

VOLUME II OF III

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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO CHARLESTON COUNTY
G. THOMAS COOPER, Jr.

S.C. SUPREME COURT

ALAN L. BURNS

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT,

APPELLATE CASE NO. 2019-000380

APPENDIX

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1 A. She did not.

2 Q. Did you set up another time to meet with
3 her?

4 A. I did. We agreed to meet on April 21st,
5 2011.

6 Q. What happened at that time?

7 A. She came in. She was still very, very
8 emotional, very upset and tearful. So she
9 had asked if I could write down what she was
10 dictating to me. So I wrote down for her
11 whatever she said. I wrote it down for her
12 word for word, then she reviewed it and
13 signed it.

14 Q. Does **Minor 3** have any disability?

15 A. She does. I believe that she is -- I
16 don't know the extent of her hearing
17 impairment but she is hearing impaired.

18 Q. Did you also speak with **Minor 4**?

19 A. I did.

20 Q. Did she give you any additional
21 information?

22 A. She did not give me any more additional
23 information than what she had given to
24 Detective Bacon.

25 Q. What was her demeanor?

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1 A. She had a very flat affect. She was
2 clearly upset but just very flat. Not to the
3 emotional tearful extent that Minor 3 was,
4 but she was flat and very upset.

5 Q. Did you get an additional statement from
6 her?

7 A. I got a statement from her, asked her if
8 she had any additional information to give
9 me.

10 Q. She didn't?

11 A. She did not.

12 Q. Did you determine before you did these
13 warrants that at this point in time, back
14 when they were telling you about was, was in
15 Charleston County?

16 A. I did.

17 Q. How did you do that?

18 A. I ran a records check through our
19 records management system. It is basically a
20 computer data base that we have and it show
21 calls that we had at addresses dating back to
22 the '70s. I also went to our records
23 division and had them run a check to
24 determine if that address was in fact under
25 the jurisdiction of Charleston County at that

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1 time.

2 SOLICITOR HERRING-LASH: Court's
3 indulgence for one moment?

4 THE COURT: Certainly.

5 SOLICITOR HERRING-LASH: Those
6 are all the questions that I have. Please
7 answer any that Mr. Burns may have.

8 THE COURT: You may cross-examine,
9 Mr. Burns.

10 CROSS EXAMINATION

11 BY MR. ALAN BURNS:

12 Q. The warrants that you acquired for me,
13 it was based on Minor 4 -- based solely on
14 the affidavit taken by the Mount Pleasant
15 Police Department?

16 A. It was based on her statement to Mount
17 Pleasant as well as when I spoke with her.

18 Q. Did you take a statement from her?

19 A. Yes, I did.

20 Q. But you didn't get a written, signed
21 statement from her?

22 A. I did get a signed statement from her
23 asking her if there were any further details
24 than what she had given to Detective Bacon,
25 where she did give me a statement saying that

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1 'no, there were none.'

2 Q. So your warrants were based on the
3 statement given to the Mount Pleasant Police
4 Department?

5 A. As well as the statement -- the verbal
6 and the statement that she gave to me. Yes.

7 Q. And you had -- prior to taking a
8 statement from **Minor 3** did you read the
9 statement that she had given to the Mount
10 Pleasant Police Department?

11 A. I did.

12 Q. Did you read the report from the Mount
13 Pleasant Police Department?

14 A. I reviewed it, yes.

15 Q. In the report from the Mount Pleasant
16 Police Department, which has already been
17 entered into evidence, Detective Bacon said
18 that as a result of **Minor 3**'s first statement
19 that I couldn't be charged. I believe that
20 was in regards to Section 16-63 -- 63-19-
21 1210. All right. All you familiar with that
22 section?

23 A. By the statute number, I -- no. If you
24 give me the statute name, I probably would be
25 able to answer.

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1 MR. ALAN BURNS: If I could have
2 this marked ---

3 THE COURT: You don't need to.
4 She reviewed the document and -- we will make
5 it a court's exhibit. It is not evidence,
6 it's the law.

7 MR. ALAN BURNS: Thank you.

8 THE COURT: She's on notice of the
9 statute, if she is familiar with it.

10 THE WITNESS: I am not familiar
11 with the transfers of jurisdiction.

12 MR. ALAN BURNS: All right.
13 May I have that report?

14 COURT REPORTER: On Minor 3?

15 MR. ALAN BURNS: Right. For
16 reference, it's Defendant's Exhibit 14.

17 THE COURT: Very well. Thank you,
18 sir.

19 SOLICITOR HERRING-LASH: Your
20 Honor, I think that he is giving her another
21 document, prepared by another individual. I
22 am not sure but ---

23 THE COURT: It's been admitted?
24 Has this one been admitted?

25 MR. ALAN BURNS: Yes, sir.

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1 THE COURT: It's in evidence.

2 CROSS EXAMINATION CONTINUED

3 BY MR. ALAN BURNS:

4 Q. Where it is underlined, would you read
5 that for me, please?

6 A. Aloud?

7 Q. Yes.

8 A. (Reading): *"Alan was not charged with*
9 *the sexual assault on Minor 3, as she*
10 *reported that she was three years old at the*
11 *time, which would have made Alan thirteen*
12 *years old during the time of the offense."*

13 Q. Okay. And let me ask you to read
14 something else. Defendant's Exhibit 15,
15 would you read the highlighted part, please.

16 A. It's just a fragment of a sentence. Do
17 you want me to read the whole ---

18 Q. No, just the highlighted section,
19 please.

20 A. (Reading): *"...penis against my vagina,*
21 *but he never penetrated with his penis."*

22 Q. That was from her original statement and
23 report, which reflects that -- the report
24 from Detective Bacon, then the discovery of
25 that statement, they then contacted you. As

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1 a result you went to **Minor 3** and you got
2 another statement from her where she, in the
3 statement that you took, alleged that there
4 was some penetration.

5 A. The statement that she gave to Detective
6 Bacon, which is referenced in her report, is
7 what she had disclosed about when she was
8 three years old. When I spoke with her, she
9 disclosed the ones when she was eight to nine
10 years old. So there were two different
11 instances.

12 Q. Well, but when she was reporting that,
13 she was referring to her entire childhood.

14 THE COURT: Wait a minute. Before
15 you answer that, you're going to lay a
16 foundation of how this witness knows what she
17 was telling somebody else at that time.
18 She's testified from her review of the
19 statement what she discerned. Then what her
20 statement was. But if you want her to
21 testify as to what the witness said to
22 another person, you've got to lay a
23 foundation. So rephrase your question.

24 CROSS EXAMINATION CONTINUED

25 BY MR. ALAN BURNS:

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1 Q. When [Minor 3] gave her second statement
2 to you, did she at any time infer that her
3 first statement was only in relationship to
4 when she was three years old?

5 A. When we met with her on April 1st, my
6 first meeting with [Minor 3], who is referred
7 to as [Minor 3], she did come to me at that
8 point and said that there was more
9 information that she was wished to disclose.
10 She became very tearful, broke down and cried
11 and disclosed that there had been another
12 sexual assault, that it was when she was
13 older -- eight to nine years old. That she
14 had originally minimized when she spoke with
15 Detective Bacon. However, when she did speak
16 with me she disclosed what had happened when
17 she was eight to nine years old.

18 Q. In the statement that [Minor 3] gave to
19 Detective Bacon -- well, let me get you to
20 read it. Would you read from the first
21 question and answer -- read the first
22 question and answer, and then the part that
23 is highlighted again.

24 A. (Reading):

25 Q. What happened when you were

1 *eight or nine?*

2 A. *When he would approach me, I*
3 *would just run from him.*

4 Q. Read the highlighted part.

5 A. That was the highlighted part. Before
6 that it says, (reading):

7 Q. *How many times has your uncle*
8 *molested you?*

9 A. *Quite a few. He did it a few*
10 *times when I was three years old and he tried*
11 *to do it again when I was eight or nine.*

12 Q. *What happened when you were*
13 *eight or nine?*

14 A. *When he would approach me, I*
15 *would just run from him.*

16 Q. Read the next part?

17 A. (Reading):

18 Q. *Where was Alan's room?*

19 I'm sorry, (reading):

20 Q. *What happened when you were*
21 *eight or nine?*

22 A. *When he would approach me, I*
23 *would just run from him.*

24 Q. Okay. Now, in the statement that she

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1 gave to you, she said that when she was eight
2 or nine years old that she was penetrated; is
3 that correct?

4 A. Correct.

5 Q. So in the statement that she gave to the
6 Mount Pleasant police, was she not covering
7 also the ages of eight and nine, when she
8 declared that she had never been penetrated?

9 A. Again, she came -- when I spoke with
10 her, she said that she was disclosing more
11 information than what she had given to Mount
12 Pleasant, Detective Bacon.

13 Q. Okay. In statement one -- because there
14 are two statements. In statement one, the
15 alleged victim stated that when she was eight
16 or nine years old that she had never been
17 penetrated.

18 In statement two, the alleged victim
19 stated that when she was eight or nine that
20 she was penetrated.

21 In your opinion as an investigator,
22 do you find these two statements to be
23 contradictory?

24 A. I do not. In her first statement to
25 Detective Bacon, I believe that she actually

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1 states that he does penetrate her with his
2 fingers, I believe is what it says. Again,
3 in mine, again a different instance, she goes
4 on to say that when she was older -- in my
5 experience as an investigator, it is not
6 uncommon for a victim to give more details
7 at a later time, to not disclose all the
8 information the first interview. It is not
9 uncommon for a victim to now disclose all the
10 information immediately when an incident
11 happens. So the fact that she gave more or
12 additional information does not give me any
13 concern. It is quite common for victims to
14 give more information as an initial
15 interview.

16 Q. So if an individual told you that
17 something didn't happen, at all, and then an
18 individual comes back and tells you that it
19 did happen, you would tell me that there's
20 not a contradiction in that?

21 A. Again, the two different statements --
22 she is referring in the first -- in the first
23 statement to Detective Bacon, she gives
24 details about that and said that it happened
25 when she was three.

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1 Then she talks about that he tries again
2 when she was eight or nine, and how she run
3 from him.

4 It is not uncommon, again, for victims
5 to give more to the police from the first
6 time once their comfort level is a little bit
7 better with the investigator or the instance
8 that they are dealing with. It's not
9 uncommon for them to give more details to
10 that.

11 MR. ALAN BURNS: I would like to
12 get this marked.

13 COURT REPORTER: Defendant's
14 Exhibit 19 (sic), one page.

15 THE COURT: Defendant's 19 (sic)
16 for ID only.

17 CROSS EXAMINATION CONTINUED

18 BY MR. ALAN BURNS:

19 Q. What is this?

20 A. This is page one of three from the
21 statement that I took from Minor 3?

22 MR. ALAN BURNS: I would like to
23 enter this into evidence, Your Honor.

24 THE COURT: Any objection?

25 SOLICITOR HERRING-LASH: No objec-

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1 tion.

2 THE COURT: Without objection, it
3 is admitted.

4 COURT REPORTER: I apologize, Mr.
5 Burns. That should be Defendant's Exhibit
6 18. I misspoke.

7 THE COURT: Defendant's Exhibit 18
8 is admitted without objection.

9 (SO ENTERED AS DEFENDANT'S EXHIBIT 18)

10 MR. ALAN BURNS: That's all.

11 SOLICITOR HERRING-LASH: I have
12 no redirect.

13 THE COURT: Very well, you may
14 come down. Thank you.

15 (WITNESS STEPS DOWN)

16 THE COURT: Ladies and Gentlemen,
17 at this point we will recess for the evening.

18 Of course, you are not at liberty to
19 discuss this case among yourself or with
20 anyone outside the courtroom, including
21 anyone at home.

22 I would ask that you return to the
23 jury room at 9:45. We have a matter that was
24 scheduled. I want to assure you that we
25 didn't schedule these, knowing that we were

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1 having a jury trial. We had a change. I was
2 to be the plea judge this week and things had
3 to be changed around and we had already
4 scheduled these. I try not to do that when I
5 have a jury, so I apologize to you in advance
6 for starting a little later. We will start
7 at 9:45 in the morning.

8 Have a good evening. I will see you
9 at 9:45.

10 (JURY OUT @ 4:25 P.M.)

11 THE COURT: Anything from the
12 State before we recess?

13 SOLICITOR HERRING-LASH: No, Your
14 Honor.

15 THE COURT: Anything from the
16 defense?

17 MR. ALAN BURNS: No, sir, Your
18 Honor.

19 THE COURT: Thank you. We will be
20 at-ease until 9:45. Have a good evening.

21 (COURT IN RECESS)

22 (TRANSCRIPT CONTINUED NEXT PAGE)

23

24

25

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1 AUGUST 8, 2012 9:50 A.M.

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3 (DEFENDANT PRESENT)

4 THE COURT: Let the record reflect
5 that Mr. Burns is present. Good morning to
6 you, sir.

7 MR. ALAN BURNS: Good morning, Your
8 Honor.

9 THE COURT: Anything before we
10 bring in the jury, from the State?

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

13 THE COURT: From the defense, Mr.
14 Burns?

15 MR. ALAN BURNS: No, sir.

16 THE COURT: Bring in our jury.

17 (JURY IN @ 9:55 A.M.)

18 THE COURT: Good morning, Ladies
19 and Gentlemen. I hope that you had a good
20 evening. We are ready to continue in this
21 matter. Please give your attention to the
22 first witness. Solicitor, good morning. You
23 may call your first witness.

24 SOLICITOR HERRING-LASH: The
25 State calls Minor 3 [REDACTED] Your Honor, this

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1 witness has an interpreter that needs to be
2 sworn also.

3 THE COURT: All right. Ma'am, as
4 the interpreter, would you please state your
5 full name for the record.

6 GLENDIA BOON: Glendia Boon.

7 THE COURT: You are a certified
8 interpreter?

9 GLENDIA BOON: Yes, sir, I am.

10 THE COURT: Have you prepared
11 these services before?

12 GLENDIA BOON: Yes, I have.

13 THE COURT: Do you swear or affirm
14 that you will perform the services of
15 verbatim interpretation for this proceeding
16 today and comply with your responsibility in
17 every respect? If you will, say "I do."

18 GLENDIA BOON: I do.

19 THE COURT: Thank you, ma'am, I
20 appoint you for purposes of an interpreter
21 for this -- you're an interpreter in what
22 area?

23 GLENDIA BOON: American Sign
24 Language.

25 THE COURT: Any objection, Mr.

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1 Burns?

2 MR. ALAN BURNS: No, sir, Your
3 Honor.

4 THE COURT: Very well, thank you.

5 SOLICITOR HERRING-LASH: Your
6 Honor, for the record, Miss Burns will speak.
7 She reads lips. She cannot reads lips from
8 this distance but she can speak.

9 (WITNESS TAKES STAND)

10 [Minor 3] [REDACTED] [REDACTED] being duly
11 sworn to tell the truth, the whole truth and
12 nothing but the truth, testified as follows:

13 DIRECT EXAMINATION

14 BY SOLICITOR HERRING-LASH:

15 Q. [Minor 3], what is your date of birth?

16 A. [REDACTED] [REDACTED] [REDACTED]

17 Q. Where do you work?

18 A. I am not working right now.

19 Q. Where have you worked?

20 A. I used to do housekeeping, cook and
21 other things.

22 Q. Where do you live?

23 A. North Charleston.

24 Q. Who lives with you?

25 A. My husband and two kids.

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1 Q. And what are the ages of your children?

2 A. Four and sixteen.

3 Q. **Minor 3**, do you have a hearing
4 disability?

5 A. Yes, I do.

6 Q. How long have you had that?

7 A. Since I was born.

8 Q. Are you related to Alan Burns?

9 A. Yes, I am.

10 Q. How are you related?

11 A. He is my uncle.

12 Q. On which side?

13 A. My dad's side.

14 Q. Did you stay with your grandparents
15 growing up?

16 A. Yes, during the summers and weekends
17 when my parents worked.

18 Q. Who else was there, as far as cousins?

19 A. **Minor 4** and **Minor 5**.

20 Q. Did you become close?

21 A. Yes.

22 Q. Was Alan Burns also there?

23 A. Yes.

24 Q. What were your ages when you first went
25 there?

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1 A. I believe when I was born, small.

2 Q. How old were you when you left?

3 A. About three or four, my dad was in the
4 military.

5 Q. Then when did you come back to stay?

6 A. When I was eight, I believe.

7 Q. And did Mr. Burns do anything sexual to
8 you?

9 A. Yes, he did.

10 Q. What is the first thing that you
11 remember?

12 A. The first time that I remember is that
13 it happened when I was about three years old,
14 at my grandma's house.

15 Q. What happened?

16 A. I remember he had me, Minor 4, Minor 5
17 and my brother in the room.

18 Q. Which room?

19 A. His room.

20 Q. What happened?

21 A. He took turns fondling us.

22 Q. What do you mean?

23 A. Touching us inappropriately.

24 Q. Where did he touch you?

25 A. Between our legs.

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1 Q. Did you have your clothes on?

2 A. Yes.

3 Q. What about his clothes?

4 A. Pants down.

5 Q. Did he make you touch him?

6 A. I don't remember that part.

7 Q. Did you witness him touching any other
8 child?

9 A. Yes.

10 Q. Who?

11 A. Minor 4 and Minor 5

12 Q. What did you see?

13 A. Him touching us. He was taking turns.

14 Q. Where were y'all?

15 A. All of us were in his room.

16 Q. Was that always where you were?

17 A. Yes.

18 Q. Did anyone cry?

19 A. I remember Minor 4 and Minor 5 crying but
20 I don't remember if I was crying.

21 Q. When you moved away, where did you go?

22 A. I believe -- my dad was in the Army. I
23 believe that it was Tennessee, then Texas,
24 wherever.

25 Q. When you came back, did you go back over

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1 and stay at your grandparents?

2 A. Yes.

3 Q. And this was when, you said, you were
4 around eight?

5 A. Yes.

6 Q. Did anything happen then?

7 A. Yes.

8 Q. Can you tell the jury?

9 A. I remember taking a nap. It was in the
10 room across from where Alan's room is. I
11 woke up and he was standing over me.

12 Q. What happened?

13 A. That's when he violated me again.

14 Q. What do you mean by "violated"?

15 A. He was touching me, then he rapes me.

16 Q. What do you mean by rape?

17 A. Penetrated me, put his penis inside me.

18 Q. Where were you?

19 A. On the bed.

20 Q. You said the room across from Alan's
21 room?

22 A. Yes.

23 Q. Where was everyone else, if you know?

24 A. I don't remember.

25 Q. You said that you came in to take a nap?

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1 A. Yes.

2 Q. Had you been outside or inside, to take
3 a nap?

4 A. Yes.

5 Q. Which one?

6 A. I believe that I was outside and came in
7 and took a nap. I don't remember all those
8 details.

9 Q. But you were laying on the bed?

10 A. Yes.

11 Q. How were you laying on the bed?

12 A. I was laying on the bed. When I woke
13 up, I was on the edge.

14 Q. What do you mean by the edge of the bed?

15 A. I was laying on the bed with my butt off
16 the bed.

17 Q. Were your feet on the floor?

18 A. Yes.

19 Q. What position were you in?

20 A. (No verbal response).

21 Q. Do you understand?

22 A. No.

23 Q. Was your stomach touching the bed or
24 your back?

25 A. My back was on the bed.

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1 Q. What happened?

2 A. (No verbal response).

3 Q. Were your clothes on or off?

4 A. My pants was down.

5 Q. How did they get down?

6 A. I don't know. I woke up, they was down.

7 He was standing over me.

8 Q. Who was standing over you?

9 A. Alan.

10 Q. What happened then?

11 A. He was just fondling me. Then he
12 stopped. I was bleeding. He told me to be
13 quiet and go to the bedroom.

14 Q. Did you go to the bathroom?

15 A. Yes.

16 Q. How did it feel to you?

17 A. At that time I was confused, it hurt.
18 I didn't know what I was going to do.

19 Q. You said that you were bleeding?

20 A. Yes.

21 Q. Where were you bleeding?

22 A. Between my legs.

23 Q. Did Mr. Burns say anything to you?

24 A. I remember him telling me not to say
25 anything to nobody.

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1 Q. What did you do after this stopped?

2 A. I really don't anything.

3 Q. Do you remember what happened after you
4 left the restroom?

5 A. Not really.

6 Q. Did you tell anybody?

7 A. No.

8 Q. Why not?

9 A. Because I was scared.

10 Q. Were there other occasions when things
11 would happen?

12 A. I wouldn't remember.

13 Q. Did you ever discuss this with anyone?

14 A. I talked to [Minor 4] about it one time
15 but anybody, in general, no.

16 Q. About how old were you when you talked
17 to [Minor 4] if you know?

18 A. I talked to [Minor 4] when it first
19 happened. We'd talk about it among each
20 other.

21 Q. When it first happened, do you mean back
22 when you were a little child?

23 A. Yes.

24 Q. Did there come a time when Alan went
25 away?

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1 A. Yes.

2 Q. During the years that he was gone, did
3 you tell anybody in the family about it?

4 A. No.

5 Q. How did you end up calling the Mount
6 Pleasant police?

7 A. Minor 4 called me and told me that there
8 was a case going on in the family and asked
9 me if I wanted to say anything.

10 Q. How are people able to call you?

11 A. I don't know how she know, but she know.
12 She just called and told me about me.

13 Q. But do they have to use the rely system
14 on the phone?

15 A. No, she texted me on my cell phone.

16 Q. They text you?

17 A. Yes.

18 Q. Did you in fact talk or go to the Mount
19 Pleasant Police Department?

20 A. Yes, I did.

21 Q. Do you remember who that you first
22 talked with?

23 A. I don't remember her name but I talked
24 with a detective at the Police Department.

25 Q. Did you tell her about everything that

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1 had happened?

2 A. At first I didn't.

3 Q. Why not?

4 A. Because I felt that I just told them a
5 little bit that it would make a difference.

6 Q. You didn't want to talk about it?

7 A. Right.

8 Q. At that point in time, had you ever told
9 anybody about the details about the nap?

10 A. No, I didn't.

11 Q. Did you also talk to a Charleston County
12 Sheriff deputy?

13 A. Yes, I did.

14 Q. Where were you when you talked to her?

15 A. At Minor 4's school.

16 Q. Pardon me?

17 A. At Minor 4's school, Mary Ford.

18 Q. Did you tell her about the incident with
19 the nap?

20 A. Yes, I did.

21 Q. Do you know why you were able to tell
22 her about that?

23 A. Because she was asking questions, so I
24 decided to tell her more.

25 Q. Was that the first time ---

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1 A. Yes.

2 Q. How have you felt since talking or
3 telling about this?

4 A. A little bit relieved but at the same
5 time I just want to get it all out.

6 Q. Do you still think about this, have
7 dreams or have nightmares about this?

8 MR. ALAN BURNS: Objection, Your
9 Honor.

10 THE WITNESS: Yes, I do.

11 THE COURT: Basis of objection?

12 MR. ALAN BURNS: I have a legal
13 issue that I need to bring up to you.

14 THE COURT: What is the basis of
15 your objection?

16 MR. ALAN BURNS: May we approach
17 the bench, Your Honor?

18 (OFF RECORD SIDEBAR)

19 THE COURT: You can put that on
20 the record at the first break. Objection is
21 overruled.

22 DIRECT EXAMINATION CONTINUED

23 BY SOLICITOR HERRING-LASH:

24 Q. Minor 3 do you need me to repeat my
25 question?

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1 A. Please repeat.

2 Q. Do these memories still bother you?

3 A. Yes.

4 Q. In what way?

5 A. I have nightmares and -- I have
6 nightmares.

7 SOLICITOR HERRING-LASH: Minor 3
8 those are all the questions that I have. If
9 you will, answer any that Mr. Burns has.

10 THE COURT: You may cross-examine,
11 Mr. Burns.

12 MR. ALAN BURNS: Thank you, Your
13 Honor.

14 CROSS EXAMINATION

15 BY MR. ALAN BURNS:

16 Q. Minor 3 when you was first contacted
17 you gave the Mount Pleasant Police Department
18 a statement. In that statement ---

19 THE COURT: I am going to ask you,
20 Mr. Burns, you break your questions down this
21 morning. It will facilitate the record but
22 it will also help the interpreter.

23 MR. ALAN BURNS: Right.

24 THE COURT: You have to ask one
25 question at a time. Don't ask multiple

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1 questions. Let the -- the question was that
2 'you gave them a statement?' She needs to
3 answer that, yes or no. Then you can follow
4 up with your next question, but that's the
5 way that you are going to have to work it
6 this morning.

7 CROSS EXAMINATION CONTINUED

8 BY MR. ALAN BURNS:

9 Q. In the statement that you gave to the
10 Mount Pleasant Police Department, did you
11 state that there had been no penetration?

12 A. I did.

13 Q. Late on you gave a second statement, and
14 in that statement you said that there was
15 penetration.

16 A. Yes, I did.

17 Q. Why was there a difference in the two
18 statements?

19 A. Because when I gave the first statement,
20 I didn't want to tell every detail. When
21 they asked me again, at the second statement,
22 I decided to give them every detail.

23 Q. Why did you not want to give them all
24 the details at first?

25 A. Because I feel like I didn't know -- I

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1 just felt like if they knew enough of the
2 details that it wouldn't make a difference.

3 Q. At some point you found out that the
4 police couldn't charge me for the first
5 details; is that correct?

6 A. I didn't know anything about the charge.
7 The only thing I know is that when they
8 questioned me the first time that I told them
9 what I told them. Then when they talked to
10 me again, I just decided to release myself
11 and let everybody know exactly -- everything
12 that I remember.

13 Q. When you gave the first statement, you
14 stated that when you was eight and nine that
15 there had never been any incidents that
16 occurred; is that true?

17 A. Repeat the question?

18 Q. Did you state that there were never any
19 incidents that occurred when you were eight
20 or nine?

21 A. I told what I remember.

22 Q. Showing you Defendant's Exhibit 15.
23 Would you read these two questions and
24 answers.

25 A. (Reading):

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1 Q. What happened when you were
2 eight and nine?

3 A. When he would approach me, I
4 would just run away from him.

5 Q. So you stated that when you were eight
6 and nine that you ran away from me and
7 nothing ever happened.

8 a. No.

9 Q. In that statement right there, did you
10 not state that you would just run away?

11 A. You did it to me that one time but you
12 -- you always tried to do it to me then, but
13 I wouldn't let you.

14 Q. So when I tried again, you didn't let
15 me? According to that statement and your
16 testimony now?

17 A. Yeah.

18 Q. Exhibit 18, would you read the
19 highlighted section?

20 A. (Reading):

21 A. He put his penis inside my
22 vagina and I started bleeding. He made me go
23 wash myself in the bathroom.

24 Q. So does that contradict what you just
25 testified to, that you I had never done

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1 anything to you when you were eight or nine?

2 A. You did things. I never said you
3 didn't.

4 Q. In the first statement, you stated that
5 when you were eight or nine ---

6 THE COURT: Mr. Burns, she has
7 testified. The statements speak for them-
8 selves. You're arguing with the witness.

9 MR. ALAN BURNS: Thank you, Your
10 Honor.

11 THE COURT: Move on to your next
12 question.

13 CROSS EXAMINATION CONTINUED

14 BY MR. ALAN BURNS:

15 Q. You also said that when you were three
16 that [Minor 4], [Minor 5] and B.J. (phonetic) were
17 in the room with you; is that correct?

18 A. Right.

19 Q. How old is [Minor 5]? What is the
20 difference between your age and [Minor 5]'s age?

21 A. [Minor 5] was a baby. I don't remember
22 exactly how old she was but she was a baby.
23 She could barely walk at the time. That's
24 what I remember.

25 Q. She was able to walk or barely able to

1 walk. I need to get clarification on that.

2 A. I don't remember. Like I said, she was
3 a baby.

4 Q. Yes.

5 A. Was she wearing diapers? Underwear?
6 How was she dressed?

7 A. She had clothes on. But when you were
8 putting your hands on her and inside her
9 clothes.

10 Q. Was I putting my hand inside her -- was
11 she wearing panties or underwear?

12 A. I don't remember, but I know what you
13 did to her.

14 Q. Minor 5's birthday, if you can remember
15 this, is [REDACTED] [REDACTED] [REDACTED]; is that correct?

16 A. I believe so.

17 Q. So that would mean that when you were
18 three that Minor 5 wasn't even one yet?

19 A. I am not saying exactly that I was
20 three. I said about three. I am not saying
21 exactly three.

22 Q. In your first statement you said that
23 you was first because you was the oldest.
24 How did you know that?

25 A. How did I know what?

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1 Q. How did you know that you were first
2 because you were the oldest?

3 A. I was the oldest.

4 Q. How do you know that you were first
5 because you were the oldest?

6 THE COURT: I don't understand
7 your question. How do you know that you were
8 first what? Clarify your question. It's an
9 unclear question.

10 CROSS EXAMINATION CONTINUED

11 BY MR. ALAN BURNS:

12 Q. In your statement you said that "*Alan*
13 *lined up us girls. I was first because I*
14 *was the oldest.*" How do you know that I
15 placed you first because you were the oldest?

16 A. That's the way that I remember. I
17 remember you putting me in the line first and
18 then lining everybody else up.

19 Q. Okay. You gave two different
20 statements. One to the Mount Pleasant police
21 alleging one thing. Then a totally different
22 statement to the Charleston County Sheriff's
23 Office, alleging something else. Which
24 statement should the jury believe?

25 A. They should believe both. In the first

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1 statement I didn't give all the details.

2 In the second statement, I just added on
3 to the first statement.

4 MR. ALAN BURNS: I am going to
5 leave it right there.

6 THE COURT: Redirect?

7 SOLICITOR HERRING-LASH: No, Your
8 Honor. May the witness be excused?

9 THE COURT: Any objection, Mr.
10 Burns, to the witness being excused?

11 MR. ALAN BURNS: No objection.

12 THE COURT: You may come down and
13 you are excused.

14 (WITNESS STEPS DOWN)

15 SOLICITOR HERRING-LASH: Your
16 Honor, the interpreter has to turn in some
17 paperwork.

18 THE COURT: Ladies and Gentlemen,
19 why don't I let you go to your jury room for
20 a moment. There is a matter of law that we
21 need to take up before the next witness.

22 Please don't begin your delibera-
23 tions, don't discuss the case. We will be
24 with you in about ten minutes I would think.

25 (JURY OUT @ 10:05 A.M.)

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1 THE COURT: During the testimony
2 of the last witness, Minor 3 [REDACTED], there was
3 an objection made by Mr. Burns, and a sidebar
4 held.

5 Mr. Burns advised the court that
6 Assistant Solicitor Stoney was signaling the
7 witness about how to answer. The court noted
8 that the witness was watching -- the witness,
9 who had a hearing impairment, totally was
10 focused on the interpreter throughout the
11 entire examination; otherwise, she couldn't
12 understand what was being asked in the first
13 place.

14 Also the court would like to note
15 for the record, because the court overruled
16 the objection, that the interpreter was
17 standing between Mr. Stoney and the witness,
18 as was Ms. Herring-Lash. I find it
19 incredible and incredulous would be able to
20 signal a witness in a fashion that she would
21 understand in the first place.

22 But the court notes the objection
23 for the record. I would be happy -- and I
24 will -- I believe that Mr. Burns said that he
25 observed, and I will allow you to say for the

1 record what you observed Mr. Stoney doing.

2 I think you said that he was giving hand

3 signals up and down for "yes" or "no." Is

4 that correct?

5 MR. ALAN BURNS: Yes, Your Honor.

6 THE COURT: Up and down, -- the

7 witness very seldom answered yes or no but --

8 but her -- certainly her testimony speaks for

9 itself.

10 MR. ALAN BURNS: Yes, sir. I

11 informed Mr. Smith about this, it was on

12 Monday, that I had observed Mr. Stoney doing

13 this throughout the entire trial with all

14 witnesses. He has several signals. If you

15 sit back and you pay close attention, you

16 will see him give certain signals ---

17 THE COURT: I would suggest

18 something. I appreciate that. I appreciate

19 it and the record now contains your notation

20 of that. I would suggest to you -- and I am

21 not giving you advice, because I can't. I

22 was a lawyer for twenty-one years. It

23 probably would serve me more to focus on what

24 the witness is saying and doing than what

25 anybody else in this courtroom is doing. But

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1 you -- you look at whatever you want to look
2 at. Thank you, sir.

3 MR. ALAN BURNS: I just would like
4 to also have this Motion entered into the
5 record and preserved for appeal.

6 THE COURT: Mr. Burns -- and I
7 will accept that as not argument but really
8 that you just don't understand, at all, what
9 we are doing. Do you understand that's
10 precisely what I just did for you?

11 MR. ALAN BURNS: Okay.

12 THE COURT: You don't understand
13 that?

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

15 THE COURT: That's why I excused
16 the jury and went into this long discourse
17 about what we have. I am not here just for
18 talk. But I'll accept it as -- not as some
19 kind of challenge to the court but, rather,
20 your truly not understanding the process.
21 Which again points out some of my concerns
22 when you wanted to represent yourself. Thank
23 you, sir.

24 State ready to continue?

25 SOLICITOR HERRING-LASH: Yes, Your

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1 Honor.

2 THE COURT: Mr. Burns, are you
3 ready to continue?

4 MR. ALAN BURNS: Yes, sir.

5 THE COURT: Thank you. Bring in
6 our jury.

7 Mr. Burns, I don't think that we are
8 going to have any more questions but I almost
9 called you down -- we will talk about that at
10 the end. I can talk about that during the
11 Motions period. That's not a problem. Thank
12 you.

13 (JURY IN @ 10:21 A.M.)

14 THE COURT: Thank you, Ladies and
15 Gentlemen. We are ready to continue. State
16 may call its next witness.

17 SOLICITOR HERRING-LASH: The
18 State calls Don Elsey.

19 (WITNESS TAKES STAND)

20 DONALD E. ELSEY, 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. Dr. Elsey, where do you work?

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1 A. D. Norton Lowcountry Children's Center.

2 Q. How long have you worked there?

3 A. Fifteen years.

4 Q. What is your job there?

5 A. I am the clinical director.

6 Q. What is your educational background?

7 A. I have a bachelors in psychology and
8 sociology, a masters in clinical counseling
9 and a doctorate in childhood development.

10 Q. What are your professional
11 certifications?

12 A. I am a licensed professional counselor
13 and a licensed professional counselor
14 supervisor.

15 Q. And what has been your professional
16 experience?

17 A. I worked for twenty-five plus years in
18 the field of psychiatry and psychology and
19 currently I've been working with an interest
20 in child abuse, for the last fifteen years.

21 Q. And do you supervise other
22 professionals?

23 A. I supervise all the clinical staff at
24 our place.

25 Q. At the Lowcountry Children's Center?

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1 A. Yes, ma'am.

2 Q. What is the Lowcountry Children's
3 Center?

4 A. It is a child advocacy center. We see
5 children when there is a concerns about their
6 safety or possible abuse. We provide
7 treatment, also, as needed.

8 Q. How many children have you seen with
9 concerns of child abuse in your professional
10 career?

11 A. Above five thousand.

12 Q. And have you testified as an expert in
13 the area of the dynamics of child sexual
14 abuse?

15 A. Yes, ma'am.

16 Q. About how many times?

17 A. About a hundred and twenty-five times.

18 Q. And have you been offered as an expert
19 in that area?

20 A. Yes, ma'am.

21 SOLICITOR HERRING-LASH: Your
22 Honor, at this time I would offer Dr. Elsey
23 as an expert in the area of child sexual
24 abuse.

25 THE COURT: Do you care to examine

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1 Dr. Elsey concerning his qualifications, at
2 this point?

3 MR. ALAN BURNS: No, sir, Your
4 Honor.

5 THE COURT: Very well. I will
6 permit Dr. Elsey to render opinions in that
7 area.

8 DIRECT EXAMINATION CONTINUED
9 BY SOLICITOR HERRING-LASH:

10 Q. Dr. Elsey, in your profession what is
11 meant by delay in disclosure?

12 A. It means that when an event happens that
13 there is a period of time between the child
14 telling what happened to them.

15 Q. Why don't kids tell?

16 A. There are multiple reasons. Because
17 they are scared to death, usually, when
18 something traumatic has happened.

19 They don't understand it.

20 There may be a real or a perceived that
21 they won't be believed or protected by their
22 caregivers.

23 They may think that they are partially
24 responsible for it happening, because
25 sometimes what happens is that they involve

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1 the kid. 'Won't this be fun?' 'Doesn't this
2 feel good?' Which confuses the child. They
3 feel like they are just as culpable as the
4 person doing it.

5 Q. Is there research in this area?

6 A. Yes, ma'am. There's tons of research in
7 this area.

8 Q. Has the research borne out your clinical
9 experience?

10 A. (Affirmative nod), and delayed
11 disclosure is the norm in child abuse.
12 That's been experience after experience,
13 research after research.

14 Q. And have you see that by clinical
15 experience, in your day to day work?

16 A. Yes, ma'am.

17 Q. Do you also do a special group?

18 A. I've run a group for the past ten years
19 for adult males who were sexually abused as
20 children. There was no such group in this
21 community and I was asked to run that, so
22 it's been going on for approximately ten
23 years.

24 Q. And in that group, I assume that they
25 are all adult males?

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1 A. Correct.

2 Q. And what is the average time that they
3 have waited between abuse and disclosure?

4 A. Twenty-nine years on average. When I've
5 asked the guys how long, it's been
6 approximately twenty-nine years between when
7 it happened and then telling somebody.

8 Q. Is it often the first time that they've
9 told, when they come to your group?

10 A. Actually no, because to be referred to
11 my group they would have had had to tell
12 someone else. But it is consistent that
13 males have a harder time talking about this
14 than females do. That is also based on the
15 research.

16 Q. In the group, do they discuss their
17 abuse?

18 A. They do.

19 Q. Have you had adult males discuss
20 instances of abuse that happened in their
21 early childhood?

22 A. Absolutely.

23 Q. Are they are to recall the details?

24 A. They are. It varies. There are some
25 who recall precise details, others have foggy

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1 memories of it, others who have snapshots of
2 it. All remember on some level when they
3 come to my group.

4 Q. As far as their memories, is that petty
5 consistent with the research?

6 A. Yes, the research is -- again,
7 depending on age. Approximately after age
8 four memories are more robust, but you can
9 remember -- even younger than that some
10 people have very vivid memories.

11 Q. I guess there are different -- you said
12 snapshot memories. What is that?

13 A. They just remember bits and pieces of
14 events. There are all sorts of potential
15 psychological reasons for that. Maybe it's
16 just so emotionally laden that it is just too
17 hard to remember at this point.

18 One of the dynamics of children, when
19 there is abuse, is that they want to survive.
20 Sometimes to survive, for some kids, is to
21 remember every detail. For others, it's just
22 to push it away and not remember it.

23 Q. Have you had adults who have repressed
24 and just all of a sudden memories come back?

25 A. I have. I have had several guys come in

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1 and talk to me in therapy and this has come
2 up. Or they're moving to a another location,
3 it may have popped up. Talking to a friend
4 has made it pop up.

5 Q. Is that kind of -- forgetting is kind of
6 a way of self-preservation, if you will?

7 A. It is a coping skill. It is a way, as I
8 mentioned earlier, for kids to survive. This
9 is so horrific -- 'I can't remember, I can't
10 think about it.'

11 Q. Then when it comes back, is there an
12 emotional reaction?

13 A. Most of the time there is almost
14 definitely an emotional reaction. It's
15 almost like they were that child again on
16 some level.

17 Q. Have you had others that have always
18 remembered but just didn't want to talk about
19 it?

20 A. I would say that's probably more the
21 norm. It's kinda been there but it's not
22 something that you want to think about.
23 If someone had asked me about it, you may
24 mentioned it, maybe not. But it's still
25 there.

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1 Q. Have you ever had an occasion where you
2 had an adult or a child that there have been
3 witnesses that something happened but that
4 child has not told?

5 A. Absolutely. We see children now that
6 there is a witness or some sort of medical
7 evidence but the child is 'it did not
8 happen.' Certainly with adults that's been
9 the case, too.

10 Q. Now, as far as the family dynamics, are
11 the family dynamics that may make it more
12 likely or less likely that a child may tell?

13 A. The research is pretty clear. If the
14 alleged offender is someone close to the
15 child, which in the world of child abuse that
16 is almost always the case, the child has a
17 very difficult time telling. This may be
18 someone that they've been told to trust,
19 someone that they love on some level.
20 Someone that they may know more about,
21 someone who may be in trouble for other
22 things -- who is violent or whatever. They
23 may be aware of that and it makes them more
24 unlikely to tell.

25 Q. If it is a family member, that would

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1 influence their telling?

2 A. Absolutely. Someone close to them.

3 Q. If a child has experienced or witnessed
4 violence from that person, would that also
5 affect their ability to tell?

6 A. Absolutely. People who hurt kids
7 generally don't want to be caught, so there
8 is a process of making a child not tell. It
9 can be the grooming process, which is
10 treating them special and spending special
11 time with them, giving them special things.
12 Or it can be more aggressive, 'if you tell,
13 this will happen', 'if you tell, I will hurt
14 you.' If the child has knowledge that person
15 has a history of violence, put that together
16 and they most likely won't tell.

17 Q. When a children goes tell, is there -- I
18 guess -- is disclosure an event or a process?
19 Explain.

20 A. It is usually a process. What that
21 means is that a child, or even an adult, will
22 tell a little information and see what
23 happens. Oftentimes when a child tells, they
24 are met with 'oh, this can't be true' or
25 'this is hurting me too much, I can't hear

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1 this.' Which means that they take it back.
2 If they're met with 'we want to keep you
3 safe, we want you to be okay through this, it
4 is not your fault,' then the child can tell
5 me more details of what happened.

6 Also in therapy children, and adults,
7 can remember more as they break down some of
8 those offenses such as denial and repression,
9 as you mentioned earlier.

10 Q. So it sounds like after they've told and
11 they've had some therapy or they had to start
12 remembering, that more memories could come
13 back?

14 A. Absolutely it could. And they feel
15 safe, psychologically and emotionally, safe
16 also.

17 Q. Is that kinda of like testing the
18 waters, to put a little bit out there.

19 A. It certainly can be, yes.

20 Q. And see what happens?

21 A. Especially if they are told by the
22 person who hurt them that 'no one is going to
23 believe you' or 'you're going to foster care'
24 or 'your mom won't love you anymore if you
25 tell.' They worry that might be reality.

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1 Q. Also are there terms of disclosure such
2 as "accidental disclosure" or "purposeful
3 disclosure".

4 A. Yes, ma'am.

5 Q. What does that mean and how does it
6 impact?

7 A. A purposeful disclosure means that a
8 child is prepared to tell. They made have
9 received from information, some education,
10 maybe they feel supported to the point that
11 they have chosen to tell, they are
12 emotionally ready to tell on some level.

13 Q. Accidental, young kids -- sometimes a
14 child may be caught sexually acting out and
15 the parent may say 'how did you learn that'
16 and they blurt out this sexual abuse. Then
17 their world falls apart for a period of time,
18 mom is upset, police are coming by, DSS. It
19 gets very distressing.

20 For adolescents, quite often when
21 they're angry. 'You're taking my car keys
22 away. Let me tell you what your boyfriend
23 did years ago.' Those are not prepared
24 statements but accidentally are thrown out
25 and then more things happen after that --

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1 more information, more therapy.

2 Q. Could that also be an example of if one
3 person tells and that person tells
4 authorities, 'oh, it also happened to A, B
5 and C.' But A, B and C didn't make a choice.

6 A. Correct. They are interviewed and they
7 are almost somewhat forced to tell. Even
8 then some don't.

9 Q. As far as victim presentation when they
10 are explaining their views, what kinds of
11 presentations -- is it one of multiple?

12 A. It is a full range. We see -- at our
13 center, we see very young children, we see
14 older children and we have children telling
15 us horrific details while they are laughing.
16 Again, that is a coping skill, a survival
17 skill. We have other children who have to
18 tell us through the tears, who are almost
19 catatonic -- which means that they have
20 almost no emotion when they are telling.
21 People are different. Trauma can form that
22 personality, make them tell in different
23 ways.

24 Q. So would it be uncommon to just have an
25 absolute flat, robotic presentation of what

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1 happened?

2 A. It would not be uncommon in the adults
3 and children that I see.

4 Q. Is that a coping skill?

5 A. Absolutely.

6 Q. Maybe to explain it, is that dealing
7 with the facts and not with the emotions?

8 A. It certainly could be. I am only going
9 to let this go so deep because I don't know
10 if I am prepared to handle the other parts of
11 this.

12 Q. And is -- have you seen families in your
13 practice where the secret of childhood sexual
14 abuse is kept for generations?

15 A. Absolutely.

16 Q. Is that common?

17 A. I don't know that it is the norm but
18 certainly we see that quite often, that the
19 person -- that the child who is able to come
20 forward at that point is fighting generations
21 of 'we don't talk about this, we protect our
22 family, this stays in the house, this stays
23 on our road.' That can make it very
24 difficult for the child to be safe when they
25 are giving this information.

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1 SOLICITOR HERRING-LASH: Dr.

2 Elsey, those are all the questions that I
3 have. If you would, answer anything that Mr.
4 Burns may have.

5 THE COURT: Cross-examine, Mr.
6 Burns?

7 CROSS EXAMINATION

8 BY MR. ALAN BURNS:

9 Q. Good morning, Mr. Elsey.

10 A. Good morning.

11 Q. At Lowcountry Children's Center, most
12 often you see children that was referred to
13 you by law enforcement?

14 A. Not most often. It's a mixture between
15 the Department of Social Services,
16 physicians, attorneys, the court,
17 departments, law enforcement, a variety of
18 different referrals.

19 Q. But most come from some form of
20 government agency?

21 A. Probably DSS is the most common
22 referral; yes.

23 Q. When you see them at the center, the
24 center conducts a forensic interview with
25 them?

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1 A. Yes, sir.

2 Q. The purpose of the interview is to
3 determine if the child has been sexually
4 abused?

5 A. It is to determine -- part of the
6 investigation is to determine if something
7 happened to the child. It is not just sexual
8 abuse that we assess for. It's any type of
9 abuse or trauma to a child.

10 Q. In this case we are going to focus on
11 basically sexual abuse.

12 A. Yes, sir.

13 Q. Okay. You don't actually investigate
14 any of the cases?

15 A. We are a part of the investigation. If
16 there is an investigation going on, law
17 enforcement does their piece, the medical
18 people do their piece, DSS does their piece,
19 the court does their piece. We do a portion
20 of that.

21 Q. So the investigative portion that you
22 do, you do it as a part of the prosecutorial
23 investigation?

24 A. If that is going on. Yes, sir.

25 Q. You simply interview the child?

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1 A. We interview the child. We meet with
2 the caregiver, because part of our role also
3 is to help that child feel safe. If they are
4 not safe, to help them feel protected.

5 Engaging with that caregiver is a crucial
6 part of that, so we meet with the caregiver
7 also and do the forensic interview.

8 Q. You turn over the interview to the
9 police officer(s)?

10 A. If they are involved, yes, sir.

11 Q. Did you turn over a report of your
12 interviews in this case to the police or the
13 solicitor?

14 A. I don't have any information that we saw
15 these individuals as children.

16 Q. Did you see the police report, the
17 incident reports or any of the witness
18 statements?

19 A. No, sir.

20 Q. Do you don't actually know if any abuse
21 has taken place?

22 A. No, sir.

23 Q. So your opinion about abuse is based
24 only entirely on what the child tells you?

25 A. In our job and the forensic interview,

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1 we base our opinion on what and how the child
2 tells us. For example, if the child shakes
3 their head and nothing is happening or if
4 they're crying and bawling, that's
5 information. But we base our information on
6 what the child tells us as far as the
7 investigation and how they tell us.

8 Q. In this case, none of the alleged
9 victims has told you or anyone at your agency
10 anything?

11 A. Not that I am aware of. Certainly not
12 me.

13 Q. When you testify in court, do you always
14 testify for the State?

15 A. No, sir. I've testified for the defense
16 a number of times.

17 Q. Have you ever testified for the
18 Charleston County Public Defenders Office?

19 A. Yes, sir.

20 Q. In some instances when children report,
21 it may not have actually happened; is that
22 correct?

23 A. That's correct.

24 Q. So ultimately your job is to conduct an
25 interview with the child; is that right?

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1 A. That's right. That's one of our primary
2 job in the forensic interview.

3 Q. And an interview that is free of bias?

4 A. Free of bias?

5 Q. Yes.

6 A. Yes, sir. All of our interviewers have
7 been trained to ask what are called
8 nonleading questions, to allow for free
9 information to come from a child, and that
10 they are developmentally appropriate. You
11 don't ask a five-year-old the same question
12 that you ask an eleven-year-old, for example.

13 Q. Okay. But you -- the conclusions that
14 you reach are based, generally, on general
15 knowledge and not specific knowledge about
16 this case; is that correct?

17 A. Well, I really haven't reach any
18 conclusions on this case. That is not my
19 role. My role is just to provide information
20 to the jury, to help them make the best
21 decision in this case.

22 Q. So therefore your testimony today is
23 based on just general knowledge?

24 A. I wouldn't say general knowledge. It's
25 based on very specific knowledge about child

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1 abuse and the impact that the abuse has on
2 children and families and memory.

3 Q. But nothing specific that pertains tot
4 his particular case?

5 A. Not of the details are about this case;
6 no, sir.

7 MR. ALAN BURNS: Thank you.

8 THE COURT: Redirect?

9 REDIRECT EXAMINATION

10 BY SOLICITOR HERRING-LASH:

11 Q. Dr. Elsey, I think that you explained it
12 but you're here as an expert and not as a
13 treating doctor for any of these individuals?

14 A. That's correct.

15 Q. When law enforcement refers victims or
16 allegations to your agency, is it children
17 that are making a report?

18 A. Children up to the age of eighteen, yes.

19 Q. Or if there is some kind of mental
20 incapacity they may refer ---

21 A. We have seen a few adults who have a
22 diagnosis of mental retardation. So we've
23 been able to see them. Developmentally they
24 still process as a younger child.

25 Q. And if it is an older adolescent, adult,

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1 law enforcement investigates those
2 statements?

3 A. They do. They may refer them to us for
4 our treatment, assessment or treatment.

5 SOLICITOR HERRING-LASH: Those
6 are all the questions that I have.

7 THE COURT: Recross?

8 MR. ALAN BURNS: No, sir, Your
9 Honor.

10 THE COURT: Do you wish Dr. Elsey
11 to be excused?

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

14 THE COURT: Any objection?

15 MR. ALAN BURNS: No, sir.

16 THE COURT: Dr. Elsey, thank you
17 very much. You may come down and you are free
18 to leave, sir.

19 (WITNESS TAKES STAND)

20 SOLICITOR HERRING-LASH: Your
21 Honor, at this point the State would rest.

22 THE COURT: Very well. Ladies and
23 Gentlemen, at this point there are some
24 matters of law that I must take up out of
25 your presence. I am going to ask that you

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1 retire to your jury room. Do not begin your
2 deliberations, do not discuss the case among
3 yourselves. We will be with us as quickly as
4 we can.

5 (JURY OUT @ 10:40 A.M.)

6 THE COURT: Anything from the
7 State at this point?

8 SOLICITOR HERRING-LASH: No, Your
9 Honor.

10 THE COURT: Mr. Burns, be happy to
11 hear from you?

12 MR. ALAN BURNS: Judge, I don't
13 believe that even in looking at this case in
14 the light most favorable to the State that
15 the State has met their burden of prove; that
16 the State has failed to prove any physical
17 evidence or scientific evidence. Your Honor,
18 the State has failed to produce any medical
19 evidence to support these charges.

20 Your Honor, the State has also
21 failed to prove jurisdiction in these cases,
22 in two ways. First, the State has failed to
23 prove that an agreement existed allowing
24 Mount Pleasant police to investigate cases
25 within rural Charleston County pursuant to

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1 South Carolina Code 23-1-215(a), which
2 specifically states, (reading):

3 *"In the event of crimes or crimes*
4 *that have occurred where multiple*
5 *jurisdictions, either county or municipal,*
6 *are involved, law enforcement officers are*
7 *authorized to exercise jurisdiction within*
8 *other counties or municipalities for the*
9 *purpose of criminal investigation only if a*
10 *written agreement between or among the law*
11 *enforcement agencies involved has been*
12 *executed. This limitation on law enforcement*
13 *activity shall not apply to any activity*
14 *authorized by Section 17-13-40."*

15 Your Honor, Section 17-13-40 ---

16 THE COURT: Mr. Burns, you don't
17 need to read the statutes into the record.
18 They speak for themselves. You can rely on
19 them. I am familiar with them, so you don't
20 have to read that for the record to be
21 protected. I understand that's the basis for
22 your argument.

23 Are there any other statutes, other
24 than those that you just cited?

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1 MR. ALAN BURNS: No, not for that
2 issue. I have -- the second reason is that
3 the State has failed to prove jurisdiction by
4 providing testimony of the county in which
5 they allege that these events occurred. I
6 cite *State v. Williams*, 468 S.C. 2nd 626, at
7 630.

8 Your Honor, at this point there
9 is still the open issue whether the Mount
10 Pleasant police officers were acting outside
11 of her lawfully vested jurisdiction. The
12 State has not provided any prove that
13 Detective Michelle Bacon, the detective lead
14 officer, was acting within the bounds of the
15 statute and her vested authority with the
16 Mount Pleasant Police Department .

17 THE COURT: Okay. Anything else?

18 MR. ALAN BURNS: No, sir. Thank
19 you.

20 THE COURT: Thank you. First of
21 all, with respect to the jurisdiction, there
22 is an abundance of testimony that it doesn't
23 have to be anything other than that, I
24 believe that testimony is evidence. I
25 believe that I tell the jury that every day.

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1 That being said, the witness testified that
2 the area that she investigated was within the
3 corporate limits of the Town of Mount
4 Pleasant. She referred those matters that
5 were not to Charleston County, clearly
6 indicating that those were in Charleston
7 County. Clearly testimony has been
8 established that all of the offenses occurred
9 in Charleston County, through the testimony
10 of the two witnesses, just those two alone.

11 Clearly the evidence -- by the way,
12 I don't argue with you that there is
13 certainly no medical testimony. But that's
14 not required. Testimony of the victim
15 doesn't even have to be corroborated, there
16 is a statute that provides that and I am
17 going to charge the jury that law because it
18 applies. They testified, testified pretty
19 specifically about it.

20 The one testimony -- and I mentioned
21 -- I almost called you down, but it's
22 interesting because -- you wasted time, you
23 asked her a lot of questions, Minor 3
24 about the three-year-old. I've read the
25 indictments on all three. It does not appear

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1 that -- all three of these charges was when
2 she returned.

3 SOLICITOR HERRING-LASH: Yes,
4 Your Honor.

5 THE COURT: So there is no charge
6 about when she was three years old, none,
7 that this jury is being asked to consider.
8 Albeit that was part of her statement.

9 But your statement that they
10 couldn't prosecute you because you didn't
11 penetrate is totally wrong, because that's
12 what lewd act is. That's one of the examples
13 of a lewd act. So when you say that you
14 couldn't be prosecuted, that really was a
15 misstatement of the law but I let you ask
16 that.

17 You can shake your head all you
18 want, sir. I think I am right on that. But
19 when you appeal my statement here and you get
20 to the Supreme Court to say that that
21 wouldn't constitute a lewd act, then I won't
22 say it again. But I believe that to be the
23 case right now, sir. Thank you.

24 So your Motion is denied in every
25 respect. It's very clear. In fact, the

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1 evidence -- if the jury chooses to believe
2 the witnesses -- is overwhelming. So, thank
3 you.

4 Now, that having been done, I will
5 ask you if you wish to present any witnesses.
6 You may say yes and you may start calling
7 your witnesses when the jury returns.

8 But before we get to that point, do
9 you plan to testify?

10 MR. ALAN BURNS: At this point, I
11 still haven't actually decided as of yet
12 because ---

13 THE COURT: All right, sir. I
14 will need to examine you before you rest.
15 Let me just talk to you -- to use this time
16 productively. Do you understand your right
17 to testify or not to testify?

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

19 THE COURT: Do you understand
20 that, as I have already instructed the jury,
21 that you have absolutely nothing to prove or
22 disprove in this proceeding?

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

24 And if you chose not to testify in
25 this case, that would be your absolute

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1 Constitutional right and I would instruct the
2 jury that they could not use that against
3 you. As a part of my charge, I state that if
4 they even talk about it, if they even thought
5 about it, that that would violate their oath
6 that they've took. I think that it is
7 significant.

8 So you understand that I will give
9 that charge, if you choose not to testify?

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

11 THE COURT: Do you also under-
12 stand, however, that it is your right to
13 testify?

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

15 THE COURT: And that if you do
16 testify that you would be subject to cross
17 examination just as every witness that has
18 testified for the State is subject to your
19 cross-examination?

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

21 THE COURT: And you understand
22 that in that cross-examination that the State
23 would be at liberty to ask you questions. I
24 think you made a motion concerning your prior
25 charges. Before you testify, we would have

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1 to go on the record and I would make a
2 determination as to what charges, if any,
3 could be used against you in cross-
4 examination.

5 It doesn't in any way make your
6 testimony not credible. I would just merely
7 instruct the jury that if you did testify and
8 I permitted the State to examine you
9 concerning any prior charges, that they could
10 not use that in any way other than in
11 assessing the credibility and the
12 believability of a witness. It doesn't
13 prevent them from believing you but it just
14 is one of the factors that they would
15 consider.

16 You understand that you would be
17 subject to that, do you not?

18 MR. ALAN BURNS: Yes, sir.

19 THE COURT: Before you finish --
20 when I say finish, as I am sure that your
21 assistants have told you, you have to at some
22 point say 'I don't wish to present any more
23 witnesses.' Before you do that, make that
24 statement, I want to have another opportunity
25 to talk to you.

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1 MR. ALAN BURNS: Yes, sir.

2 THE COURT: Have you today
3 consumed any alcohol or taken any type of
4 medication, in the last twenty-four hours?

5 MR. ALAN BURNS: No, sir.

6 THE COURT: You have obviously
7 demonstrated your ability to think by
8 examining witnesses and making decisions that
9 you have been making throughout this trial.
10 The record is certainly replete with that.
11 So it doesn't appear that you're functioning
12 or laboring under any disability. Is that a
13 fair assessment?

14 MR. ALAN BURNS: Yes, sir.

15 THE COURT: So I would want to
16 renew this discussion before you rest your
17 case. Okay?

18 MR. ALAN BURNS: Yes, sir.

19 THE COURT: Let's take about a
20 ten-minute break and then we will get
21 started. The witnesses will be here at
22 11:00?

23 MR. ALAN BURNS: Yes, sir.

24 THE COURT: That's good. Perfect
25 timing. Okay, we will be at-ease.

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1 (BRIEF RECESS)

2 (DEFENDANT PRESENT)

3 THE COURT: State ready?

4 SOLICITOR HERRING-LASH: Yes, Your
5 Honor.

6 THE COURT: Defendant ready, Mr.
7 Burns?

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

9 (JURY IN @ 11:10 A.M.)

10 THE COURT: Thank you, Ladies and
11 Gentlemen. Appreciate your patient. As you
12 will recall, when we started I mentioned to
13 you that Mr. Burns, of course, has no
14 responsibility to prove or disprove anything
15 at all. He doesn't have to prove his
16 innocence. In fact, he doesn't have to
17 present any evidence at all. But that he
18 would have the opportunity after the State
19 had completed its case. So, Mr. Burns, as I
20 understand, you do desire to call additional
21 witnesses for the jury's consideration; is
22 that correct?

23 MR. ALAN BURNS: Yes, sir.

24 THE COURT: You may proceed, sir.
25 Call your first witness.

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1 MR. ALAN BURNS: I call Susan
2 Bettelli to the stand, Your Honor.

3 (WITNESS TAKES STAND)

4 SUSAN BETTELLI, 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 Mr. ALAN BURNS:

9 Q. Good morning, Ms. Bettelli.

10 A. Good morning.

11 Q. I don't believe that we have ever met
12 personally. I am Alan Burns. I'm the
13 Defendant. Could you please tell the jury
14 where you work?

15 A. I work for the Town of Mount Pleasant,
16 in the Planning Department.

17 Q. What is your job title there?

18 A. I am a Planner III.

19 Q. How long have you worked in that job
20 position?

21 A. About seven and a half years.

22 Q. Would you please tell the jury what your
23 job responsibility are?

24 A. I make most of the maps for the Town of
25 Mount Pleasant. I also do annexations,

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1 rezoning, and -- it's kinda of a mixed bag,
2 rezoning or questions from the public that
3 have to do with our planning and zoning
4 departments.

5 Q. So part of your job responsibilities are
6 to prepare maps?

7 A. Correct.

8 Q. When you prepare those maps, you can put
9 certain things that you can -- you can
10 include certain details in the maps?

11 A. Yes, sir.

12 Q. Reference points?

13 A. (Affirmative nod).

14 Q. And one of those reference points is
15 jurisdictional lines?

16 A. Basically the layers that we have in the
17 planning department, it has to do with the
18 jurisdiction of the planning department, what
19 has been annexed into the town of Mount
20 Pleasant. Correct.

21 Q. Can you define in any of those maps the
22 jurisdictional lines for the Town of Mount
23 Pleasant Police Department?

24 A. No, I don't have any of that
25 information.

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1 Q. But generally the jurisdiction for the
2 Police Department and the Town of Mount
3 Pleasant would be the same?

4 A. I have no idea.

5 Q. You do include individual property lines
6 on the maps as well?

7 A. If it is requested, yes.

8 MR. ALAN BURNS: Let me present
9 this map -- no, they have already presented
10 it.

11 THE COURT: No, you can present it
12 this witness. It's been used for
13 demonstrative purposes.

14 MR. ALAN BURNS: Okay.

15 DIRECT EXAMINATION CONTINUED

16 BY MR. ALAN BURNS:

17 Q. This is Exhibit 12, do you remember
18 preparing this map?

19 A. Yes, sir.

20 Q. On this map, did you include the
21 jurisdictional lines for the town of Mount
22 Pleasant?

23 A. Yes, it's the lines for what has been
24 annexed into the Town versus what is under
25 the Charleston County planning's

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1 jurisdiction.

2 Q. Okay. On this map, I specifically
3 requested an area between Hidden Lakes and
4 Venning Road and between Labor Camp Road and
5 the intercoastal waterway. Is that correct?
6 But you covered a much larger area, is that
7 correct?

8 A. I would assume so. I made the map as
9 requested.

10 Q. On this map you outlined the town of
11 Mount Pleasant jurisdiction in what fashion?

12 A. Basically the black outline is the Town
13 of Mount Pleasant and the hatched outline is
14 what is in Charleston County.

15 Q. So anything on this map that is hatched
16 out is in Charleston County, outside the
17 Mount Pleasant jurisdiction?

18 A. As far as the planning department is
19 concerned.

20 Q. Okay. Let me present a couple of
21 letters to you.

22 MR. ALAN BURNS: If I could get
23 these marked.

24 COURT REPORTER: Defendant's
25 Exhibit 19 for identification.

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1 MR. ALAN BURNS: It's two individual
2 documents.

3 COURT REPORTER: And also
4 Defendant's Exhibit 20, each being a letter.

5 THE COURT: One page?

6 COURT REPORTER: Yes, sir.

7 THE COURT: Defendant's Exhibits
8 19 and 20, marked for identification only,
9 each being a one-page letter.

10 DIRECT EXAMINATION CONTINUED

11 BY MR. ALAN BURNS:

12 Q. Do you recognize these two documents,
13 ma'am?

14 A. (Upon review), yes, sir.

15 Q. Would you tell me what those documents
16 are, please?

17 A. These are the responses to the letters
18 that you sent. You basically sent us letters
19 requesting maps and these are the letters
20 that I sent you back.

21 MR. ALAN BURNS: I would like to
22 have these admitted into evidence, Your
23 Honor.

24 THE COURT: Objection?

25 SOLICITOR HERRING-LASH: No

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1 objection.

2 THE COURT: Without objection,
3 they are admitted.

4 (SO ENTERED AS DEFENDANT'S EXHIBIT 19)

5 (SO ENTERED AS DEFENDANT'S EXHIBIT 20)

6 DIRECT EXAMINATION CONTINUED

7 BY MR. ALAN BURNS:

8 Q. Would you please read Exhibit 20?

9 A. Dated December 28th, 2011, (reading):

10 "Dear Alan L. Burns: I've included a copy
11 of the map that you requested. The map shows
12 the properties that are in the Town limits of
13 the Town of Mount Pleasant in the blue
14 outline. These properties that have been
15 annexed into the Town of Mount Pleasant. The
16 properties with the white outline are under
17 the jurisdiction of Charleston County Zoning
18 & Planning Department. Please contact
19 Charleston County for any additional
20 information that you need in that area. This
21 map and the previous map are free of charge.
22 Any additional maps will require a fee.
23 Regards, Town of Mount Pleasant Planning
24 Department."

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1 Q. Thank you.

2 MR. ALAN BURNS: Mark this,
3 please.

4 COURT REPORTER: Defendant's
5 Exhibit 21, for identification.

6 THE COURT: Okay.

7 COURT REPORTER: One page.

8 DIRECT EXAMINATION CONTINUED

9 BY MR. ALAN BURNS:

10 Q. Can you identify this map?

11 A. Yes, this is the map that was described
12 in the letter that I just read.

13 Q. Okay.

14 MR. ALAN BURNS: I would like to
15 have that entered into evidence, as well.

16 SOLICITOR HERRING-LASH: No
17 objection, Your Honor.

18 THE COURT: Without objection, it
19 is admitted.

20 (SO ENTERED AS DEFENDANT'S EXHIBIT 21)

21 MR. ALAN BURNS: Thank you, ma'am.
22 Thank you, Ms. Bettelli. If you would, would
23 you please answer any questions that the
24 solicitor might have?

25 THE WITNESS: Sure.

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1 THE COURT: Cross-
2 examination?

3 SOLICITOR HERRING-LASH: Just
4 briefly.

5 CROSS EXAMINATION

6 BY SOLICITOR HERRING-LASH:

7 Q. What you said in your letter was, I
8 think, that you outlined the areas that the
9 zoning and the planning department had
10 jurisdiction of?

11 A. Correct. Those are properties annexed
12 into the Town of Mount Pleasant.

13 Q. And I think your testimony was that you
14 do not have any knowledge of what the Mount
15 Pleasant -- what law enforcement jurisdiction
16 was?

17 A. Correct.

18 SOLICITOR HERRING-LASH: That's
19 all the questions that I have.

20 THE COURT: Redirect?

21 MR. ALAN BURNS: Your Honor, may I
22 approach?

23 THE COURT: Redirect?

24 MR. ALAN BURNS: No, no redirect.
25 Sorry, I didn't hear you.

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1 THE COURT: You may come down.

2 (WITNESS STEPS DOWN)

3 THE COURT: Do you wish the
4 witness to be excused?

5 MR. ALAN BURNS: Yes, sir, Your
6 Honor.

7 THE COURT: Any objection?

8 SOLICITOR HERRING-LASH: No, Your
9 Honor.

10 THE COURT: You are free to leave.
11 Thank you, Ms. Bettelli. Yes, sir?

12 (OFF RECORD SIDEBAR)

13 THE COURT: Okay, we will deal
14 with that at the appropriate time.

15 MR. ALAN BURNS: Thank you, sir.

16 THE COURT: Call your next
17 witness, please.

18 MR. ALAN BURNS: I call Richard
19 Beasley to the stand, Your Honor.

20 (WITNESS TAKES STAND)

21 RICHARD BEASLEY, being duly sworn to
22 tell the truth, the whole truth and nothing
23 but the truth, testified, as follows:

24 DIRECT EXAMINATION

25 BY MR. ALAN BURNS:

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1 Q. Good morning, Mr. Beasley. How are you?

2 A. I am doing just fine.

3 Q. Could you please tell the jury where you
4 work, sir?

5 A. Charleston County, GIS mapping
6 department for the Assessor.

7 Q. What is your job title?

8 A. GIS Technician.

9 Q. How long have you had that position?

10 A. Fifteen years.

11 Q. Could you please tell the jury what your
12 job responsibilities are?

13 A. I update the tax maps according to the
14 recorded plats and deeds.

15 Q. As part of your job responsibilities, do
16 you prepare maps on request by individuals?

17 A. Yes, sir.

18 Q. And also in criminal proceedings, as
19 required?

20 A. Yes, sir.

21 Q. Okay. When you prepare these maps, are
22 certain -- can certain things be added,
23 certain pinpoints or highlights?

24 A. Not currently from our front counter
25 application. We basically print tax maps.

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1 We don't do any embellishments.

2 Q. Okay. Do you -- can you add juris-
3 dictional lines, show jurisdictional lines
4 for the county?

5 A. Actually I do not control the
6 jurisdictional lines. Once I revise the
7 property lines, the annexation,
8 jurisdictional lines are done by another
9 department.

10 Q. By another department?

11 A. Right.

12 Q. Okay. Did you prepare and provide some
13 maps to me upon request, through Mr. Ted
14 Smith?

15 A. Yes.

16 MR. ALAN BURNS: I would like to
17 have this marked.

18 COURT REPORTER: Defendant's
19 Exhibit 22 for identification.

20 DIRECT EXAMINATION CONTINUED

21 BY MR. ALAN BURNS:

22 Q. Is this one of the maps that you
23 prepared, sir?

24 A. Yes, sir.

25 Q. And this map shows the county lines and

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1 boundaries for areas that's in Charleston
2 County jurisdiction as opposed to the Town of
3 Mount Pleasant?

4 A. Yes, the red line is the county/Town
5 boundary line.

6 Q. And everything else would be the Town of
7 Mount Pleasant?

8 A. Right. I can't tell from this map what
9 is the county and what's the town.

10 Q. (Indicating).

11 A. Okay.

12 Q. So that area that you pointed to, that
13 would be county jurisdiction?

14 A. Yes, sir.

15 MR. ALAN BURNS: I would like to
16 have this entered into evidence.

17 THE COURT: Any objection?

18 SOLICITOR HERRING-LASH: No
19 objection.

20 THE COURT: Defendant's Exhibit 22
21 is admitted without objection.

22 (SO ENTERED AS DEFENDANT'S EXHIBIT 22)

23 THE COURT: While you are there,
24 what was the other map that you wanted to --
25 the blowup?

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1 MR. ALAN BURNS: Exhibit 12.

2 THE COURT: Exhibit 12, without
3 objection, is likewise admitted.

4 MR. ALAN BURNS: Thank you, Your
5 Honor.

6 (SO ENTERED AS DEFENDANT'S EXHIBIT 12)

7 MR. ALAN BURNS: Thank you, Mr.
8 Beasley. I have no further questions, but
9 please answer any questions that Ms. Herring-
10 Lash may have.

11 SOLICITOR HERRING-LASH: Your
12 Honor, I have no questions.

13 THE COURT: Thank you. Mr.
14 Beasley, -- do you wish the witness to be
15 excused?

16 MR. ALAN BURNS: Yes, sir.

17 THE COURT: Any objection?

18 SOLICITOR HERRING-LASH: No, Your
19 Honor.

20 THE COURT: You are also free to
21 leave, sir.

22 (WITNESS STEPS DOWN)

23 THE COURT: Call your next
24 witness.

25 MR. ALAN BURNS: Call Ed Knisley.

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1 (WITNESS TAKES STAND)

2 EDWARD KNISLEY, being duly sworn to
3 tell the truth, the whole truth and nothing
4 but the truth, testified, as follows:

5 DIRECT EXAMINATION

6 BY MR. ALAN BURNS:

7 Q. Good morning, Mr. Knisley, how are you?

8 A. Good, sir.

9 Q. Please tell us where you work?

10 A. I am the deputy county attorney for
11 Charleston County.

12 Q. Okay. How long have you had this job,
13 sir?

14 A. That particular position, for about five
15 years.

16 Q. Would you please tell the jury what your
17 job responsibilities are? Just some of them.

18 A. I provide legal services as an attorney
19 for the County for various departments, the
20 Sheriff's Office, County Council, tax
21 offices, just any County department. There
22 are a number of county attorneys and I am
23 just one of several.

24 Q. Okay. Mr. Knisley, is it true that you
25 first learned of these cases against me in

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1 responding to a subpoena to Sheriff Al

2 Cannon?

3 A. Yes, sir.

4 Q. When you responded, you responded in an

5 e-mail to Mr. Ted Smith of the Charleston

6 County Public Defender?

7 A. I believe so.

8 MR. ALAN BURNS: Mark this,

9 please?

10 COURT REPORTER: Defendant's

11 Exhibit 23, consisting of one page.

12 THE COURT: Very well, a one-page

13 document.

14 DIRECT EXAMINATION CONTINUED

15 BY MR. ALAN BURNS:

16 Q. Can you identify that document?

17 A. Yes, sir, it's an e-mail that I sent Mr.

18 Smith on May 4th of this year.

19 Q. Okay.

20 MR. ALAN BURNS: I would like to

21 have that entered into evidence, Your Honor.

22 THE COURT: Any objection?

23 SOLICITOR HERRING-LASH: No, Your

24 Honor.

25 (SO ENTERED AS DEFENDANT'S EXHIBIT 23)

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1 DIRECT EXAMINATION CONTINUED

2 BY MR. ALAN BURNS:

3 Q. Would you please read that document
4 aloud for us, please, to the jury?

5 A. Sure, (reading):

6 "Mr. Smith: Regarding a subpoena
7 served on Sheriff Cannon on May 3, 2012,
8 neither Sheriff Cannon nor any other
9 personnel with the Charleston County
10 Sheriff's Office are aware of any type of
11 agreement between the Sheriff's Office and
12 Mount Pleasant Police Department regarding
13 the investigation which resulted in charges
14 against Mr. Burns. Please let me know if the
15 sheriff's personal presence is still
16 necessary at 9:00 a.m. on Monday morning.
17 The sheriff understand that he could be
18 called as a witness during the appropriate
19 time during the trial and requests reasonable
20 notice if he is to be called. Thank you."

21 Q. Thank you, Mr. Knisley.

22 LORI PROCTOR: Your Honor, what
23 number is that exhibit?

24 THE COURT: Exhibit 23.

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1 DIRECT EXAMINATION CONTINUED

2 BY MR. ALAN BURNS:

3 Q. Mr. Knisley, are you aware of any type
4 of agreement between the Charleston County
5 Sheriff's Office and the Town of Mount
6 Pleasant Police Department that would allow
7 for a criminal investigation?

8 A. Yes, sir.

9 Q. Would you explain that agreement,
10 please?

11 A. There are two agreements that I am aware
12 of that are -- general e-mail reference,
13 specifically to this particular
14 investigation. But there are two general
15 agreements. One was entered into back in the
16 early '90s, I believe, between County Council
17 and the Town of Mount Pleasant to provide law
18 enforcement coverage for what we call
19 doughnut holes in the Town of Mount Pleasant.
20 As you go to Mount Pleasant, uh, there are a
21 number of individual parcels -- some are
22 close to the bottom of the Ravenel Bridge --
23 that are still in the County. They're not in
24 the Town of Mount Pleasant. For efficiency
25 and public safety reasons, the County Council

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1 contracted with the Town to provide law
2 enforcement services in those areas. The
3 County pays Mount Pleasant quarterly for that
4 service.

5 The other agreement is a general mutual
6 aid agreement between the two agencies that
7 is pursuant to a different statute in state
8 law that just permits in any emergency
9 situation the two agencies to assist each
10 other as necessary.

11 Q. Okay.

12 MR. ALAN BURNS: Let's mark this
13 one?

14 THE COURT: What is it? Is it a
15 statute?

16 MR. ALAN BURNS: Yes, sir.

17 THE COURT: Well, you don't need
18 to -- you can ask him any question you want
19 about a statute as long as it is relevant and
20 as long as it is pertinent.

21 MR. ALAN BURNS: Okay.

22 DIRECT EXAMINATION CONTINUED

23 BY MR. ALAN BURNS:

24 Q. Do you recognize this statute, sir?

25 A. Yes, sir.

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1 Q. Would you read the first ---

2 THE COURT: No, sir. What's the
3 question about the -- because -- first of
4 all, Mr. Burns, as you heard me tell the
5 jury, they're here to decide the factual
6 issues. I am here to decide the legal issue.
7 The statute would have nothing to do with
8 their decision on a factual issue unless you
9 want to frame the question so that it would
10 require him to read it. But just to read the
11 statute is not necessary at this point, sir.
12 You can ask him any question that you want
13 about the statute, that you think is
14 pertinent to the issue. But just reading the
15 statute serves no useful purpose.

16 MR. ALAN BURNS: That would be all
17 that I have then.

18 THE COURT: You may cross examine.

19 CROSS EXAMINATION

20 BY SOLICITOR HERRING-LASH:

21 Q. Mr. Knisley, you testified about an
22 agreement between the County Council and the
23 Town of Mount Pleasant to provide law
24 enforcement services for those unincorporated
25 areas, what's been called "doughnut holes",

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1 in Mount Pleasant?

2 A. Yes, ma'am.

3 THE COURT: Mr. Burns, first of
4 all, she is showing it to you. She is going
5 to ask some questions. If you need more time
6 to study that document before you redirect, I
7 will allow you an opportunity. The first
8 thing that we want to find out is whether --
9 the only reason that she is showing it to you
10 is to see if you have an objection to it.

11 MR. ALAN BURNS: I don't ---

12 THE COURT: No.

13 SOLICITOR HERRING-LASH: Your
14 Honor, I apologize. Someone just gave me
15 this this morning or I would have shown it to
16 Mr. Burns before.

17 THE COURT: That's fine. I will
18 allow Mr. Burns as much time as he wants
19 after you finish your cross examination.

20 Mr. Burns, if you need to review
21 that document, we will take a break -- if
22 that be necessary.

23 MR. ALAN BURNS: Thank you.

24 SOLICITOR HERRING-LASH: May I
25 approach the witness.

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1 COURT REPORTER: State's Exhibit
2 22 for identification.

3 CROSS EXAMINATION CONTINUED

4 BY SOLICITOR HERRING-LASH:

5 Q. Mr. Knisley, is this the contract you
6 were referring to where the County agreed to
7 pay the Mount Pleasant Police Department for
8 law enforcement services in doughnut areas?

9 A. Yes, ma'am, it is.

10 Q. When was that -- I think at the back,
11 when it was first signed?

12 A. Yes, ma'am. The then-chairman of County
13 Council signed it September 10, 1998.

14 Q. Does it go on where -- the agreement,
15 after that?

16 A. As far as the signature?

17 Q. Yeah.

18 A. Yes, ma'am. The then-mayor of the Town
19 of Mount Pleasant signed it November 10th,
20 1998.

21 Q. Keeping going?

22 A. It includes a map that shows the
23 jurisdictional boundaries covered by the
24 contract. Describes the doughnut hole areas.
25 Then there is the original agreement, which I

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1 believe might be the original agreement of
2 1993, between the Town of Mount Pleasant.

3 Q. So the original agreement was in 1993
4 and it was renewed in ---

5 A. Yes, ma'am, and continues to this day.

6 Q. It does continue to this day?

7 A. Yes, ma'am. The County pays the Town
8 quarterly.

9 Q. Just to make sure, there are places
10 within the -- Mount Pleasant surrounds places
11 that are in the County but the Mount Pleasant
12 Police Department has jurisdiction over those
13 places?

14 A. Yes, ma'am.

15 Q. Even though they are not in the City?

16 A. Yes, ma'am.

17 SOLICITOR HERRING-LASH: Your
18 Honor, I would offer to admit State's Exhibit
19 22 into evidence.

20 THE COURT: Any objection?

21 MR. ALAN BURNS: None, Your Honor.

22 THE COURT: Without objection, it
23 is admitted.

24 (SO ENTERED AS STATE'S EXHIBIT 22)

25 SOLICITOR HERRING-LASH: That's

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1 all the questions that I have.

2 THE COURT: You need a chance to
3 review the document further?

4 MR. ALAN BURNS: Yes, please.

5 THE COURT: Ladies and Gentlemen,
6 I will let you go to your jury for a few
7 minutes. Do not begin your deliberations, do
8 not discuss the case.

9 (JURY OUT @ 11:36 A.M.)

10 THE COURT: How long are you going
11 to need?

12 MR. ALAN BURNS: I am not sure.

13 THE COURT: It's a document about
14 which you have been asking questions. So I
15 don't know what you need to study. I assume
16 since you've been asking questions about it
17 that you're familiar with it.

18 MR. ALAN BURNS: No, Your Honor.

19 THE COURT: Well, that's an oops.
20 I will give you about ten minutes. Mr.
21 Knisley, you may step down if you want to.
22 I'd just ask that you have no conversation
23 with any of the attorneys.

24 (BRIEF RECESS)

25 (DEFENDANT PRESENT)

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1 THE COURT: Let the record reflect
2 that Mr. Burns is present.

3 SOLICITOR HERRING-LASH: Your
4 Honor, may we approach.

5 (OFF RECORD SIDEBAR
6 RE: SCHEDULE OF UNRELATED PLEAS)

7 THE COURT: Mr. Burns, are you
8 ready to continue?

9 MR. ALAN BURNS: Yes, sir.

10 THE COURT: Let's bring in our
11 jury.

12 (JURY IN @ 11:48 A.M.)

13 THE COURT: Thank you, Ladies and
14 Gentlemen. You may redirect the witness.

15 REDIRECT EXAMINATION

16 BY MR. ALAN BURNS:

17 Q. Mr. Knisley, do you believe that this
18 agreement that you were reading was entered
19 into in accordance with Section 5-7-60?

20 A. I haven't read it in detail, but I
21 presume that it is. It appears to be.

22 Q. Okay.

23 A. It certainly appears to be.

24 Q. Are you aware of the prohibition in 5-7-
25 60 that prohibits contracting for police

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1 services?

2 A. I am not aware of a prohibition against
3 contracting. I believe that 5-7-60 provides
4 specifically that police services can be
5 contracted for between agencies.

6 THE COURT: Sir, you're arguing
7 with this witness about a legal matter.
8 That's not for the jury's consideration.
9 That's what I am trying to tell you. That's
10 a legal issue. Thank you, sir.

11 The contract is in. Whether he
12 believes it or not -- there's several
13 opinions that -- opinions on the law don't
14 override my decision as a judge. The jury is
15 not going to make that decision. So this is
16 not -- not pertinent. He has already
17 testified.

18 You can argue it -- you can ask him
19 any question that you want but you don't need
20 to ask him what the statute says. Okay?
21 Because that's what I have to determine. You
22 will argue that before me, not with Mr.
23 Knisley.

24 MR. ALAN BURNS: Okay.

25 THE COURT: Thank you, sir.

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1 MR. ALAN BURNS: I will end it
2 right there then. Thank you.

3 THE COURT: All right. Any
4 recross?

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

7 THE COURT: Do you wish Mr.
8 Knisley to be excused?

9 MR. ALAN BURNS: Yes, sir.

10 THE COURT: Any objection?

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

13 THE COURT: Mr. Knisley, you are
14 free to leave. Thank you, sir.

15 (WITNESS STEPS DOWN)

16 THE COURT: All right, Ladies and
17 Gentlemen, at this point we will recess for
18 lunch. Do not begin your deliberations,
19 don't discuss this case among yourself.

20 I am going to give you a little bit
21 longer because I need to accept a guilty plea
22 in another case. The nonjury matter that I
23 was to do this morning, we were not able to
24 do. So we are going to do that now.

25 I ask that you be back in your jury

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1 room by 2:00. Have a good lunch.

2 (JURY OUT @ 11:58 A.M.)

3 THE COURT: Anything from the
4 State before we recess?

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

7 THE COURT: Anything from the
8 defendant before we recess?

9 MR. ALAN BURNS: No, sir.

10 THE COURT: Insofar as our
11 discussion about the law, Mr. Burns, as you
12 know we have already heard some discussion.
13 You will revisit that at the close of your
14 case. That will be a time when we discuss
15 the statute and I will hear you fully at that
16 point on that particular issues, on your
17 interpretation of the statute.

18 MR. ALAN BURNS: Yes, sir.

19 THE COURT: Thank you, sir.

20 MR. ALAN BURNS: Uh, ---

21 THE COURT: Sir?

22 MR. ALAN BURNS: That's all right.

23 You say that we will discuss it then, so I
24 will wait until ---

25 THE COURT: No, that's where you

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1 make your motions. If you -- if you have a
2 legal matter, it -- what this witness does
3 or doesn't believe is not germane to my
4 decision. The jury is not going to decide if
5 it is legally correct. I have to make that
6 call.

7 MR. ALAN BURNS: Okay.

8 THE COURT: That is a legal
9 decision that has to be made, not a factual
10 decision.

11 MR. ALAN BURNS: That answers my
12 question. Thank you, sir.

13 THE COURT: The only thing that
14 could be -- just thinking out loud with you
15 -- there could be -- if there was some
16 question of fact about where it occurred, but
17 I haven't seen anything that even pinpoints
18 where it occurred in the first place.

19 So there is no evidence that a jury
20 can pass on at this point other than the fact
21 that the witness has said that it wasn't
22 within that jurisdiction where we were
23 involved. But that's the extent of it.

24 It's really not a factual issue
25 because you're not arguing a specific -- that

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1 one agency should have been doing it versus
2 another. You're saying that nobody can do
3 it, period. That's what I understand your
4 argument to be.

5 I'll be happy to hear from you
6 on your construction of the statute. Be
7 interesting. What was your section again?

8 MR. ALAN BURNS: 5-7-60 and the
9 other one was 23-1-215.

10 THE COURT: Thank you, sir. Any
11 other statutes?

12 MR. ALAN BURNS: I've got to pull
13 them up.

14 THE COURT: I want you to give me
15 all of them so that I can be looking at them,
16 after lunch.

17 MR. ALAN BURNS: Yes, sir.

18 (LUNCH RECESS)

19 (DEFENDANT PRESENT)

20 THE COURT: Let the record reflect
21 that Mr. Burns is present. Are you ready to
22 continue, Mr. Burns?

23 MR. ALAN BURNS: Yes, sir.

24 THE COURT: State ready?

25 SOLICITOR HERRING-LASH: Yes,

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1 Your Honor.

2 THE COURT: Bring in our jury.

3 (JURY IN @ 2:05 P.M.)

4 THE COURT: Thank you very much,
5 Ladies and Gentlemen. I hope you had a good
6 lunch. We will continue now. Mr. Burns, do
7 you wish to call any additional witnesses?

8 MR. ALAN BURNS: Yes, sir.

9 THE COURT: Call your next
10 witness.

11 MR. ALAN BURNS: I call Ray Smalls
12 to the stand.

13 (WITNESS TAKES STAND)

14 RAY SMALLS, being duly sworn to tell
15 the truth, the whole truth and nothing but
16 the truth, testified, as follows:

17 DIRECT EXAMINATION

18 BY MR. ALAN BURNS:

19 Q. Ray, would you mind telling the court
20 how you are related to me?

21 A. By marrying your sister Karen, your
22 brother-in-law.

23 Q. Father of Minor 2

24 A. No. Stepfather.

25 Q. But you practically raised him just like

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1 he was your son?

2 A. Yes.

3 Q. You also raised the older brother just
4 like your son, as well?

5 A. Yes.

6 Q. You have two other children, as well?

7 A. Yes.

8 Q. Would you give their names too, please?

9 A. Cadre Smalls, Kimberly Smalls.

10 Q. Do you remember on February 28th, 1997,
11 when I first came home?

12 A. No.

13 Q. You don't remember that?

14 A. (Negative gesture).

15 Q. Were you married to Karen during 1997?

16 A. '97?

17 Q. (Affirmative nod).

18 A. Yes.

19 Q. Were you and Karen together during 1997?

20 A. Yes.

21 Q. Back during 1997, were you the person
22 who used to take Kevin and Minor 2 shopping,
23 to get their haircuts and generally the manly
24 stuff -- each them the manly ways of life?

25 A. Occasionally.

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1 Q. Occasionally?

2 A. (Affirmative nod).

3 Q. Okay. Did you used to take Kevin and

4 Minor 2 with you to get their haircuts when
5 you got your hair cut?

6 A. Occasionally.

7 Q. Did you ever get your hair cut by me?

8 A. No.

9 Q. When I first came home, you took me
10 shopping to Bluestein's Boys & Menswear to
11 purchase a suit. Right?

12 A. I remember that.

13 Q. And you had to help me be fitted for the
14 suit and make the selection for the suit
15 because I was, like, totally lost in that
16 area; right?

17 A. I assisted you, yeah.

18 Q. And the suit was purchased and paid for
19 on my mother's credit card; is that right?

20 A. I am not sure how it got paid. I know
21 that you couldn't afford to pay for it.

22 Q. And you didn't pay for it either?

23 A. (No verbal response).

24 Q. When we went shopping, your wife Karen
25 went with us; didn't she?

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1 A. Yes.

2 Q. And after we got through purchasing the
3 suit, we made some stops at WalMart and
4 purchased some other personal items for me
5 because I didn't have anything. Right?

6 A. Yes.

7 SOLICITOR HERRING-LASH: Your
8 Honor, he is leading.

9 THE COURT: Yes, he is. Rephrase
10 your question. You can't ask leading ques-
11 tions.

12 DIRECT EXAMINATION CONTINUED

13 BY MR. ALAN BURNS:

14 Q. So in fact on this -- Karen was the one
15 in control of the credit card?

16 THE COURT: That is a leading
17 question. You can't ask that in that
18 fashion. That is what the solicitor just
19 objected to.

20 DIRECT EXAMINATION CONTINUED

21 BY MR. ALAN BURNS:

22 Q. Was Karen in control of the credit card?

23 A. I couldn't answer that. I don't know.

24 Q. So when the others -- when the others
25 testified that the others had went shopping

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1 when ---

2 SOLICITOR HERRING-LASH: Your
3 Honor, pitting.

4 THE COURT: I don't know what the
5 question is. Don't answer the question until
6 I hear it. Complete your question, please.

7 DIRECT EXAMINATION CONTINUED

8 BY MR. ALAN BURNS:

9 Q. When others have testified that Karen
10 had went shopping for me, in all factuality
11 (sic) I was with her?

12 THE COURT: You can't answer that
13 question. First of all, you'd have to prove
14 what he knows for the entire time. You'd
15 have to prove that he was with this person.
16 Otherwise he'd been speculating. And it is
17 pitting. So I sustain the objection.

18 DIRECT EXAMINATION CONTINUED

19 BY MR. ALAN BURNS:

20 Q. When Minor 2 told you the things that he
21 said that I did to him, you instantly
22 believed him?

23 A. He didn't tell me anything.

24 Q. He told your wife?

25 A. I couldn't answer that.

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1 Q. When you found out about the things that
2 [Minor 2] said that I had done to him, did you
3 instantly believe him?

4 A. Ask the question again?

5 Q. When you first found out about the
6 things that [Minor 2] said that I had done to
7 him, did you instantly believe what was being
8 said?

9 A. Yes.

10 Q. Did you ever have any doubts at all
11 about what he was telling you, telling you
12 or telling anyone?

13 A. Like I said before, he didn't tell me
14 anything. I just know that if he came to me
15 with something that I would believe what he
16 was saying.

17 Q. He came to you with that?

18 A. No.

19 Q. But when he went to others, you ---

20 A. I can't answer that. I can't answer
21 that.

22 THE COURT: Under 602, he has
23 already stated the reason why he can't answer
24 that is because he doesn't know.

25 THE WITNESS: I can't answer

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1 that.

2 DIRECT EXAMINATION CONTINUED

3 BY MR. ALAN BURNS:

4 Q. So then you never questioned or made any
5 additional inquiries about the things that
6 you had heard that I had done?

7 A. No.

8 Q. It is true that Karen thought that my
9 little backyard barber shop was unfit and
10 unsanitary to let her boys come in?

11 SOLICITOR HERRING-LASH:

12 Objection. Leading.

13 THE COURT: Not only leading but
14 you asked him what someone else knows and he
15 can't possibly answer. You've got to lay the
16 foundation for why he would know that of his
17 own knowledge. That's under 602. This
18 witness has lack of knowledge of that.

19 DIRECT EXAMINATION CONTINUED

20 BY MR. ALAN BURNS:

21 Q. Is it true that you thought that my
22 little backyard barber shop was unfit and
23 unsanitary?

24 A. Is it true that I thought that?

25 Q. (Affirmative nod).

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1 A. I didn't think anything about your
2 little barber shop in the back yard.

3 Q. Did you ever come to my little barber
4 shop to get your hair cut?

5 A. Your little barber shop?

6 Q. Yeah.

7 A. To the little barn, I frequently
8 visited. But not no barber shop.

9 Q. And you got your hair cut by me?

10 A. No.

11 Q. Thank you.

12 MR. ALAN BURNS: That's all.

13 Thank you.

14 THE COURT: Do you have any
15 questions, Solicitor?

16 SOLICITOR HERRING-LASH: No, Your
17 Honor.

18 THE COURT: You may come down,
19 sir. Do you wish Mr. Smalls to be excused?

20 MR. ALAN BURNS: Yes, sir.

21 THE COURT: Any objection,
22 Solicitor, to Mr. Smalls being excused?

23 SOLICITOR HERRING-LASH: No, Your
24 Honor.

25 THE COURT: Mr. Smalls, you are

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1 free to leave, sir. Thank you.

2 (WITNESS STEPS DOWN)

3 THE COURT: Call your next
4 witness.

5 MR. ALAN BURNS: I call Sonya
6 Singleton.

7 (WITNESS TAKES STAND)

8 SO'NIA SINGLETON, being duly sworn
9 to tell the truth, the whole truth and
10 nothing but the truth, testified, as follows:

11

12 DIRECT EXAMINATION

13 BY MR. ALAN BURNS:

14 Q. Please tell the court how we are
15 related?

16 A. You are my mother's brother.

17 Q. Her older brother or younger brother?

18 A. Younger.

19 Q. I'm the youngest?

20 A. Excuse me?

21 Q. I'm the youngest?

22 A. You are my mother's younger brother.

23 Q. I need to clear up a few things. Do you
24 remember when I came home in 1997?

25 A. Yes.

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1 Q. Where you living at the time?

2 A. With my mother.

3 Q. Where at?

4 A. Possibly with my grandmother, could be
5 at her current address.

6 Q. Were you still in high school at the
7 time?

8 A. Yes.

9 Q. Who else was living in the house with at
10 the time?

11 A. What?

12 Q. Who else was living in the house?

13 A. My mother, me, my younger sister and my
14 older brother and my grandparents.

15 Q. During that time was So'Nia living there
16 as well, Cecilia's stepdaughter?

17 A. No.

18 Q. Did So'Nia ever live with you all at any
19 time?

20 A. No.

21 Q. What about Minor 1 your adopted sister?

22 A. At that location, no.

23 Q. Where did you sleep at in the house?

24 Which room was yours, if you recall?

25 A. I can't recall. In a bed in my room but

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1 I can't recall which room that it was.

2 Q. How long did you live there? Did you
3 live there all your life?

4 A. No.

5 Q. When did you first move in there at that
6 house?

7 A. When did what -- did I move into that
8 house?

9 Q. Yes, with your grandmother?

10 A. I don't know. I was a baby.

11 Q. So you lived there from the time you was
12 a baby until when?

13 A. Until my mother moved us out, which was
14 when you ---

15 Q. How old were you when she moved you out?

16 A. I was a teenager. I don't know the
17 exact age. I was a teenager, an adolescent.

18 Q. You were an adolescent?

19 A. A teenager, not an adult.

20 Q. Did you attend college after you
21 graduated from high school?

22 A. Yes.

23 Q. Which college did you attend?

24 A. Clark Atlanta University, the College of
25 Charleston and the Art Institute.

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1 Q. Did you ever have me to drive you to
2 college?

3 A. Did I ever have you drive me to college?
4 No.

5 Q. Did I ever drive you to college in
6 Atlanta?

7 A. You took me back with my mother.

8 Q. Did I ever come down there and pick you
9 up from college?

10 A. With my mother, yes. Once.

11 Q. Over the past three or four years, were
12 you in communication with me by letter?

13 A. In the what?

14 Q. Past three or four years, were you in
15 communications with me by letter?

16 A. No.

17 Q. You never wrote me? Not one time?

18 A. You said in the last three or four
19 years.

20 Q. Right.

21 A. No.

22 Q. You have a son, don't you?

23 A. Yes.

24 Q. How old is your son?

25 A. Which one?

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1 Q. The oldest one, Miles?

2 A. He's eight.

3 Q. So within the -- let's go back. When
4 Miles was about two or three years old, did
5 you often write me and tell me about him?

6 A. No.

7 Q. Did you ever send me a picture of Miles?

8 A. Not to my recollection, no.

9 Q. Did you ever send me a letter with some
10 scribbly writing, saying that Miles wanted to
11 write me a letter?

12 A. No.

13 MR. ALAN BURNS: Your Honor, would
14 you please indulge me for a moment, please.

15 THE COURT: Yes, sir.

16 MR. ALAN BURNS: (Reviewing
17 files).

18 THE COURT: Mr. Burns, ---

19 (OFF RECORD SIDEBAR)

20 MR. ALAN BURNS: Thank you.

21 THE COURT: Go on to something
22 else, please.

23 MR. ALAN BURNS: That's all the
24 questions that I have.

25 THE COURT: Cross examination?

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1 SOLICITOR HERRING-LASH: I just
2 have one.

3 THE COURT: Sure.

4 CROSS EXAMINATION

5 BY SOLICITOR HERRING-LASH:

6 Q. So'Nia, when [Minor 1] came to life with
7 y'all, how old were you then?

8 A. I was getting ready to graduate from
9 high school.

10 Q. Where did y'all live?

11 THE COURT: Excuse me a second.

12 Mr. Burns, you need to keep your voice down,
13 please, sir. You're disrupting the
14 proceeding.

15 CROSS EXAMINATION CONTINUED

16 BY SOLICITOR HERRING-LASH:

17 Q. Where did y'all live then?

18 A. We lived still in Mount Pleasant, in
19 Hickory Shadows.

20 SOLICITOR HERRING-LASH: Those
21 are all the questions that I have.

22 THE COURT: Redirect, Mr. Burns?

23 MR. ALAN BURNS: No, but I would
24 like to recall the witness.

25 THE COURT: Well, I don't know

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1 whether you will or not. You are excused at
2 this time but you're not free to leave.

3 (WITNESS STEPS DOWN)

4 THE COURT: Call your next
5 witness.

6 MR. ALAN BURNS: I call Vera
7 Capers to the stand.

8 (WITNESS TAKES STAND)

9 VERA CAPERS, being duly sworn to
10 tell the truth, the whole truth and nothing
11 but the truth, testified, as follows:

12 DIRECT EXAMINATION

13 BY MR. ALAN BURNS:

14 Q. Vera, how are you related to me?

15 A. You are my brother.

16 Q. How many other brothers and sister do
17 you have?

18 A. Four brothers, -- four more brothers and
19 four sisters.

20 Q. So there's ten of us?

21 A. Yes.

22 Q. But you had two more brothers; is that
23 correct?

24 A. Yes.

25 Q. Would you please give the name of all of

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1 them, the living brothers and sister, in
2 order of age?

3 A. In what?

4 Q. Order of age, oldest to youngest.

5 A. Oliver

6 Arthur

7 Ray

8 Davey

9 Alice

10 Catherine (phonetic)

11 Karen

12 Cecilia

13 You

14 Then myself.

15 Q. So you and I are closer in age to each
16 other? You are closer in age to me than to
17 any of the others?

18 A. Yes, I guess so.

19 Q. What are the names of the two that died?

20 A. Luther and Richard.

21 Q. And Luther died on June 5, 1968?

22 A. Yes.

23 Q. Is that date important in our family for
24 any other reasons?

25 A. What date?

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1 Q. June 5th.

2 A. That's my birthday.

3 Q. So the eldest child died on the youngest
4 child's birthday?

5 A. First birthday, yes.

6 Q. So you were born in 1967?

7 A. Yes.

8 Q. I need to show you a document that we
9 have already submitted in evidence, if you
10 don't mind. Exhibit 14.

11 MR. ALAN BURNS: Exhibit 14, Your
12 Honor.

13 THE COURT: Thank you.

14 SOLICITOR HERRING-LASH: Your
15 Honor, may I see it?

16 MR. ALAN BURNS: Exhibit 14.

17 THE COURT: It has already been
18 admitted.

19 DIRECT EXAMINATION CONTINUED

20 BY MR. ALAN BURNS:

21 Q. Would you please read the first two
22 lines right there.. You can read it to
23 yourself.

24 A. You want me to read it to myself?

25 Q. Yeah, you can read it to yourself.

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1 A. (Upon review), okay. I can't see too
2 good now.

3 Q. Right up here, just the first two lines.

4 A. Oh, okay.

5 Q. You want to try out my glasses?

6 THE COURT: Why don't you read it?
7 It's in evidence. If she is having trouble,
8 why don't you read -- what is the question?

9 THE WITNESS: I see it.

10 DIRECT EXAMINATION CONTINUED

11 BY MR. ALAN BURNS:

12 Q. You see what it says?

13 A. Yeah.

14 Q. It says, (reading): "*There was another*
15 *child, Luther Burns, who died at age nineteen*
16 *in Vietnam. [Minor 2] advised me that he*
17 *learned from his family that Luther molested*
18 *Alan, Vera and Celia (phonetic).*" What do
19 you think of that statement?

20 SOLICITOR HERRING-LASH: Your
21 Honor, I have to object to relevance.

22 THE COURT: Sustained. Her
23 opinion of that statement has no relevancy
24 whatsoever.

25 DIRECT EXAMINATION CONTINUED

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1 BY MR. ALAN BURNS:

2 Q. Is that a true statement?

3 THE COURT: I just sustained the
4 objection, Mr. Burns. You can't ask the
5 question; it's inappropriate, it has no
6 relevance. Her opinion about the statement
7 is not what is relevant. The jury makes that
8 determination. She can't pass judgment on
9 that.

10 DIRECT EXAMINATION CONTINUED

11 BY MR. ALAN BURNS:

12 Q. Did Luther ever molest you?

13 A. No.

14 Q. Did Luther ever molest me?

15 A. I don't know.

16 THE COURT: Order in the court,
17 please. Hold on a second. Ladies and
18 Gentlemen, I am delighted to have anybody
19 here that -- that the seats allow, enough
20 seating. But we are going to have order.
21 That's the second outburst, the second
22 response that I've heard. If I hear another
23 one, they are going to remove you and I will
24 deal with you after the jury is excused.
25 That would be contempt of court. So if you

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1 can't control yourself, you might as well
2 exit now. If you remain, you're going to
3 comply with the court's ruling. Everybody
4 understand? Thank you. You may continue.

5 DIRECT EXAMINATION CONTINUED

6 BY MR. ALAN BURNS:

7 Q. To your knowledge, did Luther ever
8 molest Celia?

9 SOLICITOR HERRING-LASH: Your
10 Honor, calls for speculation.

11 THE COURT: Sustained under 602.
12 She can't possible answer that question.

13 DIRECT EXAMINATION CONTINUED

14 BY MR. ALAN BURNS:

15 Q. So it's a lie that Luther ever molested
16 you?

17 A. That's a lie, yes.

18 Q. Vera, do you remember an old saying from
19 our childhood that goes "if you lie on the
20 dead, you will lie on the living"?

21 A. I can't recall.

22 Q. But the fact that it is stated that
23 Luther molested you, that is a definite lie?

24 THE COURT: Sir, you have asked
25 that question.

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1 THE WITNESS: Definite lie.

2 THE COURT: No, ma'am. You've
3 asked that question multiple times. That is
4 all that I am going to allow that question to
5 be asked. Move on to something else.

6 DIRECT EXAMINATION CONTINUED

7 BY MR. ALAN BURNS:

8 Q. Vera, at some time during the last year
9 our father got sick and was in the hospital;
10 is that true?

11 A. Yes.

12 Q. You called to the jail to talk to me?

13 A. I did.

14 Q. To tell my -- (emotional). Did you know
15 that somebody else in the family called the
16 jail and told them that they didn't want me
17 to come see dad?

18 A. I didn't know that, no.

19 Q. So I didn't get to see him while he was
20 in the hospital.

21 THE COURT: Mr. Burns -- Mr.
22 Burns, this isn't appropriate. One of the
23 things under the law that I am going to
24 instruct the jury -- and you don't want them
25 to do this, their decision can't be motivated

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1 by any kind of human emotion. All that
2 question is is appealing to emotion. It
3 doesn't have a thing to do with this
4 proceeding. It doesn't have a thing to do
5 with the allegations in the indictments.
6 Thank you, sir. You can move on to something
7 that is relevant.

8 MR. ALAN BURNS: (Tenders document
9 to be marked as exhibit.

10 COURT REPORTER: Defendant's
11 Exhibit 24, a one-page document.

12 THE COURT: Defendant's Exhibit 24
13 for ID only.

14 DIRECT EXAMINATION CONTINUED

15 BY MR. ALAN BURNS:

16 Q. Do you recognize this document?

17 A. Yes.

18 Q. Would you please tell us what it is?

19 A. It is a letter that my dad told me wrote
20 to you.

21 Q. And you wrote this letter in reference
22 to a letter that I wrote to him?

23 A. Yes.

24 Q. In the letter, what were some of the
25 things that I asked him? Did you read the

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1 letter that I wrote to him.

2 A. I did read it.

3 SOLICITOR HERRING-LASH: Your
4 Honor, I would object to this line of
5 questioning.

6 THE COURT: What basis?

7 SOLICITOR HERRING-LASH: I don't
8 know what letter he is talking about. He
9 doesn't have the letter. It is not this
10 letter that he is referring.

11 MR. ALAN BURNS: Your Honor, may
12 we approach?

13 THE COURT: Sure. Ladies and
14 Gentlemen, I'll let you go to your jury room
15 for just a moment. Don't begin any
16 deliberations. We will be with you as quick
17 as we can.

18 (JURY OUT @ 2:33 P.M.)

19 THE COURT: What is it that you
20 want about this letter? This letter has
21 nothing to do with anything about this case,
22 other than sending you money, hoping you are
23 doing all right -- and he said 'yes', which
24 would be hearsay because we don't have the
25 person that wrote this letter here. The

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1 person who is making that statement, it
2 requires her to state. It's actually
3 hearsay. She is reporting something in a
4 letter that he didn't write. What is the
5 purpose of the letter. Why is it relevant?

6 MR. ALAN BURNS: The letter goes
7 to the motivation of the alleged victim.

8 THE COURT: Please show me where
9 it shows anything about the victims, anything
10 at all about them?

11 MR. ALAN BURNS: The letter goes
12 to the motivation of the victims and the
13 victims' parents to lie, to keep me from
14 going home to my family.

15 THE COURT: Going home to your
16 family when?

17 MR. ALAN BURNS: Because some of
18 my family members have been talking to
19 developers about selling the property.

20 THE COURT: All of this is after
21 you've been arrested?

22 MR. ALAN BURNS: No, sir, this is
23 before.

24 THE COURT: What is the relevance?
25 Does it have anything to do with the charges?

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1 MR. ALAN BURNS: It does.

2 THE COURT: This letter is dated
3 May 3, 2010.

4 MR. ALAN BURNS: Yes, sir.

5 THE COURT: And your ---

6 MR. ALAN BURNS: And charges were
7 initiated in April 2010.

8 THE COURT: Correct. So all I am
9 saying to you is that you're in jail. It
10 doesn't talk anything specifically about the
11 charges, other than he is sending you money.
12 I don't know what that is for. Telling you
13 not to worry. The letter doesn't have any
14 significant.

15 I would sustained the objection.
16 It's now part of the record. The court is
17 not going to allow you to question the
18 witness concerning the contents.

19 If you want to ask the witness other
20 questions, if they are admissible under the
21 rules of evidence, we'll -- maybe you can get
22 it out that way but you're not getting the
23 letter in evidence. Thank you.

24 Do you have other questions of this
25 witness?

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1 MR. ALAN BURNS: Yes, sir.

2 THE COURT: All right. Let's
3 bring in our jury, please.

4 And I am going to instruct you,
5 again, Mr. Burns, that you can't make those
6 statements that you were making in talking to
7 her. That's inappropriate. Okay? Do you
8 understand that?

9 MR. ALAN BURNS: Yes. I under-
10 stand, sir.

11 THE COURT: Okay.

12 (JURY IN @ 2:38 P.M.)

13 THE COURT: You may continue your
14 examination.

15 DIRECT EXAMINATION CONTINUED

16 BY MR. ALAN BURNS:

17 Q. Vera, did you know that one of your
18 siblings, nieces or nephews, contacted the
19 jail and prevented me from coming to my
20 father's funeral?

21 A. No.

22 Q. Did you contact the jail in an attempt
23 to notify me and have me come to the funeral?

24 A. Just to let you know that he had passed.

25 Q. And sometime after that, did I ever make

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1 a phone call to you?

2 A. Yes.

3 SOLICITOR HERRING-LASH: Your
4 Honor, I would object to the relevance.

5 THE COURT: Sustained.

6 ALAN BURNS: That's all that I have
7 to ask you, Vera. Thank you.

8 THE COURT: Cross-examine.

9 SOLICITOR HERRING-LASH: Yes,
10 sir.

11 CROSS EXAMINATION

12 BY SOLICITOR HERRING-LASH:

13 Q. Vera, ---

14 A. Yes?

15 Q. At some point in time back when Minor 4
16 is going off to college, did you know at that
17 point that she had told Cathy about what
18 happened?

19 A. No.

20 Q. When did you find out what she had told
21 her mother?

22 A. Before Alan had came back home.
23 Sometime before 1997.

24 Q. Before he came back home in '97, you
25 knew?

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1 A. Yes.

2 Q. When he came back in '97, was there
3 anybody that protested having him move back
4 in the home?

5 A. Not that I can remember.

6 Q. What about [Minor 5]?

7 A. Not that I can remember.

8 Q. Do you remember talking to me and my
9 investigator on April 23rd, 2012, at your
10 home?

11 A. Yes.

12 Q. Do you remember telling us that [Minor 5]
13 did not want you to allow Alan to move back
14 in?

15 A. In my home, (affirmative nod). Not in
16 my mother's home.

17 Q. In your home?

18 A. (Affirmative nod), in my home.

19 Q. Who was living in your home?

20 A. In my home was myself, my husband and my
21 three children -- and I think that [Minor 5] was
22 there.

23 Q. And ---

24 A. I think [Minor 5] was there. I'm not sure.

25 Q. And [Minor 5] was the one that asked you

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1 not to let him move in?

2 A. Yes.

3 SOLICITOR HERRING-LASH: Those
4 are all the questions that I have.

5 THE COURT: Redirect, Mr. Burns.

6 REDIRECT EXAMINATION

7 BY MR. ALAN BURNS:

8 Q. When I came home in 1997, was it you who
9 picked me up and brought me home?

10 A. It was.

11 Q. And when we came home, the first stop
12 that we made was by my mother's job?

13 A. Yes.

14 Q. After -- since all these allegations
15 have come up, did you speak to your children
16 -- you have two girls, don't you?

17 A. I do.

18 Q. And your daughters are ---

19 SOLICITOR HERRING-LASH: This is
20 beyond the scope of cross.

21 THE COURT: Sustained. Inappro-
22 priate. Redirect is confined to the
23 questions asked on cross.

24 REDIRECT EXAMINATION CONTINUED

25 BY MR. ALAN BURNS:

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1 Q. Did you have any concerns about me doing
2 anything to your daughters?

3 A. I mean, I had concerns. Yes.

4 Q. Did you ever think that I'd did anything
5 to any of your daughters?

6 A. No, I didn't think that. No.

7 Q. Have any of your daughters ever
8 indicated that I ---

9 SOLICITOR HERRING-LASH: Your
10 Honor, this is still beyond the scope.

11 THE COURT: I sustained the
12 objection as to what some other person other
13 than **Minor 5** -- that's the only person that
14 was mentioned. Her mindset would be
15 probative. I'm not going to ask -- ask
16 another but not that one.

17 MR. ALAN BURNS: That's all, Your
18 Honor.

19 THE COURT: Okay.

20 MR. ALAN BURNS: Thank you, Vera.

21 THE COURT: Recross?

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

24 THE COURT: You may step down,
25 ma'am.

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1 (WITNESS STEPS DOWN)

2 THE COURT: Call your next
3 witness.

4 MR. ALAN BURNS: I would like to
5 recall So'Nia Singleton, Your Honor.

6 THE COURT: Very well.

7 (WITNESS TAKES STAND)

8 THE COURT: Ms. Singleton, I
9 remind you that you are under oath in this
10 matter.

11 MR. ALAN BURNS: Can I have this
12 marked?

13 THE COURT: Sure.

14 COURT REPORTER: Defendant's
15 Exhibit 25 for identification, consisting of
16 two pages.

17 THE COURT: Defendant's Exhibit 25
18 for ID only.

19 SO'NIA SINGLETON, having been
20 previously sworn, testified as follows:

21 EXAMINATION RESUMED

22 BY MR. ALAN BURNS:

23 Q. Do you recognize the handwriting on that
24 letter?

25 A. Yes.

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1 Q. Is that your handwriting?

2 A. It could be.

3 Q. You recognize the handwriting, so is it
4 yours?

5 A. Yes, it could be my handwriting.

6 MR. ALAN BURNS: I would like to
7 enter this into evidence.

8 SOLICITOR HERRING-LASH: Your
9 Honor, I object to it being entered into
10 evidence. Relevance.

11 THE COURT: Let me see the
12 document that you object to relevance on.

13 COURT REPORTER: (Tenders).

14 THE COURT: (Upon review), I will
15 allow it based on the witness' previous
16 testimony. It goes to probative value as to
17 credibility. Defendant's Exhibit 25 is
18 admitted subject to objection of counsel.

19 (SO ENTERED AS DEFENDANT'S EXHIBIT 25)

20 EXAMINATION CONTINUED

21 BY MR. ALAN BURNS:

22 Q. Is not this a letter that you wrote to
23 me?

24 A. It could.

25 Q. Is that your signature?

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1 A. Yes.

2 Q. Did you sign that?

3 A. Can I see the letter from you?

4 Q. (Tenders).

5 A. Thank you. (Upon review), that doesn't
6 look like my signature.

7 THE COURT: Ma'am, what did you
8 say? I didn't hear you?

9 THE WITNESS: I said it doesn't
10 look like my signature.

11 MR. ALAN BURNS: That's all that I
12 have, Your Honor.

13 THE WITNESS: My name is
14 So'Nia.

15 THE COURT: Do you wish to cross-
16 examine?

17 SOLICITOR HERRING-LASH: Yes.

18 THE COURT: You may do so.

19 CROSS EXAMINATION

20 BY SOLICITOR HERRING-LASH:

21 Q. So'Nia, could you tell by reading this
22 letter when it was written?

23 A. No. Could I see it?

24 Q. (Tenders).

25 A. (Reviewing).

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1 Q. Is there any date on the letter?

2 A. No.

3 Q. You testified that you did not write in
4 the last two to three years?

5 A. (Affirmative nod), no.

6 Q. Is there anything in this letter that
7 would let you know when you wrote this?

8 A. (Upon review) this -- this looks like
9 two or three different things mixed together.
10 Something says ten years. No.

11 Q. How long has it been since your Uncle
12 Alan Burns has been away, out of Charleston;
13 do you know?

14 A. I have no idea.

15 Q. Has it been a long time?

16 A. Yes.

17 Q. Have you ever during that entire period
18 written him a letter?

19 A. I think once in college. This is not
20 like one letter.

21 Q. What do you mean?

22 A. Because this is talking about -- like I
23 said, when him and my mom picked me up from
24 college, it is saying something about ten
25 years and then something about my sister.

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1 That's not the same time.

2 Q. What do you mean?

3 A. Okay.

4 Q. What about your sister? Is that Ashley?

5 A. Yes, it is mentioning my sister Ashley
6 that has a little boy. Okay. I went to
7 Clark Atlanta when he took me as a student in
8 2000. My son wasn't born then and neither
9 was my sister's son, so there is no way
10 possible -- because this just doesn't make
11 any sense.

12 Q. When did you get a job at BellSouth; do
13 you know?

14 A. That was in 2004.

15 Q. One part of this letter says, "I got a
16 great job at BellSouth."

17 A. That was in 2004.

18 Q. So that's not been in the last two to
19 three years?

20 A. No.

21 SOLICITOR HERRING-LASH: That's
22 all the questions that I have.

23 THE COURT: Redirect?

24 MR. ALAN BURNS: Yes, Your Honor.

25 REDIRECT EXAMINATION

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1 BY MR. ALAN BURNS:

2 Q. Can I see the letter?

3 A. (Tenders)

4 MR. ALAN BURNS: Can have the
5 witness read the letter aloud, Your Honor?

6 THE COURT: You can publish the
7 letter but the letter is going back to the
8 jury, they'll ---

9 MR. ALAN BURNS: Right, I under-
10 stand but I would like for it to be read
11 aloud, if I may.

12 THE COURT: They can read it for
13 themselves, but you can publish it if you
14 want to.

15 MR. ALAN BURNS: Can I have it put up
16 on the board?

17 THE COURT: If you want to publish
18 it, let the witness read it -- if you think
19 that it is necessary that she read it.

20 REDIRECT EXAMINATION

21 BY MR. ALAN BURNS:

22 Q. Read it out loud, please.

23 A. (Reading):

24 "Dear Uncle: Sorry it's taken so
25 long for me to respond to your letter. As

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1 you can see from the address, I have moved
2 with my mom, only temporarily. I was going
3 to going to join the Force but I didn't want
4 to leave Miles for some long. I have missed
5 his birthday and Christmas. I decided to go
6 back to school to get my masters -- yeah,
7 college again. Remember when you and mom
8 came to Atlanta, Clark Atlanta, to pick me
9 and my roommate up. I -- that was a fun
10 trip. You know everything..." -- and it has
11 something scribbled out -- "...has their
12 faults but you have always been there when I
13 needed you. Thank you so much. Love ya!
14 Oh, and Ashley has a little boy. I don'
15 know..." -- and then it is cut off --
16 "...amazing how well it happens sometimes.
17 I got a great job at BellSouth and after four
18 months they are going to pay for me to go
19 back to school. Raymond and I are still
20 together, ten long years. We're looking for
21 a place now -- yea, yea, the marriage thing
22 is coming soon. We have so much to catch up
23 on. Don't be afraid to write. I know it's
24 been hard with your condition and all (HTW

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1 *disorder). I hope you enjoy the two..." -- I*
2 *don't know what that says. "Love always,*
3 *your niece, So'Nia K. Singleton. I am*
4 *writing on my legs, so sorry so sloppy."*

5 I didn't write this.

6 Q. Yes, you did.

7 A. I didn't write this. I have a college
8 education.

9 THE COURT: Ma'am. That's ---

10 MR. ALAN BURNS: Thank you, Your
11 Honor. That's all that I have.

12 THE COURT: Recross?

13 SOLICITOR HERRING-LASH: Yes,
14 sir.

15 RE CROSS EXAMINATION

16 BY SOLICITOR HERRING-LASH:

17 Q. After reading that letter, you said that
18 you did not write it?

19 A. I didn't write that.

20 Q. What about the letter let's you know
21 that you didn't write it?

22 A. First of all, it's too much information
23 in different timeframes that don't match. Me
24 and somebody named Raymond is incorrect. Me
25 talking about getting marriage (sic) is

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1 incorrect. Me living with my mom temporarily
2 is incorrect. I didn't write that. I didn't
3 tell him anything about my son or my sister.

4 SOLICITOR HERRING-LASH: That's
5 all that I have.

6 THE COURT: Thank you, you may
7 come down. Do you wish the witness to be
8 excused?

9 MR. ALAN BURNS: Yes, sir, Your
10 Honor.

11 THE COURT: Any objection to Miss
12 Singleton being excused?

13 SOLICITOR HERRING-LASH: No
14 objection, Your Honor.

15 THE COURT: You are excused, Miss
16 Singleton.

17 (WITNESS STEPS DOWN)

18 THE COURT: Ladies and Gentlemen,
19 at this point there is one witness who is not
20 available until Friday. We were not going to
21 be available to work tomorrow anyway, so that
22 will be fine.

23 We will finish the testimony Friday
24 and then you will make your decision on
25 Friday and decide this case.

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1 We will have two portions remaining
2 after we complete the defendant's testimony
3 -- excuse me, the defendant's presentation.
4 The defendant doesn't have to testify but he
5 has the right to call any additional
6 witnesses that he wants to.

7 We will complete the evidentiary
8 portion Friday morning and I would think that
9 certainly by lunchtime that you would have
10 this case.

11 Please remember that you still have
12 some additional evidence to hear. While you
13 will not hear any additional evidence in the
14 closing arguments or the jury charge, it
15 would still be inappropriate for you to begin
16 your deliberations individually or
17 collectively.

18 Have a good day tomorrow. Relax.
19 We will see you Friday morning. I'd ask you
20 to be in your jury room please, by 9:30.

21 (JURY OUT @ 2:54 P.M.)

22 THE COURT: As I understand from
23 your statement, the doctor is the only
24 witness that you have remaining.

25 MR. ALAN BURNS: Yes, sir, she is.

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1 THE COURT: So at that point --
2 the inference to be drawn is that you will
3 not be testifying.

4 MR. ALAN BURNS: That's correct.

5 THE COURT: If you change your
6 mind, let me know, please, first thing Friday
7 morning. We will have a conversation again
8 on Friday morning before you call the doctor.
9 Once we have completed the doctor's
10 testimony, I assume that you will say that
11 you don't wish to present any additional
12 witnesses. Is that correct?

13 MR. ALAN BURNS: That's correct.

14 THE COURT: Do you anticipate any
15 reply testimony at this point?

16 SOLICITOR HERRING-LASH: Not at
17 this point, Your Honor.

18 THE COURT: In your day off, you
19 need to start formulating your closing
20 remarks.

21 MR. ALAN BURNS: Yes, sir.

22 THE COURT: Because I will
23 probably take about a five to ten minute
24 break and we will move into the closing and
25 charge. Do you have any specific requests to

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1 charge that you want the court to make?

2 MR. ALAN BURNS: Not at this time.

3 THE COURT: I would like those
4 first thing Friday morning.

5 MR. ALAN BURNS: Yes, sir.

6 THE COURT: Does the State have
7 any specific requests?

8 Obviously I will define the
9 statutes. I will charge the corroboration
10 statute.

11 SOLICITOR HERRING-LASH: That is
12 the only one that I would ask.

13 THE COURT: I will do that. I
14 will charge criminal sexual conduct first
15 degree, criminal sexual conduct second
16 degree, and lewd act. I think that those are
17 the three charges?

18 SOLICITOR HERRING-LASH: Yes,
19 sir.

20 THE COURT: All right, we will be
21 at-ease until 9:30 Friday morning.

22 (COURT IN RECESS)

23 (TRANSCRIPT CONTINUED NEXT PAGE)

24

25

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24 MR. ALAN BURNS: Your Honor, we're
25 ready.

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1 THE COURT: All right. Bring in
2 the panel, please.

3 MR. ALAN BURNS: Your Honor, ---

4 THE COURT: Mr. Burns, I am going
5 to deal with the jury right now, merely
6 administrative. I'll be happy to hear from
7 you but then I will be happy to hear from you
8 once I've have a chance to deal with the
9 jury. Thank you, sir.

10 MR. ALAN BURNS: All right, sir.
11 Thank you.

12 THE COURT: Just be patient,
13 please.

14 (JURY IN @ 9:35 A.M.)

15 THE COURT: Good morning, Ladies
16 and Gentlemen. You look strangely familiar.
17 I hope that you had a good day yesterday.

18 We're almost ready to begin. I need
19 to ask of you -- and this is not something
20 that I do -- I do this pretty regularly if
21 there is a day that we have inbetween, and
22 that happens from time to time during a trial
23 that we have to interrupt. I need to ask if
24 each jury -- first of all, I'd ask you to
25 raise your hand. (Jurors comply). Do you

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1 swear or affirm that all of your responses to
2 my questions will be the truth, so help you,
3 God. If your response is affirmative to my
4 question, say "I do". (Unanimous response
5 from jurors). Thank you.

6 Has every juror complied fully with
7 the court's instructions in that you have no
8 talked with anyone or permitted anyone to
9 talk with you about this case? If so, say "I
10 do" -- if anyone hasn't complied with that,
11 please raise your hand. (No response).
12 Thank you. There were no hands raised.

13 Has anyone conducted any independent
14 research on the internet or otherwise during
15 this trial? (No response). No one raised
16 their hand.

17 Has anyone read the Post & Courier
18 this morning, read the article *Trial Nearing*
19 *End in Sex Assault Case*? If so, please raise
20 your hand. (No response). There are none.

21 Does any juror feel at this moment
22 that by the day off they've experienced
23 anything that would affect their ability to
24 continue to be that fair and impartial judge
25 of the facts in this case, and to at the

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1 appropriate time consider the evidence and
2 decide what they believe to be the true
3 facts? If you feel that you would have a
4 problem, raise your hand. (No response).

5 Thank you so much, Ladies and
6 Gentlemen. I didn't expect otherwise, but I
7 needed to do that and place it on the record
8 before we start.

9 There are some matters now -- we are
10 waiting on a witness. Any of you that live
11 in West Ashley, on the side where the traffic
12 is going to the islands, you know that it is
13 a mess. This person is coming from the
14 Beaufort area and in near but has encountered
15 the problem at Main Road. Upon the arrival
16 of that witness, we will return you to the
17 courtroom. Just please be patient. It's one
18 of those unusual circumstances for right now.

19 Please retire to your jury room. Do
20 not begin your deliberations, do not discuss
21 the case, we will be with you shortly.

22 (JURY OUT @ 9:39 P.M.)

23 THE COURT: Any exceptions of
24 additions from the State in response to the
25 Court's inquire of the jury?

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

3 THE COURT: Any exceptions or
4 additions to the court's inquiry from the
5 defense, Mr. Burns?

6 MR. ALAN BURNS: No, sir.

7 THE COURT: Thank you. Now, Mr.
8 Burns, I will be happy to hear from you?

9 MR. ALAN BURNS: Thank you, Your
10 Honor.

11 THE COURT: Yes, sir.

12 MR. ALAN BURNS: Your Honor, I
13 just received some information from Mr. Smith
14 in regards to another one of the witnesses
15 that had subpoenaed. When I issued the
16 subpoena, she was in North Carolina where she
17 lives. It's one of the victims' mother. She
18 has sent a letter stating that she is on her
19 way right now to the court but that she
20 cannot get her until 12:00 o'clock. She is
21 on her way. The defense has not rested and I
22 do have an additional witness here today to
23 testify, that has came forward with
24 information.

25 THE COURT: What is this witness

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1 -- what do you plan -- what is the purpose
2 for calling this witness that is on the way
3 from North Carolina?

4 MR. ALAN BURNS: This witness
5 states that she has absolute proof that two
6 of the victims are lying and she would like
7 to come forward ---

8 THE COURT: Ma'am -- whoever is
9 speaking needs to be quiet.

10 MR. ALAN BURNS: Yes, sir. A
11 victim and witnesses ---

12 THE COURT: Based on what? Based
13 on her opinion?

14 MR. ALAN BURNS: She has absolute
15 proof.

16 THE COURT: What is the absolute
17 proof? What is the basis of the proof that
18 your witness is going to offer?

19 MR. ALAN BURNS: Can I just show
20 you that?

21

22 THE COURT: No, sir. I don't need
23 to know that a witness says 'I can prove that
24 they are lying.' I want to know what you've
25 talked with her about, what the witness has

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1 indicated to you, that believes -- first of
2 all that she is going to be able to testify
3 under the rules of evidence. Any opinion
4 that a witness is lying, as you have already
5 experienced, is not going to be admitted. So
6 I don't know what this witness is offering
7 that is admissible evidence. That's what I
8 want you to tell me if you can.

9 MR. ALAN BURNS: She has -- this
10 witness has had conversations with the victim
11 and the victim has informed this witness that
12 these things did not happen. That's what the
13 witness will be testifying to.

14 THE COURT: All right. Well, we
15 will see how it goes, Mr. Burns, that's all
16 that I can tell you.

17 MR. ALAN BURNS: Thank you, sir,
18 appreciate it.

19 SOLICITOR HERRING-LASH: Your
20 Honor, I have one comment about that.

21 THE COURT: Sure.

22 SOLICITOR HERRING-LASH: Normally
23 under the rule you cannot bring in a prior
24 inconsistent statement without asking the
25 person on the stand if they made that

1 statement, when did they make it, give them a
2 chance to acknowledge or deny it. So if he
3 has that, whatever witness that he is talking
4 about, to recall them and have that ---

5 THE COURT: I understand. Thank
6 you. That was good -- that was good trial
7 advocacy for 801(b)(1). Mr. Burns, as I
8 mentioned, will have to put it in properly.
9 Otherwise it's hearsay unless it comes in
10 under the Rules, and the rules are very
11 specific. The Court is aware of that. Thank
12 you, ma'am.

13 SOLICITOR HERRING-LASH: One
14 other point that we may be able to go over,
15 regarding his expert testimony.

16 THE COURT: Sure.

17 SOLICITOR HERRING-LASH: I don't
18 know but just based on when we had our
19 continuance motion and he said to the court
20 that his expert would be testifying, that she
21 knew that these people were lying by reading
22 their statements.

23 I have no idea that she would say
24 that but there is a case, *State v McCurley*, a
25 2012 case, 725 SE 2nd 139, that specifically

1 talks about experts not being allowed to
2 address the credibility of -- in this case it
3 was a child witness in an interview. But it
4 would be the same for any expert addressing
5 the credibility of any witness.

6 Just to warn Mr. Burns about that
7 before he questions them.

8 THE COURT: Yeah, I think it is
9 synonymous with the one that I recall, John
10 Freeman, who is superb professor and a superb
11 lawyer, but -- the court found that his
12 opinion of what the law was not proper
13 because that's the decision of the trial
14 judge. I would say the same thing about the
15 credibility. They can talk about areas that
16 they may want to that shows where there may
17 be some questions raised, but I don't think
18 they can render an ultimate opinion on that.
19 But I will be happy to review that case while
20 we are waiting.

21 SOLICITOR HERRING-LASH: I have a
22 copy of it if ---

23 THE COURT: I have it right here.
24 Thank you. Anything else? (No response).

25 Okay, we will be at-ease until the

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1 witness arrives -- unless you want to call
2 your witness now.

3 MR. ALAN BURNS: Yes, I would like
4 to call Cecilia ---

5 THE COURT: Let's wait for the
6 jury.

7 MR. ALAN BURNS: Oh, the jury
8 isn't present. Yes, sir.

9 THE COURT: Let's bring in our
10 jury, please.

11 (JURY IN @ 9:45 A.M.)

12 THE COURT: Thank you, Ladies and
13 Gentlemen. Call your first witness this
14 morning.

15 MR. ALAN BURNS: Celia Mae Burns.

16 (WITNESS TAKES STAND)

17 CELIA MAE BURNS, being duly sworn
18 to tell the truth, the whole truth and
19 nothing but the truth, testified, as follows:

20 DIRECT EXAMINATION

21 BY MR. ALAN BURNS:

22 Q. Celia, can you tell the jury how we are
23 related?

24 A. I am his sister, we are a year apart.

25 Q. Say that part again? I didn't hear you.

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1 A. One year apart.

2 Q. Celia, have you spoken to any of the
3 victims/witnesses with regards to the
4 allegations against me?

5 A. I don't -- about what?

6 Q. Have you spoken to any of them with
7 regards to the charges against me? The
8 claims that they are making against me.

9 A. Just my sister who is on the way down.

10 THE COURT: Your sister who?

11 THE WITNESS: My sister,
12 Catherine. She's on her way down.

13 THE COURT: Is she -- the question
14 was have you spoken to a victim in this case.
15 She's not an alleged victim in this case, is
16 she?

17 THE WITNESS: No, she is not.

18 DIRECT EXAMINATION CONTINUED

19 BY MR. ALAN BURNS:

20 Q. She is one of the victim's mother?

21 A. (Affirmative nod), mother.

22 Q. After hearing of these allegations
23 coming forward, did you speak to any of your
24 children and make any inquiries as to whether
25 there was an inappropriate behavior between

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1 me and them?

2 A. I did.

3 Q. What was their response to you?

4 A. No, they did not. There was never.

5 Q. Did you ask them whether or not they
6 have ever observed me doing anything to them,
7 to anyone?

8 A. I did.

9 Q. What was their response to that?

10 A. No, they did not.

11 Q. Celia, as far as you know, I came home
12 in 1997; is that correct?

13 A. I am not sure, because I wasn't in South
14 Carolina then. I came to visit a couple of
15 times.

16 Q. During those visits, did you ever come
17 to notice any form of alienations from me and
18 any of the alleged victims?

19 A. No.

20 Q. They always treated me like I was always
21 their favorite uncle?

22 A. Well, just an uncle.

23 Q. Okay. But there weren't no -- no one
24 didn't show any disdain or scorn for me or
25 anything like that?

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1 A. Not to my knowledge at the time.

2 Q. Is it true that most of the time when
3 someone needed a little assistance with their
4 cars and other stuff that they would call one
5 me?

6 SOLICITOR HERRING-LASH: Your
7 Honor, I object to the relevance.

8 THE COURT: Sustained.

9 DIRECT EXAMINATION CONTINUED

10 BY MR. ALAN BURNS:

11 Q. Let me ask you about that.

12 THE COURT: Hold on a second, let
13 me -- y'all approach just a second.

14 (OFF RECORD SIDEBAR)

15 DIRECT EXAMINATION CONTINUED

16 BY MR. ALAN BURNS:

17 Q. Celia, are you aware of the fact that
18 someone from the family called the county
19 jail and ---

20 SOLICITOR HERRING-LASH: Your Honor,
21 I object.

22 THE COURT: Hearsay, she has no
23 independent knowledge of that. I don't even
24 know how that -- the way that question is
25 phrased, there is no way that ---

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1 DIRECT EXAMINATION CONTINUED

2 BY MR. ALAN BURNS:

3 Q. After hearing these allegations, have
4 you formed an opinion as to these charges
5 against me?

6 SOLICITOR HERRING-LASH: Your
7 Honor, that's also ---

8 THE COURT: Totally inappropriate.
9 You can't asked her that question. I sustain
10 the objection.

11 MR. ALAN BURNS: That's all the
12 questions that I have. Thank you, Celia.

13 THE COURT: Cross examine?

14 SOLICITOR HERRING-LASH: Just
15 briefly, Your Honor.

16 CROSS EXAMINATION

17 BY SOLICITOR HERRING-LASH:

18 Q. Celia, you are Mr. Burns younger or
19 older sister?

20 A. Older.

21 Q. And what is -- you said that there is
22 one year's difference?

23 A. Yes.

24 Q. What is his birth date?

25 A. [REDACTED] 1964.

1 SOLICITOR HERRING-LASH: Those
2 are all the questions that I have.

3 THE COURT: Redirect? Redirect,
4 Mr. Burns.

5 MR. ALAN BURNS: Yes, sir.

6 REDIRECT EXAMINATION

7 BY MR. ALAN BURNS:

8 Q. Were you ever molested by Luther?

9 SOLICITOR HERRING-LASH: Your
10 Honor, that is ---

11 THE COURT: --- inappropriate
12 redirect. I sustain the objection.

13 THE WITNESS: Another brother,
14 by another brother.

15 THE COURT: No, ma'am, don't
16 answer the question. The jury is to
17 disregard the witness' response. It is
18 inappropriate redirect.

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

21 THE COURT: You may come down.
22 Thank you, ma'am.

23 (WITNESS STEPS DOWN)

24 THE COURT: We're checking to see
25 if the next witness has arrived. Ladies and

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1 Gentlemen, you may go to your jury room. Do
2 not begin your deliberations, don't discuss
3 the case, we will be with you very shortly.

4 (JURY OUT @ 9:57 A.M.)

5 THE COURT: Anything from the
6 State during this recess?

7 SOLICITOR HERRING-LASH: No, sir.

8 THE COURT: Anything, Mr. Burns?

9 MR. ALAN BURNS: No, sir.

10 (BRIEF RECESS)

11 (DEFENDANT REMAINS IN COURTROOM)

12 THE COURT: Okay, the witness is
13 here. Are you ready, Mr. Burns?

14 MR. ALAN BURNS: Judge, we're
15 ready.

16 THE COURT: All right, State
17 ready?

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

20 THE COURT: Bring in the jury.

21 (JURY IN @ 10:04 A.M.)

22 THE COURT: Mr. Burns, call your
23 next witness.

24 MR. ALAN BURNS: I call Dr. Salas
25 to the stand, Your Honor.

1 (WITNESS TAKES STAND)

2 AMANDA SALAS, being duly sworn to
3 tell the truth, the whole truth and nothing
4 but the truth, testified, as follows:

5 DIRECT EXAMINATION

6 BY MR. ALAN BURNS:

7 Q. Good morning, Dr. Salas. How are you?

8 A. Good morning.

9 Q. Would you please inform us about a
10 little of your educational background,
11 please.

12 A. Yes. I finished college and then went
13 to medical school at the Medical University
14 of South Carolina Medical School, graduated
15 from there in 2003.

16 I entered a psychiatric residency
17 program at the Medical College of Georgia
18 that same year. I finished adult and child
19 adolescent studies in 2008.

20 Then I did a forensic psychiatric
21 fellowship from 2009 until 2010.

22 I hold board certification in general
23 adult psychiatry, child adolescent psychiatry
24 and forensic psychiatry.

25 Q. So there is a difference in adult,

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1 child, adolescent and forensic psychiatry?

2 A. Yes, there is a difference.

3 Q. Could you -- so would there be a
4 different approach in what you would do in a
5 clinical setting as compared to what you do
6 as a consulting forensic psychiatrist. Can
7 you tell us some of those differences?

8 A. Yes, there is a difference. In the
9 clinical setting you actually do assessments,
10 trying to figure out what is an accurate
11 diagnosis for the person who presents to you,
12 and come up with a treatment plan of what's
13 you would recommend if you identify someone
14 as having mental health illness.

15 Then as a consulting forensic
16 psychiatrist, this is no doctor-patient
17 relationship. You review records, you may
18 interview people, you gather information and
19 you look at it in a very objective format and
20 try to apply the knowledge that you hold in
21 psychiatry and identify if there's any
22 influence that psychiatric illness or symptom
23 of what we know and study in psychiatry
24 applies to questions asked by the court.

25 Q. Okay. Just to make sure that I have a

1 good understanding of what psychiatry is,
2 would you please explain in simply terms ---

3 A. I will do my best.

4 Q. Okay.

5 A. In forensic psychiatry, the key is that
6 there is no doctor-client relationship.
7 You're providing opinions and answering
8 questions that the court might have in trying
9 to help people navigate where there is an
10 overlap of mental health issues and
11 developmental issue pertaining to mental
12 health and how it relates to the application
13 of the law, or when someone encounters a
14 legal issue.

15 Q. So then the forensic aspect of your
16 studies involves adult, child and adolescent
17 psychiatry?

18 A. It does. Although my training program
19 for the forensic aspect leans heavily towards
20 adult, some adolescent and not as much child
21 work due to the nature of the attendings that
22 I had and the nature of their academic
23 interests were leaning towards the adult and
24 adolescent population.

25 Q. So it leans more to adolescents?

1 A. For what I was trained during the
2 academic year of receiving my forensic
3 fellowship training, yes.

4 Q. Have you ever testified in a court of
5 law with respect to these things?

6 A. Yes.

7 Q. In which courts? State, federal or ---

8 A. I have testified in South Carolina
9 General Sessions Court. I have not testified
10 in Federal Court. I have testified numerous
11 times, too many times to count, in Probate
12 Court.

13 Q. Were you certified by the court to
14 testify on this subject?

15 A. Yes, I have been in the past.

16 Q. How many times, if you can recall, have
17 you been qualified to testify as an expert?

18 A. Hundreds of times in Probate Court,
19 which probably doesn't pertain to why we are
20 here today. In terms of having similar
21 testimony experiences in General Sessions in
22 South Carolina, it's probably been eight,
23 nine, maybe ten times.

24 Q. Do you recall if you were called to
25 testify as an expert and was disqualified?

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1 A. No.

2 Q. Not once?

3 A. Never. Not once.

4 MR. ALAN BURNS: Judge, I'd ask
5 that she be qualified as an expert ---

6 THE COURT: In what area?

7 MR. ALAN BURNS: In the areas of
8 child psychology -- psychiatry, rather, I
9 mean.

10 SOLICITOR HERRING-LASH: I have
11 no objection.

12 THE COURT: She will be permitted
13 to render opinions in that area.

14 MR. ALAN BURNS: Thank you, sir.

15 DIRECT EXAMINATION CONTINUED

16 BY MR. ALAN BURNS:

17 Q. So then have you consulted and have you
18 had a chance to review the statements and
19 other relevant documents in this case; is
20 that correct?

21 A. Yes, I have.

22 Q. And is it true that issues in this case
23 including statements pertaining to childhood
24 memories as recalled by adults?

25 A. I have reviewed statements where adults

1 gave statements based on experiences that did
2 happen in childhood, yes.

3 Q. And the things -- and this bring into
4 play your specialty and training, right?

5 A. Yes, it does.

6 Q. So you are an expert in the area of
7 childhood and adolescent memories?

8 A. Yes.

9 Q. What are the different factors that make
10 up memories?

11 A. There are three components in how
12 someone is able to form a memory to be able
13 to recall it. The first step is encoding.
14 The second one is storage. The third
15 component of the memory is retrieval.

16 What that means is that at the time an
17 event is happening, in order for you to later
18 recall it as a memory, at the time that the
19 event is happening you have to have your
20 neural pathways laid down so that you can
21 actually encode it and transcribe what's
22 actually happening, that you're involved in,
23 into the brain. Then the brain has to be
24 able to store it somewhere. Then later, when
25 you're ready to pull that memory back, you

1 have to be able to actually retrieve it.

2 So the three steps pertaining to the creation
3 and ability to recall a memory are the
4 encoding, the ability to store and retrieval.

5 Q. What does it mean when someone talks
6 about the plasticity of memory?

7 A. The plasticity of memory is referring to
8 the fact that when someone recalls an event,
9 they try to retell their story that it is not
10 going to play over and over again like you'd
11 play a movie in a DVD player or something.

12 You are not going to get the exact same
13 information as if someone were recording it.
14 What happens is that there are some
15 altercations that occur. It is not going to
16 completely change form unless someone is just
17 not telling the truth about something, or if
18 they are making it, and then it would change
19 form completely. Otherwise, you hold onto
20 and keep components of that memory that would
21 look the same to an outside observer, someone
22 who is listening to it, but there may be some
23 fine details that kinda flex a little bit.

24 That's the plasticity.

25 Q. And is there a different between

1 composition and plasticity memory?

2 A. Yes. Composition refers to those three
3 components of the encoding, storage and
4 retrieval. Plasticity refers -- you've got
5 your bony structure in place but how you
6 might put the meat on it might look a little
7 different. But at the end of the retrieval
8 of the memory, you can still recognize it as
9 being the same.

10 Q. Let's take it one at a time. First
11 explain what composition of memory actually
12 is.

13 A. The composition is how you encode the
14 memory. So can I take this event that is
15 happening before me, can I actually pull that
16 into my brain so that I can store it
17 somewhere?

18 You move from encoding to storage.
19 Storage is just what that is, brain component
20 that is going to hold onto the memory --
21 whether it's or five minutes, whether it is
22 the next day or whether it's going to be
23 years later. So how can you hold onto it so
24 that later on down the line and you need to
25 go back and retrieve it, it's in that little

1 storage container.

2 The question of retrieval is can you
3 extract it from storage and repeat it in a
4 fashion that's congruent with what actually
5 happened at the time that you're trying to
6 recall those details. So can you then
7 retrieve and repeat back the events as they
8 happened?

9 Q. Okay. So then what is plasticity of
10 memory again?

11 A. Plasticity is the flex that you get in
12 memory so that even when you recall something
13 and you're doing your best effort to recall
14 it with accuracy, it's going to look a little
15 bit different but at the end of hearing the
16 story you see the same bony structure in it
17 -- that's an analogy, of course. But you see
18 the same bony structure in it. You recognize
19 it as being the same event that someone is
20 recalling, but it may look at little
21 different in the fine details.

22 Q. Are either of these two the same as
23 reliability of memory? Or is that something
24 different?

25 A. Reliability is different from

1 plasticity. It's different from the
2 composition of the memory.

3 Q. What about believability of a person's
4 memory?

5 A. Believability in my specialty is
6 referred to as credibility. It's different
7 than reliability. Reliability is how
8 accurate somebody would be when they repeat a
9 story from memory.

10 So if I had an event happen, like a car
11 accident or something, and tomorrow I repeat
12 that to someone, the reliability is can I
13 repeat what happened with accuracy so that
14 it's specific to the events as they actually
15 transpired.

16 Then the credibility is am I believable
17 or not? Maybe a car accident didn't happen
18 but I am a really good storyteller and I can
19 con anybody into believing my story. That is
20 related to the credibility, am I believable
21 when I given account of story telling that is
22 based on an alleged memory.

23 The reliability is my memory retold with
24 accuracy.

25 Q. All right. At this point I want to

1 focus on the comparison of reliability and
2 credibility. Can you explain the difference
3 between these two terms; in simple terms, so
4 that I can understand.

5 A. Reliability pertains to the accuracy of
6 the story. So when you pull a memory back,
7 is it accurate for how the events actually
8 happened.

9 The credibility is how believable you
10 are when you tell the story.

11 Q. Okay. Let me see, I want you -- have
12 you ever seen that document?

13 A. Yes, I have seen this article before.

14 Q. If you look at that article -- and
15 you've had a chance to review it?

16 A. Yes.

17 MR. ALAN BURNS: I would like to
18 have this marked.

19 COURT REPORTER: Defendant's
20 Exhibit 26 for identification.

21 THE COURT: Exhibit 26 for ID
22 only, a one-page document.

23 DIRECT EXAMINATION CONTINUED

24 BY MR. ALAN BURNS:

25 Q. Have you ever seen that document?

1 A. Yes, I have seen this article before.

2 Q. If you look at that article, uh, -- and
3 you've had a chance to review it?

4 A. (Affirmative nod).

5 Q. Can you give us a brief summary of this
6 article, pointing out the difference between
7 credibility versus reliability.

8 SOLICITOR HERRING-LASH: Objection.

9 THE COURT: I sustain the
10 objection. This witness can publish anything
11 that she has considered and she is certainly
12 entitled to rely on her opinion but under the
13 Rules it can only be done by examination of
14 the Court; therefore, she can't disclose the
15 -- at least at this point -- contents of
16 Exhibit 26, unless you lay the proper
17 foundation.

18 MR. ALAN BURNS: May I approach?

19 THE COURT: The witness?

20 MR. ALAN BURNS: Yes.

21 THE COURT: Yes.

22 MR. ALAN BURNS: May I lay the
23 foundation?

24 THE COURT: If you can lay a
25 foundation.

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1 MR. ALAN BURNS: May I approach
2 the witness in the absence of the jury?

3 THE COURT: Excuse me?

4 MR. ALAN BURNS: May I approach
5 the witness in the absence of the jury.

6 THE COURT: Proffer it?

7 MR. ALAN BURNS: Yes.

8 THE COURT: We are not there yet.
9 You can lay the foundation. If you cannot
10 lay the foundation right now, then go ahead
11 with your next question.

12 DIRECT EXAMINATION CONTINUED

13 BY MR. ALAN BURNS:

14 Q. What is suggestibility?

15 A. Suggestibility relates to the influence
16 of psychological and social factors and how
17 those influence the recall of a memory in
18 terms of how someone might later be reporting
19 events.

20 Q. What are some of the factors that
21 influence how suggestibility -- one is ---

22 A. What are some of the factors of
23 suggestibility?

24 Q. Yes.

25 A. Suggestibility is influence by the

1 psychological and social factors that come
2 into play in terms of how someone can be
3 telling their story. It can be influenced by
4 asking leading questions. So if I am trying
5 to extract a story from a child and I ask a
6 whole bunch of leading questions such as 'Did
7 you eat a hamburger for lunch today?' "Uh-
8 huh." So you can get a lot of answers that
9 may not be true if you use these factors.
10 The leading question is one.

11 Asking a question, the child giving
12 an answer, then coming back and asking the
13 same question again is another way of how you
14 can get information that may not be accurate.

15 There are also positive and negative
16 consequences. For instance, if I am asking a
17 toddler about something that they did in
18 preschool that day and I say, 'Did you
19 complete your assignment?' If I am looking
20 at them and I am holding a lollipop and I
21 ask, 'Did you complete your assignment?'
22 They are likely to say "Uh-huh" even if they
23 didn't. On the negative side, you can
24 influence them by 'I am not going to let you
25 have this lollipop until we get down to the

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1 bottom of it and figure it out. You can
2 influence what you get out of somebody based
3 on these factors. That is just a few
4 examples.

5 Q. Just for the record, in this case we are
6 talking about how memory reliability and
7 suggestibility relates to memories about
8 sexual assault and abuse; right?

9 A. Yes.

10 Q. In your clinical practice, do you treat
11 victims of sexual assault?

12 A. Yes.

13 Q. Do you treat adults that claim to have
14 been victims of sexual assault as children?

15 A. Yes.

16 Q. Have you had an opportunity to review
17 the written statement of the alleged victims
18 in this case?

19 A. Yes, I have.

20 Q. Specifically which statements have you
21 reviewed?

22 A. I reviewed a statement from [Minor 2]
23 [Minor 2] dated April 6th, 2010.

24 This is a statement given by [Minor 4]
25 Burns dated May 17th, 2010.

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1 Another statement given by Minor 4
2 [REDACTED], May 17, 2010.

3 This is a statement given by Cathy D.
4 Burns dated May 17, 2010.

5 I've reviewed this statement by Minor 3
6 Minor 3 [REDACTED], also known as Minor 3 [REDACTED] dated May
7 18th, 2010.

8 A statement by Minor 1 [REDACTED] [REDACTED] and
9 the date of it is June 2nd, 2010.

10 I've reviewed another statement by
11 Minor 3 [REDACTED] [REDACTED] given on April 21st, 2011.

12 This is a statement from Minor 5 [REDACTED]
13 Minor 5 [REDACTED]. The date of the statement is
14 April 12th, 2012.

15 Q. So that's eight, in all, statements that
16 you have reviewed?

17 A. Yes.

18 Q. And you've had the statement to review
19 two statements from Minor 3 [REDACTED]?

20 A. Yes, I have.

21 Q. What do you make of the discrepancies in
22 the two statements ---

23 SOLICITOR HERRING-LASH: Your
24 Honor, I ---

25 DIRECT EXAMINATION CONTINUED

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1 BY MR. ALAN BURNS:

2 Q. --- from a psychiatric standpoint?

3 THE COURT: You object to that?

4 SOLICITOR HERRING-LASH: Yes, sir.

5 THE COURT: I sustain the
6 objection. As you recall, it is contrary to
7 the law stated in *Jennings* and *McCurley*.

8 MR. ALAN BURNS: Okay.

9 DIRECT EXAMINATION CONTINUED

10 BY MR. ALAN BURNS:

11 Q. In this report that you reviewed, she
12 alleges memories from when she was three
13 years old. What is your expert opinion on
14 being to recall memories -- an adult being
15 able to recall memories, in detail, from when
16 they were three years old?

17 A. Someone who is three at the time of an
18 event, they are just entering the ability to
19 formulate the basis of memories.

20 Your brain doesn't have that capacity,
21 your neuronal pathways aren't laid down until
22 you are entering age two and age three. That
23 is usually when people begin to have their
24 first memories.

25 Compared to older ages, such as

1 adolescents, when you reflect on what a child
2 who has had an event happened or occurred,
3 that they're trying to call, when they are
4 three, they are not going to recall it with
5 as much detail as they would when they are
6 older. So someone who is three is going to
7 be lacking in detail in terms of what they
8 are going to be able to report, even if they
9 don't report it until much later in adult-
10 hood.

11 Q. So it would be easier for a person --
12 what you're saying is that an eight or nine-
13 year-old would be able to recall things more
14 easily, more freely, than -- would have the
15 ability to recall things more clearly, as
16 opposed to a three-year-old?

17 A. An eight or a nine-year-old would have
18 -- if they were recalling something -- if an
19 adult is recalling something that happened
20 when they were eight or nine, their memory of
21 whatever they are recalling is going to hold
22 more detail when the foundation is laid at a
23 later age than when it is laid down at a
24 younger age such as three.

25 Q. Okay. Do you identify or have any

1 concerns about potential factors of how
2 suggestibility may have impacted what you
3 reviewed in Minor 3's statement?

4 SOLICITOR HERRING-LASH: Your
5 Honor, same objection.

6 THE COURT: Once again, you can't
7 -- it's an indirect opinion on the
8 credibility of a witness. Therefore, it is
9 not permitted under *McCurley* or under
10 *Jennings*; that being the sole province of the
11 jury.

12 DIRECT EXAMINATION CONTINUED

13 BY MR. ALAN BURNS:

14 Q. In reviewing the documents from a
15 forensic standpoint, and that -- you also
16 have degrees in that, you're an expert in
17 that area as well?

18 A. Yes.

19 Q. From a forensic standpoint, are there
20 any telltale signs or suggestibility in the
21 reports that you are reviewing?

22 SOLICITOR HERRING-LASH: Your
23 Honor, objection.

24 THE COURT: Once again, it's an
25 inappropriate question. This witness will

1 not be allowed to render an opinion on the
2 credibility of any witness in this case.
3 It's contrary to the law in *McCurley* and
4 *Jennings*.

5 Let's approach, please. This is the
6 third question.

7 (OFF RECORD SIDEBAR)

8 THE COURT: Move on to some other
9 area, please.

10 DIRECT EXAMINATION CONTINUED

11 BY MR. ALAN BURNS:

12 Q. Can the memory of an adult recalling a
13 childhood memory be influenced by
14 psychological factors of suggestibility?

15 A. Yes.

16 Q. So you're telling me that it is also
17 possible that these statements could be made
18 ---

19 THE COURT: Mr. Burns, I am not
20 going to allow you to go there, sir. You
21 have asked the general question and that's as
22 far as it goes. I've told you that you've
23 not going to be allowed to do that. Move on
24 to something else.

25 MR. ALAN BURNS: Would you indulge

1 me ---

2 THE COURT: I will indulge you.

3 Yes, sir. Do you need to talk with your
4 assistants?

5 MR. ALAN BURNS: (Sidebar with
6 Lori Proctor and Ted Smith).

7 DIRECT EXAMINATION CONTINUED

8 BY MR. ALAN BURNS:

9 Q. Can you just explain some of the
10 different factors of suggestibility?

11 A. Yes. When there -- may I draw on the
12 board? Do you have a board that I can draw
13 on?

14 THE COURT: There is a board that
15 opens up -- just one second.

16 BAILIFF: (Provides board).

17 THE COURT: Doctor, my only
18 request is that you please keep your voice
19 up, please.

20 THE WITNESS: Yes, sir --
21 (marking on display board).

22 DIRECT EXAMINATION CONTINUED

23 BY MR. ALAN BURNS:

24 Q. These are the different factors of
25 suggestibility?

1 A. What I've done is I've made an outline
2 that may be of assistance in trying to follow
3 how all these things relate to each other.

4 We have been through the three
5 components of memory: encoding, storage and
6 retrieval. That's the one, two and three.

7 Memory is influenced by reliability and
8 credibility. Reliability being how accurate
9 the statement are, credibility being how
10 believable the statements are.

11 How reliable someone is is influenced by
12 how suggestible they are.

13 The question, I believe, pertained to
14 what are the components of suggestibility?

15 Q. Right.

16 A. That has to relate to age. So at the
17 time that the event occurred, the younger
18 person is not going to be able to have the
19 memory laid down in order to have as much
20 detail as someone who is having an event
21 occur to them when they are older.

22 Then when you go to retrieve that
23 memory, the -- component number three is
24 memory. The factors related to
25 suggestibility are -- if you ask a leading

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1 question, you might get information that
2 doesn't have the same reliability. So it
3 is not going to be recalled with as much
4 accuracy.

5 If you ask a question and someone
6 answers it and you keep asking the same
7 question, even if you rephrase it in a
8 different form, you're not going to have the
9 same reliability from that statement.

10 If you say 'everybody else is telling me
11 this' -- we call this the-other-people type
12 question. Everybody else is saying, you
13 know, little Johnny hid the markers from the
14 teacher. If a person is trying to recall
15 that and everybody else is saying it, then
16 all of a sudden I am going to say it too.
17 It's kinda like everyone begins to follow in
18 the same group. So that component is the
19 factor of suggestibility that influences how
20 reliable somebody is.

21 And then also if you have positive
22 and negative consequence, like we talked
23 about. If you're giving a reward for
24 somebody recalling something, it may steer
25 them in the direction of recall what the

1 question/examiner is asking them to recall.
2 If there are negative consequences, they may
3 shift and change the story in order to avoid
4 something from happening.

5 So those are the factors of suggesti-
6 bility and how they relate to reliability.

7 Q. You mentioned those three, storage and
8 -- what else?

9 A. Encoding, storage and retrieval. I will
10 fill them in -- (marking on board).

11 Q. Thank you. Would you explain what
12 encoding is?

13 A. Encoding is your brain's ability --
14 whether or not the neuronal pathways have
15 been laid down, have the railroad tracks been
16 put down so that what's happening before you
17 can actually track it's way into the storage
18 part of your brain.

19 The storage is that you hold onto
20 whatever little "box" in your brain that you
21 put it in, protect that box, until you decide
22 or have a time when you are recalling that
23 event.

24 Retrieval is when you unlock the box,
25 bring it back out through a set of tracks and

1 repeat what happened. If you can that with
2 accuracy, you're said to be reliable.

3 Even if you make something up but you do
4 it to where people believe you, you're said
5 to lack credibility.

6 If you're reliable and credible, then
7 hopefully the memory that you're repeating
8 back is actually what has happened. But
9 suggestibility is a large factor that comes
10 into play when you're looking at how reliable
11 someone's statement is.

12 Q. Okay. What about the storage and
13 retrieval, can you explain that again?

14 A. Storage is the box that sits in your
15 brain. Let's say that I am doing just fine,
16 growing up, going to school, I am learning
17 things, and all of a sudden I have a severe
18 head injury. Depending on where I get
19 whacked on my head, I may not be able to ever
20 get back to that box and get it open again.
21 It may be that the actual box where I put it
22 in my brain is damaged.

23 Hopefully that doesn't happen, that it
24 will stay in a protected area. The skull is
25 going to protect my brain, which is going to

1 protect the little box that I have my memory
2 component in. So that later when I want to -
3 - or when something triggers it, that I can
4 recall that memory of taking it out of the
5 box and putting it right back down, telling
6 my story which is my memory.

7 Q. What about the retrieval?

8 A. That last component was the retrieval.

9 Q. That's when you go in and pull that
10 memory back out?

11 A. That's correct.

12 Q. But can that be altered when you're
13 trying to retrieve the memory?

14 A. Yes, it can be altered through
15 retrieval. The pathways that get the memory
16 to go into the box are different than the
17 pathways that bring it out. So development
18 impacts that. The longer something sits in
19 that storage box -- just like you may go rent
20 a storage component/box for -- it's going to
21 shift, it is going to look a little bit dusty
22 when you go to retrieve it. The longer that
23 it sits there, the more it's exposed to --
24 the more that it loses in that component.
25 Then you rely on whether or not you have

1 neuronal pathways that are laid down and not
2 damaged when you go to retrieve it.

3 Q. Can social and psychological factors
4 play a role in altering the retrieval as
5 well?

6 A. They play a role in how reliable
7 somebody is when they're telling their story
8 again. Someone may actually be able to
9 retrieve something with accuracy, but then
10 when factoring in the suggestible components,
11 which are those social and psychological
12 externals factors of how reliable someone is,
13 you may get a different story even though
14 that person is capable of giving a reliable
15 one. Under those other suggestible factors
16 they are not able to give it with the same
17 reliability.

18 Q. Okay.

19 MR. ALAN BURNS: Thank you. Thank
20 you, Dr. Salas. Would you please answer any
21 questions that Ms. Herring-Lash may have.
22 Thank you.

23 THE COURT: You may cross-examine.

24 CROSS EXAMINATION

25 BY SOLICITOR HERRING-LASH:

1 Q. Dr. Sala, good morning.

2 A. Good morning.

3 Q. I think you mentioned that you treat or
4 have treated some adults who were victims
5 when they were children?

6 A. Yes.

7 Q. Is that a big part of your practice or
8 do you mainly deal with children?

9 A. I treat children, adolescents and
10 adults. I don't know how that percentage
11 comes out because I am not that organized of
12 an individual.

13 Q. Okay.

14 A. But right now I am treating mostly
15 children/adolescents from May to August.
16 Prior to that, in the preceding two years,
17 I would estimate that it has probably been
18 fifty/fifty if you combine what I do when I
19 treat patients that are on an inpatient unit
20 plus my outpatient clinic, comparing the
21 number of adolescent children to adults.

22 Q. Well, those adults that you have treated
23 that were victimized sexually as children,
24 are they able to talk with you about what
25 happened to them as children, for the most

1 part?

2 A. They do talk with me about what their
3 memory component is.

4 Q. And I think that -- well, are you -- do
5 you know or have you read on the research
6 regarding traumatic memory?

7 A. What are you referring to when you say
8 traumatic memory?

9 Q. There are some research regarding how
10 trauma memory is stored as opposed to regular
11 memory.

12 A. I am familiar with some of that but that
13 literature base gets very broad very quickly,
14 so I don't know if I have reviewed articles
15 that you may be referring to. But I am
16 familiar with the difference in trauma
17 memories from regular memories.

18 Q. Is it fair to say that research has -- I
19 guess the supposition to begin some of the
20 research was that the trauma memory would be
21 more vividly recalled. But really the
22 research has kinda shown that it is like any
23 other memory. Some people remember -- have
24 robust memories and some have sporadic
25 memories or snapshots?

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1 A. Yes, all of the above.. It relates to
2 the factor of repression that can come into
3 play as well.

4 Q. Is it true that some victims repress a
5 memory of abuse?

6 A. Yes.

7 Q. Repressed rather than suppressed, right?

8 A. Yes, meaning that they're doing it on an
9 unconscious level. If I purposefully tried
10 not to think about something, that's
11 suppression. Repression is it's just
12 happening and I don't have that -- yeah,
13 effort put into it.

14 Q. Do you have people who have repressed
15 and then suddenly recalled memories?

16 A. (Pause), I am trying to think of an
17 example. Most of the people that I have
18 treated, they have had a delay in getting
19 access to me. So I don't deal with them
20 right at the time when there is an initial
21 trigger and then the next day I see them in
22 my clinic or something. So by the time I've
23 see a client that is landing on my doorstep,
24 there's been a delay. So I don't know how
25 many of those have had like a sporadic

1 intrusion. It does happen.

2 Q. And there are many that have never
3 really depressed it, they've just repressed,
4 not spoken about it and tried, consciously,
5 to not ---

6 A. Correct. That happens too.

7 Q. Talking about the age of memory, I think
8 that you said that age three is when you
9 start to have the ability to formulate
10 memories?

11 A. Yes. Some people in the developmental
12 skill may be precocious and start that
13 process between ages two and three, but our
14 foundation of neuronal pathways is not really
15 developing until age three.

16 Q. I guess the problem with those memories,
17 if you want to call it a problem, is that
18 they would lack some detail -- more detail
19 that, say, a six, seven or eight-year-old?

20 A. Right. The memories that are laid down
21 at that early preschool age are related more
22 to emotional components. As you develop
23 vocabulary and learn what words mean, you
24 begin to have a better opportunity to
25 assigning detail and information. It's

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1 related to the development of vocabulary that
2 parallels growth at that phase.

3 Q. So you may at three remember the event
4 but not have the vocabulary to actually
5 describe? Is that ---

6 A. Right. When the event is happening and
7 you're encoding it, you don't have the
8 language development in place so that you --
9 you may have a stronger emotional component,
10 which is stored in a different box in the
11 brain, but not have all the words that go
12 with that component. So when you go back as
13 an adult and try to retrieve it, you have
14 kind of this idea that this may have happened
15 or something but you don't have -- because of
16 the stage of development where you were at
17 that young age -- the same articulate
18 ability, because it never was encoded.

19 Q. And by the age of around six or seven
20 you begin to have more robust memory and more
21 detail?

22 A. Yes, you are developing a progression in
23 being able to recall details at six or seven.
24 You would have further ability to recall more
25 detail at even a later age.

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1 Q. Just to talk a moment about
2 suggestibility, a lot of the research on
3 suggestibility is when the person that is
4 being interviewed is a child.

5 A. Yes.

6 Q. And it is very important -- I guess the
7 younger the child -- to be extremely
8 important not to be leading or to use the
9 positive and negative reinforcements that I
10 think that you talked about?

11 A. Correct.

12 Q. As the person being interviewed gets
13 older, the suggestibility gets less; is that
14 true?

15 A. Yes, they show a little bit resilience
16 (sic) in their influence to the suggestible
17 factors if they are recalling something when
18 they are older than that they do when they
19 are recalling it when they are younger.

20 Q. And when you're trying to determine the
21 amount of suggestibility, would -- I know
22 that you mentioned leading questions.

23 A. (Affirmative nod).

24 Q. So if the interview was not leading but,
25 say, 'tell me what happened', 'can you tell

1 me more', 'can you tell me and where', would
2 that be less leading than 'this happened,
3 didn't it?'

4 A. Yes. The way it is initially phrased --
5 that technique of asking questions is less
6 leading, has less suggestibility than someone
7 who has someone prompting them through a
8 statement.

9 Q. And another thing that you would look at
10 to determine suggestibility is whether what
11 they are saying is corroborated by
12 independent sources?

13 A. Correct.

14 Q. And even an eyewitness that corroborates
15 something would lend more strength to that
16 memory?

17 A. Yes, in terms of reliability. The
18 memory would be considered more reliable if
19 you had a lot of corroboration going on to
20 verify that, yes, this is how many other
21 people and factual date, whatever you want to
22 call it, can advance that reliability.

23 Q. And suggestibility, you'd look at the
24 age of the person, when they are being
25 interviewed and the type of questions that

1 are being asking them?

2 A. Those are some of the components that
3 you look at.

4 SOLICITOR HERRING-LASH: I think that
5 those are all the questions that I have, Dr.
6 Salas. Thank you.

7 THE COURT: Redirect?

8 MR. ALAN BURNS: Yes, sir.

9 REDIRECT EXAMINATION

10 BY MR. ALAN BURNS:

11 Q. So then as a person gets a little older,
12 the likelihood of suggestibility then turns
13 into, I guess, you'd call it, omissions and
14 commissions.

15 A. Yes. When you start talking about
16 errors of omissions versus errors of
17 commission, what you're referring to --
18 it's influenced by age. So a little kid is
19 going to leave out information, if you're
20 asking them questions, to a three-year-old --
21 tell me what happened, tell me what happened
22 -- a three-year-old is going to omit a bunch
23 of stuff, whereas someone is older is more
24 likely to put in a bunch of details that
25 didn't happen.

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1 MR. ALAN BURNS: Thank you,
2 Doctor.

3 THE COURT: Recross?

4 SOLICITOR HERRING-LASH: No, Your
5 Honor.

6 THE COURT: You may step down --
7 do you wish Dr. Salas to be excused?

8 MR. ALAN BURNS: Yes, sir.

9 THE COURT: Any objection?

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

12 THE COURT: Dr. Salas, thank you
13 so much. You may step down. You are free to
14 leave. Have a safe trip back.

15 Dr. Salas, you may step down. I am
16 going to excuse the jury. Please don't leave
17 just yet, wait for a just a second.

18 THE WITNESS: Yes, sir.

19 (WITNESS STEPS DOWN)

20 THE COURT: Ladies and Gentlemen,
21 I am going to let you go to your jury room at
22 this time. Don't begin your deliberations,
23 don't discuss the case. There are a couple
24 of matters that we need to take up out of
25 your presence. We will be will you shortly.

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1 (JURY OUT @ 10:48 A.M.)

2 THE COURT: Anything from the
3 State at this point?

4 SOLICITOR HERRING-LASH: No, sir.

5 THE COURT: Mr. Burns, do you wish
6 to proffer any testimony from Dr. Salas?

7 MR. ALAN BURNS: No, sir, I don't.

8 THE COURT: Let me -- just so that
9 the citation for *State v McCurley* is 725 S.E.
10 2nd 139, decided 3/28/12. Then also *State v*
11 *Jennings*, which is cited in the McCurley
12 case, 716 S.E. 2nd 91, a 2011 case, Supreme
13 Court case. Both address the issue of
14 whether or not a witness may render an
15 opinion of credibility of any other witness.
16 The court relies on those decisions and the
17 discussions contained therein.

18 All right, Dr. Salas is free to
19 leave.

20 We will be at-ease for a few
21 minutes. When we come back, we will talk
22 more about the witness that's on her way from
23 North Carolina.

24 (BRIEF RECESS)

25 (DEFENDANT PRESENT)

1 THE COURT: Where is the witness?

2 MR. ALAN BURNS: She's on I-26,
3 thirty minutes ago.

4 THE COURT: How is this witness
5 -- because as I read this Rule 801(d)(1),
6 it's not just the fact that it is
7 inconsistent or consistent, but the second
8 part of that is that there is a qualifying
9 part, "provided however the statement must
10 have been made before the alleged fabrication
11 or before the alleged improper influence or
12 motive arose." That seems to me to imply
13 that it had to be made before anything was
14 disclosed in this case.

15 When was the statement alleged made?
16 After you'd been prosecuted, after you had
17 been charged?

18 MR. ALAN BURNS: Before.

19 THE COURT: I see. Before you
20 were ever charged, this person said you never
21 did anything to her. Before there was ever a
22 charge filed against you?

23 MR. ALAN BURNS: Yes, sir.

24 THE COURT: Just out of the blue,
25 this person just goes up and says, 'you know,

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1 Mr. Burns has never done anything against
2 me.'

3 MR. ALAN BURNS: (No verbal
4 response).

5 THE COURT: For no reason, just
6 goes up and says 'Mr. Burns has never abused
7 me.'

8 MR. ALAN BURNS: The charges from
9 one of the others came forward first. Then
10 this -- my sister had a conversation with her
11 daughter before the charges from the daughter
12 came about. That's how -- once they was
13 told, after that, once they disclosed, then
14 the daughter went and gave the police a
15 totally different story.

16 THE COURT: Okay. Hope that's the
17 way that she says it.

18 SOLICITOR HERRING-LASH: Your Honor,
19 the rule that I was referring to is 613, that
20 before evidence before -- "*extrinsic evidence*
21 *of a prior inconsistent statement by a*
22 *witness is not admissible unless the witness*
23 *is advised of the substance of the statement,*
24 *time and place that it was allegedly made and*
25 *the person to whom it was and given the*

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1 *opportunity to explain or deny the*
2 *statement."*

3 I don't know which witness that he
4 is talking about but ---

5 THE COURT: I don't either.

6 SOLICITOR HERRING-LASH: --- none
7 of them were given that opportunity.

8 THE COURT: All right. Are those
9 witnesses available?

10 MR. ALAN BURNS: Minor 5

11 THE COURT: We can ahead and call
12 -- you're going to have to lay the foundation
13 for the statement. So you want to recall her
14 as a witness.

15 MR. ALAN BURNS: Yes, Your Honor.

16 THE COURT: Let's bring in the ---

17 MR. ALAN BURNS: And Jackie, as
18 well.

19 THE COURT: Recall anybody that
20 you want to recall.

21 MR. ALAN BURNS: Thank you.

22 THE COURT: Just for the record,
23 Ms. Herring-Lash, the court notes that
24 probably, technically, that might be
25 exceeding it, because he is a lawyer I am not

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1 going to hold him strictly to that.

2 (JURY IN @ 11:09 A.M.)

3 THE COURT: Thank you, Ladies and
4 Gentlemen. Mr. Burns, you have indicated you
5 wish to call some additional witnesses?

6 MR. ALAN BURNS: Yes, sir. I
7 would recall Minor 5 [REDACTED].

8 THE COURT: This is a witness that
9 previously testified?

10 SOLICITOR HERRING-LASH: Yes,
11 Your Honor. She is not in the courtroom.

12 THE COURT: Find the witness.

13 (WITNESS TAKES STAND)

14 Minor 5 [REDACTED] having been previously
15 sworn, continued to testify as follows:

16 EXAMINATION RESUMED

17 BY MR. ALAN BURNS:

18 Q. Minor 5 [REDACTED] did you tell your mother that I
19 fondled you?

20 A. No.

21 Q. Did you then -- okay. Did you tell your
22 mother that you made this up?

23 A. No.

24 Q. Did I ever babysit your kids?

25 A. Not to my knowledge, no.

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1 Q. You got married in Virginia, right?

2 A. I got married in Virginia in '98.

3 Q. Did everybody in the family, including
4 myself, sleep in your house in Virginia
5 during the wedding?

6 A. My house?

7 Q. Your mother's house?

8 A. My mother's house, not my house. I had
9 my own apartment.

10 Q. What year did you go in the military?

11 A. November 1998.

12 MR. ALAN BURNS: That's all that
13 I have. Thank you.

14 THE COURT: Cross-examine?

15 SOLICITOR HERRING-LASH: No, Your
16 Honor. I think under the Rules that he
17 hasn't completed his entire examination.

18 THE COURT: He's -- that's up to
19 him. I agree. Understand, and noted. He's
20 completed his examination, apparently. That
21 concludes your examination of this witness?

22 MR. ALAN BURNS: Would you indulge
23 me for a second, Your Honor?

24 THE COURT: Yes, sir.

25 MR. ALAN BURNS: (Sidebar with

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1 Lori Proctor and Ted Smith).

2 EXAMINATION RESUMED

3 BY MR. ALAN BURNS:

4 Q. Do you remember the statement that you
5 gave to the police?

6 A. I never gave a statement to the police.

7 Q. The statement to the investigator?

8 A. Yes.

9 Q. When did you give that statement?

10 A. My written statement?

11 Q. Yes.

12 A. April of 2012, this year.

13 Q. And in that written statement, did you
14 state that you had told somebody about the
15 alleged abuse?

16 A. Told somebody about the alleged abuse?

17 Q. In your written statement?

18 A. Not to my knowledge, no.

19 Q. So you don't remember what you said in
20 your written statement?

21 A. I remember the details ---

22 THE COURT: Mr. Burns, wait a
23 second. That's a statement that you have
24 introduced into evidence that the jury will
25 have to read. So if it is in there, just --

1 why don't you refer to the statement if you
2 know that there is something in there. You
3 don't need to ask the question because it's
4 already admitted.

5 You need to give her a copy of the
6 statement so that she can look at it.

7 MR. ALAN BURNS: I don't see the
8 statement.

9 SOLICITOR HERRING-LASH: I don't
10 think he ---

11 THE COURT: I don't have the
12 statement. I don't think that it was
13 admitted. I don't have any reference to it.
14 Looks like only photographs were -- so you
15 need to show her the statement before you ask
16 her questions about it.

17 MR. ALAN BURNS: (Tenders document
18 to be marked as exhibit).

19 COURT REPORTER: Thank you, sir.
20 Defendant's Exhibit 27 for identification.

21 THE COURT: A four-page document
22 for ID.

23 EXAMINATION CONTINUED

24 BY Mr. ALAN BURNS:

25 Q. Can you identify that document?

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1 A. Yes, I can.

2 Q. Tell you tell us what it is?

3 A. It is a statement that I gave to Amanda.

4 MR. ALAN BURNS: I would like to
5 enter this into evidence, Your Honor.

6 THE COURT: Any objection?

7 SOLICITOR HERRING-LASH: No
8 objection.

9 THE COURT: Without objection, it
10 is admitted.

11 (SO ENTERED AS DEFENDANT'S EXHIBIT 27)

12 EXAMINATION CONTINUED

13 BY MR. ALAN BURNS:

14 Q. Do you remember the substance of the
15 statement?

16 A. The -- I don't understand the question.

17 THE COURT: With regard to what,
18 Mr. Burns? She's identified it. What is it
19 that you want to ask her?

20 EXAMINATION CONTINUED

21 BY MR. ALAN BURNS:

22 Q. Did you ever tell anyone about these
23 alleged offenses prior to coming to the
24 police?

25 A. I never went to the police.

1 Q. Prior to -- you talked to Detective
2 Bacon?

3 A. Did you ever tell anyone, at all, in my
4 lifetime?

5 Q. Yes.

6 A. Yes.

7 Q. Who did you tell?

8 A. When I was eighteen, I told my mother
9 that you had molested me. I never went into
10 the details. I just told her that Alan had
11 did something to me.

12 I told So'Nia Singleton when I was
13 eighteen and had came back from Germany.

14 I told Moses Singleton when I was
15 eighteen and had came back from Germany.

16 I told every boyfriend that I've dated
17 from the time I was twelve up until my recent
18 fiancé.

19 I told my ex-husband.

20 I even told my children. I didn't go
21 into details. Because I question them every
22 day whether somebody had done something to
23 them, just to make sure that nobody has
24 harmed or hurt them in any way, shape or
25 form.

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1 I told my Aunt Vera.

2 I told my Aunt Celia.

3 I can't remember if I told my Aunt
4 Alice, but I probably talked to her about it.

5 I never went into details. It was
6 always just that you had molested me. I
7 never went into details. I never told
8 exactly what you did but, yes, I did tell
9 them that you had molested me.

10 Q. Earlier when you testified, you said
11 that -- is this true, that you said that the
12 only time that you had ever told anybody was
13 when you was about nine or ten, when you,
14 [Minor 4] and [Minor 3] were in ---

15 A. That was not your question. Your
16 question was did I ever talk to any of them,
17 any of the victims, and I told you no, that
18 we never had a discussion. I talked to them
19 when we were about ten years old. We were
20 sitting on the bench in my grandmother's
21 yard. [Minor 4] had mentioned something and I
22 told her that that was not a dream, that that
23 actually happened.

24 Q. And did you ever tell your mother that I
25 did something to you?

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1 A. I told my mother you molested me. I
2 never went into the details. Your question
3 earlier was did I tell my mother if you'd
4 fondled me. No, I did not.

5 MR. ALAN BURNS: One moment's
6 indulgence, please.

7 THE COURT: Okay.

8 EXAMINATION CONTINUED

9 BY MR. ALAN BURNS:

10 Q. Prior to giving this statement to Amanda
11 Salas, did you ever tell anyone the details
12 about the alleged abuse/assault?

13 A. I don't understand your question.

14 Q. You said that you didn't tell your
15 mother the details about the assault. Did
16 you ever tell anyone the details about the
17 assault?

18 A. Yes.

19 Q. You told everyone except for your
20 mother?

21 A. Whenever I would try to tell my mom
22 about what happened to me, she was so angry
23 at the situation that had went on, that no
24 one told her, because she was away in the
25 military -- whenever I'd go to her and try to

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1 talk to her about it, she said 'I don't want
2 to hear about it', 'I don't have time for
3 this right now' and she would walk out the
4 door and leave.

5 Q. When you gave this statement, where were
6 you at when you gave this statement?

7 A. I was in the solicitor's office here,
8 upstairs or -- I can't remember which floor
9 it was on, but I was here in this building.

10 Q. And you said that the date was - what
11 date did you say that it was?

12 A. If my memory is correct, it was April
13 the 12th of this year.

14 Q. Do you remember the time of day? Was it
15 morning, afternoon, evening?

16 A. Let's see. I came from South Carolina
17 -- I mean North Carolina to South Carolina.
18 I got here and it was about 10:00, so it had
19 to be between 10:00 and 11:00 a.m. in the
20 morning.

21 MR. ALAN BURNS: Thank you, Your
22 Honor.

23 THE COURT: Cross examine?

24 SOLICITOR HERRING-LASH: No, Your
25 Honor.

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1 THE COURT: You may come down.

2 (WITNESS STEPS DOWN)

3 THE COURT: Do you have another
4 witness to call?

5 MR. ALAN BURNS: I call Jackie
6 Blake to the stand.

7 SOLICITOR HERRING-LASH: I don't
8 think Ms. Blake has been here since Monday.
9 She lives in Orangeburg and I don't believe
10 that she was subpoenaed by the defense.

11 THE COURT: She was released.
12 Do you have another witness?

13 MR. ALAN BURNS: The last witness
14 will be Catherine Harris, and that is the
15 witness that we are waiting on, Your Honor.
16 I would like to ask, if possible, may we
17 please -- may we please have a recess for
18 thirty, forty-five minutes until she can
19 arrive.

20 THE COURT: I will give you a
21 recess for a few moment.

22 Ladies and Gentlemen, what is going
23 to happen now is that Miss Hoskins will come
24 in and give you menus. We will go ahead and
25 order your lunch so that your lunch will be

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1 ready when you start your deliberations in
2 this case. We'll take a break to take care
3 of that right now. Don't discuss the case.
4 We will be with you as quickly as we can.
5 Thank you.

6 (JURY OUT @ 11:30 A.M.)

7 THE COURT: Mr. Burns? Solicitor?

8 SOLICITOR HERRING-LASH: Your
9 Honor, I don't think that he -- the statement
10 that he is trying to get in, unless I'm
11 incorrect, through Catherine Harris is that
12 this witness, Minor 5 told her that it did
13 not happen. He did not advise her of the
14 substance of that, the time or place that was
15 alleged made. He didn't fit any of those
16 into ---

17 THE COURT: Very well. I will be
18 happy to hear from you.

19 MR. ALAN BURNS: Indulgence ---

20 THE COURT: Mr. Burns, I've
21 indulged you this entire trial. You are now
22 the one that is causing this trial to be
23 delayed because you've made representations
24 about what a witness is going to say or not
25 say.

1 I've given you the benefit of two
2 persons who have assisted you, advised you,
3 shown you the rules. I understand that
4 you're not a lawyer. But I'm going to tell
5 you something, as I told you earlier in this
6 trial, -- and I've really bent over
7 backwards, I think. If you were a lawyer, we
8 would have already been arguing and I would
9 be charging to the jury. But I understand
10 that and I want to give you a fair
11 opportunity to present your case.

12 But I have to apply those rules that
13 I've mentioned to you, that must be applied
14 to everybody -- lawyers or pro se litigants.
15 It is your responsibility to have your
16 witnesses present. It is not the jury's
17 responsibility to sit around and wait for you
18 to bring people in.

19 I understand about the conflict with
20 the witness on Wednesday. For that reason,
21 we accommodated that witness, accommodated
22 you. We were glad to do that. I understand
23 that professional witnesses have situations
24 that they can't control.

25 I don't know anything about the

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1 reason for this witness not to be here, other
2 than the fact that it's been said that she is
3 in North Carolina. First of all, I don't
4 know how you subpoenaed her in North Carolina
5 without getting authorization to do so so,
6 because I don't think the subpoena power
7 extends beyond the state of South Carolina.
8 So she obviously coming voluntarily. You
9 didn't effect a subpoena. That's your fault,
10 not the State's, not the court's.

11 But, again, trying to accommodate
12 you, we've done that. You knew this morning
13 -- and I believe that when we adjourned that
14 you said that you had one witness remaining
15 and that you intended not to testify. But
16 now this morning, you -- and that's
17 perfectly, I won't hold you to that.

18 It's your responsibility to make
19 sure that all those people are present so
20 that we can get this case, in an orderly
21 fashion, for this matter to proceed. Now
22 you're asking me to wait forty-five more
23 minutes for you to bring testimony of a
24 witness -- and I, yet, don't know what the
25 witness is going to say.

1 You have to be specific now because
2 the rules requires that. I am afraid that
3 the reason that you didn't ask or give the
4 specificity of the statement is because you
5 really don't know what it is.

6 Have you ever spoken directly to
7 this person about the statement?

8 MR. ALAN BURNS: No, sir, I
9 didn't.

10 THE COURT: So you don't have the
11 foggiest notion of what the specifics of that
12 statement are, do you? When it was made?
13 The situation surrounding it? Is that
14 correct?

15 MR. ALAN BURNS: (No verbal
16 response).

17 THE COURT: The only thing that
18 you know is what somebody else told you that
19 this witness is supposedly going to say.
20 Correct?

21 MR. ALAN BURNS: Basically.

22 THE COURT: Well, how can you --
23 answer, if you can, how you've complied with
24 Rule 613. The rule is specific. It says
25 that you have to give the time, place and

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1 content of the statement. Which you can't
2 do, because you have not talked to the
3 person. The rule requires you to do that.

4 That's what -- that's why -- again,
5 another example. Not to -- this case is
6 replete with examples of why person should
7 not represent themselves in cases of this
8 magnitude. It is a complicated process to
9 try a case. I think you've found out a
10 little bit about that.

11 MR. ALAN BURNS: I sure have.

12 THE COURT: It moves really
13 quickly. That's why you thought I was being
14 harsh in talking to you. I was trying to
15 convey to you that you really don't want to
16 go there, Mr. Burns. But at your insistence,
17 I've allowed you to do that. And I've given
18 you not one but two assistants. That's
19 really above and beyond, to be honest with
20 you. So you've had all the benefit in the
21 world in this case.

22 Frankly, I -- I appreciate the fact
23 that the witness is here but she can't even
24 testify now because you have already had the
25 chance to recall the witness. And, quite

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1 frankly, just to give you an example, -- if
2 Ms. Proctor was handling this case, Mr. Burns
3 subject to cross-examination, she says -- and
4 she knows or she should know as a lawyer, and
5 I think she would agree with me, that 'I know
6 somebody that is going to contradict what she
7 says' -- and she is familiar with Rule 613.
8 I probably would not have allowed her to
9 recall that witness. Now, would it have been
10 a mistake that she made? You bet. We are
11 not perfect as lawyers. I've made my share
12 of them.

13 In this case, as I told you when you
14 wanted to represent yourself, there is
15 another little problem. I don't know what
16 the jury is going to do, but if they acquit
17 you then this problem is moot. But if they
18 convict you, assuming that there has been no
19 error of law on appeal, that's going to be it
20 for you -- unlike other persons who can take
21 round two, which is 'my lawyer messed up.'
22 You were the lawyer. Yeah, you did.
23 Numerous times. Admitting evidence that
24 couldn't have been admitted but through you,
25 damaging evidence. But that's your right, to

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1 represent yourself.

2 Any idea, Mr. Smith, have you
3 checked further on this witness.

4 FEMALE: She is getting on the
5 Charleston exit from 95.

6 THE COURT: I can tell you, from
7 having driven that, my office is thirty-eight
8 minutes from that point and then you've got
9 another thirty minutes, so you're probably an
10 hour, an hour and fifteen minutes, away.
11 So I will happy for you to stay -- if you
12 want to talk specifically with the person who
13 has told you what the witness is going to
14 say, so that we can know when, time, place
15 and what specifically the witness is going to
16 say.

17 I would caution everybody here about
18 what is about to happen. Because if that
19 witness comes in here and -- if I wait and
20 that witness does not say what you're
21 representing, somebody is going to be
22 responsible for contempt of court because
23 they are delaying the process unnecessarily
24 and improperly. I can't impose sanctions but
25 I can impose contempt of court.

1 (TED SMITH EXITS COURTROOM)

2 THE COURT: Mr. Burns, let me
3 hasten to add or supplement something that I
4 said to you. I said that it's been my
5 observation that I think you've made some
6 errors at the trial. I also understand,
7 having been a trial attorney, that sometimes
8 in the room everybody may think that I made
9 some mistakes but I had a strategy and a
10 reason for doing what I did. It might have
11 appeared to be an error to them but it -- it
12 was intent on my part. You may have had
13 every good reason for doing what you did,
14 sir. I am not passing judgment on your
15 performance of anything along those lines.
16 Thank you, sir.

17 MR. ALAN BURNS: Thank you.

18 (OFF RECORD SIDEBAR)

19 THE COURT: Mr. Burns, my mom is
20 not here. Moms are special. She didn't
21 always like everything that I did but I
22 guarantee that you'd be hard-pressed to get
23 her to tell you that. She may tell me that
24 but she wouldn't tell you that. So -- as I
25 understand, you don't wish to call any

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1 additional witnesses?

2 MR. ALAN BURNS: That's right.

3 THE COURT: And it is still your
4 desire, Mr. Burns, not to testify in this
5 case?

6 MR. ALAN BURNS: That's correct.

7 THE COURT: You've had, again,
8 additional time to think about that? I think
9 that you mentioned at the close of business
10 Wednesday that was your desire, Thursday you
11 didn't change your mind and now you still
12 want to exercise your right to not take the
13 stand?

14 MR. ALAN BURNS: That's correct.

15 THE COURT: Have you consumed any
16 alcohol or taken any type of medication in
17 the last twenty-four hours, sir?

18 MR. ALAN BURNS: No, sir.

19 THE COURT: I know you've
20 withstood the pressures of the trial but,
21 notwithstanding, are you comfortable with
22 your decision not to testify?

23 MR. ALAN BURNS: Yes, sir.

24 THE COURT: Nobody has threatened
25 you in any way or forced you to take that

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1 position?

2 MR. ALAN BURNS: No, sir.

3 THE COURT: And while neither Mr.
4 Smith or Ms. Proctor are your attorneys, they
5 have been made available to discuss legal
6 positions with you. Have you exercised your
7 right -- have you talked with them about your
8 right to testify or not testify?

9 MR. ALAN BURNS: Yes, sir.

10 THE COURT: And I don't want you
11 to disclose anything that you have discussed
12 with them, but that is also a part of your
13 decision -- your having had the benefit of
14 professionals to discuss that with?

15 MR. ALAN BURNS: Yes, sir.

16 THE COURT: But ultimately the
17 decision is yours, and you've made the
18 decision for yourself, sir?

19 MR. ALAN BURNS: Yes, sir.

20 THE COURT: Thank you, Mr. Burns.
21 You may be seated. I find that Mr. Burns
22 certainly has demonstrated, throughout this
23 procedure, quite remarkably, I might add,
24 that his ability to read law and have rulings
25 made -- conforming and working around some

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1 things -- having said what I said, I must
2 also say that he has demonstrated that he
3 does understand what is going on and fully
4 appreciates it. I find that he has had
5 sufficient time to make the decision. We
6 were talking about it earlier and I find
7 nothing to change my opinion that Mr. Burns
8 has made a conscious decision for himself to
9 not testify. I find that to be a decision
10 that he makes freely, voluntarily and
11 intelligently.

12 So when the jury comes back, do you
13 anticipate calling any additional witnesses
14 when he indicates that he does not have any
15 further witnesses?

16 SOLICITOR HERRING-LASH: No, Your
17 Honor.

18 THE COURT: So what we will do now
19 -- Mr. Burns, that means that the defendant
20 rests. I'm going to ask you to -- we will go
21 through this process when the jury returns,
22 just for you to state for their benefit that
23 you do not wish to present any additional
24 witnesses in this case.

25 MR. ALAN BURNS: Right.

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1 THE COURT: I will then turn to
2 the State and they will indicate they have
3 nothing further.

4 So we are at a point now -- another
5 what we call legal part, where -- remember
6 when the State concluded, I asked you if you
7 had motions.

8 MR. ALAN BURNS: (Affirmative
9 nod).

10 THE COURT: We are at that state
11 now for further motions and I will be happy
12 to hear from you -- well, I assume that the
13 State has not motions.

14 SOLICITOR HERRING-LASH: No, Your
15 Honor.

16 THE COURT: Very well. Mr. Burns?
17 If you need a moment to confer with your
18 assistants, please feel free to do so.

19 MR. ALAN BURNS: At this time, I
20 would like to again move for a directed
21 verdict on the grounds of jurisdictional
22 issues.

23 I cite as the authority Section
24 5-7-60, 23-1-215, 23-1-210, 17-13-30,
25 17-13-40, 17-13-45, 23-20-50, 23-20-30 and

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1 *State v. Boswell*, 707 S.E. 2nd 265, 2011.

2 Your Honor, the State entered as
3 evidence of jurisdiction two contracts.

4 One of the contracts that the State
5 entered, on pages five and four of the term,
6 it states that the contract was for one year,
7 a one-year term. I believe that it was '93
8 to '94, somewhere back in the early '90s.
9 That contract is expired.

10 The other contract that the State
11 submitted, Your Honor, it actually violates
12 the section of the Code of Laws that I just
13 mention, whereas those sections of the Code
14 specifically mandates that the Mount Pleasant
15 police when coming out of their jurisdiction
16 must comply with additional law.

17 The contract and the agreement under
18 which they entered the contract, that statute
19 only allows for a general patrol area.
20 Beyond the general patrol -- in the contract,
21 I think Section 5-7-30, that section allows
22 for one jurisdiction to allow a municipality
23 to enter a contract with the County for the
24 purpose of general police patrol.

25 But when it comes to issues of

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1 criminal investigation, another statute comes
2 into play, 23-1-215, which requires a
3 specific contract drawn up for that specific
4 investigation. That at the conclusion of an
5 investigation that agreement expires.

6 There are specific statutes that
7 deal with specific incidences where a
8 contract must be entered.

9 Section 5-7-60 actually prohibits
10 the type of contracts that the Mount Pleasant
11 Police Department and Charleston County now
12 have in place, where they can just give
13 unfettered jurisdiction to a municipality to
14 police the entire county if they want to.
15 The legislature did not intend for 5-7-30 to
16 give the County the authority to enter into a
17 contract to just give the police the -- the
18 local, municipal police to overrun the County
19 with liberty in every police matter.

20 If that were the case, they wouldn't
21 have created the additional statutes that I
22 named, such as 23-2-215. They wouldn't have
23 created 17-13-30 or 17-13-40. These statutes
24 wouldn't have been needed if all that had to
25 do was to rely on 5-7-30. 5-7-30 was created

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1 solely to give the Mount Pleasant -- to give
2 an unincorporated area general police patrol
3 due to the fact of its isolation, not to give
4 the other agency unfettered control to handle
5 all police duties.

6 In addition to that, the contact
7 itself in another way. Given that the Mount
8 Pleasant has jurisdiction, they still
9 recognize the boundaries of the Mount
10 Pleasant police and the County in the
11 jurisdictional issue. If the Mount Pleasant
12 Police Department has jurisdiction to arrest
13 someone for a misdemeanor, then they should
14 the authority to take that person in front of
15 a municipal judge but the contract prohibits
16 that and only requires them to be taken in
17 front of a magistrate judge, which is an
18 indication that the contract itself does not
19 meet the standard of the additional statute
20 or the holdings in *State v Boswell*.

21 The other issue that I would raise
22 is the issue of the grand jury, my request
23 for the theoretical illegality of the grand
24 jury. I raise that issue again.

25 And any other Motions I previously

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1 made are hereby renewed, and I'd ask that
2 those Motions be reconsidered again and made
3 a part of this Motion for directed verdict.

4 The State has not produced any
5 evidence to substantiate the charges, they
6 have not produced any physical evidence, any
7 medical evidence, any scientific evidence or
8 anything that would substantiate the charges
9 brought against me.

10 I ask for a directed verdict.

11 THE COURT: Solicitor, do you wish
12 to respond?

13 SOLICITOR HERRING-LASH: Your
14 Honor, the statute that the County and the
15 City relied on was 5-7-110, which gives the
16 contract rights.

17 Title 23 that he is referring to is
18 when there is a specific investigation. I
19 think that's what the e-mail with Mr. Knisley
20 -- if they were asked to have a contract or
21 an agreement regarding this case. That's
22 what Title 23 provides, agreements between
23 agencies for the purpose of specific criminal
24 investigations.

25 5-7-110 is the statute on which

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1 these contracts were based, and that allows
2 for police protection beyond corporate limits
3 of a municipality.

4 THE COURT: Do you wish to reply?

5 MR. ALAN BURNS: Yes, Your Honor.
6 The solicitor states that 23-1-215 is for
7 specific investigations. She is absolutely
8 correct. The investigation that Detective
9 Michelle Bacon conducted was a specific
10 investigation. She didn't just happen to
11 come upon that as a part of some general
12 patrol. This was a specific investigation,
13 therefore the solicitor is right. 23-1-215
14 is the statute that should have been applied.
15 Therefore, an agreement should have been
16 written in accord with that specific
17 investigation.

18 THE COURT: All right, sir. Thank
19 you.

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

22 THE COURT: Motion is denied. The
23 record is clear. All right, any specific
24 requests to charge other than corroboration?

25 SOLICITOR HERRING-LASH: No, Your

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1 Honor.

2 THE COURT: I will charge first
3 and second degree criminal sexual conduct and
4 lewd act. Any specific requests to charge,
5 Mr. Burns?

6 MR. ALAN BURNS: No, sir.

7 THE COURT: Judge, when you bring
8 the jury in, are you going to go direct ---

9 THE COURT: I am. How long do you
10 need?

11 SOLICITOR HERRING-LASH: I was
12 just going to ask a question about closings.

13 THE COURT: Okay.

14 SOLICITOR HERRING-LASH: I'm ready.

15 THE COURT: All right.

16 SOLICITOR HERRING-LASH: The
17 incident report that was entered into
18 evidence by Mr. Burns does refer to the fact
19 that he was in prison and what he was in
20 prison for. I do not intend to dwell on it
21 but in my closing I was going to mention
22 that, which I never would normally but since
23 it is in evidence I do have a couple of
24 points that I mention about that. Since I
25 didn't know if you knew that was in the

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1 evidence, I just wanted to make sure that you
2 didn't think that I was just ---

3 THE COURT: I do. Not only that
4 but there were questions asked during the
5 examination where Mr. Burns stated -- I think
6 with one witness he talked about buying
7 clothes after he was released from prison.
8 So there is no question that that has been
9 brought before the jury. There is no
10 question that the State couldn't have done
11 but there's no question that the evidence
12 introduced by Mr Burns, that's a -- that's
13 fair game.

14 SOLICITOR HERRING-LASH: The only
15 other issue, and I just am not sure that Mr.
16 Burns is aware that when he is giving his
17 closing argument that he not go into the
18 facts that are not in evidence. I just want
19 to put that out there before he starts, so
20 that I don't have to object.

21 THE COURT: Mr. Burns, as you
22 noted during the trial -- and as I told you,
23 it's really a fine line, you asking questions
24 but you were testifying. I tried to be
25 consistent in stopping you from stating -- I

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1 think after it was brought to your attention
2 that you apologized, and I assume that was
3 because you recognized that that was
4 something that you shouldn't have been doing,
5 that that was not proper for you to do.

6 It is not -- you are entitled to
7 argue the evidence, reasonable inferences to
8 be drawn, but you cannot in essence testify
9 during your trial (sic). I am going to tell
10 the jury that you don't have to testify.
11 That would be contrary not only to the rules
12 that govern closing arguments but it is going
13 to be contrary to the law, because you -- you
14 don't offer any evidence. As I told them,
15 the only evidence that they can consider is
16 not Ms. Herring-Lash's statement or your
17 statements. In fact, I am going to tell them
18 and remind them that neither of your
19 statements are evidence. The evidence came
20 through the testimony of witnesses.

21 So you need to stay within the
22 purview of what you can do. You can testify
23 (sic) as to what witnesses said, didn't say.
24 You can testify to reasonable inferences to
25 be drawn from that testimony. But you,

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1 yourself, cannot testify. Okay?

2 MR. ALAN BURNS: (Affirmative
3 nod).

4 TED SMITH: Judge, if we may have
5 just a moment to look at the exhibits. It
6 may make it move more swiftly if we could
7 line up what we are going to use.

8 THE COURT: Absolutely. How long
9 do you need? Fifteen minutes?

10 TED SMITH: Ten or fifteen
11 minutes.

12 THE COURT: That's fine. We will
13 be at-ease for fifteen minutes. Thank you.

14 (BRIEF RECESS)

15 (COUNSEL REVIEW OF EXHIBITS)

16 (DEFENDANT PRESENT)

17 THE COURT: Are we ready to
18 proceed?

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

21 THE COURT: Mr. Burns, are you
22 ready?

23 MR. ALAN BURNS: Yes, sir, Your
24 Honor.

25 THE COURT: Let's bring in our

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1 jury. We will run through the formality of
2 closing.

3 (JURY IN @ 12:20 p.m.)

4 THE COURT: At this point, Mr.
5 Burns, do you wish to call any additional
6 witnesses?

7 MR. ALAN BURNS: No, sir, Your
8 Honor. The defense rests.

9 THE COURT: Very well. Does the
10 State have any reply?

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

13 THE COURT: Ladies and Gentlemen,
14 at this point we would normally have another
15 matter, a period where I would have to take
16 up matters of law. We have done that. The
17 record contains those matters and they are
18 preserved for further review, if necessary.

19 We now have completed, therefore,
20 the evidentiary portion of this proceeding.
21 The remaining -- the two remaining portions,
22 while you will not hear any evidence, are
23 still very important in this process of
24 dispute resolution. You will recall, as I
25 told you when we started, that Mr. Burns and

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1 the attorneys would have an opportunity to
2 speak to you again after you heard the
3 evidence. We call this closing arguments.
4 Now it is appropriate for them to discuss
5 with you the evidence, that is the testimony
6 of the witnesses and exhibits that were
7 introduced through their testimony. Their
8 remarks will be helpful, I'm sure, when you
9 begin the process of analyzing the evidence
10 and deciding what you believe to be credible
11 and believable. Please give them your
12 attention.

13 Following their arguments, I will
14 give you the law. Of course my remarks,
15 likewise, should not be considered evidence
16 by you in any fashion. Thank you for your
17 attention throughout.

18 Mr. Burns, you may proceed.

19 MR. ALAN BURNS: When I first came
20 up here at opening statements, I said to you
21 that if it doesn't make sense, it isn't true.
22 I told you that if a person lies about small
23 things, they will lie about big things.

24 Ladies and Gentlemen of the jury, as
25 I started my opening statement, I am going to

1 start my closing statement. I am not a
2 lawyer, I am not trying to be a lawyer. I
3 am not one to pretend as if I am a lawyer.

4 The odds in this case are stacked
5 totally and acutely against me. Right now I
6 am worse off than David when he went against
7 Goliath. David had a snake and five rocks in
8 a bag. I don't have nothing, I am standing
9 here by myself.

10 You heard the testimony of my family
11 against me. Minor 2 started all of this.
12 For what reason, I don't know. I can't
13 speculate, I can't guess. I don't know why
14 he did it, but he did it. Sitting around,
15 hanging out with his friends, drinking, in
16 college, watching television -- a television
17 show that at first he denied that he was
18 watching. *'No, I wasn't watching anything, I*
19 *was just sitting around. We was playing*
20 *cards. Oh, I might have been watching it.'*

21 But the statement, the statement
22 that I submitted in evidence, his statement
23 contradicted his testimony. In the statement
24 he went into explicit detail of the that
25 entire episode of the show. If you weren't

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1 paying particular detail to the show, you
2 wouldn't have known every detail of the show.
3 But he did.

4 He told the police that I cut him.
5 Okay? The police asked him where I cut him
6 at. He said, 'barely, on my hand.' Barely
7 someplace. He didn't know. He never
8 mentioned the cut on his leg, on either one
9 of his legs. The first time that anybody
10 heard anything about a cut on his leg was
11 when he came in here and I asked him about
12 the cut. He was (gesturing), 'right there,
13 right there.' He showed you a three-inch cut
14 on his leg.

15 *'How come you forgot to tell the*
16 *police about a three-inch cut on your leg*
17 *when you talked to them? When you talked to*
18 *them, you could barely remember or show them*
19 *where it was at?'*

20 Anything that I got ready to ask him
21 what happened or where something happened,
22 that would have pointed to the lie that they
23 were telling: 'Oh, I can't remember. I don't
24 remember.'

1 He got so frustrated that he took
2 the chair, slid it back and tried to put a
3 hole in the wall. The judge had to talk to
4 him about that. 'You don't act like that?'
5 Why? Why are you so upset if you're telling
6 the truth? Why are you lying about those
7 small things?

8 Karen, when I asked her:

9 'Didn't y'all come to visit me.'

10 'I don't think I ever come to visit
11 you.'

12 Yes, she did. They used to drive
13 there and four carloads of people up there to
14 see me.

15 So why do you want to lie about
16 that? Makes no reason, no sense. Why would
17 you want to lie about that? That's
18 supposedly happened before these alleged
19 events happened. The whole family used to
20 come up there.

21 But I will tell you what that small
22 lie was about. That small lie was about
23 Minor 2's statement. In Minor 2's statement
24 he stated that when I came home in 1997 that
25 he didn't know who I was. If Karen had

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1 admitted that they used to come up and visit
2 me prior to '97, that would mean that **Minor 2**
3 lied in his statement that he said that he
4 didn't know who I as when I came home. He
5 knew who I was. He didn't ask nobody, *'Who*
6 *that is? I ain't never seen him before.'*

7 **Minor 2**, in his statement and also
8 in here, tried to say that Karen went
9 shopping for me and left me home with him.
10 When we asked who went shopping with Karen,
11 *'I can't remember, I don't have any*
12 *recollection of that.'*

13 So I called the father to the stand.
14 He didn't want to testify in my behalf, I
15 know that when I called him up there. But I
16 am not interested in him being my buddy, my
17 friend or anything else. All I wanted was
18 the truth. So I asked him first:

19 *'Did you take me to buy a suit?'*

20 *'I may have.'*

21 *'In fact, you were the one who*
22 *helped me pick out a suit. I'd been away so*
23 *long, I didn't know nothing about the style.'*

24 *'Well, I may have assisted you.'*

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1 Fine, just so long as you admit that
2 I was with you in the store. And I was.

3 'Did I pay for the suit?'

4 'I don't see how.'

5 He was right, because I didn't have
6 nothing. That's what he said, I couldn't pay
7 for it. Did he pay for it? "Yeah, right."
8 That brought a snicker from everyone.

9 Remember?

10 Okay, so then:

11 'Who paid for it? Was Karen along
12 with us?

13 'Yes.'

14 That's the shopping trip where Karen
15 was at, where **Minor 2** said he was at home
16 being molested by me. So how could **Minor 2**
17 be being molested by me if I was with his
18 mother and father in the store shopping. We
19 was gone for about four or five hours. If he
20 had been molested, somebody else did it. I
21 couldn't have did it, because I was with his
22 mama and daddy in the city, at Bluestein's,
23 while he was in Mount Pleasant. Ain't no why
24 in the world. It's a lie.

25 **Minor 2** also told Detective Bacon

1 that Luther molested me, Celia and Vera.
2 Vera sat on the stand and said that's a lie.
3 That's a lie.

4 I asked Vera did Luther molest me
5 and she said, *'How should I know?'* They
6 laughed, because I was a gentleman. The
7 judge had to quiet them down, *'we aren't*
8 *going to have that in the courtroom.'*

9 But that statement speaks volumes.
10 If Vera has no way of knowing whether Luther
11 molested me, how would **Minor 2** know? Luther
12 died in '68. **Minor 2** was born in '89, '90.
13 How would he know? He wouldn't.

14 But he made up that lie for a
15 reason, because on Law & Order, the perpetra-
16 tor -- they always show the perpetrator as
17 having some type of past where the perpetra-
18 tor had molested someone. So he wanted to
19 make sure that he threw that little thing in
20 there so that he could create the illusion
21 that this is why he did this. This is why he
22 did this. I never touched that boy, never in
23 my life.

24 Karen tried to testify and said that
25 I got **Minor 2** in the speakeasy. The

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1 solicitor showed you some pictures of the
2 speakeasy, the little shop. It was a little
3 raggedy barn. That's what Ray called it.

4 'You mean the little barn in the back yard,
5 that little shack?' Yeah, that's what I
6 mean. That's the way that we all thought
7 about it at the time, it was a little barm
8 and a little shack. And 'your kids, you
9 didn't let them come in there' because it was
10 nothing but a little barn and a little shack.
11 So people, again, they lied.

12 'You're not going to let your son
13 come in that little barn, little shack to get
14 their hair cut. That place wasn't up to your
15 standards.'

16 You went to Smiley (phonetic) to get
17 your hair cut. No problem. I ain't got no
18 problem with that.

19 Minor 4 don't want to admit that I
20 used to give her rides to and from school.
21 Why? Why do you want to tell a lie about
22 something like that?

23 'Did you used to work to Woodland
24 Park Elementary? Did you used to teach

1 *there?*

2 *'No, I used to substitute.'*

3 Okay. That's even better, because
4 when you substitute that means that you're
5 not on a regular schedule. Which means that
6 you might need rides at all hours. School
7 starts at 7:30, 8:00. They don't find out
8 until 8:30 that certain teaches aren't
9 coming, so they call you. You need a special
10 ride when you mom or dad or somebody else,
11 they already gone to work, so you need a
12 special ride and you've got to call somebody.
13 You didn't have a driver's license. So how
14 did you get to work? You called dependable
15 Uncle Alan. But now you want to lie and say
16 that Uncle Alan did these things.

17 When I asked Alice,

18 *'Did I used to take your daughter to*
19 *and from college, drive your son to*
20 *Orangeburg College?'*

21 *'No, you never did these things.*

22 *Uh-uh.'*

23 Then So'Nia finally admitted *'you*
24 *did it one time, you took one time, you*

1 *picked me up one time.'*

2 One time, two times, five times, I
3 did it. Why? Why lie about that small,
4 simple stuff?

5 Why are all these allegations coming
6 out? Prior to this, I got along with
7 everybody in the family. But now everybody
8 wants to give the impression that 'no, uh-uh,
9 we hated him all along, from the time that he
10 came home in '97 nobody wanted to be around
11 him.' That's what they all said. Why?

12 Why all these little lies? Because
13 they are trying to hide some big stuff, some
14 big stuff that you don't want people to see.
15 'I don't recall, I don't recollect.'

16 That's a phrase that attorneys, when
17 they are prepping their witnesses, they tell
18 them that little phrase. 'We don't want this
19 to get it. We don't' want this to get in, so
20 when he asks about this just say that you
21 don't have a recollection. You don't
22 remember it. That way it doesn't get it.'

23 Remember Minor 1, when I asked about
24 the pictures? I showed her pictures of this

1 entire roadway, that's where she said that
2 this thing happened at, on this road right
3 here. She said that it happened on -- she
4 said that I drove down that road, that there
5 were houses on the right-hand side. That I
6 drove down the road, I turned around by the
7 houses, right by the houses, and then I drove
8 back up to the head of the road -- not all
9 the way to the head of the road, but that I
10 drove back up and then I parked on the left-
11 hand side of the road. Look at the map. If
12 that's what she said and that's what
13 happened, that means that when I turned down
14 the road and I went down, the only houses on
15 that road -- it's a short distance, you can
16 almost see it from the corner. If you go
17 there right now, you can almost see the
18 houses from this corner. You can see the
19 houses.

20 So if I drove, turned around in
21 front of the houses and then drove back and
22 parked on the side of the road, that means
23 that I was on the right-hand side as you're
24 going in, the left-hand side as you're coming
25 out. That we were standing in the middle of

1 the road when I did these things to her?
2 That means that anybody driving down this
3 road could have simply looked down here and
4 seen her violating her. That's what she said
5 happened.

6 These are the only houses on that
7 road. These are the only houses. Denise
8 Skidmore's (phonetic) house, our Cousin
9 Vinnie's (phonetic) house, and then the
10 Gray's (phonetic) home. That's the only
11 houses there. There aren't any houses back
12 there on the side of the road. The only
13 other house is when you go back, way back in
14 the plantation, and that ain't next to the
15 road. That's on the left-hand side. These
16 are the only houses. You can take the map
17 back there and you can see the whole map.
18 She lied.

19 They all lied. Why? Because
20 Minor 2 told a lie, so they came in wanting
21 to support him. They lied for him.

22 Minor 4 has lived in my mother's
23 house for almost twenty-some-odd years. For
24 almost twenty years. Sonie was born while
25 Minor 4 was living in that house. So'Nia,

1 sat right there, she was born living in that
2 house. She was raised until she was
3 seventeen years old living in that house.
4 And neither one of them can remember which
5 bedroom that they slept in.

6 Now, how are you going to live in a
7 house for seventeen years and not, a few
8 years, remember which bedroom was yours? You
9 remember. Why don't you want to admit that?
10 Because they don't want to admit who was
11 living in the house in '97? Why? *'I can't*
12 *remember, I don't any recollection.'* Why?
13 You know why? Because if you admit that, you
14 would be admitting something else.

15 **Minor 2** said that I took him into
16 one of the abandoned bedrooms, one of the
17 bedrooms that nobody was sleeping in. Every
18 bedroom in the house was occupied.

19 That's why. That's way they lie.
20 They lie about little things to cover up the
21 big things.

22 Who all was living in the house?
23 Alice, So'Nia, Ashley, Shaun, mom and dad.
24 When I came home, all the bedrooms were full
25 up. Where did I sleep? I slept in the den

1 on the daybed. That was the only place that
2 I could sleep.

3 My wife, exwife, she testified:

4 *'When did I move in the house with*
5 *you? A week after I came home.'*

6 I met her the next night and about a
7 week later, I moved in with her in Mount
8 Pleasant. That's why I was living there.
9 She wanted to paint a picture that I was such
10 a bad character. I was a bad dad, I was
11 cruel. *'I was cruel while I caught your son*
12 *with pot. When your son got their driver's*
13 *license, I was the one that took them. When*
14 *the police caught your son with drugs, I was*
15 *the one who went and bailed him out.'* That's
16 being cruel, that's being a bad dad. When I
17 caught them with drugs in the house, I took
18 it and flushed it down the toilet. And I
19 asked her, *'the very next day you allowed him*
20 *to go back up there where I'd just forbid him*
21 *to go.'*

22 But I am a bad father, not like she
23 is a bad mother. But I'm the bad one. She
24 moved out from me to move with another guy.
25 That guy was getting high with her son. When

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1 that broke up and she was in the house with
2 the son by herself, she left the son in a
3 little small trailer, she moved in with her
4 mother. Two weeks later, I am the bad guy,
5 that she don't like, that supposedly
6 threatened her, but she says she rented a
7 room from me for convenience, to get to and
8 from work. *Well, your son is living in a*
9 *little small trailer that is even closer to*
10 *your job.* It might have been uncomfortable
11 but it would have been more convenient. *But*
12 *you passed that up to come and live with me?*
13 *Why? We had already broke up and you knew*
14 *that I had a girlfriend at the time. So why*
15 *would you want to come live with me? I'm the*
16 *bad guy. I was rude to your kids, I*
17 *threatened to hurt you, I had a girlfriend*
18 *but you still would rather come and rent a*
19 *room at my house than to go and live in*
20 *something that is uncomfortable, that would*
21 *be more convenient. Don't make no sense. It*
22 *don't make no sense at all. Why?*

23 Minor 3 Minor 3 was three years
24 old, she said. She told the police that I

1 did things to her when she was three years
2 old. The police specifically asked her in
3 her statement, *'What happened to you when you*
4 *was eight or nine? "Nothing", I would run*
5 *whenever he would come around.'* Nothing
6 happened when she was eight or nine. The
7 police included her in their investigation.
8 The concluded that it was a jurisdictional
9 issue. They couldn't charge me with this
10 because that would mean that this happened at
11 some other time and we can't charge you.

12 Well, a few months later Minor 3
13 found out that I couldn't get charged. So
14 the solicitor called her in. She went to
15 them and she gave another statement, to the
16 police in Charleston County. In this
17 statement she says that *'When I was eight or*
18 *nine, he penetrated me. He stuck it in me,*
19 *he made me bleed.'* But she'd just said in
20 one that that ain't none of that happened.
21 I stood right here in front of her and asked
22 her, *'Which one should we believe?'* She said
23 to believe both of them.

24 How can you believe both of them
25 when they're saying something completely

1 different? My left hand is closed, my right
2 hand is open. Are you going to believe that
3 both of my hands are open? That they are the
4 same? No.

5 Totally unbelievable. Everything
6 that they've said is totally unbelievable.

7 **Minor 5** says that when she was two
8 years old, she remembers when she was wearing
9 a yellow jumpsuit with red across the top.
10 She didn't remember that. She saw it in a
11 picture and created her story around this
12 picture. That's what she did. She saw a
13 picture and she created a story around this
14 picture. That's why she said, 'I was wearing
15 a yellow jumpsuit.'

16 Two years old and she remembers that
17 I was wearing a green-and-blue plaid shirt
18 and bluejeans. She didn't remember that
19 either. She saw that in a picture, too, and
20 she formulated this story around it.

21 See, the solicitor messed up when
22 she showed her this picture. Because this
23 picture proves where the "memory" that she
24 has of what she was wearing comes from. It
25 comes from this picture.

1 Two years old, she remembered the
2 crib that she was in. The colored crib, the
3 exact position, everything, which way that it
4 was facing, which way the walls were. You
5 know how she remembers all that? From the
6 pictures. She saw all the pictures and then
7 she built a story around the pictures.
8 That's what she did.

9 She was two years old and she says
10 that she remembers all these things. So I
11 asked her what color was my bedroom. She
12 couldn't remember. 'I don't know. White.
13 Beige.' No. My bedroom was green.

14 What color was the spread? 'I
15 don't really remember, I don't know. It
16 was summertime. It was probably white, had
17 sheets on the beds.'

18 Why get frustrated about that when
19 you didn't get frustrated that you remember
20 that when you was two years old that you
21 remember that you was wearing a yellow
22 jumpsuit? You didn't. You couldn't even
23 remember the color of the outside of the
24 house. What color was the outside of mom's
25 house? 'I don't know. I don't know. Gray.'

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1 No, it was a mustard colored house. She
2 couldn't remember none of that but she could
3 remember the color of my shirt and the color
4 of my pants.

5 How? You heard my expert when she
6 talked/testified about memories. When you
7 are that age, you're not going to remember
8 all the explicit detail about what color this
9 was, what color that was, what color your
10 crib was.

11 Think about it, how many of you
12 sitting up there can remember the color of
13 your crib? Can you remember when you were
14 two years old the color of your crib? The
15 color of your mother's dress when she came to
16 give you a ball on a certain day, or to
17 change your diaper? You can't remember stuff
18 like that. You don't. You don't remember
19 stuff like that. How could you remember
20 that.

21 And then she tried to say that 'when
22 I was three years old that he had me lying up
23 on the bed first, then Minor 4 and then
24 Minor 5. He had us like this because I was
25 the oldest.'

1 *'Well, you were three. How old was*
2 Minor 5 *You was born in '73, Minor 5 was born*
3 *in '77. How old was Minor 5'* It doesn't add
4 up. Couldn't have happened. Couldn't have
5 happened. Minor 5 was three years younger
6 than her.

7 It just don't add up. If it don't
8 make sense, that's probably because it's a
9 lie. If you lie about little things, you
10 will lie about big things.

11 I asked So'Nia about the letter.
12 *'No, I would never write you a letter.'*
13 I got the letter, I had to dig it out of
14 quite a stack. I didn't bring them all,
15 I left those back at the jail. But
16 thankfully I had one letter. I presented it
17 to her:

18 *Is that your signature?*

19 *It looks like my signature.*

20 *You don't recognize your signature?*

21 She recognized it. She recognized
22 the letter, too. So I had her read the
23 letter aloud. The letter brought so much
24 memory and flashback that she had to smile.
25 Then when she caught herself, what she was

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1 doing, she put mean face back on. But still
2 yet, 'You wrote it, along with a whole bunch
3 of others. Why do you want to lie about
4 that?'

5 What is significance of lying about
6 the letter like that? What is the
7 significance? Because they want to give the
8 illusion that none of them like me, they
9 didn't want me around, they hated me, for
10 whatever reason.

11 Minor 5 said I used to come over to
12 her house, that she didn't want me there,
13 that she didn't like me. Uh-uh. She never
14 let me play with her kids, I didn't go into
15 her kitchen. Well, I did all those things.

16 Minor 5 also testified to something
17 else really important. Minor 5 said her and
18 her husband aren't together anymore. I asked
19 her why. Minor 5 said because of these
20 charges. Because her husband did not believe
21 her. She said -- this is what Minor 5 said --
22 her husband refused to believe her because he
23 couldn't understand ---

24 SOLICITOR HERRING-LASH: Misstating
25 facts.

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1 THE COURT: I will instruct the
2 jury to disregard your's or Mr. Burns'
3 statements that are not consistent with their
4 recollection of what a witness said or didn't
5 say.

6 MR. ALAN BURNS: Okay. Minor 5
7 said that her husband and her had a fight and
8 they broke up because of these charges, that
9 he didn't believe her because me and her got
10 along too well when they were living on
11 Century Oaks. I was living on right around
12 the corner. My girl used to walk around to
13 see them, used to go there to pick her up.
14 That's why they broke up? That's what Minor 5
15 testified to, that her and her husband broke
16 up as a result of these charges because he
17 did not believe her. Why would your husband
18 not believe you if you say something like
19 that? You know why? Because he saw how me
20 and Minor 5 got along.

21 See how me and Minor 5 got along
22 (displaying photograph). This is how we got
23 along. She hated me? She didn't like me.
24 She didn't want to be no place around me.
25 She -- 'I just barely tolerated you.' That's

1 what it looks like in the picture? She's not
2 just tolerating me. She's putting a necklace
3 around my neck for Christmas.

4 The house was full of people. Why
5 didn't she just tell someone else to do it?
6 Why are you doing it and then you're smiling?
7 You don't have the look on your face like
8 you're just tolerating me. She's smiling,
9 she is having a good time. But she didn't
10 like me, she couldn't stand me. This was
11 taken in 1998, December the 16th, 1998. That
12 is at the time that they said they'd draw my
13 name out of the box and they'd throw it back
14 because they didn't even want my name. Not
15 so. Not so. That's a Christmas picture at my
16 mama's, because that's where we all gathered
17 at.

18 That conflicts with what she said,
19 totally. All this stuff that's come up, it
20 contradicts each and every one of them. Why?
21 Why are they lying about these little things?
22 Why lie about little simple things? It don't
23 make no sense.

24 This is the party (displaying
25 photograph). Who at this party looks

1 frightened. Sitting around, looking like
2 they hate me? I'm in the background.
3 These photos were provided by the solicitor,
4 but she wouldn't enter none of them in
5 evidence. Why not? Because as you can see,
6 everybody was having a good time at the
7 party. There goes Vera, there goes Minor 2 ,
8 -- there is Minor 2 right there, our picture
9 together. I'm standing next to Minor 4
10 We're smiling. It looks like we are getting
11 along. That is Minor 4 right there
12 (indicating). We are getting along.

13 Me and So'Nia got along the same
14 way, but she now wants to give the impression
15 that it's not so, that it wasn't like that.
16 Why?

17 Why are they lying about little
18 small stuff. If you're telling the truth,
19 just come forward and say, 'Yeah, we got
20 along real good. I used to write him because
21 we was good to go and everything. Everything
22 was good. Then I found out and now I won't
23 have anything to do with him.' Why not just
24 state that? That's what you should have
25 done.

1 You have destroyed all your
2 credibility by sitting there lying, saying
3 you did not write not letter, that you
4 weren't in communication with me. Why? Why?
5 Why lie about something silly like that.

6 Okay. We all got along real good
7 until this allegations came up. Why not just
8 say that? What are you trying to hide? What
9 is it that everybody is trying to hide? They
10 are trying to hide the truth. They know that
11 everything is a bunch of lies. But a mother
12 is always going to support the child, and a
13 father will always support the child too --
14 even if they know it's a lie, they are going
15 to stand behind their child. But at some
16 point you've got to come out and say that,
17 *You're lying. You need to tell the truth.'*

18 Not only that but look at the walls
19 in the house. Pretty walls. A real nice,
20 professional paint job in there. This is in
21 2000. It's a real nice paint job there. You
22 know who painted that? I did.

23 THE COURT: Mr. Burns, that's
24 testimony. You are not allowed to testify,
25 sir. Confine your arguments to testimony

1 given and reasonable inferences.

2 MR. ALAN BURNS: Oh, and by the
3 way, this photo -- this photo was taken in
4 Cathy's house. That is in whose house that I
5 was living. They hated me? They didn't want
6 to be around me? April 3rd, 2000, I was
7 living in their house.

8 The State did not put in any of this
9 evidence. Why? They got all these photos
10 and they wouldn't put it in evidence. Why?
11 What are you hiding?

12 The State has got photos showing
13 this road, from the corner going all the way
14 back, every section. They've got a photo
15 from here to here, one from here to here, and
16 they've got one from here to here. Then they
17 have another one from here to here. Then
18 they've got photos showing the same thing
19 coming out. I asked Minor 1 about these
20 photos and she said,

21 'I don't remember. How am I
22 supposed to remember?'

23 'Because you said something horrible
24 happened to you down this road. You said
25 something terribly horrible happened to you.

1 *You should remember. Look at all these*
2 *photos. Where did it happen at? Show me*
3 *where it happened at.*

4 She can't "remember." According to
5 the description that she gave, it happened
6 here, out in the open, in the middle of the
7 road. You go down the road like this, houses
8 on the right side, you turn around and then
9 you park on the left hand -- she said on this
10 side of the vehicle, which would have put me
11 and her in the street. Anybody riding down
12 the street could see us. We weren't on the
13 side in the bushes where nobody could see us,
14 away from curbside. We was on the street
15 side, because I was parked on the opposite
16 side of the road. That's what she said. If
17 I am coming out and I park on that side, that
18 would put the view on the opposite side of
19 the road. So if I am on the passenger side
20 of my van, that would mean that we are in the
21 street where we could be seen -- not just
22 from this street but from here too. Any car
23 driving down here, you could look down there
24 and you'd see me in the car doing something
25 to her. Come on. That doesn't make sense.

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1 That's a lie. Nothing happened between me
2 and you -- between me and -- none of that.

3 Look at all the photos.

4 Here is the letter. That's the
5 letter from So'Nia. She wrote this letter.
6 You can take it back and look at it, and you
7 will see why when she was reading it that she
8 was laughing -- because it brought back
9 memories. She regained her recollection --
10 when at first she said that she don't
11 recollect it, she don't remember. She
12 regained her recollection when she started
13 reading it. She had a smile when she read
14 this letter. When she caught herself, she
15 put her mean look back on.

16 This is the letter that she wrote --
17 a real long, big letter. She got a great job
18 at BellSouth, they're going to pay her to go
19 back to school. Nice letter.

20 But she didn't write me no letters.
21 She said, '*I ain't never write you no*
22 *letters, I would never have told you nothing*
23 *like that.*' It is in your handwriting, you
24 wrote this. So why do you want to lie about
25 it?

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1 We were fine before the allegations
2 came along. So why don't you want to just
3 stand up and say, 'Oh, yeah, back then we
4 used to write and I used to talk to you but
5 that was before I found out that you did so
6 and so.' Why don't you just say that?
7 Wouldn't that have given more credibility to
8 what she said? So, why lie? Rather than
9 taking that route, she lied. Why? That was
10 part of the State's ---

11 (TELEPHONE SOUNDING IN COURTROOM)

12 MR. ALAN BURNS: Why lie about
13 this letter? What's so important to lie?

14 All these little things that they're
15 lying about, why? Why did Minor 2 lie about
16 coming to visit me? Why? What difference
17 would it have made if you'd said, 'Yeah, we
18 came up to visit you, we used to caravan
19 three cars up there. All of us used to come
20 up and visit you for three or four hours.'

21 Wouldn't that have been more
22 credible than to say 'there's no way that we
23 came back to visit you.' Back then there
24 were no allegations.

25 So why are they lying about it?

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1 Because it would mean that Minor 2 knew who I
2 was.

3 THE COURT: Mr. Burns, you've
4 covered just about everything about twice
5 now. You're going to need to wrap it up,
6 sir.

7 MR. ALAN BURNS: You also heard my
8 expert witness testify. She spoke about
9 credibility and suggestibility. One of the
10 last things that I asked her about was
11 omission and commission. The older a person
12 gets that's when they tend to start adding
13 things, to start making up things, their
14 lies.

15 That's what it is, a bunch of lies.
16 Why do you want to lie on me? If you lie
17 about small things, you will lie about big
18 things. If it don't make sense, it probably
19 is not true.

20 Minor 2 is willing to lie about a
21 dead uncle, to say that he molested someone,
22 then surely Minor 2 will lie about a living
23 uncle, to say that he molested him. What is
24 the difference? There ain't no difference in
25 that. If you lie about one, you'll

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1 definitely lie about the other. Thank you.

2 THE COURT: Thank you, Mr. Burns.

3 Ms. Herring-Lash.

4 SOLICITOR HERRING-LASH: May it
5 please the Court, Mr. Burns.

6 The anger is understandable and
7 undeniable. Some of you may have questions
8 about the anger displayed by some of his
9 witnesses. Some of you may not.

10 I think the better question is, how
11 were they able to show such restraint? How
12 were they able to control the human urge not
13 to lash out at the person who assaulted them
14 or their loved one.

15 It is hard to imagine that bravery
16 that these five people displayed, not only
17 enduring this, living with it, coming
18 forward, talking to law enforcement, being
19 here in a strange room telling a group of
20 people about some of the most horrific things
21 in their lives. But then to have to be
22 questioned by the person who did it. Their
23 bravery is undeniable.

24 In preparing the closing statement,
25 it's really difficult to balance. Not to say

1 too much, to bore you, but not to leave out
2 something that is important. I'll try to
3 strike that balance and not to go on and on.

4 The crime of child sexual assault
5 often lays dormant for years. By their very
6 nature, children are just not able to stand
7 up to adults. They are no match.

8 They fear violence. Especially if
9 the person that is assaulting them is violent
10 with others, if they see that they are much
11 more likely to be afraid. Because they wait
12 and don't report, we don't have the kind of
13 evidence that you see on TV -- DNA evidence,
14 one of the officers explained; trace
15 evidence, something that the defendant would
16 have left on the body of the victim. That
17 is nonexistent when the child has waited so
18 long.

19 There are different ways that
20 memories come back. Both of the expert
21 witnesses talk about that. There are some
22 very specific details -- some people remember
23 specific details, some people have snapshots
24 and very vague, almost no recollection.
25 Other people remember all at once, it comes

1 flooding back and then they remember
2 piecemeal. Both experts said all of those
3 are common.

4 It just really depends on the person
5 and your memory. I think she had said that
6 the research on trauma, that trauma memories
7 are not different. It's really an individual
8 thing, the way that you remember.

9 Here you had all of that. Some of
10 these people -- Minor 1 and Minor 5 had some
11 pretty detailed, graphic memories on assault
12 and Minor 3 of one assault. You have Minor 2
13 who remembered it once and then a little more
14 came, then a little more. Then you have
15 Minor 4, who has repressed almost everything
16 but one little snapshot of memory.

17 But they do have one common thread
18 in all of their memories. That is their
19 uncle, their violent uncle, who is a serial
20 rapist. He only raped the children in his
21 family, so it wasn't a big story of a
22 manhunt. Nonetheless, he repeatedly raped
23 five children.

24 This has been a long week -- not
25 fun, I'm sure. But this is really important

1 and you're a very important part of this
2 process. It is worth your time, because this
3 is important.

4 In order to make sense of any of
5 this, you have to understand that families
6 keep secrets -- for year, and for various
7 reasons. It doesn't mean that they don't see
8 their children as precious. This stuff is
9 hard. It's much easier to just let it go
10 away and not deal with it. It's hard. It's
11 hard to face that this is happening.

12 In the '80s when Alan Burns' mother
13 found out that he had done this, her response
14 at that time was probably a common response.
15 Beat him. He was seventeen, eighteen,
16 nineteen years old. Just beat him. That was
17 probably a common response -- not the right
18 response, but back then that may have been
19 the response.

20 I will try to go over very briefly
21 each witness and just go a little bit into
22 the details that they gave you, because when
23 you look back on a witness' statement, what
24 you can look at to judge their credibility is
25 the details that they were able to remember

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1 and if any of those details were corroborated
2 by other witnesses or in other ways.

3 First of all, we will begin with
4 **Minor 2**. It was obvious that he was not
5 happy to be here. He wasn't comfortable.
6 This wasn't a pleasant day. He tried for
7 years not to remember. He tried to put it
8 out of his mind, repress it, not think about
9 it. But he knew in the back of his mind, he
10 said to you and in his statement -- and you
11 will have his statement.

12 It is unusual that y'all have
13 statements. We were not allowed to present
14 those statements but because Mr. Burns
15 decided to, of course we didn't object.

16 In the back of his mind, **Minor 2**
17 knew that Alan was coming home. He talks to
18 -- he explains that in the police report. He
19 knew that Alan was coming home, after having
20 done this to another relative that he didn't
21 know. So he was -- that was in the back of
22 his mind.

23 Then you have this confluence of the
24 things that happened that night where all of
25 this comes, suddenly, back. He becomes

1 hysterical. He called his mother. She comes
2 to get him. They try to calm him down. He
3 spoke to Detective Bacon after he and his
4 mother had decided, 'Okay, this is what you
5 want to do. We will go for it.' He didn't
6 give her all of the details that he gave you
7 in here.

8 That first time was the first time
9 that he'd ever really sat down to give the
10 details. He was crying, he was upset. I
11 submit to you that the differences that you
12 will see in his statement and his testimony
13 are really more that in here he remembered
14 more detail. It is not that they were
15 different.

16 And he said, you know that *'after*
17 *this came out, I've been having to talk about*
18 *this.'* It's been out there for two years,
19 *'I've had to do it.'* And, *'yes, it is*
20 *easier now, today, to talk about it, even in*
21 *this room, than it was the first time that I*
22 *ever let myself remember it.'*

23 One example of one of the
24 differences is that in his statement is that
25 Mr. Burns came up to him and pushed his penis

1 in his face. In here he admitted that Mr.
2 Burns penis actually went into his mouth.
3 But that he felt very dirty -- very dirty,
4 and really didn't want to have to talk about
5 that.

6 Look at all of the details that he
7 did give you about what happened. To start
8 off with, after the assault with the -- in
9 the front room, that he went into a room next
10 to the -- took him into a room next to his
11 grandmother's room. My memory is not that
12 the room was not considered abandoned, but I
13 could be wrong. That he made him bend over
14 and grab his ankles and, the back, he
15 assaulted him. Minor 2 felt the emotional
16 pain and the physical pain.

17 He then had to wash and Mr. Burns
18 told him, *"don't tell anybody. I've been in*
19 *prison for stabbing somebody and I'll cut*
20 *you"* and he cut him. Then Minor 2 went and
21 got under the kitchen cabinet, with the pans
22 and pots, where he stayed until his mother
23 got home.

24 This part may be a little confusing
25 about home, not home. Mr. Burns was gone

1 away twice, from '87 to '97, and from 2002
2 until he was due back, as Minor 2 said, in
3 2010. We are talking here about when he came
4 home in 1997, when he and Minor 2 first met.

5 Now, he asked Minor 2 -- not Karen
6 -- about visiting the prison. I don't know
7 how old Minor 2 was when he supposedly
8 visited the prison but he was seven when he
9 came home.

10 Karen said that she and someone else
11 went, at the grandmother's behest, to buy
12 toiletry items for Alan since he had just
13 returned. This was not the Bluestein trip
14 where he bought a suit. This was to buy some
15 articles when he first returned home. And
16 when she came home that she finds him hiding
17 under the sink. She didn't really think a
18 lot of it at that time, but she does remember
19 that -- because it was kinda strange.

20 He also tells about being picked up
21 from the boys and girls club in a van.
22 Felicia and -- Felicia also talked about
23 that, that he would pick Minor 2 up -- not
24 even his brother, just Minor 2 Minor 2 says
25 that he takes him to Labor Camp Road and he's

1 thinking *'this is by my daycare.'* It was.
2 Karen said that his daycare was there. He
3 stops the van, opens the sliding door, makes
4 him end over the floor and anally penetrates
5 him.

6 MR. ALAN BURNS: Objection, Your
7 Honor. That was never testified to in court.

8 THE COURT: Again, as I indicated
9 to you, I will instruct the jury -- as I
10 indicated to Ms. Herring-Lash, I will
11 instruct the jury that they are to take their
12 own recollections. So the objection is noted
13 and overruled.

14 SOLICITOR HERRING-LASH: After
15 that, they go home.

16 He tells you then about another
17 location where he was assaulted, in what they
18 called the "speakeasy", where the hair --
19 where Mr. Burns cut people's hair.

20 Felicia, [Minor 5] and Karen all
21 remember [Minor 2] crying and asking, *'I don't*
22 *want my hair cut. I don't want my hair cut.'*
23 Well, they didn't know why. They made him go
24 and get his hair cut.

25 Karen describes all of the nieces

1 and nephews -- the nieces being around when
2 this happened and Alan Burns being around.

3 To go back for one moment to
4 **Minor 2** those details were very rich and
5 they give you reason to believe him. They
6 give you reason to understand why he is so
7 angry, and also why he is so brave.

8 Karen said that the nieces were on
9 Venning Road. Mr. Burns had access to them.

10 She talked about going to pick
11 **Minor 2** up and him being so hysterical that
12 she couldn't really understand much what he
13 was saying. She took him back, then had to
14 go back and get him again. Finally he calmed
15 down. He never really has gone into a lot of
16 detail but was able to tell her that it was
17 at grandmother's house, it was also at the
18 speakeasy and it was also in the van. So she
19 knew about those different occasions.

20 She gave **Minor 2** the decision to go
21 forward or not. See, Karen, as she said,
22 already knew about the others -- that were a
23 long time ago. **Minor 2** didn't know. She
24 told him. They decided 'okay, we will go
25 forward because at some point this has to

1 stop, and that point is now.'

2 She said that they still don't talk
3 about it.

4 Cathy, she knew about this from the
5 time Minor 4 went to college. Minor 4 told
6 her. The way that she reacted to that, was
7 that right? Was that wrong? She was doing
8 what she could do as a mother. She felt like
9 it was dirty, that she was ashamed, that
10 there -- that she knew about it. That may
11 not have been a good decision but she made it
12 because that's what her daughter wanted. Her
13 daughter didn't want it known.

14 She saw the letter addressed to her
15 husband, Oliver. Another reason that she
16 didn't want it come out was because she
17 didn't want Oliver to do anything to Mr.
18 Burns. She opened that letter, and read it.
19 She wasn't surprised at what he said,
20 apologizing for what he had done, because she
21 already knew, Minor 4 had told her. She
22 took it to her mother-in-law, Alan's mother.
23 I think she said that when it was read out
24 loud that Alan's father had one tear run down
25 his face. She left that letter there and

1 kept the secret that Minor 4 wanted her to
2 keep.

3 Minor 4 tried to stay away from Alan
4 after he got home. They said that she
5 stopped going over there. When she drew his
6 name, she didn't want it anymore.

7 On cross-examination, the nerve of
8 Mr. Burns to question Cathy's parenting. She
9 was trying -- she told him when he came home,
10 to give him the benefit of the doubt, he had
11 married and, in the beginning, had started
12 going to church. To give him the benefit of
13 the doubt. He questioned her parenting.

14 This was not an easy decision for
15 this family, for Minor 4's family, to come
16 forward. You may go back and question, as I
17 said, what happened. No one knows that they
18 would do until you're in that position. We
19 might think that we know what we would do,
20 but we don't.

21 Minor 4 has almost known him -- she
22 has one snapshot memory but it is pretty
23 detailed. They are in Alan's bedroom,
24 which there is a picture showing which
25 bedroom it is. The bunk bed is up against

1 the wall, the door is there, the window is
2 there. They are in a line: Minor 5 Alan,
3 Minor 4. He's on his knees facing her and he
4 has a towel but he ejaculates on her.

5 The other memory that he has is that
6 he is over at her home, they are playing a
7 board game, her siblings and her. She knows
8 that something touched her in some way that
9 felt bad.

10 If her snaps of memory is not enough
11 for you, you have in evidence also other
12 people seeing her being assaulted, things
13 that she doesn't remember. Perhaps the
14 horror is just too much.

15 If this is a situation where this
16 group just got together and decided, 'let's
17 make this up', well, number one, you would
18 think that they wouldn't have somebody make
19 up that they didn't remember. But the other
20 thing, when you look at motive, that is one
21 of the most important things about these
22 people making this up is that Mr. Burns said
23 that it started with Minor 2 Well, Minor 4
24 told her mother when she went off to college.
25 So you would have to believe that this

1 scenario was contrived back years ago when
2 Minor 4 went to college and that they just
3 kinda waited until the right moment to spring
4 it. Minor 4 would have to be the mastermind
5 since she told first. That makes absolutely
6 no sense.

7 Minor 5, she does have some memories.

8 Let me go back to the cross on

9 Minor 4. Like he did with every witness, he
10 speaks untruths with authority.

11 'You tutored my son.'

12 "No, I didn't."

13 'You wrote me many, many letters.'

14 "No, I wrote you one."

15 That letter, on redirect, it was
16 written because the grandmother told her that
17 she had to.

18 Minor 5 has memories. The one small
19 memory when she was two was in the crib. The
20 barbeque was when she was three, she said.
21 She was very happy to find that picture. Her
22 statement was given back in April. She
23 reported to you that she found that picture
24 June 23rd or the 26th and was surprised. She
25 got that piece of furniture, they couldn't

1 open the door of the cabinet, they found out
2 why, there was an album in it. When she saw
3 that picture, you know, she was very
4 surprised.

5 She remembered Jackie -- if you
6 question her memories of when she was three,
7 the most evidence that you have is Jackie.
8 She said that Jackie came in and that's how
9 they knew to look for Jackie. Jackie
10 corroborated that. It happened. What Minor 5
11 remembered when she was that young, an adult
12 would remember -- just like Dr. Salas said.
13 The three year old's memory loses a lot of
14 detail and the adult's memory was more
15 detailed about what happened that day. Just
16 as Dr. Salas said, at three you do start to
17 get your memories but you would lose detail.

18 But the assault that she really
19 described happened when she was around six or
20 seven. One was in the middle of the night.
21 They were in his room. They heard something
22 and she thought that maybe it was her
23 grandfather, because he was a merchant marine
24 and he may have been up. The other time, she
25 had gotten up late at night on the way to the

1 bathroom and he had pulled her into his room
2 and assaulted her. What was her answer? She
3 just wet the bed at night. That is the
4 child's solution, she just wet the bed.

5 She told you that when she was
6 coming back here and he was coming back,
7 yeah, she was around him. Her kids, I think
8 that she said were around him once without
9 her, without her control.

10 She said that she tolerated him.
11 But she was in the position of either you
12 tolerate him or you tell everybody what
13 happened. That's an untenable position, not
14 to mention that Karen knew what happened.
15 Jackie had already seen it. Grandmother had
16 already beaten him for what happened. So you
17 do what you have to do to survive and to get
18 along.

19 **Minor 1** was around eleven years of
20 age when she came into this family. She had
21 come from a bad situation and Mr. Burns knew
22 that. He, in the very beginning, started
23 kissing on her, started touching her, saying
24 in appropriate things. She said that he put
25 his hands in her pants, put his finger in her

1 -- at various locations.

2 What her real memory of is the one
3 violent rape that happened. They were
4 driving -- he was supposed to be taking her
5 home to Hickory Shadows, to her mother's
6 home. He goes all the way -- her description
7 is that he goes all the way to the end, turns
8 around, comes almost all the way back, pulls
9 to the side of the road.

10 He's lifted the hood, saying that
11 he's got to fix something. Asks her for a
12 tool. When she bends over the side door to
13 get the tool, he comes up behind her, pulls
14 her clothes down, sexually assaults her,
15 wipes her back off with a rag -- his white
16 shirt, -- throws it behind the passenger seat
17 and then tells her that she better not tell.

18 He hits her with some tool in the
19 knee and tells her that if she tells that it
20 will be worse. Then what was more signifi-
21 cant to her was, *'I'll cut your mother's*
22 *brakes or I'll hurt your mother's car.'* She
23 finally had a mother, she finally had a
24 family and if she told -- you know, she said
25 'I wasn't kin. What if they send me back to

1 foster care?' She is not going to tell. She
2 is not going to ever tell, because if she
3 does she could be sent away. His big issue
4 with this is where on the road that it
5 happened.

6 Jacqueline was very clear about what
7 she saw. Extremely clear. She was in the
8 kitchen. **Minor 4** comes running in the
9 kitchen, *'Uncle Alan is hurting me, Uncle*
10 *Alan is hurting me.'* She didn't even know
11 that Alan was there.

12 She walks into the room and there on
13 the bottom bunk sits Alan with his finger
14 inside **Minor 5**. He runs out of the room. She
15 calls -- first of all she says that both
16 girls are hysterical. She calms the girls,
17 wipes them up, washes them up. She calls her
18 mother-in-law, his mother, and she calls
19 Davey.

20 When his mother gets home, she beats
21 him. She said the color of the extension
22 cord. I can't remember if she said yellow or
23 orange, but she told you the color. She
24 beats him until he gets into the bathroom,
25 locks himself in, jumps out the window, runs

1 to the store up at the corner. He calls and
2 brings the police back and the mom says, 'If
3 you can handle him better than I can, take
4 him.'

5 She had very, very clear details.
6 She saw what happened.

7 Minor 5 his exwife was very, very
8 soft spoken. She corroborated things to you
9 that she had no idea at the time that she was
10 seeing. She worked at the boys and girls
11 club in Mount Pleasant. She knew that
12 Minor 2 got picked up there. She knew that
13 he cried, didn't want his hair cut.

14 She knew that Minor 1 was always in
15 the car with him or in the van with him,
16 coming all the way up to North Charleston
17 from Mount Pleasant but the child didn't get
18 out of the car. She didn't know why at the
19 time.

20 Then when she found out what he had
21 done to Minor 5 and Minor 4, and confronted
22 him, he didn't deny it. He didn't deny it.
23 He said that God had forgiven him. I won't
24 repeat what he said about the girls.

25 On cross-examination, she stood up

1 to him. On all his cross, he speaks untruths
2 with conviction and certainty. Like he
3 knows:

4 'Yes, you didn't discipline my
5 children, you beat them.'

6 'I didn't threaten to burn the house
7 down. You threatened to burn the house down
8 with me in it.'

9 'You didn't set up school activities
10 for my children, the school did that.

11 You were always with young girls.
12 You did things to Minor 4 and Minor 5 that
13 ruined them.'

14 He tried to list the things that he
15 did for her kids and she was like, 'No, you
16 didn't do that.' Again, untruths.

17 Detective Bacon took the statements,
18 found out where the jurisdiction was. She
19 found the other victims. This could not be a
20 normal investigation as far as searching for
21 evidence, because it had been so long.

22 Detective Avila got the second
23 statement from Minor 3. Yes, Minor 3 did
24 give them information and more information.

1 As Dr. Elsey explained, sometimes it just
2 takes a long time for that information, for
3 more to come out. But Detective Avila said
4 that it is not the less bit unusual for a
5 child to tell a little bit the first time and
6 then to tell more, that that is actually more
7 common than uncommon.

8 **Minor 3** says that the girls were all
9 lined up. Alison and **Minor 5** kinda alluded to
10 the same thing, these three all together.

11 The important thing that she talks
12 about is after she comes back, that's when
13 she was eight, and that is the assault that
14 she remembered and told you about in detail.
15 She came in, or was in the room across from
16 Alan's room, taking a nap. She doesn't wake
17 up until she is pulled to the edge of the bed
18 with her feet on the floor and her pants
19 down. He rapes her. She bleeds, she cleans
20 herself off. He tells her not to tell, and
21 she doesn't.

22 You can be sure that from then on
23 she did try to run from him as best she
24 could. She didn't really want to have to
25 talk about this. She tried -- she said that

1 she thought if she could just say a little
2 bit about it that would be enough. But once
3 she started thinking about it, the memories
4 came back.

5 Dr. Elsey explained to you that
6 children don't tell. It is possible to
7 remember events from the past. I think both
8 doctors told you that. Dr. Salas explained
9 that three is when you can retrieve them but
10 that -- the suggestibility things are when
11 they are children that are being interviewed,
12 not when they are adults being interviewed
13 about childhood experiences.

14 He also talked about no common
15 presentation. Many of you may expect that
16 when you talk about an assault that you'd
17 cry. In reality, a lot of the times there is
18 a flat affect. With Minor 2 and Minor 4
19 this was particular true. Robotic. Flat.
20 He explained that you are giving word but not
21 letting emotions come out.

22 With Minor 5 and Minor 3 and Minor 1,
23 there was several times that they -- you
24 could see the emotions almost coming.

25 So'Nia, -- you look at the letter,

1 it has nothing to do with this case at all.
2 Nothing about this case. But -- and it is
3 questionable whether those two pages go
4 together. But the big part about that, Mr.
5 Burns' question to her was:

6 *'Didn't you write me within the past*
7 *two years? Didn't you write me within the*
8 *last two years?'*

9 *"No, not within the last two years."*

10 That was his question.

11 There was only one part of that
12 letter that she could put a reference to and
13 that was the BellSouth job, that was in 2004.
14 And 2004 isn't within the last two years.
15 Once again, fast and loose with the truth.

16 She was not a victim. He had gone
17 away when she was growing up.

18 Vera said that she is not
19 comfortable with leaving her kids around him.
20 That **Minor 5** was living with her in '97 and
21 did not want Alan to come to that house.

22 Dr. Sala, once again, and I have
23 already gone over this, she also talked about
24 suppressed and repressed memory, which we
25 have with the -- repressed with **Minor 2** and

1 suppressed with Minor 3.

2 The evidence in this case that you
3 have, Ladies and Gentlemen, is the testimony
4 that you heard from the witness stand. Of
5 all the victims and the people that
6 corroborated what was said. You also have
7 statements and reports and the pictures. The
8 pictures are to show the house, to show you
9 where in relation one room is to the other,
10 where the bathroom is to the bedroom, just
11 things like that. The pictures of the
12 children are to show you when, what they were
13 like back then as opposed to now.

14 Mr. Burns has represented himself
15 and has every right to do that. It is his
16 right to represent himself. But that doesn't
17 mean that you don't have to follow the rules
18 of evidence. The State has to object, the
19 court has to impose its rulings. Don't feel
20 sorry for him if he seemed not to be know
21 what he was doing. This was his choice.

22 Ladies and Gentlemen, the law in
23 this case, I will go over very briefly
24 because I have gone over it with you before.

25 Criminal sexual conduct with a minor

1 is an actor engages in sexual battery with a
2 victim who is less than eleven.

3 Second degree, fourteen years of age
4 or less or less than sixteen and the person
5 is familial or is in a position of authority
6 or is older than the victim.

7 None of these require any kind of
8 force, although in this situation there was
9 force.

10 The difference between first and
11 second is the age of the victim. First is
12 when the victim is under eleven. Second is
13 when they are over eleven. That is why with
14 **Minor 1**, that she is the only one for second
15 degree, because she was older. The others
16 were under the age. That is the difference.

17 Lewd act upon a minor, there are two
18 different charges. One is the child is under
19 sixteen -- because the law changed from the
20 '80s to the '90s. But this is basically --
21 here is the other one: fondling, touching,
22 short of penetration.

23 Mr. Burns is right, his family is
24 against him. Thank goodness. Thank
25 goodness. So many families, even

1 institutions, sometimes don't stand up for
2 the victims.

3 Sexual battery -- sorry.

4 Intercourse, fellatio, cunnilingus and, of
5 course, anal intercourse. Any intrusion --
6 the different in sexual battery and the lewd
7 act is that with sexual battery that there is
8 penetration of some source. That is the
9 difference in the charges. Of course, you
10 can have both. Somebody has been touched and
11 they have also been penetrated.

12 The State must prove each of the
13 elements that I have turned over to you, each
14 of those elements beyond a reasonable doubt.
15 What is that? It is not every doubt. It is
16 not any doubt. It not the shadow of a doubt.
17 It is a doubt for which a reasonable juror,
18 seeking the truth, would not act.

19 There are few things in this world
20 that you will ever know without absolute
21 certainty. Absolute certainty is not
22 required. I submit to you that we could
23 never try a criminal case if absolute
24 certainty were the standard. If you knew
25 this without absolute certainty, you would

1 have been up there (indicating witness stand)
2 and not there (indicating jury box), because
3 you would have seen it or experienced it.

4 When you came in here on Monday
5 morning, you knew absolutely nothing about
6 this family or this situation. If you now
7 believe that this happened, the State has met
8 that burden.

9 It is important, this is an
10 important day for Mr. Burns and it's an
11 important day for these five victims. It is
12 their day in court also. They ask you and
13 the State will ask you, after you have
14 deliberated, to find a verdict that speaks
15 the truth. That is guilty, guilty, guilty,
16 guilty, guilty. Thank you.

17 THE COURT: Thank you, Ms.
18 Herring-Lash. Is there any juror that needs
19 to take a break? If so, please raise your
20 hand. (No response). Thank you.

21 Thank you, Ladies and Gentlemen.
22 Now it becomes my responsibility, of course,
23 as the trial judge to give you the law that
24 you have promised that you will accept and
25 apply fairly and impartially to those facts

1 that you will determine very shortly when you
2 begin your deliberations in this case.

3 Of course the State, Mr. Burns and
4 the Court expects that you will, when
5 instructed, begin your deliberations, apply
6 your common sense, your sense of logic and
7 reasoning, your life's experiences, fairly
8 and impartially to analyze the evidence,
9 decide the true facts, and then take the law
10 and apply it fairly and report that decision.
11 When you have that, you'll have honored that
12 commitment that you made when we started this
13 process.

14 During this instruction, I am going
15 to discuss a number of principles with you.
16 You may hear me use the term and you've heard
17 it during the trial of the case, "defendant."
18 "Defendant" is a term that we use to
19 designate the party against whom a claim is
20 made. That, of course, this case being a
21 criminal allegation is Mr. Burns.

22 It doesn't mean anything else. It's
23 just another way of referring to him. So if
24 you hear the term "defendant", just know that
25 it is a reference to Mr. Burns. Don't imply

1 anything else or infer anything else from
2 that.

3 Mr. Burns, as I mentioned to you has
4 been accused in these documents which I told
5 in my hand. I've shared with you the
6 allegations when we qualified you. They are
7 indictments. None of them are evidence, they
8 won't accompany you to our jury room. They
9 merely contain the allegations against Mr.
10 Burns.

11 Of course, as I explained to you
12 when we started, Mr. Burns has rendered a
13 plea of not guilty to each of those charges,
14 which places the burden then upon the State
15 to prove his guilt beyond a reasonable doubt.

16 As you recall, I stated that one of
17 the basic principles of law in these types of
18 disputes, that is a criminal, is that persons
19 accused of committing criminal offenses are
20 never required to come in and prove their
21 innocent. They are not required to prove or
22 to state anything. They certain are not
23 required to explain anything.

24 The law says that persons so accused
25 are to be presumed innocent. That is an

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1 active presumption. As I stated to you, that
2 means that you have to actively maintain that
3 presumption until and through your
4 deliberations until and unless you are
5 convinced beyond a reasonable doubt that the
6 State has met its burden of proof as to each
7 element of the crime specifically charged.
8 Then and only then may you change that
9 position.

10 Obviously, Ladies and Gentlemen, it
11 would naturally flow and follow that persons
12 so accused are not required to testify in his
13 or her behalf. When a person so accused
14 chooses not to, a jury may not consider that
15 under any circumstances. Because persons so
16 accused have the Constitutional right to
17 remain silent. The assertion of that right
18 cannot be used against that individual.

19 Therefore, under your oath, you are
20 to reach no inference, you are to draw no
21 conclusions whatsoever from the fact that Mr.
22 Burns did not testify. His failure to
23 testify should not even be discussed in the
24 jury room. If you do, you will have violated
25 your oath.

1 The reason of course is very plain,
2 aside from the assertion of the right. The
3 State, and the State alone, has the burden of
4 prove and they must prove its case beyond a
5 reasonable doubt before you may return a
6 verdict of guilt as to any of these charges.

7 What is a reasonable doubt? A
8 reasonable doubt is a doubt that would make
9 an conscientious, sincere juror searching for
10 the truth in the case person to hesitate to
11 act or take some action.

12 Reasonable doubt is a doubt that
13 leaves you -- beyond a reasonable doubt means
14 that you are firmly convinced of the
15 defendant's guilt as to that particular
16 charge.

17 Now, there are very few things in
18 this life and in this world that we know with
19 absolutely certainty. The law does not
20 require the State to enter proof that
21 overcomes every possible doubt. If based
22 upon your consideration of the evidence you
23 are firmly convinced of Mr. Burns' guilt as
24 to any of these charges, the you must return
25 a verdict of guilty as to that particular

1 charge.

2 If, on the other hand, you find --
3 you feel that there is a real possibility
4 that he is not guilty, then you must give him
5 the benefit of that doubt and return a
6 verdict of not guilty as to that particular
7 charge.

8 Reasonable doubt, Ladies and
9 Gentlemen, may arise from the evidence in the
10 case, or the lack of evidence in the case,
11 and it is up to you to determine whether or
12 not reasonable doubt exists in this
13 particular matter.

14 I charge you that Mr. Burns is
15 entitled to every reasonable doubt arising in
16 the whole case. That means simply this, if
17 upon any issue of fact which would be
18 essential to your returning a verdict of
19 guilty you should have a reasonable doubt as
20 to how that issue should be resolved, I would
21 instruct you that you must resolve that in
22 favor of the defendant.

23 Now, the evidence, of course, as I
24 have stated throughout that you are consider
25 consists of the testimony of witnesses or

1 exhibits that have been introduced through
2 their testimony. Nothing else.

3 There were times that evidence or
4 evidentiary matters, or exhibits, that were
5 referred to, and you heard me say for
6 "identification purposes only." If those
7 exhibits were ultimately introduced, insofar
8 as that exhibit is concerned, you can
9 certainly consider the testimony of the
10 witness. But because it was not formally
11 introduced, it will not accompany you to the
12 jury room.

13 Those that were introduced, you'll
14 consider the testimony regarding that exhibit
15 and the exhibit itself, you will review both
16 of those, evaluate both and decide what you
17 believe to be credible and believable.

18 Please remember that during the
19 trial, as I mentioned to you, that Mr. Burns
20 has the absolute right to represent himself.
21 You shouldn't consider that whatsoever
22 because that is his right and his privilege.

23 But as you know, as we know, there
24 are rules of evidence that I am required to
25 enforce in this proceeding. Anytime an

1 objection was made or any discussion was had
2 about any type of evidentiary issue, please
3 understand that that is the way that we work.
4 I had to take care of those matters of law.
5 You are not to be involved in that whatso-
6 ever. You are not to infer anything from the
7 fact that an objection was made. You're not
8 to hold that against any party.

9 If it was objectionable, or if the
10 witness was allowed to answer any party -- or
11 the -- Mr. Burns or the State was not allowed
12 to pursue the question. That should not be
13 considered by you whatsoever, because those
14 are matters for my determination. If you do
15 allow yourself to engage in that thought
16 process, you've allowed yourself to step over
17 in my area of responsibility.

18 Really probably the best example
19 that I can give you of how we work together
20 arises out of those situations. If an
21 objection was made during the trial and I
22 overruled the objection, I have simply said
23 as a matter of law that I am going to prevent
24 that question and answer. But that's as far
25 as it goes. If you take that as something

1 that you have to accept as the truth, then
2 you have allowed me to step over into your
3 area of responsibility. It stops at that
4 point, it shifts to you. Then you have to
5 decide whether or not you believe that
6 particular testimony or -- and, if so, how
7 strongly.

8 That is how we resolve those issues.
9 I resolve the legal issue. You in turn will
10 resolve the factual issues.

11 Now, remember that the remarks of
12 the attorneys and Mr. Burns are to be
13 considered by you as evidence. They are to
14 help you and to assist you in analyzing the
15 evidence and in applying the law, but you
16 should disregard any remarks of Mr. Burns or
17 the attorneys that are inconsistent with the
18 testimony of the witnesses as you recall that
19 testimony, or inconsistent with the exhibit
20 that might have been introduced through that
21 testimony.

22 Why? Because you are the sole
23 judges of the facts of this dispute. You and
24 you alone can make that determination based
25 on the evidence in this case.

1 Now, if you in your recollection
2 cannot agree on what a witness did or didn't
3 say, we have the ability to replay that
4 should that become necessary. As I
5 mentioned to you when I was qualifying you
6 generally, Ms. Garrison has the
7 responsibility of keeping the verbatim
8 record. If you need that, we can replay it
9 for your benefit should that become
10 necessary.

11 Also any statement of law by Mr.
12 Burns and/or the State that differs from my
13 statement of the law, you must disregard
14 their statement and take it as I give it to
15 you. The reason for that is that for
16 purposes of this proceeding today, I am the
17 sole judge of the law and it is my
18 responsibility to give you that law for your
19 consideration.

20 When the State has the burden of
21 prove, it is their responsibility to present
22 evidence for your consideration to prove its
23 case.

24 Evidence -- really there are two
25 types of evidence: direct and indirect. The

1 popular name for indirect evidence is
2 circumstantial evidence.

3 Direct evidence is when someone
4 testifies to a sensory perception: I saw
5 something, I heard something, I felt
6 something, or the like.

7 If you're firmly convinced as to
8 the truthfulness or credibility of that
9 particular testimony, then it would establish
10 that particular fact or circumstance.

11 Circumstantial evidence or indirect
12 evidence is when someone testifies to a
13 number of circumstances and when you link
14 them it leads you to a conclusion. Again, if
15 you're firmly convinced as to the
16 circumstances and to the link, and you're
17 firmly convinced as to the logical
18 conclusion, then it would establish that
19 particular fact and circumstance, as well.

20 Quite honestly, it's not uncommon
21 for a jury to have to consider both types of
22 evidence. Quite often both are used in
23 proving a case. Our law does make this
24 clear, though, that while both methods are
25 proper, the law makes no distinction between

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1 the weight or the value to be given either to
2 the direct or circumstantial evidence nor is
3 any greater degree of certainty required of
4 circumstantial evidence than direct evidence.
5 You are instructed to weigh all the evidence
6 and give it the weight that you think it is
7 entitled.

8 I would further instruct you,
9 though, that the mere facts that the
10 circumstances of a case are presented that
11 are strongly suspicious of guilt or that the
12 circumstances are such that a defendant's
13 guilt is probable, that would not be enough.
14 In order to sustain a conviction, the
15 evidence has to be more than a mere suspicion
16 or more than a probability. It has to be
17 such that it convinces you beyond a
18 reasonable doubt.

19 Now, how do you decide the
20 credibility and the believability and the
21 facts of a case? Well, you have to evaluate
22 the credibility and the believability of each
23 witness. That means that you have to assess
24 it, apply your common sense, sense of logic
25 and reason. You have to assess and evaluate

1 each witness even though the testimony is not
2 contradicted directly. Because there would
3 always remain the inherent credibility or
4 believability about what a witness says or is
5 testifying to.

6 There are many factors that we can
7 consider to assist us in making this type of
8 decision. I am going to discuss some of them
9 with you now. But if I don't mention a
10 method of a factor that you have used in your
11 life and you've found it to be reliable,
12 please use it when you do begin the process
13 of analyzing this case.

14 Some of the factors that we may
15 consider may be the appearance of a witness.
16 How did they appear to you, hesitant or
17 straightforward in answering questions?

18 What was the ability of the witness
19 to know the facts he or she testified to, and
20 how did the witness come to know those
21 particular facts and circumstances?

22 Was the testimony of the witness
23 consistent, was it inconsistent?

24 Was it strengthened or weakened by
25 other evidence in the case?

1 Is there a reason for a witness to
2 give testimony that may help or hurt one side
3 or the other? In other words, was the
4 witness biased or prejudiced in any fashion?

5 In making the determinations of
6 credibility and believability of the
7 witnesses, our law gives you very broad
8 discretions:

9 You have the right to believe all of
10 a witness' testimony, parts of a witness'
11 testimony, or none of a witness' testimony.

12 You can believe one witness against
13 many, many witnesses against one.

14 Now, you don't make these decisions
15 arbitrarily. But if there is a reason in the
16 case for taking that position, you have that
17 prerogative, that right because your mission,
18 your objective, is to determine the truth
19 regardless of the sources of the evidence.

20 Now, while you enjoy very broad
21 discretion and wide latitude when it comes to
22 determining the facts, you don't enjoy the
23 same with the law. You've promised that you
24 will accept the law as I give it you and
25 apply it fair and impartial. That means that

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1 you further promise -- and if you hear a
2 principle of law with which you differ, I
3 respect your right to feel that way. You may
4 even, after this proceeding, seek to have
5 some law modified or changed. That would be
6 your right in this country. But for purposes
7 of this proceeding today, you promised to set
8 aside your personal feelings of what you
9 thought the law was or should be and apply
10 the law as I give it to you. I am confident
11 that you will do that.

12 Please remember also that nothing
13 that I say is to be considered evidence or a
14 factual statement by me. That's your job,
15 not mine.

16 The order of the instruction means
17 nothing. I had to put it in some order.
18 Please consider the charge as a whole when
19 you seek to apply it to the facts as you
20 determine.

21 Let's talk about the various charges
22 that you will have to consider. First is
23 criminal sexual conduct with a minor in the
24 first degree; then, secondly, criminal sexual
25 conduct with a minor in the second degree.

1 Each of those basically have to deal with the
2 same principle -- first we will talk about
3 the similarities, which are identical. The
4 defendant in either the first or second
5 degree, the State must prove beyond a
6 reasonable doubt that the Defendant, Mr5.
7 Burns, engaged in a sexual battery with the
8 victim.

9 A sexual battery is sexual
10 intercourse, cunnilingus, fellatio or anal
11 intercourse or any intrusion, however slight,
12 of any part of a person's body or of any
13 object into the genital or anal openings of
14 another person's body except when the
15 intrusion is accomplished for medically
16 recognized treatment or diagnostic purposes.

17 In first degree, the State must
18 prove beyond a reasonable doubt that the
19 victim was less than eleven years of age at
20 the time of the battery.

21 In second degree, the State must
22 prove that the victim was at least eleven
23 years old but not more than fourteen years
24 old at the time of the sexual battery. Or
25 that the victim was less than sixteen years

1 old but at least fourteen years of age. That
2 the defendant was in the position of
3 familial, custodial or official authority to
4 coerce the victim to submit, or that the
5 victim was older than the victim.

6 Consent, willingness, ignorance or
7 indifference on the part of the minor, if
8 any, as to what was taking place, does not in
9 any way affect the charge of criminal sexual
10 conduct with a minor.

11 Furthermore, I would instruct you
12 that in either criminal sexual conduct with a
13 minor, first or second, that the victim's
14 testimony need not be corroborated.

15 The next charge is a lewd act upon a
16 child under the age of sixteen. The
17 Defendant is charged with committing that
18 offense and the State must prove beyond a
19 reasonable doubt that the Defendant was over
20 the age of fourteen.

21 Next the State must prove beyond a
22 reasonable doubt that the Defendant willfully
23 and lewdly committed or attempted a lewd and
24 lascivious act on the body, or with its
25 parts, of a child under the age of sixteen

1 with the intent to arouse, appeal to or
2 gratify the lust, passions or sexual desires
3 of the defendant or of the child.

4 "Willfully" means voluntarily and
5 intentionally with the specific intent to do
6 something that the law provides.

7 "Lewd" mean obscene, lustful,
8 indecent, lecherous.

9 "Lascivious" meaning intending to
10 incite lust, lewd and indecent behavior or
11 intending to deprave the morals to sexual
12 relations.

13 "Criminal intent" is a necessary
14 element of each of the crimes, Ladies and
15 Gentlemen, and it must be proven by the State
16 beyond a reasonable doubt. Criminal intent
17 is always a matter that must be left to you,
18 as judges of the facts, to -- by considering
19 the circumstances surrounding the situation.
20 Criminal intent therefore may be inferred
21 from circumstances shown to have existed at
22 the time the alleged act occurred.

23 Criminal intent is a state of mind
24 that operates jointly with an act in the
25 commission of the crime.

1 Intent includes those consequences
2 which represent the very purpose for which an
3 act is done or is known to be substantially
4 certain to result regardless of one's desire.
5 Criminal intent is a mental state of
6 conscious wrongdoing. That must be
7 established beyond a reasonable doubt.

8 Ladies and Gentlemen, throughout
9 this entire process you have been -- you were
10 selected, as I mentioned, to be a judge with
11 me. You and I have had the responsibility of
12 performing the tasks assigned to us as a
13 judge. That means that we don't have any
14 friends to reward, nor do we have any enemies
15 to punish. This is not always easy to
16 accomplish, I will confess from the git-go.

17 When we become a judge, we also
18 promise to set aside human emotion. That
19 sometimes is difficult. But you've promised
20 to do that, just as I did. That is what I am
21 confident that you will do, you can't be
22 motivated by any passion, anger, prejudice at
23 all. You have to methodically apply your
24 common sense, your sense of logic and reason,
25 to analyze the evidence and decide what you

1 believe to be true. Once you decide that,
2 you take the law and apply that law to those
3 facts and report your decision, whatever it
4 is, consistent with the instructions. When
5 you've done that, you will have honored the
6 commitment that you made.

7 Mr. Presiding Juror, in order to
8 assist you in reporting that verdict, I've
9 prepared a number of verdict forms. I will
10 be sending them back. I will not go over
11 them all, I will just go over one. Basically
12 they appear to be the same. The only
13 difference -- and this is to assist you -- as
14 you know, as all of you know, there are
15 multiple indictments. Rather than giving you
16 -- I've given you a number, which you will
17 note is captioned. The caption is simply to
18 facilitate the filing of the document. It
19 means nothing to you other than to designate
20 the case and the victim in that particular
21 case.

22 To assist you and the other jurors,
23 I've simply placed on each verdict form a
24 charge. Then there is a parenthesis in the
25 verdict form and that identifies the victim

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1 in that particular indictment. So when you
2 analyze it, you will know that you are
3 dealing with that victim.

4 Your choices are the same on each
5 one. There are two. The order in which they
6 appear means absolutely nothing, I had to put
7 them in some order.

8 You will note that each one has a
9 line following the choices, "Presiding
10 Juror". That will be where you will sign
11 when you have completed that form

12 Whichever the choice, I would simply
13 ask that you place a check or an x in the
14 blank that precedes the choice, then circle
15 it. Once you have done that, sign it. You
16 will have completed that verdict form.

17 Go on to the next one and so on
18 until you have completed -- addressed all the
19 charges.

20 Let's talk about it. If your choice
21 is Guilty as to a particular indictment, what
22 will you be saying? You will say simply that
23 you analyzed the evidence of that particular
24 charge by that victim and you found the
25 evidence convinced you beyond a reasonable

1 doubt as to each element and you are
2 returning a verdict of guilty.

3 Not Guilty simply says that as to
4 that particular charge by that victim you are
5 not firmly convinced of each element and,
6 therefore, you are returning a verdict of Not
7 Guilty. Why? Because the State would have
8 failed to meet its burden of proof in
9 establishing each element beyond a reasonable
10 doubt.

11 That is the way you will do it
12 through each one of them until you've answer
13 each charge.

14 In order for it to be a choice it
15 requires a vote of twelve to zero. Eleven to
16 one, ten to two, that won't work. It has to
17 be unanimous, you all must agree.

18 I know that you're anxious to get
19 started with the process, and you are almost
20 there. I told you that it would be the last
21 instruction that I will give you before you
22 left.

23 Before telling you that, I need to
24 ask if any of the first twelve of you feel
25 that you are unable to continue? If so,

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1 please raise your hand. (No response).

2 Thank you.

3 Alternates, thank you very much, it
4 appears as if the first twelve will be able
5 to continue. In just a moment, I am going to
6 excuse you all and I need to discuss my
7 charge with the attorneys and Mr. Burns. If
8 there are any additions or corrections that I
9 need to give, we will return all of you to
10 the courtroom and give you that instruction.
11 But if there aren't any, we will gather the
12 exhibits and the verdict forms and deliver
13 them to you.

14 Once you have received those
15 exhibits and verdict forms, then you may
16 begin your deliberations. But not before.

17 Now, when you retire in just a
18 moment, I am going to ask that my alternates
19 not go back to the jury room. They will take
20 you to another room and I will be in shortly
21 to discuss with you how much longer that you
22 need to remain.

23 Thank you for your attention. I
24 know that you are ready to start but you must
25 wait just a little bit longer. We will get

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1 it to you -- is the lunch here?

2 CLERK: Yes, sir.

3 THE COURT: Your lunch is here!

4 That's a good start, that's good timing.

5 Thank you so much. Please retire to your

6 jury room and await the exhibits before

7 commencing your deliberations.

8 (JURY OUT @ 2:03 P.M.)

9 THE COURT: Any exceptions or
10 additions from the State?

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

13 THE COURT: Any exceptions or
14 additions, Mr. Burns?

15 MR. ALAN BURNS: No, sir, Your
16 Honor.

17 THE COURT: Thank you very much.
18 Mr. Burns, my leader, Ms. Garrison, told me
19 that you have a few exhibits.

20 MR. ALAN BURNS: Yes, sir.

21 THE COURT: If you would return
22 those, thank you very much.

23 MR. ALAN BURNS: (Tenders to
24 reporter).

25 THE COURT: All right, we will be

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1 at-ease. We've gone through the exhibits, so
2 I think we are ready to go. Please deliver
3 the exhibits to the jury.

4 (JURY IN DELIBERATIONS @ 2:05 P.M.)

5 THE COURT: Let me dismiss the
6 alternates and I will be right back.

7 (RECESS)

8 (DEFENDANT PRESENT)

9 (REQUEST TO HEAR TESTIMONY @ 3:20 P.M.)

10 THE COURT: We have a request from
11 the jury. Let the record reflect that Mr.
12 Burns is present. Bring in the jury.

13 (JURY IN @ 3:23 P.M.)

14 THE COURT: I now have that has
15 been marked as Court's Exhibit 3 whereby you
16 are requesting the transcripts of Minor 2 and
17 the aunt -- and that'?

18 COURT REPORTER: Cathy Burns.

19 THE COURT: Cathy Burns. The day
20 may come -- it is not here yet. Some states
21 are experimenting with it, and that's a
22 normal request -- especially for visual
23 persons, it would be nice to look at. We
24 don't have that capability. What we can do
25 is replay the testimony for you. We're

1 prepared to do that if that's what you need
2 us to do.

3 (SO ENTERED AS COURT'S EXHIBIT 3)

4 FOREMAN: That would be helpful.

5 THE COURT: What I am going to do
6 is this -- I don't want to know what you're
7 looking for -- and when I say you, I mean the
8 jury panel as a whole. What I will do is I
9 will start it -- and you will recall that the
10 format for examination or testimony is direct
11 exam, cross exam, redirect and recross. The
12 difference between the two is that on
13 redirect you're limited to matters brought
14 out on cross, in recross you're limited to
15 matters brought out on redirect. With that
16 exception -- I don't know where it comes,
17 whatever it is that you're looking for. But
18 we will play that testimony until you tell us
19 that you or other jurors have heard what they
20 need and then we will move to the next
21 person. We will do them in the order in
22 which she (court reporter) replays them, if
23 that is agreeable.

24 FOREMAN: That's fine.

25 THE COURT: Ms. Garrison, if you

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1 would, let's play the testimony for Minor 2.

2 COURT REPORTER: This microphone
3 is not working. If we had speakers, it might
4 help.

5 SOLICITOR HERRING-LASH: We have
6 some other speakers. She will go and get
7 them.

8 TECHNICIAN: (Sets up speakers).

9 COURT REPORTER: This is the
10 testimony of Minor 2, direct
11 examination by Solicitor Herring-Lash:

12 Minor 2, being duly
13 sworn to tell the truth, the whole truth
14 and nothing but the truth, testified, as
15 follows:

16 DIRECT EXAMINATION

17 BY SOLICITOR HERRING-LASH:

18 Q. Minor 2, what is your date of birth?

19 A. [REDACTED]

20 Q. Where do you live?

21 A. Mount Pleasant.

22 Q. Where do you work?

23 A. Currently I am unemployed, and I am
24 also a model.

1 Q. A model?

2 A. Yes.

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

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

7 Q. Who was in your family, your direct
8 family? Like your mother, your step-
9 father, who are they?

10 A. My mother is Karen Smalls.

11 My stepfather is Ray Smalls.

12 I have an older brother, Kevin
13 Washington; two younger sisters, Cadre and
14 Kimberly Smalls. I have a son, Jacques
15 Coltrane (phonetic).

16 Q. Minor 2, could you move that micro-
17 phone a little closer to you so that we
18 can make sure that we hear what you say?

19 THE COURT: You'll have to pull
20 up to that.

21 DIRECT EXAMINATION CONTINUED

22 BY SOLICITOR HERRING-LASH:

23 Q. Minor 2, are you related to the
24 Defendant, Alan Burns?

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1 A. Yes.

2 Q. How are you related?

3 A. He is my maternal uncle.

4 Q. Your mom's brother?

5 A. Yes.

6 Q. Is he an older brother or a younger
7 brother?

8 A. Younger.

9 Q. Do you have lots of cousins?

10 A. I do.

11 Q. A pretty big family?

12 A. (Affirmative nod), very big.

13 Q. Where does your grandparents live --
14 or your grandmother?

15 A. She resides off of Rands Hill Road in
16 Mount Pleasant.

17 Q. What about your grandfather, is he
18 still alive?

19 A. He's deceased.

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

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

23 Q. I am going to show you what has been
24 marked as State's Exhibit 1, can you

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1 identify this as your grandmother's house?

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

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

6 A. Yes.

7 SOLICITOR HERRING-LASH: Your
8 Honor, at this time the State would move
9 State's Exhibit 1 into evidence?

10 THE COURT: Any objection, Mr.
11 Burns?

12 MR. ALAN BURNS: No objection.

13 THE COURT: Without objection,
14 State's Exhibit 1, a photograph, is
15 admitted.

16 (SO ENTERED AS STATE'S EXHIBIT 1)

17 DIRECT EXAMINATION CONTINUED

18 BY SOLICITOR HERRING-LASH:

19 Q. Behind you, is this the photo that you
20 just identified?

21 A. Yes.

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

24 A. Yes.

1 Q. What -- in your very early years, was
2 he there?

3 A. Yes.

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

5 A. I was around the age of seven.

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

7 A. As far as in the house?

8 Q. (Affirmative nod).

9 A. I was inside the dining room.

10 Q. That was inside that house?

11 A. Yes.

12 Q. And you said that you were around the
13 age of seven or eight?

14 A. Yes.

15 Q. Do you recognize this picture?

16 A. Yes.

17 Q. What is that?

18 A. This is a school photograph.

19 Q. What year?

20 A. I believe 1997.

21 Q. What grade were you in then?

22 A. First grade.

23 Q. First grade, '97?

24 A. Yes.

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

2 A. Yes.

3 Q. Tell me about your first meeting with
4 him.

5 A. I believe that I walked in with my
6 Aunt Kathy and -- it was through the back
7 door, so we had to go through the kitchen
8 to get to the dining room. He stood by
9 the china hutch. My Aunt Cathy asked me
10 if I knew who that was. I told her 'no.'
11 She said 'that's your uncle.' I kinda was
12 lost because I'd never met him before.
13 She explained that was my mother's younger
14 brother, that he'd went away for a while,
15 he's back, so on and so forth.

16 Q. And what happened after that?

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

19 Q. When they went to the store, were you
20 left at home?

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

22 Q. What happened while you were at home?

23 A. He assaulted me.

24 Q. Can you repeat that?

1 A. He assaulted me.

2 Q. Can you explain to the jury what
3 happened?

4 A. Yes. He kinda started coming towards
5 me, touching me. He pulled down his
6 pants, exposed himself to me. He started
7 putting his penis towards my face, made me
8 put my mouth on his penis.

9 Q. Where were you when he was doing this?

10 A. This was inside my grandmother's
11 middle room, next to her bedroom.

12 Q. Minor 2 do you recognize this room?

13 A. Yes.

14 Q. Is that the room that you're talking
15 about?

16 A. Yes.

17 SOLICITOR HERRING-LASH: Your
18 Honor, at this time the State would move
19 State's Exhibit 4 into evidence.

20 THE COURT: Any objection?

21 MR. ALAN BURNS: No objection.

22 THE COURT: State's Exhibit 4
23 is admitted, a photograph.

24 (SO ENTERED AS STATE'S EXHIBIT 4)

1 DIRECT EXAMINATION CONTINUED

2 BY SOLICITOR HERRING-LASH:

3 Q. And what happened -- you told us some
4 of what happened. What happened after
5 that?

6 A. He -- I actually started crying. He
7 was forcing himself on me.

8 Q. What do you mean by forcing himself on
9 you?

10 A. As putting his penis in my mouth.
11 From that he started getting angry.

12 Q. How could you tell that he was angry?

13 A. He started getting hostile. He
14 started grabbing me very, very tightly
15 around my wrists. From there, he told me
16 to pull down my pants. I kinda didn't
17 want to, I was fighting. He made me pull
18 down my pants. He made me grab my ankles.

19 Q. He made you what?

20 A. Grab my ankles and then he put his
21 penis inside of me, he penetrated me.

22 Q. What did you do?

23 A. I screamed and cried.

24 Q. Did he do anything to make you stop

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1 crying or screaming?

2 A. To make me stop screaming, he put a
3 towel in my mouth.

4 Q. A what?

5 A. A towel in my mouth.

6 Q. And what were you thinking of,

7 Minor 2 ?

8 A. 'Why?' I didn't know what was
9 happening, I was so confused. I did not
10 understand at all. I was lost as to who
11 this person was and what was going on.

12 Q. What happened after he assaulted you?

13 A. He grabbed the knife and he cut me a
14 few times on my left leg, on my shin, on
15 my knee, and as well on my left arm.

16 Q. What did he say?

17 A. He told me that he has ---

18 Q. Don't say anything that he said. Did
19 he threaten you?

20 A. He threatened me.

21 Q. And what happened after that?

22 A. I was very, very afraid and I ran into
23 my grandmother's kitchen and ---

24 Q. Did you clean up in any way before

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1 that?

2 A. He made me take a bath.

3 MR. ALAN BURNS: Objection, Your
4 Honor.

5 THE COURT: What is the basis
6 of objection?

7 MR. ALAN BURNS: She's leading.

8 THE COURT: Overruled.

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR HERRING-LASH:

11 Q. Explain.

12 A. He made me take a bath. He made me
13 wash off. He stood in the doorway while I
14 washed off.

15 Q. And what happened after you washed
16 off?

17 A. I ran into my grandmother's kitchen
18 and got in the kitchen cabinet under the
19 sink.

20 Q. And what is the next thing that you
21 remember happening?

22 A. I remember either my aunt or my mother
23 coming home and finding me under the
24 cabinet.

1 Q. Did you tell them what had happened
2 and 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
8 day?

9 A. (No verbal response).

10 Q. Any other location?

11 A. Yes.

12 Q. Tell us about that.

13 A. There were several times. There was
14 an incidence where he picked me up from
15 the boys and girls center which was in the
16 old village area of Mount Pleasant.

17 Q. The what?

18 A. The old village area of Mount
19 Pleasant. He said that he was going to
20 take me home. About halfway from one
21 destination to the next, I realized that
22 we weren't going anywhere near where I
23 lived. He actually took me by the
24 preschool where I used to go.

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1 Q. Do you know what street that was on?

2 A. The preschool is on Labor Camp Road.

3 Q. On Labor Camp Road?

4 A. Yes.

5 Q. Can you speak up a little bit,

6 Kentril?

7 A. Is that better?

8 Q. Yes. Thank you. What happened on

9 Labor Camp Road?

10 A. He actually assaulted me again inside

11 the back of his van. It was a red Ford

12 Astro, I believe.

13 Q. And tell the jury about how that

14 occurred?

15 A. We got to the location and he looked

16 at me, he just gave me this stare. He

17 walked around from the driver's side to

18 the passenger side and pulled me out and

19 told me, "Don't ever forget I will hurt

20 you."

21 Q. What happened after he pulled you out?

22 A. He pulled me in the back of his van.

23 He actually only had one seat, which was

24 in the very far back of the van. He then

1 *assaulted me again.*

2 *Q. When you say "assaulted you", what did*
3 *he do?*

4 *A. Raped.*

5 *Q. What does that mean?*

6 *A. Penetration with his penis.*

7 *Q. Did you have your clothes on or off?*

8 *A. He pulled down my pants.*

9 *Q. What about his clothes?*

10 *A. His clothing was half off. As far as*
11 *his pants he kinda undid his belt and his*
12 *zipper.*

13 *Q. What about your shirt or his shirt?*

14 *A. They both were on. He didn't make me*
15 *take it off and he didn't bother to take*
16 *his off at all either.*

17 *Q. They were both on?*

18 *A. Yeah.*

19 *Q. Where did y'all go after you left*
20 *Labor Camp Road?*

21 *A. He took me back to my grandmother's*
22 *house.*

23 *Q. Did you say anything to anybody then?*

24 *A. Not directly.*

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1 Q What do you mean, not directly?

2 A. It was more along the lines of me just
3 walking in, going to sleep, waking up
4 crying, saying that I had a nightmare. I
5 just was afraid. I didn't want any
6 dinner. I just -- (pause) -- kinda gave
7 signs, I guess, but never actually said
8 something.

9 Q. Did anyone pick up on those signs?
10 Question you about them?

11 A. No, not at the time.

12 Q. Was there any other location where
13 anything occurred?

14 A. Yes.

15 Q. Where was that?

16 A. A few of my relatives' houses.

17 Q. Do you remember any in particular?

18 A. My birthday.

19 Q. Which house was that at, do you
20 remember?

21 A. I don't necessarily remember where
22 that happened. There was an instance
23 where there was a family gathering and all
24 the children would be outside, inside or

1 something vice-versa. He would kind find
2 his way, walk towards me. That was also
3 the time where he would -- we had a shop
4 outside, my grandfather had a speakeasy
5 and he would cut hair there. There were
6 several times inside the speakeasy.

7 Q. Let me show you what has been marked
8 as State's Exhibits 6, 7 and 8. Starting
9 with Exhibit 6, can you tell us what that
10 is?

11 A. This is a picture of my grandmother's
12 backyard.

13 Q. Can you see what you call the
14 speakeasy in that picture?

15 A. On the far left-hand side.

16 Q. What about State's Exhibit 7?

17 A. That's a door, the door there was the
18 main entrance.

19 Q. To the what?

20 A. To the speakeasy.

21 Q. What about State's Exhibit 8?

22 A. This was the back room that he
23 utilized as -- I guess you could call
24 storage. There was a bathroom where that

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1 *sheetrock is, where the two lines are, and*
2 *there was a cot on the right-hand side.*

3 Q. A cot?

4 A. Yes.

5 SOLICITOR HERRING-LASH: Your
6 Honor, at this time the State would ask to
7 admit State's Exhibits 6, 7, and 8.

8 THE COURT: Any objection?

9 MR. ALAN BURNS: No objection.

10 THE COURT: Without objection,
11 State's Exhibits 6, 7 and 7 are admitted.

12 (SO ENTERED AS STATE'S EXHIBIT 6)

13 (SO ENTERED AS STATE'S EXHIBIT 7)

14 (SO ENTERED AS STATE'S EXHIBIT 8)

15 DIRECT EXAMINATION CONTINUED

16 BY SOLICITOR HERRING-LASH:

17 Q. You said that y'all called that the
18 *speakeasy?*

19 A. Yes.

20 Q. Look behind you, is that the picture
21 that you identified a moment ago as your
22 first grade picture?

23 A. Yes.

24 Q. When this first event happened?

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1 A. Yes.

2 Q. Can you show the jury in this picture
3 where the speakeasy is?

4 A. It's on this left-hand side
5 (indicating).

6 Q. Is that it?

7 A. Yes.

8 Q. Is that inside?

9 A. Yes.

10 Q. What happened in the speakeasy, why
11 would you be going in there?

12 A. That is where he had a barbershop, as
13 he called it.

14 Q. To cut hair?

15 A. Yes.

16 Q. Did he cut your hair?

17 A. Yes.

18 Q. Can you tell the jury what happened in
19 the speakeasy?

20 A. Normally we would be around -- I mean,
21 as far as the family as a whole. It could
22 be any occasion. He would actually say to
23 my mom, [Minor 2] needs a haircut' or
24 something of that nature.

1 Q. How did you act about getting your
2 hair cut?

3 A. Very, very afraid. Literally I said
4 "I don't want a haircut." I protested
5 lots of times. I even cried.

6 Q. But you had to get it anyway?

7 A. I had to get it anyway.

8 Q. What happened in the speakeasy?

9 A. Inside the speakeasy where the cot was
10 ---

11 Q. Can you see in that picture where the
12 cot was?

13 A. On this right-hand side, on the far
14 end where the box was.

15 Q. Where the box thing is?

16 A. Yeah.

17 Q. What happened in there?

18 A. He raped me again there.

19 Q. Can you explain? Was it on the cot?

20 A. Yes.

21 Q. How were you on the cot? What
22 position?

23 A. I was actually humped over, meaning my
24 head was down.

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1 Q. What about your uncle, what position
2 was he in?

3 A. Standing.

4 Q. Where was he standing?

5 A. He would be standing at the lot end of
6 the bed or cot.

7 Q. You said that you were bunked over?

8 A. Yeah.

9 Q. What happened?

10 A. He anally penetrated me.

11 Q. Did you have your clothes on?

12 A. No.

13 Q. Where were they?

14 A. He actually made me take all of them
15 off.

16 Q. What about your shirt?

17 A. Including my shirt.

18 Q. Is that the only time you can remember
19 when you had to take all of your clothes
20 off?

21 A. It seemed like every time that we went
22 to the speakeasy that he made me take all
23 of my clothes off.

24 Q. So it happened more than once in the

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1 speakeasy?

2 A. Yes.

3 Q. What about Mr. Burns' clothing?

4 A. He never really took off his clothing,
5 he just kinda exposed his front/genitals.

6 Q. During this time, did you continue to
7 be around him?

8 A. I tried not to.

9 Q. But did you have to?

10 A. I mean, there were times when we --
11 like we might be leaving for church or we
12 would all have to be together for dinners,
13 for birthdays, anniversaries, holidays.
14 He would just make his way around, kinda
15 making sure, talking to me, saying
16 something as a reminder.

17 Q. Did you ever think about trying to
18 tell anybody back then?

19 A. No, I was too afraid -- to die.

20 Q. Now, did Mr. Burns leave Charleston
21 and go away at some point?

22 A. At some point, I do remember him not
23 being around. I didn't know where he was.

24 Q. Did you stay in Charleston when he was

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1 gone?

2 A. Yes.

3 Q. Or in Mount Pleasant?

4 A. Yes.

5 Q. Did you go to Wando High School?

6 A. I did.

7 Q. When did you graduate from Wando High?

8 A. In 2008.

9 Q. Where did you go after that?

10 A. I went to Coastal Carolina University.

11 MR. ALAN BURNS: Could he speak
12 up?

13 THE COURT: Yes. Pull up so
14 that you can speak closely into that mic,
15 please.

16 DIRECT EXAMINATION CONTINUED

17 BY SOLICITOR HERRING-LASH:

18 Q. You have a very low voice, so try to
19 bring it up. Okay?

20 A. Okay.

21 Q. You went to Coastal Carolina?

22 A. Yes.

23 Q. Where did you go -- when did you go?

24 Sorry. When did you go to Coastal

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1. Carolina?

2. A. In 2008, the same year that I
3. graduated.

4. Q. And when was the first time that you
5. told someone?

6. A. The first time I actually said
7. directly that he did something to me was
8. in 2010, I believe that it was.

9. Q. Who was that?

10. A. It was my mother.

11. Q. Where were you when you told your
12. mother?

13. A. I was at a friend's house.

14. Q. Were you at college or here?

15. A. At college.

16. Q. And how did you tell her, was it in
17. person or ---

18. A. It was over the phone.

19. Q. Tell us about that.

20. A. I was actually with my friends and we
21. were watching TV, but we were all in
22. conversation. I looked up and I saw that
23. a law show was on, of some sort. For some
24. reason I just started remembering that

1 time was running out. I kinda started
2 panicking. I got up and I went to the
3 bathroom. I was very hysterical. It all
4 just came flashing back to me that Uncle
5 Alan did something to me. I was very,
6 very hysterical. Very hysterical.

7 Q. And you called your mom?

8 A. I ran out of the house, went to my
9 car, called my mom.

10 Q. Did she come?

11 A. Yes, sometime later.

12 Q. She was coming from Mount Pleasant?

13 A. Yes.

14 Q. And did you tell her what had
15 happened?

16 A. I did, (affirmative nod).

17 Q. Did there come a time when you decided
18 to go to the police?

19 A. Yes.

20 Q. Do you remember about when that was
21 that you went to the police?

22 A. It was in February of 2010.

23 Q. Who went with you?

24 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
4 chance to. But the second time that we
5 went, I spoke to Detective Bacon and gave
6 her a statement.

7 Q. When you talked to Detective Bacon,
8 did your mother go to the Police
9 Department with 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
16 her 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
23 there were other people in your family
24 that she needed to talk to?

1 A. Yes, I told her about Minor 5 and
2 Minor 4.

3 Q. Had your mother told you about them?

4 A. No.

5 Q. When did you first hear about these
6 other cousins?

7 A. It was my winter break in 2009 from
8 college. And I was actually at work, at
9 Dunleavy's Pub, where I worked with my
10 Aunt Cathy.

11 COURT REPORTER: The name of the
12 pub, again?

13 THE WITNESS: Dunleavy's. I
14 -- we were talking and I -- she worked
15 with the Humanity Services and we went
16 from talking about STDs to things of
17 sexual nature. After some of my responses
18 to some of the things that she said, she
19 kinda said, 'You know, something happened
20 years ago to Minor 4 and to Minor 5

21 DIRECT EXAMINATION CONTINUED

22 BY SOLICITOR HERRING-LASH:

23 Q. And -- go ahead.

24 A. When she said that, I kinda -- I froze

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1 up. I kinda questioned myself if she knew
2 what happened.

3 Q. If she had been told about you?

4 A. Yes.

5 Q. And when you went to the police
6 department, you did tell them about these
7 other people?

8 A. Yes.

9 Q. And, Minor 2, is this something that
10 is easy for you to talk about?

11 A. No.

12 Q. How do you feel about having told and
13 being here?

14 A. Cold, numb, I feel -- (pause) --
15 literally words cannot describe.

16 FOREMAN: We've heard what we
17 needed to hear.

18 THE COURT: I understand that
19 concludes that witness.

20 FOREMAN: Yes, sir.

21 THE COURT: Do you want to move to
22 the next witness?

23 FOREMAN: If we could have some
24 time to discuss among ourselves ---

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1 THE COURT: Very well, you may
2 retire to your jury room and continue your
3 deliberations.

4 (JURY OUT @ 4:10 P.M.)

5 THE COURT: Exceptions or
6 additions from the State?

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

9 THE COURT: Any exceptions or
10 additions from Mr. Burns?

11 MR. ALAN BURNS: No, sir.

12 THE COURT: Very well, we will be
13 at-ease.

14 (JURY IN DELIBERATION)

15 (NOTIFIED OF JURY NOTE @ 4:50 P.M.)

16 THE COURT: I now have what we
17 will mark as Court's Exhibit 4.

18 (SO ENTERED AS COURT'S EXHIBIT 4)

19 THE COURT: It is a note from the
20 jury. Are there two indictments involving

21 Minor 1

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

24 THE COURT: Two criminal sexual
25 conduct, second degree; one digital

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1 penetration, the other sexual intercourse.

2 SOLICITOR HERRING-LASH: Yes.

3 THE COURT: Court's Exhibit 4
4 says, "Additional clarification on sexual
5 conduct for [Minor 1] [REDACTED]" I am going to
6 discuss the two indictments. I assume they
7 don't need any further definition but I'll
8 find out. Bring in the jury.

9 (JURY IN @ 4:52 P.M.)

10 THE COURT: Mr. Presiding Juror,
11 I have your note, which we have marked as
12 Court's Exhibit 4, which asks for a
13 clarification of criminal sexual conduct for
14 [Minor 1] [REDACTED].

15 I am not sure that I understand what
16 -- there are two indictments alleging conduct
17 which would constitute, if proven, criminal
18 sexual conduct in the second degree.

19 Indictment 11-3387, which is one,
20 alleges sexual intercourse as being the act.
21 They both allege it occurring during the same
22 period of time -- July 1997 to June 30, 2001.
23 The second indictment, which is 3388, alleges
24 digital penetration. The distinction is that
25 one alleges sexual intercourse, the other

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1 alleges digital penetration.

2 Those are the only two counts
3 concerning [Minor 1] [REDACTED]. After defining
4 those for you, do you need further
5 instruction on the criminal sexual conduct
6 with a minor?

7 FOREMAN: No, sir, that clears
8 it up.

9 THE COURT: Thank you, sir. You
10 may retire and continue your deliberations.

11 (JURY OUT @ 4:55 P.M.)

12 THE COURT: Any exceptions or
13 additions from the State?

14 SOLICITOR HERRING-LASH: No, Your
15 Honor.

16 THE COURT: Any exceptions of
17 additions from Mr. Burns?

18 MR. ALAN BURNS: No, sir.

19 THE COURT: Thank you very much.
20 We will be at-ease again.

21 (NOTIFIED OF REQUEST FOR TESTIMONY

22 OF [Minor 1] [REDACTED] @ 5:00 P.M.)

23 (SO ENTERED AS COURT'S EXHIBIT 5)

24 (DEFENDANT PRESENT)

25 THE COURT: Court's Exhibit 5.

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1 They want to hear the testimony of Minor 1

2 Bring in our jury, please.

3 (JURY IN @ 5:03 P.M.)

4 THE COURT: I understand that the
5 jury would like to hear the testimony of

6 Minor 1 We are prepared to play
7 that. As before, we will play it until you
8 give us notice to stop.

9 COURT REPORTER: Testimony of
10 Minor 1 direct examination by
11 Solicitor Herring-Lash:

12 Minor 1, being duly
13 sworn to tell the truth, the whole truth
14 and nothing but the truth, testified, as
15 follows:

16 DIRECT EXAMINATION

17 BY SOLICITOR HERRING-LASH:

18 Q. Minor 1 where do you live?

19 A. Bachelor Street.

20 Q. Where do you work?

21 A. I do private nursing.

22 Q. Do what?

23 A. I do private nursing.

24 Q. What is your date of birth?

1 A. [REDACTED] [REDACTED] [REDACTED].

2 Q. How do you know the Burns family?

3 A. I was adopted into the Burns family.

4 Q. About what age were you, if you
5 remember, when you were first adopted?

6 A. Around eleven.

7 Q. How did you come to be adopted into
8 that family?

9 A. Through Alice Singleton.

10 Q. Explain that. Did she know your
11 mother?

12 A. My aunt and her was best friends.

13 Q. Did something happen to your aunt?

14 A. Yes, on the day that she was supposed
15 to come get me, she passed away.

16 Q. Then you stayed with who?

17 A. Alice Singleton.

18 Q. Is Allice Singleton related to Mr.
19 Burns?

20 A. Yes.

21 Q. What relationship are they?

22 A. Sister/brother.

23 Q. So when you came into their family,
24 did you meet Alan?

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1 A. Yes.

2 Q. Did you visit with your grandparents?

3 A. Yes.

4 Q. Did you come to, at some point, think
5 of Oliver and Alisteen Burns as your
6 grand-parents?

7 A. Yes.

8 Q. And how often would you visit over
9 there?

10 A. I'd come every day, at least every day
11 or every other day.

12 Q. Showing you what has been marked for
13 ID as State's Exhibit 20. Do you
14 recognize that?

15 A. Yes.

16 Q. Who is that in the picture?

17 A. Me, my mom, my Cousin Latasha.

18 Q. Is that shortly after you came with
19 your mother?

20 A. Yes.

21 SOLICITOR HERRING-LASH: Your
22 Honor, at this time the State would offer
23 State's Exhibit 20 into evidence.

24 THE COURT: Any objection, Mr.

1 Burns?

2 MR. ALAN BURNS: No objection.

3 THE COURT: Without objection,
4 State's Exhibit 20 is admitted.

5 (SO ENTERED AS STATE'S EXHIBIT 20)

6 DIRECT EXAMINATION CONTINUED

7 BY SOLICITOR HERRING-LASH:

8 Q. So is that your mom or who is that?

9 A. That is my mom.

10 Q. How close did your mom live to the
11 Burns family, if you have an estimate?

12 A. I would say no more than five minutes
13 driving from them.

14 Q. But she was not one of the people that
15 lived right in that very area?

16 A. Oh, no, ma'am.

17 Q. Do you remember when you first met the
18 Defendant, Alan Burns?

19 A. Yes.

20 Q. When was that?

21 A. I can't remember what year that it was
22 but I remember meeting him.

23 Q. Do you remember where you were when
24 you first met him?

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1 A. Yes.

2 Q. Where were you?

3 A. My mother's house.

4 Q. Did he make any comments to you?

5 A. No, not at first.

6 Q. Ever?

7 A. Yes.

8 Q. What were those?

9 A. It was more sexual comments like I'm
10 pretty or like I have some pretty breasts.

11 Q. Did he ever touch you in any way?

12 A. Then or?

13 Q. Then, in the beginning.

14 A. Not in the beginning, no.

15 Q. Did there some a time when he did do
16 something inappropriate to you?

17 A. Yes.

18 Q. Explain when that was?

19 A. First it was more like feeling on me,
20 putting his hand in my pants.

21 Q. When you say put his hand in your
22 pants, what do you mean?

23 A. Just like squeezing my breast or
24 touching my private area, or something

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1 *like that.*

2 *Q. Did he put his hand in your pants?*

3 *A. Yes.*

4 *Q. Did he touch your private area on top*
5 *or inside?*

6 *A. Top, side, which -- yes.*

7 *Q. Inside?*

8 *A. Yes.*

9 *Q. Do you know where you were when this*
10 *happened?*

11 *A. I could be at my mother's house, my*
12 *grandmother's house.*

13 *Q. And is there a particular event that*
14 *you remember?*

15 *A. I remember all of them.*

16 *Q. Is there an event where more happened*
17 *than touching inside your pants?*

18 *A. By day at my grandmother's house -- it*
19 *was like a Monday through Friday because*
20 *my mom was at work. She was just getting*
21 *off, she was tired. She told someone to*
22 *come get me, but then Alan was like --*
23 *well, Mr. Burns -- he was going to go over*
24 *there anyway to look at her car because*

1 something was wrong with it. So he said -
2 --

3 Q. Did he work on her car?

4 A. Yes. And he said that he would take
5 me. But would he took me, instead of us -
6 - we came out of the -- instead of us -- I
7 think that's like a right turn. We kept
8 on going straight across ---

9 Q. Let me show you -- (displaying map).

10 SOLICITOR HERRING-LASH: Your
11 Honor, I just want to show this to the
12 witness for demonstrative purposes only.

13 THE COURT: Is it marked?

14 SOLICITOR HERRING-LASH: It is not
15 marked.

16 THE COURT: Let's mark it,
17 please, for demonstrative purposes only.

18 COURT REPORTER: State's Exhibit
19 21.

20 THE COURT: State's Exhibit 21
21 is a map affixed to a board for ID
22 purposes only.

23 (SO ENTERED AS STATE'S EXHIBIT 21 FOR ID)

24 DIRECT EXAMINATION CONTINUED

1 BY SOLICITOR HERRING-LASH:

2 Q. Minor 1, you said that you left your
3 grandparents' house?

4 A. Um-humm.

5 THE COURT: Was that a "yes"?

6 DEFENDANT: Yes.

7 SOLICITOR HERRING-LASH: May
8 the witness come down?

9 THE COURT: You may, but keep
10 your voice raised when you -- you may step
11 down.

12 DIRECT EXAMINATION CONTINUED

13 BY SOLICITOR HERRING-LASH:

14 Q. Minor 1, to orient you, this is
15 Venning Road. What road did your
16 grandparents live on?

17 A. Which one is this?

18 Q. This is Venning Road and this is Rands
19 Hill.

20 A. Where is my grandmother's house?

21 Q. Rands Hill.

22 A. (Affirmative nod).

23 Q. This is Venning Road. You said that
24 y'all went on Venning Road.

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1 A. What is this roundabout?

2 Q. That's Rifle Range and Venning.

3 A. So my grandmother's house is this was?

4 THE COURT: No, ma'am, you
5 can't ask Ms. Herring-Lash.

6 THE WITNESS: Okay. This is
7 my grandmother's house. We came out there
8 the roundabout is and we ---

9 THE COURT: Ma'am, can you get
10 on the side so that the jury can see.

11 THE WITNESS: My
12 grandmother's house is right here. We
13 turned this way. The roundabout wasn't
14 always there, they've since build that
15 there. It just went straight.

16 DIRECT EXAMINATION CONTINUED

17 BY SOLICITOR HERRING-LASH:

18 Q. Where did you go?

19 A. We went straight back here. There
20 were some houses back here.

21 FOREMAN: Thank you, Your Honor.

22 THE COURT: Thank you. You may
23 retire and resume your deliberations. Thank
24 you.

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1 (JURY OUT @ 5:08 P.M.)

2 THE COURT: Exceptions or
3 additions from the State?

4 SOLICITOR HERRING-LASH: No, Your
5 Honor.

6 THE COURT: Exceptions or
7 additions, Mr. Burns?

8 MR. ALAN BURNS: No, sir, Your
9 Honor.

10 (JURY IN DELIBERATION)

11 (NOTIFIED OF VERDICT @ 5:10 P.M.)

12 (DEFENDANT PRESENT)

13 THE COURT: I am advised that the
14 jury has reached a verdict. I understand --
15 notwithstanding what I have charged the jury,
16 I am a human being and I understand the
17 emotion that has been flowing in this room.
18 I understand the human reaction and the
19 desire to express certain things. But one
20 thing is for sure. We are going to try to
21 continue to have a dignified atmosphere in
22 this process. These folks have made a
23 sacrifice for everybody in this room and more
24 importantly to this process and the State of
25 South Carolina.

1 When the verdict is published, I do
2 not want any response whatsoever. If anybody
3 does, if I hear any sounds, crying, laughing,
4 cheering, anything, then I will deal with you
5 as soon as I discharge the jury. That will
6 be contempt of court. I understand that may
7 be difficult. So if you feel like you might
8 have a problem restraining yourself, I think
9 it is a good idea to leave now. If you
10 remain, you remain under those terms.

11 If anybody wants to leave, leave
12 now. The doors are going to be locked.

13 COURT REPORTER: Your Honor, one
14 lady wants out.

15 THE COURT: Please let anyone who
16 wants to leave, to leave now. Then the doors
17 are to be locked.

18 Is the State ready to receive the
19 verdicts?

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

22 THE COURT: Is the defense ready
23 to receive the verdicts?

24 MR. ALAN BURNS: Yes, sir.

25 THE COURT: Mr. Burns, when I

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1 receive the verdicts and start to publish it,
2 I am going to ask that you please rise at
3 that point.

4 MR. ALAN BURNS: (Affirmative
5 nod).

6 THE COURT: Let's bring in our
7 jury.

8 (JURY IN @ 5:15 P.M.)

9 THE COURT: Mr. Presiding Juror, I
10 understand that the jury has reached a
11 verdict?

12 FOREMAN: Yes, sir.

13 THE COURT: Please tender the
14 verdict forms to the bailiff?

15 FOREMAN: (Complies)

16 BAILIFF: (Tenders to court)

17 THE COURT: (Upon review), the
18 verdict forms have been properly completed.
19 I ask the defendant to please rise.

20 MR. ALAN BURNS: (Complies).

21 THE COURT: All of these verdicts
22 will be -- I will publish the indictment
23 number but they are all captioned the State
24 of South Carolina versus Alan Lee Burns.

25 The first one is Indictment 11-3390,

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1 Minor 2 (reading): "We, the jury
2 by unanimous consent find the Defendant, Alan
3 Lee Burns, on the charge of criminal sexual
4 conduct with a minor in the first degree,
5 Guilty." Signed by Mr. Olmstead as the
6 presiding juror, dated August 10th, 2012.

7 Indictment 11-GS-10-3391, (reading):
8 "We, the jury by unanimous consent find the
9 Defendant, Alan Lee Burns, on the charge of
10 criminal sexual conduct with a minor in the
11 first degree, Guilty." This is in connection
12 with Minor 2 . Signed by Mr.
13 Olmstead as the presiding juror, dated August
14 10th, 2012.

15 Indictment 11-3392, Minor 2
16 Minor 2 (reading): "We, the jury by
17 unanimous consent find the Defendant, Alan
18 Lee Burns, on the charge of lewd act upon a
19 minor, Guilty." Signed by Mr. Olmstead as
20 the presiding juror, dated August 10th, 2012.

21 Indictment 11-4779, in connection
22 with Minor 4 (reading): "We, the jury
23 by unanimous consent find the Defendant, Alan
24 Lee Burns, Guilty on the charge of lewd act
25 on a minor." Signed by Mr. Olmstead as the

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1 presiding juror, dated August 10th, 2012.

2 Indictment 11-4778, in connection
3 with [Minor 3] [REDACTED], (reading): "We, the jury
4 by unanimous consent find the Defendant, Alan
5 Lee Burns, on the charge of lewd act upon a
6 minor, Guilty." Signed by Mr. Olmstead as
7 the presiding juror, dated August 10th, 2012.

8 Indictment 11-4776, in connection
9 with [Minor 3] [REDACTED], (reading): "We, the jury
10 by unanimous consent find the Defendant, Alan
11 Lee Burns, on the charge of criminal sexual
12 conduct with a minor in the first degree,
13 Guilty." Signed by Mr. Olmstead as the
14 presiding juror, dated August 10th, 2012.

15 Indictment 11-4777, in connection
16 with [Minor 3] [REDACTED], (reading): "We, the jury
17 by unanimous consent find the Defendant, Alan
18 Lee Burns, on the charge of criminal sexual
19 conduct with a minor in the first degree,
20 Guilty." Signed by Mr. Olmstead as the
21 presiding juror, dated August 10th, 2012.

22 Indictment 12-3172, [Minor 5] [REDACTED]
23 [REDACTED] (reading): "We, the jury by unanimous
24 consent find the Defendant, Alan Lee Burns,
25 on the charge of criminal sexual conduct with

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1 a minor in the first degree, Guilty." Signed
2 by Mr. Olmstead as the presiding juror, dated
3 August 10th, 2012.

4 Indictment 12-3173, Minor 5 [REDACTED]
5 [REDACTED] (reading): "We, the jury by unanimous
6 consent find the Defendant, Alan Lee Burns,
7 on the charge of lewd act on a minor,
8 Guilty." Signed by Mr. Olmstead as the
9 presiding juror, dated August 10th, 2012.

10 Indictment 11-3388, this is in
11 regards to Minor 1 [REDACTED], (reading): "We,
12 the jury by unanimous consent find the
13 Defendant, Alan Lee Burns, on the charge of
14 criminal sexual conduct with a minor in the
15 second degree, Guilty." Signed by Mr.
16 Olmstead as the presiding juror, dated August
17 10th, 2012.

18 Indictment 11-3389, regarding
19 Minor 1 [REDACTED], (reading): "We, the jury
20 by unanimous consent find the Defendant, Alan
21 Lee Burns, on the charge of lewd act upon a
22 minor, Guilty." Signed by Mr. Olmstead as
23 the presiding juror, dated August 10th, 2012.

24 In connection with 11-3387,
25 (reading): "We, the jury by unanimous

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1 consent find the Defendant, Alan Lee Burns,
2 on the charge of criminal sexual conduct with
3 a minor in the second degree, Guilty."

4 Signed by Mr. Olmstead as the presiding
5 juror, dated August 10th, 2012. Let me hold
6 that indictment. That's the confusion.
7 That is correct. I didn't disclose that one
8 but had already voted on that. You are
9 correct on that indictment. I said that
10 there were two, there were actually three but
11 the jury has acted on that. Very good.

12 Ladies and Gentlemen of the jury,
13 if the court has accurately published your
14 verdict, please indicate by raising your
15 right hand -- (all juror raise right hand).
16 You may put them down. Let the record
17 reflect that each juror raised his or her
18 right hand in response to the court's
19 inquiry.

20 Anything further from the jury from
21 the State?

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

24 THE COURT: Anything further from
25 the jury from the defense?

1 MR. ALAN BURNS: Yes, I would like
2 to poll the jury.

3 THE COURT: All right. Ladies and
4 Gentlemen, what is going to happen now is
5 that the clerk is going to call your name.
6 She will ask you two questions: Were those
7 your verdicts, and are those still your
8 verdicts? We won't do them each but as a
9 total since there are unanimous. Any
10 objection to doing it as a total group rather
11 than individual indictments?

12 SOLICITOR HERRING-LASH: No, sir.

13 THE COURT: Mr. Burns:

14 MR. ALAN BURNS: I would rather
15 that it be done individually.

16 THE COURT: Fine. Your objection
17 is noted and denied. We will do it as a
18 group. There are two questions, just follow
19 her instructions.

20 CLERK: Juror Number 243, Gregory
21 Olmstead, are these your verdicts?

22 JUROR NUMBER 243: Yes, ma'am.

23 CLERK: Are they still your
24 verdicts?

25 JUROR NUMBER 243: Yes, ma

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1 ma.

2 CLERK: Juror Number 13, Jane Babb,
3 are these your verdicts?

4 JUROR NUMBER 13: Yes.

5 CLERK: Are these still your
6 verdicts?

7 JUROR NUMBER 13: Yes.

8 Correct. Juror Number 90,
9 Herbert Deas. Are these your verdicts?

10 JUROR NUMBER 90: Yes.

11 CLERK: Are these still your
12 verdicts?

13 JUROR NUMBER 90: Yes.

14 CLERK: Juror Number 102, Lila
15 Fickling, are these your verdicts?

16 JUROR NUMBER 102: Yes.

17 CLERK: Are these still your
18 verdicts?

19 JUROR NUMBER 102: Yes.

20 CLERK: Juror Number 156, Robert
21 Holzel, are these your verdicts?

22 JUROR NUMBER 156: Yes.

23 CLERK: Are these still your
24 verdicts?

25 JUROR NUMBER 156: Yes.

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859

1 CLERK: Juror Number 182, Philip

2 Kelly, are these your verdicts?

3 JUROR NUMBER 182: Yes, ma'am.

4 CLERK: Are these still your
5 verdicts?

6 JUROR NUMBER 182: Yes, ma'am.

7 CLERK: Juror Number 220, Brigitte
8 Miklaszewski, are these your verdicts?

9 JUROR NUMBER 220: Yes.

10 CLERK: Are these still your
11 verdicts?

12 JUROR NUMBER 220: Yes.

13 CLERK: Juror Number 248, Cheryl
14 Parish, are these your verdicts?

15 JUROR NUMBER 248: They are.

16 CLERK: Are these still your
17 verdicts?

18 JUROR NUMBER 248: Yes.

19 CLERK: Juror Number 268, Cathy
20 Richardson, are these your verdicts?

21 JUROR NUMBER 268: Yes.

22 CLERK: Are these still your
23 verdicts?

24 JUROR NUMBER 268: Yes.

25 CLERK: Juror Number 269, Jennie

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1 Richardson, are these your verdicts?

2 JUROR NUMBER 269: Yes.

3 CLERK: Are these still your
4 verdicts?

5 JUROR NUMBER 269: Yes.

6 CLERK: Juror Number 282, Michael
7 Schurlknight, are these your verdicts?

8 JUROR NUMBER 282: Yes.

9 CLERK: Are these still your
10 verdicts?

11 JUROR NUMBER 282: Yes.

12 CLERK: Juror 317, Ellen Tischbin,
13 are these your verdicts?

14 JUROR NUMBER 317: Yes.

15 CLERK: Are these still your
16 verdicts?

17 JUROR NUMBER 317: Yes.

18 CLERK: Your Honor, the jury has
19 been polled the verdict stands.

20 THE COURT: They have and the
21 polling is accurate.

22 Ladies and Gentlemen, thank you very
23 much for your participation in this process.

24 I am going to ask that you retire to your
25 jury room. I will be with you in just a

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1 moment.

2 (JURY OUT @ 5:35 P.M.)

3 THE COURT: Mr. Burns, any motions
4 concerning the verdicts?

5 MR. ALAN BURNS: No, sir.

6 THE COURT: Very well, do you have
7 sentencing sheets?

8 SOLICITOR HERRING-LASH: She is
9 getting them now, Your Honor.

10 THE COURT: We will be at-ease for
11 a few moments. I will be back momentarily.
12 I am going to excuse the jury.

13 (BRIEF RECESS)

14 (DEFENDANT REMAINS IN COURTROOM)

15 (JUDGE ENTERS COURTROOM)

16 TED SMITH: Your Honor, we just
17 want to make his Motion for a new trial.

18 THE COURT: That's what I was
19 asking.

20 LORI PROCTOR: We thought you
21 mean before the jury.

22 THE COURT: Okay. I'm sorry.

23 LORI PROCTOR: That you wanted
24 to go talk to the jury.

25 THE COURT: That's okay. No

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1 problem. Delighted to know that because I
2 thought 'I think you want to make a motion.'

3 LORI PROCTOR: We do.

4 THE COURT: Okay. That's fine.
5 Mr. Burns, you have some post-trial Motions
6 now, sir?

7 MR. ALAN BURNS: Yes, sir.

8 THE COURT: I will be delighted to
9 hear from you.

10 MR. ALAN BURNS: I would like to
11 move for a new trial based on my previous
12 arguments presented to the court, and I would
13 like to renew all Motions and objections
14 previously made.

15 THE COURT: That is appropriated
16 made and preserved, sir. Thank you so much
17 for -- having previously ruled on those, I
18 will try to be consistent. I think it was a
19 jury issue, I think the evidence -- certainly
20 that was their consideration and -- quite
21 frankly, it's almost 5:309 and they have been
22 deliberating for quite some time, so I think
23 they gave a conscientious view of it. I
24 think the jury was not responding to any
25 passion or prejudice and the evidence

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1 certainly support their position, so I would
2 deny your Motions. Thank you.

3 Do we have sentencing sheets?

4 They're en route?

5 SOLICITOR HERRING-LASH: Yes,
6 sir. I just need to sign them.

7 THE COURT: Before I hear from Mr.
8 Burns, does any victim or family member wish
9 to make any further statements?

10 SOLICITOR HERRING-LASH: Does
11 anyone ---

12 THE COURT: I would ask that if
13 you do that you just give me your full name
14 for the record.

15 Minor 5 [REDACTED] My name is

16 Minor 5 [REDACTED] Your Honor, the only
17 thing I wanted to say is that this is the
18 hardest thing I ever had to do in my life.

19 Alan is my uncle. He was supposed
20 to be protecting me from the rapists, the
21 murderers, the molesters. I feel like he
22 stole my innocence, he murdered my spirit, he
23 made me feel unworthy, unwanted and unloved
24 for years. I hated myself for years because
25 of what he did to me. I don't hate him but I

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1 hate what he did to me. I want him to pay
2 for what he did to me. That's really all
3 that I have to say.

4 THE COURT: Thank you, ma'am.
5 Thank you for your courage, too. Anyone
6 else? Solicitor, -- I don't know that --
7 part of it is in the record of this
8 proceeding but what is his record?

9 SOLICITOR HERRING-LASH: Yes,
10 sir. He has:

11 '84, trespass and simple assault
12 '85, driving under suspension
13 '85, failing to stop for blue light
14 '87, assault and battery
15 '98, disorderly conduct
16 '98, criminal domestic violence
17 '03, criminal sexual assault on a
18 minor and a 03 lewd act on a minor.

19 THE COURT: What was his sentence
20 for that?

21 SOLICITOR HERRING-LASH: The
22 criminal sexual conduct in the second degree
23 with a minor and the lewd act, ten years.

24 THE COURT: Ten years?

25 SOLICITOR HERRING-LASH: (Affirmative

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1 nod). Your Honor, I would just want to say
2 that all of these victims have shown a
3 tremendous amount of courage being here.
4 I think that this behavior deserves, some at
5 least of these sentences be run consecutive
6 because of the damage that he has done and
7 the violence that he has displayed.

8 THE COURT: Thank you, ma'am.
9 Anything else from the State?

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

12 THE COURT: Mr. Burns, anything
13 that you wish to add? Anything that you want
14 to say to me? Or anyone on his behalf?

15 MR. ALAN BURNS: My sister wants
16 to say something on my behalf.

17 THE COURT: Sure, I'll be happy to
18 hear from her. Just give me your name,
19 please.

20 CATHERINE HARRIS: Good
21 afternoon, Your Honor. My name is Catherine
22 Burns Harris. I am Alan's sister.

23 THE COURT: Yes, ma'am.

24 CATHERINE HARRIS: I just want
25 to nobody is perfect and that I believe what

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1 happened today and for the last week, that my
2 brother was railroaded. I believe that the
3 family cooperated and conspired to bring all
4 these charges.

5 They were minors. My brother was
6 only a minor, too. He was only fifteen and
7 sometimes younger than that, so he was a
8 child at that time. Those charges should
9 have been brought up when he was a child. He
10 should have been tried as a child.

11 To take criminal things from thirty
12 years ago, that he would not even remember,
13 and put it on a grown man and say that 'you
14 are going to be charged with this now, after
15 thirty or forty years.' When statements have
16 been lost, when nobody ever knows really what
17 happened, testimony is lost and they are
18 fabricating the truth.

19 I also feel that my family has been
20 torn apart by this. We are never going to
21 get that back. If they felt that these
22 charges were warranted, as a family we should
23 have come together as a family and brought
24 the charges on him then. Thank you.

25 THE COURT: Thank you, ma'am.

1 Anything else, Mr. Burns?

2 MR. ALAN BURNS: No, Your Honor.

3 THE COURT: Okay. I appreciate
4 everybody's right to have their own
5 perspective of this process. I don't need
6 to debate whether it's -- whether you --
7 anybody's perspective is correct or not. I
8 have my own.

9 I think that this is an incredible
10 country in which we live. What we have
11 observed this week is a manifestation of that
12 and a compilation of that. It is pretty
13 unique when we have the crimes alleged here
14 and the trauma -- talk about trauma, the
15 trauma that's been introduced into the lives,
16 brought into the lives of this family, uh, --
17 yet we require them to come forward in a
18 court of law, be subjected to cross
19 examination, at length. Yet they don't have
20 to prove a thing. That's the way that it
21 ought to be. That's one of the things that
22 we -- I hope that we never take that for
23 granted. I know that I don't.

24 But in this particular situation,
25 the State clearly -- clearly -- when you

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1 bring folks, a cross-section of this
2 community together and they listen and they
3 do, conscientiously, what these fine
4 individuals have done, I don't have anything
5 but praise for this process. I thank them
6 for their sacrifice and their commitment to
7 make it work, to make it work well.

8 They decided, they heard -- and
9 quite frankly, not that it makes any
10 difference, if I could have switched roles,
11 I would have voted the same way every single
12 one of them voted, without hesitation, based
13 on the evidence that I heard.

14 I don't think that there was any
15 railroading. I think that we have a person
16 who, unfortunately, -- unfortunately, Mr.
17 Burns, and I don't know what -- you're -- my
18 law clerk and I were commenting about you and
19 how you handled yourself in the courtroom. I
20 think that I said that to you before, that it
21 is a shame. What a waste. The mind that you
22 have, being able to perceive things, that you
23 didn't focus that in another direction. But
24 we are all human and we make mistakes. I
25 agree with that.

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1 But one thing's for sure. You've
2 had opportunities before and -- opportunities
3 in connection with this area. It seems that
4 when you were released from prison, having
5 been punished for this very same thing, that
6 you did it again.

7 Now, I admit to you that some of
8 this was already in existence at the time.
9 I understand that, I understand the
10 frustration of that. It doesn't excuse it,
11 it doesn't justify it. But the ones that
12 occurred from March of 1997 to 2001, that is
13 just absolutely -- there is no way in the
14 world to explain or to justify that.

15 So the sentence of the court -- and
16 I agree with you, the sentence of the court
17 needs to be consecutive punishment. So the
18 sentence of the Court on Indictment 11-3391
19 is thirty (30) years.

20 Indictment 11-4776, another criminal
21 sexual conduct with a minor, first degree,
22 thirty (30) years. That sentence is
23 consecutive in every respect to 3391.

24 The sentence of the court on
25 Indictment 11-3390, criminal sexual conduct

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1 with a minor in the first degree, is thirty
2 (30) years and it is concurrent with
3 Indictment -- the first indictment, which
4 would be the controller, 3391.

5 Indictment 12-3172 is thirty (30)
6 years and it is concurrent.

7 Obviously you are given credit for
8 time served, as the statute requires.

9 11-3394, lewd act, is fifteen (15)
10 years. It is concurrent, credit for time
11 served.

12 11-3392, lewd act, is fifteen (15)
13 years. Concurrent. Credit for time served.

14 11-4777, criminal sexual conduct
15 first degree, is thirty (30) year,
16 concurrent, credit for time served.

17 11-4778, lewd act, is fifteen (15)
18 years, concurrent, credit for time served.

19 11-4779, lewd act, is fifteen (15)
20 years, concurrent, credit for time served.

21 12-3173, lewd act, is fifteen (15)
22 years, concurrent, credit for time served.

23 11-3387, criminal sexual conduct
24 with a minor in the second degree is twenty
25 (20) years. Concurrent, credit for time

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1 served.

2 11-3388 is criminal sexual conduct
3 with a minor, second degree, twenty (20)
4 years, concurrent, credit for time served.

5 11-3389, lewd act, is fifteen (15)
6 years, concurrent, credit for time served.

7 As I understand from my discussions
8 with the Department of Probation & Parole, of
9 course the first sentence imposed 11-3391, a
10 thirty-year sentence, of course that is a
11 nonparolable offense that requires eighty-
12 five percent. As I understand and I don't
13 think that they will change this tomorrow,
14 but at least as far as I understand you will
15 not begin serving or get any credit for any
16 time on the thirty-year sentence -- let me
17 sure that is not shown as the first -- 4776
18 is the second one that I sentenced?

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

21 COURT REPORTER: Yes, sir. Thirty
22 years, consecutive.

23 THE COURT: Is that first degree?

24 SOLICITOR HERRING-LASH: Yes,
25 sir.

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1 THE COURT: You will not be given
2 any credit for any time that you would have
3 served on the first one. You will start
4 serving that after you've completed the
5 eighty-five percent, as I understand it.
6 So you will have a thirty-year sentence that
7 follows, so you'll have about sixty years.
8 Good luck to you, sir.

9 Anything further from the State?
10 SOLICITOR HERRING-LASH: No, Your
11 Honor.

12 THE COURT: Let me thank also on
13 the record Mr. Smith and Ms. Proctor --
14 Ladies and Gentlemen, for your benefit, these
15 good folks have been sitting here giving
16 their time. They were appointed to assist
17 Mr. Burns. They do not represent Mr. Burns.
18 But to help him in formulating any kind of
19 scheme or strategies and to help with issues
20 of law. I appreciate very much their
21 contribution to the process, as well.
22 Another example of why this process is
23 incredible. Thank you for that. Good luck
24 to each one of you.

25 (DEFENDANT INTO CUSTODY)

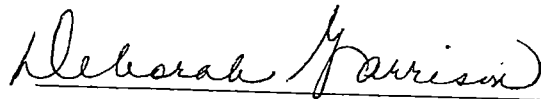
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(TRIAL CONCLUDED)

CERTIFICATE OF REPORTER

I, the undersigned, Deborah Garrison,
official court reporter for the 9th Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the jury
trial held before The Honorable R. Markley
Dennis, Jr., on August 6-10, 2012;

I further certify that I am neither kin
nor counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison

Circuit Court Reporter

9th Judicial Circuit

Charleston, South Carolina

January 31, 2013

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

RECEIVED

OCT 12 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ALAN L. BURNS,

APPELLANT

APPELLATE CASE NO. 2012-212760

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in denying Appellant's request for documents relating to the grand jury after the indictment was issued that did not seek to invade the secrecy of the grand jury proceedings but only sought information in order to assure the grand jury was impanelled legally?

STATEMENT OF THE CASE

On June 7, 2011, a Charleston County grand jury indicted Appellant for two counts of criminal sexual conduct with a minor in the second degree (2011-GS-10-3387 & 2011-GS-10-3388), three counts of lewd act upon a minor (2011-GS-10-3389, 2011-GS-10-3392, & 2011-GS-10-3394), and two counts of criminal sexual conduct with a minor in the first degree (2011-GS-10-3390 & 2011-GS-10-3391). On August 1, 2011, a Charleston County grand jury indicted Appellant for two counts of criminal sexual conduct with a minor in the first degree (2011-GS-10-4776 & 2011-GS-10-4777) and two counts of lewd act upon a minor (2011-GS-10-4778 & 2011-GS-10-4779). On May 7, 2012, a Charleston County grand jury indicted Appellant for criminal sexual conduct with a minor in the first degree (2012-GS-10-3172) and lewd act upon a minor (2012-GS-10-3173). R. 812 - 813; R. 815 - 816; R. 818 - 819; R. 821 - 822; R. 824 - 825; R. 828 - 829; R. 831 - 832; R. 834 - 835; R. 838 - 839; R. 842 - 843; R. 846 - 847; R. 850 - 851; R. 854 - 855.¹ The state, represented by Debi Herring-Lash and Randall Stoney, called the case for trial on August 6, 2012 before the Honorable R. Markley Dennis, Jr. and a jury. Appellant represented himself; however, Lori Proctor and Ted Smith attended as stand-by counsel. R. 110. The jury found Petitioner guilty as charged. R. 775, line 25 - R. 779, line 11. Judge Dennis sentenced Appellant to two consecutive terms of thirty years' imprisonment for two counts of criminal sexual conduct with a minor in the first degree for a total of sixty years. R. 788, lines 15-23. Additionally, Judge Dennis

¹ Although the Charleston County grand jury returned a true bill for docket number 2011-GS-10-3394, this indictment was not presented to the petit jury for consideration. However, the judge issued a sentence on this charge. On August 27, 2012, Judge Dennis issued an order vacating the sentence, explaining that the charge was not submitted to the petit jury because it was a duplicate of 2011-GS-10-4779. R. 846 - 847.

sentenced Appellant to thirty years' imprisonment for two additional counts of criminal sexual conduct with a minor in the first degree to be served concurrently. R. 788, line 24 – R. 789, line 6; R. 789, lines 14-16. He then sentenced Appellant to fifteen years' imprisonment for each of the five counts of lewd act and to twenty years' imprisonment for each of the two counts of criminal sexual conduct with a minor in the second degree. These were to be served concurrently as well. R. 789, line 9 – R. 790, line 6.

Appellant filed a timely notice of appeal. This brief follows.

STATEMENT OF FACTS

In 2010, Minor 2, who suffers from bipolar disorder, had a flashback to abuse that he allegedly suffered in 1997 at the hands of his uncle, Appellant. Minor 2 was away from home at college at the time. He was drinking, playing cards, and watching television with friends when the flashback occurred. He called his mother to tell her about his flashback. R. 151, line 7 – R. 152, line 17; R. 163, lines 22-25; R. 165, lines 2-12; R. 214, line 12 – R. 216, line 24.² The previous winter, Minor 2 had learned from an aunt that his cousins, Minor 4 and Minor 5, were abused. Minor 2 and his mother went to the police to make an official report. R. 152, lines 18-25; R. 217, line 19 – R. 218, line 4. Additionally, Minor 2 and his mother began organizing the family members to report allegations of abuse as well. R. 153, line 22 – R. 154, line 1; R. 155, lines 3-6; R. 219, line 14 – R. 220, line 2; R. 232, lines 9-20.

When Minor 2 testified at Appellant's trial in 2012, he claimed Appellant inserted his penis into Minor 2's mouth and penetrated him anally fifteen years earlier. He further claimed that Appellant cut him multiple times with a knife after the alleged assaults. R. 137, line 7 – R. 139, line 21. Minor 2 also claimed that Appellant penetrated him with his penis in the back of a van on an unspecified day. R. 141, line 12 – R. 143, line 12. Minor 2 described a third incident of Appellant allegedly raping him in a barn, which was called a "speakeasy" by some, behind his grandparent's house during a family gathering. R. 144, line 4 – R. 149, line 13. Although Minor 2 had reported to the police in 2010 with claims of alleged sexual assaults, his testimony at trial differed from his statements

² Minor 2's mother also informed Minor 2 that she knew about others who had been abused. R. 218, lines 5-13. Several members of the family were aware of the alleged abuse to others, but decided not to act. R. 220, lines 3-10.

to police. For example, he never told the police that Appellant inserted his penis into Minor 2's mouth. R. 157, lines 15-22. Additionally, Minor 2 told the police he could not remember where he had been cut, but during his testimony, he was very specific with the locations of the cuts and even showed the jury his scars. R. 139, lines 18-21; R. 158, line 20 – R. 161, line 14. Further, Minor 2 never mentioned anything to the police about any alleged assaults in the barn. R. 171, lines 12-25.

Minor 4 was Appellant's niece and lived in the same residence as Appellant when she was between five and eight years old. R. 245, line 15 – R. 246, line 8. Minor 4 claimed that one day she and Minor 5 were in Appellant's room when Appellant masturbated and ejaculated on Minor 4. R. 248, lines 15-24. Minor 4 also claimed that on some unknown date, Appellant was at her home playing a board game with her and her siblings. She claimed Appellant was touching her. She did not know where but she knew he was "doing something wrong." R. 250, lines 2-12.³ Minor 4 told her mother about the alleged instances when Minor 4 entered college. However, they did not contact police or even tell Minor 4's father. R. 250, line 25 – R. 251, line 10. In 2010, Minor 2 asked Minor 4 to speak with the police about what she claimed happened to her. Minor 4 agreed. R. 251, lines 11-22.

Minor 5, another of Appellant's nieces, lived in the same residence as Appellant until she was seven years old. R. 261, line 23 – R. 263, line 1. Minor 5 claimed she recalled Appellant fondling her when she was two or three years old. Minor 5 claimed

³ These incidents were alleged to have occurred between December 20, 1981 and August 1987. R. 812 - 813; R. 815 - 816; R. 818 - 819; R. 821 - 822; R. 824 - 825; R. 828 - 829; R. 831 - 832; R. 834 - 835; R. 838 - 839; R. 842 - 843; R. 846 - 847; R. 850 - 851; R. 854 - 855.

she could even remember the color of the crib – red. R. 263, line 25 – R. 264, line 11. Additionally, she claimed Appellant fondled her when she was three years old. R. 264, line 14 – R. 265, line 1. Just as Minor 5 had recalled the color of the crib when she was two years old, she claimed she could remember wearing a yellow jumper when she was three years old and Appellant allegedly fondled her. R. 265, lines 2-7.

Minor 5 claimed she recalled Appellant “doing things to” Minor 4, including “trying to penetrate her” and making Minor 4 fondle him. R. 268, lines 5-25. Minor 5 also claimed she saw Appellant ejaculate on Minor 4’s leg. R. 269, lines 7-8.⁴ Immediately after ejaculating on Minor 4’s leg, Appellant allegedly “tried to enter [Minor 5] anally.” R. 269, lines 8-12. Minor 5 also claimed she suffered constipation because Appellant raped her anally, but she did not relate any specific instances. R. 273, lines 17-25.⁵ However, Minor 5 claimed that on an unspecified date, her aunt walked in. Her aunt’s husband and Appellant’s mother beat Appellant as a consequence. R. 270, lines 4-17.⁶

Minor 5 learned of the criminal investigation regarding Appellant on May 10, 2010 when she received a text from Minor 5. However, when the police initially

⁴ Minor 5 also claimed she saw Appellant fondle Minor 3. R. 275, lines 1-18.

⁵ These incidents were alleged to have occurred between December 20, 1981 and December 31, 1985, approximately thirty years before the trial. R. 812 - 813; R. 815 - 816; R. 818 - 819; R. 821 - 822; R. 824 - 825; R. 828 - 829; R. 831 - 832; R. 834 - 835; R. 838 - 839; R. 842 - 843; R. 846 - 847; R. 850 - 851; R. 854 - 855.

⁶ Minor 5’s aunt, Jacquelyn Blake, was married to Appellant’s brother. R. 308, lines 2-14. During her marriage, Blake would care for Minor 4 and Minor 5. She claimed that one day Minor 4 told her that Appellant was hurting Minor 5. When Blake followed Minor 4 to Appellant’s room, she observed Appellant with his finger in Minor 5’s vagina. R. 308, line 21 – R. 310, line 17.

contacted Minor 5, she did not give a statement. It was some time later before Minor 5 gave an official statement to police. R. 277, line 16 – R. 278, line 20.

Minor 1 was adopted by Appellant's sister when Minor 1 was eleven years old. R. 318, line 13 – R. 319, line 7. Minor 1 claimed that initially Appellant made sexual comments to her. Then, Appellant squeezed her breast and touched her "private area." R. 321, line 11 – R. 322, line 14. Minor 1 claimed that one day Appellant agreed to take her from her house to her grandmother's house. On the way there, Appellant pulled the car to the side of the road and began working on it. R. 322, line 22 – R. 326, line 16. Appellant asked Minor 1 to hand him a tool. When Minor 1 "went to bend over to hand him the tool, ... everything just went crazy." Minor 1 claimed Appellant took off her pants and underwear and inserted his penis into her while standing on the side of the road. R. 326, line 25 – R. 327, line 25.⁷

Years later, her mother called and asked if anything ever happened to her. She told her mother about Appellant's conduct. Thereafter, she and her mother met in person to discuss the matter. Finally, she and her mother went to the police. R. 329, lines 12-24.

Minor 3 was also one of Appellant's nieces. R. 472, lines 8-11. While growing up, Minor 3 spent time in Appellant's home with her cousins Minor 4 and Minor 5. R. 472, lines 14-23. According to Minor 3, when she was three years old, Appellant fondled her, Minor 4, and Minor 5. R. 473, lines 12-25. Minor 3 claimed that when she returned to the area at eight years old, Appellant raped her while she was taking a nap. R. 474,

⁷ These incidents were alleged to have occurred between the four years between July 1997 and June 30, 2001. R. 812 - 813; R. 815 - 816; R. 818 - 819; R. 821 - 822; R. 824 - 825; R. 828 - 829; R. 831 - 832; R. 834 - 835; R. 838 - 839; R. 842 - 843; R. 846 - 847; R. 850 - 851; R. 854 - 855.

line 21 – R. 475, line 17.⁸ Years later, Minor 4 informed Minor 3 that “there was a case going on in the family” and asked her to participate. R. 479, lines 5-9. Subsequently, Minor 3 spoke to an officer with the Mount Pleasant Police Department revealing only the allegations of abuse from when she was three years old. Later, Minor 3 talked to a deputy from the Charleston County Sheriff’s Office and she included the purported incident that occurred when she was taking a nap. R. 479, line 18 – R. 480, line 20.

⁸ These incidents were alleged to have occurred between December 20, 1981 and June 23, 1985. R. 812 - 813; R. 815 - 816; R. 818 - 819; R. 821 - 822; R. 824 - 825; R. 828 - 829; R. 831 - 832; R. 834 - 835; R. 838 - 839; R. 842 - 843; R. 846 - 847; R. 850 - 851; R. 854 - 855.

ARGUMENT

The trial judge erred in denying Appellant's request for documents relating to the grand jury after the indictment was issued that did not seek to invade the secrecy of the grand jury proceedings but only sought information in order to assure the grand jury was impanelled legally.

Relevant facts

On April 1, 2011, Appellant appeared before the Honorable Deadra L. Jefferson for a pre-trial hearing. R. 1. During the hearing, Appellant requested “[a]ny and all grand jury information, including date, time, and place, proceeding transcript, minutes....” R. 13, lines 21-23. The judge responded, “You cannot get any of that. It’s secret in South Carolina. It’s protected by privilege. You can get the date the grand jury met and the date they true billed your indictment, but the exact nature of their investigation is not subject to discovery.” R. 13, line 24 – R. 14, line 3. The judge explained that Appellant would receive a copy of the indictment which would “show the date and time the grand jury met.” According to the judge, that was all that Appellant was “entitled to” receive. R. 14, lines 7-10.

On August 1, 2012, Appellant appeared before the Honorable Stephanie P. McDonald for consideration of additional pre-trial matters. R. 94. Appellant requested the “grand-jury panel documents and other supporting materials that [were] submitted to the grand jury.” R. 105. 12, lines 14-17. Appellant elaborated that he wanted “any grand jury documents and any - - the application that was sent to the grand jury - - petition that was sent to the grand jury, proposed indictments.” Appellant also wanted to review the testimony and evidence presented to the grand jury. R. 106, lines 11-17. To support his

position, Appellant cited Evans v. State, 363 S.C. 495, 611 S.E.2d 510 (2005). Appellant argued he was entitled to the documents to determine the legality of the grand jury that indicted him. R. 106, line 24 – R. 107, line 4.

Initially, the solicitor responded, “I don’t know what he’s talking about. We don’t present anything to the grand jury. An officer goes in and gives testimony. They send a representative for each department.” R. 107, lines 10-13. The prosecutor continued that she was “not aware” of the case referenced by Appellant. R. 107, lines 14-15. The state speculated that Appellant was referring to a state grand jury, which was more of an investigative body “than our just regular grand jury.” R. 107, lines 14-20. After being assured by the prosecutor that the state had complied with discovery, the judge denied the motion. R. 107, line 21 – R. 108, line 12.

Immediately prior to trial, Appellant renewed his request for the impanelment documents of the grand jury before the Honorable R. Markley Dennis, Jr. Appellant explained that he wanted to challenge the legality of the grand jury and asked that the indictments be quashed based on the prosecutor’s representation that the documents did not exist. R. 111, lines 3-21. The state responded that she was “not exactly sure what he [was] referring to.” She further noted that Judge McDonald had addressed the request during a hearing the previous week. R. 114, lines 2-9. Appellant explained that he had a right to challenge the legality of the grand jury that indicted him and he sought the information necessary to make such a challenge. R. 114, lines 21-25. Judge Dennis refused to revisit Judge McDonald’s ruling on the matter. R. 115, line 21 – R. 118, line 24.

During the trial, Appellant requested a hearing to determine the legality of the grand jury. R. 242, lines 9-23. Judge Dennis denied Appellant's request based upon the ruling of Judge McDonald concerning the discovery of the grand jury documents. R. 242, line 24 – R. 243, line 9.

Discussion

The South Carolina Constitution provides that “[n]o person may be held to answer for any crime ... unless on a presentment or indictment of a grand jury of the county where the crime has been committed.” S.C. Const. Art. I, § 11. “The indictment to be preferred by a grand jury ... must, of course, be one which has been returned by a legal grand jury.” State v. Rector, 158 S.C. 212, 155 S.E. 385, 390 (1930) overruled on other grounds by Evans v. State, 363 S.C. 495, 611 S.E.2d 510 (2005). “[O]ne who demands and is refused the right to be tried for crime charged against him only upon an indictment presented by a legal grand jury, in instances where such indictment is required, may thereafter justly take the position that he has been ‘deprived of life, liberty or property without due process of law’” in violation of the state constitution. Rector, 158 S.C. at ___, 155 S.E. at 392.

South Carolina's grand jury scheme is governed by statute.⁹ About two weeks before the first term of court for the calendar year convenes, the jury commissioners draw the number of grand jurors sufficient in order to impanel a grand jury. Then, the clerk of

⁹ The South Carolina Code provides for two methods of selecting and impaneling grand juries. For the sake of efficiency, Appellant has discussed only one method. However, the “alternative method” appears at S.C. Code Ann. § 14-7-1910, et seq. The procedures are very similar but the alternative method provides for selection and impanelment in December and July and six-month terms. Also, to use the alternative method, the county's governing body must enact an ordinance. S.C. Code Ann. § 14-7-1960.

court issues writs of venire facias requiring the potential grand jurors' attendance on the first day of the first week of criminal court in the county. S.C. Code Ann. § 14-7-1520. When the grand jurors report, the presiding judge ascertains their qualifications. Only the presiding judge may excuse or disqualify the jurors and only as prescribed by law. "The clerk of court shall maintain a list of all jurors who are excused or disqualified by the presiding judge and state the reasons given by the presiding judge for excusing or disqualifying the jurors." Further, "[t]he clerk of court shall maintain a list of the jurors who were not served with the writs of venire facias and the reasons service was not effected" as reported by the sheriff. S.C. Code Ann. § 14-7-1530.

After the judge qualifies the grand jury venire, the clerk of court randomly draws twelve jurors, who shall serve as grand jurors. Those twelve serve with six held over from the previous grand jury who are selected pursuant to a random drawing as described in section 14-7-1510(A) of the South Carolina Code. S.C. Code Ann. § 14-7-1540.¹⁰ At least three more names must be drawn to serve as alternate grand jurors. The remainder of the venire may then be discharged. Id. Thereafter, the grand jury hears sworn testimony from witnesses whose names appear on the bill of indictment in the grand jury room. S.C. Code Ann. § 14-7-1550.¹¹

¹⁰ Pursuant to South Carolina's Constitution, the grand jury of each county shall consist of eighteen members, twelve of whom must agree in a matter before it can be submitted to the court. Per the Constitution, each juror must be a resident of South Carolina. S.C. Const. art. V, § 22.

¹¹ Pursuant to Rule 3(c), SCCrimP, the solicitor "shall take action on the warrant by preparing an indictment for presentment to the grand jury, which indictment shall be filed with the Clerk of Court, assigned a criminal case number, and presented to the Grand Jury."

“The established procedure in this state is for the action of the grand jury to be endorsed on the indictment over the signature of the foreman.” State v. Sanders, 251 S.C. 431, 437, 163 S.E.2d 220, 224 (1968). Thereafter, the indictment is “presented to the court where, in open court and in the presence of the grand jury, the clerk of court reads the action taken.” Id. “[T]he caption of an indictment should show the place and date at which the court was held and the indictment found.” State v. Griffin, 277 S.C. 193, 196, 285 S.E.2d 631, 633 (1981), overruled on other grounds by State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009). However, “omissions may be corrected by other parts of the indictment.” Id.

When an indictment against a defendant “is presented, that accusation made, that pleading filed, the accused has two courses of procedure open to him. He may question the propriety of the accusation, the manner in which it has been presented, the source from which it proceeds, and have these matters promptly and properly determined.” The second course is to waive these matters and proceed to a jury trial. State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 499 (2005)(internal citations omitted).

In Rector, 158 S.C. at ___, 155 S.E. at 390, the Supreme Court explained that “[a]s long as the grand jury has been known to our judicial system, and that body came with the organization of our first courts, their acts and proceedings have been regarded almost sacredly secret.” However, tellingly, the Rector Court affirmed the circuit judge’s decision to quash the indictment where the defendant demonstrated that at least one of the grand jurors was not qualified to serve because the juror was not a registered elector of the county as required by the state constitution. Id. at ___, 155 S.E. at 396. Thus, the Rector opinion demonstrates that it is the proceedings of the grand jury that are secret.

“No principle has been followed more closely than that which protects the secrecy of the proceedings of the grand jury.” Ex parte McLeod, 272, S.C. 373, 376, 252 S.E.2d 126, 128 (1979)(emphasis added); see also, Rector, 158 S.C. at ___, 155 S.E. at 390 (“[n]o one, not even the presiding judge, may invade the secrecy of the grand jury’s deliberations, to inquire what influences moved them in their acts, or to ascertain how any member may have voted”)(emphasis added).

In Evans v. State, 363 S.C. 495, 503, 611 S.E.2d 510, 515 (2005), the Supreme Court concluded that “impanelment documents, including the state’s petition, supporting materials, and the impaneling judge’s order, may be released to a defendant prior to trial upon timely request.” The Court explained the release of the documents was appropriate because the statutory provision concerning release was not a complete prohibition. The Court concluded that the “release of the documents usually is not prohibited by secrecy provisions or other concerns following the issuance of a true bill of indictment,” and that “a defendant has the right to review the documents to determine whether to timely challenge the legality of the state grand jury which indicted him.” Id. Evans concerned the state grand jury system; however, the principles necessarily apply to all grand jury proceedings.

The statutory provision governing the secrecy of state grand jury proceedings “mirror[ed] the view long held uniformly by courts nationwide that secrecy of grand jury proceedings is desirable and necessary.” Id. at 505, 611 S.E.2d at 515. Nevertheless, “[t]he secrecy provisions applicable to a particular case are relaxed after an indictment has been issued by the state grand jury.” Thus, the Court held that a defendant was entitled to review and reproduce recorded materials of the grand jury proceedings subject

to statutory limitations. Id. at 506, 611 S.E.2d at 516. The Court recognized that “[a]lthough maintaining secrecy is essential while a matter is under deliberation by the grand jury, such concerns diminish following issuance of a true bill indictment.” Id. at 507, 611 S.E.2d at 516.

“A defendant has a constitutional right to demand that a grand jury which is properly established and constituted under the law consider the criminal allegations against him.” Id. at 509, 611 S.E.2d at 518 (citing S.C. Const. art. I, § 11 and art. V, § 22). The Court also made clear that “[a] defendant must challenge the legality and sufficiency of the process of the state grand jury before the jury renders a verdict in order to preserve the error for direct appellate review. Id. The Court then enumerated three categories of cases for challenging an indictment based upon errors within the grand jury. The first category concerned indictments issued by a grand jury that was illegally established, including the selection of grand jurors in an illegal or discriminatory manner. Id. at 511-512, 611 S.E.2d at 518-519. The second category involved challenges to “a lesser irregularity in the selection or makeup of a grand jury,” including the disqualification of an individual grand juror. Id. at 512, 611 S.E.2d at 519. In the final category of cases are those involving “a truly minor irregularity in the functioning or process of the grand jury.” Id. at 512-513, 611 S.E.2d at 519-520.

The Court held

a defendant is entitled to review impanelment documents in order to determine, by a timely motion to quash an indictment made before the jury renders its verdict, whether the state grand jury which indicted him was legally established or suffered from any lesser irregularity which implicates the defendant’s constitutional right to have his case considered by a grand jury which is properly constituted under the law.

Id. at 513, 611 S.E.2d at 520. Thus, the Court directed that impanelment documents be released to a defendant after the issuance of a true bill of indictment and in response to a request made pursuant to Rule 5, SCCrimP. Id. The Court placed the burden of proof on the state to demonstrate why the documents should not be released “because only the state possesses the necessary information to analyze the issue and explain to the court why releasing the documents should be prohibited or delayed.” Id. (citing State v. Rector, 158 S.C. 212, 228, 155 S.E. 385, 391 (1930)). In a footnote, the Court made clear that its decision applied with equal force to state grand juries and county grand juries. Id. at 510 n. 7, 611 S.E.2d at 518 n. 7.

In State v. George, 323 S.C. 496, 476 S.E.2d 903 (1996), the South Carolina Supreme Court remanded George’s case to the circuit court for a hearing to allow George to present data pertaining to the disqualification of individual grand jurors in Horry County. Specifically, the Court held George was denied the opportunity as detailed in Castaneda v. Partida, 430 U.S. 482 (1977) to provide statistics comparing the proportion of African Americans in Horry County to the proportion called to serve as grand jurors.

On remand, the circuit court judge conducted a hearing on whether African Americans had been systematically excluded from the Horry County grand jury. The trial judge found no discriminatory exclusion of African Americans. On appeal, the South Carolina Supreme Court affirmed. State v. George, 331 S.C. 342, 344, 503 S.E.2d 168, 169-170 (1998). At the hearing, George presented evidence of the races of grand jurors who sat on Horry County’s grand jury for the period 1991-1993. Id. at 345, 503 S.E.2d at 170. George also presented data concerning the percentage of African Americans summoned for grand jury service during the period 1991-1996. Id. As our

Supreme Court explained, the Castaneda test requires analysis of underrepresentation over a significant period of time; therefore, it is necessary that a defendant have the data relating to the demographics of grand jurors who were summoned and those who served over a significant period of time. Id. at 346, 503 S.E.2d at 170. The George case makes clear that a defendant is entitled to know the demographics of the entire potential jury pool as such information would be necessary to establish an Equal Protection violation. Id. at 346-347, 503 S.E.2d at 171. Further, the George Court noted the need to know the reasons for excusals of grand jurors because of their potential impact on the number of jurors of a particular demographic available for selection. Id. at 347, 503 S.E.2d at 171. And, finally, a defendant would need to know the demographics of holdover grand jurors because one-third of the grand jury is composed of jurors held over from the previous year's grand jury pursuant to statute. Id. Of course, the statistical data does not end the inquiry as "a selection procedure that is susceptible of abuse or is not racially neutral supports the presumption of discrimination raised by the statistical showing." Id. at 349, 503 S.E.2d at 172 (quoting Castaneda, 430 U.S. at 494). Thus, a defendant must know the precise procedures followed by the authorities in the jury selection process from the creation of the lists of potential grand jurors to selection. Id. at 349-350, 503 S.E.2d at 172.

The trial judge erred in denying Appellant discovery of the impanelment documents of the grand jury that indicted him. Appellant was entitled to learn of the jury qualification procedures, and if those procedures were followed. Pursuant to statute, the clerk of court maintains a list of the jurors who were not found disqualified and those who were excused. Appellant was entitled to know if the procedures for selecting the

holdover jurors was followed. Only then could Appellant exercise one of his courses of action as outlined by the Gentry Court – to question the propriety of the accusation, the manner in which it has been presented, the source from which it proceeds, and have these matters promptly and properly determined.

Pursuant to the Evans decision, Appellant was required to challenge the legality and the sufficiency of the grand jury process prior to verdict. These challenges would include (1) the selection of the grand jurors to expose any illegality or discrimination in the grand jury system as a whole, and (2) the selection of the grand jurors to expose any illegality or discrimination in the qualification or disqualification of an individual grand juror. In order to ensure the grand jury process complies with the state and federal constitution, Appellant is entitled to data concerning the grand jurors to allow him to investigate any discrimination like that alleged in George, supra. Thus, Appellant must have data concerning the grand juries, including gender, race and other suspect classes, for a significant period of time.

The faces of the indictments cause some concern. On five of the thirteen indictments, the name of a witness actually appears. However, the remaining eight list either Mount Pleasant Police Department or Charleston County Sheriff's Department. R. 812 - 813; R. 815 - 816; R. 818 - 819; R. 821 - 822; R. 824 - 825; R. 828 - 829; R. 831 - 832; R. 834 - 835; R. 838 - 839; R. 842 - 843; R. 846 - 847; R. 850 - 851; R. 854 - 855. It is highly unlikely that the entire police department or sheriff's department appeared at the grand jury.

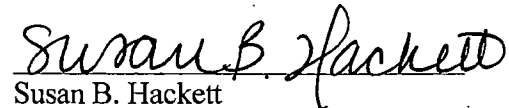
The trial judge erred in finding that the secrecy shrouding the grand jury proceedings applies to those proceedings after an indictment has been issued and applies

to matters outside of the actual jury deliberations. The statutes and case law make clear that Appellant was entitled to certain documents concerning the grand jury in order to investigate the legality of the indictments used to charge him.

CONCLUSION

Appellant respectfully requests this Court vacate his convictions and sentences based upon the illegality of the grand jury. In the alternative, Appellant respectfully requests this Court remand the matter with instructions that Appellant receive discovery materials relative to the grand jury and that a hearing take place to determine the legality of the grand jury.

Respectfully submitted,


Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of October, 2015.

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SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief on Appellant complies with Rule 211(b), SCACR.

October 12, 2015

Susan B. Hackett

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ALAN L. BURNS,

APPELLANT

CERTIFICATE OF SERVICE

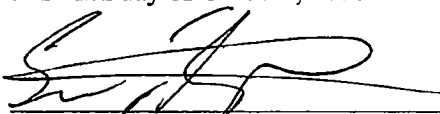
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 12th day of October, 2015.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of October, 2015.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SEP 23 2015
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The Honorable R. Markley Dennis, Jr., Circuit Court Judge SC Court of Appeals
Appellate Case No. 2012-212760

THE STATE,

Respondent,

v.

ALAN L. BURNS,

Appellant.

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STATEMENT OF ISSUE ON APPEAL

The circuit court properly denied Appellant's request for documents regarding the county grand jury, which was not based on any allegations of impropriety in the selection or qualifications of the grand jurors, but was a fishing expedition for information regarding what the grand jury considered during the deliberations leading to his indictments.

STATEMENT OF THE CASE

Respondent concurs with Appellant's procedural Statement of the Case.

STATEMENT OF THE FACTS

The Charleston County Grand Jury indicted Appellant Alan L. Burns on multiple counts of first degree criminal sexual conduct with a minor and lewd act on a minor. Appellant represented himself, with two appointed stand-by counsel, and submitted a discovery request pursuant to Rule 5, SCRCrimP, seeking, *inter alia*, the following grand jury information:

25) Any and all Grand Jury information to include (sic) Date, Time, and Place of Proceedings, Transcripts, minute and/or official records to include (sic):

- (a) the names of anyone who makes a presentation or gives oral testimony
- (b) the names of all participants and their (sic) official capacity in which they participated
- (c) any and all material presented, tangible and non-tangible evidence (i.e. affidavits, statements, letters, confessions reports, photos), oral testimony, and/or physical evidence (hair fiber, debris, semen, articles of clothing, etc., etc.) etc., etc.)
- (d) any and all findings, decisions and orders.

(Rule Five [5] Specific Brady Request, dated January 13, 2011 [January 2011 Request]; Record on Appeal [R], pp., 799-802).

Appellant subsequently moved to compel and for a hearing, alleging the State “failed and/or refused to comply” with the Rule 5 request. (Motion to Compel/Motion for Discovery Hearing, filed February 3, 2011; R., pp. 803-804). At a motion hearing on April 1, 2011, the circuit court advised Appellant the grand jury proceedings were secret, and the “exact nature of their investigation is not subject to discovery.” (April 1, 2011 Hearing Transcript [April 2011 HT], pp. 14-15; R., pp. 14-15).

Appellant submitted identical discovery requests on May 30, 2011, and moved to compel by motion filed August 1, 2011. (Rule Five [5] Specific Brady Request, dated May 30, 2011 [May 2011 Request], Motion to Compel Discovery, filed August 1, 2011;

R., pp. 805-807, 808). The discovery motion and various other matters were heard on November 2, 2011, and the circuit court found the discovery matters were addressed and decided in the prior hearing. (November 2, 2011 Hearing Transcript [November 2011 HT], pp. 22, 32-41; R., pp. 44, 54-63). Appellant did not raise the discovery issues during pre-trial hearings in May 2012, June 2012, and July 2012, and the case was set for trial on August 6, 2012.

On July 31, 2012, Appellant filed a Motion for Grand Jury Inpanelment Documents and Supporting Materials. (Motion for Grand Jury Inpanelment Documents and Supporting Materials, filed July 31, 2012 [July 2012 Motion]; R., p. 809). At an emergency hearing on August 1, 2012, Appellant requested any grand jury documents, and stated he wanted to “listen to any witnesses that testified at the grand jury, and . . . the evidence that was presented to the grand jury.” After reviewing case law submitted by Appellant, the circuit court denied the motion. (Emergency Hearing Transcript [EHT], pp. 12-16; R., pp. 105-109).

The case was called for a jury trial on August 6, 2012, before the Honorable R. Markley Dennis, Jr., Circuit Court Judge. Prior to trial, Appellant moved to quash the indictments on the ground the State failed to produce documents regarding the impanelment of the grand jury, and there was no proof the grand jury was legally impaneled. The circuit court denied the motion, finding the issue was previously considered and ruled on in a prior hearing. (Trial Transcript [TT], pp. 122-127; R., pp. 111-116.¹

¹The court further clarified the ruling during trial. (TT, pp. 280-281; R., pp. 242-243).

The State presented testimony from victims and witnesses regarding Appellant's sexual molestation of several family members when they were minors. (TT, pp. 164-273, 282-381, 390-535; R., pp. 132-241, 244-343, 352-489). The State also presented expert testimony regarding the dynamics of child sexual abuse, particularly the issue of delayed disclosure. (TT, pp. 539-559; R., pp. 493-513).

At the close of the State's case, Appellant moved for directed verdict on the grounds the State failed to present any physical or scientific evidence supporting the charges, and a jurisdiction issue related to the authority of one investigator to investigate the charges and make an arrest. The circuit court denied the motion, finding there was "an abundance of evidence" on the jurisdiction issue, and "overwhelming" evidence of the charges. (TT, pp. 560-565; R., pp. 514-519).

After presenting evidence, Appellant moved for directed verdict on the jurisdiction grounds raised in his previous directed verdict motion, as well as "the theoretical illegality of the grand jury." The circuit court again denied the motion. (TT, pp. 719-724; R., pp. 647-652).

The jury convicted Appellant of all charges, and the circuit court sentenced him to consecutive and concurrent terms totaling sixty years incarceration. (TT, pp. 852-856, 867-872; R., pp. 775-779, 786-791). This appeal followed.

ARGUMENT

The circuit court properly denied Appellant's request for documents regarding the grand jury, which was not based on any allegations of impropriety in the selection or qualifications of the grand jurors, but was a fishing expedition for information regarding what the grand jury considered during the deliberations leading to his indictments.

Relying heavily on Evans v. State, 363 S.C. 495, 611 S.E.2d 510 (2005), a case involving the defendant's right to obtain state grand jury impanelment documents, Appellant asserts the circuit court erred in denying his discovery requests for the county grand jury impanelment documents, specifically the qualification procedures, whether those procedures were followed, and data regarding the composition of the grand jury that indicted him. As a threshold matter, Appellant did not raise these allegations in the circuit court, or make **any** allegations involving the grand jury's selection or qualification. Even if the issue he raises on appeal is preserved, however, Appellant's reliance on Evans is misplaced.

In criminal cases, the appellate court sits to review errors of law only, and the appellate court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Banda, 371 S.C. 245, 639 S.E.2d 36, 39 (2006); *see also* State v. Ravenell, 387 S.C. 449, 692 S.E.2d 554, 557 (Ct. App. 2010) (same). A party may not argue one ground on appeal after arguing a different ground to the trial court. State v. Haselden, 353 S.C. 190, 577 S.E.2d 445, 448 (2003); *see also* State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691, 693–94 (2003) (stating an issue not raised to and ruled upon by the trial court is not properly before the appellate court).

A. Preservation

Prior to his motion filed July 31, 2012, seven days before his trial was scheduled to begin after numerous continuances and motions hearings, all of Appellant's discovery requests related to the grand jury only sought information regarding the grand jury's actual deliberations. (January 2011 Request, May 2011 Request, April 2011 HT, pp. 14-15; R., pp. 799-802, 805, 14-15). The July 2012 motion contained the first reference to the "impanelment documents," but still primarily focused on information regarding matters presented to the grand jury. (July 2012 Motion; R., pp. 809).

At the August 1, 2012, emergency hearing on his motion, Appellant stated he wanted "the grand jury panel documents and any other supporting materials that was submitted to the grand jury." He further indicated he wanted "to listen to any witnesses that testified at the grand jury," and "the evidence that was presented to the grand jury." (EHT, pp. 12-14; R., pp. 105-107). In his pre-trial motion on August 6, 2012, Appellant stated he wanted impanelment documents to challenge the legality of the grand jury **as it related to the circuit court's subject matter jurisdiction.**² (TT, pp. 122-127; R., pp. 111-117).

Appellant never alleged any irregularities in the selection or qualification of the grand jury members, or sought information from the clerk of court's office regarding the qualification procedures and data reflecting the composition of the grand jury. Rather, he clearly only wanted information regarding the evidence presented to and considered by the grand jury. Thus, he did not raise the issue he now asserts on appeal, and it is not preserved for appellate review.

²In Evans, the Supreme Court conclusively settled the subject matter jurisdiction issue contrary to Appellant's stated position.

B. Impanelment Information

Appellant contends he was entitled to the grand jury impanelment documents under Evans and State v. George, 323 S.C. 496, 476 S.E.2d 903 (1996). In the absence of alleged improprieties in the selection and qualification of the grand jury members, neither case supports Appellant's position.

In Evans, the defendant was indicted by a state grand jury, and the South Carolina Supreme Court considered his request for documents relating to impanelment of the state grand jury that indicted him. The Court held the defendant had a constitutional right to demand the grand jury considering the allegations against him be properly established and constituted under the law, and nothing in the state grand jury statutes prohibited release of the impanelment documents after the state grand jury issues an indictment. 611 S.E.2d at 514-520.

The state grand jury's operations are governed by statute, and the type of criminal cases it can consider is restricted. *See generally*, S.C. Code Ann. §§14-7-1600 through -1820 (Supp. 2014) (the SGJ Act). The Legislature created the state grand jury, "in part, to improve the State's ability to detect and eliminate criminal activity," but provided for limited jurisdiction and specialized procedures. State v. Green, 337 S.C. 67, 522 S.E.2d 602, 604 (Ct. App. 1999) (The state grand jury "operates under a very specialized procedure under which a defendant is permitted to obtain and review all evidence which was considered in handing down an indictment."); *see also* State v. Wilson, 315 S.C. 289, 433 S.E.2d 864 (1993). While many state grand jury procedures are similar to county

grand jury procedures, there are significant differences directly impacting Appellant's position.³

Impanelment of a state grand jury requires a written document, signed by the Attorney General and the State Law Enforcement Division Chief, setting out the type of offenses to be investigated and indicating impanelment serves the public interest.⁴ S.C. Code Ann. §14-7-1630(B) (Supp. 2014). Based on the contents of the written document, a circuit court judge may order impanelment of a state grand jury for an initial period of twelve calendar months, which the presiding judge may extend upon written request of the Attorney General. S.C. Code Ann. §14-7-1630(D) (Supp. 2014).⁵ The presiding judge may also discharge a state grand jury prior to the end of its term, limit the state grand jury's investigation if he determines it is acting outside its jurisdiction or proper investigative activity, or expand the scope of the original impanelment order. S.C. Code Ann. §14-7-1630 (F) and (G) (Supp. 2014); S.C. Code Ann. §14-7-1690 (Supp. 2014).

³The Legislature amended the SGJ Act in 2015, particularly regarding the documentation required to initiate a state grand jury investigation. *See* 2015 Act No. 45. None of the amendments impact the issue in this case, and the discussion herein references the statute prior to amendment.

⁴For certain types of cases, the written document also had to allege the offenses may involve multiple counties.

⁵The clerk of the state grand jury compiles a "master list" of seven hundred potential jurors from lists provided by the counties, and the presiding judge determines whether any individuals on the list are unqualified, exempt or excused from service. The clerk then prepares a "qualified state grand jury list," which must be prepared annually. When a state grand jury is impaneled, the clerk randomly draws sixty names from the qualified state grand jury list, and eighteen jurors and four alternates are randomly selected from those names. S.C. Code Ann. §14-7-1660 (Supp. 2014). Unlike county clerks of court, the SGJ Act does not require the state grand jury clerk to retain the master list, or keep a list of excused jurors indicating the reason the presiding judge disqualified, exempted or excused them. *See* S.C. Code Ann. §14-7-1530 (Supp. 2014) (county clerk of court must maintain a list of excused or disqualified jurors indicating the reasons for excusing or disqualifying them).

In contrast, county grand juries are automatically impaneled before the first general sessions term in the calendar year, without a written request from the solicitor or a law enforcement agency related to a particular type of offense, there is no “impanelment order,” and the circuit court has no authority to discharge or limit the grand jury. S.C. Code Ann. §14-7-1510 through -1540 (Supp. 2014). Unlike the state grand jury’s restricted authority, once impaneled, the county grand jury has authority and jurisdiction to hear and rule on **any** general sessions level offenses within the county.

Another stark difference between the state grand jury and county grand juries is how the cases are presented. The Attorney General or his designee “shall attend” state grand jury sessions, serve as its legal advisor, and examine witnesses, present evidence, and draft indictments or reports as directed by the state grand jury. S.C. Code Ann. §14-7-1650(A) (Supp. 2014). In contrast, counsel for the State is **not permitted** to be present during the county grand jury proceedings. Ex parte McLeod, 272 S.C. 373, 252 S.E.2d 126, 128 (1979) (reiterating the “long established public policy” prohibiting the prosecuting attorney from entering the grand jury room to present evidence). Rather, as occurred in this case, the investigative agency presents the case to the grand jury.⁶ (EHT, p. 14; R., p. 107).

Finally, for purposes of the instant case, a Brodignagian difference between the state grand jury and county grand juries is the statutory requirement that all state grand jury proceedings be recorded by a court reporter, with a transcript prepared upon request,

⁶Solicitors are also expressly prohibited from appearing as the sole witness before the grand jury. State v. Anderson, 312 S.C. 185, 439 S.E.2d 835, 836 (1993). Investigative officers may appear as the sole witness before the grand jury. State v. Whitted, 279 S.C. 260, 305 S.E.2d 245, 246 (1983) (*overruled on other grounds by State v. Collins*, 329 S.C. 23, 495 S.E.2d 202 [1998]).

and the defendant is entitled to “review and reproduce” those recordings. S.C. Code Ann. §14-7-1700 (Supp. 2014). In addition, all evidence presented to the state grand jury must be retained by the Attorney General unless otherwise ordered by the court in a particular case. *Id.*

Significantly, between 1989 and 1990, the statutes governing county grand juries required recording of grand jury proceedings, but the Legislature repealed the statutory requirement in 1990. S.C. Code Ann. §14-7-1595, *repealed by* 1990 Act. No. 461, §1 (Supp. 2014).⁷ The Legislature clearly knew how to impose the recording requirement on county grand juries, but ultimately chose not to do so. Thus, there is no recording requirement for county grand juries, and the only document presented to the grand jury is usually the indictment itself.⁸

“The regularity of grand jury proceedings is presumed absent clear evidence to the contrary.” *Evans*, 611 S.E.2d at 520. A defendant must present evidence to support a motion to quash an indictment based on alleged irregularities in the grand jury composition or proceedings. *Id.*; *see also State v. Brownfield*, 60 S.C. 509, 39 S.E. 2, 4 (1901) (if allegations of grand jury impropriety are disputed by the State, defendant must present competent evidence to support grounds asserted as the basis for a motion to quash an indictment). The circuit court’s decision on the issue will be reversed only for abuse of discretion. *Evans*, 611 S.E.2d at 520.

In *Evans*, the Supreme Court outlined three categories of challenges to the legality

⁷This statute essentially mirrored many of the state grand jury recording requirements.

⁸This distinction spotlights the state grand jury’s fundamental function as an investigative entity, which is **not** a primary function of county grand juries.

of a grand jury. The first category involves “the existence of the grand jury as a body,” or “the jurors were selected in an illegal or discriminatory manner,” both of which render the indictment a nullity. The second category involves a defendant’s assertion of a lesser irregularity in the selection or makeup of the grand jury, such as disqualification of an individual grand juror, which would also render the indictment null and void. The third category involves the assertion of a truly minor irregularity in the functioning or processes of the grand jury, which does not implicate the legality of the grand jury, or rise to the level of a constitutional violation. 611 S.E.2d at 518-520.

In George, the Supreme Court remanded the case to the circuit court for a hearing on the defendant’s allegation the procedure used by Horry County to select grand jurors resulted in the systematic exclusion of blacks in Horry County over a four year period.⁹ 476 S.E.2d at 910. After remand, the Court affirmed the circuit court’s finding the defendant failed to establish any discrimination in the selection of grand jurors. State v. George, 331 S.C. 342, 503 S.E.2d 168 (1998).

Appellant acknowledges the county grand jury selection process is governed by statute, and accomplished through the county clerk of court. (Brief of Appellant, pp. 13-14). The State neither controls, nor participates in, the selection process or retention of any documents related to it, and there is no indication Appellant, or the two attorneys assisting him with the case, ever attempted to get documents from the clerk of court regarding the grand jury selection, which are a matter of public record in the custody and control of the county clerk of court.

⁹The Court cited Castaneda v. Partida, 430 U.S. 482 (1977), as the standard for inquiries into the legality of a grand jury. Appellant also cites Castaneda as support for his position, however, the defendant in that case asserted a specific allegation of discrimination in the Texas grand jury selection process. *Id.* at 485-486.

Appellant's heavy reliance on Evans in the context of this case compares apples (state grand juries) to oranges (county grand juries), while attempting to paint the oranges red in the hope this Court will overlook the significant differences between the two entities, particularly their primary functions, how they are impaneled, what documents are required to impanel them, who presents the cases before them, and retention of evidence presented. Many state grand jury statutory requirements simply do not apply to county grand juries.

As discussed above, unlike the defendants in Castaneda, Evans and George, Appellant never alleged any purported irregularities in the grand jury selection, composition or proceedings, but made a conclusory statement, based on Evans, that if the grand jury was "illegally" impaneled, the circuit court did not have subject matter jurisdiction. (Motion for Grand Jury Impanelment Documents, EHT, pp. 12-14, TT, pp. 122-127; R., pp. 105-107, 111-116). Nor does he allege any such irregularities on appeal, but continues the conclusory, one-size-fits-all approach.

In essence, Appellant takes the position merely using the word "legality" in the same sentence as "grand jury" entitles a defendant to go on a fishing expedition through any and all documents related and/or presented to the grand jury, which is contrary to the long standing principle that the grand jury's "acts and proceedings have been regarded almost sacredly secret." State v. Rector, 158 S.C. 212, 155 S.E.2d 385, 390 (1930); *see also* Evans, 611 S.E.2d at 515-516 (stringent secrecy provisions of SGJ Act mirror the uniformly held view of courts nationwide that secrecy of grand jury proceedings is desirable and necessary). The substance of Appellant's discovery requests, and the belated reference to "impanelment documents," clearly reveal such a fishing expedition

was exactly what he wanted, and the circuit court properly refused to allow it.¹⁰

Accordingly, the circuit court's ruling should be affirmed.

¹⁰A cursory review of the hearing and trial transcripts in the Record on Appeal clearly reveals all the circuit court judges who dealt with Appellant at each stage of the proceedings were incredibly patient and accommodating with him, even in the face of his blatant contempt of court.

CONCLUSION

Based on the foregoing, Respondent submits Appellant's conviction and sentence should be affirmed.

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ATTORNEYS FOR RESPONDENT

September 23, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

SEP 23 2015

SC Court of Appeals

Appeal From Charleston County
The Honorable R. Markley Dennis, Jr., Circuit Court Judge
Appellate Case No. 2012-212760

THE STATE,

Respondent,

v.

ALAN L. BURNS,

Appellant.

CERTIFICATE OF COUNSEL

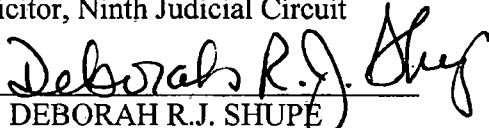
The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR and the August 13, 2007, order from the South Carolina Supreme Court entitled, "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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ATTORNEYS FOR RESPONDENT

September 23, 2015

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Appellant.

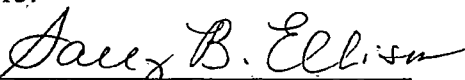
PROOF OF SERVICE

I, Sally B. Ellison, certify I served the Final Brief of Respondent on Appellant by depositing two copies in the United States mail, postage prepaid, addressed to:

Susan B. Hackett
Assistant Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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I further certify all parties required by Rule to be served have been served.

This 23rd. day of September, 2015.


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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Alan Lee Burns, Appellant.

Appellate Case No. 2012-212760

Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge
Stephanie P. McDonald, Circuit Court Judge

Unpublished Opinion No. 2016-UP-287
Submitted March 1, 2016 – Filed June 15, 2016

AFFIRMED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Deborah R.J. Shupe,
both of Columbia; and Solicitor Scarlett Anne Wilson, of
Charleston, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003)

("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal."); *Malloy v. Thompson*, 409 S.C. 557, 561, 762 S.E.2d 690, 692 (2014) ("The issue must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge.").

AFFIRMED.¹

HUFF, SHORT, and THOMAS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.