that we brought over to plead.

6 (Off-the-record discussion.)

7 THE COURT: I'm going to take pleas until four
8 o'clock, give Mr. McMullen a chance to get organized and
9 then what we don't finish up, we'll finish in the morning.
10 Fair enough?

11 Sorry, ladies.

12 MS. RINGLER: No problem, Your Honor.

13 THE COURT: Thank you. Does that work out fine,
14 Mr. Solicitor? Mr. Thurmond, is that okay?

15 MR. THURMOND: Yes, sir.

16 (Thereupon, at 3:51 p.m., and thereafter other
17 matters were heard by the Court. At 4:14 p.m., the
18 hearing of this matter resumed as follows:

19 THE COURT: Mr. McMullen?

20 MR. McMULLEN: May it please the Court.

21 THE COURT: Yes, sir.

22 MR. McMULLEN: Your Honor, if I may, I'd like to
23 move for the suppression of the Internet chat that I
24 believe the State seeks to introduce. And we do so under
25 Rule 106.

1 THE COURT: Sir, I thought I made a little list
2 of things you had to do this afternoon. First one you're
3 going to argue to me is 16-15-342 is unconstitutional.

4 MR. McMULLEN: That's what I need.

5 THE COURT: That's what I wrote. And I haven't
6 gotten your memo on this. You got a memo, Mr. McMullen?

7 MR. McMULLEN: No, sir. It's my belief under
8 Rule Four I'm allowed to make these motions in open court.

9 THE COURT: Well, you are, but, you know, if you
10 want me to look at something and study it, most judges
11 like a little something in writing so they can look at
12 it. But that's okay. I'll listen to you.

13 MR. McMULLEN: May it please the Court.

14 THE COURT: Yes, sir.

15 MR. McMULLEN: 16-15-342 is, I would say,
16 unconstitutionally broad and it's a prior restraint on
17 speech. It's not narrowly tailored to achieve the State's
18 purpose which is a laudable goal. Of course, it chills
19 free speech and it makes, it proscribes speech that would
20 otherwise be constitutionally protected.

21 THE COURT: Do you have anything other than
22 McMullen on that cite?

23 MR. McMULLEN: Yes, sir. In Roth versus --
24 United States versus Roth -- I'm sorry. Roth versus
25 United States, 354 US 476 in 1957, they stated a matter

1 which was sexually oriented but not obscene is fully
2 protected by the constitution.

3 They talk about sensitive tools being needed in
4 Paris Adult Theatre versus Slaton in 1973 413 US 49.
5 It's, I believe, the dissenting opinion of Justice
6 Brennan.

7 He states, obscenity can turn on the individual
8 idiosyncrasies of individuals. It says, obscenity at most
9 is the expression of offensive ideas. There are regimes
10 in the world where ideas offensive to the majority are
11 suppressed. It seems that one of the most offensive
12 experiences in my life was a visit to a nation where
13 bookstalls were filled only with books on math and books
14 on religion. Mr. Brennan says, I'm sure I would find
15 offensive most of the books and movies charged with being
16 obscene. But in a life that has not been short, I've yet
17 to be trapped into seeing or reading something that would
18 offend me.

19 He says later, I see ads in bookstores and neon
20 lights that resemble bait for those who seek vicarious
21 exhilaration, but as a parent or a priest or a teacher, I
22 would have no compunction in edging my children or wards
23 away from the books or movies that did no more than excite
24 a man's base instincts. But I never supposed that
25 government was permitted to sit in judgment on one's

1 tastes or beliefs save as they involved action within the
2 reach of the police power of government.

3 THE COURT: How in the world is that germane to
4 somebody allegedly trying to have, solicit sex over the
5 Internet with a minor?

6 MR. McMULLEN: Your Honor, apparently the statute
7 defines that as, communicates with or attempts to contact
8 or communicate with a person. And then it defines the
9 sexual activity in 16-15-375.

10 And in 375, the definition of sexual activity is
11 so broad that sex education teachers could be guilty of
12 it, a high school girl who turns 18 might go out with her
13 date on Friday night and he's 17. If she asks him, let's
14 go out to lookout point and smooch like we always do,
15 she's violated the law. It's just very broad, and not
16 narrowly tailored such that people have notice as to what
17 is illegal.

18 It creates the unusual situation, Your Honor,
19 where apparently in B., consent is a defense if the person
20 is between 16 and 18. And it's not a defense if they're
21 under 16.

22 THE COURT: Where are you looking at? What are
23 you reading?

24 MR. McMULLEN: 16-15-342.

25 THE COURT: 342.

1 MR. McMULLEN: B.

2 THE COURT: B.?

3 MR. McMULLEN: Yes, sir.

4 THE COURT: Okay.

5 MR. McMULLEN: Oddly enough, consent is a defense
6 if it's a real child who is 17 even though it may be the
7 day before her 18th birthday. However, if I'm really
8 talking or if someone is really talking to a law
9 enforcement officer who says it's my 18th birthday
10 tomorrow, somebody says, well, since you're going to be
11 legal tomorrow, let's go do something, that would violate
12 statute.

13 So a person who actually communicates with a real
14 child is not punished under this statute while someone
15 who's talking to an adult would be.

16 This is -- it also says, Your Honor, in Section
17 D., that it's not a defense to prosecution on the basis of
18 consent or otherwise. So, there's no defense to this, a
19 person reasonably believed to be under the age of 18, is a
20 law enforcement agent or officer acting in official
21 capacity. But were otherwise, I think that kind of takes
22 away any affirmative defense.

23 So --

24 THE COURT: Let me just ask this question: Has
25 this statute been challenged constitutionally in our

1 supreme court?

2 MR. McMULLEN: Not to my knowledge. I've seen no
3 reported case, but the State may know.

4 MS. RINGLER: No, Your Honor. We had two
5 opinions with regard to this statute and neither ones were
6 constitutional challenges addressed by the Court.

7 MR. McMULLEN: One is Odom.

8 MS. RINGLER: And Gaines would be the other case,
9 Your Honor. I have copies of both.

10 MR. McMULLEN: So, I mean, I hate to ask the
11 Court to declare a statute unconstitutional but maybe
12 another ground would work. But I do --

13 THE COURT: Why would you hate to ask me that?

14 MR. McMULLEN: Well, I need to do my job. It's
15 just a tough spot to put anyone in to try and find this
16 unconstitutional.

17 We all, I think, in this courtroom want children
18 to be protected. And so it's a difficult decision and I
19 know hard cases sometimes make bad law.

20 But -- let's see. But coupled with the
21 definition of sexual activity found in 16-15-375, five,
22 the statute really makes it difficult to determine what
23 speech is prescribed and that would have a chilling
24 effect.

25 THE COURT: Anything else on that point?

1 MR. McMULLEN: Yes, sir. He's charged -- I'm
2 sorry. First amendment.

3 Oh. The definition of reasonably believed, Your
4 Honor. I would assert to define the person's state of
5 mind is reasonably believing is to un -- improperly dilute
6 the burden of proof in the case.

7 The statute through legislation seeks to do what
8 the Court would never be able to do which is to instruct
9 the jury, you don't have to find this one element beyond a
10 reasonable doubt.

11 They used the term reasonable belief in the
12 statute so frequently that were you to charge a jury the
13 language of the statute, you'd have to refer to the
14 Defendant as if he's already presumed guilty because they
15 say the person who reasonably believed was this old or
16 this old or this old. And so by the time the jury gets
17 done hearing the reasonable belief, they've got -- it's
18 almost like the Court is putting its onus or its stamp of
19 approval on the proof in the case.

20 It seems that might be cured, Your Honor, by
21 merely removing reasonably and just that they believed,
22 and make the State prove beyond a reasonable doubt what
23 someone believed rather than to say that it was a
24 reasonable belief.

25 I contend, Your Honor, that that reasonable

1 belief language really does not shift the burden, it at
2 least reduces or dilutes the burden.

3 THE COURT: Anything else on the
4 unconstitutionality of that?

5 MR. McMULLEN: For that I would cite Yates versus
6 Aiken, 484 US 211 1988, a case involving this actual town,
7 where they said the due process clause of the fourth
8 amendment (sic) protects the accused against constitution
9 -- against conviction except upon proof beyond a
10 reasonable doubt if every fact necessary constitutes a
11 crime of which he is charged.

12 I would also cite Henry Winship 397 US 358 at
13 364, citing the burden of proof beyond a reasonable doubt
14 is a bedrock principle. It's the counter weight to the
15 presumption of innocence. Samson versus Montana. These
16 cases all apply to the 14th amendment. They all apply to
17 the State's first amendment and the sixth amendment, I'm
18 sorry. The right to be tried and proved guilty beyond a
19 reasonable doubt.

20 State versus Meades, is a 1999 South Carolina
21 case where the Court, Supreme Court states that the
22 Judge's circumstantial evidence charge instructed jurors
23 to seek a reasonable explanation other than the guilt of
24 the accused. And the idea there was the Court explained
25 that when the jurors have to seek a reasonable explanation

1 other than the guilt, that that implies the guilt and that
2 there's an affirmative duty to rebut that, that it shifts
3 the burden.

4 Also, Your Honor, Battle versus State which is a
5 2009 case. It's opinion number 26633 and it was decided
6 April 13th of this year by the Supreme Court. And in that
7 case a jury charge was unconstitutionally shifting the
8 burden of proof. And they cite the Meades case, State
9 versus Meades.

10 That's my argument there, Your Honor.

11 THE COURT: Does the State care to respond?

12 MS. RINGLER: Yes, Your Honor. With regard to
13 the first amendment allegations, the State would contend
14 that the statute does not simply prohibit speech, that it
15 actually is out to address conduct coupled with speech.
16 It seeks to prohibit the individual seeking out and
17 soliciting a child online by means for sex. So it's not
18 simply prohibiting content of speech, but it's meant to
19 get the action of reaching out and soliciting a child.

20 With regard to the -- that the language of
21 reasonable belief somehow affects the burden of proof, the
22 State would just contend that that's merely an element of
23 the crime that the State must prove and it in no way
24 affects the burden of proof, that the State must prove
25 that element beyond a reasonable doubt.

1 With regard to the vagueness argument, just for
2 this, Your Honor, that this statute does provide a person
3 of ordinary intelligence, that this would be prohibited by
4 law. And it's not arbitrarily imposed. In this instance,
5 Your Honor, the Defendant was aware that his conduct was
6 ill advised. He asked the child during the chat, quote,
7 yo, Y. O., peeps let you out after dark. So he wanted to,
8 he sought to make sure that the daughter -- excuse me,
9 that the child was alone and that she would be able to
10 meet him without the presence of her parent.

11 And so, Your Honor, we would think that a
12 reasonable person would understand that luring a child
13 online for sex would be prohibited by law. In this
14 instance he knew what he was doing was ill advised because
15 he wanted to make sure that the child was without a parent
16 at the time.

17 And, Your Honor, this would go -- this would
18 prohibit the teaching of sex education. Again, it's the
19 soliciting, it's the asking of sex. It would in no way
20 inhibit a teacher to be able to teach children under the
21 age of 18 about sex.

22 I think, Your Honor, that he pointed out the
23 defense was associated with individuals close in age, that
24 consent is a defense when the person is at least 16 years
25 of age. And in this case, Your Honor, the uncover

1 presenter was 14 years of age. So that defense isn't
2 brought into -- this isn't an issue as applied in this
3 case.

4 Nothing further from the State, Your Honor.

5 THE COURT: Thank you. All right. Let's go to
6 the violations of the rules. 106, one double-02, (1002)
7 one double 04 (1004). Which rule are you referring to?

8 MR. McMULLEN: I'm sorry, sir?

9 THE COURT: What rules are you referring to?

10 MR. McMULLEN: Rule 106 of the rules of
11 evidence. Remainder or -- remainder of or related writing
12 statements. The rule, Your Honor, states when a writing
13 or recorded statement or part thereof is introduced by a
14 party, an adverse party may require the introduction at
15 that time of any other part or any other writing or
16 recorded statement which ought in fairness to be
17 considered contemporaneously.

18 I would submit, Your Honor, that the printout
19 that I've been provided in the discovery is not a complete
20 conversation, and that the rule of completeness, as it's
21 often called, would demand in fairness to us that the
22 entire conversation would be there.

23 As you can see what I have handed up, the State's
24 discovery to me, the chat that they would seek to
25 introduce begins, I haven't before.

1 THE COURT: That is their complete transcript of
2 what they have; is that not correct?

3 MR. McMULLEN: Yes, Your Honor.

4 THE COURT: But you just take the position that
5 they've left something out?

6 MR. McMULLEN: Yes, sir. There's no conversation
7 I know of that would begin that way. And I think the
8 State would agree, stipulate, that this was the one and
9 only conversation they allege Mr. Green had with this
10 persona.

11 So whatever he -- and they contend he initiated
12 the chat and, of course, the first line is from her, or
13 her persona. And, you know, the State contends that --
14 well, I'm getting off the subject when I talk about that.

15 Well, you will notice the third line she already
16 says, I hooked up with a 16 year old and then he says
17 later, about halfway down the page, he asks, isn't that
18 you on the bed in your profile pic.

19 Now, you'll notice in the materials you have,
20 there is no profile pic. And I asked for that beginning
21 one week after this arrest. And I received it eventually.
22 But what I got is a photograph of a woman who at the time
23 of the photograph, I understand, was a probation officer
24 and who was nowhere near 14 years of age.

25 THE COURT: So you want me to exclude this

1 transcript because it violates Rule 104?

2 MR. McMULLEN: Yes, sir. That -- I think in
3 fairness, we ought to have the rest of the conversation.

4 THE COURT: And where is the rest of the
5 conversation, ma'am?

6 MS. PORTER: Your Honor, if I may, I'm going to
7 address this motion.

8 Your Honor, when one goes online and enters into
9 these chat rooms and begins these instant messenger chats,
10 specifically with Yahoo, which was the device that, the
11 software used in this case, anyone, not specifically law
12 enforcement, but anyone using Yahoo instant messenger, can
13 archive their chats.

14 When you hit save and institute this archiving
15 and recording of the chat, there's a timing delay. It
16 happens every time. There's absolutely no way to resolve
17 it, but it misses the very first line.

18 He is missing one line out of the entire chat.
19 We will stipulate and we only intend to introduce this one
20 chat. That's the only chat we've got. But, it is
21 something that could not be helped, cannot be recorded.
22 And we're talking about one line.

23 The purpose of Rule 106 is to prevent the State
24 from putting in two lines of a three- or four-page chat
25 and take it out of context. This is the entire chat.

1 THE COURT: If you tried to do that, he has the
2 right to put the rest of it in.

3 MS. PORTER: Yes, sir.

4 THE COURT: If this is all you've got, this is
5 all you've got. So it's complete. I don't see how that's
6 relevant.

7 MR. McMULLEN: If the -- if the written -- if the
8 writing is purportedly a record of a conversation, then
9 the entire conversation ought in fairness to be recorded.

10 Just as a contract that someone would seek to
11 enforce in this courtroom, missing a line or two or three,
12 we don't know how many.

13 Just -- let me just back up if I may, Your Honor.

14 Not to impugn anybody, but it seems to me that
15 there are other ways to record this. One would be to hit
16 the print page button on the computer. Another would be
17 to photograph the monitor. They had a camera to
18 photograph Mr. Green that night. And you could also cut
19 and paste. It doesn't just disappear.

20 Now, and I also believe that one of the things
21 that a person who signs up for Yahoo, what they have to
22 do, first of all, is they have to agree to the terms of
23 service for Yahoo which includes being 19 years of age to
24 create the profile which is why as you'll see later I
25 guess but LittleMandy's profile says age 114, but you have

1 to be over 18 or it won't allow you to be in chat room
2 legally.

3 And then I believe one of the settings you can
4 use for your preferences is auto archive every
5 conversation, put them in a folder. But if that's not
6 true, there's a better way and the State normally uses it
7 and it's Camtasia.

8 Perhaps the Court's familiar with it. But
9 Camtasia is a program that is designed to document in
10 realtime what is on a person's monitor and if the person
11 so chooses also they could have a camera and a microphone
12 that would be activated so you could even -- somehow a
13 split screen. I've never seen one but I've read about
14 them. It's downloadable. It's what they normally use and
15 it doesn't lose -- it captures the entire conversation.

16 But if, Your Honor, the officers knew that the
17 Camtasia machine wasn't working and if they knew that the
18 auto archive misses the first line, however much, however
19 long the time delay would be, then I respectfully, with
20 all respect to them, submit that they could have hit print
21 page, they could have photographed it. There are -- they
22 could have cut and pasted it and put it in a Word document
23 and printed it.

24 Rather -- theoretically, Your Honor, the first
25 line could be, hey, I enjoyed role playing and pretending

1 to be an older man after a younger girl. Have you ever,
2 you know, would you like to do that. Well, it could be.
3 And then the next line is, I haven't before.

4 THE COURT: It could be snowing outside.

5 MR. McMULLEN: And that's the problem with
6 getting part of the writing.

7 THE COURT: You've got the complete writing.
8 They don't have anything else.

9 MR. McMULLEN: All right, sir. And this writing,
10 what I don't know about it is it says it's Yahoo. There's
11 no date as to when it was printed out. I do know at the
12 preliminary hearing they said it wasn't available then.

13 THE COURT: Well, I mean, obviously, you're going
14 to have to people on the stand. You can cross-examine
15 them about that --

16 MR. McMULLEN: Yes, sir.

17 THE COURT: -- or anything you want to. I find
18 it does not violate rule --

19 MR. McMULLEN: 106.

20 THE COURT: -- 106.

21 MR. McMULLEN: Your Honor, Rule 1002 is a
22 requirement of an original. To prove the content of a
23 writing, recording or a photograph, the original writing,
24 recording or photograph is required except as otherwise
25 provided. And then the photograph's otherwise provided in

1 1004. Other evidence of that nature is admissible if the
2 original's not obtainable.

3 And basically the first statement of the
4 Defendant is not there. So, there's no indicia of
5 reliability that we would usually require.

6 THE COURT: What original are you talking about?

7 MR. McMULLEN: The -- well, just if there was
8 Camtasia recording or if there was a contemporaneously-
9 produced document.

10 MS. PORTER: Your Honor, this is the
11 contemporaneously-produced document. This is the original
12 by the auto archive.

13 Now in the Camtasia, although we attempted to use
14 that at the same time, and the testimony will show that
15 the State always attempts to do two types of recording,
16 the Camtasia did fail in this instance. We do not have
17 that.

18 THE COURT: That goes to the weight, not the
19 admissibility.

20 MS. PORTER: Yes, sir.

21 THE COURT: It may create reasonable doubt; I
22 don't know.

23 MS. PORTER: Yes, sir.

24 THE COURT: But it doesn't keep it out.

25 MR. McMULLEN: All right, sir. Move forward?

1 THE COURT: Please. Yes, sir. It's late.

2 MR. McMULLEN: Yes, sir.

3 Section 16-3-655 is criminal sexual conduct.

4 Mr. Green is accused of attempting to commit --

5 THE COURT: I apologize. Say that again.

6 MR. McMULLEN: 16-3-655, assault and criminal
7 sexual conduct. And basically, without going into the
8 entire definition of that, the allegation will be that he
9 attempted to commit criminal sexual conduct on someone
10 and --

11 THE COURT: And that person wasn't real.

12 MR. McMULLEN: Yes, sir. And also that there
13 was --

14 THE COURT: And you can't have sexual conduct
15 with a fictitious person.

16 MR. McMULLEN: Well, yes, sir. And also that
17 there's no present ability to carry it out.

18 According to the State versus Roy Murphy, 322
19 South Carolina 321, assault of a high and aggravated
20 nature is a lesser-included offense of first degree
21 criminal sexual conduct and therefore assault with intent
22 to commit CSC with a minor, it's also a lesser-included
23 offense of that. And the only element that's missing is
24 the touching.

25 So AHAN, assault of a high and aggravated nature,

1 is a lesser-included offense of criminal sexual conduct.
2 An assault, therefore, is an element of CSC and there is
3 no present ability to carry out the assault if he's on a
4 computer in one instance or if he's showing up and there's
5 nobody there.

6 But moreover, Your Honor, in this case the
7 transcript shows that he asks, is that you on the bed.
8 And it's an adult's photograph whose identity I found, but
9 it was through great effort, and recently. But she was a
10 probation officer and she was clearly not that old, and
11 then she was not employed as a law enforcement officer at
12 the time.

13 And officer -- Detective Platt at the preliminary
14 hearing testified to that effect but he thought she was a
15 probation officer. In fact, I believe at the time she was
16 married to a member of the sheriff's department. He's
17 left since but I think they know who she was.

18 But, this conversation could be a fantasy but
19 moreover on the second page she says, mom's working
20 tonight. And he says, so what does that mean. Mom's not
21 home. So are you going to come out. Sure. And then she
22 asks -- I'm sorry. He asks, do you have movies. And then
23 she says, you got any you can bring. He ends up bringing
24 a comedy or two. She then says, bring a Trojan. He says,
25 I'll bring it but I won't pressure you to do anything you

1 don't want to do. She says, cool. He says, if you change
2 your mind and want to just chill out that's cool too.

3 Then he later asks, what kind of movie should I
4 bring. And she says, I don't care. He says, I'll bring a
5 comedy.

6 And later, what do I do when I get there. I
7 don't care. She says, I'll be there before you. A fact
8 that -- the fact that if it were true and I hate to
9 suggest that anybody put a child in harm's way, but if
10 somebody were there who didn't appear to be of age, a
11 person who thought they were meeting somebody older could
12 drive away, much as a person who shows up on a blind date
13 might keep walking if they didn't like the person that
14 they thought they were going to meet.

15 I submit to the Court respectfully that it's
16 almost the opposite. It's almost unreasonable to believe
17 that anybody is who they say they are online but in this
18 instance this guy out of caution or whatever else he's
19 doing, saying, we don't have to do anything when I
20 arrive.

21 And I think that the intent law generally says
22 that it has to be something that would, but for being
23 interrupted by law enforcement that their intent was to go
24 through with it. And it appears from the conversation to
25 me, Your Honor, that this guy is saying, I'm not going to

1 pressure you to do anything when I get there.

2 THE COURT: Just meet me there ready to go, if
3 you want to, fine, if not --

4 MR. McMULLEN: Yes. And so this may still
5 survive the solicitation of a minor part because of the
6 reasonably-believed language or whatever is in that
7 statute.

8 But as for the intent, we think the argument I
9 would have is that there was no intent because he never
10 formulated this plan that we're going to do this.

11 I think what would separate Mr. Green's case from
12 the ones decided everywhere else unfavorably would be that
13 language that Mr. Green used in the conversation which
14 would be, we don't have to do anything. I think all the
15 cases say that a lot of times people talk more than one
16 time. And a lot of times they develop some relationship.
17 They have some sort of sense as to who they think they're
18 talking to or trust. But, in a lot of cases they've
19 decided over a course of time this is what we're going to
20 do when we finally meet and that element isn't here.

21 THE COURT: What you're saying it was sort of up
22 in the air as to what they were going to do when they get
23 there?

24 MR. McMULLEN: Yes, sir.

25 THE COURT: If it's a pretty blonde maybe he'll

1 go out with her but if she's not attractive then he'll
2 keep on walking. He doesn't know what's going to happen
3 until he gets there.

4 MR. McMULLEN: I think these detectives would
5 probably say if they had a best friend that was going to
6 go out Friday night with somebody they met online,
7 probably the detectives would say, yeah, oh yeah, you got
8 a cheerleader for the Falcons? You know, bring me her
9 picture when you come back.

10 I think that most of us would have to be
11 skeptical about meeting anybody online and whether they
12 are who they pretend they are.

13 THE COURT: I don't know. I've never tried it.

14 MR. McMULLEN: So I would just submit
15 respectfully that the attempt to commit CSC with a minor
16 is that, I think you have to also look at the -- consider,
17 please, the fact that the profile picture used, again, is
18 not before you but it was obtained. I have that and it
19 was a person who at the time was out of college and
20 already working as a probation officer. If that person
21 had shown up then. . .

22 THE COURT: Then what?

23 MR. McMULLEN: Then he probably would have gone
24 through with it if given the chance, if it would have been
25 a 20-some year old who was pictured in the photograph.

1 Ms. Ringler wasn't even, you know, wasn't working
2 there at the time this case was made. And so she
3 obviously wouldn't necessarily know every detail of every
4 case and everything that happened before she joined the
5 attorney general's office.

6 Certainly imply no dishonesty on anybody's part
7 but it is, to me, out of a fundamental sense of fairness,
8 they don't have to use a real 14 year old to do this or
9 even the photo a 14 year old. They can get somebody who's
10 over 14 to consent, here's a picture of me when I was 14.
11 They can use that.

12 And that would be, to me, much more credible
13 belief or -- I just would argue that as a matter of law
14 that somebody 10, eight to nine to 10 years older than
15 they purport to be on the Internet is incredible. And --

16 THE COURT: Well, isn't credibility what juries
17 determine day in and day out?

18 MR. McMULLEN: Yes, sir. Yes, sir.

19 THE COURT: They may find that this is the most
20 incredible story they've ever heard and acquit your guy.
21 That's not for me. I'm not the decider of the facts. I'm
22 just the judge of the law. And credibility is certainly
23 not within my province. That's for juries to determine.

24 MR. McMULLEN: I would just submit as a matter of
25 law, Your Honor, that if the photograph in the profile are

1 used under this statute is of somebody over the age of
2 consent then as a matter of law that the person couldn't
3 beyond a reasonable doubt have the belief that that person
4 was under the age of consent.

5 THE COURT: Do you have any law that says that?

6 MR. McMULLEN: There is none, not that I'm aware
7 of, Your Honor.

8 THE COURT: Okay.

9 MR. McMULLEN: I have searched for it. I don't
10 know of another case where it's been revealed that a
11 20-something year old was posing or was having her
12 photograph used. I think most agencies use -- I don't
13 know. I don't know what they use.

14 THE COURT: I don't either. All right.
15 Ms. Ringler, anything you want to add? I've read your
16 memorandum.

17 MS. RINGLER: Yes, Your Honor. The memorandum
18 with regard to overt act. With regard to possibility
19 of -- the fact that it was not an actual child and was
20 actually an uncover officer is why he was charged with
21 attempted CSC. And because of that, the facts were as the
22 Defendant believed them to be, he would have been guilty
23 of the underlying offense.

24 And, Your Honor, the State will put forth the
25 required specific intent. Your Honor, at around 10

1 minutes into the chat the Defendant asked, would you sleep
2 with me. When he showed up at the meet location, he had
3 with him condoms and also two separate types of male
4 enhancement supplements. Throughout the chat he does talk
5 about the undercover LittleMandy's sexual experience. He
6 talks about different sexual acts with her.

7 Your Honor, the language of the chat coupled with
8 the fact that he did travel to meet the undercover with
9 those items, Your Honor, I think that's sufficient
10 evidence of specific intent.

11 And again, impossibility of fact I don't think
12 would play into this. And the facts were, I think he
13 would have committed the crime of attempted CSC with a
14 minor.

15 The language is, if reasonable. Again, Your
16 Honor, that would be for a finder of fact to determine and
17 that would be an argument for the jury.

18 There has been some discussion of the individual
19 used in the photograph. The State has said that it would
20 be willing to stipulate that it was a photo of a person
21 under the age of 18, and that it would be up to the jury
22 to determine if it was reasonable for him to believe he
23 was speaking to somebody who was actually under the age of
24 18.

25 MR. McMULLEN: May I hand up the photograph?

1 THE COURT: You may.

2 MR. McMULLEN: If I can find it.

3 THE COURT: Well, if you don't have it right
4 there, let's move onto something else. You can give it to
5 me tomorrow.

6 MR. McMULLEN: All right.

7 MS. RINGLER: And again, Your Honor, you have my
8 memo of law on the overt act, that traveling to meet was
9 beyond mere preparation and was an overt act to completing
10 the underlying offense.

11 THE COURT: Thank you. All right. Let's move to
12 the entrapment argument.

13 MR. McMULLEN: I'm going to -- I'm going to skip
14 that one. We're going to withdraw that motion, Your
15 Honor.

16 THE COURT: Lyle argument.

17 MR. McMULLEN: The State intends to submit, I
18 think, some conversation that they say they received or
19 that they say they recovered from the computer and that
20 they confiscated from Mr. Green's home. And it's a
21 conversation that I didn't know about and it wasn't made
22 available to me in the first round of discovery. I
23 received it -- first I received correspondence that said
24 that the computer had been checked and that there was not
25 anything else on it.

1 And when we asked for our trial they had a more
2 exhaustive search done and then found things that were
3 somehow imbedded, you know, that the first search, first
4 research wouldn't have uncovered.

5 One of the things or the thing that I think --
6 I'm sorry. They would introduce two things from that, I
7 think. Photographs that were apparently sent by Mr. Green
8 to law enforcement during the conversation which are also
9 not documented. Apparently there were three; two were of
10 Mr. Green's anatomy and the third of his face.

11 THE COURT: Third of what?

12 MR. McMULLEN: The third was of his face. That
13 photograph or documentation of it, I've never seen. I've
14 seen an X., you know, on the records that were produced
15 where a photo would have been, but I don't know what
16 happened to that.

17 And I think that that is one reason that's not
18 reliable. As the Court is aware, if it's not the subject
19 of criminal conviction, State versus Fletcher requires
20 that it be proved by clear and convincing evidence.

21 And if the State wanted to, you know, do that, I
22 think we'd have a better idea of whether it was
23 admissible. So, you know, I don't know if you want to
24 have that proffered now. Would you like us to take that
25 up later?

1 THE COURT: Well, what did y'all take off his
2 computer and introduce into evidence; anything?

3 MS. RINGLER: Yes, Your Honor. Just to sort of
4 clarify the time line that went on. Originally, Your
5 Honor, this -- Mr. McMullen wrote a letter to the State
6 saying that this would be a plea. Because of that the
7 State did not do a full forensic examination of the
8 computer. The computer was simply checked for child
9 pornography which is something that we do with limited
10 resources, limited time. A lot of computers to look at.
11 So we just had it checked for child pornography.

12 I was told at that point that there was nothing
13 that we would go forward on as far as -- there was some --
14 so at that point that was what it was checked for.

15 Later on when I was told it was actually going to
16 be a trial, that's when a full exam was done. As part of
17 that exam there were several images found on that
18 computer. Two of them were photos of a -- they were penis
19 photos that were found to be the ones that were sent to
20 the undercover officer during the course of the chat. So
21 that was found during the course of the forensic
22 examination.

23 Also there was a delay between the Defendant's
24 arrest and when the computer was actually seized by law
25 enforcement. So after his arrest the Defendant was able

1 to get back and have access to his computer.

2 The State is going to put forth a chat that the
3 State believes occurred during that time. So this was
4 after he was released on bond he went home and chatted and
5 stated that --

6 THE COURT: Chatted with whom?

7 MS. RINGLER: A person purported to be 17 years
8 of age. And so the State is -- during that chat, he
9 referenced this crime. And so the State is going to put
10 forth that chat as an admission.

11 So it would be not a prior bad act but the State
12 is going to try to admit it under an admission because it
13 was referencing this crime. And, again, this was all
14 pursuant to a search warrant that was obtained by law
15 enforcement. That's when the computer was seized.

16 THE COURT: So pictures are pictures that were
17 allegedly shown at the time of the chat?

18 MS. RINGLER: To LittleMandy, to the undercover
19 persona.

20 THE COURT: And the subsequent chat is while he
21 was out on bond he allegedly admits this chat with an
22 undercover agent?

23 MS. RINGLER: He references that and talks about
24 it, yes, Your Honor, and this chat was found on the
25 computer.

1 THE COURT: Well --

2 MS. RINGLER: And that would be something that
3 would come forth through -- come in through the forensic
4 examiner who is not here today, Your Honor.

5 THE COURT: When he gets here tomorrow, before we
6 get into that subsequent chat, let's just do a quick
7 proffer to make sure it's not more prejudicial than
8 probative and whether or not it violates any other rules
9 that may be applicable or any cases that may be
10 applicable.

11 So I'm going to ask that you not mention that in
12 your opening statement. Let me know when you get ready to
13 do it, we'll send the jury out and we'll proffer it and
14 I'll make a determination after hearing the testimony and
15 reviewing what came off of the computer.

16 As far as the photographs go, if they're the same
17 photographs that were shown during the chat with an
18 undercover agent, they certainly would be relevant. But,
19 out of an abundance of caution, before you introduce those
20 let's do a proffer so I can make a 403 analysis as to
21 prejudicial versus probative.

22 MS. RINGLER: So refrain from mentioning the
23 photos as well in opening?

24 THE COURT: Yes, ma'am.

25 MR. McMULLEN: Finally, Your Honor, may I -- I'd

1 like to move, respectfully, that the witnesses be
2 sequestered, the State witnesses at least.

3 THE COURT: That's one you can easily --

4 MS. RINGLER: Your Honor, we would just ask that
5 our expert, the forensic examiner, be present and also the
6 case agent be present during the trial.

7 MR. McMULLEN: That would be fine by me.

8 THE COURT: What else?

9 MR. McMULLEN: That's all I have.

10 THE COURT: You got a discovery, Rule Five, Brady
11 violation.

12 MR. McMULLEN: Oh yes. Just, the issue would be,
13 Your Honor, that on October 13th he was arrested. And --
14 I mean, on the 20th. That day I requested a preliminary
15 hearing. On October 25th of '06 is when the computer was
16 seized at the home.

17 November 8th we had the preliminary hearing and
18 Detective Platt then told me, probation officer at the
19 time.

20 Rule Fives were sent and received. I got the
21 initial discovery packet that I handed up on February of
22 '07. We did get a letter from Ms. Ringler in August of
23 '07 saying, referring, like, since you, we're going to
24 plead but I think that was an honest mistake. I don't
25 think I sent a letter ever because Mr. Green never

1 authorized that.

2 And, but I think it was an honest mistake but in
3 any event, I wrote her right back saying we still need to
4 know who LittleMandy is and whatever you got off that
5 computer.

6 And then I got a letter saying, we don't have --
7 I wrote that on 7-7-08. Again, let's see. Plea offer
8 expired on March 20th of '09. I think it was a typo, but
9 it said '08 but it was '09.

10 On March 5th it was scheduled for trial. No,
11 March 5th is the day I received the forensic exam. And
12 that's the day I received the photographs by going over to
13 Ms. Ringler's office and the disk that has a Lyle
14 connotation on it as well as the photographs.

15 But, basically, I would say that it's a violation
16 of the rules of discovery that I didn't get any of that
17 stuff until now. You know, they've had --

18 THE COURT: You got it now, today?

19 MR. McMULLEN: Yes, sir. I did.

20 THE COURT: What did you get today?

21 MR. McMULLEN: Oh no. I'm sorry.

22 THE COURT: When did you receive it?

23 MR. McMULLEN: March 5th.

24 THE COURT: Of 2009?

25 MR. McMULLEN: '09; yes, sir.

1 THE COURT: And today is June 15th, 2009.

2 MR. McMULLEN: June 15th. So it's been three
3 months and some change.

4 But all I'm saying is that we were trying to
5 evaluate the case as best we could. And, you know, we
6 just got the stuff but I don't think that there's anything
7 untoward going on. It's just, we all have busy jobs
8 but --

9 THE COURT: I understand that. You had three
10 months now to digest it. Have you not? March to April to
11 May?

12 MR. McMULLEN: Yes.

13 THE COURT: June.

14 MR. McMULLEN: And I'm not complaining about
15 that. I'm just saying that we've asked repeatedly for
16 this stuff. Some of it's exculpatory. I don't know what
17 else we're missing, but for them to --

18 THE COURT: Well, I'll ask them. Is he missing
19 anything?

20 MS. PORTER: No, Your Honor.

21 THE COURT: I didn't think so. Okay. Anything
22 else?

23 MS. RINGLER: Nothing further from the State,
24 Your Honor.

25 THE COURT: Let me see y'all in chambers. Is

JURY SELECTION

1 this young man out on bond?

2 MR. McMULLEN: Yes, sir.

3 THE COURT: All right. Madam court reporter,
4 9:30 in the morning.

5 END OF DAY: 5:02 P.M.

6 * **

7 ON TUESDAY, JUNE 16, 2009 AT 10:51 A.M.:

8 THE COURT: All right. Ladies and gentlemen, I'd
9 like to go ahead and draw the first jury.

10 This process will probably take us about 15 or 20
11 minutes. Anybody have any problems, bathroom wise, or
12 everybody okay?

13 MR. McMULLEN: May we approach?

14 (Off-the-record discussion.)

15 THE COURT: Ms. Ringler, you may call your first
16 case.

17 MS. RINGLER: Thank you, Your Honor.

18 The State calls State versus Benjamin Paul Green,
19 indictment number 2007-GS-02-190, and 2007-GS-02-191.

20 THE COURT: Thank you. Mr. McMullen, you
21 represent Mr. Green?

22 MR. McMULLEN: Yes, sir.

23 THE COURT: Are you ready to proceed?

24 MR. McMULLEN: Yes, sir.

25 THE COURT: You may be seated. All right.

JURY SELECTION

1 Ladies and gentlemen of jury, we're about to
2 begin the trial of the case of the State of South Carolina
3 versus Benjamin Paul Green the Fourth. Mr. Green is the
4 man who just stood up at counsel table.

5 Mr. Green has been indicted for two alleged
6 offenses one is for criminal solicitation of a minor. The
7 other is attempted criminal sexual conduct with a minor in
8 the second degree.

9 Ladies and gentlemen, these are simply
10 indictments. That's the charging paper which brings
11 someone into court. He has pled not guilty to these
12 charges. He is presumed to be innocent throughout the
13 trial unless the State is able to prove each and every
14 element of each and every indictment to you beyond a
15 reasonable doubt.

16 So we're going to try that case. I have to ask
17 you some questions, so please listen carefully. And if
18 they apply to you, please stand and we will talk about it.

19 I remind you that you're still under oath.
20 Mr. McMullen, do you have a witness list?

21 MR. McMULLEN: Yes, Your Honor. It's on the voir
22 dire. The very last page, last page.

23 THE COURT: One?

24 MR. McMULLEN: Yes, sir.

25 THE COURT: Thank you.

JURY SELECTION

1 Ladies and gentlemen of the jury panel, I'm going
2 to ask Mr. Benjamin Paul Green the Fourth to please stand
3 one more time. Would you face the jury panel?

4 THE DEFENDANT: (Complies.)

5 THE COURT: Would you please have a seat,
6 Mr. McMullen? Mr. Green, thank you. You may be seated.

7 Is any member of the jury panel now or in the
8 past been related by blood or marriage to Benjamin Paul
9 Green the Fourth?

10 (No response.)

11 Any member of the jury panel ever had a close
12 personal or social relationship with Mr. Benjamin Paul
13 Green the Fourth? If so, please stand.

14 (No response.)

15 Ladies and gentlemen, I am told that the
16 following are potential witnesses in the trial of this
17 case. I'm going to read them out and then I'm going to
18 ask you the same question: Have you now or in the past
19 been related by blood or marriage or do you now or in the
20 past have a close or personal or social relationship with
21 any of these witnesses. If any of the witnesses are in
22 the courtroom, please stand.

23 Lynda Williamson. Investigator Tommy Platt with
24 Aiken County Sheriff's office. Thank you.

25 Deputy Jason Feemster, Aiken County Sheriff's

JURY SELECTION

1 Office. Investigator Shawn Zeigler, Aiken County

2 Sheriff's office. Thank you.

3 Detective Brian Metz with the Richland County
4 Sheriff's Office.

5 All right, girls. Help me. Tony Pantsari. Good
6 old southern name. Special Agent Amanda Simmons with the
7 FBI. Bobby Belton with South Carolina Attorney General's
8 Office. Investigator Kurt Bargman, Aiken County Sheriff's
9 Office.

10 Any additional witnesses by the State?

11 MS. RINGLER: None. No more for the State, Your
12 Honor.

13 THE COURT: By the Defendant?

14 MR. McMULLEN: No, sir.

15 THE COURT: All right. Ladies and gentlemen, has
16 anyone ever been related by blood or marriage to any of
17 these potential witnesses or has anyone ever had a close
18 personal or social relationship with any of the
19 witnesses? If so, please stand.

20 (No response.)

21 Ladies and gentlemen of the jury panel, the case
22 will be prosecuted by lawyers from the South Carolina
23 Attorney General's Office, led by Ms. Susanna Ringler and
24 assisted by Susan Porter.

25 MS. PORTER: Yes, sir.

JURY SELECTION

1 THE COURT: Susan Porter.

2 The Defendant is represented by Mr. Michael
3 McMullen of the Richland County Bar.

4 Any member of the jury panel related by blood or
5 marriage or do you have a close personal or social
6 relationship with any of the lawyers? If so, please
7 stand.

8 (No response.)

9 Any member of the jury panel now or in the past
10 been represented by any of the lawyers involved in the
11 case? If so, please stand.

12 (No response.)

13 Ladies and gentlemen of the jury panel, the
14 allegations contained in the indictment, once again I
15 reiterate, these are simply allegations. It is not facts
16 in the case. These are the allegations, but I have to
17 tell you a little bit about what the allegations are to
18 ask you if you know anything about the case.

19 It is alleged that on or about October 13 of
20 2006, that Benjamin Paul Green the Fourth, who was 18
21 years or older at the time, allegedly contacted and
22 communicated by way of the Internet with a person located
23 in Aiken County that he reasonably believed to be 14 years
24 of age for the purpose or with the intent of persuading
25 that person to engage or participate in sexual activity,

JURY SELECTION

1 or with the intent to perform a sexual activity in the
2 presence of a person reasonably believed to be under the
3 age of 14.

4 It is also alleged that Benjamin Paul Green the
5 Fourth on that same date, October 13 of 2006, attempted to
6 commit criminal sexual conduct with a minor in that he did
7 allegedly, knowingly travel from his residence in the
8 State of Georgia and arrived at a predetermined location
9 in the Beech Island Area for the purpose or with the
10 alleged specific intent to engage in sexual battery as
11 defined by our laws with a female person that he believed
12 to be 14 years of age.

13 Those are simply allegations, ladies and
14 gentlemen. He's pled not guilty. And as I said, his plea
15 of not guilty clothes him with the presumption of
16 innocence until all these allegations are proved to you
17 beyond a reasonable doubt. But having said that, does
18 anyone know anything at all about these allegations?

19 Have you seen anything about it on TV? Heard
20 anything about it on the radio? Read anything about it in
21 the newspaper? Has anyone discussed it with you? Have
22 you heard it being generally discussed in public or
23 anywhere? Does anybody know anything at all about the
24 case? If so, please stand and identify yourself.

25 Your name, please?

JURY SELECTION

1 THE JUROR: Brad Link, juror 81. I read about
2 the case in the Aiken Standard.

3 THE COURT: All right, sir. We all -- I read two
4 newspapers on the way over here this morning. The fact --
5 stand up. The fact that you have read and remember
6 something about this case, would that in any way preclude
7 or keep you from being a fair and impartial juror in the
8 trial of this case, trying the case solely based on the
9 evidence that you hear from the witness stand and
10 determining what evidence convinces you of its truth and
11 applying that evidence to the law as I give it to you at
12 the conclusion of the case?

13 THE JUROR: No, it would not, sir.

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

15 Is any member of the jury panel a member of the
16 grand jury which true billed these indictments in Aiken on
17 or about January 18 of 2007?

18 (No response.)

19 Any member of the jury panel who is a member of
20 or a contributor to any group which has as its primary
21 concern the promotion of law enforcement or of victims'
22 rights? These types of groups would include but not be
23 limited to MADD, that's Mothers Against Drunk Drivers;
24 CAVE, Citizens Against Violent Crime; SADD, Students
25 Against Drunk Drivers. Any type of those organizations.

JURY SELECTION

1 Is anybody a member of those organizations or do you
2 contribute to those organizations? If so, please stand.

3 (No response.)

4 Any member of the jury panel or your immediate
5 family -- any member of the jury panel employed by law
6 enforcement or does any -- or do you have immediate family
7 members employed by law enforcement? If so, please stand.

8 Yes, ma'am, your name?

9 THE JUROR: Me Lindsey Griffin, juror number
10 155. My husband is a police officer with Aiken Public
11 Safety.

12 THE COURT: Aiken Public Safety?

13 THE JUROR: Yes.

14 THE COURT: They're not witnesses in this case,
15 are they, ladies?

16 MS. RINGLER: No, Your Honor. sheriff's office.

17 THE COURT: Ma'am, the fact that your husband is
18 employed with the Aiken Department of Public Safety, would
19 that in any way preclude or keep you from being a fair and
20 impartial juror?

21 THE JUROR: No, sir. But he was also employed by
22 the Aiken Sheriff's Office.

23 THE COURT: When?

24 THE JUROR: I believe it was in 2006. He started
25 working Aiken Public Safety in 2008.

JURY SELECTION

1 THE COURT: Your name again?

2 THE JUROR: Lindsey Griffin.

3 THE COURT: Excuse Ms. Griffin from the trial of
4 this case. Just stay with us, please, ma'am.

5 Sir, your name?

6 THE JUROR: Keith Campbell, juror number 27. I
7 have an extensive family background in law enforcement,
8 law enforcement officers in Ohio, California, New York
9 State. I'm retired from the federal government, also.

10 THE COURT: Fine. The fact that you have family
11 members in law enforcement and you're retired from the
12 federal government, would that in any way preclude or keep
13 you from being a fair and impartial juror in the trial of
14 this case?

15 THE JUROR: No, Your Honor. It would not.

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

17 THE JUROR: Judge, my husband is a retired
18 Georgia police officer. He retired for medical reasons.

19 THE COURT: Your husband?

20 THE JUROR: Yes, sir. I'm juror 157, Cathy
21 Narvaez.

22 THE COURT: The fact that your husband at one
23 time was employed with law enforcement, ma'am, would that
24 in any way preclude or keep you from being a fair and
25 impartial juror?

JURY SELECTION

1 THE JUROR: I don't think it would.

2 THE COURT: I need to know for sure.

3 THE JUROR: No.

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

5 Any member of the jury panel have a -- what type
6 of work does your client do?

7 MR. McMULLEN: (Conferring with Defendant).

8 Process technician at a pharmaceutical company.

9 THE COURT: Any member of the jury panel ever
10 conducted business or worked with the Defendant, Benjamin
11 Green? If so, please stand.

12 (No response.)

13 Any member of the jury panel been a victim of a
14 violent crime or a close family member been a victim of a
15 violent crime? If so, please stand.

16 (No response.)

17 Any member of the jury panel related to -- strike
18 that.

19 Any member of the jury panel related to any of
20 the employees of the South Carolina Attorney General's
21 Office? If so, please stand.

22 (No response.)

23 Ladies and gentlemen, please listen carefully to
24 this question. One of the main duties I have to perform
25 as a judge is to ensure that everyone who is tried in my

JURY SELECTION

1 courtroom, not my courtroom, this courtroom, receives a
2 fair trial, whether it's a civil case between two civil
3 litigants or whether it's someone charged with a crime
4 such as this case.

5 And to do that, I have to ensure that the 12
6 jurors who I seat to hear the case can be fair and
7 impartial to both the State and to the Defendant. And
8 that means being able to listen to the testimony and the
9 evidence that is presented. And you will be the people
10 who will find the true facts in the case and take those
11 true facts as you find them to be and apply it to the law
12 as I give it to you and render a true and just verdict.

13 So if anybody knows of any reason whatsoever why
14 he or she cannot do that, whether it be some personal
15 convictions, personal beliefs, experiences that you've had
16 in life that would preclude you from being fair and
17 impartial, any reason whatsoever, I need to know about
18 it.

19 And if it's a personal reason I'll be glad to
20 discuss it with you in person. But, I just have to make
21 sure that when I seat 12 jurors that my 12 jurors can try
22 this case based solely on what's presented to them in the
23 courtroom and not be influenced by anything else.

24 So do I have anyone who cannot perform that task
25 or that duty? Please stand.

JURY SELECTION

1 (No response.)

2 Any additional questions by the State?

3 MS. RINGLER: None from the State, Your Honor.

4 THE COURT: Mr. McMullen, I have your voir dire,
5 proposed voir dire. I will make it part of the record so
6 you'll be protected. Anything else?

7 (Thereupon, Defendant's requested voir dire, was
8 marked as Court's Exhibit No. 1 and received into the
9 record.)

10 MR. McMULLEN: Thank you. No, sir.

11 THE COURT: Thank you. What is it, five and
12 five? Let me see y'all at side bar.

13 (Off-the-record discussion.)

14 THE COURT: All right. Ladies and gentlemen, the
15 way we draw a jury in a criminal trial as opposed to a
16 civil trial, if this were a civil trial my jury clerk will
17 have all your names. She's got everybody's name who is
18 still here with us. She is now mixing them up. She is
19 now placing them into this very high tech, gray steel
20 box. And she will shake that box up.

21 I go to some counties and they have it on
22 computers. I go to some counties and they have it in the
23 old roll thing with the tubes. I go to some counties,
24 they have them in cigar boxes. The statute says that it's
25 supposed to be done by someone who is blind, or a child

JURY SELECTION

1 under the age of five or seven. We always waive that
2 now. We've gotten a little more modern.

3 In all seriousness, she's going to draw the names
4 out randomly. If this were a civil trial like a medical
5 malpractice case, she would draw 20 names out and put them
6 on a piece of paper. The plaintiff would have four
7 strikes and the defendant would have four strikes so 20
8 less eight is 12 and then we'd call those 12 out.

9 In general sessions we do it a little different.
10 She will pull the name out and call your name. As your
11 name is called, if you would please come down and stand
12 right between the two tables here at the front. The State
13 has five strikes. The Defendant has 10.

14 There's certain statutes that give you 10
15 strikes, certain statutes that give you five. So this is
16 one that gives you 10. He has 10 strikes and the State
17 has five. They can strike you or ask that you not serve
18 for most any reason at all, within some bounds of
19 reasonableness.

20 But we'll go through that process until we get 12
21 jurors and two alternates. And then once we have the jury
22 seated, I can release the rest of you for the balance of
23 the day. And those jurors who I have for this trial, I'll
24 show you where your jury room is and we're going to start
25 the trial around two or 2:15.

JURY SELECTION

1 So is everybody still comfortable? This process
2 will take us about 10 more minutes, perhaps.

3 Are you ready, ma'am? The State ready for the
4 jury selection?

5 MS. RINGLER: Yes, Your Honor.

6 THE COURT: And the Defendant ready for the jury
7 selection?

8 MR. McMULLEN: Yes, sir.

9 THE COURT: All right. Call the names.

10 THE CLERK: As your name is called, please come
11 forward, bring your belongings with you.

12 Juror number 88, Priscilla McBurnette (black
13 female).

14 THE COURT: Ms. McBurnette, just come right up
15 here for me. Keep coming. Keep coming, and stop. Turn
16 around and face those lawyers. There you go.

17 MS. RINGLER: Thank you, Your Honor. Please
18 present juror number 88.

19 MR. McMULLEN: Please swear the juror.

20 THE COURT: All right. Ms. McBurnette, please
21 have a seat.

22 THE CLERK: Go have a seat in the jury box to the
23 left.

24 Juror number 23, Lisa Busbee (white female).

25 What says the State?

JURY SELECTION

1 MS. RINGLER: Please swear Ms. Busbee.

2 THE CLERK: What says the defense?

3 MR. McMULLEN: Please swear the juror.

4 THE CLERK: You may have a seat in the jury box
5 to the left.

6 Juror number 107, Paul Probst (white male). What
7 says the State?

8 MS. RINGLER: Please present this juror.

9 THE CLERK: What says the defense?

10 MR. McMULLEN: Please excuse the juror.

11 THE CLERK: You may return to your seat.

12 Juror number 135, William Veronee (white male).
13 What says the State?

14 MS. RINGLER: Please strike the juror.

15 THE CLERK: You may return to your seat.

16 Juror number 114, Charlotte Sabo (white female).

17 THE COURT: One what?

18 THE CLERK: 114. What says the State?

19 MS. RINGLER: Please present the juror.

20 THE CLERK: What says the defense?

21 MR. McMULLEN: Please swear the juror.

22 THE CLERK: You may have a seat in the jury box
23 to the left.

24 Juror number 133, Kyle Todd (white male). What
25 says the State?

JURY SELECTION

1 MS. RINGLER: Please present the juror.

2 THE CLERK: What says the defense?

3 MR. McMULLEN: Please swear the juror.

4 THE CLERK: You may have a seat in the jury box
5 to the left.

6 Juror number 153, James Gill (white male). What
7 says the State?

8 MS. RINGLER: Please present the juror.

9 THE CLERK: What says the defense?

10 MR. McMULLEN: Please excuse the juror.

11 THE CLERK: You may return to your seat.

12 Juror number 125, Chad Stringer (white male).
13 What says the State?

14 MS. RINGLER: Please present the juror.

15 THE CLERK: What says the defense?

16 MR. McMULLEN: Please swear the juror.

17 THE CLERK: You may have a seat in the jury box
18 to the left.

19 Juror number 94, Andrew Mock (white male). What
20 says the State?

21 MS. RINGLER: Please present the juror.

22 THE CLERK: What say the defense?

23 MR. McMULLEN: Please excuse the juror.

24 THE CLERK: You may return to your seat.

25 Juror number four, Lisa Jeter (white female).

JURY SELECTION

1 What says the State?

2 MS. RINGLER: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. McMULLEN: Please swear the juror.

5 THE CLERK: You may have a seat in the jury box
6 to the left.

7 Juror number 139, Krysta Warner (white female).

8 What says the State?

9 MS. RINGLER: Please present.

10 THE CLERK: What says the defense?

11 MR. McMULLEN: Please swear the juror.

12 THE CLERK: You may have a seat in the jury box
13 to the left.

14 Juror number 75, Larry Kitchens (white male).

15 What says the State?

16 MS. RINGLER: Please present the juror.

17 THE CLERK: What says the defense?

18 MR. McMULLEN: Please swear the juror.

19 THE CLERK: You may have a seat in the jury box
20 to the left.

21 Juror number 17, James Brooks (white male). What
22 says the State?

23 MS. RINGLER: Please present the juror.

24 THE CLERK: What says the defense?

25 MR. McMULLEN: Please swear the juror.

JURY SELECTION

1 THE CLERK: You may have a seat in the jury box
2 to the left.

3 Juror number 142, Benjamin Whitmire (white
4 male). What says the State?

5 MS. RINGLER: Please present the juror.

6 THE CLERK: What says the defense?

7 MR. McMULLEN: Please swear the juror.

8 THE CLERK: You may have a seat in the jury box
9 to the left.

10 Juror number, 86 Theodoro Martinez (hispanic
11 male). What says the State?

12 MS. RINGLER: The State strikes juror number 86.

13 THE CLERK: You may return to your seat. Juror
14 number 157, Cathy Narvaez (white female).

15 MR. McMULLEN: What was the number again?

16 THE CLERK: 157. What says the State?

17 MS. RINGLER: Please present juror number 157.

18 THE CLERK: What says the defense?

19 MR. McMULLEN: Please excuse the juror.

20 THE CLERK: You may return to your seat.

21 Juror number 27, Keith Campbell (white male).

22 THE COURT: I'm sorry, what number?

23 THE CLERK: 27. What says the State?

24 MS. RINGLER: Please present juror number 27.

25 THE CLERK: What says the defense?

JURY SELECTION

1 MR. McMULLEN: Please excuse the juror.

2 THE CLERK: You may return to your seat. The
3 State has exhausted two strikes, the defense five.

4 Juror number nine, Nancy Bell (white female).
5 What says the State?

6 MS. RINGLER: Please present juror number nine.

7 THE CLERK: What says the defense?

8 MR. McMULLEN: Please excuse the juror.

9 THE CLERK: You may return to your seat.

10 Juror number 120, Ronnie Smith (white male).
11 What says the State?

12 MS. RINGLER: Please present juror number 120.

13 THE CLERK: What says the defense?

14 MR. McMULLEN: Please swear the juror.

15 THE CLERK: You may have a seat in the jury box
16 to the left.

17 Juror number 95, Paul Moore (white male). What
18 says the State?

19 MS. RINGLER: Please present juror number 95.

20 THE CLERK: What says the defense?

21 MR. McMULLEN: Please swear the juror.

22 THE CLERK: You may have a seat in the jury box
23 to the left.

24 THE COURT: Let me have two alternates. Two and
25 one.

JURY SELECTION

1 THE CLERK: Yes, sir. Alternate number one.
2 Juror number 81, Bradley Link (white male). What says the
3 State?

4 MS. RINGLER: Please present juror number 81.

5 THE CLERK: What says the defense?

6 MR. McMULLEN: Please excuse the juror.

7 THE CLERK: You may return to your seat.

8 Juror number 152, Carmen Cato (white female).
9 What says the State?

10 MS. RINGLER: Please present juror number 152

11 THE CLERK: What says the defense?

12 MR. McMULLEN: Please seat the alternate.

13 THE CLERK: You may have a seat in the jury box
14 to the left.

15 Alternate number two. Juror number 154, John
16 Goodin (white male). What says the State?

17 MS. RINGLER: Please present juror number 154.

18 THE CLERK: What says the defense?

19 MR. McMULLEN: Please seat the alternate.

20 THE CLERK: You may have a seat in the jury box
21 to the left.

22 THE COURT: Would either -- answering yes or no
23 with no explanation, any motions by the State in
24 connection with the drawing of the jury?

25 MS. RINGLER: No, Your Honor.

1 THE COURT: By the Defendant?

2 MR. McMULLEN: No, sir.

3 THE COURT: Thank you. All right, ladies and
4 gentlemen, those of you who were not drawn I assume
5 everyone has that call-back number for, on your jury
6 package. I'm going to excuse you now for the balance of
7 the day. Please call back after six to receive your
8 instructions for tomorrow.

9 Thank you. You're excused to go. Everybody else
10 remain seated.

11 (Jury panel exits courtroom at 11:25 a.m.)

12 THE COURT: I've got enough to keep me going
13 until about two o'clock. I don't want you sitting back
14 there twiddling your thumbs. I'm going to let you go.
15 We're going to start at 2:15.

16 Is that okay with everybody?

17 SEVERAL JURORS: Yes, sir.

18 THE COURT: Somebody has a ride problem. You're
19 just going to stick around here and eat lunch down here,
20 you don't need a ride?

21 THE JUROR: No.

22 THE COURT: I walk downtown. All right.

23 We're going to start right at 2:15, probably go
24 to around five, 5:15 this afternoon, depending on where we
25 are. Is that going to be an imposition on anybody?

1 Personal schedule? Work schedule?

2 You're not sworn in yet. I'll do that when we
3 get back, but please don't let anybody discuss this case
4 with you. I don't think they will but if anybody tries
5 to, just simply tell them, I'm on the jury, I can't talk
6 about it. If they insist, get their names and I'll deal
7 with them.

8 So Mr. Whittle will show you where your jury room
9 is, how to get to it. And we'll start punctually at
10 2:15. Thank you. Everybody else remain seated.

11 (Jury panel exits courtroom at 11:26 a.m.)

12 (Thereafter, other matters were heard by the
13 Court. The hearing of this trial resumed at 2:00 p.m.)

14 THE COURT: State ready to proceed?

15 MS. RINGLER: Yes, Your Honor.

16 THE COURT: Defense ready to proceed?

17 MR. McMULLEN: Yes, sir.

18 THE COURT: All right. As to yesterday's motions
19 that I heard, to the extent I did not rule yesterday
20 afternoon, it's my understanding you've abandoned your
21 entrapment motion.

22 You argued to me that 16-15-342 is
23 unconstitutional. I have carefully considered your
24 arguments and I respectfully deny that motion.

25 I further find that Rules 106, 1002, 1004, I'm

1 not sure I can do a pretrial ruling on those, it's almost
2 like a motion in limine, but if you think that the
3 statement is not complete when they try to introduce it,
4 you can make whatever objection you need to make --

5 MR. McMULLEN: Yes, sir.

6 THE COURT: -- contemporaneously with that. I
7 further deny your motion concerning the present ability to
8 carry out the crime.

9 Lyle arguments, I ruled on that, that we were
10 going to, like a motion in limine, that Ms. Ringler, that
11 you would not bring up subsequent acts that occurred on
12 the computer or alleged to have been on the computer until
13 we have a proffer and do that in camera outside the
14 presence of the jury.

15 MS. RINGLER: Yes, Your Honor.

16 THE COURT: As well as two pictures of the
17 anatomy of the -- the alleged anatomy of the Defendant.
18 And I did not yesterday see any violations of Rule Five,
19 Brady motions.

20 Did I cover it all, Mr. McMullen?

21 MR. McMULLEN: The burden part of 342, you may
22 have covered that just now but --

23 THE COURT: Well --

24 MR. McMULLEN: -- is there a -- would the Court
25 consider asking the jury just to decide whether something

1 is -- whether he believed beyond a reasonable doubt or is.
2 reasonably believed.

3 THE COURT: No, sir. I'm going to charge the
4 statute as worded.

5 MR. McMULLEN: All right, sir.

6 THE COURT: You know, that's -- I don't make the
7 statutes. They're made by the legislature.

8 MR. McMULLEN: Yes, sir.

9 THE COURT: I'm not going to charge anything
10 other than the statute as written.

11 MR. McMULLEN: Yes, sir.

12 THE COURT: Likewise, in chambers it was brought
13 to my attention that yesterday we amended the indictment
14 to correct the fact that he allegedly traveled from his
15 residence in the State of Georgia. That was incorrect.
16 It was traveled from South Carolina; right?

17 MS. RINGLER: Yes, Your Honor.

18 THE COURT: I want to advise the jury of that.
19 And also when I was talking to them about criminal
20 solicitation of a minor, I misconstrued and said something
21 had to be under the age of 14 when it should be 18. Under
22 16-15-375, five, and I'm going to straighten that up.

23 MS. RINGLER: Your Honor, I think it was the
24 solicitation one. That was for solicitation, a person
25 just has to be under 18. I think that was the statute.

1 THE COURT: You're correct. All right. Anything
2 else before we bring the jury in?

3 MS. RINGLER: No, sir.

4 MR. McMULLEN: Are the witnesses sequestered? I
5 guess they don't have to be.

6 MS. RINGLER: Yes, Your Honor. We have our
7 expert and then our case agent is present and everybody
8 else is outside.

9 THE COURT: Very well.

10 MS. RINGLER: We do have an individual from SLED
11 that just wanted to watch the trial, Your Honor. So he's
12 just there in the back observing. We already told him not
13 to discuss this with any of his co-workers.

14 THE COURT: His name?

15 MR. HAY: Mark Hay.

16 THE COURT: Glad to have you.

17 MR. HAY: Thank you, sir.

18 THE COURT: Behave yourself back there. I can
19 get Judge Lloyd on you.

20 MR. HAY: Yes, sir.

21 THE COURT: How's he doing? Tell him I said
22 hello.

23 MR. HAY: Yes, sir.

24 MS. RINGLER: I guess, Your Honor, just to
25 clarify. The images that we discussed that were

TOMMY PLATT - DIRECT

1 eventually found on the Defendant's computer, those will
2 come up as part of the State's first witness, Investigator
3 Platt. The State plans on showing them to Investigator
4 Platt and asking him, are these the ones that were sent to
5 you by the individual.

6 THE COURT: Well, put him on the stand now and do
7 a proffer. Call him now.

8 TOMMY PLATT, having been duly sworn, was examined
9 and testified as follows:

10 THE CLERK: Have a seat in the witness box.
11 State your full name for the Court, spelling your last,
12 please.

13 (Thereupon, State's Exhibits No. 1 and 2,
14 photographs were marked for identification.)

15 THE WITNESS: Tommy Platt, P-L-A-T-T.

16 DIRECT EXAMINATION

17 BY MS. RINGLER:

18 Q. Investigator Platt, on October 13th, 2006, were you
19 conducting an online undercover investigation at that
20 time?

21 A. Yes, I was.

22 Q. Were you chatting with anyone at that point during
23 that day?

24 A. Yes.

25 Q. What was the screen name of the individual that you

TOMMY PLATT - DIRECT

1 were chatting with?

2 A. Screen name was Black Slider.

3 Q. During the course of your chat with the Black Slider,
4 did Black Slider send any images to you during the course
5 of the chat?

6 A. Yes, he did. He sent three images.

7 Q. I'm handing you what's been previously marked as
8 State's Exhibit One and Two.

9 THE COURT: He sent you three?

10 THE WITNESS: Yes, sir.

11 THE COURT: Okay. Go ahead.

12 BY MS. RINGLER:

13 Q. Do you recognize them?

14 A. Yes, I do.

15 Q. What are they?

16 A. Those are the images that he sent stating that that
17 was his penis.

18 Q. So those are two of the images that were sent to you
19 that day?

20 A. The other image was of his face.

21 MS. RINGLER: Thank you, Investigator Platt.

22 Your Honor, at this time the State moves to have --

23 THE COURT: I'm not going to let them in now.

24 We're just doing a proffer. Show them to defense counsel.

25 MR. McMULLEN: Oh, I've seen them.

1 THE COURT: Is there any objection?

2 MR. McMULLEN: Yes, sir.

3 THE COURT: Hold on one second. Any objection?

4 MR. McMULLEN: Yes, Your Honor. May I just ask
5 the officer a question or two?

6 THE COURT: You may.

7 CROSS-EXAMINATION

8 BY MR. McMULLEN:

9 Q. Officer, where is the third photograph?

10 A. It should be in the case file.

11 Q. Yes, sir. Do you have it?

12 THE COURT: This is not subject of this proffer.

13 MR. McMULLEN: Okay.

14 THE COURT: See, his face is not going to be any
15 problem.

16 MR. McMULLEN: Your Honor, I would say under Rule
17 403 that this is more prejudicial than probative. I don't
18 think that they can prove his identity with those
19 photographs, and the face photograph would. If that's
20 what they're trying to show.

21 THE COURT: I don't know what it's trying to
22 show. Ma'am?

23 MS. RINGLER: Your Honor, they're not being
24 offered for the purposes of identification but to show the
25 furtherance of the conduct to solicit sex from the

1 underage child as a form of grooming, as a form of
2 soliciting sex.

3 During the chat he sends the photos claiming that
4 they're him and asks --

5 THE COURT: Are you going to put in his facial
6 photo as well?

7 MS. RINGLER: Your Honor, yes, we do have -- I
8 actually don't have the picture that was sent of the
9 face. I don't actually have that, Your Honor.

10 THE COURT: Okay. Anything else?

11 MR. McMULLEN: I would just, Your Honor, submit
12 that we would say the same information could come in
13 through testimony and that the photographs would appeal to
14 the prejudice if not the passion of the jury. It's just
15 so prejudicial.

16 THE COURT: Well, he's the one who sent the
17 photographs.

18 MR. McMULLEN: Yes, sir.

19 THE COURT: He's the one -- if they depict what
20 they're saying they depict, I mean, obviously he took
21 himself, took a picture of himself while aroused and sent
22 it to this alleged 14 year old. And I would think that is
23 highly relevant in the trial of this case and that
24 relevancy outweighs any prejudicial effect.

25 I respectfully decline to overrule your objection

1 and I will allow the photographs in unless something else
2 comes up during the trial.

3 Sir, you may step down.

4 THE WITNESS: Thank you, sir.

5 MS. RINGLER: Thank you, Your Honor.

6 MR. McMULLEN: For the record, Your Honor, at the
7 appropriate time, am I just to say quickly and quietly
8 that I renew my objection?

9 THE COURT: Mr. McMullen, I'm not going to tell
10 you how to try your case.

11 MR. McMULLEN: I just want to make sure you're not
12 going to jump on me.

13 THE COURT: If I jumped on you, I apologize. I
14 don't think I've jumped on you. I just don't try lawyers'
15 cases for them.

16 MR. McMULLEN: All right.

17 THE COURT: In fact, I've been instructed not
18 to.

19 (Jury enters courtroom at 2:15 p.m.)

20 THE COURT: Mr. McMullen, we're waiting on you.

21 MR. McMULLEN: Thank you.

22 THE COURT: Thank you. Ladies and gentlemen of
23 the jury, the first thing we have to do before we get
24 started is I'm going to ask you to please stand once
25 again. Raise your right hand. The clerk will swear you

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 in for this particular case

2 (Jury impaneled.)

3 THE CLERK: You may be seated.

4 THE COURT: Before we get started, let me clear
5 up two things. In the indictment, which I told you is
6 just simply the charging document by which the case is
7 brought into the courtroom, when I was qualifying the jury
8 earlier I said it was alleged in the indictment that
9 Mr. Green traveled from his residence in the State of
10 Georgia.

11 Well, actually that was a scrivener's error in
12 the indictment and he was not in Georgia. It's alleged
13 that he was in South Carolina.

14 So does that change anybody's opinion about
15 knowing anything about the case, the fact I misread it?
16 We amended it yesterday. We just didn't put it on there.

17 And then the other thing. When I was talking to
18 you about criminal solicitation of a minor, and I will
19 charge you this more particularly at the conclusion of the
20 case, but I said that in that particular offense which is
21 16-15-375 Subsection 5, it has to be with intent to
22 perform a sexual activity in the presence of a person
23 reasonably believed to be under the age, and I said 14.
24 It's actually 18.

25 That was my mistake. I read it wrong in doing

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 it. But at the conclusion of the case, I will go over all
2 of that with you and charge you on the exact law.

3 Let me just reiterate the fact that Mr. Green has
4 been indicted in two indictments, that should be of no
5 concern to you because that's simply the allegations that
6 bring us into this courtroom. As I told you, he's pled
7 not guilty to both indictments.

8 In the Constitution of this State and the United
9 States, he's presumed to be innocent unless and until the
10 State is able to prove each and every element of those
11 indictments to you, the jury, beyond a reasonable doubt.
12 I'll tell you what reasonable doubt is and I'll tell you
13 all what that means at the conclusion of the case.

14 The way we will operate today is that when I
15 finish my little bit of opening remarks, the State goes
16 first because they have the burden of proof. They will
17 make a short opening statement followed by the Defendant
18 who will make a short opening statement.

19 Opening statements, that is not evidence in the
20 case. It is simply what the lawyers intend that they will
21 show you, sort of a road map that they will follow in
22 presenting their case.

23 Once they have completed their opening
24 statements, as I said, the State has the burden of proof.
25 They will go first. They will call their witnesses and

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 present their case.

2 At the conclusion of their case the defense has
3 an opportunity to present his defense, call witnesses if
4 he chooses to do so. And then after that, after all of
5 that is over, said and done, then we will finish up with
6 final arguments by the State and by the Defendant. And
7 then I will charge or instruct you on the law and then you
8 will be in a position to start deliberating.

9 You and I have different functions to perform
10 during the trial of the case. I have two, really main
11 things to do. Number one is I rule on the admissibility
12 of evidence. And the other thing I do, my position makes
13 me the judge of the law in the case. I will tell you what
14 the law is, charge you on the law at various times during
15 the case.

16 You've just taken an oath that says that if you
17 come into the courtroom with some preconceived idea about
18 what the law is or should be and it does not agree with
19 what I tell you, you should set aside any preconceived
20 ideas or thoughts and accept the law as I give it to you.
21 I am the Judge of the law in the case, not me, but my
22 position. So please accept the law as I give it to you.

23 My other function is to rule on the admissibility
24 of evidence. The lawyers have to play under our rules of
25 evidence and our rules of criminal procedure.

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 Most of what will come into the trial will be
2 admitted into the trial. Every now and then I may sustain
3 an objection and tell you not to consider that last bit of
4 testimony but most of it will come in and be admitted into
5 the trial of the case.

6 I try cases all over the state and I promise you
7 you'll hear different versions of the facts, different
8 positions. And then it becomes your duty, once I admit
9 that evidence into the case and you take over because the
10 12 of you collectively acting as one, you determine what
11 the true facts are in the case. You are the finders of
12 the facts.

13 I'm the judge of the law. You're the judge of
14 the facts. I can't tell you what the facts are. And you
15 can't tell me what the law is. So, y'all will determine
16 what the true facts are in the case. Once you make a
17 determination as to who you believe, credibility of
18 witnesses, what you believe, and what the true facts are,
19 then you take those true facts and you apply it to the law
20 as I charge it to you at the conclusion of the case and
21 then you'll be in a position at that time to render a true
22 and just verdict.

23 The word verdict is a Latin word that simply
24 means to speak the truth. That's simply what your job is.

25 I'm not trying to run an endurance course up

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 here, even though I do try to run it efficiently and move
2 it along. But if at any time during the trial of the case
3 you get tired, you need to use the bathroom, you need to
4 get a drink, just need to stand up and stretch, get tired
5 of listening to me, whatever, raise your hand and we'll
6 take a break.

7 Each time we take a break, I will tell you and
8 instruct you, please do not start any deliberations or
9 even talk about the case at all.

10 You're not to do that until all the evidence is
11 in, the final arguments are made, and I instruct you on
12 the law. You can talk about whatever you want to when you
13 go back to the jury room, but please do not discuss the
14 case at all until that time.

15 When we take our afternoon break, I'm going to
16 ask the 12 of you, excluding the two alternates, to please
17 select a foreperson from the 12 of you. The foreperson is
18 simply someone who acts as the spokesperson for the jury.
19 If you have any concerns, the foreperson will bring those
20 concerns to me. The foreperson will be the person who
21 leads up the deliberations at the end of the case and the
22 foreperson is the one that will actually sign the verdict
23 form on behalf of everybody.

24 So I'm going to ask that you please select a
25 foreperson among you when you do that.

OPENING STATEMENTS ON BEHALF OF THE STATE

1 When we go home tonight, I'm going to tell you
2 and ask you, please, don't read anything about it in the
3 newspaper. We have the newspaper here. They will be
4 reporting it in Aiken Standard tomorrow but let's try this
5 case based solely on what's in the courtroom. I'd ask
6 that you not read anything in the newspaper about it. He
7 writes excellent articles but sometimes, you know, he may
8 report on things that takes place when y'all are not in
9 here and those types of things so I'd ask that you not
10 read anything.

11 When it's all over, said and done you can read
12 all about it. And don't let anybody discuss the case with
13 you. Okay?

14 In just a few minutes I'm going to turn it over
15 to the State. They can make their opening remarks and the
16 Defendant will make his opening remarks. We'll get
17 started with the trial of the case.

18 Any exceptions to my opening statement by the
19 State?

20 MS. RINGLER: None from the State, Your Honor.

21 THE COURT: By the Defendant?

22 MR. McMULLEN: No, sir.

23 THE COURT: All right. Ms. Ringler, you may make
24 an opening statement.

25 OPENING STATEMENTS ON BEHALF OF THE STATE

OPENING STATEMENTS ON BEHALF OF THE STATE

1 MS. RINGLER: The case that you are going to hear
2 this afternoon and part of tomorrow, this is a sex crime
3 case. In this case the Defendant used the Internet as a
4 tool, a tool to reach out and search for an intended
5 victim.

6 The Internet connects us to the world. It can
7 also be a doorway to another person's life. And so it was
8 for the Defendant, Benjamin Green. The Internet was a
9 doorway into the life of LittleMandyl4SC.

10 The Defendant learned that Mandy lived in Aiken
11 County, that she lived with her mother and that she was 14
12 years old. But what the Defendant didn't know at the time
13 was that he was actually speaking with Investigator Tommy
14 Platt of the Aiken County Sheriff's Office.

15 Investigator Platt, who's here today and who
16 you'll hear from in a little bit, is an Internet crimes
17 investigator. He goes in and online conducts proactive
18 undercover investigations. He creates online personas,
19 online profiles of underage children. He developed a
20 whole back story, a whole background for these personas.

21 He then goes online onto different websites as a
22 child and conducts investigations. He was conducting one
23 of these investigation on October 13th, 2006. On that day
24 he logged on as LittleMandyl4SC. He entered into a Yahoo
25 chat room as that persona, as that 14-year-old child.

OPENING STATEMENTS ON BEHALF OF THE STATE

1 While in the chat room he did not participate in
2 the chat. A chat room is an open forum where anybody
3 logged into the chat room can make posts and communicate
4 with other people in the chat room.

5 Instead Investigator Platt as Mandy was logged
6 into the chat room but did not participate. It was at
7 that time that LittleMandy was approached by Black
8 Slider. That was the screen name of the individual who
9 approached LittleMandy.

10 The two then entered into an instant message
11 private chat. This is a one-on-one chat between two
12 people that can't be viewed by people outside that chat.

13 And during the course of the chat that's when
14 Black Slider who was later identified as Benjamin Green
15 communicated with LittleMandy. He asked LittleMandy how
16 old she was. She told him that she was 14 years old and
17 that she was from Aiken, South Carolina.

18 Within 10 minutes of the chat the Defendant asked
19 LittleMandy about her sexual experience and also if she
20 would have sex with him. He goes on to have a sexually-
21 graphic chat with LittleMandy and arranges to meet
22 LittleMandy for the purposes of having sexual intercourse.

23 Also during the chat, LittleMandy asked the
24 Defendant, could I drive your car when we meet. To that
25 he responds, no, you're too young. So the Defendant

OPENING STATEMENTS ON BEHALF OF THE STATE

1 arranges to meet with LittleMandy. This is in Aiken,
2 South Carolina. And then the chat ends.

3 At that time Investigator Platt goes to the
4 predetermined meet location and he sits and waits.
5 Before -- at about the time that the Defendant said that
6 he would be there during the chat, a car approaches at the
7 meet location. It pulls up and stops.

8 Now, there's nothing around this predetermined
9 meet location. It's a cul-de-sac that's undeveloped.
10 There are no buildings, no streetlights. There's nothing
11 there at that time of night except the investigator and
12 two other officers that are there to assist.

13 So the Defendant pulls up in the car that he
14 described during his chat and stops. That's when
15 Investigator Platt comes out asks the Defendant, Benjamin
16 Green, to exit his vehicle and speaks to him.

17 You'll hear today about that arrest. You'll hear
18 today about the chat. You'll actually get to see the chat
19 and read it yourself, read what was communicated to what
20 the Defendant thought was a 14-year-old girl.

21 You also hear about how the computer of the
22 Defendant was searched, was seized and searched and
23 examined by a forensic examiner. And you'll hear about
24 the results of that examination today.

25 And the State is confident that after you hear

OPENING STATEMENTS ON BEHALF OF THE DEFENSE

1 all the evidence presented that you'll find that the
2 Defendant did in fact solicit an underage child for sex
3 and also that he traveled to meet that underage child for
4 the purposes of having sexual intercourse, and you will
5 find him guilty of criminal solicitation of a minor and
6 attempted criminal sexual conduct in the second degree.

7 OPENING STATEMENTS ON BEHALF OF THE DEFENDANT

8 MR. McMULLEN: If it please the Court, ladies and
9 gentlemen of the jury. Good afternoon. Thank you for
10 being here.

11 I'm honored to be here to do my job today which I
12 love very much. And I'm here in the greatest system for
13 justice in the world. And you are, too. You're part of
14 it today.

15 And I think that you're in for a treat. I think
16 that as His Honor said earlier, those of you, many are
17 called, few are chosen and you who have been chosen are
18 going to see what you won't see on Court TV. You're going
19 to see a real-life trial. You're going to be part of the
20 process.

21 And you, ladies and gentlemen, play the most
22 important part. We can have a jury trial without a lawyer
23 even but we need a jury. And we need a fair jury. And we
24 need the burden to be properly applied.

25 You know, in a civil case where you're fighting

OPENING STATEMENTS ON BEHALF OF THE DEFENSE

1 over property, lawsuit of some sort, the burden is the
2 lowest one. It's a preponderance of the evidence. That's
3 where it's 50 percent plus just a little bit more is all
4 you need to rule one way or the other.

5 There are higher standards. There's clear and
6 convincing. There are several others, but the highest one
7 that there is is beyond a reasonable doubt. Beyond a
8 reasonable doubt.

9 Now, what you're going to be asked to consider by
10 the State is the evidence that they have. And what I want
11 you to please listen for is when they tell you how they
12 lured or how they attracted anybody to reply to them.
13 What was it, an adult chat room or was it a children's
14 chat room? Was the photograph used in the profile that of
15 a 14 year old, or was it of somebody older?

16 What we seek is a fair hearing today. Mr. Green
17 has been working for the last two years, waiting for this
18 trial and waiting for the opportunity to respond to the
19 attorney general's allegations.

20 He has a fine staff. He's -- he himself appears
21 to be a politician but his staff are a fine group of
22 lawyers. And they're here to do their job. I'm here to
23 do mine.

24 And your job, ladies and gentlemen, you can see
25 that if this was a seesaw or a scale that the balance

OPENING STATEMENTS ON BEHALF OF THE DEFENSE

1 would be tipped pretty, pretty heavily in favor of the
2 State.

3 They're going to have their federal grant money
4 and their fancy computer equipment and their fine, well-
5 trained, professional investigators and their fine well-
6 trained professional lawyers but Mr. Green has me.

7 And Mr. Green has the presumption of innocence
8 and the benefit, we hope, of the -- being made to prove
9 beyond a reasonable doubt that he believed LittleMandy was
10 14 years of age. What they're going to really have to
11 prove to you is that it's reasonable, beyond a reasonable
12 doubt, it's reasonable to believe that what somebody's
13 telling you in an Internet chat room is believable.

14 They want you to believe that it's -- well, we'll
15 let them make their burden but ask those questions of
16 yourself. Will they show you that the person on the
17 profile, that the photograph that they used was a 14 year
18 old, and will they show you the entire conversation.

19 Now they know, these well-trained folks know that
20 if they catch somebody they think's preying on children
21 that they're going to have to come into court and show
22 evidence to a jury, like you, and convince them beyond a
23 reasonable doubt. And so, if they're going to use an
24 Internet chat room chat or instant message chat then, do
25 they have the whole chat for you.

TOMMY PLATT - DIRECT

1 I submit to you that this case is about fairness.
2 And we'll just see how fair the process was that was used
3 to catch Mr. Green.

4 Thank you for your attention.

5 THE COURT: You may call your first witness.

6 MS. RINGLER: Thank you, Your Honor. The State
7 calls Investigator Tommy Platt.

8 TOMMY PLATT, having been duly sworn, was examined
9 and testified as follows:

10 THE CLERK: Have a seat in the witness box,
11 stating your full name, spelling your last for Court,
12 please.

13 THE WITNESS: Tommy Platt, P. L. A. T. T.

14 DIRECT EXAMINATION

15 BY MS. RINGLER:

16 Q. Thank you, Investigator Platt. Where do you currently
17 work?

18 A. Aiken County Sheriff's Office.

19 Q. And what are your duties there?

20 A. I am the polygraph examiner.

21 Q. What's your background in law enforcement?

22 A. I have almost 16 years. I started off as an animal
23 control officer, did a lateral transfer to the sheriff's
24 office a few years after that, was road deputy, then
25 promoted to sergeant, school resource officer, juvenile

TOMMY PLATT - DIRECT

1 investigator, and now polygraph examiner.

2 Q. How many years were you an investigator?

3 A. Nine years.

4 Q. Are you familiar with what's commonly referred to as
5 Internet Crimes Against Children task force or ICAC task
6 force?

7 A. Yes.

8 Q. What is that?

9 A. That is a group of law enforcement agencies throughout
10 the state and throughout the United States who come
11 together as a group, train together, took classes together
12 to do proactive investigations online.

13 Q. And what sort of training did you get on conducting
14 online Internet investigations?

15 A. I've been through the Internet technology school, then
16 I went to the uncover investigation class.

17 Q. And what did you learn from the undercover
18 investigation class?

19 A. We were trained to build a persona or profile. We
20 used Yahoo in our undercover class. They basically taught
21 us how to act and talk like a 12, 13, 14-year-old male or
22 female.

23 Q. Why conduct a proactive investigation?

24 A. To try and catch bad guys before they actually get to
25 a child.

TOMMY PLATT - DIRECT

1 Q. How is a proactive investigation different from a
2 reactive investigation?

3 A. A proactive is where we set up our personas and we go
4 into the chat room and sit and wait for somebody to hit on
5 us and where a reactive is where we actually have a live
6 victim that somebody's already talked to or met with.

7 Q. So why conduct a proactive investigation as opposed to
8 a reactive one?

9 A. To catch the bad guys before they actually get to a
10 child.

11 Q. Let's talk a little bit about the undercover personas
12 that you use. Do you have more than one or just one that
13 you use?

14 A. I have more than one.

15 Q. And is each one different?

16 A. Each one is different.

17 Q. What goes into creating an online persona?

18 A. First we come up with a screen name which in a screen
19 name we try and have our age, a location of where we're
20 from, maybe a nickname all built in one. Some people use
21 their zip codes, phone numbers, date of births.

22 Q. And what persona were you using in October of 2006?

23 A. LittleMandyl4SC.

24 Q. And so, what was the significance of that screen name?

25 A. We went with -- our name was Mandy Ann, and we were 14

TOMMY PLATT - DIRECT

1 years old, out of South Carolina.

2 Q. And how much -- what goes into developing a persona of
3 LittleMandy?

4 A. We will either upload a picture for our profile, we'll
5 put a quote in there, single or married, occupation, we
6 always will put student or nothing in there.

7 Q. Are you familiar with the Yahoo program and the
8 services it provides its customers?

9 A. Yes, I am.

10 Q. What sort of services does it provide?

11 A. Yahoo which is a search engine, it has weather,
12 e-mail, finance, and then it has these chat rooms.

13 Q. And you mentioned chat rooms. Do you have to create
14 an account to log onto these chat rooms?

15 A. You do.

16 Q. And how do you create an account?

17 A. Anybody can create an account. All you have to do is
18 go into Yahoo, get an e-mail address and just set up your
19 own profile.

20 Q. I'm handing you what's been previously marked as
21 State's Exhibit Three. Do you recognize it?

22 A. Yes, I do.

23 Q. What is it?

24 A. This is my LittleMandy profile for Yahoo.

25 Q. Is that the one that you were using on October 13th,

TOMMY PLATT - DIRECT

1 2006?

2 A. This is.

3 MS. RINGLER: Your Honor, at this time the State
4 would move to admit this profile into evidence.

5 THE COURT: Any objection?

6 MR. McMULLEN: No, sir.

7 THE COURT: All right. What exhibit is it?

8 MS. RINGLER: Exhibit Number Three, Your Honor.

9 (Thereupon, State's Exhibit No. 3,
10 LittleMandyl4SC Yahoo profile, was received into
11 evidence.)

12 BY MS. RINGLER:

13 Q. And next I'm handing you what's been previously marked
14 as State's Exhibit Number Four. Would those slides aid
15 you in explaining to the jury how a person gains access to
16 a Yahoo chat room?

17 A. Yes.

18 Q. Thank you. Your Honor, the State would move to admit
19 these as a demonstrative exhibit.

20 MR. McMULLEN: May I approach? I don't think
21 I've seen these yet.

22 THE COURT: Well, show it to him.

23 MR. McMULLEN: May we approach? I haven't seen
24 some of these things.

25 THE COURT: Either make an objection --

TOMMY PLATT - DIRECT

1 MR. McMULLEN: I object.

2 THE COURT: And what's your objection?

3 MR. McMULLEN: I have not been provided some of
4 these photographs.

5 THE COURT: Well, it's just for demonstrative
6 purposes.

7 MR. McMULLEN: Yes, sir. That's my objection.
8 In discovery I have not been provided what's being
9 presented during the case in chief.

10 THE COURT: Let me see it.

11 MS. RINGLER: (Documents handed to the Judge.)

12 THE COURT: All right. Let me see y'all over
13 here on sidebar.

14 (Off-the-record discussion.)

15 THE COURT: Objection sustained. Ladies and
16 gentlemen, Exhibit Four will not come into evidence but it
17 can be used in the presentation of the case by way of what
18 we call demonstrative evidence which means she is
19 demonstrating her point.

20 MS. RINGLER: Thank you, Your Honor. The State
21 would request to publish the exhibit Number Three to the
22 jury at this time.

23 THE COURT: Ma'am, just go ahead and try your
24 case. When we take a break or when -- I'll let the jury
25 look at Number Three, but if you're trying to ask

TOMMY PLATT - DIRECT

1 questions while they're looking, they can't keep their
2 mind on what they're doing.

3 That's what I do in all trials, publish them at
4 the end of the testimony.

5 BY MS. RINGLER:

6 Q. Investigator Platt, I'm going to hand you what's been
7 admitted as State's Exhibit Number Three. Could you
8 please talk to the jury a little bit about the profile
9 that was being used that day.

10 A. When I created this profile my screen name was
11 LittleMandy14SC. The next line down you have a chance to
12 put in your real name so everybody can see it. And I used
13 Mandy, and then it has next line down is for your
14 nickname, like, what your friends would call you and I
15 have Mandy Ann. It then has your location which I put
16 near Aiken. Age, I put 114. Marital status, I put
17 single. Sex, I put female. Occupation, I put, what do
18 you think.

19 And then there's the -- it goes down to hobbies. And
20 I typed in chilling with my gals, rocking to Kenny
21 Chesney, Naascar and the Braves. There's another -- going
22 down further where you can put a quote in and, which is
23 the same quote I use on all of mine. It's, girls just
24 want to have fun. Then there's an area where you can put
25 a home page or a cool link which we don't ever put any of

TOMMY PLATT - DIRECT

1 those in.

2 And that puts -- we also have a picture that's
3 uploaded to it of what we're supposed to look like.

4 Q. So that profile that you have there, Exhibit Number
5 Three, is that viewable to people online?

6 A. It's viewable by anybody in Yahoo.

7 Q. And you had said that you used the age 114. Does
8 Yahoo have any age restrictions on their services?

9 A. Yes, it does.

10 Q. Are you over the age of 18?

11 A. No, we're trained to be 14.

12 Q. But you entered an age that was over 18?

13 A. Right.

14 Q. Did Yahoo do anything to verify --

15 A. Not at all.

16 Q. -- the age?

17 A. No. We were trained in our undercover class that
18 we're not allowed -- we have to put in an age. We always
19 put in something that is outrageous, that it can't
20 happen. Like 114, to show that we're actually 14. Some
21 investigators use 112, 113.

22 Q. And from your experience and training as an
23 investigator and also your training with computer crimes,
24 do children under the age of 18 use Yahoo services?

25 A. All the time.

TOMMY PLATT - DIRECT

1 MS. RINGLER: Your Honor, at this time the State
2 would ask to publish the Yahoo profile to the jury.

3 THE COURT: Are you finished with him?

4 MS. RINGLER: No, Your Honor.

5 THE COURT: Then keep going.

6 MS. RINGLER: Okay.

7 BY MS. RINGLER:

8 Q. What is a chat room?

9 A. A chat room is where a group of people meet and just
10 chat. They talk. There's different categories and
11 subcategories in that which you can request to go to those
12 different chat rooms. Once you're in a chat room there's
13 something called a billboard where everyone's name, their
14 screen name is posted on the right-hand side. And the
15 billboard, everybody gets to chat. You can see what
16 everybody else is chatting with each other.

17 Then in the chat room if you want to send what's
18 called an instant message to somebody in private, you just
19 IM them.

20 MS. RINGLER: And, Your Honor, the State does
21 have a demonstrative evidence to show the jury at this
22 time how to log on to the chat room.

23 THE COURT: Go ahead. Where are you going?

24 MR. McMULLEN: I was hoping to see it.

25 THE COURT: You may. Stand right over here.

TOMMY PLATT - DIRECT

1 BY MS. RINGLER:

2 Q. And so, Investigator Platt, what is being depicted
3 here up on the screen for the jury?

4 A. Can I step down so I can see a little better?

5 THE COURT: If you need to.

6 THE WITNESS: Okay. This is the Yahoo member
7 directory where you log in for your, either Yahoo chat
8 room or your e-mail.

9 BY MS. RINGLER:

10 Q. And so, there's two boxes there that say Yahoo ID and
11 password?

12 A. Right.

13 Q. So what would you enter in those?

14 A. LittleMandy -- well, you would enter your screen name
15 for your Yahoo ID, whatever you set up and then you use
16 your password to get in to go to the chat rooms.

17 Q. And so in this line, what's being depicted in this
18 line?

19 A. The center, this is your different categories of where
20 you can go into. Once you click on a category, it will
21 bring you over to the rooms that are available.

22 Q. And so these are from the different Yahoo chat rooms?

23 A. Right.

24 Q. So you said they were in categories?

25 A. Uh-huh.

TOMMY PLATT - DIRECT

1 Q. Can you talk a little bit about the different
2 categories that are available?

3 A. Yes. Games. That's usually one that young adults go
4 in, different videos games and stuff. It's self-
5 explanatory. It goes all the way down.

6 The ones we use in our undercover investigations is
7 usually school and education, science, romance by
8 location, regional, recreation and sports.

9 Q. Why would you want to limit the chat by location?

10 A. Because we're concentrating on South Carolina and
11 Georgia.

12 Q. And then in this next screen what's being depicted in
13 this?

14 A. This is showing that you're actually in South Carolina
15 Five chat room. This is stating which one you're actually
16 in. The notification that they're reporting all IEP
17 addresses and this is all the different people, the screen
18 names of where they are. So you can actually click on,
19 say for instance, a Adrianna, you can double click on her
20 and it will bring the profile up, like we've just shown,
21 and all of Adrianna's information.

22 Q. And so when you conduct your investigations, do you
23 participate in the chats?

24 A. We log into a chat room. We seldomly put anything up
25 on a billboard which, this will be the billboard where

TOMMY PLATT - DIRECT

1 everybody talks and you can see who's talking and what
2 they're saying. We just hang out where our name's over
3 here so everybody can see us.

4 Q. So when you are logged into the chat room, would our
5 name be present on there on the right in the list?

6 A. Yes.

7 Q. And so you mentioned the bulletin board. Is that how
8 people would post on the board?

9 A. Right.

10 Q. And so, what's being depicted in this slide?

11 A. This is one, two, three separate people chatting with
12 me at one time. This is an individual private chat where
13 I'm talking here and then this person, and on down.

14 Q. So these are instant message chats?

15 A. These are instant messages.

16 Q. Thank you. Please have a ...

17 When you're conducting your proactive investigations
18 and you're chatting with somebody, like you just talked us
19 through on the instant message, how do you document those
20 chats?

21 A. We archive all of our chats. There's -- Yahoo has a
22 preference button where you can go in and --

23 MR. McMULLEN: Your Honor, I'm going to object at
24 this time unless he's been qualified as an expert on auto
25 archiving from Yahoo.

TOMMY PLATT - DIRECT

1 THE COURT: Overruled.

2 BY MS. RINGLER:

3 Q. Please talk us through how you set up the archiving
4 feature.

5 A. You click on the preference button which will show
6 either archive all the time, delete after every chat, or
7 delete all the time.

8 We click on archive all the time so it saves all the
9 chats. We chat with so many people at one time, that's
10 why we use our archive because we can always go back and
11 capture the chat.

12 Q. Is this something that you have to manually ask it to
13 save or does it do it automatically?

14 A. Once you click the archive to archive all the time it
15 automatically does it.

16 Q. Does the archiving feature save the entire chat?

17 A. It loses the very first line of every chat.

18 Q. Is that something you learned about in your training?

19 A. We learned in undercover school that whenever a chat
20 is being archived, the very first line will automatically
21 be deleted. It's just not captured.

22 Q. Is there anything that you can do to change that?

23 A. No.

24 Q. Is there any other method that you use to document the
25 chats?

TOMMY PLATT - DIRECT

1 A. Yes. We use a program called Camtasia. Camtasia is a
2 live action recorder that captures everything on the
3 screen in realtime which was just shown on the screen
4 there. That was a Camtasia capture.

5 Q. Is it a video or an image or photo or --

6 A. It's a video. It captures the screen in realtime and
7 it's just like a camcorder. It records everything.

8 Q. What exactly does it record?

9 A. The whole screen. Whatever comes up on the screen;
10 the chats, pictures, videos. Whatever comes up on our
11 computer screen.

12 Q. On your screen?

13 A. Right.

14 Q. Did you use the Camtasia program on October 13th,
15 2006?

16 A. We attempted.

17 Q. Were you successful?

18 A. No, we weren't. We -- in 2006 we had a problem which
19 we thought was our Camtasia program where we would
20 automatically start our Camtasia then go into the chat
21 rooms where everything was recorded, we kept getting
22 booted or kicked off the computer.

23 We were assuming it was the Camtasia program. We
24 believed it was a Atlantic Broadband problem. We switched
25 out several modems and routers but, yeah, there was

TOMMY PLATT - DIRECT

1 several cases where Camtasia just wouldn't work.

2 Q. And did it work on October 13th, 2006?

3 A. It did not.

4 Q. Why use two different methods to document?

5 A. For a backup.

6 Q. Did you conduct an online proactive investigation on
7 October 13th, 2006?

8 A. Yes, I did.

9 Q. Where were you?

10 A. At 420 Hampton Avenue in Aiken, at the sheriff's
11 office.

12 Q. In Aiken County?

13 A. Yes.

14 Q. And you had said before that you were using the
15 LittleMandy profile that day?

16 A. Correct.

17 Q. What do you -- what did you do when you first began
18 your investigation that day?

19 A. I don't remember exactly what time we started. It was
20 probably around lunchtime. Myself and Investigator
21 Feemster got online and just stayed in the chat rooms
22 chatting, there's no telling how many people, all day.

23 Q. Were you contacted by an individual with a screen name
24 Black Slider that day?

25 A. Yes, I was.

TOMMY PLATT - DIRECT

1 Q. And what happened -- how were you contacted?

2 MR. McMULLEN: I'm going to object unless this
3 statement has been provided in the discovery or --

4 THE COURT: Say that again. Ask the question
5 again.

6 BY MS. RINGLER:

7 Q. I asked: Were you contacted by an individual with the
8 screen name Black Slider and then I asked, how were you
9 contacted?

10 THE COURT: And you object to that?

11 MR. McMULLEN: Yes, because I have not ever heard
12 the content of this. It hasn't been provided. It's a
13 statement they say it's the Defendant.

14 THE COURT: Well, he hasn't answered yet.

15 MR. McMULLEN: Right. I have to object before he
16 answers.

17 THE COURT: Overruled.

18 THE WITNESS: Through instant message.

19 BY MS. RINGLER:

20 Q. And did you continue to, did you respond back to Black
21 Slider through instant message?

22 A. I did.

23 Q. Did you document that chat?

24 A. We -- through our archive we put it on Notepad and
25 printed it out.

TOMMY PLATT - DIRECT

1 MR. McMULLEN: Subject to my objection, Your
2 Honor.

3 BY MS. RINGLER:

4 Q. I'm handing you what's been previously marked as
5 State's Exhibit Five. Do you recognize it?

6 A. Yes, I do.

7 Q. What is it?

8 A. This is the chats from myself and Black Slider.

9 Q. And does it accurately depict the conversation that
10 you had with Black Slider that day?

11 A. Yes, it does.

12 Q. Is there anything missing from the chat?

13 A. The very first line.

14 MS. RINGLER: Thank you. Your Honor, the State
15 moves to admit the archived chat at this time, State's
16 Exhibit Number Five.

17 MR. McMULLEN: Just -- I object for the grounds
18 previously stated.

19 THE COURT: Overruled.

20 MR. McMULLEN: It's not a fair representation.

21 MS. RINGLER: Thank you, Your Honor.

22 (Thereupon, State's Exhibit No. 5, archived chat,
23 was received into evidence.)

24 MS. RINGLER: The State would ask to publish the
25 chat to the jury at this time.

TOMMY PLATT - DIRECT

1 THE COURT: In what manner? How are you going to
2 do that?

3 MS. RINGLER: It would be through Powerpoint.
4 Thank you, Your Honor.

5 BY MS. RINGLER:

6 Q. I'll hand you State's Exhibit Five and also it will be
7 up on the screen as well. Now, Investigator Platt, can
8 you please talk us through the chat that you had, that
9 LittleMandy had with Black Slider that day, on October 13,
10 2006?

11 A. Okay. The first thing is that when we go into a chat
12 room, we don't initiate a chat. We wait for people to
13 come talk to us. That's why the first line is missing,
14 which I don't know what Black Slider's first line was.
15 Whatever it was I responded to, I haven't before. And
16 then he states, what's the oldest you would have. And I
17 stated, I hooked up with a 16 year old.

18 You want me to read all of them or just talk about --

19 Q. Well, let's go down to the second-from-the-bottom
20 line. What's going on at that point?

21 A. That's where he was asking how old I was and I stated
22 I was 14. And then he came back and stated that he was
23 21.

24 THE COURT: Hold on one second.

25 MR. McMULLEN: Your Honor, if they're going to

TOMMY PLATT - DIRECT

1 publish part of this to the jury, I'd like for them to
2 publish the entire statement.

3 THE COURT: You'll get the opportunity to do that
4 when you have cross-examination.

5 MR. McMULLEN: Rule 106 says I can do it now.

6 THE COURT: No, sir. Don't argue with me.

7 MS. RINGLER: I see --

8 THE COURT: It's not what Rule 106 says. Go
9 ahead.

10 BY MS. RINGLER:

11 Q. I see that there was a time and a date also. Is that
12 something that always happens with the chats?

13 A. That's called a time stamp. And that is another
14 option with Yahoo that we use in our investigations to
15 show what date and time we are talking with someone.

16 Q. So the time that's appearing on that screen, that's
17 the time that the chat occurred, that line occurred?

18 A. That's correct.

19 Q. The line -- is it the time you received it or the time
20 that it was sent?

21 A. For -- yeah, the time it was sent. And the time
22 received, so...

23 Q. And this next slide, what's going on in this portion
24 of the chat?

25 A. This is when he was starting to talk about, do you

TOMMY PLATT - DIRECT

1 like black guys. I stated, I've never gone out with one.
2 Then he asked if I ever slept with one or wanted to. I
3 stated I had never done that. And he came back with, ever
4 wanted to.

5 Q. I see that a lot of words are being shortened. Is
6 that common on --

7 A. Yes.

8 Q. -- online chatting?

9 A. That is. That's something that we were also taught in
10 the undercover school and it's just a quicker way for
11 people to chat.

12 Q. And so that's -- that commonly occurs in chats?

13 A. Yes, it does.

14 Q. Can you talk a little bit about what's going on in
15 this chat, this screen?

16 A. This is, the one before that was -- his chat was, ever
17 wanted to, talking about having sex. I put in, I don't
18 know. Then he stated he wanted to be the first one with
19 LittleMandy. I just kind of blew him off at that point,
20 asked him if he was faking. He says, no, why would I be
21 faking.

22 Q. Why did you ask if he was faking?

23 A. That is something that's common with the 12, 13 and 14
24 year olds. That's what they say for somebody who is a
25 player or somebody who's just playing around.

TOMMY PLATT - DIRECT

1 Q. Could you please read us what's going on in this
2 slide?

3 A. It's when he looked at my profile pic. He said, isn't
4 that you on the bed in the profile. And I said, yes. I
5 asked him where he lived. He said he thought I was pretty
6 and wouldn't mind giving me an orgasm or two. Then he
7 stated he lived in Columbia.

8 And I asked him for a pic, which we do every time to
9 help identify -- I'm sorry. He asked me for any more pics
10 which I said no. And he said he had a few. He asked if I
11 liked being on top. And I stated that I had only done it
12 once. And he stated, you've only had sex once or been on
13 top once.

14 Which I respond, never been on top. And he says, wow,
15 you're still almost a virgin. And then he asked, would I
16 sleep with him. And I stated, I don't know.

17 Q. Just referring back to the time stamps, how long had
18 the conversation gone on at that point before he asked
19 would you sleep with me?

20 A. By that, 10 minutes and 15 seconds from our initial
21 chat.

22 Q. And how did you respond to that question?

23 A. About sleeping with him?

24 Q. Yes.

25 A. I stated, I don't know.

TOMMY PLATT - DIRECT

1 Q. Please continue on.

2 A. Then he stated that he would like to. I asked if he
3 was for real. He said, what or why not. You a pretty
4 white girl. That's when I asked him for a pic. He stated
5 he liked pretty white girls. He stated he was trying to
6 get the pics now. I stated, cool.

7 That's -- the break in between those is when he sent
8 me a picture of his face.

9 I stated that he was cute. Asked him if he was a
10 player. He said, not a player just have friends. Asked
11 him what kind of job he had, which we're trained to ask if
12 they work, where they work, what kind of cars they drive.

13 Q. Why would you want to try to obtain that kind of
14 information?

15 A. It helps with the investigation. There's, sometimes
16 where, if a traveler shows up and gets away and they're
17 honest about where they were, then that helps us to go
18 after them.

19 Q. And what did he say about his job?

20 A. He said he worked at a plant.

21 Q. Were you able to identify who Black Slider was?

22 A. Yes.

23 Q. Who was Black Slider?

24 A. Benjamin Paul Green the Fourth.

25 Q. Were you able to determine where the Defendant,

TOMMY PLATT - DIRECT

1 Mr. Green, worked?

2 A. He -- when he arrived he stated to me that he did work
3 at a plant. So he was actually being honest there. I
4 asked him if he was rich. He said, hell no, laugh out
5 loud. I've got bills.

6 I typed in, wow. At that point is where he sent me a
7 picture of his penis. He asked, wow what. I said, your
8 dick. He said, do you like it. And I said, yes. I
9 stated, it's big.

10 He said, I can show it to you in person. Stated, for
11 real. He said, yes, if you want me to.

12 And this is something that we always put in there. We
13 ask, are you going to kill me or kidnap me. And that's
14 something that we're also trained in the undercover school
15 to put in there.

16 Q. Why would you put something like that in there?

17 A. Because there's actually been occasions where
18 travelers have gone and kidnapped real live victims. And
19 there's a chance that the person that is going to be doing
20 the traveling, when they get there they have duct tape,
21 ropes, guns.

22 We just kind of want to ask them and see if they're
23 going to be honest about that.

24 Q. So in the other chats that you've conducted, do people
25 ever stop chatting with you once they learned of your age?

TOMMY PLATT - DIRECT

1 A. All the time.

2 Q. Did you ever chat -- have you ever chatted with people
3 and the chats never became sexual?

4 A. All the time.

5 Q. In this case, it was the Defendant who brought up sex
6 first. Do you ever bring up -- does Mandy ever bring up
7 sex first in a chat?

8 A. No, not at all.

9 Q. Does Mandy ever bring up meeting first in a chat?

10 A. No, not at all. Another reason we put, you ain't
11 going to kill me or kidnap me, is that what a 12, 13, or
12 14 year old little girl would be scared that would happen
13 to them if meeting somebody.

14 He types in, laugh out loud, hell no, about the
15 killing and kidnapping. Asked him what kind of car he
16 had. He stated he was just a freaky guy. He said he had
17 a two-door. I asked if it was tight, and he stated it was
18 all right. He stated that it wasn't hooked up. I asked
19 him, what kind.

20 The reason for that is if a traveler shows up and
21 tries to run then, we -- if they're honest, we'll know
22 what kind of car. He stated it was a Oldsmobile. I said,
23 cool. Asked him if it was dropped. He said, no, laugh
24 old loud. Asked him if it had a system in it.

25 Q. What does drop mean?

TOMMY PLATT - DIRECT

1 A. Where a vehicle is lowered, lowered to the ground.

2 Q. And by system, what did you mean by that?

3 A. Stereo, which is something that young men and women
4 are into. He stated it wasn't or he told me that it
5 wasn't hooked up.

6 I asked him if I could drive it which is something we
7 always use and always ask. He stated, no, you ain't old
8 enough. I said, so. He said, you might wreck it. I
9 stated, no, I won't. And then he stated, you might wreck
10 it and kill me.

11 Q. And what does KK mean?

12 A. That's just a little thing I use for meaning okay.

13 THE COURT: Use it for what?

14 THE WITNESS: Just means okay.

15 He stated that he would think about it but only
16 with him in the car. I put KK.

17 That's when he asked, your peeps let you out
18 after dark. What he was referring to my parents let me
19 out after dark. I put, mom's working tonight. He stated,
20 what does that mean. Said, mom's not home. He asked if I
21 was going to come out. I stated, sure. Then he put,
22 maybe I can come in. I said, yeah, cool.

23 He asked if I was sure and asked if I had movies
24 and stuff. I said, not many. You got any you can bring.
25 He said, yeah a few that he could bring. And asked if it

TOMMY PLATT - DIRECT

1 was DVDs. I stated, yes.

2 Then I put in, bring a Trojan. He said, okay. He
3 said, I'll bring it but I won't pressure you to do
4 anything you don't want to do. I said, cool. He then put
5 in there, if you change your mind and want to just chill
6 out, that's cool too.

7 He asked me if I drank. I said that I drank two weeks
8 ago. He asked, so I don't need to bring any. And I just
9 put, do you.

10 BY MS. RINGLER:

11 Q. Is there a reason you chose Malibu as the drink?

12 A. That is a drink that is popular with teenage girls.
13 And that's why we use that.

14 Q. Please continue.

15 A. And if we're using a male persona underage we'll use
16 beer instead. So he asked if he needed to bring any. I
17 said, do you. And he said, because he didn't drink much
18 himself, just a little bit.

19 I put, cool so what time. He said, you tell me. It
20 will take me about an hour to get down there. I put in,
21 seven. He said -- and I put that because at the time it
22 was 6:04 and he stated he was coming from Columbia which
23 made sense when he would show up.

24 He asked, when does mom go to work. I stated she was
25 already gone. And he asked when she'd be back. I put

TOMMY PLATT - DIRECT

1 that she went to eat before she went to work, that's why
2 she had already left. He put, what time will she come
3 home. I said, seven a.m.

4 He asked what kind of movies should he bring. I put
5 in, I don't care. He said, okay. And what about your
6 address. I asked, what you got. He said, I'll bring a
7 comedy. He said cool -- or I said, cool.

8 He asked again for an address. I said, you want me to
9 meet you at the circle. He said he didn't know what the
10 circle was. I stated, it's a gravel circle down from my
11 house. That's where we drank two weeks ago.

12 I also stated, no one lives down there. So he stated
13 he guesses so. I said, cool. I said it's Old Magnolia
14 Lane in Beech Island. He said, what the direction. And
15 he asked if I had a number. I think he was asking for a
16 house number.

17 He said, I don't know how to get there. I asked him
18 if he could Mapquest it or use Yahoo Maps. And there was
19 a delay of almost 48 seconds so I asked him if he was
20 still there which I think he was using the Yahoo Maps then
21 or Mapquest. He put, yes. He said, so seven or 7:30,
22 cool. He said, 7:30.

23 Cool, you got directions. What do I type in
24 Mapquest. Then I put, Old Magnolia Lane, Beech Island,
25 South Carolina.

TOMMY PLATT - DIRECT

1 Okay. Hold on. I put, KK. You there. Yeah. So, he
2 asked, so what do you want to do when I -- so what to do
3 when I get the call or get there. Asking if he wanted me
4 to call. I put, I don't care.

5 He said, what number. I said, there is no number no
6 one lives down there. Well, how can I call you. And I
7 just put, I live down the road. He asked to let me know
8 when he got there or got near.

9 He said -- I put, oh, we have a cell but mom took it
10 to work with her. I guess just wait there -- or he put, I
11 guess just wait there, and hope you show up.

12 And he put, wow, no house phone. I typed in, I'll be
13 there before you. He said, okay. He put in, you're not
14 going to have no dudes with you are you. And I said, no.
15 And he typed in, I don't mind other females, laugh out
16 loud. I put in, laugh out loud no girls either.

17 But yeah I'm on the way. Okay. I'll bring like three
18 movies. I put in, cool. He said, oh and I'm Ben. And
19 what else. And he stated, a Trojan just in case. I put
20 in, yep.

21 Okay. See you then. Oh I forgot, I have Yahoo on my
22 cell phone too. If you stay on the computer. I put,
23 cool. He said, all right. I'm coming. I asked him for
24 his number and asked him if he got directions.

25 He put, yep, cool. Did you get directions. Just want

TOMMY PLATT - DIRECT

1. to make sure you knew how to get there. He put, yep.

2. And that's when I told him I was Mandy. He said, yeah
3 I'll be fine as long as they're okay.

4. I said I'd see him soon. He said, this is cool. I
5 said, what's cool. And I said, this, meeting you, driving
6 your car. He said, oh. I said, do you want to give me
7 your number. He said he'd do that later. I said, okay
8 see you soon.

9 At this point he said, make it 7:45 he's got to
10 freshen up. I said cool. He comes back says, hey boo, is
11 eight cool, I'm running behind. I'm sorry. You got me.
12 I said, K. waiting. I put, I am going to jump in the
13 shower, I'll be waiting. He typed in, okay. A little
14 offer he typed in, I'm on the way. And then he typed in,
15 this is on his cell phone, almost there. And then the
16 last one we got was, five minutes away.

17 Q. Is that the point when the chat ended?

18 A. Yes.

19 Q. What did you do at that point?

20 A. We went down to Old Magnolia Lane in Beech Island and
21 set up.

22 Q. And I'm handing you what's been previously marked as
23 State's Exhibit One and Two. Do you recognize them?

24 A. Yes, I do.

25 Q. What are they?

TOMMY PLATT - DIRECT

1 A. Those are pictures of a penis that Black Slider sent
2 to me while we were chatting.

3 MS. RINGLER: Your Honor, the State would at this
4 time move to have Exhibits One and Two entered into
5 evidence.

6 MR. McMULLEN: Objection. It's the same, it's --
7 it appeals to the passion and prejudice of the jury.
8 Unnecessary.

9 THE COURT: Overruled.

10 (Thereupon, State's Exhibits No. 1 and 2,
11 photographs, were received into evidence.)

12 MS. RINGLER: Thank you, Your Honor. The State
13 would ask to publish them to the jury at this time.

14 THE COURT: Ladies and gentlemen of the jury this
15 is rather graphic, so ...

16 (Exhibits displayed to jury.)

17 THE COURT: What number is that?

18 MS. RINGLER: I'm publishing to the jury State's
19 Exhibit Number One and then State's Exhibit Number Two.

20 THE COURT: Thank you.

21 BY MS. RINGLER:

22 Q. I'm showing you what's been previously marked as
23 State's Exhibit Five. Do you recognize it?

24 A. Yes, I do.

25 Q. What is it?

TOMMY PLATT - DIRECT

1 THE COURT: Number Five?

2 MS. RINGLER: Excuse me. Number Six. I
3 apologize.

4 THE WITNESS: That's Old Magnolia Lane in Beech
5 Island.

6 BY MS. RINGLER:

7 Q. Why is that significant?

8 A. This is where our meet place is.

9 Q. Was this the spot that was referenced in the chat?

10 A. Yes, it was.

11 MS. RINGLER: Your Honor, at this time the State
12 would move to have State's Exhibit Number Six moved into
13 evidence.

14 MR. McMULLEN: I object. It wasn't provided to
15 us in discovery.

16 THE COURT: Overruled.

17 (Thereupon, State's Exhibit No. 6, poster, was
18 received into evidence.)

19 BY MS. RINGLER:

20 Q. So after the chat ended, where did you go at that
21 point?

22 A. To the end of Old Magnolia Lane.

23 Q. And were you alone or were there other investigators
24 with you?

25 A. I was with Investigator Feemster and Investigator

TOMMY PLATT - DIRECT

1 Zeigler.

2 Q. Were they with you at the time of the chat?

3 A. They were.

4 Q. So after the chat ended, did y'all discuss what would
5 happen at that time?

6 A. Yes. We -- Investigator Feemster and I, we do all the
7 chats. Investigator Zeigler goes with us if someone is
8 possibly traveling, to assist.

9 So we have a game plan of where we're going to
10 position ourselves and what we're going to do if the bad
11 guy shows up.

12 Q. So after you came up with your plan, what did you do
13 at that point?

14 A. We left the sheriff's office, drove down to Old
15 Magnolia Lane and positioned our vehicles.

16 MS. RINGLER: Your Honor, the State would ask to
17 publish State's Exhibit Six to the jury at this time.

18 THE COURT: You may just hold it up right there
19 for them.

20 MS. RINGLER: Yes, sir, Your Honor. We're
21 also -- have a stand we're working on.

22 THE COURT: Looks like we might be a while on the
23 stand.

24 Good job, Ms. Porter.

25 MS. PORTER: Thank you, Your Honor.

TOMMY PLATT - DIRECT

1 MS. RINGLER: Your Honor, the State would ask for
2 the witness to step down and use the exhibit to
3 demonstrate to the jury where everyone was positioned.

4 THE COURT: You may, but you may have to hold it
5 up. It's so low they can't see it on the back row. Maybe
6 I complimented Ms. Porter too soon.

7 MS. PORTER: Well --

8 THE COURT: Everybody see it? Raise your hand if
9 you can't.

10 THE WITNESS: The road going this way is Storm
11 Branch Road, and the road down south of that would be
12 Pinelog. This is going to Aiken and this way going to
13 Beech Island. So when you come off of Pinelog onto Storm
14 Branch, you make your left onto Old Magnolia Lane. There
15 are a couple of houses up in here, the little cul-de-sac
16 way on down.

17 It's a straight shot downhill. And it's a really
18 sharp curve right here. We positioned our vehicles,
19 Investigator Zeigler right here, myself right here,
20 Investigator Feemster over here.

21 BY MS. RINGLER:

22 Q. And so this photo is obviously taken during the
23 daylight. This took place on October 13th, 2006 at,
24 around seven or eight o'clock. Would it have been light
25 out at that time?

TOMMY PLATT - DIRECT

1 A. No, it was dark.

2 Q. Are there any streetlights on that street?

3 A. No, no.

4 Q. Any houses?

5 A. No houses.

6 Q. So, the night when you were positioned there, was
7 there any light? Could you see anything on the road?

8 A. We could see if there's a car from way back here
9 approaching. We can see their headlights right here. We
10 can also see a little bit through the woods if a car's
11 approaching. We can see a long ways before they actually
12 get into the turn.

13 Q. And why -- did you visit the site before using it as a
14 meet site?

15 A. Yes. We've used it several times.

16 Q. Why did you choose this particular site?

17 A. One of the main reasons is it's off the beaten path.
18 Nobody should be down here if they don't have a reason to
19 be down here. Another reason is there's no houses. In
20 case we get in a gun fight, we don't have to worry about
21 innocent bystanders.

22 Q. The fact that it's a cul-de-sac, was that at all
23 advantageous or?

24 A. Yes. There's hardly any way to escape unless they're
25 able to spin their car around and take back off that way.

TOMMY PLATT - DIRECT

1 Q. You say there were three cars positioned there?

2 A. Right.

3 Q. Could you mark where you were, which car you were?

4 A. Well, the middle car.. Right there.

5 Q. And then I see you've made --

6 A. Investigator Zeigler. Investigator Feemster. .

7 Q. Could you put a Z. on Investigator Zeigler's car and
8 an F. on Investigator Feemster's car?

9 A. (Complying.)

10 Q. And then you were in the center car there?

11 A. Uh-huh.

12 Q. Did you see any -- what time of night was this when
13 you went to the meet location?

14 A. As soon as we logged off the last chat. I don't know
15 the exact time. As soon as we logged off we went straight
16 there and went to the meet location.

17 Q. And once you were positioned in the meet location, did
18 you see a car approaching?

19 A. Yes, we did.

20 Q. What did you see at first?

21 A. Actually we got there a little bit earlier. As soon
22 as we logged off we got down there, and we had car come
23 down and it ended up it was a prostitute with a young man
24 and we sent them away.

25 Q. After that --

TOMMY PLATT - DIRECT

1 A. And that was right at dark when we saw them. Then we
2 saw the headlights approaching of the second car. It was
3 probably about 10 minutes after that. The vehicle came to
4 a stop about right here.

5 Q. What type of vehicle were you in at that time?

6 A. Ford, Crown Victorias.

7 Q. Were they marked or unmarked?

8 A. Unmarked.

9 Q. Were they police cars?

10 A. Yes.

11 Q. Did you have your lights on at that time?

12 A. No.

13 Q. Did you ever turn on your lights at any time?

14 A. Yes. As soon as the vehicle got about this close to
15 us with his high beams on, he could see that it was three
16 unmarked police cars sitting there. At that time what we
17 do in every take-down, Investigator Zeigler will take
18 closer to the passenger side, I'll take directly in front
19 towards the driver's side, and Investigator Feemster comes
20 all the way around to the back of the car so there's no
21 way the car could escape.

22 Q. When did the car stop?

23 A. Probably 15, 20 yards in front of our vehicles.

24 Q. And after he stopped, did the car move any?

25 A. No, he stopped.

TOMMY PLATT - DIRECT

1 Q. So then you moved your vehicles to block his?

2 A. Right.

3 Q. Thank you for explaining that.

4 A. Okay.

5 Q. And what type of car was the individual driving who
6 approached that night?

7 A. Oldsmobile two door.

8 Q. And why was the make -- was the make of the car
9 significant for you?

10 A. Yeah. We knew we had the right guy when he showed up
11 in an Oldsmobile two door.

12 Q. And why was that?

13 A. That's what he chatted and stated that's what he would
14 be driving.

15 Q. And what happened after you, after the vehicles
16 stopped and you positioned your cars?

17 A. We approached Mr. Green, asked him to exit the
18 vehicle, asked for ID which he said, Benjamin Paul Green.
19 He was then Mirandized verbally by myself, and we asked
20 him what he was doing.

21 He stated that he was there to meet a 14-year-old
22 girl. I don't know verbatim exactly what he said, but --

23 Q. And you said that you gave him his Miranda warnings?

24 A. Yes.

25 Q. Did you use a form or read them from a card?

TOMMY PLATT - DIRECT

1 A. I carry a card in my wallet.

2 Q. Do you have the card with you today?

3 A. Yes, I do.

4 Q. Could you please show it to the jury?

5 A. (Complying.)

6 Q. And you said that you were able to identify the
7 individual as Benjamin Green?

8 A. Yes.

9 Q. Did you learn where Mr. Green lived?

10 A. Yes. I believe his driver's license said Columbia,
11 South Carolina.

12 Q. At any point did you contact another member of the
13 ICAC task force or Internet Crimes Against Children task
14 force with regard to this case?

15 A. Yes, I did.

16 Q. Who did you contact?

17 A. I contacted SLED in regards to the computer for
18 Mr. Green.

19 Q. Was there anybody else that you contacted?

20 A. Uh.

21 Q. Do you know if anyone went to Mr. Green's residence?

22 A. Yeah. Brian Metz, which I contacted SLED who said
23 they were going to contact him. I talked to Brian Metz
24 later on who was, I believe, doing the forensic on the
25 computer -- or doing the search warrant for the computer.

TOMMY PLATT - DIRECT

1 Q. So you -- let's go back to the statements that
2 Mr. Green talked to you about at the time of his arrest.
3 Were you aware of whether Mr. Green brought anything with
4 him that night?

5 A. Yes. Investigator Feemster, I believe, was the one.
6 He did the inventory of the vehicle for the tow truck.
7 Stated that there was a bottle in the back seat of alcohol
8 and the seal was broken on it. Mr. Green then told me
9 that he had opened the bottle and taken a sip, but he
10 wasn't intoxicated.

11 MR. McMULLEN: I object to that, Your Honor. I
12 believe we've gone over in Jackson V. Denno what was going
13 to be testified to, and that was not a part of it.

14 THE COURT: I ruled that it could come in.

15 MR. McMULLEN: That was not part of it.

16 THE COURT: It was part of it.

17 BY MS. RINGLER:

18 Q. Please continue.

19 A. Again, not knowing verbatim exactly what Mr. Green
20 said, he stated that he was there to meet a 14-year-old
21 girl.

22 Q. You mentioned that there was a bottle of liquor in the
23 car. Were there any other items found in the car?

24 A. Yes. Condoms, two movies - DVDs, some sort of male
25 enhancement cream and drugs, his cell phone.

TOMMY PLATT - DIRECT

1 Q. And --

2 A. And handwritten directions on how to get to Old
3 Magnolia Lane.

4 Q. Okay. Investigator Platt, I'm handing you what's been
5 marked as State's Exhibit Seven and Eight. Do you
6 recognize them?

7 A. Yes, I do.

8 Q. What are they?

9 A. This is --

10 THE COURT: Which one is which?

11 THE WITNESS: Number Seven --

12 THE COURT: All right.

13 THE WITNESS: -- is Mr. Green's cell phone.

14 Investigator Zeigler took the picture of this with his
15 camera.

16 BY MS. RINGLER:

17 Q. Okay.

18 A. Stating, okay, I'm on the way, almost there, five
19 minutes away.

20 Q. Does that accurately depict what was on the cell phone
21 that night?

22 A. Yes.

23 Q. And then, I'm handing you what's been marked as
24 State's Exhibit Number Eight. What is that?

25 A. This is the copy of the handwritten directions that

TOMMY PLATT - DIRECT

1 were found in his car.

2 Q. Thank you.

3 MS. RINGLER: Your Honor, the State moves to
4 admit State's Exhibit Number Seven and Eight into
5 evidence.

6 MR. McMULLEN: No objection.

7 (Thereupon, State's Exhibit No. 7, cell phone
8 text blow-up, and State's Exhibit No. 8, directions, were
9 received into evidence.)

10 BY MS. RINGLER:

11 Q. Your Honor, would you prefer the State publish it now
12 or wait until the end of testimony?

13 After you spoke to Mr. Green at the arrest -- at the
14 meeting location, was Mr. Green transported anywhere?

15 A. Yes.

16 Q. Are you aware of whether Mr. Green made any statements
17 while being transported?

18 A. No.

19 Q. He did not make any statements to your knowledge?

20 A. Not that I'm aware of.

21 Q. You mentioned that the Defendant told you what he was
22 doing there that night. Did he make any other -- excuse
23 me.

24 So, you said that you spoke to him outside his vehicle
25 that night?

TOMMY PLATT - DIRECT

1 A. Right.

2 Q. Did you speak to him at any other place?

3 A. In my police car.

4 Q. Did he say anything while he was in your police car?

5 A. Yes, he did. I took Mr. Green over to the car. I was
6 hoping to get him to write a statement for me.

7 MR. McMULLEN: I object, Your Honor. I believe
8 he has a right to remain silent and commenting on having
9 him write a statement is a no-no.

10 THE COURT: Where are you going with that,
11 Ms. Ringler?

12 BY MS. RINGLER:

13 Q. Let's just go on to what was said while he was in the
14 car.

15 A. While he was sitting in my car, he stated that he was
16 using his personal computer at his residence when he was
17 doing the chats. We always ask that for purpose of
18 getting a search warrant from whatever agency to get the
19 computer for our forensics. He stated the computer was in
20 his bedroom. He also stated to me that he was addicted to
21 pornography and that his wife and their two-week-old child
22 had just left him.

23 MR. McMULLEN: Your Honor, may I ask for a
24 curative instruction at this time as to the statement?

25 THE COURT: Ladies and gentlemen, disregard any

TOMMY PLATT - DIRECT

1 testimony about an alleged statement. Thank you.

2 The Defendant has an absolute right to remain
3 silent. The fact that he did or did not give a statement,
4 written, is to be not considered by you in any manner
5 whatsoever. That's his absolute right not to give a
6 written statement.

7 Don't even consider it. Don't even discuss it
8 when you're deliberating the case.

9 BY MS. RINGLER:

10 Q. I'm handing you what's been previously marked as
11 State's Exhibit Nine and 10. What are they?

12 A. This is -- Number Nine is a picture of Mr. Green
13 standing outside at Old Magnolia Lane.

14 And Exhibit 10 is a picture of his two-door
15 Oldsmobile.

16 Q. And do they truly and accurately depict how Mr. Green
17 was, appeared that night and the vehicle that he drove?

18 A. Yes.

19 Q. Thank you.

20 MS. RINGLER: Your Honor, the State moves to
21 admit State's Exhibit Nine and 10.

22 MR. McMULLEN: No objection.

23 MS. RINGLER: Thank you, Your Honor.

24 (Thereupon, State's Exhibit No. 9, photograph,
25 and State's Exhibit No. 10, photograph, were received into

TOMMY PLATT - DIRECT

1 evidence.)

2 MS. RINGLER: The State would just ask to the
3 publish the exhibits at this time.

4 THE COURT: You can do them all except that long
5 statement that you've already done.

6 MS. RINGLER: Yes, Your Honor. Thank you.

7 (Exhibits displayed to the jury.)

8 THE COURT: I used the wrong word. It wasn't a
9 statement. It was the transcript of the -- alleged
10 transcript of the chat online. It's not a statement.

11 MS. RINGLER: Thank you. Thank you, Your Honor.
12 The State is now publishing State's Exhibit Seven to the
13 jury.

14 THE COURT: Thank you.

15 MS. RINGLER: The State is now publishing State's
16 Exhibit 10 to the jury.

17 The State is now publishing State's Exhibit Eight
18 to the jury.

19 THE COURT: Turn that one over, please.

20 MS. RINGLER: The State is now publishing State's
21 Exhibit Nine to the jury.

22 Thank you, Investigator Platt. Please answer any
23 questions the defense may have.

24 THE COURT: All right. Let's take a short
25 break. Ladies and gentlemen of the jury, we're going to

TOMMY PLATT - DIRECT

1 take about a 10-minute break for you to stretch your legs,
2 use the bathroom, get yourself something to drink.

3 Please, if you get a chance to, select a
4 foreperson for me among the 12 of you. Don't discuss the
5 case. Do not start deliberations. You may step out.

6 (Jury exits courtroom at 3:43 p.m.)

7 THE COURT: We'll take about a 10 or 15-minute
8 break.

9 Officer, you're right in the middle of your
10 testimony. Please do not discuss it with anyone.

11 THE WITNESS: Yes, sir.

12 THE COURT: Thank you. We'll stand at ease for
13 about 10 minutes.

14 (Thereupon a recess was taken from 3:42 p.m.,
15 until 3:57 p.m., when the trial resumed:)

16 THE COURT: Anything for the record before we
17 start on behalf of the State?

18 MS. RINGLER: Nothing for the State, Your Honor.

19 THE COURT: On behalf of the Defendant?

20 MR. McMULLEN: No, sir.

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

23 (Jury enters courtroom at four o'clock p.m.)

24 THE COURT: Mr. Smith is the foreperson.

25 Congratulations. You've won your first election, I guess,

TOMMY PLATT - CROSS

1 or did you walk in the bathroom and they elected you?

2 THE JUROR: I jumped on it.

3 (Off-the-record discussion.)

4 THE COURT: Thank you for your services.

5 Mr. McMullen?

6 MR. McMULLEN: May it please the Court.

7 THE COURT: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. McMULLEN:

10 Q. Good evening, Detective Platt. Good afternoon.

11 A. Good afternoon.

12 Q. I'm going to ask you to please tell the jury just a
13 little bit about your training and experience. When did
14 you begin working on these types of cases?

15 A. 2003, again in 2004.

16 Q. And prior to that you went to the criminal justice
17 academy?

18 A. Uh-huh.

19 Q. Is that -- when did you do that?

20 A. I went twice. The first time was in '95 for Class C.
21 and then '98 for Class A.

22 Q. When you were there, did you receive training on
23 police work investigations, interviewing techniques?

24 A. Right.

25 Q. Yes?

TOMMY PLATT - CROSS

1 A. Yes.

2 Q. Gathering evidence for court, investigating cases and
3 gathering evidence, preserving evidence?

4 A. Yes.

5 Q. And when you were learning about interviewing, what
6 did you learn basically about how to do that, just in a
7 nutshell. How do you preserve evidence?

8 THE COURT: Wait a minute. You've asked him two
9 or three different questions.

10 MR. McMULLEN: I'm sorry. I withdraw the
11 question.

12 BY MR. McMULLEN:

13 Q. Did you learn how -- in investigative techniques, did
14 you learn ways to preserve evidence of an interview?

15 A. Ways to preserve the evidence of an interview?

16 Q. Yes, sir.

17 A. I'm not following you.

18 Q. All right. Did you take any notes?

19 A. No, I did not take any notes.

20 Q. All right. Is that something you were taught to do to
21 preserve the evidence of the content of an interview?

22 A. They taught us to take notes, yeah. As basic road
23 patrol doing police reports and all, you don't take an
24 incident report into somebody's house on a case.

25 Q. Yes, sir.

TOMMY PLATT - CROSS

1 A. You take notes and then go back to your car and write
2 a report.

3 Q. All right. Did you take any notes about the roadside,
4 the thing you did at the cul-de-sac when you first --

5 A. No, I didn't do any handwritten notes when we were on
6 Old Magnolia Lane.

7 Q. Right. Did you ever do any?

8 A. No, I didn't.

9 Q. And this happened October 13th of 2006?

10 A. Yes, sir.

11 Q. And when was it that you went and were, received your
12 training on how to conduct these investigations?

13 A. I've been through several schools. I think my first
14 school was in 2003, I believe.

15 Q. So you had received some training on this before
16 October of 2006?

17 A. Yes.

18 Q. Do you still have a copy of the conversation you say
19 you had with Black Slider?

20 A. Yes, sir.

21 Q. Would you please get that? I want us to publish this
22 to the jury. If it please the Court, I'd like to have me
23 read one part of this and him read the other and have him
24 correct me if I'm reading any of it imprecisely.

25 Would you prefer to be LittleMandy or Black Slider?

TOMMY PLATT - CROSS

- 1 A. Whatever you want.
- 2 Q. I'll be Black Slider.
- 3 A. Okay.
- 4 Q. How does the conversation on this document begin?
- 5 A. LittleMandy stating, I haven't before.
- 6 Q. What's the oldest you would.
- 7 A. I hooked up with a 16 year old.
- 8 Q. Damn. How young are you?
- 9 A. Fourteen.
- 10 Q. Damn. I'm 21.
- 11 A. Oh.
- 12 Q. You like black guys?
- 13 A. Never gone out with one.
- 14 Q. Ever slept with one or wanted to?
- 15 A. Never done that.
- 16 Q. Ever wanted to?
- 17 A. I don't know.
- 18 Q. Oh. I wanted to be your first.
- 19 A. Whatever.
- 20 Q. What does that mean?
- 21 A. You are faking.
- 22 Q. No, I'm not. Why would I be faking?
- 23 A. I don't know.
- 24 Q. Isn't that you on the bed in your profile pic?
- 25 A. Yeah. Where do you live.

TOMMY PLATT - CROSS

1 Q. Okay, then. I think you're pretty. I wouldn't mind
2 giving you an orgasm or two. I live in Columbia.

3 A. Cool.

4 Q. Do you have any more pics?

5 A. No. Do you.

6 Q. A few. Do you like to be on top?

7 A. Only done it once.

8 Q. You've had sex once or been on top once?

9 A. Never been on top.

10 Q. Wow. You're still almost a virgin. Would you sleep
11 with me?

12 A. I don't know.

13 Q. Because I'd sure like to.

14 A. Are you for real.

15 Q. Yeah. Why not. You're a pretty white girl.

16 A. Pic.

17 Q. I like pretty white girls. I'm trying to get them
18 now.

19 A. Cool.

20 Q. Your line.

21 A. I'm sorry.

22 You are cute. Are you a player.

23 Q. Thanks. No, not a player. Just have friends, in
24 quotes.

25 A. What kind of job do you got.

TOMMY PLATT - CROSS

- 1 Q. I work at a plant.
- 2 A. Cool. Are you rich.
- 3 Q. Hell no. LOL.
- 4 A. LOL.
- 5 Q. I got bills.
- 6 A. Wow.
- 7 Q. Wow what.
- 8 A. Your dick.
- 9 Q. You like it.
- 10 A. Yeah. It's big.
- 11 Q. I can show it to you in person.
- 12 A. For real.
- 13 Q. Yeah, if you want me to.
- 14 A. You ain't going to like kill me or kidnap me, are you.
- 15 Q. LOL. Hell no.
- 16 A. What kind of car do you got.
- 17 Q. I'm just a freaky guy. That's all. I got a two door.
- 18 A. A two door. Is it tight.
- 19 Q. It's all right. It ain't hooked up.
- 20 A. What kind.
- 21 Q. Oldsmobile.
- 22 A. Cool. Dropped.
- 23 Q. No. LOL.
- 24 A. System.
- 25 Q. I told you, it ain't hooked up. No.

TOMMY PLATT - CROSS

- 1 A. Can I drive it.
- 2 Q. No, you ain't old enough.
- 3 A. So.
- 4 Q. You might wreck it.
- 5 A. No, I won't.
- 6 Q. And kill me.
- 7 A. KK.
- 8 Q. I'll think about it but only with me in the car.
- 9 A. KK.
- 10 Q. Your peeps let you out after dark.
- 11 A. Mom's working tonight.
- 12 Q. So what does that mean.
- 13 A. Mom's not home.
- 14 Q. So are you going to come out.
- 15 A. Sure.
- 16 Q. Or maybe I can come in.
- 17 A. Yeah. Cool.
- 18 Q. Are you sure. You got movies and stuff.
- 19 A. Not many. You got any you can bring.
- 20 Q. Yeah. I got a few myself I might could bring. DVDs,
- 21 right.
- 22 A. Yeah. Bring a Trojan.
- 23 Q. I'll bring it but I won't pressure you to do anything
- 24 you don't want to do.
- 25 A. Cool.

TOMMY PLATT - CROSS

1 Q. If you change your mind and want to just chill out,
2 that's cool too.

3 A. KK.

4 Q. You don't drink, do you.

5 A. I drank some Malibu two weeks ago.

6 Q. So I don't need to bring any.

7 A. Do you.

8 Q. Because I don't drink much myself, just a little bit.

9 A. Cool. So what time.

10 Q. You tell me. It will take me about an hour to get
11 down there.

12 A. Seven.

13 Q. When does mom go to work.

14 A. She's gone.

15 Q. Oh. When's she get back.

16 A. She went to eat with her before work.

17 Q. What time she come home?

18 A. Seven a.m.

19 Q. What kind of movie should I bring.

20 A. I don't care.

21 Q. Okay. And what about your address.

22 A. What you got.

23 Q. I'll bring a comedy.

24 A. Cool.

25 Q. Address.

TOMMY PLATT - CROSS

1 A. You want to meet me at the circle.

2 Q. I don't know what circle is.

3 A. It's a gravel circle down from my house. That's where
4 we drank two weeks ago. No one lives down there.

5 Q. I guess so.

6 A. Cool. It's Old Magnolia Lane in Beech Island.

7 Q. What the direction. Do you have a number.

8 A. Huh..

9 Q. I don't know how to get there.

10 A. You got Mapquest or Yahoo Maps. Are you there.

11 Q. Yeah.

12 A. So seven or 7:30 cool.

13 Q. 7:30.

14 A. Cool. You got directions.

15 Q. What do I type in Mapquest?

16 A. Old Magnolia Lane, Beech Island, South Carolina.

17 Q. Okay. Hold on then.

18 A. KK. Are you there.

19 Q. Yeah. So, what to do when I get there. Call.

20 A. I don't care.

21 Q. What number.

22 A. There is no number. No one lives down there.

23 Q. Well how can I call you.

24 A. I live down the road.

25 Q. To let you know I'm there.

TOMMY PLATT - CROSS

1 A. Oh. We have a cell but mom took it to work.

2 Q. I guess I just wait there and hope you show up. Wow.

3 No house phone.

4 A. I'll be there before you.

5 Q. Okay. You're not going to have no dudes with you, are
6 you.

7 A. No.

8 Q. I don't mind other females. LOL.

9 A. Laugh out loud. No girls either.

10 Q. There's a blank line in between those two, isn't there
11 officer -- detective?

12 A. Yeah.

13 Q. And that was at 6:16:31. 6:16 and 31 seconds;
14 correct?

15 A. Uh-huh.

16 Q. And then LOL. I'm sorry. That's your line.

17 But yeah, I'm on my way. Okay. I'll bring like three
18 movies.

19 A. Cool.

20 Q. Oh. And I'm Ben.

21 A. And what else.

22 Q. A Trojan just in case.

23 A. Yep.

24 Q. Okay. See you then. Oh. I forgot. I have Yahoo on
25 my cell too, if you stay on the computer.

TOMMY PLATT - CROSS

- 1 A. Cool.
- 2 Q. All right. I'm coming.
- 3 A. What's your number. Did you get directions.
- 4 Q. Yep.
- 5 A. Cool. Did you get directions. Just wanted to make
6 sure you knew how to get here.
- 7 Q. Yeah.
- 8 A. Cool. By the way I'm Mandy.
- 9 Q. Yeah. I'll be fine as long as they're okay.
- 10 A. KK. See you soon. This is cool.
- 11 Q. What's cool.
- 12 A. This meeting you, driving your car.
- 13 Q. Oh.
- 14 A. You want to give me or you want to give your number.
- 15 Q. Later?
- 16 A. KK. See you soon.
- 17 Q. Make it 7:45. I got to freshen up.
- 18 A. Cool.
- 19 Q. Is eight cool. I'm running behind. I'm sorry. You
20 got me.
- 21 A. KK. Waiting. Hey I'm going to jump in the shower.
22 I'll be waiting.
- 23 Q. Okay. I'm on my way. Almost there. Five minutes
24 away. Thank you.
- 25 Now, on that profile that you set up, you used a

TOMMY PLATT - CROSS.

1 photograph; is that correct?

2 A. Yes.

3 Q. And tell me what's the name of the person whose
4 photograph you used?

5 A. Lynda Williamson.

6 Q. And what was her line of work at the time of 2006?

7 A. I don't know what she did in 2006.

8 Q. All right.

9 A. I started using her picture in a profile around 2004,
10 2005. Her husband who was an agent with us gave us the
11 picture and told us that she was a probation and parole
12 officer.

13 Q. Did he tell you that?

14 A. He told me that.

15 Q. Did he give you permission to use the picture?

16 A. Yes. He gave me the picture.

17 Q. When? And that was in 2000 to 2001?

18 A. No. 2005, 2006.

19 Q. When was the photograph taken?

20 A. I don't know.

21 Q. How old was she when the photograph was taken?

22 A. I don't know that either.

23 Q. Was she 14?

24 A. I don't know.

25 Q. So, now, the profile says that she's 14. Is that --

TOMMY PLATT - CROSS

1 or is it -- you put 114?

2 A. Yes.

3 Q. And you testified earlier anybody can create an
4 address, an account and a profile?

5 A. That's correct.

6 Q. Did you create this profile?

7 A. I did.

8 Q. And you put in age 114 where the place for the age
9 goes; did you not?

10 A. I did.

11 Q. The profile, it says something like, I love the Braves
12 or that's one of your favorite things?

13 A. Right.

14 Q. Didn't it used to also say, I love Chipper Jones?

15 A. One of my profiles does.

16 Q. Didn't this one also say that at one time?

17 A. I'm not sure. We changed the quotes around,
18 favorites, stuff like that around.

19 Q. Now, Yahoo has age restrictions; don't they?

20 A. Yes.

21 Q. The terms of use actually say, don't they, if you
22 create a profile you're vouching that you're 18?

23 A. Right.

24 Q. And the Internet, as someone in your line of work can
25 tell us, the Internet is a masquerade ball, isn't it?

TOMMY PLATT - CROSS

1 Everyone's anonymous online; isn't that correct?

2 A. That's possible.

3 Q. Well, all right. I mean, isn't it fair to say that a
4 lot of people pretend to be what they are not when they're
5 on a computer and nobody can see their face?

6 A. That's possible.

7 Q. I mean, you won't agree that that's the way it is?

8 A. I have a MySpace account and it's really me.

9 Q. If a friend of yours were to say, I've got a date with
10 an Atlanta Falcons cheerleader this weekend. I met her
11 online, and I'm going to meet her in Atlanta. What would
12 you say to your friend?

13 A. Good job.

14 Q. Yeah. Would you believe that he was going to go down
15 there and actually meet the cheerleader?

16 A. It's possible.

17 Q. All right. Is it reasonable to believe that?

18 A. Yeah. Like I said, I have my own MySpace and it's
19 really me on there, so.

20 Q. Yes, sir. But you also have an account that says that
21 you're a little 14-year-old girl?

22 A. That's true.

23 Q. Now the training you received, it's my understanding
24 that there are protocols or standards that are not
25 circulated for obvious reasons, and juries and defense

TOMMY PLATT - CROSS

1 lawyers get to hear them as needed. Law enforcement gets
2 them for their training so they can ferret these folks out
3 from society; is that fair to say?

4 A. That's fair to say.

5 Q. And that these standards are closely guarded. I'll be
6 giving them back when this is over with.

7 A. All right.

8 Q. Have you got a copy of these or have you been trained
9 with these standards?

10 May I approach the witness?

11 Let me show you page eight of 14 of those standards.

12 THE COURT: What standard are you talking about?

13 MR. McMULLEN: I'm sorry. The Internet Crimes
14 Against Children standards and protocols for
15 investigation.

16 THE COURT: Written by whom? Who put them out?

17 MR. McMULLEN: The Internet Crimes Against
18 Children Commission, or whatever ICAC is.

19 THE WITNESS: What are you showing me?

20 BY MR. McMULLEN:

21 Q. Are these those Internet Crimes Against Children task
22 force operational investigative standards; is that what
23 these are?

24 A. Yes, sir.

25 Q. Are you familiar with these? I mean, is that your

TOMMY PLATT - CROSS

1 training materials?

2 A. We have quarterly meetings with the ICAC task force.

3 My lieutenant got a copy of it.

4 Q. Let me just read you some of these and you tell me if
5 you've been trained that these are the way to do
6 investigations, please.

7 A. Okay.

8 Q. Case management, case predication and prioritization.
9 Well, let me just skip to record keeping.

10 ICAC agency shall be subject to existing agency
11 incident reporting procedures and case supervision systems
12 at a minimum, unique identifier shall be assigned to each
13 case.

14 Is that something you've been trained to do?

15 A. Unique identifiers will be assigned to each case.

16 Q. Yes, sir. I don't know what it means. I'm just
17 asking you if you know what it means.

18 A. I have no idea.

19 Q. Undercover investigations. 4.31. Tell me, please,
20 sir, if this is your understanding. Carefully managed
21 undercover operations conducted by well-trained officers
22 are among the most effective techniques available to law
23 enforcement for addressing ICAC offenses. Undercover
24 operations when executed and documented properly collect
25 virtually unassailable evidence regarding a suspect's

TOMMY PLATT - CROSS

1 predilection to exploit children.

2 Is that fair to say? Is that your understanding?

3 A. Yes.

4 Q. When executed and documented properly?

5 A. Yes.

6 Q. ICAC supervisors are responsible for ensuring that
7 ICAC investigators receive a copy of the ICAC operational
8 investigators' standards. Is that your understanding?

9 A. I suppose so.

10 Q. Have you received a copy of the standards?

11 A. Like I say, it's in our lieutenant's office.

12 Q. One of the things -- let me ask you: Is one of the
13 things that you've been trained to do other than
14 photographs of law enforcement officers who have provided
15 their informed written consent, no actual human images
16 shall be uploaded, transmitted or forwarded by ICAC
17 personnel. Are you aware of that?

18 A. What year is that?

19 Q. May 2006.

20 A. When we were doing these cases, using this persona, it
21 was nothing about that we couldn't use anything that was
22 non human. Is that what you're saying there or you're
23 saying it's got to be a police officer?

24 Q. Let me just read this and see what your -- see if this
25 helps. Other than photographs of law enforcement officers

TOMMY PLATT - CROSS

1 who have provided their informed written consent, no
2 actual human images shall be uploaded, transmitted or
3 forwarded by ICAC personnel.

4 A. Okay.

5 Q. What I read that to say is if you want to put a
6 picture on a profile it has to be a law enforcement
7 officer's photograph?

8 A. Yes.

9 Q. Was that your understanding?

10 A. Yes.

11 Q. Was Lynda Williamson a law enforcement officer?

12 A. From what her husband told me, she was a probation and
13 parole officer.

14 Q. When?

15 A. At the time when he gave me the picture. Was she an
16 agent when the picture was taken? I don't know.

17 Q. Was she an agent in 2006?

18 A. Whenever I got the picture and started using that
19 picture in my persona, she was with probation and parole.

20 Q. All right. How about now?

21 A. I haven't talked to her in years.

22 Q. Does she work there now?

23 A. No.

24 Q. You still using this persona?

25 A. Yes.

TOMMY PLATT - CROSS

1 Q. During online dialogue undercover officers should
2 allow the investigative target to set the tone, pace and
3 subject matter of the online conversation. Image transfer
4 shall be initiated by the target.

5 Is that your understanding?

6 A. Yes.

7 Q. So it should be their idea to send a picture, not your
8 idea to ask for one?

9 A. No. What that's saying is we don't start sending
10 pictures of us to the target. We can ask for pics all day
11 long.

12 Q. Image transfer shall be initiated by the target. So
13 that means only transfer one way? I mean, what you're
14 saying is they have to volunteer to send you a photo of
15 them. It's okay for you to ask for one?

16 A. It's okay for us to ask for a pic of the target.
17 We're not supposed to start sending, if we have other
18 pictures of our undercover persona out to the target,
19 without them asking.

20 Q. So, let them set the tone and the pace and subject
21 matter and let them initiate image transfer; is that
22 right? Yes, sir?

23 A. Yeah.

24 Q. Undercover online activity shall be recorded and
25 documented. Any departures from this policy due to

TOMMY PLATT - CROSS

1 unusual circumstances shall be documented in the relevant
2 case file and reviewed by the ICAC supervisor.

3 Is that something that is part of the policy?

4 A. I guess.

5 Q. Did you do that in this case?

6 A. We have contacted ICAC several times about our
7 Camtasia program. We've had SLED agents come down and
8 look at our Camtasia program.

9 Q. To see what's wrong with it?

10 A. Uh-huh.

11 Q. This says, shall be recorded and documented. Any
12 departure shall be documented in relevant case file. Did
13 you document any departure from this defective sum of the
14 conversation or online or half of it is missing?

15 A. No, I do not document that. Camtasia went down and we
16 didn't use Camtasia. And I didn't document the first line
17 as missing on our archives because that happens every
18 single time.

19 Q. Did you document -- did you write down what the first
20 line was?

21 A. No, sir. We chat with so many people as soon as we
22 log on there, we don't keep up with every first line that
23 everybody says.

24 Q. Now Investigator Feemster was standing next to you in
25 the room while this was happening?

TOMMY PLATT - CROSS

1 A. Behind me, on his computer conducting chats with other
2 people.

3 Q. He's the one who helped you with the arrest and was
4 able to photograph the Defendant at the cul-de-sac; right?

5 A. I don't know who photographed the Defendant. It was
6 either Investigator Zeigler or Feemster.

7 Q. They had a camera; isn't that right?

8 A. Right.

9 Q. So you could have taken a picture of the monitor or
10 you could have written it down?

11 A. Like I say, we chat with 15 to 50 people at one time.

12 Q. Yes, sir.

13 A. We don't have time to write down the first line of
14 every single chat because a lot of the people we're
15 chatting with they find out we're 13, 14 years old and
16 they say goodbye.

17 Q. Does the first line just disappear from the dialogue
18 box or is it just not archived in whatever the Yahoo
19 archive system does?

20 A. As soon as the chats come up, when it goes to archive,
21 which we retrieve and put on a Notepad to print it out,
22 the first line's gone.

23 Q. All right. When the first line comes up on your
24 screen and you reply, does the first line disappear?

25 A. No.

TOMMY PLATT - CROSS

1 Q. Can you hit the button that says print screen?

2 A. No.

3 Q. Can you cut and paste that first line and save it on
4 Notepad before it's gone?

5 A. Yes. We could do that.

6 Q. Now you've got -- we saw the Camtasia simulation or at
7 least a freeze frame of what one looks like?

8 A. Right.

9 Q. You used the term realtime?

10 A. Uh-huh.

11 Q. Will you just explain for me what realtime means?

12 A. It captures everything on the screen that's going on
13 right then through, until it stops.

14 Q. In the -- like, minute by minute?

15 A. Second by second.

16 Q. Okay. So if the conversation on a piece of paper took
17 this long, you could look at the times in the Camtasia
18 presentation would be the same exact way, the jury would
19 see not only the order but also the delays in between --

20 A. That's right.

21 Q. -- waiting six minutes or whatever, something like you
22 had?

23 A. That's right.

24 Q. So but now the Camtasia it has -- you're talking to
25 three or four people at once or however many people

TOMMY PLATT - CROSS

1 initiate conversation with you; is that fair to say?

2 A. Can you repeat it?

3 Q. Yes, sir. More than one chat happens at a time?

4 A. All the time.

5 Q. All right. So, how can you be sure today to tell the
6 jury what was said in that first line?

7 A. I stated I didn't know exactly what was said in the
8 first line.

9 Q. Okay. All right. And a lot of folks use the
10 Internet, don't they, for fantasy?

11 A. I don't know.

12 Q. What chat room were you in? Were you in a adult chat
13 room?

14 A. South Carolina Five.

15 Q. The one you have to be 18 to get in or supposed to
16 be?

17 A. You're supposed to be 18 to be chatting on Yahoo,
18 period.

19 Q. Does Yahoo have parental controls?

20 A. No, they do not.

21 Q. Do they have monitors or people in the room to monitor
22 things?

23 A. I don't know. Right now they might. In 2006 they did
24 not.

25 Q. Do you have any record of what was going on in the

TOMMY PLATT - CROSS

1 chat room you were waiting in? In other words, was there
2 any dialogue between you and Black Slider in the chat room
3 itself before it moved into an instant message?

4 A. No. There was nothing on the billboard.

5 Q. Does that ever happen?

6 A. Real rarely. It's usually -- when we go into the chat
7 room, we're hit on by other people in there. We don't
8 hardly ever go on a billboard and nobody says anything on
9 the billboard to us.

10 Q. Yes, sir. You said earlier you seldom put up a
11 billboard chat; is that right?

12 A. Right.

13 Q. Some chat on that. So sometimes you do?

14 A. Sometimes we do.

15 Q. So, to be fair, you can't remember for certain if this
16 isn't one of those times; can you?

17 A. No, no. If we're chatting on a billboard, that's
18 between me and Investigator Feemster where we're chatting
19 back and forth as to 13, 14-year-old girls on the
20 billboard, not with everybody.

21 Q. What do y'all say to one another?

22 A. Hi, how are you, how was school today.

23 Q. You talk about sex?

24 A. No. We're not allowed to bring up sex first.

25 Q. You used the word proactive for these investigations?

TOMMY PLATT - CROSS

1 A. Yes, sir.

2 Q. Is that -- for those of us who might not know the word
3 proactive, in the -- did you do an interview for the Aiken
4 Standard that was published Monday, July 24th, 2006?

5 A. I might have.

6 Q. Do you remember reading your name in the paper?

7 A. I've done a bunch of them; I don't know.

8 Q. Did you say it's fun, it's like fishing?

9 A. Yes, I do remember saying that.

10 Q. And to use that analogy, as tasteless as it may be,
11 the bait you were using was a grown woman; is that right?

12 A. No. It was my persona of a 14-year-old girl.

13 Q. With pictures being a thousand -- worth a thousand
14 words, may I see the photograph you had in your persona?

15 A. It's in evidence. Exhibit --

16 Q. You've got two photographs of his penis. How come you
17 didn't get a photograph of his face that he sent?

18 A. We did have a photograph of his face.

19 Q. What happened to it?

20 A. I don't know.

21 Q. And you don't know what happened to the rest of the
22 front page or the first part of the chat; right?

23 A. Yeah. I know what happened to the first line of the
24 chat.

25 Q. All right. How do we know, not to impugn you, sir, at

TOMMY PLATT - CROSS

1 all, but how does the jury know, how do I know, how do
2 people that can't go to this ICAC training know that it's
3 just the first line?

4 How could -- if the Camtasia machine can malfunction,
5 can't the auto archive machine malfunction?

6 A. No, sir. Archive captures every single line except
7 for the first one. There's no possible way of going in
8 and deleting lines. Everything is archived except the
9 first line.

10 Q. Don't you have to transfer it to Notepad?

11 A. Correct.

12 Q. So this isn't something you get on auto archive and
13 hit a button, you have to somehow move it to Notepad?

14 A. That's right.

15 Q. Couldn't the information be lost in that process?

16 A. No.

17 Q. It's like cut and paste; isn't it?

18 A. It is cut and paste, from archive to Notepad.

19 Q. Edited. Would it be fair to call it editing?

20 A. No. We're not editing anything. We're cutting and
21 pasting.

22 Q. All right. So, you would have the jury believe that
23 the very second line of this conversation -- you never
24 talked with Black Slider before October 13, 2006; isn't
25 that right?

TOMMY PLATT - CROSS

1 A. Actually I have talked to another Black Slider in the
2 past which the name was spelled differently.

3 Q. I see.

4 A. And I can't say if it was the same one or not. And
5 that was just a brief five-line chat.

6 Q. Well -- so, you don't know whether that was this
7 person or not?

8 A. No, I don't know if --

9 Q. Could be two different Black Sliders or different
10 spelling you say?

11 A. Right.

12 Q. All right. So, the way this is spelled, have you ever
13 -- is this the first conversation to your knowledge?

14 A. Yes, that is.

15 Q. And so then you would have the jury believe that the
16 second line would be, I haven't before?

17 A. Right.

18 Q. And then they could surmise what they like the first
19 line would be, or the rest of the dialogue; is that right?

20 A. I don't know what the first line was.

21 Q. All right. And then, and you don't know how old
22 LittleMandy was in Exhibit Three?

23 A. I do not.

24 Q. Would you concede that -- well, this is, this is a
25 photograph of -- a viewer of Yahoo can blow that site up,

TOMMY PLATT - CROSS

1 right? They can click on that and enlarge?

2 A. No. You cannot enlarge a picture off a profile. What
3 you see is what you get on a profile.

4 Q. So this, what the attorney general sent to me, what --
5 you can't do that?

6 A. That is a picture off my computer that I sent to them.

7 Q. But a person can't look at somebody's profile and
8 click on it and make it bigger?

9 A. You can't zoom in on a profile pic.

10 Q. All right.

11 A. We've tried in the past on other people's profiles.

12 Q. All right. Beg the Court's indulgence briefly.

13 Would you agree, officer, part of the training would
14 be, never say or do anything you would not want to repeat
15 to a jury? The top 10 rules for investigating online
16 sexual exploitation --

17 THE COURT: Where are you reading from?

18 MR. McMULLEN: An article, just an article.

19 THE COURT: An article from where?

20 MR. McMULLEN: Well, I don't even have that. I
21 just downloaded -- I printed out some rules from an
22 article I read. And I just want to see if the officer --

23 THE COURT: Identify the article. Just --

24 MR. McMULLEN: Huh? It's --

25 THE COURT: What's the article concerning? You

TOMMY PLATT - CROSS

1 have to show it to him to see if he recognizes it.

2 BY MR. McMULLEN:

3 Q. Let me just ask it this way: Would you agree that it
4 would be a bad idea to say or do anything you would not
5 want to repeat to a jury?

6 A. You're talking about in reference to doing chats?

7 Q. Yes.

8 A. I would disagree with that.

9 Q. All right. Log everything, it's important, in these
10 cases?

11 THE COURT: Mr. McMullen, you're going around.
12 You're evading my ruling on that.

13 MR. McMULLEN: Yes, sir. I don't mean to do
14 that. I shouldn't do that. I'm sorry.

15 I don't have the name of the article. I just
16 wanted to know if this expert witness agreed --

17 THE COURT: He hasn't been qualified as an
18 expert. He is a detective.

19 MR. McMULLEN: Okay. Well, he can testify about
20 Yahoo.

21 THE COURT: Well, that's right. He works on it.
22 day in and day out. Nobody has asked him opinions.
23 That's where experts come in.

24 MR. McMULLEN: All right.

25 BY MR. McMULLEN:

TOMMY PLATT - CROSS

1 Q. Are you allowed to work from your personal account?

2 A. No, we're not.

3 Q. Do you agree that it's a good idea to give a person an
4 out, to say something to them that lets them out of it,
5 to give them a chance to not bite at the bait?

6 A. Like how? Give me an example. I don't understand.

7 Q. All right.

8 A. You mean, like tell them we're police officers doing
9 an undercover sting?

10 Q. Like where he says, for example, I won't pressure you
11 to do anything you don't want to do. If you change your
12 mind, that's cool, too.

13 Maybe even say something like, are you sure you want
14 to do that, I'm only 14.

15 A. What did I type after that line?

16 Q. KK. I drank some Malibu two weeks ago.

17 The third line, sir, which would really be the fourth
18 if there's one missing, the third line says I hooked up
19 with a 16 year old. So in that conversation LittleMandy
20 whose photograph belongs to a probation, former probation
21 officer, LittleMandy's photograph, you're posing as this
22 woman and saying that you are 14 and you've had sex with a
23 16 year old; is that correct?

24 A. That's correct.

25 Q. And does Lynda Williamson know you're doing that?

TOMMY PLATT - CROSS

1 A. Yes, she knows.

2 Q. All right. And then when you say, isn't that -- when
3 you are asked, isn't that you on the bed in your profile
4 pic, the answer you give is, yeah?

5 A. Yeah.

6 Q. Let's see. Then you are asked, do you have any more
7 pics. No. Do you. So you're asking them to send
8 photographs?

9 A. He asked me, do you have any more pics. I put, no.
10 Do you.

11 Q. Any more. So he's talking, I suppose, but would you
12 suppose about what picture was on your profile. Do you
13 have any more than that?

14 A. Profile pic, yeah, that's correct.

15 Q. You say no and then he sends one. And you say it's of
16 this man?

17 A. Correct.

18 Q. He sends one of himself?

19 A. Right.

20 Q. And that's the one that we don't have?

21 A. Right.

22 Q. And then later you say, did you have -- done it once,
23 right. And then you received a picture and you say you're
24 cute and ask if he's a player. And you defined that
25 earlier as somebody that fools around?

TOMMY PLATT - CROSS

1 A. Uh-huh.

2 Q. Is that kind of right?

3 A. Right.

4 Q. Is that accurate? And then later on you say, you
5 refer to his male private part as, how do you -- what do
6 you say on here?

7 A. I typed in, wow. He put, wow what. And I put in,
8 your dick.

9 Q. So LittleMandy says that?

10 A. Yeah.

11 Q. And LittleMandy later says that she has consumed
12 alcohol?

13 A. In the past.

14 Q. In the past. And what's the drinking age in South
15 Carolina?

16 A. Twenty-one.

17 Q. So now when you're asked, yo peeps let you out after
18 dark. You say, mom's working tonight. Mom's not home.
19 All right. And then when asked about movies --

20 THE COURT: Hold on a second. Everybody okay
21 over there?

22 (Pause.)

23 BY MR. McMULLEN:

24 Q. When asked about movies, he ends up bringing a comedy
25 or two comedies; isn't that correct?

TOMMY PLATT - CROSS

1 A. Yes.

2 Q. They're not in any way pornographic, are they?

3 A. No.

4 Q. In his car did you find any pornography?

5 A. I didn't search the car, but as far as I know there
6 was no pornography found.

7 Q. Now when you were asked what to do when I get there.

8 I don't care; correct? I guess what I'm asking: Does it
9 seem to you like there's a definite plan to have sex or is
10 this, we might watch a movie, we might watch a comedy, we
11 might go drink Bacardi at the end of the street?

12 A. Ten minutes into the chat it was wanting to have sex
13 with Mandy. Asked me, would you sleep with me.

14 Q. You say 10 minutes into it. Where are you talking
15 about?

16 A. Three-quarters of the way down page one of the chats.
17 He stated, you're still almost a virgin. Will -- would
18 you sleep with me.

19 Q. All right. Would you. Yeah. Not will. But is it
20 something you would do; right? I mean, you already said
21 you had sex once with a 16 year old. And he's saying,
22 well, would you do it with me. Isn't that a hypothetical
23 question or isn't it a question rather than a request?

24 THE COURT: Your question: Is it a question or
25 is it a request?

TOMMY PLATT - CROSS

1 MR. McMULLEN: Yes, sir.

2 THE WITNESS: I take that as a request.

3 BY MR. McMULLEN:

4 Q. All right. Did you know the Camtasia machine was not
5 working?

6 A. Yeah. We realized it about three o'clock, four
7 o'clock that afternoon.

8 Q. And you said that you usually use backup in that
9 situation; is that correct?

10 A. Yahoo archiving.

11 Q. And what was the -- since the Camtasia was down that
12 day, what was your backup that day?

13 A. Yahoo archiving.

14 Q. What was your first method then?

15 A. Camtasia.

16 Q. You knew at three that it wasn't working, you said?

17 A. Right. We're not going to stop doing undercover
18 operations just because our Camtasia went down. We're
19 going to continue doing our investigations and we're going
20 to use our Yahoo archiving.

21 Q. And knowing what you knew, not even write down the
22 first sentence, just not hit page-anything, and you can't
23 go back and document it in any way?

24 A. No, you can't.

25 MR. McMULLEN: Beg the Court's indulgence just a

WILLIAM SHAWN ZEIGLER - DIRECT

1 moment, sir. (Pause.)

2 I have no further questions at this time. Thank
3 you, sir.

4 THE COURT: Redirect?

5 MS. RINGLER: Court's indulgence Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. RINGLER:

8 Q. Investigator Platt, who contacted whom in this October
9 13th, 2006 chat?

10 A. Black Slider contacted LittleMandy.

11 Q. How old did LittleMandy say she was during the chat?

12 A. Fourteen.

13 Q. Did she say she was any age other than 14?

14 A. Nope. 14.

15 MS. RINGLER: Nothing further from the State,
16 Your Honor.

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

18 THE WITNESS: Thank you, sir.

19 THE COURT: You got a 10-minute witness?

20 MS. RINGLER: Yes, Your Honor

21 THE COURT: All right. Call him or her, him.

22 MS. RINGLER: Thank you, Your Honor. The State
23 calls Shawn Zeigler.

24 WILLIAM SHAWN ZEIGLER, having been duly sworn,
25 was examined and testified as follows:

WILLIAM SHAWN ZEIGLER - DIRECT

1 THE CLERK: Have a seat in the witness box
2 stating your full name, spelling your last for the Court,
3 please.

4 THE WITNESS: Yes, ma'am. William Shawn Zeigler.
5 Z. E. I. G. L. E. R.

6 MS. RINGLER: Thank you.

7 DIRECT EXAMINATION

8 BY MS. RINGLER:

9 Q. Investigator Zeigler, where do you work?

10 A. At Aiken County Sheriff's Office.

11 Q. And what do you do with the Aiken County Sheriff's
12 Office?

13 A. Currently I'm working in the narcotics division as an
14 investigator.

15 Q. What were you doing in October of 2006?

16 A. I was a domestic violence investigator with the
17 sheriff's office assigned to the juvenile division.

18 Q. In October of 2006, did you ever assist in any of the
19 Internet Crimes Against Children arrests that occurred in
20 Aiken County?

21 A. I did, on several occasions.

22 Q. Did you assist in one that occurred on October 13th,
23 2006?

24 A. I did.

25 Q. Are you -- where did that arrest occur?

WILLIAM SHAWN ZEIGLER - DIRECT

1 A. At a location off of Storm Branch Road in Aiken
2 County, South Carolina.

3 Q. Okay. And prior to -- did a car arrive at that scene?

4 A. Yes, it did.

5 Q. Prior to the car arriving, where were you positioned?

6 A. At the end of that road, waiting right there, cul-de-
7 sac area at the end of that road.

8 Q. Did a car approach?

9 A. Yes, it did.

10 Q. What did the car do once it approached?

11 A. At that time the investigators I was with, we
12 initiated emergency equipment of the vehicle and that
13 vehicle stopped.

14 Q. What happened after the car stopped?

15 A. We exited our patrol vehicles. We were wearing vests
16 that identified us as law enforcement. And we approached
17 the driver, and asked the driver to exit the vehicle and
18 identify themselves.

19 Q. Which side of the car did you approach?

20 A. The driver's side.

21 Q. What happened after you -- was the individual in the
22 car or outside the car when you asked for identification?

23 A. The individual was in the driver's seat of the
24 vehicle.

25 Q. Did the driver exit the vehicle?

WILLIAM SHAWN ZEIGLER - DIRECT

1 A. Yes. Investigator Platt asked him to exit the vehicle
2 and identify himself.

3 Q. And were you able to identify who the driver was at
4 that time?

5 A. Yes, by government-issued ID it's the Defendant.

6 Q. What happened after the Defendant got out of the car?

7 A. Investigator Platt asked him why he was there and of
8 course who he was.

9 Q. Did you search the Defendant at that time?

10 A. At some point after he exited the vehicle, that is
11 correct.

12 Q. What happened after he said why he -- excuse me. What
13 happened after the Defendant, Mr. Green, said why he was
14 there?

15 A. Investigator Platt read him his Miranda rights.

16 Q. What happened after that?

17 A. The Defendant and Investigator Platt sat in
18 Investigator Platt ACSO-issued vehicle and spoke.

19 Q. Did you perform a search on Mr. Green before or after
20 that happened?

21 A. It was at a point after he exited the vehicle. I
22 can't recall if it was before or after his interaction
23 with Investigator Platt in the vehicle.

24 Q. What was the purpose of the search?

25 A. At that point in time it would have been incident to

WILLIAM SHAWN ZEIGLER - DIRECT

1 his arrest.

2 Q. When you searched Mr. Green, did you find anything?

3 A. Yes. On his person was a small box container that
4 contained some type of supplement that was of a sexual
5 nature, I believe.

6 Q. I'm handing you what's been previously marked as
7 State's Exhibit 11. Do you recognize this?

8 A. Yeah. It is the item because it has some oriental-
9 type writing on it that I was unfamiliar with.

10 MS. RINGLER: Your Honor, at this time the State
11 would move to enter Exhibit Number 11, State's Exhibit
12 Number 11 into evidence.

13 THE COURT: Any objection?

14 MR. McMULLEN: No, sir.

15 (Thereupon, State's Exhibit No. 11, herbal
16 supplement, was received into evidence.)

17 BY MS. RINGLER:

18 Q. Where did you find this item on Mr. Green?

19 A. It was on his person in a pocket. I can't recall
20 exactly which pocket.

21 Q. And you retrieved the item at that time?

22 A. Yes, I did.

23 Q. Did you look and examine -- look into Mr. Green's car
24 at any time?

25 A. Yes. Investigator Feemster and I were -- did the

WILLIAM SHAWN ZEIGLER - CROSS

1 inventory of the vehicle.

2 Q. Did you find anything in his car or did you see
3 anything in his car?

4 A. There was a bottle of a liquor, alcoholic beverage in
5 the rear seat, rear area of the vehicle. There was some
6 DVDs located in the vehicle, and one portion of the
7 vehicle, a handwritten note with directions to that
8 location were located as well.

9 Q. And who seized those items?

10 A. Investigator Feemster was responsible for the
11 inventory and therefore seized those items as evidence.

12 Q. Were any photographs taken at that time?

13 A. I don't recall.

14 Q. Okay.

15 MS. RINGLER: Nothing further from this witness,
16 Your Honor.

17 THE COURT: Cross?

18 CROSS-EXAMINATION

19 BY MR. McMULLEN:

20 Q. Good afternoon.

21 A. Good afternoon.

22 Q. You were there that night at the cul-de-sac on the
23 night of October 13th?

24 A. Yes, sir.

25 Q. What time did this happen?

WILLIAM SHAWN ZEIGLER - CROSS

1 A. It had gotten dark outside. I can't completely recall
2 the time. I apologize. It was, you know, when it gets
3 dark, around six. So it was subsequent to six o'clock in
4 the evening.

5 Q. All right. Do you know whether this was before or
6 after daylight savings time?

7 A. It's in October. I would assume that it probably
8 rolled over. I may be wrong.

9 Q. When you approached the vehicle, was the ID checked
10 while Mr. Green was still in the vehicle?

11 A. If I recall correctly he was out of the vehicle.

12 Q. Was he asked to exit the vehicle?

13 A. Yes, sir. He would have been.

14 Q. All right. And Detective Platt asked him, what are
15 you here for?

16 A. Yes, sir.

17 Q. Do you remember his response?

18 A. No, sir; I don't, verbatim.

19 Q. And then after that Miranda warnings were read?

20 A. That is correct.

21 Q. You said that you found handwritten notes?

22 A. They were located in the vehicle; yes, sir.

23 Q. And those were of directions there?

24 A. It was directions that were, like, scratched into a
25 piece of paper as one would do like phone number or

1 something.

2 Q. All right. So why would he put it -- why would he
3 write the notes?

4 A. I have no idea why he would do that, other than I
5 would assume that he was --

6 THE COURT: No, sir. No, sir. No, sir. Don't
7 assume. You can't speculate to why he wrote the notes.

8 BY MR. McMULLEN:

9 Q. And these notes were directions to the place?

10 A. That is correct.

11 MR. McMULLEN: Thank you. That's all my
12 questions.

13 THE COURT: Thank you. Anything on redirect?

14 MS. RINGLER: No redirect, Your Honor.

15 THE COURT: You may step down. Do you have a
16 seven-minute witness?

17 MS. RINGLER: No, Your Honor.

18 THE COURT: Do you have any less than seven
19 minutes?

20 MS. RINGLER: No, Your Honor.

21 THE COURT: All right. Let's make a little quick
22 change. I've got five motions in the morning at 9:30,
23 plus a conference call they just told me about.

24 I don't want you all waiting on me. Let's start
25 at ten o'clock but your biscuits will still be here. You

1 want to get a little bit here a little earlier to eat
2 them, that's fine. If you get here real early,
3 Mr. Whittle will give you two instead of one. We'll start
4 right at ten. I'll have all of this out of the way and you
5 won't have to wait on me.

6 Please tonight do not discuss the case, don't let
7 anybody discuss it with you. Please do not read any
8 article in the newspaper tomorrow. Please do not do any
9 computer research or any research on your own. That's not
10 permissible.

11 Let's try this case based solely on what we hear
12 in the courtroom and what I charge you the law to be.

13 One juror needs a ride. Where do you live,
14 ma'am?

15 THE JUROR: I live in North Augusta, Belvedere.

16 THE COURT: We got you covered. When you go to
17 the jury room --

18 THE BAILIFF: Just wait out there.

19 THE COURT: -- Mr. Whittle will have you wait
20 right there. When they get to your neighborhood, they'll
21 turn the blue lights and siren on.

22 THE JUROR: Please don't.

23 THE COURT: Thank you. See you in the morning.

24 (Jury exits courtroom at 4:55 p.m.)

25 THE COURT: Anything from the State for the

1 record before we break for the evening?

2 MS. RINGLER: Your Honor, we would just like to
3 address the issue of bond.

4 THE COURT: We'll he is -- his bond is up. He is
5 incarcerated tonight.

6 MS. RINGLER: Thank you, Your Honor.

7 THE COURT: Anything else?

8 MS. RINGLER: Nothing further from the State,
9 Your Honor.

10 THE COURT: From the Defendant?

11 MR. McMULLEN: He has to go to jail tonight?

12 THE COURT: Yes, sir. He knows the rules.

13 MR. McMULLEN: I know it's discretionary.

14 THE COURT: It is discretionary. Has he ever
15 failed to show up?

16 MR. McMULLEN: No, sir.

17 THE COURT: Where does he live?

18 MR. McMULLEN: Columbia. His wife's here. He's
19 got two children. It might be his last night at home for
20 a while.

21 THE COURT: Since it's in my discretion I'll
22 allow him -- I'll allow him to remain out on bond.

23 MS. PORTER: Your Honor, may we ask that the
24 bondsman sign a new bond? We have had problems with this
25 in the past. We will be unable to estreat the bond or

1 have the bondsman held accountable and help us look for
2 him provided he does not attend court tomorrow.

3 THE COURT: Who's on his bond? Who's your
4 bondsman?

5 THE DEFENDANT: Bradley.

6 MS. PORTER: I apologize, Your Honor. I just
7 have several cases on appeal right now regarding that
8 issue.

9 THE COURT: Ms. Porter, I've been doing it a long
10 time. I've never known anybody not to show up the next
11 day. I can't imagine. How many do you have?

12 MS. PORTER: Two. I had just --

13 THE COURT: Maybe you scared them away.

14 MS. PORTER: Got one back from Mexico and one
15 from South Dakota and still looking for two others.

16 THE COURT: All right. Mr. McMullen, since the
17 State's objecting, I'm not going to allow him out on
18 bond. He can stay with us tonight. All right.

19 We'll start at ten o'clock in the morning. Let
20 me see the lawyers in chambers, please.

21 END OF DAY'S PROCEEDINGS: 4:57 P.M.

22 ** ** **

23
24 ON JUNE 17, 2010 AT 10:17 A.M.:

25 (State's Exhibit No. 17, Encase Report, and

1 State's Exhibit No. 18, chat printout, marked for
2 identification.)

3 THE COURT: All right. AG and defense lawyer,
4 we're missing one juror. I'm going to substitute that
5 juror with an alternate. I have two alternates, Ms. Cato
6 and Mr. Goodin. I can randomly select it or I can draw
7 the first one. What's your pleasure? State?

8 MS. RINGLER: Random selection, Your Honor.

9 THE COURT: All right. Put me -- y'all got
10 something over there, a box or something? Just put number
11 one and number two in there. Number one will be Cato and
12 number two will be Goodin. Any objection to that
13 procedure by the defense?

14 MR. McMULLEN: No, sir.

15 (Pause.)

16 THE CLERK: Number one.

17 THE COURT: All right. Ms. Cato will be
18 elevated. Bring the jury in, please.

19 MS. RINGLER: Your Honor, what was the juror
20 number?

21 THE COURT: 152, Ms. Cato.

22 (Jury enters courtroom at 10:19 a.m.)

23 THE COURT: Ms. Cato, I'm going to ask you to
24 come have a seat by the foreperson. I have now elevated
25 you to sit on the jury. I didn't slight you, Mr. Goodin,

JASON FEEMSTER - DIRECT

1 I put both of your names into a hat and just drew them
2 randomly.

3 I hope you had a pleasant evening. You may call
4 your next witness.

5 MS. RINGLER: Thank you, Your Honor. The State
6 calls Jason Feemster.

7 JASON FEEMSTER, having been duly sworn, was
8 examined and testified as follows:

9 THE CLERK: Have a seat on the witness box and
10 state your full name for the Court, spelling your last,
11 please.

12 THE WITNESS: My name is Jason Feemster, F. as in
13 fox, E. E. M. S. T. E. R.

14 DIRECT EXAMINATION

15 BY MS. RINGLER:

16 Q. Thank you. Investigator Feemster, where do you
17 presently work?

18 A. The Aiken County Sheriff's Office.

19 Q. And what do you do there?

20 A. I'm now assigned to the road patrol division of the
21 office.

22 Q. Were you working on the road in October of 2006?

23 A. No, ma'am; I was not.

24 Q. What were you doing at that time?

25 A. Juvenile investigations division.

JASON FEEMSTER - DIRECT

1 Q. Were you an investigator at this time?

2 A. Yes, ma'am.

3 Q. What types of crimes did you investigate?

4 A. Child abuse, juvenile crime, Internet crimes.

5 Q. And what was your training and experience before
6 2006?

7 A. I'd have to look at my certifications, but I believe I
8 had gone to, I believe, one Internet Crimes Task Force
9 training class at that time. I believe I had further
10 training through 2007 in that.

11 Q. How many years were you an investigator?

12 A. I was assigned to the investigations division, I
13 believe, in 2001 until I left in 2007.

14 Q. And you left in 2007. When did you return to the
15 sheriff's office?

16 A. I returned in December of 2008.

17 Q. Did you assist in the investigation that occurred on
18 October 13th, 2006?

19 A. Yes, ma'am.

20 Q. Did you assist in the meet of the individual Black
21 Slider?

22 A. Yes, ma'am.

23 Q. Where were you positioned at the meet site?

24 A. I was stationary at the end of Magnolia Drive in my
25 patrol vehicle.

JASON FEEMSTER - DIRECT

1 Q. Were you -- where were the other cars positioned?

2 A. If I recall correctly -- I'm not sure which
3 investigator was where. I believe I was the last car to
4 the right. There were three of us lined up, if I'm not
5 mistaken, at the end of the cul-de-sac.

6 Q. And what happened once you were positioned there at
7 the cul-de-sac?

8 A. One vehicle approached and we stopped to identify the
9 people in the vehicle. If I'm not mistaken, there was a
10 white male and a white female. We identified them. They
11 were released. And then shortly after that time the other
12 vehicle showed up with Mr. Green in the vehicle.

13 Q. When did you first see that vehicle that Mr. Green was
14 driving?

15 A. When -- I know when you round the curb it kind of goes
16 up a hill. You could see headlights coming. We assume --
17 it's a dead end road. There is minimal traffic in that
18 neighborhood. It was barely built up at that time.
19 That's what I'm trying to explain to you if that's what
20 you're looking for.

21 Q. I was just wanting to know. So you saw the
22 headlights. What happened after that?

23 A. After the headlights and it stopped, Investigator
24 Platt and Zeigler approached the vehicle. I stayed back
25 because there were three vehicles and I don't want to risk

JASON FEEMSTER - DIRECT

1 a collision and we all went to the vehicle at this time.

2 Q. When you said approach, you approached in a vehicle?

3 A. Yes, ma'am; with our vehicles.

4 Q. Did you exit your vehicle?

5 A. Yes, ma'am; I did.

6 Q. Where were you at that point in time?

7 A. I'm not sure where I was. I know that I went to
8 secure the vehicle, I know that, while Investigator Platt
9 had spoke with Mr. Green.

10 Q. By secure the vehicle, what does that entail?

11 A. Just to make sure that the vehicle was safe. There
12 were no other people in the vehicle to secure any possible
13 evidence that would be in the vehicle.

14 Q. How would you do that?

15 A. Basically I went and parked as near the vehicle, I'm
16 not sure what side of the vehicle I was on. I walked over
17 and stood at the vehicle.

18 Q. Did you look inside the vehicle?

19 A. Yes, ma'am.

20 Q. And this meet site, was that in Aiken County?

21 A. Yes, ma'am; it was.

22 Q. Do you know the age of Mr. Green on October 13th,
23 2006?

24 A. No, ma'am; I don't.

25 Q. If you saw the incident report, would that refresh

JASON FEEMSTER - DIRECT

1 your recollection?

2 A. Yes, ma'am.

3 MR. McMULLEN: I object. That would be hearsay,
4 Your Honor.

5 THE COURT: Overruled.

6 THE WITNESS: If I'm reading the report
7 correctly -- it is a bad copy -- I believe he was 27 at
8 the time on October 13, 2006.

9 BY MS. RINGLER:

10 Q. So the Defendant was over the age of 18 on October
11 13th, 2006?

12 A. Yes, ma'am.

13 Q. So let's go back to when you were talking about
14 securing the vehicle. Did you perform a search of the
15 vehicle?

16 A. Yes, ma'am. After the arrest was made, I inventoried
17 the vehicle for the wrecker service.

18 Q. And why inventory the vehicle?

19 A. Just to make sure all of his items were there. And to
20 secure them for the towing company, to make sure there was
21 no theft and also to secure for any evidence after the
22 arrest was made.

23 Q. What did you find pursuant to the inventory search?

24 A. Recollection, I believe there was condoms in there, a
25 bottle of liquor, some DVDs.

JASON FEEMSTER - DIRECT

1 THE COURT: Hold on a second. Hold on a second.
2 Whose phone is going off, please?

3 (Pause.) That's all right. Just turn it off,
4 ma'am. Everybody make sure your phones are off. I'll
5 make sure mine is off. Move along.

6 THE WITNESS: DVDs, miscellaneous papers.

7 BY MS. RINGLER:

8 Q. Did you find -- was there anything else that you found
9 in the vehicle?

10 A. Just recalling from when I looked at the incident
11 report and the chain of custody, it was also handwritten
12 directions to the location where we were supposed to have
13 met. I'm sure I've left off items just not -- by memory,
14 without looking at the evidence sheet and the tow sheet.

15 Q. Would it help your recollection if you looked at the
16 property sheet?

17 A. Oh, yes, ma'am.

18 MR. McMULLEN: Again, Your Honor, I object on
19 hearsay grounds unless he prepared this sheet.

20 MS. RINGLER: Your Honor, we're just using it for
21 the purpose of refreshing his recollection.

22 THE COURT: That's correct. Overruled.

23 THE WITNESS: You'd like for me to recall each
24 and every item I secured?

25 THE COURT: No, sir. Read that to refresh your

JASON FEEMSTER - DIRECT

1 memory and then answer the question.

2 THE WITNESS: Okay. Herbal supplements,
3 handwritten directions, like I advised, to it. And there
4 is also a note of a Sony Ericsson cell phone that was
5 secured.

6 BY MS. RINGLER:

7 Q. Okay. I'm handing you what's been previously marked
8 as State's Exhibit Number 12. Do you recognize it?

9 A. I don't recall this exact phone, but I know a cell
10 phone was collected, according to this sheet. Let me see
11 if it is a Sony Ericsson.

12 It says Sony Ericsson on it.

13 Q. And I'm handing you what's been previously marked as
14 State's Exhibit 13. Do you recognize it?

15 A. Not offhand. I mean, if it's secured in the evidence,
16 I would state that it came from that incident location or
17 from that incident.

18 Q. And then I'm handing you State's Exhibit 14. What is
19 it?

20 A. A package of Lifestyle condoms.

21 Q. Do you recognize it?

22 A. Yes, ma'am; from the notation on the report.

23 Q. And then, I'm sorry. Item number 13, what was that?

24 A. I believe it's some type of herbal supplement. It's
25 marked on the back with the exhibit number.

JASON FEEMSTER - DIRECT

1 Q. Does it say what the herbal supplement is intended
2 for?

3 A. I believe it was stamina.

4 Q. And I'm handing you what's been marked as State's
5 Exhibit 15. What is it?

6 A. It is a DVD entitled White Chicks, and a DVD entitled
7 Envy.

8 Q. Do you recognize that?

9 A. I remember the White Chicks DVD.

10 Q. I'm handing you State's Exhibit 16, what is that?

11 A. It's a bottle of Bacardi Coconut.

12 Q. And do you recognize that?

13 A. Yes, ma'am; I do recall that.

14 Q. And where was the -- where were the movies and the
15 Bacardi found?

16 A. The movies and the Bacardi were located in the
17 vehicle. I'm not sure where the cell phone -- I can't
18 recall where the cell phone was located at the time or the
19 herbal supplement, but I know that the movies and the
20 Bacardi were in the vehicle at that time.

21 Q. Thank you. Your Honor, the State moves at this time
22 to admit items 12 through 16 into evidence at this time.

23 MR. McMULLEN: No objection.

24 THE COURT: Without objection.

25 (Thereupon, State's Exhibit No. 12, cell phone,

JASON FEEMSTER - DIRECT

1 State's Exhibit No. 13, herbal supplement, State's Exhibit
2 No. 14, Trojans, State's Exhibit No. 15, two DVDs, and
3 State's Exhibit No. 16, Bacardi liquor, were received into
4 evidence.)

5 BY MS. RINGLER:

6 Q. And did you fill out a form after collecting these
7 items?

8 A. Yes, ma'am; I did.

9 Q. Did you -- what did you do with the items after they
10 were collected?

11 A. The items were secured at the evidence area of the
12 sheriff's office.

13 Q. Did you take them to the sheriff's office?

14 A. Yes, ma'am. I believe -- from looking at the report,
15 I believe it reflected that I was the one that secured
16 those items. Yes, ma'am.

17 Q. Do they appear to be in the same condition --

18 A. Yes, ma'am.

19 Q. -- as when you put them in evidence?

20 A. Yes, ma'am.

21 Q. And what did you do after conducting the search of the
22 car?

23 A. I believe the wrecker service was notified and they
24 secured the vehicle and I went home for the evening after
25 that.

1 MS. RINGLER: Thank you. Please answer any
2 questions that defense counsel might have.

3 MR. McMULLEN: No questions.

4 MS. RINGLER: Nothing further from the State for
5 this witness, Your Honor.

6 THE COURT: You may step down. Call your next
7 witness.

8 MS. PORTER: May we approach very briefly, Your
9 Honor?

10 (Off-the-record discussion.)

11 THE COURT: Mr. Foreperson, ladies and gentlemen,
12 in an effort to be efficient, I'm going to take a five-
13 minute break. I think that the five minutes will save us
14 an hour.

15 So y'all go back to the jury room. Don't discuss
16 the case. Don't start deliberating. We'll be back in
17 about five minutes.

18 Aren't you kin to one of my clerks?

19 THE JUROR: Shannon.

20 THE COURT: She told me all about you.

21 (Jury exits courtroom at 10:33 a.m.)

22 (Break taken.)

23 THE COURT: All right. Ms. Ringler,
24 Mr. McMullen, Ms. Porter, let the record reflect that we
25 had an in-chambers discussion wherein the three of you had

1 presented to me a six item stipulation concerning the
2 computer of the Defendant that was seized on October 25,
3 '06.

4 I will read the stipulation to the jury and I
5 will inform them what a stipulation is. A stipulation
6 also refers to Exhibit 17 which will be introduced without
7 objection to be published from -- to be published to the
8 jury.

9 Okay. Is that correct, Ms. Ringler?

10 MS. RINGLER: Yes, Your Honor.

11 THE COURT: Is that correct, Mr. McMullen?

12 MR. McMULLEN: Yes, Your Honor.

13 THE COURT: I'm going to mark the stipulation as
14 Court's Exhibit One. I would like for both of you to look
15 at -- Court's Exhibit Two.

16 I would like for both of you to look at it and
17 agree that that is in fact the stipulation that was
18 presented to me in chambers.

19 MR. McMULLEN: I agree, Your Honor.

20 MS. RINGLER: Yes, Your Honor.

21 THE COURT: Then I understand that would be the
22 State's case?

23 MS. RINGLER: Yes, Your Honor. We would publish
24 17 and then we'll do motions.

25 THE COURT: And then we'll do motions and then

1 talk about the Defendant's right to testify and then we'll
2 move into the defense case.

3 Mr. Whittle, I anticipate this will take us about
4 10 minutes. So I'm going to order the jury lunch. So go
5 ahead and get Bowery menus. Bring the jury, Mr. Whittle.

6 (Thereupon, Court's Exhibit No. 2, stipulation,
7 was received into the record.)

8 (Jury enters courtroom at 10:50 a.m.)

9 THE COURT: Mr. Foreman, ladies and gentlemen of
10 the jury, we took a break so the lawyers from the attorney
11 general's office and the defense lawyer could try to reach
12 an understanding and an agreement on certain facts.
13 That's called a stipulation.

14 A stipulation is simply facts that are not
15 controverted. They are admitted by both sides and are
16 found to be true by you. That keeps us from having to
17 call a number of witnesses to prove these facts. The
18 defense agrees to them. The State agrees to them. I'm
19 going read it to you and you are to accept it as true
20 facts in the case.

21 The stipulation is as follows: On October 25,
22 2061 on black-top E. machine computer was seized from the
23 Defendant's residence located at [REDACTED] Grays End Road,
24 Columbia, South Carolina.

25 The Defendant used that computer on October 13th,

1 2006 to chat with LittleMandyl4SC on the Yahoo service
2 provider.

3 The Defendant also used that computer on October
4 20, 2006 to chat with one known as Jsexxy that's spelled
5 S. E. X. X. X. Y. 88 S. on AOL service provider. During
6 the October 20, 2006 chat the Defendant and Jsexxy88S
7 discussed meeting to engage in sexual activity and
8 Jsexxy88s stated her age to be 17 years of age.

9 During the October 20, 2006 chat the Defendant
10 stated, quote, I got in trouble before so I'm scared, end
11 of quote. Next the computer was analyzed and State's
12 Exhibit 17 was generated. The photos in State's Exhibit
13 One and Two which you saw yesterday were consistent with
14 the photos located on the computer.

15 And at this time State's Exhibit 17 will be
16 introduced into the trial of this case without objection
17 and the State will be allowed to publish State's Exhibit
18 17.

19 (Thereupon, State's Exhibit No. 17, Encase
20 report, was received into evidence.)

21 THE COURT: Now on behalf of the State, was the
22 stipulation read as agreed upon?

23 MS. RINGLER: Yes, Your Honor.

24 THE COURT: By the Defendant?

25 MR. McMULLEN: Yes, sir.

1 THE COURT: All right. You may publish 17.

2 (State's Exhibit No. 17 published to the jury.)

3 THE COURT: Let me just remind you as she's
4 getting that ready, that will conclude the State's case so
5 we were able to make it more efficient for you

6 MS. RINGLER: Thank you, Your Honor. The State
7 is publishing State's Exhibit 17.

8 THE COURT: Mr. Foreman, ladies and gentlemen of
9 the jury, obviously when you start your deliberations and
10 discussing the case at the appropriate time, you will have
11 all of those exhibits in the jury room to review and look
12 at.

13 They just publish them on that fancy machine so
14 you can look at them while we're trying it, but you'll
15 have all of that back in the jury room. So you'll have
16 ample opportunity to take as much time to look at it as
17 you want or desire.

18 You may call your next witness.

19 MS. RINGLER: The State rests at this time, Your
20 Honor.

21 THE COURT: All right. That concludes the
22 State's testimony. I have to spend a few minutes with the
23 lawyers as required at the end of the case to see what the
24 defense is going to do. It will take us about five or 10
25 minutes.

1 During that time, Mr. Whittle is going to give
2 you a menu from the Bowery. I think to make things run
3 smoothly, if it's okay with y'all, I'd like to order you
4 lunch and let it be brought in. And then we can continue
5 to work up until the time the lunch gets here, take time
6 to eat lunch. I'm going to have to take a little bit of
7 time at lunch because I've got two things that I've
8 scheduled over the lunch hour.

9 So I can't obviously be trying the case at the
10 same time I'm doing that but we'll work around that as
11 best we can. I'll go ahead and get your lunch brought in
12 and if you get through with lunch before I can start back,
13 you can go downstairs and enjoy the fresh air and we'll
14 decide on the time we start back.

15 Return to your jury room. Go ahead and order
16 your lunch but do not start deliberations. Don't discuss
17 the case. Thank you.

18 (Jury exits courtroom at 10:56 a.m.)

19 THE COURT: Any motions on behalf of the State?

20 MS. RINGLER: Not at this time, Your Honor.

21 THE COURT: By the Defendant?

22 MR. McMULLEN: Yes, Your Honor.

23 Your Honor, may it please the Court. I
24 respectfully request the State or the Court to issue a
25 directed verdict or dismiss the two indictments.

1 The indictment for attempted criminal sexual
2 conduct with a minor, Your Honor, I would assert
3 respectfully that criminal sexual conduct with a minor
4 includes the lesser-included offenses of assault and
5 battery of a high and aggravated nature, assault of a high
6 aggravated natural, simple assault and battery, simple
7 assault alone. The simple assault element is not and
8 cannot be met where the defendant had no present ability
9 to carry out the threat.

10 THE COURT: I.e., there was no young person for
11 him to have the assault with.

12 MR. McMULLEN: There was -- correct. There was
13 never that. And also there was no -- in another argument
14 along those lines, there was no expressed intent to do the
15 act. There was no overt act that would lead to an
16 unbroken chain because during the chat that's in evidence,
17 there is no expressed intent to do the act for sure.

18 In the cases that we've seen, Your Honor, it's
19 always an agreement, an understanding that the two parties
20 when they got together would engage in some specific
21 sexual activity. And I'll spare the Court the list, but
22 usually in the cases they specifically describe what
23 sexual activity would occur this is absent here.

24 They certainly talked about orgasms and sex, but
25 the Defendant clearly said that, if I get there and you

1 don't want to, we won't do it. And that was actually in
2 response to LittleMandy's request that he bring a condom.
3 A request that was made very early in the conversation.

4 So I would allege, Your Honor, even in the light
5 most favorable to the State, that the only realistic
6 reason -- the only realistic conclusion to be drawn would
7 be that she always had a chance to back out or that he
8 always had a chance to back out.

9 The third line of the conversation that we had in
10 evidence is that she's admitting to having had sex with a
11 16 year old. And then later refers to the male part of
12 the anatomy with a D. word. And then he says he could
13 show it to her if he wants her to (sic).

14 Some of this could be fantasy but one of the
15 things that's said here is, bring a Trojan. And then he
16 says, I'll bring it but I won't pressure you to do
17 anything you don't want to do.

18 That's in the record. As well as, if you change
19 your mind and want to just chill out, that's cool too. He
20 ends up bringing a comedy, not a pornographic movie.

21 THE COURT: Yeah, but he also brings the
22 prophylactic. He also brings supplement for sexual
23 enhancement, I guess is what they're saying it was.

24 MR. McMULLEN: Yes, sir. Absolutely.

25 THE COURT: He also brings alcohol.

1 MR. McMULLEN: Yes, sir. You know, the way it's
2 said at 10-13-2006 at 6:17 and five seconds he says, I'll
3 bring a Trojan just in case.

4 I would argue, Your Honor, that all of those
5 things he brought were, quote, just in case. But this
6 could also easily be contributing to the delinquency of a
7 minor case. Had they gotten there and maybe had some
8 alcohol if there had been a 14 year old, they might have
9 done that.

10 She admitted to drinking. But the main thing
11 that I wanted to say on this issue was that there was
12 never an understanding that the act would be consummated
13 when he arrived. And I think that's what separates this
14 situation from the cases we see reported. And that's what
15 takes it away from being an attempt.

16 In essence, there's no chance to chicken out.
17 Certainly we wouldn't suggest anybody be put in harm's
18 way, but what we would suggest, Your Honor, is the intent
19 and the expressed agreement to consummate a sexual act
20 must be stated before the Defendant arrives at the scene
21 in order to constitute an attempt.

22 THE COURT: Well, he said, would you sleep with
23 me.

24 MR. McMULLEN: But they never say, yes, that's
25 what we're going to do when you get here.

1 THE COURT: That's a fact for the jury to
2 decide. Attempt is an effort to accomplish a crime which
3 does not succeed.

4 And certainly there is evidence in the record
5 that he was attempting to accomplish the crime of criminal
6 sexual conduct with a minor. And the jury may not believe
7 that, but there's evidence in the record for them to
8 decide, not for me to dismiss it as a matter of law on
9 that particular argument.

10 Anything else?

11 MR. McMULLEN: Yes, sir. The fact that the
12 photograph used by the State to entice the Defendant there
13 or to represent who the victim was, that that photograph
14 was in fact of a person over the age of consent. And that
15 therefore in the light most favorable to the State the
16 alleged victim is, as far as the Defendant knows, in his
17 mind is specific intent is to have sex with the person in
18 the photograph. And the person in the photograph at the
19 time of the photograph was never -- the age was never
20 proved, but in fact the Defendant will show if necessary
21 that that person was under -- was over 21 at the time of
22 the photograph, not 14 or 15, even in her teens, but 23 or
23 24.

24 THE COURT: But the evidence is uncontroverted
25 that she said or LittleMandy says that she's 14 and he

1 says, damn, I'm 21.

2 MR. McMULLEN: Yes.

3 THE COURT: And --

4 MR. McMULLEN: I'm sorry, sir.

5 THE COURT: So there is evidence in the record.

6 If the jury wants to believe that, they certainly can.

7 They don't have to believe it, but they may. But the
8 evidence exists.

9 MR. McMULLEN: Your Honor, I would also assert
10 that in the light most favorable to the State that the
11 evidence just doesn't show that he solicited any minor at
12 all. Since there was no minor, there's no attempt.

13 Also renew my objections, Your Honor, to the
14 statute as being unconstitutional, and a restriction on
15 speech, vague, over broad and replying to conduct that's
16 protected.

17 THE COURT: All right, sir. For the same reasons
18 I -- I mean, you don't have any case law that says this
19 statute is unconstitutional or not from our state or from
20 any state or federal law or anything that says these
21 statutes are unconstitutional, do you?

22 MR. McMULLEN: No, sir.

23 THE COURT: These are --

24 MR. McMULLEN: To my knowledge not many cases of
25 these have been tried. It is a relatively new statute.

1 There are only two reported cases in our state.

2 THE COURT: But there are plenty of reported
3 cases from elsewhere.

4 MR. McMULLEN: As I say, my search has shown no
5 argument to that effect.

6 THE COURT: I understand. So that's respectfully
7 denied. Anything else? Anything else?

8 MR. McMULLEN: No, sir. I would like, Your
9 Honor, if you would give me just five minutes with the
10 witness that I'm just meeting for the first time. She's
11 LittleMandy14. The State never gave me any of this
12 information --

13 MS. RINGLER: I'm going to give it to you.

14 MR. McMULLEN: This is my first chance to meet
15 with her.

16 THE COURT: All right. Let me talk to your
17 client a little.

18 MR. McMULLEN: Your Honor?

19 THE COURT: Mr. Green, if you would stand and
20 raise your right hand.

21 (Defendant placed under oath.)

22 THE COURT: You can put your hand down. You may
23 even sit down if you'd like.

24 All right. Mr. Green, we've reached the stage of
25 the trial where you may present your defense.

1 So I need to explain to you the rights that you
2 have under the fifth amendment to the Constitution of the
3 United States.

4 If you do not understand what I'm telling you,
5 please just stop me and I'll repeat it. If you don't stop
6 me, then I'll assume that you've understood what I've
7 said. Is that fair?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: The first amendment to the
10 Constitution of the United States says, quote, no person
11 shall be compelled in a criminal case to be a witness
12 against themselves, end of quote.

13 That means that you cannot be required to testify
14 in this case. Obviously you have the right to testify if
15 you want to, but nobody can make you testify. This is a
16 personal right and no one can waive or give up this right
17 except you.

18 Now, obviously if you want to testify you may, but if
19 you testify then you'll be subjected to the same rules
20 that everybody else is subjected to under cross-
21 examination.

22 The State can cross-examine you on any relevant issue
23 or fact in the case. And as I've been told by your lawyer
24 and the State that you have a prior record of shoplifting,
25 the State can use that particular prior record for

1 impeachment purposes to talk about your credibility or to
2 attack your credibility. If they do, of course, I will
3 tell the jury that they can only consider that prior
4 conviction as it pertains to credibility.

5 And I still have to make a determination as to whether
6 or not allowing them to use that would be more probative
7 than prejudicial.

8 If you decide not to testify, as part of my jury
9 charge and instructions at the conclusion of the case, I
10 would tell the jury, number one, that they cannot hold
11 against you the fact that you did not testify. They
12 cannot hold that fact against you in any manner
13 whatsoever.

14 And, in fact, I will instruct them that they can't
15 even consider the fact that you did not testify when they
16 deliberate your guilt or innocence. That fact cannot be
17 mentioned in the jury room. And I will tell the
18 foreperson that is one of his duties that if anybody says
19 that you didn't testify, they're not to discuss that and
20 to not hold anything against you and the fact that you
21 didn't testify.

22 Now, do you understand your rights to testify and your
23 rights to remain silent?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Understanding those rights, do you

1 wish to testify in this trial?

2 THE DEFENDANT: Sir?

3 THE COURT: Do you wish to testify?

4 THE DEFENDANT: No, sir.

5 THE COURT: Sir?

6 THE DEFENDANT: No, sir.

7 THE COURT: No, sir?

8 THE DEFENDANT: No, sir.

9 THE COURT: All right, sir. And have you had
10 enough time to spend with your lawyer and enough time to
11 digest what I've just told you in order to make that
12 decision?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you have any questions you'd like
15 to ask me?

16 THE DEFENDANT: No, sir.

17 THE COURT: Any questions you need to ask your
18 lawyer now?

19 THE DEFENDANT: No, sir.

20 THE COURT: I respect your decision and having
21 made that decision, obviously I will instruct the jury
22 about your failure to testify. They can't hold that
23 against you and can't even discuss it. Is that fair?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Let's take a quick

1 break. Five minutes. Now, ladies and gentlemen, we'll be
2 through with the trial so be prepared to go into your
3 final arguments.

4 MR. McMULLEN: Will we argue charges or discuss
5 that?

6 THE COURT: I will tell you what the charges
7 are. That's not going to take but a second. You want to
8 know now?

9 MR. McMULLEN: Whenever.

10 THE COURT: Go ahead and get them out of the way.

11 MR. McMULLEN: Whatever suits Your Honor.

12 THE COURT: It suits me now, to do it right now.

13 MR. McMULLEN: All right, sir.

14 THE COURT: I intend to charge the following:
15 Duties of the judge and jury, the fact that he was
16 indicted is not to be held against him, it's simply the
17 charging document. He's presumed to be innocent. I'll
18 charge the presumption of innocence. I'll charge
19 reasonable doubt. I'll charge failure of the Defendant to
20 testify. I'll charge credibility of witnesses as the duty
21 of the jury.

22 I'll charge that the verdict has to be
23 unanimous. It cannot be based on sympathy, passion or any
24 other arbitrary factor.

25 I'll charge criminal sexual conduct in the second

1 degree with a minor. I will charge the law of attempt,
2 and I'll charge criminal solicitation of a minor as all
3 set out in the appropriate statutes.

4 I will have a verdict form which says, we find
5 the Defendant not guilty, we find the Defendant guilty of
6 attempted second degree criminal sexual conduct. A
7 separate verdict as to solicitation of a minor.

8 I will charge the jury that they have to consider
9 each indictment separate and apart from the other and make
10 a unanimous decision on each indictment.

11 I think that's what I will charge.

12 MR. McMULLEN: May it please the Court.

13 THE COURT: Yes, sir.

14 MR. McMULLEN: Thank you. Would the Court
15 consider the charge on rejected or stricken evidence as in
16 any statements that might have been made from the witness
17 stand where an objection was sustained?

18 THE COURT: I will tell them they can only
19 consider evidence that's been admitted into the trial. If
20 I've sustained an objection, please do not -- that is not
21 part of the testimony. Remind me to do that.

22 MR. McMULLEN: May I ask, Your Honor, that you
23 instruct them on the definition of criminal intent?

24 THE COURT: And you have a proposed charge on
25 that?

1 MR. McMULLEN: I don't have one in writing, Your
2 Honor. On State versus Taylor, I have one in the book
3 that I would propose. May I hand that up?

4 THE COURT: Hand me the book. I'll look at your
5 book.

6 MR. McMULLEN: (Complying.)

7 THE COURT: All right. I'll charge criminal
8 intent if you want me to.

9 MR. McMULLEN: Yes, sir. Your Honor, will the
10 Court charge the lesser-included offenses that I have
11 listed? This could be an attempted assault and battery of
12 a high and aggravated nature. That is an assault, a
13 battery with harmful or offensive touching. This could be
14 attempted criminal -- contributing to the delinquency of a
15 minor. It fits those elements as well. I believe that
16 the evidence would show that.

17 And the attempt to commit those things. The
18 attempt to commit assault and battery, assault. Those are
19 all lesser-included offenses.

20 Then the King charge, Your Honor.

21 MS. RINGLER: Your Honor, the State would object
22 to that. The facts don't support the lesser included and
23 also, Your Honor, he was not charged with contributing to
24 the delinquency or attempted contributing to the
25 delinquency of a minor.

1 THE COURT: Well, you can be charged with murder
2 and I'll charge the lesser included voluntary manslaughter
3 if it's appropriate and/or involuntary. The fact that he
4 wasn't charged is not dispositive of it, but -- you got
5 any case law that says on attempted CSC with a minor that,
6 number one, those are lesser-included offenses and then,
7 two, they should be charged?

8 MR. McMULLEN: One -- yes, sir. State versus
9 Murphy.

10 THE COURT: Hand me the case.

11 MR. McMULLEN: Yes, sir. There is case law to
12 the effect that, that that's where I got those arguments.

13 THE COURT: Well, State versus Mathis 340 SE
14 Second 538, is assault and battery of a high and
15 aggravated nature is a lesser-included offense under
16 16-3-655, one. That talks about criminal sexual conduct
17 in the first degree.

18 MR. McMULLEN: Yes, sir. And of course CSC
19 second is a lesser-included offense of that.

20 THE COURT: And should be submitted to the jury
21 if there is evidence from which it could be inferred that
22 the Defendant committed an assault and battery of a high
23 and aggravated nature rather than greater offense of
24 criminal sexual conduct in the first degree.

25 I just don't see -- it is either all or not to me

1 in this situation. It's either --

2 MR. McMULLEN: I would submit that if it's a
3 lesser-included offense of criminal sexual conduct in the
4 first degree, it has all the elements except a different
5 age that it could be the same with a CSC second.

6 THE COURT: It may be a lesser included but that
7 doesn't mean I have to charge it.

8 MR. McMULLEN: No, sir. But I would respectfully
9 submit that the evidence would support such a charge to
10 the jury.

11 THE COURT: What evidence?

12 MR. McMULLEN: All of the evidence.

13 THE COURT: Sir?

14 MR. McMULLEN: The contributing statute, Your
15 Honor, 16-17-419 where a person over 18 knowingly,
16 willfully encourages, aids or causes a minor defined later
17 as someone under 18 to violate any law or any
18 municipality's ordinance to be incorrigible or
19 ungovernable.

20 I'll skip the ones that don't apply, but to
21 engage, to associate with immoral or vicious persons or to
22 place in violation of the law, use obscene language and
23 afford himself or herself as to willfully injure or
24 endanger his or her morals or health or the morals or
25 others.

1 I would assert respectfully the facts support the
2 charges, Your Honor.

3 THE COURT: Well, in State versus Muphry
4 (phonetically) it says there was no evidence to support
5 instruction on a charge of assault and battery of a high
6 and aggravated nature, it's a lesser-included offense of
7 CSC with a minor as there was no penetration and that she
8 was -- and then State versus Dempsey says it's not proper
9 to charge it.

10 State versus Muphry again. All right. Anything
11 else?

12 MS. RINGLER: Just, Your Honor, that the State
13 would contend that if it is a lesser included of CSC
14 first, there's also case law that states that CSC second
15 is not a lesser included of CSC first. So just because
16 it's -- does -- it was a -- it was a lesser included does
17 not make it a lesser included of a second. That was Downen
18 V. State. 354 SC 563.

19 And then also, Your Honor, the State would
20 contend that contributing -- that contributing is not a
21 lesser included either.

22 And the State would also request that as part of
23 the CSC with a minor instruction, that there be some
24 language that, the fact that the victim is not capable of
25 consenting to a sexual battery.

1 THE COURT: All right. I find that there is no
2 evidence, conduct that could have been construed as an
3 ABHAN. And I would respectfully decline the lesser-
4 included offense. You're protected on the record.

5 MR. McMULLEN: Did you rule on the contributing?

6 THE COURT: As well as contributing.

7 MR. McMULLEN: Thank you.

8 THE COURT: Anything else?

9 MS. PORTER: Your Honor, may we request that it
10 be charged that a minor under the age of 16 is not capable
11 of voluntarily consenting to a sexual battery committed by
12 an older person?

13 THE COURT: Where did you get that from? It's a
14 statute, isn't it?

15 MS. PORTER: Yes, sir. Well, it's the general
16 assembly stated in Doe versus Greenville Hospital System,
17 Judge Macauley's decision from 1994. It's 323 South
18 Carolina 33, and it's 448 Southeast Second 564. The
19 supreme court did dismiss certiori on that case.

20 THE COURT: All right. Hand it to me, please.

21 MS. PORTER: I don't have a copy of the case,
22 Your Honor, but I do have the place.

23 (Handed to judge.)

24 THE COURT: Anything else?

25 MR. McMULLEN: May it please the Court. As to

1 the present ability requirements, I would cite, Your
2 Honor, State versus Murphy, State versus Mims, State
3 versus Joel L. Mathis, all of these find that assault and
4 batteries are lesser-included offenses of criminal sexual
5 conduct charges.

6 THE COURT: Criminal sexual conduct with a
7 minor?

8 MR. McMULLEN: Let's see.

9 THE COURT: Sir?

10 MR. McMULLEN: I'm not sure each one was with a
11 minor.

12 THE COURT: I have ruled. Thank you. You're
13 protected. All right. Five minutes, start.

14 (Break taken.)

15 MS. PORTER: Your Honor, can we proffer this
16 testimony? I'm not quite sure what the relevance of the
17 testimony is with regards to -- he's got all of these
18 annual photos, I'm assuming, of the same individual at a
19 younger age. And I'm just not sure of the relevance since
20 this Defendant did not have those photos to compare and
21 contrast when he's talking to LittleMandy on the Internet.

22 THE COURT: I don't know what he's going to do.
23 What are you trying to do, Mr. McMullen?

24 MR. McMULLEN: Well, Judge, first of all, I'm
25 going to put the person up there whose photograph has been

1 used --

2 THE COURT: That's fine.

3 MR. McMULLEN: -- to be on the profile and show
4 the jury what that same exact person really did look like
5 when she was that age so that the jury can have an idea of
6 what somebody at that age looked like, the difference
7 between LittleMandy when she was really 14 and what she
8 looks like when she's 24.

9 MS. PORTER: And I would object to that unless he
10 can establish that the Defendant had the opportunity
11 during the chats to compare and contrast those photos and
12 make a determination that the person he believed at the
13 time to be 14 was not truly 14.

14 MR. McMULLEN: This is completely relevant, Your
15 Honor, because the photograph that they used was not of a
16 14 year old or even a person who was older and they
17 allowed them to use the picture when they were 14.

18 MS. PORTER: I believe we've established that she
19 was not 14 in the photograph.

20 MR. McMULLEN: They never said her age. And I
21 want her to get up there and testify how old she was when
22 that photograph was taken. And that goes to the heart
23 of where --

24 THE COURT: Well, she can testify as to how old
25 she was when that photograph was taken.

LYNDA WILLIAMSON - DIRECT

1 MR. McMULLEN: All right.

2 THE COURT: But as far as going into her high
3 school album.

4 MR. McMULLEN: Then I want her to testify as to
5 what she did look like when she was 14. I think that's --

6 THE COURT: How can she testify to, how did you
7 look when you were 14?

8 MR. McMULLEN: I've got a picture of my high
9 school yearbook I can show you. It's all the difference
10 in the world between 14 and 24. And that's the crux of
11 our case. If we're not allowed to present this on this
12 issue, I don't know what would be relevant..

13 THE COURT: I'll decide what's relevant.

14 All right. Call the jury in. Ma'am, you just
15 make your objection. I don't know where he's going.

16 (Jury enters courtroom at 11:33 a.m.)

17 THE COURT: You may call your first witness, sir.

18 MR. McMULLEN: The defense calls Lynda
19 Williamson.

20 THE COURT: Come around, Ms. Williamson. Raise
21 your right hand, please.

22 LYNDA WILLIAMSON, having been duly sworn, was
23 examined and testified as follows:

24 DIRECT EXAMINATION

25 THE CLERK: Have a seat on the witness box.

LYNDA WILLIAMSON - DIRECT

1 State your full name for the Court, spelling your last,
2 please.

3 THE WITNESS: My name is Lynda Williamson. It's
4 W. I. L. L. I. A. M. S. O. N.

5 DIRECT EXAMINATION

6 BY MR. McMULLEN:

7 Q. Good morning, Ms. Williamson.

8 A. Good morning.

9 Q. Would you kindly tell us your former occupation, where
10 were you working in -- well, tell us first of all your
11 age.

12 A. I'm 31.

13 Q. And are you aware that your photograph was being used
14 on a profile, in a Yahoo profile as LittleMandyl4SC?

15 A. No.

16 Q. This is -- would you kindly look at what I've
17 identified as, the court reporter has labeled as Defense
18 Exhibit Three? What is that, ma'am?

19 A. That's a picture of me.

20 Q. Would you tell us how old you were when that
21 photograph was taken?

22 A. I believe I was 24, maybe 25.

23 Q. And on what is that -- describe the photograph and
24 what it's with there, please.

25 A. It's a picture of me on the bed of my apartment at the

LYNDA WILLIAMSON - DIRECT

1 time.

2 Q. And is it on a Yahoo profile?

3 A. Yes, it is.

4 Q. Have you seen this before?

5 A. About five minutes ago.

6 Q. Have you ever seen it before that?

7 A. No.

8 Q. How old were you when that photograph was taken?

9 A. I think I was 24, possibly 25.

10 Q. What were you -- so, and you're 31 today?

11 A. Yes.

12 Q. How much longer?

13 A. Tuesday.

14 Q. You'll be --

15 A. Thirty-two.

16 Q. You'll be 32 on Tuesday?

17 A. Uh-huh.

18 Q. And so, that was taken in what year?

19 A. I think it was taken in 2001.

20 Q. All right. When -- did you ever give permission for
21 that photograph to be used by anybody?

22 A. I did.

23 Q. To whom did you give it?

24 A. I gave it to Mark Hammond with the Aiken County
25 Sheriff's Office.

LYNDA WILLIAMSON - DIRECT

1 Q. Tell us how that came about.

2 A. Mark happened to be my neighbor at the time and we
3 were friends. And he was starting an Internet sexual
4 predator thing, and he needed a law enforcement official
5 to give consent to use a photo if while chatting the
6 suspect or whatever wanted to see a photo. So I gave that
7 photo.

8 Q. So Mark Hammond was -- how did you know Mark Hammond?

9 A. He was my neighbor.

10 Q. And he just asked you one day to use your photo for
11 that?

12 A. Uh-huh, yes.

13 Q. Who gave him the photo?

14 A. He took the photo himself.

15 Q. And where was the photo taken?

16 A. At my apartment. It was Brittany Downs in Aiken.

17 Q. At the time of the photo in the chat that you're
18 holding there, Defense Exhibit Three, were you 21 years of
19 age?

20 THE COURT: Sir, you've asked that four times.
21 Move along.

22 MR. McMULLEN: I'd like to offer this into
23 evidence.

24 THE COURT: Any objection?

25 MS. PORTER: No objection, Your Honor.

LYNDA WILLIAMSON - DIRECT

1 THE COURT: What is it? Let me see it.

2 MR. McMULLEN: Defense Exhibit Three.

3 THE COURT: Thank you.

4 (Thereupon, Defendant's Exhibit No. 3, Yahoo
5 member photo, was received into evidence.)

6 BY MR. McMULLEN:

7 Q. I'm showing you what's been marked Defense Exhibit
8 Four. Can you describe that?

9 A. It's a picture of me that I had on Meet Up dot com. I
10 was on a dog-walking group that we met.

11 THE COURT: A what?

12 THE WITNESS: A dog-walking group.

13 THE COURT: A dog-walking group?

14 THE WITNESS: Yeah.

15 THE COURT: This is a picture of that?

16 THE WITNESS: Yes. It's a picture of that.

17 BY MR. McMULLEN:

18 Q. When was this photograph taken?

19 A. I'm going to guess it was taken in 2006. The date on
20 the picture says 1-7-06.

21 Q. How old would you have been then?

22 MS. PORTER: Your Honor, I'm going to object to
23 relevancy. Under Rule 401, I don't see how any of this is
24 relevant.

25 THE COURT: How are pictures that she's got on

LYNDA WILLIAMSON - DIRECT

1 the Internet relevant to this case, sir?

2 MR. McMULLEN: This photograph is one taken of
3 her when she was -- at that same time, at 2006.

4 THE COURT: Well, are you going to put all the
5 photographs that were taken of her in 2006?

6 MR. McMULLEN: Well, let me -- I'll just proffer
7 this. If you want to overrule it you can.

8 THE COURT: Well, I will if I want to.
9 Absolutely. So you want just another photograph in taken
10 in 2006?

11 MR. McMULLEN: Yes, sir.

12 THE COURT: I'll allow it for whatever reason it
13 may show.

14 MR. McMULLEN: Thank you.

15 THE COURT: You're welcome. Move along.

16 (Thereupon, Defendant's Exhibit No. 4, photograph
17 from Meetup.com, was received into evidence.)

18 BY MR. McMULLEN:

19 Q. Exhibit One, would you kindly look at that and
20 identify that?

21 A. It looks like an annual.

22 THE COURT: Can you identify it, ma'am?

23 THE WITNESS: Yes. It's from North Augusta High
24 School. It looks like it was my senior annual.

25 BY MR. McMULLEN:

LYNDA WILLIAMSON - DIRECT

1 Q. I'm showing this to the defense, (sic) would you like
2 to see it again?

3 MS. PORTER: I haven't seen it yet.

4 THE COURT: I assume it's got a picture of her,
5 it's not just an annual.

6 MR. McMULLEN: Yes, sir. I'm showing it.

7 MS. PORTER: Same objection. Relevancy, Your
8 Honor.

9 THE COURT: Overruled.

10 (Thereupon, Defendant's Exhibit No. 5, North
11 Augusta High School photograph 1996, was received into
12 evidence.)

13 BY MR. McMULLEN:

14 Q. Would you tell us what page two of that is, please,
15 ma'am?

16 A. It is -- it is a page where my class picture was.

17 Q. How old were you when that was taken?

18 A. I'm not sure because I know this is not my senior
19 picture, and I graduated in '96; so I don't know.

20 Q. All right. Would you kindly circle your photograph on
21 that?

22 THE COURT: Let me see it.

23 BY MR. McMULLEN:

24 Q. Would you circle -- all right. If you were this was
25 taken in '94 and you were in the class of '96, how old

LYNDA WILLIAMSON - DIRECT

1 would you have been, roughly?

2 A. Fourteen.

3 Q. This is when you were 14?

4 A. Yeah. I think so.

5 Q. Defense Exhibit One?

6 A. Yes.

7 Q. All right. I would move this into evidence.

8 MS. PORTER: I have already objected. I think
9 he's overruled it.

10 (Thereupon, Defendant's Exhibit No. 1, photograph
11 from North Augusta High School yearbook 1994, received
12 into evidence.)

13 BY MR. McMULLEN:

14 Q. In then in 1995, would you have been a year older. Is
15 that correct?

16 A. That is correct.

17 Q. Would you kindly circle what you looked like?

18 THE COURT: That one's not in evidence, is it,
19 Defense Two?

20 MS. PORTER: Same objection; relevance.

21 MR. McMULLEN: I'll move it in if it isn't, Your
22 Honor. This is Defense Two. She was a year older.

23 MS. PORTER: State would object to relevancy.

24 THE COURT: Overruled.

25 (Thereupon, Defendant's Exhibit No. 2, photograph

LYNDA WILLIAMSON - DIRECT

1 of North Augusta High School yearbook 1995, was received
2 into evidence.)

3 BY MR. McMULLEN:

4 Q. Would you kindly circle your photograph on page two of
5 Defense Exhibit Two?

6 A. (Complying.)

7 Q. That's how you looked when you were 15; is that
8 correct?

9 A. That's correct. That's correct.

10 Q. And then we have Defense Three. And now I'm going to
11 show opposing counsel, Your Honor, what's been marked for
12 identification as Defense Five. And we'll ask you to
13 identify it.

14 Had -- would you kindly tell us what that is, please,
15 ma'am?

16 A. This is my senior annual from North Augusta High
17 School.

18 Q. Would you like through there and see if you find any
19 pictures of yourself?

20 A. I do.

21 Q. Would you circle those, please?

22 A. (Complying.)

23 Q. Thank you, ma'am. Now, that's when you graduated from
24 high school; is that correct? That's your senior
25 photograph?

LYNDA WILLIAMSON - DIRECT

1 A. Yes. Uh-huh. Uh-huh.

2 Q. Tell me, what did you do after 1996? Where did you go
3 to after that?

4 A. I went to USC-Aiken for college.

5 Q. How many years did you go to college?

6 A. Four.

7 Q. Then what did you do after four years of college?

8 A. I started working with the probation office.

9 Q. What year was that?

10 A. 2000.

11 Q. And then how long did you work there?

12 A. Until 2001. And of 2001.

13 Q. So that would have been the time that the photograph
14 was taken that's on that profile; is that correct?

15 A. Correct.

16 Q. And then after that, where did you go to work?

17 A. I went to work with the Department of Social Services.

18 Q. Were you a law enforcement officer there?

19 A. No.

20 Q. Were you involved in law enforcement at all since 2001?

21 A. No.

22 Q. When you gave your photograph to detective -- what was
23 his name?

24 A. Mark Hammond.

25 Q. Did you sign anything saying I had authorized this or

LYNDA WILLIAMSON - CROSS

1 did you just verbally authorize it?

2 A. I don't really remember.

3 Q. All right. Do you know how many -- how many times
4 your photograph has been used by officers to entice, to
5 pretend to be someone underage online?

6 A. No, I don't.

7 Q. No idea?

8 A. No clue.

9 Q. Do you know how many different officers that used your
10 photo to create these profiles?

11 A. No, I don't.

12 Q. Have you ever authorized anybody besides your neighbor
13 in 2000 to use your photograph to pretend to be somebody
14 else?

15 A. No, I haven't.

16 Q. Until I contacted you, did you ever know that that was
17 happening?

18 A. I did not.

19 MR. McMULLEN: Thank you for coming. Please
20 answer any questions that the other side has.

21 THE COURT: Ms. Porter?

22 CROSS-EXAMINATION

23 MS. PORTER: Thank you, Your Honor. Briefly.

24 BY MS. PORTER:

25 Q. You gave permission to Mark Hammond who worked at the

LYNDA WILLIAMSON - CROSS

1 sheriff's office; correct?

2 A. Correct.

3 Q. Did you ever withdraw that permission?

4 A. I did not.

5 Q. Did you ever specify exactly how your photograph was
6 to be used by the sheriff's office?

7 A. I did not specify.

8 Q. So your friend and neighbor took this photograph for
9 the specific purpose of using it for solicitation of
10 minors over the Internet investigations?

11 A. Yes.

12 Q. At that time you were a probation and parole officer?

13 A. Correct.

14 Q. Which is a law enforcement officer in the State of
15 South Carolina; correct?

16 A. Correct.

17 Q. These other photographs, other photographs, all
18 Defense Exhibits One, Two, three -- I'm sorry, One, Two,
19 Four, And five, they were never given to law enforcement?

20 A. No.

21 Q. Correct?

22 A. Correct.

23 Q. And they were never used by the Internet Crimes
24 Against Children task force with the sheriff's office for
25 these investigations, were they?

1 A. Not that I'm aware of; no.

2 Q. And these to your knowledge are not in chat rooms
3 purporting to be 14 years of age?

4 A. That's correct.

5 Q. And the Defendant didn't have those while he was
6 chatting with LittleMandy SC; did he?

7 A. I don't think so, no.

8 MS. PORTER: No further questions, Your Honor.

9 Thank you.

10 REDIRECT EXAMINATION

11 BY MR. McMULLEN:

12 Q. They didn't ask you for any photographs when you were
13 14?

14 A. No.

15 Q. They just wanted one of you when you were 24?

16 A. That's correct.

17 MR. McMULLEN: Thank you.

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

19 MR. McMULLEN: May the witness be excused?

20 THE COURT: She may. Next witness.

21 MR. McMULLEN: The defense rests.

22 THE COURT: Have a nice afternoon.

23 THE WITNESS: Thank you, sir.

24 THE COURT: Anything in reply?

25 MS. PORTER: No, Your Honor.

1 THE COURT: Mr. Foreman, ladies and gentlemen of
2 the jury. That concludes all of the testimony. I'll
3 spend about two or three minutes with the lawyers and make
4 sure that they're ready to go and we'll do the final
5 arguments and the charge and hopefully have it to you by
6 the time your lunch gets here.

7 Don't discuss the case. Step back. Don't get
8 too comfortable because we're not going to be long.

9 (Jury exits courtroom at 11:48 a.m.)

10 THE COURT: All right. Anything by the State
11 before we proceed?

12 MS. RINGLER: No, nothing from the State, Your
13 Honor.

14 MR. McMULLEN: I renew my motions to dismiss the
15 case and as a matter of law since she was 24 years old
16 when these were taken. I would ask Your Honor as a matter
17 of law to dismiss these cases.

18 THE COURT: Well, do you have any case law
19 anywhere in the United States that says that if the
20 profile picture is of someone older than 14 that that
21 should be dismissed as a matter of law?

22 MR. McMULLEN: No, sir. I don't think anybody
23 else uses those.

24 THE COURT: You don't know that.

25 MR. McMULLEN: No, sir; I don't. I've looked for

1 them. I haven't found any cases either way.

2 THE COURT: You've looked for them on chat lines
3 or on cases? I'm just cutting up with you. All right,
4 sir.

5 MR. McMULLEN: Don't make them come seize my
6 computer..

7 THE COURT: No, sir. That was said in jest. I
8 understand. I practiced 30 years and I know how
9 frustrating it is when you can't find a case to support
10 your position.

11 MR. McMULLEN: Her name is Lynda with a Y. so it
12 was very, very, very difficult to find her.

13 THE COURT: I commend you for finding her. Are
14 you going to make the State open in full or waive the
15 opening?

16 MR. McMULLEN: I'd like for them to open on the
17 law.

18 MS. PORTER: Your Honor, I don't believe that we
19 want to open on the law. We'd like to waive that.

20 THE COURT: You can waive it. All right. Are
21 y'all ready?

22 MR. McMULLEN: I need just two minutes, Your
23 Honor. Is that all right?

24 (Break taken.)

25 THE COURT: Yes, sir.

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 (Jury enters courtroom at 11:53 a.m.)

2 THE COURT: Mr. Foreman, ladies and gentlemen of
3 the jury of the jury. We're now at the point of the trial
4 where we will listen to the final arguments. The final
5 argument is not evidence in the case. That's simply,
6 these lawyers are adversaries for their positions.
7 They'll be arguing the evidence in the light most
8 favorable to their client.

9 The defense goes first followed by the State.
10 Once we do that, then I will instruct you or charge you on
11 the law and then you can start talking about it.

12 MR. McMULLEN: May it please the Court.

13 THE COURT: Mr. McMullen, you may proceed.

14 CLOSING ARGUMENT ON BEHALF OF THE DEFENSE

15 MR. McMULLEN: Madams Attorney General, ladies
16 and gentlemen of the jury. Thank you for your attention.
17 His Honor kept his promise to move these things along
18 quickly.

19 I think you'll agree that being part of this
20 process is really interesting. And I think it's a lot
21 different from Court TV or the way they try cases in
22 California, I understand. And it moves along and I don't
23 think you get any more justice after a year-long trial
24 than you did after one that moves along quickly and
25 efficiently. And I think it is a credit to our system

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 that we do that.

2 We don't want to waste your time. This is a very
3 very, very important matter. We're talking about a man's
4 life, to figure out whether we're going to brand somebody
5 a sexual offender or predator or --

6 MS. RINGLER: Objection, Your Honor.

7 THE COURT: Punishment. That was not proper
8 argument. Punishment is up to me. That's not proper
9 argument. Just disregard that remark as improper.

10 MR. McMULLEN: As I was about to say, I love this
11 system. As I said at the beginning of this case, you
12 remember the Judge said how the solicitor has brought an
13 energy to this office that's really been needed, and how
14 the attorney generals are doing a great job and the
15 sheriff and the assistant solicitors and the deputies.

16 And he said, you'll recall, I got accused -- if I
17 committed a crime in Aiken County, I wouldn't want him to
18 have to prosecute me.

19 And all I asked you for was a fair trial because
20 all balance is on this side. All of the weight is on this
21 side. And so you people, when the accused gets a fair
22 trial, balance the might and the weight of the government
23 with the presumption of innocence. It balances the
24 ability of the government to come at you with all they got
25 with the burden of proof, beyond a reasonable doubt.

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 You're all that comes between the government and
2 the conviction. And you must begin the trial with that
3 presumption. Unless the State proves beyond a reasonable
4 doubt every single element of each of those crimes, you
5 must find him not guilty. That won't be easy.

6 What will you tell your friends if anybody
7 inquires? You can tell them if they bother you, you go
8 see the Judge. He'll deal with them. But what will you
9 tell your family? You had jury duty. What kind of case
10 did you hear? Oh yeah. What verdict did you render?

11 Well, nobody can question your verdict but, what
12 will you tell them when they do? What I suggest you tell
13 them is that the State didn't meet its burden of proof,
14 that they didn't prove their case. That they tried to use
15 a 24-year-old girl's picture to pretend to be a 14-year-
16 old girl and this was done online, one conversation. And
17 they wanted you to believe beyond a reasonable doubt
18 without even the whole conversation.

19 You know, it's not my job to prove the case but
20 it's not his job to prove the case. It's the State's job.

21 They got all this technology and all these folks
22 and they're fine folks and they're doing a fine job.
23 They're doing good, positive work. But whether it's a
24 case this serious or not, for the mighty government to do
25 what they want to do here and strip you of your liberty,

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 the same government has to meet that heavy burden and
2 prove beyond a reasonable doubt.

3 I remember when I was a young boy, I was just
4 learning to read, sitting at the breakfast table. I put
5 some Big Chief peanut butter on my piece of toast. And
6 just as I took a bite I sounded out the word big chief.
7 And just as I took a bite full of peanut butter my sister,
8 you can guess what she accused me of calling her. She
9 thought I had said bitch and told my father so. And I'll
10 come back to that in a little bit.

11 But the presumption of innocence is reasonable
12 doubt and not just words as long as jurors just like have
13 the courage to give them meaning.

14 I got up -- what is reasonable doubt? What is
15 the presumption of innocence? The presumption of
16 innocence, the -- if I got up this morning and went out to
17 get my newspaper and saw on the front page that my brother
18 had robbed the convenience store down the street, I would
19 say, there's no way. You've got to prove that to me.

20 Ladies and gentlemen, that is the presumption of
21 innocence. You're not being asked whether the State
22 convinced you of something that you think happened or
23 might have happened or probably happened or clear and
24 convincingly happened. You're being asked to decide
25 whether the government brought before you evidence that

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 convinces you beyond a reasonable doubt, evidence that's
2 accurate, complete, trustworthy. You want something to be
3 believed that leaves you without a reasonable doubt, a
4 doubt for which you can give a reason.

5 Well, I'm not going to define the law because
6 you're going to hear it from the State probably and you're
7 certainly going to hear it from the Judge. And just
8 apply, please, the law that His Honor gives you. And I'll
9 try not to bother you with saying things three times that
10 have to be said once.

11 You'll hear from him the law. Please when you
12 hear that and you apply to, the facts of this case to the
13 law, I want you to listen for things that leave you with a
14 doubt, a doubt for which you can give a reason.

15 And if any one is missing, any element is
16 missing, they have not proved, like, you have to convince
17 me about my brother, then you must find the Defendant not
18 guilty.

19 Now, how do they convince you? They used
20 testimony from an officer who wants you to believe that he
21 was acting in the capacity of a 14 year old, and wants you
22 to believe that he was contacted first by the Defendant.
23 And he wants you to believe that the Defendant beyond a
24 reasonable doubt reasonably believed that this person was
25 14.

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 The detective when he testified admitted that
2 anybody can create an account on Yahoo. Anybody can have
3 an address in a profile and obviously you can put a
4 photograph up there and pretend to be whoever you want to
5 be.

6 He said he used the age of 114 because he was
7 trained to do that. He was trained to make -- put
8 something in there that's just outrageous. I think they
9 did that. You know, they don't have to put a 14 year
10 old -- they don't have to go take a picture of a 14 year
11 old and use the picture. They could have asked the
12 permission, which they didn't even do, with
13 Ms. Williamson. They could have asked the permission of
14 Ms. Williamson, give us a picture of what you looked like
15 when you were 14.

16 You'll have that. You'll have that to compare
17 with what she looked like when she was not a teenager
18 anymore, not in college anymore, when she was a law
19 enforcement officer, 24 years of age. Does that give you
20 a reason to doubt? Does that give you a reasonable doubt
21 that he believed this girl was 14? This girl, you know,
22 LittleMandy.

23 You know, when you take a picture there is a
24 comedian that said, hey, you want to see a picture of me
25 when I was younger. He said, yeah. What's really a trick

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 is to show me a picture of you when you're older.

2 The point is, when you show a photograph of
3 somebody that means that when that was taken they're a
4 little older now. So whatever age she was when that photo
5 was taken, I think that anybody looking at it could assume
6 that she's older now.

7 You know, the officer was asked, what was some of
8 these rules, never do or say anything you don't want a
9 jury to hear. Log everything, document everything.

10 I asked the officer what chat room he was in.
11 And it's an adult chat room. He says they're recording
12 each other's IP addresses. He says there's always
13 backup. They always backup so they can bring the jury a
14 complete conversation.

15 He said they seldom, seldom put anything on the
16 billboard, but we don't know what they put on the
17 billboard. You know they're -- according to the
18 testimony, the officers are chatting back and forth in the
19 open chat room, they're fishing, as he put it, but they
20 seldom chat.

21 We don't know what they said there. He said they
22 often have three or four different chats going on at the
23 same time. They're pro-actively investigating. They
24 auto-archive everything. And as I said, they didn't show
25 you anybody from Yahoo that says, here's the way we auto-

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 archive. They didn't use their fancy computer to send, to
2 get on a Yahoo chat room and send to one of these other
3 computers an instant message and then show you that the
4 first line can't be archived. That's a reason to doubt.
5 That's a doubt for which you can give a reason. They say
6 those things are automatically deleted. They're not
7 captured.

8 They use another method than just the auto-
9 archive. They use Camtasia. And officer testified that
10 he and Feemster knew at three o'clock that Camtasia wasn't
11 working. They were having problems with Camtasia. You
12 could see in real time every single item that is sent back
13 and forth. That would record the first line or whatever
14 else is missing before we see what LittleMandy's first
15 words are, I haven't before. And you'll have that
16 conversation in the jury room.

17 They knew that Camtasia wasn't working. They
18 knew that they were supposed to document it. They don't
19 know what was said. They can't even tell you what they
20 claim is the first line. There's been no proof of that
21 but even if it is, they can't tell you what the first line
22 was or haven't before.

23 Have you ever engaged in fantasy role play where
24 you, you know, you're younger and I'm chasing you around.
25 We all know as tasteless as it is or whatever floats your

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 boat, but we all know that people have odd sexual
2 preferences. And, you know, not everything is for
3 everybody but this is America. And I believe it's fair to
4 say that people can do what they want to do in the privacy
5 of their own home as long as they don't hurt other people,
6 as long as they don't hurt children.

7 Now it's interesting because the solicitation of
8 a minor statute says that if you're over 18 and you
9 solicit somebody under 18, well, if they're from 16 to 18
10 then consent is a defense. You can get consent from a
11 16-year-old girl or a 16-year-old boy to have sex with you
12 and not violate this law.

13 But now you could date somebody in high school
14 and that somebody turns 18 the week before you do and they
15 could ask you out for a weekend or let's go to the
16 mountains at lookout point and do some heavy petting,
17 they've broken this law.

18 So you -- so a grown man, my age, over 18 could
19 contact a 16-year-old girl in her bedroom and type to her
20 and ask her for sex under this statute and the answer
21 would be, well, if she consents it's okay. But if you're
22 talking to a law enforcement officer who's not a 16-year-
23 old girl, then you've broken the law.

24 What a great statute we have from the
25 legislature. But that's what we're dealt with. That's

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 what you have to see whether it's been violated or not.

2 But consent is apparently not a defense to this
3 if you're a cop pretending to be a girl. It's only if
4 you're really a girl.

5 Now, to be fair, this girl didn't pretend to be
6 16 old enough to give consent. This person pretended to
7 be 14. They could have chosen any age they wanted. The
8 fact remains that they used the photograph of somebody
9 much older than the age of consent which would apparently
10 be 16 or 18 if it's a cop, an officer.

11 The officers told you they kept getting booted on
12 Camtasia. They knew there was a problem with it. They
13 knew it wasn't working and they didn't hit screen saver.
14 They didn't hit print screen, control print screen. They
15 didn't take a photograph of it like they took of Mr. Green
16 at the scene of the cul-de-sac. They had that ability.
17 They could do -- exercise it. They didn't even make a
18 handwritten note.

19 Likewise with what happened at the cul-de-sac,
20 the officer testified that you can't see around the corner
21 here. So now if you were driving down the street and had
22 never been here before, I'm referring to State's Exhibit
23 Six, and if you were driving down this cul-de-sac, there's
24 only one way you could come down it. You wouldn't know
25 what was around the corner. You wouldn't know if there

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 were houses back there or not until you got around the
2 corner and saw the police.

3 Now what was the testimony of when the police
4 surrounded this car? Did he try to run? He rolled down
5 his window. He was asked for his ID, and then one of the
6 officers said at that point he was read his rights, but
7 the second officer said, no, first of all they said, who
8 are you here to meet.

9 So either way he wasn't read his rights or if he
10 was, the testimony was from the first officer, from
11 Detective Platt, he said he was here to meet a woman he
12 believed to be 14 years of age.

13 Now, they identified themselves as police. They
14 surrounded his car. And the officer wants you to believe
15 that this man said, I'm here to meet a girl I believe to
16 be 14 years of age.

17 Is that credible? What I think is credible is
18 that he said, I'm going to meet Mandy. I'm here to meet
19 Mandy. And in the chat she asked, are you for real. And
20 he has said -- I'm sorry. Apparently the chat isn't going
21 to be in the evidence room (sic) with you. Has it been
22 marked as evidence?

23 THE COURT: It sure has.

24 MR. McMULLEN: Is it up here, Madam Court
25 Reporter? Do you have it?

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 THE COURT: State's Exhibit Five.

2 MR. McMULLEN: We'll find that and send it back
3 there with you but you heard it. You heard the officer
4 and I with the chat.

5 As you can see we have a different court reporter
6 today and so it's certainly not her omission, but the chat
7 said -- if I can find it, basically the question is: Are
8 you real, going to come down here and do this. And he
9 says, why would I be faking. Isn't that you on the bed in
10 your profile pic. Isn't that you on the bed.

11 Well, it's a 24 year old on the bed. So, did he
12 have the intent to commit a crime with a child or did he
13 intend to meet the lady who came up here and testified?
14 You know, she's closer to that age today. She's closer to
15 24 years old just now, seven years older, than she was
16 close to 14. There is a big difference between a 14 year
17 old and a 24 year old.

18 So cul-de-sac can't see around the corner,
19 doesn't know whether he's going there to do anything or
20 not but he's there to meet Mandy. This isn't that you in
21 the picture. I submit to you that when he said, when he
22 answered that question, said, I'm here to meet Mandy, no,
23 I'm here to meet 14-year-old girl.

24 There was some mention of drugs and apparently
25 it's performance-enhancing drugs. I'm not sure what that

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 is but apparently it's not an illegal drug. That's
2 apparent. He wasn't arrested for it. It seems to be an
3 over-the-counter thing.

4 You noticed that part of the evidence is
5 handwritten directions. Now why would he write down the
6 directions? So he could remember them. Something that
7 the police didn't do.

8 So, ladies and gentlemen, that's the way the
9 State's meeting their burden of proof here.

10 So, you also heard testimony that you can't just
11 print these conversations. You put it into Notepad and
12 then cut and paste it, the conversation. Does the first
13 line disappear or is it still on the screen? Could you
14 have cut and pasted that? Doesn't know what the first
15 line is. We don't know how many chats he had going on at
16 this time. We don't know what happened to the picture of
17 Mr. Green's face that was sent.

18 They got two of his -- I'll let you remember what
19 the detective called it when he was pretending to be 14
20 year old LittleMandy. Ms. Williamson has no idea that
21 they're using the photograph to say, hey guys, come on
22 down to Aiken and see me. Bring a condom. Fairness.
23 That's what this is about.

24 So where is the picture of his face? That would
25 be some pretty good evidence. She said when she

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 testified, Ms. Williamson said that she was not working as
2 a law enforcement officer any more. She had stopped doing
3 that in 2001, five years earlier.

4 She did not tell you that her husband gave that
5 photograph to anybody, because he didn't. What husband
6 would do that? They weren't married then.

7 MS. RINGLER: Objection, Your Honor. Arguing
8 facts not in evidence.

9 MR. McMULLEN: I'm sorry.

10 THE COURT: Please, Mr. McMullen.

11 MR. McMULLEN: I'm sorry.

12 THE COURT: Please, and don't criticize the law
13 anymore, either. The law is the law. Move along.

14 MR. McMULLEN: Nothing else, Your Honor?

15 The legal drinking age in this state is 21 and
16 LittleMandy said she had been drinking the weekend before
17 or two weeks earlier. You decide. Don't listen to what I
18 say. Listen to what you remember. Listen to -- the
19 evidence is for you to decide.

20 And certainly what the lawyers say is not
21 testimony. If I misstate facts, I apologize. I'm not
22 trying to trick anybody.

23 On the other hand, at a time when every other
24 area of our economy is shrinking, the only sector that
25 seems to be growing is the government. They have all the

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 tools, the training, the technology. They make the rules.

2 You know, if you're hunting, if you're fishing,
3 you still have to obey the rules. You can't put a
4 spotlight on a vehicle and then on the deer and then shoot
5 it. You know, the State is going to come tell you that
6 you should convict Mr. Green because he's preying on
7 children, because he's a predator and that that's why you
8 should convict him so he can't harm children.

9 But I would submit to you, which one of us is the
10 bully here? You know, why do they have to trick us to --
11 what protection does any of us have when the government
12 decides to come at us? The presumption of innocence. You
13 must have the courtesy to use it.

14 The officer testified that sometimes it's a
15 game. It's fun. It's like fishing. That's what he said
16 in the paper. He agrees, he remembered saying that. And
17 that's fine, but use the right size net. At least let's
18 be fair about it.

19 One of the rules, don't ask for pictures
20 yourself. Don't set the tone. Don't be the one showing
21 pictures of people. Now, they were in an adult chat room
22 where you have to be an adult to join. And you're
23 supposed to be an adult to have the screen name in the
24 first place. So either you've lied about your age to get
25 in there or you're lying when you say you're not 14.

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 This officer asked him to bring condoms, called
2 the penis a dick. Said, we're sexually active and drank.
3 And I submit to you, ladies and gentlemen, that is a net
4 cast too broadly. It lets -- it doesn't let the little
5 fish slip through. It's too tight. You don't catch what
6 you're after.

7 It wasn't until this morning that you even heard
8 the Defendant's age. Then the officer said, I think he
9 was 27. Well, if that's true, which we really didn't
10 know, and if you don't think that that is proof beyond a
11 reasonable doubt, you can decide that and go home. But if
12 you think that they've proved that he was of age, that he
13 was 27 years old, well then he was only three years older
14 than the girl in the picture, assuming that the picture
15 had been taken that day.

16 Now attempt requires that you make an effort to
17 do something and that you have the present ability to do
18 it. And you'll look -- you'll see in the transcript of
19 the conversation when we find it, you'll see that he said
20 several times, when I get there you don't have to do this
21 if you don't want to.

22 You know, as I said earlier, this is America.
23 The first amendment applies. We're allowed to have free
24 speech. And certainly you need to protect your children.
25 But, as I said, this law is so broad it covers areas of

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 speech that aren't protected.

2 THE COURT: No, sir. Don't criticize the law.
3 I'll instruct them on what the law is.

4 MR. McMULLEN: All right. I'm sorry.

5 But as I was saying, in this country we have
6 freedom of speech. So there's no trustworthiness on the
7 Internet.

8 If I ask the officer was his friend going down to
9 the Falcons game to meet the Falcons cheerleader, do you
10 really believe that that's what his friend was going to
11 find down there, or was it going be a former left tackle
12 for the Falcons.

13 You know, apparently if you want to you can be a
14 46 year old overweight guy and pretend to be somebody who
15 likes the outdoors and stays in shape and, you know, has a
16 great job. I think it's fair to say that not everybody is
17 what they pretend to be online. And that's, in a free
18 society what we're supposed to have. If you had that
19 inclination, if you wanted to sample or you wanted to
20 exercise your freedom of speech in a forum, where would
21 you go for that. I made the comparison that this was like
22 a masquerade ball, like a costume party. And these
23 parties are held in chat rooms. And as in those parties
24 when the masks comes off, when people meet in person a lot
25 of times the party's over and they don't see each other

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 after that.

2 The State is not who needs to flip on the lights
3 and tell us the party is over. It's the last call.
4 That's censorship. What we need to have is a forum where
5 people can pretend to be gorillas chasing around little
6 girls with outfits or French maid outfits or school girls
7 where they can entertain those fantasies if they want to.
8 And I submit to you that whether you like that or not,
9 it's not your call.

10 What is important, what the solution is not to
11 let the State tell us that we can't do this. The solution
12 is not to suppress the ideas that you don't have to buy
13 it. I don't know when I've ever been made to do anything
14 by other people like this.

15 What could we do to not suppress speech, you
16 know. The true measure of free speech is what you're
17 willing to do to protect the speech that you don't agree
18 with. Patrick Henry said, I may not believe what you say
19 but I'll fight to the death your right to say it.

20 Expressions, art, ideas. Those are the mark of a
21 free society. You know, one of the things that could be
22 done instead of attacking the people online in adult chat
23 rooms is we could ask parents to watch their children. We
24 could ask parents to, if they have a computer in their
25 home, let's make a law that says --

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 MS. RINGLER: Objection, Your Honor.

2 THE COURT: Mr. McMullen, stick to the facts in
3 this case.

4 MR. McMULLEN: I'm just trying to make my
5 argument, Judge.

6 THE COURT: Well, you've been going for 45
7 minutes.

8 MR. McMULLEN: Yes, sir. Yes, sir. I'm almost
9 done you 'but, you know --

10 THE COURT: Stick to the case, please.

11 MR. McMULLEN: What any child could do is hit the
12 X. in the corner of the box. Nobody has to keep talking.
13 Parental controls exists. There are other ways than
14 suppression of speech.

15 So a child could go to another chat room, a child
16 could, anybody could hit no more contact. You can block
17 out somebody from contacting you again. You know, you're
18 in a Yahoo chat room. Apparently these pop-ups come up
19 that solicit you for sex. They don't know --

20 MS. RINGLER: Objection, Your Honor.

21 THE COURT: What's the objection?

22 MS. RINGLER: Facts not in evidence.

23 THE COURT: It is not in evidence.

24 MR. McMULLEN: So do those violate the law? We
25 all know, I think we can just take notice, we live in the

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 real world. We've seen commercials for alcohol and we
2 don't attack the -- we don't -- what we do is we don't let
3 the convenience store owners sell the alcohol to minors.
4 We don't prescribe the movies that are adult in nature.
5 We punish the movie theatre owner who lets the children
6 in. And gaming and casinos, we don't punish the people
7 who try to sneak in the casinos. We hold the casino
8 owners responsible.

9 Yahoo could be the ones held responsible here.
10 If you're going to get out of the big pond, if you're
11 going to fish for children, then go to the kiddie pool.
12 Go after Yahoo like we do the tobacco companies and the
13 convenience stores.

14 As I say, we just want a fair trial.

15 People have fantasies that they engage in
16 online. Like it or not, that's just the way it is.

17 So I wanted to tell you too, that not only is the
18 first part of this conversation missing, I want you to
19 examine the last few lines of the conversation. The last
20 three lines.

21 When we get Exhibit Five, see what time is
22 reflected on those. What difference does it make? When
23 my father didn't smack me for cursing at the breakfast
24 table, I didn't get smacked that day because he had a
25 reasonable doubt. His son didn't use language like that.

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 He hesitated to act. And, you know, I had peanut butter
2 on the roof of my mouth and all I had to do is shake my
3 head and say no. But I didn't get hit that day because he
4 hesitated to act. He had a reasonable doubt.

5 You know, what's the difference? Even if you buy
6 that there's only one line missing which they certainly
7 haven't proved, what's the difference? What comes before
8 that? Even if it's one line, it can make all the
9 difference.

10 Thank you for your attention. We expect you and
11 we hope you will return a verdict of not guilty. Thank
12 you.

13 THE COURT: Mr. Foreman, ladies and gentlemen,
14 everybody okay? If you get bathroom needs, raise your
15 hand.

16 Ms. Ringler?

17 THE COURT: Exhibit Five is right on the desk,
18 sir. So the court reporter didn't lose it. Nobody else
19 lost it. It's been sitting right there. Thank you.

20 CLOSING ARGUMENT ON BEHALF OF THE STATE

21 BY MS. RINGLER:

22 For the Defendant the Internet was a doorway to
23 LittleMandy. It was the Defendant's intent the Defendant,
24 Benjamin Green, intent was to walk through that doorway
25 and into the bedroom of 14 year old LittleMandy.

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 Now during Investigator Platt's testimony defense
2 counsel asked, did you give the Defendant a way out.
3 Well, I submit to you that the Defendant always had a way
4 out. He could have always turned -- all he had to do was
5 turn off his computer. All he had to do is turn around on
6 his way to Columbia (sic) but he didn't.

7 He continued to chat. He continued to solicit
8 the 14 year old Mandy for sex and he drove to meet Mandy
9 for the purpose of having sex with 14 year old Mandy. And
10 defense counsel puts the responsibility on the child to
11 have turned off the computer when it was the Defendant who
12 was the adult in this situation. He could have turned off
13 that computer. He could have turned around instead of
14 driving to Aiken.

15 So let's talk for a minute about what's not at
16 issue here today. Identity is not an issue. The
17 Defendant admits that he was the person chatting with
18 Mandy. He admits that he traveled to Aiken for the
19 purpose of meeting Mandy. And we know that these are the
20 items that were found in his car when he arrived in Aiken,
21 South Carolina. And we know that the photos that he sent,
22 those were found on his computer.

23 So what we're looking at is, did the Defendant
24 solicit sex from someone a reasonable person would have
25 believed would be under the age of 18, and did the

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 Defendant travel to Aiken for the purpose of committing
2 sexual battery on 14 year old Mandy.

3 So let's take a minute to go through the chat and
4 just kind of hit on some of the high points. Within the
5 first few lines of the chat the Defendant is told that
6 LittleMandy is 14 years old. And right away the chat
7 becomes sexual. He asked about her sexual experience and
8 then asked about her age. And then he asked about what's
9 the oldest you've been with. Again, trying to find out
10 her sexual experience, trying to work towards soliciting
11 her for sex.

12 Again, he's asking about sexual experience there
13 and then he talks about how he wants to be her first. And
14 he goes on to say, would you sleep with me within the
15 first 10 minutes of the chat, he solicits her for sex
16 because he sure would like to.

17 And we talked about -- Investigator Platt talked
18 about his training and experience in conducting these
19 online investigations, how he's not the first to approach,
20 how he's not the first to bring up sex, and how he's not
21 the first to bring up meeting.

22 All three the Defendant did. He approached
23 LittleMandy. He brought up sex first. And he's the one
24 that brought up meeting. And LittleMandy did propose a
25 place where they could meet but that was because that was

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 a place that Investigator Platt had looked at beforehand.
2 It was a place that he could ensure the safety himself,
3 his co-workers, and also for the people of Aiken County.
4 He wanted to make sure that it was an area where there
5 wouldn't be other people around and that he could control
6 the situation.

7 And, again, the Defendant goes on to say -- after
8 showing a picture of the penis, I can show that to you in
9 person. And he goes on to say when LittleMandy asked, can
10 I drive your car, your Oldsmobile, the Defendant says,
11 well, you're not old enough, you might wreck it.

12 So he concedes that she's under age. She's 14
13 years old. She's not legal to drive and she shouldn't be
14 behind the wheel.

15 He also asked about permission from the parent.
16 He asked her, are you going to be -- are we going to be
17 able to get together. Are your parents going to let you
18 get out of the house. Again, acknowledging that she's
19 under the age of 18. She's 14 years old, still living
20 with her mother.

21 Then he goes on to bring up the idea of meeting
22 for sex. He asks not to meet. He talks about whether or
23 not they're going to have the act. He asks, can I come
24 into your house. He goes on to talk about bringing a
25 condom, bringing movies, bringing liquor for LittleMandy;

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 all as part of his solicitation for sex, all as part of
2 his planning to meet for the purpose of having sex with 14
3 year old Mandy.

4 And he goes on, he makes sure he has directions
5 to where they're going to meet. He writes down these
6 instructions and he brings them with him because he
7 doesn't want to take any chances. He wants to make sure
8 that he makes it there that night to meet 14 year old
9 Mandy.

10 Now the defense counsel in his closing arguments
11 talked about the fantasy that goes on on the Internet.
12 But was it fantasy when the Defendant said that his name
13 was Ben? It wasn't fantasy. And he wasn't fantasy when
14 he said he worked at a plant, he lives in Columbia and he
15 drives an Oldsmobile. That is not fantasy.

16 And if it all was fantasy, then why did he drive
17 to Aiken? Why did he -- that's the real world there.
18 He's going to meet Mandy at that point. So if it's all
19 fantasy, then why travel because then the fantasy is
20 dead. He's going to meet Mandy.

21 He traveled because it wasn't fantasy. That's
22 because he thought he was talking to a 14-year-old girl
23 and he traveled because he wanted to have sex with that
24 14-year-old girl in the circle in a remote area where they
25 would have privacy to do what he wanted. And he brought

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 his condoms. He brought his liquor. He brought his
2 herbal supplements because he wanted to make sure that the
3 act got done.

4 He brought a whole pack of condoms. So he had a
5 whole evening planned out, with liquor and movies and male
6 stamina supplements and condoms, where he would commit
7 sexual battery on 14 year old Mandy.

8 And you heard from Investigator Platt who said
9 it's possible and it actually happens frequently that
10 children under the age of 18 log on, create a Yahoo
11 account and log on and participate in chat rooms and
12 instant messaging. And that's a common occurrence in his
13 training and experience.

14 The defense counsel criticized Investigator Platt
15 for continuing on with his investigations when the
16 Camtasia wasn't working.

17 Well the purpose of those investigations, as
18 Investigator Platt told you, is to get between predators
19 and children. He's out there to trying to prevent actual
20 children from being solicited, that the proactive
21 investigations put him in between the predator and the
22 child.

23 And it's understandable and commendable that he
24 continued on with that quest, with that investigation even
25 though one of the two methods was not working to document

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 chats. He still had the, this Yahoo archiver and he still
2 was documenting the chat.

3 And, yes, the archiver doesn't have that first
4 line. It's not saved. But we still have every other line
5 of that chat. And you'll get to take that chat back with
6 you and read through it and see the number of times that
7 sex was brought up, the number of times that LittleMandy's
8 age is referenced.

9 And you'll get to read that and look at that
10 yourself. You'll also get to take all of these items
11 back, all of these accessories that he brought with him
12 that night for when he met LittleMandy for the purpose of
13 having sex with her.

14 And there has been a lot of talk about the
15 profile photo used. And you heard from the woman whose
16 photo it was. You also heard that this photo was
17 specifically taken for the purpose it was used. And that
18 it was -- this occurred when she was a law enforcement
19 officer. It was when she was a probation officer and that
20 she never asked investigators to stop using it.

21 And the yearbooks, the annuals that the defense
22 attorney referenced, the Defendant didn't have that. All
23 he had was the profile picture, the small little picture
24 on the profile screen.

25 So let's take a minute to look at that profile

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 real quick. So that's the picture that he saw, that dark
2 picture, very small on the computer screen.

3 I mean, this is blown up here. All he saw was on
4 his small little computer screen where it listed the age
5 of 114 years old, where all throughout the chat she told
6 him that she was 14 years old. And even the screen name
7 it gives her age.

8 So I -- it's consistently throughout this chat
9 the chat and throughout everything that the Defendant saw
10 that LittleMandy was 14 years old.

11 And you'll have a chance to go back and look at
12 that profile yourself. I think the question has been
13 posed, well, why not use a picture when she actually was
14 14. Well, she was 14 in the 90s and hairstyle, dress has
15 certainly changed since then. It's certainly a lot
16 different in 2006 than it was in the 90s. So that's why
17 using a picture of her today in 2006 clothes with a photo
18 that --

19 (Disruption from woman in audience.)

20 THE COURT: Hold on a second. Get her out. Let
21 her out.

22 Disregard. I have no idea who that is, somebody
23 can't control their emotions. Go ahead.

24 BY MS. RINGLER:

25 To go back to, did the Defendant solicit sex from

1 a person reasonably believed to be under the age of 18 and
2 I would submit to you, yes, that we have proven that all
3 throughout 14 years old is what was listed.

4 The Defendant asked, believed that and that he
5 said, you're not going to be able to drive my car, you're
6 too young. He goes on to ask about parents, are we going
7 to be able to meet.

8 Everything consistent with the Defendant
9 believing that it was 14 years old and a reasonable person
10 looking at this believing that they were chatting with
11 somebody 14 years old.

12 And did the Defendant travel for the purpose of
13 committing a sexual battery on a 14 year old? And I would
14 submit to you, yes. That's also been been proven with the
15 condoms, with the herbal supplements, and from everything
16 that was said during that chat. Every sexual comment,
17 every question about sexual experience and everything
18 about -- sending the images of the penis. Everything
19 geared towards traveling and for the purpose of having
20 sexual battery with that child,

21 So the State is confident that after you've heard
22 all of the testimony from yesterday and today that you'll
23 do what truth dictates and justice demands and find the
24 Defendant guilty of criminal solicitation of a minor and
25 attempted criminal sexual conduct in the second degree.

JUDGE'S CHARGE TO THE JURY

1 Thank you.

2 THE COURT: Mr. Foreman, ladies and gentlemen, my
3 instructions are 12, 15, 16, 17 minutes, somewhere in that
4 neighborhood. Everybody okay? Anybody need a bathroom
5 break?

6 JURY CHARGE

7 THE COURT: Let me remind you again the fact that
8 the Defendant in this case, Mr. Benjamin Paul Green the
9 Fourth, is charged with attempted criminal sexual conduct
10 with a minor in the second degree and criminal
11 solicitation of a minor, the indictment is not evidence in
12 the case and cannot be considered by you as evidence of
13 guilt in the case, nor does it create any presumption or
14 inference of guilt. The indictments are simply the formal
15 written documents by which the case comes into court.

16 There are multiple indictments in this case.
17 Each indictment charges a separate and distinct offense.
18 You must decide each indictment separately on the evidence
19 and the law applicable to it, uninfluenced by your
20 decision as to any other indictment.

21 He may be convicted on both. He may be convicted
22 on one, may be acquitted on both, may be acquitted on one
23 and convicted on one. You decide them independently and
24 separately of each other. And I will give you separate
25 verdict forms of guilty or not guilty to consider on each

JUDGE'S CHARGE TO THE JURY

1 indictment. So you consider each one of them separate and
2 apart from the other one, Mr. Foreman.

3 To both of these indictments Mr. Green has pled
4 not guilty. And that plea of not guilty puts the burden
5 on the State of South Carolina to prove the Defendant
6 guilty beyond a reasonable doubt.

7 A person charged with committing a criminal
8 offense in South Carolina is never, ever required to prove
9 himself innocent. I charge and instruct you that it is an
10 important constitutional rule of law that a defendant in a
11 criminal trial, no matter how serious the charges may be,
12 will always be presumed to be innocent of the crime for
13 which the indictments were issued unless guilt has been
14 proven by evidence satisfying you of that guilt beyond a
15 reasonable doubt.

16 This presumption of innocence does not end when
17 you begin your deliberations but it stays with the
18 Defendant throughout the trial until you reach a verdict
19 of guilt based on evidence satisfying you of that guilt
20 beyond a reasonable doubt.

21 The presumption of innocence is not a mere legal
22 theory or phrase. It is a substantial constitutional
23 right to which every defendant is entitled unless you the
24 jury are satisfied from the evidence of the Defendant's
25 guilt beyond a reasonable doubt.

JUDGE'S CHARGE TO THE JURY

1 What is a reasonable doubt? It has been defined
2 by our courts as simply this: A reasonable doubt is the
3 kind of doubt that would cause a reasonable person to
4 hesitate to act. It is the kind of doubt that would cause
5 a reasonable person to hesitate to act.

6 I remind you during the trial, of course, I've
7 had certain duties to perform and you've had certain
8 duties to perform. One of my duties, as I told you, was
9 to rule on the admissibility of evidence.

10 So there were some objections made that I
11 sustained. So when I sustained objections, that evidence
12 did not come into the trial of the case. But everything
13 else that did come into the trial of the case you may
14 consider in determining what the true facts are in the
15 case.

16 I remind you once again that I'm the judge of the
17 law in the case or the position that I'm in makes me the
18 judge of the law in the case. So I'm asking you to accept
19 the law as I give it to you and to set aside any
20 preconceived ideas that you may have or that you had
21 coming in if it does not agree with what I tell you.

22 Likewise, you're the judges of the facts in this
23 case. So if at any time during the trial of the case I
24 may have frowned or yawned or rolled my eyes or smiled or
25 did anything that could make you think that I have some

JUDGE'S CHARGE TO THE JURY

1 opinion about the case, please set that aside because the
2 law does not allow me to have any opinion about the facts.

3 You are the finders of the facts in the case. By
4 being the finders of the facts in this case that
5 necessarily means that you must determine the credibility
6 of the witnesses who have testified in the case.

7 Credibility simply means believability. It is
8 your duty as jurors to analyze and evaluate the evidence
9 and determine which evidence convinces you of its truth.

10 Use your ordinary common sense as you deal with
11 people throughout life, your wife, your husband, your
12 children, your employees at work. You know how to judge
13 credibility. You know how to judge when somebody is
14 telling the truth. So use that in determining what
15 evidence you believe in this case.

16 In determining the believability of witnesses who
17 have testified in the case you may believe one witness
18 over several, several over one. You may believe a part of
19 the testimony of a witness and reject the remaining part.
20 You can believe everything a witness says and reject
21 everything a witness says. It's entirely up to you.

22 You may consider whether any witness has
23 exhibited to you any interest, bias, prejudice or other
24 motive in the case. And you may also consider the
25 appearance and manner of a witness while on the witness

JUDGE'S CHARGE TO THE JURY

1 stand.

2 In this case the Defendant did not testify. I
3 charge and instruct and emphasize that the fact the
4 Defendant did not testify is not, not a fact to be
5 considered by you in any way whatsoever in your
6 deliberations and in your consideration on the question of
7 the guilt or innocence of the Defendant. It must not be
8 considered by you in any manner whatsoever. A defendant
9 has the constitutional right to remain silent and the
10 assertion of this right must not be considered by you in
11 your deliberations.

12 I repeat, under your oath you're to draw
13 absolutely no conclusion whatever from the fact that the
14 Defendant in this case did not testify. It should not be
15 discussed when you deliberate the case. The burden of
16 proof is on the State. The Defendant is not required to
17 prove his innocence. The burden of proof remains on the
18 State to prove guilt beyond a reasonable doubt.

19 So, Mr. Foreperson, one of your main duties is if
20 anybody talks about the Defendant not testifying, that is
21 totally prohibited and please stop that. You're to infer
22 nothing from the fact that he did not testify.

23 In order to establish criminal liability,
24 criminal intent is required. For example, the mental
25 state required to prove by the State for a particular

JUDGE'S CHARGE TO THE JURY

1 crime might be purpose, intent, knowledge, recklessness or
2 criminal negligence.

3 Criminal intent must be proven by the State
4 beyond a reasonable doubt. Criminal intent is always a
5 matter that must be determined by the jury from
6 circumstances surrounding the situation. There is no way
7 to prove intent to a mathematical certainty. There is no
8 way medical science can dissect a person's brain and
9 determine what the person had in mind. So the law says
10 that criminal intent may be inferred from the
11 circumstances shown to have existed.

12 Criminal intent is a mental state, a conscious
13 wrongdoing. It is up to you to determine what the
14 Defendant intended to do based on the circumstances shown
15 to have existed and on the evidence as presented.

16 Now, ladies and gentlemen, that what I have just
17 given you is sort of the general law that I charge on all
18 cases all over the state where I hold court. That sort of
19 pertains to all criminal cases. Now let me turn my
20 attention or our attention to the charges in this
21 particular case.

22 We'll -- I'm going to talk about them and the
23 order that I talk about them is no rhyme or reason why. I
24 got to do one before the other. So I'm going to talk
25 about the attempted -- the charge of attempted second

JUDGE'S CHARGE TO THE JURY

1 degree criminal sexual conduct with a minor.

2 In one indictment the Defendant is charged with
3 attempted criminal sexual conduct with a minor. The State
4 must prove beyond a reasonable doubt that the Defendant
5 attempted to engage in a sexual battery with the victim.

6 A sexual battery is defined in the statute as
7 sexual intercourse, cunnilingus, fellatio -- that's oral
8 sex -- anal intercourse or any intrusion, however slight,
9 of any part of a person's body or of any object into the
10 genital or anal opening of another person's body. So they
11 must prove that he attempted to perform a sexual battery
12 as I just defined that for you, as intercourse, oral sex,
13 anal intercourse, et cetera.

14 The State then must prove beyond a reasonable
15 doubt that the intended victim was at least 11 but not
16 more than 14 at the time of the attempted sexual battery.

17 Consent, willingness, indifference or ignorance
18 on the part of the minor as to what was taking place does
19 not in any way affect the charge of criminal sexual
20 conduct with a minor. Attempt is defined as an effort to
21 accomplish a crime which does not succeed. An attempt
22 includes a specific intent to do a particular criminal act
23 along with an act falling short of the act intended.

24 The State must prove and show beyond a reasonable
25 doubt more than mere preparation and intent. There must

JUDGE'S CHARGE TO THE JURY

1 be some overt act committed in the effect -- in the effort
2 to commit the crime.

3 Intent means intending the result which actually
4 occurs, not accidentally or involuntarily. Intent may be
5 shown by acts and conduct of the Defendant and other
6 circumstances from which you may naturally and reasonably
7 infer intent.

8 So that's the statutory offense of attempted
9 criminal sexual conduct with a minor in the second degree.

10 The other indictment is criminal solicitation of
11 a minor that he's charged with. That's codified in
12 Section 16-15-342 of the laws of our state. In order to
13 prove that, the State must prove beyond a reasonable doubt
14 that the Defendant contacted or communicated with or
15 attempted to contact or communicate with a person who is
16 under the age of 18 or a person the Defendant reasonably
17 believed to be under the age of 18 for the purpose of or
18 with the intent of persuading, inducing, enticing or
19 coercing the person to engage or participate in a sexual
20 activity or with the intent to perform a sexual activity
21 in the presence of a person under the age of 18, or a
22 person the Defendant reasonably believed to be under the
23 age of 18.

24 Sexual activity is defined in our statutes as any
25 of the following acts or simulations thereof and that

JUDGE'S CHARGE TO THE JURY

1 would include masturbation, intercourse -- are the main
2 definitions of that.

3 Consent is a defense to a prosecution pursuant to
4 this section if a person under the age of 18 or a person
5 reasonably believed under the age of 18 is at least 16
6 years old. Consent is not a defense to a prosecution if a
7 person under the age of 18 or the person reasonably
8 believed to be under the age of 18 is under the age of 16.

9 So criminal solicitation is, the State must prove
10 beyond a reasonable doubt that the Defendant contacted or
11 communicated with or attempted to contact or communicate
12 with a person who was under the age of 18 or a person the
13 Defendant reasonably believed to be under the age of 18
14 for the purpose of engaging in a sexual activity.

15 All of that verbiage is boiled down to that last
16 thing.

17 Now ladies and gentlemen of the jury, your
18 verdict, you must have a verdict on each indictment. You
19 must consider them separate and apart from the other and
20 your verdict must be unanimous. It can only be based on
21 the facts that you find them to be in this courtroom and
22 apply those facts to the law as I give it to you.

23 It cannot be based on sympathy, passion, or
24 anything arbitrary. It has to be based simply on the
25 evidence as you find it to be and the law as I've given it

JUDGE'S CHARGE TO THE JURY

1 to you.

2 There are two verdict forms. One to criminal
3 solicitation, one to the attempted criminal sexual
4 conduct. It is very simple. It's not guilty or guilty.
5 Your verdict must be unanimous, as I said. Please discuss
6 each one separate and apart from the other.

7 In just a minute -- I assume their lunch might be
8 here.

9 THE BAILIFF: Yes, it is.

10 THE COURT: Your lunch is here. You can do it
11 one of two ways. You can deliberate while you eat. You
12 can say, let's eat and then deliberate. Y'all are in
13 charge; however you want to do it.

14 I'm going to send you back to your jury room now
15 and ask you not to start deliberating. I have to ask the
16 lawyers if I've left anything out, collect all the
17 evidence, make sure we have it all in order. That will
18 take about three to five minutes. I'll then send the
19 exhibits into the jury room along with the verdict forms
20 and then you may start discussing the case, deliberating.

21 If you have any questions during your
22 deliberations, write it out on a piece of paper, give it
23 to Mr. Whittle or one of the bailiffs after you knock on
24 the door. If I can answer it, I will. If I can't, I'll
25 try to give you the explanation as to why I can't.

1 Sometimes I can, sometimes I can't.

2 Once you have reached a verdict on both
3 indictments, fill them out, let the bailiff know and then
4 we'll receive you back into the courtroom.

5 If at any time somebody just absolutely has to
6 have cigarette, let the bailiff know. I'll let you go
7 downstairs, smoke your cigarette. Everybody else has to
8 stop deliberating if anybody leaves the room. So unless
9 you really have to, I'd rather you not but anyway, I'm not
10 going to deprive you of that.

11 Now having said all of that, please go to your
12 jury room and wait just a few minutes before you start.
13 Put the alternate in the jury room and that other guy who
14 was late this morning, tell him to go home. If he can't
15 be on time I don't need him. Thank you.

16 Mr. Whittle, the alternate's going to go first.

17 THE BAILIFF: Okay. Put alternate in two.

18 (Jury exits courtroom at 12:59 p.m.)

19 THE COURT: All right. Any additional requests
20 or objections to my charge by the State?

21 MS. RINGLER: Nothing from the State, Your Honor.

22 THE COURT: By the Defendant?

23 MR. McMULLEN: Just renew the ones previously
24 made.

25 THE COURT: Lesser included offenses.

1 MR. McMULLEN: Yes, sir.

2 THE COURT: Thank you. You're protected on
3 that. All right.

4 Will you please come forward make sure we have
5 all the exhibits.

6 (Attorneys comply.)

7 THE COURT: On the defense side you got One
8 through Five.

9 Let the record reflect the lawyers, both sides
10 have reviewed all of the exhibits and they're in
11 agreement. They're in order and should go back to the
12 jury along with the verdict form. Jury started to
13 deliberate at 1:04.

14 All right. We'll stand at ease for a few
15 minutes.

16 (Thereafter, other matters were heard by the
17 Court.)

18 THE COURT: We got a question. Please clarify
19 the statutes of the attempted criminal sexual conduct with
20 a minor in the second degree. So I'm going to bring them
21 out and recharge criminal sexual -- attempted second
22 degree criminal sexual conduct.

23 Any objection by the State?

24 MS. RINGLER: None from the State, Your Honor.

25 THE COURT: Ma'am, can you please be quiet back

1 there? Thank you.

2 MR. McMULLEN: No, sir. No objection.

3 THE COURT: All right. Bring them in.

4 (Jury enters courtroom at 1:59 p.m.)

5 THE COURT: Mr. Foreman, I got a note that says,
6 Judge, please clarify the statute of the attempted
7 criminal sexual conduct with a minor in the second
8 degree.

9 The only way I can clarify it is to give it to
10 you again.

11 Will that suit?

12 THE FOREPERSON OF THE JURY: Yes, sir.

13 THE COURT: All right. The Defendant is charged
14 with attempted criminal sexual conduct with a minor in the
15 second degree.

16 The State must prove beyond a reasonable doubt
17 that the Defendant attempted to engage in a sexual battery
18 with the victim, prove beyond a reasonable doubt that the
19 Defendant attempted to engage in a sexual battery with the
20 victim.

21 What is a sexual battery. It is described in
22 that statute as sexual intercourse, oral sex or anal
23 intercourse of any intrusion, however slight, of any part
24 of a person's body or of any object into the genital or
25 anal opening of another person's body.

1 Then the State must prove beyond a reasonable
2 doubt that the intended victim was at least 11 but not
3 more than 14 years old at the time.

4 So that's basically it.

5 Attempt is defined as an effort to accomplish a
6 crime which does not succeed. An attempt includes a
7 specific intent to do a particular criminal act along with
8 an act falling short of the act intended. The State must
9 show more than mere preparation and intent. There must be
10 some overt act committed and the effort to commit the
11 crime. Is that what you need?

12 If you have any further questions, that's how you
13 do it. Send me a note. How was your lunch?

14 (Thereupon, note from jury was marked as Court's
15 Exhibit Three. Jury exited courtroom at 2:01 p.m., to
16 resume deliberations.)

17 THE COURT: Any objection to the recharge by the
18 State?

19 MS. RINGLER: None from the State, Your Honor.

20 THE COURT: By the Defendant?

21 MR. McMULLEN: No, sir.

22 (Thereafter, other matters were heard by the
23 Court.)

24 THE COURT: Let the record reflect that after I
25 recharged the jury we had an informal discussion at the

1 side bar and I was concerned about the statute that says
2 engages in a sexual battery with the victim who is 14
3 years of age or less but who is at least 11 years.

4 In actuality, I should have been charging the
5 actor engages in a sexual battery with a victim who is at
6 least 14 years of age but who is less than 16 years of age
7 and the actor is older than the victim. That's subsection
8 two of criminal sexual conduct with a minor in the second
9 degree.

10 So I'm going to bring the jury back and recharge
11 that portion. I understand that they have a verdict but
12 I'm going to tell them notwithstanding that they need to
13 consider it with this charge. They can go back and look
14 at it.

15 MR. McMULLEN: May I just put my objection on the
16 record, Your Honor?

17 THE COURT: Put it.

18 MR. McMULLEN: My objection respectfully, Your
19 Honor, would be that in the event that the jury returned a
20 verdict of not guilty on what they've been charged with at
21 this point, that for us to charge them to now go back in
22 there and reconsider based on new law would give the wrong
23 impression. And I didn't object to the charge the first
24 time.

25 THE COURT: So you just want me to let it stand

1 as is?

2 MR. McMULLEN: Yes, sir.

3 THE COURT: You have no objection to letting it
4 stand as is? And what if they return a verdict of guilty,
5 what are you going to say then?

6 MR. McMULLEN: Well, I think we have to ask for a
7 mistrial at that point.

8 THE COURT: Well no, sir. I'm not going to give
9 you two bites at the apple. Your objection is noted. I'm
10 going to handle it like I said. Thank you.

11 MR. McMULLEN: May we know what the verdict was?

12 THE COURT: I'm not going to know. We'll know
13 eventually, but I'm not going to know now.

14 (Jury enters courtroom at 2:13 p.m.)

15 THE COURT: Mr. Foreman, I want to make sure I
16 did not confuse y'all just a second ago when I was giving
17 you that law.

18 Under the statute that talks about criminal
19 sexual conduct with a minor in the second degree --
20 attempted criminal sexual conduct with a minor in the
21 second degree, there are two subsections. And it
22 basically deals with ages.

23 There is one where the victim who is 14 years of
24 age but is less than 11 years of age (sic). You also are
25 guilty if the State can prove beyond a reasonable doubt

1 that the actor engaged in a sexual battery with a victim
2 who was at least 14 but is less than 16 and the actor is
3 older than the victim.

4 I don't know whether that makes any difference to
5 y'all or not, but I'm going to ask you to go back to your
6 jury room and make sure your decision is still the same
7 based on what I just told you. It may not be the same. I
8 don't know.

9 Make sure you know that. I'll ask you to step
10 back one more second, please. See if that makes any
11 difference. 14 to 16 and the actor is older. That's what
12 they have to prove beyond a reasonable doubt.

13 (Jury exits courtroom at 2:14 p.m.)

14 MS. RINGLER: Thank you, Your Honor.

15 THE COURT: Yes, sir.

16 MR. McMULLEN: Yes, sir. I just have to object
17 based on, if we're this confused, I'm sure that the jury
18 is, too.

19 I would just ask that the judgment -- I would
20 just ask that the verdict be the same. It seems that if
21 they came back with the jury verdict of guilty in the 11
22 to 14 charge, then they should -- then he should still be
23 punished under the CSC second age range.

24 THE COURT: It's both second. It's not a
25 different degree. It's both second. It's just two ways

VERDICT & SENTENCING

1 of doing it.

2 MR. McMULLEN: I believe that the charge is just
3 confusing to the jury. It is confusing to me.

4 THE COURT: Well, I won't comment on that.

5 Ms. Brisbin, you have a case you want to call?

6 MS. RINGLER: Yes, sir.

7 (Off-the-record discussion.)

8 (Jury enters courtroom at 2:15 p.m.)

9 THE COURT: Mr. Foreman, have y'all reached a
10 verdict?

11 FOREPERSON OF THE JURY: Yes, sir.

12 THE COURT: Would you hand it to the bailiff,
13 please?

14 FOREPERSON OF THE JURY: (Complies.)

15 THE COURT: Thank you, sir. All right. Stand
16 and receive the verdict, please.

17 THE DEFENDANT: (Complies.)

18 THE CLERK: Your Honor, we have the State of
19 South Carolina versus Benjamin Paul Green the Fourth,
20 indictment 2007-GS-02-190. Verdict form. As of offense
21 of criminal sexual -- wait a minute. As offense of
22 criminal solicitation of a minor we the jury find the
23 defendant guilty, signed by Foreman Ronnie Smith dated
24 June 17th, 2009.

25 Indictment 2007-GS-02-191, as to the offense of

VERDICT & SENTENCING

1 attempt criminal sexual conduct with a minor in the second
2 degree, we the jury find the defendant guilty. Signed by
3 foreperson Ronnie Smith, dated June 17th, 2009.

4 Ladies and gentlemen of the petit jury, if this
5 is your verdict please indicate by the raising of your
6 right hand.

7 THE JURY: (Complies.)

8 THE CLERK: Your Honor, all hands are raised.

9 THE COURT: Anything further by the State?

10 MS. RINGLER: Nothing from the State, Your Honor.

11 THE COURT: By the Defendant?

12 MR. McMULLEN: No, sir.

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

14 Mr. Foreman, ladies and gentlemen, thank you so
15 very much. You've been an excellent jury. You've paid
16 attention. You've done your job, listened to the
17 evidence, determined what was true and applied it to the
18 facts.

19 So your duty this week is concluded. We will not
20 need you for anything further during the week.

21 We've got you a check and a work excuse. If you
22 want to go back to the jury room, they'll be glad to give
23 you that. What is left to do now, I have to sentence
24 him. You're welcome to stay. I'm going to do it right
25 now in just a second. You're welcome to listen to that or

VERDICT & SENTENCING

1 you're welcome to leave.

2 After that the solicitor's got several pleas this
3 afternoon. Tomorrow morning we have another round of
4 pleas and I understand tomorrow afternoon we have an all
5 afternoon of probation violation.

6 Oftentimes when someone is sentenced let's say
7 they have, an easy one, a larceny charge. It carries up
8 to five years. A lot of times I'll give them four years
9 suspended to three years of probation which means they
10 have to do three years of probation and it has a lot of
11 conditions like paying back the person they stole from,
12 random alcohol and drug testing, substance abuse
13 counseling, sometimes community service, but they have to,
14 you know, if they do that they're okay.

15 A lot of times they won't do their probation.
16 They'll turn out positive for drugs or they won't make
17 their restitution or they won't report as they're supposed
18 to, they get involved in another crime.

19 So they come back before me for a probation
20 violation. And if I sentenced them to four years
21 suspended to three years of probation then they're looking
22 at that four years sending them back. I could send them
23 back four years, three years, whatever, just depending on
24 the circumstances. So we've got a full afternoon of that
25 tomorrow.

VERDICT & SENTENCING

1 We stay busy but we can't do it without y'all.
2 If I didn't have a jury I wouldn't get anybody agreeing to
3 do anything. I don't mean the lawyers, but the people
4 accused of crimes. If I didn't have something pushing
5 them to finality they would never get to end.

6 Y'all are welcome to stay. You're welcome to
7 leave. I'll give you a chance to leave and then you -- or
8 you're welcome to listen to the sentencing, whichever.
9 Your pleasure.

10 The sentencing sheet, ladies.

11 MR. McMULLEN: Your Honor, if it please the
12 Court. I believe I'm required to ask for a judgment
13 notwithstanding the verdict for the Court to set aside the
14 verdict.

15 THE COURT: I'll give you 10 days to make your
16 post-trial motions.

17 MR. McMULLEN: Yes, sir.

18 THE COURT: Come forward, Mr. Green.
19 Mr. McMullen, if you'll please sign the sentence sheets
20 and have your client sign it.

21 CSC second degree with a minor, is that serious
22 or not? Serious?

23 MS. BRISBIN: Most serious.

24 THE COURT: Make sure that's on the sentence
25 sheet. He doesn't have to sign it if he doesn't want to.

VERDICT & SENTENCING

1 All right. For the benefit of Mr. Green, and
2 those in the courtroom, you've been found guilty by this
3 jury of attempted criminal sexual conduct with a minor in
4 the second degree. That carries up to 20 years in the
5 State Department of Corrections.

6 That is classified as a most-serious offense,
7 Mr. Green, which means that is a strike against you which
8 means that if and when you are released from incarceration
9 you become involved in criminal activity that is
10 classified as most serious, then you would be subjecting
11 yourself to life in prison without the possibility of
12 parole, or if you become involved in criminal activity
13 that is classified as serious two times with a most
14 serious, that's three strikes under that scenario. And
15 you would be subjecting yourself to life in prison without
16 the possibility of parole.

17 This is also what we call a no-parole sentence.
18 So whatever time I give you, you will do 85 percent of
19 that time. You will be released to a community
20 supervision program which will necessitate -- that does
21 not carry mandatory GPS. That's CSC first; right?

22 MS. RINGLER: Correct, Your Honor.

23 THE COURT: And criminal solicitation of a minor
24 carries up to 10 years in the State Department of
25 Corrections. It's also classified as most serious. Since

VERDICT & SENTENCING

1 it occurred at the same time, it will only be one strike.

2 MS. PORTER: Your Honor, I have to say that was my
3 error. I do not believe criminal solicitation is a most-
4 serious offense. I apologize to the Court.

5 THE COURT: Yes, ma'am. All right.

6 Mr. McMullen, what do you want to tell me?

7 MR. McMULLEN: May it please the Court.

8 THE COURT: Yes, sir.

9 MR. McMULLEN: Your Honor, he was 27 at the time
10 of the offense. And I believe Your Honor heard the facts
11 along with all of us.

12 He has one other conviction for shoplifting and I
13 believe that his failure or refusal to sign is more out of
14 not knowing what that says than out of any disrespect
15 but --

16 THE COURT: I don't take it as disrespect. He
17 can sign it if he wants to. He doesn't have to. I can't
18 make him.

19 MR. McMULLEN: Ask the Court to give him the most
20 lenient sentence it feels most comfortable with. He has
21 two young children and a wife whom he has been supporting
22 while out on bond. I don't know if there's anything he'd
23 like to say.

24 THE COURT: I'm going to give him that
25 opportunity. Mr. Green, anything you want to tell me?

VERDICT & SENTENCING

1 THE DEFENDANT: I just want to take care of my
2 family.

3 THE COURT: I'm sorry. What?

4 THE DEFENDANT: I just want to take care of my
5 family. That's all I care about.

6 THE COURT: I understand.

7 THE DEFENDANT: My wife is not working.

8 THE COURT: Mr. Green, it is my duty obviously,
9 is to, when a jury comes back with a sentence or convicts
10 someone, finds them guilty and I, quite frankly, after
11 listening to the evidence, I agree with them 100 percent.
12 The evidence in my opinion was overwhelmingly, and way
13 beyond reasonable doubt that they proved each and every
14 element of both indictments.

15 And one thing we all have to do is protect our
16 young children, our minors, and particularly from people
17 who try to engage in sexual activities with them at such a
18 a tender age.

19 And the Internet is unfortunately used or misused
20 in that vein more than we'd all like to think.

21 And thank goodness we have this task force that
22 is able to prevent these types of crimes by this type of
23 investigation. And thank goodness we have juries that are
24 able to listen and accept the evidence as has been
25 presented.

1 So I'm here to protect our children.

2 Mr. Green, AS TO THE INDICTMENT FOR ATTEMPTED
3 CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE SECOND DEGREE,
4 THE SENTENCE OF THIS COURT IS YOU BE COMMITTED TO THE
5 STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 12 YEARS.

6 AS TO THE CRIMINAL SOLICITATION OF A MINOR, THE
7 SENTENCE OF THIS COURT YOU BE COMMITTED TO THE STATE
8 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 10 YEARS.
9 THEY'LL RUN CONCURRENT.

10 THE DEFENDANT: I got babies.

11 THE COURT: All right, sir. You can file your
12 motions, Mr. McMullen.

13 MR. McMULLEN: Thank you.

14 THE COURT: Mr. Foreman, ladies and gentlemen,
15 obviously one of the toughest parts of my job is deciding
16 what is appropriate. But when it comes to small children,
17 we've got to protect them. I don't know any other way to
18 protect them than to take these kind of people off the
19 streets for a while and to set an example for others who
20 wish to get involved in this type of activity.

21 I could have given him 20 years but he did not
22 have a prior record but he'll be gone about 10 years.

23 Thank you for your job today. Y'all did a good
24 job. Thank you. I appreciate it. Thank you. Y'all have
25 a wonderful day.

1 (Jury exits courtroom at 2:28 p.m.)

2 END OF PROCEEDINGS

3 * * * *

4 CERTIFICATE OF REPORTER

5 I, Cheri L. Young, Registered Professional Reporter,
6 and Official Court Reporter for the State of South
7 Carolina, do hereby certify that the foregoing transcript
8 of proceedings heard on Monday, June 15, 2009, Tuesday,
9 June 16, 2009, in Aiken, South Carolina, was reported by
10 me using machine shorthand and realtime computer-aided
11 translation, and June 17, 2009 was reported by Lisa H.
12 Davenport using machine shorthand and realtime computer-
13 aided translation and is a true, accurate and complete
14 transcript of the proceedings had and evidence introduced
15 in the hearing of the matter.

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

18 I have hereunto set my hand this Wednesday, the 31st
19 day of March, 2010.

20

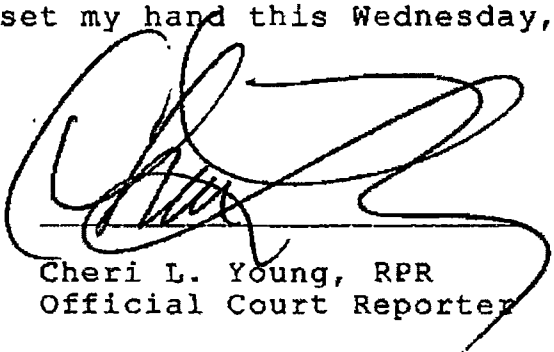
21

22

23

24

25



Cheri L. Young, RPR
Official Court Reporter

State of South Carolina

County of Aiken

) Court of General Sessions
) 07-GS-02-190,191

The State of South Carolina

Plaintiff

VS.

Transcript of Record

Benjamin P. Green

Defendant

September 15, 2009
Aiken, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

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

Susanna M. Ringler, Esq.
Attorney for the Plaintiff

Michael D. McMullen, Esq.
Attorney for the Defendant

Lisa H. Davenport
Official Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X O F W I T N E S S E S

Statement by Mr. McMullen.....	3
Statement by the Defendant.....	4
Statement by the Defendant's Mother.....	5
Statement by Tasha Green.....	8
Statement by Pastor Cary Green.....	10
Statement by Terrell Wilkins.....	11
Statement by Ms. Ringler.....	12

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
P-1	Letters	18	18

1 (Whereupon, on September 15, 2009 the following
2 proceedings were held:)

3 THE COURT: Everybody ready? We're on the record
4 with the State versus Benjamin P. Green, 07-GS-02-190 and
5 191. This is a motion for reconsideration of my sentence.
6 Mr. McMullen is present along with his client. Also
7 present is the AG's office, Ms. Susanna Ringler.

8 Mr. McMullen?

9 MR. MCMULLEN: May it please the Court.

10 THE COURT: Yes, sir.

11 MR. MCMULLEN: Your Honor imposed a sentence of 12
12 years after trial -- a three-day trial wherein Mr. Green
13 was convicted and as you know in an attempt to commit
14 criminal sexual conduct with a minor, second degree.

15 THE COURT: Hold on a second. Everybody remain
16 silent, please.

17 MR. MCMULLEN: Mr. Green, if you'll remain standing,
18 please, sir.

19 THE COURT: He doesn't have to stand.

20 MR. MCMULLEN: He's got a wonderful wife. He's got
21 two young children. He is 27.

22 THE COURT: You told me all that at the sentencing.
23 I know all about him. Why would I give him a new
24 sentence?

25 MR. MCMULLEN: I've got some letters that I'd like to

1 hand up from some of his friends within the church. I
2 just wanted to request that Your Honor consider the 12
3 years. He is a changed man. I think he was in shock
4 after the verdict and I believe he would like to address
5 the court himself and so would his mother and his wife if
6 the court is willing.

7 THE COURT: I don't know that that is appropriate on
8 a motion to reconsider.

9 Mr. Green, I'll be glad to hear from you.

10 THE DEFENDANT: Yes, sir. I would just like to
11 appeal to the mercy of the court in regard to the
12 mitigating circumstances surrounding my criminal history
13 before and after the alleged events on October of 2006. I
14 came to roll call faithfully two and a half years. There
15 wasn't any problems.

16 THE COURT: What was your prior record?

17 THE DEFENDANT: Sir?

18 THE COURT: Did you have a prior record?

19 THE DEFENDANT: I had a shoplifting from my senior
20 year in high school, 1997. Other than that, I had not
21 only nothing in regards to this similar type of charges,
22 but nothing at all, and after October of 2006 I never was
23 in the chatroom again. I patiently waited for this trial
24 and I raised my daughters. I put them to sleep every
25 night and woke them every morning.

1 Other than the incident of October of 2006, I don't
2 think there is anything showing that I'm the type of
3 person that they're trying to say I am. I can assure you
4 in all honesty, God as my witness, that I am not that type
5 of person and I'm just concerned with getting home and
6 raising --

7 THE COURT: Where are you incarcerated?

8 THE DEFENDANT: Lieber Correctional.

9 THE COURT: How are you doing?

10 THE DEFENDANT: I mean, other than my family, I am
11 doing all right.

12 THE COURT: You're not in trouble, are you?

13 THE DEFENDANT: No, sir.

14 THE COURT: All right.

15 THE DEFENDANT: Not at all.

16 THE COURT: Thank you.

17 THE DEFENDANT: Can I say one more thing?

18 THE COURT: You may.

19 THE DEFENDANT: At time of the arrest I faced a lot
20 of embarrassment and shame, of course. I lost my job, and
21 it took a while for me to get a job and get my family back
22 financially stable and after getting convicted, again,
23 it's going through again, and I'd like to also note the
24 fact that upon release I still have to register as a sex
25 offender. That itself -- that's for life. That's another

1 punishment in itself.

2 THE COURT: Thank you. I'll let his mother speak.

3 Ma'am, come forward.

4 THE MOTHER: I had to write mine down.

5 THE COURT: That's fine. Your name for the record,

6 please, ma'am?

7 THE MOTHER: My name?

8 THE COURT: Yes, ma'am.

9 THE MOTHER: Jacqueline (inaudible.)

10 THE COURT: All right. Turn around and face me,

11 please, ma'am.

12 THE MOTHER: Face you?

13 THE COURT: Well, if you want me to hear it.

14 THE MOTHER: Okay. I just wrote a statement here to

15 you, Judge, Honorable Judge Early. I am writing this

16 letter on behalf of my son Benjamin. For the past three

17 months Benjamin had a lot of time to realize he is in a

18 place that he does not want to be and he had enough time

19 to realize he's not above the law. Thank God for the

20 intervention.

21 I'm not here to rebuke anything. I am just saying

22 I'm glad that you guys -- the law enforcement -- had an

23 intervention. However, I don't believe the punishment

24 that he got fit the crime because of the intervention. I

25 thank God for that.

1 Twelve years seemed to be a very long time for a
2 young man who doesn't have a criminal background and I am
3 sure if given the chance he can show to be a productive
4 citizen of the State of South Carolina or anywhere that he
5 choose to live. Benjamin's absence from the home has
6 created an ongoing problem for my 3-year-old granddaughter
7 who everytime a car door slams she yells, Is that Daddy,
8 Grandma, thinking her Daddy is coming home from work.
9 Because of all of that that I have just stated, especially
10 not having a criminal background and the effect that it's
11 having on my 3-year-old granddaughter, I ask that you
12 would please reconsider the sentence that you have given
13 him.

14 THE COURT: Where do you live, ma'am?

15 THE MOTHER: I live in Richland County in -- next to
16 the Northeast, Richland Northeast High School.

17 THE COURT: Richland County?

18 THE MOTHER: Yes, sir. I raised Benjamin from the
19 age of 6 years old by myself. Benjamin was an A, B
20 student right through high school. So, somewhere along
21 the line, things happen, but I am just asking if you can
22 reconsider that sentence. It is a long time. Thank you.

23 THE COURT: You're quite welcome.

24 Anyone else, Mr. McMullen?

25 MR. MCMULLEN: Yes, sir. Mrs. Tasha Green, his wife.

1 THE COURT: Good morning, Mrs. Green.

2 MRS. TASHA GREEN: Good morning. I first want to say
3 thank you for the opportunity you have allowed me to speak
4 on my husband's behalf. I appreciate it and I am, too,
5 grateful for this opportunity. Mr. Green, my husband, has
6 made a mistake in judgment and in life -- a mistake I know
7 deeply that he deeply regrets and are puzzled by the
8 reasons for his actions.

9 I am asking as the mother of his children and as his
10 wife that you would consider and allow him to come home
11 and provide for his family instead of allowing taxpayers
12 to take care of him and help take care of his family.
13 Through some research I notice that several -- that
14 several -- most of the majority of those convicted of the
15 same crime has got probation for several years or house
16 arrest somewhere on close watch and I am asking that you
17 would consider all three of these actions for my husband
18 Mr. Green. Whether it will triple the time of probation,
19 house arrest, just, please, Your Honor, on behalf of my
20 kids and myself, please allow their father to provide for
21 them and take care of his family.

22 Judge Early, I do understand and I recognize the
23 seriousness of this crime and I do understand the goal of
24 the special division, but I am sure that my husband and
25 the father of my children is not a threat to society. I

1 do not have a clue to why he chose to make a poor judgment
2 that night, but I can assure you it will never happen
3 again. I am asking you for you not to see things I am
4 requesting from you as an insult to you and the law.
5 There are mitigating circumstances that would allow you to
6 understand my request.

7 My husband has attempted as you will hear from Pastor
8 Brady -- he has tried to get help seeking the answer as to
9 why he chose to make the decision he made October 13,
10 2006. He practically don't have a criminal history. He
11 also has never been in trouble with the law for any crimes
12 such as this. Furthermore, even after his arrest in 2006
13 he stayed out of trouble and had no legal issues.

14 Judge Early, I am sure you are aware that there are
15 other options for Mr. Green that will make his life
16 outside of the jail walls just as uncomfortable for him
17 being inside of the jail. The only difference outside of
18 jail that he would have the opportunity to provide for his
19 family and be a part of his children's life. He has to
20 register as a sex offender and with that alone there are
21 many boundaries that he would have for the rest of his
22 life.

23 Judge Early, again, please consider house arrest, a
24 ridiculous amount of years of probation. Please, for the
25 sake of my children just allow their father to come home

1 and help support them. Again, thank you for your time and
2 your opportunity to speak on my husband's behalf.

3 THE COURT: Thank you.

4 MR. MCMULLEN: Pastor Cary Green.

5 PASTOR CARY GREEN: Good morning, Your Honor.

6 THE COURT: Good morning.

7 PASTOR CARY GREEN: I am the director of an addiction
8 treatment program. It is an inpatient and outpatient
9 program. Mr. Green came and applied -- came into our
10 outpatient part of our program when this situation took
11 place and faithfully came every week for about almost a
12 year, sought counseling for situation. We have several
13 guys in the program that were in the same kind of
14 situation.

15 THE COURT: Was the situation drugs or a sex
16 addiction?

17 PASTOR CARY GREEN: Our program deals with
18 life-controlling problems. There are people there with
19 drugs problems, but they're also there with other
20 problems -- gambling --

21 THE COURT: What was this?

22 PASTOR CARY GREEN: Mr. Green? His issue was the
23 internet situation.

24 THE COURT: It wasn't a drug issue.

25 PASTOR CARY GREEN: No. And just -- I am just here

1 to validate that he did seek help and went through the
2 program. He seemed to make progress, and I believe he was
3 sincere and forthright about his problem.

4 THE COURT: Thank you so very much.

5 PASTOR CARY GREEN: Thank you.

6 MR. MCMULLEN: Terrell Wilkins.

7 MR. TERRELL WILKINS: Good morning, Your Honor.

8 THE COURT: Give us your name, please, sir.

9 MR. TERRELL WILKINS: My name is Terrell Wilkins.

10 THE COURT: Wilkins?

11 MR. TERRELL WILKINS: Yes, sir. I am also on behalf
12 of Benjamin Paul Green making a request that you, the
13 Court, without insult can reconsider the number of years
14 that you have given him. I have known this young man for
15 six years -- me and my wife. And his family -- they have
16 helped me and my wife in situations and based on the
17 character of Benjamin Paul Green that he's reformed even
18 me myself visiting him while he was in Kirkland -- for a
19 couple of weeks being in Kirkland I am visiting him I have
20 saw a change in this young man and the sincerity that he
21 is a commodity and can be a commodity to the society with
22 strict observation from the system that if there is set in
23 place to keep and observe him outside of the walls.

24 I understand that there is a zero tolerance for this
25 kind of crime and I agree. However, being that this is

1 his first offense -- major offense -- with -- I pray that
2 the courts will reconsider the number of years that he's
3 receiving. I am a licensed minister and I have visited
4 him for several times because I do prison ministry so I
5 was able -- We came up in ministry together and, so, I ask
6 of the court today that they will reconsider once again
7 sincerely.

8 THE COURT: Thank you.

9 MR. TERRELL WILKINS: Thank you, sir.

10 MR. MCMULLEN: Finally, Your Honor, I have some
11 letters that I'd like to hand up and I have placed on top
12 one from a man named Christopher Booker who was written a
13 letter by Mr. Green from prison.

14 THE COURT: Mr. Green, how old are your children?

15 THE DEFENDANT: Sir?

16 THE COURT: How old are your children?

17 THE DEFENDANT: One just turned 2 and the 2-year-old
18 is about to turn 3. The oldest one turns 3 next week.

19 THE COURT: Basically, 2 and 3?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Ms. Ringler, have you seen these letters?

22 MS. RINGLER: No, Your Honor. If I may read them.

23 THE COURT: You got a copy for her?

24 MR. MCMULLEN: No, sir. I'm sorry.

25 THE COURT: I'll let you look at them.

1 MS. RINGLER: Thank you, Your Honor.

2 THE COURT: Anything else, sir?

3 MR. MCMULLEN: No, sir. Thank you for your
4 consideration.

5 THE COURT: You got one that's not even signed.

6 MR. MCMULLEN: Yes, sir.

7 THE COURT: One letter, not signed.

8 MR. MCMULLEN: Yes, sir. I just got that this
9 morning. I wanted to hand it up for what it's worth.

10 THE COURT: Who is it from?

11 MR. MCMULLEN: I don't know, Your Honor. I am told
12 it's a man named Thomas Conyers, sir.

13 THE COURT: Anything else, sir?

14 MR. MCMULLEN: Just must renew any post-trial motions
15 I made.

16 THE COURT: This is not the time to renew. I assume
17 that you've already appealed it.

18 MR. MCMULLEN: Nothing else, Your Honor.

19 THE COURT: Ms. Ringler?

20 MS. RINGLER: Just, Your Honor, the state would like
21 to point out I know that the Defendant stated that he had
22 not been back on the internet since this occurred. At
23 trial the state actually did present evidence where the
24 chat found on his computer where he did chat with an
25 underage female after his arrest and then just, Your

1 Honor, the state would just say that there is nothing
2 further -- no additional facts at the time that the court
3 did not have at the time of sentencing. We would
4 respectfully request that the sentence remain as it is.

5 THE COURT: All right. He was convicted of what,
6 ma'am?

7 MS. RINGLER: Criminal solicitation of a minor and
8 attempted criminal sexual conduct with a minor, second
9 degree.

10 THE COURT: And I gave him a 12-year sentence?

11 MS. RINGLER: Yes, Your Honor, a 12 for the attempted
12 CSC and 10 on the solicitation.

13 THE COURT: Concurrent?

14 MS. RINGLER: Yes, Your Honor.

15 THE COURT: Do you have any statistics on what's the
16 sort of average median range of sentence on these type of
17 offenses in the state?

18 MS. RINGLER: For our guilty pleas that we've had
19 most that have -- we have two types of defendants,
20 generally. One is the chat and one is the chat and
21 travel. For the ones that chat and travel there have been
22 some that have gotten probation. Most have gotten between
23 two and five years.

24 THE COURT: How about the trial?

25 MS. RINGLER: For trial, Your Honor, this is my first

1 trial of one of these offenses. We've had two others,
2 Your Honor, and I don't recall what sentences they got. I
3 believe both got I want to say around 10 years, Your
4 Honor, but I don't know for sure.

5 THE COURT: Is that information available to the
6 court?

7 MS. RINGLER: Yes, Your Honor. I can call my office
8 and ask them to look that up for me.

9 THE COURT: If you would, please, I'd like that
10 information.

11 MS. RINGLER: Yes, Your Honor.

12 MR. MCMULLEN: If it please the court, I happen to
13 have --

14 THE COURT: She's in the middle of her recitation.

15 MR. MCMULLEN: Yes, sir.

16 THE COURT: Anything else, ma'am?

17 MS. RINGLER: Nothing further, Your Honor, and I can
18 just step out and make that phonecall if you'd like.

19 THE COURT: Or you can step back to my chambers.

20 MS. RINGLER: I'll step back there.

21 THE COURT: Hold on. What else do you want to tell
22 me?

23 MR. MCMULLEN: I happen to have that information,
24 sir.

25 THE COURT: Look at it and see if it's correct.

1 MS. RINGLER: Yes, Your Honor. This is actually some
2 material that our office put out as part of a recent -- I
3 believe; this is what it looks like -- as part of a recent
4 press conference that we had for our 100th conviction.

5 THE COURT: Conviction means guilty plea and trial?

6 MS. RINGLER: Yes, Your Honor. So, we've had -- This
7 was our third trial that we've had.

8 THE COURT: What were the other two sentences?

9 MS. RINGLER: That's what I am looking up, Your
10 Honor, right now. It has pleas and trials on this list.

11 THE COURT: Do you know, sir? It's a simple
12 question. Do you know?

13 MR. MCMULLEN: I believe I do.

14 THE COURT: You believe you know?

15 MR. MCMULLEN: Well, it doesn't say on this sheet,
16 Your Honor, but my understanding is that the Attorney
17 General dismisses the CSC charges. So, if someone has got
18 a conviction for that, it must be after a trial. They
19 dismiss upon a plea.

20 THE COURT: So the answer is you don't know?

21 MR. MCMULLEN: Yes, sir.

22 MS. RINGLER: Your Honor, the first trial we had was
23 William Gaines. He received -- Your Honor, I'm sorry. I
24 think I will need to call my office.

25 THE COURT: All right. Go make a phonecall. Just

1 step right back there. We're going to hold for a second.

2 MR. MCMULLEN: Before she goes may I say one thing
3 Mr. Green wants me to correct? He just stated now that
4 since October of '06 he had not gotten back on the
5 internet, not that it hasn't been since his arrest.

6 THE COURT: Thank you.

7 MR. MCMULLEN: Thank you, sir.

8 MS. RINGLER: Thank you, Your Honor.

9 (Whereupon, a short break was taken.)

10 MS. RINGLER: Thank you, Your Honor. We have two
11 other trials. The first was a solicitation case. It did
12 not involve traveling to meet the undercover. That was
13 State versus Gaines. He was sentenced by Judge Keesley in
14 Lexington County. He received 10 years suspended on 4
15 years, plus 5 years probation.

16 THE COURT: Ten, four, and five?

17 MS. RINGLER: Yes, Your Honor. Again, that was not a
18 traveller. We had --

19 THE COURT: Not a traveller.

20 MS. RINGLER: -- State versus Reed who did travel so
21 he was convicted of solicitation and also attempted
22 criminal sexual conduct of a minor. He was sentenced in
23 Oconee County by Judge McCullough and received 20 years
24 suspended on 10 years, plus 5 years probation.

25 THE COURT: Twenty, ten, five?

1 MS. RINGLER: Yes, Your Honor.

2 THE COURT: And I gave 12 straight up?

3 MS. RINGLER: Twelve and then -- yes, Your Honor.

4 THE COURT: Twelve, ten, concurrent. Okay.

5 All right. Mr. McMullen, how about make your
6 letters -- Show them to Ms. Ringler. Make them an exhibit
7 to make them a part of this record. I assume that's what
8 you want to do?

9 MR. MCMULLEN: Yes, sir, Your Honor.

10 THE COURT: So, it looks like my sentence is pretty
11 much in line with Judge McCullough who is the only other
12 judge -- He gave him 20 years suspended to 10. I gave
13 just a straight 12-year sentence. I don't know which one
14 he would max out on quicker, and Judge Keesley gave a
15 4-year sentence -- or 10 suspended to 4 on a no-travel.
16 It looks like I am pretty much in the ballpark.

17 MS. RINGLER: Yes, Your Honor.

18 THE COURT: All right. Mr. McMullen, I will take it
19 under advisement. I will try to get y'all a decision
20 within the next few weeks.

21 MR. MCMULLEN: Thank you. May it please the court.
22 Let me offer this as an exhibit.

23 THE COURT: Just make them all one exhibit.

24 (Whereupon, Defendant's Exhibit No. 1 was marked for
25 identification and received into evidence.)

1 THE COURT: Good luck to you, Mr. Green. I'll look
2 at it. Thank you. Y'all be careful.

3 (End of Transcript of Record.)
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

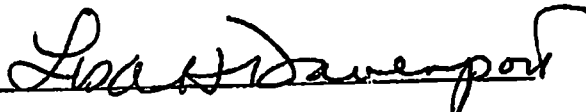
CERTIFICATE OF REPORTER

State of South Carolina)
County of Aiken)

I, Lisa H. Davenport, Official Court Reporter for the
Second Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Aiken County, South Carolina, on the 15th day of
September, 2009.

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

October 19, 2010


Lisa H. Davenport, Court Reporter

K094019
K094020
FORM 5

2013-CP-02-00477
2007-GS-02-00190, 00191

Filed 27 February 2013
J. L. Leland
CLERK OF COURT
Aiken County

Deputy Clerk AM Time 8:30 am
Trial Judge David A. Early III
Trial Atty.: Michael McMuller
Court Reporter: Lisa Davenport
Sec: PCR Petitioner Solicitor
General Sessions Atty. Gen.
Appointed Atty.

STATE OF SOUTH CAROLINA)

County of Aiken)

Benjamin P. Green #335365)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

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 Kershaw Correctional Institution
2. Name and location of Court which imposed sentence Aiken County General Sessions
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) 2007-GS-02-190: Criminal Solicitation of a minor, 16-15-0342
 - (b) 2007-GS-02-191: Attempted CSC with a minor in the 2nd -

- (c) N/A
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. Conviction affirmed
- ii. Denied petition for rehearing and remittitur
- iii. N/A
- (c) the date of each such result:
- i. April 4, 2012
- ii. May 3, 2012
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Opinion No. 27108
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) SEE ATTACHED PAGE
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHED PAGE
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Motion to reconsider sentence
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Aiken County Court of General Sessions
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

i. Sentence reduced from 12 to 10 years

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. October 12, 2009

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

- (a) your arraignment and plea? No
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you—
- i. Michael D. McMullen, 1722 Marion Street, Columbia, SC 29201
- ii. Wanda H. Carter, 1330 Lady Street, Suite 401, Columbia, SC 29201
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial, Sentencing and Sentence Reconsideration Hearing
- ii. Direct Appeal
- iii. _____
19. State clearly the relief you seek in filing this application:
- Vacate Conviction and Sentence
20. Are you now under sentence from any other court that you have not challenged?
- No

19. State clearly the relief you seek in filing this application:

Vacate Conviction and Sentence

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Aiken)

VERIFICATION

I, Benjamin P. Green #335365, 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.

Benjamin P. Green

SWORN to and subscribed before me this 22
day of January February, 2013.

Catharine A. Orma (L.S.)
Notary Public

My Commission Expires: My Commission Expires December 22, 2018

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Benjamin P. Green #335363, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
22 day of February, 2013.


Notary Public

My Commission Expires: My Commission Expires December 22, 2018

10. (a) Applicant was denied the right to effective assistance of counsel -- guaranteed by the Sixth and Fourteenth amendments to the U.S. Constitution, and by Article I, § 3 and 14 of the S.C. Constitution -- during the guilt-or-innocence phase of his trial.
 - (b) Applicant was denied the right to effective assistance of appellate counsel during the post trial appellate process.
11. (a) Trial counsels performance during the guilt-or-innocence phase was both unreasonable and prejudicial. Strickland v. Washington, 466 U.S. 668 (1984). Counsel's acts or omissions included, but are not limited to, the following:
 - (i) Trial counsel failed to request a jury instruction that included the necessary "present ability" element needed to prove an attempt crime, according to law, even though counsel had previously argued this fact.
 - (ii) Trial counsel failed to adequately research the attempt charge, whereas he would have acquired and been able to provide the case law needed to prove the proper elements that constitute an attempt, even though counsel had used the lack of the "present ability" element as a main point of defense.
 - (iii) Trial counsel failed to properly object to the use of a supposed incriminating statement that was never submitted to the jury to determine the voluntariness, as is required by state law.
 - (iv) trial counsel failed to argue against the voluntariness of a supposed incriminating statement during the Jackson v. Denno hearing, instead focusing on the reliability of the statement.
 - (v) Trial counsel failed to contemporaneously object to trial judge's improper comments that were made in the presence of the jury.
 - (vi) Trial counsel failed to sufficiently Yahoo Messenger's auto archiving feature, which would have led him to discover the facts needed to contest the Attorney general's office claims on how the auto archiving feature functions.
 - (vii) Trial counsel failed to move for the suppression of evidence, whose probative value was substantially outweighed by the danger of unfair prejudice.
 - (viii) Trial counsel failed to maintain adequate knowledge of relevant details of case law that said counsel provided to the trial judge.
 - (ix) Trial counsel failed to call to question the integrity of conflicting testimony from the prosecutions witnesses.
 - (b) Appellate counsel's performance during the post-trial appellate process was both unreasonable and prejudicial. Evitts v. Lucey, 469 U.S. 387 (1985). Appellate counsel's acts or omissions included, but are not limited to, the following:
 - (i) Appellate counsel failed to raise an obvious reversible error on direct appeal, that had clearly been preserved for appeal.
 - (ii) Appellate counsel failed to exercise due diligence when researching the preserved issues, in spite of having filed for multiple extensions.
 - (iii) Appellate counsel failed to exercise due diligence when studying the particulars of the case, which resulted in a prejudicial lack of knowledge concerning specific relevant details during the appellate hearing.
 - (iv) Appellate counsel argued issue during the appellate hearing that not only was not preserved for appeal, but was not even brought up during the trial proceedings, thereby taking away from the material issues.
 - (v) Appellate counsel failed to include meritorious issues in appellant's brief.

(vi) Appellate counsel failed to include requested relevant information in appellant's brief, thereby depriving the Supreme Court the ability to make a properly informed decision regarding the issues.

16. (a) Ineffective Assistance of Counsel, Post-Conviction Relief Remedy.
- (b) Ineffective Assistance of Appellate Counsel, Post-Conviction Relief Remedy.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

2013-CP-02-477

Benjamin P. Green, IV., #335365,

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post-conviction relief filed February 27, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was true billed indicted at the January 2007 term of the Aiken County Grand Jury for Attempted Criminal Sexual Conduct with a Minor in the Second Degree (2007-GS-02-191) and Criminal Solicitation of a Minor (2007-GS-02-190). Michael D. McMullen, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III. Applicant was found guilty, and on June 17, 2009, Applicant was sentenced to twelve years imprisonment for Attempted Criminal Sexual Conduct with a Minor in the Second Degree and ten years imprisonment for Criminal Solicitation of a Minor with all sentences to run concurrent.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Wanda H. Carter, Esquire. The South Carolina Supreme Court affirmed the Applicants

conviction and sentence. State v. Green, Op. No. 27108 (Ct. App. filed April 4, 2012). The Remittitur was issued on May 3, 2012.

Attached herewith and incorporated herein by reference are the records of the Aiken County Clerk of Court regarding the subject convictions, records from the South Carolina Department of Corrections, appellate records, and trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons :

I. Ineffective Assistance of Counsel

- a. "Applicant was denied the right to effective assistance of counsel guaranteed by the Sixth and Fourteenth amendments to the U.S. Constitution, and by Article I, § 3 and 14 of the S.C. Constitution during the guilt or innocence phase of his trial.
- b. "Trial counsel's performance during the guilt-or-innocence phase was both unreasonable and prejudicial. Strickland v. Washington, 466 U.S. 668 (1984). Counsel's acts or omissions included, but are not limited to the following:"
- c. "Trial counsel failed to request a jury instruction that included the necessary 'present ability' element needed to prove an attempt crime, according to law, even though counsel had previously argued this fact."
- d. "Trial counsel failed to adequately research the attempt charge, whereas he would have acquired and been able to provide the case law needed to prove the proper elements that constitute an attempt, even though counsel had used the lack of the 'present ability' element as a main point of defense."
- e. "Trial counsel failed to properly object to the use of a supposed incriminating statement that was never submitted to the jury to determine the voluntariness, as is required by state law."
- f. "Trial counsel failed to argue against the voluntariness of a supposed incriminating statement during the Jackson v. Denno hearing, instead focusing on the reliability of the statement."
- g. "Trial counsel failed to contemporaneously object to trial judge's improper comments that were made in the presence of the jury."
- h. "Trial counsel failed to sufficient Yahoo Messenger's auto archiving feature, which would have led him to discover the facts

needed to contest the Attorney general's office claims on how the auto archiving feature functions.

- i. "Trial counsel failed to move for the suppression of evidence, whose probative value was substantially outweighed by the danger of unfair prejudice."
- j. "Trial counsel failed to maintain adequate knowledge of relevant details of case law that said counsel provided to the trial judge."
- k. "Trial counsel failed to call to question the integrity of conflicting testimony from the prosecutions witnesses"

2. Ineffective Assistance of Appellate Counsel

- a. "Applicant was denied the right to effective assistance of appellate counsel during the post trial appellate process."
- b. "Appellate counsel's performance during the post-trial appellate process was both unreasonable and prejudicial. Evitts v. Lucey, 469 U.S. 387 (1985). Appellate counsel's acts or omissions included, but are not limited to the following:"
- c. "Appellate counsel failed to raise an obvious reversible error on direct appeal that had clearly been preserved for appeal."
- d. "Appellate counsel failed to exercise due diligence when researching the preserved issues, in spite of having filed for multiple extensions."
- e. "Appellate counsel failed to exercise due diligence when studying the particulars of the case, which resulted in a prejudicial lack of knowledge concerning specific relevant details during the appellate hearing."
- f. "Appellate counsel argued issues during the appellate hearing that only was not preserved for appeal, but was not even brought up during the trial proceedings, thereby taking away from the material issues,"
- g. "Appellate counsel failed to include meritorious issues in appellant's brief."
- h. "Appellate counsel failed to include requested relevant information in appellant's brief, thereby depriving the Supreme Court the ability to make a properly informed decision regarding the issues."

Any claims not specifically enumerated in the post-conviction application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCRCP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 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 the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies 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, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 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.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264,

305 S.E.2d 247 (1983).

IV.

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent contends that the Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this allegation.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

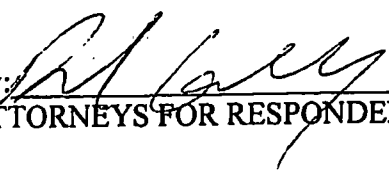
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

June 19, 2013.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	
	)	2013-CP-02-477
	)	
BENJAMIN P. GREEN, 335365,	)	
	)	
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:

**Aimee Zmroczek, Esquire
A.J.Z. Law Firm, LLC
1001 Washington Street, Ste. 207
Columbia, SC 29201**

DATED this 18th day of June, 2013.


Caroline Kaiser, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA

2 COUNTY OF AIKEN

CIRCUIT COURT
2013-CP-02-00477

3
4 BENJAMIN PAUL GREEN,
Applicant,

5 -vs-

TRANSCRIPT OF RECORD

6
7 STATE OF SOUTH CAROLINA,
Respondent.

8
9 Post-Conviction Relief Hearing

10 Heard on Friday, September 11, 2015

11 Aiken, South Carolina

12
13 BEFORE:

14 THE HONORABLE EDGAR W. DICKSON

15
16
17 APPEARANCES:

18 Counsel on Behalf of the Applicant:
Aimee J. Zmroczek, Esq.

19 Counsel on Behalf of the Respondent, State of SC:
20 Daniel F. Gourley, Esq.

21
22
23 Cheri L. Young, RPR
24 Circuit Court Reporter
P O Box 5232
25 Aiken, SC 29803-5232

EXAMINATION INDEX

BENJAMIN GREEN

DIRECT BY MS. ZMROCEK	6

CROSS BY MR. GOURLEY	39

REDIRECT BY MS. ZMROCEK	47

CHRISTOPHER JAMES WATKINS

DIRECT BY MS. ZMROCEK	49

MICHAEL D. McMULLEN

DIRECT BY MR. GOURLEY	59

CROSS BY MS. ZMROCEK	69

REDIRECT BY MR. GOURLEY	80

RECROSS BY MS. ZMROCEK	80

EXHIBIT INDEX

MAR ADM

Applicant's

1 Chat log

53 53

Court's

1 Applicant's handwritten notes of PCR
issues, 6 pgs

39 39

1 ON FRIDAY, SEPTEMBER 11, 2015, AT 12:14 P.M.:

2 THE COURT: Yes, sir.

3 MR. GOURLEY: This is Benjamin Green versus the State
4 of South Carolina, Docket Number 2013-CP-02-477. He's
5 presently confined in the South Carolina Department of
6 Corrections pursuant to orders of committment of the Aiken
7 County Clerk of Court. He was true-bill indicted at the
8 January 2007 Term of the Aiken County Grand Jury for
9 attempted criminal sexual conduct with a minor in the
10 second degree and criminal solicitation of a minor.
11 Mr. McMullen represented him.

12 He proceeded to a jury trial before the Honorable
13 Doyet A. Early the Third. He was found guilty and on June
14 17th, 2009, was sentenced to 12 years imprisonment for
15 attempted criminal sexual conduct with a minor in the
16 second degree and a 10-year term of imprisonment for
17 criminal solicitation of a minor. Those sentences were to
18 run concurrently.

19 Timely notice of appeal was filed on Applicant's
20 behalf. And the South Carolina Supreme Court affirmed the
21 Applicant's conviction and a remittitur was issued on May
22 3rd, 2012. He filed a timely application for PCR on
23 February 27th, 2013, alleging ineffective assistance of
24 counsel and ineffective assistance of appellate counsel.

25 The State filed its return on June 18th, 2013, and

1 he's represented in this matter by Ms. Zmroczek.

2 THE COURT: All right. Ms. Zmroczek.

3 MS. ZMROCZEK: Thank you, Your Honor.

4 This case, Your Honor, we are going to ask that it be
5 held open and we discussed this with Mr. Gourley. We're
6 going to put testimony, obviously, up today, but one of
7 the issues, Your Honor, with this case is that it's one of
8 those AG Internet crimes, that special task force.

9 And it took sometime and -- because there were
10 several different agencies involved, it took sometime for
11 us to locate the actual disks. We have a digital
12 forensics expert that we're going to put up today but he
13 is going to review those disks on Monday and we've asked
14 Mr. -- and that's why we have Mr. Cave from SLED here
15 because he is going to confirm that he, that that's going
16 to be done on Monday.

17 And when I spoke with Mr. Gourley last night he
18 agreed that we should go forward today with the testimony
19 and that, I think that we were going to discuss being able
20 to leave the record open in case there was something to
21 amend after he was able to view these.

22 THE COURT: Okay. And, you know, I'm glad y'all have
23 these late-night discussions.

24 MS. ZMROCZEK: What's that?

25 THE COURT: I'm glad you all have these late-night

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 discussions.

2 MR. GOURLEY: Me too, Judge.

3 THE COURT: Well then, we'll leave the record open
4 for that; is that correct?

5 MR. GOURLEY: Yes, Judge.

6 THE COURT: All right. We'll do that.

7 MS. ZMROCZEK: Thank you. And then at this time,
8 Your Honor, I first we want to call Mr. Benjamin Green to
9 the stand.

10 THE COURT: All right. Mr. Green.

11 BENJAMIN GREEN, having been duly sworn, was examined
12 and testified as follows:

13 THE COURT: Mr. Green, please get comfortable.

14 THE APPLICANT: This chair here?

15 THE COURT: Yes, sir. That one right there.

16 THE APPLICANT: Yes, sir. Thank you.

17 THE COURT: Get comfortable. And you need to speak
18 up loudly, please, sir.

19 THE APPLICANT: Yes, sir.

20 THE COURT: You did very good. Very good. All
21 right. Ms. Zmroczek?

22 MS. ZMROCZEK: Thank you.

23 DIRECT EXAMINATION

24 BY MS. ZMROCZEK:

25 Q. Mr. Green, how old are you?

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 A. Currently 36 years old.

2 Q. And, where do you currently reside?

3 A. My family resides in Irmo, South Carolina, but I'm
4 incarcerated at Kershaw Correctional Institution.

5 Q. And you're incarcerated as a result of charges that
6 Mr. McMullen represented you on?

7 A. Yes, ma'am.

8 Q. Did you retain him or were you appointed?

9 A. Retained.

10 Q. And how much did you pay Mr. McMullen?

11 A. If I remember I believe it was \$10,000 all together.

12 Q. Did y'all discuss any experts that would be needed at
13 that time or at any time?

14 A. The only time that that was discussed was after the
15 first day of trial when I asked him could he get in
16 contact with somebody about verifying what I believed to
17 be a false statement that was made about the computer
18 investigation by the State.

19 Q. And that false statement -- so the evidence that was
20 presented was a lot of technical computer evidence,
21 correct?

22 A. That is correct.

23 Q. And the only evidence that was presented was from the
24 State and there were -- there were -- there was
25 information, like, at the beginning of those chats and

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 then information presented during those chats that were
2 either out of order or just completely missing, correct?

3 A. Yes, ma'am. Some was missing and then there were time
4 inconsistencies at the end of the conversations. And
5 being that I use computers everyday I knew there was a
6 problem but I was not able to, to get that done myself
7 because they had revoked my bond.

8 And I had asked Mr. McMullen to take care of that for
9 me. At the time I did not know that they were going to
10 say what they said at the trial which is why I was not
11 prepared to defend what I believe was a false statement.

12 Q. But you were out on bond prior to the trial, right?

13 A. For almost three years, yes, ma'am.

14 Q. And so you had -- you were aware of -- you were aware
15 of what they were -- the evidence, but you weren't aware
16 of how they were going to testify but you were aware that
17 there was some computer chats?

18 A. I was aware of the evidence and I also was aware there
19 was a part of a conversation missing, but I was not aware
20 of what statement that they were going to make to defend
21 why it was missing.

22 Q. Okay. And that -- so you had -- you had known that
23 there was a portion missing. And had you known what they
24 were going to testify to, you would have had Mr. McMullen
25 or yourself hire an expert to be able to combat or to

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 challenge what the State presented?

2 A. Yes, ma'am.

3 Q. And did you feel like that was something that changed
4 the outcome of your trial, that prejudiced you?

5 A. Yes, ma'am, because I know that being able to prove
6 that that false statement was made would not only have
7 kept that piece of evidence from being included in the
8 trial but it would also prove that they made a false
9 statement knowingly and intentionally against me violating
10 my constitutional rights.

11 THE COURT: Ms. Zmorczech, I hate to interrupt, but
12 could you tell me where the false statement is so we could
13 go from there? If you don't mind.

14 MS. ZMROCZEK: Yes. Sorry.

15 Q. Do you have that marked down?

16 A. You want to know where it's at in the transcript?

17 THE COURT: Yes, sir, Mr. Green. That will help me.

18 THE APPLICANT: Not a problem.

19 MS. ZMROCZEK: Sorry, Your Honor, I have it marked as
20 well.

21 THE APPLICANT: That would be page 110, line 16
22 through 23.

23 THE COURT: Okay. Hold on one second.

24 THE APPLICANT: Yes, sir.

25 THE COURT: You weren't here earlier, but I want to

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 make sure I got all the pages.

2 THE COURT: All right. 110.

3 THE APPLICANT: Yes, sir.

4 THE COURT: Line 16 through 23?

5 THE APPLICANT: Yes, sir. Also pages 114 --

6 THE COURT: Okay.

7 THE APPLICANT: -- lines 1 through 21.

8 THE COURT: 114, 1 through 21?

9 THE APPLICANT: Yes, sir. These two sets of pages
10 were actually the testimony of the main investigator in
11 the case.

12 THE COURT: Tommy Platt?

13 THE APPLICANT: Tommy Platt. That's correct.

14 THE COURT: Okay.

15 THE APPLICANT: And I also have pages 35 through 39
16 where Ms. Porter made the statement as well. She was a
17 representative of the attorney general's office.

18 THE COURT: Was she making a statement in her
19 opening?

20 THE APPLICANT: Well, what it was it was a question
21 about whether that statement was true or not. And so she
22 asked the trial court at that time could she testify as to
23 why the software operated in the manner that they said it
24 operated in.

25 THE COURT: Okay. The chats from myself. Is there

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 anything missing, the very first line?

2 THE APPLICANT: Yes, sir. That's it right there.

3 Where they were saying that only one line was missing and
4 I was disputing that because I was the one that was in
5 that conversation and I knew that there was more than one
6 line missing.

7 THE COURT: How many lines do you believe were
8 missing?

9 THE APPLICANT: I believe somewhere between seven or
10 eight lines were missing.

11 THE COURT: Okay.

12 THE APPLICANT: And I also believe I know why they
13 were missing.

14 THE COURT: Okay. Tell me.

15 BY MS. ZMROCZEK:

16 Q. That was my next question. Tell the Judge why.

17 A. I believe that they were missing because I believe in
18 the process of what they already admitted that they had
19 copied and pasted from the auto archive, they admitted
20 they copied and pasted and missed that. Somebody made a
21 mistake. And when they realized they made a mistake they
22 had to cover it realizing we were going to ask for the
23 entire conversation so they had to come up with something
24 to say why there was only one line missing. And I know
25 that from using Yahoo Messenger myself for many years that

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 Yahoo Messenger works the way it was designed to work to
2 save every line of every conversation.

3 THE COURT: Okay. Just so I can understand it.

4 THE APPLICANT: Yes, sir.

5 THE COURT: They cut and pasted these conversations
6 together?

7 THE APPLICANT: Yes, sir.

8 THE COURT: They left out lines in those
9 conversations?

10 THE APPLICANT: Yes, sir.

11 THE COURT: Okay.

12 THE APPLICANT: And --

13 THE COURT: Okay. And when they left out those lines
14 they did that deliberately?

15 THE APPLICANT: I don't believe that they
16 deliberately left out lines but I do believe they
17 deliberately lied about why lines were missing.

18 THE COURT: And you believe these lines that were
19 missing would help you?

20 THE APPLICANT: Yes, sir.

21 THE COURT: Tell me why.

22 THE APPLICANT: Because they show that, that I
23 introduced myself in a manner that was, it was not sexual
24 initially and that it was just a normal conversation
25 beginning off. One of the things that they said during

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 the trial was that the entire conversation was sexual from
2 the time it turned sexual and that was not true. It had
3 turned sexual and then halfway through the conversation it
4 turned non-sexual again which was part of the argument
5 that we were making was that, yes, it was a sexual
6 conversation but that towards the end that the tone of the
7 conversation changed. And it never got to a place where I
8 was actually saying, look, I want to have sex with you.

9 THE COURT: Okay.

10 THE APPLICANT: Because I did tell them that I had
11 many conversations online with many people. And I didn't
12 have a problem telling them that. And I do know that in
13 the midst of doing that you talk to people and people
14 pretend to be people sometimes, you don't know who you're
15 talking to. And I got in a conversation and it turned
16 sexual and then it didn't turn sexual and at the end of
17 the conversation you can clearly see where what's going to
18 be agreed to is watching movies and driving around in a
19 car. It has nothing -- there's no sexual intent in that
20 conversation.

21 THE COURT: But those lines were preserved in the
22 record.

23 THE APPLICANT: Which lines?

24 THE COURT: The end --

25 THE APPLICANT: Yes, sir. They are. Yes, sir.

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 THE COURT: Okay. But you're saying because the
2 first of it starts out that way and then it turns sexual
3 and then it goes back to --

4 THE APPLICANT: Yes, sir.

5 THE COURT: -- that would help your defense?

6 THE APPLICANT: Yes, sir.

7 THE COURT: And the fact the State didn't present
8 them caused you --

9 THE APPLICANT: Yes, sir. That is correct.

10 THE COURT: -- to be convicted, probably?

11 THE APPLICANT: Yes, sir. That's correct.

12 THE COURT: Okay.

13 THE APPLICANT: And also the three or four lines at
14 the end where the time stamp changed it was also evidence
15 of copying and pasting because it shows that two different
16 computers were used to put together their document that
17 they presented as an original conversation.

18 THE COURT: Okay.

19 BY MS. ZMROCZEK:

20 Q. And, Mr. Green, we have an expert too and, and so
21 we'll get there. But one of things that I think what
22 you're trying to say, and correct me if I'm wrong, is that
23 you, you felt like the State presented -- or that -- not
24 you felt like, the State did present in your opinion just
25 incorrect testimony because in essence they were -- what

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 their position was was that you were trolling for a
2 14-year-old girl. And it's your testimony that it was
3 never -- that's not what you were doing.

4 A. That is correct. It was never my initial intention
5 even getting online in the first place that night.

6 Q. Okay.

7 A. That was not my intention at all.

8 Q. And that those conversations would show that you were
9 actually -- that when you were approached in a
10 conversation it was actually you were approached by, you
11 didn't know it at the time but by the law enforcement,
12 correct?

13 A. No, I did initiate the conversation. I initiated
14 several conversations and I had several conversations
15 going on at one time. And then this conversation ended up
16 turning sexual. I was just online in conversation. It
17 was never my intent to get online and look for an underage
18 girl to go travel, like they're saying, and do whatever
19 with.

20 Q. Or have sex. That was not your intent?

21 A. That was not my intent. No, ma'am.

22 Q. Okay. That's my question. And, you -- when you were
23 arrested you had a cell phone?

24 A. Yes, ma'am.

25 Q. And they also took two computers?

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 A. Yes, ma'am.

2 Q. Okay. And, do you know -- were you ever provided any,
3 any discovery that was received off of your cell phone?

4 A. Off of the cell phone?

5 Q. Right.

6 A. The only thing I received --

7 Q. Did they ever do a download or --

8 A. -- was just a picture of the last couple messages that
9 were sent from the cell phone.

10 Q. And you don't -- and it's your testimony that that --
11 that's not the full and complete -- you were never
12 provided, like, a Cellebrite or a complete download of
13 your phone, right?

14 A. No, ma'am.

15 Q. Okay. And that was never presented?

16 A. No, ma'am.

17 Q. And that -- it's your assertion that had that been
18 done that that would show that that -- that -- that the
19 picture of what they claim to be those last chats, that
20 wasn't accurate?

21 A. That's correct.

22 Q. Okay. And none of that could be done because you did
23 not have an expert to testify, correct?

24 A. That's true.

25 Q. And is that your only complaint about your lawyer?

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 A. No, ma'am.

2 Q. Okay. And tell the Judge what your other complaints
3 were.

4 A. This other complaint may be even more pertinent. It
5 says -- excuse me one moment. I apologize.

6 Q. No worries.

7 A. I switched my page.

8 I have: Trial counsel failed to argue against the
9 voluntariness of the supposed incriminating statement
10 during a Jackson versus Denno hearing instead of focusing
11 on the reliability of the statement. I had an issue where
12 the State had put forth that I said that I was there to
13 meet a 14-year-old girl and disputed that because that
14 statement doesn't make any sense in and of itself, at
15 least not in my opinion.

16 And he argued against that in a Jackson versus Denno
17 and then the trial court ended up telling him that that
18 wasn't the time to argue liability, it was the time to
19 argue voluntariness.

20 And there was already a discrepancy in between
21 Detective Platt and Investigator Zeigler's testimony about
22 when I was Mirandized. Detective Platt said I was
23 Mirandized immediately and then he asked me what I was
24 there doing. Why would you Mirandize somebody when they
25 don't know what's going on.

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 Investigator Zeigler said the order properly; that
2 they asked me what I was doing there and then they got me
3 out of the vehicle and then they Mirandized me. That's
4 the proper order of events.

5 But they were trying to use the statement that I said
6 when I got there and what I actually said was, "I guess
7 I'm here to see you," because I didn't know what was going
8 on. But he turned it into that I said I was there to see
9 a 14-year-old girl.

10 So in Jackson versus Denno the trial court lost his
11 patience and told Mr. McMullen that, "I'm going to go
12 ahead and let this into the trial but now it will be
13 presented to the jury, and the jury has to determine
14 whether the statement was made freely and voluntarily and
15 whether he was Mirandized properly."

16 Now the trial went on and Mr. McMullen did continue to
17 attack that statement, and at times even attacked the
18 Miranda warnings but the statement was never stricken from
19 the record.

20 He also failed to move to get it stricken when both
21 officers said they couldn't remember what I said. So he
22 should have at that time moved to strike it from the
23 record because it was an inaccurate and unreliable
24 statement.

25 The second failure was during the charges to the jury

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 the judge never did the charge that he said he was going
2 to make which is a constitutional violation, and no
3 conviction should be found in part or in whole on
4 involuntary statement. It was never given to the jury for
5 them to determine whether I made the statement
6 voluntarily.

7 Q. And also --

8 A. And also, they also handed me --

9 THE COURT: Hold one. We got to do it one at a time
10 just to make sure --

11 THE APPLICANT: Yes, sir.

12 THE COURT: The charge -- Judge Early did not charge
13 voluntariness?

14 THE APPLICANT: No, sir.

15 MS. ZMROCZEK: The voluntariness of the statements.

16 THE APPLICANT: It was never charged voluntariness to
17 the jury.

18 THE COURT: Okay. And your attorney did not object
19 to that?

20 THE APPLICANT: Did not object and did not --

21 MS. ZMROCZEK: It wasn't preserved, right.

22 THE COURT: Okay.

23 THE APPLICANT: Now secondary, they also prejudiced
24 me because when I got on direct appeal and I lost on
25 direct appeal in the opinion the first thing that the

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 Supreme Court said was that Mr. Green admitted that he was
2 there to see a 14-year-old girl. So that same statement
3 that should have never been allowed in and never offered
4 to the jury was used against me to lose my appeal.

5 BY MS. ZMROCZEK:

6 Q. Okay.

7 A. I don't have -- I apologize. Time to speak again?

8 THE COURT: Oh, yeah. I'm sorry. I didn't mean to
9 stop you.

10 THE APPLICANT: I know Wanda Carter is not here but I
11 also have her on the --

12 THE COURT: Who?

13 THE APPLICANT: Wanda S. Carter. And that was, that
14 according the law that's a reversible error for you to
15 be -- your conviction to be founded in part on involuntary
16 statement. And she did not use that in the brief or in
17 her oral argument at my appeal. And I would have won my
18 direct appeal on that error if she would have brought it
19 up.

20 BY MS. ZMROCZEK:

21 Q. And did she make any contact with you regarding what
22 issues you wanted or did you write her or --

23 A. I have over there copies of what I actually put in and
24 she kept telling me she would and then when I got the
25 brief what I asked her to put in wasn't in there. She

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 told me she would do it in oral argument, and she didn't
2 do it on oral argument.

3 Q. And your basis was that, again, dealing with the
4 voluntariness, the voluntariness much less besides what
5 was said and what, what you're saying is the Court of
6 Appeals relied on -- or their basis was that this is what
7 you said and you're saying you never even said that?

8 A. The very first thing that they said was that Mr. Green
9 admitted he was there to see a 14-year-old girl. Number
10 one, I did make that statement. Number two, that
11 statement was never given to the jury, charged properly
12 for them to determine whether I made it or was it
13 voluntary or not. It was a violation of my due process
14 and my protection rights.

15 Q. Okay. And what else?

16 A. Also -- well, you've already covered the failure to
17 investigate the Yahoo Messenger.

18 Trial counsel also failed to maintain adequate
19 knowledge of the relevant details of the case law that he
20 provided to the trial judge in trying to get the
21 lesser-included offenses for me. Mr. McMullen did give
22 the proper case law but for whatever reason when asked
23 particulars about, like, whether it was a minor or what
24 the mitigating circumstances were he couldn't answer those
25 questions. And so the trial court actually went on seeing

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 that these case laws were saying that it was appropriate
2 to charge assault and battery of a high and aggravated
3 nature and also assault of a high and aggravated nature,
4 and then he went on to say on the record that, well, even
5 though it's a lesser-included offense it doesn't mean that
6 I have to charge it.

7 And so but the law says you do have to charge it. And
8 so he said he felt that it was all or nothing. But all or
9 nothing is not up to the judge. It's up to the jury. So
10 we were just asking for him to charge. But Mr. McMullen
11 couldn't, he couldn't answer the questions dealing with
12 the case law. He presented the case law but he couldn't
13 answer any of the judge's questions. So that showed an
14 inadequate preparation on his part to make sure that he
15 studied those case laws to even know what elements of it
16 that he needed to present.

17 And also, the same case law is also stated that you
18 needed to have a present ability to be guilty of an intent
19 prior. And he couldn't -- he couldn't argue that as
20 well. And that was pretty much one of the main things
21 besides that statement that Mr. McMullen was harping on
22 during the whole trial was there was no present ability
23 for Mr. Green to commit these crimes. So he was asking
24 for a directed verdict.

25 And the judge asked him, "Well, do you have any case

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 law for me to give you a directed verdict," and he
2 answered "no" several times.

3 And I also have those if you need where they say in
4 the transcript, Your Honor.

5 Q. And, but you agree that he had prepared and handed up
6 the case law but when it came time to preserve the
7 argument that he wasn't -- that he didn't do it at that
8 time?

9 A. That is correct.

10 Q. Okay.

11 A. And there was one particular case -- if I may say in
12 particular, State versus Nesbitt it actually says that for
13 intent crimes you have to have a present ability. And he
14 didn't have that case law either. And I just felt that
15 that being the most prevalent one, I just didn't
16 understand why he didn't have that particular case law.

17 But all the case law that he did present, they say
18 that they were lesser-included charges was appropriate
19 because they were all forms of an assault but you did have
20 to have the present ability to commit the crime.

21 And on the next level, Wanda Carter, she argued
22 factual impossibility. And that was never our argument
23 because we understand that the statute does say that you
24 can't argue that it was an undercover officer there. But
25 that was not our argument. Our argument was just simply

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 that I never had the present ability to complete a sexual
2 assault on any person because there was no person there.

3 And so we was entitled to a lesser-included charge and
4 that if you say it was all or nothing on a lesser
5 included, then it's all or nothing on the greater. So you
6 should have gave us a directed verdict.

7 Q. And Ms. Carter, she was appointed through appellate
8 defense?

9 A. That is correct.

10 Q. Okay.

11 A. And also when the judge said that he didn't have to
12 charge the lesser-included offenses of -- it's on a issue
13 raised by the evidence it says that is an error if you do
14 not charge it because the jury needs to make sure that
15 they have every essential element to establish guilt. And
16 that was error on his part that was reversible, but she
17 didn't also put it in her brief or in her oral argument.

18 Q. And you would agree that that wasn't preserved?

19 A. That was not preserved. No, no -- the -- the -- that
20 was preserved. When the judge said he objected to
21 Mr. McMullen because of his lack of presentation on the
22 case law --

23 Q. Right.

24 A. -- he said, "Well, I don't have to charge it." So he
25 denied Mr. McMullen. So that was preserved. He told him

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 he was protected on the record.

2 So because it was protected on the record, Wanda
3 Carter had the opportunity to use it on direct appeal as a
4 reversible error. I could have won on the appeal level.
5 I should have won on the appeal level if it had not been
6 for that error.

7 Q. Okay. Did you have -- those are your -- I want to
8 make sure we get all the main issues before I ask my next
9 round of questions.

10 A. The other main issue I had was the trial counsel
11 failed to call into question the integrity of conflicting
12 testimony from the prosecution's witnesses. Detective
13 Platt and Investigator Zeigler had different testimonies
14 as when I was Mirandized in relation to when the supposed
15 incriminating statement was made.

16 Mr. McMullen was ineffective for failing to make use
17 of Zeigler's testimony on his direct and cross-examination
18 for the purpose of impeaching Detective Tommy Platt who
19 was the State's key witness. His failure prejudiced me
20 because it allowed the introduction of this incriminating
21 statement to stand on the record. And this influenced the
22 jury and the State's Supreme Court at the post-trial
23 level, that they used as an admission of guilt.

24 And -- excuse me. Detective Tommy Platt also had a
25 conflicting testimony with Ms. Linda Williamson who was

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 the actual woman from the photo that was used in the
2 Little Mandy profile by Detective Platt.

3 Q. And that was something that came out during trial that
4 y'all had been kind of surprised about -- that had been
5 withheld from y'all that they knew -- they actually used a
6 photo of somebody -- you didn't know that prior to it
7 being testified in trial, correct?

8 A. No, we didn't know it because we were the ones that
9 got Ms. Williamson to come to trial.

10 Q. Okay.

11 A. But what we didn't know was that it was going to be
12 two different stories as to how this photo was used.
13 Despite the vast differences in these two accounts
14 Mr. McMullen failed to highlight Detective Platt's
15 discrepancies who was trying to secure a conviction
16 against the testimony of a person who was actually in the
17 photo and she had no stake in the trial outcome. This
18 allowed inconsistencies to stand on the record and these
19 inconsistencies favored the State.

20 Detective Platt, the State's key witness, was in an
21 impeachable position that Mr. McMullen did not use to
22 attack his veracity of his claims being that his testimony
23 was the most vital to the State's case as he was a key
24 witness.

25 Detective Platt was obviously misleading by how he

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 obtained the photo, when he obtained the photo, and by
2 whether he actually had a lawful right to be using the
3 photo because everything that he said was contradictory to
4 Ms. Williamson who herself was the one that gave the photo
5 to an officer. Mr. Platt said he got it from her husband
6 and that turned out not to be true.

7 It also was true that she was no longer a law
8 enforcement officer at the time that this photo was being
9 used. She was no longer an officer as of 2001. And it
10 was 2006 when this investigation took place. So it's five
11 years after her no longer being a law enforcement
12 officer. Her photo was not supposed to even be used
13 anymore.

14 Q. And you felt like that not using that as impeachment
15 could -- or if he had used that as impeachment that could
16 have weighed on the jury's ability to determine his
17 credibility?

18 A. That is correct. That is correct. And with his
19 credibility in jeopardy, with that in conjunction with the
20 story that he told about the first line of the chat being
21 missing, with that in conjunction with him not even
22 remembering what I said, the statement he was trying to
23 put in, I believe all of those elements together would
24 have damaged his credibility and damaged a key witness and
25 allow me to get a favorable judgment on my behalf from the

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 jury.

2 Q. Okay. And, before I forget it because I wrote this
3 down and I want it covered. You and I have discussed that
4 -- well, because of your convictions you have collateral
5 consequences such as you have to register as a sex
6 offender and things like that?

7 A. Yes, ma'am.

8 Q. And you understand that what you're asking the Court
9 to do is to find that these errors prejudiced you so much
10 that you -- and you're asking this Court to vacate your
11 conviction and you're asking for a new trial,
12 understanding that you're not going to get credit for any
13 of the time that you've been arrested or done, that if you
14 get out that you will go -- you'll have to report like
15 it's a brand new case. You have to report to the jail.
16 You understand that, right?

17 A. I do understand.

18 Q. And that's what you're asking this Court to do,
19 correct?

20 A. What I'm asking for is a vacation of the conviction
21 and a vacation of the sentence, and if that's a part of it
22 that's a part of it.

23 Q. To start the whole process over, right?

24 A. Yes, ma'am.

25 Q. Okay.

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 THE COURT: Well, Mr. Green, I want to make sure you
2 understand.

3 THE APPLICANT: Okay.

4 THE COURT: I can't -- I mean, I can -- if I believe
5 the testimony, I can grant your post-conviction relief but
6 that means you just go back to square one. You're
7 still -- you would be charged -- you would still have to
8 go forward on the attempted criminal sexual conduct with a
9 minor and criminal solicitation and any other charges that
10 they might have regarding this; do you understand that?

11 THE APPLICANT: Just those two charges.

12 THE COURT: Yeah. This is not just I grant it and
13 your sentence is over with.

14 THE APPLICANT: Uh-huh.

15 THE COURT: Okay. And the likelihood of -- you know,
16 they won't release you immediately.

17 THE APPLICANT: I understand that.

18 THE COURT: I just want to make sure.

19 THE APPLICANT: Yes, sir.

20 THE COURT: You just go back and start all over
21 again.

22 THE APPLICANT: I understand. Yes, sir.

23 THE COURT: Okay. all right.

24 BY MS. ZMROCZEK:

25 Q. And I guess that's what I was trying to say, too, is

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 that, let's say if you get retried and they find you
2 guilty of a lesser included, but even though you've done
3 time that that would not count if you got time on your new
4 trial. You understand that, right?

5 A. I understand that.

6 Q. Okay. Good. And we're not trying to confuse you.
7 It's just sometimes -- and you're obviously a lot more
8 intelligent than a lot of people, probably, with whom
9 you're incarcerated. So I just wanted to make sure that
10 you did understand that.

11 A. I do understand that. I did have a question. Is it
12 okay to ask a question?

13 Q. Yeah.

14 A. I didn't know would I be able to enter this in an
15 exhibition?

16 Q. Exhibit?

17 A. Exhibit.

18 Q. We're going -- we have an expert, and that's why we're
19 going to --

20 A. Okay.

21 Q. Okay. Yeah.

22 A. I just wanted to make sure that got on the record.

23 Q. No, no, no. Yeah, that's fine. And what you were
24 asking about, you were able -- prior to you -- prior to
25 you being -- you were incarcerated once the trial started,

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 right? They revoked your bond?

2 A. Well, once the trial started I was out on bond and
3 then they revoked my bond. And I was incarcerated from
4 the second day of the trial.

5 Q. But you were -- you were able to, to inquire into
6 Yahoo regarding -- because you're -- as you said, one of
7 your biggest concerns was something didn't smell right.
8 Something wasn't right about these chats when they were
9 saying the lines were missing --

10 A. That's correct.

11 Q. -- and you were actually -- you did some inquiry into
12 Yahoo itself?

13 A. I wasn't able to until I got incarcerated --
14 convicted, and then I was able to contact my wife, and she
15 was able to contact the Yahoo technical department of
16 which two technical advisors actually told her that that
17 was a false statement and that Yahoo has always saved the
18 first line of every chat. It's designed that way and if
19 it didn't happen that way that something was wrong with
20 the computer software. And they also replicated and did
21 an example for her and found that out.

22 Q. And had you had an expert to testify, that would have
23 been presented at your trial?

24 A. That is correct.

25 Q. And that's why I want to make sure. We'll deal with

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 that --

2 A. Yes, ma'am.

3 Q. -- separate. Go ahead.

4 A. I had one other issue. The trial counsel failed to
5 contemporaneously object to trial judge's improper
6 comments made in the presence of the jury. On page 238 of
7 the transcript lines 10 through 21, Mr. McMullen did make
8 a reference to these improper remarks but that was not the
9 time that the remarks were made. These remarks were
10 actually made at the beginning of the trial at the jury
11 selection. And I do not know why those remarks aren't in
12 the transcript at that point, it's a little fishy to me,
13 but those remarks were made. I remember them.
14 Mr. McMullen remembered them. This is why he brought them
15 up during the closing arguments but he should have
16 objected to them at the time that they were made.

17 Counsel's failure not only allowed undue vouching of
18 the prosecution's credibility to be impressed upon the
19 jury, but counsel failed to properly preserve the issue in
20 the trial record and such comments constitute an error of
21 law and are inherently prejudicial.

22 And if preserved properly they could have been
23 addressed at the post-trial appellate level, won and
24 reversal on behalf the defendant/appellate.

25 Q. And it's your -- and what I expect Mr. McMullen to

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 testify to, these statements were made -- are you saying
2 that they were made by --

3 A. They were made by --

4 Q. -- the assistant attorney general --

5 A. -- the judge.

6 Q. -- or by Judge Early?

7 A. They were made by Judge Early.

8 Q. Okay.

9 A. In regards to the Aiken County Sheriff's Department
10 and the Solicitor of Aiken County at that time, he made a
11 comment I'll never forget. He said that he would hate to
12 be arrested and have to be prosecuted by the Solicitor of
13 Aiken County. And he shouldn't have said that. That
14 should have been objected to right then at that time.

15 THE COURT: And just -- I hate to interrupt, but I
16 got to get it. That is not -- you said he made those
17 comments and the jury --

18 THE APPLICANT: He made those comments in the
19 presence of the jury shortly after the complete jury had
20 been selected. And it is not in the transcript at the
21 point of which those comments were made.

22 BY MS. ZMROCZEK:

23 Q. Did he make it -- he made it to the entire jury pool?

24 A. He made it to the entire courtroom.

25 Q. Okay. That's what -- I think that that's why it's

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 probably not --

2 THE COURT: The jury was selected and seated?

3 THE APPLICANT: Yes, sir.

4 THE COURT: But that's not in the transcript?

5 THE APPLICANT: No, sir.

6 BY MS. ZMROCZEK:

7 Q. And the other jurors, the remaining jurors that
8 weren't selected were still in the courtroom?

9 A. No, no.

10 Q. They were not?

11 A. They were gone.

12 Q. But that's not been recorded?

13 A. That's not been recorded but Mr. McMullen did bring it
14 up in his closing arguments.

15 THE COURT: And that's at 238?

16 THE APPLICANT: Yes, sir. Page 238 lines 10 through
17 21.

18 THE COURT: Okay. All right.

19 BY MS. ZMROCZEK:

20 Q. And are there any other issues? I just -- I want to
21 make sure that we haven't left anything out.

22 A. The only other issue I have is similar to the
23 incriminating statement. Said counsel failed to properly
24 object to the use of the supposed incriminating statement
25 that was never submitted to the jury to determine the

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 voluntariness as required by law. And so, similar to the
2 other, other complaint, the Jackson versus Denno
3 complaint.

4 Q. Is it safe to say you have a couple of main issues.
5 One, that there was no expert to challenge what they were
6 saying?

7 A. Yes, ma'am.

8 Q. Two, that there was a big concern and lack of
9 preservation and lack of a charge regarding this statement
10 whatever it was --

11 A. Yes, ma'am.

12 Q. -- but, and that was relied upon by every stage of
13 this court?

14 A. Yes, ma'am.

15 Q. And then -- and then the other, just more detailed,
16 specific objections and -- by trial counsel, but then also
17 separately on appellate counsel, just a complete disregard
18 for almost the record and things that you had asked her to
19 preserve?

20 A. Yes, ma'am.

21 Q. Okay. I just wanted to make sure to kind of, to wrap
22 it all up. Mr. Green, please answer any --

23 THE COURT: Before, before you do that. The issues
24 that he gave appellate counsel, do I have those? Are
25 those set forth in the --

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 THE APPLICANT: It should be on the application.

2 THE COURT: Okay. Just to make sure.

3 THE APPLICANT: I had nine issues for the trial
4 counsel and six issues for the appellate counsel.

5 THE COURT: Okay. I've got your -- this is your
6 application?

7 THE APPLICANT: Yes, sir.

8 THE COURT: Okay. Let me just make sure. (Pause.)

9 Now you have a list that -- I see 10 -- I have
10 numbers 10.

11 MS. ZMROCZEK: Are you missing some pages?

12 THE COURT: I have numbers 10, 11 and 16. You don't
13 have a copier at the AG's office, do you?

14 MR. GOURLEY: You have pages, what, Judge?

15 THE COURT: When I have the addendum right here, I
16 have just -- I have numbers 10, 11, and 16. So I think
17 I'm missing something.

18 MR. GOURLEY: No. Judge, he's just referencing the
19 question on the PCR application.

20 THE COURT: Okay. All right. Oh, I see. Okay. I'm
21 with you. Okay. So, appellate counsel, number 10, I've
22 got those listed what you got for them. Okay.

23 THE APPLICANT: I did have one other issue.

24 THE COURT: Okay.

25 THE APPLICANT: It's the very first one. Is it okay

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 to say it now?

2 THE COURT: Oh, yeah, yeah. We're still live.

3 MS. ZMROCZEK: You're good.

4 THE APPLICANT: I want to make sure.

5 Trial counsel failed to request a jury instruction or
6 object to an improper instruction regarding the definition
7 of an intent. Counsel allowed an erroneous instruction on
8 intent that was devoid of the necessary present ability
9 element that is needed to prove an intent crime according
10 to the state law.

11 This failure by trial counsel to request -- object
12 prejudiced the trial outcome by not allowing the jury to
13 make an informed decision based on all the proper and
14 essential elements relevant to the charge of a -- excuse
15 me, attempted criminal sexual conduct with a minor in the
16 second degree. A decision more than likely would have
17 been in defense's favor considering that the jury would
18 have been able to determine that an essential element was
19 missing. This failure also prejudiced the outcome by not
20 allowing the issue to be preserved for appellate argument.

21 The trial court committed reversible error as it
22 failed to give a requested charge on the issue raised by
23 the evidence and because he didn't object to it and it
24 wasn't denied, then it wasn't preserved and it was a
25 reversible error. So we lost that opportunity.

BENJAMIN GREEN - DIRECT BY ZMROCZEK

1 He failed to adequately research the attempt charge
2 which he would have been able to provide the case law
3 needed to prove the proper elements that constitute an
4 intent even though he used a lack of present ability
5 element as his main point of defense. The proper
6 instructions would have enabled the jury to narrowly
7 conclude that the State could not prove the element of
8 present ability. This was a lack of research and
9 preparation which deprived the jury of vital information
10 and hindered it from ruling in my favor.

11 THE COURT: Mr. Green, do you mind showing me what
12 you're reading from?

13 THE APPLICANT: Yes, sir.

14 THE COURT: Are those your handwritten notes?

15 THE APPLICANT: Yes, sir. Would you like to see
16 them?

17 THE COURT: Okay. But that is the outline -- your
18 handwritten notes outlining all of your issues?

19 THE APPLICANT: Yes, sir. You can have it if you
20 want to.

21 MS. ZMROCZEK: We can make it a Court's Exhibit.

22 THE APPLICANT: Yeah, I don't mind that.

23 THE COURT: What I'd like to do is if you just send
24 me a copy. I want to make sure I got all of these things,
25 that we got everything covered.

BENJAMIN GREEN - CROSS BY GOURLEY

1 MS. ZMROCZEK: Yes, sir.

2 THE COURT: You can just provide me with a copy but
3 if you would note that as a Court's Exhibit. Court's
4 Exhibit 1, and then if you'd just make a copy for me.

5 (Court's Exhibit 1, Applicant's handwritten notes of
6 PCR issues, 6 pgs, received into evidence.)

7 THE COURT: Do you want a copy?

8 MR. GOURLEY: No, I'm writing everything down.

9 THE APPLICANT: Thank you, Your Honor.

10 MS. ZMROCZEK: Okay. Now, please answer any
11 questions that Mr. Gourley may have for you. Okay?

12 THE APPLICANT: Yes, ma'am.

13 THE COURT: Mr. Gourley, your witness.

14 MR. GOURLEY: Thank you, Judge.

15 MS. ZMROCZEK: And I'll make sure -- I'll ask the
16 clerk for a copy, too, just so I've got it.

17 THE APPLICANT: Thank you.

18 MS. ZMROCZEK: And because she's awesome.

19 CROSS-EXAMINATION

20 BY MR. GOURLEY:

21 Q. Mr. Green, how many times did you meet with
22 Mr. McMullen before you all went to trial?

23 A. If my memory serves me correct, I would say maybe four
24 or five times --

25 Q. Okay.

BENJAMIN GREEN - CROSS BY GOURLEY

1 A. -- over a little over a two-and-a-half-year period.

2 Q. And were you out on bond or were you --

3 A. Yes, sir.

4 Q. And did these meetings take place at his office?

5 A. Yes, sir.

6 Q. And during those meetings did y'all have the
7 opportunity to go over the State's evidence against you?

8 A. What was provided at the time, yes, sir.

9 Q. Okay. And did you give him any kind of leads or
10 witnesses to look into?

11 A. Witnesses?

12 Q. Yeah.

13 A. No, sir.

14 Q. Okay. And did y'all talk about any kind of defense to
15 this charge?

16 A. Yes, sir.

17 Q. And what was that?

18 A. At the time I believe it was the no-present-ability,
19 entrapment. I think that was it that I can remember.

20 Q. Okay. Well, let's talk about the factual situation
21 here. You stated on direct that you were on the group
22 chat message, right?

23 A. Can you repeat that again?

24 Q. You stated on direct that you were in this group chat
25 message having a bunch of conversations going on?

BENJAMIN GREEN - CROSS BY GOURLEY

1 A. Yes, sir.

2 Q. Okay. And then you contacted Little Mandy South
3 Carolina 14?

4 A. That is correct.

5 Q. Okay. And what happened in that initial conversation
6 that supposedly is missing?

7 A. Well, I was just asking how they were doing.

8 Q. Okay.

9 A. What were you up to.

10 Q. Okay.

11 A. And what kind of things are you into, you know.

12 Q. Okay. And then the conversation turned sexual?

13 A. That it did.

14 Q. Okay. And you began to ask her whether or not she had
15 ever slept with a black man?

16 A. I did.

17 Q. And then you indicated to her that you wanted to sleep
18 with a white girl, right?

19 A. I indicated something to that nature, yes, sir.

20 Q. Okay. And that you also indicated that you had slept
21 with a 16-year-old, the youngest girl that you ever slept
22 with?

23 A. Yes, sir.

24 Q. And then you also provided her pictures of your face
25 and two pictures of your penis?

BENJAMIN GREEN - CROSS BY GOURLEY

- 1 A. Yes, sir, that is correct.
- 2 Q. Okay. And then y'all had arranged to meet up at a
3 location, correct?
- 4 A. Arranged to meet at a location. Yes, sir.
- 5 Q. And then later on you drove to that location, right?
- 6 A. I did drive to that location.
- 7 Q. And as part of that meeting you agreed to bring some
8 liquor and a DVD and you also had some condoms and some
9 kind of herbal pill with you as well?
- 10 A. No, I didn't have an herbal pill.
- 11 Q. Okay. But you had your DVD, White Chicks, right?
- 12 A. Yes, sir. White Chicks.
- 13 Q. White Chicks and rum?
- 14 A. Yes, sir.
- 15 Q. And you drove to this location that you had agreed to
16 meet LittleMandySC14 on, right?
- 17 A. That is correct.
- 18 Q. And she told you that she was a 14-year-old girl in
19 that conversation, right?
- 20 A. The person did say that. Yes, sir.
- 21 Q. Okay. So why did you go to this location to meet with
22 LittleMandySC14?
- 23 A. Just for what it said in the conversation, to watch
24 movies and drive around.
- 25 Q. But it also said in the conversation that you wanted

BENJAMIN GREEN - CROSS BY GOURLEY

1 to have sex with her and you sent her pictures of your
2 penis?

3 A. Actuall the question was "would you." That's a
4 hypothetical question, but the State interpreted it how
5 they wanted to interpret it.

6 Q. But you said --

7 A. I --

8 Q. -- if you wanted to --

9 THE COURT: Let him answer. She's having a hard time
10 copying it down if y'all are both talking over each
11 other. If you just let Mr. Green answer and you can
12 follow back up. Okay? I'm sorry, Mr. Green.

13 THE APPLICANT: Uh-huh.

14 THE COURT: If you'd just continue with your answer.

15 THE APPLICANT: I never testified during the trial so
16 I was never really given the -- well, I can't say I was
17 given the opportunity but I did not take the opportunity
18 to give my point of view on how to interpret my own
19 words. So the State presented my own to words how they
20 wanted to interpret them.

21 So the question was, "Would you sleep with me?" I
22 did ask that question but that question was not "Will
23 you'll sleep with me?" It was a hypothetical question
24 which is a question that I've asked many times in my life
25 and not had a problem with interpretation.

BENJAMIN GREEN - CROSS BY GOURLEY

1 Q. Do you make it a habit to ask 14-year-old girls, "Will
2 you sleep with me"?

3 A. Not 14-year-old girls, no, sir, but I have asked
4 females that before.

5 Q. But you did in this situation?

6 A. Yes, I did ask that question in this situation.

7 Q. And you showed up at this undisclosed location with
8 condoms, DVDs and liquor, right?

9 A. Yes, sir.

10 Q. To meet this 14-year-old girl?

11 A. That is correct.

12 Q. Okay. And the issue with your statement. What
13 happened that night when you got out of the car in your
14 own words?

15 A. When I got out of the car that night they walked me
16 over to the police car and then they Mirandized me and
17 then put me in the police car and then they began to ask
18 me some personal questions.

19 Q. Did you ever make the statement that you were there to
20 see them?

21 A. No, not then, no.

22 Q. When did you make that statement?

23 A. I made that statement when they flashed the light in
24 the car and I rolled the window down and they said, "What
25 are you doing here?" I said, "I don't know." They said,

BENJAMIN GREEN - CROSS BY GOURLEY

1 "Well, who are you here to see?" I said, "I'm guess I'm
2 here to see you."

3 Q. Okay. And at that point they got you out of the car
4 and then they took you to the police officer's car and
5 Mirandized you?

6 A. That is correct.

7 Q. Okay. So that's kind of conformed with what, I guess,
8 Mr. Zeigler said but not what Mr. Platt says?

9 A. That is correct.

10 Q. And you wanted your witness or your attorney to
11 impeach Mr. Platt?

12 A. That is correct.

13 Q. Okay. But Mr. Platt had already testified, right?

14 A. That is correct.

15 Q. Okay. And you also wanted your attorney to impeach
16 Mr. Platt with Ms. Williams' statement, right?

17 A. Uh-huh.

18 Q. And Ms. Williams is the one who provided the picture
19 to be LittleMandySC14, right?

20 A. That is correct.

21 Q. So you wanted your attorney to, what, recall Mr. Platt
22 to then cross-examine him or directly examine him on these
23 issues, because he's already testified?

24 A. That is correct, but he already testified that -- the
25 impeachable testimony comes after Mr. Platt.

BENJAMIN GREEN - CROSS BY GOURLEY

1 Q. Okay.

2 A. And so now that you've, you've direct and cross-
3 examined two other individuals both whose testimony
4 conflict with the Detective Platt.

5 Q. Right.

6 A. And move to impeach.

7 Q. That's inconsistent, right?

8 A. Yes, sir.

9 Q. And don't you think those inconsistencies were brought
10 out through the testimony of Mr. Zeigler and Ms. Williams?

11 A. No, he didn't bring them out the way they were
12 supposed to be brought out. Just because they were
13 brought out, he still has a responsibility to use their
14 testimony for impeachable purposes.

15 Q. But you would agree with me that there was
16 inconsistent statements between Mr. Platt, Mr. Zeigler and
17 Ms. Williams throughout that trial?

18 A. That is correct.

19 Q. And the jury heard those inconsistent statements,
20 right?

21 A. Yes, they did.

22 MR. GOURLEY: Okay. Judge, I don't have any other
23 questions. Thank you, Mr. Green.

24 THE COURT: Anything on --

25 THE APPLICANT: Thank you, sir.

BENJAMIN GREEN - REDIRECT BY ZMROCZEK

1 MS. ZMROCZEK: Just briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. ZMROCZEK:

4 Q. Mr. Green, Mr. Gourley asked you about the pictures
5 that -- you said a picture of your face and two of your
6 penis, but was that picture of your face ever presented to
7 the jury?

8 A. No, sir -- I mean, excuse me. No, ma'am.

9 Q. That's okay.

10 A. No, ma'am.

11 Q. And do you recall why?

12 A. They said they didn't know why. They said they didn't
13 know where it was at.

14 Q. They didn't know where it was at?

15 A. If I remember correctly when they was asked where was
16 that picture they said they didn't know where it was at.

17 Q. And so either they lost it or they nobody could find
18 it, but it was not -- the pictures of your anatomy were
19 presented to the jury?

20 A. That is correct.

21 Q. Okay. And had you told your trial counsel that that
22 was -- did y'all talk about the chats beforehand?

23 A. Yes, we did.

24 Q. In preparation for trial?

25 A. Yes, we did.

BENJAMIN GREEN - REDIRECT BY ZMROCZEK

1 Q. And did he ask you, "Why did you ask that"?

2 A. Why did I ask what?

3 Q. That hypothetical question. Did you tell him it was a
4 hypothetical question?

5 A. Oh. Yes, yes.

6 Q. Okay.

7 A. He didn't ask me why I asked it, but we did talk about
8 that question.

9 Q. And you told him it was a hypothetical?

10 A. Yes, ma'am.

11 Q. Was that -- did he cross-examine -- could that have
12 been a hypothetical?

13 A. Yes.

14 Q. And that was brought out in the testimony?

15 A. Yes, it was.

16 Q. Okay. Thank you, Mr. Green. I have no further
17 questions.

18 THE COURT: Anything on recross?

19 MR. GOURLEY: No, Judge.

20 THE COURT: Thank you, sir. You can step down.

21 THE APPLICANT: Thank you.

22 THE COURT: All right.

23 MS. ZMROCZEK: Your Honor, one more witness.

24 THE COURT: Go ahead.

25 MS. ZMROCZEK: Well, actually two but kind of one. I

CHRISTOPHER J WATKINS - DIRECT BY ZMROCZEK

1 call Christopher Watkins

2 CHRISTOPHER JAMES WATKINS, having been duly sworn was
3 examined and testified as follows:

4 THE CLERK: Have a seat. State your name for the
5 record.

6 THE COURT: Mr. Watkins, you need to speak up.

7 THE WITNESS: Yes, sir.

8 THE COURT: You're the IT man?

9 THE WITNESS: Yes, sir.

10 THE COURT: Go ahead.

11 THE WITNESS: My name's Christopher James Watkins.

12 DIRECT EXAMINATION

13 BY MS. ZMROCZEK:

14 Q. Mr. Watkins, where are you employed?

15 A. Stillenger Investigations.

16 Q. And how long have you been there?

17 A. Since February of 2010.

18 Q. What are your job duties?

19 A. I am criminal defense investigator and digital
20 forensics analyst.

21 Q. And digital forensics?

22 A. Yes, digital forensics analyst.

23 Q. What is digital forensics?

24 A. Digital forensics is an area of forensic science that
25 deals with the securing and preserving of digital evidence

CHRISTOPHER J WATKINS - DIRECT BY ZMROCZEK

1 that can be found on all kinds of digital mediums.

2 Q. And what's your education and training in this field?

3 A. So I come from an IT and computer science background.

4 Studied originally at the Lexington Technology Center,

5 Lexington -- I'm sorry, Midlands Technical College. Was

6 also certified as a general technician.

7 Q. Let me ask you this. Are there degrees or

8 certifications in digital forensics or is it a different

9 kind of science?

10 A. Yes.

11 Q. Okay. Is it -- what is an applied science?

12 A. Well, digital forensics is an applied science.

13 Q. Okay. And what does that mean?

14 A. It means you're applying areas from other sciences

15 to -- such as from information technology and computer

16 science into the field of digital forensics.

17 Q. And how long have you been doing digital forensics?

18 A. 2010.

19 Q. Okay. Do you have any other memberships or

20 certifications?

21 A. I'm a member of the American Society of Digital

22 Forensics and Media Discovery.

23 MS. ZMROCZEK: Your Honor, at this time we would --

24 oh. Sorry.

25 Q. Have you ever been certified as an expert or testified

CHRISTOPHER J WATKINS - DIRECT BY ZMROCZEK

1 as an expert in digital forensics before?

2 A. Yes. I've been qualified as an expert in South
3 Carolina Family Court, Circuit Court and United States
4 Federal Court.

5 MS. ZMROCZEK: Your Honor, at this time we would move
6 to certify, or --

7 THE COURT: Qualify him as an expert in digital
8 forensic analysis?

9 MS. ZMROCZEK: Yes. Thank you.

10 THE COURT: That's what I'm here for.

11 MR. GOURLEY: Judge, I don't have any objection.

12 THE COURT: All right. I will note that Mr. Watkins
13 is board qualified as a digital forensic analysis --
14 analyst.

15 Okay. I'm going to get there. It's Friday. I'm
16 sorry.

17 MS. ZMROCZEK: Amongst the three of us we will get
18 it.

19 THE COURT: Eventually we will get to the right
20 word. Okay. Go ahead.

21 BY MS. ZMROCZEK:

22 Q. Mr. Watkins, what did your investigation -- how did
23 you become revolved in this case?

24 A. I received funding requests or funding orders from
25 your firm, A to Z Law Firm.

CHRISTOPHER J WATKINS - DIRECT BY ZMROCZEK

1 Q. How would a digital forensics specialist have assisted
2 Mr. Green in his defense or in his trial, or his counsel
3 in trial?

4 A. Okay. So, upon review of his discovery in this case I
5 documented several, several different areas that a digital
6 forensics specialist -- would have been helpful in this
7 case.

8 So three -- I'm going to give three main focal points
9 and then I'll give details for each one of those. So the
10 three focal points that I found that a digital forensics
11 specialist would have been necessary and it deals with the
12 archive Yahoo Messenger chat log and the investigation
13 that created that log; Defendant's Sony Erickson cell
14 phone; and Defendant's computers.

15 So I'll start with the archived Yahoo Message chat
16 log. So, reviewing this chat log I saw that there's four
17 messages at the end of the chat, at the end of the log at
18 the very bottom, and they're consistent with the messages
19 that appear on the Yahoo Messenger app on the Sony
20 Erickson phone.

21 Q. What is -- and I'm going to stop you right there. I'm
22 sorry. Your Honor, would it -- it just occurred to me
23 that we're talking about these and you haven't seen it.
24 Would it assist the Court if I made this a Court's
25 exhibit?

CHRISTOPHER J WATKINS - DIRECT BY ZMROCZEK

1 THE COURT: Let Mr. Gourley see what you're talking
2 about. We might be able to move it along a lot easier.

3 (Ms. Zmroczek hands document to Mr. Gourley.)

4 THE COURT: That was supposedly an exhibit at trial?

5 MR. GOURLEY: Supposedly. If that's the case I won't
6 have any objection to it.

7 THE COURT: Okay

8 MS. ZMROCZEK: Yeah, it was State's 1?

9 MR. GOURLEY: Actually, it's State's 12.

10 THE COURT: State's 12 at trial?

11 MS. ZMROCZEK: Yes.

12 MR. GOURLEY: I don't have an objection.

13 THE COURT: This was State's 12 at trial?

14 MS. ZMROCZEK: It was State's 12 at trial, Your
15 Honor. And we'll mark it as?

16 THE COURT: Applicant's 1?

17 MS. ZMROCZEK: Yes.

18 THE COURT: Okay.

19 (Applicant's Exhibit No. 1, chat log, marked for
20 identification and received into evidence.)

21 BY MS. ZMROCZEK:

22 Q. And Applicant's 1, which we're moving into evidence,
23 is that the chat that you're referring to?

24 A. Yes, it is.

25 Q. Okay. And would that help explain what you're talking

CHRISTOPHER J WATKINS - DIRECT BY ZMROCZEK

1 about?

2 A. Absolutely.

3 Q. Okay. Thank you. Go ahead.

4 A. All right. So the four messages that we see in this
5 picture here are at the bottom of --

6 Q. Judge, I ask him to hand it to you just so you can see
7 what he's talking about.

8 A. They're at the bottom of the chat log. And what I
9 noticed about these four messages that appear in the chat
10 log is two of the four are out of chronological order.

11 And that's unusual because the Yahoo Messenger

12 automatically stores, it saves the lines in the archive in
13 chronological order. So I thought that that was odd.

14 So one or more of the lines in the Yahoo Messenger
15 chat between the two users, Blackslider and
16 LittleMandy14SC, are missing or appear to be missing. And
17 then I observed in the transcript, you know, Investigator
18 Platt stated that the first line of the chat could not be
19 saved and that the first line of any chat could never be
20 saved. And I found that unusual as well because I've used
21 Yahoo Messenger since, since it's originated and that's
22 never been the case.

23 Q. And that -- I believe that was the testimony that was
24 referred to at page, on page 110 where he stated that they
25 don't, that Yahoo Messenger doesn't --

CHRISTOPHER J WATKINS - DIRECT BY ZMROCZEK

1 A. Yahoo, yes, where he stated that the first line of the
2 chat could never be recorded.

3 Q. Okay. And Your Honor, that's reflected in the record
4 at page 110 beginning at lines 12.

5 THE COURT: Okay.

6 MS. ZMROCZEK: Or, sorry. Eight. Thank you.

7 THE WITNESS: Okay. Also one of the -- the picture
8 of the Defendant was never received by the defense, and it
9 was indicated to have been sent during that chat.

10 According to the trial transcript -- or, yeah, the
11 trial transcript, Investigator Platt stated that he didn't
12 know where the picture was. When pictures are received in
13 Yahoo Messenger they're automatically stored in the same
14 directory. So I found that odd as well that it was either
15 missing or could not be located.

16 BY MS. ZMROCZEK:

17 Q. And you're talking about the picture of the face that
18 was never --

19 A. The -- yeah.

20 Q. You said it was --

21 A. Yes. The picture of the face was not received by the
22 defense.

23 Q. And that's on page 118 of the trial transcript?

24 THE COURT: Okay.

25 THE WITNESS: So, a defendant -- or a digital

CHRISTOPHER J WATKINS - DIRECT BY ZMROCZEK

1 forensics specialist would have been helpful to recommend
2 subpoenas to the Aiken County Sheriff's Department for,
3 one, to find out the version of the Yahoo Messenger
4 software, a copy of the archived folder containing the raw
5 chat log history and any received pictures and also any
6 bench notes or any notes that they took during their
7 investigation.

8 Q. Hang on. And is that what you are, that's what you
9 are going to do on Monday. You had some trouble
10 locating -- you had some trouble trying to find out where
11 these items were located, correct?

12 A. Yes, it was a little bit confusing.

13 Q. And but it's now been resolved and that you're going
14 to SLED on Monday to be able to do that?

15 A. Yes. I was informed by Special Agent Mark Hay that he
16 would notify me when they're ready to be reviewed.

17 THE COURT: Let me ask a question. I'm not trying
18 to -- if he's going to do this on Monday, wouldn't it be
19 better for me to have him testify after he's done
20 everything?

21 MS. ZMROCZEK: That -- and, Your Honor, that's kind
22 of what -- that's kind of what we were discussing last
23 night. And we were trying to figure out what the Court
24 would prefer.

25 THE COURT: Well, I'd rather him --

CHRISTOPHER J WATKINS - DIRECT BY ZMROCZEK

1 MS. ZMROCZEK: Be able to present it all --

2 THE COURT: -- be able to do everything and then come
3 back and present it all to me in a more -- I mean, not
4 that he's not doing a good job now but, you know --

5 MS. ZMROCZEK: It would be more complete and save
6 time.

7 THE COURT: -- it would be complete and he could
8 answer the questions rather than just suppose about the
9 questions.

10 MS. ZMROCZEK: Okay.

11 THE COURT: So.

12 MS. ZMROCZEK: If the State doesn't have an
13 objection.

14 MR. GOURLEY: No, sir, Judge.

15 THE COURT: What I'd like to do is, Mr. Watkins, I'm
16 going to get you to step down and I'm going to get you
17 back in front of me once you've completed your
18 investigation.

19 THE WITNESS: Okay. Yes, sir.

20 THE COURT: All right.

21 MS. ZMROCZEK: Okay. And then -- and the only reason
22 that we had the special agent here was to make sure that
23 all of that evidence was preserved and that --

24 THE COURT: Okay.

25 MS. ZMROCZEK: -- and so I believe putting him up

1 would be moot at this point.

2 THE COURT: And he's been here and he's been enjoying
3 it. I can see that happy look on his face. And if we
4 need you later on, you know, we'll bring you back, have
5 another hearing.

6 UNIDENTIFIED SPEAKER: Okay.

7 THE COURT: All right. I'm going to let you step
8 down. Okay? So.

9 MS. ZMROCZEK: And then that would be our
10 presentation, Your Honor.

11 THE COURT: All right. Now, since we've got to do
12 that, are we going to have the attorney testify after
13 that? To me it makes sense but y'all tell me what you all
14 want to do.

15 MR. McMULLEN: Let's do it now if we can.

16 THE COURT: Okay.

17 MS. ZMROCZEK: And what I believe the gist of his
18 testimony as far as we're concerned, Your Honor, is just
19 that he didn't do this.

20 THE COURT: Okay.

21 MS. ZMROCZEK: So I don't know that we'll be able
22 to --

23 THE COURT: All right. Come on down.

24 MICHAEL D. McMULLEN, having been duly sworn, was
25 examined and testified as follows:

MICHAEL D McMULLEN - DIRECT BY GOURLEY

1 THE CLERK: Have a seat state your name for the
2 record, please.

3 THE WITNESS: Michael D. McMullen.

4 THE COURT: Your witness.

5 MR. GOURLEY: Thank you, Judge.

6 DIRECT EXAMINATION

7 BY MR. GOURLEY:

8 Q. Mr. McMullen, how long have you been practicing law,
9 sir?

10 A. Since 1992.

11 Q. And you were retained in this case?

12 A. Yes, sir.

13 Q. And how many times did you meet with Mr. Green?

14 THE COURT: Hold on one second. Gentlemen, I don't
15 mind y'all talking, but I'd rather y'all talk out there.

16 UNIDENTIFIED SPEAKER: Sorry, Judge.

17 THE COURT: Thank you. Okay.. Go ahead.

18 BY MR. GOURLEY:

19 Q. How many times did you meet with Mr. Green prior to
20 his trial?

21 A. At least five or six, maybe more. But we also spoke
22 on the phone quite frequently.

23 Q. Okay. Did you file Rule Five and Brady motions?

24 A. Yes, sir.

25 Q. And did you have the opportunity to review that

MICHAEL D McMULLEN - DIRECT BY GOURLEY

1 material with Mr. Green?

2 A. Yes, sir.

3 Q. And did you discuss the elements and the charges of
4 what the State would be required to prove?

5 A. We did.

6 Q. Okay. And can you briefly discuss Mr. Green's version
7 of the factual events?

8 A. Sure. Our position was that Mr. Green went there to
9 see what he would find, basically that the person on the
10 other end is always kind of an unknown entity. And he
11 even said in the chat, the part that we do have, you know,
12 "When I get there I won't force you to do anything. I
13 won't pressure you to do anything. We don't have to do
14 anything if you don't want to."

15 And, it seemed to me that that didn't rise to the
16 level of intent. And that since there was no person who
17 showed up, since it was an officer that, you know -- I
18 compared it in the trial to somebody who thinks they're
19 going to go meet somebody on a blind date, doesn't like
20 what they see and just keeps walking. That was kind of
21 his intention is if he got there and it was a child of 14
22 that he would not have, you know, gone any further.

23 Also, when we first met -- we met here when he first
24 got arrested and then we met in my office a week later, it
25 was a Friday. And when we first met the -- we got online

MICHAEL D McMULLEN - DIRECT BY GOURLEY

1 and we looked at this profile and they had a photograph
2 that was later removed but thank goodness I printed out
3 that photograph because the State never provided it to
4 me. And it was a photograph of this woman, Linda
5 Williamson, who I learned later was a probation officer
6 and who was 24 at the time the photo was taken.

7 Q. Right.

8 A. And so we thought that a jury would have a hard time
9 convicting a guy of mistaking a 24-year-old for a 14-year-
10 old.

11 Q. Uh-huh.

12 A. So, but as far as his actions, that's -- I think I've
13 answered what you asked.

14 Q. Yes, sir. And is that the reason why you called
15 Ms. Williamson in defense?

16 A. Yes. We had a pretty tough time finding her but the
17 State sure didn't provide any of that information to us.

18 Q. Yes, sir. And Mr. Green has alleged that you were
19 ineffective for failing to impeach Mr. Platt, I guess,
20 with the inconsistent statements of Mr. Zeigler and then
21 again Ms. Williams later on. Were you in any way
22 interested in calling Mr. Platt in defense to impeach him
23 with some minor inconsistencies?

24 A. No, sir. I really didn't see the value of that.

25 Q. Okay. There was a stipulation on the record as well;

MICHAEL D McMULLEN - DIRECT BY GOURLEY

1 is that correct?

2 A. Yes.

3 Q. And can you kind of briefly tell the Court about why
4 you stipulated to it and what you stipulated to?

5 A. Yes. I mentioned a moment ago that we met the first
6 time when he was not incarcerated, we met in my office on
7 a Friday. Apparently he had been in a chat conversation
8 with somebody who was 17-years-old right before our
9 meeting because -- and he said on that thing, "Hey, I got
10 to go. I got to go meet with my lawyer." I think our
11 meeting was at noon.

12 But, when SLED seized the computer -- they apparently
13 left it there long enough for him to do that a week
14 later. When SLED seized the computer and when we said we
15 were going to go to trial they said, "Well, we've got news
16 for you, we're going to introduce this, too, under Lyle."
17 And it was page 201 of the transcript, the stipulation was
18 on October 25, 2061, which is a typo, on black top
19 e-Machine Computer was seized from the Defendant's
20 residence. They give the address.

21 The Defendant used that computer on October 13th,
22 2006, to chat with LittleMandy14SC on the Yahoo service
23 provider. The Defendant also used that computer on
24 October 20th to chat with one known as Jenny -- or I'm
25 sorry, JSEXXXY. That's three Xs, on AOL. During 20 --

MICHAEL D McMULLEN - DIRECT BY GOURLEY

1 October 20, 2006, chat the Defendant and JSexxy88S just
2 goes to meeting to engage in sexual activity. And she
3 stated her age to be 17.

4 During that chat the Defendant stated, quote, I got in
5 trouble before so I'm scared, end of quote. Next the
6 computer was analyzed and State's Exhibit 17 was
7 generated. The photos in State's Exhibit 1 and 2 which
8 you saw yesterday were consistent with the photos located
9 on the computer. And then -- I mean, that's the
10 stipulation.

11 We agreed, the prosecutor and I, with the judge's
12 blessing, I guess, agreed that's as much Lyle evidence as
13 would come in. And we did it in the form of a
14 stipulation.

15 Q. And why did you do it in the form of a stipulation?

16 A. Well, I thought it was terribly damaging testimony and
17 that the less said about it the better.

18 Q. Okay. Mr. Green has also alleged that you failed to
19 hire an expert, forensic expert to look into the chats and
20 the chat logs and everything like that. Can you kind of
21 explain why you did or did not choose to do that?

22 A. Well, the budget wasn't there for it.

23 Q. Uh-huh.

24 A. I believe the fee was 7,500, not 10,000 but if he says
25 10,000 that could be true. But the family was out of

MICHAEL D McMULLEN - DIRECT BY GOURLEY

1 money and was doing the best they could, I think, to make
2 my payments. And then, you know, I just am not in a
3 position of paying for the experts and being a lawyer.

4 Q. Right. Okay. And did you explain that to Mr. Green?

5 A. Well, I'm not sure we really thought it was an
6 important -- he brought it up, like he said before, he
7 brought it up once the trial had commenced.

8 Q. Okay.

9 A. But now having said all of that, I was basically going
10 to use their experts and hopefully educate myself enough
11 to do that effectively.

12 Q. Okay. And of course during the trial you cross-
13 examined Investigator Platt and the experts from the State
14 about the lack of the first sentence from the Yahoo
15 Messenger, right?

16 A. Yes.

17 Q. And also the lack of the facial photograph of
18 Mr. Green, correct?

19 A. I don't remember that part, but --

20 Q. Okay.

21 A. -- in a pretrial motion --

22 Q. That's correct.

23 A. -- page 33 of the transcript I made a big deal with
24 the Court about the rule of completeness and that I didn't
25 care if it was one line missing or a hundred, that we

MICHAEL D McMULLEN - DIRECT BY GOURLEY

1 weren't getting the complete conversation. And so the
2 thing, the whole thing should be kept out.

3 You know the rest of that story.

4 Q. Okay.

5 MR. GOURLEY: Beg the Court's indulgence, Your Honor.

6 THE COURT: Okay.

7 BY MR. GOURLEY:

8 Q. Regarding the Jackson v. Denno, in your opinion was
9 there any question that the statement was voluntarily
10 given?

11 A. I was confused as to the statement because of the
12 discrepancies and -- but I think that Mr. Green agreed
13 that he said he was there to meet that person.

14 Q. Right.

15 A. And then they confronted him with the phone record
16 that you saw earlier.

17 Q. Right.

18 A. They knew they were talking to the same person.

19 Q. Right.

20 A. And then the seizure of the computer at his house
21 proved that as well.

22 Q. Okay. And you mentioned the phone records. Mr. Green
23 actually had his phone on him with the messenger pulled up
24 when he arrived at the scene; is that correct?

25 A. That's my understanding. Yes, sir. And he gave

MICHAEL D McMULLEN - DIRECT BY GOURLEY

1 consent to search his car.

2 Q. Okay.

3 A. Oh. And by the way, the movies were comedies.

4 Q. Right. And those were unique as discussed or she
5 wanted a comedy to be brought, LittleMandy did?

6 A. Or it was his idea. I think -- I think that the
7 persona was trying to get him to bring pornographic
8 material to enhance their case and he chose to get White
9 Chicks which is -- it had one of the Waylan brothers in
10 it.

11 Q. Yes, sir. Regarding Judge Early's comment to the
12 jury, can you kind of elaborate on that just a little bit?

13 A. Sure. When the whole panel was in here, the whole
14 venire, however you say that, when they were all here, the
15 Judge recognized Bill Weeks. He recognize the solicitor,
16 the sheriff, the solicitor's office. And he said, "If I
17 committed a crime in Aiken County I sure wouldn't want to
18 have to go to trial with Bill Weeks and this crowd."

19 Q. Uh-huh.

20 A. As if to say the only way you're going to go on trial
21 is if you're guilty.

22 Q. Right.

23 A. If I committed the crime. And then I didn't feel that
24 was a great way to start the week by my objecting to that,
25 plus the case had not yet been called.

MICHAEL D McMULLEN - DIRECT BY GOURLEY

1 Q. Uh-huh.

2 A. So, but I did refer to it in my closing and something
3 like, you know, when the compliments were being handed out
4 we didn't get one.

5 Q. Right. Was the entire jury -- just Mr. Green's
6 eventual jury panel was here or was the entire jury voir
7 dire?

8 A. Everybody who had been summoned for jury duty.

9 Q. Okay. So qualification and everything hadn't taken
10 place and jury selection hadn't taken place?

11 A. Correct.

12 Q. Okay. So Judge Early made that comment to everybody,
13 not just Mr. Green's specific jury panel?

14 A. Correct.

15 Q. Okay. How many juries were being picked that day?

16 A. One.

17 Q. Just your jury?

18 A. Yes, sir.

19 Q. What kind of investigation or preparation did you do
20 for this case?

21 A. I did a lot of legal research and a lot of planning
22 on, you know, what to ask the different witnesses, the box
23 that's in front of counsel for the Defendant is the box I
24 assembled. And it's -- it's, I think, evidence of a lot
25 of work. I mean, it was a lot of issues here.

MICHAEL D McMULLEN - CROSS BY ZMROCZEK

1 Q. Right. Do you think you were prepared for trial to
2 the best of your abilities?

3 A. Yes, sir. I mean, you have to stop somewhere.

4 Q. Yes, sir. Okay.

5 A. I wasn't thrilled when I had been told the trial would
6 begin on Monday -- I mean, on Tuesday. And then I get a
7 call from the attorney general saying the Judge wants us
8 to go down there right now.

9 Q. Uh-huh.

10 A. And our motions would be heard Monday afternoon.

11 Q. Right.

12 A. And then when we were in the back he said, "How long
13 do you think the motions will take?" And I said "Most of
14 the morning tomorrow." And he says, "Oh, hell no, they
15 won't. You got an hour today."

16 Q. Yes, sir.

17 A. But I was just as prepared as I could be. I just
18 wasn't prepared for that.

19 Q. Yes, sir. Okay. Judge, that's all the questions I
20 have. Thank you, Mr. McMullen.

21 THE COURT: All right. Ms. Zmroczek?

22 MS. ZMROCZEK: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MS. ZMROCZEK:

25 Q. Mr. McMullen, you graciously provided me this entire

MICHAEL D McMULLEN - CROSS BY ZMROCZEK

1 box. That was all your research, right?

2 A. Yes, ma'am.

3 Q. Okay. And you, you prepared -- and you would agree
4 that Mr. Green was able to -- he was knowledgeable in
5 computers and was able to kind of, to talk to you about
6 what he thought some of the issues were as well, right?

7 A. Yes. Yes, ma'am.

8 Q. But you would agree now, of course, now knowing -- not
9 just because of the outcome of the trial but because of
10 how the testimony ended up being presented, that having an
11 expert, some sort of expert in digital forensics instead
12 of trying to learn it yourself would have, would have
13 helped not only helped you but made a difference in your
14 ability to cross-examine and to point out specific errors
15 that the State had, correct?

16 That was a very long question.

17 A. I think -- yes. I think what we're getting to is
18 whether that conversation was complete or not. And I
19 suppose, yes, that an expert might have been able to show
20 that more than one line was missing, or that the first
21 line is capturable. But now I did make those arguments
22 that there are other ways to capture a first line: They
23 could have written it down; they could have taken a
24 photograph of the screen; they could have printed the
25 button screen shot, print screen. They could have done

MICHAEL D McMULLEN - CROSS BY ZMROCZEK

1 other things besides just say the first line's not
2 available. And I thought that that, you know, should have
3 sufficed.

4 Q. But you would agree that you, regardless of your
5 ability to kind of research yourself, that having specific
6 technical knowledge could make a difference?

7 A. Sure. If his family could have afforded money for an
8 expert I would have tried to find one.

9 Q. And, I guess, during the trial is when you said that
10 he had asked, "Wait, we need an expert". And at that time
11 you were in the middle of trial, right?

12 A. Yes.

13 Q. Okay. You didn't ask for a continuance?

14 A. No, ma'am.

15 Q. Okay. And, when -- you talked a little bit about the
16 stipulation. Why did you advise Mr. Green to sign a
17 stipulation on that secondary chat to be admitted because
18 the State -- you knew that the State wanted to use it as
19 evidence of guilt, right?

20 A. I think that's the only reason, yes, that they would
21 have put it in.

22 Q. And so what was -- what was -- what was the reason
23 that you advised him to sign that stipulation?

24 A. I felt certain under Lyle it would come in because if
25 nothing else the identity and -- you know, identity of the

MICHAEL D McMULLEN - CROSS BY ZMROCZEK

1 person in that chat room on the 13th was also the identity
2 of the person chatting on the 20th. And, you know, they
3 had him saying, "I'm going to visit with my lawyer now."
4 I mean, I think they had it pretty well locked up that
5 Mr. Green was the person on the other end of that and then
6 they had the photographs. It just seemed like the longer
7 we spent dwelling on that it was just not going to help
8 Mr. Green's case.

9 Q. But you would agree that they had problems because
10 that, that chat was nowhere to be found on any of his
11 computers?

12 A. No, that's where they found the chat.

13 Q. I mean, but when they tried to -- you would agree that
14 they had problems recovering some of the information that
15 they were presenting?

16 A. The -- that expert never took the stand.

17 Q. Okay. Yeah. That's -- yeah.

18 A. And I never really got a chance to talk with that
19 person. I think that person was brought in pretty late in
20 the day by the State. I would have loved the chance to
21 talk with him before the trial.

22 Q. And that was something that the State -- and I believe
23 you argued it a little bit. You had issues with them kind
24 of providing you with what you would consider Brady
25 material at the last minute, right?

MICHAEL D McMULLEN - CROSS BY ZMROCZEK

1 A. Absolutely.

2 Q. And they even tried to put a PowerPoint, or they used
3 a PowerPoint that they hadn't shared with you or showed
4 you and I believe you objected to that as well?

5 A. Yes.

6 Q. And that was -- would you consider that prejudicial
7 behavior by the State as far as being able to prepare for
8 that part of your case?

9 A. The PowerPoint presentation focused mostly on the
10 printout or the transcript of the conversation. So I had
11 been provided as much as they had of that.

12 It's just -- again, I felt that that rule of
13 completeness should have kept it all out because we don't
14 know what preceded. The conversations don't start the way
15 this did. It was --

16 Q. And -- yeah.

17 A. -- the bottom of page 33.

18 Q. In the trial transcript?

19 A. Yes. The chat that they would seek to introduce
20 begins, quote, I haven't before. And that's -- I don't
21 think that's even the second line of a brand new chat. I
22 don't think that's the way conversations begin. So I
23 think more than one line was missing. And I argued that
24 to the jury and to the Court, but.

25 Q. Before I forget. I wanted to ask you when you --

MICHAEL D McMULLEN - CROSS BY ZMROCZEK

1 obviously Mr. Green's appeal was handled by appellate
2 defense. Did you -- were you ever contacted or did you
3 ever discuss what, what, what issues you felt like you had
4 preserved well that they needed to argue?

5 A. Yeah, I think I actually went over there. I think I
6 tried to get Catherine Hudgins to take it. And I don't
7 think that -- what's her name?

8 Q. Oh.

9 A. Betsy was there yet.

10 Q. Right.

11 A. But maybe she was, but somebody else got the case.
12 And I did encourage them to, you know, go after certain
13 issues. And the Court at the end, you know, when you
14 renew your motions and so forth, the judge was kind enough
15 to ask me to list them all and so I did. And, you know,
16 that was kind of the top page when I went over to the
17 appellate defense folks.

18 Q. But obviously you're not going to do their job for
19 them?

20 A. Well, one I would love to have.

21 Q. Right. And I believe that you even testified -- you
22 were asked about the statement and you said even you were
23 confused about the statement?

24 A. Yes, yes.

25 Q. And --

MICHAEL D McMULLEN - CROSS BY ZMROCZEK

1 A. The the judge said something like, well, I can't help
2 that. You know, I don't think the man got a fair trial
3 but I don't think it was because of anything I failed to
4 do.

5 Q. Do you think that -- but certainly having an expert
6 could have, maybe could have helped you or helped him in
7 dealing with some of their last-minute issues?

8 A. Let me just let the Judge decide that one.

9 Q. Certainly. And, the -- with regard to the charge, did
10 you do requested -- like, did you type out requested
11 charges or did y'all discuss it or how was it that the
12 voluntariness, was it just an oversight?

13 A. I'm sure it was. Yes, ma'am.

14 Q. Okay. But you would agree that that statement,
15 whatever it was, tends to be problematic, A, because we
16 don't know what it was, and, B, knowing if it was
17 voluntarily given, whatever it was?

18 A. Yeah. Unfortunately, I didn't ask for that and I
19 don't know what the jury would have decided as to the
20 voluntariness of it.

21 Q. Okay. Let me ask you this. You -- what percentage of
22 your practice is criminal law?

23 A. 99.

24 Q. Had you tried any of these attorney general kind of
25 child cases before?

MICHAEL D McMULLEN - CROSS BY ZMROCZEK

1 A. No. At the time I was renting my office from Jack
2 Swerling and he had, and I read some of his transcripts.
3 There was a case out of Spartanburg that was, I was able
4 to read about. And I believe I went over to the ICAC
5 office a couple of times.

6 Q. Would you ask for -- you did a Rule Five Brady motion,
7 obviously. You would argue that they complied with it a
8 little bit late at times. But did you do any -- did you
9 issue any of your own subpoenas to Yahoo or to any of
10 these agencies?

11 A. No, ma'am.

12 Q. Okay.

13 A. Just Ms. Williamson.

14 Q. Just -- okay. And had you, had you -- you wouldn't be
15 able to examine a computer, like, you wouldn't be able to
16 examine a computer, you're certainly not -- I know I'm
17 not, but --

18 A. I am not a forensic computer expert.

19 Q. Okay. Those subpoenas probably would have -- yeah.

20 And you did -- I think that's the attempt and -- the
21 attempt and intent portions. That's why you had the
22 person that -- the picture that they used from -- and the
23 woman that you had testified was not 14, correct?

24 A. Correct.

25 Q. And, I mean, it was clear from looking at the picture

MICHAEL D McMULLEN - CROSS BY ZMROCZEK

1 she wasn't 14?

2 A. I thought so, yes.

3 Q. And then when she testified obviously she didn't
4 look --

5 A. Correct. And then I think that the jury got the
6 benefit of what she did look like when she was 14. We put
7 several photographs of her in. And then, you know, just
8 the fact that they had concealed that or didn't know that
9 was troublesome.

10 Q. And explain to the Judge when they concealed that --
11 explain to him so he gets kind of a clear understanding as
12 to kind of how that all flushed out.

13 A. Well after the arrest Mr. Green and I, like I said, we
14 met. We pulled it up on the computer. I printed out what
15 it looked like at the time. And then subsequently that
16 photograph was gone. They still had the same everything
17 else. And, you know, obviously people -- the photograph
18 was taken at one point in time and obviously he was
19 talking to that person later in time. So, she would have
20 been at least, you know, a little older.

21 Q. Right. And the photograph that you're saying that was
22 gone was the one that was introduced that clearly showed
23 that she wasn't -- or that you showed her 14-year-old
24 picture and it wasn't that one?

25 A. Correct.

MICHAEL D McMULLEN - CROSS BY ZMROCZEK

1 Q. Okay. That's what I'm asking.

2 A. They tried to make her look pretty young but she
3 looked, you know, she was 24 and it's kind of hard to hide
4 10 years.

5 Q. Sadly I know. And did you feel like it was the police
6 who were maybe trying to mislead the jury or the Court as
7 to their information or their reliance?

8 A. I think I should have been provided that photograph by
9 that ICAC unit. I'm not sure whether those attorneys even
10 worked there when this case was made or whether they
11 inherited the case. I'd like to think that they didn't
12 know, but by the time the trial got here I had located her
13 through a great deal of effort. And she had been married
14 to one of the narcotics officers and when he was
15 discharged from his job and then she wanted them to take
16 that down and they kept using it.

17 Q. And she was angry about that?

18 A. She was, yeah. She didn't know it was being used.

19 Q. And there was a significant amount of time that
20 elapsed between when the incident that led to the arrest
21 occurred --

22 A. I think it was seven years.

23 Q. -- and when the case was tried?

24 A. Oh, I'm sorry. Seven years between when that photo
25 was taken and when the police used it.

MICHAEL D McMULLEN - CROSS BY ZMROCZEK

1 Q. And then at least three years from the incident that
2 led to the arrest to the trial?

3 A. Oh, yeah. That's right. That's right.

4 Q. Okay.

5 MS. ZMROCZEK: Beg the Court's indulgence.

6 (Conferring with Applicant.)

7 Q. When you were -- when you were educating yourself
8 regarding, kind of, the chat, obviously it didn't make
9 sense to you. You could see that at least some part of
10 the conversation was missing. Did you ever contact, just
11 like, do a general information with the Yahoo technical
12 people?

13 A. I can't recall having done that, no.

14 Q. Okay.

15 A. The only thing I really remember doing was trying to
16 find some written Yahoo protocols to where they say, you
17 know, you got to be at least a certain age to be on these
18 chat rooms.

19 Q. And were you ever able to find that?

20 A. I don't recall. If I did it would have been printed
21 out and put in that box.

22 Q. Okay. But you didn't introduce any of that into trial
23 if you had done it?

24 A. Not unless -- you know, I cross-examined the folks who
25 were doing the fishing about, you know, don't you have to

MICHAEL D McMULLEN - CROSS BY ZMROCZEK

1 be a certain age. And this is why they put in the profile
2 114 is the age. If they put 14 in the Yahoo stuff
3 wouldn't have allowed them to set up the account.

4 Now where I learned that I don't know. Mr. Green may
5 have told me that.

6 Q. And then it's interesting that -- the last question I
7 have. It's interesting you use the word "fishing". This
8 kind of was -- these crimes kind of had a big push. I
9 guess it was like to Catch a Predator was on TV, and
10 you're familiar that that -- that the part -- that the job
11 of these ICAC agents, like, all they did was to pretend to
12 be somebody, some young girl and that they would try to
13 entice these people or talk to them and, and kind of
14 manipulate the situation once they found these people. Is
15 that what you're --

16 MR. GOURLEY: Judge, I'm going to object to
17 Ms. Zmorczech's characterization of ICAC investigators. I
18 think Mr. Platt in the transcript speaks for itself as far
19 as what they do.

20 THE COURT: I sustain the objection.

21 BY MS. ZMROCZEK:

22 Q. You were able to at least investigate kind of as best
23 you could but you felt -- were you provided all of the
24 information with the inner workings of ICAC?

25 A. I don't know. That's a tough question.

MICHAEL D McMULLEN - RECROSS BY ZMROCZEK

1 They were cooperative when I went over, trying to be
2 very, you know, very open about what they had. And then
3 I'm not sure they -- I'm not sure that the right hand
4 always knew what the left hand was doing.

5 Q. And I guess that was a better way of saying it. Thank
6 you.

7 A. Yes, ma'am.

8 THE COURT: Anything on redirect?

9 MR. GOURLEY: Just one question, Judge.

10 REDIRECT EXAMINATION

11 BY MR. GOURLEY:

12 Q. Mr. McMullen, did Mr. Green ever dispute that he was
13 the person in these instant message chats?

14 A. No, sir.

15 MR. GOURLEY: Okay. Thank you.

16 THE COURT: Anything on recross?

17 MS. ZMROCZEK: Just briefly.

18 RECROSS-EXAMINATION

19 BY MS. ZMROCZEK:

20 Q. Did you all ever talk about -- you and he discussed
21 what his intent was, right?

22 A. Oh, yes.

23 Q. And it was never to have sex with a 14-year-old?

24 A. Correct.

25 MS. ZMROCZEK: Okay. Thank you.

1 THE COURT: Okay.. You may step down. Thank you,
2 sir.

3 THE WITNESS: Yes, sir.

4 THE COURT: We're going to leave the record open
5 until we find out from the expert?

6 MR. GOURLEY: Yes, sir, Judge. And I'd like the
7 opportunity to call any witnesses in response to their
8 expert.

9 THE COURT: And vice versa.

10 MS. ZMROCZEK: Certainly. What I'll do to make it
11 easier, I will make sure that any report, or -- I'll have
12 him write a report so that way Mr. Gourley has something
13 to rely on instead of just kind hitting the line because
14 he's tired of punching.

15 THE COURT: Y'all have a wonderful weekend.

16 MS. ZMROCZEK: Thank you.

17 MR. GOURLEY: Thank you, Judge.

18 END OF PROCEEDINGS: 1:48 P.M.

19

20

21

22

23

24

25

1 CERTIFICATE OF REPORTER

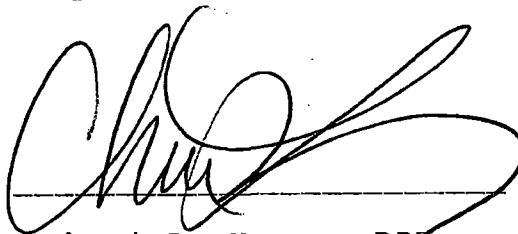
2 STATE OF SOUTH CAROLINA)

3 COUNTY OF AIKEN)

4 I, Cheri L. Young, Registered Professional Reporter
5 and Official Court Reporter for the State of South
6 Carolina, Second Circuit-At Large, do hereby certify that
7 the foregoing proceedings were written stenographically by
8 me using computer-aided translation; further, that the
9 foregoing is a true, accurate and complete record, to the
10 best of my skill and ability, of all the proceedings had
11 and evidence introduced in the hearing of the captioned
12 case, relative to appeal, in the Court of General Sessions
13 for Aiken County, on the 11th day of September, 2015.

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

16 I have hereunder set my hand this 24th day of
17 August, 2017.



20 Cheri L. Young, RPR
21 Official Court Reporter
22
23
24
25

1	State of South Carolina	)	In the Court
		)	Of Common Pleas
2	County of Aiken	)	Case No.: 2013-CP-02-00477
		)	
3	Benjamin Paul Green IV,	)	
		)	
4	Applicant,	)	
5	vs.	)	Transcript of Record
		)	
6	State of South Carolina,	)	
		)	
7	Defendant.	)	
	_____	)	

8

9

June 30, 2016

10

Orangeburg, South Carolina

11

12 BEFORE:

13

The Honorable Edgar W. Dickson, Judge

14

15 APPEARANCES:

16

17

Aimee J. Zmroczek, Esquire
Attorney for the Applicant

18

19

Julie Coleman, Assistant State Attorney
Attorney for the State

20

21 ALSO PRESENT:

22

Benjamin Paul Green

23

24

25

1	INDEX	
2	PCR HEARING	
3	WITNESS	PAGE
4	CHRISTOPHER J. WATKINS	
5	Direct Examination Continued by Ms. Zmroczek	5
6	Cross Examination by Ms. Coleman	30
7	Redirect Examination by Ms. Zmroczek	39
8		
9	Certificate of Reporter	46

10

11 EXHIBITS.

12 APPLICANT'S

13	NO.	DESCRIPTION	ID	EVDS.
14	1	Report of Chris Watkins	3	3
15	2	SC3C Intake Info	12	17

16

17

18

19

20

21

22

23

24

25

1 Thereupon, the following proceedings were had,

2 THE COURT: All right. This is the case of Benjamin
3 P. Green the Fourth, number 335365. Applicant versus
4 State of South Carolina, respondent. This is a PCR case
5 out of Aiken County, and the docket number is
6 2013-CP-02-477.

7 We had an original hearing -- Well, we began the
8 hearing, I guess I should say, on September 11th, 2015
9 and at the close of taking the testimony the Court was
10 asked to leave the record open for some additional
11 testimony and, Ms. Zmroczek, that was your request; is
12 that correct?

13 MS. ZMROCZEK: That's correct, Your Honor. Actually
14 what I believe happened was while the expert was
15 testifying, you said have you had a chance to review the
16 evidence and so we, actually the State assisted us in
17 getting that done so...

18 THE COURT: Okay. All right. And so now we've
19 reconvened and I have been given a report of Christopher
20 J. Watkins; is that correct?

21 MS. ZMROCZEK: That's correct, Your Honor.

22 THE COURT: All right. And that is marked as
23 Applicant's exhibit number 1 for purposes of this
24 hearing. Are you ready to proceed?

25 MS. ZMROCZEK: We are, Your Honor.

1 THE COURT: Okay.

2 MS. ZMROCZEK: And they have been provided a copy,
3 too.

4 MS. COLEMAN: We have, Your Honor.

5 THE COURT: Okay. All right. Thank you.

6 MS. ZMROCZEK: Thank you. Your Honor, at this time
7 we would call Mr. Watkins back to the stand.

8 THE COURT: Mr. Watkins.

9 Thereupon,

10 CHRISTOPHER J. WATKINS

11 after having been first duly sworn, testified as follows,

12 THE COURT: Let me see. We had already taken your
13 testimony, right?

14 THE WITNESS: We did a little bit. Yes, sir.

15 THE COURT: All right.

16 MS. ZMROCZEK: Just to refresh, Your Honor, I'll
17 just very quickly just go back through his background or
18 unless you have--

19 THE COURT: I think I have got my notes here.
20 Digital forensic analyst. He checked with archive,
21 Yahoo, investigation cell phones.

22 THE WITNESS: Yes, sir.

23 THE COURT: Okay. Anyway. You go ahead and pick it
24 up. That won't hurt at all.

25 MS. ZMROCZEK: Thank you, Your Honor.

1 DIRECT EXAMINATION CONTINUED

2 BY MS. ZMROCZEK:

3 Q. Mr. Watkins, you were retained in this case to
4 review some of the digital evidence?

5 A. That's correct.

6 Q. And explain to the Court a little bit about when you
7 are contacted by attorneys, what you are asked to do and what
8 you are asked to look for?

9 A. So typically when an attorney is getting prepared
10 for a hearing or for trial, they will ask me to review the
11 evidence in the case to assist with any issues with that
12 evidence or speak with the witnesses or whatever the case
13 may be in assisting the attorney for trial or hearing.

14 Q. How can looking at evidence -- Have you dealt with
15 cases involving phones and computers before?

16 A. I have. Many, many times.

17 Q. What can you do to provide assistance for the
18 attorneys?

19 A. So in cases such as this I will review the evidence
20 presented by the State or by the investigating agency and just
21 kind of look over what it is that they're providing and see,
22 and kind of measure the veracity of the findings in that as
23 well as their procedure in collecting the evidence and
24 analyzing the evidence and how they report it.

25 Q. Were you asked to do that specifically in this case

1 for the purposes of the PCR hearing?

2 A. Yes.

3 Q. And during your review, this was an Aiken County
4 Sheriff's Department case; is that correct?

5 A. Yes.

6 Q. And in your review of the evidence did you document
7 any issues or potential issues with the evidence presented?

8 A. Yes. Several. I'm gonna go down a list. So when I
9 received the case, I reviewed the trial transcript, the
10 evidence listed in the case, the reports and in reviewing the
11 testimony, the trial testimony I observed that Investigator
12 Tommy Platt's testimony, as I reviewed it I kind of questioned
13 the veracity of his testimony. For example, the Yahoo Chat,
14 this case involved a Yahoo - it was an online investigation
15 and they were using Yahoo Messenger to conduct a online chat
16 and the resulting conversation that was produced, they did
17 provide a printout but what I noticed on that printout is that
18 the last four messages that appear in the log are out of order
19 or at least two of them are out of order and that's not how
20 the Yahoo Messenger archive would be formatted. It would be
21 all in chronological order so I found that to be odd. I
22 believe that had they provided a digital copy of this we would
23 have been able to see exactly the conversation as it appeared,
24 as it took place.

25 Q. Did you request a digital copy of what they had?

1 A. Digital copy of the -- Yes. Yes. I did contact
2 them and try to get a copy of really everything that they
3 had.

4 Q. What were you provided to review?

5 A. Through the Aiken County Sheriff's Department they
6 didn't have any of the evidence on record. They actually had
7 submitted it to SC3C, the South Carolina Computer Crime
8 Center, so it was from there that I actually reviewed the
9 digital evidence, the computers in this case.

10 Q. Were you ever provided a digital copy of the chat?

11 A. No.

12 Q. Did one exist?

13 A. Well, I can't say. One had to have existed. Sure.
14 But as far as getting access to it it did not exist. So also
15 going back through Mr. Platt's testimony, he did state - he
16 did state on the stand that they typically utilize a screen
17 reporting software to record the chats as they're doing their
18 investigation and he had stated that the chat software which
19 is called - or I'm sorry - the screen recording software which
20 was called Camtasia was not functioning correctly and he also
21 stated in his testimony that they had called out SLED agents
22 to come review the software or the work stations and nobody
23 could figure out what was going on.

24 Q. Why did you find that questionable?

25 A. I found that odd because Camtasia is a free

1 software. Anybody can download it. A 12 year old can
2 download it and you can install it. You can record anything
3 on your computer screen. The fact that it was not working on
4 one machine but several is just, that's just not how the
5 software works. If it goes down on one machine, I would not
6 expect it to go down on all the machines.

7 Q. Could steps have been taken to preserve that another
8 way since they knew that their recording software was down?

9 A. Yes. I would have -- I mean, I would expect that
10 they would download another recording software if one did not
11 work. They could have taken photos. And again, they could
12 have preserved the digital archive of the conversation that
13 was taking place. In his testimony he also indicated that
14 there were several other investigators conducting Yahoo
15 Messenger chats, investigations that night.

16 THE COURT: I hate to interrupt your train of
17 thought. You said the software that was available was
18 called what?

19 THE WITNESS: Camtasia.

20 THE COURT: Do you mind spelling that for me?

21 THE WITNESS: No problem. C-a-m-t-a-s-i-a.

22 THE COURT: Okay. And that's a free software?

23 THE WITNESS: It's a free software.

24 BY MS. ZMROCZEK:

25 Q. Do you happen to know the other names of the other

1 software programs that they could have used?

2 A. I mean, there are several out there. And by the
3 way, Camtasia, this would have been back in 2007 so what the
4 functionality of the newer software I wouldn't - I wouldn't
5 know what they were dealing with then is what I'm saying but I
6 think that had that information been subpoenaed, they could
7 have subpoenaed the version of the recording software.

8 Q. The lawyer you mean or an expert?

9 A. Yes, ma'am. Or the IM messenger itself to find out
10 the version of that. Another thing, another issue that I did
11 find was that there was a photograph taken of Mr. Green's cell
12 phone that was found in his car during his arrest and we have
13 a printed copy but we never got a digital copy. Now, on the
14 printed copy you see the date stamp of the date of incident,
15 October 13th, 2006, but a digital copy was not provided and
16 that could have been subpoenaed and that would have been a
17 good thing to do because you would want to verify the time and
18 date that it was taken. You could also look at the metadata
19 and ensure that there was no manipulation to the content of
20 the picture itself.

21 Q. Were you ever allowed access to the phone itself?

22 A. No. Now, one of the things that I did ask when I
23 contacted Aiken County Sheriff's Office evidence, they said
24 that they didn't have the phone in their custody so I did not
25 have a chance. And also SC3C did not have a copy of the phone

1 either. So as far as I can tell from what we received in my
2 review of the case is the only thing to do with the phone was
3 the picture that was taken of the phone and whoever was
4 responsible for copying the chat message that included the, uh
5 --

6 Q. Let me ask you this: Are you aware if text messages
7 can be altered? Like can you delete portions of text messages
8 or can you delete messages without deleting the entire text?

9 A. Uhm, do you mean from a phone itself?

10 Q. Yeah. I mean from the phone. Yes.

11 A. Okay. Deleting partial messages, no. That's not
12 possible.

13 Q. But not the whole sentence but like the whole, a
14 whole line of text, like an individual text?

15 A. You would have to delete the entire text if you
16 wanted to delete the text.

17 Q. But not the conversation?

18 A. You could delete a conversation depending on the
19 model phone that might be available. I think that answers
20 your question.

21 Q. For example, like if I wanted to - if I said
22 something and I wanted to show my mom a text but I didn't want
23 her to see that one text, I can delete just that one little
24 text which would change the conversation or at least alter it
25 by taking out that one thing that I said?

1 A. Right. You could delete an individual text
2 message.

3 Q. Okay. And so those are the kinds of things that you
4 can check if you have the actual --

5 A. If I had the actual phone, I would be able to see.
6 Not only that, because this was using the IM messenger
7 application that was downloaded to the phone purportedly for
8 the photo so I would have examined the phone to find out what
9 account this was registered to on the phone because it doesn't
10 say that in the picture and it would also show us the time and
11 date that each of these text messages or messages are being
12 sent and received.

13 Q. Tell the Judge, and I'll leave that in a minute, but
14 tell the Judge, explain to him what Cellebrite is?

15 A. Okay. Cellebrite is a forensic tool that we use to
16 extract data from cell phones, primarily cell phones and what
17 that does is it essentially takes a download of the phone and
18 preserves that so you can take the data from the phone and you
19 no longer need the phone if you have a copy essentially, a
20 forensic copy.

21 Q. Does it have text messages on it?

22 A. It would retain text messages. Now, of course,
23 different model phones offer different types of information
24 that you can get from a Cellebrite acquisition.

25 Q. But to your knowledge none of that was done in this

1 case?

2 A. I received no indication that that was ever done.

3 No.

4 Q. When you went back to try to get the phone, nobody
5 seems to know where it is?

6 A. Correct.

7 Q. Okay. Sorry. Keep going.

8 A. No problem. Okay. Another thing I noted in my
9 review was there is a South Carolina Computer Crime Center
10 computer intake form which I have here and on it --

11 Q. Hang on real quick for me.

12 A. Okay.

13 MS. ZMROCZEK: Your Honor, this is - and we can mark
14 it. I just wanted them, before he referred to a report,
15 I wanted for them to be able to see it so I'll go ahead
16 and mark it now and they can object but I just think for
17 the purposes of a clear record to be referring to
18 something I wanted to go ahead and have it marked.

19 THE COURT: Okay.

20 (Whereupon, Applicant's Exhibit #2 marked for
21 identification.)

22 BY MS. ZMROCZEK:

23 Q. Now, I'm handing you what's been marked as
24 applicant's number 2. Can you explain first of all where you
25 got that information?

1 A. This was provided in the case file that I received
2 from you.

3 Q. From the defense attorney?

4 A. From - from the --

5 Q. From the defense attorney and then from me?

6 A. Correct. Yes.

7 Q. Okay.

8 A. So on this document --

9 THE COURT: What is it? I hate to interrupt. Can
10 you tell me the name of the document?

11 THE WITNESS: Yes, sir. It's listed as South
12 Carolina Computer Crime Center computer intake
13 information. It's essentially a computer intake form.

14 THE COURT: All right.

15 BY THE WITNESS:

16 A. The submitting officer listed is B.A. Metz. In the
17 text of the - there's a line here that reads, "Has anyone
18 turned on the computer or viewed the content of this computer
19 media?" And the text, what was filled in or written in by the
20 submitting officer reads, "Was running and online. My wife,
21 investigating officer checked my documents and several
22 folders".

23 BY MS. ZMROCZEK:

24 Q. Okay. And why did that raise a flag for you?

25 A. It raised a flag for me because that's - typically

1 when you come into a situation where you have a computer that
2 is running, you want to make sure that you're assessing the
3 computer with the forensic mind to maintain what's on that
4 computer. Just accessing a computer and just clicking around
5 on it could potentially alter what's on the computer.

6 Q. How is it -- When somebody in your experience
7 especially like when you get a computer crime from this
8 department, how is it typically provided to you?

9 A. As far as the reports?

10 Q. What are their policies and procedures as far as you
11 know. Do they just give you the computer or do they save it
12 and make a copy?

13 A. Essentially what they'll do is they'll take the
14 computer from the site and they'll extract a forensic copy.

15 Q. Explain what a forensic copy is.

16 A. So essentially a forensic copy is a bit by bit copy
17 of the data from a hard drive in a computer so you're
18 essentially looking at everything including any of the deleted
19 space, basically everything that's on the hard drive.

20 Q. How can that change if it's not forensically
21 copied?

22 A. Well --

23 Q. Like does data change and download and can it alter
24 things?

25 A. Well, in respect to this I only caution that if

1 you're messing around on a computer in a live state and you're
2 not a forensic examiner, you may not utilize the proper
3 methods to secure that data and you could potentially, and it
4 may be minor, may be something minor but it could also be
5 something major that you could change on the computer that
6 would look like somebody else had done but really you're there
7 and you're actually the one that's changed it. The proper
8 method if a forensic examiner was present, they could use a
9 specific tool. We have a tool that we can actually connect
10 into the machine and depending on the type of the machine
11 which in this case -- I'll just give you this example since it
12 pertains to this computer. You plug in essentially a tool
13 that will extract the data that's live in the live state in
14 the live memory and then you would go ahead and disconnect the
15 computer from its power source. The actual forensic
16 extraction from the hard drives we do by extracting the hard
17 drive from the computer and then we connect it to our forensic
18 tool that actually makes the acquisition, the copy, the
19 forensic copy.

20 Q. And to your knowledge it wasn't done that way in
21 this case?

22 A. Well, there's no - in the notes from the forensic
23 examiner there's no indication of that.

24 Q. How could an attorney have used that information as
25 far as maybe moving to exclude this testimony or this evidence

1 or at least to challenge it? How could an attorney have used
2 you or how could you have assisted or any expert assisted an
3 attorney in challenging that evidence?

4 A. Well, I would certainly have - it definitely could
5 be used to challenge the officers that were involved in
6 seizing the device and challenging what procedures that they
7 were using to actual secure the data because if they didn't do
8 it the proper way, then there's no way that they could verify
9 that the data was secure at the time that they removed it from
10 the residence.

11 Q. And at that time had there been any chats on it and
12 had it been preserved correctly, could that have allowed the
13 attorney to challenge the chat log that they were using that
14 you found problems with?

15 A. Well, I can't get into any specifics as to what it
16 --

17 Q. Because you don't know?

18 A. -- potentially could have altered. Right. I don't
19 know that. The issue is the procedure that was followed to
20 look at the data and take the computer off site. The issue is
21 looking at the computer in a live state and potentially
22 altering data on the computer while it's running before you
23 even have it in a lab environment.

24 MS. ZMROCZEK: Your Honor, at this time we would
25 move Plaintiff's exhibit 2 into evidence.

1 THE COURT: Any objection?

2 MS. COLEMAN: No objection.

3 THE COURT: All right. Plaintiff's 2 is in evidence
4 without objection.

5 BY THE WITNESS:

6 Q. Okay. Now, in referring to my report I did also
7 review examiner Belton's computer forensic report.

8 BY MS. ZMROCZEK:

9 Q. Now, it's my understanding and your understanding
10 through reading it that the attorney had stipulated to
11 Examiner Belton's report prior to the testimony, correct?

12 A. Stipulated to the report?

13 Q. Stipulated to the accuracy?

14 A. I believe it was --

15 Q. Let me ask the question this way. That was a poorly
16 asked question. Did you see when reading the transcript any
17 challenges to Investigator Belton's report?

18 A. No. There was not.

19 Q. I'll come back to that. But tell me what you found
20 with his report?

21 A. Okay.

22 Q. Or tell the Judge.

23 A. First of all, there were two items that were
24 examined. One of the items was listed as not having any
25 evidentiary value so it was not examined. So when I did my

1 examination, I also looked at the same device that there was a
2 report provided on which was an 80 gigabyte hard drive. So
3 some of the -- Okay. So in reviewing Examiner Belton's
4 report, the Yahoo Chat log that's in question that was
5 provided through Investigator Platt's testimony was not
6 indicated at all in Examiner Belton's report and I found that
7 odd. I wanted to see where this came in as far as the
8 investigation. The Yahoo Chat I would think would be present
9 on the computer so that's why I wanted to examine that for
10 that purpose. There was another chat that was found on the
11 computer by Examiner Belton. The chat log came from a program
12 called Aimpro which is another instant messaging software.

13 THE COURT: What's the name of that again?

14 THE WITNESS: Aimpro. It's A-i-m-p-r-o.

15 THE COURT: Okay. Appreciate it.

16 BY THE WITNESS:

17 A. The chat messages between - between two totally
18 different user names than were listed in the Yahoo Chat log.
19 That's one thing that I noted immediately. And this
20 particular chat log that I'm talking about now from Aimpro was
21 presented and discussed at trial and in that chat log the
22 person who Mr. Green is purported to be speaking to who goes
23 by the user handle Jsexxy with three X's,
24 J-s-e-x-x-x-y-8-8-s, in that conversation there's at some
25 point that this user says that he or she is 17 years of age.

1 At no time in this conversation is it revealed what the gender
2 of this person is. I'll just assume it's a she. At some
3 point in the conversation Mr. Green also indicates, you had
4 lied about your age at a previous time or something to that
5 effect.

6 BY MS. ZMROCZEK:

7 Q. Just to make it clear, the chat that you're
8 referring to on the Aimpro, was that one done by the uncover
9 officers?

10 A. No.

11 Q. So they were testifying about a chat --

12 A. That was actually -- Sorry.

13 Q. Okay. Yes. Make it clear for me.

14 A. That was actually found on his computer.

15 Q. And that wasn't one of their --

16 A. Right. Not a product of their investigation but a
17 chat that was actually found on the computer that was
18 examined.

19 MS. ZMROCZEK: Okay. Your Honor, this is page 3 of
20 his report just in case you want to follow. Go ahead.

21 THE COURT: I just happen to be there.

22 BY MS. ZMROCZEK:

23 Q. Go ahead.

24 A. So there's no indication through any of the
25 discovery or any of the testimony that indicated that they

1 followed up on the identity of this individual so it was never
2 revealed the identity of this person and whether this person
3 was actually 17 years of age. This was not a conversation
4 with an investigator acting as a 17 year old as was indicated
5 with the original, the Yahoo chat. So I found that.

6 Q. And that was evidence that was presented at the
7 trial?

8 A. That was evidence that was presented at trial.

9 Q. How could having an expert been used to challenge --
10 How would you have helped and assist the attorney challenge
11 the admission of that evidence?

12 A. Essentially by examining the machine the same way I
13 did and finding this chat log and then reviewing the case file
14 to find out whether they had ever tried to make any effort to
15 identify the individual in this conversation and challenge --

16 Q. In essence it was a hearsay conversation that they
17 were relying on, correct?

18 A. It seems that way. Yes.

19 Q. I know I use legal terms but you're saying -- My
20 main question is is that that chat that was presented from the
21 Aimpro was not one done by undercover police?

22 A. Correct.

23 Q. So we don't know if that person was underage, of
24 age. We don't know a thing about that person?

25 A. We don't even know their name.

1 Q. And no investigation was done into that?

2 A. There was nothing provided to me that indicates
3 otherwise.

4 Q. Okay. Go ahead.

5 A. And there was nothing -- And I'll add there's
6 nothing in the trial transcript that indicated otherwise.

7 Q. The defense attorney that represented Mr. Green
8 didn't challenge that in any aspect? I know he challenged the
9 constitutionality of it but, I mean, admit the --

10 A. Right. Right.

11 MS. ZMROCZEK: Okay. And, Your Honor, I know that
12 in the beginning of the trial transcript there were a lot
13 of constitutional pretrial arguments so it was addressed
14 there and I know that that was the crux of the defense
15 attorney's focus but we were trying to focus on what was
16 actually presented to the 12 jurors who made the
17 decision.

18 BY MS. ZMROCZEK:

19 Q. Sorry. Keep going?

20 A. Also, in Examiner Belton's report there was a file
21 titled thumbs.db which is essentially a database file that
22 will typically store thumbnails of photos and this file is
23 necessary for speeding up the process of viewing Internet,
24 browsing the Internet or browsing through file folders. It's
25 why when you click a folder that has a bunch of pictures in

1 it, it's why it loads faster and doesn't have to download all
2 the picture because there's a file in there that controls that
3 essentially.

4 Q. Did you get to look at those photos?

5 A. There was one provided on the disk and I did look at
6 the disk particular file referenced in the report and found
7 that there was an issue with the date stamp which would
8 indicate that these messages would not have been sent at the
9 time that this Aimpro chat was taking place which is what was
10 purported because there were two pictures that were sent
11 during the Aimpro Chat and while I didn't - I couldn't see
12 those pictures because the pictures weren't attached to the
13 view, I could view the source of that file and upon doing so I
14 found that the two photos had the file names. One was named
15 smiley_yellow_15.gif which is a picture file. The other was
16 smiley_yellow_02.gif.

17 Q. What are those pictures of?

18 A. These were found in the Aimpro resources folder
19 which means it comes from the program itself and they were
20 essentially smiley faces or some version.

21 Q. Emoji?

22 A. An emoji. Yes.

23 Q. An emoticon?

24 A. Yes.

25 Q. Or whatever. It was a yellow like Wal-Mart smiley

1 face?

2 A. Right.

3 Q. And I just used Wal-Mart but that's just a reference
4 there.

5 A. So again, an examiner could have reviewed this and
6 created some doubt into the veracity of the report that was
7 provided by Examiner Belton.

8 Q. At the trial were they just addressed as photos and
9 they were never identified?

10 A. They were addressed as photos and the photos, they
11 were shown. I believe they had the exhibits of the photos,
12 however, there was no question as to exactly when they were
13 created, whether they were sent, where they were sent. As it
14 read it was more implied.

15 Q. Okay. And not challenged?

16 A. And not challenged. Correct.

17 Q. Okay. Thank you. Were there any other specific
18 issues that you as an examiner would have brought to the
19 attention of a defense attorney to raise either pre-trial or
20 during trial?

21 A. Yes. Because the Yahoo Messenger chat log contained
22 essentially a conversation between user handle lilmandyl4sc,
23 that's l-i-l-m-a-n-d-y-1-4-s-c, and the other user being blak
24 slyder spelled b-l-a-k space s-l-y-d-e-r. Now, I ran a index
25 search of the computer. Essentially what that does is it

1 takes all of the characters found on the, from the hard drive
2 and essentially looks for, I can search by a text string which
3 in this case I did for these users names and there were zero
4 results for either user name on this machine. I also --

5 Q. But that was the report that was submitted to the
6 jury, right?

7 A. Well, that was the chat log.

8 Q. The chat log. And the chat log was missing -- I
9 know we talked about this before -- it was missing the -- What
10 was it missing?

11 A. It was missing the top one or two lines.

12 Q. So we don't know what kind of conversation or who
13 initiated it, correct?

14 A. Correct. And Investigator Platt did say that during
15 his export of that, it was common that the top two lines would
16 be deleted and I found that odd as well. I have used Yahoo
17 Messenger in the past and I have had other cases that this
18 issue has come up, not this particular issue but the use of
19 Yahoo Messenger.

20 Q. Has it ever been an issue that you have
21 encountered?

22 A. That's never been something that I have encountered.
23 Whenever you export an archived conversation, it exports the
24 entire conversation.

25 Q. Had you been able to testify either pre-trial or

1 during the trial, you could have at least attacked or
2 challenged his testimony?

3 A. Correct. Very much so. Because the issue that lies
4 with that is where this chat communication really came from
5 because there's no way to independently verify the --

6 Q. Authenticity?

7 A. Right. The authenticity of how it was generated.
8 There's no digital evidence that corresponds with this chat
9 conversation. I mean, it's almost - I mean, you could type
10 this up and print it out and you would still have a digital
11 file of what you printed out and there was nothing provided.

12 I also ran searches on the machine, on the forensic
13 image for lines in the chat log that appeared in the Yahoo
14 Messenger chat. The reason I did this as well, because I
15 added all these searches at the same time by the way, but I
16 did this because sometimes when you experience an issue where
17 there's a loss of data, data has been deleted or corrupted or
18 pilot manipulated, it doesn't always delete everything and in
19 some cases it won't delete anything at all and in some cases
20 you could potentially delete everything and not have it
21 recoverable. But I did this just to verify that there were no
22 pieces that could be found of this conversation on the
23 computer.

24 And on top of that, I also examined the system
25 registry which stores information about the Windows operating

1 system, other programs that are downloaded in the system and
2 their corresponding files that control or allow that program
3 to operate and I found that there were a total of 12 Yahoo
4 Messenger user names that had existed at one time on the
5 computer and in Examiner Belton's report he only indicates 11
6 so I found a twelfth one that had been deleted and I was able
7 to recover that.

8 Q. Did any of them correspond to the --

9 A. None of these user names matched the user name that
10 was used in this Yahoo Chat log.

11 Q. Okay.

12 A. So in finding that that essentially verifies that I
13 was able to essentially recover the deleted instances of past
14 user names, user names that were deleted. I was able to
15 recover those. In my expert opinion if the user name that had
16 existed or the user name that was used in the Yahoo Chat
17 Messenger log, had that existed in the computer, I would have
18 been able to find it.

19 Q. And you weren't able to find it?

20 A. And I was not able to find it. It does not exist in
21 the machine.

22 Q. Okay. Are there any other issues, major issues that
23 you found that you could have provided to a defense attorney
24 to at least challenge this evidence either pre-trial or to
25 contradict what was testified to during trial in addition to

1 what you have already said?

2 A. Okay. I'm going to review my notes real quick just
3 to make sure I'm not missing anything. All right. It appears
4 I have covered all the issues.

5 Q. I have one question before we move on. You have
6 testified in Federal Court, Family Court, Circuit Court. You
7 have testified in all courts in South Carolina, correct?

8 A. Yes.

9 Q. When you testify, do you just testify from the stand
10 or are you able to make visual presentations to help explain
11 all of this very complicated things to the jury?

12 A. Yes. If it calls for it and the funding allows for
13 it, I will occasionally do that as well. Yes.

14 Q. You can do charts and visuals to show what you're
15 testifying about and like where the differences are,
16 correct?

17 A. Yes.

18 Q. Okay. Sorry. Go ahead. What -- So in your review
19 of this case had the defense hired an expert to at least look
20 or challenge this evidence do you think that -- Would it have
21 been beneficial to Mr. Green's defense to do so?

22 A. Absolutely.

23 Q. Let me ask it this way: Was it prejudicial not to
24 have done that?

25 A. I think so.

1 MS. COLEMAN: Object, Your Honor. This is a legal
2 conclusion that he's not entitled to make.

3 MS. ZMROCZEK: Certainly, Your Honor, and I'm not
4 asking it as a legal question but more of a could it have
5 helped question and I'll rephrase it, if you like.

6 THE COURT: I'm fine with that. I'll note your
7 objection on the record. I know the gist of what you
8 were getting at.

9 MS. ZMROCZEK: Okay.

10 BY MS. ZMROCZEK:

11 Q. What could have using an expert done for Mr. Green
12 and his attorney?

13 A. Mr. Green's trial counsel could have subpoenaed
14 several of these items that were missing. Could have asked
15 for, first of all, the Yahoo messenger software version and
16 Camtasia software version that were being used by the
17 investigators. The copy of the actual archive folder where
18 you install the software there is a directory that they could
19 have copied that would have contained this chat history and
20 that could have been provided. He could also have subpoenaed
21 bench notes that would help the examiner kind of get an idea
22 of where they were going or how they were conducting the
23 investigation, any other findings.

24 He could have - since -- Okay. And the digital
25 photograph that was not provided, there were printouts of the

1 photographs that were taken but not a digital copy, that would
2 have been useful to an examiner just to verify that the
3 pictures were taken at this time or the time that they were
4 taken and to verify there was no manipulation to the content
5 of the photos. And also he could have also requested access
6 to the cell phone that we do not have access to and a examiner
7 could have reviewed that and gotten a better idea of how these
8 chats were taking place as this one photograph of the phone
9 does not answer all the questions. It doesn't tell us the
10 direction. Doesn't tell us the user name of the person on the
11 phone, the phone owner and it doesn't indicate whether there
12 were any deleted data or anything that could have been
13 potentially useful in the trial attorney being able to assist
14 Mr. Green.

15 Q. Let me ask you this: When you are hired by an
16 attorney to assist in a defense, do you always testify?

17 A. Not always.

18 Q. What are other things that you can do? Do you
19 listen to experts as they testify?

20 A. Yes.

21 Q. Then what do you do with the attorney as a person is
22 testifying, for example, if something doesn't make sense? How
23 do you assist them?

24 A. I can assist the attorney by giving appropriate
25 questions or information. Some things that the expert may be

1 talking about that may be completely over the attorney's head
2 I can help explain the process, the procedure, what exactly
3 they're talking about and provide insight into how the
4 accuracy of the information or how you can determine the
5 accuracy of the information.

6 MS. ZMROCZEK: Thank you. I have no further
7 questions at this time. Please answer any questions that
8 the defense has.

9 THE COURT: Okay. Ms. Coleman, your witness.

10 CROSS EXAMINATION

11 BY MS. COLEMAN:

12 Q. Hi, Mr. Watkins. How are you?

13 A. Good. How are you doing?

14 Q. Good. I just to start by going over your
15 qualifications a little bit more. Will you remind me of when
16 you were certified as a general IT technician; is that
17 correct?

18 A. Yes. Original certification was like 2012, I
19 believe. My background goes back to 2003 starting in high
20 school. I went to the Lexington Technology Center and I also
21 studied at Midlands Technical College. I have also been
22 involved in taking several online courses pursuant to
23 certifications and extended learning or, because it's a
24 growing field I have to stay on top of all the new
25 technologies that come out.

1 Q. Right. You testified today about several different
2 programs like Camtasia and Cellebrite I think was one of them;
3 is that correct?

4 A. Yes. Cellebrite is a forensic tool but they do have
5 a software version. Yes.

6 Q. When did you start learning about those programs?

7 A. It was 2007 is when I began studying.

8 Q. When did you complete that? Was that part of the
9 certification from 2012?

10 A. No. It was not part of any certification. I
11 actually started learning that on my own in 2007. I didn't
12 start practicing professionally until 2010.

13 Q. Okay. So you were not able - you would not have
14 been qualified as an expert in this field until 2010; is that
15 correct?

16 A. That is correct. Yes.

17 Q. So they could not have used you specifically in the
18 2009 trial as an expert?

19 A. Right. But perhaps someone with the same
20 background.

21 Q. Right. Okay. Let's go back to some of those
22 programs again. Camtasia you mentioned. Is it true that
23 everything you have testified to today about these programs is
24 today's modern knowledge about these programs and the way that
25 they work?

1 A. I did review the Yahoo. Basically if you could do a
2 Google search for older software versions, you can actually
3 find software versions that were released at earlier times. I
4 did do this for the Yahoo Messenger. I looked up essentially
5 there's like a change log of whenever they update their
6 software and they have different software versions that are
7 listed and I did look at the one that was released I believe
8 it was, would have been June of 2006 if I remember correctly.
9 There was another one that was released in October of that
10 same year, another version. But yes. I did look at those.

11 Q. So that was Camtasia as they would have used it in
12 2006?

13 A. Camtasia, I don't know if I found the exact. I
14 don't want to testify that I found the exact version that they
15 would have used, but I did download an older version just to
16 see what it's capabilities were. Yes.

17 Q. Okay. And Cellebrite which you just talked about,
18 again, you stated that that would have been used to, it could
19 have been used to extract information from the cell phone,
20 correct?

21 A. Correct.

22 Q. Was that available, was that technology available in
23 2006?

24 A. It was. I can't tell you how limited or how
25 advanced it was at the time. I don't have that knowledge.

1 Q. Okay. The report that you examined, Belton's
2 report, was never discussed at trial; is that correct?

3 A. Which one now?

4 Q. Investigator Belton's report, the original forensic
5 report on this?

6 A. I believe they went over the chat log --

7 Q. Yes.

8 A. -- that was found in the report. And also the
9 photos, I believe.

10 Q. But the investigation of the computer itself was not
11 discussed at trial and what was found on the computer?

12 A. If it was -- I remember it being limited. I just
13 know that the chat messages and the photos.

14 Q. Which chat messages?

15 A. The ones from the Aimpro log.

16 Q. Okay. You testified about the last four messages of
17 the chat being out of order; is that correct?

18 A. Yes.

19 Q. There was admitted into evidence the picture of the
20 cell phone with the chat, correct?

21 A. Yes. That's correct.

22 Q. Were the last four messages on the cell phone
23 correct? Were those in the correct order?

24 A. The issue with the cell phone picture is that
25 there's no time and date that the messages were sent. I

1 received a black and white photo. I don't know if there was a
2 color photo available. There are arrows like an arrow symbol
3 next to each of the four messages that are on the picture. I
4 don't know if they're color coded and maybe in this instance
5 there's a way to tell which direction or who is sending the
6 message, but in the photo that I have there's no way to tell
7 that.

8 Q. Okay. The issues with Camtasia that you discussed,
9 this was all discussed on cross examination at the trial,
10 correct?

11 A. Yes.

12 Q. You also mentioned that the attorney could have
13 subpoenaed a digital copy of the chat as opposed to the
14 printout, correct?

15 A. Yes. I think that there should have been at least
16 some effort to try. Whether it existed or not, after
17 receiving the printout that's not known but I think the
18 attempt at least could have been made.

19 Q. That was my next question. Do you think that the
20 digital copy might have existed in 2006?

21 A. From where it was -- I mean, the digital copy should
22 have been provided after the chat message considering the
23 issue with Camtasia. If there was any issue with the software
24 recording it, I would imagine they would have exported the
25 actual archive chat instead of printing it off.

1 Q. Okay. Now, you're not an attorney, correct?

2 A. I am not an attorney.

3 Q. Okay. Did you subpoena the documents for this case
4 that you have referred to today such as the digital copy and
5 everything else that you said that the attorney could have and
6 should have subpoenaed?

7 A. No. And, of course, I do assist in issuing
8 subpoenas for the attorney acting as agent of counsel, but as
9 far as these items, no. I did talk to the evidence custodian
10 to inquire whether any of that was made available and
11 essentially I was told that the only items that were noted
12 were the computers that had been sent off to SC3C and he did
13 note some other items that were found in the car, not digital
14 evidence.

15 Q. Okay. So you have not seen the exact documents that
16 you think should have been subpoenaed in this case?

17 A. Correct.

18 Q. And you are not aware of what they said or if they
19 would have been helpful or not?

20 A. Well, the documents in question I would have been
21 interested to see the digital copies of everything and yes, I
22 do think that would have been helpful.

23 Q. Okay. The cell phone -- Sorry. I'm jumping around
24 a bit -- The cell phone you said did not have the specific
25 screen name connected to it; is that correct?

1 A. On the picture?

2 Q. On the picture of the cell phone?

3 A. Yes. It shows, at the top of the picture it says
4 lilmandyl4sc but there was nowhere on this picture that I see
5 the user name that was in contact with it.

6 Q. But the picture of the cell phone does show that he
7 was chatting on the phone with lilmandyl4sc?

8 A. Right.

9 Q. The original report that you analyzed and compared
10 your report to showed nine references to the Yahoo user name
11 black slyder, correct? Is that incorrect? Correct me if I'm
12 wrong.

13 A. Let me pull that up.

14 Q. And that was spelled b-l-a-c-k slyder? This is on
15 page 3 of your report under number 1 noted in the report.

16 A. Okay. Right. There was a user name. Let's see.
17 Okay. There was a user name black slyder spelled b-l-a-c-k,
18 b-l-a-c-k s-l-y-d-e-r and another blacklslyder spelled the
19 same just with an "l" there in the middle found and the date
20 stamp associated with those put that at June 30th, 2006.

21 Q. Okay.

22 A. I'm sorry. As the last date of it being updated in
23 the system.

24 Q. Those were found on that specific computer?

25 A. On that computer. Yes.

1 Q. And that was noted in the original report?

2 A. It was noted in Examiner Belton's report. Yes.

3 Q. Okay. Yes. In your report I believe you reported
4 that the last time the computer had been accessed by Mr. Green
5 I believe was October 19th. Does that sound correct? 2006.
6 And I'm looking at page 2 of 5 under examination of results.
7 The last time account, user account to log onto the system was
8 October 19th, 2006?

9 A. Right. Yes.

10 Q. And he was arrested on October 13th; is that
11 correct?

12 A. Yes.

13 Q. And he was out on bond so --

14 A. On the 19th. Yes.

15 Q. On the 19th. Okay. So he had several days to use
16 this computer between when he was arrested for the crime and
17 the computer was seized from him, correct?

18 A. Yes.

19 Q. So it's possible that he had gotten on the computer
20 and deleted user names?

21 A. If he had deleted anything, I would have been able
22 to recover that. As I did recover other deleted user names,
23 Yahoo Chat user names which I mentioned earlier. So if that
24 particular user name had been deleted or any content
25 associated with that, I should have seen some indication, some

1 artifact indicating that.

2 Q. Can you say that with one hundred percent certainty
3 that there definitely would have been some trace of it if it
4 had been deleted?

5 A. In this field you can never say anything with one
6 hundred percent certainty, but I would say that in my expert
7 opinion that the chances of something being deleted that
8 recently and not existing yet older Yahoo Chat user handles
9 that had been deleted could still be found is highly
10 unlikely.

11 Q. Okay. So that's just saying that, your conclusion
12 there is that it was not deleted from this specific computer,
13 correct?

14 A. The evidence would indicate that the chat did not
15 take place on this computer.

16 Q. But it's possible that it could have taken place on
17 a different computer?

18 A. Correct.

19 Q. Or from the cell phone?

20 A. Or from the cell phone which we never had access
21 to.

22 Q. Right. So we cannot say with a hundred percent
23 certainty that this computer was ever used?

24 A. That's correct.

25 Q. But it could have been done from another computer?

1 A. Correct.

2 Q. Regardless of the content on the phone or on this
3 computer, Mr. Green did show up where the police were waiting
4 for him with the specific evidence that they seized from his
5 car, correct?

6 A. Agreed.

7 Q. And he admitted to meeting, he was attempting to
8 meet with a 14 year old, correct?

9 A. Yes.

10 MS. COLEMAN: Thank you. No further questions.

11 THE COURT: Anything on redirect?

12 MS. ZMROCZEK: Just briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. ZMROCZEK:

15 Q. The evidence that they seized from his car
16 particularly they're referring to a video, can you tell the
17 Judge what that video was? It was a movie, correct?

18 A. It was a movie.

19 Q. Was it a pornographic movie?

20 A. No. It was not. The movie is titled "Envy And
21 White Chicks" movie title.

22 MS. ZMROCZEK: White chicks.

23 THE COURT: That's in your report?

24 THE WITNESS: No, sir. That's in the Aiken County
25 Sheriff's Office evidence property receipt.

1 MS. ZMROCZEK: It's just that she referred to items
2 in the car and I wanted to make sure that the Court was
3 aware that they were not pornographic movies but just
4 regular movies.

5 THE COURT: Okay.

6 BY MS. ZMROCZEK:

7 Q. And then she asked you specifically about knowing
8 what types of versions of Yahoo and Camtasia were running
9 during the time of the investigation and arrest, correct?

10 A. Yes.

11 Q. Are you familiar with -- You were provided all the
12 discovery, correct?

13 A. Yes.

14 Q. You are aware that Mr. Green actually contacted
15 Yahoo Messenger?

16 A. Yes. He did inform me of that. Yes.

17 Q. So I'm just handing that for you to refer to.
18 Explain how like Yahoo Messenger they have like a help
19 system?

20 A. They do.

21 Q. And does it require an expert to contact the Yahoo
22 Messenger?

23 A. Of course not.

24 Q. So that's something that the attorney could have
25 done on his own even without an expert?

1 A. Yes.

2 Q. To have some explanation or to have some questions
3 as to why these lines of the chats were missing?

4 A. Yes. Pico contacted Yahoo and found out or asked if
5 I export a conversation and I'm missing two lines, how would
6 that happen? Something to that effect.

7 Q. And you're aware that Mr. Green did this, right?

8 A. Did --

9 Q. Contacted?

10 A. Yes.

11 Q. And to your knowledge that was never put into the
12 record, right?

13 A. Correct.

14 Q. And she asked you about subpoenas. You certainly
15 don't issue subpoenas without getting them from an attorney,
16 right?

17 A. Absolutely not.

18 Q. So had the attorney or had -- You called down to
19 Aiken County to ask what evidence they had, correct?

20 A. Yes.

21 Q. Had they had the evidence that you wanted to examine
22 what would you have then done?

23 A. Firstly I would have up updated you. I would have
24 requested that we be allowed to look at that and if need be we
25 could have issued a subpoena. We don't normally need to do

1 that though whenever we request to see evidence.

2 Q. But that's certainly something that you ask
3 attorneys to do if you feel like --

4 A. Yes.

5 Q. But they didn't have it there, right? There was
6 nothing for you to subpoena?

7 A. Right. Correct.

8 Q. Okay. And you have been qualified as an expert in
9 digital forensics in Federal Court?

10 A. Yes.

11 Q. In State courts?

12 A. Yes.

13 Q. Circuit Courts and Family Courts?

14 A. Yes.

15 Q. And although you couldn't have been the expert in
16 this case back when in 2009 when it went to trial, correct?

17 A. Right.

18 Q. Are you aware, is this something that was not --
19 Were there experts around?

20 A. Uhm, there were. I can't remember his name. I know
21 some folks who started long before I did.

22 Q. Okay. So this is not something that, expert
23 testimony or expert investigation into this very complicated
24 field isn't something that wasn't available in 2006, '07, '08,
25 '09, correct?

1 A. Correct. Correct.

2 MS. ZMROCZEK: I believe those are all the questions
3 I have, Your Honor.

4 THE COURT: All right. Ms. Coleman, anything on
5 recross?

6 MS. COLEMAN: Nothing further from the State.

7 THE COURT. All right. Before you step down, let me
8 just -- Okay. I don't have any questions. Thank you,
9 sir. Appreciate it. Any other witnesses on behalf of
10 that?

11 MS. ZMROCZEK: Your Honor, those are the witnesses
12 that we have.

13 THE COURT: Okay.

14 MS. ZMROCZEK: My brain spins when I talk and think
15 about this as I'm quite sure yours and all the jury does.
16 What I would ask to do, I can make an argument or it
17 would probably be more coherent if I provided a written
18 memorandum to my argument and I would provide it to the
19 State as well. I have it. It's almost completed. I
20 wanted to make sure what his testimony was going to be
21 before I submitted that final argument but I can have
22 that to the Court by Friday and a copy to them as well.

23 THE COURT: You mean by tomorrow?

24 MS. ZMROCZEK: Yeah. Because I just wanted to make
25 sure what he testified to.

1 THE COURT: No. I appreciate that.

2 MS. ZMROCZEK: I know that this case has been
3 dragging on. And, Your Honor, I wanted to also just
4 remind the Court that I know that PCR's are very
5 difficult cases and I know that Mr. Green is actually set
6 to max out soon but the point of him challenging what his
7 attorney didn't do is that this case carries a mandatory
8 --

9 THE COURT: Sex offender registry.

10 MS. ZMROCZEK: Yes. And so regardless of him maxing
11 out we just wanted to make sure that the Court is aware,
12 we're not pushing the Court because obviously this is
13 very complicated but we just even if he is maxed out, we
14 don't want it to just go away because of the collateral
15 consequence.

16 THE COURT: I personally don't have any objection to
17 you sending me a memorandum or your argument of what you
18 think the attorney did wrong and then I will allow Ms.
19 Coleman to respond but what I am going to say is I'll
20 give you until next Friday to do that because I'm not
21 gonna be here tomorrow if I can help it and so if you
22 would get it to me by next Friday. Ms. Coleman, I know
23 you're gonna have to, well, I'm assuming you might have
24 to get Mr. Girlie -- Well, no. Good. You don't need his
25 help at all. He's over there shaking his head like she's

1 on her own. I'm out of here. Do you need ten days? Two
2 weeks?

3 MS. COLEMAN: Next Friday would be fine with me,
4 Your Honor, to respond.

5 THE COURT: Yeah. I think you're gonna probably
6 want to respond to hers. That would make more sense.

7 MS. COLEMAN: Let's say maybe one week after that.

8 THE COURT: Okay.

9 MS. ZMROCZEK: We work fast, Your Honor.

10 THE COURT: Y'all do work fast. And then if you
11 wouldn't mind doing that. Now, if any of y'all run into
12 some problems, just let me know, okay, about getting it
13 done. Just in case you have a week of court, Ms.
14 Coleman, and things don't work out as well as you think
15 they're gonna work out.

16 MS. COLEMAN: Thank you.

17 MS. ZMROCZEK: Thank you, Your Honor.

18 THE COURT: Thank you all.

19 WHEREUPON, THE HEARING WAS CONCLUDED.

20

21

22

23

24

25

1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

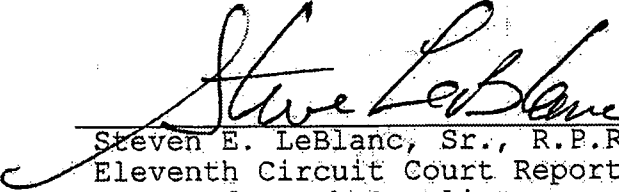
25

I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
and Official Circuit Court Reporter for the Eleventh Judicial
Circuit in and for the State of South Carolina, do hereby
certify that I reported the proceedings in the before
captioned case in the Court of Common Pleas in and for the
State of South Carolina on the 30th day of June, 2016.

I FURTHER CERTIFY that the forgoing 45 pages
constitute a true and accurate record of said proceedings.

I FURTHER CERTIFY that I am neither related, counsel
to, nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand at
Lexington County, this 19th day of September, 2017.


Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

RECEIPT FOR EXHIBITS

Case No. 2013-CP-02-00477
 Plaintiff: Benjamin Paul Green, IV
 Defendant: State of SC
 Date Trial Started: 9-11-2015

Judge E. Dickson
 Plt's Atty. Aimee Zmroczek
 Def's. Atty. Daniel Gourley
 Date Trial Ended: _____

Received of Cheri Young, Court Reporter for the above case, these exhibits:

		Clerk of Court Use
1	Screen Shot of Chat	✓
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12	Court Exhibits	✓
13	1. Applicant's PCR	
14	Issues - Handwritten -	
15	6 pgs - front & back	
16		
17		
18		
19		
20		

This 11th day of September 20 15

Page 1 of 1

By [Signature]

Richland County Clerk of Court

Clerk should retain white copy in Civil cases, yellow copy in Criminal cases FILED

September 11, 2015
[Signature]
2:00 pm

RECEIVED
Hilmandy 145c

HA

ok

Im on my way

Almost there

5 min away

PLAINTIFF'S
EXHIBIT

7

OCT 13 2006

FILED September 11 1955
U.S. District Court
District of Columbia
2:00 PM

Post Conviction Relief Issues
Benjamin Paul Green IV #335365
2013 CP-02 00477
2007 GS-02 00190,00191

COURT'S
EXHIBIT

1

459

I am being held in custody unlawfully, because during the guilt - or - innocence phase of my trial for the charges of Criminal Solicitation of a Minor (16-15-0342) and Attempted Criminal Sexual Conduct with a Minor in the Second Degree (16-3-655(B) and 16-1-80), I was denied my right to effective assistance of counsel, which is guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution, and by Article I, §§ 3 and 14 of the South Carolina Constitution. I was also denied my right to effective assistance of counsel during my post-trial appellate process. I will proceed to set forth how both instances of said denial were not only unconstitutional, but also harmfully prejudicial in leading to and resulting in an unlawful conviction and subsequent affirmation of that conviction.

Trial counsel's performance during the guilt - or - innocence phase of my trial was both egregiously unreasonable and fatally prejudicial. (Strickland v. Washington, 466 U.S. 668, 1984) Counsel's acts or omissions include, but are not limited to, the following:

- (i) Trial Counsel failed to request a jury instruction or object to improper instructions regarding the definition of an attempt. Counsel allowed an erroneous instruction on attempt that was devoid of the necessary "present ability" element that is needed to prove an attempt crime, according to State Law (State v. Nesbitt App. 2001 550 S.E. 2d 864) (State v. Quick 19 S.E. 2d 102, 1942), even though counsel had previously and repeatedly argued the fact that this element was missing [p. 22:1-6/p. 215:9-16/p. 220:1-5 (while arguing for lesser)/p. 252:16-21]. A jury charge is correct if it contains the correct definition of the law when read as a whole. The purpose of instructions is to enlighten the jury and to aid it in arriving at a correct verdict (State v. Kelly, 540 S.E. 2d 851, 2001). This failure by Trial Counsel to request or object prejudiced the trial outcome by not allowing the jury to make an informed decision based on all the proper and essential elements relevant to the charge of ACSC w/minor 2nd, a decision that more than likely would have been in the defenses favor considering that the jury would have been able to determine that an essential element was missing. This failure also prejudiced the outcome by not allowing the issue to be preserved for appellate argument. "It is the duty of the court regardless of request to instruct the jury on each and all the essential elements of the crime charged, and the failure to so instruct constitutes reversible error, regardless of whether the defendant requested such instruction." (Utah - State v. Roberts, 711 P. 2d. 235.) "When instruction purports to set forth all elements of a crime necessary to conviction, instruction is fatally defective if necessary element is omitted." (Ind-

FILED September 16, 15

FILED

2:00 pm

②

Smith v. State, 459 N.E. 2d 355). "Error is not cured just because the court, upon review, is satisfied the jury would or could have found that the state proved the missing element had the jury been properly instructed."

(Conn. — State v. Gabriel, 473 A.2d 300). "Instructions which fail to correctly define the elements of the offense charged, so that the jury may decide whether they have been established beyond a reasonable doubt, are constitutionally deficient, and constitute prejudicial error, requiring reversal." (Colo. — Key v. People, 715 P.2d 319. / W. Va. — State v. Barker, 346 S.E.2d 344). "Complete omission of issue [in this case "Present Ability"] as central to criminal trial as part of definition of crime charged deprives jury of guidance it must have to properly decide case." (Ill. — People v. Oguniola, 429 N.E. 2d 861 / Also Neb. — State v. Bridger, 388 N.W. 2d 831, for "... Failure to define word constituting essential element of crime charged.") Considering that the Trial Court also commits reversible error if it fails to give a requested charge on an issue raised

272:20-273:3

279:5-11

276:19-25

279:17-21

(recharge)

by the evidence, (State v. Harrison, 539 S.E.2d 71), the failure to request the full definition of attempt charged based on the whole law, deprived the defendant of a preserved obvious reversible error to be addressed at the Post Trial level, at which the appellant would have been granted the reversal as a matter of error of law. As can be seen, Trial Counsel was ineffective for failing to request an instruction that included a main theory for the defense (Riddle v. State, 418 S.E.2d 308, 1992) (Gray v. Lynn, 6 F.3d 265)

(ii)

State v. Nesbitt

App. 2001

78:6-8 (Deny motion)

40:16-41:5

279:5-11, 17-21

Trial Counsel failed to adequately research the attempt charge, whereas he would have been able to provide the case law needed to prove the proper elements that constitute an attempt, even though counsel had used the lack of the "Present Ability" element as a main point of defense. [pp. 22:1-6 / 252:16-21 / 272:20-273:3]. Counsel was ill-prepared to prove an essential element of the charged crime, an element that if included in the jury instructions, would have enabled the jury to undoubtedly conclude that the State could not prove this element, and thereby rule in the defendant's favor. This lack of research and preparation deprived the jury of vital information and hindered it from ruling in the defendant's favor, prejudicing the trial outcome. Inadequate investigation and preparation is in effect, ineffective assistance of counsel. (People v. Labree,

34 N.Y.2d 257⁽¹⁹⁷⁴⁾/People v. Donovan, 585 N.Y.S.2d 70, 1992). "A Criminal defense attorney has a duty to perform a reasonable investigation, including at a minimum... to make an independent investigation of the facts and circumstances of the case." (Lounds v. State, 670 S.E.2d 646, 2008)

(iii) Trial Counsel failed to properly object to the use of a supposed incriminating statement that was never submitted to the jury to determine the voluntariness, as is required by state law.

19:17-20:2 [pp. 134:17-24/136:19-21; Det. Platt] (Jackson v. Denno, 378 U.S. 368, 1963-64) [pp. 179-180/183:9-20] Trial Counsel had Four opportunities to object to and move to suppress an incriminating statement supposedly made by the defendant. Twice Det. Platt admitted that he did not know what "Mr. Green said verbatim." Det. Platt was also inconsistent in his attempts to recollect the statement. Trial Counsel twice had opportunity to object and move to suppress Det. Platt's attempts to use this statement, and trial counsel failed to do so at both instances. Trial Counsel also had two more opportunities during the testimony of Investigator Zeigler, who also could not remember what "Mr. Green said verbatim." Again trial counsel failed to object and move to suppress the statement as it was on record, allowing it to stand and prejudice the trial outcome by influencing the jury as a potential statement of confession. Had the jury not had this statement on record, it would've been more difficult for them to prove all the elements of ACSC w/ minor 2nd in their deliberations. Trial Counsel also failed to highlight the disparity in the testimonies of Det. Platt and Inv. Zeigler in regards as to when the statement was supposedly made. Det. Platt stated that the statement was made AFTER the Miranda warnings. However, Inv. Zeigler testified that the statement was made BEFORE the Miranda warnings, which reveals that the statement was involuntary, in accordance with the defense. Trial Counsel failed to pick up on this conflict and appropriate it towards the suppression of the statement [pp. 179-180/183:9-20]. This prejudiced the trial outcome severely against the defendant, allowing for a conviction founded, in whole or in part, upon an involuntary confession, depriving defendant of due process, violating constitutional provisions. In addition the Trial Court erred in failing to submit the issue to the jury for consideration as required by law, in light of the defendant's disputing not only voluntariness, but also the exact content of the statement. The jury was never charged that they must determine and establish beyond reasonable doubt that the defendant was given and understood his rights, and that the statement was given freely and voluntarily, before the statement could be considered in deliberations. This is consistently treated as an error requiring reversal (State

247:3-10(close)

19:24-20:2

(4)

v. Victor, 387 S.E. 2d 18, 1989/State v. Drayton, 337 S.E.2d 216, 1985/ Trial Counsel failed to request an appropriate charge in regards to the statement, thereby allowing the Trial Court to abuse its discretion and bypass the mandated jury consideration of involuntariness, further prejudicing the trial outcome towards a verdict against the defendant, at minimum, partly founded on the statement. Furthermore, Trial Counsel's failure further prejudiced the defendant at the Post-Trial Appellate level, as the State Supreme Court used the statement as an "admission" of intent in its opinion, which could have been prevented had Trial Counsel properly objected and requested the statement stricken or suppressed. This failure allowed the State Supreme Court to erroneously affirm an unconstitutional conviction, and was extremely deficient in allowing the Trial Jury to be exposed to the statement. (Rivera v. State, 677 S.E.2d 596, 2001)

(iv)

19:1-20:2

Trial Counsel failed to argue against the voluntariness of a supposed incriminating statement during the Jackson v. Denno hearing, instead focusing on the reliability of the statement. [pp. 13:13-19:23]. This failure defeated the whole purpose of the Jackson v. Denno Hearing, which would have been prevented had counsel argued the appropriate merits of involuntariness, such as when the statement was actually made, "Before" or "After" the Miranda Rights were read. Counsel also here demonstrated a lack of preparation that was deficient representation that prejudiced the trial outcome by allowing a potentially damaging statement past the Jackson v. Denno, instead of successfully suppressing the statement, thereby keeping it away from the jury and even the State Supreme Court, increasing the defendant's probability of a not-guilty verdict, or a reversal of a conviction at the Appellate level. Trial Counsel failed to show an adequate level of investigation into the prosecution's witness testimonies, which would have led counsel to discover the conflicting versions of when supposed statement was made, thus enabling counsel to prove involuntariness at the Jackson v. Denno and have the statement suppressed. This heavily prejudiced the trial outcome as the supposed incriminating statement was utilized adversely against the defendant during the guilt or innocence phase and at the Post-Trial Appellate phase. Again, "a criminal defense attorney has a duty to perform a reasonable investigation, including at minimum, the duty to interview potential witnesses and to make an independent investigation of the facts.

Roberts v. State

602 S.E.2d 768, 2001

and circumstances of the case." (Lounds v. State, 570 S.E.2d 646, 2008) Failure to perform this minimal duty is ineffective assistance of counsel. (People v. Donnan, 585 N.Y.S. 2d 70, 1992) Counsel's conduct was deficient because he failed to adequately prepare and present evidence to establish truth.

238:10-21

(closing reference)

(V) Trial Counsel failed to contemporaneously object to Trial Judge's improper comments made in the presence of the jury. Though counsel preserved this issue in a motion for a new trial, failing to object at the time of the comments prejudiced the outcome of the trial by allowing the Trial Judge to bolster the prosecution in front of the jury by saying that he would hate to be prosecuted by the Aiken County Solicitor. In a trial where the Aiken County Sheriff's Department was the arresting agency, these comments by the Trial Court lent unfair credibility to the prosecution, and in effect to the prosecution's witnesses, who were officers of that very same Aiken County Sheriff's Department, and whose credibility was crucial to the State's case considering they were the key witnesses for the State. Prejudice clearly flowed from not only the Trial Court's unlawful comments that reflected the judge's vouching of the prosecution's credibility, but also from Trial Counsel's erroneous failure to object to the Court's comments at the moment they were made, instead waiting until after a conviction and objecting in a motion for a new trial. Counsel's failure not only allowed undue vouching of the prosecution's credibility to be impressed upon the jury (Gilchrist v. State, 565 S.E.2d 281, 2002 / Sosebee v. Leake, 362 S.E.2d 22, 1987), counsel failed to properly preserve the issue on the trial record, as such comments constitute an error of law and are inherently prejudicial. (Matthews v. State, 565 S.E.2d 766, 2002) and if preserved properly, could have been addressed at the Post-Trial Appellate, warranting a reversal on behalf of defendant/appellant.

162:11-163:5 (marginalia)

(VI) Trial Counsel failed to sufficiently investigate Yahoo Messenger's Auto Archive feature, which would have led counsel to discover the facts needed to contest the State's claims on how the Auto Archive feature functions. [pp. 110:16-23 (No object) / 114:1-21 (Object) / 167:21-168:4-21 (cross) / 256:17-257:9 (Def. Close) / 263:3-4 (State Close) / pp. 35:4-36:6 (Porter); 39:7-24 (Porter)]. This failure to investigate and be sufficiently knowledgeable about the operation of Yahoo Messenger's Auto Archive prejudiced the outcome of the trial by allowing the State to deliberately make material false statements and untrue claims as to how Auto Archive functions, thereby supporting the inclusion of the questioned archived chat conversation as evidence despite it being an incomplete and unfair representation, violating Rules 106 [Remainder] and 1002 [Original] of the S.C. Rules of Evidence, which counsel attempted to argue [pp. 33:5-38:20]. A simple but thorough inquiry by Trial

move to suppress

23:22-25; 1106

⑥

Counsel would have revealed that the Auto Archive feature of Yahoo Messenger saves every line of an archived chat, and always has. This discovery would have proved a conspired perjury on the parts of the Attorney General's Office and the State's key witness from the Aiken County Sheriff's Department, Detective Tommy Platt, as well as prevented a vital piece of State Evidence from being admitted into the trial. "The knowing use of perjured testimony by the state in a criminal prosecution is a violation of the rights of the accused under both the federal and the state constitutions and justifies the granting of relief under such statutes or rules." (U.S. - Napue v. People of the State of Illinois, 79 S.Ct. 1173, 360 U.S. 264/U.S. - U.S. v. Safel, D.C. Ohio, 594 F. Supp. 1525). "The knowing use by the government of perjured testimony against accused to obtain a conviction constitutes a ground for vacation of the conviction and sentence. (U.S. - Sears v. U.S., C.A. Fla., 265 F.2d 301). "It is unlawful for a person to willfully give false, misleading, or incomplete testimony under oath in any court of record, judicial, administrative, or regulatory proceeding in this State." (16-9-10 (M) 11). It is apparent that Trial Counsel's failure to investigate allowed the false testimony on a contested material issue to affect the trial judgement in the result of a conviction, rather than counsel being able to suppress the ~~that the State's~~ only documented piece of evidence in their attempt to prove that a conversation actually took place, removing it from consideration by the jury. Trial counsel also lost an opportunity to redirect the perjured testimony in an attempt to impeach Det. Tommy Platt, the State's Key witness, which would have in effect rendered the State's Key witness and main piece of evidence uncredible, and would have been conducive to a directed verdict in the defendant's favor. "Cases involving perjured testimony which the prosecutor knew or should have known, that had the evidence been disclosed to the defense, there is a reasonable probability that the result of the proceeding would have been different, the evidence is material for purposes of a Brady Violation." (State v. Moses, 702 S.E.2d 315, SC App 2010). Trial Counsel was unable to take advantage of this Brady Violation in the defendant's favor because he had not done the necessary investigation to procure the correct facts about Yahoo Messenger's Auto Archive Feature. ^{close} Also 256:17-22, ^{in that difference} last 3 lines.

(vii) Trial Counsel failed to move for the suppression of evidence, whose probative value was substantially outweighed by the danger of unfair prejudice. [51:2-15/52:5

(7)

-15/198:23-201:20]. Trial Counsel ill-advised the defendant to sign a stipulation agreeing to the introduction of certain parts of a secondary chat, even though the State had earlier explicitly noted its intent to "put forth that chat as an admission." [51:9-10] This secondary chat involved a living 17 year old female rather than a fictitious female of 14 years of age. This secondary chat also was initiated by the 17 year old female, as well as was any sexual content in the chat. This secondary chat was not similar to the particulars of the primary chat, but nonetheless the Trial Counsel allowed the secondary chat to be used against the defendant's character as evidence of a propensity towards sexual conduct of a criminal nature and as an admission of guilt with one excerpted phrase taken out of context. Trial Counsel allowed this by first failing to move to suppress, and secondly, by advising the defendant to agree to stipulation. These failures adversely affected the trial's outcome by allowing the jury to be subject to and have access to irrelevant yet prejudicial information that suggested to jurors that the defendant was probably guilty of the crime for which defendant was on trial since defendant supposedly showed a propensity to commit such crimes. This failure to move to suppress and Trial Counsel's improper advice amount to ineffective assistance of counsel. (People v. Donovan, 585 N.Y.S.2d 70)

(viii) Trial Counsel failed to maintain adequate knowledge of relevant details of case law that counsel provided to trial judge [pp. 40:1-41:7 (St. v. Murphy)/415:3-220:13]. Trial Counsel was unable to validate as to why the Court should charge the lesser included offenses based on the case law offered by counsel. Instead, the Trial Court was allowed to erroneously apply case law as to why it should not charge the lesser included offenses. Trial Counsel correctly cited State v. Murphy, but because of his lack of familiarity with that case, counsel allowed Trial Court to veer from State v. Murphy's support of the lesser [p. 218:3-9] to State v. Dempsey, which says that it is not proper to charge, but only because in that particular case, there were actual sexual batteries that occurred. However the Trial Court also cited State v. Mathis, which consequently states that failure to instruct on ABHAN was a reversible error, yet Trial Counsel was not knowledgeable on this case as well. Trial Counsel was also ignorant of other case law that agreed ABHAN is a lesser included of which a charge is entitled (State v. White, State v. Pressley, State v. Murphy also clearly sets forth the difference between the lesser of ABHAN or AHAN being charged as to whether there was an actual battery or sexual battery that took place, which did not in the defendant's case, entitling him to a charge of the lesser AHAN based on evidence. The court's all or nothing stance [216:25] should have led to a directed verdict on the defendant's behalf. Trial Counsel cited State v. Murphy, State v. Mims, and State v. Mathis, all with no reference to each case's determination that failure to instruct the lesser included ABHAN is a reversible error, as well as

(8)

their inclusion of the present ability requirements stated specifically in regards to Criminal Sexual Conduct as it relates to assaults in general. This failure by the counsel to sufficiently research and prepare his presentation of relevant case law prejudiced the trial outcome by denying defendant the right and opportunity to face less severe sentencing if found guilty of the lesser included offenses. In addition, when Trial Court ^{asked} whether the State v. Murphy, State v. Mims, and State v. Mathis cases referred to "a minor," counsel responded he was "not sure." [220:6-11], even though counsel cited Murphy in pre-trial motions [40:18], further evidencing his lack of preparation. On at least two separate occasions, Court asked Counsel for case law to support request to dismiss charges as a matter of law, and trial counsel was unable to produce and responded no, again showing he was ill-prepared to present his arguments. Counsel's blatant failure to research and study the material case law in regards to his main points of defense deprived the defendant of his due process rights and was ineffective assistance of counsel. (Stevens v. State, 617 S.E.2d 366, 2005/People v. Labree, 373 N.E.2d 730/Lounds v. State, 670 S.E.2d 646/

45:24-46:7

235:14-25

208:17-22

(IX) Trial Counsel failed to call into question the integrity of conflicting testimony from the prosecution's witnesses. Detective Platt and Investigator Zeigler had different testimonies as to when the defendant was Mirandized in relation to when a supposed incriminating statement was made. Det. Platt maintained that he Mirandized the defendant before the statement was made. However Inv. Zeigler asserted that the defendant was Mirandized AFTER the statement was made. Trial Counsel was ineffective for failing to make use of Zeigler's testimony on direct and cross-examination for the purpose of impeaching Det. Tommy Platt, who was State's Key Witness, [p.133:14-20/180:12-15 (Zeigler Cross/Direct)/134:15-24 (Platt Direct)/16:9-14 (Platt Denial Cross)], especially in light of a material issue such as the voluntariness of a supposed incriminating statement and the discrepancies between the two testimonies. (People v. Wallace, 187 A.2d 198, 591 N.Y.S.2d 189, 1972). This failure prejudiced the trial outcome by allowing the ~~same~~ introduction of a supposed incriminating statement by the defendant to stand on the record and influence the jury, and the State Supreme Court at Post-Trial, in the way of an admission of guilt. Detective Tommy Platt also had conflicting testimony with Mrs. Linda Williamson, the actual woman from the photo used in the Lil' Mandi profile by Det. Platt on the night of Oct. 13, 2006. [223:3-232:31 (Lynda Direct)/232:22-234:16 (Lynda Cross, ReDirect)/153:25-154:18; 159:6-160:25; 161:24-162:4 (Platt Cross)]

(9)

First, Detective Platt stated that Mrs. Linda Williamson's Husband is the individual who gave him the picture and the permission to use the picture, around 2005, 2006. Det. Platt also stated that when he received the picture and started using it, that Mrs. Williamson was at that time a law enforcement officer, specifically a probation and parole officer, according to her husband, who had given him the picture [154:6-18/160:5-19]. Det. Platt goes on to state that Lynda Williamson had knowledge of him using her photograph to pose as a 14-year old girl [72:17-173:1]. However, in Mrs. Williamson's own testimony, she stated that it was her, not her husband, who gave the picture to Mark Hammond of the Aiken County Sheriff's Department, not to Detective Tommy Platt. Mrs. Williamson stated it was actually Mark Hammond who took the photo himself, and it was Hammond to whom she gave initial permission to use the photograph. She also stated that she was 24 or 25 years old when the photo was taken in 2001, and while she was a probation officer at the time, she had not been in law enforcement at all since 2001. [224:8-225:16/231:7-21]. Mrs. Williamson also stated that although up to that point, she had not rescinded her permission to Mark Hammond, she never authorized anybody besides Mark Hammond to use her photograph to pretend to be someone else, and she had no previous knowledge before that trial that anyone besides Mark Hammond was using her picture, including no knowledge of Detective Platt using it in a Yahoo profile as Little Moody (LSC, posing as a 14-year old girl. ^{Five years after she was no longer in law enforcement} [233:9-18; 233:25-233:6; 223:13-224:7]. Despite the vast differences in these two accounts of the same events and circumstances, Trial Counsel failed to highlight Detective Platt's discrepancies, who was trying to secure a conviction, against the testimony of the person who is actually in the photo, an individual with no stake in the trial outcome. These failures allowed inconsistencies to stand on the record which clearly favored the State and prejudiced the defendant. Once again, Det. Platt, the State's key witness, was in an impeachable position that the Trial Counsel did not appropriate to attack the veracity of Det. Platt's claims, being that his testimony was vital to the State's case. Det. Platt was obviously misleading about how he obtained Mrs. Williamson's photo, when he obtained the photo, and about whether he actually had any lawful right to be using the photo, even up until that date, 8 years after she was no longer in law enforcement. Trial Counsel again failed to use testimony, in this instance Lynda Williamson, for the purpose of impeaching Det. Tommy Platt. Trial Counsel also failed to highlight Det. Platt's unfamiliarity with ICAC standards and protocols, especially when Platt responded "I guess" when questioned about documentation procedures, knowing that proper documentation was a recurring issue dealing with a portion of the primary chat record being missing. [161:24-162:4/159:12-13 (written consent from af.)]. Trial Counsel also failed to utilize Platt's own inconsistent and ~~unreliable~~ statements about what the defendant said when asked why he showed up in Aiken that night.

(10)

in conjunction with Platt's other inconsistent remarks to impeach him. "Trial Counsel is ineffective for failing to impeach [the State's Key Witness] and failing to prepare and present evidence that would have established the truth." (Robert v. State, 602 S.E.2d 768, 2004). (People v. Wallace, 187 A.D.2d 998) ~~(Counsel's failure to)~~ utilize important trial testimony was deficient conduct that prejudiced the trial outcome by allowing untruthful and unlawful testimony against the defendant to stand on the record and influence the jury that said testimony was reliable and more than likely true, and rule in favor of the State.

Appellate counsel's performance during the post-trial appellate process was both unreasonable and prejudicial. (Elli v. Lucey, 469 U.S. 387, 1985) Counsel's acts or omissions included, but are not limited to, the followings:

- (i) Appellate counsel failed to raise an obvious reversible error on direct appeal, that had clearly been preserved for appeal. (Simpkins v. State, 401 S.E.2d 142, 1991). The admissibility of a statement supposedly made by the defendant was preserved on the motion for a new trial as well as during the Jackson v. Demo [18:34-20:22]. State Law clearly states that failure to submit the statement to the jury for the issue of voluntariness is a reversible error. Failing to raise this issue deprived defendant of his entitlement to a reversal on direct appeal. In addition, Appellate counsel's failure to pursue this significant and obvious error of law gave way to an unreliable affirmation of petitioner's conviction, both of which were at least partly based on an undetermined statement, which is a deprivation of due process, and is evidenced by the Supreme Court's usage of the statement as an admission in its Opinion (No. 27108) (State v. Victor, 387 S.E.2d 248) (State v. Drayton 357 S.E.2d 216)

Mason v. Hanks

Appellate counsel also failed to pursue the issue of the trial court's refusal to charge the lesser included offenses of ACSC w/minor 2nd in regards to the Trial Court's statement that "it may be a lesser included but that doesn't mean I have to charge it..." which was preceded by "it's either all or not to me in this situation"

(11)

[216:1-217:6], both statements given after the trial court was exposed to several case laws that explicitly set forth ABHIAN, AHAN as lesser-included of CSC w/minor ^{no pressure to do anything} (no completed battery), and that failure to charge was reversible error. Trial Court commits reversible error if it fails to give a requested charge on an issue raised by the evidence (State v. Harrison, 539 S.E.2d 71, App. 2000). Counsel's failure to again neglect to pursue an obvious question of state law prevented petitioner from winning his appeal. (Mason v. Hanis, 97 F.3d, 902, 7th Cir. 1996). (Guy determines all or nothing, not Judge)

- (ii) Appellate Counsel failed to exercise due diligence when researching the preserved issues, in spite of having filed for multiple extensions. This failure led to the most meritorious issues being left out of the brief, thereby decreasing the chances of success for appellant. This failure also led to a deficient argument on the matter of the uncharged lesser included offenses, furthering crippling the appellant's chances to win his appeal. [219:1-4, 25-220:5 (benial protected)]
- (iii) Appellate Counsel failed to exercise due diligence when studying the particulars of the case, which resulted in a prejudicial lack of knowledge concerning specific relevant details during the appellate hearing. This failure prevented Counsel from being able to refute erroneous assertions, such as the appellant was in possession of pornography and drugs, which are easily dispelled after a study of all the evidence and the transcript. This failure allowed the Supreme Court to have a prejudiced and misleading view of Appellant. [174:24-175:6]
- (iv) Appellate Counsel argued issue during oral argument that not only was not preserved for appeal, but was never brought up during the trial. This unreasonable behavior adversely affected the outcome by taking precious time away from the material issues that were raised. (Race).
- (v) Appellate Counsel failed to include meritorious issues. Counsel failed to include several issues which highlighted the various forms of judicial & prosecutorial misconduct, that would have led the Supreme Court to rule in Appellant's favor, such as refused jury charges, involuntary statement not given to jury to consider, multiple Brady Violations [53:10-55:22/128:14-16], and Trial Court's Refusal to honor Rule 106 of the Rules of Evidence (eff. 9/3/85) [115:24-116:9], all errors of law, some automatic reversals, depriving the petitioner of a fair appeal and entitled reversal.
- (vi) Appellate Counsel failed to include requested material information in appellant brief. Appellant shared

(12)

information several times with counsel to add to the Appellant Brief in Response to the Respondent's brief. Counsel also declined to share copy of final brief with Appellant. This failure to include the requested information prejudiced the outcome of the hearing by depriving the Supreme Court the full ability to make a properly informed decision regarding the issues based complete reasoning of the appropriate case law.

- "Where accused has been denied his constitutional rights by misconduct which occurred during the trial, post-conviction relief is available." Parker v. Gladden, Ct. 87 S. Ct. 468, 385 U.S. 563;

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Benjamin P. Green, IV, #335365,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

2013-CP-02-477

ORDER OF DISMISSAL

FILED 1.17.17
Aiken County Clerk
Aiken County Clerk

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on February 27, 2013. Respondent submitted its return on June 18, 2013. An evidentiary hearing was held on September 11, 2015 at the Aiken County Courthouse. Applicant was present and represented by Aimee Zmroczek, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office. Following the hearing, the record was left open to obtain additional testimony. A second evidentiary hearing was held on June 30, 2016 at the Orangeburg County Courthouse, and both parties waived venue. Applicant was present and represented by Ms. Zmroczek. Respondent was represented by Julie A. Coleman and Daniel Gourley, both of the South Carolina Attorney General's Office. Subsequently, both parties submitted memoranda in support of their positions. This Order of Dismissal follows.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was true billed indicted at the January 2007 term of the Aiken County Grand Jury for Attempted Criminal Sexual Conduct with a Minor in the Second Degree (2007-GS-02-191) and Criminal Solicitation of a

Minor (2007-GS-02-190). Michael D. McMullen, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III. Applicant was found guilty, and on June 17, 2009, Applicant was sentenced to twelve years imprisonment for Attempted Criminal Sexual Conduct with a Minor in the Second Degree and ten years imprisonment for Criminal Solicitation of a Minor with all sentences to run concurrent.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Wanda H. Carter, Esquire. The South Carolina Supreme Court affirmed Applicant's conviction and sentence. State v. Green, Op. No. 27108 (Cl. App. filed April 4, 2012). Remittitur was issued on May 3, 2012.

Applicant filed a timely application for post-conviction relief on February 27, 2013.

II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

I. Ineffective Assistance of Counsel

- a. "Applicant was denied the right to effective assistance of counsel guaranteed by the Sixth and Fourteenth amendments to the U.S. Constitution, and by Article I, § 3 and 14 of the S.C. Constitution during the guilt or innocence phase of his trial.
- b. "Trial counsel's performance during the guilt-or-innocence phase was both unreasonable and prejudicial. Strickland v. Washington, 466 U.S. 668 (1984). Counsel's acts or omissions included, but are not limited to the following:"
- c. "Trial counsel failed to request a jury instruction that included the necessary 'present ability' element needed to prove an attempt crime, according to law, even though counsel had previously argued this fact."
- d. "Trial counsel failed to adequately research the attempt charge, whereas he would have acquired and been able to provide the case law needed to prove the proper elements that constitute an attempt, even though counsel had used the lack of the 'present ability' element as a main point of defense."
- e. "Trial counsel failed to properly object to the use of a supposed

incriminating statement that was never submitted to the jury to determine the voluntariness, as is required by state law."

- f. "Trial counsel failed to argue against the voluntariness of a supposed incriminating statement during the Jackson v. Denno hearing, instead focusing on the reliability of the statement."
- g. "Trial counsel failed to contemporaneously object to trial judge's improper comments that were made in the presence of the jury."
- h. "Trial counsel failed to sufficient Yahoo Messenger's auto archiving feature, which would have led him to discover the facts needed to contest the Attorney general's office claims on how the auto archiving feature functions."
- i. "Trial counsel failed to move for the suppression of evidence, whose probative value was substantially outweighed by the danger of unfair prejudice."
- j. "Trial counsel failed to maintain adequate knowledge of relevant details of case law that said counsel provided to the trial judge."
- k. "Trial counsel failed to call to question the integrity of conflicting testimony from the prosecution witnesses"

2. Ineffective Assistance of Appellate Counsel

- a. "Applicant was denied the right to effective assistance of appellate counsel during the post-trial appellate process."
- b. "Appellate counsel's performance during the post-trial appellate process was both unreasonable and prejudicial. Evitts v. Lucsey, 469 U.S. 387 (1985). Appellate counsel's acts or omissions included, but are not limited to the following:"
- c. "Appellate counsel failed to raise an obvious reversible error on direct appeal that had clearly been preserved for appeal."
- d. "Appellate counsel failed to exercise due diligence when researching the preserved issues, in spite of having filed for multiple extensions."
- e. "Appellate counsel failed to exercise due diligence when studying the particulars of the case, which resulted in a prejudicial lack of knowledge concerning specific relevant details during the appellate hearing."
- f. "Appellate counsel argued issues during the appellate hearing that only was not preserved for appeal, but was not even brought up during the trial proceedings, thereby taking away from the material issues."
- g. "Appellate counsel failed to include meritorious issues in appellant's brief."
- h. "Appellate counsel failed to include requested relevant information in appellant's brief, thereby depriving the Supreme Court the ability to make a properly informed decision regarding the issues."

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their 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 the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order 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. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

IV. 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. 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).

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant makes several allegations arguing that Trial Counsel was ineffective in his representation surrounding his trial. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)).

Summary of Testimony Presented

Applicant asserts that Trial Counsel was ineffective for failing to call a digital expert to challenge the State's evidence against him on his laptop computer. At the PCR hearing, Applicant presented testimony from Chris Watkins, a digital expert, who was hired to review the digital evidence in this case. He gave testimony on the investigator's report of Applicant's laptop computer. Although he testified about several issues he saw in the report, Mr. Watkins agreed that this report was not used as evidence or discussed at trial. He further testified about computer software that could have been used to properly investigate this case, such as "Cell Bright," which is a program that is used to extract cell phone information, but he was not certain if any of this technology could have been used to investigate this laptop computer in 2006 before the trial. Mr. Watkins also testified that he did not have access to the cell phone in this case and was unable to

access the information that could have been extracted from the cell phone, so he was unsure what it would have been.

Mr. Watkins testified about the unreliability of the technology and software used in the investigator's original report; however he agreed that these faults were elicited at trial on cross-examination of the State's investigator.

Mr. Watkins testified that he found no evidence that the "blak slyder" screen name had ever been created, accessed, or deleted from that laptop computer. He further explained that if it ~~these records had been deleted from the laptop~~, he would probably be able to tell that it had been there. However, he testified that there are times when information is deleted from computers that cannot be recovered, and there is no way to be absolutely certain that a laptop would show records of deleted information.

Mr. Watkins testified that Trial Counsel should have subpoenaed chat records from Yahoo! Chats and other documents in order to properly investigate this case. However, he testified that he was not an attorney and that he had not actually subpoenaed the documents for this case about which he testified, so he could not know for sure what they would have said.

Findings

This Court finds that the testimony presented at the PCR hearings satisfies neither prong of the Strickland test; Applicant can show neither ineffectiveness nor prejudice.

As Mr. Watkins testified, there may have been several faults or discrepancies in the report run by the State's investigator. However, Trial Counsel elicited many of these faults on cross examination at trial, and they were adequately presented to the jury to consider. Trial Counsel was not ineffective in choosing not to produce a witness to testify to this effect. Furthermore, the report that Mr. Watkins examined and testified about was not discussed at trial

nor introduced to the jury, so it was not considered as evidence by the jury during deliberations. Thus, Applicant can show no prejudice because bringing in an expert to criticize the integrity of a report that was not discussed at trial would not have affected the outcome of the trial.

Additionally, Applicant has failed to meet his burden in proving that Trial Counsel should have subpoenaed the records from the cell phone or from the Yahoo! chats because he did not subpoena them himself or prove what useful information these records would have contained that would have changed the outcome of this trial. Without the exact evidence that would have been introduced at trial, it is improper to speculate that there could have been some additional evidence that might have changed the jury's verdict. See Bannister v. State, 333 S.C. 303, 509 S.E.2d 807 (1998).

Furthermore, Mr. Watkin's testimony that there was no evidence that the laptop computer ever created, accessed, or deleted the username "blak slyder" is inconclusive. He agreed that there is no way to be sure that anything was not deleted from a laptop, and he further agreed that the username could have been accessed or deleted from a different device. Mr. Watkin's speculation about what might have never existed on a laptop is not enough to satisfy the burden of proof in this case.

Lastly, Applicant has offered no evidence that Trial Counsel's strategy in the arguments he made during the Jackson v. Denno hearing were ineffective or prejudicial, and thus has failed to satisfy his burden of proof.

Applicant has failed to meet his burden in proving trial counsel was ineffective in any regard. Applicant has not shown that he was prejudiced by any of trial counsel's actions as he has failed to show that the result of his trial would have been different but for trial counsel's actions. Accordingly these allegations are denied and dismissed with prejudice.

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

Applicant has failed to present sufficient evidence at the evidentiary hearings to support his allegations of ineffective assistance of appellate counsel, and thus has failed to meet his burden of proof. Therefore, these allegations are denied and dismissed with prejudice.

OVERWHELMING EVIDENCE

Applicant cannot meet his burden to show that he was prejudiced by any alleged deficiencies because there is overwhelming evidence of his guilt. See Franklin v. Cates, 346 S.C. 563, 570 n. 3, 337 S.E.2d 718, 722 n. 3 (2001), cert. denied, 535 U.S. 1114, 122 S.Ct. 2332, 153 L.Ed.2d 162 (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of the defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt); cf. Ford v. State, 314 S.C. 245, 248, 442 S.E.2d 604, 606 (1994) (holding respondent failed to prove prejudice from trial counsel's failure to request an alibi charge where there was overwhelming evidence of guilt).

The chat messages from the "blak slyder" screen name provided evidence that identifies Applicant as the perpetrator, such as stating that his name was Ben and that he worked at a plant. Transcript pg. 148, 152. There was also no question that Applicant appeared at the specified meeting place in the vehicle identified in the chat and with all of the items that "blak slyder" stated he would bring in the chat, such as the DVDs, his cell phone, condoms, alcohol, printed directions to the locations, and sexual enhancement supplements. When Applicant arrived, he stated that he was there to meet a fourteen year old girl name Mandy. Furthermore, Applicant sent two photographs of his penis as well as a picture of his face to the investigators in the chat.

The South Carolina Supreme Court found the evidence against Applicant overwhelming in the direct appeal of this case. "Moreover, even if the judge erred in admitting the photographs, we find any error to be harmless given that the text of the online chats, the testimony of the investigating officers, and the evidence found in Green's car conclusively established the elements of the crimes for which Green was charged." State v. Green, 397 S.C. 268, 288, 724 S.E.2d 664, 674 (2012)(citing State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989), recognizing that an insubstantial error not affecting the result of the trial is harmless where "guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached.")

The testimony at the PCR hearing reflected the exact evidence used at trial was correct. Applicant did not dispute the evidence against him. This is clearly overwhelming evidence of Applicant's guilt. As a result, Applicant can show no prejudice from any of the allegations raised in his PCR application as no deficiency on behalf of trial counsel could have reasonably changed the outcome of trial, and these allegations are denied and dismissed with prejudice.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

V. CONCLUSION

Based on all the foregoing, this Court finds and concludes that the 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 that 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 (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 that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 27th day of December, 2016.


 EDGAR W. DICKSON
 Presiding Judge
 Third Judicial Circuit

, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL DISTRICT
2013-CP-02-477

Benjamin P. Green, IV, #335365)
Applicant,)

v.)

State of South Carolina,)
Respondent.)

MOTION TO RECONSIDER

1-26-17 12:30 SP
Robert L. White
C.C.P. & G.S.
Shondell White
Deputy Clerk

NOW COMES, Applicant, Benjamin P. Green, IV, by and through his undersigned counsel, and moves pursuant to Rule 59(e) SCRCP for an order altering or amending the court's prior order filed on January 17, 2017, denying Applicant's claim and dismissing with prejudice. While the court has ruled in the State's favor, the Applicant submits this motion to ensure that he has "enable[d] the lower court to rule properly after it has considered all relevant facts, law, and arguments." Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 546, 546 (2000). Specifically all allegations submitted in the memoranda by Applicant regarding:

1. Ineffective Assistance of Counsel:

a. Applicant was denied the right to effective assistance of counsel guaranteed by the Sixth and Fourteenth amendments to the U.S. Constitution, and by Article I, § 3 and 14 of the S.C. Constitution during the guilt or innocence phase of his trial.

b. Trial counsel's performance during the guilt-or-innocence phase was both unreasonable and prejudicial. Strickland v. Washington, 466 U.S. 668 (1984). Counsel's acts or omissions included, but are not limited to the following:

c. Trial counsel failed to request a jury instruction that included the necessary "present ability" element needed to prove an attempt crime, according to law, even though counsel had previously argued this fact.

d. Trial counsel failed to adequately research the attempt charge, whereas he would have acquired and been able to provide the case law needed to prove the proper elements that constitute an attempt, even though counsel had used the lack of the "present ability" element as a main point of defense.

e. Trial counsel failed to properly object to the use of a supposed incriminating statement that was never submitted to the jury to determine the voluntariness, as is required by state law.

f. Trial counsel failed to argue against the voluntariness of a supposed incriminating statement during the Jackson v. Denno hearing, instead focusing on the reliability of the statement.

g. Trial counsel failed to contemporaneously object to trial judge's improper comments that were made in the presence of the jury.

h. Trial counsel failed to sufficient Yahoo Messenger's auto archiving feature, which would have led him to discovery the facts needed to contest the Attorney general's office claims on how the auto archiving feature functions.

i. Trial counsel failed to move for the suppression of evidence whose probative value was substantially outweighed by the danger of unfair prejudice.

j. Trial counsel failed to maintain adequate knowledge of relevant details of case law that said counsel provided to the trial judge.

k. Trial counsel failed to call to question the integrity of conflicting testimony from the prosecutions witnesses.

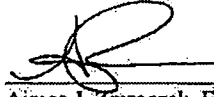
2. Ineffective Assistance of Appellate Counsel

- a. Applicant was denied the right to effective assistance of appellate counsel during the post-trial appellate process.
- b. Appellate counsel's performance during the post-trial appellate process was both unreasonable and prejudicial. Evitts v. Lucey, 469 U.S. 387 (1985). Appellate counsel's acts or omissions included, but are not limited to the following:
 - c. Appellate counsel failed to raise an obvious reversible error on direct appeal that had clearly been preserved for appeal.
 - d. Appellate counsel failed to exercise due diligence when researching the preserved issues, in spite of having filed for multiple extensions.
 - e. Appellate counsel failed to exercise due diligence when studying the particulars of the case, which resulted in a prejudicial lack of knowledge concerning specific relevant details during the appellate hearing.
 - f. Appellate counsel argued issues during the appellate hearing that only was not preserved for appeal, but was not even brought up during the trial proceedings, thereby taking away from the material issues.
 - g. Appellate counsel failed to include meritorious issues in appellant's brief.
 - h. Appellate counsel failed to include requested relevant information in appellant's brief, thereby depriving the Supreme Court the ability to make a properly informed decision regarding the issues.

THEREFORE, counsel requests that Order be reconsidered for the above listed specific

reasons and issues not specifically listed above but raised during the trial of this matter.

Respectfully Submitted,



Aimée J. Zmroczek, Esq. #77936
A. J. Z. Law Firm, LLC
2003 Lincoln Street
P.O. Box 11961
Columbia, SC 29211
(803) 400-1918 telephone
(803) 403-8005 fax
ajzlawfirm@gmail.com
Counsel for Applicant

Columbia, South Carolina
Dated: January 22, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL DISTRICT
2013-CP-02-477

Benjamin P. Green, IV, #335365)
Applicant,)
-vs-)

CERTIFICATE OF SERVICE

State of South Carolina,)
Respondent.)

I certify that, on this date, I served a copy of the Motion to Reconsider dated
January 22, 2017 by depositing it in the U.S. Mail in an envelope with
sufficient postage affixed, addressed as follows:

Daniel Gourley
Assistant Attorney General
SC Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

FILED

1-26-17 12:30
SP
Robert L. White
CCCP & GS
Shadell Parks
Deputy Clerk

Christina A. Metze
Christina A. Metze

Columbia, South Carolina

Dated: 1/23/17

WITNESSES

inv. Tommy Platt - Aiken County S.O.

January 19 7

/Caw

ARREST WARRANT NUMBER

K094020 K-094010 JCB

ACTION OF GRAND JURY

Jury Bill

Richard Smith

Foreperson of Grand Jury

Date: January 18, 2007 JCB

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-02- 190

The State of South Carolina**County of Aiken****COURT OF GENERAL SESSIONS****January 2007 TERM****THE STATE**

vs.

Benjamin Paul Green IV**D.O.B. [REDACTED] 1978****Indictment for****CRIMINAL SOLICITATION
OF A MINOR****SC Code: 16-15-342****CDR Code: 2999**

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF AIKEN)

CRIMINAL SOLICITATION OF A MINOR

At a Court of General Sessions, convened on January 22, 2007, the Grand Jurors of Aiken County present upon their oath:

That Benjamin Paul Green IV, on or about October 13, 2006, did willfully and knowingly commit the crime of criminal solicitation of a minor. To wit: Benjamin Paul Green IV, a person eighteen years of age or older, did knowingly contact and communicate by way of the Internet with a person located in County of Aiken, State of South Carolina, that he reasonably believed to be fourteen years of age, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity as defined in Section 16-15-375(5), or with the intent to perform a sexual activity in the presence of the person reasonably believed to be under the age of eighteen. This is in direct violation of Section 16-15-0342, 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.

OFFICE OF THE ATTORNEY GENERAL


HENRY McMASTER (DMS)
ATTORNEY GENERAL

2/16/29

DOCKET NO. 2007-GS-02- 191

WITNESSES

Inv. Tommy Platt - Aiken County S.O.

January 19 7

/s/ [Signature]

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

January 2007 TERM

ARREST WARRANT NUMBER

K094019 -K-094020 DCR

THE STATE

vs.

Benjamin Paul Green IV
D.O.B. [REDACTED] /1978

ACTION OF GRAND JURY

John B. [Signature]

[Signature]

Foreperson of Grand Jury
Date: January 18, 2007 [Signature]

VERDICT

Indictment for

**ATTEMPTED CRIMINAL SEXUAL
CONDUCT WITH A MINOR IN THE
SECOND DEGREE**

Foreperson of Petit Jury
Date:

SC Code: 16-3-655(B)
CDR Code: 0396

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF AIKEN)

ATTEMPTED CRIMINAL SEXUAL CONDUCT
WITH A MINOR IN THE SECOND DEGREE

At a Court of General Sessions, convened on January 22, 2007, the Grand Jurors of Aiken County present upon their oath:

That Benjamin Paul Green IV, on October 13, 2006, did willfully and knowingly attempt to commit the crime of criminal sexual conduct with a minor in the second degree. To wit: Benjamin Paul Green IV, a person eighteen years of age or older, did knowingly travel from his residence in the State of Georgia and arrive at a predetermined location in the Beech Island area of the County of Aiken, State of South Carolina, for the purpose of or with the specific intent to engage in sexual battery, as defined in Section 16-3-651(h), with a female person that he believed to be fourteen years of age. This is in direct violation of Section 16-3-655(B) and Section 16-1-80, 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.

OFFICE OF THE ATTORNEY GENERAL


HENRY McMASTER (DMS)
ATTORNEY GENERAL