

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Calhoun County

Honorable Maite Murphy, Circuit Court Judge

RECEIVED

May 14 2020

S.C. SUPREME COURT

JOHN EDWARD HAYNES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001640

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CALHOUN) COURT OF GENERAL SESSIONS
3 2010 GS 09 0069; 0070

4 STATE OF SOUTH CAROLINA)
5)
6 versus) TRANSCRIPT OF RECORD
7)
8 JOHN EDWARD HAYNES)
9 Defendant)

10 Orangeburg, South Carolina
11 May 18, 2012
12

13 B E F O R E :

14 HONORABLE EDGAR DICKSON, Judge
15

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

17 For the State: FORD, Esq.
18 Assistant Solicitor

19 For the Defendant: BANKS, Esq.
20 M. and WISE, Esq.

21 Reporter Present: HARRY DOT WALKER
22

23 HARRIET P. BENNETT
24 Reporter, S. C. Court Administration
25 46 Regency Oaks Drive
Summerville, S.C. 29485

1

I N D E X

2

Direct-Redirect Cross-Recross

3

Motion

3

4

ADAM GRAHAM

5

By Solicitor

17-25

6

By Mr. Wise

21

7

DEFENDANT:

8

By Mr. Wise

30

9

No Cross Exam.

10

Ruling

33

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EXHIBITS

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1 (The within matter came before the Court on May 18,
2 2012)

3 SOLICITOR: John Haynes.

4 THE COURT: Yes, sir?

5 MR. BANKS: Your Honor, I have a Motion with regard to
6 Mr. Haynes.

7 THE COURT: Okay.

8 MR. BANKS: I think I filed it with the Clerk's Office,
9 a Motion to be relieved. I made that Motion back in December
10 of 2010.

11 THE COURT: This is the case where you made the Motion
12 -- let me make sure that I have the right case. This is
13 the case Mr. Wise was also involved in?

14 MR. BANKS: Yes, sir. Judge Goodstein in her wisdom de-
15 cided to put me in sort of the second chair, instead of having
16 me be the lead, giving Mr. Wise the opportunity to fix things
17 and push forward.

18 He was going to sort of take the lead and, of course, I
19 have taken a back seat ever since then. I have had virtually
20 very little contact with Mr. Haynes since that time.

21 Of course, I think we had a hearing a couple of weeks
22 ago of some sort.

23 I have made the motion again. I am still on the case,
24 but the motion is basically this. He has for the past year and
25 a half refused to listen and cooperate or to do anything that

1 would assist in his case; to follow any of my suggestions.
2 He won't even listen.

3 All that is coming from him is argument from him, spewing
4 from him, and I am completely thwarted by Mr. Haynes. I am a
5 non-factor to Mr. Haynes, a non-entity.

6 In fact, I would go so far as to say that I am hindrance,
7 an obstacle, a distraction and an object -- I think that my
8 presence at counsel table would be detrimental to Mr. Haynes'
9 case simply from the mind of Mr. Haynes. Not from my abil-
10 ities, not from my knowledge, not from my know-how -- none of
11 that.

12 I think the distraction of the anger that Mr. Haynes has
13 toward me would be detrimental to the case, and I don't want
14 anything to harm him.

15 So I think in all wisdom I should have relief as counsel.
16 That is my Motion.

17 Of course, he may wish to respond.

18 THE COURT: All right.

19 THE COURT: Mr. Haynes, before I hear from you, is Mr.
20 Wise here?

21 MR. WISE: Yes, Your Honor. We have a Schmerber Motion.

22 THE COURT: I understand.

23 SOLICITOR: Your Honor, I think we also have a Schmerber
24 Motion to take up.

25 THE COURT: All right. Mr. Haynes, you were represented

1 originally in your case by Mr. Banks?

2 DEFENDANT: Yes, sir, and he filed a Motion to be re-
3 lieved in my case.

4 Accordingly, he (inaudible) and he said he had enough, so
5 I got Mr. Mark Wise.

6 He bring an action to be taken off the case. I didn't ask
7 him to be taken from my case. I don't know why he's here's today.

8 THE COURT: You didn't ask for him to be taken off the
9 case?

10 DEFENDANT: No, sir. He did it hisself.

11 I don't know what the case is about. I don't know what
12 it's about.

13 THE COURT: Okay. Do you want Mr. Banks to stay on the
14 case?

15 DEFENDANT: I don't know what this case is about.

16 THE COURT: Are you telling me that Mr. Banks did not tell
17 you what you were charged with?

18 DEFENDANT: Mr. Dickson, I don't know what it's about.
19 Last time I was in Family Court for my kids and the people
20 at the jailhouse check my wallet and check on the Family Court
21 for the reason the warrant was out.

22 But I'm not sure why -- I don't know exactly why I'm in
23 jail. I think . . .

24 THE COURT: I may be able to help some with that.

25 DEFENDANT: I don't know.

1 THE COURT: I want to make sure you understand that . .

2 DEFENDANT: Mr. Dickson, if you would go over it with me?

3 I'm not pleading guilty . .

4 THE COURT: This isn't Family Court. That doesn't have
5 anything to do with this Court. Okay?

6 There are charges in General Sessions that you are facing.

7 MR. BANKS: We have gone through this entire dialogue.

8 DEFENDANT: I've never seen a warrant.

9 MR. BANKS: Your Honor, we have gone over this many times,
10 and this entire matter.

11 DEFENDANT: The only warrant I ever saw was the motion in
12 this case, not the warrant. The motion in this case.

13 THE COURT: When were the warrants obtained?

14 SOLICITOR: Your Honor, he's actually been indicted by
15 the Calhoun County Grand Jury on two counts of criminal sex-
16 ual conduct with a minor, second degree, and one count of in-
17 cest.

18 These were true billed back in May of 2010.

19 THE COURT: All right. Okay. Wait a minute, Mr. Haynes.
20 Let me explain something to you. I want to make sure that you
21 understand.

22 There are two counts of criminal sexual conduct?

23 SOLICITOR: Yes, sir.

24 THE COURT: Okay. You are charged in General Sessions with
25 two counts of criminal sexual conduct in the second degree and

1 one count of incest. That's what you are charged with in
2 General Sessions.

3 Do you understand what I'm saying?

4 DEFENDANT: I plead not guilty.

5 THE COURT: It's fine that you are pleading not guilty. I
6 don't have any problems with that. Do you understand what you
7 are charged with?

8 DEFENDANT: No, sir.

9 THE COURT: Okay. Now, you have now had two attorneys.
10 Mr. Banks has told you that -- Mr. Wise, have you explained to
11 him what he's charged with?

12 MR. WISE: I believe I have, Your Honor, because that's what
13 I do first, but I can't say I did it on this day or when . .

14 THE COURT: Okay. He's indicating that he's not guilty.
15 Do you want a trial?

16 DEFENDANT: Yes, sir.

17 THE COURT: All right. Okay, Mr. Haynes. How old are you?

18 DEFENDANT: I'm thirty-one. I'll be forty in December.

19 THE COURT: So you're thirty-nine?

20 DEFENDANT: Yes, sir. Yes, sir.

21 THE COURT: How far did you go in school?

22 DEFENDANT: Eleven and a half.

23 THE COURT: Okay, where were you going to school?

24 DEFENDANT: (Inaudible)

25 THE COURT: Why did you stop?

1 DEFENDANT: I was playing football and some of us got into
2 it and I got kicked out.

3 THE COURT: Did you ever get your GED?

4 DEFENDANT: No, sir.

5 THE COURT: What kind of jobs have you had?

6 DEFENDANT: Well, I do mechanic work, I do construction.

7 (Part of answer not audible on tape) Temporary stuff.

8 THE COURT: Have you ever been treated for any mental health
9 issue?

10 DEFENDANT: No.

11 THE COURT: Are you taking any kind of medication?

12 DEFENDANT: Kobler.

13 THE COURT: Are you under the influence of any alcohol or
14 taking any drugs?

15 DEFENDANT: No, sir.

16 THE COURT: All right. Are you thinking clearly here today?

17 DEFENDANT: Yes, sir.

18 THE COURT: Do you know exactly what you're doing?

19 DEFENDANT: Yes.

20 THE COURT: Listen carefully to me. You are charged with
21 two counts of criminal sexual conduct with a minor in the sec-
22 ond degree and one count of incest.

23 Do you understand what I've just told you?

24 DEFENDANT: I can't say I understand.

25 THE COURT: Do you understand what incest is?

1 DEFENDANT: Yes, sir.

2 THE COURT: Do you know what criminal sexual conduct
3 is? Criminal sexual conduct with a minor?

4 DEFENDANT: Yes, I do. Yes, I do.

5 THE COURT: Okay. So you understand.

6 Now, you have been charged with those, which means
7 -- were these Indictments true billed?

8 SOLICITOR: Yes, sir.

9 THE COURT: The Indictments were true billed by the
10 Grand Jury and you are facing these charges.

11 You can go to a trial and a jury can determine whe-
12 ther or not you are guilty or innocent. Okay?

13 Or you can plead to these charges and it can be dis-
14 posed of that way. Also, there are some motions that
15 your attorney can file that might persuade a Court to
16 throw these charges out.

17 So those are your options. Do you understand that?

18 DEFENDANT: I do.

19 THE COURT: You understand that?

20 DEFENDANT: To my charges I am not guilty.

21 THE COURT: All right. Well, I need to make sure
22 you understand that you will have a trial or you can plead
23 to these charges, or that your attorney may be able to
24 file some motions to have the charges thrown out.

25 I need to know if you understand that.

1 The choices in this situation are that you can go to a
2 trial or you will plead, or your attorney may file some kind of
3 motions to have the charges dismissed if there is some reason
4 to dismiss them.

5 DEFENDANT: A plea or trial -- I want a trial. I'm not
6 guilty.

7 I know the charges are against me. I know this. I know
8 this. I have paper work and it supposed to be in Family Court
9 on, and it come from Family Court to General Sessions. They
10 didn't put me on a trial docket. The Family Court didn't
11 issue no -- that was supposed to be on child support.

12 So I'd headed for the Family Court issues with no General
13 Sessions. That's what . .

14 THE COURT: All right. (Portion inaudible)

15 THE COURT: Mr. Haynes, I've already told you this . .

16 DEFENDANT: I got some journals and some Orders and they
17 didn't put this in General Sessions. It was Family Court.
18 Some people and my attorneys told me there ain't no way they
19 can put this thing in General Sessions.

20 THE COURT: Mr. Haynes, I've already told you this has
21 nothing to do with Family Court.

22 DEFENDANT: How it be in General Sessions? My lawyer
23 told me this is in Family Court.

24 THE COURT: You have Indictments that put you in General
25 Sessions.

1 DEFENDANT: Who can put it in General Sessions? It's
2 not right.

3 THE COURT: Three Indictments.-- hold on a second.

4 DEFENDANT: It's not right.

5 THE COURT: Has he been evaluated?

6 SOLICITOR: Yes, he has been.

7 THE COURT: What was the result of the evaluation?

8 SOLICITOR: Your Honor, I've got a copy of it.

9 THE COURT: Okay.

10 (Brief pause in proceeding)

11 MR. BANKS: Your Honor, while you're looking at that, what
12 you are seeing in Mr. Haynes is the very reason why no attorney
13 will be able to help Mr. Haynes, because he will not cooperate
14 with anyone.

15 He thinks he shouldn't be here so there will be no cooper-
16 ation at all. He has said he wouldn't assist . .

17 (Defendant and counsel speaking at the same time)

18 DEFENDANT: No, I have said nothing like that at all.

19 THE COURT: That's enough. I don't want to hear anything
20 from you unless I ask you a question.

21 Is this an Orangeburg or Calhoun County case?

22 SOLICITOR: Calhoun County, Your Honor.

23 THE COURT: Okay, and there are four terms of Court here
24 this year in May and June?

25 CLERK: There are four scheduled, yes, sir.

1 THE COURT: Okay. All right. Anything else regarding
2 your Motion?

3 MR. BANKS: No, sir, Your Honor.

4 THE COURT: Okay. Mr. Banks, it appears to me that Mr.
5 Haynes is a difficult Defendant, and I agree with you that as a
6 general rule no one should be entitled to two Public Defenders.

7 But I also don't believe that Mr. Wise should be left alone
8 to have to deal with this, and the way Mr. Haynes acts and lis-
9 tens does not indicate to me that he is going to listen readily
10 to any attorney.

11 But he's not going to get another attorney, and I'm not
12 going to dismiss you. So I apologize to you and Mr. Wise --
13 you are going to remain as his attorneys.

14 In that way, I think Mr. Haynes will come to the realiza-
15 tion that he's going to go to trial on his case and talk with
16 you all. Okay?

17 It's going to be disposed of this year. It will be dis-
18 posed of this year, and I want you to come to a number when
19 the case is going to be tried, so pick a week.

20 SOLICITOR: Yes, sir. Would you hear the State's Motion
21 for a Schmerber hearing? We need it before we schedule that.

22 THE COURT: You may sit down, Mr. Haynes. Go sit down.

23 SOLICITOR: I'm not aware of how long the results of that
24 may take, the testing the State is asking to be done.

25 THE COURT: Okay. You go sit down for the time being,

1 wherever you decide you want to be.

2 Okay.

3 MR. WISE: Your Honor, before we begin, . .

4 THE COURT: Yes, sir.

5 MR. WISE: . . the Solicitor filed a Motion to get Mr.
6 Haynes' DNA. The issue, as Mr. Haynes has alluded to, is that
7 there was a matter really about the same issues in the Family
8 Court.

9 As a part of that matter, they took a swab from Mr. Haynes
10 and made a determination that he is the father of two children.
11 So that has been done and analyzed.

12 The question is, having had his DNA taken and analyzed,
13 he feels he should not have to be put through that again.
14 We recognize that the Courts have specifically said that it
15 is a small intrusion, but his position is, and I think it is
16 well taken, that it's been done.

17 We recognize that to require the State to produce the
18 witnesses who did the analysis is an extra effort, but I'd
19 submit to the Court that that extra effort, when you counter-
20 balance that as against Mr. Haynes' constitutional rights
21 not to have his DNA taken, the scales would favor Mr. Haynes.

22 His position is, that having been done, the Court
23 should not order his DNA to be taken a second time.

24 THE COURT: All right. Mr. Wise, is he taking the po-
25 sition that he will contest chain of custody?

1 MR. WISE: No, Your Honor. We will still litigate that,
2 and they will have to bring witnesses in. It's all been done,
3 and we would litigate that.

4 THE COURT: Okay. You want me to rule on that now?

5 MR. WISE: Well, actually the fact that the Family Court
6 has already taken it and the results have come back that we
7 have seen, there is -- we're not going to fight about whether
8 or not there is probable cause to believe the finding or that
9 the finding would be sufficient from the Family Court.

10 THE COURT: You have the finding of Lab Corps and you'd
11 have them come in and . .

12 MR. WISE: Yes, they would come in and they would testify
13 which is the practice that would be conducted at trial.

14 What we are saying is that we recognize at this point it
15 has been done to him, but we're not stipulating . .

16 THE COURT: Okay. Still, we've got to bring in people
17 from Lab Corps and you have to ask them the questions to have
18 a trial on this.

19 MR. WISE: They would come in and testify to the chain
20 and their practice that they conducted their trial, so we're
21 not stipulating -- what we are saying is that we recognize
22 at this point it has been done to him.

23 THE COURT: I understand, but, I mean, do you know the
24 requirements would be the same as in Family Court for the
25 chain of custody? Do you have reason to know that?

1 MR. WISE: No, but I think that should be balanced
2 against taking another swab from him.

3 THE COURT: Do you know that the requirements of the
4 Family Court for chain of custody would be the same as those
5 in General Sessions? The safeguards and requirements?

6 MR. WISE: No, I think we -- I understand the Court's
7 concern, but I think balanced against taking another swab
8 from him when he has had it done.

9 THE COURT: Okay.

10 MR. WISE: You know, another intrusion into the body
11 of Mr. Haynes.

12 THE COURT: If he is going to contest it, then I do
13 want the -- I agree that intruding into the body is signi-
14 ficant.

15 If he is going to contest chain of custody, then I'd
16 want the chain of custody to comply with whatever require-
17 ments are necessary to comply with the General Sessions
18 Court safeguards.

19 I will tell you that in another life I used to have
20 to deal with Lab Corps. I am aware of how they handle the
21 chain of custody in Family Court, and I believe that they
22 raise issues that would not be brought up in General Ses-
23 sions.

24 Okay, I would want to give an opportunity for Defense
25 attorneys to contest chain of custody that could raise

1 issues at trial with a jury. I do not want to start a
2 trial and have to stop it because of chain of custody is-
3 sues.

4 Do you understand that?

5 MR. WISE: Yes, sir.

6 THE COURT: So with regard to -- unless he is willing
7 to concede the results and the chain of custody, I am not
8 going to just rely on the Family Court result.

9 I will let you briefly place on the record your con-
10 cerns. Okay?

11 MR. WISE: Yes, sir. Very well, Your Honor.

12 THE COURT: All right. Thank you.

13 SOLICITOR: Your Honor, if the Defendant conceded the
14 probable cause of the State asking for a sample of the De-
15 fendant's DNA, a Schmerber hearing would not be necessary.

16 THE COURT: Would you tell me again?

17 SOLICITOR: The Defendant conceded the probable cause
18 for the State asking for intrusion into the Defendant's body
19 for the purpose of determine DNA, . .

20 THE COURT: The probable cause being that he has had --
21 been tested for the two children by his DNA . .

22 SOLICITOR: Yes, sir, that that's been conceded.

23 THE COURT: In Family Court?

24 SOLICITOR: Yes, sir.

25 16 MR. WISE: Your Honor, I would say that if I have given

1 the Court the impression that I am somehow waiving Mr.
2 Haynes' constitutional rights, then I have misspoken.

3 THE COURT: Then we will go ahead and have the hear-
4 ing. Ms. Ford and Mr. Wise, I'm not going to rely on
5 what happened in Family Court.

6 SOLICITOR: Yes, sir, we will proceed with the
7 Schmerber hearing and call . .

8 THE COURT: I'm not going to rely on the Family Court
9 for probable cause.

10 SOLICITOR: Yes, sir, and the State would call Mr.
11 Graham.

12 THE COURT: Come on up.

13 ADAM GRAHAM,
14 being duly sworn, testified as follows:

15 CLERK: State your full name.

16 WITNESS: Adam Graham.

17 DIRECT EXAMINATION

18 BY SOLICITOR:

19 Q. Is it Deputy Graham or Investigator Graham?

20 A. Lieutenant Graham.

21 Q. How long have you been an investigator?

22 A. Over ten years.

23 Q. And where are you currently employed?

24 A. Calhoun County Sheriff's Office.

25 Q. Investigator Graham, did you have occasion to

INV. GRAHAM ON DIRECT

1 investigate a case with Mr. Haynes?

2 A. Yes, maam, I did

3 Q. And how did you become involved in that case?

4 A. We received a call from the Department of Social Ser-
5 vices in Calhoun County, a criminal sexual conduct case in-
6 volving two children and the Defendant.

7 Q. And what is the name of the victim in the case?

8 A. The victim in the case is JW [REDACTED].

9 Q. And there were two children?

10 A. Yes, maam.

11 Q. How old were those children?

12 A. At the time of the incident one was five months and one
13 was eighteen months.

14 Q. And how old was the alleged victim at the time you be-
15 came involved with the case?

16 A. JW [REDACTED] was seventeen when we got the report.

17 Q. And were these children both under sixteen years of age?

18 A. Yes.

19 Q. And at the time of the reported incident would JW [REDACTED]
20 have been under sixteen years of age?

21 A. Yes, maam.

22 Q. What were the allegations that you discovered in your in-
23 vestigation?

24 A. That JW [REDACTED] was Mr. Haynes' step-daughter and he
25 had two children by her, the criminal sexual conduct charges.

INV. GRAHAM ON DIRECT

1 Q. And these were the allegations you were asked to investi-
2 gate?

3 A. Yes, maam, by the Department of Social Services.

4 Q. And was any testing done involving Mr. Haynes?

5 A. Yes, maam.

6 Q. What was the testing?

7 A. DNA samples, swabs, bucal swabs.

8 Q. And were the attorneys present when the samples were
9 obtained from the children and Mr. Haynes?

10 A. Yes, maam.

11 Q. And what were the results of those tests?

12 A. Both children were ninety-nine point nine that Mr. Haynes
13 was the father.

14 Q. So the DNA tests came back that indicated ninety-nine
15 point nine percent that Mr. Haynes was the father of those
16 children?

17 A. Yes, maam.

18 Q. Were another individual tested with regard to the children?

19 A. Yes, maam, I believe one other -- I believe prior to the
20 Sheriff's Office being involved there was one other individual
21 that was tested.

22 Q. Okay, and do you know what the results were of that test-
23 ing?

24 A. I believe it was negative that he was the father.

25 Q. Okay, was that a test done on Mr. Goodwine?

INV. GRAHAM ON DIRECT

1 A. Yes, maam.

2 Q. And he was excluded as the father?

3 A. Yes, maam.

4 Q. What you would be asking the Court to do is to be allowed
5 to take a sample of Mr. Haynes' DNA?

6 A. Yes, maam.

7 Q. And how would that be done?

8 A. I would have one of my investigators standing by, and he
9 would take a sample which would be transported to SLED by that
10 investigator for results, the State Law Enforcement Division.

11 Q. Where would you take the sample from Mr. Haynes?

12 A. From the mouth.

13 Q. A swab? A bucal swab?

14 A. Yes, maam.

15 Q. And obviously the results of this testing would be to con-
16 firm the DNA test on the children?

17 A. Yes, maam.

18 Q. And are you aware that the testing of the bucal is a way
19 to determine a DNA sample?

20 A. Yes, maam.

21 Q. And in your experience as a law enforcement officer, for
22 ten years, is the test reliable for a DNA sample?

23 A. Yes, maam.

24 Q. No further questions.

25 THE COURT: Any Cross Examination?

INV. GRAHAM ON CROSS

1 CROSS EXAMINATION

2 BY MR. WISE:

3 Q. When was the call from the Department of Social Services
4 about?

5 A. This would have been January 4th of 2010.

6 Q. And what prompted them to call you at that time?

7 A. I'm thinking because of the actual nature of the charges
8 they wanted to get law enforcement involved at the point that
9 they knew we would need to be notified.

10 Q. On January 4 of 2010 had they already done a Family Court
11 DNA testing?

12 A. I think they actually did Mr. Goodwine prior to notifying
13 us.

14 Q. Had they done on January 4 of 2010 a DNA test on Mr. Haynes?

15 A. I'm not sure about Mr. Haynes before we were brought in.

16 Q. On that day the Family Court had not done Mr. Haynes that
17 you know of?

18 A. I'm not sure if they had on that date.

19 Q. Okay.

20 A. But I don't think that they had. I think that was the
21 March timeframe.

22 Q. So the Family Court called you and you don't think they
23 had done a test on Mr. Haynes?

24 A. You mean when DSS ..

25 Q. When DSS called . .

INV. GRAHAM ON CROSS

- 1 A. I don't think they had.
- 2 Q. When DSS called you, did you come out and do the DNA test
- 3 on Mr. Haynes?
- 4 A. At the time there was no particular reason why we didn't
- 5 do it. We were just getting involved in the case and starting
- 6 the case. We had no knowledge of the case prior to January
- 7 the 4th.
- 8 Q. So you could have done the test that the Family Court ul-
- 9 timately had done?
- 10 A. Correct.
- 11 Q. And then we wouldn't be here today?
- 12 A. I can't say that.
- 13 Q. Okay. Tell me how Lab Corps did the test.
- 14 A. I can't say how Lab Corps did the test.
- 15 Q. Who took Mr. Haynes' swab?
- 16 A. I can't answer that.
- 17 Q. Where is the swab?
- 18 A. I can't answer that.
- 19 Q. You have no idea?
- 20 A. No.
- 21 Q. Have you looked into that?
- 22 A. Looked into Lab Corps? No, sir.
- 23 Q. Looked at where the swab is?
- 24 A. No, sir.
- 25 Q. The swab was taken and was going to SLED to be tested?

INV. GRAHAM ON CROSS

1 What was going to happen was that the swab was going to be
2 taken and sent to SLED to be tested?

3 A. The one we're in Court here about?

4 Q. No, no. The one that was taken from Mr. Haynes as a
5 result of the Family Court Order?

6 A. I don't know about that one.

7 Q. So you don't know where it is?

8 A. I don't know. I have no idea.

9 Q. Have you tried to figure out where it is?

10 A. No, sir.

11 Q. Do you know anything about that swab that would cause it
12 not to be used in this case?

13 A. No, sir, I don't know.

14 Q. As far as you know, that swab may be sufficient?

15 A. Sir, I don't know.

16 Q. Do you have any reason to believe there is anything about
17 the Lab Corps tests that are problematic with the State?

18 A. No, sir, I don't.

19 Q. Okay. Let me go back a minute. You said that the vic-
20 tim was seventeen years old when you first became aware of this,
21 and the allegations were that she had had a sexual relationship
22 with Mr. Haynes?

23 A. Yes, sir.

24 Q. When you learned about this allegation and began your inves-
25 tigation, did you learn about the nature of that relationship

INV. GRAHAM ON CROSS

1 at all? Did you obtain information about that?

2 A. In the initial investigation, no, sir. We dealt with
3 DSS and that was all we knew at the time.

4 Q. Did you talk with [REDACTED] JW at all?

5 A. No, sir, we didn't. At the time she was with DSS, so
6 to speak, in their custody.

7 Q. All right.

8 A. So to speak.

9 Q. Have you ever talked with her, the seventeen year old?

10 A. No, sir. No, sir.

11 Q. Have you investigated the allegation that -- are you
12 aware in the investigation of the allegation that she had sex
13 with Mr. Haynes while he was sleeping?

14 A. I heard that, yes.

15 Q. Okay, and you heard that that came from her and not from
16 Mr. Haynes?

17 A. Yes, sir, initially.

18 MR. WISE: If I may have one moment?

19 THE COURT: Yes, sir.

20 BY MR. WISE:

21 Q. Investigator Graham, let me back up a little bit. Is it
22 your testimony you did not take a swab from Mr. Haynes?

23 A. The swab Lab Corps took.

24 Q. You have talked with Mr. Haynes about the case?

25 A. I tried to.

INV. GRAHAM ON CROSS

1 Q. Investigator Graham, I want you to look at this and read
2 this paragraph. Just read it to yourself.

3 A. . .

4 (Brief pause)

5 Q. Have you read that?

6 A. Yes.

7 Q. That paragraph seems to indicate that you were involved in
8 DNA testing. Am I correct? Did I read it incorrectly?

9 A. It does indicate that, yes, sir, but that's not accur-
10 ate.

11 Q. That's not accurate?

12 A. No, sir.

13 Q. Whatever this is, this is wrong -- that paragraph?

14 A. Yes, sir. I'm not sure when he went to D.S.S. but I re-
15 member them telling me about the DNA testing.

16 Q. So what this says about you transporting him . .

17 A. No, I didn't. I did not transport him at all.

18 Q. Okay. Thank you.

19 MR. WISE: I don't have anymore questions of this witness.

20 THE COURT: Anything on Redirect?

21 SOLICITOR: Yes, sir, Your Honor.

22 REDIRECT EXAMINATION

23 BY SOLICITOR:

24 Q. Just a couple of questions. Mr. Haynes was tested by
25 D.S.S.? Correct?

INV. GRAHAM ON REDIRECT

1 A. Yes, maam.

2 Q. And it had nothing to do with the General Ses-
3 sions case?

4 A. No, maam.

5 Q. This is what Mr. Wise had you read a few minutes ago?

6 A. Yes, maam.

7 Q. Asking you about your involvement?

8 A. Yes, maam.

9 Q. And would you read the last sentence there?

10 A. Mr. Haynes . .

11 Q. Right there.

12 A. S. C. D.S.S. case worker contacted Sergeant Graham to let
13 Mr. Haynes know and transport him to their appointment, if the
14 transportation was needed.

15 Q. So that wasn't saying you had to transport him but only if
16 transportation was necessary?

17 A. Correct.

18 Q. Also, when you were first contacted about this case if you
19 had gotten a sample from Mr. Haynes, how would you have gotten
20 that sample?

21 A. Through a swab to his cheek.

22 Q. Okay, but he would have to give consent to that, correct?

23 A. Yes, maam.

24 Q. Otherwise what would have happened?

25 A. Court-ordered DNA.

INV. GRAHAM ON REDIRECT

1 Q. So you couldn't have just gone up to him and swabbed him?

2 A. Correct.

3 Q. He would have to have consented or you would have had to
4 have this hearing?

5 A. Yes, maam.

6 Q. Investigator Graham, have you seen that before?

7 A. Yes, maam, I have a copy of it.

8 Q. Okay, and what is it?

9 A. It looks like the paperwork done by Ms. Tyler or the Depart-
10 ment of Social Services. JW [REDACTED] is the mother.

11 The child is Minor Child 1 and alleged father is Mr. John
12 Haynes.

13 Q. What does the second page say at the bottom. Right down
14 there -- does it say who collect the reported samples from Mr.
15 Haynes?

16 A. Yes, maam, it does.

17 Q. Who did that?

18 A. Miss Tina -- it looks like Eaves.

19 Q. And what does it say she collected?

20 A. Specimen collected.

21 Q. Who was the specimen collected from?

22 A. John Haynes.

23 Q. And have you ever seen these pieces of paper here?

24 A. Yes, maam, I have.

25 Q. And what are they?

INV. GRAHAM ON REDIRECT

1 A. Results from the Lab Corps testing.

2 Q. Can you read the sentence right in the middle?

3 A. Probability of paternity, ninety-nine point nine nine per-
4 cent.

5 Q. That paternity test was the DNA sample that D.S.S. took?

6 A. Yes, maam. This one has ^{Minor Child} [REDACTED] Minor Child 1, JW [REDACTED]

7 [REDACTED] JW and Mr. John Haynes.

8 Q. And what does this say here?

9 A. Paternity index nine hundred thousand seventy-three, four
10 hundred five to one. Probability of paternity is ninety-nine
11 point ~~nine~~ ~~nine~~ percent.

12 Q. Who was involved in this test?

13 A. [REDACTED] JW, [REDACTED] Minor Child 2 and John Haynes.

14 Q. Thank you.

15 SOLICITOR: Your Honor, we would enter these as Court's
16 Exhibits.

17 THE COURT: Any objection?

18 MR. WISE: No, sir.

19 THE COURT: Ms. Harry Dot, mark these as Court's Exhibits.

20 (Test reports marked Court's Exhibits 1 and 2 without objec-
21 tion)

22 THE COURT: Anything else, Ms. Ford?

23 SOLICITOR: Just a few questions, Your Honor.

24 THE COURT: All right.

25 BY SOLICITOR:

INV. GRAHAM ON REDIRECT

1 Q. Investigator Graham, you had absolutely no contact with Mr.
2 Haynes with the DNA testing done previously, that taken by DSS
3 is that right?

4 A. No, that was taken by DSS.

5 Q. The only way you could do testing in this case is by the
6 consent of Mr. Haynes or by this Court proceeding we are here
7 about?

8 A. That's right.

9 Q. So that is what we're doing today. Right?

10 A. Yes, maam.

11 Q. No further questions.

12 MR. WISE: Nothing further.

13 THE COURT: You may step down.

14 (Witness excused from stand)

15 THE COURT: Call your next witness. Any further witnesses?

16 SOLICITOR: Nothing further, Your Honor.

17 THE COURT: All right. Mr. Wise?

18 MR. WISE: One moment, please.

19 (Brief pause in proceeding)

20 THE COURT: Are you going to call Mr. Haynes.

21 MR. WISE: Yes, sir.

22 THE COURT: All right, Mr. Haynes, come on up.

23 Mr. Haynes, you need to come up and be sworn.

24 SOLICITOR: Your Honor, the State would object to Mr.

25 Haynes testifying at this time. It is the State's burden of

1 proof in obtaining an Order for the Defendant to be tested,
2 which we believe is only a minor intrusion. Testimony from
3 the Defendant would be out of order at this time, Your Honor.

4 THE COURT: I understand, and I will note your objection
5 to the testimony.

6 I will let this go forward on a limited basis, and only
7 testimony related to that intrusion.

8 SOLICITOR: Your Honor, just to clarify as to the limited
9 questioning here, . .

10 THE COURT: We won't get into the matter of him being
11 transported, but only relevant issues.

12 SOLICITOR: Yes, sir.

13 THE COURT: Go ahead and swear him.

14 JOHN EDWARD HAYNES, being
15 duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. WISE:

18 Q. Please state your full name for the record.

19 A. John Edward Haynes.

20 Q. Mr. Haynes, you are the Defendant in this action, is that
21 right?

22 A. Yes, sir.

23 THE COURT: Cut to the chase.

24 Q. Has you DNA been tested prior to this in this case?

25 A. Yes, sir. Once.

DEFENDANT ON DIRECT

1 Q. Just one time?

2 A. No, it was two. I got the swab from Mr. -- the Lieutenant
3 right here one time and he say he couldn't use that, and the
4 Judge ordered me another one.

5 I did that one.

6 Q. So they tested you?

7 A. Yes, sir.

8 Q. Was Lieutenant Graham involved?

9 A. The second time he wasn't in the picture.

10 Q. Who tested you the second time?

11 A. I went to the Lexington County Courthouse. The one he
12 say they couldn't use, they swab my mouth in the Courthouse
13 right down there. Then two weeks later he say he couldn't use
14 that for DNA and he needed the lab to do it.

15 So they set up a test and he said if I didn't have a ride
16 or anything he would transport me, but I had got a lawyer to take
17 care of that.

18 Q. So you consented to that?

19 A. The first test, yeah, I signed -- the first test he gave
20 me I signed the thing, and the second time I came here to Family
21 Court and the Judge ruled that, all right, for me to take the
22 DNA test for the case there.

23 Q. And the Lieutenant said it didn't work out?

24 A. He said it had to come through the lab.

25 Q. Did you say he transported you somewhere?

DEFENDANT ON DIRECT

1 A. No, I thought the test he took from me, the swab, would
2 have worked but he came back to me and said what you going
3 to do, and I said I'll take the test and went down and gave
4 them a swab.

5 So I wait almost a month or two and they said they had
6 to go through a lab to get it done, so I said set it up, wher-
7 ever you want to do it, and he offered the transportation wher-
8 ever I had to go to do it.

9 But I had already called my lawyer, Scott Palmer, and I
10 went through Scott Palmer with it. He said I did not cooperate
11 with him by him not taking me to get the DNA test, but I had to
12 wait on my lawyer to tell me where and when to get the test.

13 So he said to wait until we come to Court and the Judge --
14 do what the Judge tell me, and what he was talking about is
15 when he took the test and it didn't work.

16 Q. And you're saying you don't want to have another test?

17 A. No, I don't want another one. I think it's my right not
18 to do it since they done it before.

19 Q. No further questions.

20 THE COURT: Any questions?

21 SOLICITOR: No, sir.

22 THE COURT: You may step down.

23 (Witenss excused from stand)

24 THE COURT: Call your next witness.

25 MR. WISE: No further witnesses.

1 THE COURT: Ms. Ford, I'll hear from you briefly.

2 SOLICITOR: Your Honor, we would just ask that you author-
3 ize the test to be done.

4 THE COURT: Mr. Wise, anything you want to tell me?

5 MR. WISE: The only thing we have heard here is that the
6 evidence from the State's witness seems to indicate that there
7 is no reason that the initial swab of Lab Corps cannot be used.

8 That there was a swab taken in the very beginning that
9 couldn't be used, but it could have been taken in the very be-
10 ginning when he became aware it couldn't be used.

11 At this point, the State should use what they have. They
12 do not need to do anything further.

13 THE COURT: Anything further?

14 MR. WISE: No, sir.

15 THE COURT: I find there is probable cause to believe the
16 suspect committed the crimes as charged, and I think there is
17 clear indication that material evidence can be found.

18 The method to be used is ^{safe} secure and reliable. The crimes
19 are serious, and a clean swab in the lining of the mouth is a
20 minor intrusion. It has happened before in this case, and,
21 balancing the constitutional safeguards with the need for this
22 evidence to go forward in this matter, I find that it is appro-
23 priate and necessary to acquire this involuntary evidence for
24 use in this trial.

25 All right. I will note your objection to my ruling, and

1 it is preserved on the record..

2 You are authorized to go forward with the test.

3 SOLICITOR: Thank you, Your Honor.

4 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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1 CERTIFICATE

2 I, HARRIET P. BENNETT, Court Reporter for South Carolina
3 Court Administration, hereby certify that the foregoing Tran-
4 script was prepared from the records of Harry Dot Walker to the
5 best of my ability, having been heard in the Court of General
6 Sessions for Calhoun County on May 18, 2012.

7 FURTHER, I certify that I am neither of kin nor counsel
8 to any party to this action, nor do I have any interest in the
9 case.

10 June 26, 2014

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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

2010-GS-09-00069

COUNTY OF CALHOUN

2010-GS-09-00070

STATE OF SOUTH CAROLINA,

- V S -

JOHN EDWARD HAYNES,

Defendant .

February 25-28, 2013

B E F O R E:

HONORABLE DIANE S. GOODSTEIN

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1 P-R-O-C-E-E-D-I-N-G-S

2 (Convened 3:02 p.m., February 25, 2013).

3 THE COURT: The first matter we have is what?

4 MS. FORD: Your Honor, State versus John
5 Edward Haynes, we'll be continuing with the Blair
6 hearing.

7 THE COURT: Okay. Has the doctor had an
8 opportunity to examine Mr. Haynes today?

9 MS. FORD: Yes, Your Honor, briefly.

10 THE COURT: Okay, all right.

11 MS. FORD: We'll have him brought out
12 momentarily.

13 THE COURT: Good afternoon, Mr. Haynes.

14 THE DEFENDANT: Good afternoon, ma'am.

15 THE COURT: All right, as I understand, the
16 first matter is the Blair hearing?

17 MS. FORD: That's correct, Your Honor.

18 THE COURT: All right, very well.

19 MS. FORD: May it please the Court.

20 THE COURT: Yes.

21 MS. FORD: The State calls Dr. Richard
22 Frierson to the stand.

23

24

25

1 DR. RICHARD FRIERSON, after being first duly sworn,
2 testified as follows:

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

4 Dr. Frierson, would you move that microphone
5 down a little bit? There you go.

6 Your witness.

7 MS. FORD: Thank you, Your Honor.

8 DIRECT EXAMINATION BY MS. FORD:

9 Q Dr. Frierson, where are you employed?

10 A I'm employed by the University of South
11 Carolina School of Medicine but I also as part of
12 that do contract work for the Department of Mental
13 Health.

14 Q Okay. What is your job exactly?

15 A I am director of the forensic psychiatry
16 fellowship, I help train psychiatrists to become
17 forensic psychiatrists. I also clinically perform
18 evaluations of competency and criminal
19 responsibility for Circuit Courts throughout South
20 Carolina.

21 Q How long have you been doing that type work?

22 A Since 1993.

23 Q Can you briefly described your background,
24 your educational background?

25 A Yes. I received a Bachelor's Degree in music

1 from the University of South Carolina. I then
2 completed four years of medical school in 1988,
3 South Carolina School of Medicine. I completed
4 four years of training, residency training in
5 psychiatry at William S. Hall Psychiatric
6 Institute, 1992. I completed a one year fellowship
7 in forensic psychiatry at the William S. Hall
8 Psychiatric Insitute in 1993. I'm currently Board
9 Certified by the American Board of Psychiatry in
10 the fields of general psychiatry and forensic
11 psychiatry.

12 Q Thank you, Doctor. Have you testified in
13 court before?

14 A Yes.

15 Q Approximately how many times?

16 A Hundreds.

17 MS. FORD: Your Honor, at this point the
18 State would move to have Dr. Frierson admitted as
19 an expert in forensic psychiatry.

20 THE COURT: Any voir dire?

21 MR. WISE: No.

22 THE COURT: All right. Any objection?

23 MR. WISE: No.

24 THE COURT: All right, so qualified.

25 MS. FORD: Thank you.

1 BY MS. FORD:

2 Q Dr. Frierson, did you receive a court order
3 to examine the defendant Mr. John Haynes?

4 A The Department of Mental Health received that
5 order on August 1st of 2011.

6 Q And did you examine Mr. Haynes?

7 A Yes.

8 Q Did you collect any information prior to that
9 examination to familiarize yourself with Mr.
10 Haynes' situation?

11 A Yes. We had been provided with the arrest
12 warrant related to the alleged offense, the
13 indictments, the incident reports, some medical
14 records from the detention center and some medical
15 records from the regional medical center.

16 Q When did you examine Mr. Haynes?

17 A On August 15th, 2011.

18 Q And who all was present for that evaluation?

19 A Just myself and the social worker over the
20 case, Carol David.

21 Q Approximately how much time did you spend
22 with Mr. Haynes back in August?

23 A I interviewed him for an hour and 20 minutes.

24 Q Did you have an opportunity to meet with Mr.
25 Haynes today?

1 A Very briefly.

2 Q Doctor, you're familiar with the legal
3 standards for competency?

4 A Yes.

5 Q What was done to determine if Mr. Haynes met
6 those standards, Doctor?

7 A Specifically he was asked a series of
8 questions aimed at assessing his understanding of
9 the legal system and how it works and also
10 discussed aspects of his current case, his attitude
11 toward his case, his attitude towards the ability
12 to work with an attorney.

13 Q Did you inquire if he understood the charges
14 against him?

15 A Yes, I did.

16 Q And do you believe he did understand?

17 A Yes. He was able to state the charges
18 against him, however he initially mispronounced the
19 word incest as instant but he understood what it
20 meant.

21 Q Okay. And after that evaluation do you
22 believe that Mr. Haynes is capable of assisting his
23 attorney in his defense?

24 A It is my opinion that he has the capacity to
25 assist his attorneys if he so chooses.

1 Q Is there any evidence that Mr. Haynes suffers
2 from any mental illness?

3 A I was unable to find evidence of mental
4 illness. He had never been hospitalized, never
5 been in mental health treatment. He denies
6 symptoms of mental illness, he denies
7 hallucinations, delusions, depression, anxiety, he
8 did not endorse symptoms we formally find in people
9 with a mental illness.

10 Q Is there any evidence that Mr. Haynes is
11 intellectually disabled?

12 A No. I did diagnose borderline intellectual
13 functioning. I believe that is just based on my
14 clinical interview with him. We did have some
15 school records that eventually came in after my
16 evaluation and they would be consistent with
17 someone who has borderline intellectual functioning
18 or very low average intelligence but he is not
19 intellectually disabled or in the prior medical
20 term mentally retarded.

21 Q Dr. Frierson, in your expert opinion to a
22 reasonable degree of medical certainty what is your
23 opinion regarding Mr. Haynes' competency to stand
24 trial?

25 A It is my opinion that Mr. Haynes has an

1 excellent factual understanding of the legal system
2 and a rational ability to assist his attorney.
3 However -- and for those reasons it is my opinion
4 that he is competent to stand trial. However, with
5 the caveat that he believes or feels that he is
6 being railroaded and that people are really not
7 helping him, for example, dissatisfaction with his
8 attorneys, but he understands the role and function
9 of an attorney, what they are supposed to do but
10 his beliefs about being railroaded and that they
11 are all crooked in Calhoun County in my opinion do
12 not represent mental illness but rather a value
13 system he holds.

14 Q Thank you, Doctor. Is this opinion based on
15 both your evaluation conducted in 2011 and your
16 meeting with him today?

17 A My meeting today was incredibly brief
18 because he did not want to speak with me. He did
19 remember me, he knew who I was, he knew where he
20 had seen me before. He made mention that he didn't
21 believe that I could testify because he failed to
22 sign an information form. When we do these
23 evaluations we go over information about the
24 evaluation, "This is court ordered, we are going to
25 see if you understand the legal system, I'm going

1 to write a report, it is going to three people, the
2 judge, your lawyer and the Solicitor, they can call
3 us and talk to us about the report." We went over
4 all that with him. In fact I asked him questions
5 about that, which indicated to me that he was able
6 to retain that information. I asked him to sign
7 the form, we went over this information, he refused
8 to sign, he said, "I'm not signing anything." And
9 then he indicated to me that because he did not
10 sign that he didn't believe that I could come and
11 testify.

12 Q Thank you. Doctor, did you generate a
13 report, a written report of your findings from
14 August, 2011?

15 A Yes.

16 MS. FORD: May I approach, Your Honor?

17 THE COURT: You may.

18 Q Dr. Frierson, can you identify this document?

19 A This document appears to be a copy of my
20 original report.

21 Q And, Doctor, is your signature on that
22 report?

23 A It is.

24 Q And are the findings in that report
25 consistent with your testimony here today?

1 A Yes.

2 MS. FORD: Thank you, Doctor. At this time,
3 Your Honor, the State would move to admit the
4 evaluation done by Dr. Frierson into evidence.

5 MR. WISE: May we see it?

6 No objection, Your Honor.

7 THE COURT: All right. Very well, it's
8 admitted without objection for purposes of this
9 hearing.

10 (Dr. Frierson's report marked and received in
11 evidence as State's Blair Hearing Exhibit
12 Number 1).

13 MS. FORD: No further questions, Your Honor.

14 THE COURT: Cross examination?

15 MR. WISE: Thank you.

16 CROSS EXAMINATION BY MR. WISE:

17 Q Dr. Frierson, I want to kind of start with
18 the last thing first. You went to speak with Mr.
19 Haynes today and he would not speak with you?

20 A He didn't want to sit down and be
21 interviewed, he spoke to me briefly.

22 Q Did you explain to him you might be able to
23 help him?

24 A I did not.

25 Q He indicated to you that since he did not

1 sign that form, that you couldn't testify. Did you
2 explain to him that that was not true?

3 A I didn't really explain it was not true but I
4 indicated that, "I believe you're wrong."

5 Q Okay. Did he accept your statement then he
6 was incorrect?

7 A He didn't say anything either way after I
8 told him that.

9 Q Okay. He didn't acknowledge you as the
10 expert and might know something about what you're
11 talking about?

12 A Correct.

13 Q You indicated during your testimony that Mr.
14 Haynes has borderline intellectual functioning,
15 okay, which means his level of functioning is
16 slightly above what would have been called mentally
17 retarded, correct?

18 A Yes. I mean, if you want to give it a
19 number, we normally say borderline intellectual
20 functioning falls within the realm of an IQ between
21 70 and 85.

22 Q And normal is what?

23 A Average?

24 Q Average.

25 A A hundred.

1 Q A hundred?

2 A Average could be anywhere, normal would be
3 anywhere between 85 to like 115.

4 Q When you spoke to Mr. Haynes initially back
5 in August did he indicate to you that he was going
6 to assist his attorneys?

7 A No, he did not. He indicated that he was
8 dissatisfied with his attorneys. He had initially
9 said that there was on attorney named, I believe it
10 is Martin Banks, if I can read my writing
11 correctly, I'm not sure I'm reading it right, but
12 that Martin Banks initially had his case and he
13 turned the case over to Mark Wise who I believe is
14 you.

15 Q That's correct.

16 A And he said that Martin Banks had said that
17 he, Mr. Haynes, was going to sue him is the reason
18 that he turned it over to you but then he added
19 that you were a much more experienced lawyer
20 anyway.

21 Q Did he indicate to you in your conversation
22 with him that he believed that I was going to help
23 him?

24 A No. You personally?

25 Q Yes.

1 A No. He understood that the job of an
2 attorney is to help him but the attorney is
3 supposed to help him but he didn't indicate, he
4 said about you that, "Mr. Wise knows there is
5 nothing in my motion for discovery," and when I was
6 going over the initial information form and I said
7 who is going to get our report, meaning the judge,
8 the Solicitor and the attorney, he responded, "The
9 three crooked people that are trying to put me in
10 prison, the judge, Solicitor and my supposed to be
11 Public Defender Mark Wise."

12 Q So, he referred to me as one of the crooked
13 people?

14 A Yes.

15 Q And his supposed to be public defender?

16 A Yes.

17 Q Okay. Let's talk about that for a minute.
18 The judge, the Solicitor and me?

19 A Yes.

20 Q Did he indicate to you that he thought we
21 were functioning as a team, we were all out to get
22 him?

23 A Well, you were conspiring, yes.

24 Q And when he spoke about the judge that was
25 conspiring, just so the record is clear, I believe

1 he was speaking about Judge Dickson, is that
2 correct?

3 A Dickson, that's correct.

4 Q So, Judge Dickson, the Solicitor -- did he
5 name Miss Ford specifically as the Solicitor, Miss
6 Ford?

7 A He did not mention her name, no.

8 Q So, he mentioned me by name, Judge Dickson by
9 name and the Solicitor are all part of a conspiracy
10 against --

11 A Uh-huh (Affirmative).

12 Q -- against him?

13 A Trying to railroad him.

14 Q Trying to railroad him. Did he indicate why
15 we were trying to do that?

16 A No.

17 Q Okay, all right. In your report you describe
18 him --

19 A He did indicate the public defender was paid
20 by the State. I mean, his discussion of all of
21 this was not different from similar expressions of
22 dislike for the legal system that I hear from lots
23 of criminal defendants who have either been in
24 trouble before or what have you.

25 Q Okay. You described him in your report as

1 having an idiosyncratic view of his situation. You
2 used that term?

3 A Yes.

4 Q What do you mean by that, idiosyncratic?

5 A He expects to have unusually favorable
6 treatment in the legal system. His expectations
7 are, in my opinion, somewhat idiosyncratic,
8 especially in looking at discovery evidence. I
9 believe he understand DNA evidence, he understands
10 DNA is in sperm, he understands what it is, so he's
11 capable of intellectually understanding it but he
12 is really naive in how he expects to challenge it
13 or his sorts of theory of how he would explain how
14 his DNA was involved in this case.

15 Q So, he understands, he reviewed the
16 discovery, he understands the case against him but
17 he is not willing to cooperate with me to help him?

18 A He doesn't want to accept the facts as they
19 appear to align with evidence.

20 Q Does that mean he's going to help me or not?

21 A I don't know whether he will or won't. I
22 think there is a great likelihood that he may not.

23 Q Okay. Even though he knows that there is all
24 this evidence against him?

25 A Yes.

1 Q Okay.

2 A I mean, he was able to talk sophisitcatedly
3 about discovery, Rule 5, he used those terms.

4 Q You asked him about his alcohol and substance
5 abuse history but he wouldn't give you, he wouldn't
6 answer those questions for you, would he?

7 A He would just say he was a casual drinker, he
8 wouldn't go into how much, how often, exactly the
9 amount. He did tell me that he had a DUI twelve
10 years ago.

11 Q Okay. Looking at the second page of your
12 report, you write, and I'm in the paragraph that is
13 alcohol and substance use history.

14 A Uh-huh (Affirmative).

15 Q The last full sentence, "He was not
16 forthcoming at answering questions relating to
17 alcohol and substance abuse history and related
18 that such questions were not relevant to a
19 competency determination."

20 A Yes.

21 Q Did you tell him that you were asking that
22 information because that could help him?

23 A Sir?

24 Q Did you ask him, did you tell him you wanted
25 that information because you thought it could help

1 him?

2 A No. Those questions are like have you ever
3 had blackouts where you don't remember the next day
4 when you have been drinking, have you ever had
5 withdrawal symptoms or got the shakes if you
6 couldn't get a drink. Physiological tolerance,
7 dependence on alcohol, those sorts of questions he
8 just thought were irrelevant to whether he's
9 competent now.

10 Q He didn't think it was important so he wasn't
11 going to deal with it?

12 A Correct.

13 Q You have described him as being minimally
14 cooperative with this evaluation, right?

15 A Yes.

16 Q Even though he knew the purpose of it, even
17 though he knew the purpose of this evaluation?

18 A Yes.

19 Q Okay.

20 A I mean, he clearly believes he's competent
21 and if someone thinks he is not I think he is
22 rather offended.

23 Q Even though he believes he's competent and
24 you're trying to evaluate his competence, he would
25 not even answer some of the questions, you would

1 ask him questions and he would refuse to answer
2 them?

3 A Some.

4 Q You wrote, I think, "He has chosen not to be
5 helpful or receptive to his attorney." Am I
6 stating that correctly?

7 A I believe so.

8 Q Okay. And he continues today to not be
9 helpful or receptive to his attorneys, is that
10 correct?

11 A Yes.

12 Q Okay. And that means he's not going to help?

13 A He could choose not to help you, possibly.

14 Q Did he give you any reasons as to why he
15 would not help, let me help him?

16 A Other than you're part of the system and you
17 don't have his best interest at heart.

18 Q Did he indicate what he thinks he's going to
19 gain by not letting me help him?

20 A No.

21 Q Dr. Frierson, you indicated he did not want
22 to speak to you today?

23 A He didn't want to be interviewed.

24 Q Did he say why?

25 A He knows I'm a mental health guy, he

1 remembered me from 2011 when he was brought to the
2 forensic evaluation center. Other than that, he
3 didn't. He said, "I don't need to talk to you."

4 Q Did he think it would help his situation to
5 not speak to you?

6 A I don't know. It is quite possible he may
7 think I'm involved with whatever conspiracy is out
8 to convict him. I'm probably part of the system,
9 too, but he didn't specifically say that but it
10 would not surprise me if he held that type attitude
11 towards me.

12 Q Do you think that would be a rational thing
13 for him to think?

14 A It is not rational but it is not mental
15 illness.

16 Q I've got you. So, he's irrational but not
17 mentally ill?

18 A Correct.

19 Q And his irrational thoughts are going to stop
20 him from letting us help him?

21 A It doesn't stop him from him letting you help
22 him. It leads him to choose not to assist you.

23 MR. WISE: Very good. May I have one moment,
24 Your Honor?

25 THE COURT: Sure.

1 MR. WISE: That's all I have.

2 THE COURT: Okay. Redirect?

3 MS. FORD: Nothing, Your Honor.

4 THE COURT: All right. Is Dr. Frierson free
5 to go?

6 MS. FORD: Yes, Your Honor.

7 THE COURT: Any objection.

8 MR. WISE: Yes, we don't need him.

9 THE COURT: No objection. Thank you.
10 (Witness excused).

11 THE COURT: All right, any additional
12 witnesses?

13 MS. FORD: No further witnesses, Your Honor.

14 THE COURT: Okay.

15 Yes?

16 MR. WISE: May I have one moment?

17 THE COURT: Sure.

18 MR. WISE: We call Mr. Haynes.

19 THE COURT: Okay, sure.

20

21

22

23

24

25

1 JOHN EDWARD HAYNES, after being first duly sworn,
2 testified as follows:

3 THE CLERK: State your full name for the
4 record, please.

5 THE WITNESS: John Edward Haynes.

6 THE CLERK: Have a seat and pull the
7 microphone up, please.

8 THE COURT: All right.

9 MR. WISE: Ready, Your Honor?

10 THE COURT: Yes.

11 MR. WISE: Thank you.

12 DIRECT EXAMINATION BY MR. WISE:

13 Q Good afternoon, Mr. Haynes.

14 A How you doing?

15 Q Mr. Haynes, let's get right to it. You are
16 here today because your trial is going to start
17 tomorrow. Do you understand that?

18 A I just heard this basically today.

19 Q Today, okay. All right. Do you remember you
20 and I talking about the fact that your trial was
21 going to be starting this week?

22 A Well, the time you did talk to me about it
23 you wasn't going over no trial. You called me up
24 and said I'm going to trial, you didn't prepare me
25 for trial.

1 Q Let me ask you this, Mr. Haynes.

2 Understanding that your case is going to go to
3 trial, is it your intent to assist me in defending
4 you? Are you going to help me, are you going to
5 help me to help you?

6 A Well, like I said, I mean, how could I make
7 that decision if you never come towards me for the
8 trial until two days before trial pop up? You
9 never even explained that to me, not nothing, you
10 saying for the last two years I going to trial,
11 going to trial, open plea or go to trial. What man
12 would open plea or go to trial if you not explained
13 what is going on? You my attorney.

14 Q Understanding -- what you're telling the
15 judge is you didn't know you were going to go to
16 trial?

17 A I'm telling you because you're the one
18 talking to me about supposed to be my public
19 defender which I don't know how you become, if
20 Martin Banks on my case, why didn't I receive a pro
21 bono attorney instead of you? You given to me,
22 saying Doug Mellard the same thing, you all three
23 attorneys the same way, why I can't get a pro bono
24 attorney to represent me, being as I didn't want
25 you all to represent me, period, because Martin

1 Banks railroaded me, how can I have confidence in
2 him, you talking to him on my case, that ain't
3 right.

4 Q So you feel that because Martin Banks started
5 with you and I took over for Mr. Banks --

6 A The thing about it, if he started with you, I
7 seen you and him back there talking to each other
8 back there, how, why would you talk to him if you
9 was representing me, why wouldn't I get my motion
10 for discovery, and dealing with me instead of
11 letting me see you talk to him, knowing he wasn't
12 doing me right to start with, why would you do
13 that?

14 Q So, you're upset because I was talking to Mr.
15 Banks?

16 A I mean, more reason than that anyway. Just
17 like you sent an investigator out there to do
18 something behind my back.

19 THE COURT: Hold on, hold on. Hold on, okay?
20 We have two things going on. We've got a Blair
21 hearing that is ongoing but I want to be sure I'm
22 proteting your attorney-client privilege and I have
23 my Solicitor, I say my Solicitor, two of them, do
24 you see what I'm saying, so what I don't want to
25 have happen is that I don't want any of your

1 conversation --

2 THE WITNESS: I've got you.

3 THE COURT: You've got it. Because that
4 belongs to you, I don't want that to happen. Do
5 you see what I'm saying?

6 THE WITNESS: Right.

7 THE COURT: What I need you to do is just ask
8 him questions that have to do with Blair. Now, if
9 we need to get into some more issues we'll do that
10 but we need to do that outside the presence of
11 anybody other than you, security and the court
12 reporter and my law clerk and the clerk.

13 THE WITNESS: I understand. Thank you.

14 BY MR. WISE:

15 Q Now that we are here are you going to
16 cooperate with me in this trial?

17 A The answer I have to give you, she don't want
18 me to speak it in front of them.

19 THE COURT: I think we're on the same page.

20 THE WITNESS: Why would you ask me a question
21 like that if it ain't right? That is what I'm
22 talking about, right there.

23 MR. WISE: Okay. I don't have anything
24 further.

25 THE COURT: Okay. All right, very well.

1 With regard to the Blair issues and the Blair
2 issues only, is there cross-examination?

3 MS. FORD: Beg the Court's indulgence.

4 THE COURT: Sure. Here is the rule. You
5 don't answer a question until it passes muster. Do
6 you see what I'm saying, you just hold up.

7 THE WITNESS: Yes.

8 CROSS EXAMINATION BY MR. BELL:

9 Q Mr. Haynes, do you know what you're charged
10 with?

11 THE COURT: You can answer that question.

12 A I understand what you all are trying to
13 charge me with.

14 Q What are you charged with?

15 A Well, the paperwork say I'm charged with
16 incest and two counts of criminal sexual conduct
17 with a minor.

18 Q And you understand you are going on trial on
19 those charges, is that correct?

20 A Like I said, I just found that out.

21 THE COURT: Slow down, let me pass on it.

22 THE WITNESS: I'm sorry.

23 THE COURT: That's okay. You can answer. Do
24 you know that you are to go to trial on those
25 charges, I think that is what he asked?

1 THE WITNESS: I just finding that out this
2 previous minute, just finding that out.

3 BY MR. BELL:

4 Q And you know that she's the judge?

5 A Yes. You're the Solicitor, that is my
6 attorneys sitting there with me and the jury sit
7 over here, yes, I been on jury duty one time
8 before.

9 MR. BELL: Thank you, Mr. Haynes.

10 THE COURT: Is that all you want to ask?

11 Okay, does that prompt any additional
12 questions?

13 MR. WISE: No, Your Honor.

14 THE COURT: Okay, very well. All right.

15 Now, you can come down now, you may have to
16 come back up but you can come on back down right
17 now, okay?

18 THE WITNESS: Thank you, ma'am.

19 THE COURT: Yes. You will probably be
20 trucking back up in just a minute but that's all
21 for right now -- well, I've got one question I do
22 want to ask him. I actually don't know the answer
23 to this.

24 Do you know how many different, you talked
25 about paperwork, do you know how many different

1 charges are on that paperwork, in terms of numbers?

2 I don't even know if the question makes sense.

3 THE WITNESS: Incest and two counts of
4 criminal sexual conduct, three.

5 THE COURT: Three?

6 THE WITNESS: That is what the indictment
7 supposed to be.

8 THE COURT: I actually don't know.

9 THE WITNESS: The first sheet I got April 27
10 showing three of them, I got three warrants.

11 THE COURT: Okay, all right. Three warrants
12 and three indictments.

13 THE WITNESS: Yes.

14 THE COURT: I understand. Now, you're
15 telling me you had CSC, and what was the other one?

16 THE WITNESS: Incest.

17 THE COURT: I'm with you. Okay.

18 THE WITNESS: I made a mistake when I told
19 him.

20 THE COURT: That's okay, that's fine.

21 (Witness excused).

22 MR. WISE: Could I make argument?

23 THE COURT: Of course.

24 MR. WISE: I recognize the only issue before
25 the Court is the Blair hearing and it has to do

1 with the issue of whether or not he's competent.
2 There are some things I think we know from this
3 situation. From Dr. Frierson's testimony, the
4 number one thing I think we know is that Mr. Haynes
5 is not going to assist us in his defense.

6 The other thing that Dr. Frierson indicates
7 is that he has the idiosyncratic view of this
8 situation, of his situation. He has indicated to
9 Dr. Frierson that he believes there is a conspiracy
10 involving Judge Dickson, myself and the Solicitor.
11 We don't know why because he has never expressed a
12 reason, but the best that the doctor can do is use
13 the word idiosyncratic to describe it, it and it
14 may be irrational.

15 I submit to the Court that if he is
16 irrational and we can't determine why because he
17 won't answer the questions and that irrationality
18 causes him to not want to cooperate with his
19 attorneys, that that makes him incompetent. I
20 can't give the Court a reason why -- well, we have
21 a little, I think a little bit of exposure as to
22 why he thinks that there may be a conspiracy.

23 I don't know why he thinks the judge and his
24 lawyers are against him and obviously, Your Honor,
25 his unwillingness to cooperate with us is bringing

1 harm on himself and that's the problem. It is his
2 inability, unwillingness to assist his defense that
3 causes us to be here fighting about this and we
4 can't, I don't think we can get to the bottom of it
5 today. My thought was, on how to deal with this
6 situation, given the fact that his irrational
7 theories or thoughts cause him not to cooperate, to
8 find him incompetent, let him be committed for 60
9 days and maybe with some intense counseling, maybe
10 some counseling involving me, we can all go up and
11 try to deal with this and maybe some tests
12 particularly to see if there is something else
13 going on that we don't know about and we can get to
14 the heart of this, we can figure out what needs to
15 happen to help him recognize that he should assist
16 his attorneys and kind of deal with this case.

17 I recognize that this case is dragging on and
18 I recognize when I stand before the Court and say
19 another 60 days that makes it drag on some more but
20 he is facing a significant sentence, as the Court
21 is aware. He seems to indicate, or Dr. Frierson
22 seems to indicates maybe he can be made to help and
23 maybe 60 days would be something that would help us
24 get to the heart of this, this issue, whatever the
25 cause of it is that makes him irrational and

1 idiosyncratic, and help his attorneys. I think we
2 should do everything we can to try to get him to
3 the point where we can help him help himself and --

4 THE COURT: I got it.

5 Okay, on behalf of the State?

6 MS. FORD: Just briefly, Your Honor. It's
7 the State's position that Mr. Haynes is competent
8 to stand trial. Dr. Frierson who was admitted as
9 an expert in forensic psychiatry testified not only
10 Mr. Haynes understands the charges against him but
11 he is also capable of assisting in his own defense.
12 Dr. Frierson determined that there is no history of
13 mental illness nor intellectual disability and it
14 is up to the Court to determine Mr. Hayne's
15 competency. It would have to be, to determine him
16 to be incompetent would have to be as a result of
17 some sort of mental illness or intellectual
18 disability, and Dr. Frierson has indicated and Mr.
19 Haynes himself through his testimony has indicated
20 that he understands the charges against him, he is
21 capable of assisting his attorneys if he chooses to
22 do so, there is no history of mental retardation,
23 mental illness which would deem Mr. Haynes to be
24 incompetent and the State asks Your Honor to
25 determine Mr. Haynes competent to stand trial and

1 to proceed to trial tomorrow.

2 THE COURT: Okay. Let me ask this question.
3 Is there a motion to be relieved?

4 MR. WISE: Your Honor, I filed a motion to be
5 relieved, that motion was denied, I did plan to
6 renew that motion this afternoon but I thought --

7 THE COURT: Okay. I'm going to combine the
8 two. I know it is a little, I've got the testimony
9 of Dr. Frierson but I feel compelled to act on the
10 motion to be relieved. I've got to protect Mr.
11 Haynes' rights and so the next part, I'm going to
12 combine the motion to be relieved with my ability
13 to try to figure out what, if any, impact his
14 present state of mind might have on the issue of
15 his ability to assist his counsel, so with that in
16 mind, the Solicitors will be excused from the
17 courtroom. The people who will remain of course
18 will be security and obviously counsel, Mr. Haynes'
19 counsel and the clerk.

20 (State's attorneys and spectators were
21 excused from the courtroom).

22 THE COURT: All right, I need to have a roll
23 call, if you will, of everyone who is present in
24 the courtroom because each and everyone will be
25 under court order not to discuss any of the matters

1 which are heard during this part of the hearing
2 with anyone else and the reason for that is that it
3 is my intention to protect Mr. Haynes'
4 attorney-client privilege. What that means is that
5 everyone present is under the Court's order not to
6 discuss the matters which will be, which may be
7 discussed during this hearing and we will start
8 here, yes, sir?

9 DEPUTY SHERIFF: Lieutenant Jerry Briggs with
10 the Calhoun County Sheriff's office.

11 DEPUTY SHERIFF: Officer Fred Brown with the
12 detention center.

13 THE COURT: You know who you are, Mr. Court
14 Reporter, Mr. Young,
15 Miss Pauling.

16 MS. PAULING: Claudia Pauling.

17 DEPUTY SHERIFF: Sergeant Mike Higgins,
18 Calhoun County Sheriff's office.

19 THE COURT: Okay.

20 BAILIFF: Holman, bailiff.

21 DEPUTY SHERIFF: Captain Kirk Hoyle with the
22 Calhoun County Sheriff's office.

23 THE COURT: All right. Of course counsel for
24 Mr. Haynes.

25 THE COURT: Very well. Those of you with the

1 Sheriff's Department, are you involved in any way,
2 shape or form with this particular investigation?

3 DEPUTY SHERIFF: We are --

4 THE COURT: Deputy Goolsby. Yes, sir?

5 DEPUTY SHERIFF: Your Honor, I believe myself
6 and maybe Sergeant Heard are maybe the only two
7 deputies and maybe the two deputies who are not
8 here are the only deputies are not.

9 THE COURT: All right. You understand the
10 importance of not discussing the matters with the
11 other members of the Sheriff's Department, the
12 matters discussed here today?

13 DEPUTY SHERIFF: Yes, ma'am.

14 THE COURT: All right.

15 Now, all right, you may proceed.

16 MR. MELLARD: We would like to recall Mr.
17 John Haynes to the stand, Your Honor.

18 THE COURT: He's fine there, we can hear him
19 there.

20 Mr. Haynes, I just need enough volume I can
21 hear you, okay?

22 THE DEFENDANT: Yes.

23 JOHN EDWARD HAYNES, after being first duly sworn,
24 testified as follows:

25 QUESTIONS BY MR. MELLARD:

1 Q Mr. Haynes, tell us again what the charges
2 against you are.

3 A Well, it is stated like that, I don't know
4 nothing about the charges but I know what they put
5 on me, I put it like that, incest and two counts of
6 criminal sexual conduct.

7 Q Okay. And who brought these charges against
8 you? How did you end up with these charges?

9 A Somebody gave them allegations about the
10 situation with the family and I, to tell you the
11 truth, I never seen, the warrants came from the
12 Sheriff's Department on April the 8th, 2010, and
13 that is when I came, I came, went to jail then and
14 I got the warrants that day. So I assume they came
15 from the Sheriff's Department.

16 Q Okay. Did Martin Banks have anything to do
17 with this?

18 A Not at first.

19 Q How about later?

20 A That case went to Family Court, Family Court
21 dismissed the case saying I'm not, I wasn't guilty
22 of these charges and I was looking for mostly
23 discovery, and I never knew, Martin Banks
24 subpoenaed for the motion to discovery from Scott
25 Palmer, I never knew about it until eight months

1 down the road.

2 Q Just so we're clear, Scott Palmer was
3 representing you in Family Court?

4 A Yes.

5 Q All right. How did Martin Banks get
6 involved?

7 A That is what I need to know, how, because
8 when the Family Court case was over on May 26, '10,
9 June the 7th I find out that Martin Banks already
10 did a motion for my subpoena for my motion for
11 discovery from Scott Palmer, how he came in to get
12 a motion to get from Scott Palmer, I never talked
13 to him about it, about being my public defender or
14 nothing, signed papers or nothing, the clerk of
15 court or nothing. My public defender, where he
16 come in at to get my motion, to keep it from me for
17 eight months, where did he come in at? I don't
18 know, but I'm seeing the subpoena that he is filing
19 subpoena twelve days after Family Court saying lose
20 the right to my family or go back home. I'm saying
21 I went to court on April 26th, 2010, and my mom and
22 my wife told me DSS told them everything was over,
23 so I'm in jail wondering what is going on and every
24 time Martin Banks talk to me he not showing me on
25 paper, where he said plead or go to trial, plead or

1 go to trial, and my mama went and applied for an
2 attorney, I think Lindsey Joyner, I think she is
3 like a federal attorney, she applied for her and
4 she said, "It is your right to have your motion for
5 discovery." So I told my mom I wanted to know why
6 Martin Banks ain't telling me, 58 days or something
7 I been in jail, what is going on, he ain't telling
8 me nothing.

9 So I went back to my mama, my mama went back
10 to Martin Banks and Scott Palmer, he called me up,
11 called me up here on December, I think around
12 December, a hearing, he called me and gave me
13 motion discovery eight months after I been in
14 Family Court and I didn't know what is going on. I
15 said, "What is going on, what is happened to the
16 paperwork?" Martin Banks said Scott Palmer have
17 all the paperwork. I'm not knowing that, he's
18 telling me to go to trial or plead. What is my
19 defense, what is going on, what is wrong? I mean,
20 what --

21 Q Let me ask you this. You said the Family
22 Court case was dismissed, right?

23 A Well, Judge Wylie, Wylie, I got the paper to
24 show the judge if you would like to see it, he said
25 there is no sexual offender. I don't know what the

1 charge is about for the sexual conduct, period.
2 Whatever my attorney came, whatever my attorney got
3 here from Family Court, on the order they put, I
4 don't know what the law establish, he said the case
5 dismissed, Martin Banks said, "We going to trial
6 for DSS." I'm like, "What's going on, you can't go
7 to trial unless you get your ducks in a row." That
8 is why I don't know what the charges was because I
9 never had the paperwork to find out what it about,
10 that is where it come in, Martin Banks was

11 misrepresenting me, if he was my lawyer, but who
12 signed him to be my public defender if I didn't?

13 Q The Family Court case, in your opinion --

14 A The court opinion, I'm doing whatever he
15 asked me to do, I'm following that, but I'm seeing
16 this paperwork that said true bill and all, true
17 act, whatever it is, from --

18 THE COURT: Let me ask you this question.
19 You had a hearing in Family Court on April 26th?

20 THE WITNESS: Yes, ma'am.

21 THE COURT: 2010?

22 THE WITNESS: 2010.

23 THE COURT: You said there were warrants you
24 got on April the 8th, 2010?

25 THE WITNESS: April 8, right.

1 THE COURT: April 8, 2010, you got warrants?

2 THE WITNESS: That's right.

3 THE COURT: Okay. And Mr. Palmer, you had

4 Mr. Palmer representing you in Family Court?

5 THE WITNESS: Yes, ma'am.

6 THE COURT: And there was a hearing in April,

7 the end of April in the Family Court with Judge

8 Wylie?

9 THE WITNESS: Yes, April 26, right.

10 THE COURT: April 26?

11 THE WITNESS: Yes, ma'am.

12 THE COURT: But the whole -- let me ask this

13 question. When were you, when did you arrive at

14 the jail?

15 THE WITNESS: April the 8th.

16 THE COURT: Okay.

17 THE WITNESS: April 7th or April 8th.

18 THE COURT: Okay. All right. And, so, when

19 you got served with the warrants, then that is when

20 you went to jail?

21 THE WITNESS: Yes, ma'am. Yes, ma'am.

22 THE COURT: And while you were at the jail --

23 THE WITNESS: Family Court.

24 THE COURT: -- then you got the Family Court

25 stuff, too?

1 THE WITNESS: Yes, I came to Family Court.

2 THE COURT: I understand. Do you remember
3 when you got the Family Court petition, do you
4 remember that?

5 THE WITNESS: To come to Family Court?

6 THE COURT: Yes, the stuff from the Family
7 Court that says for the 26th?

8 THE WITNESS: Yes, ma'am.

9 THE COURT: You got that, too?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: You know there are two tracks?

12 THE WITNESS: What?

13 THE COURT: There are two trials, there is
14 that Family Court track and General Sessions track?

15 THE WITNESS: Right.

16 THE COURT: Okay.

17 THE WITNESS: I got that telling me to go to
18 Family Court.

19 THE COURT: I understand.

20 THE WITNESS: First of all they give me some
21 papers for General Sessions charge.

22 THE COURT: Yes.

23 THE WITNESS: Before Family Court was over.

24 THE COURT: Right.

25 THE WITNESS: Whoever it was, actually clerk

1 of court, they turn the case to General Sessions
2 and supposed to answer in ten days. Ain't nobody
3 went to answer that. You have ten days, she will
4 assume that the case was not to be prosecuted
5 within ten days. If you want to see it I can bring
6 it to you. I didn't know what it was about, I
7 don't know nothing about these charges, what is
8 going on. Family Court proved I wasn't guilty or
9 nothing, I don't know what is going on. That is
10 the paperwork I got for Family Court.

11 THE COURT: I've got it. Okay.

12 THE DEFENDANT: This other paper right here,
13 I did get motion for discovery, this paper I got
14 from them, I got that paper right there from Family
15 Court, when I did got this eight months later, I
16 was looking, how can this go, the judge stated
17 right here --

18 MR. MELLARD: Let me ask you one question.

19 BY MR. MELLARD:

20 Q Do you believe that since Family Court
21 dismissed the case that nobody else can bring a
22 case against you?

23 A I mean, that is what the paperwork say right
24 here, not no General Sessions, and like I said, I
25 don't know what the case is all about, this came,

1 allegation came out of the blue, I'm wondering what
2 it is about and I'm looking like what are these
3 charges on me.

4 THE COURT: This piece of paper?

5 THE WITNESS: Yes. You may keep it, but I'm
6 not going to take it, I have a copy, take that to
7 her, take that, too, there is another one down at
8 the bottom. Number eight down, that was telling
9 me --

10 THE COURT: Thank you. Okay.

11 THE WITNESS: Judge, just a few more things.
12 You see that paperwork there, it say Family Court
13 versus me, right?

14 THE COURT: Yes.

15 THE WITNESS: Now, I got this on these
16 General Sessions subpoena here after that got done.

17 THE COURT: Yes.

18 THE WITNESS: They got John Haynes along with
19 DSS on the subpoena. I mean, how can me and DSS
20 versus the --

21 THE COURT: How can what, now?

22 THE WITNESS: DSS versus JW [REDACTED] in
23 General Sessions, they got on the subpoena here
24 that --

25 THE COURT: Let me see what you've got.

1 THE WITNESS: Take this, too, show her that.
2 These two papers, I don't understand right here.

3 THE COURT: I understand, I'm with you.

4 THE WITNESS: That is confusing right there,
5 I don't understand that. That is after they put me
6 in General Sessions.

7 THE COURT: This says State of South Carolina
8 versus John Edward Haynes.

9 THE WITNESS: Yes, that's right. Now read on
10 down, read on down where you see they got me and
11 DSS versus JW [REDACTED]

12 THE COURT: All right, let me look to see if
13 I find it. State of South Carolina, criminal case,
14 South Carolina General Sessions Court, County of
15 Calhoun, State of South Carolina versus John Edward
16 Haynes, it's got the case number, subpoena for John
17 Edward Haynes, to Palmer, Scott Palmer, Santee,
18 then it comes on down, comes on down, place is the
19 Calhoun County courthouse, "You are commanded to
20 mail the following documents to Martin Banks," list
21 of the documents, "all records including but not
22 limited to attorney's notes, reports, statements,
23 interviews, et cetera, for John Edward Haynes along
24 with Department of Social Services versus JW [REDACTED]
25 JW [REDACTED]

1 THE WITNESS: How could that be, now she --

2 MR. MELLARD: Your Honor, I think I can
3 explain.

4 THE COURT: Let me explain it to him.
5 Because what Mr. Banks is asking for through this
6 subpoena is that you get, he wants to get the
7 information that Mr. Palmer had in his possession
8 and control that had anything to do with the DSS
9 case to see whether or not any of that information
10 would be helpful to you in the General Sessions
11 case.

12 THE WITNESS: Right.

13 THE COURT: And the DSS case is DSS and he
14 took the first name in the caption of the DSS case
15 because -- well, he did take the first name, what
16 it says is the Department, South Carolina
17 Department of Social Services, who is the
18 plaintiff, versus John Edward Haynes, Gail Haynes,
19 Rente Flood, who are the defendants, and in the
20 interest of JW [REDACTED], Minor Child 1 [REDACTED],
21 Minor Child 2 [REDACTED], it is in their interest.

22 THE WITNESS: Okay.

23 THE COURT: All three children are at issue,
24 but the defendant is John Edward Haynes, Gail
25 Haynes and Rente Flood. The subpoena says

1 Department of Social Services versus JW
2 JW it is just not drafted very well by Mr.
3 Banks, but what he is looking for, I don't think
4 there is any question but that Mr. Palmer would
5 understand what he was looking for, he was looking
6 for your DSS file.

7 THE WITNESS: Okay. Back to this Family
8 Court coming in, Martin Banks getting everything,
9 where did he come in at? I didn't really sign for
10 him to be a public defender.

11 THE COURT: I understand what your question
12 is, how did that happen without you making an
13 application for public defender?

14 THE WITNESS: In twelve days nobody ever
15 explained it but, you know, what the paperwork is,
16 I'm seeing this from Family Court, like I say, I
17 don't know what this case is all about, what it is
18 about until I find out eight months later, I find
19 out. I'm not guilty on something I don't know
20 about and ending up in General Sessions on these
21 charges I don't know nothing about.

22 THE COURT: I understand. I understand.
23 Well, here is the result, here is the way that
24 happened. Let me see if I can kind of explain it
25 it to you because it can be a little complicated.

1 What happened was that Family Court moves more
2 quickly typically than General Sessions does for
3 this reason. Because you've got children and
4 Family Court's focus is taking care of the children
5 and in this instance the Family Court, the
6 immediate focus was to take care of JW
7 JW and her children, Minor Child 1 and Minor Child 2
8 Minor Child 2

9 THE WITNESS: Right.

10 THE COURT: Little children. So, as I read
11 the Family Court order, the question was what was
12 going on with these children and why did JW
13 JW have two little children, she's so young.

14 THE WITNESS: Right.

15 THE COURT: Right. So, apparently JW
16 JW initially said that these two children
17 were the, the father of these two children was a
18 little 16 year old boy.

19 THE WITNESS: Right, my understanding.

20 THE COURT: And the DNA excluded the 16 year
21 old.

22 THE WITNESS: Right.

23 THE COURT: And someone told the Department
24 of Social Services that it appeared, that for
25 whatever reason they believed that you also might

1 be the father of these two children.

2 THE WITNESS: Right, that was told about, the
3 whole thing got started.

4 THE COURT: Well, it is in this order. So
5 the DNA testing was done and the DNA testing came
6 back and it said in the Family Court order that the
7 DNA testing indicated that you were the biological
8 father.

9 THE WITNESS: Right, that is what I'm saying.

10 THE COURT: Of these two children, right?

11 THE WITNESS: Yes.

12 THE COURT: So, then the Department of Social
13 Services is trying to figure out what is to be done
14 to protect JW [REDACTED], Minor Child 1 and
15 Minor Child 2 [REDACTED]?

16 THE DEFENDANT: Right.

17 THE COURT: Particularly JW [REDACTED]
18 cannot go back to the home if you're there?

19 THE DEFENDANT: Right.

20 THE COURT: Okay. So, apparently you entered
21 a plea in the Family Court which would be the
22 equivalent of what is called an Alford plea in
23 General Sessions and you basically said, "I won't
24 admit it but I'm probably going to be found
25 guilty," and as a result there is, you're on the

1 sex offender registry and you were removed from the
2 home. Apparently at some point you were arrested
3 for sexual conduct with a minor and incest and put
4 in jail?

5 THE DEFENDANT: Right.

6 THE COURT: I gather the putting of you in
7 jail then made the home a safe place for JW to
8 be with JW mother?

9 THE DEFENDANT: Not really.

10 THE COURT: That is what the order says.

11 THE DEFENDANT: The whole time Family Court
12 was going on I was staying down the street, I leave
13 the house so they could stay there.

14 THE COURT: I understand.

15 THE DEFENDANT: I did everything DSS asked me
16 to do.

17 THE COURT: I understand. The problem is, is
18 that the Family Court is a civil matter, it is not
19 a criminal matter.

20 THE DEFENDANT: Like I said, I didn't know
21 nothing, I don't know none of this.

22 THE COURT: I got you. Well, at some point
23 there were warrants issued, looks like warrants
24 were issued May the 8th, 2010, and you were
25 arrested at some point?

1 THE DEFENDANT: Uh-huh (Affirmative).

2 THE COURT: And I don't know if you bonded
3 out or if you were able to bond out?

4 THE DEFENDANT: I've stayed in there since
5 then.

6 THE COURT: From the time you where arrested?

7 THE DEFENDANT: Almost three years.

8 THE COURT: Okay. So, the letter that has
9 been sent from David Pascoe was sent to the
10 Department of Social Services and the reason that
11 happened is because the Department of Social
12 Services has a statutory duty that when there is
13 information that becomes known to the Department of
14 Social Services that a crime has been committed, by
15 statute the Department of Social Services has to
16 report that conduct to the Solicitor or to law
17 enforcement. That was done, so for whatever reason
18 once that report was made David Pascoe sent the
19 victim impact letter to the Department of Social
20 Services because apparently that is who made the
21 report of an allegation of sexual abuse instead of
22 sending that victim impact to someone on behalf of
23 **JW** **[REDACTED]**.

24 Now, it very well may be that when Solicitor
25 Pascoe sent that letter to the Department of Social

1 Services he believed that the Department of Social
2 Services was the correct entity to make, to
3 represent the interest of [REDACTED] JW [REDACTED] as an
4 alleged victim. So, that is that connection.

5 But here is what is important for you. The
6 fact that this matter has been to the Department of
7 Social Services and there has been an adjudication
8 in the Department of Social Services and the
9 Department of Social Services has, and when Judge
10 Wylie said that the information that was provided
11 at the Family Court is not to be used against you
12 in the criminal matter, just means that you have an
13 opportunity to defend yourself with regard to the
14 criminal charges of criminal sexual conduct with a
15 minor and that what occurred in the Family Court
16 occurred in the Family Court with the focus toward
17 protecting [REDACTED] JW and the children [REDACTED] Minor Child 1 and
18 [REDACTED] Minor Child 2 and that that is a totally different track
19 and that is a totally different focus than what
20 happens in General Sessions, and that is to bring
21 charges against you for criminal sexual conduct
22 with a minor.

23 THE DEFENDANT: The thing about it, like I
24 said, I don't know anything about that.

25 THE COURT: What do you mean you don't know?

1 THE DEFENDANT: I don't know nothing about
2 messing with my daughter, I don't mess with my
3 daughter.

4 THE COURT: Good, that's wonderful, because
5 these lawyers, these lawyers are attempting to
6 represent you and you have pled not guilty.

7 THE DEFENDANT: Right, because I don't know
8 nothing about it.

9 THE COURT: Which is good. And the burden is
10 on the State of South Carolina to prove guilt
11 beyond a reasonable doubt. You don't have to prove
12 anything, you don't have to open your mouth but the
13 State maintains and alleges three things. Number
14 one, that you have had criminal sexual conduct with
15 JW at least two occasions and that as
16 a result of that criminal sexual conduct you have
17 also committed incest because she is your
18 stepdaughter, as I understand it, or biological
19 daughter?

20 THE DEFENDANT: Stepdaughter, I raised her.

21 THE COURT: So that is the reason for those
22 three. I understand you may say, "I'm completely
23 innocent of that," and to that extent you have pled
24 not guilty to that so I understand that is your
25 posture in this court.

1 THE DEFENDANT: True.

2 THE COURT: You have pled not guilty, okay,
3 and you are presumed innocent. Have you got that?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: So, what occurred in the Family
6 Court cannot be used against you by the terms of
7 the family court order, okay? So, that is why
8 there was a DNA test done which no doubt the State
9 intends to use, okay, all right, in its case
10 against you.

11 Are you with me?

12 Now, Martin Banks, the reason, you know, how
13 Martin Banks got in the picture, I don't know, here
14 is what I can tell you, here is all I know about
15 that. All I know about that is that at some point,
16 just on the basis of what I looked at here, at some
17 point Martin Banks represented you and that makes
18 sense because he is the only public defender that
19 is in Calhoun county.

20 THE DEFENDANT: Right. Why shouldn't he come
21 to me and let me know something? He didn't come to
22 me, just like the public defender I have with this
23 situation going on, I mean, why don't you come to
24 me and speak to me what the situation is about?

25 THE COURT: I'm with you, I got you.

1 THE DEFENDANT: If I'm going to trial tell me
2 what this trial is about.

3 THE COURT: Right.

4 THE DEFENDANT: Do you know what I'm staying?

5 THE COURT: Yes.

6 THE DEFENDANT: I don't know, you know --

7 THE COURT: Yes.

8 THE DEFENDANT: You're telling me this,
9 telling me that, I want to know exactly what is
10 going on with the situation now.

11 THE COURT: I'm with you.

12 THE DEFENDANT: I mean, actually I don't know
13 what is going on.

14 THE COURT: I'm with you. Now, I'm going to
15 show you this and I don't know, only because it is
16 part of your, part of the record in your case, it
17 indicates that at some point someone, it may not
18 have been you, Mr. Haynes, it might have been
19 somebody that did this on your behalf, but it
20 appears that, and you'll just have to bear with me
21 because I don't know what the process is in Calhoun
22 County, but in your file there is, it says order
23 for appointment of legal counsel for indigent
24 defendant, and this was signed by Jenny Bedonna?

25 THE CLERK: Bedonna.

1 THE COURT: She's a screener, she screens
2 people, and it is dated on the 9th of April, 2010,
3 and it says that Martin Banks was appointed counsel
4 for you and it appears that you appeared before
5 Judge Lake for your, for your bond hearing.

6 THE DEFENDANT: Right, I remember a bond
7 hearing.

8 THE COURT: Bond was set at like \$25,000.

9 THE DEFENDANT: That's right.

10 THE COURT: That was on April the 10th. And
11 somebody, I don't know if it was you or I don't
12 know if it was somebody on your behalf made
13 application for public defender. You may very
14 well not have known it, somebody was concerned
15 about you needing a lawyer and the only public
16 defender in Calhoun County is Martin Banks, so
17 Martin Banks was appointed.

18 Typically normally what happens is the
19 screener will meet with people before counsel is
20 appointed and I can't tell you, if she didn't meet
21 with you I don't know why she didn't meet with you,
22 I don't know if that came from the Family Court, I
23 don't know anything about it but --

24 THE DEFENDANT: I don't know anything about
25 this either, this is the first time I seen it.

1 THE COURT: Thank goodness somebody tended to
2 you having a lawyer. The --

3 THE DEFENDANT: Not on my information, I
4 don't know who did it.

5 THE COURT: Well, I mean, somebody thought
6 you were in jail and you were charged with serious
7 crimes and you needed a lawyer and there is only
8 one public defender in Calhoun County.

9 THE DEFENDANT: Who would --

10 THE COURT: Who would do such a thing?

11 THE DEFENDANT: Yes.

12 THE COURT: Somebody that cares but probably,
13 I don't know, you have one public defender, you
14 needed a lawyer, you know.

15 THE DEFENDANT: I mean, in twelve days,
16 eleven days I could have got a paid lawyer.

17 THE COURT: But it is my understanding that
18 at some point you became really concerned about
19 Martin Banks, is my understanding.

20 THE DEFENDANT: Really he didn't, he didn't
21 start representing me, he didn't represent me.

22 THE COURT: I'm with you. Except at some
23 point there was a change made to these two lawyers
24 who are actually from Orangeburg.

25 THE DEFENDANT: Well, these two lawyers, I

1 tried to get rid of them, tried to get rid of Mark
2 Wise for the last two years, he wasn't doing
3 nothing, I just met the other one a week ago, I was
4 wondering, whatever his name is. I don't have no
5 problem with them representing me but how would you
6 come to represent me telling me, "We got this on
7 you, we fixing to send you to prison, we this, we
8 that," how come a public defender tell me that?

9 THE COURT: This Public Defender, he can't
10 send you to prison.

11 THE DEFENDANT: Why would he tell me that if
12 he representing me?

13 THE COURT: What I can tell you is he's
14 scared to death you're going to prison, probably is
15 what he's telling you.

16 THE DEFENDANT: Ma'am, to tell you the truth,
17 ma'am, I don't know about this situation, if that
18 happened, be that, that is God's will, I don't know
19 nothing about it. I don't say he will be the cause
20 of it, I'm not saying I'm the cause of it. The
21 only thing I'm saying, if he going to represent me
22 I would like him to represent me to the highest,
23 not him coming at me the way he did when he first
24 started coming off.

25 THE COURT: You mean Mark Wise?

1 THE DEFENDANT: Mark Wise lying to me,
2 between Martin Banks and him lying to me, I caught
3 them in lies.

4 THE COURT: Mark Wise?

5 THE DEFENDANT: Yes.

6 THE COURT: What kind of lie?

7 THE DEFENDANT: One day I come down to the
8 courthouse --

9 THE COURT: You went down to the courthouse,
10 okay.

11 THE DEFENDANT: I went to the courthouse.
12 M & M Investigators --

13 THE DEFENDANT: Right.

14 THE COURT: -- came to me, called me down,
15 said, "I got this investigator to talk to you about
16 the situation." I said, what investigator? You
17 never talked about an investigator going and doing
18 anything." I said, "First of all, why you send an
19 investigator down, I'm not going to talk to you?"
20 "I'm going to wait until he can talk to you."

21 He didn't came that day, so the next day I
22 came, he called me back up there, we had a
23 visitation, my mom came, and I told my mom, I said,
24 "Mama, this Public Defender Judge Dickson assured
25 me, I told him I didn't want Martin Banks," and my

1 mama said she check on a lawyer for me.

2 THE COURT: Right.

3 THE DEFENDANT: I told him, I said that man
4 can't tell you that your investigator going to put
5 you in prison for life and your family going to put
6 you in for life. They told my mama what the
7 investigator trying to do. I got back to the jail
8 the same day, so I sat down, I went back to the
9 courthouse, Mark Wise said the investigator be here
10 any minute. He came in the door, I looked at him,
11 I said, "I know what is going on," I said, "How you
12 doing?" I said, "Let me get your business card."
13 I got his business card, I sat down, "What's going
14 on?" he tried to disguise things, car in the yard,
15 all this, I said, "Okay, you been to my house." He
16 said, "Your daughter said they want to put you in
17 prison for the rest of your life." I said, "Why
18 you said that?" I told Martin Wise, "Why you
19 sitting there lying to me, my mama told me some man
20 gave my daughter a card, my daughter, she don't
21 have no say for him," you know, and I said, "Why
22 you sit there and lie to me, have this man go out
23 there, and lie to me but he been to my house and I
24 know you wasn't there, I mean, he talked to my
25 daughter, you talk about the man put me in prison,

1 you, this man lying," so I got up and walk out.

2 He tell me, he told me, he told me, "The
3 investigator told me the same thing, just between
4 me and you." And, "What do you mean, this man here
5 went to my house behind my back, come on, what's
6 going on? You ain't supposed to send no
7 investigator out and do nothing like that. I mean,
8 you come to me and discuss with me about the
9 investigator going on, to search on anything on my
10 behalf, you sent him out there without me knowing
11 anything and you telling me, you don't give me no
12 discovery, no Rule 5, how come you send somebody
13 out there to do that? Do you have my file, do you
14 have anything that go against me?"

15 I mean, with me, if you got a case, if they
16 got a case, I don't know nothing, I ain't got a
17 legal mail in three years, I ain't got no legal
18 mail, them telling me a paper saying he my public
19 defender, first appearance, second appearance, I
20 got nothing. The only thing I got is the motion
21 papers I send and family court. This is the papers
22 I got from Family Court, I don't got nothing from
23 them on this General Sessions case, ever.

24 THE COURT: Yes.

25 THE DEFENDANT: Not even nothing, so if he my

1 lawyer, I haven't seen my lawyer, why haven't I
2 seen a paper saying going to trial tomorrow? I
3 haven't seen one paper.

4 THE COURT: Okay.

5 THE DEFENDANT: He got the Family Court
6 papers.

7 THE COURT: Yes, sir, Mr. Wise?

8 THE DEFENDANT: He's got the papers there.

9 MR. WISE: Let me address the investigator
10 issue first.

11 THE COURT: Okay.

12 MR. WISE: It is pretty much as Mr. Haynes
13 has indicated, I did send an investigator out,
14 obviously to speak to the mother, to see if they
15 would speak to him, speak to the victim, to try to
16 see what if anything they could help us with and
17 that didn't come out. We did meet, I did indicate
18 to him he went out and Mr. Haynes called him a
19 liar, said he hadn't been out there.

20 THE COURT: Okay. Let me ask you this. Had
21 you had a chance to talk to Mr. Haynes before the
22 investigator went out to the house?

23 MR. WISE: I would imagine that we would just
24 because -- well, I did, because my initial meeting
25 with Mr. Haynes would have been with Mr. Banks when

1 I first became involved.

2 THE COURT: Okay.

3 MR. WISE: So I would have had to at least
4 have one conversation but I can't say how many
5 would have occurred before I sent the investigator
6 out.

7 THE COURT: Okay. Do you keep a calendar of
8 how many meetings you have had?

9 MR. WISE: I do. We have kind of a computer
10 printout that says when we meet but I just don't
11 have it with me. I will provide it to the Court, I
12 will provide it to the Court tomorrow.

13 MR. WISE: Okay. Can you approximate how
14 many times you have met with Mr. Haynes and tried
15 to talk to Mr. Haynes?

16 MR. WISE: I would say it would have to be,
17 Judge, it is a guess, it would have to be a dozen
18 times and Mr. Haynes is correct regarding what
19 would be in a Rule 5 versus the information he
20 received from the Family Court. The situation is
21 this, Your Honor. The Family Court, DSS became
22 involved very early on and we have all of DSS'
23 records and the caseworker notes. They kind of lay
24 out what happened and some of it supports what Mr.
25 Haynes is saying now.

1 Once the criminal case started, then there
2 was very little law enforcement involvement because
3 by that point he had been adjudicated the father,
4 they arrested him, they charged him with criminal
5 sexual conduct with a minor, two counts of that and
6 one count of incest. So we have, I think, an
7 incident report that indicates he was arrested,
8 there is some chain of custody reports related to
9 the DNA that was taken, the Smuerver exam, and not
10 much else because the case, the problem arose --

11 THE COURT: In the Family Court?

12 MR. WISE: Exactly.

13 THE COURT: I understand. The original
14 adjudication?

15 MR. WISE: Exactly.

16 THE COURT: And once the Smuerver was done
17 and the DNA was repeated, was the DNA results
18 similar to the ones in Family Court?

19 MR. WISE: They were. We had them reviewed
20 by our expert to see if there was a problem.

21 THE COURT: Okay.

22 Yes?

23 THE DEFENDANT: I know something just ain't
24 hitting right, I mean, I'm not trying to get out of
25 nothing but what is going on with the situation?

1 THE COURT: It is a slam dunk, it is very
2 clear, unfortunately, Mr. Haynes, it is very clear
3 and what it says is that, rightly or wrongly, what
4 the information says is that **JW** originally
5 told the Department of Social Services back in 2010
6 that -- she was how old, she was born in '92?

7 THE DEFENDANT: 16, 17.

8 THE COURT: 17. And she had two children?

9 THE DEFENDANT: Right.

10 THE COURT: Right. So, at some point someone
11 became concerned because you had a 17 year old with
12 two children, which means that she was having
13 sexual intercourse prior to the age of consent and
14 so somebody, I gather it got to the Department of
15 Social Services, the Department of Social Services
16 started to want to know who had been having sex
17 with this under age girl.

18 THE DEFENDANT: Right.

19 THE COURT: And originally she said that it
20 was a young boy who was sixteen years old.

21 THE DEFENDANT: It was more than one.

22 THE COURT: It doesn't matter, it doesn't
23 matter. They did a DNA test on the person who she
24 alleged was the father.

25 THE DEFENDANT: She gave two names but they

1 only did one, I'm thinking.

2 THE COURT: I'm with you.

3 THE DEFENDANT: They took my swab. When the
4 Sheriff's Department took my swab they said they
5 couldn't use it, right then Judge Wylie told them
6 that they had to send me, JW and the two kids
7 and get the DNA test over again because they had to
8 take it all together.

9 THE COURT: Okay.

10 THE DEFENDANT: They only took me over there,
11 the same swab that Stanley Graham had, I still
12 believe they matched those two instead of the kids'
13 swab with me, they didn't take the kids.

14 THE COURT: They weren't going to take the
15 kids with you.

16 THE DEFENDANT: They could have sent them.

17 THE COURT: They weren't going to put them in
18 the same room with you.

19 THE DEFENDANT: They didn't test me, they
20 didn't test the kids, they didn't take any DNA to
21 match mine up with them. They didn't with the
22 kids, they did with the young boy, they did with
23 me.

24 THE COURT: Yes, they did.

25 THE DEFENDANT: No, they didn't, ma'am. They

1 just sent me up there,.

2 THE COURT: How do you know whether they did
3 or they didn't?

4 THE DEFENDANT: Ma'am, I live right across
5 the street from the kids, they never took the kids.

6 THE COURT: Okay.

7 THE DEFENDANT: They never took those two
8 kids to take the test.

9 THE COURT: Okay. Well, that would be the
10 Family Court matter. Irrespectively, that is the
11 Family Court matter and the Family Court, it was in
12 the Family Court it was determined that you were
13 the biological father of these two young children,
14 JW -- hear me, now, JW was the
15 mom and that Minor Child 1 and Minor Child 2,
16 that you were the biological father.

17 THE DEFENDANT: That is what they said, yes.

18 THE COURT: And then you pled to that under
19 what is called North Carolina versus Alford. What
20 you said was that, "I would like to deny it but I
21 think I'm going to be found guilty," is basically
22 what you did.

23 THE DEFENDANT: I never, like I said, I never
24 knew nothing about it.

25 THE COURT: Yes, you did, you did it in

1 Family Court.

2 THE DEFENDANT: I don't know nothing about
3 this.

4 THE COURT: Yes, you did. The Family Court,
5 what you passed up says this, Mr. Haynes, it said
6 the parties have, you're a party, it says, "The
7 parties have hereby stipulated and this Court finds
8 that the evidence presented to the Court could
9 result in a finding that it is more likely than not
10 that the defendant John Haynes sexually abused the
11 minor JW [REDACTED]. With the advice of his
12 counsel and in accordance with the equivalent of
13 North Carolina versus Alford and its prodigy, the
14 defendant voluntarily and knowingly stipulates the
15 evidence in this case presented to the Court could
16 more likely than not result in a finding of sexual
17 abuse against the defendant John Haynes." That's
18 you. "I find that defendant John Haynes did not
19 admit to the abuse and/or neglect at this
20 proceeding. I further find that the above
21 stipulation shall only be valid in this Family
22 Court action and shall not be used against the
23 defendant in any proceeding in General Sessions."
24 That is this Court. "However, for the purpose of
25 an entry on the central registry for abuse and

1 neglect pursuant to Section 63-7-1940 and any other
2 future Family Court proceedings on this issue of
3 abuse and/or neglect of the minor child [REDACTED] JW
4 [REDACTED] JW in the civil proceeding only this order
5 shall be interpreted and construed as containing a
6 finding that defendant John Haynes sexually abused
7 the minor [REDACTED] JW [REDACTED]. I further find this
8 affirmative determination shall be entered into the
9 central registry of abuse and neglect pursuant to
10 63-7-1940 as amended."

11 Now, here is what happened. The DNA came
12 back in the Family Court that you were the
13 biological father of these children and Judge Wylie
14 entered an order with your stipulation, with the
15 equivalent of what is North Carolina versus Alford,
16 while you didn't affirmatively admit it, you
17 believed if evidence was presented to the Court you
18 would be found that you more likely than not have
19 sexually abused [REDACTED] JW [REDACTED] and these two
20 children were yours.

21 THE DEFENDANT: No, nobody told me anything
22 like that.

23 THE COURT: I'm telling you that is what it
24 said.

25 THE DEFENDANT: And nobody told me nothing.

1 THE COURT: You have had this piece of paper
2 with you for a long time. Let me invite you to
3 read it again. That is what it says, Mr. Haynes.
4 What it also says is wonderfully helpful to you, it
5 says that determination by the Family Court is not
6 to be used in this court, okay?

7 THE DEFENDANT: You said that but like I
8 said --

9 THE COURT: Here is your problem, Mr. Haynes.
10 Your problem is DNA testing has been done again,
11 okay?

12 THE DEFENDANT: I didn't hear from that, they
13 told me not to take that.

14 THE COURT: I'm sorry?

15 THE DEFENDANT: They told me not to take that
16 DNA, off this thing right here.

17 THE COURT: There was a Smuerver hearing in
18 this case.

19 THE DEFENDANT: That's the one they took from
20 me, off this paperwork right here, that I don't
21 have no indictment paper or nothing on. Why they
22 done that, I ain't gave them --

23 THE COURT: You had a Smuerver hearing or
24 consent, which was it?

25 MR. WISE: It was a Smuerver hearing and what

1 Mr. Haynes I think is indicating is the DNA was
2 forcibly taken from him.

3 THE DEFENDANT: Yes.

4 THE COURT: Because it was the court order it
5 be taken from you.

6 THE DEFENDANT: On whatever ground?

7 THE COURT: Smuerver, it is called a Smuerver
8 hearing and here is the allegation. There would
9 have been an allegation made to the Court that
10 there was probable case to believe that you were
11 the father of these two children. If you're the
12 father of these two children of JW [REDACTED]
13 then the DNA would do one of two things. It would
14 either confirm that you were the father or it would
15 exonerate you, meaning it would prove that you were
16 in fact not the father.

17 THE DEFENDANT: Right. Where did the
18 allegations coming from?

19 THE COURT: Where did the allegation come
20 from?

21 THE DEFENDANT: For the General Sessions
22 case.

23 THE COURT: Where did it come from? The
24 Department of Social Services, because the
25 Department of Social Services would have notified,

1 would have notified law enforcement as they are
2 required to do by law that there was probable cause
3 to believe that you had sexually abused JW
4 JW and they have to do that by law.

5 THE DEFENDANT: Would you call that physical
6 neglect?

7 THE COURT: I would call it sexual abuse.

8 MR. MELLARD: Would you like to see this,
9 Your Honor?

10 THE COURT: I'm sorry?

11 DEFENSE TWO: Would you like to see this? He
12 is trying to get it passed up.

13 THE COURT: Of course. Okay, all right.
14 Well, this, what this is, it's a document that is
15 given to people who are reported for child abuse
16 and neglect to let them know what their rights are.
17 Apparently this would have happened more likely
18 than not very early on, certainly before an
19 adjudication in accordance with this order that I
20 have look at that is dated in May of 2010. There
21 is an order of Judge Wylie dated -- no, I'm sorry,
22 June 21st. This notice is a piece of paper that
23 when folks have been accused of abuse, that they
24 are given a piece of paper to tell them who the
25 caseworker is and the phone number to call.

1 THE DEFENDANT: They didn't say nothing about
2 sexual abuse, they said abuse and neglect. How can
3 they get allegations of sexual abuse if they are
4 saying -- I mean, they saying it, I mean, the State
5 is saying that they gave them allegations of that.

6 THE COURT: No, no.

7 THE DEFENDANT: How come --

8 THE COURT: This happened real early on, real
9 early on.

10 THE DEFENDANT: How come they get the
11 allegation --

12 THE COURT: Real early on.

13 THE DEFENDANT: Okay.

14 THE COURT: You know, once the Department of
15 Social Services starts their investigation, if
16 they, I don't know, maybe she showed up with a
17 bruise, I don't know, I don't know, I don't know
18 what happened to [REDACTED] JW maybe [REDACTED] JW showed up
19 at school with a bruise and they asked her, I don't
20 know, I don't know the facts of your case.

21 THE DEFENDANT: Your Honor --

22 THE COURT: You're not listening. You need
23 to listen. It is time for you to listen, okay?
24 What happened was this is a piece of paper that is
25 given to individuals who have, against whom

1 allegations have been made. The State, you have
2 certain rights and here they are, okay? Once the
3 train goes on the track the Department of Social
4 Services, because -- I don't know, it is a good
5 thing, Mr. Doe, not you, let's say Mr. Doe slaps a
6 child and leaves a black eye and a bruise, okay,
7 they can't open their eye and the child shows up at
8 school and they can't open their eye and the
9 teacher says, "What happened to you," and let's say
10 that child says, "Well, my step-dad got upset and
11 slapped me." I can promise you that that school is
12 going to contact the Department of Social Services
13 who is going to contact that individual and give
14 them a piece of paper that says, "I need to tell
15 you that there have been allegations of physical
16 abuse made against you."

17 THE DEFENDANT: Right.

18 THE COURT: All right. That child, John Doe,
19 this is the John Doe child, John Doe's child is
20 going to be examined by the Department of Social
21 Services caseworker and I don't know who else but
22 when they are there, when they are examining this
23 child because his eye won't open up, if this 17
24 year old child, all of a sudden two little children
25 walk up to this 17 year old, they are looking at

1 this little 17 year old that has two little
2 children, they say, "How precious, are these your
3 brother and sister?" And the little 17 year old
4 says, "These are my children." What started out as
5 physical abuse is immediately going to go also into
6 investigation with regard to sexual abuse because
7 the the 17 year old child ought not have two
8 children.

9 THE DEFENDANT: True, I agree with you.

10 THE COURT: So, you had an investigation, it
11 may have started out as physical abuse but it now
12 boils into not only physical abuse but also sexual
13 abuse, right?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Right. Then if Mr. John Doe ends
16 up being not only a person who had physically
17 abused this child but also sexually abused that
18 child that person doesn't get to say, "Well, you
19 all just gave me a note telling me my rights about
20 physical abuse, you didn't give me another note on
21 it when it went to sexual abuse, therefore that
22 case can't be investigated." That isn't the way it
23 works.

24 THE DEFENDANT: Your Honor, this General
25 Sessions DNA swab came on me, it was ten months, my

1 daughter been out of school and all that, that was
2 ten months ago.

3 THE COURT: All right.

4 THE DEFENDANT: So, where the allegation come
5 from ten months ago, she be 20 this year, so where
6 the allegation come from ten months ago about I
7 sexual abused her and give them any reason to get
8 DNA from me for that, they didn't do it the whole
9 time --

10 THE COURT: What happened originally, it
11 originally happened in the Department of Social
12 Services, right, yes?

13 THE DEFENDANT: Yes, but this case is so
14 sudden and going the last, it gone the last ten
15 months.

16 THE COURT: It ain't gone anywhere, this one
17 is different, it ain't gone anywhere, it has not
18 been dismissed.

19 THE DEFENDANT: I find out now.

20 THE COURT: You don't think, you think it has
21 been dismissed, but it hadn't been dismissed, it
22 hasn't been over, it hasn't been ended and here is
23 the ending of it. There is a finding that you
24 sexually abused JW and you are on the
25 registry for having sexually abused a child.

1 THE DEFENDANT: I heard that, I heard that.

2 THE COURT: Okay. So, there ain't no
3 dismissal ever happened, it's over.

4 THE DEFENDANT: I heard that. That is what
5 I'm saying,.

6 THE COURT: The only beauty of this order is
7 that they could not use that DNA sample, they had
8 to get another one.

9 THE DEFENDANT: Right. What I'm saying, how
10 did they do that?

11 THE COURT: The Department of Social Services
12 called up the Solicitor and law enforcement and
13 they say, "We've got a seventeen year old with two
14 little children, we believe that there is evidence
15 that she's been sexually abused, we believe that
16 the father, the stepfather we believe is the person
17 who has sexually abused these children."

18 THE DEFENDANT: Why they had done this thing
19 April 27 when they had the paperwork Friday, the
20 lady came Friday and I gave it to her, I got the
21 paper up there, April 27th, that is what I'm
22 saying, that is what got me mixed up, all this
23 going down and I'm look looking at this thing
24 saying, like I say, I don't know how it come to be
25 here, honestly, but after it come down I'm saying

1 like, okay, okay, then you got --

2 THE COURT: You got arrested, the arrest
3 warrants were issued at about the same time the DSS
4 case got going, too.

5 THE DEFENDANT: No. DSS case was gone a year
6 before I got arrested.

7 THE COURT: Okay. Okay, well then -- okay.

8 THE DEFENDANT: Right.

9 THE COURT: That is a little slow, then, they
10 were a little slow. They probably waited until the
11 DNA swabs came back. But at that point, at that
12 point the Department of Social Services has a legal
13 obligation to report to law enforcement if there is
14 probable cause to believe that you had had sex with
15 little JW [REDACTED], your stepdaughter.

16 Now, there is going to be a jury here and the
17 Smuerver hearing is going to be, there will be
18 allegations made by the Department of Social
19 Services, "We believe based upon our investigation
20 that there is probable cause to believe that Mr.
21 Haynes had sexual intercourse with his stepdaughter
22 JW [REDACTED]," at which point, at which point they
23 will say either the DNA will include him or it will
24 exclude him as being the biological father. That
25 is why there was an order entered to take your DNA.

1 THE DEFENDANT: So you're saying that Family
2 Court order, Family Court is over, DSS came and
3 gave General Sessions --

4 THE COURT: They have to, they have to.

5 THE DEFENDANT: You see, let me ask this
6 ma'am, I ain't trying to get out of it, nobody ever
7 speak to me on these things, I don't know anything
8 about it, nobody actually told me how that came
9 like that, so --

10 THE COURT: Well, the way that happened is by
11 statute. When there is evidence of a crime against
12 a child the Department of Social Services by
13 statute has to report that to law enforcement.
14 Family Court, that isn't what the Family Court
15 exists for. The Family Court exists to protect
16 children and to help children and, if they can, to
17 put families back together. What the Family Court
18 does not do is it does not, it does handle criminal
19 cases against minors. Criminal cases against
20 adults, that is up here in General Sessions court.
21 The Department of Social Services turns its
22 information, if you will, over to law enforcement
23 here and law enforcement, then you were arrested,
24 there was a Smuerver hearing to take your DNA
25 because Judge Wylie said the DNA sample that had

1 been used in the Family Court couldn't be used in
2 General Sessions, therefore the Smuerver hearing
3 occurred, there was an order, Smuerver hearing
4 order entered?

5 MR. WISE: Yes, sir.

6 THE COURT: A Smuerver order was entered to
7 take the DNA and the DNA was going to be taken
8 whether you assisted or not, the DNA was going to
9 be taken at that point. As I understand the case,
10 your DNA sample was taken and I don't know what the
11 results is, it showed whatever it showed, I'm sure
12 your lawyers have shown it to an expert.

13 Have you shown to it your expert?

14 MR. WISE: Yes, we have, Your Honor.

15 THE COURT: Okay, very well.

16 THE DEFENDANT: Well, then I understand, Your
17 Honor. Like I say, I don't know why DNA, I don't
18 know why DSS, if it had probable cause, I don't
19 know why DSS didn't went ahead and go ahead to
20 first start with when they had it, I don't know
21 why.

22 THE COURT: Okay.

23 THE DEFENDANT: I don't know why now General
24 Sessions, it go on to General Sessions, now another
25 swab, that is what is getting me lost, why all this

1 changing over, I'm lost with it, I'm lost.

2 THE COURT: I don't know why, I think I have
3 been pretty clear. It it is two different
4 proceedings. You see, your Family Court, the
5 maximum penalty the Family Court can do is say you
6 can never be in the presence of JW
7 ever again, period.

8 THE DEFENDANT: Right.

9 THE COURT: They can't put you in prison.
10 This Court can put you in prison for the rest of
11 your life.

12 THE DEFENDANT: I understand that.

13 THE COURT: So that is why Family Court
14 wasn't the appropriate place for the criminal
15 charges to be handled. That is why it came to
16 General Sessions, okay, that is why it is really
17 important for you to cooperate with your lawyers.

18 THE DEFENDANT: I understand that.

19 THE COURT: Assist them so that they can help
20 you.

21 THE DEFENDANT: Is there a proper procedure
22 when it came down, proper procedure? It never came
23 down proper procedure, especially Martin Banks.
24 Martin Banks came to me and told, "You going to
25 plead or go to trial," and I asked him to show me

1 some paperwork. They showed me nothing. Then I
2 seen them two talking together and he came to me,
3 he, DSS ain't finished, you got the lawyer telling
4 me things ain't right. I mean," you got to go to
5 trial," they pulling my leg, I'm asking him
6 questions, he is talking back and forth to Martin
7 Banks, saying a couple months, two or three months
8 down the line I come see him again, I'm looking,
9 Martin Banks and him sitting there talking, Martin
10 Banks, Martin Banks four months down the line, you
11 know, "He is talking to you again, you supposed to
12 be my public defender, what is Banks doing there,
13 asking me what I'm going to do." Martin Banks
14 wants me gone, so I'm doing, he calling me to go
15 over the paperwork or whatever he call me for, he
16 never told me what I'm doing, ever, him and Martin
17 Banks sitting in the office, what Martin doing
18 sitting here, that it is confidential, he talk to
19 Martin Banks, Martin Banks, he got off my case, he
20 wrote the motion to get off my case, what him and
21 Martin Banks doing together to see me on a case I
22 had anyway, I was asking like why I want this man
23 representing me? He still talk to Martin Banks and
24 Martin Banks ain't doing nothing.

25 THE COURT: I can tell why, because Martin

1 Banks has an ethical obligation to inform your new
2 counsel of what is the status of your case.

3 THE DEFENDANT: That happened, they did that.
4 I mean, I'm talking about almost six months down
5 the road they sitting there talking about it.

6 THE COURT: Well, do you know what he's
7 talking about?

8 MR. WISE: Let me just look at one thing.

9 THE COURT: Okay.

10 MR. WISE: I think the issue may be that Mr.
11 Banks remained on this case until he was relieved
12 by Judge Dickson.

13 THE COURT: Okay.

14 MR. WISE: And so there was a period of time
15 when he was still, would have still been involved
16 and I would have had meetings with him and talked
17 to him.

18 THE COURT: Okay.

19 MR. WISE: It looks like that happened May
20 18th of this year.

21 THE COURT: Of --

22 MR. WISE: I'm sorry, 2012.

23 THE COURT: 2012, okay. So that is why you
24 all have been talking?

25 MR. WISE: Yes,.

1 THE COURT: And then Martin Banks was
2 relieved from the case in May of 2010?

3 MR. WISE: Yes.

4 THE COURT: Okay.

5 THE DEFENDANT: Ma'am, I got a motion here
6 saying December 28, I got a motion saying --

7 THE COURT: 2011?

8 THE DEFENDANT: No, 2010, he got a motion,
9 Martin Banks got a motion to relieve him as
10 counsel, himself.

11 THE COURT: Until he is relieved by the Court
12 he cannot stop representing you.

13 THE DEFENDANT: That is why I say why ain't
14 they telling me this. They ain't telling me this
15 thing, that is why I'm saying they ain't telling me
16 nothing, they don't go over with me what they try
17 to do, it didn't look like to me, that is why I was
18 concerned about what was going on. Like I say, I
19 don't have nobody, with these men representing me,
20 but if you represent me represent me, show me what
21 you doing, you got to show me what you doing. I
22 got no notion about the case, I don't know what
23 they tell me, Martin Banks hid the paperwork eight
24 months from me, he just pick up and give it to
25 them. Notice, he never showed it to me, these are

1 Family Court discovery, these are not General
2 Sessions motions for discovery, there ain't no Rule
3 5 in Family Court.

4 THE COURT: I don't know if you were
5 listening when Mr. Wise told me, the reality is
6 that the majority of the criminal case against you
7 was formulated in the Family Court level, okay?

8 THE DEFENDANT: How can they use that out of
9 Family Court? Like I said --

10 THE COURT: They can't use your order, they
11 cannot use Judge Wylie's order against you, they
12 can certainly use the information that they
13 retained, they can't wipe their mind of the
14 information of that and they got a new DNA test.

15 THE DEFENDANT: I mean, new DNA test, I
16 understand that.

17 THE COURT: Yes.

18 THE DEFENDANT: But they just say the
19 stipulation, the stipulation --

20 THE COURT: You do realize the stipulation
21 is, that you allowed the stipulation that you
22 sexually abused JW --

23 THE DEFENDANT: Ma'am?

24 THE COURT: You understand that is not going
25 to be shown to the jury?

1 THE DEFENDANT: Ma'am, I understand what
2 you're saying. I just don't like when it comes, I
3 just don't like when it come down, when me saying I
4 did it, I don't know nothing about it. And I
5 don't --

6 THE COURT: You might want to read your order
7 that you just handed to me.

8 THE DEFENDANT: I understand. I know the
9 lawyer didn't tell me --

10 THE COURT: You had this, you just handed me
11 this.

12 THE DEFENDANT: I'm not a lawyer, I don't
13 know all this lawyer stuff.

14 THE COURT: Mr. Haynes --

15 THE DEFENDANT: Ma'am?

16 THE COURT: It is what you did.

17 THE DEFENDANT: No.

18 THE COURT: It is what you did, Mr. Haynes.

19 THE DEFENDANT: Excuse me, Judge Goodstein.

20 THE COURT: Mr. Haynes, listen. Let me tell
21 you what. I'm not going over this with you again.
22 Here is where you are, Mr. Haynes. Let me try to
23 cut to the chaff. I just listened to a
24 psychiatrist, I have just listened to your lawyers,
25 and the psychiatrist says that you are competent to

1 assist your lawyers but you may choose not to.

2 THE DEFENDANT: Right, because what is going
3 on, I didn't know nothing about what is going on.

4 THE COURT: I just heard Mr. Wise tell me in
5 front of the Solicitor that he was concerned you
6 have not been cooperating, wouldn't talk to him,
7 wouldn't help him help you.

8 THE DEFENDANT: Because he never came with me
9 and tell me nothing about this.

10 THE COURT: You're telling me that Mark Wise
11 has never talked to you about this case?

12 THE DEFENDANT: No, ma'am. The only thing
13 Mark Wise ever come to me saying, "We going to
14 trial, we going to trial." I said, "Mark, you
15 never went over nothing, the General Sessions
16 case."

17 THE COURT: Did you ever tell Mr. Wise, "I'm
18 not going to talk to you"? Did you ever say that
19 to him?

20 THE DEFENDANT: Yes, several times after I
21 found out he wasn't helping me.

22 THE COURT: Okay. Let me just tell you it is
23 my advice to you, sir, that you start talking to
24 him right now, okay?

25 THE DEFENDANT: If he will talk to me.

1 THE COURT: All right.

2 Anything else?

3 MR. MELLARD: I would just like to ask him if
4 he is going, wants us to represent him.

5 THE COURT: I don't care.

6 MR. MELLARD: Okay.

7 THE COURT: Mr. Mellard, I don't care, he can
8 tell me no or he can tell me yes, okay? Thank you.

9 MR. MELLARD: Okay.

10 THE COURT: I mean, you know, I'm looking at
11 Mr. Wise, your file is what, eight inches thick?

12 MR. WISE: That's the section I brought to
13 court today.

14 THE COURT: That is just the section you
15 brought to court today?

16 MR. WISE: Yes.

17 THE COURT: Okay. Very well. Well, it would
18 be my advice to your client that he listen to you
19 and that he assist you with regard to his case.

20 MR. MELLARD: Your Honor, just one thing.
21 Since I now, I assume, understand what is going on,
22 because the Court has gone into detail on this,
23 we're supposed to pick a jury tomorrow morning.

24 THE COURT: I know.

25 MR. MELLARD: We would ask if he decides to

1 talk to us that we be allowed to have a little bit
2 of time to talk with him so that we could get this
3 case going. We would, and I would just ask for Mr.
4 Wise's input but I would ask we pick the jury
5 tomorrow and try the case maybe Wednesday, give us
6 a chance to at least talk with him if he so wants
7 to choose or maybe at some other point --

8 THE COURT: Okay.

9 Yes?

10 MR. WISE: Your Honor, I very seldom disagree
11 with Mr. Mellard but just a little background.
12 Since I have been representing Mr. Haynes I sent
13 Dr. Holcomb to speak with him, Dr. Holcomb is a
14 psychiatrist in Orangeburg, she indicated that Mr.
15 Haynes has told her that she should not share with
16 me anything they talked about. I sent Dr.
17 Schwartz-Watts to meet with Mr. Haynes, he refused
18 to come out of his cell to speak to her. I have
19 been doing the best I can but if the Court is
20 inclined, if we are all now going to work together,
21 what I would like the Court to do is give me the
22 opportunity to have these folks interact with Mr.
23 Haynes so that I can, these are things I wanted to
24 do and couldn't do and I don't think I can do it by
25 Wednesday of this week.

1 MR. MELLARD: I would say I probably misspoke
2 on that, Your Honor.

3 THE COURT: I got it. Thank you. Tell me
4 what it is you were hoping, you were hoping to get
5 from the psychologists or from Dr. Schwartz-Watts.

6 MR. WISE: Briefly, this case, Mr. Haynes has
7 done a good job of explaining what this is about,
8 the issue in this case is whether or not at the
9 time these children were conceived Mr. Haynes was
10 conscious of what was going on. Very specifically,
11 Your Honor, the victim in this case has told DSS
12 that she, using her words, went in on Mr. Haynes
13 when he was asleep, he was drunk, that he didn't
14 know anything about it, that she did it because she
15 wanted a baby and that she was in love with Mr.
16 Haynes and he didn't know anything about this.

17 So, it is my intention to present an issue of
18 consciousness in this case. I used, and the
19 reason, Dr. Holcomb, I initially identified because
20 I was led to believe she was knowledgeable about
21 the issue of consciousness and sexual performance
22 and that kind of things, which I think is something
23 that I need an expert to come in and explain to the
24 jury, and she spoke to him and they spoke for
25 hours, at least an hour. Dr. Schwartz-Watts,

1 frankly, Your Honor, at this point I don't know if
2 he spoke with Dr. Holcomb or Dr. Schwartz-Watts,
3 but to try to develop this defense, that is why I
4 was looking for these mental health people.

5 THE COURT: Okay. So he has the ability to
6 release the psychologist to give you that
7 information, yes?

8 MR. WISE: Yes.

9 THE COURT: And he has not done that?

10 MR. WISE: That's correct.

11 THE COURT: Okay. Well it's my suggestion
12 that he do that. If he chooses not to do it that
13 then you won't have benefit of that defense, will
14 you?

15 MR. WISE: Your Honor, you're absolutely
16 right. The problem as we sit here now, we're going
17 to start this case tomorrow.

18 THE COURT: I'm aware of that. I didn't
19 cause the situation, Mr. Wise, and neither did you.
20 I suggest he do that and do it pretty quickly. You
21 get that information, if you get that information
22 and you need to renew a motion for continuance I'm
23 certainly glad to hear you before the jury is
24 selected tomorrow morning, okay?

25 MR. WISE: All right.

1 THE COURT: All right. I need the Solicitor
2 back.

3 (The courtroom was re-opened to the
4 Solicitor's office and the public).

5 THE COURT: All right. Obviously I have had
6 an extensive conversation and interaction with Mr.
7 Haynes and I have again asked him, it was my
8 intention to preserve his attorney-client privilege
9 and I'm satisfied that has occurred.

10 He is competent to assist counsel, he is very
11 bright. Based on just my observation of him I find
12 him to be very articulate and bright and is
13 certainly capable to assist with counsel. I would
14 not relieve counsel from representing him and he
15 certainly is competent, very competent, very
16 bright. I'm very surprised that the doctor found
17 him, found him to be low average intelligence. I
18 think he is much brighter than that, after
19 interacting with him. He is bright.

20 But, then again, I'm a jurist doctor an not
21 a medical doctor, and counsel will not be relieved.
22 I do -- and I'm going to ask the jail to please
23 give counsel extended time with him.

24 How long will it take on the State's behalf
25 to try this case?

1 MS. FORD: Your Honor, we have six witnesses.
2 I wouldn't think more than a day, day and a half.

3 THE COURT: Okay. Tuesday we will pick the
4 jury, that's tomorrow, we will pick the jury
5 tomorrow and start Wednesday.

6 MR. WISE: There were some other pretrial
7 motions.

8 THE COURT: You have other pretrial motions?

9 MR. WISE: Yes.

10 THE COURT: Great, tomorrow, we can do it
11 after the jury is selected, that is even better.

12 MR. WISE: Okay.

13 THE COURT: Very well. All right. Then
14 that will conclude what we're going to do today.
15 The jury is coming in in the morning at 10:00?

16 THE CLERK: 10:00.

17 THE COURT: I will see you all at 10:00.

18 MS. FORD: Thank you.

19 THE COURT: You're welcome.

20 (Recessed at 5:27 p.m., February 25, 2013).

21 (Reconvened at 12:20 p.m., February 26,
22 2013).

23 THE COURT: Now, if the attorneys will
24 approach just a minute.

25 (Unrecorded bench conference).

1 THE COURT: All right, ladies and gentlemen,
2 now that we have had that bench conference I'm
3 going to continue. What we're going to do at this
4 point is I'm going to call on the Assistant
5 Solicitor to please call our first case which is
6 for trial this week.

7 MS. FORD: Thank you, Your Honor. If it
8 please the Court, the State calls the case of John
9 Edward Haynes. He is charged in two indictments.
10 The first indictment is 2010-GS-09-0069, a charge
11 of incest, and 2010-GS-09-0070, sexual battery.
12 They were both true billed by the grand jury of
13 Calhoun County May 14, 2010.

14 THE COURT: All right. Tell me, do you want
15 to pass those forward, or you may have a copy?

16 MS. FORD: May I approach?

17 THE COURT: Yes.

18 Thank you. Thank you very much.

19 Let me tell tell you what has just happened,
20 then I'm going to explain to you what an indictment
21 is and what it is not.

22 Ladies and gentlemen, what has just happened
23 is that Miss Ford, who is an Assistant Solicitor
24 here in the First Judicial Circuit in South
25 Carolina, we are the only state in the country that

1 calls the prosecuting attorney the Solicitor. It
2 is a holdover from England and we are a prodigy of
3 English jurisprudence. In many other states the
4 prosecuting attorney is called the District
5 Attorney. If you watch CNN, Nancy Grace, those
6 shows often are about the District Attorney or the
7 State's Attorney. In South Carolina the attorney
8 who prosecutes cases for the State is called the
9 Solicitor. We are special in South Carolina in so
10 many ways and one of the ways that we are unique is
11 this. Our prosecuting attorneys for the State are
12 called Solicitors.

13 Now, ladies and gentlemen, what has just
14 happened is that Miss Ford who is an Assistant
15 Solicitor in the First Judicial Circuit has called
16 to trial the first case for trial. Now, she has
17 done that by calling my attention to two
18 indictments and, ladies and gentlemen, I want to
19 tell you what an indictment is and what it is not
20 because in a moment I am going to be reading to you
21 some of the allegations of the indictments, and the
22 reason that I'm going to be doing that is because I
23 want to find out whether or not any of you know or
24 think you may know or if you have heard or think
25 you may have heard anything about these

1 allegations, to include having heard about it
2 today.

3 Now, ladies and gentlemen, I will tell you
4 that an indictment is a charging document. First
5 of all it is a piece of paper, a piece of paper.
6 And on this piece of paper there is information on
7 the piece of paper and the purpose of this piece of
8 paper is to give notice to a citizen that the State
9 of South Carolina maintains, alleges, if you will,
10 that this citizen has violated one or more of the
11 criminal laws of the State of South Carolina.

12 Now, let me hasten to tell you that to each
13 and every allegation of each of these indictments
14 the citizen who has been so notified, Mr. John
15 Edward Haynes, he has pled not guilty to each
16 allegation of each of these indictments, to both of
17 these indictments and that places the burden to
18 prove each and every allegation of each of these
19 indictments, that puts the burden on the State to
20 prove each of these allegations against Mr. Haynes
21 beyond a reasonable doubt, and we're going to talk
22 about that a whole lot but I want you to know
23 immediately that to these allegations in each of
24 these indictments that Mr. Haynes has pled not
25 guilty.

1 Now, so why would I read you these
2 indictments? Well, the reason I'm going to read to
3 you some of these allegations again is to find out
4 whether or not any of you know or think you may
5 know or have heard or think you may have heard
6 anything about these allegations. After I have
7 done that, ladies and gentlemen, then I'm going to
8 introduce to you some folks and then I have a few
9 questions I'm going to ask of you and then we're
10 actually going to seat our jury for this case.

11 Now, ladies and gentlemen, indictment
12 2010-GS-09-70 alleges in part that in Calhoun
13 County, South Carolina on or about January the 1st,
14 2008, the defendant John Edward Haynes did engage
15 in a sexual battery upon a minor who was at least
16 fourteen years old or fourteen years of age but
17 less than sixteen years of age and the defendant
18 was more than two years older than the victim
19 and/or in a position of familial, custodial and
20 official authority to coerce the victim in that the
21 defendant did have sexual intercourse with the
22 victim **JW** **[REDACTED]**. This offense is in
23 violation of Section 16-3-655 of the South Carolina
24 Code of Laws as amended.

25 Now, ladies and gentlemen, again I hasten to

1 tell you as to each and every allegation of this
2 indictment the defendant has pled not guilty.

3 Now, ladies and gentlemen, with regard to
4 2010-GS-09-69 as amended, the indictment alleges in
5 part that in Calhoun County South Carolina on or
6 about January the 1st, 2008, the defendant John
7 Edward Haynes did engage in incest in that the
8 defendant did have sexual intercourse with his
9 wife's daughter [REDACTED] JW [REDACTED], this offense in
10 violation of Section 16-3-655 of the South Carolina
11 Code of Laws, 1976, as amended.

12 Now, ladies and gentlemen -- did I read the
13 amended part correctly?

14 MS. FORD: No, ma'am.

15 THE COURT: Give me the amended section.

16 MS. FORD: Carolina Code 16-15-20.

17 THE COURT: Section 16-15-20 of the South
18 Carolina Code of Laws rather than 16-3-655.

19 Ladies and gentlemen, I ask do any of you
20 know or think you may know or have heard or think
21 you may have heard anything about these
22 allegations, to include anything you may have heard
23 today? If so, please stand at this time.

24 Yes, ma'am, I will ask you, please come
25 forward one at a time, I will meet you down there.

1 (Bench conferences with jurors out of the
2 hearing of the jury panel).

3 THE COURT: Now, let me tell you, you need to
4 talk loud enough for the court reporter to hear you
5 but I don't want the jury panel to hear your
6 responses. First of all your name and number.

7 JUROR: Kelly Thompson, 105.

8 THE COURT: Okay. Tell me what you know or
9 think you know.

10 JUROR: I know her.

11 THE COURT: Who is her?

12 JUROR: JW [REDACTED].

13 THE COURT: How do you know JW [REDACTED]?

14 JUROR: I was her bus driver.

15 THE COURT: You were her bus driver, okay,
16 all right. Now, did you have occasion to speak
17 with JW [REDACTED] about these events?

18 JUROR: No.

19 THE COURT: Okay.

20 JUROR: And she had an altercation on my bus.

21 THE COURT: With you?

22 JUROR: No.

23 THE COURT: With someone else?

24 JUROR: Yes.

25 THE COURT: How long ago did that occur?

1 JUROR: About four or five years ago.

2 THE COURT: Okay. Now, as a result of your
3 interaction with JW do you believe
4 that that might or could interfere with your
5 ability to be completely fair and impartial to the
6 State as well as to Mr. Haynes?

7 JUROR: Yes.

8 THE COURT: Can you set your interactions
9 with her, set them completely aside and make up
10 your mind based on what you hear while court is in
11 session?

12 JUROR: Yes.

13 THE COURT: Please stay with us.

14 MR. MELLARD: That is 105.

15 THE COURT: 105.

16 (Next bench conference with juror)

17 THE COURT: I just need our court reporter to
18 be able to hear you. Start with your name and
19 number.

20 JUROR: Shelia Conner, I don't know the
21 number.

22 THE COURT: Okay.

23 JUROR: I think I have heard about it. I'm
24 thinking, I don't exactly know any details but I
25 think I have heard about it, something about it.

1 THE COURT: What is it you think you might
2 have heard?

3 JUROR: I think, I'm not sure, they just tell
4 me the story of how he had sex with his
5 stepdaughter.

6 THE COURT: Very well. And as a result -- do
7 you remember when you heard that?

8 JUROR: It's been awhile ago, about a year
9 ago.

10 THE COURT: About a year ago?

11 JUROR: Yes.

12 THE COURT: As a result of having heard that
13 do you believe that that might impact on your
14 ability to be completely fair and impartial both to
15 the State as well as to the defendant?

16 JUROR: I think it would.

17 THE COURT: I understand. I'm going to
18 excuse you. Do not discuss the matter with your
19 fellow jurors. Thank you very much.

20 (Next bench conference with juror).

21 THE COURT: Tell me your name and your
22 number.

23 JUROR: Pamela Green.

24 THE COURT: I just need enough volume for our
25 court reporter to hear you.

1 JUROR: Is his name Haynes?

2 THE COURT: Yes.

3 JUROR: My best friend is a Haynes, I heard
4 it from them.

5 THE COURT: Tell me what you heard.

6 JUROR: What happened, you know, with the
7 young lady.

8 THE COURT: Okay. And about how long ago did
9 you hear that?

10 JUROR: I can't remember, it been a while.

11 THE COURT: The Haynes you talk to, do you
12 all visit often?

13 JUROR: Yes.

14 THE COURT: Very well. Do you think that is
15 going to have an impact, that your best friend had
16 these conversations, do you think you can set those
17 conversations completely aside and make up your
18 mind and base your opinion on what you hear while
19 court is in session or do you think the
20 conversation would have an impact?

21 JUROR: It probably will.

22 THE COURT: Because of your social
23 relationship with her?

24 JUROR: Yes.

25 THE COURT: I'm going to ask you to sit this

1 one out. I'm going to ask you not to discuss this
2 matter with the other jurors.

3 JUROR: Okay.

4 (Bench conferences concluded).

5 THE COURT: All right. Now, ladies and
6 gentlemen, can you hear me if I stay down here? If
7 you can't hear me just raise your hand and let me
8 know, all right?

9 Now, ladies and gentlemen, you're going to
10 hear me ask this question with regard to all of you
11 folks, it is going to be things like are you
12 related by blood or marriage or acquainted with so
13 and so. Now, I want to define the term acquainted
14 with because I actually intend a very, very general
15 definition of the term acquainted with. Let me
16 give you an example. It may be that you went to
17 school with someone twenty years ago that I will
18 ask you about and you hadn't thought about them,
19 hadn't seen them in twenty years but know that you
20 went to school with them twenty years ago. Believe
21 it or not you would stand and say, "I went to
22 school with this person twenty years ago," and then
23 I may ask you some follow-up questions but that
24 relationship is limited and as old as it is it
25 would be encompassed within my definition of

1 acquainted with.

2 It may be that you simply work at the same
3 location with somebody that I will ask you about,
4 maybe you wave at each other occasionally across
5 the parking lot and that is the extent of your
6 relationship. Well, believe it or not, that
7 relationship, as limited as it is, would be
8 encompassed within my definition of acquainted with
9 and you will stand and say, "I work at the same
10 location as this person, occasionally we wave at
11 each other across the parking lot," then I may ask
12 you some follow-up questions but that relationship
13 would be encompassed within my definition of
14 acquainted with. When in doubt stand and disclose
15 is sort of a good rule of thumb.

16 Now, ladies and gentlemen, at this time
17 please allow me to introduce you to Miss Ford and
18 she is going to introduce the folks in her office.

19 MS. FORD: Thank you, Your Honor. Good
20 afternoon, I'm Sarah Ford, prosecuting this case on
21 behalf of the State of South Carolina, along with
22 Harrison Bell. The other attorneys in our office
23 include John Sorenson, Tommy Scott, Rob Clariday,
24 Fran Jeffries, Crystal Chapman and Ted Lupton.

25 THE COURT: As well as the Solicitor.

1 MS. FORD: Our Solicitor is David Pascoe.

2 THE COURT: Ladies and gentlemen, are you
3 related by blood or marriage or acquainted with
4 Miss Ford, Mr. Bell or any of the attorneys that
5 Miss Ford just mentioned? If so, please stand at
6 this time and tell me your name.

7 JUROR: Megan Evans.

8 THE COURT: Do you know the number?

9 MR. BELL: 37.

10 THE COURT: 37, I'm told. Now, I want you
11 just to answer what I ask because I don't need any
12 more information than that. First of tell me who
13 you know.

14 JUROR: I know Sarah Ford.

15 THE COURT: Very well. Let me ask you this.
16 Do you visit in each other's home?

17 JUROR: I haven't seen her in years.

18 THE COURT: In years? As a result of your
19 acquaintanceship with Miss Ford do you believe that
20 that might or could in any respect interfere with
21 your ability to be completely fair and impartial
22 both to the State as well as Mr. Haynes?

23 JUROR: No, ma'am.

24 THE COURT: Can you set that relationship
25 aside and make up your mind based on what you hear

1 in court while court is in session?

2 JUROR: Yes, ma'am.

3 THE COURT: Thank you. Please stay with us.

4 Anyone else?

5 Tell me your name and number.

6 JUROR: Rona Jamison. My family is

7 acquaintances with Mr. Pascoe.

8 THE COURT: Do you visit in each other's

9 home?

10 JUROR: No.

11 THE COURT: As a result of that relationship

12 do you believe that relationship might or could in

13 any respect interfere with your ability to be

14 completely fair and impartial both to the State as

15 well as to Mr. Haynes?

16 JUROR: No.

17 THE COURT: Can you set that relationship

18 aside and make up your mind based on what you hear

19 in court while court is in session?

20 JUROR: Yes.

21 THE COURT: Thank you. Please stay with us.

22 Someone else? Yes, ma'am, tell me your name

23 and juror number.

24 JUROR: Ann Bryson, number 16, I know Sarah

25 Ford.

1 THE COURT: All right. Do you visit in each
2 other's home?

3 JUROR: No.

4 THE COURT: Do you babysit her dogs?

5 JUROR: No.

6 THE COURT: Okay. I just couldn't resist.
7 Now, as a result of your relationship with Miss
8 Ford do you believe that that might or could in any
9 regard interfere with your ability to be completely
10 fair and impartial both to the State as well as Mr.
11 Haynes?

12 JUROR: No.

13 THE COURT: That was a --

14 JUROR: No.

15 THE COURT: Thank you. And can you set that
16 relationship aside and make up your mind based on
17 what you hear in court while court is in session?

18 JUROR: Yes.

19 THE COURT: Thank you. Please stay with us.

20 All right, anyone else?

21 Very well. Now, ladies and gentlemen, please
22 allow me to introduce you to Mr. John Edward
23 Haynes, and this is Mr. Haynes seated right here,
24 the gentleman in the middle.

25 Thank you so much, Mr. Haynes, you may be

1 seated.

2 Ladies and gentlemen, are you related by
3 blood or marriage or acquainted with Mr. John
4 Edward Haynes? If so, please stand at this time.

5 And I find no one is standing.

6 Now, ladies and gentlemen, Mr. Haynes is
7 represented by Mr. Mark Wise, and this is Mr. Wise.

8 MR. WISE: Good afternoon.

9 THE COURT: And this is Mr. Doug Mellard.
10 Who are the other lawyers in your office?

11 MR. WISE: In our office we have Jillian
12 Ullman and Mark Leiendecker.

13 THE COURT: Very well. Ladies and gentlemen,
14 are you related by blood or marriage or acquainted
15 with or have you or any member of your immediate
16 family, to your knowledge, ever been represented by
17 Mr. Wise, Mr. Mellard or any of the attorneys in
18 the office or employees in the office? If so
19 please stand at this time.

20 And I find no one standing.

21 Now, ladies and gentlemen, I am going to read
22 to you a list of potential witnesses, and if you
23 happen to be in the courtroom I'm going to ask you
24 to please stand because it is so much easier with a
25 face and name than just the name itself, so if they

1 are here I want them to stand for you.

2 My question as to each and every one of
3 these folks is are you related by blood or marriage
4 or acquainted with any of these individuals.

5 JW [REDACTED]. This is JW [REDACTED]. If
6 you can turn just a little bit, JW [REDACTED], and
7 face the jury panel for me? Thank you so much and
8 you may be seated.

9 Gail Haynes. And this is Miss Gail Haynes.

10 Thank you, ma'am. You may be seated.

11 Stanley Graham, of course.

12 And Lieutenant Dukes. There he is, of
13 course. Thank you. You may be seated.

14 And W. A. Cartright, Captain W. A.
15 Cartwright. Sheriff, is he outside the door?
16 That's okay, that's fine.

17 And Investigator Matt Trentham. There he is.
18 Thank you and you may be seated.

19 Amanda Webb.

20 And Dr. Amanda -- is it Salas?

21 MR. WISE: Yes, ma'am.

22 THE COURT: Dr. Amanda Salas.

23 Eula Clark.

24 Dr. Marc Harari.

25 Are you related by blood or marriage or

1 acquainted with, or with regard to Dr. Salas, Dr.
2 Harari, have you or any member of your immediate
3 family to your knowledge ever been treated by those
4 folks? If so, please stand at this time.

5 And does anybody need me to go over the list
6 again if you are worried that maybe, that maybe I
7 didn't pronounce it correctly because I'm from like
8 Dillon? Everybody good, okay? Very well.

9 Now, ladies and gentlemen, I have questions
10 to ask of you. Ladies and gentlemen, are you
11 employed by or related by blood or marriage or do
12 you have a close personal friend -- let me tell you
13 about this close personal friend. This close
14 personal friend is so close to you that they are
15 closer to you than like your brother or sister.
16 That type close is what a close personal friend is.
17 So, are you employed by currently or in the past or
18 are you related by blood or marriage to someone who
19 is or do you have this close personal friend who is
20 a member of any law enforcement agency? If so,
21 please stand at this time.

22 JUROR: I have --

23 THE COURT: All right. First your name and
24 number.

25 JUROR: Marcus Harris, Sr. I'm not sure what

1 my number is.

2 THE COURT: And your daughter is engaged to
3 someone --

4 JUROR: My future stepdaughter is engaged to
5 Andy Hayes.

6 THE COURT: Who is a member of law
7 enforcement?

8 JUROR: The Assistant Chief of Police.

9 THE COURT: For St. Matthews?

10 JUROR: St. Matthews, yes.

11 THE COURT: Thank you very much. Now, as a
12 result of that relationship do you believe that
13 that relationship might or could in any respect
14 interfere with your ability to be completely fair
15 and impartial both to the State as well as to Mr.
16 Haynes, and that is a yes or no.

17 JUROR: Yes.

18 THE COURT: Very well. Then I'm going to ask
19 you to sit this one out, please.

20 JUROR: Okay.

21 THE COURT: All right.

22 All right, yes, sir, your name and number?

23 JUROR: William Buyck, number 21.

24 THE COURT: Tell me who you know.

25 JUROR: My dad is a state constable.

1 THE COURT: Okay. As a result of that, your
2 daddy is a state constable, might that, could that
3 interfere with your ability to be completely fair
4 and impartial both to the State as well as Mr.
5 Haynes?

6 JUROR: No.

7 THE COURT: You can set that relationship
8 aside and make up your mind based upon what you
9 hear in court while court is in session?

10 JUROR: Yes.

11 THE COURT: Thank you. Please be seated.

12 Yes, ma'am, your name and number?

13 JUROR: Bailey Edwards, I'm not sure of my
14 number. I know Sheriff Thomas Summers, I'm best
15 friends with his daughter.

16 THE COURT: All right.

17 JUROR: I live nextdoor.

18 THE COURT: All right. As a result of that
19 relationship do you believe that that relationship
20 might or could interfere with your ability to be
21 completely fair and impartial both to the State as
22 well as to Mr. Haynes?

23 JUROR: No.

24 THE COURT: Can you set that relationship
25 aside and make up your mind based upon what you

1 hear in court while court is in session?

2 JUROR: Yes.

3 THE COURT: To be more specific, if you
4 believe the State has not met its burden of proof,
5 would the fact of your relationship with the
6 sheriff's daughter enter your mind as you
7 deliberated on this case?

8 JUROR: No.

9 THE COURT: Or could you set it aside?

10 JUROR: I can set it aside.

11 THE COURT: Thank you so much. Please stay
12 with us.

13 Yes, sir, your name and number?

14 JUROR: I have a first cousin who is a deputy
15 in Lexington County.

16 THE COURT: Your number and name?

17 JUROR: David Baughman, number 8.

18 THE COURT: Could that interfere with your
19 ability to be completely fair and impartial both as
20 to the State and Mr. Haynes?

21 JUROR: Huh-uh (negative).

22 THE COURT: You're shaking your head.

23 JUROR: No.

24 THE COURT: Okay, thank you. He needs an
25 audible answer. Can you set that relationship

1 aside and make up your mind based on what you hear
2 while court is in session?

3 JUROR: Yes.

4 THE COURT: Thank you.

5 Now, are you employed by or related by blood
6 or marriage or do you have a close personal friend
7 who is employed by the Attorney General or any
8 prosecuting attorney's office? If so, please
9 stand, Attorney General or any prosecuting
10 attorney's office, if so, please stand.

11 Yes, ma'am, name and number.

12 JUROR: 29, and I'm related to somebody in
13 the courtroom.

14 THE COURT: You're related to somebody in the
15 courtroom?

16 JUROR: Yes.

17 THE COURT: Who?

18 JUROR: There.

19 THE COURT: What is the nature of your
20 relationship?

21 JUROR: First cousin.

22 THE COURT: First cousin, all right. And do
23 you visit in each other's home?

24 JUROR: We have before. I live here now and
25 she lives in Orangeburg.

1 THE COURT: I understand. And as a result of
2 that relationship do you believe that it might or
3 that it could interfere with your ability to be
4 completely fair and impartial both to the State as
5 well as to Mr. Haynes?

6 JUROR: No.

7 THE COURT: You don't think it would have an
8 effect?

9 JUROR: Huh-uh (negative).

10 THE COURT: And can you put that relationship
11 out of your mind completely and make up your mind
12 based on what you hear in court while court is in
13 session?

14 JUROR: Yes, ma'am.

15 THE COURT: Specifically if you believed that
16 the State had not met its burden of proof do you
17 believe that your relationship with your first
18 cousin would in any way enter your mind, your
19 consideration?

20 JUROR: No, ma'am.

21 THE COURT: Very well, thank you. Please be
22 seated.

23 All right. Ladies and gentlemen, have you
24 ever contributed to Solicitor Pascoe's campaign or
25 the campaign of the Calhoun County Sheriff, have

1 you ever given money to either of these people's
2 campaigns, Solicitor Pascoe or Sheriff Summers? If
3 so, please stand.

4 I find no one is standing.

5 Now, ladies and gentlemen, are you a member
6 of or is a member of your immediate family, to your
7 knowledge, a member of an organization such as MADD
8 or SADD or CAVE or any similar type organization
9 which has as a goal the promotion of law
10 enforcement and/or victims' rights? If so, please
11 stand.

12 And I find no one is standing.

13 Now, ladies and gentlemen, have you ever been
14 employed by or do you have an immediate family
15 member or close personal friend who is or has been,
16 to your knowledge, employed by the South Carolina
17 Department of Social Services? If so, please
18 stand.

19 JUROR: The Department of Social Services?

20 THE COURT: Yes.

21 JUROR: I think my mother-in-law worked for
22 them.

23 THE COURT: At some point?

24 JUROR: Yes.

25 THE COURT: Currently?

1 JUROR: No, she's retired.

2 THE COURT: Would that have an effect on your
3 ability to be completely fair and impartial both to
4 the State as well as Mr. Haynes?

5 JUROR: No.

6 THE COURT: Very well, thank you. And your
7 number and name?

8 JUROR: Amanda Evans, I think my number is
9 37. I work for DSS.

10 THE COURT: Yes. You're employed by the
11 Department of Social Services?

12 JUROR: Yes, ma'am.

13 THE COURT: All right, from what county?

14 JUROR: Richland County.

15 THE COURT: In Richland County?

16 JUROR: Yes, ma'am.

17 THE COURT: Very well. It is my
18 understanding that this department, that they --
19 well, let me -- okay, that's it. Thank you.
20 That's all.

21 MR. WISE: Excuse me.

22 THE COURT: Did you miss the name?

23 THE COURT: Your number and name?

24 JUROR: Chasity Keller-Huggins.

25 THE COURT: Ladies and gentlemen, I'm going

1 to ask you two questions together, please don't
2 respond to either until I have asked both and if
3 you need to respond I want you to approach.

4 The first question. Have you or any member
5 of your immediate family or close personal friend
6 ever worked or volunteered at a job or activity
7 which included working at a women's shelter, rape
8 crisis center or similar organization? That is
9 question number one. Question number two is have
10 you or any member of your immediate family ever
11 been charged with or been the victim of a crime,
12 and if you need to respond to either of those
13 questions I'm going to ask you to please approach.
14 Do you all need it asked again? You've got it,
15 okay. Come forward, please, one at a time.

16 (Conferences with jurors outside the hearing
17 of the jury panel).

18 THE COURT: I just need your name and number
19 loud enough for our court reporter to hear.

20 JUROR: Sue Irick.

21 THE COURT: Okay.

22 JUROR: I was robbed and I was also molested.

23 THE COURT: All right. How long ago?

24 JUROR: The robbery was about seven years
25 ago.

1 THE COURT: Okay.

2 JUROR: And the molestation was about 23
3 years ago.

4 THE COURT: As a result of those experiences
5 do you believe that either of them alone or the two
6 together might or could interfere with your ability
7 to be fair and impartial to both the State as well
8 as Mr. Haynes?

9 JUROR: No.

10 THE COURT: Do you believe you can set those
11 experiences, particularly the molestation, set that
12 aside and make up your mind based on what you hear
13 in the courtroom while court is in session?

14 JUROR: Yes.

15 THE COURT: You can do that, you believe you
16 can do that?

17 JUROR: Yes.

18 THE COURT: Thank you very much. Stay with
19 us.

20 (Next juror conference).

21 THE COURT: Hello. Please tell me your name
22 or number.

23 JUROR: Elizabeth Sharpe, number 92.

24 THE COURT: Okay.

25 JUROR: I was molested as a child.

1 THE COURT: How long ago?

2 JUROR: I'm 24, it started when I was 13.

3 THE COURT: All right. As a result of that
4 experience, or those experiences, could they
5 interfere with your ability to be completely fair
6 and impartial both to the State as well as Mr.
7 Haynes?

8 JUROR: No. That was a long time ago.

9 THE COURT: You would set that aside and make
10 up your mind completely on what you hear in court?

11 JUROR: Yes.

12 THE COURT: Okay.

13 (Next juror conference).

14 THE COURT: Your name and number.

15 JUROR: Chasity Keller-Huggins, number 65. I
16 work with DSS and we have a lot of sexual abuse
17 cases.

18 THE COURT: You're not on the food stamp
19 side, you're on the --

20 JUROR: Child care vouchers.

21 THE COURT: Child care vouchers, I've got
22 you. This is of course a charge that was
23 investigated by abuse and neglect.

24 JUROR: No, ma'am. Our division is the
25 daycare division.

1 THE COURT: What you're saying, DSS in
2 general is involved with those?

3 JUROR: Yes.

4 THE COURT: Okay. Now, as a result of the
5 involvement of yourself in those matters that you
6 just described, might that, could that interfere
7 with your ability to be completely fair and
8 impartial both to the State as well as to Mr.
9 Haynes?

10 JUROR: Probably so, dealing with victims of
11 rape, things like that kind of --

12 THE COURT: Okay, all right, I understand.
13 You're saying, you're telling me you have concerns
14 that your experience could have an effect on you as
15 far as being impartial?

16 JUROR: Yes.

17 THE COURT: Okay. I will ask you to sit this
18 one out.

19 JUROR: Okay.

20 (Next juror conference).

21 THE COURT: Hello. Tell me your name and
22 number.

23 JUROR: Number 17, Donald Bryson, 18 years
24 ago I was involved in a divorce, I was accused of
25 molestation.

1 THE COURT: As a result of that could you set
2 that aside?

3 JUROR: I could be very biased in that
4 situation, yes.

5 THE COURT: Thank you, sir. I will set you
6 aside.

7 (Next juror conference).

8 THE COURT: Hello. Your name and number?

9 JUROR: Norman Andrews, the DUI I mentioned
10 earlier.

11 THE COURT: As a result of that experience
12 would that interfere --

13 JUROR: No. Did you say Robb Clariday works
14 for you all? I know his dad and his brother.

15 THE COURT: Okay. Do you all visit in each
16 other's home?

17 JUROR: No, ma'am.

18 THE COURT: Would that have an effect --

19 JUROR: None.

20 THE COURT: Very well, thank you.

21 (Next juror conference).

22 THE COURT: Hi. Can you tell me your name
23 and number?

24 JUROR: Maria Dorn, 32.

25 THE COURT: 32.

1 JUROR: My husband and one of my brothers was
2 robbed.

3 THE COURT: The experience they had, would
4 that interfere with your ability to be fair in this
5 case?

6 JUROR: No.

7 THE COURT: Very well. Thank you.

8 THE COURT: Ladies and gentlemen, do you know
9 any reason why you ought not, should not, could not
10 be a juror in this case, being ready, willing and
11 able to listen to the evidence and make up your
12 mind based solely on what you hear in court while
13 court is in session, being completely unaffected by
14 matters determined extraneous, matters outside the
15 court while court is in session?

16 Ladies and gentlemen, if you have any
17 concerns whatsoever about that I'm going to ask you
18 to approach. It may be simply that you didn't
19 disclose something earlier that you think I need to
20 know, it may be you were shy earlier, now you have
21 formed up, you have been together for awhile, it
22 might be that during that break that you had
23 forgotten about the tickets to Tahiti and you
24 looked in your pocketbook and lo and behold there
25 were the tickets to Tahiti and you don't know how

1 in the world you were supposed to bring that up to
2 me now because you're supposed to leave tomorrow
3 afternoon at 3:00, how are you going to bring that
4 up? Well, now is the time to do it. It may be
5 that these particular issues, as I have relayed to
6 you by reading to you some of the allegations in
7 the indictment, that you had some feelings one way
8 or the other regarding those issues that you feel
9 like you need to discuss with me, or anything else,
10 ladies and gentlemen, I'm going to ask you to come
11 forward and give us an opportunity to discuss the
12 matter.

13 And I find no one standing.

14 Any further voir dire from the State?

15 MS. FORD: Nothing further from the State.

16 THE COURT: From the defense?

17 MR. WISE: No, ma'am.

18 THE COURT: Very well, I find our panel is
19 now qualified.

20 Now, with regard to the strikes, there are
21 five on behalf of the State and ten on behalf of
22 the defense, and we will proceed, if we can, to get
23 an alternate. I would like to have two but we may
24 have none.

25 So, ladies and gentlemen, when your name is

1 called, when your name is called, what you will do,
2 you will exit your row and you will come up here
3 and you will come stand in front of this microphone
4 and you are first going to hear from the State and
5 what they will say is, we'll hear them say one of
6 two things, either present the juror, or excuse the
7 juror. If you hear excuse the juror please just
8 take your seat back in the audience.

9 Ladies and gentlemen, what I can promise you
10 is these lawyers mean no embarrassment. There are
11 probably a thousand different considerations that
12 go into jury selection. I can assure you that one
13 of the considerations that doesn't go into it is
14 that they won't embarrass you, because I promise
15 you they will not.

16 If you hear present the juror, then you will
17 hear from one of the attorneys for Mr. Haynes and
18 they will either say seat the juror, which means
19 you will come over here and take a seat, or you
20 will hear them say excuse the juror and if you hear
21 excuse the juror you just simply take your seat
22 back in the audience.

23 Ladies and gentlemen, at this time I'm going
24 to turn the matter over to the Clerk but beforehand
25 I am going to ask do you waive selection of the

1 jury by a small child, a person under the age of
2 six?

3 MS. FORD: Yes, Your Honor.

4 THE COURT: And for the defense?

5 MR. MELLARD: Yes, ma'am.

6 THE COURT: Okay, very well. Of course under
7 the consideration, consideration of the statute,
8 two things occur. The Clerk of Court is also
9 allowed to yield to someone competent in selecting a
10 jury. That would be Miss Pauling?

11 THE CLERK: Yes.

12 THE COURT: And pursuant to the order of the
13 Chief Justice, the jury selection is allowed to be
14 done by computer, and that is how you would intend
15 to select the jury, Miss Pauling?

16 THE CLERK: Yes, ma'am.

17 THE COURT: By use of the case management
18 system and the Chief Justice's administrative
19 order?

20 THE CLERK: Correct, yes, ma'am.

21 THE COURT: Thank you very much. You may
22 proceed.

23 THE CLERK: Number 1, Randall Allen. Please
24 come forward. Come stand right here, please turn
25 around and face the back.

1 What says the State?

2 MS. FORD: Please excuse Mr. Allen.

3 THE CLERK: You're excused.

4 Number 2, Norman Andrews, Jr. Please come
5 forward.

6 What says the State?

7 MS. FORD: Beg the Court's indulgence.

8 Please excuse Mr. Andrews.

9 THE CLERK: Number 3, David Baughman.

10 What --

11 MR. BELL: You're going alphabetically.

12 THE COURT: Hold on one second.

13 THE CLERK: Do you want to reshuffle them? I
14 don't know what happened.

15 THE COURT: Is it Baughman? I'm going to
16 ask you to take a seat for me. We will begin
17 again, I'm sorry. We'll have to start it over.

18 THE CLERK: Do you want me to reshuffle them?

19 THE COURT: Yes. Start all over again. Five
20 for the State, ten for the defense. Alternates,
21 two for the defense, one by the State.

22 THE CLERK: Conrad Hutto, Jr., Number 58.
23 Please come forward.

24 What say the State?

25 MS. FORD: Please present Mr. Hutto.

1 MR. MELLARD: Please excuse Mr. Hutto.
2 THE CLERK: Megan Evans, 37.
3 What says the State?
4 MR. MS. FORD: Please present Miss Evans.
5 MR. MELLARD: Please excuse Miss Evans.
6 THE CLERK: Juror 60, Sue Irick.
7 What says the State?
8 MS. FORD: Please present Miss Irick.
9 THE CLERK: What says the defense?
10 MR. MELLARD: Please excuse Miss Irick.
11 THE CLERK: Juror number 47, William M. Hair.
12 What says the State?
13 MS. FORD: Please seat Mr. Hair.
14 THE CLERK: What says the defense?
15 MR. MELLARD: Please seat Mr. Hair.
16 THE CLERK: Juror number 61, Rona Jamison.
17 What says the State?
18 MS. FORD: Please present Miss Jamison.
19 MR. MELLARD: Please seat Miss Jamison.
20 THE CLERK: Please have a seat in the jury
21 box.
22 Juror number 35, Bailey Edwards.
23 What says the State?
24 MS. FORD: Please present Miss Edwards.
25 THE CLERK: What says the defense?

1 MR. WISE: One moment.

2 THE CLERK: Okay.

3 MR. MELLARD: Please excuse this juror.

4 THE CLERK: Juror number 22, J. Calvin
5 Callahan.

6 What says the State?

7 MS. FORD: Please present Mr. Callahan.

8 MR. MELLARD: Please seat Mr. Callahan.

9 THE CLERK: Be seated in the jury box.
10 Juror number 100, Lonnie R. Spires, Jr.
11 What says the State?

12 MS. FORD: Please present Mr. Spires.

13 MR. MELLARD: Please seat Mr. Spires.

14 THE CLERK: Be seated, please.
15 Juror 54, Margaret A. Hirth.
16 What says the State?

17 MS. FORD: Please present Miss Hirth.

18 THE CLERK: What says the defense?

19 MR. MELLARD: Please seat Miss Hirth.

20 THE CLERK: Have a seat in the jury box.
21 Juror number 29, Madelyn J. Crosland.
22 What says the State?

23 MS. FORD: Please present Miss Crosland.

24 MR. MELLARD: Please excuse Miss Crosland.

25 THE CLERK: Okay.

1 Juror number 8, David Baughman.
2 What says the State?
3 MS. FORD: Please present Mr. Baughman.
4 THE CLERK: What says the defense?
5 MR. MELLARD: Please excuse Mr. Baughman.
6 THE CLERK: Juror 103, Jennifer T. Swafford.
7 What says the State?
8 MS. FORD: Please present Miss Swafford.
9 THE CLERK: What says the defense?
10 MR. MELLARD: Please seat this juror.
11 THE CLERK: Be seated please.
12 Number 118, Nancy M. Winter.
13 What says the State?
14 MS. FORD: Please present Miss Winter.
15 MR. MELLARD: Please seat Miss Winter.
16 THE CLERK: Please be seated in the jury box.
17 Juror number 119, Billy J. Wolf, Jr.
18 What says the State?
19 MS. FORD: Please present Mr. Wolf.
20 MR. MELLARD: Please seat Mr. Wolf.
21 THE CLERK: Be seated in the jury box.
22 Juror number 86, Kathryn E. Rickenbaker.
23 What says the State?
24 MS. FORD: Please present Miss Rickenbaker.
25 THE CLERK: What says the defense?

1 MR. MELLARD: Please seat Miss Rickenbaker.
2 THE CLERK: Have a seat in the jury box.
3 Number 6, Norman E. Andrews, Jr.
4 What says the State?
5 MS. FORD: Please excuse Mr. Andrews.
6 Number 106, Kyle R. Tucker.
7 What says the State?
8 MS. FORD: Please present Mr. Tucker.
9 THE CLERK: What says the defense?
10 MR. MELLARD: Please excuse Mr. Tucker.
11 THE CLERK: Juror number 110 --
12 THE COURT: Hold on a second.
13 THE CLERK: I'm sorry, I apologize. Skip to
14 Number 4, Randal D. Allen.
15 What says the State?
16 MS. FORD: Please excuse Mr. Allen.
17 THE CLERK: Number 110, Laquesha Watson.
18 What says the State?
19 MS. FORD: Beg the Court's indulgence.
20 THE COURT: Wait a minute. Hold here just a
21 second.
22 MS. FORD: Please present Miss Watson.
23 THE CLERK: Hold on. What says the defense?
24 MR. MELLARD: Please seat Miss Watson.
25 THE COURT: Now go.

1 THE CLERK: Juror number 112, Loretta
2 Whitmore.
3 What says the State?
4 MS. FORD: Please present Miss Whitmore.
5 THE CLERK: What says the defense?
6 MR. MELLARD: Please seat the juror.
7 THE CLERK: Have a seat in the jury box.
8 THE CLERK: Number 46, Joshua W. Hair.
9 What says the State?
10 MS. FORD: Please present Mr. Hair.
11 THE CLERK: What says the defense?
12 MR. MELLARD: Please excuse Mr. Hair.
13 THE CLERK: Juror number 21, William P.
14 Buyck, III.
15 What says the State.
16 MS. FORD: Please present Mr. Buyck.
17 THE CLERK: What says the defense?
18 MR. MELLARD: Please excuse the juror.
19 THE CLERK: Juror number 105, Kelly N.
20 Thompson.
21 What says the State?
22 MS. FORD: Beg the Court's indulgence.
23 THE COURT: Okay.
24 MR. MELLARD: Your Honor, may we approach?
25 THE COURT: You may.

1 MR. MELLARD: Very briefly.

2 THE COURT: Sure.

3 (Unrecorded bench conference).

4 MS. FORD: Please present Miss Thompson.

5 THE CLERK: What says the defendant?

6 MR. MELLARD: Please seat Miss Thompson.

7 THE CLERK: Please have a seat in the jury
8 box.

9 THE CLERK: First alternate.

10 Number 90, Wayne Rucker, Sr.

11 What says the State?

12 MS. FORD: Please present Mr. Rucker.

13 MR. MELLARD: Please seat Mr. Rucker.

14 THE CLERK: All right, second alternate.

15 Number 115, Theodore Williams.

16 What says the State?

17 MS. FORD: Please present Mr. Williams.

18 MR. MELLARD: Please seat Mr. Williams.

19 THE COURT: All right. Are there any matters
20 regarding the qualification and selection of the
21 jury, from the State?

22 MS. FORD: Nothing from the State, Your
23 Honor.

24 THE COURT: From the defense?

25 MR. MELLARD: No, ma'am.

1 THE COURT: Very well. Ladies and gentlemen,
2 those of you who are in our audience are now known
3 as our remaining jurors. What I'm going to ask you
4 to do for me, please, is call the jury information
5 line after 6:00 o'clock this evening.

6 Now, there should have been a little card in
7 your pocket. However, if you are like me you don't
8 have a clue where that thing is, so if you need
9 another card we would like to get that for you. If
10 you will just let Miss Pauling know, she will be
11 delighted to get that card for you.

12 Let me do it this way. Who needs a card with
13 the jury information number on it? Don't be shy.
14 We'll get you one, someone will get you one.

15 Ladies and gentlemen, I need you to call that
16 juror information line after 6:00 o'clock this
17 evening, after 6:00 o'clock this evening. You are
18 known as the remaining jurors, as the remaining
19 jurors. I believe that you will be told when to
20 call back and there is a possibility that you will
21 be asked to return to the courthouse at a
22 particular time. Irrespectively of what the
23 recording on the machine has for you, please follow
24 that instruction.

25 These folks are going to be known as jury

1 panel number one and you are going to be known as
2 the remaining jurors. Jury panel number one and
3 remaining jurors.

4 Irrespectively of what the message is for
5 you, please follow that instruction. Again, I
6 think it is going to, your instruction is going to
7 be to call back again at another time. But
8 irrespectively of what the instruction is please
9 follow it.

10 Now, please don't call before 6:00 o'clock
11 because we need to have time to know what our
12 schedule is and to put the recording on the machine
13 for you, so please wait until after 6:00. Now,
14 that means you can call at 6:01, 7:35, if you're
15 awake at 4:00 o'clock tomorrow morning please feel
16 free to give the machine a call at that time or the
17 jury information line at a call at that time.

18 Please, we have used so much of your precious
19 times and I want you to know we're grateful for
20 every single tick of the clock. I can't wait to
21 see you again. If you will do so for us quietly,
22 anybody who needs something for their employer
23 because they are dashing off to work and they are
24 going to want something from you as you go to work
25 this afternoon, if you will go downstairs to the

1 clerk's office on the first floor they will be
2 delighted to get that for you.

3 Thank you again for every moment of your time
4 today and I look forward to seeing you later in the
5 week. If you will do so of course quietly, you are
6 free to go.

7 (Jury panel excused from the courtroom).

8 THE COURT: Now, ladies and gentlemen, let me
9 tell you that we are going to be proceeding in the
10 morning at 9:30, in the morning at 9:30.

11 Now, what I'm going to ask, I have to give
12 you some instructions and I do want, I do want our
13 bailiff to take you and show you your jury room and
14 how to come and go from your jury room because it
15 is different than how folks in the audience would
16 come and go and I do need to give you some
17 instruction.

18 The first instruction that I want to give you
19 has to do with the seating assignments. Mr.
20 Rucker, you are our alternate, as are you, Mr.
21 Williams. I'm going to ask you all to just keep a
22 seat on the back row. If you like your seat on the
23 back row, you can keep whichever one you want but
24 if you want to change around that's fine, just if
25 you all, the two of you would just keep on the back

1 row, that way I can keep up with you as our
2 alternates, but if you want to move, check out
3 another seat, feel free to do it, that is
4 absolutely fine but I do need you to stay on that
5 back row so I can keep up with you. I promise it
6 is not because we put the bad cushions there for
7 you, it is because of the fact I want to keep up
8 with you.

9 With regard to the rest of our jurors, this
10 seat right here front and center, that is the
11 front, that is the seat for our presiding juror,
12 and our presiding juror will have three additional
13 tasks as a juror and they are as follows. At the
14 conclusion of the case the presiding juror will
15 actually take physical possession of the verdict
16 form and it will be the presiding juror's
17 responsibility once the deliberations of the jury
18 are concluded, and I promise there will be no
19 wasting your time when your deliberation time has
20 come, it will be the presiding juror's
21 responsibility to write the verdict of the jury on
22 the verdict form.

23 Secondly, the presiding juror presides in the
24 jury room during those deliberations just to be
25 sure that everybody has a chance to participate.

1 Finally, the presiding juror is the jury's
2 spokesperson here in court which means that in the
3 event the jury needs to communicate with me for
4 whatever reason the presiding juror will put that
5 down in writing, probably give it to one of our
6 bailiffs who will in turn give that to me.

7 So, these are the three additional tasks of
8 the presiding juror, none of them too difficult.

9 Ladies and gentlemen, I'm going to ask you to
10 please select one of your number to act as the
11 presiding juror. Now, when you have been selected
12 as the presiding juror I want you to take this seat
13 as the presiding juror and keep that seat
14 throughout the trial. When you have been selected
15 you can either give me a note and say, give me your
16 name and juror number if you know it, tell me you
17 have been selected as the presiding juror, you can
18 tell me when you come into the courtroom, "I'm
19 number 60, I have been selected to preside, to
20 serve as the presiding juror." Or I might be smart
21 enough to figure it out from where you take your
22 seat. Either one of those three methods are
23 perfectly fine. I just need for you all to select
24 your presiding juror sometime prior to the time you
25 deliberate and then I will need to know who the

1 presiding juror is.

2 Now, ladies and gentlemen, that's it for
3 seating assignments. With regard to the others of
4 you, if you get a seat you like, keep it. If you
5 want another one get here early, get another seat.
6 There is no other assigned seating.

7 Now, ladies and gentlemen, in a minute I'm
8 going to dismiss you for the balance of the day and
9 I need to give you some instruction and I want to
10 try to explain to you why I give you that
11 instruction. Each and every time we meet with each
12 other I'm going to give you this instruction. Do
13 not discuss this matter or allow anyone to discuss
14 it with you.

15 Why would I give you that instruction? Well,
16 it's for this reason. Tomorrow morning you're
17 going to be sworn as a jury in this case. As the
18 jury in this case it is going to be your duty to
19 make the findings of fact in this case based solely
20 on what you hear in court while court is in
21 session. It is going to be critical that you
22 listen open mindedly to all the evidence that is
23 presented to you and that you don't make up your
24 mind about anything until you have heard all of the
25 evidence and the arguments of counsel and then my

1 charge on the law.

2 Now, what we know from having tried cases in
3 this country for over 200 years is that when we
4 begin to talk about something, we can't help it, we
5 start making up our mind about it. Apparently it
6 is the way we're put together as human beings, so
7 the reason that I'm going to give you these
8 instructions, do not discuss this matter with
9 anyone or allow anyone to discuss this matter with
10 you, is to support your ability to listen open
11 mindedly to all the evidence and that's the reason
12 that I give you that instruction.

13 Now, you are going to be going home or to
14 work this afternoon and home this evening and no
15 doubt there is going to be somebody curious about
16 what you have been up to. It is perfectly fine to
17 say, "I did not need one of their chauffer driven
18 rides down to the courthouse and I did go to my
19 jury selection this morning and I have been elected
20 to serve on a jury," and then everybody wants to
21 know, well, what kind of case is it, is it a civil
22 case or a criminal case? It is perfectly fine to
23 say you have been selected to serve on a criminal
24 case as opposed to a civil case. But beyond that
25 you cannot discuss this matter or allow them to

1 discuss it with you. But I don't want anybody
2 upset with you, put it on the judge, tell them the
3 judge told you you can't talk about it, let them
4 get upset with me, don't let them get upset with
5 you, so put it on me.

6 Now, when you have been discharged from your
7 service on this jury, and again there will be no
8 question in your mind when that time has come
9 because we will specifically talk about it, you
10 will be at liberty to talk about this case if you
11 want to but until that time has come you must not
12 discuss this case or allow anyone to discuss it
13 with you. In fact, should anybody try to discuss
14 this case with you please get their name. If you
15 cannot get their name get their description and I
16 want you to report that to me immediately upon
17 returning to the courthouse and I will deal with
18 that individual because no one should try to talk
19 to you about this case and should anyone try to do
20 that then I will take care of that person.

21 Now, ladies and gentlemen, if you happen to
22 see these folks in and around the courthouse or
23 going to and from the courthouse or at lunch or
24 whatever, please, if they shirk away from you and
25 they won't even say hello, please understand they

1 are not being rude, they just understand that if
2 they were to interact with you they would be in
3 big, big trouble and they know that, so if they
4 happen to see you and not even speak with you
5 please understand they are not being rude, they are
6 just following my instructions.

7 Now, ladies and gentlemen, we live in a
8 world of social media, we have all kinds of
9 information available to us. I must tell you, you
10 must not access any information about this case,
11 you must not go looking for any definitions, you
12 must not do any kind of research, please do not
13 blog, don't Link, don't Shout Out, don't Facebook,
14 don't Linken, My Space and any other of those
15 millions of different websites where people can
16 discuss matters. You must receive all of the
17 information from which you will make up your mind
18 here in court while court is in session.

19 Now, ladies and gentlemen, your cell phone or
20 any other communication device, please leave it
21 somewhere other than the courthouse because you
22 must not have a cell phone or other communication
23 device with you while you're serving on the jury.
24 The reason for that, let me share, I don't mind
25 sharing that with you, in Charleston a number of

1 years ago the jury got to the point of deliberation
2 and they reached a point where they needed to have
3 some discussion, to work on on issue. One of the
4 jurors said, "I've got a buddy that knows all about
5 this, I will dial him right up." Well, that came
6 to light and the entire trial had to be scrapped
7 because that was information that was injected into
8 the jury's deliberation that didn't come to them in
9 court while court is in session, so since then we
10 have a rule you cannot have a cell phone or other
11 communication device with you while you serve on
12 the jury.

13 Now, having said that, we are all tethered to
14 those things. If you forget and you bring your
15 cell phone with you please just let our bailiffs
16 know and we will take your cell phone and we will
17 take very, very good care of it until we take a
18 break and you take it to your car or wherever, we
19 will take good care of it until we take a break and
20 then you can remove it from the courthouse. If you
21 think, however, you're going to be able to turn
22 that thing off and store it away and we not know
23 about it, you know darned good and well it will
24 turn itself back on and it will ring and then we
25 will have a problem. So, please, if you forget,

1 we're all human, we're not going to fuss at you, if
2 you bring it in accidentally we will just take
3 possession of it and keep good care of it while
4 you're serving on the jury, until you can take it
5 to your car.

6 Don't read anything, don't listen to anything
7 about this case. I don't know whether or not there
8 will be any publicity, I just simply don't have any
9 way of knowing. Anderson Cooper is not here, I did
10 note that, but I don't know whether or not there
11 will be any press. This is a public place and
12 press is available to come in at any point in time
13 so I don't know whether or not there would be any
14 kind of publicity about this matter but sometimes I
15 do know because you do have to get permission to
16 bring cameras but newspaper folks don't use cameras
17 sometimes so there may be press and I wouldn't know
18 about it. So, I give you, out of an abundance of
19 precaution I do give you the instruction don't read
20 anything, don't listen to anything about this case,
21 that would be the radio, television or the internet
22 or the newspaper. Again, you must receive all of
23 the information from what you will make up your
24 mind here in court while court is in session.

25 Now, if you need something for your employer

1 I'm just going to ask you to remain for a moment in
2 the jury room and Miss Pauling will meet you there
3 and get that for you. I don't want you to have to
4 roam around the courthouse, we'll bring that to you
5 in the jury room and you can take that to your
6 employer this afternoon if you need that.

7 Now, does anybody work at night? Anybody?
8 No tonight, not tonight. I need you resting
9 because I need you rested in the morning. Now, if
10 your employer has any concerns whatsoever about the
11 fact you will need to rest tonight and not come in,
12 if you just give me the name and phone number in
13 the morning I will be happy to intercede on your
14 behalf. I need you rested, these other jurors that
15 serve, they are resting at night, they are missing
16 their work during the day, I need you all resting
17 tonight, understanding you will miss your work
18 tonight but I must have you rested so you can pay
19 the appropriate attention. I don't want anybody --

20 JUROR: I work until 11:00 or 12:00.

21 THE COURT: Too late. I want you rested.
22 Just communicate that, and sometimes employers
23 think you can do that, "Judge Goodstein says I
24 can't and she will be delighted to talk to you
25 about that first thing in the morning." Get their

1 name and phone number, I will be happy to call on
2 your behalf. It's not going to happen, I must have
3 you rested, that is not fair to you or to these
4 litigants.

5 Now, I believe that covers everything. Let
6 me give you a little bit of a road map. When you
7 come in tomorrow morning at 9:30 you're going to be
8 sworn in as a jury in this case. I have a few
9 preliminary remarks I will make to you and then
10 we're going to get right into the trial of this
11 case, so please get a good night's rest and have a
12 wonderful afternoon and if you will go with your
13 bailiff he will show you the jury room. Miss
14 Pauling will be in in just a moment to double check
15 to see if anybody needs an excuse for their work
16 this afternoon when you are running off to work. I
17 so look forward to seeing you in the morning.

18 A final reminder not to discuss this matter
19 or allow anyone to discuss it with you.

20 Thank you so much. If you will go to your
21 jury room, I will see you in the morning.

22 (Jury excused from the courtroom).

23 THE COURT: Thank you so much. All right, if
24 we have motions we'll tend to them but we'll all go
25 get some nourishment. I'm going to ask you all to

1 be please back at 2:45, that is right at an hour,
2 we'll hear motions at that time. See you then.

3 (Recessed at 1:55 p.m.).

4 (Resumed at 2:50 p.m.).

5 THE COURT: Mr. Mellard will be in in a
6 minute?

7 MR. WISE: Yes. Here he is.

8 THE COURT: I wanted to take this opportunity
9 to put on the record that just prior to beginning
10 the jury qualification and selection on this
11 particular case that there was a motion made by the
12 State to amend indictment number 2010-GS-9-69 to
13 correct a scrivner's error on the front of the
14 indictment. There is an incorrect Code Section
15 given in the body of the indictment. The motion
16 was made, it was objected to by the defense and the
17 ruling of the Court is because the statutory
18 notation is correct on the front of the indictment
19 and the elements alleged within the body of the
20 indictment are consistent with the statute, I made
21 the determination that the statutory provision that
22 was cited in the indictment was a scrivner's error.
23 I might have ruled differently had it not been
24 correct on the front of the indictment. And I note
25 the exception to my ruling by the defense. I did

1 want the record to show that that motion had been
2 made and I denied it.

3 Now, as I understand, we have an afternoon of
4 motions and first let me hear from the State.

5 MS. FORD: Yes, Your Honor. We have one
6 further motion, Your Honor, a further motion to
7 amend the indictment, the incest indictment, Your
8 Honor. On the back of the indictment it reads in
9 Calhoun County, South Carolina on or about January
10 21st, 2008. The State would move to have the
11 indictment read on or about January 1st, 2008,
12 through March 1st of 2009, to give some
13 definiteness of the actual allegations and the
14 evidence that the State would be presenting. Your
15 Honor, this doesn't change the nature of the
16 offense, time of course is not an element of this
17 crime, and Mr. Haynes and his attorney are
18 sufficiently on notice of the charge, the nature of
19 the offense and this would just further close in
20 the actual time period the state is looking to
21 present evidence, Your Honor.

22 THE COURT: All right.

23 MS. FORD: Up until this morning Mr. Haynes
24 was served with another indictment, criminal sexual
25 conduct with a minor second degree which indicates

1 the March 1st, 2009 date. The State has decided to
2 only proceed with one count of criminal sexual
3 conduct with a minor as well as incest and will not
4 be proceeding on the second CSC with a minor
5 indictment. With that being said, Your Honor, the
6 defendant as well as his attorneys were certainly
7 on notice of the evidence that would be presented
8 extending from at least January 1st of 2008 through
9 March 1st of 2009.

10 THE COURT: All right. Let me hear from the
11 defense in that regard.

12 MR. WISE: This goes to another matter we
13 raise in our pretrial motions but I will try to
14 deal with this now.

15 THE COURT: Okay.

16 MR. WISE: We oppose allowing the amendment.
17 A little background. As I think I understand it,
18 there are two children in this situation. The
19 incident related to January 1st, 2008, on both the
20 CSC indictment and the incest indictment relate to
21 the older child **Minor Child 1** The State did inform me
22 they were not going to go forward on the CSC
23 indictment related to the March 1st, 2009, incident
24 which relates to the child **Minor Child 2** so we were, in
25 preparing the case, looking at this case for trial

1 preparing to go forward on the incest issue related
2 to **Minor Child 1** and not **Minor Child 2**

3 So, even though we were aware of the fact
4 that there was, we were not prepared to deal with
5 the other child, being under the impression they
6 were not going to pursue the other child.
7 Obviously, Judge, at this point if the defendant is
8 convicted of the CSC with a minor as to **Minor Child 1** then
9 the incest as to **Minor Child 1** would be closely related to
10 that and we're prepared to deal with whether or not
11 there was any kind of contact with them that would
12 be criminal.

13 So, the reason we are opposing it is because
14 it is just not something we were anticipating
15 having to deal with that other child. That is what
16 we're prepared to go forward with.

17 THE COURT: Okay. All right.

18 MS. FORD: Your Honor, the State's position
19 would be that clearly if the State was alleging a
20 charge of incest on child number one, the State
21 certainly would be relying on an incest, the incest
22 extending to the second child. I mean, the time
23 period is not a necessity or an element of the
24 crime of incest, so certainly if an incest or an
25 incestuous action or situation took place in 2008

1 and an additional one took place in 2009 it would
2 certainly be sufficient that incest was committed
3 but not having to deal with a certain time period,
4 so the State just feels that with the extension of
5 that time and kind of closing in that time frame it
6 would actually be of benefit to the defense in that
7 they certainly know what allegations would be
8 presented. They were aware of the allegations with
9 the additional CSC with a minor charge and we would
10 ask for the amendment of that indictment.

11 Your Honor, I do have some case law, if I may
12 approach.

13 THE COURT: Yes. And I want to know when did
14 the State notify the defense that the State would
15 not be going forward on the other CSC with minor
16 second degree?

17 MS. FORD: I believe that was about last
18 week.

19 THE COURT: In the last thirty days?

20 MS. FORD: Yes, Your Honor.

21 THE COURT: So, in excess of two and a half
22 years the indictments that have been in existence
23 on this case and the arrest warrants that have been
24 in existence on this case have included the second
25 CSC with a minor?

1 MS. FORD: Yes, Your Honor.

2 THE COURT: All right. Very well. Okay, let
3 me hear your case law.

4 MS. FORD: Your Honor, the State would rely
5 on both State versus Means -- Your Honor, I do
6 apologize but may I approach?

7 THE COURT: Yes.

8 MS. FORD: It is actually quite wet, Your
9 Honor, a leaking convertible top, I apologize.

10 State versus Means simply indicates the
11 amendment would be permissible and it would be our
12 argument that this amendment would be permissible
13 as it doesn't change the nature of the offense.

14 And further, State vs. Means also allows that
15 if the State moves before trial to amend an
16 indictment the Court must first determine whether
17 the existing indictment is sufficient to place the
18 defendant on notice of a particular offense and the
19 nature of that offense and whether, secondly, that
20 it could determine or should determine whether the
21 amended indictment would be sufficient to place the
22 defendant on notice of the particular offense, the
23 nature of that offense, without changing the
24 offense or the nature of that offense, Your Honor.

25 The State would also rely on South Carolina

1 Code 17-19-100, which indicates that if on the
2 trial date there appears to be any variance in the
3 allegations of the indictment and proof offered
4 thereof the Court may amend the indictment if it
5 does not change the nature of the offense charged.

6 Your Honor, you have heard our argument why
7 it does not change the nature of the offense, and
8 the State would rely on State versus Means as well
9 as 17-19-100.

10 THE COURT: Thank you.

11 MR. WISE: We believe it changed the nature
12 of the offense in this sense, it relates to a
13 completely different victim. It is one thing if
14 they say it deals with **Minor Child 1** and it happened at
15 some other point, but what they are saying is there
16 is another victim, another child and they also want
17 to prove, they want to bring in evidence of and
18 that is why we think it does change the nature of
19 the offense and we oppose it.

20 MS. FORD: Your Honor, if I may respond
21 briefly?

22 THE COURT: Okay.

23 MS. FORD: Your Honor, the victim in this
24 case is **JW** **[REDACTED]**. Now, whether **Minor Child 1** or
25 **Minor Child 2** **[REDACTED]** which the State would allege to be

1 the product of this incestuous sexual contact, the
2 victim has always been JW [REDACTED] which is
3 clearly indicated in the actual indictments. The
4 charge in the indictment simply indicates that Mr.
5 Haynes did engage in incest by having sexual
6 intercourse with his wife's daughter JW [REDACTED]

7 JW [REDACTED] It doesn't indicate anything about Minor Child 1
8 Minor Child 1 or Minor Child 2 [REDACTED] as the actual victim
9 here, it is JW [REDACTED], the act of having
10 sexual intercourse with his wife's daughter, not
11 the product of the incestuous relationship.

12 Minor Child 2 and Minor Child 1 are the product of that sexual
13 intercourse which the State would allege to be
14 incestuous but they are not the victim.

15 THE COURT: Okay. As I look at the Means
16 case, it says, "We conclude the body and the
17 caption of the original indictment when examined
18 with a practical eye in view of all the surrounding
19 circumstances provided adequate notice to the
20 respondent that he faces the charge of CDVHAN. The
21 law prescribes only two forms of criminal domestic
22 violence, criminal domestic violence and criminal
23 domestic violence of a high and aggravated nature.
24 The caption of the indictment stated the offense
25 was aggravated, indicating CDVHAN. This caption is

1 consistent with the charging language in the body
2 of the indictment. The indictment was sufficient
3 to apprise the respondent of the elements of the
4 offense, the Circuit Court knew what judgment to
5 pronounce in the event of conviction and the
6 respondent was ensured the protection of double
7 jeopardy and it had no import on this case."

8 All right. I'm looking here at State versus
9 Quarrels that says that the indictment may be
10 amended to state the correct time or date of the
11 alleged crime when time or date is not of the
12 essence of the crime.

13 And State versus Jones, amending the
14 indictment to correct victim's names is scrivner's
15 error, it doesn't change the nature of the offense.

16 All right. Now, here is what I want to do,
17 I want to make, the other indictment needs to be
18 made a Court's exhibit because I think it is
19 reasonable for the Court to assume that counsel was
20 preparing to meet two indictments up until very
21 recently and the other indictment for criminal
22 sexual conduct with a minor in the second degree
23 certainly alleges the period of January the 1st,
24 2008, through March of 2009, and necessarily as
25 counsel prepares to meet that offense, because of

1 the nature of the criminal sexual conduct in the
2 second degree, I mean, with a child, that was
3 provided as a result of the alleged criminal sexual
4 conduct in the second degree.

5 So, I want to make that a Court's Exhibit.

6 (Indictment marked as Court's Exhibit 1).

7 THE COURT: I do think the defendant was on
8 notice. Okay?

9 Now, also I want to just in an abundance of
10 precaution, I also want to make as a Court's
11 exhibit, I want to make a copy of the first attempt
12 at jury strike because the computer did what
13 computers do, while it may have mixed, mixed up to
14 some extent the names of the jurors, it went right
15 down in alphabetical order and that was pointed out
16 by counsel, at which point I stopped doing strikes
17 and we reshuffled the names and then we had the
18 jury strikes that we now have the jury. I think it
19 is appropriate that we make it a court's exhibit
20 the original strike sheet I had that shows that the
21 computer, while it may have done some shuffling, it
22 put everybody back in alphabetical order, and so I
23 want to make that Court's Exhibit 3.

24 (Jury strike sheet marked as Court's Exhibit
25 Number 3).

1 THE COURT: And then I'm going to put the one
2 that was in fact used, I would like to make the one
3 actually used Court's Exhibit 4.

4 (Jury strike sheet marked as Court's Exhibit
5 Number 4).

6 THE COURT: Any other motions from the State?

7 MS. FORD: No further motions.

8 THE COURT: The defense's motions?

9 MR. MELLARD: We would move to keep out any
10 mention of the prior DSS paternity test and things
11 we have discussed. I don't know if the Solicitor
12 is aware of what the Family Court said but in
13 speaking with them, I don't think they are planning
14 to put it in but I want to make sure we're clear
15 about that.

16 THE COURT: No. To be fair, on the witness
17 list you all put down the DSS caseworker.

18 MR. MELLARD: If we obviously open that door,
19 then obviously they can walk through it.

20 THE COURT: Okay. I will hear from the State
21 on that.

22 MS. FORD: The State would not be placing in
23 evidence any mention of the DNA paternity test or
24 anything of that nature, Your Honor.

25 THE COURT: Okay, very well.

1 MR. MELLARD: When the State attempted to get
2 his DNA pursuant to the Smuerver order there was an
3 altercation, we would move to exclude the mention
4 of that altercation. As the Court has heard, he
5 was under certain impressions the way the system
6 goes, so his not wanting to give up the DNA I would
7 split is highly prejudicial in this case and we
8 would ask the Court to exclude any mention of the
9 altercation that resulted from that.

10 THE COURT: All right, I will hear from you
11 in that regard.

12 MS. FORD: Your Honor, we would certainly
13 present evidence that his DNA was acquired but the
14 way it was acquired, unless the defense were to
15 open that door, I don't think that would be
16 anything we would present, Your Honor.

17 THE COURT: Very well.

18 MR. MELLARD: And my last motion is to
19 sequester the witnesses, Your Honor. We feel that
20 would be appropriate.

21 MS. FORD: With the exception of our victim
22 and lead investigator.

23 THE COURT: What about the victim and the
24 lead investigator, they are entitled to be present.

25 MR. MELLARD: We would have no objection to

1 that.

2 THE COURT: Okay, very well. And of course
3 sauce for the goose is sauce for the gander.

4 MR. MELLARD: That is all the motions I have.
5 I believe Mr. Wise has some.

6 THE COURT: Okay.

7 MR. WISE: Your Honor, I have a motion
8 related to the incest indictment. I'm going to
9 move this Court to quash the incest indictment.

10 THE COURT: Okay.

11 MR. WISE: I believe that the incest
12 indictment fails on constitutional grounds,
13 basically three.

14 THE COURT: All right.

15 MR. WISE: I would like to lay them out
16 relatively quickly.

17 THE COURT: Okay.

18 MR. WISE: The first one is a due process,
19 both federal and state grounds --

20 THE COURT: Okay.

21 MR. WISE: -- related to the incest
22 indictment. Very basically, Your Honor, the
23 statute, the incest statute seeks to control
24 personal relationships that I would submit are
25 within the liberty people can choose. The Supreme

1 Court has already dealt with the issue of privacy
2 as relates to sexual matters and I have looked at
3 the incest statute and I think it relates to
4 relationships that would be considered between
5 adults, it prohibits relationships that would be
6 between adults, that would be entered voluntarily
7 and freely and as a result I submit to the Court
8 that the State has no interest in those kind of
9 relationships.

10 Courts have consistently held that we should
11 not penalize consensual sexual relations that are
12 conducted in private and are not harmful to others
13 and I believe that the sum of the relationships
14 included in the incest statute go to those kind of
15 relationships.

16 And if the Court recognizes a liberty
17 interest in those relationships, then I submit to
18 the Court that those relationships are protected by
19 the due process clause of the 14th Amendment and as
20 a result of that I would ask the Court to quash the
21 indictment. I submit to the Court that if the
22 situation, the relationships don't involve minors
23 or people who might be injured or people who might
24 be coerced, if they don't involve public conduct,
25 then the right under due process clause gives

1 people the ability to do that, to have those
2 relationships without interference from the State.

3 I would, I'm sure the Court is aware of the
4 last Supreme Court case to deal with this, the Long
5 versus Texas case, and one of the things that that
6 court said was that as the constitution endures, as
7 our country progresses, that every generation is
8 allowed to invoke principles related to their
9 morality. I submit to the Court that now as we
10 stand here and look at some of these relationships
11 that are prohibited by the incest statute, that the
12 State no longer has interest, those morality issues
13 just don't exist in some of these relationships. I
14 am not saying that everything prohibited by that
15 incest statute, the Court has no interest in but
16 I'm saying that there are some relationships that
17 the Court does, making that statute I think over
18 broad and subject to this Court quashing the
19 indictment.

20 The second part of this goes to I guess an
21 equal protection ground. When I was looking at the
22 statute one of the things that caught my attention
23 is that it does not penalize incestuous conduct
24 that would be considered of a homosexual nature.
25 In other words, the statute says I can't have, a

1 man can't have certain relationships with certain
2 female relatives and a female can't have
3 relationship with certain male relatives but the
4 statute doesn't prohibit a man from having certain
5 relationships with a male relative, and I submit
6 that to the extent that the statute doesn't treat
7 these issues, these relationships equally it is an
8 equal protection violation and I submit to the
9 Court that there is really no rational relationship
10 between prohibiting the relationships that are
11 prohibited and allowing the relationships that are
12 not prohibited, there is no rational relationship
13 to any government interest.

14 I understand and recognize that there is
15 always going to be this concern about genetics and
16 those issues but I look at the statute and I see it
17 doesn't deal with other blood relations like
18 cousins, which I think creates some issues because
19 there are relationships where there are no blood,
20 prohibited blood relationships, with no blood
21 relation, and other relationships where there is a
22 blood relation that are prohibited by the statute.

23 So, I submit to the Court --

24 THE COURT: For example?

25 MR. WISE: If I wanted to have sex with my

1 cousin it wouldn't fall under this statute but I
2 didn't have a carnal relationship with a stepchild
3 or stepparent. Now, it would seem to me that
4 recognizing that issue about the genetic concern,
5 that the relationship of a cousin would be more
6 significant than a relationship of a stepparent or
7 stepchild.

8 And the last one is just kind of a, taking
9 those same two arguments and applying them to South
10 Carolina specifically because our constitution has
11 this right of privacy and I think that's separate
12 from the federal government, South Carolina has
13 recognized the right of privacy in our constitution
14 and I think that given that right of privacy that
15 we have in South Carolina we should be reluctant to
16 intrude on these consensual relationships not
17 involving force or coercion, obviously not
18 involving any minors, I think the right of privacy
19 would encompass those relationships. The Supreme
20 Court said sexual relationships are subject to a
21 right and the constitution says we have this right
22 and I think the state doesn't have an interest in
23 it.

24 THE COURT: All right.

25 MR. BELL: Your Honor, in the first place, as

1 to the first equal protection argument, as to due
2 process, I will pass this up. I found a case from
3 2007 from the great State of California which I
4 believe would have some persuasive authority since
5 they tend to be a little more liberal with their
6 sexual tendencies. It is a case called People
7 versus Scott, where I think the facts are that an
8 18 year old girl had sex with her father, she was
9 of the age of consent in California, as a matter of
10 fact part of this, what the California case said
11 was that it was constitutional because it had a
12 rational basis. They cited in fact the Lawrence
13 case if you want to see it.

14 THE COURT: Let me ask this. Stepfather or
15 biological father?

16 MR. BELL: This is biological father in this
17 particular one. They said that the State has an
18 interest in it, basically three factors. One is
19 for family harmony.

20 Two, to protect children from, you know, an
21 authority figure imposing their will.

22 And three, and I quote South Carolina, I mean
23 the California case, inbreeding or genetic mutation
24 was the third rational basis, and they upheld it
25 back in 2007. And they cited the Lawrence case,

1 talking about sexual, the sexual openness of
2 society and people being able to have consensual or
3 whatever sex in privacy. What I would say is that,
4 Your Honor, I would say there is a rational basis
5 for that on the due process part, that the State
6 has that interest in it and the family matters, for
7 those three particular state interests in the
8 family, for that part.

9 As to the equal protection argument, first of
10 all I read our statute 16-15-20 and I think it
11 protects the relationships that I think in other
12 sections of our code are, you know, the
13 relationships to who you can marry or can't marry,
14 cousins or what have you. It protects, it looks
15 like first cousins. And first cousins once removed
16 are included in the incestuous, because they talk
17 about sister, daughter, father's daughter,
18 brother's daughter, et cetera, which would be first
19 cousin or first cousins once removed.

20 As to the homosexual, it does not exclude
21 that, and what I would argue, Your Honor, I may be
22 wrong but in my mind even with the United States
23 Constitution at this point in time, it may, it may
24 change in the very near future, I don't know, but
25 sexual orientation is not a suspect class for equal

1 protection and certainly in South Carolina I'm
2 pretty sure it is not a suspect class for equal
3 protection under the Constitution.

4 We think, again, that the three mandates
5 that, that the three state interests have,
6 protection of the family, protection of the
7 children and inbreeding, especially the inbreeding,
8 you know, the first two, it doesn't, I think, you
9 know, you could apply those to homosexual type
10 acts, male on male, female on female, but with the
11 inbreeding I think that is pretty much a
12 physiological impossibility, that that concern of
13 the State can be thrown out, or a homosexual type
14 relationship, that is not, that can't happen. I
15 think that is what this statute seeks to protect,
16 are all three types of conduct and kind of and/or
17 situation, not all three together, but either/or on
18 those those types of conduct.

19 And as to the right of privacy, I don't think
20 this comes under privacy. This is, you know, this
21 is a family, this is an overriding concern over the
22 right to privacy. Again, citing those state
23 concerns. So we feel that South Carolina incest
24 statute would pass muster constitutionally under
25 the federal constitution and under the South

1 Carolina constiution.

2 THE COURT: Okay.

3 Yes, sir?

4 MR. WISE: Very briefly, Your Honor.

5 THE COURT: Sure.

6 MR. WISE: I understand everything Mr. Bell
7 argued, I understand the rationale he has. The
8 problem I have is as you apply those rationales to
9 the South Carolina statute, to the extent that the
10 State recognizes these three interests, the
11 statute, I think, either goes too far or doesn't go
12 far enough. What I mean by that, there is the
13 thing about family harmony but you have these
14 relationships that are tenuous, as an example, a
15 man not being able to have carnal relationship with
16 his wife's grandmother.

17 Now, I understand the State's concerned about
18 family harmony but some relationships, I think, are
19 not likely to have any impact on family harmony
20 because they are just the nature of these
21 relationships, the degrees of which these parties
22 are separated is so significant.

23 Children not being victimized, absolutely, I
24 don't stand in front of the Court to say that
25 should be allowed or we condone it, but then the

1 statute goes and adds lots of other relationships
2 that don't involve children, like men and their
3 wife's great grandmother, and obviously I think the
4 State's concern about inbreeding is a valid one but
5 then the State goes on and prohibits relationships
6 where there are no possibilities of inbreeding,
7 then this statute goes too far. So I say that some
8 situations it goes too far, others not far enough,
9 and that, I think, with this statute that is the
10 problem. I am not standing up in front of the
11 Court saying this is a good thing but I'm saying as
12 this statute has been written by our Legislature it
13 shouldn't stand up.

14 The only thing I would just mention on my
15 point was clear about the equal protection issue, I
16 simply submit to the Court that if I as a man
17 should be, can be allowed to have sex with one
18 relative, that it shouldn't be prohibited for me to
19 have sex with a relative of the same degree, of the
20 same sex as me. That was my point. It is either
21 bad all around or okay all around and I think you
22 have to treat, treat these relationships the same.

23 THE COURT: Well, let me ask this question.
24 Let me start at the beginning in terms of where
25 South Carolina exists today and I really would

1 address this to Mr. Bell. Given the law of the
2 State of South Carolina, I don't, without comment
3 because I am charged to presume that the law as it
4 exists is constitutional and I am to construe it in
5 a constitutional fashion if at all possible, so we
6 begin with regard to equal protection argument, as
7 the law exists in the State of South Carolina I
8 don't think we can get to the equal protection
9 argument under the incest action, given the
10 existence of certain criminal laws that would
11 exclude same sex conduct, so I think that the
12 incest statute by virtue of other statutory
13 provisions would preclude your particular equal
14 protection argument and therefore that leaves us
15 heterosexual conduct only, and the due process part
16 of that is whether or not there is a sufficient
17 state interest for the preservation of the marital
18 relationship and is there sufficient preservation
19 in terms of the genetic needs, and that is an
20 inbreeding question, but South Carolina is a little
21 bit different because of South Carolina's stance,
22 vis-a-vis second cousins as opposed to third
23 cousins. Some states extend it to third cousins,
24 South Carolina extends it to second cousins, but I
25 don't have any scientific, I don't have any

1 evidence before me as I sit here today that would
2 allow me to make a determination, vis-a-vis second
3 cousins as opposed to third cousins because it is
4 first cousins is excluded and not second cousins,
5 first cousins once removed but not second cousins.

6 Isn't that the argument, Mr. Bell?

7 MR. BELL: I think so as best I can read the
8 statute.

9 THE COURT: Okay. As a commentary, it was my
10 understanding it was going to be extended to second
11 cousins and not third cousins but either way I
12 don't have any, I don't have any scientific
13 evidence, as I sit here today, on that issue.

14 With regard to the, if you will, the
15 preservation of, you had spoken in terms of family
16 harmony, I think you can extend that to talk about
17 marital harmony as well. And South Carolina is the
18 only state in the union that has the ground for
19 divorce in the Constitution, we are very unique in
20 that regard, which under the conflicts of law
21 analysis goes to show that in South Carolina the
22 preservation of marriage is as high a public policy
23 as there can be under the law because the means to
24 separate that relationship is contained within the
25 Constitution and every other state in the union it

1 isn't statutory, but not in South Carolina. It is
2 contained in the Constitution, which means the
3 State maintains that the preservation of marriage
4 is of the highest, at the top, and while you
5 certainly can argue that forbidding sexual
6 intercourse between a stepchild and a step-parent
7 does not have a genetic overtone, it clearly, from
8 a public policy standpoint, can have a, I think you
9 mentioned family harmony and could the state have
10 interest in maintaining marital, marriage, period.
11 No doubt, certainly the State interest in
12 preserving marriage is certainly an overwhelming
13 state interest and the act of sexual intercourse
14 between stepchildren and step-parent clearly affect
15 that. I think I called it family harmony.

16 So, while this particular circumstance,
17 genetic concern would not exist, and I agree with
18 that, the preservation of both marriage and family
19 harmony, certainly I understand in that regard.
20 The statute as a whole, though, and while it may be
21 somewhat antiquated, given that I am to presume the
22 constitutionality it, I am not prepared to declare
23 that it is repugnant to either the state or federal
24 constitution for the reasons I have already
25 articulated and would respectfully deny your

1 motion, noting your exception.

2 MR. WISE: Thank you, Your Honor. The only
3 thing I would add, and I don't know it will make a
4 difference, the Court has ruled, the statute does
5 not prohibit the cousin carnal relationship but the
6 Court did mention that in ruling on it.

7 THE COURT: I think it does. I think it
8 does. I think it doesn't state cousin, it picks
9 them up by talking about sister, children. I read
10 that to mean nieces and nephews.

11 MR. WISE: maybe it is a distinction without
12 a difference but --

13 THE COURT: Yes, it may be. It very well may
14 be but still in all, today I would be without
15 genetic evidence to show that matters.

16 MR. WISE: Thank you, Your Honor.

17 THE COURT: Yes.

18 Next, Mr. Wise?

19 MR. WISE: That's all we have. Thank you.

20 THE COURT: Yes.

21 MR. BELL: Your Honor, the only thing I would
22 like to do is not necessarily a motion, I would
23 just like the Court to put on the record, I know
24 this seems stupid, but just housekeeping, because
25 of everything that was going on this morning, that

1 the defendant has been in the courtroom in street
2 clothes, not his orange jail suit, both for the
3 this morning session and this afternoon and because
4 I have seen people make motions saying they were in
5 their jail clothes during a trial when they really
6 weren't, I just want to get that on the record, I
7 know it is stupid and petty or something.

8 THE COURT: I don't think it is at all. And
9 this morning it was brought to the Court's
10 attention that there was some concern with regards
11 to Mr. Haynes about a number of matters that had to
12 do with his presence in court and I made a
13 determination in chambers that it was completely up
14 to Mr. Haynes whether he wished to be present in
15 court or not be present in court, that was his
16 choice and that we would proceed, and that it was
17 further Mr. Haynes' decision if he wished to be in
18 court for selection of the jury that he could come
19 in his clothes issued by the jail or he could come
20 in clothes which were street clothes, so to speak,
21 dress shirt, dress pants, tie, dress shoes, and if
22 he chose, if Mr. Haynes chose to come in street
23 clothes that he would wear the leg restraint under
24 his clothing and that was not up for discussion
25 with me and that is my policy. It has been my

1 policy for a long time and early on it was my
2 understanding that Mr. Haynes had made a decision
3 that he did not wish to be present for the early
4 part, or he made his determination, as relayed to
5 me by counsel, that he did not choose to be present
6 in court this morning, so we proceeded, and when I
7 was informed of that I told counsel to let him
8 know, Mr. Haynes know that we would be proceeding
9 with the selection of the jury and if he changed
10 his mind let me know and that we would, when we
11 could in appropriate fashion, stop the proceedings
12 and allow him to come join us. Interestingly
13 enough, typically and normally I have jury
14 qualification without defendants present and yet
15 they're present when their case is called and the
16 qualification is done for their specific case.

17 However, Mr. Haynes through counsel notified
18 the Court that he wanted to be present for the jury
19 qualification and so after the roll call part of
20 the process which his counsel was present, as was
21 the Solicitor, we took a recess, I sent the jury
22 out of the jury room, or out of the courtroom,
23 rather, the jury panel out of the courtroom and
24 afforded him time, him being Mr. Haynes, time to
25 change from his jail issued attire into the dress

1 pants, dress shirt and tie and shoes, in leg
2 restraints, which he did, and he was present for
3 the general qualification of the jury panel
4 beginning with my asking the statutorily mandated
5 questions and then he of course was present for the
6 entire qualification of the jury with regard to his
7 specific case and then the jury selection for his
8 particular case.

9 Now, it is my understanding of the law that
10 Mr. Haynes can choose to be present or not be
11 present, it is his choice. If he chose not to be
12 present I was prepared to tell the jury that it is
13 his decision to be present or not be present and
14 that they, and that the jury could draw no
15 inference whatsoever on his decision not to be
16 present, it wasn't an issue to be considered by
17 them, only the issue of whether he was guilty or
18 not guilty. I was going to give them a charge in
19 that regard. It wasn't necessary.

20 And the same would hold true for tomorrow or
21 the next day or the next day if he chooses not to
22 be present. However, if Mr. Haynes is present and
23 he chooses to wear dress clothing as he is wearing
24 now he will wear the leg restraints. And that is
25 where we are at this point.

1 I believe that covers everything.

2 MS. FORD: May we approach, Your Honor?

3 THE COURT: Sure.

4 (Unrecorded bench conference).

5 THE COURT: Okay. All right, anything
6 further from the State?

7 MS. FORD: Nothing further from the State.

8 THE COURT: And from the defense?

9 MR. WISE: No, Your Honor.

10 THE COURT: Let me ask you this question.
11 Just in terms of your meeting, do you need any
12 directions to the jail that you have access so you
13 all can meet with Mr. Haynes this evening? If you
14 need it just draft me an order or you can fax it to
15 me if it seems to be a problem.

16 MR. WISE: Thank you, Your Honor.

17 THE COURT: And I will be happy to sign that.

18 And that will conclude, I think, those
19 matters we have.

20 Solicitor, does the Solicitor's office have
21 any pleas you want to do this afternoon? Any other
22 matters to attend to?

23 MR. BELL: Not I'm aware of.

24 THE COURT: All right. Counsel, let me see
25 you in chambers for just a little bit.

1 (Recessed at 3:41 p.m.).
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4 I, the undersigned Henry P. Young, Official
5 Court Reporter for the Eighth Judicial Circuit of
6 the State of South Carolina, do hereby certify that
7 the foregoing is a true, accurate, and complete
8 transcript of record of all the proceedings had and
9 evidence introduced in the trial of the captioned
10 case in the Circuit Court for Calhoun County, South
11 Carolina, on the 25th and 26th days of February,
12 2013.

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

15

May 12, 2013

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Henry P. Young
Court Reporter

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

2010-GS-09-00069

COUNTY OF CALHOUN

2010-GS-09-00070

STATE OF SOUTH CAROLINA,

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-vs-

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JOHN EDWARD HAYNES,

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Defendant.

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February 25-28, 2013

B E F O R E:

HONORABLE DIANE S. GOODSTEIN

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

SARAH A. FORD, Esquire
BENJAMIN HARRISON BELL, JR., Esquire
Attorneys for the State

MARK WISE, Esquire
ROBERT DOUGLAS MELLARD, Esquire
Attorneys for the Defendant

Henry P. Young
Court Reporter

VOLUME II of II
February 27-28, 2013

1 (Convened 10:20 a.m., February 27, 2013).

2 THE COURT: Anything from the State before we
3 bring the jury out this morning?

4 MS. FORD: Nothing from the State.

5 THE COURT: From the defense?

6 MR. WISE: Very briefly, Your Honor, I have
7 one matter I would like to take up with the Court.
8 Prior to the case being called for trial a Smuerver
9 hearing was held in this matter, testimony was
10 taken in front of Judge Dickson, arguments were
11 heard, I opposed the motion, the motion was
12 granted. It is my intention not to waive that
13 objection that I raised at the time asserted in
14 front of another judge. I didn't want to relitigate
15 it but I did want to let the Court know that we
16 were not waiving that. At the time the DNA
17 evidence is offered in I will just renew that
18 objection just so it is preserved for appeal.

19 THE COURT: Very well.

20 MR. WISE: Thank you.

21 THE COURT: And I appreciate the explanation
22 and I do believe at the time the DNA, assuming it
23 is offered, I think that you must renew it but you
24 can just renew on the same grounds as you raised
25 earlier with Judge Dickson in the Smuerver hearing

1 and I think that will suffice.

2 MR. WISE: Thank you, Your Honor.

3 THE COURT: Now, as to the witnesses, have
4 they been sequestered?

5 MS. FORD: Yes, Your Honor.

6 THE COURT: And your witnesses?

7 MR. WISE: Yes, sir.

8 THE COURT: Now, I know that you are here
9 from the Times Democrat, good morning. Does your
10 camera go clickty click?

11 SPECTATOR: A little.

12 THE COURT: You know not to take the jury,
13 right?

14 SPECTATOR: Yes, ma'am.

15 THE COURT: Very well. You know the camera,
16 the clicky click, keep it as minimal as you can for
17 me, okay?

18 SPECTATOR: Yes, ma'am.

19 THE COURT: Thank you so much.

20 All right, let us have our jury. Are you all
21 ready to swear them in?

22 THE CLERK: Yes, ma'am.

23 THE COURT: Fantastic. I'll have a few
24 remarks.

25 (The jury returned to the courtroom).

1 THE COURT: Good morning, ladies and
2 gentlemen. At this time I am going to call on Mr.
3 Stacey, I'm going to ask him to please swear you in
4 as the jury in this case.

5 Mr. Stacey.

6 THE CLERK: Thank you, Your Honor, if it
7 please the Court.

8 (Jury Sworn).

9 THE CLERK: Thank you. Be seated.

10 THE COURT: Now, ladies and gentlemen, before
11 we begin this trial I want to tell you that this
12 trial probably will be different from what you
13 might expect. Many people do not have the chance
14 to attend actual court sessions as you are now
15 doing and may think from watching television or
16 reading books or perhaps movies that trials are
17 always full of high drama, intense action and
18 riveting circumstances and then there is a break
19 for a commercial. Well, all of these things are
20 true at times. Of course a trial is not for
21 entertainment. It is, some people say this, a
22 fundamental part of our democracy, a search for the
23 truth and an effort to be sure that justice is done
24 between the parties at the bar.

25 Searching for the truth and making sure that

1 justice is done is often slow, deliberate and
2 repetitive, the absolute opposite of what you may
3 have seen on television or movies or read in books.

4 Ladies and gentlemen, this courtroom is a
5 place of honor dedicated to the protection and the
6 preservation of all citizens' rights through what
7 many have called and I submit to you the greatest
8 system of justice that people have ever created.

9 Ladies and gentlemen, these attorneys who are
10 appearing before you are advocates for the parties
11 they represent but first and foremost they are
12 officers of the court and they are sworn to uphold
13 the integrity and the fairness of our judicial
14 system and they will help you in your search for
15 the truth. You should expect them to be
16 professional, competent and ethical in the
17 representation of their client's interest.
18 Remember that you now have taken an oath to try
19 this case and to reach a fair and just verdict and
20 you are also expected, and I know you will be, to
21 be professional, reasonable and ethical.

22 Ladies and gentlemen, I want to thank you for
23 accepting this most important responsibility of
24 jury service and for your contribution to our
25 system of justice. It is no small thing to be a

1 juror, it is critical, it is essential to our
2 democracy and to our life.

3 Ladies and gentlemen, as you now know, the
4 case that we are about to try is the State of South
5 Carolina versus Mr. John Edward Haynes. Ladies and
6 gentlemen, I may from time to time refer to him as
7 the defendant.

8 What I will now say to you is intended to
9 serve as an introduction to the trial of this case.
10 These remarks are not a charge on the law in this
11 case, these remarks are intended to serve as
12 introduction. I will instruct you regarding the
13 law applicable to this case. Once you have heard
14 all the evidence, the arguments of counsel, I will
15 then instruct you on the law applicable to this
16 case and then you will deliberate. The reason that
17 I am making these preliminary remarks to you is
18 because I want you to have a road map, I want you
19 to know what is happening at every stage of the
20 trial.

21 Ladies and gentlemen, the defendant in this
22 case, Mr. Haynes, has been accused of criminal
23 sexual conduct with a minor in the second degree
24 and incest, and he has pled not guilty to each of
25 those indictments. The State therefore has the

1 burden of proving each of the elements of each of
2 these charges beyond a reasonable doubt.

3 Ladies and gentlemen, it will be your duty to
4 determine whether or not the State has met its
5 burden. You will make your determination as to
6 each of these indictments independently and you
7 will consider them separately. Your purpose as
8 jurors is to find and to determine the facts.

9 Under our system of justice you are the only,
10 the sole judges of the facts in this case. If at
11 anytime, ladies and gentlemen, I do anything
12 regarding the facts, if I make a gesture or if I
13 say something and you think that that is a comment
14 on or a gesture with regard to the facts I ask you
15 in advance please disregard that because I have no
16 opinion regarding these facts. The law doesn't
17 allow me to have an opinion, I don't have an
18 opinion. It might have been too much lunch or
19 something but I can assure you that I will make no
20 comment intentionally with regard to the facts. If
21 it looks like I did please disregard it because I
22 have no opinion regarding these facts. I know that
23 that is a matter solely for you to determine.

24 You are to determine the facts from the
25 testimony that you are going to hear, the sworn

1 testimony that you're going to hear and from other
2 evidence which will be introduced into court and of
3 course from any inferences which you feel may
4 properly be drawn from the evidence. Again, the
5 evidence in this case will be from sworn testimony
6 and from exhibits which are admitted into evidence.

7 It is especially important that you perform
8 your duty of determining the facts diligently and
9 conscientiously because, you see, under our system
10 of justice there is ordinarily no way to correct an
11 erroneous determination by a trial jury.
12 Determinations of facts by a trial jury are facts
13 for all time.

14 On the other hand and with equal inferences,
15 the same law that makes you the judges of the facts
16 makes me the judge of the law. The law as given to
17 you by the Court is the only law that you may
18 consider. You must accept and you must follow the
19 law even though you may disagree with it. Now,
20 maybe that would be a wonderful topic of
21 conversation for you to take up with your
22 legislature at some later day but for our system to
23 work correctly you must accept and apply the law
24 exactly as I give it to you.

25 Now, the way that your task will work is that

1 you will find the facts as you find them to be from
2 the evidence presented in this trial and then once
3 you have found the facts as you have found them to
4 be you will take the law as I give it to you and
5 you will apply it to those facts and that is how
6 you will reach your verdict, which will be a true
7 and just verdict under the oath that you just took
8 as jurors.

9 Now, until I advise you to begin your
10 deliberations you must not discuss this case with
11 anyone, including your fellow jurors, your friends
12 or family members or anyone involved in this case.
13 After the case is submitted to you, and I promise
14 you there will be no question in your mind when
15 that time comes, you must discuss it only in the
16 jury room with your fellow jurors.

17 The attorneys and the parties in this case
18 have been advised that they are not to talk to you
19 at all so if you see anyone involved in the case
20 and they don't even say hello they are not being
21 unfriendly, they are simply following my
22 instructions.

23 Ladies and gentlemen, it is critical, it is
24 important that you keep an open mind and that you
25 not decide any issue in this case until all the

1 evidence has been presented, the parties have made
2 their closing arguments and I have instructed you
3 regarding the law applicable in this case.

4 It is your solemn responsibility to determine
5 whether Mr. Haynes is guilty or not guilty and your
6 verdict must be based solely on the evidence that
7 is presented to you in this trial and on the law as
8 I instruct you at the close of trial.

9 Now, in just a moment the State will have an
10 opportunity to present what is called an opening
11 statement to you in which one of the attorneys for
12 the State will have an opportunity to discuss with
13 you what they believe the issues are in this case.
14 Once the State has had an opportunity to make their
15 opening statement, likewise Mr. Haynes through his
16 lawyers will have an opportunity to make an opening
17 statement as well and likewise to discuss with you
18 what they believe the issues are in this case.

19 Now, ladies and gentlemen, the opening
20 statements are not true arguments. Those arguments
21 will come at the conclusion of the case and I want
22 to tell you this. I want to tell you that what the
23 attorneys say is important and I urge you to give
24 them your undivided attention but, ladies and
25 gentlemen, please keep in mind that what the

1 attorneys say is not evidence. The evidence comes
2 from the witnesses in the case and from the
3 exhibits which are admitted into evidence.

4 Now, ladies and gentlemen, once the opening
5 statements are finished then each side will have an
6 opportunity to present evidence to you and that
7 evidence will take or may take many forms. There
8 will be sworn testimony, it may be photographs or
9 documents and the like. Irrespectively of what the
10 evidence is, I urge you to give the evidence in
11 this case, the testimony in this case your
12 undivided attention.

13 Now, ladies and gentlemen, in deciding what
14 the true facts are in this case you must decide
15 whether or not the testimony of the witness and
16 witnesses is believable. It will be my
17 responsibility to rule as a matter of law as to
18 whether certain testimony or evidence is admissible
19 at all or not but once evidence is admitted,
20 whether witness testimony is admitted, whether or
21 not you believe it, the weight you give to it is a
22 matter solely for you to determine.

23 In deciding whether to believe witnesses you
24 have the right to consider any interest or bias or
25 prejudice of any witness, the opportunity for the

1 witness to have seen the matters and things about
2 which the witness may testify and the way the
3 witness acts on the witness stand. You have the
4 right to consider anything that is in the record
5 that will help you evaluate the testimony of the
6 witnesses. That means that it is your duty to pay
7 close attention to these witnesses, observe them,
8 listen to them and pay close attention to the
9 attorneys and the Court. Please do not let your
10 thoughts wander but give the strictest attention to
11 these matters so that at the conclusion of all the
12 testimony, after the argument of counsel and the
13 charge on the law by the Court you will then be in
14 a position to determine what the true facts are and
15 to apply the law to those facts and thus render a
16 true and just verdict.

17 Now, ladies and gentlemen, I want to go over
18 with you another process that no doubt you will
19 experience, because I want you to understand what
20 is going on. Ladies and gentlemen, you are
21 learning that a trial is a structured activity and
22 as in sports or business or any other structured
23 activity there are certain rules that both sides
24 must obey when presenting evidence and these rules
25 have a definite purpose. Their purpose is to

1 ensure that the information that you receive is the
2 most trustworthy and reliable information that is
3 available.

4 Now, these rules have a name. They are
5 called the rules of evidence. Imagine that. Now,
6 ladies and gentlemen, under our rules of evidence
7 there is a procedure and there is a duty for
8 counsel to call a possible violation of the rules
9 of evidence to my attention. The way that our
10 rules allow them to do that is by saying objection.

11 Now, ladies and gentlemen, because that is
12 the only means that our rules give these attorneys
13 to raise those possible matters, possible
14 violations of the rules to my attention, you must
15 not hold an attorney's objection against him or her
16 and their client nor should you conclude from my
17 ruling on the objection that I favor one side or
18 the other, because I can assure you I do not. This
19 is simply the means that our rules give them to
20 raise a possible violation of the rules and they
21 have a duty to do that.

22 Now, ladies and gentlemen, I want to talk to
23 you about the way that I'm going to handle
24 objections so you will understand what is going on
25 and why. Sometimes the lawyers will stand and they

1 will say objection and they will give me a word or
2 two, they will say, for example, objection,
3 hearsay. And from that I will know that their
4 objection, that they are objecting and their ground
5 for the objection and I will be able to rule on the
6 matter. If I say that the objection is sustained
7 that means that that piece of evidence or testimony
8 that is being offered cannot be received or
9 received in that fashion. If I say that the
10 objection is overruled that means there isn't a
11 violation of the rules of evidence and that bit of
12 testimony or evidence may be received.

13 Now, sometimes I may need to have counsel
14 approach and there may come a time when I will need
15 to ask you to step to your jury room, so I want you
16 to understand exactly what is happening. If I need
17 to ask counsel to approach it is because I need to
18 hear just a few words from them to help me be able
19 to rule on that matter. If I ask you to step to
20 the jury room it is because I need to hear a little
21 bit more and I wouldn't want my conversations with
22 the attorneys to be construed as being a comment on
23 the facts, so the reason I ask the lawyers to
24 approach or that I will need to ask you to step to
25 your jury room, which will be minimal, I will

1 assure you, as it possibly can be, is just to allow
2 me the ability to make my determination and have a
3 bit of conversation and give me a little bit of
4 time to basically do that work I must do. It is
5 certainly not these folks trying to keep anything
6 from you, it is just to let me do the work I need
7 to do to make my ruling.

8 Now, ladies and gentlemen, oftentimes,
9 rightfully so, jurors want to know about the taking
10 of notes. I want to talk about that with you
11 because I'm going to ask you not to take notes,
12 understanding there are people in this world who
13 are note takers and I'm one of them. Sometimes it
14 helps me be able to listen to take a note or two.
15 Well, let me tell you why I'm going to ask you to
16 refrain from taking notes. The criticism of taking
17 notes is that it is so important that you observe
18 the witnesses when they testify, that there is a
19 real concern that a juror can miss something as it
20 is coming from the witness stand because they are
21 taking a note.

22 Other concerns about taking notes is that if
23 one juror has a note and another juror doesn't have
24 a note during the deliberations that there can be
25 an undue amount of influence placed upon the note.

1 Now, let me just tell you, after fifteen
2 years here is where I have come to as a policy
3 matter. When trials are expected to be of a
4 relatively short duration, and I am informed that
5 this matter is expected to be a relatively short
6 duration, I ask jurors just listen attentively,
7 observe the witness and not take notes and just
8 trust their memory. When trials are going to be a
9 longer duration, then I have, we may have elaborate
10 notes and, you know, we provide paper and pen and
11 pad and all of that and we go through all that.

12 Now, I have commented on the anticipated
13 duration of this trial. I want you to know that
14 this trial is of the utmost importance, it is of
15 the utmost importance to the State, Mr. Haynes and
16 to our system. The only reason that I mentioned
17 the anticipated duration is that I didn't want you
18 to be concerned about my instruction not to take
19 notes and I wanted you to understand fully why.

20 Now, ladies and gentlemen, in order that I
21 preserve everyone's rights I'm going to ask of
22 these parties if they have any objection or
23 addition to my preliminary comments to you.

24 From the State?

25 MS. FORD: No objection from the State.

1 THE COURT: From the defense?

2 MR. WISE: No, Your Honor. Thank you.

3 THE COURT: Ladies and gentlemen, at this
4 time I ask that you please draw close as we listen
5 to the opening statements of these attorneys.

6 On behalf of the State?

7 MR. BELL: Thank you, Your Honor. If it
8 please the Court.

9 Ladies and gentlemen of the jury, incest and
10 criminal sexual conduct with a minor in the second
11 degree, those are the crimes that the State has
12 charged the defendant John Haynes with in this
13 case. The State charged this because of conduct
14 that occurred several years ago with his
15 stepdaughter [REDACTED] JW [REDACTED] who is in the
16 courtroom and who will testify.

17 We believe that somewhere in the early part
18 of January, 2008, probably other times earlier but
19 the time that we can prove, one of which was in the
20 early part of January of 2008 he had sexual
21 intercourse with [REDACTED] JW [REDACTED] who was fifteen
22 years of age at the time. We can prove this
23 because on October 5th, 2008, [REDACTED] Minor Child 1 was
24 born some nine months later, and then again in the
25 later part of January of 2009 through until about

1 the 1st of March, 2009, when [JW] was sixteen
2 they had sexual intercourse again. They may have
3 had other times but we can prove this particular
4 time, again because in the latter party of October,
5 2009, [Minor Child 2] [REDACTED] was born.

6 Once these children had been born to [JW]
7 [JW] they got to wondering who the father was
8 and then upon the investigation it went towards
9 John Haynes, the stepfather, the husband of
10 [JW] mother Gail Haynes.

11 And after he was arrested and charged with
12 these crimes the State took DNA samples from Mr.
13 Haynes, from [Minor Child 1], from [Minor Child 2]
14 from [JW] [REDACTED] and they were tested and it
15 was found that he was the father of those two
16 children and that is why we're here, ladies and
17 gentlemen. We're here to uphold our laws and that
18 is my duty.

19 My name is Harrison Bell, as you have heard,
20 and along with Sarah Ford we represent the State of
21 South Carolina, we're Solicitors, we're prosecutors
22 and it is our duty to prove and to bring people to
23 court and prove the crimes that have been charged
24 against them. We represent the State of South
25 Carolina, we represent Calhoun County and that is

1 why we're here today.

2 And as you have heard from Her Honor Judge
3 Goodstein it is our duty and it is our requirement
4 under the law that we have the burden of proving
5 criminal charges against defendants who have been
6 charged. They have nothing to prove, he has
7 nothing to prove, he sits there innocent and he
8 sits there innocent until we prove to you that he
9 is guilty of the crimes charged. That is a
10 fundamental concept in our criminal law in South
11 Carolina and in these United States and we must
12 prove each element of each crime beyond all
13 reasonable doubt in order to convict. You will be
14 charged that later on in the trial as Her Honor
15 Judge Goodstein told you, and as I said, that is
16 the fundamental concept of criminal law in these
17 United States.

18 Now, what is a reasonable doubt? Well, what
19 I will tell you is the State does not have the
20 burden of proving a person guilty beyond all doubt
21 or beyond, you may have heard in some old shows a
22 shadow of a doubt. It is reasonable doubt. We
23 don't have to prove a person 100 percent guilty.
24 It is a substantial doubt. We've got to prove,
25 there is a term, if you have a firm conviction they

1 are guilty of the crimes charged, and that is the
2 kind of standard that you will hear about as to
3 what a reasonable doubt is.

4 You know, as I stated to you, he has been
5 charged with two crimes. He has been charged with
6 the crime of incest and the crime of criminal
7 sexual conduct with a minor in the second degree,
8 and there are elements on each of those crimes and
9 I want to go over them with you a moment.

10 First of all with incest, this is the law,
11 Code Section 16-15-20, it states that any person
12 who shall have carnal intercourse with each other
13 within the following degrees of relationship, to
14 wit, and it talks about a man with various
15 relations of his and then a woman. What we're
16 concerned with in this particular case is a man
17 with his wife's daughter, or stepdaughter, and that
18 is in the statute in Section One there, and as I
19 stated, [REDACTED] JW [REDACTED] was his wife's daughter.

20 And the other crime -- and we must prove
21 that, we must prove there was carnal intercourse,
22 we must prove there was sexual intercourse with his
23 wife's daughter, that is what we have to prove,
24 those elements beyond, each element beyond all
25 reasonable doubt.

1 And he has also been charged with criminal
2 sexual conduct with a minor in the second degree,
3 which is South Carolina Code 16-3-655. Now, there
4 are two sections with this. It says a person is
5 guilty of criminal sexual conduct with a minor in
6 the second degree if, and there is Section One
7 which we're really not concerned with in this case,
8 Section Two is what we're concerned with. The
9 actor engages in sexual battery, we say sexual
10 intercourse, which is sexual battery in South
11 Carolina, with a victim who is at least fourteen
12 years of age but who is less than sixteen, as we
13 stated on one occasion that we can prove and there
14 were other occasions but the one we can prove is
15 that she was fifteen years of age and that he is
16 older than the victim, that he is in a position of
17 familial or custodial care of the victim such as a
18 parent, and those are the elements that we must
19 prove in this case for criminal sexual conduct with
20 a minor in the second degree.

21 Now, ladies and gentlemen, as you have heard,
22 the State, we use various forms of evidence to
23 prove these charges. One of which you will always
24 know is testimony from this witness stand. You get
25 to listen to people called by the State to come up

1 and testify about what happened and what they know
2 about this particular case. Some of it may be kind
3 of boring, it may be a police officer who touched a
4 particular piece of evidence, that should be quick,
5 but it is boring, it is what the State has to do
6 because we have to prove the case.

7 And what you have to do, ladies and
8 gentlemen, as you heard, is when these witnesses
9 get up there you must determine their credibility,
10 you must check out their credibility, their
11 believability, are they lying or are they not
12 lying, are they telling the truth. That is your
13 job and you are probably wondering how do you do
14 that. Well, I wish I could tell you how to do that
15 but I can't, nobody can. All I can suggest to you
16 ladies and gentlemen you do like you do every day
17 in your life with your family, with friends or even
18 with strangers. When somebody comes up and talks
19 to you you listen to them, you watch them, you look
20 at their expressions and you determine whether
21 somebody is telling you the truth or not in your
22 everyday life, whether it's believable or not, and
23 that is all I can ask or anybody in this courtroom
24 can ask of you is how to do it. You haven't
25 checked your common sense or your everyday lives at

1 the door, you bring it in here with you, with your
2 experiences, and you can use those experiences to
3 help you out to determine credibility of witnesses.

4 We will also present some exhibits or
5 physical evidence, we call it, too. You get to
6 take those as well and as Her Honor told you, you
7 take the testimony that you have heard, the
8 believable testimony that you have heard, you take
9 any exhibits that have been offered and you take
10 them back in your jury room and you take the law
11 that she charges you and you put it together and
12 you deliberate and you come up with a verdict, a
13 word which simply means to speak the truth. That
14 is all we're after here, ladies and gentlemen, is
15 the truth.

16 Now, the only thing that I can ask of you,
17 that we can ask of you is to listen carefully. As
18 stated, this is an important day in court for both
19 parties, for the State of South Carolina here to
20 uphold the law, for **JW** who was victimized by
21 her stepfather. It is also important for him
22 because his liberty is at stake in this trial and
23 all we ask is that you listen carefully and
24 consider all the evidence carefully.

25 I believe, ladies and gentlemen, in the end

1 that the State of South Carolina will present you
2 with more than enough evidence to find John Haynes
3 guilty of incest and guilty of criminal sexual
4 conduct in the second degree with a minor.

5 Thank you.

6 THE COURT: Thank you so much, Mr. Bell.

7 Mr. Mellard.

8 MR. MELLARD: I tend to be one of these get
9 to the point kind of persons so I'm just going to
10 go ahead and get to the point. Mr. Haynes is not
11 guilty, all right? The State has to prove two
12 things to you. First of all they have to prove the
13 act, that is all the stuff you saw on the chart
14 here, they have to prove that he did a voluntary
15 act, that is the first thing.

16 The second thing they have to prove is what
17 is called criminal intent, that he intended to do
18 what they are saying he did. So, two things, they
19 have to prove the act and they have to prove
20 intent.

21 Now, a couple days ago we were out to lunch
22 and one of the attorneys in my office was telling
23 me about her mom and apparently when she was a
24 little kid she was sitting at the kitchen table
25 early in the morning and her mom came in from the

1 bedroom, went to the cupboard, got out a box of
2 cereal, came and put it on the kitchen table, went
3 to the refrigerator, got out some milk, put it on
4 the table, then she opened up the box of cereal,
5 poured it on the floor, opened up the milk, poured
6 it on the floor, turned around, went back to the
7 bedroom, didn't see her for two more hours. All
8 right. When she came out she didn't remember
9 pouring that stuff on the floor, she had no intent
10 to pour that cereal on the floor. Now, that is
11 kind of easy to figure out what happened there
12 because she was obviously sleep walking.

13 Now, what you all have got to figure out here
14 is what happened here and as you have heard, that's
15 from the witness stand, so I won't go into all that
16 kind of stuff about what you have heard from the
17 Judge and what you have heard from the Solicitor.
18 But the important thing to note is that John Haynes
19 is not guilty. The testimony is going to show that
20 he did not do a voluntary act and the testimony is
21 going to show that he had no criminal intent. Mr.
22 Haynes is not guilty and I'm confident when this
23 trial is over you're going to return a verdict not
24 guilty.

25 THE COURT: Thank you, Mr. Mellard.

1 All right, call your first witness, please.

2 MS. FORD: Thank you, Your Honor. If it

3 please the Court, the State calls JW [REDACTED].

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1 **JW** [REDACTED], after being first duly sworn,
2 testified as follows:

3 THE CLERK: Please state your full name for
4 the record.

5 THE WITNESS: **JW** [REDACTED]

6 THE CLERK: Thank you so much.

7 THE COURT: What I'm going to ask you to do
8 is state your full name for the record again.

9 THE WITNESS: **JW** [REDACTED].

10 THE COURT: Pull that a little closer. The
11 acoustics in this courtroom are interesting. Would
12 you try that one more time?

13 THE WITNESS: **JW** [REDACTED].

14 THE COURT: Very well. Now, ladies and
15 gentlemen, if you have difficulty hearing her raise
16 your hand or signal, if something is shown to you
17 at some point and you have difficulty seeing,
18 because I want you to be able to see and hear
19 everything, so if you have trouble hearing, if you
20 have trouble seeing, please just raise your hand.

21 And, **JW** [REDACTED], see that young lady way
22 on the end of our jury box?

23 THE WITNESS: Uh-huh (Affirmative).

24 THE COURT: I need you to have enough volume
25 with the microphone so she can hear you.

1 THE WITNESS: Okay.

2 THE COURT: Thank you so much. Your witness,
3 Miss Ford.

4 MS. FORD: Thank you, Your Honor.

5 DIRECT EXAMINATION BY MS. FORD:

6 Q Good morning, JW

7 A Good morning.

8 Q How old are you?

9 A Twenty.

10 Q When was your date of birth?

11 A .

12 Q And what do you do?

13 A I go to school at OCT and I work part time.

14 THE COURT: I'm having trouble hearing.

15 Bring it a little bit closer. Say that again.

16 Q Try that again, what do you do?

17 A I go to school at OCT and I work part time at
18 the landfill.

19 Q What are your future plans, what do you want
20 to do when you finish school?

21 A Become a cometologist.

22 Q Where do you live?

23 A .

24 Q Is that here in Calhoun County?

25 A Yes, ma'am.

1 Q Who do you live with?
2 A My mom, my two kids and my stepbrother.
3 Q And how old are your children?
4 A Four and three.
5 Q What are their names?
6 A [REDACTED] Minor Child 1 [REDACTED] and [REDACTED] Minor Child 2 [REDACTED].
7 Q Did anyone else used to live with you?
8 A Yes, ma'am.
9 Q Who?
10 A John Haynes.
11 Q Who was John Haynes to you?
12 A My stepfather.
13 Q Okay. How long had you known him?
14 A Since I was a baby.
15 Q So, you have known him --
16 A All my life.
17 Q All your life?
18 A Uh-huh.
19 THE COURT: Is that yes?
20 A Yes.
21 THE COURT: The only reason that I stopped
22 you is because when you say uh-huh or huh-uh, I
23 know Miss Ford probably knows what you mean but I
24 need our record to be clear.
25 THE WITNESS: Okay.

1 THE COURT: Thank you.

2 BY MS. FORD:

3 Q Did you think of John Haynes as a father?

4 A Yes, ma'am.

5 Q Did your relationship ever change with him?

6 A Yes, ma'am.

7 Q From a father to something else?

8 A Yes, ma'am.

9 Q When was that?

10 A When the sexual conduct started.

11 Q Okay. How old were you when that started?

12 A Thirteen.

13 Q Well, what happened, what would he do?

14 A Well, it all started when I used to take
15 baths and he would take one with me and I didn't
16 feel comfortable about it.

17 Q Let me stop you, **JW** You said he would
18 take baths with you. What do you mean?

19 A He would get in it with me and try to show me
20 how to wash but, you know, I already know how to do
21 that, so I felt uncomfortable about the situation
22 and I told my mother about it and she confronted
23 him and she told my family members about it and
24 they got on him about that and he had to stop.

25 Q How old were you when he would get in the

1 bath with you?

2 A I was like twelve or thirteen at the time.

3 Q Okay. After you told your mother did John

4 Haynes stop getting in the baths with you, showing

5 you how to wash?

6 A Yes, ma'am.

7 Q Okay. Did he ever touch you ever again?

8 A Yes, ma'am.

9 Q What did he do?

10 A He would touch my privates.

11 Q Do you mean your breasts?

12 A Yes, ma'am.

13 Q Your genitals?

14 A Yes, ma'am.

15 Q Did he ever force you to have sexual

16 intercourse?

17 A Yes, ma'am.

18 Q When did this happen?

19 A It started when I was fifteen, yes, fifteen.

20 Q Okay. Where would this happen?

21 A At home.

22 Q Okay, where was your home, what is the

23 address of your home?

24 A [REDACTED].

25 Q That's in Fort Motte?

1 A Yes, ma'am.

2 Q And you said that happened at home. Was
3 anyone else home when that happened?

4 A No, ma'am.

5 Q Okay. What did you say to John Haynes when
6 he would do this?

7 A I told him I knew it wasn't right because he
8 was married to my mother and I was only young and
9 he was supposed to be my father and I felt very
10 uncomfortable with it.

11 Q Did he ever say anything to you or threaten
12 you in any way?

13 A Yes, ma'am.

14 Q Tell me about that.

15 A Well, when I said, you know, I would let my
16 mother know about it he would tell me they wasn't
17 going to believe me at all and, you know, I used to
18 watch TV and I would see that happen on TV so I
19 started to believe him and it would turn into he
20 would start hitting me and stuff and he just made
21 it truthful to me that they wasn't going to believe
22 me at all.

23 Q Okay. How long did he molest you and assault
24 you, JW

25 A It was for two years, three years.

1 Q Okay. How old were you when you first became
2 pregnant?

3 A Fifteen.

4 Q When was your baby born, **Minor Child 1**

5 A **[REDACTED] [REDACTED] [REDACTED]**

6 Q Okay. And how old were you when you gave
7 birth to **Minor Child 1**

8 A Fifteen.

9 Q After you had **Minor Child 1** did John Haynes bother
10 you anymore?

11 A It stopped for a little while, then he
12 started up again.

13 Q When you say he started up again, what do you
14 mean?

15 A He started having sexual conduct with me
16 again.

17 Q You say sexual conduct, do you mean sexual
18 intercourse?

19 A Intercourse, yes, ma'am.

20 Q Touching your breasts and genitals?

21 A Yes, ma'am.

22 Q And engaging in sexual intercourse?

23 A Yes, ma'am.

24 Q And you became pregnant again?

25 A Yes, ma'am.

1 Q How old were you when you got pregnant again?

2 A Sixteen.

3 Q And when did you have **Minor Child 2** your second
4 baby?

5 A .

6 Q And how old were you when he was born?

7 A Seventeen.

8 Q **JW** who is the father of your two
9 children?

10 A John Haynes.

11 MS. FORD: May I approach the witness, Your
12 Honor?

13 THE COURT: You may.

14 Q You have two children, correct, **Minor Child 1** and
15 **Minor Child 2**

16 A Yes, ma'am.

17 Q Can you take a look at this? Can you tell me
18 what that is?

19 A My kids.

20 Q Okay. And what are their names?

21 A **Minor Child 1** and **Minor Child 2**.

22 Q And does this picture fairly and accurately
23 depict what your children **Minor Child 1** and **Minor Child 2**
24 **Minor Child 2** look like?

25 A Yes, ma'am.

1 MS. FORD: Your Honor, at this time the State
2 would move what has been marked State's Exhibit 1
3 into evidence and publish it to the jury.

4 THE COURT: Please show it to defense
5 counsel.

6 MR. WISE: We object to relevance.

7 THE COURT: Counsel, let me see you.

8 (Unrecorded bench conference).

9 THE COURT: That will be State's Exhibit
10 Number --

11 MS. FORD: State's Exhibit Number 1, Your
12 Honor.

13 THE COURT: Number 1 is in evidence. Note
14 the exception of the defense.

15 MS. FORD: Yes, Your Honor.

16 (Photograph marked and received in evidence
17 as State's Exhibit Number 1).

18 THE COURT: Now, ladies and gentlemen, let me
19 tell you about viewing the exhibits. It is
20 perfectly fine for counsel to publish the exhibit.
21 I want you to know, though, that all the exhibits
22 will be with you in your jury room for your
23 deliberations and the only reason I mention this is
24 because I don't want you to allow the viewing of
25 the exhibit to keep you from being able to listen

1 to the testimony. I just want you to be confident
2 you will have those with you.

3 MS. FORD: Thank you, Your Honor.

4 BY MS. FORD:

5 Q JW at that time when you became
6 pregnant with Minor Child 1 and later Minor Child 2 had you ever
7 had sex with anyone else?

8 A No, ma'am.

9 MR. WISE: Your Honor, relevance.

10 THE COURT: Overruled.

11 BY MS. FORD:

12 Q You had not had sex with anyone else?

13 A No, ma'am.

14 Q Did you ultimately tell anyone about what was
15 happening to you?

16 A No, ma'am.

17 Q Okay. Why not?

18 A Because, as I said before, he said my mother
19 wouldn't believe me and the most threat he could
20 ever do was tell me that he would murder me and my
21 kids and my family also if I would tell anyone.

22 Q When he would threaten you did he just use
23 words?

24 A No, ma'am.

25 Q What would he do?

1 A At one time I thought -- you know, he would
2 go in the back room and he had a shotgun and he
3 brought it into my room to show me that he wasn't
4 playing at all.

5 Q And you believed him?

6 A Yes, ma'am.

7 Q And that is why you didn't tell?

8 A Yes, ma'am.

9 Q When you were first asked about who was the
10 father of your two children did you say John Haynes
11 when you were asked?

12 A No ma'am.

13 Q Why not?

14 A Because I was trying to save my baby girl and
15 my family and myself.

16 Q Who did you say was the father?

17 A Deondre Goodwine.

18 Q Was that the truth?

19 A No, ma'am.

20 Q Why did you say Deondre Goodwine?

21 A Every day after school we would hang out all
22 the time and people in the neighborhood and also at
23 school would think we were going together because
24 we was attached to each other all the time and so
25 to me he was an easy target so I could keep my

1 family and myself safe.

2 Q And that is why you said Deondre Goodwine?

3 A Yes, ma'am.

4 Q But ultimately -- was that the truth?

5 A No, ma'am.

6 Q Ultimately who was the father of your
7 children?

8 A John Haynes.

9 Q Your stepfather John Haynes?

10 A Yes.

11 MS. FORD: Beg the Court's indulgence, Your
12 Honor.

13 THE COURT: All right.

14 Q JW where was your home? You said all
15 this happened --

16 A At the house.

17 Q And you said it was on Bethany Road?

18 A Uh-huh (Affirmative).

19 Q What county was that in?

20 A Calhoun County.

21 Q Thank you. Do you see John Haynes in the
22 courtroom?

23 A Yes, ma'am.

24 Q Can you point him out for the jury?

25 MS. FORD: Your Honor, let the record reflect

1 that the victim JW [REDACTED] pointed out the
2 defendant John Haynes.

3 THE COURT: Very well.

4 MS. FORD: No further questions, Your Honor.

5 THE COURT: All right.

6 Cross-examination.

7 MR. WISE: Might I inquire?

8 THE COURT: Yes.

9 CROSS EXAMINATION BY MR. WISE:

10 Q [REDACTED] JW good morning.

11 A Good morning.

12 Q Would you like some water?

13 A I have some.

14 Q [REDACTED] JW what you have said today is very
15 different from the things you said in the past,
16 isn't it?

17 A I'm not understanding what you're saying.

18 Q You're not understanding what I'm saying?

19 Okay. Do you know who Eula Clark is?

20 A Yes.

21 Q Who is she?

22 A She was at DSS in St. Matthews.

23 Q How do you know her?

24 A Because she came to the house to test John
25 Haynes.

1 Q She did other things, didn't she?

2 A Yes.

3 Q What else did she do?

4 A She took me to Columbia to see a therapist.

5 Q She spent a lot of time with you, didn't she?

6 A Yes, sir.

7 Q You spoke to her?

8 A Yes, sir.

9 Q She made a report of the things you said to

10 her?

11 A Yes.

12 Q She made a lot of reports about the things

13 that you said to her?

14 A Yes.

15 Q Very good. Now, the things that you're

16 saying today are a lot different than the things

17 you told Mis Clark, aren't they?

18 A I don't remember.

19 Q You don't remember, okay. Let's start with

20 this. Do you remember telling Miss Clark you

21 wanted to have a baby, do you remember telling her

22 that?

23 A No, sir.

24 Q You don't remember telling her that?

25 A No, sir.

1 Q All right. Do you remember telling her that
2 all of your friends had babies and you wanted one
3 also?

4 A No, sir.

5 Q Okay. Do you remember telling her about a
6 young man named Grandon?

7 A No.

8 Q You didn't mention Grandon at all?

9 A No.

10 Q Do you remember telling her that Grandon
11 wouldn't give you a baby?

12 MS. FORD: Objection, Your Honor, relevance.

13 MR. WISE: Your Honor, the issue in this case
14 is --

15 (Unrecorded bench conference).

16 THE COURT: Ladies and gentlemen, it's a good
17 time for our morning break, too. I'm going to ask
18 you to step to your jury room. During the time you
19 are outside our presence please do not discuss this
20 matter or allow anyone to discuss it with you.
21 We'll use this as our morning break, we'll probably
22 be about 20 to 25 minutes. That gives you a good
23 time to take a break. I don't know that we have
24 any smokers but if we to let them go outside and
25 smoke.

1 If you will, step to your jury room with your
2 bailiff.

3 (Jury excused from the courtroom).

4 MR. BELL: Your Honor, if I may, I just
5 wanted to point out I noted the jury took State's
6 Exhibit 1 back there to the jury room.

7 THE COURT: All right. Here is what I just
8 wanted to be certain of. Well, I think probably
9 I'm going to ask, since we are -- hold on. Let me,
10 what I want to do is I want to see, since the other
11 witness is not here who would be testifying with
12 regard to statements and they are not under oath,
13 tell me what you have.

14 MR. WISE: These are all the statements we
15 have, this is the DSS file, what I'm going to hand
16 up to the Court, what I was going to present to the
17 witness to cross-examine her.

18 THE COURT: Okay. Who took these notes?

19 MR. WISE: The case manager in her situation
20 would be Eula Clark. Your Honor, this is the
21 documents I wanted to examine the witness about, I
22 will hand them up now, one is the psychological
23 evaluation.

24 THE COURT: Okay. Has Miss Ford seen that
25 one?

1 MR. WISE: I'm giving her copies of that now.
2 That is the psychological evaluation and the
3 forensic interview.

4 THE COURT: Okay, all right. Now, Mr. Wise,
5 tell me how you intend to use the statements and
6 from what source, because obviously there are
7 statements in some of the information you handed me
8 that probably are in the neighborhood of fourth
9 layer hearsay, so I need to know how you're going
10 to go about it.

11 MR. WISE: Some of these statements, I guess
12 we can go through each one, kind of deal with how I
13 intend to -- let me back up. The first thing I
14 want to do is ask [REDACTED] JW if she said them.
15 Obviously if she said them, then that is the end of
16 it, I can move on from there. If she denies it,
17 then I think because the statements are relevant to
18 the issue in this trial, then I can prove them by
19 extrensic evidence. Some of these statements --

20 THE COURT: What would be the extrensic
21 evidence that you would intend to prove them by?

22 MR. WISE: Eula Clark would be one, Marc
23 Carari would be -- actually those are the two, Eula
24 Clark and Marc Carari would be the people I would
25 call in who would say, "[REDACTED] JW [REDACTED] said thus

1 and so to me."

2 THE COURT: Who is Carari.

3 MR. WISE: Carari is the individual who did
4 the psychological evaluation.

5 THE COURT: Okay.

6 MR. WISE: Those would be, if I were going to
7 call witnesses related to this issue those would be
8 the two I intended to call.

9 THE COURT: Okay. All right. Yes?

10 MS. FORD: Your Honor, these reports that Mr.
11 Wise is attempting to use are hearsay. If he
12 wishes to call those individuals during his case
13 then he can certainly do that. JW [REDACTED] has
14 answered she doesn't recall that, she doesn't
15 remember that.

16 Additionally, Your Honor, a lot of it,
17 especially with the DSS paperwork, it says
18 reportedly this, reportedly that, it doesn't state
19 from whom it was reported, it doesn't necessarily
20 indicate it was from JW [REDACTED]. It just stays
21 reportedly.

22 Additionally, Your Honor, I believe the
23 defense has opened the door for the State to
24 certainly go into the issues that they, during
25 their pretrial motions they wanted to avoid,

1 certainly we can go into the issues that there was
2 another DNA test that was done, the DNA came back
3 conclusive that John Haynes is the father and DSS
4 indicated John Haynes as a sexual abuser of JW
5 JW that was their result. I certainly think
6 at this point, because they have opened the door,
7 we can get into that at this point.

8 MR. WISE: May I address the last point, Your
9 Honor?

10 THE COURT: Let me do the first one, then
11 we'll do the second one. All right, I think that
12 the rule, there are two rules that come into
13 effect. One is Rule 801(D)(1)(A) and (B). (C)(2)
14 is what it is, admission by a party. So I think
15 that, concerning did she make a statement, and I
16 just want to be clear with you, if you, if you call
17 in your case for purposes of extrinsic evidence the
18 DSS caseworker, then the door is open beyond simply
19 if the statement was made because obviously once
20 you have the inconsistent statement under 801(2)
21 you can have consistent statements brought in as
22 well to refute.

23 And with regard to the psychological
24 evaluation and the fact statements were made, I
25 just want to be sure that it is either, as I read

1 the psychological evaluation, this particular
2 evaluator has an opinion about those statements and
3 what is really going on and so I'm not going to
4 allow just the statement to blindly come out. I
5 want you to be apprised of that, I don't want you
6 to be surprised because I think if he testifies to
7 that statement, then he is also going to talk about
8 what he thinks about it.

9 But I don't believe that I can keep you from
10 asking, "Did you make this statement?" If she says
11 no, then you're into the extrensic evidence but
12 further than that, I think that door is opened, I
13 think the door is opened already for the State to
14 call the DSS worker and ask her, "What do you know
15 about it, what did you think was going on, based on
16 your investigation what happened, what were the
17 other statements that were made," so I think the
18 door is opened as far as the DSS worker.

19 MR. WISE: Dealing with that second issue,
20 and I guess I want to address something I think the
21 State is arguing. As I understand the rule of
22 completeness, certainly if I called the DSS worker
23 and say did **JW** tell you thus and such, and she
24 said yes and she said this and that, but I don't
25 think they are entitled to everything that happened

1 between JW and the DSS worker. I think they
2 are entitled to have the other side of that
3 statement only because it was referenced, gets into
4 the DNA test was done in Family Court or any issue
5 unrelated to giving the jury a complete picture of
6 what JW was saying at the time she made that
7 statement. I think that is it, I think the rule of
8 completeness says they can give a jury a complete
9 picture but it is just not a free for all and not
10 everything that has ever happened with DSS in
11 Family Court.

12 THE COURT: Okay, I got it. I'm not prepared
13 to rule on that issue simply because Judge Wylie's
14 order specifically speaks to that. There is a
15 specific court order that limits it but it just, it
16 limits, I think it limits the admission, I'm going
17 to have to go back and look at that, and I don't
18 know if the door is opened to the DNA testing
19 because of the statement of the DSS worker, I don't
20 know that, I'm going to have to go back and look at
21 Judge Wylie's order. Clearly the admissions in
22 Family Court, those are excluded by virtue of Judge
23 Wylie's order.

24 MR. WISE: Your Honor, I was referring to
25 Rule 106 when I was arguing.

1 THE COURT: Yes, I agree with you on that.
2 Let me ask you this question. Is the DSS worker
3 under subpoena?

4 MR. WISE: I subpoenaed her, Your Honor.

5 THE COURT: Okay. Do not release her from
6 the subpoena unless you let the State know.

7 MR. WISE: I will.

8 THE COURT: And the reason for that is the
9 State, in the pretrial motions the State was
10 relying on, I gather, her not being called. If you
11 put her under subpoena, now her testimony very well
12 may become relevant, I don't want them to suffer
13 from their reliance on representations from you.
14 Do not release her from subpoena. You actually
15 obtained service on the DSS worker?

16 MR. WISE: We have. The way I have
17 structured it, I didn't know how this was going to
18 go. I subpoenaed everybody for 2:00 o'clock, I
19 would let them know if I needed them, if I didn't I
20 wouldn't.

21 THE COURT: In other words, you got service
22 on her?

23 MR. WISE: Yes, I did.

24 THE COURT: All right. We will all take a
25 very short break, I don't want the jury to be

1 waiting. I don't know about you all but I need a
2 comfort break.

3 You can have one, too. However, while you're
4 on the stand you can't talk to anybody about your
5 testimony and can't anybody speak to you about your
6 testimony, but you can go take a break.

7 (Recessed at 11:55 a.m.).

8 (Resumed at 12:14 p.m.).

9 THE COURT: All right, anything before we
10 bring the jury out.

11 MS. FORD: No, sir.

12 MR. WISE: Your Honor, I handed up two
13 documents, I didn't know if the court wanted to
14 retain them or not.

15 THE COURT: No.

16 There you go, get situated and get that
17 microphone back.

18 All right, let's have the jury.

19 (The jury returned to the courtroom).

20 All right, ladies and gentlemen, we will
21 continue with the State's case and the
22 cross-examination.

23 Mr. Wise.

24 MR. WISE: Thank you.

25 BY MR. WISE:

1 Q [REDACTED] JW [REDACTED] I'm just going to back up so we can
2 get started again. The question I asked you was do
3 you remember speaking, do you remember telling Eula
4 Clark that you wanted to have a baby, that all your
5 friends had babies and that you wanted one also?

6 A No, I don't.

7 Q You don't remember telling her that?

8 A No, sir.

9 Q Okay. Do you remember telling her that your
10 boyfriend Grandon would not give you a baby because
11 he did not want a baby?

12 A No.

13 Q You don't remember telling her that?

14 A No.

15 Q Now, JW [REDACTED], I have Miss Clark's
16 reports, would looking at them help refresh your
17 recollection about whether or not you said those
18 things?

19 A Yes, I could do that.

20 Q Okay. Now, JW [REDACTED], those reports have
21 tabs on them.

22 MS. FORD: Your Honor, objection. These
23 reports are hearsay and to have the witness
24 actually look over the report of someone else's
25 recollection of an alleged conversation --

1 THE COURT: He can show her the Manhattan
2 phone book and see if it refreshes her
3 recollection.

4 MS. FORD: Thank you, Your Honor.

5 THE COURT: If it does refresh her
6 recollection, so be it, but it either will or
7 won't.

8 MR. WISE: Okay.

9 BY MR. WISE:

10 Q Now, JW [REDACTED], what I have handed you
11 have tabs on the right side, those tabs have
12 numbers, I'm going to refer to those numbers as we
13 go through this, okay?

14 THE COURT: No, she gets to look at the
15 document in its entirety and she will tell you if
16 it refreshes her recollection.

17 MR. WISE: Okay.

18 THE COURT: Otherwise that would be quodding
19 from a document that would not be in evidence. If
20 she just wants to look over it --

21 MR. WISE: Okay.

22 THE COURT: And the question is, of course
23 does that document refresh your recollection.

24 BY MR. WISE:

25 Q Okay. Having reviewed that document, Miss

1 Williams, do you remember on May the 20th of 2010
2 saying to Mis Clark that you wanted a baby, all
3 your friends had babies, you wanted one also, that
4 Grandon would not give you a baby?

5 A No, sir.

6 Q Now, you testified that you told Mis Clark
7 that Deondre was the father of **Minor Child 1**

8 A Yes.

9 Q Do you remember telling Miss Clark that a
10 person named Marcus House could be the father of
11 **Minor Child 1**

12 A Yes.

13 Q Did you tell her that?

14 A Yes.

15 Q Okay, very good. Do you remember telling
16 Miss Clark that you were in love with your
17 stepfather?

18 A No, sir.

19 Q You never remember telling her that?

20 A No, sir.

21 Q Reviewing that document, anything in that
22 document refresh your recollection?

23 A No, sir.

24 Q Okay. You don't remember on May 25th of
25 2010 --

1 MS. FORD: Objection.

2 THE COURT: Sustained.

3 Q Do you remember telling her you went in on
4 him because you were in love with him?

5 A No, sir.

6 Q You don't remember that? Do you remember
7 telling her that you had sex with him because you
8 loved him and you wanted to have a baby?

9 A No, sir.

10 Q Do you remember telling her that if John
11 Haynes was the father it's nobody else's business?

12 A No, sir.

13 Q Okay. Do you remember having an evaluation
14 by a doctor named Dr. Harari?

15 A Yes.

16 Q Do you remember telling him you loved John
17 Haynes and you wanted to have his children?

18 A No, sir.

19 Q Do you remember telling Miss Clark that you,
20 or that John Haynes did not have any sexual contact
21 with you?

22 A No, sir.

23 Q You don't remember telling her that?

24 A No, sir.

25 Q Okay. And do you remember telling her, or do

1 you remember saying, do you remember saying that
2 you have two children as a result of a consensual
3 sexual relationship with your boyfriend?

4 A I don't remember that.

5 Q You don't remember that, okay. Now I want to
6 talk about some other things for a minute. Do you
7 remember telling Miss Clark that your step-dad is
8 in jail for nothing, that he did not do anything to
9 you and that you approached him, do you remember
10 telling her that?

11 A No, sir.

12 Q Okay. Do you remember telling her that your
13 step-dad did not know or do anything because he was
14 drunk?

15 A No, sir.

16 Q You don't remember telling her that?

17 A No.

18 Q Okay. Do you remember telling her that Mr.
19 Haynes drinks a lot, he has an alcohol problem and
20 he needs help?

21 A Yes, ma'am -- yes, sir.

22 Q You do remember telling her that?

23 A Uh-huh (Affirmative).

24 Q All right. In talking about the sexual
25 things, do you remember telling Dr. Harari that you

1 seduced John when he was under the influence of
2 alcohol, to have sex with him?

3 A No, sir.

4 Q Do you remember telling her that John was
5 entirely unaware that he was having sex?

6 A No, sir.

7 Q Do you remember saying that you took
8 advantage of him when he was intoxicated?

9 A No, sir.

10 Q Do you remember telling Miss Clark that he
11 did not know or do anything because he was drunk?

12 A No, sir.

13 Q All right. Now, do you remember admitting
14 that you had lied about some of the things that you
15 have said?

16 A No, sir.

17 Q Okay. Do you remember telling Miss Clark
18 that you said that John raped you because you felt
19 that's what everyone wanted to hear?

20 A No, sir.

21 Q Okay. Do you remember telling Dr. Harari
22 that you made the initial allegation of sexual
23 abuse by John because you felt you would be in
24 trouble if you admitted you seduced your
25 stepfather?

1 A No.

2 Q You don't remember anything of that?

3 A No.

4 Q Okay.

5 MR. WISE: May I approach the witness, Your
6 Honor?

7 THE COURT: You may.

8 Q JW I have asked you some questions
9 about a statement made to Dr. Harari, would you
10 like to review his report? Would that help refresh
11 your recollection about what you may have said to
12 him?

13 A I can do that.

14 Q JW what I will do, I will ask you to
15 look at this forensic interview also.

16 A Okay.

17 Q Just let me know when you're done.

18 JW looking at that psychological
19 evaluation, does that refresh your recollection
20 about whether or not you ever said to Dr. Harari
21 you loved Mr. Haynes and wanted to have his
22 children?

23 A No.

24 Q And looking at that evaluation, does that
25 refresh your recollection about saying you seduced

1 John when he was under the influence of alcohol?

2 A No.

3 Q All right. I want to talk a little bit about
4 your fear of Mr. Haynes. Do you recall telling
5 Miss Clark that you were not fearful of your
6 step-dad, did you ever tell her that?

7 A No.

8 Q You don't remember saying that to her?

9 A No.

10 Q All right. Do you remember telling Miss
11 Clark you wanted to get him, John, out of jail so
12 you and he can go to a picnic together?

13 A No.

14 Q A picnic at Fort Motte?

15 A No.

16 Q You don't remember saying that?

17 A No.

18 Q You wanted him out of jail, you went the year
19 before, you wanted to go this year?

20 A No.

21 Q You wanted him out for your birthday?

22 A No.

23 MS. FORD: Objection, Your Honor, asked and
24 answered.

25 THE COURT: The second question had not been

1 asked, she said no. She responded.

2 Q [REDACTED] JW I want to talk a little bit about
3 John's drinking. You would agree, I think, that he
4 drinks on a daily basis, correct?

5 A Yes.

6 Q Okay. And as a matter of fact you said that
7 the only problem you have with your step-dad is his
8 drinking?

9 A Yes.

10 Q [REDACTED] JW there came a time when John was no
11 longer living in the house with you, correct?

12 A Yes.

13 Q Do you remember when that was?

14 A After the DNA, when they came to the house
15 and took the DNA.

16 Q Would that have been around December, 2009?

17 A Yes.

18 Q Okay. So, after December, 2009, he was one
19 place, you were someplace else?

20 A Yes.

21 Q Okay, all right. [REDACTED] JW did you ever tell
22 your mother about going in on John?

23 A I don't understand.

24 Q Did you ever tell your mother that you went
25 in and had sex with your step-dad when he was

1 sleeping and drunk?

2 A No.

3 Q Did you ever tell anyone at school about any
4 of this?

5 A No.

6 Q Nobody?

7 A No.

8 Q Anybody at church?

9 A No.

10 Q Any friends?

11 A No, sir.

12 Q Okay. Any relative at all?

13 A No, sir.

14 Q You never told anyone the things that you're
15 telling us today?

16 A No, sir.

17 Q Okay. **JW** on direct examination you
18 said that you thought Deondre Goodwine -- is that
19 his name, am I saying his name right?

20 A Yes.

21 Q He would be, I think the word you used was an
22 easy target?

23 A Yes.

24 Q When you used the word easy target to refer
25 to Deondre Goodwine what did you mean by that?

1 A Everyone knew, thought it was Deondre, so
2 they assumed that he was the father, so I just let
3 them think that.

4 Q And you were prepared to have him be the
5 father of your child?

6 A Yes.

7 Q Recognizing all that involved, that he would
8 be the father, have to pay child support, all the
9 obligations, you were ready to do that to Deondre?

10 A Well, I wasn't going for him on child
11 support, it was my choice to put him on child
12 support or not.

13 Q But as far as you were concerned you were
14 willing to let the whole world think that Deondre
15 was the father because you said it would be better
16 for you?

17 A Yes.

18 Q Okay. And you said that to Miss Clark, that
19 Deondre is the father?

20 A Yes.

21 Q And you said that to her because you wanted
22 her to do something with that information, right?

23 A Yes.

24 Q You wanted her to take him to court and have
25 him adjudicated the father?

1 A Huh-uh (negative).

2 Q You have to answer.

3 A Say that again.

4 Q You wanted her to take action with that

5 information?

6 A Yes.

7 Q You wanted her to take him to court and have

8 him to be found to be the father?

9 A Yes.

10 Q Okay, all right. So, even though that was a

11 lie, you were willing to lie to Miss Clark to get

12 her to do something to Deondre Goodwine?

13 A Well, it wasn't all by lying, it was all

14 about keeping my family safe.

15 Q Okay. So, you wanted Miss Clark to do

16 something and you told her something to make her do

17 what you wanted her to do?

18 A Yes.

19 Q Even though you knew that thing was a lie?

20 A Yes.

21 Q You were trying to manipulate Miss Clark,

22 weren't you?

23 A No.

24 Q Okay. But you told her something that wasn't

25 true to get her to do something?

1 A I told her to benefit me, I didn't try to
2 manipulate her or nothing like that, I just told
3 her what I wanted, you know, that Deondre was the
4 father.

5 Q You lied to get something you wanted?

6 A (No response).

7 Q You have to answer.

8 A I didn't -- yes.

9 Q Okay. When you came up with this plan to lie
10 about Deondre and then tell Miss Clark to get her
11 to take him to Family Court and all that involved
12 did you come up with this on your own?

13 A Yes.

14 Q Did anybody help you with that?

15 A No.

16 Q You came up with that all on your own?

17 A Yes.

18 Q Okay. **JW** just a last few things. You
19 love your kids, right?

20 A Yes.

21 Q And you want to be a good mother?

22 A Yes.

23 Q You are a good mother, aren't you?

24 A Yes.

25 Q Okay. And you want your children to know

1 that you love them?

2 A Yes.

3 Q And you want to protect your children?

4 A Yes.

5 Q You don't want them to suffer any physical
6 harm or any emotional harm?

7 A No.

8 Q All right. And you would not do anything,
9 nothing that would cause them any emotional harm,
10 would you?

11 A No.

12 MR. WISE: May I have one moment?

13 THE COURT: Yes.

14 MR. WISE: JW thank you.

15 THE COURT: Redirect?

16 MS. FORD: Just briefly, Your Honor.

17 THE COURT: All right.

18 REDIRECT EXAMINATION BY MS. FORD:

19 Q JW when Mr. Wise was asking you some
20 questions he asked you about Marcus House?

21 A Yes.

22 Q Who is Marcus House?

23 A No one.

24 Q When you say no one, what do you mean by
25 that?

1 A When the test came back for Deondre Goodwine
2 it proved he wasn't the father. In order for me
3 not to expose him I had to come up with a name to
4 save me and my family so that is the name I came up
5 with.

6 Q So, Marcus House was a made up name?

7 A Yes, ma'am.

8 Q And did you make up Marcus House all on your
9 own?

10 A Yes, ma'am.

11 Q Okay. JW did you seduce John Haynes?

12 A No, ma'am.

13 Q Did you go in on him to have sex with him
14 because you wanted to?

15 A No, ma'am.

16 Q Did John Haynes molest you?

17 A Yes, ma'am.

18 Q Did he force you to have sexual intercourse
19 with him?

20 A Yes, ma'am.

21 Q Did he impregnate you?

22 A Yes, ma'am.

23 Q Twice?

24 A Yes, ma'am.

25 Q If you had said something to take away the

1 blame from John Haynes when all this happened
2 several years ago why would you have done that?

3 MR. WISE: Objection, Your Honor. I'm not
4 sure there is a foundation. She hasn't said, she
5 hasn't said anything, speculative.

6 THE COURT: On the ground of speculation,
7 sustained.

8 MR. WISE: Thank you.

9 BY MS. FORD:

10 Q Did John Haynes threaten you, JW

11 A Yes, ma'am.

12 Q Is that why you may have said some of the
13 things you said?

14 A Ask me --

15 MR. WISE: Objection. Could counsel rephrase
16 the question?

17 THE COURT: Sustained.

18 Q JW were you scared of John Haynes?

19 A Yes, ma'am.

20 Q Why were you scared of him?

21 A Because if I didn't do what he said I would
22 get abused or get a gun pointed at me.

23 Q Did he do those things to you?

24 A Yes, ma'am.

25 Q And you were scared of him, right?

1 A Yes, ma'am.

2 MS. FORD: No further questions, Your Honor.

3 THE COURT: All right, recross?

4 MR. WISE: Very brief.

5 THE COURT: All right.

6 RECROSS EXAMINATION BY MR. WISE:

7 Q JW you said you made up the name Marcus
8 House?

9 A Yes.

10 Q Why, why would you do that?

11 A Because Deondre Goodwine was found not the
12 father so if I would have told it was John Haynes,
13 in my mind, you know, I wouldn't have a life and my
14 family wouldn't have a life, I had to come up with
15 a name quick to save me and my family and my kids.

16 Q You gave this name to who, who did you tell
17 it was Marcus House?

18 A Well, first I told my mother, then that is
19 when she told Miss Clark.

20 Q Did you tell your mother you were lying?

21 A No, sir.

22 Q So, you looked your mother in the eye and
23 lied to her?

24 A Well, when I told her a name she kind of
25 believed me but I didn't want to call it as a lie

1 because I'm trying to save my family.

2 Q So you lied to accomplish something you
3 thought you needed to accomplish?

4 A Yes.

5 Q Okay. And who else did you tell this lie to?
6 You told your mother. Who else?

7 A My grandmother.

8 Q You told your grandmother that same lie?

9 A Yes.

10 Q Who else?

11 A That was it.

12 Q Did you tell Miss Clark this lie?

13 A Uh-huh (Affirmative).

14 Q Okay. What did you think Miss Clark was
15 going to do with this lie?

16 A Well, first they had to find him.

17 Q All right. So you thought she would go
18 looking for somebody named Marcus House?

19 A Yes.

20 Q To make sure I got this, you were going to
21 send Miss Clark on a mission to find somebody you
22 made up?

23 A Yes.

24 Q You don't think that's wrong?

25 A At this time, yes, but at the time, no,

1 because I'm trying to save the people I love and if
2 I didn't go with it then something would happen.

3 Q When did you make up this lie?

4 A After Deondre was found out not the father.

5 Q About what month was that?

6 A I can't remember.

7 Q It was after John was out of the house,
8 wasn't it?

9 A He was, it was beginning, they was in the
10 process of getting him out of the house.

11 Q Did you ever tell anybody you made that up?

12 A Yes, after everything was found out.

13 Q So, when Miss Clark comes in she's going to
14 say you straightened this lie out?

15 A Yes.

16 MS. FORD: Objection.

17 MR. WISE: That's all.

18 THE COURT: All right.

19 (Witness excused).

20 THE COURT: Call your next witness, please.

21 MS. FORD: The State calls Gail Haynes.

22

23

24

25

1 GAIL HAYNES, after being first duly sworn,
2 testified as follows:

3 THE CLERK: Please have a seat. State your
4 full name for the record, please.

5 THE WITNESS: Gail Veronica Williams Haynes.

6 THE CLERK: Thank you, ma'am.

7 THE COURT: Move that microphone closer to
8 you.

9 DIRECT EXAMINATION BY MS. FORD:

10 Q Good afternoon, Miss Haynes. Where do you
11 live?

12 A Fort Motte.

13 Q Here in Calhoun County?

14 A Yes.

15 Q Are you married?

16 A Yes.

17 Q To whom?

18 A John Haynes.

19 Q Is John Haynes in the courtroom?

20 A Yes, ma'am.

21 Q Can you point him out?

22 A Over there.

23 Q When did you get married to him?

24 A December the 27th, 1997.

25 Q Where did you get married?

1 A At my church in New Bethany.

2 MS. FORD: May I approach the witness, Your
3 Honor?

4 THE COURT: You may.

5 Q Do you recognize this?

6 A Yes, ma'am.

7 Q What is that?

8 A My marriage license.

9 Q What are the names on that marriage license?

10 A John Edward Haynes and Gail Veronica
11 Williams.

12 Q Does it have Mr. Haynes' date of birth on
13 there?

14 A Yes.

15 Q What is it?

16 A October --

17 MR. WISE: Objection, Your Honor. This is
18 hearsay.

19 THE COURT: All right. In other words,
20 you're concerned about the document being published
21 and it's not in evidence?

22 MR. WISE: Yes.

23 THE COURT: Very well

24 MR. WISE: The document was prepared by
25 somebody else.

1 THE COURT: Well, it may or may not be a self
2 authenticating document at this point.

3 MR. WISE: Yes.

4 BY MS. FORD:

5 Q What is the date on that document?

6 A December 10th, '97. And there is another
7 date on here, December 9th. I mean, what date are
8 you looking for?

9 Q The date it was issued, Miss Haynes.

10 A 7th day of December, '97?

11 Q Yes, ma'am.

12 MS. FORD: Your Honor, the State would move
13 to place the marriage license into evidence as
14 State's Exhibit 2.

15 THE COURT: All right. Show it to counsel,
16 please.

17 MR. WISE: I do have an objection. May we
18 approach?

19 THE COURT: Sure.

20 (Unrecorded bench conference).

21 THE COURT: Very well. The document is a
22 self authenticating document, it comes in under
23 803, 9 and 12, it is a certified copy, a self
24 authenticating document because it is a document
25 that is required to be kept under the Code and

1 therefore it is admitted over the objection, over
2 the objection of defense. Rule 902 speaks to self
3 authenticating documents.

4 MS. FORD: Thank you, Your Honor.

5 (Marriage license marked and received in
6 evidence as State's Exhibit Number 2).

7 BY MS. FORD:

8 Q Miss Haynes, after you were married you lived
9 together with John Haynes?

10 A Yes.

11 Q Who lived with you?

12 THE COURT: You have to speak up. You and I
13 both have to speak up, they can't hear either one
14 of us. Ask that question again.

15 MS. FORD: Sure.

16 Q After you were married did you live with John
17 Haynes?

18 A Yes.

19 Q Who lived with you?

20 A Me, John and my daughter JW

21 Q Okay. What is your daughter JW date
22 of birth?

23 A [REDACTED] [REDACTED] [REDACTED]

24 Q Do you have any grandchildren?

25 A Yes.

1 Q When did your daughter first become pregnant?
2 A In '08.
3 Q 2008?
4 A Yes, ma'am.
5 Q How old was she?
6 A Fifteen.
7 Q Okay. And do you know how old she was when
8 she had her baby?
9 A Fifteen.
10 Q Okay. And her other child, when did she get
11 pregnant with her son?
12 A 2010.
13 Q Okay. Would that have been 2009 or 2010? I
14 don't want to confuse you with too many dates, Miss
15 Haynes.
16 A Well, I know she had them -- '09, I'm sorry.
17 Q That's okay, take your time. And how old was
18 she then?
19 A Almost seventeen.
20 Q During the time when JW became pregnant
21 did you work?
22 A Yes.
23 Q Where did you work?
24 A Welman Plastics right here in St. Matthews.
25 Q Did you work a particular shift?

1 A Yes, ma'am, third.

2 Q Third, and what is third shift, what times
3 did you work on third shift?

4 A 11:00 p.m. at night until 7:20 the next
5 morning.

6 Q So, you worked while everyone else was
7 asleep?

8 A Yes.

9 Q And when you were working where was JW

10 A Home with John.

11 Q Your husband John, her stepfather?

12 A Yes.

13 Q And he was to be caring for her?

14 A Yes.

15 Q Were you aware of any problems between John
16 Haynes and JW at the time?

17 A No.

18 MS. FORD: Beg the Court's indulgence.

19 THE COURT: All right.

20 MS. FORD: No further questions, Your Honor.

21 THE COURT: Very well.

22 Cross-examination.

23 CROSS EXAMINATION BY MR. WISE:

24 Q Miss Haynes, how are you this afternoon?

25 A Fine.

1 THE COURT: Do you need some water, a cup of
2 water?

3 THE WITNESS: Yes.

4 THE COURT: You can go ahead.

5 BY MR. WISE:

6 Q Miss Haynes, John was also working, isn't
7 that correct?

8 A Yes.

9 Q Where was he working?

10 A At a lumber company in Camden.

11 Q Did he work anyplace else?

12 A Yes. He worked at Welman Plastics in St.
13 Matthews also.

14 Q Was he also working at a tire company of some
15 sort?

16 A St. Matthews Tires.

17 Q What did he do at St. Matthews Tires?

18 A Changed tires.

19 Q Full-time job?

20 A Yes.

21 Q Tough job, he came home tired when he came
22 home, wasn't he?

23 A I guess.

24 Q All right. And John likes to drink, he
25 drinks every day, doesn't he?

1 A Yes.

2 Q He drinks a lot, doesn't he?

3 A Yes.

4 Q Okay. And he has been known to come home
5 after a hard day's work and have some beers, go to
6 sleep?

7 A Yes. Not go to sleep, I'm not going to agree
8 with that.

9 Q So, he would come home from a hard day's work
10 and have some beers?

11 A Uh-huh (Affirmative).

12 Q You didn't know him to just pass out from the
13 beers and being tired?

14 A No, not from the beers.

15 Q Okay. I think Miss Ford asked you this
16 question. You had no idea what was going on
17 between **JW** and John?

18 A No, I didn't.

19 Q Okay. Did there come a time when you
20 confronted **JW** about whether or not there was
21 something going on between her and John?

22 A Yes.

23 Q Okay. She denied it, didn't she?

24 A Yes.

25 Q Looked you right in the eye and said no?

1 A Yes.

2 Q Okay. You didn't notice any difference in
3 her personality?

4 A I mean, I just figured it was teenagers, they
5 have their back and forth little confrontations,
6 whatever.

7 Q As far as you could tell everything was
8 normal in your house?

9 A Yes.

10 Q JW was as she always had been, subject
11 to that little teenage stuff?

12 A Excuse me?

13 Q JW was, her personality was as it pretty
14 much always had been?

15 A Well, she got a little what I would say a
16 little more attitude with herself but I couldn't
17 figure out what was the problem.

18 Q Okay. It came a point when John moved out of
19 the house, right?

20 A Uh-huh (Affirmative).

21 Q And --

22 THE COURT: Is that yes?

23 A Yes. I'm sorry.

24 Q I'm sorry. And he moved out, he agreed to
25 move out, he said, "I'm leaving," and he moved out?

1 A Well, it was either him or the kids, it was
2 an option and --

3 Q And he left?

4 A Yes.

5 Q All right. Did you ever talk to John, after
6 he moved out, about anything going on with him and
7 JW

8 A Yes.

9 Q Okay. Miss Haynes, let me ask you a couple
10 last few questions. Did JW ever tell you that
11 she had sex with John when he was not aware of it,
12 did she ever tell you that story?

13 A No.

14 Q She never said that to you?

15 A I mean, no, she never said that. She never
16 said she had sex with him when he was passed out?

17 Q Yes.

18 A No.

19 Q Okay. Did you ever have a conversation with
20 John about taking baths with JW

21 A Now, as she was a little girl he took a bath
22 with her but as she got bigger, no, no baths.

23 Q Okay. All right. Did JW ever complain
24 about John hitting her?

25 A Yes.

1 Q When was that?

2 A They had some type of altercation, like I
3 said, I was working and when I got home I found out
4 about it, they had some altercations and she said
5 he hit her in her face.

6 Q Okay. Behind some altercation they had?

7 A I mean, I wasn't there so I don't know, I can
8 only take what they told me.

9 Q Sure. Did **JW** ever tell you about
10 somebody named Marcus House?

11 A Yes, she did.

12 Q What did she say about Marcus House?

13 A She said, when I found out she was pregnant
14 and I asked her who was the baby's father and she
15 said Marcus House.

16 Q Okay. And you believed her?

17 A Yes.

18 Q Okay. Did you ever meet Marcus House?

19 A No.

20 Q Did you ever ask anyone about Marcus House?

21 A Yes, I did.

22 Q Okay. Did she ever tell you she just made it
23 up?

24 A After all of this, yes.

25 Q So, when she said it to you, you looked in

1 her eye and you said you believed her?

2 A Yes.

3 Q Even though she was lying to you?

4 A Yes.

5 Q You couldn't tell, she said it --

6 MS. FORD: Objection, Your Honor.

7 THE COURT: Let me hear the question. Don't
8 answer until I rule on it.

9 MR. WISE: I will rephrase the question.

10 BY MR. WISE:

11 Q When she looked in your eye and told you that
12 lie you couldn't tell she was lying?

13 THE COURT: Any objection to that?

14 MS. FORD: Yes, Your Honor.

15 THE COURT: All right.

16 (Unrecorded bench conference).

17 MR. WISE: May I have one moment, Your Honor?

18 THE COURT: Sure.

19 MR. WISE: Thank you.

20 THE COURT: All right.

21 Any redirect?

22 MS. FORD: No redirect, Your Honor.

23 THE COURT: Very well. You may come down.

24 (Witness excused).

25 THE COURT: It's 1:00 o'clock, all right,

1 let's see.

2 MS. FORD: Your Honor, at this point the
3 State would ask if Miss Haynes could remain in the
4 courtroom?

5 THE COURT: If she does not intend to be
6 recalled, certainly. And before the witnesses
7 leave I want to just hold them just a moment after
8 the jury leaves.

9 All right, ladies and gentlemen, we're now
10 ready for lunch. I'm going to ask you that during
11 our lunch, one hour and 15 minutes, please do not
12 discuss this matter or allow anyone to discuss this
13 matter with you, do not read anything, do not
14 listen to anything about this matter. You must
15 receive all of the information from which you will
16 make up your mind here in court when court is in
17 session. That means the radio, television,
18 internet, newspaper, and don't do any sort of
19 investigation. Again, you must receive all the
20 information from which you will make up your mind
21 here in court while court is in session. Enjoy
22 your lunch and I will see you at 2:15. Have a good
23 lunch. Go with your bailiff.

24 (Jury excused from the courtroom).

25 THE COURT: One of the things that I wanted

1 to mention to the family and to the witnesses who
2 have already testified, now that you have testified
3 you're free to be in the courtroom if both sides
4 agree, if they don't think you will need to be
5 recalled. What I need to share with the family and
6 just be certain, I know I'm sure Mr. Wise and Mr.
7 Mellard have shared this with you but out of an
8 abundance of precaution, the witnesses, just as you
9 were sequestered, the other witnesses who will
10 testify likewise are sequestered and so it is human
11 nature for the folks who are sequestered to want to
12 know a what is going on, it is just human nature.
13 Part of the sequestration order is that you can't
14 talk to folks who haven't testified, about their
15 testimony because that, obviously that erodes the
16 sequestration, and that would really go for the
17 family as well, the witnesses, and I don't even
18 have a clue who else might be testifying. You may
19 or may not know somebody that is going to testify,
20 if they approach you and say, "Oh, my gosh, what
21 happened, what can you tell me," just say, "The
22 judge has instructed me not to discuss this matter
23 and I can't talk about it with you because you're a
24 witness or you may be called as a witness." It is
25 so much easier to put it on the judge. Family

1 members or somebody you know would be upset with
2 you, have them be upset with me, put it all on the
3 judge, just say, "Judge so and so said not talk
4 about it," because again it is human nature that
5 they may want to know what is going on, and again
6 that is the witnesses who are sequestered. If
7 you're wondering about, gosh, what does that mean,
8 does that mean I can't talk to somebody, a
9 particular person, please ask. Ask Mr. Bell or
10 Miss Ford in that regard, it is best to ask if you
11 can speak to someone rather than someone you can't.
12 I wanted to share that with you.

13 One more thing I would ask of everyone. You
14 know, one of the wonderful things about St.
15 Matthews is that it is very small, a wonderfully
16 small town. When we try a case one of the very
17 different things about St. Matthews, it is a very
18 small town and it is hard not to run into jurors or
19 other witnesses, so if you would just be mindful,
20 if you happen to come in contact with the witnesses
21 please don't interact with them and if you're
22 talking to your family members about the case, if
23 you will lower your voices, I would really
24 appreciate that. I don't want the jury to receive
25 any information outside of the courtroom about this

1 particular matter. If you all could help me in
2 that regard I would very much appreciate it.

3 With that, have a great lunch, I will see you
4 back at 2:15.

5 (Recessed at 1:07 p.m.).

6 (Resumed at 2:25 p.m.).

7 THE COURT: Anything from the State?

8 MS. FORD: No.

9 THE COURT: The defense?

10 MR. WISE: There was one objection made to
11 the marriage license, we made it at side bar, I
12 just wanted to note what that was on the record,
13 that the objection was overruled.

14 THE COURT: Thank you so much.

15 MR. WISE: What I was arguing, the hearsay
16 portion of the marriage license.

17 THE COURT: Thank you, sir. Great.

18 Let's have the jury.

19 (The jury returned to the courtroom).

20 THE COURT: Oh, my good necessary, you've got
21 them all back. You are doing fabulously. I'm
22 going to nominate you to the presiding juror hall
23 of fame.

24 Ladies and gentlemen, I hope you had a very
25 pleasant lunch. At this time we'll continue with

1 the case.

2 The State will please call your next witness.

3 MR. BELL: Thank Your Honor. The State would
4 call Stanley Graham to the stand.

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1 STANLEY ADAM GRAHAM, after being first duly sworn,
2 testified as follows:

3 THE CLERK: State your full name for the
4 record, please.

5 THE WITNESS: Stanley Adam Graham.

6 DIRECT EXAMINATION BY MR. BELL:

7 Q Would you state your name again for the
8 record?

9 A Stanley Adam Graham.

10 Q Where are you employed?

11 A Calhoun County Sheriff's office.

12 Q In what capacity are you employed there?

13 A I am the lieutenant over the patrol division.

14 Q And how long have you been with the Calhoun
15 County Sheriff's Department?

16 A I started there in 2005.

17 Q How long have you been in law enforcement?

18 A Since 2001.

19 Q Generally what kind of training have you had
20 throughout your law enforcement career?

21 A Investigator, common training.

22 Q Lieutenant Graham, were you involved in the
23 investigation involving this case with Mr. Haynes
24 and JW [REDACTED] ?

25 A Yes, sir, I was.

1 Q Okay. And I believe you got involved after
2 DSS got involved, is that correct?

3 A That's correct.

4 Q Okay. And as a result of the investigation
5 did you have occasion to take some evidence from
6 individuals?

7 A Yes, sir.

8 Q What did you do?

9 A We were actually ordered to take a DNA
10 sample.

11 Q Okay. In particular did you take any
12 samples?

13 A Yes, sir.

14 Q Who did you take samples from?

15 A Mr. Haynes, JW [REDACTED] and two small
16 children.

17 Q Okay. And what kind of samples --
18 specifically the two small children, do you recall
19 their names?

20 A No, sir.

21 Q But JW [REDACTED]' children?

22 A They were JW [REDACTED]' children, yes, sir.

23 Q How did you take those samples?

24 A These were swabs.

25 Q Okay.

1 A To the mouth.

2 Q Okay. I think they are called buccal swabs?

3 A Yes, sir.

4 Q And how do you take the sample?

5 A My procedure is of course rubber gloves, take

6 a sterile swab and swab the inside of the mouth.

7 Q Do you have a particular protocol procedure

8 you follow in doing that?

9 A As in?

10 Q I believe you have a special, do you have

11 special swabs or --

12 A We ensure we have sterile swabs, they are

13 sealed when we get them.

14 Q Okay. And what happens once you you take

15 those swabs? What do you do with them?

16 A Once I took the samples I transported them

17 back to the sheriff's office and turned them over

18 to the investigation division.

19 Q Did you seal them up or anything?

20 A The investigators actually sealed them up.

21 Q Okay. Lieutenant Graham, let me show you a

22 couple items, let me show you what has been marked

23 as State's 4, 5 and 6 and ask you if you can

24 identify them? If you need to open them for

25 identification, to identify them, please do so.

1 A The first one is an evidence bag sealed by
2 Deputy Carl Wright, which is our evidence
3 technician, and the name --

4 Q Can you see what that is, or do you need to
5 open it to see what that is?

6 A I will need to open it but it is a sealed
7 evidence bag.

8 MR. BELL: Thank you, Mr. Clerk.

9 Q There you are.

10 A Thank you. The first one is a sample,
11 sealed, with the name of JW [REDACTED], victim
12 mother, Calhoun County Sheriff's office.

13 Q You took that particular swab, is that
14 correct?

15 A Yes, sir, I did.

16 Q Okay. When you took that swab what did you
17 do with it?

18 A Once I took the sample I let it air dry for a
19 minute and took it back to the sheriff's office and
20 turned it over to my investigator.

21 Q Did you turn it over to a particular person?

22 A Investigator Matt Trentham.

23 Q How about State's -- what is the next one, 5?

24 A This is State's Exhibit 5.

25 Q Okay.

1 A This sample was labeled Calhoun County
2 Sheriff's office, it has the case number 10-10,
3 [Minor Child 1], juvenile child, and I took that
4 sample.

5 Q Okay. Did you do the same thing, you let it
6 air dry, then you took it and gave it to who?

7 A Investigator Matt Trentham.

8 Q [Minor Child 1] is the minor child of [JW]
9 [JW]

10 A Yes, sir.

11 Q Okay. Finally State's 6.

12 A This one I can actually read through the
13 paper.

14 Q Okay.

15 A This is [Minor Child 2], which is the other
16 small child of [JW].

17 Q Okay. What did you do with that swab?

18 A The same thing, sealed it and took it in an
19 envelope, took it to the investigators and they
20 sealed it.

21 Q And who in particular did you give it to?

22 A Investigator Matt Trentham.

23 MR. BELL: Thanks, Lieutenant Graham. Please
24 answer any questions the defense may have.

25 THE COURT: Cross-examination.

1 MR. MELLARD: Just a few questions.

2 CROSS EXAMINATION MR. MELLARD:

3 Q You put the samples in an envelope?

4 A It comes with a box that we transport like
5 biomaterial in because --

6 Q Do you know who sealed it up?

7 A Usually it's Investigator Trentham.

8 Q Usually, but in this case do you know who
9 sealed it up?

10 A I did not see who sealed it up.

11 Q You have no idea?

12 A No.

13 MR. MELLARD: One second.

14 That's all, Judge.

15 THE COURT: All right.

16 Redirect?

17 MS. FORD: None, Your Honor.

18 THE COURT: You may step down.

19 (Witness excused).

20 THE COURT: Call your next witness, please.

21 MR. BELL: The State would call Investigator
22 Matt Trentham.

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1 MATTHEW RYAN TRENTAM, after being first duly
2 sworn, testified as follows:

3 THE CLERK: Please state your full name for
4 the record.

5 THE WITNESS: Matthew Ryan Trentham.

6 THE CLERK: Thank you, sir.

7 DIRECT EXAMINATION BY MR. BELL:

8 Q Would you state your name again for the
9 record?

10 A Matthew Ryan Trentham.

11 Q Where are you employed?

12 A Calhoun County Sheriff's office.

13 Q And in what capacity are you employed by the
14 Sheriff's Department?

15 A Currently I'm assigned to criminal
16 investigations division and also, excuse me,
17 alternate evidence custodian.

18 Q Okay. How long have you worked for the
19 Sheriff's Department?

20 A Since March of 2008.

21 Q And how long have you been in law
22 enforcement?

23 A Since May of 2001.

24 Q Investigator Trentham, I want to show you
25 several items that are marked as State's 4, 5 and 6

1 for identification and ask if you have seen these
2 items before?

3 A I have, sir.

4 Q Where have you seen those items before?

5 A These items were presented to me by
6 Lieutenant Graham and identified as DNA swabs that
7 he had obtained from the victim in this case and
8 the two children and I basically made sure that
9 they were properly dried as per the normal evidence
10 procedures, made sure that the boxes they were
11 contained in were labeled properly, sealed and then
12 placed them inside the envelopes and turned them
13 over to the evidence custodian.

14 Q Let me ask you this question. What exactly,
15 in each of these items 4, 5 and 6, what did
16 Lieutenant Graham bring to you or give to you?

17 A We have kits that we use that are, basically
18 consist of two sterile cotton swabs and a box, it
19 is manually folded together to contain the DNA. It
20 can't be placed in plastic because it degrades the
21 DNA sample itself, so they are contained within
22 basically a cardboard box that has predefined lines
23 on it for the victim's name and what type of swab
24 it is. That is what was presented to me, three of
25 those boxes.

1 Q Okay. And so you then determined to make
2 sure they were air dried properly, is that correct?

3 A Correct.

4 Q Did you seal the boxes?

5 A I did.

6 Q And then you put them into -- what did you do
7 with the boxes?

8 A The boxes that contained the swabs were
9 closed up, sealed and placed inside the envelope.
10 The envelopes were then sealed and labeled on the
11 outside for the SLED analyst eventually, and the
12 seal was placed on them by myself.

13 Q Okay. So you put them in these manila
14 folders, 4, 5 and 6, is that correct?

15 A Yes, sir.

16 Q Then what did you do with them?

17 A They were -- I maintained -- basically SLED
18 has an internet site that has access by law
19 enforcement. Because of security, they require a
20 password be changed every 90 days, so I'm a
21 custodian of that internet site, so to speak, for
22 the Sheriff's office. Once I received those, I
23 also was given the information on the original case
24 file from Captain Cartwright, the evidence
25 custodian, I pre-logged all that information into

1 SLED's website and then turned everything I had,
2 this material and the evidence sheet, back over to
3 Captain Cartwright for transport to SLED.

4 Q So this physical evidence, State's 4, 5 and
5 6, you turned over to Captain Cartwright?

6 A Yes.

7 Q What is his capacity?

8 A He is the evidence custodian.

9 Q He maintained the evidence after that, after
10 he gets it?

11 A Yes. He is the primary custodian for all
12 evidence of the Calhoun County Sheriff's office.

13 MR. BELL: Thank you, Investigator Trentham.
14 Please answer any questions the defense may have
15 for you.

16 THE COURT: Cross examination?

17 MR. MELLARD: No questions.

18 THE COURT: You may come down.

19 (Witness excused).

20 THE COURT: Call your next witness.

21 MR. BELL: The State would call Lieutenant
22 Henry Dukes to the stand.

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1 HENRY DUKES, JR., after being first duly sworn,
2 testified as follows:

3 THE CLERK: Please state your full name for
4 the record.

5 THE WITNESS: Henry Dukes, Jr.

6 THE CLERK: Thank you, sir. Pull the
7 microphone close and speak clearly.

8 DIRECT EXAMINATION BY MR. BELL:

9 Q Would you state your name again for the
10 record.

11 A Henry Dukes, Jr.

12 Q And where are you employed?

13 A Calhoun County Sheriff's office.

14 Q And in what capacity are you employed at
15 Calhoun County Sheriff's office?

16 A I'm the lieutenant over the investigations.

17 Q And how long have you been with Calhoun
18 County Sheriff's Department?

19 A Approximately just about two years.

20 Q How long have you been in law enforcement?

21 A I have over 25 years experience.

22 Q And you were involved in some of the
23 investigation of the case involving JW

24 JW and the defendant John Haynes?

25 A Yes, I was.

1 Q In fact you took some evidence from Mr.
2 Haynes, is that correct?

3 A Yes, I did.

4 Q That was pursuant to court order?

5 A Yes, sir.

6 Q Okay. What exactly did you do with Mr.
7 Haynes?

8 A We just took a DNA sample from him.

9 Q How did you do that, what means did you use?

10 A Oral swabs.

11 Q Buccal swabs, I think they are also called?

12 A Yes, sir.

13 Q Let me show you what has been marked as
14 State's 3 for identification and ask if you can
15 identify it, and you can open that, you can open it
16 if you need to, to identify it.

17 A I don't need to open it.

18 Q What is it?

19 A This is the brown paper bag that the sample
20 swabs were placed into. You can see on the outside
21 of it collected by Lieutenant Dukes and it has the
22 date.

23 Q Okay. And so you took them and you did what
24 you had to do, air dried the swabs, is that
25 correct?

1 A Correct.

2 Q And put them in the box that comes with the
3 kit?

4 A Yes, sir, which I can feel is inside here.

5 Q And you put it in that inside brown envelope?

6 A Yes, sir, the inside brown envelope.

7 Q Then you sealed that envelope, is that
8 correct?

9 A Yes, we did.

10 Q Okay. And once you sealed that and filled
11 all the information out what did you do with that
12 envelope?

13 A It was placed into evidence.

14 Q Okay. Did you give it to anybody in
15 particular?

16 A Yes, Captain Cartwright, who is over our
17 evidence, it was turned over to him and chain of
18 custody was signed and turned over to him.

19 Q How many swabs did you take when you were
20 taking evidence from Mr. Haynes?

21 A There was a total of three containers that
22 were taken.

23 Q And did you put all three in evidence?

24 A No, all three weren't. There was only two
25 containing three Q-tip swabs were placed in

1 evidence.

2 Q What did you do with the third?

3 A The third was turned over to the defendant by
4 way of his attorney.

5 Q Okay. And you said you turned State's 3 over
6 to Captain Cartwright, is that correct?

7 A Yes.

8 Q Okay. Did you put the red evidence tape on,
9 around the bag, did you do that sealing?

10 A Yes, I sealed it.

11 MR. BELL: Okay, thank you, Lieutenant Dukes.
12 Please answer any questions the defense may have.

13 THE COURT: Cross-examination.

14 CROSS EXAMINATION BY MR. MELLARD:

15 Q I just want to clarify something. You're the
16 person that took the swabs from Mr. Haynes?

17 A Yes.

18 Q You're the one that put the swab in his mouth
19 and swabbed and got the sample?

20 A Yes, sir.

21 Q Okay.

22 MR. MELLARD: All right, that's all the
23 questions I have.

24 THE COURT: Redirect?

25 MR. BELL: Nothing, Your Honor. I ask he be

1 excused.

2 THE COURT: Any objection?

3 MR. MELLARD: No objection.

4 THE COURT: You're excused.

5 (Witness excused).

6 THE COURT: Call your next witness, please.

7 MR. BELL: We would call Captain Cartwright.

8 We would ask the officers be allowed to
9 remain in the courtroom if no longer needed.

10 THE COURT: Sure.

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1 WILLIAM ALEXANDER CARTWRIGHT, after being first
2 duly sworn, testified as follows:

3 THE CLERK: Please state your full name for
4 the record.

5 THE WITNESS: William Alexander Cartwright,
6 III.

7 THE CLERK: Have a seat, pull the mike close
8 to you.

9 Thank you, sir.

10 DIRECT EXAMINATION BY MR. BELL:

11 Q Would you state your name again for the
12 record?

13 A William Alexander Cartwright, III.

14 Q Where are you employed?

15 A Calhoun County Sheriff's office.

16 Q And in what capacity are you employed there?

17 A Administrative captain, I also handle all the
18 evidence.

19 Q And, Captain Cartwright, how long have you
20 been with the Calhoun County Sheriff's office?

21 A Since 2004 but I had 34 years total, I had
22 been with this agency before back in the eighties,
23 I have 34 years.

24 Q Captain Cartwright, you said you are
25 administrative captain and you're over the

1 evidence, is that correct?

2 A Yes, sir.

3 Q What do you do with the evidence?

4 A I receive it either through a pass-through or
5 it is hand delivered to me by an investigator or
6 road personnel and I take that evidence, I log it
7 in, I take it and place it in the evidence room.
8 Depending on what kind of evidence it is, if it is
9 drugs, money or weapons it goes into the vault, all
10 other evidence goes to regular storage and at this
11 particular time an investigator will tell me,
12 "Okay, I need that evidence moved to SLED or to
13 Orangeburg for testing," and then I take it myself
14 to either Orangeburg or to SLED, depending on what
15 analyzation needs to be done with it.

16 Q And you have sole control over the evidence
17 room?

18 A Yes, sir.

19 Q I believe you're the only one with a key or a
20 combination, whatever, to the evidence room?

21 A I am the only one.

22 Q Let me direct your attention to these items
23 of evidence, Captain Cartwright, what have been
24 marked now State's 3, 4, 5 and 6 and I ask if you
25 have seen these items?

1 A Yes, sir, I have.

2 Q And where have you seen them before?

3 A These are items that I took control of and
4 when I take them to SLED I have to initial the heat
5 sealed bag, they are sealed again at SLED at
6 evidence intake and I have to initial across the
7 top of each seal and date it when I delivered it to
8 SLED.

9 Q Okay. So, you received the inner bags, the
10 manila bags or the brown bags?

11 A Yes, sir. I received these from the
12 investigators and then when I go to SLED, then I
13 get, SLED seals it again and then it has a lab
14 number and our case number to correspond with this.

15 Q Okay. So, when you take them up to SLED and
16 you give, they have -- what is the procedure at
17 SLED when you take those items there?

18 A Okay. Well, first off, sir, what we do is we
19 do a procedure called I-Lab, which is done over the
20 internet, Matt Trentham, Sergeant Matt Trentham
21 handles all the I-Lab entries into the computer,
22 that is then sent to SLED, that is a heads up to
23 SLED to let them know, "We're fixing to bring you
24 evidence and all the paperwork is done on the
25 computer." I have a copy of that paperwork when I

1 go. The I-Lab report is printed off, I have got a
2 copy, I also take a copy of the incident report
3 with me so SLED has some idea what kind of case
4 we're looking at.

5 So, I go up to SLED, I go in the intake, I go
6 in, they get on their computer, that has already
7 been I-Labbed, they bring it up, they print off
8 their lab number which is this yellow sticker,
9 place it on there to heat seal it and then I
10 initial off on it and it is theirs. I also receive
11 a receipt for that item, too, when I turn it in.

12 Q Okay. So, the last time you saw these items
13 they were, you took them to SLED and they were heat
14 sealed and closed, is that correct?

15 A Yes, sir, that's correct.

16 Q Do you recall who the evidence intake person
17 was at SLED at the time, at the time you took these
18 items?

19 A I think it was Miss Yarborough. There is
20 four different ladies there that work in the SLED
21 intake and I believe it was a Miss Yarborough that
22 received it.

23 MR. BELL: Thank you, Captain Cartwright.
24 Please answer any questions the defense may have
25 for you.

1 THE WITNESS: Thank you.

2 THE COURT: Cross-examination?

3 MR. MELLARD: Hold on one second, Your Honor.

4 THE COURT: All right.

5 MR. MELLARD: No questions.

6 THE COURT: All right, thank you. May this
7 witness be excused?

8 MR. BELL: Certainly, Your Honor. As stated
9 before, we would like he be allowed to remain in
10 the courtroom.

11 THE COURT: All right, the witness is
12 excused.

13 (Witness excused).

14 THE COURT: Call your next witness.

15 MR. BELL: The State will call Amanda Webb.

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1 AMANDA WEBB, after being first duly sworn,
2 testified as follows:

3 THE CLERK: Please state your full name for
4 the record.

5 THE WITNESS: Amanda Webb.

6 THE CLERK: Have a seat. Pull that mike to
7 you.

8 THE WITNESS: Okay.

9 THE CLERK: Speak loudly and clearly into the
10 microphone.

11 DIRECT EXAMINATION BY MR. BELL:

12 Q Would you state your name, please, for the
13 record?

14 A Amanda Webb.

15 Q And where are you employed, Miss Webb?

16 A I'm in the forensic DNA case work department
17 at SLED.

18 Q Okay. And what is your job title?

19 A I'm a DNA analyst, I work criminal cases from
20 all over the State of South Carolina.

21 Q Could you please tell the jury your
22 educational background?

23 A I have a Bachelor of Science in forensic
24 chemistry and I also have a Master's of Science in
25 forensic chemistry, both from Marshall University.

1 Q Okay. And what instruction have you received
2 or what educational background do you have with
3 regard to DNA?

4 A Getting my forensic chemistry, my Bachelor of
5 Science in forensic chemistry, I had multiple
6 biology, genetics, statistics, course work along
7 those lines, and those are required for, there is a
8 national guideline of courses you have to have to
9 become a forensic DNA analyst and I have completed
10 all of those.

11 And then also when I went on to get my
12 Master's in forensics I took more extensive DNA
13 courses.

14 Q And did you have any training with SLED or
15 any other law enforcement in particular toward DNA?

16 A Yes, I did. Once I completed my college
17 courses I was hired on at SLED and then I was
18 trained under another court qualified analyst for
19 approximately a year and a half and I had to take
20 all sorts of tests and complete the tests before I
21 was allowed to do independent work, and still I
22 have to take a test every, twice a year to make
23 sure I'm still doing my work the way that I'm
24 supposed to and get the correct answers, and then
25 also everything that I do is reviewed by two other

1 analysts in the department, so each case that I do
2 is reviewed by two other analysts as well.

3 Q And how long have you been working as an
4 analyst I guess on your own, for lack of a better
5 term?

6 A Sure. That would be approximately three and
7 a half, four years.

8 Q Okay. And have you ever been qualified as an
9 expert in forensic DNA analysis in the state courts
10 of South Carolina or the federal court?

11 A Yes, I have.

12 Q Approximately how many times, the best you
13 remember?

14 A About a dozen.

15 Q And let me ask you this other question. Your
16 laboratory, is your lab laboratory certified?

17 A Yes, it is. It is a class A lab credited.
18 What that means is other forensic scientists from
19 outside of even the State of South Carolina come
20 into our lab and perform an audit to make sure that
21 we're doing things according to national
22 guidelines.

23 MR. BELL: Your Honor, we offer Miss Webb as
24 an expert in the area of forensic DNA analysis.

25 THE COURT: Any voir dire?

1 MR. MELLARD: No.

2 THE COURT: Any objection?

3 MR. MELLARD: No, ma'am.

4 THE COURT: Very well. Ladies and gentlemen,
5 let me explain to you what has just occurred.
6 Under our rules of evidence ordinarily witnesses
7 are not allowed to testify regarding their opinions
8 or the reasons for those opinions. There is an
9 exception and that is when by virtue of someone's
10 knowledge or training or experience or education or
11 profession they have become an expert in a
12 particular field, art or science, and when those
13 facts are laid out, if you will, and the person
14 that is offered as an expert, and if they are so
15 qualified as an expert, then those witnesses may
16 testify regarding their opinions within their
17 expertise and the reasons for those opinions.

18 When I give you the concluding instructions I
19 will instruct you further regarding expert opinions
20 but for now I'm telling you that expert opinion
21 testimony is given for the purpose of helping you
22 understand the evidence and not for the purpose of
23 controlling your judgment.

24 You may proceed.

25 MR. BELL: Thank you, Your Honor.

1 BY MR. BELL:

2 Q First off, Miss Webb, generally I just have a
3 question. What is DNA?

4 A DNA is a chemical found in every cell of the
5 body, it is passed down, you get half your DNA from
6 your mom and half your DNA from your dad. That is
7 why you can see some sort of similar characteristic
8 sometimes, it is passed down from your parents.

9 In forensic DNA I look at 16 different
10 locations on the DNA strand and I can compare these
11 locations to one another and in criminal cases what
12 we get is evidence, we get evidence items and then
13 DNA from a known suspect and/or a known victim.
14 And so I can compare any DNA profile developed from
15 an evidence item back to someone that I know DNA
16 has been collected from so I can compare it to a
17 victim or a suspect and I can say whether or not
18 that person is, it matches or it doesn't match that
19 person.

20 Q Okay. And why is it that DNA, you can match
21 people using DNA?

22 A Yes. DNA is unique to each individual except
23 in the case of identical twins.

24 Q And how do you do that? I mean, how do you,
25 generally how do you go about doing that? You said

1 you compare sixteen sites?

2 A Yes.

3 Q How do you get the DNA or how do you do that?

4 A Sure. Generally how we get the evidence is
5 swabs or cuttings from clothing or material. In
6 this case it was swabs. These were all swabs from
7 a person, so it was a swab from the inside of the
8 cheek, from the people in this case, and so then
9 what I do is I cut the cotton tip of the swab and I
10 add some more agents to that and the agents will,
11 there is some instrumentation that is automated and
12 it will separate out the DNA from any other
13 proteins or other unwanted things that can also be
14 found in the cells.

15 So, you separate and isolate DNA and then you
16 can, then the next step is to quantify the DNA,
17 basically see how much DNA you have to work with.
18 And then I can amplify the DNA. That is how, it is
19 sort of like making multiple copies of the DNA,
20 just over and over, that is how I can work with
21 such a small amount and be able to get the profile.

22 Once those copies are made it is separated
23 through another instrument and then my results end
24 up just being numbers and it is just basically a
25 number comparison, if the same number is there, and

1 if the same number is there on the evidence item
2 that is there for the victim or the suspect, then
3 it is a match. If the number is not there, then it
4 is not a match.

5 Q And you said you're looking at 16 sites.

6 What is important about these sites?

7 A Well, these sites, actually the whole strand
8 of DNA in the human body, most of it is exactly
9 alike between people but the areas that we target
10 in forensics is a small portion that is unique to
11 each individual except for identical twins, so it
12 is these particular locations that makes it unique
13 to a certain individual and these locations were
14 picked also because they have the most fairness
15 between them, meaning that it would be less likely
16 to find the same individual with the same DNA
17 profile at these particular regions.

18 Q Let's go a little more specific into this
19 case. I want to show you what is in front of you
20 what has been marked State's 3, 4, 5 and 6 for
21 identification. First have you seen those items?

22 A Yes, sir, I have.

23 Q You were asked to test these four items,
24 State's 3, 4, 5 and 6. Is that correct?

25 A Yes, that's correct.

1 Q How did you come to have these items at SLED?

2 A The items were brought to the laboratory and
3 then submitted to the evidence log-in or evidence
4 control department and what they do is they just
5 make sure all the items are listed on our computer
6 system and then they take the items, they would
7 have been brought in in just a manila envelope, and
8 then in the evidence log-in, it is completely
9 sealed when it comes to them, and then the evidence
10 log-in employees will put the manila envelope
11 inside one of these pouches and the pouch is heat
12 sealed and whoever submits the evidence initials
13 and dates when it was submitted and that way when
14 it comes to me I know that no one has opened the
15 pouch, the plastic pouch that it is in, and in this
16 particular case it was submitted to Doris
17 Yarborough.

18 MR. MELLARD: Objection, Your Honor, hearsay.

19 MR. BELL: I think she can testify as to the
20 people that touched it, that had possession of it
21 in the agency.

22 THE COURT: Well, she can certainly testify
23 she can recognize it. I think you need to lay a
24 foundation.

25 MR. MELLARD: Okay.

1 BY MR. BELL:

2 Q Let me ask you this, Miss Webb. How were
3 these items 3, 4, 5 and 6 when you received them?

4 A They were inside these heat sealed pouches,
5 they are individually labeled with a case number
6 and item number, it has been initialed and dated by
7 the agency employee and other than that the pouch
8 was intact.

9 Q Okay. Nobody had opened it before you
10 received them?

11 A That's correct.

12 Q Nobody had opened State's 3, 4, 5 or 6?

13 A Correct.

14 Q Nothing was done with those items until you
15 received them?

16 A Yes, that's correct.

17 Q Nobody went in and pulled the swabs out or
18 anything until you received them?

19 A That is correct.

20 Q So, you were the first person to touch the
21 swabs in SLED, is that correct?

22 A Right, I was the first and only person
23 actually to open the pouch and touch the swabs and
24 do anything with those.

25 Q And State's 3, 4, 5 and 6 had not been

1 tampered with in any way you could tell?

2 A That's correct.

3 MR. BELL: Your Honor, we offer State's 3, 4,
4 5 and 6 into evidence at this time.

5 MR. MELLARD: We object, Your Honor.

6 THE COURT: All right. Approach.

7 (Unrecorded bench conference).

8 THE COURT: All right. There has been an
9 objection, the objection is to the chain of
10 custody. One is a renewal of a pretrial matter.
11 On that basis, I would allow the admissibility with
12 regard to that.

13 With regard to the other ground that was
14 stated, it has to do with the chain of custody, I
15 would overrule the objection and allow it.

16 You may proceed.

17 MR. BELL: Thank you.

18 (Swabs were marked and received in evidence
19 as State's Exhibits 3, 4, 5 and 6).

20 BY MR. BELL:

21 Q Now, Miss Webb, we're talking about State's
22 3, 4, 5 and 6, you were asked to examine those
23 items?

24 A Yes, I was.

25 Q I think you were asked to compare State's 3

1 against -- well, State's 5 and 6 I believe are the
2 two children, [Minor Child 1] and [Minor Child 2] correct me if I'm
3 wrong.

4 A Yes, sir, that's correct.

5 Q And you also had a sample from the mother, is
6 that correct, [JW] [REDACTED] ?

7 A Yes, I do.

8 Q Okay. And what were your findings based on
9 your DNA analysis?

10 A I will start with State's Exhibit 5, which is
11 concerning the child [Minor Child 1]. And after my
12 DNA analysis, I found that the DNA profile
13 developed from [Minor Child 1] is consistent with
14 being the biological offspring of [JW] [REDACTED]
15 and John Haynes. Basically what that means is the
16 DNA profile developed from [Minor Child 1], it
17 appears to be the child of [JW] [REDACTED] and
18 John Haynes, and then I have to do a statistical
19 calculation because there is a match, and the
20 statistical calculation is just to help put weight
21 on the evidence, and my statistics for that says
22 it's proximately 380,000 times more likely to see
23 these genetic results if John Haynes is the true
24 biological father than if a random man is the
25 father.

1 And then also with the genetic results
2 obtained, greater than 99.99 percent of randomly
3 tested men would be excluded as the potential
4 father.

5 Q So, in other words, it's a 99.99 percent
6 certainty that John Haynes is the father of the
7 child [Minor Child 1] ? Is that a correct statement?

8 A It's -- well, greater than 99.99 percent. If
9 you were to test everyone at random, 99.99 percent
10 of the time they would not match and they would not
11 be the father. And it is 380,000 times more likely
12 that John Haynes is the father than a man picked at
13 random out of the population.

14 Q Okay. And what about, I think State's 6 in
15 regards to [Minor Child 2] ?

16 A Yes. For [Minor Child 2], the DNA profile
17 developed from [Minor Child 2] is consistent with
18 being the biological offspring of [JW]
19 and John Haynes. So, again the DNA corresponds, it
20 matches up that [Minor Child 2] could be the child
21 of [JW] and John Haynes and it is
22 approximately 1.1 million times greater to see
23 these results if John Haynes is the true father
24 than if a random man was the father, and again with
25 these genetic results obtained, greater tahn 99.99

1 percent of randomly tested men would be excluded as
2 the father.

3 Q And based on, based on these results can you
4 give an opinion beyond all scientific certainty who
5 the father of these children were?

6 A Well, in my opinion after doing multiple
7 paternity cases I would say it is a very strong
8 likelihood that John Haynes is the father of both
9 of the children.

10 Q On your statistics, are you ever going to
11 give 100 percent?

12 A No.

13 Q Why?

14 A There is always other factors that have to be
15 considered when doing statistical calculations. It
16 would be impossible to have a 100 percent simply
17 because the calculation deals with frequency you
18 can find DNA in random people in the population, so
19 it has to take into consideration every other
20 person's DNA profile and it would never discount
21 the fact of a very low likelihood that someone
22 could come up with that but again I think it is
23 very strong support with this 99.99 percent that
24 anyone at random would be tested would be excluded.

25 MR. BELL: Thank you, Miss Webb. Please

1 answer questions the defense has.

2 THE COURT: All right.

3 CROSS EXAMINATION BY MR. MELLARD:

4 Q You stated earlier that only identical twins
5 have identical DNA?

6 A Yes, that's correct.

7 Q Okay. That is true when a hundred percent of
8 the DNA is analyzed?

9 A When the locations that I look at with my
10 testing is analyzed.

11 Q Okay. Now, in a forensic situation you said
12 only 16 low side are analyzed?

13 A Yes, that's correct.

14 Q And these low side, they represent less than
15 one percent of the total amount of cell DNA?

16 A I believe that's right.

17 Q Okay. Now, you talked about -- let me ask
18 this. There are two sub-specialties in genetics,
19 is my understanding. There is molecular genetics
20 and population genetics, is that correct?

21 A There could be more sub-specialties in
22 genetics, I'm not certain.

23 Q Let's talk about molecular genetics. What
24 that does, it incorporates the actual laboratory
25 work leading to the generation of a DNA profile?

1 A Yes.

2 Q Okay. And once DNA profiles have been done
3 for all the individuals involved in a paternity
4 case, then the statistical analysis is done as to
5 the probability of a particular person being the
6 father?

7 A Yes, that's correct.

8 Q Okay. And the need for population genetics
9 demonstrates why unless you analyze 100 percent of
10 the DNA you can never be 100 percent certain a
11 particular individual matches an evidentiary
12 sample?

13 A No, that is not correct. We do not analyze
14 100 percent of a person's DNA. As I said before, a
15 large part of everyone's DNA would really match but
16 there is a small portion on the DNA strand that is
17 unique to each individual except for identical
18 twins and that is the portion that I look at, so we
19 don't test 100 percent of DNA.

20 Q Okay. Now, you provided us with a list of
21 lab inscriptions. Are you aware of that?

22 A I'm aware of what I provided you. I don't
23 know about what is called an inscription,
24 unrecoverable, intended transfer lock, or transfer
25 log.

1 Q That would be basically unrecoverable
2 intended transfer, that would be lab errors?

3 A Well, it is possible that it is
4 contamination.

5 Q So, there have been contaminations at the
6 SLED laboratory?

7 A Yes, there has been contamination that has
8 occurred. We have many practices and protocols in
9 place to prevent this and that is why we do, every
10 time someone writes a report and performs any
11 analysis on any item there is the two separate
12 reviews and also we have all of the staff's DNA
13 profiles on hand because, you know, unfortunately
14 we're human and err sometimes, and especially when
15 you're working with an item you can take many
16 precautions, gloves, safety glasses, mask, and
17 sometimes you will still find maybe a staff member
18 have DNA that shows up in some of the items but we
19 always have checks for that. It is a requirement,
20 it is something we do every time we run evidence,
21 just to check it against staff profiles, check it
22 against any other case profiles that I might have
23 ran at that same time and then if we find a
24 contaminant that can't be reported out in the case
25 we make note of that and try to track down from

1 what particular process it could have happened and
2 then move forward and try to develop a profile from
3 any item that might have some swab left and report
4 out the new profile. We don't report out any
5 contaminated profiles.

6 Q Let me ask you this. In science the best way
7 to have confidence in your final product is to
8 repeat the experiment and obtain the same results.
9 Correct?

10 A Yes, that's correct.

11 Q Okay. Were you asked to repeat the DNA
12 analysis in the case?

13 A No. It is SLED protocol we don't repeat our
14 analysis.

15 MR. MELLARD: Thank you. That's all the
16 questions I have.

17 MR. BELL: Your Honor, can she have an
18 opportunity to answer? He cut her off.

19 THE COURT: Yes, she may complete her answer.

20 THE WITNESS: The SLED protocol, we don't
21 repeat our analysis. As you can imagine, the
22 laboratory gets numerous cases throughout the state
23 and it wouldn't really be efficient. And also,
24 like I said, our protocols have many checks and
25 balances in place to make sure that our work is

1 good quality, and again nothing is reported out
2 that hasn't had those checks and it won't be
3 reported out if there is an issue with the item.

4 BY MR. MELLARD:

5 Q Just so we're clear, did you repeat the DNA
6 analysis in the case?

7 A I didn't repeat it.

8 MR. MELLARD: All right.

9 THE COURT: Any redirect?

10 REDIRECT EXAMINATION BY MR. BELL:

11 Q You're not required to repeat it, are you?

12 A No, we're not.

13 Q Your work was reviewed, is that correct, in
14 this particular case?

15 A That's correct. I reviewed it myself and
16 also two other DNA analysts reviewed my work.

17 Q Any contamination reported in this case?

18 A Not in this case, no.

19 MR. BELL: Thank you.

20 THE COURT: Recross?

21 MR. MELLARD: No questions.

22 THE COURT: Is this witness free to leave?

23 MR. BELL: Yes, Your Honor.

24 THE COURT: Any objection?

25 MR. MELLARD: No objection.

1 THE COURT: You may be excused.

2 (Witness excused).

3 MS. FORD: May we have one moment, Your
4 Honor?

5 THE COURT: Yes, sir.

6 MS. FORD: Your Honor, the State would rest
7 at this point.

8 THE COURT: Very well. Ladies and gentlemen,
9 you have heard the witnesses and seen the evidence
10 you will from the State in their case in chief.
11 There are matters I must take up outside your
12 presence, so I'm going to ask you to step to your
13 jury room, to not discuss this matter or allow
14 anyone to discuss it with you. We'll see you
15 shortly. Thank you.

16 (Jury excused from the courtroom).

17 THE COURT: All right. Are there any
18 motions?

19 MR. MELLARD: Yes, ma'am. At this time we
20 move for a directed verdict.

21 THE COURT: All right.

22 MR. MELLARD: Addressing the first
23 indictment, the incest indictment. It is our
24 position that the State has failed to show that the
25 defendant had knowing, knowingly had sexual

1 intercourse with a person, with his wife's
2 daughter. It is our opinion the State has failed
3 to meet that burden and a directed verdict should
4 be granted in this case as to the incest.

5 As to the criminal sexual conduct with a
6 minor, again it is our position that the State has
7 failed to show that the defendant knowingly engaged
8 in sexual battery with a person between the ages of
9 14 and 16. Hold on one second. So, it is our
10 position that they failed to show he knowingly
11 engaged in a sexual battery, Your Honor, and based
12 on that they failed to meet the elements of
13 criminal sexual conduct and we would ask the Court
14 to direct a verdict.

15 THE COURT: Thank you so much. Of course as
16 you know it is not my responsibility to weigh the
17 evidence but it is my responsibility to ascertain
18 whether or not there is evidence on each and every
19 element of each of the two offenses, and I find
20 that there is evidence on each of the elements,
21 each and both of the charges. We have the marriage
22 license which establishes the marriage, we have the
23 testimony of Miss Haynes they were married and JW
24 JW is his stepdaughter, and that, that
25 combined with the testimony of the alleged victim

1 in this case, that there was, that she was
2 subjected to forceful sexual intercourse with the
3 defendant on numerous occasions beginning when I
4 believe she said she was 13 years old and which
5 continued and produced two children. There is
6 evidence for each element of the incest and
7 criminal sexual conduct with a minor second degree.
8 The victim gave her birth date, and given that she,
9 both her birth dates were testified to as well as
10 her age when these sexual contacts, sexual battery
11 began. That satisfies the elements. I find there
12 is evidence on each element of each of the two
13 offenses and of course it is not for me to weigh
14 that, that is the jury to weigh, and I would
15 therefore respectfully deny your motion and note
16 your exception.

17 Now, does the defendant intend to call
18 witnesses?

19 MR. WISE: We do, Your Honor.

20 THE COURT: All right. And do you wish for
21 me to examine Mr. Haynes now or later with regard
22 to his right to testify?

23 MR. WISE: I think now would be fine, Your
24 Honor.

25 THE COURT: Okay. Very well, Mr. Haynes, if

1 you would please stand and raise your right hand
2 for me.

3 JOHN EDWARD HAYNES, after being first duly sworn,
4 stated as follows:

5 THE COURT: All right, sir, please tell me
6 your name.

7 THE DEFENDANT: John Edward Haynes.

8 THE COURT: You may put down your hand. Mr.
9 Haynes, at this time I'm going to explain to you
10 certain of your rights. If you do not understand
11 anything that I say I want you to let me know. If
12 you want me to explain anything, also please let me
13 know. There are many ways to explain any one
14 thing.

15 Do you understand?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Now, Mr. Haynes, we have now
18 reached the stage of the trial where you may take
19 the stand. You have the right and protection given
20 to you by the Fifth Amendment of the Constitution
21 of the United States and of the State of the South
22 Carolina which states in part that no person shall
23 be compelled in a criminal case to testify against
24 themselves. This means that you cannot be required
25 to testify in this case. You have the right to

1 testify on your own behalf, however no one can make
2 you testify. This is a personal right and no one
3 can waive this right except you.

4 If you decide to testify you will be subject
5 to the same rules that govern other witnesses and
6 you may be examined and cross-examined on any
7 relevant issue in this case. In addition, if you
8 have any convictions involving a false statement or
9 for crimes punishable by imprisonment for more than
10 one year and this court determines that the
11 probative value of admitting this evidence
12 outweighs its prejudicial effect to you the
13 Solicitor will be able to introduce your record to
14 attack your credibility but only to attack your
15 credibility. I would give the jury a limiting
16 instruction that even if you have a record, excuse
17 me, even if that would be admissible it would only
18 be admissible for the purpose of attacking your
19 credibility.

20 If you decide to testify this decision on
21 your part must be freely, voluntarily and
22 intelligently made with knowledge of the
23 protections given to you by the Fifth Amendment and
24 the consequences of your decision to testify. If
25 you decide not to testify I will instruct the

1 jurors they cannot give the fact you did not
2 testify any consideration whatsoever and that there
3 is to be absolutely no prejudice to you because you
4 did not testify.

5 The decision whether to testify or not to
6 testify is left entirely up to you. Now, I
7 encourage you, I hope you are continuing to talk to
8 your attorneys, to talk to your family and friends,
9 people who you have faith and trust in but you must
10 know that the final decision whether you want to
11 testify or not testify is left entirely up to you.
12 That is your decision.

13 Do you understand what I have explained to
14 you?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Do you have any questions about
17 what I just explained to you?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: All right. Now, have you
20 discussed with your, I don't want to know what you
21 have discussed but have you discussed with your
22 lawyers whether you should or should not testify?
23 I don't want to know about the decision but did you
24 all talk?

25 THE DEFENDANT: Yes, we did.

1 THE COURT: Now, here is what I want you to
2 know. Two things. Number one, I don't know what
3 the order of your witnesses might be but if you all
4 want to take a break before Mr. Haynes makes up his
5 mind whether he is going to testify or not and have
6 one more opportunity to speak to you all, just let
7 me know, because I don't want to rush you. In
8 other words, that decision is his to make and if he
9 needs to consult with you further I certainly will
10 give you that opportunity.

11 I would ask at this point would Mr. Haynes be
12 your next witness or would somebody else?

13 MR. WISE: Somebody else would be our next
14 witness.

15 THE COURT: Very well. Again, if we need to
16 take a break let me know that.

17 MR. WISE: Thank you, Your Honor.

18 THE COURT: Thank you.

19 All right, are you all ready to go?

20 MR. WISE: Your Honor, could we have a very
21 brief break?

22 THE COURT: Yes, you can.

23 MR. BELL: Your Honor --

24 THE COURT: We can all take a very brief
25 comfort break.

1 MR. BELL: I would also ask, one of their
2 witnesses I would object to and I think we would
3 need to do something outside the presence of the
4 jury, just kind of a heads up.

5 THE COURT: Okay. Is that the next witness?

6 MR. WISE: It would not be the next witness.

7 THE COURT: So, great, why don't you all go
8 take a very quick comfort break. You just let us
9 know if you need to take a comfort break, too,
10 everybody, we'll take five minutes and come on
11 back.

12 MR. WISE: One more item. One of the
13 witnesses is going to be Eula Clark. The Court
14 ordered, we asked the Court to sequester the
15 witnesses. Gail Haynes has been in the courtroom
16 while we did the police officers. However, there
17 is a chance that I may call Gail Haynes in my case.

18 THE COURT: Okay.

19 MR. WISE: So, what I would ask the Court,
20 even though she's been in for purposes of listening
21 to the police, when we start our case I would like
22 her to remain outside.

23 THE COURT: Okay. Miss Haynes gets to take
24 her comfort break early.

25 Thank you, Miss Haynes.

1 THE COURT: All right, we'll take our break,
2 about five minutes, you all.

3 (Recessed at 3:28 p.m.).

4 (Resumed at 3:33 p.m.).

5 THE COURT: Is the State ready?

6 MS. FORD: We are.

7 THE COURT: Is the defense ready?

8 MR. WISE: Yes, Your Honor.

9 THE COURT: Very well, let's have the jury.

10 (The jury returned to the courtroom).

11 THE COURT: All right, ladies and gentlemen,
12 as I mentioned before you went back in your jury
13 room, you have heard from the State. Now we turn
14 to the defense.

15 MR. WISE: Thank you, Your Honor. At this
16 point we call Dr. Marc Harari.

17 THE COURT: Very well.

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1 DR. MARC HARARI, after being first duly sworn,
2 testified as follows:

3 THE CLERK: Please state your full name for
4 the record.

5 THE WITNESS: My name is Dr. Marc, M-a-r-c,
6 Harari, H-a-r-a-r-i.

7 THE COURT: Your witness, Mr. Wise.

8 MR. WISE: Thank you, Your Honor.

9 DIRECT EXAMINATION BY MR. WISE:

10 Q Dr. Harari, good afternoon.

11 A Good afternoon.

12 Q I appreciate your patience.

13 Dr. Harari, what kind of doctor are you?

14 A I'm a psychologist.

15 Q And what do psychologists do?

16 A Psychologists do a number of things. I have
17 a private practice in Columbia, South Carolina, I
18 do psychological evaluations on children ranging as
19 young as five years old to elderly, and also
20 psychological testing, usually encompasses an
21 interview with an individual, several personality
22 or cognitive tests, then I make conclusions and
23 recommendations based on my findings.

24 Q Dr. Harari, what is a psychological
25 evaluation, what does that mean?

1 A I get referrals from physicians, from
2 agencies to assess someone's mental health and
3 functioning capacity, to see, depending on the
4 referrals, make recommendations to help facilitate
5 treatment.

6 Q So, somebody would come to you by referral
7 and the people, the organization making the
8 referral would give you information that they
9 wanted you to consider?

10 A Yes.

11 Q Okay, very good. Do you get referrals from
12 the Calhoun County Department of Social Services?

13 A I have, yes.

14 Q Okay. And I want to call your attention to
15 June 1st of 2010?

16 A Yes.

17 Q You were practicing at that time?

18 A Yes.

19 Q Did you get a referral prior to that from the
20 Calhoun County Department of Social Services to do
21 a psychological evaluation of JW [REDACTED]?

22 A Yes, I did.

23 Q And what was involved in that evaluation,
24 what did you do?

25 A Okay. In the evaluation of JW [REDACTED]

1 I was, I had what what is called collateral
2 information from Miss Eula Clark. She has --

3 Q Dr. Harari, you cannot testify to what you
4 were told. You can just say you had information.

5 A Well, okay.

6 Q Okay.

7 A So, what I'm saying -- what was your question
8 again, sir?

9 Q When you met with JW --

10 A Yes.

11 Q I will rephrase the question. You met with
12 JW Did you give her any tests?

13 A Yes.

14 Q Did you speak to her?

15 A Yes.

16 Q Ask her questions?

17 A Yes.

18 Q Okay. What kind of tests did you give her?

19 A I gave her eight different tests, some
20 pertaining to parenting, some pertaining to her
21 mental health functioning, some pertaining to her
22 personality functioning and some pertaining to her
23 intellectual abilities.

24 Q Very good. Just to be clear, was she
25 referred by Eula Clark at the Calhoun County --

1 A Yes.

2 Q Very good. Now, in the process of speaking
3 to her I assume you keep track of the things she
4 says to you?

5 A Yes.

6 Q Okay, all right. And how many times did you
7 meet with JW

8 A One time on June 1st, 2010.

9 Q Okay. Is that normal, one visit for an
10 evaluation?

11 A Yes.

12 Q Very good. All right, I call your attention
13 to June 1st of 2010. When you met with JW did
14 you and she talk about the issue of potential
15 sexual abuse?

16 A Yes. I asked her, one of the questions I ask
17 typically in an interview to the client, if they
18 have ever been the victim of trauma, physical abuse
19 or sexual abuse.

20 Q During the course of your interview with
21 JW did she say she, that she seduced John
22 Haynes when he was under the influence of alcohol,
23 to have sex with him?

24 A Yes, she said she seduced her stepfather when
25 he was under the influence of alcohol, to have sex

1 with her, she believed her stepfather was entirely
2 unaware that he had sexual relations.

3 Q Did she add that she took advantage of Mr.
4 Haynes because he was intoxicated?

5 A Yes.

6 Q Okay. Did she say to you during this
7 interview that she made the initial allegation of
8 sexual abuse by her step-father because she thought
9 she would be in trouble if she admitted that she
10 seduced her stepfather?

11 A Yes.

12 Q Okay.

13 MR. WISE: Let me just have one moment.

14 THE COURT: Yes.

15 Q Doctor, did she, in speaking with her, did
16 she say to you that she loved her stepfather and
17 that she wanted to have his children at that time,
18 that she wanted to have his children?

19 A Yes.

20 MR. MELLARD: Doctor, thank you. Answer any
21 questions the State has.

22 THE COURT: Cross-examination.

23 MS. FORD: Thank you, Your Honor.

24 CROSS EXAMINATION BY MS. FORD:

25 Q Good afternoon, Dr. Harari.

1 A Good afternoon.

2 Q Dr. Harari, in your experience how many cases
3 have you dealt with with victims of childhood
4 sexual abuse?

5 A I have been doing psychological testing
6 since, as far as professionally on my own since
7 2005, with the Department of Juvenile Justice since
8 2000, easily estimate in the hundreds.

9 Q Numerous?

10 A Yes.

11 Q You're experienced in this area?

12 A Yes, I have had a lot of familiarity with
13 sexual abuse victims.

14 Q Are you familiar with child victims of sexual
15 abuse recanting their initial statement?

16 A Yes.

17 Q Can you explain that?

18 A Recantation means when they first admit
19 something, when they first admit to being abused,
20 then they later recant it, meaning they take it
21 back and and say, "No, I wasn't, I was not abused."

22 Q Can you explain some family dynamics that
23 might go into a child recanting a statement after
24 they have already made a statement?

25 MR. WISE: Objection, Your Honor. Two

1 grounds. One, relevance. And two, I think there
2 is a lack of foundation and I guess it would be
3 speculative as to this situation.

4 THE COURT: Approach.

5 (Unrecorded bench conference).

6 BY MS. FORD:

7 Q Dr. Harari, do family dynamics have anything
8 to do with a child recanting?

9 A In some cases, yes.

10 Q Let's take a look at this particular case,
11 Dr. Harari. I know you received some additional
12 information from other sources. Correct?

13 A Yes.

14 Q And after receiving that information and
15 interviewing JW what was your
16 diagnosis of her and I guess your conclusion
17 regarding your interview?

18 A From the accumulation of information I
19 received my diagnosis was she was sexually abused.

20 Q Can you expand on that, Doctor?

21 A One of the things I assessed for JW was
22 her credibility regarding how realistic she was
23 being with me in terms of her presentation, you
24 know, the facts of what her story was, and on the
25 psychological inventory there are many tests within

1 that that assess validity, meaning is the person
2 exaggerating symptoms or is a person minimizing
3 symptoms, engaging in unrealistic response pattern.

4 [JW] was, based on her surveys, was giving
5 a very unrealistic response pattern, being very
6 protective, very defensive. Based on the facts of
7 the case and her IQ which was in the borderline
8 range, to concoct such, it didn't seem reasonable
9 or possible for her to concoct such an action to be
10 forced upon her.

11 Q So, in other words, Doctor, for [JW]
12 [JW] to have concocted this seduction of her
13 stepfather John Haynes is impossible to you?

14 A Very far, extremely farfetched.

15 Q Thank you, Doctor. What did [JW] believe,
16 through your interview what did you learn as to, if
17 she took responsibility for seducing her
18 step-father, what did she think was going to
19 happen?

20 A Well, she never revealed anything to me about
21 that personally. That was more from the collateral
22 I received from Miss Clark stating that it was her
23 impression she was trying to --

24 MR. WISE: Objection, hearsay.

25 THE COURT: You have to lay a foundation.

1 MS. FORD: Yes, Your Honor. Beg the Court's
2 indulgence just one moment.

3 BY MS. FORD:

4 Q Doctor, do you believe, you stated that
5 JW was protective?

6 A Yes.

7 Q Protective of John Haynes?

8 A I believe so, yes.

9 Q Why do you think that is?

10 A Again, it appeared her motive was to, so he
11 would not be in any trouble with the criminal
12 justice system.

13 Q Even if that wasn't necessarily true,
14 correct?

15 A Yes.

16 MS. FORD: Beg the Court's indulgence, Your
17 Honor.

18 THE COURT: All right.

19 Q Just to make sure I understand, Doctor, it
20 was your diagnosis following your evaluation of
21 JW that she was a victim of childhood
22 sexual abuse, correct?

23 A Yes.

24 Q And that she was minimizing what happened to
25 her?

1 A Yes.

2 Q In an effort to protect John Haynes?

3 A Yes.

4 Q And that based on the tests that you gave
5 her, including her IQ test, that her explanation
6 was highly unlikely?

7 A Yes.

8 MS. FORD: No further questions, Your Honor.

9 THE COURT: All right, redirect?

10 REDIRECT EXAMINATION BY MR. WISE:

11 Q Dr. Harari, you gave her, Miss Ford asked you
12 about the diagnosis?

13 A Yes.

14 Q And asked you about two tests you gave her?

15 A Yes.

16 Q One other thing you found out about her from
17 the tests that you gave her is that her personality
18 profile suggested an inflated sense of self worth,
19 is that right?

20 A Yes.

21 Q She has a tendency to seek attention and
22 stimulation in her environment?

23 A Correct.

24 Q That people like JW usually engage in
25 seductive, immature exhibitions and self

1 gratification and self dramatizing behavior?

2 A Yes.

3 Q You also said about people like JW they
4 have an assumption that the rules of society do not
5 apply to them?

6 A Correct.

7 MR. WISE: Thank you.

8 THE COURT: Re-cross?

9 MS. FORD: Beg the Court's indulgence, Your
10 Honor.

11 Nothing further, Your Honor.

12 THE COURT: All right. Is this witness free
13 to leave?

14 MR. WISE: He is, Your Honor.

15 THE COURT: Any objection?

16 MS. FORD: No objection.

17 (Witness excused).

18 THE COURT: All right, call your next
19 witness.

20 MR. WISE: Thank you, Your Honor. We call
21 Eula Clark.

22

23

24

25

1 EULA CLARK, after being first duly sworn, testified
2 as follows:

3 THE CLERK: Please state your full name for
4 the record.

5 THE WITNESS: Eula Mae Clark.

6 THE CLERK: Have a seat. Pull the microphone
7 close to you. Thank you.

8 THE COURT: Your witness.

9 DIRECT EXAMINATION BY MR. WISE:

10 Q Miss Clark, how are you?

11 A I'm fine, thank you.

12 Q Very good. Miss Clark, will you tell the
13 ladies and gentlemen of the jury what it is that
14 you do?

15 A I work for Calhoun County Department of
16 Social Services, child protective service
17 specialist in their child protective services.

18 THE COURT: Move the microphone just a little
19 closer. I'm having a little trouble hearing.

20 Q How long have you been doing that?

21 A I have been working with DSS for eighteen
22 years.

23 Q Eighteen years?

24 A Yes.

25 Q Okay. And day to day what do you do, what is

1 your job?

2 A Well, I am a CPS assessment worker, I do what
3 we call assessments. When a report comes in I go
4 out on the report and I do all the leg work as far
5 as contacting and making referrals for the
6 assessment.

7 Q As part of your job do you interact with
8 children who come within the realm of DSS?

9 A Yes.

10 Q Okay. Would they call you a case manager?

11 A Social worker, caseworker, that's right.

12 Q All right. And as part of your
13 responsibility do you keep track of the things that
14 you do?

15 A Yes.

16 Q Do you do reports and notes?

17 A Yes.

18 Q Okay. You would do the case dictation, is
19 that what you folks call it?

20 A Yes, dictations.

21 Q Dictations are when something happens you go
22 back and you write it down?

23 A Yes, I put it in the system.

24 Q You put it in the system? Why do you do
25 that?

1 A That is to keep a record of everything that
2 we do and have a case file.

3 Q Because you might forget something?

4 A Yes.

5 Q Okay. Now, Miss Clark, I want to talk to you
6 about JW . Do you know JW

7 A Yes.

8 Q How do you know JW

9 A We received a report, that was in November of
10 '99 and that is when I met JW and her family.

11 Q Okay. And you were her caseworker, social
12 worker?

13 A Yes.

14 Q Okay. And did you remain her caseworker,
15 social worker as long as the case in DSS was
16 pending?

17 A Yes.

18 Q And when did the case finally close?

19 A The case closed, let me see, the case was
20 closed on 5/16/2011.

21 Q Of 2011?

22 A Yes.

23 Q So, close to two years you were involved with
24 JW

25 A Yes.

1 Q How often would you see [JW] during that
2 time?

3 A On a monthly basis.

4 Q On a monthly basis?

5 A Yes.

6 Q When you would see [JW] what kind of
7 things would you do?

8 A We talked about the case, her and the
9 children's safety and wellbeing.

10 Q So, she would talk to you about things and
11 you would write those things down?

12 A Yes.

13 Q Okay. And you would make those dictations by
14 dates, action dates, I think you call them?

15 A Yes.

16 Q Okay, very good. All right, I want to ask
17 about a couple things. Did there come a time when
18 [JW] said to you -- do you have your records
19 with you now?

20 A Yes.

21 Q I can give you that if you want but did there
22 come a time when [JW] said to you that she
23 wanted to have a baby, that all of her friends had
24 babies and she wanted one also?

25 A Yes.

1 Q Okay. Did there come a time when she said to
2 you her boyfriend Grandon would not give her a
3 baby, he did not want a baby?

4 A Yes.

5 Q Okay. All right. Did there come a time when
6 she said to you, talking about her relationship
7 with John Haynes, that she said to you that she
8 went in on him because she was in love with him?

9 A She did.

10 Q Okay, all right. But that she didn't have
11 those feelings anymore?

12 A Yes.

13 Q Okay. Did she say to you that she had sex
14 with John because she loved him and wanted to have
15 a baby, did she say that to you?

16 A Yes, as far as I can recall.

17 Q Okay. Did she say to you that if John was
18 the father of her children it was no one else's
19 business?

20 A She did say that, I think, in the interview.

21 Q There was times when she said to you that
22 John was not the father of the children. Correct?

23 A Yes.

24 Q Okay. Actually there were times she denied
25 that he was the father?

1 A Yes.

2 Q Okay. She actually made that denial on more
3 than one occasion?

4 A Yes.

5 Q Okay. Now, in talking about how it came that
6 she was pregnant with John's child, did she say to
7 you that her step-dad was in jail for nothing that
8 she did, he did not do anything to her, that she
9 approached him?

10 A She did say that.

11 Q Okay. Did she say to you on this topic that
12 her step-dad did not know or do anything because he
13 was drunk?

14 A Yes.

15 Q Okay. All right. In talking about whether
16 or not he knew what was going on when children were
17 being conceived, did she say to you that he did not
18 know or do anything, he did not know or do anything
19 because he was drunk?

20 A She didn't say that. She approached him,
21 that he did not know what was going on.

22 Q He didn't know what was going on?

23 A Yes.

24 Q All right. Let me ask you a question. Can
25 you look at your notes from May the 20th of 2010?

1 A Yes.

2 Q Do you have them in front of you?

3 A Yes.

4 Q And I want you to look, do you see the line
5 that starts with the word drunk, just go down the
6 lines?

7 A I don't --

8 MR. WISE: Your Honor, may I approach the
9 witness?

10 THE COURT: You may.

11 Q Miss Clark, I'm just going to show you, do
12 you see that section that I just pointed to that is
13 highlighted?

14 A Yes.

15 Q Okay. And what she said to you was she
16 approached him and he did not know or do anything
17 because he was drunk. That is what she said to
18 you?

19 A She approached him, he did not know or do
20 anything because he was drunk.

21 Q Okay, all right. Now, in talking about why
22 she said something different about John, did she
23 say to you that she said he raped her because she
24 felt that is what everyone wanted to hear?

25 A She did say that.

1 Q Okay. And on more than one occasion she said
2 to you that she is not afraid of John Haynes?

3 A She did say that.

4 Q As a matter of fact there came a time when
5 she said some things to you to get him out of jail
6 so the two of them could go to a picnic together?

7 A I'm not sure about the picnic but I know she
8 wanted, she said some things about she, she said
9 she felt this would have gotten him out of jail.

10 Q The reason she wanted him out of jail was
11 because they wanted to go to a picnic. I will call
12 your attention to September 29th of 2010.

13 MR. WISE: May I approach the witness again?

14 THE COURT: You may.

15 Q If I may highlight that one sentence, she
16 wanted him to go on a picnic on her birthday. And
17 her birthday was five or six months later, correct?

18 A Her birthday is [REDACTED].

19 Q And in discussing that picnic apparently she
20 said they went to the picnic together the year
21 before and she wanted to do it again?

22 A I can't recall.

23 Q Do you have that piece of paper I just gave
24 you?

25 A Yes.

1 Q Look at the next sentence.

2 A "Went to the picnic together last year."

3 Q Okay. Now, Miss Clark, all these statements
4 that JW made about what she did to John, were
5 you ever involved in a meeting where she told her
6 mother these things?

7 A I was not.

8 Q Okay.

9 A They were spoke about but I was not.

10 Q You don't know if she ever had that meeting
11 or not?

12 A I don't.

13 MR. WISE: Let me have one moment.

14 THE COURT: You may.

15 MR. WISE: Miss Clark, give me just one
16 second.

17 BY MR. WISE:

18 Q Miss Clark, just a little background about
19 this. When you first became involved with JW
20 with this family, you didn't become involved with
21 them with anything related to this issue we're
22 talking about today?

23 A Our report came in due to the fact there was
24 a call about concerns about a mom and a seventeen
25 year old who had two children and they felt the two

1 children were fathered by her step-dad.

2 Q So, when you got a call, this wasn't the
3 reason that Mr. Haynes --

4 A This was the reason for the report.

5 Q It wasn't related to the mom having some kind
6 of problem with drugs?

7 A It was reported the seventeen year old
8 daughter who has two children and the mother's
9 husband reportedly may be the father of the two
10 children.

11 Q When you did your initial interview with
12 JW she told you John was not the father?

13 A That's correct.

14 Q She told you Deondre was the father?

15 A That's correct.

16 Q When she told you that she looked you in the
17 eye and said Deondre is the father, that is what
18 she said, and as a result of that you went out and
19 you tested Deondre, the first thing you did?

20 A Yes.

21 Q Because you believed what she said?

22 A We had to start someplace and in speaking
23 with the child enforcement specialist, he said
24 start with Deondre. If Deondre was ruled out then
25 we would go for the step-father.

1 Q [JW] looked you in the eye, she told you
2 that and she lied to you?

3 A Yes.

4 Q Okay. There came a point when Mr. Haynes
5 left the house. Correct?

6 A Yes, that is correct.

7 Q He moved out on his own, left the house?

8 A We asked he leave the home.

9 Q And he did?

10 A Yes.

11 Q And as late as July of 2010 [JW] had not
12 told her mother anything about what was going on
13 with her and Mr. Haynes?

14 MS. FORD: Objection, Your Honor, that's
15 speculation, she has no firsthand knowledge of what
16 [JW] may or may not have told her mother at
17 anytime.

18 THE COURT: Yes, sir, do you wish to be
19 heard?

20 MR. WISE: I'll withdraw the question.

21 THE COURT: Very well.

22 BY MR. WISE:

23 Q But [JW] did tell you that she was fearful
24 of telling her mother about what she had done?

25 A She did.

1 Q Okay. Did there come a time, Miss Clark,
2 when you told her that, when she tried to tell you
3 what was going on with her and John, she told you
4 that, you told her that a judge would not believe
5 what she said? Did you tell her that?

6 A I'm trying to find it. I remember something
7 to that effect.

8 Q All right. I call your attention back to May
9 20, 2010.

10 MR. WISE: May I approach the witness again,
11 Your Honor?

12 THE COURT: You may.

13 THE WITNESS: What date was that?

14 MR. WISE: Hold on one second.

15 BY MR. WISE:

16 Q Do you see that line?

17 A Yes, I did.

18 Q Okay. And your statement is you did not
19 believe a judge was going to believe her about what
20 happened?

21 A She wanted to change her story.

22 Q She wanted to change her story, you said the
23 judge is not going to believe that?

24 A Yes. She said she approached him and he did
25 not know anything what was going on.

1 Q Okay.

2 MR. WISE: May I have that back?

3 Miss Clark, thank you.

4 THE COURT: Cross-examination?

5 MS. FORD: Thank you, Your Honor.

6 CROSS EXAMINATION BY MS. FORD:

7 Q Good afternoon, Miss Clark.

8 A Good afternoon.

9 Q You got involved in this case to investigate

10 whether John Haynes was the father of JW

11 JW two children, correct?

12 A That's correct.

13 Q You investigated that, right?

14 A Yes.

15 Q Ultimately you determined that John Haynes

16 was the father of not one but both of her children?

17 A That's correct.

18 Q You mentioned initially JW

19 denied that there was any sort of sexual contact

20 between her and Mr. Haynes, correct?

21 A That is correct.

22 Q And then she later said, "I came onto him"?

23 A Yes.

24 Q Right?

25 A Yes.

1 Q But you didn't believe her, did you?

2 A I did not.

3 Q We're talking about a fourteen, fifteen year
4 old, sixteen year old child here, right?

5 A Yes.

6 Q And through your investigation you required
7 Mr. Haynes to leave the home to protect JW
8 JW

9 A That's correct.

10 Q Or JW . You noted in your notes
11 that you believed JW lied to protect
12 John Haynes, is that right?

13 A Yes.

14 Q And in fact Dr. Harari indicated to you and
15 you agreed that JW was minimizing --

16 MR. WISE: Objection, Your Honor.

17 THE COURT: Sustained.

18 MR. WISE: Thank you.

19 THE COURT: Approach.

20 MS. FORD: Yes.

21 (Unrecorded bench conference).

22 BY MS. FORD:

23 Q Miss Clark, was one of the reasons you didn't
24 believe JW because DSS had a DNA test done to
25 establish paternity?

1 A That is correct, that is what I told about
2 her dad not, the judge not believing her because of
3 the fact we already had the DNA test done and --

4 MR. WISE: Objection, Your Honor. I think
5 she can testify what was done but the results would
6 be hearsay.

7 THE COURT: In terms of what the Court may or
8 may not do, yes, I agree.

9 Q There was a test that was conducted, correct?

10 A Correct.

11 Q And based on that test as well as your
12 investigation was paternity established in this
13 case?

14 MR. WISE: Objection.

15 Q In your DSS case.

16 MR. WISE: I think that would be hearsay as
17 to the result of the test. She can say there was a
18 test.

19 THE COURT: What?

20 MR. WISE: I think she can testify that a
21 test was done.

22 MS. FORD: I'm asking about the findings of
23 the case, is that the result of that.

24 THE COURT: A result of the DNA test?

25 MS. FORD: Yes, Your Honor.

1 THE COURT: Was there a test done?

2 MS. FORD: Yes. Your Honor, if I could be
3 heard further?

4 (Unrecorded bench conference).

5 BY MS. FORD:

6 Q Let me ask you that question again, Miss
7 Clark. A DNA test was given to -- let me rephrase
8 it. A DNA swab was taken from John Haynes as well
9 as the two children, JW two children?

10 A Correct.

11 Q Is that correct?

12 A Yes.

13 Q And ultimately a DNA analysis was done with
14 DSS, correct?

15 A Yes.

16 Q What were the results of that DNA analysis?
17 Are you aware of that?

18 A I have a copy of it. It was 99.99 percent
19 probable that Mr. John Haynes was the biological
20 father of Minor Child 1 and Minor Child 2 .

21 Q Thank you, Miss Clark. So, based on that,
22 you did not believe what JW was telling you
23 about how it happened, correct?

24 A That's correct.

25 MS. FORD: Beg the Court's indulgence, Your

1 Honor.

2 THE COURT: All right.

3 Q Miss Clark, did [JW] ever tell you that
4 she heard that people who molest children get raped
5 and beaten in prison?

6 A Yes, she did.

7 Q Did she tell you that she was concerned that
8 might happen to her step-father?

9 A She did.

10 Q This was when she was denying that he knew
11 about anything. Correct?

12 A Correct.

13 Q That she was saying that she seduced him?

14 A Yes.

15 Q Correct?

16 A Correct.

17 Q And that she was concerned about him being
18 raped and beaten in prison?

19 A Yes.

20 MS. FORD: Beg the Court's indulgence, Your
21 Honor.

22 Q Just a few more questions, Miss Clark.

23 Initially [JW] said that Deondre Goodwine was
24 the father of her children?

25 A Yes.

1 Q But he was excluded, correct?

2 A Yes.

3 Q Then she said Marcus House?

4 A Yes.

5 Q But you found out he didn't exist, correct?

6 A We couldn't locate him.

7 Q Then she said she seduced her step-father,
8 that it wasn't his fault, correct?

9 A Correct.

10 Q But ultimately it was determined that he's
11 the father of her two children, is that correct?

12 A That is correct.

13 MS. FORD: No further questions, Your Honor.

14 THE COURT: All right. Mr. Wise.

15 MR. WISE: Thank you, Your Honor, very
16 briefly.

17 REDIRECT EXAMINATION BY MR. WISE:

18 Q So, you think **JW** is protective of John
19 Haynes?

20 A Yes.

21 Q Because she loves him?

22 A Yes.

23 Q And that is even after all this she loves
24 him?

25 A Yes, that is what she says.

1 Q That's what she says. Now, JW told you
2 that, I think Miss Ford says, Deondre Goodwine was
3 the father, then you did the DNA test and it was as
4 a result of those tests that you knew JW was
5 lying to you. Correct?

6 A Yes.

7 Q You couldn't tell she was a liar until you
8 did scientific testing to figure it out?

9 A I guess that is the truth.

10 Q Okay. You talked about Marcus House. You
11 said you couldn't locate him?

12 A We never had an address or number for him.

13 Q Never had an address or number. You are
14 still looking for him?

15 A No, we're not.

16 Q Why not?

17 A Because our case has been closed.

18 Q If your case was open would you still look
19 for him?

20 A If we had contact information we would have.

21 Q How much effort did you put into finding
22 Marcus House.

23 MS. FORD: Objection, Your Honor, relevance.

24 MR. WISE: Your Honor, could we approach the
25 side?

1 THE COURT: Sure.

2 (Unrecorded bench conference).

3 THE COURT: Ladies and gentlemen, step to
4 your jury room, do not discuss this matter or allow
5 anyone to discuss it with you, there is a matter I
6 must take up outside your presence.

7 (Jury excused from the courtroom).

8 THE COURT: Okay.

9 MR. WISE: Your Honor, if I can address the
10 issue we had at the side bar?

11 THE COURT: Sure.

12 MR. WISE: The issue of whether or not, where
13 I'm going, she never told her that there was a
14 Marcus House. Now, the victim JW testified
15 there was no Marcus House and I think it goes to
16 her credibility, that even though she made it up,
17 she's never corrected it and it goes to the
18 victim's credibility, and I think that is all it
19 goes to, she said something, that she lied and she
20 just, no matter what happened, never corrected it.

21 MS. FORD: Your Honor, did two paternity
22 tests not correct that?

23 THE COURT: Here is my concern. We are not
24 going there because your question to this witness
25 was, "Why did you stop looking for Marcus House,"

1 and she said, "Because our case is closed." She
2 did, this witness did you a grand favor because
3 what she didn't say was that there was a court
4 order, stipulation that he had sexually abused this
5 child, he did you a favor, she has told you this
6 case is closed, you know Judge Wylie said that
7 stipulation is not to be used against your client
8 and you are treading in dangerous water. We are
9 not going down Marcus House, you're not going to
10 put this witness in a position where she would
11 otherwise testify that to which she cannot testify
12 to.

13 MR. WISE: That was not my intention.

14 THE COURT: It doesn't matter, oh, no, no,
15 sir, this case, because you put her in a position
16 to testify to that which she cannot testify to, the
17 case is ended, he stipulated he would be found to
18 have sexually abused this child and that cannot be
19 testified to, this witness has done a masterful
20 job, masterful job, this is not your first rodeo, a
21 masterful job in honoring Judge Wylie's order.
22 You're not going to push her there.

23 I'm going to tell the jury to disregard the
24 entire questioning about Marcus House, okay? Am I
25 clear about that? Yes.

1 Okay, bring my jury back.

2 MR. LUGINBILL: Judge, if I can real quickly,
3 he's getting into what other people may have said,
4 I thought that is where he was going. She also
5 cannot reveal who the initial reporter was or any
6 other subsequent conversations she may have had
7 with that individual, so I would ask both counsel
8 to steer clear of that. There is a statute
9 directly on that, that has to remain confidential.

10 THE COURT: Okay.

11 (The jury returned to the courtroom).

12 THE COURT: All right, ladies and gentlemen,
13 there was a line of questioning about Mr. House
14 just before you all left the courtroom. I have
15 made a determination that that line of questioning
16 needs to be excluded and disavowed from your mind.

17 Therefore, Mr. Wise, you may proceed.

18 MR. WISE: No more questions.

19 THE COURT: Very well. Miss Ford?

20 MS. FORD: Nothing, Your Honor.

21 THE COURT: And is this witness free to
22 leave?

23 MR. WISE: She is.

24 THE COURT: Very well. Thank you.

25 (Witness excused).

1 THE COURT: All right, Mr. Wise?

2 MR. WISE: My next witness would be Dr.
3 Salas, I think Mr. Bell had an issue about that
4 matter.

5 THE COURT: All right, Bailiff.

6 Exercise, exercise, you're getting skinnier
7 by the minute in this case. There is another
8 matter I must take up outside your presence. As a
9 matter of fact, hold on a minute. Let me tell you
10 what I am going to do. What I'm going to do is if
11 it looks like it is going to be really any length
12 I'm going to let you all go for the day but let me
13 see what we're dealing with. As I said, there is a
14 matter I understand I must deal with outside your
15 presence but, again, if it is going to go for a
16 little bit I'm going to let you all go on and
17 exercise, exercise, please step to your jury room,
18 do not discuss this matter or allow anyone to
19 discuss it with you.

20 (Jury excused from the courtroom).

21 MR. WISE: Before Mr. Bell begins, I had
22 moved to sequester Gail Williams, the mother of
23 **JW** she has been outside, I'm not going to
24 call her, I have no objection to her being in the
25 courtroom with her daughter.

1 THE COURT: Okay.

2 MR. BELL: Your Honor, my undersanding is
3 the next witness will be Amanda Salas who is a
4 psychiatrist and I'm kind of doing a little
5 guesswork here but what I have been related is that
6 she would be called to testify about something
7 called sleep sex or sex somnia and the State would
8 object to her testimony on numerous grounds.

9 First and foremost, relevance. And two
10 phases of relevance. Number one, there has been no
11 testimony that he had sex with this girl while he
12 was asleep. The only thing that even comes close
13 to that is she took advantage of him while he was
14 passed out from drinking which I don't think
15 qualifies as sleep sex, so I think as to relevance
16 in this case it would have no relevance.

17 Number two, more specifically is I have not,
18 the State has not been provided with any tests or
19 anything to show that she has tested Mr. Haynes to
20 see if he has sex somnia, I think is the term they
21 like to use for sleep sex, I mean, to say that he
22 is a person that does this activity regularly, on
23 relevance. I mean, I think there is two prongs of
24 relevance that we would object to. If the Court
25 happens to find it's relevant, then we would object

1 under Rule 702 as to reliability or the science
2 behind it under State versus White, State versus
3 Council, State versus Jones and furthermore if the
4 Court finds it's reliable we would object she is
5 not an expert to testify about this particular
6 science.

7 So, we have kind of a four or five prong
8 objection to this testimony.

9 THE COURT: All right. Very well. I think
10 I'm going to get my jury out and send them home, I
11 think that is what I need to do.

12 (The jury returned to the courtroom).

13 THE COURT: Exercise, exercise, you're
14 getting skinny.

15 Well, I have determined that I'm not going to
16 be able to be short so I'm going to send you home.
17 Ladies and gentlemen, I do need to give you some
18 instructions because a couple things that I did
19 want to talk about. The first thing that I wanted
20 to talk about is that whether you know it or not
21 the curiosity is going to be heightened and I
22 wanted to remind you you cannot discuss this matter
23 or allow anyone to discuss it with you but
24 remember, put it on the judge, don't you take any
25 upset with the heightened curiosity, remember, put

1 it on the judge, tell them the judge told you not
2 to talk about it. So, I wanted to share that with
3 you.

4 Now, you're my night worker, you're my night
5 worker, both of you are my night worker. Now, did
6 you have any resistance with your understanding,
7 that you have an understanding?

8 JUROR: No.

9 THE COURT: No understanding? Mediocre
10 understanding? Okay, you can't go to work tonight
11 either, so if the understanding gets less, again
12 Judge Goodstein is going to be happy to call in the
13 morning, just bring me a name and number for both
14 of you, I will intercede on your behalf because I
15 do need you to rest because as you know, you all
16 have been riveted all day, you have done exactly
17 what I have asked you to do and that is to give to
18 these proceedings your undivided attention and that
19 is tiring and you need your rest.

20 So, again, bring me the name and number and I
21 will be happy to call.

22 So, ladies and gentlemen, when you go home
23 interest is going to be heightened. You can't
24 discuss this matter or allow anyone to discuss it
25 with you. I'm quite confident you noticed this

1 morning that there was a camera present in the
2 courtroom, so you now know there more likely than
3 not will be some sort of publicity about this
4 particular matter, therefore you must be on guard
5 not to listen to anything or read anything about
6 this matter, and that would be the radio, the
7 television or the newspaper or the internet. You
8 must receive all the information from which you
9 will make up your mind here in court while court is
10 in session.

11 Please do not do any sort of investigation.
12 If there were terms you did not understand please
13 don't go to the internet, it is so tempting but
14 don't, you would be receiving information outside
15 of court and you must receive all of the
16 information with which you will make up your mind
17 in court while court is in session.

18 And I will see you in the morning at 9:30.
19 Thank you so much.

20 (The jury was excused from the courtroom).

21 THE COURT: Okay. Now, Mr. Wise?

22 MR. WISE: Thank you, Your Honor.

23 THE COURT: Yes.

24 MR. WISE: Addressing the issues raised, let
25 me start with this. The defense isn't sex somnia

1 or something along this line. This is an issue
2 scientifically speaking, conscious or unconscious,
3 science says this. A person can do things and not
4 be aware of it, very simple. It is comparable to
5 someone sleep walking but it is different. It is a
6 defense that is recognized in many jurisdictions
7 but that is the nature of the defense.

8 Now, what makes that defense relative in this
9 case is there have been consistent statements,
10 different statements saying that she approached
11 him, that he did not, he did not know or do
12 anything, that he was entirely unaware that he was
13 having sex, that she took advantage of him, that he
14 did not know or do anything.

15 So, I submit to the Court the issue that the
16 jury has to resolve at this time, can a person
17 engage in an act of sexual intercourse and not know
18 it and conceive two children and not know it, and
19 the science that Dr. Salas is going to testify to
20 is yes, that can happen, so that is what makes it
21 relevant.

22 Now, she hasn't performed any tests on Mr.
23 Haynes but she is going to talk about the science
24 based on her research, she's going to lay out what
25 it means and what the publications state and

1 hopefully explain to the jury what this automatism,
2 unconscious issue, how it works. Whether or not it
3 is reliable I would submit is for the Court after
4 she testifies to what research she has done, she
5 will do that.

6 I'm trying to remember what the fourth issue
7 was.

8 THE COURT: Relevance and science.

9 MR. WISE: I think it is relevant. There is
10 science on it, she will lay that out.

11 THE COURT: What about diminished capacity,
12 in other words, why is it nothing more than an
13 allegation of diminished capacity because he was
14 drinking?

15 MR. WISE: Totally different, Your Honor, and
16 the difference is this. The diminished capacity,
17 and I understand the Court's concern, somebody can
18 drink, their inhibitions go down and they are doing
19 things they might not otherwise do. We have
20 discussed that, she will deal with that, but this
21 is an issue where a person is completely totally
22 unconscious, they are not doing anything, they are
23 not saying anything, they don't know what they're
24 doing.

25 THE COURT: Let me ask you this question. Is

1 this witness someone who would be prepared to
2 explain, is it someone who is an expert in the
3 physiology, because on the one hand we are not
4 talking about the date rape drug and you have a
5 young woman who is unconscious and is raped and has
6 no consciousness at all. We are talking about a
7 man who must perform and there is more than one
8 activity that has to occur. First and foremost he
9 must have an erection and he must maintain that
10 erection to the point of ejaculation, so the
11 question gets to be is this witness not only
12 someone that can talk about that people can
13 actually do things while they are unconscious, is
14 she an expert in the field of sexual physiology, if
15 you will, because you have to be able to put, you
16 have to tie it up. You are telling me she has the
17 ability to do that as well?

18 MR. WISE: Yes. Specifically I'm going to
19 ask her can a person who is unconscious obtain an
20 erection, can a person keep that erection, would
21 the fact they obtain the erection wake them up, can
22 they ejaculate in this unconscious state, would
23 their ejaculating wake them up, and she's prepared
24 to deal with that. Now, she's here today,
25 obviously she will have to come back tomorrow but

1 if the Court would like to take a brief proffer of
2 her.

3 THE COURT: We'll do that.

4 MR. BELL: Your Honor, I would still object.
5 He is talking about, it is the same thing, it
6 requires the subject to do something appropriately,
7 not be the receptor, I can't even pronounce it, but
8 it is sleep walking, it is part of the whole thing,
9 sleep walking, sexomnia, it requires them to be
10 affirmatively doing something, even if it is just
11 rolling over and groping the partner in bed, this
12 isn't lay back, and what the evidence in this case
13 is about is that, you know, she jumped on him while
14 he was unconscious, where he had no knowledge,
15 didn't do anything, was just there.

16 THE COURT: Right. And irrespective, she's
17 entitled to do the proffer.

18 MR. BELL: I understand.

19 THE COURT: I understand exactly where you're
20 coming from. There has to be a proffer. Okay?
21 So, I'll hear the proffer.

22 MR. WISE: Amanda Salas.

23 THE COURT: I ask you to please be mindful,
24 Counsel, of science, even if there is science, she
25 has to be able to give an opinion with regard to

1 this case.

2 MR. WISE: Your Honor, her opinion is going
3 to be really science.

4 THE COURT: She has to be able to relate it
5 to this one, ask her the hypothetical.

6 MR. WISE: All right.

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1 DR. AMANDA SALAS, after being first duly sworn,
2 testified as follows:

3 THE COURT: Thank you. State your full name
4 for the record. Pull that microphone to you,
5 please.

6 THE WITNESS: Dr. Amanda Salas, S-a-l-a-s.

7 THE COURT: Your witness.

8 MR. WISE: Thank you, Your Honor.

9 DIRECT EXAMINATION BY MR. WISE:

10 Q Dr. Salas, what is your occupation?

11 A I'm a psychiatrist.

12 Q Okay. And describe to the Court what that
13 entails.

14 A It is very broad. It deals with
15 understanding the emotional components of how
16 people process life, the behaviors that they would
17 demonstrate, in the context they understand
18 themselves so they can function well in society.
19 It also deals with the diagnoses that come about
20 when someone has a problem such as a mood disorder,
21 anxiety disorder, problems with schizophrenia. It
22 is very broad but it deals basically with emotions
23 and the relation of how people think and behave and
24 how all that influences them.

25 Q Describe your educational background to the

1 Court.

2 A Beginning with medical school, I finished
3 that in 2003, then I went into residency at Medical
4 College of Georgia where I did a residency program
5 in general psychiatry, and then I went to a child,
6 adolescent child psychiatry fellowship, finished
7 that in 2008, worked for one year and then did a
8 one year fellowship in forensic psychiatry,
9 finishing that in 2010.

10 Q How long have you practiced psychiatry?

11 A As a psychiatrist, since 2003.

12 Q 2003. And are you licensed to practice
13 psychiatry?

14 A Yes, I am licensed to practice psychiatry in
15 South Carolina and Georgia.

16 Q Are you certified by any Boards in
17 psychiatry?

18 A Yes, I am.

19 Q What Board?

20 A I am Board certified in general psychiatry,
21 child adolescent psychiatry as well at forensic
22 psychiatry.

23 Q Do you have any teaching experience?

24 A I do.

25 Q Would you relate that to the court, please?

1 A I'm on adjunct clinical faculty with A. T.
2 Still University which is a program out in Arizona.
3 I also work with students affiliated with the
4 University of South Carolina Beaufort and at
5 present I have a student of licensed professional
6 counselors who is working with me to learn how to
7 perform counseling.

8 Q Have you received any honors or awards in
9 psychiatry?

10 A Yes, I have. Beginning with my intern year I
11 received the E. J. McCravy outstanding intern
12 award. I have had a national award when I was in
13 my child Fellowship and selected to serve as a child
14 private Fellow, and that means that I had the
15 responsibility of assisting other Board certified
16 nationally recognized psychiatrists in developing
17 test questions that help Fellows in training
18 determine where they are in their educational
19 progress in child psychiatry. I think it is an
20 honor that I was nominated to the Governor's
21 Commission, to be on the board of mental health
22 that oversees South Carolina Department of Mental
23 Health but I was not selected for that.

24 Q Have you published any papers, scientific
25 articles?

1 A Yes, I have.

2 Q Name a few.

3 A Under supervision I published in
4 schizophrenia, that overlaps, bipolar disorder and
5 schizophrenia as well.

6 Q Have you ever testified in the Court of
7 General Sessions?

8 A Yes, I have.

9 Q Have you been qualified as an expert?

10 A Yes, I have.

11 Q Doctor, are you familiar with the term
12 automatism?

13 A Yes, I am.

14 Q What does that term mean?

15 A The term automatism relates to involuntary
16 behavior that occurs in a state of unconsciousness.
17 It is basically when you engage in something that
18 you could do when you're awake but you're not fully
19 awake, not fully conscious and you're engaging in a
20 complicated behavior.

21 Q What is the difference between automatism and
22 unconsciousness?

23 A They kind of relate. Unconsciousness is a
24 state of where you are in your level of awareness
25 of what is going on around you, a higher order of

1 thinking. When you are conscious you are in
2 control of interpreting what is going on in your
3 environment, directng how you can impact your
4 environment, positive or negative. When you're
5 unconscious you don't have the higher order level
6 of awareness to be able to have that direct impact.
7 Automatism is occurring in a state of
8 unconciouness.

9 Q Have you conducted research into the area of
10 automatism or unconsciousness?

11 A Yes, I have.

12 Q What type research have you conducted?

13 A I did a literature review in terms of
14 understanding some of the issues pertaining to
15 automatism. And the facts of this case unique to
16 what I discussed with you about the details of what
17 was going on with this case in particular, that
18 prompted me to go and do a literature review
19 through ProMed.

20 Q Now let's talk a little bit about what
21 automatism and unconsciousness is. Can a person
22 engage in any movement or activities while in an
23 unconscious state?

24 A Can they engage in activities while they're
25 unconscious?

1 Q Yes, can they do that when they're
2 unconscious?

3 A Yes, you can move and do activities when you
4 are unconscious.

5 Q Would those movements be considered
6 voluntary?

7 A They are not considered voluntary when
8 they're unconscious, no.

9 Q A person who is engaging in some movement or
10 activity when they are unconscious, are they aware
11 that they are engaging in this movement or
12 activity?

13 A When a person is unconscious they don't have
14 the higher order of thinking that allows them to be
15 aware of what they're doing.

16 Q So, they would not be aware?

17 A They would not be aware of what they're
18 doing.

19 Q Okay. I want to talk about the connection of
20 automatism and unconsciousness and sexual
21 performace.

22 A Okay.

23 MR. BELL: I would object, Your Honor. She
24 stated no background in urology or the medical side
25 of male physiology.

1 MR. WISE: Judge, I don't think she needs to
2 be a physiologist to talk about what the research
3 says about whether a person can do things when they
4 are automatus. I don't think you need a doctor
5 come in and say the reason a person walks when they
6 are unconscious is hard to do where they must flex
7 their legs. She can testify what the mind does and
8 what the body does in that state, in a state of
9 unconsciousness, that is what she's testifying to.

10 THE COURT: You haven't qualified her as an
11 expert yet.

12 MR. WISE: Okay, all right. I would move to
13 qualify her as an expert in the field of
14 psychiatry.

15 THE COURT: Okay.

16 MR. BELL: I would object. I mean, she says
17 the only research she did in autontism was what she
18 did in preparation of this cars.

19 THE COURT: In PubMed.

20 MR. BELL: PubMed, that's correct. There is
21 no independent research or she has had any other
22 contact with automatism.

23 THE COURT: She is a psychiatrist, she is an
24 expert in the field of psychiatry. Now, I don't
25 know that she is an expert in the field of

1 automatism.

2 MR. WISE: Your Honor, I would submit to the
3 Court that that would be an issue for the jury.
4 They are free to evaluate whether or not --

5 THE COURT: Oh, I'm a gatekeeper when it
6 comes to whether or not somebody has sufficient
7 expertise and can testify to the jury.

8 MR. WISE: She's indicated that she's done
9 the research.

10 THE COURT: She went to PubMed. No one asked
11 her anything else she did but go to PubMed.

12 MR. WISE: Well, maybe, let me just lay it
13 out.

14 BY MR. WISE:

15 Q What is PubMed, what does that mean?

16 A PubMed is the humongus database that is held
17 by, regularly by the government, that is
18 essentially, I don't like to use the word, it is
19 the authoratative database where you would go and
20 do research and it has the ability to look through
21 thousands and thousands of different articles and
22 journals to search for key words that you would
23 then screen by getting abstracts back and determine
24 the relevance. So, for instance, when I have done
25 my research in schizophrenia and bypolar I would go

1 and do PubMed literature review and that would
2 allow us access to searching thousands of articles
3 that we otherwise wouldn't have had access and
4 ability to find but it is something that you can
5 access on line but it is not the same thing as
6 doing a Google search or Bing search because it
7 actually is a scientific database.

8 Q Did you read articles related to automatism
9 for purposes of appearing in court today?

10 A I read a lot of the abstracts that I found.
11 The articles were not accessible because you have
12 to have many different expenses in order to get all
13 the different articles that are published in a
14 variety of different journals, so I did not choose
15 to pull and charge the bill for 25, 35, 50 dollars
16 per article in order to get information that
17 ultimately was not, it is not relevant in terms of
18 showing that the research for automatism of the
19 nature I was looking for, that it wasn't
20 substantiated in that database. There has been
21 some conflicting reports, there have been a lot of
22 things that you would normally go and do a search,
23 like if you go to search for schizophrenia you get
24 thousands of articles back, if you go and search
25 for sexual response you get thousands of articles,

1 but when you start linking together the components
2 I was looking at as to the questions that were
3 posed to me in this particular case you get about
4 40 articles that didn't answer the specific
5 question. There was information that was held that
6 was factual information, that we learned in medical
7 school that pertained to a sexual response and the
8 impact of substances on it. It is information that
9 you interpret with a medical background, not
10 necessarily because I'm a psychiatrist or any other
11 type of physician.

12 Q How many articles did you see on this
13 subject, automatism and unconsciousness?

14 A Automatism and unconsciousness?

15 Q Or unconsciousness, the issue we're dealing
16 with in this case?

17 A There were probably, depending on how you
18 phrase the words and make it come together, you
19 could get around 40 different articles. But again
20 not all of them were relevant in terms of being
21 able to address specific things that we were
22 looking at in terms of the thoughts that I had when
23 I reviewed case material and was presented with
24 information, because the research isn't done to
25 investigate something that had already been

1 established in terms of what someone's sexual
2 response was and the impact substances have on
3 sexual response.

4 Q Can you just rephrase that last part again
5 about research not having been done?

6 A There is a sexual response, there is a lot of
7 information that outlines exactly what a sexual
8 response is. There is a lot of information that we
9 study in psychiatry pertaining to the impact of
10 different substances on different behaviors and
11 functions and there is published data relating to
12 the use of alcohol on sexual response but in terms
13 of if you narrow down your search to say sexual
14 response and alcoholism and erection and something,
15 you don't get information that pertains to the
16 physiologic response because the information that
17 is being looked at in terms of the psychological
18 factors that allows someone to achieve an erection
19 or not and how strong that response is. So, the
20 factual basis is accepted across the field so it is
21 not being looked at. We don't look at something
22 that we know to be true, such as when we know that
23 the sky is blue, we quit questioning that until it
24 changes color again.

25 Q This is not an issue of a physiological

1 response?

2 A It is an issue of a physiological response in
3 the context of the use of a substance, because a
4 substance impacts the physiological response.

5 Q And what about, for lack of a better term,
6 the psychological response?

7 A There is information and data that has been
8 published in terms of what might turn someone on in
9 relation to being under the influence of
10 substances, whether they are disinhibited or
11 experiencing what we call alcoholic myopia, which
12 triggers, increases the sexual response or not, but
13 the physiological response occurs, so we're not
14 doing research to figure out do you drink alcohol
15 and have a physiological response of an erection,
16 because that is accepted, as you drink alcohol you
17 can have an erection.

18 Q So, the physiological part of this science is
19 well established?

20 A Yes, that has been.

21 Q Okay, very good. Now, in your search,
22 understanding that the physiological part of it has
23 been established, have you looked at the
24 information that is available about being able to
25 achieve an erection and not be conscious?

1 A Can you have an erection and not be
2 conscious, yes.

3 Q And explain to the Court, based on the
4 science, how that occurs.

5 A When you are not conscious your
6 parasympathetic nervous system takes over, which is
7 essentially where your body is at rest. It usually
8 happens after you have had your meal, you're
9 digesting food, you are not fearful, you're not
10 frightened, you are in a state of relaxation for
11 the most part. And the parasympathetic system is the
12 system that takes over when you are in a state of
13 unconsciousness unless you have been on a substance
14 that would move you into sympathetic responses.

15 When you are in a sympathetic response that
16 is the physiological nervous system component that
17 allows for an erection to occur. You do not have
18 the erection occur when you are under a sympathetic
19 response, you have to have parasympathetic response
20 present in order to have an erection and it is a
21 parasympathetic nervous system that is activated in a
22 state of unconsciousness and altered by being reved
23 up by any accelerant that would move you over into
24 a sympathetic response.

25 Q So, would a person be aware of a

1 parasympathetic response?

2 A No. Everyone in this courtroom is having a
3 balance of their parapatetic and their sympathetic
4 response in terms of how their heart is beating,
5 how their pace of breathing is going, their level
6 of nervousness or lack thereof, how relaxed they
7 are or lack thereof, but you're not trying to think
8 about is this my parapatetic system balancing my
9 pulse to my sympathetic system for how I'm
10 breathing and it is a balance ratio, and sometimes
11 in medical school we were taught the bear in the
12 woods, when you're out in the woods and you
13 encounter a bear, most people would be frightened
14 by that and get the fight or flight response
15 because the sympathetic system takes over. That is
16 the complete oposite of where somebody would be,
17 say, when they are sleeping and they are in a
18 parasympathetic state outside of realm, which is a
19 dream state, which is not relevant.

20 Q If a man were basically, basically the --

21 MR. BELL: Your Honor, first of all we've got
22 to get her to be an expert on something before he
23 starts asking hypotheticals and I still object,
24 she's not an expert in whatever we're trying to
25 talk about.

1 MR. WISE: Your Honor, I think she is
2 certainly qualified as an expert in psychiatry and
3 I think her research allows her to talk about what
4 the science is regarding what the automatism
5 parasympathetic response is.

6 THE COURT: So you would move she be
7 qualified as an expert in the field of psychiatry?

8 MR. WISE: Yes.

9 THE COURT: With a subspecialty in the field
10 of automatism?

11 MR. WISE: Automatism.

12 THE COURT: Yes.

13 MR. WISE: Yes.

14 THE COURT: Very well.

15 MR. BELL: Your Honor --

16 THE COURT: Voir dire?

17 BY MR. BELL:

18 Q Dr. Salas, what research other than looking
19 on PubMed have you done with automatism?

20 A For automatism?

21 Q Have you done any independent research
22 yourself?

23 A I'm not a researcher and so I don't go and
24 research, for instance, depression, so in terms of
25 whether I even have an interest to go and research

1 automatism, I don't but what I can tell you is that
2 it is something that we learn when we are on a
3 neurology rotation as well as when we do
4 psychiatry. Most of the times when I talk about
5 automatism it is a field of psychiatry relates to
6 someone who is asleep and we would consider it
7 something like when you're sleep walking, you get
8 hungry, except you don't know you're hungry, you
9 probably aren't hungry, you go and make a sandwich,
10 that process of sleep walking and making the
11 sandwich is an automatic behavior that fits
12 automatism.

13 Q My question is, I mean, you don't have any
14 specialized training in automatism?

15 A I'm not an automatism researcher and I don't
16 have anything that says that that is all I have
17 studied but part of what we learn is identifying
18 automatic behaviors.

19 Q I understand that but in order to be an
20 expert you have to have some specialized knowledge,
21 correct?

22 A Yes.

23 Q And you don't have specialized knowledge for
24 automatism, you have a general knowledge of
25 automatism, correct?

1 A I have specialized knowledge in terms of
2 having a medical degree that allows me to know that
3 automatism exists and how to identify it but in
4 terms of would you want to come to me if you were
5 wanting to have somebody treated specifically for
6 automatism, no, because I don't promote myself as
7 somebody who studies automatism.

8 Q But I believe you have specialized knowledge,
9 I see, in child psychology, psychiatry?

10 A Psychiatry.

11 Q You have specialized knowledge, I think you
12 did a paper on schizophrenia, is that correct, you
13 haven't done anything like that on automatism?

14 A No, sir, I haven't done any of the papers
15 that have been written on autontotism.

16 Q I mean, all you did to prepare for this was
17 to research it in PubMed?

18 A I researched it in PubMed. I researched
19 automatism and unconsciousness, which is something
20 we deal with in psychiatry and the difference
21 between unconsciousness and automatism is when you
22 link the behavior to the unconscious state.

23 Q And automatism is the person doing something
24 I would say proactively, I mean like they initiate
25 the behavior, they go up and, I mean, unconsciously

1 but they go walk and go fix a sandwich or go do
2 this, go do that unconsciously while they're in a
3 sleep state, is that correct?

4 A It is in an unconscious state that someone is
5 having a behavior. Automatism, maybe this is part
6 of the confusion, it is a word that you use in
7 medicine, whether you're a neurologist, an
8 internist, family practice, pediatrician,
9 psychiatrist, I wouldn't even know where to go and
10 find someone who is a doctor of automatism because
11 that is not a field. It is a word and a term that
12 you use relative to the nature of your specialty
13 and what you do.

14 Q Let me ask you this. Is it kin to
15 parasomnias?

16 A Parasomnia?

17 Q Yes.

18 A It's related to parasomnia in terms of would
19 you engage in an unconscious behavior when you're
20 having a sleep disturbance.

21 Q Let me ask you this. Have you dealt with any
22 patient or anybody with automatism?

23 A When I was doing my neurology rotation, yes,
24 because most often you will find that automatism is
25 outside of sleep walking, found in the most serious

1 stage if someone has, in that time period shortly
2 after seizures you would have somebody who has
3 bizzare behavior.

4 MR. BELL: Thank you, Your Honor, nothing
5 further.

6 THE COURT: Okay.

7 MR. BELL: I still object. I don't think she
8 has a specialized training or knowledge in order to
9 help define a fact on this particular subject in
10 this case.

11 THE COURT: Very well. Do you wish to make a
12 proffer?

13 MR. WISE: Yes, Your Honor. I certainly
14 understand the State's position.

15 MR. BELL: First, I will tell you, I will go
16 back to relevance, I don't see where all this is
17 relevant, still don't.

18 MR. WISE: Your Honor, I think the
19 fundamental issue in this case, I understand what
20 the State's concern is, and that is whether or not
21 this is relevant because there is no indication
22 that John did anything but I think the science is
23 that you can be, in this case, laid out, lay down
24 and your body can do things, in this case you can
25 get an erection and you can ejaculate and you don't

1 know you're doing it and your body is not
2 controlling it. So, that is why it becomes
3 relevant in the case. This is not a function of
4 somebody who is sleep walking, walks over to
5 [REDACTED] JW this is a situation where somebody,
6 [REDACTED] JW can come to John and do this to him and he
7 not know about it.

8 Now, as to her expertise, I think this issue
9 about whether or not something like that can
10 happen, that a person can have this physiological
11 response, this parasympathetic activity and not
12 know about it and it just is something that
13 happens, it is certainly relevant to this case and
14 that relevancy is the nature of this case, that
15 that is what happened here. The reason we come
16 forward with all this is because of [REDACTED] JW
17 statement about his not knowing what he was doing,
18 him not knowing what was going on. That is what
19 makes this relevant. Her knowledge is, I submit,
20 superior to the jurors' knowledge. Is she the
21 world expert, no, but certainly she has the ability
22 to provide some information and knowledge to the
23 jury that would help them in understanding the
24 issue that we are presenting here, which is how
25 this thing could have happened.

1 MR. BELL: And I still haven't heard anything
2 that says she's, that she's testified to that says
3 what he wants her to testify, that she can testify
4 to.

5 MR. WISE: She can testify, I think, and if I
6 didn't, if I can ask a thousand more questions but
7 I think what she -- let me just ask these
8 questions. Apparently I didn't.

9 THE COURT: Okay.

10 BY MR. WISE:

11 Q Okay, Dr. Salas, can a man achieve an
12 erection in an unconscious state?

13 A Yes.

14 Q Okay. If he achieves an erection in an
15 unconscious state will that wake him up?

16 A No, not necessarily.

17 Q If a man achieves an erection in an
18 unconscious state would that be a voluntary action?

19 A No. It is being achieved in an unconscious
20 state, so the erection at that point in time would
21 not be voluntary.

22 Q Would a man in an unconscious state be aware
23 of what he's doing?

24 A No, a man in an unconscious state is not
25 aware of what he is doing.

1 Q Can a man in an unconscious state engage in
2 an act of sexual intercourse?

3 A Yes.

4 Q Would he be aware he is engaging in an act of
5 sexual intercourse?

6 A When he is unconscious, no.

7 Q Okay. Once he gains the erection in an
8 unconscious state how long would it last? Does it
9 stay, does it go away?

10 A I can't testify to how long it would last but
11 --

12 Q Can he control it?

13 A No, it is not under the control of the
14 unconscious person.

15 Q Okay. All right. Can a man in an
16 unconscious state ejaculate?

17 A Yes.

18 Q Okay. Would the fact that he ejaculated,
19 would that wake him up?

20 A No. There is no link between ejaculation and
21 moving from unconsciousness to consciousness or
22 vice versa.

23 Q So, a man in an unconscious state can be made
24 erect, can engage in the act of sexual intercourse
25 and ejaculate and not know it ever happened?

1 A Yes, that is possible.

2 Q Okay. How could that happen, how could all
3 that happen and he not know it?

4 A The nature of being unconscious prevents your
5 knowledge of it happening and you can still have an
6 erection, physiologically it's possible to have an
7 erection while you're unconscious. It is also
8 possible to ejaculate while you're unconscious. It
9 is more likely to remain unconscious if you have a
10 substance such as alcohol on board that would keep
11 you in a state of unconsciousness.

12 Q And that would happen without John exercising
13 any intentional control over his body?

14 A It would happen in an involuntary state when
15 a person is unconscious.

16 Q Okay. And can a woman become pregnant from
17 intercourse that occurs in this manner?

18 A In terms of there is an unconscious man who
19 has an erection, who ejaculates, if he ejaculates
20 in close proximity to where the egg and the sperm
21 would unite, yes.

22 Q Can a woman place her vagina over his penis
23 for purposes of sexual intercourse?

24 A Yes, that could happen.

25 Q Okay, all right. Now, just a couple things.

1 You have never interviewed John?

2 A No.

3 Q You don't know anything about him?

4 A No.

5 Q All right. You have no opinion about whether
6 or not -- I withdraw that.

7 MR. WISE: That's what we have, Your Honor.

8 THE COURT: That's the key question. Okay.

9 All right. That's your proffer?

10 MR. WISE: Yes.

11 THE COURT: I gather because you didn't go to
12 the next step, that this witness is not prepared to
13 testify that most probably within a reasonable
14 degree of medical certainty that, that being more
15 likely than not that this defendant on these
16 occasions suffered from automatism, yet achieved an
17 erection and ejaculated, making this child
18 pregnant?

19 MR. WISE: That's correct.

20 THE COURT: She's not prepared to testify to
21 that?

22 MR. WISE: No.

23 THE COURT: Okay. So, what she's prepared to
24 testify, there is this thing called automatism and
25 it can happen?

1 MR. WISE: It can happen and the issue
2 related to sexual performance and those issues.

3 THE COURT: Okay.

4 MR. WISE: How it happened and what causes
5 it.

6 THE COURT: Okay. And she doesn't have any
7 information about how much alcohol and how drunk he
8 was and how passed out he was or any of that?

9 MR. WISE: No, she doesn't.

10 THE COURT: Okay.

11 MR. WISE: If I may, are you done with this
12 witness?

13 THE COURT: Yes, we are.

14 MR. WISE: All right.

15 THE COURT: You can step down, Dr. Salas.
16 Thank you so much.

17 THE WITNESS: May I be excused?

18 THE COURT: Yes, you may. Thank you for
19 being here.

20 (Witness excused).

21 MR. WISE: Your Honor, the issue in this case
22 I think at this point is obvious and that is that
23 this occurred without John knowing anything about
24 it.

25 THE COURT: No, that is not what she

1 testified.

2 MR. WISE: No, no --

3 THE COURT: If this jury wishes to speculate,
4 there is no way for the jury to do that. You see,
5 we have just spent a fair amount of time, she's the
6 doctor and she's talked about where this condition
7 can occur. She doesn't know whether he had it or
8 not. And she can't testify most probably within a
9 reasonable degree of medical certainty he was in
10 this state, based on hypothetical or otherwise.
11 So, then what you have done is you have taken a
12 very, assuming that she's an expert, okay, I'm
13 going to back up there, but assuming that she's see
14 an expert, okay, in this field, she can't testify
15 about anything with regard to the defendant.

16 MR. WISE: That's correct.

17 THE COURT: Which means all she could do is
18 invite the jury to speculate, okay? This is not
19 the kind of issue, this is not the kind of
20 condition that these jurors could ever know without
21 there being expert testimony, without the judge
22 inviting them, without just inviting them to
23 speculate.

24 Aside from the other issues that -- well, I'm
25 getting ahead, diminished capacity, there is no

1 such defense in South Carolina and it seems to me
2 that what she basically is saying is that if you
3 get real drunk you diminish your capacity and you
4 can diminish your capacity to such an extent that
5 you can have sex and not know it. And you're a
6 man.

7 Now, I'm inviting, if I was to allow her to
8 testify all I would be doing would be allowing this
9 jury to speculate and that is inappropriate. This
10 would be a highly technical, this is a medical
11 condition, a medical psychological, physiological
12 condition that this jury could not possibly make a
13 determination without expert testimony, so that is
14 assuming she is an expert.

15 Now, let me tell you what doesn't make her an
16 expert in this area of automatism. What doesn't
17 make her an expert is that she read 40 articles,
18 not articles, she didn't buy those, she read the
19 summaries which are called --

20 MS. FORD: Abstracts.

21 THE COURT: -- abstracts, which are
22 summaries. It is like, she didn't even read the
23 articles, she read the summaries, she read the,
24 what she got free on line without having to buy the
25 article. Some of them didn't apply and she was

1 real clear about that, some of them didn't even
2 apply, nobody asked how many did, but the maximum
3 number was 40. And I understand she was, she did
4 her residency in neurology at some point in her
5 career and came across this particular topic. That
6 doesn't make her an expert, and so it would be
7 inappropriate for me to let her talk about this
8 thing and then ask the jury how about speculating.
9 That would not be appropriate.

10 Now, I don't know that I even, even assuming
11 that she is an expert, all I am doing is inviting
12 this jury to speculate. She doesn't know anything
13 about this gentleman. I assume she could testify
14 from a hypothetical so it would be admissible for
15 that reason, I understand, but I don't think she is
16 an expert in this particular field, State versus
17 Jones, and I don't believe by virtue of the fact
18 that she was, that she had some information during
19 her neurology residency and that she has read a
20 maximum of 40 abstracts, which some of them did not
21 involve automatism, makes her an expert and I would
22 not allow her to testify as an expert before this
23 jury on the issue of automatism, really for two
24 reasons.

25 Number one, I don't think she's an expert but

1 even if she was an expert, she doesn't have any
2 information with regard to the defendant and she
3 can't testify most probably within a reasonable
4 degree of medical certainty anything with regard to
5 him. And that just, that invites the jury to
6 speculate.

7 MR. WISE: Might I add just one thing?

8 THE COURT: Yes.

9 MR. WISE: Your Honor, the only, well,
10 obviously if the Court is going to determine she's
11 not an expert, then that puts an end to it, but I
12 think the information is relevant because it
13 relates specifically to what has been going on in
14 this case. I understand the Court's concern and I
15 certainly understand the Court's concern about
16 speculation.

17 THE COURT: Yes.

18 MR. WISE: But there has been enough laid out
19 here to raise this issue and I think lay people
20 without some additional information can't solve it.

21 THE COURT: I agree, I absolutely think
22 you're correct and I think that they would have to
23 have appropriate expert testimony regarding, what
24 is it, automatism?

25 MR. WISE: Automatism.

1 THE COURT: And have to then take the next
2 step to relate it to this defendant. I think you
3 would have to have someone who would be able to
4 say, with regards to their exposure and their
5 knowledge and expertise, vis-a-vis automatism, and
6 they can say, "I have interviewed him, this is the
7 information, I have looked at his medical record,
8 he is alcoholic, he drinks 45 beers a day, that
9 puts him over a period of fifteen years where he
10 has dranked this amount of alcohol and it ain't
11 going to really make him black out, it is going to
12 make him semi black out, and because he is semi
13 blacked out he will know that, he might have some
14 acknowledgement that he is having sex but he
15 wouldn't have a clue with whom it would be but he
16 would not be so drunk that he would not be able to
17 have an erection and an orgasm, wouldn't even know,
18 wouldn't care who it might be and it happens to him
19 every day of his life." That is the kind of
20 testimony that this jury would have to have.

21 MR. WISE: On a related issue, I'm going to
22 submit to the Court a charge on automatism and
23 consciousness, if the Court would like. I assume
24 Mr. Bell is going to object and we can take a
25 couple minutes to talk about that now, I can give

1 the Court the authority I have in support of it.

2 THE COURT: Is it South Carolina law?

3 Probably not.

4 MR. WISE: In an odd way there is, I found
5 one reference to this condition in a dissenting
6 opinion.

7 THE COURT: I would be interested. Well,
8 unfortunately the state of the law currently in
9 South Carolina is diminished capacity is not a
10 defense. That is going to be --

11 MR. WISE: Will, Your Honor, let me --

12 THE COURT: We must be reaching the light at
13 the end.

14 MR. WISE: I'm sorry?

15 THE COURT: We must be reaching the end, you
16 don't have any more witnesses?

17 MR. WISE: No.

18 THE COURT: Okay.

19 MR. WISE: The issue of automatism, Your
20 Honor, is a defense that is used in situations
21 where otherwise criminal conduct of an individual
22 is a result of an involuntary, completely beyond
23 the individual's knowledge and control. That is
24 what we have been talking about.

25 THE COURT: Yes.

1 MR. WISE: I submit to the Court especially
2 in this case due process should allow Mr. Haynes to
3 assert that as a defense. Now, the defense has
4 been raised, Your Honor, in a number of
5 jurisdictions, North Carolina.

6 THE COURT: Yes.

7 MR. WISE: Let me have one moment.

8 THE COURT: Sure.

9 MR. WISE: I think what I will do at this
10 point, I have a significant amount of authority.

11 THE COURT: We're going to have an
12 opportunity to go over the charge. Don't worry
13 about giving me that right this minute, we're going
14 to have time to go over the charge.

15 MR. WISE: What I will do --

16 THE COURT: We're going to have a charge
17 conference.

18 MR. WISE: I will hand it up just so the
19 Court can at least look at it.

20 THE COURT: Sure, all right.

21 MR. WISE: The total charge and the authority
22 that I cite. May I approach the bench?

23 THE COURT: Absolutely.

24 MR. WISE: Hopefully --

25 THE COURT: We'll go over it, absolutely.

1 MS. FORD: Do you have copy of that for us?

2 MR. WISE: I do.

3 THE COURT: Fantastic. I'm not quite sure
4 how you deal with the problem of diminished
5 capacity but we'll talk about that tomorrow.

6 MR. WISE: Thank you.

7 THE COURT: All right. Now, here is what I
8 don't want to put you in position of, Mr. Wise. I
9 will not, I will ask tomorrow what is Mr. Haynes'
10 intentions with regard to testifying. There is
11 absolutely no reason to do that now because he may
12 have questions, he may have concerns he wants to go
13 over with you all over the balance of the evening,
14 okay?

15 MR. WISE: Thank you.

16 THE COURT: There is absolutely no reason to
17 make that inquiry until tomorrow morning, I will do
18 that in the morning.

19 MR. WISE: Thank you.

20 Can I have those cases back? I have them out
21 of order.

22 THE COURT: Sure, absolutely.

23 MR. WISE: Give me a minute.

24 THE COURT: And do you know if there is going
25 to be any rebuttal?

1 MS. FORD: Sorry, Your Honor?

2 THE COURT: Any rebuttal?

3 MS. FORD: At this time I don't believe so,
4 Your Honor. There would be possibly one matter
5 that Mr. Bell and I need to discuss.

6 THE COURT: Yes. I just wanted to get a
7 sense, not positively no but maybe. Don't tie
8 yourself down until you absolutely have to. So,
9 you all will address that this evening, that will
10 be fine.

11 MS. FORD: Yes, ma'am.

12 THE COURT: Okay. Obviously, please, please,
13 do not worry about the basic charge, you all have
14 got too much to do to worry about that. I've got
15 the basic ones. If there is anything unusual, if
16 you have any unusual ones, then certainly you want
17 to give that to me but don't give any of the normal
18 charge, you all know what is normal, customary.
19 You know what the basic ones are.

20 So, I will see you all in the a.m., okay?

21 MS. FORD: Yes.

22 THE COURT: See you in the morning.

23 (Recessed 5:30 p.m., February 27, 2013).

24 (Reconvened 10:20 a.m., February 28, 2013).

25 THE COURT: All right. The time has come, I

1 believe, for me to inquire whether or not, Mr.
2 Haynes, you intend to testify because it is my
3 understanding that there are no additional
4 witnesses to be presented by the defense.

5 Is that correct, there are no additional
6 witnesses?

7 MR. WISE: That's correct.

8 THE COURT: So, at this point, Mr. Haynes, do
9 you wish to testify or you wish not to testify?

10 THE DEFENDANT: I wish not to testify.

11 THE COURT: Very well. All right, then, I
12 would have you then say --

13 MR. WISE: We would rest.

14 THE COURT: Very well. Will there be
15 rebuttal?

16 MS. FORD: No rebuttal, Your Honor.

17 THE COURT: Very well. All right. Now, when
18 the jury comes out you would then of course rest in
19 front of the jury and in a moment I will hear your
20 motions, and for the record, I want to thank
21 counsel for going over with me in an informal
22 fashion the charge conference and I know that there
23 are objections to the charge as it exists and we
24 will make some of those charges, or charge, I'm
25 going to make that a part of our record and the

1 authority as well in support of that request.

2 And then what we'll do, we'll bring the jury
3 out and then we'll get into, if appropriate at that
4 time, we'll get into closing argument. As I
5 stated, the State will not open, the State will
6 simply close and then the opening argument will be
7 from the defendant and then argument from the
8 State, okay?

9 MR. WISE: That's correct, Your Honor.

10 THE COURT: Great. All right, I'm going to
11 sit down and I will hear motions.

12 MR. MELLARD: Your Honor, the first motion is
13 we would renew our motion for directed verdict. We
14 do not believe the State has proven the elements of
15 the incestuous conduct required.

16 THE COURT: Thank you so much. I simply must
17 determine whether or not there is evidence on each
18 element from which the jury could determine guilt,
19 and there is evidence on each element from which
20 they could determine guilt. I'm aware of that. I
21 deny the motion and note your exception, all right?

22 MR. WISE: Regarding the jury charge --

23 THE COURT: Yes.

24 MR. WISE: Realtive to this case, we have the
25 proposed charge, diminished capacity, we would ask

1 the Court not to instruct the jury on these issues,
2 diminished capacity issue. We don't believe it is
3 an issue in the case and we think to raise it as an
4 issue and then to say it doesn't apply, that would
5 give the jury kind of an improper vision of what
6 this case is.

7 Also as to the issue of involuntary
8 intoxication, we don't believe, just based on the
9 evidence that has come into this case, we don't
10 think it would be necessary or appropriate.

11 THE COURT: Very well. Now, what I want to
12 do is be sure you make the charge, the
13 unconsciousness, make that a court's exhibit.

14 MR. WISE: Okay.

15 THE COURT: We will make that a court
16 exhibit. This particular charge was requested,
17 there was, I would like to place with it the
18 authority which was given to the Court from around
19 the country and because of our state of the law as
20 it regards diminished capacity and the need for --
21 let me just say this. Based on the evidence in
22 this case I have made a determination that I do not
23 believe that that is an appropriate charge.

24 Now, I'm going to try to remember to remind
25 you that at the conclusion of the charge that you

1 just raise it again because as I understand the
2 case law that is when you're actually supposed to
3 raise objections to the charge, once the charge is
4 given. I'm going to put myself a big note to
5 remind you to do that because it is my, because you
6 all have helped me, I don't want you to be
7 prejudiced by the fact that you're raising it now
8 rather than at the conclusion of the charge because
9 I don't think that's fair because you all have
10 helped me by having the informal charge conference
11 and I don't think that, I don't think that would be
12 fair, so I'm going to make a big note. When I ask
13 whether there are any exceptions, I know I will ask
14 that but I will also remind myself to remind you to
15 renew your objection.

16 MR. WISE: Thank you. We appreciate that, we
17 do.

18 THE COURT: Absolutely.

19 MR. WISE: One more thing. I did a quick
20 survey of law all over the United States and I just
21 wanted to kind of lay out the states that have
22 already accepted that kind of charge and they
23 include North Carolina, which I think the Court is
24 aware of, Georgia, West Virginia, Texas, Indiana,
25 Montana, Wyoming, Washington, Delaware and the

1 United States District Court for Maryland.

2 THE COURT: Thank you so kindly.

3 MR. WISE: And I have that authority if the
4 Court would be --

5 THE COURT: I think that I have cases, I
6 believe, from each of those jurisdictions but let's
7 check and make sure. I know I saw Wyoming and
8 North Carolina.

9 MR. WISE: One South Carolina case that dealt
10 with it.

11 THE COURT: Yes, a dissent.

12 MR. WISE: Yes.

13 THE COURT: And then I think you may want to,
14 just so our record is complete, just put the other
15 jurisdictions, if you want to put that case law,
16 make it a part of a court's exhibit.

17 MR. WISE: I will.

18 THE COURT: Okay, thank you.

19 Now, anything else before we bring the jury
20 out?

21 MS. FORD: Nothing from the State.

22 THE COURT: The defense?

23 MR. WISE: No, Your Honor, thank you.

24 THE COURT: I want to be sure that the
25 defense has rested off the record, motions have

1 been made and ruled upon and you know the defendant
2 is going to rest on the record, I would not want
3 the defendant any way prejudiced by the fact that
4 the motions were made off the record. We have done
5 that out of consideration for this jury so we would
6 not bring them in and then send them right back
7 out, so I want the record to reflect that as well.

8 Let's have the jury.

9 (The jury returned to the courtroom).

10 THE COURT: Good morning, ladies and
11 gentlemen. I apologize for keeping you in your
12 jury room this morning but there were some matters
13 we needed to tend to but we are certainly now ready
14 to proceed.

15 I call on the defense, call your first
16 witness.

17 MR. WISE: The defense would rest at this
18 time.

19 THE COURT: Very well. Any rebuttal?

20 MS. FORD: No rebuttal, Your Honor.

21 THE COURT: Very well. You have now heard
22 the witnesses and received the evidence that you
23 will in this case. What remains for us now are the
24 arguments of counsel and my charge or instruction
25 on the law. This is how we're going to be

1 proceeding. Just in a few moments you're going to
2 be hearing from Mr. Wise on behalf of the defendant
3 Mr. Haynes in his closing argument and then you're
4 going to hear from Miss Ford in her closing
5 argument on behalf of the State. Once these
6 arguments are finished we're going to have a very
7 short break, but I will explain to you when we
8 reach that point and then you are going to, at that
9 point then I'm going to give you the charge or the
10 instruction on the law, there will be another very
11 short break that I'm going to explain to you at
12 that point, then you're going to receive this case
13 for your deliberations.

14 Ladies and gentlemen, at this time I ask that
15 you please draw close as you listen to the closing
16 arguments of counsel.

17 Mr. Wise.

18 MR. WISE: Thank you, Your Honor, if it
19 please the Court.

20 THE COURT: Yes, sir.

21 MR. WISE: Obviously the issue in this case
22 is not a sexual relationship between John Haynes
23 and JW Mr. Mellerd and I have been
24 practicing together for a little while now and
25 other people have said things about us but one of

1 the things they have never said about us is that we
2 were stupid. We came into this court knowing there
3 was a sexual relationship but why we're here is
4 because, as Mr. Mellard said in his opening, the
5 issue in this case is that the State has to prove
6 an act and they have to prove intent. That is why
7 we're here.

8 The problem is that they can't prove that
9 John did anything, the State cannot prove that John
10 intended to do anything. On the facts of this case
11 as they were laid out from that witness stand they
12 simply can't.

13 [JW] has said what has happened here. She
14 has told you about how those children were
15 conceived. It is not my argument, this is not some
16 theory. You have heard the words that she has
17 talked about in this situation, and what has she
18 told you? She said she wanted a baby, all her
19 friends had babies, she wanted one also. Her
20 friend Grandon would not give her a baby, she tried
21 with Deondre, and then she decided on John. She
22 had sex with him because she loved him and wanted
23 to have his baby. Her words, not my words. She
24 said if John is the father it's no one's business.
25 John, this is what [JW] said, John did not know

1 anything, he did not do anything because he was
2 drunk. That is what she said. What she said, John
3 was entirely unaware he was having sex. Her words,
4 she took advantage of John when he was intoxicated.

5 That's not the first time this has happened,
6 it is just like what happened in the Old Testament
7 with Lott and his daughter, what happened here.
8 She then lied, [JW] said she then lied and said
9 John raped her because it is what everyone wanted
10 to hear and that she thought she would be in
11 trouble if she admitted she seduced her
12 step-father.

13 That's what she said because that's what
14 happened. Who would say such a thing, who would
15 make up that story if it weren't true? How could
16 something like this happen? Here is what we know.
17 John works, he works hard, he comes home, he
18 drinks, he goes to sleep, passes out, whatever the
19 word you want to call it, but there comes a point
20 when he is out and that's when [JW] takes
21 advantage of him.

22 I submit to you she didn't think she was
23 going to be found out. She did this and assumed no
24 one would know, including John, because as she said
25 it was no one's business, but the interesting thing

1 about this case is she was almost right. Remember
2 when [Minor Child 1] was born nobody knew, nobody asked, she
3 accomplished what she wanted to accomplish. She
4 has two beautiful babies. Everyone had babies, she
5 wanted a baby and now she has a baby.

6 John did not do anything wrong. How do we
7 know that? Because there is no indication at any
8 point from any witness in this trial, any witness,
9 that he has ever remotely indicated any knowledge
10 of this. DSS testified, Gail testified, no one
11 ever said he knew anything about what was going on.

12 [JW] said things that were not true. Now,
13 the State might say to you that she lied because
14 she was afraid of John. I understand that but that
15 just doesn't make sense. How do we know? Because
16 in December, the middle of December, 2009, John was
17 out of the house and thereafter she had no reason
18 to fear him but in spite of that, in spite of the
19 fact he was one place and she was another she
20 continued to say John was not the father.
21 Obviously at that point John posed no threat to
22 her, so her fear of John would not cause her to
23 make up something.

24 So, her reason, she was afraid of him, that
25 is why she made up this story about what she did to

1 him just doesn't make sense. The State might say
2 that she made up this story because she was trying
3 to protect John, trying to save him or help him.
4 That doesn't make any sense when you look at the
5 evidence. To accept her story wholehearted about
6 what she testified to happened here, you have to
7 believe that she was a victim of an attack by John
8 but then made up all this stuff to save him, to
9 help him, she was trying to help the man she said
10 attacked her. Indeed, that she tried to get him
11 out of jail so the two of them could go to a picnic
12 together.

13 Now, that's incredible. Certainly if what
14 she said John did was true she would not want to
15 take him to a picnic. She can't be deathly afraid
16 of John because he threatened to kill her and then
17 lied to get him out of jail so they can go have
18 sex. She wanted to attend that picnic and she
19 wanted to attend that picnic with him because she
20 was not afraid of him and in fact she was still in
21 love with him and I think that's what Miss Clark
22 told you.

23 There is an interesting part about this case
24 and that is the fact there is no corroboration, and
25 I don't mean about the children, we know they have

1 two children, that's obvious, but with the force
2 and the threat that JW said she endured, even
3 after John was away and out of the house JW
4 never told anyone, she never mentioned this to
5 anybody, she never told her mother, her friend,
6 cousin, classmate, no one, and I submit she would
7 have told someone if it were true. What is the
8 likelihood that such a thing can happen and she did
9 not mention it? The reason she never told anybody
10 is because she knew what she had done and she was
11 not going to reveal it. She knew what happened
12 here.

13 So, the question, the thing I have thought
14 about is why would she make this up, why would this
15 happen? And it occurred to me this. JW I
16 don't doubt for a minute JW is a good parent,
17 she has two kids, two children, she wants to
18 protect them from physical harm, from emotional
19 harm, she said that, but the only way she can
20 protect them from emotional harm is to maintain the
21 position she was the victim. She can't go through
22 life saying she did this, she can't because she
23 cannot at some point in the future look those
24 children in the eye and say this is how you got
25 here, this is what I did, I love you but this is

1 what happened. She can't do that. It is better
2 for her as a loving parent and better for those
3 children that she go through life as the victim and
4 not the victimizer.

5 Now, the problem I think is going to be
6 whether or not you believe [JW] could do
7 something like this, does she have the ability to
8 do this? There are some things you can't get away
9 from about [JW] and this is just how the case
10 developed. [JW] has the ability to look you
11 right in the eye and lie to you. She does it and
12 no one can tell, she has done it consistently and I
13 submit that she did it here when I asked her if she
14 remembered saying that she had sex with her
15 step-father and she could not remember. Now, you
16 can say, "I would never say something like that,"
17 you can say lots of things but the thing you cannot
18 forget is whether or not you ever said that. You
19 know whether or not you ever said you had sex with
20 your step-father. Most people would say, "I never
21 said that, I would never say that." Remember, she
22 looked her mother right in the eye and lied to her,
23 she looked her grandmother in the eye and lied to
24 her, she looked Eula Clark in the eye and lied to
25 her and no one could tell. And not just little

1 white lies, little inconsequential lies, but lies
2 to manipulate. No matter what the consequence was,
3 she was willing to let Miss Clark go looking for
4 somebody named Marcus House, just a name she made
5 up. All the effort, all the work didn't matter.

6 She was willing to let Deondre be declared
7 the father of **Minor Child 1** even though she knew he wasn't,
8 she was willing to do that to him. Why was she
9 willing to do that to him? Because he was, in her
10 words, an easy target, and you know who also was an
11 easy target? John Haynes is an easy target, and
12 you're easy targets. You can't get away from the
13 fact that **JW** says things to get what she
14 wants. She has told you that. And in evaluating
15 her words and her acts you have to remember that.
16 Even though she is young, she has that ability, I
17 understand it is difficult to accept, it is
18 difficult to accept a young woman would do such a
19 thing but the thing we know is that she is, she's
20 capable of that.

21 As Dr. Harari said, adolescents like **JW**
22 like attention and stimulation and they engage in
23 behavior that is immature, exhibitionistic, self
24 dramatizing and probably most significant for this
25 case seductive. But the thing I think that Dr.

1 Harari said that described [JW] to a T is this.
2 She has an arrogant assumption that the rules of
3 society do not apply to her, rules like having sex
4 with your step-father when he is not aware of it.

5 An interesting thing about [JW] and I
6 think you have to consider in evaluating this is, I
7 asked her mother if she noticed any difference, she
8 said no. How could a girl, a young lady, whatever
9 happened, do all this and her mother not notice
10 anything about it? She never let on, never
11 changed. I submit to you she has a lot more
12 control than we might think. She was able to hide
13 her actions and to control her emotions related to
14 those actions.

15 Now, I'm not trying to be mean spirited
16 toward [JW] but you have to evaluate these
17 things in looking at this case. There are just
18 some things about her that there is just no doubt,
19 not because I say so, but the others said so. And
20 then there is the one little thing that troubles me
21 about this and that is the time when she comes to
22 Miss Clark and tries to lay it all out. She tells
23 her, Miss Clark tells her that no one is going
24 to believe her, so she is now caught, she can't get
25 away and here we are.

1 This is a bad situation, it is time to put an
2 end to it. We all agree that something happened
3 that should not have happened, no doubt about that,
4 we're not fighting about that, but it was not
5 John's fault. We can't correct what happened, you
6 can't correct what happened by punishing John, by
7 convicting John, especially when [JW] has laid
8 out the truth of what happened for you, she's laid
9 it out. It is time to find John not guilty and let
10 John and [JW] go on and try to deal with this
11 situation as best they can.

12 Thank you.

13 THE COURT: Miss Ford.

14 MS. FORD: Thank you, Your Honor, if it
15 please the Court.

16 Home is the place where our kids grow up,
17 where they should be protected, secure, safe. For
18 [JW] [REDACTED] home wasn't that place, home was
19 the place where one of the people who are supposed
20 to protect her, keep her safe from harm and danger,
21 is the one that was actually committing that harm,
22 was the person who molested her for years, would
23 get in the bathtub with her to show her how to
24 wash. Eventually moving on to raping her and
25 impregnating her not once, but twice. And that

1 person was John Haynes.

2 Ladies and gentlemen, John Haynes is charged
3 on two different indictments and Mr. Bell laid this
4 out for you during his opening but I want to go
5 back over it. He is charged with incest. And
6 incest, under South Carolina law, is any person who
7 shall have carnal intercourse, sexual intercourse,
8 with each other within the following degrees of
9 relationship. A man, and it lists a number of
10 relationships. Here we're concerned with his
11 wife's daughter. So, it is illegal for a man to
12 have sexual intercourse with his wife's daughter.

13 What testimony did you hear? Gail Haynes
14 testified that she married John Haynes in 1997 here
15 in Calhoun County, her daughter JW testified
16 on a number of occasions that John Haynes forced
17 her to have sexual intercourse. But do we just
18 have their testimony? No. We have Minor Child 1
19 and Minor Child 2.

20 Amanda Webb from SLED testified that John
21 Haynes is the father of these two children. In
22 fact Miss Eula Clark testified that DSS did their
23 own DNA analysis and they also found, 99.99 percent
24 certainty, that John Haynes is the father of Minor Child 1
25 Minor Child 1 and Minor Child 2. Ladies and

1 gentlemen, based on the evidence that was presented
2 to you it is the State's position that John Haynes
3 is guilty of incest.

4 But John Haynes is also charged with criminal
5 sexual conduct with a minor in the second degree.
6 And the law lays out that a person is guilty of
7 criminal sexual conduct with a minor in the second
8 degree, the first part deals with a victim between
9 fourteen and eleven years of age, that doesn't
10 apply here. But we look to subsection two, that if
11 the actor engages in a sexual battery with a victim
12 who is at least fourteen years of age but less than
13 sixteen years of age and the actor, the actor in
14 this situation is a person accused of criminal
15 sexual conduct, being John Haynes, and the actor is
16 in a position of familial, custodial or official
17 authority to coerce the victim to submit or is
18 older than the victim. The statute goes on dealing
19 with individuals who are charged with this, if they
20 are eighteen years of age or younger, and that
21 doesn't apply. So we're only focused right here.

22 Let's look at the testimony. What did you
23 hear from the witness stand? JW [REDACTED]
24 testified that she was about fourteen years old
25 when John Haynes began forcing her to have sexual

1 intercourse with him. She was impregnated at
2 fifteen, had her first baby Minor Child 1 when she was
3 fifteen years old. John Haynes was her
4 step-father, married to her mother. Certainly a
5 person of familial authority over her, she had
6 known him all her life, she said, thought of him as
7 her father. She thought of that man as her father,
8 yet he forced her to have sexual intercourse on at
9 least two occasions that we can prove.

10 Ladies and gentlemen, Mr. Bell stated during
11 his opening that the burden of proof in this case
12 is not beyond any doubt but it is beyond a
13 reasonable doubt. I submit to you that it is not
14 your job as jurors to look for reasonable doubt.
15 We ask that you take the testimony as it has been
16 presented to you to make your determination and,
17 ladies and gentlemen, I submit to you that the
18 State has overcome the burden, overcome the burden
19 of proof and proven that Mr. Haynes is guilty of
20 criminal sexual conduct with a minor in the second
21 degree.

22 Now, Mr. Wise just came up here and he says,
23 you know, he and Mr. Mellard aren't stupid, they
24 knew there were two children, and I agree, they're
25 not stupid men, we have known there are two

1 children and the father of those children is John
2 Haynes, couldn't really argue with that. So, what
3 have they done? They have placed the blame on
4 everyone except where it belongs, which is on the
5 shoulders of John Haynes. They spent all day
6 yesterday and this morning calling JW [REDACTED]
7 a liar. They called her a liar. The defense wants
8 you to believe that everything was JW [REDACTED]
9 JW [REDACTED] fault, she wanted a baby, she wanted to
10 have sex with John Haynes who she testified she
11 thought of as her father. They want you to believe
12 she seduced him when he was drinking alcohol. They
13 want you to believe that John Haynes was entirely
14 unaware that he was having sex with his daughter,
15 entirely unaware, that JW [REDACTED] became
16 pregnant with John Haynes' child not once but twice
17 without him even knowing it. They call her a liar
18 but they want you to believe what she said about
19 her seducing him, everything else is a lie except
20 that one part that takes the blame away from where
21 it belonged, which is on their client, which is on
22 John Haynes.

23 Judge Goodstein in her opening remarks
24 reminded you all to bring your common sense and
25 your life experience with you to your job this week

1 as jurors. I submit to you ladies and gentlemen by
2 applying common sense and your general life
3 experience what the defense is proposing is
4 ludicrous.

5 Dr. Harari testified during his evaluation
6 with [JW] that she claimed that she seduced her
7 step-father. But what else did Dr. Harari testify
8 to? He testified that he didn't believe her. He
9 testified that based on the tests he gave her
10 during that evaluation he found [JW] to be
11 minimizing what happened, to be protecting John
12 Haynes, and he further stated that with her IQ
13 level he didn't believe she was capable of coming
14 up with a plan, formulating a plan to seduce her
15 step-father and ultimately becoming pregnant by him
16 twice by her design. Dr. Harari testified despite
17 what the defense wants you to believe that [JW]
18 said, that she seduced him, despite her saying that
19 to Dr. Harari, he didn't believe her and he
20 diagnosed her as a child victim of sexual abuse.
21 It punches holes in the assertion they want you to
22 believe that [JW] [REDACTED] isn't the victim but
23 the real victim is John Haynes?

24 Miss Clark from DSS testified that [JW]
25 originally told her that the father of her children

1 was Deondre Goodwine. It wasn't really a stretch
2 because they were friends, people assumed. But
3 ultimately through the DSS investigation he was
4 excluded as the father. Then [JW] needed a
5 name, Marcus House, a made up name, trying to keep
6 DSS from honing in on who really was at fault, John
7 Haynes.

8 But ultimately DSS tested John Haynes and
9 paternity was established with 99.99 percent
10 certainty according to Miss Clark's testimony, that
11 he fathered [JW] children. Then [JW]
12 according to what Miss Clark testified to, changed
13 again and said it was her fault, she came on to
14 John Haynes, she seduced him. But what did Miss
15 Clark testify to? She didn't believe her. Miss
16 Clark also testified that [JW] was worried, she
17 was concerned about what happens to people in jail
18 who molest and hurt children, she heard that they
19 get hurt in jail, they get beaten in jail.

20 Ladies and gentlemen, I submit that [JW]
21 [JW] was doing everything she could to protect
22 John Haynes, she was willing to lie, she was
23 willing to blame everyone else, including herself,
24 but John Haynes. Why? She testified that she was
25 scared of him. She testified that he threatened

1 her. You heard that he slapped her, he hit her in
2 her face, but then [JW] testified he said, "No
3 one is going to believe you and if you tell what
4 happened," he said he was going to kill her and her
5 family, and repeatedly yesterday [JW] said, "I
6 did what I had to do to protect my family, to
7 protect myself and my family." John Haynes went so
8 far as to show [JW] [REDACTED] the gun he would
9 use if she told the truth, that John Haynes had
10 molested her, raped her repeatedly, impregnated her
11 twice, he was going to hurt her or her kids, her
12 family.

13 And Mr. Wise stated by December, 2009, he was
14 out of the house, he wasn't a threat. Ladies and
15 gentlemen, you don't need to live with someone to
16 kill them, to hurt them, to shoot them with a gun.
17 To say that should have taken away the fear that
18 [JW] [REDACTED] had that this man would kill her
19 if she told the truth about what happened, I submit
20 that it makes no difference.

21 Let's also remember that we're talking about
22 a young girl who had just had her second baby by
23 the man she considered to be her father, a man who
24 [JW] testified, in fact her mother Gail Haynes
25 testified would take baths with her when she was

1 twelve or thirteen years old, a man who molested
2 JW for years, touching her breasts, her
3 genitals. John Haynes' intent was clear, he was
4 groping her, a man who ultimately forced himself on
5 JW, forcing her to have sexual
6 intercourse, impregnating her twice.

7 Ladies and gentlemen, John Haynes is not the
8 innocent victim in this case, he is not the
9 innocent victim of JW's seduction that
10 the defense wants you to believe. This man
11 violated JW repeatedly in her home
12 where she should have been safe and protected, by
13 the very person who was supposed to protect her.

14 Ladies and gentlemen, the evidence presented,
15 the evidence you heard proves that John Haynes
16 committed the crimes with which he is charged and
17 when you go to the jury room to deliberate I ask
18 you to consider all the evidence and I ask that you
19 hold John Haynes responsible for what he did, hold
20 him responsible for what he did and find him guilty
21 of incest and criminal sexual conduct with a minor
22 in the second degree.

23 Thank you.

24 THE COURT: Thank you, Miss Ford. That first
25 break I was talking about, let's stand up, that's

1 it.

2 Ladies and gentlemen, why I do that, I need
3 you to pay attention to me, so I want the oxygen to
4 move.

5 If there is anyone who needs to take a
6 comfort break raise their hand because I'm going to
7 need your undivided attention for probably about, I
8 don't know, 20, 25 minutes. Anybody? Don't be
9 shy. Very well. We'll move around a minute and
10 when you're ready to be seated be seated.

11 Ladies and gentlemen of our jury you have
12 heard the evidence and the arguments of both sides.
13 It is now my duty to explain to you the law which
14 is applicable to this case.

15 Ladies and gentlemen, in this case there are
16 two indictments. One of the indictments charges
17 the defendant who is Mr. John Edward Haynes with
18 the offense of criminal sexual conduct with a minor
19 in the second degree. The other indictment charges
20 the defendant Mr. John Edward Haynes with incest.

21 Ladies and gentlemen, I remind you the fact
22 that the defendant was arrested, charged and
23 indicted in this case is not evidence in this case
24 and cannot be considered by you as evidence of
25 guilt in this case nor does it create any

1 presumption or inference of guilt.

2 Ladies and gentlemen, these indictments are
3 simply the formal written instruments which contain
4 the charges made against the defendant. These
5 indictments are the formal documents by which this
6 case is brought into this Court.

7 Each indictment charges a separate and
8 distinct offense. You must decide each indictment
9 separately on the evidence and the law applicable
10 to it, uninfluenced by your decision as to any
11 other indictment. The defendant may be convicted
12 or acquitted on any or all of the offenses charged.
13 You will be asked to write a separate verdict of
14 guilty or not guilty for each indictment.

15 Ladies and gentlemen, indictment
16 2010-GS-09-70 alleges in part that in Calhoun
17 County, South Carolina on or about January the 1st,
18 2008, that the defendant John Edward Haynes did
19 engage in a sexual battery upon a minor who was at
20 least fourteen years of age but less than sixteen
21 years of age and the defendant was more than two
22 years older than the victim and in a position of
23 familial, custodial or official authority to coerce
24 the victim and that the defendant did have sexual
25 intercourse with the victim JW [REDACTED], this

1 offense in violation of Section 16-3-655 of the
2 South Carolina Code of Laws as amended.

3 Ladies and gentlemen, indictment
4 2010-GS-09-069, alleges that in Calhoun County,
5 South Carolina on or about January the 1st, 2008,
6 through March the 1st, 2009, defendant John Edward
7 Haynes did engage in incest in that the defendant
8 did have sexual intercourse with his wife's
9 daughter **JW** **[REDACTED]**, this offense in
10 violation of Section 16-50-20 of the South Carolina
11 Code of Laws as amended.

12 Now, ladies and gentlemen, the defendant in
13 this case has pled not guilty to each of these two
14 indictments. That plea places the burden on the
15 State to prove the defendant guilty. A person
16 charged with committing a crime in South Carolina,
17 a criminal offense, is never required to prove
18 himself innocent. But a pause here. It's
19 something if you can't read your own handwriting,
20 but the incest statute, just to be clear with you,
21 is 16-15-20. We will go over that in just a little
22 bit.

23 Ladies and gentlemen, I charge you that it is
24 an important rule of the law that the defendant in
25 a criminal trial, no matter what the seriousness of

1 the charge or the charges may be, will always be
2 presumed to be innocent of the crime for which the
3 indictment or the indictments were issued unless
4 guilt has been proven by evidence satisfying you of
5 that guilt beyond a reasonable doubt. This
6 presumption of innocence does not end when you
7 begin your deliberations but it accompanies the
8 defendant throughout the trial until you should
9 reach a verdict of guilt based on evidence
10 satisfying you of that guilt beyond a reasonable
11 doubt.

12 Presumption of innocence is like a robe of
13 righteousness placed about the shoulders of the
14 defendant which remains with him until it has been
15 stripped from him by evidence satisfying you of the
16 defendant's guilt beyond a reasonable doubt. The
17 presumption of innocence is not a mere legal
18 theory, it is not just a legal phrase. It is a
19 substantial right to which every defendant is
20 entitled unless you the jury are satisfied from the
21 evidence of the defendant's guilt beyond a
22 reasonable doubt.

23 What, then, is reasonable doubt in the law?
24 A reasonable doubt is the kind of doubt that would
25 cause a reasonable person to hesitate to act. The

1 State has the burden of proving the defendant
2 guilty beyond a reasonable doubt. Some of you may
3 have served as jurors in civil cases where you were
4 told that it is only necessary to prove that a fact
5 is more likely true than not true, such as by the
6 greater weight or the preponderance of the
7 evidence. In criminal cases the State's proof must
8 be more powerful than that, it must be beyond a
9 reasonable doubt. Proof beyond a reasonable doubt
10 is proof that leaves you firmly convinced of the
11 defendant's guilt.

12 There are very few things that we know in
13 this world with absolute certainty and in criminal
14 cases the law does not require proof that overcomes
15 every possible doubt. If based on your
16 consideration of the evidence you are firmly
17 convinced that the defendant is guilty of the crime
18 or the crimes charged you must find the defendant
19 guilty. If on the other hand you think there is a
20 real possibility that the defendant is not guilty
21 you must give the defendant the benefit of the
22 doubt and find him not guilty. Of course again you
23 do this analysis for each indictment separately and
24 independently one from the other.

25 Ladies and gentlemen, I remind you that

1 during this trial you and I have certain duties to
2 perform. As the trial judge it is my
3 responsibility to preside over the trial of this
4 case and I also have the duty to rule on the
5 admissibility of the evidence which has been
6 offered during the trial. You are to consider only
7 the competent evidence before you. If there was
8 any testimony ordered stricken from the record in
9 this case during this trial you must disregard that
10 testimony or that evidence. You are to consider
11 only the testimony which has been presented from
12 this witness stand and any exhibits which have been
13 made a part of the record in this case.

14 Ladies and gentlemen, I have the additional
15 duty to charge you regarding the law applicable to
16 this case. As the presiding Judge I am the sole
17 judge of the law in the case and it is your duty as
18 jurors to accept and apply the law as I now state
19 it to you. If you already have any ideas as to
20 what the law is or what it should be and it does
21 not agree with what I tell you the law is you must
22 by your oath abandon your preconceived idea because
23 you are sworn to accept and apply the law exactly
24 as I state it to you.

25 Now, in every case tried in this court before

1 a jury the jury becomes the sole, the exclusive,
2 the only finders of fact in a case. A trial judge
3 cannot intimate, state, comment on or make any
4 statement to a trial jury about the facts in a
5 case. You are not to infer from what I may have
6 said during the progress of this trial in ruling on
7 the admissibility of evidence or otherwise or
8 anything that I say now during the course of this
9 instruction to you that I have any opinion
10 regarding the facts in this case. The law does not
11 allow me to have an opinion about the facts in this
12 case. I have no opinion regarding the facts in
13 this case. This is a matter solely for you the
14 jury to determine. As jurors it is your duty to
15 determine the effect, the value, the weight and the
16 truth of the evidence presented during this trial.

17 Now, ladies and gentlemen, there generally
18 are two types of evidence presented during a trial.
19 One is called direct evidence and the other
20 circumstantial evidence. Direct evidence is the
21 testimony of a person who claims to have actual
22 knowledge of a fact, such as an eyewitness. It is
23 evidence which immediately establishes the main
24 fact to be proved. Circumstantial evidence is
25 proof of a chain of facts and circumstances

1 indicating the existence of a fact. It is evidence
2 which immediately establishes collateral facts from
3 which the main fact may be inferred.
4 Circumstantial evidence is based on inference and
5 not on personal knowledge or observation.

6 Let me give you an example. It's February,
7 let's pretend like it's cold outside, real cold
8 outside and let's pretend that snow is forecast and
9 let's further pretend that we walk outside and lo
10 and behold we get hit smack in the face with snow.
11 We are truly an eyewitness to the fact that it is
12 snowing, that is direct evidence.

13 Now let me shift on you a little bit. We'll
14 still let it be February, we'll still pretend it is
15 very cold outside and we'll further pretend that
16 snow is forecast but let's put it in the nighttime
17 and we will look outside just before we go to bed
18 and all we see is our poor old crunchy brown grass.
19 We go to sleep, awake in the next morning and lo
20 and behold snow covers everything.

21 Here is what we know. Here is what we can
22 testify to. Here are the collateral facts. It is
23 February, it is cold outside, when we went to bed
24 last night snow was forecast but all we saw was
25 brown crunchy grass but yet when we awake this

1 morning snow covered everything. Those are the
2 collateral facts, those are the facts that we know.
3 But through inference we also know the fact that it
4 snowed last night, we didn't see it snow last night
5 but we know it snowed last night because of the
6 collateral facts that we do know and through
7 inference we know that it snowed last night,
8 although we didn't see it snow. That is
9 circumstantial evidence.

10 The law makes absolutely no distinction
11 between the weight or value to be given to either
12 direct or circumstantial evidence nor is a greater
13 degree of certainty required of circumstantial
14 evidence than of direct evidence. You should weigh
15 all of the evidence in the case and after weighing
16 all the evidence if you're not convinced of the
17 guilt of the defendant beyond a reasonable doubt
18 you must find the defendant not guilty. Once
19 again, you do this analysis for each indictment.

20 Now, necessarily you must determine the
21 credibility of the witnesses who have testified in
22 this case. Okay, what does credibility mean?
23 Well, credibility, simply it means believability.
24 It becomes your duty as jurors to analyze and to
25 evaluate the evidence and determine which evidence

1 convinces you of its truth. In determining the
2 believability of witnesses who have testified in
3 this case, and I am going to go over these
4 examples, this is not an exhaustive list and you
5 didn't check your common sense at the courthouse
6 door, these are simply examples.

7 In determining the believability of witnesses
8 who have testified in this case you may believe one
9 witness over several witnesses or several witnesses
10 over one witness, you can believe part of the
11 testimony of a witness and reject the remaining
12 part of the testimony of that same witness. You
13 may believe the testimony of a witness in its
14 entirety or you can reject the testimony of a
15 witness in its entirety. You may consider whether
16 any witness has exhibited to you any interest or
17 bias or prejudice or other motive in this case and
18 you may consider the appearance and the manner of
19 the witness while on the witness stand.

20 Now, ladies and gentlemen, during the course
21 of this trial you have heard testimony of a witness
22 deemed to be an expert witness. Our rules of
23 evidence ordinarily do not permit witnesses to
24 testify regarding their opinions or conclusions.
25 There is of course an exception to this rule and

1 that is for witnesses who are expert witnesses. An
2 expert witness is a witness who by virtue of their
3 education, experience, profession have become an
4 expert in some art or science or their profession
5 or calling and these individuals, these witnesses
6 may state their opinions as to relevant material
7 matter in which the witness claims to be an expert
8 and those witnesses, those expert witnesses may
9 also state the reasons for their opinion.

10 Ladies and gentlemen, you should consider any
11 expert opinion received in evidence in this case
12 and like any other evidence you give it the weight
13 you think it deserves. If you decide that the
14 opinion of an expert witness is not based on
15 sufficient education and experience or if you
16 conclude that the reasons given in support of the
17 opinion are not sound or that the opinion is
18 outweighed by other evidence you may disregard the
19 opinion in its entirety. An expert witness'
20 testimony is to be given no greater weight than
21 that of other witnesses simply because the witness
22 is an expert. And further, you are not required to
23 accept an expert's opinion even though it is not
24 contradicted.

25 Now, ladies and gentlemen, I instruct you and

1 I emphasize that the fact that the defendant in
2 this case, that the fact that Mr. Haynes did not
3 testify is not, is not a factor to be considered by
4 you in any way in your deliberations and in your
5 consideration on the question of whether the
6 defendant is guilty or not guilty. In fact, the
7 fact that Mr. Haynes did not testify must not be
8 considered by you in any manner whatsoever.

9 Ladies and gentlemen, a defendant has the
10 constitutional right to remain silent and the
11 assertion of this right must not be considered by
12 you in your deliberations. I repeat, under your
13 oath you are to draw no conclusion whatsoever from
14 the fact that the defendant in this case did not
15 testify. The fact that this defendant did not
16 testify, ladies and gentlemen, should not even be
17 discussed in your jury room. The burden of proof,
18 as I have stated it to you, is and remains on the
19 State. The defendant is not required to prove
20 himself not guilty. The burden of proof is and
21 remains on the State to prove guilt beyond a
22 reasonable doubt.

23 Now, ladies and gentlemen, in order to
24 establish criminal liability criminal intent is
25 required. For example, the mental state required

1 to be proven by the State for a particular crime
2 might be purpose, intent, knowledge, recklessness,
3 criminal negligence, for example. Criminal intent
4 must be proved by the State beyond a reasonable
5 doubt. Criminal intent is always a matter that
6 must be determined by the jury from the
7 circumstances surrounding the situation because,
8 you see, there is no way to prove intent to a
9 mathematical certainty, there is no way that
10 medical science can dissect a person's brain and
11 determine what the person had in mind, so the law
12 says that criminal intent may be inferred from the
13 circumstances shown to have existed. This is how
14 you make a determination of whether or not the
15 intent, the element requiring intent was proven.

16 It is not necessary to establish intent by
17 direct and positive evidence but intent may be
18 established by inference in the same way as any
19 other fact, by taking into consideration the acts
20 of the parties and all the facts and circumstances
21 of the case.

22 Criminal intent is a mental state, a
23 conscious wrongdoing. It is up to you to determine
24 what the defendant intended to do based on the
25 circumstances shown to have existed. Criminal

1 intent can arise from action or failure to act, it
2 can arise from circumstances considered by the law
3 to be the equivalent of criminal intent.

4 Ladies and gentlemen, the intent, the
5 specific intent, we will talk about when I give you
6 the definition of the offense.

7 Now, ladies and gentlemen, there has been
8 evidence presented that one or more witnesses may
9 have made prior statements which are not consistent
10 with the witness' present testimony. You may use
11 this evidence to decide whether to believe the
12 witness or witnesses. You may also use evidence of
13 the earlier contradictory statements to determine
14 the truth of those statements. It is up to you to
15 decide whether to believe the earlier statements or
16 the testimony given at trial. If a witness has
17 shown to knowingly testify untruthfully concerning
18 any material matter you may consider this in
19 determining whether to trust the witness' testimony
20 as to other matters. You may reject all the
21 testimony of that witness or give all or part of
22 the testimony the weight that you think it
23 deserves.

24 Now we're going to talk about these two
25 offenses and the elements. Ladies and gentlemen,

1 the first offense that we're going to talk about is
2 second degree criminal sexual conduct with a minor
3 and that Code Section and then we're going to talk
4 about the offense of incest in that section.

5 Now, ladies and gentlemen, Section 16-3-655
6 under the Code of Laws is where we find under our
7 Code of Laws the second degree criminal sexual
8 conduct with a minor offense. And the defendant,
9 Mr. Haynes, is charged with second degree criminal
10 sexual conduct with a minor. The State must prove
11 beyond a reasonable doubt that the defendant
12 engaged in a sexual battery with the victim.

13 Now, what is a sexual battery? A sexual
14 battery is sexual intercourse, cunnilingus,
15 falacio, anal intercourse or any intrusion, however
16 slight, of any part of a person's body or of any
17 object into the genital or anal openings of another
18 person's body except when the intrusion is
19 accomplished for medically recognized treatment or
20 diagnostic purposes.

21 The State must then prove beyond a reasonable
22 doubt that the victim was less than sixteen years
23 of old but at least fourteen years old and that the
24 defendant was either in a position of familial,
25 custodial or official authority to coerce the

1 victim to submit or that the defendant was older
2 than the victim.

3 Now, ladies and gentlemen, incest is found at
4 section 16-15-20 of our Code of Laws, and the
5 defendant is charged with incest. The State must
6 prove beyond a reasonable doubt that the defendant
7 had sexual intercourse with certain types of
8 relatives in order to prove incest. These
9 relatives include the defendant's mother,
10 grandmother, daughter, granddaughter, stepmother,
11 sister, grandfather's wife, son's wife, grandson's
12 wife, wife's mother, wife's grandmother, wife's
13 daughter, wife's granddaughter, brother's daughter,
14 sister's daughter, father's sister or mother's
15 sister.

16 Ladies and gentlemen, I further charge you
17 that South Carolina does not recognize a doctrine
18 which is called diminished capacity as a defense to
19 negate the specific intent required of the offense
20 to which a defendant is charged. I further charge
21 you that under South Carolina law voluntary
22 intoxication does not relieve an individual from
23 criminal responsibility and is generally not a
24 valid defense in South Carolina.

25 Now, ladies and gentlemen, we're now going to

1 go over the verdict form. There are two things I
2 want to tell you before I do that. The first thing
3 I want to tell you is that there are two
4 indictments and there are two, there are two
5 determinations for you to make with regard to this
6 verdict form and we'll go over that in just a
7 moment, and there are two possible verdicts for
8 each of these two indictments, not guilty or
9 guilty.

10 Now, I have put these two possible verdicts
11 on this piece of paper we're going to go over in a
12 minute. I want you to know I could have just as
13 easily reversed it but one is first and one is
14 second. I just say that because I don't want you
15 to think there is any hidden meaning in the order
16 in which these possible verdicts are placed on
17 paper. That is a disclaimer, if you will.

18 Ladies and gentlemen, you know if you are
19 going to put two things on paper one has to be
20 first and one has to be second, so please do not
21 take any hidden meaning from the order in which
22 these possible verdicts have been placed on paper.

23 Now, the other matter that I want to speak
24 with you about is that I want to tell you that your
25 verdict must be unanimous, and that means that your

1 verdict must be the verdict of each and every one
2 of you. This must be the verdict of all twelve of
3 you. This is not majority rule and this is not
4 dictaturoship, this is not the verdict of any one of
5 you or the majority, this verdict must be
6 unanimous, it must be the verdict of each and every
7 one of you.

8 Now, that should be a hint to my alternates
9 Mr. Williams and Mr. Rucker. I want you all to
10 stay with me when my jury leaves on this next
11 occasion because we still have twelve people, you
12 are still our alternates, stay with me on this next
13 occasion.

14 Now, ladies and gentlemen, I'm going to go
15 over the verdict form with you, I'm going to try to
16 do it up here, obviously you are going to have this
17 with you. This is the verdict form. This is
18 called the caption, this first part, and it is
19 simply the caption, meaning the title of the case.
20 It is State of South Carolina versus John Edward
21 Haynes, just the title of the case, and these are
22 the indictment numbers, I read those indictment
23 numbers actually to you.

24 Now, here is what this next line says. It
25 says please circle the appropriate verdict below

1 and follow the accompanying instructions carefully.
2 Number one says, as to the charge of incest we the
3 jury unanimously, you see my children think I'm a
4 nag, you all are learning why, unanimously find the
5 defendant, and there are two possible verdicts and
6 I put two possible verdicts on this piece of paper
7 and again you will take no hidden meaning from the
8 order in which they are placed on paper. One is
9 guilty, one is not guilty. Irrespective of what
10 the unanimous verdict of this jury is, madam
11 presiding juror, you will circle that verdict so
12 there is no question that is what the unanimous
13 verdict of the jury is with regard to number one,
14 which is the charge of incest or indictment for
15 incest.

16 Number two states, as to the charge of
17 criminal sexual conduct with a minor second degree
18 we the jury, again, unanimously find the defendant,
19 and again the possible verdicts, one is not guilty,
20 one is guilty. Take no hidden meaning from the
21 order in which these have been placed on paper and
22 irrespective of which is the unanimous verdict of
23 this jury, just circle it so there is no question
24 but what is the unanimous verdict of the jury.

25 Now, once the jury has completed its

1 deliberations and you filled out your verdict form
2 and you will date it. For your reference purposes
3 today is February the 28th, my daughter's birthday,
4 2013, and you will sign herewith as the presiding
5 juror, and you know who you are, I'm sure.

6 Now, a few additional instructions I want to
7 give to you. In just a moment I'm going to be
8 asking you to step to your jury room with this
9 instruction. Do not discuss this matter or allow
10 anyone to discuss it with you. At this point you
11 are saying, "Hold up, you said this is the point at
12 which we were supposed to start our deliberation,
13 what are you talking about?" I'm going to tell you
14 what we're talking about. On this next occasion
15 when you step to your jury room I'm going to turn
16 to these lawyers and I'm going to ask them two
17 questions, have I given this jury all the law that
18 they may need for their deliberations and have I
19 stated it correctly, and these lawyers will help me
20 know the answer to those questions. And sometimes,
21 sometimes I fail to give a jury all the law that
22 they may need for their deliberations and I need to
23 bring them back out and give them an additional
24 part of the law. Now, in the event that I need to
25 bring you back out for that reason I ask you in

1 advance please do not consider that instruction
2 with any emphasis.

3 Now, sometimes I need to bring jurors back
4 out because goodness knows it is unintended but
5 sometimes something just comes out wrong and I need
6 to actually correct my error and I ask you in
7 advance in the event that I need to bring you back
8 out because I have stated something incorrectly and
9 I need to correct myself, I'm going to ask you to
10 please allow me to correct my error in your mind, I
11 ask it in advance.

12 Now, ladies and gentlemen, I want you to know
13 that this is my chance to get this right, to give
14 you all the law you may need for your deliberation
15 and state it for you correctly and the lawyers help
16 me assure that I have done what I am supposed to
17 do.

18 Now, in the event that I do not need to bring
19 you back out here is what will happen. You will be
20 brought the exhibits, the verdict form and an
21 instruction to begin your deliberations. Now, you
22 know, Mr. Lacey and Miss Paulette and I have been
23 doing this a long time and they do a wonderful job
24 and they say when to begin your deliberations, so
25 let me just tell you, you won't have the exhibits

1 and the verdict form unless it is time to begin
2 your deliberation, so when you have your verdict
3 form and you have your exhibits then you will begin
4 your deliberations.

5 Now, there are a couple other matters I will
6 mention to you. All twelve of you have to be
7 together for you to deliberate. So, in the event
8 somebody needs to take a comfort break just stop
9 your deliberations and take your comfort break. I
10 don't know that we have any smokers but if you do
11 and that person needs to smoke stop your
12 deliberations, let our bailiff know and that person
13 can be escorted so he can go out in this kind of
14 chilly breeze and smoke your weed and then we'll
15 return to the jury room and then when all twelve of
16 you are together again you may recommence your
17 deliberation. Just remember if you need to take a
18 comfort break stop your deliberation, take your
19 comfort break and then reconvene your deliberations
20 once you are together again.

21 Now, the last thought that I'm going to leave
22 you with is this. The word verdict comes from the
23 Latin phrase verdicto, which means to speak the
24 truth, to speak the truth, which is now your task.
25 Step to your jury room, do not discuss this matter

1 or allow anyone to discuss it with you and we will
2 be with you very shortly.

3 (The jury was excused from the courtroom).

4 THE COURT: All right, Mr. Rucker and Mr.
5 Williams, this is what I'm going to ask you to do
6 for me. I'm going to ask you to give me fifteen
7 minutes once the jury has begun its deliberations,
8 for this reason. I think should something happen
9 to one of our jurors during those early minutes of
10 the deliberation, and believe it or not it is rare
11 but occasionally that will happen, I think that I
12 can stop the deliberations, seat one of you, begin
13 the deliberations anew and save the trial, so you
14 have given me so much of your time, I'm going to
15 ask you for fifteen more minutes once the jury has
16 begun its deliberations, so we will take you and
17 put you in another area away from the jury but you
18 all are welcome to watch a watch and we'll watch
19 it, too, I don't want to keep you any longer than I
20 must.

21 Thank you and if you will go with my bailiff
22 they will take you to the conference room over
23 there. Wonderful.

24 (The Alternate jurors were excused from the
25 courtroom).

1 THE COURT: Exceptions or additions from the
2 State?

3 MS. FORD: Your Honor, one exception. Your
4 Honor did not charge consent, someone under the age
5 of 16 does not have ability to consent under South
6 Carolina law.

7 THE COURT: Okay, pass it to me. All right.
8 Counsel, I will check it, I know it has changed, I
9 think, anyway, I'm going to look at the statute
10 again.

11 All right, mine says fourteen, what does
12 yours say?

13 MS. FORD: Your Honorm, it also states both
14 actors are between the age of fourteen and
15 eighteen.

16 THE COURT: Say again.

17 MS. FORD: Both actors are between the ages
18 of fourteen and eighteen.

19 THE COURT: That's correct, the defendant is
20 not less than eighteen, so the second section
21 doesn't apply.

22 MS. FORD: Right.

23 THE COURT: Yes. So, what I charged is the
24 law, it is straight out of the statute. Tell me
25 what you want me to charge.

1 MS. FORD: Your Honor, it would be the
2 State's position that fourteen would be the age if
3 both the actors are between the ages of fourteen
4 and eighteen. That is not the case in this
5 situation, she is under the age of sixteen, the
6 actor was in a position of familial custodial
7 authority over her and is older than her, it
8 doesn't fall into that exception so it would be our
9 position that it would be the age of sixteen.

10 THE COURT: Can you show me any authority
11 where it says the age of consent is sixteen?

12 MS. FORD: Beg the Court's indulgence for
13 just one moment.

14 THE COURT: I know, I got it. Okay, did you
15 find me anything under fourteen?

16 MS. FORD: May we approach, Your Honor?

17 THE COURT: Yes.

18 (Unrecorded bench conference).

19 THE COURT: Okay, anything else?

20 MS. FORD: Nothing further from the State,
21 Your Honor.

22 THE COURT: Now, you have to state your
23 ground.

24 MR. WISE: Thank you. I have one other
25 matter I want to call the Court's attention to

1 regarding the exhibit.

2 THE COURT: Sure.

3 MR. WISE: But I will deal with the charge
4 issue first. I would renew my prior application
5 that the Court charge the jury on the law related
6 to unconsciousness. I provided proposed charge to
7 the Court, I'm going to give some additional
8 research to the clerk for inclusion in the record.

9 THE COURT: Okay.

10 MR. WISE: I would renew my opposition to the
11 charge on diminished capacity and involuntary
12 intoxication.

13 THE COURT: Thank you so much.

14 MR. WISE: And as to the other matter, Your
15 Honor, it appears to me that one of the jurors --
16 okay.

17 THE COURT: You're concerned about the
18 gentleman whose eyes were closed and I stopped and
19 his eyes opened and by the end of the charge his
20 eyes were closed again?

21 MR. WISE: Yes.

22 THE COURT: Yes. Did you all happen to
23 notice that on behalf of the State?

24 MS. FORD: Yes, Your Honor, but I also
25 noticed that his foot was tapping the entire time

1 so it appeared to me that perhaps his eyes were
2 closed and he was just listening to what Your Honor
3 was charging to them. His chair was moving pretty
4 much the entire time.

5 THE COURT: Okay. Very well, I note your
6 exception. Obviously when I stopped he would open
7 his eyes so he very well may have been awake.

8 Very well, all right. I see no reason to
9 bring the jury out. But here is what you all must
10 do for me. Please, please look at the verdict
11 form, please look at the exhibits that are going to
12 the jury to be sure that what is going to the jury
13 is what is supposed to be going to this jury. If
14 you all will, please do that for me and we will be
15 in recess awaiting the jury. Here is your verdict
16 form.

17 (Evidence and verdict form delivered to the
18 jury at 12:04 p.m.).

19 THE COURT: I think more likely than not he
20 was paying attention, that he was okay.

21 (Recessed at 12:06 p.m.).

22 (Resumed at 12:28 p.m.).

23 THE COURT: I have a note. The note says,
24 "We would like the definition of indictment number
25 one, incest." She actually calls it incense. And

1 then, "Number two, criminal sexual conduct with a
2 minor in the second degree." So, I would propose
3 to bring them back out and simply recharge them
4 with regard to that and ask everyone, I'm going to
5 ask, this will be what I would intend to do, I'm
6 going to ask everyone to please keep their eyes
7 open, that way I will know they are awake.

8 Any objection to me doing that?

9 MS. FORD: No.

10 MR. WISE: No.

11 THE COURT: And I will be nice about it, I
12 will ask them to keep their eyes open.

13 All right, let me have the jury.

14 (The jury returned to the courtroom).

15 THE COURT: All right. Ladies and gentlemen,
16 I have your note and as I understand the note, you
17 would like to be instructed with regard to the
18 definition of the two offenses. I'm delighted to
19 do that, I'm going to do that now. I got a little
20 tickled because the first one said that you wanted
21 the definition of incense. You're such a seventies
22 girl.

23 Now, very well. And I will begin, I will
24 begin with incest, then I'm going to move into
25 criminal sexual conduct with a minor in the second

1 degree, and I'm going to ask you all to do a favor
2 for me. Some people naturally as they are
3 concentrating sort of rest their eyes, you know, I
4 have done that before. I can't know that you are
5 awake and therefore listening to me unless your
6 eyes are awake. If you, you know, if you need to
7 stand up to keep your eyes awake that's okay, stand
8 up, but I need to ask you kindly please keep your
9 eyes open for me so I will know that you are awake.

10 Now, incest, I almost said incense, which is
11 found in Section 16-15-20 of the South Carolina
12 Code of Laws as amended.

13 Defendant is charged with incest. The State
14 must prove beyond a reasonable doubt that the
15 defendant had sexual intercourse with certain types
16 of relatives. Here are the certain types of
17 relatives. These relatives include the defendant's
18 mother, grandmother, daughter, granddaughter,
19 stepmother, sister, grandfather's wife, son's wife,
20 grandson's wife, wife's mother, wife's grandmother,
21 wife's daughter, wife's granddaughter, brother's
22 daughter, sister's daughter, father's sister or
23 mother's sister.

24 That concludes the charge with regard to
25 incest.

1 Now, second degree criminal sexual conduct
2 with a minor, I think I have always said criminal
3 sexual conduct with a minor in the second degree,
4 found at 16-3-655 of the Code of Laws.

5 The defendant is charged with second degree
6 criminal sexual conduct with a minor, I have also
7 called it criminal sexual conduct with a minor in
8 the second degree. The State must prove beyond a
9 reasonable doubt that the defendant engaged in a
10 sexual battery with the victim. A sexual battery
11 is sexual intercourse, cunnilingus, falacio, anal
12 intercourse or any intrusion however slight of any
13 part of a person's body or of any object into the
14 genital or anal openings of another person's body
15 except when the intrusion is accomplished for
16 medically recognized treatment or diagnostic
17 purposes. That is the first element, sexual
18 battery. The second item. The State must then
19 prove beyond a reasonable doubt that the victim was
20 less than sixteen years old but at least fourteen
21 years old and that the defendant was either in a
22 position of familial, custodial or official
23 authority to coerce the victim to submit or that
24 the defendant was older than the victim.

25 Ladies and gentlemen, that concludes the

1 charge on incest and criminal sexual conduct with a
2 minor in the second degree.

3 If you will, please step to your jury room
4 and continue your deliberations, and lunch is on
5 the way.

6 (The jury was excused from the courtroom).

7 THE COURT: Any exceptions from the State?

8 MS. FORD: No.

9 THE COURT: The defense?

10 MR. WISE: No.

11 THE COURT: We will continue to be in recess
12 until we hear from the jury.

13 (Recessed at 12:35 p.m.).

14 (Resumed at 1:25 p.m.).

15 THE COURT: Please be seated. Now, ladies
16 and gentlemen, it is my understanding the jury has
17 reached its verdict and in a moment we're going to
18 bring the jury out. Have is what I need to tell
19 everyone on both sides. I know these matters are
20 heart wrenching. However, having said that, this
21 jury, as you have been able to observe, they have
22 paid attention, they have worked so very diligently
23 and they are entitled to the decorum of this court
24 to be calm and appropriate. Knowing that these
25 matters are very emotional, if there is anyone who

1 is currently in the courtroom who is concerned that
2 they would be unable to maintain their composure
3 irrespective of what the verdict of this jury is,
4 I'm going to ask you to leave now.

5 Now, having said that, once the jury has come
6 back with their verdict and you have had a chance
7 to emotionally pull yourself together you can
8 certainly come right back into the courtroom. If
9 anyone believes they are not going to be able to
10 maintain their composure I want you to go ahead and
11 take your leave now.

12 Very well, no one has left, so let me again
13 just remind everyone that it is of the utmost
14 importance you keep your composure. This jury
15 certainly is entitled to that.

16 All right, anything further from the State
17 before we bring the jury out?

18 MS. FORD: Nothing from the State.

19 THE COURT: The defense?

20 MR. WISE: No, Your Honor.

21 THE COURT: Very well, have the jury come in.

22 (The jury returned to the courtroom).

23 THE COURT: All right. It is my
24 understanding that the jury has reached its
25 verdict. Is that correct?

1 JUROR: Yes.

2 THE COURT: If you will pass it to the
3 bailiff, he will pass it to me.

4 Very well. I find that the verdict is in due
5 form. If you will publish it for us, please, sir.

6 THE CLERK: State of South Carolina versus
7 John Edward Haynes, indictment number
8 2010-GS-09-0069 and indictment number
9 2010-GS-09-0070. As to the charge of incest, we
10 the jury unanimously find the defendant guilty.

11 As to Count Two, the charge of criminal
12 sexual conduct with a minor second degree, we the
13 jury unanimously find the defendant guilty.

14 And is this your verdict?

15 JUROR: Yes, it is.

16 THE COURT: Let me just say that I believe it
17 is signed as of today's date and it has the
18 presiding juror's signature on the verdict form as
19 I have reviewed it.

20 Ladies and gentlemen, if this was your
21 verdict in your jury room and continues to be your
22 verdict please indicate by raising your right hand.

23 Let me observe for the record all the jurors
24 have their right hand raised. Anything from the
25 State before we dismiss our jury?

1 MS. FORD: Nothing from the State, Your
2 Honor.

3 THE COURT: Anything from the defense?

4 MR. WISE: I would ask the Court to poll the
5 jury. I'm not sure if that was accomplished by the
6 raising of the hands.

7 THE COURT: Very well.

8 THE CLERK: Ladies and gentlemen of the jury,
9 madam presiding juror, I will start with you.

10 Was this your verdict and is it still your
11 verdict?

12 JUROR: Yes.

13 THE CLERK: Mr. Calvin Callahan. Was this
14 your verdict and is this still your verdict?

15 JUROR: Yes.

16 THE CLERK: Mr. William M. Hair. Was this
17 your verdict and is it still your verdict?

18 JUROR: Yes.

19 THE CLERK: Miss Rona Jamison. Was this your
20 verdict and is it still your verdict?

21 JUROR: Yes.

22 THE CLERK: Miss Kathryn E. Rickenbaker. Was
23 this your verdict and is it still your verdict?

24 JUROR: Yes.

25 THE CLERK: Mr. Lonnie Spires, Jr. Was this

1 your verdict and is it still your verdict?

2 JUROR: Yes.

3 THE CLERK: Miss Jennifer T. Swafford. Was
4 this your verdict and is it still your verdict?

5 JUROR: Yes.

6 THE CLERK: Kelly N. Thompson. Was this your
7 verdict and is it still your verdict?

8 JUROR: Yes.

9 THE CLERK: Laquesha Watson. Was this your
10 verdict and is it still your verdict?

11 JUROR: Yes.

12 THE CLERK: Loretta Whitmore. Was this your
13 verdict and is it still your verdict?

14 JUROR: Yes.

15 THE CLERK: Nancy M. Winter. Was this your
16 verdict and is it still your verdict?

17 JUROR: Yes.

18 THE CLERK: And Billy Wolf, Jr. Was this
19 your verdict and is it still your verdict?

20 JUROR: Yes.

21 THE CLERK: Okay.

22 THE COURT: Very well, all the jurors have
23 been polled and the verdict stands. Anything from
24 the defense at this time?

25 MR. WISE: Not for the jury.

1 THE COURT: Thank you very much.

2 Ladies and gentlemen, I want to thank you for
3 your service on this jury. I want to thank you for
4 your service on this jury panel. That should be a
5 hint to you that not only am I dismissing you for
6 your service on this jury but I'm able to dismiss
7 you for the balance of the week.

8 Now, let me share with you your lunch has
9 been delivered to you in your jury room. I don't
10 want anyone to go away without your lunch. Please,
11 I want you to feel very free to please go back into
12 your jury room and have your lunch but I did want
13 to discuss a couple matters with you because I told
14 you you couldn't talk about this. You are now at
15 liberty to discuss this matter if you choose, if
16 you choose, and what I mean by that, it is my
17 policy, is it my practice to have this discussion
18 with jury panels that I have the opportunity to
19 work with only because I'm afraid now if I don't
20 that the matter I'm about to discuss with you, this
21 has never happened, will happen and that is this.
22 Should someone want to talk about this matter and
23 you say thank you but I don't want to talk about it
24 and they should persist, then I want you to know
25 that you can call the clerk's office and talk to

1 Miss Paulette, you can talk to Mr. Lacey, they will
2 talk to me and I will intercede on your behalf. I
3 have never had that happened but I'm scared if I
4 don't say it it will happen. That is why I share
5 that with the jury, and the reason for that, just
6 so you know, is that the practice of law is an art
7 and not a science, sometimes lawyers will call and
8 they will want to talk about a trial skill and did
9 it work or did it not work as they try to improve
10 their skills.

11 Now, I can promise you these lawyers, I don't
12 know whether they would call or not but I know that
13 if they call you trying to improve their skills and
14 you say, "I don't want to talk about it," these
15 lawyers would not ask you another question, that
16 I'm confident off.

17 Now, when you go home this evening, when you
18 return to work you can talk about it if you want to
19 and if you don't want to talk about it, again if
20 you certainly don't want to talk about it you don't
21 have to.

22 Those of you who are going to be dashing off
23 to work, if you need something for your employer so
24 your employer will know where you have been and
25 what you have been up to we will be happy to get

1 that for you so they will know. And, oh, let me
2 remind you that you are, you are entitled to your
3 exemption from jury service in a court of record
4 now for 2014 and 2015 should you choose to exercise
5 that exemption. You are not eligible to serve on a
6 jury in a court of record for the balance of 2013.
7 I know you will be sad but there is hope for you in
8 magistrate court, maybe municipal court, so do be
9 mindful if you happen to be called again, you
10 happen to receive a summons in 2013, if you will
11 call miss Miss Pauling she will remember you and
12 you won't have to come that Monday and go through
13 the process because you are not eligible to serve
14 for the balance of the year.

15 I would -- quickly two more things. People
16 want to know when the big fat jury check is going
17 to come and when I started I used to tell jurors
18 that the check was in the mail in Dorchester County
19 because I thought it was, then I was informed by my
20 clerk of court to stop that because the check
21 wasn't in the mail and you shouldn't tell people
22 that, you're the judge. I said I thought it was in
23 the mail.

24 The check is not in the mail but it will be
25 shortly, but it is a very small token of all that

1 you have given to us and that of course is your
2 dire and precious time and for every single
3 solitary person, on behalf of all of us involved
4 with the judicial system I want to thank you. It
5 is no small thing you have done to give so much of
6 your time and we're all so very grateful. It has
7 been an honor to work with you this past week. If
8 our paths ever cross again I will be honored.

9 You can please retire, please have some
10 lunch, I will be in in a little bit in case you all
11 have any questions. You have given us so much of
12 your time I'm delighted to give you some of mine.
13 People sometimes want to know, well, what happens
14 next. I want you of course to have your lunch, we
15 will go forward with sentencing at this point, it
16 is completely up to you, jurors sometimes want to
17 know what happened and want to observe, you are
18 welcome to observe or not, that again is completely
19 up to you. If you are ready to go get you some
20 lunch, or if you were to remain you're welcome to
21 stay right where you are. I thank you and I now
22 turn you back over to yourselves. Thank you so
23 much.

24 (Jury excused from the courtroom).

25 THE COURT: All right. Anything before

1 sentencing?

2 MR. WISE: Yes, Your Honor.

3 THE COURT: All right.

4 MR. WISE: Thank you, Your Honor. At this
5 point I would ask the Court to consider a motion
6 for new trial for Mr. Haynes. I have several
7 grounds in support for the Court to consider. The
8 first relates to the issue of the constitutionality
9 of the incest statute. The second relates to the
10 Court's declining to submit the charge of
11 diminished consciousness to the jury. The third
12 relates to the exclusion of the expert on the issue
13 of automatism or unconsciousness, so we would ask
14 the Court to consider that to allow those to be
15 presented.

16 THE COURT: Thank you so much, Mr. Wise, I
17 appreciate that. I would decline to grant the
18 motion for a new trial for the reasons that were
19 stated during the trial and stated with more
20 particularity during the course of the trial and
21 make reference to my rulings during the course of
22 the trial for the basis of my denial, and I
23 respectfully note your exception.

24 All right. I'm going to proceed now with
25 sentencing and, Miss Ford, Mr. Bell, whichever one

1 of you has it, if you would please share with me
2 any record that Mr. Haynes has I would like to get
3 that.

4 MS. FORD: Yes, Your Honor. Mr. Haynes has a
5 conviction for discharging a firearm in the city
6 limits from 1994, he has a stalking conviction from
7 1997, as well as a malicious injury to property
8 conviction also from 1997.

9 THE COURT: And of course I have heard from
10 the victim during her testimony but I'm happy to
11 hear from the victim or anyone on behalf of the
12 victim.

13 MS. FORD: I just spoke with JW [REDACTED],
14 she did not wish to address Your Honor but just
15 asked me to convey that she would ask for the
16 maximum sentence in this case, Your Honor.

17 THE COURT: Mr. Wise?

18 MR. WISE: Your Honor, a couple things we
19 would like to bring to the Court's attention. The
20 Court has now heard Mr. Haynes' background. If the
21 Court would note, he has no prior conviction for
22 any sexually related offenses. He has no crimes of
23 violence in his background, no crimes involving any
24 type of assaultive behavior except a misdemeanor.
25 I am told he has no crime, aside from the

1 discharging the firearm, involving pointing,
2 presenting a firearm, those kind of offenses. The
3 stalking charge and malicious injury to personal
4 property charge and discharging a firearm charge
5 all date back to the 1990's, the most recent one
6 was '97, so that is a pretty significant amount of
7 time since then.

8 THE COURT: Sixteen plus years.

9 MR. WISE: During that time I call to the
10 Court's attention the fact Mr. Haynes has been
11 working, at the time he was arrested he was
12 working, he was born in South Carolina and lived
13 most of his life here, his whole life he has lived
14 here, all except five years. He has family in the
15 courtroom, his mother is here, so he does have
16 significant family support in the courtroom. I
17 would ask that you take all that into consideration
18 in sentencing.

19 THE COURT: Assuredly.

20 If any family member would like to say
21 anything I will hear them now.

22 MR. WISE: May I have a moment, Your Honor?

23 THE COURT: Indeed, of course.

24 MR. WISE: Your Honor, Mr. Haynes' mother
25 would like to speak, Miss Cecelia Haynes.

1 THE COURT: Ceceilia Haynes. Yes, ma'am, hi,
2 Miss Haynes.

3 THE WITNESS: All right.

4 THE COURT: When you're ready.

5 THE WITNESS: I'm Cecelia Haynes and I'm John
6 Haynes' mother and I have known him ever since he
7 was out of my womb and I have known JW from
8 the time she had the baby up until now. I know he
9 doesn't rape nobody or tackle nobody, because I
10 remember that I was at the house one night and she
11 must have skipped school and JW mother, me
12 and John done told JW about I don't know what
13 boy it is cutting class if you do but I'm saying if
14 that kid, the one that DSS say that she couldn't
15 find, that is JW kids' father. My son is
16 not the father, I know that. That is all I got to
17 say, it is not my son, I know that.

18 MR. WISE: That's all we have.

19 THE COURT: Okay. All right. I have written
20 the sentence and I am prepared to sentence the
21 defendant at this time. Once I have sentenced the
22 defendant, then I did want to just mention a couple
23 things to the victim in this case.

24 With regard to Mr. Haynes, with regard to
25 2010-GS-9-70, which is criminal sexual conduct with

1 a minor in the second degree, I want to note for
2 the record this offense is a violent offense.
3 Under the terms of the statute there are
4 circumstances where it is not to be considered most
5 serious. I want to do the opposite, I am going to
6 make findings to be assured it is considered most
7 serious and I am making a specific finding that the
8 sexual intercourse was not consensual, this was
9 nonconsensual sexual intercourse, so it would be a
10 most serious offense.

11 And, Mr. Haynes, I'm going to commit you to
12 the State Department of Corrections for a period of
13 twenty years. You are to be given credit for the
14 time that you have served.

15 I also make a specific finding in accordance
16 with the statutory provisions of the State that you
17 will be placed on the sex offender registry. This
18 is a sexually violent offense and most serious and
19 it is my recommendation that you be placed on
20 electronic monitoring when you're released from the
21 South Carolina Department of Corrections. And you
22 will be placed on the central registry for child
23 abuse and neglect.

24 With regard to 2010-GS-9-69, which is the
25 indictment for incest, the sentence of this court

1 is you will be confined to the South Carolina
2 Department of Corrections for a period of ten
3 years, provided that upon the service of five years
4 and probation for five years the sentence will be
5 satisfied. This sentence will run consecutive to
6 the sentence that I have just imposed, the five
7 your sentence.

8 With regard to the probationary part of this
9 sentence, I want you to successfully complete a sex
10 offender treatment program. There is to be no
11 contact with minor children until the sex offender
12 treatment has been successfully completed and there
13 is to be no contact either directly or indirectly
14 with the victim in this case.

15 This of course also is an offense for which
16 the sex offender registry is appropriate and this
17 is also a sexually violent offense. Probation will
18 begin, Mr. Haynes, when you have been released from
19 the South Carolina Department of Corrections, and
20 you will be placed on the central registry for
21 child abuse and neglect. You are to be given
22 credit for time that you have served.

23 And that concludes the sentence.

24 Now, with regard to JW [REDACTED]. JW
25 JW I'm going to speak to you for a moment,

1 come up here. I want to compliment you and I have
2 a couple things to say to you and I want to say
3 them to you. I want you to know that I weep for
4 that little girl and I weep for that little girl
5 that was abused and I want you to know that I get
6 what you have been through and I feel for that
7 little girl. I admire you because somehow in your
8 heart you have put aside this tragic, horrific
9 treatment that you have suffered and have brought
10 love to those two little children. I don't know
11 what to say about that but that you have put your
12 own suffering to the side and found it in your
13 heart to give love. What an amazing woman you are.
14 That cannot be easy. I urge you to seek treatment,
15 to be gentle with yourself, to help yourself heal
16 because what horrible, horrible experiences you
17 have been through and just as Miss Ford eloquently
18 argued, these things happened to you in your home
19 where a little girl is supposed to be safe, and for
20 that I am so sorry.

21 And I want you to know that I think you have
22 terrific strength. I know that to come to this
23 court and to testify and to stand tall and strong
24 wasn't easy and I want you to know that I think you
25 are extraordinary and I wish you joy, I wish you

1 peace, I wish you continued bravery. I'm proud of
2 you for going back to school, I think you are a
3 marvelous example for your children, I think you
4 are a marvelous example for all women. I urge you
5 whatever path you take, whether it is going to be
6 cosmetology or whatever your future holds, I hope
7 it is sweet, I hope it is dear, because you deserve
8 only good things. I wish you well with your
9 children. Thank you for being an example for all
10 of us.

11 THE WITNESS: Thank you.

12 THE COURT: You're welcome. All right, that
13 concludes this case.

14 MR. WISE: May we approach the bench for just
15 one moment?

16 (Unrecorded bench conference).

17 (Hearing Concluded).

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4 I, the undersigned Henry P. Young, Official
5 Court Reporter for the Eighth Judicial Circuit of
6 the State of South Carolina, do hereby certify that
7 the foregoing is a true, accurate, and complete
8 transcript of record of all the proceedings had and
9 evidence introduced in the trial of the captioned
10 case in the Circuit Court for Calhoun County, South
11 Carolina, on the 27th and 28th days of February,
12 2013.

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

15

May 12, 2013

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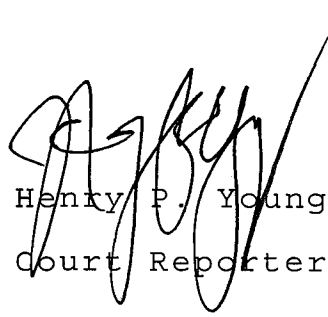
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Henry P. Young
Court Reporter

FORM 5

2015-CP-09-00215

STATE OF SOUTH CAROLINA)

COUNTY OF)

CALHOUN

IN THE COURT OF COMMON PLEAS

JOHN EDWARD HAYES, 354464
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

APPLICATION FOR)

POST-CONVICTION RELIEF)

2015 DEC 28 2:58

FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention 386 REDEMPTION WAY, McCONNELL CORR. INST. McCONNELL, SC.
2. Name and location of Court which imposed sentence _____
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-LS-09-0070 (ORIGINAL SEXUAL CONDUCT WITH MINOR - SECOND DEGREE)
 - (b) 2010-LS-09-0069 INCEST
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 2-28-2013 20-yrs 2010-LS-09-0070
 - (b) 2-28-2013 10-yrs 2010-LS-09-0069

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. DENIED / AFFIRMED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) X
- (b) X
- (c) X
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

1. INEFFECTIVE ASSISTANCE of COUNSEL.

2. VIOLATION

3. INSUFFICIENT EVIDENCE for 2nd DEGREE (SL).

4. FAMILY COURT DNA WAS THE 1st INSTEAD OF 2nd

5. INSUFFICIENCY of EVIDENCE.

Revised 3/2003

6. FRAUD UPON THE COURT.

7. ABUSE of DISCRETION by COURT.

- (a) _____
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHMENT.
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? APPEAL COURT
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. 1/4
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. X/1/4
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. _____
- ii. 1/1/4
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. X/A _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. X/A _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. X/A _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. X/A _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) X/A _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? ✓ _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Affirmed. _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- Scott Palmer, Esq.
 - Mr. K. J. Rose Esq. Mr. D. B. Barks Esq. Mr. McElwain
 - Mr. David Alexander - Appellate Defender - 1350 Lundy Street, Suite 401 Columbia, SC 29201-3332
- (b) the proceedings at which each such attorney represented you:
- Family Court.
 - General Session Court.
 - Direct Appeal.

19. State clearly the relief you seek in filing this application:

VACATE SENTENCE AND CONVICTION.

20. Are you now under sentence from any other court that you have not challenged?

No.

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, JOHN EDWARD HAYNES, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

John E Haynes

SWORN to and subscribed before me this 10th
day of December, 2015.

Michael Carbone (L.S.)
Notary Public

My Commission Expires: July 9 2025

KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
SOUTH CAROLINA

2015 DEC 28 P 2:59

FILED