

VOLUME I OF III

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO CHARLESTON COUNTY
G. THOMAS COOPER, Jr.

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S.C. SUPREME COURT

ALAN L. BURNS

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT,

APPELLATE CASE NO. 2019-000380

APPENDIX

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 11-GS-10-338 <i>et al</i>
	)	
Alan Burns,	)	
	)	
Defendant.	)	

TRANSCRIPT OF JURY TRIAL

The within Jury Trial was held August 6-10, 2012, before The Honorable R. Markley Dennis, Jr., in Courtroom 3A of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended, as follows:

APPEARANCES:

Debi Herring-Lash, Assistant Solicitor
 Randall Stoney, Assistant Solicitor
 9th JUDICIAL CIRCUIT SOLICITOR'S OFFICE
 101 Meeting Street, 4th Floor
 Charleston, SC 29402
 Appearing for State of South Carolina

Alan Burns, Defendant
 Appearing *Pro Se*

ALSO ATTENDING:

Lori Proctor, Public Defender
 Ted Smith, Public Defender
 Court-Appointed to Assist Mr. Burns

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1 (DEFENDANT PRESENT)

2 (ROLL CALL)

3 THE COURT: Thank you, Ladies and
4 Gentlemen, good morning to you.

5 I am one of the circuit court judges
6 in this circuit. My home is in Berkeley. I've
7 been assigned this week to conduct a term of
8 General Sessions Court, which deals with
9 criminal disputes. Judge Jefferson, I think
10 will be the trial judge in the civil disputes.

11 It is probably a good week to be
12 picked. It is unusual that we only have two
13 jury terms going. So it's good that there are
14 a lot of you here.

15 I always enjoy coming down to the roll
16 call. Some judges don't. I enjoy it because
17 you hear a lot of things. Mr. Bostic, I don't
18 think playing professional football, those of
19 us who have known you and who have observed
20 you, your success over the years, is anything
21 boring at all. We thank you for what you've
22 done in representing this state. I think you
23 played for that university up to the road from
24 where I went to school -- Clemson. Is that
25 correct?

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1 JUROR NUMBER 39: Yes, sir.

2 THE COURT: Okay. Very, very
3 wonderful representative of that fine
4 institution as well.

5 JUROR NUMBER 39: Thank you, sir.

6 THE COURT: Always love to hear
7 that. It's interesting. An animal
8 communicator? I love that too. That's a first
9 for me as well. So you -- you really do pick
10 up some good information. I still want to hear
11 about what "unoccupied" means. Maybe we can
12 talk about that.

13 I do enjoy it, because when you come
14 and you see what I've seen this morning -- and
15 you heard it with me, -- you realize that this
16 system is really marvelous. It was designed
17 and contemplated a cross section of the
18 community. You heard it as well as I did.
19 Both in age and in occupations you truly are
20 the consummate jury panel, as far as I am
21 concerned.

22 We have an eighteen-year-old and we
23 have a seventy-eight year old. I think those
24 are the bookends. Everything inbetween. It
25 seems to me, though I didn't count them, I

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1 heard twenty-two as being -- I heard more
2 twenty-twos than I did any other age but you
3 really are a true across-the-board of this
4 community.

5 Before we qualify you, I want to
6 assure you of one thing. I know a lot of
7 people come, and maybe some of you came,
8 excited about the opportunity to serve. That's
9 great. I hope one day that I will be able to
10 serve. I mean that sincerely. When I was a
11 lawyer for twenty-one years, lawyers, doctors,
12 nurses, we were excused. We weren't even part
13 of the panel. Now we are. Unfortunately I am
14 not qualified because I happen to work within
15 the walls of a courthouse. As you will hear,
16 I must disqualify anyone so employed in a
17 courthouse.

18 But one day I hope that I will be able
19 to serve, because it really is a marvelous
20 service. It really is something that --
21 everybody talks about 'it's not the best system
22 for resolving disputes in the world, it just
23 beats the next best hands down.' You know, I
24 can't think of one. Maybe one day we will
25 develop one. Maybe I don't know. It's not

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1 perfect. Man developed it. But I have been a
2 judge now for over eighteen years and -- you
3 know, it -- it really -- I'm -- I'm amazed at
4 how well it works all the time. I think it's
5 attributable to people like you who make the
6 sacrifice to serve in a function that probably
7 -- I would venture to say that it probably
8 wasn't on your Top Ten list of things that you
9 wanted to do this week. But you -- some of you
10 will be participating. Some of you may not
11 have the opportunity to serve but -- and we'll
12 talk about that a lot more.

13 But I thank you for being here. I
14 thank you in advance for the pleasure and
15 privilege of working with some of you. I hope
16 that when you leave this week that you will
17 maybe share some feelings about this system
18 that you didn't bring with you when you came.
19 I've heard jurors say 'I came with great
20 skepticism about it and after participating I
21 was proud to do that and I feel better about
22 what we have in this country.' So I hope
23 you'll have that same experience this week.

24 There are a number of questions that I
25 have to ask of you, so I need to ask you --

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1 both now and -- you will be -- there are
2 basically two qualifications. There is a
3 general qualification, which I will do in just
4 a moment and then there will be a case specific
5 qualification that each trial judge will do.
6 You will go through that process.

7 The general qualification, there are
8 some specific answers obviously.

9 The case specific qualification really
10 are questions designed to help you make a
11 determination as to whether or not you could be
12 a fair and impartial judge in that particular
13 case, because that's really what a jury does.
14 You become a judge with the trial judge.

15 Our roles are well defined and pretty
16 specific. My role as a trial judge is to
17 preside over the trial, to make rulings on
18 matters of law and to give you the law at the
19 conclusion of the trial. I will have nothing
20 to do with the factual determination. That is
21 solely your responsibility. You will have
22 nothing to do with the law, that is solely mine
23 or Judge Jefferson's responsibility.

24 I'll assure you of one thing. The
25 factual determination, I don't believe that

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1 there is anybody in the world more qualified
2 than you are to make that determination. The
3 reason that I say that is, whether we are
4 eighteen or seventy-eight, we've made that --

5 I'd hate to know how many times a week we make
6 that type of determination. We hear something
7 or we read something and we decide whether we
8 believe it. Most of the time it's a
9 subconscious process but there are times when
10 we are asked, or somebody tells us, and we've
11 got to make a call: business, personal. That
12 is exactly what you will do. In fact, all that
13 you will do is that you will consider the
14 evidence in the case and -- and we'll talk more
15 about that after I qualify you.

16 But before I ask you the questions, I
17 need to -- and this oath applies for your
18 entire service. Do each of you solemnly swear
19 or affirm that you will truthfully and
20 completely respond to every question asked of
21 you by the court this week? If you will make
22 that commitment, say "I do."

23 (JURORS RESPOND AFFIRMATIVELY)

24 THE COURT: Are there any members of
25 the panel that could not make that commitment

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1 for any reason? If so, please stand. (No
2 response). Thank you very much.

3 Before giving you the qualification
4 questions there still remain a few exemptions.
5 As I stated, when I started in 1973 there were
6 many, many more. But now we have reduced it.
7 I think it's appropriate. And I think, again,
8 that the whole design of the jury is to have a
9 cross-section of our community, and we do that.

10 Now, if you fall into any one of these
11 categories, exemption categories, it doesn't
12 prevent you from serving. It just gives you
13 the option, if you wish to claim the exemption,
14 to be excused.

15 So please don't think that if you fall
16 into this one -- for instance, Mr. Holzel
17 (Juror Number 156) is seventy-eight. He and
18 two others have reached that milestone in life
19 of being sixty-five. I will join you in
20 December. I used to think that it meant that
21 we were old but now every day that I am blessed
22 enough and fortunate enough to be able to work
23 and be involved with people like you, it's not
24 so bad after all. But if you wish to be
25 excused, any of the three -- if you wish to be

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1 excused, please stand. (No response). Thank
2 you. I appreciate your service. I really do.
3 You bring to this process something that I
4 think is important.

5 We have an eighteen-year-old that
6 brings an eighteen-year-old's vision and how
7 they perceive things, and then we have Mr.
8 Holzel.

9 Mr. Holzel, I am not trying to -- you
10 just happen to be the other part. You bring a
11 seventy-eight's viewpoint; which is perfect,
12 which is what exactly is intended. So thank
13 you, sir. Thank you so very much for your
14 participation. I look forward to working with
15 you.

16 I didn't hear any of these, but is
17 there any member(s) of the panel that are
18 officers or employees with the Department of
19 Corrections? You have an exemption. If there
20 are, please stand. (No response). There are
21 none.

22 Are there any members of the jury
23 panel that have the care, custody and control
24 of a child or children under the age of seven
25 years and you do not work outside of the home

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1 or your working arrangements are such that you
2 alternate the care of the child with another
3 caregiver so that there is a caregiver present
4 at all times? If that applies to you and you
5 need to claim the exemption, please stand.

6 Yes?

7 JUROR NUMBER 83: I am a widow. I
8 work part-time. I have childcare Monday
9 through Thursday.

10 THE COURT: You have childcare for?

11 JUROR NUMBER 83: My five-year-old
12 daughter.

13 THE COURT: All right. What are
14 your times?

15 JUROR NUMBER 83: I work 8:30 to 3:00.
16 I have childcare from 8:00 to 4:30, but I do
17 not have any childcare on Fridays because I do
18 not work.

19 THE COURT: Okay.

20 JUROR NUMBER 83: And I would like to
21 throw in a monkey wrench.

22 THE COURT: Throw it at me, give it
23 to me.

24 JUROR NUMBER 83: I do have a letter
25 from my employer requesting that I be excused.

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1 THE COURT: That part of it, I
2 probably -- I don't know what your employer's
3 situation is. I could transfer you but I
4 probably can't excuse you. The 4:30 is a time
5 that has to be met?

6 JUROR NUMBER 83: Right. I have a
7 young girl who works ---

8 THE COURT: You qualify. What is
9 your number and name?

10 JUROR NUMBER 83: My number is 83.
11 My name is Michele Crull. I will be happy to
12 be transferred.

13 THE COURT: No, ma'am. You can be
14 excused, if you want to be. Now, I will be
15 happy to transfer you if you want to be.

16 JUROR NUMBER 83: Well, it is kinda
17 interesting.

18 THE COURT: It is interesting. It
19 is ---

20 JUROR NUMBER 83: I would like to talk
21 to the fellow whose wife is unoccupied.

22 THE COURT: (Laughter), you want
23 that job? Me, too. Your exemption, do you
24 want to claim it?

25 JUROR NUMBER 83: Yes, sir.

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1 THE COURT: You are free to leave.

2 Good luck to you, ma'am. Thank you.

3 (JUROR NUMBER 83 EXCUSED)

4 THE COURT: Yes, ma'am?

5 JUROR NUMBER 199: I have a son that
6 is seven years old. I work from 8:00 to 3:30,
7 which is the time that he's in school. I have
8 no one to take care of him.

9 THE COURT: Seven won't work. I
10 didn't set it, the legislature did. It has to
11 be under seven years of age. Thank you, ma'am.

12 COURT REPORTER: Her number, Judge?

13 THE COURT: Your number, please?

14 JUROR NUMBER 199: I am not sure
15 of my number. The name is Kim Marion.

16 THE COURT: Thank you. Yes?

17 JUROR NUMBER On Thursday my mom
18 has a doctor's appointment and ---

19 THE COURT: Ma'am?

20 JUROR NUMBER 187: My mom has a
21 colonoscopy on Thursday and I ---

22 THE COURT: Hold onto that one. I'm
23 asking about children at this point. Do you
24 have a child at this point under the age of
25 seven?

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1 JUROR NUMBER 187: No. Grandchildren.

2 THE COURT: I understand. I
3 understand that one, really do. I will talk
4 with you about that at the end.

5 And I am not trying to -- there is
6 nothing wrong with what you've done. This
7 lovely lady, Ms. Garrison, the person that I
8 have been sitting with, is my court reporter.
9 What we are doing is making a record of this
10 proceeding. It started when I started after
11 they called the roll. I try to keep things in
12 categories so that if somebody is reviewing it
13 they know that we are dealing with children at
14 this point. But I will deal with that. Thank
15 you, ma'am. Okay?

16 JUROR NUMBER 187: Yes, sir.

17 THE COURT: Are there any other
18 persons who have a child under the age of seven
19 which needs to take that exemption? (No
20 response). Thank you, there are none.

21 Are there any members of the jury
22 panel that have the care or responsibility of a
23 person of any age who because of some physical
24 or mental condition requires constant care and
25 you are the caregiver. If you need to claim

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21

1 that exemption, please stand. (No response).

2 Thank you, there appear to be none.

3 I heard a number of these. Hopefully
4 we're at a good point in your careers in this
5 area, but if you are a student, teacher or
6 necessary employee with institutions of
7 learning -- K through 12 and institutions of
8 higher learning, including technical colleges
9 -- and your duties as a juror would conflict
10 with your responsibilities in any of those
11 areas and you need to claim the exemption,
12 please stand. Okay?

13 JUROR NUMBER 178: As long as it is
14 just this week I can do it, but -- my work
15 starts one week from today.

16 THE COURT: I can assure you that
17 your services, and Judge Jefferson as well, I
18 will assure you that we will complete your
19 services this week.

20 JUROR NUMBER 178: Okay.

21 THE COURT: Your name and number?

22 JUROR NUMBER 178: 178, Jennifer
23 Jones.

24 THE COURT: Yes?

25 JUROR NUMBER 334: I am a high

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1 school English teacher and I have training on
2 Thursday for a new course I am teaching this
3 school year.

4 THE COURT: Let me -- how long ---

5 CLERK: We should be through.

6 THE COURT: All right, I will
7 protect you from the criminal case because it
8 could run into Thursday maybe. We will protect
9 you for Thursday and Friday, if you want to
10 serve.

11 JUROR NUMBER 334: Okay.

12 THE COURT: Do you wish to do that?
13 It's your exemption, if you want to claim it.

14 JUROR NUMBER 334: We also have
15 registration on Tuesday and ---

16 THE COURT: No, I'll let you go.
17 Your employer would probably be upset. Your
18 name and number?

19 JUROR NUMBER 334: Stephanie G.
20 Wells, 334.

21 THE COURT: Thank you, Ms. Wells.
22 Thank you for what you do. Good luck to you.

23 (JUROR NUMBER 334 EXCUSED)

24 THE COURT: Are there any others?
25 (No response). Well, thank you. I heard a

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1 number of them and I appreciate -- I'm sorry?!

2 There you are. I am so sorry. Forgive me.

3 JUROR NUMBER 288: I go to school
4 Tuesday through Saturday, from 8:00 to 4:00.

5 THE COURT: I wish I could
6 accommodate you. You're -- good luck. Your
7 number and name, please?

8 JUROR NUMBER 288: Raven Simmons
9 but -- my number, I am not sure.

10 THE COURT: Miss Simmons, good luck
11 in your academic pursuits.

12 (JUROR NUMBER 288 EXCUSED)

13 THE COURT: Are there any others?
14 My bad. I apologize.

15 The next one would apply to any of you
16 that are here and subject to being called. You
17 wouldn't actually have to serve to earn this.
18 You can only be required to serve on a circuit
19 court jury in this state once every three
20 years. So those of you who remain will earn an
21 exemption for three years.. That's probably the
22 most valuable thing that you will receive,
23 including the check that you'll get.

24 Are there any members of the jury
25 panel who have previously served in the circuit

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1 court -- if you served in the federal court,
2 magistrate court, municipal court, that was
3 great experience but you didn't earn the
4 exemption. But if you served in the circuit
5 court within the last three years and wish to
6 claim the exemption, please stand. (No
7 response). Thank you. There appear to be
8 none.

9 Any member of the jury panel who has
10 served in the circuit court this year? (No
11 response). Thank you, there are none.

12 Any member of the jury panel who has
13 served on a grand jury for any county in this
14 state for the last five years. You earn an
15 exempt for five years by serving on the grand
16 jury. Does that apply to any juror. If so,
17 please stand. (No response). Thank you.
18 There appear to be none.

19 Ladies and Gentlemen, the last
20 exemption is an exemption that originated,
21 I think probably when this state had major
22 agricultural situations and occupations but
23 it evolved into what we have today -- sole
24 practitioners, your own business. The
25 exemption is that if your business has to shut

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1 down because you are serving, that there is
2 nobody that can open the doors, there is nobody
3 that can be there for you, then you have an
4 exemption. If that applies to any juror,
5 please stand.

6 JUROR NUMBER 55: I am a one-man shop,
7 I own my own business and my client rely on me.
8 I work from 9:00 to ---

9 THE COURT: I understand. If you
10 are not there, your business is not operating?

11 JUROR NUMBER 55: Correct.

12 THE COURT: Your name and number?

13 JUROR NUMBER 55: Charles Capasso, I
14 believe my number is 47 (sic).

15 THE COURT: You are excused, sir.

16 (JUROR NUMBER 55 EXCUSED)

17 THE COURT: Yes, sir.

18 JUROR NUMBER 348: Ronnie Wyatt.
19 I am a self-employed plumbing contractor.

20 THE COURT: You're it?

21 JUROR NUMBER 348: I'm it.

22 THE COURT: All right, you wish to
23 claim the exemption?

24 JUROR NUMBER 348: (Affirmative
25 nod), thank you.

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1 THE COURT: Your number, please?

2 JUROR NUMBER 348: Ron White.

3 COURT REPORTER: 348.

4 THE COURT: Number 348 is excused.

5 Thank you.

6 (JUROR NUMBER 348 EXCUSED)

7 THE COURT: Yes, sir?

8 JUROR NUMBER 138: Your Honor, I own my
9 own cleaning company. I could probably make it
10 if it is just one week since things right now
11 are kind of slow.

12 THE COURT: It is just for one week.
13 That's it.

14 JUROR NUMBER 138: Okay.

15 THE COURT: I can promise you that.

16 JUROR NUMBER 138: I think I can do
17 that.

18 THE COURT: Your name and number,
19 please?

20 JUROR NUMBER 138: Jesse Gregory,
21 138.

22 THE COURT: Yes, sir?

23 JUROR NUMBER 347: I am a self-
24 employed electrical contractor?

25 THE COURT: You're it?

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1 JUROR NUMBER 347: (Affirmative nod).

2 THE COURT: You wish to claim the
3 exemption, sir?

4 JUROR NUMBER 347: Yes, sir.

5 THE COURT: Your number, sir?

6 JUROR NUMBER 347: 347.

7 THE COURT: Good luck.

8 (JUROR NUMBER 347 EXCUSED)

9 THE COURT: Yes, sir.

10 JUROR NUMBER 196: My name is Tommy
11 Lesesne. I own a shipping agency that ---

12 THE COURT: Anybody else working
13 there?

14 JUROR NUMBER 196: No, sir. I
15 don't have anybody else and I never know until
16 a day or two in advance ---

17 THE COURT: So no one is there to
18 run the show while you're gone?

19 JUROR NUMBER 196: No, sir. I'm
20 it.

21 THE COURT: Your number?

22 JUROR NUMBER 196: 196.

23 THE COURT: Number 196 is excused.

24 (JUROR NUMBER 196 EXCUSED)

25 THE COURT: Are there others? (No

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1 response). Thank you, Ladies and Gentlemen.

2 Those are all of the exemptions.

3 The next group of questions, if any of
4 these apply to you it is very important that

5 you share the response with the court because

6 these deal with your qualifications to serve.

7 All of these questions and all of these answers
8 are provided by law. I didn't think about
9 these and say 'well, let me throw these out and
10 see what happens with these today.'

11 I've been asking this first one for
12 over eighteen years. I've never found anyone
13 that met it. I am always open to the first.
14 I have a good idea that each of you probably
15 do, but if you don't have a highway department
16 identification card or a voter's registration
17 certificate or a driver's license -- you don't
18 have to have all three, you don't have to have
19 it with you here today. Does that apply to any
20 juror? If so, please stand? (No response).
21 Didn't think so, because that's how we got your
22 name to send you the invitation.

23 The Andersons got both -- it's not a
24 first, it happens but the odds against that,
25 I'd hate to try to figure out what that is from

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1 all the others drawn in Charleston County.

2 But we're delighted to have you here. That
3 is quite amazing when you think about that.

4 The next question, I think we -- the
5 youngest, I said, I think was eighteen. If you
6 haven't reached your eighteenth birthday,
7 please stand. (No response). Thank you.
8 There are none.

9 Are there any members of the jury
10 panel who are clerks of court, deputy clerks of
11 court, constables, sheriffs, probate judges,
12 county commissioners, county officers or any
13 persons employed within the walls of any
14 courthouse. If so, please stand. (No
15 response). Thank you. There are none.

16 Are there any members of the jury
17 panel that hold a law enforcement commission?
18 That could be with or without pay. In other
19 words, you're empowered to arrest someone,
20 generally. If that applies to you, please
21 stand. Thank you, there are none.

22 Any member of the jury panel who is
23 not a resident and citizen of Charleston
24 County? If so, please stand. (No response).
25 Thank you. There are none.

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1 Is there any member of the jury panel
2 who is not a citizen of the United States? If
3 so, please stand. (No response). Thank you.
4 There are none.

5 The next group of questions, Ladies
6 and Gentlemen, I will afford you an opportunity
7 to come forward and share your response with me
8 and the court reporter in just a moment. But
9 it is important that you do respond to these
10 questions if any do apply to you.

11 The first one, if any member of the
12 jury panel has ever been convicted in a court
13 of record, state or federal court, of a crime
14 that carried a potential sentence of more than
15 one year. You wouldn't have actually had to
16 receive a sentence of more than one year, only
17 the potential for that, and you haven't had
18 your civil rights restored by pardon or
19 amnesty. That would prevent you from serving.

20 Unfortunately it does not matter how
21 long ago it may have occurred. If it occurred
22 in your lifetime and you haven't taken some
23 formal steps to remove it, you cannot serve.
24 There have been attempts to try to change that
25 over the years but they've been unsuccessful

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2 So if that applies, please come
3 forward and let me talk with you about it.

15 So if that applies to any of you, I
16 will need to talk with you about that.

21 If there are any members of the jury
22 panel that do not have the equivalent of a
23 sixth grade education, I will need to talk with
24 you about that, as well.

25 Also, now, the lady that mentioned --

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1 if you have some personal or business problem
2 that you need to discuss, that would create a
3 problem with your serving this week and you
4 haven't previously been transferred, -- if you
5 have been transferred, this is your time.

6 Unless it is some emergency situation, I am not
7 going to be -- probably not going to be able to
8 excuse you. But I will be happy now to talk
9 with any jurors that have matters to discuss
10 with the court. If you will, just form two
11 lines, please.

12 Mr. Rivers, good morning, sir.

13 BAILIFF: Good morning, Your
14 Honor.

15 THE COURT: How are you, sir?

16 BAILIFF: Blessed and highly-
17 favored.

18 THE COURT: Do you hear that
19 response? You hear that every day of his life.
20 And he means that, too.

21 BAILIFF: Juror 170.

22 SIDEBAR:

23 JUROR NUMBER 170: I am
24 pregnant and I'm prone to morning and afternoon
25 sickness.

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1 THE COURT: Your name?

2 JUROR NUMBER 170: Charlotte

3 Stegall, 170.

4 THE COURT: Thank you.

5 (SIDEBAR CONCLUDED)

6 THE COURT: I am going to excuse Ms.

7 Stegall for statutory reasons.

8 (JUROR NUMBER 170 EXCUSED)

9 BAILIFF: Juror Number 326.

10 SIDEBAR:

11 THE COURT: Yes, sir?

12 JUROR NUMBER 326: I am Peter

13 Viera, Juror Number 326. I bartend for a

14 living and my boss won't give me the time off,

15 and if I don't work I don't make a dime.

16 THE COURT: I understand.

17 JUROR NUMBER 326: The lights will

18 go off and I won't eat.

19 THE COURT: I understand that.

20 That's probably true of a lot of people. I can

21 postpone it for you so that you can make

22 arrangements but invariably you'd have the same

23 situation.

24 JUROR NUMBER 326: Yes, sir.

25 THE COURT: It's your call. I

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1 think I would just get it over with if I were
2 you.

3 JUROR NUMBER 326: Yes, sir.

4 (SIDEBAR CONCLUDED)

5 THE COURT: Number 326 will remain.

6 BAILIFF: Juror Number 134.

7 SIDEBAR:

8 JUROR NUMBER 134: I had a gun
9 charge in ---

10 THE COURT: What was the charge?

11 JUROR NUMBER 134: Unlawful
12 possession.

13 THE COURT: That was it?

14 JUROR NUMBER 134: (Affirmative
15 nod).

16 THE COURT: It was an
17 obliterated serial number or a stolen pistol?

18 JUROR NUMBER 134: No, it wasn't
19 stolen or -- (negative gesture).

20 THE COURT: That doesn't carry
21 more than a year, so that would not disqualify
22 you.

23 JUROR NUMBER 134: I just wanted
24 you to know.

25 THE COURT: Thank you, sir.

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1 (SIDEBAR CONCLUDED)

2 THE COURT: Juror Number 134 will
3 remain.

4 BAILIFF: Juror Number 187.

5 SIDEBAR:

6 THE COURT: Good morning.

7 JUROR NUMBER 187: Mom has
8 had set up with her doctor a colonoscopy, and I
9 am the only one that take her and be with her
10 for that.

11 THE COURT: When is that?

12 JUROR NUMBER 187: It's
13 Thursday. If she could get somebody else, she
14 would. But my daughter is going to college and
15 -- I just feel like I need to be with her. She
16 lost her sister about a year and a half ago
17 with colon cancer.

18 THE COURT: All right. I am
19 going to transfer you, ma'am, but when the next
20 term that they give you, you're going to have
21 to serve at that time. Do you understand that?

22 JUROR NUMBER 187: Yes, sir.

23 THE COURT: If you want to
24 postpone it, I will do it. But you may want to
25 try to serve. You may not be selected, I don't

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1 know what your situation. If you want to be
2 transferred -- but you only have two terms.
3 Sometimes we have four terms during jury
4 service. So what do you want to do, do you
5 want to be transferred or do you want to take
6 a chance?

7 JUROR NUMBER 187: When you say
8 transferred, you mean ---

9 THE COURT: I would postpone it
10 to another time but that doesn't ---

11 JUROR NUMBER 187: Because I could
12 stay and ---

13 THE COURT: If I were you, I'd
14 stick. If you're serving on a jury that might
15 be deliberating on Thursday, then you are going
16 to have to serve.

17 JUROR NUMBER 187: Okay.

18 THE COURT: Are you willing to
19 do that?

20 JUROR NUMBER 187: Okay.

21 THE COURT: No, I am asking you.
22 Not "okay". You have to do that, otherwise I'd
23 have to transfer you.

24 JUROR NUMBER 187: So I'd have
25 to ---

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1 THE COURT: I'll protect you.

2 (SIDEBAR CONCLUDED)

3 THE COURT: I will protect this
4 juror. If we select a jury on Wednesday
5 afternoon, she will have to serve on that case.
6 If not, she's protected on Thursday and Friday.

7 BAILIFF: Juror Number 199.

8 SIDEBAR:

9 THE COURT: Good morning, ma'am.

10 JUROR NUMBER 199: Good
11 morning. As I told you, I have one son, seven
12 years old. I am a single mom. Not only that,
13 I am taking care of my grandmother who is not
14 -- we're looking for her to pass away.

15 THE COURT: Are you working
16 outside of the home?

17 JUROR NUMBER 199: I was
18 working, yes.

19 THE COURT: So that -- are you
20 working outside the home now?

21 JUROR NUMBER 199: Yes.

22 THE COURT: Well, that doesn't
23 meet the eligibility. I can transfer you so
24 that you can make arrangements.

25 JUROR NUMBER 199: I would

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1 appreciate that.

2 THE COURT: But unfortunately --

3 I don't know why the magic age being under
4 seven years, but that's what it is. If you

5 want to make arrangements for the time that

6 they give you, then you can make arrangements
7 for somebody to be there if they need to be.

8 It's your call. Do you want to be transferred?

9 JUROR NUMBER 199: Yeah.

10 (SIDEBAR CONCLUDED)

11 THE COURT: All right. Number 199
12 will be transferred. Hope all goes well for
13 you, ma'am. See Mr. Brown in the back. He
14 will tell you when and that will be your term.
15 Hope all goes well for you, ma'am.

16 (JUROR 199 TRANSFERRED)

17 BAILIFF: Juror Number 229.

18 SIDEBAR:

19 JUROR NUMBER 229: Can you
20 protect me for my niece's wedding on Friday.

21 THE COURT: Yes.

22 JUROR NUMBER 229: Thank you.

23 (SIDEBAR CONCLUDED)

24 THE COURT: Juror Number 229 is
25 protected from serving on Friday.

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1 BAILIFF: Juror Number 118:

2 SIDEBAR:

3 JUROR NUMBER 118: I want to serve
4 but I have ADHD and severe migraine such that I
5 can't -- I mean, I still want to do it.

6 THE COURT: Do you work?

7 JUROR NUMBER 118: I work,
8 yeah. I am a salaried general manager.

9 THE COURT: Is it sudden onset
10 of those situations?

11 JUROR NUMBER 118: Yeah, the
12 migraine usually. I have medication for it
13 that I take right as it hits, so -- usually I
14 can find a way to get through it.

15 THE COURT: Let's work through
16 it.

17 JUROR NUMBER 118: Okay.

18 (SIDEBAR CONCLUDED)

19 THE COURT: Juror Number 118, we
20 will work through his situation.

21 BAILIFF: Juror Number 51, Your
22 Honor.

23 SIDEBAR:

24 JUROR NUMBER 51: I am working
25 the night shift, chemical operator. I was

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1 trying to see if I could get this put off to
2 another date because I didn't have enough time
3 to get my shift changed.

4 THE COURT: I am going to give
5 you another time. Now, you need to let them
6 know.

7 JUROR NUMBER 51: Yes, sir.

8 THE COURT: All right.

9 (SIDEBAR CONCLUDED)

10 THE COURT: Number 51, for business,
11 reasons, needs to be transferred. See Mr.
12 Brown in the back and he will give you a date.

13 (JUROR NUMBER 51 TRANSFERRED)

14 THE COURT: Thank you. Are you Mr.
15 Buck?

16 JUROR NUMBER 51: Yes, sir.

17 THE COURT: Thank you.

18 BAILIFF: Juror Number 171.

19 SIDEBAR:

20 THE COURT: Good morning.

21 JUROR NUMBER 171: Good
22 morning, Your Honor. My name is Molly Jenkins.
23 I am a retired school teacher for Charleston
24 County. In 1993, I did a year for fraudulent
25 checks.

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1 THE COURT: Checks.

2 JUROR NUMBER 171: Back in
3 1990.

4 THE COURT: What were the
5 checks?

6 JUROR NUMBER 171: Yes, small
7 amounts. I was a single parent at the time.

8 THE COURT: That would not
9 disqualify you.

10 JUROR NUMBER 171: Thank you.
11 I just wanted to tell you.

12 THE COURT: Thank you, ma'am.

13 (SIDEBAR CONCLUDED)

14 THE COURT: Juror number 171 will
15 remain.

16 BAILIFF: Juror Number 208.

17 SIDEBAR:

18 THE COURT: Yes, ma'am.

19 JUROR NUMBER 208: I have a
20 daughter that is acting out and we have
21 meetings with the school and with some medical
22 studies.

23 THE COURT: You need to be
24 there?

25 JUROR NUMBER 208: They wrote me

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1 a note if you want to see it.

2 THE COURT: You have that going
3 on this week?

4 JUROR NUMBER 208: Yes, sir,
5 I do. For several weeks.

6 THE COURT: You have not been
7 transferred previously?

8 JUROR NUMBER 208: No, sir.

9 THE COURT: We will postpone it.

10 JUROR NUMBER 208: I will be
11 happy to serve. I just need to point out that
12 we are separated and that's what it is for.

13 THE COURT: Listen, I have a
14 daughter that does that all the time. You need
15 to check your forms -- there is a misspelling
16 on it.

17 (SIDEBAR CONCLUDED)

18 THE COURT: Juror Number 208 is to
19 be transferred.

20 (JUROR NUMBER 208 TRANSFERRED)

21 BAILIFF: Juror Number 286.

22 SIDEBAR:

23 JUROR NUMBER 286: If I could
24 be excused or protected just for Thursday,
25 there is something that I have to do.

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1 THE COURT: Suppose you're
2 picked on a jury Wednesday. That's the
3 problem.

4 JUROR NUMBER 286: Yes, sir.

5 THE COURT: It could run into
6 Thursday with deliberations.

7 JUROR NUMBER 286: There are
8 only three of us and I really need ---

9 THE COURT: What is your number?

10 JUROR NUMBER 286: 286.

11 THE COURT: You've been
12 transferred once? Sorry, can't do it.

13 JUROR NUMBER 286: All right.

14 THE COURT: I will protect you
15 if you're not serving.

16 JUROR NUMBER 286: Okay.

17 (SIDEBAR CONCLUDED)

18 THE COURT: If she is not serving,
19 Juror Number 286 will be protected for Thursday
20 -- if she is not serving.

21 BAILIFF: Juror Number 183, Your
22 Honor.

23 SIDEBAR:

24 JUROR NUMBER 183: On
25 Wednesday, I have a continuing education class

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1 for my insurance license and the last test for
2 my dissertation. Is there any way that I could
3 just be excused that day?

4 THE COURT: No, it's the middle
5 of the week. That's the problem. Have you
6 been transferred?

7 JUROR NUMBER 183: No, and I
8 would rather just serve this week.

9 THE COURT: If you serve, then
10 you will not be able to take the day to ---

11 JUROR NUMBER 183: That's fine.

12 (SIDEBAR CONCLUDED)

13 THE COURT: Number 183 will
14 remain.

15 BAILIFF: Juror Number 207, Your
16 Honor.

17 SIDEBAR:

18 THE COURT: Good morning.

19 JUROR NUMBER 207: I have a
20 presentation on Thursday morning with Clemson
21 University. All I really need to know is if I
22 need to get rid of that or if we will be done
23 by Thursday.

24 THE COURT: I can do this for
25 you -- if you're serving on a jury -- what

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1 you're telling me is that 'I can work around
2 that and continue to serve.'

3 JUROR NUMBER 207: Yes.

4 THE COURT: Okay.

5 (SIDEBAR CONCLUDED)

6 THE COURT: Juror 207 will be
7 protected on Thursday if he is not serving.
8 Okay.

9 BAILIFF: Juror Number 233.

10 SIDEBAR:

11 THE COURT: Good morning, sir.

12 JUROR NUMBER 233: I have a
13 medical problem and am taking medication three
14 times a day, and I have to have something to
15 eat each time that I take it.

16 THE COURT: You don't work? Is
17 that correct?

18 JUROR NUMBER 233: (Affirmative
19 nod), no. I am disabled.

20 (SIDEBAR CONCLUDED)

21 THE COURT: Juror Number 233 is
22 excused for statutory reasons. Have a good
23 day, sir.

24 (JUROR NUMBER 233 EXCUSED)

25 BAILIFF: Juror Number 48, Your

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1 Honor.

2 SIDEBAR:

3 THE COURT: Good morning.

4 JUROR NUMBER 48: I served on a

5 jury in the last couple of years, in this same

6 building. So do I stay?

7 THE COURT: That's your call.

8 When did you serve? Here?

9 JUROR NUMBER 48: Yes. The exact
10 same process.

11 THE COURT: It is your call. If
12 you want to claim the exemption, you can.

13 JUROR NUMBER 48: I want to claim
14 the exemption.

15 (SIDEBAR CONCLUDED)

16 THE COURT: Number 48 is excused.
17 He's claiming the exemption of previous service
18 within the last three years.

19 (JUROR NUMBER 48 EXCUSED)

20 THE COURT: Are there other? (No
21 response). There are none.

22 Ladies and Gentlemen, it is my honor
23 and distinct privilege to qualify you to serve
24 this week. I mean that sincerely. It's one of
25 the few things that I think is very consistent

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1 about my job, at least as a judge though it
2 was as a lawyer too. I just have come to
3 appreciate this process a lot more as a judge
4 than I even thought about as a lawyer. I
5 understood the necessity of it as a lawyer, I
6 understood how wonderful it was. But working
7 on this side gives you a totally different
8 perspective because I have the opportunity to
9 work closely with some of you, to talk with
10 some of you who serve and, truly, when you
11 finish a week of jury service -- especially,
12 since I happen to live in this area -- it makes
13 you proud. You know what? I live with some
14 pretty good folks. I really do.

15 You have already spoken volumes about
16 yourself. You may not know that but you have.
17 You saw me excuse persons who said that they
18 had some exemption. For example, the last
19 gentlemen said 'I've served within the last
20 three years.' We could have pulled it up, but
21 I didn't. Why? Because he took the same oath
22 that you took. I trusted what he said. Why
23 didn't you stand up and say, 'I've got small
24 children, I have to keep them'? Probably
25 because you don't and that's why you didn't say

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1 that. What does that say about you? It says,
2 you know, unless you just came here really,
3 really wanting to serve, and maybe some of you
4 did, -- but you didn't do that because it
5 wasn't true, and that says something about you.

6 It really does, if you think what we
7 are about -- "we" being the two judges that
8 work together. It really is the essence of
9 what we do.

10 As I said to you before we qualified
11 you, you are extremely well qualified to
12 perform the task of being a judge of the facts.
13 I don't know you but if you've made it this far
14 in life, you've had to use your common sense,
15 you've had to use your sense of logic and
16 reason and you've had to use your ability to
17 listen to something and say whether or not you
18 believe it.

19 I mean, those of you that work in
20 school settings, good gracious, how many times
21 do you have to do that? I have a wonderful
22 friend at home -- when my oldest son -- and she
23 is retired now but she was a marvelous teacher.
24 He was responding to a question about a book,
25 after he'd rambled on for about four minutes,

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1 and I'm guessing he came by that honestly, she
2 said 'Thank you, Mr. Dennis. But I would
3 advise you that before you answer again that it
4 might be a good idea to read the book first.'
5 She saw through that in a heartbeat.

6 We all do that. Those are things that
7 we do. We have to.

8 The real catch or the real essence of
9 why I believe in this system so strongly is
10 really the next step. No one will know whether
11 you applied your common sense, your sense of
12 logic and reasoning fairly and impartially but
13 you. That's where it rests.

14 The same is true for me. You will
15 take an oath similar to my oath. When I took
16 this job, I promised to use my knowledge, my
17 sense of logic and reasoning fairly and
18 impartially in performing the tasks assigned to
19 me. I try to do that every day that I take
20 that bench.

21 It is a privilege to serve this state
22 in this capacity and work with these good folks
23 -- some of whom are present. This is a group
24 of professionals that I'm honored to have been
25 a part of, to have been a lawyer and to now be

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1 a judge.

2 But I make this commitment every
3 single time that I qualify a jury, that I am
4 going to do the best that I can this week.

5 ~~To as humanly possible be the best judge that~~

6 I know how to be.

7 I just ask you to make that same
8 commitment if you're selected as a juror.

9 If we both honor that commitment --
10 everybody is not going to like what we do, I
11 can promise you that. That goes without
12 saying. Somebody is probably going to be
13 dissatisfied. One thing's for sure -- they
14 may not like it but they can have no complaint
15 about it because they've received what the
16 system contemplated: a fair and impartial
17 resolution of their dispute. That is what this
18 is about.

19 You are going to make your decision
20 based on evidence. Evidence consists of
21 testimony of witnesses and exhibits that might
22 be introduced through their testimony, and
23 nothing else. Something you hear, something
24 that you read, something that you see. How
25 many times have you done that?

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1 Then once you decide what you believe
2 to be the true facts of the dispute, you will
3 take the law from the trial judge and apply
4 that law fairly and impartially. That law may
5 not agree with -- you know, one of the things
6 that I asked you was if you have a driver's
7 license, a voter's registration or an ID. I
8 find that to be an interesting question that we
9 are required to do, because you're here in the
10 first place. Maybe someone would just walk in
11 off the street, say 'there's a jury, I'd like
12 to go sit.' I guess that potentially could
13 happen. What is there to tell the person from
14 not telling the truth about that? Neverthe-
15 less, we still could have that situation. I
16 find that unusual. But you know what? For
17 eighteen years I've asked it, because it has
18 been the law since I started and -- if I am
19 blessed and fortunate enough to be here another
20 eighteen, I probably won't be -- I hope to be
21 here eighteen but not here like this. I
22 probably would have to ask that question again
23 because I took the same oath that you've taken,
24 to take the law notwithstanding my personal
25 opinion and to give you that law. You have to

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1 apply that law.

2 There are a lot of people who have
3 something to do with this process. These folks
4 are members of the Bar. They are here
5 representing their clients..

6 This weekend I was attending a seminar
7 where the keynote speaker was Senator Franklin.
8 He was talking about this process and the
9 necessity of this process. It is really one of
10 the few things that I think that we do that we
11 got right. Again, does it constantly need to
12 be revisited and tweaked? Sure it does. We
13 are constantly trying to improve everything.

14 But I heard a couple of years ago
15 something that confirms what Senator Franklin
16 said. It said, you know, that this is
17 something that we need to fight for, that we
18 need to really, really protect, that we ought
19 to hold sacred -- the right of persons to come
20 and have their complaints resolved in a civil
21 orderly fashion.

22 It must be pretty good. Remember when
23 they had the change and we all had to go back
24 and study geography again, because we had all
25 the different countries came out of a breakup.

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1 When they started forming their country, the
2 gentleman who was the mayor of Richmond, and I
3 heard him speak one time, he was the president
4 of the American Bar Association. In that
5 capacity he was going all over the country. He
6 went to speak to those countries because those
7 countries were looking at our country to set up
8 their judicial process, how they wanted it
9 done.

10 You know what? I'd love to think it
11 is because we have people like the lawyers that
12 are here, me, the others, Judge Jefferson, --
13 but I really think it is more you than anybody
14 else, and I thank you for that.

15 And probably the people around this
16 room that you just dealt. You dealt with two
17 of them -- of course Mrs. Armstrong is your
18 Clerk of Court and she has representatives
19 here. You've heard from several this morning.
20 There will be a representative from her office,
21 an assistant clerk, in every courtroom that is
22 functioning this week.

23 There will also be a group that I call
24 friends, my friends, the court's friends. We
25 call them bailiffs. They are great people.

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1 You've talked to several here. Mr. Rivers is
2 one. He's been my friend for a number of
3 years. I'm honored to be his friend, to be
4 honest with you. He's a great guy. That's
5 true of Mr. Williams who is standing here, of
6 Mr. Brown who is sitting back there. There are
7 a lot of great people. I think you will find
8 that to be true.

9 I had one of the judges say -- that
10 was talking to the jurors and one of the things
11 that they said, and I want these people to hear
12 it, he said "Those are the nicest people in the
13 world. They just really are so pleasant."
14 They do a great job and I know Mrs. Armstrong
15 is proud of her clerks.

16 There are security persons that will
17 be in every courtroom. I'd love to have it so
18 that we could give them the day off, say 'go do
19 something else.' But we live in the real world
20 and we have to acknowledge that. I appreciate
21 the fact that they are here and that they
22 provide us with security to make this process
23 function as efficiently as it does.

24 A lot of people. This lady -- the
25 other lady -- I'm been sitting between two

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1 wonderful persons. Ms. Garrison and I have
2 been together for a while -- we won't say how
3 long. She -- I'd put her against any court
4 reporter in this state. I am biased. I think
5 she is the best, but she does her job very
6 well.

7 The other lady that is seated there is
8 my clerk. Kind of a strange week, because this
9 is the last week that I am going to have with
10 her. She has been wonderful. The greatest
11 thing in the world, I think, as I told her when
12 I hired her, and as I've told several clerks
13 that have worked for me, that I've been very
14 privileged to have an association and a
15 friendship with. It's kinda like the eighteen
16 year old, if you will, or the twenty-one year
17 old. You bring a perspective -- not to say
18 that those of us that have moved a little
19 higher, that our perspective is old or out-
20 dated but it's nice to have the most current
21 thinking, somebody that is dealing with the
22 current philosophy. To me, it's great to have
23 a person that's just finished law school, that
24 has dealt with the most current theory. It's a
25 wonderful thing. I appreciate all that she has

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1 done for me.

2 A lot of people. A lot of people that
3 you don't even see. But you know what? If you
4 start prioritizing and say, 'Whose job is the

5 most important?' Human nature being what it

6 is, some of us like to say "me." But you know

7 what? In my experiences as a judge and as a

8 lawyer, and I think you'd probably agree with

9 this, frankly of all the jobs that we've talked

10 about, Mrs. Garrison's job is one that I don't

11 want. That is the toughest job in the world.

12 She has the responsibility of keeping the

13 record, verbatim. Folks, you may think that's

14 simple. Well, in the real world you and I both

15 know, and I'm prone, I -- lawyers know this

16 too. I am prone to talk when they talk.

17 That's called interrupting. You know,

18 sometimes we get a little passionate about what

19 we're saying and we start going really

20 together. Can you imagine the difficulty of

21 hearing both, being able to say who is saying

22 what? Then you throw in another mouth in the

23 midst of it, two lawyers -- so three of us

24 talking simultaneously. So it gets very

25 difficult. She does a great job.

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1 I've worked with her long enough to
2 know that I am proud to be on her team. I
3 think that's what it is. It's like anything
4 else in our lives when we have had to depend on
5 somebody else to assist us in performing a
6 task. I would venture to say that we may have
7 some involvement and input, but we can't
8 control the end result. Why? Because we can't
9 control the effort of the other person. We can
10 ask them but we depend on them -- that's one of
11 the things that age has taught me. Finally
12 I've reached the point, I realize, that the
13 only person that I know I can control is me.
14 There are some lawyers that say I don't do that
15 very well sometimes.

16 I just ask you to do one thing -- I
17 can't control but I ask you to make the same
18 commitment that I've made, do the best that you
19 can. I look forward to working with you.

20 Let's talk about the time. I am
21 sure that they have probably gone over it.
22 Generally we start at 9:30 and work until 5:00,
23 5:30 or so. None of you will be sequestered
24 this week. That is not in the plan. You will
25 be able to go home in the evening. You will

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1 have a midmorning break -- generally we work
2 about an hour and a half as a benchmark and
3 then take a break. That seems to be -- at
4 least for me and my observation from others of
5 the length of time that we can listen and
6 focus. So we start at 9:30, take a lunch break
7 around 12:30 or so, you'll get about an hour
8 and a half for lunch, in Charleston you need an
9 hour and a half for lunch. Then you will come
10 back, we will repeat the same process in the
11 afternoon. Hopefully that will not be too much
12 of an imposition. You will be given breaks
13 more frequently if needed. And there are some
14 other things that may come up during the trial
15 that would give you some additional time.
16 Hopefully you'll find it not too cumbersome.

17 Obviously the call in is for those of
18 you that are not serving. It is designed to
19 help you. We will try not to bring you back
20 here unnecessarily. Please know that. Just
21 follow the instructions on the answering
22 machine each evening if you're not serving on a
23 jury. Obviously if you're serving on a jury,
24 then I -- I understand that it is not something
25 that you do every day. I've had jurors not

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1 show up because they were serving on a jury and
2 I told them to report at a certain time but
3 they say 'well, I called the answering machine
4 and it said that I didn't have to come in, to
5 call back tomorrow after 6:30.' They went on
6 about their day. You think, 'how could
7 somebody do that?' Very easy. Very easy,
8 because you told them to do that. That's one
9 of the things that you hear. Please, if you
10 are on the jury, don't call. Listen to your
11 judge, do what the judge tells you.

12 What we are going to do now is give
13 you a break. Then we will divide the panel and
14 -- I'm going to select my jury here rather than
15 bring a group of people upstairs. We're here.
16 Everybody is here that needs to be. We will
17 take a few minutes. Take about a ten-minute
18 break. When you come back, we will qualify you
19 for my jury. Thank you very much, Ladies and
20 Gentlemen.

21 (BRIEF RECESS)

22 (DEFENDANT PRESENT)

23 THE COURT: Thank you, very much,
24 Ladies and Gentlemen. We are doing this to
25 accommodate you -- and let me put on the

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1 record that there are some matters of law
2 that have been raised and we will deal with
3 those when we complete the process of
4 qualifying you and selecting the jury. We
5 will go to the courtroom to accomplish the
6 hearing of Motions and matters of law.

7 That will be pretty much how it
8 works this week, Ladies and Gentlemen.
9 Matters of law are for my consideration only.
10 There is nothing private about those. It's
11 nothing that is secret or sacred about it.
12 It's just common sense. If you don't hear
13 something -- if it is not a matter for your
14 consideration it's easier if you don't hear
15 it, then you don't have to think about it.
16 So obviously that is the reason that we do
17 that.

18 But when you think about, when you
19 decide the case that you are going to decide,
20 we are not going to be present either. So
21 it's just the way that the process works.
22 Please understand that.

23 Hopefully we will not have times
24 when you are in and out, but there are
25 occasions when that happens. There are

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1 matters that arise during a trial where I may
2 have to excuse you to deal with matters of
3 law. Please understand something. That's
4 the way that the process is designed. There
5 is nothing wrong with that. You shouldn't
6 hold that against anyone.

7 There may be objections made from
8 time to time by the parties and they -- those
9 sometimes will have to be heard outside of
10 your presence, but that's the way that we
11 deal with that. That's the structure for
12 this process.

13 There are questions now, as I
14 mentioned to you, that I am going to ask you.
15 These questions have no correct answer as
16 they pertain to you. They are only designed
17 to help you make a response. Obviously there
18 is a correct answer, such as I am going to
19 ask you if you know a number of people or if
20 you're related by blood or marriage to any of
21 them, have any social or business dealings
22 with them, have any contact. You'd need to
23 stand and share those types of answers if
24 that applies to you, obviously.

25 First I want to identify the

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1 dispute. The dispute that brings us here
2 today is a dispute entitled the State of
3 South Carolina, who is the party making the
4 claim. The claims are being made against Mr.
5 Alan Burns. That is what I mean, it is a
6 dispute.

7 What I am holding in my hand are
8 twelve indictments. An indictment is simply
9 a formal charge. These documents are what
10 they appear to you to be, they are pieces of
11 paper. They are not evidence. They merely
12 contain allegations. That's what frames the
13 issue of that particular dispute, that is the
14 allegations in that particular indictment
15 provide the parameters for that dispute.

16 We will talk about each allegation
17 in just a moment. They accuse Mr. Burns of
18 committing criminal sexual conduct with a
19 minor and lewd act upon a minor. There are
20 several of them and we will talk about that.
21 Of course those are merely allegations.

22 Mr. Alan Burns is seated at the
23 table to my left. Mr. Burns, good morning.
24 If you would, please stand and face the jury
25 panel. This is Mr. Alan Burns.

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1 MR. ALAN BURNS: (Complies).

2 THE COURT: Thank you, sir. You
3 may be seated, Mr. Burns. Are there any
4 members of the jury panel who are related by
5 blood or marriage, have any business dealings
6 with, socially or casually acquainted with,
7 have any contact with Mr. Burns? Please
8 stand. (No response). Thank you. There are
9 none.

10 Mr. Burns has made the decision for
11 himself in this process, and it is provided
12 by law that that is very proper, there's
13 nothing wrong with that. Mr. Burns is his
14 lawyer, he is representing himself. You
15 shouldn't infer anything from that. You
16 shouldn't consider that. He has every right
17 to do that. He has chosen to exercise that
18 right.

19 There has been appointed an
20 assistant who will be assisting him. Ms.
21 Proctor, if you would identify yourself.
22 And I think Mr. Smith will also be involved.

23 LORI PROCTOR: I am Lori
24 Proctor. Also sitting with Mr. Burns will be
25 Ted Smith. We are both attorneys in the

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1 Public Defender's Office.

2 THE COURT: Thank you. Are any
3 members of the jury panel related by blood or
4 marriage, have any business dealings with,
5 socially or casually acquainted with, ever
6 been represented by Ms. Proctor or by Mr.
7 Smith? If so, please stand. (No response).
8 Thank you. There are none.

9 Mr. Ashley Pennington is the circuit
10 public defender, the public defender for the
11 ninth circuit. Are there any members of the
12 jury panel related by blood or marriage, have
13 any business dealings with, socially or
14 casually acquainted with, ever been
15 represented by Mr. Ashley Pennington? If so,
16 please stand. Thank you. There appear to be
17 none.

18 The State of South Carolina is, of
19 course, the party making the claim, the
20 charging party here. They've made the charge
21 and are represented by circuit solicitors.

22 The Ninth Circuit Solicitor is
23 Scarlett Wilson. Are there any members of
24 the jury panel related by blood or marriage,
25 have any business dealings with, socially or

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1 casually acquainted with, ever been
2 represented by our Solicitor, Miss Scarlett
3 Wilson? If so, please stand.

4 JUROR NUMBER 62: I work at the
5 U.S. Attorneys Office and we do a lot of work
6 with the solicitor's office. Is that ---

7 THE COURT: Sure. The fact that
8 you have those dealings with the solicitor's
9 office, would that affect or influence you in
10 this dispute?

11 JUROR NUMBER 62: I do civil work,
12 so I don't think so.

13 THE COURT: Not to single you out
14 but that is a very normal human response that
15 I've given many, many times in my life -- 'I
16 don't think so.' But unfortunately it's got
17 to be more than that.

18 JUROR NUMBER 62: No.

19 THE COURT: Would it influence or
20 in any way affect how you viewed the evidence
21 and applied the law?

22 JUROR NUMBER 62: No.

23 THE COURT: Would you apply your
24 common sense, your sense of logic and reason
25 fairly in analyzing the evidence and in

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1 applying the law, and would your decision be
2 fair to the State and to Mr. Burns.

3 JUROR NUMBER 62: It would be fair.

4 THE COURT: Your name and number?

5 JUROR NUMBER 62: Rachel Cechak,
6 Number 62.

7 THE COURT: Thank you, ma'am. You
8 may be seated. Anyone else? (No response).
9 Thank you. There appear to be none.

10 Ms. Wilson has a number of
11 assistants who assist her in presenting cases
12 on behalf of the State. Ms. Herring-Lash
13 will be handling this -- and anyone that will
14 be assisting you, Ms. Herring Lash.

15 SOLICITOR HERRING-LASH: Yes. Debi
16 Herring-Lash, Assistant Solicitor. Randall
17 Stoney will be sitting with me.

18 THE COURT: Are there any members
19 of the jury panel related by blood or
20 marriage, have any business dealings with,
21 socially or casually acquainted with, ever
22 been represented by Ms. Herring-Lash or Mr.
23 Stoney? If so, please stand. (No response).
24 Thank you. There appear to be none.

25 I am going to give you the names of

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1 a number of persons. If you are related by
2 blood or marriage, have any business dealings
3 with, socially or casually acquainted with
4 any of these persons, you need to stand and
5 share that information with the Court:

6

Minor 1 [REDACTED]

7

Kathy Burns

8

Minor 4 [REDACTED]

who is a teacher at

9

Mary Ford

10

Minor 2 [REDACTED]

11

Minor 5 [REDACTED]

12

Minor 3 [REDACTED]

13

Jacqueline Blake

14

Felicia Milson

15

Karen Smalls, who is a teacher at

16

Military Magnet

17

Alice Singleton

18

Olivia Jenkins

19

Officer Dunbar with the Mount

20

Pleasant Police Department

21

Detective Michelle Bacon with the

22

Mount Pleasant Police Department

23

Sergeant Rita Avila with the

24

Charleston County Sheriff's Office

25

Don Elsey, who works with the

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1 Lowcountry Children's Center

2 Vera Capes

3 Gail Heath

4 Keith Hair

5 Do you have additional?

6 MS. PROCTOR: Yes, Your Honor.

7 THE COURT: Thank you. I may have

8 already said some of these:

9 Alicia Singleton

10 Myra Greg

11 Cecilia Burns

12 Katherine B. Harris

13 Susan Knight

14 Susan B. Bettelli

15 Richard Beasley

16 Lieutenant L. Johnson

17 Dr. Amanda Salas

18 Ed Knisley

19 Police Chief Harry Sewell

20 Kathy Burns

21 JUROR NUMBER 240: In your first

22 list, I worked at Mary Ford Elementary and

23 I ---

24 THE COURT: You do?

25 JUROR NUMBER 240: I did. I know

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1 Minor 4 ██████████.

2 THE COURT: Would that affect or
3 influence you in this dispute?

4 JUROR NUMBER 240: I can't say
5 since I don't know the case.

6 THE COURT: Well, would her
7 testifying influence you more than any other
8 witness?

9 JUROR NUMBER 240: I don't know.

10 THE COURT: Ma'am, your name and
11 number, please.

12 JUROR NUMBER 240: Susan Norman,
13 240.

14 THE COURT: Ms. Norman, you are
15 excused from this dispute. She needs to call
16 back tonight. You are free to leave. Thank
17 you, ma'am.

18 (JUROR NUMBER 240 EXCUSED)

19 THE COURT: Yes?

20 JUROR NUMBER 293: I have known
21 Harry Sewell since he was a young guy, a
22 little kid.

23 THE COURT: Would that affect or
24 influence you?

25 JUROR NUMBER 293: No, it would

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1 not affect me.

2 THE COURT: If he should testify,
3 would you consider his testimony the same as
4 any witness?

5 JUROR NUMBER 293: Absolutely.

6 THE COURT: And would you base
7 your decision on the evidence and the law and
8 would that decision be fair to both sides?

9 JUROR NUMBER 293: Absolutely.

10 THE COURT: Your name and number,
11 please.

12 JUROR NUMBER 293: Elizabeth Smiley,
13 293.

14 THE COURT: Thank you, Ms. Smiley.

15 JUROR NUMBER 54: I have worked
16 with Detective Michelle Bacon in the past.

17 THE COURT: Would that affect you
18 in any way, sir?

19 JUROR NUMBER 54: No.

20 THE COURT: If Detective Bacon
21 should testify, would you consider the
22 detective's testimony the same as any
23 witness?

24 JUROR NUMBER 54: Yes.

25 THE COURT: And you would base

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1 your decision on the evidence and the law and
2 it would be fair to both sides?

3 JUROR NUMBER 54: Yes, Your Honor.

4 THE COURT: Your name and number
5 again?

6 JUROR NUMBER 54: John Campbell,
7 54.

8 THE COURT: Thank you, Mr.
9 Campbell. Are there others? (No response).
10 There appear to be none.

11 As I mentioned to you, there are
12 twelve disputes, twelve allegations. I need
13 to share with you what has been alleged in
14 each of those so that I can ask you
15 questions.

16 The questions that I will be asking
17 you initially about any of this is -- so if
18 it triggers, please stand if you're familiar
19 with any of these disputes. I need to ask if
20 you've heard anything, read anything, if you
21 have any prior knowledge, if anybody has
22 talked with you about it, if you've had any
23 discussion with anybody about any of these
24 disputes prior to today.

25 The first one, Mr. Burns has been

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1 accused -- as I mentioned, they are
2 indictment and they are only accusations.

3 He has been accused and alleged to
4 have committed a lewd act upon a minor in
5 that Mr. Burns, who is allegedly over
6 fourteen years of age, did in Charleston
7 County between December 20th, 1981 and
8 December 31st, 1985, willfully and lewd did
9 commit or did attempt to commit a lewd or
10 lascivious act upon the body, any part or
11 member thereof, of a child under the age of
12 fourteen years, namely Minor 5 [REDACTED],
13 with the intent of arousing or appealing to
14 and gratifying the lust or passions or sexual
15 desires of himself or of the child.

16 He is also accused of committing the
17 offense of criminal sexual conduct with a
18 minor, allegedly in the first degree, in that
19 Mr. Burns, whose birth date is December 20,
20 1964, did in Charleston County, between
21 December 20, 1981 and December 31, 1985,
22 engage in sexual battery upon Minor 5 [REDACTED]
23 [REDACTED], whose birth date was July 23rd, 1997,
24 by anal penetration.

25 It is alleged that he committed a

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1 lewd act upon a minor in that in Charleston
2 County, between December 20, 1981 and August
3 1987, Mr. Burns, a person over the age of
4 fourteen age, did willfully and lewdly
5 commit, or attempt to commit, a lewd and
6 lascivious act upon the body or member
7 thereof upon a child of the age of sixteen
8 years, to-wit Minor 4 [REDACTED], with the intent
9 of arousing, appealing to or gratifying the
10 lust, passions or desires of himself or of
11 that child.

12 It is further alleged that Mr. Burns
13 did, in Charleston County, between December
14 of 1981 and August of 1987, did commit or
15 attempt to commit a lewd and lascivious act
16 upon the body, or body parts, of a child
17 under the age of sixteen years, Minor 3 [REDACTED]
18 [REDACTED]

19 Similar allegations concerning --
20 and those are all statutory aspects of that
21 charge. I am not going to repeat them in
22 each one but it is alleged in each one.

23 That Mr. Burns, in this indictment,
24 allegedly committed the offense of criminal
25 sexual conduct with a minor in the first

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1 degree. It is alleged that he did, in
2 Charleston County, between December 20th, 1981
3 and June 23rd, 1985, engage in sexual battery
4 upon Minor 3 [REDACTED] with digital penetration.

5 It is alleged in this indictment
6 that he committed the offense of criminal
7 sexual conduct with a minor in the first
8 degree in that between the dates of December
9 20th, 1981 and June 23rd, 1985, Mr. Burns
10 engaged, allegedly, in sexual battery upon
11 Minor 3 [REDACTED] in that he had sexual
12 intercourse with that individual.

13 It is further alleged in this
14 indictment that Mr. Burns committed a lewd
15 act upon a minor, in Charleston County,
16 between March 1st, 1997 and March 10th, 2001,
17 in that he allegedly committed or attempted
18 to commit a lewd and lascivious act upon the
19 body, or a part of member thereof, of a
20 child, Minor 2 [REDACTED].

21 It is further alleged in this
22 indictment that he committed the offense of
23 criminal sexual conduct with a minor in the
24 first degree, in that Mr. Burns allegedly, in
25 Charleston County, between March 1st, 1997,

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1 and March 10th, 2001, engaged in sexual
2 battery upon Minor 2 [REDACTED], to-wit:
3 fellatio.

4 It is alleged in this indictment
5 that he committed the offense of criminal
6 sexual conduct with a minor in the first
7 degree in that between -- in Charleston
8 County -- March 1st, 1997 and March 10th, 2001,
9 he engaged in sexual battery upon Minor 2 [REDACTED]
10 Minor 2 [REDACTED]; namely, to-wit: anal penetration.

11 It is alleged in this indictment
12 that he committed a lewd act upon a minor in
13 Charleston County between July 1997 and June
14 30, 2001, in that he allegedly willfully and
15 lewdly committed, or attempted to commit, a
16 lewd and lascivious act upon the body, or any
17 part or member thereof, of a child under the
18 age of sixteen, namely Minor 1 [REDACTED].

19 It is alleged in this indictment
20 that he allegedly committed the offense of
21 criminal sexual conduct with a minor in the
22 second degree, in Charleston County, between
23 July 1997 and June 30th, 2001, by engaging in
24 sexual battery upon Minor 1 [REDACTED],
25 allegedly by digital penetration.

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1 Then in this indictment, it is
2 alleged that Mr. Burns committed the offense
3 of criminal sexual conduct with a minor in
4 the second degree between July 1997 and June
5 2001, engaged in sexual battery upon Minor 1
6 ██████████ in that he allegedly had sexual
7 intercourse.

8 Any member of the jury that's heard
9 anything, read anything, has any prior
10 knowledge of this dispute, please stand. (No
11 response). Thank you. There appear to be
12 none.

13 Is there anything about the nature
14 of these charges, Ladies and Gentlemen, that
15 you, because of something that may have
16 happened in your life -- to you, to a family
17 member, a close personal friend or some
18 strong feeling or philosophy that you have,
19 developed through your life, that would
20 affect or influence your ability to fairly
21 and impartially apply your common sense in
22 analyzing the evidence and deciding what you
23 believe to be the true facts? Then once
24 making that decision, taking the law as I
25 give it to you and applying that law fairly

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1 and impartially to those facts?

2 If you feel that there is something,
3 please stand. I would ask you to come
4 forward, please, ma'am.

5 SIDEBAR:

6 THE COURT: Give me your
7 name.

8 JUROR NUMBER 215: Loree
9 Meggett.

10 THE COURT: What is your
11 situation?

12 JUROR NUMBER 215: 215 is
13 my number. I have a niece that is twelve and
14 someone is facing the same charges as he is,
15 abuse. We're getting ready to go to court
16 and -- this is the same thing.

17 THE COURT: Your number
18 again?

19 JUROR NUMBER 215: 215.

20 (SIDEBAR CONCLUDED)

21 THE COURT: Number 215 will be
22 excused from participation in this case. If
23 you will, call the number after 6:00 tonight.
24 Have a good day, ma'am.

25 (JUROR NUMBER 215 EXCUSED)

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1 THE COURT: You may come forward.

2 SIDEBAR:

3 THE COURT: If you would,
4 give me your name.

5 JUROR NUMBER 178: Jennifer
6 Jones, 178. I have a three-year-old daughter
7 and I am not sure but that I wouldn't be
8 biased about ---

9 THE COURT: What about the
10 ages, they're older?

11 SOLICITOR HERRING-LASH:
12 Twenty-four and ten.

13 THE COURT: You think that it
14 would affect you?

15 JUROR NUMBER 178: I think
16 that it might.

17 THE COURT: Sure. Your
18 number, please.

19 JUROR NUMBER 178: 178.

20 (SIDEBAR CONCLUDED)

21 THE COURT: Number 178 will be
22 excused from participation in this dispute.
23 Call the number after 6:00.

24 (JUROR NUMBER 178 EXCUSED)

25 THE COURT: Yes, sir?

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1 SIDEBAR:

2 JUROR NUMBER 209: I believe
3 that I know Mr. Minor 2

4 THE COURT: Minor 2

5 JUROR NUMBER 209: (Affirmative
6 nod), I can't guarantee that I could ---

7 THE COURT: So you are
8 familiar with one of the victims, alleged
9 victims in this case?

10 JUROR NUMBER 209: Right.

11 THE COURT: Your number?

12 JUROR NUMBER 209: 209.

13 (SIDEBAR CONCLUDED)

14 THE COURT: Juror Number 209 will
15 be excused from participation in this
16 dispute. Call the number after 6:00.

17 (JUROR NUMBER 209 EXCUSED)

18 SIDEBAR:

19 THE COURT: This is why we're
20 doing this on the side. If I don't hear from
21 you, I will assume that you don't have any
22 objection.

23 DEFENDANT: Yes, sir.

24 THE COURT: Thank you, sir.

25 (SIDEBAR WITH DEFENDANT CONCLUDED)

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1 SIDEBAR:

2 THE COURT: Yes, ma'am?

3 JUROR NUMBER 190: Sorry, I
4 probably should have stood earlier. I don't
5 know Ms. Herring-Lash but my husband, Dr.
6 Kollar, has worked with her. He trusts her
7 explicitly.

8 THE COURT: Would that affect
9 you?

10 JUROR NUMBER 190: I think that
11 it would.

12 THE COURT: Sure. Your number,
13 please?

14 JUROR NUMBER 190: Number 190.

15 THE COURT: And your name?

16 JUROR NUMBER 190: Debra Kollar.
17 I'm sorry.

18 (SIDEBAR CONCLUDED)

19 THE COURT: Mrs. Kollar will be
20 excused -- no, no apology. Let me say --
21 this juror is apologizing because she has
22 come to share something. I am not trying to
23 embarrass you but that's precisely why I
24 believe in this process. People do that
25 every single day, just like the previous

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1 ones, that come forward and share something.
2 That is exactly what you should do. So you
3 don't apologize. Thank you, ma'am. I
4 applaud you. Thank you. Have a great day.

5 (JUROR NUMBER 190 EXCUSED)

6 THE COURT: Are there others? (No
7 response). Thank you. There appear to be
8 none.

9 Are there any members of the jury
10 panel, a member of your immediate family, or
11 close personal friend that has been involved
12 in any dispute, litigation, be it criminal
13 side or civil side, where allegations similar
14 to this, of a sexual nature, where you've
15 been a witness or in any capacity involved?
16 If so, please stand. I will ask you to come
17 forward, please.

18 SIDEBAR:

19 THE COURT: Give me your
20 name.

21 JUROR NUMBER 261: I am Number
22 261, David Purcell.

23 THE COURT: Okay.

24 JUROR NUMBER 261: My son
25 was involved -- he was never called -- his

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1 church, a church member was convicted of a
2 sexual crime.

3 THE COURT: Was he involved
4 in some way, connected with the allegation?

5 JUROR NUMBER 261: The man
6 was his designated church leader. He was
7 never brought into the trial.

8 THE COURT: So he never took
9 any formal part?

10 JUROR NUMBER 261: No.

11 THE COURT: Would that
12 affect or influence you in this dispute?

13 JUROR NUMBER 261: (No
14 response).

15 THE COURT: Thank you for
16 your hesitation. I've learned over the years
17 and I appreciate that, it's a very normal and
18 human response. Your number?

19 JUROR NUMBER 261: 261.

20 (SIDEBAR CONCLUDED)

21 THE COURT: Number 261 will be
22 excused from participation in this dispute.
23 Have a great day.

24 (JUROR NUMBER 261 EXCUSED)

25 BAILIFF: Number 54.

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1 SIDEBAR:

2 JUROR NUMBER 54: I have been
3 court-appointed in cases involving sexual
4 abuse.

5 THE COURT: Your name and
6 number?

7 JUROR NUMBER 54: John
8 Campbell, Number 54.

9 THE COURT: Mr. Campbell,
10 would that affect you or influence you in
11 this case?

12 JUROR NUMBER 54: No, sir.

13 THE COURT: Would you apply
14 your knowledge and your personal experiences
15 fairly and impartially in analyzing the
16 evidence?

17 JUROR NUMBER 54: I would.

18 THE COURT: And would your
19 decision be fair to both sides, based on the
20 law and evidence in this case?

21 JUROR NUMBER 54: Yes, it
22 would.

23 (SIDEBAR CONCLUDED)

24 THE COURT: Your number again?

25 JUROR NUMBER 54: Fifty-four.

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1 THE COURT: Number 54 will remain.

2 DEFENDANT: Your Honor, ---

3 SIDEBAR:

4 THE COURT: Well, if his
5 experiences doesn't affect his ability to be
6 fair, then it doesn't disqualify him. That's
7 why I asked him the question.

8 (SIDEBAR CONCLUDED)

9 THE COURT: Are there others?
10 (No response). Thank you. There appear to
11 be none.

12 Are there any members of the jury
13 panel, member of your immediate family that
14 now or formerly was involved with law
15 enforcement in any capacity? Yes, ma'am?

16 JUROR NUMBER 132: My brother was
17 with the U.S. Customs, Border Patrol,
18 retired.

19 THE COURT: Your mother?

20 JUROR NUMBER 132: Brother.

21 THE COURT: Would that affect or
22 influence you in this dispute?

23 JUROR NUMBER 132: No, sir.

24 THE COURT: Would you decide this
25 case based on the law and the evidence and

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1 would it be fair to both sides?

2 JUROR NUMBER 132: Yes, sir.

3 THE COURT: Your name and number,
4 please?

5 JUROR NUMBER 132: Pamela Gordon,
6 Number 132.

7 THE COURT: Thank you, Ms. Gordon.

8 JUROR NUMBER 186: I have a niece
9 by marriage that is with the Mount Pleasant
10 Police Department.

11 THE COURT: Would that affect you
12 in any way in this dispute?

13 JUROR NUMBER 186: No.

14 THE COURT: Would you base your
15 decision on the evidence and the law and
16 would your decision be fair to both sides?

17 JUROR NUMBER 186: Yes, sir.

18 THE COURT: Your name and number,
19 please?

20 JUROR NUMBER 186: Carol Kilpatrick.

21 THE COURT: I'm sorry.

22 JUROR NUMBER 186: Carol Kilpatrick.

23 THE COURT: Thank you. Are there
24 others? Yes?

25 JUROR NUMBER 46: Dollie Brown. I

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1 retired from the Charleston Police Department
2 in 2003. I worked there for thirty years.

3 THE COURT: Would that affect you
4 in this dispute, ma'am?

5 JUROR NUMBER 46: Not at all.

6 THE COURT: Would you apply your
7 experience and knowledge fairly and
8 impartially in analyzing the evidence?

9 JUROR NUMBER 46: Absolutely.

10 THE COURT: Would you base your
11 decision on the evidence and the law and
12 would it be fair to both the State and the
13 defendant?

14 JUROR NUMBER 46: Yes, sir.

15 (SIDEBAR CONCLUDED)

16 THE COURT: Thank you, Ms. Brown.

17 MR. ALAN BURNS: What was her
18 number?

19 JUROR NUMBER 46: Forty-six (46).

20 THE COURT: Yes, sir?

21 SIDEBAR:

22 JUROR NUMBER 326: My
23 stepbrother is a police office in Portsmouth,
24 Rhode Island. It's about a thousand miles
25 away.

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1 THE COURT: I understand.

2 Would that affect or influence you?

3 JUROR NUMBER 326: No, sir.

4 THE COURT: Will you base
5 your decision on the evidence and the law and
6 will it be fair?

7 JUROR NUMBER 326: Yes, sir.

8 THE COURT: Your number and
9 name, sir?

10 JUROR NUMBER 326: Three
11 twenty-six (326).

12 (SIDEBAR CONCLUDED)

13 THE COURT: Anyone else? (No
14 response). Thank you. There appear to be
15 none.

16 Are there any members of the jury
17 panel now or formerly employed with, have any
18 business dealings with in any capacity with
19 the Solicitor's Office for the Ninth Circuit
20 or the Public Defender's Offices for the
21 Ninth Circuit. If so, please stand. Yes,
22 sir?

23 SIDEBAR:

24 JUROR NUMBER 156: Not recently
25 but professional, I had some dealings with

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1 the solicitor's office.

2 THE COURT: Would that affect
3 or influence you in this case, sir?

4 JUROR NUMBER 156: No.

5 THE COURT: Would you base
6 your decision based on the evidence and the
7 law, and would your decision be fair to both
8 sides?

9 JUROR NUMBER 156: Yes.

10 THE COURT: Your name and
11 number please.

12 JUROR NUMBER 156: Robert
13 Holzel, Number 156.

14 THE COURT: Thank you, Mr.
15 Holzel.

16 (SIDEBAR CONCLUDED)

17 THE COURT: Yes?

18 JUROR NUMBER 286: I was
19 currently employed by a previous assistant
20 solicitor and his wife is in the solicitor's
21 office. I don't think that would influence
22 me at all.

23 THE COURT: You don't think that it
24 would?

25 JUROR NUMBER 286: It wouldn't.

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1 THE COURT: Your name and number?

2 JUROR NUMBER 186: Kayce

3 Seifert, Number 286.

4 THE COURT: Thank you, Ms. Seifert.

5 Anyone else? (No response). Thank you.

6 There appear to be none.

7 There are a number of principles of
8 law that I will give you at the conclusion of
9 the trial, in what we call the charge
10 portion. But one of the primary portions of
11 the law that governs this dispute, and every
12 criminal dispute with which I am familiar in
13 the United States, is that persons accused of
14 criminal offenses such as Mr. Burns is today
15 are just that: accused of committing criminal
16 offenses.

17 The law further states that the
18 party who makes the accusation -- that means
19 the State of South Carolina -- has the sole
20 burden of proof, is the only party who has
21 any burden of proof in a criminal dispute;
22 which is the State of South Carolina in this
23 case.

24 Mr. Burns has absolutely nothing to
25 prove or disprove. The law places upon him

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1 no responsibility whatsoever. You cannot
2 consider that against him in any fashion.
3 Why? Because it would be contrary to the
4 law. And secondly it would be contrary to
5 a presumption that you are required to
6 maintain. It's an active mental process.
7 The law says that persons so accused are
8 presumed to be innocent. That presumption
9 has to remain until you as a juror, if you're
10 selected, after your deliberations and
11 through your deliberations, by considering
12 the evidence and applying the law, has
13 reached the conclusion that you believe that
14 the State has met its burden of proof beyond
15 a reasonable doubt.

16 A reasonable doubt, I will define it
17 for you but it is a doubt that would cause a
18 conscientious, honest juror searching for the
19 truth in a case to hesitate to act or to take
20 some action. Only then may you change from
21 that position of presuming that he is
22 innocent.

23 Then if at the end you're not
24 convinced -- and the State has to prove --
25 in order for you to change, I would further

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1 instruct you, that the State has to prove
2 each element of each particular crime to that
3 standard. So if you have a reasonable doubt
4 as to any one of the elements, you may not
5 change that position and you must return a
6 verdict of not guilty, because that's what
7 the verdict will mean. It means that as to
8 that particular case that the State did not
9 meets its burden of prove.

10 That's what these disputes are
11 about, to determine if the State meets its
12 burden of prove. Mr. Burns has nothing to do
13 with that process.

14 Is there anything about your
15 beliefs, something that has happened in your
16 life, any strong feelings at all, anything at
17 all that would give you any concern about
18 your ability to follow that instruction and
19 all other instructions that I would give you
20 on the law? If so, please stand. (No
21 response). Thank you. There are none.

22 Has any member of the jury panel
23 ever worked, every participated in any type
24 of criminal prosecution -- in any capacity?
25 If so, please stand.

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1 JUROR NUMBER 62: When I interned
2 with the U.S. Attorneys Office, I did
3 criminal work.

4 THE COURT: And would you apply
5 your experiences fairly and impartially?

6 JUROR NUMBER 62: Yes, sir.

7 THE COURT: Your name and number?

8 JUROR NUMBER 62: Rachel Cechak,
9 62.

10 THE COURT: Thank you. Yes,
11 ma'am?

12 JUROR NUMBER 286: The person that
13 I worked with previously, I did criminal work
14 with him. Previously I worked with the
15 solicitor's office.

16 THE COURT: And you would apply
17 your knowledge fairly and impartially?

18 JUROR NUMBER 286: Yes.

19 THE COURT: Your name and number?

20 JUROR NUMBER 286: Two eighty-
21 six (286).

22 THE COURT: Thank you.

23 JUROR NUMBER 104: I was subpoenaed
24 before a grand jury?

25 THE COURT: In a case in this

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1 circuit?

2 JUROR NUMBER 104: No, Massachusetts.

3 THE COURT: The fact that you had
4 that experience, would it affect or influence
5 you in any way?

6 JUROR NUMBER 104: I am not sure.
7 It really tainted me.

8 THE COURT: Thank you very much.
9 I appreciate it. Your number, please?

10 JUROR NUMBER 104: 104.

11 THE COURT: 104 will be excused
12 from participation in this dispute. Call the
13 number after 6:00 tonight. Thank you so
14 much. Have a good day.

15 (JUROR NUMBER 104 EXCUSED)

16 THE COURT: Anyone else? (No
17 response). Thank you. There appear to be
18 none.

19 THE COURT: Any other specific
20 questions from the State?

21 SOLICITOR HERRING-LASH: No, Your
22 Honor.

23 THE COURT: Any other specific
24 questions, Mr. Burns, that you wish me to ask
25 of this jury?

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1 MR. ALAN BURNS: (No response).

2 THE COURT: For your information,
3 I am going to make your requested questions a
4 court's exhibit. As they are written, they
5 are asked for you and requested by you. I
6 think that I have covered every one probably
7 except the last two, and I declined to ask
8 those. I think that those are questions that
9 the law does not allow me to ask. So I --
10 but they are part of the court's exhibits.

11 Any other/additional requests other
12 than those contained in your submission?

13 MR. ALAN BURNS: No, Your Honor.

14 THE COURT: Very well. I feel
15 like the Court has addressed all the other
16 questions specifically, either directly or
17 indirectly. It will be Court's Exhibit ---

18 COURT REPORTER: Marked as Court's
19 Exhibit 1.

20 (SO ENTERED AS COURT'S EXHIBIT 1)

21 THE COURT: Ladies and Gentlemen,
22 the last question that I have for you is
23 this. As I mentioned to you, you will take
24 an oath -- that is one of the first steps
25 that will happen, before we start. You will

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1 raise your hand and you will promise,
2 essentially, to at the appropriate time to
3 apply your common sense, your sense of logic
4 and reason fairly in analyzing the evidence
5 and determine the true facts from that
6 evidence. Then once you decide those true
7 facts, taking the law as I give it to you and
8 applying that law fairly and impartially to
9 those facts.

10 Is there anything that you've heard
11 about this dispute that would give you any
12 concern about your ability to make that
13 commitment to the State, to Mr. Burns and to
14 the Court? If so, please stand. (No
15 response). Thank you. There are none.

16 If we were in the jury room
17 upstairs, you'd have to come and turn and
18 face the lawyers. That is the process in a
19 criminal dispute. The process that we use to
20 select our jury. In just a moment -- Miss
21 Hoskins, are you going to call them?

22 CLERK: (Affirmative nod).

23 THE COURT: Ms. Hoskins is going
24 to call your name. I ask that when you come
25 and you -- I think both sides can see. If

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1 you will, just stand here -- (demonstrating).

2 First the State of South Carolina,
3 Miss Hoskins will say 'What says the State?'
4 or such -- then the solicitors will say to
5 swear the jury, seat the juror, something
6 like that. Or they may say to excuse the
7 juror. Each side can excuse jurors. The
8 State can excuse five, Mr. Burns can excuse
9 ten.

10 We go through that process until we
11 select our twelve jurors and an alternate.
12 Please understand something. The fact that
13 they excuse you doesn't mean anything. Don't
14 take it personally. That's just the way that
15 the process works.

16 If they say to seat the juror, what
17 we are going to do is -- Mr. Brown, you have
18 some chairs?

19 BAILIFF BROWN: Yes, sir.

20 THE COURT: Mr. Brown will direct
21 you to where you need to sit. Take a seat
22 in the back of the courtroom until we have
23 identified our twelve jurors and two
24 alternates. Thank you so much for your
25 assistance and your patience.

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1 I turn it over to you now, Miss
2 Hoskins.

3 COURT REPORTER: Mr. Burns needs a
4 list.

5 CLERK MICHELE: We're coming --
6 (providing lists to all counsel).

7 THE COURT: The list that has been
8 handed -- there's a new process that we have.
9 Years ago -- in fact, last week I revisited -
10 I returned to Manning, was trying cases in
11 Manning and that's the place where I tried my
12 first case as a trial judge in 1994. It was
13 good to get back. The process has changed,
14 though. In Manning there was a jury boy that
15 -- that's what he was hired by the Clerk to
16 come. You had to be of a certain age or you
17 had to have some challenge maybe that --
18 either blind or you had some mental problem
19 to be able to -- all of that to do what? To
20 make sure that nobody did anything that fixed
21 the jury selection.

22 Then we got really sophisticated.
23 We got these funny little capsules. We'd cut
24 up lists of names and stuffed the paper with
25 the name on it into a capsule. Well, that's

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1 great too. You pull the name out of the
2 capsule but when you pull the next jury, you
3 have to restuff them. That made a lot of
4 sense. Anyway, they put into a drum. Spin
5 the drum, pick a capsule.

6 Then we moved into the marvelous
7 computer age. Now we have a bill that says
8 that we can select it with a random computer-
9 generated name. So that's what has happened.
10 Your names have been pulled, placed on a
11 list. That list is numbered sequentially.
12 We will go through that list as it has been
13 called. Just follow the instruction of Miss
14 Hoskins. Thank you.

15 CLERK: As I call your name and
16 juror number, please come forward. Juror
17 Number 269, Jenny Richardson.

18 (WHITE FEMALE BEFORE COUNSEL)

19 CLERK: What say you for the State?

20 SOLICITOR HERRING-LASH: Please
21 present the juror.

22 CLERK: What say you for the
23 Defendant?

24 MR. ALAN BURNS: Please seat the
25 juror.

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1 (JUROR NUMBER 169 SEATED)

2 CLERK: Please step to the back of
3 the room. Juror Number 268, Cathy
4 Richardson.

5 (WHITE FEMALE BEFORE COUNSEL)

6 CLERK: What say you for the State?

7 SOLICITOR HERRING-LASH: Please
8 seat the juror.

9 CLERK: What say you for the
10 Defendant?

11 MR. ALAN BURNS: Please seat the
12 juror.

13 (JUROR NUMBER 268 SEATED)

14 CLERK: Juror Number 197, Nancy
15 Lewis.

16 (WHITE FEMALE BEFORE COUNSEL)

17 CLERK: What say you for the State?

18 SOLICITOR HERRING-LASH: Please
19 seat the juror.

20 CLERK: What say you for the
21 defendant?

22 MR. ALAN BURNS: Please strike the
23 juror.

24 CLERK: Ms. Lewis, please have a
25 seat back in the audience.

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1 (JUROR NUMBER 197 EXCUSED)

2 CLERK: Juror Number 253, Gwen

3 Petty.

4 (WHITE FEMALE BEFORE COUNSEL)

5 CLERK: What say you for the State?

6 SOLICITOR HERRING-LASH: Please

7 present the juror.

8 CLERK: What say you for the

9 Defendant?

10 MR. ALAN BURNS: Please strike the

11 juror.

12 CLERK: Please have a seat back in

13 your seat.

14 (JUROR NUMBER 253 EXCUSED)

15 CLERK: Juror Number 314, Maureen

16 Taylor.

17 (WHITE FEMALE BEFORE COUNSEL)

18 CLERK: What say you for the State?

19 SOLICITOR HERRING-LASH: Please

20 present the juror.

21 CLERK: What say you for the

22 Defendant?

23 MR. ALAN BURNS: Please strike the

24 juror.

25 CLERK: Ms. Taylor, please have a

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1 seat back in your seat.

2 (JUROR NUMBER 314 EXCUSED)

3 CLERK: Juror Number 317, Ellen
4 Tischbin.

5 (WHITE FEMALE BEFORE COUNSEL)

6 THE COURT: What say you for the
7 State?

8 SOLICITOR HERRING-LASH: Please
9 present the juror.

10 CLERK: What say you for the
11 Defendant?

12 MR. ALAN BURNS: Please seat the
13 juror.

14 CLERK: Please have a seat in the
15 back of the jury room.

16 (JUROR NUMBER 317 SEATED)

17 CLERK: Juror Number 67, Sharon
18 Clawson.

19 (WHITE FEMALE BEFORE COUNSEL)

20 SOLICITOR HERRING-LASH: Please
21 present the juror.

22 CLERK: What say you for the
23 Defendant?

24 MR. ALAN BURNS: Please strike the
25 juror.

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1 CLERK: Please have a seat back in
2 your seat.

3 (Juror NUMBER 67 EXCUSED)

4 CLERK: Juror Number 13, Jane Babb.
5 (WHITE FEMALE BEFORE COUNSEL)

6 CLERK: What say you for the State?

7 SOLICITOR HERRING-LASH: Please
8 present the juror.

9 CLERK: What say you for the
10 Defendant?

11 MR. ALAN BURNS: Please seat the
12 juror.

13 CLERK: Please have a seat back in
14 your seat.

15 (JUROR NUMBER 13 SEATED)

16 CLERK: Juror Number 282, Michael
17 Schurlknight.

18 (WHITE MALE BEFORE COUNSEL)

19 CLERK: What say you for the State?

20 SOLICITOR HERRING-LASH: Please
21 seat the juror.

22 CLERK: What say you for the
23 Defendant?

24 MR. ALAN BURNS: Please seat the
25 jury.

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1 CLERK: Mr. Shurlknight, please
2 have a seat in the back of the jury room.
3 (JUROR NUMBER 282 SEATED)
4 CLERK: Jury Number 157, Kimberly
5 Mount.
6 (WHITE FEMALE BEFORE COUNSEL)
7 CLERK: What say you for the State?
8 SOLICITOR HERRING-LASH: Please
9 excuse Ms. Mount.
10 CLERK: Ms. Mount, please have a
11 seat back in the audience.
12 (JUROR NUMBER 157 EXCUSED)
13 CLERK: Juror Number 182, Philip
14 Kelly.
15 (WHITE MALE BEFORE COUNSEL)
16 CLERK: What say you for the State?
17 SOLICITOR HERRING-LASH: Please
18 seat the juror.
19 CLERK: What say you for the
20 Defendant?
21 MR. ALAN BURNS: Please seat the
22 juror.
23 (JUROR NUMBER 182 SEATED)
24 CLERK: Juror Number 227, Anthony
25 Mitchell.

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1 (BLACK MALE BEFORE COUNSEL)

2 CLERK: What say you for the State?

3 SOLICITOR HERRING-LASH: Please
4 present the juror.

5 CLERK: What say you for the
6 Defendant?

7 MR. ALAN BURNS: Please strike the
8 juror.

9 CLERK: Mr. Mitchell, please have a
10 seat back in the audience.

11 (JUROR NUMBER 227 EXCUSED)

12 CLERK: Five strikes for Defendant.
13 Juror Number 248, Cheryl Parish.

14 (WHITE FEMALE BEFORE COUNSEL)

15 CLERK: What say you for the State?

16 SOLICITOR HERRING-LASH: Please
17 present the juror.

18 CLERK: What say you for the
19 Defendant?

20 MR. ALAN BURNS: Please seat the
21 juror.

22 CLERK: Ms. Parish, please have a
23 seat in the back.

24 (JUROR NUMBER 248 SEATED)

25 CLERK: Juror Number 102, Lila

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1 Fickling.

2 (ASIAN FEMALE BEFORE COUNSEL)

3 CLERK: What say you for the State?

4 SOLICITOR HERRING-LASH: Please
5 seat the juror.

6 CLERK: What say you for the
7 Defendant?

8 MR. ALAN BURNS: Please seat the
9 juror.

10 (JUROR NUMBER 102 SEATED)

11 CLERK: Juror Number 157, Robert
12 Holzel.

13 (WHITE MALE BEFORE COUNSEL)

14 CLERK: What says the State?

15 SOLICITOR HERRING-LASH: Please
16 seat the juror.

17 CLERK: What say you for the
18 Defendant?

19 MR. ALAN BURNS: Please seat the
20 juror.

21 (JUROR NUMBER 157 SEATED)

22 CLERK: Juror Number 90, Herbert
23 Deas.

24 (BLACK MALE BEFORE COUNSEL)

25 CLERK: What say you for the State?

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1 SOLICITOR HERRING-LASH: Please
2 present the juror.

3 CLERK: What say you for the
4 Defendant?

5 MR. ALAN BURNS: Please seat the
6 juror.

7 CLERK: Mr. Deas, please have a
8 seat in the back.

9 (JUROR NUMBER 90 SEATED)

10 CLERK: Juror Number 220, Brigitte
11 Miklaszewski.

12 (WHITE FEMALE BEFORE COUNSEL)

13 CLERK: What say you for the State?

14 SOLICITOR HERRING-LASH: Please
15 present the juror.

16 CLERK: What say you for the
17 Defendant?

18 MR. ALAN BURNS: Please seat the
19 juror.

20 (JUROR NUMBER 220 SEATED)

21 CLERK: Juror Number 243, Gregory
22 Olmstead.

23 (WHITE MALE BEFORE COUNSEL)

24 CLERK: What say you for the State?

25 SOLICITOR HERRING-LASH: Please

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1 present the juror.

2 CLERK: What say you for the
3 Defendant?

4 MR. ALAN BURNS: Please seat the
5 juror.

6 (JUROR NUMBER 243 SEATED)

7 THE COURT: That's our twelve.
8 Please pick our first alternate. The State
9 has one strike and, Mr. Burns, you have two
10 on each alternate, sir.

11 CLERK: Striking for the first
12 alternate, Juror Number 318, Christopher
13 Trahan.

14 (WHITE MALE BEFORE COUNSEL)

15 CLERK: What say you for the State?

16 SOLICITOR HERRING-LASH: Please
17 present the juror.

18 CLERK: What say you for the
19 Defendant?

20 MR. ALAN BURNS: Please strike the
21 juror.

22 CLERK: Mr. Trehan, please have a
23 seat back in the audience.

24 (JUROR NUMBER 318 EXCUSED)

25 CLERK: Juror Number 326, Peter

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1 Vira.

2 (WHITE MALE BEFORE COUNSEL)

3 CLERK: What say you for the State?

4 SOLICITOR HERRING-LASH: Please
5 present the juror.

6 CLERK: What say you for the
7 Defendant?

8 MR. ALAN BURNS: Please seat the
9 juror.

10 (JUROR NUMBER 326 SEATED)

11 THE COURT: Alternate number two,
12 strikes to be one and two again.

13 CLERK: Striking for the second
14 alternate, Juror Number 76, Patricia Hiott.

15 (WHITE FEMALE BEFORE COUNSEL)

16 CLERK: What say you for the State?

17 SOLICITOR HERRING-LASH: Please
18 present the juror.

19 CLERK: What say you for the
20 Defendant.

21 MR. ALAN BURNS: Please seat the
22 juror.

23 CLERK: Ms. Hiott, please have a
24 seat in the back.

25 (JUROR NUMBER 76 SEATED)

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1 CLERK: The jury is seated, Your
2 Honor.

3 THE COURT: All right. Any
4 Motions from the State regarding the
5 selection process?

6 SOLICITOR HERRING-LASH: No, Your
7 Honor.

8 THE COURT: Mr. Burns, any
9 Motion(s) from you concerning the selection
10 process?

11 MR. ALAN BURNS: No, Your Honor.

12 THE COURT: Very well. Ladies and
13 Gentlemen, those of you that were not
14 selected, thank you so very much for your
15 patience. You are now free to leave.

16 Call the number after 6:00 tonight
17 and follow that instruction.

18 I may see you later in the week but,
19 if not, have a great week and thank you for
20 your assistance.

21 (JURY PANEL EXCUSED)

22 THE COURT: Rather than make you
23 move and come forward, I'll walk to the back
24 -- Deb (court reporter), is that okay?

25 COURT REPORTER: Yes, sir.

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1 THE COURT: Ladies and Gentlemen,
2 there are matters now that I am going to take
3 up out of your presence. I am going to
4 excuse you for -- it's now 12:15 and there
5 are several Motions that we need to hear, so
6 I am going to give you a little bit longer
7 today than customarily.

8 Please remember that you are not at
9 liberty to discuss this case with anyone.
10 You should not allow anybody to talk about
11 this case in your presence or to talk to you
12 about serving on the jury in this case -- any
13 case for that matter.

14 You will take an oath to decide this
15 case based on what you hear in the courtroom.
16 So it's obviously that you shouldn't talk to
17 anyone outside, because -- it may influence
18 you but it automatically -- if you think
19 about it, if somebody saw you doing that, and
20 saw that the person had talked to you, they
21 might think they are influenced. So it is
22 very important not to do that.

23 Also please remember something, and
24 I will remind you of this when we gather --
25 I'm going to give you until 2:15. When you

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1 leave here, you will go to -- they will take
2 you to go to your jury room. That's where
3 you will need to return, to go direct to your
4 jury room. Please remember that you have
5 heard no evidence. You've only heard what I
6 shared with you as having been alleged. It's
7 just that, alleged. You're not at liberty to
8 conduct any independent research on anything.
9 We've had some issues -- I've had them, other
10 judges have had them as well, that caused the
11 Chief Justice, my boss, to issue an Order
12 that we are to instruct the jury every single
13 time -- and I don't know you, I'm not being
14 critical of you, I just know myself. I know
15 that -- I've been fortunate enough to have
16 children and grandchildren. Maybe you've had
17 the same experience that when you tell
18 somebody to not do something, that's what
19 they want to do. If that is an urge, you
20 have to resist that urge. Once the case is
21 complete, you can research it to your heart's
22 content. But during the trial you are to
23 make your decision on the evidence, testimony
24 and exhibits, that are presented in this
25 trial.

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1 It's been about four years ago. I
2 was trying a case -- fortunately the parties
3 resolved the criminal dispute. We were about
4 to do the charge, arguing and charge, which
5 is the last step before the jury decides the
6 case. So I went back to excuse the jury and
7 tell them that we had been able to resolve
8 it. One of the jurors made this statement,
9 'Well, I am glad that they resolved it,
10 because I was really worried about how they
11 were going to get around self-defense in this
12 case. I went online last night and I read
13 about it.' Well, fortunately we'd resolved
14 it. Had that case not been resolved, because
15 of that juror we would have had to declare a
16 mistrial and conduct that trial all over
17 again. Please understand that it is that
18 critical and you're not allowed to conduct
19 any research.

20 Have a great lunch and I will see
21 you in the courtroom at 2:15. Thank you.

22 (JURY OUT FOR LUNCH)

23 THE COURT: All right, let's go to
24 the courtroom. I think that would be better
25 for arguing any Motions.

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1 (RELOCATED FROM JURY ASSEMBLY

2 ROOM TO COURTROOM 3A)

3 (BRIEF RECESS)

4 (DEFENDANT PRESENT)

5 THE COURT: Let the record reflect
6 that Mr. Burns is present.

7 First, any objections from the State
8 regarding my remarks to the jury or anything
9 said to the jury thus far? Any objections or
10 exceptions from the State?

11 SOLICITOR HERRING-LASH: No, Your
12 Honor.

13 THE COURT: Mr. Burns, other than
14 your request for the *voir dire*, your last two
15 questions, which I declined because I think
16 that they deal with -- for instance, I will
17 give you an example, 'whether or not someone
18 would believe a police officer over someone
19 else.' Those are specific. I asked
20 generally whether they would believe someone
21 opposed to anyone else indirectly by asking
22 would they be influenced by that witness.
23 But your requests are noted in Court's
24 Exhibit 1, because we made that a part of the
25 record.

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1 Any additional objections or anything that
2 you have concerning my remarks to the jury
3 thus far?

4 MR. ALAN BURNS: No, sir.

5 THE COURT: Thank you, sir. All
6 right. Any Motions from the State at this
7 point?

8 SOLICITOR HERRING-LASH: Your
9 Honor, there are two indictments that have
10 scrivener errors that need to be corrected.

11 THE COURT: All right.

12 SOLICITOR HERRING-LASH: The
13 first one is 11-GS-10-03378 (sic), lewd act
14 on a minor, reads "under sixteen" and it
15 should be "under fourteen". The title was
16 under fourteen but it reads sixteen there.

17 THE COURT: (Affirmative nod), I
18 read that.

19 SOLICITOR HERRING-LASH: The ---

20 THE COURT: Let's deal with that
21 one. Any objection to changing the age to
22 deal with the statute?

23 MR. ALAN BURNS: What indictment
24 was it?

25 THE COURT: Sir? Again, the

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1 indictment number?

2 SOLICITOR HERRING-LASH: 03378

3 (sic).

4 THE COURT: We don't have that

5 indictment. Are you sure of the number?

6 Yeah, there it is. It's 4778, not 3778.

7 I remember reading it. It was the first one.

8 Yeah, Indictment 12-3173 says a child under
9 the age of fourteen years.

10 SOLICITOR HERRING-LASH: It's

11 4778.

12 THE COURT: Okay. And you want
13 to change that?

14 SOLICITOR HERRING-LASH: To

15 "under fourteen".

16 THE COURT: I see. Okay. Any
17 objection? It talks about a child under the
18 age of sixteen years, the statute doesn't --
19 it's under fourteen that applies. It's 4778.
20 2011.

21 MR. ALAN BURNS: I would be making
22 a motion on the basis that I never received
23 several of these indictments. They have some
24 indictments listed that I never received the
25 indictments. My motion will be towards those

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1 that I did receive.

2 THE COURT: State's response to
3 that?

4 SOLICITOR HERRING-LASH: Your
5 Honor, I will have to look. I have the -- I
6 have here the direct indictment, 477--, which
7 indictments? Because I have where he was
8 served.

9 THE COURT: He says that he didn't
10 see 2011-GS-10-04778. He's never been served
11 with that.

12 SOLICITOR HERRING-LASH: I have
13 a big list, (reviewing). Those were not --
14 that was not a direct indictment. That was
15 on the warrant and he should have gotten that
16 in his discovery, so let me see what number
17 -- the Bates stamp. It's not one that was
18 served him directly, it was served on him
19 through discovery because it was not a direct
20 indictment.

21 THE COURT: They way that we deal
22 with this is that we just simply pull it out
23 and then there is a charge pending against
24 him that he will have to answer to one day.
25 It's not going to be quashed. It's just not

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1 going to go forward today. He says that he
2 doesn't have notice of it.

3 SOLICITOR HERRING-LASH: I have
4 the motions ---

5 THE COURT: Mr. Burns, you
6 understand that there will be a pending
7 indictment against you?

8 MR. ALAN BURNS: (No verbal
9 response).

10 THE COURT: That's up to you. You
11 were charged with the warrant. We can cite
12 it back and get the warrant, if you're going
13 to give me the warrant. I'll be happy to do
14 that for you.

15 MR. ALAN BURNS: There weren't any
16 warrants for that charge.

17 THE COURT: Well, there wouldn't
18 have been if it wasn't directly indicted.

19 MR. ALAN BURNS: I have the -- I
20 was only served four warrants.

21 THE COURT: And 4778 is Warrant M-
22 611171.

23 THE COURT: Do you have that
24 warrant? Do we know whether or not he was
25 served?

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1 MR. ALAN BURNS: I have those
2 warrants, that warrant.

3 THE COURT: Well, were you served
4 with that warrant?

5 MR. ALAN BURNS: (Reviewing
6 files).

7 THE COURT: I have the booking/
8 arrest sheet if he needs that.

9 MR. ALAN BURNS: The warrants that
10 I was served are -- what number did you say
11 it was?

12 THE COURT: Warrant number, Ms.
13 Herring-Lash?

14 SOLICITOR HERRING-LASH: It was
15 M-611171.

16 MR. ALAN BURNS: Yes, I have that
17 warrant.

18 THE COURT: Then your Motion to
19 quash the indictment is denied. You were
20 served with the charges contained in the --
21 what does the warrant say? Does the warrant
22 have the same language?

23 SOLICITOR HERRING-LASH: Let me
24 get that warrant, Your Honor. (Upon review),
25 okay. The warrant says that, (reading):

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1 "Between the dates of January '82
2 and December of '84, while at [REDACTED] Venning
3 Road in the County and State aforesaid, the
4 above defendant, Alan Burns, did commit the
5 offense in violation of 15-16-140 of the Code
6 of South Carolina laws, 1976 as amended,
7 committing a lewd act upon a minor, in that
8 he did willfully, unlawfully and feloniously
9 touch the child victim, date of birth
10 6/24/74, who was at the time approximately
11 eight to nine years old, with his penis in
12 his hand with the intent of arousing and
13 gratifying his own lust and sexual desires."

14 That, "On April 21, 2011, the
15 victim, now an adult, gave a written signed
16 statement to Detective Rita Avila of the
17 Charleston County Sheriff's Department. The
18 victim stated that she was approximately
19 eight to nine. The Defendant rubbed his
20 penis on her, put it between her legs. She
21 further stated the Defendant would slap her
22 all over with his penis. He would also touch
23 her vagina with his fingers. Victim advised
24 this occurred in the Defendant's bedroom in
25 his residence at [REDACTED] Rands Hill Road during

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1 the time of the incident. However, the
2 address at the time of the incident was [REDACTED]
3 Venning Road in the jurisdiction of the
4 Charleston County Sheriff's Office. The
5 Defendant's birthday is [REDACTED] '64."

6 And, "Between '82 and '84, the
7 Defendant was seventeen to twenty years of
8 age."

9 THE COURT: What is your objection
10 to the indictment other than the fact that
11 you said that you had not received it? The
12 indictment itself, which basically doesn't go
13 into that much detail other than setting
14 forth the statute and naming the persons --
15 and stating under the age of sixteen, which
16 is incorrect. It should be under the age of
17 fourteen, should it not? Is that what you
18 want to change, to fourteen?

19 SOLICITOR HERRING-LASH: Yes,
20 Your Honor.

21 THE COURT: Which is what the
22 statute prescribes?

23 SOLICITOR HERRING-LASH: Yes,
24 Your Honor.

25 MR. ALAN BURNS: Well, the warrant

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1 lacks probable cause because the warrant
2 doesn't take into ---

3 THE COURT: This is not a probable
4 cause Motion. The Motion to modify the
5 indictment to conform to the statute is
6 granted.

7 All right, what is the next one?

8 SOLICITOR HERRING-LASH: The
9 other statute directly following that is the
10 4779, it also says sixteen and that should be
11 fourteen?

12 THE COURT: Objection? Same
13 objection?

14 MR. ALAN BURNS: Yes, sir, Your
15 Honor.

16 THE COURT: Very well. Subject to
17 the objection, I grant you your Motion to
18 conform the indictment to the terminology in
19 the statute, since the statute is likewise
20 cited in the indictment.

21 SOLICITOR HERRING-LASH: That is
22 all, Your Honor.

23 THE COURT: Very well. Any
24 Motions now from the defendant, Mr. Burns?

25 MR. ALAN BURNS: Yes, sir.

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1 THE COURT: I will happy to hear
2 from you.

3 MR. ALAN BURNS: Your Honor, on
4 August 1st, I appeared before the Court for a
5 Motions hearing. At that Motions hearing, I
6 specifically asked for the impanelment of a
7 grand jury, I asked for the impaneling
8 judge's Order. I also asked that the State
9 produce the petition and any other materials.
10 I also have copies of the -- in my original
11 specific Brady request, Rule 5, I asked for
12 these documents as well.

13 At the time that I made the request
14 for these documents, the State responded that
15 these documents do not exist. I would like
16 to challenge the legality of the County grand
17 jury and due to the fact that the State
18 states that these documents do not exist, I
19 would ask that the indictments be quashed on
20 the grounds that there is no proof that the
21 grand jury was legally impaneled.

22 And I would like to present, if I
23 may, copies of the -- that is the original
24 Rule 5 Brady request.

25 THE COURT: What does this have to

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1 do with -- the grand jury impaneling, with
2 the *Brady* request information?

3 MR. ALAN BURNS: I had requested
4 the grand jury documents in my Rule 5.

5 THE COURT: What grand jury
6 documents are you referencing?

7 MR. ALAN BURNS: The impaneling
8 documents.

9 THE COURT: What has that got to
10 do with *Brady* issues.

11 MR. ALAN BURNS: Well, I requested
12 it through *Brady*.

13 THE COURT: I understand. There
14 is no -- there's nothing about the grand jury
15 that would have anything to do with a *Brady*
16 motion. Why is that pertinent to a *Brady*
17 motion? Maybe I don't -- I don't understand.
18 Maybe you can clarify it for me. What the
19 grand jury constitution has to do with *Brady*.

20 MR. ALAN BURNS: The case law that
21 I have, it specifically states that if you
22 request it through *Brady* ---

23 THE COURT: What? Grand jury
24 material?

25 MR. ALAN BURNS: Yes, sir, can be

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1 requested through your Rule 5.

2 THE COURT: What case are you
3 relying on?

4 MR. ALAN BURNS: *Evans v. State.*

5 THE COURT: Do you have a copy of
6 it?

7 MR. ALAN BURNS: Yes, sir, I do.

8 THE COURT: May I see it?

9 MR. ALAN BURNS: (Tendered to
10 bench by Lori Proctor).

11 THE COURT: You want that to be
12 marked as a court's exhibit?

13 MR. ALAN BURNS: Yes, sir, I do.

14 THE COURT: Court's Exhibit 2 is
15 material provided which is in response to the
16 Brady motion, provided by the defendant.

17 (SO ENTERED AS COURT'S EXHIBIT 2)

18 MR. ALAN BURNS: I have some areas
19 in that already highlighted.

20 THE COURT: Well, sir -- some
21 areas in what?

22 MR. ALAN BURNS: In that case.

23 THE COURT: I am going to hand you
24 the case back, (tendering).

25 What is your response, Ms. Herring-

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1 Lash?

2 SOLICITOR HERRING-LASH: Your
3 Honor, I am not exactly sure what he is
4 referring to. I think that he went over this
5 issue with Judge McDonald last week and the
6 case that he handed up at that time regarded
7 the statewide grand jury, which is a
8 different -- which is an investigatory grand
9 jury.

10 THE COURT: (Affirmative nod).

11 SOLICITOR HERRING-LASH: I don't
12 know exactly what he -- at that time he was
13 asking for witnesses and tapes that had to do
14 with the grand jury. I don't know what he is
15 talking about exactly. I didn't see the
16 case. I don't know if it is the same case or
17 not.

18 MR. ALAN BURNS: If I may, Your
19 Honor?

20 THE COURT: Sure.

21 MR. ALAN BURNS: In accordance
22 with this case, this South Carolina Supreme
23 Court case, it gives the defendant the right
24 to timely challenge the legality of the grand
25 jury that indicted him.

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1 THE COURT: I understand.

2 MR. ALAN BURNS: Upon that timely
3 request, it's incumbent upon the court to
4 verify that the grand jury was legally
5 constituted.

6 THE COURT: How have you
7 challenged it?

8 MR. ALAN BURNS: Yes, sir.

9 THE COURT: How have you timely
10 challenged the ---

11 MR. ALAN BURNS: That's what I
12 said. I made my request in my discovery and
13 I also made my request by submitting -- if I
14 may present you with a copy, (tendering).

15 THE COURT: Thank you. (Upon
16 review), this Motion that has been handed to
17 me, this matter has been raised, ----

18 MR. ALAN BURNS: Right, this has
19 been raised several times. This isn't the
20 first time.

21 THE COURT: This is what you
22 argued before Judge McDonald?

23 MR. ALAN BURNS: Yes, sir.

24 THE COURT: She denied the Motion.

25 MR. ALAN BURNS: Yes, sir, for the

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1 impanelment documents.

2 THE COURT: Your Motion is then
3 denied. It's a part of the record of this
4 case. You don't raise that again. That's
5 already been raised.

6 MR. ALAN BURNS: So I can't ask
7 for the indictments to be ---

8 THE COURT: You can't ask me to do
9 that. You've already asked Judge McDonald to
10 do that, and she denied your Motion.

11 MR. ALAN BURNS: I understand.
12 What I am asking Your Honor is I'm raising a
13 matter of subject matter jurisdiction.

14 THE COURT: Well, I -- based on
15 what?

16 MR. ALAN BURNS: That if the grand
17 jury that impaneled -- if the grand jury was
18 illegally impaneled, then that would relieve
19 this court of subject matter jurisdiction.

20 THE COURT: Might. But that issue
21 has been raised and denied. So your Motion
22 now is denied further, denied based on the
23 fact that it has already been decided.

24 MR. ALAN BURNS: I just want to
25 make sure that it's on the record for appeal.

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1 THE COURT: Every Motion that has
2 been -- for which you've been to court and
3 Motions have been filed, all of those are
4 part of the record of your case. It doesn't
5 have to be heard by me. In fact, I can't
6 hear it because I can't change the decision
7 another judge has made. That's part of the
8 record. The reviewing court will consider
9 that and decide whether that judge made the
10 correct determination.

11 MR. ALAN BURNS: That was simply
12 the hearing judge. You're the trial judge
13 and ---

14 THE COURT: Sir, I -- you know
15 what? I appreciate your request. It doesn't
16 matter. I just simply stated and -- I know
17 that you're not a lawyer, but one of the
18 things you know is that -- in the Circuit
19 Court, we're all Circuit Court judges.

20 I will give you an example. Years
21 ago it was the first time that I ever
22 realized or it occurred to me that you might
23 as well do that, have those hearings, because
24 why do we wait for calling the case for trial
25 to hear the statement of the defendant,

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1 called a *Jackson v. Denno* hearing.

2 I was trying a case, there had been
3 a mistrial in the case. We were scheduling
4 the *Jackson v Denno* hearing. When I was
5 looking through the file, there was an Order
6 of a colleague of mine, who was then living,
7 in fact a classmate, Judge Westbrook, who had
8 ruled on the *Jackson v. Denno* hearing. There
9 was no reason for me to hear it. He had
10 already ruled on it.

11 That happens in civil cases quite
12 frequently. There will be a Motion heard by
13 a judge, then the trial judge hears the case.
14 When the case is appealed, if it is appealed,
15 that ruling of that prior trial judge will be
16 required. What happens when they report it,
17 then involved in that, you see two judges
18 because there were two judges that were
19 involved in the trial/disposition of that
20 case.

21 MR. ALAN BURNS: Correct.

22 THE COURT: So it is not revisited
23 by me. Okay?

24 MR. ALAN BURNS: Okay.

25 THE COURT: All right. Any

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1 additional Motions?

2 MR. ALAN BURNS: Yes, sir. I have
3 another Motion.

4 THE COURT: All right.

5 MR. ALAN BURNS: If you will give
6 me one second.

7 THE COURT: Sure.

8 MR. ALAN BURNS: Your Honor, at
9 this time I would like to move the court to
10 suppress all the State's evidence, mainly all
11 the victim witness statements and all oral
12 testimony. Your Honor, I would like to at
13 this time call witnesses to give testimony in
14 regard to-- this motion is being made in
15 regard to the jurisdiction of the Mount
16 Pleasant Police Department. The Mount
17 Pleasant police officers that investigated
18 this case investigated the entire case in
19 violation of Section 23-1-215 of the South
20 Carolina Code of Laws and did not have
21 jurisdiction to investigate the case. If I
22 may, ---

23 THE COURT: No, sir, I am not
24 going to have you call witnesses. That
25 Motion -- is there a formal Motion that

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1 you've made to suppress some documents?

2 MR. ALAN BURNS: No, Your Honor.

3 THE COURT: Then there is ---

4 MR. ALAN BURNS: I am making the
5 Motion now.

6 THE COURT: Well, your Motion is
7 not timely. You certainly have a right to
8 object to any testimony given in this trial.
9 That will be done, then you will argue your
10 basis for your -- my not allowing a witness
11 to testify to certain things. But there is
12 no formal Motion pending, so you can't make a
13 Motion now. You have to give notice of your
14 motion and the basis for your motions. You
15 haven't done that -- just a moment, let me
16 finish. You said that you didn't file any
17 motion, that you are making the motion now.
18 You have to give ten days notice of a motion
19 that would be in the sense of taking some
20 action that would prevent a trial going
21 forward. You can -- now you can object to
22 things but there is no motion to suppress
23 something that you haven't formally made.
24 You haven't made any motion. Yes, sir?

25 MR. ALAN BURNS: There is one

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1 motion that I formerly made, which related to
2 another witness, my mother, who made a
3 statement to the Mount Pleasant Police
4 Department. I made that motion prior.
5 I appeared before you for that motion
6 and you told me ---

7 THE COURT: I denied it.

8 MR. ALAN BURNS: No, you didn't
9 deny it. You told me that I had to make it
10 at trial.

11 THE COURT: That's fine. When she
12 takes the stand, if she takes the stand, then
13 I may suppress her testimony. We will
14 proffer that testimony at that time. We
15 don't do it before. That doesn't have
16 anything to do with -- you do it when the
17 witness is called. For instance, you make a
18 motion to suppress a statement. Suppose the
19 State doesn't call that witness. Why have I
20 heard the motion? There is nothing to
21 suppress, the jury doesn't hear it anyway.
22 That's why you wait until they present a
23 witness before you move to suppress it.
24 Okay?

25 MR. ALAN BURNS: I understand.

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1 THE COURT: All right. I will be
2 happy to hear any motion that you want and
3 any objection that you have concerning any
4 witness.

5 MR. ALAN BURNS: I want to make
6 another motion, a motion to exclude my prior
7 arrest record, my prior place of convictions,
8 my prior times in confinements.

9 THE COURT: Well, I'll be happy to
10 hear that if you -- are you going to take the
11 stand?

12 MR. ALAN BURNS: I haven't decided
13 that.

14 THE COURT: That's precisely my
15 point. No need to exclude that because
16 that's the only time that it would come in.

17 MR. ALAN BURNS: All right, Your
18 Honor.

19 THE COURT: I'll be happy to hear
20 you at that point. Basically what we will do
21 is -- the State will probably be the ones
22 moving to have certain ones identified. I
23 think the Rule is 609, that they would be
24 allowed under that rule of evidence. We will
25 deal with those at that time. But I don't

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1 have to -- you've already heard me tell the
2 jury that you don't have anything to prove.
3 So if you don't take the stand, there's no
4 reason in the world for me to address that.
5 Okay? Thank you. What else?

6 MR. ALAN BURNS: I would like to
7 ask that the witnesses be sequestered, Your
8 Honor.

9 THE COURT: Very well. Any
10 objection from the State?

11 SOLICITOR HERRING-LASH: No, Your
12 Honor.

13 THE COURT: I will require all
14 witnesses, the State's or Defendant's
15 witnesses to be sequestered. Obviously the
16 victims, I don't -- are you going to
17 sequester the victims, as well?

18 SOLICITOR HERRING-LASH: Your
19 Honor, yes. I will have them stay after they
20 testify, but not before.

21 THE COURT: Okay. They will not
22 be allowed -- the victims will have the right
23 to remain in the courtroom under the Victim's
24 Rights Act after they testify, but they will
25 not be in the courtroom prior to their

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1 testimony. You may designate a chief
2 investigating officer. If you will, disclose
3 that person. Of course that person has a
4 right to remain.

5 SOLICITOR HERRING-LASH: Yes,
6 Your Honor. There are two in this case since
7 it was investigated by both the Charleston
8 County Sheriff's Office and Mount Pleasant.

9 THE COURT: All right.

10 SOLICITOR HERRING-LASH: Because
11 of the jurisdiction. Detective Avila is here
12 today and Michelle Bacon will be here
13 tomorrow.

14 THE COURT: Very well, both of
15 those persons may remain in the courtroom.
16 They are the investigating officers.

17 Other than that, all other witnesses
18 will be sequestered.

19 MR. ALAN BURNS: Thank you, Your
20 Honor.

21 THE COURT: Anything else, Mr.
22 Burns?

23 MR. ALAN BURNS: No, sir.

24 THE COURT: Anything further from
25 the State?

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1 SOLICITOR HERRING-LASH: No, Your
2 Honor.

3 THE COURT: We will at-ease until
4 2:15, please.

5 (LUNCH RECESS)

6 (DEFENDANT PRESENT)

7 THE COURT: Let the record reflect
8 that Mr. Burns is present.

9 We've already covered several things
10 after we struck the jury but I want to put on
11 the record, again, that it's obvious that you
12 have prepared, you have your notes and
13 everything before you, but it is still your
14 desire to move forward representing yourself
15 in this matter; is that correct?

16 MR. ALAN BURNS: Yes, sir, it is.

17 THE COURT: And you would reaffirm
18 the positions that you have stated in various
19 hearings concerning whether you should or
20 should not represent yourself?

21 MR. ALAN BURNS: Yes, sir.

22 THE COURT: But you are
23 comfortable with your decision in that
24 respect?

25 MR. ALAN BURNS: Yes, sir.

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1 THE COURT: Thank you so much. Do
2 we have all the jurors?

3 CLERK: Yes, sir.

4 THE COURT: Is the State ready to
5 proceed?

6 SOLICITOR HERRING-LASH: Judge, I
7 just have one housekeeping matter.

8 THE COURT: Sure.

9 SOLICITOR HERRING-LASH: I think
10 that we had discussed at one point that
11 because of the way that this trial is going,
12 that both Mr. Burns and I would have to stand
13 behind the podium and not approach the
14 witnesses. I just wanted to know if you
15 still want us to ---

16 THE COURT: I don't have any
17 problem with you having necessary -- I think
18 you -- you certainly are free to stand behind
19 the podium if you're more comfortable.

20 For instance, Mr. Burns, if you have
21 questions and you want to stand behind the
22 podium, that's fine. If you choose to move
23 from it, that would be fine too. I would
24 just urge you to respect the space of any
25 witness. That's just typically -- that's

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1 what lawyers do, as well. But I don't have
2 any problem with anything.

3 Let's talk about one thing, though.
4 What I would like to do -- if you have a
5 matter of law, Mr. Burns, my idiocracy is
6 that you state your basis for your objection.
7 If you need to argue that objection, then I
8 need to excuse the jury. Many times I will
9 step down and have what we call a sidebar,
10 where we can talk about it. Then we can put
11 it on the record if it needs to be placed
12 later, rather than sending the jury out,
13 having a discussion and bringing the jury
14 back in. Some times it can be resolved
15 merely by just talking about it for a few
16 minutes at sidebar. Sometimes it requires a
17 lengthy statement on the record.

18 I just try to minimize the number of
19 times that the jury has to leave. That's the
20 sole purpose of it. Then when we take a
21 break, we place everything that we had in
22 sidebar, if need be, on the record.

23 Please understand that -- that's one
24 of the things that I do. Whenever I take a
25 recess, I will always -- or I try to

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1 remember, and I think that I do that most of
2 the time, I will say 'Is there anything
3 further from the State?' Then I will say 'Is
4 there anything further from the Defendant?'
5 If there is something that you want placed on
6 the record that occurred off the record, so
7 to speak, please use that opportunity.
8 That's the reason that I am asking you that.
9 Okay?

10 MR. ALAN BURNS: Yes, sir.

11 THE COURT: Thank you, sir.

12 State is ready to proceed?

13 SOLICITOR HERRING-LASH: Yes,
14 Your Honor.

15 THE COURT: Defendant is ready to
16 proceed?

17 MR. ALAN BURNS: (No verbal
18 response).

19 THE COURT: Mr. Burns, are you
20 read to proceed?

21 MR. ALAN BURNS: Yes, sir, I am.

22 THE COURT: All right. Let's
23 bring in our jury.

24 (JURY IN @ 2:21 P.M.)

25 THE COURT: Good afternoon, Ladies

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1 and Gentlemen. I hope that you had a good
2 lunch. We are ready to continue the matter
3 that we started this morning.

4 Before I ask the Clerk to administer
5 your oath, let me talk briefly about the
6 seating arrangement. You will note that
7 there are fourteen seats there, which is to
8 accommodate the jury and the two alternates.

9 Mr. Vira and Ms. Hiott, you are our
10 two alternates. At this point that term
11 really has very little significance. If at
12 the end of this trial, if the first twelve
13 who were selected are able to continue, then
14 you will not participate in the final
15 deliberations. But it is not uncommon for an
16 alternate to be placed on the jury during a
17 trial -- for numbers of reasons. So please
18 don't let that detract from your attention.
19 I know that it won't. You are very much a
20 party of the jury until we reach that point.
21 As I say, if the first twelve are able to
22 continue, then you will not decide the case
23 ultimately. But you don't know that and I
24 don't know that, so please function on the
25 premise that you will perform that task.

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1 The other -- the rest of you may
2 sit, please, in any seat that you want other
3 than the two on the top row, the two end
4 seats.

5 The first chair on the first row
6 will be occupied at some point in time by the
7 juror -- one of the first twelve of you --
8 that you select to be -- I call them
9 "presiding juror", foreperson, forelady,
10 foreman. It's the -- someone has to be
11 responsibility for signing the verdict form
12 on behalf of the jury.

13 If there are exhibits that are
14 introduced during the trial, it would be the
15 responsibility of that juror to receive those
16 exhibits and when the jury has completed its
17 deliberations returning them to the court.

18 There may be occasions when it may
19 be necessary to submit some written
20 communication from the jury panel to the
21 court and the presiding juror drafts that on
22 behalf of the other jurors.

23 That is really the essence of
24 additional responsibilities. The statute
25 allows me to select the presiding juror or

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1 for you to select the presiding juror. I let
2 the jury pick their presiding juror. It does
3 not have to be done right away. Just
4 whenever you do, I would just ask that that
5 person sit in that seat, the first chair, for
6 the balance of the trial after the person has
7 been so designated. Until then, anybody is
8 free to occupy any seats other than the two
9 chairs for the alternates.

10 In deciding on your presiding juror,
11 at I said, any of the first twelve of you are
12 eligible. It has been my observation over
13 the years that a presiding juror is basically
14 someone, I think, that facilitates the
15 discussion. Some persons are better
16 facilitators than others, that's why I let
17 the jury pick theirs. After you've had a
18 chance to talk among yourselves, you elect
19 the one that you want to serve as your
20 presiding juror.

21 Thank you very much for your
22 attention. Please give your attention now
23 to Miss Hoskins (deputy clerk) as she
24 administers your oath.

25 (WHEREUPON JURY SWORN)

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1 THE COURT: Thank you, Ladies and
2 Gentlemen. You now have become a judge with
3 me and now you and I will work to resolve
4 this dispute.

5 You have undertaken the task that we
6 talked about this morning. You've promised
7 now to be the judge of the facts and you, and
8 you alone, have that responsibility. I have
9 nothing to do with that.

10 You have nothing to do with the law.

11 We will function together and work
12 together in resolving this dispute.

13 As I mentioned to you when we were
14 qualifying you, this is a criminal dispute.
15 Because of that, the only party that has any
16 burden of proof is the State of South
17 Carolina. You will look to the State to
18 prove its case.

19 As you heard, the State has made a
20 number of allegations against Mr. Burns.

21 Mr. Burns has no responsibility to
22 prove or to disprove anything at all. So
23 never look to his table to do anything,
24 because he has no responsibility to do that.
25 If you do think about that or have that

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1 thought of 'well, why didn't he explain' or
2 justify something, you've violated the oath
3 that you just took.

4 What you promised to do is to use
5 the -- all the tools and equipment that are
6 necessary to perform that task accompanied
7 you when you came into this courtroom. What
8 is that? You've brought your life's
9 experiences, your common sense, your sense of
10 logic and reason. Everyone expects that you
11 will do that.

12 You also brought something else
13 which I think is equally important. It's
14 something that we talked about not so much
15 directly but, if you think about it,
16 indirectly by the questions that I asked of
17 each juror, each juror that responded to the
18 questions. Basically you said 'I have an
19 open mind, I haven't decided or predetermined
20 anything in this case. I don't know anything
21 about this case.' So you brought that open
22 mind and I would urge you that you must
23 maintain that open mind.

24 Now, please understand that when
25 the -- that when talking about that open

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1 mind there is one principle of law that
2 accompanies that. When you came in, each of
3 you said that you had no problem applying the
4 principle of law that a person is presumed
5 innocent until proven guilty. That must be
6 part of that process. Otherwise, then you
7 have violated the oath that you just took.
8 You can only change that position when the
9 court has given you an instruction to begin
10 your deliberations, to evaluate the evidence
11 and decide for yourself whether the State has
12 met its burden of proof. We will talk about
13 that in just a moment. So please remember
14 that as we go through the trial.

15 There are four distinct parts to
16 this process of dispute resolution. In just
17 a moment, after I finish my opening remarks
18 to you, the attorneys will give their opening
19 statements -- the attorneys and Mr. Burns
20 will give their opening statement.

21 In opening statement, each side has
22 an opportunity to give you an overview of the
23 dispute. They may discuss some legal
24 principles with you, they may discuss some of
25 the evidence that they expect you will hear.

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1 They speak to you twice, once before
2 you hear the evidence and once after you hear
3 the evidence. The difference between the two
4 is quite obvious. You've heard the evidence
5 and then they will talk with you and -- will
6 talk to you in what we call 'closing
7 arguments' where they will discuss that
8 evidence and suggest reasonable inferences
9 that you may draw from that evidence. Give
10 you their arguments concerning those
11 inferences.

12 Both opening statements and closing
13 arguments will be extremely helpful to you
14 when you begin the process of deciding this
15 case. You should give the attorneys your
16 attention and I am confident that you will.
17 But please remember something, their remarks
18 -- just as my remarks now and during the
19 charge portion -- should never be considered
20 as evidence by you. The evidence will come
21 during the evidentiary portion when the
22 witnesses will take the stand and testify.

23 You will at the appropriate time
24 ultimately evaluate that testimony, deciding
25 for yourself what you find to be credible and

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1 believable. Once you've made that decision
2 after commencing your deliberations and
3 deciding what to be the true facts, then you
4 take the law and apply that law to those
5 facts and reach a decision. When you've done
6 that, you will have honored the commitment
7 that you just made to the State, Mr. Burns
8 and to the court.

9 Now, let's talk about that. Since
10 the State has the burden of proof, they must
11 go first. They must present the evidence.
12 The purpose of that is to present evidence
13 which ultimately you will consider to decide
14 whether each element of the various crimes
15 alleged have been met. I will define for you
16 the various crimes: lewd act on a minor,
17 criminal sexual conduct with a minor first
18 degree and second degree. I will give you
19 the elements of that. When you then begin
20 your deliberations, you will then be asking
21 yourself as to each of those elements, am I
22 convinced beyond a reasonable doubt -- in
23 other words, remember that doubt that would
24 cause a conscientious juror to hesitate to
25 act.

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1 If your conclusion is that 'I am
2 firmly convinced that the State has met the
3 burden of proof as to that element' -- and if
4 in the process you go through the answer to
5 each element is 'yes, I am firmly convinced
6 that element has been established', then you
7 must return a verdict of guilty.

8 If on the other hand there is any
9 one element you reach the conclusion 'I am
10 not firmly convinced as to that particular
11 element', then you must return a verdict of
12 not guilty consistent with your oath. Why?
13 Because the State would have failed to meet
14 its burden of proof and, therefore, you must
15 return a verdict of not guilty. The
16 defendant is entitled to that.

17 So that's what you will be
18 determining and that is the process. We will
19 go through that and the State will present
20 its evidence.

21 Now, please remember something.
22 While I mentioned to you that Mr. Burns has
23 no responsibility to prove or to disprove
24 anything, Mr. Burns still has the right, if
25 he chooses to, to present witnesses for your

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1 consideration. Obviously that is another
2 logical reason why, aside from the fact that
3 you shouldn't decide anything because the law
4 says you shouldn't decide anything -- and we
5 talked about that -- until you have been
6 instructed to begin your deliberations. But
7 you certainly shouldn't decide anything until
8 you've heard all the evidence. So please
9 keep that in mind and keep that open mind
10 throughout the process.

11 At the conclusion, I will go through
12 the charge with you and we will discuss the
13 various principles. We will talk about
14 reasonable doubt in more detail. We will
15 talk about some of the factors that you are
16 going to consider in evaluating credibility
17 and believability of witnesses. We will go
18 through the elements of the various crimes.

19 You and I both know that in making
20 those determinations of credibility and
21 believability we all -- you've had it maybe
22 in your life, I certainly have had in mine.
23 Somebody just says something that causes the
24 thought 'that doesn't make any sense',
25 'that's not logical.' That's a very normal

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1 reaction sometimes. Or I look at a facial
2 expression, some body language that raises a
3 red flag about what a person is saying.

4 If those occur during the trial for
5 you and you have a similar reaction, please
6 remember something. While you should make a
7 mental note about your reaction, don't go to
8 the next level and say, 'I don't believe
9 that.' If you do, you will have violated the
10 oath that you took.

11 I would suggest that you make that
12 mental note and then when you begin your
13 deliberations, you raise that issue with your
14 fellow jurors. There may be an explanation
15 that satisfies you. Or, in the alternative,
16 it may be ultimately something that causes
17 you to decide that you don't believe that
18 testimony. But don't make the ultimate
19 decision. Make a notation so that you can
20 talk about it but don't make your ultimate
21 decision. That's really what your focus is
22 going to be. Your focus will be on that
23 credibility and believability factor, which
24 is so critical in any dispute -- not just
25 this one.

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1 I look forward to trying the case
2 with you. It's an honor to serve with each
3 one of you as a judge. I ask you -- and I
4 appreciate your attention to my remarks. I
5 ask you now to give that same attention to
6 the attorneys and to Mr. Burns as they give
7 their opening statements.

8 Ms. Herring-Lash.

9 SOLICITOR HERRING-LASH: Thank
10 you, Your Honor. Ladies and Gentlemen,
11 Minor 2 is now twenty-two years of
12 age. In 2009 he was a college student at
13 Coastal Carolina College.

14 One evening he was sitting around an
15 apartment with a group of friends watching
16 television -- I think that he was watching an
17 episode of *Law & Order*. One of his friends
18 walked into the room carrying a knife that he
19 was going to cut a sandwich with, and a rag
20 in the other hand. All of a sudden, Minor 2
21 was flooded with a memory or memories of
22 something that had happened to him back when
23 he was a child.

24 He left and went into the bathroom
25 and called his mother. He was so hysterical

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1 that his mother couldn't really make out
2 exactly what he was saying but she knew that
3 he was hysterical and he was crying. So she
4 and his stepfather, her husband, got in their
5 car, late that evening, and drove to the
6 Coastal Carolina campus and got [Minor 2]

7 They spoke with him, they got him to
8 calm down. They brought him back to
9 Charleston. Eventually understood that he
10 was saying that he was molested by his uncle,
11 Alan Burns, and sexually assaulted by his
12 uncle, Alan Burns.

13 He stayed home to get calm for a few
14 days. Went back. His mother went up there
15 to check on him once. He came back for
16 spring break. His mother, Karen Smalls,
17 actually came forward at that time and
18 mentioned to him that she had known years ago
19 that this had happened to other nieces and
20 that no one in the family had done anything.
21 They had just kinda let it go as a secret, as
22 many families do. They discussed this.

23 Mr. Burns had moved away, he was not
24 living in Charleston for a while but he would
25 be coming back soon. This made [Minor 2] know

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1 and his mother know that they needed to, this
2 time, do something that probably should have
3 been done back in the '80s.

4 So they went to the Mount Pleasant
5 Police Department, they told the Mount
6 Pleasant Police Department what had happened
7 to [Minor 2]. They also told them, 'We know
8 that there are other family members. We are
9 not sure that they will come down here and
10 talk to you, because this is something that
11 they have not spoken about.'

12 They did eventually come. You will
13 hear from another niece, [Minor 4];
14 another niece, [Minor 3] who also goes by
15 "[Minor 3]"; another niece, [Minor 5]. These girls
16 will explain being assaulted back in the mid
17 '80s.

18 They lived a lot of their lives,
19 when they were young, in the home where Mr.
20 Burns parents have a home. He was there. As
21 grandchildren they stayed -- two of them
22 actually stayed fulltime. One visited a lot.

23 Mr. Burns left Charleston in '87,
24 returned in '97. 1997 is when the assaults
25 on [Minor 2] occurred. So there was a time

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1 period that he was away. These other three
2 children were back before he left.

3 Another niece also came forward,
4 Minor 1 who had actually been assaulted
5 after Mr. Burns moved back to Mount Pleasant
6 in '97.

7 They all eventually went in and gave
8 statements or talked to law enforcement. At
9 the time that these events were happening,
10 they were all afraid and scared to really
11 come forward.

12 At one point an adult aunt actually
13 walked in on it and what she did was to tell
14 Mr. Burns' mother. The mother beat him, but
15 that was it. That is how it was handled.

16 What they discovered, what law
17 enforcement discovered is that the first
18 three children, when these assaults occurred,
19 was before Venning Road was part of the city
20 of Mount Pleasant. So those three incidents
21 were referred to the Charleston County
22 Sheriff's Office, which is a little bit
23 unusual in that you'll have two
24 jurisdictions. That is why. Venning Road
25 did not become the City of Mount Pleasant

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1 until later.

2 Each of these five victims will have
3 to come in here and sit on the witness stand
4 and explain to you the details that they
5 remember about what occurred, as well as the
6 adults who saw things or heard things, who
7 now realize that things happened that they
8 should have known or picked up on.

9 The law in this case, I will briefly
10 go over -- as Judge Dennis explained, he will
11 explain the law to you.

12 It (projector) may not be working,
13 so I will just tell you. Criminal sexual
14 conduct with a minor in the first degree is
15 one of the charges that Mr. Burns is charged
16 with. That is when an actor engages in the
17 sexual battery with a victim who is less than
18 eleven years of age. One of the things that
19 may stand out to you when you read this is
20 that when you hear of criminal sexual conduct
21 a lot of times you'd think of some kind of
22 physical force or violence would be a
23 necessary element that would have to be
24 proven. But because of the age of the child,
25 being under the age of eleven, force and

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1 violence is not an element. The element is
2 the respective age of the child.

3 He is also charged with criminal
4 sexual conduct in the second degree. That is
5 when a person engages in a sexual battery
6 with a victim who is between the ages of
7 eleven and fourteen and/or a victim who is
8 fourteen or fifteen, less than sixteen, and
9 the actor is older than the victim or is in
10 some position of authority.

11 In this case, one of the victims has
12 a charge of criminal sexual conduct in the
13 second degree -- that's Minor 1 -- because
14 she was not assaulted until she was over the
15 age of eleven.

16 He is also charged with lewd act on
17 a minor. It is unlawful for a person over
18 the age of fourteen to willfully and lewdly
19 commit or attempt to commit a lewd and
20 lascivious act with the body, or its parts
21 thereof, of a child under the age of sixteen
22 with the intent of arousing, appealing to or
23 gratifying the lust and passions or desires
24 of such person or the child.

25 We have two different statutes

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1 involved here. At one point, before 1996,
2 lewd act was if the child was under the age
3 of fourteen. So the children that were
4 assaulted in the '80s, it was under fourteen.

5 Lewd act is really what you would
6 see as child molestation: fondling and
7 touching, absent actual penetration which is
8 required for criminal sexual conduct.

9 A sexual battery is what is required
10 for criminal sexual conduct. A sexual
11 battery is defined as sexual intercourse,
12 cunnilingus, -- cunnilingus is oral sex upon
13 a female, -- fellation, which is oral sex on
14 a male, anal intercourse, or any intrusion,
15 however slight, into any part of a person's
16 body or any object into the genital or anal
17 openings of another person's body, except if
18 it is for medical purposes.

19 I will put this up here. Some
20 people remember what they read better than
21 what is said to them, so it may help you
22 remember. I know that these terms are very
23 foreign to you in your lives, so we will
24 probably go over them more than once.

25 As Judge Dennis said, Mr. Burns is

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1 representing himself. That in no way affects
2 the fact that the State has to present the
3 witnesses and the evidence to you or the way
4 that you look at the witnesses or the
5 evidence.

6 We will ask you. after you have
7 heard all the witnesses, to find Mr. Burns
8 guilty of the actions that he has committed.
9 Thank you.

10 THE COURT: Thank you. Mr. Burns.

11 MR. ALAN BURNS: Good morning. I
12 am not an attorney. I am representing
13 myself. I am representing myself for my own
14 personal reasons because I've lived through
15 some experiences with attorneys and I prefer
16 to represent myself.

17 If it doesn't make any sense, it's
18 probably because it's not true. Right now
19 the odds are stacked totally against me.
20 There are a number of people making false
21 accusations against me, some of the same sort
22 but that still doesn't make it true. It can
23 be untrue. You can have more than one people
24 make up a lie on you.

25 Don't let the fact that there are

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1 multiple charges against me be the deciding
2 factor. The solicitor here is well known for
3 processing cases. Believe this, she knows
4 all the tricks of manipulation to manipulate
5 you into seeing things differently than they
6 actually is.

7 You are going to hear her use words
8 about "justice", you're going to hear her use
9 words about "the law", such as what she just
10 had up on the bulletin board. What she just
11 put up on the bulletin board isn't actually
12 the law. Criminal sexual conduct in the
13 first degree doesn't have an element of age.
14 Criminal sexual conduct in the first degree
15 with a minor has an element of age.

16 That is just an example to show you
17 how she will try to manipulate you with stuff
18 that she is going to present to you.

19 Criminal sexual conduct in the first
20 degree, criminal sexual conduct first degree
21 with a minor. Those are two different
22 charges, they carry two different elements.

23 So does criminal sexual conduct in
24 the second degree and criminal sexual conduct
25 in the second degree with a minor. Those are

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1 two different charges.

2 The way that she put it up just now,
3 she wanted to play on your mind so that you
4 wouldn't see what she was actually saying.
5 It's a form of ---

6 THE COURT: Mr. Burns, I am going
7 to ask you to confine your opening statements
8 to just that. You'll have a chance to argue.
9 This is more argumentative than an opening
10 statement.

11 MR. ALAN BURNS: Yes, sir.

12 THE COURT: Thank you, sir.

13 MR. ALAN BURNS: You are going to
14 hear tales that don't make sense and you're
15 going to hear things that you are going to
16 think is just unbelievable.

17 You're going to hear from the
18 officer that was the lead officer, who went
19 so far to make an arrest that she violated
20 the law and committed a felony crime. I am
21 going to prove that to you. I will also show
22 you that that officer was so hot to make an
23 arrest and build an arrest record that she
24 didn't even attempt to verify anything. That
25 she went so far that she lied in an

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1 affidavit, she lied to a magistrate judge and
2 she openly tried to cover up unlawful actions
3 by ---

4 SOLICITOR HERRING-LASH: Your
5 Honor, I object to argument.

6 THE COURT: It's argument.

7 MR. ALAN BURNS: Very good.

8 THE COURT: The rules don't allow
9 that at this point, Mr. Burns. You'll have
10 an opportunity at another stage, another
11 point.

12 MR. ALAN BURNS: In this case
13 there is motivation. Everyone in this room
14 has a motivation, because everyone in this
15 room has an agenda.

16 The judge in this case, he has an
17 agenda. He has to see to it that there is a
18 fair trial. That's why he made an objection
19 to what I was saying just now.

20 THE COURT: Mr. Burns, ---

21 MR. ALAN BURNS: To ---

22 THE COURT: --- you are not
23 allowed to do that, sir, in our proceeding.
24 You must refrain from that. The rules don't
25 permit you to comment on that, sir. Okay?

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1 MR. ALAN BURNS: Okay. The
2 witnesses, they're going to be making a
3 statement because they are going to be trying
4 to support the people that they are here to
5 support. They already have a bias. You are
6 going to hear from each one of them and a lot
7 of the things that you are going to hear, it
8 just ain't going to make no sense.

9 During the time that they said these
10 things were committed, they said that these
11 things happened to these people when they
12 were kids, small kids. You're going to hear
13 testimony from the witnesses who are going to
14 say that throughout their entire lives they
15 were tormented, they were afraid, they
16 couldn't sleep, they had all kinds of
17 problems, but you're going to see evidence
18 presented by the solicitor which is going to
19 actually contradict this. She has photos
20 showing these victims, alleged victims, with
21 me, laughing, enjoying themselves.

22 You will hear testimony from these
23 same victims, who called me to give them
24 rides, to come to their house. If a person
25 is so afraid of you, why would a person do

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1 such a thing?

2 You're also going to hear testimony
3 where one of the alleged victims, who is
4 supposed to be so traumatized, brought her
5 child over to my house and left them with me
6 -- a person who was molested by this
7 gentleman over here, would not take her child
8 and leave it with that gentleman who molested
9 her.

10 Things just don't make sense. If it
11 don't make sense, it's probably because it's
12 not true. I just ask that you clear your
13 mind, open your minds -- I know that
14 everybody formulates an opinion when they
15 hear something because that's natural. That
16 is a natural thing for everybody to do. I
17 ask that you to set that aside momentarily
18 and look at the evidence. Forget what she
19 (indicating Ms. Herring-Lash) and forget what
20 I say. Listen to what they're going to say
21 and then you decide whether or not it makes
22 sense. If it don't make sense, it's probably
23 because it ain't true. It ain't true,
24 because I didn't do any of the things that
25 they say that I did. Thank you.

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1 THE COURT: Thank you, Mr. Burns.

2 You may call your first witness, Solicitor.

3 SOLICITOR HERRING-LASH: The

4 State would call Minor 2 [REDACTED].

5 (WITNESS TAKES STAND)

6 [REDACTED] Minor 2 [REDACTED] being duly sworn

7 to tell the truth, the whole truth and

8 nothing but the truth, testified, as follows:

9 DIRECT EXAMINATION

10 BY SOLICITOR HERRING-LASH:

11 Q. [REDACTED] Minor 2, what is your date of birth?

12 A. [REDACTED] 1990.

13 Q. Where do you live?

14 A. Mount Pleasant.

15 Q. Where do you work?

16 A. Currently I am unemployed, and I am also
17 a model.

18 Q. A model?

19 A. Yes.

20 Q. What do you do in your spare time?

21 A. In my spare time, I am an artist. I
22 like to do some things of the artsy nature.

23 Q. Who was in your family, your direct
24 family? Like your mother, your stepfather,
25 who are they?

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1 A. My mother is Karen Smalls.

2 My stepfather is Ray Smalls.

3 I have an older brother, Kevin Washington;
4 two younger sisters, Cadre and Kimberly
5 Smalls. I have a son, Jacques Coltrane
6 (phonetic).

7 Q. [Minor 2] could you move that microphone
8 a little closer to you so that we can make
9 sure that we hear what you say?

10 THE COURT: You'll have to pull up
11 to that.

12 DIRECT EXAMINATION CONTINUED

13 BY SOLICITOR HERRING-LASH:

14 Q. [Minor 2], are you related to the
15 Defendant, Alan Burns?

16 A. Yes.

17 Q. How are you related?

18 A. He is my maternal uncle.

19 Q. Your mom's brother?

20 A. Yes.

21 Q. Is he an older brother or a younger
22 brother?

23 A. Younger.

24 Q. Do you have lots of cousins?

25 A. I do.

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1 Q. A pretty big family?

2 A. (Affirmative nod), very big.

3 Q. Where does your grandparents live -- or
4 your grandmother?

5 A. She resides off of Rands Hill Road in
6 Mount Pleasant.

7 Q. What about your grandfather, is he still
8 alive?

9 A. He's deceased.

10 Q. Now, when you were growing up, did you
11 spend time with your grandparents?

12 A. Yeah, I spent a lot of time.

13 Q. I am going to show you what has been
14 marked as State's Exhibit 1, can you identify
15 this as your grandmother's house?

16 A. (Affirmative nod), this is my grand-
17 mother's house.

18 Q. That's the grandmother's house where you
19 spent a lot of time, growing up?

20 A. Yes.

21 SOLICITOR HERRING-LASH: Your
22 Honor, at this time the State would move
23 State's Exhibit 1 into evidence?

24 THE COURT: Any objection, Mr.
25 Burns?

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1 MR. ALAN BURNS: No objection.

2 THE COURT: Without objection,
3 State's Exhibit 1, a photograph, is admitted.

4 (SO ENTERED AS STATE'S EXHIBIT 1)

5 DIRECT EXAMINATION CONTINUED

6 BY SOLICITOR HERRING-LASH:

7 Q. Behind you, is this the photo that you
8 just identified?

9 A. Yes.

10 Q. Did there come a time when your Uncle
11 Alan also stayed at that home?

12 A. Yes.

13 Q. What -- in your very early years, was he
14 there?

15 A. Yes.

16 Q. About what age did you first meet him?

17 A. I was around the age of seven.

18 Q. Where were you when you first met him?

19 A. As far as in the house?

20 Q. (Affirmative nod).

21 A. I was inside the dining room.

22 Q. That was inside that house?

23 A. Yes.

24 Q. And you said that you were around the
25 age of seven or eight?

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1 A. Yes.

2 Q. Do you recognize this picture?

3 A. Yes.

4 Q. What is that?

5 A. This is a school photograph.

6 Q. What year?

7 A. I believe 1997.

8 Q. What grade were you in then?

9 A. First grade.

10 Q. First grade, '97?

11 A. Yes.

12 Q. That is when you met Mr. Burns?

13 A. Yes.

14 Q. Tell me about your first meeting with
15 him.

16 A. I believe that I walked in with my Aunt
17 Cathy and -- it was through the back door, so
18 we had to go through the kitchen to get to
19 the dining room. He stood by the china
20 hutch. My Aunt Cathy asked me if I knew who
21 that was. I told her 'no.' She said 'that's
22 your uncle.' I kinda was lost because I'd
23 never met him before. She explained that was
24 my mother's younger brother, that he'd went
25 away for a while, he's back, so on and so

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1 forth.

2 Q. And what happened after that?

3 A. My aunt, my mother and I believe one
4 other aunt, they went to the store.

5 Q. When they went to the store, were you
6 left at home?

7 A. Yes, at my grandmother's house.

8 Q. What happened while you were at home?

9 A. He assaulted me.

10 Q. Can you repeat that?

11 A. He assaulted me.

12 Q. Can you explain to the jury what
13 happened?

14 A. Yes. He kinda started coming towards
15 me, touching me. He pulled down his pants,
16 exposed himself to me. He started putting
17 his penis towards my face, made me put my
18 mouth on his penis.

19 Q. Where were you when he was doing this?

20 A. This was inside my grandmother's middle
21 room, next to her bedroom.

22 Q. Minor 2, do you recognize this room?

23 A. Yes.

24 Q. Is that the room that you're talking
25 about?

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1 A. Yes.

2 SOLICITOR HERRING-LASH: Your
3 Honor, at this time the State would move
4 State's Exhibit 4 into evidence.

5 THE COURT: Any objection?

6 MR. ALAN BURNS: No objection.

7 THE COURT: State's Exhibit 4 is
8 admitted, a photograph.

9 (SO ENTERED AS STATE'S EXHIBIT 4)

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR HERRING-LASH:

12 Q. And what happened -- you told us some of
13 what happened. What happened after that?

14 A. He -- I actually started crying. He was
15 forcing himself on me.

16 Q. What do you mean by forcing himself on
17 you?

18 A. As putting his penis in my mouth. From
19 that he started getting angry.

20 Q. How could you tell that he was angry?

21 A. He started getting hostile. He started
22 grabbing me very, very tightly around my
23 wrists. From there, he told me to pull down
24 my pants. I kinda didn't want to, I was
25 fighting. He made me pull down my pants. He

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1 made me grab my ankles.

2 Q. He made you what?

3 A. Grab my ankles and then he put his penis
4 inside of me, he penetrated me.

5 Q. What did you do?

6 A. I screamed and cried.

7 Q. Did he do anything to make you stop
8 crying or screaming?

9 A. To make me stop screaming, he put a
10 towel in my mouth.

11 Q. A what?

12 A. A towel in my mouth.

13 Q. And what were you thinking of, Minor 2?

14 A. 'Why?' I didn't know what was
15 happening, I was so confused. I did not
16 understand at all. I was lost as to who this
17 person was and what was going on.

18 Q. What happened after he assaulted you?

19 A. He grabbed the knife and he cut me a few
20 times on my left leg, on my shin, on my knee,
21 and as well on my left arm.

22 Q. What did he say?

23 A. He told me that he has ---

24 Q. Don't say anything that he said. Did he
25 threaten you?

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1 A. He threatened me.

2 Q. And what happened after that?

3 A. I was very, very afraid and I ran into
4 my grandmother's kitchen and ---

5 Q. Did you clean up in any way before that?

6 A. He made me take a bath.

7 MR. ALAN BURNS: Objection, Your
8 Honor.

9 THE COURT: What is the basis of
10 objection?

11 MR. ALAN BURNS: She's leading.

12 THE COURT: Overruled.

13 DIRECT EXAMINATION CONTINUED

14 BY SOLICITOR HERRING-LASH:

15 Q. Explain.

16 A. He made me take a bath. He made me wash
17 off. He stood in the doorway while I washed
18 off.

19 Q. And what happened after you washed off?

20 A. I ran into my grandmother's kitchen and
21 got in the kitchen cabinet under the sink.

22 Q. And what is the next thing that you
23 remember happening?

24 A. I remember either my aunt or my mother
25 coming home and finding me under the cabinet.

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1 Q. Did you tell them what had happened and
2 why you were under there?

3 A. No.

4 Q. Why not?

5 A. Because of the threat that he made to
6 hurt myself as well as others.

7 Q. Did anything happen other than that day?

8 A. (No verbal response).

9 Q. Any other location?

10 A. Yes.

11 Q. Tell us about that.

12 A. There were several times. There was an
13 incidence where he picked me up from the boys
14 and girls center which was in the old village
15 area of Mount Pleasant.

16 Q. The what?

17 A. The old village area of Mount Pleasant.

18 He said that he was going to take me home.

19 About halfway from one destination to the
20 next, I realized that we weren't going

21 anywhere near where I lived. He actually

22 took me by the preschool where I used to go.

23 Q. Do you know what street that was on?

24 A. The preschool is on Labor Camp Road.

25 Q. On Labor Camp Road?

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1 A. Yes.

2 Q. Can you speak up a little bit, Minor 2?

3 A. Is that better?

4 Q. Yes. Thank you. What happened on Labor
5 Camp Road?

6 A. He actually assaulted me again inside
7 the back of his van. It was a red Ford
8 Astro, I believe.

9 Q. And tell the jury about how that
10 occurred?

11 A. We got to the location and he looked at
12 me, he just gave me this stare. He walked
13 around from the driver's side to the
14 passenger side and pulled me out and told me,
15 "Don't ever forget I will hurt you."

16 Q. What happened after he pulled you out?

17 A. He pulled me in the back of his van. He
18 actually only had one seat, which was in the
19 very far back of the van. He then assaulted
20 me again.

21 Q. When you say "assaulted you", what did
22 he do?

23 A. Raped.

24 Q. What does that mean?

25 A. Penetration with his penis.

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1 Q. Did you have your clothes on or off?

2 A. He pulled down my pants.

3 Q. What about his clothes?

4 A. His clothing was half off. As far as
5 his pants he kinda undid his belt and his
6 zipper.

7 Q. What about your shirt or his shirt?

8 A. They both were on. He didn't make me
9 take it off and he didn't bother to take his
10 off at all either.

11 Q. They were both on?

12 A. Yeah.

13 Q. Where did y'all go after you left Labor
14 Camp Road?

15 A. He took me back to my grandmother's
16 house.

17 Q. Did you say anything to anybody then?

18 A. Not directly.

19 Q. What do you mean, not directly?

20 A. It was more along the lines of me just
21 walking in, going to sleep, waking up crying,
22 saying that I had a nightmare. I just was
23 afraid. I didn't want any dinner. I just --
24 (pause) -- kinda gave signs, I guess, but
25 never actually said something.

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1 Q. Did anyone pick up on those signs?

2 Question you about them?

3 A. No, not at the time.

4 Q. Was there any other location where
5 anything occurred?

6 A. Yes.

7 Q. Where was that?

8 A. A few of my relatives' houses.

9 Q. Do you remember any in particular?

10 A. My birthday.

11 Q. Which house was that at, do you
12 remember?

13 A. I don't necessarily remember where that
14 happened. There was an instance where there
15 was a family gathering and all the children
16 would be outside, inside or something vice-
17 versa. He would kind of find his way, walk
18 towards me. That was also the time where he
19 would -- we had a shop outside, my
20 grandfather had a speakeasy and he would cut
21 hair there. There were several times inside
22 the speakeasy.

23 Q. Let me show you what has been marked as
24 State's Exhibits 6, 7 and 8. Starting with
25 Exhibit 6, can you tell us what that is?

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1 A. This is a picture of my grandmother's
2 backyard.

3 Q. Can you see what you call the speakeasy
4 in that picture?

5 A. On the far left-hand side.

6 Q. What about State's Exhibit 7?

7 A. That's a door, the door there was the
8 main entrance.

9 Q. To the what?

10 A. To the speakeasy.

11 Q. What about State's Exhibit 8?

12 A. This was the back room that he utilized
13 as -- I guess you could call storage. There
14 was a bathroom where that sheetrock is, where
15 the two lines are, and there was a cot on the
16 right-hand side.

17 Q. A cot?

18 A. Yes.

19 SOLICITOR HERRING-LASH: Your
20 Honor, at this time the State would ask to
21 admit State's Exhibits 6, 7, and 8.

22 THE COURT: Any objection?

23 MR. ALAN BURNS: No objection.

24 THE COURT: Without objection,
25 State's Exhibits 6, 7 and 7 are admitted.

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1 (SO ENTERED AS STATE'S EXHIBIT 6)

2 (SO ENTERED AS STATE'S EXHIBIT 7)

3 (SO ENTERED AS STATE'S EXHIBIT 8)

4 DIRECT EXAMINATION CONTINUED

5 BY SOLICITOR HERRING-LASH:

6 Q. You said that y'all called that the
7 speakeasy?

8 A. Yes.

9 Q. Look behind you, is that the picture
10 that you identified a moment ago as your
11 first grade picture?

12 A. Yes.

13 Q. When this first event happened?

14 A. Yes.

15 Q. Can you show the jury in this picture
16 where the speakeasy is?

17 A. It's on this left-hand side
18 (indicating).

19 Q. Is that it?

20 A. Yes.

21 Q. Is that inside?

22 A. Yes.

23 Q. What happened in the speakeasy, why
24 would you be going in there?

25 A. That is where he had a barbershop, as he

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1 called it.

2 Q. To cut hair?

3 A. Yes.

4 Q. Did he cut your hair?

5 A. Yes.

6 Q. Can you tell the jury what happened in
7 the speakeasy?

8 A. Normally we would be around -- I mean,
9 as far as the family as a whole. It could be
10 any occasion. He would actually say to my
11 mom, [Minor 2.] needs a haircut' or something
12 of that nature.

13 Q. How did you act about getting your hair
14 cut?

15 A. Very, very afraid. Literally I said "I
16 don't want a haircut." I protested lots of
17 times. I even cried.

18 Q. But you had to get it anyway?

19 A. I had to get it anyway.

20 Q. What happened in the speakeasy?

21 A. Inside the speakeasy where the cot was

22 ---

23 Q. Can you see in that picture where the
24 cot was?

25 A. On this right-hand side, on the far end

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1 where the box was.

2 Q. Where the box thing is?

3 A. Yeah.

4 Q. What happened in there?

5 A. He raped me again there.

6 Q. Can you explain? Was it on the cot?

7 A. Yes.

8 Q. How were you on the cot? What position?

9 A. I was actually humped over, meaning my
10 head was down.

11 Q. What about your uncle, what position was
12 he in?

13 A. Standing.

14 Q. Where was he standing?

15 A. He would be standing at the long end of
16 the bed or cot.

17 Q. You said that you were bunked over?

18 A. Yeah.

19 Q. What happened?

20 A. He anally penetrated me.

21 Q. Did you have your clothes on?

22 A. No.

23 Q. Where were they?

24 A. He actually made me take all of them
25 off.

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1 Q. What about your shirt?

2 A. Including my shirt.

3 Q. Is that the only time you can remember
4 when you had to take all of your clothes off?

5 A. It seemed like every time that we went
6 to the speakeasy that he made me take all of
7 my clothes off.

8 Q. So it happened more than once in the
9 speakeasy?

10 A. Yes.

11 Q. What about Mr. Burns' clothing?

12 A. He never really took off his clothing,
13 he just kinda exposed his front/genitals.

14 Q. During this time, did you continue to be
15 around him?

16 A. I tried not to.

17 Q. But did you have to?

18 A. I mean, there were times when we -- like
19 we might be leaving for church or we would
20 all have to be together for dinners, for
21 birthdays, anniversaries, holidays. He would
22 just make his way around, kinda making sure,
23 talking to me, saying something as a
24 reminder.

25 Q. Did you ever think about trying to tell

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1 anybody back then?

2 A. No, I was too afraid -- to die.

3 Q. Now, did Mr. Burns leave Charleston and
4 go away at some point?

5 A. At some point, I do remember him not
6 being around. I didn't know where he was.

7 Q. Did you stay in Charleston when he was
8 gone?

9 A. Yes.

10 Q. Or in Mount Pleasant?

11 A. Yes.

12 Q. Did you go to Wando High School?

13 A. I did.

14 Q. When did you graduate from Wando High?

15 A. In 2008.

16 Q. Where did you go after that?

17 A. I went to Coastal Carolina University.

18 MR. ALAN BURNS: Could he speak
19 up?

20 THE COURT: Yes. Pull up so that
21 you can speak closely into that mic, please.

22 DIRECT EXAMINATION CONTINUED

23 BY SOLICITOR HERRING-LASH:

24 Q. You have a very low voice, so try to
25 bring it up. Okay?

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1 A. Okay.

2 Q. You went to Coastal Carolina?

3 A. Yes.

4 Q. Where did you go -- when did you go?

5 Sorry. When did you go to Coastal Carolina?

6 A. In 2008, the same year that I graduated.

7 Q. And when was the first time that you
8 told someone?

9 A. The first time I actually said directly
10 that he did something to me was in 2010, I
11 believe that it was.

12 Q. Who was that?

13 A. It was my mother.

14 Q. Where were you when you told your
15 mother?

16 A. I was at a friend's house.

17 Q. Were you at college or here?

18 A. At college.

19 Q. And how did you tell her, was it in
20 person or ---

21 A. It was over the phone.

22 Q. Tell us about that.

23 A. I was actually with my friends and we
24 were watching TV, but we were all in
25 conversation. I looked up and I saw that a

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1 law show was on, of some sort. For some
2 reason I just started remembering that time
3 was running out. I kinda started panicking.
4 I got up and I went to the bathroom. I was
5 very hysterical. It all just came flashing
6 back to me that Uncle Alan did something to
7 me. I was very, very hysterical. Very
8 hysterical.

9 Q. And you called your mom?

10 A. I ran out of the house, went to my car,
11 called my mom.

12 Q. Did she come?

13 A. Yes, sometime later.

14 Q. She was coming from Mount Pleasant?

15 A. Yes.

16 Q. And did you tell her what had happened?

17 A. I did, (affirmative nod).

18 Q. Did there come a time when you decided
19 to go to the police?

20 A. Yes.

21 Q. Do you remember about when that was that
22 you went to the police?

23 A. It was in February of 2010.

24 Q. Who went with you?

25 A. My mother.

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1 Q. Who did you talk with at the police
2 department?

3 A. The initial time we didn't get a chance
4 to. But the second time that we went, I
5 spoke to Detective Bacon and gave her a
6 statement.

7 Q. When you talked to Detective Bacon, did
8 your mother go to the Police Department with
9 you?

10 A. She did.

11 Q. Did you talk to Detective Bacon in
12 private when you gave her your statement?

13 A. Yes.

14 Q. At that point in time when you first
15 talked to Detective Bacon, did you give her
16 the details of every event that ever
17 happened?

18 A. No.

19 Q. Do you remember the details of every
20 event that ever happened?

21 A. No.

22 Q. Did you tell Detective Bacon that there
23 were other people in your family that she
24 needed to talk to?

25 A. Yes, I told her about Minor 5 and

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1 Minor 4 .

2 Q. Had your mother told you about them?

3 A. No.

4 Q. When did you first hear about these
5 other cousins?

6 A. It was my winter break in 2009 from
7 college. And I was actually at work, at
8 Dunleavy's Pub, where I worked with my Aunt
9 Cathy.

10 COURT REPORTER: The name of the
11 pub, again?

12 THE WITNESS: Dunleavy's. I --
13 we were talking and I -- she worked with the
14 Humanity Services and we went from talking
15 about STDs to things of sexual nature. After
16 some of my responses to some of the things
17 that she said, she kinda said, 'You know,
18 something happened years ago to Minor 4 and
19 to Minor 5 .

20 DIRECT EXAMINATION CONTINUED

21 BY SOLICITOR HERRING-LASH:

22 Q. And -- go ahead.

23 A. When she said that, I kinda -- I froze
24 up. I kinda questioned myself if she knew
25 what happened.

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1 Q. If she had been told about you?

2 A. Yes.

3 Q. And when you went to the police
4 department, you did tell them about these
5 other people?

6 A. Yes.

7 Q. And, [Minor 2] is this something that is
8 easy for you to talk about?

9 A. No.

10 Q. How do you feel about having told and
11 being here?

12 A. Cold, numb, I feel -- (pause) --
13 literally words cannot describe.

14 SOLICITOR HERRING-LASH: Court's
15 indulgence for one moment?

16 THE COURT: Yes, ma'am.

17 SOLICITOR HERRING-LASH: [Minor 2]
18 those are all the questions that I have. You
19 will now need to answer any that Mr. Burns
20 has.

21 THE COURT: You may cross-examine.

22 LORI PROCTOR: Court's indul-
23 gence?

24 THE COURT: Yes, ma'am.

25 LORI PROCTOR: (Sidebar with

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1 Defendant and Mr. Smith).

2 TED SMITH: Judge, may I approach?

3 THE COURT: Yes, sir.

4 (OFF RECORD SIDEBAR)

5 CROSS EXAMINATION

6 BY MR. ALAN BURNS:

7 Q. Hello. That was good testimony. Hold
8 on a second. You said in 1997 you didn't
9 know who I was, isn't that what you testified
10 to just now, when I first came home that you
11 didn't know who I was?

12 A. No.

13 Q. That you had never seen me before.

14 A. No.

15 THE COURT: You need to speak up,
16 please, to make sure that we hear you.

17 DEFENDANT: I said "no." I'd
18 never saw you before.

19 CROSS EXAMINATION

20 BY MR. ALAN BURNS:

21 Q. Did your family ever come up on visits
22 to see me in Columbia, bring the whole
23 family? Three carloads of people, a whole
24 caravan.

25 A. Not to my memory.

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1 Q. Did your family ever come to visit me at
2 McDougall, in Ridgeville?

3 A. Not to my knowledge or my memory.

4 Q. Not to your knowledge or your memory.
5 Okay, buddy.

6 THE COURT: Mr. Burns, I am going
7 to instruct you that Rule 611(a) -- I have a
8 responsibility to instruct you that you may
9 ask questions but that you're not to make
10 those statements.

11 MR. ALAN BURNS: I apologize.

12 THE COURT: Thank you, sir.

13 CROSS EXAMINATION CONTINUED

14 BY MR. ALAN BURNS:

15 Q. In your statement to Detective Bacon,
16 you never mentioned anything about a penis in
17 your mouth. Why is that?

18 A. I was very ashamed to actually be
19 speaking to somebody about it. Furthermore,
20 it was very, very hard for me. I cried the
21 whole entire time while I gave her the
22 statement.

23 Q. So it was -- it's easier for you now to
24 speak in a full courtroom, in front of all
25 these people, than it was to speak to one

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1 person?

2 A. After two years of counseling from
3 various counselors, (affirmative nod).

4 Q. It's easier?

5 A. And having to talk about it all the
6 time, yeah.

7 Q. So it's easier for you to talk now in
8 front of a full crowd of people ---

9 A. Yes.

10 Q. --- than it was for you to talk in front
11 of one person in privacy?

12 A. Yes.

13 Q. Interesting. I apologize. In your
14 statement to the police, you mentioned being
15 cut. What did you say in your statement to
16 Detective Bacon? Do you recall?

17 A. My exact? About the threat or?

18 Q. About being cut.

19 A. He cut me and told me that he would ---

20 Q. Where did you tell Detective Bacon that
21 I cut you?

22 A. On my arm.

23 Q. That's what you said?

24 A. (No verbal response).

25 Q. I have your statement here. According

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1 to your statement you told Detective Bacon
2 that you didn't know where you'd gotten cut
3 at. Right?

4 A. I told her that I could not remember.

5 Q. But now you can remember that you were
6 cut four or five times?

7 A. Three times.

8 Q. Three times?

9 A. Yes.

10 Q. So how is it that you couldn't remember
11 back then where you were even cut at, and now
12 you can remember being cut three times and
13 exactly where you were cut at?

14 A. Having to talk to a few counselors and
15 actually finding a very good one.

16 Q. So the counselor told you where you had
17 cut at?

18 A. No, she was able to get me to remember
19 exactly ---

20 Q. How did she get you to remember where
21 you got cut at?

22 A. (No verbal response).

23 Q. She pointed to scars on your body and
24 said 'that's probably it'?

25 A. No.

1 Q. So, then, how did you remember?

2 A. Over time it just -- I remembered.

3 Q. Over time you remembered. Do you have a
4 scar?

5 A. I have ---

6 Q. Do you have scars?

7 A. Yes, I do.

8 Q. Would you mind showing us the scar on
9 your leg?

10 A. Sure, -- who do I need to show?

11 THE COURT: You may come down and
12 demonstrate the scar. Don't say anything
13 when you're down. Just point to it. Turn
14 and face the jury panel.

15 THE WITNESS: (Displaying),
16 from here to here there is a scar. On the
17 knee here and then the small one, (displaying
18 left arm).

19 MR. ALAN BURNS: Apparently you
20 lost that one again.

21 THE COURT: No, sir. Please, sir.
22 Take your seat.

23 THE WITNESS: (Complies)

24 CROSS EXAMINATION CONTINUED

25 BY MR. ALAN BURNS:

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1 Q. So you have a two and a half inch scar
2 on your leg and you had forgotten where that
3 one was when you spoke to Detective Bacon.
4 But when you talked to Detective Bacon, you
5 had a scar that you couldn't -- didn't know
6 where it was. Even just now in front of the
7 jury you were unable to -- you had to search
8 for it. How do you explain that?

9 A. I don't sit down and think about what
10 you did to me all day every day. I have a
11 life.

12 Q. I asked how do you explain that you
13 couldn't readily find the scar?

14 A. Was that not an explanation?

15 Q. No, it wasn't.

16 THE COURT: No, sir, that's
17 argumentative. He's answered your question.
18 Go on to something else, sir.

19 CROSS EXAMINATION CONTINUED

20 BY MR. ALAN BURNS:

21 Q. You also stated that you and your
22 friends were at -- what college did you say
23 that you attended?

24 A. Coastal Carolina.

25 Q. Whose house were you at that night when

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1 you supposedly had the revelation?

2 A. Is that necessary?

3 THE COURT: No, sir. Answer the
4 question. You are not going to ask the
5 questions.

6 THE WITNESS: A friend of mine
7 by the name of Emily.

8 CROSS EXAMINATION CONTINUED

9 BY MR. ALAN BURNS:

10 Q. By the name of what?

11 A. Emily?

12 Q. Emily who?

13 A. Gibson.

14 Q. That is your girlfriend?

15 A. Is that necessary?

16 THE COURT: No, sir. Answer the
17 question. You are not going to ask the
18 questions.

19 THE WITNESS: No.

20 CROSS EXAMINATION CONTINUED

21 BY MR. ALAN BURNS:

22 Q. She is not your girlfriend?

23 A. No.

24 Q. Who else was at the house that night?

25 A. A few other people that I don't

1 necessarily remember.

2 Q. How many people?

3 A. Three to four.

4 Q. It was her house? Who'all lived at the
5 house? Just her?

6 A. It was her and a roommate.

7 Q. A female?

8 A. Yes.

9 Q. It was you and three or four other guys?

10 A. No. It was myself and -- I believe that
11 there were a total of five people: myself,
12 her roommate, herself, and two other males.

13 Q. Who were those two other people?

14 A. I believe that they were my friends
15 Nolan and Mike.

16 Q. You don't have a mental problem or
17 anything like that that affects your
18 mentality, do you?

19 A. Not my mentality but my memory, yes.

20 Q. You don't have any types of ailments,
21 mental illness, anything like that?

22 A. I am diagnosed bipolar, if that is what
23 you mean.

24 Q. Humm?

25 A. I am diagnosed bipolar. Is that what

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1 you mean?

2 Q. You've been diagnosed bipolar?

3 A. Depressed, sleep/insomnia, some eating
4 disorders, ---

5 Q. Who diagnosed you as being bipolar?

6 A. Doctors.

7 Q. What doctor?

8 A. I don't know the name. I was at a
9 hospital, I sat inside the room, looked at a
10 screen and spoke to someone over a telecom
11 screen of some sort.

12 Q. How long ago were you diagnosed?

13 A. About two years now, probably three. It
14 was a while ago.

15 Q. Are you on some type of medication?

16 A. I was on lots of them.

17 Q. Are you on medication now?

18 A. At this moment, no.

19 Q. But you are still bipolar?

20 A. Yes.

21 Q. You don't know the doctor that diagnosed
22 you as being bipolar?

23 A. I do not remember the person's name.

24 Q. Let's go back to that house that night
25 when you had this revelation. What were you

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1 all doing at the house?

2 A. We were sitting around playing some card
3 games, I had a beer or two, the TV was on,
4 but we were mostly just talking. I mean, we
5 were college students.

6 Q. You weren't watching TV?

7 A. Not necessarily. I don't tend to watch
8 TV too much.

9 Q. You don't like watching TV too much?

10 A. No.

11 Q. In your statement to Detective Bacon --
12 let's see if I can find the precise page.

13 MR. ALAN BURNS: Do you mind if I
14 approach?

15 THE COURT: You may. Do you want
16 to have that marked?

17 MR. ALAN BURNS: That is the
18 statement that you gave to the police. Do
19 you want to take a look at it.

20 THE COURT: Mr. Burns, the process
21 is that you are to give it to court reporter
22 and let her mark it so that we can help
23 identify it.

24 MR. ALAN BURNS: (Tenders to court
25 reporter).

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1 COURT REPORTER: Thank you, sir.

2 Marked Defendant's Exhibit 1 for

3 identification.

4 THE COURT: Identification only.

5 CROSS EXAMINATION CONTINUED

6 BY MR. ALAN BURNS:

7 Q. On that statement right there, in the
8 yellow section, ---

9 A. Um-humm.

10 MR. ALAN BURNS: Your Honor, ---

11 THE WITNESS: I'm listening.

12 What do you have to say?

13 THE COURT: No, sir. Sir, I need
14 you to move forward and sit up the
15 microphone, like I'm asking you -- sir.

16 THE WITNESS: (Complies).

17 THE COURT: You may ask your
18 question. You may step back, you don't need
19 to be ---

20 MR. ALAN BURNS: Okay.

21 CROSS EXAMINATION CONTINUED

22 BY MR. ALAN BURNS:

23 Q. The yellow section right there that I
24 have highlighted, would you mind reading the
25 first few lines of it, please?

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1 THE COURT: Do you want him to
2 read it to himself.

3 MR. ALAN BURNS: Well, he can read
4 it to himself.

5 THE COURT: In order for him to
6 publish it aloud, you have to have it
7 admitted.

8 MR. ALAN BURNS: Okay.

9 CROSS EXAMINATION CONTINUED

10 BY MR. ALAN BURNS:

11 Q. Would you mind reading it to yourself
12 first, please, so that I can ask you a
13 question. Just the first three lines.

14 A. (Upon review), okay.

15 MR. ALAN BURNS: Your Honor, I
16 would like to admit this into evidence.

17 THE COURT: Any objection?

18 SOLICITOR HERRING-LASH: No, Your
19 Honor.

20 THE COURT: It is admitted. It's
21 Defendant's Exhibit 1.

22 (SO ENTERED AS DEFENDANT'S EXHIBIT 1)

23 MR. ALAN BURNS: So I can now have
24 him read it aloud?

25 THE COURT: You may.

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1 CROSS EXAMINATION CONTINUED

2 BY MR. ALAN BURNS:

3 Q. Would you mind reading that aloud,
4 please? Just the highlighted section, the
5 first three lines.

6 A. (Reading): "We were watching *Law &*
7 *Order, Special Victims Unit.* I used to watch
8 *it when I was younger, then I stopped.* This
9 *time was the first time in a very long time*
10 *that I actually sat down and watched some*
11 *episodes."*

12 Q. You said -- when I asked you what you
13 were doing when you were at your friend's
14 house, you said that you were just sitting
15 around playing cards, that you don't watch
16 TV. But according to your statement, you
17 knew exactly what you were doing that night.
18 You were sitting around drinking, watching
19 *Law & Order.* What prompted your episode that
20 night, whatever you want to call it?

21 A. What prompted my episode?

22 Q. Yeah.

23 A. (No verbal response).

24 Q. Did that show right there prompt you to
25 have your episode that night?

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1 A. You could say it triggered my episode.

2 What prompted my episode was that shortly I

3 would have to see you, sir.

4 Q. Excuse me? I didn't hear you.

5 A. Shortly I would have to see you, sir.

6 Q. So on that night you knew that you were

7 going to be seeing me soon?

8 A. No, on that night I -- like I said

9 earlier, I remembered that time was running

10 out and I did not necessarily understand

11 where that whole thought came from but I

12 started getting hysterical. Then I stepped

13 outside to the restroom and then I started

14 having some memories.

15 Q. You also mentioned something else in

16 that statement as well. You mentioned

17 something about a towel and a knife. Do you

18 recall what you said to Detective Bacon?

19 A. No, I don't.

20 Q. About the towel and the knife?

21 A. No, I don't.

22 Q. So when you -- you don't remember

23 anything that you said to the detective, or

24 you just made up some stuff and told to the

25 detective and now when you've come into the

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1 courtroom you're just making up some stuff.

2 SOLICITOR HERRING-LASH: Your

3 Honor, I would object as argumentative.

4 THE COURT: Sustained. That's
5 inappropriate.

6 CROSS EXAMINATION CONTINUED

7 BY MR. ALAN BURNS:

8 Q. So you don't remember any of the things
9 that are in the statement?

10 A. No, I don't. I remember some of the
11 things that I said to her but I don't
12 remember detailed, word for word. I have a
13 statement at home but, believe it or not, I
14 did not take the time to read over it.

15 Q. So the things that you said in the
16 statement, they're true; aren't they?

17 A. (Affirmative nod), Um-humm.

18 THE COURT: Is that a "yes"?

19 THE WITNESS: Yes.

20 CROSS EXAMINATION CONTINUED

21 BY MR. ALAN BURNS:

22 Q. So if they are true, how do you don't
23 remember what -- that that was the statement
24 that you gave to the police, telling her what
25 was supposed to have happened? Is it not?

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1 A. I don't understand what you're asking
2 me.

3 Q. Your statement has changed. Why is the
4 statement that you gave to the police
5 different from the one that you're testifying
6 to here today?

7 A. How so?

8 Q. The statement that you gave to the
9 police, you never mentioned anything about a
10 penis going in your mouth.

11 A. (No verbal response).

12 Q. In the statement to the police, you
13 never mentioned anything about the speakeasy.
14 Why is that?

15 A. (No verbal response).

16 THE COURT: Is that a question?

17 MR. ALAN BURNS: Yes, sir.

18 THE COURT: Answer the question.

19 THE WITNESS: Me meeting with
20 the detective for the first time after me
21 remembering bits and pieces of things that
22 happened to me in the past and mainly
23 remembering a lot of fear, mainly remembering
24 you and your knife and your threats, I kinda
25 necessarily didn't want to be there at all.

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1 CROSS EXAMINATION CONTINUED

2 BY MR. ALAN BURNS:

3 Q. Speaking of the knife, how did the knife
4 look?

5 A. I don't remember exactly what kind of
6 knife that it was. I remember that it had a
7 very long blade.

8 Q. How long?

9 A. Not that long. It wasn't even
10 necessarily a knife, I believe that it was a
11 box cutter of some sort. But I am not -- I
12 can't ---

13 Q. So box cutters now have very long
14 blades?

15 THE COURT: No, sir. That's
16 argumentative, please. Restate your
17 question.

18 MR. ALAN BURNS: Okay.

19 CROSS EXAMINATION CONTINUED

20 BY MR. ALAN BURNS:

21 Q. You said a few seconds ago that it was a
22 very long knife. Then you instantly changed
23 it and said that you believed that it was box
24 cutter. Which was it? Was it a knife or a
25 box cutter?

1 A. A box cutter.

2 Q. Okay. Do box cutters resemble knives,
3 in your opinion?

4 A. From the standpoint of a seven-year-old,
5 yes. And from the standpoint of a box cutter
6 that has an adjustable blade, yes.

7 Q. You mentioned something else. You said
8 that when I first came home from wherever I
9 was at that you was at home, in the dining
10 room?

11 A. Yes.

12 Q. Huh?

13 A. Yes.

14 Q. So you were living at this address?

15 A. In a sense, yes. I spent a lot of time
16 at my grandmother's ---

17 Q. You said ---

18 THE COURT: No, sir. Allow him to
19 answer the question before you ask him
20 another question. You may complete your
21 answer, sir.

22 THE WITNESS: I spent a lot of
23 time at my grandmother's house. My grand-
24 mother was retired, I believe, or she worked
25 at the nursing home -- I can't quite

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1 remember. My mother worked, so when I did
2 need someone or I needed to be somewhere so
3 that I could be watched, my grandmother was
4 there. So, yeah, since I -- I lived there,
5 I spent a lot of time there.

6 CROSS EXAMINATION CONTINUED

7 BY MR. ALAN BURNS:

8 Q. So where were you living at, precisely?

9 A. I don't remember.

10 Q. Where was your address at?

11 A. I don't remember.

12 Q. Interesting. I had just came home, I
13 walked in the door and you were in the house.
14 I'd just came in with my bags and everything?

15 A. No, I walked in the door. You were in
16 the house, standing by the china hutch. I
17 walked in the door, through the back door,
18 through the kitchen towards the dining room.
19 You stood in the dining room by the china
20 hutch, your back towards the wall, facing
21 towards the kitchen area.

22 Q. That was the day that I came home?

23 A. I assume.

24 MR. ALAN BURNS: Your Honor, could
25 I have a moment, please?

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1 THE COURT: Sure.

2 MR. ALAN BURNS: (Sidebar with Ms.

3 Proctor and Mr. Smith). Okay.

4 CROSS EXAMINATION CONTINUED

5 BY MR. ALAN BURNS:

6 Q. You also said that when I picked you up
7 from the boys and girls club that I drove you
8 to some place. Where did you say that I
9 drove you to?

10 A. To the preschool that I had attended
11 when I was younger, off Labor Camp Road.

12 Q. That was down a dirt road?

13 A. I don't know what kind of road it was at
14 the time, but right now -- to this day it's
15 paved.

16 Q. This day it's paved but when you
17 contended, was it a dirt road?

18 A. I don't know. I don't know what kind of
19 road it was.

20 Q. Let me ask you another question. You
21 told Detective Bacon some stuff about your
22 oldest uncle. Do you remember what you told
23 Detective Bacon?

24 A. I didn't hear what you just said.

25 Q. About your eldest uncle.

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1 A. My eldest uncle?

2 Q. (Affirmative nod), the one that died.

3 SOLICITOR HERRING-LASH: Your
4 Honor, could Mr. Burns point out to me what
5 he is talking about in the statement?

6 THE COURT: He just asked him did
7 he make some statement. That's all that he
8 asked. If he can remember -- I don't know
9 what it is.

10 MR. ALAN BURNS: I'm sorry.

11 THE COURT: If you want to clarify
12 your question, you need to make your question
13 clear.

14 MR. ALAN BURNS: That's what I was
15 going to do.

16 THE COURT: Okay.

17 CROSS EXAMINATION CONTINUED

18 BY MR. ALAN BURNS:

19 Q. Did you make a statement to Detective
20 Bacon about your eldest uncle, Luther Burns,
21 involving me?

22 A. Not to my knowledge. I don't know what
23 you're talking about.

24 MR. ALAN BURNS: (Sidebar with
25 Solicitor Herring-Lash).

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1 CROSS EXAMINATION CONTINUED

2 BY MR. ALAN BURNS:

3 Q. I have a report from the Mount Pleasant
4 Police officer. In her report it reads ---

5 THE COURT: Wait a minute. You
6 are publishing from a report that this
7 witness did not prepare?

8 MR. ALAN BURNS: No, he didn't
9 prepare it.

10 THE COURT: He didn't prepare it?

11 MR. ALAN BURNS: No, sir.

12 THE COURT: Are you going to allow
13 him to publish it?

14 SOLICITOR HERRING-LASH: No, Your
15 Honor. I didn't know what he was going to
16 try to say.

17 THE COURT: You can't read from a
18 report. That would be hearsay, it's
19 improper. If this witness prepared it, then
20 fine, you can ask this witness about
21 something that he did. But you can't publish
22 from that. That would be inappropriate.

23 You can call the witness and ask the
24 witness who prepared that but you can't have
25 this witness testify to that.

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1 MR. ALAN BURNS: All right.

2 CROSS EXAMINATION CONTINUED

3 BY MR. ALAN BURNS:

4 Q. Did you, at any time, tell the police
5 that I had been molesting you?

6 A. Excuse me?

7 Q. Did you ever tell the police ---

8 THE COURT: Rephrase. Are you
9 asking him if he told the police that you had
10 been molesting him?

11 MR. ALAN BURNS: Yes, sir.

12 THE WITNESS: Not to my memory.

13 MR. ALAN BURNS: Okay.

14 CROSS EXAMINATION CONTINUED

15 BY MR. ALAN BURNS:

16 Q. I had started to ask you some stuff
17 earlier about that report that you put up
18 there, the night of the -- where was it?
19 North Myrtle Beach, Myrtle Beach? That's
20 where you was at, right?

21 A. What are you asking me?

22 Q. The night that you had the episode?

23 A. The night I had the episode?

24 Q. Right.

25 A. The night where I recollected some

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1 memories, I was in Conway, South Carolina.

2 Q. In Conway? That is where Coastal
3 Carolina is?

4 A. That's where Coastal Carolina is,
5 (affirmative nod).

6 Q. I don't know. That's why I am asking.

7 A. Okay. That doesn't have nothing to do
8 with me.

9 Q. The night that you had the episode, you
10 was watching *Law & Order*. In that report,
11 also it states that there was another event
12 that took place with the knife and towel,
13 that actually triggered -- that's what you
14 said, according to the statement that you
15 gave, that triggered the episode; is that
16 correct?

17 A. I don't know what you're talking about.
18 You've got me confused.

19 THE COURT: Show him the state-
20 ment. Review your statement. Give him a
21 moment to review it.

22 Sir, you asked him about the
23 statement that is in evidence. That's the
24 only way that you can ask that question.

25 MR. ALAN BURNS: Yes, sir, I

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1 understand.

2 THE COURT: Just show him -- why
3 don't you show him ---

4 THE WITNESS: I see what you're
5 saying.

6 THE COURT: Okay.

7 THE WITNESS: This says that at
8 the time that triggered my episode, as you
9 call it, I was in this living room kinda
10 paying attention to this TV, having my
11 conversations, sipping my beer and a friend
12 of mine walks in and had a knife in his hand.

13 CROSS EXAMINATION CONTINUED

14 BY MR. ALAN BURNS:

15 Q. Huh?

16 A. A friend of mine walked in from the
17 kitchen -- I can't remember what he was
18 doing, but he had a knife in his hand.

19 Q. A knife and a towel?

20 A. (Affirmative nod), and a towel.

21 Q. Just read this statement aloud if you
22 would.

23 A. (Reading): "It was close to the end
24 of..." ---

25 Q. Start from the beginning of that page

1 and read the whole thing.

2 THE COURT: No, sir. You're going
3 to ask him -- why do you want him now, in
4 reference to the question that you just asked
5 him, he is going to read that portion. Then
6 if you wish him to publish more, you may ask
7 another question.

8 MR. ALAN BURNS: Yes, sir.

9 THE COURT: Read the portion that
10 you had just reviewed, please.

11 THE WITNESS: (Reading): "My
12 friend walked out of the kitchen from making
13 food with a rag in one hand and a knife in
14 the other, to clean the knife. I instantly
15 got very uncomfortable. I went to the
16 bathroom and the only thing I ..." -- and
17 that's the only thing that is highlighted.

18 THE COURT: Now you may ask a
19 followup question if you wish.

20 CROSS EXAMINATION CONTINUED

21 BY MR. ALAN BURNS:

22 Q. Read the entire statement for me, so
23 that we can get a fully understanding of
24 exactly what the statement says.

25 A. (Reading):

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1 Q. Who is the first person that
2 you told and when?

3 A. This past February I was at my
4 girlfriend's house in Myrtle Beach. We were
5 watching Law & Order, Special Victims Unit.
6 I used to watch it when I was younger, then I
7 stopped. This was the first time in a very
8 long time that I actually sat down to watch
9 some episodes. It was around 9:00 p.m. I
10 had been sipping on a beer. I was halfway,
11 this episode was about a kid who was accused
12 and kicked out of school (phonetic, coughing
13 in courtroom). It was close to the end when
14 the kid was about to go to jail. My friend,
15 Mack, walked out of the kitchen from making
16 food with a rag in one hand and a towel in
17 the other -- a rag in one hand and a knife in
18 the other hand, to clean the knife. I got
19 very uncomfortable. I went to the bathroom
20 and the only thing that I could think was
21 that 'you were molested by Uncle Alan.' For
22 ten minutes, I was hysterical. I got the
23 sickening feeling in my stomach, I got cold
24 sweats, I was stomping my feet, to prevent

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1 *myself screaming I put a towel in my mouth.*

2 *From there, I dashed for the back door.*

3 *So -- then it stops.*

4 Q. A little while ago when the solicitor
5 was questioning you and I started questioning
6 you and I asked you about what you was doing
7 that night, you claimed that you couldn't
8 remember. Right?

9 A. I also haven't studied the statement
10 that I made two years ago.

11 Q. And you also stated that you weren't
12 watching TV because you don't watch TV that
13 much. Right?

14 A. I said that the TV was on but we were
15 playing cards, I was sipping a beer. But I
16 don't watch TV that much.

17 Q. And you'd said that you weren't really
18 paying attention to what was on TV; right?

19 A. Yeah.

20 Q. That's what you just testified to a
21 little while ago?

22 A. Yes.

23 Q. But the statement that you gave to the
24 police, it clearly shows that you were
25 watching TV more than doing anything else, do

1 much so that you knew exactly what episode of
2 *Law & Order* that you was watching and exactly
3 what was going on in the show.

4 A. From the statement, it proves that ---

5 Q. And you even mentioned what time that it
6 was.

7 A. From the statement it proves that
8 throughout the course of this show being on,
9 which I believe is about an hour long, if my
10 memory serves me correctly, I glanced enough
11 and pay attention to bits and pieces enough
12 to give a statement saying that this
13 particular instance happened.

14 Q. Okay. You said that when this first
15 incident happened at your grandma's house
16 that you were -- that I was in the house, you
17 came in, some other people had come in and
18 somehow or another we ended up by ourselves.
19 How did that come about, again?

20 A. Somehow or other, I remember us being by
21 ourselves. I don't remember exactly who was
22 around me at that time. That's what I
23 remember. I remember that the adults who
24 walked in with me or who I trusted, who I
25 knew, were not there anymore.

1 Q. Who were those adults?

2 A. My Aunt Cathy.

3 Q. Your Aunt Cathy was there that day?

4 A. (Affirmative nod), and my mother.

5 Q. That was the day that I came home from
6 prison?

7 A. I believe that there was someone else
8 but I can't quite remember who it was. I'm
9 sorry, what did you say? That was the day
10 when?

11 Q. When I came home from prison?

12 A. Yeah, I believe so. Yes. I am not
13 entirely sure, I just remember you having on
14 an orange jumpsuit.

15 Q. I had on an orange jumpsuit?

16 A. Or a jumpsuit of some color. I am not
17 entirely sure. I believe that it was orange.

18 Q. All right. Let me ask you another
19 question. Who all was living at grandmama's
20 house at that time?

21 A. I don't remember. It was -- there was
22 spans of time that I remember ---

23 Q. 1997?

24 A. I don't remember.

25 Q. When you were in elementary school,

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1 where did you catch the school bus to go to
2 school?

3 THE COURT: Mr. Burns, sir, let's
4 move on to something else. He has already
5 answered your question. He can't remember.
6 So you've gotten your answer. Move on to
7 something else, sir. I assume that you are
8 talking about in 1997?

9 MR. ALAN BURNS: Um-humm.

10 THE COURT: Was that a "yes"? You
11 need to say yes or ---

12 MR. ALAN BURNS: Yes, sir. Yes.
13 I apologize.

14 THE COURT: You don't need to
15 apologize. We're trying to keep the record
16 straight.

17 MR. ALAN BURNS: All right, okay.
18 Yes, sir.

19 CROSS EXAMINATION CONTINUED

20 BY MR. ALAN BURNS:

21 Q. In your statement, you also mentioned
22 that somebody had did a family tree for you
23 and told you where I fit into the family. Do
24 you remember who did that for you?

25 A. Someone did a family tree for me?

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1 Q. Um-humm. That's what -- do you have the
2 statement before you?

3 A. I believe what I said and I believe what
4 should be in the statement is that Aunt Cathy
5 said 'that's your Uncle Alan, that's your
6 mama's younger brother.' I believe that's
7 what I thought I said.

8 Q. Let me ask you this question, too, so
9 that we can get clear on something. When you
10 say Cathy, who do you mean? Cathy? You have
11 two aunts by the name -- with similar names
12 of Cathy. Right?

13 A. I have one aunt by the name of Cathy.

14 Q. What is the other's name?

15 A. Catherine. Which is a little different
16 than Cathy.

17 Q. I understand what you're saying but I'm
18 just asking you to clarify for the record,
19 because when we used to refer to Cathy we
20 used to refer to them as Big Cathy and Little
21 Cathy?

22 A. I never referred to them -- I refer to
23 Aunt Cathy and then Catherine.

24 Q. Okay. So you're talking about your
25 Uncle Crissy's wife, Cathy?

1 THE COURT: Move on, please, sir.
2 Move on to something more relevant, sir.

3 MR. ALAN BURNS: Okay.

4 CROSS EXAMINATION CONTINUED

5 BY MR. ALAN BURNS:

6 Q. When you said -- you mentioned several
7 incidents where I supposedly did these things
8 to you: one at a daycare center, the other
9 you said in the house, and -- where was the
10 other one again?

11 A. The speakeasy.

12 Q. The speakeasy, yeah. You said that you
13 used to come back there to get your hair cut?

14 A. Yes.

15 Q. When you came back there to get your
16 hair cut, who brought you back there to get
17 your hair cut?

18 A. You would be in the house or you would
19 already be in the back. I don't know what
20 you were doing. You'd actually come in -- at
21 some point in time you'd actually make your
22 way back to where everybody was and say to my
23 mother, 'Hey, Minor 2 needs to get a
24 haircut.' Or you'd make some kind of comment
25 towards her to allow me in your presence

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1 inside the speakeasy so that you could cut my
2 hair and do whatever else you wanted. But
3 you -- go ahead.

4 Q. You have a brother, Kevin. He's older
5 than you, right?

6 A. Yes.

7 Q. By how many years? How much older than
8 you is he?

9 A. He's ---

10 THE COURT: Mr. Burns, a juror --
11 we've been going now for almost two hours.
12 I'm going to let the jury take a break. When
13 we come back, you can pick up at that point.

14 Ladies and Gentlemen, I am going to
15 let you go to your jury room. Do not begin
16 your deliberations, don't discuss the case.
17 We will be with you in about fifteen minutes.
18 Thank you.

19 (JURY OUT @ 3:55 P.M.)

20 THE COURT: First of all, Mr.
21 Washington, you're going to act properly in
22 this courtroom, sir. You're going to refrain
23 from any of these actions and gyrations that
24 you've been demonstrating. That's not
25 appropriate. We're not going to have that.

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1 I understand that it is very difficult for
2 you, sir, and I am sorry that you have to be
3 here but we are going to observe proper
4 decorum in the courtroom. Okay?

5 THE WITNESS: Yes, sir.

6 THE COURT: Mr. Burns, I wanted to
7 read to you 611(a), which places upon the
8 trial judge, I think, a very important
9 responsibility in handling matters of this
10 nature. 611(a), which is our rules of
11 evidence, says as follows -- and I checked to
12 make sure that the Federal Court has a
13 similar rule, and it does. It says -- it
14 talks about the mode and order of
15 interrogation and presentation. It says that
16 *"the Court shall exercise reasonable control*
17 *over the mode and order of interrogating*
18 *witnesses and presenting evidence so as to*
19 *make the interrogation and presentation*
20 *effective for the ascertainment of the truth,*
21 *to avoid needless consumption of time and*
22 *protect the witness from harassment and undue*
23 *embarrassment."*

24 That's why you have to be careful
25 what you're doing asking questions about

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1 something that was fifteen years ago that at
2 this point hasn't been demonstrated any
3 connection with what the allegations are.
4 Whether he remembers who was in a house has
5 nothing to do with the allegations at this
6 point. Now, if you want to bring out
7 something -- lay the foundation where it
8 becomes pertinent and germane, please do so.
9 Otherwise, I am going to consider you wasting
10 not my time but those folks that are sitting
11 in that box. We are going to move this case
12 forward. That's why I stopped you with the
13 comments that you made. You can't do that.

14 I, as the trial judge, am not trying
15 to interfere but I have to honor the
16 obligation that this rule places upon me to
17 make sure that a witness is not abused.
18 You're certainly entitled to cross-examine
19 him within the confines of the rules. Okay?

20 MR. ALAN BURNS: Yes, sir.

21 THE COURT: Thank you. We will be
22 at-ease for about fifteen minutes.

23 Mr. Washington, you may come down
24 but you are to have no conversation with
25 anyone during the break.

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1 (BRIEF RECESS)

2 (DEFENDANT PRESENT)

3 THE COURT: Let the record reflect
4 that Mr. Burns is present.

5 SOLICITOR HERRING-LASH: Judge,
6 there were two or three witnesses that were
7 sitting in the courtroom that Mr. Burns just
8 served.

9 THE COURT: All right.

10 SOLICITOR HERRING-LASH: So I
11 don't think that they were violating the
12 Order. They didn't know that they were going
13 to be served.

14 THE COURT: That's fine. Any
15 witnesses -- anyone here who is a witness or
16 who has been subpoenaed as a witness for
17 either the State or Mr. Burns? (No
18 response). Okay.

19 SOLICITOR HERRING-LASH: They've
20 left now.

21 THE COURT: Okay. Is the State
22 ready?

23 SOLICITOR HERRING-LASH: Yes,
24 sir.

25 THE COURT: Defense ready, Mr.

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1 Burns?

2 MR. ALAN BURNS: Yes, sir.

3 THE COURT: All right, we are
4 going to bring the jury back in. Be
5 prepared. We want to move on.

6 (WITNESS, Minor 2 [REDACTED], RESUMES STAND)

7 (JURY IN @ 4:10 P.M.)

8 THE COURT: Thank you, Ladies and
9 Gentlemen. Mr. Burns, you may resume your
10 examination.

11 MR. ALAN BURNS: This is all part
12 of the same statement that I've already given
13 him, just the other pages.

14 COURT REPORTER: This will be
15 Defendant's Exhibit 2 for identification and
16 they are pages one, two, three, four, six and
17 seven of ---

18 THE COURT: So that's a portion of
19 Defendant's 1, is that correct?

20 MR. ALAN BURNS: Yes, sir.

21 THE COURT: And you want that to
22 be admitted?

23 MR. ALAN BURNS: Yes, sir.

24 THE COURT: Any objection?

25 SOLICITOR HERRING-LASH: No, Your

1 Honor.

2 THE COURT: Defendant's Exhibit 2
3 is admitted into evidence without objection,
4 those additional pages.

5 (SO ENTERED AS DEFENDANT'S EXHIBIT 2)

6 CROSS EXAMINATION RESUMED

7 BY MR. ALAN BURNS:

8 Q. Minor 2, at some point in time within
9 the last couple of years, did you write a
10 letter to me?

11 A. Yes.

12 Q. In that letter, did you make any
13 references to how things around grandma's
14 and grandpa's house had changed over the
15 past year or so?

16 A. Not to my knowledge, no.

17 Q. In that letter, did you make any
18 reference to the fact that you didn't want me
19 to come home?

20 A. I might have, yes.

21 Q. And in that letter did you make any
22 reference to the animals that granddaddy used
23 to have there at the house?

24 A. No.

25 Q. Not being able to take care of them?

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1 A. No.

2 SOLICITOR HERRING-LASH: May I
3 see?

4 MR. ALAN BURNS: (Tenders document
5 to solicitor).

6 SOLICITOR HERRING-LASH: (Upon
7 review), Your Honor, we have a legal matter.

8 THE COURT: All right. Ladies and
9 Gentlemen, I need for you to return to your
10 jury room. There is a matter of law that I
11 need to take up first. Please do not begin
12 your deliberations. We will be with you as
13 quick as we can.

14 (JURY OUT @ 4:16 P.M.)

15 SOLICITOR HERRING-LASH: Your
16 Honor, I just wanted to make clear that Mr.
17 Burns understands -- because the situation
18 with the letter that he is referring to and
19 is going to show Mr. Minor 2 is the letter
20 that SLED and the defense expert had both
21 analyzed and said that this witness did not
22 write.

23 THE COURT: That's fine.

24 SOLICITOR HERRING-LASH: I just
25 wanted him to understand ---

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1 THE COURT: First of all he needs
2 to understand -- Mr. Burns, have the court
3 reporter mark the letter, please. It will be
4 Defendant's Exhibit 3, if you plan to use it.

5 MR. ALAN BURNS: (Tenders to court
6 reporter).

7 COURT REPORTER: Defendant's
8 Exhibit 3 for identification, consisting of
9 two pages.

10 THE COURT: We are about to --
11 you're about to show him that. I don't know
12 what his testimony is going to be, but I
13 assume that he's probably going to say that
14 'I didn't write that letter.'

15 SOLICITOR HERRING-LASH: I assume
16 so.

17 THE COURT: That's as far as it
18 goes insofar as publishing the letter is
19 concerned, because he has to identify it
20 before it is admissible.

21 MR. ALAN BURNS: I understand.

22 THE COURT: Okay. So long as you
23 understand that and as long as you also
24 understand that by doing so that you're
25 opening the door to something that might not

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1 be otherwise presented for this jury's
2 consideration. That is that the letter was
3 not signed or prepared by that witness, by
4 Mr. Minor 2. You proceed as you deem fit.
5 Do you wish to go forward with that letter?

6 MR. ALAN BURNS: I just want to
7 ask the questions. I ---

8 THE COURT: I don't know what your
9 questions are but ---

10 MR. ALAN BURNS: I understand.

11 THE COURT: I've told you about
12 publishing, reading from that letter. You
13 cannot ask him that until the letter is
14 admitted.

15 MR. ALAN BURNS: That's ---

16 THE COURT: It can't be admitted
17 if he says 'I didn't write it.'

18 MR. ALAN BURNS: I understand.

19 THE COURT: Okay.

20 MR. ALAN BURNS: It's ---

21 THE COURT: Then you understand
22 that if there is an objection made that I
23 will probably sustain the objection. So -- I
24 don't know what your question is.

25 MR. ALAN BURNS: I wasn't even

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1 going to submit that letter into evidence.

2 THE COURT: Well, you have to --
3 when you refer to something, -- at this
4 point, it is not in evidence. It's only
5 marked for the record. Just so that you
6 understand, we mark it so that when they
7 review this -- when you show a document to a
8 witness it needs to have a name. The name is
9 Defendant's Exhibit 3.

10 MR. ALAN BURNS: Right.

11 THE COURT: That way when they
12 review it, they know what you're showing the
13 witness.

14 MR. ALAN BURNS: Right.

15 THE COURT: That's why we mark
16 things. That's why we say it's for
17 identification. It doesn't mean that it is
18 admitted, unless you offer it. Then I -- if
19 there is no objection, I will probably admit
20 it. If there is an objection, then I will
21 have to rule on whether it is admissible or
22 not.

23 MR. ALAN BURNS: Right.

24 THE COURT: Just because you're
25 marking it doesn't mean that it is admitted.

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1 MR. ALAN BURNS: Right. Exactly.

2 THE COURT: All right.

3 MR. ALAN BURNS: It doesn't mean
4 that I have to show it either.

5 THE COURT: To who?

6 MR. ALAN BURNS: To the witness.

7 THE COURT: Well, I don't know --
8 what's the purpose of marking it if you're
9 not going to show it to him?

10 MR. ALAN BURNS: That's what I was
11 saying. I wasn't ---

12 THE COURT: Well, then don't pull
13 out -- then -- let me explain something else
14 that you're just doing. Under 403 and under
15 Rule 611(a) you said, 'Did you write me a
16 letter?' You go get a letter. Then you hold
17 this letter, that's an old trick of the trade
18 -- we all have done that, to find out whether
19 a witness believes 'did I write it down.'
20 It's to catch them off guard. It's a trick.
21 There's no reason for you to show that.
22 That's just poor sports--, -- that is poor
23 gamesmanship in this courtroom, under 611(a),
24 unless you are going to ask this witness a
25 question about it. Okay?

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1 MR. ALAN BURNS: Yes, sir.

2 THE COURT: All right, sir. We're
3 on the same page. I was a lawyer for twenty-
4 one years, Mr. Burns. Okay. All right.
5 Let's bring in the jury.

6 COURT REPORTER: And I stand
7 corrected. It (Defendant's Exhibit 3) is
8 three pages.

9 MR. ALAN BURNS: Yes, three pages.

10 (JURY IN @ 4:20 P.M.)

11 THE COURT: Thank you, Ladies and
12 Gentlemen. Mr. Burns, you may cross-examine.

13 CROSS EXAMINATION CONTINUED

14 BY MR. ALAN BURNS:

15 Q. Minor 2, did you ever indicate to me, by
16 any means, that no one in the family really
17 wanted me to come back home because of my
18 past?

19 A. Not to my memory.

20 THE COURT: Mr. Minor 2, you
21 need to pull up so that the microphone can
22 pick you up. Speak into the mic, please.

23 THE WITNESS: Not to my memory.

24 CROSS EXAMINATION CONTINUED

25 BY MR. ALAN BURNS:

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1 Q. Did you ever indicate to me, by any
2 means, that you were sorry for what you were
3 about to do to me?

4 A. No.

5 Q. Going forward to the police?

6 A. No.

7 Q. Did you ever indicate to me that when I
8 did return that I would probably want to go
9 back to raising hogs, the way I used to?

10 A. No.

11 Q. Did you know that I used to raise hogs
12 and stuff, ---

13 A. No.

14 Q. --- had a pet hog for all the kids to
15 ride, when I was a kid?

16 A. No.

17 Q. But you did write a letter to me
18 sometime in 2010; is that correct?

19 A. I believe so, yes.

20 Q. And that letter was in reference to you
21 speaking to me about these charges?

22 A. Yes.

23 Q. And in that letter you explained to me
24 that you were Karen's second son, trying to
25 identify who you were to me?

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1 A. Yes.

2 Q. And in that letter you explained that
3 you were a sophomore in college?

4 A. I believe so. Sure.

5 Q. Let me ask you, ---

6 MR. ALAN BURNS: I am going to
7 present the letter to him, Your Honor.

8 THE COURT: It is to be marked as
9 Defendant's Exhibit 3 for identification
10 only.

11 CROSS EXAMINATION CONTINUED

12 BY MR. ALAN BURNS:

13 Q. There you go -- take that.

14 A. (No verbal response).

15 SOLICITOR HERRING-LASH: Your
16 Honor, is there a question?

17 THE COURT: I don't know.

18 MR. ALAN BURNS: Yeah, I want him
19 to read the letter first and then I will ask
20 him about it.

21 THE COURT: What's the purpose for
22 which he is to read the letter? What's the
23 question? Phrase your question, please, Mr.
24 Burns. There is no need for him to read the
25 letter unless there is a question which

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1 requires him to read the letter.

2 CROSS EXAMINATION CONTINUED

3 BY MR. ALAN BURNS:

4 Q. Is there any truth in any of the things
5 that is said in the ---

6 THE COURT: No, sir, that is
7 publishing the letter, sir. What is it that
8 you want to ask him about? You've asked him
9 certain things that he's allegedly said. You
10 can ask him -- if there is some part of that
11 which you wish to further publish but asking
12 'did you say such and such', that's fine.
13 The question of 'is there any truth to it',
14 any truth to what? What does that reference?
15 That doesn't help us.

16 MR. ALAN BURNS: I want to ask him
17 if ---

18 THE COURT: Ask him specifically
19 what it is that you're asking, did he say so
20 and so. More importantly, you're going to
21 have to -- you're going to have to identify
22 the letter.

23 MR. ALAN BURNS: So can I go ahead
24 and enter the letter first?

25 THE COURT: You have to lay the

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1 foundation to enter the letter.

2 MR. ALAN BURNS: Okay.

3 THE COURT: You have to ask him
4 the question, does he recognize that letter.

5 MR. ALAN BURNS: Okay.

6 CROSS EXAMINATION CONTINUED

7 BY MR. ALAN BURNS:

8 Q. Do you recognize that letter, Minor 2 ?

9 A. No.

10 Q. You never sent that letter to me?

11 A. No.

12 MR. ALAN BURNS: Your Honor, I
13 would like to enter that letter into
14 evidence?

15 THE COURT: Any objection?

16 SOLICITOR HERRING-LASH: Yes,
17 Your Honor, I object.

18 THE COURT: Sustained.

19 MR. ALAN BURNS: Withdrawn.

20 THE COURT: It stays with the
21 court reporter.

22 MR. ALAN BURNS: All right.

23 COURT REPORTER: Thank you, sir.

24 MR. ALAN BURNS: No further
25 questions at this time.

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1 THE COURT: Any redirect?

2 SOLICITOR HERRING-LASH: Just a
3 few questions, Your Honor.

4 REDIRECT EXAMINATION

5 BY SOLICITOR HERRING-LASH:

6 Q. Minor 2 just to clarify, when Mr. Burns
7 asked you about the incident at the
8 preschool, were you actually in the preschool
9 when you were describing ---

10 A. No, just in the parking lot area.

11 Q. And when you were talking about the box
12 cutter or the knife, were you talking about
13 Mr. Burns or your friend? I think I got
14 confused.

15 A. The box cutter knife, that was in
16 reference to him (indicating Mr. Burns).

17 Q. Then your friend had a knife also?

18 A. Yes.

19 Q. Okay.

20 SOLICITOR HERRING-LASH: Your
21 Honor, may I approach?

22 THE COURT: Yes, you may.

23 COURT REPORTER: State's Exhibit
24 12 for ID.

25 THE COURT: Twelve for identifica-

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1 tion only.

2 SOLICITOR HERRING-LASH: Your

3 Honor, may I approach the witness?

4 SOLICITOR HERRING-LASH: Yes, you

5 may.

6 REDIRECT EXAMINATION CONTINUED

7 BY SOLICITOR HERRING-LASH:

8 Q. Minor 2 would you look at that?

9 A. (Review).

10 Q. Do you recognize that?

11 A. Yes.

12 Q. What is that?

13 A. This is the letter that I wrote to him.

14 MR. ALAN BURNS: Objection, Your

15 Honor.

16 THE COURT: Hold on a second. I

17 have an -- an objection to him testifying

18 that is the letter that he wrote? I mean,

19 what is the objection to? It hasn't been

20 offered yet. Did you offer that letter?

21 SOLICITOR HERRING-LASH: No, Your

22 Honor.

23 THE COURT: Okay.

24 REDIRECT EXAMINATION CONTINUED

25 BY SOLICITOR HERRING-LASH:

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1 Q. Did you write one letter or two letters?

2 A. I wrote one letter to him.

3 Q. And the letter that I just showed us is
4 that letter?

5 A. Yes.

6 SOLICITOR HERRING-LASH: Those
7 are all the questions that I have.

8 THE COURT: Recross?

9 MR. ALAN BURNS: No, Your Honor.

10 THE COURT: Thank you, Mr.

11 Minor 2. You may step down.

12 (WITNESS STEPS DOWN)

13 THE COURT: Call your next
14 witness.

15 SOLICITOR HERRING-LASH: The
16 State would call Karen Smalls.

17 (WITNESS TAKES STAND)

18 KAREN SMALLS, being duly sworn to
19 tell the truth, the whole truth and nothing
20 but the truth, testified, as follows:

21 DIRECT EXAMINATION

22 BY SOLICITOR HERRING-LASH:

23 Q. Mrs. Smalls, where do you live?

24 A. Rifle Range Road in Mount Pleasant.

25 Q. Are you related to Minor 2 ?

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- 1 A. I am.
- 2 Q. What is your relationship?
- 3 A. I am his mother.
- 4 Q. Who else is in your immediate family?
- 5 A. My husband, Ray, and our two daughters
- 6 -- Cadre, Kimberly and my son Kevin.
- 7 Q. Where do you work?
- 8 A. At Military Academy High School.
- 9 Q. What do you do there?
- 10 A. I am a high school math teacher.
- 11 Q. How long have you been a math teacher?
- 12 A. Since 1999.
- 13 Q. And you are Mr. Burns' what, what ---
- 14 A. Sister?
- 15 Q. When you grew up -- are you older or
- 16 younger than him?
- 17 A. Older.
- 18 Q. Did you have many, many siblings?
- 19 A. We did.
- 20 Q. How many?
- 21 A. I have four sisters and five brothers
- 22 living.
- 23 Q. Was he the youngest in the family?
- 24 A. No, he is not the youngest. He is the
- 25 youngest brother.

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1 Q. The youngest brother?

2 A. Yes.

3 Q. Did you grow up on Venning Road?

4 A. I did.

5 Q. Does your mother still live there?

6 A. She does.

7 Q. What is your mother's health right now?

8 A. She has dementia, early stage Alzheimer.

9 Q. So she is not actually coherent?

10 A. No, she doesn't remember a lot of stuff.

11 Q. During the time that your nieces and
12 nephews and sons were growing up, did they
13 spend a lot of time with their grandmother?

14 A. Yes.

15 Q. And that would have been in the home on
16 Venning Road?

17 A. Yes.

18 Q. Did some of them pretty much live there?

19 A. Yes.

20 Q. Who lived there, as far as your nieces?

21 A. **Minor 4** **████████** lived there, and **Minor 5**
22 **Burns** lived there.

23 Q. Why did they live there?

24 A. **Minor 5**'s mom was in the military and my
25 mom and dad got custody of her when my sister

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1 went away. Then [Minor 4] used to live there
2 because her mother and father were in New
3 York and she had asthma really bad, so they
4 let her stay here where the air is a little
5 better.

6 Q. During the time that [Minor 5] and [Minor 4]
7 lived there, was Mr. Burns also living there
8 for some part of that?

9 A. Yes.

10 Q. Did there come a time that he left and
11 went away?

12 A. Yes.

13 Q. Do you know the dates of when he left
14 and when he came back?

15 A. He went away in 1987, December, and he
16 came back in 1997 about the end of February
17 or the beginning of March.

18 Q. Did you and your family continue to go
19 to that home and stay there?

20 A. Yes.

21 Q. When he came back, did he move back in
22 and stay at that home again?

23 A. He stayed there for a little while, yes.

24 Q. How old was [Minor 2] when he moved back?

25 A. [Minor 2] was seven.

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1 Q. Did [Minor 2] continue to visit over
2 there?

3 A. He did.

4 Q. Do you remember a specific time when you
5 left [Minor 2] there?

6 A. I do.

7 Q. Can you explain to the jury about that?

8 A. Well, there was one time that I remember
9 specifically. My mother sent my sister and I
10 to WalMart to get some stuff for him.

11 Q. When you say him, you ---

12 A. For Alan. We were using her credit
13 card, but she sent us. So I left [Minor 2]
14 there.

15 Q. And was Alan there?

16 A. He was, (affirmative nod).

17 Q. Do you remember if that was one of the
18 first times that he met Mr. Burns?

19 A. It was one of the first times, yes.

20 Q. Do you remember what was going on when
21 you got home?

22 A. It was strange because when I came home,
23 I didn't see [Minor 2] initially. You know,
24 when you're kinda looking around, he was
25 actually in the kitchen under one of my

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1 mother's cabinets.

2 Q. What was he doing under there?

3 A. He was just tucked away in the back of
4 the pots and pans, just trying to -- kinda
5 all curled up in the back.

6 Q. Did you try to get him out?

7 A. I did. I asked him what was going on,
8 why was he under there. My mother came
9 around at the same time and said, oh, you
10 know, he must have been playing, 'Nothing's
11 wrong with that, he can play under there. I
12 will pull some pots out so that there will be
13 a little spot for him and whenever he needs
14 to go under there or wants to go under there,
15 he can go.'

16 Q. Do you remember any other times that
17 Minor 2 was with Mr. Burns?

18 A. I remember specifically at least one
19 more time when we were outside and I -- I
20 came over with my whole family and Alan was
21 supposed to be cutting his hair.

22 Q. Cutting Minor 2's hair?

23 A. Yes.

24 Q. What happened?

25 A. Well, we had this little building in the

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1 back that we called the speakeasy that he
2 used to cut the hair in. I was telling
3 [Minor 2] to go and get a haircut back there
4 and he didn't want to go -- he was crying
5 whatever and I was just thinking that he just
6 didn't want to get a haircut. But I made him
7 go anyway to get the haircut.

8 Q. Was Mr. Burns the one that was cutting
9 his hair?

10 A. Yes.

11 Q. Now, did [Minor 2] go to daycare?

12 A. He did.

13 Q. And where did he go to daycare?

14 A. He went to a daycare on Labor Camp Road
15 in Mount Pleasant.

16 Q. In 1997, was he out of daycare already?

17 A. (Affirmative nod), he was out of
18 daycare.

19 Q. Do you remember any other times that Mr.
20 Burns would give [Minor 2] -- be alone with him
21 or give him rides, anything like that?

22 A. I didn't know of any other times, no.

23 Q. Now, did Mr. Burns also leave Charleston
24 again?

25 A. He did.

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1 Q. When was that?

2 A. It was -- I don't know exactly when but
3 it was like in the early 2000s, 2001 or
4 sometime. I am not exactly sure.

5 Q. Did Minor 2 go away to college?

6 A. He did.

7 Q. Where did he go?

8 A. He went to Coastal Carolina University.

9 Q. Do you know when he started college?

10 A. He graduated high school in 2008, so he
11 would have gone the Fall of 2008.

12 Q. During the time that he was in college,
13 did you get a call one evening from him?

14 A. I did.

15 Q. How was he acting when you received that
16 call?

17 A. He was hysterical. He was on the phone,
18 he was crying. It was a state that I'd never
19 seen him in before.

20 Q. Was this day or night?

21 A. It was at night, about 9:30 or 10:00 at
22 night.

23 Q. What did you do?

24 A. I tried to calm him down but I couldn't.
25 You know, he kept going on and on about him

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1 remembering something. I tried to calm him
2 down. I had another son that was up there.
3 I tried to get him to go over to find out
4 where Minor 2 was. None of that worked, so
5 my husband and I got in the car and we went
6 to Coastal.

7 Q. Were you able to find him?

8 A. We were.

9 Q. When you got there, what was his
10 demeanor like?

11 A. It was pretty much the same.

12 Q. Was he able to discuss with you what had
13 happened?

14 A. Eventually he said that he kept
15 remembering something that happened to him
16 and he was asking me, you know. He said,
17 'I am remembering something happened to me.'
18 I was asking him what, you know. He didn't
19 go into a lot of details. You know, he kept
20 -- I didn't want to probe him too much. You
21 know, I was trying to settle him down.

22 Q. Did y'all bring him home?

23 A. We did, (affirmative nod).

24 Q. Did he eventually tell you that he had
25 been assaulted?

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1 A. He did, (affirmative nod).

2 Q. Did he tell you where he was when he was
3 assaulted?

4 A. He did tell me.

5 Q. Where?

6 A. In my mom's house, in one of the
7 bedrooms that was there.

8 Q. Did he tell you any other place?

9 A. He also told me about -- he told me
10 about that -- he kept asking me questions
11 about the daycare thing and a big car.

12 Q. A big what?

13 A. Car, a big car. He kept asking me --
14 well, he told me about the speakeasy, about
15 the -- I don't think he said about the hair
16 cutting but he remembered going in the
17 speakeasy.

18 Q. Did he tell you when these events
19 occurred?

20 A. As far as ---

21 Q. What year? What timeframe?

22 A. He didn't specifically, you know, tell
23 me exactly what year -- he didn't say what
24 year it was.

25 Q. Has he ever been able to sit down and

1 give you a lot of details?

2 A. No, he hasn't.

3 Q. Does he like to talk to you about this?

4 A. No, and he -- you know, when he talks to
5 me about it, he starts crying and he just
6 gets really in a bad way.

7 Q. Did he return to school?

8 A. He did.

9 Q. For about how long?

10 A. He went back to school. He stayed on
11 for that weekend, then we took him back.
12 Then I had to go back and get him again.

13 Q. How long was that?

14 A. It was within maybe a week or so.

15 Q. Why did you have to go back and get him?

16 A. Because he was still not in a good way.
17 We brought him home and we talked about it
18 some more.

19 Q. Did y'all eventually decide to go to law
20 enforcement?

21 A. Well, he actually decided -- after we
22 talked about it, he decided. I told him, you
23 know, that 'It is your call. I am not going
24 to tell you to do anything. What happened
25 happened to you, so that's a decision that

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1 you have to make because you're grown.' You
2 know? 'Whatever you do, I'm going to support
3 you in that.' That's what he decided that he
4 wanted to do.

5 Q. Did you let him know that you knew about
6 other people, other nieces.

7 A. I did.

8 Q. Had you let him know before that time?

9 A. Before? That this had happened to him?

10 Q. (Affirmative nod).

11 A. I hadn't even spoken to him about that.

12 Q. You had never talked to him?

13 A. No.

14 Q. Did you go to the Police Department with
15 him?

16 A. We did go together. When we went the
17 first time, I don't know but for some reason
18 we didn't go because we thought that they
19 were open or -- for some reason we didn't --
20 it wasn't like he'd changed his mind but --
21 maybe we went to the wrong building or
22 something and we didn't go in. But the
23 second time we went in and I took him.

24 Q. Did you talk with the detective?

25 A. Minor 2 did.

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1 Q. Did she talk to him alone?

2 A. She did.

3 Q. Does [Minor 2] live here now?

4 A. He does.

5 Q. Did the detective have [Minor 2] write a
6 letter to Mr. Burns?

7 A. She did.

8 Q. Do you know why?

9 A. Well, she wanted -- and this was after
10 we'd gone to the police department. I think
11 it was when she'd spoken to him. She wanted
12 him to write a letter to see, you know, if he
13 could get Alan to confess what he'd done.

14 Q. Have you seen other victims after
15 they've told, and you've talked with them?

16 A. About?

17 Q. About their abuse? Have you spoken to
18 them in detail?

19 A. No.

20 Q. Do y'all sit around and talk about this
21 as a family?

22 A. I don't think so. We might talk about
23 -- not about what actually was done to them,
24 but as far as saying that the court date is
25 coming up, that we are going to support each

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1 other as a family. Things like that. That's
2 about it.

3 Q. Do you know why when you found out about
4 the nieces that no one in your family did
5 anything about that?

6 A. I don't know. I mean, I know that I was
7 a lot younger. I didn't have any children
8 myself. I found out -- I think maybe my
9 sister-in-law maybe had mentioned it. But I
10 -- I don't know why that decision was made.

11 SOLICITOR HERRING-LASH: Court's
12 indulgence.

13 THE COURT: Certainly.

14 SOLICITOR HERRING-LASH: Mrs.
15 Smalls, those are all the questions that I
16 have. If you would, please answer any that
17 Mr. Burns may have.

18 THE COURT: You may cross examine,
19 Mr. Burns.

20 CROSS EXAMINATION

21 BY MR. ALAN BURNS:

22 Q. I've only got a couple of questions.
23 How are you doing?

24 A. (No verbal response).

25 Q. The night that Minor 2 called you, you

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1 said that you drove up there. Did you make
2 any inquiries as to whether or not he had
3 been drinking or using any type of drugs or
4 anything?

5 A. No.

6 Q. So there is a possibility that he could
7 have been ---

8 A. I don't know what he was doing as far as
9 drinking.

10 Q. Okay. I understand that you're saying
11 that you don't know but is it a possibility,
12 I'm asking. Yes or no?

13 SOLICITOR HERRING-LASH: Your
14 Honor, I think she answered the question.

15 THE COURT: She said that she doesn't
16 know. Under 602, if she doesn't know she
17 can't speculate. That would be speculation.

18 CROSS EXAMINATION CONTINUED

19 BY MR. ALAN BURNS:

20 Q. When Minor 2 came back, you said that he
21 came back to get his haircut from me. Was
22 this done like a service that you or
23 somebody, him, paid for the haircut? Or did
24 I just do that ---

25 A. Did you charge me?

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1 Q. I am asking the question.

2 A. I don't know. I don't know if I paid or
3 not, but I know that you cut the hair.

4 Q. Okay. And you said that I had went away
5 in December of what year? December of '87?

6 A. Yes.

7 Q. It was September?

8 A. No, it was December.

9 THE COURT: Just answer the
10 question. It's argumentative. Ask another
11 question.

12 MR. ALAN BURNS: That's all that I
13 have. Thank you, Your Honor.

14 THE COURT: Redirect?

15 SOLICITOR HERRING-LASH: No, Your
16 Honor.

17 THE COURT: You may come down,
18 Mrs. Smalls.

19 (WITNESS STEPS DOWN)

20 THE COURT: Call your next
21 witness.

22 SOLICITOR HERRING-LASH: Cathy
23 Burns.

24 (WITNESS TAKES STAND)

25 CATHY BURNS, being duly sworn to

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1 tell the truth, the whole truth and nothing
2 but the truth, testified, as follows:

3 DIRECT EXAMINATION

4 BY SOLICITOR HERRING-LASH:

5 Q. Ms. Burns, where do you live?

6 A. I live at [REDACTED] Rands Hill Road, Mount
7 Pleasant, South Carolina.

8 Q. How long have you lived there?

9 A. Since 1980.

10 Q. Before that where did you live?

11 A. Before that, I moved next door. I lived
12 at my mother-in-law's house, which was [REDACTED]
13 -- [REDACTED] one of the addresses, but I lived
14 right across the street from her.

15 Q. Did the address change from Venning to
16 Rands Hill?

17 A. Yes.

18 Q. And are you related to Alan Burns?

19 A. Yes, I am.

20 Q. How are you related?

21 A. Alan is my husband's baby brother.

22 Q. Do you have children?

23 A. Yes, I do.

24 Q. Who are they?

25 A. [REDACTED] Minor 4 [REDACTED] Cheryl Burns, Olivia

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1 Burns, Oliver Burns III.

2 Q. Are you working right now?

3 A. No, I am not.

4 Q. Have you worked in the past?

5 A. Yes, I have.

6 Q. What was your job?

7 A. I was a kitchen manager at Dunleavy's
8 Pub for eighteen years.

9 Q. And when did you first meet Alan Burns?

10 A. I first met Alan in the summer of 1969.

11 Q. Is that when you met his brother?

12 A. Yes.

13 Q. You've been married to his brother for
14 how long?

15 A. I was married to Oliver for -- since
16 [REDACTED] 1973.

17 Q. And did there come a time that you and
18 Oliver moved away from Charleston?

19 A. Yes. We moved away in, I want to say,
20 1974.

21 Q. Did your daughter, Minor 4, ever have to
22 come back and live here rather than staying
23 with you?

24 A. Yes. Minor 4 came back to South
25 Carolina at the age of five to start

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1 kindergarten and she lived with my mother-in-
2 law.

3 Q. Why did she have to come back here?

4 A. We were getting ready to move back to
5 South Carolina and I was ill at the time --I
6 have epilepsy.

7 Q. So she had to live with Mr. and Mrs.
8 Burns on Venning Road?

9 A. Yes.

10 Q. Was Alan living there at the time?

11 A. Yes.

12 Q. Do you if at that time there were other
13 nieces also living there or staying there a
14 great deal of time?

15 A. At that particular time, I want to say
16 **Minor 5** was staying there. I am uncertain of
17 exactly how many children lived in the house
18 at the time because it was quite a coming-
19 and-going. I can't say specifically but I
20 know that over a period of time the children
21 would stay there.

22 Q. Why did **Minor 5** have to stay there?

23 A. **Minor 5**'s mom went into the military and
24 she was staying with her grandma.

25 Q. What about **Minor 3**?

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1 A. Minor 3 she ---

2 Q. You call Minor 3 "Minor 3", if that
3 right?

4 A. Yeah. Minor 3 was there. I don't
5 remember if she lived in the house
6 permanently but they came in the summer and
7 on the weekends to stay with their grandma.

8 Q. After you moved back to Charleston, did
9 you move kinda across the street?

10 A. Yes.

11 Q. Did you live in a mobile home at the
12 time?

13 A. I lived in a mobile home.

14 Q. And did Mr. Burns visit you in that
15 mobile home?

16 A. Alan?

17 Q. Yes.

18 A. Yes, he did.

19 Q. Did Minor 4 continue to go back and
20 forth between your home and her grandparents'
21 house?

22 A. Yes.

23 Q. Was there a period of time that Mr. Alan
24 Burns left?

25 A. Yes.

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1 Q. When you returned, did Minor 4 continue
2 to visit over there?

3 A. Not as much as she used to. She would
4 go over if I went over or a family member
5 went over.

6 Q. How did y'all celebrate -- deciding
7 about Christmas? Tell us about that.

8 A. At Thanksgiving we would pull names. At
9 Christmastime -- the adults pulled names, the
10 children pulled names, then at Christmas we
11 would all meet at my mother-in-law's house at
12 about 6:00 o'clock and exchange the gifts.

13 Q. And that particular Thanksgiving, did
14 Minor 4 draw Mr. Burns name?

15 A. Yes, she did.

16 Q. What happened?

17 A. She got this funny look in her eyes and
18 I asked her what was wrong. She told me that
19 she had pulled his name. That was the last
20 time that she participated. She put the name
21 back. It was a lot of commotion about why
22 she didn't want to have his name, but we
23 didn't say anything, we just let her put the
24 name back in.

25 Q. Is this after he returned in the home in

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1 '97?

2 A. Yes.

3 Q. While he was gone away, did you receive
4 a letter from him or did your husband receive
5 a letter?

6 A. Yes.

7 Q. And did you open that letter?

8 A. Yes, I did.

9 Q. Why did you open it?

10 A. I opened the letter because about a year
11 prior to the letter, Minor 4 had told me that
12 she was molested.

13 MR. ALAN BURNS: Objection.

14 THE COURT: Basis for objection?

15 MR. ALAN BURNS: Relevancy.

16 THE COURT: Overruled.

17 DIRECT EXAMINATION CONTINUED

18 BY SOLICITOR HERRING-LASH:

19 Q. What did you do with the letter when you
20 opened it?

21 A. I opened the letter, I read it. Once I
22 got through reading it, I took the letter
23 next door to my mother and father-in-law.

24 Q. Why did you do that?

25 A. Because I had held it so long, I wanted

1 someone else to understand what I was
2 holding. I wanted them to see. Because I
3 did not tell my husband about the letter, I
4 wanted someone to see the letter. I went to
5 my mother-in-law and my father-in-law.

6 I read the letter -- halfway through
7 the letter, she took the letter from me and
8 she finished reading the letter.

9 Q. Your mother-in-law did?

10 A. My mother-in-law did. My father-in-law
11 sat in the chair. He didn't say anything.
12 He just had like one tear coming down from
13 his eye. My mother-in-law said, "He's just
14 kidding, that is not true."

15 Q. That what was not true?

16 A. In the letter he wrote that he'd found
17 the Lord, that the Lord had forgiven him and
18 that ---

19 MR. ALAN BURNS: Objection, Your
20 Honor.

21 THE COURT: Basis of objection?

22 MR. ALAN BURNS: Hearsay.

23 SOLICITOR HERRING-LASH: Your
24 Honor, I am fixing to offer the statement.

25 THE COURT: Under 801(d)(2) it is

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1 not hearsay.

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR HERRING-LASH:

4 Q. What else did she say?

5 A. Do you want me to continue?

6 Q. (Affirmative nod).

7 A. The letter said that he'd found the Lord

8 and that if it was within my husband's,

9 Oliver's, heart or whatever, I can't remember

10 word for word, could he please forgive him

11 for what he'd did to Minor 4 and Minor 5.

12 Q. Did you show your husband the letter?

13 A. No, I didn't.

14 Q. Did you tell anybody else about it?

15 A. I told no one about the letter but my

16 mother-in-law and my father-in-law.

17 Q. Why not?

18 A. It's family history. My husband and

19 Alan never really got along that well, lots

20 of domestic violence at times. Lots of

21 arguments. I just took it upon myself not

22 to show it to him because I did not want my

23 husband to go to jail. That was my mindset.

24 Q. Did Minor 4 ever write your husband a

25 letter?

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1 A. Yes, she did.

2 Q. Did you ever give it to him?

3 A. I got the letter one morning. That
4 evening she called and said ---

5 Q. You can't say what she said.

6 A. I got the letter that morning. The
7 letter wasn't given to him until maybe six
8 months later.

9 Q. But you eventually gave it to him?

10 A. Yes.

11 Q. Now, when Alan came home in 1997, did he
12 move back in with your in-laws?

13 A. Yes.

14 Q. During that time, did you ever see him
15 with Minor 1 [REDACTED]?

16 A. Yes.

17 Q. Explain that.

18 A. I would see him with Minor 1 when he
19 would bring her -- we'd say 'in the corner.'
20 When he'd bring her in the corner.

21 Q. Is that what you called where you lived,
22 in the corner?

23 A. Yeah. Where my mother-in-law lived,
24 we'd say that's the corner. I would see her
25 when he brought her in the corner. She lived

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1 in Hickory Shadow. I would see them in the
2 yard, you know, -- no reason.

3 Q. What about [Minor 2] did you ever see him
4 with [Minor 2]

5 A. Yes.

6 Q. What about that?

7 A. Again, maybe on a Saturday or whatever,
8 he used to cut the kids hair.

9 Q. Did there come a time when you realized
10 that this case was going to be reported to
11 the police?

12 A. Yes.

13 Q. What did you do when you heard about
14 that?

15 A. I spoke with my sister-in-law, Karen,
16 and she -- they were going to go to the
17 police about it. I told her that [Minor 4] was
18 willing to go along with it, to support ---

19 Q. [Minor 4]?

20 A. [Minor 4] my daughter. To support him.

21 Q. What kind of social life has [Minor 4]
22 had?

23 A. None. She is thirty-eight years old,
24 never had a boyfriend, never goes out. Every
25 now and then she might go to the movies with

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1 her sisters. The majority of the time she
2 goes to the movies alone. She lives alone.
3 She goes to church and comes to our house.

4 Q. Does she also work?

5 A. Yes.

6 Q. How has she dealt with coming forward?

7 A. She goes for counseling.

8 Q. Did she just start?

9 A. No. Minor 4 has been in counseling for
10 quite a while now. She has a new counselor,
11 but -- (pause).

12 SOLICITOR HERRING-LASH: Court's
13 indulgence for a moment?

14 THE COURT: Certainly.

15 SOLICITOR HERRING-LASH: Ms.

16 Burns, those are all the questions that I
17 have. If you could answer any from Mr.
18 Burns.

19 THE COURT: Any cross-examination,
20 Mr. Burns?

21 MR. ALAN BURNS: Yes, sir.

22 CROSS EXAMINATION

23 BY MR. ALAN BURNS:

24 Q. You mentioned a letter. Where is that
25 letter now?

1 A. I have no idea.

2 Q. Do you know who you gave it to?

3 A. Which one of the letters are you talking
4 about?

5 Q. The letter that you said that I wrote.

6 A. One letter was given to your mother and
7 another letter was given to my husband, and
8 we don't save trash.

9 Q. So those letters don't exist now?

10 A. Not to my knowledge.

11 MR. ALAN BURNS: Your Honor, at
12 this time I would move to have this witness'
13 testimony stricken because she testified to
14 hearsay that can't be substantiated.

15 THE COURT: Overruled. Denied.

16 CROSS EXAMINATION CONTINUED

17 BY MR. ALAN BURNS:

18 Q. You stated that Minor 4 has never had a
19 boyfriend?

20 A. Not to my knowledge. I'm talking about
21 a boyfriend, male/female relationship. No,
22 she has not.

23 Q. Because in her statement she stated that
24 she'd had a boyfriend that she was going to
25 counseling because when she'd tried to have

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1 sex with him that she couldn't.

2 A. Well, she didn't divulge that to me.

3 That's not something that you talk to your
4 mother about.

5 Q. Let me ask you a question about the
6 property that is Rands Hill.

7 A. Property?

8 Q. The property back on Rands Hill.

9 There's been a lot of development going on
10 back in that area where we live?

11 A. Rands Hill, where we live?

12 Q. Yes.

13 A. No, sir.

14 Q. A lot of individual developers coming
15 back ---

16 SOLICITOR HERRING-LASH: I would
17 object to relevancy.

18 THE WITNESS: Not to my
19 knowledge.

20 THE COURT: Hold on just one
21 second, please. Don't answer the question if
22 the lawyer raises an objection. What is the
23 relevance?

24 MR. ALAN BURNS: Motive. Motive
25 for them telling a lie, because they're

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1 trying to sell the property. That's why they
2 don't want me back. My father wrote me a
3 letter that ---

4 THE COURT: I sustain the
5 objection.

6 MR. ALAN BURNS: Okay.

7 CROSS EXAMINATION CONTINUED

8 BY MR. ALAN BURNS:

9 Q. You also stated that you had sent
10 Minor 4 back from New York when she was five
11 years old because you were ill?

12 A. I didn't sent Minor 4 back. I brought
13 Minor 4 to South Carolina. Yes, I was ill.

14 Q. That was why you brought her back?

15 A. I brought her back so that she could
16 start kindergarten.

17 Q. Because you were ill?

18 A. Because I was ill and I was getting
19 ready to move back to South Carolina.

20 Q. Okay. I am just trying to get the facts
21 straight because Karen testified before you
22 and stated that Minor 4 was ill with asthma.

23 A. She did have asthma. That was one of
24 the reasons why we were leaving New York
25 also.

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1 Q. But you didn't move down to South
2 Carolina with Minor 4 when she was five years
3 old; isn't that true?

4 A. I did move back. I moved back in 1980.
5 I left her with Alisteen (phonetic) and
6 Oliver Burns in August.

7 Q. For how long?

8 A. Until I moved down in January 1980.

9 Q. And you left her, in what year did you
10 leave her down?

11 A. 1979.

12 Q. Okay. So the letter that you mentioned,
13 you do not have that?

14 A. (No verbal response).

15 Q. And you and Minor 4, your daughter,
16 you've never discussed anything having to do
17 with the birds-and-bees with her?

18 A. To be honest with you, I did not.

19 Q. Let me ask you this question, too. Do
20 you consider yourself to have been a good
21 mother?

22 A. Uh, ---

23 Q. On a scale of one to ten?

24 A. I'd say I'm a nine-and-a-half.

25 Q. A nine-and-a-half?

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1 A. (No verbal response).

2 Q. Okay. Would the average mother who had
3 had knowledge that their daughter had been
4 molested by somebody, do you think that they
5 would have hid that from their husband,
6 buried it someplace?

7 THE COURT: Mr. Burns, that's --
8 unless you can establish some basis for that,
9 under 602 that's pure speculation on her
10 part. You'd have to lay a foundation before
11 you can ask a question like that, under our
12 rules of evidence.

13 MR. ALAN BURNS: Okay.

14 CROSS EXAMINATION CONTINUED

15 BY MR. ALAN BURNS:

16 Q. So you think that you are being a good
17 mother by not going to your husband and
18 reporting what you'd found out?

19 A. Yes.

20 Q. That was being a good mother?

21 A. Yes.

22 Q. So you didn't consider it as being a
23 danger that I would be coming home? And you
24 said that this happened in what year, that
25 you got the letter?

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1 A. I am not sure what year that I got the
2 letter. She was in college at the time and
3 Mr. Alan Burns was in prison at the time.
4 When Mr. Burns came home from prison, Mr.
5 Burns got married and I gave Mr. Burns the
6 benefit of the doubt that he had changed --
7 because Mr. Burns got married and moved away.
8 Mr. Burns had also written a letter and asked
9 my husband to forgive him for what he had
10 done, so I assumed that Mr. Burns was not
11 going to do it again to -- not only not to
12 Minor 4 but not to anyone else.

13 So I consider myself a good mother
14 because I protected my child, because she did
15 not want anyone to find out -- she didn't
16 want her daddy to think that she was a "bad"
17 person. That's why I did not tell him.

18 Because she did not want her father
19 to look at her disgustingly. She thought
20 that she was a disgusting person because of
21 something that she had no control over, that
22 she didn't tell anybody for eighteen or
23 nineteen years, however long.

24 I protected her. She asked me not
25 to tell, I didn't. When she asked me to

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1 tell, I did.

2 Q. So, again, my question was -- because
3 you still didn't answer my question. My
4 question was, do you consider it to be a good
5 mother to allow the man who you said
6 molested/raped your daughter to come out when
7 you physically had a chance to keep him in
8 prison?

9 A. I am still a good mother. I consider
10 myself a good mother.

11 Q. And were you being a good mother at that
12 time?

13 A. Yes, I ---

14 THE COURT: She's answered ---

15 THE WITNESS: --- was.

16 THE COURT: Hold on. She's
17 answered the question about three times, Mr.
18 Burns.

19 MR. ALAN BURNS: That's all.

20 Thank you.

21 THE COURT: Redirect?

22 SOLICITOR HERRING-LASH: Just one
23 question.

24 REDIRECT EXAMINATION

25 BY SOLICITOR HERRING-LASH:

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1 Q. When you moved back here from New York,
2 did Minor 4 still continue to go over and
3 spend time at the Oliver Burns residence?

4 A. Yes, she did.

5 SOLICITOR HERRING-LASH: Those
6 are all the questions that I have.

7 THE COURT: Recross?

8 MR. ALAN BURNS: (Negative
9 gesture).

10 THE COURT: You may come down.
11 Thank you.

12 (WITNESS STEPS DOWN)

13 THE COURT: Ladies and Gentlemen,
14 at this point we will take our recess for the
15 evening. Do not begin your deliberations,
16 don't discuss this case.

17 Please return -- I have a matter
18 scheduled, not in this case but in another
19 case at about 9:30 and I should be finished
20 with that in about ten or fifteen minutes.

21 Please be in your jury room by 9:45
22 and we will bring you in the courtroom to
23 resume the testimony.

24 Please remember something. You are
25 not at liberty, of course, to talk about this

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1 case among yourselves. Nor are you at
2 liberty to talk with anyone about this case.
3 If there is someone home tonight when you go
4 home, I imagine one of the first questions is
5 going to be, 'What are you doing, what is the
6 case about?' There is a great temptation to
7 want to respond to that. In my humble
8 opinion, I believe that you will have started
9 your individual deliberations if you talk
10 about it at that point. You'll have an
11 opportunity to talk with someone when you've
12 completed the case, but you must wait until
13 you've completed the case before you discuss
14 it with anyone.

15 Have a good evening and I will see
16 you tomorrow at 9:45.

17 (JURY OUT @ 5:00 P.M.)

18 THE COURT: Anything from the
19 State before recessing?

20 SOLICITOR HERRING-LASH: Your
21 Honor, the only thing I wanted to bring to
22 your attention is that I have one witness,
23 and she can be the last of all of these but
24 she cannot testify until Wednesday morning
25 at 9:30 because I had to hire an interpreter

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1 from Columbia and I had to give her a time.

2 THE COURT: That's fine.

3 SOLICITOR HERRING-LASH: I think
4 that Mr. Burns has a witness issues with his
5 expert, that there is one day that she can't
6 be here.

7 THE COURT: Which day is that?

8 MR. ALAN BURNS: Thursday, Your
9 Honor.

10 THE COURT: Good, neither can I.
11 We are not going to be holding court on
12 Thursday. The witness could testify before
13 Thursday?

14 MR. ALAN BURNS: I don't know.

15 TED SMITH: I think that it is
16 possible that she could come in late
17 Wednesday afternoon. I'll just need to
18 double check.

19 THE COURT: If you would check,
20 just as a back up.

21 TED SMITH: I know that she is
22 fully free on Friday.

23 THE COURT: It may be Friday that
24 we have to hear it. I just -- if things move
25 and we get to the point and we can put it in,

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1 I would love to do that. That would -- I
2 don't know how many witnesses that we have.
3 I want to have Friday really more as a point
4 for arguing and charging and deliberation,
5 than to have testimony. But if it is
6 necessary, that's fine.

7 TED SMITH: Thank you, Your Honor.

8 THE COURT: Anything from the
9 Defendant at this point?

10 MR. ALAN BURNS: No, Your Honor.

11 THE COURT: We're off the record.

12 (OFF RECORD DISCUSSION)

13 THE COURT: Okay. We will be at-
14 ease in this case until 9:45.

15 (COURT IN RECESS)

16 (TRANSCRIPT CONTINUED NEXT PAGE)

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1 AUGUST 7, 2012 9:45 A.M.

2

3 (DEFENDANT PRESENT)

4 THE COURT: Is the Defendant ready
5 to proceed?

6 MR. ALAN BURNS: Yes, sir.

7 THE COURT: Good morning. Is
8 there anything before we bring in the jury,
9 from the State?

10 SOLICITOR HERRING-LASH: Yes,
11 Judge. I just wanted to -- yesterday after
12 **Minor 2** and Cathy Burns left the stand, he
13 subpoenaed ---

14 THE COURT: Let's have order,
15 please!

16 SOLICITOR HERRING-LASH: --- them
17 and I just wanted to make sure because if he
18 plans on calling Ms. Burns -- because her
19 daughter was testifying and if she could
20 testify first so that she could be in here
21 for her daughter.

22 THE COURT: Yes.

23 SOLICITOR HERRING-LASH: I know
24 that if has a real issue to subpoena them,
25 they -- they were on the stand already.

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1 THE COURT: Let's deal with them
2 one at a time.

3 SOLICITOR HERRING-LASH: Okay.

4 THE COURT: The subpoena that was
5 issued for Ms. Burns, is that -- is she free
6 to leave now or do you plan to call her in
7 your case?

8 MR. ALAN BURNS: I plan to call her
9 in my case.

10 THE COURT: So you plan to recall
11 her?

12 MR. ALAN BURNS: Yes, sir. I want
13 her on standby, because I want to call her
14 later.

15 THE COURT: That's fine.

16 SOLICITOR HERRING-LASH: Being on
17 standby -- is being in the courtroom an
18 issue?

19 THE COURT: Well, if he plans to
20 call her, she can't be in the courtroom.
21 Thank you.

22 SOLICITOR HERRING-LASH: And the
23 other witness that has been subpoenaed is
24 Chief Harry Sewell. He just wants some idea
25 -- he gave me his cell phone number but he's

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1 got a lot of ---

2 THE COURT: Tell him I can't
3 address that. He can file a motion to quash
4 the subpoena if he wants to, but that's the
5 only way that I am going to respond to what
6 he should do. I would suggest that he might
7 want to contact Mr. Burns, come talk to him.
8 From the standpoint of me responding, I am
9 not -- I'd love to but you've got -- it's got
10 to be before me some way before I can respond
11 to that.

12 SOLICITOR HERRING-LASH: I will
13 call him back and just see what he ---

14 THE COURT: Tell him -- you know,
15 he's got to -- I think that there is a
16 counsel for the department and I think that
17 they know how to file a motion to quash.
18 I've seen it done a lot of times and I've
19 heard it a lot of times, in civil matters for
20 sure. So he has recourse.

21 So tell him -- I'm not being callous
22 to his request. I understand what he is
23 asking me, and I don't blame him.

24 I don't know what he is going to
25 testify to either but that's not a matter

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1 that I can address right now.

2 SOLICITOR HERRING-LASH: Well, I
3 will talk to him over the break.

4 THE COURT: Anything else?

5 SOLICITOR HERRING-LASH: No, Your
6 Honor.

7 MR. ALAN BURNS: Uh, ---

8 THE COURT: Yes, sir?

9 MR. ALAN BURNS: If I may, there's
10 just one thing that I want to be clear on.
11 Yesterday before we began, I made a motion
12 with regards to the grand jury.

13 THE COURT: Yes, sir.

14 MR. ALAN BURNS: The way that I
15 explained it, it sounded like I was asking
16 for the documents again but that wasn't what
17 I was requesting.

18 THE COURT: I didn't take it that
19 way.

20 MR. ALAN BURNS: I was just asking
21 because I wanted to try to get a hearing so
22 that you can decide the legality of the grand
23 jury process.

24 THE COURT: I saw Judge McDonald
25 to confirm. She heard that. She heard the

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1 issue concerning the issue concerning the
2 Grand Jury. Her ruling was -- she told --
3 her discussion with me was, 'I asked Ms.
4 Herring-Lash, did you give him everything
5 he needed in response to Rule 5?' "Yes."
6 The Motion to set aside the grand jury based
7 on the Rule 5 submissions has been denied.
8 So that matter has been addressed. Thank
9 you, sir.

10 MR. ALAN BURNS: Thank you, sir.

11 THE COURT: As I indicated to you,
12 that is a ruling that is subject to review,
13 if need be. Okay?

14 MR. ALAN BURNS: Thank you, sir.

15 THE COURT: You bet. Anything
16 else?

17 SOLICITOR HERRING-LASH: No, Your
18 Honor

19 THE COURT: Okay, let's bring in
20 our jury.

21 (JURY IN @ 9:58 A.M.)

22 THE COURT: Good morning, Ladies
23 and Gentlemen. I hope you had a good
24 evening, and a safe trip in with this
25 inclement weather. I know this is not a

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1 place you'd wish to spend your day, but at
2 least it's the kind of day where there's no
3 temptation to be elsewhere. That's for sure.

4 I ask you to now give your attention
5 to the next witness. Good morning, Ms.
6 Herring-Lash, you may call you first witness.

7 SOLICITOR HERRING-LASH: The
8 State calls Minor 4 [REDACTED].

9 (WITNESS TAKES STAND)

10 Minor 4 [REDACTED] being duly sworn to
11 tell the truth, the whole truth and nothing
12 but the truth, testified, as follows:

13 DIRECT EXAMINATION

14 BY SOLICITOR HERRING-LASH:

15 Q. What is your date of birth?

16 A. [REDACTED]

17 Q. Where do you live?

18 A. In Mount Pleasant.

19 Q. And where do you work?

20 A. I work for the Charleston County School
21 District.

22 Q. Are you a teacher?

23 A. Yes.

24 Q. How long have you been a teacher,

25 Minor 4 [REDACTED]

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1. A. This will be twelve years.
2. Q. What grades do you teach?
3. A. I've taught first grade, third grade and
4. now I teach kindergarten.
5. Q. Where do you teach?
6. A. Mary Ford Elementary School.
7. Q. Who is in your immediate family?
8. A. Oliver Burns, Jr.; Cathy Burns;
9. Sherrill, Olivia, and Christopher Burns.
10. Q. Are you also related to Alan Burns?
11. A. Yes.
12. Q. How are you related to him?
13. A. He is my uncle, my father's youngest
14. brother.
15. Q. When you were growing up, did there
16. come a time when you stayed with your grand-
17. parents, Mr. Burns' parents?
18. A. Yes.
19. Q. Where were your parents when you stayed
20. with them?
21. A. They were in New York and then they came
22. down later.
23. Q. After they came down, did you continue
24. to spend time with your grandparents?
25. A. Yes.

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1 Q. Did Alan Burns live there during this
2 time period?

3 A. Yes.

4 Q. What ages were you that you spent time
5 around Mr. Burns?

6 A. As far as I can remember, from the age
7 of about five to eight years old; then off
8 and on as I got older, because we moved out.

9 Q. Minor 4 do you recognize this picture?

10 A. Yes.

11 Q. What is that?

12 A. A picture of me in first grade. It's a
13 school picture.

14 SOLICITOR HERRING-LASH: Your Honor,
15 at this time I would offer State's Exhibit 18
16 into evidence.

17 THE COURT: Any objection?

18 MR. ALAN BURNS: No, sir.

19 THE COURT: Without objection,
20 State's Exhibit 18 is admitted.

21 (SO ENTERED AS STATE'S EXHIBIT 18.)

22 DIRECT EXAMINATION CONTINUED

23 BY SOLICITOR HERRING-LASH:

24 Q. Minor 4, is that a picture of you during
25 this timeframe that we are talking about?

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1 A. Yes.

2 Q. Were there other cousins also around?

3 A. I just remember [Minor 5] being there.

4 Q. Do you ever remember [Minor 3] every
5 visiting or being there?

6 A. No.

7 Q. You just remember [Minor 5]

8 A. Yes.

9 Q. Did there come a time, [Minor 4] that
10 anything happened to you at your grand-
11 mother's home?

12 A. Yes.

13 Q. Where were you in that house?

14 A. In Alan's room.

15 Q. [Minor 4], I show you what has been marked
16 for ID as State's Exhibit 19. Do you
17 recognize that?

18 A. Yes.

19 Q. What is that?

20 A. Grandmama's house.

21 Q. Okay.

22 SOLICITOR HERRING-LASH: Your
23 Honor, at this time I would offer State's
24 Exhibit 19 into evidence.

25

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1 THE COURT: Any objection?

2 MR. ALAN BURNS: No, sir.

3 THE COURT: Without objection,
4 State's Exhibit 19 is admitted.

5 (SO ENTERED AS STATE'S EXHIBIT 19)

6 DIRECT EXAMINATION CONTINUED

7 BY SOLICITOR HERRING-LASH:

8 Q. **Minor 4**, do you see -- can you tell in
9 that picture which room was Alan's room?

10 A. The far corner in the back, where the
11 light is coming through.

12 Q. Is that the room that you are talking
13 about?

14 A. Yes.

15 Q. What happened in that room?

16 A. There was a set of bunk beds in that
17 room. The head of the bed was near the door,
18 the foot of the bed is near the window facing
19 out towards the back of the house. **Minor 5**
20 was at that end near the window. I was at
21 the other end. Alan was inbetween us, in the
22 bed on his knees -- I can't remember the
23 exact position. He took his penis out,
24 masturbated and ejaculated on me.

25 Q. Did he say anything to you?

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1 A. I don't remember.

2 Q. Did you say anything to him?

3 A. I don't remember.

4 Q. Do you remember if Minor 5 said or did
5 anything?

6 A. No.

7 Q. Do you have a very difficult time
8 remembering this period in your life?

9 A. Yes.

10 Q. Have you tried to remember?

11 A. No.

12 Q. Do you want to?

13 A. No.

14 Q. Now, do you remember if anybody else
15 came into the room or anything like that?

16 A. I don't remember anybody ever coming
17 into that room.

18 Q. Did you ever see him do something to
19 anyone else?

20 A. Not that I remember, no.

21 Q. Did something happen to you at another
22 place, on another occasion?

23 A. Yes. After we moved into our trailer, I
24 don't know why he was there but we were in
25 our room -- Olivia, Sherill, Christopher was

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1 there.

2 Q. Are those your siblings?

3 A. Yes. We were on the floor playing a
4 board game. He was there with us. I don't
5 know -- I don't know why. He was touching
6 me, I don't know where but I know he was
7 doing something wrong. He was hiding it from
8 them, he wouldn't let them see what he was
9 doing.

10 Q. Do you remember how you felt?

11 A. I knew that something wrong was
12 happening.

13 Q. Did you ever tell anyone about this?

14 A. When I was in the fifth grade, I told my
15 best friend at the time.

16 Q. What prompted that?

17 A. We were watching a video in class about
18 good touching and bad touching. I told her
19 that had happened to me. She just looked at
20 me. I told her not to tell anybody. We
21 never talked about it again.

22 Q. Do you know where she is today?

23 A. No. She went to Moultrie Middle School
24 and I never saw her again.

25 Q. Did there come a time when you told your

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1 mom, Cathy Burns?

2 A. Not until I was in college.

3 Q. When you told her when you were in
4 college, what happened?

5 A. Nothing really. I told her. She got
6 this stunned expression on her face. She
7 didn't say anything for awhile. I don't
8 remember what came after that.

9 Q. Did you tell your dad?

10 A. No.

11 Q. Why did you decide to come forward at
12 this point at time, in 2010, with this
13 touching?

14 A. [Minor 2] came to me and asked me to speak
15 to the detective about what happened and I
16 told him that I would.

17 Q. Do you know how [Minor 2] knew?

18 A. No.

19 Q. Did you go to the police?

20 A. Detective Bacon actually called me on
21 the phone and my mom drove me to the police
22 station.

23 Q. Then you talked to the detective?

24 A. Yes.

25 Q. How do you feel about coming forward?

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1 A. I don't want to be here.

2 Q. Have you discussed these details with
3 any family members?

4 A. No.

5 SOLICITOR HERRING-LASH: Court's
6 indulgence for a moment.

7 THE COURT: Certainly.

8 SOLICITOR HERRING-LASH: Minor 4
9 those are all the questions that I have. You
10 will now need to answer any that Mr. Burns
11 has for you.

12 THE WITNESS: That's fine.

13 THE COURT: You may cross-examine,
14 Mr. Burns.

15 CROSS EXAMINATION

16 BY MR. ALAN BURNS:

17 Q. How long have you been a teacher?

18 A. I already answered that.

19 THE COURT: No, ma'am. Let me --
20 you'll answer the questions unless an
21 objection is made.

22 THE WITNESS: I've been a
23 teacher for eleven years.

24 CROSS EXAMINATION CONTINUED

25 BY MR. ALAN BURNS:

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1 Q. Your first teaching job, where was that?

2 A. McNair Elementary School.

3 Q. Where is that located at?

4 A. On Spruill Avenue.

5 SOLICITOR HERRING-LASH: Your
6 Honor, objection to relevance.

7 THE COURT: Sustained. Move on to
8 something relevant, please.. What she is
9 doing today is not relevant, unless you can
10 lay a foundation for its relevancy.

11 CROSS EXAMINATION CONTINUED

12 BY MR. ALAN BURNS:

13 Q. Did you ever work at Midland Park
14 Elementary School?

15 A. As a substitute.

16 Q. During that time, you didn't have a
17 driver's license or your own transportation;
18 is that right?

19 A. No.

20 SOLICITOR HERRING-LASH: Your
21 Honor, I would object to the relevance.

22 THE COURT: Sustained.

23 CROSS EXAMINATION CONTINUED

24 BY MR. ALAN BURNS:

25 Q. At some point in time you had to catch a

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1 ride to and from work?

2 THE COURT: I have already
3 sustained the objection as to relevancy.

4 MR. ALAN BURNS: May I approach
5 the bench, Your Honor?

6 THE COURT: You surely may, sir.

7 (OFF RECORD BENCH CONFERENCE)

8 CROSS EXAMINATION CONTINUED

9 BY MR. ALAN BURNS:

10 Q. On several occasions, do you recall
11 calling me and asking me to pick you up from
12 Midland Park Elementary School, to give you a
13 ride home?

14 A. I never called you to pick me up from
15 Midland Park.

16 Q. Did I ever pick you up from Midland
17 Park?

18 A. No.

19 Q. Your mother never called me and asked me
20 to pick you up from Midland Park Elementary
21 either?

22 A. No.

23 Q. When you were college, you attended
24 Charleston Southern; is that correct?

25 A. Yes.

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1 Q. Did you ever write to me, write letters
2 or anything to me while I was away?

3 A. Not while I was in Charleston Southern.

4 Q. When was that that you wrote a letter to
5 me?

6 A. I wrote you a letter when I was in
7 Spartanburg Methodist College.

8 Q. Spartanburg. And at that time you sent
9 me a picture, a large picture?

10 A. I don't recall that.

11 Q. Did you ever take a picture where you
12 was wearing black pants, pink top, and
13 sitting on a director's chair?

14 A. I don't recall that.

15 Q. But you did write to me when you were in
16 college?

17 A. Spartanburg Methodist, yes.

18 Q. Okay. Was it only one time or more than
19 one time that you wrote to me?

20 A. I don't know.

21 Q. But you stated a little while ago that
22 while you was in college that I'd told your
23 mother that I had done something to you?

24 A. Yes.

25 Q. But you were still writing to me?

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1 A. No, I was not.

2 Q. At some point during, I believe around
3 '98. '99, did you and I have an agreement for
4 you to tutor my son?

5 A. No.

6 Q. Okay. So my son, Danny, never ever was
7 tutored by you?

8 A. No.

9 Q. Okay. Did you and I ever have any
10 conversation regarding you tutoring my son?

11 A. No.

12 Q. Have you ever seen this photo, Minor 4

13 A. No. I am not even in that picture.

14 Q. No, I didn't ask you ---

15 THE COURT: Mr. Burns, you've
16 shown her something. Remember that we are
17 keeping a record, so we need to have it
18 identified. Have it marked for
19 identification.

20 COURT REPORTER: Defendant's
21 Exhibit 4 for identification.

22 THE COURT: Defendant's Exhibit 4
23 for identification only.

24 COURT REPORTER: Is there another
25 one that you want me to mark?

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1 MR. ALAN BURNS: Yeah.

2 COURT REPORTER: Defendant's

3 Exhibit 5 for identification.

4 THE COURT: Exhibit 5, a photo.

5 CROSS EXAMINATION CONTINUED

6 BY MR. ALAN BURNS:

7 Q. Have you ever seen this photo?

8 THE COURT: What is "this",

9 Exhibit 5?

10 MR. ALAN BURNS: Defendant's

11 Exhibit 5.

12 THE COURT: Thank you, sir.

13 CROSS EXAMINATION CONTINUED

14 BY MR. ALAN BURNS:

15 Q. Have you ever seen this photo,

16 Defendant's Exhibit 5?

17 A. I saw that photo yesterday.

18 Q. You say that you saw this photo

19 yesterday?

20 A. Yes.

21 Q. When you were preparing for your

22 testimony today?

23 A. No. No, but I've seen that picture.

24 Q. Who had possession of the photo when you

25 saw it yesterday, if you don't mind me

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1 asking?

2 A. The solicitor.

3 Q. So when she showed it to you -- she
4 showed it to you for ---

5 A. She asked me about the picture. I told
6 her that I didn't know anything about the
7 picture, the same thing I'm telling you. I
8 don't know anything about the picture.

9 Q. Did you see this one yesterday as well?

10 A. No.

11 THE COURT: What is this one?

12 MR. ALAN BURNS: Exhibit 4.

13 THE COURT: She's denied seeing
14 that, never seen it. You've already asked a
15 question about it. Five, she admits that she
16 saw it yesterday.

17 CROSS EXAMINATION CONTINUED

18 BY MR. ALAN BURNS:

19 Q. Do you recall the birthday party that
20 took place where those photos were taken?

21 A. No, I do not.

22 Q. So you weren't at a birthday party ---

23 THE COURT: That's an improper
24 phrasing. You asked her did she recall it.
25 She didn't say that she wasn't. She didn't

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1 recall it, so you -- you can restate your
2 question, please.

3 MR. ALAN BURNS: Okay. That's
4 all. Thank you.

5 THE COURT: Redirect?

6 SOLICITOR HERRING-LASH: Yes,
7 Your Honor, just briefly.

8 REDIRECT EXAMINATION

9 BY SOLICITOR HERRING-LASH:

10 Q. Minor 4 ---

11 A. Yes?

12 Q. --- you said that you did write Mr.
13 Burns a letter?

14 A. Yes.

15 Q. Do you know when that was?

16 A. It was between '92 and '94.

17 Q. And do you know what -- what was the
18 purpose of you writing him?

19 A. He wrote to me and grandmama asked me to
20 write to him. I did what she asked me to do.

21 SOLICITOR HERRING-LASH: Those
22 are all the questions that I have, Your
23 Honor.

24 THE COURT: Recross?

25 MR. ALAN BURNS: No, Your Honor.

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1 THE COURT: Thank you, you may
2 come down.

3 (WITNESS STEPS DOWN)

4 THE COURT: Call your next
5 witness, please.

6 SOLICITOR HERRING-LASH: Your
7 Honor, may Minor 4 be excused?

8 MR. ALAN BURNS: Any objection,
9 Mr. Burns?

10 MR. ALAN BURNS: No, Your Honor.

11 THE COURT: She is free to leave.

12 SOLICITOR HERRING-LASH: Minor 5
13 Burns-Handy.

14 THE COURT: Very well.

15 (WITNESS TAKES STAND)

16 Minor 5 [REDACTED], being duly sworn
17 to tell the truth, the whole truth and
18 nothing but the truth, testified, as follows:

19 DIRECT EXAMINATION

20 BY MR. ALAN BURNS:

21 Q. Minor 5, where do you live?

22 A. I live in Fayetteville, North Carolina.

23 Q. What is your date of birth?

24 A. [REDACTED] [REDACTED] [REDACTED]

25 Q. Who do you live with?

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- 1 A. My three children.
- 2 Q. What is your job right now?
- 3 A. I am a student.
- 4 Q. What are you studying?
- 5 A. Elementary education.
- 6 Q. Do you do any activities?
- 7 A. I volunteer thirty-five hours a week at
- 8 my daughters elementary school.
- 9 Q. Are you going to be a substitute teacher
- 10 there?
- 11 A. Yes, I am. I just obtained my license
- 12 to do that.
- 13 Q. And how long have you lived in North
- 14 Carolina?
- 15 A. Since [REDACTED] 2005.
- 16 Q. And was your mother in the military at
- 17 some point?
- 18 A. Yes, she was.
- 19 Q. Is that how you ended up at Fort Bragg,
- 20 in Fayetteville?
- 21 A. Yes. My mother and my stepfather are
- 22 both retired military.
- 23 Q. Are you related to Alan Burns?
- 24 A. Yes, I am.
- 25 Q. How are you related to him?

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- 1 A. He is my maternal uncle.
- 2 Q. So he is your mom's brother?
- 3 A. He is my mom's brother.
- 4 Q. Are you related to Alisteen and Oliver
- 5 Burns?
- 6 A. Yes, I am.
- 7 Q. How are you related to them?
- 8 A. They are my mother's parents.
- 9 Q. Did you live with them?
- 10 A. Yes, I did.
- 11 Q. Did they actually get custody of you for
- 12 a while?
- 13 A. Yes, they did.
- 14 Q. When was that, and why?
- 15 A. They got custody of me at the age of, I
- 16 want to say three. My mother was going in
- 17 the military, she was a single parent and she
- 18 could not enter the military as a single
- 19 parent, she had to forfeit legal custody of
- 20 me to someone else. So she gave legal
- 21 custody of me to her parents.
- 22 Q. How long did you stay in their custody
- 23 or stay with them?
- 24 A. I was with them from birth up until I
- 25 was seven, and then I went to live with my

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1 mom and her exhusband in Germany.

2 Q. How long did you stay in Germany before
3 coming back?

4 A. I went there in December of '84 and I
5 came back in June of '86.

6 Q. Then you stayed there, in Mount
7 Pleasant, for a while after that?

8 A. Yes, I did.

9 Q. And while you were living there at your
10 grandparents' house -- well, first of all, I
11 want to show you -- I am going to show you
12 what has been marked for ID as State's
13 Exhibit 13. Do you recognize that?

14 A. Yes, I do.

15 Q. What is that a picture of?

16 A. That's a picture of me, my first grade
17 picture.

18 Q. That's during the time that you were
19 living with your grandparents?

20 A. Yes.

21 Q. During the time that you were living
22 with your grandparents, did something happen
23 to you?

24 A. Yes.

25 Q. Can you tell us the first time that you

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1 remember?

2 A. The first time that I remember anything
3 happening to me, I was about two or almost
4 three years old. We were on the porch at my
5 grandmother's house. I was in a red crib. I
6 remember being in the crib, I remember my
7 Uncle Alan coming out there -- what he
8 originally came out there for, I have no
9 idea. But I was in a crib, he was reaching
10 his hand through the crib. Most of that was
11 just him fondling me.

12 Q. Was there another time?

13 A. There were many other times.

14 Q. Tell us about the next time that you
15 remember details.

16 A. The next time that I can remember -- at
17 this time I think that I was about maybe
18 three. I had just turned three. It was a
19 birthday party that I think that they were
20 having for me. It was more like a barbeque
21 where we were all in the yard, all the
22 neighborhood people, all my aunts and all
23 them. At this time, I had came in to use the
24 restroom and he was in the house then. That
25 time, he was just -- it was just fondling

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1 that time also.

2 Q. Do you remember what you had on that
3 day?

4 A. I had on a yellow jumper. It was like a
5 romper. It had two ties on the sides and had
6 red in it. I don't know why I remember but I
7 just remember that that is what I had on.

8 Q. I am going to show you what has been
9 marked as State's Exhibit 14 for ID. Do you
10 recognize that picture?

11 A. Yes, I do.

12 Q. What is that?

13 A. It's a picture of the party that we were
14 having at my grandmother's house, in her
15 yard.

16 SOLICITOR HERRING-LASH: Your
17 Honor, at this time the State would offer
18 into evidence State's Exhibit 14.

19 THE COURT: Any objection, Mr.
20 Burns?

21 MR. ALAN BURNS: Yes, I would
22 object, Your Honor.

23 THE COURT: What is the basis of
24 the objection?

25 MR. ALAN BURNS: That picture was

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1 never given to me in discovery.

2 THE COURT: Thank you, sir.

3 Subject to the objection of Counsel, it's
4 admitted. State's Exhibit 14.

5 (SO ENTERED AS STATE'S EXHIBIT 14

6 SUBJECT TO OBJECTION OF DEFENSE)

7 DIRECT EXAMINATION CONTINUED

8 BY SOLICITOR HERRING-LASH:

9 Q. Is that the barbeque that you were
10 talking about?

11 A. Yes.

12 Q. Is that what you were describing that
13 you had on at the time?

14 A. That is what I was describing.

15 Q. Now, is there another time when
16 something happened to you?

17 A. The next time that I remember, I think
18 that I was still also four at this time, we
19 were in his room.

20 Q. By "his" room, who do you mean?

21 A. I mean Alan's room. His room was
22 located down the hallway at my grandmother's
23 house, all the way to the back on the left-
24 hand side.

25 Q. Let me get back -- if you look at the

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1 pictures that have already been admitted into
2 evidence, do you see his room there?

3 A. Yes, I do.

4 Q. Which room is it?

5 A. It is the third door on the left.

6 THE COURT: What exhibit is that?

7 SOLICITOR HERRING-LASH: Exhibit
8 19 that I am showing the witness.

9 THE COURT: Thank you.

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR HERRING-LASH:

12 Q. What happened that day?

13 A. That particular day, he had me and -- to
14 the best of my recollection -- I think

15 **Minor 4**. His way of getting us into his room
16 was always that he wanted us to come hear him
17 play his trumpet. I remember this trumpet
18 because it was like no other trumpet I've
19 ever seen. I haven't seen one since. That's
20 not to say that they don't exist but -- this
21 one was silver, where every other trumpet was
22 gold. It had like a silver tint to it.

23 When we went in the room, there were
24 bunk beds up along the back of the wall.
25 He -- it was like a closet that they had

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1 makeshift, like a rod that was going from one
2 corner of the wall to the next corner of the
3 wall. When you first walked in, there was a
4 dresser right there.

5 It was me and Minor 4 in there. He was
6 doing things to her. At this particular
7 time, I was just watching.

8 Q. How was Minor 4 acting?

9 A. She was scared, she was crying, I was
10 scared for her because I was watching this
11 happen to her and there was nothing that I
12 could do about it. So at that time, I didn't
13 know what was bothering me the most, the fact
14 that he was doing this to her or the fact
15 that I was there watching and couldn't do
16 anything about it.

17 Q. You were younger than Minor 4

18 A. I was younger. I am three years younger
19 than her.

20 Q. Was there a time when you and Minor 4 --
21 well, did you see other things happen to
22 Minor 4?

23 A. I saw many other things. I saw him
24 trying to penetrate her on numerous times.
25 I saw him had her fondle him.

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1 Q. Where would y'all be?

2 A. I saw Alan fondle [Minor 4] and I saw Alan
3 make [Minor 4] fondle him.

4 Q. Where were you?

5 A. I was sitting by the dresser.

6 Q. What room?

7 A. We were in his room. And I watched him
8 ejaculate on her leg. When I thought it was
9 over, then he turned around and he got me.

10 Q. What did he do to you?

11 A. He put me on the bed, he got on top of
12 me and he tried to enter me anally.

13 Q. When he did that, how did that feel?

14 A. It hurt. It felt like my insides was
15 ripping out.

16 Q. What happened after that?

17 A. He told me to stop crying, to be quiet.
18 He used to put his hands over our mouths. He
19 was gonna kill us, he was going to kill our
20 parents.

21 Q. Did you tell anybody at this time?

22 A. At this particular time, no.

23 Q. Why not?

24 A. Because I honestly believed him.

25 Q. That ---

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1 A. Because I felt like he was hurting me,
2 so anything that he said he was going to do,
3 he was going to do it.

4 Q. Did there come a time when any adult
5 walked in on y'all?

6 A. My Aunt Jacqueline walked in to us.

7 Q. What happened?

8 A. She called her husband, Davey. Davey
9 came and Davey beat him.

10 Q. Did she call anyone else?

11 A. She called my grandmother.

12 Q. What did your grandmother do?

13 A. My grandmother came home and beat him
14 some more. They beat him really bad.
15 Personally, I wanted them to beat him until
16 he couldn't breathe anymore. But -- that's
17 what I was thinking at that time.

18 Q. What happened when they were beating
19 him?

20 A. Alan ran in the bathroom, jumped out the
21 window -- and he decided that he wanted to go
22 and call the police. The police came -- and
23 for the life of me, I have no idea why they
24 sent him away, or whatever they said, but
25 nothing was done.

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1 Q. How did that make you feel?

2 A. I had mixed emotions. When they were
3 beating him, I thought it was all over. I
4 thought 'this is it, this is going to be
5 over, this is never going to happen to me
6 again.' But then it didn't stop.

7 I don't know if he became more enraged
8 because of what happened, but it didn't stop.

9 Q. Did it change?

10 A. It changed, (affirmative nod).

11 Q. How did it change?

12 A. He became more vindictive with it, as if
13 it wasn't already vindictive enough.

14 Q. Do you remember another event when
15 something happened?

16 A. I remember there were times when I would
17 get up in the middle of the night -- (sighs).

18 Q. What would you get up for?

19 A. I would get up to go use the bathroom --
20 you'll have to excuse me -- (emotional) --
21 because I am trying to contain myself.

22 Q. Get a glass of water.

23 A. No, it is ---

24 Q. I want to show you what has been
25 previously marked for ID purposes as State's

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1 Exhibit 17. Do you recognize that?

2 A. Yes, I do.

3 Q. Is the bathroom that you're talking
4 about in ---

5 A. This is a picture of the bathroom. I
6 mean, it's been remodeled but that's the
7 bathroom. It's still in the same place.

8 SOLICITOR HERRING-LASH: Your
9 Honor, at this time we would offer State's
10 Exhibit 17 into evidence.

11 THE COURT: Any objection?

12 MR. ALAN BURNS: No objection,
13 Your Honor.

14 THE COURT: Without objection,
15 State's Exhibit 17 is admitted.

16 (SO ENTERED AS STATE'S EXHIBIT 17)

17 DIRECT EXAMINATION CONTINUED

18 BY SOLICITOR HERRING-LASH:

19 Q. Is that the bathroom?

20 A. That is the bathroom.

21 Q. And you said that you got up in the
22 middle of the night to go to the bathroom.

23 A. Yes.

24 Q. What happened?

25 A. I was taken to Alan's room.

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1 Q. You were what?

2 A. He took me to his room, Alan took me to
3 his room.

4 Q. Can you see his room up there too?

5 A. Yes, his room is the room where the door
6 is open and the light is coming out, at the
7 far end on the left.

8 We heard a noise -- I don't know what it
9 was. I know at that particular time that my
10 grandfather, who was a merchant marine
11 seaman, was home during this time and he
12 normally walked the house, so I assumed that
13 it was him. I was told to go back to my
14 room. But I remember after that time it was
15 just to the point where I started using the
16 bathroom on myself. It was me wetting the
17 bed all the time. Then there were times that
18 I was so constipated because of the things
19 that he did to me where I just couldn't use
20 the bathroom at all.

21 Q. When you say the things that he did to
22 you, what are you talking about?

23 A. I am talking about the things when he --
24 I don't know any other way to put it, when he
25 raped me anally. Because that's what it was.

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1 Q. Did that happen more than once?

2 A. It happened on more than one occasion.

3 Q. Where was it that it happened?

4 A. The majority of the time it was always
5 in that room.

6 Q. And you said that you had constipation?

7 A. Yes, I did.

8 Q. Did you ever go to a doctor about any of
9 these issues?

10 A. I went to a doctor -- I can't remember
11 where it was. I just remember being in this
12 room. I remember a catheter being stuck
13 inside me. They had me laying there for
14 hours. It was to see -- they told me that I
15 was being tested to see if I had a bladder
16 problem, a bladder control problem. I don't
17 know if they were waiting to see if how often
18 I was going to go to the bathroom or
19 whatever. I remember numerous occasions
20 where I had to be taken to the doctor for
21 being constipated and given enemas.

22 Q. During the time that they tested your
23 bladder, is that when you were wetting the
24 bed so much?

25 A. Yes.

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1 Q. Now, did you ever witness anything
2 happen to [Minor 3]

3 A. Only on one occasion.

4 Q. What was that?

5 A. That was one occasion where it was me,
6 [Minor 3] and [Minor 4] in the room. I never
7 could figure out why all three of us had to
8 be there. I don't know if it was just that
9 if we were all together then nobody would
10 assume we were one and not the other. But
11 the only thing that I can remember him doing
12 to her was him fondling her. I never
13 remember him trying to penetrate her. I do
14 remember him trying to penetrate [Minor 4]

15 Q. What part of [Minor 3]'s body did you see
16 him attempt to fondle or to fondle?

17 A. Her vagina area, him making her touch
18 him.

19 Q. Did you and [Minor 4] and [Minor 3] ever
20 talk about this?

21 A. This is nothing that we sat down and
22 talked about.

23 Q. Was there ever a time that y'all
24 discussed it?

25 A. There was a time, once. I think that I

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1 was about ten, in the fifth grade. They were
2 in middle school at the time. **Minor 4**
3 mentioned something and I looked at her
4 crazy-like, 'No, that happened. You didn't
5 imagine it. It's not something imaginary
6 that happened to you. It happened.'

7 Q. How did you know it happened?

8 A. I know it happened. I felt it, I still
9 feel it. I feel it emotionally. I don't
10 know what hurt me worse, him actually
11 molesting me or the emotional pain that I
12 sustained from him making me watch him molest
13 my cousins and me being in a position where
14 there was nothing that I could do about it.

15 Q. As you got older, did you continue to
16 visit?

17 A. To visit?

18 Q. Mount Pleasant? To your grandparents?

19 A. Yes. Mostly around holidays. I am not
20 trying to come back and live there but --
21 it's just not a place where I feel
22 comfortable or can stay for long periods of
23 time.

24 Q. Do you have another cousin, named

25 **Minor 1**?

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1 A. Yes, I do.

2 Q. Did you ever witness Alan with [Minor 1]?

3 A. The only time I can remember is that I
4 don't know what it was -- I don't know if it
5 was a Christmas party. I just know -- we
6 were always at my grandmother's a lot.
7 There's always a barbeque, a party or we're
8 doing gift exchange, so I don't remember the
9 instance.

10 But I do remember one time [Minor 1] was
11 trying to get home to her mother's house and
12 he mentioned that he was about to leave and
13 that he would take her home.

14 Q. Did she go with him?

15 A. Yes, she did.

16 Q. Why did you -- or how did you end up
17 coming forward after all these years?

18 A. There's more than one answer to that
19 question.

20 Q. That's fine.

21 A. At the time [Minor 4] called me and -- it
22 was May 10th, 2010. She texted me, actually.

23 Her text just said, "[Minor 5] I have to
24 ask you a question."

25 I texted her back and said, "What?"

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1 But I kinda already knew what she was
2 about to ask me, so instead of texting her
3 back, I called her. She told me that they
4 were bringing criminal charges on Alan. In
5 the conversation that me and her had, I
6 started naming a bunch of people. She asked
7 me how I knew, did they ever tell me
8 anything. I told her that I just knew.

9 Q. Were you contacted by the Mount Pleasant
10 police?

11 A. Yes.

12 Q. Did you send a statement to them?

13 A. No, I did not.

14 Q. Why not?

15 A. Because I felt like what I needed to say
16 or what could be said by me could not be put
17 into a statement.

18 Q. Did you eventually come to Charleston
19 and give a statement?

20 A. Yes, I did.

21 Q. How do you feel about coming forward
22 now?

23 A. I feel relieved. I feel like a lot of
24 things that I have been holding inside of me
25 so long -- I feel -- at first I felt scared,

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1 but -- I don't know how to describe it but I
2 serve a God that is mighty and He told me
3 that I don't have nothing to fear at all.
4 Nothing. His exact words were to me were
5 that "nobody has a heaven or hell to put me
6 in" but Him.

7 SOLICITOR HERRING-LASH: Court's
8 indulgence for one moment.

9 THE COURT: Certainly.

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR HERRING-LASH:

12 Q. [Minor 5] do you also remember being
13 around [Minor 2] when you would come back?

14 A. (Affirmative nod), I remember being
15 around [Minor 2].

16 Q. What do you remember?

17 A. A lot of times -- I don't know. [Minor 2]
18 used to be this happy-go-lucky person and
19 then -- I can't really explain it, like he
20 just wasn't the same person. But I thought
21 at that time that he was going to school, you
22 know, just different things, peer pressure.
23 He was still in school, so I didn't really
24 think anything of it.

25 Most of it was just us being together

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1 at, like, family gatherings, birthday
2 parties, Christmas, Thanksgiving, in church,
3 different things like that.

4 Q. Did you ever see him get a haircut from
5 Alan Burns?

6 A. I never witnessed him get a haircut from
7 Alan Burns. I know that Alan had -- my
8 grandfather had like, I guess it was an old
9 trailer, and -- we were using it for storage
10 for many years. I knew that part of it was
11 still for storage and that Alan had set up a
12 barber shop in the back. I knew many of them
13 would go back there and get their hair cut.
14 I never personally saw, with my own two eyes,
15 Alan give him a haircut. But I knew that he
16 went back there.

17 SOLICITOR HERRING-LASH: Minor 5
18 those are all the questions that I have. If
19 you would now answer any that Mr. Burns has.

20 THE WITNESS: Sure.

21 THE COURT: Cross-examination.

22 CROSS EXAMINATION

23 BY MR. ALAN BURNS:

24 Q. You stated that your first memory was at
25 age two?

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1 A. Yes.

2 Q. Your second was at age three?

3 A. Yes.

4 Q. And at that age, age two, you remember
5 the color of your crib?

6 A. My crib was red. You want me to
7 describe the whole porch? Because I can give
8 you more memories.

9 THE COURT: Ma'am, just answer the
10 questions, please.

11 CROSS EXAMINATION CONTINUED

12 BY MR. ALAN BURNS:

13 Q. And at age two, you remember that you
14 were on the crib; is that correct, is that
15 what you're saying?

16 A. I was on the porch in a red crib.

17 Q. And at age three, you remember I had on
18 -- what color shirt I had on?

19 A. Your shirt was a blue and green plaid
20 shirt, you had on bluejeans.

21 Q. And you said that I took you into a back
22 room; is that right?

23 A. You took me into the back bedroom on the
24 left side.

25 Q. What color were the walls of the room?

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1 A. The walls in the room were white.

2 Q. Green.

3 A. Whatever.

4 THE COURT: No, sir, that's
5 argumentative.

6 THE COURT: I apologize, Your
7 Honor.

8 CROSS EXAMINATION CONTINUED

9 BY MR. ALAN BURNS:

10 Q. What color was the bed covering?

11 A. The bed covering?

12 Q. Yeah.

13 A. At that time that you took us back
14 there, that I remember, it was summertime.
15 You had sheets on the bed. There was no bed
16 covering on there.

17 Q. What color was the wall on the porch?

18 A. Alan, the porch was screened in. The
19 walls were grayish, palish blue looking
20 color.

21 Q. And you said that when you were four
22 that you remember me trying to do some things
23 to Minor 4 right?

24 A. Yes.

25 Q. What was I wearing that day?

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1 A. On that particular day, I honestly don't
2 remember.

3 Q. What were you wearing?

4 A. I honestly don't remember.

5 Q. But you remember when you was two what
6 you was wearing?

7 A. I remember because you did it to me that
8 day, so that's what made it significant. I
9 remember because the God that I serve allowed
10 me to remember.

11 Q. Is there a possibility that you remember
12 because you saw a picture wearing something
13 and you say that you remember ---

14 A. No, because -- you want to know what I
15 remember?

16 THE COURT: Allow him to finish
17 answering -- to finish asking the question
18 before you answer.

19 THE WITNESS: Okay.

20 CROSS EXAMINATION CONTINUED

21 BY MR. ALAN BURNS:

22 Q. Is it possible that you say that you
23 remember these specific colors and stuff from
24 when you were two years old because you've
25 seen pictures of these things?

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1 A. No.

2 Q. How about what was Minor 4 wearing the
3 day we were in this room?

4 A. I don't remember.

5 Q. And this was when you was four?

6 A. Yes.

7 Q. You mentioned in your statement about a
8 time when you went to go live with your mom;
9 is that right?

10 A. Yes.

11 Q. What year did you say that was in?

12 A. About 1984.

13 Q. Do you remember or recall a time when I
14 left, as well?

15 A. Which particular time did you leave?
16 Because I can remember many times you left.
17 So which particular time? You left at one
18 time and you went to Miami, you left another
19 time and you went to New York, you left
20 another time and you was gone for a long
21 time.

22 Q. Do you remember when I left and went to
23 Job Corps?

24 A. No.

25 Q. What would have been in 1981.

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1 THE COURT: She doesn't remember,
2 so you can't testify now. You'll have an
3 opportunity later. Thank you, sir.

4 CROSS EXAMINATION CONTINUED

5 BY MR. ALAN BURNS:

6 Q. Do you remember in 19--, -- hold on a
7 second. Do you remember in 1982 when I left
8 home and started working with the traveling
9 sales company?

10 A. No.

11 Q. And in 1982, you would have been five
12 years old; right?

13 A. What is the relevance of this?

14 THE COURT: No. Ma'am, you just
15 answer the questions. You just said that you
16 don't remember. That's the answer that you
17 need to give.

18 THE WITNESS: Okay. "No."

19 CROSS EXAMINATION CONTINUED

20 BY MR. ALAN BURNS:

21 Q. You say you do recall the time when I
22 was in New York?

23 A. I remember you left and you went to New
24 York. Well, I don't remember you being --
25 like where you went. I found out after the

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1 fact that -- 'Where's Alan? Oh, he's in New
2 York.'

3 Q. What year was that that I went to New
4 York, do you know?

5 A. I don't know.

6 Q. You don't remember?

7 A. No. You were there for more than one
8 year.

9 Q. You said that I'd left and went to
10 Miami. Do you remember what year that was?

11 A. I am trying to remember the grade that I
12 was in.

13 Q. Let's see if I can juggle (sic) your
14 memory.

15 A. No, I don't need you to jog my memory.
16 Thank you.

17 Q. Did I go to New York before I went to
18 Miami or did I go to Miami before I went to
19 New York?

20 A. You went to Miami first and then you
21 went to New York.

22 Q. During the years that I was in Miami and
23 New York, where were you at?

24 THE COURT: Wait a minute. She
25 does not know when you were in New York. She

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1 said that -- she approximates. So she really
2 can't answer that question under 602. Unless
3 she knows when it is, she can't tell you
4 where she was, sir.

5 Let's move on to something that
6 she's answered that she has knowledge of.

7 CROSS EXAMINATION CONTINUED

8 BY MR. ALAN BURNS:

9 Q. You stated that I made some threats to
10 Minor 4; do you remember that?

11 A. I said that you made threats to me.

12 Q. Did you make this story up, all this
13 stuff?

14 A. Do you really want me to answer that
15 question?

16 THE COURT: Yes, ma'am, answer the
17 question.

18 THE WITNESS: No, I did not.

19 CROSS EXAMINATION CONTINUED

20 BY MR. ALAN BURNS:

21 Q. Did you make up all the explicit
22 details?

23 A. No, I did not.

24 Q. You can't actually remember all these
25 things from when you were two years old. You

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1 just looked at some pictures and created the
2 memory. Is that true?

3 A. No. I remember. As much as I don't
4 want to remember, I remember. Since you
5 mentioned the picture, I saw that picture for
6 the first time maybe a week before I came
7 here, because my daughter inherited an
8 entertainment center from my mother. It was
9 in an album, as she was going through the
10 entertainment center, that was in there. I
11 never even knew that pictures existed of that
12 when I told her that happened, two years ago
13 I told her that happened.

14 Q. So you mean to tell me that you can
15 actually remember the clothing, color and
16 type of clothing, that I was wearing when you
17 was two years old?

18 THE COURT: She has answered that
19 question.

20 THE WITNESS: Alan, I told you
21 that I ---

22 THE COURT: No, ma'am. Ma'am,
23 when the court or attorneys speak, you must
24 stop. Okay? Under 611(a), she has already
25 answered that, Mr. Burns, several times.

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1 I've allowed you some leeway there. Now you
2 go on to something else, please.

3 CROSS EXAMINATION CONTINUED

4 BY MR. ALAN BURNS:

5 Q. Did you put all the details in your
6 story because you thought that it would be
7 more believable?

8 THE WITNESS: May I answer that
9 question?

10 THE COURT: Ma'am, answer the
11 question unless it is stopped otherwise by
12 a lawyer or the court. Okay?

13 THE WITNESS: Okay. I remember
14 that. I don't remember what you were wearing
15 all the time but I remember what you were
16 wearing on that particular time. I remember
17 the color crib I was in and I remember what
18 I was wearing on that particular time.

19 CROSS EXAMINATION CONTINUED

20 BY MR. ALAN BURNS:

21 Q. You're married, right?

22 A. (No verbal response).

23 Q. You're married?

24 A. No, I'm divorced.

25 Q. For a time, did you live in North

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1 Charleston?

2 A. Yes, I did.

3 Q. Did you live on Century Oaks Complex?

4 A. Yes, I did.

5 Q. And at a specific time while you were
6 living on Century Oaks, did I also live on
7 Century Oaks?

8 A. You were staying with some girl.

9 Q. And during that time, did I frequently
10 visit your house?

11 A. Unfortunately.

12 Q. And quite often when I came over to your
13 house, the first thing that I did was go into
14 the kitchen and get something to eat and play
15 with your kids?

16 A. Excuse me? You said quite often when
17 you came to my house that the first thing
18 that you did was go in the kitchen?

19 Q. Yes. In the family house that I go to,
20 I go into the ---

21 THE COURT: No, Mr. Burns, you're
22 -- again you're testifying, sir.

23 MR. ALAN BURNS: Oh, okay.

24 THE COURT: I am not going to
25 allow that at this point. Clarify the

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1 question. She asked you if that was the
2 first thing that you did when you went in.
3 You need to restate your question so that she
4 can understand it.

5 MR. ALAN BURNS: Yes, sir.

6 CROSS EXAMINATION CONTINUED

7 BY MR. ALAN BURNS:

8 Q. When I came over to your house, did I
9 routinely go in your kitchen and fix
10 something to eat?

11 A. Yes, you routinely went in my kitchen
12 but you did not fix anything to eat.

13 Q. Did I also play with your kids?

14 A. When you were at my house? Yes. My
15 then-husband was also there also.

16 Q. And you also frequently called me to
17 come and fix your car?

18 A. Can we get that statement correct? My
19 then-husband would call you to come fix the
20 car.

21 Q. But -- what year was this, if you can
22 recall?

23 A. That I was living in Century Oaks?

24 Q. Yes.

25 A. This was -- in the year 2000, because my

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1 son was born in '99.

2 Q. During that time you had knowledge and
3 remembrance of things that you say that I did
4 when you were two years old?

5 A. Yes.

6 Q. And you never once ran me out of your
7 house?

8 A. You know, what goes on behind closed
9 doors -- but since you brought it up. I told
10 my husband what happened. I told him that I
11 didn't want you in my house. He, for the
12 life of me, could not understand how it was
13 that you were back in our family if you had
14 did this. So that's why he and I are no
15 longer married. That's why he is wherever he
16 is and I'm where I am.

17 Q. And during that time, even though you
18 had knowledge that I had done this things to
19 you, supposedly, when you were two years old,
20 the things that you remember so vividly, you
21 never once yelled at me or cursed at me not
22 to touch your kids or to play with your kids?

23 A. Because I was in the room every time
24 that you were with my kids, except for one
25 time I wasn't there when you were around my

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1 children. One time. That was beyond my
2 control.

3 MR. ALAN BURNS: Your Honor, --
4 hold on a second -- (sidebar with Mr. Smith).
5 May I approach? May I see Defendant's
6 Exhibit 5 -- no, it has to be Exhibit 4.
7 No, it must be -- it must be the other one.

8 THE COURT: While you are doing
9 that, I am going to let the jury take a
10 break. Do not begin your deliberations,
11 Ladies and Gentlemen. We will be with you
12 shortly.

13 MR. ALAN BURNS: Thank you, Your
14 Honor.

15 (JURY OUT @ 10:58 A.M.)

16 THE COURT: Anything from the
17 State before we recess?

18 SOLICITOR HERRING-LASH: No, Your
19 Honor.

20 THE COURT: Anything from the
21 Defendant before we recess?

22 MR. ALAN BURNS: No, sir.

23 THE COURT: Mr. Burns, one of the
24 things -- and it's one of those unusual areas
25 here. As I told the jury, you have every

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1 right to represent yourself. That's fine.
2 I don't have a problem with that whatsoever.
3 But it's one of those unusual little areas
4 here, too. I've also told them that you
5 don't have to take the stand, you don't have
6 to say a word. Therefore I've got to balance
7 something here. I have to make sure that
8 you're being a lawyer and not being the
9 defendant, Mr. Burns, by testifying. Lawyers
10 cannot testify, so you have to be careful
11 there. I am going to stop you every time.
12 I am not trying to interrupt you but I can't
13 allow you to say things before the jury that
14 is subconsciously you testifying.

15 MR. ALAN BURNS: Right.

16 THE COURT: You can create some
17 issues for yourself by doing that. I am
18 trying to make sure that doesn't happen
19 either, sir.

20 MR. ALAN BURNS: I understand what
21 you're saying. I understand when you stop
22 me. I just get a little carried away.

23 THE COURT: I understand. So we
24 understand -- when a witness says something
25 that you disagree with, that's fine. But the

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1 way that you deal with that is to present
2 testimony which contradicts that. Then at
3 the end, you get to argue the contradiction.
4 Not during the time that the witness is
5 testifying. Okay?

6 MR. ALAN BURNS: Yes, sir.

7 THE COURT: Thank you, sir. All
8 right, we will be at-ease for about ten
9 minutes.

10 You (witness) may step down, if you
11 wish. I'd ask that you have no conversation
12 with anyone.

13 (BRIEF RECESS)

14 (DEFENDANT PRESENT)

15 THE COURT: Let the record reflect
16 that the Defendant is present. Is the State
17 ready to proceed?

18 SOLICITOR HERRING-LASH: Yes, sir.

19 MR. ALAN BURNS: Are you ready,
20 Mr. Burns?

21 MR. ALAN BURNS: Yes, Your Honor.

22 THE COURT: Let's bring in the
23 jury.

24 (JURY IN @ 11:24 A.M.)

25 THE COURT: Thank you, Ladies and

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1 Gentlemen. I noticed that you have now
2 occupied that seat for the third time. I
3 assure that you've been selected at the
4 presiding juror, is that correct?

5 JUROR NUMBER 243: Yes, sir.

6 THE COURT: Your name and number
7 for the record?

8 JUROR NUMBER 243: My name is
9 Gregory Olmstead, Number 243.

10 THE COURT: All right. Mr. Burns,
11 we've taken a break. You may resume your
12 examination.

13 CROSS EXAMINATION RESUMED

14 BY MR. ALAN BURNS:

15 Q. Minor 5, during the time that you lived
16 on Century Oaks, even though your husband and
17 I got along, you didn't get along with me; is
18 that right?

19 A. I was tolerable of you, I tolerated you.

20 Q. You tolerated me.

21 A. (No verbal response).

22 Q. But you didn't really speak to me that
23 often either, is that right?

24 A. I never said that I didn't speak to you.

25 I said that I tolerated you.

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1 Q. When you lived in North Carolina, did
2 you attend church?

3 A. Yes.

4 Q. What was the name of the church that you
5 attended?

6 SOLICITOR HERRING-LASH: Your
7 Honor, I would object to relevance.

8 THE COURT: Sustained.

9 MR. ALAN BURNS: (Tenders document
10 to be marked as exhibit).

11 COURT REPORTER: Defendant's
12 Exhibit 6 for identification.

13 CROSS EXAMINATION CONTINUED

14 BY MR. ALAN BURNS:

15 Q. Do you recognize that picture?

16 A. Yes, I do.

17 Q. Would you tell me who all is in that
18 picture?

19 A. You and I.

20 MR. ALAN BURNS: Your Honor, could
21 I have this picture put up on the board,
22 please.

23 THE COURT: Do you want to
24 introduce the picture?

25 MR. ALAN BURNS: Yes, sir.

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1 THE COURT: Any objection?

2 SOLICITOR HERRING-LASH: No, Your
3 Honor.

4 THE COURT: Without objection,
5 Defendant's Exhibit 6 is admitted.

6 (SO ENTERED AS DEFENDANT'S EXHIBIT 6)

7 THE COURT: Ladies and Gentlemen,
8 any exhibit admitted into evidence will be
9 sent to you in your jury room when you begin
10 your deliberations. You'll have the
11 opportunity to review any of those that are
12 admitted at that time.

13 CROSS EXAMINATION CONTINUED

14 BY MR. ALAN BURNS:

15 Q. Minor 5 in that picture, can you
16 describe what you're doing for me?

17 A. Putting on a necklace.

18 Q. Can you tell what the occasion was that
19 you were doing this?

20 A. It was Christmas. We had a gift
21 exchange at grandma's house.

22 Q. And the gift -- the necklace that you're
23 putting on me is a gift from you to me?

24 A. No, I did not pull your name.

25 Q. So that was a gift from somebody else

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1 and you were just putting it on me?

2 A. It was from somebody else. You were
3 standing there, I was sitting right there.
4 You held up your gift. You was like, 'Can
5 somebody put it on?' I was standing right
6 there. You asked me to put it on, I put it
7 on.

8 Q. And that was just one of those acts that
9 you tolerated me, that you mentioned?

10 A. You were in the house with the rest of
11 the family. How was I supposed to react to
12 you? I am a Christian woman.

13 Q. Were you a Christian woman when you were
14 living on Century Oaks?

15 A. I've been a Christian woman most of my
16 life.

17 Q. And when I came over to your house on
18 Century Oaks, you stated a little while ago
19 that your husband would talk to me but that
20 you didn't really -- you didn't really have
21 any dealings with me.

22 A. No. You said did I like you, did you
23 come over there. I said my husband liked
24 you. You came in the house. You asked me
25 did you go in my kitchen and fix food. I

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1 said you went in my kitchen but that you did
2 not fix food. I never said that you didn't
3 eat there. I said that you didn't fix it. I
4 never said that I didn't spoke -- speak to
5 you. I said that I tolerated you. You were
6 trying to make it seem like it all friendly
7 friendly and buddy-buddy and it was never
8 that.

9 Q. This picture was taken after the time
10 when I supposedly had molested you, though;
11 right?

12 A. Yes.

13 Q. And it was taken while you had full
14 remembrance of ---

15 THE COURT: Sir, she has already
16 answered your question. You don't need to
17 ask that question in follow up. She's
18 already responded to your question. You have
19 that answer. Move on to something else.

20 MR. ALAN BURNS: That's all that I
21 have for now.

22 THE COURT: Okay, sir. Thank you.
23 Redirect?

24 SOLICITOR HERRING-LASH: Yes,
25 Your Honor.

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1 REDIRECT EXAMINATION

2 BY SOLICITOR HERRING-LASH:

3 Q. [Minor 5] we have seen pictures of the
4 house. I don't know if we can put that back
5 up -- (displaying).

6 THE COURT: What exhibit is this?

7 SOLICITOR HERRING-LASH: I don't
8 know ---

9 THE WITNESS: That is ---

10 THE COURT: Just one second.

11 SOLICITOR HERRING-LASH: I think
12 that's Exhibit 1.

13 THE COURT: State's Exhibit 1.

14 REDIRECT EXAMINATION CONTINUED

15 BY SOLICITOR HERRING-LASH:

16 Q. When you were talking about the porch.
17 The porch that is on that house now, was that
18 the porch back then?

19 A. It's in the same spot but they kinda
20 closed it in and made it a den. They put up
21 a wall and shortened the porch -- because the
22 porch had ran the whole front. Where the
23 window unit is, that is now part of my
24 grandmother's room but it wasn't -- that was
25 part of the porch.

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1 Q. Was it screened instead of ---

2 A. It was screen. It was board but where
3 the windows are, the screens came up. On
4 this end, closest to this side over here
5 where the air-conditioner unit is, that was
6 part of the porch. They put a wall there.
7 The wall is kinda of inbetween where that
8 air-conditioner unit is and the window that
9 is closest to the door. They extended my
10 grandmother's room into that and enclosed the
11 rest and made it a den.

12 Q. When Mr. Burns was questioning you about
13 the events that happened when you were two,
14 you told us about other events -- up to what
15 age?

16 A. The events that happened after two?

17 Q. (Affirmative nod).

18 A. There were events that happened up until
19 -- that I told earlier, was up until I was
20 about five, seven. Was the last time,
21 because I went and moved.

22 Q. You found the picture of you in the
23 jumper when?

24 A. It was -- I want to say about June 27th.

25 Q. How did you find it?

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1 A. My daughter has an entertainment center
2 that used to be my mom's. She was cleaning
3 it out and going through stuff and she was
4 adding more stuff to it. The way that the
5 entertainment center sits is that on the
6 bottom there are two double doors that meet
7 in the middle. She putting stuff in there
8 and she was like, 'Mommy, I can't put all my
9 stuff in there.' I was like, 'Well, you need
10 to go in there and see what's stopping it.'
11 When we went in to see what was stopping it,
12 she pulled out a photo album. As I started
13 looking through the photo album, there were
14 pictures in there. I said, 'Oh, this is
15 Mommy's.'

16 The first picture in there was a picture
17 of me in kindergarten.

18 Then after that, it was my mom and her
19 ex-husband, pictures of us when we were in
20 Germany with one my aunts who was also
21 stationed in Germany.

22 At the end of the book, there was
23 pictures of the -- that you had shown me.
24 Then I just remember looking at my daughter,
25 'Where did you find this?' That's when she

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1 told me. She was like, 'I got it out of
2 there.' I always was telling her that 'I
3 didn't know that there was pictures of
4 these.' She was like, 'Pictures of what?' I
5 was like, 'I can't tell you what I'm talking
6 about but I never knew that pictures
7 existed.'

8 Q. Do you remember the date that you gave
9 your written statement about this?

10 A. I think it was April. I don't remember.
11 I am remembering all the days that I talked
12 to you. I know that I talked to you in March
13 and then ---

14 Q. If I showed you a copy of your written
15 statement, would it refresh your memory, just
16 to look at the date?

17 A. (No verbal response).

18 Q. Don't read it out loud but does that
19 refresh your memory that you gave the
20 statement?

21 A. April 12th, (affirmative nod).

22 Q. What is the date?

23 A. April the 12th, 2012.

24 SOLICITOR HERRING-LASH: Those
25 are all the questions that I have, **Minor 5**.

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1 THE COURT: Recross?

2 RECROSS EXAMINATION

3 BY MR. ALAN BURNS:

4 Q. Who owns the photo album that you found
5 the pictures in?

6 A. I am assuming it was my mother's. I
7 don't know. I assumed that it was my
8 mother's since it was in the entertainment
9 center that she had. If it wasn't her, then
10 it was her exhusband's, because there were
11 pictures of him in there also of when they
12 were stationed at Fort Sam Houston, Texas.
13 It was mainly pictures of my mom, him and his
14 family. There were pictures of me and
15 another cousin, Michael, and his mom when we
16 were stationed in Germany -- or when my
17 parents were stationed in Germany. Then
18 there were just a few of those pictures at
19 the end.

20 Q. Where is the photo album right now? Do
21 you mind if I ask.

22 A. The photo album is at my house.

23 Q. So you're in possession of it?

24 A. My daughter is, (affirmative nod).

25 Q. Okay. What is your daughter's name?

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1 A. Lashone (phonetic).

2 SOLICITOR HERRING-LASH: What is the
3 relevance of this?

4 THE COURT: I will allow that
5 question.

6 THE WITNESS: Lashone
7 (phonetic) Handy.

8 RECROSS EXAMINATION CONTINUED

9 BY MR. ALAN BURNS:

10 Q. Does she live in South Carolina or is
11 she living in North Carolina?

12 A. She lives in North Carolina.

13 Q. So the photo album, at the present time,
14 is in North Carolina?

15 A. Yeah.

16 Q And you provided that photo to the
17 solicitor or to the police?

18 A. To the solicitor.

19 Q. Okay.

20 A. I never spoke to the police.

21 Q. You never spoke to Detective Michelle
22 Bacon?

23 A. I spoke to her on the phone but I never
24 gave her a statement, if that is what you're
25 asking. No.

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1 Q. But you just said that you never spoke
2 to her. That's all.

3 MR. ALAN BURNS: That's all, Your
4 Honor. Thank you.

5 THE COURT: You can explain your
6 answer if you need to. You said that you
7 spoke to her on the phone.

8 THE WITNESS: She called me on
9 the phone and asked me if I would like to
10 give her a statement. I told her that I was
11 going to give her a statement. I wrote the
12 statement on my computer. I never sent her a
13 written statement.

14 THE COURT: You may come down.
15 Thank you very much.

16 (WITNESS STEPS DOWN)

17 THE COURT: The State would call
18 Jacquelyn Blake.

19 (WITNESS TAKES STAND)

20 JACQUELYN BLAKE, being duly sworn to
21 tell the truth, the whole truth and nothing
22 but the truth, testified, as follows:

23 DIRECT EXAMINATION

24 BY SOLICITOR HERRING-LASH:

25 Q. Ms. Blake, where do you live?

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- 1 A. Orangeburg, South Carolina.
- 2 Q. And are -- do you -- do you know or did
- 3 you used to be in the Burns Family?
- 4 A. Yes.
- 5 Q. How was that?
- 6 A. I was married into the family, to Davey
- 7 Burns.
- 8 Q. To who?
- 9 A. To Davey Burns, Sr.
- 10 Q. Can you move that microphone a little
- 11 closer. It's not picking up.
- 12 A. (Complies).
- 13 Q. Is Davey Burns related to Alan Burns?
- 14 A. Yes, that's his brother.
- 15 Q. When you married Davey, where did you
- 16 all live?
- 17 A. At his mom's house for a little while
- 18 and then in yard in a house that we built.
- 19 Q. You had a house in the same yard?
- 20 A. Yes.
- 21 Q. When you were married to him, did you
- 22 watch of care for [Minor 4] and [Minor 5]
- 23 A. Yes, I did.
- 24 Q. Did you do that like during the day?
- 25 A. Yes.

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1 Q. Where was Ms. Alisteen Burns?

2 A. At work.

3 Q. Do you know where she worked?

4 A. She was doing healthcare nursing at
5 Sandpiper Village, I believe.

6 Q. And what about Mr. Oliver Burns?

7 A. He was a merchant seaman, he was gone a
8 lot.

9 Q. Do you remember specifically caring for
10 **Minor 5** and **Minor 4**?

11 A. Yes.

12 Q. Did there come a day when you witnessed
13 something?

14 A. Yes, I did.

15 Q. Can you just explain to the jury what
16 happened, from the beginning to end.

17 A. I was watching the girls. I was in the
18 kitchen, watching television. The girls were
19 playing -- at this time, I assume that it was
20 only me, **Minor 5** and **Minor 4** in the house
21 because that's usually how it was. Everybody
22 else would either be at work or at school.

23 **Minor 4** came in the kitchen crying. I
24 was asking her why she was crying, what
25 happened, what was wrong. For a minute or so

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1 she didn't tell me anything. Then finally,
2 after I kept asking her, she said that Uncle
3 Alan was hurting [Minor 5]

4 Q. Was she upset at this point?

5 A. She was very upset.

6 Q. I didn't believe her at first because I
7 didn't know Alan was in the house. I said,
8 'Well, what are you guys doing?'

9 She said, 'Uncle Alan is hurting
10 [Minor 5].'

11 I said, 'Come on, show me.'

12 So we got up, went down the hallway, she
13 went into the bathroom.

14 When I opened the door, Alan had [Minor 5]
15 -- Alan was sitting on the bed, [Minor 5] was
16 laying down and he had his finger in [Minor 5]'s
17 vagina.

18 When he turned around and saw me, he
19 jumped up, ran out of the room.

20 I got [Minor 5] She was crying and
21 screaming. I tried to calm the girls down.
22 I kept asking [Minor 5], you know, 'calm down,
23 calm down, what's wrong?' And she said
24 "Uncle Alan did it to me, too."

25 I said okay, okay. I tried to get them

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1 calmed down and I couldn't get them calmed
2 down. I tried to call Alan's mom at work and
3 told her that she needed to come home,
4 something had happened to the girls.

5 When she got home -- I don't know where
6 Alan was at the time, if he was in the yard
7 or where he was. She got home, I told her
8 what had happened, what the girls said, what
9 I saw. When they get back in the house, she
10 started beating Alan with an extension cord.

11 Somehow Alan got away from her. He went
12 in the bathroom and locked the door.

13 When we finally did get the door -- by
14 this time, his mom had already called Davey,
15 my husband, and by the time that he got there
16 and got the bathroom door open, Alan had
17 already jumped out the bathroom window.

18 Alan came back later on that night to
19 threaten me, to tell me that he's going to
20 get me -- I was pregnant, --that he was going
21 to kill me and my baby for telling and
22 calling his mom.

23 His mom decided at that time that every
24 since then she would drop me, [Minor 5] and
25 [Minor 4] to her sister's house, his auntie's

1 house, when she'd go to work. That's what we
2 did.

3 Q. Did you end up leaving?

4 A. I eventually left. I got divorced in
5 1993 and I moved out.

6 Q. Did you all move out of that house?

7 A. We moved out of that house a couple of
8 times and came back. When I got my divorce,
9 being that the house was on my in-law's land
10 they said that it wasn't legally my house but
11 they gave me the right to live in the house
12 until my youngest child graduated from high
13 school. I left that house completely in
14 2002.

15 Q. Do you know if **Minor 4** and **Minor 5**
16 continued to go over and stay with the
17 grandparents?

18 A. Yes, eventually -- **Minor 4**'s mom and dad
19 at the time were living in New York, **Minor 4**
20 was staying with her grandma in Charleston
21 and they were about to move to Charleston.
22 So they ended up moving down here.

23 Q. And when you say in a room, just to be
24 clear, whose room was it?

25 A. It was Alan's room. The last room in

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1 the house. The hallway is rather long. You
2 go down the hallway and there is a room on
3 the left and one of the right. Alan's room
4 was on the left.

5 Q. Now, after seeing this and telling your
6 mother-in-law, did you tell other people?

7 A. I believe that I told Davey, my husband.
8 I didn't think that it was my place to tell
9 anybody else, really.

10 Q. Do you remember if Alan got the police?

11 A. I don't recall. I remember an incident
12 and I think that it might be the same as when
13 he went -- somehow he got the police, saying
14 that his mom was abusing him, beating him or
15 whatever. But I remember her when they came
16 -- they told his mom that they were there
17 because he'd called and said that she was
18 abusing him or beating him. She told them
19 plain, 'If you think you can do a better job,
20 you take him with you.'

21 Q. Was that the end of that?

22 A. Um-humm.

23 SOLICITOR HERRING-LASH: Ms.

24 Blake, those are all the questions that I
25 have to ask you. Please answer any that Mr.

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1 Burns may have for your.

2 THE COURT: You may cross-examine.

3 MR. ALAN BURNS: Yes.

4 CROSS EXAMINATION

5 BY MR. ALAN BURNS:

6 Q. How long did you live with your mother-
7 in-law when you first got married?

8 A. About six months.

9 Q. What year did you married?

10 A. 1979.

11 Q. And you said Minor 4 was in kinder-
12 garten?

13 A. No, I did not say that. I said Minor 4
14 was there during the summers until her mom
15 and dad decided to move there. Then Minor 4
16 just stayed there until they got there.

17 Q. But you say that when these incidents
18 occurred that the only people who were in the
19 house were you and the kids, and everybody
20 else was at school or at work?

21 A. Right.

22 Q. So that means that Minor 4 wasn't in
23 school at the time?

24 A. Not at the time, at least not that day.

25 Q. So you would have been at least under

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1 four or five years old

2 A. I believe she and -- she may have been
3 five. There's two years between Minor 4 and
4 Minor 5, and Minor 5 was three.

5 Q. You ----

6 A. I am not sure.

7 MR. ALAN BURNS: Your Honor, I
8 have a legal issue that I need to raise.

9 THE COURT: Sidebar.

10 (OFF RECORD SIDEBAR)

11 THE COURT: Thank you, sir.

12 CROSS EXAMINATION CONTINUED

13 BY MR. ALAN BURNS:

14 Q. So you said that you lived in the house
15 for six months?

16 A. Around that time.

17 Q. Then you moved out?

18 A. Yes.

19 Q. Where did you move to?

20 A. Next door, about fifteen feet

21 Q. So the house next door was being built
22 during the first six months?

23 A. Yes, it was built -- I got married in
24 September. We moved in with Ms. Alisteen and
25 October -- the house was already built. It

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1 was built as a one bedroom, one bath, just
2 basic because it was just me and Davey and I
3 was pregnant. The house wasn't a big house
4 when we first built it.

5 Q. When you first started building the
6 house, didn't Davey first start building the
7 house behind the house? Laid the foundation
8 to build the house behind the house, then
9 stopped and built it in front?

10 A. Where that house is is where that house
11 was supposed to be in the beginning. That's
12 where we started, that's where we finished.

13 MR. ALAN BURNS: That's all that I
14 have for you.

15 THE COURT: Redirect?

16 REDIRECT EXAMINATION

17 BY SOLICITOR HERRING-LASH:

18 Q. Mrs. Blake, just to clarify, at the time
19 of this event you were living not with your
20 in-laws but already had moved?

21 A. Right, into my own house.

22 SOLICITOR HERRING-LASH: Those
23 are all the questions that I have. Thank
24 you.

25 THE COURT: Recross?

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1 RECROSS EXAMINATION

2 BY MR. ALAN BURNS:

3 Q. You and Davey Burns, Sr. aren't together
4 anymore?

5 A. No.

6 Q Y'all not cohabit or -- you're able to
7 communicate and everything? The last time
8 you spoke to him, where was he living at?

9 A. The last time I spoke to Davey, Sr. he
10 was living in West Virginia with our son
11 Richard.

12 Q. Okay.

13 THE COURT: You may come down.

14 (WITNESS STEPS DOWN)

15 THE COURT: Who is your next
16 witness?

17 SOLICITOR HERRING-LASH: Minor 1

18 Minor 1. Your Honor, may Ms. Blake be
19 excused?

20 THE COURT: Any objection, Mr.
21 Burns?

22 MR. ALAN BURNS: No.

23 THE COURT: You are free to leave.

24 (WITNESS TAKES STAND)

25 Minor 1 being duly sworn

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1 to tell the truth, the whole truth and
2 nothing but the truth, testified, as follows:

3 DIRECT EXAMINATION

4 BY SOLICITOR HERRING-LASH:

5 Q. [Minor 1] where do you live?

6 A. [REDACTED] Bachelor Street.

7 Q. Where do you work?

8 A. I do private nursing.

9 Q. Do what?

10 A. I do private nursing.

11 Q. What is your date of birth?

12 A. [REDACTED] [REDACTED] [REDACTED]

13 Q. How do you know the Burns family?

14 A. I was adopted into the Burns family.

15 Q. About what age were you, if you
16 remember, when you were first adopted?

17 A. Around eleven.

18 Q. How did you come to be adopted into that
19 family?

20 A. Through Alice Singleton.

21 Q. Explain that. Did she know your mother?

22 A. My aunt and her was best friends.

23 Q. Did something happen to your aunt?

24 A. Yes, on the day that she was supposed to
25 come get me, she passed away.

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1 Q. Then you stayed with who?

2 A. Alice Singleton.

3 Q. Is Alice Singleton related to Mr.
4 Burns?

5 A. Yes.

6 Q. What relationship are they?

7 A. Sister/brother.

8 Q. So when you came into their family, did
9 you meet Alan?

10 A. Yes.

11 Q. Did you visit with your grandparents?

12 A. Yes.

13 Q. Did you come to, at some point, think
14 of Oliver and Alisteen Burns as your grand-
15 parents?

16 A. Yes.

17 Q. And how often would you visit over
18 there?

19 A. I'd come every day, at least every day
20 or every other day.

21 Q. Showing you what has been marked for ID
22 as State's Exhibit 20. Do you recognize
23 that?

24 A. Yes.

25 Q. Who is that in the picture?

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1 A. Me, my mom, my Cousin Latasha.

2 Q. Is that shortly after you came with your
3 mother?

4 A. Yes.

5 SOLICITOR HERRING-LASH: Your
6 Honor, at this time the State would offer
7 State's Exhibit 20 into evidence.

8 THE COURT: Any objection, Mr.
9 Burns?

10 MR. ALAN BURNS: No objection.

11 THE COURT: Without objection,
12 State's Exhibit 20 is admitted.

13 (SO ENTERED AS STATE'S EXHIBIT 20)

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR HERRING-LASH:

16 Q. So is that your mom or who is that?

17 A. That is my mom.

18 Q. How close did your mom live to the Burns
19 family, if you have an estimate?

20 A. I would say no more than five minutes
21 driving from them.

22 Q. But she was not one of the people that
23 lived right in that very area?

24 A. Oh, no, ma'am.

25 Q. Do you remember when you first met the

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1 Defendant, Alan Burns?

2 A. Yes.

3 Q. When was that?

4 A. I can't remember what year that it was
5 but I remember meeting him.

6 Q. Do you remember where you were when you
7 first met him?

8 A. Yes.

9 Q. Where were you?

10 A. My mother's house.

11 Q. Did he make any comments to you?

12 A. No, not at first.

13 Q. Ever?

14 A. Yes.

15 Q. What were those?

16 A. It was more sexual comments like I'm
17 pretty or like I have some pretty breasts.

18 Q. Did he ever touch you in any way?

19 A. Then or?

20 Q. Then, in the beginning.

21 A. Not in the beginning, no.

22 Q. Did there some a time when he did do
23 something inappropriate to you?

24 A. Yes.

25 Q. Explain when that was?

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1 A. First it was more like feeling on me,
2 putting his hand in my pants.

3 Q. When you say put his hand in your pants,
4 what do you mean?

5 A. Just like squeezing my breast or
6 touching my private area, or something like
7 that.

8 Q. Did he put his hand in your pants?

9 A. Yes.

10 Q. Did he touch your private area on top or
11 inside?

12 A. Top, side, which -- yes.

13 Q. Inside?

14 A. Yes.

15 Q. Do you know where you were when this
16 happened?

17 A. I could be at my mother's house, my
18 grandmother's house.

19 Q. And is there a particular event that you
20 remember?

21 A. I remember all of them.

22 Q. Is there an event where more happened
23 than touching inside your pants?

24 A. By day at my grandmother's house -- it
25 was like a Monday through Friday because my

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1 mom was at work. She was just getting off,
2 she was tired. She told someone to come get
3 me, but then Alan was like -- well, Mr. Burns
4 -- he was going to go over there anyway to
5 look at her car because something was wrong
6 with it. So he said ---

7 Q. Did he work on her car?

8 A. Yes. And he said that he would take me.
9 But would he took me, instead of us -- we
10 came out of the -- instead of us -- I think
11 that's like a right turn. We kept on going
12 straight across ---

13 Q. Let me show you -- (displaying map).

14 SOLICITOR HERRING-LASH: Your
15 Honor, I just want to show this to the
16 witness for demonstrative purposes only.

17 THE COURT: Is it marked?

18 SOLICITOR HERRING-LASH: It is not
19 marked.

20 THE COURT: Let's mark it, please,
21 for demonstrative purposes only.

22 COURT REPORTER: State's Exhibit
23 21.

24 THE COURT: State's Exhibit 21 is
25 a map affixed to a board for ID purposes

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1 only.

2 (SO ENTERED AS STATE'S EXHIBIT 21 FOR ID)

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR HERRING-LASH:

5 Q. [Minor 1] you said that you left your
6 grandparents' house?

7 A. Um-humm.

8 THE COURT: Was that a "yes"?

9 DEFENDANT: Yes.

10 SOLICITOR HERRING-LASH: May the
11 witness come down?

12 THE COURT: You may, but keep your
13 voice raised when you -- you may step down.

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR HERRING-LASH:

16 Q. [Minor 1] to orient you, this is Venning
17 Road. What road did your grandparents live
18 on?

19 A. Which one is this?

20 Q. This is Venning Road and this is Rands
21 Hill.

22 A. Where is my grandmother's house?

23 Q. Rands Hill.

24 A. (Affirmative nod).

25 Q. This is Venning Road. You said that

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1 y'all went on Venning Road.

2 A. What is this roundabout?

3 Q. That's Rifle Range and Venning.

4 A. So my grandmother's house is this was?

5 THE COURT: No, ma'am, you can't
6 ask Ms. Herring-Lash.

7 THE WITNESS: Okay. This is my
8 grandmother's house. We came out there the
9 roundabout is and we ---

10 THE COURT: Ma'am, can you get on
11 the side so that the jury can see.

12 THE WITNESS: My grandmother's
13 house is right here. We turned this way.
14 The roundabout wasn't always there, they've
15 since build that there. It just went
16 straight.

17 DIRECT EXAMINATION CONTINUED

18 BY SOLICITOR HERRING-LASH:

19 Q. Where did you go?

20 A. We went straight back here. There were
21 some houses back here.

22 Q. That's where y'all drove to?

23 A. Yeah.

24 Q. What was the area like back there,

25 Minor 1 ?

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1 A. Just a road, you could see some trees,
2 and if you go all the way in the back there
3 are like a couple of houses.

4 Q. Where did you go?

5 A. We went down by the house, we turned
6 around and came back up.

7 Q. What kind of car?

8 A. It wasn't a car. It was a van, a dark-
9 colored van.

10 Q. What happened with the van?

11 A. Nothing happened with it. We just
12 pulled over and I asked him what we were
13 doing and he said that we were waiting on
14 somebody. While he waited, he was tightening
15 something under the hood. So I sat in the
16 car and waited for him.

17 He came back around, he opened the
18 sliding door. So I just kept looking, I
19 don't say anything. Then he went back under
20 the hood.

21 Then he called me, I got out of the car.
22 He asked me to hand him a tool because there
23 was a toolbox in the back.

24 Q. Did you hand him the tool?

25 A. Well, when I went to bend over to hand

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1 him the tool he came in behind me. I thought
2 that he was coming to get the tool but then
3 everything just went crazy. He pushed me
4 somewhat to where I'm bending over to him.
5 He put his hand around my neck and with the
6 other hand he was taking off the bottoms.

7 Q. He was what?

8 A. He was taking off my pants and
9 underwear. I started crying, asking him what
10 he was doing. He told me to shut up because
11 I was "used to it." After that, he took his
12 penis out and he inserted it. He kept going
13 until it was time for him to ejaculate. He
14 grabbed a white shirt to clean hisself off.
15 He threw it to me and told me to clean myself
16 off. I was still crying, but he told me to
17 shut up. I sat on the bottom of the car,
18 like where the floorboard is. He got a tool
19 out of there and he hit me with it and he
20 asked me if I saw how it feel. I told him
21 yes, that it hurt and I started crying even
22 more. He said 'shut up.' 'If you tell
23 anybody, I'll make sure that your mama get
24 into an accident on her way going to work.
25 I'll cut her brakes or something.'

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1 Q. Did you say anything to him?

2 A. No.

3 Q. What did he mean by "you're used to it"?

4 A. Because before I got to my adopted mom,
5 I was raped before that.

6 Q. Did he know about that?

7 A. I guess so.

8 Q. Why didn't you tell your mom?

9 A. I had already been bounced around, I
10 didn't want to leave, I didn't want to tell
11 her and then she turn me back over to DSS, so
12 I just stayed quiet.

13 Q. Did you continue to be around him?

14 A. Yes.

15 Q. Did you have any options?

16 A. No.

17 Q. Did anything else ever happen?

18 A. It was more, the touching got more.
19 There was more touching. He would come and
20 pick me up from places, like church or
21 something and tell me that my mom told him to
22 come get me. He would drive me to his
23 household on Ashley Phosphate Road at the
24 time, but I would never get out or anything.

25 Q. You never would get out of the car?

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1 A. No, just to ride around with him.

2 Q. Who was he living with in North

3 Charleston at the time?

4 A. It was my Aunt [Minor 5] at the time.

5 Q. Did you attend the boys and girls club?

6 A. No.

7 Q. Did she work there?

8 A. I can't recall.

9 Q. Over the years, did you ever confide in
10 anyone?

11 A. No.

12 Q. How did you come to go to the police?

13 What happened?

14 A. My mom called me one morning and she
15 asked me if anything ever happened and she
16 told me not to lie to her, so I told her the
17 truth.

18 Q. What did you do?

19 A. She told me to come over to her house
20 and sit down and talk to her.

21 Q. Did you do that?

22 A. Yes.

23 Q. Did you end up going to the police then?

24 A. Yes.

25 Q. Did you know [Minor 2] ?

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1 A. Yes.

2 Q. When you were eleven and moved in there,
3 was he around there also?

4 A. Yes.

5 Q. [Minor 1] how do you feel about coming
6 forward now?

7 A. Pretty good.

8 Q. Feel?

9 A. Good.

10 Q. You do?

11 A. (Affirmative nod).

12 SOLICITOR HERRING-LASH: Those
13 are all the questions that I have, [Minor 1].
14 Answer any that Mr. Burns has. Okay?

15 THE COURT: Cross-examine.

16 CROSS EXAMINATION

17 BY MR. ALAN BURNS:

18 Q. You said that I drove you to an area off
19 of Venning Road?

20 A. Yes.

21 Q. Could you describe this area, what it
22 looked like?

23 A. Just the road, trees, palm trees and
24 there were houses in the back.

25 Q. And where did I park at?

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1 A. You parked on the side of the road, in
2 the middle of the palm trees.

3 Q. I parked in the middle of the palm
4 trees. How many palm trees?

5 A. It was two.

6 Q. Two?

7 A. Yes.

8 Q. What side of the road was I parked on?

9 A. You had to be parked on the left-hand
10 side.

11 Q. As you're going in or coming back out?

12 A. No, coming back out.

13 Q. And the field would have been on the
14 left-hand side, as well?

15 A. The field?

16 Q. The field that I was parked -- was I
17 parked in the field?

18 A. No, you were parked on the side of the
19 road.

20 Q. And there was no field or anything
21 around?

22 A. Not that I recall.

23 Q. Was this the first time you had ever
24 been to this area?

25 A. Yes.

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1 Q. And you've never been back to that area
2 again?

3 A. Not to my knowledge.

4 Q. Not to this very day, you've not been
5 back to that area?

6 A. Not to my knowledge.

7 Q. You said that I hit you with a tool?

8 A. Yes.

9 Q. What did I hit you with?

10 A. On my knee.

11 Q. What type of tool was it?

12 A. I don't recall.

13 Q. At the time you said your mom had a car,
14 what kind of car did she have?

15 A. She had a blue car but I don't know the
16 make or model.

17 Q. Dark blue? Light blue?

18 A. Light blue.

19 Q. Why didn't you tell anyone?

20 A. Because you said that if I did that you
21 would cut her brakes or you would have did
22 something to her.

23 Q. Was there a time when you ran away from
24 home, from my sister's house?

25 A. Yes.

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1 Q. How long were you gone?

2 A. How long was I gone?

3 Q. Yes.

4 A. Two or three days.

5 Q. Were you found or did you come back home
6 on your own?

7 A. No, I was found.

8 Q. Where were you found at?

9 SOLICITOR HERRING-LASH: Your
10 Honor, I would object to relevance.

11 THE COURT: Sustained. Character.
12 Improper.

13 CROSS EXAMINATION CONTINUED

14 BY MR. ALAN BURNS:

15 Q. You said that there wasn't no field
16 around where ---

17 A. Not to my knowledge.

18 Q. And you said that I parked under two big
19 palm trees?

20 A. Yes.

21 MR. ALAN BURNS: Your Honor, could
22 I put out the State's exhibit and ask
23 something, because I couldn't see what she
24 was pointing to when she was pointing.

25 THE COURT: Yes, sir. Next time

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1 just move so that you can see. Certainly you
2 can reference whatever it is that you see.
3 The jury has seen it. You want her to show
4 you where it was?

5 MR. ALAN BURNS: Yes, sir.

6 THE COURT: Hold it up and let her
7 show you. No need for her to come down.
8 Just show her the exhibit. No need to put it
9 up or for her to come down since she has
10 already shown the jury. This is for your
11 benefit.

12 CROSS EXAMINATION CONTINUED

13 BY MR. ALAN BURNS:

14 Q. Can you show me?

15 A. Along this road.

16 Q. Where at along this road?

17 A. Right here.

18 Q. Show me exactly where.

19 A. Right along this road.

20 Q. You don't remember exactly where? D

21 A. No, I don't remember the exact spot.

22 THE COURT: She has answered your
23 question, Mr. Burns, to the best of her
24 ability. That's as far as you're going to go
25 on that issue. Thank you.

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1 CROSS EXAMINATION CONTINUED

2 BY MR. ALAN BURNS:

3 Q. Did you ever take the police and show
4 them the area where this supposedly happened?

5 A. No.

6 Q. Okay. Let me ask you this question, you
7 said that --you said when I went down the
8 road -- that I took you down the road, drove
9 all the way down by some houses and turned
10 around?

11 A. Yes.

12 Q. Then I came back up and parked by two
13 big palm trees, that there was just two big
14 palm trees there?

15 A. Yes.

16 MR. ALAN BURNS: (Tenders document
17 to be marked as exhibit).

18 COURT REPORTER: Defendant's
19 Exhibit 7 for identification.

20 CROSS EXAMINATION CONTINUED

21 BY MR. ALAN BURNS:

22 Q. Do you recognize the area in this
23 picture?

24 A. Yes.

25 Q. Where is it?

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1 A. That's the same road that you took me
2 down.

3 Q. Is this where I parked at?

4 A. No, you parked a little farther back.
5 So that's not the part of the road that I am
6 talking about. That is down the same road,
7 though.

8 MR. ALAN BURNS: (Tenders document
9 to be marked as exhibit)

10 COURT REPORTER: Defendant's
11 Exhibit 8 for identification.

12 (SO ENTERED AS DEFENDANT'S EXHIBIT 8 FOR ID)

13 THE COURT: Photograph, ID only.

14 CROSS EXAMINATION CONTINUED

15 BY MR. ALAN BURNS:

16 Q. Do you recognize this photo?

17 A. If you could hold it down some so that I
18 could see it.

19 Q. (Displaying).

20 A. Yes, I recognize that photo.

21 Q. Do you recognize the area that I parked
22 in, in this photo?

23 A. No.

24 Q. Is it further down than this?

25 A. Yes.

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1 Q. Very good.

2 MR. ALAN BURNS: Your Honor, I
3 would like to enter that.

4 THE COURT: Enter it into
5 evidence. Do you want it marked or?

6 MR. ALAN BURNS: Marked into
7 evidence.

8 THE COURT: For demonstrative
9 purposes. It's not the same thing as State's
10 Exhibit previously marked?

11 MR. ALAN BURNS: No, sir, it is
12 not.

13 THE COURT: All right, sir, that's
14 fine.

15 COURT REPORTER: Defendant's
16 Exhibit 9.

17 (SO ENTERED AS DEFENDANT'S EXHIBIT 9 FOR ID)

18 THE COURT: Defendant's Exhibit 9
19 is a blown up photograph, aerial photograph.

20 MR. ALAN BURNS: Your Honor, this
21 is an aerial photo of Venning Road as it
22 looked in 1979 -- excuse me -- in 1997 and
23 1998.

24 CROSS EXAMINATION CONTINUED

25 BY MR. ALAN BURNS:

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1 Q. Would you show me on this map
2 approximately how far down that we went?

3 A. I can't tell on this map.

4 Q. These are the palm trees that I just
5 showed you.

6 THE COURT: No, sir. Now, Mr.
7 Burns, you're testifying again.

8 MR. ALAN BURNS: Oh, I'm sorry.

9 THE COURT: She's said that she
10 cannot on that map. If you have something
11 else that you want to ask her about, that's
12 fine but the witness now would be speculating
13 if she locate it because she's said that she
14 can't tell.

15 MR. ALAN BURNS: Okay.

16 THE COURT: And you can't testify
17 at this point.

18 MR. ALAN BURNS: Okay, I just want
19 that entered in the record.

20 THE COURT: It is not entered. It
21 is for ID only.

22 MR. ALAN BURNS: (Tenders
23 documents to be marked as exhibits).

24 COURT REPORTER: Defendant's
25 Exhibit 10 for identification, and Exhibit

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1 11.

2 THE COURT: Defendant's 10 and 11
3 for ID only, each being a photograph.

4 CROSS EXAMINATION CONTINUED

5 BY MR. ALAN BURNS:

6 Q. Do you recognize these photos?

7 A. No, I don't.

8 Q. Do you recognize this photo?

9 A. No, I don't.

10 THE COURT: Which -- so that was
11 Exhibits 10 and 11 that you just showed her?
12 Is that correct, Mr. Burns?

13 MR. ALAN BURNS: Yes, sir. Ten
14 and eleven.

15 THE COURT: She doesn't recognize
16 either one of them.

17 CROSS EXAMINATION CONTINUED

18 BY MR. ALAN BURNS:

19 Q. So, Minor 1 I just showed you two
20 photos of the entire road.

21 THE COURT: No, sir. You are
22 testifying again. She didn't recognize them.
23 You can't tell her what that is. She said
24 that she doesn't recognize it, so you'd have
25 to testify. If you can prove what that is,

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1 then you're entitled to make a statement but
2 first you have to prove it. It's an improper
3 question. You have to rephrase your question
4 without identifying what it is, because it
5 hasn't been identified.

6 MR. ALAN BURNS: Okay.

7 CROSS EXAMINATION CONTINUED

8 BY MR. ALAN BURNS:

9 Q. Minor 1 if you were to be taken back to
10 that area today, would you be able to
11 identify it?

12 A. Yes, sir, I would.

13 Q. So if I was to present to you photos of
14 that area, would you be able to identify it?

15 A. If it was clear photos then, yes, sir, I
16 would.

17 Q. Were the photos that I just showed you
18 clear enough for you to identify that was the
19 entire length of the road?

20 A. No, sir.

21 Q. All right. Let me ask you another
22 question. I don't expect you to know the
23 answer but ---

24 THE COURT: You don't expect her
25 to know the answer? Why are you asking her

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1 the question.

2 MR. ALAN BURNS: I am just
3 checking to see if she knows the answer.

4 THE COURT: Don't ask her a
5 question that you don't expect her to know
6 the answer because that's -- there is a rule
7 of evidence, 602, and it says witnesses are
8 not allowed to talk about things of which
9 they have no knowledge. So if a person
10 doesn't have knowledge, how can she testify?

11 MR. ALAN BURNS: I'll move to
12 something else.

13 CROSS EXAMINATION CONTINUED

14 BY MR. ALAN BURNS:

15 Q. Do you remember what you was wearing
16 that day?

17 A. No, sir.

18 Q. Do you remember what I was wearing that
19 day?

20 A. I know it was a white shirt.

21 Q. The same shirt that I used to wipe
22 myself ---

23 A. Yes.

24 Q. --- and wipe your back?

25 A. Yes.

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1 Q. Following that, did I put the shirt back
2 on?

3 A. No, sir, you didn't put the shirt back
4 on. You threw it in the backseat.

5 Q. At the time, how old did you say that
6 you were?

7 A. I was around eleven, eleven or twelve.

8 Q. I went barebacked.

9 A. Excuse me?

10 Q. I went home bare backed. I didn't have
11 any shirt on?

12 A. Yeah, you had a shirt. You had one of
13 those tank top type shirts on.

14 MR. ALAN BURNS: All right. That
15 will be it for now, Your Honor.

16 THE COURT: Redirect?

17 SOLICITOR HERRING-LASH: No, Your
18 Honor. May Ms. Whitaker be excused?

19 THE COURT: Any objection?

20 MR. ALAN BURNS: Yes, I would like
21 to call Ms. Whitaker back, Your Honor.

22 THE COURT: Did you subpoena her?

23 MR. ALAN BURNS: Yeah, I did sent
24 a subpoena for her.

25 THE COURT: Ms. Whitaker, you have

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1 to remain here but -- she may remain in the
2 courtroom. Thank you. If you choose to, or
3 you may remain outside. You're not free to
4 leave.

5 THE COURT: All right. At this
6 point we will take a recess for lunch. Do
7 not, Ladies and Gentlemen, begin your
8 deliberations, do not discuss the case among
9 yourselves and certainly while you are out do
10 not permit anyone to talk about the case in
11 your presence or talk about the case. Have a
12 good lunch.

13 I would ask that you please return
14 to your jury room by 1:45 and we will resume
15 the trial at that time. Thank you.

16 (JURY OUT @ 12:17 P.M.)

17 THE COURT: Anything from the
18 State before we recess?

19 SOLICITOR HERRING-LASH: No, Your
20 Honor.

21 THE COURT: Anything from the
22 Defendant, Mr. Burns?

23 MR. ALAN BURNS: I would like to
24 know if it would be possible for them to
25 bring me back up early before we get ready to

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1. proceed so that I can prepare.

2. THE COURT: Yes, we will talk
3. about that but right now -- yes, I will
4. accommodate you ---

5. MR. ALAN BURNS: Thank you.
6. There's nothing else, sir.

7. THE COURT: Who are your witnesses
8. this afternoon? I want you to make a list,
9. give Mr. Burns a list of the witnesses.

10. What I want you to do, Mr. Burns, so
11. that we will have what it is that you --
12. that's what we do with lawyers and --- you're
13. doing fine. You have the files but you need
14. to put those files and the matter that you
15. think that you may use -- you might not use
16. them -- but every matter that you think that
17. you might use on cross-examination, they need
18. to be in a place where you can put your hand
19. on them real quickly. I am going to require
20. them to give you the witnesses and the order
21. in which they will appear. I am going to
22. require them to do that so that you don't
23. have to sit there and go through all your
24. files as long as your have up to now.

25. SOLICITOR HERRING-LASH: Your

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1 Honor, I can put the order of -- there is one
2 person who is coming from Columbia and I will
3 put her up as soon as she gets here.

4 THE COURT: That's fine. Who is
5 the person from Columbia?

6 SOLICITOR HERRING-LASH: Gail
7 Heath. She is a handwriting analyst.

8 THE COURT: How long do you need
9 to be brought up before we start, Mr. Burns?

10 MR. ALAN BURNS: Ten, fifteen
11 minutes.

12 THE COURT: All right. We will
13 start back at 1:45 and he may be here by
14 1:30, please. We will be in recess until
15 1:45.

16 (LUNCH RECESS)

17 (DEFENDANT PRESENT)

18 SOLICITOR HERRING-LASH: Your
19 Honor, one matter. There are some witnesses
20 for Mr. Burns that have been in the courtroom
21 the whole time. I realize that he has not
22 been able to communicate with them, may not
23 know who they are. But it's been brought to
24 my attention that they have been in the
25 courtroom the whole time. I think it is

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1 Cecilia Burns and ---

2 THE COURT: Is there somebody
3 outside that's screening people as they come
4 in?

5 SOLICITOR HERRING-LASH: Not that
6 I know of.

7 THE COURT: That's fine. If you
8 are a witness, if you have been subpoenaed to
9 be a witness in this case, you're not -- we
10 are sequestering witnesses and you need to
11 wait outside. So -- any witnesses subpoenaed
12 by either side needs to leave.

13 So there is nobody here as witness.

14 FEMALE: I came -- can I talk to
15 you?

16 THE COURT: Yes, ma'am.

17 FEMALE: I got a subpoena yesterday.
18 I came today to verify when I'm supposed to
19 be questioned but I do have a job and school
20 and ---

21 THE COURT: Who subpoenaed you?

22 FEMALE: I was told the defense.

23 THE COURT: Then you will have to
24 talk to him. But right now if you've been
25 listed by either side, ---

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1 FEMALE: I understand but I didn't
2 even know the rules ---

3 THE COURT: Ma'am, I'm telling you
4 the rules.

5 FEMALE: Okay, tell me.

6 THE COURT: You can leave. Right
7 now you can sit outside -- ma'am, you have to
8 sit outside until your name is called. That
9 is the rules.

10 FEMALE: I am not a relative to this
11 whole case anyway. I believe that --
12 (talking as she exits courtroom).

13 THE COURT: What did you say,
14 ma'am?

15 FEMALE: Nothing -- (exits
16 courtroom).

17 THE COURT: You better not be
18 saying anything. You might not be leaving at
19 all.

20 Mr. Burns, I've been patient with
21 you. You're going to have to make sure that
22 you're not communicating with any of these
23 people. When they come in the courtroom,
24 you're going to have to inform the court so
25 that I can instruct them to leave. You need

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1 to do that. You need to have told them that
2 they'd been sequestered. That was your
3 motion.

4 MR. ALAN BURNS: Right, I
5 understand that.

6 THE COURT: All right. Well, if
7 you understand that, don't let that happen
8 anymore.

9 MR. ALAN BURNS: Because I'm been
10 trying to ---

11 THE COURT: Let me finish and then
12 I will hear from you.

13 MR. ALAN BURNS: Okay.

14 THE COURT: We are giving you --
15 this is about the second time that has
16 happened. The next time that it happens --
17 because your motion to sequester the
18 witnesses was granted, you are now on notice
19 that the next witness that stays in this
20 courtroom -- I don't know what they are going
21 to testify to, but they will not be permitted
22 to testify. Okay? It's that important, so
23 you might better monitor that. Now I will be
24 glad to hear from you.

25 MR. ALAN BURNS: The situation is

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1 that when they keep coming in, I notify Ted.
2 I also told Ms. Herring-Lash at one time,
3 because the order that you gave when I first
4 made the request was for Ms. Herring-Lash to
5 appoint someone to ---

6 THE COURT: No, that's not what I
7 said. You misunderstood what I said. I said
8 she can designate your chief investigating
9 officer, who can remain here and that the
10 victims after they testify can remain in the
11 courtroom under the Victims Bill Of Rights.

12 Now, with respect to what you have
13 to do, that's your responsibility to monitor
14 the witnesses. I can't sanction you as a
15 lawyer, because you're not a lawyer. But I
16 can sanction you by not allowing the
17 witnesses -- whatever you have to do -- if
18 Mr. Smith has to go tell them to leave, he
19 can get up and leave to tell them that. But
20 it is your responsibility to keep those
21 witnesses out of court. You should be
22 communicating with them somehow, but that's
23 -- that's a problem and I understand that
24 logistical problem.

25 But I am just telling you that the

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1 one thing that I can do is prevent you from
2 calling the witnesses if they remain contrary
3 to the order which has been issued in this
4 case at your request, not the State's request
5 but your request.

6 MR. ALAN BURNS: Yes, sir.

7 THE COURT: If a witness has
8 already testified, they are free stay here or
9 they have been excused. There was one
10 witness that I think Mr. Burns had subpoenaed
11 that I would not allow because the person was
12 not a victim, as I understand.

13 SOLICITOR HERRING-LASH: Right.
14 And I think the only one that is not a victim
15 that is in here is Karen Burns, and she has
16 already testified. She has not be subpoenaed
17 by Mr. Burns.

18 THE COURT: Very well.

19 TED SMITH: Judge, just very
20 briefly, I talked with both of those
21 witnesses in the hallway. They both
22 indicated and that they would not be back.

23 THE COURT: Well, I don't know
24 what the purpose was of their being
25 subpoenaed, but -- Mr. Burns, you can

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1 subpoena anyone but -- I was a lawyer for
2 twenty-one years. One mistake that you do is
3 that you subpoena somebody and put them on
4 the stand and if you don't know what they are
5 going to say it's not always a good thing to
6 do. You might get somebody angry at you and
7 it might work against you.

8 So I don't know what your motive was
9 or what you intended to gain from these
10 people but somebody needs to be communicating
11 with these people. She was obviously angry
12 about being subpoenaed.

13 So I don't know what your purpose
14 and you don't need to discuss that to me, I'm
15 not asking you to do that, but I am just
16 cautioning you, having been a lawyer. It's
17 not always a good idea to put a witness, that
18 you have to do a direct examination and you
19 don't know what they are going to say.

20 Just with that -- I am adding that
21 -- you can ignore that, you can -- I am just
22 cautioning you as a person that's presenting
23 their case. Okay?

24 MR. ALAN BURNS: Thank you, sir.

25 LORI PROCTOR: Just one minute.

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1 THE COURT: Sure, Ms. Proctor.

2 LORI PROCTOR: (Sidebar with
3 Defendant and Mr. Smith). Thank you, Your
4 Honor, we're ready.

5 THE COURT: Bring in our jurors,
6 please. Thank you.

7 (JURY IN @ 12:40 P.M.)

8 THE COURT: Thank you, Ladies and
9 Gentlemen. I hope you had a good lunch. We
10 are now ready to continue. Please give your
11 attention to the next witness. Solicitor,
12 you may call your next witness.

13 SOLICITOR RAN STONEY: The State
14 calls Felicia Milson.

15 (WITNESS TAKES STAND)

16 FELICIA MILSON, being duly sworn to
17 tell the truth, the whole truth and nothing
18 but the truth, testified as follows:

19 DIRECT EXAMINATION

20 BY SOLICITOR RAN STONEY:

21 Q. Good afternoon. Ms. Milson, where do
22 you live?

23 A. I live at [REDACTED] Black Rail Court, Mount
24 Pleasant, South Carolina.

25 Q. How long have you lived in Mount

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1 Pleasant?

2 A. Right now about ten or twelve years.

3 Q. Do you know the Burns family?

4 A. Yes.

5 Q. How did you come to know the Burns?

6 A. I knew some of the brothers and sisters
7 when we went to high school together. I used
8 to hang out with the older sister.

9 Q. During that time did you see Alan Burns?

10 A. No, I never met him.

11 Q. Do you know Alan Burns?

12 A. I know him, you know, later on in life.
13 We started dating, then we got married, then
14 we got divorced.

15 Q. How long were you married to Mr. Burns?

16 A. I'd say about two years.

17 Q. Where did you and Alan live?

18 A. First we lived on the Jenkins Project
19 and then we moved with his parents and then
20 we moved to Dunlap Street in North
21 Charleston.

22 Q. Was Alan working at this time?

23 A. At first he was. He was a painter.

24 Q. Were you working?

25 A. Yes.

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1 Q. Where were you working?

2 A. I used to work for the school service in
3 the lunch room and then I worked the after-
4 school program. I worked at Piggly-Wiggly.
5 The later on I would work that evening at the
6 boys and girls club.

7 Q. While you were working at the boys and
8 girls club, would Alan come to visit you
9 there?

10 A. Yes.

11 Q. Did any of his nieces and nephews attend
12 any of the programs at the boys and girls
13 club?

14 A. Yes.

15 Q. Which ones?

16 A. It used to be [Minor 2] and Kevin.

17 Q. When Alan would come to visit you, would
18 he interact with his nephews?

19 A. Yes. Kevin mostly played with the other
20 kids. [Minor 2] mostly by himself, but he was
21 always asking [Minor 2] to go someplace with
22 him.

23 Q. Alan was asking [Minor 2] to go someplace
24 with him?

25 A. Um-humm.

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1 THE COURT: Was that a "yes"?

2 THE WITNESS: Yes. Sorry about
3 that.

4 DIRECT EXAMINATION CONTINUED

5 BY SOLICITOR RAN STONEY:

6 Q. Would the two of them go alone?

7 A. Yes.

8 Q. Going back to Alan's parents' house, do
9 you remember them having an outbuilding known
10 as the speakeasy?

11 A. Yes.

12 Q. What was that?

13 A. It was just like a family gathering
14 spot. Then he turned it into a barber shop.

15 Q. So Alan would cut peoples hair back
16 there?

17 A. Yeah.

18 Q. Do you remember if **Minor 2** got his hair
19 cut back there?

20 A. Yes.

21 Q. Does anything stand out to you about
22 when **Minor 2** would get his hair cut?

23 A. He was mostly always crying, didn't want
24 to go back there; you know, more than the
25 other kids. He just did not want to go back

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1 there. But his mom would always tell you
2 'you gotta get your hair cut' because, you
3 know, church was the next morning.

4 Q. So she would end up making him go get
5 his hair cut?

6 A. Yes.

7 Q. Do you know [Minor 1] [REDACTED]?

8 A. Yes.

9 Q. Do you ever remember seeing her around
10 with Mr. Burns?

11 A. Yes. Several times they came up to our
12 home on Dunlap Street, like in the
13 summertime. She would be in the car. I
14 would come to the door and she would be like,
15 'Hi, Aunt Felicia.' I would be thinking
16 like, 'What is she doing up here?' I asked
17 him, I said, you know, 'Why is [Minor 1] with
18 you?' And he said, 'Oh, we were at the
19 church and I had to come home and get
20 something.' So in my mind, I am like 'does
21 [Minor 4] know her daughter is up here?' You
22 know.

23 Q. Why was that strange to you, that she
24 would be up there?

25 A. Because she lived in Mount Pleasant.

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1 Why would she come all the way up here? Why
2 would you bring her up here instead of take
3 her home.

4 Q. When you say that you would walk to the
5 door, was that the door of the car?

6 A. The door -- the doorway of the house and
7 they would be parked in front of the doorway
8 and, you know, she would hail me.

9 Q. Did **Minor 1** ever get out of the car?

10 A. No, she just sat there.

11 Q. Do you remember if you saw Yolanda and
12 Mr. Burns together on more than one occasion?

13 A. No, just when they would come up.

14 Q. But more than one time?

15 A. Yes.

16 Q. While you were married to Alan, were you
17 part of the Burns family holiday festivities?

18 A. Yes.

19 Q. Any anything ever happen during the
20 holidays that you found strange?

21 A. Yes. One Thanksgiving -- you know, they
22 always put names in a bag that I had, you
23 know, for each one to pick a name out for
24 Christmas. This one particular Thanksgiving,
25 **Minor 4** had picked Alan's name. She was so

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1 mad, she was crying, she was just beside
2 herself and -- you know, we just had to calm
3 her down and somebody else had to take his
4 name.

5 Q. Did you look into the fact any further
6 or ask Alan about it?

7 A. Yes.

8 Q. What was Alan's reaction when you asked
9 him about it?

10 A. I asked him what did you do to those
11 kids for those kids to act like that, you
12 know, you need to go and apologize to them,
13 ask them for their forgiveness.

14 He would be like, 'God will forgive me.
15 I've already forgive myself.' I said, 'well,
16 you need to go talk to them and ask them for
17 their forgiveness.'

18 Excuse me everybody, he said, 'Fuck
19 them.' I say, 'How you mean? You already
20 messed those kids up. Those kids -- those
21 kids have got to go through life like that.'
22 I told him that I was so sorry that I married
23 you, because if I'd knowed you were like
24 that, I would never have married you.' He
25 was like, 'Fuck them, fuck you.' I was,

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1 like, 'Okay.' You know.

2 Q. Did he ever deny the allegations?

3 A. (Negative gesture), no. No.

4 Q. During the time that you lived in North
5 Charleston, would Alan stay in Mount
6 Pleasant?

7 A. All the time. All the time, he was
8 always in Mount Pleasant.

9 Q. So is it fair to say that while you all
10 were married that you weren't necessarily
11 living in the same place?

12 A. We were living in the same house. He
13 would come home odd hours of the night.

14 SOLICITOR RAN STONEY: Court's
15 indulgence.

16 THE COURT: Yes, sir.

17 DIRECT EXAMINATION CONTINUED

18 BY SOLICITOR RAN STONEY:

19 Q. Can you tell me the dates that you were
20 married?

21 A. All I know is that we were dating in
22 1997 and -- I think we got married somewhere
23 in June of '98. I am not sure.

24 Q. How long did you say you were married?

25 A. About two years.

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1 Q. Do you remember what kind of car that
2 Alan used to drive?

3 A. Alan had many cars. I mean, I had a
4 Skylark, I had a Lincoln, Alan had several
5 vans, a boat, a little car -- I can't
6 remember the name of the little car. He had
7 a gray-and-burgundy car, he had a black car.
8 He just had a lot of cars. He used to drive
9 my car a lot too.

10 SOLICITOR RAN STONEY: Thank you.
11 Please answer any questions that Mr. Burns
12 has.

13 THE COURT: You may cross examine.

14 CROSS EXAMINATION

15 BY MR. ALAN BURNS:

16 Q. Good morning. When I first came home in
17 '97, where did you and I live?

18 A. When you came home in '97?

19 Q. (Affirmative nod).

20 A. We lived on Edmond Jenkins for a little
21 while.

22 Q. I asked where did we meet?

23 A. Oh, at a nightclub.

24 Q. Who introduced us?

25 A. Your Cousin Paul and Bonita.

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1 Q. And what was during the same week when I
2 first came home, right?

3 A. I don't know when you first came home.
4 They just said that you came out of prison
5 and you were looking for somebody to talk to.

6 Q. And it was within about two weeks that
7 you allowed me to move into your house with
8 you?

9 A. Yes.

10 Q. And we lived there together on Edmond
11 Jenkins Project until we moved; right?

12 A. Yes, to your mother's house.

13 Q. Right. During the time that we would be
14 living on the Jenkins Project, there was a
15 time when I came home from work one evening
16 and I caught Travis, your son, in the bedroom
17 rolling up some marijuana in bags to sell. I
18 took it from him and ---

19 SOLICITOR RAN STONEY: Objection.

20 THE COURT: Sustained. It's not
21 relevant.

22 MR. ALAN BURNS: Goes to
23 character, Your Honor.

24 THE COURT: That's correct.
25 That's why it is not relevant. It's

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1 inadmissible.

2 MR. ALAN BURNS: Okay.

3 THE COURT: Under the rules.

4 CROSS EXAMINATION CONTINUED

5 BY MR. ALAN BURNS:

6 Q. Whenever I attempted to discipline the
7 children, if I grounded them, tried to make
8 them study, did you always go behind me and
9 suspend the punishment for whatever it was
10 that they were doing?

11 A. Yes, Alan, because you were too harsh on
12 them. You beat them. You beat my son. You
13 beat my son, (emotional).

14 Q. Which ones of your sons did I beat?

15 A. Daniel. You got him -- oh, my god, you
16 got him so messed up.

17 Q. When you and I first met, since you
18 brought this up, was not Daniel in some type
19 of special classes in school?

20 A. Yes, he was.

21 Q. He had learning disabilities?

22 A. Yes, he did.

23 Q. And he had behavioral problems?

24 A. Yes, he did.

25 Q. Was there ever a time when his grades

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1 had gotten so bad that I attempted to get him
2 a tutoring service?

3 A. I already had then in tutoring at the
4 Brown Church.

5 Q. We had already moved, so ---

6 THE COURT: That's arguing.

7 MR. ALAN BURNS: I apologize.

8 Thank you.

9 CROSS EXAMINATION CONTINUED

10 BY MR. ALAN BURNS:

11 Q. After we had moved to North Charleston,
12 did I ever attempt to get Daniel into various
13 basketball leagues, like the AAU?

14 A. You didn't do that. It was the school
15 that did that, it was the coaches.

16 Q. Did Daniel ever play high school
17 basketball?

18 A. Yes.

19 Q. Daniel's grades were at a level where he
20 was able to be on the team?

21 A. He used to play high school basketball.

22 Q. I'm talking about ---

23 A. I'm talking about Wanda High School when
24 he used to go to school there, yes.

25 Q. There was a time, and I don't know if

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1 you remember,

2 SOLICITOR RAN STONEY: Relevance?

3 THE COURT: I sustain the
4 objection. You've got with that as much as
5 you can go.

6 MR. ALAN BURNS: I'm ready to go
7 on to something else.

8 THE COURT: That's good. Then we
9 are both on the same page. I'm glad to know
10 that you are moving on, Mr. Burns. Thank
11 you, sir.

12 CROSS EXAMINATION CONTINUED

13 BY MR. ALAN BURNS:

14 Q. There was a time when, after me and you
15 had separated -- do you remember when we
16 separated?

17 A. Um-humm.

18 THE COURT: "Yes?"

19 THE WITNESS: Yes. I'm sorry.
20 It helps the record. It is not a problem but
21 we need to make sure of your answer.

22 THE WITNESS: Okay. "Yes."

23 CROSS EXAMINATION CONTINUED

24 BY MR. ALAN BURNS:

25 Q. And you had got some information from

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1 someone that said to keep me away from the
2 house that all you had to go was to make up a
3 story that I had threatened to burn the house
4 down?

5 A. You told me that yourself. We were
6 arguing and I told you, I said that I wanted
7 you out of the house. I wanted us to
8 separate. And you said if you had to leave
9 this house that you would burn it down with
10 us in it. I remember. I remember. I
11 remember everything.

12 Q. When you filed for the separation
13 papers, I was living at the house with you?

14 A. No, because you had got picked -- you
15 had got picked up. You got picked up.

16 Q. Exactly. So when I got out of jail, I
17 went on and got my own place; is that
18 correct?

19 A. Yes.

20 Q. Was there a time -- and during that time
21 you had moved into a trailer with your three
22 sons; is that correct?

23 A. Yes.

24 Q. And was there a time when you moved out
25 of the trailer with your three sons and moved

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1 back over with your mother?

2 A. Yes.

3 Q. Shortly thereafter, did you come to me
4 and ask me to rent a room in my house?

5 A. Yes, just for myself.

6 Q. And this was after you had found out all
7 the stuff that you supposedly had found out
8 from [Minor 4] and everybody else?

9 A. Not supposedly.

10 Q. This was after you found out the stuff
11 from them?

12 A. Yes.

13 Q. So with the knowledge of all this stuff
14 in your mind, the knowledge that I beat your
15 son and you hated me so much, ---

16 A. I never hated you. I never hated you.

17 Q. Okay. You still came to live with me.
18 You left out of your mother's house where you
19 were living with ----

20 A. (Affirmative nod), to get closer to my
21 job.

22 Q. So you would risk being around me, a
23 person who you considered to be a person
24 who'd threatened ---

25 THE COURT: You have a compound

1 question there. You need to break that up.

2 MR. ALAN BURNS: Sorry.

3 CROSS EXAMINATION CONTINUED

4 BY MR. ALAN BURNS:

5 Q. So you risked your safety for the
6 convenience of your job?

7 A. I wasn't scared of you. I never was
8 scared of you, but I didn't like what you was
9 doing to my kids.

10 Q. Was there ever a time I bought an old
11 car from the junkyard, a black car, and I
12 took it over to Mount Pleasant and took
13 Durell (phonetic) over there and told him
14 that I bought the car for him and asked him
15 to -- all we've got to do is fix it up and
16 it's your car?

17 A. Yes.

18 Q. Huh?

19 A. Yes.

20 SOLICITOR RAN STONEY: Objection.

21 THE COURT: Overruled.

22 CROSS EXAMINATION CONTINUED

23 BY MR. ALAN BURNS:

24 Q. And Durell refused, so I fixed the car
25 myself? After that ---

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1 THE COURT: Wait a minute. Hold
2 on. Mr. Burns, you are stating things that
3 you've got to establish -- she'd have to have
4 knowledge of what you just said, for you to
5 ask the question in that fashion. As I told
6 you, one of the rules we have is that she has
7 to have independent knowledge of it for it to
8 be admissible. So you just stated something.
9 Again, you're testifying. Lay a foundation
10 for it.

11 MR. ALAN BURNS: Okay.

12 THE COURT: By asking this witness
13 what her knowledge is of that.

14 MR. ALAN BURNS: Okay.

15 CROSS EXAMINATION CONTINUED

16 BY MR. ALAN BURNS:

17 Q. Did there come a time after that that
18 Durell asked me for the car?

19 A. No, I don't remember that time.

20 Q. Did I ever give Durell a red or burgundy
21 car, the car that he wrecked?

22 A. All I remember is that black car.

23 Q. Was that car ever painted?

24 A. All I can say is that I remember the
25 black car.

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1 Q. What ever happened to that car?

2 A. I have no idea.

3 Q. Was not Durell in a car accident ---

4 THE COURT: She says that she
5 doesn't know.

6 MR. ALAN BURNS: No, I am asking
7 her another question.

8 THE COURT: You are going to have
9 to establish the relevance of him being in a
10 car accident, sir, for it to be germane to
11 the question.

12 CROSS EXAMINATION CONTINUED

13 BY MR. ALAN BURNS:

14 Q. You said that I did buy him a car and
15 that -- to give ---

16 THE COURT: No, sir, that's not
17 what she said. You phrased it, sir. I told
18 you to lay the foundation. Ask her knowledge
19 about that. You can't make those statements.
20 Ask the witness a question. She never said
21 that. She said that she knew about a black
22 car. She didn't say that she knew that you
23 bought it or anything else about it. You
24 have to lay the foundation. Please rephrase
25 the question. Ask the witness what her

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1 knowledge is of that.

2 CROSS EXAMINATION CONTINUED

3 BY MR. ALAN BURNS:

4 Q. Do you have knowledge of the fact that I
5 bought a black car for Durell?

6 A. I know you came home. You say that you
7 have a car that you are going to fix up.
8 That was it.

9 MR. ALAN BURNS: Your Honor, could
10 I have the reporter read back the questions
11 that I asked her?

12 THE COURT: Sir, -- no, you can't
13 at this point. She just said that 'I have
14 knowledge that you had a car.'

15 MR. ALAN BURNS: Okay.

16 THE COURT: Ladies and Gentlemen,
17 I am ---

18 MR. ALAN BURNS: I ---

19 THE COURT: Hold on a second. I
20 am going to ask tat you go to your jury room.
21 There is a matter of law that I need to take
22 up out of your presence.

23 (JURY OUT @ 2:23 P.M.)

24 THE COURT: Mr. Burns, I've been
25 very lenient with you in allowing you some

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1 leeway because you're trying to do it -- and
2 you're doing a job that -- quite frankly,
3 you're doing fine. We could all as
4 professionals discuss the pros and cons of
5 some of your questions, but that's okay.
6 You're handling yourself and you're
7 conducting yourself in accordance with the
8 rules of this court. I respect that. I
9 appreciate you doing that.

10 But you need to understand
11 something. There are a lot of -- the rules
12 of evidence govern what we're doing here.
13 The rules of this operation of this courtroom
14 govern what we do here.

15 While you are not a lawyer and I
16 can't -- your lawyers and the lawyers for the
17 State, I can sanction them because they are
18 officers of this court. They have sworn to
19 follow the rules. I can't sanction you as a
20 lawyer, because you're not a lawyer.

21 But one thing is for sure, if you
22 choose to enter this forum and enter the role
23 of being a lawyer, I am going to hold you to
24 those same rules. One thing is -- once I
25 rule, the Rule provides that you can't argue

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1 with that ruling. You can appeal me, but you
2 can't argue with my ruling -- not at any
3 time, and you certainly are not going to do
4 it in the presence of the jury. That's a
5 challenge to my responsibility as a trial
6 judge. And this judge, I've tried -- not to
7 be heavy-handed but I have an obligation to
8 make this courtroom -- to keep it in an order
9 that I think is orderly and will proceed to
10 accomplish what I read to you about Rule
11 611(a), to the determination of the truth.

12 You're going to comply with the
13 Rules. Now, if you think this witness
14 answered your question, -- the way to do that
15 is to ask the question again. Not to say 'I
16 want you to read back.' You may have seen
17 that on TV, I've seen it on TV. That isn't
18 the way that it works. That's the problem,
19 TV doesn't depict what happens in a
20 courtroom. Therein lies the problem.

21 I am not threatening you. I just
22 want to caution you of something. Your
23 liberty to be in this courtroom, to be your
24 own lawyer depends on your compliance with
25 the Rules. There are a lot of cases where

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1 pro se litigants have lost that privilege for
2 not complying with the Rules. I am not
3 saying you are there. I am not threatening
4 you in that fashion. I am just reminding you
5 that's the ultimate sanction.

6 I assure you that I don't want to do
7 that and I have no reason at this juncture to
8 do that, but if that persists, I am going to
9 assume that you're pushing the envelope a
10 little bit and I am not going to permit it.
11 Okay?

12 MR. ALAN BURNS: Okay.

13 THE COURT: Thank you, sir.

14 MR. ALAN BURNS: Yes, sir.

15 THE COURT: Bring in our jury.

16 (JURY IN @ 2:28 P.M.)

17 THE COURT: Thank you, Ladies and
18 Gentlemen. Mr. Burns, you may continue your
19 examination, sir.

20 CROSS EXAMINATION CONTINUED

21 BY MR. ALAN BURNS:

22 Q. You testified that I was mean to your
23 boys? In my meanness, was I doing it to be
24 cruel to them or was I doing it because I
25 thought I was trying to be a good father,

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1 discipline them and bring them up the right
2 way?

3 A. You were being cruel. You weren't a
4 good father.

5 Q. I probably wasn't.

6 MR. ALAN BURNS: Excuse me.

7 THE COURT: No, sir.

8 CROSS EXAMINATION CONTINUED

9 BY MR. ALAN BURNS:

10 Q. Was there a time when I took the oldest
11 son, Travis, to an Army recruiter and I was
12 trying to get him to enlist in the military?

13 A. Yes.

14 Q. Okay. Prior to us moving from my
15 mother's house and from Jenkins Project, was
16 there other times -- besides the one time
17 that I have already mentioned -- that I had
18 tried to get you and some others to see that
19 Travis was messing up, was in the street with
20 drugs and other stuff?

21 A. I can't recall that.

22 Q. Was there a time when you, myself and
23 Travis was going to Mount Pleasant and we had
24 to stop at the grocery store because Travis
25 said he wanted to get a job application?

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413
413

1 Travis got out of the car, met somebody at
2 the side of the grocery store, sold some
3 drugs, and when I pointed it out to you ---

4 SOLICITOR RAN STONEY: Objection.

5 THE COURT: Sustained. That's
6 character. Under 608, it's not permitted.

7 CROSS EXAMINATION CONTINUED

8 BY MR. ALAN BURNS:

9 Q. Was there ever a time when Travis got
10 into some other trouble and I went to the
11 police to ---

12 SOLICITOR RAN STONEY: Objection.

13 THE COURT: Sustained. Character
14 evidence. Not allowed under 608.

15 CROSS EXAMINATION CONTINUED

16 BY MR. ALAN BURNS:

17 Q. Did you work for the boys or girls club
18 of the Town of Mount Pleasant Recreation
19 Department?

20 A. They were both joined together.

21 Q. They weren't separate entities?

22 A. No, they were both joined together,
23 because the same kids would be there all day.

24 Q. Right. But you received your paycheck
25 from the Town of Mount Pleasant, not the boys

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1 and girls club.

2 A. The Town of Mount Pleasant, and I worked
3 with the boys and girls club too.

4 Q. So you got a paycheck from them, as
5 well?

6 A. Um-humm.

7 THE COURT: Is that a "yes"?

8 THE WITNESS: "Yes." Sorry
9 about that.

10 CROSS EXAMINATION CONTINUED

11 BY MR. ALAN BURNS:

12 Q. When you moved in with me, when you
13 rented a room from me in North Charleston,
14 prior to you renting that room did I not
15 inform you that I had already moved on, that
16 I had a girlfriend, prior to you renting the
17 room?

18 A. Yeah, you had many girlfriends. You had
19 many little kids coming there, too.

20 Q. Okay. And you still agreed to come and
21 rent the room and live in the house with me?

22 A. I was barely there. I was always
23 working. I just wanted some place to sleep
24 so that I could go to work.

25 Q. Couldn't you have slept at your mother's

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1 house?

2 A. Like I told you before, I asked you to
3 let me stay there to be closer to my job. I
4 let my kids have the trailer where I was
5 renting, because it was too small for all of
6 us to live there.

7 Q. But you could have still stayed in the
8 trailer, though?

9 THE COURT: That's argumentative.

10 CROSS EXAMINATION CONTINUED.

11 BY MR. ALAN BURNS:

12 Q. Let me ask you this, when you first
13 rented the trailer, isn't it true that you
14 had rented the trailer with a male friend of
15 yours, Charles Goodwater?

16 A. No.

17 Q. You and Charles Goodwater weren't dating
18 and living together during that time?

19 A. No.

20 SOLICITOR RAN STONEY: Objection.

21 THE COURT: Sustained. Character.
22 608, not permitted.

23 CROSS EXAMINATION CONTINUED

24 BY MR. ALAN BURNS:

25 Q. When you came and lived with me, was

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1 there a time when -- a Saturday morning when
2 my niece [Minor 3] would come over and have me
3 look at her car?

4 A. I can't recall that. I never saw [Minor 3]
5 there. I saw your cousin there.

6 Q. Which one of my cousins?

7 A. There were two cousins, I guess they
8 were your two cousins. There were so many
9 different young ladies there. I described
10 them and then that's when I found out that
11 they were your sister's -- cousins.

12 Q. Prior to you coming to live with me, you
13 used to have a van, a blue van with a light
14 brown panel on it. Something. An Aerostar.
15 Do you recall that?

16 A. We had that together.

17 Q. No, I am not talking about the one that
18 we had.

19 THE COURT: No, sir.

20 MR. ALAN BURNS: Okay.

21 CROSS EXAMINATION CONTINUED

22 BY MR. ALAN BURNS:

23 Q. While we were separated, what type of
24 vehicle were you driving?

25 A. I had a Skylark.

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1 Q. Was that when we were together?

2 A. Together and after.

3 Q. You bought the Skylark, you traded a
4 gray and burgundy Mercury Monarch that I'd
5 owned to buy that Skylark?

6 A. Yes.

7 Q. So technically the Skylark was actually
8 mine?

9 A. If you say so.

10 Q. Let me ask you something else, too.

11 Prior to us getting together, getting
12 married, you said that you lived on the
13 projects; right?

14 A. Yes.

15 Q. How long had you lived on the projects?

16 A. I can't ---

17 SOLICITOR RAN STONEY: Objection.

18 THE COURT: Sustained. Not
19 relevant.

20 CROSS EXAMINATION CONTINUED

21 BY MR. ALAN BURNS:

22 Q. Shortly after we got married, ---

23 THE COURT: Mr. Burns, let's have
24 a conference, please.

25 (OFF RECORD BENCH CONFERENCE)

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1 MR. ALAN BURNS: All right, that's
2 all that I have then ---

3 THE COURT: Thank you, sir.

4 MR. ALAN BURNS: --- for now.

5 THE COURT: For now? This witness
6 is on the stand.

7 MR. ALAN BURNS: All right.

8 THE COURT: Redirect?

9 SOLICITOR RAN STONEY: Just briefly,
10 Your Honor.

11 REDIRECT EXAMINATION

12 BY SOLICITOR RAN STONEY:

13 Q. When you moved back in with Alan Burns
14 after having lived with your mother, was it
15 you and your children?

16 THE COURT: Mr. Burns, keep your
17 voice down, please.

18 THE WITNESS: It was just me.

19 REDIRECT EXAMINATION CONTINUED

20 BY SOLICITOR RAN STONEY:

21 Q. Just you? Not your children?

22 A. No, they just didn't want to be bothered
23 with him.

24 SOLICITOR RAN STONEY: That's all.

25 THE COURT: Recross, Mr. Burns?

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1 RECROSS EXAMINATION

2 BY MR. ALAN BURNS:

3 Q. Was it that they just didn't want to be
4 bothered with me or was it that they didn't
5 want to be disciplined, and you didn't take
6 the time to discipline them?

7 A. No. They just didn't want to be
8 bothered with you. They didn't want to be
9 around you, especially my young son.

10 Q. That's the one who, when you abandoned
11 him in North Charleston, they went in -- went
12 in and robbed someone at the mall.

13 A. I didn't abandon my son.

14 Q. You left the three of them in the
15 trailer to fend for themselves while you
16 moved back in with your mom, for convenience?

17 SOLICITOR RAN STONEY: Objection.

18 THE COURT: I will allow it.

19 THE WITNESS: I did not abandon
20 my sons.

21 RECROSS EXAMINATION

22 BY MR. ALAN BURNS:

23 Q. But the three of them was left in the
24 house to live alone ---

25 A. I went there every day.

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1 THE COURT: Ma'am, let him finish
2 asking the question before you answer it.

3 THE WITNESS: Okay.

4 RECROSS EXAMINATION CONTINUED

5 BY MR. ALAN BURNS:

6 Q. You left the three of them to live alone
7 in the trailer in Mount Pleasant. You knew
8 that ---

9 THE COURT: Don't ask multiple
10 questions.

11 MR. ALAN BURNS: All right.
12 Sorry.

13 RECROSS EXAMINATION CONTINUE D

14 BY MR. ALAN BURNS:

15 Q. You left the three of them alone, to
16 live in a trailer in North Charleston while
17 you moved back in with your mother; right?

18 A. My son Travis was of age.

19 Q. Did you leave the three of them in the
20 trailer in North Charleston while you moved
21 back in with your mother, yes or no?

22 A. Yes, but I came there every day. I paid
23 the rent, I paid the light bill, I made sure
24 that they had food in the house. I went
25 there every day.

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1 Q. And you knew that Travis got high and
2 sold drugs? You knew that Durell got high
3 and sold drugs?

4 SOLICITOR RAN STONEY: Objection.

5 THE COURT: Sustained. That's
6 character and you're not allowed to do that.

7 MR. ALAN BURNS: Okay.

8 RECROSS EXAMINATION CONTINUED

9 BY MR. ALAN BURNS:

10 Q. Was Daniel of age when you moved out of
11 the trailer?

12 A. Yes, he was sixteen going on seventeen.

13 THE COURT: I remind you, Mr.
14 Burns, that you're limited. This is recross.
15 It is very restricted, only to what was
16 opened on redirect. That's why I allowed the
17 first question but you've pretty much
18 exceeded it.

19 MR. ALAN BURNS: All right. That's
20 all that I have.

21 THE COURT: Thank you, ma'am. You
22 may come down.

23 (WITNESS STEPS DOWN)

24 THE COURT: Do you wish the
25 witness to be excused?

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1 SOLICITOR HERRING-LASH: Yes,
2 Your Honor.

3 THE COURT: Have you subpoenaed
4 this witness, Mr. Burns?

5 MR. ALAN BURNS: No, we didn't.

6 THE COURT: Any objection to her
7 leaving?

8 MR. ALAN BURNS: No.

9 THE COURT: Very well, you are
10 free to leave if you wish. Call your next
11 witness, please.

12 SOLICITOR HERRING-LASH: The State
13 calls Alice Singleton.

14 (WITNESS TAKES STAND)

15 ALICE BURNS SINGLETON, being duly
16 sworn to tell the truth, the whole truth and
17 nothing but the truth, testified, as follows:

18 DIRECT EXAMINATION

19 BY SOLICITOR HERRING-LASH:

20 Q. Ms. Singleton, where do you live?

21 A. In Mount Pleasant.

22 Q. How long have you lived there?

23 A. In Mount Pleasant, all of my life.

24 Q. Are you related to the Defendant, Alan
25 Burns?

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1 A. Yes.

2 Q. What is your relation?

3 A. He's my brother.

4 Q. Are you also related to Minor 1

5 Minor 1?

6 A. Yes, I am.

7 Q. How are you related to Minor 1

8 A. I am her mom.

9 Q. When did you -- are you her adopted mom?

10 A. Yes. Well, the Court appointed me her
11 mother.

12 Q. When was that?

13 A. I believe 1999, '98-'99.

14 Q. When Minor 1 came to live with you, did
15 she also come to be around your brother, Mr.
16 Alan Burns?

17 A. Yes.

18 Q. Were they ever alone together?

19 A. Not to my knowledge.

20 Q. Did he ever give her rides?

21 A. I found out later that he did, but not
22 with my permission.

23 Q. Not with your permission?

24 A. No.

25 Q. How did you find out later that he did?

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- 1 A. [Minor 1] told me.
- 2 Q. Did he have a job that he did for you,
3 as far as cars?
- 4 A. He would repair my car.
- 5 Q. Did he have any other jobs around the
6 house?
- 7 A. If something was broken or stuff like
8 that, but he mainly did my cars.
- 9 Q. So he would come to your house?
- 10 A. To my house, my job, wherever my car was
11 broken.
- 12 Q. Where were you living at that time when
13 [Minor 1] moved in?
- 14 A. In a subdivision in Mount Pleasant,
15 Hickory Shadows.
- 16 Q. What she spend time at your parents'
17 house also?
- 18 A. Yes.
- 19 Q. Did Alan cut hair there?
- 20 A. Yes, he did.
- 21 Q. Did he ever cut your hair?
- 22 A. No, not mine.
- 23 Q. Did he cut like children's hair or ---
- 24 A. My nephews.
- 25 Q. Do you remember anything particular

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1 about that?

2 A. About him cutting hair?

3 Q. (Affirmative nod).

4 A. My dad had like a barn in the back and
5 he set up shop there and we would send the
6 kids there to get their haircuts.

7 Q. How did you find out about what Minor 1
8 has said that Mr. Burns did?

9 A. I asked her after I found out what was
10 doing on. I was told that he did something
11 to her. I called her and asked her.

12 Q. Did you go with her to the police?

13 A. I took her, yes.

14 Q. And have you talked to be supportive of
15 her?

16 A. Oh, yes.

17 SOLICITOR HERRING-LASH: Court's
18 indulgence -- that's all the questions that I
19 have.

20 THE COURT: Cross-examine?

21 CROSS EXAMINATION

22 BY MR. ALAN BURNS:

23 Q. Your testimony here today is only on
24 things that you were told?

25 A. Yes.

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1 Q. And you don't have any actual knowledge
2 of any of the accusations against me, is that
3 right?

4 A. Actual knowledge is what my daughter
5 told me, that's actual.

6 Q. Have you ever seen me inappropriately
7 touch your daughter?

8 A. No.

9 Q. Have you ever seen inappropriately touch
10 Minor 4 ?

11 A. No.

12 Q. Have you ever seen me inappropriately
13 touch Minor 3

14 A. No.

15 Q. Have you ever seen me inappropriately
16 touch Minor 2 ?

17 A. No.

18 Q. Have you ever seen me inappropriately
19 touch Minor 5

20 A. No.

21 Q. Okay. Let me go to something else right
22 quick. When first came home in 1997, where
23 were you living then?

24 A. Same place that I am living at now.

25 Q. You weren't living at your mother's

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1 house when I ---

2 A. Oh, yes. When you first came, I was
3 living there. That's why I moved out.

4 Q. You moved out first, me or you?

5 A. I did.

6 Q. Was there a time when you and I got into
7 an argument because of a bathroom issue?

8 A. We probably did.

9 Q. And you accused me of trying to -- just
10 coming home and wanting to run the house?

11 A. I don't know what the argument was
12 about.

13 Q. Who else was living in the house at that
14 time?

15 A. My mother, my father and my children.

16 Q. Would you name your children, please?

17 A. Moses, So'Nia and Ashley.

18 Q. Was there also a stepdaughter of
19 Cecila's, Shonie or Shana, whatever her name
20 is?

21 A. I don't know. You've had to check with
22 Cecila.

23 Q. So you don't remember ---

24 A. She probably was living there. I don't
25 remember.

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1 Q. Okay. Would you mind telling us what
2 the living arrangement was in the house at
3 that time?

4 A. The people that I just mentioned was
5 living in the house at that time.

6 Q. My question is, can you tell us what the
7 living arrangement was in the house at that
8 time?

9 A. It was the people living in the house:
10 my mom, my dad, myself and my children. That
11 was the living arrangements in the house at
12 that time.

13 Q. Okay. Let me rephrase it so that you
14 can understand it. What room were you
15 sleeping in at the time?

16 A. One of the bedrooms.

17 Q. Which one?

18 A. I am not sure.

19 Q. Which room was So'Nia and Cecila living
20 in at the time?

21 A. One of the bedrooms also.

22 Q. Which one?

23 A. I am not.

24 Q. Which one was Ashley sleeping in at the
25 time?

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1 A. One of the bedrooms.

2 Q. Which one?

3 A. I am not sure.

4 Q. Were all of the bedrooms in the house
5 being occupied?

6 A. I am not sure. I don't remember.

7 Q. When I first came home, where was I
8 sleeping at?

9 THE COURT: What is the relevance
10 of this, please? Because she has already
11 testified in answer to your questions that
12 she has no independent knowledge. You've
13 already covered everything else. Where you
14 were sleeping, where everybody -- unless you
15 can lay the foundation, I am not going to
16 allow you to ask any more questions about
17 that.

18 MR. ALAN BURNS: Okay.

19 CROSS EXAMINATION CONTINUED

20 BY MR. ALAN BURNS:

21 Q. Can you ever recall a time, during the
22 period of time on the day that I came home,
23 that I was left in the house with Minor 2 or
24 anyone, by myself?

25 A. I don't remember.

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1 Q. What kind of car were you driving at the
2 time?

3 THE COURT: That's not relevant.

4 THE WITNESS: I don't remember.

5 THE COURT: Mr. Burns, again I am
6 going to have a sidebar with you.

7 (OFF RECORD SIDEBAR)

8 THE COURT: So you are going to
9 ask the questions that you think is pertinent
10 sir. Thank you, sir.

11 CROSS EXAMINATION CONTINUED

12 BY MR. ALAN BURNS:

13 Q. Did you ever notice any changes in
14 Minor 1 that would indicate that something
15 may have been wrong?

16 A. What kind of changes?

17 Q. Behavior? Grades?

18 A. I don't remember. She was a normal
19 child. She started acting out at one point.

20 Q. Was she -- did she ever run away from
21 home?

22 A. Yeah, she did.

23 Q. Do you know the reason why?

24 A. No, I don't.

25 Q. How long was she gone?

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1 SOLICITOR HERRING-LASH: Your

2 Honor, I would object.

3 THE COURT: I will allow that.

4 THE WITNESS: Probably from
5 after school one day until dark.

6 CROSS EXAMINATION CONTINUED

7 BY MR. ALAN BURNS:

8 Q. How was her grades in school?

9 A. I don't remember.

10 Q. Did she graduate from high school?

11 A. I believe that she did.

12 Q. You didn't attend the graduation?

13 A. No, I didn't.

14 Q. Did you attend the graduation of Ashley?

15 A. I probably did, yes.

16 Q. Did you attend the graduation of Sonny?

17 A. I probably did.

18 Q. What about Moses?

19 A. Yes, I think that I did.

20 Q. Was there ever a time when you and

21 Minor 1 ever got into serious arguments or
22 altercation?

23 A. I hope so. She was my daughter.

24 Q. And as a result -- that's why she ran
25 away from home?

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1 A. No.

2 Q. What about Luther?

3 A. What about him?

4 Q. Did he ever attack you? Choke you?

5 SOLICITOR HERRING-LASH: Your

6 Honor, I would object to relevance.

7 THE COURT: Luther was the person
8 that you asked out?

9 MR. ALAN BURNS: Right, that would
10 be Moses.

11 THE COURT: I sustain the
12 objection.

13 CROSS EXAMINATION CONTINUED

14 BY MR. ALAN BURNS:

15 Q. Did Minor 1 attend college?

16 A. I think she did.

17 Q. Did you foot the bill for college?

18 A. I didn't foot the bill for none.

19 Q. You didn't foot the bill for Sonya?

20 A. No, the state of South Carolina did.

21 Q. Which college did she attend?

22 A. Who?

23 Q. Sonya, So'Nia.

24 A. Clark, in Atlanta.

25 Q. That was the one where you frequently

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1 had me to take you to take her back to school
2 or to pick her up?

3 A. No.

4 Q. You never had ---

5 A. Not frequently. Once.

6 Q. Once?

7 A. (Affirmative nod), once.

8 Q. That was taking her or picking her up?

9 A. Picking her up and taking her.

10 Q. So twice?

11 A. Once picking her up. Once taking her
12 back.

13 Q. And you don't remember the sleeping
14 arrangements in the house or anything like
15 that?

16 A. Boy, didn't I already told you?

17 THE COURT: No, ma'am. Just
18 answer the question.

19 THE WITNESS: We slept in the
20 house.

21 THE COURT: That is as far as it
22 goes. You've already asked that question.

23 CROSS EXAMINATION CONTINUED

24 BY MR. ALAN BURNS:

25 Q. If -- I want to make sure that I word

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1 this just right. You're here today and you
2 are testifying simply to what your daughter
3 told you; is that correct?

4 A. I am testifying to the questions that
5 you just asked.

6 Q. Are you here today testifying to what
7 your daughter told you?

8 A. To all the questions that you just
9 asked.

10 MR. ALAN BURNS: Your Honor, could
11 you please ---

12 THE COURT: No, sir. She's
13 answered ---

14 MR. ALAN BURNS: --- instruct her
15 to answer the questions yes or not?

16 THE COURT: No, sir, she doesn't
17 have to answer it yes or not, Mr. Burns.
18 That's another television show. The witness
19 sometimes has to say yes or no but they can
20 explain their answer, and that's what our
21 rules allow. This question, you've already
22 asked it. That's called asked and answered.
23 You've asked her that in the first series of
24 question which she has answered. She has now
25 answered your question, the way that it is

1 couched.

2 If you want to rephrase your
3 question, you may do so. I am not going to
4 instruct it any way other than the way that
5 she has answered it right now because she has
6 complied with your -- she's responded to your
7 question. Thank you, sir.

8 If you want to rephrase it, please
9 feel free to do so. Move on to some other
10 area.

11 CROSS EXAMINATION CONTINUED

12 BY MR. ALAN BURNS:

13 Q. Have your daughter ever been known to
14 lie to you?

15 A. All my children have lied to me.

16 Q. So there is a possibility that your
17 daughter could have lied to you about this?

18 A. No.

19 Q. How do you know that?

20 A. Because I know my daughter.

21 Q. Did you know your daughter on the other
22 occasions when she lied to you?

23 A. Yes, I did.

24 Q. When she lied to you, you knew?

25 A. Yes.

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1 Q. But you say that you don't have any
2 actual knowledge of me doing anything to your
3 daughter?

4 A. Yes, I do. I have actual knowledge of
5 what she told me, and I believe that.

6 Q. Listen to this question carefully.

7 A. I just did.

8 THE COURT: She just explained it.

9 MR. ALAN BURNS: No, I am asking
10 her another question.

11 THE COURT: Well, ask her another
12 because you're -- when you say "listen to it
13 carefully..." it implies that you are going
14 to reask that question. She's answered it.
15 She has explained it. She has knowledge
16 based on what her daughter told her.

17 MR. ALAN BURNS: Okay.

18 THE COURT: So we don't need her
19 to agree. Okay?

20 MR. ALAN BURNS: I understand.

21 THE COURT: Move on to your next
22 question that you want to ask, please, sir.

23 CROSS EXAMINATION CONTINUED

24 BY MR. ALAN BURNS:

25 Q. Do you understand the difference between

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1 actual knowledge about something, you studied
2 something, knowing something for a fact and
3 knowing only what somebody told you?

4 THE COURT: That's argumentative.
5 That's precisely what I am talking about.
6 You are at liberty to talk at the appropriate
7 stage in this process and argue to the jury
8 what you just said. This witness does not
9 have to agree with your position on that.
10 That's why I am saying that it is
11 argumentative. Move on to something else.

12 MR. ALAN BURNS: That's all that I
13 have.

14 THE COURT: Thank you, sir.

15 MR. ALAN BURNS: That's good.

16 SOLICITOR HERRING-LASH: I have
17 just one question.

18 REDIRECT EXAMINATION

19 BY SOLICITOR HERRING-LASH:

20 Q. When was it that Minor 1 began to act
21 out?

22 A. It was about -- after she -- whatever
23 Alan did to her, it was after that time.

24 SOLICITOR HERRING-LASH: That's
25 all the questions that I have.

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1 THE COURT: Recross as to that
2 question?

3 RECROSS EXAMINATION

4 BY MR. ALAN BURNS:

5 Q. When did you say that Minor 1 first tell
6 you about all of this?

7 A. A few years ago. A year, maybe two. I
8 don't remember.

9 Q. So Minor 1 didn't start acting out until
10 a year or two ago?

11 A. No. She acted out -- she started acting
12 out after you molested her but I just found
13 out about it a year or two ago.

14 MR. ALAN BURNS: Thank you, Your
15 Honor.

16 THE COURT: You may come down.
17 Thank you, ma'am.

18 SOLICITOR HERRING-LASH: Was she
19 subpoenaed?

20 MR. ALAN BURNS: Yes.

21 THE COURT: Do you wish for her to
22 remain, Mr. Burns?

23 MR. ALAN BURNS: Yes, Your Honor.

24 THE COURT: Very well. You must
25 remain outside, please, ma'am.

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1 Call your next witness.

2 SOLICITOR RAN STONEY: The State
3 calls Detective Michelle Bacon.

4 THE COURT: Yes, sir?

5 MR. ALAN BURNS: I have a legal
6 issue. May we have a sidebar?

7 THE COURT: Okay. We will go
8 ahead and excuse the jury because I was
9 debating mentally whether or not to take a
10 break at this moment anyway.

11 Ladies and Gentlemen, we will let
12 you go to your jury room for just a moment.
13 We will probably take a break after we
14 complete the arguments, so we will be with
15 you in probably about ten or fifteen minutes,
16 I would think. Thank you.

17 (JURY OUT @ 2:58 P.M.)

18 THE COURT: Yes, sir?

19 MR. ALAN BURNS: Your Honor, this
20 is the witness that I attempted to raise the
21 issue pretrial about jurisdiction issues. I
22 would like to proffer her at this time in
23 regard to the jurisdiction.

24 THE COURT: I will be happy for
25 you to proceed.

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1 MR. ALAN BURNS: May I proceed by
2 questioning the witness?

3 THE COURT: That's what a proffer
4 is, (affirmative nod).

5 MR. ALAN BURNS: Sorry.

6 THE COURT: But you have to be
7 specific as to that topic, Mr. Burns.

8 MR. ALAN BURNS: Yes, Your Honor.

9 PROFFER EXAMINATION

10 BY MR. ALAN BURNS:

11 Q. Good morning (sic), Detective Bacon.

12 A. Good afternoon.

13 Q. Good afternoon. Sorry. The only police
14 department that you work for is the Mount
15 Pleasant Police Department; is that correct?

16 A. Correct.

17 Q. And you were the lead detective in this
18 case; is that correct?

19 A. Yes.

20 Q. Were there any sharing agreements
21 between you and any other jurisdictions in
22 this case?

23 A. I am not sure what you mean by your
24 question.

25 Q. Was there some type of written agreement

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1 between the Mount Pleasant Police Department
2 and the Charleston County Police Department
3 for you to investigate the case?

4 A. The Charleston County Sheriff's Office?

5 Q. Right.

6 A. The Town of Mount Pleasant, we have
7 jurisdiction over the incident location,
8 Venning Road where the incidents took place.

9 THE COURT: Mr. Burns, you really
10 are getting the cart before the horse here,
11 because she's got to testify to where these
12 crimes occurred in the jurisdiction of Mount
13 Pleasant. There has been no testimony yet.

14 MR. ALAN BURNS: All right.

15 THE COURT: So you are really too
16 soon with your line of questioning.

17 MR. ALAN BURNS: Okay.

18 THE COURT: I would caution you
19 and remind you that you have two agencies
20 here. There are multiple areas where these
21 crimes allegedly occurred. So just because
22 there are multiple areas does not mean that
23 one does not have jurisdiction or that they
24 don't collaborate. But right now you can't
25 ask those questions be we haven't heard

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1 enough yet.

2 MR. ALAN BURNS: Yes, sir.

3 THE COURT: I will allow you to do
4 that at such time -- but at this time -- you
5 can object all you want to her testimony
6 based on your previous argument. At this
7 point I am going to overrule your objection
8 but allow you, at the appropriate time, to
9 ask any follow up questions as a proffer.
10 Although, I don't think that it is really
11 necessary or needed but I will allow you to
12 do that. Okay? Thank you, sir.

13 All right, we will be at-ease for
14 just a moment. Let's take about a ten-minute
15 break.

16 (BRIEF RECESS)

17 (DEFENDANT PRESENT)

18 THE COURT: Are you ready, Mr.
19 Burns?

20 MR. ALAN BURNS: Yes, sir.

21 THE COURT: State ready,
22 Solicitor?

23 SOLICITOR RAN STONEY: Yes, Your
24 Honor.

25 THE COURT: Detective, you may

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1 take the stand. Bring in our jury.

2 (WITNESS TAKES STAND)

3 (JURY IN @ 3:11 P.M.)

4 MICHELLE BACON, being duly sworn to
5 tell the truth, the whole truth and nothing
6 but the truth, testified, as follows:

7 DIRECT EXAMINATION

8 BY SOLICITOR RAN STONEY:

9 Q. Good afternoon, Detective Bacon. Where
10 do you work?

11 A. Mount Pleasant Police Department.

12 Q. How long have you been with Mount
13 Pleasant Police Department?

14 A. Eleven years.

15 Q. What are your duties with the Mount
16 Pleasant Police Department?

17 A. I am a detective with the criminal
18 investigative bureau and I investigate crimes
19 reported to our agency.

20 Q. Did you become involved in the case of
21 the State of South Carolina versus Alan
22 Burns?

23 A. Yes.

24 Q. When did you get this case?

25 A. April 6th, 2010.

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1 Q. How did you come to be involved in this
2 matter?

3 A. [Minor 2] [REDACTED], one of the victims,
4 and his mother, Karen Smalls, and his father,
5 Ray Smalls, has showed up to our lobby and I
6 responded to the lobby and met with them.

7 Q. Did you talk with [Minor 2] ?

8 A. I did.

9 Q. Did you talk to him alone?

10 A. I did. I escorted him to an interview
11 room and I interviewed him.

12 Q. Did he tell you about an assault?

13 A. Yes, he did.

14 Q. Did he tell you where this assault
15 occurred?

16 (LOUD TALKING OUTSIDE COURTROOM)

17 THE COURT: Hold on just a second.
18 Mr. Robinson, could you assist and have that
19 outside door closed? Thank you.

20 DIRECT EXAMINATION CONTINUED

21 BY SOLICITOR RAN STONEY:

22 Q. Did he tell ---

23 A. He said that it occurred at his
24 grandparents' residence at [REDACTED] Rands Hill
25 Road in Mount Pleasant and in a van.

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1 Q. Did he tell you when this occurred?

2 A. Approximately when he was a child,
3 between the ages of seven and nine years old.

4 Q. What was his demeanor like when he was
5 telling you about this experience?

6 A. He was very afraid. He was crying.
7 Just, very upset.

8 Q. Did you also talk to his mother?

9 A. I did.

10 Q. As a result of these conversations, what
11 did you do?

12 A. I asked **Minor 2** -- because he had
13 mentioned in the interview that there were
14 some other cousins who were also victims, but
15 that he didn't know their names. I told him
16 to try to find out, ascertain their names,
17 and let me know who they were.

18 Q. Did he let you know?

19 A. Yes.

20 Q. Did you next contact **Minor 4** **██████████**?

21 A. I did.

22 Q. Did she come to the department?

23 A. Yes, she did.

24 Q. Did anyone come with her?

25 A. Yes, her mother came with her. Cathy

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1 Burns.

2 Q. Did you take a statement from her?

3 A. Yes. I interviewed both of them and
4 took a statement from both of them.

5 Q. What was [Minor 4] s behavior like?

6 A. She, too -- she was just very, uh, she
7 seemed very afraid and upset. Scared.

8 Q. And you said that you also talk with
9 [Minor 4] s mother, Cathy?

10 A. Yes.

11 Q. Did you contact anyone else as a result
12 of your meeting with Cathy?

13 A. [Minor 4] has mentioned another cousin,
14 [Minor 5] that had also been
15 molested by the Defendant. So she'd given me
16 her name and number.

17 Q. Was she able to come in and meet with
18 you?

19 A. No, she lived in North Carolina at the
20 time.

21 Q. Were you contacted by anyone else
22 regarding this case?

23 A. I was. I was contacted by an additional
24 victim, a cousin, [Minor 3]

25 Q. Did you set up an appointment with her?

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1 A. I did.

2 Q. Where did you see her?

3 A. She came into the Police Department on
4 May 18th, 2010.

5 Q. Did she also give you a history of
6 assault?

7 A. Yeah, she did.

8 Q. Where did this assault occur?

9 A. Also at her grandparents' residence at
10 [REDACTED] Rands Hill Road in Mount Pleasant.

11 Q. And when did she say that it occurred?

12 A. Beginning at age three.

13 Q. What was her demeanor like?

14 A. Similar to [REDACTED] Minor 4 and [REDACTED] Minor 2. She was
15 very -- she'd never told anybody, she said.
16 She was crying, she was upset during the
17 interview.

18 Q. During this interview, did she mentioned
19 that she'd witnessed this defendant doing
20 this to others?

21 A. Yes, she did.

22 Q. Did she explain this to you?

23 A. Yes, she said that the defendant would
24 line up the girls and she as always the first
25 one because she was the oldest.

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1 Q. Did you ever meet with [Minor 2] again?

2 A. I did. He came in to the Police
3 Department.

4 Q. As a result of this meeting, what did
5 you do next?

6 A. Well, he'd mentioned that there was
7 another cousin, [Minor 1], that was
8 also a victim of the defendant's.

9 Q. Did you meet with [Minor 1]

10 A. I did. I called her and set up an
11 appointment with her to come in and see me.

12 Q. Did she come to the Mount Pleasant
13 Police Department?

14 A. She did. Her mother, Alice Burns, came
15 with her.

16 Q. Did she give you a history of assault?

17 A. She did.

18 Q. Where did she say that this assault
19 occurred?

20 A. She said that it happened in a van off
21 of Venning Road. She mentioned just various
22 other places.

23 Q. When did she say that it happened?

24 A. From the ages of twelve to fourteen.

25 Q. Did you send any of these victims for

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1 medical evaluations?

2 A. No.

3 Q. Why not?

4 A. Because the SLED protocol, our State Law
5 Enforcement Division's protocol is that we
6 send for medical evaluation within seventy-
7 two hours of a sexual assaults. These
8 assaults occurred years ago, so -- no.

9 Q. Just for our information, what is
10 forensic evidence?

11 A. It's any trace evidence left on the
12 victim by the suspect.

13 Q. As a result of talking with all of these
14 individuals, what did you do?

15 A. I attained warrants for criminal sexual
16 conduct for a minor, first degree for
17 **Minor 2** s assault and criminal sexual conduct
18 with a minor second degree for **Minor 1** s
19 assault.

20 Q. So did you obtain warrants for **Minor 4**
21 and **Minor 3**?

22 A. No, I didn't.

23 Q. Why not?

24 A. Because those incidents occurred prior
25 to 1993. Mount Pleasant didn't have

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1 jurisdiction on Rands Hill Road or Venning
2 Road prior to 1993. So I had to contact the
3 Charleston County Sheriff's Office.

4 Q. Why didn't Mount Pleasant have
5 jurisdiction?

6 A. We just didn't have jurisdiction at the
7 time. There was some sort of County contract
8 that we entered into with Charleston County,
9 between the town of Mount Pleasant and
10 Charleston County, that allowed the Mount
11 Pleasant Police Department to begin enforcing
12 state law in various places. There are kind
13 of like "doughnut holes" throughout the town
14 of Mount Pleasant that Charleston County had
15 jurisdiction. We entered into that contact
16 like mid 1993.

17 Q. So that area became incorporated into
18 jurisdiction of the Town of Mount Pleasant?

19 A. Correct.

20 Q. Did [Minor 3] give another statement?

21 A. She did.

22 Q. When was this?

23 A. I don't recall the date. I met with
24 [Minor 3] [Minor 4] and Detective Rita Avila of
25 the Charleston County Sheriff's Office at

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1 Minor 4's place of employment. I believe
2 that was the Mary Ford Elementary School.
3 That's where Minor 3 gave an additional
4 statement, a more detailed statement, to
5 Detective Avila.

6 Q. What was her demeanor during this second
7 interview?

8 A. She was -- very similar, being upset,
9 she was crying but she said that she felt
10 very relieved for being able to just finally
11 get it out.

12 SOLICITOR RAN STONEY: Thank you.
13 Please answer any questions that Mr. Burns
14 has.

15 THE COURT: Cross examination.

16 CROSS EXAMINATION

17 BY MR. ALAN BURNS:

18 Q. In your report you stated that there was
19 a jurisdictional issue?

20 A. (No verbal response).

21 Q. As a result of that jurisdictional
22 issue. How did you verify that
23 jurisdictional issue?

24 A. Through our police department, through
25 our Town, our planning and zoning department.

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1 We were able to verify that ---

2 Q. Who in the planning and zoning
3 department did you speak to?

4 A. I don't recall.

5 Q. That area is annexed into the Town of
6 Mount Pleasant?

7 A. Correct.

8 Q. When did you say it was annexed into the
9 Town of Mount Pleasant?

10 A. I believe mid 1993.

11 Q. So that would show on the Town of Mount
12 Pleasant planning and zoning maps ---

13 A. I don't know.

14 Q. --- as being a part of Mount Pleasant?

15 A. I don't know.

16 Q. Okay. Does the Mount Pleasant Police
17 Department and the Town of Mount Pleasant
18 Planning and Zoning Department use the same
19 jurisdictional maps?

20 A. I don't know.

21 Q. So would the Town of Mount Pleasant
22 Police Department have a jurisdictional map
23 that they go by?

24 A. I believe so, yes.

25 Q. So -- and the address within the

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1 jurisdiction, they are recorded digitally in
2 the mapping system?

3 A. I don't know.

4 Q. If I showed you a map of the town of
5 Mount Pleasant, that area, would you be able
6 to identify it? A jurisdictional map of that
7 area?

8 A. As far as the place of jurisdiction?

9 Q. Right, in that area?

10 A. In the area of Venning Road?

11 Q. Right.

12 A. We have jurisdiction of all of Venning
13 Road at this point. There are no little
14 pockets.

15 Q. How can you -- can you verify that
16 jurisdiction?

17 A. I am sure there's paperwork. I mean,
18 I did the research on verifying if we can
19 jurisdiction on Rands Hill Road and Venning
20 Road at the time that I investigated this
21 case two years ago. So, you know, I am sure
22 that we had jurisdiction before going ahead
23 with the warrants. You know, is there
24 document? (Affirmative nod), I am sure we
25 can get that.

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1 Q. Okay. Because I had spoke ---

2 THE COURT: No, sir, you can't
3 testify about what you do. You can testify
4 at another point in this proceeding. You
5 can't use that as a foundation for this
6 witness. You can ask the witness what
7 knowledge she has, and she's testified to
8 that already.

9 MR. ALAN BURNS: Okay.

10 THE COURT: You can present any
11 witnesses that you want to. You don't have
12 to, of course, as I've told this jury. But
13 when the defense has the opportunity to
14 present witnesses, you can present any
15 witnesses that you want to, to testify about
16 this issue.

17 MR. ALAN BURNS: May I have this
18 marked, Your Honor, for presentation to the
19 witness.

20 THE COURT: You can have it marked
21 for identification.

22 COURT REPORTER: Defendant's
23 Exhibit 12 for identification.

24 THE COURT: A map.

25 CROSS EXAMINATION CONTINUED

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1 BY MR. ALAN BURNS:

2 Q. Do you recognize this map?

3 A. (Upon review), okay.

4 Q. Can you identify the area where these
5 events allegedly took place?

6 A. Is Rands Hill Road marked?

7 Q. Yes, (indicating). I have a smaller map
8 I can give you if you'd like to see that?

9 A. Rands Hill Road, right there.

10 Q. The other offenses that you said that
11 transpired, can you show me where that
12 happened at on Venning Road?

13 A. Minor 1 stated that it happened right
14 past -- well, there's a traffic circle. She
15 said that there wasn't a traffic circle at
16 the time.

17 Q. Right.

18 A. So she said in that area right there,
19 just right past the traffic circle.

20 Q. Did you go and view that area?

21 A. No.

22 Q. You never went down and looked over the
23 area, to take any pictures or anything in
24 that area ---

25 A. No, because ---

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1 Q. --- during your investigation?

2 A. --- she described it to me. She said it
3 was on Venning Road right past the traffic
4 circle.

5 Q. Okay. And she said that it was like in
6 the first part of Venning Road, like right in
7 here?

8 A. Yeah.

9 Q. Let me ask you one more question before
10 I take this down. This map is an official
11 jurisdictional ---

12 THE COURT: No, sir. That's where
13 -- you can't phrase your question that way.
14 It's a map. You've got to lay the foundation
15 and you've got to have it admitted for that
16 purpose.

17 MR. ALAN BURNS: Okay. Can I have
18 it admitted now?

19 THE COURT: For what purpose?
20 It's a map for demonstrative purposes. It
21 would serve no other useful purpose than
22 you've shown the witness and she's pointed
23 out where it is. It comes in as a map.
24 That's all. You may want to wait until later
25 -- it's already marked. It may be introduced

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1 for some other purpose -- I don't know -- but
2 right now there is no need to admit it at
3 this point. No, sir. It's been marked,
4 leave it with the court reporter. Thank you
5 very much.

6 MR. ALAN BURNS: All right.
7 May I have this marked?

8 COURT REPORTER: Yes, sir.
9 Defendant's Exhibit 13 for identification.

10 THE COURT: Defendant's 13 for ID.

11 MR. ALAN BURNS: Two pages.

12 THE COURT: A two-page document.

13 CROSS EXAMINATION CONTINUED

14 BY MR. ALAN BURNS:

15 Q. Would you read that document and tell me
16 if you have any knowledge of it.

17 A. (Upon review), "A" or just what is
18 highlighted?

19 THE COURT: No, ma'am. Just read
20 the document. The question is, do you have
21 any knowledge of the document? Not what is
22 in it -- yet.

23 THE WITNESS: (Upon review), I
24 have never seen that.

25 THE COURT: Okay.

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1 CROSS EXAMINATION CONTINUED

2 BY MR. ALAN BURNS:

3 Q. You've never seen but do you have any
4 knowledge about it?

5 THE COURT: It goes up here (with
6 court reporter).

7 MR. ALAN BURNS: I keep forget-
8 ing.

9 THE COURT: That's fine. It
10 happens, no infrequently.

11 CROSS EXAMINATION CONTINUED

12 BY MR. ALAN BURNS:

13 Q. Do you have any knowledge about a
14 requirement by law officers operating outside
15 of the jurisdiction to have a signed written
16 agreement to go into another jurisdiction?

17 A. Repeat the question?

18 Q. Do you have any knowledge about a
19 written agreement for law enforcement offices
20 to be required to have a signed written
21 agreement before they can go inside another
22 jurisdiction?

23 A. No.

24 Q. As far as you know -- well, based on the
25 identification map that I just showed you

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1 just now, were you outside your jurisdiction?

2 THE COURT: No, sir, you haven't
3 established that that map shows anything
4 about jurisdiction. It's a map. That's all.
5 That questions is improperly phrased. If you
6 want to rephrase your question, you may do
7 so. But you can't tie it to a jurisdiction
8 because it hasn't been established yet.

9 CROSS EXAMINATION CONTINUED

10 BY MR. ALAN BURNS:

11 Q. When you conducted your initial
12 investigation and you first notice the
13 jurisdictional issue, you -- you went to
14 source. You said that the source with the
15 Town of Mount Pleasant. That's what you
16 said, right?

17 A. Yes.

18 Q. I just wanted to refresh my memory.
19 As a result of that, what happened with the
20 charges that you said were outside of your
21 jurisdiction. Did you forward that to the
22 appropriate jurisdiction of what did you do
23 with it?

24 A. No, I sent it up to the solicitor's
25 office.

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1 Q. Let me ask you some other questions. In
2 your report, one of the first notes that you
3 have in there is that there was another
4 child, Luther Burns, who died at age nineteen
5 in the Viet Nam war.

6 SOLICITOR HERRING-LASH: Your
7 Honor, I objection to his publishing the
8 document.

9 THE COURT: Sustained. Don't read
10 from the document. You can phrase a
11 question, certainly. That's proper. But you
12 can't refer to a document without it being
13 admitted into evidence.

14 MR. ALAN BURNS: I would like to
15 get it admitted into evidence.

16 THE COURT: You can try. I don't
17 think that you're going to be able to do that
18 under our rules but you can certain present
19 it if you want to.

20 MR. ALAN BURNS: I would like to
21 submit this into evidence, Your Honor.

22 THE COURT: Well, you have to mark
23 it, have it identified, lay the foundation.

24 MR. ALAN BURNS: I got you.

25 COURT REPORTER: Defendant's

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1 Exhibit 14 for identification, four pages.

2 THE COURT: Defendant's Exhibit 14
3 for ID only.

4 CROSS EXAMINATION CONTINUED

5 BY MR. ALAN BURNS:

6 Q. Do you recognize that document?

7 A. Yes, I do.

8 Q. It is a four-page document. Would you
9 look over the whole thing and make sure that
10 it's the report that you filed.

11 A. Okay. (Upon review), it appears to be.
12 Yes.

13 Q. On the first line of this document you
14 stated ---

15 THE COURT: No, sir.

16 CROSS EXAMINATION CONTINUED

17 BY MR. ALAN BURNS:

18 Q. Would you please ---

19 THE COURT: You can't publish from
20 the document without it being admitted. You
21 can't do that.

22 MR. ALAN BURNS: I haven't done
23 that yet?

24 THE COURT: No, sir.

25 MR. ALAN BURNS: It was just

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1 marked. I would like to submit this into
2 evidence.

3 THE COURT: Objection?

4 SOLICITOR HERRING-LASH: No
5 objection, Your Honor.

6 THE COURT: Very well.

7 MR. ALAN BURNS: Okay.

8 THE COURT: It is admitted.

9 (SO ENTERED AS DEFENDANT'S EXHIBIT 14)

10 CROSS EXAMINATION CONTINUED

11 BY MR. ALAN BURNS:

12 Q. Would you read the first line, the first
13 note that you have on the document, please?

14 A. (Reading): *"There was another child,*
15 *Luther Burns, who died at age nineteen in the*
16 *Viet Nam war. [Minor 2] advised me that he*
17 *learned from his family that Luther molested*
18 *Alan, Vera and Cecilia."*

19 Q. Did you take any steps to attempt to
20 verify that?

21 A. No.

22 Q. So in your investigation you didn't ask
23 nobody about that?

24 A. No.

25 Q. How many aunts did [Minor 2] have?

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1 A. On whose side?

2 Q. On his mother's side?

3 A. Four. Is that right? Four?

4 Q. Right. You met with how many of them
5 during the course of your investigation?

6 A. I met with Alice, Karen and Vera, I
7 think.

8 Q. And you didn't ask any of them anything
9 about that issue?

10 A. No.

11 Q. In your report, did you question anyone
12 about things that Minor 2 stated had happened
13 to him?

14 A. Happened to him when?

15 Q. At any time, any molestation, anything
16 that I supposedly had done to him. Did you
17 question anyone else about that?

18 A. He mentioned that there were no
19 witnesses.

20 Q. Did you ever speak to his mother ---

21 A. And that he'd never told anybody. I'm
22 sorry. Go ahead.

23 Q. Go ahead.

24 A. He mentioned that there were no
25 witnesses and he never told anybody.

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1 Q. Did you -- you said that his mother was
2 at the police station?

3 A. Yes.

4 Q. You talked to her?

5 A. Briefly, yes.

6 Q. Did you ask her about any past out-
7 bursts, behavior problems, grades, his social
8 skills, anything like that?

9 A. I don't recall. No.

10 Q. So no, or you don't recall.

11 A. I don't recall.

12 Q. Did you have a chance to talk with his
13 stepfather?

14 A. No.

15 Q. Let me get the actual report. I want to
16 first ask you about the statement that you
17 took from Minor 3

18 A. Okay.

19 MR. ALAN BURNS: Your Honor, may I
20 stand here at the podium?

21 THE COURT: Yes, sir.

22 CROSS EXAMINATION CONTINUED

23 BY MR. ALAN BURNS:

24 Q. In her statement she alleged a lot of
25 things happened when she was three years old.

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1 A. Okay.

2 Q. As a result of that, in your report you
3 stated that I couldn't be charged; isn't that
4 correct?

5 A. Uh, it's -- what page is that?

6 Q. (Indicating) ---

7 A. Which part?

8 Q. (Indicating) ---

9 A. Okay, (reading): "Alan was not charged
10 with the sexual assault on Minor 3 She was
11 reported three years old at the time, which
12 would have made it thirteen years old at the
13 time of the offense."

14 Q. Okay.

15 A. When I initially interviewed Minor 3
16 she said three.

17 Q. And in the report that Minor 3 made --
18 let me get that.

19 MR. ALAN BURNS: Let me get that
20 marked.

21 COURT REPORTER: Defendant's
22 Exhibit 15 for identification, consisting of
23 three pages.

24 THE COURT: A three-page document
25 for ID only.

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1 CROSS EXAMINATION CONTINUED

2 BY MR. ALAN BURNS:

3 Q. On the last page ---

4 A. I have ne.

5 THE COURT: You need to look at
6 the one that he is handing you because he is
7 going to be asking you questions about that
8 document.

9 CROSS EXAMINATION CONTINUED

10 BY MR. ALAN BURNS:

11 Q. The highlighted ---

12 THE COURT: No, sir. Remember the
13 sequence. You have to get it admitted before
14 you publish it.

15 MR. ALAN BURNS: Okay.

16 THE COURT: If you want her to
17 review it, that's fine.

18 MR. ALAN BURNS: I gotcha.

19 CROSS EXAMINATION CONTINUED

20 BY MR. ALAN BURNS:

21 Q. Do you recognize the document?

22 A. Yes.

23 MR. ALAN BURNS: I would like to have
24 this admitted, Your Honor.

25 THE COURT: What does she

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1 recognize it as being.

2 MR. ALAN BURNS: As ---

3 THE COURT: No, she needs to tell
4 you what it is.

5 CROSS EXAMINATION CONTINUED

6 BY MR. ALAN BURNS:

7 Q. What is the document?

8 A. This is a statement that I took from
9 Minor 3 Burns.

10 THE COURT: Now, do you wish to
11 have that admitted?

12 MR. ALAN BURNS: Yes, sir.

13 THE COURT: Any objection?

14 SOLICITOR RAN STONEY: No, Your
15 Honor.

16 THE COURT: Without objection, it
17 is admitted as Defendant's Exhibit 15.

18 (SO ENTERED AS DEFENDANT'S EXHIBIT 15)

19 CROSS EXAMINATION CONTINUED

20 BY MR. ALAN BURNS:

21 Q. Now would you read the highlighted part
22 of that statement for me, please?

23 A. (Reading): "He would rub his penis
24 against my vagina but he never penetrated
25 with his penis."

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1 Q. Okay. And at the time when you asked
2 Minor 3 these questions, did she not inform
3 you that there has never been anything else?

4 A. I don't know if she specifically said
5 nothing else ever happened. But to my
6 knowledge this was her statement at the time
7 that this was all that happened, but I don't
8 remember if she specifically said that this
9 is all that happened.

10 Q. Last question and last answer, last
11 page, would you please read that one for me?

12 A. (Reading):

13 Q.. *Is there anything you would*
14 *like to add to your statement?*

15 A. *No, I still have nightmares.*

16 MR. ALAN BURNS: I need to see the
17 statement from Minor 2 -- and the next one.

18 COURT REPORTER: (Tenders).

19 MR. ALAN BURNS: I have Plain-
20 tiff's Exhibits 1 and 2 that I would like to
21 present to the witness.

22 THE COURT: Very well. Thank you.

23 CROSS EXAMINATION CONTINUED

24 BY MR. ALAN BURNS:

25 Q. Do you recognize these documents?

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1 THE COURT: They have already been
2 admitted.

3 MR. ALAN BURNS: Right.

4 THE COURT: So she can publish
5 them now. Once they have been admitted, she
6 can publish them and I believe that those
7 have previously been admitted. So if you
8 want her to read from that now, she may do so
9 without her identifying them.

10 MR. ALAN BURNS: Okay. Thanks.

11 CROSS EXAMINATION CONTINUED

12 BY MR. ALAN BURNS:

13 Q. Do you recognize that?

14 A. Yes, this is a statement that I took
15 from Minor 2 [REDACTED].

16 Q. In Minor 2 [REDACTED]'s statement, one of the first
17 things that Minor 2 [REDACTED] told you was that he was
18 a sophomore at Coastal Carolina University.
19 Did you verify that?

20 A. No.

21 Q. And I take it that you didn't verify
22 what his major was in college?

23 A. No.

24 Q. Okay. Minor 2 [REDACTED] stated that when he first
25 had his episode that he was at a girlfriend's

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1 house, on page five?

2 A. Yes.

3 Q. Did you verify who the girlfriend was?

4 A. No.

5 Q. And he also stated that another friend
6 was at the house. Did you verify that?

7 A. No.

8 Q. Okay. [Minor 2] stated that he had been
9 watching a television show, *Law & Order*,
10 *Special Victims*.

11 A. No need to ---

12 Q. Why not?

13 A. --- verify any of that.

14 Q. Okay. [Minor 2] stated that he had --
15 that at 9:00 p.m. that night he had been
16 drinking when he had his episode. Did you
17 make any inquiries as to the amount of
18 alcohol he had consumed?

19 A. He said "I had been sipping on a beer, I
20 was halfway."

21 Q. Did you make any additional inquiries to
22 determine the amount of alcohol that he had
23 consumed that night?

24 A. By asking him, no.

25 Q. I been, you're an investigator.

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1 Investigators ask questions, don't they?

2 A. Yes. There was no need to verify that.

3 For what purpose?

4 Q. In your line of training, is it not
5 taught that when someone reports an alleged
6 offense of any sort that you should not
7 believe or disbelieve but investigate to find
8 out one way or the other, and then follow
9 where the investigation wherever it should
10 go.

11 A. You phrased that kind of ---

12 THE COURT: Repeat the question so
13 that she can understand the question.

14 THE WITNESS: Repeat the
15 question?

16 CROSS EXAMINATION CONTINUED

17 BY MR. ALAN BURNS:

18 Q. In your line of training, is it not
19 taught that when someone reports an alleged
20 offense, such as this, that you should not
21 believe or disbelieve but, rather,
22 investigate to either prove or disprove it?

23 A. I wouldn't say that we were taught to
24 believe or not to believe. We were taught to
25 investigate, to find out facts of the case.

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1 Q. What steps did you take to verify any of
2 the things that he had alleged that
3 transpired the night that he had this
4 episode?

5 A. That was not the incident at hand.
6 There were no witnesses to the crime that we
7 are talking about here today. He had just
8 mentioned that when he first -- that he had
9 had an episode at his girlfriend's house. He
10 didn't tell any of them what had happened.
11 He went into the bathroom. So there was no
12 purpose for me to go find out how much beer
13 he had that night, or interview the people
14 that were at the house. You know, if he were
15 to have mentioned that there were witnesses
16 to actual assault, then I would have tried to
17 interview those witnesses.

18 Q. So there's a possibility that -- as far
19 as from your standpoint, ---

20 THE COURT: Rephrase that. What
21 is "that".

22 MR. ALAN BURNS: The incident that
23 night.

24 CROSS EXAMINATION CONTINUED

25 BY MR. ALAN BURNS:

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1 Q. The incident that night, you made no
2 attempt to verify whether that was true or
3 not -- in any manner?

4 A. That he got upset and went into the
5 bathroom?

6 Q. Yes.

7 A. And called his mother?

8 Q. Yes.

9 A. No. He was just describing how it kinda
10 came about.

11 Q. When you spoke to his mother, did you
12 ask her about that?

13 A. I believe that she told me about that.

14 Q. You didn't take notes from your
15 interview with his mother?

16 A. No, it was a very brief. Very brief
17 with Ms. Smalls.

18 Q. You didn't think that would have been
19 important for you to do a history background
20 on **Minor 2**'s behavior, that could have shed
21 some light on his acting out or doing
22 something over the period of time that he
23 alleged that this happened.

24 THE COURT: Don't answer that
25 questions. Mr. Burns, approach please.

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1 (OFF RECORD SIDEBAR)

2 THE COURT: You may continue your
3 examination consistent with the Rules.

4 CROSS EXAMINATION CONTINUED

5 BY MR. ALAN BURNS:

6 Q. Did you speak to any counselors in this
7 case?

8 THE COURT: Are you talking about
9 attorneys, or counselors ---

10 MR. ALAN BURNS: Psychiatric.

11 CROSS EXAMINATION CONTINUED

12 BY MR. ALAN BURNS:

13 Q. Psychologists, things like that ---

14 A. No.

15 Q. --- about Minor 2 ?

16 A. No.

17 Q. To your knowledge, was he in counseling
18 or taking some type of treatment or
19 medication or anything?

20 A. He mentioned during the interview that
21 -- I asked him if he was in counseling and he
22 said yes, as of February 2010.

23 Q. What date did he report this to you?

24 A. April 6th, 2010.

25 Q. As far as your investigation into this

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1 entire matter with Minor 2 you only took the
2 statement -- you write the statement, didn't
3 you?

4 A. Yes.

5 Q. You got him to sign it?

6 A. Yes.

7 Q. That was all that you had done in the
8 case?

9 A. At what point?

10 Q. The entire case. What else did you do
11 in the case besides take the statement,
12 getting the warrants and having the warrants
13 served?

14 A. In just terms of Minor 2

15 Q. Yes.

16 A. Yes.

17 Q. That's all that you did?

18 A. Yes.

19 Q. Let me ask you a question about your
20 training, if you don't mind. Do you have
21 certificates in your personnel record in
22 regards to your training to investigate
23 criminal sexual conduct charges or any type
24 of sexual offense charges?

25 A. I do have certificates. I've attended

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1 numerous training classes. I don't know if
2 it's kept in my personnel file or my training
3 file. There are several different files. I
4 don't know ---

5 Q. But any training classes that you had,
6 it would be recorded someplace in your
7 records to ---

8 A. Yes.

9 Q. --- verify that you've had that
10 training?

11 A. Yes. I would say my training records.

12 Q. A few weeks ago you were asked questions
13 in regards to your training file and it was
14 discovered that you didn't really have
15 anything in your training file. Is that
16 true?

17 A. What are you referring to?

18 Q. When you testified in court a few weeks,
19 in a case similar to this, ---

20 SOLICITOR RAN STONEY: Objection.

21 THE COURT: Sustained. It's not
22 relevant at this point. I don't know what
23 the purpose of that is, as to what she
24 testified to another court.

25 CROSS EXAMINATION CONTINUED

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1 BY MR. ALAN BURNS:

2 Q. Could you give the name of some of the
3 training classes that you've had?

4 A. The names?

5 Q. Yes, of the training classes that you've
6 took and have certification for in regards to
7 sexual offenses.

8 A. Detective Level I, child sexual abuse
9 investigation course; child abuse
10 investigations; advanced sexual assault.

11 Those are a few.

12 Q. Are all of those in your record?

13 A. Should be, yes. That's in addition to
14 the training that I received at the South
15 Carolina Criminal Justice Academy and during
16 basic law enforcement as well. We get a lot
17 of on-the-job experience as well.

18 Q. Could you explain what some of those
19 classes are, the ones that are pertinent to
20 this case?

21 SOLICITOR RAN STONEY: Objection.

22 THE COURT: Sustained. It's not
23 relevant to this. She has testified to what
24 she has participated in and your experience.
25 You haven't asked her to render an opinion.

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1 Really I don't know what else -- she has
2 testified to what she has done thus far.

3 Go on to something else.

4 That is unless you're trying to
5 qualify her as an expert and ask her an
6 opinion about something as an expert witness.

7 Unless you are doing that, you've
8 covered this area at this point.

9 CROSS EXAMINATION CONTINUED

10 BY MR. ALAN BURNS:

11 Q. As far as your case, the case that you
12 had investigating Minor 1 [REDACTED], -- let me
13 get that.

14 MR. ALAN BURNS: I would like to
15 have this marked.

16 COURT REPORTER: Defendant's
17 Exhibit 16 for identification, consisting of
18 three pages.

19 THE COURT: A three-page document,
20 Defendant's Exhibit 16 for ID only.

21 CROSS EXAMINATION CONTINUED

22 BY MR. ALAN BURNS:

23 Q. Can you identify that document?

24 A. (Upon review), yes. This is the
25 statement that I took from Yolanda.

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1 MR. ALAN BURNS: I would like to
2 have this entered.

3 THE COURT: Any objection?

4 SOLICITOR RAN STONEY: No objection.

5 THE COURT: Without objection, it
6 is admitted.

7 MR. ALAN BURNS: He said that he
8 objected?

9 THE COURT: No, absolutely not. I
10 can promise you that.

11 MR. ALAN BURNS: Okay.

12 (SO ENTERED AS DEFENDANT'S EXHIBIT 16)

13 CROSS EXAMINATION CONTINUED

14 BY MR. ALAN BURNS:

15 Q. As to your investigation as to alleged
16 allegations by Minor 1 [REDACTED], did you
17 attempt to verify anything that she had
18 alleged?

19 A. There were no witnesses, so I really
20 couldn't verify anything.

21 Q. In her statement, she states that I took
22 her to some area where -- let me get you the
23 statement, the highlight section.

24 A. (Reading): "He took me to some area
25 where there are two big palm trees. If

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1 *you're on Venning Road going towards Rifle*
2 *Range Road, go straight through. The*
3 *roundabout wasn't there back then. There*
4 *were houses on the right side, not left. He*
5 *turned around and parked by two big palm*
6 *trees."*

7 Q. Did you attempt to verify that location,
8 two big palm trees, take pictures of it so
9 that you would have that as evidence to
10 verify that this is where it supposedly
11 happened?

12 A. No. She described the location. I was
13 familiar with the location and -- no.

14 Q. So you are familiar with the area?

15 A. I knew the area that she was talking
16 about.

17 Q. Okay. Can I see Exhibit -- the picture.

18 MR. ALAN BURNS: Exhibit 1?

19 COURT REPORTER: Sorry, I believe
20 that's a seven.

21 MR. ALAN BURNS: Oh, that's a
22 seven.

23 COURT REPORTER: Yes, sir.

24 CROSS EXAMINATION CONTINUED

25 BY MR. ALAN BURNS:

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1 Q. Do you know where that area is?

2 A. I can't really tell. I mean, there are
3 no street signs.

4 THE COURT: Mr. Burns, approach
5 please.

6 COURT REPORTER: Let me correct
7 that exhibit sticker so that it looks more
8 like a seven. Thank you.

9 (OFF RECORD SIDEBAR)

10 CROSS EXAMINATION CONTINUED

11 BY MR. ALAN BURNS:

12 Q. Did you speak to **Minor 1**'s mother and
13 make any inquiries if she had noticed any bad
14 behavior, acting out or anything of that
15 sort?

16 A. No.

17 Q. Was -- is **Minor 1** under some type of
18 counseling, did you make any inquiries along
19 those lines?

20 A. No, my understanding is that she did not
21 attend counseling.

22 Q. In the case of **Minor 1** as well as in
23 the case of **Minor 2** the only thing that you
24 did was take their statement, issue the
25 warrants, have the warrants served?

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1 A. Yes. I was very limited on what I could
2 do in this case.

3 Q. You didn't attempt to verify whether or
4 not somebody could have happened to see them
5 going to this place versus any place?

6 A. Who would I have spoken to?

7 Q. Members of the family.

8 A. When I interviewed [Minor 1] and [Minor 2]
9 they told me that there were no witnesses to
10 what had happened.

11 Q. Did you [Minor 1] why she never told
12 anybody?

13 A. I believe that I did. Yes, I asked her
14 why she didn't tell anyone until now.

15 Q. And her response was what?

16 A. Her response was, (reading): "Because
17 it had happened to me before and that's how I
18 ended up with my mom. I didn't want my mom
19 to send me back. I didn't want to leave. I
20 didn't think anyone would believe me, because
21 I was new to the family."

22 Q. Did you attempt to make inquiries into
23 that statement?

24 A. Inquiries like what?

25 Q. What she just said, that something had

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1 happened to her before? Maybe there was type
2 of record or something.

3 A. No, because -- no.

4 Q. Did you speak to her mother? Did you do
5 an interview with her mother?

6 A. I spoke with her. I didn't formally
7 interview her, take a statement. I believe
8 that she brought [Minor 1] to the police
9 station, so we met.

10 Q. So she was there in your presence? You
11 had an opportunity, you could have
12 interviewed her -- formally?

13 A. She had nothing to tell me. She was not
14 a witness to what had happened.

15 Q. And as far as you know she had no
16 knowledge about anything?

17 A. Correct.

18 Q. That's from [Minor 1]? [Minor 1] stated
19 that her mother had no knowledge about
20 anything at all?

21 A. She said nobody had knowledge about
22 that.

23 Q. Did you attempt to verify how old
24 [Minor 1] was when she came to live with Alice?

25 A. No. She told me that she was twelve

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1 years old, adopted into the family at twelve
2 years old.

3 Q. So when everybody just told you these
4 things, you just instantly believed them and
5 that's all that was needed? That's all that
6 you were looking for?

7 A. That's what she told me. She gave me a
8 sworn written statement to that.

9 Q. So when you took their statements, you
10 were only looking for enough so that you
11 could acquire warrants? Is that what you
12 were doing?

13 A. No.

14 Q. You were trying to find out the facts
15 and the truth?

16 A. Right. She told me and she swore to the
17 statement, the information that she gave me.

18 Q. Okay. Beyond that, there was nothing
19 else at all from [Minor 1]?

20 A. (No verbal response).

21 Q. You didn't make any inquiries -- that's
22 all right. Let me move on to the next one.

23 The statement from [Minor 4]. When you
24 took the statement from [Minor 4], did you at
25 any time attempt to verify anything that

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1 Minor 4 had said in her statement?

2 A.

3 MR. ALAN BURNS: (Tenders document
4 to be marked).

5 COURT REPORTER: Defendant's
6 Exhibit 17 for identification, consisting of
7 two pages.

8 THE COURT: A two-page document
9 for ID purposes only.

10 CROSS EXAMINATION CONTINUED

11 BY MR. ALAN BURNS:

12 Q. Can you identify this document, please?

13 A. This is the statement that I took from

14 Minor 4 .

15 MR. ALAN BURNS: I would like to
16 have this entered into evidence.

17 THE COURT: Without objection?

18 SOLICITOR RAN STONEY: No objection.

19 THE COURT: Without objection,
20 statement of Minor 4 is admitted into
21 evidence.

22 (SO ENTERED AS DEFENDANT'S EXHIBIT 17)

23 CROSS EXAMINATION CONTINUED

24 BY MR. ALAN BURNS:

25 Q. When you interviewed Minor 4 and she

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1 gave you her statement, did you attempt to
2 verify any of the things which she had said
3 in her statement?

4 A. She mentioned [Minor 5] being in the room
5 at one point, and I believe [Minor 3] I made
6 an attempt to interview [Minor 5] and I did
7 interview [Minor 3]

8 Q. Were the things in that statement
9 verified?

10 A. These specific incidences, I believe
11 between [Minor 3] and [Minor 4] that there were
12 so many that the specific incidents I'd say
13 that there would be no way to tell.

14 Q. According to [Minor 4]'s statement, how
15 many incidents were there?

16 A. (Upon review), it's hard to really tell
17 because she says between the years of 1979
18 and '89, then she kind of discusses that one
19 time this happened. 'I have a memory of
20 this.'

21 Q. How many incidents does she name in this
22 specific statement?

23 A. She says, "I remember games Alan would
24 play with me. One thing ..." -- she mentions
25 one time, an incident.

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1 Q. A few moments ago I asked you the same
2 question, could anybody corroborate her
3 statement. You said that there were "so many
4 times." But in the statement Minor 4 only
5 told you about one incident.

6 A. She said that she was thinking that she
7 was seven or eight years old at the time, --
8 (reviewing). Then there were so many games
9 played, maybe when she was about nine or ten.

10 Q. But, still, she only made reference to
11 one incident?

12 A. Right.

13 THE COURT: Rephrase that ques-
14 tion, because that's a misleading question.
15 She only described one incident. The
16 statement doesn't say that there was only one
17 -- unless you can point it out in the
18 statement, restate your question.

19 CROSS EXAMINATION CONTINUED

20 BY MR. ALAN BURNS:

21 Q. So she only described one incident; is
22 that correct?

23 A. Just bear with me as I read the
24 statement.

25 THE COURT: Take your time. Read

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1 the entire statement if you need to. I tell
2 you what we will do, we will take a break and
3 let you hear the statement.

4 Ladies and Gentlemen, go to your
5 jury room for about ten minutes. Thank you.

6 (JURY OUT @ 3:40 P.M.)

7 THE COURT: Anything from the
8 State before we recess?

9 SOLICITOR RAN STONEY: No, Your
10 Honor.

11 THE COURT: Mr. Burns, anything?

12 MR. ALAN BURNS: No, sir.

13 THE COURT: All right, we will be
14 at-ease.

15 (BRIEF RECESS)

16 (DEFENDANT PRESENT)

17 THE COURT: Are you ready to
18 continue?

19 MR. ALAN BURNS: Yes, sir.

20 THE COURT: Bring in the jury.

21 (JURY IN @ 3:52 P.M.)

22 THE COURT: Thank you, Ladies and
23 Gentlemen. Mr. Burns, you may continue your
24 examination. I think Detective Bacon has had
25 an opportunity to review the statement now.

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1 THE WITNESS: Yes, sir. Thank
2 you. What was I asking her about?

3 COURT REPORTER: The pending
4 question is, "So she only described on
5 incident, is that correct?"

6 CROSS EXAMINATION CONTINUED

7 BY MR. ALAN BURNS:

8 Q. So you only describe one incident, is
9 that correct?

10 A. After I've had a chance to review the
11 statement, it appears to be two. She talks
12 about describing and talking about dreams
13 with cousins and -- she told them about a
14 dream that she had about Alan in the back
15 bunk in the bedroom at her grandmama's where
16 "he ejaculated on me." She said that
17 actually had happened. She told her cousins
18 that it was a dream but she said that it had
19 actually happened.

20 Q. She said in the statement that it
21 happened?

22 A. Yeah. I think on page -- were I did Q
23 and A, on page one of two.

24 Q. That's not entered into evidence.

25 A. Okay. Well, then, later on the in

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1 statement I ask her, (reading):

2 Q. When you told you cousins about
3 your dream about your Uncle Alan, was that a
4 dream or do you know if it actually happened?

5 A. It actually happened but we
6 were talking about dreams, so I said it was a
7 dream.

8 Q. So ---

9 A. So that incident and then the incident
10 ---

11 Q. Wait a minute.

12 THE COURT: No, sir., She is going
13 through the statement. You've asked her to
14 read the statement so that she can tell you
15 about it. She can answer the question.

16 MR. ALAN BURNS: She's ---

17 THE COURT: Sir?

18 MR. ALAN BURNS: She's reading
19 something that ---

20 THE COURT: That's fine. You gave
21 it to her and you asked her whether there was
22 one or two, and she's telling. So she can
23 answer the question, sir. You've asked the
24 question. You asked the door for this.
25 Okay? That's what it is called. But she can.

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1 answer the question. Now, just to the extent
2 that she has answered it doesn't open the
3 door for the entire statement yet.

4 You may continue to answer the
5 question.

6 THE WITNESS: As to the second,
7 "I also remember games that Alan played with
8 me at one time. I don't know why he was at
9 our house with us in our bedroom, we were
10 supposedly playing a board game but he kept
11 touching me at places and making me touch
12 him, laughing and pretending so that my
13 sisters and brothers wouldn't notice."

14 CROSS EXAMINATION CONTINUED

15 BY MR. ALAN BURNS:

16 Q. Did you attempt to ask any of the
17 sisters or brothers had they noticed?

18 A. No.

19 Q. And did you ever find out who her
20 counselor was?

21 A. No. Oh, I'm sorry. I think that she
22 might have told me in this statement. (Upon
23 review), Rosalyn Pollard (phonetic).

24 Q. Did you ever attempt to contact her in
25 any manner?

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1 A. No.

2 Q. You didn't attempt to interview her?

3 A. No.

4 Q. So as far as [Minor 4], you didn't attempt
5 to interview anyone else?

6 A. She said ---

7 THE COURT: Hold on. Anyone else?
8 Who?

9 MR. ALAN BURNS: Anyone.

10 THE COURT: She has already
11 testified that she talked to some. Are you
12 talking about in addition to the persons that
13 she has already answered?

14 MR. ALAN BURNS: Right.

15 THE COURT: Okay.

16 THE WITNESS: In addition to
17 the people that I've already mentioned, no.

18 CROSS EXAMINATION CONTINUED

19 BY MR. ALAN BURNS:

20 Q. The only person that you mentioned was

21 [Minor 3]

22 A. [Minor 3] (affirmative nod), and I made an
23 attempt with [Minor 5]

24 Q. You talked with her?

25 A. [Minor 5]?

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1 Q. Yeah.

2 A. (Affirmative nod), I spoke with her on
3 the phone.

4 Q. Did she verify anything?

5 A. No, she didn't give a statement on the
6 phone; no.

7 Q. All right.

8 MR. ALAN BURNS: That's all the
9 questions that I have for you, Detective.

10 THE COURT: All right.

11 MR. ALAN BURNS: Thank you, Your
12 Honor.

13 THE COURT: Yes, sir. Redirect?

14 REDIRECT EXAMINATION

15 BY SOLICITOR RAN STONEY:

16 Q. Can you please explain again the
17 agreement entered into between the Court and
18 the Town of Mount Pleasant in 1993 with
19 regards to jurisdiction?

20 A. Basically, just to simplify it -- prior
21 to 1993, Charleston County had jurisdiction.
22 In 1993, the Town of Mount Pleasant and
23 Charleston County entered a mutual agreement
24 where the Town of Mount Pleasant can respond
25 to calls for service in specific areas that

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1 Charleston County had jurisdiction of in
2 Mount Pleasant.

3 Q. So since 1993, the Mount Pleasant Police
4 Department has handled cases in the Rands
5 Hill, Venning Road area?

6 A. Yes. We respond to 911 calls, take
7 reports, respond to calls for service; yes.

8 Q. Also in your report you mentioned a
9 brother, Luther, and allegations against him.
10 Why didn't you investigate those?

11 A. [Minor 2] had mentioned it to me. Those
12 victims were apparently his ---

13 Q. May I rephrase?

14 A. Yes.

15 Q. Was Luther around?

16 A. No. He said that he'd died when he was
17 nineteen years old, in Viet Nam.

18 Q. When you initially met [Minor 3], she gave
19 a statement -- did you meet with her again at
20 a later date?

21 A. [Minor 3]?

22 Q. Yes.

23 A. Yes.

24 Q. And did she give you more information at
25 this meeting?

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1 A. Yeah, she gave additional details of
2 what occurred. She gave a statement to
3 Detective Avila.

4 Q. To your knowledge, had she ever told
5 anybody these details before?

6 A. No.

7 Q. Mr. Burns mentioned your investigation,
8 your looking into witnesses. During the
9 course of your investigation, were you not
10 able to uncover four additional victims in
11 addition to [Minor 2] as part of your
12 investigation?

13 A. Yes, because when [Minor 2] came, that's
14 all that we knew. It was just [Minor 2] at the
15 time.

16 Q. And that led you to take warrants out
17 against Mr. Burns?

18 A. Correct.

19 Q. Then, finally, with regards to [Minor 1]
20 and her statement, the area in which she
21 describes the sexual assault, has that area
22 changed since the assault occurred in 1997?

23 A. It probably has. I am sure the
24 landscaping has changed. She mentioned that
25 the roundabout wasn't even there back then,

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1 and it is today. So, yes.

2 Q. And, finally, with regards to Minor 5
3 you talked to her?

4 A. Yes.

5 Q. Did she agree to give you a statement?

6 A. She did. She just was very upset. You
7 know, she said that when her cousins had
8 contacted her that she was having a very hard
9 time dealing with it, all of the emotions,
10 her coping with it. She just wanted to take
11 her time in getting me a statement. I didn't
12 want to pressure her at all, so I said
13 'whenever you are ready and able to, write
14 your statement and send it to me.' She said
15 that she would.

16 SOLICITOR RAN STONEY: That's all.

17 THE COURT: Recross, Mr. Burns.

18 RECROSS EXAMINATION

19 BY MR. ALAN BURNS:

20 Q. Under the agreement that you said that
21 the Town of Mount Pleasant and the County of
22 Charleston has, what is the title of that
23 agreement?

24 A. I don't have it with it.

25 Q. What statute is it?

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1 A. I don't know. I don't have it with me.

2 Q. When you investigated these alleged
3 charges, you investigated as an officer
4 vested under the color or law with the Mount
5 Pleasant Police Department?

6 A. Yes.

7 Q. You weren't acting as an agent for any
8 other agencies at the time, is that correct?

9 A. Correct.

10 MR. ALAN BURNS: Thank you.

11 THE COURT: You may come down.

12 (WITNESS STEPS DOWN)

13 THE COURT: Who is your next
14 witness.

15 SOLICITOR HERRING-LASH: Detective
16 Rita Avila.

17 (WITNESS TAKES STAND)

18 RITA AVILA, being duly sworn to tell
19 the truth, the whole truth and nothing but
20 the truth, testified, as follows:

21 DIRECT EXAMINATION

22 BY SOLICITOR HERRING-LASH:

23 Q. Detective Avila, where do you work?

24 A. Charleston County Sheriffs Office.

25 Q. How long have you worked there?

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1 A. Just over nine years.

2 Q. Back -- right now, what are your duties?

3 A. Right now -- I am a sergeant and I
4 supervise the special victims unit for our
5 criminal investigations division.

6 Q. What does that mean?

7 A. We investigate crimes against children,
8 sexual assaults and physical abuse of
9 vulnerable adults, as well as control the sex
10 offender registry and school resource
11 officers.

12 Q. Back in April of 2011, what were your
13 duties?

14 A. I was a detective in what is now called
15 the special victims unit. I investigated
16 crime scene involving children and sexual
17 assaults.

18 Q. When you were doing that, did you get
19 assigned to work on the case of the State
20 versus Alan Burns?

21 A. I did.

22 Q. When was that?

23 A. I was contacted -- I'm sorry, I don't
24 know the exact date that I was contacted but
25 it was in April of 2011.

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1 Q. Who contacted you about getting the
2 case?

3 A. Detective Bacon from Mount Pleasant.

4 Q. Why was she calling you?

5 A. She advised me that the case that she
6 was investigating, through her investigation
7 she had determined that some of the
8 incidences had occurred at an address -- that
9 at the time the incidents occurred -- that
10 had not been incorporated into the Town of
11 Mount Pleasant and were under the
12 jurisdiction of Charleston County.

13 Q. So did you meet with Detective Bacon?

14 A. I did.

15 Q. Did you go over her file?

16 A. I did.

17 Q. Then what did you do?

18 A. After reviewing her file, I set up a
19 time to meet with two of the victims: Minor 4

20 and Minor 3

21 Q. Where did you meet with them?

22 A. We met at the elementary school that
23 Minor 4 was speaking -- I'm sorry, -- was
24 teaching at.

25 Q. Did you interview Minor 3 at that time?

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1 A. I did. I spoke with her about what she
2 had disclosed to Detective Bacon.

3 Q. Did she give you additional information?

4 A. She did give me additional information.

5 Q. Did she at that time tell you about a
6 sexual assault?

7 A. She did.

8 Q. And did she tell you where it had
9 occurred?

10 A. She said that it occurred at her
11 grandparents' house.

12 Q. Did she tell you when?

13 A. She said it was when she was
14 approximately eight to nine years old.

15 Q. Did she write her statement that day?

16 A. She did not.

17 Q. Why not?

18 A. She was very emotional, crying. It was
19 difficult for her to give all the details.
20 She was very, very emotional and tearful.

21 Q. Had she ever give the details regarding
22 the sexual assault to anyone before?

23 A. Not to my knowledge, no.

24 Q. Did she give those details to Detective
25 Bacon in the beginning?