

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Saluda County

Honorable J. Derham Cole, Circuit Court Judge

\_\_\_\_\_  
DAVID ANDREW BOWERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-001000

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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**RECEIVED**

**Jan 29 2021**

**S.C. SUPREME COURT**

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February 4 - 6, 2014  
Saluda, South Carolina

B E F O R E:

The Honorable William P. Keesley, Judge; and a jury.

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

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Stacy L. Sheppard, RPR  
Circuit Court Reporter

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1                   (The following proceedings were held on  
2                   February 4, 2014.)

3                   **THE COURT:** Ladies and gentlemen of the jury,  
4                   we're going to turn our attention from the more  
5                   general now to the more specific. The Solicitor's  
6                   office will call a case for trial and we will turn  
7                   our attention to that specific case.

8                   I'll be asking you questions. These questions  
9                   are designed to find out from you if you have any  
10                  possible connection with the case or anybody in it,  
11                  if you, because of anything in your background or  
12                  those close to you, would be in a situation where  
13                  your ability to be a fair and impartial juror in a  
14                  particular type of case might be affected.  
15                  Basically, if you just keep in mind that the purpose  
16                  of these questions is to obtain a jury that is fair  
17                  and impartial, I think the questions will make more  
18                  sense to you.

19                  Remember that you're under oath. Remember that  
20                  if I ever ask you anything you prefer to discuss  
21                  more privately, you may come down front and talk  
22                  about it on the side. And remember that you should  
23                  discuss these things with me if you have any doubt  
24                  about whether they apply to you.

25                  All right. Solicitor, call your cases.

1           **MR. MAYE:** May it please the Court, Your Honor.  
2           The State now calls for trial indictment  
3           2012-GS-41-440, the State versus David Andrew  
4           Bowers, an indictment for criminal sexual conduct  
5           with a minor in the first degree. It's been true  
6           billed by the Grand Jury of Saluda County. The  
7           State now calls this case for trial.

8           Also indictment 2013-GS-41-010, the State  
9           versus David Andrew Bowers, an indictment for  
10          criminal solicitation of a minor. It has also been  
11          true billed by the grand jury. The State calls both  
12          these cases for trial.

13          **THE COURT:** All right. Ladies and gentlemen of  
14          the jury, please give me your attention. We're  
15          about to qualify a jury that's going to hear two  
16          separate and distinct cases, each of which must be  
17          evaluated on its own merit or lack of merit. The  
18          cases will be tried together for purposes of  
19          convenience. Sometimes I may use the term case in  
20          the singular, sometimes I may say cases in the  
21          plural, but regardless of what I say, if -- in  
22          hearing these things, you need to understand that  
23          I'm talking about both of these matters.

24          Both of these cases are captioned the State of  
25          South Carolina versus David Andrew Bowers. In one

1 indictment, it is alleged that Mr. Bowers committed  
2 the offense of criminal solicitation of a minor.  
3 It's alleged in that indictment that David Andrew  
4 Bowers, whose date of birth is alleged to be [REDACTED]  
5 [REDACTED] did in Saluda County, on or between  
6 October the 6th, 2012, and October the 7th, 2012,  
7 knowingly and unlawfully contact or communicate with  
8 or attempt to contact or communicate with **Minor**  
9 **Minor** whose date of birth is alleged to be November  
10 the 15th, 2001, a person who is alleged to be under  
11 the age of 18, for the purpose of or with the intent  
12 of persuading, inducing, enticing or coercing  
13 Ms. Enlow to participate in sexual activity as  
14 defined in statutes which are cited in the  
15 indictment.

16 The other indictment charges Mr. Bowers with  
17 criminal sexual conduct with a minor in the first  
18 degree. That indictment alleges that David Andrew  
19 Bowers did in Saluda County, on or about October the  
20 7th, 2012, engage in sexual battery upon and/or with  
21 the body of **Minor**, whose date of  
22 birth is alleged to be November the 15th, 2001, a  
23 female child then being less than 11 years of age  
24 and the defendant being older than the victim, which  
25 is alleged to be in violation of the code section

1           cited in the indictment.

2           Now, upon his arraignment on these charges,  
3           Mr. Bowers has entered pleas of not guilty. He is  
4           presumed to be innocent. It is incumbent upon the  
5           State of South Carolina, having brought these  
6           charges, to prove every essential element of each  
7           offense charged beyond a reasonable doubt.

8           An indictment is not evidence. These are  
9           merely charging papers, the formal means by which  
10          someone is charged and brought to trial. You may  
11          not give the indictments any evidentiary value at  
12          all. Mr. Bowers is presumed to be innocent.

13          I'll be asking you questions. If any of them  
14          apply to you or you have doubt about whether they  
15          apply to you, please stand and follow the procedure  
16          that I outlined for you earlier.

17          Is David Andrew Bowers in the courtroom?  
18          Mr. Bowers, I need for you to stand and turn so the  
19          jury can see you.

20          Thank you, sir. You may be seated.

21          Is there any member of the jury panel who is  
22          related by blood or marriage or connected by  
23          employment with the defendant in these cases, David  
24          Andrew Bowers; if so, please stand?

25                 (Juror stands.)

1           **THE COURT:** What's your name, sir?

2           **JUROR:** Gerald Silk.

3           **THE CLERK:** Number 172.

4           **THE COURT:** 172, Mr. Silk. What's your  
5 situation, sir?

6           **JUROR:** Connected by marriage.

7           **THE COURT:** What relation?

8           **JUROR:** His wife.

9           **THE COURT:** His wife is what relationship?

10          **JUROR:** Will be my niece.

11          **THE COURT:** Do you know anything at all about  
12 this matter?

13          **JUROR:** Yes, sir.

14          **THE COURT:** Come down front, please.

15               The attorneys may join me on the side.

16       Mr. Bowers may if he wishes.

17               (Whereupon, the following bench conference  
18 was held on the record, in the presence of the jury  
19 panel, but out of the hearing of the jury panel.)

20          **THE COURT:** Let me just ask the last question  
21 first and then we'll work our way back. Mr. Silk,  
22 is there anything about your situation that affects  
23 your ability to be a fair and impartial juror in the  
24 case?

25          **JUROR:** Yes, sir.

1           **THE COURT:** All right. The answer's in the  
2 affirmative. I'll set you aside on this case.  
3 Don't discuss anything about the case or the family  
4 with your fellow jurors, okay?

5           **JUROR:** Yes, sir.

6           **THE COURT:** Just have a seat right back there.  
7 172 is set aside on the trial of this case.

8           (The bench conference was concluded.)

9           **THE COURT:** Anybody else?

10           (There was no response.)

11           **THE COURT:** Mr. Bowers will be represented by  
12 Mr. Lance Sheek.

13           (Mr. Sheek stands and faces the jury panel.)

14           **THE COURT:** Thank you, Mr. Sheek.

15           Now, the following persons have been identified  
16 as potential witnesses for the State. I'm going to  
17 read a list of names. If any of these people are in  
18 the courtroom, that person will need to stand as his  
19 or her name is called and face the jury. If I read  
20 out a name and the person is not here and you have  
21 some question as a juror as to whether the person  
22 that you may have some connection with is that same  
23 person, if you'll let me know, I'll get more  
24 identifying information for you.

25           Potential witnesses for the State are: **Minor**

1       **Minor** -- would you please stand and face that way?  
2       Thank you, ma'am -- Kenny Clark, thank you; Russell  
3       Scott Enlow, thank you, sir; Jennifer Enlow, thank  
4       you; Jesse Quattlebaum. Is it Miano?

5               **MR. MAYE:** That's Steve Miano, Your Honor. I'm  
6       not exactly sure. M-i-a-n-o.

7               **THE COURT:** Steve Miano, M-i-a-n-o; Lori Haag  
8       -- would you walk down here, please, ma'am? Just  
9       walk to the center aisle and come down to those  
10      benches. Thank you, ma'am -- Russ Padgett over here  
11      to my right, thank you; Janice Ergle; and Kes or  
12      Kester Holmes.

13              All right. To the best of your knowledge,  
14      ladies and gentlemen, are any of you related by  
15      blood or marriage or connected by employment with  
16      any of the potential witnesses for the State; if so,  
17      please stand?

18              (There was no response.)

19              **THE COURT:** The State will be represented --

20              (Juror stands.)

21              **THE COURT:** What's your name?

22              **JUROR:** Karen Watts.

23              **THE CLERK:** 194.

24              **THE COURT:** Ms. Watts is 194. What's your  
25      situation?



1           **JUROR:** The defendant -- or the plaintiff is a  
2 distant relative, third or fourth cousin.

3           **THE COURT:** You mean Ms. Enlow?

4           **JUROR:** (Juror nodded head.)

5           **THE COURT:** So **Minor** is a distant  
6 relative of yours?

7           **JUROR:** Yes, sir.

8           **THE COURT:** Do you know anything about this  
9 case?

10          **JUROR:** No.

11          **THE COURT:** Nobody's talked to you about it at  
12 all?

13          **JUROR:** No.

14          **THE COURT:** Ms. Watts, to be on the safe side,  
15 I'm going to set you aside on this trial. Just stay  
16 with us for other instructions, please.

17               194 is set aside.

18               The State will be represented by Mr. Ervin  
19 Maye. He's an assistant solicitor with the  
20 Solicitor's office of the Eleventh Judicial Circuit.

21               (Mr. Maye stands and faces the jury panel.)

22          **THE COURT:** Thank you, Mr. Maye.

23               Do any of you have any connection of any kind  
24 with the Saluda County Sheriff's Office, any of you  
25 current or former employees there or anybody related

1 to you work there currently or formerly? If you  
2 have any connection whatsoever with that law  
3 enforcement entity, if you volunteer, anything like  
4 that, you need to let us know about it.

5 (Jurors stand.)

6 **THE COURT:** What's your name?

7 **JUROR:** Donna Edmunds.

8 **THE CLERK:** 66.

9 **THE COURT:** Ms. Edmunds is juror number 66.  
10 What's your situation, please?

11 **JUROR:** I just know or familiar with one of the  
12 -- the head dispatcher at the sheriff's department.  
13 My daughter and her are real good friends, and I  
14 know the family, but that's essentially it.

15 **THE COURT:** Do you -- is there anything at all  
16 about that connection that affects your ability to  
17 be a fair and impartial juror in the case?

18 **JUROR:** No, sir.

19 **THE COURT:** Can you decide the case without  
20 regard to what the head dispatcher may think of your  
21 decision or any of the other people that you  
22 mentioned?

23 **JUROR:** I'd make a fair decision.

24 **THE COURT:** Do you have any doubt whatsoever  
25 about your ability to be fair and impartial in the

1 matter?

2 **JUROR:** No doubt.

3 **THE COURT:** Thank you. 66, Ms. Edmunds, is  
4 eligible to serve.

5 Your name, please?

6 **JUROR:** Sarah R. Mizzell.

7 **THE COURT:** Ms. Mizzell is 132.

8 What's your situation, please?

9 **JUROR:** My brother's a jailer at the county  
10 jail.

11 **THE COURT:** Do you know anything about this  
12 matter?

13 **JUROR:** No, sir.

14 **THE COURT:** All right. Can you decide the case  
15 without regard to what he may think of your  
16 decision?

17 **JUROR:** Yes.

18 **THE COURT:** Is there anything at all about your  
19 situation that might affect your ability to be a  
20 fair and impartial juror in the case?

21 **JUROR:** No, sir.

22 **THE COURT:** Do you have any doubt in your mind?

23 **JUROR:** No, sir.

24 **THE COURT:** Thank you. Ms. Mizzell is juror  
25 number 132. She's eligible to serve.

1 Anybody else?

2 (There was no response.)

3 **THE COURT:** Do any of you know anything about  
4 this case? Do you know anything about the  
5 underlying allegations? Has anybody talked to you  
6 about it? Have you overheard people talking about  
7 it? Have you heard, seen or read anything through  
8 any type of media or other outlet? Do you know  
9 anything whatsoever about this matter; if so, please  
10 stand?

11 (There was no response.)

12 **THE COURT:** Now, I've asked you if you were  
13 related by blood or marriage or connected by  
14 employment with various people. What I need for you  
15 to do now is this: If you've got any connection of  
16 any kind with any of the people or any of the  
17 entities involved in this case, you need to disclose  
18 that to us.

19 So, for example, if you are a neighbor, if you  
20 are a friend, if you attend the same church or civic  
21 clubs, if you have ever been involved in a case  
22 involving one of these attorneys on either side,  
23 either on the side the attorney was advocating for  
24 or the side that the attorney was advocating  
25 against, if you have any connection of any kind with

1 anybody or any entity in this case, you need to tell  
2 us about it, please stand.

3 (Jurors stand.)

4 **THE COURT:** What's your name?

5 **JUROR:** Russ Black, number 15.

6 **THE COURT:** Ms. Black is juror number 15.

7 What's your situation, please?

8 **JUROR:** Former state trooper, former SLED  
9 agent.

10 **THE COURT:** Is there anything at all about your  
11 experiences or your background or any relationships  
12 you may have developed in those positions that would  
13 affect your ability to be a fair and impartial juror  
14 in this case?

15 **JUROR:** No, sir.

16 **THE COURT:** Do you have any doubt whatsoever  
17 about your ability to be fair and impartial?

18 **JUROR:** No, sir.

19 **THE COURT:** Thank you.

20 Mr. Black's juror number 15. He's eligible to  
21 serve.

22 Ms. Edmunds, 66.

23 **JUROR:** I know one of the State's witnesses.

24 **THE COURT:** Which one?

25 **JUROR:** Ms. Ergle.

1           **THE COURT:** Is there anything about your  
2 connection with Janice Ergle that affects your  
3 ability to be a fair and impartial juror in the  
4 case?

5           **JUROR:** No, sir.

6           **THE COURT:** How do you know her? Is it a  
7 friendship?

8           **JUROR:** Acquaintance.

9           **THE COURT:** Did you say acquaintance?

10          **JUROR:** Just friends. I've known her for a  
11 while, but we don't really -- I know her when I see  
12 her and, you know, she works as a jailer. I see her  
13 around, that's about it.

14          **THE COURT:** All right. Ms. Edmunds, I need you  
15 to listen carefully to these questions. I need you  
16 to answer them yes or no. If you need to go beyond  
17 yes or no to give me the proper answer, you come  
18 down front to give me the full answer, all right?

19          **JUROR:** Okay.

20          **THE COURT:** Do you understand that if you're a  
21 juror in this case, that you'll be under an oath in  
22 which you're promising us that you will decide the  
23 case based on the evidence and the law; you  
24 understand that?

25          **JUROR:** Yes, sir.

1           **THE COURT:** You understand that as a juror, you  
2 will have to evaluate the credibility, the  
3 believability of every witness who testifies. You  
4 understand that?

5           **JUROR:** Yes, sir.

6           **THE COURT:** You understand if Ms. Ergle  
7 testifies, then you have to evaluate whether she's  
8 believable or not. You understand that?

9           **JUROR:** Yes, sir.

10          **THE COURT:** Have you ever formed in your own  
11 mind or have you ever expressed to anyone else an  
12 opinion as to whether or not Janice Ergle is a  
13 believable person?

14          **JUROR:** That she is --

15          **THE COURT:** Don't tell me what your opinion is.  
16 Have you formed or expressed any opinion as to  
17 whether or not she's a believable person?

18          **JUROR:** No.

19          **THE COURT:** You've never formed an opinion as  
20 to whether she's believable or not?

21          **JUROR:** I'm sorry. I didn't understand. Yes,  
22 sir, I do.

23          **THE COURT:** All right. I'm going to have to  
24 set you aside because you've already evaluated her  
25 credibility. Just have a seat. I'm going to set

1           you aside on this case, all right. Thank you.

2                   66 is set aside on the trial of this case.

3                   Anybody else?

4                   (There was no response.)

5                   **THE COURT:** All right. Is there anything at  
6 all about the nature of these allegations that might  
7 affect your ability to be a fair and impartial juror  
8 in the case? As I indicated to you, the charges  
9 that are alleged against Mr. Bowers are criminal  
10 sexual conduct with a minor in the first degree and  
11 criminal solicitation of a minor. Is there anything  
12 at all about the charges themselves, just the nature  
13 and allegation of those type of charges in general  
14 terms, that would affect or might affect your  
15 ability to be a fair and impartial juror in  
16 evaluating these cases; if so, please stand?

17                   (There was no response.)

18                   **THE COURT:** Are any of you members of or  
19 financial contributors to any organization which has  
20 as one of its primary purposes, the support of law  
21 enforcement or victims or victims' rights, that  
22 would include such things as volunteering at a  
23 shelter for abused persons, being a financial  
24 contributor to Citizens Against Violent Crime or  
25 belong to any kind of trooper organization or



1 Mothers Against Drunk Driving or Students Against  
2 Drunk Driving, anything that supports law  
3 enforcement or victims or victims' rights, you need  
4 to tell us about it; if so, please stand?

5 (There was no response.)

6 **THE COURT:** All right. Now, I'm going to pose  
7 a question that's going to have multiple parts to  
8 it. I'm going to include a lot of questions in one  
9 question. And we're going to talk about these  
10 things, if it applies to anyone, over here on the  
11 side. We're not going to talk about these things  
12 except on the side. So please listen carefully to  
13 all the parts.

14 Have any of you, any of your immediate family  
15 members or anyone very close to you ever been  
16 accused of committing an offense which was sexual in  
17 nature, or have any of you, any of your immediate  
18 family members or anyone very close to you ever been  
19 the victim of any type of offense that was sexual in  
20 nature regardless of whether or not any charges were  
21 actually filed; if so, please stand?

22 (Jurors stand.)

23 **THE COURT:** Form a line over here, please, on  
24 my left. The lawyers may come up and listen;  
25 Mr. Bowers may if he wishes.

1                   (Whereupon, the following bench conferences  
2                   were held on the record, in the presence of the jury  
3                   panel, but out of the hearing of the jury panel.)

4                   **THE COURT:** What is your name, please, ma'am?

5                   **JUROR:** Tonya Titus, number 186.

6                   **THE COURT:** 186. What's your situation, ma'am?

7                   **JUROR:** My father was accused of sexual  
8                   misconduct with my sister.

9                   **THE COURT:** Was he charged?

10                  **JUROR:** Yes.

11                  **THE COURT:** Was he convicted?

12                  **JUROR:** He pled guilty, sir.

13                  **THE COURT:** And what punishment did he get; do  
14                  you know?

15                  **JUROR:** I believe it was three years probation.

16                  **THE COURT:** Was that in Saluda County?

17                  **JUROR:** No, sir. It was in Ohio.

18                  **THE COURT:** Is there anything at all about that  
19                  relationship or experiences related to it that in  
20                  any way affects your ability to be a fair and  
21                  impartial juror?

22                  **JUROR:** I don't believe so, no, sir.

23                  **THE COURT:** You have any doubt in your mind?

24                  **JUROR:** No, sir.

25                  **THE COURT:** Thank you very much.

1 Ms. Titus is 186 and eligible to serve.

2 Yes, sir. What's your name, sir?

3 **JUROR:** Daniel Geanetta, juror 75.

4 **THE COURT:** 75. What's your situation, please?

5 **JUROR:** I have five daughters and one of my

6 minor daughters within the last two years was

7 impregnated by a 27-year-old male.

8 **THE COURT:** One of your daughters got pregnant

9 how? What did you say?

10 **JUROR:** By a 27-year-old male.

11 **THE COURT:** How old was your child?

12 **JUROR:** At the time she was 16.

13 **THE COURT:** Any charges brought?

14 **JUROR:** No, sir. They had moved back to

15 Colorado.

16 **THE COURT:** Your child and the man?

17 **JUROR:** No. My child and my recently ex-wife.

18 **THE COURT:** Is there anything about that

19 experience or your relationship with your daughter

20 that affects your ability to be fair and impartial

21 in this particular case?

22 **JUROR:** Definitely.

23 **THE COURT:** Okay. I'll set you aside on this

24 case. Mr. Geanetta, don't discuss any of that with

25 your fellow jurors, please. Just have a seat back

1           there and wait for further instructions.

2           75 is set aside on the trial of this case.

3           Yes, sir. What's your name, please?

4           **JUROR:** Justin Langford, number 108.

5           **THE COURT:** 108. What's your situation?

6           **JUROR:** My fiancée's father, he was indicted on  
7 a charge back in 2000, 2001 on sexual assault,  
8 whatever it is.

9           **THE COURT:** Was that in Saluda County?

10          **JUROR:** Yes, sir.

11          **THE COURT:** Has he been -- has the case been  
12 handled or do you know?

13          **JUROR:** Yeah. He's got to go like every six  
14 months and pay money up here. It's a sex offender  
15 charge.

16          **THE COURT:** So he got probation you think?

17          **JUROR:** I don't know. I know every six months  
18 he comes pay money to the county.

19          **THE COURT:** Did he go to prison?

20          **JUROR:** No.

21          **THE COURT:** Were you saying he has to register  
22 as a sex offender?

23          **JUROR:** Yeah.

24          **THE COURT:** All right. Is there anything about  
25 that experience or your relationship with any of

1       those people that affects your ability to be fair  
2       and impartial in this case?

3               **JUROR:** No, sir.

4               **THE COURT:** If he was prosecuted by the same  
5       office that's prosecuting this case, would that  
6       affect your ability to be fair and impartial?

7               **JUROR:** No, sir.

8               **THE COURT:** Do you have any doubt at all about  
9       your ability to be a fair and impartial juror?

10              **JUROR:** No doubt.

11              **THE COURT:** What's the name of your fiancée's  
12       father?

13              **JUROR:** Robert Rhoden.

14              **THE COURT:** Thanks very much, sir.

15              **JUROR:** All right. Thank you.

16              **THE COURT:** Mr. Langford is 108 and he's set  
17       aside -- I'm sorry -- he's eligible to serve on this  
18       jury.

19              Yes, ma'am. What's your name, please?

20              **JUROR:** Candace Bussey.

21              **THE COURT:** 31, Ms. Bussey. What's your  
22       situation, please?

23              **JUROR:** My brother was sent to prison for  
24       sexual assault.

25              **THE COURT:** Your brother -- is he still in

1 prison?

2 **JUROR:** No, sir.

3 **THE COURT:** Did that happen in Saluda County?

4 **JUROR:** Edgefield County.

5 **THE COURT:** Edgefield. What's your brother's  
6 name?

7 **JUROR:** Ryan Bussey. I think he -- he don't  
8 have to register as a sex offender, though.

9 **THE COURT:** Okay. Did he plead guilty or have  
10 a jury trial; do you remember?

11 **JUROR:** I don't think he had a jury trial. It  
12 was something about he pled to high and aggravated  
13 nature --

14 **THE COURT:** Assault. Okay. Is there anything  
15 at all about that experience that affects your  
16 ability to be a fair and impartial juror, your  
17 relationship with your brother that affects your  
18 ability?

19 **JUROR:** Yes, sir.

20 **THE COURT:** Okay. I'll set you aside on this  
21 case. Just don't discuss any of that with your  
22 fellow jurors, please, ma'am.

23 31, Ms. Bussey, is set aside on the trial of  
24 this case.

25 Yes, ma'am. What's your name, please?

1           **JUROR:** Jan Eargle. I think it's 65.

2           **THE COURT:** Right, 65. What's your situation,  
3 please?

4           **JUROR:** My daughter's first husband was  
5 convicted on charges, sex with a minor. As far as I  
6 know -- well, we know -- he's currently still in  
7 McCormick County Prison.

8           **THE COURT:** What county did that happen in?

9           **JUROR:** I'm thinking Lexington.

10          **THE COURT:** Lexington you think?

11          **JUROR:** Uh-huh.

12          **THE COURT:** And I take it -- you said it was  
13 first husband, so they divorced?

14          **JUROR:** Yes, sir.

15          **THE COURT:** Were you related in any way to the  
16 alleged victim in that case?

17          **JUROR:** No.

18          **THE COURT:** Is there anything at all about that  
19 experience or your relationship with those folks  
20 that affects your ability to be fair and impartial?

21          **JUROR:** No, sir.

22          **THE COURT:** Any doubt in your mind about your  
23 ability to be a fair and impartial juror in this  
24 case?

25          **JUROR:** No, sir.

1           **THE COURT:** Thank you.

2           Ms. Eargle is 65 and eligible to serve.

3           Yes, ma'am.

4           **JUROR:** 120, Leannan Matthews.

5           **THE COURT:** 120. Yes, ma'am.

6           **JUROR:** Okay. State of Kansas versus Shoptaw  
7           and it involved my ex-husband, my oldest son as the,  
8           they call it, defendants. And my daughter was the  
9           plaintiff. And it also involved child -- it was her  
10          child from the rape of my son. It's all documented.

11          **COURT REPORTER:** Can you spell the last name?

12          **JUROR:** It's S-h-o-p-t-a-w.

13          **THE COURT:** Is there anything about that  
14          experience, your relationship with them that affects  
15          your ability to be fair and impartial?

16          **JUROR:** Oh, yes, it still does.

17          **THE COURT:** Don't discuss any of that with your  
18          fellow jurors, please. I'll set you aside on this  
19          trial.

20          **JUROR:** I'm sorry?

21          **THE COURT:** Don't discuss all of that with your  
22          fellow jurors and I'll set you aside on this case.  
23          Just have a seat back there. You won't serve on  
24          this case.

25          120 is set aside on this trial.



1 Yes, ma'am.

2 **JUROR:** 154.

3 **THE COURT:** What did you find out?

4 **JUROR:** He said he'll try and just get in touch  
5 with someone. He's got to get someone to get the  
6 kids off -- we pick them up in the pick-up line  
7 every day, so got to get someone to do that. So  
8 he's checking with it.

9 **THE COURT:** So you're okay to serve?

10 **JUROR:** Yes, but the thing is you asked --

11 **THE COURT:** Yeah, I need to ask you --

12 **JUROR:** It was my sister and I.

13 **THE COURT:** You and your sister?

14 **JUROR:** Uh-huh. And my other sister. It was  
15 three of us.

16 **THE COURT:** Two sisters and you were victims?

17 **JUROR:** Uh-huh, stepfather and uncle.

18 **THE COURT:** Were either of them charged?

19 **JUROR:** No. We were too scared to go forward.

20 **THE COURT:** Yes, ma'am. Is there anything  
21 about that experience that affects your ability to  
22 be fair and impartial?

23 **JUROR:** Uh-huh.

24 **THE COURT:** Okay. I'll set you aside on this  
25 case. Don't discuss any of that with your fellow

1 jurors, please. Thank you.

2 154, Ms. Ridgell, is set aside on the trial of  
3 this case.

4 Yes, sir. What's your name, please?

5 **JUROR:** Brad Wood, number 204.

6 **THE COURT:** Go ahead, please.

7 **JUROR:** My second cousin, who was a minor at  
8 the time, raped my other second cousin, who was a  
9 minor at the time, giving him four or five years in  
10 DJJ.

11 **THE COURT:** Okay. So the one who got the  
12 sentence in DJJ raped another cousin?

13 **JUROR:** His sister.

14 **THE COURT:** Was that in Saluda County?

15 **JUROR:** No, sir. It was in Gilbert.

16 **THE COURT:** So it was in Lexington County?

17 **JUROR:** Yes, sir.

18 **THE COURT:** Were you involved in the case in  
19 any way?

20 **JUROR:** No, sir.

21 **THE COURT:** Is there anything about that  
22 experience or your relationship with them that  
23 affects your ability to be fair and impartial?

24 **JUROR:** Not in the slightest, Judge.

25 **THE COURT:** Okay. Do you have any doubt about

1 your ability to be a fair and impartial juror?

2 **JUROR:** Not in my mind.

3 **THE COURT:** Thank you. All right, stay with  
4 us, please.

5 204 is eligible to serve.

6 Yes, sir. Your name, sir?

7 **JUROR:** Juror 54, David Craps.

8 **THE COURT:** 54, yes, sir.

9 **JUROR:** I have a niece and nephew sexually  
10 abused when they were very small at an in-home  
11 daycare.

12 **THE COURT:** Where did that happen? What  
13 county?

14 **JUROR:** Lexington.

15 **THE COURT:** Anybody charged?

16 **JUROR:** Yes.

17 **THE COURT:** Is there anything about that  
18 experience that affects your ability to be a fair  
19 and impartial juror in this case?

20 **JUROR:** No, sir.

21 **THE COURT:** Do you have any doubt in your mind  
22 about it?

23 **JUROR:** Yeah, I do.

24 **THE COURT:** Then I'll set you aside. Was that  
25 a pretty good while ago?

1           **JUROR:** Yes, sir, probably about 12, 15 years  
2 ago.

3           **THE COURT:** Older guy?

4           **JUROR:** Uh-huh.

5           **THE COURT:** I sentenced him.

6           **JUROR:** Oh, you did?

7           **THE COURT:** I'm pretty sure, if it's the same  
8 case. Anyway, that's about all I ought to say, I  
9 guess. All right, thank you. I'm going to set you  
10 aside. Don't discuss that with your fellow jurors.

11           54 is set aside on the trial of this case.

12           (The bench conferences were concluded.)

13           **THE COURT:** Have any of you formed or expressed  
14 any opinions about the case; if so, please stand?

15           (There was no response.)

16           **THE COURT:** Are any of you aware of any  
17 interest, bias or prejudice that you might have for  
18 or against the State, for or against the defendant,  
19 for or against anyone or any entity involved in  
20 these cases; if so, please stand?

21           (There was no response.)

22           **THE COURT:** Can each of you give both the State  
23 of South Carolina and the defendant, Mr. Bowers, a  
24 fair and impartial trial? If you know of any reason  
25 why you cannot, please stand now.

1 (There was no response.)

2 **THE COURT:** Further questions from the State?

3 **MR. MAYE:** Nothing from the State, Your Honor.

4 Thank you.

5 **THE COURT:** Further questions from the defense?

6 **MR. SHEEK:** None from the defense, Your Honor.

7 **THE COURT:** Thank you very much.

8 I should note for the record that during the  
9 break, Ms. Ridgell found out that they probably can  
10 get childcare services, but she's set aside on this  
11 case anyway, 154.

12 All right. The jury panel is qualified. I  
13 didn't bring my notebook up. What are the strikes?

14 **MR. SHEEK:** Five and ten, Your Honor.

15 **MR. MAYE:** Five and ten.

16 **THE COURT:** All right. Ladies and gentlemen,  
17 what's going to happen now is that the Clerk of  
18 Court is going to tell the computer to randomly  
19 select an order, the number of you who have not been  
20 set aside on this trial. She will start at the top  
21 of the list. And if your name is called, you need  
22 to gather your belongings, come down front and just  
23 go to the nearest aisle.

24 And, basically, what I want you to do is to  
25 come down to where this rail is where Ms. Holmes is

1 sitting where that microphone is and just turn so  
2 I'm looking straight at your back. So come to the  
3 center, come up to the rail. And then once you get  
4 down here, the Clerk's going to ask questions of the  
5 State's attorney and the defense attorney. And  
6 based on the responses that she gets, you'll be told  
7 either to have a seat in the jury box or to return  
8 to your seat in the courtroom. So that's why you  
9 need to bring your personal belongings because your  
10 next stop may be over here in the jury box.

11 (Pause.)

12 **THE COURT:** All right. Madame Clerk, give us a  
13 jury.

14 **THE CLERK:** 145, Amy P. Potts.

15 (Whereupon, Amy P. Potts, a white female,  
16 was called forward.)

17 **THE CLERK:** What say you for the State?

18 **MR. MAYE:** Please present the juror.

19 **THE CLERK:** What say you for the defense?

20 **MR. SHEEK:** Please excuse Ms. Potts from this  
21 trial.

22 **THE CLERK:** Please return to your seat.

23 Number 43, Christina R. Cochran.

24 (Whereupon, Christina R. Cochran, a white  
25 female, was called forward.)

1           **THE CLERK:**   What say you for the State?

2           **MR. MAYE:**   Please present the juror.

3           **THE CLERK:**   What say you for the defense?

4           **MR. SHEEK:**   Please excuse Ms. Cochran from this  
5 trial.

6           **THE CLERK:**   Please return to your seat.

7           159, Geraldine Robinson.

8           (Whereupon, Geraldine Robinson, a black  
9 female, was called forward.)

10          **THE CLERK:**   What say you for the State?

11          **MR. MAYE:**   Please present the juror.

12          **THE CLERK:**   What say you for the defense?

13          **MR. SHEEK:**   Please swear the juror.

14          **THE CLERK:**   Please have a seat in the jury box.

15          65, Jan D. Eargle.

16          (Whereupon, Jan D. Eargle, a white female,  
17 was called forward.)

18          **THE CLERK:**   What say you for the State?

19          **MR. MAYE:**   Please present the juror.

20          **THE CLERK:**   What say you for the defense?

21          **MR. SHEEK:**   Please excuse the juror from this  
22 trial.

23          **THE CLERK:**   Please return to your seat.

24          28, Dariana M. Burno.

25          (Whereupon, Dariana M. Burno, a black

1 female, was called forward.)

2 **THE CLERK:** What say you for the State?

3 **MR. MAYE:** Please present the juror.

4 **THE CLERK:** What say you for the defense?

5 **MR. SHEEK:** Please swear the juror.

6 **THE CLERK:** Please have a seat in the jury box.

7 114, Donnie L. Longshore.

8 (Whereupon, Donnie L. Longshore, a white  
9 male, was called forward.)

10 **THE CLERK:** What say you for the State?

11 **MR. MAYE:** Please present the juror.

12 **THE CLERK:** What say you for the defense?

13 **MR. SHEEK:** Please swear the juror.

14 **THE CLERK:** Please have a seat in the jury box.

15 173, Olivia M. Simmons.

16 (Whereupon, Olivia M. Simmons, a black  
17 female, was called forward.)

18 **THE CLERK:** What say you for the State?

19 **MR. MAYE:** Please present the juror.

20 **THE CLERK:** What say you for the defense?

21 **MR. SHEEK:** Please swear the juror.

22 **THE CLERK:** Please have a seat in the jury box.

23 111, Deborah S. Lomax.

24 (Whereupon, Deborah S. Lomax, a white  
25 female, was called forward.)



1           **THE CLERK:** What say you for the State?

2           **MR. MAYE:** Please present the juror.

3           **THE CLERK:** What say you for the defense?

4           **MR. SHEEK:** Please excuse the juror from this  
5 trial.

6           **THE CLERK:** Please return to your seat.

7           139, Ronnie M. Nichols.

8           (Whereupon, Ronnie M. Nichols, a white male,  
9 was called forward.)

10          **THE CLERK:** What say you for the State?

11          **MR. MAYE:** Please present the juror.

12          **THE CLERK:** What say you for the defense?

13          **MR. SHEEK:** Please swear the juror.

14          **THE CLERK:** Please have a seat in the jury box.  
15 129, Toney Minick.

16          (Whereupon, Toney Minick, a black male, was  
17 called forward.)

18          **THE CLERK:** What say you for the State?

19          **MR. MAYE:** Please present the juror.

20          **THE CLERK:** What say you for the defense?

21          **MR. SHEEK:** Please swear the juror.

22          **THE CLERK:** Please have a seat in the jury box.  
23 94, Thomas C. Holloway.

24          (Whereupon, Thomas C. Holloway, a black  
25 male, was called forward.)

1           **THE CLERK:** What say you for the State?

2           **MR. MAYE:** Please excuse the juror from the  
3 trial of this case.

4           **THE CLERK:** Please return to your seat.

5           88, Margaret R. Harmon.

6           (Whereupon, Margaret R. Harmon, a white  
7 female, was called forward.)

8           **THE CLERK:** What say you for the State?

9           **MR. MAYE:** Please present the juror.

10          **THE CLERK:** What say you for the defense?

11          **MR. SHEEK:** Please excuse the juror from this  
12 trial.

13          **THE CLERK:** Please return to your seat.

14          99, Joy J. Hyler.

15          (Whereupon, Joy J. Hyler, a white female,  
16 was called forward.)

17          **THE CLERK:** What say you for the State?

18          **MR. MAYE:** Please present the juror.

19          **THE CLERK:** What say you for the defense?

20          **MR. SHEEK:** Please swear the juror.

21          **THE CLERK:** Please have a seat in the jury box.

22          57, Scott E. Crouch.

23          (Whereupon, Scott E. Crouch, a white male,  
24 was called forward.)

25          **THE CLERK:** What say you for the State?

1           **MR. MAYE:** Please present the juror.

2           **THE CLERK:** What say you for the defense?

3           **MR. SHEEK:** Please swear the juror.

4           **THE CLERK:** Please have a seat in the jury box.

5           96, Ehren J. Hoover.

6                   (Whereupon, Ehren J. Hoover, a white male,  
7 was called forward.)

8           **THE CLERK:** What say you for the State?

9           **MR. MAYE:** Please present the juror.

10          **THE CLERK:** What say you for the defense?

11          **MR. SHEEK:** Please swear the juror.

12          **THE CLERK:** Please have a seat in the jury box.

13          107, Debbie H. Kirkland.

14                   (Whereupon, Debbie H. Kirkland, a white  
15 female, was called forward.)

16          **THE CLERK:** What say you for the State?

17          **MR. MAYE:** Please present the juror.

18          **THE CLERK:** What say you for the defense?

19          **MR. SHEEK:** Please swear the juror.

20          **THE CLERK:** Please have a seat in the jury box.

21          69, Elliot Etheredge.

22                   (Whereupon, Elliot Etheredge, a black male,  
23 was called forward.)

24          **THE CLERK:** What say you for the State?

25          **MR. MAYE:** Please excuse the juror from the

1 trial of this case.

2 **THE CLERK:** Please return to your seat.

3 202, Cynthia S. Willis.

4 (Whereupon, Cynthia S. Willis, a white  
5 female, was called forward.)

6 **THE CLERK:** What say you for the State?

7 **MR. MAYE:** Please present the juror.

8 **THE CLERK:** What say you for the defense?

9 **MR. SHEEK:** Please excuse the juror from this  
10 trial.

11 **THE CLERK:** Please return to your seat.

12 132, Sarah R. Mizzell.

13 (Whereupon, Sarah R. Mizzell, a white  
14 female, was called forward.)

15 **THE CLERK:** What say you for the State?

16 **MR. MAYE:** Please present the juror.

17 **THE CLERK:** What say you for the defense?

18 **MR. SHEEK:** Please excuse the juror from this  
19 trial.

20 **THE CLERK:** Please return to your seat.

21 77, Delphine Goff.

22 (Whereupon, Delphine Goff, a white female,  
23 was called forward.)

24 **THE CLERK:** What say you for the State?

25 **MR. MAYE:** Please present the juror.

1           **THE CLERK:** What say you for the defense?

2           **MR. SHEEK:** Please swear the juror.

3           **THE CLERK:** Please have a seat in the jury box.

4           126, Jane A. McIntyre.

5           (Whereupon, Jane A. McIntyre, a white

6           female, was called forward.)

7           **THE CLERK:** What say you for the State?

8           **MR. MAYE:** Please present the juror.

9           **THE CLERK:** What say you for the defense?

10          **MR. SHEEK:** Please excuse the juror from this

11          trial.

12          **THE CLERK:** Please return to your seat.

13          24, Ricky N. Brown, Jr.

14          (Whereupon, Ricky N. Brown, Jr., a white

15          male, was called forward.)

16          **THE CLERK:** What say you for the State?

17          **MR. MAYE:** Please present the juror.

18          **THE CLERK:** What say you for the defense?

19          **MR. SHEEK:** Please swear the juror.

20          **THE CLERK:** Please have a seat in the jury box.

21          **THE COURT:** Draw an alternate. The strikes are

22          one for the State and two for the defense.

23          **THE CLERK:** 160, Jimmy Rodgers.

24          (Whereupon, Jimmy Rodgers, a white male, was

25          called forward.)

1           **THE CLERK:** What say you for the State?

2           **MR. MAYE:** Please present the juror.

3           **THE CLERK:** What say you for the defense?

4           **MR. SHEEK:** Please swear the juror.

5           **THE CLERK:** Please have a seat in the jury box.

6           **THE COURT:** Draw another alternate. Strikes  
7 are one for the State and two for the defense.

8           **THE CLERK:** 18, David W. Boone.

9                   (Whereupon, David W. Boone, a white male,  
10 was called forward.)

11           **THE CLERK:** What say you for the State?

12           **MR. MAYE:** Please present the juror.

13           **THE CLERK:** What say you for the defense?

14           **MR. SHEEK:** Please swear the juror.

15           **THE CLERK:** Please have a seat in the jury box.

16           **THE COURT:** Are there any matters to take up  
17 including composition of the jury panel prior to the  
18 jury being sworn, from the State?

19           **MR. MAYE:** None from the State, Your Honor.

20 Thank you.

21           **THE COURT:** From the defense?

22           **MR. SHEEK:** Nothing from the defense, Your  
23 Honor.

24           **THE COURT:** Thank you.

25 All right. Ladies and gentlemen, I have to

1       talk with the attorneys and find out what issues I  
2       need to deal with before we get started with the  
3       part of the trial that you will be involved in. We  
4       have pretrial issues in every single case and this  
5       is the time when I find out for sure what they are.  
6       So let me get my bearings and then I'll tell you how  
7       we plan to proceed.

8               I'm going to send you into the jury room in a  
9       moment. You are not to discuss the case among  
10      yourselves in any way, don't talk about the people  
11      involved in it, the type of cases that are alleged,  
12      don't talk about this case in any way whatsoever.  
13      While you're in there, what I want you to do for me  
14      without discussing the case is to select a  
15      foreperson of your jury. Now, it cannot be either  
16      of the two alternates, the gentlemen on the back  
17      row. It has to be the -- among the first 12 that  
18      were chosen. I want you to select a foreperson. I  
19      want you to write the name and the juror number down  
20      for me and give that to the bailiff, but don't  
21      discuss the case.

22             If you have cell phones, turn them off. I'll  
23      have to give you instructions about that in a  
24      minute, all right. Follow the bailiff, please.

25             (The jury retires to the jury room.)

1           **THE COURT:** Who was the lady that worked in  
2 Newberry Hospital? Come down here, please.

3           **MR. MAYE:** They're telling me Ms. Edmunds.

4           **THE COURT:** 66.

5           (Whereupon, the following bench conference  
6 was held on the record, in the presence of the jury  
7 panel, but out of the hearing of the jury panel.)

8           **THE COURT:** Since you didn't get on this first  
9 jury, I'm going to let you go. You don't have to  
10 worry about calling in or coming back. You're  
11 through for the week, okay. Do you need any kind of  
12 slip to prove you were up here for work?

13          **JUROR:** No, sir.

14          **THE COURT:** 66, she's excused.

15          (The bench conference was concluded.)

16          **THE COURT:** All right. Ladies and gentlemen,  
17 if you're not selected on this case, I told you  
18 you'd be with me at least -- about two hours, and  
19 we're pretty close. What we're going to do is we're  
20 going to put you on a telephone standby system and  
21 I'm going to explain that to you in a little detail  
22 in just a moment. If there is an opportunity to  
23 call another case for trial, I'll need to bring a  
24 jury in to be selected for that case. They do have  
25 some backup cases and they have one case that is



1 relatively short, again, not any less important.  
2 I'm not really sure they're going to be able to try  
3 two cases this week, but we'll see how it goes.

4 It's too early in the week for me to turn the  
5 jury loose, and sometimes things happen in a trial  
6 that are unexpected and we move off that trial and  
7 go to another one. So I don't want to waste the  
8 court time that we have available in Saluda, so  
9 we're going to keep you on telephone standby.

10 I promise you that I know that you have other  
11 places to be and other things to do. And I promise  
12 you that as soon as I know that I can't use you  
13 anymore this week, that I don't need you to do the  
14 business that we have to do, I promise you I'll tell  
15 the Clerk to put on the message that you're through  
16 for the week. It's too early in the week for me to  
17 do that.

18 Now, if you'll bear with me just a few more  
19 moments, I want to explain to you this call-in  
20 system. You're going to be given a telephone number  
21 -- they haven't been given it already, have they?

22 **THE CLERK:** No, sir.

23 **THE COURT:** As you leave, get a telephone  
24 number from the bailiff as you're going out the  
25 door. You need to call that number tonight after

1       6:00 and follow the instructions. I know six  
2       o'clock might not be the best time to tell your  
3       employer about tomorrow, but we have tried moving it  
4       up in the day. I've talked with judges across the  
5       state, they tried the same thing. It's pretty  
6       standard across the state. As far as I know, it's  
7       completely standard, six o'clock, because that's  
8       usually about the time the judges are finishing up  
9       with the work of the court that day and leaving the  
10      courthouse and know what to tell the Clerk to put on  
11      the message.

12             Now, when I was practicing law years ago, the  
13      way that judges dealt with juries is they brought  
14      them in every morning and every afternoon, and the  
15      judges sat there -- I mean, the juries sat there.  
16      So judges brought the juries in every morning and  
17      every afternoon and they sat there. And, at some  
18      point, they may say, go to lunch, come back at 2:00,  
19      2:30, go home, come back tomorrow. That's the way  
20      it was.

21             About the time that I was coming on the bench,  
22      we realized that while that's really convenient for  
23      the court to have the jury there all the time, it's  
24      really not necessary and it's really inconvenient  
25      for the jurors. Plus, from a taxpayer standpoint,

1       it cost a whole lot more money because you only get  
2       paid juror pay, I call that Happy Meal money, but  
3       you only get juror pay for the days you're actually  
4       here. So we developed this call-in system across  
5       the state, every county has gone to it now, and you  
6       call that number and we'll tell you either to come  
7       in the next day or call back or that you're through.

8               Now, I'm going to, at this point, insult your  
9       intelligence. Please forgive me. I'm talking to  
10      the lowest common denominator of 22 years of juries  
11      that I've dealt with. This system is great, but it  
12      only works if you call. There have been many times  
13      when I've told jurors what I think might happen in a  
14      week. I do that to help the jurors plan. But if I  
15      knew exactly what was going to happen, I wouldn't  
16      have you call in, I'd tell you. So call. I've had  
17      jurors tell me, well, I didn't call because you said  
18      you didn't think you'd need us until Thursday or  
19      whatever. Call.

20             Which gets me to the next point: If you're  
21      supposed to be here and you're not here, I send  
22      somebody to get you. Don't mean that as a threat, I  
23      just want you to understand that anybody who should  
24      have been here this morning that didn't show up, the  
25      sheriff is contacting them. I don't think we had

1       anybody, but we did last week -- two weeks ago.  
2       They get contacted. Most of the time they just  
3       simply forgot and we put them in another term of  
4       court. But if you're not here and you're supposed  
5       to be, somebody's going to be calling. And if they  
6       don't get you on the phone, they're going to come  
7       find you.

8               Which gets me to the third point: If you have  
9       some true emergency that arises that prevents you  
10      from being here, please have somebody call the  
11      Clerk's office and tell us so that we know what's  
12      going on. I promise you I'll be as reasonable as I  
13      possibly can in dealing with anything, but make sure  
14      it's a true emergency.

15             Now, I may decide, say on Wednesday afternoon,  
16      that there's no way we're going to be able to try  
17      another case this week and I'll tell Ms. Holmes, cut  
18      the jury loose. I have had a few situations, never  
19      in Saluda County, but I have had a few situations  
20      over the years where a person was getting paid by  
21      their employer while they're on jury duty and even  
22      though I might have turned the jury loose on Tuesday  
23      or Wednesday, the juror took the rest of the week  
24      off and expected us to write them an excuse. That  
25      won't happen. You're only going to get an excuse,

1       if you need one, for the days you're actually up  
2       here.

3               And I really don't have any power over your  
4       employers. I can't tell them what to do. Most of  
5       them are really easy to work with. But you can get  
6       an excuse from work, you can get a slip certifying  
7       you were up here, more precise. So if anybody tries  
8       to plant that bug in your ear about, well, you just  
9       take the rest of the week off, don't listen to them,  
10      it doesn't work.

11             The last thing I want to say in case I do not  
12      see you again is thank you very much. It's easy to  
13      find yourself in a dispute like these folks are in.  
14      If you're ever in one of these disputes, you're  
15      going to be very grateful that people like you came  
16      away from everything they had to do in their lives  
17      so we can resolve our disputes in a room like this  
18      and go on with life. So thank you.

19             All right. Any questions about the call-in  
20      system? Call tonight, follow the instructions,  
21      after 6:00. Make sure you get your slip of paper  
22      with the telephone number on it as you leave. If  
23      you're here for jury duty, you're free to go. Call  
24      tonight after 6:00.

25             Everybody else stay seated.

1 (The remaining jury panel was excused.)

2 **THE COURT:** All right. There's a Denno hearing  
3 that we need to do. What else?

4 **MR. SHEEK:** That's the only thing I know of  
5 pretrial, Your Honor.

6 **MR. MAYE:** Your Honor, maybe at a break, not  
7 while we're in between the jury, we've got a couple  
8 of phone calls, they were jail phone calls, that  
9 I'll probably need you to make a judgment call on at  
10 some point in time.

11 **THE COURT:** All right. So I've got a Denno  
12 hearing and then you've got to find some information  
13 that I have to review?

14 **MR. MAYE:** No, sir. I have two jail telephone  
15 conversations, but they wouldn't be with the  
16 witnesses I think we'd reach today. I would propose  
17 to the Court whatever you dictate would be  
18 appropriate, but it's not something we need to take  
19 up prior to opening statements and all of that.

20 We would need to do the Jackson versus Denno  
21 prior to going into that, but it'd basically just be  
22 a prejudicial versus probative balancing test on  
23 those two tapes. And I'd need to get the tapes in  
24 here and let you listen to them. And I'm assuming  
25 the defense would like for me to do that in camera

1 and get some kind of determination as to whether or  
2 not those are going to be admissible, but it  
3 wouldn't be anything that would prohibit us from  
4 going right on into this case now.

5 **THE COURT:** How long will a Denno hearing take?

6 **MR. MAYE:** Not long, Your Honor. I have one  
7 witness, possibly a second witness, but the second  
8 witness was merely a witness to the event.

9 **MR. SHEEK:** And I will call the defendant for  
10 purposes of the Jackson v. Denno hearing, Your  
11 Honor, but I don't expect any lengthy testimony.

12 **THE COURT:** Okay. So you're talking about 30  
13 minutes or what?

14 **MR. MAYE:** We're thinking more like 45 minutes  
15 to an hour, Your Honor. If I had to guess, maybe 45  
16 minutes, that'd be at the most. I assume your issue  
17 is we take it up before lunch or after lunch?

18 **THE COURT:** No. I think I got to do  
19 Mr. Johnson's matter and something else.

20 **MR. MAYE:** I'm guessing 45 minutes, Your Honor.

21 **THE COURT:** All right. Have they given you a  
22 name yet?

23 **BAILIFF:** No, sir.

24 **THE COURT:** See if they got it now.

25 (Pause.)

1           **THE COURT:** Go ahead and bring them in.

2           They designated 173, Ms. Simmons, as Foreman of  
3 the jury.

4           (The jury returns to the courtroom.)

5           (Court's Exhibit Number 1, jury note, marked  
6 for identification.)

7           **THE COURT:** Ladies and gentlemen, I'm going to  
8 let you go to lunch after I give you some  
9 instructions. You'll be on your own for lunch and  
10 I'll give you a time to come back. You may have to  
11 wait on us a little bit after you come back, but I'd  
12 rather try to keep things moving if it's okay.

13          Now, before I let you go, I need to make sure  
14 you understand some things: Do not discuss this  
15 case among yourselves until I tell you to, that'll  
16 be at the very end of this trial. You won't have  
17 any doubt about when that is. Do not discuss this  
18 case with anybody else, family member, friend,  
19 anybody, until the case is over and you've been  
20 discharged from all the juries you might possibly  
21 serve on this week.

22          So, to give you an example, it's okay you have  
23 to be able to tell your employer, spouse, somebody  
24 that you're on a jury, but you cannot discuss the  
25 case. You can't tell them who's in the case, what



1 the case is about, you can't talk about the case in  
2 any way at all. If anybody attempts to contact you  
3 and discuss the case with you, report that to me so  
4 that I can deal with it.

5 I don't expect media coverage of the trial. I  
6 don't know if there ever has been any, but if there  
7 is any media coverage of the trial, get away from  
8 it, don't let yourself be exposed to it. If you are  
9 inadvertently exposed to it, report to me at the  
10 first opportunity what you may have seen, heard or  
11 read through the media.

12 Do not do any independent investigation, don't  
13 go on the Internet to try to look up law, don't do  
14 word searches, don't do things like that. When you  
15 take your oath, you're going to be -- when you take  
16 your oath, you're going to be promising us that  
17 you'll decide the case based on the evidence and the  
18 law and those things are going to come to you in the  
19 courtroom. Now, I'll tell you to use your common  
20 sense. We want you to bring that with you, but  
21 don't do any outside research.

22 Now, in the old days, I used to tell people not  
23 to do any independent investigation. And I'd give  
24 the example like once you find out where this is  
25 alleged to have occurred, don't go out there and

1 look around. There are provisions in the law to let  
2 people go to the scene and look around, if it's  
3 necessary, and it's done in a controlled setting,  
4 everything is done proper.

5 To give you an example, on the civil side, say  
6 somebody was in a case where it was a civil lawsuit  
7 where they had a wreck at a red light and there was  
8 a question about who had the green light. Well, if  
9 you go out there and look around two, three years  
10 later, they might have changed that intersection all  
11 around. You don't know that. But if we send you  
12 out there, it'll be under a controlled setting. So  
13 that's what I'm talking about.

14 Don't go look at the scene, don't go look up  
15 law. And now that we have computers, you've got a  
16 wealth of information on the computers, and it's  
17 dangerous if you start trying to look up law and you  
18 start trying to look up word searches. So, please,  
19 you're going to be under oath not to do that. Don't  
20 do any independent investigation. When you come  
21 back, I'm going to read to you something the Supreme  
22 Court says we have to read to the juries and it  
23 deals with that.

24 Okay. Now, if you have some true emergency  
25 that arises that prevents you from getting back here

1 on time, please have somebody call and let us know  
2 what's going on. I cannot just proceed without you.  
3 I need to know what's going on. Now, use your  
4 common sense. We have the two alternates, but we  
5 only use those under certain circumstances. But if  
6 something happens, if there's some true emergency,  
7 please let the Clerk's office know so that we can  
8 know whether we can proceed or not. If you're not  
9 here and we can't find you, then I have to send  
10 people to find you, all right.

11 I'm going to ask you to be back in the jury  
12 room at 2:30. I don't know that I'll be ready for  
13 you at 2:30, but hopefully close to then, I can get  
14 you out here. When you come back, don't come into  
15 the courtroom. When you leave, you'll go back  
16 through the jury room and there's a door on the  
17 other side that opens into the hallway. You'll come  
18 back through that door. So don't come out in the  
19 courtroom until I have a bailiff come get you. That  
20 door on the other side should be open for you to go  
21 in when you come back.

22 I hope you have a pleasant lunch. I need you  
23 back at 2:30. Thank you.

24 (The jury was excused for lunch.)

25 **THE COURT:** All right. Ladies and gentlemen,

1       if you're involved in this case, I need you back  
2       here at two o'clock. Do not contact any jurors,  
3       please. I'm going to give you some instructions. I  
4       know they're just common sense, but I want to make  
5       sure everybody understands this:

6               When you leave here, you need to be really  
7       careful because you may think the jurors have gone  
8       and left and they're not here, you can't rely on  
9       that. Some people don't eat lunch, some people wait  
10      on somebody to pick them up. When you leave here,  
11      the safest thing to do is make sure you're clear of  
12      the courthouse property or you're nowhere where a  
13      juror might be that might overhear anything that you  
14      might say that relates to this case or anybody in  
15      it.

16             When you go to lunch, there's a good chance  
17      that there's going to be jurors in there, the same  
18      place you chose to eat. Do not have contact with  
19      them and do not be talking about the case or anybody  
20      in it in a way that might be overheard by a juror.  
21      Please don't do that. Just be careful. I need  
22      y'all back at two o'clock.

23             You're on bond, sir? You've been out on bond?

24             **DEFENDANT:** Yes, sir.

25             **THE COURT:** All right. I have to make

1 decisions in each case as the case goes along  
2 whether to take somebody into custody or not. The  
3 jury hadn't been sworn yet. You won't be taken into  
4 custody before lunch for sure. I may not take you  
5 into custody at all until the end of the trial. But  
6 you make absolutely certain that you're back here at  
7 two o'clock, all right?

8 **DEFENDANT:** Yes, sir.

9 **THE COURT:** If there's something going on that  
10 prevents you from being here, you make sure that you  
11 let your lawyer -- I'm not saying that I'll stop,  
12 but if you're not here, what happens is I issue a  
13 bench warrant for your arrest. If they pick you up,  
14 then they'll bring you back up here, but if they  
15 don't find you, it doesn't matter, the case is going  
16 to go on most likely and you'll be tried in your  
17 absence, so make sure you're here. If Mr. Sheek  
18 should tell you to be here a time earlier than what  
19 I say for the court to start, you be here when  
20 Mr. Sheek tells you.

21 **DEFENDANT:** Yes, sir.

22 **THE COURT:** All right. Thank you.

23 (Whereupon, there was a luncheon recess.)

24 **THE COURT:** Call your witness.

25 **MR. MAYE:** State would call Investigator Kenny

1 Clark to the stand.

2 **THE COURT:** Come around, please.

3 KENNETH CLARK,

4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. MAYE:

7 **Q** Investigator Clark, introduce yourself for the  
8 record.

9 **A** I'm Kenneth Clark.

10 **Q** Where were you employed back in October of  
11 2012?

12 **A** Saluda County Sheriff's Office.

13 **Q** In what capacity were you employed?

14 **A** I was a sergeant.

15 **Q** Did you have an opportunity to encounter the  
16 defendant in this case, David Bowers, in working  
17 this case, in which we're at trial currently?

18 **A** Yes, sir.

19 **Q** Okay. Did you have an opportunity to speak  
20 with him on the afternoon of October the 7th of  
21 2012?

22 **A** Yes, sir.

23 **Q** Okay. Was he in custody and charged at that  
24 time for the crime, the CSC case in which we're  
25 proceeding now?

1       **A**     Yes, sir.

2       **Q**     Okay. So he was in custody. And where were  
3 you when you talked with him?

4       **A**     We were at the Saluda County Sheriff's Office.

5       **Q**     Okay. Let me ask you this: Prior to speaking  
6 with him, did you execute a written waiver of rights  
7 in this case?

8       **A**     Yes, sir.

9       **Q**     Do you have the original written waiver of  
10 rights that you executed?

11      **A**     Yes, sir.

12           **MR. MAYE:** Your Honor, if there's no objection  
13 at this time, we'll make it a court's exhibit or  
14 anything else. I have copies of the waiver of  
15 rights and a statement. I have a copy for the  
16 Court, and I'll pass those up to the Court if  
17 there's no objection from the defense.

18           **MR. SHEEK:** There's no objection, Your Honor.

19           **THE COURT:** You want to mark it a court's  
20 exhibit.

21                   (Court's Exhibit Number 2, waiver of rights  
22 and Court's Exhibit Number 3, statement of  
23 defendant, marked for identification.)

24           **MR. MAYE:** And, Your Honor, I hand up Court's 2  
25 and 3 just for the Court to be able to follow along.

1 BY MR. MAYE:

2 Q Investigator Clark, do you have the original  
3 copy of that written waiver of rights that was  
4 executed by the defendant in this case?

5 A Yes, sir.

6 Q Okay. Would you go through the information  
7 that is contained in that written waiver of rights  
8 and would you please provide to the Court the  
9 information about how this was filled out and how  
10 this written waiver of rights was executed?

11 A Yes, sir. This waiver of rights, we go with  
12 the defendant line by line, fill it in as we go.  
13 Each time we advise of a right, they initial that  
14 they understand that right, and then at the bottom,  
15 they sign. And I can read you what we did that day.

16 Q Go through exactly as you conducted it and  
17 carried it out that day.

18 A It says, I, David Andrew Bowers, am 23 years  
19 old. My address is [REDACTED] Enlow Drive, Batesburg,  
20 South Carolina, 29006. I have finished the 12th  
21 grade and can read. I have been told by Sergeant  
22 Clark, who I understand is a law enforcement  
23 officer, that he would like to question me  
24 concerning the crime of criminal sexual conduct with  
25 a minor in the first degree. This officer has also



1 explained to me that I understand that. And I  
2 understand that I have the right to remain silent,  
3 that means that I do not have to say anything or  
4 answer any questions.

5 **Q** Did he initial that at that time?

6 **A** He initialled that.

7 Anything I say may be used against me in a  
8 court of law. He initialled that.

9 I have the right to talk with an attorney and  
10 to have an attorney here with me now and to advise  
11 me and help me during questioning. He initialled  
12 that.

13 If I want to have an attorney with me before  
14 and during questioning, but cannot afford to pay an  
15 attorney, one will be provided to me at no cost  
16 before and while I am being questioned. Initialled.

17 If I decide to answer questions now without an  
18 attorney here, I still have the right to stop  
19 answering questions whenever I want to. Initialled.

20 I also have the right to stop answering  
21 questions until I have talked with an attorney.  
22 Initialled.

23 Then it states, I understand my rights as  
24 explained to me by Deputy Clark. I now state that I  
25 do wish to answer questions at this time and that I

1 do not wish to have an attorney here before and  
2 during questioning. My decision to answer questions  
3 now without an attorney is made freely and is my own  
4 choice. No one has threatened or coerced me in any  
5 way or promised me special treatment. To show my  
6 decision, I am signing my name in the space below.  
7 It's signed, David A. Bowers, date 10/7/12, time  
8 3:09, witnessed by Sergeant K.H. Clark and K.M.  
9 Holmes.

10 **Q** In each block where there's a blank for him to  
11 initial, did he actually do that in his own  
12 handwriting and did you observe that?

13 **A** Yes, sir.

14 **Q** Okay. Where the line is where it says, Signed  
15 David A. Bowers, is that his signature and did you  
16 actually witness him write, date and give the time  
17 in that regard?

18 **A** Yes, sir.

19 **Q** Okay. Is that your signature and is that where  
20 you signed on the written waiver of rights that you  
21 have there, your name, Sergeant K.H. Clark?

22 **A** Yes, sir.

23 **Q** Who else was present there? And I'll ask, did  
24 they sign the waiver?

25 **A** Yes. K.M. Holmes and he was there.

1       **Q**     All right. Let me ask you this: At the time  
2       that you spoke with him, did he appear to be under  
3       the influence of alcohol, drugs or medication of any  
4       kind?

5       **A**     No, sir.

6       **Q**     Okay. Did he understand your conversation with  
7       him? Did he appear to respond appropriately to your  
8       questions and statements?

9       **A**     Yes, sir.

10      **Q**     Okay. At any time, did you threaten him in any  
11      way?

12      **A**     No, sir.

13      **Q**     Did you do anything to attempt to coerce him to  
14      give you a statement at that point in time?

15      **A**     No, sir.

16      **Q**     Okay. Did you make any promises to him either  
17      orally or in writing at that time?

18      **A**     No, sir.

19      **Q**     Did you do anything at all to attempt to  
20      influence his decision as to whether or not he would  
21      speak with you or give you a statement or not?

22      **A**     No, sir.

23      **Q**     Okay. Let me ask you this: In your presence,  
24      did anyone else threaten him, promise him anything,  
25      do anything to coerce him or offer him any incentive

1 or reward or punishment in your presence?

2 **A** No, sir.

3 **Q** After you executed the written waiver of rights  
4 in this case -- and I'll ask you, do you have the  
5 written waiver, the original?

6 **A** The original.

7 **MR. MAYE:** And, Your Honor, at this time, I'm  
8 going to ask also that this be marked as a court's  
9 exhibit, and this is the original.

10 **MR. SHEEK:** No objection.

11 **THE COURT:** Or marked just for identification,  
12 not as a court's exhibit. I apologize.

13 (State's Exhibit Number 1, waiver of rights,  
14 marked for identification.)

15 BY MR. MAYE:

16 **Q** Is State's 1, now just for identification,  
17 that's the original of the written waiver of rights;  
18 correct?

19 **A** Yes, sir.

20 **Q** Okay. After you had executed that written  
21 waiver of rights, did he give you a statement at  
22 that time?

23 **A** Yes, sir.

24 **Q** Do you have the original of the voluntary  
25 statement that he executed and gave you after being

1       advised of his rights in writing?

2       **A**     Yes, sir.

3       **Q**     Did you bring it with you today?

4       **A**     Yes, sir.

5               **MR. MAYE:** Your Honor, at this point in time,  
6       I'm going to move to mark this also as State's for  
7       ID.

8               **THE COURT:** All right.

9               (State's Exhibit Number 2, statement of  
10      defendant, marked for identification.)

11      BY MR. MAYE:

12      **Q**     Investigator Clark, I hand you back State's 2.  
13      Let me ask you this: In carrying out this voluntary  
14      statement form or it being generated, who wrote this  
15      or what were the circumstances? Give that  
16      information to the Court.

17      **A**     David Bowers wrote it himself and it was  
18      witnessed by myself.

19      **Q**     Okay. You signed as a witness. Was anybody  
20      else present at the time that he executed this  
21      written statement?

22      **A**     Yes, Deputy Holmes.

23      **Q**     He was?

24      **A**     Yes, sir.

25      **Q**     Now, there's a place where you signed as a

1 witness, but did Deputy Holmes sign it at that time  
2 or did just --

3 **A** No, sir. I'm the only one that signed it.

4 **Q** Okay. Please go through and read for the Court  
5 in this case what he gave, what information he  
6 provided in his written statement.

7 **A** It says, Statement of David Bowers, [REDACTED] Enlow  
8 Drive, Batesburg, South Carolina, 29006. On October  
9 6th, 2012, I was out with friends watching the  
10 football game and I was drinking. Rode home with  
11 Rusty Enlow. And around 11:30 p.m. and 12:00 a.m.,  
12 **Minor** [REDACTED] was touching in between my legs and I  
13 did it back. And she also jumped in my lap. And  
14 she wanted me to touch her breast and put my hand  
15 down her pants, and like an idiot, I done it. And  
16 then she wanted me to stick finger in her and I done  
17 that also. And before all of this happened, we  
18 texted stuff back and forth about sexual stuff, but  
19 nothing ever happened.

20 I've never done anything like this in my life.  
21 And I'm not attracted to minors, nor would I have  
22 sex with them. I was provoked into doing what I  
23 done by what she did to me and nothing will ever  
24 happen like this again. I've learned my lesson from  
25 it. I guess the alcohol had something to do with

1       this sick situation, but I swear on my own  
2       daughter's life, this will never happen again. But  
3       I never had sex with her, nor did any other sexual  
4       things happen to myself from her. I know I was  
5       wrong and I am deeply and truly sorry that it did  
6       happen.

7               And it has his initials at the end of the  
8       statement, D.A.B. And then we always mark it off  
9       where nothing can be added to the statement. And he  
10      initialled each block. And it's signed David A.  
11      Bowers, 10/7/12, witnessed by me.

12      **Q**     Did you direct him as to what he was to write  
13      or was this his own statement? Did he generate this  
14      himself?

15      **A**     That was his own statement.

16      **Q**     So you did not direct him what to write or tell  
17      him what to say?

18      **A**     No, sir.

19      **Q**     And, again, during the course of him carrying  
20      out this statement, you had already executed a  
21      written waiver of rights, did you do anything to  
22      threaten him, coerce him, did you promise him  
23      anything or did you do anything to influence his  
24      decision in regard to writing this voluntary  
25      statement?

1           **A**     No, sir.

2           **MR. MAYE:** Answer any questions the defense has  
3           for you regarding the voluntariness of the  
4           statement.

5                               CROSS-EXAMINATION

6           BY MR. SHEEK:

7           **Q**     Mr. Clark, was this process, whether the giving  
8           of the rights or the writing of the statement,  
9           recorded either by video or audio?

10          **A**     No, sir.

11          **MR. SHEEK:** That's all the questions I have,  
12          Your Honor.

13          **THE COURT:** Redirect.

14          **MR. MAYE:** Nothing else. Thank you.

15          **THE COURT:** Thank you, sir. You may step down.

16          **MR. MAYE:** The State would call Kes Holmes to  
17          the stand.

18          **THE COURT:** Come around and be sworn.

19                               KES HOLMES,  
20          having been duly sworn, testified as follows:

21                               DIRECT EXAMINATION

22          BY MR. MAYE:

23          **Q**     Chief Holmes, where were you employed on  
24          October the 7th of 2012?

25          **A**     At the Saluda County Sheriff's Office.



1       **Q**     Did you have an occasion to assist then  
2       Investigator Kenny Clark of your office in  
3       conducting a written waiver of rights form or  
4       carrying out a written waiver of rights form and  
5       taking a statement from the defendant in this case,  
6       David Bowers?

7       **A**     I did.

8       **Q**     I hand you what's been marked as State's 1 for  
9       ID and State's 2 for ID.  Would you review State's 1  
10      for ID and tell me what that is?

11      **A**     It's a waiver of rights from Saluda County  
12      Sheriff's Office.

13      **Q**     Is that the written waiver of rights that was  
14      carried out by David Andrew Bowers on that date and  
15      time that's indicated on the waiver of rights?

16      **A**     It is.

17      **Q**     Were you present as he was provided his rights  
18      and he initialled each block on it?

19      **A**     Yes, sir, I was.

20      **Q**     Okay.  Did you watch him sign this written  
21      waiver of rights and did you, in fact, witness it?

22      **A**     I did.

23      **Q**     Did you do anything during the time that he was  
24      carrying out the written waiver of rights to  
25      threaten him, coerce him?  Did you make any promises

1 to him or did you do anything to influence his  
2 decision as to whether or not to execute this waiver  
3 of rights?

4 **A** I did not.

5 **Q** Did anyone else promise him, threaten him or do  
6 anything to influence his decision in your presence  
7 there?

8 **A** They didn't.

9 **Q** Okay. State's 2 for ID, do you recognize that  
10 written statement?

11 **A** I do.

12 **Q** Is that the written statement that was  
13 generated by the defendant in this case, David  
14 Andrew Bowers, after such time as y'all had obtained  
15 the written waiver of rights?

16 **A** It is.

17 **Q** Okay. You did not witness that in signing it,  
18 but you were present there, did you not?

19 **A** That's correct, I was present.

20 **Q** Okay. During the course of time in which  
21 Mr. Bowers generated that written statement, did you  
22 threaten him, coerce him? Did you do anything to  
23 influence his decision as to whether or not to  
24 execute that written statement?

25 **A** I did not.

1       **Q**     Okay. Did you direct what he was to write or  
2       did he write that himself?

3       **A**     He wrote this himself.

4       **Q**     Okay. Again, you didn't threaten him, do  
5       anything to promise him anything in order to get him  
6       to write that statement, did you?

7       **A**     I did not.

8       **Q**     Okay. Did you witness anybody else make him  
9       any promises, threaten him or do anything to  
10      influence his decision as he was generating the  
11      written statement?

12      **A**     I did not.

13           **MR. MAYE:** Answer any questions the defense has  
14      for you.

15           **MR. SHEEK:** No questions of this witness, Your  
16      Honor.

17           **THE COURT:** Thank you, sir. You may step down.  
18      Anything else from the State?

19           **MR. MAYE:** No, sir, Your Honor. The only thing  
20      that I have, and I don't think it's timely at this  
21      point in time, I do have statements from the  
22      defendant in this case, which were not in writing.  
23      They were recorded statements from jail  
24      conversations. I think it's premature to take that  
25      up. I think it would be more prudent, given the

1 hour that we are and we have a jury waiting, to  
2 address that later, but I leave it to the defense if  
3 they care to put up anything in regard to the Denno  
4 hearing.

5 **THE COURT:** Do you have any evidence on the  
6 Denno hearing?

7 **MR. SHEEK:** Yes, sir. For the purposes of this  
8 hearing, I will call David Bowers to the stand.

9 **THE COURT:** Come around please.

10 DAVID ANDREW BOWERS,  
11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. SHEEK:

14 **Q** Sir, if you would, give us your name for the  
15 record and spell your last name.

16 **A** You said spell it too?

17 **Q** Yes, sir.

18 **A** David Andrew Bowers, B-o-w-e-r-s.

19 **Q** And how are -- how old are you, Mr. Bowers?

20 **A** Twenty-four.

21 **Q** And on October the 7th of 2012, how old were  
22 you?

23 **A** Twenty-three.

24 **Q** And do you recall the -- being taken up to the  
25 police department to give a statement regarding

1       allegations that you had sexually touched a  
2       ten-year-old child?

3       **A**     Yeah.

4       **Q**     You have to say it out loud.

5       **A**     Yes, sir.

6       **Q**     Okay. And how did you get to the police  
7       station?

8       **A**     They come and picked me up.

9       **Q**     When you say they, who are you referring to?

10      **A**     It was Kenny Clark, Holmes and Archie Hill.

11      **Q**     And did they place you under arrest?

12      **A**     Yes.

13      **Q**     Were you placed into handcuffs?

14      **A**     Yes, sir.

15      **Q**     When they took you to the police department,  
16      did they take you straight into an interrogation  
17      room or what happened?

18      **A**     Yeah, it was straight into an interrogation  
19      room.

20      **Q**     And who was there?

21      **A**     It was all three of the same officers, Clark,  
22      Holmes and Hill.

23      **Q**     And was there a discussion regarding why you  
24      had been arrested?

25      **A**     Yes, sir.

1           **Q**     Did they tell you what the charges were?

2           **A**     Yes, sir.

3           **Q**     What did they tell you?

4           **A**     They just told me that I was charged with  
5           criminal sexual conduct with a minor first degree  
6           and -- and that's about all -- or solicitation too.

7           **Q**     And at some point, did they discuss with you  
8           the possible sentences or jail time you could get?

9           **A**     Yes, sir.

10          **Q**     What did they tell you about that?

11          **A**     It was 25 to life.

12          **Q**     Prior to that time, did you have any idea what  
13          kind of penalties that offense carried?

14          **A**     No, sir.

15          **Q**     And did they ask you to give a statement?

16          **A**     Yes, sir.

17          **Q**     Did they ever discuss with you the allegations  
18          that this little girl had made?

19          **A**     Not at the present time until I told them --  
20          when I first made my statement, I said nothing had  
21          happened other than text messages, and then they  
22          said I was lying.

23          **Q**     Okay. Did they tell you anything else other  
24          than that you were lying?

25          **A**     That they had the truth and if I didn't tell

1 the truth, that it was going to -- I'd be put in  
2 prison for 25 to life.

3 Q And did they ever make any statements about  
4 what they viewed the truth to be?

5 A Yes, sir.

6 Q Okay. And --

7 A They were just asking you know X, Y, Z, and I  
8 just agreed with all of it simply because of 25 to  
9 life, that's pretty scary.

10 Q Well, did they ever make any statements about  
11 what would happen if you cooperated or how it would  
12 go with you if you went along with it?

13 A Oh, yes, sir. They said that would be -- it  
14 would look better in the judge's eyes.

15 Q It would look better in the judge's eyes if  
16 what?

17 A Like me telling me the truth, which was what  
18 they was wanting me to say.

19 Q And prior to you writing that statement, was it  
20 clear to you what they were wanting you to say?

21 A Like before they told me?

22 Q Before you wrote the statement, was it clear  
23 what they wanted you to say?

24 A Oh, yes, sir.

25 Q When you wrote this statement that the officer

1 just read, is it true?

2 **A** No, sir.

3 **Q** What part of it is not true?

4 **A** Everything that -- everything except the text  
5 messages.

6 **Q** And if it's not true, why did you write it?

7 **A** I just felt like I was pressured into doing it,  
8 trying to tell the truth, that they thought was the  
9 truth.

10 **Q** And what was your understanding or what had you  
11 been told was going to happen to you if you didn't  
12 tell the truth as they saw it?

13 **A** That I was going to get the maximum, if not,  
14 you know, the 25 years.

15 **Q** And was it the threat of that jail time that  
16 made you write this statement?

17 **A** Yes, sir.

18 **MR. SHEEK:** Thank you. That's all the  
19 questions I have.

20 **THE COURT:** Cross.

21 CROSS-EXAMINATION

22 BY MR. MAYE:

23 **Q** Mr. Bowers, you were, at that time, 23 years of  
24 age; is that correct?

25 **A** Yes, sir.



1       **Q**     And you graduated Batesburg-Leesville, what,  
2       about 2007; is that correct?

3       **A**     It was 2008, January.

4       **Q**     So you went to high school and you graduated  
5       from high school; correct?

6       **A**     Yes, sir.

7       **Q**     Okay. And you can read and write?

8       **A**     Yes, sir.

9       **Q**     Okay. And you executed this written waiver of  
10      rights, and that's your signature on the written  
11      waiver of rights; correct?

12      **A**     Yes, sir.

13      **Q**     Okay. So you wrote in there that you  
14      understood that you could absolutely say nothing;  
15      that you didn't have to answer the questions; you  
16      understood that anything that you told them could be  
17      used against you in a court of law; that you had the  
18      right to talk with an attorney and to have an  
19      attorney there and to advise you; that if you wanted  
20      to have an attorney but couldn't afford one, that  
21      they would provide one to you; that if you stopped  
22      to answer questions without an attorney, that you  
23      had the right to stop whenever you wanted to; and  
24      that you also had the right to stop answering  
25      questions until you talked with an attorney.

1           Now, you understood all of that and initialled  
2       it, didn't you?

3       **A**     Well, I -- yes, sir.

4       **Q**     Okay. So you understood all of those rights  
5       and you initialled them and signed it; correct?

6       **A**     Yes, sir.

7       **Q**     And then afterwards, what's marked as State's 2  
8       in this case, this is for ID, that's actually your  
9       handwriting, isn't it?

10      **A**     Yes, sir.

11      **Q**     Okay. So you wrote that in your own  
12      handwriting in their presence after being advised of  
13      your rights on that written form; correct?

14      **A**     Yes, sir.

15      **Q**     Did you put anywhere in there about that they  
16      had threatened you in your handwriting?

17      **A**     No, sir.

18      **Q**     Did you put anything in there about anything  
19      that they had promised you as you had the chance to  
20      write that out in your own handwriting?

21      **A**     No, sir.

22      **Q**     Okay. So you admit in this case that you wrote  
23      this out in their presence after being advised of  
24      this written waiver of rights. And at no point in  
25      time, did you stop writing or did anybody force you

1 physically to write any of this; correct?

2 **A** No, sir.

3 **Q** So they didn't actually hold your hand and  
4 force you to put pen to paper, did they?

5 **A** Oh, no, sir. No, sir.

6 **MR. MAYE:** Nothing else. Thank you.

7 **THE COURT:** Redirect.

8 **MR. SHEEK:** No redirect, Your Honor.

9 **THE COURT:** Thank you, sir. You may step down.

10 **MR. SHEEK:** That's all the witnesses the  
11 defense has in this regard, Your Honor.

12 **THE COURT:** State have any reply?

13 **MR. MAYE:** The State would call Officer Clark  
14 in reply.

15 **THE COURT:** You're still under oath. Come  
16 around, please.

17 KENNETH CLARK,

18 having been previously duly sworn, resumed the  
19 witness stand and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. MAYE:

22 **Q** Officer Clark, let me ask you, in this case,  
23 did you make any threats to the defendant in this  
24 case in regard to him getting 25 years or he would  
25 get the maximum if he didn't write this statement?

1       **A**     No, sir.

2       **Q**     Okay. Did you make any -- in inducement in  
3       getting him to write this statement, did you tell  
4       him that if he wrote what you wanted him to say,  
5       that it would go better with the judge in this case?

6       **A**     No, sir.

7       **Q**     Okay. What were the circumstances of him  
8       actually generating this? Did you tell him what to  
9       say or did he write this of his own --

10      **A**     He wrote his own statement.

11           **MR. MAYE:** There's all I have. Thanks.

12           **THE COURT:** Any cross-examination?

13           **MR. SHEEK:** No further cross, Your Honor.

14           **THE COURT:** Thank you, sir. You may step down.

15           **MR. MAYE:** Your Honor, that's all the State  
16       would have at this time.

17           **THE COURT:** All right. Do y'all wish to be  
18       heard on the Denno issue?

19           **MR. SHEEK:** No additional arguments from the  
20       defense, Your Honor.

21           **MR. MAYE:** Nothing else, Your Honor. We would  
22       just rely on the testimony as it's been put forth  
23       and the written documents that the State's produced  
24       for identification.

25           **THE COURT:** All right. Based upon what's been

1       presented, the Court's observation of the witnesses,  
2       the Court's evaluation of credibility, the Court  
3       finds that the State has met its burden and has  
4       established by the greater weight or preponderance  
5       of the evidence and by at least clear and convincing  
6       evidence, that the defendant was in custody at the  
7       time of the alleged statement, which is marked as  
8       Court's Exhibit Number 3. It's also marked for  
9       identification purposes.

10           The Court finds that the defendant was properly  
11       advised of his rights under Miranda and the Fifth  
12       and Sixth Amendments of the Constitution of the  
13       United States. Specifically, he was advised that he  
14       had the right to remain silent; that anything he  
15       said may be used against him in court; that he had  
16       the right to an attorney; and he had a right to have  
17       an attorney present with him and advise him; if he  
18       could not afford an attorney, one will be appointed  
19       for him at no cost. He was advised that he could  
20       stop answering questions at any time, and he could  
21       exercise his right to have an attorney present at  
22       any time.

23           The Court finds that he gave the statement  
24       that's marked as Court's Exhibit Number 3, freely,  
25       knowingly, voluntarily and intelligently. The Court

1       has considered and weighed the evidence that's been  
2       presented indicating the officers coerced him in  
3       some fashion, threatened him improperly. The Court  
4       finds the greater weight of the evidence and the  
5       credibility falls on testimony given to the Court by  
6       the State. The Court finds that the statement was  
7       the product of the defendant's own free will and was  
8       not improperly induced by threats, coercion,  
9       promises, hope of reward or leniency or any other  
10      improper method.

11             The Court finds that if the proper foundation  
12      is established in front of the jury, the statement  
13      will be admitted for the jury to evaluate whether  
14      the State has proven beyond a reasonable doubt that  
15      the defendant, in fact, gave the statement and that  
16      he did so freely and voluntarily and that he did so  
17      after being properly advised of his rights.

18             Any other motions pretrial?

19             **MR. MAYE:** No, sir, Your Honor. We had -- we  
20      had talked about a stipulation in this case. And I  
21      will state we're willing -- in order to expedite  
22      this, Your Honor, the cell phone of the victim in  
23      this case, Your Honor, was taken, was -- the  
24      contents of it were viewed by her father. It was  
25      taken to law enforcement.

1           There was a subsequent search warrant that was  
2       carried out at the defendant's residence, Your  
3       Honor, where they seized an iPhone. The text  
4       messages or at least the bulk of the text messages  
5       that appear on her phone are a mirror image between  
6       the iPhone that he had as outgoing and incoming  
7       messages both on her phone and his phone. The bulk  
8       of those were -- are mirrored between the two phones  
9       indicating a conversation at least between those two  
10      phones in this case.

11           I have a printout in this case and had spoken  
12      with the defense in this case about perhaps  
13      stipulating to the -- Your Honor, I've provided --  
14      there was a search warrant that was executed by  
15      Investigator Clark where they seized a cell phone.  
16      A subsequent search warrant was executed by  
17      Investigator Quattlebaum.

18           Once they seized the phone to download the  
19      contents, which were done by an officer in Newberry,  
20      that officer subsequently died. The phone remained  
21      in custody the whole time. Officer Russ Padgett  
22      executed a search warrant for the contents again.  
23      They were downloaded by Steve Miano.

24           I have provided the defense, each time the  
25      contents of his phone were dumped, the first time by

1       the officer at Newberry, the second time by the  
2       officer over in Aiken County, I've provided them  
3       with copies of all the search warrants in this case,  
4       Your Honor, and a written transcript. I don't  
5       think, from my conversation with the defense, that  
6       they're going to have any objection to the contents  
7       that were downloaded from the phone, certainly  
8       leaving open the possibility that someone else might  
9       have responded or someone else might have generated  
10      it, but at least as to the information in the phone,  
11      it's my understanding that they intend to stipulate  
12      to that.

13             I would move to admit that as a State's  
14      evidence, if there is such a stipulation in this  
15      case, and that would certainly save probably half of  
16      the State's witnesses of going into covering the  
17      search warrants, covering the subsequent download,  
18      and I'll leave that to the defense.

19             I have further stated to the defense in this  
20      case, the victim after such time of this assault,  
21      was interviewed twice at the children's center, the  
22      Dickerson Center, Your Honor. She was interviewed  
23      on November the 28th of 2012 and November -- excuse  
24      me -- October. She was twice interviewed. And I've  
25      got the wrong dates in here, Your Honor, but she was



1 twice interviewed at the Dickerson Center.

2 I'm not going to require them to bring someone  
3 from the Dickerson Center. I would stipulate that  
4 all of that is factual and valid and can be used in  
5 cross-examination or in any other fashion that the  
6 defense would care to use them, Your Honor. And I  
7 think we're offering that because that would speed  
8 this trial up dramatically. And I'll leave that to  
9 the defense in regard to those stipulations.

10 **MR. SHEEK:** The statements the State made to  
11 you are correct, Your Honor. The only question I  
12 have that I failed to ask the State earlier, was  
13 there any report generated from the victim's phone?

14 **MR. MAYE:** No. I have the phone. We have the  
15 phone. We have that it's being able to be booted up  
16 and we do have the information, but we didn't do a  
17 similar dump on the victim's phone. But we do have  
18 that phone. It is able to be downloaded. You can  
19 fire it up and look at it and read the text messages  
20 off of it.

21 **MR. SHEEK:** Then the statements the Solicitor's  
22 made to you are correct to my understanding. I've  
23 seen the transcript that he intends to enter and  
24 we're not going to object to that. We're ready to  
25 go.

1           **THE COURT:** All right. We're at ease for five  
2 minutes.

3           (Brief Recess.)

4           (State's Exhibit Number 3, copy of text  
5 messages, marked for identification.)

6           **THE COURT:** Is the State ready for the jury?

7           **MR. MAYE:** The State's ready, Your Honor.

8           **THE COURT:** Defense ready for the jury?

9           **MR. SHEEK:** Defense is ready, Your Honor.

10          **THE COURT:** All right. Bring the jury in,  
11 please.

12          (The jury returns to the courtroom.)

13          **THE COURT:** First thing I have to do is have  
14 you placed under the oath of a trial jury. I need  
15 you to stand and raise your right hand. The Clerk  
16 will administer your oath.

17          (The jury was duly sworn by the Clerk of  
18 Court at 2:48 p.m.)

19          **THE COURT:** All right. Ladies and gentlemen,  
20 I'm going to begin by explaining to you how I expect  
21 the case to begin. I won't go through the whole  
22 thing, but I'll tell you how we'll get started. And  
23 then I'm going to give you some instructions you  
24 have to follow throughout the trial.

25          The first thing that's going to happen is that

1       the attorneys are going to make their opening  
2       statements to you. In these opening statements, the  
3       attorneys are not permitted to engage in what we  
4       call argument. An opening statement is allowed to  
5       be introductory in nature, an outline, an overview,  
6       but it has to stop there. The arguments come at a  
7       later point in the trial.

8               Now, when the opening statements are finished,  
9       I'll call upon the Solicitor to present the State's  
10      case. The State brought these charges, and the  
11      State has the entire burden of proof. The State has  
12      to prove every essential element of each charge  
13      beyond a reasonable doubt. So I'll recognize the  
14      Solicitor to present evidence in an attempt to meet  
15      that burden. When the State has finished presenting  
16      its case in chief, the Solicitor will inform me that  
17      the State rests.

18             At that point, I'll have to send you out of the  
19      courtroom and I have to discuss legal issues with  
20      the attorneys. When you come back from that break,  
21      I'll tell you where we go from there, but those are  
22      kind of the landmarks you can look for as we get  
23      started.

24             Now, it's really important that you understand  
25      some things. That oath that you just took was one

1 in which you promised us that you're going to decide  
2 these cases based on the evidence and the law. So  
3 you need to know where those things come from.

4 The law comes from me. It's my job to decide  
5 what law applies to a case and to tell it to the  
6 jury at the end of the case. The evidence comes  
7 from the sworn testimony of the witnesses. Evidence  
8 can also come in the form of exhibits.

9 Now, an exhibit can be anything tangible that's  
10 marked in the record. It can be a photograph, a  
11 map, a chart or a record of some kind. Anything  
12 tangible that can be marked in the record, it can be  
13 an exhibit. You will have the exhibits in the jury  
14 room with you when you decide the cases.

15 Now, the reason I'm telling you that is because  
16 during trials, what often happens is that attorneys  
17 will be referring to a document or show a small  
18 photograph, things like that, that you can't  
19 possibly see from your vantage point. I just want  
20 you to understand that if it's an exhibit, you're  
21 going to have it with you in the jury room when you  
22 decide the case. So the evidence comes from the  
23 witnesses and the exhibits.

24 Now, normally what the lawyers say is not  
25 evidence. I want you to pay close attention to what

1       they say, but what comes out of their mouths is not  
2       evidence. There is one exception to that rule and  
3       that is where the attorneys agree to stipulate to  
4       some fact or facts, and then you take that fact or  
5       facts as a given. It's just an agreement that we're  
6       not going to have to go through all of the different  
7       things to put the proof up on the witness stand or  
8       things like that. They agree certain things are not  
9       in dispute.

10           Now, if the attorneys mutually and specifically  
11       agree before you and say, we're entering a  
12       stipulation to this fact, then you may take that  
13       fact as a given, otherwise, what the lawyers say is  
14       not evidence.

15           Now, it's also really important that you  
16       understand that there are two judges in the  
17       courtroom. I'm the judge of the law. I've already  
18       told you that part of my job is to tell the jury the  
19       law at the end of the trial. It's also my job to  
20       rule on the admissibility of evidence and to  
21       maintain order. So I rule on legal issues and other  
22       matters and I preside over the trial.

23           You're the other judge. You must understand  
24       that only -- you are the only judges of the facts,  
25       only you get to decide the issues of fact. You

1 alone get to evaluate whether evidence is believable  
2 or not. That's entirely your prerogative. You  
3 alone get to decide what weight, if any, to put on  
4 evidence. Again, that's the jury's prerogative and  
5 I'm not going to invade your province.

6 To give you kind of an explanation of how these  
7 roles interact, in a typical trial, there may be  
8 from time to time during a trial, situations where  
9 one side or the other feels as though something is  
10 being put before the jury that is not permissible  
11 under the rules. And if one of these attorneys  
12 feels like the other side is trying to put something  
13 before the jury that's not within the rules, those  
14 attorneys have taken an oath, just like you have  
15 taken an oath, I had to take an oath each to do our  
16 respective jobs, and the attorneys have an  
17 obligation to stand up and raise an objection.

18 Now, if that happens and if the attorney raises  
19 an objection and I overrule the objection, that  
20 means I let it come before you. If I sustain the  
21 objection, I agree that it doesn't fit within the  
22 rules for the jury to consider and you ignore that.

23 Now, going back to the first one, if I look at  
24 that objection and I overrule it and I let it come  
25 before the jury, you need to understand that when I

1       make that decision, it will not cross my mind to  
2       think about whether that thing is believable or not,  
3       because that's not my job. I won't give one second  
4       of thought as to whether that thing should be given  
5       any weight in the case. It's not my job.

6             All I'm going to be doing is looking with  
7       tunnel vision, very narrowly, to look at that  
8       objection, and if I feel that the thing fits within  
9       the rules for the jury to consider, I let it go  
10      before the jury and the jury decides whether to  
11      believe it or not and the jury decides what weight,  
12      if any, to put upon it. So that's kind of how our  
13      different roles will interact in the court. I'm the  
14      only judge of the law and you're the only judge of  
15      the facts.

16            Now, while it's important that you obey your  
17      oath and you decide this case based on the evidence  
18      and the law, I'm not telling you to leave your  
19      common sense at home. We want you to use your  
20      common sense, your sense of logic and reason and  
21      your good judgment. It just makes good common sense  
22      that you keep an open mind about these cases and you  
23      don't make up your mind until you've heard all of  
24      the evidence and you know what law applies to the  
25      case.

1           So there's a rule that I've already mentioned  
2       to you, but I need to repeat it again, and that is  
3       that you are not to discuss this case in any way at  
4       all until I tell you to. Don't talk about the case  
5       in any manner whatsoever.

6           Now, that's a hard rule to follow because you  
7       14 folks may feel that you have little in common  
8       except you all live in Saluda County and you all got  
9       picked on this case. So the logical thing you're  
10      going to want to talk about during any breaks is  
11      what you just saw in the courtroom, what you just  
12      heard in the courtroom or some comment about this  
13      person or that person. You have to resist all of  
14      that and not discuss the case until the very end  
15      when I tell you to begin your deliberations.

16          Now, quickly, as I mentioned to you earlier,  
17      you're not to discuss this case with anyone else  
18      until you've been completely discharged from jury  
19      duty; if anybody attempts to contact you and discuss  
20      the case with you, report it to me so I can deal  
21      with it; don't let yourselves be exposed to any  
22      media coverage of the trial if there should be any;  
23      if, for some reason you are inadvertently exposed to  
24      media coverage, get away from it, report to me at  
25      the first opportunity what you may have seen, heard



1 or read through the media; don't do any independent  
2 investigation, I've already discussed that with you  
3 at some length, do not do independent investigation.

4 You're perfectly equipped to do the jobs that  
5 you're going to be called upon to do. You need to  
6 sit and listen attentively, pay close attention and  
7 when the time comes to deliberate, you need to  
8 discuss the cases and apply the law. And I'm a  
9 hundred percent confident that you're perfectly  
10 equipped to do all of that.

11 Now, I told you folks that I had to read  
12 something to you that the Supreme Court had put out,  
13 our South Carolina Supreme Court. And it's a lot of  
14 overlap of what I've already told you, but since the  
15 Chief Justice said we're supposed to read it, I read  
16 it to every jury. So while my language may not be  
17 quite as precise and articulate as the Supreme  
18 Court, I'm going to read this to you in a moment.

19 I always like to kind of tell juries why  
20 they're doing these things. You're going to hear me  
21 talk about cell phones and computers and Internet  
22 when I read this. Well, there have been some  
23 situations, none in South Carolina that I know  
24 about, but in some other states where you hear about  
25 these trials taking months and weeks and years,

1       there have been some situations where there have  
2       been problems with text messaging and social  
3       networks and all kinds of things like that. So if  
4       you have a Facebook account and you go on your  
5       Facebook account and you write anything about court,  
6       if you were to write how exciting it was or how  
7       boring it was, you've violated what I just told you.

8             If you were to comment about a case, then that  
9       would be the same as if you walked out on the steps  
10      of the courthouse and shouted it to millions of  
11      people. You cannot communicate through any means  
12      about the case. Same thing with Twitter, same thing  
13      with text messaging, just don't do it.

14            Now, again, we never had this problem in South  
15      Carolina, but a lot of this stuff is generated  
16      because people who have tried to get on juries in  
17      big cases and tried to get some book deal out of it  
18      or something, you know, it's just -- it's just part  
19      of us having to go through things that ought to be  
20      common sense. So I'll read to you now what the  
21      chief says:

22            Until your jury service is concluded, you are  
23      not to discuss the case with others including other  
24      jurors except as authorized by the court. You're  
25      not to read or listen to any news reports about the

1 case. You're not to use a computer, a cell phone or  
2 any other electronic device with communication  
3 capabilities while attending the trial or during  
4 deliberations. You may use such devices during  
5 lunch breaks or extended breaks, but you may not use  
6 them to obtain or disclose information that's been  
7 prohibited by the court. You may not use a cell  
8 phone, a computer or any other electronic device  
9 with communication capabilities or any other method  
10 to obtain or disclose information about the case  
11 when you're not in court.

12 Now, information about the case includes, but  
13 is not limited to, the following types of things:  
14 Information about a party, a witness, an attorney or  
15 a court officer, any news accounts of the case, any  
16 information collected through juror research on any  
17 topics raised or testimony offered by any witness,  
18 any information collected through juror research on  
19 any topic that the juror might think would be  
20 helpful in deciding the case.

21 The last thing before I recognize the  
22 attorneys, then after they talk, we'll probably take  
23 a short break and then go into the evidence, I want  
24 to say thank you. Folks, I'm going to tell you in  
25 advance I'm not going to sit up here repeatedly and

1       thank you. And the reason I don't is because I  
2       think it cheapens it when I do that. I know you  
3       have other places to be. I know you have other  
4       things to do. And I can tell you that one of my pet  
5       peeves is having jurors waiting on us. It just  
6       drives me nuts.

7               Now, court often involves hurry up and wait.  
8       And each case is different and there's no way to  
9       anticipate what -- how a case is going to proceed.  
10       I know nothing about this case. I'm like you are  
11       going to be hearing it for the first time. I, like  
12       you, am supposed to be neutral and detached. All I  
13       can promise you is this: If you're waiting on us,  
14       we're working. There will never be a time when  
15       you're back there in that room waiting on us and  
16       we're out here goofing off, that's not going to  
17       happen on my watch. Can't promise you you won't  
18       have to wait, you already have had to wait, but if  
19       you're waiting, we're working. So I invite your  
20       close attention.

21               Solicitor, you're recognized for your opening  
22       statement.

23               **MR. MAYE:** May it please the Court, Your Honor.

24               **THE COURT:** Yes, sir.

25                               OPENING STATEMENT

1           **MR. MAYE:** Ladies and gentlemen, we're now  
2           approaching the hour of three o'clock. My name is  
3           Ervin Maye and I'm an assistant Solicitor here in  
4           the Eleventh Judicial Circuit. The Eleventh Circuit  
5           is made up of Lexington, Edgefield, McCormick and  
6           Saluda Counties. I work for your elected Solicitor  
7           that's seated over there on the other side of the  
8           courtroom, Mr. Donnie Myers. For about the past 20  
9           years, I've been helping him take care of McCormick,  
10          Edgefield and Saluda Counties. And I represent the  
11          State of South Carolina.

12                 And I'm going to tell you up front in this  
13          case, the State -- this is a criminal case, and the  
14          State has the burden of proof in this case. Now,  
15          the 12 of you that go back in that jury room to  
16          deliberate in this case are going to sit as the  
17          judges of the facts in this case, because all of the  
18          facts that you're going to hear in this case are  
19          going to come to you right here from the witness  
20          stand. With that in mind, just as surely as Judge  
21          Keesley is sitting up there with his robe on, you're  
22          the judges of the facts in this case.

23                 We're all cognizant that you've been taken away  
24          from what you would have normally been doing this  
25          week and we understand that that's a serious

1       imposition. You can't go to work, you can't be with  
2       your families, you can't do any of the things that  
3       you would have normally been doing this week because  
4       you've been compelled to come up here and sit as  
5       jurors.

6               They say, in days gone by, there used to be a  
7       lot of compulsory public service, and there's a lot  
8       of evidence of that right up here on this courthouse  
9       ground. There are monuments to people on the  
10      courthouse grounds here, gave ultimate sacrifice.  
11      Draft, went out and served their country.

12             They say, at one point in time back in -- many,  
13      many years ago, people used to have to work on the  
14      roads or pay somebody to work in their place. So  
15      there used to be a lot of different kinds of public  
16      service in the old days, but this is it. This is  
17      the last compulsory service.

18             Winston Churchill once said that this is the  
19      highest duty that a citizen performs during  
20      peacetime. And we're cognizant of the fact that  
21      you've been taken away from what you would have been  
22      doing.

23             But we're about serious business in this case.  
24      The defendant in this case, David Bowers, is charged  
25      with criminal sexual conduct with a minor in the

1 first degree.

2 Now, at the conclusion of all of the facts and  
3 the arguments that you'll hear in this case, Judge  
4 Keesley will charge you in great detail with what  
5 the law is, but I submit to you you're going to hear  
6 criminal sexual conduct with a minor is basically a  
7 sexual assault or a sexual battery against a minor.  
8 And you're going to hear in this case, when we're  
9 talking about criminal sexual conduct with a minor  
10 in the first degree, we're talking about a child  
11 less, at the time that the event took place, than 11  
12 years of age.

13 David Bowers is also charged with criminal  
14 solicitation of a minor. I submit to you we're  
15 going to talk about and I'm going to go through what  
16 I think the facts that are going to come before you  
17 from the witness stand are going to show in this  
18 case, but he's charged with criminal solicitation of  
19 a minor. I'm going to tell you a little bit more  
20 about the facts that the State expects will come  
21 forward from the stand.

22 But that criminal solicitation of a minor  
23 basically stem from e-mails, horribly graphic  
24 e-mails of a sexual nature that you're going to hear  
25 and you're going to see the text messages that went

1 back and forth between David Bowers, the defendant  
2 in this case that's seated over there in that light  
3 green shirt with his attorney, Mr. Sheek, and the  
4 victim in this case, **Minor**, the young  
5 lady that's seated right here between these two  
6 ladies in the red sweater.

7 At the time that this took place, it happened  
8 on October the 6th, which was a Saturday, of 2012  
9 and October the 7th, that was a Sunday. One of the  
10 first people that you're going to hear from in this  
11 case is **Minor** dad, Russell Enlow. Russell  
12 is going to get up here, we submit to you, from the  
13 stand, he's going to tell you where he's from. If  
14 you go out 178 back towards Batesburg-Leesville up  
15 to Golf Course Road, still in Saluda County, and you  
16 turn back to the left and you go down just a little  
17 ways and you turn back to the left on Enlow drive,  
18 he's going to tell you that he's lived back there on  
19 that family property all of his life.

20 And you're going to hear in this case, **Minor**  
21 **Minor** back on that day in October, that Saturday  
22 and Sunday, she was, at that time, ten years old and  
23 she was in the fifth grade. You're going to hear,  
24 in this case, that their family situation was kind  
25 of yours, mine and ours, like a lot of modern



1 families in this case.

2 **Minor** mom is actually Deanna Alison  
3 Crawford. And Russell and Deanna Alison Crawford  
4 were married at one time, but got divorced. You're  
5 going to learn that at the time that this took  
6 place, that her dad, Russell, had remarried and his  
7 wife's name is Jennifer Enlow. And they live there  
8 on this family piece of property.

9 Now, **Minor** was ten. She had a half brother  
10 that lived there -- or she had a full brother that  
11 lived there named **sibling 1** And she had a half sister  
12 who was only about two or three years old at the  
13 time named **sibling 2**, and Jennifer and Russell,  
14 that was their child. So she lived there with her  
15 natural brother and she lived there with a much  
16 younger sibling, **sibling 2** in this case.

17 You're going to hear in this case about what  
18 the family dynamics were because you're going to  
19 find out that David Bowers was no stranger to them.  
20 He was someone that, essentially, was family to  
21 them. You're going to hear that they were cousins.  
22 Russell, her father, and David Bowers in this case  
23 were cousins.

24 And at the time that this took place, he had  
25 been around there for a pretty good period of time

1       because he lived there on that family property in a  
2       mobile home that was basically just across the field  
3       from them. He had a girlfriend named Lori Haag and  
4       they had a young child together. And they lived in  
5       a mobile home that was very near to the family  
6       household there, the house that Russell and **Minor**  
7       and all of the rest of the family members lived  
8       there out at the end of Enlow Drive.

9               And you're going to hear that over the years  
10       that they had very close relations with the  
11       defendant in this case, David Bowers. He baby-sat.  
12       He came in and out of the house when he wanted to.  
13       He got things out of the refrigerator.

14              Before and along the time that he graduated  
15       from high school back in '07 or '08 from  
16       Batesburg-Leesville, he worked part time, because  
17       Russell Enlow is going to tell you in this case that  
18       he's an exterminator, that he has a private  
19       business. And over the years, he let David Bowers,  
20       the defendant in this case, work for him part time.  
21       And after he graduated from high school, he let him  
22       come to work and be a full-time employee. And they  
23       work together and they vacation together.

24              David Bowers, his wife, Lori Haag, they came  
25       over about every afternoon. And you're going to

1 learn that this was a very close-knit group.

2 That Saturday and Sunday, October the 6th and  
3 October the 7th, you're going to hear that all of  
4 them basically got together, **Minor** her brother --  
5 now, **sibling 2** didn't go with them because she was too  
6 young -- but Russell, his wife Jennifer, all of them  
7 got together and they went out onto Lake Murray.  
8 And you're going to hear that the purpose that they  
9 went to Lake Murray was to go over to some friends'  
10 house because it was the Carolina/Georgia ball game  
11 on that day, and that they took two vehicles over  
12 there and they drove over to that ball game out at  
13 this couple's house at the lake.

14 They all had a good time. You're going to hear  
15 about the recreation that they engaged in. They  
16 ate. They watched the ball game. They gathered.  
17 They visited.

18 You're going to find out that Lori Haag, the  
19 girlfriend of Mr. Bowers in this case, she was  
20 employed somewhere and she had to get up the next  
21 morning very early. And she was going to -- it was  
22 going to be necessary for her to leave early. So  
23 they drove in one car. But when they all returned,  
24 Lori had already come back in a vehicle. So when  
25 all of them got through, after the Carolina game was

1 over, Georgia/Carolina game out at the lake, they  
2 all got together in Russell's Ford Explorer and they  
3 drove back to the Enlow family home place.

4 And you're going to hear that it wasn't  
5 unusual, when they got back out there, you're going  
6 to hear a tale about how they pulled up in the yard  
7 and there was some kind of animal that was up under  
8 a carport. And at that time, **Minor** brother and  
9 David Bowers in this case saw some sort of animal  
10 fleeing. Well, like a lot of young folks, they  
11 jumped up and got flashlights and they ran out into  
12 the woods.

13 And you're going to hear in this case that  
14 Russell and his wife, they came back to the house,  
15 they were getting their three-year-old back in the  
16 bed, everybody was kind of separated off. You're  
17 going to hear in this case that it ended up that  
18 **Minor** and David Bowers in this case were together  
19 watching a movie on television when Russell and his  
20 wife went to bed, left them up.

21 Now, **Minor** brother in this case was in  
22 another room. He wasn't with them. And you're  
23 going to find out that when Russell and his wife  
24 went to bed leaving **Minor** and David Bowers, the  
25 defendant in this case, alone there in that room,

1       they didn't have any idea what was going on until  
2       the next morning. Because you're going to hear in  
3       this case that Russell and his wife got some sort of  
4       bad feeling and suspicion that something just was  
5       not right on that night.

6               So as a lot of young people have cell phones,  
7       and that's pretty much a telltale about a lot of  
8       things that are going on in a young person's life,  
9       the way they text and send messages back and forth,  
10      it's a pretty good snapshot of what's going on in a  
11      child's life. Well, of course, at this time,  
12      **Minor** ten years old. Her dad is paying for that  
13      cell phone. He went and retrieved her cell phone  
14      and he brought up the text messages. And he and his  
15      wife went through and they scrolled through and they  
16      saw all of these text messages.

17             And I submit to you the evidence in this case,  
18      this is going to come forth from the stand, is going  
19      to show you an absolutely wildly inappropriate  
20      exchange of text messages in between **Minor** who is  
21      ten years old, and David Bowers, who was a trusted  
22      family friend and cousin who was 23 years of age,  
23      that were of a wildly inappropriate, sensibility,  
24      language, graphic sexual terms that would make  
25      somebody that was 50 years old blush, certainly not

1 language one would expect with a ten-year-old who  
2 was text messaging back and forth in between a  
3 23-year-old.

4 And I submit to you you're going to see and  
5 hear what the text messages are because you'll find  
6 out, at that point in time, Russell, her father in  
7 this case, they knew that a sexual assault had taken  
8 place. It was obvious from the language in that  
9 text message that there was a sexual relationship  
10 going on in between their ten-year-old daughter  
11 **Minor** and David Bowers.

12 And you're going to hear that he did not stop  
13 and he did not hesitate. He immediately gathered  
14 that cell phone up and he got in the car to drive  
15 straight up here to the sheriff's office. You're  
16 going to hear that he was so upset about it at that  
17 time, and even though he had been divorced from  
18 Deanna Alison Crawford for a long time, that that  
19 was **Minor** biological mother and that he called  
20 her and he summoned her and told her, get up to the  
21 sheriff's department right now.

22 You're going to find out that Russell took that  
23 cell phone, that he showed it to the investigators  
24 that were assigned to this case. Kenny Clark that's  
25 seated over at the State's table with me was, at

1       that time, working as a detective who specialized  
2       with the sheriff's office in working sex crimes for  
3       the then sheriff. You're going to find out that he  
4       got the text messages and looked and gathered the  
5       family information and history as to who these  
6       people were and the text messages that were flowing  
7       back and forth in between Mr. Bowers in this case  
8       and **Minor** And they immediately went and got him  
9       to arrest him for criminal sexual conduct just from  
10      the language that was there.

11             You're going to hear that right after getting  
12      that information and gathering the information in  
13      this case, that they went out there and they placed  
14      David Bowers, the defendant, in this case into  
15      custody, and they brought him back up here to the  
16      sheriff's office.

17             And you're going to hear after being advised of  
18      his rights and going through it in writing with him  
19      and talking with him about what happened in this  
20      case, that he wrote a written statement in this case  
21      where he admitted, in this case, and confessed that  
22      he had engaged in a sexual relationship with this  
23      ten-year-old child.

24             He admitted that he had fondled her. He  
25      admitted that he had touched her breast. He

1 admitted that he touched her back side. He admitted  
2 that he had digitally penetrated her, that he had  
3 taken his finger and penetrated her vagina. You'll  
4 read the confession in this case as it comes in  
5 before you that out of his own mouth that he  
6 admitted, in this case, this wildly inappropriate  
7 relationship that he was engaging in with this  
8 ten-year-old child, this fifth grader.

9 You're going to hear further from the stand in  
10 this case that they charged him with CSC with a  
11 minor in the first degree because she was less than  
12 11 years of age.

13 And the State in this case has got to prove,  
14 and we've got the burden of proof and we welcome it,  
15 but we've got to prove a lot of elements. So you're  
16 going to hear some testimony as it comes from the  
17 stand in this case, what county was this in, because  
18 one of the things the State's got to prove in this  
19 case is that it happened in Saluda County. When's  
20 your birthday, when's his birthday. The elements of  
21 this crime in this case, the State's got to prove,  
22 how old he is, how old **Minor** is.

23 These are the elements of the crime that the  
24 State's got to prove in this case. And, again, I'll  
25 tell you and submit to you, the State welcomes the



1       burden in this case.

2               But you're going to hear that Kenny Clark in  
3       this case, that they got **Minor** and that part of  
4       investigating, they interviewed her, they took her  
5       over to the Dickerson Center in Lexington. And I  
6       submit to you you're going to hear in this case,  
7       when she got over there, and I don't think it will  
8       be any surprise or shock or I don't think that it  
9       will be any secret in this case, that she cared for  
10      him, that she thought they were having a  
11      relationship in this case as skewed and as wrong as  
12      that is.

13             And there's nobody that you will hear anything  
14      from the stand up here to say that he forced this  
15      child to do anything physically. He didn't hold her  
16      down and rape her in this case. It was consensual  
17      between them. But one of the things you're going to  
18      hear in this case is when you're ten years old, you  
19      can't consent. There's absolutely no consented  
20      issue with a ten-year-old in this case. And we  
21      submit to you that's the testimony you're going to  
22      hear from the State in this case is how old she was,  
23      how old he was.

24             And you're going to find out when she went over  
25      to the Dickerson Center, she denied anything had

1 even happened in this case, never mind the fact that  
2 the defendant in this case had already confessed to  
3 doing it, but at that time, he had already knew that  
4 they had the text messages between them. And the  
5 State submits to you from what you'll hear from the  
6 evidence in this case, they speak for themselves.  
7 And nobody's going to hide the fact, she went over  
8 there and told them she met with him on two  
9 different times, and she only incrementally would  
10 admit that anything took place before.

11 She's going to come hear and testify before you  
12 under oath now 12 years of age. She's going to tell  
13 you about the text messages that went back and forth  
14 in between her and the defendant in this case, about  
15 how she learned this talk, the degree of familiarity  
16 between them and the ease and the shocking text  
17 messages that she, herself, sent in this case.  
18 She's going to tell you about it up here under oath.

19 You'll hear from her father in this case.  
20 You're going to hear from the detectives that  
21 investigated it. And I submit to you at the  
22 conclusion of all of the evidence in this case,  
23 after Judge Keesley charges you with great detail  
24 what the law is, that the State's going to come back  
25 and ask you for verdicts of guilty in this case for

1 criminal sexual conduct with a minor in the first  
2 degree and the criminal solicitation with a minor in  
3 this case.

4 Again, mindful of the fact that you've been  
5 taken away from what you would have normally been  
6 doing, we'll get to presenting the evidence to you  
7 with all deliberation. Thanks.

8 **THE COURT:** Thank you, Solicitor.

9 Mr. Sheek, you're recognized for your opening  
10 statement.

11 **MR. SHEEK:** Thank you, Your Honor. May it  
12 please the Court.

13 **THE COURT:** Yes, sir.

14 **MR. SHEEK:** Ladies and gentlemen of the jury,  
15 again, my name is Lance Sheek. I practice law here  
16 in South Carolina. I live up the road in Greenwood.  
17 And today I have the opportunity to represent  
18 Mr. David Bowers, the gentleman the Solicitor just  
19 talked about, seated right over there at the table  
20 beside me.

21 I agree with a lot of what the Solicitor said  
22 about this process, but one thing we all agree on is  
23 that you are going to be the sole judges of the  
24 facts. And why do we all keep talking about that?  
25 Because at the end of this case, after the

1 presentation of all the evidence that the Solicitor  
2 told you about, you're going to go back into that  
3 room that you've sat in today and you're going to  
4 deliberate. You're going to be asked to reach a  
5 verdict. Verdict comes from a word that literally  
6 means to speak the truth, and that's what we're  
7 going to ask of you here today and possibly into  
8 tomorrow as we present evidence.

9 One thing I'm going to ask you to do at this  
10 point, though, is keep an open mind. The Solicitor  
11 just told you a story. And as the Judge just said a  
12 few minutes ago, we don't give you evidence. What  
13 the Solicitor just told you wasn't evidence. It's  
14 merely a story. I was told many stories growing up,  
15 most of them fairy tales. I don't believe they were  
16 actually true; they were simply stories. You've got  
17 to decide what is and isn't true.

18 And the reason that's important is I've  
19 learned, in years of doing this, that the truth is  
20 found in the details. And why do I say that? I  
21 have dealt with literally hundreds of criminal cases  
22 in my career and a story is easy to tell, an  
23 allegation is easy to make.

24 But why do we talk about the State having the  
25 burden of proof as the Solicitor just acknowledged?

1 Well, the reason that is is because they bring a  
2 charge through an indictment. An indictment's  
3 sought after there's a warrant gotten, a warrant.

4 All throughout this process in South Carolina  
5 through the obtaining of a warrant from a summary  
6 court judge or a bond hearing or presentation of an  
7 indictment to a grand jury, the defendant doesn't  
8 get to participate, have representation, call  
9 witnesses and things of that nature. The first time  
10 David Bowers has had people of his community  
11 unbiased sit down and listen to all of the evidence  
12 is today. That's what you are here for. And it's  
13 the first time that Mr. David Bowers has had someone  
14 represent him to come in and do what we call test  
15 the evidence.

16 One thing you're going to have to do when you  
17 come in in this case is reach a verdict based, as we  
18 talk about, proof beyond a reasonable doubt. And  
19 His Honor, being the judge of the law, will tell you  
20 what reasonable doubt is. And I think most of you  
21 probably come into the courtroom really knowing what  
22 reasonable doubt is. It's been defined a couple of  
23 ways: Our Supreme Court says it's the kind of doubt  
24 that would cause a reasonable person to hesitate to  
25 act or they've defined it as proof that leaves you

1       firmly convinced of a fact.

2               As you listen to the State's presentation of  
3       this evidence, I want you to look at the details and  
4       keep an open mind because things are simply not  
5       always as they seem. I've raised two boys who are  
6       now teenagers and I have learned over the years of  
7       he did so and so and, no, I didn't, that things are  
8       not always as they seem. And it's not till I sit  
9       down and ask them the details that I can usually  
10      find out the truth of what's happened. That's all  
11      I'm going to ask you to do right now.

12             I'm not going to sit here and go through an  
13      entire case and he's going to say this and she's  
14      going to say that. You're going to hear it from  
15      this stand, that's where you're going to pay your  
16      attention and that's the only place you're going to  
17      have to base your verdict on at the end of this  
18      case.

19             So all I'm going to ask you to do now, keep  
20      that open mind, listen, wait till the evidence is  
21      tested by cross-examination, and not until  
22      everything is before you when His Honor charges you  
23      that it's time to start the deliberations, do you  
24      start deciding what the facts are. And if you do  
25      that, if you'll just follow that oath that you've

1       taken, then we're going to have justice at the end  
2       of this case.

3               His Honor said a couple of times thank you for  
4       being here. I want to join in that because until  
5       you people are gathered here today, David Bowers  
6       doesn't get to come forward and ask for justice to  
7       be done, and that's all we're seeking here in the  
8       next couple of days as we go through this trial. So  
9       thank you very much for being here.

10              **THE COURT:** Thank you, Mr. Sheek.

11              All right. Ladies and gentlemen, we're going  
12       to take a very quick break, five minutes maybe, then  
13       I'll bring you out here and you'll start hearing the  
14       evidence. Don't discuss the case. Follow the  
15       bailiff, please.

16              (The jury retires to the jury room.)

17              **THE COURT:** Court's at ease for about five  
18       minutes.

19              (Brief Recess.)

20              **THE COURT:** Ready, Solicitor?

21              **MR. MAYE:** The State's ready.

22              **THE COURT:** Bring in the jury.

23              (The jury returns to the courtroom.)

24              **THE COURT:** All right. Call your first  
25       witness, Solicitor.

1           **MR. MAYE:** The State calls Russell Enlow to the  
2 stand.

3                           RUSSELL SCOTT ENLOW,  
4           having been duly sworn, testified as follows:

5                           DIRECT EXAMINATION

6 BY MR. MAYE:

7       **Q**     Mr. Enlow, speak up as much as you can in here.  
8 Introduce yourself, state your name for the record  
9 and tell the ladies and gentlemen of the jury who  
10 you are.

11      **A**     I'm Russell Scott Enlow. I'm **Minor**  
12 daddy.

13      **Q**     Okay. Russell, tell me where you've grown up.  
14 Where all -- where did you live and go to school?  
15 What's your background?

16      **A**     I've lived basically at **[REDACTED]** Enlow Drive my  
17 entire life except when I was living at mama's  
18 house, which I can see right across the field from  
19 me.

20      **Q**     Leaving the courthouse here, tell the ladies  
21 and gentlemen of the jury how you get to your house  
22 and y'all's property out there at Enlow Drive.

23      **A**     Basically, you go up Batesburg Highway, it's  
24 about nine miles. You go across Klaus Creek and  
25 then Morris Creek and go up to the top of Morris



1 Creek Hill and take a left on Old Golf Course Road,  
2 go about two-tenths of a mile, then you're going to  
3 turn on Enlow Drive and you just -- it's about  
4 nine-tenths to a mile to my house from there.

5 **Q** Have you lived out there on that piece of  
6 property most all your life?

7 **A** My entire life.

8 **Q** Your entire life. Tell the ladies and  
9 gentlemen of the jury what kind of property is it.  
10 Just describe to them where you grew up out there  
11 and where y'all were living in October of 2012, tell  
12 them about it.

13 **A** You want me to describe the property?

14 **Q** Just tell them about how it's laid out there.  
15 When you get out on Enlow Drive, where is your  
16 house?

17 **A** Enlow Drive, as it's coming down, it actually  
18 splits and goes three different ways. If you take  
19 the left fork, you're going to my sister and  
20 mother-in-law's house. If you go straight, you're  
21 going to my house. And if you go to the right,  
22 you're going to my mom and dad's house, my cousin,  
23 Tina's, house and the defendant, David's, house.

24 **Q** David Bowers, the defendant in this case?

25 **A** David Bowers.

1 Q Where did you go to elementary school, middle  
2 and high school and all; where did you go?

3 A Batesburg-Leesville.

4 Q You went to Batesburg-Leesville because y'all  
5 were up on the upper end out -- all of your  
6 property, where you live, what county is that in?

7 A That's in Saluda County.

8 Q It's all in Saluda County, but you went to  
9 school over in Batesburg?

10 A Uh-huh.

11 Q Okay. When did you graduate from high school,  
12 Mr. Enlow?

13 A Graduated in 1990.

14 Q Now, you were married previous to -- you're  
15 currently married. What's your current wife's name?

16 A My current wife's name is Jennifer.

17 Q Jennifer Enlow. Okay. Now, you were  
18 previously married I believe; is that correct?

19 A That's correct. I married Deanna Alison  
20 Cockrell in 1994 and we were divorced in 2008.

21 Q Okay. Did y'all have children as a result of  
22 y'all being married? As a product of your marriage,  
23 did you have children?

24 A Yeah, we had two. We had a son, sibling 1

25 sibling 1, and we had Minor.

1 We had her November the 15th of 2001.

2 Q She was born November the 15th of 2001?

3 A Uh-huh.

4 Q That's **Minor** Okay. Now, after you and your  
5 first wife split and you remarried Jennifer, what --  
6 I mean, you married Jennifer having been divorced  
7 from your first wife, what year did y'all get  
8 married?

9 A 2008.

10 Q Have y'all subsequently, since you been  
11 married, have y'all had a child?

12 A Yes, we have.

13 Q Okay. What is that child's name?

14 A **sibling 2**. We call her **sibling 2**

15 Q Okay. And so back in October of 2012, when the  
16 events in this case unfolded, how old -- about how  
17 old was **sibling 2** then?

18 A She was around two to three.

19 Q Okay. Same time in October, how old was  
20 **Minor** your daughter, the victim in this case?

21 A Ten.

22 Q She was ten. How old was your son at that  
23 time?

24 A Fifteen.

25 Q Okay. Tell the ladies and gentlemen of the

1 jury how you know the defendant in this case, David  
2 Bowers, what your connection is with him and  
3 describe basically the nature, y'all's ongoing  
4 relationship up until October of 2012. Just lay the  
5 stage for me. Tell them about how you know him.

6 **A** How I know him? David Bowers is my first  
7 cousin's oldest son.

8 **Q** Who's your first cousin?

9 **A** Tina Crouch.

10 **Q** Tina Crouch is your first cousin.

11 **A** Which is David's mom.

12 **Q** So he is a cousin of yours. What does that  
13 make him? What kind of cousin? You'd have to help  
14 me with that.

15 **A** Second.

16 **Q** Second cousin, okay. How long have you known  
17 David Bowers, the defendant in this case?

18 **A** Pretty much ever since they moved over there to  
19 the family property, which they moved onto the part  
20 of the property that my aunt, Donnette {phonetic}  
21 Root, owns. And that was probably, I don't know the  
22 exact date or year that they actually moved over  
23 there, but I'm thinking it was somewhere around  
24 2002, 2003, somewhere --

25 **Q** Do you know when he was born, what his birthday

1 is?

2 **A** [REDACTED].

3 **Q** He was born [REDACTED], okay. Tell the  
4 ladies and gentlemen of the jury prior to this  
5 October incident, what kind of relationship did  
6 y'all have? What was -- how did he interact with  
7 you over the years and how did that progress?

8 **A** Well, over the years when he was in high  
9 school, I mean, you know, he'd stopped by and, you  
10 know, we'd say hey, wave in the road and things like  
11 that. And during the summer time, he would work for  
12 me in my business. I run a pest control business.

13 **Q** How long have you been running that pest  
14 control business, Mr. Enlow?

15 **A** Since 2002.

16 **Q** Since '02, okay. So he worked for you part  
17 time. What other kind of things did y'all do  
18 together and how did he interact with you and your  
19 family?

20 **A** Me and my first wife, when we were married, we  
21 got him several times to baby-sit our kids because,  
22 I mean, we trusted him. I mean, we didn't have any  
23 reason not to because, you know, he was our family.  
24 And we would take him on vacations with us. We took  
25 him to Myrtle Beach I think in '05, '06, somewhere

1 along in there.

2 We provided him a cell phone during that time.

3 And, you know, pretty much, you know, everything  
4 that he needed, we tried to provide for him because  
5 I mean, you know, we thought of him, you know,  
6 that's our family. We try to take care of family.

7 **Q** After he graduated from high school, did there  
8 come a time that he went to work for you actually  
9 with your business?

10 **A** Yeah. It was July 26 of 2012, he started  
11 working for me full time.

12 **Q** What does that entail? With him working for  
13 you, what did that entail?

14 **A** Well, it's helping do the pest control  
15 treatments and termite treatments and just everyday  
16 pest control.

17 **Q** Okay. How many days a week did you work in  
18 your pest control business?

19 **A** Five.

20 **Q** Five days a week. About what time would y'all  
21 normally start in the mornings?

22 **A** Usually start around 8:00 and got off around  
23 5:00.

24 **Q** So in October of 2012, about how long had he  
25 been working for you on a full-time basis?

1       **A**     He was nearing -- it wasn't 90 days yet because  
2       I, you know, I was waiting on his 90-day  
3       probationary period to end, but he had been working  
4       for me, I would say, a little over 60 days. It was  
5       somewhere between 60 and 90 days.

6       **Q**     Full time?

7       **A**     Full time.

8       **Q**     But he worked for you part time over a long  
9       period of time; is that correct?

10      **A**     Oh, yeah.

11      **Q**     Okay. What was his living situation?  
12      Obviously, you had a close relationship with him.  
13      Where did he live in relation to you and who lived  
14      with him?

15      **A**     He lived in a single-wide trailer. It's  
16      approximately, I'd say, about 800 feet from our  
17      house. He moved there with his girlfriend, Lori  
18      Haag, and their little girl that they had together,

19      **D's minor child**

20      **Q**     Okay. Let's talk about the 6th and the 7th of  
21      October of 2012. What went on that weekend? Had  
22      y'all worked earlier that week? And tell us about  
23      going into that weekend. What happened or what was  
24      taking place?

25      **A**     Well, it was a normal week. We worked our

1 normal schedule. And Saturday, we had planned to go  
2 to a friend's house on the lake, Leeann Hutto's  
3 house on Hutto Island, to watch the Georgia/Carolina  
4 game.

5 **Q** Okay. How did y'all go to go out to watch the  
6 ball game? How did everybody get there when y'all  
7 went on that day?

8 **A** We initially met at our -- at my house. And  
9 myself, my wife --

10 **Q** Now, your wife's name would be, help me with  
11 that?

12 **A** Jennifer.

13 **Q** Jennifer. You and your wife, Jennifer.

14 **A** Me and my wife, Jennifer; my son, **sibling 1** my  
15 daughter, **Minor** and my other daughter, **sibling 2** --

16 **Q** So **sibling 2** actually went with you?

17 **A** Yeah. She went with us because there's other  
18 babies there the same age that they interact and  
19 they play and stuff like that.

20 **Q** When y'all left out there off your household  
21 property at Enlow Drive, how did y'all go out to the  
22 lake? How did y'all get there? What did you go in?

23 **A** We went in a -- my wife's Ford Explorer. And  
24 David and his girlfriend, Lori, followed in her car.

25 **Q** What kind of car did she drive?



1           **A**     She drove a Hyundai.

2           **Q**     Now, did they take their daughter with them  
3           when they went out there?

4           **A**     No.

5           **Q**     D's minor child I believe you said her name was?

6           **A**     D's minor child

7           **Q**     Okay. So you took your whole family, and he  
8           and his wife, Lori, went. And y'all went in two  
9           cars?

10          **A**     That's correct.

11          **Q**     What happened when you got out there to Hutto  
12          Island to your friend's house, what all happened  
13          that day?

14          **A**     Well, she had had to -- she had already told us  
15          that she had to go to work earlier --

16          **Q**     Who's she?

17          **A**     Lori. Lori said that she had to go to work  
18          earlier that morning, so she didn't stay out there  
19          too long. I think she stayed maybe an hour, hour  
20          and a half.

21          **Q**     Do you know what kind of work she was doing at  
22          the time?

23          **A**     She was a phlebotomist at, I think, she was  
24          working at Aiken at the time.

25          **Q**     Okay.

1       **A**     And so she came out there, you know, ate, you  
2       know, socialized a little bit, then she had to  
3       leave, which, you know, she drove her car back  
4       because she had to, you know, try to get a little  
5       bit of sleep before she went to work. And then  
6       while we were, you know, we were at the, I guess,  
7       the little get-together, it was pretty much set up  
8       all the women and kids were on the inside and the  
9       guys had a flat screen TV set up in the garage, and  
10      we were all out around it just watching the game.

11      **Q**     And your daughter, again, was how old at the  
12      time?

13      **A**     My daughter was ten.

14      **Q**     Did you give her a cell phone at that time?

15      **A**     Yes, I did.

16      **Q**     You gave her a cell phone?

17      **A**     I gave her a cell phone, so if -- when she was  
18      on visitation visits with my ex-wife, Deanna  
19      Crawford, that if she ever wanted to call me or ever  
20      needed me for anything, you know, she had a way to  
21      call me.

22      **Q**     She had a cell phone; right?

23      **A**     That's correct.

24      **Q**     I'm going to show you, I'm not going to move to  
25      admit this into evidence, but just for -- I'm going

1 to show you for ID -- mark this for ID.

2 (State's Exhibit Number 4, cell phone,  
3 marked for identification.)

4 **Q** Show you State's 4 for ID. Is that the cell  
5 phone that you provided to **Minor** your ten-year-old  
6 at the time?

7 **A** Yes, it is.

8 **Q** Okay. You can set that down. Now, I know with  
9 phones, there -- I guess, there are smart phones and  
10 there are some that are not as smart and I guess  
11 there are some that are not smart at all. That's  
12 not the latest, greatest, that's not the smartest  
13 phone, is it?

14 **A** No.

15 **Q** Okay. You provided that phone to your  
16 daughter, but there were certainly smarter phones, I  
17 guess, is a fair enough way to say?

18 **A** Yes.

19 **Q** But you can text message and you can make calls  
20 and that kind of thing on the type of phone that you  
21 bought, that phone that you provided her?

22 **A** That's correct.

23 **Q** You've kind of laid the stage of how people  
24 were, I guess, engaged in recreation at the lake  
25 house where y'all were visiting. Did there come a

1 time that y'all left? And tell the ladies and  
2 gentlemen the circumstances of y'all leaving or  
3 about what time that was.

4 **A** Well, after the game was over, you know, we may  
5 have hung out for, like, five or ten minutes and  
6 then we all got back into the Ford Explorer.

7 **Q** Who's all of you again? Everybody that's in  
8 the Explorer.

9 **A** It's me; my wife, Jennifer; my son, **sibling 1** my  
10 daughter, **Minor** my other daughter, **sibling 2** and David  
11 Bowers.

12 **Q** Do you remember about what time y'all left or  
13 about what time you got back out? Where did y'all  
14 go once you left out there from Hutto island from  
15 the ball game at your friend's house?

16 **A** From our friend's house, we came home. We  
17 pretty much came home because, I mean, I was pretty  
18 tired at the time.

19 **Q** Ball park, what time was that?

20 **A** It was probably, I'd say, around 11:00 or a  
21 little after.

22 **Q** You think it was around 11:00?

23 **A** Yeah, around 11:00.

24 **Q** Okay. What happened when y'all got home? Tell  
25 the ladies and gentlemen of the jury what y'all saw

1 and what happened.

2 **A** When we were coming up the driveway, when we  
3 got close to the garage, we noticed it was a black  
4 animal that was -- we couldn't identify it. We  
5 didn't know what it was. We didn't know if it was a  
6 bear, you know, or anything like that. So we sat  
7 there and had the lights shining on it and all of a  
8 sudden, it just took off.

9 **Q** When you say you don't know if it was a bear,  
10 it could have been a possum, it could have been a  
11 bear --

12 **A** No. It wasn't no possum. It was too big for a  
13 possum, but, I mean, it was a pretty nice size. But  
14 it was black, though. We really couldn't identify  
15 what exactly, what it was. So my son, **Sibling 1** and  
16 David Bowers got out, grabbed some flashlights out  
17 of the work truck and took off through the woods,  
18 you know, to go find -- see if they could find out  
19 what it was.

20 **Q** Now, you -- was he 23 at the time, Mr. Bowers  
21 in this case?

22 **A** Yeah.

23 **Q** And your son was about how old?

24 **A** Fifteen.

25 **Q** Was that a pretty typical interaction in

1 between them at the time?

2 **A** Yeah, they -- I mean, because **sibling 1** he pretty  
3 much grew up around David.

4 **Q** Okay. All right. So they get the flashlights  
5 and go off and in search of whatever's under the  
6 carport. What do the rest of you do?

7 **A** Me and my wife, Jennifer, went inside and so  
8 did my daughter, **Minor** went inside to get ready  
9 for bed. I mean, **sibling 2** we had to get **sibling 2** ready to  
10 go to sleep. And, at that time, it took a little  
11 bit more effort than what it does now, but we got  
12 her to sleep. And we got our showers, you know,  
13 just ready to get -- go to bed.

14 **Q** Okay. Did there come a time that **sibling 1** and  
15 David Bowers, the defendant in this case, that they  
16 returned?

17 **A** What was that?

18 **Q** Did they come back to the house?

19 **A** Yeah.

20 **Q** They came back to the house. When you went to  
21 bed, who was where? What did you see and observe  
22 along about the time y'all went to bed?

23 **A** When I went in, I was under the assumption  
24 that --

25 **Q** No, just what you -- not under an assumption,

1 just what you saw and what you knew when you went to  
2 bed.

3 **A** What I knew when I went to bed?

4 **Q** Yeah.

5 **A** That the kids were out watching a movie and I  
6 had no idea he was in the house.

7 **Q** You did not realize he was still there?

8 **A** No.

9 **Q** All right. Let's talk about the next morning.  
10 What happened? Now, you can't say what your wife  
11 said in this case, but without going into what she  
12 said, what happened when you got up the next  
13 morning?

14 **A** Just like any other day, just got out of bed  
15 and did the normal morning things and --

16 **Q** Let me ask you this: Did you and Mr. Bowers  
17 have plans to do anything that following day; and if  
18 so, what was that?

19 **A** Yeah. I had let him borrow my lawn mower, I  
20 think it was that week.

21 **Q** Yeah.

22 **A** And he had run over something and bent my  
23 blades. And, well, I needed to cut my grass, so he  
24 was going to help me change the blades. I went and  
25 bought the blades and he was going to come over and

1 help me change them.

2 **Q** Okay.

3 **A** So, I mean, that's pretty much what we had  
4 planned to do that day. I just lost my train of  
5 thought.

6 **Q** What happened that morning after you got up?  
7 What happened?

8 **A** I had a conversation with my wife, Jennifer.  
9 And based on the conversation that we had, I went  
10 and recovered **Minor** cell phone. We had a feeling  
11 something just wasn't right.

12 **Q** And that was your phone that you provided to  
13 your ten-year-old?

14 **A** Yes. This phone right here {indicating}.

15 **Q** Okay. I know young people now, I guess -- how  
16 often did she text message and send messages and  
17 all? About how often of an occurrence was that  
18 based on your observations of her? Is that  
19 something she frequently did?

20 **A** She's -- she didn't do it too often much, but  
21 she was a normal tween. I mean, she would text, you  
22 know, a lot of family members because that's  
23 basically all I let, you know, be on her friends  
24 list and only people that I approved that went to  
25 school with her.



1       **Q**     Did you periodically get that cell phone and  
2       look at it then as a part and parcel of you being  
3       her daddy?

4       **A**     Oh, yes.

5       **Q**     Well, you've told them that you had some sort  
6       of feeling. What happened when you got that cell  
7       phone and you fired it up and you looked at it?  
8       Where did you -- how did you get it away from

9       **Minor**

10      **A**     I just went and took it.

11      **Q**     You went and got it, okay. What did you and  
12      your wife do with the cell phone once you got a hold  
13      of it?

14      **A**     We went into our master bathroom and sat down  
15      and started looking at the text messages.

16      **Q**     Were y'all able to read text messages off of  
17      the phone in this case?

18      **A**     Yes.

19      **Q**     I'm going to ask you this: At this point in  
20      time, have you had an opportunity to view all of the  
21      text messages on the phone at this point in time, on  
22      that telephone?

23      **A**     Yes.

24      **Q**     Okay. Have you been provided with a download  
25      or a dump of information that was downloaded from

1 the defendant, Mr. Bowers', iPhone in this case by  
2 law enforcement?

3 **A** Yes.

4 **Q** At this point in time, I'm going to show you --

5 **MR. MAYE:** And I think that there's a  
6 stipulation in this case, Your Honor. State's 3, at  
7 this time, is in by stipulation, which is a download  
8 that law enforcement obtained from Mr. Bowers' cell  
9 phone.

10 **Q** Let me ask you this: If you can review that  
11 and just take a look at that.

12 **THE COURT:** It's in evidence without objection?

13 **MR. SHEEK:** That's correct, Your Honor.

14 **THE COURT:** It's in evidence without objection.  
15 Thank you.

16 (State's Exhibit Number 3, copy of text  
17 messages, admitted into evidence.)

18 BY MR. MAYE:

19 **Q** I'm going to show you State's 3, and I believe  
20 you have your own copy of text messages; is that  
21 correct?

22 **A** That's correct.

23 **Q** Go through and look and review what's in, by  
24 stipulation, State's 3 and see if that fairly and  
25 accurately represents the text messages going back

1 and forth in between those two phones.

2 **A** That's correct.

3 **Q** Go through and look at all of it.

4 **A** (Witness reviewing document.)

5 **Q** Does that fairly and accurately reflect text  
6 messages, what's been provided to you that was  
7 downloaded from his phone, and does it mirror, at  
8 least the parts of it that are on your daughter's  
9 phone, does that mirror the back and forth? You've  
10 looked at that phone and you've looked at that list.  
11 Does those mirror each other and match?

12 **A** Yes.

13 **Q** Okay. As to your daughter's phone, who did it  
14 indicate that she was text messaging with and  
15 responding to on your daughter's phone?

16 **A** David Bowers.

17 **Q** Okay. And you've looked at the download or the  
18 information from the phone that's been identified to  
19 you at least as Mr. Bowers' phone. Who did it  
20 indicate that he was communicating with or how was  
21 it identified on his phone?

22 **A** It was text messaging my ten-year-old daughter,  
23 Ali.

24 **Q** Okay. When was the first one on that list,  
25 what day and time was that? And you're going to

1 have to help me with this time and day thing, but  
2 when was the first one?

3 **A** The first one on this was Saturday, October  
4 6th, 2012, at 11:20 Eastern Standard Time.

5 **Q** Okay. They're marked differently on that  
6 download. How are they marked?

7 **A** They're marked with GMT, which is Greenwich  
8 Means Time.

9 **Q** Greenwich Mean Time, okay. And we're how many  
10 hours behind that?

11 **A** We're five hours behind that.

12 **Q** So the first message you got is what time  
13 again?

14 **A** 11:20.

15 **Q** Okay. I want you to go through and publish, as  
16 it goes back and forth, the text messages going back  
17 and forth in between the two of them and identify  
18 what is Ali's sending messages -- which are Ali's  
19 and which are indicated, from that information that  
20 you have, to be David Bowers, the defendant in this  
21 case. Go through and publish that to the jury.

22 **A** Okay. Okay. I'm reading -- this is from  
23 David's phone. Ali: When are you coming?

24 David responds: In a minute.

25 Ali writes back: Okay.

1 David says: Well, I'm probably going to have  
2 to wait cause I got to go to eye exam.

3 Ali writes: Oh.

4 David writes back: WYD -- which means what you  
5 doing.

6 Ali writes back: Watching T.V., and you really  
7 don't need to get an eye exam when you already had  
8 one and you got contacts.

9 David writes: LOL. It's a check up.

10 Ali writes: You don't need one.

11 David writes: Yeah, I do. LOL.

12 **MR. SHEEK:** Your Honor, I would pose an  
13 objection at this point. I'm not objecting to  
14 what's been downloaded from the phone, but to the  
15 Ali writes, the David writes. That's certainly not  
16 in evidence.

17 **MR. MAYE:** I'll ask him in-going and outgoing  
18 messages from that phone, Your Honor. I can  
19 certainly ask him to do that.

20 **THE COURT:** All right.

21 BY MR. MAYE:

22 **Q** You just identify them as, from the dump that  
23 you have, from his in-going and outgoing messages  
24 between those two parties. Go ahead.

25 **A** Do I need to say Ali or David?

1       **Q**     Nope. Incoming or outgoing. You just identify  
2           them as they are on the printout there?

3       **A**     Okay. Incoming: Come with us tonight to  
4           Leeann's house, please.

5           Outgoing: I am.

6           Incoming: Yay. And I was sucking the in  
7           helium and it made my voice high pitch. LOL. And I  
8           recorded it on my phone and I will show you when I  
9           see you.

10          LOL. On.

11          Okay, not on. That was -- wait a second --  
12          outgoing, outgoing.

13          Incoming: We are home. Go ahead and come one.

14          Outgoing: LOL. I was up there earlier.

15          Incoming: Well, I wasn't here, so come on.

16          Outgoing: Where were you?

17          Incoming: I was at my best friend, Devin's,  
18          birthday party.

19          Incoming -- it's a little weird -- it's C KIF  
20          IK can ride with y'all.

21       **Q**     Just publish it as it is.

22       **A**     Okay. Incoming: Hey, do you still want it?

23           Incoming: Hey, do you still want it?

24           Outgoing: LOL. Do you?

25           Incoming: Yes. See if I can stay the night.

1           LOL.

2           Outgoing: LOL. Okay.

3           Outgoing: I do too.

4           Incoming: LOL.

5           Incoming: Okay. Tell me what my dad -- and

6           that's where it stops there.

7           Outgoing: LOL. It will be a no though, cause

8           Lori won't be home.

9           Incoming: Soooooooo that was only because I had

10          chores and I don't have anymore to do.

11          Outgoing: Really?

12          Incoming: Yep.

13          Outgoing: So you really want it?

14          Incoming: Yeah, I'm horny.

15          Outgoing: LOL. Me too.

16          Incoming: You drunk yet?

17          Outgoing: I'm feeling it, but not drunk,

18          ha-ha.

19          Incoming: Get drunk.

20          Incoming: It makes me even more horny. LOL.

21          Outgoing: LOL. Good.

22          Incoming: LOL.

23          Outgoing: I'm serious. Ha-ha.

24          Incoming: LOL.

25          Outgoing: You so sexy right now. God.

1 Incoming: How?

2 Outgoing: Look at yourself.

3 Incoming: I just did and I'm not.

4 Outgoing: Oh, yes, you are, trust me.

5 Incoming: I am not.

6 Outgoing: Hum, yes, you are.

7 Incoming: Nope.

8 Outgoing: Yes, seriously.

9 Incoming: Nope.

10 Outgoing: Yes.

11 Incoming: No, I'm not.

12 Outgoing: Yes, you are.

13 Incoming: No, I not.

14 Outgoing: Yes, you are, seriously.

15 Incoming: No, I'm not.

16 Outgoing: Yes.

17 Incoming: No.

18 Outgoing: Yeah, you are.

19 Outgoing: I'm not sexy though.

20 Incoming: Yes, you are. And, no, I'm not. If

21 you keep saying yes, then you and getting nothing

22 and ask my daddy.

23 Outgoing: I'm not for sure, okay.

24 Incoming: What you mean you're not for sure?

25 Outgoing: Sexy.



1 Incoming: No, I'm not.

2 Outgoing: And, no, I -- and, no, I not.

3 Incoming: Yes, you are.

4 Outgoing: No, I'm not. LOL.

5 Incoming: Yes, you are. And if I'm so sexy,

6 come in here and say it to my face.

7 Incoming: Help me.

8 Outgoing: LOL. How?

9 Incoming: I don't know, but this is so

10 retarded.

11 Outgoing: Yeah.

12 Incoming: It's my fave show. Not. And this

13 is making...

14 **Q** Read it.

15 **A** Read it as it's written?

16 **Q** Read it.

17 **A** It's my fave show. Not. And this is making my

18 pussy vibrate and it feels good because I'm horny.

19 LOL. Really now?

20 Outgoing: Cause I wished I was in your pussy.

21 Incoming: Not, not when we were going down

22 that rocky and dirt road, and I wish you were in it

23 too. And stay the night at my house tonight,

24 please, since you're half drunk, please.

25 Outgoing: LOL. Can't. Ha-ha.

1 Incoming: Yes, you can.

2 Outgoing: No, I can't cause I been drinking.

3 Incoming: That's why.

4 Outgoing: Yeah.

5 Incoming: Okay. Then stay the night and while

6 they are sleeping, we can mess around. LOL.

7 Outgoing: Yeah, right, in my dreams.

8 Incoming: Shut up before I pour my drink on

9 you and it will happen.

10 Outgoing: Yeah, right.

11 Incoming: Please stay the night.

12 Outgoing: Luke wants me to come to the bar

13 they at.

14 Incoming: Hell no.

15 Outgoing: What?

16 Incoming: You not go no bar and my boobs are

17 bouncing up and down.

18 Outgoing: Yes, I see them, ha-ha.

19 Incoming: Ha-ha. OMG. Yes, you're fucking me

20 too hard. LOL. Ha-ha-ha.

21 Outgoing: Ha-ha, I wish.

22 Incoming: LOL.

23 Outgoing: So would you?

24 Incoming: Would I what?

25 Outgoing: Want us fucking.

1 Incoming: Yes, I'm horny.

2 Incoming: Are you going to stay, please? If  
3 you don't stay here, then next time I stay the night  
4 with y'all, then I'm not having sex with you.

5 Incoming: Where are y'all at?

6 Outgoing: Why not? In the woods.

7 Incoming: Because I told you already. And  
8 what are y'all doing? And when you come in, I'll  
9 check you for ticks.

10 Outgoing: Okay.

11 Incoming: Does a one legged duck swim in a  
12 circle? It felt good and was I wet when you were  
13 doing it?

14 Incoming: Hey, I went to change my underwear  
15 and my pants, and my pants were wet at the crotch  
16 part. And I'm wearing underwear wear too and I was  
17 like, OMG, that felt so good inside of me.

18 Outgoing: LOL. So do you want it to happen  
19 again?

20 Incoming: Does a bear shit in the woods? WBU  
21 -- which stands for what about you.

22 Outgoing: Same. LOL. Every time I see you  
23 now, that's all I'm going to think about. LOL.

24 Incoming: LOL. Are you looking for your  
25 sunglasses?

1           Outgoing: No. They were in my truck. LOL.

2           While I left my dip there. LOL.

3           Outgoing: Do you want more?

4           Incoming: Yes.

5           Outgoing: When? And do you ever touch  
6           yourself thinking of me? JW -- which stands for  
7           just wondering.

8           Incoming: Yeah.

9           Outgoing: That's awesome, ha-ha. I like that.

10          Incoming: LOL.

11          **Q**    Once you saw those text messages on your  
12          daughter's phone, what was the next thing that you  
13          did when you saw those messages?

14          **A**    After me and my wife, Jennifer, looked at the  
15          text messages, we didn't actually look at all of  
16          them, we went through just the first part, and after  
17          looking at those, we pretty much, based on what we  
18          saw, pretty much decided that she -- a sexual  
19          assault had taken place at our house the night  
20          before. And I grabbed her phone --

21          **Q**    Your daughter's phone?

22          **A**    My daughter's phone, this phone right here, and  
23          went to the Saluda County Sheriff's Department.

24          **Q**    Okay. Who did you meet with at the sheriff's  
25          department? What steps -- did you contact anybody

1 or what did you do as you went to the sheriff's  
2 office?

3 **A** As I was going to the sheriff's department, I  
4 called Ali's biological mother, Deanna Crawford.  
5 And I told her, I said to meet me at the sheriff's  
6 department, don't ask any questions, just get there  
7 now.

8 **Q** What did you do -- who got to the sheriff's  
9 office first? Not long --

10 **A** I did.

11 **Q** -- to the sheriff's office from your house, is  
12 it?

13 **A** No. It's about, like, five or six miles.

14 **Q** Okay. Once you got to the sheriff's office --  
15 you get there first; is that correct?

16 **A** That's correct.

17 **Q** Okay. Who do you meet with and at what point  
18 in time does your ex-wife, **Minor** biological  
19 mother, show up? How does that unfold?

20 **A** I got to the sheriff's department and went in  
21 and asked to speak to a deputy. Archie Hill came  
22 out to greet me and he took me back to a conference  
23 room and just proceeded, you know, ask me what was  
24 going on and that's when I showed him the phone.  
25 And I said, I think something's going on here and I

1       need you to look at it to confirm it, and he did.

2       **Q**     So you allowed him to look at your daughter's  
3       cell phone?

4       **A**     Yes, I did.

5       **Q**     Okay. I'm going to ask you this: Once you got  
6       the cell phone, did you change or alter anything  
7       that was on it in any way? Did you do anything with  
8       it other than just look?

9       **A**     I just looked. And once I was at the Saluda  
10      County Sheriff's Office, they pretty much  
11      confiscated that phone and put it --

12      **Q**     You gave it to them voluntarily?

13      **A**     Yeah. I gave it to them voluntarily and they  
14      put it in an evidence bag.

15      **Q**     And they receipted it where they had received  
16      it from you and all when you turned it over to them?

17      **A**     That's correct.

18      **Q**     At that point in time, I guess you turned it  
19      over to law enforcement; is that correct?

20      **A**     That is true.

21      **Q**     Now, let me just ask you this: You said you  
22      speculated that a sexual assault had taken place.  
23      If that took place at your house, what county would  
24      that have been in?

25      **A**     It's in Saluda County.

1       **Q**     That would have been in Saluda County, your  
2     house.

3               **MR. MAYE:** Answer any questions the defense has  
4     for you.

5                               CROSS-EXAMINATION

6     BY MR. SHEEK:

7       **Q**     Sir, about what time was it you said you got  
8     back to your house after watching the game?

9       **A**     It was around 11:00 or a little after.

10      **Q**     And was David with you the whole time y'all  
11     were watching the game?

12      **A**     In what aspect?

13      **Q**     Well, you said the men were out in the garage  
14     gathered around the T.V. Was Mr. Bowers out there?

15      **A**     Yeah.

16      **Q**     And did he stay there for the entire game?

17      **A**     Pretty much.

18      **Q**     Do you know what time the game went off?

19      **A**     Around 10:30, 10:45.

20      **Q**     So you didn't hang around the house very long  
21     before driving back to your house?

22      **A**     No.

23      **Q**     When you got back to your house, did you see  
24     him anymore? You testified you didn't know he was  
25     still at your house. When's the last time you saw

1 Mr. Bowers?

2 **A** After we pulled up into my driveway and they  
3 took off to -- they got flashlights and stuff like  
4 that, that was pretty much the last time I seen him  
5 because I told him, I'll see you tomorrow, because I  
6 was ready to go to bed.

7 **Q** And so that's the last time you dealt with him.  
8 The next morning you saw the cell phone. About what  
9 time was that?

10 **A** I have no idea what time that was.

11 **Q** When you saw the cell phone, you said you went  
12 to the master bedroom and y'all looked and saw --

13 **A** Master bath.

14 **Q** Sorry, master bathroom. And you saw at least  
15 part of these messages; correct?

16 **A** That is correct.

17 **Q** And I'm not asking you what anybody said, but  
18 did you go back and talk to **Minor** at that point?

19 **A** I didn't need to talk to **Minor**

20 **Q** I understand you might not need to. I just,  
21 for the record, need an answer. Did you go talk to  
22 her prior to going to the sheriff's department?

23 **A** No, I didn't.

24 **MR. SHEEK:** That's all the questions I have.

25 **THE COURT:** Redirect.



1           **MR. MAYE:** Just one.

2                               REDIRECT EXAMINATION

3           BY MR. MAYE:

4           **Q**     The last text message, about what time did that  
5           come in? The last text message that you published,  
6           do you know -- you'll have to help me with Eastern  
7           Standard Time and Greenwich Mean Time, but about  
8           what time did that last text message come in?

9           **A**     It came in at 3:06 a.m. Eastern Standard Time.

10          **Q**     On what day?

11          **A**     Sunday, October the 7th.

12          **Q**     So the first one --

13          **A**     2012.

14          **Q**     The first one was when?

15          **A**     The first one was Saturday, October 6th, 2012,  
16          at 11:20 Eastern Standard Time.

17          **Q**     And the last one, Sunday at what time?

18          **A**     October 7th at 3:06 a.m. Eastern Standard Time.

19          **Q**     And so the rest of them fell somewhere in  
20          between those date ranges; right?

21          **A**     That's correct. And 11:20, I believe, is a.m.

22          **Q**     So when you were asked in this case, Was he  
23          with you the whole time, could you tell whether or  
24          not he was texting someone or not? Were you  
25          watching him that close that you could have told

1       what he was doing every minute?

2       **A**     He worked for me every day, that was a constant  
3       for him to be texting somebody. I mean, as, you  
4       know, he could be texting Lori for all I know. I  
5       mean, she had, at that time, was already gone. So I  
6       mean, I didn't know who he was texting.

7       **Q**     But you did notice him texting on his phone  
8       during the time that y'all were at the game?

9       **A**     That is correct.

10      **Q**     But you can't say that you could account for  
11      every minute that you stared right at him?

12      **A**     No. I figured he was a big boy. He could take  
13      care of hisself.

14             **MR. MAYE:** Nothing else. Answer anything the  
15      defense has for you. Thanks.

16             **THE COURT:** Recross.

17                             RECROSS-EXAMINATION

18      BY MR. SHEEK:

19      **Q**     While y'all were at the game, do you know where  
20      your daughter was?

21      **A**     She was inside.

22      **Q**     Do you know who she was with?

23      **A**     She was with the little kids watching the T.V.  
24      in -- they have a T.V. room right as you come in the  
25      garage door to the right. They have a flat screen

1 T.V. that has a couch and a bunch of children's toys  
2 in there. She was in there laying down with the  
3 kids watching T.V.

4 **MR. SHEEK:** Thank you. That's all the  
5 questions I have.

6 **THE COURT:** Anything further of this witness?

7 **MR. MAYE:** Nothing, Your Honor. Thank you.

8 **THE COURT:** Thank you, sir. You may step down.  
9 Call your next witness.

10 **MR. MAYE:** The State would call **Minor** to  
11 the stand.

12 **THE COURT:** Come around, please.

13 **Minor**,

14 having been duly sworn, testified as follows:

15 **THE COURT:** Have a seat up here, please. I  
16 need you to speak into that microphone and answer  
17 Mr. Maye's questions.

18 **THE WITNESS:** Yes, sir.

19 DIRECT EXAMINATION

20 BY MR. MAYE:

21 **Q** **Minor** state your name for the record. Speak  
22 up as much as you can.

23 **A** **Minor**.

24 **Q** **Minor** when were you born? What is your  
25 birthday?

1

**A**

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**Q**

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**A****Q**

I know that it's kind of repetitive, but just -- who are your mom and dad?

**A****Q****A****Q****A****Q****A****Q****A****Q****A****Q****A****Q****A****Q****A****Q****A****Q****A**

My dad is Russell Enlow. My biological mom is Deanna Crawford. And my stepmom is Jennifer Enlow.

Okay. Minor where have you lived all your life?

Enlow Drive.

Pull that mic down as much as you can and speak right into it. You live where?

Enlow Drive.

Enlow Drive, okay. You lived there all your life?

Yes, sir.

Okay. Now, your mom and dad got divorced. About how old were you when your mom and your -- your biological mom and your dad got divorced?

I was just about to turn six or seven.

About six or seven, okay. Tell me about your family members. Who are your brothers and sisters? Let's talk about October of 2012. Who all was living at your house there?

It was my dad, my stepmom -- my dad, my stepmom, my brother, sibling 1 and my little sister,

1 sibling 2

2 Q Where all did you go to school? Where did you  
3 start elementary school?

4 A I started elementary school at Batesburg  
5 Elementary.

6 Q At Batesburg Elementary. In October of 2012,  
7 what grade would you have been in, Minor

8 A I was in fifth.

9 Q In the fifth grade. And how old were you then?

10 A Ten.

11 Q And you're how old now?

12 A Twelve.

13 Q You're 12 now, okay. Let's get right to it.  
14 How do you know David Bowers, the defendant in this  
15 case?

16 A I've known him since I was three or four. I  
17 mean, he used to come over and baby-sit me and my  
18 brother a lot. And, like, then I was really close  
19 to him and then he started to stop coming around,  
20 but he is also my second or third cousin.

21 Q Okay. So you know he's your cousin, okay. How  
22 often did he come over and how did that evolve over  
23 time? How often did he come over to your house and  
24 what kind of things would happen when he was at your  
25 house?

1       **A**     He would just come over whenever and just hung  
2       out with us and watched T.V. and just normal stuff  
3       like that.

4       **Q**     Okay. Was he over often? Was that a common  
5       occurrence?

6       **A**     Yes, sir.

7       **Q**     Did there come a time that he got a girlfriend  
8       and who was that and how -- where did he live in  
9       relation to y'all?

10      **A**     He lived right across the field from us and  
11      just --

12      **Q**     Who was his girlfriend?

13      **A**     At the time?

14      **Q**     Yeah. In October of 2012, who was his  
15      girlfriend?

16      **A**     Lori Haag.

17      **Q**     Okay. Did they have a child together?

18      **A**     Yes, sir.

19      **Q**     Okay. What was the child's name?

20      **A**     D's minor child

21      **Q**     Okay. Did you go over there and visit them?  
22      Were you around over there with them? Were you a  
23      guest in their house?

24      **A**     Yes, sir.

25      **Q**     Okay. About how frequently did that happen?

1       **A**     Every other weekend.

2       **Q**     About every other weekend, okay. About how  
3       often, say, outside of the work day, about how often  
4       would he be over at y'all's house, David Bowers, the  
5       defendant in this case? How often would he come  
6       around?

7       **A**     Just a lot, frequently.

8       **Q**     When he came over, did he beat on the door, did  
9       he knock, was it formal or did he just kind of come  
10      in and out when he wanted to?

11      **A**     Sometimes he knocked, sometimes he just came  
12      in.

13      **Q**     Okay. All right. In the evenings and all  
14      after everybody would work, would it be typical for  
15      his girlfriend and he to be over at y'all's house  
16      hanging out?

17      **A**     Yes, sir.

18      **Q**     Okay. Now, **Minor** this is going to sound  
19      silly, but I'm going to ask you is David Bowers, is  
20      he present here in the courtroom today?

21      **A**     Yes, sir.

22      **Q**     Could you point him out and say how he's  
23      dressed and where he's sitting?

24      **A**     {Indicating}. I can't see what he's --

25      **Q**     Sitting at the table there. What color shirt

1 does he got on?

2 **A** Green.

3 **MR. MAYE:** Your Honor, I just ask that the  
4 record reflect she's identified the defendant, David  
5 Bowers, in this case.

6 **THE COURT:** So noted.

7 BY MR. MAYE:

8 **Q** **Minor** let me ask you this: Over time prior  
9 to October of 2012, did you and David Bowers, the  
10 defendant in this case, did y'all have a pattern of  
11 text messaging and communicating with each other?

12 **A** Yes, sir.

13 **Q** Okay. About how long had that been going on?  
14 How long had you had a phone and about how long had  
15 y'all been carrying on back and forth text messaging  
16 each other?

17 **A** I've had a phone for a while. And when I  
18 started, like, hanging around his sister, Brianna,  
19 then that's when he and I started texting.

20 **Q** Texting?

21 **A** (Witness nodded head.)

22 **Q** Okay. So y'all communicated by texting, that's  
23 what your testimony is. Did y'all also talk and  
24 converse and talk back and forth with each other  
25 during the time in the months and weeks and even



1 years prior to October of 2012? Did y'all talk with  
2 each other frequently?

3 **A** Yes, sir.

4 **Q** **Minor** I don't mean to embarrass you, but  
5 you've already sat here in the courtroom and heard  
6 the text messages from your phone published from  
7 State's 3. **Minor** there's some pretty graphic and  
8 sexual language contained in your text messages.  
9 I'm not trying to embarrass you. Where did you get  
10 those vocabulary words and where did you learn that  
11 sort of interaction and text? Who did you learn  
12 that from?

13 **A** David.

14 **Q** David?

15 **A** (Witness nodded head.)

16 **Q** You were ten at the time; correct?

17 **A** Yes, sir.

18 **Q** Would that have been a communication that would  
19 have been -- were you communicating with any of your  
20 other ten-year-old friends --

21 **A** Yes, sir.

22 **Q** -- with that kind of language?

23 **A** No.

24 **Q** Not with that kind of language?

25 **A** No, sir.

1       **Q**     But you did text and exchange messages with  
2       other friends and all; correct?

3       **A**     Yes, sir.

4       **Q**     But the texts of a sexual nature with, I guess,  
5       bad terms, pussy, those different words that are in  
6       your text messages, who did you communicate those  
7       kind of messages with?

8       **A**     David.

9       **Q**     David, the defendant in this case. You've got  
10      text messages, but would he also communicate those  
11      types of words and things with you verbally or would  
12      y'all talk about them?

13      **A**     Yes, sir.

14      **Q**     Okay. About how long had that been going on,  
15      him talking with you about things of a sexual nature  
16      and those types of terms and words?

17      **A**     A couple of times of being at his house.

18      **Q**     Okay. Did it occur all of a sudden or did  
19      those sorts of things occur gradually?

20      **A**     Repeat it.

21      **Q**     Did y'all start out talking full-blown talk  
22      like that or did it just, a few words at the time  
23      start up in between y'all?

24      **A**     A few words at a time.

25      **Q**     Okay. Did he share with you what the meanings

1 of those words were and what he was talking about?  
2 Did y'all speak and discuss that?

3 **A** Yes, sir.

4 **Q** Okay. By October 6th and 7th of 2012, had  
5 y'all been exchanging messages like that for a  
6 while?

7 **A** Yes, sir.

8 **Q** Let's talk about that transcript there. I'm  
9 not trying to embarrass you, but I want you to look  
10 at State's 3 and those text messages right there. I  
11 just want you to review all of them in there.

12 **A** (Witness reviewing document.)

13 **Q** **Minor** let me ask you this: Does that  
14 printout of those messages, do those fairly and  
15 accurately reflect the exchange of text messages  
16 between you and David Bowers on that Saturday and  
17 Sunday in October of 2012?

18 **A** Yes, sir.

19 **Q** What was that answer?

20 **A** Yes, sir.

21 **Q** They do, okay. Where were you and where was he  
22 during the time that y'all were exchanging these  
23 text messages? They start some time Saturday and  
24 end way on over in the evening Sunday. Where were  
25 y'all during the time that y'all were exchanging

1       these text messages?

2       **A**     The first time was just 11:20. I was at my  
3       mom's getting ready for my friend's birthday party.  
4       Then near the end, I was with him at the  
5       get-together at Leeann's house.

6       **Q**     So they progressed throughout the day; is that  
7       correct?

8       **A**     Yes, sir.

9       **Q**     Okay. During the course of those text messages  
10      going back and forth, at times, were y'all in the  
11      same car or were you in close proximity? Could you  
12      see him responding to the texts that you were  
13      sending him?

14      **A**     Yes, sir.

15      **Q**     Okay. So y'all were communicating privately  
16      even though you were in close proximity?

17      **A**     Yes, sir.

18      **Q**     Okay. During the time that you were at the  
19      ball game, did you text back and forth with him?

20      **A**     Yes, sir.

21      **Q**     Okay. And I guess out of all the other times  
22      that are reflected there, are those text messages  
23      between you and David Bowers?

24      **A**     Yes, sir.

25      **Q**     What happened when y'all went -- there's

1 already been testimony about y'all going to the ball  
2 game and all. Tell the ladies and gentlemen of the  
3 jury about you being at the ball game and him being  
4 at the ball game. What happened over there at Hutto  
5 Island at your friend's house? What was going on  
6 over there?

7 **A** Well, we just watched the Carolina/Georgia  
8 football game and ate and, like, was around friends  
9 and just -- just hanging out with them.

10 **Q** Okay. Did there come a time that y'all, I  
11 guess, left and came back to your house? And  
12 describe to the ladies and gentlemen who left and  
13 where you came back to and what happened when you  
14 got home.

15 **A** We left around 10:30, 10:45, somewhere around  
16 there. And me -- me, my dad, my stepmom, my little  
17 sister and David all rode in the Ford Explorer home.

18 **Q** Okay. What happened when y'all got back over  
19 to your house at Enlow Drive?

20 **A** Well, we saw this animal up under the carport  
21 thingy.

22 **Q** Okay. What happened then?

23 **A** David and my brother, **sibling 1** got out of the  
24 car, went and got flashlights and ran into the woods  
25 to see what it was.

1       **Q**     Okay. What happened next? Where did you go  
2       when they went off in search of whatever was up  
3       under the carport?

4       **A**     I went inside and started getting ready to go  
5       to bed. I was putting on my pajamas and then going  
6       into the living room to watch a movie.

7       **Q**     Okay. Where was David Bowers during this time?

8       **A**     When I was getting ready for bed, he was  
9       outside with my brother. And when I came out, they  
10      were coming inside.

11      **Q**     They were coming inside, okay. Where did  
12      everybody go, eventually, there? You and who were  
13      watching the movie? Who was watching the movie with  
14      you?

15      **A**     He was.

16      **Q**     David Bowers?

17      **A**     Yes, sir.

18      **Q**     Okay. Where was everybody else while y'all  
19      were watching a movie?

20      **A**     My brother was in the other room and --

21      **Q**     What kind of other room? How is the house laid  
22      out? What kind of other room was he in?

23      **A**     It was the living room. And the kitchen splits  
24      the living room from the playroom.

25      **Q**     Okay. And where were you and the defendant,

1 David Bowers, at that time?

2 **A** In the playroom.

3 **Q** Okay. Where were your mom and dad at that  
4 point in time?

5 **A** They were already in bed.

6 **Q** They were in bed. What movie were y'all  
7 watching? Do you remember what y'all were watching?

8 **A** Grown Ups.

9 **Q** Grown Ups?

10 **A** Yes, sir.

11 **Q** Whose movie is that?

12 **A** It's an Adam Sandler movie.

13 **Q** It's an Adam Sandler movie. Tell the ladies  
14 and gentlemen of the jury what happened while you  
15 two were alone in there watching a movie. What  
16 happened?

17 **A** (No response.)

18 **Q** Just start one thing at the time. What was the  
19 first thing that happened, **Minor**

20 **A** We watched the movie and just talked, like,  
21 just back and forth.

22 **Q** Y'all talked back and forth, okay. What was  
23 the first physical contact between you two?

24 **A** (No response.)

25 **Q** Just tell the ladies and gentlemen of the jury

1        what he did.

2        **A**     Well, as time went on watching the movie, he  
3        just started talking and then started rubbing my  
4        leg, put his hand in my pants and then...

5        **Q**     Just tell them what he did.

6        **A**     (No response.)

7        **Q**     What did he do to you, **Minor**

8        **A**     He digitally started rubbing at the time.

9        **Q**     He started rubbing your vagina with what? You  
10       say digitally, but that's not your word.

11       **A**     His fingers.

12       **Q**     His fingers, okay. He rubbed your vagina with  
13       his fingers. Did he penetrate your vagina?

14       **A**     (Witness nodded head.)

15       **Q**     You're going to have to say yes.

16       **A**     Yes, sir.

17       **Q**     He did, okay. Where else on your body did he  
18       touch you at that time?

19       **A**     Just there.

20       **Q**     He just touched you. Did he rub on you or did  
21       he touch you in any other places other than your  
22       vaginal area?

23       **A**     Well, before that, he started, like, putting  
24       his hands under my shirt and started rubbing my  
25       breast.



1 Q He started rubbing your breast. You're going  
2 to have to pull that mic down. I'm sorry.

3 A I'm sorry. It is down.

4 Q Just talk into the mic. He started rubbing  
5 your breast. Where else on your body did he touch  
6 you other than your vaginal area and your breast?

7 A That's it.

8 Q That was it. Are you absolutely certain that  
9 David Bowers, the defendant in this case, put his  
10 fingers inside your vagina on that night at your  
11 house?

12 A Yes, sir.

13 Q In Saluda County. Minor again, I'm not  
14 trying to embarrass you, but y'all had exchanged a  
15 lot of text messages that were of a very graphic and  
16 sexual nature throughout the course of that day; is  
17 that not correct?

18 A Yes, sir.

19 Q And you did write those things to him, didn't  
20 you?

21 A Yes, sir.

22 Q And the responses in there are from him, from  
23 David Bowers; correct?

24 A Yes, sir.

25 Q Now, Minor after your dad got your phone and

1 found these text messages, you went over and you  
2 talked to them at the Dickerson Center in Lexington,  
3 didn't you?

4 **A** Yes, sir.

5 **Q** And you did not disclose everything that  
6 happened to them, did you?

7 **A** No, sir.

8 **Q** In fact, you talked to them twice, didn't you?

9 **A** Yes, sir.

10 **Q** Why didn't you tell them everything that  
11 happened? Why didn't you disclose everything that  
12 happened?

13 **A** Because I was embarrassed and scared.

14 **Q** Now, **Minor** again, I'm not trying to embarrass  
15 you, but is the language in the text messages that  
16 you were exchanging back and forth, that's not  
17 something you're proud of I'm sure?

18 **A** No, sir.

19 **Q** And I'm sure it causes you considerable  
20 embarrassment to have to go through that?

21 **A** Yes, sir.

22 **Q** **Minor** you did not initially disclose any  
23 information to the Dickerson Center, did you?

24 **A** No, sir.

25 **THE COURT:** What was your answer?

1           **THE WITNESS:** No, sir.

2           **THE COURT:** That microphone is kind of  
3           directional, which means you have to speak straight  
4           into it. If you're away from it, it won't pick up  
5           your sound, okay. So try to speak directly into it,  
6           okay.

7           **THE WITNESS:** Okay.

8           **THE COURT:** Thank you.

9           BY MR. MAYE:

10          **Q**     **Minor** you didn't tell them everything at the  
11          Dickerson Center to start with, did you?

12          **A**     No, sir.

13          **Q**     Is the information that you have provided to  
14          the jury up here under oath about him touching you  
15          and penetrating you that night, is that the truth,

16          **Minor**

17          **A**     Yes, sir.

18          **MR. MAYE:** Begging the Court's indulgence.

19          **THE COURT:** Yes, sir.

20                   (Pause.)

21          **MR. MAYE:** Answer any questions the defense has  
22          for you.

23          **THE COURT:** Let's break right now, all right.

24                   Ladies and gentlemen, we'll take a recess.

25                   I'll get some bearings and I'll tell you how we'll

1 proceed in a few minutes. You'll probably be out  
2 about ten minutes. Don't discuss the case. Follow  
3 the bailiff, please.

4 (The jury retires to the jury room.)

5 **THE COURT:** Ms. Enlow, during the break, you  
6 can step down if you like, but you're not permitted  
7 to talk to anybody about your testimony. You  
8 understand what I mean?

9 **THE WITNESS:** Yes, sir.

10 **THE COURT:** All right. Thank you.  
11 How long do you think the cross is going to  
12 take?

13 **MR. SHEEK:** Because of two different  
14 interviews, Judge, 30, 45 minutes.

15 **THE COURT:** So y'all want to keep going  
16 tonight?

17 **MR. MAYE:** We prefer to, Your Honor. I'm  
18 always willing -- we're taking a break -- and I  
19 completely understand. I want to go to the funeral  
20 as well myself, but with us taking that break, I  
21 would prefer to go forward as long as we could  
22 tonight.

23 **MR. SHEEK:** Whatever His Honor wants to do,  
24 Judge.

25 **THE COURT:** All right. Let's take about a

1 five-minute break now and we'll see how it goes. If  
2 it starts running too long, we'll have to stop, all  
3 right. We're at ease for about five minutes.

4 (Brief Recess.)

5 **THE COURT:** All right. Is the defense ready  
6 for the jury?

7 **MR. SHEEK:** The defense is ready, Your Honor.

8 **THE COURT:** Ms. Enlow, I need you back up here,  
9 please.

10 (Witness resumes the witness stand.)

11 **THE COURT:** You're still under oath.  
12 Bring the jury in.

13 **MR. SHEEK:** Judge, before we bring the jury in,  
14 can we address one thing?

15 **MR. MAYE:** Your Honor, I became aware, when I  
16 looked in this bag with the phone, there's a little  
17 tiny handwritten note in there where she jotted out  
18 something about being digitally penetrated and  
19 touched. It involves the communication to her from  
20 the officers because she was embarrassed to talk  
21 about it.

22 I'm going to direct her, because I didn't give  
23 that to them, I didn't even know it existed, it just  
24 happened to be in the bag with the phone and I  
25 looked -- the detective brought it to my attention.

1 I didn't provide that to them. I'm not offering  
2 that and we'll just have to live with that. But I'm  
3 directing her, if she gets asked anything about, did  
4 you tell them, I'm going to not -- I'm going to  
5 direct that we're not going to talk about that note  
6 because it is a written communication.

7 But, in all fairness, I didn't turn it over to  
8 them because I didn't know it existed. And so I'm  
9 just directing her not to talk about that written  
10 note. She's never mentioned it to me. I don't know  
11 that she remembered it, but we're going to live and  
12 die by that. We didn't turn it over and I'm not  
13 offering it because it just wouldn't be fair. And  
14 I'm directing her not to talk about it and I'm  
15 directing Officer Clark here not to talk about that  
16 written note because we didn't give it to them. I  
17 didn't know it existed.

18 **THE COURT:** Ms. Enlow, you understand the note  
19 they're talking about?

20 **THE WITNESS:** Yes, sir.

21 **THE COURT:** Because they didn't give it to the  
22 defense, you can't mention it, okay?

23 **THE WITNESS:** Okay.

24 **THE COURT:** If they ask you about it or if they  
25 ask you something, you feel like you have to say

1 something about that note, you just turn to me and  
2 tell me you need to talk to me, all right?

3 **THE WITNESS:** Yes, sir.

4 **MR. MAYE:** And like I said, Your Honor, that's  
5 -- just a few minutes ago is the first time I was  
6 even aware that that existed. Somebody sealed it up  
7 with the phone ages ago. We had officers that left.  
8 And we're just going to -- we're going to suffer  
9 that because it was not intentional.

10 And I'm not going to make the defense, having  
11 not been aware of it, I just didn't want him to  
12 blunder into a question he didn't know the answer of  
13 because of our failure to turn over that part. I  
14 think it could possibly be a prior consistent  
15 statement. I'm not going to offer it for anything  
16 like that.

17 **MR. SHEEK:** And as soon as he found it, he  
18 showed me. I've read it. It's not exculpatory in  
19 nature, so we're not prejudiced.

20 **THE COURT:** I'm sure it's fine and it was  
21 unintentional and it's duplicative.

22 All right. Bring the jury back in.

23 (The jury returns to the courtroom.)

24 **THE COURT:** Cross-examination.

25 **MR. SHEEK:** Thank you, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. SHEEK:

3 Q Is it all right if I call you Minor or do you  
4 prefer I call you Ms. Enlow?

5 A It doesn't matter.

6 Q All right. Well, Minor my name's Lance. I'm  
7 going to ask you some questions, but it's not my  
8 intent to trick you. So if I ask you something you  
9 don't understand, please tell me you don't  
10 understand the question, okay?

11 A Yes, sir.

12 Q Is that fair enough?

13 A Yes, sir.

14 Q All right. Minor did you have an opportunity  
15 to go to the sheriff's department and actually talk  
16 to investigators?

17 A Repeat the question.

18 Q Did you actually go to the sheriff's department  
19 and talk to any investigators about what happened  
20 with David?

21 A Yes, sir.

22 Q Okay. And was that on the same day that your  
23 father had gone up there?

24 A Yes, sir.

25 Q Did he actually take you with him or did



1 somebody take you up there later?

2 **A** My mom came and picked me up and took me to the  
3 sheriff's department.

4 **Q** Okay. And you're referring to your biological  
5 mother, Ms. Crawford?

6 **A** Yes, sir.

7 **Q** And do you live most of the time with your  
8 father?

9 **A** Yes, sir.

10 **Q** And you have what we normally call visitation  
11 with your mother?

12 **A** Yes, sir.

13 **Q** How often do you get to see your mom?

14 **A** On Wednesdays. And every other Wednesday, it's  
15 Wednesday, Thursday, Friday and then come back  
16 Saturday.

17 **Q** And I think you even mentioned in one of these  
18 interviews that you'd like to be able to see your  
19 mom more; correct?

20 **A** I don't recall that.

21 **Q** Okay. Well, let me ask you this: When you  
22 were talking to Mr. Maye a minute ago, he asked you  
23 about going to a place called the Dickerson Center;  
24 do you remember that?

25 **A** Yes, sir.

1       **Q**     And you actually spoke with somebody there. Do  
2       you remember who you spoke with?

3       **A**     No, sir.

4       **Q**     Was it a woman or a man?

5       **A**     It was a woman.

6       **Q**     Okay. And did anybody tell you what your  
7       purpose of going up there was before you went?

8       **A**     Yes, sir.

9       **Q**     Okay. And what did they tell you was the  
10      reason you were going there?

11      **A**     So I would tell them what happened.

12      **Q**     And you actually -- the first time you went up  
13      there was October 17th; correct?

14      **A**     Yes, sir.

15      **Q**     It was about ten days after you had talked to  
16      them at the sheriff's department?

17      **A**     Yes, sir.

18      **Q**     Now, when you talked to them at the sheriff's  
19      department, you told them the same thing you told  
20      the jury, that David had put his hands down your  
21      pants; correct?

22      **A**     Correct.

23      **Q**     And you told them that he had put his fingers  
24      inside of you. Didn't you tell them that?

25      **A**     Yes, sir.

1       **Q**     So you told Mr. Maye that when you went to the  
2       Dickerson Center ten days later, you told them none  
3       of that; correct?

4       **A**     Correct.

5       **Q**     And you said it was because you were  
6       embarrassed?

7       **A**     Yes, sir.

8       **Q**     Why were you embarrassed to tell these people  
9       what happened if you had already told the sheriff's  
10      department?

11      **A**     Because it was just something I didn't like  
12      talking about.

13      **Q**     Do you remember them going through with you a  
14      set of instructions about the importance of telling  
15      the truth?

16      **A**     Yes, sir.

17      **Q**     And then they actually did a little exercise  
18      about truth versus a lie, which statement's true,  
19      which one's a lie. Do you remember doing that?

20      **A**     Yes, sir.

21      **Q**     And do you remember them telling you that it  
22      was all being video recorded?

23      **A**     Yes, sir.

24      **Q**     Okay. And they went through at length that  
25      they only want to talk to you about things that were

1 real and true; correct?

2 **A** Yes, sir.

3 **Q** And you promised them you would do that?

4 **A** Yes, sir.

5 **Q** And are you telling me then that what you told  
6 them on the 17th was all a lie?

7 **A** No, sir.

8 **Q** Okay. Well, you didn't disclose that David had  
9 done anything. What do you recall telling them?

10 **A** I don't remember.

11 **Q** Okay. Let's go back to the date of the 7th.  
12 Mr. Maye just asked you about what happened. You  
13 said when you got home, David and your brother went  
14 out into the woods to look for this animal or  
15 whatever somebody had seen?

16 **A** Yes, sir.

17 **Q** Do you recall how long they were out there?

18 **A** No, sir.

19 **THE COURT:** I'm having trouble hearing you, so  
20 speak into the microphone, please.

21 BY MR. SHEEK:

22 **Q** Okay. When David came back in, where were you  
23 in the house?

24 **A** In the playroom.

25 **Q** And where were you sitting, laying or what

1 exactly were you doing?

2 **A** I was sitting watching T.V.

3 **Q** Where were you sitting?

4 **A** The far end of the couch next to the wall.

5 **Q** Okay. For the jury, describe the room, how  
6 it's laid out, where the furniture is and where the  
7 T.V. is so they'll know what we're talking about.

8 **A** As you walk in, if you look to your right,  
9 there is the TV. And if you look straight, there's  
10 the couch and then there's the doorway to the  
11 kitchen.

12 **Q** Okay. So you're sitting on the end of the  
13 couch; is that correct?

14 **A** Yes, sir.

15 **Q** And what were you wearing at this time?

16 **A** Yoga pants and a T-shirt.

17 **Q** And were you sitting upright, laying down or on  
18 the couch? How were you situated?

19 **A** Sitting upright.

20 **Q** When David came in, where did he go? Did he  
21 sit beside you or go somewhere else?

22 **A** Sat beside me.

23 **Q** And did y'all watch the movie sitting there?

24 **A** Yes, sir.

25 **Q** At any point, did any of you change places?

1       **A**     No, sir.

2       **Q**     Okay. Describe were you under covers or was  
3       anything on top of you, blankets or anything like  
4       that?

5       **A**     Yes, sir.

6       **Q**     Okay. What was that?

7       **A**     A blanket.

8       **Q**     All right. Was it also covering David or was  
9       it covering just you?

10      **A**     Just me.

11      **Q**     How long did you sit there watching the movie  
12      before he ever touched you?

13      **A**     During the middle of the movie towards the end.

14      **Q**     It was during when? I'm sorry.

15      **A**     During the middle of the movie towards the end.

16      **Q**     Okay. During the middle of the movie. When  
17      you went to the Dickerson Center on the 17th, do you  
18      remember telling them that he touched you some place  
19      he shouldn't have touched you?

20      **A**     Yes, sir.

21      **Q**     Okay. And what did you tell them you did at  
22      that point; do you recall?

23      **A**     No, sir.

24      **Q**     Have you had an opportunity to watch this video  
25      tape?

1           **THE COURT:** Hold on. I can't tell whether  
2 she's saying yes or no. You really need to speak in  
3 that microphone so we know exactly what you're  
4 saying, okay.

5           **THE WITNESS:** Yes, sir.

6           **THE COURT:** Okay. Thank you.

7 BY MR. SHEEK:

8           **Q** And I asked you, did you recall what you told  
9 them you did, and your answer was?

10          **A** No, sir.

11          **Q** Okay. And have you had an opportunity to  
12 review that video tape of that interview?

13          **A** No, sir.

14          **Q** Well, let me ask you if you recall telling them  
15 that you hit David and kicked him and pushed him out  
16 of the room?

17          **A** I don't recall saying that.

18          **Q** Okay. And do you recall telling them that you  
19 locked the door, dead bolted it and turned off the  
20 lights and hoped that he tripped on his way out?

21          **A** I did say that.

22          **Q** Okay. But you're saying now that that was not  
23 true?

24          **A** How did I say it wasn't true?

25          **THE COURT:** Is she saying she did say that or

1       didn't say that?

2               **MR. SHEEK:** I'm not sure either, Judge.

3               **THE COURT:** Did you say you did say that or  
4       didn't say that?

5               **THE WITNESS:** I said that.

6               **THE COURT:** Speak in the microphone, please.

7               **THE WITNESS:** I said that.

8       BY MR. SHEEK:

9       **Q**     Okay. And is that true?

10      **A**     That is true.

11      **Q**     Okay. So you turned off the lights, locked the  
12      door and dead bolted it. Are you talking about the  
13      outside light of the house?

14      **A**     Yes, sir.

15      **Q**     Okay. And you're saying you hoped he tripped  
16      on the way out?

17      **A**     Yes, sir.

18      **Q**     And what about the striking him and hitting  
19      him, did you do that?

20      **A**     No, sir.

21      **Q**     When you said, I looked at him and then slapped  
22      him and told him to get out of my house, was that  
23      true?

24      **A**     No, sir. I told him to get out.

25      **Q**     And why?



1       **A**     Because I didn't want him to be there.

2       **Q**     Okay. And you said, You have no right to do  
3       that; I'm young or you're old. You told him that?

4       **A**     That is something that me and him discussed.

5       **Q**     Okay. And when did y'all discuss that?

6       **A**     Before it happened and after.

7       **Q**     And do you also recall telling them that he had  
8       your phone and was actually texting from your phone  
9       to his and back from his to yours?

10      **A**     I don't recall saying that.

11      **Q**     Okay. Well, if you did tell them that, is that  
12      true?

13      **A**     No, sir.

14      **Q**     Okay. Do you know why you would have told them  
15      that?

16      **A**     No. No, sir.

17      **Q**     Do you remember David getting a text from Lori  
18      about 3:00 in the morning coming into his phone and  
19      you actually responded from his phone back to Lori?

20      **A**     No, sir.

21      **Q**     You don't recall that at all?

22      **A**     No, sir.

23      **Q**     At any point that night, did you have his phone  
24      in your possession?

25      **A**     No, sir.

1       **Q**     You sat there for about two hours watching this  
2       movie; correct?

3       **A**     Correct.

4       **Q**     About what time did David leave; do you recall?

5       **A**     No, sir.

6       **Q**     When you talked to the police officers on the  
7       7th, before ever going to the Dickerson Center, did  
8       you tell them that David had put his penis inside  
9       your privates?

10      **A**     No, sir.

11      **Q**     And you don't know why that would be in their  
12      report?

13      **A**     No, sir.

14      **Q**     And you actually went back to the Dickerson  
15      then on the 28th; is that correct?

16      **A**     Yes, sir.

17      **Q**     And, at that time, you gave them a different  
18      report of what had been going on; correct?

19      **A**     Correct.

20      **Q**     So you would agree with me that when you talked  
21      to the police and then talked to the Dickerson  
22      Center the first time, you gave them a different  
23      story of what had happened; is that correct?

24      **A**     Yes, sir.

25      **Q**     And then when you went back 11 -- I'm sorry --

1 a month and a week later to the Dickerson Center,  
2 then you gave them a different story again?

3 **A** Yes, sir.

4 **Q** So would you agree that the story you told the  
5 police wasn't true?

6 **A** No, sir.

7 **Q** Well, you've told the jury -- go ahead.  
8 Explain yourself.

9 **A** I didn't really talk to them and tell them my  
10 story. All I did was sit there. And then the  
11 victim's advocate brought me back and she told me  
12 why it was wrong and told me what is going to  
13 happen.

14 **Q** The victim's advocate. Are you referring to  
15 this lady sitting right back here?

16 **A** Yes, sir.

17 **Q** And she was with you on the 7th?

18 **A** Yes, sir.

19 **Q** Now, you just made a statement to Mr. Maye  
20 about being digitally penetrated. Who told you that  
21 terminology?

22 **A** I was overhearing how he referred to it to the  
23 jury.

24 **Q** Okay. Do you recall talking to them at the  
25 Dickerson Center about being upset of David talking

1 about things with prior girlfriends? Do you recall  
2 talking to them about that?

3 **A** Yes, sir.

4 **Q** And you were upset with David about that?

5 **A** Yes, sir.

6 **Q** Okay. And I believe you may have already told  
7 me, you do not recall telling them that you were  
8 upset because you didn't get to see your mother  
9 more?

10 **A** I do not recall that.

11 **Q** And do you recall talking to them about a prior  
12 incidence where you had reported that your mother  
13 had hit you and were taken to the police; do you  
14 recall that?

15 **A** Yes, sir.

16 **Q** And then you told the police that didn't  
17 happen; correct?

18 **A** Correct.

19 **Q** Okay.

20 **MR. SHEEK:** Beg the Court's indulgence just one  
21 moment, Judge.

22 **THE COURT:** Yes, sir.

23 BY MR. SHEEK:

24 **Q** Now, when you went back on November the 28th  
25 for the second time at the Dickerson Center, you

1 told them that he had actually touched you on more  
2 occasions, not just on that one day; didn't you?

3 **A** Yes, sir.

4 **Q** And you went into detail about one occasion.  
5 You said he touched you while somebody was sitting  
6 in your lap. Do you recall who that was?

7 **A** Minor's cousin

8 **Q** And who is Minor's cousin

9 **A** She's my cousin.

10 **Q** And how old is Minor's cousin

11 **A** She is currently 14.

12 **Q** Okay. And so you were telling them that he was  
13 touching you inappropriately with Minor's cousin who's older  
14 than you, sitting in your lap?

15 **A** Yes, sir.

16 **Q** So this would have happened in front of Minor's cousin

17 **A** She didn't see it.

18 **Q** Well, where was he touching you while she was  
19 sitting on your lap?

20 **A** My back side.

21 **Q** Okay. Are you referring to your buttocks, your  
22 bottom area?

23 **A** Yes, sir.

24 **Q** And so he was inappropriately fondling your  
25 bottom with Minor's cousin sitting in your lap?

1       **A**     Yes, sir.

2       **Q**     And you had never told anybody about that prior  
3       to November 28th?

4       **A**     No, sir.

5       **Q**     I believe you also told them then that there  
6       were more inappropriate texts than just what we've  
7       seen today; correct?

8       **A**     No, sir.

9       **Q**     Do you recall telling them that he had sent  
10      pictures of himself, inappropriate pictures, to you?

11      **A**     Yes, sir.

12      **Q**     And had asked for the same thing from you?

13      **A**     Yes, sir.

14      **Q**     And you had sent him one; correct?

15      **A**     Yes, sir.

16      **Q**     And I understand -- I'm not trying to embarrass  
17      you. But it would have been sent to the phone that  
18      we've talked about, the same number; correct?

19      **A**     Yes, sir.

20      **Q**     Do you recall roughly when that was?

21      **A**     Around August.

22      **Q**     And then you also told them a good bit of  
23      detail about **D's minor child** Now, who is **D's minor child**

24      **A**     David and Lori's daughter.

25      **Q**     And at this time, in October 2012, how old was

1 D's minor child

2 A Two.

3 Q And you said that you had seen David throw

4 D's minor child Do you remember telling them that?

5 A Yes, sir.

6 Q And that he would grab her foot and jerk her  
7 down?

8 A Yes, sir.

9 Q And grab her head and bang it up against the  
10 wall?

11 A No, sir.

12 Q Do you recall saying, He grabs her head and  
13 starts shaking her head like that and sometimes  
14 she'll hit the wall or something like that?

15 A No, sir.

16 Q Okay. Is that true? Have you seen that?

17 A No, sir.

18 Q And if you made that statement then, that would  
19 have not been a true statement?

20 A I don't recall making that statement.

21 Q Okay. Well --

22 MR. SHEEK: Beg the Court's indulgence one  
23 moment.

24 THE COURT: Yes, sir.

25 (Pause.)

1 BY MR. SHEEK:

2 Q And do you know any reason why you would have  
3 said that if that wasn't a true statement?

4 A No, sir.

5 Q Now, Ali, I'm going to talk a little bit about  
6 these text messages and I'm not trying to embarrass  
7 you. But you said in your first forensic interview,  
8 that David actually had the phone texting back and  
9 forth between your phone and his; correct? Or did  
10 you say you don't remember saying that?

11 A I don't remember saying that.

12 Q Okay. But looking back here today, that's not  
13 true. He didn't have your phone sending any of  
14 these texts, did he?

15 A No, sir.

16 Q At one point, you referenced bouncing up and  
17 down. What were you talking about?

18 A (No response.)

19 Q Do you recall?

20 A No, sir.

21 Q Do you want me to show you the text message so  
22 you'll know what I'm talking about?

23 A I have them right here.

24 MR. SHEEK: Judge, if I can approach the  
25 witness and --



1           **THE COURT:** She's got a copy.

2           **MR. SHEEK:** Has she got a copy, okay.

3           **THE COURT:** You can tell her which one or what  
4 page.

5           **MR. SHEEK:** Okay. Judge, the pages on mine are  
6 not numbered. It's number 95 of the numbered texts.

7           **THE COURT:** You can show her if you want to  
8 come up here, if she's having trouble finding it.

9 BY MR. SHEEK:

10          **Q** Can you find number 95 there?

11          **A** {Indicating}.

12          **Q** Yes, ma'am. You're talking about, My boobs are  
13 bouncing up and down. What were you talking about  
14 bouncing up and down?

15          **A** (No response.)

16          **Q** That's not something that was really going on,  
17 was it?

18          **A** No.

19          **Q** I mean, that was -- you're talking about -- and  
20 LOL means, I don't do a lot of texting, but that  
21 means laugh out loud?

22          **A** Yes, sir.

23          **Q** That indicates a joke?

24          **A** Yes, sir.

25          **Q** And so when you're saying, My boobs are

1 bouncing up and down, they weren't really bouncing  
2 up and down. You were making a joke?

3 **A** Yeah.

4 **Q** And even number 97 where it says, Ha-ha, OMG,  
5 yes -- I guess U-R means, you're, your. Is that  
6 what you mean when you text U-R?

7 **A** You're.

8 **Q** Okay. And excuse my language, but it says,  
9 Ha-ha, OMG, yes, you're fucking me too hard, LOL.  
10 Again, that wasn't actually happening, was it?

11 **A** No, sir.

12 **Q** Okay. That was something you were texting just  
13 being silly; correct?

14 **A** Yes, sir.

15 **Q** And inappropriate, but not real?

16 **A** No, sir.

17 **Q** And a lot of this conversation that we've  
18 talked about was just that kind of stuff, it was  
19 inappropriate talk, but not something that was  
20 really happening?

21 **A** Yes, sir.

22 **MR. SHEEK:** That's all the questions I have,  
23 Your Honor.

24 **THE COURT:** Redirect.

25 \*\*\*\*\*

1 REDIRECT EXAMINATION

2 BY MR. MAYE:

3 Q Ali, the bottom line in this, you've always  
4 been embarrassed about what you texted to him;  
5 correct?

6 A Correct.

7 Q And you denied even doing that, made an excuse  
8 that he had done it because you were embarrassed and  
9 humiliated about it; right?

10 A Yes, sir.

11 Q Ali, you've been reluctant to admit this  
12 conduct because it's been embarrassing to you; is  
13 that not correct?

14 A Yes, sir.

15 Q Is that yes?

16 A Yes, sir.

17 Q You were ten at the time?

18 A Yes, sir.

19 Q You're 12 now?

20 A Yes, sir.

21 Q This is not something even easy for you to  
22 admit and talk about when you're 12, is it?

23 A No, sir.

24 Q He's asked you about -- or you were asked on  
25 cross-examination about some of that language about

1 him fucking you and you bouncing up and down not  
2 being real and you've said that that is not; is that  
3 correct?

4 **A** Yes, sir.

5 **Q** The conduct of him touching you and penetrating  
6 you and putting his fingers inside of you that night  
7 at the house is that true and correct? Did that  
8 actually happen?

9 **A** Yes, sir.

10 **MR. MAYE:** That's all I have.

11 **THE COURT:** Recross.

12 **MR. SHEEK:** No recross, Your Honor.

13 **THE COURT:** Thank you, ma'am. You may step  
14 down.

15 Do you want to call another witness or do you  
16 want to recess for the day?

17 **MR. MAYE:** Your Honor, my next witness will  
18 probably be fairly lengthy. I'd say it will be a  
19 good time to break. I appreciate you letting us get  
20 in what we've got done so far. Thank you.

21 **THE COURT:** Is one o'clock tomorrow okay?

22 **MR. SHEEK:** Yes, sir.

23 **MR. MAYE:** Yes, sir.

24 **THE COURT:** All right. Ladies and gentlemen,  
25 we're going to recess for the day. And as I told

1       you, I need to attend that funeral tomorrow. They  
2       set it at 11:00, which is -- I'm sure -- I'm sure I  
3       should be here by one o'clock. So I need y'all in  
4       the jury room at one o'clock.

5               Remember all of those admonitions I gave to you  
6       about not discussing the case and all of those  
7       things. And I look to see you tomorrow at one  
8       o'clock. If you have some true emergency that  
9       arises, please let us know. All right, follow the  
10      bailiff, please.

11             (The jury was excused for the day.)

12            **MR. SHEEK:** Your Honor, we just need to address  
13      Mr. Bowers' situation this evening.

14            **THE COURT:** Mr. Bowers, you can remain out this  
15      evening. You need to make sure you're here tomorrow  
16      no later than one o'clock or such sooner time as  
17      Mr. Sheek might tell you to be here.

18            **DEFENDANT:** Yes, sir.

19            **THE COURT:** You remember what I told you about  
20      the cases proceeding?

21            **DEFENDANT:** Yes, sir.

22            **THE COURT:** Well, I've sworn that jury now, so  
23      I'm not stopping, jeopardy's attached, and I need to  
24      keep going with the trial.

25            **DEFENDANT:** I understand.

1           **THE COURT:** Is that it?

2           **MR. SHEEK:** That's it, Judge.

3           **THE COURT:** Y'all be careful as you leave. I  
4 don't know who was in here when I instructed earlier  
5 at the lunch break, be real careful as you leave  
6 that you not be talking about the case or have any  
7 contact with a juror, don't assume that the jurors  
8 have already left the courthouse property. They may  
9 be around the corner or may be within earshot.

10           Court's in recess till 1:00 p.m. tomorrow.

11           **MR. MAYE:** Thank you, Your Honor.

12           (The proceedings were concluded for February  
13 4, 2014.)

14           (The following proceedings were held on  
15 February 5, 2014.)

16           **MR. MAYE:** May it please the Court, Your Honor.

17           **THE COURT:** Yes, sir.

18           **MR. MAYE:** I have one matter before the jury  
19 comes back. I'm informed by the chief deputy from  
20 the sheriff's department that one of the jurors that  
21 is seated, and I think his name is Mr. Nichols, had  
22 a burglary over the weekend. The sheriff's  
23 department solved that burglary yesterday and that  
24 juror received notice. The officer that notified  
25 him was not aware that he was on this jury now. It

1       was just in the regular course of business with the  
2       sheriff's department. They solved an outstanding  
3       burglary case and notified the victim.

4               I've informed Mr. Sheek of that. I don't -- I  
5       made specific inquiry with the officer in this case  
6       as to whether or not he discussed anything other  
7       than the other outstanding case outside of this and  
8       I was assured there was no discussion of that, but I  
9       do bring it to the Court's attention because it was  
10      brought to my attention. I've already notified the  
11      defense.

12             **THE COURT:** Mr. Sheek.

13             **MR. SHEEK:** If that was the extent of the  
14      communication, I don't see that that violates any  
15      oath the juror had.

16             **THE COURT:** All right. So is there any need  
17      for me to do any inquiry or y'all just want to leave  
18      it alone or what do you want to do?

19             **MR. MAYE:** Your Honor, I'd certainly leave that  
20      to the defense. I don't intend to make -- I would  
21      not request an inquiry. I was assured that there  
22      was contact in the regular course of business and it  
23      was inadvertent, just happened to be the timing that  
24      it was solved during the pendency of this case.  
25      I'll leave that to the defense.

1           **MR. SHEEK:** I think, out of an abundance of  
2           caution, Your Honor, just a brief inquiry. And if  
3           he says there was no other communication than that,  
4           I wouldn't ask that you go any further.

5           **THE COURT:** All right. Would you see if Ronnie  
6           M. Nichols, 139, is in there? If he is, ask him to  
7           step out here, please.

8                     (Juror Ronnie M. Nichols enters the  
9           courtroom.)

10          **THE COURT:** Would you just have a seat anywhere  
11          in there for me, Mr. Nichols, please?

12          **JUROR:** Yes, sir.

13          **THE COURT:** I need to ask you a few questions  
14          and remember that you're under oath, all right?

15          **JUROR:** Yes.

16          **THE COURT:** I was advised that you had had a  
17          burglary or something committed against you at some  
18          point in the past.

19          **JUROR:** Yes, yesterday.

20          **THE COURT:** And that you had some contact with  
21          law enforcement because of that.

22          **JUROR:** Yes.

23          **THE COURT:** Okay. Which agency was it that  
24          contacted you?

25          **JUROR:** When? There was three of them now. I



1 don't know their names.

2 **THE COURT:** Not the officers themselves, but  
3 the -- was it the sheriff's office or the town  
4 police or who was it?

5 **JUROR:** I just called up Saluda.

6 **THE COURT:** Okay. So you didn't talk to  
7 anybody face-to-face?

8 **JUROR:** Yeah, I talked to them. They come to  
9 the house, yes.

10 **THE COURT:** But you don't know -- do you live  
11 in the county or the town?

12 **JUROR:** I live in the county. I think that --  
13 it's three of them come down there. I don't know  
14 their names.

15 **THE COURT:** Okay. Is there anything at all  
16 about your contact with law enforcement yesterday or  
17 what happened to you yesterday that would in any way  
18 affect your ability to be a fair and impartial juror  
19 in this case?

20 **JUROR:** I don't think so.

21 **THE COURT:** Do you have any doubt in your mind?

22 **JUROR:** No.

23 **THE COURT:** All right. Thank you very much,  
24 sir.

25 **JUROR:** I did have a long day yesterday. See,

1 I worked yesterday morning and I was up about 30  
2 something hours.

3 **THE COURT:** I'm sorry.

4 **JUROR:** But I think we got that resolved now.

5 **THE COURT:** Okay. Well, they -- just -- as  
6 they said to me before you came out here, in an  
7 abundance of caution when something like this  
8 happens, I have to find out from the juror if --  
9 they just talked to you about your case; right?

10 **JUROR:** Yeah, oh, yeah.

11 **THE COURT:** They didn't mention anything about  
12 this case, did they?

13 **JUROR:** I don't know nothing about the other  
14 case. I hadn't ever heard of this other case before  
15 it come.

16 **THE COURT:** All right. Okay. Thank you very  
17 much.

18 **JUROR:** Thank you.

19 (The juror leaves the courtroom.)

20 **THE COURT:** Do y'all have any matters to take  
21 up?

22 **MR. SHEEK:** No, sir.

23 **MR. MAYE:** Nothing from the State, Your Honor.  
24 I just wanted to make sure, once I had been advised  
25 of it, I wanted to make sure I apprised the Court

1 and the defense.

2 **THE COURT:** Are we ready -- do we have all of  
3 the jurors now? Are we still missing two?

4 **MR. MAYE:** Your Honor, I am stipulating there's  
5 a -- there were forensic interviews. I have  
6 stipulated that he can use those for any purpose  
7 he'd like to. If he'd like to admit them, if he'd  
8 like to cross-examine the witness on them, I don't  
9 have any objection to those going in.

10 **THE COURT:** Okay. Have y'all marked them?

11 **MR. SHEEK:** They have not been marked yet, Your  
12 Honor.

13 **THE COURT:** Do you want to mark them now?  
14 Obviously, once you put evidence in, you've lost the  
15 right to argue last.

16 Mr. Sheek, you heard what I said?

17 **MR. SHEEK:** I apologize, Judge.

18 **THE COURT:** Once you put evidence in, you lose  
19 the right to argue last. And I don't know what your  
20 plans are as far as producing evidence. Do you want  
21 to introduce them?

22 **MR. SHEEK:** Yes, sir, I do want to introduce  
23 them. I understand I lose last argument.

24 **THE COURT:** Then go ahead and get Stacy to mark  
25 it, if you want to do it now.

1 (Defendant's Exhibit Numbers 1 and 2,  
2 forensic interviews reports, marked and admitted  
3 into evidence.)

4 (Pause.)

5 **THE COURT:** State ready for the jury?

6 **MR. MAYE:** State's ready.

7 **THE COURT:** Defense?

8 **MR. SHEEK:** Defense is ready.

9 **THE COURT:** Bring the jury in, please.

10 (The jury enters the courtroom at 1:18 p.m.)

11 **THE COURT:** Call your next witness.

12 **MR. MAYE:** State calls Chief Kes Holmes to the  
13 stand, please.

14 KES HOLMES,

15 having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. MAYE:

18 **Q** Chief Holmes, if you would, introduce yourself  
19 to the ladies and gentlemen of the jury. Tell them  
20 where you're now employed and tell them where you  
21 were employed back in October of 2012.

22 **A** I'm Kes Holmes. I'm the chief of police at the  
23 Town of Saluda now. In 2012, I was a deputy at the  
24 sheriff's office.

25 **Q** Chief Holmes, let me ask you this: Did you

1 have an occasion to witness a written waiver of  
2 rights form that was executed by the defendant in  
3 this case, David Andrew Bowers?

4 **A** I did.

5 **Q** Okay. I hand you what's been marked as State's  
6 1 for identification at this point in time and ask  
7 you is that the original of the written waiver of  
8 rights form that was provided to David Andrew Bowers  
9 on October the 7th of 2012?

10 **A** It is.

11 **Q** Okay. Were you present when that was executed  
12 and written?

13 **A** Yes, I was.

14 **Q** Okay. Did you observe Investigator Clark in  
15 this case go through his rights with him as they're  
16 written on that form?

17 **A** I did.

18 **Q** Did you observe him sign his signature to that?  
19 Was that done in your presence?

20 **A** It was done in my presence, yes.

21 **Q** While you were there, did you threaten him in  
22 any way?

23 **A** No.

24 **Q** Did you do anything to coerce him to give you  
25 or to sign that waiver or to give any statement?

1       **A**     No.

2       **Q**     Okay. Did you do anything at all to influence  
3       his decision as to whether or not he executed that  
4       written waiver of rights or a subsequent written  
5       statement that was executed?

6       **A**     No.

7       **Q**     Okay. Did you observe anyone else either  
8       threaten him, promise him anything or do anything to  
9       influence his decision as to whether or not to  
10      execute that written waiver of rights or give you a  
11      statement?

12      **A**     I did not.

13      **Q**     I'm going to show you State's 2 this time at  
14      identification -- or for identification at this  
15      point in time. Is that a copy of the statement, the  
16      written statement, that Mr. Bowers executed on that  
17      same date?

18      **A**     It is.

19      **Q**     Did you watch him carry out and execute that  
20      written statement and sign it?

21      **A**     I did.

22      **Q**     Okay. On the previous written waiver of  
23      rights, did you sign on that indicating that you  
24      witnessed that?

25      **A**     I did.

1       **Q**     Okay. Did you also witness him execute that  
2       written statement on that same day?

3       **A**     I watched him write it; I did not sign it.

4       **Q**     You did not sign that one, but you did sign the  
5       written waiver of rights?

6       **A**     Correct.

7       **Q**     Where there's a place to sign on the written  
8       waiver of rights?

9       **A**     Correct.

10           **MR. MAYE:** Answer any questions the defense has  
11       for you.

12           **THE COURT:** Cross.

13                           CROSS-EXAMINATION

14       BY MR. SHEEK:

15       **Q**     Chief, did you have any part in the  
16       investigation of this incident?

17       **A**     I did. I assisted Investigator Clark.

18       **Q**     Okay. And you were present when that statement  
19       was given?

20       **A**     I was.

21       **Q**     Is there a reason you have two officers present  
22       when that happens?

23       **A**     I mean, it's common. It was three of us  
24       working that day, I believe.

25       **Q**     Okay. And what would that be? Why would you

1 have more than one in there when a statement is  
2 given?

3 **A** Just so you'll have witnesses.

4 **Q** So that you could have witnesses to come to  
5 court and tell them what happened; correct?

6 **A** Correct.

7 **Q** And if we look at what the State has entered as  
8 State's Exhibit Number 1, that's a written waiver of  
9 rights?

10 **A** It is.

11 **Q** And why did we do that in writing as opposed to  
12 just telling them their rights and coming to court  
13 and telling the jury that's what happened?

14 **A** So you'll have a document for the jury to see.

15 **Q** To document it?

16 **A** Correct.

17 **Q** Okay. Now, you're chief of police now; right?

18 **A** I am.

19 **Q** So, of course, you have responsibility over all  
20 of the city police department, including on-the-road  
21 patrol?

22 **A** Correct.

23 **Q** Are your cars equipped with video cameras?

24 **A** Some are, some are not.

25 **Q** Okay. Well, the law requires if you're going



1 to have a, say, a DUI for instance, that that DUI  
2 must be video taped from the time you turn on the  
3 blue lights to the time the person is taken to the  
4 jail; correct?

5 **A** Or an affidavit.

6 **Q** Or an affidavit that the car wasn't working?

7 **A** Correct.

8 **Q** And the reason that is is so that you can  
9 document what happens on that DUI stop and how it  
10 proceeds; correct?

11 **A** That's right.

12 **Q** And the county, likewise, has video equipment,  
13 don't they?

14 **A** Yes.

15 **Q** Okay. Is there any video or any audio  
16 whatsoever of this interview of David Bowers?

17 **A** Not that I'm aware of.

18 **MR. SHEEK:** I have no further questions.

19 **THE COURT:** Redirect.

20 **MR. MAYE:** Nothing else.

21 **THE COURT:** Thank you, sir. You may step down.  
22 Call your next witness.

23 **MR. MAYE:** State calls Investigator Kenny Clark  
24 to the stand.

25 \*\*\*\*\*

1 KENNETH CLARK,  
2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. MAYE:

5 **Q** Investigator Clark, tell the ladies and  
6 gentlemen of the jury, introduce yourself, tell them  
7 where you're now employed, tell them where you were  
8 employed back in October of 2012.

9 **A** My name is Kenneth Clark. I formerly worked  
10 with the Johnston Police Department. And in 2012, I  
11 was with the Saluda County Sheriff's Office.

12 **Q** Tell the ladies and gentlemen of the jury how  
13 you became involved in this investigation, what your  
14 role was, what you did to carry out and conduct the  
15 initial investigation and the follow-up.

16 **A** In 2012, I was a sergeant over the road at the  
17 sheriff's office. I also was the child sex crimes  
18 investigator for the department. And my other job  
19 was I was the one that listened and monitored all  
20 jail phone records.

21 **Q** Okay. Directly what was your involvement, once  
22 you became aware that there was an allegation of a  
23 sexual assault in this case, what did you do to  
24 conduct and carry out an investigation?

25 **A** Captain Hill got in touch with me and advised

1 me that, you know, he believed there was a child sex  
2 crime. I came to the sheriff's office. I met with  
3 him. I assisted him in doing his affidavit. I went  
4 ahead and got a search warrant for the defendant's  
5 residence, and I just monitored -- assisted in the  
6 investigation.

7 **Q** Okay. You've already mentioned, and we can  
8 cover this now since you've just mentioned this,  
9 once you realized there was a phone where text  
10 messages were involved, what search warrant did you  
11 carry out, what did you seize and what did you do as  
12 a result thereof?

13 **A** At that point, we seized the defendant's cell  
14 phone. And at the time, we took a computer from the  
15 residence.

16 **Q** Okay. Did you subsequently -- did your agency  
17 subsequently have a search warrant done for the  
18 contents of that cell phone and was it subsequently  
19 downloaded?

20 **A** Yes, sir.

21 **Q** I'm going to show you what's already an exhibit  
22 as State's Exhibit Number 3. It's already in  
23 evidence as State's 3. Is that a summation of the  
24 text messaging that was downloaded as a result of  
25 those search warrants, his phone being seized and

1           that being downloaded?

2           **A**     Yes, sir.

3           **Q**     And so that fairly and accurately reflects the  
4           text messages that were contained on his phone both  
5           incoming and outgoing; is that correct?

6           **A**     Correct.

7           **Q**     You've talked about the search warrant that you  
8           carried out in this case. What did you do in the  
9           way of speaking with the victim in this case or what  
10          did you do in furtherance of the investigation once  
11          you were summoned to cooperate?

12          **A**     After assisting Captain Hill, after viewing the  
13          text messages that we had from her phone at the time  
14          and after an interview, a brief interview with the  
15          victim, it had come -- I was advised that she had  
16          been digitally penetrated by the defendant's  
17          fingers. And at that point, Captain Hill, we did an  
18          affidavit and got an arrest warrant at the same time  
19          we got a search warrant. We went to the defendant's  
20          residence, myself, Captain Hill and Deputy Holmes,  
21          placed the defendant under arrest and executed a  
22          search warrant.

23          **Q**     Once y'all executed the search warrant in this  
24          case -- well, let me back up a minute and ask you  
25          this: The affidavit that you got in support of the

1       arrest warrant for criminal sexual conduct with a  
2       minor, what did you seek that on? What was the  
3       basis of the CSC first with a minor --

4       **A**     The basis on the CSC with a minor on this  
5       affidavit was due to dental -- digital penetration  
6       with his fingers on the victim and her age being ten  
7       years of age and his age being 23.

8       **Q**     Okay. So that is the information that you had,  
9       digital penetration, and you got the affidavit based  
10      on that information?

11      **A**     Yes, sir.

12      **Q**     That you received from the victim?

13      **A**     Yes, sir.

14      **Q**     Okay. Let me ask you this: Once you placed  
15      him under arrest and brought him back to the  
16      sheriff's office, I'm going to show you, at this  
17      point in time, State's 1, where was Mr. Bowers? Was  
18      he in custody at the time that you interviewed him  
19      there?

20      **A**     Yes, sir, he was in custody.

21      **Q**     Okay. When you begin to interview someone that  
22      is under arrest for a crime, do you carry out and  
23      conduct a written waiver of rights?

24      **A**     Yes, sir.

25      **Q**     Okay. Did you carry out and conduct a written

1 waiver of rights with the defendant in this case,  
2 Mr. Bowers, and how did you conduct that?

3 **A** Yes, sir, I did. When we start it, we go line  
4 by line with them as we go.

5 **Q** Okay. Go through it exactly as you carried it  
6 out and conducted it, every piece of information, go  
7 through and carry out what you did.

8 **A** It's a waiver of rights form. It starts out:  
9 I, David Andrew Bowers, am 23 years old. My address  
10 is [REDACTED] Enlow Drive, Batesburg, South Carolina,  
11 29006. I have finished the 12th grade in school and  
12 can read.

13 I have been told by Sergeant Clark, who I  
14 understand is a law enforcement officer, that he  
15 would like to question me concerning the crime of  
16 criminal sexual conduct with a minor in the first  
17 degree. This officer has also explained to me and I  
18 understand that, one, I have the right to remain  
19 silent, that means that I do not have to say  
20 anything or answer any questions. He initialled  
21 that.

22 **Q** That was done in your presence?

23 **A** Done in my presence, yes, sir.

24 **Q** Okay.

25 **A** Two, anything I say may be used against me in a

1 court of law, initialled. Three, I have the right  
2 to talk with an attorney and to have an attorney  
3 here with me now and to advise and help me during  
4 questioning, initialled. Number four, if I have --  
5 if I want to have an attorney with me before and  
6 during questioning but cannot afford to pay an  
7 attorney, one will be provided to me at no cost  
8 before and while I'm being questioned, initialled.  
9 Number five, if I decide to answer questions now  
10 without an attorney here, I still have the right to  
11 stop answering questions whenever I want to,  
12 initialled. Six, I also have the right to stop  
13 answering questions until I have talked with an  
14 attorney, initialled.

15 Further states: I understand my rights as  
16 explained to me by Deputy Clark. I now state that I  
17 do wish to answer questions at this time and that I  
18 do not wish to have an attorney here before and  
19 during questioning. My decision to answer questions  
20 now with an attorney -- without an attorney is made  
21 freely and is my own choice. No one has threatened  
22 or coerced me in any way or promised me special  
23 treatment. To show my decision, I am signing my  
24 name in the space below. Signed, David A. Bowers.  
25 Date, 10/7/12. Time, 3:09. Witness, Sergeant K.H.

1 Clark. Witness, K.M. Holmes.

2 **Q** Did you witness him sign that in your presence?

3 **A** Yes, sir.

4 **Q** Did you indicate that you had witnessed that in  
5 writing and did Officer Holmes indicate that?

6 **A** Yes, sir.

7 **Q** Is that the original of that written waiver of  
8 rights that you executed that day?

9 **A** Yes, sir.

10 **MR. MAYE:** Your Honor, I'm going to move to  
11 admit this into evidence at this time subject to any  
12 objections on the part of the defense.

13 **THE COURT:** Subject to previous objection?

14 **MR. SHEEK:** No new objections, Your Honor.

15 **THE COURT:** Subject to previous objections,  
16 mark that into evidence, Madame Court Reporter.

17 (State's Exhibit Number 1, waiver of rights,  
18 admitted into evidence.)

19 BY MR. MAYE:

20 **Q** Investigator Clark, I'm going to show you  
21 what's been marked State's Exhibit 2 just for  
22 identification at this point in time, ask you if you  
23 can identify that document, lay the foundation for  
24 it.

25 **A** Yes, sir. This is the voluntary statement



1 given by David Bowers.

2 **Q** Okay. How are you able to identify that as the  
3 written statement that he gave?

4 **A** I witnessed it and I was there while he wrote  
5 it.

6 **Q** Did you sign your name on there in witnessing  
7 that statement?

8 **A** I did.

9 **MR. MAYE:** Your Honor, at this time, I'm going  
10 to move to admit the written statement into  
11 evidence, of course, subject to any objection on the  
12 part of the defense.

13 **THE COURT:** Subject to previous objection?

14 **MR. SHEEK:** Yes, sir.

15 **THE COURT:** Subject to previous objection, mark  
16 the document into evidence, please.

17 (State's Exhibit Number 2, statement of  
18 defendant, admitted into evidence.)

19 BY MR. MAYE:

20 **Q** Investigator Clark, let me ask you, once you  
21 execute a written waiver of rights with the subject,  
22 how do you go about having them give you a written  
23 statement and how was it done in the case of the  
24 specific statement that you have in your hand?

25 **A** Generally just tell them to write a statement

1 of their own words and -- as to what happened.

2 **Q** Okay. Did you give him any specifics of the  
3 allegations? Did you go through all of the  
4 information you have or provide him with any  
5 specifics prior to him executing that written  
6 statement?

7 **A** No, sir. Initially, all that we told him is  
8 that, of course, the criminal sexual conduct with a  
9 minor first, what his charge was. And, basically,  
10 we didn't have a lengthy conversation. We just told  
11 him, after reading the text messages and speaking  
12 with the victim, that we generally knew what  
13 happened. We just needed to hear his side of the  
14 story. And at that time, he wrote a statement.

15 **Q** Now, you told him you generally knew what  
16 happened, but you didn't give him any of the  
17 specifics?

18 **A** No, sir.

19 **Q** Did you just ask him to write his side of it or  
20 what had happened?

21 **A** Yes, sir.

22 **Q** As a result of you making that inquiry for him  
23 to write his statement, please publish to the jury  
24 what he told you and what he wrote in his  
25 handwriting there.

1       **A**       In his handwriting: Voluntary statement,  
2       statement of David Bowers, page one of one. [REDACTED]  
3       Enlow Drive, Batesburg, South Carolina, 29006.

4               On October 6, 2012, I was out with friends  
5       watching the football game and I was drinking, rode  
6       home with Rusty Enlow. And around 11:30 p.m. and  
7       12:00 a.m., **Minor** [REDACTED] was touching in between my  
8       legs and I done it back. And she also jumped in my  
9       lap and she wanted me to touch her breast and put my  
10      hand down in her -- down her pants, and like an  
11      idiot, I done it. And then she wanted me to stick  
12      finger in her and I done that also. And before all  
13      of this happened, we texted stuff back and forth  
14      about sexual stuff, but nothing's ever happened.

15             I've never done anything like this in my life.  
16      And I'm not attracted to minors, nor would I have  
17      sex with them. I was provoked into doing what I  
18      done by what she did to me. And nothing will ever  
19      happen like this again. I've learned my lesson from  
20      it. I guess the alcohol had something to do with  
21      this sick situation, but I swear on my own  
22      daughter's life, this will never, ever happen again.  
23      But I never had sex with her, nor did any other  
24      sexual things happen to myself from her. I know I  
25      was wrong and I'm deeply and truly sorry that it did

1       happen.

2               At the end of it is his initials. We had him  
3       do that to show that we don't add anything to his  
4       statement. We mark a big X and put his initials in  
5       each block again to show that nothing was added to  
6       his statement. Signature of affiant, David A.  
7       Bowers. Witness, K.H. Clark.

8       **Q**     Did you give him any direction on what he was  
9       to write? Did he write that of his own hand?

10      **A**     I gave him no direction. He wrote that on his  
11      own.

12      **Q**     Okay. Let me ask you this: At any point in  
13      time, either at the written waiver of rights form or  
14      when he executed that written statement, did you  
15      make any threats to him?

16      **A**     No, sir.

17      **Q**     Did you make any promises to him at all as to  
18      any of the charges or what you would or would not  
19      do? Did you make him any promises at all?

20      **A**     No, sir.

21      **Q**     Okay. Did you do anything to try to influence  
22      his decision as to whether or not he provided you  
23      the statement or executed the written waiver of  
24      rights?

25      **A**     No, sir.

1       **Q**     Okay. Did anyone else in your presence do  
2       anything to threaten him, to coerce him or influence  
3       his decision?

4       **A**     No, sir.

5       **Q**     Okay. Now, Investigator Clark, you had already  
6       had an arrest warrant in this case for the criminal  
7       sexual conduct with a minor; is that correct?

8       **A**     Yes, sir.

9       **Q**     Okay. Did you subsequently seek additional  
10      charges based on the substance of the text  
11      communication in between them, and what charges were  
12      those?

13      **A**     Yes, sir. Once his cell phone that was taken  
14      under the search warrant, after the second search  
15      warrant was obtained and we actually got all of the  
16      texts from his phone, I did an affidavit for  
17      criminal solicitation with a minor.

18      **Q**     That's based on the communication of a sexual  
19      nature in between those two?

20      **A**     Yes, sir.

21      **Q**     Okay. Was the information that you had that  
22      that text messaging took place before the criminal  
23      -- the basis of the warrant for criminal sexual  
24      conduct of the digital penetration?

25      **A**     Yes, sir.

1       **Q**     Okay. Investigator, you had a specialty in  
2       working what types of crimes at the sheriff's  
3       department? I know you worked a variety, but what  
4       specialized area of responsibility did you have  
5       working for the sheriff then?

6       **A**     Child sex crimes.

7       **Q**     Based upon that, what was a typical pattern of  
8       activity with you? What did you do to further the  
9       investigation or to follow up on it after such time  
10      as you made the charges against Mr. Bowers  
11      specifically involving this case?

12      **A**     Every morning when I came into work, my job was  
13      to monitor all jail records, phone calls coming in  
14      -- I mean, going out from each inmate at the  
15      detention center.

16      **Q**     Okay. Let me ask you this: How does the  
17      jail's phone system work? You were the supervisor  
18      over that program is my understanding; correct?

19      **A**     I wasn't the supervisor. I was an  
20      administrator on the program, which only meant I had  
21      my own login. I could access it without being at  
22      the detention center. But, yes, sir, I was the  
23      administrator for the sheriff's office.

24      **Q**     How is an inmate given a, I guess, a warning,  
25      just like you give that written waiver of rights,

1       how is an inmate that utilizes that electronic phone  
2       system at the jail provided with information that  
3       the calls that they make are subject to being  
4       monitored and how does that work?

5       **A**     At the beginning of the phone call, and I do  
6       not know verbatim exactly what it says, but it's to  
7       the effect of each call is subject to monitoring by  
8       law enforcement and it asks you to say your name and  
9       then it repeats the name so that you know who's  
10      talking on the phone, nobody just borrows cards and  
11      uses them.

12      **Q**     Okay. During the time that you were following  
13      up on this investigation, did you have an occasion  
14      to monitor telephone communications on the part of  
15      the defendant in this case and other parties?

16      **A**     Yes, sir.

17      **Q**     Okay. Did you compile all of those pieces of  
18      information or the files with the calls on them, and  
19      what did you do with them in regard to this case?

20      **A**     Yes, sir. I made copies of I think it was in  
21      excess of 20 phone calls while he was in the  
22      detention center. I made copies for the Solicitor's  
23      office. I made copies for the defense. And that  
24      was it.

25      **Q**     Okay. Did you provide copies of all of the

1 telephone communications made there to the defense  
2 in this case?

3 **A** Yes. All of the phone calls that he made were  
4 given to the defense.

5 **Q** Okay. Were there two particular calls or how  
6 many calls, if any, in which did you extract  
7 information in preparation to testify in this case?

8 **A** In preparation for this case, we decided on the  
9 first two phone calls in the beginning.

10 **Q** Do you know what date those two phone calls  
11 were made and about what time they were made?

12 **A** Yes, sir. The first phone call was made on  
13 10/8/12 at 1851, which would be 6:51 at night.

14 **Q** Okay.

15 **A** The second call was 10/9/12 at 1907, which will  
16 be 5:07.

17 **Q** What specifically did you do to apprise the  
18 defense in this case that you had that information  
19 and bring those two particular calls to a particular  
20 emphasis?

21 **A** We played the phone calls in the -- with the  
22 Solicitor's office and the defense present. And I  
23 had made notes on the phone calls that -- his words,  
24 what he was saying on the phone calls and just went  
25 over the notes.



1       **Q**     Okay.  Don't go into anything else that any  
2             other party said to the phone calls, but as to the  
3             defendant in this case, Mr. Bowers, please provide  
4             the information that were the substance of his  
5             statements that he made on those recorded telephone  
6             conversations.

7       **A**     The first phone call, 10/8/12, 1851, the first  
8             is:  Lori, I was drunk, what I was trying to say.  
9             Claiming alcohol was the thing.  I mean, it  
10            happened, but it wasn't like I done it willingly.  
11            You know I wouldn't do nothing like that if I'm  
12            sober, you know that.  Doing that shit like in the  
13            pool straddling me and shit and then it went from  
14            there.  I mean, I hate I done it.  All of that  
15            happened while I was drunk.  It was from the  
16            drinking.  We didn't fuck or nothing.  It's still  
17            bad.  Hate it happened.

18            10/9/12, 1907, told the -- told truth in first  
19            place.  I got pursued into that.  I'm sorry for what  
20            happened.  She said, Quit, that's not right.  Didn't  
21            erase any of my texts.  Deleted picture.  Ain't like  
22            I forced it.

23       **Q**     Okay.  That's just his conversation nothing --

24       **A**     That is just the remarks from him.

25       **Q**     Investigator Clark, is that, monitoring of the

1 recorded conversation at the time that you were at  
2 the sheriff's department, is that something that you  
3 did with all of the cases in which you were involved  
4 that you had time to search?

5 **A** Yes, sir. I did that on a daily basis. I  
6 also -- I did it for other people's investigations,  
7 that was just my first part of the day.

8 **Q** So, Investigator Clark, based on your  
9 investigation of this case, what charges did you  
10 have or did you seek to be brought against the  
11 defendant in this case, Mr. Bowers?

12 **A** Like I said, I assisted Captain Hill with his  
13 affidavit on criminal sexual conduct with a minor in  
14 the first degree. I personally sought the warrant  
15 on criminal solicitation of a minor.

16 **Q** Okay.

17 **MR. MAYE:** Answer any questions the defense has  
18 for you. Thank you.

19 CROSS-EXAMINATION

20 BY MR. SHEEK:

21 **Q** Detective Clark, you say on a daily basis, you  
22 would monitor these phone calls not just for this  
23 case but for all the cases?

24 **A** Yes, sir.

25 **Q** And I would assume that that's fairly time

1 consuming in your job to have to go to that length  
2 and listen to all these phone calls?

3 **A** If you do it on a daily basis, it's not that  
4 bad.

5 **Q** And, in this case, when you put them all  
6 together at one time over the days, it was several  
7 hours of phone calls, wasn't it?

8 **A** Yes, sir.

9 **Q** And you took the time to go through them all?

10 **A** Yes, sir.

11 **Q** And that's because you wanted to be as thorough  
12 as possible when the case would eventually come to  
13 court; correct?

14 **A** Yes, sir.

15 **Q** And you don't want to leave anything undone or  
16 any leaf unturned so to speak?

17 **A** Yes, sir.

18 **Q** Now, when Chief Holmes testified, he said there  
19 was no recording of this statement that David Bowers  
20 gave; is that correct?

21 **A** That is correct.

22 **Q** But when you went and picked up David, you had  
23 already gotten the warrant for his arrest; right?

24 **A** Yes, sir.

25 **Q** You had already gotten the search warrant

1 signed by a summary court judge?

2 **A** Yes, sir.

3 **Q** So it wasn't like you were not expecting David  
4 to come in and talk to you. You went specifically  
5 to pick him up; correct?

6 **A** Yes, sir.

7 **Q** And certainly the sheriff's department has  
8 video capabilities, don't they?

9 **A** In 2012, I don't know if we had a video per se  
10 that -- I don't think so.

11 **Q** Well, you would admit that your cars are  
12 equipped with videos even in 2012, weren't they?

13 **A** Some of them.

14 **Q** What about tape recorders?

15 **A** I'm sure there was a tape recorder there.

16 **Q** You can get the little small handheld ones at  
17 CVS for \$15; right?

18 **A** Yes, sir.

19 **Q** Did you ever tape record this conversation?

20 **A** No, sir, I did not.

21 **Q** But when the child goes to the Dickerson  
22 Center, since you do child sex cases, you're aware  
23 of their protocol for forensic interviews; correct?

24 **A** Yes, sir.

25 **Q** And their protocol requires that they be video

1           taped, don't they?

2           **A**     Yes, sir.

3           **Q**     And that is so you can show that the child's  
4           not influenced one way or the other?

5           **A**     Yes, sir.

6           **Q**     And that can be as vitally important when a  
7           defendant comes in and gives a statement; correct?

8           **A**     Yes, sir.

9           **Q**     And, I mean, that's the reason we have State's  
10          Exhibit Number 1, which is the advice of rights?

11          **A**     Yes, sir.

12          **Q**     The reason you get that document is to show he  
13          was given his rights?

14          **A**     Yes, sir.

15          **Q**     Why would you want it in writing as opposed to  
16          simply coming in and saying, hey, we told him his  
17          rights and he said he understood them?

18          **A**     Just where it's right here where his  
19          signature's on it.

20          **Q**     Well, I understand that, but why? Why would we  
21          get in it in writing? Why go to that trouble?

22          **A**     Just as -- so it's evidence.

23          **Q**     Right. The reason is so you can show the jury  
24          he was given his statement; right? He was given his  
25          rights?

1       **A**     Yes, sir.

2       **Q**     And it's just as critical to show that he  
3       wasn't made any threats or coerced in any way to say  
4       a particular thing?

5       **A**     Yes, sir.

6       **Q**     I mean, that's the reason the Solicitor was  
7       asking, did you tell him any details; correct?

8       **A**     Correct.

9       **Q**     Who did David have with him when he gave that  
10      statement?

11      **A**     It was just him.

12      **Q**     Was he allowed to have any family members,  
13      preacher, teacher or boss, anybody else?

14      **A**     I mean, I don't know. There was nobody else  
15      there. He didn't ask for anybody.

16      **Q**     Now, you seized his phone?

17      **A**     Yes, sir.

18      **Q**     And you sent it for a, what they call, a  
19      forensic examination of the phone; correct?

20      **A**     Yes, sir.

21      **Q**     Who did that examination?

22      **A**     Officer Quattlebaum took the phone. I have no  
23      idea who the first person was that did the --

24      **Q**     But it was sent out --

25      **A**     It was sent out of our office, yes, sir.

1       **Q**     Because you want to use someone with the  
2       technical abilities to basically go in and review it  
3       in detail; correct?

4       **A**     Yes, sir.

5       **Q**     And they have the ability on that forensic  
6       interview -- forensic examination of these digital  
7       media to even recover certain things that are  
8       deleted?

9       **A**     Yes, sir, I would imagine.

10      **Q**     And did the child also, as part of her forensic  
11      interviews at the Dickerson Center, go to the  
12      Children's Advocacy Medical Response System for a  
13      medical review?

14      **A**     Yes, sir. Victim Advocate Maffett took the  
15      victim.

16      **Q**     And that's to have her seen medically?

17      **A**     Yes, sir.

18      **Q**     For any evidence of any type of sexual assault?

19      **A**     Yes, sir.

20      **Q**     Okay. Was there a, what we normally call, a  
21      rape kit done?

22      **A**     Yes, sir.

23      **Q**     And tell the jury what a rape kit is.

24      **A**     It's just a kit done by a SANE nurse at either  
25      a emergency room or a hospital setting where they

1           try to recover evidence.

2           **Q**     And as part of a rape kit, they'll also take  
3           clothing and things like this; correct?

4           **A**     Yes, sir.

5           **Q**     And was that done in this case?

6           **A**     I believe so, yes, sir.

7           **Q**     And one of the things that we can do through  
8           SLED -- and SLED's the State Law Enforcement  
9           Division; right?

10          **A**     Yes, sir.

11          **Q**     And you can ask them to assist in any of these  
12          type cases where you need certain testing done;  
13          right?

14          **A**     Yes, sir.

15          **Q**     And you can send a rape kit to them and you can  
16          specifically say, look for DNA; correct?

17          **A**     Yes, sir.

18          **Q**     Because not only DNA from semen, but -- talk a  
19          little bit about DNA. DNA can be found in a single  
20          skin cell, can't it?

21          **A**     It can.

22          **Q**     Okay. And we have what's called touch DNA,  
23          which is where skin cells are put off constantly by  
24          the body. And if you touch or hold an item, you'll  
25          leave skin cells there and DNA can be found;



1 correct?

2 **A** Yes, sir.

3 **Q** And if your hands are actually forcibly put  
4 underneath clothing or underneath underwear, we  
5 would check for touch DNA, wouldn't we?

6 **A** Yes, sir.

7 **Q** Did we do that?

8 **A** No, sir.

9 **Q** Now, have you had an opportunity, as the chief  
10 investigator for this instance, to look at the  
11 incident report in this case?

12 **A** Yes, sir.

13 **Q** Okay. And would you agree with me that in the  
14 incident report, the allegations reported on  
15 10/7/2012, were digital and penile penetration?

16 **A** That's what it said, yes, sir.

17 **MR. SHEEK:** Beg the Court's indulgence one  
18 moment.

19 **THE COURT:** Yes, sir.

20 (Pause.)

21 **MR. SHEEK:** Thank you, Investigator Clark.  
22 I have no further questions, Your Honor.

23 **THE COURT:** Redirect.

24 **MR. MAYE:** Just a couple.

25 \*\*\*\*\*

1 REDIRECT EXAMINATION

2 BY MR. MAYE:

3 Q Investigator Clark, when you're requesting DNA  
4 tests and all, is it a factor whether or not someone  
5 is in and out of a household as a regular guest or  
6 as a stranger, a who done it situation, does that  
7 influence your decision on whether or not you send  
8 items out for additional forensic testing?

9 A Yes, sir.

10 Q What was the situation in this case, though, in  
11 regard to that?

12 A Well, in this case, we had the victim and the  
13 defendant's admission, so, you know, we didn't. And  
14 he frequented the house all the time.

15 Q Okay. Let me ask you this: You were asked  
16 about the incident report in this case about there  
17 being allegations of not just digital penetration,  
18 but an ongoing sexual relationship, basically sexual  
19 intercourse, between Mr. Bowers and **Minor** the  
20 victim in this case. Could you explain that  
21 information or how that came to pass?

22 A Yes, sir. In the initial -- when Captain Hill,  
23 he met with the parents, the father and the  
24 biological mother, and was showed the text messages  
25 and in the text messages, in talking with the

1 father, it was believed that there was sexual  
2 intercourse with his ten-year-old daughter.

3 Q Does the -- could you pick out the portion of  
4 the --

5 A I don't have the incident report here.

6 Q No, excuse me. Could you pick out the portion  
7 in State's 3, the text message, where it  
8 specifically talks about intercourse in between  
9 these two?

10 A I mean, just a few to begin with is: Yeah, I'm  
11 horny. It makes me even more horny. Yes, you are.  
12 And, no, I'm not. If you keep saying yes, then you  
13 and getting nothing and ask my daddy. Is my fave  
14 show. Not. And this is making my pussy vibrate and  
15 it feels good because I'm horny. Okay, then stay  
16 the night and while they are sleeping, we can mess  
17 around. Yeah, right, in my dreams. Ha-ha. OMG.  
18 Yes, you're fucking me too hard. Ha-ha. I wish.  
19 LOL. So would you? Would I what? Want us fucking.  
20 Yes, I'm horny. Are you going to stay, please? If  
21 you don't stay here, then next time I stay the night  
22 with y'all, then I'm not having sex with you.

23 Q Okay. You can stop right there. So you had  
24 information from that text message, based on that,  
25 that there was an ongoing sexual relationship that

1 involved penetration other than just the digital  
2 penetration?

3 **A** Yes, sir. Just reading the texts and Captain  
4 Hill meeting with the parents, it was believed that  
5 there was a sexual relationship.

6 **Q** Okay. Involving more -- specifically involving  
7 intercourse?

8 **A** Right. Yes, sir. But after I did an initial  
9 with the victim, I got with Captain Hill and it was  
10 determined that the penetration was digitally with  
11 his fingers, that is what the arrest warrant was  
12 for.

13 **Q** So you suspected that there was sexual  
14 intercourse, penile sexual intercourse, but after  
15 talking with the victim in this case directly, you  
16 got the warrant just for the digital penetration?

17 **A** Yes, sir. The warrant was just for digital  
18 penetration. It was not penile penetration.

19 **Q** Okay. And so when you brought the defendant  
20 in, he specifically denied any intercourse, penile  
21 or vaginal intercourse, but he said --

22 **A** He said, But I never had sex with her.

23 **Q** But he did admit that he had penetrated her  
24 with his hand?

25 **A** Yes, sir.

1           **Q**     In his own written statement?

2           **A**     Yes, sir.

3           **Q**     He just denied the actual act of sexual  
4 intercourse; correct?

5           **A**     Yes, sir.

6                   **MR. MAYE:** Answer any questions the defense  
7 has. Thank you.

8                                 RECROSS-EXAMINATION

9           BY MR. SHEEK:

10          **Q**     Investigator, are you telling me you obtained  
11 an arrest warrant for Mr. Bowers without anybody  
12 talking to this victim?

13          **A**     No, sir, that's not what I said.

14          **Q**     Okay. And he was arrested on October the 7th;  
15 correct?

16          **A**     Yes, sir.

17          **Q**     The same day this incident report was prepared?

18          **A**     Yes, sir.

19          **Q**     And you're not saying this report's incorrect?

20          **A**     I'm not saying that.

21                   **MR. SHEEK:** I have no further questions, Your  
22 Honor.

23                   **THE COURT:** Anything further of the witness?

24                   **MR. MAYE:** No, sir, Your Honor. Thank you.

25                   **THE COURT:** Thank you. You may step down.

1           Call your next witness.

2           **MR. MAYE:** Thank you, Your Honor, briefly beg  
3 the Court's indulgence.

4           **THE COURT:** Yes, sir.

5           (Pause.)

6           **MR. MAYE:** Your Honor, with that, the State  
7 rests. Thank you.

8           **THE COURT:** Ladies and gentlemen of the jury, I  
9 told you that when the State rests, I have to confer  
10 with the attorneys about legal issues. So we've  
11 reached that point in the trial. This typically  
12 takes about 20 minutes. If it's going to be  
13 substantially longer than that, I'll send word to  
14 you, but I have to ask you to step in the jury room  
15 while I do this. So don't discuss the case. I'll  
16 get back to you in 20 minutes or so. Thank you.

17           (The jury retires to the jury room.)

18           **THE COURT:** Motions.

19           **MR. SHEEK:** Your Honor, the defense will move  
20 for a directed verdict on both charges based on the  
21 ground that the State has failed to present  
22 sufficient evidence upon which a reasonable jury  
23 could find the defendant guilty beyond any  
24 reasonable doubt.

25           **THE COURT:** Solicitor, do you wish to be heard?

1           **MR. MAYE:** Your Honor, briefly, we would just  
2 maintain, respectfully, they're jury issues.

3           **THE COURT:** All right. I was looking at the  
4 exhibits to see if there was anything in here about  
5 the defendant's age. State's Exhibit Number 1  
6 indicates he's 23 years of age on October the 7th,  
7 2012, when the statement was given. There may have  
8 been something else, but I just --

9           **MR. MAYE:** Your Honor, there was. I asked the  
10 date of birth of the defendant in this case to  
11 Mr. Enlow and he did give his date of birth, his  
12 daughter's date of birth. And it is in the record  
13 directly with his date of birth.

14           **MR. SHEEK:** I acknowledge that there was  
15 testimony to that fact.

16           **THE COURT:** I wrote down the date of birth of  
17 **Minor**, but anyway it's in there. The  
18 motion's respectfully denied.

19           Mr. Bowers, I have to go over some matters with  
20 you now and I need them under oath. So I need you  
21 to stand and raise your right hand.

22                           DAVID ANDREW BOWERS,

23           having been duly sworn, testified as follows:

24           **THE COURT:** You may have a seat. I need you to  
25 speak loudly. This lady takes down everything you

1 say, all right?

2 **DEFENDANT:** (Defendant nodded head.)

3 **THE COURT:** You've got to speak your answer.

4 **DEFENDANT:** Yes, sir.

5 **THE COURT:** All right. We've reached the stage  
6 of the trial where the State has rested its case in  
7 chief. And the next thing that would happen is that  
8 your side would get the opportunity to present any  
9 evidence you want the jury to consider. You  
10 understand where we are in the trial?

11 **DEFENDANT:** Yes, sir.

12 **THE COURT:** Now, you are presumed innocent.  
13 You have no obligation yourself or to have anyone  
14 else on your behalf present any evidence. You  
15 understand that?

16 **DEFENDANT:** Yes, sir.

17 **THE COURT:** The burden is entirely upon the  
18 State to prove you guilty beyond a reasonable doubt.  
19 You understand that?

20 **DEFENDANT:** Yes, sir.

21 **THE COURT:** But you are permitted, if you wish,  
22 to have evidence offered on your behalf. And if you  
23 wish to testify yourself, you certainly may. You  
24 understand?

25 **DEFENDANT:** Yes, sir.



1           **THE COURT:** No one, however, can force you to  
2           testify. You have an absolute right to maintain  
3           your silence. If you choose not to testify, I'm  
4           going to tell that jury that they cannot hold your  
5           silence against you in any way at all. You  
6           understand?

7           **DEFENDANT:** Yes, sir.

8           **THE COURT:** I will tell them that they cannot  
9           discuss it in their deliberations, that it's not to  
10          enter their minds in making the decision of whether  
11          you're guilty or not guilty. You understand that?

12          **DEFENDANT:** Yes, sir.

13          **THE COURT:** This decision about whether you  
14          testify or not, it's your decision to make and yours  
15          alone. Do you realize that?

16          **DEFENDANT:** Yes, sir.

17          **THE COURT:** I expect that you might confer with  
18          anyone whose opinion you value on important  
19          decisions, your attorney, family members, friends,  
20          but ultimately you're the person on trial and  
21          ultimately it's your decision as to whether you  
22          testify or not. Do you understand?

23          **DEFENDANT:** Yes, sir.

24          **THE COURT:** Now, does he have a prior criminal  
25          record that would subject him to impeachment?

1           **MR. MAYE:** No, sir, he does not.

2           **THE COURT:** At this point, Mr. Bowers, are you  
3 under the influence of any medication, alcohol, drug  
4 or anything that adversely affects your thinking?

5           **DEFENDANT:** No, sir.

6           **THE COURT:** Do you suffer from any physical or  
7 mental conditions that adversely affect your  
8 thinking?

9           **DEFENDANT:** No, sir.

10          **THE COURT:** So you're clearheaded now and you  
11 know what you're doing?

12          **DEFENDANT:** Yes, sir.

13          **THE COURT:** Have you understood everything I've  
14 been over with you?

15          **DEFENDANT:** Yes, sir.

16          **THE COURT:** Has anybody attempted to improperly  
17 influence you in any way to get you to decide to  
18 testify or not testify?

19          **DEFENDANT:** No, sir.

20          **THE COURT:** So whatever decision you make is  
21 your own decision, made of your own free will?

22          **DEFENDANT:** Yes, sir.

23          **THE COURT:** All right. Mr. Bowers, I'm going  
24 to make some findings right now and then we'll take  
25 a break, I'll let you talk with your lawyer. I'm

1       going to find, at this point, that you understand  
2       that you have a right to testify, you have a right  
3       not to testify; you understand that if you choose  
4       not to testify, that I will tell the jury they  
5       cannot hold your silence in any way against you; you  
6       understand that the decision about whether you  
7       testify or not is your decision to make and yours  
8       alone. I find that you have freely, knowingly,  
9       voluntarily and intelligently made your decision  
10      about whether you testify or not.

11             Are you fully satisfied with your attorney?

12             **DEFENDANT:** Yes, sir.

13             **THE COURT:** All right. Now, if anybody  
14      attempts to improperly influence you about  
15      testifying or not testifying, you must let me know  
16      that immediately. You understand?

17             **DEFENDANT:** Yes, sir.

18             **THE COURT:** Otherwise, I'm going to maintain  
19      those findings that I just made. Do you understand?

20             **DEFENDANT:** Yes, sir.

21             **THE COURT:** All right. We'll be at ease for  
22      about 15 minutes. Let me know if you need more  
23      time.

24                     (Brief Recess.)

25             **THE COURT:** Do you wish to offer evidence?

1           **MR. SHEEK:** We do, Your Honor.

2           **THE COURT:** All right. Are you ready for the  
3 jury?

4           **MR. SHEEK:** We are ready, sir.

5           **THE COURT:** State ready?

6           **MR. MAYE:** The State's ready, Your Honor.  
7 Thank you.

8           **THE COURT:** Bring them in, please.

9                   (The jury returns to the courtroom.)

10          **THE COURT:** Folks, when I told you at the  
11 outset that I was going to give you some landmarks  
12 to look for as we got started, but I was not going  
13 to go through the whole process, I indicated that I  
14 would tell you at this point where we go from here.  
15 The next step in the process is that the defense is  
16 given the opportunity to present evidence for you to  
17 consider.

18               Now that does not change the burden of proof.  
19 The burden of proof remains entirely upon the State  
20 to prove the guilt of the defendant beyond a  
21 reasonable doubt, but the defense is offered the  
22 opportunity to present evidence for you to consider  
23 in deciding whether the State has met its burden of  
24 proof or has failed to meet its burden of proof. So  
25 I invite your close attention.

1 Mr. Sheek, call your first witness.

2 **MR. SHEEK:** Thank you, Your Honor. The defense  
3 calls David Bowers to the stand.

4 **THE COURT:** Come around please, Mr. Bowers.

5 DAVID ANDREW BOWERS,  
6 having been duly sworn, testified as follows:

7 **THE COURT:** Just have a seat there and tell us  
8 your full name, please.

9 **THE WITNESS:** David Andrew Bowers.

10 **THE COURT:** Answer Mr. Sheek's questions,  
11 please.

12 DIRECT EXAMINATION

13 BY MR. SHEEK:

14 **Q** Mr. Bowers, how old are you?

15 **A** Twenty-four.

16 **Q** And where do you live, sir?

17 **A** I'm staying with my aunt now off Piney Grove  
18 Road in Saluda.

19 **Q** And back in October of 2012, where were you  
20 living?

21 **A** [REDACTED] Enlow Drive.

22 **Q** And who did you live with?

23 **A** Lori, my fiancée, and my little girl, [REDACTED] D's minor child

24 **Q** And do you have any other children?

25 **A** I have one on the way that's due in March.

1           **Q**     How old is D's minor child

2           **A**     She is three.

3           **Q**     All right. I want to go ahead and start off,  
4           David, by handing you what's been marked as State's  
5           Exhibit Number 3, a print out of text messages. You  
6           and I had an opportunity to look over those?

7           **A**     Yes, sir.

8           **Q**     Those text messages that are marked incoming,  
9           did you receive those text messages from Ali?

10          **A**     Yes, sir.

11          **Q**     And on October the 6th, in the early morning  
12          hours of October the 7th of 2012, the text messages  
13          that are marked outgoing, did you send those?

14          **A**     Yes, sir, I did.

15          **Q**     And do you deny that you sent any of those text  
16          messages?

17          **A**     No, sir, I don't.

18          **Q**     Tell the jury what was going on that you sent  
19          those text messages to Ali.

20          **A**     I was just drinking and it was kind of like a  
21          -- I mean, it was stupid. I hate I done it, but I  
22          did send them. I wished I could go back and change  
23          everything, but I can't.

24          **Q**     Now, you heard Ali testify about some of the  
25          texts she sent you referring to things that

1 obviously were not actually occurring?

2 **A** Yes, sir. It was just, like, joking.

3 **Q** And is that the nature of the conversation you  
4 had with Ali by text that night?

5 **A** Yes, sir.

6 **Q** And did those text messages, any of them, refer  
7 to something that actually physically occurred?

8 **A** No, sir.

9 **Q** In those text messages, do you make comment  
10 about, did you enjoy it or do you want to do it or  
11 something of that nature; correct?

12 **A** Yes, sir.

13 **Q** Well, what are you referring to?

14 **A** It was just the joking text acting like  
15 whenever she said that I was fucking her so hard or  
16 something like that.

17 **Q** Would you agree in front of this jury that  
18 there was no excuse for sending those kind of text  
19 messages to a ten-year-old child?

20 **A** No, there's no excuse.

21 **Q** Did you have any physical relationship with  
22 Ali? And by physical, I mean any type of  
23 inappropriate touching in a sexual nature.

24 **A** No, sir.

25 **Q** Rubbing her breasts, rubbing her legs, rubbing

1 her in her genital area, anything of that nature?

2 **A** No, sir.

3 **Q** Did you ever stick your hands in her pants or  
4 put your fingers inside of her vagina?

5 **A** No, sir.

6 **Q** Let me hand you what's been marked as State's  
7 Exhibit Number 1, which is an advice of rights. Do  
8 you recall that form?

9 **A** Yes, sir, I do.

10 **Q** Where did you see that form first?

11 **A** At -- in an interrogation room at the sheriff's  
12 office.

13 **Q** Tell the jury how you got to the interrogation  
14 room. What happened that you ended up there?

15 **A** I was at home by myself, was actually sleeping  
16 on the couch, and then I heard knocking on the door  
17 and it happened to be the sheriff deputies there.  
18 And I was arrested and they proceeded to bring me to  
19 the sheriff's office.

20 **Q** Tell me about the arrest. How did that go?

21 **A** Well, when I opened the door, I got snatched  
22 out of the house, didn't know what was going on, and  
23 put in handcuffs. And I just -- I got put in a car  
24 after they searched the house.

25 **Q** Did they just ask you to go along or were they



1       aggressive, physically controlling you? What  
2       happened?

3       **A**     After I got snatched out with the handcuffs put  
4       on, I was just sitting in a chair on the porch.

5       **Q**     When you were taken to the police station, was  
6       there anybody with you other than the police  
7       officers?

8       **A**     No, sir.

9       **Q**     Where did you go when you first got to the  
10      police station with the officers?

11      **A**     It was straight to the interrogation room.

12      **Q**     Well, describe this interrogation room. What's  
13      it like?

14      **A**     It was a long table, chairs around.

15      **Q**     Okay. And who was in there with you?

16      **A**     The three officers and myself.

17      **Q**     Okay. At some point, had you asked them, why  
18      am I being arrested, what's going on or anything of  
19      that nature?

20      **A**     Well, I asked whenever I got snatched out of my  
21      house.

22      **Q**     What were you told?

23      **A**     Nothing at that time. I wasn't told till I got  
24      to the interrogation room.

25      **Q**     And what were you told then?

1       **A**     That I was being charged with criminal sexual  
2     conduct with a minor.

3       **Q**     And did they ever tell you anything that  
4     allegedly you had done?

5       **A**     Yes, sir. Well, after -- after we -- after  
6     they asked what my statement would have been.

7       **Q**     Okay. Was -- did they tell you what Ali  
8     accused you of before or after you wrote that  
9     statement?

10      **A**     It was before.

11      **Q**     And when you wrote that written statement --  
12     I'm going to hand you what's been marked as State's  
13     Exhibit Number 2 and ask you is that a copy of your  
14     written statement?

15      **A**     Yes, sir.

16      **Q**     Is that statement true?

17      **A**     No, sir.

18      **Q**     Well, why in the world would you write a  
19     written statement that wasn't true?

20      **A**     Well, when they -- whenever I was giving my  
21     statement, I told the officers that I didn't do  
22     nothing, that it was only texting. And I was told I  
23     was lying, that they had proof, they knew the truth.  
24     And he proceeded saying -- asking did I touch her  
25     breast, did I touch her inappropriate, did I finger

1 her. And I just went along with it thinking I was  
2 going to go home and it would be over with after  
3 they investigated it at a hospital and found that  
4 nothing did happen because I didn't do it.

5 **Q** Well, why in the world would you think you  
6 needed to just go along? Why did you think that  
7 would benefit you?

8 **A** I just thought that was the only way out  
9 because every time I said I didn't do it, it was,  
10 You're lying, you're lying, so.

11 **Q** Did they ever tell you what they were going to  
12 do if you continued to lie, as they put it?

13 **A** Well, they said that the charge was 25 to life,  
14 so that, of course, made me want to go along with  
15 it. And they said that if I lied, that the judge  
16 would look bad upon it.

17 **Q** And are you telling this jury that prior to  
18 writing that statement, you told the police that you  
19 did not sexually touch her, but you did send those  
20 text messages?

21 **A** Yes, sir, I did.

22 **Q** The officer talked about some phone calls  
23 between you and Lori. Did you call her when you  
24 were over there at the detention center?

25 **A** Yes, sir, I did every day.

1       **Q**     And he talked about the statements that you  
2       made?

3       **A**     Yes, sir.

4       **Q**     About how you wished it hadn't happened, it was  
5       bad?

6       **A**     Yes, sir.

7       **Q**     Did you make those statements?

8       **A**     Yes, sir, I did.

9       **Q**     Well, what are you talking about when you say  
10      it? What's it?

11      **A**     Just the texting.

12      **Q**     Did you ever tell Lori that you had touched  
13      this child in a sexual way?

14      **A**     No, sir, I never did.

15      **Q**     When you said, I wished it hadn't happened,  
16      what are you talking about?

17      **A**     Just the text messages.

18      **Q**     And you agree to this jury that you're guilty  
19      of sending those text messages?

20      **A**     Yes, sir, I do.

21      **Q**     Any doubt about that whatsoever?

22      **A**     No, sir.

23      **Q**     No one else took your phone. You're not saying  
24      someone else was doing it and setting you up?

25      **A**     No, sir.

1       **Q**     Not claiming these officers did it and put it  
2       on there?

3       **A**     No, sir.

4       **Q**     Now, in Defense Exhibit Number 2, forensic  
5       interview, Ali talks to them, making statements  
6       about you throwing **D's minor child** around, jerking her off  
7       her feet and hurting her, banging her head into the  
8       wall. Have you ever treated your daughter that way?

9       **A**     No, sir, not at all --

10      **Q**     Any idea -- I'm sorry. Go ahead.

11      **A**     I said, No, sir, not at all.

12      **Q**     Any idea why those kind of comments have been  
13      made?

14      **A**     I have no idea. That's kind of a sick thing to  
15      say about somebody honestly.

16      **Q**     Has the department of social services come in  
17      and investigated your home on the allegations you've  
18      abused this child?

19      **A**     No, sir.

20      **Q**     **D's minor child** still live at home with you and your  
21      fiancée?

22      **A**     Well, with the living situation now, not as of  
23      now, but she's still there, yes.

24      **Q**     Okay. As part of your bond, you had to move  
25      away from that place?

1           **A**     Yes, sir.

2           **Q**     But you and Lori are still together?

3           **A**     Yes, sir, we are.

4           **Q**     Still plan on getting married?

5           **A**     Yes, sir.

6           **Q**     David, but for the police telling you what they  
7           saw the truth is and their statements about if you  
8           kept lying, you were going to do 25 to life, but for  
9           those threats, would you have given that written  
10          statement?

11          **A**     No, sir.

12          **Q**     Do you recall making a statement on the phone  
13          about, I told the police the truth at first?

14          **A**     Yes, sir.

15          **Q**     Or from the first. Do you recall?

16          **A**     Yes, I do.

17          **Q**     What were you talking about?

18          **A**     That I didn't do nothing but text.

19          **Q**     Is that the first thing you told them?

20          **A**     Yes, sir.

21                 **MR. SHEEK:** Thank you, Mr. Bowers. Please  
22          answer anything the Solicitor may have.

23                 **THE COURT:** Cross-examination.

24                                         \*\*\*\*\*

25                                         \*\*\*\*\*

## 1 CROSS-EXAMINATION

2 BY MR. MAYE:

3 Q Mr. Bowers, so you remember giving this written  
4 waiver of rights to the police; correct?

5 A Yes, sir.

6 Q Okay. So you remember they told you you didn't  
7 have to say anything at all?

8 A Yes, sir.

9 Q Okay. And you acknowledged that?

10 A Yes, sir, I did.

11 Q And they told you that anything you were going  
12 to say was going to be used against you in court,  
13 didn't they?

14 A Yes, sir.

15 Q They told you you had the right to an attorney  
16 there that could advise you and help you with  
17 questions, didn't they?

18 A Yes, sir.

19 Q They told you if you wanted to have an  
20 attorney, and even if you couldn't afford one, that  
21 they would get one for you; right?

22 A Yes, sir.

23 Q They told you that if you decided to answer the  
24 questions without an attorney, you could stop at any  
25 time; right?

1       **A**     Right.  Yes, sir.

2       **Q**     They told you right then that you could stop  
3               answering questions until you had had time to talk  
4               with a lawyer; isn't that right?

5       **A**     Yes, sir.

6       **Q**     So you knew and understood every one of those  
7               things.  You don't have any mental defects that  
8               would have stopped you from understanding this, do  
9               you?

10      **A**     No, sir.

11      **Q**     I mean, you're, what, 23 years old at that  
12              time?

13      **A**     Yes, sir.

14      **Q**     You graduated from high school?

15      **A**     Yes, sir.

16      **Q**     You work a job.  You got a driver's license at  
17              that time?

18      **A**     Yes, sir.

19      **Q**     You're working?

20      **A**     Yes, sir.

21      **Q**     Carrying out all the responsibilities that an  
22              adult person does; isn't that right?

23      **A**     Yes, sir.

24      **Q**     Okay.  You got a daughter.  You live in your  
25              own household with a girl -- girlfriend and a child;



1 is that correct?

2 **A** Yes, sir, that's correct.

3 **Q** So in spite of all of that, you're trying to  
4 tell the ladies and gentlemen of the jury up here  
5 that you wrote in this statement here that you put  
6 your fingers and digitally penetrated a fifth  
7 grader, a ten-year-old little girl?

8 **A** Yes, sir.

9 **Q** And that this is a total lie?

10 **A** Yes, sir, it is.

11 **Q** You just did this so you could get out of  
12 there. You thought this was going to get you out of  
13 there?

14 **A** Well, I -- yes, sir.

15 **Q** How was this going to get you out of here, you  
16 writing that you digitally penetrated this little  
17 girl? How did you think this was going to get you  
18 out of this?

19 **A** I just thought if I went along with what they  
20 wanted to hear, the way they talked, they said, just  
21 don't contact Rusty Enlow and stay away from there.  
22 So I was under the consumption {sic} that I was  
23 going home.

24 **Q** The truth of the matter is, Mr. Bowers, you  
25 were so worried about it coming out that you were

1       having intercourse with this girl, like y'all were  
2       texting back and forth, you were just running from  
3       that. And you were completely admitting to  
4       digitally penetrating her, just fingering the girl,  
5       because you thought that wasn't a big deal; isn't  
6       that right?

7       **A**     No, sir, that's all a lie.

8       **Q**     What's all a lie?

9       **A**     The whole statement was a lie.

10      **Q**     You wrote it.

11      **A**     I know. It's a lie, though.

12      **Q**     Did they hold a gun to your head?

13      **A**     No, sir.

14      **Q**     Did they get out whips and hoses and bright  
15      lights and hold over you?

16      **A**     No, sir.

17      **Q**     So you put pen to paper and you admit up here  
18      in front of this jury that every word of this you  
19      wrote?

20      **A**     Yes, sir.

21      **Q**     Again, Mr. Bowers, the truth of the matter is  
22      you're so worried about it coming out that you're  
23      having intercourse with this girl, you admitted to  
24      CSC inadvertently here because you penetrated her  
25      with your fingers, didn't you?

1       **A**     No, sir.

2       **Q**     You admit that every bit of this text messages  
3       is -- are texts between you and a ten-year-old;  
4       right?

5       **A**     Yes, sir.

6       **Q**     So when this ten-year-old child text messaged  
7       you, Are you going to stay, please; if you don't  
8       stay here, then the next time I S-T-Y the night with  
9       y'all, then I'm not having sex with you, what's your  
10      response to that? What do you write when this  
11      ten-year-old little girl says the next time she  
12      comes over to your house, she's not having sex with  
13      you?

14      **A**     Why not? In the woods.

15      **Q**     You don't text anything back about what are you  
16      talking about, we've never had sex, what in the  
17      world are you speaking of? You just go right on and  
18      roll right on with the conversation when this ten  
19      year old starts talking to you about having sex with  
20      you.

21      **A**     Yes, sir.

22      **Q**     That's the kind of interaction that you have  
23      with a ten-year-old child?

24      **A**     I mean, I can't deny it. I did send it. It  
25      was stupid.

1       **Q**     But you're up here in front of this jury trying  
2       to deny that you put your finger inside of this  
3       girl, which is exactly what you wrote in this  
4       statement; is that right?

5       **A**     Yes, sir.

6       **Q**     So your explanation to all of this is the only  
7       thing that you did is just send these nasty, vile  
8       text messages to this ten-year-old; right?

9       **A**     Yes, sir.

10      **Q**     And you acknowledge that -- you heard  
11     everything that the officer said that you said in  
12     those phone conversations, those recorded phone  
13     conversations, you heard all that; right?

14      **A**     Yes, sir, I did.

15      **Q**     Okay. Not anything that he said in there that  
16     didn't take place in those conversations? I mean,  
17     we've got the tapes. Everything he said was  
18     accurate; right?

19      **A**     Yes, sir.

20      **Q**     Your last -- the last thing that he talked  
21     about, It ain't like I forced it, what are you  
22     talking about that you forced?

23      **A**     Like the conversation talking sexual or  
24     anything like that.

25      **Q**     You're trying to tell this jury that what

1       you're talking about, It ain't like I forced it, is  
2       that somehow that you involved force in making this  
3       girl text message you?

4       **A**     Yes, sir.

5       **Q**     Well, you're not even around each other when  
6       you're text messaging each other. I mean, you're  
7       off at distant lengths from each other. Y'all  
8       weren't around each other during all this time, were  
9       you?

10      **A**     Yeah. It was in Rusty's house the night.

11      **Q**     No. These text messages start at, Lord, that  
12      Saturday about 11 o'clock and go to three o'clock in  
13      the morning the next day. Y'all weren't in each  
14      other's presence all of that time, were you?

15      **A**     Yes, sir.

16      **Q**     So you're trying to tell this jury up here now  
17      that y'all were always in each other's presence  
18      during that entire time period from 11:20 a.m. on  
19      Saturday morning until three o'clock in the a.m.,  
20      you were always there right with her?

21      **A**     Well, not at 11:00. She was at a party or  
22      something, I guess, is what it was. When we went to  
23      the family or the friend's get-together, it was with  
24      each other and then after that.

25      **Q**     Mr. Bowers, that's not what you're talking

1       about at all. You're defending yourself saying it  
2       isn't like you forced the sexual conduct in between  
3       you; isn't that right?

4       **A**     No, sir.

5       **Q**     Because what you're trying to run from in this  
6       case is whether or not y'all had actual intercourse;  
7       isn't that true?

8       **A**     No, sir.

9       **Q**     It's in your text, alcohol is going to be your  
10      defense. You're actually talking about, with Lori,  
11      what your defense is going to be. You're going to  
12      say that alcohol was involved in this. That's what  
13      the conversation is, isn't it?

14      **A**     On the phone?

15      **Q**     Yeah, that's right. You're talking to Lori  
16      saying that you're going to defend this with  
17      alcohol, you're going to say you were drunk?

18      **A**     Well, I was drunk at the time.

19      **Q**     But you weren't still drunk the next day when  
20      you went in there and wrote this statement, this  
21      sworn statement, to these officers admitting that  
22      you digitally penetrated this child, were you?

23      **A**     I was still under the influence of alcohol  
24      then.

25      **Q**     You were still drunk all that time later when

1           they got you the very next day, you're still drunk?

2           **A**     I was still under the influence of alcohol,  
3           yes, sir.

4           **Q**     I mean, it happened, but it wasn't like I done  
5           it willingly. What's that about? What did you do  
6           willingly?

7           **A**     Texting.

8           **Q**     You didn't do the texting willingly.

9                    You know I wouldn't do no thing like that if  
10          I'm sober. That's about texting?

11          **A**     Yes, sir.

12          **Q**     That's what you're telling them up here under  
13          oath?

14          **A**     Yes, sir.

15          **Q**     Doing that stuff like in the pool straddling me  
16          and shit and then it went from there. Texting?

17          **A**     Yes, sir.

18          **Q**     You're telling your girlfriend that all this  
19          texting took place because she was straddling you in  
20          the pool?

21          **A**     I don't know exactly what I meant by that,  
22          but that's --

23          **Q**     Well, you said it. It's your words. Tell the  
24          jury what you meant by that. How does that have  
25          anything to do with texting?

1       **A**     I don't know what the straddling, that don't  
2       make no sense, but.

3       **Q**     Exactly. This doesn't make any sense at all,  
4       does it?

5       **A**     Not the straddling part, no, sir.

6       **Q**     But you said it, didn't you? Because you're  
7       explaining why you touched this child and put your  
8       finger inside of her; isn't that right?

9       **A**     I didn't do that.

10      **Q**     I mean, I hate I done it. You said that,  
11      didn't you?

12      **A**     Yes, sir.

13      **Q**     All of that happened while I was drunk. Right?

14      **A**     Yes, sir.

15      **Q**     And, again, you want to tell this jury that's  
16      texting from 11:20 in the morning till 3:00 a.m.  
17      You were solid drunk that whole time?

18      **A**     Yes, sir, that was about texting.

19      **Q**     All of that happened while I was drunk. Again,  
20      I'll ask you, so you're telling the jury that you  
21      were drunk from 11:20 in the morning on Saturday  
22      till 3:00 something in the evening on Sunday night,  
23      you were drunk that whole time?

24      **A**     No, not that whole time. It was at the  
25      whatever time the game started that night at that



1 party.

2 Q We didn't fuck or nothing. It's still bad.  
3 Hate it happened.

4 A Yeah.

5 Q And, again, you're telling them that's just  
6 text messages?

7 A Yes, sir.

8 Q Then you go right on, the next time you talk to  
9 Lori on the phone, you told her, I told the truth in  
10 the first place; right? That's what you told her?

11 A Yes, sir.

12 Q I got pursued into that. You're saying this  
13 child pursued you into all of this. You're saying  
14 that this is this ten-year-old little girl's fault?

15 A No, sir. I mean, like I said, I'm guilty of  
16 the texting myself. It was stupid.

17 Q Where did this ten-year-old fifth grader learn  
18 all of this dirty nasty talk?

19 A I have no idea.

20 Q You have no idea where this little girl learned  
21 all of this talk about talking about her pussy being  
22 wet and all of that?

23 A No, sir.

24 Q And y'all just all of a sudden struck up on  
25 this particular day and start texting like you were

1       texting with a 30-year-old prostitute and she just  
2       came up with that out of thin air, a ten-year-old?

3       **A**     Yes, sir. I hadn't -- I hadn't taught nobody  
4       nothing like that.

5       **Q**     Oh, you've never talked to anybody like that.  
6       You just cranked up out of --

7       **A**     No. I said I never taught anybody how to talk  
8       like that.

9       **Q**     Well, you were sure engaging in text messages  
10      about fucking and her pussy being wet and all of  
11      those dirty things with a ten-year-old fifth grader;  
12      right?

13      **A**     Yes, sir.

14      **Q**     But you're saying you have no idea where this  
15      little fifth grader would have come up with that  
16      because it sure didn't come from you. Is that what  
17      you're telling them up here under oath?

18      **A**     Yes, sir.

19      **Q**     It never once occurred to you to go back to her  
20      mom and dad and say, I don't know where in the world  
21      this little girl is getting all of this dirty talk?  
22      You just went to bed that night, that Sunday night,  
23      knowing you had all of this information about this  
24      vile talk their little ten-year-old was giving you  
25      and you don't say one word to her mom and daddy, do

1           you?

2           **A**     No, sir.

3           **Q**     You just keep it to yourself, your little  
4           secret?

5           **A**     (No response.)

6           **Q**     Is that right?

7           **A**     Yes, sir.

8           **Q**     Don't say one word?

9           **A**     Yes, sir.

10          **Q**     You're talking in here about you didn't erase  
11          any of your texts in there. You messed up with  
12          that, didn't you?

13          **A**     (No response.)

14          **Q**     You're saying this to your girlfriend, right?

15          **A**     Oh, yes, sir.

16          **Q**     I didn't erase any of my texts. You're telling  
17          your girlfriend about how you messed up in this  
18          case, couldn't cover your tracks, could you?

19          **A**     Oh, no, sir. I was just saying I didn't erase  
20          nothing.

21          **Q**     What kind of picture are you talking to her  
22          about deleting? You deleted the picture. It's your  
23          own words. What kind of picture did you delete?

24          **A**     She had sent a nude picture of herself.

25          **Q**     A ten-year-old little girl sent a nude picture

1 of herself?

2 **A** Yes, sir.

3 **Q** And you did nothing and said nothing to one  
4 soul in the world?

5 **A** Huh-huh, just deleted it as soon as it come in.

6 **Q** It ain't like I forced it. You don't think  
7 there's a problem with you engaging in this kind of  
8 communications and a ten-year-old little girl  
9 sending you naked pictures of herself?

10 **A** Oh, yes, sir. I mean, that's -- that was wrong  
11 to even have any kind of conversation like that,  
12 period.

13 **Q** Let's talk about Kes Holmes and Kenny Clark in  
14 there at the sheriff's department talking to you  
15 when you wrote this confession, which you admit you  
16 gave; right?

17 **A** Yes, sir.

18 **Q** Which one of them -- tell the ladies and  
19 gentlemen of the jury which one of them forced you  
20 to write these lies. Which one of them specifically  
21 forced you?

22 **A** Clark, Officer Clark.

23 **Q** And he forced you to write that **Minor**  
24 was touching me in between my legs and I did it  
25 back. He forced you to write that?

1       **A**     Yes, sir.

2       **Q**     You're as sure about that as everything else  
3       you've told this jury under oath?

4       **A**     Yes, sir.

5       **Q**     He forced you to write, She jumped in my lap  
6       and she wanted me to touch her breast and put my  
7       hand down her pants. He forced you to write that?

8       **A**     Yes, sir.

9       **Q**     Okay. And like an idiot, I done it. And then  
10      she wanted me to stick finger in her and I did that  
11      also. He made you write that?

12      **A**     Yes, sir.

13      **Q**     And then you go on and on and apologize and  
14      swear how it's never going to happen again; right?

15      **A**     Yes, sir.

16      **Q**     He make you do that too? Did he force you to  
17      do all that as well or was that your idea?

18      **A**     That was just me adding stuff at the end of it.

19      **Q**     Did they not tell you that you would see that  
20      statement again, that it would be used against you  
21      in court?

22      **A**     Well, I guess that's what that was for, the  
23      waiver of rights.

24      **Q**     Full well told you all of that; right?

25      **A**     Yes, sir.

1       **Q**     But you're telling this jury up here under oath  
2       that you're going to hang your entire future and  
3       your freedom on the hope that somehow she's going to  
4       go down to the hospital and get examined and it's  
5       going to set you free and exonerate you; is that  
6       right?

7       **A**     Yes, sir.

8       **Q**     23-year-old man, a high school graduate,  
9       working a job and that's a reasonable belief in your  
10      mind that you're going to confess to digitally  
11      penetrating this child, this ten-year-old fifth  
12      grader, and you're going to set your sights on being  
13      exonerated by the fact she's going to go down to the  
14      hospital and it's not going to show anything; right?

15      **A**     Yes, sir.

16      **Q**     That was your thought process on that day?

17      **A**     Yes, sir.

18      **Q**     Well, now, of course, after these officers  
19      forced you to do this, I'm sure the first thing that  
20      you did when you got out from under their presence  
21      is starting to tell the jailers and everybody else  
22      that they forced you to do this; right?

23      **A**     No, sir. I was just on the phone with Lori.

24      **Q**     And so I'm sure when you get on the phone there  
25      with Lori, you talked all about how they had forced

1       you to do all of this when you're talking to your  
2       girlfriend; isn't that right?

3       **A**     Yes, sir.

4       **Q**     You never said one word. You got 30-some odd  
5       phone conversations recorded there?

6       **A**     It was in the one Mr. Clark was -- or one that  
7       was wrote down where it said -- I can't remember  
8       exactly what you said.

9       **Q**     We've got the conversations, remember that when  
10      you're testifying. We've got them all recorded.

11      **A**     Yes, sir. I think it was the second  
12      conversation that was something where I said I told  
13      the truth to begin with where that meant nothing  
14      ever had happened except the messages. And then it  
15      says, I was provoked into doing what I done. That  
16      was talking about the conversation.

17      **Q**     You've got a chance to talk to your girlfriend  
18      on the telephone, but you don't say one word to her  
19      about how these officers forced you into giving a  
20      false confession of digitally penetrating a  
21      ten-year-old little girl. You don't mention one  
22      word to her about that in any of the conversations?

23      **A**     Not over the phone, no, sir.

24            **MR. SHEEK:** Your Honor, a matter for the Court,  
25      please.

1           **THE COURT:** All right. Ladies and gentlemen, I  
2 need to discuss something outside of your presence.  
3 Please step in the jury room. Don't discuss the  
4 case.

5           (The jury retires to the jury room.)

6           **THE COURT:** Yes, sir.

7           **MR. SHEEK:** I'm going to pose an objection at  
8 this point because I think we're getting real close  
9 to burden shifting. In fact, I think if it was  
10 explored fully, my conversations with him was to not  
11 have any specific conversations with anybody  
12 regarding what had happened, and I certainly don't  
13 want to get into that. So I think arguing, you  
14 know, did you deny it or did you tell the jailers or  
15 anything like that is actually a burden shifting  
16 type question, Your Honor. That's my objection.

17          **MR. MAYE:** Your Honor, I certainly was not  
18 asking him about anything that he told his attorney  
19 in this case. Obviously, his direct testimony in  
20 this case was that these statements in the phone  
21 conversation in regard to I'm telling the truth and  
22 all were an attempt on his part to explain away his  
23 false confession. I think it would certainly be  
24 fair game for me to ask him why he didn't  
25 specifically, at that same time, inform his



1 girlfriend about the details and the specifics of  
2 how he had falsely been forced into confessing.

3 And, Your Honor, I certainly -- that's not the  
4 result of any interrogation. He was advised that  
5 his calls were being recorded. He was not being  
6 interrogated by the police. I'm certainly glad that  
7 his counsel has advised him not to say anything  
8 about talking with his attorney or being advised to  
9 keep his mouth shut about his attorney, but at this  
10 point in time, he hadn't even retained the services  
11 of counsel.

12 And I think it would certainly be fair game  
13 that he's attempting to explain away his statements  
14 about how he told the truth in the first place, yet  
15 there was absolutely no outcry on his part about how  
16 he had been forced into giving a false confession  
17 during the midst of these conversations. And I'll  
18 leave it in the Court's discretion.

19 **THE COURT:** Anything else?

20 **MR. SHEEK:** No, sir.

21 **THE COURT:** I haven't heard anything that  
22 sounded to me like burden shifting. I don't know  
23 anything about 30-odd conversations, so I really  
24 don't know exactly at what point in time you came  
25 into the picture and -- the only conversations I've

1       been made aware of were the two that you intended to  
2       go into with his fiancée.

3               **MR. MAYE:** And I can limit it to that, that's  
4       absolutely no problem.

5               **THE COURT:** I'm not telling you you have to  
6       limit it to that. I just don't know what these  
7       other conversations are about. I think if he -- if  
8       he gave a statement, he can be asked about the  
9       statement. And so far I haven't heard anything that  
10      I think amounts to burden shifting.

11              **MR. SHEEK:** And my specific objection, I  
12      understand your ruling, and that's the reason I  
13      hadn't objected before this point, but if the  
14      question is posed, well, why didn't you go tell them  
15      that this was a false confession, that he's  
16      certainly going to be putting the defendant in the  
17      place of having to testify about our conversations  
18      because he had retained me long before he was out of  
19      jail.

20              **MR. MAYE:** Your Honor, I'm certainly not going  
21      to ask him that. I'm going to limit it to these  
22      phone conversation -- in fact, these two phone  
23      conversations with his girlfriend which he claims  
24      he's advising her of this situation. I can handle  
25      that.

1           **MR. SHEEK:** Yes, sir.

2           **THE COURT:** Bring in the jury.

3                   (The jury returns to the courtroom.)

4           **THE COURT:** All right. You may continue,  
5           Solicitor.

6           BY MR. MAYE:

7           **Q**     Mr. Bowers, the truth of the matter is once you  
8           get a chance to talk to your girlfriend, and let's  
9           just take these first two conversations, you never  
10          mentioned one word to her about the police falsely  
11          making you confess to digitally penetrating this  
12          child, do you?

13          **A**     No, sir, not over the phone.

14          **MR. MAYE:** I don't have any other questions for  
15          him.

16          **THE COURT:** Redirect.

17          **MR. SHEEK:** No redirect, Your Honor.

18          **THE COURT:** Thank you, sir. You may step down.  
19          Any other evidence from the defense?

20          **MR. SHEEK:** The defense would call Lori Haag to  
21          the stand.

22          **THE COURT:** Come around please, ma'am.

23                               LORI HAAG,  
24          having been duly sworn, testified as follows:

25          **THE COURT:** Have a seat there. Tell us your

1 full name, please.

2 **THE WITNESS:** Lori Haag.

3 DIRECT EXAMINATION

4 BY MR. SHEEK:

5 **Q** Spell your last name please, ma'am.

6 **A** H-a-a-g.

7 **Q** And, Lori, how do you know David Bowers?

8 **A** He's my fiancé.

9 **Q** And how long have y'all been in a relationship?

10 **A** Almost five years.

11 **Q** And you have one child together?

12 **A** Yes, sir.

13 **Q** That would be D's minor child

14 **A** Yes, sir.

15 **Q** And you have one on the way?

16 **A** Yes, sir, in March.

17 **Q** And are you and David still engaged in a  
18 relationship?

19 **A** Yes, sir, we are.

20 **Q** And y'all were actually living together in  
21 October of 2012?

22 **A** Yes, sir.

23 **Q** Ma'am, you've heard some testimony about some  
24 phone conversations when David was at the detention  
25 center?

1       **A**     Yes, sir.

2       **Q**     Did he call you from the detention center?

3       **A**     Yes, sir, he did.

4       **Q**     And in these conversations that we were just  
5     talking about, did he make the statements that the  
6     investigator said he made?

7       **A**     Yes, sir.

8       **Q**     And when he made those statements about he's  
9     sorry he did it or he hate it happened, what was  
10    your understanding of what he was referring to?

11           **MR. MAYE:** Your Honor, she can't possibly  
12    speculate as to what his state of mind was in regard  
13    to that. That's opinion testimony and I object.

14           **THE COURT:** Ladies and gentlemen, step in the  
15    jury room. Don't discuss the case.

16                   (The jury retires to the jury room.)

17           **THE COURT:** As I understand the question, and  
18    perhaps it can be phrased differently, you're asking  
19    her to say what he meant by what he said.

20           **MR. SHEEK:** No, sir. I'm asking what her  
21    understanding of the subject of the conversation  
22    was. She can only testify as to what she understood  
23    David to be talking about.

24           **THE COURT:** Ask her so I -- I'm having a hard  
25    time understanding how that is either relevant or is

1           permissible.

2           **MR. SHEEK:**   How about this question --

3           **THE COURT:**   There may be other ways you can  
4           phrase it to ask her questions, but...

5                               EXAMINATION

6           BY MR. SHEEK:

7           **Q**       Have you ever engaged in a conversation with  
8           David Bowers where he told you that he had sexually  
9           touched this child?

10          **A**       No, sir.

11          **Q**       If David Bowers had told you he had sexually  
12          touched this child, would you still be engaged in a  
13          relationship with him?

14          **A**       No, sir.

15          **Q**       You've heard the statements that were made in  
16          Defense Exhibit Number 2 about Mr. Bowers physically  
17          abusing D's minor child

18          **A**       Yes, sir.

19          **Q**       Has that ever occurred?

20          **A**       No, sir.

21          **Q**       Have you ever witnessed --

22          **THE COURT:**   Wait a minute.   Has what ever  
23          occurred?

24          **MR. SHEEK:**   The physical abuse of D's minor child that  
25          was stated in defense exhibit --

1                   **THE COURT:** I'm sorry. I missed D's minor child I  
2 apologize. Go ahead.

3 BY MR. SHEEK:

4           **Q**     Have you ever witnessed any type of  
5 mistreatment of your daughter by her father?

6           **A**     No, sir.

7                   **MR. SHEEK:** That would be how I'd proceed with  
8 this witness, Your Honor.

9                   **THE COURT:** Do you wish to be heard, Solicitor?

10                  **MR. MAYE:** Your Honor, again, my concern is as  
11 long as she's not going to give any state of mind as  
12 to what he meant by a conversation, what her  
13 speculation was about what their conversation was  
14 about, these are the naked words. For her to give  
15 her interpretation or speculation, I would object to  
16 them. As long as they're limited in that, the other  
17 items, I'm not going to object to it.

18                  **THE COURT:** Unless there's some unique  
19 situation that requires some sort of pattern or  
20 habit or conduct that doesn't appear to be in  
21 evidence here, one person can't testify about what  
22 another person had in his head. And I don't have a  
23 problem with the questions you asked after I asked  
24 you to rephrase them. You can ask those questions,  
25 but she can't say what he was thinking. And she

1 can't say, in general terms, what he meant by the  
2 words. The words speak for themselves generally.

3 And unless there's some sort of unique  
4 situation, you know, I'm just pulling things out of  
5 the air, if people had code words they used or there  
6 was something -- the history of a couple that if  
7 they said a certain thing, it really meant something  
8 different that nobody else would really understand,  
9 then you could maybe get into explaining what the  
10 words mean, but otherwise I don't see how you can  
11 ask her what he meant by what he said. But as far  
12 as you asking what you just asked her, I don't have  
13 a problem with that, all right.

14 **MR. SHEEK:** I'll stick with what I proffered  
15 then after you advised me.

16 **THE COURT:** Bring in the jury.

17 (The jury returns to the courtroom.)

18 **THE COURT:** All right. The objection is  
19 sustained. You may ask the question in a different  
20 way.

21 **MR. SHEEK:** Yes, sir.

22 BY MR. SHEEK:

23 **Q** Ma'am, has David Bowers ever told you that he  
24 touched [D's minor child] -- not [D's minor child] -- that he touched  
25 Ali in a sexual manner?



1           **A**     No, sir.

2           **Q**     And if he had, would you still be engaged in a  
3           relationship with him?

4           **A**     No, sir, I wouldn't.

5           **Q**     And you heard statements and testimony about  
6           Ali saying that David had mistreated, physically,  
7           D's minor child thrown her about?

8           **A**     Yes, sir.

9           **Q**     Hit her head against the wall, things of that  
10          nature?

11          **A**     Yes, sir.

12          **Q**     Have you ever witnessed any mistreatment of  
13          D's minor child by her father, David Bowers?

14          **A**     No, sir.

15          **Q**     And, again, if that were going on, would you  
16          still be in a relationship with Mr. Bowers?

17          **A**     No, sir, I wouldn't.

18               **MR. SHEEK:** Thank you, ma'am. That's all the  
19          questions I have.

20               **THE COURT:** Cross.

21                               CROSS-EXAMINATION

22           **BY MR. MAYE:**

23          **Q**     Ms. Haag, the second of the conversations, the  
24          recorded conversations the deputy made mention to,  
25          happened on October the 9th of 2012, just a day or

1 so after he got arrested; right?

2 **A** Yes, sir.

3 **Q** At that point in time, from your conversation  
4 with him, you were already aware of the texts and  
5 the naked pictures, weren't you?

6 **A** Yes, sir.

7 **Q** So you were aware that your boyfriend and the  
8 father of your child was engaging in this kind of  
9 text communication with a fifth grader, a  
10 ten-year-old?

11 **A** I was not aware until after he was arrested.

12 **Q** Well, you talked to him on the 8th. When in  
13 that conversation on the 8th, the day before, do you  
14 talk all about the texts?

15 **A** When he was talking about he was sorry for what  
16 he has done.

17 **Q** He didn't say one word about text messages in  
18 that first conversation, did he?

19 **A** No, sir. I was -- I assumed that he was  
20 talking about the text messages.

21 **Q** Because you were already aware of the  
22 photographs and the text messaging that was going on  
23 in between your boyfriend and this fifth grader;  
24 isn't that right?

25 **A** I was only aware of what he was being arrested

1           for.

2           **Q**     But, Ms. Haag, and I remind you you're under  
3           oath, you're talking away about deleting the texts  
4           and deleting the pictures with no explanation as to  
5           any of this in this conversation. And I remind you  
6           you're under oath. I ask you again, did you know  
7           about all those text messages and the photographs  
8           prior to his arrest?

9           **A**     I knew he was texting, but I did not know if  
10          that -- it was this violent text messages.

11          **Q**     How bad did you think it was?

12          **A**     I did not think it was that at all.

13          **Q**     But you knew that this fifth grader was sending  
14          naked pictures of herself to your boyfriend and you  
15          don't think to tell her stepmom, her dad, her  
16          biological --

17          **A**     No, I did not know it was a naked picture.

18          **Q**     What kind of picture did you think it was?

19          **A**     I was just told it was a picture that was sent.

20          **Q**     What, a picture of her playing basketball or  
21          something like that? What kind of picture would  
22          have needed to have been deleted?

23          **A**     I was asking if he had deleted the picture that  
24          she had sent because I was told there was a picture  
25          sent.

1           **Q**     What kind of picture?

2           **A**     They did not go into detail what kind of  
3           picture it was.

4           **Q**     So you don't ask a thing about that?

5           **A**     No, sir.

6           **Q**     In fact, Ms. Haag, he's apologizing to you not  
7           for text messages, but for messing with this child;  
8           isn't that right?

9           **A**     No, sir. He was apologizing for the text  
10          messages.

11          **Q**     Even though y'all don't have any conversation  
12          at all about that in either one of these  
13          conversations, do you?

14          **A**     No, sir. I knew what he was talking about when  
15          he was apologizing.

16                 **MR. MAYE:** Nothing else. Thank you.

17                 **THE COURT:** Redirect.

18                 **MR. SHEEK:** No redirect, Your Honor.

19                 **THE COURT:** Thank you, ma'am. You may step  
20          down.

21                 Call your next witness.

22                 **MR. SHEEK:** The defense rests, Your Honor.

23                 **THE COURT:** Thank you.

24                 Does the State wish to offer any reply  
25          testimony?

1           **MR. MAYE:** Excuse me, Your Honor? I'm sorry.

2           **THE COURT:** Reply?

3           **MR. MAYE:** Nothing. Thank you.

4           **THE COURT:** Ladies and gentlemen, you now have  
5 all of the evidence you're going to have to decide  
6 these cases. We are at another point where I have  
7 to confer with the attorneys about legal issues.  
8 Now, this break normally takes 30 minutes or so  
9 because, at this point, it's usually when I give the  
10 attorneys a printout of what I intend to talk to you  
11 about, what I intend to tell you the law is. I  
12 can't -- I've been working on it all along, but I  
13 can't do it completely until I've heard the case.

14           As I mentioned to you briefly, the Chief  
15 Justice, I think it was the former Chief Justice,  
16 but the order is still in place, has advised us that  
17 we're not to argue and charge, which are the next  
18 two stages of trial, after 4:00 p.m. except in  
19 unusual circumstances, basically when it's  
20 absolutely necessary. We're going to be running  
21 pretty close to 4:00.

22           And while I -- I'm going to talk to the  
23 attorneys. I'm going to see if we can continue  
24 today. It may be best to bring you back in the  
25 morning for the arguments and charge and have us

1 stay here and go through all of this stuff because  
2 sometimes what the lawyers think I ought to be  
3 telling you is a little different than what I think  
4 I should be telling you about the law and they don't  
5 know what I intend to tell you until they see it  
6 written out. Actually, I haven't finished it yet.  
7 I'm still putting some finishing touches on it.

8 So that's a long way of telling you what I want  
9 you to do is step in the jury room. Let me talk to  
10 the lawyers. Let me do what I can do today. And if  
11 it looks like we can continue on, we will. If not,  
12 we'll start at 9:30 or 10:00 in the morning and  
13 we'll go right into you'll hear closing arguments  
14 and then I'll give you the law and then the case  
15 will be placed into your hands to decide. So that's  
16 where we are. Follow the bailiff, please.

17 (The jury retires to the jury room.)

18 **THE COURT:** All right. Are there any motions?

19 **MR. SHEEK:** Your Honor, we would renew the  
20 motions that we have previously made. There's no  
21 new grounds.

22 **THE COURT:** All right. The motion's  
23 respectfully denied.

24 I did not have a charge on criminal  
25 solicitation of a minor. We did not have one in the

1 materials that had been given to us, so I've been  
2 trying to fashion one. I've got a draft of a charge  
3 that right now is 11 pages going on to the 12th  
4 page. I haven't had much of a chance to proofread  
5 it.

6 And I'll ask what you all want to do. We will  
7 not perhaps be at four o'clock when we start the  
8 arguments and charge, but we'll be real close to it.  
9 Do you have a preference?

10 **MR. MAYE:** Your Honor, I'm ready to do whatever  
11 you dictate doing. We're ready at any time.

12 **MR. SHEEK:** Your Honor, obviously, I would  
13 enjoy having the evening to pull myself together and  
14 prepare a closing, but, Judge, if you want to go  
15 forward, then I don't want to put the Court at...

16 **THE COURT:** To be honest with you, my  
17 preference would be not to be rushed in putting this  
18 together. Like I said, fortunately, this is not the  
19 kind of thing we try every day, so it's not like a  
20 lot of these cases where I just go pick up another  
21 charge and just start changing names around and  
22 after I hear the facts, massage the facts a little  
23 bit and put an explanation in there. I never have  
24 given a charge on criminal solicitation of a minor  
25 apparently. I've had cases of it, but I've never

1       had it go to a jury before. And it's got so many  
2       ors and options.

3               **MR. SHEEK:** I'm looking at the statute.

4               **THE COURT:** I'm trying to put it in a form that  
5       when I read it, it sounds like people talking and  
6       not like a bunch of legalese written on a piece of  
7       paper. I can sit up here and read the statute,  
8       which I will do, but then I usually try to read the  
9       applicable portions of the statute and then kind of  
10      recount them in more everyday terms.

11              I would rather for you to stay here -- I'll  
12      make the call. I'd rather for y'all to stay here,  
13      let me work this out, let me print it, let's go over  
14      the law and then have the jury come back at 9:30 in  
15      the morning and we'll start. Will that work?

16              **MR. SHEEK:** Yes, sir.

17              **MR. MAYE:** I can do anything you like, Your  
18      Honor. We're happy to do whatever the Court likes.

19              **THE COURT:** Is that going to create a hardship  
20      for anybody else that needs to be here?

21              **MR. SHEEK:** No, sir, not for the defense.

22              **THE COURT:** All right. Bring in the jury.

23                      (The jury returns to the courtroom.)

24              **THE COURT:** All right. Folks, I had to make a  
25      decision. And I'm sure it's not going to please



1       everybody, I can't please everybody, but I want to  
2       do my best to ensure that I give everybody a fair  
3       trial. And what I think I need to do is not feel  
4       rushed in putting this charge together. I can sit  
5       here and read to you statutes, but statutes are  
6       written a lot of times in legalese type language.  
7       And so what I usually do is I'll read sections of  
8       the statute, but then I'll kind of phrase it in more  
9       everyday terms that are easier to follow when you're  
10      speaking with someone. So that's what I'm trying to  
11      do. I've got 12 pages up here roughed out.

12             What we're going to do is we're going to stay  
13      here. I'm going to get this in a form that I'm  
14      comfortable with. I'm going to give it to the  
15      lawyers. Then they're going to point out to me  
16      where they think it needs some more refining or  
17      additions. And then whenever we get all that worked  
18      out, I'll do -- if we are not through for the day,  
19      I'll do guilty pleas or something that they've got  
20      on other cases. And I'll have you come back in the  
21      morning at 9:30. And at 9:30 in the morning, you'll  
22      hear the closing arguments, I'll tell you the law  
23      and then we'll give the case to you to decide. So  
24      that's the plan.

25             Remember all of those admonitions that I gave

1 to you. I need you in the jury room, please, at  
2 9:30 in the morning. Thank you very much.

3 (The jury was excused for the day.)

4 **THE COURT:** All right. Folks, I'm going to  
5 take the computer back in the office and work in  
6 there. I really only need the lawyers to stay and  
7 the defendant to stay. Anybody else who wants to  
8 stay is welcome to stay. Now, if you're not on this  
9 case and you're up here on another case, you don't  
10 leave unless the Solicitor's released you. But I  
11 can usually work better when I'm back there and work  
12 quicker. So anybody who wants to stay is welcome to  
13 stay. The lawyers and the defendant must stay until  
14 I give this to you.

15 All right. We're at ease.

16 (Brief Recess.)

17 **THE COURT:** I distributed the draft -- is the  
18 defendant still here?

19 **MR. SHEEK:** Yes, sir, he's right here.

20 **THE COURT:** I distributed a draft of the  
21 proposed charge. I had indicated to the attorneys  
22 that I had left in expert witness, that should not  
23 have been left in. And there are some sections  
24 where I had put language in brackets. I usually put  
25 that there to indicate I'm not going to be reading

1       that, but I want to leave it in there in case I pull  
2       it up later on another case, so that's why the  
3       brackets are in there. If you have any input about  
4       the charge, I'll be happy to hear it, from the  
5       State?

6               **MR. MAYE:** Nothing from the State, Your Honor.  
7       Thank you. The State is satisfied.

8               **THE COURT:** Defense?

9               **MR. SHEEK:** The defense is satisfied, Your  
10      Honor.

11              **THE COURT:** All right. Mr. Bowers, you need to  
12      be here in the morning at 9:30. Make sure that  
13      you're here, all right.

14              **DEFENDANT:** Yes, sir.

15              **THE COURT:** Do you want him here sooner than  
16      9:30, Mr. Sheek?

17              **MR. SHEEK:** 9:30.

18              **MR. MAYE:** Thank you, Your Honor.

19              **THE COURT:** All right.

20                   (The proceedings were concluded for February  
21      5, 2014.)

22                   (The following proceedings were held on  
23      February 6, 2014.)

24              **THE COURT:** I think there was one matter I  
25      needed to cover with the attorneys. I don't believe

1 I put an involuntary intoxication charge in that  
2 draft. So I intend to add it. Do y'all want to be  
3 heard?

4 **MR. MAYE:** I would request that, Your Honor, to  
5 the extent that there's at least something in front  
6 of the jury that his statements to the -- his  
7 girlfriend that are on tape and now proffered to the  
8 jury is that he was intoxicated and wanted to use  
9 intoxication as a defense.

10 **THE COURT:** Are all the jurors here?

11 **BAILIFF:** Missing one.

12 **THE COURT:** Is it the same one that was late  
13 yesterday?

14 **BAILIFF:** No, sir.

15 **THE COURT:** Let me know when we've got all of  
16 them, please.

17 (Pause.)

18 **BAILIFF:** They're all here.

19 **THE COURT:** State ready for the jury?

20 **MR. MAYE:** The State's ready, Your Honor.

21 **THE COURT:** Defense?

22 **MR. SHEEK:** The defense is ready, Your Honor.

23 **MR. MAYE:** I'm informed that I'm not going to  
24 be required to open on the law. Thank you.

25 **THE COURT:** Bring them in please.

1                   (The jury enters the courtroom at 9:35 a.m.)

2                   **THE COURT:** Ladies and gentlemen, as I told you  
3 yesterday, there are two stages that remain in this  
4 trial, closing arguments and the charge. At the  
5 outset of the trial, when I was explaining to you  
6 about opening statements, I told you that opening  
7 statements were limited. They could only be  
8 introductions, outlines, overviews and that they  
9 were not allowed to extend into argument.

10                  Well, we have reached the stage of the trial  
11 where the attorneys are permitted to engage in what  
12 we refer to as argument and that is that they're  
13 permitted to use the art of advocacy to attempt to  
14 get you to see things as they would like you to see  
15 them on behalf of their respective positions.  
16 Again, it doesn't change the burden of proof. The  
17 burden of proof is entirely on the State.

18                  Now, the way this works is that the defense  
19 attorney will make his closing argument and then the  
20 State's attorney will make the last closing  
21 argument. I always take a break between when they  
22 finish and when I start, usually it's a short break.  
23 Sometimes I take a break between the two closing  
24 arguments. I just play it by ear as to how long  
25 they go. So I invite your close attention.

1           Mr. Sheek, you're recognized.

2           **MR. SHEEK:** Thank you, Your Honor. May it  
3 please the Court.

4           **THE COURT:** Yes, sir.

5                           CLOSING ARGUMENT

6           **MR. SHEEK:** Madame Forelady and ladies and  
7 gentlemen of the jury, you've heard all of the  
8 testimony and evidence that you're going to hear in  
9 this case. And you're going to be asked, in a few  
10 minutes after the Solicitor talks to you, to do what  
11 I talked about Tuesday and that's go back in that  
12 room you've been in and reach a verdict or to speak  
13 the truth.

14           And let's talk about what you're going to have  
15 to look at, because the State calls a case like this  
16 to trial. You heard it on Tuesday as the Solicitor  
17 stood up and called the case. And they come to you,  
18 a jury, bringing the charge.

19           And I told you at the beginning of this case,  
20 that this is the first time that David's had  
21 somebody to sit down and listen to it unbiased. I  
22 also said, keep an open mind till you hear all the  
23 evidence because the State's come into this case  
24 with a statement of, look at all the evidence that  
25 we've got. They will tell you something like, it's

1       overwhelming and that you're going to ask to be  
2       convicting -- you're going to be asked to convict  
3       David Bowers of the crime, criminal sexual conduct  
4       with a minor and criminal solicitation of a minor.  
5       Well, let's talk about the evidence they brought  
6       because I told you that a lot of times the proof is  
7       in the details.

8               When we talk about the burden of proof, well,  
9       why is that important? Well, as you heard, as the  
10      State came in and testified, they've got the  
11      resources, they've got the sheriff's department,  
12      they've got their investigators, they've got SLED,  
13      they've got the labs, they've got the means to  
14      gather, preserve and present the evidence to you and  
15      that's their job because they're going to ask you to  
16      convict him and to do so beyond a reasonable doubt.

17             And listen to how the Judge defines reasonable  
18      doubt, because I tell you, in cases like this, a lot  
19      of times people think, we've got to determine who's  
20      telling us the truth. And the Judge tells you, you  
21      have the right and should judge the credibility in  
22      people that talk to you.

23             Well, how do we really know who's telling us  
24      the truth? And I told you, I've got two boys. I've  
25      raised two kids. They're both now teenagers. And

1       deciding who's telling me the truth is always  
2       difficult. And a lot of times the truth somewhere  
3       falls in the middle of what I'm hearing from each  
4       particular side.

5               There really should be three types of verdicts  
6       in cases like this. There should be guilty and not  
7       guilty, that we normally hear about, and there  
8       should be not proven. Because what happens in so  
9       many of these cases is the State comes in and they  
10      simply can't prove the charges they've decided to  
11      bring against the defendant.

12             Now, let's talk about the evidence in this  
13      case. First and foremost, David Bowers got on the  
14      stand and told you from the get-go, he sent those  
15      text messages. And they are bad and they are  
16      offensive and they were inappropriate and never  
17      should have been sent. I think all of us can agree  
18      on that, that those type of texts never should have  
19      happened with a ten-year-old child.

20             But Ali got on the stand and told you herself  
21      that they were texting about things that weren't  
22      real and true, things that weren't really happening  
23      and didn't really happen. I mean, she sent the one  
24      text about having sex, about it feeling so good.  
25      And I said, Well, that really wasn't happening, was



1       it? And she said, Well, no. I said, So you were  
2       texting about things that weren't really true?  
3       That's right.

4               Now, I don't know when this sexting got going  
5       between kids, I don't, but it happens. And it's  
6       something that I know I'm always concerned about  
7       with my own children and so I do check their phones  
8       for these type of things. But for some reason, they  
9       enjoy texting about things and acting like something  
10      happened that really didn't.

11             And as I thought about this case, I thought  
12      about the popularity years ago of these sex phone  
13      lines where people would call in and talk to someone  
14      just to talk dirty to them and pay ungodly amounts  
15      of money to do that. I never understood it, but  
16      that happens. And the question's not does it  
17      happen, it does. And so why it happens, I don't  
18      really know.

19             But she told you in her own words from the  
20      stand that they were texting about things that  
21      weren't real and true. The texts were just that,  
22      they were texts.

23             The State says, well, in addition to the texts  
24      though, we also have a confession. A confession.  
25      Well, let's talk about that because I'm going to

1 talk to you for the next few minutes and then the  
2 Solicitor's going to get up and get to respond to  
3 everything I say. I don't get to get up and respond  
4 to what he says, that's not the way it works. It  
5 works that way because someone has to have the last  
6 argument and they've got the burden of proof. David  
7 Bowers doesn't have to prove anything. He doesn't  
8 have to get on this stand, doesn't have to do  
9 anything. Since they have the burden, they're going  
10 to get to go last. But let's look at this  
11 confession.

12 Now, you will know as a jury, the Judge is  
13 going to tell you you can use your common sense,  
14 that's the one thing I definitely want you to use.  
15 I heard one of these judges on TV once make the  
16 comment, If it doesn't make sense, then it's not  
17 true. I think that's probably extreme, but if it  
18 doesn't make sense, it certainly needs a second look  
19 and a very close look. I can agree with that.

20 If the State is investigating this kind of case  
21 and they're going to interview the defendant and  
22 they know -- I mean, we've been doing jury trials  
23 just like this for 250 years, the burden has always  
24 been on the State. We've always had a jury trial  
25 system in this nation, so this isn't something new.

1       They know time in and time out, we're going to sit  
2       in front of a jury and we're going to present  
3       evidence. When they are gathering what is probably  
4       the most important piece of evidence to give to you,  
5       the jury, the statement of a defendant, what do they  
6       do?

7               Well, we talk about the abilities they have,  
8       the video tape or audio tape, they have them. You  
9       heard from the witness on the stand that they're  
10      even required to have videos in their car and the  
11      that the videos must be running if they want to  
12      charge somebody with the simple crime of driving  
13      under the influence. That video has to come on at  
14      the time they turn on their blue lights and it must  
15      run through the entire incident and record them  
16      being given their rights, if applicable.

17             Now, our Legislature made that law, but didn't  
18      take the next step for whatever reason and say, now,  
19      hey, if you're interviewing a defendant about  
20      another felony, then record it. Well, why would we  
21      record it? Why is that important? Well, as you  
22      heard me talking to the State's witnesses, I said,  
23      hey, talk to me about State's Exhibit Number 1.  
24      What is that? And they said, well, that's the  
25      advice of rights. Now, you're going to have all

1       these in the jury room so you're going to get to  
2       look at them. The advice of rights.

3               Well, why do you get that in writing? So that  
4       we can show that he was given his rights. Okay, so  
5       you're doing this so that you can show a jury that  
6       he was properly given his rights -- because it's not  
7       required that it be in writing, it's just required  
8       that they've been told. Right, we're doing it to  
9       show a jury.

10              Okay. And why would you get a statement in  
11       writing? Why do we have Defense Exhibit Number 2?  
12       Why not just come in and tell the jury what he said?  
13       Well, because we want to be able to show them in  
14       writing.

15              Well, folks, if we're doing that, why don't we  
16       just record it? Then all this argument and all this  
17       discussion about what was or wasn't said by the  
18       officers, what threats were or were not made are  
19       gone. We simply put it up here. We play it for  
20       y'all. There it is.

21              Because let's face it, folks, when you are  
22       asked to sit as a jury, it no longer is about  
23       winning or losing, it's about the truth and it's  
24       about justice. And wouldn't you think that you, the  
25       jury, would simply be given everything there was,

1       just give you everything? You're smart people.  
2       You've got common sense. Look through it, decide  
3       what's important and what's not important and reach  
4       your verdict based on all the evidence.

5               We sit a witness up here in this stand and we  
6       tell them, do you swear to tell the truth, the whole  
7       truth and nothing but the truth. The whole truth,  
8       that's what you get, that's what you, as a jury,  
9       deserve. And they've got the burden to do that. So  
10      why in the world would they just simply not record  
11      it? It's not hard. You've got the capabilities.  
12      You've got the equipment.

13              Well, I thought, well, okay, sometimes they  
14      simply don't know somebody's coming in. They're  
15      caught by surprise. Well, that wasn't the case,  
16      because I asked him, well, did you prepare an arrest  
17      warrant before you went to get him? Yeah. And you  
18      prepared a search warrant and went, got those  
19      signed? That's right. And then you went and picked  
20      him up. So they were going to get him to bring him  
21      up there. They weren't surprised by him being  
22      there. They planned it.

23              Well, why did you have other officers in the  
24      room then? So we have witnesses to what happened.  
25      Witnesses to what happened? Tape it. You don't

1           need the witnesses.

2           Now, one thing I learned very early on, my  
3           daddy taught me, is people don't do things for no  
4           reason. There's a reason people do things. It's  
5           the reason I disciplined my children as they were  
6           growing up, because when they disobeyed, they were  
7           getting some benefit for that disobedience. Whether  
8           it was doing something they wanted to do or  
9           whatever, they were getting a benefit to them. So  
10          if I made the punishment too severe for the benefit  
11          they were getting, they wouldn't do it again.  
12          That's why punishment works. That's why we  
13          discipline.

14          This is not, folks, the first time the State  
15          has come into a trial and had someone say, hey, did  
16          you not record this statement? This is not the  
17          first time a defendant has got up here and said,  
18          now, wait a second, they threatened me with this and  
19          promised me this to get me to give this statement.

20          If you watch the TV shows, you see about people  
21          who have given statements and then DNA says it  
22          wasn't them. And you think, well, why in the world  
23          would somebody give a statement if they didn't do  
24          it? That doesn't make a lick of sense.

25          And the Solicitor gets up here with Mr. Bowers

1       on the stand and he begins to get loud and  
2       incredulous and go, so you wrote this statement that  
3       you did it and you want to tell this jury you  
4       didn't. All of that is nullified by simply taping  
5       it, a \$10 tape recorder that you can get at CVS, a  
6       video recorder they've got at the sheriff's  
7       department. You've seen it on the TV shows where  
8       the people are sitting in the interrogation rooms  
9       and they're playing the statement the defendant  
10      said.

11             This isn't something new, folks. This is 2014.  
12      And we've been doing that for a long time, but it  
13      wasn't done and you've got to ask yourselves why.  
14      If you knew he was coming and you had the ability  
15      and you knew you were going to come before a jury  
16      eventually, why didn't you simply tape it? Unless  
17      we simply don't want you to see the manner in which  
18      this was obtained.

19             Because you saw David testify up here. He was  
20      23 years old, not been in trouble before. He sits  
21      up here, and even under the cross-examination of the  
22      Solicitor, he begins to get nervous. He wants to be  
23      agreeable. He wants to get out of the conflict. He  
24      wants to avoid the trouble.

25             And when you've got three officers in the room

1       and they're telling you you're lying -- they never  
2       denied they told him he was lying when he said he  
3       didn't touch them -- when they're saying, you're  
4       lying and let me tell you something, boy, you lie to  
5       me, you're going to go to jail for life, but you  
6       tell me the truth and it's going to help you, tell  
7       me the truth and it's going to go easier on you,  
8       well, when you say I didn't touch them and you've  
9       said I'm lying, then what is the truth? I mean,  
10      you're not stupid. They've already told him what  
11      he's accused of and they've told him how they see  
12      the truth. So David writes what he thinks they want  
13      to hear.

14             That's another thing, does it happen? That's  
15      not a question we have to answer. It happens. The  
16      question is why? Why does it happen? Well, it only  
17      happens when somebody has made certain threats or  
18      certain promises to get them to give a statement.  
19      And if you're going to take the time to do it in  
20      writing and you're going to take the time to have  
21      the other officer sitting there, simply take that  
22      time to record it. It's not hard.

23             And that's why I say, when things don't make  
24      sense, you've got to look at it. People don't do  
25      things for no reason. There's a reason that wasn't



1 recorded. There's a reason you didn't see it or  
2 hear it yourselves. And you've got to ask  
3 yourselves why.

4 Because it's not that they don't think to  
5 record things. We talked about the statements this  
6 child gave at the Dickerson Center. What do I say?  
7 I said to the officer on the stand, What's their  
8 protocol require? It requires it be video taped.  
9 And is that so that you can show the child wasn't  
10 led to say a certain thing or influenced to say a  
11 certain thing? That's right. Wow. So we're going  
12 to video tape everything the child says to show that  
13 they weren't wrongfully influenced, but we're not  
14 going to video tape or audio tape a statement of a  
15 defendant to show he wasn't improperly influenced?  
16 So, see, even the reasoning they do it is well known  
17 to them.

18 Folks, there's a reason it wasn't done. It's  
19 not hard. There's a reason it wasn't done, because  
20 don't think for a second that they wouldn't rather  
21 sit here in a trial if the guy really confessed the  
22 way they said. They would much rather just simply  
23 play you a tape of it and be done with it and not  
24 let me have this argument. There's a reason they're  
25 willing to face this argument, because they don't

1 want you to see how that statement was obtained.

2 Then you look at the statement of the  
3 defendant. You look at the statement of **Minor**  
4 The Solicitor told you from the get-go, first time  
5 she went to give a statement about what happened,  
6 she said nothing happened. Well, I don't have that  
7 one. But you've got two summaries. You didn't get  
8 to see the video tapes of either one of these. The  
9 State didn't offer them, but you've got two  
10 summaries of what she told the Dickerson Center.  
11 And when you go back there to look at them, the  
12 first thing I want you to look at is these evidence  
13 tags on top. What do they say? Defendant's Exhibit  
14 1, Defendant's Exhibit 2.

15 Now, folks, why is the defense having to even  
16 get you anything about these statements that she  
17 made? As I said, this is about truth. This is  
18 about a man charged with a very serious crime that  
19 you're going to be asked to convict beyond a  
20 reasonable doubt. And they've brought the charges,  
21 and I have to try to get this in evidence?

22 They've got video taped copies of what she  
23 said. Did you see it? Just watch it. There it is.  
24 Let the jury have all the evidence and let them have  
25 the respect enough to say, you've got enough sense

1 to know what matters and what doesn't and make your  
2 verdict based on it. The defense shouldn't even  
3 have to bring this up to you. Well, there's a  
4 reason that we are. You're going to have these in  
5 evidence. Look at them. Look at them.

6 Now, I don't have a statement where she went to  
7 the Dickerson Center and said nothing happened,  
8 don't have that one. I've got the one of October  
9 17th where she went down and told a similar story to  
10 what she told in court today. There are some things  
11 in here that are interesting, and you're going to be  
12 able to look at them when you're back there and I  
13 encourage you to do that.

14 But one thing she says in there, it says,  
15 **Minor** stated her stepmother asked her what happened  
16 between her and David because she felt something was  
17 wrong. She said she had just woken up when her  
18 stepmother asked her and she didn't want to talk  
19 about it. **Minor** said she denied it. She reported  
20 that she, meaning her stepmother -- I'm sorry --  
21 Alison thought she was going to get in trouble for  
22 something that she didn't do. Didn't happen.

23 She reported her stepmother told her, quote,  
24 you will never get away with anything as long as I'm  
25 here. She reported her stepmother told her, quote,

1       now, **D's minor child** going to grow up without having a  
2       dad because of what you and him were doing. She  
3       said, her mother thought I wasn't telling the truth  
4       because I was denying everything when I was talking  
5       to Jennifer.

6               The child said it didn't happen is what she  
7       told her stepmother and she told her mother.

8               Now, she goes on to say, they told her she was  
9       lying and she got in trouble. She said she was  
10      disciplined for it. So the child says it didn't  
11      happen and she's told she's a liar, just like David  
12      was, and she's disciplined.

13              And then -- now, this statement was given ten  
14      days later after being told she was a liar by those  
15      that she was talking to and after being disciplined,  
16      then she goes in and tells this story. Now, this is  
17      after she's denied it the first time, as the State's  
18      acknowledged, this is after she's told her  
19      stepmother and father nothing happened, she comes in  
20      to give a statement after they've told her she's a  
21      liar.

22              Then -- now, after she's told this statement,  
23      that's not good enough, we're going to bring her  
24      back on November the 28th. Now, she goes into this  
25      whole long story. I want you to read it. I'm not

1       going to sit here and read it all for you. You're  
2       going to have it in evidence. Suffice it to say,  
3       it's completely different from the story she told on  
4       the 17th and the story she told on the stand.  
5       You'll see in here where she told these people that  
6       David had her phone and was the one sending those  
7       texts from her phone to his and back from his to  
8       her. Now she said on the stand she didn't say that.

9               I mean, you have to understand, a child of that  
10       age has been put in a horrible situation. The texts  
11       were incredibly wrong. It's not her fault. It's  
12       not. But she was caught in a situation that was  
13       bad. And when she told them nothing happened, she  
14       was told she was a liar and she got in trouble and  
15       she got disciplined, so she told what they were  
16       saying really happened.

17              But she can't remember everything she told  
18       because she was simply trying to get out of trouble.  
19       And so she sat on the stand and said something  
20       different from what she said here and different from  
21       what she said here. And you won't be able to get  
22       around that. And the State can get up here and try  
23       to spin it all different ways, but you're not going  
24       to get around that. You're simply not.

25              So they've got their statement, they've got

1       their text messages and they've got their victim.  
2       Then there was something really interesting.  They  
3       came in here and said, well, as part of my job, I go  
4       every morning and I listen to phone calls for the  
5       jail.  And that really caught my attention because  
6       the whole time I've been bothered by the fact they  
7       won't record the statement of a defendant and I know  
8       why and I'm hoping you understand why.  And I know  
9       they've always got their reasons why.  And the  
10      Solicitor will get up here in a minute and explain  
11      why:  Well, he gave a written statement, we don't  
12      need to record it.

13             Really.  You take the time to record every  
14      inmate's phone calls and you take the time to go up  
15      and listen to every inmate's phone calls to find,  
16      picking pieces and phrases and things to come tell a  
17      jury about, but you don't think to record a  
18      statement of a defendant that you're interrogating?  
19      Really?  Because they did, they record every one of  
20      those phone calls.  They went through every one of  
21      them, hours of phone calls.  And he comes up and he  
22      picks out these phrases that he tells you about:  He  
23      was sorry he did it; he shouldn't have done it.

24             But what does David actually say in there?  
25      That's what he says.  And he says, I told the police

1       at first; from the first, I told them what really  
2       happened. I told them the truth, I think his  
3       statement was, from the first. And he did and they  
4       told him he was a liar.

5               So they pick out these phrases, and it's always  
6       it and it and I wished it hadn't happened and I  
7       shouldn't have done it, it wouldn't have happened if  
8       I'd been drunk. The bottom line is they're still  
9       talking about the texting. Lori got up here and  
10      talked to you about it. He's talking about those  
11      inappropriate texts. He was sorry it happened. It  
12      shouldn't have happened. It was wrong.

13             And if you've got the time to record those  
14      phone calls and you think far enough ahead to record  
15      those phone calls to try to tap, you know, try to  
16      trap them saying something and in all those hours of  
17      phone calls, that was all you could get out of it,  
18      but you didn't take the time to record his  
19      statement, to me, that's simply amazing.

20             You come into a situation like this, and it's  
21      not like TV, nobody jumps up back there in the  
22      courtroom in an hour long show and admits to what  
23      they did and we all walk away happy. You've got to  
24      actually reach a decision.

25             And as I thought about the officer up here

1 reading the statements that he heard the defendant  
2 say on these tapes, I thought back to a movie I saw  
3 years ago, My Cousin Vinny. I don't know if any of  
4 y'all ever saw that. These two kids are accused of  
5 robbing a store and killing a guy that they didn't  
6 do. And they're stopped by the police. And the old  
7 police chief is interrogating this one kid and he  
8 says, you robbed that store. The kid goes, I robbed  
9 the store? And the guy says, and you killed that  
10 clerk. The kid says, I killed the clerk?

11 So they go to trial some time later. The  
12 officer is sitting on the stand. And the prosecutor  
13 says, did you hear this -- have a conversation with  
14 him? I certainly did. And what did he say to you?  
15 The officer looks at his notes and goes, he said, I  
16 robbed the store, and he said, I killed the clerk.  
17 Well, those are the words he said, that's not what  
18 he was saying.

19 Just bring us the recording of what happened.  
20 You have the right to see that, you really do.

21 David Bowers, at 23 years old, should have  
22 known better than to send those text messages. I  
23 told him that from the get-go. That was stupid, it  
24 was wrong and it was inexcusable. But that's all  
25 the State's proven happened.



1           The reason I said David doesn't have to prove  
2           anything is I don't get to participate in those  
3           interrogations. I don't get to set the standards  
4           that they use. I can call SLED 15 times and send  
5           them eight letters that say I want this done and  
6           this done and this done and SLED's going to ignore  
7           me. They don't work for me. But they do work for  
8           them.

9           So in addition to these other things the  
10          defense has brought out, what else does the State  
11          have that they didn't tell you about up front that I  
12          had to bring out? Did you send the child for a  
13          medical examination as part of this process? Yes,  
14          we did. Okay, so what did the State's witnesses say  
15          to you about that medical examination; do y'all  
16          remember? Nothing. Because they didn't bring  
17          anybody in here to talk about it. Not a thing.  
18          Wonder why.

19          Okay. Well, we talked about taking a rape kit  
20          and how part of the rape kit is not only a medical  
21          examination, but they take the clothes and they  
22          preserve them and they send them off for testing.  
23          Good. What did the SLED person say about the rape  
24          kit? Anybody remember? Nothing, because it wasn't  
25          done or there was no witness called to it. I don't

1 know whether or not it was done.

2 And I thought, well, you know, let's talk about  
3 this. DNA is not a new science. Your DNA is  
4 encoded in every single cell of your body. Skin  
5 cells, which we give off all the time, have your DNA  
6 in it, your complete DNA code. And they do what's  
7 called touch DNA testing. You touch or rub or  
8 scrape up against an object, they can test it for  
9 your DNA because we're always giving off skin cells.  
10 When a tracking dog tracks you, that's actually what  
11 he's tracking is the scent from the decay of skin  
12 cells your body gives off, that's how often and how  
13 much you give them off.

14 So we've got this man that has supposedly  
15 shoved his hands under the girl's pants inside her  
16 panties and done this for some amount of time.  
17 Fine, give us the test on the DNA. Even if you sent  
18 it down and they said we can't find something. How  
19 did you know that? Bring the person up here to say  
20 why or what circumstances it was, but nothing.

21 I don't have control over those folks. I  
22 don't. I don't have control over their testing.  
23 They did it. They took the rape kit. I'm sure they  
24 sent it. They didn't call it. They didn't even  
25 tell you about it.

1           Now, as I said, the Judge is going to talk to  
2           you about reasonable doubt and what proof beyond a  
3           reasonable doubt is. And it's been defined  
4           different ways, but think about it this way:  
5           Reasonable doubt is the kind of doubt that would  
6           cause you to hesitate to act in a very important  
7           decision.

8           Well, let's go to something that's not quite as  
9           important as what we're doing here today. Let's say  
10          you were trying to decide whether or not to buy a  
11          car. You'd gone and looked at a car. And you say,  
12          well, give me the car facts, if you've seen those  
13          commercials, a report on what this car's been  
14          through, give me the car facts. And they bring out  
15          reports like they have here.

16          The first statement that nothing happened, the  
17          second statement that something happened, the third  
18          statement is completely different and then her  
19          testimony on the stand. They bring out three  
20          reports and each one of them say a different thing.  
21          One of them says the car's never been in trouble,  
22          never been hurt, never been wrecked, it's a great  
23          car. The other one says the car has frame damage,  
24          serious accident. And the third one says, nah, it's  
25          been damaged, but it's not that bad. Are you buying

1           that car? Do you have reasonable doubt?

2           You say, well, wait a second, y'all did some  
3           other tests on it, I know. You know, you sent it  
4           off to this place and had it examined, sort of like  
5           what we have on the DNA and the rape kit and the  
6           medical examination, so I know there were some other  
7           examinations done on the car. And the salesman  
8           goes, not important, don't worry about those, not  
9           important.

10          Now, are you buying that car? You wouldn't.  
11          You know you wouldn't. You'd walk off and go  
12          somewhere else because you've got reasonable doubt  
13          about something that's really not a life changing  
14          event, it's just buying a car.

15          This is so much more than that. And I wish to  
16          goodness that, as a defense attorney, I had the  
17          resources to do what the State can do, but I don't,  
18          and it's okay that they do because they have the  
19          burden. I wish to goodness I could prove something  
20          didn't happen. I can't, but I don't have to. They  
21          have to prove it did.

22          I've worked a lot of years with the youth group  
23          in my church and I would hope that if a child were  
24          to come up and say, look, eight years ago on this  
25          trip, Mr. Sheek touched me like he shouldn't have

1       done and that I find myself sitting in that seat  
2       because of something that's been alleged against me,  
3       that when we sit in a courtroom or I give a  
4       statement or there's other tests made, that the  
5       jury's given everything, every bit of it.

6               As an attorney, I would know better when I go  
7       to give a statement, but don't think about what I  
8       would do, don't think even about what you would do,  
9       you think about what that 23-year-old boy, who's not  
10      sophisticated -- at 23, I was in my second year of  
11      law school. At 23, David is doing pest control  
12      work, high school education, not sophisticated in  
13      the ways of the police, not sophisticated in the  
14      ways of the Court. And he knew he was caught doing  
15      something stupid and he thought, well, if I just go  
16      along with the cops, it'll be okay.

17             But what's important is what do you have to do  
18      now? You've got to go back and reach a verdict.  
19      And as I said again and again, that means to  
20      literally speak the truth. Because this process is  
21      about truth. It really is. It's not about do I  
22      win. It's not about does Mr. Mayes {sic} win or  
23      does the sheriff's department win or does David  
24      Bowers win. It's about our community and the  
25      standards that we expect to be used in our general

1 sessions, criminal process.

2 You wouldn't have bought the car. And there's  
3 reasonable doubt. You should have been given  
4 everything and there's a reason you weren't.  
5 There's a reason the little girl's story has changed  
6 several times. And they really base it on that,  
7 that and the statement of David.

8 And they can talk about these text messages and  
9 they will, but you know why, you know why that  
10 wordage was read to you over and over again?  
11 Because you probably had the same emotional reaction  
12 to hearing those words that I did. Emotionally, you  
13 just go, oh, my God, to and from a ten-year-old,  
14 really. But this isn't about emotion folks, it  
15 isn't. That's the reason the State wants you to  
16 have that emotion because they've not brought you  
17 the evidence.

18 I want you to go back in the jury room, please,  
19 think about your oath, think about the instructions  
20 the Judge gives you and to speak truth and to do  
21 justice in this case and to hold the State to the  
22 standard that they told you at the beginning of the  
23 case they accepted.

24 When Mr. Mayes gets up here right now and talks  
25 to you, he should explain to you why it wasn't

1       important to get those testing results in or call  
2       those witnesses, why the defense has to bring you  
3       these reports, why they don't need to record these  
4       things, why it doesn't matter. And he will say  
5       something to the effect of, well, just like the  
6       officer said, once we got a confession, we didn't  
7       need anything else. Really? So that's what you're  
8       going to do, huh?

9               I appreciate y'all being here. It's been, I  
10       know, a long week for y'all, but for David Bowers,  
11       this is so very important. And for the State, it's  
12       important. For our community, it's important. So  
13       thank you for being here. Listen attentively for  
14       the next few minutes as the Solicitor talks to you  
15       and as the Judge charges you and then just follow  
16       that oath. That's all I ask of you. Thank you.

17               **THE COURT:** Thank you, Mr. Sheek.

18               All right. Folks, we're going to take a short  
19       break, five minutes or less, and then I'll bring you  
20       back out to hear the closing arguments of the  
21       Solicitor. Don't discuss the case.

22               (The jury retires to the jury room.)

23               **THE COURT:** We're at ease for five minutes.

24               (Brief Recess.)

25               **THE COURT:** Bring the jury in.

1 (The jury returns to the courtroom.)

2 **THE COURT:** Once again, ladies and gentlemen, I  
3 invite your close attention.

4 Solicitor, you're recognized.

5 **MR. MAYE:** May it please the Court. Thank you,  
6 Your Honor.

7 Ladies and gentlemen, again, I'm mindful, into  
8 Thursday, you've been taken away from what you would  
9 have been doing, but this is vitally important. The  
10 12 of you that are going to go back in that jury  
11 room and deliberate in this case sit as the judges  
12 of the facts in this case.

13 This is as serious of a matter that ever comes  
14 before any jury in any courthouse, certainly here in  
15 Saluda County, because what we're talking about in  
16 this case is just an absolute betrayal of trust and  
17 the violation of a ten-year-old little girl, talking  
18 about a fifth grader. She's 12 now. You can tell,  
19 she's intelligent, but she was ten then. She was an  
20 elementary school child, a fifth grader. Talking  
21 about criminal sexual conduct with a minor in the  
22 first degree, violating, penetrating a child less  
23 than 11 years of age and what a betrayal.

24 You heard that he was basically family in this  
25 household. He came in and out. He didn't knock.



1        Sometimes he just came in. You've heard Mr. Enlow  
2        talking about over the years, well, you know, he  
3        grew up next to him. I let him work for me when I  
4        was -- when he was in school, when he was growing  
5        up, came in and out of her house, took him on  
6        vacation, gave him a cell phone. He was in and out  
7        of our house.

8            Obviously, near this same day of the ball game,  
9        they got him gathered up and, Lord, he's riding in  
10       the car with them. They're going to bed. He had  
11       him baby-sitting over the years. They go to bed  
12       that night, leave their ten-year-old daughter in  
13       there watching a movie with him. You know they  
14       trusted him and they felt like he was family.

15           Even he's going to tell you in this case that  
16       during the midst of the consideration and the regard  
17       that they held him at, obviously, they let him in  
18       their household, they let him have access to their  
19       daughter, you know they trusted him and they cared  
20       for him. He worked for them. He'd basically taken  
21       him on to raise.

22           And in the midst of that -- even what he's  
23       going to tell you in this case -- I want you to go  
24       back and look at these text messages that are going  
25       back and forth in between this adult man, now he got

1 up here and some of the ridiculous things he said  
2 are child like, but he was a 23-year-old man. He  
3 was a high school graduate. He was working. He had  
4 a child. He was a father. He was a man. He was  
5 dealing with a fifth grader, a ten-year-old.

6 Go through these texts and look at the tenure  
7 and the things that are being discussed in these  
8 text messages. There are some people that'll go  
9 their whole lives, let alone at ten years old, there  
10 are some people that are 50 years old, 60 years old  
11 that will go through their whole lives and never  
12 will communicate with another human being with these  
13 kind of vile terms. What was going on in between  
14 these two?

15 He got up here under oath, I thought one of the  
16 most critical things that he said in his testimony  
17 up here, because he got up here, swore to tell the  
18 truth in between the 12 of you. And the 12 of you  
19 bring into this courtroom the sum total of all of  
20 your life experiences. And every day in your life  
21 you're weighing whether or not things are true or  
22 false, the way people tell you things, what's being  
23 told to you. There's a certain amount of arrogance  
24 that comes about when you think that I'm so much  
25 smarter than 12 other people that I can just weave a

1       tangled web of lies and just waltz out, just abject  
2       arrogance.

3               One of the most interesting things in this  
4       case, he said up here under oath, because I asked  
5       him after he said this statement, Are you as sure  
6       about that as everything else you've told these 12  
7       people up here under oath? Oh, yes. Told you that  
8       this texting and this language that occurred on  
9       October the 6th going into the 7th, that Saturday  
10      and Sunday, low and behold, that was the first time  
11      anything like this had ever happened.

12              Where did she get this 'ol nasty talk, all this  
13      language about pussy and coming and having sex and  
14      checking each other for ticks and about how next  
15      time I come over to your house, we're not having sex  
16      and all? Oh, that was the first time that ever  
17      happened.

18              I don't know where in the world she got all  
19      this language. Do you think she picked up this  
20      language, this adult level conversation, this dirty  
21      talk, it would be dirty talk in between 50-year-old  
22      people, you think she picked that up in a classroom  
23      at Batesburg-Leesville Elementary School? Do you  
24      think she picked that up talking to her other  
25      ten-year-old little friends? This is like 1-800 or

1        1-900 sex talk in between people that would be  
2        paying for it, adults. This is just as bad a  
3        conversation as anybody would ever engage in. And  
4        Lord knows what was going on.

5                Now, he's not overcharged in this case. He's  
6        charged with criminal sexual conduct with a minor in  
7        the first degree, but all the cops charged him with  
8        in this case was just what he admitted to, digital  
9        penetration. They didn't charge him with having  
10       sex. But you look at the talk in here. What's  
11       going on? She said, The next time I come over to  
12       your house, you know we're not having sex or we are  
13       having sex. They're talking about an ongoing sexual  
14       relationship that includes sexual intercourse in  
15       here. And he admits, oh, yes, every bit of this is  
16       mine. Now, I don't know where she got all this  
17       dirty talk because it's the first time it ever came  
18       up.

19               Look at his little responses to this. Do you  
20       think this is the first time these two ever talked  
21       about anything like this? How long and how much  
22       time and how gradual was it? How much time did it  
23       take him to get this ten-year-old to start  
24       conversing with him like this? This is like some  
25       adult boyfriend and girlfriend going back and forth

1       and talking about their next sexual encounter.

2               And he'd have you believe up here under oath  
3       that, oh, Lord, she just got that from somewhere  
4       else and that just came up out of the blue. And  
5       these are his responses to these text messages  
6       because this is coming from his phone. You can look  
7       at outgoing and in going. This is coming from his  
8       phone. So the things that are coming from her and  
9       his responses back and forth and this little banter  
10      back and forth, talking about this sexual  
11      relationship that they have, he'd have you believe  
12      up here under oath that's the first time that ever  
13      happened and these are my responses.

14             When she's talking about coming over to my  
15      house and having sex with me and all, oh, I'm just  
16      laughing out loud, not what in the world are you  
17      talking about having sex with a ten-year-old? You  
18      don't see one word of that in these text messages.

19             Now, he's going to get up here and sell you the  
20      bill of goods, oh, yeah, this is true, and I'm  
21      certainly guilty of sending these text messages,  
22      but, oh, Lord, I didn't put my fingers inside of  
23      this ten-year-old. Oh, no. These bad 'ol police  
24      officers over here, they made me do that. They made  
25      me put pen to paper at my own handwriting and

1 confess. They forced me to.

2 These evil police officers are up here weaving  
3 a tangled web of lies. They didn't get a tape  
4 recorder out. They didn't get a camera out. As he  
5 put pen to paper in his own handwriting after being  
6 advised of his rights one after another, they told  
7 him he could have stopped at any time, you could  
8 have a lawyer, but, oh, he didn't need one because  
9 he's crafty. He's crafty.

10 Let's get down to the simple facts of what  
11 happened here and we'll get back to that. There was  
12 an ongoing pattern, obviously, of text messages in  
13 this case, absolutely vile text messages where these  
14 two are talking about having sex. Now, this is not  
15 her fault. She's ten year old {sic}. It was  
16 consensual. Whatever was going on in between them,  
17 he wasn't forcing her, he wasn't holding her down,  
18 he didn't snatch her up as she was getting off the  
19 school bus and started this. She consented to it.  
20 We concede that.

21 It's obvious in this case from her messages to  
22 him and back and forth, this was a consensual  
23 relationship that not only was she participating in,  
24 you know, she was enthusiastic about it, you can  
25 tell it. But the law protects children. You can't

1 consent to that. You can, as a 23-year-old adult  
2 say, well, she gave it to me, it was okay, I didn't  
3 take it, I didn't force it, I didn't rape her,  
4 because you're not old enough to make those adult  
5 judgments when you're ten years old, when you're a  
6 fifth grader.

7 It's just absolutely unnatural to think that a  
8 grown man, a 23-year-old man with a child of his  
9 own, living in his own household is going to be  
10 engaging in this kind of relationship with a  
11 ten-year-old. And that's what we're talking about  
12 in this case, that's the tragedy of it.

13 She wasn't equipped to make any decisions about  
14 whether or not she consented or not to this. It's  
15 quite obvious in here that she thinks that that's  
16 her boyfriend. They're engaging in this kind of  
17 behavior together. Well, the law protects fifth  
18 graders from this very type of behavior.

19 You've got the text messages here, which even  
20 he admits he was sending back and forth. Now, he'd  
21 try to have you believe, oh, it's the first time  
22 now. I didn't groom her to do this. I didn't work  
23 on this incrementally. Over time I didn't develop  
24 this pattern of back and forth communication to  
25 where this little fifth grader is going to be

1       communicating with me like this. And, oh, I didn't  
2       do that. She got that somewhere else now. I'm as  
3       sure about that as everything else I've told you up  
4       here under oath. She came up with that on her own.  
5       I didn't have any part of that.

6               After this afternoon where they trusted this  
7       young man and they took him out on a family outing  
8       and they went to sleep that night with him watching  
9       a movie with their ten-year-old, they get up the  
10      next morning, this mother and father, and find these  
11      text messages. And it doesn't take a genius and it  
12      doesn't take a clairvoyant, once these text messages  
13      are read, and you're going to have them back there  
14      to read in great detail, to figure out that  
15      something terribly, terribly wrong was going on in  
16      between these two, and it wasn't fantasy and it  
17      wasn't fiction. These text messages you'll have to  
18      look at.

19             Did he gather hisself up and go over and  
20      confront him? Did he go over to David Bowers'  
21      house? Did he pick up a gun and go try to kill him  
22      in this case? No. He did exactly what he was  
23      supposed to do. He gathered that cell phone up,  
24      even though he was estranged, divorced from her  
25      biological mother, you can tell, this was such a



1       serious event, he called her on the way. Whatever  
2       differences they had that led to their dissolution  
3       of their marriage, you can tell that dissolved in an  
4       instant.

5               He gathered that cell phone up. He came up  
6       here to the sheriff's office. He gave it to the  
7       sheriff. He turned it over to these capable  
8       officers who began a thorough and complete  
9       investigation in this case. They brought this  
10      ten-year-old child up, obviously, she gave them the  
11      information right from the get-go, it was digital  
12      penetration.

13             Now, who knows what was going on between them.  
14      She's embarrassed. She's humiliated. She later  
15      gets over to the counselors and says none of it  
16      happened. She even gives the incredible thing,  
17      she's so embarrassed, she's so humiliated that this  
18      has come to light, she even tries to tell them at  
19      some point in time, well, I didn't do these texts,  
20      he was going back and forth. And that's ridiculous.

21             Now, she's embarrassed. She's ashamed. But,  
22      you know, a ten-year-old shouldn't be put in the  
23      situation to have to explain any of this. How  
24      embarrassing, how humiliating. Whatever type of  
25      relationship that they had, however much far it

1       went, intercourse, digital penetration, whatever  
2       kind of relationship these two had going on, it  
3       wasn't her fault and she's embarrassed, she's  
4       humiliated.

5               But you can bet this, right from the start the  
6       police had the correct information about what  
7       happened that night. She told them initially right  
8       there that night to the detectives, I was digitally  
9       penetrated. She couldn't hardly bring herself to  
10      get up here in front of the stand and tell you. She  
11      was humiliated and utterly embarrassed to have to  
12      get up here and tell you about the relationship,  
13      about the situation that this grown man put her in.

14             You bring into the courtroom all the sum total  
15      of your life experiences. Utter humiliation for a  
16      ten-year-old then, but a 12-year-old now, to have to  
17      get up here and tell you the intimate details of her  
18      life, to have to admit to you that she was  
19      communicating with this grown man in this fashion.  
20      It's humiliating. It's a situation that's not of  
21      her making, though, because that's why the law  
22      protects children, especially children under the age  
23      of 11 years old, from being preyed upon by adult  
24      men, to not put her in this situation.

25             But she did it, she told the police that night

1       he digitally penetrated her. She came up here as a  
2       12-year-old and she sat and under oath she told you,  
3       he digitally penetrated me that night, put his hands  
4       on me, he touched me. As humiliating and as  
5       difficult as that was for her, she put her hand on  
6       the Bible and told you under oath that's what  
7       happened, the same thing she told the police that  
8       night, the same thing that he put pen to paper and  
9       told the police that day after being advised of his  
10      rights, I digitally penetrated this child, put my  
11      fingers inside of her.

12             At that point in time, the police get a search  
13      warrant. They go get that phone. So they just  
14      don't have what's on her phone, but they have his  
15      iPhone. Lord, they get a search warrant again to  
16      get the contents to download and to bring up here  
17      what you got and that's it. They charged him in  
18      this case with that, criminal sexual conduct with a  
19      minor. He wrote in his own handwriting exactly  
20      mirroring what she said.

21             And you heard what the investigator said in  
22      this case about how he carried this out. He had a  
23      piece of paper here written that he was charged with  
24      criminal sexual conduct with a minor in the first  
25      degree. The investigator in this case told you

1       under oath up here he didn't give him any of the  
2       details about the allegations. They gave him his  
3       rights and they told him, what happened? Write down  
4       what your version of the events that led us here  
5       were.

6               He didn't tell him about what the allegations  
7       were. He didn't go through all of the information  
8       that they had with him at that time. Tell us what  
9       happened in your words, and that's what he did. And  
10      you can tell that it's a narrative here. This is  
11      what he said in his words with no information from  
12      the detectives at that point in time.

13             Now, he knew he was charged with criminal  
14      sexual conduct, but here's where the manipulation  
15      starts in this case: He's charged with criminal  
16      sexual conduct. You can read this statement from  
17      the outset because he wasn't as smart as he thought  
18      he was, because in this case from, certainly, from  
19      reading these text messages, it was every belief,  
20      certainly on the part of the parents in this case  
21      and certainly on the part of the police, that they  
22      were engaging in far more than this digital  
23      penetration that went on that night, that they were  
24      having full-blown sexual intercourse, that's what  
25      was believed.

1           And, oh, he's running from that. But he's not  
2           as smart as he thought he was because in his  
3           statement here, he's going to great lengths to say,  
4           oh, I didn't have sex with her now, because he's so  
5           worried about it coming out that he's having  
6           full-blown sexual intercourse, penile, vaginal  
7           sexual intercourse with this child, that he's going  
8           to explain it all away right here. Oh, no, I wasn't  
9           having sex with her, like Bill Clinton in this case,  
10          oh, I wasn't having sex with her, I just digitally  
11          penetrated, I just put my fingers inside of her.  
12          And I'm going to write it all out here. And it's  
13          her fault.

14                On October the 6th, 2012, I was with friends  
15          watching the football game. Interesting how he  
16          identifies them, I was with friends. These were his  
17          family members. These were people that trusted him  
18          with their ten-year-old, that let him baby-sit, that  
19          gave him a cell phone, that took him on vacation,  
20          that let him come in and out of their house, I was  
21          with friends watching the football game and I was  
22          drinking. Just like he's going to explain it away  
23          when the detective hears those conversations,  
24          recorded conversations, and goes through them, he's  
25          going to explain this all away because he was drunk.

1 He's starting right here, Oh, I was drinking.

2 Rode with Rusty Enlow around 11:30 p.m. and  
3 12:00 a.m. **Minor** was touching me in between  
4 my legs. Oh, this bad, naughty ten-year-old. It's  
5 all her fault now.

6 She's touching me between my legs, it's her  
7 fault. And I done it back. And she also jumped in  
8 my lap, again this aggressive ten-year-old, it's all  
9 her fault, this seductress, jumped in my lap and she  
10 wanted me to touch her, wanted me to touch her  
11 breast and put my hand down her pants. She wanted  
12 him to do this, this grown man and this ten-year-old  
13 child. And like an idiot, I done it. And then she  
14 wanted me to stick fingers in her and I done that  
15 also, this 'ol bad ten-year-old.

16 And before all this happened, we texted stuff  
17 back and forth about sexual stuff, but nothing ever  
18 happened. Now, he's running from the fact that any  
19 of this texting indicate that they've got a  
20 full-blown sexual relationship, he's so running from  
21 that in this case, he's going to be sure and put in  
22 here now, oh, no, we didn't do anything like this,  
23 we didn't have sex, because that's how he's  
24 differentiating this. I would never have sex with  
25 them. I've never done anything like this in my

1       life. And I'm not attracted to minors nor would I  
2       have sex with them.

3               Now, I didn't have sex, because he's charged in  
4       this case, now this genius, he's charged with  
5       criminal sexual conduct with a minor, so he's going  
6       to deny away the sex, but just admit just, well, I  
7       just put my fingers inside of her, that's not sex.

8               Because I was provoked into doing what I done.  
9       Again, he was provoked by this ten-year-old child,  
10      this fifth grader, by what she did to me. And  
11      nothing will ever happen like this again. I've  
12      learned my lesson. I guess he's learned his lesson  
13      not to hang around these wayward ten year olds.

14              I guess the alcohol had something to do with  
15      this sick situation. But I swear on my daughter's  
16      life, that I'll never do this again. But I never  
17      had sex with her nor did other sexual things happen  
18      to myself from her. I know I was wrong and I'm  
19      deeply and truly sorry that it did happen. That's  
20      what he tells in response of what happened to them,  
21      not with any details about what happened, you tell  
22      your side of it and you put pen to paper. That's  
23      what he writes.

24              All her fault. Lord, if she hadn't enticed me  
25      and induced me, I would have never put my fingers

1       inside of her, but I'm not going to do it again.  
2       I'm real sorry about it. And I'll go forth and I  
3       won't do this anymore.

4               Here's the problem with that: The Judge is  
5       going to charge you, and the State's got the burden  
6       of proof in this case, but the Judge is going to  
7       charge you with what the law in this case. The  
8       problem with his confession is he has attempted to  
9       craft his way out of this. This criminal sexual  
10      conduct with a minor includes a sexual battery. And  
11      a battery, the Judge is going to define that to you,  
12      a battery is like any kind of offensive bodily  
13      contact.

14             But in this case, criminal sexual conduct with  
15      a minor, and in every case, not only -- includes a  
16      variety of things, it can include sexual  
17      intercourse, penile, vaginal intercourse, it can  
18      include that, but it includes any penetration by any  
19      body part of his, however slight. The problem he's  
20      got is he's crafting this confession in here to only  
21      admit to that, that's criminal sexual conduct with a  
22      minor too. He wasn't as crafty as he thought. He's  
23      going to deny what's in here that they're having  
24      full-blown intercourse, but in the process, he  
25      admits to being guilty of exactly what he's charged



1 with in this case.

2 Like I said, the Judge is going to charge you  
3 with the law, any penetration, finger, any  
4 penetration by any body part, however slight. Him  
5 putting his fingers up inside of her is criminal  
6 sexual conduct with a minor in the first degree. He  
7 wasn't as smart or as crafty as he thought.

8 He's also charged in this case with criminal  
9 solicitation with a minor, person over 18  
10 communicating with a minor, a person under 18, with  
11 the intent to induce, entice or coerce a minor to  
12 participate in sexual activity.

13 Now, he's directly telling you he's guilty of  
14 that in this case, but there's no question. You can  
15 look at the tone and tenure and the words that are  
16 going back and forth between him and this child.  
17 You know full well that this is dirty talk in  
18 anticipation of the sexual encounter that took  
19 place, whatever was taking place over what period of  
20 time.

21 Now, he's not overcharged in this case. What  
22 he's charged with is just for what happened that one  
23 night. But what she said happened to the police  
24 when she went to them, what he put pen to paper to  
25 after being advised of his rights, that's all he's

1 charged with in this case, putting his fingers  
2 inside of her on the night going in between that  
3 Saturday and Sunday, one time, that's all he's  
4 charged with. He's not overcharged, just absolutely  
5 what he admits to in this case.

6 The criminal solicitation of a minor is  
7 basically the dirty talk, which he did tell you he  
8 did. And it's obvious.

9 You've got the evidence in this case. You've  
10 got this child who told the cops what happened that  
11 night. You've got the defendant's confession before  
12 you where he admits what he did that night, even if  
13 he's trying to -- attempting to explain his way out  
14 of it. And the Judge is going to give you what the  
15 law is in this case.

16 The State joins with what the defense said in  
17 this case, we want you to do justice in this case  
18 and come back with a verdict that speaks the truth.  
19 But we submit to you, it's not complicated what was  
20 going on and it's obvious what happened in this  
21 case.

22 You know, but it's interesting now, the police,  
23 these bad 'ol cops that coerced this confession out  
24 of him, he's only going to admit to as much as he  
25 thinks that'll just absolve him of all of this in

1       this case. And they're telling you, oh, the cops  
2       should have had a tape recorder out; they should  
3       have tape recorded this whole thing. That's why  
4       they had him put pen to paper here in his own  
5       handwriting. They didn't hold a gun to his head.

6               Two well-reasoned officers got up here under  
7       oath and told you, and that's why we went through it  
8       with them, did you threaten him; did you coerce him;  
9       did you do anything to try to influence him? No,  
10      no, no. Officer Holmes, no, no, no. Did anybody do  
11      that in your presence? No, no, no. We asked him  
12      what happened, to write his version of it and he  
13      did.

14             They're going to tell you, oh, you ought to  
15      find him not guilty because they did not have a tape  
16      recorder there. They did not have a camera there.  
17      It's all that just -- got to be exactly like he  
18      said, it's got to be that they coerced him, these  
19      bad 'ol police officers, turn him loose. That's why  
20      they had him put it in writing. What are they going  
21      to do, tape him writing this down? That's what they  
22      want you to do in this case, let him go because they  
23      didn't have a camera. I guess, they just didn't do  
24      that.

25             The bottom line is that's why they did it in

1       writing so they'd have it here in his own  
2       handwriting for you to see. Even he admits that he  
3       went through every bit of this and he could have  
4       asked for a lawyer, he could have stopped, he didn't  
5       have to write a thing, but he did because he thought  
6       he was being crafty enough to write his way out of  
7       it. He wrote his way right into it. No grown  
8       person who's graduated from high school, he's not  
9       mentally defective, is going to admit to this if  
10      they did not do it. He just did not realize it was  
11      as serious and it was still constituting criminal  
12      sexual conduct with a minor. He wasn't as smart as  
13      he thought.

14             He tells you that the reason, not only was he  
15      coerced into doing this, but the reason that he  
16      cooperated and he wrote this bad statement is that  
17      somehow, that some subsequent medical examination  
18      was going to exonerate him, wants you to believe  
19      that he wrote a confession in this case falsely  
20      knowing that somehow his fat would be pulled out of  
21      the fire later on by some medical examination.  
22      That's what he wants you to believe up here under  
23      oath. And he's just as sure about that as anything  
24      else he's said.

25             The interesting thing is, and the detective

1       told you in this case, and you can tell that he was  
2       a experienced sex crimes investigator because one of  
3       the things that he did in this case was he got up  
4       every morning in any case he was involved in, it  
5       didn't take a lot of diligence to do this with the  
6       phone calls, he said that he monitored the recorded  
7       phone call conversations here. He came back and he  
8       gave you, and the officer came up here and told you,  
9       they went through and they reviewed these tapes with  
10      the defense in this case. You can bet this is what  
11      was said. And he listened to what was said in  
12      between Lori Haag, his girlfriend, that came up here  
13      and testified in this case and this defendant.

14             Lori, I was drunk what I was trying to say.  
15      And, again, he's getting back, he wants to pin this  
16      all at this point in time, and this is just -- this  
17      is on the 8th, so this is right after this occurred  
18      when he first gets into custody. One of the  
19      earliest phone conversations that he had a chance to  
20      make, right then he's saying, I'm claiming alcohol  
21      was the thing. He's going to explain this all away  
22      by he's drunk.

23             I mean, it happened, but it wasn't like I done  
24      it willingly. You know I wouldn't do no thing like  
25      that if I'm sober. He's trying to explain to the

1 mother of his child why he did this in this case,  
2 that it's her fault. He's going to explain all this  
3 away, at some point in time, by voluntary  
4 intoxication. You can listen to what the Judge told  
5 you about voluntary intoxication.

6 Still her fault doing that shit like in the  
7 pool, straddling me and shit and then it went from  
8 there. Now, he wants you to believe, got up here  
9 under oath and told you, this is all about text  
10 messages. And this is what he's telling you. Text  
11 messages came from and started from what happened in  
12 the pool, her straddling him. Just like he's  
13 writing in here, oh, it's her fault her climbing in  
14 his lap, this bad ten-year-old. I mean, I hate I  
15 done it, wants you to believe he's talking about  
16 text messaging. This is him talking to his  
17 girlfriend on the 8th.

18 All of that happened while I was drunk. Again,  
19 he wants to sell you, that's just text messages.

20 It was from the drinking. We didn't fuck or  
21 nothing. It's still bad. I hate it happened.  
22 Again, he wants to sell you, 12 intelligent people,  
23 that he's talking about text messages.

24 Next conversation he starts out, I told the  
25 truth in the first place. His written statement is

1       what he's talking about. I got pursued into that.  
2       I'm sorry for what happened.

3               Then he gets to talking about, I didn't erase  
4       any of my texts. Talks about this deleted picture,  
5       this naked picture, he says, that's going back and  
6       forth. Ain't like I forced it. Again, he's going  
7       to explain all this away to his girlfriend and  
8       everybody else, I was drunk, it ain't like I made  
9       her do it. Wants you to believe all of this about  
10      the text messages.

11             Here's one thing that I didn't even ask him  
12      about, but it's obvious in this case: The detective  
13      told you up front he wasn't even charged with any  
14      crime at that point in time about making text  
15      messages, that didn't come until later. You can  
16      even look at the indictment, that's a 2013  
17      indictment, that charge didn't even occur till  
18      later. He wasn't even facing the charge. He wasn't  
19      even aware that he was going to be in any jeopardy  
20      for sending these dirty text messages. He wasn't  
21      even -- he didn't even know about it at that time.

22             Now, he wants to explain away that recorded  
23      jail phone conversation by something that didn't  
24      occur until later. He didn't even face any charges  
25      for that. It's just what a tangled web you weave

1       when you start trying to convince people of  
2       something.

3               Because he's going to hang his hat on all of  
4       this talk, this subsequent confession that occurs  
5       unbeknownst to him. He didn't realize, they tell  
6       him that, oh, it's going to be recorded, but there  
7       are all kinds of phone conversations. The chance  
8       that somebody's actually going to sit and listen to  
9       them obviously wasn't something that he gambled  
10      correctly on. This is a confession just as surely  
11      as when he put pen to paper here what he told his  
12      girlfriend. And he wasn't talking about text  
13      messages because that charge didn't even occur till  
14      later on.

15             He's up here trying to explain away that all  
16      this confessing was, oh, I -- all I'm going to admit  
17      to in this case is these text messages and, oh,  
18      that's what I was talking about. He wasn't even  
19      charged with that at the time. How absolutely and  
20      utterly ridiculous and arrogant to get up here and  
21      try to explain away his confession and what he was  
22      talking to, about with his girlfriend on a charge he  
23      didn't even face at that time. He's scheming. He's  
24      manipulative. He's going to explain his way out of  
25      all this.



1           The disturbing part of this is Lori Haag when  
2           he's talking about her, obviously she knew some of  
3           this was going on. She knew what he was talking  
4           about with pictures. She knew what he was talking  
5           about with texts. She was aware of this. They  
6           didn't talk about it in their first conversation.  
7           He'd been in jail and picked up. We're just talking  
8           about on the 9th that they're talking about this.  
9           She's already aware of this deleted picture and  
10          these nasty text messages.

11          Now, she's up here and you know she loves him.  
12          This is the mother of his child and she loves him.  
13          And you can wrap that in the veil of charity and  
14          push it to one side because you know she cares  
15          something about him and she's trying to help him.  
16          And her testimony up here is trying to help him with  
17          this story that he's trying to sell y'all about how  
18          this confession and all of this has to do only with  
19          text messages. And she's trying to help, trying to  
20          tell you, oh, that's what he meant. He was just  
21          talking about the text messages, which they had no  
22          idea he was even charged with at that time or would  
23          subsequently be charged with. Wrap that in the veil  
24          of charity and push it to one side.

25          They want to tell you in this case, oh, the

1 police didn't do any DNA, that it's magic, that like  
2 when the bloodhounds are chasing somebody, I guess  
3 they can go around and vacuum up things, this touch  
4 DNA, this magic science fiction stuff they should  
5 have done in this case or could have done in this  
6 case.

7           It's on over the next afternoon. And the only  
8 act that they have, they don't have any information  
9 that full-blown sexual intercourse took place, that  
10 there would be any semen, that there would be any  
11 body fluids. What they have in this case is an  
12 allegation of just touching. And they want you to  
13 believe some science fiction from just a touch, that  
14 they could somehow pull some kind of DNA sample out  
15 of that.

16           You can bet these are experienced sex crimes  
17 investigators. If they thought that that would  
18 yield anything, they would have done it. The only  
19 allegation that they had, and by even his own  
20 admission, was that he digitally penetrated this  
21 child, not that any intercourse had taken place in  
22 between them, not that there would be any body  
23 fluids to try to seek in this case, no semen, no  
24 saliva. He didn't say that he engaged in oral sex  
25 with her. He didn't say that he had full blown

1       intercourse with her, and that's not what she said.  
2       They didn't do it.

3               Ladies and gentlemen, you've got the evidence  
4       in this case. You've got his confession. You've  
5       got the officers' testimony that he sat down and  
6       wrote that freely and voluntarily, this is his  
7       version of the facts in this case, that they didn't  
8       threaten him and they didn't coerce him, they didn't  
9       try to make him do anything at all.

10              Now, he was going to spin this his way from the  
11       outset, but he spun his way right into it. He  
12       wasn't as smart as he thought. He wasn't as crafty  
13       as he thought. They got his phone conversations  
14       where he talked about this, which is just as much of  
15       a confession as what he wrote here as he's talking  
16       to his girlfriend. He didn't say one word to her  
17       about how, oh, these police officers coerced a  
18       confession out of me, a false confession, that he --  
19       the bill of goods that he's trying to sell you.

20              When he's there talking to his girlfriend and  
21       scheming about how he's going to get his way out of  
22       this, that he was intoxicated and didn't know what  
23       was going on and this bad 'ol ten-year-old induced  
24       him into doing it, he doesn't say one word about any  
25       police officer making him write anything that wasn't

1 true or about how he wrote it and it wasn't true and  
2 some subsequent medical exam was going to set him  
3 free.

4 All he's charged with in this case is putting  
5 his fingers inside of this child. She says he did  
6 it. He says he did it and he admits it to his  
7 girlfriend in this case. That's all he's charged  
8 with. He's not overcharged. He told you in this  
9 case up front, I'm guilty of the text messages.  
10 He's going to have you to believe that, oh, she  
11 gathered all this from some other place other than  
12 me and I had nothing to do with it and I just fell  
13 into this talk.

14 He's charged with criminal sexual conduct with  
15 a minor. The State submits to you in your  
16 consideration of this case, that the evidence is  
17 certainly overwhelming in there that he's guilty of  
18 this crime, that he put his fingers inside this  
19 ten-year-old child here in Saluda County.

20 I told you that we had elements to prove in  
21 this case, how old she was, how old he was at the  
22 time, whether or not it happened in Saluda County  
23 and whether or not there was some penetration,  
24 however slight. You've got it. You've got the  
25 evidence from her, from him, from the detectives in

1       this case and from those phone calls that were  
2       monitored by the cops.

3               As to the criminal solicitation of a minor,  
4       sending those messages, even he says he did that.  
5       Come back with a verdict that speaks the truth, does  
6       justice for this ten-year-old child, does justice  
7       for everyone here in Saluda County. If you do that,  
8       you will have fulfilled your obligations as jurors,  
9       you will not have rewarded anyone or punished  
10      anyone, you will have only spoken the truth.

11             **THE COURT:** All right. Thank you, Solicitor.

12             Ladies and gentlemen, as I told you, we'll take  
13      a short break, again, about a five-minute break.  
14      I'll bring you back out here and tell you the law.  
15      Its going to take me about 26 minutes to tell you  
16      the law. Thank you. Follow the bailiff.

17             (The jury retires to the jury room.)

18             **THE COURT:** Because of the way the criminal  
19      sexual conduct statute is written, the Court is  
20      required to have the jury determine if there is  
21      actual penetration, and I think that is because if  
22      there is a subsequent CSC, the penalty is life or  
23      death. This is the exact verdict form, except  
24      changing the names, I used in prior cases on the  
25      CSC, but I wanted y'all to see it before I showed it

1 to the jury and make sure that there's no problem  
2 with it. There's a lewd act charge in there that  
3 shouldn't be.

4 **MR. SHEEK:** You said an extra lewd act charge?

5 **THE COURT:** No, that shouldn't be -- I must not  
6 have changed -- well, the other pages are from  
7 another case.

8 **MR. MAYE:** I've got two about Michael Ray  
9 Elders. I've got one with David Ray Bowers and  
10 Michael Elders, that's just a typo. I mean, that's  
11 just --

12 **THE COURT:** Yeah, but there's no -- there's no  
13 lewd act. The other page is supposed to read about  
14 the criminal solicitation. I have to get that  
15 straightened out. Court's at ease for five minutes.

16 (Brief Recess.)

17 **THE COURT:** Anybody who wants to be in needs to  
18 be in; anybody who wants to be out during the charge  
19 needs to step outside. Please don't do anything to  
20 distract the jury. Please stay still and stay  
21 quiet.

22 All right. Bring in the jury.

23 (The jury returns to the courtroom.)

24 CHARGE OF THE COURT

25 **THE COURT:** Members of the jury, all of the

1 evidence has been presented, you've heard the  
2 arguments of counsel and now it's time for me to  
3 instruct you on the law that applies to the case.  
4 Thank you for the manner in which you've conducted  
5 yourselves. Please continue to pay close attention  
6 during this next stage.

7 Now, first, you need to understand some basic  
8 ground rules. You, the jury members, are the sole  
9 judges of the facts. You decide all of the issues  
10 of fact. You alone determine the truth of the  
11 evidence, its effect, its value and its weight. You  
12 alone judge the credibility of witnesses, in other  
13 words, whether or not a witness' testimony is  
14 believable.

15 Now, in that regard, you may believe all that a  
16 witness said or none of it. You may believe part of  
17 what a witness said and not believe the balance.  
18 You may believe one witness against many or many  
19 against one. You may consider any interest, bias or  
20 prejudice that you feel that a witness has in the  
21 case. You may consider the demeanor and the  
22 appearance of the witness and the opportunity for  
23 knowledge that the witness had. You may consider  
24 the lack of evidence presented by the State. But  
25 you're not to exercise these considerations

1       arbitrarily. What I want you to do is to use your  
2       common sense, use your sense of logic and reason and  
3       your good judgment.

4             It's not proper for me to give you a charge on  
5       the facts of the case. I cannot discuss the facts  
6       with you. I'm not even permitted to convey to a  
7       jury what, if any, personal opinions I may develop  
8       about a case, are the facts of a case as it goes  
9       along. So if during any stage of this trial, you  
10      develop an impression that I have a personal opinion  
11      about the facts, you must remove that totally from  
12      your mind. You're the sole judges of the facts.

13            Now, I am the judge of the law that applies to  
14      the case and you're bound under your oath to accept  
15      and apply the law as I give it to you. That means  
16      if you have conflicting ideas about what the law is  
17      or what it should be, you have to abandon those. I  
18      give you the law, you apply it to the facts as you  
19      determine them to be and in that way, you reach your  
20      verdicts.

21            It's also my job to decide what evidence is  
22      admissible. If I ruled anything inadmissible or  
23      instructed you to disregard anything, you are not to  
24      consider those things in arriving at your verdict.  
25      Base your verdicts upon the competent evidence



1       before you, consider the testimony of the witnesses  
2       and the exhibits admitted in the trial.

3               Now, I need to explain to you that there are  
4       two types of evidence generally presented during a  
5       trial, direct evidence and circumstantial evidence.  
6       Direct evidence directly proves the existence of a  
7       fact and does not require deduction. Circumstantial  
8       evidence is proof of a chain. It's proof of chain  
9       of facts and circumstances indicating the existence  
10      of a fact. Crimes may be proven by circumstantial  
11      evidence.

12             The law makes no distinction between the weight  
13      or value to be given to either direct or  
14      circumstantial evidence; however, to the extent that  
15      the State relies on circumstantial evidence, all of  
16      the circumstances must be consistent with each other  
17      and when taken together, point conclusively to the  
18      guilt of the accused beyond a reasonable doubt. If  
19      the circumstances merely portray the defendant's  
20      behavior as suspicious, the proof has failed.

21             The State has the burden of proving the  
22      defendant guilty beyond a reasonable doubt. This  
23      burden rests with the State regardless of whether  
24      the State relies on direct evidence, circumstantial  
25      evidence or some combination of the two.

1           The defendant in these cases, Mr. Bowers, is  
2       presumed to be innocent. This is no mere legal  
3       theory. It is a fundamental and substantial right  
4       to which everyone is entitled. It's been described  
5       as being like a robe of righteousness that's placed  
6       around an accused and it remains with him through  
7       every stage of the trial. It continues to exist  
8       after you go back to your jury room to deliberate so  
9       that he is presumed to be innocent unless and until  
10      you, the jury, determine that the State has proven  
11      him guilty beyond a reasonable doubt.

12           A defendant is not required to prove his  
13      innocence. He is not required to prove anything.  
14      The burden is on the State to prove the guilt of the  
15      defendant beyond a reasonable doubt. And it's  
16      required that every essential element of each  
17      offense charged be proven by the State beyond a  
18      reasonable doubt.

19           Now, the State is not required to prove the  
20      defendant guilty beyond all doubt or beyond every  
21      doubt. The appropriate standard is proof beyond a  
22      reasonable doubt.

23           Some of you may have served as jurors in civil  
24      court where the burden of proof requires  
25      establishing that something is more likely than not,

1       it's probable, and we call that the greater weight  
2       or preponderance of the evidence. But we're not in  
3       civil court. We're in criminal court and the  
4       standard is much higher and the proof must be much  
5       stronger than what is required in civil court. The  
6       burden of proof in criminal cases, such as these  
7       that are before you, is proof beyond a reasonable  
8       doubt.

9               So what do I mean by that term? In a criminal  
10       court setting, the State has to prove more than the  
11       likelihood or the probability of guilt. Proof  
12       beyond a reasonable doubt is proof that leaves you  
13       firmly convinced of the defendant's guilt.

14              There are few things in the world that we know  
15       with absolute certainty and in criminal cases, the  
16       law does not require proof that overcomes every  
17       possible doubt. If, based on your consideration of  
18       the evidence, you are firmly convinced that the  
19       defendant is guilty of a crime charged, then you are  
20       to find him guilty of that charge. If, on the other  
21       hand, you think there is a real possibility that he  
22       is not guilty, you must give him the benefit of the  
23       doubt and find him not guilty.

24              There is no obligation on the defendant to  
25       raise any doubt or any other possibility. He is

1       presumed to be innocent. And the State has the  
2       entire burden of proof and has to prove to you that  
3       the defendant is guilty to the exclusion of any  
4       other real possibility.

5             I charge you, ladies and gentlemen, that  
6       voluntary intoxication is not a defense to a crime.  
7       If a person voluntarily becomes intoxicated, that  
8       person will be just as responsible for acts  
9       committed while intoxicated as when not intoxicated.

10            I need to also go over the law with you related  
11       to evidence concerning a statement allegedly made by  
12       the defendant to law enforcement. In evaluating  
13       this alleged statement, you first need to determine  
14       if the State has proven beyond a reasonable doubt  
15       that the defendant, in fact, made the statement. If  
16       not, then you cannot consider the alleged statement  
17       in any way against the defendant.

18            If you find that the defendant made the  
19       statement, the next thing you're going to be asked  
20       to evaluate is whether the defendant was properly  
21       advised of his rights prior to being interrogated  
22       and giving the statement.

23            If a person is in custody, he must be given  
24       Miranda warnings prior to interrogation by the  
25       police. The Miranda warnings are that you have the

1 right to remain silent, that any statement made can  
2 and will be used against you in court, that you have  
3 the right to an attorney, and if you cannot have --  
4 I'm sorry -- if you do not have the resources to  
5 hire an attorney, the court will appoint one at no  
6 expense, that you have the right to consult with a  
7 lawyer before answering any questions or making any  
8 statements, that you have the right to have a lawyer  
9 present at all times during all interviews and all  
10 interrogations, and that you may stop answering  
11 questions at any time and ask to exercise these  
12 rights.

13 Now, those exact words do not have to be  
14 communicated or used, but the substantial equivalent  
15 of them has to be communicated to the defendant in  
16 order to constitute valid Miranda warnings.

17 If the State proves to you that the statement  
18 was made, that Miranda warnings were given prior to  
19 interrogating the defendant while the defendant was  
20 in custody, the State must then prove to you that  
21 the defendant knowingly and intelligently waived his  
22 constitutional rights and made the statement to  
23 police.

24 The final requirement is that the statement in  
25 question must have been given voluntarily. The

1 State has to prove to you that the statement was the  
2 expression of the defendant's own free will and that  
3 it was not improperly induced by compulsion, duress,  
4 fear or force or by the promise of some reward or  
5 hope of reward. Unless the statement is given  
6 freely and voluntarily, you may not consider it  
7 against the defendant.

8 So if a statement was made while in custody to  
9 a police officer in response to the officer's  
10 questions, I instruct you that you cannot use that  
11 statement against the defendant unless you are  
12 satisfied that the State has proven beyond a  
13 reasonable doubt every requirement about  
14 consideration of the statement that I have just  
15 instructed you.

16 All right. Now, let's turn to the specific  
17 charges that are alleged here. As you know, ladies  
18 and gentlemen, in this case, the defendant,  
19 Mr. Bowers, is charged with two separate and  
20 distinct offenses, each of which has to be evaluated  
21 on its own merit or lack of merit.

22 In one indictment, Mr. Bowers is charged with  
23 criminal sexual conduct with a minor in the first  
24 degree. It is alleged that in Saluda County, on or  
25 between the dates of October the 6th, 2012, and

1       October the 7th, 2012, David Andrew Bowers engaged  
2       in sexual battery with **Minor**, who is  
3       alleged to have been born on ,  
4        she being less than 11 years of age and the  
5       defendant being older than Ms. Enlow.

6               In the other indictment, the defendant is  
7       charged with criminal solicitation of a minor. It's  
8       alleged that David Andrew Bowers, who is alleged to  
9       have been born on March the 1st, 1989, did in Saluda  
10      County, on or between the dates of October the 6th,  
11      2012, and October the 7th, 2012, knowingly and  
12      unlawfully contact or communicate with or attempt to  
13      contact or communicate with **Minor**, whose date  
14      of birth is alleged to be , she  
15      being under the age of 18. The communication or  
16      attempted communication or contact being for the  
17      purpose of or with the intent of persuading,  
18      inducing, enticing or coercing **Minor** to  
19      participate in sexual activity as defined in the  
20      statute.

21             I remind you, ladies and gentlemen, that these  
22      indictments are not evidence. They have no  
23      evidentiary value. They're merely charging papers.

24             Now, to prove a defendant guilty of any crime,  
25      the State has to prove beyond a reasonable doubt

1       that the defendant acted with a necessary criminal  
2       intent. The criminal intent required in these cases  
3       is that the defendant must have been proven to have  
4       acted knowingly. To act knowingly means to act with  
5       knowledge, to act consciously not accidentally. It is  
6       an intentional act, a willful act.

7               Intent is a mental state. It may be shown by  
8       acts and conduct of the defendant and other  
9       circumstances from which you may naturally and  
10      reasonably infer intent, but the State has to prove  
11      to you the necessary criminal intent was possessed  
12      by the defendant in order for you to find him guilty  
13      of any crime. And the burden of proof, again, is  
14      beyond a reasonable doubt.

15             All right. I'm going to explain to you now the  
16      law related to the charge of criminal sexual conduct  
17      with a minor in the first degree. A person engages  
18      in criminal sexual conduct in the first degree when  
19      he engages in a sexual battery with a person who is  
20      less than 11 years of age.

21             Sexual battery is a defined term. The  
22      definition of sexual battery includes situations  
23      where a perpetrator causes any intrusion, however  
24      slight, of any part of the perpetrator's body into  
25      the genital or anal openings of the purported



1 victim's body except when that's done for -- by  
2 licensed and legitimate medical personnel.

3 So to prove the defendant guilty of criminal  
4 sexual conduct with a minor in the first degree, the  
5 State first must prove to you beyond a reasonable  
6 doubt that the alleged incident occurred in Saluda  
7 County on or between the dates alleged in the  
8 indictment; the State must prove to you that the  
9 defendant engaged in a sexual battery with **Minor**  
10 Enlow; and the State must prove to you that **Minor**  
11 **Minor** was less than 11 years of age at the time.

12 To prove sexual battery, the State has to prove  
13 to you beyond a reasonable doubt that at the date,  
14 time and place alleged in the indictment, the  
15 defendant caused some part of his body to be  
16 inserted, however slightly, into the genital opening  
17 of **Minor**. Any consent, willingness,  
18 indifference or ignorance on the part of the minor  
19 is not a defense to criminal sexual conduct with a  
20 minor in the first degree.

21 And now I need to go over the law with you  
22 about criminal solicitation of a minor. Criminal  
23 solicitation of a minor occurs when a person who is  
24 18 years of age or older, a person who is a legal  
25 adult, knowingly contacts or communicates with a

1 person under 18 years of age for the purpose of or  
2 with the intent to persuade, induce, entice or  
3 coerce the minor to participate in a sexual  
4 activity.

5 Sexual activity is a defined term. It includes  
6 any of the following acts or simulations of any of  
7 the following acts: Masturbation whether done alone  
8 or with another human; vaginal, anal or oral  
9 intercourse; touching in an act of apparent sexual  
10 stimulation or sexual abuse of the clothed or  
11 unclothed genitals, pubic area or buttocks of  
12 another person or the clothed or unclothed breast of  
13 a human female; the insertion of any part of a  
14 person's body other than the male sexual organ or of  
15 any object into another person's anus or vagina,  
16 again, except when that would be done as part of a  
17 recognized medical procedure.

18 So to prove the defendant guilty of criminal  
19 solicitation of a minor, the State has to prove to  
20 you beyond a reasonable doubt that on the date and  
21 at the time and place alleged in the indictment, the  
22 defendant was over 18 years of age and that he  
23 knowingly and intentionally contacted or  
24 communicated with **Minor** at a time when she  
25 was less than 18 years of age with the purpose of or

1 with the intent to persuade her, induce her, entice  
2 her to participate in a sexual activity.

3 Sexual activity, as I've said, is a defined  
4 term. I've read the definitions to you. They  
5 include masturbation, sexual intercourse, touching  
6 in one of the sexually inappropriate ways mentioned  
7 in the definition or insertion of a part of a  
8 person's body other than his penis or an object into  
9 the genital or anal openings of another person.

10 Now, ladies and gentlemen, the defendant is  
11 entitled to every reasonable doubt arising in the  
12 entire case. If upon any issue of fact essential to  
13 a conviction, you have a reasonable doubt as to how  
14 that should be resolved, you must resolve that doubt  
15 in favor of the defendant.

16 If upon reviewing an entire case, you have a  
17 reasonable doubt as to whether the defendant has  
18 been proven guilty beyond -- I'm sorry -- if you  
19 have a reasonable doubt as to whether the defendant  
20 has been proven guilty, he must be given the benefit  
21 of that doubt and you must find him not guilty on  
22 that charge.

23 On the other hand, if upon reviewing an entire  
24 case, you find that the State has proven every  
25 element of the crime charged against the defendant

1       beyond a reasonable doubt, it's equally your duty to  
2       find the defendant guilty of that charge.

3             All right. That's the law.

4             Ladies and gentlemen, when you go back to the  
5       jury room to decide these cases, you're going to  
6       have with you the exhibits that have been admitted  
7       in the trial and you're going to have these verdict  
8       forms. On these forms, you're going to tell us your  
9       decisions concerning these two cases.

10            One verdict form is for the criminal sexual  
11       conduct with a minor in the first degree, the other  
12       is for the charge of criminal solicitation of a  
13       minor. Each of them has a caption at the top and  
14       they have a different case number because each case  
15       is different. And I've put in bold letters,  
16       underlined the charge that you're considering on  
17       each of these verdict forms.

18            This one reads, As to the charge of criminal  
19       sexual conduct with a minor in the first degree, we,  
20       the, jury unanimously find the defendant, and you  
21       have two options. You may find him not guilty or  
22       you may find him guilty of criminal sexual conduct  
23       with a minor in the first degree.

24            And the law requires that in order for you to  
25       find him guilty on this charge, that you have found

1       that the State has proven him guilty of criminal  
2       sexual conduct with a minor in the first degree,  
3       including proof beyond a reasonable doubt that the  
4       defendant performed sexual battery by intrusion,  
5       however slight, of his finger into the minor's  
6       vagina.

7               The other verdict form as to the charge of  
8       criminal solicitation of a minor, it reads, We, the  
9       jury, unanimously find the defendant, again, you  
10      have two options. You may find him not guilty or  
11      you may find him guilty of criminal solicitation of  
12      a minor.

13             Folks, I'm supposed to tell you that you're not  
14      to infer from the order in which I state those  
15      things that I am trying to suggest one over the  
16      other. I've got to say one thing first and one  
17      thing second. I think you'll find the verdict form  
18      self-explanatory.

19             Madame Foreman, part of your job is to record  
20      the verdicts for me. If you'll just check the  
21      response chosen by the jury on each case and sign  
22      your name on the signature line.

23             Now, ladies and gentlemen, how you go about  
24      your votes, how you go about your deliberations,  
25      that's all in your discretion, subject to this

1        requirement: The verdicts must be unanimous. All  
2        12 of the jurors must agree in order for your  
3        foreperson to record a verdict. You cannot do  
4        anything to change the requirement of unanimity.  
5        There has to be unanimity in order for something to  
6        be a verdict. If it's not unanimous, it's not a  
7        verdict.

8                All right. Now, I've told you probably a dozen  
9        or more times not to discuss the case until I tell  
10       you it's time, and believe it or not, it's not time  
11       yet. The law says that I have to go over with you  
12       the things that -- I'm sorry -- that I have to go  
13       over with the attorneys the things that I just told  
14       you. And that's just common sense. We don't want  
15       you back there deciding these cases using the wrong  
16       law. So if I said something wrong, they have to be  
17       given a chance to point it out to me so that I have  
18       an opportunity to correct my mistake.

19               Now, the truth of the matter is that, as I  
20       mentioned to you yesterday, we stayed, I printed out  
21       a proposed charge, we've already been over that. We  
22       covered it briefly again this morning, and I don't  
23       think this part will take very long to go through  
24       with the lawyers. But I never read the charge  
25       verbatim. Sometimes I say things I don't even know

1 I said.

2 So here's the signal you need to be looking  
3 for: If I'm satisfied with what I told you, I will  
4 send in the verdict forms and send in the exhibits  
5 to the jury room, the bailiff will bring the two  
6 alternates out, he will leave those documents, those  
7 things, the exhibits and the verdict form on each  
8 case, in the jury room. When it's just the 12 of  
9 you in there with the exhibits and the door is shut  
10 and the bailiff's out and the alternate's out, you  
11 can start talking about the case. You don't have to  
12 wait another second, but don't talk about it until  
13 then. When you have reached your verdicts, knock on  
14 the door and the bailiff will respond to your knock.

15 Thank you very much for your attention. You  
16 may retire to your jury room. The two alternates  
17 need to go in at this point.

18 (The jury retires to the jury room.)

19 **THE COURT:** Please state for the record  
20 exceptions, additions or objections to the charge,  
21 from the State.

22 **MR. MAYE:** None from the State, Your Honor.  
23 Thank you.

24 **THE COURT:** From the defense.

25 **MR. SHEEK:** None from the defense, Your Honor.

1           **THE COURT:** Thank you very much.

2           Well, gentlemen, everybody, I appreciate the  
3           respect you've shown to the Court. It's been a  
4           pleasure being with you folks. This is a very  
5           difficult case. The jury has the most difficult job  
6           in the courthouse and we're going to put it in their  
7           hands and see what they decide.

8           Check the verdict form on each case please,  
9           Attorneys. And when you're satisfied, give those to  
10          the bailiff and check the exhibits as well.

11          (Pause.)

12          **THE COURT:** Did y'all check the exhibits?

13          **MR. SHEEK:** Yes, sir. No objection from the  
14          defense.

15          **MR. MAYE:** None from the State, Your Honor.

16          **THE COURT:** Madame Bailiff, bring the  
17          alternates out, please.

18          (Whereupon, the alternates enter the  
19          courtroom.)

20          **THE COURT:** Y'all just have a seat for a  
21          second. Anywhere is fine. It doesn't matter where.

22          I have Mr. Rodgers and Mr. Boone. All right,  
23          gentlemen, we made it through the trial without any  
24          of the jurors getting sick or any issues coming up,  
25          so I'm going to excuse you from jury duty now.



1       You're through with jury duty. You don't have to  
2       come back. I've released the jury for the rest of  
3       the week.

4               I want you to understand that I use alternates  
5       in about half the cases I do. So once we swear that  
6       jury, as I mentioned earlier, jeopardy attaches  
7       under the double jeopardy clause and we have to keep  
8       going forward. So the reason we had you sitting  
9       over there is because if I lost one or two jurors,  
10      we could keep going. In this case, we didn't.

11              But I really appreciate your service. If you  
12      have questions, comments, criticisms or complaints,  
13      you can write to me and I'll try to address them. I  
14      used to talk to jurors at this point privately, but  
15      we've been given instructions not to do that anymore  
16      because -- they used to tell us to do it, now they  
17      tell us don't do it because, you know, it's not on  
18      the record, so if anybody ever claims anything  
19      happened, there's no record of it.

20              So if you need a slip for work or anything, you  
21      can check with the Clerk. If not, you're free to go  
22      any time you want to go. If you want to stay,  
23      you're welcome to stay.

24              (The alternates were excused.)

25              **THE COURT:** All right. We're at ease on this

1 case pending a verdict.

2 Mr. Bowers, at this point, I always take  
3 defendants into custody. You're in custody.

4 (Whereupon, the jury commences its  
5 deliberations at 11:25 a.m.)

6 (A recess transpired.)

7 (Court's Exhibit Number 4, jury note, marked  
8 for identification.)

9 **THE COURT:** All right. One housekeeping matter  
10 I need to address. The jury had sent out a note,  
11 which I've had marked as a court's exhibit, that  
12 indicated that there was a typographical error on  
13 one of the sentence sheets. I don't know what is  
14 going on. I'm having to e-mail these forms and have  
15 them printed. And when I e-mail, I have saved them  
16 into a new form, but apparently twice now it has not  
17 communicated what was said. There must be some code  
18 in it or something.

19 Anyway, the only thing was, it had Lexington in  
20 it and the date in March, I don't remember what  
21 year, but it's attached to that note. I spoke with  
22 the attorneys and the jury just asked for a  
23 corrected verdict form. And with their consent, I  
24 sent it in. So the note of the jury has been  
25 marked. The erroneous proposed verdict form has

1       been marked, attached to that note, and the jury was  
2       given a proper verdict form.

3               I've been told the jury has a verdict.

4       Obviously, I have no way of knowing what they've  
5       decided. Please do not show signs of approval or  
6       disapproval. I realize these are very emotional  
7       matters, but I need you to stay still and stay  
8       quiet, don't shake your head in agreement or  
9       disagreement, don't show signs of approval or  
10      disapproval with the jury's verdict.

11              Bring the jury in, please.

12              (The jury returns to open court to report  
13      its verdict at 1:52 p.m.)

14              **THE COURT:** Madame clerk.

15              **THE CLERK:** Madame Forelady, have you reached a  
16      verdict?

17              **FORELADY:** Yes, ma'am.

18              **THE CLERK:** Will you please pass it to the  
19      bailiff?

20              (The clerk hands verdicts to the Judge.)

21                              VERDICT OF THE JURY

22              **THE COURT:** All right. They're in proper form.

23              The verdict on case number 2012-GS-41-440, the  
24      State versus David Andrew Bowers, as to the charge  
25      of criminal sexual conduct with a minor in the first

1 degree, we, the jury, unanimously find the defendant  
2 guilty of criminal sexual conduct with a minor in  
3 the first degree, including proof beyond a  
4 reasonable doubt that the defendant performed sexual  
5 battery by intrusion, however slight, of his finger  
6 into the minor's vagina. Signed by the Foreperson  
7 of the jury.

8 On case number 2013-GS-41-10, as to the charge  
9 of criminal solicitation of a minor, we, the jury,  
10 unanimously find the defendant guilty of criminal  
11 solicitation of a minor. Signed by the Foreperson  
12 of the jury.

13 Ladies and gentlemen of the jury, if I've  
14 accurately stated your verdicts, that is guilty as  
15 to both charges, please raise your right hand.

16 All 12 hands are raised.

17 Are there any matters to take up prior to the  
18 jury being discharged, from the State?

19 **MR. MAYE:** None from the State, Your Honor.

20 **THE COURT:** From the defense?

21 **MR. SHEEK:** None from the defense, Your Honor.

22 **THE COURT:** Ladies and gentlemen, that's going  
23 to conclude your jury service. There are some legal  
24 issues I have to address with the attorneys outside  
25 your presence. If you want a slip for work, if

1       you'll just stay in the jury room, the Clerk will  
2       come and get you a slip. If you, for any reason,  
3       want to watch the sentencing, I'll ask if you want  
4       to do that before I start the sentencing procedure.

5             Thank you very, very much for your service. If  
6       you don't need a slip and you don't want to stay  
7       around for anything else, you're free to go. Thank  
8       you.

9             (The jury was excused.)

10       **THE COURT:** We're at ease.

11             (Defendant's mother passes out.)

12       **THE COURT:** Put him in the holding cell. We're  
13       at ease.

14             (Brief Recess.)

15       **THE COURT:** Are there any motions?

16       **MR. SHEEK:** Just renew our motion -- well, it  
17       would be a motion for judgment notwithstanding the  
18       verdict, Your Honor, on the same grounds we had  
19       stated on our directed verdict motion.

20       **THE COURT:** Motion for a new trial is denied.  
21       There's ample evidence to support the jury's  
22       verdict.

23             All right. Does the State have anything  
24       related to sentencing? Did any of the jurors stay?

25       **BAILIFF:** No, sir.

1           **MR. MAYE:** Your Honor, the facts speak for  
2 themselves. It's a horrible betrayal. It's a  
3 tragedy for every member of every one of the family  
4 that's involved in this. And the facts just speak  
5 for themselves. I ask that the Court execute your  
6 sage judgment.

7           **THE COURT:** Mr. Sheek.

8           **MR. SHEEK:** Thank you, Your Honor. I think  
9 you've heard probably most of the relevant facts,  
10 Your Honor. David is 23 years old. He's not  
11 married. He is engaged. His fiancée has been here  
12 with him throughout the trial. He has one young  
13 child, a daughter. He has another child expected to  
14 be here very soon. He has no other children. He is  
15 a lifelong resident of the Saluda area.

16           With this offense, he has no criminal record,  
17 Your Honor, the mandatory sentence is great and it's  
18 not parole eligible. I would certainly encourage  
19 the Court, in light of his youth, the allegations in  
20 this case, the lack of criminal record, to impose  
21 the minimum sentence required by law.

22           **THE COURT:** Did you want to say anything,  
23 Mr. Bowers?

24           (Defendant confers with Mr. Sheek.)

25           **MR. SHEEK:** All he said to me, Your Honor, is

1       that in light of what's happened to his mother, he's  
2       just emotionally -- doesn't know what to say right  
3       now.

4               **THE COURT:** Do you want to come back tomorrow  
5       and be sentenced?

6               **DEFENDANT:** I'm sorry for what happened, of  
7       course, as far as all the texting and everything,  
8       but there's no excuse.

9               **THE COURT:** Have a seat, please.

10              (Pause.)

11              **THE COURT:** All right. Mr. Bowers, if you wish  
12       to appeal anything from these proceedings, it has to  
13       be done in writing. You understand that?

14              **DEFENDANT:** (Nodded head.)

15              **THE COURT:** Speak your answer.

16              **DEFENDANT:** Yes, sir.

17              **THE COURT:** And it has a very short timeframe  
18       for filing the notice of intent to appeal. I  
19       suggest to you that you go ahead and tell your  
20       attorney to file the notice of intent to appeal if  
21       you have any thought whatsoever about the  
22       possibility of appealing the case. You can always  
23       withdraw an appeal, but -- listen to me now and then  
24       you can talk to him as long as you need to.

25              **DEFENDANT:** Yes, sir.

1           **THE COURT:** Are you listening to me?

2           **DEFENDANT:** Yes, sir.

3           **THE COURT:** You can always withdraw an appeal  
4 if you were to decide to do that, I don't know why  
5 you would in cases like this, but if you let that  
6 time go by, you lose the right to appeal.

7           **DEFENDANT:** Okay.

8           **THE COURT:** So you need to go ahead and file  
9 your notice of intent to appeal. You need to tell  
10 Mr. Sheek that. And if you don't have the resources  
11 to hire an attorney through the appellate process,  
12 there's a provision that you can be appointed an  
13 appellate defender. You understand all that?

14          **DEFENDANT:** Yes, sir.

15                               SENTENCE OF THE COURT

16          **THE COURT:** There's a mandatory sentence on  
17 your case, Mr. Bowers, of criminal sexual conduct  
18 with a minor in the first degree. And the Court  
19 imposes the following sentences on these two  
20 charges:

21               On the CSC first, the sentence is you be  
22 committed to the South Carolina Department of  
23 Corrections for 25 years, plus pay the costs and  
24 assessments. Active electronic monitoring is  
25 required. I had noted on your sentence sheet that



1 the jury found that the criminal sexual conduct  
2 involved digital penetration of the victim's vagina.  
3 Pay your court costs within a year beginning any  
4 community supervision or released from prison.

5 On the other indictment, criminal solicitation,  
6 is ten years, plus costs and assessments. The  
7 sentences are run concurrently. You're given credit  
8 for jail time under section 24-13-40. Those credits  
9 will be applied and calculated by the department of  
10 corrections. You have sex offender registry  
11 required, and the same conditions on this indictment  
12 as on the previous one related to the payment of  
13 your costs.

14 You have an active 25-year sentence, 25 years  
15 and 10 years running concurrently. You understand  
16 your sentence?

17 **DEFENDANT:** Yes, sir.

18 **THE COURT:** Good luck to you, sir.

19

20 END OF PROCEEDINGS

21

22

23

24

25

## 1 C E R T I F I C A T E

2

3 STATE OF SOUTH CAROLINA

4 COUNTY OF SALUDA

5

6 I, the undersigned, Stacy L. Sheppard, Circuit  
7 Court Reporter for the Eleventh Judicial Circuit of  
8 the State of South Carolina, do hereby certify that  
9 the foregoing is a true, accurate and complete  
10 transcript of record of all the proceedings had and  
11 the evidence introduced in the trial of the  
12 captioned cause, relative to appeal in the Criminal  
13 Court for Saluda County, South Carolina, on the 4th  
14 - 6th of February, 2014.

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

17

18 December 22, 2014

19

20 s/Stacy L. Sheppard

21

22 Stacy L. Sheppard, RPR

23 Circuit Court Reporter

24

25

FORM 5  
FILED

STATE OF SOUTH CAROLINA )

2016 SEP 16 ) AM 10: 54 IN THE COURT OF COMMON PLEAS

COUNTY OF SALUDA )

CLERK OF COURT  
SALUDA CO. S.C.

DAVID A. BOWERS #358706 )

Full name and prison number (if any) of Applicant. )

v. )

State of South Carolina )

2016-CP-41-201

APPLICATION FOR

POST-CONVICTION RELIEF

**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institution, P.O. Box 205, Ridgeville, SC 29472
2. Name and location of Court which imposed sentence Saluda County Court of General Sessions, 100 E. Church Street, Saluda, SC 29138
3. Name(s) of co-defendant(s) (if any) \_\_\_\_\_
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) Criminal Sexual Conduct with a minor 1<sup>st</sup> Degree (2012-GS-41-440)
  - (b) Criminal Solicitation of a Minor (2013-GS-41-010)
  - (c)

5. The date upon which sentence was imposed and the terms of the sentence:
- (a) February 4, 2014 - twenty five (25) years
  - (b) February 4, 2014 - ten (10) years concurrent
  - (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty
  - (b) after a plea of not guilty X
  - (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. South Carolina Court of Appeals
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (b) the result in each such Court to which you appealed:
    - i. Dismissed
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (c) the date of each such result:
    - i. June 8, 2016
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (d) if known, citations of any written opinion or orders entered pursuant to such results:
    - i. Unpublished opinion No. 2016-UP-252
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) \_\_\_\_\_
  - (b) \_\_\_\_\_

- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) \_\_\_\_\_
- (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?
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief?
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)?
- (d) any other petitions, motions or applications in this or any other Court?
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. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- 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) \_\_\_\_\_

(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? yes(c) your sentencing? yes(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. C. Lance Sheek, Esq., Eighth circuit Solicitor's Office, P.O. Box 516, Greenwood,SC 29648ii. Katherine H. Hudgins, Esq., Appellate Defender, P.O. Box 11589, Columbia, SC29211

iii.

(b) the proceedings at which each such attorney represented you:

i. Jury Trialii. Sentencingiii. Direct Appeal

19. State clearly the relief you seek in filing this application:

New trial

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA )

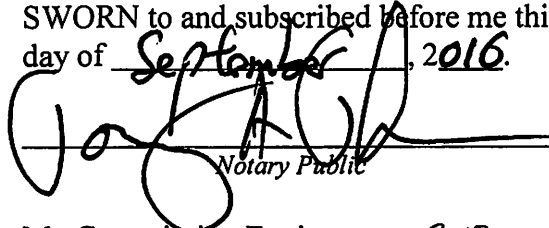
County of Dorchester )

VERIFICATION

I, David Bowers, 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.

X David A. Bowers

SWORN to and subscribed before me this 7  
day of September, 2016.

 (L.S.)  
Notary Public

My Commission Expires: 3-17-24



**APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I, David Bowers, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

X David A. Bowers  
Applicant

SWORN or affirmed to and subscribed before me this

7 day of September, 2018  
[Signature]  
Notary Public

My Commission Expires: 3-17-24

|                          |   |                                      |
|--------------------------|---|--------------------------------------|
| STATE OF SOUTH CAROLINA  | ) |                                      |
|                          | ) | IN THE COURT OF COMMON PLEAS         |
| COUNTY OF SALUDA         | ) |                                      |
|                          | ) |                                      |
|                          | ) | 2016-CP-41-201                       |
| David Andrew Bowers,     | ) |                                      |
| Applicant,               | ) |                                      |
|                          | ) |                                      |
| v.                       | ) | <b>RETURN AND MOTION TO DISMISS,</b> |
|                          | ) | <b>OR IN THE ALTERNATIVE,</b>        |
| State of South Carolina, | ) | <b>MOTION FOR A MORE DEFINITE</b>    |
|                          | ) | <b>STATEMENT</b>                     |
| Respondent.              | ) |                                      |
| _____                    | ) |                                      |

Respondent hereby makes Return to the Post-Conviction Relief (PCR) Application filed September 16, 2016. Respondent submits that the Application should be summarily dismissed because it fails to provide any facts supporting the ground upon which his application is based. In the Alternative, Respondent moves for a more definite statement. Respondent would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Saluda County. Applicant was indicted at the February 2013, term of the Saluda County Grand Jury for one count each of Criminal Sexual Conduct with a Minor, 1st Degree (2012-GS-41-440), and Criminal Solicitation of a Minor (2013-GS-41-010). Applicant was represented at trial by Lance Sheek, Esq. February 4-6, 2014, At trial Applicant was convicted by a jury of all charges. The Honorable William P. Keesley Judge Keesley sentenced Applicant to twenty-five years for Criminal Sexual Conduct with a Minor, 1st Degree, and ten years for the Criminal Solicitation of a Minor to run concurrently.

Applicant filed a timely Notice of Appeal and an *Anders* brief was submitted by

Katherine Hudgins, Esq. on behalf of Applicant. The South Carolina Court of Appeals affirmed Applicant's conviction on June 15, 2016. *State v. Bowers*, Op. No. 2016-UP-252 (S.C. Ct. App. 2015). The Court returned the Remittitur on June 24, 2016.

Attached herewith and incorporated herein by reference are the records of the Saluda County Clerk of Court regarding the subject convictions, the transcript from Applicant's trial, Applicant's appellate records, and Applicant's records from the South Carolina Department of Corrections. Respondent reserves the right to amend its Return upon the receipt of other relevant records.

## II.

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

### 1. Ineffective Assistance of Counsel

Applicant offered no supporting facts or explanation in support of his allegation of ineffective assistance of counsel.

## III.

Respondent submits Applicant's unspecified and general claim of ineffective assistance of counsel allegation is insufficient to warrant a hearing or relief because the applicant has failed to provide any facts supporting the grounds upon which his application is based in accordance with S.C. Code Ann. § 17-27-50. The respondent moves for summary dismissal pursuant to South Carolina Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that this allegation should be dismissed as a matter of law.

## IV.

Alternatively, Respondent moves for a more definite statement. The Uniform Post-Conviction Procedure Act requires the Applicant to set forth the grounds upon which the application is based and supporting facts. *See* S.C. Code Ann. § 17-27-50 (1985). Applicant does not explain with any specificity whatsoever the facts upon which his ineffective assistance of counsel claim is based.

Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application well in advance and set forth specific facts upon which the allegation is based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests Applicant be required to amend his application to set forth specifically the facts supporting his claim.

## V.

Each and every allegation contained within the application not expressly admitted, qualified or explained is hereby denied.

## VI.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code Ann. § 17-27-10 *et seq.*; Rule 71.1, SCRCP. All claims should be made well in advance of the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. Rule 15(a), SCRCP.

Because Applicant has been appointed an attorney, the attorney is the only individual authorized to file amendments to this application, and filings by Applicant will not be considered at the PCR hearing. *See* Rule 11, SCRCF.

VII.

WHEREFORE, having made its Return, Respondent requests this Application be summarily dismissed for failure to state a claim, or, in the alternative, order Applicant to provide a more definite statement.

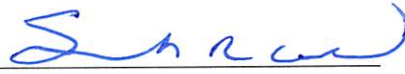
Respectfully submitted,

ALAN WILSON  
Attorney General

DONALD J. ZELENKA  
Deputy Attorney General

MELODY J. BROWN  
Senior Assistant Deputy Attorney General

SUSANNAH R. COLE  
Assistant Attorney General

By:   
SUSANNAH R. COLE  
S.C. Bar No. 68383

Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-6305

August 24, 2017  
Columbia, South Carolina

ATTORNEYS FOR RESPONDENT

|                          |   |                              |
|--------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA  | ) |                              |
|                          | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF SALUDA         | ) |                              |
|                          | ) |                              |
|                          | ) | 2016-CP-41-0201              |
|                          | ) |                              |
| DAVID A. BOWERS,         | ) |                              |
|                          | ) |                              |
| Applicant,               | ) |                              |
|                          | ) |                              |
| vs                       | ) | AFFIDAVIT OF SERVICE BY MAIL |
|                          | ) |                              |
| STATE OF SOUTH CAROLINA, | ) |                              |
|                          | ) |                              |
| Respondent.              | ) |                              |

---

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss or in the Alternative Motion for a More Definite Statement** with attachments, in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tommy A. Thomas, Esquire  
 PO Box 88  
 Irmo, SC 29063

**RETURN ATTACHMENT LIST:**

- (1) Saluda County Clerk of Court Records
- (2) Record of Appeal
- (3) SCDC records
- (4) Applicant's Appellant Records

DATED this 24<sup>th</sup> day of August, 2017.

  
 Troyeshi Brailey  
 Paralegal to Susannah R. Cole  
 Assistant Attorney General

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
 COUNTY OF SALUDA )

DOCKET NO.: 2016-CP-41-201

DAVID BOWERS #358706, )  
 )  
 Applicant, )  
 v. )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent, )  
 \_\_\_\_\_ )

AMENDMENT TO APPLICATION  
 FOR POST CONVICTION RELIEF

CLERK OF COURT  
 SALUDA CO.  
 S.C.

2017 SEP 12 PM 12:13

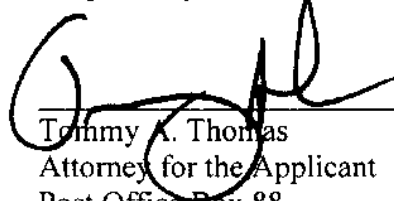
FILED

Pursuant to the Respondent's Return and Motion for More Definite Statement, the Applicant by and through his attorney, Tommy A. Thomas, would respectfully amend and supplement his original application for Post-Conviction Relief filed September 16, 2016, by adding the following:

1. That the Applicant specifically re-alleges his claim of ineffective assistance of counsel.
2. That trial Counsel was ineffective for the following additional reasons:
  - a. Failure to bring out the fact that the results of the medical examination of the minor was negative.
  - b. Failure to bring out that the statement given by the Applicant by the Police was coerced. He was told that if he signed the statement that he could go home. Counsel was ineffective for not filing a Motion to Suppress this statement.
  - c. Failure to investigate and bring out the relationship of the witnesses and that some of them were related to each other and their potential bias.

- d. Failure to properly explain the ten (10) year plea offer to the Applicant.
- e. Failure to file a Post-Trial Motion to reconsider the sentence.
- f. Failure to properly investigate the Jury Pool. One of the Juror's and the victim's Father were Facebook friends.

Respectfully submitted,



Tommy A. Thomas  
Attorney for the Applicant  
Post Office Box 88  
Irmo, SC 29063  
(803) 732-5507

September 11, 2017  
Irmo, SC



STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SALUDA )

DOCKET NO.: 2016-CP-41-201

DAVID BOWERS #358706, )

Applicant, )

v. )

STATE OF SOUTH CAROLINA, )

Respondent, )

CERTIFICATE OF SERVICE

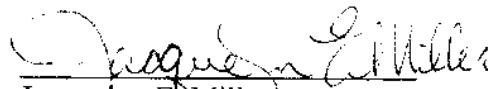
CLERK OF COURT  
 SALUDA CO. S.C.

2017 SEP 12 PM 12:13

11-11-17

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Applicant hereby certify that I placed in the United States Mail, a copy of an Amendment to Application for Post Conviction Relief, with postage prepaid and the return address clearly shown on said envelope to Susannah R. Cole, Esq. of the Attorney General's Office, at:

Susannah R. Cole, Esq.  
 Attorney General's Office  
 P.O. Box 11549  
 Columbia, SC 29211-1549



Jacquelyn E. Miller  
 Secretary to Tommy A. Thomas  
 Attorney for Applicant  
 P.O. Box 88  
 Irmo, SC 29063  
 (803) 732-5507

Irmo, SC  
 September 11, 2017

|                          |   |                               |
|--------------------------|---|-------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS  |
|                          | ) |                               |
| COUNTY OF SALUDA         | ) | THE ELEVENTH JUDICIAL CIRCUIT |
|                          | ) |                               |
|                          | ) | 2016-CP-41-201                |
| David Andrew Bowers,     | ) |                               |
| Applicant,               | ) |                               |
|                          | ) |                               |
| v.                       | ) | <b>RETURN TO AMENDED</b>      |
|                          | ) | <b>APPLICATION FOR</b>        |
| State of South Carolina, | ) | <b>POST-CONVICTION RELIEF</b> |
|                          | ) |                               |
| Respondent.              | ) |                               |
| _____                    | ) |                               |

In response to the application for post-conviction relief filed by David Andrew Bowers (Applicant) on September 16, 2016, and amended by filing on September 11, 2017, Respondent would show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Saluda County. Applicant was indicted at the February 2013, term of the Saluda County Grand Jury for one count each of Criminal Sexual Conduct with a Minor, 1st Degree (2012-GS-41-440), and Criminal Solicitation of a Minor (2013-GS-41-010). Applicant was represented at trial by Lance Sheek, Esq. February 4-6, 2014, At trial Applicant was convicted by a jury of all charges. The Honorable William P. Keesley Judge Keesley sentenced Applicant to twenty-five years for Criminal Sexual Conduct with a Minor, 1st Degree, and ten years for the Criminal Solicitation of a Minor to run concurrently.

Applicant filed a timely Notice of Appeal and an Anders brief was submitted by Katherine Hudgins, Esq. on behalf of Applicant. The South Carolina Court of Appeals affirmed Applicant's conviction on June 15, 2016. State v. Bowers, Op. No. 2016-UP-252 (S.C. Ct. App.

2015). The Court returned the Remittitur on June 24, 2016.

Incorporated herein by reference<sup>1</sup> are the records of the Saluda County Clerk of Court regarding the subject convictions, the transcript from Applicant's trial, Applicant's appellate records, and Applicant's records from the South Carolina Department of Corrections. Respondent reserves the right to further amend its Return upon the receipt of other relevant records.

## II.

In his Amended Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

### Ineffective Assistance of Counsel

In support of his claim, Applicant alleged counsel provided ineffective assistance for the following reasons:

- a) Failure to bring out the fact that the results of the medical examination of the minor was negative.
- b) Failure to bring out that the statement given by the Applicant by the police was coerced. He was told that if he signed the statement that he could go home. Counsel was ineffective for not filing a Motion to Suppress this statement.
- c) Failure to investigate and bring out the relationship of the witnesses and that some of them were related to each other and their potential bias.
- d) Failure to properly explain the ten (10) year plea offer to the Applicant.
- e) Failure to file a Post-Trial Motion to reconsider the sentence.
- f) Failure to properly investigate the Jury Pool. One on the Juror's and the victim's Father were Facebook friends.

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<sup>1</sup> The materials referenced have already been provided to the Court and all parties in the original return filed August 24, 2017.

## III.

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but

for counsel's unprofessional errors, the result of the proceeding would have been different.”  
Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

#### IV.

During pre-trial motions, the defense requested the court conduct a Jackson v. Denno<sup>2</sup> hearing to determine whether Applicant’s statement to the Saluda County Sheriff’s investigator was voluntary. (T. p. 48-49, 56.) At the time Applicant gave his statement, he was in custody and had waived his Miranda rights. (T. p. 57.) Applicant wrote the statement himself, signed it, and two deputies witnessed it. (T. p. 63.) In his statement, Applicant admitted he touched the minor between her legs, put his hand down her pants, touched her breasts, and put his finger in her vagina. (T. p. 64.) Applicant claimed he was provoked. (T. p. 64.) The victim was ten years old. (T. p. 71.) The trial court made a though finding on the admissibility of the statement. (T. p. 78-80.)

The victim’s father, Russell, testified Applicant is his second cousin, who also worked for him. (T. p. 118-119.) Russell said he provided a cell phone for his ten year old daughter to use during her custodial visits with his ex-wife. (T. p. 124.) On the day of the incident, Russell and his family and Applicant and his wife attended a gathering to watch a football game. (T. p. 126.) On the way back from the gathering, Applicant and victim rode in the same car. (T. p. 126.) When they arrived back home, Russell went to bed while the children stayed up to watch a movie. Russell said he did not know Applicant was still in the house. (T. p. 128-129.) The next morning, Russell felt something was unusual, so he reviewed the text messages from his

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<sup>2</sup> Jackson v. Denno, 378 US 368 (1964).

daughter's phone. (T. p. 132-133.) In the messages, the victim and Applicant discuss feeling "horny," getting "drunk," being "sexy," and clearly refer to an incident that occurred on the car ride home the night before in which Applicant digitally penetrated the victim. (T. p. 134-142.) After finding the texts on his daughter's phone, Russell immediately took the phone to the sheriff's department. (T. p. 143.)

The victim testified she spent a great deal of time with Applicant because he babysat them sometimes and lived nearby. The victim said Applicant taught her some of the graphic language she used in the texts. (T. p. 155.) The victim said the texts occurred over time. (T. p. 156-157.) The victim corroborated the testimony of her father, and explained that after her family went to bed, she and Applicant stayed up to watch a movie. (T. p. 161-162.) Applicant touched her leg, then put his hand down her pants, than touched her vagina and penetrated her with his fingers. (T. p. 162.) Applicant also touched her breasts. (T. p. 163.) On cross examination, the victim said she denied what happened because she was embarrassed and scared. (T. p. 164.) The victim acknowledged she denied the activity when she was examined at the Dickerson Center, but then later told the sheriff's deputy what happened. (T. p. 172-174.)

The State introduced copies of phone calls Applicant made to his girlfriend from the detention center following his arrest in which he admitted the assault of the child, but claimed he was drunk and said he was "pursued into that." (T. p. 219.)

In his defense, Applicant admitted he sent the text messages to the victim, but claimed he was only joking with the ten year old girl. (T. p. 241.)

## V.

Given the record of the trial proceedings, Applicant cannot meet his burden of showing counsel was ineffective for his failure to challenge the voluntariness of Applicant's statement, his failure to show witness bias, or his failure to point out the lack of incriminating finding from the victim's medical exam. Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the remaining allegations of ineffective assistance of counsel probably raise questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

## VI.

Each and every allegation contained within the application not expressly admitted, qualified or explained is hereby denied.

## VII.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code Ann. § 17-27-10 *et seq.*; Rule 71.1, SCRCP. All claims should be made well in advance of the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. Rule 15(a), SCRCP.

Because Applicant has been appointed an attorney, the attorney is the only individual authorized to file amendments to this application, and this Court should consider any filings by Applicant at the PCR hearing. *See* Rule 11, SCRCP.

## VIII.

WHEREFORE, having made its Amended Return, Respondent requests that a hearing be held on the claims of ineffective assistance of trial counsel.

Respectfully submitted,

ALAN WILSON  
Attorney General

DONALD J. ZELENKA  
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October 10, 2017  
Columbia, South Carolina

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STATE OF SOUTH CAROLINA  
COUNTY OF SALUDA

IN THE COURT OF COMMON PLEAS FOR  
THE ELEVENTH JUDICIAL CIRCUIT

2016-CP-41-201

David Andrew Bowers,

Applicant,

V.

State of South Carolina,

Respondent.

### PROOF OF SERVICE BY MAIL

I have this day served a copy of the **Amended Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tommy A. Thomas, Esquire  
P.O. Box 88  
Irmo, SC 29063

I further certify that all parties required by Rule to be served have been served. This 10th day of October, 2017.

Shruti

Susannah R. Cole  
Assistant Attorney General  
SC Bar No. 68383

1 State of South Carolina )  
2 County of Saluda ) Indictment No.: 2016-CP-41-00201  
3 David Andrew Bowers, )  
4 Plaintiff, )  
5 vs. ) Transcript of Record  
6 State of South Carolina, )  
7 Defendant. )  
8 \_\_\_\_\_ )

9

10

February 23, 2018

11

Lexington, South Carolina

12

BEFORE:

13

The Honorable J. Derham Cole, Judge

14

15

APPEARANCES:

16

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Tommy A. Thomas, Esquire  
Attorney for the Plaintiff

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Susannah Cole, Assistant Attorney General  
Attorney for the Defendant

21

22

ALSO PRESENT:

23

24

David Andrews Bowers

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1       Thereupon, the following proceedings were had,

2               MS. COLE:   David Bowers.

3               THE COURT:   Ms. Cole.

4               MS. COLE:   Your Honor, this is David Andrew Bowers  
5       versus the State of South Carolina. The case number is  
6       2016-CP-41-00201. Your Honor, this is a Saluda County  
7       case arising out of Mr. Bowers' trial before Judge  
8       Keesley in February of 2014. Mr. Bowers was charged and  
9       convicted of one count each of criminal sexual conduct  
10      with a minor first degree and criminal solicitation of a  
11      minor. Judge Keesley sentenced Mr. Bowers to 25 years  
12      for the csc with a minor and 10 years for the criminal  
13      solicitation of a minor. Those were concurrent  
14      sentences. Mr. Bowers was represented by Lance Sheek.

15              The charge arose from the discovery of text messages  
16      on the 10 year old victim's phone by her father. The  
17      discovery of the text led to an investigation of an  
18      incident in the car the night before in which the victim  
19      sat in Mr. Bowers' lap, he touched her breasts and in  
20      between her legs and then digitally penetrated the  
21      victim. Mr. Bowers is a cousin of the family and  
22      frequently spent time with the family.

23              Mr. Bowers appealed his conviction in an Anders  
24      Brief and his convictions were affirmed in June of 2016.  
25      It is our understanding that Mr. Bowers now alleges

1 multiple claims of ineffective assistance of counsel and  
2 we are ready to proceed.

3 THE COURT: All right. Mr. Thomas, you represent  
4 him?

5 MR. THOMAS: Yes, sir.

6 THE COURT: Good morning.

7 MR. THOMAS: Good morning, Your Honor.

8 THE COURT: Yes, sir.

9 MR. THOMAS: Your Honor, if it please the Court, I  
10 do represent Mr. Bowers. We're ready to proceed. Just  
11 for kind of a housekeeping thing prior, I have in the  
12 past indicated just the page numbers and the line numbers  
13 in the transcript when I'm referring to something just  
14 for the Court's information. I find that easier rather  
15 than sometimes having my clients read parts of the  
16 transcript, if that's okay.

17 THE COURT: I like that.

18 MR. THOMAS: If it please the Court, I will do  
19 that.

20 THE COURT: Sure.

21 MR. THOMAS: Thank you, Your Honor. Your Honor, if  
22 it please the Court, we'll call Mr. David Bowers to the  
23 stand.

24 Thereupon,

25 DAVID ANDREW BOWERS

1 after having been first duly sworn, testified as follows,

2 THE CLERK: Please have a seat. Once you're seated,  
3 state your full name for the record.

4 THE WITNESS: David Andrew Bowers.

5 MR. THOMAS: If it please the Court, Your Honor.

6 THE COURT: Yes, sir.

7 DIRECT EXAMINATION

8 BY MR. THOMAS:

9 Q. Mr. Bowers, you're currently incarcerated in the  
10 South Carolina Department of Corrections?

11 A. Yes, sir.

12 Q. All right, sir. What are you serving time for?

13 A. For the criminal sexual conduct first degree.

14 Q. With a minor?

15 A. Yeah. Minor. And then solicitation of a minor.

16 Q. And you have an active sentence of course on those  
17 charges?

18 A. Yeah.

19 Q. What is your total sentence?

20 A. 25.

21 Q. You got 25 --

22 A. And then 10 concurrent.

23 Q. Ten concurrent. Now, you have filed a post  
24 conviction relief action. You understand that the relief that  
25 you are requesting today is for a new trial?

1 A. Yes, sir.

2 Q. You understand that you're asking for your sentence  
3 to be vacated?

4 A. Yes, sir.

5 Q. You and I have talked about this, that also gives  
6 you certain exposure?

7 A. Yeah.

8 Q. And that you received a 25 year sentence. You could  
9 potentially get more?

10 A. Yes, sir.

11 Q. Do you understand that risk?

12 A. Yes, sir.

13 Q. And you're willing to go forward today?

14 A. Yes, sir.

15 Q. And you want to go forward today?

16 A. Yes, sir.

17 Q. Mr. Bowers, you were arrested when?

18 A. It was October the 7th, 2012.

19 Q. All right, sir. You were in Saluda County?

20 A. Yeah.

21 Q. Okay. Now, your charges were the csc conduct with a  
22 minor first degree?

23 A. Yes, sir.

24 Q. And the criminal solicitation?

25 A. Yeah.

1 Q. And those were the original charges?

2 A. Mm-hmm.

3 Q. All right, sir. Now, you were taken to the  
4 detention center?

5 A. Yeah.

6 Q. Were you released on bond?

7 A. Yeah. It was like, I think it was like two months  
8 and a week I stayed in county.

9 Q. That you were in the county detention center?

10 A. Yeah.

11 Q. All right, sir. How long were you out on bond?

12 A. From December 12th of 2012 until when I went to  
13 trial in 2014 February.

14 Q. All right, sir. Now, during that period of time you  
15 retained a lawyer; is that correct?

16 A. Yes, sir.

17 Q. Who did you retain?

18 A. Mr. Lance Sheek.

19 Q. All right, sir. Do you remember roughly when you  
20 retained him?

21 A. It was - I know I was in the county so it was  
22 probably within the first week or two.

23 Q. So you were still in the detention center?

24 A. Yes, sir.

25 Q. So he had the opportunity to represent you for a



1 period of time --

2 A. Yes, sir.

3 Q. -- prior to your trial. Okay. Now, what did you do  
4 during that period? How did you prepare with your attorney?  
5 What did y'all do to prepare for trial?

6 A. Uhm, we spoke briefly when he come to the county  
7 while I was in the county and, uh, then after I got out on  
8 bond, I can't remember exactly what month it was when I got  
9 out, I went to his office in Greenwood with my mom and we  
10 spoke there and that's whenever I got all the copies of the, I  
11 guess that was the motion for discovery, and that was that  
12 time. And then after that it was, I don't remember. Like I  
13 say, I don't remember how long it took but whenever I went to  
14 my roll calls we had met there and talked a few more times.

15 Q. How many times did you meet with him to prepare your  
16 case?

17 A. Just once at the office when we had talked, but I  
18 guess it was probably maybe four or five times that we had  
19 seen each other.

20 Q. When he gave you the discovery, did you have an  
21 opportunity to go over that material with him?

22 A. Yeah.

23 Q. Okay. Now, you said that Mr. Sheek represented  
24 you?

25 A. Yes, sir.

1           Q.    I think you had indicated to me that you found out  
2 later that he also served as a part time Solicitor?

3           A.    Yes.  That was whenever I was at one of the roll  
4 call hearings because they were questioning me where he was at  
5 and I said I have no idea but, you know, why he wasn't there  
6 with me at my roll call.

7           Q.    Did that give you any concern?

8           A.    Yeah, to be honest because I didn't know what to do  
9 at that point because I had spent every dollar, you know, for  
10 him to represent me that I had.

11          Q.    And you're saying today that you feel there were  
12 things that he could have done that he didn't do for you?

13          A.    Yeah.

14          Q.    All right, sir.  Did you and he talk about a theory  
15 of defense?  I mean, you made a decision to go to trial?

16          A.    Yes.

17          Q.    And how did you make that decision?  What kind of  
18 information did you have?

19          A.    It was just mainly me knowing what really happened  
20 and I thought maybe it was just best to do that.

21          Q.    Take it to trial?

22          A.    Yeah.  Take it to trial.

23          Q.    Did he give you any advice in regards to accepting a  
24 plea offer or taking it to trial?

25          A.    Yeah.  He did.  He told me it would probably be in

1 my best interest to do that because of the type of charge it  
2 is.

3 Q. To do what? I'm sorry.

4 A. To take the plea.

5 Q. Did you have plea offers?

6 A. I had one that was a zero to 15. They said they had  
7 to speak to the victim's family and find out if they wanted to  
8 go forward with that. I never heard anything else on that  
9 plea whether it was throwed out or not so obviously it was  
10 throwed out and then it was a 10 year plea. I just don't know  
11 exactly what the charges were.

12 Q. Did you accept the 10 year plea offer?

13 A. I told him through a text message the night of that  
14 I wanted to take it, but then I kind of said let's hold up and  
15 wait until in the morning and they ended up taking it off the  
16 table.

17 Q. All right, sir. Now, you were present, of course,  
18 in the courtroom when the jury was selected.

19 A. Yes, sir.

20 Q. All right. Did you have any concern about any of  
21 the jurors?

22 A. There was one in particular that, Debbie Kirkland, I  
23 don't remember what juror number she was.

24 MR. THOMAS: Just for the Court's information, that  
25 is contained on page 37 of the transcript.

1 BY MR. THOMAS:

2 Q. This lady was Debbie Kirkland?

3 A. Yes, sir.

4 Q. What concern did you have about Ms. Kirkland?

5 A. Well, like I said, with Rusty being the father of  
6 the victim I worked with him with a pest control company that  
7 he owned, self-employed and I knew for certain that he was  
8 banking at the bank that she was a teller at and that he was  
9 actually - she was a customer of him as far as pest control.

10 Q. And they were friends?

11 A. Yeah. Oh, yeah. Friends on Facebook as well.

12 Q. All right. And did you bring this information to  
13 the attention of your attorney?

14 A. I told him that I knew they knew each other as far  
15 as that but at the time I didn't know that they were actually  
16 Facebook friends.

17 Q. But you knew the other information?

18 A. Yes. I knew the other information.

19 Q. Was she - she was not struck? She went onto the  
20 jury?

21 A. Right. She served on the jury panel.

22 Q. Okay. Now, we talked about the pretrial motions and  
23 that there was a Jackson v. Denno Hearing. Do you know what  
24 that is?

25 A. At the time I didn't. I still don't really

1 understand what it is.

2 Q. But you understand that you had given a statement?

3 A. Right.

4 Q. And that your attorney was trying to keep that  
5 statement out?

6 A. Right.

7 Q. Okay. And you had given a statement basically  
8 saying that you had committed this crime?

9 A. Yes, sir.

10 Q. Why did you do that?

11 A. Well, while being interrogated by the three officers  
12 that come and arrested me at my house, they questioned me on  
13 what happened because they were, of course, they seen the  
14 messages in the text and everything and I told them nothing  
15 had happened other than the messages itself and then they just  
16 kept hounding me, hounding me saying I was a f'ing liar and  
17 just raising their voices and just getting belligerent and  
18 they ended up saying you did this. You did this. You did  
19 this, as far as everything I admitted to in the statement and  
20 they said that if I kept denying it and saying nothing  
21 happened, that I was facing 25 to life already and I would get  
22 the max if I didn't tell them the truth of what happened and,  
23 of course, me never being in trouble and being scared so I  
24 just thought that was the best and only way to actually to be  
25 able to be done with the interrogation.

1 Q. So you told them what they wanted to hear?

2 A. Right.

3 Q. Was your statement true?

4 A. No.

5 MR. THOMAS: Your Honor, for the Court's information  
6 that's in the transcript from pages 73 to 74.

7 THE COURT: Okay.

8 BY MR. THOMAS:

9 Q. Now, the Court ruled against you and allowed that  
10 information to come in, allowed the statement to come in?

11 A. Yes, sir.

12 Q. Okay. Now, let me ask you about, you were talking  
13 about text messages. So there were these alleged text  
14 messages between you and this young lady?

15 A. Yeah.

16 Q. All right. And they issued a search warrant and  
17 they seized your phone?

18 A. Yes, sir.

19 Q. All right. Do you know whether or not they seized  
20 her phone?

21 A. I think they may have. I'm not sure to be honest.

22 Q. All right. Did you ever see any text messages from  
23 her phone?

24 A. No. It was just all pulled from my phone records.

25 Q. Did you ask your attorney about that?

1 A. No. I didn't think to or anything at the time.

2 Q. So y'all didn't discuss why they had your text  
3 messages but they didn't have hers?

4 A. Not that I recall.

5 Q. All right. And also there was, I think this young  
6 lady, she was taken to the Dickerson Center?

7 A. Yes, sir.

8 Q. What is the Dickerson Center?

9 A. It's where they take like victims from sexual crimes  
10 that's been committed to check to see if there's any DNA.

11 Q. Forensic interview?

12 A. Yeah. Forensic interview.

13 Q. Did you have an opportunity or did you discuss this  
14 forensic interview with your attorney?

15 A. Yes, sir, because it was actually a paperwork in the  
16 motion that had stated, I think, I want to say it was just one  
17 paper at the time if I'm not mistaken, but it had everything  
18 as far as what they searched for, no findings and then her  
19 statement said nothing had happened.

20 Q. Did you see any paperwork in regards to a report  
21 from the Dickerson Center?

22 A. Yeah.

23 Q. What was your understanding of that report?

24 A. My understanding was, was - I'm not trying to  
25 backtrack here, but going back to the statement with the cops

1 before I was taken to the county, they said that she's at the  
2 Dickerson Center. That's how I learned of that's where she  
3 was at the time and they said if she comes back with findings  
4 of anything, that you're pretty much screwed and I said so  
5 that means with the statement with me saying, you know, what  
6 y'all want to hear, if it comes back negative, that means I  
7 get to go home and this is all over with and they said  
8 correct. So my understanding when I seen the paperwork after  
9 being out on bond I was like, well, this is all gonna be  
10 over.

11 Q. Because she had said nothing had happened?

12 A. Yes, sir. And then it said no findings as well on  
13 the paper.

14 Q. Did that information, was that part of your decision  
15 to go to trial with this case?

16 A. Mainly. Yes, sir.

17 Q. Based upon the information from the Dickerson  
18 Center?

19 A. Right.

20 Q. All right. And was there also any kind of rape  
21 protocol or rape kit that was performed?

22 A. I think the only thing was as far as being there  
23 whatever they performed there. I'm not sure exactly what it  
24 was. I'm thinking that's what it was because with it saying  
25 no findings.



1 Q. Okay. Was there any DNA evidence in this case that  
2 linked you to the crime?

3 A. No, sir.

4 Q. Did you talk to your attorney about what this meant,  
5 that there wasn't any DNA evidence?

6 A. Well, not really. I mean, it was just, that was  
7 just what I had seen as far as driving back from Greenwood  
8 back to Saluda with my mom, I was just looking through the  
9 papers, but we never really discussed it as far as I can  
10 recall.

11 Q. But in your mind was that part, did that play a part  
12 in your decision to go to trial in this case?

13 A. Oh, yes. A hundred percent.

14 Q. So you had the Dickerson Center, you had no DNA?

15 A. Mm-hmm.

16 Q. All right, sir. Now, how about as far as the  
17 statement that you had given, did you and your attorney talk  
18 about how he was gonna attempt to keep that out?

19 A. I'm pretty sure we did. I knew that in the county  
20 he said that with that statement being made we were gonna try  
21 to have that suppressed I think was the word that was used.

22 Q. Yes, sir.

23 A. And I knew that that was a reason. He had told me  
24 from the get go that that statement did not look good as far  
25 as proving your innocence if you're admitting to something

1 so...

2 Q. Let me ask you this: You had mentioned to me  
3 something about video evidence of, I guess, a video recording  
4 of the actual statement that you had given?

5 A. Right.

6 Q. Did you discuss that with your attorney in regards  
7 to how that might be used?

8 A. Yes, sir. He actually brought it up asking why  
9 there was no video of the interrogation or audio of the  
10 interrogation even though they had the means and equipment to  
11 be able to do so and they really didn't have no answer for  
12 it.

13 Q. Okay. Which might have supported your position that  
14 you were forced or coerced?

15 A. Yes. It would have definitely showed that, no doubt  
16 in my mind.

17 Q. Now, do you remember you had testified that the  
18 information that she had given at the Dickerson Center had  
19 indicated that you were not involved first? She made several  
20 statements; is that correct?

21 A. Yes. It was a lot of statements made. Yes, sir.

22 Q. And there were inconsistencies in these  
23 statements?

24 A. Yes, sir.

25 Q. Okay. Now, did you have an opportunity to talk to

1 your attorney about that?

2 A. Yeah. We did. It was -- I can't recall exactly  
3 what was said, but we did speak of it.

4 Q. Okay. Let me ask you this: The State had thought  
5 that you were, that your relationship with this young lady was  
6 more involved.

7 A. Yes. Like it was actually like a  
8 boyfriend/girlfriend type.

9 Q. Right. And that there was more involvement than  
10 actually what they were putting you on trial for.

11 A. Right. Right.

12 Q. Do you remember at trial any information coming out  
13 about that she had jumped up and pushed you out the door or  
14 locked the door? Do you remember any of that?

15 A. Yes, sir. I do.

16 Q. What was that?

17 A. She was mainly saying that, I mean, I don't know  
18 where that come from but everything that had happened as well  
19 and like I say backtracking again as far as the statement  
20 where I had told the police that when I passed out on the  
21 couch asleep, I woke up with her on me grabbing me between my  
22 legs and I threw her off and I walked out the house, but she  
23 changed the story saying she pushed me out, shut the door, all  
24 this, dead bolted the lock.

25 Q. Was that consistent with the State's theory about

1 that you had an ongoing girlfriend/boyfriend relationship?

2 A. No. Not in my eyes at all.

3 Q. Did you talk to your attorney about that or when did  
4 you know that information?

5 A. I don't recall exactly when I heard that  
6 information. I want to say we may have spoke about something  
7 like that. As far as inconsistencies with the stories and  
8 everything it was probably around that time I would imagine.

9 Q. Do you know whether or not at trial your attorney  
10 argued these inconsistencies?

11 A. No. He didn't.

12 Q. Okay. Mr. Bowers, you and I have spent a lot of  
13 time talking about this case.

14 A. Yes, sir.

15 Q. I'm gonna ask you this and I'm not implying that I  
16 have forgotten something or that I have overlooked something,  
17 but today is your day in court.

18 A. Yes, sir.

19 Q. Is there anything else that you would like to bring  
20 to the Court's attention, anything that you feel like I may  
21 have forgotten or may have left out?

22 A. None that I can really think of off the top of my  
23 head at the moment.

24 MR. THOMAS: Okay. All right. Your Honor, please  
25 the Court, that's all the questions I have.

1 CROSS EXAMINATION

2 BY MS. COLE:

3 Q. Good morning, Mr. Bowers.

4 A. Good morning.

5 Q. Some of these questions your attorney may have asked  
6 you but I'll ask you again. How many times did you meet with  
7 Mr. Sheek before you went to trial?

8 A. Had to be anywhere between four to six times  
9 including county as well.

10 Q. You did hire him, right? You said you and your mom  
11 I think retained him when you were out on bond?

12 A. No. This was while I was -- He was retained while I  
13 was in the county. Yeah.

14 Q. But you were able to meet with him in person --

15 A. Right.

16 Q. -- outside of the detention center?

17 A. Yeah. Mm-hmm.

18 Q. Okay. And you said, I believe, that you went over  
19 all the State's evidence against you?

20 A. Right.

21 Q. So you were aware of the statement you gave the  
22 police?

23 A. Right.

24 Q. The text on the phones?

25 A. Yeah.

1           Q.    But you were aware of what the case was that the  
2   State was about to present against you?

3           A.    Mm-hmm.

4           Q.    And you said now that the statement you gave to  
5   police was coerced?

6           A.    Yeah.

7           Q.    What about the text?  What was your defense of the  
8   text?

9           A.    There was no excuse for that.  I had actually  
10   admitted at trial, uhm, that I was guilty of that.  There  
11   wasn't no excuse.  It was stupid and dumb but, I mean, it did  
12   happen.  I mean, there wasn't no denying that.

13          Q.    Okay.  Did you give your attorney any other leads or  
14   ideas about a possible defense other than it didn't happen or  
15   she was lying or --

16          A.    No.  I was just mainly saying that.

17          Q.    And let's talk about the plea.  You said you were  
18   first offered zero to 15?

19          A.    Yeah.  I just don't remember.  Like I said, I know  
20   it was when I was on bond, but yeah, I was offered that.

21          Q.    Okay.  And then there was another 10 year offer; is  
22   that right?

23          A.    Mm-hmm.

24          Q.    And if I understood you correctly, you said you  
25   thought about taking it?

1 A. Right.

2 Q. And said I want to wait?

3 A. Yeah.

4 Q. But then when you changed your mind or when you  
5 called Mr. Sheek --

6 A. Right.

7 Q. -- it was off the table at that point?

8 A. Yeah. And I want to say that may have been -- I  
9 don't remember if it was when we went to a roll call hearing  
10 maybe. We asked them if - he asked the State Attorney if it  
11 was still on the table and he said no. Absolutely not so...

12 Q. Okay. And you said Mr. Sheek advised you to plead  
13 guilty --

14 A. Right.

15 Q. -- in light of the State's case?

16 A. Yes.

17 Q. And he explained how strong the State's case was?

18 A. Well, I can't remember exactly in the county what  
19 the percentage was when I asked as far as in helping me or if  
20 it was, you know, wouldn't be helping and then I think it  
21 ended up being a 50/50 shot is what he had told me.

22 Q. So you also testified, I believe, that you recall  
23 the pretrial hearing, that Jackson v. Denno Hearing?

24 A. Right.

25 Q. Do you remember Mr. Sheek asking the investigators

1 about the questions they asked you?

2 A. Mm-hmm.

3 Q. And do you remember Mr. Sheek challenging whether or  
4 not they promised you anything?

5 A. Right.

6 Q. And you remember him asking about why wasn't there a  
7 video?

8 A. Right.

9 Q. So he did try to get that statement suppressed?

10 A. Yeah. Yeah.

11 Q. It just ultimately wasn't successful?

12 A. Right.

13 Q. And you had signed a waiver of rights, right?

14 A. Mm-hmm.

15 Q. The medical exam, you said you were aware of the  
16 medical exam, you saw it?

17 A. Right.

18 Q. But you didn't take it to him and say, hey, can you  
19 explain what this means?

20 A. Well, I thought it was self explanatory as far as  
21 saying no findings and she said nothing happened.

22 Q. In the statement you gave to the police you  
23 described the incident in the car, correct, the night  
24 before?

25 A. I think -- I can't remember exactly what it said,



1 but I think it may have been, yeah. It was riding home with  
2 them with the father and them. Yeah.

3 Q. Right. And that you told the police she climbed  
4 into your lap?

5 A. Yeah. Well, that was actually at their house.

6 Q. At the house?

7 A. Yes.

8 Q. Okay. And that she asked you to touch her breasts  
9 --

10 A. Right.

11 Q. -- or something to that effect and that you put your  
12 finger inside her private parts?

13 A. Yeah.

14 Q. Okay. And you were related to the family, right?  
15 Can you explain your relationship with the family?

16 A. I want to say the dad would be my second cousin so  
17 that would make her my third cousin, the kids. I think that's  
18 exactly right.

19 Q. And her father testified at trial?

20 A. Right.

21 Q. And there was no hiding the fact that everyone was  
22 related in this case?

23 A. No. No.

24 Q. And they knew that you were a cousin as well?

25 A. Right.

1 Q. Okay. When did you find out about the Facebook  
2 connection on the jury pool?

3 A. This was actually my mom had looked up, uh, I think  
4 it was whenever I first had came to prison, maybe the first  
5 year I was at Lieber and we had found out about that and then  
6 I was like, well, that shows even more, you know, like I was  
7 saying where they were customers of each other I guess you  
8 would say.

9 MS. COLE: Okay. I believe that's all the questions  
10 I have for you.

11 THE WITNESS: Thank you.

12 MR. THOMAS: If Your Honor, please the Court.

13 THE COURT: Yes sir.

14 REDIRECT EXAMINATION

15 BY MR. THOMAS:

16 Q. Following up on the Facebook connection, you found  
17 out about the Facebook connection after you were incarcerated?

18 A. Right.

19 Q. But you knew that there was some sort of  
20 relationship between the father and the juror?

21 A. Yeah. I think a friendship. Yes, sir.

22 Q. And you brought that out to counsel, to your  
23 attorney?

24 A. Right. During the jury pool.

25 Q. During the jury pool?

1 A. Yes, sir.

2 Q. All right. And I think you indicated to me that  
3 there were strikes left?

4 A. Yeah. I went back through my transcript. I want to  
5 say it was, I can't remember the exact count, I think it was  
6 10 and something, five or something.

7 Q. So to your information she could have been struck?

8 A. Right. Right.

9 Q. Okay. And on the plea counsel asked you about, you  
10 know, the plea offers and you said in your other testimony  
11 that you had accepted the 10 years, you wanted to accept the  
12 10 years but it was pulled off the table?

13 A. Right. Well, that was actually between me and  
14 Mr. Sheek the night of through a text message.

15 Q. Right. Did you know that there was a deadline, that  
16 you had to accept that plea by a certain time?

17 A. Well, during the meeting at the courthouse as far as  
18 discussing that meeting with Mr. Sheek, uhm, he went in and  
19 talked to, I think it was Mr. Maye at the time, I think that's  
20 who it was, and come back out and explained the plea offer and  
21 I said, well, can I sleep on it? And he went back to check  
22 with him and he was no. We got to know something right now.  
23 And I was like seriously? I can't wait until in the morning  
24 or anything just to try to sleep on this to make a decision  
25 because it was a big decision and he said no so... But I

1 guess that would have meant that was the deadline I'm  
2 guessing.

3 Q. And why didn't you accept the offer?

4 A. Uhm, mainly because I'm innocent of this. I just  
5 wanted to go to trial and I was hoping it was gonna work in my  
6 favor but obviously it didn't.

7 MR. THOMAS: Okay. No further questions, Your  
8 Honor.

9 MS. COLE: No further questions, Your Honor.

10 THE COURT: You may step down.

11 MR. THOMAS: Your Honor, if it please the Court, we  
12 call counsel Mr. Lance Sheek.

13 THE COURT: Okay.

14 Thereupon,

15 CHRISTOPHER LANCE SHEEK

16 after having been first duly sworn, testified as follows,

17 THE CLERK: Please have a seat. Once you're seated,  
18 state your full name for the record.

19 THE WITNESS: My name is Christopher Lance Sheek.  
20 Last name is S-h-e-e-k.

21 MR. THOMAS: Please the Court.

22 THE COURT: Yes, sir.

23 DIRECT EXAMINATION

24 BY MR. THOMAS:

25 Q. Mr. Sheek, you had an opportunity to represent

1 Mr. Bowers?

2 A. I did, sir.

3 Q. All right, sir. And you were in private practice at  
4 the time?

5 A. Yes, sir.

6 Q. Were you also part-time with the Solicitor's  
7 Office?

8 A. Later I went part-time with the Solicitor's Office  
9 in the Eighth Circuit but not in the Eleventh Circuit.

10 Q. All right. And you were retained in this case?

11 A. Yes, sir.

12 Q. And what did you do to get this case ready for  
13 trial?

14 A. Well, the very first thing was, of course, file a  
15 Rule 5 and a Brady motion and wait for that information to  
16 come in. In the meantime we were working on getting  
17 Mr. Bowers a bond hearing because he was being held without  
18 bond as he testified and it took a couple of months to get  
19 that taken care of. As the evidence came in from the  
20 Solicitor's Office as he testified he and I believe his mother  
21 and I'm not sure if someone else came with him came up to my  
22 office. We met there. I gave them copies of what I had and  
23 then as time went on it kind of trickled in such as  
24 information from the Dickerson Center and some jail phone  
25 calls that were recorded. I didn't receive those initially.

1 They came in later as the State got those and as I would get  
2 that I would let him know if something else came in or if  
3 something changed.

4 Q. Do you feel like that the State complied with  
5 discovery request?

6 A. I do with one exception. I don't think it was not  
7 intentional. There was a handwritten note that was in with  
8 the cell phone of the victim in this case. It was actually  
9 sealed up in the bag. The Solicitor found it actually when we  
10 were in trial. It wasn't really, didn't have any exculpatory  
11 value to me. He brought it to our attention. He did not  
12 attempt to put it in evidence, let the Judge know about it,  
13 and basically I believe said something to the effect of he  
14 didn't want me to ask a question that blundered into that  
15 since I had been made aware of it.

16 Q. So it had no impact on the trial?

17 A. It had no exculpatory value for us.

18 Q. Let me ask you about in thinking along those lines  
19 the information in discovery that were provided about the text  
20 messages.

21 A. Yes.

22 Q. You received the text messages from his phone; is  
23 that correct?

24 A. Yes. They had done a dump of his phone if I'm not  
25 mistaken at Aiken either county or city in Aiken where they

1 had the technology to do that and for some reason they had a  
2 problem with that and then actually had to dump it a second  
3 time.

4 MR. THOMAS: Your Honor, just for the Court's  
5 information, the text messages, this information starts  
6 on page 81, lines 18 through 23.

7 BY MR. THOMAS:

8 Q. And when I read the transcript, it was interesting,  
9 I noticed that they didn't give you the text messages from her  
10 phone.

11 A. My understanding from what they told me they never  
12 dumped her phone. They had her phone physically and they told  
13 me they had it and powered it up to let me see it, but I don't  
14 believe there was ever a forensic dump of the information off  
15 that phone.

16 MR. THOMAS: Your honor, her phone is discussed on  
17 page 83.

18 BY MR. THOMAS:

19 Q. Did you think it was, I mean, and I know in the  
20 transcript on page 83 they talk about he actually had the  
21 phone in the courtroom with him?

22 A. Correct.

23 Q. Would it have been prudent to have as part of the  
24 discovery to have requested a quote unquote dump of those text  
25 messages on her phone?

1           A.    Uhm, the reason I didn't is in my discussions with  
2   Mr. Bowers, he had indicated that the text messages we went  
3   over were legitimate. He had sent those and received those in  
4   talking with the victim so the State had not dumped her phone.  
5   I wasn't at the time interested in encouraging them to dump it  
6   if there was something more they didn't know about.

7           Q.    I understand. But there were allegations by the  
8   State that there had been, or actually I think you brought up  
9   that there were inconsistencies about, there were things that  
10  were in the text messages that weren't true?

11          A.    Yes.

12          Q.    Or like either just kind of fantasy or made up?

13          A.    Correct. We talked about that in the testimony with  
14  Mr. Bowers and I also went over that when the victim  
15  testified. They were clearly statements that did not happen  
16  and that went along with Mr. Bowers' testimony that this was a  
17  joke or an inappropriate banter but not something that really  
18  occurred.

19          Q.    All right. And I was curious and I guess we don't  
20  know whether or not those text messages on her phone could  
21  have maybe supported that position that a lot of this was  
22  fantasy about the sexual relations?

23          A.    Well, we had the text messages that she had sent him  
24  on the forensic dump. They weren't just his messages. We had  
25  them back and forth. They allowed me to see her phone to see



1     that those messages were on her phone. So I don't know if  
2     that answered your question.

3           Q.    Yes, sir. It does. And I notice, too, that there  
4     was no objection made to the transcript of those text messages  
5     off of his phone coming into evidence. Was there any way that  
6     you could have kept that out?

7           A.    I do not believe so, but to be honest with you I  
8     didn't want to because when dealing with the statement and  
9     dealing with her testimony we knew that we had to present that  
10    there was some banter but that it was not sexual and there was  
11    no penetration of any type and I hoped to use the  
12    inconsistencies in the text messages to support that.

13           MR. THOMAS: Your Honor, for the Court's  
14    information, that's on page 83 in the transcript as well.  
15    BY MR. THOMAS:

16           Q.    Now, the Dickerson Center, what is the Dickerson  
17    Center?

18           A.    It's a child advocacy center in I believe Columbia  
19    and they do forensic interviews for children that allege some  
20    type of sexual abuse.

21           Q.    She was taken to the Dickerson Center?

22           A.    She was taken there on two occasions. The first  
23    forensic interview she disclosed that nothing had happened so  
24    we obviously used that in our defense. She was taken back a  
25    second time where she disclosed that there was penetration.

1 So there were two separate interviews and they were  
2 inconsistent.

3 Q. All right. And you attempted to point out these  
4 inconsistencies at court?

5 A. I did and I even went over those inconsistencies  
6 with her and the fact that when she went, she didn't report to  
7 them that anything had happened, and you have to be obviously  
8 very careful. She was 12 years old at the time. I'm cross  
9 examining her and you can't beat her up in front of the jury,  
10 so trying to be gentle though she said, well, I was scared and  
11 embarrassed and I pointed out to her, but you say you had  
12 already told the police all these things, so if you've already  
13 told strangers, why would you have been afraid to tell them,  
14 and then used a prior statement of hers that she wanted to  
15 spend more time with her biological mother. Her biological  
16 mother and father were divorced and she lived with her father  
17 and tried to insinuate that perhaps she was using these  
18 allegations as a way to get more time with her mother and that  
19 when she went to the Dickerson Center, she was actually being  
20 honest the first time that nothing happened.

21 MR. THOMAS: And, Your Honor, the Dickerson Center,  
22 that testimony begins on page 165.

23 BY MR. THOMAS:

24 Q. Now, the State's contention, and I notice this  
25 throughout the transcript, seems like the State's contention

1 was that there was some sort of almost girlfriend/boyfriend  
2 relationship going on between the two of them?

3 A. Yeah. That was what they had contended.

4 Q. Right. So there would have been a relationship?

5 A. Right. And I think they base that off of one of the  
6 text messages had made the statement the victim was asking  
7 David not to leave the house, to stay overnight because he had  
8 been drinking. She didn't want him to go anywhere. And then  
9 the comment was made if you don't, the next time I'm at your  
10 house I'm not gonna have sex with you. And they said, see, we  
11 think there's some kind of ongoing thing there.

12 Q. I noticed in the transcript --

13 MR. THOMAS: Your Honor, this is page 172 and 177.

14 BY MR. THOMAS:

15 Q. -- you asked her about, and I guess this came from  
16 information that you got from the Dickerson Center, about she  
17 said she hit David and kicked him and pushed him out of the  
18 room.

19 A. Right.

20 Q. And then another comment, and these are lines 14  
21 through 21 on page 177, I locked the door, dead bolt, turned  
22 off the lights.

23 A. Correct.

24 Q. So she made those comments that would indicate that  
25 he might have attempted to do something but she said no, no

1 and pushed him away?

2 A. We did bring out that she had made those comments.  
3 I was trying to more use them as this didn't happen. You're  
4 in here telling something you think people want you to say,  
5 not something that actually happened.

6 Q. And what I thought about when looking at that was  
7 that if the State's kind of contention they are painting a  
8 picture of, well, you know, we've charged him with this one  
9 incident and the text messages, but we believe that this case  
10 involves lots more of sexual relationship between the two and  
11 how if any way would those comments made by her impact the  
12 State's thoughts of this ongoing relationship.

13 A. They could have. I was trying to walk kind of a  
14 fine line. I didn't want to give a lot of credibility to  
15 statements that she had made at the Dickerson Center. I felt  
16 like in this case I wasn't gonna go in and prove beyond a  
17 reasonable doubt that nothing happened. I was relying on the  
18 fact that the State couldn't prove beyond a reasonable doubt  
19 that it did and so I wanted to be able to argue that you don't  
20 really know what to believe in what she has said because she's  
21 given inconsistent and unsupported statements.

22 Q. But you have a situation where in closing and I  
23 looked at the statements made --

24 MR. THOMAS: And the State's closing statement, Your  
25 Honor, that's on page 319.

1 BY MR. THOMAS:

2 Q. -- there is basically argument that there is a  
3 pattern of sexual relationship?

4 A. Yes, sir.

5 Q. And I wonder what your thoughts would be as to how  
6 that could flavor or almost use the word prejudice the jury to  
7 thinking, you know, he's guilty of this, there was all kinds  
8 of stuff going on.

9 A. I see what you're saying and at the time I didn't  
10 think the State had crossed the line from commenting on  
11 evidence or reasonable inferences and you have to be so  
12 careful in objecting on a closing argument, at the time I  
13 didn't think strategically that it was necessary to object to  
14 that based on what I intended to argue.

15 Q. All right. You and I talked about this earlier  
16 today. He was charged with criminal sexual conduct first with  
17 a minor.

18 A. Yes, sir.

19 Q. But the case was really about a fondling of sorts  
20 and the text messages?

21 A. Correct. The evidence was heavily on the  
22 solicitation and the touching and then, of course, the  
23 question of whether or not there was ever any penetration  
24 however slight would determine the first degree nature.  
25 David's testimony has always been to me that it never did

1 occur. I didn't really want to argue that perhaps something  
2 had happened but there was no penetration.

3 Q. But, and I guess this is kind of a two fold  
4 question. Does the painting of this outside of basically what  
5 he's charged with, what the allegations are, prejudice him in  
6 some manner in which that goes to the jury of saying -- I  
7 mean, is there something wrong with that? You know, he's  
8 charged with this but we know he did that.

9 A. I see what you're saying and I think if it had gone  
10 too far -- I did not object to what they said because I felt  
11 like based on the totality of the text messages they didn't go  
12 outside the realm of what was permissible so I didn't  
13 object.

14 Q. Okay. All right. I was just curious about that  
15 because it kind of struck me as - especially in light of her,  
16 your elicitation of the testimony from her that, oh, no, when  
17 he tried to do this, I said, oh, no, we're not doing this --

18 A. Yes, sir.

19 Q. -- and I threw him out of the room.

20 A. I see what you're saying. At the time I didn't  
21 object.

22 Q. Okay. All right. Now, there was no DNA evidence in  
23 this case?

24 A. There was not. It was an allegation of digital  
25 penetration. There was no DNA.

1 Q. What was the question about the touch DNA? Where  
2 were you going with that thought?

3 A. Trying to throw an idea in the jury's mind that  
4 somehow they might have been able to get touch DNA if they had  
5 checked on it though with my experience that was one reason I  
6 didn't call for a SANE nurse to come testify because she would  
7 have explained that.

8 MR. THOMAS: And, Your Honor, that's on page 227.

9 BY MR. THOMAS:

10 Q. Also you had a burden shifting argument which I did  
11 like. I thought it was a good argument.

12 A. Yeah. I remember that the Solicitor was arguing  
13 that he never said in any of his phone calls this didn't  
14 happen and I was trying to argue that's inappropriate. The  
15 Judge didn't agree with me.

16 Q. Now, she went to the Dickerson Center. She was in,  
17 I guess, referred to what they call the child advocacy medical  
18 response system.

19 MR. THOMAS: Which, Your Honor, is on page 225.

20 BY MR. THOMAS:

21 Q. And I guess a protocol kit was done at that time?

22 A. Correct.

23 Q. Do you know what the results of that kit were?

24 A. There was no findings. There was no trauma, no  
25 semen, nothing of that nature.

1           Q.    I notice that you did not, from what I can tell from  
2   the transcript none of that information was introduced into  
3   court or presented to the jury other than just the mention  
4   that it was done?

5           A.    Yeah.  Mention that there was one done and then I  
6   wanted to use the inference because there was no follow-up  
7   from the State.  You don't have anything else.  You know,  
8   basically the State had the option to do it.  We've heard that  
9   they did it.  The State's got to bring you the evidence and,  
10   jury, you don't have anything from it and that's the reason.  
11   As I say, I have dealt with the response from both  
12   pediatricians and the nurses and that's the reason I didn't  
13   want to call them as witnesses.  They're prepared to explain  
14   all the reasons why we won't have trauma, we won't have DNA.

15          Q.    That was gonna be my next question was, what were  
16   the benefits or were there benefits of you actually having to  
17   try to introduce that report or introduce testimony about the  
18   negative findings in that report?

19          A.    And that was the reason I didn't produce any  
20   testimony because generally, like I say, they explain that  
21   very well in a way that a jury understands that we wouldn't  
22   expect to find DNA or trauma based on these allegations.

23          Q.    Just one last question.  You did not place any  
24   objection to the State's closing argument about there being  
25   some sort of pattern of sexual relationship?



1           A.    I did not.  No, sir.

2                   MR. THOMAS:  And again, Your Honor, that's on page  
3           319.  I have no further questions, Your Honor.

4                               CROSS EXAMINATION

5  BY MS. COLE:

6           Q.    Mr. Sheek, how would you characterize the State's  
7           case against Mr. Bowers?

8           A.    It was strong and that was the reason, as Mr. Bowers  
9           testified, I recommended that he take the plea even though it  
10          was a substantial amount of time and he's even right when we  
11          talked about percentage, he was correct and the reason I felt  
12          like we had any chance was because of the inconsistencies in  
13          the Dickerson Center, no physical evidence, the fact that I  
14          could show some of the things in the text messages did not  
15          occur, but still at 50/50, I wouldn't take a 50 percent chance  
16          at 25 to life.

17          Q.    And the text, the problem with the text would have  
18          been if the text are joking, then that gives a credible  
19          problem to both the child, sure, but also Mr. Bowers?

20          A.    It does.  And the real problem for a jury with those  
21          texts were how graphic they were and the fact they're  
22          corresponding with a 10 year old, I told him that's going to  
23          upset a jury and they're not gonna look kindly on things.

24          Q.    And the solicitation charge, the text were clearly  
25          relevant to the solicitation charge.  There was no getting

1 around those text with the solicitation charge?

2 A. Not that I could think of. No, ma'am.

3 Q. You're in a delicate spot in examining a child or  
4 cross examining a child on the stand?

5 A. Yes, ma'am. In front of a jury it's very tricky.

6 Q. Certainly would it have been of benefit to you or  
7 Mr. Bowers for you to aggressively cross examine this child?

8 A. In my experience if you come across as mean, beating  
9 up a child, the jury definitely holds it against you, so  
10 that's the reason I was trying to tread lightly while still  
11 pointing out the inconsistencies. That's the reason I never,  
12 when she was on the stand, called her a liar, but I did at one  
13 point say, so why did you lie to them, you know? If you're  
14 saying this wasn't right, why did you lie? That was about as  
15 aggressive I felt getting with a child.

16 Q. And the allegations that the State made about  
17 criminal sexual conduct, that related to the digital  
18 penetration, correct?

19 A. Yes, ma'am.

20 Q. Okay. So the results from the Dickerson Center,  
21 what could you do with that to help Mr. Bowers, if anything?

22 A. Now you're talking about the forensic interview as  
23 opposed to medical?

24 Q. Right. I'm moving on from the statement to medical.  
25 What would any results do for Mr. Bowers?

1           A.    For the medical it really doesn't do anything.  What  
2   they tell you is that even when there is penile penetration in  
3   a young child, that in a majority of the cases they do not see  
4   physical trauma and if there is trauma, it will heal too  
5   quickly.  After a few days they won't see evidence.  People  
6   think there's scarring or things like that.  There's a belief  
7   if there is any type of penetration, a doctor can find it.  
8   That's a myth.  I don't want to call somebody who is well  
9   versed in these things or to explain delayed disclosure.  I  
10   don't want the jury to hear about no findings and then they  
11   would explain why there was none found.

12          Q.    Someone, an expert could explain delayed disclosure  
13   or why a child might not be truthful as well?

14          A.    Absolutely.

15          Q.    Okay.  While the child's statements were  
16   inconsistent, how damaging to your case were Mr. Bowers' own  
17   statements?

18          A.    Very damaging when you're trying to use reasonable  
19   doubt for a jury because a child is on the stand saying it  
20   happened and so you have got to convince a jury.  I take that  
21   back.  I don't feel like you can convince a jury it didn't  
22   happen.  I want to convince the jury you don't have enough to  
23   convict beyond a reasonable doubt standard that we've got to  
24   use in this case.  The State could go, okay, if he wants to  
25   say the child was being honest at the Dickerson Center, what

1 about when she went to the police? What did he say? What did  
2 the text messages say? What did he say on jail phone calls?  
3 So when you added them all up is where it got real  
4 problematic.

5 Q. He did admit to digital penetration in his police  
6 statement?

7 A. Yes.

8 Q. Can you explain how the development of the plea  
9 negotiation came about?

10 A. Yeah. Initially the State was adamant on a plea,  
11 guilty or go to trial, then they talked to the victim's family  
12 and the victim's family is actually the one that said, okay,  
13 we don't necessarily want a 25 to life, but I was told by the  
14 Solicitor that the victim's family wanted Mr. Bowers to serve  
15 10 years so the actual plea offer wasn't 10, it was 12 because  
16 they wanted him to serve 10 and felt like with 85 percent  
17 that's what would happen on a 12 year deal. We talked about  
18 zero to 15. What I talked to Mr. Bowers about is, hey, how  
19 about we go to them and offer them a straight up to lewd act  
20 with a given zero to 15, get out of that 85 percent and gives  
21 us room to argue with the Judge. They never would agree to  
22 that so they made the offer, then they said if we didn't take  
23 it that term, it was gonna be no good. They didn't go to  
24 trial that term. We went back, asked Ervin if he would still  
25 leave it open. I'm sorry. Ervin is Ervin Maye the Deputy

1 Solicitor. I asked him if he would still leave it open. He  
2 said he would for that day and that's when we had the  
3 conversation that Mr. Bowers has testified about that he said  
4 can I think about it overnight. I went up and talked to  
5 Mr. Maye and he said no. It's now or never.

6 Q. And he told you, no, it's now or never? He can't  
7 think about it overnight?

8 A. Yeah. Right. We've got to give him an answer  
9 now.

10 Q. And he declined. He would not take the plea?

11 A. Yeah.

12 Q. You certainly took this case to trial. Did you  
13 think it was in his best interest to plea?

14 A. I thought it was in his best interest to plea. Yes,  
15 ma'am.

16 Q. You told him that?

17 A. Yes.

18 Q. All right. The juror information.

19 A. Yes, ma'am.

20 Q. Were you aware there was any relationship between or  
21 connection between a juror member and the victim's father?

22 A. I was aware -- Saluda being a small town, we were  
23 always concerned about who knew what and I do recall a  
24 conversation with Mr. Bowers about whether or not a juror, and  
25 I don't recall if it's that one, worked at a bank where this

1 man banked, but the jurors had been asked obviously if they  
2 knew him, if they had any type of relationship and that hadn't  
3 been disclosed and we were going through strikes pretty  
4 quickly. If you look at the jury strikes, you will see I was  
5 knocking jurors out real quickly at the beginning and I was  
6 starting to try and hold on because there were people in the  
7 jury pool I knew I absolutely didn't want and so I was  
8 starting to be more judicious and based on the fact that she  
9 said she didn't know anybody and had no connection with anyone  
10 we went forward. I don't know anything about a Facebook  
11 friend or I don't recall him actually treating her house. I  
12 just remember she worked at a bank there in town.

13 Q. So a bank teller and customer, she easily could not  
14 have recognized him and had no idea who the father was?

15 A. Right.

16 Q. Not even Mr. Bowers. And certainly you don't have  
17 time to do full background investigations of the jurors on the  
18 jury pool, do you?

19 A. No, ma'am. We had went to jury qualification and  
20 then did as much as I could. I had actually taken the jury  
21 list to some people I knew that, not in Saluda, but in that  
22 area and asked them to look over it and just got as much  
23 information as I could.

24 Q. You're aware of Mr. Bowers' grounds. I believe I  
25 sent you the amended application. So there are a couple there

1 so --

2 A. Yes, ma'am.

3 Q. -- I'm gonna ask you a couple questions. You did,  
4 in fact, attempt to suppress his statement to the police. You  
5 did what you could --

6 A. Yes, ma'am.

7 Q. -- in the Jackson v. Denno Hearing?

8 A. Yes, ma'am. David had always maintained just what  
9 he testified here today, that he gave the statement, it wasn't  
10 true, he did it because he thought if he told them that, he  
11 could go home.

12 Q. And he had been read his rights?

13 A. Yes, ma'am.

14 Q. There's no Miranda issues that you can find. He was  
15 not intoxicated or impaired?

16 A. No, ma'am. He was not.

17 Q. And he's a pretty bright guy, seemed to  
18 understand?

19 A. Yes, ma'am. He understood. He told me just like he  
20 testified today he was scared and thought that's what they  
21 wanted to hear and that would get him home.

22 Q. Was there any question about how everyone was  
23 related in this case, that the victim was related to one of  
24 the witnesses? Was that ever a concern to you that there  
25 might be some sort of a witness bias in this case?

1           A.    They were all related.  Of course, the father  
2 testified, the little girl who was related to Mr. Bowers.  
3 They were all related in this case unfortunately with the  
4 exception, of course, of the police officers.

5           Q.    Sure.  Sure.  That was certainly no secret, the  
6 relationship between them?

7           A.    No, ma'am.  It was not.

8           Q.    So there's no benefit in trying to attack one  
9 witness on being bias against his own daughter for example?

10          A.    Not that I could see.

11          Q.    That wouldn't help you.  Did you file any post trial  
12 motions on Mr. Bowers' behalf, do you recall?

13          A.    Other than the notice of appeal, no.

14          Q.    So he didn't ask you to file any kind of  
15 reconsideration?

16          A.    No.  We did not file for reconsideration because the  
17 Judge gave a statutory minimum.

18          Q.    And lastly the jail phone calls.  I believe we've  
19 talked about this before that you were aware of the statement  
20 to the police?

21          A.    Yes.

22          Q.    But then you heard the jail phone calls.  Can you  
23 kind on characterize the jail phone calls?

24          A.    There were a lot of phone calls that had nothing to  
25 do with the case one way or the other.  The vast majority of



1     them didn't, but there were a couple of times where he,  
2     Mr. Bowers would discuss the allegations in the case and had  
3     made a comment that she jumped in his lap, she started  
4     grabbing him, she initiated it and he made a comment at one  
5     time I wouldn't have done it if it hadn't a been for the  
6     alcohol. That was problematic because, what do you mean?  
7     Done what? I mean, if you're saying you didn't do anything  
8     other than the text messages and he testified at trial I was  
9     referring to the text messages, but it was still  
10    problematic.

11           Q.    And so given that and given the child's inconsistent  
12    statements as well you did the best you could with the content  
13    of the text, if I understand you, as far as the suggestion  
14    there might have been something else going on?

15           A.    Yes. We did the best we could with the context of  
16    those texts.

17                   MS. COLE: Thank you, Mr. Sheek. No further  
18    questions.

19                   MR. THOMAS: Your Honor, please the Court.

20                               REDIRECT EXAMINATION

21    BY MR. THOMAS:

22           Q.    Just one or two questions, Mr. Sheek. Going back to  
23    the questions that she asked you about the juror, the one that  
24    potentially knew the victim's father and had a professional  
25    and also other relationship in regards to him working doing

1     exterminating for her, in this world of modern technology when  
2     you were practicing law did you ever make it a point when you  
3     got a list of jurors to see if they were Facebook  
4     connections?

5           A.     No. I did not. To be honest with you I wouldn't  
6     have known how to do a Facebook check. I mean, I know how to  
7     search and see if somebody is on Facebook, but how to see who  
8     they're connected to I'm not aware of.

9           Q.     Have you ever in the past as part of suggested  
10    questions for the jury pool asked that does anybody have a  
11    Facebook relationship or Facebook page with any of these  
12    witnesses?

13          A.     I have not requested that particular question. I  
14    thought when I asked do you have any business or social  
15    relationship or family relationship, that it would cover that  
16    so I've never asked that particular question. No, sir.

17               MR. THOMAS: No further questions, Your Honor.

18               MS. COLE: No recross examination.

19               THE COURT: You may step down.

20               MR. THOMAS: Your Honor, that's the applicant's  
21    case.

22               THE COURT: Okay. Anything else?

23               MS. COLE: No, Your Honor. Not from the State.

24               THE COURT: All right. I'll review it and issue an  
25    order.

1 MR. THOMAS: Thank you, Your Honor.

2 MS. COLE: Thank you, Your Honor.

3 THE COURT: Thank you. Let's take a ten minute  
4 recess.

5 WHEREUPON, THE HEARING WAS CONCLUDED.

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## 1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON )

4

5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,  
6 and Official Circuit Court Reporter for the Eleventh Judicial  
7 Circuit in and for the State of South Carolina, do hereby  
8 certify that I reported the proceedings in the before  
9 captioned case in the Court of Common Pleas in and for the  
10 State of South Carolina on the 23rd day of February, 2018.

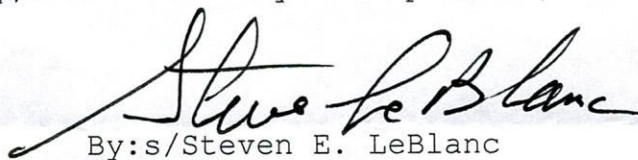
11 I FURTHER CERTIFY that the forgoing 50 pages  
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel  
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at  
16 Lexington County, this 27th day of September, 2020.

17

18



By:s/Steven E. LeBlanc

19

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Steven E. LeBlanc, Sr., R.P.R.  
Eleventh Circuit Court Reporter  
State of South Carolina.

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|--------------------------|---|-------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS  |
|                          | ) |                               |
| COUNTY OF SALUDA         | ) | THE ELEVENTH JUDICIAL CIRCUIT |
|                          | ) |                               |
|                          | ) | 2016-CP-41-201                |
| David Andrew Bowers,     | ) |                               |
| Applicant,               | ) |                               |
|                          | ) |                               |
| v.                       | ) | <b>ORDER OF DISMISSAL</b>     |
|                          | ) |                               |
| State of South Carolina, | ) |                               |
|                          | ) |                               |
| Respondent.              | ) |                               |

This matter comes to the Court by way of an application for post-conviction relief (PCR) filed September 16, 2016, and amended September 11, 2017. Respondent made its return on August 24, 2017, and filed an amended return on October 10, 2017. An evidentiary hearing was held February 23, 2018. Applicant was present and represented by Tommy A. Thomas, Esquire. Assistant Attorney General Susannah Cole of the South Carolina Attorney General's Office represented Respondent. Applicant and trial counsel C. Lance Sheek, Esquire testified. The Court had before it records from the Saluda County Clerk of Court and South Carolina Department of Corrections (SCDC) and Applicant's trial transcript.

Following review of testimony presented at the hearing and all other evidence, this Court finds Applicant received constitutionally effective assistance of counsel at all stages of his trial and relief must be denied.

#### PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Saluda County. Applicant was indicted at the February 2013, term of the Saluda County Grand Jury for one count each of criminal sexual

*[Handwritten signature]*



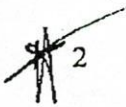
conduct with a minor ("CSC"), 1st degree (2012-GS-41-440), and criminal solicitation of a minor (2013-GS-41-010). Applicant was represented at trial by Lance Sheek, Esq. on February 4-6, 2014. The jury convicted Applicant of all charges. The Honorable William P. Keesley sentenced Applicant to twenty-five years' imprisonment for CSC with a minor, 1st Degree, and ten years for criminal solicitation of a minor, to run concurrently.

Applicant filed a timely notice of appeal and an *Anders* brief was submitted by Katherine Hudgins, Esquire on behalf of Applicant. The South Carolina Court of Appeals affirmed Applicant's conviction on June 15, 2016. *State v. Bowers*, Op. No. 2016-UP-252 (S.C. Ct. App. 2015). The Court returned the remittitur on June 24, 2016.

In his amended application of September 11, 2017, Applicant alleged he is being held in custody unlawfully due to ineffective assistance of trial counsel. In support of his claim, Applicant alleged counsel provided ineffective assistance for the following reasons:

- a) Failure to bring out the fact that the results of the medical examination of the minor was negative.
- b) Failure to bring out that the statement given by the Applicant by the police was coerced. He was told that if he signed the statement that he could go home. Counsel was ineffective for not filing a Motion to Suppress this statement.
- c) Failure to investigate and bring out the relationship of the witnesses and that some of them were related to each other and their potential bias.
- d) Failure to properly explain the ten (10) year plea offer to the Applicant.
- e) Failure to file a Post-Trial Motion to reconsider the sentence.
- f) Failure to properly investigate the Jury Pool. One on the Juror's and the victim's Father were Facebook friends.

At the hearing, Applicant proceeded on the grounds of ineffective assistance of counsel raised in the amended application.

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### SUMMARY OF THE TRIAL TESTIMONY

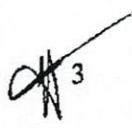
Prior to the start of trial, Applicant requested the court conduct a *Jackson v. Denno*<sup>1</sup> hearing to determine whether Applicant's statement to the Saluda County Sheriff's investigator was voluntary. At the time Applicant gave his statement, he was in custody and had waived his *Miranda* rights. Applicant wrote the statement himself, signed it, and two deputies witnessed it. In his statement, Applicant admitted he touched the minor between her legs, put his hand down her pants, touched her breasts, and put his finger in her vagina. Applicant claimed he was provoked by the ten year old victim. The trial court found the statement admissible.

The victim's father, Russell, testified Applicant is his cousin, who also worked for him. Russell said he provided a cell phone for his ten year old daughter to use during her custodial visits with his ex-wife. On the day of the incident, Russell and his family and Applicant and his wife attended a gathering to watch a football game. On the way back from the gathering, Applicant and victim rode in the same car. When they arrived back home, Russell went to bed while the children stayed up to watch a movie. Russell said he did not know Applicant was still in the house. The next morning, Russell felt something was unusual, so he reviewed the text messages from his daughter's phone. In the messages, the victim and Applicant discuss feeling "horny," getting "drunk," being "sexy," and clearly refer to an incident that occurred on the car ride home the night before in which Applicant digitally penetrated the victim. After finding the texts on his daughter's phone, Russell immediately took the phone to the sheriff's department.

The victim testified she spent a great deal of time with Applicant because he babysat them sometimes and lived nearby. The victim said Applicant taught her some of the graphic

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<sup>1</sup> *Jackson v. Denno*, 378 US 368 (1964).

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language she used in the texts. The victim said the texts occurred over time. The victim corroborated the testimony of her father, and explained that after her family went to bed, she and Applicant stayed up to watch a movie. Applicant touched her leg, then put his hand down her pants, than touched her vagina and penetrated her with his fingers. Applicant also touched her breasts. On cross examination, the victim said she denied what happened because she was embarrassed and scared. The victim acknowledged she denied the activity when she was examined at the Dickerson Center, but then later told the sheriff's deputy what happened.

The State introduced copies of phone calls Applicant made to his girlfriend from the detention center following his arrest in which he admitted the assault of the child, but claimed he was drunk and said he was "pursued into that." In his defense, Applicant admitted he sent the text messages to the victim, but claimed he was only joking with the ten year old girl.

#### SUMMARY OF THE PCR EVIDENTIARY HEARING TESTIMONY

Applicant testified his family retained counsel, and they spoke briefly while he was in jail, but Applicant was also able to meet with counsel at his office while released on bond. Applicant said he met with counsel many times, during which they went over the State's evidence against him. Applicant knew the State had his explicit text messages to the victim, as well as his own statement in which he admitted the crime. Applicant testified counsel informed him of the State's offer of a ten year sentenced and advised him to accept the offer, but Applicant said he told counsel he wanted to wait. Applicant admitted counsel told him the solicitor wanted a decision about the plea offer immediately, but he decided to think about the offer anyway. Applicant said he when told counsel he changed his mind, the offer was no longer available.

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Applicant testified that during jury selection, he recognized one of the jurors as a teller at the bank where the victim's father conducted business. Applicant said he later discovered the juror and the victim's father were Facebook friends.

Applicant also recalled his statement to law enforcement in which he admitted he digitally penetrated the victim. Applicant claimed the statement was untrue and he was coerced into making it by the officers. Applicant recalled counsel attempting to suppress the statement before the trial. Applicant also acknowledged the officers got a warrant for his phone and retrieved his text messages, but said counsel never requested a search of the victim's phone. Applicant also believed the report from the Dickenson Center, in which victim made inconsistent statements, and the medical report, in which no physical signs of sexual assault or DNA were found, would have supported his defense the victim was lying. Applicant said counsel did not discuss the DNA findings with him and he believed counsel should have used the victim's statements to more aggressively confront her about her changing story.

Trial counsel Lance Sheek testified he filed all the appropriate Rule 5 and *Brady* motions and reviewed the evidence with Applicant. Counsel said that in addition to the texts to the victim and Applicant's statement to law enforcement admitting the conduct, recordings of jail phone calls were damaging to the defense. Counsel said although a cell phone extraction was not performed on the victim's phone, the phone was made available to the defense for inspection. Counsel said Applicant had admitted to sending the texts, so counsel did not want to discover or bring attention to possibly more damaging texts that could be found on victim's phone.

Concerning the plea offer, counsel said the victim's family wanted Applicant to serve ten years, and he advised Applicant strongly to take the plea in light of the State's case. Counsel said

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he told Applicant it was a "now or never" offer from the solicitor and warned him that if he waited, the offer would not be available. Counsel said when Applicant called the next day, the offer was off the table.

Counsel said his best defense at trial was to attempt to portray the victim's story as a fantasy, and that the State could not prove their case beyond a reasonable doubt. Counsel attempted to impeach the victim with the report from the Dickerson Center, but had to proceed carefully because attacking a child's credibility can make an unfavorable impression on the jury. As for the lack of medical evidence, counsel said he did not want to defend Applicant on the basis that a relationship happened, but there was no penile penetration. Counsel also said the danger of attacking the report from the Dickerson Center would be opening the door for testimony from an expert on why a child's disclosures can be inconsistent. Counsel thought it would be more harmful than helpful to draw too much attention to those findings.

Counsel testified that because the trial was in Saluda, he was not particularly surprised a juror may have had a business connection with the victim's father, but he was unaware of any more serious relationship between the juror and the victim's family. Counsel said he did not want to use one of his strikes on a juror that said she did not know the victim's family because he wanted to save his strikes until necessary. Counsel also said there was no bias to exploit in the father's testimony because it was undisputed the victim and her father were related, as well as related to Applicant. Counsel said there was no advantage to making this argument. Counsel also said he did not file a motion to reconsider the sentence because Applicant received the statutory minimum and such a motion could not help his client.



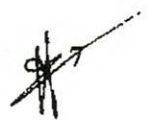


### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record, and further had the opportunity to observe the witnesses presented at the evidentiary hearing, closely pass upon their credibility, and weigh their testimony accordingly. This Court finds trial counsel's testimony is credible and should be afforded great weight. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80. Applicant has failed to prove by a preponderance of the evidence that Counsel was deficient or that he was prejudiced by any deficiency.

#### Ineffective Assistance of Counsel

Applicant alleges numerous claims of ineffective assistance of counsel. In evaluating allegations of ineffective assistance of counsel, the court applies the two-pronged test outlined in *Strickland v. Washington*, 466 U.S. 668, 669 (1984). First, Applicant must prove counsel's performance was deficient. *Id.* Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). "The proper measure of counsel's performance remains whether he has provided representation within the range of competence required of attorneys in criminal cases." *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, Counsels' deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* "[E]very effort



must be made to eliminate the distorting effects of hindsight" and to evaluate counsel's decisions at the time they were made. *Strickland*, 466 U.S. at 689. Accordingly, courts must be wary of second-guessing counsel's tactics. *Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

After careful review of the record and testimony presented at the evidentiary hearing, and based on the standard above, this Court denies and dismisses with prejudice the application for relief.

*Failure to argue the results of the medical exam were exculpatory*

Applicant alleges counsel was ineffective in failing to argue the report and medical exam from the Dickenson Center exculpated Appellant. Specifically, Applicant argues the lack of his DNA evidence found on the victim, as well as inconsistencies in the victim's statements, proved the victim was lying about the criminal sexual conduct.

At trial, the State stipulated to the results from the Dickenson Center, which showed no physical evidence of sexual assault and included statements from the victim denying anything had happened between her and Appellant. (Trial Tr. p. 83.) The State even mentioned the findings in its opening statement. (Trial Tr. p. 107.) The State further asked the victim about the examination from the Dickenson Center during its direct examination of her. (Trial Tr. p. 165.) The record reflects counsel also asked the victim about her inconsistencies on the stand. Counsel additionally asked the victim about other incidents in which she had made false statements. (Trial Tr. p. 182.) At the PCR hearing, counsel explained he carefully cross-examined the victim because attacking a young girl would not make a favorable impression on the jury. Counsel also said that given the scenario described in Applicant's statement to law enforcement, he would not

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expect DNA to be present. Further, counsel elected not to aggressively pursue the findings of the Dickerson Center because he thought the State might call an expert to explain the effects of sexual assault on a child and why the victim might make inconsistent statements.

This Court finds Applicant has failed to meet his burden in proving Counsel was ineffective for failing to "bring out" or emphasize the results of the DNA evidence, the medical exam, and the Dickerson Center. This Court finds Counsel made a strategic decision to not dwell on the findings of the Dickerson Center considering the nature of the allegation. Counsel credibly testified he thought that line of questioning could do more harm than good, given the nature of the alleged penetration. As counsel testified, cross-examining a child witness is a delicate task. Also, in an effort to discredit the investigation, counsel attempted to impeach investigators with their failure to request DNA testing of the victim's rape kit. However, because DNA would not normally be found from digital penetration, counsel elected not to draw too much attention to the medical reports, for fear the State would call its own expert on sexual trauma to children. This was a reasonable trial strategy. *See Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 530 (1992) (Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance). This Court finds Counsel was not deficient.

*Failure to challenge the admission of Applicant's confession*

Applicant alleges counsel was ineffective in failing to have Applicant's statement to law enforcement suppressed because his statement was not given voluntarily. Applicant said his statement was coerced, but offered no substantive testimony of how he was coerced into confessing to CSC, except his claim that officers told him he could receive twenty-five years'

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imprisonment to life imprisonment if convicted. The record reflects counsel did attempt to suppress Applicant's statement at the pre-trial hearing, but the trial court found the statement admissible. (Trial Tr. p. 56.) Later at trial, counsel attempted to cast doubt on the voluntariness of Applicant's statement when he cross examined law enforcement on why they had not videotaped or audio recorded their interview with Applicant. (Trial Tr. p. 203.)

This Court finds counsel challenged the voluntariness of Applicant's statement, and when the statement was deemed admissible, attempted to cast doubt on the investigators' methods to obtain the statement. Moreover, Applicant has not testified to any reason the statement would not be considered voluntary, when Applicant acknowledged the officers warned him of an accurate possible sentencing range. Applicant has failed to carry his burden of proof counsel was deficient in failing to challenge his statement or that he was prejudiced in any way from counsel's efforts.

*Failure to argue witness bias*

Applicant next alleges counsel was ineffective for failure "to investigate and bring out the relationship of the witnesses and that some of them were related to each other and their potential bias." The Confrontation Clause permits a defendant to cross-examine a State's witness when there exists "a substantial possibility the witness would give biased testimony" against a defendant. *See, e.g. State v. Sims*, 348 S.C. 16, 558 S.E.2d 518 (2002). "'On cross-examination, any fact may be elicited which tends to show interest, bias, or partiality' of the witness." *State v. Brewington*, 267 S.C. 97, 101, 226 S.E.2d 249, 250 (1976) (citing 98 C.J.S. Witnesses s 560a). Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by any other evidence. *SCRE 608(c); State v. Brown*, 303 S.C. 169, 399 S.E.2d 593 (1991).

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In this case, however, it was clear from the testimony at trial that the witnesses were related to each other, including Applicant. When the victim's father testified, he immediately identified himself as her father. (Trial Tr. p. 114.) Further, the victim's father testified the Applicant was his "first cousin's oldest son." (Trial Tr. p. 118.) Counsel credibly testified at the PCR hearing there was no reason to argue the witnesses were biased based on their familial relationship because the witnesses were all members of the same family. This Court finds this allegation wholly without substance or merit.

*Failure to properly explain the plea offer*

Applicant alleges counsel failed to properly explain the plea offer, but his testimony at the PCR evidentiary hearing contradicts that claim. Applicant testified counsel informed him of the State's offer, advised him it would be in his best interest to accept the offer, and finally warned Applicant the offer would be rescinded if he delayed in accepting it any longer. Applicant said that in spite of counsel's advice, he told counsel he wanted to think about the offer overnight. Because of Applicant's delay, the solicitor rescinded the offer. Counsel's testimony was consistent with Applicant's.

This Court finds counsel adequately and reasonably advised Applicant as to the plea offer. Plea agreements rest upon contract principles. *State v. Thrift*, 312 S.C. 282, 440 S.E.2d 341 (1994). The plea agreement exists only as an "offer" until the defendant accepts by entering into a court-approved guilty plea; until which point neither the State, the defendant, nor the court are bound by the plea agreement. *Reed v. Becka*, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999) (citations omitted). The State may withdraw a plea offer at any time prior to the court accepting the defendant's plea. *Id.* at 688. Applicant was warned the State would withdraw the offer.

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Nonetheless, Applicant failed to take counsel's advice to accept the offer immediately. Counsel cannot be ineffective in failing to advise Applicant about the plea when Applicant admitted he ignored counsel's competent advice to accept the plea without delay. This allegation is denied and dismissed with prejudice.

*Failure to file a post-trial motion to reconsider the sentence*

Applicant alleges counsel failed to file a motion to reconsider his sentence. Applicant was convicted of both crimes of CSC with a minor and criminal solicitation of a minor. Although Applicant received ten years' imprisonment for the solicitation charge, he received a concurrent term of twenty-five years for CSC with a minor. Twenty-five years' imprisonment is the statutory minimum for that offense. *See* S.C. Code Ann. § 16-3-655(D)(1). Counsel testified that in light of Applicant's receipt of the minimum sentence for the CSC charge, he did not file a motion to reconsider the sentence. In his collateral action, Applicant has provided no grounds to support a motion for reconsideration of the sentence, given his sentence of minimum time falls within the confines of the sentencing statute. Applicant has failed to meet his burden of proof on his claims counsel was ineffective on this ground. This Court finds counsel was not deficient for failing to file a motion to reconsider and Applicant was not prejudiced.

*Failure to strike a juror*

Applicant alleges counsel was ineffective for failing to strike a juror who knew and was Facebook friends with the victim's father. Applicant said he recognized the juror as working at a bank in which the victim's father had a business relationship. Applicant said he learned of the Facebook friendship after the trial. In contrast, counsel said the juror did not indicate she knew the victim's father or that she could not be impartial during the trial judge's questioning. Counsel

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also said that because Applicant was tried in a small county, it would not be unusual for a juror to have some remote connection with Applicant or the witnesses. Counsel said his strikes were accumulating quickly, and he did not want to waste a strike on someone when it was not necessary. Neither the juror nor the witness was called to testify regarding the alleged relationship.

This Court finds Applicant has failed to meet his burden with respect to this allegation. While the Sixth and Fourteenth Amendments to the United States Constitution provide a defendant with the constitutional right to a fair and impartial jury of his peers, this right does not entitle a defendant to handpick a jury. *State v. Stanko*, 376 S.C. 571, 577, 658 S.E.2d 94, 96-97 (2008); see also *State v. Edwards*, 384 S.C. 504, 509, 682 S.E.2d 820, 823 (2009) (a defendant is not entitled to the jury of his or her choice); *Magazine v. State*, 361 S.C. 610, 617, 606 S.E.2d 761, 765 ("a criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury"). The Constitution, after all, "does not dictate a catechism for voir dire, but only that the defendant be afforded an impartial jury." *Stanko*, at 97, 658 S.E.2d at 576 (citing *Morgan v. Illinois*, 504 U.S. 719, 729 (1992)). The process of jury selection inherently falls within the expertise and experience of trial counsel. *Magazine* at 617, 606 S.E.2d at 764 (citing *Palacio v. State*, 333 S.C. 506, 517, 511 S.E.2d 62, 68 (1999)). In a PCR proceeding, an applicant must provide credible evidence that the trial attorney's refusal to strike a juror prejudice the defense.

Applicant has failed to present any credible evidence that his right to a trial by a competent and impartial jury was violated. Applicant has not shown counsel's decision to reserve his strikes constituted a deficiency in any way. Further, this Court construes Applicant's

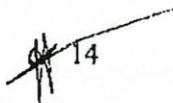
claim to suggest that in the absence of a juror favorable to the victim's family, he would not have been convicted. Applicant cannot convince this Court he was prejudiced by counsel's failure to strike the juror when the State presented overwhelming evidence of Applicant's guilt.

This Court finds Applicant failed to prove there was a relationship between a juror and a witness or that counsel was deficient for failing to strike said juror. Applicant's assertion of a relationship is based purely speculation. This Court also finds Applicant failed to prove he was prejudiced by counsel's failure to strike a juror such that the juror's presence caused a reasonable probability of altering the result of the trial. Accordingly, this Court denies and dismisses this allegation.

#### CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty 30 days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 1991, Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1g, SCRCP, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

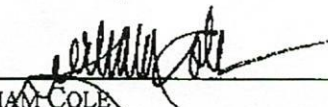
 14



**IT IS THEREFORE ORDERED THAT:**

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 14 day of May, 2010

  
\_\_\_\_\_  
J. DERHAM COLE  
Presiding Judge  
Eleventh Judicial Circuit

\_\_\_\_\_, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SALUDA )

IN THE COURT OF GENERAL SESSIONS

THE STATE, )  
 )

-vs-

VERDICT FORM

DAVID ANDREW BOWERS, )  
 )

Case Number: 2013-GS-41-00010

Defendant. )  
 )  
 \_\_\_\_\_ )

AS TO THE CHARGE OF CRIMINAL SOLICITATION OF A MINOR:

WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT [CHECK ONE]:

[ ] NOT GUILTY.

OR

[ ☒ ] GUILTY OF CRIMINAL SOLICITATION OF A MINOR.

Oliver M. Simmons  
 Foreperson

Saluda, South Carolina

February 6, 2014

Judge: William P. Keesley  
 Ct. Reporter: S. Sheppard

ATTEST: TRUE COPY

Doris B. Abner  
 Clerk of Court  
 Saluda, S. C.

COUNTY OF  
STATESaluda  
VS.

David Andrew Bowers

AKA:

Race: Sex: M Age: 23

DOB: 1989 SS#:

Address:   
City, State, Zip: Batesburg, SC 29006

DL#: SID#:

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Criminal Solicitation of a Minor

in violation of § 16-15-342 of the S.C. Code of Laws, bearing CDR Code #

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$ ; provided that upon the service of days/months/years and/or payment of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

\*Fine:

|                                        |         |           |
|----------------------------------------|---------|-----------|
| § 14-1-206 (Assessments 107.5 %)       | \$      |           |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100   | \$ 100.00 |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$        |
| § 56-5-2995 (DUI Assessment)           | \$12    | \$        |
| § 56-1-286 (DUI Breath Test)           | \$25    | \$        |
| Proviso 47.9 (Public Def/Prob)         | \$500   | \$        |
| § 14-1-212 (Law Enforce. Funding)      | \$25    | \$ 25.00  |
| § 14-1-213 (Drug Court Surcharge)      | \$150   | \$        |
| § 50-21-114(BUI Breath Test Fee)       | \$50    | \$        |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ea | \$        |
| Proviso 90.5 (SCCJA Surcharge)         | \$5     | \$ 5.00   |
| 3% to County (if paid in installments) | \$      | \$ 3.90   |
| TOTAL                                  |         | \$ 133.90 |

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

INDICTMENT/CASE#: 2013-GS-41-10

A/W#: 2012A4110200023

Date of Offense: 10/6/2012

S.C. Code § : 16-15-0342

CDR Code #: 2999

## SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

ATTEST: TRUE COPY  
Clerk of Court  
Saluda, S. C.

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other: SEX OFFENDER REGISTRY

SAME CONDITIONS AS 2012-GS-41-

440 RE: Pym. OF 1st 10853

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2050

Sentence Date:

FEB. 6, 2014

WITNESSES

SCSO

CLARK

DOCKET NO. 2013-GS-41- 010

**The State of South Carolina**

**County of SALUDA**

**COURT OF GENERAL SESSIONS**

**FEBRUARY TERM 2013**

**THE STATE**

**vs.**

**DAVID ANDREW BOWERS**

**ARREST WARRANT NUMBER**

**2012A4110200023**

**ACTION OF GRAND JURY**

**TRUE BILL**

Foreperson of Grand Jury  
Date: **TRUE BILL**

**FEB 04 2013**

**VERDICT**

**Guilty**

**Delvinia Hummon**

Foreperson of Petit Jury  
Date: **2-6-14**

**CDR# 2999**

**Indictment for**

**CRIMINAL SOLICITATION OF A MINOR**

**DONALD V. MYERS, SOLICITOR**

ATTEST: TRUE COPY  
*Doris B. B. B.*  
Clerk of Court  
Saluda, S. C.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SALUDA )

INDICTMENT FOR  
CRIMINAL SOLICITATION OF A MINOR

At a Court of General Sessions, convened on February 4, 2013 the Grand Jurors of Saluda County present upon their oath:

That DAVID ANDREW BOWERS, DOB [REDACTED]/1989, did in Saluda County on or between October 6, 2012 and October 7, 2012, knowingly and unlawfully contact or communicate with or attempt to contact or communicate with the victim, [REDACTED], DOB [REDACTED] person who is under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the victim to participate in sexual activity as defined in §16-15-375(5), South Carolina Code of Laws, 1976, as amended, in violation of §16-15-342, South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
\_\_\_\_\_  
ASSISTANT SOLICITOR

## ARREST WARRANT

2012A4110200023

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Saluda

THE STATE

201210-2289

against

David Andrew Bowers

Address:

Batesburg, SC 29006-8141

Phone:

SSN:

Sex: M Race: W Height: 6 1 Weight: 150

DL State: SC DL #:

DOB: 1989

Agency ORI #: SC0410000

Prosecuting Agency: Saluda County Sheriff

Prosecuting Officer: Kenny Clark - 1006

Offense: Minor / Criminal solicitation of a minor

Offense Code: 2999

Code/Ordinance Sec: 16-15-0342

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

## RETURN

A copy of this arrest warrant was delivered to

defendant

on

David Bowers  
11-3-12

Signature of Constable/Law Enforcement Officer

## RETURN WARRANT TO:

General Sessions

100 East Church Street, Suite 6

Saluda, SC 29138

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Saluda

Personally appeared before me the affiant Kenny Clark

being duly sworn deposes and says that defendant David Andrew Bowers

did within this county and state on or about 10/6/2012

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Saluda)

in the following particulars:

DESCRIPTION OF OFFENSE: Minor / Criminal solicitation of a minor

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

See Attached Affidavit:

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Saluda

Affiant's Address 100 Law Enforcement Dr

Saluda, SC 29138-

Affiant's Telephone (864)445-2112

## ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 10/6/2012

defendant David Andrew Bowers

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Saluda

) as set forth below:

DESCRIPTION OF OFFENSE: Minor / Criminal solicitation of a minor

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 11/3/2012

(L.S.)

Signature of Issuing Judge

David Bruce Horne

Judge Code: 5606

Judge's Address 108 South Rudolph Street

Saluda, SC 29138-

Judge's Telephone (864)445-4500 x 2236

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by  
S.C. Attorney General  
April 21, 2003  
SCCA 518FILED  
2012 NOV -6 AM 9:25  
CLERK OF COURT  
SALUDA CO. S.C.CLERK OF COURT  
SALUDA, S.C.

466

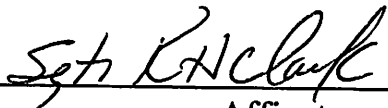


**STATE OF SOUTH CAROLINA****AFFIDAVIT****COUNTY OF SALUDA**

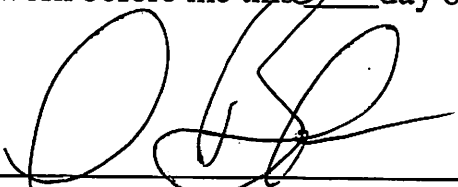
Personally appeared before me, **Sgt. K. H Clark**, being duly sworn, deposes and states that the defendant, **David Bowers, DOB 03-01-1989**, did commit the following offense to wit:

**Criminal Solicitation Of A Minor**  
**16-15-342 (A)**

The defendant did between October 6, 2012 and October 7, 2012, commit the above offense by soliciting the victim, [REDACTED] **DOB [REDACTED]**, trying to talk the victim into a sexual activity. The defendant communicated with the victim through text messages. While texting the victim the defendant was enticing and coercing the victim to engage in a sexual activity. The defendant is 23 years of age and the victim is 10 years of age. This incident occurred at [REDACTED], Batesburg, within Saluda County South Carolina. This is in violation of section 16-15-342(A), code of the South Carolina Code of Laws as amended.

  
\_\_\_\_\_  
Affiant

Sworn before me this 30 day of Nov, 2012

  
\_\_\_\_\_  
Magistrate of Saluda County

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF GENERAL SESSIONS  
 COUNTY OF SALUDA )

THE STATE, )  
 )  
 -vs- ) VERDICT FORM  
 )  
 DAVID ANDREW BOWERS, ) Case Number: 2012-GS-41-00440  
 )  
 Defendant. )

AS TO THE CHARGE OF CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE  
FIRST DEGREE:

WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT [CHECK ONE]:

[ ] NOT GUILTY.

OR

[ ✓ ] GUILTY OF CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE  
 FIRST DEGREE, INCLUDING PROOF BEYOND A REASONABLE  
 DOUBT THAT THE DEFENDANT PERFORMED SEXUAL BATTERY BY  
 INTRUSION, HOWEVER SLIGHT, OF HIS FINGER INTO THE  
 MINOR'S VAGINA.

Olivia M. Simon  
 Foreperson

Saluda, South Carolina

February 6, 2014

Judge: William P. Keesley  
 Ct. Reporter: S. Sheppard

ATTEST: TRUE COPY

Dois B. Abner  
 Clerk of Court  
 Saluda, S. C.

## STATE OF SOUTH CAROLINA

## IN THE COURT OF GENERAL SESSIONS

469

COUNTY OF Saluda  
 STATE VS.  
David Andrew Bowers

AKA:  
 Race: White Sex: M Age: 23  
 DOB: -1989 SS#:

Address:   
 City, State, Zip: Batesburg, SC 29006

DL#:  SID#:

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Criminal Sexual Conduct with a Minor First Degree

in violation of § 16-3-655A1 of the S.C. Code of Laws, bearing CDR Code # 0385

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] Solicitor SC Bar#  Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
 for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed  years  
 and/or to pay a fine of \$ ; provided that upon the service of  days/months/years and/or payment  
 of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
 by the State Department of Corrections.

☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$  plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

\*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

Clerk of Court/ Deputy Clerk [Signature]

Court Reporter: [Signature]

SCCA/217 (03/2011)

INDICTMENT/CASE#: 2012GS4100440

A/W#: 2012A4110100098

Date of Offense: 10/7/2012

S.C. Code § : 16-03-0655(A)(1)

CDR Code #: 0385

## SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

Criminal Sexual Conduct with a Minor First Degree

in violation of § 16-3-655A1 of the S.C. Code of Laws, bearing CDR Code # 0385

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

[Signature] Solicitor SC Bar#  Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
 for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed  years  
 and/or to pay a fine of \$ ; provided that upon the service of  days/months/years and/or payment  
 of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
 by the State Department of Corrections.

☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$  plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

\*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

Clerk of Court/ Deputy Clerk [Signature]

Court Reporter: [Signature]

SCCA/217 (03/2011)

PTUP  days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly  
 pmts. of \$  beginning

\$  paid to Public Defender Fund

Other: ACTIVE ELECTRONIC MONITORING;

JURY FOUND THAT THE CSC INVOLVED  
DIGITAL PENETRATION OF VICTIM'S

VAGINA; pay ct. costs w/in 1yr. of beginning

☐ Appointed PD or appointed other counsel, Any

§ 47.12 requires \$500 be paid to Clerk Comm.  
 during probation. SUPV. OR  
RAVAGE FROM  
PRISON

Presiding Judge William P. Clardy

Judge Code: 205D

Sentence Date: FEB. 6, 2014

THE COURT FINDS ON THE RECORD THAT THIS  
IS A VIOLENT CRIME & FLEETING FOR PURPOSES OF

ATTEST: TRUE COPY  
[Signature]  
 Clerk of Court  
 Saluda, S. C.

WITNESSES

SCSO

HILL

DOCKET NO. 2012-GS-41- 440

**The State of South Carolina**

**County of SALUDA**

**COURT OF GENERAL SESSIONS**

**OCTOBER TERM 2012**

**THE STATE**

**vs.**

**DAVID ANDREW BOWERS**

**ARREST WARRANT NUMBER**

2012A4110100098

**ACTION OF GRAND JURY**

**TRUE BILL**

*Donna G. Berry*  
Foreperson of Grand Jury  
Date: **OCT 24 2012**

**VERDICT**

*Guilty*

*Olivia Hammond*

Foreperson of Petit Jury  
Date: **2-6-14**

**CDR#0385**

**Indictment for**

**CRIMINAL SEXUAL CONDUCT WITH A  
MNOR 1<sup>ST</sup> DEGREE**

**DONALD V. MYERS, SOLICITOR**

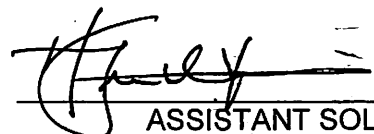
**ATTEST: TRUE COPY**  
*Doris B. [Signature]*  
Clerk of Court  
Saluda, S. C.

STATE OF SOUTH CAROLINA )  
COUNTY OF SALUDA )  
INDICTMENT FOR  
CRIMINAL SEXUAL CONDUCT WITH A MNOR  
1<sup>ST</sup> DEGREE

At a Court of General Sessions, convened on October 24, 2012 the Grand Jurors of Saluda County present upon their oath:

That DAVID ANDREW BOWERS, did in Saluda County on or about October 7, 2012, engage in sexual battery upon and/or with the body of [REDACTED] (DOB [REDACTED]) a female child then being less than eleven years of age, and the defendant being older than the victim, in violation of §16-3-655(A)(1), South Carolina Code of Laws, 1976, as amended, with penalties provided for in §16-3-653(C)(1), South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
ASSISTANT SOLICITOR

2012A4110100098

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Saluda

THE STATE

2012102289

against

David Andrew Bowers

Address:

Batesburg, SC 29006-8141

Phone:

SSN:

Sex: M Race: W Height: 6 1 Weight: 150

DL State: SC DL #:

DOB: Agency ORI #: SC0410000

Prosecuting Agency: Saluda County Sheriff

Prosecuting Officer: Archie Hill - 1021

Offense: Sex / Criminal sexual conduct - First degree

Offense Code: 0160

Code/Ordinance Sec: 16-03-0652

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

## RETURN

A copy of this arrest warrant was delivered to defendant David Bowers on 10-7-12

Signature of Constable/Law Enforcement Officer

## RETURN WARRANT TO:

General Sessions  
100 East Church Street, Suite 6  
Saluda, SC 29138

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STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Saluda

Personally appeared before me the affiant Archie Hillbeing duly sworn deposes and says that defendant David Andrew Bowersdid within this county and state on or about 10/7/2012State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Saluda

in the following particulars:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct - First degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT:

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Saluda

Affiant's Address 100 Law Enforcement Dr

Saluda, SC 29138-

Affiant's Telephone

## ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 10/7/2012defendant David Andrew Bowers

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Saluda

) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 10/7/2012

Signature of Issuing Judge

Joyce Buffington Shults

Judge Code: 5801

(L.S.)

Judge's Address 108 South Rudolph Street

Saluda, SC 29138-

Judge's Telephone (864)445-4500 x 2236

Issuing Court:

☒

Magistrate

☐

Municipal

☐

Circuit

ORIGINAL

Form Approved by  
S.C. Attorney General  
April 21, 2003  
SCCA 518

AFFIDAVIT

FILED  
Clerk of Court  
Saluda Co. SC

OCT 09 2012

ATTEST: TRUE COPY

Clerk of Court  
Saluda, S.C.

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STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF SALUDA

Personally appeared before me, **Captain A. HILL**, being duly sworn, deposes and states that the defendant, **David Andrew Bowers, DOB 03-01-1989**, did commit the following offense to wit:

**JUVENILE** **Criminal Sexual Conduct With A Minor 1<sup>st</sup> Degree**  
16-3-655 (A1)

**CONFIDENTIAL**

The defendant did between October 6, 2012 and October 7, 2012 commit the above offense by committing a sexual battery on the victim, [REDACTED] **DOB [REDACTED]**. The defendant did put his 2 fingers inside the victim's vagina for sexual gratification. The victim asked the defendant to stop and the defendant only removed one finger. The defendant, after the sexual battery, started to text the victim and ask if she enjoyed it and then started to text questions of a sexual nature. The victim during this time frame was ten years of age. This incident occurred at [REDACTED] Batesburg, within Saluda County South Carolina. This is in violation of section 16-3-655 (A1), code of the South Carolina Code of Laws as amended.

Capt. Archie Hill  
Affiant

Sworn before me this 7 day of October, 2012

[Signature]  
Magistrate of Saluda County