

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Marion County

Honorable D. Craig Brown, Circuit Court Judge

LINDELL DAVIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-001568

APPENDIX

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S.C. SUPREME COURT

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	)	COURT OF GENERAL SESSIONS
COUNTY OF MARION	)	2014-GS-33-00312
	)	
	)	
	)	
State of South Carolina	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Lindell Davis	)	)
<u>DEFENDANT</u>	)	November 16-17, 2015
		Marion, South Carolina

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, JR., JUDGE; and a jury.

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

DAVID RICHARDSON, Assistant Solicitor
 LAUREN HUMMEL, Assistant Solicitor
 Attorneys for the State

HANK ANDERSON, ASSISTANT PUBLIC DEFENDER
 Attorney for the Defendant

KESHIA REED
 Official Court Reporter

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1 THE COURT: All right. Members of the jury
2 panel, at this time we're going to pick a jury for a
3 particular case and I need for you to remember that you
4 are under oath. And that if a question applies to you,
5 you need to respond. In this particular case, the State
6 of South Carolina alleges that a Lindell Davis did in
7 Marion County on or about March 31st 2014, knowingly
8 contact or communicate with or attempt to contact or
9 communicate with M.J. [REDACTED], a person who is under the
10 age of 18, for the purpose of enticing or coercing the
11 person to engage or participate in sexual activities,
12 which is in violation of the laws of this state.

13 Also, the State of South Carolina alleges that
14 Lindell Davis did willfully and unlawfully commit the
15 crime of criminal sexual conduct by engaging in sexual
16 battery with a minor under age, which is also in violation
17 of the laws of this State. In this regard, the defendant
18 has pled not guilty and requested a jury trial.

19 Now, has any member of the jury panel heard
20 anything about this case, do you know anything about this
21 case, have you talk to anybody about that that might know
22 anything about this case, if so please stand? All right.
23 No one stood.

24 Mr. Richardson, is the minor in the courtroom by
25 chance?

1 MR. RICHARDSON: Yes.

2 THE COURT: All right. Can she turn and face
3 the jury panel? M.J. [REDACTED], if you would please stand.

4 MR. RICHARDSON: She's in the middle.

5 THE COURT: The middle. If you would step out
6 and face the jury panel briefly, if you don't mind? All
7 right. Thank you. You may have a seat.

8 Does any member of the jury panel related by
9 blood or marriage or has a close personal or social
10 relationship with M.J. [REDACTED] in this case, if so please
11 stand? All right. No one stood.

12 Is the defendant in the courtroom Mr. Lindell
13 Davis?

14 MR. ANDERSON: Yes, sir, Your Honor.

15 THE COURT: If he would please stand, turn and
16 face the jury panel. All right. You may be seated.
17 Thank you.

18 Is any member of the jury panel related by blood
19 or marriage or has a close personal or social relationship
20 with the defendant, Mr. Lindell Davis, in this case, if so
21 please stand? All right. No one stood.

22 Mr. Richardson, if you will stand and introduce
23 yourself and any members of your staff.

24 MR. RICHARDSON: Yes, sir, Your Honor. Good
25 morning, ladies and gentlemen. My name is David

1 Richardson. I'm an assistant solicitor here with the
2 Twelfth Judicial Circuit Solicitor's office, that covers
3 Marion and Florence County, seated with me trying this
4 case is Lauren Hummel. She's also assistant solicitor.
5 Other prosecutors in our office are Ed Clements, who's the
6 elected Solicitor, Rick Hoefer, Fitzlee McEachin, John
7 Jepertinger, Todd Tucker, Angel Daniels, Kevin Hope,
8 Stephen Hill, and John Holt.

9 THE COURT: All right. Is any member of the
10 jury panel related by blood or marriage or has a close
11 personal or social relationship with any of these
12 solicitors, if so please stand? No one stand.

13 Mr. Anderson, please stand and introduce
14 yourself and any members of your staff.

15 MR. ANDERSON: My name is Hank Anderson. I'm a
16 part-time public defender here in Marion and also do some
17 work over in Florence. Molly Sloan is our secretary.
18 She's here in Marion all the time. We also have coming
19 over here in Florence we have Vick Meetze who lives in
20 here Marion. We also have Scott Floyd.

21 THE COURT: Thank you. Does any member of the
22 jury panel related by blood or marriage or has a close
23 personal or social relationship with Mr. Anderson or any
24 member of his staff, if so please stand? All right. No
25 one stood. All right. The witnesses on behalf of the

1 State of South Carolina will be in addition to the victim
2 will be a Cathie Almazon, Christal Saldierna, Larhonda
3 Genwright, Samantha Jackson with the Marion County
4 sheriff's office, Martin Bell also with the sheriff's
5 department, Tracy Causey and James Powell also with the
6 sheriff's department. Those jurors who came in late, they
7 need to move over to the left side.

8 THE CLERK: Members of the jury panel that
9 returned late, if you'll move over here on this side of
10 the courtroom please that just walked in.

11 THE COURT: I want the five of you to remember I
12 said 20 'til not quarter 'til. Don't be late for the rest
13 of the week. All right. I'm going to start over again.
14 The State of South Carolina their witnesses will be a
15 Cathie Almazon, Christal Saldierna, Lerhonda Genwright,
16 with the sheriff's department Samantha Jackson, Martin
17 Bell, Tracy Causey, James Powell, and with EMS Jessica
18 Martin, and Sally Williamson with the Care House of the
19 Pee Dee. In this regard, is any member of the jury panel
20 related by blood or marriage or has a close personal or
21 social relationship with any of the State's witnesses, if
22 so please stand?

23 And the gentleman upfront, what's your name and
24 your number?

25 PROSPECTIVE JUROR: James Briley. I don't

1 remember my number.

2 THE COURT: All right. Hold on one second.
3 We'll find it.

4 THE CLERK: Eighteen.

5 THE COURT: Eighteen. All right. And which
6 witness do you know?

7 PROSPECTIVE JUROR: James Powell.

8 THE COURT: All right. Well, taking that into
9 account if you were selected to serve on a jury in this
10 case, could you be fair and impartial not only to the
11 State, but the defense as well?

12 PROSPECTIVE JUROR: Yes, sir, I could.

13 THE COURT: Would you be fair and impartial to
14 both sides?

15 PROSPECTIVE JUROR: Yes, sir.

16 THE COURT: Thank you, appreciate you standing.
17 The lady in the back your name and your number?

18 PROSPECTIVE JUROR: Dawn Thompson juror number
19 164. I have a close-personal relationship with James
20 Powell. He calls me Granny.

21 THE COURT: All right. Well, taking that into
22 account, if you were selected to serve on a jury in this
23 case, could you be fair and impartial not only to the
24 State, but the defense as well?

25 PROSPECTIVE JUROR: No, I would lean to -- I

1 don't think I could be fair or unbiased in this case.

2 THE COURT: All right. I'm going to excuse you
3 for purposes of this trial only, if you'll have a seat.
4 Juror number 164.

5 All right. The man upfront.

6 PROSPECTIVE JUROR: Brian Brown.

7 THE COURT: And your number?

8 PROSPECTIVE JUROR: Twenty. James Powell.

9 THE COURT: All right. Well, taking that into
10 account if you were selected to serve on a jury in this
11 case, could you be fair and impartial to both sides?

12 PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: Would you be fair and impartial to
14 both sides?

15 PROSPECTIVE JUROR: Yes, sir.

16 THE COURT: Thank you.

17 All right. Your name and your number?

18 PROSPECTIVE JUROR: Jaron Skorput.

19 THE CLERK: Number 155.

20 THE COURT: All right. And how does that
21 question apply to you?

22 PROSPECTIVE JUROR: I know James Powell.

23 THE COURT: All right. Well, taking that into
24 account, if you were selected to serve on a jury in this
25 case, could you be fair and impartial to both sides the

1 State and the defense?

2 PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: Would you be fair and impartial to
4 both sides?

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: Thank you. All right. The
7 gentleman in back your name and your number.

8 PROSPECTIVE JUROR: Louis Catlett 27. I know
9 James Powell and Jessica Martin.

10 THE COURT: All right. Well, taking that into
11 account, if you were selected to serve on a jury in this
12 case, could you be fair and impartial to both sides?

13 PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: Would you be fair and impartial to
15 both sides?

16 PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: Thank you. Does any member of the
18 jury panel related by blood or marriage to any law
19 enforcement officer, if so please stand? That could be
20 the sheriff's department, police officer, anybody?

21 All right. Your name and your number.

22 PROSPECTIVE JUROR: William T. White I don't
23 know my number. Robert Page.

24 THE COURT: That number is 107. Taking that
25 into account, if you were selected to serve on a jury in

1 this case, could you be fair and impartial not only to the
2 State, but the defense as well?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: Thank you. Anybody else?
5 Mr. Skorput.

6 PROSPECTIVE JUROR: My uncle he works at the
7 Solicitor's office in Columbia.

8 THE COURT: Taking that into account, if you
9 were selected to serve on a jury in this case, could you
10 be fair and impartial to both sides?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Would you be fair and impartial to
13 both sides?

14 PROSPECTIVE JUROR: Yes, sir.

15 THE COURT: Thank you for standing.
16 Anybody else?

17 PROSPECTIVE JUROR: My brother is a deputy
18 sheriff in Robeson County North Carolina.

19 THE COURT: And your name and number?

20 PROSPECTIVE JUROR: I'm sorry, Charles Russ 147.

21 THE COURT: Well, taking that into account, if
22 you were selected to serve on a jury in this case, could
23 you be fair and impartial both sides?

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: Would you be fair and impartial to

1 both sides?

2 PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: Anybody else?

4 Your name and number.

5 PROSPECTIVE JUROR: Joseph Hardwick juror 70.

6 My son's a police officer in Mullins police department.

7 THE COURT: Taking that into account, if you
8 were selected to serve on a jury in this case, could you
9 be fair and impartial to both sides?

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: Would you be fair and impartial o
12 both sides?

13 PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: Thank you.

15 Anybody else? You already stood I believe.

16 Anybody else?

17 Is any member of the jury panel aware of any
18 bias or prejudice for or against the State of South
19 Carolina, if so please stand? No one stood.

20 Is any member of the jury panel formed an
21 opinion as to the guilt or innocence of the defendant,
22 Mr. Lindell Davis, in this case, if so please stand? No
23 one stood.

24 Is there any member of the jury panel who is a
25 member of or contributor to any group, which has as its

1 primary concern the promotion of law enforcement or
2 victims' rights? These groups would include but certainly
3 not being limited to MADD, SADD or CAVE Citizens Against
4 Violent Crimes, if so please stand? No one stood.

5 Has any member of the jury panel or any member
6 of your immediate family ever been involved in a crime of
7 personal violence? This could be included but not limited
8 to criminal sexual conduct, assault and battery of a high
9 and aggravated nature, murder, manslaughter, kidnapping,
10 armed robbery, et cetera. Now, if you or any member of
11 your family have ever been a victim or a defendant in a
12 crime such as these just mentioned or anything similar to
13 them, please stand come on up?

14 THE CLERK: This is juror number 45.

15 THE COURT: Give me your name again.

16 PROSPECTIVE JUROR: Tranzia T. Drakeford.

17 THE COURT: And how does that apply to you?

18 PROSPECTIVE JUROR: It was myself.

19 THE COURT: What happened?

20 PROSPECTIVE JUROR: I was doing home health and
21 the person that I was doing help for, the mother, sexually
22 assaulted me.

23 THE COURT: All right. Well, taking that into
24 account, if you were selected to serve on a jury in this
25 case, could you be fair and impartial to the State and the

1 defense?

2 PROSPECTIVE JUROR: I still kind of feel bitter
3 from it, so no.

4 THE COURT: You going to say no?

5 PROSPECTIVE JUROR: I feel bitter from it, so I
6 might be thinking about my situation.

7 THE COURT: All right. I'm going to excuse you
8 from this trial only, but if you would stay out there in
9 the jury panel.

10 Number 45 is excused from this trial.

11 The next one.

12 THE CLERK: Number 155 Jaron Skorput.

13 THE COURT: Mr. Skorput, tell me about it.

14 PROSPECTIVE JUROR: I got a DUI back in 2008. I
15 don't know if that qualifies just wanted to let you know I
16 got a DUI back in 2008.

17 THE COURT: DUI first offense?

18 PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: You good to go just have a seat.
20 Thank you. I appreciate you coming forward.

21 Give me your name and number again?

22 PROSPECTIVE JUROR: William White 170.

23 THE COURT: 170, yes, sir.

24 PROSPECTIVE JUROR: My son had to plead guilty
25 to second degree assault.

1 THE COURT: Taking that into account, if you
2 were selected to serve on a jury in this case, could you
3 be fair and impartial to the State and the defense?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: I appreciate you coming forward.
6 Give me your name and number?

7 PROSPECTIVE JUROR: Henrietta Murrell 110.

8 THE COURT: 110 what you got?

9 PROSPECTIVE JUROR: My niece was murdered in
10 2004 over in Mullins. She was dead for like three weeks.

11 THE COURT: Taking that into account, if you
12 were selected to serve on a jury in this case, could you
13 be fair and impartial to both sides the State and the
14 defense?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Would you be fair and impartial to
17 both sides?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: Thank you.

20 PROSPECTIVE JUROR: David Smith 157.

21 THE COURT: 157 what you got?

22 PROSPECTIVE JUROR: When I was 13 years old, I
23 watched my mother get killed by a man with two baseball
24 bats.

25 THE COURT: Taking that into account, if you

1 were selected to serve on a jury in this case, could you
2 be fair and impartial to both sides?

3 PROSPECTIVE JUROR: If it was a violent crime
4 involved, probably not.

5 THE COURT: I need to know yes or no?

6 PROSPECTIVE JUROR: No.

7 THE COURT: All right. I'm going to excuse you
8 for the purposes of this trial only, stick around. Thank
9 you.

10 Give me your name and number?

11 PROSPECTIVE JUROR: Deborah Bethea I don't know
12 my number.

13 THE COURT: Deborah Bethea 12. What you got?

14 PROSPECTIVE JUROR: My sister beat a girl with a
15 hammer and my brother had a gun charge, but their life has
16 nothing to do with me.

17 THE COURT: Okay. Well, taking that into
18 account, if you were selected to serve on a jury in this
19 case, could you be fair and impartial to the State and the
20 defense?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Thank you. I appreciate you coming
23 forward.

24 What's your name and number?

25 PROSPECTIVE JUROR: I don't know my number Kelly

1 Leach.

2 THE COURT: Leach hold on a second.

3 THE CLERK: Juror number 96.

4 THE COURT: And how does that apply to you?

5 PROSPECTIVE JUROR: Victim of CDV.

6 THE COURT: All right. Taking that into
7 account, if you were selected to serve on a jury in this
8 case, could you be fair and impartial to the State and the
9 defense?

10 PROSPECTIVE JUROR: Uh-huh.

11 THE COURT: Is that yes?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Thank you very much.

14 Juror number 31 Mr. Cook.

15 PROSPECTIVE JUROR: My oldest brother he was
16 involved in a theft ring and stolen equipment. He pulled
17 a year and he's already served his time and he's on
18 probation. I want to let you know that.

19 THE COURT: Taking that into account, if you
20 were selected to serve on a jury in this case could you
21 ---

22 PROSPECTIVE JUROR: I realize the guy sitting
23 out there he use to work with my brother with a
24 construction company. I been knowing him through that,
25 but I can be fair as far as him. I wouldn't let that get

1 in the way.

2 THE COURT: So if you were selected to serve on
3 a jury in this case, you would be fair and impartial to
4 the State and the defense?

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: Good. Thank you.

7 Your name and number?

8 PROSPECTIVE JUROR: Carlile Page 118.

9 THE COURT: All right, what you got?

10 PROSPECTIVE JUROR: Oh, I have a brother got
11 served -- well, sexual contact with minors got served six
12 months in Columbia. Now, he live in Greenville.

13 THE COURT: Your brother?

14 PROSPECTIVE JUROR: Yeah.

15 THE COURT: All right. Taking that into
16 account, if you were selected to serve on a jury in this
17 case, could you be fair and impartial to the state and the
18 defense?

19 PROSPECTIVE JUROR: I doubt it. I don't know.

20 THE COURT: Yes or no?

21 PROSPECTIVE JUROR: Huh?

22 THE COURT: Yes or no?

23 PROSPECTIVE JUROR: No.

24 THE COURT: Which side would you be favorable?

25 PROSPECTIVE JUROR: Well, according to what they

1 done, I would say -- I guess I could say yes according to
2 what they done?

3 THE COURT: What who did?

4 PROSPECTIVE JUROR: Well, you're talking about
5 if I was selected as a juror?

6 THE COURT: Yeah, if you were selected to serve
7 on a jury in this case, could you be fair and impartial to
8 the State and the defense?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: All right. Would you be fair and
11 impartial to the State and the defense?

12 PROSPECTIVE JUROR: Yes, I'm going to say yes.

13 THE COURT: You just tell me the truth and I'll
14 go with it.

15 PROSPECTIVE JUROR: Huh?

16 THE COURT: You just tell me the truth and I'll
17 go with it.

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: You can have a seat.

20 Juror 118 is staying. Is there any member of
21 the jury panel who knows of any reason whatsoever why they
22 could not give the parties in this case a fair and
23 impartial trial, if so please stand? No one stood.

24 Is any member of the jury panel have any
25 religious or philosophical objections to rendering

1 judgment against their fellow man, if so please stand? No
2 one stood.

3 Has any member of the jury panel or any member
4 of your family ever been prosecuted by this Solicitor or
5 any member of the Solicitor's staff regardless of whether
6 the case was dismissed or not, if so please stand?

7 You like to come up?

8 PROSPECTIVE JUROR: Same thing.

9 THE COURT: You good with that?

10 MR. ANDERSON: Yes, sir, Your Honor.

11 THE COURT: State good with that?

12 What was your name and number again?

13 PROSPECTIVE JUROR: William T. White.

14 THE COURT: Has any member of the jury panel or
15 family member or close personal friend ever been accused
16 of committing a crime against a child, if so please stand?
17 No one stood.

18 Anything further from the State?

19 MR. RICHARDSON: No, sir.

20 THE COURT: Anything further from defense?

21 MR. ANDERSON: No, sir, Your Honor.

22 THE COURT: All right, except for those I have
23 excused for this trial, I find the jury panel qualified.
24 Ms. Clerk, if you give us a jury of 12 and one alternate.

25 (WHEREUPON, a pause in the proceedings.)

1 THE CLERK: Ladies and gentlemen, getting ready
2 to draw a jury, if I call your name, if you'll come
3 forward please stand at the end of this counter, if you
4 have jackets anything you have with you just bring forward
5 with you please.

6 Juror number 70 Joseph Hardwick. Mr. Hardwick,
7 if you come stand at the end of this counter please face
8 back out toward the audience. Thank you, sir.

9 (WHEREUPON, a white male, comes forward.)

10 THE CLERK: What say the State?

11 MR. RICHARDSON: Please present Mr. Hardwick.

12 THE CLERK: What say the defense?

13 MR. ANDERSON: Please the Court, we'll excuse
14 Mr. Hardwick from this case.

15 THE CLERK: You excuse from this case, Mr.
16 Hardwick. Thank you.

17 Juror number 52 Cheryl Fryson excuse for the
18 day. She has protection for the day.

19 Number 90 Louise M. Krauel.

20 (WHEREUPON, a white female, comes forward.)

21 THE CLERK: What say the State?

22 MR. RICHARDSON: Please present Ms. Krauel.

23 THE CLERK: What say the defense?

24 MR. ANDERSON: Please seat her in this case.

25 THE CLERK: Beg your pardon.

1 MR. ANDERSON: Please seat her.

2 THE CLERK: All right, thank you, sir.

3 If you'll have a seat in the jury box please,
4 ma'am.

5 Number 24 Bobby Carmichael.

6 (WHEREUPON, a black male, comes forward.)

7 THE CLERK: What say the State?

8 MR. RICHARDSON: Please excuse Mr. Carmichael
9 for the trial of this case.

10 THE CLERK: You excuse from this trial, Mr.
11 Carmichael. Thank you, sir.

12 Number 11 Stephon S. Bennett.

13 (WHEREUPON, a black male, comes forward.)

14 THE CLERK: What say the State?

15 MR. RICHARDSON: Please excuse Mr. Bennett for
16 the trial of this case.

17 THE CLERK: You excuse Mr. Bennett. Thank you,
18 sir.

19 Number 161 Christopher A. Taylor.

20 (WHEREUPON, a white male, comes forward.)

21 THE CLERK: What say the State?

22 MR. RICHARDSON: Please present Mr. Taylor.

23 THE CLERK: What say the defense?

24 MR. ANDERSON: Please excuse Mr. Taylor from
25 this case.

1 THE CLERK: You excuse from this case Mr.
2 Taylor. Thank you.

3 Number 31 Kelvin A. Cook.

4 (WHEREUPON, a white male, comes forward.)

5 THE CLERK: What say the State?

6 MR. RICHARDSON: Please excuse Mr. Cook for the
7 purposes of this case?

8 THE CLERK: You excuse from this trial Mr. Cook.
9 Thank you.

10 Number 88 Mildred L. Jones.

11 (WHEREUPON, a black female, comes forward.)

12 THE CLERK: What say the State?

13 MR. RICHARDSON: Please present Ms. Jones.

14 THE CLERK: What say the defense?

15 MR. ANDERSON: Your Honor, earlier I think when
16 she was answering voir dire questions, she said she was a
17 security officer at Perdue. Would the Court inquire
18 whether or not she has the power to arrest in her job
19 capacity there?

20 THE COURT: All right. Ms. Jones, you heard the
21 question. Do you have the power to arrest anyone?

22 PROSPECTIVE JUROR: If they're at the job, if
23 they're only at Perdue, only at Perdue.

24 MR. ANDERSON: Please excuse Ms. Jones from this
25 case.

1 THE CLERK: Thank you, Ms. Jones.

2 Number 12 Deborah L. Bethea.

3 (WHEREUPON, a black female, comes forward.)

4 THE CLERK: What say the State?

5 MR. RICHARDSON: Please present Ms. Bethea.

6 THE CLERK: What say the defense?

7 MR. ANDERSON: Please seat Ms. Bethea.

8 THE CLERK: Ms. Bethea, if you'll have a seat in
9 the jury box.

10 Number 100 Phillip A. Lester.

11 (WHEREUPON, a black male, comes forward.)

12 THE CLERK: What say the State?

13 MR. RICHARDSON: Please present Mr. Lester.

14 THE CLERK: What say the defense?

15 MR. ANDERSON: Your Honor, if I could inquire
16 what branch of the military and what was his job in the
17 military?

18 THE COURT: If you could answer the question.

19 PROSPECTIVE JUROR: Well, I had several jobs
20 when I was in the military. I was supervisor for a cannon
21 crew. Then I became drill sergeant. And then I worked at
22 the NCO training school in Fort Sill where I wrote
23 manuals, books for the Army and for the non-Army
24 residents.

25 MR. ANDERSON: Please seat the juror.

1 THE CLERK: If you'll have a seat in the jury
2 box please, sir. Thank you.

3 Number 95 Wanda B. Lane.

4 (WHEREUPON, a white female, comes forward.)

5 THE CLERK: What say the State?

6 MR. RICHARDSON: Please present Ms. Lane.

7 THE CLERK: What say the defense?

8 MR. ANDERSON: Please excuse Ms. Lane from this
9 case.

10 THE CLERK: Thank you. You excused from this
11 case.

12 Number 17 Betty L. Brice.

13 (WHEREUPON, a black female, comes forward.)

14 THE CLERK: What say the State?

15 MR. RICHARDSON: Please present Ms. Brice.

16 THE CLERK: What say the defense?

17 MR. ANDERSON: Please seat Ms. Brice.

18 THE CLERK: Ms. Brice, if you'll have a seat in
19 the jury box.

20 Number 165 Deborah A. Thompson.

21 (WHEREUPON, a black female, comes forward.)

22 THE CLERK: What say the State?

23 MR. RICHARDSON: Please present Ms. Thompson.

24 THE CLERK: What say the defense?

25 MR. ANDERSON: Please excuse Ms. Thompson from

1 this case.

2 THE CLERK: You excuse from this case, Ms.

3 Thompson. Thank you.

4 Number 18 James G. Briley.

5 (WHEREUPON, a white male, comes forward.)

6 THE CLERK: What say the State?

7 MR. RICHARDSON: Please present Mr. Briley.

8 THE CLERK: What say the defense?

9 MR. ANDERSON: Please excuse Mr. Briley.

10 THE CLERK: Number 158 Jimmy L. Stevenson.

11 (WHEREUPON, a black male, comes forward.)

12 THE CLERK: What say the State?

13 MR. RICHARDSON: Please excuse Mr. Stevenson for
14 the purposes of this trial only.

15 THE CLERK: You excuse from this trial, Mr.

16 Stevenson. Thank you.

17 Number 118 Carlile Page.

18 (WHEREUPON, a black male, comes forward.)

19 THE CLERK: What say the State?

20 MR. RICHARDSON: Please excuse Mr. Page for
21 purpose of this trial.

22 THE CLERK: Mr. Page, you excuse from this
23 trial. Thank you.

24 Number 170 William T. White, Jr.

25 (WHEREUPON, a white male, comes forward.)

1 THE CLERK: What say the State?

2 MR. RICHARDSON: No challenge.

3 MR. ANDERSON: Please excuse Mr. White from this
4 case.

5 THE CLERK: Number 84 Carolyn C. Johnson.

6 (WHEREUPON, a black female, comes forward.)

7 THE CLERK: What say the State?

8 MR. RICHARDSON: Please present Ms. Johnson.

9 THE CLERK: What say the defense?

10 MR. ANDERSON: Please seat Ms. Johnson.

11 THE CLERK: Ms. Johnson, if you'll have a seat
12 in the jury box. Thank you.

13 Number 145 Trevor A. Rogers..

14 (WHEREUPON, a white male, comes forward.)

15 THE CLERK: What say the State?

16 MR. RICHARDSON: Your Honor, just to clarify, I
17 think I used five, so I have no challenge for cause.

18 THE CLERK: What say the defense?

19 MR. ANDERSON: Your Honor, I think he indicated
20 that he worked at the Cecil.

21 PROSPECTIVE JUROR: The Cephher (sic) Group.

22 MR. ANDERSON: What is that?

23 PROSPECTIVE JUROR: Truck driving.

24 MR. ANDERSON: Please seat him, Your Honor.

25 THE CLERK: Have a seat in the jury box please,

1 sir.

2 Number 36 Chelsey L. Cribb.

3 (WHEREUPON, a white female, comes forward.)

4 THE CLERK: What say the State?

5 MR. RICHARDSON: No challenge.

6 THE CLERK: What say the defense?

7 MR. ANDERSON: Please seat Ms. Cribb.

8 THE CLERK: If you'll have a seat in the jury
9 box please.

10 Number 162 Phyllis Crawford.

11 (WHEREUPON, a black female, comes forward.)

12 THE CLERK: What say the State?

13 MR. RICHARDSON: No challenge.

14 THE CLERK: What say the defense?

15 MR. ANDERSON: Please seat Ms. Crawford, Your
16 Honor.

17 THE CLERK: Ms. Crawford, if you'll have a seat
18 in the jury box please.

19 Number 142 Tremayne Robertson.

20 (WHEREUPON, a black male, comes forward.)

21 THE CLERK: What say the State?

22 MR. RICHARDSON: No challenge.

23 THE CLERK: What say the defense?

24 MR. ANDERSON: Please seat Mr. Robertson.

25 THE CLERK: If you'll have a seat in the jury

1 box please, sir.

2 Number 155 Jaron A. Skorput.

3 (WHEREUPON, a white male, comes forward.)

4 THE CLERK: What say the State?

5 MR. RICHARDSON: No challenge.

6 THE CLERK: What say the defense?

7 MR. ANDERSON: Please strike this juror for
8 cause -- not for cause just strike him -- please excuse
9 him.

10 THE CLERK: You excuse from this trial, sir.
11 Thank you.

12 Number 168 Quandarius T. Wheeler.

13 (WHEREUPON, a black male, comes forward.)

14 THE CLERK: What say the State?

15 MR. RICHARDSON: No challenge.

16 THE CLERK: What say the defense?

17 MR. ANDERSON: Please seat Mr. Wheeler.

18 THE CLERK: If you'll have a seat in the jury
19 box please, sir.

20 Number 30 Christina L. Collins.

21 (WHEREUPON, a white female, comes forward.)

22 THE CLERK: What say the State?

23 MR. RICHARDSON: No challenge.

24 THE CLERK: Say the defense?

25 MR. ANDERSON: Please seat Ms. Collins.

1 THE CLERK: If you'll have a seat in the jury
2 box.

3 For our alternates number 49 Mitchell Foster.

4 (WHEREUPON, a black male, comes forward.)

5 THE COURT: Well, we need one more juror. We're
6 one juror short.

7 THE CLERK: Oh, I'm sorry. One more juror I'm
8 sorry. What say the State?

9 MR. RICHARDSON: No challenge.

10 THE CLERK: What say the defense?

11 MR. ANDERSON: Please seat him.

12 THE CLERK: If you'll have a seat in the jury
13 box please, sir.

14 Now, we do the alternate. Number 154 Larry D.
15 Shokes.

16 (WHEREUPON, a white male, comes forward.)

17 THE CLERK: What say the State?

18 MR. RICHARDSON: Please excuse Mr. Shokes for
19 the purpose of this trial only.

20 THE CLERK: You excused from this trial. Thank
21 you, sir.

22 Number nine Stephanie J. Becker.

23 (WHEREUPON, a white female, comes forward.)

24 THE CLERK: What say the State?

25 MR. RICHARDSON: No challenge.

1 THE CLERK: What say the defense?

2 MR. ANDERSON: Please seat Ms. Becker.

3 THE CLERK: If you'll have a seat in one of the
4 chairs in front.

5 THE COURT: Any objections to the jury or the
6 process for which they were drawn what says the State?

7 MR. RICHARDSON: None, Your Honor.

8 THE COURT: Says the defense?

9 MR. ANDERSON: Court's indulgence one moment,
10 Your Honor.

11 (WHEREUPON, a pause in the proceedings.)

12 MR. ANDERSON: No objections, Your Honor.

13 THE COURT: All right. The remainder of the
14 jury panel is excused for the day. If you would call back
15 in after six this evening to see if there's any further
16 instructions for you, you five you need to stay put. And
17 you can now go if you would like.

18 (WHEREUPON, the remaining jury panel excused for
19 the day.)

20 THE COURT: All right. Members of the jury, I
21 need you back here at two o'clock this afternoon to begin
22 this trial, but before you leave, I want to instruct that
23 you are not to talk to anybody about this case. Do not
24 research anybody involved in this case. You know who the
25 defendant is. You know who the victim is. And you know

1 who the witnesses are. Do not get on the computer and
2 Google their names or try to find out anything about this
3 case in any manner whatsoever. You just forget about it.
4 You enjoy your lunch. You come back and we'll start at
5 two. You are excused. I'll see you back at two.

6 (WHEREUPON, the jury is excused for lunch.)

7 THE COURT: Anything we need to take up before
8 two?

9 MR. RICHARDSON: I don't believe so, Your Honor.

10 THE COURT: I will see you back at two and we'll
11 get started.

12 (WHEREUPON, a lunch break was taken.)

13 (WHEREUPON, State's Exhibits Nos. 1-8 were
14 marked for identification only.)

15 THE COURT: What you got?

16 MR. RICHARDSON: I have a Jackson vs. Denno
17 hearing.

18 MR. ANDERSON: I do have a motion before the
19 jury comes out. My typical sequestration. I have no
20 objection to Ms. Jackson. I think she's the lead
21 investigator. Certainly no objection to the young lady
22 being in here the victim in this case or either her mom or
23 her aunt whoever she chooses, but I would ask that
24 everyone else that's going to testify in this case be
25 sequestered.

1 THE COURT: You okay with that?

2 MR. RICHARDSON: Yes, sir, Your Honor, I don't
3 have any problem with it.

4 THE COURT: We'll do it, make sure they're
5 cleared out.

6 MR. RICHARDSON: All right.

7 THE COURT: I'm ready when you are.

8 MR. RICHARDSON: For the Jackson vs. Denno
9 hearing, we call Investigator Samantha Jackson.

10 THE CLERK: Do you swear to tell the truth, the
11 whole truth, and nothing but the truth so help you God?

12 THE WITNESS: I do.

13 THE CLERK: Thank you.

14 WHEREUPON,

15 Samantha Jackson,
16 after first having been duly sworn, testified as follows:

17 **DIRECT EXAMINATION IN-CAMERA**

18 BY MR. RICHARDSON:

19 Q Investigator Jackson, you're the lead investigator on
20 this case?

21 A Yes, sir.

22 Q And as part of this investigation, did you meet with
23 the defendant and obtain a statement or statements from
24 him?

25 A Yes, sir, I did.

1 Q Would you please tell what day that occurred?

2 A June the 2nd.

3 Q Of?

4 A Of 2014 I'm sorry.

5 Q Okay. And where were you located when he gave you a
6 statement?

7 A Marion County sheriff's office.

8 Q Who all was present?

9 A Myself and Detective Bell.

10 Q Okay. And was the defendant in custody at that time,
11 did you all arrest him on warrants?

12 A Yes, sir, we had picked him up from his resident on
13 warrants, yes, sir.

14 Q All right. So he had been arrested and you all took
15 him to the detention center and ask him if he wanted to
16 make a statement to you?

17 A When we pick him up, we took him directly straight to
18 the sheriff's office, that way he wouldn't have to go
19 through the booking area and all that before we talk to
20 him. We took him to the sheriff's office and asked him if
21 he would like to talk to us.

22 Q Okay. And given that he was in custody, I want to
23 show you State's Exhibit 1 for purposes of this hearing.
24 Do you recognize that?

25 A Yes, sir.

1 Q What is that?

2 A This is our standard Miranda rights form for the
3 sheriff's office.

4 Q All right. Is that the form that was executed by the
5 defendant in this case and yourself?

6 A Yes, sir.

7 Q All right. And what's the date on that form?

8 A Date is June 2nd 2014.

9 Q All right.

10 MR. RICHARDSON: Your Honor, this could just be
11 a court's exhibit for purposes for this hearing at this
12 time.

13 THE COURT: Any objection?

14 MR. ANDERSON: No, sir, Your Honor.

15 BY MR. RICHARDSON:

16 Q All right. Investigator Jackson, could you please
17 take us through this form and read the questions that you
18 asked of the defendant and his response to those
19 questions?

20 A Okay. First of all, when we do the Miranda rights
21 form, we give the defendant a clipboard with the Miranda
22 right's sheet on it and we read the sheet to them. The
23 top says Marion County sheriff's office Mark Richardson
24 Sheriff, Miranda Warnings and it has case number in this
25 case it's 20140500571 location the Marion County sheriff's

1 office. The date is June 2nd 2014. The time that the
2 Miranda right's was started was 2:37 excuse me -- 2:34
3 p.m. Then it goes on and says the Constitution of the
4 United States requires me to inform you that -- and the
5 first line they have to make a mark or initial stating
6 that they understand before we move on to the next line.
7 You want me to read each one?

8 Q Sure. What questions were asked of him?

9 A The first is you have the right to remain silent and
10 he put a mark. Second one is anything you say can and
11 will be used against you in the court of law. He also put
12 a mark there saying that he understand. You have the
13 right to speak with an attorney and have him or her
14 present with you while you're being questioned. He put a
15 mark stating that he understood. If you cannot afford to
16 hire an attorney, one will be appointed to represent you
17 before any questioning if you wish. Again, he put a mark
18 stating that he understood. You can decide any time to
19 exercise these rights and not answer any questions or make
20 any statements. Again, he put a mark saying that he
21 understood. Then you have the question do you understand
22 each of these rights as I have explain them to you. He
23 put a mark beside yes stating that he did. Having these
24 rights in mind, do you wish to speak to us now. He put a
25 mark by yes. Then he put his name, address, city and

1 state. And then under that once he completed his name,
2 address, city and state, I read the waiver of rights,
3 which is I have read this statement of my rights. I
4 understand what my rights are. I am willing to make a
5 statement and answer questions. I do want an attorney at
6 this time. I understand and know what I am doing. No
7 promises or threats have been made to me and no pressure
8 of any kind has been used against me by anyone in exchange
9 for my statement. He signed it, wrote the time down which
10 was 2:37 and myself and Detective Bell witnessed it.

11 Q Okay. So he did sign this form indicating he
12 understood his rights?

13 A Yes, sir.

14 Q When you went over this document with him and
15 ultimately took a statement from him, you mentioned that
16 yourself another detective were present?

17 A Yes, sir.

18 Q What was the physical location within the sheriff's
19 office were you in there, was it some interrogation room?

20 A It was Detective Bell's. I think at the time we
21 shared an office. It was in our office.

22 Q No bars or ---

23 A No, sir.

24 Q --- cells or anything like that?

25 A No, sir.

1 Q All right. And at the time you took the statement
2 from him, he didn't appear to be under the influence of
3 any drugs or alcohol or anything that would cause you
4 concern that he didn't understand what you guys were doing
5 there?

6 A No, sir.

7 Q All right. About how long did the questioning last?

8 A The Miranda rights was started at 2:34. He started
9 his statement at 2:48, so I'm going to say no more than an
10 hour all total.

11 Q Okay. At any time during the taking of a statement
12 did he request any bathroom breaks, food, water anything
13 like that?

14 A Nothing.

15 Q Did he provide a written statement to you?

16 A Yes, sir, he did.

17 Q Let me show you what's marked as State's Exhibit 3
18 for this hearing take a look at that. Do you recognize
19 that?

20 A Yes, sir.

21 Q What is it?

22 A This is the handwritten statement that Mr. Davis
23 provided to myself and Detective Bell.

24 Q All right.

25 MR. RICHARDSON: If I could make this an exhibit

1 for the purposes of this hearing at this time.

2 MR. ANDERSON: No objection.

3 BY MR. RICHARDSON:

4 Q All right. And is this the statement from the same
5 time he met with you at the sheriff's office?

6 A Yes, sir.

7 Q And was this part of the, I guess, interrogation
8 process after he signed his Miranda form?

9 A Yes, sir, it was.

10 Q Did he also provide a verbal statement to you and
11 Detective Bell as well that went into, I guess, greater
12 detail than the written statement?

13 A Yes, sir.

14 Q Was that also at the same time during this about an
15 hour-long period?

16 A Yes, sir.

17 Q All right. So the written statement and verbal
18 statement everything you did with him took about an hour?

19 A Yes, sir.

20 Q All right. Based on the circumstances that are
21 present at the time and your personal observations, did
22 Mr. Davis appear to completely understand what he was
23 doing and provide a voluntary statement to you?

24 A Yes, sir.

25 Q All right. Also as apart of your interrogation of

1 Mr. Davis, did you inquire about his cell phone?

2 A Yes, sir.

3 Q And did you ask if you could take a look at his cell
4 phone?

5 A Yes, sir.

6 Q I'm going to ask you to take a look at State's Number
7 2. Can you identify that?

8 A Yes, sir, this is our consent to search.

9 Q And is that in reference to Mr. Davis' cell phone?

10 A Yes, sir.

11 Q And was that document executed at the same time as
12 these other documents in that hour-long window?

13 A Yes, sir.

14 MR. RICHARDSON: Your Honor, if exhibit two
15 could be court's exhibit for this hearing only.

16 MR. ANDERSON: No objection, Your Honor.

17 BY MR. RICHARDSON:

18 Q So you asked Mr. Davis if you could search his cell
19 phone?

20 A Yes, sir.

21 Q And he signed and you witnessed?

22 A Yes, sir.

23 Q This document?

24 A Yes, sir.

25 Q So he did agree to allow you to look at it?

1 A Yes, sir.

2 MR. RICHARDSON: Your Honor, I believe that's
3 all the questions I have at this time in terms of
4 voluntariness of the statement.

5 THE COURT: Mr. Anderson.

6 MR. ANDERSON: I don't have any questions at
7 this time, Judge.

8 THE COURT: All right. You may step down.

9 (WHEREUPON, the witness leaves the witness
10 stand.)

11 THE COURT: Any other witnesses?

12 MR. RICHARDSON: No, sir.

13 THE COURT: Anything from you, Mr. Anderson?

14 MR. ANDERSON: No, sir, Your Honor.

15 THE COURT: For the record, I'll find that the
16 defendant was properly Mirandized and that the statement
17 was given freely and voluntarily. Anything else we need
18 take up?

19 MR. RICHARDSON: Your Honor, I did mention to
20 Mr. Anderson that during the course of the victim's
21 testimony I did plan to ask her questions about some prior
22 sexual contact that she and the defendant had had. Of
23 course, that raises a 404(b) issue. Mr. Anderson is aware
24 that I'll be bringing that up, indicated that he would
25 make a proper objections but just wanted to make the Court

1 aware of that. So at the appropriate time ---

2 MR. ANDERSON: And I do object to that, Your
3 Honor. I think it's inappropriate. I think it's
4 certainly more prejudicial than probative. Your Honor,
5 certainly she can testify as to what actually happen on
6 the day in question, Your Honor. But I think if she
7 starts getting into prior acts that was going on the last
8 four or five months, my client was not charged with that.
9 Certainly, he could have been seen. I know Your Honor
10 you've seen several indictments that would from say on or
11 about April 1st up until such and such date, the defendant
12 did have intercourse. Your Honor, this is a specific
13 date. I just think it would be more prejudicial than
14 probative in this matter. I don't think it has any
15 bearing on this case itself. She's going to testify as to
16 what happened on May 31st of 2014. I think if she starts
17 talking about prior acts, that is just very prejudicial to
18 my client.

19 THE COURT: All right.

20 MR. RICHARDSON: The purpose of eliciting the
21 testimony would be to show the exceptions in Rule 404
22 absence of mistake or identity or common scheme or plan.
23 And just to show that this was not some, you know,
24 perchance thing or mistake that these two had been
25 involved in some form of sexual relationship for a period

1 of months leading up to this. This happened to be the
2 particular evening that they got caught, so that would be
3 nature of the testimony.

4 THE COURT: All right. We'll hear it, you
5 object at the right time. And we'll take a look at it.

6 MR. ANDERSON: Thank you, Your Honor.

7 THE COURT: Go ahead and bring them out.

8 (WHEREUPON, the jury came into open court.)

9 THE COURT: All right. Ms. Price, I'm going to
10 make you the forelady for the jury.

11 Ms. Clerk, if you'll go ahead and swear them.

12 (WHEREUPON, jury sworn.)

13 THE COURT: All right. Ladies and gentlemen of
14 the jury, we're getting ready to start this trial, but
15 before we do, I want to go over a few things with you just
16 to give you a little bit of working knowledge before the
17 trial actually begins. First thing, I want to tell you is
18 that the State of South Carolina has the burden of proof.
19 They have to prove the defendant guilty beyond a
20 reasonable doubt. Furthermore, I want to explain to you
21 what your role is and what my role is. You are the judge
22 of the facts. I am the judge of the law. You ask
23 yourselves, well, how does that differ, that differs
24 because you 12 and maybe the alternate, you determine what
25 the facts of this case are. Nobody else not me, not my

1 clerk, nobody in the audience only you. Well, you ask
2 yourselves how do we know what the facts of this case are,
3 how do I make that determination. You do that simply by
4 looking at the evidence in the case. That could be made
5 up of two things the witnesses that come over right here
6 and they're sworn in and they testify. And it could be
7 made up of any documents submitted into the record as
8 evidence, that could be photographs or reports or posters
9 or what have you. From those matters, you determine what
10 the facts of the case are.

11 Now, in turn, I am judge of the law. At the end
12 of this case, I will instruct you on the law in great
13 detail. And I want you to understand that you have to
14 accept the law as I give it to you. If you have any
15 preconceived ideas as to what you think the law is or what
16 it ought to be and it does not agree with what I tell you
17 the law is, you have to abandon those preconceptions and
18 accept the law as I give it to you. And only when I tell
19 you to begin your deliberations, which will be at the very
20 very end of this trial, where you take your findings of
21 fact, you'll take the law as I give it to you, put them
22 together and make a decision therefrom.

23 Furthermore, at any point in time during this
24 trial if we take a break or if we do not finish today and
25 you go home this evening and you come back tomorrow, at no

1 point in time until I tell you to, which will be at the
2 very very end, you do not discuss this case at all. It's
3 very important that you hear from everybody including me,
4 so that you have everything you need to make a decision
5 before you even start discussing the case. Furthermore,
6 when you leave the courtroom, do not get on the computer
7 as I told you before. Do not research anything.
8 Everything you need is right here in this courtroom.

9 All right. I want you to relax. At any point
10 in time, if you need to take a break, you need something
11 to drink or you don't feel good or what have you, just
12 kind of let me know, and I'll try to take a break and make
13 sure that you're taken care of. At this point in time, I
14 want you to sit back and I want you to relax. And I
15 recognize the State for your opening statement.

16 MS. HUMMEL: Thank you, Your Honor. May it
17 please the Court.

18 THE COURT: Yes.

19 MS. HUMMEL: Mr. Anderson. Ladies and gentlemen
20 of the jury, let me tell you about this case and give you
21 a little introduction. It's going to be about a
22 50-something-year-old man who he was caught having sex
23 with a girl who's under age. She's only 15. Before I get
24 into the law and tell you about what exactly the defendant
25 is charged with, I'm going to tell you about the facts.

1 The girl I just mentioned her name is M.J. She
2 has an aunt and her name is Christal and she often goes to
3 her aunt's house. She often visits her. This Aunt
4 Christal she has a shed on her property and in that shed
5 is a weight room.

6 Now, the defendant in this case, Mr. Davis, he
7 became a very close friend of the family and Aunt Christal
8 and he would often use this weight room. He would often
9 use it to lift weights. You know, perhaps he got a little
10 too close to the family in this case.

11 On the night of May 31st 2014, he wasn't using
12 that weight room to lift weights. About ten o'clock that
13 night, there was a text message sent from his phone to the
14 phone of M.J. You're going to get to see a
15 picture of that text message. And, ladies and gentlemen,
16 once you see that picture, that text message I don't think
17 you'll have any doubt about what the defendant was trying
18 to do that night with M.J. About 10:03 that night
19 three minutes after that text message was first sent to
20 M.J., another text message was sent from the
21 defendant's phone number to M.J. telling her to
22 come lock up. I think the evidence will show you that
23 what he was referring to was that shed where he was out
24 there lifting weights in a weight room. So M.J. goes out
25 there. She goes out there to lock up the shed. He didn't

1 really want her to come lock up. The evidence will show
2 what he really wanted to do was something that he wasn't
3 suppose to be doing according to the law.

4 10:15 only 12 minutes after M.J. got that text
5 message from him, Aunt Christal goes out to check on
6 M.J. She hadn't come back from locking up the shed.
7 But when she walks into that shed, what she sees is M.J.
8 lying on a weight bench with her clothes from her
9 waist down, pulled down to her ankles and her leg is over
10 the shoulder of the defendant. The defendant is on top of
11 her and the word that she used to describe it is he was
12 humping her.

13 When she immediately sees what's going on, the
14 defendant jumps up. He immediately jumps up. Ladies and
15 gentlemen, I say that's because he knew that what he was
16 doing was wrong. When he jumps up a few moments later, he
17 leaves. Law enforcement is called and they come out to
18 the scene and they investigate what happened.

19 Now, the defendant is charged in this case with
20 criminal sexual conduct with a minor second degree. And
21 all that basically means is that he is charged with
22 engaging in a sexual battery with someone who's under 16
23 but at least 14. Now, a sexual battery can be a number of
24 things, but for the purposes of this case, all it means is
25 sexual intercourse or vaginal penetration. And the

1 evidence that the State is going to show you will
2 establish that that's exactly what happened on that night.

3 He's also charged with solicitation of a minor.
4 And what that means is he contacted someone under the age
5 of 18 for the purpose of getting M.J. to engage in some
6 type of sexual activity. And, ladies and gentlemen, when
7 you see that text message that he sent to M.J., I
8 don't think you're going to have any doubt that that's
9 exactly what he was trying to do that night.

10 Now, I want to address something else. You're
11 not going to hear about force in this case. M.J. will
12 tell you that it was consensual, but I'm going to tell you
13 about why it doesn't matter. The law does not require
14 that there be any consent in order for someone to be
15 guilty of this crime. Consent is not relevant and I'll
16 tell you why that is. It's basically like people who
17 can't legally drink until they reach a certain age or they
18 can't go buy tobacco products until they reach a certain
19 age or they can't vote. That applies to all of us. And
20 the law provides for those things because the law deems
21 they're not mature enough to make that decision. And so
22 that's why in this case M.J. who's under 15, she
23 wasn't mature enough to make that decision. So it doesn't
24 matter if she consented or not.

25 Now, I'm sure all of you know in a case like

1 this criminal case, the State has the burden of proof. We
2 have to prove all these things to you beyond a reasonable
3 doubt. In order to do that, we're going to call some
4 witnesses. You're going to hear from M.J. [REDACTED], the
5 girl I told you about. You're also going to hear from
6 Aunt Christal. And what they're going to tell you M.J. [REDACTED]
7 will tell you about how when her Aunt Christal walked in
8 that night, the defendant had already penetrated her and
9 that he immediately jumped up when Aunt Christal walked
10 in.

11 Aunt Christal she's going to tell you about what
12 she saw that night. You're also going to hear from
13 officers. The officers who responded. Officers who
14 investigated the case and they'll tell you about what they
15 did to find out what happened. And at the end of this
16 case, my co-counsel, Mr. Richardson, he's going to come
17 before you in closing argument and he will ask that you
18 find the defendant guilty of criminal sexual conduct with
19 a minor in the second degree and solicitation of a minor.
20 Ladies and gentlemen, I think that you won't have any
21 doubt once you hear all the evidence and the testimony in
22 this case because that's exactly what happened on night of
23 the May 31st 2014. Thank you.

24 THE COURT: Thank you. Mr. Anderson.

25 MR. ANDERSON: Lindell Davis stands before you

1 an innocent man. And I think the Judge will tell you
2 later that until the State proves him guilty beyond a
3 reasonable doubt he is an innocent man. A long time ago I
4 heard a phrase certainty is the enemy and I thought about
5 it. And I said certainty is the enemy. What the world
6 does that mean. And then I said, you know, it's probably
7 something like, well, it's more to this than meets the
8 eye.

9 And then I started thinking about that a little
10 while. And you say you know what I been riding down the
11 road before and I could have sworn that I saw somebody
12 that I knew beep the horn at them, waive to them. And
13 then a week or so, ten days later, I go, Sam, I beep the
14 horn at you the other day, waive to you, you didn't even
15 acknowledge me. Sam looked at me and he go what day was
16 that, that was last Thursday. Hank, I was in California
17 last Thursday. I thought -- I could have sworn that was
18 you.

19 I live out in the country. My old house where I
20 grew up, don't have a lot of lights out there. You can't
21 even see my house from the road with the outside lights
22 are turned off. Sometimes when I'm out there walking my
23 dog at night my imagination can play a trick on me or I
24 think I might see something that I don't actually see. I
25 remember when I was a young child as a kid, I would

1 imagine that I see things in my closet. I see things in
2 my house. I see things that really weren't there. In
3 this case, there were certain things that were not done,
4 the State is claiming that my client had sexual
5 intercourse with this young girl, but yet there was no
6 physical exam that was done as far as a doctor is concern.
7 I think they took her to the hospital. I think they
8 interviewed her, but no physical exam was done on her. As
9 far as by a licensed medical doctor, that could say, yeah,
10 my opinion this girl was no longer a virgin. In my
11 opinion, this girl has had sexual intercourse, that was
12 not done in this case. You're not going to hear about any
13 DNA evidence. You'll hear that some was attempted to be
14 found at the hospital by a nurse or by a doctor at the
15 hospital, but that nothing was found. Nothing was seen,
16 nothing was found. You know, they -- I think that that
17 person testifies you will hear what they had to say. And,
18 of course, you'll hear what I have to ask them on
19 cross-examination.

20 And why I'm speaking on that subject, the judge
21 told you earlier there's two types of evidence. There is,
22 of course, physical evidence will come in by way of an
23 exhibit. There's also evidence that you hear from
24 witnesses. And, of course, you probably already imagine
25 you all ever watch TV before, the questions that sometimes

1 the State may ask are a whole lot easier and that's
2 evidence. You all can certainly consider that, but the
3 questions that I ask and the answers that come that is
4 also evidence. There's also going to be some evidence
5 that is received from a witness or gotten out of a
6 witness for the lack of a better term, that we will bring
7 out and that's certainly evidence as well. And I think at
8 the end of the day when you hear everything that's said
9 about this case, you'll agree with me that Mr. Davis, Lin
10 is not guilty of this. Thank you.

11 THE COURT: Thank you.

12 Call your first witness.

13 MR. RICHARDSON: Yes, sir, Your Honor. First
14 witness will be M.J. [REDACTED]. I ask that the Court will
15 clear out any unnecessary folks in the back of the
16 courtroom.

17 THE COURT: Everybody in the courtroom that
18 doesn't need to be here, you need to go ahead and vacate
19 the courtroom.

20 (WHEREUPON, a pause in the proceedings.)

21 MR. RICHARDSON: All right. Your Honor, we call
22 M.J. [REDACTED].

23 THE CLERK: Ma'am, come around let me swear you
24 in please. Do you swear to tell the truth, the whole
25 truth, and nothing but the truth so help you God?

1 THE WITNESS: I do.

2 THE CLERK: You may take the witness chair and
3 be careful.

4 WHEREUPON,

5 M.J. [REDACTED],

6 after first having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. RICHARDSON:

9 Q All right. M.J. [REDACTED] let's start off by telling us your
10 date of birth if you would please?

11 A [REDACTED]

12 Q [REDACTED] [REDACTED]. Okay. And where do you live?

13 A With my aunt.

14 Q All right. And where does she live is it in Marion
15 somewhere?

16 A In Mullins.

17 Q In Mullins. And who all lives in the house with you?

18 A Just me and her two kids and her.

19 Q All right. And how hold are her kids, are they
20 younger?

21 A Six and three.

22 Q All right. Back in May of last year, were you still
23 staying with your mom some of the time or were you
24 visiting?

25 A I was staying with my mother and going to her house.

1 Q So you were visiting with your aunt?

2 A Yes, sir.

3 Q And you visit her quite a bit?

4 A Yes, sir.

5 Q Okay. Are you in school?

6 A Yes, sir.

7 Q What grade are you in?

8 A I'm in 11th this year.

9 Q All right. And what's your favorite subject in
10 school?

11 A Math.

12 Q All right. What are you hoping to do when you
13 finish?

14 A My mother wants me to be a mathematician, but I don't
15 think I have the brains for it.

16 Q I don't either, that's why I do this. All right.

17 M.J., how did you initially get to know Lindell Davis?
18 Do you remember when you met him?

19 A Yes, sir.

20 Q All right. How is he connected to your family?

21 A He knew my aunt's husband whatever and he passed away
22 and I went to the funeral. And that's how we got to know
23 everybody.

24 Q Okay. So your aunt's husband passed away?

25 MR. ANDERSON: Your Honor, please the Court,

1 would you please ask her to speak up just a little bit.

2 THE COURT: If you would just take your time,
3 speak a little slowly.

4 BY MR. RICHARDSON:

5 Q Okay. All right. M.J., so you met Mr. Davis after
6 your aunt's husband passed away?

7 A Yes, sir.

8 Q All right. Had they been friends?

9 A Yes, sir.

10 Q All right. And about how long ago was that?

11 A About how long ago what was?

12 Q When your aunt's husband passed away when you first
13 met Mr. Davis?

14 A He passed away my ninth grade year in October.

15 Q Okay. So that was about two years ago, a little over
16 two years ago?

17 A Yes, sir.

18 Q Okay. So if you met Mr. Davis around October of
19 2013, you got to help me with the math here May of 2014
20 would have been?

21 A I don't know, sir.

22 Q Somewhere in there? A little bit less than a year
23 from October of '13 to May of '14?

24 A Yes, sir.

25 Q All right. And tell us about your aunt's property

1 out there where you all live?

2 A We stay in a trailer, but she also has like a little
3 shed to the side of it.

4 Q All right. I want to show you a couple of pictures
5 here. This one is State's Exhibit 4 for identification
6 only at this time. You take a look at that does that look
7 familiar to you?

8 A Yes, sir, that's the shed.

9 Q All right. Is that an accurate picture of what it
10 looks like?

11 A Yes, sir.

12 Q All right.

13 MR. RICHARDSON: Your Honor, if I could put
14 State's Exhibit 4 into evidence at this time.

15 THE COURT: Any objections?

16 MR. ANDERSON: No objection, Your Honor.

17 THE COURT: State's Number 4 into evidence
18 without objection.

19 (WHEREUPON, State's Exhibit No. 4 was admitted
20 into evidence.)

21 BY MR. RICHARDSON:

22 Q And, M.J., what's inside that shed?

23 A There's like toys and stuff that he use to work on
24 equipment, but there's also a weight bench and weights.

25 Q Okay. I'm going to show you what's been marked as

1 State's Number 5. You can take a look at that. Does that
2 look familiar to you?

3 A Yes, sir.

4 Q And what is that?

5 A That's the weight bench.

6 Q All right. That's the picture of the inside of the
7 shed?

8 A Yes, sir.

9 MR. RICHARDSON: All right, I ask to move
10 State's Exhibit 5 into evidence.

11 THE COURT: Any objection?

12 MR. ANDERSON: No objection, Your Honor.

13 THE COURT: State's Number 5 into evidence
14 without objection.

15 (WHEREUPON, State's Exhibit No. 5 was admitted
16 into evidence.)

17 BY MR. RICHARDSON:

18 Q Now, about this shed there on your aunt's property,
19 did Mr. Davis have access to that shed?

20 A He used it to lift weights, but he didn't have a key
21 to it. We had the only key to it.

22 Q All right. So he was allowed to come out there and
23 lift, but somebody have to open it up for him?

24 A Yes, sir.

25 Q All right. And would he do that on a regular basis?

1 A Yes, sir.

2 Q Okay. Now, on May 31st of 2014, did Mr. Davis come
3 out to lift weights at the shed?

4 A Yes, sir.

5 Q Did you know he was out there?

6 A Yes, sir.

7 Q All right. How did you know he was coming out there
8 or was out there?

9 A A text message.

10 Q All right. Do you remember about what time of night
11 or day that he was out there on May 31st?

12 A I don't know the exact time, but it was quite late.

13 Q It was dark outside?

14 A Yes, sir.

15 Q All right. Now, the shed on your aunt's property
16 does it have lights on the inside?

17 A Yes, sir.

18 Q All right. Are they kind of like circular can lights
19 like this?

20 A No, sir, she got like a beam of lights going straight
21 across.

22 Q Like a long tube?

23 A Yes, sir.

24 Q All right. So when you go in there, do you have any
25 problem seeing when you have the lights on?

1 A No, sir.

2 Q Okay. So on that particular night Mr. Davis was out
3 there, you said he sent you a text message?

4 A Yes, sir.

5 Q And how were you able to recognize that it was him
6 send you the message, did you ---

7 A His phone number.

8 Q His phone number?

9 A Yes, sir.

10 Q You knew his phone number?

11 A Yes, sir.

12 Q All right. And did you respond back to him?

13 A I can't remember if I did, but I think I just went
14 outside.

15 Q Okay. I want to show you what's been marked State's
16 Exhibit 6. If you'll take a look at this, specifically
17 the top item there. Do you recognize that top item on
18 that page?

19 A Yes, sir.

20 Q And what is that?

21 A A text message I sent to him.

22 Q Okay. And how can you tell you sent it to him is
23 there a number on there?

24 A Yes, sir, because it says 2-1 and his number.

25 Q Okay. And what time did you send that text?

1 A 9:35.

2 Q That be at night?

3 A Yes, sir.

4 Q Okay. And the item underneath that do you recognize
5 that?

6 A Yes, sir.

7 Q What is that?

8 A A text message from him.

9 Q All right. It's one he sent you?

10 A Yes, sir.

11 Q Same phone number?

12 A Yes, sir.

13 Q And what time is that text message dated or stamped?

14 A Ten o'clock.

15 Q Ten o'clock?

16 A Yes, sir.

17 Q All right. I want to show you what's been marked as
18 State's Exhibit 7 for identification. Do you recognize
19 that one?

20 A Yes, sir.

21 Q And what is that?

22 A A text message I receive from his number.

23 Q All right. And what's the time on that one?

24 A 10:03.

25 Q Okay. Are these two items accurate representations

1 of the text messages that were sent to you that night?

2 A Yes, sir.

3 Q And are these actually photographs of your phone?

4 A Yes, sir.

5 Q All right.

6 MR. RICHARDSON: Your Honor, I'd ask for State's
7 Exhibit 6 and 7 to be entered into evidence at this time.

8 THE COURT: Any objections?

9 MR. ANDERSON: No, sir, Your Honor.

10 THE COURT: Six and seven into evidence without
11 objection.

12 (WHEREUPON, State's Exhibit No. 6 and 7 was
13 admitted into evidence.)

14 MR. RICHARDSON: Your Honor, if I may publish
15 these to the jury at this time.

16 THE COURT: Yes, sir.

17 (WHEREUPON, a pause in the proceedings.)

18 BY MR. RICHARDSON:

19 Q All right. M.J. [REDACTED], so just to be clear, this first
20 text message it starts with I can't go ---

21 MR. ANDERSON: Your Honor, I'm going to object.
22 I think that's asked and answered. I also think it's
23 already into evidence.

24 THE COURT: It's into evidence, but if you're
25 going to ask a question from it, go ahead.

1 MR. RICHARDSON: Yes, sir, I was going to
2 clarify.

3 BY MR. RICHARDSON:

4 Q M.J., this top text message here that starts with I
5 can't that, I believe you testified that was a text
6 message from you to Mr. Davis?

7 A Yes, sir, that's correct.

8 Q And the other two are ones that he sent to you?

9 A Yes, sir.

10 Q All right. So, M.J., after you received those two
11 text messages around ten o'clock from Mr. Davis, what did
12 you do?

13 A I went outside.

14 Q All right. Where did you go when you went outside?

15 A Into the shed.

16 Q All right. And what was going on in the shed when
17 you got there?

18 A I believe he was lifting weights.

19 Q All right. Was he in there by himself?

20 A Yes, sir.

21 Q And what did you do when you went in?

22 A I walked in and we just -- he pulled my pants down
23 and we got on top of the weight bench.

24 Q Did he say anything to you?

25 A I can't remember exactly what he said that night,

1 sir.

2 Q Okay. So you walked in do you recall kind of what
3 you were wearing?

4 A I had on some sweat pants and I think a tank top.

5 Q All right. And you mentioned a weight bench show you
6 State's 5 is that the weight bench?

7 A Yes, sir.

8 Q All right. So when you walked in there where is the
9 weight bench in relation to the door is it close to the
10 door?

11 A Yes, sir, it's right once you walk in to the left.

12 Q Okay. And so tell us what happened once you got to
13 the weight bench?

14 A He pull down my pants and then everything happen and
15 then eventually my aunt walked in.

16 Q All right. So did you -- you say your pants were
17 pulled down. How far down were they pulled?

18 A I can't remember, sir.

19 Q All right. With respect to the weight bench, were
20 you laying on it?

21 A Yes, sir.

22 Q Were you on your back on the weight bench?

23 A Yes, sir.

24 Q All right. And what was Mr. Davis wearing?

25 A I can't remember. I think it was like some sweat

1 shorts.

2 Q Like some kind of athletic shorts or something?

3 A Yes, sir.

4 Q All right. And do you recall if he took those off
5 completely?

6 A No, sir.

7 Q What did he do?

8 A He just pulled them down a little bit.

9 Q All right. And once he pulled them down, did he
10 expose his penis to you when he pulled them down?

11 A Yes, sir.

12 Q All right. And what did he do then?

13 A He penetrated me.

14 Q All right. And by that could you -- did he get on
15 top of you?

16 A No, sir.

17 Q How did it happen?

18 A My legs were over his shoulder.

19 Q Your legs were up over his shoulder?

20 A Yes, sir.

21 Q Okay. Now, your pants were down to an extent. Was
22 his head like underneath your pants?

23 A Yes, sir.

24 Q And about how long were you all having sex before
25 your aunt walked in?

1 A I can't remember, but it wasn't long.

2 Q Wasn't long?

3 A No, sir.

4 Q While y'all were doing this, did he actually
5 penetrate your vagina?

6 A Yes, sir.

7 Q Okay. So at some point while this is going on your
8 aunt walks in?

9 A Yes, sir.

10 Q Did you have any idea she was coming?

11 A No, sir.

12 Q All right. What happened when she walked in the
13 door?

14 A He jumped off of me.

15 Q What did you do?

16 A I got up.

17 Q All right. Do you recall if he said anything?

18 A Yes, sir.

19 Q What did he say?

20 A He said I already know I'm going to jail.

21 Q Do you recall anything else he said or that's it?

22 A That's it.

23 Q All right. And what did he do then?

24 A All I know him and my aunt were talking. They were
25 fussing.

1 Q Okay. Did he hang around for the rest of the night?

2 A No, sir.

3 Q So he left pretty soon after that?

4 A Yes, sir.

5 Q All right. And what did your aunt do?

6 A I believe she called my momma and she was already on
7 the phone with somebody I think.

8 Q All right. And at some point did everybody kind of
9 lose you in the shuffle and you stayed in the shed by
10 yourself?

11 A Yes, sir.

12 Q Is that when police were already there?

13 A Yes, sir.

14 Q All right. And what happened when you were sitting
15 in the shed by yourself?

16 A I cut myself.

17 Q You cut yourself?

18 A Yes, sir.

19 Q What did you do that with?

20 A A knife.

21 Q Was that something that was already in the shed?

22 A Yes, sir.

23 Q All right. Did you end up having to go to the
24 hospital that night?

25 A Yes, sir.

1 Q All right.

2 MR. RICHARDSON: Beg the Court's indulgence a
3 moment, Your Honor.

4 THE COURT: Yes, sir.

5 (WHEREUPON, a pause in the proceedings.)

6 BY MR. RICHARDSON:

7 Q M.J. at no time during any of this did Mr. Davis
8 like force himself on you or make you do this?

9 A No, sir.

10 Q All right. So you agreed to participate in it?

11 A Yes, sir.

12 Q But at the time on May 31st 2014, how old were you?

13 A Fifteen.

14 Q Okay. Do you know about how old he was?

15 A Yes, sir.

16 Q How old was he?

17 A Fifty-four.

18 Q Fifty-four?

19 A Yes, sir.

20 Q All right.

21 MR. RICHARDSON: All right. M.J., thank you.
22 Please answer any questions Mr. Anderson may have for you.

23 THE COURT: All right. Mr. Anderson.

24 CROSS-EXAMINATION

25

1 BY MR. ANDERSON:

2 Q M.J., if you don't mind, I'm going to stand over
3 here and that way I know that I can hear your answer and
4 certainly everyone else, the jury and people like that can
5 hear your answer. Is that all right with you?

6 A Yes, sir.

7 Q If I ever ask you a question that you do not
8 understand or if you would like for me to rephrase it,
9 just let me know all right?

10 A Yes, sir.

11 Q And, of course, if I ask you a question and right now
12 you're saying, yes, sir, I would appreciate it if you
13 would not nod your head or shake your head but just give
14 me a yes or a no?

15 A Yes, sir.

16 Q M.J., I believe you said you're in the 11th grade;
17 is that right?

18 A Yes, sir.

19 Q Where do you go to school?

20 A Mullins High School, sir.

21 Q Right now you're living with your aunt?

22 A Yes, sir.

23 Q Is she here in the courtroom with you?

24 A Yes, sir.

25 Q How long ago did you move in with her?

1 A About month.

2 Q About month ago?

3 A Yes, sir.

4 Q So if we're in November right now before Halloween
5 after Halloween?

6 A Before Halloween.

7 Q But sometime during the month of October?

8 A Yes, sir.

9 Q You indicated earlier that you know Lin in this case?

10 A Yes, sir.

11 Q And you met him if you can remember correctly, you
12 met him sometime in -- well about two years ago October of
13 2013?

14 A Yes, sir.

15 Q How big -- I know it's already evidence, but how big
16 do you think the trailer is according to State's Number 4
17 if you could just give me a rough estimate?

18 A Can I ask you a question?

19 Q Do you want me to clarify?

20 A Yes, please.

21 Q How much square footage does it have?

22 A I don't know nothing about no square feet, but I'm
23 good in like algebra and stuff, sir.

24 Q Okay. Is it bigger than this courtroom or smaller?

25 A Smaller.

1 Q Do you think it is bigger or smaller than this white
2 rail to you?

3 A Bigger.

4 Q Bigger than that. So if I came back maybe ten feet
5 from me to you about that big?

6 A I think it's a little bit bigger than that.

7 Q Is it as wide as the courtroom?

8 A No, sir.

9 Q Does it have two bays? When I say two bays, could
10 you pull two cars in there?

11 A Yeah, you could.

12 Q Do you know if there ever been cars in there?

13 A Yes, sir.

14 Q You said earlier that it had machinery in it?

15 A Yes, sir.

16 Q Did someone ever use to work on cars in there?

17 A Yes, sir.

18 Q And who was that?

19 A My aunt's husband, sir.

20 Q Has she had more than one husband or just the one?

21 A Well, I'm not sure she was married to him, but I feel
22 like that should be her husband, sir, being you want to
23 get all technical.

24 Q So the one that worked on the machinery was it her
25 husband or not her husband?

1 A It was somebody she was seeing, the father of her
2 kids.

3 Q I believe earlier you said there were two tools in
4 there. There was equipment in there and were there
5 weights in there?

6 A Yes, sir.

7 Q There was a weight bench in there?

8 A Yes, sir.

9 Q How big was the weight bench?

10 A Not that big, sir.

11 Q And I'm coming over here this side of the courtroom
12 where this officer is sitting. This is a wooden bench
13 would you agree with me?

14 A Yes, sir.

15 Q Is wider than this bench?

16 A No, sir.

17 Q Not as wide?

18 A Just exactly like it is and the length is the same,
19 sir.

20 Q Okay. So maybe 14, 15 inches wide would that be a
21 fair accurate description?

22 A Yes, sir.

23 Q Looking at the photograph, I think that's already
24 been introduced State's Exhibit Number 5 do you recognize
25 that?

1 A Yes, sir.

2 Q Is that the way it looked back in May of 2014?

3 A Yes, sir.

4 Q There's -- I think there's a light in that picture
5 like the door's open would that be fair to say?

6 A Yes, sir.

7 Q And I'm going to show you State's 4 and looks like
8 the door's propped open in State's 4?

9 A Yes, sir.

10 Q Is that the only door to get into the shed?

11 A That's the only door like that, sir, but you have a
12 door to use to park a car inside.

13 Q Right, I guess the two big doors?

14 A Yes, sir.

15 Q But as far as walking in and out of that door, is
16 that the door that you went in that night?

17 A Yes, sir.

18 Q And it appears from looking at State's 5 that the
19 weight bench is maybe eight, ten feet away from the door,
20 would that be accurate?

21 A You say what?

22 Q About eight to ten feet away when you walk in the
23 door?

24 A I guess, I mean it's just like right there beside the
25 door.

1 Q There appears to be a fan in front of it?

2 A Yes, sir.

3 Q Also on State's 4 you got part of a bench and then I
4 guess you got where the weights sit on it and then you got
5 a little short extension after that; is that right?

6 A Yes, sir.

7 Q Earlier I take it you said Mr. Davis, Lin, he didn't
8 have a key to the shop or the shed?

9 A No, sir.

10 Q But that he came over on a regular basis?

11 A Yes, sir.

12 Q Did he workout there a lot?

13 A Yes, sir.

14 Q How would you qualify a lot more than ten times, more
15 than 20 times?

16 A He came over like every night to workout, sir.

17 Q Would either you or your aunt unlock the door for
18 him?

19 A Yes, sir.

20 Q When did he start coming over and working out?

21 A Do you want an exact date?

22 Q Well, just -- you said you meet him in October of
23 2013?

24 A I can't remember exactly when he came over to lift
25 weights. All I know is he came to lift weights, sir.

1 Q Do you think it was after Christmas, so it would have
2 start of 2014 or before then?

3 A Say that again?

4 Q You met him in October of 2013, so we had Halloween,
5 then he had Thanksgiving, then we had Christmas and then
6 were into 2014. Do you think you started coming over in
7 2013 or do you think it was later in 2014?

8 A I believe it was later 2014.

9 Q Was it January, was it before Valentine's day or
10 after Valentine's day?

11 A Say that again?

12 Q Was it before Valentine's day or after Valentine's
13 day? Was it January, was it February?

14 A I don't know, sir.

15 Q You said you came over every day to workout?

16 A Yes, sir.

17 Q You said that sometimes you the open the door,
18 sometimes your aunt would open the door?

19 A Yes, sir.

20 Q How many times do you think you open the door?

21 A I don't know, sir.

22 Q Would you agree with me that there 31 days in
23 January?

24 A I don't know exactly how many days is in January,
25 sir.

1 Q Would you agree that there 28 days in February?

2 A What the months got to do why we in here?

3 Q You came over there every single day. I like to know
4 a number of how many times he came over?

5 A Maybe if you look at a calendar it'll tell you how
6 many days in a month.

7 MR. RICHARDSON: Your Honor, I object to the
8 relevance.

9 THE COURT: What is the relevance?

10 MR. ANDERSON: Your Honor, I like to know how
11 many times he came over there. I mean, did he come over
12 there 10 times or he come over there 150 times.

13 THE COURT: Go ahead and ask.

14 BY MR. ANDERSON:

15 Q You say you do not know how many times he came over?

16 A I didn't say how many times he came over and the day
17 of the month. I said how many days when he came over
18 during the week almost. He came over almost every day to
19 workout in the shed. I didn't say exact date or exact
20 day.

21 Q Okay. Your testimony is that he might have started
22 coming over just that week every single day to workout; is
23 that right?

24 A No, sir, it's not.

25 Q Do you think he came over more than 20 times to

1 workout?

2 A Yes, sir.

3 Q Do you think he came over more than 50?

4 A Yes, sir.

5 Q Think he came over more than 75?

6 A I didn't count how many times he showed up in the
7 yard, sir.

8 Q Did he ever come on the weekends to workout?

9 A Yes, sir.

10 Q You say you sent him a text I'm looking at State's
11 Exhibit Number 6 that night; is that right?

12 A Yes, sir.

13 Q I think the State asked you if you looked at the time
14 it was 9:35 p.m; is that right?

15 A Yes, sir.

16 Q It's just got to a number, it does not have a
17 contact; is that correct?

18 A When the message delivered, sir, it say the name of
19 the person that was in my contact and then when you opened
20 the message, it just say the number.

21 Q In that case, it doesn't ---

22 A But I remember his number by heart, sir.

23 Q But it doesn't have his name by it?

24 A No, sir, it don't.

25 Q Okay. Does it have anywhere on there that it was

1 your phone that sent it? I mean, it doesn't have your
2 name on any of the pictures, does it?

3 A I mean, if you want the phone for proof it's at the
4 trailer and I can go get it.

5 Q According to State's Number 6, his name is nowhere on
6 there and neither is yours as far as the text messages; is
7 that right?

8 A No, sir, it's not.

9 Q And State's Exhibit Number 7 his name is nowhere on
10 the contact and your name is not on there either as far as
11 the phone is concern?

12 A No, sir, it's not.

13 Q I believe your testimony is that after you got the
14 second text message you went outside; is that right?

15 A Yes, sir.

16 Q You went out to the shed and you walked in the shed,
17 he pulled your pants down?

18 A Yes, sir.

19 Q I believe you said that he didn't actually get on the
20 bench; is that right?

21 A Yes, sir.

22 Q That he put your legs on his shoulders?

23 A Yes, sir.

24 Q He had his head, I guess, between your two legs and
25 also between your gym shorts or sweat pants?

1 A Yes, sir.

2 MR. ANDERSON: Court indulgence for one moment
3 Your Honor.

4 BY MR. ANDERSON:

5 Q Do you remember giving statements in this case?

6 A Yes, sir, I do.

7 Q Do you remember giving it to one Sergeant Clemson
8 Legette with the Marion County sheriff's office?

9 A Yes, sir.

10 MR. ANDERSON: Your Honor, may I approach the
11 witness?

12 THE COURT: Sure.

13 BY MR. ANDERSON:

14 Q Does that appear to be a copy of the statement you
15 gave Officer Legette?

16 A Yes, sir.

17 Q Does that appear to be in your handwriting?

18 A Yes, sir.

19 Q And at the top of it, M.J. [REDACTED], it says voluntary
20 statement and underneath that it says not under arrest; is
21 that right?

22 A Where?

23 Q The very top of it?

24 A Yes, sir.

25 Q Okay. And it says I, M.J. [REDACTED], and it's got

1 Sergeant Clemson Legette's name; is that right?

2 A Yes, sir.

3 Q You say how old you are and where you live; is that
4 right?

5 A Yes, sir.

6 Q Now, I believe you give an eight line statement; is
7 that right?

8 A Yes, sir.

9 Q Is that your handwriting?

10 A Yes, sir.

11 Q And the bottom of it says this is at 12:10 a.m. on
12 June 1st 2014; is that right?

13 A Yes, sir.

14 Q So you would have given that statement maybe an hour
15 and a half, two hours after this incident supposedly
16 happened?

17 A Yes, sir.

18 Q Now, when you were talking with Officer Legette where
19 were you?

20 A I believe I was in the hospital, sir.

21 Q Who else was there with you nurse, doctor?

22 A Just the officer was in the room with me, sir.

23 Q Certainly, Mr. Lin Davis was not there, was he?

24 A No, sir, he wasn't.

25 Q Nobody forced you and threatened you and put any

1 pressure on you anything like that at that point in time;
2 is that right?

3 A Repeat that question.

4 Q Nobody was forcing you, pressuring you, making you do
5 anything you didn't want to, were they?

6 A No, sir.

7 Q Talk with Officer Legette, I guess, he told you he
8 wanted to write a statement out?

9 A Yes, sir.

10 Q Told you to take as much time as you wanted?

11 A Yes, sir.

12 Q Told you to write as much detail as you wanted?

13 A Yes, sir.

14 Q Is that right?

15 A Yes, sir.

16 Q And I believe I already ask you you wrote eight
17 lines?

18 A Yes, sir.

19 Q Nowhere in there did you say that he had your pants
20 and your legs over his shoulders, his head between your
21 ---

22 A No, sir, I don't, but I was also asked to write
23 another statement if you want to give me that statement
24 that's fine.

25 Q We will get to that in a second, M.J. .

1 A Okay.

2 Q Is it anywhere in that?

3 A No, sir, it's not.

4 Q You gave this statement just you and the officer at
5 the hospital?

6 A Yes, sir.

7 MR. ANDERSON: Your Honor, may I approach the
8 witness?

9 THE COURT: Sure.

10 BY MR. ANDERSON:

11 Q You recognize that statement?

12 A Yes, sir, I do.

13 Q That also voluntary statement?

14 A Sir?

15 Q I said that's also a voluntary statement not under
16 arrest things like that at the top?

17 A Yes, sir.

18 Q And it appears this one was June the 4th; is that
19 correct?

20 A Yes, sir.

21 Q And this was like a page long would you agree with me
22 on that?

23 A Yes, sir.

24 Q More detail than that one?

25 A Yes, sir.

1 Q Tell me in that statement where you say that he put
2 your legs on his shoulders and put his head between your
3 two legs, where your gym pants would be on the back of his
4 head?

5 A You want exact line?

6 Q Yes, ma'am. You can just read it to me if you want
7 to?

8 A Line 21 -- line 20, 21 and 22.

9 Q Okay. What does line 20, 21 and 22 say?

10 A Do I actually have to read this?

11 Q Ma'am?

12 A Do I have to actually recite this?

13 Q I'm asking you if that's in there?

14 A Yes, sir, it is.

15 Q It's in there where his legs excuse me -- your legs
16 were on his shoulders and his head was between your legs,
17 that is in there?

18 A No, sir, but it is where he pulled my pants down,
19 sir.

20 Q Okay. So he pulled your pants down is in here but
21 not the other part?

22 A Yes, sir, but I do remember what happened that night.

23 Q And we are in November of 2015?

24 A Yes, sir.

25 Q And this would have been in May of 2014?

1 A Yes, sir.

2 Q You said your aunt called your mom and that Lin left
3 and a bunch of people came over; is that right?

4 A Yes, sir.

5 Q Your mom came over?

6 A Yes, sir.

7 Q Your aunt was there?

8 A Yes, sir.

9 Q I think some law enforcement officers came over?

10 A Yes, sir.

11 Q At some point in time your mom called you a name and
12 started hitting you, didn't she?

13 A Excuse me.

14 Q I said at some point in time your mom started calling
15 you names and hitting you, didn't she?

16 A She wasn't calling me names, but she was very upset
17 with what she had heard, sir.

18 Q So she never called you a derogatory name?

19 A Ever?

20 Q That night?

21 A No, sir.

22 Q Okay. The fact of the matter is you said you went
23 into, I guess, a shed and cut yourself?

24 A Yes, sir.

25 Q Isn't it true that you cut yourself over the problems

1 you and your mom were having?

2 A No, sir, it's not.

3 Q You did not tell a counselor that later?

4 A I can't remember and I don't think I told anybody
5 that later, sir.

6 MR. ANDERSON: Judge, that's all the questions I
7 have.

8 MR. RICHARDSON: No redirect, Judge.

9 THE COURT: You may step down.

10 (WHEREUPON, the witness leaves the witness
11 stand.)

12 THE COURT: Call your next witness.

13 MS. HUMMEL: Thank you, Your Honor. At this
14 time the State would call Christal Saldierna.

15 THE CLERK: Do you solemnly swear or affirm that
16 the evidence you're about to give to be the truth, the
17 whole truth and nothing but the truth so help you God?

18 THE WITNESS: Yes, ma'am.

19 THE CLERK: Have a seat in the witness box.

20 WHEREUPON,

21 Christal Saldierna,
22 after first having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. HUMMEL:

25 Q Christal, what's your full name?

1 A Christal Irene Saldierna.

2 Q Christal, where do you live?

3 A [REDACTED] Water Mill Road in Mullins.

4 Q Okay. And on your property do you have a type of
5 shed or warehouse type of building?

6 A Yes, ma'am.

7 Q Okay. And what's in that shed?

8 A Tools, weight bench, punching bag.

9 Q Do you know the defendant in this case Mr. Davis?

10 A Yes, ma'am.

11 Q And how did you come to know him?

12 A He was a friend of my boyfriend's.

13 Q Okay. And about how long had you known him?

14 A Over six years.

15 Q Okay. And during that six year period was he kind of
16 close with your family the whole time?

17 A Yes, ma'am.

18 Q Okay. At some point did he come over to use that
19 weight bench in the shed on your property?

20 A Yes, ma'am.

21 Q Okay. Do you remember about when he started doing
22 that?

23 A It was right after my boyfriend passed.

24 Q Okay. Do you know about maybe what year that was?

25 A He passed October the 8th of 2013.

1 Q Okay. Would he -- did he have permission from
2 yourself to use that weight room?

3 A Yes, ma'am.

4 Q Okay. And how often do you know would he come and
5 use the weight room?

6 A Almost every day.

7 Q Do you remember what you were doing on the night of
8 May 31st last year 2014?

9 A I was laying down watching TV because I just got back
10 from Coastal hospital because I sprain my foot playing
11 tennis.

12 Q Okay. So you were just kind of resting, relaxing?

13 A Yeah.

14 Q Okay. What were you doing about ten o'clock that
15 night were you still in bed watching TV?

16 A Yeah.

17 Q At some point did you get up and leave the bed and go
18 do something?

19 A Yeah.

20 Q Okay. And where did you go?

21 A I went to go find her to get her in the house because
22 it was getting late.

23 Q Why did you go to find her?

24 A Because she wasn't in the house and it was getting
25 late.

1 Q Okay. Had she gone outside at some point?

2 A Yes, ma'am.

3 Q Do you know about what time that was?

4 A No, ma'am.

5 Q Okay. But you do know that she had gone outside?

6 A Yes, ma'am.

7 Q Okay. Do you know why she had gone outside?

8 A She was suppose to go lock up.

9 Q Okay. So she hadn't come back in yet?

10 A Yes, ma'am.

11 Q Okay. Do you remember about what time you went
12 outside?

13 A It was a little after ten.

14 Q Okay. So did you go to the weight room or the shed?

15 A Yeah, where the door is.

16 Q Okay. And once you got to the door was it closed or
17 open?

18 A It was open.

19 Q Okay. When you got to the opening, the threshold
20 what did you see?

21 A I see M.J. laying on a bench holding bars. Lin was
22 straddling the bench. And I couldn't see the back of his
23 shorts down, but he was humping her.

24 Q Okay. You said he was wearing shorts?

25 A Yeah, like boxer shorts, like you go boxing.

1 Q Like athletic type of shorts?

2 A Yeah.

3 Q Do you know what M.J. was wearing?

4 A Sweat pants. I can't remember what shirt she was
5 wearing.

6 Q And what were -- what was the state of her clothing
7 at that time?

8 A To her ankles.

9 Q Okay. And you say she was laying on the weight bench
10 where were her legs positioned?

11 A On his shoulders.

12 Q You said that he was humping her?

13 A Uh-huh.

14 Q Could you tell from the angle that you were at if he
15 actually penetrated her?

16 A No, ma'am, I couldn't see the front of him.

17 Q Okay. But you could tell about what he was doing?

18 A Yes, ma'am.

19 Q Okay. When you walked in what was the lighting like
20 in the shed?

21 A I got shop lights. It was bright.

22 Q So brighter than these lights in this courtroom here?

23 A Yeah.

24 Q So more like the -- what we call like the iridescent
25 type?

1 A It's long shop lights.

2 Q Okay. So it was very bright you could see what was
3 going on?

4 A Yes, ma'am.

5 Q Did you walk into the shed?

6 A Yes, ma'am.

7 Q And when you walked in what happened next?

8 A I told him to get the fuck off my niece.

9 Q Okay. And what happened after that?

10 A He jumped off of her.

11 Q All right. Do you remember if he said anything at
12 any point?

13 A That he didn't penetrate her.

14 Q Okay. Did he say anything else?

15 A No, ma'am, it was too much arguing.

16 Q Okay. But he immediately jumped off of her?

17 A Yes, ma'am.

18 Q After he jumped off of her, what did you do after he
19 had told you those things?

20 A She got up, pulled her pants up and he was wanting to
21 go.

22 Q What did you do next?

23 A They didn't want me to call her mother.

24 Q Did you call her mother?

25 A Yes.

1 Q Okay. And what else did you do?

2 A I called a friend of mine that works with the fire
3 department.

4 Q Okay. Was there anybody else that you called before
5 somebody arrived at your house?

6 A No, ma'am.

7 Q Okay. Do you know what time proximately someone
8 came?

9 A Tim came first and he caught him down the road.

10 Q Okay. Do you speak with any law enforcement in this
11 case?

12 A I took statements.

13 Q Okay. Do you remember who you spoke to when you gave
14 a statement?

15 A Samantha was one and there was somebody else at the
16 time.

17 Q Okay. You can't remember?

18 A I can't remember.

19 Q Do you know about what time it was that law
20 enforcement arrived?

21 A It was a little after ten.

22 Q Okay. Not very long after you had just walked in the
23 building and made a phone call?

24 A Yes, ma'am.

25 Q Was it you that called law enforcement or was it

1 somebody else?

2 A I think I was and then my sister's calling too.

3 Q Okay. So you both called?

4 A Yes, ma'am.

5 Q Was there anything -- anybody else that you can
6 remember that you talked to besides the Samantha and the
7 other officer that you gave a statement to?

8 A His wife she had come up there and I was explaining
9 to her.

10 Q Okay. How did she come?

11 A My sister called her.

12 Q Okay. Do you remember about when she came to the
13 house?

14 A It was a little after ten, the cops and stuff was
15 already there.

16 Q Okay. Was there anybody else that showed up?

17 A Her dad, her momma.

18 Q Just to get some more clarification on how close the
19 weight bench was to the way you were standing, you know,
20 at the threshold of the shed. Can you may be tell us
21 about how close it was to you?

22 A If I walked back out of this, the weight bench is
23 right here.

24 Q Right here at the end of this?

25 A If I like walk in the door, the building door.

1 Q Okay. So you're standing at the door, the weight
2 bench in front of you about right here at the end of this
3 -- at the bench right here?

4 A Yes, ma'am.

5 Q Okay. So it's about, I guess, maybe seven or eight
6 feet approximately?

7 A Yes, ma'am.

8 Q Okay.

9 MS. HUMMEL: Beg the Court's indulgence one
10 moment, Your Honor.

11 BY MS. HUMMEL:

12 Q Now, I'm going to show you what's already been marked
13 as State's Exhibits 4 and 5?

14 MS. HUMMEL: May I approach the witness, Your
15 Honor?

16 THE COURT: Sure.

17 BY MS. HUMMEL:

18 Q Let me hand those to you and you tell me if you
19 recognize those?

20 A Yes, ma'am.

21 Q Okay. And what with are those?

22 A That's my shop and inside.

23 Q Okay. Photos of the weight room and everything?

24 A Yes, ma'am.

25 Q Okay. And is that fair and accurate kind of

1 depiction of what the weight room looks like when you saw
2 it that night?

3 A Yes, ma'am.

4 Q Okay. And on State's Exhibit 5 where it shows this
5 weight bench right here is that where you saw the victim
6 and Mr. Davis?

7 A Yes, ma'am.

8 Q Okay. Do you know what direction she was laying on
9 the bench?

10 A Her head was under the bar. She was holding the bar
11 and her legs were up on his shoulder and he was standing
12 up straddling it.

13 Q Okay. So her body was going this direction with her
14 head on this side?

15 A Yeah, her head was under the bar.

16 Q Okay. And he was standing somewhere right there?

17 A Yeah.

18 Q Now, do you have any reason to know why the
19 defendant, Mr. Davis, would know how hold old M.J. ?

20 A Yes, because he comes around all the time. He's been
21 to her birthday party and stuff of hers.

22 Q Okay. Was he at her 15-year-old birthday party when
23 she turned 15?

24 A Yes, ma'am.

25 Q Okay. And she had a cake and everything?

1 A Yes, ma'am.

2 Q Do you remember if it said her age or anything?

3 A Yes, ma'am.

4 Q Okay. What did it say?

5 A Happy birthday M.J. 15.

6 MS. HUMMEL: Thank you, Your Honor. No further
7 questions at this time.

8 THE COURT: Mr. Anderson.

9 MR. ANDERSON: Beg the Court's indulgence for
10 one moment, Your Honor.

11 (WHEREUPON, a pause in the proceedings.)

12 CROSS-EXAMINATION

13 BY MR. ANDERSON:

14 Q A lot of people came over there that night, didn't
15 they?

16 A Yes, sir.

17 Q I think you said earlier Tim came over?

18 A Yes, sir.

19 Q How many children do you have?

20 A Two.

21 Q Does M.J. have any stepbrothers?

22 A She's got a stepbrother and a stepsister. She's got
23 two brothers.

24 Q Two stepbrothers or two brothers?

25 A She's got two brothers, a step brother and a step

1 sister.

2 Q How old are her two brothers?

3 A The baby is 14 now and the oldest one is 20.

4 Q They came over that night also, didn't they?

5 A I don't know.

6 Q Her mother came over there that night?

7 A Yes, sir.

8 Q Didn't her mother strike her several times?

9 A I don't know because I didn't stay outside long.

10 Q I'm sorry.

11 A I said I don't know because I didn't stay outside

12 long. The cops wanted me to go in the house.

13 Q I think you said you had surgery or something on your

14 foot?

15 A I had a sprain my foot and I had went to the

16 emergency room playing tennis.

17 Q Are you working anywhere?

18 A No, sir.

19 Q Were you working anywhere at the time?

20 A No, sir.

21 Q Are you disabled?

22 A No, sir.

23 Q I believe you said you known Lin for about six years?

24 A A little over six years.

25 Q And that he's come over a lot and use the weights?

1 A Yes, sir, he was a friend of mine and my boyfriend's.

2 Q And I believe you testified earlier or maybe you
3 didn't but maybe M.J. Did you have children?

4 A Yes.

5 Q How many children do you have?

6 A Two.

7 Q How old are they?

8 A My son is six and my daughter is three.

9 MR. ANDERSON: Court's indulgence for a moment,
10 Your Honor.

11 (WHEREUPON, a pause in the proceedings.)

12 BY MR. ANDERSON:

13 Q You said that you went outside been approximately ten
14 o'clock?

15 A A little after, yes.

16 Q And that, of course, was on May 31st?

17 A Yes, sir.

18 Q May 31st 2014?

19 A Yes, sir.

20 Q You said you went up there because it was getting
21 late. You have any idea what time M.J. gone outside?

22 A No, sir.

23 Q How did you know that she'd gone outside?

24 A I heard the front door open.

25 Q Now, you said you have a three year old and a six

1 year old. Do they sometimes go in and out?

2 A Yes, sir, but not at night. My other niece was
3 there.

4 Q I believe you said you walked out to the shed or
5 actually this night, I guess, you might have hopped out,
6 limped out?

7 A Yes.

8 Q And if you look at State's Number 4 I believe you
9 said that that's what your shed looks like?

10 A Yes, sir.

11 Q Now, are there any outside lights on the shed?

12 A No, sir, there's a night light on this side and a
13 night light on the other side.

14 Q Let me stop you right there, when you say this side,
15 can you show me and the jury what you talking about?

16 A There's a night light that lights up the front.

17 Q And that's right by the door?

18 A It's on the opposite side of the building.

19 Q All right.

20 A But it lights up the whole front.

21 Q Okay.

22 A And down on the other side there's not lights. It's
23 on this side of the house.

24 Q All right. So there's no light, I guess, where the
25 door is that you walk in and out of the light is on the

1 other side?

2 A Yeah.

3 Q And State's Exhibit Number's 5 it looks like there is
4 some brighter light on the floor would you agree with me
5 with that?

6 A Yes, sir.

7 Q Is that probably where the sunlight is shining in
8 through the door on State's Exhibit 4?

9 A Yes, sir.

10 Q And right there soon as you walk in the door it looks
11 like there's an oscillating fan is that -- would that be
12 correct?

13 A Yes, sir.

14 Q How tall do you think that fan is?

15 A Probably about the same height I am.

16 Q And it is between the door and the weight bench; is
17 that right?

18 A Yes, sir.

19 Q Now, you said earlier on, I guess, on direct that the
20 weight bench was maybe from me to you?

21 A Uh-huh.

22 Q Is that a yes?

23 A Yes, sir.

24 Q And just for the court's record you and I might be
25 six feet apart, seven feet apart something like that?

1 A Yes, sir.

2 Q I believe you said earlier M.J. on the bench holding
3 the bar and that Lin was humping her?

4 A Yes, sir.

5 Q Did M.J. have on sweat pants, but you think they
6 were down by her ankles?

7 A Yes, sir.

8 Q And then you told him ---

9 A To get the fuck off of her.

10 Q All right. She pulled up her pants, he left. I
11 believe you called Tim and then may be her mom?

12 A Uh-huh, yes, sir.

13 Q You said -- I think you given a couple statements,
14 but you said you could not tell if he was actually
15 penetrating her or not?

16 A No, sir.

17 Q Okay. When you walk in the door, and you said the
18 door was open, when you walk in the door, you're probably
19 six or seven feet away; is that right?

20 A Yes, sir.

21 Q But you could not tell if he was penetrating her?

22 A No, sir, because the back of his pants wasn't down.
23 I couldn't tell his stuff was out in the front.

24 Q Of course, you had a good look at him after this
25 supposedly happened. I think he said he talked to you?

1 A Yeah, we were fussing, arguing.

2 MR. ANDERSON: Judge, that's all the questions I
3 have.

4 THE COURT: Any redirect?

5 MR. RICHARDSON: None, Your Honor.

6 THE COURT: You may step down.

7 (WHEREUPON, the witness leaves the witness
8 stand.)

9 THE COURT: We'll take a 15 minute break and
10 then come back. Members of the jury, if you would step
11 into the jury room. Do not discuss the case, just take a
12 break and we'll be back in 15 minutes.

13 (WHEREUPON, the jury retire to the jury room.)

14 THE COURT: We'll take a 15 minute break.

15 (WHEREUPON, a break was taken.)

16 THE COURT: Go ahead and bring out the jury.

17 (WHEREUPON, the jury came into open court.)

18 THE COURT: Go ahead and call your next witness.

19 MS. HUMMEL: Thank you, Your Honor. The State
20 would call James Powell to the stand.

21 THE CLERK: Do you solemnly swear or affirm to
22 tell the truth, the whole truth and nothing but the truth
23 so help you God?

24 THE WITNESS: I do.

25 THE CLERK: Thank you, have a seat.

1 WHEREUPON,

2 James Powell,

3 after first having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. HUMMEL:

6 Q Mr. Powell, your full name?

7 A James Powell.

8 Q Where do you currently work?

9 A SME Engineering testing firm in Florence.

10 Q Where did you work before that?

11 A Marion County sheriff's office.

12 Q How long did you work for the sheriff's office?

13 A About four years.

14 Q Were you working there on the night of May the 31st
15 of 2014?

16 A Yes, ma'am.

17 Q Okay. And what was your, I guess, title or position?

18 A I was a corporal on road patrol.

19 Q Okay. And did you receive a call from dispatch about
20 responding to a location that night?

21 A Yes, ma'am.

22 Q Do you remember what time dispatch called you?

23 A It was around 10:20, 10:24.

24 Q Did you know what that call was in reference to?

25 A Reference to a possible rape.

1 Q Okay. And do you know what the location was?

2 A It was on Water Mill Road I believe I'm not sure the
3 exact numerics.

4 Q All right. Do you know if that was located in Marion
5 County?

6 A Yes, ma'am, it was.

7 Q Okay. Now, do you know what time approximately you
8 responded to that location?

9 A I believe I got there around 1040.

10 Q Okay. What did you do first once you got there?

11 A I spoke with the complainant which was the mother to
12 the victim briefly and she told me what was going on.

13 MR. ANDERSON: Objection, Your Honor, to any
14 hearsay.

15 THE COURT: Sustain.

16 BY MS. HUMMEL:

17 Q Without telling me exactly what she told you, you
18 spoke with the mother?

19 A And then I went into the shop and spoke with the --
20 with Miss M.J. .

21 Q And what did you observe when you went in and spoke
22 to Miss M.J. ?

23 A Miss M.J. was sitting on a weight bench and has
24 laceration -- one or two lacerations on her arms.

25 Q And did you go in there basically -- basically to

1 like check on her and see if she's okay?

2 A Yes, ma'am.

3 Q All right. And did you talk with her?

4 A Yes, ma'am.

5 Q All right. Do you know if you call EMS or if they
6 were already on the way?

7 A I can't recall.

8 Q Okay. But once you saw her, you made sure they were
9 called?

10 A Yes, ma'am.

11 Q Okay. Did you talk to anyone else after you talk to
12 Miss M.J. ?

13 A I spoke back with her mother briefly.

14 Q Okay. Do you know if you took any statements that
15 night?

16 A I did not.

17 Q Okay. Do you remember who all was there when you
18 responded to the scene?

19 A I know there was several family members her mother,
20 her aunt. I think a cousin or two and maybe some uncles.
21 There were several people at the residence.

22 Q Okay. Once you talk with the mother and Miss M.J. ,
23 what else did you do?

24 A I contacted the -- my sergeant and the on-call
25 detective.

1 Q Okay. And was that all the involvement you had or
2 did you do something else?

3 A That's about all I did.

4 MS. HUMMEL: Okay. Beg the Court's indulgence
5 one moment, Your Honor. Nothing further at this time.

6 THE COURT: Mr. Anderson.

7 CROSS-EXAMINATION

8 BY MR. ANDERSON:

9 Q You're no longer Corporal Powell at this point in
10 time?

11 A No, sir.

12 Q Some days I'm sure you're glad of that. You prepared
13 a report in this case, an incident report?

14 A Yes, sir.

15 Q I believe you got a copy of that with you?

16 A Yes, sir.

17 Q Approximately two pages long?

18 A Yes, sir.

19 Q A lot of notations there about what you did and what
20 you observed things like that; is that right?

21 A Yes, sir.

22 Q One thing you note on there is that EMS came and
23 transported the young lady in this case?

24 A Yes, sir, I believe so to the emergency room. Yes,
25 sir.

1 Q And also I guess the young lady went to the Marion
2 County hospital; is that right?

3 A Yes, sir.

4 Q When I say young lady I'm talking about M.J. [REDACTED] ?

5 A Yes, sir.

6 Q When you went in there and saw that she had a couple
7 small lacerations to her arms, did you ask her, hey, why
8 did you do that?

9 A I don't recall asking her that exact question, no,
10 sir.

11 Q If she'd given you an answer, you think you'd put
12 that in your report?

13 A Yes, sir.

14 Q Is there anything in your report concerning the
15 lacerations as to what she may have said to you or what
16 you may have asked her?

17 A No, sir.

18 Q I believe you said there were several family members
19 there her mom, aunt, several cousins; is that right?

20 A To the best of my knowledge, yes, sir.

21 Q And, of course, EMS was on the scene?

22 A Yes, sir.

23 Q I believe a statement was taken from an EMS worker by
24 Detective Watson and by Sergeant Legette; is that right?

25 A I'm not aware of a statement being taken from them.

1 I wasn't there for the statement.

2 Q Second page of your report do you note that in your
3 report?

4 A Yes, sir.

5 Q One statement from the EMS worker?

6 A Yes, sir, that's Sergeant Legette inform me of that,
7 that's why I put it in my report.

8 Q Do you recall a Tim from the fire department being
9 there?

10 A Yes, sir.

11 Q And you say that her mom was there. You spoke with
12 her mom?

13 A Yes, sir.

14 Q What about her dad do you remember if her natural
15 father was there?

16 A I'm not sure. I don't recall.

17 MR. ANDERSON: Judge, that's all the questions I
18 have.

19 THE COURT: Redirect?

20 MS. HUMMEL: No, Your Honor.

21 THE COURT: You may step down. Call your next
22 witness.

23 (WHEREUPON, the witness leaves the witness
24 stand.)

25 THE CLERK: Do you swear to tell the truth, the

1 whole truth, and nothing but the truth so help you God?

2 THE WITNESS: I do.

3 WHEREUPON,

4 Samantha Jackson,

5 after first having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. RICHARDSON:

8 Q Investigator Jackson, do you work with the Marion
9 County sheriff's office?

10 A Yes, I do.

11 Q How long have you been employed there?

12 A Five years.

13 Q And how long have you been an investigator?

14 A A little over two.

15 Q All right. What were your job duties before you
16 became an investigator?

17 A I helped out on patrol, answered calls and also I was
18 considered a victims' advocate whenever victims would
19 go -- had court dates I would go sit with them as far as
20 support in the courtroom.

21 Q Okay. Few years back you were promoted to
22 investigator?

23 A Yes, I was.

24 Q All right. And do you investigate whatever comes in
25 the door or do you investigate particular types of crimes?

1 A I investigate specific crimes.

2 Q All right. What types of crimes do you specifically
3 handle?

4 A I investigator sex crimes, domestic violence, child
5 abuse and elder abuse.

6 Q Have you been in that role investigating those
7 specific crimes since the beginning of your tenure as an
8 investigator?

9 A Yes, I have.

10 Q All right. And back in May of 2014 you were -- you
11 been investigating these cases, these kinds of cases for a
12 year or so at that point close to it?

13 A Yes, sir.

14 Q All right. And you were the lead investigator on
15 this case here, correct?

16 A Yes, sir, I was.

17 Q All right. Could you please tell us how this case
18 came to you and what you did in response?

19 A Whenever a case comes in, our captain will assign
20 cases to the different investigators and this was one of
21 the cases that she assigned me that week.

22 Q Okay. So when you got the case, can you tell us when
23 you received it, when you started working on it?

24 A Give me just a second. The report was done on
25 May 31st. I was assign the case on June 2nd.

1 Q All right. So a little over 24 hours later ---

2 A Yes, sir.

3 Q --- incident took place. It was almost June the 1st
4 late hours May 31st?

5 A Yes, sir.

6 Q All right. And when you first got the case what did
7 you do, what was your first step?

8 A When I first got the case, I secured warrants on
9 Mr. Davis for criminal sexual conduct with a minor in the
10 second degree.

11 Q Okay. At that point had you reviewed the responding
12 officer's incident reports and any statements that were
13 taken that night?

14 A Yes, sir, I had.

15 Q All right. And based on the information you received
16 from statements taken that night incident reports and what
17 have you, you went ahead and got the warrants with the
18 charges we're here about today?

19 A Yes, sir, I did.

20 Q All right. And did you pick up Mr. Davis on those
21 warrants?

22 A Yes, sir, I did.

23 Q What day was that that you pick him up?

24 A June 2nd after lunch.

25 Q Okay. And did you yourself arrest him?

1 A I had assistance from another detective Detective
2 Bell.

3 Q Okay. So the two of you all went and did it?

4 A Yes, sir.

5 Q All right. When you got Mr. Davis, where did you
6 take him?

7 A We took him to the Marion County sheriff's office on
8 76.

9 Q Okay. And at that point in time since he was in
10 custody, did you give him what we know his Miranda
11 warnings?

12 A Yes, sir, I did.

13 Q I want to show you State's Exhibit Number 1 if you
14 can take a look at that. Do you recognize that?

15 A Yes, sir, I do.

16 Q And what is it?

17 A This is our standard Marion County sheriff's office
18 Miranda warnings sheet that we do for every case.

19 Q All right. And is this one in particular the one you
20 used for Lindell Davis?

21 A Yes, sir, it is.

22 MR. RICHARDSON: Your Honor, I ask for State's
23 1 to be entered into evidence?

24 MR. ANDERSON: No objection, Your Honor.

25 THE COURT: Number one into evidence without

1 objection.

2 MR. RICHARDSON: Thank you, Your Honor.

3 (WHEREUPON, State's Exhibit No. 1 was admitted
4 into evidence.)

5 BY MR. RICHARDSON:

6 Q All right. Investigator Jackson, could you -- I know
7 we all watched Law & Order and heard our right to remain
8 silent and all that kind of stuff, but it's a real thing;
9 is that correct?

10 A Yes, sir.

11 Q All right. Could you please read what that form
12 advises people of?

13 A At the top, it states that it's Marion County
14 sheriff's office. And then it state's the sheriff's name
15 Mark Richardson and then it says Miranda warnings. And
16 then it has a place where you put the case number, which
17 in this case I put the specific case number location where
18 you're doing the interview which was Marion County
19 sheriff's office on 76. The date June 2nd, 2014. At the
20 time this form was started it was 2:34 p.m. Then it goes
21 on to explain the rights which are the Constitution of the
22 United States requires me to inform you that you have the
23 right to remain silent. And then the person who's being
24 read their rights they have to put a mark indicating that
25 they understand each line. So in this case for the first

1 line, he put a mark. Second line is anything you can and
2 say will be used against you in a court of law. He put a
3 mark stating that he understood that part. You have the
4 right to speak with an attorney and have him or her
5 present with you while you're being questioned. He
6 indicated he understood that underline. If you cannot
7 afford to hire an attorney, one will be appointed to
8 represent you before any questioning if you wish. He
9 indicated he understood that. You can decide at any time
10 to exercise these rights and not answer any questions or
11 make any statements, again indicate that he understood.
12 Next line is do you understand each of these rights if I
13 have explain them to you. You have a section for yes and
14 a section for no. He indicated, yes, he understood.
15 Having these rights in mind, do you wish to talk to us
16 now. Again, you have a section for yes and a section for
17 no. He indicated yes. Then under that you have a section
18 for the name of the person who are being read their
19 rights, a place for address, their city and state. They
20 fill that out. Once they filled that out, you then have a
21 section that says waiver of rights, which states I have
22 read this statement of my rights. I understand what my
23 rights are. I am willing to make a statement and answer
24 questions. I do not want an attorney at this time. I
25 understand and know what I am doing. No promises or

1 threats have been made to me and no pressure of any kind
2 has been used against me by anyone in exchange for my
3 statement. Then the person who has been read their
4 Miranda rights they'll sign their signature and then put a
5 time at the bottom. In this case, it was 2:37 p.m. and
6 then myself and Detective Bell witness.

7 Q Okay. So at the time this form was presented to
8 Mr. Davis, it was you and Detective Bell and Mr. Davis in
9 what location?

10 A At that point in time myself, Detective Bell shared
11 an office at the Marion County sheriff's office. And we
12 did most of our interviews in our office. In this case,
13 it was in our office.

14 Q Okay. And as you indicated, you gave Mr. Davis or he
15 indicated on this sheet that he understood the rights as
16 to speaking to you all. He signed that and you witnessed
17 it?

18 A Yes, sir, I did.

19 Q All right. This was kind of mid afternoon around
20 2:30 somewhere 2:37 I think when the signature, when he
21 signed it. Did he appear to be under the influence of any
22 substance alcohol, drugs what have you or anything that
23 would have prevented him from understanding what he was
24 doing there with you all?

25 A No, sir.

1 Q About how long did the questioning last?

2 A I say approximately an hour.

3 Q At any point in time did he request a bathroom break
4 or food or water or anything of that nature?

5 A No, sir, he did not.

6 Q At any point in time did he request that the
7 interview stop and that he get a lawyer?

8 A No, sir, he did not.

9 Q So based on the circumstances present you all sitting
10 in your office, did he appear to voluntarily give you a
11 statement?

12 A Yes, sir, he did.

13 Q And in this particular case, did you ask him to write
14 a statement?

15 A Yes, sir, I did.

16 Q Do you recall if he wrote a statement first and then
17 you talk him about it or how did it -- did he give a
18 verbal statement as well?

19 A He gave a verbal statement and then we got him to
20 write it out.

21 Q Okay. So he talk you first and then you just ask him
22 to reduce it to writing?

23 A Yes, sir.

24 Q Okay. With respect to the verbal statement, did you
25 ask him -- what did you ask him or what did he say about

1 being present at the aunt's house that night or at the
2 shed?

3 A He said that he was at the aunt's house and that he
4 was there to lift weights.

5 Q Okay. And did you ask him what his phone number was?

6 A Yes, sir, I did.

7 Q And what was his response?

8 A Let me find it, I was informed by Mr. Davis that his
9 number [REDACTED] 79.

10 Q Is that an [REDACTED] number?

11 A Yes, it is.

12 Q So [REDACTED] 79?

13 A Yes, sir.

14 Q All right. And did you ask him that kind of at the
15 beginning?

16 A Yes, sir, we did.

17 Q Okay. Did you then -- what did you do then with
18 respect to these text messages already in evidence?

19 A I question Mr. Davis after receiving his cell phone
20 number about some text messages that were sent to the
21 juvenile victim on May 31st 2014.

22 Q And what was his response?

23 A Mr. Davis response was that he did not send any text
24 messages because he did not have his phone at that time.

25 Q Did he -- what did he say about where his phone was?

1 A Mr. Davis advised that a homeless man had his phone.

2 Q Did he tell you right then what that person's name
3 was?

4 A Phillip.

5 Q Did you at some point during the questioning ask him
6 if you could take a look at his phone?

7 A Yes, sir, I did.

8 Q And did you all have a consent to search form that
9 you use in circumstances like that if somebody does agree?

10 A Yes, sir, we have a standard consent to search.

11 Q I want to show you what's been marked State's Number
12 2 for identification you recognize that?

13 A Yes, sir, I do.

14 Q What is it?

15 A This is a Marion County sheriff's office voluntary
16 consent to search.

17 Q All right. What were you trying to search there?

18 A A Samsung Galaxy S2 cell phone.

19 Q Does that cell phone belong to Mr. Davis?

20 A Yes, sir, it was.

21 Q He have it on him then?

22 A Yes, sir, he did.

23 Q And could you tell us ---

24 MR. RICHARDSON: Your Honor, I move State's
25 Exhibit 2 into evidence.

1 THE COURT: Any objection?

2 MR. ANDERSON: No, sir, Your Honor.

3 THE COURT: State's Exhibit 2 into evidence
4 without objection.

5 (WHEREUPON, State's Exhibit No. 2 was admitted
6 into evidence.)

7 BY MR. RICHARDSON:

8 Q So did you advise Mr. Davis that you would like to
9 look at his phone?

10 A Yes, sir, I did.

11 Q And you presented this form to him?

12 A Yes, sir.

13 Q Did he sign it giving you consent to look at it?

14 A Yes, sir, he did?

15 Q Okay. Did you find any text messages on there?

16 A No, sir.

17 Q Did you look through the photographs?

18 A Yes, sir, I did.

19 Q I show you State's 8 do you recognize that?

20 A Yes, sir, I do.

21 Q And what is it?

22 A It is two different pictures of the juvenile victim.

23 Q Okay. Located on -- a photograph of the victim, but
24 what's the photograph of the victim on?

25 A The picture is of Mr. Davis' phone with a picture of

1 the victim Miss M.J. .

2 Q All right.

3 MR. RICHARDSON: Your Honor, that's State's 8 to
4 be placed into evidence.

5 THE COURT: Any objection?

6 MR. ANDERSON: No, sir, Your Honor.

7 THE COURT: Number 8 into evidence without
8 objection.

9 (WHEREUPON, State's Exhibit No. 8 was admitted
10 into evidence.)

11 BY MR. RICHARDSON:

12 Q All right. So did you ask Mr. Davis of his account
13 of what took place in the shed that night?

14 A Yes, sir, I did.

15 Q And what was his response?

16 A Mr. Davis advised that he was there to lift weights
17 and then Miss M.J. came outside to lock up and she tried
18 to initiate sexual contact.

19 Q Okay. And did he get any more specifics then that?

20 A Excuse me just a second. Can I read from my notes?

21 Q Well, if you take a look at them if they refresh your
22 recollection.

23 A Mr. Davis advise that when Miss Davis (sic) came in
24 the door. She spooked him because she came up behind him.
25 And he was still on the weight bench working out and that

1 he felt the bench go down. And when he turned around,
2 Miss M.J. was sitting on the weight bench behind him with
3 her pants pulled down and her legs open.

4 Q Okay. Did he mention about Aunt Christal coming in?

5 A Yes, sir, he did.

6 Q And what was his account of that?

7 A Give me just a second. Mr. Davis advised that
8 Ms. Christal came in and she yelled, no, and he stood up
9 and said he didn't do anything.

10 Q All right. And is there anything else about his
11 verbal statement anything that we not covered that he said
12 to you?

13 A We asked -- I asked Mr. Davis how long Miss M.J. had
14 been in the barn before her aunt came in and he said
15 approximately ten minutes.

16 Q Okay. After you talked with Mr. Davis, you mention
17 earlier you ask him to reduce the statement to writing?

18 A Yes, sir, I did.

19 Q All right. Show you State's Exhibit Number 3. Do
20 you recognize that?

21 A Yes, sir, I do.

22 Q And what is that?

23 A This is Mr. Davis' statement.

24 Q When is it dated?

25 A June 2nd.

1 Q So it took place same time frame we're talking about
2 as far as you and Detective Bell meeting with him?

3 A Yes, sir, it did.

4 Q All right.

5 MR. RICHARDSON: Your Honor, if I could move
6 State's Exhibit 3 into evidence.

7 THE COURT: Any objections?

8 MR. ANDERSON: No, sir, Your Honor.

9 THE COURT: State's 3 into evidence without
10 objection.

11 (WHEREUPON, State's Exhibit No. 3 was admitted
12 into evidence.)

13 BY MR. RICHARDSON:

14 Q Investigator Jackson, to the best of your ability
15 given your penmanship or what have you, could you please
16 read what that statement says?

17 A Verbatim?

18 Q Yes, ma'am.

19 A Mr. Davis statement advises that when went out to --
20 went out there Christal called me in the room to look at
21 her foot. I told her it's big. Then I said let me use
22 the barn to lift some weights. So Claudia, Kendall,
23 Shrimp and Shrimp unlock the door. I started my workout.
24 I did six set of 25 sets chest ups, 12 sets of rep. In my
25 last set, M.J. walked in scared me. I had my back turn

1 to her. I was sitting on the end of the bench. Then I
2 felt the bench move when turned around. I did not see but
3 skin. I said, oh, no, you not going to get me in trouble.
4 So I was getting up and turned to walk off and Christal
5 walked in the door and I was standing up. She was lying
6 on the bench with her clothes down. I never done nothing
7 like that in my life.

8 Q Thank you. So after you spoke with Mr. Davis, did
9 you have an opportunity to go out and visit the scene and
10 speak with the victim and her aunt?

11 A Yes, sir, I did.

12 Q All right. And State's 4 and 5 already in evidence,
13 did you take these photos?

14 A Yes, sir, I did.

15 Q All right. It's obviously daylight at least in
16 State's Exhibit 4 you took them at the same time?

17 A Yes, sir, I did.

18 Q All right. Were the lights that we've heard
19 described inside the shed on when you took the photos?

20 A No, sir, they were not.

21 Q So lights were off. So the light in the pictures
22 just from sunlight coming in the door?

23 A Yes, sir, it is.

24 Q You spoke with M.J. as part of your investigation?

25 A Yes, sir, I did.

1 Q And did she disclose ---

2 MR. ANDERSON: Objection, Your Honor. I think
3 that's already been asked and answered. She testified. I
4 think it's repetitive. I think it's cumulative.

5 THE COURT: What's the rest of your question?

6 MR. RICHARDSON: Time and place exception,
7 Judge.

8 THE COURT: Overruled.

9 BY MR. RICHARDSON:

10 Q Investigator Jackson, did M.J. [REDACTED] disclose to you about
11 the sexual penetration in the shed?

12 A Yes, sir, she did.

13 Q And did she mention the time or when it took place?

14 A Yes, sir, she did.

15 Q All right. And what date and around about what time
16 she say it took place?

17 A May 31st 2014 -- approximately 10:15.

18 Q And State's Exhibit 6 and 7 already in evidence as
19 well, did you take those photographs?

20 A Yes, sir, I did.

21 Q And those text messages is there a phone number in
22 there?

23 A Yes, sir, it is.

24 Q Could you read off that phone number?

25 A Cell phone number is [REDACTED] 79.

1 Q All right. And does that number appear in both two
2 and from section depending on what picture you are looking
3 at?

4 A Yes, sir, it does.

5 Q Now, as part of investigations with child victim or
6 witness cases, do you have a place that you typically will
7 send children to for further interviews?

8 A Yes, sir, I do. It's called the Care House in
9 Florence.

10 Q Did you do that in this case?

11 A Yes, sir, I did.

12 Q All right.

13 MR. RICHARDSON: Beg the Court's indulgence one
14 moment.

15 (WHEREUPON, a pause in the proceedings.)

16 BY MR. RICHARDSON:

17 Q Investigator Jackson, as part of this investigation,
18 was the child sent to the hospital and a rape kit or
19 anything done?

20 A Yes, sir, she was. She went to the hospital the
21 night of the incident and a rape kit was completed by the
22 hospital in Marion.

23 Q All right. How does it work from there? Do you guys
24 send that to SLED is that how -- what the next step is?

25 A Yes, sir, it was sent to SLED.

1 Q All right. And as part of that, I guess a
2 toxicological thing the test for, you know to see if
3 somebody's been drugged or something like that?

4 A Yes, sir, there was a toxicology done.

5 Q All right. And any results on that?

6 A Results were negative for ---

7 Q Did they even test it?

8 A They did test her toxicology. It was negative for
9 any drugs or alcohol or anything of that nature.

10 Q Okay. Did you also make attempts to try to recover
11 anything that could have been deleted off of Mr. Davis'
12 cell phone?

13 A Yes, sir, I did.

14 Q Were you successful in getting anything recovered?

15 A No, sir, I was not.

16 MR. RICHARDSON: Please answer any questions
17 Mr. Anderson may have.

18 CROSS-EXAMINATION

19 BY MR. ANDERSON:

20 Q Are you aware if anything was deleted?

21 A I'm sorry, sir.

22 Q So are you aware if anything was deleted? You're not
23 aware of anything that he deleted off of it, are you?

24 A No, sir.

25 Q Okay. So you sent it to AT&T they're lab or Verizon

1 their lab and you have their experts looked at it, they
2 didn't think to call you back and say, hey, we found
3 where, you know, there were some disks or there were some
4 files and there was some bits of information and that was
5 deleted, you didn't get that call, did you?

6 A When I took the cell phone to Horry County to have
7 it -- what they called dumped, no, sir, there was nothing
8 on it.

9 Q Okay. Let's talk about what else you have. You say
10 you saw the toxicology results. You also saw the
11 serological analysis, didn't you to SLED?

12 A Yes, sir, there was a rape kit sent to SLED.

13 Q Right. No sperm, no semen none of that was found?

14 A That's correct.

15 Q I think they said no spermazota was found; is that
16 right?

17 A I believe so, yes, sir.

18 Q So that would have found a -- and, of course, another
19 thing wasn't found is you didn't videotape my client, Lin,
20 when you were talking to him, did you?

21 A No, sir, it was not protocol at that point.

22 Q This was last year, wasn't it?

23 A Yes, sir, it was.

24 Q As a matter of fact when you were talking with Lin
25 and you asked him to sign the advisement of rights form

1 and read him Miranda, then got him to sign a bunch of
2 other consents, you already had warrants for his arrest,
3 didn't you?

4 A Yes, sir, I did.

5 Q It really didn't matter what he said he was already
6 under arrest as far as you were concern?

7 A Yes, sir.

8 Q As a matter fact warrants for his arrest, they were
9 served on him after he consented to everything y'all asked
10 him for, is that right?

11 A Yes, sir.

12 Q Another thing that you all did when you all took DNA
13 from my client, I think your partner the guy that was
14 sharing the cubicle with you, he took DNA from my client,
15 didn't he? Swabbed his mouth?

16 A Yes, sir, he was swabbed.

17 Q Client voluntarily consented to that?

18 A Yes, sir.

19 Q Was there a hit on his DNA? Did any of the results
20 come back saying, yeah, we found his DNA on her or we
21 found his DNA in the shop or anything like that?

22 A No, sir.

23 Q Why we're talking about the phone ---

24 MR. ANDERSON: Your Honor, may I approach the
25 witness?

1 THE COURT: Sure.

2 BY MR. ANDERSON:

3 Q State's Number 6 and State's Number 7 other than a
4 phone number, are there any contacts listed for either one
5 of those either to or from?

6 A In the two and from section on the text messages has
7 the number.

8 Q Not a contact like I was to send you a text it might
9 say Samantha? It just has a number there; is that right?

10 A That's correct.

11 Q But you took a lot of photos that night, didn't you?
12 Throughout the course of your investigation -- not that
13 night. I guess throughout the course of your
14 investigation?

15 A Yes, sir, I did.

16 Q Took some of the shop inside that's on State's
17 Number 5?

18 A Yes, sir.

19 Q Took some of the shed that's State's Number 4?

20 A Yes, sir.

21 Q Took pictures of the cell phone that's six and seven,
22 took a picture off my client's phone according to you
23 State's Number 8; is that right?

24 A Yes, sir.

25 Q His phone had a list of contacts did it not?

1 A Yes, sir.

2 Q Was she on any of them?

3 A I'm sorry.

4 Q So she -- was M.J. under any of his contacts?

5 A I don't think so.

6 Q I mean, if it would have been, certainly you would
7 have taken a picture of it, couldn't you?

8 A I'm sure I would have.

9 Q Okay. I believe you said you took it to Jeff Gause
10 of Horry County; is that right? His phone, Lin Davis'
11 phone?

12 A Jeff Gause works with us. We took the phone to Horry
13 County police department to have it dumped.

14 Q Okay. Now, do you have a copy of the return for the
15 search warrant?

16 A Yes, sir, I do.

17 Q It's got 1,922 data files downloaded; is that right
18 on the return to search warrant? 1,922 data files you got
19 that?

20 A Yes, sir.

21 Q Nowhere on there any text messages, nowhere on there
22 other than the two photos you showed me, nothing
23 pertaining to Miss M.J. was there?

24 A That's correct.

25 Q Now, earlier when Mr. Richardson was asking you

1 questions at one point in time, I think you may have
2 hesitated, so I think David kind of prompted you and
3 anything else he tell you. And you hesitated for a minute
4 and then you said, yeah, she was in there for about ten
5 minutes. You remember that?

6 A Yes, sir.

7 Q But you read the statement of Mr. Davis into
8 evidence. I think that's been marked as State's Number 3.
9 Nowhere in his statement did he write out does he say she
10 was in there ten minutes, does he?

11 A No, sir, it does not.

12 Q As a matter of fact in his handwritten statement,
13 doesn't it say when I turned it around I felt the bench
14 move, when I turned around I did not see but skin and I
15 said, oh, no, you not gone get me in trouble?

16 A That's correct.

17 Q So in his handwritten statement he wrote out he
18 immediately noticed her and got up from the bench; is that
19 right?

20 A Yes, sir.

21 Q And, of course, the interview that you had written
22 out, that's not tape recorded so we really won't know
23 what he said other than your recollection; is that right?

24 A Yes, sir.

25 Q He voluntarily gave you a statement, voluntarily gave

1 you access to his phone and all his information on his
2 phone, voluntary gave you his DNA?

3 A Yes, sir, it is.

4 Q And I believe you said that a rape kit was done at
5 the hospital. You know who examined her at the hospital?

6 A I do not. I was not present at the hospital.

7 Q Do you know whether or not she followed up with a
8 family doctor or anything like that?

9 A Not to my knowledge.

10 Q Were you present when she was interviewed at the Care
11 House?

12 A No, sir.

13 Q Not familiar with what she may or may not have told
14 the counselor at the Care House?

15 A Yes, sir, I got a copy of what is said in the
16 interview at the Care House.

17 Q Of course, can certainly ask her a question, any
18 questions if I have questions about that interview?

19 A Yes, sir.

20 MR. ANDERSON: Judge, that's all the questions I
21 have for Ms. Jackson.

22 THE COURT: Redirect?

23 MR. RICHARDSON: Beg the Court's indulgence.

24 (WHEREUPON, a pause in the proceedings.)

25 REDIRECT EXAMINATION

1 BY MR. RICHARDSON:

2 Q Investigator, in reference to the attempt to retrieve
3 any deleted items from the phone, do you have any personal
4 knowledge about whether deleted text messages are
5 recoverable?

6 A There's a way you can delete them off a smart
7 phone and they're still on the phone. But there is also a
8 way that you can completely get rid of them and they
9 cannot be recovered.

10 Q In this particular case, we don't know the
11 circumstance?

12 A Correct.

13 MR. RICHARDSON: Thank you, ma'am, that's all I
14 got.

15 THE COURT: All right, Mr. Anderson.

16 RECROSS-EXAMINATION

17 BY MR. ANDERSON:

18 Q So you don't know if they were ever on there or not?

19 A Did I personally see them on his phone, no.

20 THE COURT: You may step down.

21 (WHEREUPON, the witness leaves the witness
22 stand.)

23 THE COURT: Done for the day?

24 MR. RICHARDSON: Yes, sir, Your Honor. We need
25 to call the next one in the morning.

1 THE COURT: Members of the jury, I'll have you
2 come back at 9:30 in the morning, be here at 9:30 sharp
3 and we'll start at 9:30. Do not discuss the case tonight
4 with anybody. When it's over, you can. Everybody else
5 remain seated and you are excused.

6 (WHEREUPON, the jury excused for the day.)

7 MR. RICHARDSON: Judge, just for scheduling
8 purposes, I anticipate calling one more witness, so I
9 don't know if now will be a good time just to give
10 preliminary advisement ---

11 THE COURT: Why don't you go ahead and talk to
12 him tonight and then I'll talk to him in the morning.

13 MR. ANDERSON: Will do, Your Honor.

14 THE COURT: See you in the morning.

15 (WHEREUPON, the proceedings were concluded for
16 the day to be reconvened on November 17, 2015.)

17 THE COURT: Mr. Anderson, does your client
18 intend to testify?

19 MR. ANDERSON: You Honor, he and I discussed it
20 yesterday. No, sir, he does not.

21 THE COURT: I'm going to go over his Fifth
22 Amendment Rights real quick just to go ahead and get that
23 out of the way and make sure we don't miss that.

24 MR. ANDERSON: Yes, sir.

25 THE COURT: All right. Mr. Davis, I want you to

1 understand that this is your trial. And in your trial if
2 you would like, you can come over here and you can be
3 sworn in and you can take the witness stand and you can
4 testify. However, it's important to understand that if
5 you do testify, you may be cross examined on any and all
6 relevant issues in connection with your case.

7 Furthermore, if you have a criminal record that involves
8 crimes of dishonesty or false statements or crimes that
9 carry a punishment of more than one year and the Court
10 determines that the probative value of admitting same
11 outweigh their prejudicial effect, then your criminal
12 record will be introduced to attack your credibility. You
13 understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Furthermore, I want you to
16 understand that you have the right to remain silent, the
17 Constitutional Right. You do not have to testify and
18 nobody can make you testify. And if you choose to
19 exercise that right and not take the stand, I want you to
20 understand that I'll tell that jury they cannot use that
21 against you in anyway. I will tell the jury the fact that
22 you did not testify is to have absolutely no prejudice
23 against you. I would even tell the jury they cannot
24 discuss that fact in the jury room. Do you understand
25 your right to remain silent?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you have any questions about
3 anything I have just told you?

4 THE DEFENDANT: No, sir.

5 THE COURT: Have you discussed with your lawyer
6 as well?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you wish to testify or not
9 testify?

10 THE DEFENDANT: No.

11 THE COURT: Thank you very much. I make a
12 finding that he did so intelligently and with the advice
13 of a competent counsel. All right. You all ready to go.

14 MR. RICHARDSON: Yes, sir.

15 THE COURT: Bring the jury in.

16 MR. ANDERSON: Your Honor, before he does that,
17 yesterday based on a ruling you made, I spoke with Mr.
18 Richardson this morning about the Care House worker. I,
19 of course, told him that based on your previous ruling is
20 my understanding that she would only be allowed to testify
21 as to the event that happened on May 31st. Mr. Richardson
22 said he already discussed that with her. I just want to
23 make sure we're clear on that.

24 THE COURT: Sounds good.

25 MR. RICHARDSON: Yes, sir.

1 THE COURT: Go ahead and bring them out.

2 (WHEREUPON, the jury entered the courtroom.)

3 THE COURT: Call your next witness.

4 MR. RICHARDSON: Thank you, Your Honor. I call
5 Sally Williamson.

6 THE CLERK: Do you swear to tell the truth, the
7 whole truth, and nothing but the truth so help you God?

8 THE WITNESS: I do, yes.

9 THE CLERK: You can have a seat.

10 WHEREUPON,

11 Sally Williamson,

12 after first having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. RICHARDSON:

15 Q Ms. Williamson, could you tell us where you work?

16 A I work for the Care House of the Pee Dee.

17 Q And could you explain to us what the Care House is?

18 A The Care House is a children's advocacy center that
19 offers therapy, forensic interviewing and advocacy for
20 children and families suspected of maltreatment.

21 Q All right. And what is your job with the Care House?

22 A I am a forensic interviewer and a therapist at the
23 Care House.

24 Q And can you describe what a forensic interviewer is?

25 A A forensic interviewer is a trained professional

1 typically with a master's degree trained to conduct
2 forensic interviews with children typically ages three to
3 17. A forensic interview is a semi-structured interview
4 conducted to gather information about possible
5 maltreatment.

6 Q Okay. And how long have you been a forensic
7 interviewer?

8 A For about four and a half years.

9 Q All right. You mention that most folks who are
10 forensic interviewers typically have a master's degree of
11 some sort?

12 A Yes, that's correct.

13 Q What kind of background do you have to be a forensic
14 interviewer?

15 A I have a master's degree in counseling and a
16 Bachelor's degree in psychology. I'm also a licensed
17 professional counselor in the State of South Carolina.
18 And of course have received extensive training in forensic
19 interviewing including about 85 hours of forensic
20 interviewing training.

21 Q Okay. And in this particular case with respect to
22 **M.J.**, did you do a forensic interview with her?

23 A Yes, I did.

24 Q And what date was that interview conducted on?

25 A May I refer to my file?

1 Q Sure.

2 A On June 16th of 2014.

3 Q All right. Was that at your office?

4 A Yes, it was.

5 Q And can you describe the setting of an interview, a
6 forensic interview like who all is present, what is the
7 room like?

8 A A forensic interview is conducted at the Care House.
9 It happens to be a small room. The only people that are
10 present during the interviewing process are the child and
11 the interviewer, so no one else is permitted in the room
12 during a forensic interview. It is a small room. There's
13 no toys basically just seating and a flip chart in the
14 room as well as a closed circuit television system. So
15 there's actually a camera recording the interview so we
16 can make a record for archive and that television system
17 leads to another room where. If they're present, the
18 investigator can watch the interview being conducted in
19 real time.

20 Q Okay. And in a forensic interview, you mentioned it
21 was semi-structured. Can you take us through, you know,
22 sort of from beginning to end the different stages of a
23 forensic interview?

24 A Yes. So semi-structure means that the interviewer as
25 the interview progresses can take into account the child's

1 cognitive functioning and modify the questions to meet
2 their level. So, of course, questions would be formatted
3 differently for a three year old versus a 16 year old.
4 The different stages of an interview include rapport
5 building, so that means that the interviewer gets to know
6 the child by talking about things like home environment,
7 school, things that the child may be interested in to help
8 to build a relationship with them so they feel comfortable
9 with the interviewer. After a few minutes of rapport
10 building, the interviewer explains all of the rules of the
11 room, let's the child know that the interview is being
12 recorded, also let's them know that if they don't
13 understand questions, they should let the interviewer
14 know just to make sure that the child understands the
15 process. The next stage depending on the child's age it
16 may be that the interviewer provides or introduces
17 anatomical drawings of males and females, so that the
18 interviewer can understand the names that the child gives,
19 really just establishes a common language so that if the
20 child uses the name for a body part that the interviewer
21 is not familiar with or is unsure of what the child means
22 is able to clarify. And then the interviewer asks the
23 child why are you here or may move straight into asking
24 about possible maltreatment. And then the questions are
25 typically very opened, so they're non-leading to the

1 child. And those questions as answers are provided the
2 interviewer develops the different questions as the
3 interview progresses to clarify or gather more information
4 about the details of what may or may not have occurred.

5 Q All right. You mention that in some cases you'll
6 show an anatomical drawing, you know, body parts and have
7 the child take a look at that?

8 A Yes.

9 Q Did you do that in this case?

10 A Yes, I did.

11 Q And was M.J. able to properly identify the parts of
12 human body?

13 A She was. And it's more so conducted not necessarily
14 so that they can properly identify, but just so that the
15 interviewer is clear about what words they will use if
16 they refer to any of those parts of the body, so it's not
17 necessarily a lesson or a test, but it's rather just to
18 find out what words that they would use and she did, yes,
19 she provided names for the parts that I point to.

20 Q Okay. And during the interview process what were you
21 able to observe about her demeanor and her ability to
22 speak with you?

23 A She appeared to understand me and comprehend the
24 process as I was explaining it. She was very open and
25 forth coming with answering questions and sometimes

1 children are guarded in some way or unable or unwilling to
2 provide information, but she was very very forthcoming
3 with information and I found her to give consideration to
4 my questions and provide as much information as possible.

5 Q All right. And did she make a disclosure of
6 penetration or some type sexual abuse to you?

7 A Yes, she did.

8 Q All right. And did she give you a time and a place
9 for when that incident happened?

10 A She did.

11 Q And what was that?

12 A She disclosed that it occurred at her aunt's house in
13 -- her Aunt Christal house I believe in a barn where there
14 was some weights set up, a weight lifting bench. And the
15 time --- I don't remember the exact time. I have to look
16 through -- I remember that it was a number of days before
17 the actual interview took place in mid June.

18 Q Okay. So a period of days before in the barn at Aunt
19 Christal's house is what you recall?

20 A That is what I recall.

21 MR. RICHARDSON: Thank you, ma'am. Please
22 answer any questions Mr. Anderson may have for you.

23 CROSS-EXAMINATION

24 BY MR. ANDERSON:

25 Q Ms. Williamson, how long you been at the Care House?

1 A About four and a half years since of July 2011.

2 Q And I notice that you have a report up there with
3 you; is that right?

4 A Yes, sir, I do.

5 Q Is that a report for your interview with M.J. ?

6 A Yes, it is.

7 Q How long does it typically take you to make a report?

8 A It varies depending on the length of the interview
9 and the number of reports that we have backed up to type.

10 Q And that was going to be one of my next questions.
11 You do more than one interview a week, don't you?

12 A Absolutely.

13 Q And I know that like any other business there some
14 days that are more hectic than other days. Sometimes
15 there's more interviews one week than there are another
16 week, but on average how many interviews you think you do
17 a week?

18 A I'm not sure honestly. It varies week to week. Some
19 weeks I might have 20. Some weeks I may have ten. I've
20 done probably 1,800 interviews total.

21 Q In a year, you done how many?

22 A I didn't say in a year. It's actually in the entire
23 time I been at the Care House about 1800 interviews.

24 Q So four years 1800 maybe 400, 425 a year would that
25 sound about right?

1 A Sounds roughly correct.

2 Q Now, I also saw a CD or a disk up there with you; is
3 that right?

4 A Yes, sir.

5 Q This is an interview of a tape recorded, audio tape
6 recorded also video tape recorded?

7 A Yes, sir.

8 Q Now, when you prepared this report, do you sometimes
9 go back and look at that tape to make sure you're writing
10 everything down correctly?

11 A That is how we type the tape. I would not try to
12 type the report without reviewing the tape.

13 Q Because you want this report to be as thorough, as
14 accurate as complete as possible would that be a fair
15 statement?

16 A Of course.

17 Q And also notice that you interview more than the
18 actual young girl young boy, don't you?

19 A Interview children of all ages.

20 Q I'm sorry. You talk to other family members before
21 you interview the young person as well, don't you?

22 A Sometimes I do. Sometimes other staff members just
23 depends on availability.

24 Q In this case, I think her Aunt Christal as well as
25 her mom came to the interview; is that right?

1 A Yes, that's correct.

2 Q How long you think the interview lasted?

3 A I'm honestly not sure.

4 Q I'm looking at page 3 and page 4 of your report where
5 it's got, I guess, allegation and history and then at the
6 bottom of the page and then the top of page 4 would that
7 be information you gathered from talking with the mom and
8 talking with the aunt?

9 A Yes, or it could be information provided by law
10 enforcement at the time of the referral.

11 Q Did they actually talk to you about that? Do your
12 notes reflect where they talk to you or someone else?

13 A Typically, when they call in or email us, they talk
14 to an advocate or an in-take coordinator to schedule the
15 appointment.

16 Q All right. As far as this information that you wrote
17 on page 3 and page 4, did you gather that information from
18 the aunt or the mom?

19 A Yes.

20 Q All right. The aunt indicated to you that she walked
21 outside and saw some event happening; is that right?

22 A Yes.

23 Q And didn't she also tell you that she was on the
24 phone with Tim, talking to Tim when some of this was going
25 on? I believe that's at the bottom of page 3 maybe three

1 or four lines up.

2 A I don't see where you're referring to.

3 Q Bottom of page 3 where you got in parenthesis maybe
4 five lines up from the bottom?

5 A I don't see the person Tim's name. You asked if she
6 was speaking to Tim on the phone I don't see the word Tim.

7 Q Do you see where she was talking to another friend on
8 the phone?

9 A I see that she called 9-1-1.

10 Q All right. What about the two lines above that?

11 A Had another friend, yes.

12 Q Christal had another friend on the phone who
13 overheard the whole conversation is that what it says?

14 A That's what it says.

15 Q Okay. And at the to the top of page 4 they were
16 talking about a cell phone. Where did they find the cell
17 phone?

18 A It sounds like in the yard.

19 Q She gotten the young girl or M.J. thrown the phone
20 in the yard?

21 A That's what was reported.

22 Q Going through your report, Ms. Williamson, on page 5
23 talk about building your rapport with the M.J.; is that
24 right?

25 A That's correct.

1 Q Then you got the abuse scenario. And then on the
2 next page you got the anatomy identification. Then you
3 got the abuse scenario and I think the abuse scenario goes
4 on for a couple of pages; is that right?

5 A That's what it appears.

6 Q Ma'am.

7 A Yes.

8 Q Now, when you're talking about building rapport and
9 abuse scenario, that's when you're only talking with the
10 child in this case?

11 A That's correct.

12 Q In this case, you were talking with M.J. ?

13 A Yes.

14 Q Time you were talking with M.J. she was 15 year old?

15 A Yes.

16 Q After you build that rapport with them, you do that
17 through question and answer; is that right?

18 A Typically or I might ask them -- yes, it's typical
19 question and answer open ended typically.

20 Q A lot of times when you building a rapport with
21 someone and you're wanting them to tell you information,
22 would you agree with me that first you might use
23 open-ended questions and then eventually when you want to
24 find out more detail, you narrow your scope down would
25 that be a fair statement?

1 A Yes.

2 Q After you build rapport with someone after you think
3 you got a good working relationship with them, that's
4 where you start narrowing your questions down?

5 A Often, yes.

6 Q And sometimes when asking them questions, you want
7 find out how intelligent is this person, how articulate
8 are they, how well do they speak, does she understand what
9 I'm asking him or her. You do things like that?

10 A Yes.

11 Q And in this case, you did ask her eventually you said
12 or ask her -- tell me what happened that night? Is that
13 right. Maybe not those exact words but tell me what
14 happened that night?

15 A Probably something very similar to that, yes.

16 Q When was last time you read your report?

17 A Within the last hour.

18 Q When you asked her to describe what happened and this
19 is on page 6 at the top of the page right before we get to
20 the anatomy identification, you asked her to tell me what
21 happened in your own words that be a fair statement?

22 A Yes.

23 Q And she told you I don't even say stuff like this dot
24 dot. We were just fucking that's it basically. Is that
25 what she told you?

1 A Yes.

2 Q At no point in time when she was describing what
3 happened that night did she ever tell you that he had
4 his -- had my leg on top of his shoulders, did she?

5 A I don't recall if she said those specific words or
6 not.

7 Q At no point in time did she ever tell you my legs
8 were on his shoulders and my sweat pants and my underwear
9 were behind his head. She never told you that, did she?

10 A I don't recall if she said those specific words.

11 Q All right. Now, at some point in time when you ask
12 her about her relationship with Christal; is that right?
13 You asked her who Christal was?

14 A Yes.

15 Q You also ask her about her relationship with her mom?

16 A I believe I did, yes.

17 Q The night in question she told you that she ran away
18 from the house because she was scared of her mom?

19 A I'm not sure if she said that she was scared of her.

20 Q All right. She said she knew her mom would be angry
21 at her?

22 A Yes.

23 Q Did she also tell you that her mom hit her
24 repeatedly?

25 A She did make a disclosure of that, yes.

1 Q Didn't she also tell you that her cousins or
2 stepbrother or someone had to go get her and bring her
3 back because back she was afraid of what her mom would do
4 to her?

5 A I believe something of that nature. I'm not sure of
6 the relationship of the person.

7 Q Even after those friends or whoever was with her
8 bringing her back, her mother also hit her during that
9 time?

10 A I believe so.

11 Q Did she also tell you that she cuts herself
12 sometimes?

13 A She did.

14 Q And she also disclose that she did that because she
15 was angry with her mother?

16 A I'm not sure what her reasoning was for self injury.

17 Q Well, let's look on page 7, okay. And at the bottom
18 one, two, three, four, five, six, seven, eight, nine, ten
19 lines up. You asked her why she did that and she said
20 what?

21 A She said anger.

22 Q And then what did she say?

23 A She said her mom doesn't listen or let her explain
24 herself.

25 MR. ANDERSON: Your Honor, court's indulgence

1 for just a minute.

2 (WHEREUPON, a pause in the proceedings.)

3 MR. ANDERSON: Judge, that's all the questions I
4 have.

5 THE COURT: All right. Any redirect?

6 MR. RICHARDSON: No, sir, Judge.

7 THE COURT: You may step down.

8 (WHEREUPON, the witness leaves the witness
9 stand.)

10 THE COURT: Call your next witness.

11 MR. RICHARDSON: The State rest.

12 THE COURT: Members of the jury, I have to take
13 up some matters with the lawyers. If you would step into
14 the jury room, I'll be back with you in just a moment.

15 (WHEREUPON, the jury retire to the jury room.)

16 THE COURT: Any motions?

17 MR. ANDERSON: Yes, sir, Your Honor. Judge, I
18 would move for a directed verdict on count one and also
19 directed verdict on count two based on the lack of the
20 State even produce a scintilla of evidence in this case.

21 THE COURT: I'm going to deny that motion. All
22 right. He's getting ready to do the verdict form now. If
23 you want to take a look at the charge ahead of time, we
24 can do that.

25 MR. RICHARDSON: Sure.

1 (WHEREUPON, a pause in the proceedings.)

2 THE COURT: Here's the verdict form if you want
3 to take a look at it. Good review?

4 MR. ANDERSON: Yes, sir.

5 THE COURT: Bring them out.

6 (WHEREUPON, the jury came into open court.)

7 THE COURT: Call your first witness.

8 MR. ANDERSON: Your Honor, if it please the
9 Court, the defendant rest at this time. Also, Your Honor,
10 if it please the Court, I previously renew all motions
11 that I made.

12 THE COURT: Your motions are denied. You
13 recognize for your closing.

14 MR. RICHARDSON: Thank you, Your Honor. Mr.
15 Anderson. We finished up last night with our law
16 enforcement witnesses. And I left here kind of with a pit
17 in the stomach feeling. What went through my mind and,
18 you know, it's a common theme when the facts are bad for
19 the defense. The common response is you put the police on
20 trial and that's what we saw kind of the end of yesterday
21 when law enforcement testified. And yet it gave me that
22 feeling because I can just see the foot coming in the door
23 where a little bit of doubt creep in why the didn't police
24 do this, why didn't they do that, why did they get the
25 warrant so fast before they even talk to the guy. Those

1 kind of things creeping in. And the reason that's stuff
2 is brought out is to cause you to have some doubt that
3 Aunt Christal didn't really see what she thought she saw.
4 And that M.J. didn't really feel what she knows she felt
5 because that's the case sitting right over there. They
6 are the witnesses. They are eyewitnesses. They were
7 there when it happened. The only other person that was
8 there is Lindell Davis. So these folks sitting over here
9 are the only ones who could tell you what happened in that
10 shed. Law enforcement was not there and everything they
11 did afterwards, you know, was an attempt to do their job
12 follow their protocols. You know take statements from who
13 they can, try to collect things, send M.J. to the Care
14 House for an interview that kind of thing but really a
15 case like this law enforcement they weren't there.

16 You know this isn't a case where they're chasing
17 down a criminal running from a blue light or they're
18 conducting a sting operation in a drug case where they are
19 like on the ground and they're observing things and they
20 are the ones who are critical. This isn't that kind of
21 case.

22 This is a sex case with a minor child victim.
23 And, you know, typically in those kinds of cases all you
24 have is what the child says because child molesters, you
25 know, usually they don't get sloppy. They don't leave

1 themselves open to getting caught. You know, when a child
2 molester is taking advantage of a kid, they don't have a
3 neon sign out front of their house saying, hey, guess
4 what's going on in here come take a look. They don't want
5 to be caught. They don't want be out in the light.

6 So this case the fact that we had an eyewitness
7 with no motive to get Lindell Davis coming in and seeing
8 her niece with her pants down around her ankles, feet up
9 in the air over Lindell Davis shoulders and him doing what
10 she said he was doing. In case a like that -- in a case
11 like this with these allegations, these charges, it's just
12 from my perspective wonderful from a prosecutor's
13 standpoint. You just don't see it, but we have it here.
14 So that makes a pit in my stomach get all that much bigger
15 as we leave last night because I just see a caption going
16 in my head, you know, aunt walks in and catches man having
17 sex with minor. The man found not guilty. You know,
18 that's what I'm seeing in my head because of, you know,
19 the things that we came upon yesterday afternoon about,
20 but you got the warrants so fast. Didn't get any DNA.
21 There was no semen found, you know. He was having sex
22 with her why is there no semen found. And, you know,
23 things like that on first glance you may say that's a good
24 point. But during the cross-examinations of these
25 witnesses, you know, I was -- and you probably did the

1 same thing I was basically able come up with a sort of a
2 defense theory or explanation as to what might have really
3 happened. So we have two competing theories here what the
4 State through these two folks over here say happened and
5 then this competing theory. Now, let's go through each
6 one of those see which one makes sense.

7 All right. So Lindell out weight lifting
8 minding his business. M.J. s gone set him up, M.J. or
9 Christal both of them might be in on it. We don't know
10 why there's no motive. Lindell's a friend of the family.
11 No evidence, but there's been some problem. He's out
12 there minding his business. He gets to use the weight
13 room whenever he wants. So either M.J. and Christal had
14 it out for him or just M.J. has it out for him. So M.J.
15 sneaks out to the shed and undresses herself and sets him
16 up for the fall.

17 Now, Christal is either in on this and is going
18 to come in and catch him or she doesn't know and she just
19 happens to walk out like she testified and sees them in
20 this vicarious position. All right. So Lindell jumps up,
21 makes comments about, you know, I know I'm going to jail.
22 I didn't penetrate her or something like that. And he
23 books it before the police gets there presumably because
24 he must have known he was being set up. So the police get
25 there and M.J. sitting inside the shed cutting herself

1 presumably as part of the set up.

2 They picked Lindell up. He tells them what is
3 his phone number is. And it's on this voluntary consent
4 to search form here that he signed [REDACTED] 79. Then
5 they show him the photographs the text message y'all
6 already seen. Oh, I didn't send those. Homeless Phillip
7 had my phone. This is like a day and a half or less after
8 the event in the shed, but he's got his phone back at this
9 point because we got a photograph from him.

10 So homeless Phillip had the phone, but when
11 Lindell gets his phone back a day later or whenever there
12 no text messages, there's no trace of M.J. [REDACTED] in that phone
13 except one picture in there that happened somehow got on
14 there, that's when you look at it it's not a selfie. I
15 mean it's taken from a little bit of a distance. So
16 homeless Phillip had the phone, so somehow the text
17 messages had to get to M.J. [REDACTED] s phone. So M.J. [REDACTED] s not a
18 contact in Lindell's phone. So either homeless Phillip
19 had to pull her phone number of out thin air and send her
20 these messages or as part of the set up she had to figure
21 out a way to create text messages that would be sent to
22 her phone from the appearance of somebody else's phone
23 that just happen to be the exact phone number that Lindell
24 said was his phone number. I have no idea kids these
25 days, you know, they can do all kinds of stuff. So that's

1 one theory.

2 The other is Lindell sent M.J. those text
3 messages. She responded by walking out to the shed they
4 got caught. Neither one of them wanted to get caught.
5 M.J. sat up here and testified he didn't force me. She
6 wanted to do it. You can tell she wanted to because
7 afterwards she sitting in there upset cutting herself
8 because she got caught. Lindell certainly didn't want to
9 get out caught because he's a 54-year-old man and she's a
10 15-year-old kid and that is against the law to have sex
11 with a 15-year-old kid when you're a 54-year-old man. So
12 he makes comments like I didn't penetrate her. I know I'm
13 going to jail and he books it. He flees because he knows
14 he's wrong.

15 Police get him, ask him what his phone number
16 is. He freely gives it. Then they show him pictures of
17 those text messages you saw. And he comes up with a
18 pitiful story about homeless Phillip to try to cover his
19 tracks, which of those two things makes more sense. Those
20 two theories.

21 It's pretty clear from the testimony of M.J.
22 and Christal what went down. That's the only thing that
23 makes sense in this case. So we have M.J. telling you
24 she freely went out there, let this man have sex with her.
25 She testified that he did penetrate her. And if Christal

1 hadn't walked in and caught them, we wouldn't be here
2 right now. [M.J.] wasn't in any hurry to go tell somebody.
3 But for Christal thinking why is she outside this time of
4 night, you know, going out there to check on her we
5 wouldn't be sitting here right there, so set up, nope.

6 This is the process folks. This process that
7 we're going through right now is how people are held
8 accountable of their actions in our society. We got the
9 system on the planet designed to give people a fair shot
10 and he's getting his right now, but sometimes the person
11 didn't, you know. And we have to do what the law says we
12 got to do and we got to hold him accountable for what they
13 did no matter how tough it is. It's the way this country
14 works and we can't be letting 50-something-year-old men
15 who are having sex with 15 year olds just walk away from
16 it like it didn't happen.

17 So as I mentioned, I had this pit in my stomach
18 because all I told you about flashing through my mind
19 what if the jury buys into this garbage, what if they, you
20 know, sat her through these first couple of witnesses,
21 realized what happened and then what they know happened
22 was slowly eroded away by nonsense by things that came out
23 of people who weren't even there. Is that enough to
24 convince these folks that what they really know happened
25 didn't really happen, so that's why I'm so emphatic here

1 with you. There's this old principle that stands for the
2 premise that when you have two competing theories, the
3 most obvious answer is usually the correct one and that's
4 what we've got here. We all know what happened. He had
5 his hand in the cookie jar and he got caught, that's the
6 simplest solution here we got an eyewitness that saw it
7 happened. So it doesn't get a whole lot better than that.

8 Now, I want to go through a little bit of the
9 law with you things that we had to prove from, you know, a
10 legal standpoint about actual charges that he's facing.
11 There's certain elements to those charges that we have to
12 go through with you. So I'm going to do that now. All
13 right. First here's the time line of what we know from
14 the night of May 31st of last year. 9:35 pm that night
15 **M.J.** sends a text message I can't go because mama told
16 Christal do not let me got outside because she thinks
17 somethings up sorry, didn't mean for you to waste your gas
18 for nothing. Ten o'clock, romance. Y'all can believe it.
19 I don't have to say it. 10:03 come lock up. So we had a
20 three minute period here. Lindell makes his request.
21 This is where he solicits a minor for sex. Doesn't get
22 much more clear than that. Three minute window goes by,
23 she's not responded to him. So he gives her a reason to
24 be outside. You remember the testimony Lindell has the
25 right to come out there -- the privilege to come out and

1 use the weight room. Well, he doesn't have a key.
2 Somebody always has to let him in. Therefore, somebody
3 always has to lock it up, come lock up built in reasons,
4 built in excuse to come on out.

5 So Christal testifies that she heard the door,
6 heard somebody go outside. So after a while, she gets up
7 to go check, walks out to the barn sees this door open,
8 peeks in and hello here we go. Testimony from Christal is
9 that M.J.'s legs are up on Lindell's shoulders. They
10 grabbed onto the weight bar in her words he's humping her.
11 She makes her presence known. He jumps up like a scolded
12 dog. They share some words and he books it on out of
13 there. The police arrived testimony was at 10:20 when
14 they were called they arrived a short time after that to
15 find M.J. sitting in there having cut her wrists.

16 So one of the important things to consider with
17 respect to both of these charges are the ages of folks
18 involved. The testimony shows that at the time of this
19 event May 31st 2014, M.J. was 15 years of age. We heard
20 the testimony about how, you know, Lindell come to M.J.'s
21 15th birthday party and that M.J. had a cake with 15 on
22 it. She's 15 at the time. She testified he was 54 at the
23 time.

24 All right. So as to CSC with a minor second
25 degree here's what we got to show, the victim is at least

1 14 but under 16 years of age, so she's 15 she fits right
2 in. We have it over here she's 15 at the time. The
3 defendant is in a position to coerce and is in a familiar
4 or familia or custodial or has official authority over the
5 child or big emphasis on or here or the defendant is older
6 than the victim. He's 54, she's 15 we got that all day
7 long. Therefore, we don't have to have this other one,
8 but arguably we do. You know, he was a friend of the
9 family, much older adult. He been in her life for a
10 while. He had told Aunt Christal he's going to look out
11 for the family or whatever, so arguably he's in a position
12 of authority over a child who stays at the house a lot of
13 the time. But anyway we only need that because he's older
14 than her.

15 All right. Sexual battery is another thing that
16 must be proved with respect to criminal sexual conduct. A
17 sexual battery is sexual intercourse or penetration. And
18 bring me back to the fact that they look for DNA didn't
19 find any. We don't have to have ejaculation just
20 penetration and that's consistent with the testimony. The
21 fact that there was no semen there because M.J. testified
22 they just got started. You know, basically he had just
23 penetrated her a matter of a minute or two before Christal
24 walk in. So they didn't have time to complete the act so
25 to speak. So sexual battery is sexual intercourse or any

1 intrusion however slight of any object into the genital
2 opening of another person's body. So not to be too
3 graphic, but, you know, Lindell's penis going into M.J.'s
4 vagina is a sexual battery intrusion however slight is
5 enough. And, of course, M.J. disclosed clearly that he
6 had penetrated her vagina by the time Christal had walked
7 in.

8 Christal further testified that although she
9 could not see given her viewpoint, I guess she was looking
10 at apart of Lindell's back. She had not obviously seen
11 the penetration, but humping movements consistent with
12 what happened when two folks are having sex.

13 The other charge I'm looking at is solicitation
14 of a minor. There are eight requirements of this one as
15 well. The defendant has to be 18 years old or older.
16 He's in his 50's no problem. The victim was under 18
17 years of age. She was 15 no problem. The defendant
18 knowingly contacted or communicated or attempted to
19 contact or communicate with the victim. We have a text
20 message from his phone number which he freely admitted was
21 his phone number sent to her phone, which he had at the
22 scene was at home. I would say that fits under knowingly
23 contacted or communicated with the victim.

24 Now, the defendant's purpose or intent was to
25 persuade, induce, entice or coerce the victim to engage in

1 sexual activity. I say those four words fit that bill. I
2 think his motives were clear with that statement. Okay.
3 So those are charges that he's got. And you have all you
4 need to convict him.

5 At the conclusion of the arguments, the judge
6 going to give you the law and you're going to hear about
7 reasonable doubt. Reasonable doubt is the standard that
8 is used in this country with respect to convicting
9 someone of criminal offenses. You guys have to be
10 convinced beyond a reasonable doubt that he is guilty.
11 Another way that's put you have to be firmly convinced of
12 his guilt. So the standard is not beyond any shadow of a
13 doubt, okay. So if somebody, you know, comes in here and
14 tells you water's not wet, you don't have to believe them.
15 You don't have to believe it. The standard is not beyond
16 any shadow of a doubt. It's just beyond a reasonable
17 doubt. What is a reasonable in this case? Is this whole
18 set up scenario reasonable? Heck, no it's not. It's
19 ridiculous. What those two folks over there tell you
20 reasonable? Yes, it is because that's what happened. He
21 got caught with his hand in the cookie jar, so I ask you
22 now when you go back there to deliberate I hope none of
23 you have any doubts at this point. I hope you are firmly
24 convinced. Some of you may have some trepidation about
25 for whatever reason, but I ask those of you who are firmly

1 convinced to stand up, but you know what the right thing
2 is here and it's difficult. I know it's difficult because
3 you come in here probably never read any of these laws
4 before. The judge is going to give you the law a lot of
5 it here in a few minutes and the way it's set up and just
6 get read to you. And, you know, it's tough to fit it all
7 in there. So it's easy to go in that room out there and
8 say, well, you know, I got things to do. I got dinner to
9 cook. I got work to do. I got whatever. You know, just
10 to take the easy way out. It's too big. It's too
11 important. You can't have 50-something-year-old guys
12 running around having sex with kids. So I ask you those
13 of you who are firmly convinced to stand up find this man
14 guilty for doing what he did. Thank you.

15 MR. ANDERSON: When I began my opening
16 statement, I told you all that certainty was the enemy.
17 Things aren't always as they seem. I also came over here
18 and I put my hand on Lin's shoulder. I said Lin is
19 innocent until the State proves him guilty beyond a
20 reasonable doubt. And I also told you I believe the judge
21 will instruct you on that. Enemy or excuse me --
22 certainty is the enemy of truth. What do I mean by that.
23 When your mind's already made up, it's kind of hard to
24 figure out what the truth is. If I want to go on a
25 journey, I can't put my hand over my eye and go all right

1 I got to get to where I'm going now because I don't have
2 both eyes open. You got to watch where you going. Do you
3 all see my hand. I guarantee 13 of you will say, yeah, I
4 see your hand. No, you don't. Now, you see my hand. You
5 see the front and back of my hand. Previously, you hadn't
6 seen my hand.

7 You know, Mr. Richard said he had pit in his
8 stomach not the first thing I thought of yesterday was
9 when I was talking to you all in my opening what is
10 evidence. It's what witnesses say. Evidence is also
11 exhibits. And then I pause and I say but you know what
12 it's not only what they say on direct, but it's what they
13 say when I'm asking them questions. It's what I elicit
14 from them. There's things that I point out that they
15 didn't see. It's things that I point out that they didn't
16 do. I don't know who got a pit in his stomach, but I'm
17 willing to bet it was during some cross-examination.

18 He also said headline. You know what I don't
19 want to see in the headline innocent man goes to jail for
20 something he didn't do. I rather a hundred guilty people
21 go free than one innocent man go to jail. Certainty is
22 the enemy of truth.

23 Let's talk about M.J. for a second. M.J.'s,
24 you know, came up here and testified. She also wrote out
25 two statements. When she was testifying, she said that he

1 pulled my pants down to my ankles. And I don't know about
2 you all, but if my pants were down to my ankles, I
3 probably couldn't really walk real fast, probably couldn't
4 move real fast, probably couldn't do a lot of things real
5 fast. And if somebody had their feet over their shoulders
6 and their pants right behind their head, that will be
7 something that I put in the statement. I would put that
8 in my handwritten statement I gave law enforcement that
9 night. I also put that in my statement when I wrote three
10 or four days later. And then when I was talking with Ms.
11 Williamson at the Care House, that's something that I
12 would have told her about. I wouldn't just say, hey, we
13 were just fucking, that's basically what happened. I
14 wouldn't say that.

15 I asked M.J. questions and sometimes she was
16 vague. Sometimes she would answer my questions. We found
17 out that she was having problems with her mom when
18 Ms. Williamson testified. And she didn't tell us that
19 when she was testifying. We certainly found out when Ms.
20 Williamson was testifying. I asked her she ever cut
21 herself because her mom was angry with her. I don't
22 remember, I don't know. But I think it's pretty obvious
23 that M.J. was having some problems. I think it's pretty
24 obvious that M.J. was not doing well with her mom. Maybe
25 wants some attention. I don't know. I don't know.

1 Now, I got several questions and again keep in
2 mind that certainty is the enemy of truth, but, you know,
3 when I send a text message to anybody maybe it's because
4 I'm old. Maybe, because I can't remember numbers, but I
5 have their name for example my wife Leah Anderson I got a
6 heart by her name. She put that on there. I don't know
7 how to do that. Anytime, I get a message from her a heart
8 will pop up. And it's got a blue for me two messages and
9 right underneath it it's got my response and her responses
10 to me. It's all on the same page. State's Exhibit 6 just
11 one message per line -- per page. State's 7 one message.
12 Why if he send it is it not bang bang bang why didn't it.
13 I don't know. I don't know. I'm just asking you that. I
14 know what happens on my phone. And I know that I have
15 contacts in my phone and I ask law enforcement I said,
16 hey, did she have Lin's name under her contacts. No, I
17 didn't see it. So surely you got Lin's phone, surely you
18 got that search warrant that he voluntary gave you. His
19 information was in there and hers as well. No, I don't
20 remember that.

21 When did she get rid of the phone, well, we
22 found out from Ms. Williamson that she threw her phone
23 that night and that kept bothering me, that kept bothering
24 me, why would she throw her phone that night. And I
25 thought about it and I thought about it and then another

1 thing that bother me why was she alone in the shed. I'm
2 not talking about supposedly with Lin. I'm talking about
3 afterwards. You know, supposedly aunt catches her having
4 sex. Law enforcement is called. Friends are called. Mom
5 is called. Mom's hitting her. She runs away, they bring
6 her back. Why. Why would you let her go by herself in
7 the shed. Why. This girl supposedly just been raped.
8 This girl supposedly just had sex with someone that she
9 shouldn't have sex with. Why in the world would you leave
10 her alone. Why wouldn't somebody go in there with her.
11 Why. I don't know. Maybe, they didn't believe her.
12 Maybe, this has happened before. I don't know. I have no
13 idea. Why would she get mad and throw her phone away
14 later night. I don't know.

15 I do know and I don't know if Lin had his phone
16 that night. I don't know. I do not know that. I don't
17 know if Lin had his phone that night or not. However, as
18 I indicated to you earlier, I'm a little bit older, but
19 even when I was younger sometimes I would send a text
20 message to the wrong person. Sometimes I didn't mean to
21 send that. I mean to send that to my wife. I meant to
22 send that to somebody else. I didn't mean to send that
23 message to that person. I've done that before.

24 Well, what do we know about Christal. Certainty
25 is the enemy of truth. Christal, what did you see. Well,

1 I saw something. What did you see. Well, I saw
2 something. He was on top of her. Her pants were down.
3 Were his pants down. No, not really. I'm not going to be
4 too graphic, but I know we got several men on this jury.
5 I know we got several women on this jury too. When I'm
6 having sex or when a man has sex, he normally has what we
7 call an erection. And if someone has just caught you
8 having sex, I would submit A, they would have seen your
9 erection, your penis or B, there be an obvious protrusion
10 in your pants. You would have a tent in your pants. You
11 would have a hard on in your pants, but that was never
12 testified to. I mean, supposedly she's a feet away.
13 Supposedly, she's talking him. He's talking to her.
14 Supposedly, she's talking to some guy on the phone. Why
15 didn't we hear from him. Why didn't he come up here and
16 testify. I heard the conversation between the two of them
17 because I was on the phone with her. We didn't hear from
18 her or her whoever it was. I think it was Tim, but we did
19 hear from him. But I know one thing, the State's Exhibit
20 Number 5 as soon as you walk in the door there's fan in
21 the way between the door and the weight bench. Christal,
22 how big is that fan. It's as tall as I am. And that's
23 between you and the weight bench, that you see something
24 or you think you see something.

25 And then you got Lin's statement that he

1 voluntarily gave. Then I felt the bench move when I
2 turned around and I did not see but skin. I said, no, you
3 are not going to get me in trouble. So I was getting up
4 when I turned to walk, Christal walk in the door. I was
5 standing up. She was lying on the bench with her clothes
6 down. I never done nothing like that in my life. God
7 help me.

8 I know what I would think if I walked in and I
9 saw a naked child. I know what I would think, but I would
10 also hope to think wait, wait, wait a minute. I didn't
11 see anything. I didn't see him -- I didn't see his penis.
12 I didn't see anything that look like they were having sex
13 afterwards, but hopefully law enforcement will get us
14 something. EMS report because EMS came up there and talk
15 to him. Hopefully, they will get something from the
16 hospital. Hopefully, they'll get something from where
17 this incident happened. Hopefully, they'll take it to a
18 doctor. The doctor can come in here and say, hey, she is
19 no longer a virgin. Okay, she must have had sex at some
20 point in time, that kind of narrows it down a little bit.
21 She said it was him, but we didn't have any of them. We
22 don't have EMS person testifying he came over there that
23 night. She went to the hospital for a rape kit. We don't
24 have the rape kit. We don't have anything that was sent
25 to SLED that came back, but it was done. So why don't we

1 have the results. I guarantee you they were favorable you
2 be hearing it guarantee that.

3 Why -- speaking of why's, why if my man, Lin, is
4 going to have sex with this girl, why would he leave he
5 door open. Remember, Christal said she walked out there
6 and the door was open, bang there it was. Why would you
7 do that. Why would you leave the door open. Mr.
8 Richardson said I don't want to get caught. Why would you
9 leave the door open. That's another question I have, but
10 the door was open don't know why.

11 Responding officer basically all he told us was,
12 yeah, I responded to the scene. I know EMS was called.
13 I know a whole lot of other people were called. Then we
14 got Samantha Jackson. And when I was reading Samantha's
15 report that's when I came up with the idea of don't
16 confuse me my mind is made up. I'm going to ask you to
17 give me consent to talk to you. I'm going to ask you a
18 bunch of questions and then I want you to write me out a
19 statement. I really don't care what you have to say.
20 I'll get to that in a minute. And then I want you to give
21 me a DNA swab, which my client voluntarily did. Then I
22 want you to give me consent to get your cell phone, which
23 he voluntarily did. Then I'm going to serve these
24 warrants on you because I really don't care about
25 anything. I don't care about your DNA. I don't care

1 about your cell phone. I don't care about anything. I
2 already got my mind made up, so I'm going to serve these
3 two warrants on you that I have. Certainty is the enemy
4 of truth.

5 While we're at it, why don't you go get a search
6 warrant for his clothes. Surely, if he had on clothes
7 that night and he was having sex with her, there be some
8 evidence of his clothes his gym shorts, his underwear.
9 Surely, there would be. I know what let's get a search
10 warrant to his house. Maybe, he's got a laptop at his
11 house where he's downloaded some stuff on his computer.
12 Downloaded some stuff on the laptop. Let's go do that.
13 Let's go to his house and look. Let's talk to some
14 neighbors, let's talk to some other people that live in
15 the neighborhood and find out if anything like this has
16 ever happened before, been rumored to have happened
17 before. We don't need all that. My mind is made up. You
18 wasting my time.

19 Then we have Ms. Williamson. I'm glad Ms.
20 Williamson testified because she let me know that M.J.
21 didn't describe it the way she described it for you all.
22 She said M.J. threw her phone that night. She said that
23 her mom was hitting her. She said that she cuts herself
24 out of anger towards her mom. She didn't say I cut myself
25 because I was mad and I got caught. I cut myself because

1 I was mad about Lin. She didn't say any of that, cut
2 herself because I'm mad at my mom. I release anger,
3 that's what I did. When there a lot of things we don't
4 have in this case. A lot of things we don't have.

5 I think the judge will tell you you only have to
6 have one reasonable doubt. There's no magic number. It
7 doesn't have to be ten reasonable doubts. Doesn't have to
8 be five reasonable doubts. Doesn't have to be three only
9 has to be one, one reasonable doubt.

10 There is no DNA. There's no hospital reports.
11 There is no search warrant for his clothes. There's no
12 search warrant for his house. No talking with the
13 neighbors none of that stuff. Why isn't more stuff on the
14 phone. Why isn't there contacts on the phone. Why I
15 can't I see more than one message. Why wasn't any sperm
16 found or any semen found or any spermatozoa or whatever
17 it's called. Why didn't we hear from EMS. Why there's no
18 SLED report. Why is there no doctor in here testifying as
19 to what he saw or observed or found. I don't know. I
20 don't know the answers to those. Why didn't someone
21 overheard the conversation and come and testify. I don't
22 know. Why didn't Christal see something. I saw his
23 penis. I saw his pants. I saw his shorts. I saw
24 something. I don't know. I don't know. I know that I
25 have a pit in my stomach because I don't want this man to

1 go to jail for something he didn't do.

2 THE COURT: All right. Members of the jury, it
3 is now my duty to instruct you on the law applicable to
4 this case. It is your duty as jurors to except and apply
5 the law as I now state it to you. Furthermore, it is your
6 exclusive duty to decide all the issues of fact in this
7 case and to determine the effect, the value, the weight
8 and the truth of the evidence presented. Both the State
9 and the defendant have the right to expect that you will
10 carefully consider and evaluate the evidence, apply the
11 law of this case to it, so that in the end both the State
12 of South Carolina and this defendant will have received a
13 fair and impartial trial.

14 I want you to understand that when I use the
15 word defendant I refer to Mr. Lindell Davis. In this
16 case, the State of South Carolina charges the defendant
17 with the offenses known as criminal solicitation of a
18 minor and criminal sexual conduct with a minor second
19 degree. To these charges, the defendant has entered a
20 plea of not guilty. These pleas of not guilty places the
21 burden of proof on the State to prove the guilt of the
22 defendant to you beyond a reasonable doubt on each charge.

23 It is vital to understand that the defendant is
24 presumed under the law to be innocent of the charges. It
25 is a fundamental rule of our law that a defendant

1 regardless of the seriousness of the charges against him
2 is always presumed innocent of the crimes for which he is
3 charged, unless and until his guilt has been proved by
4 evidence that satisfies you beyond a reasonable doubt.

5 The presumption of innocence is not a mere legal
6 theory or legal phrase. The presumption of innocence is
7 very important. You need to understand that this
8 presumption accompanies the defendant from the time of his
9 arrest and appearance in this court and continues with the
10 defendant even after you retire to the jury room to
11 deliberate. In other words, the defendant receives the
12 benefit of the presumption of innocence until the very end
13 of this trial. When you, the jury, will deliberate upon
14 the evidence and decide whether the State has proved his
15 guilt on each and every charge beyond a reasonable doubt.

16 During this trial, you and I have separate
17 duties to perform. As the trial judge, it is my
18 responsibility to reside over this trial. Therefore, I
19 have the duty to rule upon the admissibility of the
20 evidence offered during the trial. In that regard, you
21 are to consider only the evidence before you. Thus, you
22 are to consider only the testimony which has been
23 presented from this witness stand together with any
24 exhibits admitted into the record as evidence.

25 Furthermore, I have the additional duty to

1 charge you on the law applicable to this case. And in
2 that regard, it is your duty to accept and apply the law
3 as I now state it to you. If you have any preconceived
4 ideas as to what the law is or what the law ought to be
5 and it does not agree with what I tell you the law is,
6 you are obligated under your oath to abandon these
7 preconceptions and accept the law as I now state it to
8 you.

9 In this trial, you are the sole and exclusive
10 judge of the facts and I am the judge of the law. Do not
11 infer that I have any opinion about the facts in this case
12 from anything I have said during the course of this trial.
13 In this trial, the law simply does not permit me to have
14 an opinion about the facts. As jurors, it is your duty
15 alone to determine the effect, the value, the weight and
16 the truth of the evidence presented. Furthermore, it is
17 your job as jurors to determine the credibility and
18 believability of witnesses who have testified in this
19 case. You must evaluate the evidence and determine which
20 evidence convinces you of its truth. In determining the
21 believability of witnesses who have testified in this
22 trial, you may believe one witness over many or many over
23 one. You may believe apart of the testimony of a witness
24 and reject the remaining part. You may believe the
25 testimony of a witness in its entirety or reject it in

1 full. You may consider whether the witness has an
2 interest in the result of the trial, whether the witness
3 is prejudice toward either party. The opportunity for the
4 witness to have seen the matters and things about which
5 the witness may testify and the way the witness acts on
6 the witness stand. Proof beyond a reasonable doubt is
7 proof that leaves you firmly convinced of the defendant's
8 guilt.

9 There are few things in this world that we know
10 with absolutely certainty, so even in criminal cases the
11 law does not require proof that overcomes every possible
12 doubt. However, if based on your consideration of the
13 evidence you are firmly convinced that the defendant is
14 guilty of the crimes charged, you must find him guilty.
15 If on the other hand you think there's a real possibility
16 that he is not guilty, you must give him the benefit of
17 the doubt and find him not guilty.

18 Please understand that reasonable doubt may
19 arise from evidence which has been presented in the case
20 or from the lack of evidence in the case. It is your
21 responsibility to determine whether or not reasonable
22 doubt exist as to the guilt of this defendant on each and
23 every charge.

24 I charge you that the defendant is entitled to
25 every reasonable doubt rising in the whole case. If upon

1 any issues of fact essential to conviction and a verdict
2 of guilty, you have a reasonable doubt as to how that
3 issue should be resolved. It would be your duty to
4 resolve that reasonable doubt in favor of the defendant.

5 Thus, in summary, it's important to understand
6 that a defendant is not required to prove his innocence.
7 Instead, the State is required by law to prove every
8 essential element of the charges against the defendant by
9 evidence which satisfies you of his guilt beyond a
10 reasonable doubt. Only then can you convict the defendant
11 and find him guilty.

12 I further instruct you the fact that the
13 defendant in this trial did not testify in his own behalf
14 is not a factor to be considered by you in any way in your
15 deliberations and in your consideration on the question of
16 guilt or innocence. In this regard, the defendant has the
17 Constitutional Right to remain silent and the exercise of
18 this right must not be considered by you in your
19 deliberations. The fact that the defendant did not
20 testify should not even be discussed in the jury room.

21 The burden of proof as I stated to you is on the
22 State. The defendant has no obligation to prove his
23 innocence. The burden of proof remains with the State to
24 prove the defendant's guilt beyond a reasonable doubt and
25 the fact that the defendant did not testify is not a

1 factor to be considered by you in deciding the guilt or
2 the innocence of the defendant.

3 When you consider the whole case if you have a
4 reasonable doubt as to the guilt or the innocence of the
5 defendant, then he is entitled to that reasonable doubt
6 and would be entitled to a verdict of not guilty.
7 However, upon considering the whole case you find that the
8 State has proved by evidence which satisfies you of the
9 guilt of the defendant beyond a reasonable doubt, then in
10 such circumstances it would equally be your duty to
11 convict the defendant and find him guilty.

12 Evidence may be direct or circumstantial.
13 Direct evidence is testimony by a witness about what the
14 witness personally saw or heard or did. Circumstantial
15 evidence is indirect evidence, that is it is proof of one
16 or more facts from which one can find another fact. You
17 are to consider both direct and circumstantial evidence.
18 The law permits you to give equal weight to both, but it
19 is for you to decide how much weight to give to any
20 evidence.

21 The defendant is charged with one count of
22 second degree criminal sexual conduct with a minor. The
23 State must prove beyond a reasonable doubt that the
24 defendant engaged in a sexual battery with the victim. A
25 sexual battery is sexual intercourse, cunnilingus,

1 fellatio, anal intercourse or any intrusion however slight
2 of any part of a person's body or of any object into the
3 genital or anal openings of another person's body except
4 when such intrusion is accomplished for medically
5 recognize treatment or diagnostic purposes.

6 The State must then prove beyond a reasonable
7 doubt that the victim was less than 16 years old but at
8 least 14 years old. And that the defendant was either in
9 a position of familial, custodial or official authority to
10 converse the victim to submit or that the defendant was
11 older than the victim.

12 The defendant is also charged with one count of
13 criminal solicitation of a minor. The State must prove
14 beyond a reasonable doubt that the defendant knowingly
15 contacted or communicated with or attempted to contact or
16 communicated with the victim. A person who is under the
17 age of 18 or a person reasonably believed to be under the
18 age of 18 for the purpose of or with the intent of
19 persuading, enticing, inducing or coercing the person to
20 engage or participate in a sexual activity or with the
21 intent to perform a sexual activity in the presence of
22 another person furthermore, South Carolina code section
23 16-3-657 states in a criminal sexual conduct case the
24 testimony of a victim need not be corroborated.

25 Ladies and gentlemen, I'm now drawing near the

1 end of my charge and I want you to clearly understand that
2 you are not partisans or advocates for the State of South
3 Carolina or this defendant. You do not serve as jurors to
4 reward your friends or punish your enemies. In this
5 regard, you have been selected by both the State and this
6 defendant to be fair and impartial jurors. It is your
7 duty by your joint deliberations to determine the truth in
8 this case giving to this defendant the benefit of every
9 reasonable doubt on each and every issue.

10 Then to the facts which you determine to be
11 true, you should take and apply the law which has been
12 given to you by this court and thus arrive at a verdict
13 which speaks the truth in this case. In fact, the word
14 verdict which has a Latin derivative means a true saying.
15 Thus when you have accomplished these responsibilities,
16 you will have satisfied your oath as jurors and you will
17 have discharged your duty to this court.

18 Now, Mr. Bailiff hand that to the forelady
19 please, sir. Now, Ms. Forelady, I have handed you the
20 verdict form. In this case, when you arrive at a verdict
21 in this case, you will write your verdict on the form.
22 For the charges, if the State has failed to prove the
23 guilt of this defendant beyond a reasonable doubt, your
24 verdict will be two words not guilty. However, should the
25 State have proved their case against the defendant beyond

1 a reasonable doubt, then your verdict would be one word
2 guilty. Ms. Forelady, once a decision has been made just
3 check which ever choice is your verdict on each charge.
4 Also please understand that the verdict that you render in
5 this case must be the verdict of each and every juror. It
6 must be your unanimous verdict. All 12 jurors must agree
7 on the verdict which you authorize the forelady to write
8 for the jury.

9 Ms. Forelady and members of the jury, I want you
10 to further understand that the order in which the choices
11 of a verdict appear on the verdict form are not suggestive
12 of any verdict on the part of this court. The verdict in
13 this case is to be determined by you and not this court.
14 Furthermore, ladies and gentlemen, please understand that
15 even though I have given the verdict form to the forelady,
16 it is not her verdict alone. It is the verdict of all 12
17 of you. And I emphasize again it must be unanimous.

18 Now, you will retire to the jury room. However,
19 I would ask that you do not begin your deliberations at
20 this time. The law requires that I consult with the
21 attorneys first. After I have done so, the bailiff will
22 bring in the items of evidence and instruct you to begin
23 your deliberations. Also should you have any questions
24 during your deliberations, you must put them in writing
25 and send them to me by way of the bailiff. The Court

1 bailiff will be placed immediately outside of the jury
2 room door to provide security and assistant for you during
3 your deliberations. Once you have reached your verdict,
4 please knock on the jury room door and ask the bailiff to
5 advise the Court that you have reached a verdict. And we
6 will return you to the courtroom as promptly as possible
7 thereafter. Thank you. You may retire to the jury room,
8 but again do not begin your deliberations until told to do
9 so.

10 (WHEREUPON, the jury retire to the jury room.)

11 THE COURT: Any objections to the charge as
12 given from the State?

13 MR. RICHARDSON: No, sir.

14 THE COURT: Defense?

15 MR. ANDERSON: No, sir.

16 THE COURT: All right. Why don't you take a
17 look at the items that are into evidence, send them on
18 back and tell them to begin. They in order?

19 MR. ANDERSON: Yes, sir.

20 MR. RICHARDSON: Yes, sir.

21 THE COURT: Mr. Bailiff, take them on back and
22 tell the alternate to come on out and tell them to begin.
23 Ms. Alternate, I want to let you know that your job is
24 complete. You can go for the day, but I need for you to
25 call back after six to see if there any further

1 instructions for you. Thank you.

2 (WHEREUPON, alternate juror is excused.)

3 (WHEREUPON, the jury began deliberations at
4 11:17 a.m.)

5 THE COURT: We'll be at ease until something
6 happens.

7 (WHEREUPON, court at ease awaiting a verdict.)

8 THE COURT: Let's go ahead and bring them out.

9 (WHEREUPON, the jury came into open court at
10 12:00 p.m. with a verdict.)

11 THE COURT: All right. Ms. Forelady, has the
12 jury reached a verdict?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: If you will hand it to the bailiff
15 please, ma'am. I find the verdict form in order. Ms.
16 Clerk, you'll publish it.

17 THE CLERK: State of South Carolina County of
18 Marion, in the court of general sessions for the Twelfth
19 Judicial Circuit, the State of South Carolina vs. Lindell
20 Davis. As to charge of solicitation of a minor: We, the
21 jury, unanimously find the defendant guilty. As to
22 charge of criminal sexual conduct with a minor second
23 degree: We, the jury, unanimously find the defendant
24 guilty. Is this your verdict say you one say you all?

25 (WHEREUPON, all jurors responded by saying yes.)

1 THE CLERK: Thank you.

2 THE COURT: Need for further polling?

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

4 THE COURT: All right. Members of the jury, I
5 appreciate all you have done. You are excused for the
6 day. If you would call back after six tonight to see if
7 there any further instructions for you. Everybody else
8 remain seated and you are dismissed.

9 (WHEREUPON, the jury dismissed.)

10 THE COURT: Any motions from the defense?

11 MR. ANDERSON: No, sir, Your Honor.

12 THE COURT: All right. Let me know when you
13 have sentencing sheets ready.

14 MR. RICHARDSON: Yes, Your Honor.

15 (WHEREUPON, a pause in the proceedings.)

16 THE COURT: All right. Let me hear from the
17 State or the victim. And does he have a criminal record?

18 MR. RICHARDSON: I spoken with the victim they
19 do not wish to address the Court. With respect to prior
20 record, looks like primarily traffic offenses. There's
21 assault and battery third degree in 2013. Looks like some
22 out of state record going back to the early 90's. Some of
23 these out -- carrying a concealed weapon, that was a
24 guilty in 1990, forgery in '91, more traffic offenses.
25 That appears to be it, Judge.

1 THE COURT: All right. Be glad to hear from
2 you.

3 MR. ANDERSON: Judge, please the Court as you've
4 already heard, Your Honor, I think Lin is 55, Judge. He's
5 been here in the courtroom the last two days. His wife
6 has been here with him. Your Honor, very very limited
7 prior criminal history. Your Honor, we just ask that you
8 please be as lenient as possible. I think when he was
9 first arrested two days.

10 THE COURT: In reference to the CSC, the
11 sentence of the Court is 15 years. In reference to the
12 solicitation, sentence of the Court is eight years. And
13 I'll run them concurrent.

14 MR. ANDERSON: Thank you, Judge.

15 MR. RICHARDSON: Thank you, Judge.

16 THE COURT: Thank you.

17 END OF REQUESTED TRANSCRIPT

18

19

20

21

22

23

24

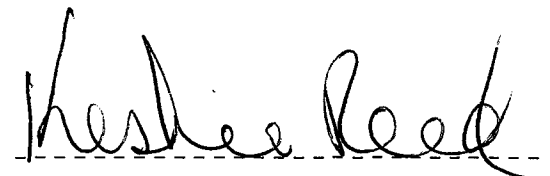
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter and Notary Public
in and for the State of South Carolina At Large, do hereby
certify that the above-entitled cause was heard as
hereinafter set out; that I was authorized to and did
transcribe the said proceedings; and that the foregoing
and annexed paged, numbered 1 through 186, inclusive,
constitute a true and accurate transcription of my
stenographic report of the said cause taken during the
said hearing. In the Court of General Sessions for Marion
County, South Carolina, on the 16-17 day of November,
2015.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto. In witness
whereof, I have hereunto affixed my signature this 8th day
of May 2016.



Keshia Reed, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)
)
 County of MARION)
)
LINDELL DAVIS, # 366106)
 Full name and prison number (if any) of Applicant)
)
 v.)
)
 State of South Carolina)
)
)
)

IN THE COURT OF COMMON PLEAS

2018 CP33 0 0 44 4

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
 2018 JUN 18 AM 10:45
 CLERK OF COURT
 MARION COUNTY SC

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 McCormick Correctional Inst. 386 Redemption
Way, McCormick, SC 29899
2. Name and location of Court which imposed sentence Marion County
General Session Court
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) 2014-GS-33-00312) Criminal Solicitation of a Minor
 (b) and Criminal Sexual Conduct with a minor 2nd Degree

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) **11/17/17(15 years CSC and 8 years current Solicitation**
 (b) _____
 (c) _____
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty _____
 (b) after a plea of not guilty ☒ _____
 (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes _____
8. If you answered "yes" to (7), list:
 (a) the name of each Court to which you appealed:
 i. **SC Court of Appeals**
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. **Denied**
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. **June 5, 2018**
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. **Attached**
 ii. _____
 iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
 (a) **N/A**
 (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ineffective assistant 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) See attached sheets
- (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? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? _____
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. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

N/A

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

N/A

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) if known, citations of any written opinions or orders entered pursuant to each such disposition:

N/A

- 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?

Yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. Court Failure to tell me of my right to testify
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

direct appeal

- 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) Not applicable

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes

(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? no

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. Hank Anderson, Marion County Public Defender

ii. Robert M. Dudeck Chief Appellate Defender
Division of Appellate Defense, 1330 Lady Street
suite 421, Columbia, SC 29201

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial

ii. Appeal

iii. _____

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)
MARION)
County of L)

VERIFICATION

I, Lindell Davis 366106, 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.

Lindell Davis

SWORN to and subscribed before me this 15
day of June, 2018.

J. A. Franklin (L.S.)
Notary Public

My Commission Expires: 12/16/2019

FILED
2018 JUN 18 AM 10:46
HAMILTON COUNTY CLERK OF COURT

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Lindell Davis 366106, 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.

Lindell Davis
Applicant

SWORN or affirmed to and subscribed before me this

15 day of June, 2018.

J. Franklin
Notary Public

My Commission Expires: 12-16-2019

The Supreme Court of South Carolina

The State, Respondent,

v.

Lindell Davis, Petitioner.

Appellate Case No. 2018-001014

Lower Court Case No. 2014GS3300312

ORDER

The South Carolina Court of Appeals dismissed the appeal in this matter after conducting a review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Petitioner now seeks review of that decision.

In *State v. Lyles*, 381 S.C. 442, 673 S.E.2d 811 (2009), this Court held that it "will no longer entertain petitions for writs of certiorari where the Court of Appeals has dismissed an appeal after conducting an *Anders* review." Accordingly, this matter is dismissed.



C.J.

FOR THE COURT

Columbia, South Carolina

June 5, 2018

cc: Alan McCrory Wilson, Esquire
 John Benjamin Aplin, Esquire
 Mr. Lindell Davis, 366106
 The Honorable Jenny Abbott Kitchings

ATTACHED SHEETS

FILED

2018 JUN 18 AM 10:46

1. Counsel was ineffective by failing to inform the Court of his client's fundamental right to testify or not to testify is a personal right that can only be waived by him.

2. Counsel was ineffective by failing to object or file motion that the Court failed to inform me to allocate.

MEMORANDUM OF LAW

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that, "there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

CONCLUSION

The applicant request a hearing on these two claims pursuant to 17-27-80 of the S.C. Code of Laws.

Dated

June 18 2018

Lindell Davis
Lindell Davis

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARION	)	FOR THE TWELFTH JUDICIAL CIRCUIT
	)	
Lindell Davis, # 366106	)	
	)	
	)	2018-CP-33-00444
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

2018 OCT -2 AM 9:43

FILED

In response to the application for post-conviction relief (PCR) filed by Lindell Davis (Applicant) on June 18, 2018, the State files this return:

I. Procedural History

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marion County Clerk of Court. During its November 2014 term, the Marion County Grand Jury indicted Applicant for second-degree criminal sexual conduct with a minor and criminal solicitation of a minor (2014-GS-33-00312). Henry M. Anderson, Jr., Esquire, represented Applicant. Assistant Solicitors David Richardson and Lauren Hummel of the Twelfth Circuit Solicitor's Office prosecuted the case.

On November 17, 2015, Applicant proceeded to a jury trial before the Honorable William H. Seals Jr. The jury convicted Applicant as indicted. Judge Seals sentenced Applicant to concurrent terms of fifteen years imprisonment for second-degree criminal sexual conduct with a minor and eight years imprisonment for criminal solicitation of a minor.

Applicant timely appealed his sentences and convictions. Chief Appellate Defender Robert M. Dudek of the South Carolina Commission on Indigent Defense—Office of Appellate Defense

submitted a brief pursuant to *Anders v. California*.¹ On December 6, 2017, the South Carolina Court of Appeals dismissed the appeal pursuant to *Anders* procedure. *State v. Davis*, Op. No. 2017-UP-450 (S.C. Ct. App. filed December 6, 2017). Applicant petitioned the South Carolina Supreme Court for a writ of certiorari to review the court of appeals' decision, and the Supreme Court denied certiorari on June 5, 2018. *State v. Davis*, S.C. Sup. Ct. Order dated June 5, 2018. The Remittitur was issued on June 19, 2018.

II. Facts

Christal Saldierna (Aunt) caught Lindell Davis having sex with her fifteen year old niece (Victim). Victim consented to the sexual relationship. Trial counsel argued Davis did not penetrate Victim.

Davis, Aunt, and Aunt's boyfriend were friends. Aunt's boyfriend and his friends used to work on cars and workout in a shed on her property.² The inside of the shed was well lit and housed tools, weightlifting equipment, and a punching bag. (R. 86, 89).

Aunt's boyfriend died in October of 2012; however, Davis and Aunt remained friends, and Davis was allowed to use the weightlifting equipment in the shed. (R. 86–87). He came over almost every day. (R. 87). While he was allowed to use the shed, he did not have a key. Aunt, or another family member, would unlock the shed for Davis, and when he was finished, someone would lock the shed behind him. (R. 58). Victim also came over to Aunt's house almost every day.³ (R. 55).

¹ 386 U.S. 738 (1967).

² The shed on Aunt's property is referred to throughout trial as a shed, barn, and garage. For ease of reference, it will be referred to as the shed in this return.

³At the time of trial, Victim was living with Aunt.

On May 31, 2014, Victim was at Aunt's house, and Davis was using the shed to lift weights. Davis and Victim communicated that night through text messages. (R. 59–63). The State entered into evidence pictures of the shed, a picture of a weight bench, and three pictures of text messages.

The first text message was sent from Victim to Davis at 9:30 p.m. The second text message was Davis's response at 10:00 p.m. The third text was from Davis to Victim at 10:03 p.m. The criminal solicitation of a minor charge stems from the 10:00 p.m. and 10:03 p.m. text messages that Davis sent Victim. (R. 57–64).

It is unclear from the record what Davis sent Victim in the 10:00 p.m. text message. However, Victim testified at trial and the record indicates that at 10:03 p.m.—Davis texted Victim, "Come lock up." Victim stated that after she received this text from Davis, she went outside to go lock the shed. Victim stated she entered the shed, and Davis was inside. (R. 57–64).

Victim stated that when she entered the shed, Davis pulled down her pants, and they had sex. (R. 64). Victim recalled what she and Davis were wearing that night. (R. 64–65). She stated that after Davis pulled her pants down, she layed down on her back on the weight bench. Victim stated that Davis was wearing athletic shorts that night, but he did not take his shorts off completely. Instead, he pulled down the front of his shorts and exposed his penis to her. She stated that after he exposed himself to her, "He penetrated me." (R. 65). She stated that while they were having sex, her legs were over his sholders. She said they were not having sex for long before Aunt walked in. (R. 66).

During cross examination, trial counsel questioned Victim about the text messages, two statements she gave to the police, and her relationship with her mother and Aunt. (R. 69–85).

Aunt testified at trial. (R. 86–107). She stated she heard Victim exit the front door to go lock the shed. (R. 87–88). After a short period of time, Aunt went to check and see what was

taking Victim so long. Aunt stated she walked out to the shed, and entered the shed. (R. 88). When asked what she saw when she entered the shed, Aunt stated, “I see [Victim] laying on a bench holding bars. [Davis] was straddling the bench. And I couldn’t see the back of his shorts down, but he was humping her.” (R. 88). Aunt recalled Victim’s pants were at her ankles and her legs were over Davis’s shoulders. Aunt reiterated that Davis was humping Victim, but admitted she could not see the front of Davis. (R. 89). When asked what happened next, Aunt said, “I told him to get the fuck off my niece.” (R. 90). Trial counsel’s cross-examination primarily focused on the fact that Aunt could not tell if Davis penetrated Victim. (R. 95–101).

After Aunt testified, the State called the deputy who arrived at the scene, and then the lead investigator. After the lead investigator’s testimony, the State indicated that it would call one more witness. However, the case concluded for the day before the State called its final witness. (R. 133). When the case reconvened the next morning, the court asked trial counsel whether Davis intended to testify. (R. 133). The court also asked trial counsel and Davis whether trial counsel advised Davis of his Fifth Amendment Right to testify or not testify at trial. Both trial counsel and Davis stated that trial counsel advised Davis of these rights. (R. 133, 135). Even so, the trial court questioned Davis about his Fifth Amendment Rights:

Q: Mr. Davis, I want you to understand that this is your trial. And in your trial if you would like, you can come over here and you can be sworn in and you can take the witness stand and you can testify. However, it’s important to understand that if you testify, you may be cross examined on any and all relevant issues in connection with your case. Furthermore, if you have a criminal record that involves crimes of dishonesty or false statements or crimes that carry a punishment of more than one year and the Court determines that the probative value of admitting same outweigh their prejudicial effect, then your criminal record will be introduced to attack your credibility. You understand that?

A: Yes, sir.

Q: Furthermore, I want you to understand that you have the right to remain silent, the Constitutional Right. You do not have to testify and nobody can make you testify. And if you choose to exercise that right and not take the stand, I want you to understand that I'll tell that jury they cannot use that against you in any[]way. I will tell the jury the fact that you did not testify is to have absolutely no prejudice against you. I would even tell the jury they cannot discuss that fact in the jury room. Do you understand your right to remain silent?

A: Yes, sir.

Q: Do you have any questions about anything I just told you?

A: No, sir.

(R. 133–135). After the above quoted colloquy, Davis stated he did not wish to testify. (R. 135).

The jury then entered the courtroom, and the State called its final witness—Sally Williamson. (R. 136).

Williamson stated she was a forensic interviewer and therapist with the Care House of the Pee Dee. Williamson interviewed Victim on June 16, 2014. She was not qualified as an expert. (R. 136–38). Williamson described the process and setting of a typical forensic interview. Victim's interview was a usual interview. (R. 138–40). At trial, the State questioned Williamson about Victim's demeanor and ability to speak with Williamson. Williamson answered:

[Victim] appeared to understand me and comprehend the process as I was explaining it. She was very open and forth coming with answering questions and sometimes children are guarded in some way or unable or unwilling to provide information, but she was very forthcoming with information and I found her to give consideration to my questions and provide as much information as possible.

(R. 140–41). Williamson then affirmed Victim disclosed penetration or some type of sexual abuse, and Victim communicated the time and place the incident occurred. (R. 141). The State then asked Williamson specifically what Victim disclosed. Williams answered:

[Victim] disclosed that it occurred at her aunt's house in -- her Aunt Christal[s] house I believe in a barn where there was some weights

set up, a weightlifting bench. And the time --- I don't remember the exact time. I have to look through -- I remember that it was a number of days before the actual interview took place in mid June.

(R. 141). Williamson only commented on the time, place, and manner of Victim's disclosure.

The State rested its case after Williamson's testimony. The jury exited the courtroom, and trial counsel moved for a directed verdict on both charges. The motion was denied, and the jury re-entered the courtroom. (R. 150). Trial counsel did not call any witnesses and rested. (R. 151). The trial court did not readvise Davis of his Fifth Amendment rights. Trial counsel renewed all previous motions. The motions were denied. The case then proceeded to closing arguments. (R. 151-73).

After closing arguments, the trial court charged the jury. (R. 173-82). There were no objections to the given charges. The jury found Davis guilty on both charges. (R. 183).

At sentencing, the State addressed Davis's limited criminal history—a few out of State charges from the early 1990's. Victim did not address the court. (R. 184). Trial counsel presented the following mitigation argument:

I think [Davis] is 55, Judge. He's been here in the courtroom the last two days. His wife has been here with him. Your Honor, very very limited prior criminal history. Your Honor, we just ask that you please be as lenient as possible. I think when he was first arrested two days.

(Tr. 185). The trial court sentenced Davis to concurrent sentences of fifteen years for second degree CSC with a minor, and eight years for criminal solicitation of a minor. (R. 185).

Davis appealed his sentences and convictions. On December 6, 2017, the court of appeals dismissed his appeal pursuant to *Anders v. California*.⁴ *State v. Davis*, Op. No. 2017-UP-450 (S.C. Ct. App. filed December 6, 2017). Davis petitioned the Supreme Court for a writ of certiorari to

⁴ 386 U.S. 738 (1967).

review the court of appeals' decision, and the Supreme Court denied certiorari on June 5, 2018. *State v. Davis*, S.C. Sup. Ct. Order dated June 5, 2018. Davis filed this PCR action on June 18, 2018.

III. Current Application

Applicant alleges he is being held in custody unlawfully due to ineffective assistance of trial counsel. Applicant alleges trial counsel was ineffective for:

1. "[F]ailing to inform the Court of [Applicant's] fundamental right to testify or not to testify is a personal right that can only be waived by the defendant;" and
2. "[F]ailing to object or file a motion that the Court failed to inform [Applicant] to allocate."

Applicant requests relief in the form of a new trial.

Attached to this return and incorporated herein are the Marion County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the appellate record (including the Record on Appeal), and the records of this current PCR action.

IV. Response to Allegation of Ineffective Assistance of Counsel

The State submits Applicant's allegation of ineffective assistance of counsel is without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To establish prejudice, the applicant must prove "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.

1. Trial Counsel's Alleged Failure to Inform the Court of Applicant's Fundamental Right to Testify or Not Testify is a Personal Right that can only be Waived by the Defendant

Applicant alleges trial counsel was ineffective for failing to inform the trial court of Applicant's right to testify or not testify at trial. The State interprets this allegation to mean that Applicant was not informed, either by trial counsel or the trial court, of his Fifth Amendment rights to testify or not testify at trial. The State submits this allegation is without merit. Applicant did not testify at trial; however, both trial counsel and Applicant stated that trial counsel advised Davis of his Fifth Amendment rights. (R. 133, 135). Even so, the trial court advised Applicant of his Fifth Amendment rights before the State called its final witness. (R. 133–135). Applicant waived his right to testify at trial. The trial court did not re-advise Applicant of his Fifth Amendment rights after the State rested its case. The State submits that even if trial counsel failed to inform Applicant of his right to testify at trial, any such alleged deficiency was cured by the trial court's colloquy. *See Brown v. State*, 317 S.C. 270, 272, 453 S.E.2d 251, 252 (1994) (“An on-the-record waiver of a constitutional or statutory right is but one method of determining whether the defendant knowingly and intelligently waived that right.”).

2. Trial Counsel's failure to Object or File a Motion that the Court Failed to Inform Applicant to Allocate

Applicant alleges trial counsel was ineffective in failing to object or file a motion because the court failed to inform Applicant to Allocate. The State interprets Applicant's allegation as failing to object or file a motion because the court failed to obtain a waiver of Applicant's allocution rights.⁵ The State submits this argument is without merit.

⁵ *See Allocution*, BLACK'S LAW DICTIONARY 91 (10th ed. 2014) (“An unsworn statement from a convicted defendant to the sentencing judge or jury in which the defendant can ask for mercy, explain his or her conduct, apologize for the crime, or say anything else in an effort to lessen the impending sentence.”).

Section 16-3-655 of the South Carolina Code applies to Applicant's second degree CSC with a minor conviction. Subsection 16-3-655(I) provides:

Notwithstanding another provision of law, in any trial pursuant to this section when the maximum penalty is death or in a separate sentencing proceeding following the trial, the defendant *and his counsel* shall have the right to make the last argument. (emphasis added). Here, during the sentencing proceeding following the trial, trial counsel delivered the last argument. (R. 185). Therefore, Applicant's allegation that trial counsel was ineffective for failing to object or file a motion because the court did not obtain a waiver of Applicant's allocution rights is without merit because trial counsel presented mitigating evidence before Applicant was sentenced.

However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the State requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983).

V. Any Future Amendments

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 pursuant to the Uniform Post-Conviction Relief Act⁶ and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)–(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing.

⁶ S.C. Code Ann. §§ 17–27–10 to –160.

The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCPP.

VI. Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VII. Request for an Evidentiary Hearing

WHEREFORE, The State requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

Respectfully submitted,

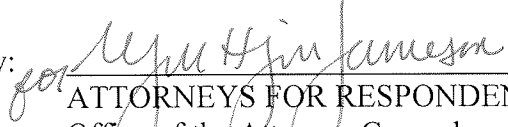
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

SAMUEL L. KEY
Assistant Attorney General

By:



ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

October 1, 2018

STATE OF SOUTH CAROLINA)

COUNTY OF MARION)

IN THE COURT OF COMMON PLEAS

2018-CP-33-00444

LINDELL DAVIS, #366106)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

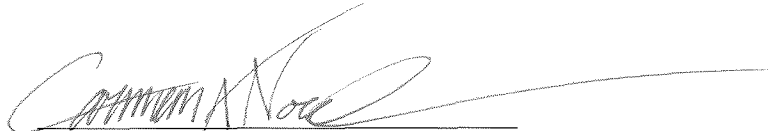
Respondent.)

FILED
2018 OCT -2 AM 9:43
CLERK OF COURT
MARION COUNTY SC

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D Waller
Waller Law Group, LLC
1116 Blanding Street
Suite 2B
Columbia, SC 29201

DATED this the 1st day of October, 2018.



Carmen A. Nord, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA

COUNTY OF MARION

Lindell Davis, # 366106,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Case No. 2018-CP-33-00444

ORDER FOR CONTINUANCE

This matter comes before the Court by way of an application for post-conviction relief filed June 18, 2018. An evidentiary hearing into the matter is scheduled for November 7, 2018, at the Florence County Courthouse. Applicant's counsel moves to continue this matter to the next regularly scheduled term of court for post-conviction relief for the Twelfth Judicial Circuit, as he has only recently been served with Respondent's Return and needs additional time to prepare this matter for an evidentiary hearing and speak with potential witnesses. Applicant's counsel has conferred with Respondent's counsel, who consents to this continuance request.

This Court finds that this matter should be continued until the next regularly scheduled term of court for post-conviction relief matters in the Twelfth Judicial Circuit.

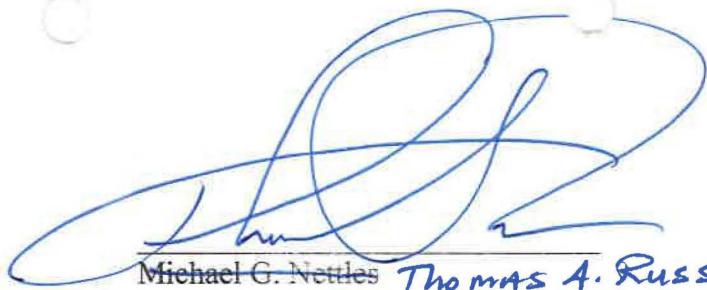
IT IS THEREFORE ORDERED:

1. That this post-conviction relief matter shall be continued and rescheduled for the next regularly scheduled term of court for post-conviction relief for the Twelfth Judicial Circuit;
2. The Applicant shall be remanded to the custody of the State.

AND IT IS SO ORDERED this 1st day of Nov., 2018.

2018 DEC -4 AM 9:54
MARION COUNTY SC
CHRISTY M GRAY
CLERK OF COURT

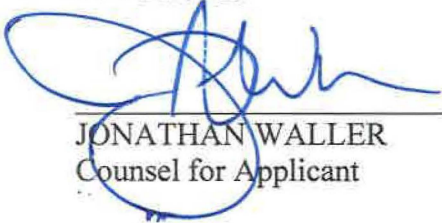
FILED



~~Michael G. Nettles~~ *Thomas A. Russo*
Chief Administrative Judge
Twelfth Judicial Circuit

MARION
~~FLORENCE~~ South Carolina

I SO MOVE:



JONATHAN WALLER
Counsel for Applicant

STATE OF SOUTH CAROLINA

COUNTY OF MARION

Lindell Davis, #366106,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Case No. 2018-CP-33-00444

**Amendment to Application for
Post Conviction Relief**

Applicant, by and through his Attorney, Jonathan D. Waller, Esquire, would amend his Application for Post-Conviction Relief filed June 18, 2018, by adding the claims of ineffective assistance of to question 10 and by adding the following specific prayers for relief to his original allegations:

1. As to representation rendered by Henry M. Anderson, Esquire:
 - a. Counsel was ineffective for failing to properly investigate the facts and circumstances surrounding the allegations against Applicant.
 - b. Counsel was ineffective for failing to contemporaneously object to impermissible testimonies of Investigator Jackson and Sally Richardson.
 - c. Counsel was ineffective for failing to object to impermissible comments made by the State during closing arguments.

Respectfully submitted,



Jonathan D. Waller, Esquire
Waller Law Group
1116 Blanding Street
Suite 2B
Columbia, SC 29201
(803) 520-7278
ATTORNEY FOR THE APPLICANT

Columbia, South Carolina
December 13, 2019

2019 DEC 16 AM 9:19

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF MARION) 2018-CP-33-00444

LINDELL DAVIS,)

Applicant,)

vs.)

STATE OF SOUTH CAROLINA,)

Respondent.)

Transcript of Record

DECEMBER 19, 2019

B E F O R E:

Honorable D. Craig Brown
Florence County Courthouse
Florence, South Carolina

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

Jonathan D. Waller, Esquire
Attorneys for Applicant

Samuel L. Key, Esquire
Attorneys for Respondent

Sallie Beth Todd
Circuit Court Reporter

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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LINDELL DAVIS

By Mr. Waller	5		19	
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By Mr. Key		18		
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HANK ANDERSON

By Mr. Waller	20			
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By Mr. Key		28		
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Certificate of Court Reporter..... 35

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE</u>
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(THERE WERE NO EXHIBITS MARKED DURING THIS HEARING.)

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

2 **MR. KEY:** May it please the Court? This is Lindell Davis
3 versus State of South Carolina, case number 2018-CP-33-0444.
4 Mr. Davis commenced this PCR action on June 18th, 2018. He is
5 confined to the South Carolina Department of Corrections
6 pursuant to order of commitment of the Marion County Clerk of
7 Court. During the November 2014 term of Marion County Grand
8 Jury he was indicted for second-degree criminal sexual conduct
9 with a minor, and criminal solicitation of a minor. He was
10 represented by Henry Hank Anderson and assistant solicitors
11 David Richardson and Lauren Hummel of the 12th Circuit
12 Solicitor's Office prosecuted the case. On November 17th,
13 2015 he proceeded to a jury trial before the Honorable William
14 H. Seals, Jr. and the jury convicted him as indicted. Judge
15 Seals sentenced applicant to concurrent terms of 15-years
16 imprisonment for second-degree criminal sexual conduct with a
17 minor and eight years for criminal solicitation of a minor.
18 He timely appealed his sentences and convictions and Chief
19 Appellate Defender Robert M. Dudek perfected his appeal by
20 filing an Anders Brief. On December 6th, 2017 the South
21 Carolina Court of Appeals dismissed the appeal pursuant to the
22 Anders procedure. Applicant petitioned the South Carolina
23 Supreme Court for a writ of certiorari to review the Court of
24 Appeals decision. That petition was filed pro se. The
25 Supreme Court denied cert on June 5th, 2018. The case was

1 remitted back to the Circuit Court on June 19th, 2018.

2 Mr. Davis alleges ineffective assistance of counsel in
3 his original application. And on December 13th, through Mr.
4 Waller, he amended his PCR application to include ineffective
5 assistance of counsel for failure to properly investigate the
6 facts and circumstances surrounding the case, failure to
7 contemporaneously object to impermissible testimony of
8 Investigator Jackson and Sally Richardson, and failing to
9 object to impermissible comments made by the state during
10 closing arguments. He is represented by Mr. Jonathan Waller
11 and is present here today.

12 **THE COURT:** Mr. Waller.

13 **MR. WALLER:** Thank you, Your Honor. May it please the
14 Court?

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

16 **MR. WALLER:** Judge, I don't have any -- other than my
17 amendments that were filed and Mr. Davis' application, I don't
18 have any opening or anything like that.

19 **THE COURT:** Do you have a copy of the amendments for me
20 because that is not in my packet?

21 **MR. WALLER:** I do, Your Honor. May I approach?

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

23 **MR. WALLER:** I apologize.

24 **THE COURT:** Thank you. All right. Do you want to call
25 your first witness?

1 **MR. WALLER:** Thank you, Your Honor. The applicant will
2 call Lindell Davis.

3 **THE CLERK:** Place your left hand on the Bible and raise
4 your right hand as much as you can.

5 **LINDELL DAVIS, HAVING BEEN**
6 **FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

7 **DIRECT EXAMINATION OF MR. DAVIS BY MR. WALLER:**

8 Q: Good morning, Mr. Davis. How are you this morning?

9 A: I'm fine. How are you doing?

10 Q: I'm doing well. Thank you for asking. All right. Mr.
11 Davis, I want to take you back to when you were first arrested
12 on these charges; do you recall that?

13 A: Yes, sir.

14 Q: Okay. And you were arrested on two charges; is that
15 right?

16 A: Yes, sir.

17 Q: Okay. What were those two charges when you were first
18 arrested?

19 A: That was --

20 Q: Was it solicitation of a minor?

21 A: Solicitation of a minor.

22 Q: And criminal sexual conduct?

23 A: Criminal sexual conduct, that's it.

24 Q: That was criminal sexual conduct with a minor second-
25 degree; is that right?

1 A: Yes, sir.

2 Q: When you were first arrested how long did it take you to
3 get a lawyer?

4 A: I have no idea.

5 Q: Okay. Let me ask it to you this way. Were you -- did
6 you bond out or were you at the detention center while you
7 were awaiting these charges?

8 A: I was bonded out.

9 Q: Okay. And did you bond out immediately?

10 A: It's like -- it took me a couple of weeks.

11 Q: Okay. How did you get a lawyer in this case?

12 A: Well one was appointed to me.

13 Q: Okay. Was that Mr. Anderson?

14 A: Yes, sir.

15 Q: Okay. So Mr. Anderson was appointed to represent you.
16 You didn't hire him or anything like that? He was appointed
17 to represent you.

18 A: He's appointed to represent me.

19 Q: Okay. When was the first time you think you met with Mr.
20 Anderson?

21 A: The first time, they gave me a letter to come to court
22 for a hearing.

23 Q: Okay.

24 A: The first time when I met him.

25 Q: Okay. You got a letter to come to court for a hearing or

1 for like a rollcall; do you know?

2 A: It was for a rollcall.

3 Q: Okay.

4 A: That's what it was.

5 Q: So that was the first time you met Mr. Anderson?

6 A: Yes, sir.

7 Q: Did y'all have a chance to discuss your case at that time
8 or was it just you know people everywhere, you're trying to
9 just check in?

10 A: No. I didn't have a chance to discuss anything with him.

11 Q: Okay. When was the first time you had an opportunity to
12 talk about your case with Mr. Anderson?

13 A: The second time when they sent me a letter and I came up
14 and we talked about the case in a little room back in the
15 corner.

16 Q: Okay. And did he have a copy of your discovery at that
17 time?

18 A: Yes. I think he did.

19 Q: Okay. Did you have a chance to go over everything with
20 him?

21 A: No, sir.

22 Q: Okay. And not just that time, but at any point in time
23 during his representation of you did you have a chance to go
24 over all of that discovery with him?

25 A: No, sir.

1 Q: Okay. Do you know what you didn't get to see?

2 A: It was a lot of stuff I didn't get to see.

3 Q: Okay. Let me do this, what did y'all get to talk about

4 in your case?

5 A: About how these -- how these ladies set me up.

6 Q: Okay. Let me back up just a little bit and I should have

7 covered this earlier. The allegations in your case were that

8 you, via text message, asked and then ultimately had sexual

9 intercourse with an underage person, a 15-year-old. Is that

10 right, what the allegations were?

11 A: Well actually the aunt had the phone.

12 Q: Okay. Hold on Mr. Davis. Were those the allegations

13 against you?

14 A: Yes, sir.

15 Q: Okay. All right. Did you and Mr. Anderson have a chance

16 to talk about those specific allegations?

17 A: No, sir.

18 Q: Y'all never talked about those allegations?

19 A: No, sir.

20 Q: Okay. Did you talk about your arrest warrants?

21 A: A couple of them.

22 Q: Okay. Well you only had two, Mr. Davis.

23 A: Yeah.

24 Q: Okay. But you talked about those?

25 A: Yes, sir.

1 Q: Okay. In those arrest warrants there would have been
2 some -- there would have been a section with the facts and the
3 state's position of the facts would have been laid out. Did
4 y'all have a chance to talk about those facts?

5 A: I can't recall. I can't recall.

6 Q: Okay. I know it's been a long time.

7 A: Yes, it has.

8 Q: All right. You testified a second ago that y'all
9 discussed that you had been set up.

10 A: Yes, sir.

11 Q: Did you think that that was a potential defense that you
12 had?

13 A: Yes, sir, because I have never ever done anything like
14 that.

15 Q: Okay. What did you and Mr. Anderson discuss about that
16 defense and how you were going to prepare that?

17 A: Well I told him I didn't do nothing like that because you
18 know I got 13 girls and I'm very protecting of them.

19 Q: Okay. You have 13 daughters; is that right?

20 A: Yes. Yes, sir.

21 Q: All right. Is that the only conversation you and Mr.
22 Anderson had about the allegations?

23 A: Basically.

24 Q: Okay. How many times total do you think you and Mr.
25 Anderson met when you were getting ready for trial?

1 A: Probably about one or two times.

2 Q: Okay. All right. And in that second meeting you said he

3 had some of your discovery, right?

4 A: Yes, sir.

5 Q: Okay. And you talked about the fact that you had been

6 set up. You thought that was a defense for you.

7 A: Yes, sir.

8 Q: What else did y'all talk about?

9 A: We talked about Ms. M.J. .

10 Q: Okay. And so the Judge understands, who is Ms. M.J. ?

11 A: M.J. , the ---

12 Q: That the victim in this case?

13 A: Yes, sir.

14 Q: Okay. What did y'all talk about?

15 A: About the -- the shed that they got -- that they got in

16 the yard.

17 Q: Okay.

18 A: And how she came in there and we talked about how it was

19 set up with the -- when she said she had hurt her foot. She

20 came out there no sooner -- she called me on the phone that

21 night. I was at home. The same thing I'm telling you now, I

22 told him the same thing. And she called me at home, I was on

23 the phone and she called me. I had another guy using my phone

24 and his name was Phil, and I got a restricted call. I don't

25 usually answer those calls. And so Phil told me, he said you

1 getting a call on the phone. I said well they'll call back.

2 And so that was the aunt calling on the niece's phone,

3 restricted call.

4 Q: Okay.

5 A: And so when I answered the phone, after she called back,

6 I answered the call and I said who is this and she said this

7 is me. I said this is me who? And she said this is Crystal.

8 Q: Crystal is the aunt?

9 A: Is the aunt.

10 Q: Okay.

11 A: And I say well why are calling with -- calling me on a

12 restricted number. And she said well this is not my phone;

13 this is M.J. 's phone.

14 Q: All right. Mr. Davis, let me back you up so that the

15 Judge has an understanding of the picture here. The --

16 Crystal, the aunt of the victim in this case ---

17 A: Yes.

18 Q: --- behind her residence there was a shed. It had some

19 workout equipment.

20 A: Yeah. It was parallel with the house. Yeah.

21 Q: And you were good friends with her -- I don't think it

22 was technically her husband, but ---

23 A: No. It was a guy he had took her in because she didn't

24 have no place to stay.

25 Q: Okay. And you were friends with him. He ultimately

1 passed away.

2 A: Yes, sir.

3 Q: But you would continue to go over and use the workout
4 equipment; is that right?

5 A: Yes, sir.

6 Q: Okay. So -- all right. Back to what you were just
7 talking about. So you were with Phil and you got a phone
8 call.

9 A: Yes, sir.

10 Q: Okay. And what happened after that?

11 A: She wanted me to come out to the house because she had
12 hurt her ankle.

13 Q: Okay.

14 A: And so I rode out there to see what the problem was and I
15 asked her if she needed to go to the doctor. She said she
16 already done left the hospital.

17 Q: Okay.

18 A: And so I looked at her ankle. I said do you mind if I
19 use the shed while I'm here? And so the step-niece ---

20 Q: Well hold on. Let me ask you this, Mr. Davis. Do you --
21 you told Mr. Anderson all of this?

22 A: Yes, sir.

23 Q: Okay. All right. What -- what was his response to this?

24 A: I even wrote out a police report stating the same thing.

25 Q: Okay. Well what did Mr. Anderson say when you told him

1 this information? What was he going to do with it?

2 A: He was going to take it all into evidence.

3 Q: Okay. Did y'all discuss any investigation you wanted him
4 to do or anything like that?

5 A: He didn't discuss it with me.

6 Q: Okay. Your phone has been mentioned a couple of times.
7 Did you get your phone back?

8 A: Yes, sir.

9 Q: Okay. And then was it subsequently taken by law
10 enforcement?

11 A: Well she asked me about my phone.

12 Q: Okay. Did she -- did you ever get that phone back?

13 A: Did I ever get it back?

14 Q: Did law enforcement take it from you?

15 A: Yes, sir.

16 Q: Okay. Did you get it back?

17 A: Yes, sir.

18 Q: Okay. Had they done any sort of testing on your phone to
19 look at ---

20 A: Yes, sir.

21 Q: Okay. Did you and Mr. Anderson have a chance to talk
22 about the testing on the phone?

23 A: No, sir.

24 Q: Okay. All right. Mr. Davis, ultimately you ended up
25 going to trial on this case, right?

1 A: Yes.

2 Q: Okay. What did you and Mr. Anderson do to get ready to
3 go to trial?

4 A: I can't recall.

5 Q: Okay. Had you given Mr. Anderson any information you
6 wanted him to investigate or any people you wanted him to
7 investigate?

8 A: I wanted him to look at this thing closely than what he
9 looked at it.

10 Q: Okay. Everything that you asked him to do, do you know
11 if he did or did not do it?

12 A: I don't know if he did it or not.

13 Q: Okay. All right. There was a forensic interview done of
14 the victim in this case.

15 A: Yes, sir.

16 Q: Did you have a chance to view that forensic interview?

17 A: Nothing but what I got in my transcript.

18 Q: Okay. You didn't -- you didn't see a video or a
19 transcript of an interview outside of the courtroom?

20 A: No, sir.

21 Q: Okay. Did you and Mr. Anderson have a chance to discuss
22 that?

23 A: No, sir.

24 Q: And did you know one had been done? Did you know an
25 interview had been done?

1 A: No, sir. I didn't.

2 Q: Okay. All right. Mr. Davis, what -- is there anything
3 that you asked Mr. Anderson to do that he did not do?

4 A: I don't think he presented me in the correct way.

5 Q: Okay. What do you mean by that?

6 A: Well as we was going through the trial, you know he got -
7 - he start talking and then the solicitor -- the solicitor
8 kind of -- the solicitor started talking and then he kind of
9 backed down a little bit.

10 Q: Okay. Let me back up a little bit more and talk about
11 some of the other pieces of evidence the state tried to use
12 against you. I'm going to ask you to talk about this.

13 A: Okay.

14 Q: You mentioned Phil had your phone. Okay.

15 A: That's right.

16 Q: Did you ask Mr. Anderson to contact Phil?

17 A: No, sir.

18 Q: Okay. Do you know whether he did or did not contact
19 Phil?

20 A: No, sir.

21 Q: He did not, or you just don't know?

22 A: He did not.

23 Q: Okay. There was no DNA testing or anything like that in
24 this case. Is that your understanding now?

25 A: Well Samantha Jackson did swab my mouth.

1 Q: Okay.

2 A: They did a swab.

3 Q: Okay. Was there any -- to your knowledge was there any
4 forensic DNA testing done on the victim in this case?

5 A: No. I don't ---

6 Q: You don't know?

7 A: I don't know.

8 Q: Okay. Mr. Davis, what did you want Mr. Anderson to do
9 that he didn't do?

10 A: I wanted him to look at this case very closely because I,
11 you know being set up ain't you know being set up ---

12 Q: Okay.

13 A: --- me being set up.

14 Q: Okay. When you say being set up, what information did
15 you give Mr. Anderson about that?

16 A: Well I told him how everything went down.

17 Q: Okay. Can you tell the Judge what you told Mr. Anderson
18 today?

19 A: Yes, sir. I told him I went out to Crystal house, she
20 called me. She called me and I went out there to her house
21 and looked at her leg. She had a bruise on her ankle. So I
22 asked her could I use the barn. You know when I walked in the
23 house nobody was in the house but the step-niece, Crystal's
24 two kids, and Crystal. That's all I seen. And so Crystal
25 called me back there in the room so I looked at her leg and

1 then I asked her could I use the barn. She said yeah, you
2 can. So Claudia, Shrimp, and Kendall, them Crystal's two kids
3 and the step-niece, she unlocked the barn for me. So I went
4 in there and then started doing my workout.

5 Q: Okay.

6 A: And so I text Crystal back on that same number and told
7 her I was finished and she could come and lock the barn now.
8 That's when M.J. run out into the barn. I didn't know she
9 was there because I hadn't seen her.

10 Q: Okay.

11 A: And I was sitting there on the end of the bench you know
12 and the rack behind me. So M.J. got on the bench, pulled her
13 clothes off, pull her pants down and was sitting there. And
14 then when I turn around like this, I seen that she was naked.
15 So I got up, I said you're not going to get me in trouble.
16 You know then about that time Crystal walked in the door.

17 Q: Okay.

18 A: And asked me what was y'all doing. I said nothing. I
19 say I haven't even touched her.

20 Q: Okay. And you told Mr. Anderson all of that?

21 A: Yes, sir.

22 Q: Okay. Mr. Davis, I don't think I have any further
23 questions for you. Is there anything that you think I've left
24 out or neglected to ask about in Mr. Anderson's representation
25 of you?

1 A: Well he -- he didn't represent me you know to the fullest
2 that I thought he would you know.

3 Q: Thank you, Mr. Davis. Please answer any questions Mr.
4 Key has.

5 A: All right.

6 **CROSS EXAMINATION OF MR. DAVIS BY MR. KEY:**

7 Q: Mr. Davis, I believe you testified that you gave your
8 phone to law enforcement?

9 A: Yes, sir.

10 Q: And you got it back?

11 A: Yes, sir.

12 Q: Do you know if at trial law enforcement used anything
13 that came from your phone, directly from your phone that they
14 gave back to you?

15 A: Say that again.

16 Q: Did law enforcement introduce anything at trial at they
17 found from your phone?

18 A: Yes, sir. They said text message.

19 Q: Okay. Text messages from your phone at trial?

20 A: Yes, sir.

21 Q: Okay. And how many times did you meet with Mr. Anderson
22 before your trial?

23 A: I'd say a couple of times.

24 Q: A couple of times.

25 A: Yeah.

1 Q: Okay. And at least in the second time y'all met, he
2 reviewed some discovery with you?

3 A: Yes, sir.

4 Q: Okay. But you did not think it was all of the discovery.

5 A: No, sir.

6 Q: Okay. And you told Mr. Anderson your version of what
7 happened that night?

8 A: Yes, sir.

9 Q: But you didn't -- you did not ask him to look into Phil?

10 A: No, sir. I didn't.

11 Q: Okay.

12 **MR. KEY:** No further questions, Your Honor.

13 **THE COURT:** Any redirect?

14 **MR. WALLER:** Just very briefly.

15 **REDIRECT EXAMINATION OF MR. DAVIS BY MR. WALLER:**

16 Q: Mr. Davis, Mr. Key asked you about Phil, looking into
17 Phil. Phil is referenced throughout the trial as homeless.
18 Did you provide Mr. Anderson with any information about where
19 he might live or anything like that?

20 A: No, sir. What Phil -- no, sir. I didn't.

21 Q: Okay. To your knowledge was Phil homeless?

22 A: Phil was not homeless because Phil stayed in the trailer
23 right before my trailer, and then his mother stayed behind me,
24 then his grandmother stayed down the road, and his two aunts
25 stayed across the road parallel to my trailer.

1 Q: Okay. So you knew how to direct Mr. Anderson how to
2 locate Phil if he needed to?

3 A: Yes, sir.

4 Q: Okay. Nothing further. Thank you.

5 **THE COURT:** Anything else, Mr. Key?

6 **MR. KEY:** No, Your Honor.

7 **THE COURT:** Sir, you may step down. Thank you.

8 **MR. DAVIS:** Thank you.

9 **MR. WALLER:** Your Honor, the applicant would call Hank
10 Anderson.

11 **HANK ANDERSON, HAVING BEEN**

12 **FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

13 **DIRECT EXAMINATION OF MR. ANDERSON BY MR. WALLER:**

14 Q: Good morning, Mr. Anderson. How are you today?

15 A: I'm good, Mr. Waller. How are you?

16 Q: I'm doing well. Thank you for asking. Mr. Anderson, can
17 we -- I guess for the court reporter's purposes, can I get you
18 to state your full name for the record?

19 A: Yes. My name is Henry Morris Anderson, Jr.

20 Q: All right. Thank you very much. Mr. Anderson, how did
21 you come to represent Lindell Davis?

22 A: I do part time work for the public defender's office in
23 Marion and this case got assigned to me.

24 Q: Okay. Do you recall or do you have anything in your file
25 about when you were appointed to represent him?

1 A: It appears that either Scott Floyd or Vick Meetze met
2 with Mr. Davis on August the 15th of 2014 in the office, and
3 then I met with him on August the 19th when he had his initial
4 appearance August 19th, of 2014. That's when I actually met
5 with him for the first time.

6 Q: Okay. And the trial didn't take place until November of
7 '15; is that right?

8 A: Yes, sir.

9 Q: Okay. So you represented him for well over a year?

10 A: Yes, sir.

11 Q: Okay. What -- if you can, what were the general
12 allegations against Mr. Davis?

13 A: Solicitation of a minor and I guess CSC second.

14 Q: Okay. Factually what were they?

15 A: That he had sex with an underaged girl.

16 Q: Okay. When you met with Mr. Davis did he give you any
17 information or any potential defenses that he might have?

18 A: When I met with him for the first time, he just basically
19 told me that it didn't happen. That the young lady had taken
20 her clothes off, but that he didn't do anything.

21 Q: Okay. Did he ask you to investigate anything or follow
22 up on anything for him?

23 A: Not that my notes reflect.

24 Q: Okay. When did you have a complete copy of the discovery
25 in this case?

1 A: Usually we get it at the initial appearance and that
2 would have been August of 2014, if not then we would have
3 gotten it by the docket appearance which would have been
4 October the 29th of 2014. So I either had it in August or
5 October.

6 Q: Okay. Was there any -- was there any forensic testing
7 done on the victim in this case?

8 A: Yes, sir.

9 Q: Okay. Do you recall what was done?

10 A: I know that they I think did a rape kit on her. They
11 also took her to the care house and had her interviewed there.

12 Q: Okay. Did you have a chance to discuss the results of
13 both of those separate tests with Mr. Davis?

14 A: I don't have notes to reflect that, but my general policy
15 is to discuss any and all discovery with my client.

16 Q: Okay. Do you know if Mr. Davis had a chance to view any
17 video of the interview?

18 A: I mean he certainly had a chance to, I don't know if he
19 did.

20 Q: Okay. I believe he testified he was bonded out this
21 entire time?

22 A: Yes, sir.

23 Q: Okay.

24 A: We actually went to court to get the ankle monitor off of
25 him in November of 2014, Judge King did lift the ankle

1 monitor.

2 Q: Okay. While he was on the ankle monitor what are the
3 places he was allowed to go? Your office would have been
4 included?

5 A: That's correct.

6 Q: Okay. Was there any testing done on any of the phones
7 involved in this case?

8 A: I think they took some text messages off the phones, but
9 I don't know what kind of actual testing that they did.

10 Q: Okay. They didn't dump the phone. They just looked at
11 it; is that your understanding?

12 A: Yes, sir.

13 Q: Okay. Was there any search warrants or anything done for
14 any of the phones?

15 A: I think so, but I'm not sure. Mr. Davis may have given
16 them his phone voluntarily and there may not have been the
17 need for a search warrant.

18 Q: Okay. At what point was the decision made to go to trial
19 in this case?

20 A: That was Mr. Davis' decision.

21 Q: Okay. What did you do in preparation to get ready for
22 trial?

23 A: Well personally I didn't think that was a very good idea,
24 but he wanted to go to trial, so I got ready and you know went
25 over all of the discovery. I prepared cross examinations for

1 all of the witnesses or the potential witnesses. I prepared
2 an opening, prepared a closing and we went to trial.

3 Q: Okay. There were two eyewitnesses, right? Obviously,
4 the victim and an aunt in this case.

5 A: That's correct.

6 Q: Were y'all aware that both of them were going to testify?

7 A: Yes, sir.

8 Q: Okay. There was some -- did you and Mr. Davis ever have
9 the conversation about him potentially being set up in this
10 case?

11 A: He just continued to tell me that it didn't happen.

12 Q: Okay.

13 A: That she did take her clothes off, but that they did not
14 have sex.

15 Q: Okay. What did y'all discuss about his phone and these
16 text messages that were back and forth between his phone and
17 the victim's phone?

18 A: I told him they weren't very good.

19 Q: Okay. Was there any potential defense to those?

20 A: Not that -- he -- I think he told me that someone else
21 sent those messages, but I mean I never got any indication of
22 that someone else so I couldn't call them as a potential
23 witness.

24 Q: Okay. Was there any -- was there any way that you saw to
25 show that someone else had his phone?

1 A: No, sir.

2 Q: Okay.

3 A: Not without being able to call somebody as a witness.

4 Q: Have you had a chance to review the transcript from this
5 case?

6 A: Yes, sir. I have.

7 Q: Do you have a copy there with you?

8 A: Yes, sir. I do.

9 Q: Okay. If I can get you to turn to the solicitor's
10 closing argument, we'll start on Page 152.

11 A: All right.

12 Q: Beginning on Line 22, it's the last full paragraph down
13 there.

14 A: Yes, sir.

15 Q: And continuing I guess just onto the beginning of the
16 next page. Was there ever -- was there ever any discussion of
17 Mr. Davis you know trying to avoid detection or any of the
18 things referenced in the solicitor's closing on Page 152 Line
19 22, at the beginning of Line 22?

20 A: So what's the question?

21 Q: Was there ever any -- was there any testimony that this
22 was anything but an isolated incident that the jury heard?

23 A: No.

24 Q: Was there -- did you feel that the solicitor's comments
25 right there were objectionable referencing -- potentially

1 referencing other activities?

2 A: At the time, no, I didn't.

3 Q: Okay. All right. If we can jump over to Page 157
4 beginning on Line 11 and continuing through Line 16. The
5 solicitor when addressing the jury uses the pronoun we when
6 talking about -- it says and we have to do what the law says
7 we got to do. We've got to hold him accountable for what they
8 did no matter how tough it is. That's the way this country
9 works, and we can't be letting 50 something year old men who
10 are having sex with 15-year-olds just walk away like it didn't
11 happen. Did you have any reason to not objecting to him using
12 we when talking to the jury?

13 A: No, sir.

14 Q: All right. And finally if I can get you to turn to Page
15 160 Line ten, ten through 13.

16 A: All right.

17 Q: Is there any testimony that you recall during the trial
18 that Mr. Davis was going to look out for this family?

19 A: No, sir.

20 Q: Okay. Was there any indication that he was in any sort
21 of position of power over the victim?

22 A: No, sir.

23 Q: Okay. He wasn't a teacher or anything like that and able
24 to exercise mental control over her, was there?

25 A: No, sir.

1 Q: Was there a strategy to not objecting to those comments
2 right there?

3 A: No, sir.

4 Q: Okay. All right. What is your understanding about the
5 limitations that an interviewer or law enforcement is allowed
6 to testify to regarding disclosures made by a victim of sexual
7 assault?

8 A: If they're qualified, I think they can testify about what
9 the child told them. I don't think they can testify as to
10 whether or not they believe it to be truthful or ---

11 Q: Okay. So testimony limited to the time and the place?

12 A: Yes, sir.

13 Q: Okay. Did you have any -- any reason to object to the
14 interviewer in this case or Investigator Jackson I believe
15 testifying that the intercourse did in fact take place? Did
16 you have any reason to object to just those two people
17 testifying that it did in fact take place?

18 A: Did I have any -- I don't think I had any reason to
19 object, no.

20 Q: Okay.

21 **MR. WALLER:** I beg the Court's indulgence, please.

22 **BY MR. WALLER:**

23 Q: Thank you, Mr. Anderson. I have nothing further.

24 **THE COURT:** Mr. Waller, was there anywhere in particular
25 within the transcript that led you to ask Mr. Anderson that

1 last question or those last couple of questions concerning
2 those officer's testimony?

3 **MR. WALLER:** Your Honor, it is kind of in the transcript
4 as well as the Anders Brief that was filed on the appeal.
5 That was the issue raised.

6 **THE COURT:** Okay.

7 **MR. WALLER:** And I have a copy of that.

8 **THE COURT:** It's probably in here.

9 **MR. WALLER:** Thank you, Your Honor. That was the issue
10 that was raised on appeal.

11 **THE COURT:** Mr. Key.

12 **CROSS EXAMINATION OF MR. ANDERSON BY MR. KEY:**

13 Q: Mr. Anderson, could you briefly describe what the state
14 alleged happened in this case, the state's theory?

15 A: The state's theory was basically that he went over to the
16 house and was working out. He sent a text message to the
17 little girl, she came outside. They were having sex while
18 they were in the shed.

19 Q: Did anyone walk in on them while they were having sex in
20 the shed?

21 A: Yes, sir. The aunt did.

22 Q: And what was your defense theory to counter the state's
23 theory?

24 A: Well obviously it wasn't very good. I -- that maybe the
25 aunt didn't see what she thought she saw.

1 Q: Okay. I believe it was -- a lot of your questions were
2 focused on the actual penetration. Okay. Did the aunt ever
3 testify that actually saw penetration happen?

4 A: No, sir.

5 Q: Okay. And did -- did Mr. Davis ever mention to you that
6 Phil had his phone the night of the incident?

7 A: In my notes where we met and talked, I don't see that
8 anywhere in my notes, but I mean he may have told me that. I
9 mean I think he told me that he didn't send that text message.

10 Q: Do you recall if that came up at trial?

11 A: I don't recall.

12 Q: Okay. But if it's in the transcript would you agree?

13 A: Yes, sir.

14 Q: Okay. Do you have the transcript in front of you?

15 A: Yes, sir. I do.

16 Q: Okay. On Page 123 of the record on appeal which is the
17 transcript and this is the Anders Brief ---

18 A: All right.

19 Q: Solicitor Richardson began this question: And did she
20 disclose --- and you objected. Do you see that?

21 A: Yes, sir.

22 Q: Okay. And then so you made your objection, and your
23 objection was overruled based on the time and place exception.

24 A: Yes, sir.

25 Q: Okay. Have you had a chance to look at the Anders Brief

1 in this case?

2 A: Yes, sir, very briefly.

3 Q: Okay. And was that the issue argued on appeal pursuant
4 to Anders?

5 A: Yes, sir.

6 Q: Okay. But ultimately the appeal was denied?

7 A: Yes, sir. That's correct.

8 Q: Okay. Okay. Now to the solicitor's closing argument, I
9 believe Mr. Waller asked you if there was any testimony that
10 anything like this had happened more than just the one time;
11 is that correct?

12 A: I mean, I -- he may have asked me that. I don't
13 remember.

14 Q: Okay. Well on the -- on Line 16 through 21 ---

15 A: What page?

16 Q: Of Page 152 of the transcript.

17 A: All right.

18 Q: Solicitor Richardson is explaining that this is not a
19 typical criminal case; is that correct?

20 A: Yes, sir.

21 Q: Okay. And then he goes into this next part talking about
22 criminal sexual conduct cases and how they differ from
23 criminal cases or regular criminal cases, correct?

24 A: Correct.

25 Q: And you did not object to that part of the argument?

1 A: No, sir. I didn't.

2 Q: Okay. Do you see any reason you should have objected to
3 that?

4 A: No, sir.

5 Q: Could you explain why?

6 A: I mean I didn't think it was objectionable.

7 Q: Okay. Now on Page 157 of the closing argument I believe
8 you testified earlier that you didn't see a reason for
9 objecting to the solicitor using the term we on Lines 11
10 through 16.

11 A: Yes, sir.

12 Q: Okay. Do you see anything objectionable to that portion
13 of the solicitor's argument now?

14 A: I mean I guess technically I could have objected to it
15 and said he was trying to personalize himself and the jury,
16 but I mean no, I don't think I would object to it now and I
17 didn't object to it then.

18 Q: Okay. Did he -- did the solicitor ever ask the jury to
19 place themselves into the shoes of the victim?

20 A: Not that I'm aware of.

21 Q: Do you have a general strategy whether to object or not
22 during the state's closing argument?

23 A: It's got to be pretty egregious for me to object.

24 Q: Okay. And why is that?

25 A: I just don't think you should object during someone's

1 closing. I don't think you should object during someone's
2 opening.

3 Q: All right. Mr. Anderson, could you briefly describe your
4 investigation or preparing for this case to go to trial?

5 A: Yes, sir. I talked to Mr. Davis and made sure that's
6 what he wanted to do. I didn't think we had a very good
7 chance, but he indicated that he didn't do it, that he wanted
8 to go to trial. Like I indicated earlier we prepared, or I
9 prepared, an opening and several cross examinations and
10 started working on my closing.

11 Q: How many times did you meet with Mr. Davis?

12 A: According to my file, we met on four occasions that I
13 know of. I think there was more than that, but that's what's
14 in the file.

15 Q: Okay. And he always maintained his innocence?

16 A: Yes, sir.

17 Q: And wanted to go to trial?

18 A: Yes, sir.

19 Q: Okay. Mr. Anderson, did this -- you stated that you
20 recalled seeing the DNA report in this case from the rape kit,
21 or did you see the DNA report from the rape kit in this case?

22 A: I know that David called the office in July of 2015 and
23 said that he was taking the case off the trial list because
24 the DNA testifying wouldn't -- was not available. And I don't
25 think the DNA -- I don't think there was any DNA and if there

1 was any it certainly didn't show anything that Mr. Davis had
2 done.

3 Q: Okay. So his DNA or his semen was not found in the
4 victim; if that's in the transcript would you agree to that?

5 A: Yes, sir.

6 Q: Okay. And you argued that there was no DNA found so
7 there was no penetration?

8 A: Yes, sir.

9 Q: Okay. Did this case boil down to the credibility of the
10 victim?

11 A: Yes, sir.

12 Q: Is that typical of child sex cases?

13 A: Yes, sir. There was more to it in this case. There was
14 a witness that said she walked in on them, and there was also
15 some evidence from the cellphone. So there was a little bit
16 more to it in this case.

17 Q: Okay. Do you recall if any of the text messages were
18 ever found off of his cellphone?

19 A: I don't. I mean they show the number that they had come
20 from, but I don't know what if anything was found on his
21 phone.

22 Q: Okay. Would that have been from his cell phone or from
23 the victim's cellphone, the text messages that were entered
24 into evidence?

25 A: I can't -- I can't remember.

1 Q: Okay.

2 MR. KEY: Nothing further, Your Honor.

3 THE COURT: Any redirect?

4 MR. WALLER: No further questions, Judge.

5 THE COURT: Mr. Anderson, you may step down, sir.

6 Mr. Waller, anything else?

7 MR. WALLER: Nothing further from the applicant, Your
8 Honor.

9 THE COURT: All right. I'll take a look at it. I'll let
10 you know.

11 MR. WALLER: Thank you, Your Honor.

12 MR. KEY: Thank you, Judge.

13 (COURT IS ADJOURNED)

C E R T I F I C A T E

I, the undersigned, Sallie Beth Todd, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the Transcript of Record of the hearing held in the interest of Lindell Davis versus State of South Carolina in the Court of Common Pleas for Marion County, Florence County Courthouse, Florence, South Carolina, on December 19, 2019.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Sallie Beth Todd, CVR

Official Reporter

February 18, 2021.

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2018-CP-33-0444

ORDER OF DISMISSAL

Respondent.

An evidentiary hearing into the matter convened before the undersigned at the Florence County Courthouse on December 19, 2019. Applicant was present and represented by Jonathan D. Waller. Assistant Attorney General Samuel L. Key represented the State. Applicant and Henry M. Anderson, Jr. (Counsel) testified at the hearing. Also before the Court were the Marion County Clerk of Court records for the underlying convictions; Applicant's records from the South Carolina Department of Corrections (SCDC); Applicant's entire appellate records including the trial transcript; and the records of this PCR action. After a full review of the record before the Court

and observation of the testimony presented, this Court finds Counsel was not constitutionally ineffective. Therefore, this action is denied and dismissed with prejudice.

I. PROCEDURAL HISTORY

Applicant is confined in SCDC pursuant to orders of commitment of the Marion County Clerk of Court. During its November 2014 term, the Marion County Grand Jury indicted Applicant for second-degree criminal sexual conduct (CSC) with a minor and criminal solicitation of a minor (2014-GS-33-00312). Henry M. Anderson, Jr., Esquire (Counsel) represented Applicant. Assistant Solicitors David Richardson and Lauren Hummel prosecuted the case.

On November 17, 2015, Applicant proceeded to a jury trial before Judge William H. Seals, Jr. The jury convicted Applicant as indicted. Judge Seals sentenced Applicant to concurrent terms of fifteen years imprisonment for second-degree CSC with a minor and eight years imprisonment for criminal solicitation of a minor. Applicant appealed.

Chief Appellate Defender Robert M. Dudek perfected Applicant's appeal by filing an *Anders*¹ brief. On December 6, 2017, the Court of Appeals dismissed the appeal. *State v. Davis*, Op. No. 2017-UP-450 (S.C. Ct. App. filed December 6, 2017). Thereafter, Applicant, *pro se*, petitioned our Supreme Court for a writ of certiorari to review the court of appeals' decision; however, the Supreme Court denied certiorari on June 5, 2018. *State v. Davis*, S.C. Sup. Ct. Order dated June 5, 2018. The case was remitted back to the circuit court on June 19, 2018.

Applicant timely commenced this PCR action on June 18, 2018.

¹*Anders v. California*, 386 U.S. 738 (1967).

II. FACTS

On May 31, 2014, Christal Saldierna (Aunt) caught Applicant having sex with her fifteen-year-old niece (Minor). Minor consented to the sexual relationship. At trial, Counsel argued Applicant did not penetrate Minor.

Applicant, Aunt, and Aunt's boyfriend were friends. Aunt's boyfriend and his friends used to work on cars and exercise in a shed on her property.² The inside of the shed was well lit and housed tools, weightlifting equipment, and a punching bag. (Tr. 86, 89).

Aunt's boyfriend died in October 2012; however, Applicant and Aunt remained friends, and Applicant was allowed to use the weightlifting equipment in the shed. (Tr. 86–87). He came over almost every day. (Tr. 87). While he was allowed to use the shed, he did not have a key. Aunt, or another family member, would unlock the shed for Applicant, and when he was finished, someone would lock the shed behind him. (Tr. 58). Minor also came over to Aunt's house almost every day.³ (Tr. 55).

On May 31, 2014, Minor was at Aunt's house, and Applicant was using the shed to lift weights. Applicant and Minor communicated that night through text messages. (Tr. 59–63). The State entered into evidence pictures of the shed, a picture of a weight bench, and three pictures of text messages.

The first text message was sent from Minor to Applicant at 9:30 pm. The second text message was Applicant's response at 10:00 p.m. The third text was from Applicant to Minor at

² The shed on Aunt's property is referred to throughout trial as a shed, barn, and garage. For ease of reference, it will be referred to as the shed in this order.

³ At the time of trial, Minor was living with Aunt.

10:03 pm. The criminal solicitation of a minor charge stems from the 10:00 pm and 10:03 pm text messages that Applicant sent Minor. (Tr. 57–64).

It is unclear from the record what Applicant sent Minor in the 10:00 p.m. text message. However, Minor testified at trial and the record indicates that at 10:03 pm—Applicant texted Minor, “Come lock up.” Minor stated that after she received this text from Applicant, she went outside to go lock the shed. Minor stated she entered the shed, and Applicant was inside. (Tr. 57–64).

Minor stated that when she entered the shed, Applicant pulled down her pants, and they had sex. (Tr. 64). Minor recalled what she and Applicant were wearing that night. (Tr. 64–65). She stated that after Applicant pulled down her pants, she layed down on her back on the weight bench. Minor recalled that Applicant was wearing athletic shorts that night, but he did not take his shorts off completely. Instead, he pulled down the front of his shorts and exposed his penis to her. She testified that after he exposed himself to her, “He penetrated me.” (Tr. 65). She stated that while they were having sex, her legs were over his sholders. She said they were not having sex for long before Aunt walked in. (Tr. 66).

During cross examination, Counsel questioned Minor about the text messages, two statements she gave to the police, and her relationship with her mother and Aunt. (Tr. 69–85).

Aunt testified at trial. (Tr. 86–107). She stated she heard Minor exit the front door to go lock the shed. (Tr. 87–88). After a short period of time, Aunt went to check and see what was taking Minor so long. Aunt stated she walked out to the shed, and entered the shed. (Tr. 88). When asked what she saw when she entered the shed, Aunt stated, “I see [Minor] laying on a bench holding bars. [Applicant] was straddling the bench. And I couldn’t see the back of his shorts down, but he was humping her.” (Tr. 88). Aunt recalled Minor’s pants were at her ankles and her legs

were over Applicant's shoulders. Aunt reiterated that Applicant was humping Minor, but admitted she could not see the front of Applicant. (Tr. 89). When asked what happened next, Aunt said, "I told him to get the fuck off my neice." (Tr. 90). Counsel's cross-examination primarily focused on the fact that Aunt could not tell if Applicant penetrated Minor. (Tr. 95–101).

After Aunt testified, the State called the deputy who arrived at the scene, and then the lead investigator. After the lead investigator's testimony, the State indicated that it would call one more witness. However, the case concluded for the day before the State called its final witness, Sally Williamson. (Tr. 133).

The following day, Williamson testified she was a forensic interviewer and therapist with the Care House of the Pee Dee. Williamson interviewed Minor on June 16, 2014. She was not qualified as an expert. (Tr. 136–38). Williamson described the process and setting of a typical forensic interview. Minor's interview was a usual interview. (Tr. 138–40). At trial, the State questioned Williamson about Minor's demeanor and ability to speak with Williamson. Williamson answered:

[Minor] appeared to understand me and comprehend the process as I was explaining it. She was very open and forth coming with answering questions and sometimes children are guarded in some way or unable or unwilling to provide information, but she was very forthcoming with information and I found her to give consideration to my questions and provide as much information as possible.

(Tr. 140–41). Williamson then affirmed that Minor disclosed penetration or some type of sexual abuse, and Minor communicated the time and place the incident occurred. (Tr. 141). The State then asked Williamson specifically what Minor disclosed. Williams answered:

[Minor] disclosed that it occurred at her aunt's house in -- her Aunt Christal['s] house I believe in a barn where there was some weights set up, a weightlifting bench. And the time --- I don't remember the

exact time. I have to look through -- I remember that it was a number of days before the actual interview took place in mid June.

(Tr. 141).

The State rested its case after Williamson's testimony. The jury exited the courtroom, and Counsel moved for a directed verdict on both charges. The motion was denied, and the jury re-entered the courtroom. (Tr. 150). Counsel did not call any witnesses and rested. (Tr. 151). Counsel renewed all previous motions, and the motions were denied. The case then proceeded to closing arguments. (Tr. 151–73).

After closing arguments, the trial court charged the jury. (Tr. 173–82). There were no objections to the given charges. The jury found Applicant guilty on both charges. (Tr. 183). The trial court sentenced Applicant to concurrent sentences of fifteen years for second-degree CSC with a minor and eight years for criminal solicitation of a minor. (Tr. 185).

III. ALLEGATIONS

In his original PCR application, Applicant alleged he is being held in custody unlawfully due to ineffective assistance of Counsel. Applicant alleged Counsel was ineffective for:

- a. “[F]ailing to inform the Court of [Applicant’s] fundamental right to testify or not to testify is a personal right that can only be waived by the defendant;” and
- b. “[F]ailing to object or file a motion that the Court failed to inform [Applicant] to allocate.”

On December 13, 2019, Applicant, through PCR counsel, amended his application alleging ineffective assistance of Counsel for:

- a. Failure to properly investigate the facts and circumstances of the case;
- b. Failure to object to impermissible testimony from Investigator Jackson and Sally Williamson; and
- c. Failure to object to impermissible comments made by the State during closing arguments.

At the outset of the PCR hearing, Applicant, through PCR counsel, informed the Court he was only going forward on the allegations contained in the amended application. Therefore, to the extent the allegations contained in the original application could be construed as separate grounds from the amended application, the Court finds Applicant has waived the allegations in his original application. Accordingly, the only issues properly before the Court are those presented in the amended application.

IV. PCR TESTIMONY

Applicant testified at the PCR hearing and recalled being arrested and charged with solicitation of a minor and second-degree CSC with a minor. Applicant stated he bonded out a couple weeks after being arrested, and Counsel was appointed to represent him. Applicant recalled first meeting Counsel at a roll call hearing, but at that time he did not have a chance to discuss anything regarding the case with Counsel. Applicant recalled first discussing the specifics of the case with Counsel during their second meeting in a room in the courthouse. Applicant recalled Counsel had a hard copy of the discovery at that time. However, Applicant testified they did not fully discuss the discovery at that time, and he never got a chance to review all of the discovery. Applicant stated he told Counsel Minor and Aunt had set him up during their second meeting.

Applicant testified Counsel never told him about the State's allegations against him, but he did remember Counsel talking about the warrants. However, Applicant could not recall whether Applicant discussed the facts in the warrants with him. Applicant told Counsel he did not commit the alleged acts, he was being set-up, and he had thirteen daughters he was very protective of. Applicant testified he and Counsel met once or twice to prepare for trial, and Counsel had the discovery during their second meeting.

Applicant explained he told Counsel he was set up by Minor and Aunt. Applicant testified Aunt had a shed with work-out equipment behind her house, he was friends with Aunt's deceased husband, and how he continued to use the shed and the work-out equipment. Additionally Applicant told Counsel Aunt called him that night asking him to come over because she hurt her foot. Also, Applicant claimed he let a man named Phil use his phone that night. Applicant stated Aunt called his phone from Minor's phone, Phil answered and relayed to Applicant that Aunt had called. Applicant stated Aunt called his phone again from Minor's phone and Applicant answered. Applicant stated he went over to the house, looked at Aunt's foot, and then went to the shed to work-out. Applicant testified he texted Aunt back on the same number she had called him on, Minor's, and told her he was done and to come lock-up.

Applicant stated Minor came out to the shed, and he was sitting on the weight bench. Applicant claimed Minor then got on the bench, took her clothes off, pulled her pants down, and was sitting there naked. Applicant stated he turned around and saw she was naked, got up, and said "you're not gonna get me in trouble." Then, Aunt walked in and asked him what they were doing. Applicant responded and said "nothing, I haven't even touched her." Applicant stated he told Counsel all of this and he even gave a written police report to the same affect. Additionally, Applicant stated he gave his phone to law enforcement, but law enforcement eventually gave his phone back to him. Applicant stated law enforcement tested the phone, but he and Counsel never discussed anything about the phone being tested.

Applicant could not recall what he and Counsel did to prepare for trial. Applicant did not give Counsel any witnesses to investigate, but asked Counsel to look at his case closely. Applicant testified he never saw Minor's forensic interview or a transcript of the interview, and Applicant did not know about the interview until trial. Applicant did not ask Counsel to investigate or look

into Phil, and knows Counsel did not look into Phil. However, Applicant could have provided Phil's location to Counsel, but did not. Applicant testified he gave a DNA sample to law enforcement but did not know if any DNA testing was done from Minor.

Counsel testified he works part time for the Public Defender's Office in Marion. Counsel stated his file shows a different Public Defender met with Applicant at the Public Defender's Office on August 15, 2014. Counsel recalled first meeting Applicant on August 19, 2014, and he represented Applicant for over a year before trial.

Counsel recalled the State's theory was Applicant was at the house working out, he sent a text-message to Minor, Minor came out to the shed, and they were having sex on the weight bench when Aunt walked in catching them in the act. Counsel recalled the defense strategy was maybe Aunt did not see what she thought she saw. Counsel stated he focused a lot of his cross-examination on actual penetration, and Aunt never testified she actually saw penetration.

Counsel recalled Applicant told him in their first meeting he did not have sex with Minor. Applicant told Counsel that Minor took her clothes off, but he did not do anything to her. Counsel stated he usually gets a complete copy of the discovery at the initial appearance, which was August 2014 in this case, or by the docket appearance, which was October 2014 in this case.

Counsel recalled there being forensic testing of the Minor—there was a rape kit done, and Minor was interviewed at the Care House. Counsel could not specifically recall going over the results of the rape kit and interview with Applicant; however, Counsel testified his general policy is to discuss any and all discovery with his client. Further, Counsel testified Applicant had a chance to view the interview, but Counsel did not know if Applicant ever saw it. Counsel recalled the State took text messages from Applicant's phone, but he did not think the State ever tested the

phone by performing a data dump. Counsel thought the State had a search warrant for Applicant's phone, but also stated Applicant may have given his phone to law enforcement voluntarily.

Counsel testified it was Applicant's decision to go to trial, but Counsel told Applicant he did not think going to trial was a good idea; however, Applicant insisted on going to trial, and Counsel was ready for trial. Counsel stated he reviewed all the discovery in preparation for trial, prepared cross-examination questions for all potential witnesses, prepared his opening and closing arguments, and went to trial. Counsel recalled there were two eyewitnesses, Minor and Aunt, and he knew both would testify at trial.

Counsel did not recall Applicant telling him he was being set-up; rather, Applicant continued asserting it did not happen—Minor took her clothes off but they did not have sex. Counsel recalled discussing the text-messages with Applicant and informing the text-messages did not look good for the case. Counsel stated Applicant may have told him someone else sent the text messages, but Applicant never told Counsel who that person was to investigate or call as a potential witness. Counsel felt the only way to effectively show someone else had Applicant's phone and sent the text-messages was to have that other person as a witness. Counsel stated Applicant may have told him that Phil had his phone that night but that never came out at trial.

V. DISCUSSION

This Court has reviewed the entire record and evidence introduced at the hearing, and the Court has also observed the witnesses presented at the evidentiary hearing, judged their credibility, and weighed their testimony accordingly in its discussion below. Set forth below are findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2014).

To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained

prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). “The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985).

Applicant alleged Counsel was constitutionally ineffective for: (a) failure to properly investigate the facts and circumstances surrounding the allegations against Applicant; (b) failure to object to impermissible testimony by Investigator Jackson and Salley Williamson; and (c) failure to object to impermissible comments made by the State during closing arguments. For the reasons discussed below, the Court disagrees and finds Counsel was not constitutionally ineffective and denies relief and dismisses the action with prejudice.

a. *Failure to Investigate*

Applicant alleges Counsel was constitutionally ineffective for failure to properly investigate and prepare for trial. Specifically, Applicant alleges Counsel should have investigated a potential witness, Phil, and elicited testimony that Phil actually had Applicant's phone on the night in question. For the reasons discussed below, the Court disagrees.

Strickland requires trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688-689. “Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.” *Id.* at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action

or inaction, counsel's performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Strickland*, 466 U.S. at 689.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). To support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. *Id.*

The Court finds Counsel reasonably conducted his investigation surrounding the case. Applicant testified he told Counsel someone had borrowed his phone on the night in question; however, Applicant testified he did not give Counsel any witnesses to look into, and he did not tell Counsel that Phil had his phone or how to locate Phil to investigate. While Applicant did tell law enforcement that Phil had his phone in his statement, he still never told Counsel about Phil or how

to find Phil. Therefore, the Court finds Counsel was not deficient for failing to investigate Phil as a potential witness because Applicant never provided Counsel with any information on who Phil was or how to find him.

The Court also finds Applicant has failed to show prejudice from Counsel's alleged failure to investigate Phil as a potential witness. First, there has been no evidence, other than Applicant's own self-serving testimony, introduced to support Applicant's assertion that Phil had his phone the night in question. For Applicant to show Counsel's alleged failure to investigate Phil prejudiced him, either Phil needed to credibly testify at the PCR hearing or Applicant must have introduced something supporting his assertion that Phil had his phone. *See Glover*, 318 S.C. at 498–99, 458 S.E.2d at 540 (stating to support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence). Here, no such supporting evidence was introduced at the PCR hearing; therefore, Applicant has failed to show prejudice.

Second, Applicant's own testimony regarding what happened the night of the incident does not support a showing of prejudice. While Applicant testified Phil had his phone the night in question, Applicant's testimony also shows that Applicant also had access and control over his phone. Applicant testified Aunt called his phone, from Minor's phone, and Phil answered. Phil relayed to Applicant that Aunt had called, and Applicant answered the phone when Aunt called back from the same number. Further, Applicant testified *he* texted the number (Minor's) when he was done lifting weights to "come lock up." This testimony shows that Applicant still maintained control over his phone that night. Therefore, Applicant has failed to show how Counsel's failure

to investigate Phil as a potential defense witness prejudiced him because Applicant still asserted he had his phone and sent a text message to Minor's number that night.

Based on the foregoing, Applicant has failed to show Counsel was deficient for failing to investigate Phil as a potential witness, Applicant merely told Counsel *someone* else had his phone the night of the incident and never provided Counsel with who that someone was or how to locate them. Further, Applicant has failed to show prejudice resulted because there was nothing introduced at the PCR hearing to support Applicant's assertion that Phil had his phone, and Applicant's own testimony shows that he had access and control over his phone. Accordingly, the Court denies relief on this allegation and dismisses it with prejudice.

Applicant also asserted Counsel was constitutionally ineffective for failing to properly prepare for trial. The Court disagrees, as Counsel credibly testified he reviewed all the discovery and thoroughly prepared for trial. Counsel articulated his trial strategy—Counsel focused his cross-examination and arguments on the fact that Aunt never saw penetration. Counsel also clearly attacked Minor's credibility at trial. (Tr. 68–85). Counsel questioned Minor about her prior inconsistent statements, and Minor cutting herself. (Tr. 79–85). Counsel used Williamson's testimony to support his argument that Minor was not credible in his closing argument. (Tr. 165–66). Counsel also elicited testimony from Sally Williamson that Minor told her she cut herself because she was angry at her mother. (Tr. 148–49). The trial transcript reflects that Counsel was clearly well prepared for trial, and the Court finds Counsel's articulated trial strategy reasonable based on the facts of this case. Therefore, this allegation is denied and dismissed with prejudice.

There was testimony regarding law enforcement obtaining Applicant's phone and looking through his text messages and pictures. Applicant testified he gave law enforcement his phone, which was returned to him. The Court finds Applicant's PCR testimony shows he voluntarily gave

law enforcement his phone to look through. Additionally, Applicant voluntarily consented to a search of his phone. (Tr. 117) (State's Exhibit 2).

Finally, Applicant admitted his phone received two calls from Minor's phone number the night in question, and admitted to texting Minor's number on the night in question. Therefore, Counsel cannot be deficient for failing to investigate anything regarding the phone records because Applicant admitted it was his phone, he spoke to Aunt on his phone when Aunt called him from Minor's number, and he texted Minor's number to "come lock up" after he was finished lifting weights. Additionally, the Court finds not credible Applicant's self-serving testimony that someone else sent the text messages to Minor. Therefore, Counsel was not deficient for failing to investigate Applicant's phone records. Further, Applicant cannot show prejudice because he admitted to the phone calls and at least one of the text messages. Accordingly, this allegation is without merit and is denied and dismissed with prejudice.

b. *Failure to object to impermissible testimony by Investigator Jackson and Sally Williamson*

Applicant alleges Counsel was constitutionally ineffective for failing to object to Investigator Jackson and Sally Williamson testifying that Minor disclosed sexual penetration to them. The Court disagrees.

Subsection 17-27-20(b) of the South Carolina Code (2014) provides that post-conviction relief "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." "[E]rrors which can be reviewed on direct appeal may not be asserted for the first time, *or reasserted*, in post-conviction proceedings." *Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 519 (1993) (emphasis added).

Applicant alleged Counsel was ineffective for failing to object to Investigator Jackson testifying Minor disclosed penetration. At trial the State asked Jackson, "And did she disclose ---

.” Counsel immediately objected stating, “I think that’s already been asked and answered. [Minor] testified. I think it’s repetitive. I think it’s cumulative.” The State responded, “Time and place exception, Judge.” Counsel’s objection was overruled. The State then asked, “[D]id Minor disclose to you about the sexual penetration in the shed?” Jackson responded, “Yes, sir, she did.” (Tr. 123). Counsel objected to Jackson testifying that Minor disclosed penetration, and this issue was raised on appeal. (Tr. 123) (*Anders* Brief). Specifically, Applicant argued on direct appeal:

The [trial] [c]ourt erred by allowing Investigator Jackson to testify [Minor] told her that “sexual penetration” occurred in this case since this testimony went beyond the “time and place exception,” and it was highly prejudicial hearsay testimony where [Minor] admitted she wanted to have sex with [Applicant], but where [Applicant] told the police penetration never occurred before [Aunt] walked into the room.

(*Anders* Brief 1; 3).

First, Counsel was not deficient for failing to object to Jackson testifying Minor disclosed penetration because Counsel properly objected at trial. Second, Applicant cannot reassert this issue in PCR because it has already been asserted and rejected by both the Court of Appeals and our Supreme Court on direct appeal. Therefore, Applicant’s allegation Counsel was constitutionally ineffective for failing to object to Jackson’s allegedly impermissible hearsay testimony regarding penetration is denied and dismissed with prejudice.

Applicant also alleged Counsel was ineffective for failing to object to Sally Williamson testifying Minor disclosed sexual penetration. At trial, the State asked Williamson, “And did [Minor] make a disclosure of penetration or some type of sexual abuse to you?” Williamson responded, “Yes, she did.” The State then asked if Minor gave Williamson “a time and place for when that happened?” Williamson responded Minor disclosed it occurred in the shed at Aunt’s

house, and the abuse occurred “a number of days before the actual interview took place in mid-June.” (Tr. 141). Counsel did not object to Williamson stating Minor disclosed penetration.

However, on cross-examination, Counsel also asked Williamson about Minor’s disclosure of the incident. Counsel asked, “And [Minor] told you I don’t even say stuff like this dot dot. *We were just fucking that’s it basically*. Is that what she told you?” Williamson agreed. (Tr. 147–48) (emphasis added). Counsel then asked, “At no point in time when she was describing what happened that night did she ever tell you that he had his - - had my leg on top of his shoulders, did she?” (Tr. 148).

At the PCR hearing, Counsel testified he did not think he had any reason to object to Williamson testifying Minor disclosed penetration to her. At first glance, the State’s question and Williamson’s answer could be viewed as impermissible hearsay testimony offered to improperly bolster Minor’s testimony. However, when looking at Williamson’s testimony as a whole, it is clear Counsel wanted to get into the details of Minor’s disclosure to Williamson. As Counsel stated in his closing argument, “I’m glad Ms. Williamson testified because she let me know that Minor didn’t describe it the way she described it to you all.” (Tr. 171).

The Court finds Counsel was not deficient for failing to object to Williamson’s testimony on direct that Minor disclosed penetration. This Court finds, as noted above, that Counsel articulated a valid and reasonable trial strategy for attacking Minor’s allegation penetration occurred by attacking Minor’s credibility in using her prior inconsistent statements. From the transcript, it is clear Counsel felt Minor’s forensic interview was inconsistent with the testimony she gave at trial, and wanted to get in the details of the disclosure to show how Minor’s trial testimony had changed from her forensic interview. The Court will not second guess Counsel’s trial strategy of attacking Minor’s credibility with the specifics of her disclosure to Williamson.

See Strickland, 466 U.S. at 691 (“Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.”). Therefore, Counsel was not deficient for failing to object to Williamson testifying Minor disclosed penetration.

Further, Applicant has failed to show prejudice resulted from Counsel’s alleged deficiency. This Court recognizes that, like with any child-sex case, Minor’s credibility was a key issue. However, the entire case did not hinge on Minor’s credibility, and finds there was other admissible evidence introduced at trial substantially showing Applicant’s guilty. *See Smalls v. State*, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018) (“In determining whether the applicant has proven prejudice, the PCR court should consider the specific impact counsel’s error had on the outcome of the trial.”).

Specifically, the Court considers the facts that Aunt walked in on the act, Applicant and Minor exchanged text-messages that night, and Applicant’s own excited utterance, “I already know I’m going to jail.” (Tr. 66). Further, while Aunt could not affirmatively testify to Applicant penetrating Minor, she did testify, “I s[aw] Minor laying on a bench holding bars. [Applicant] was straddling the bench. And I couldn’t see the back of his shorts down, *but he was humping her.*” (Tr. 88) (emphasis added). Aunt also described seeing Minor’s legs over Applicant’s shoulders and her pants around her ankles. (Tr. 89).

Based on the above referenced admissible evidence from trial, the Court is not convinced the outcome of trial would have been different if Counsel had objected to Williamson testifying Minor disclosed penetration to her. Even without this testimony, the jury certainly could find Applicant penetrated Minor from Aunt’s testimony alone—she walked in, saw Minor lying on the bench with her pants around her ankles and legs on Applicant’s shoulders, and Applicant was humping Minor.

Based on all the foregoing, Applicant has failed to show Counsel was constitutionally ineffective for failing to object to Investigator Jackson and Sally Williamson testifying Minor disclosed penetration to them. Accordingly, this allegation is denied and dismissed with prejudice.

c. Failure to object to the State's impermissible comments during closing argument

Finally, Applicant asserts Counsel was constitutionally ineffective for failing to object to the State's impermissible comments during closing arguments. Specifically, Applicant references the State's closing argument at pages 152 and 160 of the transcript. Applicant also asked Counsel if he took issue with the State using "we" when addressing the jury. This Court has reviewed the State's closing argument and finds it to be proper. Therefore, for the reasons discussed below, this allegation is denied and dismissed with prejudice.

To find whether a prosecutor's comments in closing argument violated a defendant's due process rights, the Court must determine whether the comments were improper, and if so, whether the improper argument so unfairly prejudiced the defendant as to deny him a fair trial. *Fortune v. State*, 428 S.C. 545, 549, 837 S.E.2d 37, 39 (2019). "Improper comments do not automatically require reversal if they are not prejudicial to the defendant." *Id.*, 428 S.C. at 550, 837 S.E.2d at 40 (quoting *Simmons v. State*, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998)). A PCR court must view the alleged impropriety of the prosecutor's argument in the context of the entire record, and the applicant has the burden of proving he did not receive a fair trial because of the alleged improper argument. *Id.*

"It is undisputed that closing argument is not merely a time for recitation of uncontroverted facts, but rather the prosecution may make fair inferences from the evidence." *United States v. Francisco*, 35 F.3d 116, 120 (4th Cir. 1994); *see also State v. New*, 338 S.C. 313, 319, 526 S.E.2d 237, 240 (Ct. App. 1999) ("Undoubtedly, a Solicitor may argue the State's version of the testimony

presented, and furthermore may comment on the weight to be accorded such testimony.”). A prosecutor should “prosecutor with earnestness and vigor” and “may strike hard blows, [but] is not at liberty to strike foul ones.” *Berger v. United States*, 295 U.S. 78, 88 (1935). “If a Solicitor’s closing argument remains within the record evidence and the reasonable inferences therefrom, no error occurs.” *New*, 338 S.C. at 319, 526 S.E.2d at 240. “On the other hand, a closing argument may be held improper where it appeals to personal bias or arouses the jury’s passions or prejudice.” *Id.* “[I]mproper suggestions, insinuations, and, especially, assertions of personal knowledge are apt to carry much weight against the accused when they should properly carry none.” *Berger*, at 88.

The Court has reviewed the State’s closing argument on pages 152–53 of the transcript and finds the State was merely contrasting the specific facts of this case with the typical facts of child-sex cases. The State explained that in typical child-sex cases, there are no eye-witnesses because usually everything is done in secret behind closed doors. The State explained this case was completely different from typical cases because Aunt actually walked in on Applicant and Minor having sex. The Court does not believe the State was alluding to facts not in the record—Applicant was trying to keep everything a secret—but was just attempting to illustrate why this case was different from typical child-sex cases. Therefore, the Court finds the State’s closing argument was not impermissible and Counsel was not deficient for failing to object to these comments.

On page 160 of the transcript, the State is instructing the jury on what it has to prove for Applicant to be guilty of second-degree CSC with a Minor. Applicant takes issue with the State stating, “The defendant is in a familiar or familia or custodial or has official authority over the child or big emphasis on or here the defendant is older than the victim,” because there was no indication Applicant was in a position of power or authority over Minor. However, there was

evidence at trial that Applicant is a family friend and comes over to the house every day to work out. The Court finds the State's comment is a reasonable inference from the evidence presented at trial. Further, the State tells the jury it does not matter that Applicant was in a position of authority over Applicant because he is older than the victim, which is accurate as the law states, "or is older than the victim." (Tr. 160); S.C. Code Ann. § 16-3-655(B)(2). The Court finds the State stayed with the record and its reasonable inferences in making these comments to the jury; therefore, Counsel was not deficient for failing to object.

Finally, Applicant takes issue with the State using the term "we" when addressing the jury. The Court has reviewed the State's entire closing argument and finds the State's use of the word "we" was not improper given the entire argument. The Court views the State's closing argument as the State arguing the facts and reasonable inferences of the facts in the case. Here, the facts were somewhat difficult for the State because Minor consented to and wanted to have sex with Applicant. The State was merely explaining that even though Minor, a fifteen year old girl, wanted to have sex with Applicant does not mean Applicant should not be held accountable for his actions. The State stated, "It's the way this county works, we can't be letting 50-something-year-old men who are having sex with 15 year olds just walk away from it like it didn't happen." (Tr. 157). In the Court's view, this was the State explaining that Minor's consent was irrelevant because the law makes sex between a fifty-four year old and fifteen year old illegal no matter the circumstances. Therefore, the State's use of the term "we" in its closing argument was not impermissible and Counsel was not deficient for failing to object.

The Court also finds Applicant has wholly failed to show how the State's closing argument resulted in him not receiving a fair trial. Applicant has merely hinted that the State's argument may have been impermissible; however, he has failed to claim in any way how the State's argument

infected the trial to the extent that it was unjust. Therefore, the Court finds Applicant has failed to show prejudice resulted for Counsel's alleged failure to object to the State's allegedly impermissible comments during closing argument. Accordingly, this allegation is denied and dismissed with prejudice.

VI. CONCLUSION

Based on all the foregoing, the Court finds Counsel was not constitutionally ineffective. Counsel reasonably investigate the facts and circumstances of the case. It is clear from the record Counsel wanted the details of Minor's disclosure to Williamson to come into evidence because Counsel's valid trial strategy was to attack Victim's credibility through her prior inconsistent statements, chiefly, her forensic interview. Applicant has failed to show prejudice resulted from these alleged deficiencies. Finally, Counsel was not deficient for failing to object to portions of the State's closing argument because the State's comments were admissible, and the Court finds the State's comments did not infect the trial to the extent Applicant's was denied his right to a fair trial. Accordingly, Applicant's action for PCR is denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's 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 PCR. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

THEREFORE:

1. The Court denies relief and dismisses the action with prejudice; and
2. Applicant shall be remanded to the custody of the State.

AND IT IS SO ORDERED.

D. CRAIG BROWN
Presiding Judge
Twelfth Judicial Circuit

 , South Carolina

10-19, 2020.

WITNESSES

Samantha Jackson

Marion County Sheriff

DOCKET NO. 2014-GS-33-00312

The State of South Carolina

County of

MARION

COURT OF GENERAL SESSIONS

NOVEMBER

TERM

2014

THE STATE

vs.

LINDELL DAVIS

David A Richardson

ARREST WARRANT NUMBER

2014A3310100282

2014A3310100281

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

268

Foreperson of Petit Jury

Date:

Indictment for

CRIMINAL SOLICITATION OF A MINOR
AND
CRIMINAL SEXUAL CONDUCT WITH A
MINOR SECOND DEGREE

3006
2014 NOV -6 P 2:53
MARION COUNTY SC
SHERIFF R. RHODES
CLERK OF COURT

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF MARION)

CRIMINAL SOLICITATION OF A MINOR

AND

CRIMINAL SEXUAL CONDUCT WITH A MINOR

SECOND DEGREE

At a Court of General Sessions, convened on NOVEMBER 6, 2014 the Grand Jurors of MARION County present upon their oath:

into 31
11/6/14

COUNT ONE- CRIMINAL SOLICITATION OF A MINOR

contact under age 18
2nd
11/6/14

That LINDELL DAVIS, a person eighteen years of age or older, did in Marion County, on or about May 31, 2014, knowingly contact or communicate with or attempt to contact or communicate with [REDACTED] a person who is under the age of eighteen, or a person reasonably believed to be under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity as defined in Section 16-15-375(5), or with the intent to perform a sexual activity in the presence of that person, in violation of Section 16-15-342, S. C. Code of Laws, 1976, as amended.

2nd
11/6/14

COUNT TWO- CRIMINAL SEXUAL CONDUCT WITH A MINOR SECOND DEGREE

11/4-10

That LINDELL DAVIS did in Marion County, State of South Carolina, on or about May 31, 2014, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a Minor in the Second Degree by engaging in sexual battery with a minor who was at least fourteen (14) years of age but who was less than sixteen (16) years of age, to wit: [REDACTED] whose date of birth is [REDACTED], 1999, and the Defendant was in a position of familial, custodial, or official authority to coerce the victim to submit or was older than the victim, in violation of Section 16-03-655(B)(2), S. C. 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.

The Defend. is Lindeell Davis,
Plac. W.G.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Marion
 STATE VS.
Lindell Davis

AKA:

Race: Black Sex: M Age: 56DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Mullins, SC 29574-6673DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Minor / Criminal solicitation of a minor0-10in violation of § 16-15-0342 of the S.C. Code of Laws, bearing CDR Code # 2999

☒ 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:

Richardson, David A

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 6 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 today § 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	\$ <u>100⁰⁰</u>
§ 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	\$ <u>25⁰⁰</u>
§ 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	\$ <u>5⁰⁰</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

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: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Sherry R. Rhodes
Leisha Reed

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2157Sentence Date: 11/16/15

FILED
 2015 NOV 25 AM 11:47
 MARION COUNTY CLERK

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS
271COUNTY OF Marion
STATE VS.
Lindell DavisAKA:
Race: Black Sex: M Age: 56

DOB: SS#: DL#: SID#:

Address:
City, State, Zip: Mullins, SC 29574-6673

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor, or Attempt - victim under 16 years of age - Second degree

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0655(B)(2) of the S.C. Code of Laws, bearing CDR Code # 0397

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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:

Richardson, David A

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 15 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
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§ 14-1-213 (Drug Court Surcharge)	\$150
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Proviso 90.5 (SCCJA Surcharge)	\$5
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TOTAL	\$ 133.90

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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:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

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