

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

R. Markley Dennis, Jr., Circuit Court Judge

RECEIVED

APR 30 2013

S.C. Supreme Court

RANDALL SMITH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213702

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

THE STATE,)
)
VERSUS)
)
RANDALL LANE SMITH, SR.,)
)
DEFENDANT.)

04-GS-23-6874

TRANSCRIPT OF RECORD

DAY 1
NOVEMBER 7-9, 2005
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE D. GARRISON HILL

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

CHRISTY L KEDNOCKER, Esquire
Assistant Solicitor

THOMAS CREECH, Esquire
Attorney for the Defendant

DAWN V. KOFFSKEY
COURT REPORTER

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MATTERS AND MOTIONS

1 THE COURT: MS. KEDNOCKER IS HERE FOR THE STATE. YES,
2 MA'AM, YOU WANT TO CALL THE CASE?

3 MS. KEDNOCKER: YES, SIR. MAY IT PLEASE THE COURT.

4 THE COURT: YES, MA'AM.

5 MS. KEDNOCKER: IS SHE CALLING IT OR DO YOU WANT ME TO CALL
6 IT OR..

7 THE COURT: SHE CAN CALL IT. GO AHEAD.

8 MADAME CLERK: YOUR HONOR, THIS IS CASE 2004-GS-23-6874,
9 THE STATE VERSUS RANDALL SMITH, INDICTED FOR CRIMINAL SEXUAL
10 CONDUCT WITH A MINOR SECOND DEGREE.

11 THE COURT: OKAY. MR. SMITH IS HERE WITH HIS ATTORNEY, MR.
12 CREECH.

13 MR. CREECH: YES, YOUR HONOR.

14 THE COURT: ANY MOTIONS EITHER SIDE NEEDS TO MAKE AT THIS
15 TIME? YES, MA'AM, FOR THE STATE.

16 MS. KEDNOCKER: MAY IT PLEASE THE COURT, YOUR HONOR. A FEW
17 PRETRIAL MOTIONS FROM THE STATE.

18 FIRST, IF I MAY APPROACH, YOUR HONOR.

19 THE COURT: YES, MA'AM.

20 MS. KEDNOCKER: I HAVE PROVIDED THE DEFENSE WITH A STANDARD
21 RAPE SHIELD MOTION. I'LL GIVE ONE TO THE COURT.

22 THE COURT: OKAY. THANK YOU.

23 MS. KEDNOCKER: THIS WOULD BE JUST TO PUT DEFENSE COUNSEL
24 ON NOTICE THAT ANY REFERENCES, ANY INQUIRIES BY COUNSEL OR ANY
25 REFERENCES DURING SUMMATION, ARGUMENT, WITNESS EXAMINATION THAT

MATTERS AND MOTIONS

1 IS ALLEGING ANY SPECIFIC INSTANCES OF PRIOR SEXUAL KNOWLEDGE OR
2 SEXUAL ACTIVITY IS EXCLUDED BY RAPE SHIELD. THE STATE DOES THIS
3 -- I DO THIS STANDARD IN THESE CASES. I DON'T HAVE ANY REASON TO
4 BELIEVE THERE'S ANYTHING THAT WOULD COME IN -- WELL, THERE IS ONE
5 THING WE WILL DISCUSS IN A MOMENT. BUT THIS IS BASICALLY TO PUT
6 THE DEFENSE ON NOTICE IF THEY HAVE ANYTHING THAT THEY WANT TO
7 BRING IN, THEY WOULD NEED TO DO IT IN CAMERA, AND WE WOULD NEED
8 TO HAVE A HEARING BEFORE ANYTHING LIKE THAT WOULD BE BROUGHT OUT
9 IN FRONT OF THE JURY.

10 NEXT, YOUR HONOR, AS WE DISCUSSED BACK IN CHAMBERS, THERE
11 ARE THREE VICTIMS THAT THIS DEFENDANT IS CHARGED WITH HAVING
12 SEXUAL RELATIONS OR SOME FORM OF SEXUAL ASSAULT ON: HIS SON,
13 LANE SMITH -- THAT IS NOT THE CASE THAT THE STATE IS PURSUING
14 TODAY. -- HIS NEPHEW, Minor -- THAT IS THE CASE THAT
15 THE STATE IS GOING FORWARD ON TODAY; AND HIS OTHER NEPHEW, ASHTON
16 JULIAN, THE VICTIM IN THIS TRIAL'S BROTHER.

17 AS WE DISCUSSED IN CHAMBERS THE STATE IS NOT BRINGING IN OR
18 GOING INTO THE ALLEGATIONS AGAINST THIS DEFENDANT RELATED TO HIS
19 SON FROM 1997 TO 2002, BUT WE DID PUT DEFENSE COUNSEL ON NOTICE
20 THAT THAT WITNESS IS HERE AND IS PREPARED TO TESTIFY SHOULD THE
21 DEFENSE OPEN THE DOOR TO THAT LINE OF QUESTIONING. ALSO, ASHTON
22 JULIAN IS HERE, IF THE DEFENSE OPENS THE DOOR. WE SPENT A GOOD
23 BIT OF TIME BACK IN CHAMBERS DISCUSSING THE DISCLOSURE IN THIS
24 CASE. I DID JUST SPEAK WITH Minor AND INDICATE TO HIM THAT WE
25 ARE NOT GOING INTO THE ACTUAL DISCLOSURE. Minor INDICATED TO

MATTERS AND MOTIONS

1 ME THAT PART OF WHY HE CAME FORWARD IS HE JUST COULDN'T HOLD IT
2 IN ANYMORE. SO IT'S A COMBINATION OF SPEAKING WITH THOSE TWO
3 PARTIES, HIS BROTHER ASHTON AND LANE, THAT WE SPOKE ABOUT IN
4 CHAMBERS. I JUST WANTED TO GET ON THE RECORD THAT WE ARE NOT
5 GOING INTO THAT. DISCLOSURE IS GOING TO BE SOMETHING THE STATE
6 KIND OF MOVES PAST.

7 THE COURT: OKAY.

8 MS. KEDNOCKER: ALSO, WE DISCUSSED THE FACT THAT THAT 1999
9 ALLEGATION AGAINST THIS DEFENDANT FOR HAVING SEXUAL RELATIONS
10 WITH HIS DAUGHTER IS NOT GOING TO BE PURSUED BY THE STATE IN THIS
11 CASE.

12 YOUR HONOR, ONE STIPULATION, I GUESS, IF YOU WILL, THAT
13 DEFENSE COUNSEL AND THE STATE HAS COME TO AGREEMENT ON IS RELATED
14 TO A PIECE OF FORENSIC EVIDENCE IN THIS CASE.

15 THE COURT: ALL RIGHT.

16 MS. KEDNOCKER: THERE WAS A CONDOM THAT WAS TAKEN INTO
17 EVIDENCE -- BROUGHT IN BY THE MOTHER IN THIS CASE AND TAKEN INTO
18 EVIDENCE AS POTENTIAL EVIDENCE IN THIS CASE. IT WAS TESTED
19 AGAINST FIVE PEOPLE'S BLOOD SAMPLES, AND AT THE END OF THE DAY
20 S.L.E.D. COULD MAKE NO DETERMINATION AS TO WHOSE DNA WAS ON THE
21 CONDOM. DEFENSE COUNSEL AND I REACHED AN AGREEMENT THAT THE
22 STATE NOR DEFENSE IS GOING INTO THE CONDOM AT ALL. IT PRETTY
23 MUCH IS A RED HERRING. IT DOESN'T LEAD ANYWHERE. SO WE HAVE
24 TOLD DEFENSE COUNSEL WE ARE NOT GOING INTO THAT DURING THE
25 STATE'S CASE, AND THEY ARE NOT BRINGING IT UP DURING THEIR CASE.

MATTERS AND MOTIONS

1 I'VE ALREADY INDICATED TO MY WITNESSES, OR ADVISED THEM, THAT WE
2 ARE NOT GOING INTO THAT. SO I JUST WANTED TO PUT THAT ON THE
3 RECORD.

4 THE COURT: ALL RIGHT.

5 MS. KEDNOCKER: ALSO---

6 MR. CREECH: IT'S MY UNDERSTANDING, YOUR HONOR, THAT THIS
7 VICTIM IN THIS CASE, Minor IS GOING TO TESTIFY THAT MY CLIENT
8 DID USE A CONDOM ON ONE OF THESE OCCASIONS. WHAT WE'VE AGREED TO
9 IS THAT THERE WILL BE NO TESTIMONY THAT A CONDOM WAS EVER
10 DISCOVERED.

11] THE COURT: WELL, I DON'T KNOW. THAT'S DIFFERENT THAN WHAT
12 SHE JUST SAID.

13 MR. CREECH: WELL, THAT'S MY UNDERSTANDING OF THE
14 AGREEMENT. THAT'S WHY I STOOD UP.

15 THE COURT: OKAY.

16 MS. KEDNOCKER: WHAT HE STATED IS ACCURATE. THE VICTIM IS
17 GOING TO STATE THAT ONE TIME THERE WAS A CONDOM USED. THE OTHER
18 VICTIM IN THIS CASE, DEFENDANT'S SON, WHO WE'RE NOT AT TRIAL ON,
19 STATED AT NUMEROUS TIME A CONDOM WAS USED WITH HIM. YOUR HONOR,
20 AT THE END OF THE DAY, THEY CAN'T DETERMINE WHOSE DNA IS ON THAT
21 CONDOM. THEY CAN'T TELL IF IT'S DEFINITELY MALE, BUT IT COULD BE
22 FEMALE, IT MIGHT NOT BE. WE ARE NOT GOING INTO IT. THE VICTIM
23 IS GOING TO TESTIFY AS TO ONE SPECIFIC INCIDENT WHERE THE
24 DEFENDANT DID USE A CONDOM. THE FACT THAT ONE WAS COLLECTED AND
25 THEY CAN'T DETERMINE WHAT'S ON IT, WE'RE NOT GOING INTO THAT. SO

MATTERS AND MOTIONS

1 WE'RE IN AGREEMENT ON THAT.

2 THE COURT: WELL, LET ME MAKE SURE I UNDERSTAND. IS THERE
3 A STIPULATION AS TO THE FACT THAT THE CONDOM WAS COLLECTED,
4 TESTED AND NO DETERMINE MADE; IS THAT YOUR UNDERSTANDING OF WHAT
5 THE STIPULATION IS, MR. CREECH?

6 MR. CREECH: THE STIPULATION IS THAT NEITHER SIDE WILL
7 INTRODUCE EVIDENCE OF ANY FORM THAT A CONDOM WAS EVER FOUND.

8 MS. KEDNOCKER: THAT IS WHAT WE ARE DOING IN THIS CASE. IT
9 ENDS UP BEING -- LEADING TO NOWHERE, GOING NOWHERE. AND SINCE
10 WE'RE NOT GOING INTO THE OTHER CASE WITH LANE, THE STATE DOES NOT
11 HAVE A PROBLEM IF WE DON'T GO INTO THAT. SO THE OFFICER ON THE
12 CASE IS NOT GOING TO MENTION IT EITHER.

13 THE COURT: OKAY. ALL RIGHT. WELL, IT'S NOT -- IT'S JUST
14 AN AGREEMENT YOU HAVE WITH MR. CREECH?

15 MS. KEDNOCKER: YES, SIR.

16 THE COURT: ALL RIGHT.

17 MS. KEDNOCKER: NEXT, YOUR HONOR, THERE WERE SEVERAL
18 LETTERS WRITTEN FROM JAIL BY THIS DEFENDANT. HE WAS ARRESTED ON
19 DECEMBER 24TH, 2003. AND THE STATE IS MAKING A MOTION THAT -- OR
20 WE INTEND TO INTRODUCE TESTIMONY RELATED TO EXACTLY WHEN THIS
21 DEFENDANT WAS ARRESTED. HE WAS -- FROM THE TIME THAT THE
22 DISCLOSURE HAPPENED IN THIS CASE, DECEMBER 12TH, HE GOT KICKED OUT
23 OF THE HOUSE BY MS. SMITH, THIS DEFENDANT'S WIFE.

24 THE COURT: OKAY.

25 MS. KEDNOCKER: HE PRETTY MUCH WAS ON THE RUN IN DIFFERENT

MATTERS AND MOTIONS

1 STATES FOR A WHILE AND WAS FINALLY BROUGHT BACK TO SOUTH CAROLINA
2 THROUGH A -- IF YOU WILL, HIS WIFE PRETTY MUCH TOLD HIM, MEET ME
3 AT A RESTAURANT. HE HAD NO IDEA THAT THE S.W.A.T. TEAM WAS
4 THERE. AND HE WAS TAKEN INTO CUSTODY ON DECEMBER 24TH. THE STATE
5 IS GOING TO INTRODUCE EVIDENCE AS TO THE EXACT DATE AND HOW HE
6 WAS ARRESTED AND INTRODUCE SEVERAL LETTERS IN THIS CASE THAT WERE
7 WRITTEN BY THE DEFENDANT. WE JUST WANTED TO PUT THE DEFENSE ON
8 NOTICE THAT THAT IS GOING TO COME IN. THAT'S THE STATE'S
9 INTENTION. IF THEY HAVE AN ISSUE WITH THAT, WE'D LIKE IT TO BE
10 BROUGHT UP PRETRIAL.

11 WITH ONE OF THE LETTERS, JUDGE -- AND THIS GOES BACK A GREAT
12 DEAL. ONE OF THE LETTERS STATES, I WILL TELL YOU -- THIS IS A
13 LETTER WRITTEN BY THE DEFENDANT ON JANUARY 25TH, 2004, WRITTEN TO
14 HIS WIFE WHILE HE IS INCARCERATED IN JAIL. AND HE STATES IN THE
15 LETTER, I WILL TELL YOU -- BEG THE COURT'S -- "I'LL TELL YOU THAT
16 Minor SAID HE'S WORRIED ABOUT BEING GAY MONTHS AGO. THAT'S NOT
17 HOW HE SAID IT, BUT THAT'S WHAT HE MEANT. LANE HAD SIMILAR
18 QUESTIONS." THE STATE IS MOVING TO EXCLUDE THAT PORTION AND
19 REDACT IT FROM THE LETTER. EVEN IF -- NUMBER ONE, THE STATE HAS
20 NO INFORMATION THAT THAT'S TRUE. NUMBER TWO, EVEN IF IT WERE
21 TRUE, IT'S EXCLUDED UNDER RAPE SHIELD. AND---

22 THE COURT: WAIT A MINUTE NOW. WHO WROTE THE LETTER?

23 MS. KEDNOCKER: DEFENDANT WROTE---

24 THE COURT: TO WHO?

25 MS. KEDNOCKER: HIS WIFE.

MATTERS AND MOTIONS

1 THE COURT: OKAY. ALL RIGHT. I'M SORRY.

2 MS. KEDNOCKER: HE WROTE A SERIES OF LETTERS WHEN HE WAS
3 INCARCERATED, AND IN ONE OF THEM THAT THE STATE DOES INTEND TO
4 INTRODUCE HE STATED, "I WILL TELL YOU Minor SAID HE IS WORRIED
5 ABOUT BEING GAY MONTHS AGO. THAT'S NOT HOW HE SAID IT, BUT
6 THAT'S WHAT HE MEANT. LANE HAD SIMILAR QUESTIONS."

7 THE STATE'S POSITION IS WE HAVE NO INDICATION THAT THAT'S
8 TRUE. BUT EVEN IF IT WERE TRUE, JUDGE, THAT IS THE EXACT TYPE OF
9 EVIDENCE THAT IS EXCLUDED AND PRECLUDED FROM COMING IN UNDER RAPE
10 SHIELD. SO WE WANTED TO FIND OUT IF THAT'S AN ISSUE. THE STATE
11 HAS REDACTED THAT LETTER.

12 THE COURT: OKAY.

13 MS. KEDNOCKER: WE TOOK THAT REFERENCE OUT.

14 THE COURT: OKAY. I DON'T KNOW. MR. CREECH?

15 MR. CREECH: YOUR HONOR, SHE EITHER NEEDS TO PUT THE LETTER
16 IN OR NOT PUT IT IN BECAUSE, I MEAN, SHE CAN'T JUST TAKE OUT
17 THINGS THAT ARE FAVORABLE -- ARE NOT FAVORABLE TO HER CASE AND
18 REDACT THEM. I DON'T THINK THAT EVIDENCE THAT THE VICTIM IN THIS
19 CASE SAID HE WAS WORRIED ABOUT BEING GAY, I DON'T THINK THAT THAT
20 FALLS UNDER RAPE SHIELD ANYWAY. I MEAN, I THINK THAT GOES TO A
21 PRIOR SEXUAL HISTORY OR SEXUAL PAST OF THE VICTIM. BUT THE MERE
22 FACT THAT A VICTIM MAY BE GAY, I DON'T THINK THERE'S ANYTHING
23 WRONG THE VICTIM BEING GAY IF HE IS IN FACT GAY. I DON'T THINK
24 IT GOES TO PRIOR SEXUAL HISTORY. I THINK IT JUST STATES THAT THE
25 VICTIM MAY BE GAY AND THAT THE -- OR AT LEAST THE VICTIM HAD

MATTERS AND MOTIONS

1 CONCERNS ABOUT BEING GAY. I DON'T THINK THEY CAN JUST PUT IN
2 PART OF THE LETTER THAT THEY WANT TO PUT IN, TAKE OUT WHAT PARTS
3 THEY DON'T WANT TO PUT IN AND LEAVE IN OTHER PARTS THAT THEY DO.
4 THEY EITHER PUT THE LETTER IN OR THEY DON'T.

5 MS. KEDNOCKER: YOUR HONOR, I CAN FOLLOW UP ON THAT. THE
6 NEXT PORTION THE STATE WAS GOING TO REDACT IS THE PORTION RELATED
7 TO ASHTON JULIAN.

8 THE COURT: OKAY.

9 MS. KEDNOCKER: DEFENSE COUNSEL MAY FEEL DIFFERENTLY ABOUT
10 THAT PORTION. THE STATE WAS NOT INTENDING TO PUT IN THE PART
11 THAT SAID, "ONE THING I'LL TELL YOU IS THAT ASHTON LIED. I
12 DIDN'T PULL DOWN HIS PANTS BUT I PULLED THEM UP. I THINK HE
13 WHACKED OFF AND FELL ASLEEP. ABSOLUTELY ALL I DID WAS PULL THEM
14 UP. I TRIED TO WAKE HIM TO DO IT HIMSELF BUT COULDN'T ROUSE HIM.
15 I LATER FOUND HIM STANDING IN THE BATHROOM." IF DEFENSE COUNSEL
16 WANTS TO PUT THAT IN, WE CAN WE CAN DO THAT, BUT WE'RE NOT
17 BRINGING THAT WITNESS IN AS A LYLE WITNESS. SO THE STATE WAS
18 PLANNING, SINCE WE DON'T PLAN ON INTRODUCING HIM, TO REDACT THAT
19 PORTION AS WELL OF THE LETTER. IT GOES DIRECTLY TO THE HEART OF
20 ASHTON JULIAN'S ALLEGATIONS. ASHTON SAID HE WOKE UP, THIS
21 DEFENDANT WAS RUBBING BETWEEN HIS LEGS NEAR HIS PENIS, AND THAT
22 WAS THE PORTION THE STATE WAS GOING TO TAKE OUT.

23 MR. CREECH: YOUR HONOR, THAT'S A COMPLETELY DIFFERENT
24 EVIDENTIARY ISSUE. I MEAN, THEY'VE AGREED NOT TO PUT IN ANY KIND
25 OF LYLE EVIDENCE, AND THEY'RE NOW BACKING OUT ON THAT AGREEMENT

MATTERS AND MOTIONS

1 AND---

2 MS. KEDNOCKER: NO, YOUR HONOR. WE HAVE NO INTENTION TO
3 BACK OUT---

4 THE COURT: SHE SAID THEY WERE GOING TO TAKE THAT OUT.
5 ISN'T THAT WHAT I---

6 MS. KEDNOCKER: NO, WE -- DEFENSE COUNSEL STATED, IF THEY
7 PUT THE LETTER IN, THEY NEED TO PUT IT IN IN ITS ENTIRETY. AND
8 THE STATE IS CLEARLY SAYING THAT WE HAVE AGREED WE'RE NOT
9 INTRODUCING LYLE ON ASHTON UNLESS DEFENSE OPENS THE DOOR.

10 GOING BACK TO THIS REFERENCE TO Minor BEING GAY, NUMBER
11 ONE, THE STATE'S POSITION IS THAT IT IS COVERED UNDER RAPE
12 SHIELD, WHICH STATES THAT IT EXCLUDES ANY REFERENCE WHICH ALLEGES
13 SPECIFIC INSTANCES OF PRIOR SEXUAL ACTIVITY OR KNOWLEDGE. BEING
14 GAY OR BEING STRAIGHT OR BEING ANYTHING IS PRIOR SEXUAL ACTIVITY.
15 AND EVEN IF YOU DON'T FIND THAT IT'S COVERED BY RAPE SHIELD,
16 JUDGE, WE WOULD SAY THAT UNDER RULE 403 IT IS TOO PREJUDICIAL TO
17 BRING IN. WE STATE THAT IT'S NOT RELEVANT TO THIS CASE. DEFENSE
18 COUNSEL WOULD NEED TO GIVE ME SOME REASON HOW IT COULD POSSIBLY
19 BE RELEVANT.

20 BUT I BELIEVE THAT, NUMBER ONE, IT FAILS UNDER RAPE SHIELD.
21 NUMBER TWO, IT FAILS UNDER RULE 403. AND NUMBER THREE, IT IS
22 JUST NOT RELEVANT. WE ARE FINE TAKING OUT THE PORTION ABOUT
23 ASHTON, BUT THEY CAN'T HAVE THEIR CAKE AND EAT IT TOO. WE JUST
24 ASK THAT ONE SENTENCE RELATING TO Minor THINKS HE'S GAY BE
25 TAKEN OUT, AND WE THINK IT'S A FAIR WAY TO RESOLVE THIS.

MATTERS AND MOTIONS

1 THE COURT: WHAT DIFFERENCE DOES IT MAKE, MR. CREECH, UNDER
2 403 IF HE'S HOMOSEXUAL, HETEROSEXUAL OR ASEXUAL?

3 MR. CREECH: I DON'T THINK IT MAKES ANY DIFFERENCE. I
4 DON'T THINK IT'S PREJUDICIAL AT ALL. I THINK THIS IS -- THEY'RE
5 THE ONES THAT ARE SEEKING TO ADMIT THE EVIDENCE. AND IT'S -- AND
6 THEY'RE -- WE'RE NOT OBJECTING TO THAT PART OF THE LETTER. WE
7 OBJECT TO ANY IRRELEVANT LYLE ISSUES, BUT THE -- I DON'T THINK
8 THAT'S PREJUDICIAL. IT'S JUST A FACT THAT IS EVIDENCE -- IT
9 WOULD BE IN EVIDENCE UNDER THIS LETTER THAT THEY ARE SEEKING TO
10 ADMIT.

11 THE COURT: ALL RIGHT. WELL, I'M GOING TO HAVE TO LOOK AT
12 THE LETTER, BUT WE DON'T NEED TO DETERMINE THAT RIGHT NOW, DO WE?

13 MS. KEDNOCKER: NO, SIR, YOUR HONOR. WOULD YOU LIKE A
14 COPY?

15 THE COURT: YES, I WOULD. THANK YOU.

16 MS. KEDNOCKER: YOUR HONOR, THERE IS ONE LAST PORTION OF
17 THIS LETTER THE STATE WAS GOING TO ASK TO HAVE TAKEN OUT. WE
18 JUST AGREED BACK IN CHAMBERS THAT WE WEREN'T GOING INTO THE ISSUE
19 WITH NASTASHA BACK IN 1999.

20 THE COURT: OKAY.

21 MS. KEDNOCKER: AND THERE WAS ONE PORTION BACK THERE THAT
22 TALKS ABOUT THAT. THIS IS THE COMPLETE LETTER.

23 THE COURT: OKAY.

24 MS. KEDNOCKER: JUDGE, THE WITNESS WE INTEND TO INTRODUCE
25 THAT THROUGH IS ABOUT FOUR WITNESSES IN, SO WE HAVE A LITTLE TIME

MATTERS AND MOTIONS

1 TO---

2 THE COURT: OKAY. GREAT.

3 MS. KEDNOCKER: ---COME BACK TO IT POSSIBLY.

4 THE COURT: ALL RIGHT. THANK YOU.

5 ALL RIGHT. IS THERE ANYTHING ELSE BEFORE WE BRING THE JURY
6 UP TO CONDUCT JURY SELECTION?

7 MR. CREECH: NOTHING FROM THE DEFENSE, YOUR HONOR.

8 MS. KEDNOCKER: NOTHING FURTHER FROM THE STATE, JUDGE.

9 THE COURT: OKAY. (PAUSE)

10 MS. KEDNOCKER: YOUR HONOR, THE STATE HAS A WITNESS LIST.
11 THE STATE WOULD ASK THAT THE DEFENSE PROVIDE A WITNESS LIST FOR
12 VOIR DIRE AND ALSO TO DISCUSS THESE QUESTIONS THAT THE DEFENSE
13 ATTORNEY HAS PASSED UP FOR VOIR DIRE.

14 THE COURT: OKAY. MR. CREECH?

15 MR. CREECH: YOUR HONOR, AT THIS TIME I DO NOT HAVE A
16 WITNESS LIST.

17 THE COURT: ALL RIGHT.

18 MS. KEDNOCKER: YOUR HONOR, DOES YOUR HONOR NOT REQUEST
19 THAT THE DEFENSE PROVIDE ONE AT LEAST FOR VOIR DIRE SO WE CAN
20 KNOW IF THOSE WITNESSES---

21 THE COURT: NO.

22 FIVE AND TEN, ISN'T THAT WHAT THIS IS? STRIKES?

23 MR. CREECH: YEAH, I THOUGHT IT WAS TEN, YOUR HONOR.

24 MS. KEDNOCKER: I BELIEVE ONE HAS BEEN LEFT OFF.

25 THE COURT: ONE WHAT? ONE WITNESS?

MATTERS AND MOTIONS

1 MS. KEDNOCKER: YEAH. YOUR HONOR, DID YOU MAKE A RULING
2 ABOUT THE PORTION ABOUT Minor BEING GAY IN THE LETTER?

3 THE COURT: NO. I'LL HAVE TO READ THE LETTER FIRST, AND
4 THEN I'LL RULE ON THAT.

5 MS. KEDNOCKER: OKAY.

6 THE COURT: I THINK THE LETTER'S SIX PAGES OR SOMETHING
7 LIKE THAT. I JUST GOT IT, SO I'LL HAVE TO LOOK AT IT AND REVIEW
8 IT.

9 MS. KEDNOCKER: AND DEFENSE COUNSEL DID PASS UP SOME VOIR
10 DIRE QUESTIONS. I DON'T KNOW IF YOUR HONOR WANTS TO -- THE STATE
11 WOULD OBJECT TO SOME OF THEM.

12 THE COURT: WHICH ONES?

13 MS. KEDNOCKER: YOUR HONOR, NUMBER TWO, HAS ANY MEMBER --
14 LET'S SEE. NUMBER THREE, ACTUALLY. "IS THERE ANY MEMBER OF THE
15 PANEL WHO WOULD CONVICT THE DEFENDANT UPON A LESSER STANDARD OF
16 PROOF THAN BY PROOF BEYOND A REASONABLE DOUBT?" THAT'S COVERED
17 IN YOUR GENERAL FAIR CHARGE. I DON'T BELIEVE THAT THAT'S A
18 NECESSARY, NORMAL, NEEDED CHARGE IN THIS VOIR DIRE. SO THE STATE
19 WOULD OBJECT TO NUMBER THREE.

20 I THINK NUMBER FOUR IS IRRELEVANT. "IS THERE ANY MEMBER OF
21 THE PANEL WHO HAS AN ADOLESCENT OR A TEENAGE CHILD?" THAT'S NOT
22 RELEVANT. THE STATE WOULD ALSO OBJECT TO THAT ONE.

23 THE COURT: HOLD ON ONE SECOND. MAKE SURE THAT SHE DOESN'T
24 LET THEM IN QUITE YET. (OFF RECORD DISCUSSION) OKAY.

25 MS. KEDNOCKER: AND THEN THE LAST ONE, "HAS ANY MEMBER OF

MATTERS AND MOTIONS

1 THE PANEL OR A FRIEND OR A FAMILY MEMBER EVER BEEN ACCUSED OF
2 CHILD SEXUAL ABUSE?" I DON'T KNOW. UNLESS YOUR HONOR FEELS THAT
3 THAT'S RELEVANT, THAT THAT'S...

4 THE COURT: OKAY. I UNDERSTAND.

5 ALL RIGHT. MR. CREECH?

6 MR. CREECH: YOUR HONOR, WE HAD ASKED THAT YOU ASK ALL
7 THESE QUESTIONS. AND CERTAINLY NUMBER FOUR IS RELEVANT BECAUSE
8 THE VICTIMS IN THIS CASE ARE ADOLESCENT TEENAGE CHILDREN, AND WE
9 WOULD LIKE TO KNOW IF THE MEMBERS OF THE PANEL HAVE ANY CHILDREN
10 THAT AGE, YOUR HONOR, BECAUSE THAT COULD PROBABLY IMPACT HOW THEY
11 VIEW THIS CASE. AGAIN, WE'D LIKE TO KNOW IF THEY KNOW ANYBODY OR
12 IF THEY THEMSELVES HAVE EVER BEEN ACCUSED OF THESE SIMILAR
13 TYPE---

14 THE COURT: I'LL ASK THAT. I'M NOT GOING TO ASK NUMBER
15 FOUR THOUGH. I JUST THINK THAT'S TOO WIDE OF A QUERY. I MEAN,
16 EVERYBODY HAS SOME CLOSE FRIEND OR FAMILY MEMBER WHO HAS CHILDREN
17 OR -- I JUST THINK THAT DOESN'T REALLY GET US ANYWHERE.

18 MR. CREECH: OKAY. WE WERE JUST ASKING IF ANY MEMBER OF
19 THE PANEL THEMSELVES HAD AN ADOLESCENT OR TEENAGE CHILD. THAT
20 WAS THE SOLE INQUIRY.

21 THE COURT: I UNDERSTAND. YES, SIR.

22 MR. CREECH: SO WE WOULD ASK -- NUMBER THREE, YOUR HONOR,
23 AGAIN, THIS CASE BECAUSE OF THE NATURE OF THESE ALLEGATIONS AND
24 THE NATURE OF THE STATE'S CASE, AS I UNDERSTAND IT TODAY, WE
25 WOULD ASK THE JURY IS THERE ANY MEMBER OF THE JURY THAT'S GOING

MATTERS AND MOTIONS

1 TO CONVICT OR THINK ABOUT CONVICTING ON A LESSER STANDARD OF
2 PROOF THAN THE SUBSTANTIAL BURDEN THAT THE STATE HAS IN THIS
3 CASE, WHICH IS PROOF BEYOND A REASONABLE DOUBT.

4 THE COURT: OKAY. I THINK THAT IT'S DRILLED INTO THEIR
5 HEADS REPEATEDLY THROUGHOUT THE CASE THAT THEY ARE REQUIRED TO
6 FOLLOW THE INSTRUCTIONS I GIVE THEM, WHICH I ALSO TELL THEM THAT
7 THAT'S THE LAW AND THEY HAVE TO FOLLOW THE LAW REGARDLESS OF
8 WHETHER THEY AGREE WITH IT OR NOT. SO I'M GOING TO RESPECTFULLY
9 DECLINE TO CHARGE -- OR INQUIRE ABOUT YOUR VOIR DIRE QUESTIONS
10 NUMBER THREE AND FOUR.

11 OKAY. I'LL MAKE THIS A COURT'S EXHIBIT, IF YOU WANT ME TO.

12 MR. CREECH: THANK YOU, YOUR HONOR.

13 THE COURT: ALL RIGHT. ANYTHING FURTHER BEFORE WE BRING
14 THE JURORS IN?

15 MR. CREECH: NOTHING FROM THE DEFENSE, YOUR HONOR.

16 THE COURT: OKAY. I'VE MARKED ON THIS VOIR DIRE SHEET. IF
17 YOU'VE GOT AN EXTRA ONE IT MIGHT MAKE FOR A CLEANER RECORD, BUT
18 IT DOESN'T MATTER EITHER WAY. WHATEVER YOU WANT TO DO, MR.
19 CREECH.

20 MR. CREECH: WHATEVER YOU---

21 THE COURT: OKAY. WE'LL JUST MAKE THE ONE I -- I JUST MADE
22 SOME MARKINGS ON IT.

23 MR. CREECH: AS LONG AS IT DOESN'T SAY ANYTHING LIKE, WHAT
24 IS THIS ATTORNEY THINKING?

25 THE COURT: NO. NO, IT DOESN'T. THEY'RE VERY INNOCUOUS,

VOIR DIRE

1 AND PROBABLY ILLEGIBLE DUE TO MY HANDWRITING.

2 (DEFENDANT'S VOIR DIRE REQUESTS MARKED AS COURT'S EXHIBIT
3 NUMBER 1)

4 THE COURT: OKAY. ALL RIGHT, MS. DAILEY. YOU CAN BRING
5 THEM ON IN.

6 (JURY PANEL ENTERS COURTROOM AT 11:35 A.M.)

7 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THANK YOU FOR
8 YOUR PATIENCE DOWN THERE. WE WERE TAKING UP SOME MATTERS UP HERE
9 THAT HOPEFULLY WILL MAKE THIS CASE RUN SMOOTHER. WE APPRECIATE
10 YOUR UNDERSTANDING ON THAT.

11 WE ARE ABOUT TO BEGIN THE CASE OF THE STATE OF SOUTH
12 CAROLINA VERSUS RANDALL LANE SMITH. MR. SMITH IS HERE IN THE
13 COURTROOM. THIS IS A CRIMINAL CASE, AND AS I MENTIONED TO YOU
14 EARLIER, WE HAVE JUST CRIMINAL CASES THIS WEEK THAT ARE BEING
15 TRIED, AND I'M GOING TO READ THE INDICTMENT, WHICH I'M HOLDING IN
16 MY HAND, THAT CHARGES MR. SMITH. BUT BEFORE I READ THAT, I WANT
17 TO EMPHASIZE TO YOU ALL THAT MERELY BECAUSE SOMEONE HAS BEEN
18 INDICTED FOR A CRIME, OBVIOUSLY, UNDER OUR SYSTEM OF JUSTICE,
19 THAT DOESN'T MEAN ANYTHING. AND THIS INDICTMENT AND THESE
20 CHARGES DON'T CONSTITUTE EVIDENCE. THEY DON'T CREATE ANY
21 PRESUMPTION OF GUILT. THEY DON'T CREATE EVEN A SUSPICION OF
22 GUILT, BECAUSE UNDER THE LAW MR. SMITH STANDS HERE TODAY PRESUMED
23 INNOCENT, AND HE WILL REMAIN PRESUMED INNOCENT THROUGHOUT THIS
24 TRIAL AND CAN ONLY BE CONVICTED IF THE STATE PROVES GUILT BEYOND
25 A REASONABLE DOUBT. IF THE STATE DOES NOT PROVE EVERY ESSENTIAL

VOIR DIRE

1 ELEMENT OF THIS CHARGE BEYOND A REASONABLE DOUBT, YOU WOULD BE
2 REQUIRED TO FIND HIM NOT GUILTY. BUT HE IS PRESUMED INNOCENT AT
3 THIS POINT AND STANDS BEFORE YOU INNOCENT HERE TODAY BECAUSE HE
4 HAS PLED NOT GUILTY TO THESE CHARGES.

5 THAT PUTS THE BURDEN OF PROOF AND OF PROVING GUILT ON THE
6 STATE. MR. SMITH DOESN'T HAVE TO PROVE ANYTHING TO YOU. HE
7 DOESN'T HAVE TO EXPLAIN ANYTHING. BECAUSE UNDER OUR SYSTEM OF
8 JUSTICE HE IS PRESUMED INNOCENT AND IT'S THE STATE'S DUTY AND JOB
9 TO PROVE GUILT. AND IF YOU ARE SELECTED AS A JUROR YOUR ROLE IN
10 PART WILL BE TO DETERMINE WHETHER THE STATE HAS MET THEIR BURDEN
11 OF PROOF AND WHETHER THEY'VE DONE THEIR JOB OF PROVING EACH AND
12 EVERY ELEMENT OF THIS OFFENSE BEYOND A REASONABLE DOUBT.

13 MR. SMITH HAS BEEN CHARGED WITH AN INDICTMENT WHICH READS AS
14 FOLLOWS, THAT RANDALL LANE SMITH DID IN GREENVILLE COUNTY BETWEEN
15 THE 20TH DAY OF AUGUST 2003 AND THE 12TH DAY OF DECEMBER 2003
16 COMMIT A SEXUAL BATTERY ON P.J., -- THOSE ARE INITIALS, P.J. --
17 WHO WAS 14 YEARS OF AGE OR LESS BUT WHO WAS AT LEAST 11 YEARS OF
18 AGE, IN VIOLATION OF SECTION 16-3-655 SUBSECTION 2 OF THE SOUTH
19 CAROLINA CODE.

20 NOW, AS I'VE TOLD YOU, HE'S PLED NOT GUILTY. THAT PUTS THE
21 BURDEN ON THE STATE, AND YOU WILL BE DETERMINING WHETHER THE
22 STATE HAS MET THAT BURDEN IN THIS CASE.

23 BUT WE HAVE SEVERAL QUESTIONS I NEED TO GO OVER WITH YOU TO
24 DETERMINE WHETHER YOU COULD BE FAIR AND IMPARTIAL AS A JUROR IN
25 THIS CASE AND GIVE BOTH SIDES, THAT IS, THE STATE AND MR. SMITH,

VOIR DIRE

1 A FAIR TRIAL. SO LISTEN VERY CAREFULLY TO THESE QUESTIONS. BOTH
2 SIDES ARE ENTITLED TO A FAIR TRIAL, OBVIOUSLY, AND THIS IS THEIR
3 DAY IN COURT. THERE ARE CERTAIN QUESTIONS I HAVE TO ASK YOU.
4 AND ONE OF THEM IS, IS THERE ANY MEMBER OF THE JURY PANEL WHO IS
5 RELATED BY BLOOD OR MARRIAGE TO RANDALL LANE SMITH? IF SO,
6 PLEASE STAND AT THIS TIME. (PAUSE) (NO RESPONSE)

7 DOES ANYONE HAVE A PERSONAL OR SOCIAL RELATIONSHIP TO MR.
8 SMITH? IF SO, PLEASE STAND.

9 MS. KEDNOCKER: YOUR HONOR, MAY I -- MAY WE APPROACH VERY
10 BRIEFLY?

11 THE COURT: SURE.

12 (BENCH CONFERENCE OFF RECORD FROM 11:40 TO 11:41 A.M.)

13 THE COURT: OKAY. AT THIS TIME I'M GOING TO ASK THE
14 ATTORNEYS WHO ARE INVOLVED WITH THIS CASE TO STAND UP AND
15 INTRODUCE THEMSELVES AND THE PEOPLE WHO ARE SITTING WITH HIM.

16 YES, MA'AM, ON BEHALF OF THE STATE, MS. KEDNOCKER.

17 MS. KEDNOCKER: GOOD MORNING. MY NAME IS CHRISTY KEDNOCKER.
18 I'M AN ASSISTANT SOLICITOR WITH THE GREENVILLE COUNTY SOLICITOR'S
19 OFFICE. THIS IS INVESTIGATOR LORRAINE HENDERSON. SHE IS THE
20 LEAD INVESTIGATOR ON THIS CASE.

21 THE COURT: THANK YOU.

22 YES, SIR, MR. CREECH.

23 MR. CREECH: GOOD MORNING, LADIES AND GENTLEMEN. MY NAME
24 IS TOM CREECH. I'M AN ATTORNEY HERE IN GREENVILLE, AND IN THIS
25 CASE TODAY IT IS MY PRIVILEGE TO REPRESENT MR. RANDALL LANE

VOIR DIRE

1 SMITH. RANDY, IF YOU WILL STAND. (DEFENDANT COMPLIES) THANK
2 YOU. I LOOK FORWARD TO WORKING WITH YOU ON THIS CASE.

3 THE COURT: ALL RIGHT. IS ANYONE RELATED BY BLOOD OR
4 MARRIAGE TO EITHER OF THE ATTORNEYS IN THIS CASE OR -- OKAY.
5 YES, MA'AM. WHAT IS YOUR NAME?

6 JUROR NUMBER 88: MY NAME IS CAROL PEE.

7 THE COURT: OKAY, MA'AM. I'LL TELL YOU WHAT, WE'RE GOING
8 TO HAVE TO TAKE A LITTLE BREAK HERE. IF YOU WOULD JUST GO OUT IN
9 THE HALL VERY BRIEFLY, ALL THE OTHER JURORS, AND WE HAVE TO TAKE
10 UP ONE MATTER THAT HAS ARISEN. IF THE REST OF YOU WOULD JUST GO
11 OUT IN THE HALL, AND WE'LL BE RIGHT BACK WITH YOU IN JUST ONE
12 MINUTE.

13 THANK YOU VERY MUCH.

14 (PANEL EXITS COURTROOM AT 11:42 A.M.)

15 THE COURT: YES, MA'AM, MS. PEE, WHY DON'T YOU COME ON DOWN
16 HERE AND WE'LL TALK WITH YOU WITH THE ATTORNEYS. RIGHT HERE,
17 MA'AM. SHE'S GOT TO TAKE DOWN EVERYTHING WE SAY.

18 (THE FOLLOWING DISCUSSION TAKES PLACE AT THE COURT
19 REPORTER'S STATION)

20 THE COURT: THEY HAD TOLD ME RIGHT BEFORE YOU STOOD UP THAT
21 THERE MIGHT BE SOME PROBLEM. YOU GO AHEAD AND TELL ME WHAT YOU
22 KNOW ABOUT THIS CASE.

23 JUROR NUMBER 88: I KNOW THE FAMILIES. AND HIS DAUGHTER, I
24 WAS A FOSTER PARENT FOR HIS DAUGHTER, NASTASHA---

25 THE COURT: OKAY.

VOIR DIRE

1 JUROR NUMBER 88: ---THREE OR FOUR YEARS AGO.

2 THE COURT: OKAY. SO YOU HAVE SOME KNOWLEDGE ABOUT SOME
3 ALLEGATIONS---

4 JUROR NUMBER 88: NOT THIS SITUATION.

5 THE COURT: SOME OTHER ALLEGATIONS?

6 JUROR NUMBER 88: YEAH.

7 THE COURT: OKAY.

8 JUROR NUMBER 88: ACTUALLY, I WAS AFRAID THAT IT WAS GOING
9 TO BE MAYBE WITH SOME OTHER ISSUES, NOT WITH THIS SITUATION.

10 THE COURT: YES, MA'AM. WE'RE JUST GOING TO EXCUSE YOU
11 FROM THIS CASE.

12 JUROR NUMBER 88: OKAY.

13 MS. KEDNOCKER: DO YOU MIND JUST ASKING, YOUR HONOR -- AND
14 I HAVE NO REASON TO THINK YOU DID -- IF SHE HAS TALKED TO ANYBODY
15 IN THE JURY PANEL?

16 JUROR NUMBER 88: NO, NO I HAVEN'T.

17 MS. KEDNOCKER: OKAY. I RECOGNIZED YOUR NAME.

18 THE COURT: ALL RIGHT. YOU DIDN'T MENTION IT TO ANYBODY
19 ELSE HERE TODAY?

20 JUROR NUMBER 88: WELL, I JUST -- THE ONLY THING I
21 MENTIONED WAS I MAY NOT BE ABLE TO SERVE BECAUSE I -- WHEN I SAW
22 HIS WIFE AND CHILD OUT IN THE LOBBY AND THAT I MAY NOT BE ABLE TO
23 SERVE BECAUSE I KNOW THE FAMILY.

24 MS. KEDNOCKER: YOU TOLD SOME OF THE JURORS THAT?

25 JUROR NUMBER 88: YEAH.

VOIR DIRE

1 MS. KEDNOCKER: DID YOU TELL THEM ANYTHING ABOUT---

2 JUROR NUMBER 88: NOT ANYTHING SURROUNDING ANYTHING.

3 THE COURT: OKAY.

4 MS. KEDNOCKER: NOTHING ABOUT NASTASHA AND---

5 JUROR NUMBER 88: NO. NO NAMES. NOTHING WAS MENTIONED.

6 NO CIRCUMSTANCES.

7 MS. KEDNOCKER: WERE ANY CHARGES BACK IN---

8 JUROR NUMBER 88: NO.

9 MS. KEDNOCKER: OKAY.

10 THE COURT: MR. CREECH?

11 MR. CREECH: AND YOU JUST SAID, I MAY KNOW THE WIFE AND THE
12 CHILD, IS THAT RIGHT?

13 JUROR NUMBER 88: AND THAT I MAY NOT BE ABLE TO -- IF I
14 WERE TO BE PICKED, I PROBABLY WOULDN'T BE ABLE TO DO THIS ONE.

15 MR. CREECH: BECAUSE YOU KNEW THEM?

16 JUROR NUMBER 88: YES, BECAUSE I KNEW THEM PERSONALLY. I
17 KNEW THEM, NOT THE CIRCUMSTANCES. THERE WAS NO CIRCUMSTANCES
18 MENTIONED.

19 MR. CREECH: DO YOU KNOW HOW MANY JURORS YOU MENTIONED IT
20 TO?

21 JUROR NUMBER 88: JUST THE LADY SITTING BESIDE ME.

22 MR. CREECH: OKAY.

23 JUROR NUMBER 88: BUT SHE WASN'T PICKED.

24 MS. KEDNOCKER: OH. SHE'S NOT IN THE ROOM.

25 MR. CREECH: SHE WASN'T BROUGHT UP HERE?

VOIR DIRE

1 MS. KEDNOCKER: OKAY.

2 JUROR NUMBER 88: SHE'S NOT IN THE ROOM. NO, SHE WAS
3 DOWNSTAIRS.

4 THE COURT: SHE WASN'T ONE OF THE GROUP THAT WAS ASKED TO
5 COME UP HERE?

6 JUROR NUMBER 88: NO.

7 THE COURT: AND DID YOU GIVE ANY DETAILS WHATSOEVER?

8 JUROR NUMBER 88: NO, NOTHING.

9 THE COURT: DID YOU ASK -- DID ANYBODY ASK YOU WHY YOU SAID
10 YOU MIGHT NOT BE ABLE TO SERVE?

11 JUROR NUMBER 88: JUST THE FACT THAT I KNEW THEM WAS ENOUGH
12 TO...

13 MR. CREECH: HOW DID YOU KNOW THAT HIS CASE WAS -- WHEN YOU
14 WERE DOWNSTAIRS?

15 JUROR NUMBER 88: NO. I SAW NASTASHA.

16 MR. CREECH: DOWNSTAIRS?

17 JUROR NUMBER 88: AND HIS WIFE AS I WALKED IN. AS I WAS
18 WALKING IN ONE DOOR, THEY WERE WALKING IN THE SIDE DOOR AND I SAW
19 NASTASHA. AND NANCY CAME UP TO ME AND ASKED ME, YOU KNOW, WHY
20 ARE YOU HERE? AND I JUST -- NO. SHE SAID, I HOPE YOU'RE NOT HERE
21 FOR THE SAME REASON WE ARE. I SAID, WHY ARE YOU HERE? AND SHE
22 SAID, RANDY'S TRIAL IS TODAY. AND I SAID, NO.

23 MR. CREECH: DID YOU TELL HER THAT YOU WERE A JUROR?

24 JUROR NUMBER 88: NO. OUR LINES JUST KIND OF SPLIT.

25 MS. KEDNOCKER: I'M GLAD WE FIGURED THIS OUT.

VOIR DIRE

1 MR. CREECH: OKAY. THEN YOU SAID THAT AND YOU RELAYED --
2 AND THE PERSON YOU TALKED TO DOWN IN THE JURY ASSEMBLY ROOM IS
3 NOT ON THIS PANEL; IS THAT CORRECT?

4 JUROR NUMBER 88: NO, SHE'S NOT.

5 MR. CREECH: DO YOU KNOW IF THEY TALKED TO ANYBODY, ANY
6 OTHER POTENTIAL JURORS? DID YOU SEE THEM?

7 JUROR NUMBER 88: I DON'T THINK SO. I MEAN, I DON'T KNOW.
8 WE WERE ALL JUST RIGHT THERE TOGETHER.

9 MR. CREECH: DO YOU KNOW IF ANYBODY ELSE HEARD YOU?

10 JUROR NUMBER 88: NOT THAT I'M AWARE OF.

11 MR. CREECH: WERE THERE ANY OTHER POTENTIAL JURORS STANDING
12 NEAR YOU?

13 JUROR NUMBER 88: NO.

14 MS. KEDNOCKER: THE STATE HAS NO PROBLEMS.

15 MR. CREECH: OKAY. BASED ON YOUR REPRESENTATIONS, OF
16 COURSE, WE WOULD JUST ASK THAT YOU REMOVE HER. BUT IT DOESN'T
17 APPEAR FROM WHAT SHE HAS TOLD US THAT IT HAS AFFECTED ANY OTHER
18 PARTS OF THE PANEL.

19 THE COURT: OKAY. I AGREE. BASED ON WHAT I JUST HEARD,
20 I'LL MAKE THAT DETERMINATION.

21 MA'AM, YOU ARE EXCUSED FROM THIS CASE. JUST CALL BACK AFTER
22 6:00 TONIGHT. AND PLEASE DON'T MENTION ANYTHING TO ANYBODY ABOUT
23 WHAT HAPPENED IN HERE TODAY---

24 JUROR NUMBER 88: I WON'T.

25 THE COURT: ---ANYTIME DURING THIS WEEK. OKAY? TO ANYONE.

VOIR DIRE

1 JUROR NUMBER 88: OKAY.

2 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

3 MS. KEDNOCKER: THANK YOU.

4 JUROR NUMBER 88: THANK YOU.

5 (JUROR 88 EXITS COURTROOM AT 11:47 A.M.)

6 (PANEL REENTERS COURTROOM AT 11:48 A.M.)

7 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THE QUESTION
8 THAT I BELIEVE WE WERE ON WAS IF ANYONE WAS RELATED BY BLOOD OR
9 MARRIAGE OR HAD ANY PERSONAL, SOCIAL OR BUSINESS RELATIONSHIP
10 WITH EITHER OF THE ATTORNEYS INVOLVED IN THIS CASE OR ANY OF THE
11 PEOPLE WHO WERE INTRODUCED, AND I BELIEVE IT WAS OFFICER LORRAINE
12 HENDERSON FROM THE SHERIFF'S OFFICE. IF SO, PLEASE STAND AT THIS
13 TIME. (PAUSE) (NO RESPONSE)

14 HAS ANYONE EVER BEEN EMPLOYED BY OR HAD A MEMBER OF THEIR
15 IMMEDIATE FAMILY EMPLOYED BY THE SOLICITOR'S OFFICE FOR THIS
16 CIRCUIT? IF SO, PLEASE STAND. (PAUSE) YES, SIR, MR. BOAN.

17 JUROR NUMBER 149: MY DAUGHTER.

18 THE COURT: OKAY. ALL RIGHT. I THINK IN LIGHT OF THAT
19 WE'RE GOING TO EXCUSE YOU FROM THIS PANEL AS WELL, ALL RIGHT? IF
20 YOU WOULD JUST GO DOWN -- WELL, YOU DON'T HAVE TO -- JUST CALL
21 BACK AFTER SIX O'CLOCK TONIGHT, AND THEY'LL CALL YOU ON ANOTHER
22 CASE. WE DON'T WANT TO PUT YOU IN AN UNCOMFORTABLE POSITION.
23 THANK YOU.

24 ALL RIGHT. ANYBODY ELSE NEED TO RESPOND TO THAT QUESTION?
25 (PAUSE) (NO RESPONSE)

VOIR DIRE

1 HAS ANYONE EVER BEEN REPRESENTED BY ANY OF THE ATTORNEYS IN
2 THIS CASE BEFORE OR BEEN INVOLVED IN A DISPUTE WHERE THE OTHER
3 SIDE WAS REPRESENTED BY ONE OF THESE ATTORNEYS? IF SO, PLEASE
4 STAND. (PAUSE) (NO RESPONSE)

5 ALL RIGHT. I'M GOING TO READ TO YOU A LIST OF PEOPLE WHO
6 MAY TESTIFY IN THIS CASE AND BE WITNESSES. LISTEN VERY CAREFULLY
7 BECAUSE I'M GOING TO ASK YOU IF YOU KNOW ANY OF THESE PEOPLE AND
8 IF YOU HAVE ANY RELATIONSHIP WITH THEM WHATSOEVER. THE PEOPLE
9 WHO MAY TESTIFY IN THIS CASE INCLUDE THE FOLLOWING: Minor

10 Minor ASHTON JULIAN, NANCY SMITH, DAWN EDWARDS, ALLISON DEL
11 VERDE, STEVE LAMBERT, J.B. CANNON, LORRAINE HENDERSON, NANCY
12 HENDERSON, MEREDITH LOFTIS, STEVE JULIAN, DANA LEWIS, KEVIN
13 POLLEY, LANE SMITH, TY BRACKEN, SANDRA KING, STEVE MULLIKIN,
14 KELLY RILEY, EDDIE HUCKS, RENEE PRUITT, B.E. BUTLER, EMILY
15 NORRIS, DENNIS EARGLE, LAURA CORLEY, SHERRY BROWN, JANICE BRYSON.
16 IS THAT ALL THE POTENTIAL WITNESSES, MS. KEDNOCKER?

17 MS. KEDNOCKER: YES, SIR, YOUR HONOR.

18 THE COURT: OKAY. ALL RIGHT. IS ANYONE RELATED BY BLOOD
19 OR MARRIAGE OR HAVE ANY PERSONAL, SOCIAL OR BUSINESS RELATIONSHIP
20 WITH ANY OF THE PEOPLE I JUST MENTIONED? IF SO, PLEASE STAND.
21 (PAUSE) (NO RESPONSE)

22 ALL RIGHT. HAS ANYONE HEARD ANYTHING ABOUT THIS CASE BEFORE
23 TODAY OR HAVE ANY KNOWLEDGE ABOUT THE EVENTS THAT ARE ALLEGED IN
24 THE INDICTMENT BEFORE YOU CAME TO COURT TODAY? IF SO, PLEASE
25 STAND. (PAUSE) (NO RESPONSE)

VOIR DIRE

1 IS THERE ANY MEMBER OF THE PANEL WHO COULD NOT RENDER A FAIR
2 VERDICT OR A FAIR DECISION IN THIS CASE BASED SOLELY ON THE
3 ALLEGATIONS OF ADOLESCENT SEXUAL ABUSE; THAT IS, THE FACT THAT
4 THIS CASE INVOLVES CHARGES OF SEXUAL ABUSE OF A MINOR, WOULD THAT
5 FACT ALONE KEEP YOU FROM GIVING EITHER SIDE A FAIR TRIAL? IF SO,
6 PLEASE STAND. (PAUSE) (NO RESPONSE)

7 ALL RIGHT. I'M GOING TO ASK YOU SEVERAL QUESTIONS, AND
8 AGAIN THESE ARE INQUIRING ABOUT THINGS THAT ARE VERY PERSONAL,
9 AND IF YOU DO NEED TO RESPOND, EVERYTHING HAS TO BE ON THE
10 RECORD. AND I CAN TALK TO YOU DOWN HERE WITH THE ATTORNEYS
11 PRESENT WITH THE COURT REPORTER SO WE CAN HAVE A RECORD ON THESE
12 NEXT SEVERAL QUESTIONS.

13 THE FIRST QUESTION I WANT TO ASK IS, HAVE ANY OF YOU OR ANY
14 CLOSE PERSONAL FRIEND OR FAMILY MEMBER EVER BEEN A VICTIM OF OR
15 CLAIM TO HAVE BEEN A VICTIM OF SEXUAL ABUSE? IF ANYONE NEEDS TO
16 RESPOND TO THAT, PLEASE STAND AND WE'LL TALK TO YOU DOWN HERE.
17 (PAUSE) (NO RESPONSE)

18 HAS ANYONE OR HAS ANY MEMBER OF YOUR IMMEDIATE FAMILY OR A
19 CLOSE PERSON FRIEND EVER BEEN ACCUSED OF OR CHARGED WITH SEXUAL
20 ABUSE? IF SO, PLEASE STAND. AGAIN, WE CAN TALK TO YOU DOWN HERE
21 WITH THE COURT REPORTER. (PAUSE) (NO RESPONSE)

22 ALL RIGHT. DOES ANYONE HAVE ANY BIAS OR PREJUDICE TOWARDS
23 EITHER THE STATE OR RANDALL LANE SMITH THAT THEY KNOW OF? IF SO,
24 PLEASE STAND. (PAUSE) (NO RESPONSE)

25 IS THERE ANY MEMBER OF THE JURY PANEL WHO IS A MEMBER OF OR

JURY SELECTION

1 CONTRIBUTES TO ANY GROUP WHOSE PRIMARY CONCERN IS PROMOTION OF
2 LAW ENFORCEMENT OR VICTIM'S RIGHTS? IF SO, PLEASE STAND.

3 (PAUSE) (NO RESPONSE)

4 FINALLY, IS THERE ANYONE WHO KNOWS OF ANY REASON THEY COULD
5 NOT SERVE IN THIS CASE AND BE FAIR AND IMPARTIAL BOTH TO THE
6 STATE OF SOUTH CAROLINA AND TO MR. RANDALL LANE SMITH? IF SO,
7 PLEASE STAND. (PAUSE) (NO RESPONSE)

8 ALL RIGHT. IS THERE ANY FURTHER VOIR DIRE FROM THE STATE?

9 MS. KEDNOCKER: NO, SIR, YOUR HONOR.

10 THE COURT: MR. CREECH, FROM THE DEFENSE?

11 MR. CREECH: NONE FROM THE DEFENSE, YOUR HONOR.

12 THE COURT: OKAY. ALL RIGHT. WE'RE GOING TO BEGIN THE
13 PROCESS OF JURY SELECTION. SO, YES, MA'AM.

14 MADAME CLERK: AS I CALL YOUR NAME, PLEASE COME AND
15 STAND---

16 THE COURT: THEY CAN JUST STAND WHERE THEY ARE.

17 MADAME CLERK: OR YOU CAN STAND WHERE YOU ARE AND THEN WAIT
18 FOR FURTHER INSTRUCTIONS.

19 JUROR 110, TERRY SANDOR (WHITE MALE). (PAUSE) WHAT SAYS
20 THE STATE?

21 MS. KEDNOCKER: PLEASE PRESENT THE JUROR.

22 MADAME CLERK: WHAT SAYS THE DEFENDANT?

23 MR. CREECH: (PAUSE) PLEASE SWEAR THE JUROR.

24 MADAME CLERK: MR. SANDOR, PLEASE COME HAVE A SEAT IN THE
25 JURY BOX. IF YOU HAVE ANY THINGS, BRING THEM WITH YOU.

JURY SELECTION

1 JUROR NUMBER 5, SHARON BELK (WHITE FEMALE). (PAUSE)

2 MS. KEDNOCKER: PLEASE PRESENT THE JUROR.

3 MADAME CLERK: THANK YOU. WHAT SAYS THE DEFENDANT?

4 MR. CREECH: (PAUSE) PLEASE SWEAR THE JUROR.

5 MADAME CLERK: MS. BELK, PLEASE COME AND HAVE A SEAT IN THE
6 JURY BOX.

7 JUROR 140, RANK WILSON (WHITE MALE). (PAUSE) WHAT SAYS THE
8 STATE?

9 MS. KEDNOCKER: PLEASE PRESENT THE JUROR.

10 MADAME CLERK: WHAT SAYS THE DEFENDANT?

11 MR. CREECH: PLEASE SWEAR MR. WILSON.

12 MADAME CLERK: MR. WILSON, PLEASE COME HAVE A SEAT IN THE
13 JURY BOX.

14 JUROR 153, JENNIFER SMITH (WHITE FEMALE). (PAUSE) WHAT
15 SAYS THE STATE?

16 MS. KEDNOCKER: PLEASE PRESENT THE JUROR.

17 MADAME CLERK: WHAT SAYS THE DEFENDANT?

18 MR. CREECH: (PAUSE) PLEASE SWEAR MS. SMITH.

19 MADAME CLERK: MS. SMITH, PLEASE BRING YOUR THINGS AND HAVE
20 A SEAT IN THE JURY BOX.

21 JUROR 66, DALE MAY (WHITE MALE). WHAT SAYS THE STATE?

22 MS. KEDNOCKER: PLEASE EXCUSE THE JUROR.

23 MADAME CLERK: MR. MAY, YOU ARE EXCUSED IN THIS CASE. YOU
24 MAYBE SEATED.

25 JUROR NUMBER 2, LESTER ANDERSON (WHITE MALE). (PAUSE) WHAT

JURY SELECTION

1 SAYS THE STATE?

2 MS. KEDNOCKER: PLEASE PRESENT THE JUROR?

3 MADAME CLERK: WHAT SAYS THE DEFENDANT?

4 MR. CREECH: (PAUSE) PLEASE EXCUSE MR. ANDERSON.

5 MADAME CLERK: MR. ANDERSON, YOU ARE EXCUSED FROM THIS

6 CASE. YOU MAY BE SEATED.

7 JUROR 69, JAMES MCNULTY (WHITE MALE). WHAT SAYS THE STATE?

8 MS. KEDNOCKER: PLEASE PRESENT THE JUROR

9 MADAME CLERK: WHAT SAYS THE DEFENDANT?

10 MR. CREECH: (PAUSE) PLEASE SWEAR MR. MCNULTY.

11 MADAME CLERK: MR. MCNULTY, PLEASE COME HAVE A SEAT IN THE

12 JURY BOX.

13 JUROR NUMBER 4, JANICE BEATY (BLACK FEMALE). WHAT SAYS THE

14 STATE?

15 MS. KEDNOCKER: PLEASE EXCUSE THE JUROR.

16 MADAME CLERK: MS. BEATY, YOU ARE EXCUSED FROM THIS CASE.

17 YOU MAY HAVE A SEAT.

18 JUROR 148, CRYSTAL BELL (BLACK FEMALE). (PAUSE) WHAT SAYS

19 THE STATE?

20 MS. KEDNOCKER: PLEASE EXCUSE THE JUROR.

21 MADAME CLERK: MS. BELL, YOU ARE EXCUSED IN THIS CASE. YOU

22 MAY HAVE A SEAT.

23 JUROR 38, ANNA HARMON (WHITE FEMALE). WHAT SAYS THE STATE?

24 MS. KEDNOCKER: PLEASE SWEAR THE JUROR.

25 MADAME CLERK: WHAT SAYS THE DEFENDANT?

JURY SELECTION

1 MR. CREECH: (PAUSE) PLEASE EXCUSE MS. HARMON.

2 MADAME CLERK: MS. HARMON, YOU ARE EXCUSED FROM THIS CASE.
3 PLEASE BE SEATED.

4 JUROR 141, MARY WILSON (WHITE FEMALE). WHAT SAYS THE STATE?

5 MS. KEDNOCKER: PLEASE PRESENT THE JUROR.

6 MADAME CLERK: WHAT SAYS THE DEFENDANT?

7 MR. CREECH: (PAUSE) PLEASE EXCUSE THIS JUROR.

8 MADAME CLERK: MS. WILSON, YOU ARE EXCUSED FROM THIS CASE.
9 YOU MAY BE SEATED.

10 JUROR 89, THOMAS PHILLIPS (WHITE MALE). WHAT SAYS THE
11 STATE?

12 MS. KEDNOCKER: PLEASE PRESENT THE JUROR.

13 MADAME CLERK: WHAT SAYS THE DEFENDANT?

14 MR. CREECH: (PAUSE) PLEASE PRESENT MR. PHILLIPS.

15 MADAME CLERK: MR. PHILLIPS, PLEASE HAVE A SEAT IN THE JURY
16 BOX.

17 JUROR 83, RICKIE PACE (WHITE MALE). WHAT SAYS THE STATE?

18 MS. KEDNOCKER: PLEASE EXCUSE THE JUROR.

19 MADAME CLERK: MR. PACE, YOU ARE EXCUSED IN THIS CASE.

20 JUROR 11, CHRISTOPHER SANFORD (WHITE MALE). WHAT SAYS THE
21 STATE?

22 MS. KEDNOCKER: PLEASE PRESENT THE JUROR.

23 MADAME CLERK: WHAT SAYS THE DEFENDANT?

24 MR. CREECH: (PAUSE) PLEASE SWEAR MR. SANFORD.

25 MADAME CLERK: MR. SANFORD, PLEASE COME HAVE A SEAT IN THE

JURY SELECTION

1 JURY BOX.

2 JUROR 136, BRENDA WHITNEY (BLACK FEMALE). WHAT SAYS THE
3 STATE?

4 MS. KEDNOCKER: PLEASE PRESENT THE JUROR.

5 MADAME CLERK: WHAT SAYS THE DEFENDANT?

6 MR. CREECH: (PAUSE) PLEASE SWEAR MS. WHITNEY.

7 MADAME CLERK: MS. WHITNEY, PLEASE COME HAVE SEAT IN THE
8 JURY BOX.

9 JUROR 81, BRENDAN NIX (WHITE MALE). WHAT SAYS THE STATE?

10 MS. KEDNOCKER: PLEASE PRESENT THIS JUROR.

11 MADAME CLERK: WHAT SAYS THE DEFENDANT?

12 MR. CREECH: (PAUSE) PLEASE SWEAR MR. NIX.

13 MADAME CLERK: MR. NIX, YOU MAY HAVE A SEAT IN THE JURY
14 BOX.

15 JUROR 24, ANNE EDLAND (WHITE FEMALE). WHAT SAYS THE STATE?

16 MS. KEDNOCKER: PLEASE PRESENT THE JUROR.

17 MADAME CLERK: WHAT SAYS THE DEFENDANT?

18 MR. CREECH: (PAUSE) PLEASE EXCUSE MS. EDLAND.

19 MADAME CLERK: MS. EDLAND, YOU ARE EXCUSED FROM THIS CASE.

20 JUROR 104, CALVIN ROACH (WHITE MALE). WHAT SAYS THE STATE?

21 MS. KEDNOCKER: PLEASE PRESENT THIS JUROR.

22 MADAME CLERK: WHAT SAYS THE DEFENDANT?

23 MR. CREECH: (PAUSE) PLEASE PRESENT MR. ROACH.

24 MADAME CLERK: MR. ROACH, PLEASE COME HAVE A SEAT IN THE

25 JURY BOX.

JURY SELECTION

1 JUROR 51, GEORGE MANOS (WHITE MALE). WHAT SAYS THE STATE?

2 MS. KEDNOCKER: PLEASE PRESENT THE JUROR.

3 MADAME CLERK: WHAT SAYS THE DEFENDANT?

4 MR. CREECH: (PAUSE) PLEASE EXCUSE MR. MANOS.

5 MADAME CLERK: MR. MANOS, YOU ARE EXCUSED IN THIS CASE.

6 YOU MAY BE SEATED.

7 JUROR 135, LOU WHITEHEAD (WHITE FEMALE). WHAT SAYS THE
8 STATE?

9 MS. KEDNOCKER: PLEASE PRESENT THIS JUROR.

10 MADAME CLERK: WHAT SAYS THE DEFENDANT?

11 MR. CREECH: (PAUSE) PLEASE EXCUSE MS. WHITEHEAD.

12 MADAME CLERK: MS. WHITEHEAD, YOU ARE EXCUSED IN THIS CASE.

13 JUROR 130, DORIS TILSON (WHITE FEMALE). WHAT SAYS THE
14 STATE?

15 MS. KEDNOCKER: PLEASE PRESENT THIS JUROR.

16 MADAME CLERK: WHAT SAYS THE DEFENDANT?

17 MR. CREECH: (PAUSE) PLEASE EXCUSE MS. TILSON.

18 MADAME CLERK: MS. TILSON, YOU ARE EXCUSED FROM THIS CASE.

19 JUROR 16, JOHN DAVIS (WHITE MALE). WHAT SAYS THE STATE?

20 MS. KEDNOCKER: PLEASE EXCUSE THIS JUROR.

21 MADAME CLERK: MR. DAVIS, YOU ARE EXCUSED FROM THIS CASE.

22 JUROR 142, JANETTE WINN (WHITE FEMALE). WHAT SAYS THE
23 STATE?

24 MS. KEDNOCKER: PLEASE PRESENT THIS JUROR.

25 MADAME CLERK: WHAT SAYS THE DEFENDANT?

JURY SELECTION

1 MR. CREECH: (PAUSE) PLEASE EXCUSE MS. WINN.
2 MADAME CLERK: MS. WINN, YOU ARE EXCUSED IN THIS CASE.
3 JUROR 85, DAVID PARRIS (WHITE MALE). WHAT SAYS THE STATE?
4 MS. KEDNOCKER: PLEASE PRESENT THIS JUROR.
5 THE COURT: WHAT SAYS THE DEFENDANT?
6 MR. CREECH: (PAUSE) PLEASE EXCUSE MR. PARRIS.
7 MADAME CLERK: MR. PARRIS, YOU ARE EXCUSED IN THIS CASE.
8 JUROR 53, JULIE JORDAN (WHITE FEMALE). WHAT SAYS THE STATE?
9 MS. KEDNOCKER: PLEASE PRESENT THE JUROR.
10 MADAME CLERK: WHAT SAYS THE DEFENDANT?
11 MR. CREECH: (PAUSE) PLEASE EXCUSE MS. JORDAN
12 MADAME CLERK: MS. JORDAN, YOU ARE EXCUSED IN THIS CASE.
13 JUROR NUMBER 8, CHRISTINE CAPOBIANCO (WHITE FEMALE). WHAT
14 SAYS THE STATE?
15 MS. KEDNOCKER: PLEASE PRESENT THIS JUROR.
16 MADAME CLERK: WHAT SAYS THE DEFENDANT?
17 MR. CREECH: (PAUSE) PLEASE SWEAR THE JUROR.
18 MADAME CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX.
19 JUROR 152, JIMMY MANN (WHITE MALE). WHAT SAYS THE STATE?
20 MS. KEDNOCKER: PLEASE PRESENT THE JUROR.
21 MADAME CLERK: WHAT SAYS THE DEFENDANT?
22 MR. CREECH: (PAUSE) PLEASE SWEAR MR. MANN.
23 MADAME CLERK: MR. MANN, PLEASE HAVE A SEAT IN THE JURY
24 BOX.
25 THE COURT: DOES IT SUIT THE STATE AND DEFENSE TO HAVE ONE

JURY SELECTION

1 ALTERNATE?

2 MS. KEDNOCKER: YES, SIR.

3 THE COURT: MR. CREECH, DOES THAT SUIT YOU?

4 MR. CREECH: YES, YOUR HONOR.

5 THE COURT: ALL RIGHT.

6 MADAME CLERK: JUROR 27, JACQUELINE FERNANDES (OTHER
7 FEMALE). WHAT SAYS THE STATE?

8 MS. KEDNOCKER: PLEASE PRESENT THE JUROR.

9 MADAME CLERK: WHAT SAYS THE DEFENDANT?

10 MR. CREECH: (PAUSE) PLEASE EXCUSE THIS JUROR.

11 MADAME CLERK: MS. FERNANDES, YOU ARE EXCUSED FROM THIS
12 CASE.

13 MS. KEDNOCKER: EXCUSE ME, YOUR HONOR. I BELIEVE THE
14 DEFENSE IS OUT OF STRIKES AT THIS POINT. I HAVE TEN.

15 THE COURT: WELL, THAT'S THE WAY I COUNTED IT UP TOO. MS.
16 TROUP, YOU BETTER CHECK THAT.

17 MADAME CLERK: BUT THIS IS THE ALTERNATE.

18 THE COURT: IS THAT THE ALTERNATE? OH, OKAY. ALL RIGHT.

19 MADAME CLERK: THIS IS THE ALTERNATE, SO WE STARTED AGAIN.

20 MS. KEDNOCKER: I APOLOGIZE.

21 THE COURT: HOLD ON A SECOND. HOW MANY PEOPLE HAVE WE GOT
22 OVER THERE?

23 MR. CREECH: IT LOOKS LIKE WE'VE GOT 12, YOUR HONOR.

24 THE COURT: YEAH, I THINK THERE ARE ONLY 12 SEATED. SO...

25 MADAME CLERK: IT'S THE ALTERNATE.

JURY SELECTION

1 THE COURT: HE HAS TWO STRIKES ON THE ALTERNATE.

2 MS. KEDNOCKER: RIGHT. I APOLOGIZE, YOUR HONOR. I THOUGHT
3 WE WERE ON NUMBER 12.

4 THE COURT: OKAY. ALL RIGHT. OKAY.

5 MADAME CLERK: JUROR 71, AYUB MERCHANT (OTHER MALE). WHAT
6 SAYS THE STATE?

7 MS. KEDNOCKER: PLEASE PRESENT THIS JUROR.

8 MADAME CLERK: WHAT SAYS THE DEFENDANT?

9 MR. CREECH: (PAUSE) PLEASE EXCUSE THIS JUROR.

10 MADAME CLERK: MR. MERCHANT, YOU ARE EXCUSED IN THIS CASE.

11 JUROR 86, GLENDA PATTERSON (WHITE FEMALE). WHAT SAYS THE
12 STATE?

13 MS. KEDNOCKER: PLEASE PRESENT THIS JUROR.

14 MADAME CLERK: WHAT SAYS THE DEFENDANT?

15 MR. CREECH: PLEASE SWEAR THE JUROR.

16 MADAME CLERK: MS. PATTERSON, PLEASE HAVE A SEAT IN THE
17 JURY BOX.

18 THE COURT: (PAUSE) ALL RIGHT. ANY OBJECTIONS AS TO THE
19 SELECTION PROCESS OR THE COMPOSITION OF THE JURY AT THIS POINT
20 FROM THE STATE?

21 MS. KEDNOCKER: NONE FROM THE STATE, YOUR HONOR.

22 THE COURT: FROM THE DEFENSE?

23 MR. CREECH: NONE FROM THE DEFENSE, YOUR HONOR.

24 THE COURT: OKAY. I FIND THE SELECTION COMPLIED WITH THE
25 STATUTORY REQUIREMENTS IN *BATSON v. KENTUCKY* AND *J.E.B. v.*

JURY SELECTION

1 ALABAMA.

2 ALL RIGHT. LADIES AND GENTLEMEN, THOSE OF YOU WHO WERE NOT
3 CHOSEN ON THIS JURY, YOU JUST NEED TO CALL BACK AFTER SIX O'CLOCK
4 THIS EVENING AND GET FURTHER INSTRUCTIONS AT THAT TIME. THANK
5 YOU FOR YOUR PATIENCE WITH US AND HAVE A GOOD AFTERNOON.

6 (BALANCE OF PANEL DISMISSED AT 12:17 P.M.)

7 THE COURT: ALL RIGHT. AND FOR THOSE OF YOU WHO WERE
8 CHOSEN, YOU WILL CONSTITUTE THE JURY IN THIS CASE. WE'RE GOING
9 TO BEGIN THE CASE AT ABOUT 1:45, SO IF YOU WOULD JUST BE BACK IN
10 YOUR JURY ROOM AT THAT TIME, WE'LL GO AHEAD AND TAKE A LUNCH
11 BREAK AT THIS TIME.

12 MS. DAILEY IS GOING TO BE THE BAILIFF. SHE WILL BE HERE TO
13 ASSIST YOU IN ANY WAY YOU NEED. AND MS. COOK IS BACK THERE IN
14 THE BACK OF THE COURTROOM AS WELL. JUST BE BACK AT THE JURY ROOM
15 AT 1:45, AND WE'LL START THE TRIAL AT THAT TIME.

16 LET ME JUST MENTION A COUPLE OF THINGS TO YOU THAT YOU'RE
17 GOING TO GET TIRED OF ME TELLING YOU, SO I'M GOING TO START NOW.
18 THE FIRST THING IS YOU HAVE TO DECIDE THIS CASE BASED SOLELY ON
19 THE EVIDENCE YOU HEAR DURING THE TRIAL WHILE COURT IS IN SESSION
20 AND FROM NO OTHER SOURCE. WHEN YOU COME BACK, YOU'LL TAKE AN
21 OATH TO THAT SAME EFFECT. THAT MEANS THAT YOU'RE NOT SUPPOSED TO
22 DO ANY OUTSIDE INVESTIGATION. IT ALSO MEANS YOU'RE NOT SUPPOSED
23 TO TALK TO ANYBODY ABOUT THIS CASE OR MAKE ANY KIND OF
24 INVESTIGATION INTO ANYTHING OR MAKE UP YOUR MIND ABOUT THE CASE
25 BECAUSE YOU HAVE TO KEEP AN OPEN MIND THROUGHOUT THE TRIAL. SO

MATTERS AND MOTIONS

1 KEEP THOSE THINGS IN MIND.

2 I HOPE YOU HAVE A GOOD LUNCH AND JUST BE BACK AT 1:45.

3 THANK YOU VERY MUCH.

4 (JURY EXITS COURTROOM AT 12:18 P.M.)

5 THE COURT: DOES ANYBODY NEED TO PUT ANYTHING ON THE RECORD
6 AT THIS TIME?

7 MS. KEDNOCKER: NO, SIR, YOUR HONOR.

8 MR. CREECH: NOTHING.

9 THE COURT: ALL RIGHT. SEE YOU BACK AT 1:45. THANK YOU
10 VERY MUCH.

11 MR. CREECH: YOUR HONOR CAN HE REMAIN ON BOND? THE
12 BONDSMAN DOES NOT HAVE A PROBLEM, GIGGIE'S BONDING. THEY DON'T
13 HAVE A PROBLEM WITH IT.

14 MS. KEDNOCKER: YOUR HONOR, WE LEAVE IT IN YOUR HONOR'S
15 DISCRETION WHETHER TO TAKE HIM INTO CUSTODY AT THIS POINT.

16 THE COURT: OKAY. WELL---

17 MR. CREECH: HE DOES HAVE -- AND I CAN TELL YOU THIS, YOUR
18 HONOR, HE'S GOT THIS -- HE WAS IN JAIL FOR LIKE 19 MONTHS ON THIS
19 CHARGE, YOUR HONOR, OR LONGER, AND DURING THAT TIME HE WAS DOWN
20 AT THE INFIRMARY. HE WAS HOUSED IN MEDICAL HOUSING. HE HAS A
21 SLEEP PROBLEM, SLEEP DISORDER. HE SLEEPS WITH A CPAP MACHINE AND
22 ALL THAT KIND OF STUFF. SO I KNOW THAT HIS BOND GOES OFF
23 TECHNICALLY WHEN THE JURY IS SWORN.

24 MS. KEDNOCKER: YOUR HONOR, WE WOULD FEEL THAT IT WOULD BE
25 PROBABLY -- IT WOULD BE IN THE BEST INTEREST TO TAKE HIM INTO

PRELIMINARY INSTRUCTION BY THE COURT

1 CUSTODY AT THIS POINT. IT'S NOT VERY MUCH TIME, AND WE'RE
2 STARTING BACK AT 1:45. THE STATE'S POSITION WOULD BE TO TAKE HIM
3 INTO CUSTODY UNTIL THE CASE IS CALLED TO TRIAL.

4 THE COURT: OKAY. TECHNICALLY, HIS BOND HAS EVAPORATED.
5 SO I AGREE WITH THE STATE. THANK YOU VERY MUCH.

6 MS. KEDNOCKER: THANK YOU, JUDGE.

7 THE COURT: AND THE DETENTION CENTER IS INSTRUCTED TO TAKE
8 CARE OF HIM, WHATEVER HEALTH NEEDS HE HAS AT THIS TIME. SO JUST
9 MAKE SURE THAT -- IF SOME PROBLEM OR SOME ACCOMMODATION NEEDS TO
10 BE MADE, PLEASE LET ME KNOW ABOUT THAT, ALL RIGHT?

11 DEPUTY MCCALL: YES, SIR.

12 THE COURT: THANK YOU.

13 (A LUNCH RECESS WAS TAKEN FROM 12:20 TO 1:49 P.M.)

14 THE COURT: ANYTHING BEFORE WE BRING THE JURY IN, FROM THE
15 STATE?

16 MS. KEDNOCKER: NO, SIR, YOUR HONOR.

17 THE COURT: FROM THE DEFENSE, MR. CREECH?

18 MR. CREECH: WE'RE READY, YOUR HONOR.

19 THE COURT: OKAY. THANK YOU.

20 MS. KEDNOCKER: YOUR HONOR, IF I COULD HAVE JUST ONE SECOND
21 TO FIND THE INVESTIGATOR ON THE CASE. SHE SHOULD BE -- I
22 APOLOGIZE.

23 THE COURT: OKAY.

24 (JURY REENTERS COURTROOM AT 1:51 A.M.)

25 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, GOOD

PRELIMINARY INSTRUCTION BY THE COURT

1 AFTERNOON. WE'RE ABOUT TO BEGIN THE CASE OF THE STATE OF SOUTH
2 CAROLINA VERSUS RANDALL LANE SMITH, AND I'M GOING TO GIVE YOU
3 SOME PRELIMINARY INSTRUCTIONS AT THIS TIME.

4 THE FIRST THING I WANT TO DO IS THANK YOU FOR YOUR SERVICE
5 AS JURORS THIS WEEK. OBVIOUSLY, OUR JUSTICE SYSTEM COULDN'T WORK
6 IF PEOPLE LIKE YOU DIDN'T SHOW UP IN RESPONSE TO THE SUMMONS AND
7 INSURE THAT PEOPLE COULD EXERCISE THEIR CONSTITUTIONAL RIGHT TO A
8 JURY TRIAL. AND THAT RIGHT IS CONSTITUTIONALLY GUARANTEED. IT
9 IS A VALUABLE AND IMPORTANT RIGHT TO HAVE A JURY TRIAL BEFORE A
10 JURY OF ONE'S PEERS. IN FACT, OUR FOUNDERS OF THIS COUNTRY KNEW
11 IT WAS SO IMPORTANT THAT THEY PUT THE RIGHT TO A JURY TRIAL NOT
12 ONLY IN THE CONSTITUTION ITSELF BUT IN THREE OF THE FIRST TEN
13 AMENDMENTS. SO THAT'S THE WEIGHT THEY PLACED ON IT, AND I KNOW
14 THAT YOU RECOGNIZE THAT AND APPRECIATE THAT OR YOU WOULDN'T BE
15 HERE TODAY.

16 YOU HEARD PROBABLY FROM SOMEWHERE IF YOU DIDN'T HEAR IT THIS
17 MORNING THAT YOU WERE CALLED AS A JUROR BECAUSE YOU EITHER HAVE A
18 DRIVER'S LICENSE OR YOU HAVE AN IDENTIFICATION CARD ISSUED BY THE
19 DEPARTMENT OF TRANSPORTATION OR YOU ARE REGISTERED TO VOTE.
20 THAT'S WHY YOU GOT A SUMMONS. AND YOU MAY WONDER WHY YOU WERE
21 SELECTED TO BE ON THIS JURY, AND I'M GOING TO TELL YOU WHY. YOU
22 WERE SELECTED BECAUSE BOTH SIDES, THAT IS, THE STATE AND MR.
23 SMITH, BELIEVED YOU COULD BE FAIR AND IMPARTIAL AND DECIDE THIS
24 CASE SOLELY ON THE EVIDENCE AND WITHOUT ANY BIAS OR PREJUDICE OF
25 ANY KIND.

PRELIMINARY INSTRUCTION BY THE COURT

1 NOW, LADIES AND GENTLEMEN, I'M GOING TO ASK THE CLERK TO
2 ADMINISTER THE OATH. IF YOU WILL LISTEN VERY CAREFULLY TO THIS
3 OATH, IT'S BEEN AROUND A LONG TIME AND IT WILL TELL YOU IN A
4 NUTSHELL ALL YOU NEED TO KNOW TO BE A JUROR.

5 SO, YES, MA'AM, MS. TROUP.

6 MADAME CLERK: PLEASE STAND AND RAISE YOUR RIGHT HAND FOR
7 THE OATH IN THIS CASE. THE CORRECT RESPONSE IS "I WILL."

8 YOU SHALL WELL AND TRULY TRY THE CASE 2004-GS-23-6874, THE
9 STATE VERSUS RANDALL LANE SMITH, SR., INDICTED FOR CRIMINAL
10 SEXUAL CONDUCT WITH A MINOR SECOND DEGREE, AND A TRUE VERDICT
11 RENDER ACCORDING TO THE LAW AND THE EVIDENCE SO HELP YOU GOD?

12 (JURY SWORN AT 1:53 P.M.)

13 THE COURT: ALL RIGHT. . THANK YOU, MS. TROUP.

14 LET ME INTRODUCE SOME OF THE PEOPLE IN THE COURTROOM SO YOU
15 KNOW WHAT THEIR ROLES ARE AND WHAT THEIR JOBS ARE, AND I WILL
16 TELL YOU WHAT THEIR JOBS ARE, AND I WILL TELL YOU WHAT MY JOB IS,
17 AND THEN I'M GOING TO TELL YOU WHAT YOUR JOB IS.

18 THE FIRST PERSON I WANT TO INTRODUCE IS MS. DAWN KOFFSKEY,
19 THE PERSON SEATED RIGHT IN FRONT OF ME. SHE IS THE COURT
20 REPORTER. I'M VERY FORTUNATE TO WORK WITH HER ON A REGULAR
21 BASIS. SHE TAKES DOWN EVERYTHING THAT IS SAID IN THIS COURT
22 BECAUSE IT IS A COURT OR RECORD.

23 AND SITTING NEXT TO HER, THE LADY WHO JUST GAVE YOU THE
24 OATH, IS MS. MARY TROUP. SHE IS ONE OF THE DEPUTY CLERKS WITH
25 THE CLERK OF COURT'S OFFICE UNDER MR. PAUL WICKENSIMER. SHE

PRELIMINARY INSTRUCTION BY THE COURT

1 KEEPS TRACK OF ALL THE PAPERWORK RELATED TO THIS CASE AND KEEPS
2 US ALL IN LINE.

3 SEATED UP HERE WITH ME TO MY RIGHT IS AMBER BAGBY, WHO IS A
4 RECENT GRADUATE OF THE UNIVERSITY OF SOUTH CAROLINA SCHOOL OF
5 LAW, AND SHE IS MY LAW CLERK. SHE STAYS WITH ME FOR ABOUT A YEAR
6 AND HELPS WITH RESEARCH AND LEARNS A LITTLE BIT ABOUT THE COURT
7 SYSTEM IN THE PROCESS AND IS A BIG HELP TO ME.

8 I'VE ALREADY INTRODUCED TO YOU THE BAILIFFS.

9 AND LET ME TELL YOU ALSO WHAT MY JOB IS. AS I TOLD YOU THIS
10 MORNING, MY NAME IS GARY HILL. I'M ONE OF THE RESIDENCE CIRCUIT
11 JUDGES IN GREENVILLE. AND AS THE JUDGE IN THIS CASE I HAVE
12 REALLY THREE JOBS. THE FIRST JOB I HAVE IS TO DETERMINE WHETHER
13 EVIDENCE IS ADMISSIBLE, AND YOU WILL HEAR IN THIS CASE EVIDENCE,
14 AND I WILL DETERMINE, IF ANYONE OBJECTS TO IT, WHETHER IT'S
15 ADMISSIBLE AND WHETHER YOU SHOULD CONSIDER IT.

16 THE SECOND JOB I HAVE IS TO TRY TO RUN THE CASE AS
17 EFFICIENTLY AS POSSIBLE AND TRY TO BE A TRAIN CONDUCTOR OF SORTS,
18 AND I WILL DO MY BEST TO KEEP THE TRAIN RUNNING AS SMOOTHLY AS IT
19 CAN UNDER THE CIRCUMSTANCES AND STRICTURES OF OUR SYSTEM.

20 AND THEN THE LAST JOB I HAVE IS THAT I'M CONSIDERED THE
21 JUDGE OF THE LAW, AND THAT MEANS AT THE END OF THE CASE AFTER
22 YOU'VE HEARD ALL THE EVIDENCE I'M GOING TO INSTRUCT YOU AND TELL
23 YOU WHAT THE LAW IS THAT YOU MUST APPLY TO THIS CASE.

24 AND JUST AS I AM THE JUDGE OF THE LAW, YOU AS A JUROR ARE A
25 JUDGE AS WELL. YOU ARE THE JUDGES OF THE FACTS, BECAUSE UNDER

PRELIMINARY INSTRUCTION BY THE COURT

1 OUR STATE CONSTITUTION YOU AND YOU ALONE WILL DETERMINE THE FACTS
2 OF THIS CASE THROUGH YOUR COLLECTIVE DECISION AND YOUR VERDICT.
3 I'M NOT ALLOWED TO HAVE ANY OPINION WHATSOEVER AS TO WHAT THE
4 FACTS ARE OR AS TO WHAT YOUR VERDICT SHOULD BE. YOU AND YOU
5 ALONE ARE THE EXCLUSIVE JUDGES OF THE FACTS.

6 NOW, HOW DO YOU DETERMINE WHAT THE FACTS ARE? YOU DETERMINE
7 IT FROM THE EVIDENCE YOU'RE GOING TO HEAR IN THIS CASE. AND LET
8 ME TELL YOU WHAT THE EVIDENCE THAT YOU MAY CONSIDER CONSISTS OF.
9 IT WILL CONSIST OF PRIMARILY TWO THINGS. THE FIRST YOU ARE MOST
10 FAMILIAR WITH PROBABLY IS THE SWORN TESTIMONY OF A WITNESS.
11 THERE WILL BE WITNESSES WHO ARE CALLED UP WHO WILL TAKE AN OATH.
12 THEY WILL SIT IN THIS SEAT RIGHT IN FRONT OF US AND THEY WILL
13 TESTIFY AS TO THINGS THEY HAVE SEEN OR HEARD, OBSERVED OR
14 OTHERWISE HAVE KNOWLEDGE ABOUT. AND THAT IS ONE FORM OF
15 EVIDENCE, THE SWORN TESTIMONY OF A WITNESS. THE SECOND FORM OR
16 SOURCE OF EVIDENCE IS CALLED AN EXHIBIT. AN EXHIBIT MAY BE A
17 PICTURE, A PHOTOGRAPH, SOME KIND OF PIECE OF PAPER, A DOCUMENT OF
18 SOME TYPE, A PHYSICAL, TANGIBLE THING THAT YOU CAN FEEL AND
19 TOUCH. AND YOU WILL KNOW IT'S AN EXHIBIT AND YOU'LL KNOW IT'S
20 EVIDENCE THAT YOU CAN CONSIDER IN DETERMINING WHAT THE FACTS ARE
21 BECAUSE YOU'LL HAVE IT BACK IN THE JURY ROOM WITH YOU AFTER THE
22 CASE IS OVER, AND IT WILL HAVE A LITTLE STICKER ON IT THAT WILL
23 SAY EXHIBIT SO AND SO. SO SWORN TESTIMONY OF WITNESSES AND
24 EXHIBITS WILL BE THE THINGS YOU CAN BASE YOUR DECISION ON.

25 NOW, THE WORD JURY COMES FROM AN OLD FRENCH TERM AND IT

PRELIMINARY INSTRUCTION BY THE COURT

1 MEANS A COMPANY OF PEOPLE SWORN TO RENDER A TRUE ANSWER. NOW,
2 THAT MAY NOT BE VERY HELPFUL TO YOU UNLESS YOU KNOW WHAT THE
3 QUESTION IS. AND THE QUESTION YOU ARE ASKED TO ANSWER IS WHETHER
4 THE STATE IN THIS CASE AGAINST RANDALL LEE SMITH CAN MEET ITS
5 BURDEN OF PROVING HIM GUILTY OF WHAT HE IS CHARGED WITH. ANYONE
6 CHARGED IN A CRIMINAL CASE IS PRESUMED TO BE INNOCENT NO MATTER
7 WHAT THE CHARGE IS, NO MATTER HOW SERIOUS OR HOW TRIVIAL THAT
8 CHARGE MAY BE. ANYONE CHARGED IS PRESUMED INNOCENT AND THEY ARE
9 NEVER REQUIRED TO PROVE THEMSELVES INNOCENT OR OFFER ANY EVIDENCE
10 OR EXPLANATION WHATSOEVER. THAT'S ONE OF THE CORNERSTONES OF OUR
11 LAW, AND IT IS CARDINAL AND AN IMPORTANT RULE OF LAW THAT A
12 DEFENDANT IN A CRIMINAL TRIAL WILL ALWAYS BE PRESUMED INNOCENT OF
13 THE CRIME FOR WHICH THE INDICTMENT WAS ISSUED UNLESS GUILT HAS
14 BEEN PROVEN BY EVIDENCE SATISFYING YOU OF GUILT BEYOND A
15 REASONABLE DOUBT.

16 AS I TOLD YOU BEFORE, THE INDICTMENT THAT I READ TO YOU
17 EARLIER IS SIMPLY THE CHARGE BY WHICH THE CASE IS BROUGHT INTO
18 COURT. IT'S THE FORMAL MANNER IN WHICH THE STATE IS ALLOWED TO
19 COME IN THE COURTROOM AND BEGIN THE TRIAL. AN INDICTMENT MERELY
20 SERVES THE PURPOSE OF LETTING SOMEONE KNOW WHAT THEY ARE BEING
21 CHARGED WITH DOING, AND IT IS IN A SENSE THE TICKET THAT ALLOWS
22 THE PROSECUTION TO COME IN THE DOOR OF THE COURTROOM. IT'S NOT
23 EVIDENCE OF ANYTHING. IT'S NOT PROOF OF ANYTHING. AS I'VE
24 ALREADY TOLD YOU, IT DOESN'T EVEN CREATE A SUSPICION OF GUILT.
25 THE STATE HAS THE BURDEN OF PROVING EACH AND EVERY ONE OF THE

PRELIMINARY INSTRUCTION BY THE COURT

1 ELEMENTS OF THE INDICTMENT BEYOND A REASONABLE DOUBT, AND IT WILL
2 BE YOUR DUTY AND YOUR JOB, LADIES AND GENTLEMEN, TO DECIDE
3 WHETHER THE STATE HAS MET THAT BURDEN. AND AGAIN, THE DEFENDANT
4 DOES NOT HAVE TO PROVE ANYTHING TO YOU.

5 NOW, AS I TOLD YOU, YOU HAVE TO DETERMINE WHETHER THE STATE
6 HAS MET ITS BURDEN OF PROOF. IN DETERMINING THAT, YOU MUST
7 CONSIDER THE EVIDENCE. I'VE TOLD YOU WHAT EVIDENCE IS. AND I
8 WILL TELL YOU THAT IN DETERMINING THE VERDICT YOU WILL ALSO HAVE
9 TO NECESSARILY DETERMINE THE CREDIBILITY OF THE EVIDENCE YOU
10 HEAR. YOU AND YOU ALONE ARE THE SOLE JUDGES OF THE CREDIBILITY
11 OR BELIEVABILITY OF THE WITNESSES YOU HEAR AND THE EXHIBITS THAT
12 COME INTO EVIDENCE, IF ANY. YOU WILL DECIDE WHETHER A WITNESS IS
13 TELLING THE TRUTH OR NOT OR WHETHER THE EXHIBIT IS CREDIBLE OR
14 NOT.

15 NOW, YOU CAN TAKE MANY THINGS INTO ACCOUNT IN DETERMINING
16 THIS MATTER OF CREDIBILITY. YOU CAN TAKE INTO ACCOUNT WHETHER
17 ANYONE HAS AN INTEREST IN THE OUTCOME OF THIS CASE OR DO THEY
18 HAVE ANY BIAS OR PREJUDICE OF ANY TYPE THAT MIGHT AFFECT OR COLOR
19 THEIR TESTIMONY. YOU MAY CONSIDER THE OPPORTUNITY THE WITNESS
20 HAS HAD TO SEE OR HEAR OR KNOW ABOUT THE MATTERS THEY PURPORT TO
21 TESTIFY TO. AND YOU MAY ALSO CONSIDER THE WAY THE WITNESS ACTS
22 ON THE WITNESS STAND, THAT IS, WHETHER THEY ARE HESITANT OR
23 FORTHRIGHT. IN OTHER WORDS, WHAT THEIR Demeanor IS. THOSE ARE
24 SOME OF THE THINGS YOU CAN USE IN DETERMINING CREDIBILITY.

25 YOU CAN ALSO USE THE THINGS YOU USE EVERY DAY TO DETERMINE

PRELIMINARY INSTRUCTION BY THE COURT

1 WHETHER SOMEONE IS TELLING THE TRUTH OR NOT BECAUSE YOU CERTAINLY
2 DON'T CHECK YOUR COMMON SENSE AT THE DOOR WHEN YOU REPORT FOR
3 JURY DUTY. BUT YOU DON'T DECIDE CREDIBILITY ARBITRARILY. YOU
4 HAVE SOME REASON FOR DOING IT, BUT IT IS YOUR CALL ALONE. BUT
5 THAT ALSO MEANS IT IS YOUR DUTY TO PAY CLOSE ATTENTION DURING THE
6 TRIAL.

7 I DON'T KNOW HOW LONG THERE TRIAL IS GOING TO LAST.
8 I'VE BEEN TOLD IT MAY LAST SEVERAL DAYS, BUT IT'S NOT GOING TO BE
9 AN OVERLY LONG TRIAL FROM THAT STANDPOINT. BUT PLEASE TRY TO PAY
10 AS CAREFUL ATTENTION AS YOU CAN. I KNOW IT'S DIFFICULT SOMETIMES
11 TO SIT AND LISTEN TO THINGS, BUT USUALLY IT'S THE POINT WHEN YOU
12 START WANDERING OFF AND YOUR ATTENTION GETS DIRECTED ELSEWHERE
13 THAT SOMETHING IMPORTANT HAPPENS AND YOU MISS SOMETHING
14 IMPORTANT.

15 AND LET ME JUST TELL YOU THAT UNDER OUR SYSTEM OF JUSTICE
16 YOU HAVE A VERY SOLEMN RESPONSIBILITY AS A JUDGE OF THE FACTS
17 BECAUSE THE WAY OUR SYSTEM WORKS, AS THE JUDGE OF THE LAW, IF I
18 MAKE A MISTAKE ON THE LAW, IT CAN EASILY BE CORRECTED ON APPEAL.
19 BUT IF YOU MAKE A MISTAKE AS TO WHAT THE FACTS ARE IN THIS CASE,
20 THAT CAN ALMOST NEVER BE CORRECTED. SO IT'S VERY IMPORTANT THAT
21 YOU PERFORM YOUR TASK OF DETERMINING THE FACTS CONSCIENTIOUSLY
22 AND DILIGENTLY BECAUSE IT IS ALMOST ALWAYS THE FINAL WORD IN THE
23 CASE.

24 NOW, LADIES AND GENTLEMEN, LET ME TELL YOU A LITTLE BIT
25 ABOUT THE STRUCTURE OF A CRIMINAL TRIAL AND WHAT THE PARTS OF

PRELIMINARY INSTRUCTION BY THE COURT

1 THAT TRIAL ARE. IN JUST A FEW MINUTES YOU'RE GOING TO BE HEARING
2 FROM MS. KEDNOCKER, WHO IS ONE OF THE FINE ASSISTANT SOLICITORS
3 WE HAVE IN THIS CIRCUIT. IN OTHER WORDS, SHE IS ONE OF THE
4 DISTRICT ATTORNEYS, SO TO SPEAK. AND SHE IS GOING TO GIVE AN
5 OPENING STATEMENT. AN OPENING STATEMENT IS NOT EVIDENCE BECAUSE
6 THE LAWYERS ARE NOT WITNESSES. SO WHAT THEY SAY IS NOT EVIDENCE.
7 THEY ARE MERELY TRYING TO GIVE YOU AN OUTLINE OR A BLUEPRINT OF
8 WHAT THE EVIDENCE WILL SHOW AND WHAT THEY THINK THE ISSUES ARE.
9 AFTER MS. KEDNOCKER COMPLETES HER OPENING STATEMENT MR. CREECH,
10 ON BEHALF OF THE DEFENDANT, WILL HAVE THE OPPORTUNITY BUT NOT THE
11 OBLIGATION TO GIVE AN OPENING STATEMENT AS WELL. AND I SAY HE
12 DOESN'T HAVE THE OBLIGATION TO BECAUSE AS I TOLD YOU, HE DOES NOT
13 HAVE THE BURDEN OF PROOF. THE BURDEN OF PROOF IS ON THE STATE,
14 AND MR. CREECH AND HIS CLIENT DO NOT HAVE TO OFFER ANY EVIDENCE
15 WHATSOEVER OR MAKE ANY OPENING STATEMENTS.

16 BUT AFTER THE OPENING STATEMENTS ARE DONE WE'LL THEN GO TO
17 THE NEXT PHASE OF THE TRIAL, WHICH WILL BE THE PRESENTATION OF
18 THE EVIDENCE, AND THE STATE AGAIN WILL GO FIRST BECAUSE THEY HAVE
19 THE BURDEN OF PROOF. THEY HAVE TO CARRY THAT BURDEN. THEY WILL
20 PUT UP THEIR WITNESSES. AND THEN ONCE THEY ARE THROUGH WITH
21 PUTTING UP THEIR WITNESSES AND EVIDENCE MR. CREECH AGAIN WILL
22 HAVE THE OPPORTUNITY, BUT NOT THE OBLIGATION, ON BEHALF OF HIS
23 CLIENT TO PUT UP ANY EVIDENCE HE WISHES TO.

24 AND ONCE WE'VE HAD ALL THE EVIDENCE, WE WILL THEN GO INTO
25 WHAT IS CALLED THE FINAL ARGUMENT, WHERE THE ATTORNEYS WILL GO

PRELIMINARY INSTRUCTION BY THE COURT

1 OVER WITH YOU AGAIN WHAT THEY THINK THE EVIDENCE HAS SHOWN AND
2 WHAT YOUR VERDICT SHOULD BE. AND THEN I WILL GIVE YOU THE FINAL
3 INSTRUCTIONS ON THE LAW THAT YOU MUST APPLY AND USE TO THIS CASE.
4 AFTER THAT THE CASE WILL BE IN YOUR HANDS FOR A VERDICT, FOR A
5 DECISION.

6 NOW, UNTIL THAT POINT, LADIES AND GENTLEMEN, UNTIL YOU BEGIN
7 DELIBERATING COLLECTIVELY AS A JURY YOU CANNOT DISCUSS THIS CASE
8 WITH ANYONE AND YOU CAN'T DO ANY KIND OF OUTSIDE RESEARCH, AND
9 PLEASE DON'T TRY TO DO THAT. IN THE AGE OF THE INTERNET, I CAN'T
10 STRESS THAT ENOUGH. IT HAS CAUSED A LOT OF PROBLEMS SOMETIMES
11 WITH JURORS TRYING TO DO THINGS ON THEIR OWN, WHICH IS ONLY A
12 NATURAL CURIOSITY OF COURSE. BUT YOU TOOK AN OATH JUST A FEW
13 MINUTES AGO TO DECIDE THIS CASE SOLELY ON THE EVIDENCE YOU HEARD
14 WHILE THIS COURT WAS IN SESSION. SO PLEASE DON'T DO ANY KIND OF
15 OUTSIDE INVESTIGATION, AND I'M GOING TO REPEATEDLY TELL YOU NOT
16 TO DISCUSS THIS CASE UNTIL THE END OF THE CASE, AFTER YOU HAVE
17 HEARD ALL THE EVIDENCE AND THE ARGUMENTS AND BEEN GIVEN THE LAW
18 THAT APPLIES.

19 NOW, THE REASON FOR THAT, AMONG OTHER THINGS, IS WE WENT TO
20 A LOT OF TROUBLE AND SO DID YOU THIS MORNING TO FIND 12 PEOPLE
21 WHO COULD BE FAIR AND IMPARTIAL TO BOTH SIDES AND WHO COULD KEEP
22 AN OPEN MIND, AND WE WANT YOU TO KEEP AN OPEN MIND THROUGHOUT
23 THIS TRIAL. A TRIAL IS OFTEN LIKE A PUZZLE. THE LAWYERS HAVE TO
24 PRESENT IT ONE PIECE AT A TIME. YOU MAY HEAR FROM A WITNESS THIS
25 AFTERNOON WHO SAYS ONE THING, AND IF WE TOOK A BREAK LATER ON YOU

PRELIMINARY INSTRUCTION BY THE COURT

1 MIGHT START DISCUSSING WHAT THE WITNESS SAID. AND ONCE YOU START
2 DISCUSSING WHAT WITNESSES SAY, YOU ARE STARTING TO MAKE
3 CONCLUSIONS AND YOU ARE STARTING TO MAKE UP YOUR MIND. YOU MAY
4 HEAR FROM A WITNESS TOMORROW THAT SAYS SOMETHING COMPLETELY
5 OPPOSITE. SO PLEASE KEEP AN OPEN MIND THROUGHOUT THIS CASE AND
6 TRY TO LISTEN AS ATTENTIVELY AS POSSIBLE.

7 NOW, LADIES AND GENTLEMEN, YOU ARE GOING TO HEAR IN JUST A
8 MINUTE OR SO FROM MS. KEDNOCKER, AND I KNOW YOU'RE GOING TO GIVE
9 HER THE SAME ATTENTION THAT YOU GAVE ME. I APPRECIATE THE KEEN
10 ATTENTION YOU DID GIVE ME. BUT THIS IS AN IMPORTANT CASE. IT'S
11 IMPORTANT TO THE STATE. IT IS IMPORTANT TO RANDALL LANE SMITH.
12 AND THIS IS THEIR DAY IN COURT. SO APPRECIATE THAT.

13 YES, MA'AM, MS. KEDNOCKER, OPENING STATEMENT.

14 MS. KEDNOCKER: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
15 COURT.

16 THE COURT: YES, MA'AM.

17 MS. KEDNOCKER: GOOD AFTERNOON. IN EARLY 2003 Minor

18 WAS LIKE MOST YOUNG BOYS. HE WENT TO SCHOOL. HE LOVED
19 PLAYING VIDEO GAMES. Minor HUNG OUT WITH HIS FRIENDS. BUT HIS
20 LIFE CHANGED THAT YEAR WHEN Minor UNCLE SEXUALLY ASSAULTED
21 HIM. Minor WAS JUST 12 GOING ON 13 YEARS OLD, AND THIS
22 IS THE MAN WHO SEXUALLY ASSAULTED Minor RANDALL LANE SMITH.

23 MY NAME IS CHRISTY KEDNOCKER, AND I'M AN ASSISTANT SOLICITOR
24 WITH THE GREENVILLE COUNTY SOLICITOR'S OFFICE. AND AS PROSECUTOR
25 IT'S MY JOB TO PRESENT TO YOU THE EVIDENCE IN THIS CASE TO PROVE

OPENING STATEMENTS -- BY MS. KEDNOCKER

1 TO YOU BY PROOF BEYOND A REASONABLE DOUBT THAT THIS DEFENDANT IS
2 GUILTY OF COMMITTING CRIMINAL SEXUAL CONDUCT AGAINST A MINOR IN
3 THE SECOND DEGREE.

4 JUDGE HILL, AS HE JUST TOLD YOU, IS THE SOLE INSTRUCTOR OF
5 THE LAW, AND AT THE END OF THIS CASE YOU'RE GOING TO HEAR MUCH
6 MORE ABOUT THE LAW. BUT FROM THE OUTSET, AS WE START THIS TRIAL,
7 I JUST WANT TO BRIEFLY LET YOU KNOW WHAT CRIMINAL SEXUAL CONDUCT
8 WITH A MINOR IN THE SECOND DEGREE IS. IT'S WHEN A PERSON COMMITS
9 A SEXUAL BATTERY ON A CHILD, A CHILD THAT'S AT LEAST 11 --
10 BETWEEN THE AGES OF 14 OR LESS AND AT LEAST 11.

11 AND WHAT IS A SEXUAL BATTERY? IT CAN BE A LOT OF DIFFERENT
12 THINGS. IT COULD BE VAGINAL INTERCOURSE, ANAL INTERCOURSE, ORAL
13 SEX. THE EVIDENCE IN THIS CASE WILL SHOW THAT THIS DEFENDANT
14 COMMITTED ANAL SEX ON HIS NEPHEW AND ORAL SEX ON HIS NEPHEW.

15 I WANT TO APOLOGIZE TO YOU FROM THE OUTSET. MUCH OF WHAT
16 YOU WILL HEAR, MANY OF THE WORDS AND THE TERMS THAT WE BOTH HAVE
17 TO USE ARE GRAPHIC. SOME OF YOU MAY HAVE NEVER HEARD A CASE
18 PRESENTED OR WORDS USED THE WAY YOU'RE GOING TO HAVE TO HEAR, AND
19 FOR THAT I AM VERY SORRY. BUT CRIMINAL SEXUAL CONDUCT IS AN UGLY
20 CRIME AND YOU SIMPLY HAVE TO HEAR IT FOR WHAT IT IS. YOU HAVE TO
21 HEAR THE EVIDENCE FOR WHAT IT IS.

22 THE EVIDENCE, AS JUDGE HILL JUST TOLD YOU, IS GOING TO COME
23 IN LOTS OF FORMS. THE MAJORITY OF IT WILL BE SWORN WITNESS
24 TESTIMONY. YOU WILL ALSO HEAR CIRCUMSTANTIAL EVIDENCE. AND ALL
25 OF IT COMBINED AT THE END OF THE DAY WILL BE ENOUGH TO PROVE TO

OPENING STATEMENTS -- BY MS. KEDNOCKER

1 YOU BY PROOF BEYOND A REASONABLE DOUBT THAT THIS DEFENDANT IS
2 GUILTY. IT'S AN IMPORTANT BURDEN, AND IT IS ONE THAT THE STATE
3 WELCOMES.

4 YOU'RE GOING TO HEAR FROM Minor AND YOU WILL HEAR ABOUT
5 HIS LIFE. IN 2003, WHEN HE WAS 12, YOU'LL HEAR HOW Minor USED
6 TO GO OVER TO THIS DEFENDANT'S HOUSE, HIS UNCLE, AND SPEND THE
7 NIGHT. Minor DAD IS A SINGLE DAD. Minor MOM TOOK OFF
8 YEARS AGO. SO Minor DAD WAS TRYING TO RAISE Minor AND HIS
9 BROTHER ON HIS OWN. THAT LED TO THE CIRCUMSTANCE OF Minor
10 Minor BEING AT THIS DEFENDANT'S HOUSE ALONE AT NIGHT. AND THE
11 EVIDENCE WILL SHOW IN THIS CASE THAT IN THE FALL OF 2003 WHILE
12 NANCY SMITH, THIS DEFENDANT'S WIFE, WAS AWAY WORKING THIRD SHIFT,
13 Minor WAS SLEEPING IN THE BED WITH THIS DEFENDANT.
14 THAT'S WHEN THIS DEFENDANT COMMITTED THE CRIME OF CRIMINAL SEXUAL
15 CONDUCT, IN ESSENCE, RAPING THIS 12-YEAR OLD, 13-YEAR OLD NEPHEW
16 OF HIS.

17 YOU'RE GOING TO HEAR FROM A GOOD MANY PEOPLE IN THIS TRIAL.
18 I DON'T EXPECT FOR IT TO BE THAT LONG. YOU WILL HEAR FROM
19 Minor HE WILL TELL YOU ABOUT THOSE MONTHS. HE'LL TELL YOU
20 ABOUT THE NIGHT WHEN HE FINALLY DISCLOSED IN DECEMBER AND TOLD
21 WHAT WAS GOING ON TO HIM. YOU'LL HEAR ABOUT HOW HE HAD TO TELL
22 HIS DAD, HOW HIS AUNT SAID, "YOU'VE GOT TO TELL YOUR FATHER."
23 AND Minor DIDN'T WANT TO TELL HIS DAD, BUT HE TOLD HIS DAD.
24 YOU'LL HEAR ABOUT Minor HAVING TO GO TO MEDICAL EXAMS AND BE
25 SEEN AND EXAMINED AND HOW THE LAST TWO YEARS OF HIS LIFE HAVE

OPENING STATEMENTS -- BY MS. KEDNOCKER

1 BEEN.

2 LADIES AND GENTLEMEN, THIS CASE IS IMPORTANT. IT'S
3 IMPORTANT TO EVERYONE IN THIS COURTROOM. THESE CRIMES HAPPEN
4 BEHIND CLOSED DOORS. I EXPECT THIS TRIAL TO BE RELATIVELY SHORT
5 BECAUSE OF THE NATURE OF IT. THERE AREN'T THREE OR FOUR PEOPLE
6 COMING IN TO WITNESS IT. IT HAPPENS BEHIND CLOSED DOORS. IT
7 HAPPENS IN SECRET.

8 I ASK THAT YOU LISTEN CAREFULLY. WE ALL HAVE OUR JOBS TO DO
9 IN THIS COURTROOM. MINE IS TO PRESENT TO YOU THE EVIDENCE IN
10 THIS CASE. DEFENSE COUNSEL IS TO DEFEND HIS CLIENT ZEALOUSLY.
11 AS JUDGE HILL JUST TOLD YOU, HE IS THE INSTRUCTOR OF THE LAW.
12 BUT WITH ALL DEFERENCE TO JUDGE HILL, YOU HAVE THE MOST IMPORTANT
13 JOB OF ANYONE IN THIS COURTROOM TODAY. YOU ALONE WILL DETERMINE
14 WHAT HAPPENED TO THAT 12 AND THEN 13-YEAR-OLD BOY IN 2003. AND
15 AT THE END OF THIS CASE I WILL ASK THAT YOU USE THE MOST
16 IMPORTANT TOOL THAT EACH ONE OF YOU BROUGHT INTO THIS COURTROOM
17 TODAY, YOUR PLAIN COMMON SENSE, AND RETURN A VERDICT THAT JUSTICE
18 DEMANDS IN THIS CASE. THANK YOU.

19 THE COURT: THANK YOU, MS. KEDNOCKER.

20 MR. CREECH.

21 MR. CREECH: THANK YOU, YOUR HONOR, MS. KEDNOCKER. MAY IT
22 PLEASE THE COURT, YOUR HONOR.

23 THE COURT: YES, SIR.

24 MR. CREECH: GOOD AFTERNOON, LADIES AND GENTLEMEN, MY NAME
25 IS TOM CREECH. I'M AN ATTORNEY HERE IN GREENVILLE. I HAVE MY

OPENING STATEMENTS -- BY MR. CREECH

1 OWN PRIVATE PRACTICE. AND, LADIES AND GENTLEMEN, IT'S MY
2 PRIVILEGE TODAY TO BE IN FRONT OF YOU REPRESENTING MR. RANDALL
3 LANE SMITH, RANDY SMITH. HE'S MY CLIENT.

4 LADIES AND GENTLEMEN, IN THIS CASE YOU'VE HEARD FROM THE
5 SOLICITOR, AND SHE REPRESENTS THE STATE OF SOUTH CAROLINA. OKAY?
6 SHE'S NOT A WITNESS IN THIS CASE. WHAT YOU HAVE HEARD ARE THE
7 STATE'S ALLEGATIONS. AND THEY HAVE COME IN HERE AND SHE'S TOLD
8 YOU ONE ALLEGATION AFTER ANOTHER ALLEGATION AFTER ANOTHER
9 ALLEGATION. OKAY? YOU MUST DECIDE THIS CASE BASED ON THE
10 EVIDENCE THAT YOU HEAR FROM THE WITNESS STAND -- ALL RIGHT? --
11 BASED ON THE EVIDENCE THAT THE STATE BRINGS IN HERE TO YOU.

12 I LIKE TO USE THE EXAMPLE OF THE SCALES, LADIES AND
13 GENTLEMEN. THE GOVERNMENT IN ANY CRIMINAL CASE HAS THE BURDEN OF
14 PROVING ITS CASE BEYOND A REASONABLE DOUBT. OKAY? AND IF YOU
15 TOOK THE SCALES, LADIES AND GENTLEMEN, THEY HAVE TO USE
16 SUBSTANTIAL EVIDENCE, BRING IN SUBSTANTIAL EVIDENCE TO PROVE
17 THEIR CASE IN A CRIMINAL CASE. NOW, THAT'S NOT A BURDEN TO TAKE
18 LIGHTLY. IN FACT, THE SOLICITOR SAID SHE DOES NOT TAKE THAT
19 BURDEN LIGHTLY, AND THAT BURDEN REQUIRES THE STATE TO BRING IN
20 SUBSTANTIAL EVIDENCE.

21 IN 2004, YOU'RE GOING TO HEAR WITNESSES IN THIS CASE,
22 RANDALL LANE SMITH, THE DEFENDANT, THE ACCUSED -- AND THAT'S ALL
23 HE IS, IS THE ACCUSED -- AND HIS WIFE LIVED WITH THEIR TWO
24 CHILDREN DOWN IN A SMALL APARTMENT IN MAULDIN, SOUTH CAROLINA.
25 NOW, RANDALL SMITH'S WIFE NANCY HAD A BROTHER. HIS NAME IS STEVE

OPENING STATEMENTS -- BY MR. CREECH

1 JULIAN. OKAY? SO THAT'S THE ACCUSED'S BROTHER-IN-LAW. HE SAYS
2 HE WAS WORKING AT NIGHT OR WORKING ODD HOURS, SO HE WOULD BRING
3 HIS KIDS OVER TO RANDY AND NANCY'S APARTMENT. THERE WOULD BE
4 FOUR CHILDREN IN THIS APARTMENT, ALL OF THEM EITHER TEENAGERS,
5 PRE-TEENS. NANCY WOULD BE THERE AND RANDY WOULD BE THERE TOO.
6 RANDY IS A COMMERCIAL PHOTOGRAPHER, AND HE OWNS HIS OWN BUSINESS.
7 HIS WIFE HELPED HIM RUN THAT BUSINESS FOR MANY YEARS. THEY HAD
8 ALL OF THEIR EQUIPMENT THERE IN THE APARTMENT. THE APARTMENT
9 MAYBE HAD THREE BEDROOMS, AND THERE WERE FOUR KIDS THERE. OKAY?
10 SO THE TWO NEPHEWS WOULD COME AND STAY AT THIS APARTMENT WITH
11 THEM AND SPEND THE NIGHT. AND NANCY WORKED THE THIRD SHIFT AT
12 WAL-MART. OCCASIONALLY, SHE WOULD NOT BE THERE DURING THIS TIME.
13 OKAY? SO THERE THERE WOULD BE, AGAIN, RANDY WAS THERE, MAYBE
14 FOUR KIDS THERE, TWO BEDROOMS WHERE THE KIDS STAYED. AND, LADIES
15 AND GENTLEMEN, THESE ALLEGATIONS SURFACED AT THE END OF DECEMBER
16 OF 2003.

17 NOW, Minor THE PERSON IN THIS CASE, THE VICTIM IN THIS
18 CASE, HE BEGAN COMING OVER THERE AFTER SCHOOL IN PROBABLY
19 SEPTEMBER OR AUGUST OF 2003. OKAY? SO THERE WAS A GOOD FOUR- OR
20 FIVE-MONTH PERIOD OF TIME THERE THAT HE WAS COMING TO THE
21 APARTMENT AND HIS BROTHER WOULD BE THERE, HIS COUSINS WOULD
22 THERE. THEY WOULD ALL BE THERE WITH RANDY, AND THEY'D BE THERE
23 WITH NANCY.

24 NOW, THERE ARE IN THIS CASE, LADIES AND GENTLEMEN, I THINK
25 THE STATE IS GOING TO TRY TO INTRODUCE EVIDENCE THROUGH THE

OPENING STATEMENTS -- BY MR. CREECH

1 TESTIMONY OF THIS WITNESS, Minor AND Minor SHE SAYS, WILL
2 TAKE THE STAND AND WILL TELL US WHAT HE SAYS HAPPENED. OKAY?
3 BUT Minor WAS TAKEN TO THE DOCTOR SOON AFTER THESE ALLEGATIONS
4 SURFACED, SOON AFTER HE MADE THESE ALLEGATIONS, AND THE DOCTORS
5 THAT EXAMINED HIM CAME UP WITH NORMAL EXAMS, NORMAL PHYSICAL
6 EXAMS. HE WAS TAKEN TO TWO DOCTORS. BOTH DOCTORS FOUND
7 EVERYTHING WAS FINE, EVERYTHING WAS NORMAL. OKAY?

8 THE COURT: MR. CREECH, THIS IS OPENING STATEMENT NOW.
9 DON'T GET INTO ARGUMENT.

10 MR. CREECH: THANK YOU, YOUR HONOR.

11 SO THAT'S SOME OF THE EVIDENCE THAT I THINK IS SIGNIFICANT
12 IN THIS CASE.

13 WE ASK BEFORE YOU MAKE A DECISION -- I THINK THIS IS VERY
14 IMPORTANT -- THAT YOU LISTEN TO ALL OF THE EVIDENCE PRESENTED.
15 IT'S VERY EASY TO COME IN AND HEAR ONE SIDE OF THE CASE AND TO
16 MAKE A SNAP JUDGMENT BASED JUST ON THAT SIDE OF THE CASE, BASED
17 ON JUST WHAT SHE SAID. THAT'S WHY I'M ASKING YOU TO LISTEN TO
18 ALL OF THE EVIDENCE.

19 THESE ARE JUST ALLEGATIONS. MY CLIENT HAS REQUESTED A JURY
20 TRIAL. THE STATE WILL NOT BRING SUBSTANTIAL EVIDENCE IN THIS
21 CASE. I ASK YOU NOW AND I'LL ASK YOU AT THE END OF THIS CASE TO
22 FIND MR. RANDALL LANE SMITH NOT GUILTY OF THESE CHARGES. THANK
23 YOU.

24 THE COURT: THANK YOU, MR. CREECH.

25 YES, MA'AM, MS. KEDNOCKER, YOU CAN CALL YOUR FIRST WITNESS.

MATTERS AND MOTIONS

1 MS. KEDNOCKER: THANK YOU, JUDGE.

2 THE STATE CALLS Minor

3 THE COURT: OKAY. LET ME SEE THE ATTORNEYS UP HERE REAL
4 QUICK, IF I COULD.

5 (BENCH CONFERENCE OFF RECORD)

6 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'RE GOING
7 TO TAKE A BRIEF RECESS. IF YOU WOULD, JUST GO BACK TO YOUR JURY
8 ROOM FOR JUST A COUPLE OF MINUTES. AND REMEMBER, KEEP AN OPEN
9 MIND, DON'T DISCUSS THE CASE AMONGST YOURSELVES. WE'LL BE RIGHT
10 BACK WITH YOU. THANK YOU VERY MUCH.

11 (JURY EXITS COURTROOM AT 2:16 P.M.)

12 THE COURT: OKAY. YES, MA'AM.

13 MS. KEDNOCKER: YOUR HONOR.

14 THE COURT: WHY DON'T YOU GO AHEAD AND CALL HIM ON UP HERE
15 AND---

16 MS. KEDNOCKER: THE STATE CALLS Minor

17 HAVING BEEN DULY SWORN,
18 TESTIFIED AS FOLLOWS:

19 EXAMINATION BY THE COURT:

20 Q OKAY. MR. JULIAN, GOOD AFTERNOON, SIR. AN ISSUE CAME UP
21 EARLIER TODAY IN ONE OF THE MEETINGS WE HAD ON THIS CASE. THE
22 WAS SOME CONCERN. I KNOW THAT YOU HAVE PROBABLY NEVER TESTIFIED
23 BEFORE OR ANYTHING AND THIS IS OBVIOUSLY AN IMPORTANT CASE TO
24 EVERYONE. THERE WAS SOME MENTION MADE OF PREVIOUS ALLEGED
25 EPISODES INVOLVING MR. SMITH WITH OTHER PEOPLE, I BELIEVE,

Minor

-- DIRECT BY MS. KEDNOCKER

1 Minor -- EXCUSE ME, LANE AND ASHTON ARE PEOPLE THAT YOU KNOW.
2 AND AS I UNDERSTOOD FROM THE SOLICITOR AND MR. CREECH THERE WAS
3 SOME CONCERN ABOUT WHEN YOU MADE SOME STATEMENTS. THEY WANT TO
4 MAKE SURE THAT NO REFERENCE IS MADE TO YOUR CONVERSATIONS WITH
5 LANE OR ASHTON. AND I JUST WANTED TO MAKE SURE EVERYONE
6 UNDERSTOOD THAT.

7 IS THERE ANYTHING ELSE ANYBODY ELSE WANTS ME TO INSTRUCT
8 HIM? MS. KEDNOCKER?

9 MS. KEDNOCKER: NO, SIR, JUDGE.

10 THE COURT: ALL RIGHT.

11 MR. CREECH: NO, YOUR HONOR.

12 Q ALL RIGHT. SO DO YOU UNDERSTAND THAT?

13 A YES, SIR.

14 THE COURT: OKAY. THANK YOU VERY MUCH. YOU CAN GO BACK TO
15 YOUR SEAT, I GUESS. WE'LL HAVE TO GET YOU SWORN IN ONE MORE TIME
16 WHEN THE JURY COMES BACK IN SO EVERYONE WILL HAVE A CHANCE TO SEE
17 THAT. THANK YOU.

18 OKAY. YOU CAN BRING THE JURY BACK IN.

19 (JURY REENTERS COURTROOM AT 2:20 P.M.)

20 THE COURT: ALL RIGHT. THANK YOU. YES, MA'AM, MS.
21 KEDNOCKER.

22 MS. KEDNOCKER: THE STATE CALLS Minor

23 Minor HAVING BEEN DULY SWORN,
24 TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION BY MS. KEDNOCKER:

Minor

-- DIRECT BY MS. KEDNOCKER

- 1 Q GOOD AFTERNOON, Minor CAN YOU TELL THE JURY HOW
2 OLD YOU ARE?
3 A I'M 15.
4 Q AND WHERE ARE YOU PRESENTLY IN SCHOOL?
5 A MAULDIN HIGH.
6 Q DO YOU HAVE A FAVORITE CLASS OR ANYTHING THAT YOU ENJOY
7 DOING IN SCHOOL?
8 A GYM.
9 Q GYM. DO YOU HAVE ANY BROTHERS OR SISTERS?
10 A YES, MA'AM.
11 Q CAN YOU GIVE ME THEIR NAMES?
12 A ASHTON AND HALAYA (PHONETIC).
13 Q HOW OLD IS ASHTON?
14 A THIRTEEN.
15 Q HOW OLD IS HALAYA?
16 A FIVE.
17 Q NOW, WHO DO YOU LIVE WITH? WHERE DO YOU LIVE, FIRST OF ALL,
18 Minor
19 A SIMPSONVILLE.
20 Q AND WHO DO YOU LIVE WITH?
21 A MY FATHER.
22 Q DOES ANYBODY ELSE LIVE WITH YOU THERE?
23 A NO, MA'AM.
24 Q WHERE IS YOUR MOTHER, Minor
25 A LAST TIME -- LAST I'VE SEEN HER WAS CHARLESTON.

Minor

-- DIRECT BY MS. KEDNOCKER

- 1 Q WHEN YOU SAW HER IN CHARLESTON HOW MANY YEARS AGO WAS THAT?
- 2 A THREE.
- 3 Q SO YOUR MOM IS NO LONGER IN YOUR LIFE?
- 4 A YES. THAT'S RIGHT.
- 5 Q YOUR DAD IS RAISING YOU AS A SINGLE PARENT; IS THAT CORRECT?
- 6 A YES, MA'AM.
- 7 Q Minor DO YOU KNOW THE DIFFERENCE IN THE TRUTH AND A LIE?
- 8 A YES, MA'AM.
- 9 MR. CREECH: OBJECTION, YOUR HONOR.
- 10 MS. KEDNOCKER: YOUR HONOR, THIS IS STANDARD IN THESE CASES
- 11 TO ASK A CHILD WITNESS THESE TYPES OF QUESTIONS ON THE WITNESS
- 12 STAND.
- 13 THE COURT: ALL RIGHT. OVERRULED.
- 14 MS. KEDNOCKER: THANK YOU, YOUR HONOR.
- 15 Q Minor DO YOU KNOW THE DIFFERENCE BETWEEN THE TRUTH AND A
- 16 LIE?
- 17 A YES, MA'AM.
- 18 Q WHAT'S THE DIFFERENCE? WHAT'S THE TRUTH?
- 19 A THE TRUTH IS TO OWN UP TO SOMETHING THAT HAS ACTUALLY
- 20 HAPPENED OR THAT YOU'VE COMMITTED.
- 21 Q AND WHAT IS A LIE?
- 22 A A COVER UP.
- 23 Q IS IT GOOD TO TELL THE TRUTH?
- 24 A YES, MA'AM.
- 25 Q Minor DO YOU KNOW WHY YOU ARE HERE IN COURT TODAY?

Minor

-- DIRECT BY MS. KEDNOCKER

1 A YES.

2 Q WHY ARE YOU HERE?

3 A BECAUSE MY UNCLE RAPED ME.

4 Q Minor WHAT IS YOUR UNCLE'S NAME?

5 A RANDALL SMITH.

6 Q Minor DO YOU SEE HIM IN THE COURTROOM TODAY?

7 A YES, MA'AM.

8 Q CAN YOU POINT HIM OUT AND LOOK AT HIM?

9 A RIGHT THERE (INDICATING).

10 Q WHEN WAS THE LAST TIME YOU SAW HIM?

11 A TWO YEARS AGO.

12 Q Minor DO YOU KNOW A LADY BY THE NAME OF NANCY SMITH?

13 A YES, MA'AM.

14 Q WHO IS SHE?

15 A MY AUNT.

16 Q IS SHE THIS DEFENDANT'S WIFE?

17 A EX-WIFE.

18 Q Minor I WANT TO TAKE YOU BACK JUST A LITTLE BIT. WHERE

19 DID YOU SAY YOU'RE IN SCHOOL RIGHT NOW?

20 A MAULDIN HIGH SCHOOL.

21 Q AND WHERE WERE YOU IN SCHOOL LAST YEAR?

22 A MAULDIN MIDDLE.

23 Q WERE YOU IN EIGHTH GRADE LAST YEAR?

24 A YES, MA'AM.

25 Q TAKE ME BACK ONE MORE YEAR TO THE FALL OF 2003. WHERE WERE

1 YOU IN SCHOOL?

2 A MAULDIN MIDDLE.

3 Q WHAT GRADE WERE YOU IN?

4 A SEVENTH.

5 Q WERE YOU ATTENDING OR -- WERE YOU IN ANY SPECIAL CLASSES OR
6 ANYTHING LIKE THAT WHEN YOU WERE IN SCHOOL?

7 A YES.

8 Q WHAT KIND OF CLASSES WERE YOU IN?

9 A I HAD SPECIAL EDUCATION CLASSES.

10 Q HOW LONG WERE YOU IN SPECIAL EDUCATION?

11 A SINCE THIRD GRADE.

12 Q DO YOU HAVE ANY TROUBLE COMPREHENDING WHAT I'M SAYING TO YOU
13 TODAY?

14 A NO, MA'AM.

15 Q IF YOU HAVE ANY TROUBLE COMPREHENDING WHAT I SAY OR MR.
16 CREECH SAYS, WILL YOU PLEASE MAKE SURE YOU ASK US TO REPEAT IT?

17 A (INDICATES AFFIRMATIVE RESPONSE).

18 Q YOU STATED EARLIER THAT YOU LIVE WITH YOUR DAD. YOUR DAD IS
19 A SINGLE DAD. WHAT IS YOUR DAD'S JOB?

20 A HE WORKS FOR ALLTEL.

21 Q AND WHAT DOES HE DO FOR ALLTEL?

22 A HE GOES AROUND AND CHECKS CELL SITES.

23 Q OKAY. TAKING YOU BACK TO THE FALL OF 2003, WAS YOUR DAD
24 STILL WORKING FOR ALLTEL BACK THEN?

25 A YES, MA'AM.

Minor

-- DIRECT BY MS. KEDNOCKER

1 Q AND WERE THERE SOME NIGHTS BACK IN 2003 THAT YOUR DAD HAD TO
2 WORK?

3 A YES, MA'AM.

4 Q NOW, HOW OLD WERE YOU AGAIN IN THE FALL OF 2003?

5 A THIRTEEN.

6 Q WHAT WERE YOU --

7 A I WAS 12 AT FIRST WHEN SCHOOL STARTED.

8 Q WHEN IS YOUR BIRTHDAY?

9 A ""

10 Q YOU JUST HAD A BIRTHDAY?

11 A (INDICATES AFFIRMATIVE RESPONSE).

12 Q SO WHEN YOU STARTED SCHOOL IN 2003, YOU WERE 12?

13 A YES, MA'AM.

14 Q ON THOSE NIGHTS THAT YOUR DAD HAD TO WORK BACK IN 2003 DID
15 ANYBODY ELSE LIVE AT HOME WITH YOU BESIDES YOU AND YOUR DAD? WAS
16 YOUR BROTHER THERE?

17 A YES, MA'AM.

18 Q OKAY. HOW OLD WAS YOUR BROTHER BACK IN 2003?

19 A ELEVEN.

20 Q SO BACK THEN, WHEN YOUR DAD HAD TO WORK NIGHTS, WHERE DID
21 YOU GO OR WHERE DID YOU STAY WHEN YOUR DAD WAS NOT AT HOME?

22 A ME AND MY BROTHER WOULD STAY AT MY UNCLE'S HOUSE.

23 Q AND DO YOU REMEMBER WHERE YOUR UNCLE LIVED?

24 A 42 MILLWOOD FARMS LANE.

25 Q OKAY. WHEN YOUR DAD WOULD GET CALLED OUT TO WORK AND YOU'D

Minor

-- DIRECT BY MS. KEDNOCKER

1 SPEND THE NIGHT OVER THERE HOW MANY TIMES DURING THE WEEK WOULD
2 YOU SAY THAT YOU WOULD GO SPEND THE NIGHT OVER AT YOUR UNCLE
3 RANDY AND AUNT NANCY'S HOUSE?

4 A THE MAJORITY, I WOULD SAY, TWO MOST OF THE TIME.

5 Q TWO, COUPLE TIMES A WEEK?

6 A (INDICATES AFFIRMATIVE RESPONSE).

7 Q YOU TESTIFIED THAT YOU WOULD GO OVER THERE. NOW, WOULD YOU
8 GO RIGHT AFTER SCHOOL OR HOW IS IT THAT YOU'D END UP OVER AT YOUR
9 UNCLE AND AUNT'S HOUSE?

10 A I WOULD RIDE THE BUS AFTER SCHOOL TO THEIR HOUSE.

11 Q WOULD ASHTON RIDE WITH YOU, YOUR BROTHER?

12 A IT WAS---

13 Q OR DID HE HAVE -- HOW DID HE GET OVER THERE?

14 A WELL, HE GOT OUT OF SCHOOL BEFORE I WAS, SO HE WAS OVER
15 THERE ALREADY AFTER SCHOOL. HE GOT OUT OF SCHOOL ABOUT 2:30 AND
16 THAT'S WHEN -- OR AT 2:55 AND THAT'S WHEN I WAS RIDING A BUS ON
17 THE WAY TO NANCY'S HOUSE.

18 Q YOU GOT OUT OF SCHOOL AT 2:55 AND TOOK THE BUS. OKAY.

19 WHAT WAS A TYPICAL DAY LIKE? WHEN YOU WOULD COME OVER TO
20 UNCLE RANDY AND AUNT NANCY'S HOUSE, WHAT DID YOU GUYS DO, YOU AND
21 ASHTON?

22 A USUALLY HANG AROUND.

23 Q OKAY. DO YOU KNOW WHERE YOUR AUNT NANCY WORKED OR MAY HAVE
24 WORKED BACK IN THE FALL OF 2003?

25 A YES.

Minor

-- DIRECT BY MS. KEDNOCKER

1 Q WHERE DID SHE WORK?

2 A SHE WORKED AT WAL-MART.

3 Q WHAT TIME DID YOUR AUNT GO TO WORK BACK THEN?

4 A AROUND NINE O'CLOCK.

5 Q NINE O'CLOCK IN THE MORNING OR NINE O'CLOCK AT NIGHT?

6 A NIGHT.

7 Q NOW, ON THE DAYS THAT YOU WOULD SPEND THE NIGHT -- OR THE
8 NIGHTS RATHER WHEN YOU STAYED OVER THERE, WHEN YOUR AUNT WENT TO
9 WORK WERE THERE ANY OTHER ADULTS BESIDES THIS DEFENDANT IN THE
10 HOUSE?

11 A NO, MA'AM.

12 Q CAN YOU TELL ME WHAT OTHER KIDS WERE IN THE HOUSE WITH THIS
13 DEFENDANT?

14 A THERE WAS ME AND MY BROTHER, LANE AND STASHA, AND SOMETIMES
15 ALLIE AND SEBASTIAN.

16 Q OKAY. GOING BACK TO -- DO YOU REMEMBER WAS IT A HOUSE OR AN
17 APARTMENT THAT THEY LIVED IN?

18 A IT WAS AN APARTMENT.

19 Q CAN YOU REMEMBER WHAT IT LOOKED LIKE?

20 A NOT EXACTLY.

21 Q CAN YOU REMEMBER HOW MANY BEDROOMS WERE THERE?

22 A THREE.

23 Q OKAY. WHEN THE KIDS WERE ALL SPENDING THE NIGHT CAN YOU
24 GIVE ME AN IDEA OF WHERE PEOPLE WOULD GENERALLY SLEEP?

25 A MY BROTHER SOMETIMES WOULD SLEEP DOWNSTAIRS OR IN NASTASHA'S

Minor

-- DIRECT BY MS. KEDNOCKER

1 ROOM, LANE IN HIS ROOM, ALLIE ALSO WITH NASTASHA---

2 Q OKAY. SO ALLIE AND NASTASHA ARE OVER IN THIS BEDROOM,
3 LANE'S GOT A BEDROOM. WHERE DID YOU SLEEP?

4 A IN THE ROOM WITH THE DEFENDANT.

5 Q WHY DID YOU SLEEP WITH HIM?

6 A THAT'S WHERE HE BASICALLY TOLD ME I WAS SLEEPING AT.

7 Q DID YOU FEEL FUNNY ABOUT IT?

8 A NOT AT FIRST.

9 Q OKAY. I WANT YOU TO GO BACK. CAN YOU REMEMBER WHAT THAT
10 BEDROOM LOOKED LIKE? WHAT RANDY'S BEDROOM LOOKED LIKE, RANDY AND
11 YOUR AUNT NANCY'S BEDROOM?

12 A HE HAD THREE DIFFERENT DRESSERS. ONE ON THE LEFT OF THE
13 BED, ONE IN FRONT AND ONE ON THE RIGHT OF THE BED.

14 Q AND WHEN YOU SLEPT IN THERE DO YOU REMEMBER -- DID YOU
15 ALWAYS SLEEP ON ONE SIDE OF THE BED OR A DIFFERENT SIDE OF THE
16 BED?

17 A YES, ON ONE SIDE OF THE BED.

18 Q WHICH SIDE OF THE BED DID YOU SLEEP ON?

19 A THE ONE CLOSEST TO THE WINDOW.

20 Q Minor YOU STATED THAT YOU ARE IN COURT TODAY BECAUSE YOUR
21 UNCLE RAPED YOU.

22 A THAT'S CORRECT.

23 Q I WANT YOU TO THINK BACK TO THE FIRST TIME YOUR UNCLE
24 TOUCHED YOU IN A WAY THAT WAS NOT APPROPRIATE. CAN YOU GO BACK
25 AND TELL THE JURY ABOUT THAT?

Minor

-- DIRECT BY MS. KEDNOCKER

1 A IT STARTED HAPPENING WHEN HE WAS RUBBING MY LEGS AND
2 THEN----

3 Q HOW DID THAT NIGHT START?

4 A I WAS GETTING OUT OF THE SHOWER, AND AFTER I GOT MY CLOTHES
5 ON I GOT IN THE BED, AND ME AND HIM WERE STILL TALKING, AND I WAS
6 -- AT THE TIME I WAS FALLING ASLEEP.

7 Q DO YOU REMEMBER WHAT YOU WERE WEARING AT ALL?

8 A I WAS WEARING -- I BELIEVE I WAS WEARING A GREENVILLE GROWL
9 SHIRT AND SOME PLAYBOY PAJAMAS.

10 Q OKAY. YOU GET OUT OF THE SHOWER AND YOU DRESS AND YOU GET
11 IN THE BED. WHAT HAPPENS NEXT?

12 A HE WAS TALKING TO ME AND AT THE TIME I WAS ALREADY CLOSING
13 MY EYES. HE TURNED OFF THE LIGHTS, AND WE WERE STILL TALKING AT
14 THE TIME RIGHT THEN. THAT'S WHEN HE STARTED GETTING QUIET AND
15 NEXT THING I KNOW HE STARTED ROLLING OVER, AND THAT'S WHEN HE
16 STARTED -- HE STARTED TOUCHING ME ON MY LEGS, AND THEN HE STARTED
17 GETTING HIGHER AND HIGHER AT THAT TIME.

18 Q WHEN YOU SAY HE GOT HIGHER AND HIGHER, WHERE DID HE END UP
19 GOING?

20 A HE WAS TOUCHING MY PENIS.

21 Q WAS HE TOUCHING YOUR PENIS ON TOP OF YOUR CLOTHES OR
22 UNDERNEATH YOUR CLOTHES?

23 A UNDERNEATH MY CLOTHES.

24 Q AND WHEN HE DID THAT WHAT DID YOU THINK?

25 A I DIDN'T KNOW WHAT TO THINK.

Minor

-- DIRECT BY MS. KEDNOCKER

1 Q WHEN YOU SAY HE TOUCHED YOUR PENIS, WAS HE STROKING IT, WAS
2 HE -- NOT TO BE BLUNT BUT WAS HE JUST TOUCHING IT OR WAS HE
3 TRYING TO MASTURBATE YOU?

4 A AT FIRST HE WAS TOUCHING IT.

5 Q AND THEN WHAT?

6 A NEXT THING I KNOW HE STARTED PULLING ON MY CLOTHES AND
7 THAT'S WHEN HE STARTED SUCKING MY PENIS.

8 Q I'M SORRY. YOU SAID HE STARTED SUCKING YOUR PENIS?

9 A (INDICATES AFFIRMATIVE RESPONSE).

10 Q WHERE WERE HIS HANDS WHEN HE WAS SUCKING YOUR PENIS?

11 A HE USUALLY HAD ONE OF THEM ON -- HE USUALLY HAS ONE OF THEM
12 ON AND I DON'T KNOW WHERE THE OTHER ONE WAS.

13 Q DID HE EVER PUT HIS MOUTH ANYWHERE ON YOUR BODY BESIDES
14 SUCKING YOUR PENIS? DID HE EVER PUT HIS MOUTH ANYWHERE ELSE ON
15 YOUR BODY?

16 A YES.

17 Q WHERE DID HE PUT HIS MOUTH?

18 A HE WAS KISSING ME ON MY LIPS.

19 Q Minor YOU STATED EARLIER THAT YOUR UNCLE RAPED YOU. WHEN
20 YOU SAY RAPE, WHEN YOU HEAR THAT WORD, WHAT DO YOU MEAN BY THAT?

21 A HE STUCK HIS PENIS IN MY RECTUM.

22 Q I NEED YOU TO TELL THE JURY ABOUT WHEN HE DID THAT TO YOU.
23 TELL ME ABOUT THE NIGHT THAT YOU CAN REMEMBER HIM FIRST STICKING
24 HIS PENIS IN YOUR RECTUM.

25 A ALL I REMEMBER IS HIM GRABBING A BOTTLE OF LOTION, PUTTING

Minor

-- DIRECT BY MS. KEDNOCKER

1 IT ON HIS PENIS, AND THAT'S WHEN HE ROLLED ME OVER AND PUT HIS
2 RECTUM -- PUT HIS PENIS IN MY RECTUM..

3 Q DID IT HURT?

4 A YES.

5 Q DID YOU SAY ANYTHING TO HIM WHEN HE DID THIS?

6 A NO, I DID NOT.

7 Q HOW MANY TIMES -- WHEN HE DID THIS TO YOU, WHEN THIS WAS
8 HAPPENING, WERE YOU LAYING -- WHERE WERE YOU FACING? WERE YOU
9 LAYING ON YOUR STOMACH OR WERE YOU LOOKING UP OR HOW WERE YOU
10 FACING?

11 A WHEN IT FIRST STARTED HAPPENING OR WHEN HE STUCK HIS PENIS
12 IN MY RECTUM?

13 Q WHEN HE STUCK HIS PENIS IN YOUR RECTUM.

14 A THAT TIME I WAS LAYING ON MY STOMACH.

15 Q WAS HE ON TOP OF YOU? HE GOT ON TOP OF YOU AND YOU WERE
16 LAYING FLAT OR HOW WERE YOU?

17 A I GUESS YOU COULD PUT IT THAT WAY.

18 Q CAN YOU GIVE ME AN IDEA OF HOW MANY TIMES THAT HAPPENED,
19 THAT HE WOULD, IN YOUR IDEA OF THINKING ABOUT IT, RAPE YOU WITH
20 HIS PENIS IN YOUR RECTUM? HOW MANY TIMES WOULD YOU SAY HE DID
21 THAT? AND YOU MAY NOT HAVE AN EXACT NUMBER, JUST A GUESSTIMATE.

22 A MAYBE 25 TO 26 TIMES.

23 Q AFTER HE WOULD LAY ON TOP OF YOU AND PUT THIS LOTION ON YOU
24 HOW DID IT END? DID STUFF EVER COME OUT OF HIM OR DID STUFF
25 EVER---

1 A YES.

2 Q ---COME OUT OF YOU?

3 A IT CAME OUT OF HIM.

4 Q AND WHEN THAT HAPPENED WHAT DID YOU DO?

5 A NOTHING.

6 Q WHERE DID THE STUFF GO? WOULD HE CLEAN IT UP OR WHAT DID HE
7 DO WITH THE STUFF?

8 A HE WENT TO THE BATHROOM. HE GOT A CLOTH OUT OF THE CLOSET
9 AND SOAKED IT WITH SOME HOT WATER. THAT'S WHEN HE STARTED
10 CLEANING THE BOTH OF US.

11 Q Minor BESIDES HIS PENIS DID THIS DEFENDANT EVER PUT
12 ANYTHING ELSE IN YOUR BODY?

13 A NOT THAT I CAN REMEMBER BESIDES HIS FINGER.

14 Q OKAY. TELL ME ABOUT THAT.

15 A WHAT DO YOU MEAN?

16 Q YOU SAID THAT HE PUT HIS FINGER IN YOUR RECTUM. HOW MANY
17 TIMES WOULD YOU SAY HE DID THAT?

18 A ONCE.

19 Q WHAT DID THAT MAKE YOU FEEL LIKE WHEN HE DID THAT?

20 A YOU KNOW, I LOST, YOU KNOW, EVERYTHING THAT PEOPLE KNOW ME
21 AS, YOU KNOW. I'VE LOST MY DIGNITY. I LOST MY SELF-CONFIDENCE.
22 I LOST EVERYTHING.

23 Q WHEN HE PUT HIS FINGER IN SIDE YOU LIKE THAT?

24 A (INDICATES AFFIRMATIVE RESPONSE).

25 Q DID YOU SAY ANYTHING TO HIM WHEN HE DID THAT?

Minor

-- DIRECT BY MS. KEDNOCKER

1 A UH-UH (NEGATIVE).

2 Q Minor DO YOU KNOW WHAT A CONDOM IS?

3 A YES.

4 Q DID THIS DEFENDANT EVER USE A CONDOM WHEN HE SEXUALLY
5 ASSAULTED YOU?

6 A ONE TIME I CAN REMEMBER HE WAS USING ONE.

7 Q OKAY. DID HE EVER PUT A CONDOM ON YOU?

8 A YES.

9 Q TELL ME ABOUT THAT TIME.

10 A HE WENT TO THE DRESSER AND GRABBED THE CONDOM. HE SAID TO
11 ME THAT HE WAS GOING TO TEACH ME HOW TO PUT ON A CONDOM.

12 Q OKAY. AND DID HE PUT IT ON YOU?

13 A YES, MA'AM.

14 Q DID HE END UP HAVING SEX WITH YOU?

15 A NOT WITH A CONDOM ON.

16 Q OKAY. DID HE EVER END UP HAVING SEX WITH YOU?

17 A YES, MA'AM.

18 Q HE DID. CAN YOU TELL ME ABOUT THAT? WELL, BESIDES WHAT
19 YOU'VE ALREADY TESTIFIED TO.

20 A (NO RESPONSE)

21 Q Minor LET ME ASK YOU THIS. YOU DESCRIBED A BEDROOM.
22 WHEN THIS WOULD HAPPEN TO YOU, WHEN HE WOULD PUT HIS PENIS IN
23 YOUR BOTTOM OR YOUR RECTUM, HOWEVER YOU WANT TO CALL IT, WERE THE
24 LIGHTS ON OR WERE THE LIGHTS OFF?

25 A THEY WERE MOSTLY OFF, EXCEPT FOR ONE NIGHT.

Minor

-- DIRECT BY MS. KEDNOCKER

1 Q GO AHEAD.

2 A DO YOU WANT ME TO TELL YOU ABOUT THAT ONE NIGHT HE HAD THE
3 LIGHTS ON?

4 Q SURE. YOU SAID THAT THEY WERE MOSTLY OFF BUT ONE TIME?

5 A YES, MA'AM.

6 Q ALL RIGHT. TELL ME ABOUT THAT TIME.

7 A THAT TIME IT WAS THE SAME THING THAT HAPPENED THE FIRST TIME
8 WHEN I WAS -- I WAS JUST GETTING OUT OF THE SHOWER AND I WAS
9 GETTING IN THE BED. NEXT THING YOU KNOW HE'S TALKING TO ME AND
10 WITHOUT ME NOTICING HE ROLLS OVER, AND THEN THAT'S WHEN HE
11 STARTED KISSING ME, AND THEN HE STARTED TAKING MY CLOTHES OFF..

12 Q WHAT HAPPENED AFTER THAT? AND SPEAK UP JUST A LITTLE BIT.

13 A THAT'S WHEN HE WAS ON TOP OF ME AND HE PUT MY PENIS IN HIS
14 RECTUM AND..

15 Q YOU SAID HE PUT YOUR PENIS IN HIS RECTUM?

16 A BASICALLY HE WAS ON TOP OF ME AT THE TIME.

17 Q OKAY. Minor DID THIS DEFENDANT EVER SAY ANYTHING TO YOU
18 ABOUT TELLING ANYONE OR DID YOU THINK THAT YOU COULD TELL ANYONE?

19 A YES, HE DID TELL ME. HE DID SAY SOMETHING TO ME ABOUT IT.
20 AND, NO, I COULDN'T TELL ANYBODY---

21 Q WHAT DID HE SAY?

22 A ---ANYTHING ABOUT IT.

23 Q WHY NOT?

24 A WELL, BECAUSE KNOWING HOW PEOPLE ARE, IF I TELL PEOPLE WHAT
25 HAPPENED TO ME, YOU KNOW, MAYBE THEY WON'T BELIEVE AND MAYBE THEY

Minor

-- DIRECT BY MS. KEDNOCKER

1 WON'T ACCEPT ME OR BE AROUND ME BECAUSE THEY THINK THAT I'M GAY,
2 AND THEY'D THINK I LET HIM DO THIS.

3 (STATEMENT MARKED AS STATE'S EXHIBIT NUMBER 1 FOR PURPOSES
4 OF IDENTIFICATION ONLY)

5 Q Minor BACK WHEN THIS HAPPENED TO YOU, I KNOW IT'S BEEN
6 TWO YEARS, BUT YOU GAVE A STATEMENT TO POLICE, DID YOU NOT? DO
7 YOU REMEMBER GIVING A STATEMENT TO POLICE?

8 A YES, MA'AM.

9 Q OKAY. I'M GOING TO SHOW YOU WHAT IS MARKED AS STATE'S
10 EXHIBIT 1, JUST FOR IDENTIFICATION. AND WHEN YOU GAVE THIS
11 STATEMENT -- LET ME LET YOU LOOK AT IT REAL QUICK.

12 A (REVIEWS STATEMENT).

13 Q WHEN YOU GAVE THIS STATEMENT, CAN YOU TELL ME WHAT DATE YOU
14 GAVE THIS STATEMENT BY LOOKING AT IT?

15 A ON THE 16TH OF DECEMBER.

16 Q IN WHAT YEAR?

17 A OH-THREE.

18 Q I KNOW A LOT OF TIME HAS PASSED SINCE THEN, BUT TO REFRESH
19 YOUR MEMORY CAN YOU READ THE LAST LINE THAT YOU GAVE THE
20 INVESTIGATOR AS TO WHAT THIS DEFENDANT TOLD YOU ABOUT TELLING
21 ANYBODY?

22 A HE TOLD ME NOT TO TELL ANYBODY -- NOT TO TELL ANYBODY
23 BECAUSE IF MY DAD FOUND OUT ABOUT THIS THAT HE WOULD KILL HIM.

24 Q OKAY. WHEN YOU GAVE THIS STATEMENT TO INVESTIGATOR
25 HENDERSON WERE YOU TELLING THE TRUTH?

Minor

-- DIRECT BY MS. KEDNOCKER

1 A YES, MA'AM.

2 Q DID YOU REALLY THINK WHEN HE TOLD YOU THAT YOU COULDN'T TELL
3 ANYBODY BECAUSE IF YOUR DAD FOUND OUT YOUR DAD WOULD KILL HIM,
4 DID YOU REALLY THINK YOUR DAD MIGHT GET REALLY MAD IF HE HEARD
5 ABOUT THIS?

6 A YES.

7 Q WHAT DID YOU THINK ABOUT YOUR DAD FINDING OUT?

8 A AFTER HE FOUND OUT AND I SAW THE LOOK ON HIS FACE I DIDN'T
9 EXPECT WHAT WAS GOING TO COME OUT NEXT.

10 Q YOU DIDN'T WHAT?

11 A I DIDN'T EXPECT WHAT HE WAS GOING TO DO NEXT.

12 Q Minor YOU STATED THAT THIS STARTED BACK AFTER YOU STARTED
13 SCHOOL IN FALL OF 2003; IS THAT CORRECT?

14 A YES.

15 Q DO YOU REMEMBER THE LAST DATE THAT THIS DEFENDANT EVER
16 SEXUALLY ASSAULTED YOU?

17 A DECEMBER 11TH, '03.

18 Q THAT DATE STICKS OUT IN YOUR MIND?

19 A YES, MA'AM.

20 Q WHAT DID HE DO TO YOU ON THAT DATE?

21 A HE...

22 Q DID HE---

23 A HE---

24 Q GO AHEAD.

25 A HE STUCK HIS PENIS IN MY RECTUM.

Minor

-- DIRECT BY MS. KEDNOCKER

1 Q WHEN THAT HAPPENED -- WHEN DID YOU DECIDE TO TELL ABOUT WHAT
2 THIS DEFENDANT WAS DOING TO YOU?

3 A THE 12TH OF DECEMBER.

4 Q OKAY. I WANT TO TALK ABOUT THAT NIGHT. WHAT WERE YOU DOING
5 THAT NIGHT, THE NEXT NIGHT, THE 12TH, DO YOU REMEMBER WHAT DAY OF
6 THE WEEK THAT WAS?

7 A FRIDAY.

8 Q OKAY. TELL ME ABOUT THAT NIGHT. WHAT WERE YOU DOING ON
9 THAT NIGHT?

10 A I BELIEVE I WAS EITHER IN NASTASHA'S ROOM OR LANE'S ROOM AND
11 I WAS PLAYING NINTENDO, AND THEN ALLIE, SHE WANTED ME TO COME
12 DOWNSTAIRS AND GO OUTSIDE AND WALK WITH THEM. SO I STOPPED WHAT
13 I WAS DOING AND WENT OUTSIDE WITH THEM.

14 Q WHEN YOU WERE OUTSIDE DID YOU END UP TELLING WHAT YOUR UNCLE
15 HAD DONE TO YOU?

16 A YES.

17 Q WHAT HAPPENED AT THAT POINT? WHO DID YOU TELL WHAT YOUR
18 UNCLE HAD DONE TO YOU?

19 A I TOLD -- I DIDN'T TELL ALLIE, I BELIEVE...

20 Q YOU DIDN'T TELL ALLIE?

21 A NO. I MEAN, I THINK I JUST TOLD MY BROTHER WHAT HAPPENED,
22 AND THEN THAT'S WHEN I ASKED HIM WHERE WAS LANE, AND THEY SAID HE
23 WAS UP AT THE CHURCH. SO THAT'S WHERE I STARTED RUNNING TOWARDS.
24 AND AFTER I FOUND HIM, I TOLD HIM WHAT HAPPENED.

25 Q OKAY. DON'T TELL ME WHAT LANE SAID WHEN YOU TOLD HIM WHAT

Minor

-- DIRECT BY MS. KEDNOCKER

1 HAPPENED. BUT WHAT DID LANE DO?

2 A LANE GAVE ME A HUG, AND THEN HE TRIED TO GET INTO THE CHURCH
3 BUT NOBODY COULD UNDERSTAND WHAT WE WERE -- COMPREHEND WHAT HE
4 WAS TRYING TO SAY.

5 Q DID ANYONE EVENTUALLY COME UP TO THE CHURCH, THIS DEFENDANT
6 OR YOUR AUNT OR WHO -- WHAT ENDED UP HAPPENING AFTER THAT?

7 A AT FIRST A LADY IN A WHITE CAR PULLED UP, AND LANE ASKED HER
8 IF WE COULD GET IN THE CHURCH. SHE SAID NO BECAUSE THEY WERE UP
9 THERE BABY-SITTING. SO THEN THAT'S WHEN HE GRABBED THE WATER
10 HOSE AND SPRAYED THE WINDOW, AND THE GIRLS CAME TO THE WINDOW BUT
11 THEY COULDN'T UNDERSTAND WHAT WE WERE SAYING. THAT'S WHEN THE
12 PASTOR OF THE CHURCH CAME OUTSIDE AND ASKED US IF WE NEEDED
13 ANYTHING, AND LANE SAID NO. THEN HE ASKED HIM IF WE COULD USE
14 HIS CELL PHONE. HE LET US USE HIS CELL PHONE. HE CALLED THE
15 HOUSE AND THE DEFENDANT PICKED UP AND LANE ASKED TO SPEAK TO
16 NANCY, BUT HE ASKED US, FOR WHAT? AND---

17 Q SO LANE CALLS THE HOUSE, THIS DEFENDANT PICKS UP. AT THAT
18 POINT DID ANYONE COME DOWN TO THE CHURCH? I DON'T WANT YOU TO
19 TESTIFY TO WHAT SOMEBODY ELSE SAID BECAUSE THAT'S HEARSAY. BUT
20 DID ANYONE COME DOWN TO THE CHURCH AT THIS POINT ONCE LANE
21 CALLED?

22 A YES.

23 Q WHO CAME DOWN TO THE CHURCH?

24 A AFTER THE PHONE CALL, YES, SOMEBODY CAME UP TO THE CHURCH.

25 Q OKAY. WHO CAME?

Minor

-- DIRECT BY MS. KEDNOCKER

1 A RANDY.

2 Q WHAT WAS RANDY -- WAS HE WALKING, WAS HE DRIVING, WHAT WAS
3 HE DOING?

4 A HE WAS DRIVING THE VAN UP TO THE CHURCH.

5 Q WHEN RANDY GOT TO THE CHURCH, WHAT HAPPENED?

6 A HE STOPPED IN FRONT OF WHERE WE WERE STANDING AND HE WAS
7 BEGGING US NOT TO TELL THE POLICE WHAT HE HAS DONE.

8 Q OKAY. AT THAT POINT DID THIS DEFENDANT, RANDY, LEAVE?

9 A HE PULLED OUT OF THE CHURCH PARKING LOT AND THEN HE STOPPED
10 AS SOON AS HE GOT OUT, AND HE WAS BEGGING ONCE AGAIN NOT TO TELL
11 THE -- TELLING ME NOT TO TELL THE POLICE. THEN THAT'S WHEN HE
12 DROVE OFF AND LANE CALLED BACK TO THE HOUSE AND NANCY PICKED UP,
13 AND SHE SAID SHE WAS JUST GETTING OUT OF THE SHOWER AND SHE SAID
14 SHE WAS ON HER WAY UP TO THE CHURCH.

15 Q DID YOU TALK WITH YOUR AUNT?

16 A YES.

17 Q WHAT WERE YOU ABLE TO TELL YOUR AUNT?

18 A I WAS TRYING TO TELL HER THAT, YOU KNOW, RANDY MOLESTED ME,
19 BUT SHE COULDN'T UNDERSTAND WHAT I WAS SAYING BECAUSE I WAS
20 CRYING ON THE PHONE.

21 Q HOW WERE YOU FEELING WHEN THIS FINALLY CAME OUT? YOU HADN'T
22 TOLD ANYBODY FOR SEVERAL MONTHS. HOW WERE YOU FEELING RIGHT NOW
23 WHEN THIS FINALLY CAME OUT?

24 A I WAS IN PAIN AND, YOU KNOW, I WAS SCARED BECAUSE I DIDN'T
25 KNOW WHAT WAS GOING TO HAPPEN NEXT.

PATRICK JULIAN -- DIRECT BY MS. KEDNOCKER

1 Q DID YOUR AUNT NANCY END UP COMING TO THE CHURCH?

2 A NO. WE -- ME AND LANE RAN TOWARDS THE OFFICE. THAT'S WHERE
3 SHE PULLED UP THERE. WE WERE---

4 Q SHE PULLED UP IN WHAT VEHICLE? SHE WALKED UP OR PULLED UP?

5 A SHE PULLED UP TO THE OFFICE. SHE TALKED TO ME AND LANE AND
6 ASHTON. AND THEN---

7 Q PLEASE DON'T GO INTO ANYTHING THAT SHE MAY HAVE SAID TO LANE
8 OR ASHTON. DID YOU TELL YOUR AUNT WHAT HAD HAPPENED TO YOU?

9 A YES.

10 Q WHAT DID YOU TELL YOUR AUNT?

11 A THAT, YOU KNOW, RANDY WAS MOLESTING ME, AND THAT'S WHEN SHE
12 WAS TALKING TO ALLIE AND NASTASHA.

13 Q OKAY. AFTER NANCY TALKED TO YOU ABOUT WHAT HAPPENED -- AND
14 YOU SAID ALLIE WAS THERE AS WELL?

15 A YES, MA'AM.

16 Q AFTER SHE TALKED TO YOU, YOUR AUNT TALKED TO YOU, DID SHE
17 STAY THERE OR DID SHE GO BACK TO THE HOUSE?

18 A AFTER SHE TALKED TO ME SHE DROVE BACK TOWARDS THE HOUSE.

19 SHE TOLD US TO GO DOWN TO THE GAZEBO WHILE SHE WAS IN THE HOUSE
20 TALKING TO RANDY. AND AT THE TIME ALL OF US WERE SITTING AT THE
21 GAZEBO, AND THEN AFTER SHE GOT FINISHED SHE CAME BACK INSIDE AND
22 TOLD US WE COULD COME BACK IN, AND THAT'S WHEN WE WENT BACK TO
23 THE HOUSE. SHE TOLD ME THAT RANDY WAS UPSTAIRS WITH THE DOOR
24 LOCKED. AND SHE TALKED TO ALL OF US AND THEN SHE TALKED TO ME
25 INDIVIDUALLY DOWNSTAIRS IN THE LIVING ROOM.

Minor

-- DIRECT BY MS. KEDNOCKER

1 Q YOU SAID THAT RANDY WAS UPSTAIRS IN THE BEDROOM. DID YOU
2 SEE HIM THAT NIGHT WHEN YOU CAME BACK TO THE HOUSE?

3 A NO, MA'AM.

4 Q THIS IS FRIDAY, DECEMBER 12TH. DID YOU SEE HIM THE NEXT
5 MORNING?

6 A NO, MA'AM.

7 Q WAS HE GONE BY THE TIME YOU GOT UP?

8 A YES.

9 Q Minor WE TALKED ABOUT YOUR DAD AND THAT YOU ORIGINALLY
10 WERE WORRIED -- THIS DEFENDANT TOLD YOU NOT TO TELL YOUR DAD
11 BECAUSE YOUR DAD WOULD KILL HIM?

12 A THAT'S CORRECT.

13 Q CAN YOU DESCRIBE WHAT IT WAS LIKE -- FIRST OF ALL, ON
14 SATURDAY, THAT NEXT MORNING, THIS DEFENDANT IS GONE; IS THAT
15 CORRECT?

16 A YES.

17 Q DID YOUR AUNT TALK TO YOU ABOUT TELLING YOUR DAD?

18 A YES.

19 Q DID YOU WANT TO TELL YOUR FATHER?

20 A I WANTED TO, BUT SOMETHING WAS HOLDING ME BACK AND I
21 COULDN'T.

22 Q WHAT DID YOU THINK YOUR DAD WOULD DO?

23 A I REALLY DON'T KNOW.

24 Q Minor CAN YOU TELL ME ABOUT WHEN YOU FINALLY DID TELL
25 YOUR DAD?

Minor

-- DIRECT BY MS. KEDNOCKER

1 A YEAH. THAT'S WHEN WE WERE LEAVING -- NO, THAT'S WHEN NANCY
2 WAS TALKING ABOUT THAT TIME, YOU KNOW, I WAS TELLING WHAT
3 HAPPENED, AND WE GOT IN THE TRUCK, YOU KNOW, AND HE WAS HIGHLY
4 UPSET, YOU KNOW.

5 Q DID YOU THINK YOUR FATHER WOULD BLAME YOU WHEN HE FOUND OUT
6 THAT THIS DEFENDANT HAD SEX WITH YOU?

7 A NO, I NEVER HAD THAT IN MIND.

8 Q OKAY. SO WHEN YOU TOLD YOUR DAD HOW DID HE REACT?

9 A HE WAS UPSET. HE WAS ASKING ME WHY DIDN'T I TELL HIM THIS
10 EARLIER, AND I DIDN'T HAVE ANY RESPONSE. I TOLD HIM I COULDN'T.
11 HE SAID THAT'S NOT AN EXCUSE.

12 Q Minor I WANT YOU TO GO BACK. IT'S BEEN TWO YEARS SINCE
13 THIS HAPPENED TO YOU. DO YOU FEEL THAT YOU HAVE CHANGED OR GROWN
14 OR GROWN UP SOME SINCE THIS HAPPENED TO YOU?

15 A YES.

16 Q DO YOU FEEL SLIGHTLY DIFFERENT AS A PERSON SINCE THIS HAS
17 HAPPENED TO YOU?

18 A UH-HUH (AFFIRMATIVE).

19 Q Minor I WANT YOU TO GO BACK FOR A MINUTE AND THINK ABOUT
20 HOW DID IT MAKE YOU FEEL WHEN THIS DEFENDANT DID THIS TO YOU?

21 A IT -- I LOST EVERYTHING, AND THAT IF PEOPLE FIND THIS OUT
22 THAT, YOU KNOW, THEY'RE GOING TO THINK I'M GAY AND THEY'RE GOING
23 TO THINK THAT, YOU KNOW, THIS IS WHAT I ASKED FOR.

24 Q SO DO YOU FEEL DIFFERENTLY ABOUT YOURSELF NOW THAT HE DID
25 THIS TO YOU?

Minor

-- DIRECT BY MS. KEDNOCKER

1 A YES.

2 Q HOW DO YOU FEEL ABOUT YOURSELF?

3 A I KNOW THAT IT'S NOT MY FAULT, THAT, YOU KNOW, I DIDN'T ASK
4 FOR THIS. THIS, YOU KNOW -- OVER THE YEARS, YOU KNOW, I HAVE
5 FELT MORE CONFIDENT, AND I FEEL THAT I'M STRONGER THAN I EVER
6 WAS.

7 Q WHY DO YOU FEEL THAT IT'S IMPORTANT TO TELL WHAT YOUR UNCLE
8 DID TO YOU?

9 A BECAUSE, YOU KNOW, PEOPLE OUT IN THE WORLD, IF THIS MAN WAS
10 BACK OUT ON THE STREETS, PEOPLE -- YOU KNOW, I WANT PEOPLE TO
11 KNOW THIS BECAUSE I WANT OTHER PEOPLE OUT THERE TO WATCH OUT FOR
12 THEIR CHILDREN, AND I DON'T WANT THE SAME THING TO HAPPEN THAT
13 HAPPENED TO ME.

14 Q Minor DO YOU REMEMBER -- IN THE TWO YEARS SINCE THIS
15 HAPPENED TO YOU DO YOU REMEMBER HAVING TO GO SEE A DOCTOR?

16 A YES.

17 Q DID YOU HAVE TO GO THROUGH AN EXAM?

18 A YES.

19 Q HOW DID YOU FEEL ABOUT GOING THROUGH THAT EXAM?

20 A I NEVER WANTED THAT TO HAPPEN AGAIN.

21 Q HOW DID IT MAKE YOU FEEL TO HAVE TO HAVE THE EXAM?

22 A (PAUSE) I DON'T REMEMBER HOW I ACTUALLY FELT WHEN IT
23 HAPPENED. BASICALLY, I DIDN'T FEEL ANY DIFFERENCE FROM WHAT THAT
24 EXAM I HAD TO GO THROUGH FROM THE THING THAT HAPPENED TO ME.

25 Q A LAST QUESTION, CAN YOU GIVE THIS JURY AN IDEA OF HOW THIS

1 HAS IMPACTED YOU, TO HAVE YOUR UNCLE DO THIS TO YOU?

2 A WHAT DO YOU MEAN BY THE QUESTION?

3 Q I MEAN HOW HAS IT MADE YOU FEEL ABOUT YOURSELF THAT YOUR
4 UNCLE DID THIS TO YOU?

5 A AFTER I JOINED -- AFTER THE CHURCH I'M IN NOW, YOU KNOW, AND
6 MY FATHER TOLD ME THAT IT'S NOT MY FAULT, THAT THIS MAN IS SICK,
7 AND THERE IS NO REASON FOR WHY HE DID WHAT HE DID, AND YOU KNOW,
8 AFTER I WAS SAVED AND ALL THAT STUFF, YOU KNOW, THAT STUFF WAS
9 STILL HAUNTING ME AND I STILL HAD THOUGHTS AND FLASHBACKS ABOUT
10 IT. BUT THEN OVER THE YEARS AS PRAYERS AND PRAYERS KEEP COMING
11 OUT AND STUFF LIKE THAT THAT I'VE OVERCOME WHAT HAPPENED, AND I
12 HAVEN'T LET THAT STOP ME SINCE, AND I'M NOT GOING TO LET IT START
13 NOW.

14 MS. KEDNOCKER: YOUR HONOR, I DON'T HAVE ANY FURTHER
15 QUESTIONS.

16 THE COURT: CROSS EXAMINATION, MR. CREECH.

17 MR. CREECH: THANK YOU, YOUR HONOR.

18 CROSS EXAMINATION BY MR. CREECH:

19 Q Minor DO YOU HAVE FRIENDS?

20 A YES, SIR.

21 Q DO YOU HANG OUT WITH YOUR FRIENDS A LOT?

22 A WHEN I HAVE A CHANCE.

23 Q ALL RIGHT. DO YOU HAVE EXTRACURRICULAR ACTIVITIES YOU'RE
24 INVOLVED WITH?

25 A NO.

Minor

-- CROSS BY MR. CREECH

1 Q OKAY. WHAT DO YOU DO WHEN YOU'RE NOT HANGING OUT WITH YOUR
2 FRIENDS?

3 A I'M USUALLY IN THE HOUSE.

4 Q IS YOUR DAD THERE WITH YOU?

5 A YES.

6 Q DO YOU PLAY SPORTS AT SCHOOL?

7 A NO.

8 Q ARE YOU INVOLVED WITH YOUR CHURCH?

9 A YES.

10 Q DO YOU GO TO CHURCH OFTEN?

11 A VERY OFTEN.

12 Q OKAY. IS THAT WHERE YOUR FRIENDS ARE?

13 A THAT'S WHERE MOST OF MY FRIENDS ARE.

14 Q NOW, IN FALL OF 2003 YOU WERE AT MAULDIN MIDDLE SCHOOL; IS
15 THAT RIGHT?

16 A THAT'S RIGHT.

17 Q YOU WERE IN THE SEVENTH GRADE?

18 A YES, SIR.

19 Q DID YOU RIDE THE BUS TO SCHOOL EVERY MORNING?

20 A THAT'S ONLY IF I WAS SPENDING THE NIGHT OVER THERE.

21 Q SO THE BUS WOULD COME BY YOUR HOUSE AND PICK YOU UP; IS THAT
22 RIGHT?

23 A THAT'S RIGHT.

24 Q AND WERE YOU SUPPOSED TO GO TO MAULDIN MIDDLE SCHOOL?

25 A NO, NOT EXACTLY.

Minor

-- CROSS BY MR. CREECH

1 Q IS THAT BECAUSE YOUR DAD DIDN'T LIVE IN THAT DISTRICT OR
2 THAT ZONE; IS THAT RIGHT?

3 A THAT'S RIGHT.

4 Q OKAY. SO THEN YOU WOULD -- WHO ARRANGED -- HOW WERE YOU
5 ABLE TO GO TO MAULDIN MIDDLE SCHOOL IF YOU DIDN'T LIVE IN THE
6 ZONE?

7 A I WAS USING NANCY'S ADDRESS.

8 Q AND WHO TOLD YOU TO USE NANCY'S ADDRESS?

9 A MY DAD.

10 Q THAT WAS AN INCORRECT ADDRESS; IS THAT RIGHT?

11 A THAT'S RIGHT.

12 Q WAS THAT BEFORE YOU STARTED GOING -- BEFORE YOU STARTED
13 SCHOOL; IS THAT RIGHT?

14 A UH-HUH (AFFIRMATIVE).

15 Q SO BEFORE SCHOOL STARTED YOU KNEW YOU WOULD BE SPENDING A
16 LOT OF TIME AT NANCY AND RANDY'S; IS THAT RIGHT?

17 A UH-HUH (AFFIRMATIVE).

18 Q AND YOUR FATHER IS THE ONE THAT ARRANGED FOR THAT TO OCCUR;
19 IS THAT CORRECT?

20 A THAT'S RIGHT.

21 Q AND HOW OFTEN -- YOU STATED EARLIER THAT YOU WENT OVER THERE
22 TWO TIMES A WEEK; IS THAT RIGHT?

23 A AT LEAST.

24 Q AT LEAST. SO SOME WEEKS YOU WOULD BE OVER THERE FIVE DAYS A
25 WEEK?

Minor

-- CROSS BY MR. CREECH

1 A THAT'S RIGHT.

2 Q AND WOULD YOU SPEND THE WEEKENDS OVER AT RANDY AT NANCY'S?

3 A YES.

4 Q AND WHERE WAS YOUR FATHER ON WEEKENDS?

5 A AT WORK.

6 Q AND DID HE WORK EVERY SINGLE NIGHT DURING THE WEEK?

7 A JUST ABOUT.

8 Q AND WERE THERE EVER ANY NIGHTS THAT HE WASN'T WORKING THAT
9 YOU SPENT THE NIGHT WITH RANDY AND NANCY?

10 A NO.

11 Q DID YOUR FATHER -- DID YOU EVER WANT TO GO LIVE WITH RANDY
12 AND NANCY?

13 A NOT EXACTLY.

14 Q WELL, DID YOU EVER TELL YOUR FATHER THAT YOU WANTED TO GO
15 LIVE WITH RANDY AND NANCY?

16 A NO.

17 Q DID YOU EVER WANT TO LIVE WITH RANDY AND NANCY?

18 A NO.

19 Q YOU NEVER TOLD RANDY THAT?

20 A NO.

21 Q DID YOU EVER TELL NANCY THAT?

22 A NO.

23 Q NANCY WORKED AT WAL-MART; IS THAT RIGHT?

24 A THAT'S RIGHT.

25 Q AND HOW MANY TIMES A WEEK DID SHE WORK AT WAL-MART?

Minor

-- CROSS BY MR. CREECH

1 A EVERY NIGHT EXCEPT FOR THE WEEKEND.

2 Q AND WHAT TIME DID SHE LEAVE TO GO TO WORK?

3 A USUALLY AROUND NINE O'CLOCK.

4 Q AND THERE WERE THREE OR FOUR OTHER CHILDREN IN THE
5 APARTMENT; IS THAT RIGHT?

6 A THAT'S RIGHT.

7 Q IT WAS YOU AND IT WAS NASTASHA; IS THAT RIGHT?

8 A THAT'S RIGHT.

9 Q NASTASHA IS RANDY AND NANCY'S DAUGHTER; IS THAT RIGHT?

10 A THAT'S RIGHT.

11 Q AND THERE WAS LANE. LANE WAS RANDY AND NASTASHA'S SON; IS
12 THAT RIGHT?

13 A RANDY AND NANCY'S.

14 Q RANDY AND NANCY'S SON; IS THAT RIGHT?

15 A THAT'S RIGHT.

16 Q AND THERE WAS ASHTON, YOUR BROTHER; IS THAT RIGHT?

17 A THAT'S RIGHT.

18 Q AND THERE WAS ANOTHER CHILD, WHO WAS THAT?

19 A ALLIE AND SEBASTIAN.

20 Q ALLIE? OKAY. AND ANOTHER CHILD AFTER THAT, SEBASTIAN; IS
21 THAT RIGHT?

22 A THAT'S RIGHT.

23 Q SO THERE WERE SIX CHILDREN OVER AT THE APARTMENT; IS THAT
24 RIGHT?

25 A THAT'S RIGHT.

Minor

-- CROSS BY MR. CREECH

- 1 Q AND IT WAS A THREE-BEDROOM APARTMENT, CORRECT?
- 2 A THAT'S RIGHT.
- 3 Q ARE YOU FRIENDS WITH SEBASTIAN?
- 4 A YES.
- 5 Q ARE YOU STILL FRIENDS WITH SEBASTIAN?
- 6 A YES.
- 7 Q AND WHEN DID YOU LAST TALK TO SEBASTIAN?
- 8 A SEVENTH GRADE.
- 9 Q SEVENTH GRADE? YOU HAVEN'T SPOKE TO SEBASTIAN SINCE THEN;
- 10 IS THAT CORRECT?
- 11 A THAT'S CORRECT.
- 12 Q AND YOU AND SEBASTIAN STILL GO TO THE SAME SCHOOL?
- 13 A NO.
- 14 Q HAVE YOU TRIED TO CALL SEBASTIAN?
- 15 A YES.
- 16 Q DID HE CALL YOU BACK?
- 17 A NO.
- 18 Q IN RANDY AND NANCY'S ROOM WERE THERE TWO DRESSERS OR THREE
- 19 DRESSERS, Minor
- 20 A FROM WHAT I CAN REMEMBER, THERE WAS ACTUALLY THREE.
- 21 Q ACTUALLY THREE. ONE WAS ON THE RIGHT SIDE; IS THAT RIGHT?
- 22 A THAT'S RIGHT.
- 23 Q ONE ON THE LEFT SIDE?
- 24 A (INDICATES AFFIRMATIVE RESPONSE).
- 25 Q WHERE WAS THE THIRD ONE?

1 A IN FRONT OF THE BED.

2 Q WHAT WAS IN THOSE DRESSERS, DO YOU KNOW?

3 A ALL I REMEMBER WAS CLOTHES.

4 Q DID YOU EVER GO INTO THE DRESSERS?

5 A NO.

6 Q HOW DID YOU KNOW THERE WERE CLOTHES IN THE DRESSER?

7 A BECAUSE MY UNCLE AND ALL OF THEM, THEY WAS ALWAYS PUTTING
8 CLOTHES IN THERE. THAT'S WHERE THEY USUALLY PUT THEIR CLOTHES
9 UNLESS THEY WERE MADE TO BE HANGED UP.

10 Q AND WHAT ELSE WAS ON THE DRESSERS?

11 A CLOCKS, STATUES, ALL KINDS OF STUFF.

12 Q WAS THERE ANY LOTION ON THE DRESSERS?

13 A YES.

14 Q WHICH DRESSER WAS THAT?

15 A THE ONE CLOSEST TO THE WINDOW.

16 Q AND WAS THAT ON TOP OF THE DRESSER OR BESIDE THE DRESSER?

17 A ON TOP OF THE DRESSER.

18 Q AND WHO PUT IT THERE, DO YOU KNOW?

19 A NO, I DO NOT.

20 Q DO YOU REMEMBER WHAT KIND OF LOTION IT WAS?

21 A NO.

22 Q DO YOU KNOW WHETHER IT WAS HAND LOTION?

23 A NO.

24 Q DO YOU KNOW WHETHER IT WAS ANY OTHER KIND OF LOTION?

25 A NO, I DO NOT.

Minor

-- CROSS BY MR. CREECH

- 1 Q DO YOU KNOW IF IT WAS SUNTAN LOTION?
- 2 A NO.
- 3 Q YOU STATED EARLIER THAT RANDY PUT LOTION ON HIS PENIS; IS
- 4 THAT CORRECT?
- 5 A THAT'S RIGHT.
- 6 Q DID YOU SEE HIM DO THAT?
- 7 A I COULD SEE HIM HAVE THE BOTTLE OF LOTION IN HIS HAND AND
- 8 PUT IT ON HIS PENIS.
- 9 Q AND DID THAT HAPPEN EVERY SINGLE TIME?
- 10 A ALMOST EVERY TIME.
- 11 Q HOW MANY TIMES, Minor
- 12 A I DON'T KNOW AN EXACT NUMBER.
- 13 Q DO YOU REMEMBER THE EXACT NUMBER OF TIMES YOU SAY THAT RANDY
- 14 HAD SEX WITH YOU?
- 15 A I BELIEVE I SAID 25 TO 26 TIMES.
- 16 Q AND DID YOU COUNT THOSE TIMES?
- 17 A NO.
- 18 Q DID YOU -- DO YOU KNOW HOW MANY TIMES WHEN YOU SPOKE TO --
- 19 AND GAVE YOUR STATEMENT?
- 20 A NO.
- 21 Q HAVE YOU THOUGHT ABOUT HOW MANY TIMES SINCE YOU GAVE YOUR
- 22 STATEMENT?
- 23 A NO.
- 24 Q AND HE USED THE LOTION THAT WAS ON THE DRESSER; IS THAT
- 25 RIGHT?

Minor

-- CROSS BY MR. CREECH

1 A THAT'S CORRECT.

2 Q IT WAS ON TOP OF THE DRESSER; IS THAT RIGHT?

3 A THAT'S RIGHT.

4 Q AND DID YOU EVER SEE LOTION AT THE APARTMENT WHEN RANDY
5 WASN'T HOME?

6 A NO, BECAUSE I USUALLY WASN'T IN HIS ROOM.

7 Q Minor WHEN DID THIS FIRST HAPPEN?

8 A WHEN SCHOOL WAS STARTING.

9 Q IS THAT SEPTEMBER?

10 A NO, AUGUST.

11 Q AND THE FIRST TIME THIS HAPPENED DID RANDY HAVE SEX WITH
12 YOU?

13 A YES.

14 Q DID HE USE THE LOTION THEN?

15 A YES.

16 Q DID HE USE A CONDOM THEN?

17 A I DON'T REMEMBER. I COULD NOT SEE AT THAT TIME.

18 Q NOW, YOU SAID SOMETHING WOULD COME OUT OF HIM; IS THAT
19 CORRECT?

20 A THAT'S CORRECT.

21 Q WOULD IT GET ON THE SHEETS?

22 A NO.

23 Q HOW WOULD IT NOT GET ON THE SHEETS?

24 A BECAUSE HIS PENIS WAS IN MY RECTUM.

25 Q DID YOU EVER TELL THE LAW ENFORCEMENT OFFICERS THAT?

Minor

-- CROSS BY MR. CREECH

1 A NOT TILL THE DAY THAT I TOLD EVERYBODY WHAT HAPPENED.

2 Q HOW DO YOU KNOW THAT THAT HAPPENED IF HIS PENIS WAS IN YOUR
3 RECTUM?

4 A BECAUSE I FELT IT.

5 Q WERE YOU LAYING ON YOUR STOMACH WHEN THIS HAPPENED

6 A AT FIRST I WAS LAYING ON MY BACK, AND THEN THAT'S WHEN HE
7 ROLLED ME OVER ON MY STOMACH.

8 Q DID YOU TRY TO GET AWAY AT THAT POINT?

9 A NO.

10 Q DID YOU WANT TO GET AWAY?

11 A YES.

12 Q DID YOU WANT TO GET AWAY AFTER THE FIRST TIME?

13 A YES.

14 Q AND HE WENT UP AND GOT -- AND WENT TO THE BATHROOM; IS THAT
15 RIGHT?

16 A THAT'S CORRECT

17 Q IS THAT WHERE HE USED A HAND TOWEL?

18 A YES.

19 Q DID HE USE A HAND TOWEL EVERY SINGLE TIME?

20 A YES.

21 Q WHAT DID HE DO WITH THAT HAND TOWEL?

22 A HE WOULD CLEAN THE BOTH OF US UP.

23 Q AND DID HE PUT THE HAND TOWEL INTO THE LAUNDRY BASKET?

24 A I DON'T REMEMBER.

25 Q YOU DON'T REMEMBER WHERE HE PUT IT IN THE LAUNDRY BASKET?

Minor

-- CROSS BY MR. CREECH

1 A (INDICATES NEGATIVE RESPONSE).

2 Q HAD YOU EVER SEEN A CONDOM BEFORE?

3 A YES.

4 Q WHERE HAD YOU SEEN A CONDOM?

5 A WHEN SOME OF THE HIGH SCHOOLERS WERE PLAYING WITH IT ON THE
6 BUS.

7 Q HAVE YOU EVER BOUGHT A CONDOM?

8 A NO.

9 Q HAVE YOU EVER SEEN ONE FOR SALE?

10 A NO.

11 Q HAS ANYONE EVER GIVEN YOU ONE?

12 A NO.

13 Q AND YOU SAY RANDY PUT A CONDOM ON YOU; IS THAT RIGHT?

14 A THAT'S CORRECT.

15 Q AND HE GOT ON TOP OF YOU, CORRECT?

16 A THAT'S CORRECT.

17 Q DID YOU EVER TRY TO GET UP?

18 A NO.

19 Q DID YOU SAY RANDY TOUCHED YOU AND RUBBED YOUR LEGS?

20 A YES.

21 Q DID HE DO THAT EVERY TIME?

22 A ALMOST EVERY TIME.

23 Q DID YOU EVER ASK HIM WHEN HE WAS RUBBING YOUR LEGS, WHAT HE
24 WAS DOING?

25 A NO.

Minor

-- CROSS BY MR. CREECH

1 Q DID YOU KNOW WHAT HE WAS DOING?

2 A NO, I DID NOT.

3 Q WHEN LANE -- WHEN YOU TOLD LANE YOU DID NOT WANT TO TELL
4 YOUR FATHER; IS THAT CORRECT?

5 A THAT'S CORRECT.

6 Q AND YOU TESTIFIED EARLIER YOU DIDN'T KNOW WHAT TO EXPECT; IS
7 THAT CORRECT?

8 A THAT'S CORRECT.

9 Q DID YOU EVER WANT YOUR FATHER TO FIND OUT?

10 A I DIDN'T HAVE THAT IN MIND.

11 Q WERE YOU SCARED OF WHAT YOUR FATHER WOULD DO IF HE FOUND
12 OUT?

13 A YES.

14 Q AND DID YOU EVER WANT LANE TELLING AUNT NANCY?

15 A NO.

16 Q DID YOU EVER THINK AUNT NANCY WOULD TELL YOUR FATHER?

17 A YES.

18 Q DID YOU EVER THINK OR DID YOU EVER SUSPECT THAT YOUR FATHER
19 WOULD GO AND TELL THE POLICE?

20 A I DIDN'T THINK HE'D TELL THE POLICE, BUT I KNEW HE WOULD PUT
21 THE POLICE INVOLVED.

22 Q DID YOU EVER THINK YOU WOULD HAVE TO COME AND TESTIFY?

23 A YES.

24 Q WHEN DID YOU FIRST THINK THAT?

25 A WHEN MY FATHER WAS TALKING TO ME WHEN HE WAS AT WORK ONE DAY

Minor

-- CROSS BY MR. CREECH

1 HE WAS ASKING ME IF I HAD A CHOICE IF I WANTED TO TESTIFY OR IF I
2 JUST WANTED TO LET THIS SLIDE.

3 Q BEFORE YOU TOLD ANYBODY DID YOU THINK THAT YOU WOULD HAVE TO
4 GO TO THE POLICE DEPARTMENT?

5 A YES.

6 Q DID YOU HAVE TO GO -- DID YOU FEEL LIKE YOU HAD TO GIVE A
7 STATEMENT?

8 A CAN YOU REPEAT THAT?

9 Q YOU FELT LIKE YOU HAD TO GIVE A STATEMENT; IS THAT CORRECT.

10 Minor

11 A YES.

12 Q THAT'S BEFORE YOU TOLD ANYBODY; IS THAT RIGHT?

13 A THAT'S RIGHT.

14 Q WHEN YOU TOLD YOUR AUNT NANCY DID YOU TELL HER THAT HE WAS
15 -- THAT RANDY WAS MOLESTING YOU?

16 A YES.

17 Q AND YOU USED THE WORD "MOLEST"?

18 A YES.

19 Q DID YOU SAY YOU WERE NOT SCARED THAT YOUR FATHER WOULD BLAME
20 YOU?

21 A YES.

22 Q YOU DID NOT THINK YOUR FATHER WOULD BLAME YOU; IS THAT
23 RIGHT?

24 A YES.

25 Q WOULD YOU WANT YOUR FATHER TO HURT RANDY FOR DOING THIS TO

Minor

-- CROSS BY MR. CREECH

1 YOU?

2 A YES.

3 Q DO YOU REMEMBER GOING TO THE HOSPITAL?

4 A YES.

5 Q AND DID YOUR FATHER TAKE YOU THERE?

6 A YES.

7 Q AND DO YOU REMEMBER GOING TO SEE, ABOUT A MONTH LATER, DR.
8 HENDERSON?

9 A YES.

10 Q AND DID DR. HENDERSON ASK YOU IF THERE WAS ANY LOTION USED?

11 A I DON'T REMEMBER.

12 Q DO YOU REMEMBER IF YOU EVER TOLD DR. HENDERSON THAT LOTION
13 HAD BEEN USED?

14 A I THINK SO.

15 Q DID YOU TELL DR. HENDERSON THAT A CONDOM HAD BEEN USED?

16 A I THINK SO.

17 Q DID THE DOCTOR TELL YOU THAT THE EXAM WAS NORMAL?

18 A I DON'T REMEMBER THE DOCTOR TELLING ME ANYTHING.

19 Q DID YOU TELL THE DOCTOR THAT THIS HAPPENED 25 OR 26 TIMES?

20 A NO. I BELIEVE MY FATHER WAS TELLING THE DOCTOR THAT.

21 Q DO YOU REMEMBER TELLING THE INVESTIGATORS THIS HAPPENED 25
22 OR 26 TIMES?

23 A NO, I DON'T REMEMBER.

24 Q IS THIS -- I'M HANDING YOU WHAT THE SOLICITOR MARKED AS
25 STATE'S EXHIBIT NUMBER 1 FOR YOUR STATEMENT. CAN YOU JUST READ

Minor

-- CROSS BY MR. CREECH

1 OVER THAT BRIEFLY?

2 A THE WHOLE THING?

3 Q YES.

4 A I AM THIRTEEN YEARS OLD---

5 Q WELL, YOU DON'T -- YOU JUST READ IT TO YOURSELF.

6 A OKAY.

7 MS. KEDNOCKER: THE STATE HAS NO OBJECTION TO HIM READING
8 WHATEVER PART HE WANTS OUT LOUD.

9 MR. CREECH: YOUR HONOR, I'D HAVE AN OBJECTION.

10 THE COURT: YEAH. JUST READ IT TO YOURSELF AND THEN MR.
11 CREECH CAN ASK YOU WHATEVER QUESTIONS.

12 A (COMPLIES).

13 Q Minor IS THERE ANYWHERE IN YOUR STATEMENT THAT YOU SAY
14 RANDY DID THIS 25 OR 26 TIMES TO YOU SPECIFICALLY?

15 A NO, I DID NOT.

16 Q AND IN YOUR STATEMENT DID YOU SAY THAT -- HAVE YOU HAD A
17 CHANCE TO READ OVER IT?

18 A I JUST GOT THROUGH HALF OF IT.

19 Q OKAY. DO YOU REMEMBER TELLING THE INVESTIGATOR THAT IT
20 HAPPENED EVERY TIME YOU WENT TO THE HOUSE? OR THE APARTMENT?

21 A YES.

22 Q OKAY. (PAUSE) WERE YOU EVER AFRAID YOUR FATHER WOULD GET
23 MAD AT YOU, Minor

24 A NO.

25 Q DID YOUR FATHER EVER YELL AT YOU OR SCREAM AT YOU?

Minor

-- CROSS BY MR. CREECH

- 1 A NO.
- 2 Q NEVER?
- 3 A HE HAS PLENTY OF TIMES BUT NOT BECAUSE OF THIS INCIDENT.
- 4 Q HAS HE YELLED AT YOU PREVIOUSLY?
- 5 A NO.
- 6 Q ARE YOU SCARED OF YOUR FATHER?
- 7 A SORT OF, YES.
- 8 Q IS THAT BECAUSE HE YELLS AT YOU?
- 9 A NO.
- 10 Q ARE YOU STILL IN SPECIAL EDUCATION CLASSES, Minor
- 11 A NO.
- 12 Q AT THE TIME THIS HAPPENED WERE YOU IN A SPECIAL EDUCATION
- 13 CLASS?
- 14 A YES.
- 15 Q AND AT THIS TIME HAD YOU BEEN DETERMINED TO BE EMOTIONALLY
- 16 HANDICAPPED?
- 17 A NO.
- 18 Q HAVE YOU EVER BEEN?
- 19 A NO.
- 20 Q DID NANCY KNOW OR DID NANCY EVER SEE YOU SLEEPING WITH UNCLE
- 21 RANDY?
- 22 A NO.
- 23 Q DID YOU EVER TELL HER THAT YOU SLEPT IN THE SAME BED AS
- 24 RANDY?
- 25 A YES.

Minor

-- CROSS BY MR. CREECH

1 Q SO THEN SHE WOULD KNOW?

2 A ONLY TIME I TOLD HER IS AFTER I TOLD ABOUT THE INCIDENT THAT
3 HAPPENED.

4 Q DID YOU EVER TELL YOUR DAD THAT YOU SLEPT IN THE SAME BED
5 WITH RANDY?

6 A I DON'T REMEMBER THAT.

7 Q DID YOU EVER SLEEP IN THE SAME ROOM WITH NASTASHA?

8 A I DID ONE NIGHT.

9 Q DID YOU EVER SLEEP IN THE SAME BED WITH LANE?

10 A NO.

11 Q DID THE OTHER CHILDREN KNOW THAT YOU WERE SLEEPING IN THE
12 SAME BED WITH RANDY?

13 A YES.

14 Q WERE THE BEDROOMS ALL UPSTAIRS?

15 A YES.

16 Q WERE THEY ALL CLOSE TO EACH OTHER?

17 A YES.

18 Q DO YOU REMEMBER IF NANCY EVER CAME HOME ON WEDNESDAYS AND
19 TOLD YOU TO GO DOWNSTAIRS AND SLEEP?

20 A YES.

21 Q DID YOU EVER TELL THE INVESTIGATORS, Minor THAT RANDY PUT
22 A CONDOM ON YOU?

23 A YES.

24 Q DO YOU REMEMBER PUTTING THAT IN YOUR STATEMENT?

25 A NO, I DON'T REMEMBER.

Minor

-- CROSS BY MR. CREECH

1 Q DO YOU REMEMBER IF YOU EVER TOLD THE INVESTIGATORS THAT
2 RANDY TRIED TO HAVE YOU HAVE SEX WITH HIM?

3 A YES.

4 Q DID YOU PUT THAT IN YOUR STATEMENT TO THE INVESTIGATORS?

5 A I THINK I DID.

6 Q CAN YOU LOOK THROUGH YOUR STATEMENT AND JUST POINT OUT TO ME
7 WHERE THAT IS?

8 A (PAUSE) I DON'T SEE ANYWHERE IN THE STATEMENT THAT I SAID.

9 Q Minor DO YOU REMEMBER THE NAME OF THE CHURCH THAT YOU
10 WENT TO THAT NIGHT?

11 A WHERE I FOUND LANE?

12 Q YES.

13 A NO, I DO NOT REMEMBER THE CHURCH'S NAME.

14 Q AND WHAT TIME OF NIGHT WAS THIS, DO YOU REMEMBER?

15 A NO.

16 Q WAS IT LATE AT NIGHT?

17 A I DON'T REMEMBER WHAT TIME IT WAS.

18 Q WAS IT 10:30, DOES THAT SOUND ABOUT RIGHT?

19 A PROBABLY, SOMEWHERE.

20 Q AND YOU SAY LANE STARTED SPRAYING THE WATER AT WINDOWS; IS
21 THAT RIGHT?

22 A YES.

23 Q AND THERE WERE STILL PEOPLE UP AT THE CHURCH AT THAT TIME OF
24 NIGHT?

25 A YES.

Minor

-- CROSS BY MR. CREECH

1 Q AND THE PASTOR CAME OUT AND TALKED TO YOU; IS THAT CORRECT?

2 A YES.

3 Q AND DID YOU CALL BACK TO THE HOUSE?

4 A NO, I DID NOT CALL. LANE DID.

5 Q AND DID NANCY CALL BACK TO YOU OR DID YOU CALL BACK TO
6 NANCY?

7 A HE CALLED THE HOUSE BACK.

8 Q DID YOU TALK TO NANCY THAT NIGHT OVER THE PHONE?

9 A YES.

10 Q DID YOU CALL NANCY OR DID SHE CALL YOU?

11 A WE CALLED HER.

12 Q DID YOU CALL HER OR DID HE CALL HER?

13 A I DID NOT CALL HER.

14 Q SHE CALLED YOU?

15 MS. KEDNOCKER: OBJECTION, YOUR HONOR. HE'S ANSWERED THAT
16 HE DID NOT CALL HER.

17 THE COURT: ALL RIGHT. OVERRULED. GO AHEAD.

18 Q DID Minor CALL FROM THE CELL PHONE? I MEAN, DID LANE CALL
19 FROM THE CELL PHONE, Minor

20 A YES.

21 Q AND HE TALKED TO RANDY; IS THAT RIGHT?

22 A YES.

23 Q THAT'S WHAT HE TOLD YOU, CORRECT?

24 A YES.

25 Q WERE YOU STANDING THERE LISTENING TO LANE TALK?

Minor

-- CROSS BY MR. CREECH

1 A YES.

2 Q DID YOU TURN AROUND -- AND THEN YOU TALKED TO NANCY ON THE
3 PHONE; IS THAT CORRECT?

4 A THAT'S CORRECT.

5 Q SO DID RANDY GIVE NANCY THE PHONE SO NANCY COULD TALK TO
6 YOU?

7 A I THINK SHE PICKED UP THE PHONE BEFORE HE GOT BACK THE
8 HOUSE.

9 Q SHE PICKED UP THE PHONE BEFORE HE GOT BACK TO HOUSE?

10 A I BELIEVE SO.

11 Q SO DID HE LEAVE THE PHONE OFF THE HOOK AND COME UP TO THE
12 CHURCH?

13 A NO.

14 Q AND DID Minor MAKE ANOTHER CALL BACK TO NANCY?

15 A I DID NOT CALL HER.

16 Q DID LANE MAKE ANOTHER CALL BACK TO NANCY?

17 A YES.

18 Q SO LANE MADE TWO CALLS TO NANCY; IS THAT RIGHT?

19 A THAT'S CORRECT.

20 Q BUT NANCY DIDN'T CALL BACK TO YOU; IS THAT CORRECT?

21 A THAT'S CORRECT.

22 Q AND DO YOU REMEMBER SPEAKING WITH RANDY WHEN HE CAME UP TO
23 THE CHURCH?

24 A YES.

25 Q AND DID LANE TALK WITH RANDY TOO?

Minor

-- CROSS BY MR. CREECH

1 A LANE CALLED THE HOUSE. RANDY PICKED UP THE PHONE AND LANE
2 WAS TELLING HIM TO GET THE -- LANE WAS SAYING THAT HE WANTED TO
3 SPEAK TO NANCY, BUT HE WOULD NOT LET HIM SPEAK TO HER.

4 Q AND LANE CALLED BACK TO SPEAK WITH NANCY; IS THAT YOUR
5 RECOLLECTION OF WHAT HAPPENED?

6 A YES.

7 Q AND YOU SPOKE WITH NANCY, CORRECT?

8 A THAT'S CORRECT.

9 Q SHE CAME UP THERE TOO; IS THAT RIGHT?

10 A THAT'S RIGHT.

11 Q AND YOU WERE UP THERE, CORRECT?

12 A THAT'S RIGHT.

13 Q Minor WAS UP AT THE CHURCH AND NASTASHA WAS UP AT THE
14 CHURCH; IS THAT RIGHT?

15 A NOW, WE ALL WEREN'T. ME AND LANE RAN DOWN TO THE OFFICE AND
16 THAT'S WHERE -- WE RAN PAST THE OFFICE. WE WERE ABOUT TO RUN
17 BACK TO THE HOUSE AND NANCY -- WE SAW NANCY COMING. SHE TOLD US
18 TO GET IN THE VAN. SHE PULLED UP TO THE PARKING LOT OF THE
19 OFFICE AND SHE TALKED TO THE THREE OF US, AND THEN SHE TALKED TO
20 ALLIE AND NASTASHA.

21 Q AT THE OFFICE, THE CHURCH OFFICE?

22 A THE OFFICE---

23 Q WHICH OFFICE?

24 A THE OFFICE OF THE NEIGHBORHOOD.

25 Q SO AT THE OFFICE IN THE NEIGHBORHOOD IT WAS YOU AND IT WAS

Minor

-- CROSS BY MR. CREECH

1 NASTASHA AND IT WAS ALLIE; IS THAT RIGHT?

2 A THAT'S RIGHT.

3 Q AND ALLIE IS A FRIEND OF NASTASHA?

4 A YES.

5 Q AND LANE AND ASHTON; IS THAT RIGHT?

6 A YES.

7 Q YOU RAN DOWN FROM THE CHURCH TO THE OFFICE?

8 A ME AND LANE, WE RAN PAST THE OFFICE, AND THAT'S WHEN NANCY
9 WAS PULLING UP. SO SHE TOLD US TO GET IN THE VAN, AND THAT'S
10 WHEN SHE PULLED UP TO THE PARKING LOT OF THE OFFICE.

11 Q DID LANE TELL NANCY TO MEET HIM AT THE OFFICE?

12 A NO.

13 Q AND LANE CALLED FROM THE CHURCH; IS THAT RIGHT?

14 A THAT'S RIGHT.

15 Q DID YOU EVER EXPECT LANE WOULD CALL NANCY?

16 A YES.

17 Q HE TOLD YOU HE WAS GOING TO DO THAT?

18 A I---

19 MS. KEDNOCKER: OBJECTION, YOUR HONOR. IT'S HEARSAY.

20 THE COURT: MR. CREECH?

21 MR. CREECH: IT JUST GOES TO HIS STATE OF MIND, YOUR HONOR.
22 HE SAID HE KNEW.

23 MS. KEDNOCKER: THAT'S FINE.

24 THE COURT: ALL RIGHT. GO AHEAD.

25 Q DID Minor TELL YOU HE WAS GOING TO CALL NANCY?

Minor

-- REDIRECT BY MS. KEDNOCKER

1 A LANE---

2 Q I MEAN, DID LANE TELL YOU HE WAS GOING TO CALL NANCY?

3 A I DO NOT REMEMBER LANE TELLING ME THAT OR NOT.

4 MR. CREECH: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

5 THE COURT: ALL RIGHT. REDIRECT, MS. KEDNOCKER?

6 REDIRECT EXAMINATION BY MS. KEDNOCKER:

7 Q Minor WHEN YOU SPOKE TO NANCY ON THE PHONE -- YOUR AUNT
8 NANCY ON THE PHONE THAT NIGHT, YOU STATED EARLIER YOU WERE UPSET;
9 IS THAT CORRECT?

10 A YES.

11 Q DO YOU REMEMBER WHAT YOU WERE TELLING HER WHEN YOU WERE
12 TALKING IN THE PHONE TO HER?

13 A I WAS TELLING HER THAT I WAS -- I WAS TRYING TO TELL HER
14 THAT I WAS MOLESTED.

15 Q Minor HAVE YOU EVER HAD TO COME TO COURT AND TESTIFY
16 BEFORE?

17 A NO.

18 Q IS THIS A LITTLE DIFFICULT FOR YOU?

19 A YES.

20 MS. KEDNOCKER: I HAVE NO FURTHER QUESTIONS.

21 THE COURT: ANY RECROSS, MR. CREECH?

22 MR. CREECH: NONE, YOUR HONOR.

23 THE COURT: ALL RIGHT. THANK YOU, SIR. YOU CAN STEP DOWN.

24 (WITNESS STEPS DOWN AT 3:27 P.M.)

25 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'RE GOING

1 TO TAKE A RECESS AT THIS TIME FOR 10 OR 15 MINUTES. IF YOU
2 WOULD, JUST GO BACK TO THE JURY ROOM. REMEMBER, KEEP AN OPEN
3 MIND. DON'T DISCUSS THE CASE. AND WE'LL SEE YOU BACK IN JUST A
4 LITTLE BIT. THANK YOU VERY MUCH.

5 (JURY EXITS COURTROOM AT 3:28 P.M.)

6 THE COURT: OKAY. ANYTHING FURTHER AT THIS TIME?

7 MS. KEDNOCKER: NO, SIR, YOUR HONOR.

8 THE COURT: MR. CREECH?

9 MR. CREECH: YOUR HONOR, I WAS LOOKING FOR THE BONDSMAN. I
10 CALLED GIGGIE'S BONDING COMPANY, HIS BONDSMAN. I WAS TRYING TO
11 GET HIM UP HERE TO INDICATE TO YOU THAT THEY HAVE NO PROBLEM WITH
12 HIM STAYING OUT ON BOND. THE PROBLEM THAT WE HAVE IS HE HAS GOT
13 THIS CPAP MACHINE THAT IS OVER AT HIS PARENTS' HOUSE IN ANDERSON
14 WHERE HE IS STAYING. SO FOR THEM TO BRING THIS BACK TO THE JAIL
15 FOR THE JAIL TO HOUSE HIM IS PROBLEMATIC. SO, AGAIN, I WOULD
16 JUST RENEW MY REQUEST TO HAVE HIM REMAIN OUT ON BAIL.

17 MS. KEDNOCKER: YOUR HONOR, I WOULD STATE RIGHT NOW AT 3:30
18 THAT WE SHOULD RECONSIDER THAT. THE STATE'S POSITION STILL WOULD
19 BE THAT HE HAS NO BOND HOLDING HIM AND THAT HE SHOULD BE TAKEN
20 INTO CUSTODY. PERHAPS BEFORE THE END OF THE DAY WE COULD
21 RECONSIDER IT AT THAT POINT. BUT AT THIS POINT HE---

22 THE COURT: OKAY. WELL, WE'LL SEE. IF GIGGIE'S GETS UP
23 HERE, Y'ALL CAN TALK ABOUT IT. IT LOOKS LIKE SHE'S WITH
24 GIGGIE'S. ALL RIGHT. WE'LL BE BACK IN A LITTLE BIT. THANK YOU.

25 (A RECESS WAS TAKEN FROM 3:29 TO 3:52 P.M.)

1 THE COURT: ANYTHING BEFORE WE BRING THE JURY IN?

2 MS. KEDNOCKER: NO, SIR, JUDGE. JUST PLANNING PURPOSES
3 WISE, I WANT TO LET YOUR HONOR KNOW THE STATE IS INTENDING TO
4 CALL THE OFFICER WHO SHOWED UP AT THE SCENE AND THEN NEXT WOULD
5 BE THE INVESTIGATING OFFICER. I DON'T KNOW HOW --MR. CREECH WAS
6 GETTING A LITTLE CONCERNED ABOUT WHETHER WE COULD GET THROUGH
7 BOTH OF THEM. WE DEFINITELY CAN GET THROUGH CANNON. I DON'T
8 KNOW IF WE WANT TO STOP FOR THE DAY AFTER THAT OR JUST SEE WHERE
9 THINGS ARE. BUT INVESTIGATOR HENDERSON IS THE MAIN INVESTIGATOR
10 AND I PLAN TO CALL HER NEXT. I HAVE SEVERAL WITNESSES WHO ARE
11 DOCTORS, AND I'M HAVING TO WORK MY SCHEDULE A LITTLE BIT AROUND
12 WHEN I CAN GET THEM HERE. SO THEY'RE COMING TOMORROW.

13 THE COURT: I UNDERSTAND. OKAY.

14 MS. KEDNOCKER: IT'S A LITTLE TOUGH SOMETIMES.

15 THE COURT: SO YOU'RE GOING TO CALL---

16 MS. KEDNOCKER: I'M CALLING TROOPER CANNON.

17 THE COURT: NEXT?

18 MS. KEDNOCKER: ACTUALLY, I WAS GOING TO CALL CANNON
19 BECAUSE HE WAS THE ONE WHO FIRST ARRIVED AT THE HOUSE

20 THE COURT: OH, OKAY. ALL RIGHT.

21 MS. KEDNOCKER: AND WHAT MR. CREECH WAS A LITTLE CONCERNED
22 IS IF I CALL THE NEXT ONE, WHICH IS INVESTIGATOR HENDERSON, WE
23 MIGHT RUN OUT OF TIME. I GUESS WE COULD JUST PLAY IT BY EAR AND
24 SEE HOW LONG IT TAKES TO GET THROUGH WITH HIM.

25 THE COURT: YEAH, LET'S JUST DO THAT.

JOSH CANNON -- DIRECT BY MS. KEDNOCKER

1 MS. KEDNOCKER: OKAY.

2 THE COURT: ALL RIGHT. THANK YOU.

3 MR. CREECH: YOUR HONOR, IF I COULD HAND THIS UP. (PAUSE)

4 YOUR HONOR, COULD I ADDRESS AN ISSUE?

5 THE COURT: WELL, OKAY. COME ON UP HERE IF YOU WOULD.

6 (JURY ENTERS COURTROOM AT 3:55 P.M.)

7 (OFF RECORD DISCUSSION FROM 3:55 TO 3:57 P.M.)

8 MS. KEDNOCKER: YOUR HONOR, AT THIS TIME THE STATE CALLS
9 TROOPER JOSH CANNON.

10 JOSH CANNON, HAVING BEEN DULY

11 SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION BY MS. KEDNOCKER:

13 Q GOOD AFTERNOON, TROOPER CANNON. TROOPER CANNON, WHERE ARE
14 YOU EMPLOYED?

15 A I'M EMPLOYED WITH THE SOUTH CAROLINA HIGHWAY PATROL.

16 Q AND WHAT IS YOUR POSITION, SIR?

17 A TROOPER.

18 Q HOW LONG HAVE YOU BEEN EMPLOYED WITH THE HIGHWAY PATROL?

19 A I'VE BEEN WITH THE HIGHWAY PATROL FOR APPROXIMATELY FIVE
20 MONTHS.

21 Q AND WHERE WERE YOU EMPLOYED PRIOR TO WORKING FOR THE HIGHWAY
22 PATROL?

23 A THE GREENVILLE COUNTY SHERIFF'S OFFICE.

24 Q WHAT WERE THE DATES THAT YOU WORKED FOR THE GREENVILLE
25 COUNTY SHERIFF'S OFFICE?

JOSH CANNON -- DIRECT BY MS. KEDNOCKER

1 A APRIL 15TH, 2003 TO JULY THE 5TH, 2005.

2 Q OKAY. AND WHILE WORKING WITH THE GREENVILLE COUNTY
3 SHERIFF'S OFFICE WHAT WAS YOUR JOB OR POSITION THERE?

4 A I WAS A ROAD DEPUTY. I ANSWERED CALLS FOR SERVICE,
5 BURGLARIES, ALARMS AND VARIOUS OTHER CALLS THAT WERE RECEIVED BY
6 THE SHERIFF'S OFFICE.

7 Q AND WERE YOU WORKING WITH THE GREENVILLE COUNTY SHERIFF'S
8 OFFICE ON DECEMBER 14TH, 2003?

9 A YES, MA'AM, I WAS.

10 Q AND DID YOU RESPOND TO A CALL THAT'S LED TO YOU HAVING TO
11 COME TO COURT TODAY AND TESTIFY?

12 A YES, MA'AM.

13 Q TROOPER CANNON, WHAT WAS THE NATURE OF THE CALL THAT YOU
14 RESPONDED TO?

15 A IT WAS A SEXUAL ASSAULT.

16 Q WHERE DID YOU RESPOND, TROOPER?

17 A I RESPONDED TO 901 NORTH MAIN STREET, APARTMENT 43 IN
18 MAULDIN.

19 Q AND WHOSE RESIDENCE WAS THAT?

20 A IT WAS MR. STEVEN JULIAN.

21 Q I'M SORRY. WHO WAS IT?

22 A MR. STEVEN JULIAN.

23 Q OKAY. NOW, WHEN YOU ARRIVED ON THE LOCATION THERE AT 901
24 NORTH MAIN STREET WHAT DID YOU OBSERVE?

25 A I FIRST MET WITH A DSS REPRESENTATIVE, STEVE WATKINS AND MR.

JOSH CANNON -- DIRECT BY MS. KEDNOCKER

1 STEVE JULIAN.

2 Q OKAY. AND DID YOU SPEAK WITH THE DSS PERSON THAT WAS THERE,
3 STEVE WATKINS?

4 A YES, MA'AM.

5 Q BASED ON YOUR CONVERSATION WITH HIM, WHAT DID YOU DO NEXT?

6 A I THEN WENT INSIDE AND SPOKE WITH MR. JULIAN.

7 Q AND AGAIN, MR. STEVE JULIAN. DO YOU KNOW A PERSON BY THE
8 NAME Minor

9 A YES, MA'AM.

10 Q AND WHO IS Minor

11 A HE IS THE SON OF STEVEN JULIAN.

12 Q TROOPER CANNON, GOING BACK TO THIS DAY, DECEMBER 14TH, 2003,
13 HAD YOU EVER RESPONDED TO A CALL FOR A SEXUAL ASSAULT EVER?

14 A NO, MA'AM.

15 Q AND HOW LONG HAD YOU BEEN A SHERIFF'S DEPUTY AT THAT POINT?

16 A AT THAT POINT I HAD BEEN EMPLOYED SINCE APRIL. I HAD BEEN
17 ON THE ROAD SINCE JUNE. SO I HAD BEEN ON THE ROAD FOR SIX MONTHS
18 AT THAT TIME.

19 Q AND THIS BEING YOUR -- SO LET ME TAKE YOU BACK. YOU GO INTO
20 TO THE HOUSE. YOU SPEAK WITH MR. JULIAN RELATED TO THIS
21 INCIDENT. DID YOU SPEAK WITH THE VICTIM IN THIS CASE, Minor

22

23 A YES, MA'AM.

24 Q CAN YOU DESCRIBE TO ME WHAT THAT INTERACTION WAS LIKE FOR
25 YOU, HAVING NEVER RESPONDED TO ONE OF THESE CALLS BEFORE?

JOSH CANNON -- DIRECT BY MS. KEDNOCKER

1 A IT WAS DIFFICULT BEING THAT IT WAS MY FIRST SEXUAL ASSAULT
2 CASE. IT WAS DIFFICULT FOR ME TO SPEAK WITH THE VICTIM, GIVEN
3 HIS AGE AND ALSO THE FACT THAT HE WAS A MALE. I TRIED TO PREPARE
4 MYSELF TO DEAL WITH ONE OF THESE CASES, BUT I WASN'T PREPARED TO
5 DEAL WITH AN 11-YEAR-OLD IN A SITUATION LIKE THIS.

6 Q DID YOU IN FACT SPEAK WITH Minor THAT DAY?

7 A YES, MA'AM, I DID.

8 Q CAN YOU DESCRIBE TO THE JURY WHAT Minor DEMEANOR -- HOW
9 WAS HE ACTING TO YOU?

10 A Minor WAS VISUALLY UPSET. HE HAD TEARS IN HIS EYES. HE
11 WAS SITTING ON THE COUCH WHEN I SPOKE TO HIM. HE SAT RIGHT NEXT
12 TO HIS FATHER, AS CLOSE AS YOU COULD POSSIBLY SIT. IT ALMOST
13 APPEARED THAT HE WAS TRYING TO HIDE BEHIND HIS FATHER. I WOULD
14 ASK HIM QUESTIONS AND IT WAS VERY HARD FOR HIM TO ANSWER, AND HIS
15 FATHER AND MYSELF BOTH HAD TO REASSURE HIM THAT IT WAS ALL RIGHT,
16 HE COULD ANSWER THE QUESTIONS, AND HE HAD TEARS IN HIS EYES
17 DURING THIS TIME.

18 Q WITHOUT STATING TO ME A NAME OF WHO HE MIGHT HAVE STATED,
19 DID HE IN FACT AT THAT POINT INDICATE TO YOU WHETHER HE HAD BEEN
20 THE VICTIM OF A SEXUAL ASSAULT?

21 A YES, MA'AM.

22 Q AND DID HE REPORT TO YOU A TIME FRAME WHEN THIS SEXUAL
23 ASSAULT TOOK PLACE -- THESE SEXUAL ASSAULTS TOOK PLACE?

24 A NUMEROUS TIMES OVER THE PAST MONTH.

25 Q DID HE REPORT TO YOU THE PLACE OR PLACES---

JOSH CANNON -- DIRECT BY MS. KEDNOCKER

1 A YES, MA'AM.

2 Q ---THAT HE WAS SEXUALLY ASSAULTED?

3 A YES, MA'AM.

4 Q WHAT DID HE TELL YOU?

5 A HE STATED THAT THEY HAPPENED AT THE RESIDENCE OF HIS UNCLE,
6 IN HIS UNCLE'S BEDROOM

7 MR. CREECH: OBJECTION, YOUR HONOR.

8 MS. KEDNOCKER: YOUR HONOR, THAT'S TIME AND PLACE
9 EXCEPTION.

10 THE COURT: OKAY. OVERRULED. GO AHEAD.

11 Q IN SPEAKING WITH Minor ABOUT THIS INCIDENT DID YOU -- AND
12 YOU'VE ALREADY STATED YOU WEREN'T COMFORTABLE TALKING WITH HIM;
13 IS THAT FAIR TO SAY?

14 A THAT'S FAIR TO SAY.

15 Q DID YOU -- THIS BEING YOUR FIRST SEXUAL ASSAULT CALL GOING
16 OUT ON, DID YOU GO INTO SPECIFICS WITH THIS CHILD AT ALL ABOUT
17 WHEN IT HAD HAPPENED, HOW MANY TIMES, ANYTHING LIKE THAT?

18 A NO, MA'AM.

19 Q DID YOU KNOW THAT YOU SHOULD?

20 MR. CREECH: OBJECTION.

21 THE COURT: SUSTAINED.

22 Q ALL RIGHT. IN MEETING WITH HIM, YOUR JOB OUT THERE WAS TO
23 TAKE THE INITIAL REPORT; IS THAT CORRECT?

24 A THAT'S CORRECT.

25 Q DID YOU TELL HIM TO GO TO THE HOSPITAL OR ANYTHING ON THAT

JOSH CANNON -- DIRECT BY MS. KEDNOCKER

1 DAY, I BELIEVE IT WAS SUNDAY, OR WHATEVER?

2 A NO, MA'AM, I DID NOT.

3 Q ALL RIGHT. AFTER SPEAKING WITH Minor -- SO YOU SPOKE WITH
4 Minor SPOKE WITH HIS DAD. WHAT DID YOU DO NEXT AFTER SPEAKING
5 WITH THEM AND GETTING THE INITIAL INFORMATION?

6 A I FIRST CONTACTED MY SERGEANT AND BRIEFED HIM OF THE
7 SITUATION THAT I HAD. HE THEN INSTRUCTED ME TO CONTACT OUR ON-
8 CALL SEX CRIMES INVESTIGATORS.

9 Q OKAY. DID YOU TRY TO LOCATE THE DEFENDANT IN THIS CASE
10 AFTER SPEAKING WITH Minor AND HEARING THE ALLEGATIONS OF THIS
11 CASE?

12 A YES, MA'AM, I DID.

13 Q WHERE DID YOU GO TO TRY TO LOCATE HIM?

14 A TO HIS RESIDENCE.

15 Q ALL RIGHT. WHEN YOU GOT TO -- DO YOU REMEMBER WHERE THIS
16 DEFENDANT'S RESIDENCE IS?

17 A YES, MA'AM.

18 Q WHAT IS THAT?

19 A 42 BELLWOOD FARMS LANE.

20 Q WHAT COUNTY IS THAT LOCATED IN?

21 A IT'S IN GREENVILLE COUNTY.

22 Q WHEN YOU GOT THERE WHO DID YOU SPEAK WITH?

23 A I SPOKE WITH NANCY SMITH.

24 Q AND WAS THIS DEFENDANT PRESENT AT THE HOUSE WHEN YOU SPOKE
25 WITH HER?

JOSH CANNON -- DIRECT BY MS. KEDNOCKER

1 A NO, MA'AM.

2 Q DID YOU SPEAK WITH HER REGARDING WHAT Minor TOLD YOU AND
3 TRY TO GET INFORMATION FROM HER ABOUT THE INCIDENT?

4 A YES, MA'AM.

5 Q WERE YOU ABLE TO GET INFORMATION ABOUT THIS DEFENDANT'S
6 WHEREABOUTS WHILE TALKING WITH NANCY SMITH, THE WIFE?

7 A NO, MA'AM.

8 Q WERE YOU ABLE TO GET INFORMATION ABOUT WHAT CAR OR VEHICLE
9 HE MAY BE IN?

10 A I DID GET A VEHICLE DESCRIPTION, YES, MA'AM.

11 Q WHAT WAS THE VEHICLE DESCRIPTION?

12 A A GREEN FORD AEROSTAR MINIVAN.

13 Q BEYOND WHAT YOU TESTIFIED SO FAR -- WELL, LET ME ASK YOU
14 THIS. WITH AN OFFICER THAT GOES OUT TO THE SCENE, SUCH AS
15 YOURSELF, A ROAD DEPUTY, YOU TAKE THE INITIAL REPORT; IS THAT
16 CORRECT?

17 A THAT'S CORRECT.

18 Q AND THEN THE CASE IS TRANSFERRED TO A SEX CRIMES
19 INVESTIGATOR; IS THAT CORRECT?

20 A YES, MA'AM, THAT IS CORRECT.

21 Q BESIDES WHAT YOU'VE TESTIFIED TO SO FAR, DID YOU HAVE ANY
22 FURTHER INVOLVEMENT IN THIS CASE?

23 A NO, MA'AM.

24 MS. KEDNOCKER: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

25 THE COURT: ALL RIGHT. YES, SIR, MR. CREECH.

JOSH CANNON -- CROSS BY MR. CREECH

1 MR. CREECH: THANK YOU, YOUR HONOR.

2 CROSS EXAMINATION BY MR. CREECH:

3 Q YOU SAY YOU WENT TO 901 NORTH MAIN STREET, IS THAT RIGHT,
4 APARTMENT 43?

5 A THAT'S CORRECT.

6 Q ALL RIGHT. AND YOU WENT OUT THERE -- YOU'RE JUST ANSWERING
7 A CALL; IS THAT RIGHT?

8 A THAT'S CORRECT.

9 Q YOUR JOB IS TO GO OUT AND ANSWER CALLS, CORRECT?

10 A YES.

11 Q AND TO INVESTIGATE; IS THAT RIGHT?

12 A YES, SIR.

13 Q AND BEFORE YOU GO OUT AND INVESTIGATE YOU HAVEN'T MADE ANY
14 CONCLUSIONS ABOUT ANYTHING THAT HAS HAPPENED; IS THAT RIGHT?

15 A THAT'S CORRECT.

16 Q YOU HAVEN'T MADE ANY DECISIONS OR DONE ANYTHING LIKE THAT IN
17 TERMS OF YOUR INVESTIGATION, RIGHT?

18 A THAT'S CORRECT.

19 Q YOU'RE JUST STARTING YOUR INVESTIGATION WHEN YOU GO OUT
20 THERE?

21 A YES, SIR.

22 Q AND YOU KNEW BEFORE YOU WENT OUT THERE THAT YOU WOULD NOT BE
23 INVESTIGATING THIS, IT WOULD BE REFERRED TO ANOTHER INVESTIGATOR
24 WHO HANDLES THESE TYPES OF CASES; IS THAT RIGHT?

25 A I DIDN'T KNOW THAT, NO, SIR.

JOSH CANNON -- CROSS BY MR. CREECH

1 Q BUT YOU HAD A PRETTY GOOD IDEA?

2 A IN MOST CASES. BUT EACH CASE IS DIFFERENT. IT DEPENDS ON
3 THE CIRCUMSTANCES.

4 Q RIGHT. AND THIS WAS JUST YOUR FIRST, FIRST TYPE OF CALL
5 YOU'D EVER SEEN THAT LIKE THIS?

6 A IT WAS THE FIRST SEXUAL ASSAULT CALL I HAD EVER RECEIVED,
7 YES, SIR.

8 Q AND YOU WENT FROM THERE, YOU SAID, OVER TO BELLWOOD FARMS;
9 IS THAT RIGHT?

10 A THAT'S CORRECT.

11 Q NOW, WHAT WAS THE DATE THAT YOU WENT OUT THERE, DO YOU
12 REMEMBER?

13 A DECEMBER THE 14TH, 2003.

14 Q YOU WENT ON THE 14TH, CORRECT?

15 A YES, SIR.

16 Q AND YOU MET THERE WITH MS. NANCY SMITH?

17 A THAT'S CORRECT.

18 Q OKAY. AT THAT TIME DID YOU -- YOU DIDN'T HAVE AN ARREST
19 WARRANT OR ANYTHING LIKE THAT FOR RANDY SMITH, DID YOU?

20 A NO, SIR.

21 Q NOW, YOU SAID Minor WAS HIDING BEHIND HIS DAD?

22 A HE WASN'T ACTUALLY HIDING BEHIND HIM. THAT WAS THE WAY IT
23 APPEARED TO ME, THAT HE WAS SITTING SO CLOSE THAT IT ALMOST
24 APPEARED THAT HE WAS ATTEMPTING TO HIDE BEHIND HIS FATHER.

25 Q OKAY. DID YOU EVER TALK TO RANDY SMITH IN THIS CASE?

1 A I DID NOT.

2 MR. CREECH: THANK YOU. I HAVE NO FURTHER QUESTIONS, YOUR
3 HONOR.

4 THE COURT: REDIRECT?

5 MS. KEDNOCKER: NONE FROM THE STATE, YOUR HONOR.

6 THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.

7 (WITNESS STEPS DOWN AT 4:08 P.M.)

8 THE COURT: YES, MA'AM. GO AHEAD AND CALL YOUR NEXT
9 WITNESS.

10 MS. KEDNOCKER: YOUR HONOR, THE STATE CALLS INVESTIGATOR
11 LORRAINE HENDERSON.

12 LORRAINE HENDERSON, HAVING BEEN DULY
13 SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION BY MS. KEDNOCKER:

15 Q INVESTIGATOR HENDERSON, FIRST, WHAT IS YOUR POSITION AT THE
16 GREENVILLE COUNTY SHERIFF'S OFFICE?

17 A I WORK IN THE VIOLENT CRIMES DIVISION, SEX CRIMES.

18 Q AND YOUR TITLE IS INVESTIGATOR LORRAINE HENDERSON?

19 A IT IS.

20 Q HOW LONG HAVE YOU BEEN EMPLOYED IN THE VIOLENT CRIMES UNIT?

21 A IN THE VIOLENT CRIMES UNIT? I WENT THERE JUNE 1ST OF '86.

22 Q AND WHAT IS YOUR CURRENT POSITION RIGHT NOW?

23 A SEX CRIMES INVESTIGATOR.

24 Q HOW MANY YEARS HAVE YOU BEEN A SEX CRIMES INVESTIGATOR?

25 A SINCE JUNE THE 1ST OF '86. I'VE BEEN THERE 27 YEARS.

LORRAINE HENDERSON -- DIRECT BY MS. KEDNOCKER

1 Q OKAY. PRIOR TO WORKING AS A SEX CRIMES INVESTIGATOR WHAT
2 WAS YOUR POSITION?

3 A I WORKED ON THE ROAD AS A ROAD DEPUTY WITH GREENVILLE
4 COUNTY.

5 Q AND AS A ROAD DEPUTY WHAT DOES THAT JOB ENTAIL?

6 A WE ANSWERED ALL KIND OF CALLS FROM SHOPLIFTING, ARMED
7 ROBBERIES, SEX CRIMES, JUST ANSWERING CALLS FOR FIRST RESPONDERS.

8 Q IN GENERAL, GOING BACK TO YOUR CURRENT POSITION AS A SEX
9 CRIMES INVESTIGATOR, HOW DO SEX CRIMES INVESTIGATIONS COME TO YOU
10 GENERALLY?

11 A AT FIRST WHEN IT'S GOING TO THE ROAD THROUGH THE FIRST
12 RESPONDER IT IS SENT UP TO OUR SUPERVISOR. SUPERVISORS GIVE
13 DIFFERENT CASES OUT. THERE IS MORE THAN ONE SEX CRIMES
14 INVESTIGATOR. SO IT IS ASSIGNED TO AN INVESTIGATOR.

15 Q ARE YOU FAMILIAR WITH A MAN BY THE NAME OF RANDALL SMITH,
16 SR.?

17 A YES, MA'AM.

18 Q AND IS HE PRESENT IN THE COURTROOM TODAY?

19 A HE IS.

20 Q WERE YOU SERVING IN YOUR CAPACITY AS AN INVESTIGATOR WITH
21 THE GREENVILLE COUNTY SHERIFF'S OFFICE THAT LED YOU TO COMING IN
22 CONTACT WITH THIS DEFENDANT?

23 A YES, MA'AM, I WAS.

24 Q HOW DID YOU END UP COMING IN CONTACT WITH THIS DEFENDANT?

25 A THE -- ACTUALLY, I WAS ON CALL DURING THE TIME THAT THE

1 REPORT CAME IN, AND THE REPORT WAS ORIGINALLY ASSIGNED TO ME.

2 Q WHEN DID YOU -- WHAT DATE DID YOU GET THE REPORT ASSIGNED TO
3 YOU AND DID YOU BECOME INVOLVED IN THIS INVESTIGATION?

4 A THE REPORT WAS ASSIGNED ON 12/15/03 TO ME, AND I BECAME
5 INVOLVED ON 12/16/03.

6 Q DO YOU KNOW A BOY NAMED Minor

7 A YES, MA'AM.

8 Q AND WHO IS HE?

9 A HE IS THE VICTIM IN THIS CASE.

10 Q ALL RIGHT. WHEN DID YOU FIRST COME IN CONTACT WITH Minor

11

12 A ON THE 16TH OF---

13 Q AND TELL ME ABOUT --

14 A ---2003.

15 Q OH, I APOLOGIZE. WOULD YOU STATE THE DATE AGAIN? I SPOKE
16 OVER YOU.

17 A DECEMBER THE 16TH, 2003.

18 Q ON THAT DATE HOW DID YOU COME IN CONTACT WITH Minor

19 A THEY WERE ASKED TO COME TO THE OFFICE FOR AN INTERVIEW, AND
20 THE FAMILY CAME IN, HIS FATHER AND AUNT AND SIBLINGS CAME IN WITH
21 HIM.

22 Q OKAY. WHO ALL DID YOU TALK TO ON THAT DAY ON DECEMBER 16TH,
23 2005?

24 A I SPOKE WITH MR. JULIAN, WHICH IS Minor FATHER. I SPOKE
25 TO MS. NANCY SMITH, WHICH IS HIS AUNT. AND I SPOKE TO ASHTON

LORRAINE HENDERSON -- DIRECT BY MS. KEDNOCKER

1 JULIAN, WHICH IS HIS BROTHER.

2 Q OKAY. NOW, WHEN YOU SPOKE WITH Minor THE VICTIM IN THIS
3 CASE, TELL ME HOW, GENERALLY -- WHEN YOU'RE INTERVIEWING VICTIMS
4 OF SEXUAL ASSAULT, TELL ME HOW YOU GO ABOUT INTERVIEWING A VICTIM
5 OF SEXUAL ASSAULT.

6 MR. CREECH: I OBJECT TO THIS QUESTION, YOUR HONOR.

7 MS. KEDNOCKER: YOUR HONOR, THIS IS BACKGROUND INFORMATION
8 FOR THE JURY TO UNDERSTAND WHAT THIS INVESTIGATOR DOES AND HOW
9 SHE GOES ABOUT HER JOB.

10 MR. CREECH: WE JUST ASK THAT SHE LIMIT IT TO WHAT SHE DID
11 IN THIS CASE AS OPPOSED TO HOW SHE'S DONE IT.

12 THE COURT: I AGREE. SUSTAINED.

13 Q OKAY. LET ME ASK YOU THIS: WHEN YOU MET WITH Minor
14 ON DECEMBER 16TH, 2003, HOW DID YOU GO ABOUT CONDUCTING
15 THAT INTERVIEW THAT DAY?

16 A AFTER TALKING WITH HIS FATHER AND HIS AUNT, I THEN SPOKE
17 WITH -- I GOT Minor IN THE OFFICE ALONE AND SPOKE WITH
18 HIM AND TOLD HIM WHAT I WAS INTERVIEWING HIM FOR, ABOUT THE
19 ALLEGATION THAT HE HAD MADE, AND THAT I NEEDED TO TALK WITH HIM
20 AND I NEEDED THE TRUTH FROM HIM. IT WAS JUST LIKE HE WAS WRITING
21 IN A DIARY AND I NEEDED HIM TO BE SPECIFIC, YOU KNOW, OF THE
22 EVENTS.

23 Q AND WHAT WAS THE IMPORTANCE OF YOU GETTING HIM ALONE WITH
24 YOU TO CONDUCT THIS INTERVIEW? WHY DO YOU THINK THAT'S IMPORTANT
25 TO HAVE VICTIMS, WHEN YOU GET THE INTERVIEW, TO TALK ONE ON ONE

LORRAINE HENDERSON -- DIRECT BY MS. KEDNOCKER

1 WITH THEM?

2 A WELL, I THINK IT'S IMPORTANT THAT THEY STAND ON THEIR OWN AT
3 THAT TIME AND THERE IS NO ONE THERE TO HELP THEM OUT, AND YOU GET
4 BETTER---

5 MR. CREECH: OBJECTION, YOUR HONOR. IT'S THE SAME
6 OBJECTION.

7 THE COURT: SUSTAINED.

8 Q INVESTIGATOR, CAN YOU TELL ME ABOUT Minor GENERAL
9 Demeanor WHEN YOU WERE IN THIS INTERVIEW ROOM WITH HIM? HOW
10 WOULD YOU DESCRIBE HOW Minor WAS ACTING TO YOU ON THAT DAY?

11 A IT WAS KIND OF A DIFFICULT TO TALK TO HIM. HE WAS VERY
12 UPSET AND SOMETIMES BECOME EMOTIONAL AND TEARING UP. WE HAD TO
13 STOP THE INTERVIEW TILL HE GAINED HIS COMPOSURE. WHEN HE WOULD
14 TEAR UP HE'D PUT HIS HANDS OVER HIS EYES. I PROVIDED TISSUE. AT
15 ONE POINT, YOU KNOW, HE'D JUST HAVE TO STOP UNTIL HE COULD
16 SWALLOW HIS TEARS, I GUESS, AND GET HIS COMPOSURE BACK. AND I
17 ASKED HIM AT THAT POINT WOULD IT BE -- WOULD HE PREFER TO TALK TO
18 A MALE, BECAUSE HE WAS HAVING A DIFFICULT TIME IN TELLING ME,
19 VERY DIFFICULT. AND I ASKED HIM WOULD HE PREFER TO TALK TO A
20 MALE ABOUT THIS, AND HE SAID HE WOULD NOT. SO WE'D TALK ABOUT
21 OTHER THINGS, AND WHEN HE GAINED HIS COMPOSURE BACK WE STARTED
22 TALKING ABOUT THIS AGAIN.

23 Q OKAY. IN TAKING A STATEMENT IS IT A PROCESS WHERE YOU GET
24 PART OF THE INFORMATION AND THEN, AS YOU STATED, YOU HAVE TO STOP
25 AND GET THE REST OF THE INFORMATION -- WHO IS TYPING THIS

LORRAINE HENDERSON -- DIRECT BY MS. KEDNOCKER

1 STATEMENT, NOW, IS IT YOU OR Minor

2 A I AM TYPING.

3 Q OKAY. SO YOU'RE GETTING BITS AND PIECES, PUTTING IT DOWN?

4 A RIGHT.

5 Q DID HE REPORT TO YOU WHETHER HE HAD BEEN SEXUALLY ASSAULTED
6 DURING YOUR INTERVIEW?

7 A YES, MA'AM, HE DID.

8 Q AND DID HE REPORT TO YOU A TIME FRAME OF WHEN THE SEXUAL
9 ASSAULTS TOOK PLACE?

10 A YES, MA'AM. WHEN I TOLD HIM TO TELL ME JUST LIKE HE'S DOING
11 IN A DIARY, HE STARTS TO WHERE HE CAN REMEMBER BACK AND HOW HE
12 REMEMBERS THESE THINGS, AND SO I'M TYPING WORD BY WORD WHAT HE IS
13 SAYING TO ME, AND SOMETIME IT DOESN'T COME OUT RIGHT, BUT I HAVE
14 TO TYPE JUST WHAT HE SAYS.

15 Q OKAY.

16 A AND THAT'S BASICALLY---

17 Q GOING BACK TO THE TIME FRAME, DID HE GIVE AN IDEA OF WAS IT
18 GOING ON WEEKS OR MONTHS? DID HE GIVE YOU A TIME FRAME OF HOW
19 LONG THE SEXUAL ABUSE HAD BEEN GOING---

20 A IT WAS OVER A TIME SPAN OF MONTHS.

21 Q DID HE GIVE YOU -- DID HE INDICATE TO YOU THE LAST TIME THAT
22 HE HAD BEEN SEXUALLY ASSAULTED, THE DATE OF THE LAST TIME?

23 A YES.

24 Q WHAT WAS THAT DATE?

25 A DECEMBER THE 11TH, 2003.

LORRAINE HENDERSON -- DIRECT BY MS. KEDNOCKER

1 Q DID HE REPORT TO YOU THE PLACE OR PLACES WHERE THIS SEXUAL
2 ASSAULT TOOK PLACE?

3 A HE TOLD ME IT WAS AT HIS UNCLE AND AUNT'S HOUSE.

4 Q OKAY.

5 MS. KEDNOCKER: BEG THE COURT'S INDULGENCE ONE SECOND.

6 THE COURT: YES, MA'AM. TAKE YOUR TIME.

7 Q INVESTIGATOR HENDERSON, YOU STATED THAT YOU WERE TYPING THIS
8 STATEMENT. IT TOOK -- HOW LONG WOULD YOU ESTIMATE IT TOOK YOU TO
9 GET THIS STATEMENT FROM Minor

10 A IT WAS IN EXCESS OF AN HOUR.

11 Q AND IT WAS YOUR TESTIMONY THAT HE WAS, IN YOUR WORDS, VERY
12 UPSET AND HE HAD A HARD TIME TALKING?

13 A YES, MA'AM.

14 Q IN YOUR TRAINING AND EXPERIENCE AS A SEX CRIMES INVESTIGATOR
15 DO YOU ALWAYS GET EVERY SINGLE DETAIL IN ONE PARTICULAR STATEMENT
16 --

17 MS. KEDNOCKER: YOUR HONOR, THIS GOES TO HER EXPERIENCE AS
18 AN INVESTIGATOR. SHE HAS THE KNOWLEDGE THAT SHE CAN ANSWER THIS
19 QUESTION.

20 MR. CREECH: I OBJECT ON THE PREVIOUS GROUNDS, YOUR HONOR.

21 THE COURT: SUSTAINED.

22 MS. KEDNOCKER: ALL RIGHT.

23 Q AFTER MEETING WITH Minor YOU SPOKE WITH Minor FATHER;
24 IS THAT CORRECT?

25 A NO, I SPOKE WITH Minor FATHER FIRST.

LORRAINE HENDERSON -- DIRECT BY MS. KEDNOCKER

1 Q FATHER FIRST.

2 A AND THEN I CALLED -- AFTER TALKING WITH Minor I CALLED
3 HIM BACK IN BECAUSE HE HAD TO SIGN HIS STATEMENT -- Minor HAD
4 TO SIGN THE STATEMENT IN FRONT OF HIS FATHER -- AND THEN I TALKED
5 TO HIM AGAIN A SECOND TIME.

6 Q OKAY. DID YOU IN FACT GET A STATEMENT FROM THIS DEFENDANT'S
7 WIFE THAT DAY, NANCY SMITH? OR DID SOMEONE IN YOUR AGENCY?

8 A YES, MA'AM.

9 Q ALL RIGHT. WHO GOT THAT STATEMENT?

10 A TY BRACKEN TOOK HER STATEMENT, BUT I HAD TALKED TO HER
11 PREVIOUSLY TOO.

12 Q AFTER MEETING WITH Minor DID YOU-- NOW, THIS IS ON TUESDAY
13 THE 16TH, YOU STATED, CORRECT?

14 A DECEMBER THE 16TH.

15 Q DID YOU REFER Minor TO GET A MEDICAL EXAM?

16 A YES.

17 Q OKAY. AND WHERE DID YOU REFER HIM TO GO GET THIS MEDICAL
18 EXAM?

19 A THE ADVOCACY CENTER, THE CHILD AND ADOLESCENT CENTER. AT
20 THAT TIME IT WAS ON MILLS AVENUE, AND IT'S NOW ON WHITE HORSE
21 ROAD. BUT TO DR. HENDERSON AT THE ADVOCACY CENTER.

22 Q AND DR. HENDERSON IS A PHYSICIAN THAT DOES?

23 A CHRONIC EXAMS.

24 Q CHRONIC EXAMS. ALL RIGHT. AND WERE YOU AWARE THAT

25 Minor DAD HAS TAKEN HIM -- OR WERE YOU AWARE THAT Minor HAD

1 GONE ANYWHERE THE DAY BEFORE TO GET AN EXAM?

2 A I WAS NOT.

3 Q OKAY. SO AT THIS POINT YOU MEET WITH HIM ON THE 16TH. YOU
4 REFER HIM ON TO GET AN EXAM?

5 A YES.

6 Q IS THAT STANDARD PROCEDURE FOR YOU TO REFER A CHILD IN THIS
7 SITUATION TO GET AN EXAM?

8 A YES, MA'AM, IF IT DIDN'T ---

9 MR. CREECH: YOUR HONOR, IT'S THE SAME OBJECTION.

10 THE COURT: WELL---

11 MS. KEDNOCKER: YOUR HONOR, I BELIEVE SHE CAN STATE IF IT'S
12 STANDARD PROCEDURE TO REFER A CHILD TO GET A CHRONIC EXAM---

13 THE COURT: OKAY. I'LL LET HER ANSWER THAT. GO AHEAD,
14 MA'AM.

15 A YES, IF IT DIDN'T HAPPEN WITHIN THE LAST 72 HOURS, THAT TIME
16 FRAME, THEY ARE REFERRED TO THE AD CENTER. IF IT HAPPENED IN THE
17 72-HOUR REALM, IT'S AT THE EMERGENCY ROOM.

18 Q OKAY. AND GOING BACK TO THIS DEFENDANT, IN -- WE JUST HEARD
19 -- TROOPER CANNON JUST TESTIFIED THAT ON DECEMBER 14TH HE WENT TO
20 LOCATE THIS DEFENDANT. WHEN YOU BECAME INVOLVED IN THIS CASE ON
21 DECEMBER THE 16TH, DID YOU IN FACT TRY TO LOCATE THIS DEFENDANT?

22 A NOT ON THE 16TH, NO, MA'AM, I DID NOT.

23 Q WHEN DID YOU TRY TO LOCATE THIS DEFENDANT?

24 A AFTER GATHERING ALL THE INFORMATION FROM EVERYONE ON
25 DECEMBER THE 24TH, I THINK, I SIGNED WARRANTS ON HIM AND AT THAT

LORRAINE HENDERSON -- DIRECT BY MS. KEDNOCKER

1 POINT WAS TRYING TO FIND HIM, AND I WAS WORKING WITH MARY SMITH
2 TO DO SO. I TURNED THE WARRANTS OVER TO THE FUGITIVE SQUAD.
3 THAT WAS DOWNS AND YOUNG AT THAT TIME.

4 Q AND WHY DID YOU TURN THEM OVER TO THE FUGITIVE SQUAD? DID
5 YOU BELIEVE THIS DEFENDANT WAS IN THE STATE OR DID YOU HAVE
6 REASON TO BELIEVE HE WASN'T?

7 A LIKE I SAID, IN TALKING WITH MARY SMITH AND ALSO MR. JULIAN,
8 I LEARNED THAT HE WAS BACK AND FORTH, IN AND OUT OF THE STATE,
9 AND AT THAT TIME HE WAS GOING TO MEET MARY SMITH---

10 Q ACTUALLY, NANCY SMITH?

11 A YES.

12 Q OKAY.

13 A MS. NANCY SMITH. HE WAS GOING TO MEET HER. AND SO WHEN I
14 GOT THE WARRANTS TOGETHER, I CALLED THE FUGITIVE SQUAD TO TELL
15 THEM WHERE, AND I WAS JUST -- I HAD NOT TALKED TO THE DEFENDANT
16 AT THAT TIME.

17 (LETTER MARKED AS STATE'S EXHIBIT NUMBER 2 FOR PURPOSES OF
18 IDENTIFICATION ONLY)

19 (LETTER MARKED AS STATE'S EXHIBIT NUMBER 3 FOR PURPOSES OF
20 IDENTIFICATION ONLY)

21 Q ALL RIGHT. (OFF RECORD WITH MR. CREECH) INVESTIGATOR
22 HENDERSON, I'M SHOWING YOU WHAT IS MARKED AS STATE'S EXHIBIT 2
23 AND 3 FOR IDENTIFICATION. DO YOU RECOGNIZE THESE ITEMS?

24 A YES, MA'AM.

25 Q AND HOW DO YOU RECOGNIZE THESE?

LORRAINE HENDERSON -- CROSS BY MR. CREECH

1 A I TOOK POSSESSION OF THOSE FROM NANCY SMITH.

2 Q OKAY. YOU TOOK POSSESSION OF THESE LETTERS -- EXCUSE ME.

3 AND YOU SAY THAT THESE ARE LETTERS?

4 A YES. I TOOK POSSESSION OF THESE HANDWRITTEN LETTERS FROM
5 NANCY SMITH AT THE COURTHOUSE.

6 Q OKAY. AFTER YOU RECEIVED THESE LETTERS FROM NANCY SMITH
7 RELATED TO THIS INVESTIGATION, DID YOU TAKE THESE TO ANYONE FOR
8 EXAMINATION?

9 A YES.

10 Q WHO DID YOU TAKE THEM TO?

11 A I TOOK THEM DOWN TO THE LAW ENFORCEMENT CENTER AND TURNED
12 THEM OVER TO DAWN EDWARDS.

13 Q WHO IS DAWN EDWARDS?

14 A I GUESS SHE'S TECHNICALLY ON THE FORENSIC DIVISION DOWN
15 THERE. AND I TOOK THEM TO HER FOR ANALYSIS, HANDWRITING
16 ANALYSIS.

17 Q AND THE PURPOSE OF IT WAS TO DETERMINE WHO WROTE THE
18 LETTERS; IS THAT CORRECT?

19 A THAT'S TRUE.

20 MS. KEDNOCKER: YOUR HONOR, I DON'T HAVE ANY FURTHER
21 QUESTIONS.

22 THE COURT: OKAY. CROSS EXAMINATION, MR. CREECH.

23 MR. CREECH: THANK YOU, YOUR HONOR.

24 CROSS EXAMINATION BY MR. CREECH:

25 Q INVESTIGATOR HENDERSON, NOW, YOU SAY THAT YOU CONDUCTED AN

LORRAINE HENDERSON -- CROSS BY MR. CREECH

1 INVESTIGATION IN THIS CASE AND YOU SIGNED AN ARREST WARRANT ON
2 DECEMBER THE 24TH, 2003; IS THAT RIGHT?

3 A YES.

4 Q AND SO AFTER YOUR INVESTIGATION YOUR ARREST WARRANT WAS
5 SIGNED ON DECEMBER THE 24TH, CHRISTMAS EVE, 2003?

6 A THAT'S TRUE. YES

7 Q OKAY. AND ON YOUR ARREST WARRANT DID YOU LIST THE DATES
8 THAT THIS INCIDENT ALLEGEDLY OCCURRED? DID YOU SAY AUGUST THE
9 20TH? DID YOU PUT THAT ON YOUR ARREST WARRANT?

10 A ACTUALLY I HAD A WINDOW OF TIME, AND I PUT IT -- I RAN IT
11 BETWEEN 8/20/03 TO 12/12/03.

12 Q OKAY. SO THAT AUGUST 20TH, '03, THAT CAME FROM YOU; IS THAT
13 RIGHT? YOU PUT THAT DOWN THERE?

14 A FROM THAT WINDOW OF TIME IT CAME FROM Minor SAYING
15 THAT WHEN HE WENT BACK TO SCHOOL.

16 Q OKAY. SO DID Minor TELL YOU AUGUST THE 20TH?

17 A NO, HE TOLD ME WHEN HE STARTED BACK IN THE SEVENTH GRADE,
18 AND THEY STARTED AT THE END OF AUGUST.

19 Q SO YOU PUT DOWN AUGUST THE 20TH; IS THAT RIGHT?

20 A THAT'S TRUE.

21 Q OKAY. AND THE ARREST WARRANT THAT WAS SIGNED BY YOU ON
22 DECEMBER THE 24TH, 2003, WAS SERVED ON MR. RANDY SMITH DECEMBER
23 THE 24TH OF 2003; IS THAT CORRECT?

24 A THAT IS CORRECT.

25 Q SO YOU COMPLETED YOUR INVESTIGATION ON DECEMBER THE 24TH,

1 2003, AND THAT SAME DAY MR. SMITH WAS ARRESTED?

2 A NO, I DIDN'T COMPLETE THE INVESTIGATION ON THAT DAY.

3 Q IS THAT THE DAY YOU SIGNED THE WARRANT?

4 A THAT'S THE DAY I SIGNED THE WARRANT.

5 Q AND HE WAS ARRESTED HERE IN GREENVILLE COUNTY, CORRECT?

6 A THAT'S CORRECT.

7 Q ALL RIGHT. NOW AS PART OF YOUR INVESTIGATION DO YOU
8 REMEMBER EVER VISITING DRIVE?

9 A NO, SIR, I DID NOT GO THERE.

10 Q YOU NEVER WENT TO THE APARTMENT WHERE THIS ALLEGEDLY TOOK
11 PLACE?

12 A NO, SIR, I DID NOT GO THERE.

13 Q OKAY. SO DO YOU KNOW IF YOU HAD GONE THERE WOULD YOU HAVE
14 BEEN ABLE TO SEE THE BEDROOMS OR THE PROXIMITY OF THE BEDROOMS,
15 WHERE THEY WERE UPSTAIRS?

16 A YES, SIR, I WOULD HAVE, IF I HAD GONE.

17 Q OKAY. YOU NEVER VISITED THE ROOM WHERE THIS ALLEGEDLY TOOK
18 PLACE?

19 A THAT WAS -- WHAT YOU JUST SAID, 42 BELLWOOD, I NEVER WENT TO
20 42 BELLWOOD.

21 Q WHEN YOU MET WITH Minor FOR THE FIRST TIME YOU STATED IN
22 YOUR TESTIMONY EARLIER THAT YOU TOLD HIM THE IMPORTANCE OF
23 TELLING THE TRUTH; IS THAT RIGHT?

24 A I TOLD HIM I NEEDED THE TRUTH FROM HIM, YES, SIR.

25 Q AND DID YOU TELL HIM THAT HE WOULD GET IN TROUBLE IF HE

LORRAINE HENDERSON -- CROSS BY MR. CREECH

1 DIDN'T TELL YOU THE TRUTH?

2 A DID I TELL HIM HE WOULD GET IN TROUBLE?

3 Q YES.

4 A NO. I TOLD HIM, AS I TELL EVERYBODY, YOU KNOW, DON'T LIE TO
5 ME ABOUT THIS SITUATION OR THEY COULD BE CHARGED.

6 Q WELL, IN YOUR REPORT DO YOU REMEMBER SAYING HE WAS WARNED
7 ABOUT TELLING THE TRUTH?

8 A THAT IS THE WORDS THAT I USE. I WARN THEM ABOUT TELLING THE
9 TRUTH. IF YOU LIE TO ME, I'M GOING TO CHARGE YOU. IT'S JUST
10 THAT SIMPLE.

11 Q OKAY. SO IF HE HAD BEEN MAKING THIS UP AND HE TOLD YOU
12 THAT, YOU WOULD HAVE CHARGED HIM WITH A CRIME RIGHT THEN AND
13 THERE; IS THAT RIGHT?

14 A IF IT TURNED OUT TO BE NOT TRUE AND THINGS WENT AGAINST MR.
15 SMITH, YES, SIR, I WOULD HAVE CHARGED HIM.

16 Q YOU HAD THAT CONVERSATION WITH HIM BEFORE YOU TOOK HIS
17 STATEMENT?

18 A I DID.

19 Q AND IT WAS JUST YOU AND HIM IN THIS ROOM WHEN THAT STATEMENT
20 WAS MADE TO HIM BY YOU?

21 A THAT'S TRUE.

22 Q OKAY. AND HIS FATHER WAS NOT IN THE ROOM AT THAT TIME; IS
23 THAT RIGHT?

24 A NO, HE WASN'T.

25 Q NOW, WERE YOU EVER ABLE TO -- IN YOUR INVESTIGATION COULD

1 YOU CONFIRM WHETHER SOMETHING COULD HAVE BEEN HEARD FROM THE ROOM
2 WHERE THIS HAD ALLEGEDLY TAKEN PLACE? WERE YOU EVER ABLE TO DO
3 THAT?

4 A WAS ANYTHING HEARD?

5 Q RIGHT.

6 A FROM THE INCIDENT LOCATION?

7 Q YES.

8 A THROUGH THE OTHER ROOM?

9 Q YES.

10 A NO, SIR.

11 Q DID YOU EVER TAKE A STATEMENT FROM STEVE JULIAN, THE FATHER
12 IN THIS CASE?

13 A YES, SIR, I DID. YES, SIR. NO, THIS IS THE SON. NO, I
14 TALKED TO MR. JULIAN ALONG WITH MS. SMITH.

15 Q ALL RIGHT. BUT YOU NEVER TOOK A WRITTEN STATEMENT FROM HIM?

16 A NO.

17 Q DID YOU EVER TAKE A STATEMENT FROM NASTASHA, THE DAUGHTER OF
18 MY CLIENT? DID YOU EVER TAKE A STATEMENT FROM HER, WRITTEN
19 STATEMENT?

20 A NO, SIR, I DID NOT.

21 Q OKAY. DID YOU TAKE A STATEMENT OF THE FRIEND, SEBASTIAN?

22 A NO.

23 Q OR A STATEMENT FROM THE OTHER FRIEND, ALLIE, WHO WAS AT THIS
24 HOUSE?

25 A NO, SIR. THEY WEREN'T THERE AT THE TIME I TOOK THIS.

LORRAINE HENDERSON -- CROSS BY MR. CREECH

1 Q NOW, DID YOU HAVE THE OPPORTUNITY AS PART OF YOUR
2 INVESTIGATION TO GO VISIT THIS CHURCH WHERE Minor SAYS HE MET
3 WITH LANE ON THIS NIGHT, IS THAT RIGHT? DID YOU EVER VISIT THAT
4 CHURCH OR SPEAK WITH ANYONE AT THAT CHURCH?

5 A NO, SIR, I DIDN'T. THAT WAS ALL THE FRONT OFFICERS.

6 Q (PAUSE) YOU STATED EARLIER THAT Minor WAS DIFFICULT TO
7 TALK TO?

8 A YES.

9 Q AND THAT YOU NEEDED TO -- YOU FELT LIKE YOU MIGHT GO GET A
10 MALE TO COME IN AND INTERVIEW HIM?

11 A I THOUGHT MAYBE THAT WOULD HELP, YOU KNOW, BECAUSE HE SEEMED
12 TO BE SOMEWHAT VERY EMBARRASSED TO TELL ME ABOUT IT, AND HE WAS
13 HAVING A HARD TIME. AND I THOUGHT, WELL, IF IT WAS MY BEING A
14 FEMALE, I WOULD OFFER HIM A MALE IF HE'D RATHER TALK TO A MALE,
15 BECAUSE I COULD GET ONE AT THAT TIME TO TALK TO HIM.

16 Q AND YOU REFERRED HIM TO A DOCTOR BUT AT THAT POINT YOU DID
17 NOT KNOW THAT HE HAD BEEN TO THE EMERGENCY ROOM THE PREVIOUS
18 NIGHT; IS THAT RIGHT?

19 A NO, SIR.

20 Q SO YOU DID NOT KNOW THE RESULTS OF THAT EMERGENCY ROOM
21 EXAMINATION WHEN YOU INTERVIEWED HIM; IS THAT CORRECT?

22 A NO, SIR.

23 Q OKAY. AND YOU SAY WITHIN 72 HOURS YOU WOULD REFER HIM TO
24 THE EMERGENCY ROOM; IS THAT RIGHT?

25 A YES, SIR.

LORRAINE HENDERSON -- CROSS BY MR. CREECH

1 Q AND YOU HAD THE CASE ASSIGNED TO YOU ON THE 15TH; IS THAT
2 RIGHT?

3 A THAT'S RIGHT.

4 Q AND DID YOU KNOW AT THAT TIME THE ALLEGATION OF THE LAST
5 INSTANCE WAS MADE ON THE 12TH?

6 A THE LAST ALLEGATION WAS MADE ON THE 11TH, AND AT THAT TIME I
7 DID NOT -- WHEN IT WAS GIVEN TO ME ON THE 15TH, THEN I FOUND OUT.

8 Q AND HE HAD BEEN TO THE EMERGENCY ROOM ON THE 15TH; IS THAT
9 RIGHT?

10 A WHEN I GATHERED THAT -- BUT I DIDN'T KNOW. AND THE NEXT DAY
11 WHEN THEY CAME IN ON THE 16TH, I TALKED TO HIS FATHER ABOUT THE
12 EXAM AT THE AD CENTER.

13 Q OKAY. DID THE FATHER TELL YOU THAT HE HAD TAKEN Minor TO
14 THE EMERGENCY ROOM THE NIGHT BEFORE?

15 A I DON'T REMEMBER HIM TELLING ME THAT.

16 Q NOW, PRIOR TO YOUR ARRESTING MR. SMITH IN THIS CASE DID YOU
17 SPEAK WITH HIM?

18 A I DID NOT ARREST MR. SMITH.

19 Q OKAY. PRIOR TO THE ARREST BEING MADE DID YOU SPEAK TO MR.
20 SMITH?

21 A NOT PRIOR TO THAT, NO, SIR. NOT PRIOR TO THE ARREST.

22 Q ALL RIGHT. DID YOU EVER LEAVE -- WERE YOU EVER PROVIDED ANY
23 INFORMATION OF WHERE HE MIGHT BE?

24 A BEFORE HE WAS ARRESTED?

25 Q YEAH.

MATTERS AND MOTIONS

1 IT'S NOT THE STATE'S MOTION TO TAKE OUT THE ASHTON PART, BUT I
2 WOULD THINK DEFENSE COUNSEL WOULD BE MAKING THAT MOTION IN THIS
3 LETTER ON PAGE 2, SINCE WE ARE NOT AT THIS POINT BRINGING HIM IN.

4 THE STATE'S MOTION WOULD BE TO TAKE OUT THE PART RELATED TO
5 Minor ON THE PREVIOUS STATED GROUNDS, THAT IT IS EXCLUDED UNDER
6 RAPE SHIELD AND, IF YOUR HONOR DOESN'T FIND THAT, THAT IT FAILS
7 UNDER 403. IT'S NOT RELEVANT. IT'S NOT PROBATIVE. IT'S
8 INFLAMMATORY. IT'S NOT FAIR TO THIS VICTIM. I MEAN, IT FAIRLY
9 SHOULD BE REDACTED IN THIS CASE IS THE STATE'S POSITION.

10 THE COURT: OKAY. MR. CREECH?

11 MR. CREECH: WELL, YOUR HONOR, I DO OBJECT TO ANY 404 LYLE
12 STUFF COMING IN THROUGH THIS LETTER, AND I DON'T THINK THE STATE
13 IS SEEKING TO INTRODUCE THAT.

14 IN TERMS OF Minor BEING GAY, AGAIN, THE STATE IS SEEKING
15 TO INTRODUCE THIS LETTER. HOW CAN THEY SAY WE'RE GOING TO
16 INTRODUCE THIS PART OF IT BUT, THEY'RE SAYING, NOT THIS OTHER
17 PART BECAUSE WE THINK THAT'S PREJUDICIAL TO OUR CASE? I'M
18 CLEARLY SAYING THE 404(B) STUFF AS TO ASHTON, I THINK, SHOULD NOT
19 COME IN. THAT'S MY OBJECTION. BUT IT'S KIND OF LIKE THEY'RE
20 SAYING, WELL, WE WANT TO PUT THIS IN, BUT BECAUSE WE THINK IT'S
21 PREJUDICIAL TO OUR CASE, WE WANT TO REDACT THAT PART OF IT. I
22 MEAN, PREJUDICIAL TO WHOSE CASE? ARE THEY SAYING IT'S
23 PREJUDICIAL TO THEIR CASE OR MY CASE?

24 THE COURT: WELL, I THINK THEY PROBABLY HAVE THE RIGHT TO
25 PRESENT THE EVIDENCE IN THE FORM THEY WANT TO, AND THEN YOU HAVE

1 A YES.

2 Q DID YOU CALL THAT NUMBER?

3 A NO. WHEN HE WAS TO MEET HIS WIFE I WAS TOLD OF THE
4 LOCATION, AND I INFORMED THE FUGITIVE SQUAD OF THAT LOCATION.

5 Q ALL RIGHT. I'M TALKING ABOUT BEFORE THIS DAY THOUGH. HAD
6 NANCY OR ANYONE ELSE GIVEN YOU ANY CONTACT INFORMATION FOR MR.
7 RANDY SMITH?

8 A NO. IT WAS JUST HIM CALLING HER WAS ALL THE INFORMATION
9 THAT I HAD.

10 Q WELL, DID SHE TURN AROUND AND TELL YOU WHERE HE WAS CALLING
11 FROM?

12 A HE WAS OUT OF TOWN. I REMEMBER HER SAYING HE WAS OUT OF
13 TOWN. BUT I DON'T KNOW THE EXACT PLACES HE WAS CALLING FROM.

14 Q DO YOU REMEMBER HER TELLING YOU THAT HE WOULD BE IN CONTACT
15 WITH YOU?

16 A I DON'T REMEMBER HER TELLING ME THAT, BUT SHE MIGHT HAVE.

17 Q OKAY. NOW, DID NANCY TELL YOU THAT SHE HAD KICKED HIM OUT
18 OF THE HOUSE?

19 A SHE DIDN'T USE THAT WORD. SHE TOLD ME SHE ASKED HIM TO
20 LEAVE.

21 Q OKAY. ON PAGE 2 OF YOUR REPORT TOWARDS THE END OF THE PAGE
22 DO YOU SEE WHERE -- THIS IS YOUR REPORT. YOU SAY THAT NANCY HAD
23 GIVEN YOU A NAME FOR HIM; IS THAT RIGHT? A NAME, A CONTACT?

24 A ARE WE LOOKING AT THE SAME THING?

25 Q (INDICATING) IT JUST SAYS HE HAD A FRIEND HE MIGHT GO TO.

LORRAINE HENDERSON -- CROSS BY MR. CREECH

1 HIS NAME WAS JOHN LEWIS. THAT'S IN YOUR REPORT; IS THAT RIGHT?

2 MS. KEDNOCKER: YOUR HONOR, I HAVE TO OBJECT. HE'S ASKING
3 HEARSAY FROM NANCY SMITH AT THIS POINT.

4 THE COURT: MR. CREECH?

5 MR. CREECH: WELL, I'LL WITHDRAW THAT QUESTION, YOUR HONOR.

6 THE COURT: ALL RIGHT.

7 Q I CAN ASK YOU THIS. DID YOU HAVE INFORMATION, LOOKING AT
8 YOUR REPORT, THAT A CONTACT INFORMATION AND A PHONE NUMBER AND
9 NAME OF WHERE RANDY MIGHT BE?

10 A SHE SAID THAT WAS HIS FRIEND. HE MIGHT GO THERE.

11 Q OKAY. AND DID SHE ALSO GIVE YOU HIS PARENTS---

12 MS. KEDNOCKER: AGAIN, YOUR HONOR, HEARSAY. HE IS
13 ELICITING HEARSAY FROM THIS INVESTIGATOR AS TO MS. SMITH---

14 MR. CREECH: I'LL WITHDRAW THE QUESTION, YOUR HONOR.

15 Q YOU SAID YOU HAD A FRIEND AND A CONTACT NAME, CORRECT? DID
16 YOU HAVE ANY OTHER LOCATIONS ACCORDING TO YOUR INVESTIGATION
17 WHERE HE MIGHT BE?

18 A NO. SHE TOLD ME ABOUT HIS FRIENDS AND ANOTHER LADY THAT HE
19 WORKED FOR. HE DID A LOT OF WORK, PHOTOGRAPHY WORK.

20 Q AS PART OF YOUR INVESTIGATION, MS. HENDERSON, WERE YOU ABLE
21 TO CONFIRM WHETHER NANCY WAS AT WORK ON DECEMBER THE 11TH, 2003?

22 A NO, SHE JUST TOLD ME SHE WORKED THIRD SHIFT THERE AT WAL-
23 MART.

24 MR. CREECH: YOUR HONOR, I HAVE NO FURTHER QUESTIONS FOR
25 THIS WITNESS.

1 THE COURT: THANK YOU, SIR. MS. KEDNOCKER, ANY REDIRECT?

2 MS. KEDNOCKER: YOUR HONOR, NONE FROM THE STATE.

3 THE COURT: OKAY. THANK YOU, MA'AM. YOU CAN STEP DOWN,
4 INVESTIGATOR.

5 (WITNESS STEPS DOWN AT 4:35 P.M.)

6 THE COURT: ALL RIGHT. LET ME SEE THE ATTORNEYS UP HERE
7 JUST FOR SOME LOGISTICAL INQUIRY.

8 (BENCH CONFERENCE OFF RECORD)

9 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, IT'S ABOUT
10 4:35 NOW, AND I KNOW IT'S PROBABLY BEEN A LONG DAY FOR EVERYBODY.
11 SO WE ARE AT A PLACE WHERE IT IS CONVENIENT FOR EVERYONE TO STOP
12 FOR TODAY, AND WE'RE GOING TO RESUME TOMORROW MORNING AT 9:15.
13 SO IF YOU WOULD, JUST BE BACK IN YOUR JURY ROOM AT 9:15 AND WE
14 WILL START THE CASE BACK THEN.

15 APPRECIATE YOUR COOPERATION WITH US TODAY, BEING SHUTTLED IN
16 AND OUT AND UP AND DOWN. HAVE A GOOD EVENING. REMEMBER, KEEP AN
17 OPEN MIND. DO NOT DISCUSS THE CASE. DON'T TO ANY OUTSIDE
18 INVESTIGATION. THANK YOU VERY MUCH.

19 (JURY EXITS FOR THE DAY AT 4:36 P.M.)

20 THE COURT: OKAY. THERE WAS THE ISSUE THAT PREVIOUSLY HAD
21 BEEN DISCUSSED ABOUT WHAT IS NOW MARKED AS IDENTIFICATION EXHIBIT
22 NUMBER WHAT?

23 MS. KEDNOCKER: THREE, YOUR HONOR.

24 THE COURT: OKAY. ALL RIGHT. YES, MA'AM.

25 MS. KEDNOCKER: IT IS 1/25/04, DAY 33, 2:00 A.M.

MATTERS AND MOTIONS

1 THE COURT: OKAY. I'VE HAD AN OPPORTUNITY TO READ THE
2 LETTER NOW, AND I'LL BE GLAD TO HEAR ANY ARGUMENTS. AS I
3 UNDERSTAND IT, THE STATE WANTS TO INTRODUCE THE LETTER, BUT THEY
4 WANT TO REDACT ONE PART ON PAGE 2 ABOUT SOME ACTIVITY OF ASHTON.
5 AND ALSO THERE WAS AN AREA WHERE -- I DON'T KNOW WHAT PAGE IT IS
6 BECAUSE THESE ARE NOT NUMBERED. BUT---

7 MS. KEDNOCKER: PAGE 3, JUDGE.

8 THE COURT: PAGE 3, WHERE -- OKAY. ALL RIGHT. ABOUT
9 SOMETHING THAT WHOEVER WROTE THE LETTER SAID THAT Minor SAID
10 THAT HE WORRIED ABOUT MONTHS AGO -- THAT'S NOT HOW HE SAID IT,
11 BUT THAT'S WHAT HE MEANT -- AND I'M PARAPHRASING. BUT HE SAYS
12 LANE HAD SIMILAR QUESTIONS.

13 NOW, WHICH SENTENCES DO YOU WANT TO REDACT OUT OF THAT, MS.
14 KEDNOCKER?

15 MS. KEDNOCKER: YOUR HONOR, THIS IS THE DEFENDANT ACTUALLY
16 WRITING THIS WHEN HE WAS INCARCERATED. HE SAYS, "I WILL TELL YOU
17 THAT Minor SAID HE'S WORRIED ABOUT BEING GAY MONTHS AGO.
18 THAT'S NOT WHAT HE SAID BUT THAT'S HOW HE MEANT IT."

19 THE COURT: RIGHT.

20 MS. KEDNOCKER: AND SINCE WE'RE NOT GOING INTO THE FACT
21 THAT THIS DEFENDANT -- WITH LANE AND THE SEXUAL ASSAULT CHARGE
22 RELATED TO LANE, I THINK WE NEED TO TAKE OUT "LANE HAD SIMILAR
23 QUESTIONS" TO MAKE IT MAKE ANY SENSE AT ALL.

24 THE COURT: RIGHT.

25 MS. KEDNOCKER: SO THE STATE IS ASKING TO TAKE THAT OUT.

1 A RIGHT, LIKEWISE, TO MOVE TO HAVE THE FULL PICTURE SHOWN, SO TO
2 SPEAK. SO YOU'RE SAYING YOU DON'T WANT PORTIONS REDACTED THAT
3 ARE AT ISSUE BECAUSE WHY? JUST BECAUSE YOU WANT THE WHOLE
4 PICTURE UNDER RULE 106; IS THAT WHAT YOU'RE TELLING ME?

5 MR. CREECH: YOUR HONOR, I DON'T -- (PAUSE) THAT WOULD BE
6 THE BASIS FOR MY OBJECTION.

7 THE COURT: OKAY. BUT I MEAN IT'S A LITTLE AWKWARD THE WAY
8 IT'S ARISEN. BUT BASICALLY IF THEY DIDN'T PUT IT IN -- AND I
9 UNDERSTAND THE PROBLEM ABOUT THE DEFENSE OFFERING EVIDENCE, WHAT
10 IT MIGHT DO TO CERTAIN TRIAL STRATEGIES. BUT IF YOU OFFERED IT
11 -- AND THEY'RE OBJECTING TO IT ESSENTIALLY UNDER RULE 403 AND THE
12 RAPE SHIELD STATUTE, RIGHT?

13 MS. KEDNOCKER: YES, SIR.

14 THE COURT: OKAY.

15 MS. KEDNOCKER: THE RAPE SHIELD STATUTE IS THE PRIMARY
16 BASIS. IT STATES -- IT MANDATES LIMITED ADMISSIBILITY OF
17 OPINION, EVIDENCE, REPUTATION OR SPECIFIC INSTANCES OF SEXUAL
18 ACTIVITY BY THE VICTIM. AND I BELIEVE TRYING TO SAY THAT THE
19 CHILD IS GAY, WHICH AGAIN WE HAVE NOTHING TO BELIEVE THAT, BUT IT
20 WOULD FALL UNDER RAPE SHIELD, AND IT WOULD BE THE EXACT KIND OF
21 EVIDENCE THAT WOULD BE UNDER RULE 412 IT WOULD BE KEPT OUT. I
22 DON'T KNOW WHY DEFENSE WANTS IT IN THERE SO MUCH. I DON'T KNOW
23 WHY IT'S SO RELEVANT TO THEM OR PROBATIVE OF ANYTHING. YOU KNOW,
24 THE STATE IS TRYING TO BE REASONABLE IN THIS MATTER, BUT WE THINK
25 THAT IT'S JUST -- UNDER RAPE SHIELD IT DOESN'T COME IN, AND THE

MATTERS AND MOTIONS

1 ANALYSIS SHOULD STOP THERE. WE DON'T EVEN GET TO 403 BECAUSE
2 UNDER RAPE SHIELD IT SHOULD NOT COME IN. AND THE DEFENSE COUNSEL
3 NEEDS TO PROFFER SOME EVIDENCE ON WHY THAT PIECE OF EVIDENCE,
4 WHICH I BELIEVE IS UNDER RAPE SHIELD, NEEDS TO COME IN, AND THAT
5 NEEDS TO BE DONE IN AN IN CAMERA HEARING.

6 THE COURT: OKAY.

7 MR. CREECH: YOUR HONOR, I MEAN, IF THE LETTER -- I DON'T
8 KNOW WHAT HER -- IF THE LETTER -- I DON'T KNOW WHAT HER RESPONSE
9 WOULD BE IF THE LETTER SAID, YOU KNOW, Minor IS WORRIED ABOUT
10 BEING HETEROSEXUAL MONTHS AGO. I MEAN, IS THE MERE FACT THAT
11 IT'S SEXUAL STATUS, IS IT BECAUSE HE'S GAY THEY'RE SAYING THIS
12 SHOULD NOT COME IN OR IS IT -- WHAT IS IT? IS IT BECAUSE HE'S
13 GAY? IS IT THE SEXUAL STATUS? IF HE WAS HETEROSEXUAL...

14 THE COURT: WELL, THE STATEMENT COULD BE CONSTRUED AS
15 EVIDENCE OF THE VICTIM'S SEXUAL CONDUCT WITH THE DEFENDANT,
16 COULDN'T IT, MS. KEDNOCKER? AND THEN YOU GET INTO THE SECOND
17 SENTENCE OF SECTION 16-3-659.1, SECTION 1, DON'T YOU?

18 MS. KEDNOCKER: BEG THE COURT'S INDULGENCE ONE SECOND.

19 THE COURT: ALL RIGHT.

20 MS. KEDNOCKER: (PAUSE) I APOLOGIZE. YOU'RE STATING THAT.
21 "HOWEVER, EVIDENCE OF VICTIM'S SEXUAL CONDUCT WITH THE DEFENDANT
22 OR EVIDENCE OF SPECIFIC INSTANCES OF SEXUAL ACTIVITY WITH PERSONS
23 OTHER THAN THE DEFENDANT INTRODUCED TO SHOW SOURCE OF SEMEN,
24 PREGNANCY, DISEASE"? I DON'T THINK THAT'S WHAT HE'S TALKING
25 ABOUT AT ALL. I DON'T KNOW WHAT THE GIST OF WHERE HE'S GOING

1 WITH THIS OTHER THAN TRYING TO---

2 THE COURT: I'M TALKING ABOUT THE LETTER.

3 MS. KEDNOCKER: I APOLOGIZE.

4 THE COURT: OKAY. YOU SAID IT WAS EXCLUDABLE UNDER THE
5 RAPE SHIELD.

6 MS. KEDNOCKER: I WOULD THINK SO. IT GOES BACK TO HIS
7 KNOWLEDGE. IT'S OPINION EVIDENCE, REPUTATION EVIDENCE ABOUT
8 SEXUAL ACTIVITY.

9 THE COURT: BUT DOESN'T THAT SECOND SENTENCE COME INTO PLAY
10 BECAUSE IT'S EVIDENCE OF HIS...

11 MS. KEDNOCKER: I DON'T THINK THE DEFENDANT IS ADMITTING
12 ANY SEXUAL ACTIVITY WITH OUR VICTIM AT ALL.

13 THE COURT: WELL, HE'S SAYING -- HE'S TALKING ABOUT SOME
14 STATEMENT HE MADE AS TO HIS SEXUAL ORIENTATION. WHY WOULDN'T
15 THAT BE---

16 MS. KEDNOCKER: THE DEFENDANT IS ALSO NOT ADMITTING TO
17 HAVING SEX WITH OUR VICTIM. HE'S CLEARLY, YOU KNOW---

18 THE COURT: WELL---

19 MS. KEDNOCKER: ---THROWING THAT STATEMENT OUT THERE TO
20 CONFUSE THE ISSUES AND TO CONFUSE, POSSIBLY, A JURY.

21 MR. CREECH: YOUR HONOR, WE'LL JUST AGREE TO REDACT IT. I
22 MEAN, I DON'T---

23 THE COURT: OKAY.

24 MR. CREECH: I DON'T SEE THIS---

25 MS. KEDNOCKER: THAT'S FINE.

MATTERS AND MOTIONS

1 MR. CREECH: WE'LL AGREE TO REDACT THAT PART OF THAT
2 LETTER.

3 MS. KEDNOCKER: THAT SOUNDS GOOD.

4 YOUR HONOR, THE LAST PART OF THE LETTER -- AND THE STATE
5 WILL REDACT THE PORTION RELATED TO ASHTON ON PAGE 2.

6 THE COURT: WELL, LET ME ASK BOTH OF YOU THIS, WHY DO WE
7 NEED ANY OF THAT PARAGRAPH IN THERE?

8 MS. KEDNOCKER: I DON'T THINK ANY OF IT IS RELEVANT. LANE
9 IS NOT INVOLVED IN THIS CASE, AND WE'VE TOLD YOU THAT -- SO,
10 WE'RE FINE TAKING ALL OF THAT PARAGRAPH OUT.

11 THE COURT: YOU KNOW, AND I ALSO SAW SOME STUFF ABOUT LIFE
12 INSURANCE OR SOMETHING. I WOULD JUST SUGGEST THAT YOU BOTH -- I
13 KNOW THE LETTER IS LONG. BUT PROBABLY OVER THE EVENING, LOOK IT
14 OVER AND THEN TELL ME WHICH PARTS Y'ALL CAN AGREE TO COMING IN
15 AND WHICH---

16 MS. KEDNOCKER: THE ONLY PARTS, JUDGE, I MEAN, WHEN WE
17 LOOKED AT IT, THE PART THAT "I NEVER MEANT TO PUT YOU IN THIS
18 KIND OF SITUATION," THE LETTER IN ITS ENTIRETY, THERE ARE SOME
19 VERY INTERESTING THINGS THAT THE DEFENDANT STATES ON PAGE 4 THAT
20 DON'T -- "IF YOU COULD GET THE CHARGES DROPPED, YOU COULD ALWAYS
21 RE-FILE IF I DIDN'T BEHAVE."

22 THE COURT: RIGHT.

23 MS. KEDNOCKER: I MEAN, WHAT IS THAT? AND THEN, "I WISH IT
24 WERE LIKE IN THE '50S OR '60S. EVERYTHING WOULD JUST GET SWEEP
25 UNDER THE RUG AND LIFE WOULD GO ON. THAT WAS THE WAY OF THE

MATTERS AND MOTIONS

1 SOUTH. I HAD HOPED THAT AFTER A MONTH IN HERE YOU MIGHT AGREE
2 WITH ME."

3 THE COURT: WELL, I GUESS WHAT I'M SAYING IS, INSTEAD OF
4 GOING LINE BY LINE WITH THE LETTER, IF YOU AND MR. CREECH WOULD
5 GET TOGETHER AND AGREE ON WHICH PARTS YOU WANT IN EVIDENCE AND IF
6 EITHER ONE OF YOU HAVE AN OBJECTION OR SOME PART OF IT THAT ONE
7 OF YOU WANTS IN AND THE OTHER DOESN'T, THEN WE CAN TAKE IT UP IN
8 THE MORNING. BUT I -- YOU KNOW, IT SEEMS TO ME THERE IS A LOT OF
9 STUFF IN HERE THAT Y'ALL NEED TO LOOK AT BEFORE WE LET THE JURY
10 SEE IT.

11 MS. KEDNOCKER: OKAY.

12 THE COURT: SO JUST LOOK AT IT AGAIN OVER THE EVENING
13 RECESS AND WE'LL TAKE IT UP IN THE MORNING, IF THERE IS ANY OTHER
14 PART YOU DON'T WANT IN THERE, MR. CREECH, OKAY?

15 MR. CREECH: THANK YOU, YOUR HONOR.

16 THE COURT: ALL RIGHT. HOW ABOUT THE BOND? I'VE GOT SOME
17 LETTER FROM GIGGIE'S BONDING COMPANY. WHAT IS THE STATE'S
18 POSITION ON IT?

19 MS. KEDNOCKER: YOUR HONOR, WE JUST DON'T CONSENT BASICALLY
20 BECAUSE HE HAS NO BOND AT THIS POINT. IF YOUR HONOR CAN
21 REINSTATE IT OR DECIDES TO REINSTATE IT, WE WOULD ASK THAT HE
22 HAVE ABSOLUTELY NO CONTACT DIRECT OR INDIRECT WITH ANY VICTIMS OR
23 WITNESSES. DEFENSE HAS OUR WITNESS LIST. WE HAVE NOT BEEN GIVEN
24 ANY WITNESS LIST FROM HIM YET. WE DON'T CONSENT BUT WE
25 UNDERSTAND BASED ON THIS POSITION WITH THE MEDICAL NEED OF THIS

MATTERS AND MOTIONS

1 DEFENDANT. BUT GIGGIE'S HAS TO CONSENT THAT THEY ARE GOING TO
2 STAY ON THE BOND, AND IT LOOKS LIKE WHAT THEY'RE -- IF THEY'RE
3 CONSENTING TO STAY ON THE BOND AND YOUR HONOR WANTS TO DO THAT..

4 THE COURT: OKAY. MR. CREECH?

5 MR. CREECH: HE'S -- THERE'S NEVER BEEN AN ISSUE. I THINK
6 THEY ALLEGE THAT HE HAD HAD SOME CONTACT WITH THEM RIGHT AFTER
7 THIS HAPPENED THROUGH THESE LETTERS. BUT OTHER THAN THAT,
8 THERE'S BEEN NO CONTACT WITH THE VICTIMS OR WITNESSES IN THE
9 CASE. SO I DON'T THINK THAT'S GOING TO BE AN ISSUE AT ALL. HE'S
10 GOT THIS CPAP MACHINE. HE WAS IN MEDICAL HOUSING THE ENTIRE TIME
11 HE WAS AT THE JAIL, THOSE 19 MONTHS. HE'S LIVING WITH HIS
12 PARENTS.

13 THE COURT: WASN'T THERE SOMETHING ABOUT THE S.W.A.T. TEAM
14 OR SOMETHING HAD TO---

15 MR. CREECH: WELL, THAT'S -- THE OTHER THING WAS THEY'RE
16 TRYING TO SAY THAT HE FLED, YOUR HONOR, BUT WE COMPLETELY
17 DISAGREE WITH THAT DESCRIPTION OR VERSION OF THE FACTS. SO...

18 MS. KEDNOCKER: JUDGE, HE STATES---

19 MR. CREECH: HE WAS ARRESTED RIGHT HERE IN GREENVILLE
20 COUNTY.

21 MS. KEDNOCKER: HE STATES IN HIS LETTER, "IF I THOUGHT I
22 WOULD NOT HAVE BEEN ARRESTED, I WOULD HAVE TURNED MYSELF IN."
23 AND THEN HE GOES ON TO TALK ABOUT HOW HE WENT TO NEW ORLEANS AND
24 -- YOU KNOW, HE CLEARLY DURING THAT PERIOD, HE WAS CALLING FROM
25 DIFFERENT LOCATIONS OUT OF STATE AND WAS NOT PRESENT IN THE

MATTERS AND MOTIONS

1 STATE, AND SO, YOU KNOW, WE HAD CONCERN ABOUT THAT.

2 MR. CREECH: HE WAS IN ON BOND. YOU KNOW, THEY REVOKED HIS
3 BOND BECAUSE OF THESE LETTERS. THEY SAID HE WAS MAKING ALL THESE
4 THREATS TO HIM. GOING THROUGH THE LETTERS, THERE ARE NO THREATS
5 TO THE FAMILY IN THESE LETTERS. BUT HE SAT IN JAIL FOR 19 OR 20
6 MONTHS. HE GOT OUT, I THINK, WHEN, IN SEPTEMBER? (OFF RECORD
7 WITH DEFENDANT) HE GOT OUT IN SEPTEMBER. HE'S BEEN AT HIS
8 PARENTS HOUSE SINCE SEPTEMBER IN ANDERSON. SO...

9 THE COURT: WELL, I MEAN, A PERSON'S BOND IS TO GET HIM TO
10 TRIAL AND, YOU KNOW, I'M NOT GOING TO LET HIM OUT ON BOND. ALL
11 RIGHT? THANK YOU.

12 MR. CREECH: THANK YOU, YOUR HONOR.

13 MS. KEDNOCKER: THANK YOU, JUDGE.

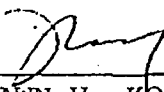
14 (TRIAL RECESSED FOR THE DAY AT 4:50 P.M._[a].)
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CERTIFICATE

I, THE UNDERSIGNED, DAWN V. KOFFSKEY, OFFICIAL COURT REPORTER FOR THE 13TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 7TH DAY OF NOVEMBER 2005.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

JUNE 30, 2006



DAWN V. KOFFSKEY
COURT REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

THE STATE,

VERSUS

RANDALL LANE SMITH, SR.,

DEFENDANT.

04-GS-23-6874

TRANSCRIPT OF RECORD

DAYS 2 AND 3
NOVEMBER 7-9, 2005
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE D. GARRISON HILL

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

CHRISTY L KEDNOCKER, Esquire
Assistant Solicitor

THOMAS CREECH, Esquire
Attorney for the Defendant

DAWN V. KOFFSKEY
COURT REPORTER

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1 (TRIAL RESUMED AT 9:25 A.M. ON 11/8/05)

2 THE COURT: ALL RIGHT. ARE Y'ALL READY FOR THE JURY?

3 MR. CREECH: YOUR HONOR, YESTERDAY WHEN WE ADJOURNED YOU
4 ASKED US TO GET TOGETHER AND LOOK AT SOME OF THESE LETTERS THAT
5 THE STATE INTENDS TO INTRODUCE.

6 THE COURT: OKAY.

7 MR. CREECH: AND SHE HAS INFORMED THAT SHE INTENDS TO
8 INTRODUCE TWO LETTERS. ONE IS DATED JANUARY THE 13TH OF 2004, A
9 LETTER WRITTEN TO STEVE -- IT SAYS, DEAR STEVE -- AND ANOTHER
10 LETTER WRITTEN TO NANCY ON JANUARY THE 25TH, 2004, AT 2:00 A.M.
11 YOUR HONOR, I HAVE SEVERAL OBJECTIONS TO EITHER OF THESE LETTERS
12 BEING ADMITTED.

13 THE COURT: OKAY.

14 MR. CREECH: FIRST OFF---

15 MS. KEDNOCKER: YOUR HONOR, WOULD YOU LIKE A COPY AS WE
16 TALK ABOUT THEM?

17 THE COURT: I DON'T HAVE THE ONE TO STEVE. I'VE GOT THE
18 ONE TO NANCY.

19 MS. KEDNOCKER: OKAY. I APOLOGIZE. LET ME GIVE YOU A COPY
20 SO YOU CAN LOOK AT IT.

21 THE COURT: THANK YOU.,

22 MS. KEDNOCKER: YES, SIR.

23 THE COURT: ALL RIGHT, MR. CREECH.

24 MR. CREECH: YOUR HONOR, I'LL TAKE UP THE LETTER TO STEVE
25 FIRST. AS A GENERAL OBJECTION, YOUR HONOR, THESE LETTERS COULD

MATTERS AND MOTIONS

1 BE POTENTIALLY CONFUSING TO THE JURY BECAUSE THERE IS NO EXPLICIT
2 ADMISSION AS TO ANY ACT THAT THE DEFENDANT IS ALLEGED TO HAVE
3 COMMITTED. HE SAYS IN THE FIRST LINE, "I WANT YOU TO KNOW THAT
4 I'M SORRY." THERE IS NO INDICATION AS TO WHAT HE IS SORRY FOR OR
5 WHAT HE MEANS BY, "I AM SORRY." SO THAT HAS A POTENTIAL CHANCE
6 TO -- OR IS POTENTIALLY MISLEADING TO THE JURY IN THAT REGARD.
7 AND SECOND, BY NOT MAKING A CLEAR ADMISSION ON ANY OF THIS STUFF,
8 YOUR HONOR, I THINK ALL OF THE STUFF IN THE LETTERS ARE HEARSAY.
9 I MEAN, OBVIOUSLY THE DEFENDANT CAN -- THEY CAN PUT IN A
10 CONFESSION BY THE DEFENDANT AS A STATEMENT AGAINST HIS INTEREST,
11 BUT NONE OF THIS IS REALLY A STATEMENT AGAINST INTEREST. I MEAN,
12 THE SECOND PARAGRAPH BEGINS, "I'M READING BY DR. WAYNE DYER A
13 BOOK REAL MAGIC - CREATING MIRACLES IN EVERYDAY LIFE." HE GOES
14 THROUGH AND TALKS ABOUT THAT. HE TALKS ABOUT HIS PRIOR
15 ALCOHOLISM AND HOW HE OVERCAME HIS PRIOR ALCOHOLISM. IN THE LAST
16 PARAGRAPH OF THE LETTER HE SAYS, "I'M NOT A MONSTER." HE SAYS,
17 "I'M STARTING TO SEE A SHRINK HERE. I UNDERSTAND PART OF MY
18 PROBLEMS AND I THINK HE CAN HELP ME TO WORK PAST THEM." I DON'T
19 THINK THAT'S ADMISSIBLE INTO EVIDENCE FOR A VARIETY OF REASONS,
20 404(B) -- RULE 404, CHARACTER EVIDENCE.

21 AGAIN, IT'S THE STATE TRYING TO ADMIT THESE DOCUMENTS. I
22 DON'T THINK THEY COULD ADMIT THAT ANY OTHER WAY THROUGH ANY OTHER
23 TYPE OF WITNESS. AGAIN, I DON'T THINK THIS LETTER IN PARTICULAR
24 TO STEVE IS RELEVANT. THERE IS NO PROBATIVE VALUE TO THIS
25 LETTER, AND IT INTRODUCES EVIDENCE OF HIS CHARACTER AND IT'S

MATTERS AND MOTIONS

1 HEARSAY.

2 THE COURT: OKAY.

3 MS. KEDNOCKER: MAY I RESPOND? YOUR HONOR, THE STATE COULD
4 NOT DISAGREE MORE. FIRST OF ALL, WHAT'S IMPORTANT HERE IS THAT
5 THIS LETTER WAS IN NO WAY MANUFACTURED, MANIPULATED, BROUGHT TO
6 LIGHT BY ANYTHING THAT THE STATE, THE POLICE, ANYBODY DID OUTSIDE
7 THE ACTIONS OF THIS DEFENDANT IN HIS OWN HAND THREE WEEKS AFTER
8 HE WAS ARRESTED WHILE HE WAS SITTING IN JAIL. HE, ON HIS OWN
9 ACCORD, BY HIS OWN VOLITION, DECIDED TO WRITE THIS LETTER. IT'S
10 EXTREMELY RELEVANT. IT'S EXTREMELY PROBATIVE. THE JURY, THE
11 TRIER OF FACT, GETS TO DECIDE HOW MUCH WEIGHT TO GIVE TO IT.

12 BUT, YOUR HONOR, LOOKING AT IT IN ITS ENTIRETY AND WHAT IT
13 IS REALLY SAYING, THE JURY HAS TO HEAR THIS LETTER. IT WAS
14 WRITTEN JANUARY 13TH. KEEPING IN MIND WHAT'S GOING ON AT THAT
15 TIME, THIS DEFENDANT, PICKED UP ON CHRISTMAS EVE, SITTING IN JAIL
16 WRITES TO THE STATE'S VICTIM HERE, Minor FATHER---

17 THE COURT: OH, THAT'S WHO -- I DIDN'T KNOW WHO STEVE WAS.

18 MS. KEDNOCKER: THIS IS Minor -- STEVE IS Minor
19 FATHER. AND I WILL LET YOU KNOW, YOUR HONOR, STEVE IS GOING TO
20 BE TESTIFYING IN THIS TRIAL. IT IS EXTREMELY PROBATIVE THAT THE
21 DEFENDANT FINDS IT UPON HIMSELF IMPORTANT ENOUGH TO WRITE TO THE
22 VICTIM HERE, TO HIS DAD, AND SAY, "I WANT YOU TO KNOW THAT I AM
23 SORRY. I HOPE YOU CAN FIND IT IN YOURSELF TO FORGIVE ME. I
24 NEVER MEANT TO HURT ANYONE. I LOVE YOU AND YOUR KIDS." AND THEN
25 YOU GO DOWN -- WHAT'S IMPORTANT HERE IS THE DATE, THE TIME

MATTERS AND MOTIONS

1 REFERENCE. "I HAVE WAITED A FEW WEEKS TO WRITE YOU IN HOPES THAT
2 SOME OF YOUR ANGER MIGHT DIMINISH. I FELT THAT IN TIME THIS
3 MIGHT BE MORE SINCERE." IT'S EXTREMELY RELEVANT THAT A MAN,
4 WHICH I'M SURE THE DEFENSE'S POSITION HERE IS A WRONGLY ACCUSED
5 MAN, FEELS IT THAT INCUMBENT UPON HIMSELF TO GO WRITE THIS AND
6 THEN TO PUT A TIME REFERENCE IN LIKE, "I'VE WAITED A FEW WEEKS TO
7 WRITE YOU IN HOPES THAT SOME OF YOUR ANGER MIGHT DIMINISH."
8 GOING ON A LITTLE BIT, YOUR HONOR, "IF THESE MIRACLES CAN HAPPEN,
9 I THINK ALL OF YOU CAN FORGIVE ME, AND I BELIEVE I CAN MAKE
10 CHANGES IN MY LIFE THAT ARE NOT SHORT OF A MIRACLE. YOU'RE A BIG
11 STRONG GUY, BUT YOU HAVE A HEART. I HOPE YOU CAN FIND A PLACE IN
12 IT TO FORGIVE ME. I HOPE YOU ALL CAN." AND THEN THE NEXT, "I
13 LOVE YOU AND CARE FOR YOU." THE NEXT LINE, "I'M TRYING TO LEARN
14 FROM MY MISTAKES." HE'S ADMITTING. HE'S SAYING "MY MISTAKES."
15 "THE BOOK TEACHES THAT EVEN OUR WORST MISTAKES SERVE AS A MEANS
16 TO TEACH US TO MAKE US BETTER AND STRONGER. PLEASE TELL YOUR
17 KIDS THAT I LOVE THEM AND MISS THEM. I NEVER MEANT TO HURT
18 ANYONE." AND THEN HE GOES AGAIN, "I HOPE ONE DAY TO MAKE UP FOR
19 MY MISTAKES. YOU'VE BEEN A GOOD FRIEND TO ME. I MISS YOU ALL.
20 I HOPE YOU WILL AT LEAST TRY TO FORGIVE ME." YOUR HONOR, THEN HE
21 CONTINUES ON, YOU KNOW. WE'RE NOT ASKING TO TAKE OUT ANY OF THIS
22 STUFF WHERE HE'S TALKING ABOUT HOW HE LOVES HIS WIFE, "PLEASE
23 HELP NANCY IN ANYWAY YOU CAN." THAT DOESN'T HURT HIM. "I WAS
24 ABLE TO WORK. I WISH I COULD SEND HER MONEY. I DON'T KNOW HOW
25 SHE'S GOING TO MAKE IT WITH WHAT SHE EARNS. I STILL LOVE HER

1 VERY MUCH AND HOPE BY SOME MIRACLE WE CAN WORK THINGS OUT."
2 THAT'S FINE. "I'M STARTING TO SEE A SHRINK IN HERE. I
3 UNDERSTAND PART OF MY PROBLEMS AND THINK HE CAN WORK PAST THEM.
4 I'M NOT A MONSTER. I JUST NEED SOME HELP."

5 JUDGE, THIS DEFENDANT -- THE STATE HAD NOTHING TO DO WITH
6 THIS LETTER BEING WRITTEN. AND IT IS UP TO THE TRIER OF FACT TO
7 DETERMINE WHAT WEIGHT, IF ANY, TO GIVE TO IT. IF THEY WANT TO GO
8 AHEAD AND SAY, YOU KNOW WHAT? HE DOESN'T SAY IN HERE, PLEASE
9 FORGIVE ME FOR RAPING YOUR CHILD, AND DOWN HERE WHERE HE SAYS,
10 "YOU HAVE A BIG STRONG HEART. I HOPE YOU CAN FIND A PLACE IN IT
11 TO FORGIVE ME," HE DOESN'T SAY FORGIVE ME FOR RAPING YOUR CHILD.
12 HE CAN DO THAT. BUT THE STATE HAS -- THIS IS A VERY RELEVANT,
13 PROBATIVE PIECE OF EVIDENCE THAT THE STATE INTENDS TO PUT IN AND
14 FEELS LIKE IT IS CRUCIAL AND ESSENTIAL TO THIS CASE.

15 THE COURT: ALL RIGHT. THANK YOU, MS. KEDNOCKER.

16 OKAY. THE LETTER IS ADMISSIBLE. HOWEVER, THE PART ON PAGE
17 1 WHERE HE SAYS, "FOR ME 20 YEARS AGO I WAS DRINKING A LOT AND
18 EVERY NIGHT," THAT SENTENCE AND GOING DOWN TO THE SENTENCE THAT
19 SAYS, "LOOKING BACK, THAT WAS A MIRACLE" NEEDS TO BE REDACTED
20 BECAUSE IT'S INADMISSIBLE UNDER RULE 403.

21 AND ON THE SECOND PAGE, THE SECOND FULL PARAGRAPH, THE
22 SENTENCE THAT SAYS, "I AM STARTING TO SEE A SHRINK HERE," THAT
23 SENTENCE AND THE NEXT THREE SENTENCES NEED TO COME OUT. SO THE
24 NEXT SENTENCE THAT THE JURY WOULD SEE WOULD START BY SAYING, "I
25 KNOW THAT YOU WILL BE THERE." ALL RIGHT. THAT'S MY RULING ON

MATTERS AND MOTIONS

1 THAT.

2 WHAT ABOUT THE SECOND LETTER?

3 MS. KEDNOCKER: OH. I'M SORRY, JUDGE. I GAVE YOU MY COPY
4 AND I JUST HAVE THE ORIGINAL, SO I WANT TO MAKE SURE I GOT WHAT
5 YOU SAID.

6 THE COURT: OKAY.

7 MS. KEDNOCKER: I DIDN'T WANT TO MARK ON THIS. IF YOU WILL
8 JUST MARK ON THERE WHAT YOU WANT.

9 THE COURT: I WILL DO THAT.

10 MS. KEDNOCKER: JUDGE, SHOULD WE MAKE A COPY AND JUST TRY
11 TO WHITE IT OUT OR SHOULD WE MARK WITH A MARKER OVER THAT?

12 THE COURT: NO, I WOULD WHITE IT OUT.

13 MS. KEDNOCKER: OKAY. I'M AFRAID THE PEN MIGHT BLEED
14 THROUGH AND GET ONTO THE OTHER SIDE SINCE IT'S TWO-SIDED.

15 MR. CREECH: YOUR HONOR, WE'D JUST ASK THAT SHE MAKE A COPY
16 OF THAT AND WHITE OUT THE COPY AND MAKE ANOTHER COPY.

17 MS. KEDNOCKER: OKAY. THAT'S FINE.

18 MR. CREECH: AND WE WOULD BE FINE WITH THAT AUTHENTICITY OF
19 THAT DOCUMENT.

20 MS. KEDNOCKER: OKAY.

21 THE COURT: OKAY.

22 MS. KEDNOCKER: THANK YOU.

23 THE COURT: THANK YOU. (PAUSE) OKAY. YES, SIR.

24 MR. CREECH: YOUR HONOR, AS TO THE SECOND LETTER, I HAVE
25 THE SAME OBJECTION GENERALLY TO THE LETTER, THAT IT'S HEARSAY.

1 IT'S NOT RELEVANT AND IT'S PREJUDICIAL UNDER RULE 403 AND ALSO
2 UNDER 4-0 -- IT'S INADMISSIBLE UNDER 404.

3 AND THEN WE TALKED YESTERDAY ABOUT SOME OF THESE PARAGRAPHS
4 COMING OUT. WE AGREED TO REDACT THE PART ABOUT, "I WILL TELL YOU
5 THAT Minor SAID HE IS WORRIED ABOUT BEING GAY," THAT ENTIRE
6 PARAGRAPH. WE WOULD ALSO ASK THAT YOU REDACT THE SECOND
7 PARAGRAPH ON PAGE 3. IT STARTS WITH "THIS MAY EXPLAIN SOME OF
8 THE THINGS. I TRIED TALKING TO HIM AROUND THANKSGIVING.
9 SOMETHING WAS BOTHERING HIM. IT HAD NOTHING TO DO WITH ME. HE
10 ASSURED ME THAT THINGS BETWEEN HE AND I WOULD WORK OUT. I NEVER
11 DID ANYTHING TO HURT LANE." I THINK THAT REFERS TO LANE AND ANY
12 PREVIOUS ALLEGATIONS CONCERNING LANE. SO WE WOULD ASK THAT THAT
13 ENTIRE PARAGRAPH BE REDACTED FROM THIS LETTER.

14 MS. KEDNOCKER: YOUR HONOR, IF I MAY, BECAUSE I'M AFRAID IF
15 I DON'T BRING THIS UP -- I WAS GOING TO BRING THIS UP NEXT BUT
16 I'M AFRAID IF I DON'T BRING IT TO YOUR ATTENTION NOW, WE MIGHT GO
17 THROUGH THIS WHOLE LETTER AND THEN HAVE TO REHASH IT. THE STATE,
18 AS I INDICATED TO YOU YESTERDAY, LANE SMITH IS THIS DEFENDANT'S
19 SON. THIS DEFENDANT IS CHARGED WITH SEXUALLY ASSAULTING HIM FROM
20 1997 TO 2002. AS I INDICATED TO YOU YESTERDAY, THE STATE HAS --
21 IS NOT TRYING TO ELICIT THAT TESTIMONY IN THIS TRIAL UNLESS THE
22 DEFENSE ATTORNEY WANTS TO BRING THAT OUT. THE STATE DOES INTEND,
23 AS I WAS TELLING YOU YESTERDAY, THE DISCLOSURE IN THIS CASE CAME
24 ABOUT WHEN ASHTON CAME IN AND TOLD Minor "DON'T SLEEP WITH
25 RANDY ANY MORE," AND Minor -- WE DIDN'T GET INTO ANY OF THAT.

MATTERS AND MOTIONS

1 WE LEFT THAT OUT. BUT THEN Minor GOES DOWN TO THE CHURCH,
2 FINDS LANE AND TELLS LANE WHAT THIS DEFENDANT IS DOING TO HIM.
3 THE STATE INTENDS TO CALL LANE AS A WITNESS THIS MORNING OR LATER
4 THIS AFTERNOON IN THIS TRIAL FOR THE LIMITED PURPOSE OF SOME
5 TESTIMONY ABOUT KNOWLEDGE AROUND THE HOUSE AND ALSO THE NIGHT OF
6 THE DISCLOSURE AND SOME OF THE PHONE CONVERSATIONS THAT WERE MADE
7 BACK AND FORTH WHEN THIS DEFENDANT WAS RIDING AROUND DIFFERENT
8 STATES BETWEEN DECEMBER 12TH AND DECEMBER 24TH WHEN HE WAS
9 ARRESTED. I DO WANT TO MAKE THE COURT AWARE THAT THAT IS THE
10 STATE'S INTENTION.

11 I HAVE MADE IT VERY CLEAR TO LANE THAT WE ARE NOT GOING INTO
12 WHAT HIS FATHER DID TO HIM AT ALL. IF THE DEFENSE ATTORNEY, YOU
13 KNOW, PUSHED THAT ISSUE, ASKING HOW LANE FEELS ABOUT HIS DAD AND
14 ALL THESE OTHER THINGS, LANE'S GOING TO PROBABLY TELL HIM HE
15 HATES HIS DAD, AND IT'S GOING TO START UNRAVELING AT THAT POINT.
16 BUT THE STATE IS GOING TO TRY TO GET VERY LIMITED TO THOSE THREE
17 THINGS AS I JUST STATED.

18 THE COURT: WELL, IT BETTER BE REAL LIMITED. ALL RIGHT.

19 MR. CREECH: YOUR HONOR, I'D ASK THAT YOU REDACT THAT
20 ENTIRE PARAGRAPH ON THE THIRD PAGE OF THIS LETTER, THE SECOND
21 PARAGRAPH. REALLY, THE WHOLE PAGE. THERE IS NOTHING IN THERE
22 THAT IS ADMISSIBLE, YOUR HONOR, UNDER MY PREVIOUS STATED
23 ARGUMENTS. SO WE WOULD ASK THAT THE ENTIRE THIRD PAGE BE
24 REDACTED. ALSO, THE FINAL PARAGRAPH -- THE FINAL SENTENCE OF THE
25 THIRD PAGE STATES, YOUR HONOR, THE, YOU KNOW, HE TALKS ABOUT "I

MATTERS AND MOTIONS

1 WOULD HAVE FAKED MY MURDER IN NEW ORLEANS. I KNOW IT WASN'T A
2 PERFECT PLAN BUT IT WOULD HAVE WORKED LONG ENOUGH FOR YOU TO
3 COLLECT ON MY LIFE INSURANCE. I WOULD RATHER BE DEAD THAN FOR US
4 TO GO THROUGH THIS," AT THE BEGINNING OF THE TOP OF WHAT'S NUMBER
5 4, PAGE NUMBER 4. IT CONTINUES DISCUSSING THIS INSURANCE ANGLE
6 IN THE FIRST PARAGRAPH ON THE TOP OF PAGE NUMBER 4.

7 YOUR HONOR, THERE IS ALSO LANGUAGE IN HERE THAT THEY INTEND
8 TO INTRODUCE IN THIS LETTER THAT STATES, "THIS ORDEAL WITH THE
9 COURT AND THE LAW IS GOING TO BE FAR MORE TRAUMATIC THAN
10 ANYTHING. IT WILL HARM ALL OF US. I WISH THERE WAS SOME WAY
11 THIS COULD BE PUT BEHIND US. THE KIDS ONLY HAVE A FEW MORE
12 YEARS. THEY WILL GO THEIR OWN WAY. I DON'T WANT THIS -- I DON'T
13 WANT THESE LAST FEW YEARS TO BE LIKE THIS FOR THEM. I WISH THIS
14 WERE LIKE IN THE FIFTIES OR SIXTIES. EVERYTHING WOULD JUST GET
15 SWEEPED UNDER THE RUG AND LIFE WOULD GO ON. THIS WAS THE WAY OF
16 THE SOUTH. I HAD HOPED THAT AFTER A MONTH IN HERE YOU MIGHT
17 AGREE WITH THIS. THROWING IT ALL OUT THERE FOR THE WORLD TO SEE
18 IS GOING TO DO MUCH MORE HARM. YOU MIGHT STILL THINK THAT HAVING
19 ALL THIS HIT THE NEWS IS THE RIGHT THING TO DO. BUT THIS WILL
20 GET UGLY FOR ALL INVOLVED," ET CETERA, ET CETERA. AND THEN HE
21 ALSO CONTINUES, "IF YOU GET THE CHARGES DROPPED YOU COULD ALWAYS
22 RE-FILE IF I DIDN'T BEHAVE. I'M NOW ON MEDICATION. THAT SEEMS
23 TO CLEAR MY THINKING. AND HE TALKS ABOUT HE THINKS HE MAY HAVE
24 ADULT ATTENTION DEFICIT DISORDER ON PAGE NUMBER 5 OF THIS
25 DOCUMENT.

MATTERS AND MOTIONS

1 YOUR HONOR, THE REST OF PAGE NUMBER 5 IS JUST THE CONDITIONS
2 OF THE JAIL.. AGAIN, I DON'T KNOW HOW THAT IS RELEVANT AT ALL TO
3 THIS CASE. AND IT WOULD ALSO BE HEARSAY BECAUSE THERE ARE
4 ABSOLUTELY NO ADMISSIONS MADE IN THAT REGARD.

5 THE COURT: WHAT ABOUT PAGE 6?

6 MR. CREECH: AS TO PAGE 6, YOUR HONOR, AGAIN, REALLY IT
7 STARTS ON THE BOTTOM OF PAGE 5. "I STILL BELIEVE THAT YOU LOVE
8 ME, AND ONCE WE GET TO TALK I THINK YOU WILL FORGIVE ME. IT MAY
9 TAKE SOME TIME, BUT ONCE YOU UNDERSTAND SOME THINGS, I THINK YOU
10 WILL BE ABLE TO.. I JUST HOPE IT'S NOT TOO LATE. I WOULD REALLY
11 LIKE TO SEE YOU. (PAUSE)

12 FINALLY, THE SECOND -- THE FIRST FULL PARAGRAPH ON PAGE 6,
13 YOUR HONOR, IS ABSOLUTELY NOT RELEVANT TO ANYTHING ON ANY ISSUE
14 IN THIS CASE. FURTHERMORE, IT WOULD BE HEARSAY. THE SECOND
15 PARAGRAPH SAYS, "ONE OTHER THING. BE CAREFUL WITH YOUR DAD. HE
16 IS STILL A SNAKE. REMEMBER, HE WANTED TO TAKE NASTASHA AWAY FROM
17 YOU AND ALL THE LIES HE TOLD HER." AND THE THIRD PARAGRAPH, "WHY
18 DID STASH AND A.J. BREAK UP?"

19 THAT THIRD -- AGAIN, THIS WHOLE PAGE 6, MY OBJECTION WOULD
20 BE AS TO RELEVANCY, HEARSAY AND IT HAS ABSOLUTELY NO PROBATIVE
21 VALUE IN THIS CASE, YOUR HONOR.

22 AND ALSO, AS TO NASTASHA, THE SECOND FULL PARAGRAPH, I WOULD
23 OBJECT UNDER RULE 404(B) TO ANY REFERENCE OF ANY TYPE OF NOT
24 ADMISSIBLE PREVIOUS BAD ACT.

25 THE COURT: WHAT IS THAT? 404(B) RELATED TO WHAT NOW?

MATTERS AND MOTIONS

1 MR. CREECH: WHEN IT SAYS -- THERE'S REFERENCE HERE,
2 "REMEMBER TO BE CAREFUL WITH YOUR DADDY. HE IS STILL A SNAKE.
3 REMEMBER HE WANTED TO TAKE NASTASHA AWAY FROM YOU TOO AND ALL THE
4 LIES HE TOLD HER, LIKE YOU AND I NEVER WANTED HER. HE IS
5 PROBABLY PLANNING SOMETHING, SO KEEP YOUR GUARD." THAT'S JUST A
6 REFERENCE TO A PREVIOUS -- THERE WERE PREVIOUS ALLEGATIONS MADE
7 AGAINST MR. SMITH CONCERNING HIS DAUGHTER, AND THE GRANDFATHER
8 WAS INVOLVED WITH THAT.

9 THE COURT: OKAY.

10 MS. KEDNOCKER: WELL, YOUR HONOR, I WOULD AGREE WITH MR.
11 CREECH ON SOME OF THESE POINTS. I DO BELIEVE THAT THE LETTER IS
12 STILL RELEVANT AND PROBATIVE. SOME OF THE MOST IMPORTANT PARTS
13 OF IT WOULD BE, "I NEVER MEANT TO PUT YOU IN THIS KIND OF
14 SITUATION," ON PAGE 1. THAT IS KIND OF A GUILTY KNOWLEDGE, IF
15 YOU WILL, ON THE PART OF THE DEFENDANT. HE IS TAKING IT UPON
16 HIMSELF TO SAY, "I NEVER MEANT TO PUT YOU IN THIS SPOT."

17 GOING DOWN, I'M SURE THEIR POSITION IS GOING TO BE THAT HE
18 WASN'T TRYING TO RUN, WHICH THE STATE'S POSITION WAS HE WAS. AND
19 HE SAID, "IF I THOUGHT I WOULD NOT HAVE BEEN ARRESTED, I WOULD
20 HAVE TURNED MYSELF IN." SO THAT'S SHOWING KNOWLEDGE THAT HE KNEW
21 THAT, YOU KNOW, THE COPS WERE LOOKING FOR HIM AND HE WAS AFRAID
22 TO TURN HIMSELF IN. THAT'S WHY THAT WENT DOWN THAT WAY. "I JUST
23 THOUGHT THAT YOU WERE TOO MAD TO DEAL WITH ME." AND THEN HE GOES
24 THROUGH, "I WAS ALONE AND AFRAID. I STAYED AT THE MICROTEL
25 LODGE. THEN I DROVE TO NEW ORLEANS AND WORKED THERE FOR TWO DAYS

MATTERS AND MOTIONS

1 AND DROVE TO BIRMINGHAM." HE IS TALKING ABOUT HIS RUNNING AWAY
2 DURING THAT TIME. "I COULD HAVE TO WORK THAT FRIDAY AFTER
3 CHRISTMAS IN BIRMINGHAM. THAT WAS MY PLAN. I WAS GOING TO
4 RETURN AND TRY TO GET BACK TO ALABAMA BY BUS OR WHATEVER." AND
5 THEN HE SAYS, "THAT'S WHAT I WANTED TO DISCUSS WITH YOU AT
6 PERKINS." THE WIFE IS GOING TO TESTIFY AS TO WHAT HAPPENED WITH
7 THAT CONVERSATION COMING UP AT PERKINS. "I KNOW YOU WANTED ME
8 OUT OF YOUR LIFE AND FIGURED 300 MILES WOULD GIVE YOU SPACE. I
9 HOPE YOU HAVE COOLED OFF AND WOULD AGREE TO SOME TERMS THAT YOU
10 WOULD TAKE ME BACK. I REALLY DIDN'T KNOW WHAT TO DO." I THINK
11 THAT GOES TO THE FLIGHT ISSUE IN THE CASE, THOSE PARAGRAPHS.

12 AND THEN YOU GO DOWN TO THIS, "I HOPE YOU MISS ME. I'M NOT
13 HOLDING MY BREATH." THIS SENTENCE HERE, "IF YOU MISSED ME HALF
14 AS MUCH, YOU WOULD FIND A WAY TO MAKE THIS ALL GO AWAY," I MEAN,
15 THAT'S HIM TRYING TO URGE THE WIFE TO DO SOMETHING TO THROW THIS
16 -- BLOW THE CASE OUT.

17 THE NEXT PARAGRAPH, THE STATE HAS NO PROBLEM AT ALL WITH,
18 YOUR HONOR. I THINK IT SHOULD COME OUT BECAUSE THE STATE IS NOT
19 BRINGING ASHTON INTO THIS CASE UNLESS DEFENSE DOES. "ONE THING
20 I'LL TELL YOU IS THAT ASHTON LIED. I DIDN'T PULL HIS PANTS
21 DOWN." THAT WHOLE PARAGRAPH SHOULD COME OUT. I AGREE WITH THAT.

22 SO YOU GO DOWN TO THE NEXT PARAGRAPH, "I KNOW IT ISN'T
23 IMPORTANT TO YOU BUT I WANT YOU TO KNOW. THERE'S MORE THAT I'LL
24 TELL YOU BUT I DON'T KNOW IF I CAN TRUST YOU. I DON'T KNOW IF I
25 SHOULD TELL YOU UNTIL AFTER THE TRIAL. I WANT YOU TO KNOW BUT MY

1 INSTINCTS TELL ME TO WAIT." THAT, I MEAN, HONESTLY, YOUR HONOR,
2 THE STATE DOESN'T HAVE -- IT'S NEITHER HERE NOR THREE. WE WOULD
3 PREFER TO HAVE THAT STILL IN, BUT WE WOULD UNDERSTAND WHATEVER
4 YOUR HONOR DOES.

5 GOING DOWN WITH THE Minor COMMENT, I BELIEVE MR. CREECH
6 DID SAY THAT HE WOULD CONCEDE THAT PART WOULD BE TAKEN OUT. THE
7 STATE'S OBJECTION WOULD BE THAT COMMENT ABOUT Minor BEING
8 WORRIED HE'S GAY.

9 "YOU WON'T THINK I'M SUCH A MONSTER IF I EXPLAIN THINGS." I
10 THINK THAT SHOULD STAY IN. YOU KNOW, HE'S TRYING TO EXPLAIN TO
11 HIS WIFE WHAT HE'S DOING, AND HE'S WRITING THIS LETTER FROM JAIL
12 HIMSELF. I WOULD HONESTLY IF IT'S --

13 THIS PARAGRAPH HERE, JUDGE, WHERE IT SAYS -- GOING INTO LANE
14 BEING A WICCAN AND ALL THAT, I THINK IT'S NOT RELEVANT OR
15 PROBATIVE. AND IF YOUR HONOR WANTS TO TAKE THAT WHOLE THING OUT,
16 JUST TO LEAVE IT AND MAKE IT FAIR, THE MONSTER COMMENT, THE STATE
17 IS FINE WITH THAT GOING OUT.

18 GOING ON TO PAGE 4, "I KNOW IT'S A LOT TO ASK BUT I STILL
19 NEED YOU. I DON'T WANT TO LOSE YOU OVER SOMETHING THIS STUPID."
20 I THINK THAT THIS PARAGRAPH ON PAGE 4 IS PROBATIVE AND RELEVANT.
21 "THIS ORDEAL WITH THE COURT IS GOING TO BE FAR MORE TRAUMATIC
22 THAN ANYTHING. IT WILL HARM ALL OF US." AND HE'S GOING ON, "I
23 WISH THERE WERE SOME WAY TO JUST PUT IT BEHIND US." THE STATE'S
24 POSITION IS HE'S JUST BEGGING HIS WIFE TO HELP HIM TELL Minor
25 AND THE OTHER KIDS, BUT Minor TO NOT COME FORWARD. AND THEN

MATTERS AND MOTIONS

1 THE STATEMENT, "I WISH IT WERE LIKE IN THE FIFTIES OR SIXTIES AND
2 EVERYTHING WOULD JUST GET SWEEPED UNDER THE RUG AND LIFE WOULD GO
3 ON. THAT WAS THE WAY OF THE SOUTH. I HOPED AFTER A FEW MONTHS
4 IN HERE YOU WOULD AGREE WITH ME." I THINK THAT'S ALL RELEVANT
5 AND PROBATIVE. "THROWING IT OUT THERE FOR THE WORLD TO SEE IS
6 GOING TO DO SO MUCH MORE HARM," I BELIEVE IT'S ALL RELEVANT AND
7 PROBATIVE.

8 I BELIEVE THIS PART HERE, "THINK ABOUT THIS LONG AND HARD.
9 THINK ABOUT HOW A TRIAL WILL AFFECT LANE." YOU KNOW, HE'S
10 PLAYING ON HIS WIFE'S EMOTIONS THERE, TRYING TO GET HER TO HELP
11 HIM GET RID OF THIS WHOLE SITUATION. AND THEN THE LAST PARAGRAPH
12 HERE, "IF YOU GOT THE CHARGES DROPPED, YOU COULD ALWAYS RE-FILE
13 IF I DIDN'T BEHAVE," WHO WRITES THAT? IF I DIDN'T BEHAVE, THAT
14 IS INDICATING THAT HE CLEARLY THINKS THAT HE HAS SOME ISSUE WITH
15 BEHAVING IF YOU GET THE CHARGES DROPPED.

16 YOUR HONOR, I WOULD AGREE PAGE 5 IS NOT THAT RELEVANT, ALL
17 THE STUFF ABOUT THE DOORS TO THE JAIL. IF YOUR HONOR WANTED TO
18 LEAVE IT IN, WE DON'T HAVE AN ISSUE EITHER WAY.

19 AND PAGE 6, REALLY, IS NOT RELEVANT. IT'S MORE JUST---

20 MR. CREECH: FOR THE RECORD, YOUR HONOR, I DO WANT TO
21 SPECIFICALLY OBJECT TO THE FIRST -- ON PAGE 2, THE FIRST SENTENCE
22 OF THE FIRST FULL PARAGRAPH, "I HOPE THAT YOU MISS ME. I'M NOT
23 HOLDING MY BREATH. IF YOU MISS ME HALF AS MUCH AS I MISS YOU,
24 YOU COULD FIND A WAY TO MAKE THIS ALL GO AWAY." AGAIN, THAT'S
25 NOT RELEVANT. IT'S NOT PROBATIVE. AND I WOULD ASK THAT THAT

1 SENTENCE SPECIFICALLY BE REDACTED..

2 THE COURT: OKAY. ALL RIGHT. MY RULING IS THIS: ON PAGE
3 2, AFTER THE SENTENCE THAT ENDS "MAKE THIS ALL GO AWAY," THE REST
4 OF THAT PARAGRAPH NEEDS TO BE REDACTED.

5 PAGE 3, THE WHOLE PAGE NEEDS TO BE REDACTED EXCEPT FOR THE
6 FIRST THREE PARAGRAPHS, THE LAST OF WHICH ENDS WITH "HURT ME WITH
7 IT."

8 PAGE 4, THE FIRST LINE, "I WOULD RATHER BE DEAD," ALL THE
9 WAY DOWN TO THE END OF THAT PARAGRAPH NEEDS TO BE REDACTED. AT
10 THE BOTTOM OF PAGE 4, THE LAST SENTENCE THAT STARTS OUT, "I
11 THOUGHT" AND THEN GOES ON TO PAGE 5 UNTIL THE END OF THAT
12 PARAGRAPH THAT ENDS WITH THE PHRASE "BUT I'M NOT EXPECTING IT"
13 NEEDS TO BE REDACTED.

14 ON PAGE 6, THE SECOND FULL PARAGRAPH, "ONE OTHER THING, BE
15 CAREFUL WITH YOUR DADDY," THAT NEEDS TO BE REDACTED.

16 ALL THE REDACTIONS ARE NECESSARY BECAUSE OF RULE 403, NOT
17 ONLY THE FACT THAT IT'S PROBATIVE VALUE IS SUBSTANTIALLY
18 OUTWEIGHED BY UNFAIR PREJUDICE BUT IT COULD ALSO CONFUSE THE
19 ISSUES WITH THE JURY, BRINGING UP OTHER MATTERS. THE LETTER IS
20 NOT HEARSAY BECAUSE IT, IN MY VIEW, IS AN ADMISSION. THAT'S MY
21 RULING.

22 ALL RIGHT. ANYTHING FURTHER? I'VE MARKED IT ON HERE.

23 MS. KEDNOCKER: OH, YOU DID? THANK YOU.

24 MR. CREECH: OKAY.

25 THE COURT: THANK YOU.

MATTERS AND MOTIONS

1 MS. KEDNOCKER: I WAS TRYING TO KEEP UP WITH IT. ALL
2 RIGHT.

3 YOUR HONOR, JUST TELL US WHAT YOU WANT US TO DO. WE CAN
4 EITHER GO TAKE A QUICK BREAK AND GET THIS DONE FOR YOU OR START
5 OUT. I HAVE WITNESSES READY TO GO.

6 THE COURT: YEAH. WE NEED TO BRING THE JURY IN BECAUSE
7 THEY'VE BEEN BACK THERE ABOUT 30 MINUTES.

8 MS. KEDNOCKER: OKAY. ALL RIGHT.

9 THE COURT: YOU CAN GET SOMEBODY TO DO IT WHILE YOU'RE
10 QUESTIONING THE WITNESS?

11 MS. KEDNOCKER: THE ONLY THING IS I HAD A HANDWRITING
12 EXPERT -- LET'S SEE -- THAT I WAS PLANNING ON CALLING THIS
13 MORNING.

14 MR. CREECH: AND, YOUR HONOR, WE'LL STIPULATE THAT THIS IS
15 HIS HANDWRITING.

16 MS. KEDNOCKER: WELL, THE STATE ACTUALLY WANTED TO PRESENT
17 EVIDENCE ON THAT FACT. THIS IS THE FIRST -- IT'S ONE WITNESS,
18 AND THIS IS THE FIRST HE'S EVER MENTIONED STIPULATION. SO WE
19 PLAN ON PRESENTING OUR EXPERT ON THAT.

20 LET ME -- WE CAN GO AHEAD, YOUR HONOR, AND GET THIS DONE
21 RIGHT NOW WHILE WE'RE DOING THIS.

22 THE COURT: ARE YOU SURE? I MEAN, I DON'T WANT TO...

23 MS. KEDNOCKER: WHAT WE COULD DO IS DO DR. POLLEY AND THEN
24 MAYBE TAKE A BRIEF RECESS, AND IF THE LETTERS AREN'T DONE -- I
25 HAVE ONE WITNESS DEFINITELY READY TO GO.

MATTERS AND MOTIONS

1 THE COURT: ALL RIGHT. YOU JUST LET ME KNOW. IF WE NEED
2 TO TAKE A BREAK, WE WILL.

3 MS. KEDNOCKER: OKAY. JUST GIVE ME ONE SECOND, YOUR HONOR,
4 IF YOU WILL.

5 MR. CREECH: YOUR HONOR, JUST FOR THE SAKE OF THE RECORD,
6 THOSE ARE YOUR FINAL RULINGS ON THE LETTER, SO DO I NEED TO
7 OBJECT WHEN THEY SEEK TO ADMIT THEM OR JUST PURSUANT TO YOUR
8 RULING?

9 THE COURT: YEAH.

10 MR. CREECH: I JUST WANT IT TO BE PRESERVED ON THE RECORD.

11 THE COURT: YES, SIR. WELL, NO -- I THINK YOU'VE MADE ALL
12 YOUR OBJECTIONS AND THERE WILL BE -- IF YOU JUST WILL OBJECT, YOU
13 DON'T NEED TO EXPAND OTHER THAN JUST BASED ON YOUR PREVIOUS
14 OBJECTIONS. THAT OUGHT TO COVER ANY BASES YOU'VE BROUGHT UP TO
15 THE EXTENT I CAN DO THAT.

16 MS. KEDNOCKER: YOUR HONOR, MY INVESTIGATOR IS GOING TO GO
17 TRY TO REDACT THOSE LETTERS.

18 THE COURT: OKAY.

19 MS. KEDNOCKER: AND HOPEFULLY WE WILL BE ABLE TO GET THAT
20 DONE. I DID WANT TO LET YOU KNOW WE DID HAVE AN EXHIBIT MADE FOR
21 OUR HANDWRITING EXAMINER -- THAT'S PART OF OUR TROUBLE RIGHT NOW
22 -- WELL, ACTUALLY, IT'S GONE. SHE WAS GOING TO SHOW THE
23 COMPARISON OF WHAT SHE DID, AND WE'RE TRYING TO WORK ON GETTING A
24 REDACTED COPY BROUGHT OVER HERE. SO THAT -- I MAY HAVE TO
25 REARRANGE THE ORDER THAT SHE TESTIFIES IN.

KEVIN POLLEY, M.D. -- DIRECT BY MS. KEDNOCKER

1 THE COURT: OKAY.

2 MS. KEDNOCKER: ALL RIGHT?

3 THE COURT: ARE YOU READY NOW? IS EVERYBODY READY FOR THE
4 JURY?

5 MR. CREECH: READY, YOUR HONOR.

6 THE COURT: ALL RIGHT. BRING THEM IN.

7 (JURY ENTERS COURTROOM AT 9:54 A.M.)

8 THE COURT: ALL RIGHT. GOOD MORNING, LADIES AND GENTLEMEN.
9 HOPE YOU HAD A GOOD EVENING. SORRY FOR THE DELAY IN GETTING YOU
10 OUT HERE. WE'VE BEEN OUT HERE SINCE A LITTLE BIT AFTER 9:00.
11 AND AS I TOLD YOU, ONE OF MY JOBS IS TO DETERMINE ADMISSIBILITY
12 OF EVIDENCE, AND SOMETIMES THINGS COME UP THAT ARE REAL TRICKY
13 AND WE HAVE TO DO IT OUTSIDE OF THE JURY'S PRESENCE, AND THAT'S
14 WHAT WE'VE BEEN WORKING ON OUT HERE. SO SORRY FOR THAT DELAY.

15 YES, MA'AM, MS. KEDNOCKER, YOU MAY CALL YOUR NEXT WITNESS.

16 MS. KEDNOCKER: THANK YOU, YOUR HONOR.

17 THE STATE CALLS DR. KEVIN POLLEY.

18 KEVIN POLLEY, M.D., HAVING BEEN DULY

19 SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION BY MS. KEDNOCKER:

21 Q DR. POLLEY, WHAT IS YOUR OCCUPATION?

22 A I AM A FULL-TIME PEDIATRIC EMERGENCY PHYSICIAN EMPLOYED AT
23 THE GREENVILLE HOSPITAL SYSTEM EMERGENCY DEPARTMENT.

24 Q OKAY. AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

25 A APPROXIMATELY NINE AND A HALF YEARS.

KEVIN POLLEY, M.D. -- DIRECT BY MS. KEDNOCKER

1 Q CAN YOU TELL ME A LITTLE BIT -- OR TELL THE JURY A LITTLE
2 BIT ABOUT WHAT YOU DO THERE AND WHAT THE CENTER DOES IN
3 PEDIATRICS?

4 A WE HAVE A FULL-TIME 24-HOUR A DAY EMERGENCY DEPARTMENT
5 DEDICATED FOR CHILDREN. WE CARE FOR CHILDREN IN MY SPECIFIC
6 AREA, AND I'M A PEDIATRIC SPECIALIST. WE SEE CHILDREN FROM AGES
7 BIRTH TO 17.

8 Q GOING BACK JUST A LITTLE BIT, CAN YOU GIVE US A GENERAL IDEA
9 OF YOUR LICENSES AND BOARD CERTIFICATIONS AND THAT TYPE OF THING?

10 A I AM LICENSED TO PRACTICE IN SOUTH CAROLINA. I HAVE BOTH
11 BOARD CERTIFICATIONS IN PEDIATRICS AND A SUBSPECIALTY BOARD IN
12 PEDIATRIC EMERGENCY MEDICINE.

13 Q OKAY. HAVE YOU TESTIFIED IN THE COURTS OF THIS STATE BEFORE
14 IN THE AREA OF PEDIATRICS?

15 A MAYBE IN THE FAMILY COURT. I DON'T BELIEVE I'VE BEEN IN
16 GENERAL SESSIONS COURT.

17 MS. KEDNOCKER: OKAY. YOUR HONOR, AT THIS TIME THE STATE
18 MOVES TO ADMIT DR. POLLEY AS AN EXPERT IN PEDIATRICS.

19 THE COURT: MR. CREECH, ANY VOIR DIRE?

20 MR. CREECH: NOT AT THIS TIME, YOUR HONOR. AS TO HIS
21 QUALIFICATIONS AS A PEDIATRIC DOCTOR, WE HAVE NO PROBLEMS WITH
22 THAT, YOUR HONOR.

23 THE COURT: OKAY. ALL RIGHT. OKAY. HE'S QUALIFIED.

24 Q THANK YOU, DR. POLLEY.

25 IN GOING BACK TO YOUR JOB -- AND I DON'T WANT TO MISSTATE --

KEVIN POLLEY, M.D. -- DIRECT BY MS. KEDNOCKER

1 THE 24-HOUR E.R., IS THAT WHAT YOU CALL IT?

2 A YES, MA'AM.

3 Q HOW DOES IT RUN DOWN THERE? WHAT DO YOU GENERALLY SEE?

4 A WE SERVE AS A REFERRAL FACILITY FOR CASES THROUGHOUT
5 GREENVILLE COUNTY AS WELL AS ANDERSON AND SPARTANBURG AND
6 SURROUNDING COUNTIES BECAUSE WE ARE AFFILIATED AND PART OF THE
7 CHILDREN'S HOSPITAL. SO WE RECEIVE CASES OF ANY NATURE,
8 BASICALLY, FOR CHILDREN IN THE UPSTATE REGION.

9 Q OKAY. AND IN THIS E.R. YOU DON'T JUST SEE SEX ASSAULT, YOU
10 SEE CAR ACCIDENT, SEX ASSAULT----

11 A ABSOLUTELY, YES.

12 Q SO ANY KIND OF CASE RELATING TO CHILDREN?

13 A YES.

14 Q ALL RIGHT. DID YOU -- WERE YOU PRESENT AND DID YOU EVER SEE
15 AN EXAM THAT'S LED YOU TO HAVE TO COME TO COURT TODAY?

16 A AS MY NOTES INDICATE, YES.

17 Q AND BY YOUR NOTES, WHAT ARE YOU REFERRING TO THERE?

18 A BASICALLY THERE ARE SOME NOTES HERE FROM THE MEDICAL RECORD.
19 AT THE TIME, WE WERE USING A MEDICAL DOCUMENTATION PIECE AS WELL
20 AS A FINAL DIAGNOSIS PIECE. THIS INDICATES THAT I WAS THE
21 ATTENDING PHYSICIAN WITH A RESIDENT PHYSICIAN ALSO EXAMINING THE
22 PATIENT ON DECEMBER 13TH -- 15TH, I'M SORRY, 2003.

23 Q AND JUST AN IDEA, THIS HAS BEEN TWO YEARS AGO, BUT IN A
24 GIVEN YEAR, HOW MANY PATIENTS DO YOU THINK YOU SEE? DO YOU SEE A
25 GOOD MANY?

KEVIN POLLEY, M.D. -- DIRECT BY MS. KEDNOCKER

1 A ACTUALLY, I SEE BETWEEN 350 TO 450 PATIENTS A MONTH.

2 Q OKAY. GOING BACK TO -- AND REFER TO YOUR NOTES IF YOU NEED
3 TO.

4 A OKAY.

5 Q I KNOW IT'S BEEN TWO YEARS. CAN YOU TELL US THE NAME OF THE
6 CHILD THAT YOU EXAMINED RELATED TO THIS CASE?

7 A AGAIN, AS MY NOTES INDICATE, THE PATIENT'S NAME WAS Minor
8

9 Q OKAY. AND DID ANY OTHER DOCTOR ASSIST YOU IN THIS EXAM?

10 A YES.

11 Q WERE YOU THE SUPERVISING PHYSICIAN IN THIS EXAM?

12 A YES.

13 Q AND WHO DID THE CHILD COME TO THE PEDIATRIC E.R. WITH?

14 A AGAIN, AS NOTES AND DOCUMENTATION BY THE SECRETARIAL STAFF
15 INDICATE, STEVEN JULIAN WAS THERE PRESENT.

16 Q HOW OLD WAS Minor WHEN HE CAME TO SEE YOU?

17 A THIRTEEN YEARS.

18 Q AND AS PART OF YOUR MEDICAL DIAGNOSIS AND TREATMENT DID YOU
19 TALK WITH Minor

20 A YES, AS MY NOTES AGAIN---

21 Q ---TO TRY TO FIGURE OUT WHAT TO DO WITH HIM?

22 A MY NOTES INDICATED THAT I DID ASK HIM BASICALLY WHAT HAD
23 HAPPENED AT THE TIME OF THE INCIDENT.

24 Q AND WHAT DID HE STATE?

25 A AGAIN, IT ALLEGES THAT HE WAS ASSAULTED.

KEVIN POLLEY, M.D. -- DIRECT BY MS. KEDNOCKER

1 Q DON'T STATE ANY NAMES IF HE DID GIVE YOU.

2 A RIGHT.

3 Q BUT HE DID STATE -- AS PART OF YOUR MEDICAL DIAGNOSIS YOU
4 FOUND OUT HE STATED HE WAS---

5 A HE WAS SEXUALLY ASSAULTED IN AN ANAL MANNER BY PENILE
6 PENETRATION.

7 Q OKAY. DID HE INDICATE TO YOU A TIME FRAME WHEN THIS ABUSE
8 HAD HAPPENED?

9 A THE LAST TIME -- BASICALLY, WE WERE TRYING TO ESTABLISH AT
10 THAT POINT A 72-HOUR WINDOW OF OPPORTUNITY FOR EVIDENCE
11 COLLECTION, WHICH IS OUR STANDARD, AND HE SAID THAT IT HAD BEEN
12 GREATER THAN 72 HOURS AND ACTUALLY HAD SAID ONE TO TWO WEEKS AGO
13 IS WHAT I HAD DOCUMENTED AT THE TIME.

14 Q DID YOU TRY TO GET -- AND LET ME GO TO THE 72-HOUR ISSUE
15 THAT YOU JUST MENTIONED. IN CHILD SEX ASSAULT CASES WHAT IS THE
16 SIGNIFICANCE IN 72 HOURS, IF THE CHILD COMES IN WITHIN 72 HOURS
17 OF AN ASSAULT?

18 A THAT IS A GENERALLY ACCEPTED PRINCIPLE FOR EVIDENCE
19 COLLECTION, THE WINDOW OF OPPORTUNITY FOR COLLECTING EVIDENCE
20 SUCH AS SEMEN, FIBER, BLOOD, HAIRS. AND WE WOULD DO WHAT IS
21 CALLED A RAPE KIT, IF IT WAS AN ACUTE EXAM VERSUS AN EXAM AFTER
22 THE 72-HOUR WINDOW, WHICH WOULD BE A DIFFERENT KIND OF EXAM.

23 Q OKAY. SO IN TALKING WITH Minor HE INDICATED IT HAD BEEN
24 MORE THAN 72 HOURS. YOU'RE NOT DOING THE ACUTE RAPE KIT EXAM,
25 CORRECT?

KEVIN POLLEY, M.D. -- DIRECT BY MS. KEDNOCKER

1 A CORRECT.

2 Q YOU ARE DOING WHAT TYPE OF AN EXAM?

3 A BASICALLY AN EXAM FOR GENERAL WELL BEING AS WELL AS ANY --
4 LOOKING FOR ANY SIGNS OF ACUTE ASSAULT OR ANY, AGAIN, INJURIES TO
5 THE CHILD.

6 Q AND TO GO BACK BEFORE WE GET OFF THIS, WHEN HE INDICATED TO
7 YOU THE TIME FRAME, THE PAST MONTH OR SO, DID YOU -- IN TRYING TO
8 TREAT THIS CHILD AND FIGURE OUT WHAT YOU NEEDED TO DO, DID YOU
9 ASK HIM HOW MANY TIMES THIS SEXUAL ASSAULT HAD HAPPENED?

10 A AGAIN, MY NOTES WOULD INDICATE, YES. TYPICALLY I WOULD ASK,
11 IS THIS A ONE-TIME THING? HAS THIS HAPPENED BEFORE? AND I WOULD
12 SAY, DID IT HAPPEN ONE TIME? TWO TIMES? GREATER THAN THREE
13 TIMES? AND BASICALLY I'VE DOCUMENTED GREATER THAN THREE TIMES,
14 WHICH IS NOT A RELEVANT NUMBER EXCEPT IT'S GREATER THAN A THREE-
15 TIME PERIOD.

16 Q ARE YOU THE PERSON WHO ASKED THE QUESTION, "IS IT GREATER
17 THAN THREE TIMES?"

18 A AS MY NOTES WOULD INDICATE, I BELIEVE SO.

19 Q AND IS THAT A STANDARD QUESTION THAT YOU ASK?

20 A TYPICALLY, YES.

21 Q AND YOU'RE NOT -- AT THAT POINT YOU'RE NOT A LAW ENFORCEMENT
22 OFFICER, YOU'RE NOT TRYING TO GET A SPECIFIC NUMBER OF ANYTHING.
23 YOU'RE JUST TRYING TO TREAT THE CHILD; IS THAT ACCURATE?

24 A THAT'S CORRECT.

25 Q OKAY. GOING BACK TO Minor HAVING A GENERAL EXAM, TELL ME

KEVIN POLLEY, M.D. -- DIRECT BY MS. KEDNOCKER

1 -- AGAIN, TELL THE JURY, IN A GENERAL EXAM WITH A BOY WHERE THERE
2 IS A CONCERN OF PENILE PENETRATION, A SEXUAL ASSAULT, WHAT ARE
3 YOU LOOKING AT? WHAT ARE YOU TRYING TO FIND?

4 A BASICALLY, HE INDICATED THAT HE HAD BEEN ASSAULTED IN HIS
5 ANORECTAL AREA AND BASICALLY IT WOULD INCLUDE -- FIRST OF ALL, WE
6 WOULD DO A GENERAL EXAM FOR ANY OTHER INJURIES OR TRAUMA THAT HAD
7 OCCURRED -- BRUISES, ABRASIONS, ANY OTHER KIND OF INJURIES -- AS
8 WELL AS A FOCUSED EXAM ON THE GENITAL AREA AND ANAL AREA WHERE HE
9 SAID THE INCIDENT HAD OCCURRED, LOOKING FOR TEARS, BRUISING,
10 BLEEDING, THINGS OF THAT NATURE.

11 Q OKAY. CAN YOU TELL ME THE -- WELL, LET ME ASK YOU THIS:
12 THE VICTIM IN THIS CASE HAS ALREADY TESTIFIED THAT THE LAST
13 SEXUAL ASSAULT WAS---

14 MR. CREECH: OBJECTION TO THE FORM, YOUR HONOR.

15 MS. KEDNOCKER: OKAY.

16 Q LET ME ASK YOU THIS, DR. POLLEY. IF THE EVIDENCE IN THIS
17 CASE WERE TO SHOW THAT -- YOU SAW THIS CHILD ON MONDAY, DECEMBER
18 15TH; IS THAT ACCURATE?

19 A YES.

20 Q IF THE EVIDENCE IN THIS CASE WERE TO SHOW THAT SUNDAY
21 DECEMBER 14TH WAS WITHIN THE 72-HOUR PERIOD, IN YOUR OPINION AS A
22 DOCTOR AND AN EXPERT, IS THERE A SIGNIFICANT AMOUNT OF EVIDENCE
23 THAT YOU WOULD HAVE FOUND ON SUNDAY THAT YOU'RE NOT -- OR
24 SUDDENLY NOT GOING TO BE ABLE TO FIND ON MONDAY?

25 A PROBABLY NOT.

1 Q AND LET ME GO INTO WHY THAT IS. GOING BACK TO Minor WITH
2 HIS GENERAL EXAM, WHAT WERE THE RESULTS OF THAT EXAM?

3 A THERE WERE NO POSITIVE FINDINGS.

4 Q OKAY. WHAT -- IN A CASE OF ANAL PENETRATION, WHAT DOES THE
5 FACT THAT THE MEDICAL REPORT -- THAT THE FINDINGS COME BACK
6 NORMAL, WHAT DOES THAT INDICATE TO YOU?

7 A BASICALLY, IT DOES NOT DISPROVE OR PROVE THAT THE INCIDENT
8 OCCURRED.

9 Q OKAY. AND WHY IS THAT?

10 A BECAUSE OF THE NATURE OF THE ORGAN OF THE ANOGENITAL --
11 ANORECTAL REGION, EXCUSE ME, IT IS A OBVIOUSLY MADE TO DILATE, TO
12 EXPAND TO ACCOMMODATE BOWEL MOVEMENTS, AND OBVIOUSLY THE CAPACITY
13 TO ACCOMMODATE THAT ALLOWS FOR ADEQUATE DILATION TO ACCOMMODATE,
14 AGAIN, EXAMS, AS WELL AS THE DAILY FUNCTIONS, IF YOU WILL.

15 Q OKAY. SO IS A FINDING OF -- THERE'S NO BRUISING, THERE'S NO
16 TEARING, DOES THAT IN ANY WAY INDICATE TO YOU THAT A CHILD HAS
17 NOT BEEN SEXUALLY PENETRATED WHEN YOU HAVE THAT KIND OF A FINDING
18 IN AN EXAM?

19 A IT DOES NOT. IT DOES NOT SAY IT DID NOT HAPPEN.

20 Q OKAY. GOING BACK TO THE -- WHAT I WAS ASKING YOU ABOUT A
21 MOMENT AGO, COULD YOU KIND OF GRAPHICALLY TELL ME, WITH AN ACUTE
22 EXAM ON A GIRL VERSUS AN ACUTE EXAM ON A BOY WHAT IS THE
23 DIFFERENCE IN, SAY, DURING THAT 72-HOUR WINDOW? WHAT YOU MIGHT
24 FIND WITH A GIRL VERSUS WHAT YOU MIGHT FIND WITH A BOY. AND SOME
25 OF THIS MAY BE GRAPHIC, BUT THE JURY JUST NEEDS TO HEAR IT.

KEVIN POLLEY, M.D. -- DIRECT BY MS. KEDNOCKER

1 A BASICALLY BECAUSE, AGAIN, FEMALES HAVE FEMALE REPRODUCTIVE
2 ORGANS, THE GENITALIA, BASICALLY THE VAGINAL AREA, IS THE MOST
3 OFTEN FOCUS OF THE ASSAULT, AND OBVIOUSLY BOYS DON'T HAVE THAT.
4 BUT A GENITAL EXAM, INCLUDING THE ANORECTAL AREA, IS ALSO
5 EXAMINED IN A GIRL AS WELL AS THE ORAL CAVITIES AND OTHER
6 CAVITIES THAT ARE LOOKED AT IN THE COURSE OF THE EXAM. SWABS ARE
7 TAKEN SPECIFIC -- LOOKING FOR EVIDENCE COLLECTION BASICALLY OR
8 EVIDENCE OF ACUTE TRAUMA.

9 Q ALL RIGHT. AND YOU JUST STATED EARLIER THAT YOU -- IF YOU
10 HAD DONE THIS EXAM ONE DAY EARLIER, YOU WOULDN'T HAVE EXPECTED TO
11 FIND MUCH MORE EVIDENCE; IS THAT CORRECT?

12 A NO. WITH NORMAL BODILY FUNCTIONS, OBVIOUSLY, BOWEL
13 MOVEMENTS AND THINGS ARE PASSING THROUGH THE RECTAL AREA, AND
14 BASICALLY PHYSICAL EVIDENCE WOULD BE NOT EXPECTED TO BE THERE
15 AFTER THE PATIENT HAD BATHED AND HAD HAD A NORMAL B.M.

16 Q SO WITH A BOY, SAY, THAT HAD BEEN SEXUALLY ASSAULTED, YOU'RE
17 SAYING THIS 72-HOUR THING, THAT ONCE A CHILD BATHES, HAS A BOWEL
18 MOVEMENT, A LOT OF ANYTHING YOU MIGHT FIND IS GOING TO BE GONE AT
19 THAT POINT?

20 A USUALLY.

21 Q OKAY. DID YOU -- DO YOU REMEMBER ASKING THE VICTIM IN THIS
22 CASE WHETHER ANY LUBRICANT WAS USED DURING THE SEXUAL---

23 A NO, I DO NOT.

24 Q OKAY. WOULD IT MAKE IT LESS LIKELY IF LUBRICANT WAS USED
25 THAT YOU WOULD HAVE ANY FINDINGS THERE?

KEVIN POLLEY, M.D. -- CROSS BY MR. CREECH

1 A YES.

2 Q OKAY. AND EVEN IN SITUATIONS WHERE THERE IS NO LUBRICANT
3 FOUND, WILL NORMAL EXAMS COME BACK IN THOSE SITUATIONS AS WELL?

4 A YES.

5 Q DID YOU ASK HIM WHETHER A CONDOM OR ANYTHING LIKE THAT WAS
6 USED?

7 A NO.

8 Q OKAY. SO IN YOUR EXPERT OPINION WOULD A NORMAL EXAM IN ANY
9 WAY INDICATE TO YOU THAT PENILE -- ANAL-PENILE PENETRATION HAD
10 NOT OCCURRED?

11 A NO.

12 MS. KEDNOCKER: OKAY. THANK YOU, DOCTOR. PLEASE ANSWER
13 ANY QUESTIONS THE DEFENSE MAY HAVE.

14 THE COURT: CROSS EXAMINATION, MR. CREECH.

15 CROSS EXAMINATION BY MR. CREECH:

16 Q THANK YOU FOR BEING HERE, DOCTOR. WOULD ACUTE ASSAULT BE
17 OBSERVABLE BY YOU EVEN AFTER 72 HOURS?

18 A IT DEPENDS ON THE NATURE OF THE EXAM. BASICALLY, AS A CHILD
19 BECOMES MORE ADULT IN SIZE AND AGE THE EVIDENCE OR THE TRAUMA
20 THAT'S INVOLVED WOULD BE LESSENER.

21 Q AN ACUTE ASSAULT, WOULD EVIDENCE OF THAT BE OBSERVABLE AFTER
22 72 HOURS?

23 A YES, IF THERE HAS BEEN THINGS SUCH AS LACERATIONS, BLEEDING,
24 BRUISING. THOSE KIND OF THINGS CAN LINGER ON IN THE EXAM, BUT
25 THEY MAY NOT. AND IT DOESN'T REALLY MATTER IF YOU EXAMINE THE

KEVIN POLLEY, M.D. -- CROSS BY MR. CREECH

1 PATIENT AT TIME ZERO OR TIME X, 72 HOURS OR BEYOND IF THERE WAS
2 NO TEARING.

3 Q OKAY. BUT, AGAIN, IT'S NOT A HARD AND FAST RULE IS, I
4 THINK, WHAT I'M HEARING. IF THERE'S AN ACUTE ASSAULT, THERE CAN
5 STILL BE EVIDENCE OF THAT ASSAULT TAKING PLACE, EVEN AFTER 72
6 HOURS, IS THAT RIGHT, DEPENDING ON THE NATURE OF THE ASSAULT?

7 A IT WOULD LOOK DIFFERENT. OBVIOUSLY, IF YOU HAVE A CUT,
8 THREE DAYS LATER THE CUT LOOKS DIFFERENT. AT 72 HOURS OR MORE,
9 YOU HAVE HEALING BRUISES. YOU HAVE SCABS HEALING OVER
10 LACERATIONS AND WOUNDS, AND THEY LOOK DIFFERENT THAN THEY DO
11 AFTER SOMEONE HAS FRESHLY CUT THEMSELVES WITH A KNIFE, TO MAKE AN
12 ANALOGY.

13 Q THANK YOU, DOCTOR. DID YOU NOTICE ANY BRUISES ON Minor
14 WHEN YOU EXAMINED HIM?

15 A MY NOTES WOULD INDICATE NO.

16 Q DID YOU NOTICE ANY ABRASIONS ON Minor WHEN YOU EXAMINED
17 HIM?

18 A MY NOTES WOULD INDICATE NO.

19 Q DID YOU NOTICE ANY TEARS, ANAL TEARS, IN Minor

20 A THAT WAS NOT OBVIOUSLY ON THE EXAM.

21 Q OKAY. DID YOU NOTICE ANY BLOOD ANYWHERE ON Minor

22 A NO.

23 Q ANY BLOOD AROUND HIS ANAL AREA?

24 A NO.

25 Q OKAY. AND HOW LONG DID THIS EXAM TAKE PLACE, DOCTOR?

KEVIN POLLEY, M.D. -- CROSS BY MR. CREECH

1 A DO YOU MEAN HOW MUCH TIME DID THE EXAM TAKE?

2 Q RIGHT.

3 A YOU KNOW, FOR THE WHOLE INTERVIEW PROCESS IT COULD TAKE
4 ANYWHERE FROM 15 MINUTES TO HALF AN HOUR, DEPENDING ON, YOU KNOW
5 -- THE PHYSICAL EXAM PORTION IS NOT AN EXTENSIVE PART. IT'S
6 BASICALLY A HISTORY AND PHYSICAL WE DO IN TANDEM, AND I HAVE NO
7 WAY OF -- WE DOCUMENT WHEN THE TIME BEGAN AND WHEN THE
8 DOCUMENTATION OCCURRED. BUT AS FAR AS THE LENGTH OF TIME IN THE
9 ROOM, IT'S IMPOSSIBLE FOR ME TO SAY.

10 Q AND BASED ON WHAT YOU TESTIFIED TO EARLIER, ACCORDING TO
11 YOUR NOTES, Minor TOLD YOU THAT THIS LAST OCCURRED ONE TO TWO
12 WEEKS PRIOR TO HIS COMING IN; IS THAT RIGHT?

13 A THAT'S WHAT'S BEEN DOCUMENTED.

14 Q OKAY. AND YOU NOTED IN YOUR RECORDS THAT THIS WAS GREATER
15 THAN THREE TIMES. WERE YOU EVER ABLE TO OBTAIN AN EXACT NUMBER
16 OF INSTANCES---

17 A NO, NO.

18 Q ---OF---

19 A BASICALLY---

20 Q I'M SORRY. GO AHEAD.

21 A BASICALLY, AGAIN, IF IT HAD BEEN GREATER THAN THREE TIMES,
22 THAT TRIGGERS ME TO LOOK FOR CHANGES THAT ARE MORE CHRONIC IN
23 NATURE AS OPPOSED TO ACUTE IN NATURE.

24 Q OKAY. WOULD A CHRONIC ASSAULT, EVIDENCE OF CHRONIC ASSAULT,
25 BE PRESENT 72 HOURS AFTER A CHRONIC ASSAULT?

KEVIN POLLEY, M.D. -- CROSS BY MR. CREECH

1 A THAT IS NOT PARTICULARLY MY JOB. IF THERE IS BELIEVED TO BE
2 CHRONIC ASSAULT, THOSE CASES ARE REFERRED TO A SEXUAL TRAUMA
3 SPECIALIST, WHO, I BELIEVE, WILL PRESENT -- WILL BE A WITNESS
4 LATER ON.

5 Q OKAY. NOW, CHRONIC ASSAULT, WOULD YOU CHARACTERIZE THAT AS
6 BEING MORE THAN THREE TIMES, MORE THAN FIVE TIMES? HOW WOULD YOU
7 DEFINE CHRONIC ASSAULT?

8 A I WOULD SAY PROBABLY MORE THAN THREE TIMES. AND, AGAIN,
9 IT'S NOT A HARD AND FAST DEFINITION.

10 Q SO THE 72-HOUR RULE APPLIES TO SIMPLY ACUTE ASSAULT; IS THAT
11 CORRECT?

12 A THAT'S MY UNDERSTANDING.

13 Q AND CHRONIC ASSAULT, THE 72-HOUR RULE MAY OR MAY NOT APPLY?

14 A THERE CAN BE ACUTE ON CHRONIC. IN OTHER WORDS THERE IS AN
15 ACUTE ASSAULT IN THE PRESENCE -- WE MAY SEE SOMEBODY WHO HAS BEEN
16 CHRONICALLY ASSAULTED WHO IS ACUTELY ASSAULTED AND PRESENTS
17 WITHIN 72-HOURS OF THEIR LAST CONTACT WITH THE PERSON.

18 Q WOULD EVIDENCE OF CHRONIC ASSAULT MORE THAN LIKELY SHOW UP
19 AFTER 72 HOURS OF THE LAST ASSAULT?

20 A THAT IS NOT MY EXAM. THAT IS NOT MY PROFESSIONAL AREA. I
21 DO AN ACUTE EXAM.

22 Q ALL RIGHT. AND ACUTE IS NOT AS SERIOUS AS CHRONIC; IS THAT
23 CORRECT?

24 A EXCUSE ME? ACUTE IS NOT SERIOUS?

25 Q ACUTE -- CHRONIC WOULD BE MORE SERIOUS THAN ACUTE; IS THAT

KEVIN POLLEY, M.D. -- CROSS BY MR. CREECH

1 CORRECT?

2 A IN A LEGAL SENSE PERHAPS. IN AN EMERGENT SENSE, NO. AN
3 ACUTE EXAM THAT HAS POSITIVE FINDINGS, I MEAN---

4 Q I UNDERSTAND.

5 A ---YOU KNOW, BASICALLY A CHILD'S HEALTH AND WELFARE IS MORE
6 LIKELY TO BE ENDANGERED IN ACUTE FINDINGS.

7 Q ALL RIGHT. AND CHRONIC, YOU'RE NOT PREPARED TO TESTIFY OR
8 FEEL QUALIFIED TO TESTIFY AS ABOUT A CHRONIC EXAM OR EVIDENCE
9 AFTER A CHRONIC EXAM; IS THAT CORRECT?

10 A I AM NOT PREPARED TO BE CONSIDERED -- THAT'S NOT EXACTLY
11 WHAT I DO. IN OTHER WORDS, PEOPLE COME TO ME IN THE EMERGENCY
12 DEPARTMENT. THEY COME WITH A PROBLEM. I DO AN EXAM TO THE BEST
13 OF MY ABILITIES. IF I FIND CHRONIC TEARS OR LESIONS OR HEALING
14 THINGS, THAT IS, AGAIN, SOMETHING THAT IS DOCUMENTED. BUT
15 BECAUSE THIS IS A VERY SPECIALIZED AREA, FOR HEALING WOUNDS OR
16 TEARS THAT HAVE OCCURRED MORE THAN 72 HOURS, WE REFER THEM TO A
17 SPECIALIST WHO CAN DO THE EXAM IN A PROPER SETTING WITH THE
18 PROPER EQUIPMENT.

19 Q AND THERE WAS NO EVIDENCE THAT YOU COULD DETERMINE OR THAT
20 YOU COULD TELL OF A CHRONIC ASSAULT; IS THAT CORRECT?

21 A YOU KNOW, THAT'S NOT A DEFINABLE TERM IN THE SCOPE OF MY
22 EXAM.

23 Q OKAY. YOU HAVE SEEN CHRONIC -- EVIDENCE OF CHRONIC ASSAULT
24 IN THE PAST; IS THAT CORRECT?

25 A THAT'S CORRECT.

KEVIN POLLEY, M.D. -- REDIRECT BY MS. KEDNOCKER

1 Q AND REFERRED THEM ON; IS THAT RIGHT?

2 A I'M SORRY?

3 Q YOU'VE REFERRED THEM ON?

4 A BASED ON HISTORY ALONE IT WOULD BE MOST -- WOULD BE USUAL
5 REASON FOR REFERRAL, NOT BY FINDINGS.

6 Q AND IN THIS CASE DID YOU SEE EVIDENCE OF WHAT YOU BELIEVED
7 TO BE CHRONIC ASSAULT?

8 A BY PHYSICAL EXAM, NO.

9 Q DOCTOR, DID YOU CLASSIFY OR DEFINE THE FINDINGS OF YOUR EXAM
10 AS NORMAL OR NO ABNORMALITIES?

11 A THAT IS, I BELIEVE, DOCUMENTED IN MY RESIDENT'S HANDWRITING.
12 I CAN'T SAY FOR SURE, BUT THAT'S WHAT I SIGNED OFF ON, YES, SIR.

13 Q ALL RIGHT. AND THE RESIDENT USED THE WORDS "NO ANAL
14 ABNORMALITIES. NO BLEEDING." IS THAT CORRECT?

15 A THAT'S CORRECT.

16 MR. CREECH: THANK YOU, YOUR HONOR. I HAVE NO FURTHER
17 QUESTIONS FOR THIS WITNESS.

18 THE COURT: ALL RIGHT. REDIRECT, MS. KEDNOCKER?

19 REDIRECT EXAMINATION BY MS. KEDNOCKER:

20 Q DR. POLLEY, I JUST WANT THE CLARIFY. YOU ARE AN EXPERT IN
21 PEDIATRICS; IS THAT CORRECT?

22 A I AM BOARD CERTIFIED AND I FEEL, YES---

23 Q AND YOU'RE NOT AN EXPERT IN, AS YOU STATED, CHRONIC SEXUAL
24 ASSAULT. YOU REFER THOSE CASES ON. IS THAT ACCURATE?

25 A THAT'S CORRECT.

KEVIN POLLEY, M.D. -- REDIRECT BY MS. KEDNOCKER

1 Q AND JUST TO GO BACK AND REMEMBER WHAT YOUR JOB IS, AT THE
2 PEDIATRIC E.R., YOU SEE CHILDREN INVOLVING CAR ACCIDENTS AND, IN
3 SOME CASES, SEXUAL ASSAULT CASES?

4 A THAT'S CORRECT.

5 Q IS IT ACCURATE -- TO CLARIFY, THE 72-HOUR SEXUAL ASSAULT
6 EXAM IS CALLED AN ACUTE EXAM SIMPLY BECAUSE IT'S WITHIN A 72-HOUR
7 PERIOD; IS THAT ACCURATE?

8 A YES.

9 Q OKAY. AND IF A CHILD DOES NOT PRESENT TO YOU WITHIN THE 72-
10 HOUR PERIOD, YOU'RE NOT DOING THAT EXAM; IS THAT ACCURATE?

11 A THAT'S CORRECT.

12 Q OKAY. SO AT THAT POINT YOU DO A GENERAL EXAM?

13 A ABSOLUTELY.

14 Q WHICH IS WHAT YOU DID IN THIS CASE?

15 A YES, MA'AM.

16 Q AND IF -- AS YOU STATED, WHEN YOU TALKED WITH Minor YOU
17 WERE TRYING TO FIND OUT HOW MANY TIMES THIS MAY HAVE HAPPENED TO
18 HIM?

19 A CORRECT.

20 Q WAS IT YOU -- WERE YOU THE PERSON WHO ASKED HIM, YOU KNOW,
21 HOW MANY TIMES THIS HAPPENED TO HIM?

22 A MY NOTES WOULD INDICATE THAT, YES.

23 Q AND IS IT YOUR GENERAL PRACTICE IN ASKING A CHILD YOU'RE NOT
24 TRYING TO SPECIFY A NUMBER---

25 A NO.

KEVIN POLLEY, M.D. -- RECROSS BY MR. CREECH

1 Q ---AS YOU STATED, YOU ASK IS IT OVER MORE THAN THREE TIMES,
2 AND THEN AT THAT POINT YOU REFER THEM ON TO A CHRONIC SPECIALIST;
3 IS THAT ACCURATE?

4 A YES.

5 Q OKAY. AND THEN GOING BACK TO A BOY AND THE PHYSIOLOGICAL
6 DIFFERENCES WITH A BOY, WAS IT YOUR TESTIMONY EARLIER THAT SAY
7 HYPOTHETICALLY A SEXUAL ASSAULT HAPPENED ON A BOY AT A PARTICULAR
8 TIME, IS IT TRUE THAT THAT NEXT DAY, BASED ON DEFECATION, BASED
9 ON SHOWERING, EVEN ONE DAY LATER THERE MAY BE NO EVIDENCE OF
10 SEXUAL ASSAULT; IS THAT ACCURATE?

11 A ABSOLUTELY.

12 Q AND IS IT ALSO ACCURATE THAT WHEN YOU PERFORM AN EXAM THE
13 FACT THAT IT COMES BACK NORMAL IN NO WAY INDICATES TO YOU THAT
14 THE ABUSE DID NOT TAKE PLACE; IS THAT CORRECT?

15 A YES.

16 MS. KEDNOCKER: DR. POLLEY, THANK YOU.

17 RECROSS EXAMINATION BY MR. CREECH:

18 Q DR. POLLEY, YOUR FINDINGS WERE NORMAL; IS THAT CORRECT?

19 A THE PHYSICAL EXAM WAS NORMAL FOR THE ACUTE EXAM THAT WE DID.

20 Q OKAY. YOU NEVER GOT A SPECIFIC NUMBER FROM THIS PERSON; IS
21 THAT CORRECT?

22 A THAT'S CORRECT, I DID NOT SOLICIT THAT.

23 Q YOU DON'T FEEL QUALIFIED TO TESTIFY ABOUT CHRONIC SEXUAL
24 ASSAULT; IS THAT CORRECT?

25 A I WOULD DEFER TO THE SPECIALIST ON THAT BECAUSE -- I WOULD

KEVIN POLLEY, M.D. -- RECROSS BY MR. CREECH

1 SAY THAT BECAUSE I DON'T HAVE THE EQUIPMENT THAT THEY DO TO DO
2 THE KIND OF EXAM THAT WOULD NEED TO BE DONE, AND THAT IS WHY WE
3 -- SPECIFICALLY WHY WE REFER THEM.

4 Q OKAY. NO EVIDENCE OF ANAL TEARING, CORRECT?

5 A CORRECT.

6 Q NO EVIDENCE OF BLEEDING?

7 A CORRECT.

8 Q NO BRUISES?

9 A CORRECT.

10 Q NO SCRATCHES?

11 A CORRECT.

12 MR. CREECH: THANK YOU, YOUR HONOR. NO FURTHER QUESTIONS.

13 THE COURT: ALL RIGHT. THANK YOU, SIR. YOU MAY STEP DOWN,
14 DOCTOR.

15 (WITNESS STEPS DOWN AT 10:16 A.M.)

16 THE COURT: OKAY. YES, MA'AM.

17 MS. KEDNOCKER: YOUR HONOR, MAY WE TAKE A BRIEF RECESS---

18 THE COURT: CERTAINLY.

19 MS. KEDNOCKER: ---TO SEE IF---

20 THE COURT: YES, MA'AM. LADIES AND GENTLEMEN, IF YOU
21 WOULD, JUST GO BACK TO YOUR JURY ROOM. AND I WOULD ASK YOU IN
22 ADDITION TO NOT TALKING ABOUT THE CASE AND CONTINUING TO KEEP AN
23 OPEN MIND, IF YOU WOULD, SELECT A FOREPERSON TO SERVE AS THE
24 LIAISON BETWEEN THE COURT AND JURY DURING YOUR BREAK, AND WE'LL
25 BE BACK WITH YOU IN ABOUT TEN MINUTES HOPEFULLY. THANK YOU.

MATTERS AND MOTIONS

1 (JURY EXITS COURTROOM AT 10:17 A.M.)

2 THE COURT: OKAY. ABOUT TEN MINUTES, DOES THAT GIVE YOU
3 ENOUGH TIME?

4 MS. KEDNOCKER: YES, SIR.

5 THE COURT: ALL RIGHT.

6 (A RECESS WAS TAKEN FROM 10:17 TO 10:41 A.M.)

7 MS. KEDNOCKER: I APOLOGIZE. THE LAST LETTER IS TAKING A
8 WHILE. HERE IS A COPY FOR DEFENSE COUNSEL OF THE FIRST LETTER.
9 THE SECOND ONE IS ALMOST DONE. WOULD YOUR HONOR LIKE TO LOOK AT
10 IT AND SEE IF YOU...

11 THE COURT: OKAY.

12 MS. KEDNOCKER: SHE IS WORKING ON IT.

13 MR. CREECH: I THOUGHT THEY WERE GOING TO WHITE THIS OUT,
14 YOUR HONOR.

15 MS. KEDNOCKER: WELL, MY INVESTIGATOR WAS DOING IT THE BEST
16 SHE COULD. SHE FOUND IT EASIER -- SHE TRIED IT AND FOUND IT
17 EASIER TO JUST BLACK IT OUT. SO, SORRY.

18 THE COURT: THAT'S OKAY.

19 MS. KEDNOCKER: SHE'S HURRYING. IT'S JUST MY NEXT TWO
20 WITNESSES DEAL WITH THE LETTERS. I'M GOING TO GO AHEAD AND CALL
21 LANE NEXT. BUT THE NEXT TWO WOULD DEAL WITH THAT. (PAUSE)

22 YOUR HONOR, DID YOU WANT TO HAVE ANY VOIR DIRE ON LANE SMITH
23 RELATED TO THE RESTRICTION OF HIS TESTIMONY? I HAVE TOLD HIM
24 THAT WE ARE NOT GOING INTO THE ALLEGATIONS OF WHAT HIS FATHER DID
25 FROM '97 TO 2002 AND THAT THE TESTIMONY IS VERY LIMITED TO WHAT I

1 STATED TO YOU EARLIER. BUT IF YOUR HONOR DOES WANT TO TALK TO
2 HIM, I'VE GOT HIM OUTSIDE.

3 THE COURT: NO, AS LONG AS YOU MADE IT CLEAR TO HIM. ALL
4 RIGHT. OKAY.

5 WHAT ABOUT THE REDACTION, MR. CREECH?

6 MR. CREECH: YOUR HONOR, I JUST WOULD ASK THAT SHE WHITE
7 THIS OUT AS OPPOSED TO BLACKING OUT THE REDACTION. THERE IS A
8 WAY THAT THEY CAN DO IT WHERE THE JURY WOULD NOT EVEN KNOW THAT
9 IT HAD BEEN REDACTED. SO NOW IT'S CREATING AN INFERENCE THAT
10 THERE IS SOMETHING THAT THEY DON'T WANT -- WE DON'T WANT THE JURY
11 TO SEE. THE JURY IS NOT BEING TOLD, SO THAT'S MY OBJECTION, YOUR
12 HONOR.

13 THE COURT: WELL, EVEN IF THEY WHITED IT OUT IT WOULD BE
14 OBVIOUS THAT THERE WOULD BE A GAP IN THE LETTER, SO I'M GOING TO
15 OVERRULE YOUR OBJECTION.

16 OKAY. SO ARE YOU READY FOR THE JURY?

17 MS. KEDNOCKER: YES, SIR.

18 THE COURT: ALL RIGHT. YES, MA'AM.

19 (JURY REENTERS COURTROOM AT 10:45 A.M.)

20 THE COURT: OKAY. LADIES AND GENTLEMEN, I RECEIVED A NOTE
21 SAYING THAT, MR. SANFORD, YOU'VE BEEN SELECTED TO BE THE
22 FOREPERSON.

23 MR. SANFORD: YES, SIR.

24 THE COURT: OKAY. THAT WILL BE YOUR REGULAR ASSIGNED SEAT.
25 THE REST OF YOU CAN SIT ANYWHERE YOU WOULD LIKE. AND IF ANYTHING

LANE SMITH -- DIRECT BY MS. KEDNOCKER

1 COMES UP THAT YOU NEED TO DISCUSS WITH ME ON BEHALF OF ANY MEMBER
2 OF THE JURY, JUST COMMUNICATE TO ME IN WRITING OR IN OPEN COURT.
3 THAT'S THE ONLY WAY I COMMUNICATE WITH YOU AS WELL. ALL RIGHT?

4 OKAY. YES, MA'AM, MS. KEDNOCKER.

5 MS. KEDNOCKER: THANK YOU, JUDGE.

6 THE STATE CALLS LANE SMITH.

7 LANE SMITH, HAVING BEEN DULY SWORN,
8 TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION BY MS. KEDNOCKER:

10 Q LANE, IF YOU WOULD, TRY TO SPEAK UP AND MAKE SURE ALL THE
11 JURY CAN HEAR YOU, OKAY?

12 A YES, MA'AM.

13 Q LANE, HOW OLD ARE YOU?

14 A I'M 17.

15 Q WHERE DO YOU GO TO SCHOOL?

16 A MAULDIN HIGH.

17 Q AND DO YOU KNOW A MAN NAMED RANDALL LANE SMITH?

18 A YES, MA'AM, I DO.

19 Q WHO IS THAT PERSON?

20 A THAT IS MY FATHER.

21 Q ALL RIGHT. I WANT TO TAKE YOU BACK TO THE FALL OF 2003.

22 CAN YOU TELL ME BACK IN THE FALL OF -- LET ME ASK YOU FIRST, WHAT
23 ARE YOUR COUSINS' NAMES?

24 A Minor AND ASHTON JULIAN.

25 Q AND BACK IN THE FALL OF 2003 WERE YOUR COUSINS STAYING OVER

LANE SMITH -- DIRECT BY MS. KEDNOCKER

1 AT YOUR HOUSE SOME AT BELLWOOD?

2 A YES, MA'AM.

3 Q HOW OFTEN DID THEY STAY OVER?

4 A ALMOST ON A NIGHTLY BASIS.

5 Q OKAY. AND BACK THEN, TELL ME AGAIN, WHAT WAS THE SETUP OF
6 THE BEDROOMS IN YOUR HOUSE?

7 A MY FATHER'S BED -- MY MOM AND DAD'S BEDROOM OVERLOOKED THE
8 PARKING LOT. MINE AND MY SISTER'S OVERLOOKED THE BACK SIDE OF
9 THE NEIGHBORHOOD.

10 Q AND BACK THEN IN 2003 WHAT WAS YOUR MOM'S WORK SCHEDULE?

11 A SHE WORKED THIRD SHIFT AT WAL-MART.

12 Q AND WHEN DID SHE WORK?

13 A EVERY MONDAY, TUESDAY, THURSDAY, FRIDAY AND SUNDAY NIGHT.

14 Q WAS IT -- WHEN SHE WOULD WORK WHAT WERE THE HOURS THAT SHE
15 WORKED?

16 A FROM TEN O'CLOCK TILL ABOUT 6:30 IN THE MORNING.

17 Q OKAY. SO WHAT TIME WOULD SHE LEAVE YOUR HOUSE TO GO TO
18 WORK?

19 A ABOUT 9:45.

20 Q ON THE DAYS THAT YOUR MOM WORKED WHAT ADULT WAS AT HOME AT
21 THE HOUSE WITH YOU?

22 A MY FATHER, RANDY SMITH.

23 Q AND, AGAIN, ON THE NIGHTS THAT ASHTON AND Minor WOULD
24 SPEND THE NIGHT OVER THERE WHERE WOULD PEOPLE SLEEP?

25 A ASHTON WOULD SLEEP DOWNSTAIRS. I WOULD SLEEP IN MY ROOM.

LANE SMITH -- DIRECT BY MS. KEDNOCKER

1 AND NASTASHA WOULD SLEEP IN HER ROOM. AND Minor WOULD SLEEP
2 WITH RANDY.

3 Q DID YOU EVER WITNESS THIS DEFENDANT TELL Minor TO SLEEP
4 WITH HIM?

5 A YES, MA'AM, I DID.

6 Q WHAT DID HE SAY?

7 A HE WANTED -- BASICALLY, HE SAID Minor HAD TO SLEEP WITH
8 HIM. HE DIDN'T HAVE A CHOICE.

9 Q OKAY. HOW -- DID YOU EVER WITNESS -- WHEN Minor AND THIS
10 DEFENDANT WOULD GO TO BED, DID YOU EVER WITNESS WHETHER THE DOOR
11 WAS OPEN OR SHUT?

12 A IT WAS ALWAYS SHUT.

13 Q IN YOUR MOM AND DAD'S ROOM DID YOUR DAD -- WERE THERE ANY --
14 DID YOUR DAD SLEEP WITH ANY KIND OF DEVICE?

15 A YES, MA'AM. HE SLEPT WITH A CPAP MACHINE.

16 Q TELL ME ABOUT THAT DEVICE.

17 A IT IS A MACHINE BASICALLY TO HELP YOU SLEEP. IT BLOWS AIR
18 THROUGH YOUR NOSE TO KEEP YOU FROM SNORING. IT'S LIKE A VACUUM
19 CLEANER BUT IT DOESN'T SUCK. AND IT'S A LITTLE QUIETER, BUT NOT
20 BY MUCH.

21 Q OKAY. SO IT MAKES NOISE IN THE ROOM; IS THAT ACCURATE?

22 A YES, MA'AM, IT DOES.

23 Q I WANT TO TAKE YOU BACK TO 2003. DID YOU EVER -- DID
24 Minor YOUR COUSIN, EVER DISCLOSE TO YOU THAT HE WAS
25 SEXUALLY ASSAULTED BY THIS DEFENDANT?

LANE SMITH -- DIRECT BY MS. KEDNOCKER

1 A ONLY ON DECEMBER---

2 MR. CREECH: OBJECTION, YOUR HONOR.

3 Q LET ME REPHRASE.

4 MR. CREECH: OBJECT TO THE FORM OF THE QUESTION.

5 THE COURT: HOLD ON JUST A SECOND. YES, MA'AM. REPHRASE
6 YOUR QUESTION.

7 Q DID YOU EVER BECOME AWARE THAT YOUR COUSIN, Minor
8 WAS EVER SEXUALLY ASSAULTED?

9 A NO, MA'AM, ONLY UNTIL EVERYTHING CAME OUT. NO, MA'AM, I DID
10 NOT.

11 Q OKAY. YOU DIDN'T KNOW. BUT WAS THERE A TIME THAT YOU DID
12 FIND OUT THAT YOUR COUSIN WAS SEXUALLY ASSAULTED?

13 A YES, MA'AM, THERE WAS A TIME.

14 Q OKAY. I WANT TO TALK ABOUT THAT TIME. WHEN WAS THAT?

15 A IT WAS IN DECEMBER.

16 Q DECEMBER OF WHEN?

17 A THE 12TH, I BELIEVE.

18 Q DO YOU KNOW WHAT YEAR IT WAS?

19 A '03.

20 Q OKAY. SO GOING BACK TO DECEMBER 12TH, 2003, UP TO THAT DATE
21 YOU DIDN'T KNOW---

22 A NO, MA'AM, I DIDN'T.

23 Q ---THAT Minor WAS BEING ASSAULTED?

24 A NO, MA'AM.

25 Q ALL RIGHT. WHERE WERE YOU WHEN Minor DISCLOSED THIS TO

LANE SMITH -- DIRECT BY MS. KEDNOCKER

1 YOU?

2 A I WAS UP AT THE NEIGHBORHOOD CHURCH JUST ABOVE THE
3 NEIGHBORHOOD.

4 Q AND HOW WAS Minor ACTING BEFORE HE DISCLOSED THIS TO YOU?

5 A VERY ERRATIC AND SCARED AND CRYING ALL AT ONCE.

6 Q OKAY. WHAT DID HE SAY TO YOU?

7 A HE DIDN'T SAY MUCH. ALL HE COULD REPEAT WAS THAT "HE
8 TOUCHED ME. HE TOUCHED ME." AND HE WAS CRYING WHILE HE SAID
9 THAT.

10 Q AND YOU STATE THAT HE WAS CRYING WHEN HE SAID THIS?

11 A YES, MA'AM.

12 Q DID HE GIVE YOU ANY DETAILS OTHER THAN "HE TOUCHED ME. HE
13 TOUCHED ME" ABOUT WHAT YOUR FATHER HAD DONE TO HIM?

14 A NO, MA'AM.

15 MR. CREECH: OBJECTION, YOUR HONOR.

16 THE COURT: ALL RIGHT. SUSTAINED.

17 Q DID HE INDICATE TO YOU THE TIME OR TIMES THAT THIS ABUSE HAD
18 HAPPENED?

19 A NO, MA'AM.

20 Q DID HE INDICATE TO YOU THE PLACE OR PLACES WHERE THIS ABUSE
21 HAD HAPPENED?

22 A NO, MA'AM.

23 Q SO HE JUST, AS YOU PREVIOUSLY STATED, HE WAS CRYING AND
24 STATING, "HE TOUCHED ME. HE TOUCHED ME" BUT NO FURTHER DETAILS;
25 IS THAT CORRECT?

LANE SMITH -- DIRECT BY MS. KEDNOCKER

1 A YES, MA'AM.

2 Q ALL RIGHT. WHEN YOU FOUND OUT THIS INFORMATION WHAT DID YOU
3 DO?

4 A THE PLACE, THE CHURCH, WAS CLOSED. THERE WERE PEOPLE BABY-
5 SITTING LITTLE CHILDREN UP THE STAIRS. I TRIED TO GET THEIR
6 ATTENTION BEST I COULD. THERE WAS A WATER HOSE NEARBY, AND I
7 TURNED THAT ON AND SPRINKLED THE WINDOW.

8 Q LANE, SLIDE UP JUST A LITTLE BIT SO THEY CAN HEAR YOU.

9 A (COMPLIES) I SPRINKLED THE WINDOW WITH A WATER HOSE NEARBY.
10 THIS GIRL NAMED BRITTANY, I DON'T KNOW HER LAST NAME, CAME TO THE
11 WINDOW. AND BRIAN LAZADER (PHONETIC) WAS THE YOUTH MINISTER AT
12 THE TIME. HE CAME DOWN AND I BORROWED THE CELL PHONE.

13 Q WHY DID YOU BORROW A CELL PHONE?

14 A BECAUSE I NEEDED TO GET IN TOUCH WITH MY MOM.

15 Q OKAY. WHEN YOU GOT THE CELL PHONE WHO, IF ANYONE, DID YOU
16 CALL?

17 A I CALLED MY HOUSE BUT RANDY PICKED UP. HE WOULDN'T LET ME
18 SPEAK WITH MY MOM.

19 Q OKAY. WHAT DID HE SAY WHEN YOU -- WHAT DID YOU SAY WHEN YOU
20 CALLED?

21 A I SAID, "LET ME TALK TO MOM. I REALLY NEED TO TALK TO HER."
22 HE SAYS, "WHAT'S GOING ON?" I KEPT SAYING, "LET ME TALK TO MOM."
23 HE SAYS, "WHERE ARE YOU?" I SAID, "I'M AT THE CHURCH. I NEED TO
24 TALK TO MOM." HE SAYS, "ALL RIGHT. I'LL BE THERE IN A MINUTE."
25 AND THEN I HUNG UP THE PHONE.

LANE SMITH -- DIRECT BY MS. KEDNOCKER

1 Q ONCE YOU HUNG UP THE PHONE WHAT, IF ANYTHING, HAPPENED NEXT?

2 A WELL, I BELIEVED MY MOM WAS COMING, BUT THE VAN PULLED UP
3 AND IT WAS HIM NOT MY MOM.

4 Q IT WAS -- WHO WAS IT?

5 A IT WAS THE DEFENDANT.

6 Q WHEN YOU SAW RANDY PULL UP IN THE VAN WHAT, IF ANYTHING, WAS
7 SAID NEXT?

8 A WELL, I TOLD HIM THAT I KNEW WHAT HE DID TO Minor AND MY
9 EXACT WORDS, PARDON MY LANGUAGE, WAS THAT "THIS SHIT'S GOING TO
10 STOP."

11 Q ALL RIGHT. SO WHEN YOU SAID "I KNOW WHAT YOU'RE DOING TO
12 Minor AND "THIS SHIT'S GOING TO STOP"---

13 A YES, MA'AM.

14 Q ---WHAT DID HE SAY BACK TO YOU?

15 A HE SAID, "LET'S GET IN THE CAR AND LET'S TALK ABOUT THIS."
16 AND I SAID, "NO, IT'S NOT GOING TO HAPPEN ANYMORE." AND THEN HE
17 SAID -- LAST THING HE SAID BEFORE HE DROVE OFF WAS TO ME AND
18 Minor BOTH, "DON'T GET ME IN TROUBLE."

19 Q WHEN HE SAID, "DON'T GET ME IN TROUBLE". AND DROVE OFF, WHAT
20 HAPPENED THEN?

21 A MY MOM CALLED THE CELL PHONE AND Minor PICKED UP AND---

22 Q DID YOUR MOM CALL THE CELL PHONE BACK?

23 A YES, MA'AM.

24 Q ALL RIGHT.

25 A AND Minor PICKED UP AND KEPT STATING OVER AND OVER, "HE

LANE SMITH -- DIRECT BY MS. KEDNOCKER

1 MOLESTED ME. HE MOLESTED ME." AND I TOOK THE PHONE AWAY FROM
2 HIM BECAUSE IT LOOKED LIKE HE WAS ABOUT TO FALL. AND I TOLD HER
3 SHE NEEDED TO GET UP HERE RIGHT NOW. AND A FEW MINUTES PASSED,
4 NOTHING HAPPENED, SO ME AND HIM, WE JUST STARTED WALKING BACK TO
5 THE NEIGHBORHOOD, AND THE OTHERS WERE MEETING US UP THERE AND MY
6 MOM PULLED UP.

7 Q WHO ARE "THE OTHERS" THAT YOU ARE TALKING ABOUT?

8 A ASHTON, NASTASHA AND ALLIE.

9 Q OKAY. SO THEY'RE OFF SOMEWHERE ELSE. YOU AND Minor ARE
10 AT THE VAN, AND THAT'S WHEN YOU TALK WITH RANDY. AT THIS POINT
11 YOUR MOM -- DID YOUR MOM, IN FACT, COME UP THERE TO WHERE YOU
12 WERE?

13 A AFTER WE STARTED WALKING BACK, SHE PULLED UP BESIDE US.

14 Q OKAY. WHAT HAPPENED WHEN YOUR MOM PULLED UP?

15 A SHE TOLD ME, Minor AND ASHTON TO GET IN THE CAR AND
16 NASTASHA AND ALLIE TO GO TO THE HOUSE, AND WE ALL THREE SAID,
17 "NO, NASTASHA AND ALLIE ARE COMING WITH US. WE DON'T WANT THEM
18 BACK AT THE HOUSE."

19 Q ALL RIGHT. DID YOU TALK WITH YOUR MOM IN THE CAR?

20 A I WAS KIND OF QUIET AND SHE WAS BASICALLY SAYING, "WHAT
21 HAPPENED? WHAT HAPPENED?"

22 Q OKAY. AND WITHOUT STATING TO ME WHAT YOU MAY HAVE SAID IN
23 THE CAR OR WHAT ASHTON MAY HAVE SAID IN THE CAR, DID YOU WITNESS
24 YOUR MOTHER TALK WITH Minor ALONE IN THE CAR?

25 A YES, MA'AM, I DID.

LANE SMITH -- DIRECT BY MS. KEDNOCKER

1 Q WHEN Minor GOT OUT OF THE CAR WERE YOU ABLE TO WITNESS
2 WHAT HIS DEMEANOR WAS? HOW WAS HE ACTING WHEN HE GOT OUT OF THE,
3 CAR?

4 A HE WAS VERY QUIET, CRYING, AND VERY DISTANT. HE JUST
5 STARTED WALKING OFF AND---

6 Q I'M SORRY. YOU SAID CRYING AND VERY WHAT?

7 A HE WAS CRYING AND KIND OF DISTANT. HE WOULDN'T TALK TO
8 ANYONE.

9 Q AT THAT POINT AFTER Minor WAS CRYING, HE'S GOTTEN OUT OF
10 THE VAN, WHERE DOES YOUR MOM GO?

11 A MY MOM TOLD ALL THREE OF US TO GET BACK -- TOLD ALL OF US
12 GET BACK IN THE CAR. WE DROVE BACK TO THE HOUSE. SHE SAID, "GO
13 TO THE GAZEBO AND I'LL COME GET YOU."

14 Q SO YOU WERE TOLD TO GO TO THE GAZEBO?

15 A YES, MA'AM?

16 Q DID YOUR MOM LEAVE?

17 A SHE WENT INSIDE AND WE WENT DOWN THERE AND WAITED ON HER.
18 AFTER THAT, I DON'T KNOW WHAT WAS SAID.

19 Q AND JUST SO I CAN UNDERSTAND THIS GEOGRAPHICALLY, HOW CLOSE
20 IS YOUR APARTMENT TO THIS GAZEBO AND THE CLUBHOUSE AND THEN THE
21 CHURCH? HOW CLOSE IS ALL THAT?

22 A THE CLUBHOUSE IS ABOUT 200 FEET AWAY. THE GAZEBO IS JUST
23 DOWN THE STREET.

24 Q AND THE CHURCH IS WITHIN WALKING DISTANCE?

25 A YES, MA'AM, IT'S A TWO-MINUTE WALK FROM HERE -- FROM THE

LANE SMITH -- DIRECT BY MS. KEDNOCKER

1 APARTMENT. IT WAS A TWO-MINUTE WALK FROM THE APARTMENT.

2 Q TWO-MINUTE WALK. SO Y'ALL WERE IN GAZEBO. HOW LONG IS IT
3 BEFORE YOUR MOM COMES BACK?

4 A IT FELT LIKE AN HOUR.

5 Q WHEN YOUR MOM CAME BACK WHAT HAPPENED THEN?

6 A SHE WALKED OVER TO US AND TOLD US NOT TO GO UPSTAIRS. SHE
7 SAID HE WAS NOT COMING OUT OF HIS ROOM AND THAT HE WAS LEAVING AT
8 10:00 A.M. THE NEXT DAY.

9 Q DID YOU SPEAK WITH THE DEFENDANT THAT NIGHT?

10 A NO, MA'AM, I DID NOT.

11 Q THAT NIGHT -- WELL, LET ME ASK YOU THIS, DID YOU SEE THE
12 DEFENDANT THE NEXT MORNING?

13 A YES, MA'AM, I DID.

14 Q WHAT WAS HE DOING THE NEXT MORNING?

15 A HE WAS DOING SOMETHING ON THE COMPUTER.

16 Q OKAY. DID HE STAY AT THE HOUSE OR DID HE IN FACT LEAVE AS
17 YOU STATED HE WAS TOLD TO LEAVE?

18 A HE LEFT ABOUT AN HOUR, AN HOUR AND A HALF LATER.

19 Q ALL RIGHT. AFTER THIS DEFENDANT LEFT THE HOUSE DID YOU
20 WITNESS YOUR MOTHER CALL ANYONE?

21 A YES, MA'AM, SHE CALLED STEVE.

22 Q ALL RIGHT. WELL, AT THIS POINT DID YOUR UNCLE IN FACT COME
23 OVER TO THE HOUSE?

24 A HE DID. AFTER A FEW-MINUTES, YES, MA'AM, HE DID. AFTER SHE
25 CALLED HIM.

LANE SMITH -- DIRECT BY MS. KEDNOCKER

1 Q DO NOT TELL ME WHAT YOUR AUNT STATED TO YOUR UNCLE BECAUSE
2 THAT WOULD BE HEARSAY. BUT DID YOUR AUNT IN FACT HAVE A
3 CONVERSATION WITH YOUR UNCLE?

4 A MY MOM?

5 Q I'M SORRY. DID YOUR MOM HAVE A CONVERSATION WITH YOUR UNCLE
6 WHEN HE GOT OVER THERE, STEVE?

7 A YES, MA'AM. SHE, ASHTON AND Minor ALL HAD A CONVERSATION
8 IN THE KITCHEN. WE WERE TOLD TO GO UPSTAIRS.

9 Q OKAY. ALL RIGHT. AND HOW WAS STEVE ACTING AFTER HE HAD
10 THIS CONVERSATION?

11 A STEVE WAS EXTREMELY MAD.. HE LOOKED LIKE HE COULD TEAR
12 SOMEONE APART. HE WAS MAD.

13 Q AND KNOWING YOUR UNCLE, HAVE YOU -- SO YOU BELIEVED HIM TO
14 BE VERY EXTREMELY MAD AT THIS POINT?

15 A YES, MA'AM, I DID.

16 Q WHAT HAPPENED AT THAT POINT WITH Minor AND ASHTON WHEN
17 STEVE GOT THERE?

18 A WELL, THEY WERE TALKING IN THE KITCHEN. A FEW MINUTES LATER
19 HE TOLD THEM TO PACK EVERYTHING UP THEY HAD IN THAT HOUSE AND TO
20 GET IN THE TRUCK. AFTER THAT THEY LEFT.

21 Q LANE, AFTER YOUR FATHER LEFT THE HOUSE THAT DAY ON DECEMBER
22 12TH, 2003, BETWEEN DECEMBER 12TH AND WHEN HE -- LET ME ASK YOU
23 THIS: IN THE DAYS FOLLOWING DECEMBER 12TH, DID YOU HAVE A
24 CONVERSATION WITH YOUR FATHER ON THE TELEPHONE?

25 A YES, MA'AM, MULTIPLE TIMES.

LANE SMITH -- DIRECT BY MS. KEDNOCKER

1 Q AND DID YOU HAVE ANY IDEA WHERE YOUR FATHER WAS CALLING
2 FROM?

3 A HE CALLED -- HE SAID HE WAS IN LOUISIANA, AUSTIN, TEXAS, AND
4 OTHER PLACES OUT OF STATE ALONG THE GULF COAST. THAT WAS IT.

5 Q DID YOU HAVE A CONVERSATION WITH YOUR FATHER -- DO YOU
6 REMEMBER A CONVERSATION WITH YOUR FATHER THAT RELATED TO YOUR
7 COUSIN Minor

8 A YES, MA'AM, I DO.

9 Q CAN YOU TELL ME ABOUT THAT?

10 A HE CALLED AND WE TALKED, AND THEN HE HAD TO GO TAKE CARE OF
11 SOMETHING, AND I CALLED MY MOM AND TOLD HER THAT HE HAD CALLED.
12 SO SHE SENT STEVE OVER AND SHE SAID, IF HE CALLS AGAIN, LET STEVE
13 LISTEN IN. WE WERE LISTENING IN---

14 Q LET ME TAKE YOU BACK. BEFORE THIS DEFENDANT CALLS, STEVE
15 COMES OVER TO THE HOUSE; IS THAT CORRECT?

16 A YES, MA'AM.

17 Q SO WHEN THIS DEFENDANT CALLS BACK IS STEVE JULIAN PRESENT IN
18 THE HOUSE?

19 A YES, MA'AM, HE IS.

20 Q ALL RIGHT. AND WHEN THIS DEFENDANT CALLS BACK, WHO ANSWERS
21 THE PHONE?

22 A I ANSWER THE PHONE.

23 Q ALL RIGHT. IS STEVE JULIAN HERE? YOUR UNCLE STEVE, DOES HE
24 HEAR THE PHONE CONVERSATION?

25 A YES, MA'AM. I TOLD HIM THAT I COULDN'T HEAR HIM AND I WAS

LANE SMITH -- DIRECT BY MS. KEDNOCKER

1 GOING TO PICK UP ANOTHER PHONE TO MAKE THE VOICES SOUND A LITTLE
2 LOUDER.

3 Q YOU TOLD THAT TO THIS DEFENDANT?

4 A YES, MA'AM, I DID.

5 Q SO AT THIS POINT STEVE PICKS UP THE OTHER LINE?

6 A YES, MA'AM.

7 Q ALL RIGHT. WHAT, IF ANYTHING, DID YOU ASK HIM ABOUT Minor
8 DURING THIS PHONE CONVERSATION?

9 A I ASKED WHAT HAPPENED BETWEEN HIM AND Minor AND HE SAID
10 THAT -- HE SAID THAT Minor WAS KISSING ON HIM ONE NIGHT AND
11 THAT Minor KEPT WANTING TO GO FURTHER AND FURTHER AND THAT HE
12 COULDN'T STOP IT.

13 Q APART FROM THAT PHONE CONVERSATION DID YOU SEE THIS
14 DEFENDANT AGAIN ---

15 A YES, MA'AM.

16 Q FROM THE TIME HE LEFT DECEMBER 12TH, WHEN DID YOU SEE HIM
17 AGAIN?

18 A ON CHRISTMAS EVE, THE DAY HE WAS ARRESTED, WE HAD JUST
19 CHANGED THE LOCKS AND WE FORGOT TO LOCK THE DOOR. WE WERE
20 SITTING ON THE COUCH AND WE HAD NO IDEA HE WAS BACK IN
21 GREENVILLE. HE JUST WALKED IN LIKE NOTHING WAS WRONG.

22 Q OKAY. DID HE STAY LONG AT THE HOUSE?

23 A NO, MA'AM. MY MOM GOT UP AND THREW HIM OUT.

24 MS. KEDNOCKER: ALL RIGHT. Minor -- LANE, I HAVE NO
25 FURTHER QUESTIONS. THANK YOU.

1 THE COURT: YES, SIR, MR. CREECH, CROSS EXAMINATION.

2 MR. CREECH: THANK YOU, YOUR HONOR.

3 CROSS EXAMINATION BY MR. CREECH:

4 Q LANE, THIS -- YOU LIVED DOWN IN MAULDIN IN THIS APARTMENT AT
5 BELLWOOD FARMS; IS THAT RIGHT?

6 A NO, MA'AM. NO, SIR.

7 Q YOU DID NOT LIVE THERE?

8 A I LIVED THERE BUT IT WAS IN GREENVILLE, SOUTH CAROLINA. IT
9 WASN'T MAULDIN JURISDICTION.

10 Q IT WAS NOT MAULDIN?

11 A NO, SIR.

12 Q IT WAS GREENVILLE?

13 A YES, SIR.

14 Q OKAY. AND YOU AND YOUR DAD AND YOUR MOM AND YOUR SISTER
15 LIVED THERE; IS THAT CORRECT?

16 A YES, SIR.

17 Q AND Minor YOUR COUSIN Minor YOUR COUSIN ASHTON SPENT
18 ALMOST EVERY NIGHT OVER THERE; IS THAT RIGHT?

19 A YES, SIR.

20 Q ALL RIGHT.

21 A MY UNCLE STEVE WORKS FOR ALL TIME AND HE WORKED IRREGULAR
22 HOURS.

23 THE COURT: HOLD ON JUST A SECOND. LET ME SEE THE
24 ATTORNEYS UP HERE REAL QUICK, IF I COULD.

25 (BENCH CONFERENCE OFF RECORD)

LANE SMITH -- CROSS BY MR. CREECH

1 Q AND ALL THREE BEDROOMS WERE UPSTAIRS; IS THAT RIGHT?

2 A YES, SIR.

3 Q OKAY. AND YOUR MOM KNEW THAT Minor WAS SLEEPING IN THE
4 SAME ROOM WITH RANDY; IS THAT RIGHT?

5 A NO, SIR.

6 Q SHE NEVER KNEW THAT?

7 A NO, SIR.

8 Q ALL RIGHT. DID YOU EVER TELL HER?

9 A NO, SIR.

10 Q YOU SLEPT IN YOUR ROOM, IS THAT RIGHT?

11 A YES, SIR, I DID.

12 Q AND ASHTON SLEPT WITH YOU?

13 A NO, SIR, HE DID NOT.

14 Q YOU SLEPT IN THE SAME ROOM?

15 A NO, SIR. HE SLEPT DOWNSTAIRS.

16 Q OKAY. YOU SLEPT BY YOURSELF; IS THAT RIGHT?

17 A YES, SIR, I DID.

18 Q NOW, Minor WENT TO MAULDIN MIDDLE SCHOOL, CORRECT?

19 A YES, SIR.

20 Q ALL RIGHT. AND THAT WAS NOT HIS DESIGNATED SCHOOL. THEY
21 GOT THAT CHANGED, IS THAT RIGHT, DO YOU KNOW?

22 A I'M NOT SURE ON THAT.

23 Q ALL RIGHT. AND Minor WAS IN SPECIAL EDUCATION CLASSES, DO
24 YOU KNOW?

25 A I DO NOT KNOW THAT. I'M NOT AWARE OF THAT.

LANE SMITH -- CROSS BY MR. CREECH

1 Q DO YOU KNOW IF Minor WAS EVER DIAGNOSED AS BEING
2 EMOTIONALLY HANDICAPPED?

3 A NO, SIR.

4 Q DID YOU EVER SEE Minor HAVE OUTBURSTS OR BE UNABLE TO
5 CONTROL HIS EMOTIONS?

6 MS. KEDNOCKER: OBJECTION, YOUR HONOR. THIS IS OUTSIDE OF
7 ANYTHING IN THE RECORD AND IT'S NOT RELEVANT.

8 THE COURT: ALL RIGHT. OVERRULED.

9 Q ALL RIGHT. DID YOU EVER SEE Minor HAVE SPONTANEOUS
10 OUTBURSTS OR THINGS LIKE THAT?

11 A NO, SIR. ME AND HIM SPENT ALMOST EVERY DAY TOGETHER. I'VE
12 NEVER SEEN ONCE LOSE HIS COOL.

13 Q DID YOU KNOW THAT HE WAS DIAGNOSED WITH AN EMOTIONAL
14 HANDICAP?

15 A NO, SIR.

16 Q YOU DID NOT KNOW THAT?

17 A NO, SIR, I DID NOT.

18 Q AND YOU DID NOT KNOW THAT HE WAS IN SPECIAL EDUCATION
19 CLASSES?

20 A NO, SIR. I KNEW HE HAD TROUBLE IN SCHOOL. THAT WAS REALLY
21 ABOUT IT.

22 Q LANE, HAVE YOU EVER SPENT TIME AT THE DEPARTMENT OF JUVENILE
23 JUSTICE?

24 A YES, SIR, I HAVE.

25 Q AND WAS THAT FOR PHONING IN A BOMB THREAT?

LANE SMITH -- CROSS BY MR. CREECH

1 A I WAS ACCUSED OF DOING THAT. YES, SIR, I WAS.

2 Q AND DID YOU THEN GO TO THE -- WERE YOU CONVICTED OF PHONING
3 IN A BOMB THREAT?

4 A I PLEADED NOLO CONTENDRE. THEY GAVE ME NINE MONTHS'
5 PROBATION.

6 Q ALL RIGHT. SO YOU WERE ON PROBATION FOR THAT OFFENSE; IS
7 THAT RIGHT?

8 A YES, SIR.

9 Q AND ARE YOU NOW DENYING THAT YOU EVER DID IT?

10 A NO, SIR, I'M NOT DENYING IT.

11 Q OKAY. Minor -- EXCUSE ME. LANE, YOUR DAD AND YOUR
12 MOTHER, AROUND THE TIME THESE ALLEGATIONS WERE MADE OR BEFORE
13 THIS, WERE THEY HAVING MARITAL DIFFICULTIES?

14 A NO, SIR. MY -- RANDY WOULD ALWAYS ASK ME IF I BELIEVED HE
15 SHOULD DIVORCE HER OR NOT, AND I JUST KEPT MY MOUTH SHUT. I
16 DIDN'T KNOW WHAT TO SAY.

17 Q DO YOU REMEMBER YOUR MOM AND DAD GETTING INTO ARGUMENTS?

18 A THEY NEVER GOT IN ARGUMENTS AROUND ME AND MY SISTER. WHEN
19 THEY DID WE WERE GENERALLY UPSTAIRS AND WE JUST HEARD RAISED
20 VOICES. THAT WAS IT.

21 Q YOU COULD HEAR RAISED VOICES; IS THAT RIGHT?

22 A YES, SIR. AND IT WAS USUALLY HIM THAT HAD THE VOICE RAISED.

23 Q AND HE WAS THE ONE THAT WAS USUALLY YELLING; IS THAT
24 CORRECT?

25 A YES, SIR.

LANE SMITH -- CROSS BY MR. CREECH

1 Q DID HE EVER APOLOGIZE TO YOU FOR YELLING AT YOUR MOTHER?

2 A NO, SIR.

3 Q DO YOU THINK HE EVER FELT BAD ABOUT YELLING AT YOUR MOTHER?

4 A NO, SIR.

5 Q YOU DON'T THINK SO?

6 A NO, SIR. HE WOULD YELL AT MY MOM FOR THE LITTLEST OF
7 THINGS, AND HE WOULD GENERALLY ACCUSE ANYONE OF SOMETHING THAT HE
8 HAS DONE.

9 Q HE WOULD GENERALLY YELL AT YOUR MOTHER FOR THE LITTLEST OF
10 THINGS?

11 A YES, SIR.

12 Q AND HE WOULD YELL AT OTHER PEOPLE TOO?

13 A YES, SIR.

14 Q DID HE EVER YELL AT Minor

15 A HE YELLED AT Minor ON ONE OR TWO OCCASIONS.

16 Q HE YELLED AT Minor ON ONE OR TWO OCCASIONS. DO YOU KNOW
17 IF HE FELT SORRY FOR DOING THAT?

18 A HE CLAIMED THAT HE FELT SORRY FOR IT.

19 Q OKAY.

20 A BUT WE NEVER BELIEVED HIM.

21 Q NOW, DID HE EVER TELL STEVE THAT HE WAS SORRY FOR YELLING AT
22 Minor STEVE IS Minor DAD. DID HE EVER SAY, "STEVE, I'M
23 SORRY FOR YELLING AT Minor YOUR CHILD. I DIDN'T MEAN TO DO
24 THAT"?

25 A YES, SIR, HE DID SAY THAT TO STEVE.

LANE SMITH -- CROSS BY MR. CREECH

1 Q OKAY. DID YOUR DAD EVER YELL AT YOU?

2 A YES, SIR.

3 Q AND DID YOU FEEL LIKE HE WAS -- WAS HE SORRY FOR YELLING AT
4 YOU? DID HE EVER EXPRESS SYMPATHY TO YOU?

5 A HE SAID HE WAS SORRY FOR IT, BUT I GENERALLY KNEW WHY HE WAS
6 YELLING AT ME.

7 Q NOW, DID HE IN FACT EVER ASK YOUR MOTHER FOR A DIVORCE, DO
8 YOU KNOW?

9 A NO, SIR.

10 Q YOU DON'T KNOW?

11 A NO, SIR. NO, HE DID NOT.

12 Q HE NEVER ASKED FOR A DIVORCE?

13 A NO, SIR.

14 Q BUT HE HAD TALKED TO YOU PRIOR TO ALL THIS COMING OUT ABOUT
15 DIVORCE, IS THAT RIGHT, WITH YOUR MOTHER?

16 A HE ASKED ME THAT A LOT OF TIMES DURING THE YEARS OF MY
17 CHILDHOOD.

18 Q OKAY. AND DO YOU KNOW IF THERE WERE ANY FINANCIAL
19 DIFFICULTIES IN YOUR HOUSE?

20 A NO, SIR.

21 Q YOU'RE NOT AWARE OF THAT?

22 A NO, SIR.

23 MR. CREECH: YOUR HONOR, I HAVE NO FURTHER QUESTIONS.

24 THE COURT: ALL RIGHT. ANY REDIRECT?

25 MS. KEDNOCKER: NOTHING FURTHER FROM THE STATE, YOUR HONOR.

DAWN EDWARDS -- DIRECT BY MS. KEDNOCKER

1 THE COURT: ALL RIGHT. THANK YOU, SIR. YOU CAN STEP DOWN.

2 (WITNESS STEPS DOWN AT 11:06 A.M.)

3 THE COURT: ALL RIGHT. YOU CAN CALL YOUR NEXT WITNESS, MS.

4 KEDNOCKER.

5 MS. KEDNOCKER: THE STATE CALLS DAWN EDWARDS.

6 MR. CREECH: AND, YOUR HONOR, WE WOULD OFFER TO STIPULATE
7 TO MS. EDWARDS' QUALIFICATIONS AND THE SUBSTANCE OF THE TESTIMONY
8 AND THAT MR. SMITH WROTE ANY LETTERS THAT SHE INTENDS TO TESTIFY
9 ABOUT TODAY.

10 MS. KEDNOCKER: OKAY. WE'LL MAKE IT VERY BRIEF THEN,
11 JUDGE.

12 THE COURT: ALL RIGHT.

13 DAWN EDWARDS, HAVING BEEN DULY SWORN,
14 TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION BY MS. KEDNOCKER:

16 Q MS. EDWARDS, WOULD YOU PLEASE STATE YOUR NAME FOR THE
17 RECORD?

18 A DAWN EDWARDS.

19 Q AND WHERE ARE YOU EMPLOYED?

20 A AT THE DEPARTMENT OF PUBLIC SAFETY FOR GREENVILLE COUNTY.
21 I'M SPECIFICALLY ASSIGNED TO THE CRIME LABORATORY.

22 Q ALL RIGHT. AND WHAT IS YOUR POSITION DOWN THERE?

23 A I'M A DOCUMENT EXAMINER -- HANDWRITING EXAMINER MOST
24 FREQUENTLY.

25 Q AND IN YOUR POSITION AS A HANDWRITING EXAMINER WERE YOU

DAWN EDWARDS -- DIRECT BY MS. KEDNOCKER

1 ASKED TO LOOK AT SOME UNKNOWN DOCUMENTS IN THIS CASE TO IDENTIFY
2 WHO THE AUTHOR WAS?

3 A YES, I WAS.

4 (REDACTED 1-13-04 LETTER MARKED AS STATE'S EXHIBIT NUMBER 4
5 FOR PURPOSES OF IDENTIFICATION ONLY)

6 (REDACTED 1-25-04 LETTER MARKED AS STATE'S EXHIBIT NUMBER 5
7 FOR PURPOSES OF IDENTIFICATION ONLY)

8 Q ALL RIGHT. I'M SHOWING YOU WHAT'S MARKED AS STATE'S EXHIBIT
9 1 AND 2 FOR IDENTIFICATION. EXCUSE ME. LET ME REPHRASE.
10 STATE'S EXHIBIT 2 AND 3 FOR IDENTIFICATION AND ALSO 4 -- (PAUSE)
11 -- AND 5, 4 AND 5. I'M SHOWING YOU STATE'S EXHIBITS 2, 3, 4 AND
12 5. DID YOU EXAMINE -- AND LET ME CLARIFY. DID YOU EXAMINE
13 STATE'S EXHIBIT 2 AND 3, THESE TWO DOCUMENTS?

14 A YES, I DID.

15 Q AND WHAT WAS THE PURPOSE OF YOUR EXAMINATION?

16 A IT WAS TO MAKE A COMPARISON WITH KNOWN SAMPLES. THESE WERE
17 MY QUESTIONED ITEMS, AND I HAD KNOWN SAMPLES PROVIDED BY RANDALL
18 SMITH THAT I OBTAINED, AND I WAS TO MAKE A COMPARISON AS TO
19 WHETHER OR NOT HE WROTE THE QUESTIONED LETTERS.

20 Q ALL RIGHT. AND SO THESE TWO QUESTIONED LETTERS, MR. SMITH
21 CAME IN AND GAVE YOU A HANDWRITING SAMPLE; IS THAT CORRECT?

22 A YES, HE DID.

23 Q AND BASED ON THE HANDWRITING SAMPLE THAT HE GAVE YOU IS IT
24 -- WHAT IS YOUR OPINION AS TO WHO THE AUTHOR OF THOSE LETTERS IS?

25 A MY DETERMINATION WAS THAT RANDALL SMITH DID WRITE THE TWO

DAWN EDWARDS -- DIRECT BY MS. KEDNOCKER

1 QUESTIONED LETTERS.

2 MS. KEDNOCKER: ALL RIGHT. THE STATE MOVES TO ADMIT
3 STATE'S EXHIBIT -- AND, YOUR HONOR, THIS IS THE REDACTED COPY OF
4 STATE'S EXHIBIT 4 AND 5 INTO EVIDENCE AT THIS TIME.

5 MR. CREECH: YOUR HONOR, JUST SUBJECT TO OUR PREVIOUS
6 OBJECTIONS.

7 MS. KEDNOCKER: YOUR HONOR, PERMISSION TO PUBLISH STATE'S
8 EXHIBIT 4 TO THE JURY AT THIS TIME.

9 THE COURT: ALL RIGHT. OKAY. THE DOCUMENTS ARE IN
10 EVIDENCE.

11 MS. KEDNOCKER: I'M JUST PUBLISHING STATE'S EXHIBIT 4 AT
12 THIS POINT.

13 THE COURT: OKAY. ALL RIGHT. GO AHEAD.

14 (STATE'S EXHIBITS 4 AND 5, LETTERS, MOVED INTO EVIDENCE)

15 Q STATE'S EXHIBIT 4 IS DATED JANUARY 13TH, 2004. "DEAR STEVE,
16 I WANT YOU TO KNOW THAT I AM SORRY. I HOPE YOU CAN FIND IT IN
17 YOURSELF TO FORGIVE ME. I NEVER MEANT TO HURT ANYONE. I LOVE
18 YOU AND YOUR KIDS. I NEVER HAD A BROTHER AND YOU SEEM LIKE ONE
19 TO ME. I'VE TRIED TO BE AS HELPFUL TO YOU AS YOU'VE BEEN HELPFUL
20 TO ME. I'VE WAITED A FEW WEEKS TO WRITE YOU IN HOPES THAT SOME
21 OF YOUR ANGER MIGHT DIMINISH. I FELT THAT IN TIME IT MIGHT BE
22 MORE SINCERE. I'M READING A BOOK BY DR. WAYNE DYER CALLED REAL
23 MAGIC - CREATING MIRACLE IN EVERYDAY LIFE. THE FIRST CHAPTER
24 ASKS YOU TO THINK BACK 10 OR 20 YEARS IN YOUR PAST AND LOOK AT
25 WHAT MIRACLES HAVE ALREADY HAPPENED. QUITTING MY JOB AS A

DAWN EDWARDS -- DIRECT BY MS. KEDNOCKER

1 CHEMIST AND BECOMING A PHOTOGRAPHER WAS TOO. FATHERING THREE
2 WONDERFUL CHILDREN AFTER A DOCTOR GAVE ME A TWO PERCENT CHANCE OF
3 HAVING KIDS WAS ANOTHER. MAYBE THE GREATEST OF ALL. I WON'T
4 BORE YOU WITH THE REST. IF THESE MIRACLES CAN HAPPEN, I THINK
5 ALL OF YOU CAN FORGIVE ME AND I BELIEVE I CAN MAKE CHANGES IN MY
6 LIFE THAT ARE NOT SHORT OF BEING A MIRACLE. YOU ARE A BIG STRONG
7 GUY, BUT YOU HAVE A HEART TOO. I HOPE YOU CAN FIND A PLACE IN IT
8 TO FORGIVE ME. I HOPE ALL OF YOU CAN. I STILL LOVE AND CARE FOR
9 YOU ALL. I'M TRYING TO LEARN FROM MY MISTAKES. THE BOOK TEACHES
10 THAT EVEN OUR WORST MISTAKES SERVE AS A MEANS TO TEACH US, TO
11 MAKE US BETTER AND STRONGER. PLEASE TELL YOUR KIDS THAT I LOVE
12 THEM AND MISS THEM. I NEVER MEANT TO HURT ANYONE. I HOPE ONE
13 DAY TO MAKE UP FOR MY MISTAKES. YOU'VE BEEN A GOOD FRIEND TO ME.
14 I MISS YOU ALL. I HOPE THAT YOU WILL AT LEAST TRY TO FORGIVE ME.
15 PLEASE HELP NANCY IN ANYWAY YOU CAN WHILE I'M IN HERE. I WORRY
16 ABOUT HER AND THE KIDS. I WISH I WAS ABLE TO WORK AND SEND HER
17 MONEY. I DON'T KNOW HOW SHE'S GOING TO MAKE IT WITH WHAT SHE
18 EARNS. I STILL LOVE HER VERY MUCH AND HOPE BY SOME MIRACLE WE
19 CAN WORK THINGS OUT. I KNOW THAT YOU WILL BE THERE FOR NANCY,
20 LANE AND NASTASHA. THANK YOU IN ADVANCE. LANE LOOKS UP TO YOU.
21 TALK TO HIM AND HELP HIM. HE IS A GREAT KID. WATCH OUT FOR ALL
22 OF THEM. I KNOW YOU WILL. THANKS FOR READING. I HAVE A LOT TO
23 SAY TO YOU IN PERSON SOMEDAY. RANDY."

24 MS. KEDNOCKER: YOUR HONOR, THE STATE HAS NO FURTHER
25 QUESTIONS AT THIS TIME.

DAWN EDWARDS -- CROSS BY MR. CREECH

1 THE COURT: YES, SIR, MR. CREECH.

2 CROSS EXAMINATION BY MR. CREECH:

3 Q MS. EDWARDS, THANK YOU FOR BEING HERE. OF COURSE, YOU CAN'T
4 INTERPRET THESE LETTERS. YOU JUST SIMPLY CAME TO THE CONCLUSION
5 THAT RANDY SMITH WROTE THE LETTERS; IS THAT RIGHT?

6 A THAT'S RIGHT.

7 MR. CREECH: GREAT. THANK YOU SO MUCH. I HAVE NO FURTHER
8 QUESTIONS.

9 THE COURT: OKAY. ANY REDIRECT?

10 MS. KEDNOCKER: NO, SIR, JUDGE. THANK YOU.

11 THE COURT: ALL RIGHT. THANK YOU, MS. EDWARDS. YOU CAN
12 STEP DOWN.

13 (WITNESS STEPS DOWN AT 11:12 A.M.)

14 THE COURT: YES, MA'AM.

15 MS. KEDNOCKER: YOUR HONOR, IS THIS WITNESS FREE TO BE
16 RELEASED?

17 THE COURT: ANY OBJECTION?

18 MR. CREECH: I HAVE NO PROBLEM WITH THAT.

19 THE COURT: YES, MA'AM.

20 MS. KEDNOCKER: YOUR HONOR, AT THIS TIME, THE STATE CALLS
21 NANCY SMITH.

22 NANCY SMITH, HAVING BEEN DULY SWORN,
23 TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION BY MS. KEDNOCKER:

25 Q WHERE DO YOU LIVE, MS. SMITH?

NANCY SMITH -- DIRECT BY MS. KEDNOCKER

1 A NOW?

2 Q YES.

3 A 623 WILLOW CREEK COURT, SIMPSONVILLE.

4 Q OKAY. AND HOW LONG HAVE YOU LIVED THERE?

5 A TWO YEARS, ALMOST TWO YEARS.

6 Q DO YOU KNOW THIS DEFENDANT, RANDALL LANE SMITH, SR.?

7 A YES, MA'AM.

8 Q AND WHO IS HE?

9 A HE'S MY HUSBAND.

10 Q HOW MANY CHILDREN DO YOU HAVE, MS. SMITH?

11 A WE HAD THREE. ONE IS DECEASED.

12 Q AND WHAT ARE THE NAMES OF YOUR CHILDREN?

13 A LANE, NASTASHA AND JONATHAN IS THE ONE THAT IS DECEASED.

14 Q THROUGHOUT THE YEARS THAT YOU'VE BEEN MARRIED TO THIS
15 DEFENDANT HOW WOULD YOU CHARACTERIZE YOUR RELATIONSHIP WITH HIM?

16 A WE'RE LIKE ANY OTHER MARRIAGE. WE'VE HAD OUR UPS AND DOWNS.

17 Q ALL RIGHT. NANCY, DO YOU HAVE A -- DO YOU HAVE ANY
18 SIBLINGS?

19 A YES, ONE SISTER, TWO BROTHERS.

20 Q AND WHAT ARE THEIR NAMES?

21 A MY SISTER'S NAME IS DENISE. I HAVE TWO BROTHERS. ONE IS
22 STEVE AND THE OTHER ONE IS MARK.

23 Q DOES STEVE HAVE ANY CHILDREN?

24 A YES, MA'AM.

25 Q WHAT ARE THEIR NAMES?

- 1 A Minor ASHTON AND HALAYA.
- 2 Q HALAYA. HOW-- IT'S HALAYA?
- 3 A YES, MA'AM.
- 4 Q HOW OLD IS HALAYA?
- 5 A SHE JUST TURNED FIVE IN JUNE.
- 6 Q OKAY. I WANT TO TAKE YOU BACK TO THE FALL OF 2003, MS.
- 7 SMITH. DO YOU REMEMBER WHAT YOUR WORK SCHEDULE WAS LIKE BACK IN
- 8 THE FALL OF 2003?
- 9 A YES, MA'AM. THAT'S A BUSY TIME OF YEAR FOR RETAIL. WE
- 10 WORKED A LOT OF HOURS.
- 11 Q WHAT WAS YOUR GENERAL SCHEDULE? I APOLOGIZE. WHERE WERE
- 12 YOU WORKING IN THE FALL OF 2004?
- 13 A WAL-MART.
- 14 Q AND WHAT WAS YOUR GENERAL WORK SCHEDULE?
- 15 A I WORKED THIRD SHIFT. I WORKED 10:00 TILL 7:00. MY STOP
- 16 TIME IS NORMALLY 7:00, BUT BECAUSE OF THE TIME OF YEAR IT WAS, I
- 17 HAD TO WORK OVER A LOT.
- 18 Q AND DID YOU HAVE A SET SCHEDULE OR DID YOU COME IN ON
- 19 DIFFERENT DAYS? WHAT WAS YOUR SCHEDULE KIND OF LIKE ON DAYS OF
- 20 THE WEEK?
- 21 A IT WAS A SET SCHEDULE. I WAS OFF ON FRIDAYS -- I'M SORRY.
- 22 I WAS OFF ON SATURDAYS AND WEDNESDAYS.
- 23 Q OKAY. WHEN YOU WOULD WORK OVERNIGHT, WHO WATCHED YOUR
- 24 CHILDREN, LANE AND NASTASHA?
- 25 A RANDY.

NANCY SMITH -- DIRECT BY MS. KEDNOCKER .

1 Q BACK IN 2003, GOING BACK TO YOUR BROTHER STEVE, DID YOUR
2 BROTHER'S CHILDREN, Minor AND ASHTON STAY OVER AT YOUR HOUSE
3 SOMETIMES?

4 A YES, MA'AM.

5 Q AND WHAT WOULD CAUSE THEM TO HAVE TO STAY AT YOUR HOUSE?

6 A MY BROTHER WORKED A LOT OF OVERTIME. HE WORKED A LOT OF
7 HOURS OUT OF STATE AND OUT OF TOWN.

8 Q AND HOW OFTEN WOULD YOU SAY THAT ASHTON AND Minor WOULD
9 STAY OVER YOUR HOUSE?

10 A THREE, MAYBE FOUR TIMES A WEEK, MAYBE MORE, MAYBE LESS. IT
11 VARIES TO HIS SCHEDULE.

12 Q SO WAS THERE ANY SET SCHEDULE OR WAS IT A VARIED SCHEDULE
13 DEPENDING ON STEVE?

14 A IT VARIED.

15 Q DURING THE TIME THAT YOU WERE WORKING AND YOU WERE AT WAL-
16 MART WORKING THAT NIGHT SHIFT, WHO WAS AT HOME WITH THE CHILDREN
17 DURING THAT TIME?

18 A WHILE I WAS WORKING?

19 Q YES.

20 A RANDY.

21 Q AND WERE THERE ANY OTHER ADULTS IN THE HOUSE WHILE YOU WERE
22 WORKING AND HE WAS TAKING CARE OF THE KIDS?

23 A NO, MA'AM.

24 Q I WANT TO TAKE YOU BACK. DID YOU EVER BECOME AWARE OF
25 WHETHER -- DID YOU EVER BECOME AWARE THAT YOUR NEPHEW, Minor

NANCY SMITH -- DIRECT BY MS. KEDNOCKER

1 JULIAN, WAS SEXUALLY ASSAULTED?

2 A I DID ON DECEMBER THE 12TH.

3 Q ALL RIGHT. I WANT TO GO BACK TO THAT NIGHT. DO YOU
4 REMEMBER WHAT YOU WERE DOING ON DECEMBER 12TH, 2003?

5 A I WAS GETTING READY TO GO TO WORK. DO YOU WANT ME TO WALK
6 YOU THROUGH IT?

7 Q SURE.

8 A OKAY. I WAS GETTING READY TO GO TO WORK. THE PHONE RUNG.
9 I DIDN'T PAY IT TOO MUCH ATTENTION BECAUSE MY SON GETS CALLS ALL
10 THE TIME. I JUST ASSUMED IT WAS ONE OF THE KIDS. I DIDN'T PAY
11 IT TOO MUCH ATTENTION. I CONTINUED TO GET READY TO GO TO WORK.
12 I WAS RUNNING A LITTLE BIT LATE BECAUSE WE WERE TRYING TO KILL
13 SOME OVERTIME BECAUSE WE WERE NOT ALLOWED TO HAVE AS MUCH
14 OVERTIME AS WE WERE GETTING AT THAT TIME OF YEAR. AS I WAS
15 GETTING DRESSED -- RANDY KNOWS EXACTLY WHAT TIME I HAVE TO BE AT
16 WORK. THE PHONE STOPPED RINGING. THE NEXT THING I KNOW HE
17 STARTS THE VAN UP AND HE LEAVES. I THOUGHT THAT WAS KIND OF ODD
18 BECAUSE HE KNEW I HAD TO BE OUT -- I HAD TO LEAVE FOR WORK WITHIN
19 TEN MINUTES BECAUSE I HAD TO BE AT WORK. I THOUGHT THAT WAS KIND
20 OF ODD, THEN I LOOKED AT THE CALLER I.D. WHICH SOMETIMES IT
21 WORKS, SOMETIMES IT DOESN'T, IN OUR BEDROOM. ANYWAY, I TURNED
22 AROUND AND PICKED THE PHONE BACK UP AND I HIT THE NUMBER THAT WAS
23 SHOWING, *69.

24 Q YOU HIT THE REDIAL OR *69?

25 A YES, MA'AM. IT WAS MY NEPHEW THAT PICKED UP THE PHONE.

NANCY SMITH -- DIRECT BY MS. KEDNOCKER

1 Q WHICH NEPHEW PICKED UP THE PHONE?

2 A Minor.

3 Q CAN YOU DESCRIBE HIS Demeanor OR WHAT HE WAS ACTING LIKE

4 WHEN -- SO YOU CALLED BACK AND HE ANSWERS. WHAT WAS HIS Demeanor
5 LIKE?

6 A HYSTERICAL. HE WAS VERY DISTRAUGHT.

7 Q WHAT, IF ANYTHING, WAS HE SAYING TO YOU WHEN YOU CALLED
8 BACK?

9 A HE KEPT SAYING, "HE MOLESTED ME. HE MOLESTED ME. HE DID
10 IT." AND I WAS TRYING TO GET Minor TO CALM DOWN. I SAID,
11 "Minor WHAT?" AND HE KEPT TELLING ME. I SAID, "WHO DID THIS
12 TO YOU?" HE SAID, "YOUR HUSBAND, RANDY."

13 MR. CREECH: OBJECTION, YOUR HONOR.

14 MS. KEDNOCKER: EXCITED UTTERANCE IS WHAT THIS IS UNDER
15 NOT...

16 THE COURT: ALL RIGHT. OVERRULED.

17 MS. KEDNOCKER: THANK YOU.

18 Q SO WHEN HE STATED TO YOU THAT RANDY WAS MOLESTING HIM, WHAT
19 DID YOU DO AT THIS POINT?

20 A I ASKED HIM WHERE HE WAS. HE SAID HE WAS AT THE CHURCH. I
21 SAID, "YOU STAY RIGHT WHERE YOU'RE AT. I'M ON MY WAY." I
22 IMMEDIATELY PUT MY SHOES ON, GRABBED MY KEYS, HEADED DOWNSTAIRS
23 TO THE DOOR. AS I WAS GOING TO THE DOOR RANDY HAD JUST PULLED UP
24 IN THE VAN. HE TOOK ONE LOOK AT ME, DIDN'T SAY A WORD, WALKED
25 BACK UPSTAIRS. I GOT IN THE VAN AND I LEFT AND WENT UP TO THE

NANCY SMITH -- DIRECT BY MS. KEDNOCKER

1 CHURCH.

2 Q WHEN YOU GOT UP TO THE CHURCH WHAT DID YOU OBSERVE?

3 A THE BOYS WAS OUTSIDE. IT TOOK ME A FEW MINUTES TO KIND OF
4 FIGURE OUT WHERE THEY WERE. IT WAS DARK. IT WAS AROUND -- IT
5 WAS A LITTLE AFTER 10:00. I GOT THEM AND I TOLD THEM TO GET IN
6 THE CAR.

7 Q OKAY. THE BOYS---

8 A IN THE VAN, YES, MA'AM.

9 Q OKAY. WHICH BOYS DID YOU TELL TO GET IN THE VAN?

10 A Minor LANE AND ASHTON.

11 Q I DON'T WANT TO DISCUSS THE CONVERSATION YOU HAD WITH ASHTON
12 OR LANE.

13 A YES, MA'AM.

14 Q DID YOU SPEAK WITH ALL THREE BOYS?

15 A (INDICATES AFFIRMATIVE RESPONSE)

16 Q LET'S NOT GET INTO THE CONVERSATIONS WITH THOSE TWO.

17 A OKAY.

18 Q DID YOU HAVE A CONVERSATION ONE-ON-ONE WITH Minor IN THE
19 VAN?

20 A YES, MA'AM.

21 Q AND DID HE STATE TO YOU WHAT HAD HAPPENED TO HIM?

22 A YES, MA'AM. I TOLD ALL THE KIDS TO GET OUT OF THE CAR.

23 Q OKAY. WHEN Minor WAS IN THE VAN DID HE INDICATE TO YOU
24 THE TIME OR TIMES THAT HE HAD BEEN SEXUALLY ASSAULTED BY THIS
25 DEFENDANT?

NANCY SMITH -- DIRECT BY MS. KEDNOCKER

1 A HE WAS STILL VERY HYSTERICAL.

2 Q OKAY. SO HE DIDN'T GIVE YOU A TIME FRAME?

3 A NO.

4 Q AND AT THIS POINT DID HE INDICATE THE PLACE OR PLACES?

5 A NOT AT THAT POINT, NO. HE JUST KEPT TELLING ME THAT "HE
6 TOUCHED ME" AND THAT "HE MOLESTED ME."

7 Q OKAY. ALL RIGHT. SO AT THIS POINT HE'S JUST UPSET. YOU
8 SPEAK TO Minor

9 A YES, MA'AM.

10 Q WHAT HAPPENS AFTER YOU SPEAK WITH THE BOYS? THEY GET OUT OF
11 THE VAN, YOU'VE SPOKEN TO Minor WHAT HAPPENS THEN?

12 A I TOLD THEM WE NEED TO GO BACK TO THE HOUSE, AND I WANTED
13 THEM TO GO TO THE GAZEBO. THERE'S A GAZEBO ABOUT MIDWAY DOWN
14 FROM WHERE WE LIVE AT. I TOLD THEM TO GO THERE TILL I GET THIS
15 STRAIGHTENED OUT.

16 Q YOU TOLD THE KIDS TO GO TO THE GAZEBO?

17 A YES, MA'AM, BECAUSE THAT WAS A SAFE PLACE FOR THEM.

18 Q AT THIS POINT YOU TELL THE KIDS TO GO TO THE GAZEBO?

19 A YES, MA'AM.

20 Q WHAT ARE YOU GOING TO DO?

21 A CONFRONT RANDY.

22 Q SO TELL THE JURY ABOUT HOW THAT WENT DOWN.

23 A I WENT UP -- I WAS FURIOUS. I WENT UPSTAIRS. HE WAS
24 SITTING AT THE EDGE -- WE HAD THIS HUGE WATERBED. HE WAS SITTING
25 AT THE EDGE OF IT JUST LOOKING AT ME AND -- DO YOU REALLY WANT ME

NANCY SMITH -- DIRECT BY MS. KEDNOCKER

1 TO USE THE EXACT WORDS THAT I USED?

2 Q YES.

3 A I JUST TOOK ONE LOOK AT HIM AND I SAID, "WHAT THE FUCK DID
4 YOU DO TO Minor

5 Q WHAT DID HE SAY?

6 A HE JUST LOOKED AT ME AND THE LOOK ON HIS FACE TOLD ME
7 EVERYTHING BASICALLY. HE SAID -- FIRST, HE DENIED IT. WE GOT
8 INTO THIS HUGE ARGUMENT. HE KEPT DENYING IT FOR A WHILE. AND
9 THEN HE FINALLY ADMITTED TO ME THAT HE DID. I SAID, "WHAT DID
10 YOU DO?" HE SAID THAT HE -- THAT Minor CAME ON TO HIM.

11 Q HE SAID Minor CAME ON TO HIM?

12 A CAME ON TO HIM. Minor STARTED KISSING HIM FIRST. AND AT
13 THAT POINT I SAID, "YOU ARE THE ADULT." HE SAID IT DIDN'T MATTER.
14 HE KEPT SAYING Minor KEPT COMING ON TO HIM.

15 Q WHEN HE'S TELLING YOU Minor CAME ON TO HIM AND WAS KISSING
16 HIM---

17 A UH-HUH (AFFIRMATIVE).

18 Q ---DID THIS MAKE YOU ANGRY?

19 A ANGRY AND SICK.

20 Q OKAY. WHAT, IF ANYTHING, DID YOU DO AT THIS POINT?

21 A WE GOT INTO ANOTHER HUGE ARGUMENT. THEN HE TOLD ME -- THEN
22 HE KIND OF TOLD ME THAT HE DID GO DOWN ON Minor

23 Q OKAY.

24 A HE KEPT SWITCHING AROUND, SAYING THAT I WASN'T GIVING HIM
25 WHAT HE NEEDED, THAT Minor WAS THERE AND THEN---

NANCY SMITH -- DIRECT BY MS. KEDNOCKER

1 Q TELL ME ABOUT WHEN HE WAS GIVING YOU WHAT YOU NEEDED?

2 A I WASN'T GIVING HIM WHAT HE NEEDED.

3 Q OKAY. HOW WAS Y'ALL'S SEX LIFE AROUND THIS POINT? WAS YOUR
4 SEX LIFE WITH RANDALL SMITH -- WERE Y'ALL HAVING A NORMAL SEX
5 LIFE OR WAS IT IN SOME WAY...

6 A IT WAS OFF A LITTLE BIT.

7 Q OKAY. SO HE'S SAYING YOU'RE NOT GIVING HIM WHAT HE WANTS.
8 HOW DID THE CONVERSATION END?

9 A THEN HE TURNED AROUND AND LOOKED AT ME AND SAID, "IT WOULD
10 HAVE BEEN A WHOLE LOT BETTER IF Minor WAS MORE COOPERATIVE."

11 Q OKAY. AND WHEN HE SAID THAT TO YOU WHAT DID YOU DO?

12 A PICKED UP A PAIR OF SCISSORS AND THREATENED HIM WITH THEM.

13 Q PICKED UP A PAIR OF SCISSORS. ALL RIGHT. WHEN YOU PICKED
14 UP THE SCISSORS, WHAT HAPPENED AFTER THAT?

15 A I DID HONESTLY TAKE A STEP TOWARD HIM, BUT THEN I STOPPED
16 BECAUSE I THINK Minor NEEDS JUSTICE. I TURNED AROUND AND TOLD
17 HIM TO PACK HIS CLOTHES AND GET OUT.

18 Q DID YOU GIVE HIM A TIME FRAME WHEN YOU WANTED HIM OUT?

19 A I TOLD HIM WITHIN TWO HOURS. THAT SHOULD HAVE GAVE HIM
20 ENOUGH TIME TO GET HIS CLOTHES AND GET OUT.

21 Q DID HE END UP LEAVING IN TWO HOURS?

22 A CLOSE TO IT. ABOUT THAT.

23 Q DID HE LEAVE THAT NIGHT OR THE NEXT MORNING?

24 A IT WAS MORE TOWARDS THE NEXT MORNING BECAUSE WE WERE ARGUING
25 AN AWFUL LOT HALF THE NIGHT.

NANCY SMITH -- DIRECT BY MS. KEDNOCKER

1 Q AFTER YOU FINISHED TALKING TO RANDY, WHERE WERE THE KIDS?
2 HOW DID THEY---

3 A THEY WERE STILL AT THE GAZEBO.

4 Q OKAY. HOW DID THEY GET BACK TO THE HOUSE?

5 A I WENT AND GOT THEM BECAUSE I KNEW AT THIS POINT THEY WERE
6 REALLY GETTING UPSET.

7 Q SO YOU FINISH FIGHTING WITH RANDY AND GO GET THE KIDS?

8 A YES, MA'AM.

9 Q AT THIS POINT WHERE IS RANDY? WHEN YOU COME BACK TO THE
10 HOUSE WITH THE KIDS, WHERE IS RANDY?

11 A I LOCKED HIM IN THE BEDROOM.

12 Q ALL RIGHT. WHERE DID EVERYBODY THAT NIGHT SLEEP? WHEN YOU
13 CAME BACK TO THE HOUSE YOU SAID YOU WERE KICKING HIM OUT. DID HE
14 IN FACT LEAVE THAT NIGHT OR DID HE LEAVE THE NEXT MORNING?

15 A IT WAS TOWARDS THE NEXT MORNING BECAUSE WE -- IT WAS TOWARDS
16 THE MORNING WE GOT THROUGH ARGUING.

17 Q OKAY. WHERE DID EVERYBODY SLEEP THAT NIGHT?

18 A THE KIDS SLEPT DOWNSTAIRS. I SLEPT IN FRONT OF HIS DOOR TO
19 MAKE SURE HE DID NOT GET OUT, SO HE COULD NOT GET ANYWHERE NEAR
20 THOSE CHILDREN AGAIN.

21 Q THE NEXT MORNING -- OR WHEN THIS DEFENDANT LEFT TOWARDS
22 MORNING, THE NEXT MORNING, WHAT, IF ANYTHING, DID YOU SAY TO HIM
23 WHEN HE WAS LEAVING? OR DID Y'ALL TALK MUCH MORE AT THAT POINT?

24 A WE DIDN'T TALK THAT MUCH MORE, NOT MUCH MORE.

25 Q WHAT DID HE LEAVE IN? WHAT KIND OF VEHICLE DID HE LEAVE IN?

NANCY SMITH -- DIRECT BY MS. KEDNOCKER

1 A WE ONLY HAD ONE VAN, AND IT WAS AN AEROSTAR. HE LEFT IN IT.
2 WE DID HAVE A SLIGHT ARGUMENT OVER THAT. I TOLD HIM HE NEEDED TO
3 CALL HIS FRIENDS BECAUSE HE'S NOT TAKING THE VAN BECAUSE I NEEDED
4 TO GET THE KIDS TO SCHOOL, AND THEY HAD DOCTOR'S APPOINTMENTS.
5 HE TOLD ME HE COULD CARE LESS ABOUT THAT.

6 Q OKAY. SO YOU ARGUED ABOUT THE VAN. WHAT COLOR WAS THE
7 VAN?

8 A GREEN.

9 Q GREEN.

10 A I THINK IT WAS A '92.

11 Q WHAT FRIENDS DID YOU SAY HE COULD GO GET A VAN FROM?

12 A ANY FRIEND HE COULD FIND. I DIDN'T CARE.

13 Q ALL RIGHT. SO HE LEAVES IN THE VAN. DID YOU TALK WITH
14 Minor THAT MORNING AFTER RANDY LEFT?

15 A I LET THE KIDS SLEEP FOR A WHILE. THEY WERE EMOTIONALLY
16 EXHAUSTED. AND I ALSO KNOW Minor HE WAS WITHDRAWN, AND I
17 KNEW IF I PUSHED HIM ANY FURTHER THAN WHERE HE HAD BEEN AT THIS
18 POINT, HE WAS GOING TO COMPLETELY SHUT DOWN. I LET HIM SLEEP FOR
19 A COUPLE MORE HOURS, THEN I WOKE HIM UP.

20 Q WHEN YOU WOKE HIM UP WHAT DID YOU SAY TO HIM? DID YOU TALK
21 ABOUT WHETHER HE HAD TO TELL HIS DAD? OR HOW DID THAT
22 CONVERSATION GO DOWN ABOUT HOW STEVE WAS GOING TO FIND OUT ABOUT
23 THIS WHOLE THING?

24 A WELL, I KNEW HE WASN'T GOING TO TELL ME TOO MUCH MORE THAN
25 WHAT HE'S ALREADY TOLD ME. I SAT HIM DOWN. I SAID, "WE NEED TO

NANCY SMITH -- DIRECT BY MS. KEDNOCKER

1 CALL YOUR DAD." HE SAID HE COULDN'T. I SAID, "WE'RE GOING TO
2 HAVE TO, HONEY. YOU CANNOT LIVE WITH THIS INSIDE YOU. YOU'RE
3 GOING TO NEED SOME HELP."

4 Q HOW DID HE REACT WHEN YOU BROUGHT UP THE PROSPECT OF CALLING
5 HIS DAD?

6 A HE WAS VERY DISTRAUGHT. HE WAS VERY UPSET.

7 Q OKAY. SO YOU TELL HIM, "YOU CAN'T KEEP THIS INSIDE YOU.
8 WE'VE GOT TO CALL YOUR DAD."

9 A YEAH.

10 Q DID YOU IN FACT CALL STEVE?

11 A YES, MA'AM. I WANTED Minor TO COME TO THE REALIZATION
12 THAT HE NEEDS TO TELL HIS DAD.

13 Q OKAY. TELL ME ABOUT THAT.

14 A I KNEW THERE WAS SOMETHING MORE THAT Minor WAS NOT TELLING
15 ME. I DIDN'T KNOW WHETHER HE JUST DIDN'T WANT TO TELL ME OR HE
16 JUST PUSHED IT DOWN FOR SO LONG. I KNEW HE WOULDN'T. SO WHAT I
17 DID WAS, I GAVE HIM A LITTLE BIT OF TIME. I SAID, "I'M GOING TO
18 GIVE YOU SOME TIME. WE'RE GOING TO HAVE TO CALL YOUR DAD
19 EVENTUALLY BECAUSE HE NEEDS TO KNOW THIS." SO WHAT I DID WAS I
20 GAVE HIM LIKE ANOTHER HALF HOUR, AND THAT WAS ENOUGH TIME FOR HIM
21 TO COME TO ME AND SAY, "I'M READY TO TALK TO MY DAD."

22 Q OKAY. SO WERE YOU THE ONE WHO IN FACT CALLED STEVE TO COME
23 OVER THERE?

24 A YES, MA'AM. I CALLED STEVE. HE WAS ON THE OTHER SIDE OF
25 ANDERSON. I TOLD HIM -- I SAID -- I ASKED HIM WHERE HE WAS AND

NANCY SMITH -- DIRECT BY MS. KEDNOCKER

1 HE TOLD ME. I SAID, "YOU NEED TO COME ON HOME BECAUSE WE NEED TO
2 TALK."

3 Q WHAT, IF ANYTHING, DID YOU -- WHEN YOU SAID, "YOU NEED TO
4 COME HOME. WE NEED TO TALK," DID YOU TELL HIM RIGHT THEN WHAT
5 WAS GOING ON?

6 A NO, MA'AM.

7 Q OKAY.

8 A I WAS NOT GOING TO DISCUSS IT OVER THE PHONE.

9 Q WHEN STEVE CAME OVER THERE WHAT DID YOU SAY TO HIM AT THAT
10 POINT?

11 A THE KIDS WERE NOT AROUND. I MADE THEM GO BACK OUTSIDE THE
12 GAZEBO. I KNEW IT WAS GOING TO BE HARD ENOUGH TO DISCUSS THIS
13 WITHOUT HAVING HIM AROUND. WE WERE IN THE KITCHEN, AND I TOLD
14 HIM. I TOLD HIM WHAT Minor TOLD ME.

15 Q OKAY.

16 A MY BROTHER DIDN'T SAY ANYTHING. HE JUST ASKED ME WHERE
17 RANDY WAS, AND I SAID, "I KICKED HIM OUT." I HAD NO IDEA WHERE
18 HE WAS.

19 Q HOW DID YOUR BROTHER TAKE THIS NEWS? HOW DID HE REACT?

20 A HE DIDN'T SAY ANYTHING. HE JUST STOOD THERE LIKE HE WAS IN
21 SHOCK.

22 Q DO YOU KNOW YOUR BROTHER PRETTY WELL?

23 A YES, MA'AM, I DO.

24 Q CAN YOU TELL WHEN HE IS ANGRY?

25 A YES, MA'AM, I CAN.

NANCY SMITH -- DIRECT BY MS. KEDNOCKER

1 Q DID HEARING THIS NEWS MAKE HIM ANGRY?

2 A VERY MUCH SO, YES, MA'AM.

3 Q WERE YOU CONCERNED ABOUT TELLING HIM THIS?

4 A NO, BECAUSE HE NEEDED TO KNOW THIS.

5 Q ALL RIGHT. HE'S ANGRY. AT THIS POINT HE DOESN'T SAY
6 ANYTHING. WHEN DOES HE LEAVE?

7 A HE STANDS THERE PROBABLY ABOUT FIVE OR TEN MINUTES AND THEN
8 HE ASKED ME WHERE RANDY IS. I SAID, "I THREW HIM OUT. I DON'T
9 KNOW WHERE HE'S AT." HE PROBABLY STANDS THERE, I DON'T KNOW,
10 IT'S ALMOST LIKE TIME STOOD STILL, AND THEN HE SAID, WELL,
11 WHERE'S THE BOYS? HE WENT AND GOT THE BOYS, AND THEY LEFT.

12 Q HOW DID YOU FEEL -- WHEN YOU FOUND THIS OUT AND THAT THIS
13 HAPPENED WHEN YOU WERE AWAY FROM HOME, HOW DID IT MAKE YOU FEEL?

14 A AT FIRST I WAS NUMB. I DIDN'T KNOW HOW TO FEEL. I WAS
15 SICK. I JUST THOUGHT IT WAS REALLY SICK TO MY STOMACH TO THINK
16 THAT A GROWN MAN WOULD DO THIS TO BEGIN WITH. I WAS VERY ANGRY.

17 Q AFTER STEVE LEFT AND HE TOOK THE BOYS DID YOU -- WHEN WAS
18 THE NEXT TIME YOU TALKED TO STEVE ABOUT Minor AND WHAT WAS
19 GOING ON WITH Minor

20 A THIS WAS ON A SATURDAY. I GOT A CALL FROM STEVE SUNDAY.

21 Q YOU GOT A CALL FROM STEVE SUNDAY. NOW, HOW HAD Y'ALL LEFT
22 THINGS ABOUT WHAT WAS GOING TO HAPPEN, YOU KNOW, WHETHER THE
23 POLICE WERE GOING TO BE CALLED OR WHAT WAS GOING TO HAPPEN AT
24 THIS POINT?

25 A RIGHT BEFORE HE LEFT I TOLD HIM I WOULD DO WHATEVER WE NEED

NANCY SMITH -- DIRECT BY MS. KEDNOCKER

1 TO DO. IF YOU WANT TO GO TO THE POLICE, WE'LL GO TO THE POLICE.

2 I WILL GO WITH YOU. WE WILL BE THERE.

3 Q SO YOU LEFT HIM WITH TIME TO TRY TO FIGURE THIS OUT?

4 A YES, MA'AM.

5 Q SUNDAY STEVE CALLS YOU BACK. WITHOUT TELLING ME WHAT HE
6 SAID IN THIS CONVERSATION, AT THIS POINT, DO POLICE END UP COMING
7 OVER TO YOUR HOUSE AFTER STEVE CALLED YOU?

8 A YES, MA'AM.

9 Q AND DID YOU SPEAK WITH A POLICE OFFICER AT YOUR HOUSE
10 RELATED TO THIS CASE?

11 A YES, MA'AM.

12 Q AT THIS POINT RANDY IS NO LONGER AT YOUR HOUSE; IS THAT
13 ACCURATE?

14 A YES, MA'AM.

15 Q THIS IS SUNDAY?

16 A UH-HUH (AFFIRMATIVE).

17 Q WERE YOU PRESENT OR DID YOU GO WITH Minor FOR A MEDICAL
18 EXAM EVER?

19 A YES, MA'AM, BOTH TIMES.

20 Q OKAY. AND WHEN AS THE FIRST TIME YOU CAN REMEMBER GOING TO
21 GET A MEDICAL EXAM?

22 A WE WENT -- THEY HAD SUGGESTED THAT WE GO TO THE EMERGENCY
23 ROOM. I WANT TO SAY THAT WAS ON A MONDAY.

24 Q ALL RIGHT.

25 A I MAY BE WRONG ON THE DATE. I'M PRETTY SURE IT WAS ON A

NANCY SMITH -- DIRECT BY MS. KEDNOCKER

1 MONDAY.

2 Q SO YOU GO MONDAY TO THE EMERGENCY ROOM?

3 A YES, MA'AM.

4 Q WERE YOU PRESENT FOR THAT?

5 A YES, MA'AM.

6 Q DID YOU SPEAK WITH THIS LADY, LORRAINE HENDERSON, RELATED TO
7 THIS CASE SHORTLY AFTER MONDAY THE 15TH?

8 A YES, MA'AM.

9 Q AND DID SHE TAKE A STATEMENT FROM YOU ABOUT WHAT YOU KNEW
10 RELATED TO THE CASE?

11 A YES, MA'AM.

12 Q NANCY, DID SHE -- AT THIS POINT STEVE -- PARDON ME. RANDY
13 IS NO LONGER AT THE HOUSE?

14 A YES, MA'AM.

15 Q DID YOU HAVE ANY IDEA WHERE HE MIGHT BE?

16 A HE HAD CALLED ME AT WORK THAT FOLLOWING TUESDAY, I BELIEVE.

17 Q OKAY.

18 A HE WAS ON HIS WAY TO ATLANTA. HE NEEDED TIME TO THINK. AND
19 HE ASKED ME IF -- DO YOU WANT ME TO TELL YOU WHAT HE ASKED ME?

20 MS. KEDNOCKER: YOUR HONOR, MAY WE APPROACH BRIEFLY?

21 THE COURT: OKAY.

22 (BENCH CONFERENCE OFF RECORD FROM 11:31 TO 11:32 A.M.)

23 Q ALL RIGHT. SO AT WORK -- WHEN HE CALLED YOU AT WORK, I
24 DON'T WANT TO DISCUSS ANYTHING OTHER THAN -- I DON'T WANT TO
25 DISCUSS ANY CONVERSATIONS RELATED TO ANY OF YOUR OTHER CHILDREN.

NANCY SMITH -- DIRECT BY MS. KEDNOCKER

1 A OH, IT WASN'T ABOUT THEM.

2 Q OKAY. GO AHEAD.

3 A HE ASKED ME HOW MAD STEVE WAS.

4 Q OKAY.

5 A I SAID, "WELL, HE'S NOT TOO HAPPY AT THIS POINT." I HAD TO
6 BE VERY CAREFUL WHAT I SAID BECAUSE I WAS ON A WORK PHONE AT THE
7 TIME AND I WAS IN THE LOUNGE. I STEPPED OUT OF THE LOUNGE AND HE
8 ASKED IF THERE WAS AN ARREST WARRANT OUT FOR HIM.

9 Q HE ASKED IF THERE WAS AN ARREST WARRANT OUT FOR HIM?

10 A UH-HUH (AFFIRMATIVE). I ASKED HIM WHERE HE WAS GOING
11 BECAUSE I COULD TELL THAT HE WAS IN TRAFFIC. HE SAID HE WAS ON
12 HIS WAY TO ATLANTA.

13 Q WHAT DID YOU SAY ABOUT THE ARREST WARRANT?

14 A I DIDN'T SAY ANYTHING BECAUSE I WAS WORRIED WHAT HE WAS
15 GOING TO DO.

16 Q ALL RIGHT. SO DURING THIS TIME -- HE CALLED YOU AT WORK?

17 A YES, MA'AM.

18 Q DID HE CALL OTHER TIMES FROM OTHER LOCATIONS?

19 A YES, MA'AM, FROM SEVERAL LOCATIONS. THAT WAS THE ONLY TIME
20 HE CALLED ME AT WORK. THE REST OF THE TIME HE KNEW MY SCHEDULE,
21 SO HE WOULD CALL WHILE I WAS AT WORK.

22 Q ALL RIGHT. AND WHEN DID YOU SEE THIS DEFENDANT AGAIN?
23 BETWEEN DECEMBER 12TH WHEN HE LEFT, WHEN DID YOU NEXT SEE THIS
24 DEFENDANT?

25 A DECEMBER 24TH.

NANCY SMITH -- DIRECT BY MS. KEDNOCKER

1 Q TELL ME ABOUT THAT DAY.

2 A HE -- LIKE I SAID, HE WOULD RANDOMLY CALL, AND HE CALLED
3 CHRISTMAS EVE, AND I WAS ALREADY TOLD TO MAKE SURE THAT I TRY TO
4 TALK HIM BACK INTO COMING BACK INTO THE STATE. HE CALLED AND
5 TOLD ME HE WAS ON HIS WAY BACK IN THE STATE AND HE WANTED TO
6 MEET. I SAID OKAY. SO HE CAME BY THE HOUSE AND HE JUST WALKED
7 IN THE DOOR LIKE HE HAD NEVER LEFT. I JUMPED UP. I BEGGED HIM
8 TO GO BACK OUTSIDE, AND HE SAID -- HE WAS DRIVING A FRIEND'S
9 JEEP, A CHEROKEE JEEP. I ASKED HIM WHERE HE GOT THE JEEP FROM.
10 HE SAID HE BORROWED IT.

11 Q LET ME ASK YOU THIS.

12 A YES, MA'AM.

13 Q YOU SAID HE LEFT IN THE VAN?

14 A YES, MA'AM.

15 Q HOW DID YOU END UP GETTING THE VAN BACK IF HE SHOWS BACK UP
16 IN A JEEP?

17 A HE LEFT IT ON THE SIDE OF THE ROAD.

18 Q AND DID HE TELL YOU HE WAS DOING THAT DURING THE---

19 A THE NIGHT THAT HE CALLED ME AT WORK, BECAUSE HE WAS
20 LAUGHING. HE ASKED ME, "WELL, DID YOU FIND THE VAN?"

21 Q ALL RIGHT.

22 A THAT WAS WHEN HE HAD BORROWED THE CHEROKEE JEEP TO GO TO
23 ATLANTA FROM ANOTHER FRIEND.

24 Q ALL RIGHT. SO GOING BACK TO DECEMBER 24TH WHEN HE WALKS IN
25 THE HOUSE AND HE'S DRIVING THIS DIFFERENT VEHICLE---

NANCY SMITH -- DIRECT BY MS. KEDNOCKER

1 A YES, MA'AM.

2 Q PICK UP FROM THERE. I'M SORRY.

3 A HE LOOKS AT ME AND HE TELLS ME, HE SAYS, "WHY DON'T YOU LET
4 ME TAKE THE KIDS TO MY PARENTS WHILE YOU PACK UP AND WE'LL GO
5 AWAY FOR A ROMANTIC WEEKEND SO WE CAN TALK?" I SAID, "NO, YOU'RE
6 NOT TAKING MY KIDS NOWHERE." I SAID, "YOU WANT TO TALK? WE'LL
7 TALK. BUT YOU'RE NOT GETTING ANYWHERE NEAR ANY CHILD." SO HE
8 SAID -- I SAID, "WHY DON'T WE JUST GO TO THE WAFFLE HOUSE?" HE
9 SAID, NO, HE WANTS SOME PLACE THAT'S QUIETER. SO HE WANTED TO GO
10 TO PERKINS, WHICH IS ON WOODRUFF ROAD.

11 Q ALL RIGHT. SO TELL ME ABOUT HOW IT GOT COORDINATED THAT YOU
12 WOULD MEET HIM AT PERKINS.

13 A OKAY. I RANDOMLY SAID TWO O'CLOCK. I MEAN, BY THEN IT WAS
14 A LITTLE AFTER -- IT WAS PROBABLY CLOSE TO 1:00. I CALLED
15 OFFICER HENDERSON AND I TOLD HER, AND SHE TOLD ME, SHE SAID, GO
16 AHEAD AND MEET HIM UP THERE AND THEN SHE'LL TAKE CARE OF THE REST
17 OF IT.

18 Q ALL RIGHT. SO YOU MET HIM AT PERKINS?

19 A YES, MA'AM.

20 Q AND HE WAS ARRESTED AT PERKINS?

21 A YES, MA'AM.

22 Q I WANT TO SHOW YOU WHAT'S MARKED AS STATE'S EXHIBIT 4 AND 5.

23 A SORRY.

24 Q DO YOU RECOGNIZE THESE DOCUMENTS?

25 A YES, MA'AM.

NANCY SMITH -- DIRECT BY MS. KEDNOCKER

1 Q AND HOW DO YOU RECOGNIZE THEM?

2 A THOSE ARE LETTERS HE SENT ME FROM JAIL.

3 Q I'M SORRY. CAN YOU REPEAT THAT?

4 A I'M SORRY. THOSE LETTERS THAT HE SENT ME FROM GREENVILLE
5 COUNTY.

6 Q WHEN HE...

7 A WHEN HE WAS INCARCERATED, YES, MA'AM.

8 Q ALL RIGHT. WHEN RANDY WAS -- SO HE WAS ARRESTED ON DECEMBER
9 24TH?

10 A YES, MA'AM.

11 Q AND DURING THE TIME THAT HE WAS INCARCERATED ON THE CHARGE
12 RANDY WROTE YOU THOSE LETTERS; IS THAT CORRECT?

13 A YES, MA'AM.

14 Q DID RANDY WRITE YOU OTHER LETTERS?

15 A YEAH, HE WROTE ME QUITE A FEW.

16 Q SO HE WROTE YOU QUITE A FEW LETTERS DURING THIS TIME. DID
17 YOU END UP WRITING HIM LETTERS BACK?

18 A YEAH, I WROTE HIM SOME BACK.

19 Q ALL RIGHT. HAVE YOU LOOKED DIRECTLY AT STATE'S EXHIBIT 4, A
20 LETTER THAT SAYS, "DEAR STEVE"?

21 A YES, MA'AM.

22 Q ON JANUARY 13TH?

23 A YES, MA'AM.

24 Q SO DID THAT LETTER GET MAILED TO YOU TO GIVE TO STEVE OR HOW
25 DID THAT LETTER COME INTO YOUR POSSESSION?

NANCY SMITH -- DIRECT BY MS. KEDNOCKER

1 A HE MAILED IT TO ME TO GIVE TO STEVE.

2 Q WHEN YOU RECEIVED THE LETTER DID YOU GIVE IT TO STEVE?

3 A NO, MA'AM.

4 Q WHY DIDN'T YOU GIVE IT TO STEVE?

5 A BASICALLY, AFTER I READ IT, I PUT IT UP.

6 Q WHAT DID YOU THINK STEVE'S REACTION WOULD BE TO THAT LETTER?

7 A IT WOULD ONLY MAKE HIM MADDER.

8 Q SO WHEN YOU RECEIVED THIS BACK IN JANUARY OF 2004 YOU NEVER
9 GAVE IT TO YOUR BROTHER?

10 A NO, MA'AM.

11 Q BECAUSE YOU THOUGHT IT WOULD MAKE HIM MADDER?

12 A I KNEW IT WOULD MAKE HIM MADDER. AND I FIGURED THE WAY HE
13 FELT RIGHT NOW IT JUST -- IT WOULD NOT DO ANY GOOD. IT WOULD
14 JUST BE LIKE RUBBING SALT IN A WOUND.

15 Q GOING BACK TO THIS TIME PERIOD ARE YOU AWARE OF ANY CONFLICT
16 WITH YOUR HUSBAND AND YOUR BROTHER THAT WOULD CAUSE HIM, RANDY,
17 TO WRITE, "I HOPE YOU CAN FIND IT IN YOURSELF TO FORGIVE ME"?
18 WAS THERE ANYTHING YOU CAN IMAGINE THAT RANDY HAD DONE TO STEVE
19 TO ASK FOR FORGIVENESS ON JANUARY 13TH, 2004, THAT YOU KNOW OF,
20 JUST PERSONAL KNOWLEDGE? THAT'S SIMPLY THE QUESTION.

21 A NO. THEY GOT ALONG KIND OF WELL, TO BE HONEST.

22 Q ALL RIGHT. GOING BACK TO Minor --

23 MS. KEDNOCKER: BEG THE COURT'S INDULGENCE ONE MOMENT.

24 (PAUSE) NANCY, I HAVE NO FURTHER QUESTIONS AT THIS TIME.

25 THE COURT: YES, SIR, MR. CREECH.

NANCY SMITH -- CROSS BY MR. CREECH

1 MR. CREECH: THANK YOU, YOUR HONOR.

2 CROSS EXAMINATION BY MR. CREECH:

3 Q MRS. SMITH, WHEN YOU SAY THAT RANDY SMITH IS YOUR HUSBAND,
4 THAT'S NOT TRUE. HE'S YOUR EX-HUSBAND, IS THAT RIGHT?

5 A NO, HE'S STILL MY HUSBAND.

6 Q SO Y'ALL ARE STILL MARRIED?

7 A YES, SIR.

8 Q YOU'RE NOT DIVORCED?

9 A NO, SIR.

10 Q DID YOU EVER FILE FOR DIVORCE?

11 A I DID, BUT HE CONTESTED IT.

12 Q SO THAT'S STILL PENDING IN THE FAMILY COURT. IS THAT YOUR
13 TESTIMONY?

14 A MY LAWYER CLOSED THE CASE BECAUSE I DIDN'T HAVE THE REST OF
15 THE MONEY TO COME UP WITH TO FIGHT A CONTESTED DIVORCE.

16 Q OKAY. BUT YOU WANT A DIVORCE, RIGHT? YOU SOUGHT DIVORCE,
17 CORRECT?

18 A WHAT NOW?

19 Q YOU WANTED A DIVORCE AND YOU SOUGHT A DIVORCE, CORRECT?

20 A YES, SIR.

21 Q NOW, YOU SAY THAT ON THE NIGHT YOU WENT UP TO THE CHURCH AND
22 WENT TO THE OFFICE AND TALKED TO ALL THE KIDS AND EVERYTHING YOU
23 SAID THAT THE PHONE RANG AND YOU THOUGHT IT WAS ONE OF Minor OR
24 LANE'S FRIENDS; IS THAT RIGHT?

25 A YES, SIR.

NANCY SMITH -- CROSS BY MR. CREECH

1 Q AND YOU SAID RANDY ANSWERED THE PHONE AND HE THEN WENT UP TO
2 THE CHURCH; IS THAT RIGHT?

3 A (INDICATES AFFIRMATIVE RESPONSE)

4 Q AND HE NEVER TOLD YOU WHO IT WAS ON THE PHONE AND YOU
5 THOUGHT THAT WAS KIND OF SUSPICIOUS OR FUNNY; IS THAT CORRECT?

6 A YES, SIR.

7 Q AND HE NEVER TOLD YOU WHO WAS ON THE PHONE; IS THAT RIGHT?

8 A HE -- NOT THAT I KNOW OF. HE MAY HAVE MENTIONED IT ON THE
9 WAY BACK. BUT I DON'T THINK HE DID. HE MAY HAVE SAID THAT THE
10 KIDS -- I THINK HE MAY HAVE SAID THAT THE KIDS -- IT WAS ONE OF
11 THE KIDS AND THEY WANTED YOU NOT ME.

12 Q OKAY. NANCY, DO YOU REMEMBER WHEN YOU GAVE YOUR STATEMENT
13 TO INVESTIGATOR BRACKEN?

14 A UH-HUH (AFFIRMATIVE).

15 Q CAN YOU JUST LOOK OVER THAT AND TELL ME IS THAT YOUR
16 STATEMENT THAT YOU SIGNED?

17 A (COMPLIES) UH-HUH (AFFIRMATIVE).

18 Q OKAY. AND DOES THE FIRST SENTENCE THERE SAY THAT -- COULD
19 YOU READ THE FIRST TWO SENTENCES OF THAT STATEMENT PLEASE?

20 A "I WAS GETTING READY FOR WORK. IT WAS AROUND 10:30 IN THE
21 EVENING. MY HUSBAND RANDY CAME IN THE ROOM AND TOLD ME THAT OUR
22 SON LANE CALLED FROM THE CHURCH AND NEEDED TO TALK TO ME. HE
23 SAID LANE REFUSED TO TELL HIM ANYTHING."

24 Q OKAY. SO RANDY DID COME IN AND SAY THAT LANE WAS ON THE
25 PHONE. THAT'S CONTRARY TO WHAT YOUR TESTIMONY FOR MS. KEDNOCKER

NANCY SMITH -- CROSS BY MR. CREECH

1 WAS?

2 A IT'S POSSIBLE, YES.

3 Q DURING THIS TIME AND PREVIOUS TO THESE ALLEGATIONS WERE YOU
4 EVER AWARE OF Minor STATUS IN SCHOOL?

5 A YES, I WAS VERY AWARE OF IT.

6 Q AND WERE YOU AWARE THAT HE HAD BEEN CLASSIFIED OR DIAGNOSED
7 WITH AN EMOTIONAL HANDICAP; IS THAT CORRECT?

8 A TO A CERTAIN EXTENT, YES, I DID.

9 Q AND THAT WAS BEFORE -- HE HAD BEEN DIAGNOSED WITH THAT
10 CONDITION PRIOR TO ANY OF THESE ALLEGATIONS COMING OUT; IS THAT
11 CORRECT?

12 A AS FAR AS I KNOW, YES.

13 Q AND IF YOU KNOW, BASED ON YOUR OBSERVATIONS OF Minor BEING
14 AN EMOTIONALLY HANDICAPPED CHILD, WAS HE PRONE TO SUDDEN
15 OUTBURSTS?

16 A Minor NEVER. Minor IS A VERY QUIET CHILD.

17 Q DO YOU OR WERE YOU EVER TOLD WHAT CAUSED HIM TO HAVE THIS
18 EMOTIONAL HANDICAP?

19 A I DIDN'T REALLY FEEL IT WAS MY BUSINESS.

20 Q OKAY. DO YOU KNOW IF THAT EMOTIONAL HANDICAP CAME ABOUT
21 BECAUSE OF NEGLECT?

22 A Minor WAS NEVER NEGLECTED.

23 Q HE WAS IN A SPECIAL EDUCATION CLASS FOR HIS DISABILITY; IS
24 THAT CORRECT?

25 A A LOT OF CHILDREN ARE.

NANCY SMITH -- CROSS BY MR. CREECH

1 Q Minor WAS IN A SPECIAL EDUCATION CLASS BECAUSE OF HIS
2 DISABILITY; IS THAT CORRECT?

3 A HE WAS BEING MAINSTREAMED. HE WAS ONLY MAYBE ONE OR TWO AT
4 THE MOST.

5 Q AND THIS WAS WHEN HE WAS IN THE SEVENTH GRADE?

6 A I'M TRYING TO THINK. ARE WE TALKING ABOUT THE ABUSE OR WHEN
7 HE WAS---

8 Q AT MAULDIN MIDDLE SCHOOL IN 2003 HE WAS IN THE SEVENTH GRADE
9 IN SPECIAL EDUCATION CLASS BECAUSE OF AN EMOTIONAL HANDICAP,
10 CORRECT?

11 A HE DID HAVE SOME TYPE OF TROUBLE LEARNING, YES. I WASN'T
12 SURE IF IT WAS EMOTIONAL OR NOT, BUT I DO KNOW HE DID HAVE A
13 LEARNING DISABILITY.

14 Q NOW, NANCY, HAD -- YOUR HUSBAND, PRIOR TO ALL OF THESE
15 ALLEGATIONS COMING OUT, HAD HE EVER YELLED AT YOU?

16 A MORE TIMES THAN I CAN COUNT, YES.

17 Q AND WAS HE ANGRY? DID HE GET ANGRY AT YOU?

18 A HE HAD A TEMPER.

19 Q HE HAD A TEMPER?

20 A UH-HUH (AFFIRMATIVE).

21 Q AND DID HE BELITTLE YOU?

22 A YES.

23 Q AND DID HE SCREAM AT YOU?

24 A YES.

25 Q WERE YOU TWO -- DID YOU HELP HIM OUT IN HIS PHOTOGRAPHY

NANCY SMITH -- CROSS BY MR. CREECH

1 BUSINESS?

2 A I HELPED HIM BUILD IT, YES. I DID MOST OF THE WORK.

3 Q DID HE EVER APOLOGIZE TO YOU FOR SCREAMING AND YELLING AT
4 YOU?

5 A NO.

6 Q NOW, DO YOU REMEMBER -- YOU SAID THAT HE WAS INCARCERATED ON
7 THIS CHARGE. . AND DO YOU REMEMBER GOING DOWN TO THE JAIL AND
8 SEEING HIM?

9 A ONCE, YEAH.

10 Q JUST ONE TIME?

11 A RIGHT AROUND ONE TIME. TELL HIM WHAT I THOUGHT OF HIM.

12 Q ARE YOU SURE THAT IT WAS JUST ONCE?

13 A AS FAR AS I KNOW THERE WAS ONCE.

14 Q DO YOU REMEMBER WRITING HIM LETTERS WHILE HE WAS IN THE
15 JAIL?

16 A I WROTE HIM A COUPLE OF LETTERS. THE REASON WHY I WROTE HIM
17 WAS HOPING HE WOULD PUT IT IN WRITING WHAT HE DID.

18 Q OKAY. AND IT WAS DURING THIS TIME WAS IT TWO LETTERS OR WAS
19 IT MAYBE FOUR LETTERS THAT YOU WROTE HIM?

20 A IT WAS MORE THAN TWO. MAYBE FOUR OR FIVE. I DON'T KNOW. I
21 DIDN'T KEEP COUNT.

22 Q DID RANDY EVER DISCUSS WITH YOU OR THREATEN TO DIVORCE YOU
23 IN 2003?

24 A WE HAD OUR SHARE OF PROBLEMS, YES, BUT I WAS WILLING TO WORK
25 IT OUT.

NANCY SMITH -- CROSS BY MR. CREECH

1 Q OKAY. WERE YOU EVER PRESENT WHEN HE YELLED AT Minor

2 A HE NEVER REALLY YELLED AT Minor HE ALWAYS FAVORED

3 Minor

4 Q WELL, WERE YOU ALWAYS WITH RANDY AND Minor

5 A AT NIGHT, NO.

6 Q OKAY. YOU NEVER SAW RANDY YELL AT Minor IS THAT YOUR

7 TESTIMONY?

8 A HE BABIED Minor

9 Q YOU NEVER SAW RANDY YELL AT Minor IS THAT YOUR TESTIMONY?

10 A HE NEVER YELLED AT Minor

11 MR. CREECH: YOUR HONOR, I JUST ASK THAT SHE ANSWER MY

12 QUESTION YES OR NO. IF YOU WOULD, INSTRUCT HER TO ANSWER THE

13 QUESTION.

14 THE COURT: ALL RIGHT. MA'AM, IF YOU CAN ANSWER HIS

15 QUESTION YES OR NO, YOU CAN DO THAT. YOU CAN EXPLAIN ANY ANSWER

16 YOU GIVE. ALL RIGHT?

17 WITNESS: YES, MA'AM. YES, SIR, I'M SORRY.

18 A WHAT WAS THE QUESTION?

19 Q YOU NEVER SAW HIM YELL AT Minor IS THAT YOUR TESTIMONY?

20 A YES.

21 Q NOW, NANCY, RANDY CALLED YOU AND DID YOU KNOW WHERE HE WAS

22 CALLING FROM AFTER YOU KICKED HIM OUT OF THE HOUSE?

23 A WHEN HE CALLED ME HE -- HE TOLD ME -- I COULD TELL THAT HE

24 WAS OUTSIDE ON EITHER A CELL PHONE OR A PAY PHONE. THAT'S WHEN

25 HE TOLD ME HE WAS ON HIS WAY TO ATLANTA.

NANCY SMITH -- CROSS BY MR. CREECH

1 Q OKAY. DID HE TELL YOU THAT HE WAS COMING BACK?

2 A HE SAID HE'LL THINK ABOUT IT.

3 Q DID HE TELL YOU THAT HE WAS GOING TO WORK?

4 A I KNEW HE WASN'T GOING TO WORK. HE HAD NO EQUIPMENT WITH
5 HIM TO GO TO WORK.

6 Q DID HE TELL YOU THAT HE WAS LOOKING FOR A JOB?

7 A NO.

8 Q ALL RIGHT. DID YOU EVER TELL RANDY WHEN YOU TALKED TO HIM
9 THAT YOU HAD GONE TO LAW ENFORCEMENT AND SPOKEN WITH THEM

10 A I DON'T BELIEVE I DID TELL HIM THAT.

11 Q YOU BELIEVE YOU TOLD HIM THAT?

12 A I SAID I DO NOT BELIEVE I DID NOT TELL HIM.

13 Q YOU BELIEVE -- OKAY.

14 A I'M PRETTY SURE I DID NOT TELL HIM.

15 Q DID YOU EVER TELL HIM?

16 A NO.

17 Q OKAY. AND HE CAME BACK INTO TOWN AND CAME TO THE APARTMENT
18 ON DECEMBER THE 24TH; IS THAT RIGHT?

19 A YES.

20 Q DID HE CALL YOU THE NIGHT BEFORE THE 24TH, ON THE 23RD?

21 A NO, IT WAS THAT MORNING.

22 Q HE CALLED YOU ON THE MORNING OF THE 24TH; IS THAT RIGHT?

23 A YES.

24 Q AND HE CAME TO THE APARTMENT AND YOU TOLD HIM THAT YOU
25 DIDN'T WANT TO GO TO WAFFLE HOUSE, THAT YOU WANTED TO WAIT UNTIL

NANCY SMITH -- CROSS BY MR. CREECH

1 TWO O'CLOCK OR SOMETHING LIKE THAT, WASN'T IT?

2 A NO. WHAT I SAID WAS, HE -- HE CAME BY THE HOUSE. HE HAD
3 WANTED TO TAKE THE KIDS TO HIS MOTHER'S WHERE I COULD PACK SO WE
4 COULD GO FOR A ROMANTIC WEEKEND. I HAD TOLD HIM NO. HE WASN'T
5 GETTING NEAR THE CHILDREN. THEN HE TURNS AROUND AND THEN HE
6 WANTS TO MEET SOMEWHERE SO WE CAN SIT DOWN AND TALK. I SUGGESTED
7 THE WAFFLE HOUSE. HE SAID NO. HE WANTED TO GO TO PERKINS.

8 Q AND DID YOU EVER TELL THE LAW ENFORCEMENT OFFICERS ABOUT
9 THIS ROMANTIC WEEKEND?

10 A NO.

11 Q OKAY. YOU MET WITH HIM AT PERKINS, RIGHT?

12 A UH-HUH (AFFIRMATIVE).

13 Q OKAY. HE CAME UP TO PERKINS, RIGHT?

14 A YEAH.

15 Q AND DID YOU TELL HIM THAT YOU WERE GOING TO CALL LAW
16 ENFORCEMENT FOLKS IN?

17 A NO.

18 Q ALL RIGHT. AND HE CAME UP THERE ANYWAY; IS THAT RIGHT?

19 A UH-HUH (AFFIRMATIVE).

20 Q OKAY. WERE YOU THERE WHEN HE GOT ARRESTED?

21 A I WAS INSIDE THE BUILDING, YES.

22 Q OKAY. AND IT WAS AFTER THAT THAT YOU WENT TO -- ABOUT HOW
23 MANY DAYS AFTER THAT WAS IT BEFORE YOU WENT TO VISIT HIM IN THE
24 JAIL?

25 A I DIDN'T KEEP TRACK OF IT. I HAVE NO IDEA. I WAS UNDER A

NANCY SMITH -- CROSS BY MR. CREECH

1 LOT OF STRESS, TO BE HONEST. I WAS MORE WORRIED ABOUT MY
2 CHILDREN THAN I WAS HIM. IT COULD BE -- I DID HAVE TO GO TAKE
3 HIS CPAP MACHINE UP THERE. I REFUSED TO TAKE IT UP THERE
4 CHRISTMAS DAY BECAUSE HE COULD LIVE WITHOUT IT. BUT HE HAD THE
5 NURSE CALL FROM GREENVILLE COUNTY SAYING HE HAD TO HAVE IT, SO I
6 DID TAKE IT UP THERE, BUT I DID NOT SEE HIM THAT NIGHT.

7 Q AND THE CPAP MACHINE, IT'S A BIG MASK THAT HE HAS TO PUT ON
8 HIS FACE; IS THAT RIGHT?

9 A UH-HUH (AFFIRMATIVE).

10 Q OKAY. NOW, DID YOU EVER KNOW THAT Minor WAS SLEEPING IN
11 THE SAME BED WITH RANDY?

12 A I CAME HOME EARLY ONE DAY AND Minor WAS ASLEEP IN MY BED,
13 AND I ASKED RANDY WHY. RANDY SAID THAT HE FELL ASLEEP WATCHING
14 T.V. AND HE DIDN'T WANT TO WAKE HIM UP. THAT'S THE ONLY TIME
15 THAT I KNOW, UP TILL I FOUND OUT THAT---

16 Q DID YOU EVER SAY TO RANDY, Minor DOESN'T NEED TO BE
17 SLEEPING IN THE SAME BED? OR DID YOU EVER EXPRESS ANY CONCERNS?
18 DID YOU EVER THINK ANYTHING WRONG ABOUT THAT?

19 A HE JUST TOLD ME THAT Minor FELL ASLEEP WATCHING TV.
20 Minor WATCHES A LOT OF TV.

21 Q IT'S A SMALL APARTMENT WITH THREE BEDROOMS AND THERE WERE
22 SIX KIDS IN THIS APARTMENT, TO YOUR KNOWLEDGE?

23 A FOUR KIDS.

24 Q FOUR KIDS.

25 A MY TWO AND Minor AND ASHTON.

NANCY SMITH -- CROSS BY MR. CREECH

1 Q ALL RIGHT. DID YOU KNOW ABOUT THE OTHER TWO CHILDREN THAT
2 WERE OVER AT THE APARTMENT?

3 A THEY WERE OVER THERE FROM TIME TO TIME.

4 Q AND IS THAT ALLIE?

5 A YES.

6 Q AND SEBASTIAN?

7 A UH-HUH (AFFIRMATIVE).

8 Q OKAY. THIS IS A THREE-BEDROOM APARTMENT, CORRECT?

9 A YES, SIR. IT WAS A TWO-STORY TOWNHOUSE.

10 Q NANCY, WHEN YOU SAY RANDY MADE STATEMENTS TO YOU AND Y'ALL
11 WERE FIGHTING THAT NIGHT THAT YOU CONFRONTED HIM, IT WAS JUST YOU
12 AND HIM IN THAT ROOM, WASN'T IT?

13 A YES, SIR.

14 Q AND Y'ALL WERE FIGHTING; IS THAT RIGHT?

15 A YES, SIR.

16 Q RANDY NEVER SAID THAT STUFF TO YOU, DID HE?

17 A HE DID SAY THAT STUFF TO ME.

18 Q THAT'S YOUR TESTIMONY TODAY?

19 A THAT HE SAID WHAT HE SAID? YES.

20 Q IT WAS YOU AND RANDY IN THE ROOM, CORRECT?

21 A UH-HUH (AFFIRMATIVE).

22 Q YOUR HUSBAND, AND YOU WERE ANGRY AT HIM; IS THAT RIGHT?

23 A I HAD A RIGHT TO BE ANGRY.

24 Q AND YOU KICKED HIM OUT?

25 A YES.

NANCY SMITH -- REDIRECT BY MS. KEDNOCKER

1 Q AND YOU HAD BEEN HAVING PROBLEMS IN YOUR MARRIAGE; IS THAT
2 RIGHT?

3 A NO MORE THAN ANY OTHER COUPLE WOULD HAVE PROBLEMS IN THEIR
4 MARRIAGE.

5 MR. CREECH: I HAVE NO FURTHER QUESTIONS.

6 THE COURT: YES, MA'AM.

7 MS. KEDNOCKER: YES, SIR. THANK YOU.

8 REDIRECT EXAMINATION BY MS. KEDNOCKER:

9 Q NANCY, GOING BACK TO WHAT DEFENSE COUNSEL ASKED YOU ABOUT
10 DIVORCE WITH THIS DEFENDANT, ISN'T IT A FACT YOU FILED FOR
11 DIVORCE APRIL OF 2005; IS THAT ACCURATE?

12 A YES, MA'AM.

13 Q SO THIS WHOLE INCIDENT HAPPENED DECEMBER 2003?

14 A YES, MA'AM.

15 Q AND YOU WAITED TILL APRIL OF 2005 TO FILE?

16 A YES, MA'AM.

17 Q GOING TO Minor EMOTIONAL HANDICAP, AS DEFENSE COUNSEL IS
18 CALLING IT, IS IT YOUR UNDERSTANDING THAT HE WAS IN SPECIAL
19 EDUCATION CLASSES IN SCHOOL?

20 A YES, MA'AM.

21 Q FOR LEARNING DISABILITIES?

22 A FOR LEARNING DISABILITIES.

23 Q AND ARE YOU AWARE OF HIM HAVING A READING COMPREHENSION
24 PROBLEM?

25 A HE WAS READING ON A LOWER GRADE LEVEL THAN WHERE HE SHOULD

NANCY SMITH -- REDIRECT BY MS. KEDNOCKER

1 HAVE BEEN, YES.

2 Q ALL RIGHT. SO IT'S NOT YOUR TESTIMONY THAT HE HAS AN
3 EMOTIONAL HANDICAP PER SE BUT HE DOES HAVE A LEARNING DISABILITY?

4 A YES, MA'AM, HE DOES HAVE A LEARNING DISABILITY.

5 Q IN TALKING ABOUT THIS DEFENDANT IN THE TIME THAT HE WAS
6 MISSING FROM THE HOUSE -- I'M SHOWING YOU WHAT'S MARKED AS
7 STATE'S EXHIBIT 5. THIS LETTER IS DATED JANUARY 25TH, 2004.

8 A YES, MA'AM.

9 Q THE DEFENDANT, IN YOUR OPINION, WAS HE -- WILL YOU READ THIS
10 PART RIGHT HERE, STARTING RIGHT THERE?

11 A YOU MEAN RIGHT HERE?

12 Q LET ME SEE. I APOLOGIZE. (PAUSE) ALL RIGHT. WELL, LET ME
13 ASK YOU THIS WAY, DID HE STATE TO YOU IN THIS LETTER, "IF I
14 THOUGHT THEY WOULD NOT HAVE ARRESTED ME, I WOULD HAVE TURNED
15 MYSELF IN"? IS THAT ACCURATE?

16 A YES, HE STATED THAT IN THE LETTER.

17 Q SO WAS HE CONCERNED DURING THAT TIME FROM DECEMBER 12TH TILL
18 CHRISTMAS EVE ABOUT BEING ARRESTED?

19 A YEAH, HE TOLD ME ON THE PHONE HE WOULD NOT GO TO JAIL.

20 Q AND ISN'T IT TRUE THIS DEFENDANT MADE A STATEMENT TO YOU IN
21 THIS LETTER --

22 MS. KEDNOCKER: YOUR HONOR, PERMISSION TO PUBLISH THE
23 RELEVANT PART AT THIS POINT.

24 THE COURT: YES, MA'AM

25 Q "I KNOW IT'S A LOT TO ASK, BUT I STILL NEED YOU. I DON'T

NANCY SMITH -- REDIRECT BY MS. KEDNOCKER

1 WANT TO LOSE YOU OVER SOMETHING THIS STUPID. THIS WHOLE ORDEAL
2 WITH THE COURT AND THE LAW IS GOING TO BE FAR MORE TRAUMATIC THAN
3 ANYTHING. IT WILL HARM ALL OF US. I WISH THERE WAS SOME WAY
4 THIS COULD BE PUT BEHIND US. THE KIDS ONLY HAVE A FEW MORE YEARS
5 AND THEY WILL BE ON THEIR OWN. I DON'T WANT THESE LAST FEW TO BE
6 LIKE THIS. I WISH THIS WERE LIKE IT WERE IN THE FIFTIES OR
7 SIXTIES, EVERYTHING WOULD JUST GET SWEEPED UNDER THE RUG AND LIFE
8 WOULD GO ON. THAT WAS THE WAY OF THE SOUTH. I HAD HOPED THAT
9 AFTER A MONTH IN HERE YOU MIGHT AGREE WITH THIS. THROWING IT ALL
10 OUT THERE FOR THE WORLD TO SEE IS GOING TO DO MUCH MORE HARM.
11 YOU MIGHT THINK HAVING ALL THIS HIT THE NEWS IS THE RIGHT THING
12 TO DO, BUT IT WILL GET UGLY FOR ALL INVOLVED. THIS WILL LEAVE
13 THE LARGEST SCARS. THINK LONG AND HARD. THINK HOW A TRIAL WILL
14 AFFECT LANE. IT'S PAIN I DON'T WANT TO SEE HIM GO THROUGH. IF
15 YOU CAN GET THE CHARGES DROPPED, YOU CAN ALWAYS RE-FILE IF I
16 DIDN'T BEHAVE. I'M ON MEDICATION NOW AND IT CLEARS MY THINKING."
17 HE WROTE YOU THIS LETTER?

18 A YES, MA'AM.

19 MS. KEDNOCKER: I HAVE NO FURTHER QUESTIONS.

20 THE COURT: YES, SIR. MR. CREECH.

21 RECROSS EXAMINATION BY MR. CREECH:

22 Q AND WAS THAT IN RESPONSE TO THE LETTERS YOU HAD WRITTEN HIM?

23 A I HAD NOT WRITTEN HIM ANY LETTERS UP THIS POINT BECAUSE THIS
24 LETTER IS DATED CHRISTMAS DAY AND HE WAS ARRESTED CHRISTMAS EVE.

25 MR. CREECH: YOUR HONOR, I HAVE NO FURTHER QUESTIONS.

NANCY SMITH -- REDIRECT BY MS. KEDNOCKER

1 THE COURT: OKAY.

2 MS. KEDNOCKER: AND JUST --

3 REDIRECT EXAMINATION BY MS. KEDNOCKER:

4 Q WOULD YOU CHECK THE DATE ON THIS LETTER ONE MORE TIME?

5 A THIS ONE RIGHT HERE?

6 Q YEAH.

7 A YES, MA'AM. OH, I'M SORRY, NOT CHRISTMAS DAY. I'M SORRY.

8 IT WAS IN JANUARY. JANUARY THE 24TH.

9 Q OKAY. JANUARY 25TH?

10 A 25TH, YES, MA'AM.

11 Q ALL RIGHT.

12 A I'M SORRY. I HAD THE WRONG DATE ON THERE.

13 RECROSS EXAMINATION BY MR. CREECH:

14 Q SO THIS WAS WRITTEN ON JANUARY THE 25TH, 2004?

15 A YES.

16 Q SO DO YOU KNOW IF IT WAS IN RESPONSE TO YOUR LETTER?

17 A I'M PRETTY SURE IT PROBABLY WAS. BUT I HAVE NO IDEA---

18 Q PROBABLY WAS?

19 A I HAVE NO IDEA WHAT I WROTE HIM. I DON'T REMEMBER BACK THAT

20 FAR.

21 MR. CREECH: NO FURTHER QUESTIONS, YOUR HONOR.

22 THE COURT: ALL RIGHT. THANK YOU. YOU MAY STEP DOWN,

23 MA'AM.

24 (WITNESS STEPS DOWN AT 11:55 A.M.)

25 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'RE GOING

MATTERS AND MOTIONS

1 TO TAKE A BRIEF RECESS. IF YOU WOULD, GO BACK TO YOUR JURY ROOM.
2 DON'T TALK ABOUT THE CASE. CONTINUE TO KEEP AN OPEN MIND AND
3 WE'LL BE BACK SHORTLY. WE'RE GOING TO KIND OF SEE WHERE WE ARE
4 AS FAR AS TIME FOR LUNCH. THANK YOU VERY MUCH.

5 (JURY EXITS COURTROOM AT 11:55 A.M.)

6 THE COURT: OKAY. CAN YOU TELL ME, IF YOU CAN, MS.
7 KEDNOCKER, WHERE WE ARE?

8 MS. KEDNOCKER: YES, SIR, YOUR HONOR. WE HAVE TWO -- A
9 MEDICAL DOCTOR AND ANOTHER EXPERT, AND THEN TESTIMONY FROM
10 POSSIBLY TWO MORE WITNESSES. IT MAY JUST BE ONE. BUT I WILL
11 TELL YOU STEVE JULIAN WILL BE TESTIFYING. THAT WILL PROBABLY
12 TAKE A WHILE.

13 THE COURT: OKAY.

14 MS. KEDNOCKER: SO I DON'T KNOW IF IT WOULD BE BEST TO
15 START RIGHT NOW BUT...

16 THE COURT: WHO IS YOUR OTHER EXPERT BESIDE THE MEDICAL
17 ONE?

18 MS. KEDNOCKER: THERE IS THE OTHER DOCTOR THAT EXAMINED
19 Minor AND THEN THE STATE IS GOING TO INTRODUCE, UNDER STATE
20 VERSUS WEAVERLING, AN EXPERT IN CHILD SEXUAL ASSAULT, AND SHE IS
21 GOING TO BASICALLY TESTIFY AS TO SOME OF THE HALLMARKS OF SEXUAL
22 ABUSE. IF WE WANT TO TAKE THAT ISSUE UP NOW WE CAN, IF DEFENSE
23 COUNSEL HAS ANY OBJECTION TO IT.

24 MR. CREECH: YOUR HONOR, THAT IS THE ABSOLUTE FIRST TIME
25 THAT I'VE EVER HEARD OF THEY'RE GOING TO PUT AN EXPERT WITNESS UP

MATTERS AND MOTIONS

1 AS TO THIS ISSUE. THEY HAVE NEVER DISCLOSED THIS TO ME AT ALL.

2 THE COURT: DID YOU FILE RULE 5?

3 MR. CREECH: I DID.

4 MS. KEDNOCKER: YOUR HONOR, IF I MAY RESPOND. MY
5 UNDERSTANDING OF RULE 5 IS THAT WE HAVE TO DISCLOSE EXPERTS THAT
6 HAVE EXAMINATIONS OR REPORTS OR SOMETHING LIKE THAT. THIS EXPERT
7 IS STRICTLY COMING IN HERE -- SHE'S GOING TO BE QUALIFIED BASED
8 ON HER CREDENTIALS IN CHILD SEXUAL ASSAULT ABUSE. I DON'T
9 BELIEVE THERE IS ANYTHING UNDER RULE 5 THAT STATES WE HAVE TO --
10 THERE IS NO REPORT, NO EXAMINATION, ANYTHING LIKE THAT THAT SHE'S
11 BRINGING INTO COURT. SHE DID NOT SEE Minor THE STATE IS NOT
12 TRYING TO CONTEND THAT SHE DID. SHE IS NOT BEING BROUGHT IN HERE
13 TO GIVE EXPERT OPINION OR TESTIMONY AS TO WHETHER SHE THINKS THAT
14 CHILD WAS SEXUALLY ASSAULTED. UNDER *STATE VERSUS WEAVERLING*, AND
15 THAT'S THE CASE THAT THE STATE IS RELYING ON, THAT CASE ALLOWED
16 EXPERT TESTIMONY FOR THE LIMITED PURPOSE, YOUR HONOR, TO ALLOW AN
17 EXPERT WHO HAD NOT INTERVIEWED OR COUNSELED THE VICTIM BEFORE
18 TRIAL TO GO AHEAD AND GIVE EXPERT OPINION TESTIMONY TO PROPERLY
19 FRAMED HYPOTHETICAL QUESTIONS.

20 THE LAST TIME, YOUR HONOR, I DID THIS IT WAS BEFORE THE
21 HONORABLE JUDGE SAUNDERS BACK IN FEBRUARY AND HE ALLOWED IT INTO
22 COURT UNDER *WEAVERLING* FOR THE LIMITED PROPERLY STRUCTURED
23 HYPOTHETICAL QUESTIONS. SOMETHING, IF THE EVIDENCE WERE TO SHOW
24 THE CHILD DELAYED REPORTING, WOULD THAT BE CONSISTENT OR
25 INCONSISTENT? IF THE EVIDENCE WERE TO SHOW BLAH, BLAH, BLAH.

MATTERS AND MOTIONS

1 THE STATE IS NOT TRYING TO ELICIT SOME KIND OF AN EXPERT OPINION
2 AS TO WHAT SHE THINKS OF Minor BECAUSE SHE'S NEVER MET HIM.

3 THE COURT: I UNDERSTAND. OKAY. SO YOUR INTENT, THOUGH,
4 IS TO CALL MR. JULIAN AT THIS TIME?

5 MS. KEDNOCKER: ACTUALLY I WAS -- I DON'T KNOW IF HE'S
6 HERE. I WAS ACTUALLY PLANNING ON CALLING HIM AFTER LUNCH.

7 THE COURT: OKAY.

8 MS. KEDNOCKER: AND MY OTHER DOCTOR, LET ME CHECK AND SEE
9 IF SHE'S HERE.

10 THE COURT: OKAY. WE MAY JUST HAVE TO BREAK FOR LUNCH NOW.
11 IT DOESN'T MATTER, BUT JUST FIND OUT.

12 MS. KEDNOCKER: YOUR HONOR, I BELIEVE I HAVE HER COMING
13 AROUND 1:30 FROM LAST PHONE CALL WITH HER.

14 THE COURT: THAT'S FINE. JUST BRING THE JURY ON BACK IN,
15 MS. DAILEY. WE'LL JUST BREAK FOR LUNCH UNTIL 1:30.

16 (JURY REENTERS COURTROOM AT 12:00 P.M.)

17 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'RE GOING
18 TO GO AHEAD AND BREAK FOR LUNCH AT THIS TIME. IF YOU WOULD, JUST
19 BE BACK IN YOUR JURY ROOM AT 1:30. REMEMBER NOT TO DISCUSS THE
20 CASE. DON'T DO ANY OUTSIDE INVESTIGATION. CONTINUE TO KEEP AN
21 OPEN MIND, BECAUSE YOU HAVEN'T HEARD ALL THE EVIDENCE YET. YOU
22 HAVEN'T HEARD THE FINAL ARGUMENTS OF THE LAWYERS, AND YOU HAVEN'T
23 HEARD THE LAW THAT APPLIES.

24 AND LET ME MENTION ONE MORE THING TO YOU. YOU MAY RUN INTO
25 PEOPLE WHO ARE CONNECTED WITH THE CASE OUT IN THE HALLWAY OR

MATTERS AND MOTIONS

1 WHATNOT, AND OBVIOUSLY THEY ARE NOT TO HAVE ANY CONTACT WITH YOU.
2 BUT IF THEY DON'T SAY ANYTHING TO YOU OR ACKNOWLEDGE YOU, THAT'S
3 JUST BECAUSE THEY ARE UNDER A DUTY NOT TO DO THAT. SO THEY'RE
4 NOT BEING RUDE OR ANYTHING LIKE THAT. I USUALLY TELL JURORS THAT
5 ON MONDAY MORNING, AND I REALIZED I DIDN'T SAY THAT.

6 SO Y'ALL HAVE A GOOD LUNCH. WE'LL SEE YOU BACK AT 1:30.
7 THANK YOU VERY MUCH.

8 (JURY EXITS COURTROOM AT 12:00 P.M.)

9 THE COURT: ALL RIGHT. ANYTHING ANYBODY NEEDS TO PUT ON
10 THE RECORD AT THIS TIME?

11 MS. KEDNOCKER: NO, SIR, YOUR HONOR.

12 THE COURT: MR. CREECH?

13 MR. CREECH: YOUR HONOR, I JUST WANT RENEW -- DURING THE
14 TESTIMONY, I THINK, OF LANE, HE SAID THAT Minor MADE A
15 DISCLOSURE AS TO THE IDENTITY OF THE PERPETRATOR, AND I OBJECTED.
16 SHE ARGUED THAT THAT CAME IN UNDER EXCITED UTTERANCE AND YOU
17 OVERRULED MY OBJECTION. YOU KNOW, THEY HAVE MADE NUMEROUS
18 REFERENCES TO IDENTITY OR TRIED TO MAKE IDENTITY. I THINK I'VE
19 BEEN ABLE TO KEEP MOST OF IT OUT. BUT BASED ON THAT ANSWER TO
20 THE QUESTION, I WOULD MOVE FOR A MISTRIAL AT THIS POINT.

21 THE COURT: ALL RIGHT. WELL, THE REFERENCES HAVE BEEN
22 MADE, AS I RECALL THEM, WOULD, I THINK, CLEARLY COME IN UNDER RES
23 GESTAE OR EXCITED UTTERANCE AND ARE OTHERWISE ADMISSIBLE, SO I'M
24 GOING TO RESPECTFULLY DENY YOUR MOTION.

25 NOW, ANOTHER THING THAT CAME UP EARLIER THAT WAS, I THINK,

NANCY HENDERSON, M.D. -- DIRECT BY MS. KEDNOCKER

1 JUST SO THE RECORD IS CLEAR, ALL THE WITNESSES HAVE BEEN
2 SEQUESTERED DURING THE TRIAL. I DON'T THINK WE EVER PUT THAT ON
3 THE RECORD.

4 DOES ANYBODY HAVE ANYTHING ELSE TO PUT ON THE RECORD AT THIS
5 TIME?

6 MS. KEDNOCKER: NO, SIR, YOUR HONOR. JUST IN RELATION TO
7 HIS MOTION FOR A MISTRIAL, THE STATE HAS, WITH ALL OF OUR
8 WITNESSES, BEEN TRYING TO LIMIT IT TO TIME AND PLACE AND THAT
9 VERY FIRMLY ROOTED EXCEPTION IN CRIMINAL SEXUAL CONDUCT CASES, SO
10 THAT'S WHAT THE STATE HAS DONE. Minor COMMENT THERE WAS
11 UNDER EXCITED UTTERANCE.

12 THE COURT: ALL RIGHT. AND I THINK UNDER RULE 801 AND
13 JOLLY VERSUS STATE THAT WHAT DID COME IN WAS PROPER. ALL RIGHT.
14 SEE YOU BACK AT 1:30. THANK YOU.

15 (A LUNCH RECESS WAS TAKEN FROM 12:03 TO 1:34 P.M.)

16 THE COURT: OKAY. ARE Y'ALL READY FOR THE JURY?

17 MS. KEDNOCKER: YES, SIR, YOUR HONOR.

18 THE COURT: OKAY. YES, MA'AM.

19 (JURY REENTERS COURTROOM AT 1:35 P.M.)

20 THE COURT: YES, MA'AM, MS. KEDNOCKER.

21 MS. KEDNOCKER: THANK YOU, YOUR HONOR.

22 THE STATE CALLS DR. NANCY HENDERSON.

23 NANCY HENDERSON, M.D., HAVING BEEN DULY
24 SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION BY MS. KEDNOCKER:

NANCY HENDERSON, M.D. -- DIRECT BY MS. KEDNOCKER

1 Q GOOD AFTERNOON, DR. HENDERSON. DR. HENDERSON, WHERE ARE YOU
2 EMPLOYED?

3 A GREENVILLE HOSPITAL SYSTEM.

4 Q AND WHAT IS YOUR POSITION THERE?

5 A I'M THE ASSISTANT DIRECTOR OF THE PEDIATRIC CLINIC.

6 Q AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

7 A SINCE 1992.

8 Q OKAY. CAN YOU DESCRIBE FOR THE JURY YOUR WORK EXPERIENCE AT
9 THE PRESENT TIME?

10 A I'M THE MEDICAL DIRECTOR AT THE GREENVILLE CHILD ADVOCACY
11 CENTER, CHILD ABUSE CENTER, AND ALSO THE ONE UP IN SPARTANBURG,
12 AND THIS IS PART OF MY JOB AT GREENVILLE HOSPITAL SYSTEM. I DO
13 THE MEDICAL EXAMS TO EVALUATE CHILDREN THAT MAY HAVE BEEN
14 SEXUALLY ABUSED OVER THERE. WE USED TO DO IT IN THE PEDIATRIC
15 CLINIC, BUT WE MOVED IT OVER TO THAT SETTING. I'M ALSO INVOLVED
16 ON THURSDAY AFTERNOON IN THE GENERAL PEDIATRIC CLINIC, WORKING
17 WITH THE PEDIATRIC AND FAMILY PRACTICE RESIDENTS IN GENERAL
18 PEDIATRIC CARE. I'M ALSO INVOLVED WITH GIVING LECTURES TO
19 MEDICAL STUDENTS AND TO THE RESIDENTS IN THE AREA OF CHILD ABUSE.

20 Q CAN YOU TELL THE JURY ABOUT YOUR LICENSES AND BOARD
21 CERTIFICATION?

22 A OKAY. I ATTENDED RUTGERS COLLEGE OF PHARMACY IN NEW
23 BRUNSWICK, NEW JERSEY, FROM 1975 TO 1980 AND THEN WENT TO BOWMAN
24 GRAY SCHOOL OF MEDICINE IN WINSTON-SALEM, NORTH CAROLINA, AND
25 GRADUATED IN 1984. I THEN DID A PEDIATRIC RESIDENCY, WHICH IS A

NANCY HENDERSON, M.D. -- DIRECT BY MS. KEDNOCKER

1 THREE-YEAR RESIDENCY, AT T.C. THOMPSON CHILDREN'S HOSPITAL IN
2 CHATTANOOGA, TENNESSEE. AND I'M BOARD CERTIFIED IN PEDIATRICS
3 AND SUB-BOARDED IN ADOLESCENT MEDICINE.

4 Q DO YOU HAVE ANY PARTICULAR TRAINING IN THE FIELD OF CHILD
5 SEXUAL ASSAULT AND ABUSE?

6 A YES. THERE'S NOT A PARTICULAR SUB-BOARD IN THE AREA OF
7 CHILD ABUSE, BUT I HAVE ATTENDED NUMEROUS CONFERENCES THROUGHOUT
8 THE COUNTRY, AND THAT'S REQUIRED, AND I SEE APPROXIMATELY 300
9 CHILDREN A YEAR FOR THIS TYPE OF EVALUATION.

10 Q AND YOU SEE THOSE CHILDREN AT THE CHILD ADVOCACY CENTER?

11 A AT BOTH OF THE ADVOCACY CENTERS, YES, MA'AM.

12 Q OKAY. HAVE YOU HAD OCCASION -- RATHER, EXCUSE ME, HAVE YOU
13 TESTIFIED IN THE COURTS OF THIS STATE IN THE AREA OF PEDIATRICS
14 AND CHILD SEXUAL ASSAULT AND ABUSE?

15 A YES, I HAVE.

16 Q AND IN WHICH COURTS HAVE YOU TESTIFIED?

17 A I'VE TESTIFIED HERE IN GREENVILLE AS WELL AS IN SPARTANBURG,
18 CHEROKEE, OCONEE COUNTY, GREENWOOD.

19 Q ABOUT HOW MANY TIME HAVE YOU TESTIFIED?

20 A I TESTIFY PROBABLY APPROXIMATELY 10 TO 15 TIMES A YEAR.

21 Q AND HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT IN THIS FIELD?

22 A YES, I HAVE.

23 MS. KEDNOCKER: YOUR HONOR, AT THIS TIME THE STATE MOVES TO
24 ADMIT DR. NANCY HENDERSON AS AN EXPERT IN THE AREA OF CHILD
25 SEXUAL ABUSE AND PEDIATRICS.

NANCY HENDERSON, M.D. -- DIRECT BY MS. KEDNOCKER

1 MR. CREECH: YOUR HONOR, NO OBJECTIONS.

2 THE COURT: ALL RIGHT. I FIND SHE IS QUALIFIED.

3 LADIES AND GENTLEMEN, LET ME JUST ADVISE YOU THAT TYPICALLY
4 WITNESSES CAN ONLY TESTIFY TO THINGS THEY HAVE SEEN FIRST HAND OR
5 OBSERVED OR HEARD, THINGS THEY'VE LEARNED THROUGH THEIR SENSES.
6 THERE IS AN EXCEPTION UNDER OUR LAW FOR EXPERT WITNESSES WHO ARE
7 ALLOWED TO GIVE THEIR OPINION IF THEY ARE QUALIFIED BASED ON
8 THEIR EXPERIENCE AND EDUCATION OR TRAINING. SO SHE'S BEEN
9 QUALIFIED. AND ANY EXPERT CAN GIVE THEIR OPINION. BUT AS WITH
10 ALL WITNESSES, THE CREDIBILITY OF THE TESTIMONY IS ENTIRELY UP TO
11 YOU. THANK YOU VERY MUCH.

12 Q DR. HENDERSON, DID YOU PERFORM AN EXAM ON A CHILD THAT'S LED
13 TO YOU HAVING TO BE IN COURT TODAY?

14 A YES, I HAVE.

15 Q WHAT IS THE NAME OF THE CHILD?

16 A Minor

17 Q WHEN DID YOU PERFORM THIS EXAM?

18 A JANUARY 15TH OF 2004.

19 Q AND HOW DID THIS CHILD GET REFERRED TO YOU?

20 A HE WAS REFERRED FROM LAW ENFORCEMENT.

21 Q HOW OLD WAS Minor WHEN YOU PERFORMED THE EXAM?

22 A THIRTEEN YEARS OLD.

23 Q AND AS PART OF YOUR TREATMENT IN TRYING TO FIGURE OUT WHAT
24 TO DO WITH Minor DID YOU ASK HIM WHAT HAPPENED?

25 A YES, I DID.

1 Q WAS HE ABLE TO INDICATE TO YOU WHETHER OR NOT HE HAD BEEN
2 SEXUALLY ASSAULTED?

3 A YES, HE WAS.

4 Q DID HE INDICATE TO YOU THE TIME FRAME WHEN THE SEXUAL
5 ASSAULTS TOOK PLACE?

6 A HE TOLD ME THE LAST TIME IT HAPPENED AND THE AGE OF WHAT IT
7 STARTED.

8 Q OKAY. DR. HENDERSON, ONE THING I WANTED TO LOOK AT -- DO
9 YOU HAVE YOUR REPORT IN YOUR HAND?

10 A YES, I DO.

11 Q AS PART OF WHEN YOU ARE MEETING WITH CHILDREN YOU ASK THEM
12 TIME PERIODS. DID HE INDICATE TO YOU WHETHER IT WAS A REPEATED
13 SERIES OF ABUSE?

14 A YES, HE DID.

15 Q OKAY. AND IF YOU WILL FLIP TO PAGE -- IT'S A LONG REPORT.
16 WELL, LET ME ASK YOU THIS. WHAT WAS THE LAST TIME -- I BELIEVE
17 IT'S PAGE 4. WHAT WAS THE LAST TIME THAT Minor HAD INDICATED
18 TO YOU THAT HE WAS SEXUALLY ASSAULTED?

19 A NOVEMBER 12TH.

20 Q NOVEMBER 12TH. IF I TOLD YOU THAT THE EVIDENCE IN THIS CASE
21 SO FAR IS THE VICTIM HAD STATED IT WAS DECEMBER 11TH, IS THERE A
22 CHANCE THAT YOU HAD TRANSPOSED THESE NUMBERS IN YOUR REPORT?

23 A THIS IS MY ONLY RECOLLECTION OF THE CASE, SO THAT CERTAINLY
24 IS POSSIBLE.

25 Q OKAY. JUST WANTED TO CHECK THAT WITH YOU. AND YOU

NANCY HENDERSON, M.D. -- DIRECT BY MS. KEDNOCKER

1 MENTIONED 11/12 AND HE STATED 12/11.

2 ALL RIGHT. GOING BACK TO -- AND AGAIN, THIS REPORT, HOW
3 MANY CHILDREN DO YOU SEE IN A YEAR?

4 A APPROXIMATELY 300.

5 Q ABOUT 300. SO WHEN YOU MEET WITH THEM YOU ARE FILLING OUT A
6 REPORT AS YOU GO AND JOTTING DOWN NOTES; IS THAT ACCURATE?

7 A YES.

8 Q OKAY. ARE THERE DIFFERENT TYPES OF EXAMS THAT ARE PERFORMED
9 ON CHILDREN WHEN THERE IS A CONCERN OF SEXUAL ASSAULT?

10 A WELL, THE EXAM ITSELF IS PRETTY CONSISTENT FROM ONE CHILD TO
11 THE OTHER. IT CONSISTS OF DOING AN INTERVIEW AND TALKING TO THEM
12 ABOUT WHAT'S HAPPENED, ANY CONCERNS ABOUT ANY MEDICAL PROBLEMS
13 THAT THEY'VE HAD, PAST MEDICAL HISTORY, MEDICATIONS THEY'RE ON,
14 ANY WORRIES THAT THEY HAVE ABOUT THEIR BODY, AND THEN IT INVOLVES
15 A COMPLETE HEAD TO TOE PHYSICAL EXAMINATION THAT INCLUDES LOOKING
16 AT THE GENITAL AREA AS WELL.

17 Q IS THERE A DIFFERENCE IN A CHRONIC MEDICAL EXAM AND AN ACUTE
18 MEDICAL EXAM?

19 A YES, THERE IS. THE ACUTE MEDICAL EXAM IS THE EXAM THAT MOST
20 PEOPLE KNOW AS KIND OF THE RAPE KIT. WHEN THE ABUSE HAS OCCURRED
21 WITHIN THE FIRST 72 HOURS, A LOT OF TIMES RAPE KITS ARE DONE,
22 WHERE THEY'RE LOOKING FOR DNA EVIDENCE. THEY'LL DO A LOT OF
23 VARIOUS SWABS, COLLECTIONS OF HAIR SAMPLES AND THINGS LIKE THAT.
24 WHEN THE CHILD IS EXAMINED AFTER THAT 72-HOUR PERIOD, THOSE TYPE
25 OF SPECIMENS ARE NO LONGER COLLECTED BECAUSE THE LIKELIHOOD OF

NANCY HENDERSON, M.D. -- DIRECT BY MS. KEDNOCKER

1 RECOVERING ANYTHING IS EXTREMELY SMALL.

2 Q IS THERE ONE TYPE OF EXAM THAT YOU SEE MORE REGULARLY THAN
3 THE OTHER?

4 A I PRIMARILY DO THE CHRONIC ABUSE EXAMS.

5 Q AND WHY IS THAT?

6 A BECAUSE WITH THE ACUTE EXAMS THEY USUALLY GO THROUGH THE
7 EMERGENCY ROOM. THAT'S THE ARRANGEMENT WE HAVE AT THE HOSPITAL
8 SYSTEM, BECAUSE MY APPOINTMENTS ARE DONE BY APPOINTMENT TO TRY TO
9 GET CHILDREN IN. THE ACUTE EXAM IS AS SOON AS A CHILD DISCLOSES.
10 AND IF IT JUST HAPPENED, THEY'LL BE BROUGHT IMMEDIATELY TO THE
11 EMERGENCY ROOM, 24 HOURS A DAY. I'M THE ONLY PHYSICIAN THERE AND
12 I CAN'T OPERATE 7 DAYS A WEEK 24 HOURS A DAY.

13 Q AND DO YOU FIND THAT YOU DO -- THAT THERE ARE MORE CHRONIC
14 EXAMS OR ACUTE EXAMS GENERALLY IN THIS TYPE OF A SITUATION?

15 A WELL, WITH CHILDREN, CHRONIC EXAMS ARE MUCH MORE COMMON. I
16 THINK THE E.R. MIGHT SEE ABOUT TWO TO THREE OVER A MONTH'S TIME
17 WHERE WE SEE ABOUT NINE IN A WEEK, AND THE REASON BEING THAT MOST
18 OFTEN CHILDREN DO NOT DISCLOSE RIGHT AWAY. SO ONCE THEY'VE BEEN
19 ABUSED, THEY WILL WAIT HOURS, WEEKS AND OFTEN MONTHS, SOMETIMES
20 EVEN YEARS TILL THEY MIGHT MAKE A DISCLOSURE, UNTIL THEY'RE IN A
21 SAFE ENVIRONMENT. SO FOR A CHILD TO DISCLOSE RIGHT AFTER AN
22 INCIDENT IS RELATIVELY UNCOMMON.

23 Q RIGHT. AND SO A PATTERN OF ABUSE CAN GO ON FOR SEVERAL
24 MONTHS BEFORE A CHILD FINALLY DISCLOSES; IS THAT WHAT YOU FIND,
25 DOCTOR?

NANCY HENDERSON, M.D. -- DIRECT BY MS. KEDNOCKER

1 A ABSOLUTELY.

2 Q IS THERE A DIFFERENCE -- NOW I WANT TO TALK ABOUT WHAT

3 Minor HAD DONE THAT DAY IN YOUR OFFICE. WHAT TYPE OF EXAM DID

4 YOU DO ON PATRICK?

5 A HE HAD THE CHRONIC EXAM.

6 Q AND CAN YOU TELL THE JURY ABOUT WHAT THE CHRONIC EXAM ON A

7 BOY SUCH AS Minor WHAT THAT ENTAILS?

8 A OKAY. THAT INVOLVES, LIKE I MENTIONED BEFORE, DOING --

9 TALKING WITH HIM, GOING OVER HIS MEDICAL HISTORY AND THEN DOING A

10 COMPLETE HEAD TO TOE PHYSICAL EXAM, LOOKING IN THE EARS, THE

11 MOUTH, LISTENING TO THE HEART AND LUNGS, CHECKING HIS ABDOMEN,

12 FEELING UNDER HIS ARMS, NECK FOR ANY KIND OF LYMPH NODES, AND

13 THEN ALSO LOOKING AT THE GENITAL AREA. SO I LOOK AT HIS PENIS,

14 THE SCROTAL AREA FOR ANY KIND OF CHANGES THERE. AND THEN I USE A

15 PIECE OF EQUIPMENT. IT HAS KIND OF A FANCY NAME, COLPOSCOPE.

16 IT'S A LARGE PIECE OF EQUIPMENT. BUT ALL IT DOES IS PROVIDE

17 MAGNIFICATION AND LIGHT SOURCE. AND IN EXAMINING MALES WE USE

18 THAT TO LOOK AT THE ANAL AREA FOR ANY KIND OF CHANGES THERE.

19 Q NOW, HOW IS -- IN Minor CASE, WHEN YOU USED THIS

20 COLPOSCOPE, WHAT DOES THE CHILD HAVE TO DO? HOW DO THEY HAVE TO

21 BE POSITIONED FOR THE EXAM?

22 A THE MOST COMMON POSITION IS FOR THEM WHAT WE CALL TO LAY ON

23 THEIR SIDE, LATERAL RECUMBENT, KIND OF WITH THEIR BACK TO ME AND

24 THEIR KNEES KIND OF CRAWLED UP TO THEIR TUMMY. THAT'S KIND OF

25 THE BEST WAY TO LOOK AT THE RECTAL AREA. AND THAT WAY, THEY'RE

NANCY HENDERSON, M.D. -- DIRECT BY MS. KEDNOCKER

1 NOT FACING IT, SO THEY'RE MORE CALM, AND THEY CAN TALK TO A
2 PARENT OR WHOEVER ELSE MIGHT BE IN THE ROOM WITH THEM AND ALLOW
3 ME TO USE THE COLPOSCOPE, AND IN SOME CASES, AS WITH Minor TO
4 DO CULTURES TO LOOK FOR SEXUALLY TRANSMITTED DISEASES.

5 Q TELL US ABOUT THAT. WHAT TESTS DID YOU PERFORM ON HIM IN
6 ADDITION TO THE COLPOSCOPE?

7 A WITH Minor THE TEST I DID, WHICH WAS BY JUST USING Q-TIPS
8 OR WHAT WE CALL RECTAL SWABS, AND WE LOOK FOR GONORRHEA AND
9 CHLAMYDIA, WHICH ARE TWO COMMON STDs.

10 Q AND THE CHILD HAS TO LAY -- OR Minor HAD TO LAY ON HIS
11 SIDE AND, YOU SAID, HOLD HIS KNEES TO HIM?

12 A WELL, HE JUST KIND OF DRAWS HIS KNEES UP TOWARD HIS BELLY
13 AND LAYS THERE. AND WE HAVE DIFFERENT THINGS THAT THEY KIND OF
14 LOOK AT, LITTLE WATER WHEELS TO KIND OF HELP KIND OF GET THEIR
15 MIND SO THEY'RE NOT REALLY TOO NERVOUS ABOUT IT. AND THEN I'M ON
16 THE OTHER SIDE USING THE COLPOSCOPE LOOKING AT THE RECTAL AREA.

17 Q WHEN A CHILD IS GOING THROUGH THIS, OR WHEN Minor IS, WHO
18 ELSE IS IN THE ROOM BESIDE YOU?

19 A I USUALLY HAVE A CHILD LIFE SPECIALIST WITH ME, AND THEY'RE
20 THERE JUST REALLY TO BE AN ADVOCATE FOR THE PATIENT TO HELP KIND
21 OF GET THEIR MIND OFF IT. FOR SOME CHILDREN WE'LL HAVE DIFFERENT
22 BOOKS THAT THEY CAN LOOK AT, LITTLE HIDDEN PICTURES, THINGS JUST
23 TO KIND OF HELP THEM RELAX, TO GET THROUGH THE EXAM. SO SHE IS
24 ALWAYS IN THERE WITH ME. AND IT'S UP TO THE CHILD WHOEVER THEY
25 WOULD LIKE TO HAVE DURING THE EXAMINATION, IF THEY WANT TO HAVE A

NANCY HENDERSON, M.D. -- DIRECT BY MS. KEDNOCKER

1 PARENT OR NOT. LET ME JUST CHECK. AND IN Minor CASE HE
2 OPTED TO HAVE THE EXAM BY HIMSELF.

3 Q THIS HAS BEEN TWO YEARS AGO. YOU MAY OR MAY NOT REMEMBER.

4 DO YOU REMEMBER Minor YOU KNOW, MUCH ABOUT HIS DEMEANOR? WAS
5 HE QUIET? WAS HE OUTGOING? MUCH ABOUT HIM?

6 A I REALLY -- BESIDES WHAT I HAVE WRITTEN HERE, I DON'T HAVE A
7 REAL STRONG RECOLLECTION OF THE DETAILS OF THAT.

8 Q THAT'S FINE. SO YOU DID THE EXAM ON Minor WHAT WERE THE
9 RESULTS OF THE EXAMINATION?

10 A HE HAD A NORMAL EXAM.

11 Q WHAT DOES A NORMAL EXAM IN A CASE -- Minor HAS STATED TO
12 YOU THERE WAS REPEATED ANAL PENETRATION. DOES THE FACT THAT THE
13 EXAM CAME BACK NORMAL INDICATE TO YOU THAT REPEATED ANAL
14 PENETRATION DID NOT OCCUR?

15 A NO, IT DOES NOT MEAN THAT.

16 Q OKAY. AND EXPLAIN THAT, PLEASE, TO THE JURY.

17 A IT IS VERY COMMON IN THE CHILDREN THAT I SEE, AND REALLY IN
18 THE CHILDREN THAT'S REPORTED IN THE MEDICAL LITERATURE, WHEN
19 THERE IS PENETRATION EITHER IN GIRLS TO THE VAGINAL AREA OR TO
20 BOYS IN THE RECTAL AREA, THAT IT'S VERY COMMON FOR THEM TO HAVE
21 NORMAL EXAMS. AND THERE IS FAIRLY GOOD REASON TO HELP UNDERSTAND
22 THAT. THE RECTAL AREA IS A MUSCLE. AND AS YOU THINK ABOUT WHAT
23 ITS NORMAL JOB IS, IT GETS BIGGER TO ALLOW EVACUATION OF STOOL.
24 WELL, IT'S VERY COMMON WHEN THINGS ENTER FROM THE OTHER WAY, FROM
25 THE OUTSIDE IN, THAT IT ALSO CAN ENLARGE AND ALLOW THAT TO ENTER

NANCY HENDERSON, M.D. -- CROSS BY MR. CREECH

1 WITHOUT ANY TRAUMA TO THAT MUSCLE AREA. SO HAVING NORMAL EXAMS
2 WHEN THERE IS A HISTORY OF RECTAL PENETRATION IS VERY, VERY
3 COMMON.

4 Q OKAY. SO IN YOUR EXPERT OPINION A NORMAL EXAM WOULD IN NO
5 WAY INDICATE TO YOU THAT SEXUAL ASSAULT, ANAL PENETRATION, DID
6 NOT OCCUR?

7 A RIGHT. IF A CHILD HAS A NORMAL EXAM WHEN THERE IS A CLEAR
8 DISCLOSURE OF PENETRATION LIKE THIS, A NORMAL EXAM IS NOT
9 UNCOMMON TO BE FOUND.

10 MS. KEDNOCKER: I HAVE NO FURTHER QUESTIONS.

11 THE COURT: CROSS EXAMINATION, MR. CREECH.

12 MR. CREECH: YES.

13 CROSS EXAMINATION BY MR. CREECH:

14 Q THANK YOU, DR. HENDERSON, FOR BEING HERE TODAY. DO YOU
15 REMEMBER IF Minor EVER DISCLOSED TO YOU HOW MANY TIMES THIS
16 ALLEGED PENETRATION TOOK PLACE?

17 A HE HAD GIVEN ME THAT KIND OF WINDOW OF WHAT IT WAS, AND THEN
18 HE ONLY HAD SAID TO ME THAT IT HAPPENED MANY TIMES.

19 Q ALL RIGHT. HE NEVER GAVE YOU A SPECIFIC FIGURE; IS THAT
20 RIGHT?

21 A NO, SIR.

22 Q ALL RIGHT. AND IN YOUR EXAMINATION OF HIM DID HE EVER TELL
23 YOU OR WERE YOU EVER MADE AWARE OF HIS STATUS AS BEING POSSIBLY
24 EMOTIONALLY HANDICAPPED?

25 A I DON'T THINK I HAD ANY HISTORY OF THAT. HE WAS NOT ON ANY

NANCY HENDERSON, M.D. -- CROSS BY MR. CREECH

1 MEDICATIONS, AND I JUST HAD THAT HE WAS IN THE SEVENTH GRADE AND
2 -- NO. SO I DID NOT HAVE ANY INFORMATION IN REGARD TO THAT.

3 Q AND DID YOU LOOK AT ANY OF HIS SCHOOL RECORDS OR DETERMINE
4 WHETHER -- DID YOU KNOW WHETHER HE WAS IN SPECIAL EDUCATION
5 CLASSES?

6 A I DID NOT HAVE THAT REPORTED TO ME, AND I HAD NOT SEEN ANY
7 OF HIS SCHOOL RECORDS.

8 Q DID HE EVER RECOUNT TO YOU AN EPISODE WHERE DURING YOUR EXAM
9 OF HIM AND HIS DISCLOSURE ABOUT HIM HAVING TO PUT ON A CONDOM AND
10 PERFORM A SEX ACT?

11 A HE DID NOT SHARE THAT WITH ME.

12 Q HE DID NOT?

13 A DID NOT.

14 Q OKAY. AND YOU SAY THAT HIS DISCLOSURE TO YOU -- HE SAID THE
15 LAST DAY THIS HAPPENED WAS NOVEMBER THE 12TH?

16 A THAT'S WHAT I HAVE WRITTEN DOWN.

17 Q ALL RIGHT. AND IS THERE ANY REASON THAT YOU CAN RECALL WHY
18 THAT WOULD BE INCORRECT?

19 A NO. EXCEPT THAT I DO SEE A LOT PATIENTS. AND THIS IS A 12-
20 PAGE REPORT AND RIGHT ON BEHIND ANOTHER PATIENT I HAVE ANOTHER
21 ONE COMING IN. SO AS CAREFULLY BUT AS QUICKLY I'M TRYING TO GET
22 ALL THE INFORMATION ON ALL THESE CHARTS WRITTEN UP SO THEY CAN
23 GET BACK OUT. SO HUMAN ERROR IS CERTAINLY ALWAYS POSSIBLE.

24 Q OKAY. HUMAN ERROR IS POSSIBLE. WOULD YOU SAY IT'S LIKELY
25 THOUGH?

NANCY HENDERSON, M.D. -- CROSS BY MR. CREECH

1 A ALL I HAVE IS THE INFORMATION THAT I WROTE DOWN.

2 Q OKAY. NOW, AS PART OF YOUR REPORT YOU INTERVIEWED Minor
3 AND HE WAS BY HIMSELF; IS THAT CORRECT?

4 A YES.

5 Q OKAY. AND DID HE DESCRIBE TO YOU WHETHER THERE WAS EVER ANY
6 FINGER OR DIGITAL PENETRATION? DID HE SAY WHETHER ANYONE PUT A
7 FINGER IN HIM?

8 A HE DID NOT SHARE THAT WITH ME.

9 Q MEANING? DID YOU ASK HIM AND HE SAID, NO, THAT DID NOT
10 HAPPEN?

11 A HE JUST SHARED WITH ME ABOUT IT BEING PENILE PENETRATION.

12 Q ALL RIGHT. DID HE EVER EXPLAIN TO YOU WHETHER EJACULATION
13 EVER OCCURRED?

14 A HE DID NOT DESCRIBE THAT.

15 Q DID HE EVER SAY TO YOU WHETHER A CONDOM WAS USED?

16 A AGAIN, HE DID NOT SHARE THAT AT ALL.

17 Q ALL RIGHT. AND ON YOUR FORM DID YOU CHECK OFF WHERE IT SAYS
18 DESCRIBED BY PATIENT, CONDOM USED, IT SAID NO. DID YOU CHECK THAT
19 OFF?

20 A YES.

21 Q DID YOU ALSO -- DID HE EVER SHARE WITH YOU WHETHER LOTION OR
22 ANY KIND OF LUBRICANT WAS USED?

23 A NO, HE DID NOT.

24 Q AND AGAIN, WAS THAT CHECKED OFF AS NO?

25 A YES.

NANCY HENDERSON, M.D. -- REDIRECT BY MS. KEDNOCKER

1 Q AS PART OF YOUR EXAMINATION DID THE PATIENT DESCRIBE ANY
2 RECTAL PAIN?

3 A HE DID NOT.

4 Q DID HE DESCRIBE ANY RECTAL BLEEDING?

5 A HE DID NOT.

6 Q AND YOU NOTED ON PAGE 11 OF YOUR REPORT THAT THE PERIANAL
7 SKIN WAS WITHIN NORMAL LIMITS; IS THAT CORRECT?

8 A YES, SIR.

9 Q AND FINALLY, YOU NOTED THAT THE EXAM WAS A NORMAL EXAM; IS
10 THAT CORRECT?

11 A YES, SIR.

12 Q WHEN A -- BASED ON YOUR EXPERIENCE WHEN AN ALLEGED SEXUAL
13 ASSAULT HAS TAKEN PLACE OUTSIDE OF THE 72-HOUR FRAME WOULD OTHER
14 EVIDENCE SUCH AS SHEETS, BEDSPREADS, CLOTHING---

15 MS. KEDNOCKER: OBJECTION, OUTSIDE THE WITNESS' KNOWLEDGE.
16 HE'S GOING TO LAW ENFORCEMENT TESTIMONY.

17 THE COURT: OVERRULED.

18 Q WOULD OTHER EVIDENCE, SUCH AS SHEETS, BEDSPREADS, CLOTHING,
19 WOULD THAT BE A POTENTIAL SOURCE OF EVIDENCE?

20 A YES, IT IS.

21 MR. CREECH: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

22 THE COURT: YES, MA'AM.

23 MS. KEDNOCKER: YES, SIR. THANK YOU.

24 REDIRECT EXAMINATION BY MS. KEDNOCKER:

25 Q DR. HENDERSON, THIS MIGHT CLEAR THIS UP. ON PAGE 1 OF YOUR

1 REPORT -- AND WHO FILLS OUT THE TOP PAGE OF YOUR REPORT?

2 A THE SECRETARY.

3 Q OKAY. SO WHEN A CHILD COMES IN TO BE SEEN BY YOU THIS WILL
4 BE FILLED OUT AND THEN THE CHILD IS SEEN AFTER THAT; IS THAT
5 THE---

6 A THE FIRST TWO PAGES ARE FILLED OUT BY THE SECRETARY.

7 Q BEFORE THE CHILD WOULD COME IN, CORRECT?

8 A YES.

9 Q OKAY. AND ON HERE IT STATES THE REPORT FROM LAW ENFORCEMENT
10 CAME IN ON 12/14/03?

11 A THAT'S WHAT IT SAYS, YES.

12 Q OKAY.

13 MS. KEDNOCKER: BEG THE COURT'S INDULGENCE ONE SECOND.

14 Q ALSO, IS IT COMMON IN YOUR EXPERIENCE IN CASES WHERE THERE
15 IS -- YOU STATED THAT A NORMAL EXAM -- THERE CAN BE SEXUAL
16 ASSAULT REGULARLY WHEN THERE IS A NORMAL EXAM, CORRECT?

17 A YES.

18 Q AND IT IS NOT -- THE FACT THAT YOU DON'T SEE BRUISING OR
19 SWELLING OR ANYTHING LIKE THAT, THAT DOES NOT INDICATE TO YOU
20 THAT A CHILD HAS NOT BEEN SEXUALLY ASSAULTED ANALLY; IS THAT
21 CORRECT?

22 A WELL, ESPECIALLY FOR MY EXAM, BECAUSE I DID NOT SEE HIM
23 INITIALLY RIGHT AFTER THE EXAMINATION. SO BRUISES AND THINGS
24 LIKE THAT, EVEN IF THEY WERE THERE, HEAL VERY, VERY QUICKLY,
25 WITHIN DAYS. SO IT REALLY WOULD HAVE BEEN VERY UNCOMMON FOR ME

NANCY HENDERSON, M.D. -- REDIRECT BY MS. KEDNOCKER

1 TO SEE THAT ON MY EXAM WITH IT BEING, YOU KNOW, A MONTH, AT LEAST
2 A MONTH OR TWO AFTER THE LAST INCIDENT OCCURRED.

3 Q AND IF A LUBRICANT WAS USED, WOULD THAT DECREASE THE CHANCE
4 THAT THERE WOULD BE BRUISING OR THAT TYPE OF THING?

5 A NO. BRUISING ACTUALLY IS RELATED TO THE AMOUNT OF FORCE
6 THAT IS USED, YOU KNOW, ONE OBJECT HITTING UP AGAINST THE OTHER.
7 SO I DON'T KNOW IF LUBRICATION WILL HELP. LUBRICATION MIGHT HELP
8 AGAINST ABRASIONS AND TEARS AND THINGS LIKE THAT.

9 Q AND GOING TO THIS PAGE THAT DEFENSE COUNSEL WAS ASKING YOU
10 ABOUT WHERE YOU CHECK CERTAIN THINGS, AGAIN, YOU'RE NOT -- WHEN
11 YOU INTERVIEW A CHILD, YOU'RE NOT DOING IT FOR THE PURPOSE OF LAW
12 ENFORCEMENT OR ANYTHING LIKE THAT, CORRECT?

13 MR. CREECH: OBJECT TO THE FORM, YOUR HONOR.

14 THE COURT: SUSTAINED.

15 Q DR. HENDERSON, WHEN YOU MEET WITH A CHILD ARE YOU BASICALLY
16 TRYING TO TALK WITH THEM TO FIND OUT WHAT HAPPENED TO THEM SO YOU
17 CAN MEDICALLY DIAGNOSE THEM

18 A RIGHT. THE PURPOSE OF THE MEDICAL HISTORY IS TO, LIKE I HAD
19 MENTIONED BEFORE, TO FIND OUT WHAT OCCURRED, WHAT KIND OF
20 SYMPTOMS THE PATIENT IS HAVING, WHAT KIND OF CONCERNS THEY HAVE
21 ABOUT WHAT'S HAPPENED TO THEM, SAFETY ISSUES AND THINGS LIKE
22 THAT. AS FAR AS A TIME FRAME, LOCATIONS ARE REALLY NOT IN THE
23 KIND OF THE REALM THAT I USUALLY DO WITH MY INTERVIEWS,
24 ESPECIALLY ONCE A CHILD IS OUT OF THE HOME AND I KNOW -- OR
25 THEY'RE NOT IN A SITUATION WHERE THEY ARE WITHIN HARM WHERE THEY

NANCY HENDERSON, M.D. -- RECROSS BY MR. CREECH

1 ARE LIVING AT THAT TIME.

2 Q AND I GUESS THE QUESTION IS, WHEN YOU INDICATED, "IT'S NOT
3 SOMETHING Minor SHARED WITH ME," RELATED TO THE CONDOM OR THE
4 FINGER IN THE ANUS, YOU WERE NOT SPECIFICALLY ASKING -- THE
5 PURPOSE OF THAT INTERVIEW IS TO ALLOW THE CHILD TO TELL YOU
6 GENERAL INFORMATION; IS THAT ACCURATE?

7 A YES.

8 MS. KEDNOCKER: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

9 MR. CREECH: JUST TO FOLLOW UP.

10 RECROSS EXAMINATION BY MR. CREECH:

11 Q IT'S A CHECKLIST, RIGHT? AND ON THAT CHECKLIST IT SAYS,
12 "CONDOM USED, DESCRIBED BY PATIENT, NO."

13 A THE CHECKLIST IS NO AS FAR AS FOR MY EXAMINATION, I DON'T GO
14 DOWN THE CHECKLIST AND ASK A CHILD EACH QUESTION. IF I DID, IT
15 WOULD BE VERY LEADING TO GO AHEAD FROM WHAT I DO TO ASK HIM, YOU
16 KNOW, WAS THERE PENILE PENETRATION? WAS THERE DIGITAL
17 PENETRATION? THAT'S REALLY NOT IN THE REALM OF A MEDICAL
18 INTERVIEW. SO AS I'M TALKING TO THE CHILD AND THEY'RE EXPLAINING
19 TO ME WHAT HAPPENED, THEN I WILL GO BACK AND, AS AN AFTER, THAT
20 CHECKLIST IS JUST USED AS A QUICK WAY FOR OTHER PEOPLE TO LOOK AT
21 AND REVIEW BUT NOT A LIST OF QUESTIONS THAT I WOULD ASK EVERY
22 PATIENT THAT COMES IN.

23 Q ALL RIGHT. BUT YOU CAN TESTIFY THAT HE MADE NO DISCLOSURE
24 ABOUT A CONDOM, ABOUT A FINGER, ABOUT EJACULATION OR ANYTHING; IS
25 THAT CORRECT?

NANCY HENDERSON, M.D. -- REDIRECT BY MS. KEDNOCKER

1 A THAT'S TRUE.

2 MR. CREECH: THANK YOU.

3 MS. KEDNOCKER: ONE.

4 REDIRECT EXAMINATION BY MS. KEDNOCKER:

5 Q NOR DID YOU ASK HIM SPECIFICALLY. THIS IS WHAT HE SHARED TO
6 YOU DURING THE CONVERSATION; IS THAT ACCURATE?

7 A THAT'S TRUE.

8 MS. KEDNOCKER: THANK YOU.

9 THE COURT: ALL RIGHT. THANK YOU FOR YOUR TIME, DOCTOR.

10 MS. KEDNOCKER: YOUR HONOR, MAY THIS WITNESS BE EXCUSED?

11 THE COURT: ANY OBJECTION, MR. CREECH?

12 MR. CREECH: NO OBJECTION, YOUR HONOR.

13 THE COURT: ALL RIGHT. YES, MA'AM.

14 (WITNESS EXCUSED AT 1:58 P.M.)

15 MS. KEDNOCKER: YOUR HONOR, THE STATE CALLS MEREDITH
16 LOFTIS.

17 THE COURT: OKAY.

18 MR. CREECH: YOUR HONOR, I WOULD REQUEST A HEARING OUTSIDE
19 THE JURY AS TO THIS WITNESS---

20 THE COURT: OKAY.

21 MR. CREECH: ---PURSUANT TO OUR PREVIOUS DISCUSSION.

22 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE HAVE
23 ANOTHER LEGAL MATTER WE HAVE TO TAKE UP. SO IF YOU WOULD, JUST
24 GO BACK TO YOUR JURY ROOM. IT WILL PROBABLY BE ABOUT TEN MINUTES
25 OR SO. DON'T DISCUSS THE CASE AND CONTINUE TO KEEP AN OPEN MIND.

MATTERS AND MOTIONS

1 THANK YOU VERY MUCH.

2 (JURY EXITS COURTROOM AT 1:59 P.M.)

3 THE COURT: OKAY. YES, SIR. MR. CREECH.

4 MR. CREECH: YOUR HONOR, IT'S MY UNDERSTANDING THE STATE
5 INTENDS TO CALL A WITNESS AND I DON'T EVEN KNOW HER NAME, TO BE
6 COMPLETELY HONEST WITH YOU. ~~HE KNOWS IT'S ON THE WITNESS LIST.~~ I
7 DON'T HAVE THAT IN FRONT OF ME. BUT I WAS NEVER INFORMED OF THIS
8 WITNESS OR THE NATURE OF HER TESTIMONY UNTIL RIGHT BEFORE WE
9 BROKE FOR LUNCH. I'VE NEVER BEEN GIVEN A REPORT. I'VE NEVER
10 BEEN TOLD BY THE SOLICITOR THAT THERE WOULD BE THIS TYPE OF
11 WITNESS WHO IS GOING TO TESTIFY TO BEHAVIOR OF SEXUAL ASSAULT
12 VICTIMS.

13 THE WAY I READ RULE 5, YOUR HONOR, IS I THINK IT SHOULD BE
14 READ AND CONSTRUED BROADLY THAT ANY REPORTS, ANY RESULTS, ANY
15 EXAMINATIONS SHOULD BE TURNED OVER TO THE DEFENSE IF THEY FILED A
16 RULE 5 MOTION, WHICH WE'VE DONE IN THIS CASE, AND THAT'S
17 UNCONTESTED AS TO OUR FILING THAT MOTION, YOUR HONOR.

18 AGAIN, NOTHING HAS BEEN DISCLOSED ABOUT THIS WITNESS, THE
19 SUBSTANCE OF HER TESTIMONY. SHE HAS NOT DISCLOSED ANY RESULTS OR
20 ANYTHING. SO THIS IS, IN A SENSE, TRIAL BY AMBUSH AS TO THIS
21 WITNESS AND WHAT THIS WITNESS INTENDS TO TESTIFY TO, AND WE WOULD
22 ASK YOUR HONOR TO EXCLUDE THIS WITNESS UNDER THE PROVISIONS OF
23 RULE 5, BASED ON THAT.

24 THE COURT: YES, MA'AM, MS. KEDNOCKER.

25 MS. KEDNOCKER: YOUR HONOR, MY READING OF RULE 5 DOES NOT

MATTERS AND MOTIONS

1 STATE THAT WE HAVE TO GIVE PRIOR NOTICE AS TO THIS WITNESS. IT'S
2 BASED ON -- LET ME APOLOGIZE. ONE SECOND. I WANT TO MAKE SURE I
3 DON'T MISREAD. BUT WE HAD TO GIVE PRIOR NOTICE THAT WE WERE
4 GOING TO USE REPORTS, EXAMINATIONS. THIS WITNESS HAS NEVER
5 EXAMINED THIS CHILD. THERE IS NO EXAMINATION OUT THERE TO BE
6 HAD. MR. CREECH CAN CERTAINLY CROSS EXAMINE HER AND SAY, "YOU'VE
7 NEVER MET THIS KID, HAVE YOU?" "NO."

8 SHE STRICTLY -- THE STATE INTENDS TO OFFER HER AS AN EXPERT
9 IN THE AREA OF CHILD SEXUAL ABUSE AND ALLOW HER TO TESTIFY UNDER
10 STATE VERSUS WEAVERLING, -- AND, YOUR HONOR, I HAVE A COPY OF
11 THAT CASE IF YOU'D LIKE TO SEE IT -- JUST AS TO THE HALLMARKS OF
12 CHILD SEXUAL ASSAULT. THE STATE INTENDS TO ASK SOME VERY
13 STRUCTURED CLOSE-ENDED QUESTIONS TO HER. IF THE EVIDENCE IN THIS
14 CASE WERE TO SHOW THAT THE CHILD DELAYED REPORTING, IS THAT
15 COMMON OR UNCOMMON? IF THE EVIDENCE IN THIS CASE WERE TO SHOW IT
16 WAS A FAMILY MEMBER THAT ASSAULTED HIM, IS THAT COMMON OR
17 UNCOMMON? THOSE KIND OF QUESTIONS THAT ARE SUPPORTED BY THE
18 EVIDENCE THAT'S ALREADY IN THE RECORD.

19 THE COURT: DID THE EXPERT GENERATE ANY KIND OF PAPERWORK?

20 MS. KEDNOCKER: NO, SIR. TO BE TOTALLY FRANK WITH YOU, I
21 JUST MET HER TODAY AND THERE HAS BEEN NO BIG PREP WITH HER OTHER
22 THAN LAST WEEK THROUGH A FRIEND I FOUND THIS WITNESS. I
23 ORIGINALLY HAD PLANNED TO CALL A DIFFERENT WITNESS WHO I COULD
24 NOT -- I ENDED UP NOT GETTING TO CALL IN THIS CASE. IT'S JUST
25 BASICALLY THE HALLMARKS OF CHILD SEXUAL ASSAULT AND ABUSE. THERE

1 HAVE BEEN NO REPORTS GENERATED. SHE HASN'T, YOU KNOW, DONE
2 ANYTHING FOR THAT. NATURALLY, I WOULD HAVE TURNED THAT OVER IF I
3 HAD ANYTHING LIKE THAT.

4 THE COURT: OKAY, MR. CREECH.

5 MR. CREECH: YOUR HONOR---

6 THE COURT: WHY WOULD RULE 5 REQUIRE HER TO TELL YOU WHO
7 THE PERSON WAS?

8 MR. CREECH: WELL, YOUR HONOR, IT DOES NOT SPECIFICALLY SAY
9 THAT THEY HAVE TO TELL US THAT. WHAT IT SAYS IS SUBSECTION D
10 JUST STATES THAT UPON REQUEST OF THE DEFENDANT THE PROSECUTION
11 SHALL PERMIT THE DEFENDANT TO INSPECT AND COPY ANY RESULTS OR
12 REPORTS OF PHYSICAL OR MENTAL EXAMINATION, ANY SCIENTIFIC TESTS
13 OR EXPERIMENTS OR COPIES THEREOF, ET CETERA.

14 SO, YOU KNOW, I DON'T KNOW IF SHE TOLD HER NOT TO PRODUCE A
15 REPORT. I DON'T KNOW IF SHE SAID, "JUST COME IN AND TESTIFY." I
16 HAVE NO CLUE. I MEAN, IT WAS LITERALLY JUST DONE TODAY. AND WE
17 ALSO REQUEST, YOUR HONOR, AT SOME POINT IN TIME, IF SHE'S GOING
18 TO OFFER HER AS AN EXPERT WITNESS -- AND, OF COURSE, I THINK
19 SHE'S GOING TO HAVE TO COMPLY WITH *STATE V. JONES* AND LAY THE
20 PROPER FOUNDATION BEFORE THIS WITNESS CAN OFFER AN OPINION AS TO
21 THAT AREA.

22 THE COURT: HOW ABOUT THAT?

23 MS. KEDNOCKER: YOUR HONOR, I INTEND TO LAY THE PROPER
24 FOUNDATION FOR HER. THIS WITNESS HAS TESTIFIED ABOUT 25 TIMES IN
25 GENERAL SESSIONS AND FAMILY COURT. AND TO GO BACK TO THE

.....

MEREDITH LOFTIS -- PROFFER BY MS. KEDNOCKER

1 QUESTION OF DID I TELL HER TO NOT GENERATE A REPORT OR ANYTHING
2 LIKE THAT, CLEARLY I WOULD NOT DO THAT. I'M SURE THIS EXPERT IN
3 HER YEARS -- SHE'S GOING TO BE QUALIFIED. AND I'M SURE THIS
4 EXPERT IN HER YEARS OF TRAINING HAS LOOKED AT REPORTS AND SHE'S
5 LEARNED FROM REPORTS. THERE'S NO REPORT THE STATE WOULD EVER ASK
6 HER NOT TO GENERATE IN A CASE LIKE THIS SO THAT IT WOULD AMBUSH
7 THE DEFENDANT.

8 FOR THE RECORD, SHE HAS TESTIFIED IN FAMILY COURT, GENERAL
9 SESSIONS AND I BELIEVE I JUST SAID 25 TIMES. SO I DON'T THINK
10 HER QUALIFICATIONS ARE GOING TO BE AN ISSUE, BUT YOUR HONOR MAY
11 FIND THAT---

12 THE COURT: WHAT DOES THE FACT THAT SHE'S BEEN QUALIFIED
13 BEFORE HAVE TO DO WITH HER---

14 MS. KEDNOCKER: IT DOESN'T. IT DOESN'T. IT'S JUST TO LET
15 YOUR HONOR KNOW I'M NOT BRINGING IN SOME PERSON OFF THE STREET
16 THAT HAS NEVER EVER BEEN IN COURT BEFORE TO TESTIFY TO THESE --
17 YOUR HONOR WOULD SURELY HAVE TO LISTEN TO THE QUALIFICATIONS AND
18 DECIDE IF YOU THINK SHE'S QUALIFIED. BUT WE CAN DO THAT OUTSIDE
19 THE PRESENCE OF THE JURY IF YOUR HONOR WANTED TO HEAR THAT.

20 THE COURT: ALL RIGHT. LET'S DO A PROFFER OF HER TESTIMONY
21 ON THE STATE VERSUS JONES FACTORS OUTSIDE THE PRESENCE OF THE
22 JURY. IS SHE OUT THERE NOW?

23 MS. KEDNOCKER: YES, SIR.

24 THE COURT: OKAY. AND I'LL LET YOU DO YOUR QUALIFICATION.

25 MEREDITH LOFTIS, HAVING BEEN DULY SWORN,

1 TESTIFIED AS FOLLOWS:

2 Q GOOD AFTERNOON, MS. LOFTIS.

3 MS. KEDNOCKER: YOUR HONOR, DO YOU WANT ME TO --

4 Q WHERE ARE YOU CURRENTLY EMPLOYED MS. LOFTIS?

5 A I'M AN INDEPENDENT CONTRACTOR -- I'M A LICENSED PROFESSIONAL
6 COUNSELOR FOR PETTIGRU COUNSELING ASSOCIATES HERE IN GREENVILLE
7 AND ALSO FOR THE CHILDREN'S ADVOCACY CENTER IN SPARTANBURG.

8 Q AND JUST SO YOU KNOW, MS. LOFTIS, WE'RE DOING THIS OUTSIDE
9 THE PRESENCE OF THE JURY FOR QUALIFICATION PURPOSES.

10 A OKAY.

11 Q WHAT ARE THE SERVICES THAT YOU PROVIDE? I BELIEVE YOU SAID
12 THE PETTIGRU CENTER. CAN YOU STATE THE SERVICES THAT ARE
13 PROVIDED AT THE DIFFERENT LOCATIONS YOU WORK AT?

14 A SURE. I PROVIDE INDIVIDUAL AND FAMILY THERAPY TO CHILDREN
15 AND ADOLESCENTS. AND AT THE CHILDREN'S ADVOCACY CENTER I FOCUS
16 ON SEXUAL ABUSE WITH CHILDREN AND ADOLESCENTS.

17 Q AND CAN YOU EXPLAIN YOUR WORK EXPERIENCE AND TRAINING?

18 A I HAVE A BACHELOR'S DEGREE, BACHELOR OF SCIENCE DEGREE FROM
19 PENN STATE UNIVERSITY, MASTER'S OF ARTS DEGREE IN COUNSELING.
20 ALSO, I HAVE MY LICENSED PROFESSIONAL COUNSELOR CERTIFICATION
21 THROUGH THE STATE OF SOUTH CAROLINA. I HAVE WORKED -- I'VE
22 TAUGHT PSYCHOLOGY AT GREENVILLE TECH. I'VE WORKED IN FOSTER CARE
23 FOR ABOUT FIVE YEARS. I'VE BEEN PRIVATE PRACTICE NOW FOR ALMOST
24 ABOUT FOUR AND A HALF, FIVE YEARS.

25 Q AND DO YOU HAVE ANY SPECIAL TRAINING IN THE AREA OF CHILD

MEREDITH LOFTIS -- PROFFER BY MS. KEDNOCKER

1 SEXUAL ASSAULT AND ABUSE?

2 A I DO. WE'RE REQUIRED BY LAW TO GET 20 HOURS PER YEAR, AND
3 THE MAJORITY OF MY HOURS TOWARDS MY LICENSE ARE FOCUSED ON SEXUAL
4 ABUSE. I'VE GONE TO TRAINING IN HUNTSVILLE, ALABAMA, WHICH IS
5 THE NATIONAL CHILDREN'S ADVOCACY CENTER, ALSO IN CHARLESTON FOR
6 OUR STATE-ORIENTED CHILD SEXUAL ABUSE TRAININGS.

7 Q AND I BELIEVE YOU JUST TOUCHED ON THIS, BUT CAN YOU TELL THE
8 COURT ABOUT ANY SPECIAL TRAINING THAT YOU HAVE IN THE AREA OF
9 CHILD SEXUAL ASSAULT AND ABUSE?

10 A SURE. I HAVE ATTENDED THE HUNTSVILLE ALABAMA TRAINING WHICH
11 FOCUSES ON FORENSIC AND FORENSIC SENSITIVE THERAPY FOR CHILD
12 SEXUAL ABUSE. THIS PAST YEAR I ATTENDED ABOUT 15 HOURS OF SEXUAL
13 ABUSE COGNITIVE BEHAVIORAL TRAINING AND TREATING CHILDHOOD
14 DISORDERS.

15 Q DO YOU HAVE OCCASION TO CONSULT WITH OTHER PROFESSIONALS IN
16 YOUR FIELD RELATED TO THE AREA OF CHILD SEXUAL ASSAULT?

17 A I DO. I WORK ONE DAY A WEEK AT THE CHILDREN'S ADVOCACY
18 CENTER, AND WE HAVE WHAT WE CALL CHILD ABUSE RESPONSE TEAM
19 STAFFINGS WHERE WE ARE ABLE TO GO OVER CASES AND ALSO OUR CLIENTS
20 AND ALSO MAKE RECOMMENDATIONS TO OTHER THERAPISTS BASED UPON OUR
21 EXPERIENCES.

22 Q AND ABOUT HOW MANY YEARS HAVE YOU COUNSELED CHILD VICTIMS OF
23 SEXUAL ASSAULT?

24 A SPECIFICALLY, ABOUT THREE AND A HALF OUT OF MY FIVE YEARS OF
25 PRIVATE PRACTICE.

MEREDITH LOFTIS -- PROFFER BY MS. KEDNOCKER

1 Q AND IN THE PAST THREE AND A HALF TO FIVE WHAT -- CAN YOU
2 ESTIMATE HOW MANY CHILDREN IN THREE AND HALF YEARS YOU'VE SEEN OR
3 TREATED FOR CHILD SEXUAL ASSAULT OR ABUSE?

4 A I WOULD SAY AT LEAST 70 OVER THREE AND A HALF YEARS, IF YOU
5 FIGURE ABOUT 25 A YEAR.

6 Q AND HAVE YOU TESTIFIED IN THE COURTS OF THIS STATE BEFORE?

7 A I HAVE.

8 Q WHICH ONES ARE THEY?

9 A I'VE TESTIFIED AS AN EXPERT WITNESS IN CHEROKEE COUNTY,
10 UNION, SPARTANBURG, ANDERSON AND GREENVILLE COUNTY.

11 Q AND IN YOUR TRAINING -- GOING BACK IN YOUR STUDIES -- DO YOU
12 KEEP UP WITH CURRENT REPORTS AND DIFFERENT CHRONICLES AND THAT
13 TYPE OF INFORMATION THAT'S RELATED TO THE FIELD OF CHILD SEXUAL
14 ASSAULT AND ABUSE TO KEEP YOU UP TO SPEED ON THE LATEST THINGS IN
15 THE FIELD?

16 A YES, I DO.

17 Q COULD YOU TELL ME ABOUT THAT?

18 A WE FOLLOW CERTAIN PROTOCOLS UNDER THE CHILDREN'S ADVOCACY
19 CENTER AND ALSO UNDER THE NATIONAL STATE GUIDELINES TOO. WE
20 FOLLOW SPECIFIC REPORTS THAT -- THE CHILD ABUSE ACCOMMODATION
21 SYNDROME, WE HAVE CERTAIN GUIDELINES THAT WE FOLLOW AS A
22 NATIONALLY RECOGNIZED NONPROFIT ORGANIZATION.

23 MS. KEDNOCKER: YOUR HONOR, THAT WOULD BE THE STATE'S VOIR
24 DIRE ON THIS WITNESS.

25 THE COURT: MR. CREECH, DO YOU HAVE ANY QUESTIONS?

MEREDITH LOFTIS -- PROFFER BY MS. KEDNOCKER

1 MR. CREECH: WELL, YOUR HONOR, I DON'T THINK SHE TALKED
2 ABOUT THE JONES FACTORS AT ALL. I MEAN, SHE'S TALKED ABOUT THE
3 QUALIFICATIONS OF THE WITNESS, BUT SHE HASN'T GONE INTO ANY OF
4 THE METHODOLOGY, THE RELIABILITY OF THE METHODOLOGY, WHETHER IT'S
5 BEEN SUBJECT TO PEER REVIEW, WHETHER IT'S BEEN PUBLISHED IN ANY
6 JOURNALS OR WHATEVER IF THE TECHNIQUES ARE ACCEPTED IN HER FIELD.

7 THE COURT: MS. KEDNOCKER?

8 MS. KEDNOCKER: I CAN CERTAINLY ASK HER SOME ADDITIONAL
9 QUESTIONS ON THOSE GROUNDS.

10 THE COURT: OKAY.

11 MS. KEDNOCKER: AND HONESTLY, YOUR HONOR, I DO NOT HAVE THE
12 JONES CASE IN FRONT OF ME AT THIS POINT. THAT'S WHY I'M A LITTLE
13 BIT... I HAVE IT.

14 Q HAVE YOU, MS. LOFTIS, PARTICIPATED IN ANY PUBLICATIONS
15 YOURSELF, ASSISTED IN, WRITTEN ANY PUBLICATIONS OF ANY FORM?

16 A NO, I HAVE NOT.

17 Q OKAY. AND WHEN YOU WERE TALKING ABOUT THE DIFFERENT REPORTS
18 THAT YOU RELY ON, WHAT PRIOR APPLICATION OF THOSE REPORTS -- HOW
19 --

20 MS. KEDNOCKER: YOUR HONOR, I GUESS I'M JUST A LITTLE,
21 MYSELF, THROWN OFF ON HOW TO QUESTION HER ABOUT -- I MEAN, SHE'S
22 TESTIFYING FROM HER BODY OF KNOWLEDGE IN HER YEARS OF WORKING
23 WITH CHILDREN. YOU KNOW, I'M NOT QUITE SURE WITH THESE JONES
24 FACTORS HOW TO PHRASE TO HER THE QUALITY CONTROL PROCEDURES USED
25 TO INSURE RELIABILITY. WHAT ARE WE DISCUSSING WITH THAT? ARE WE

MEREDITH LOFTIS -- PROFFER BY MS. KEDNOCKER

1 DISCUSSING FROM HER STUDIES OR -- I MEAN, IN THIS AREA OF CHILD
2 SEXUAL ASSAULT, I JUST -- I'M NOT QUITE SURE HOW TO APPLY THE
3 JONES FACTORS HERE.

4 THE COURT: WELL, LET ME SEE Y'ALL UP HERE ONE SECOND.

5 MS. KEDNOCKER: OKAY.

6 (BENCH CONFERENCE OFF RECORD FROM 2:12 TO 2:17 P.M.)

7
8 THE COURT: WE'LL JUST TAKE A RECESS FOR ABOUT 10 MINUTES
9 AND BE RIGHT BACK. THANK YOU.

10 (RECESS FROM 2:17 TO 2:31 P.M.)

11 THE COURT: ARE Y'ALL READY TO PROCEED?

12 MS. KEDNOCKER: YES, SIR. DO YOU WANT ME TO CALL HER BACK
13 UP AND SEE IF WE CAN -- IF YOUR HONOR IS NOT INCLINED TO QUALIFY
14 HER, THEN WE JUST WON'T BRING HER UP.

15 THE COURT: OKAY. ALL RIGHT.

16 MS. KEDNOCKER: WE WANTED TO GO AHEAD AND LAY THE REST OF
17 THE FOUNDATION AND MAKE A DETERMINATION ON THAT.

18 THE COURT: ALL RIGHT.

19 DIRECT EXAMINATION CONTINUES BY MS. KEDNOCKER:

20 Q THANK YOU, MS LOFTIS. I WANT TO GO BACK TO YOUR TRAINING
21 AND EXPERIENCE. ARE THERE ANY VERY BIG -- VERY COMMONLY RELIED
22 ON STUDIES THAT YOU USE TO HELP YOU AND ASSIST YOU IN COUNSELING
23 AND TREATING CHILDREN THAT HAVE BEEN SEXUALLY ASSAULTED?

24 A YES, WE USE -- THE MOST COMMON PUBLICATION WE USE IS THE
25 CHILD SEXUAL ABUSE ACCOMMODATION SYNDROME, WHICH IS -- BASICALLY
IT WAS A STUDY DONE BY A VARIETY OF PEOPLE. ROLAND SUMMIT IS THE

MEREDITH LOFTIS -- PROFFER BY MS. KEDNOCKER

1 MAIN PERSON WHO WROTE THE ARTICLE. AND IT BASICALLY EXPLAINS WHY
2 CHILDREN WAIT TO REPORT, THE WHOLE THEORY OF ACCOMMODATION,
3 SURVIVAL, DELAYED DISCLOSURE. THERE'S A -- I MEAN, IT'S WIDELY
4 USED IN ADDITION TO -- IT'S NOT JUST IN CRIMINAL COURT BUT ALSO
5 FAMILY COURT AND ALSO IN PHYSICAL ABUSE TOO, WHY KIDS DON'T
6 REPORT PHYSICAL ABUSE IMMEDIATELY.

7 Q AND HOW LONG HAVE YOU BEEN RELYING AND USING THAT REPORT ON
8 THE CHILD SEXUAL ABUSE ACCOMMODATION SYNDROME THAT WAS WRITTEN BY
9 THIS ROLAND SUMMIT?

10 A I WAS TOLD TO USE IT EVERY TIME SINCE I STARTED.

11 Q AND HOW LONG HAS IT BEEN IN EXISTENCE? I'M SORRY. HOW LONG
12 HAS -- WHEN DID HE PUBLISH THAT, ROLAND SUMMIT?

13 A THIS WAS IN 1983.

14 Q OKAY. SO FOR THE PAST 20-SOME ODD YEARS WOULD YOU SAY A
15 MAJORITY OR A LARGE NUMBER PEOPLE IN YOUR FIELD RELY ON THAT
16 PARTICULAR STUDY?

17 A YES.

18 Q AND HAVE THEY RELIED ON THAT STUDY THROUGHOUT THE LAST 23-
19 ODD YEARS IN TREATING VICTIMS OF CHILD SEXUAL ASSAULT?

20 A YES.

21 Q HAS IT BEEN USED NUMEROUS TIMES IN OTHER CRIMINAL CASES?

22 A YES.

23 Q AND HAS IT CONSISTENTLY BEEN USED IN YOUR TREATMENT OF CHILD
24 SEXUAL ASSAULT? IS THAT SOMETHING YOU CONSISTENTLY GO BACK TO
25 AND TRY TO USE?

MEREDITH LOFTIS -- PROFFER BY MS. KEDNOCKER

1 A YES.

2 Q BESIDES THAT IS THERE ANY OTHER TRAINING -- AND YOU LISTED A
3 LITANY OF YOUR -- A LITANY OF YOUR TRAINING AND EXPERIENCE. BUT
4 IS THERE A PARTICULAR TRAINING NATIONALLY THAT YOU GO TO THAT
5 ASSISTS YOU IN TREATING CHILD SEXUAL ASSAULT VICTIMS?

6 A THE NATIONAL TRAINING THAT EVERYONE GOES TO WHEN TREATING
7 CHILD SEXUAL ABUSE THAT ALL OF THE MAIN HEADS OF CHILD SEXUAL
8 ABUSE, PEOPLE WHO HAVE DONE ALL THE MAIN PUBLICATIONS, ALL THE
9 MAJORITY OF TRAINING IS DONE IN HUNTSVILLE, ALABAMA. IT'S THE
10 NATIONAL CHILDREN'S ADVOCACY CENTER. AND IF YOU WANT TO BE
11 TRAINED IN THE TREATMENT OF CHILD SEXUAL ABUSE, THAT IS WHERE YOU
12 GO.

13 Q AND WHAT IS THAT -- IN HUNTSVILLE, ALABAMA, HOW LONG A
14 COURSE IS THAT?

15 A IT'S ONGOING. YOU CAN RECEIVE TRAINING ALL YEAR LONG. THE
16 MAIN INITIAL TRAINING IS ABOUT A THREE- TO FOUR-DAY TRAINING, AND
17 THEN YOU CAN GO BACK FOR SPECIFICS IN CHILD SEXUAL ABUSE THERAPY.
18 YOU CAN GO BACK FOR SPECIFICS IN FORENSICS, MEDICAL EXAMINING,
19 THAT KIND OF THING.

20 Q OKAY. I IMAGINE -- FOR ATTORNEYS WE HAVE A NATIONAL
21 ADVOCACY CENTER WHERE LAWYERS GO AND THEY GET TRAINED AND GO FOR
22 DIFFERENT CLASSES. IS THAT SIMILAR TO WHAT YOU'RE TALKING ABOUT?

23 A ACTUALLY MANY ATTORNEYS DO GO.

24 Q TO?

25 A A LOT OF OUR ASSISTANT SOLICITORS GO.

MEREDITH LOFTIS -- PROFFER BY MR. CREECH

1 Q OKAY.

2 A TO HUNTSVILLE.

3 MS. KEDNOCKER: YOUR HONOR, THAT WOULD BE OUR ADDITIONAL
4 VOIR DIRE OF THIS WITNESS.

5 MR. CREECH: YOUR HONOR, I JUST HAVE SOME BRIEF QUESTIONS.

6 THE COURT: ALL RIGHT, MR. CREECH.

7 CROSS EXAMINATION BY MR. CREECH

8 Q MS. LOFTIS, IS THAT CORRECT?

9 A YES.

10 Q HAVE YOU -- YOU HAVE NOT MET WITH THE VICTIM AT ALL IN THIS
11 CASE; IS THAT CORRECT?

12 A NO.

13 Q ALL RIGHT. HAVE YOU LOOKED AT ANY REPORTS IN THIS CASE?

14 A NO.

15 Q HAVE YOU -- WHAT IS THE BASIS OF YOUR KNOWLEDGE -- WHAT ARE
16 THE FACTS AND THE BASIS FOR THE FACTS THAT YOU ARE RELYING UPON
17 TO TESTIFY IN THIS CASE?

18 A I'M SORRY. I DON'T UNDERSTAND YOUR QUESTION.

19 Q ALL RIGHT. YOU HAVE TO HAVE SOME BASIS OF THE FACTS IN THIS
20 CASE, UNDERLYING FACTS IN THIS CASE. WHAT IS YOUR BASIS FOR THE
21 FACTS IN THIS CASE?

22 A THE BASIS OF THE FACTS -- WHAT I WAS ASKED -- THE REASON WHY
23 I WAS CALLED TO TESTIFY; IS THAT WHAT YOU'RE ASKING?

24 Q RIGHT.

25 A OKAY. THE BASIS IS TO EXPLAIN THE REACTIVE BEHAVIORS OF

MEREDITH LOFTIS -- PROFFER BY MR. CREECH

1 SEXUAL ABUSE, WHAT IS COMMON, WHAT ARE SOME STANDARD -- WHY
2 CHILDREN WAIT TO REPORT, WHAT IS DELAYED DISCLOSURE, HOW DOES IT
3 WORK, IS IT COMMON FOR CERTAIN FACTORS TO BE DIFFERENT IN
4 DIFFERENT -- I MEAN, THERE'S MANY DIFFERENT DETAILS.

5 Q SO YOU'RE NOT INTENDING TO TESTIFY IN THIS CASE AS TO
6 WHETHER OR NOT THIS CHILD DELAYED IN REPORTING OR WHETHER THIS
7 CHILD OR THE VICTIM IN THIS CASE FITS UNDER THIS SYNDROME OR
8 ANYTHING -- YOU'RE NOT HERE TO TESTIFY ABOUT THIS VICTIM IN THIS
9 CASE; IS THAT RIGHT?

10 A I'VE NEVER MET THE VICTIM, SO, NO.

11 Q OKAY. AND YOU'RE JUST HERE TO INFORM THE THEORY OR
12 ENLIGHTEN THE JURY AS TO THE PRINCIPLES BEHIND DELAYED
13 DISCLOSURE; IS THAT CORRECT?

14 A YES.

15 Q OKAY. NOW, IN YOUR FIELD IS IT COMMON FOR A PSYCHOLOGIST OR
16 A BEHAVIORAL PSYCHOLOGIST TO TESTIFY IN FRONT OF A JURY WITHOUT
17 EVER HAVING TALKED TO THE ALLEGED VICTIM, WITHOUT HAVING TALKED
18 TO ANY ONE IN LAW ENFORCEMENT, WITHOUT HAVING READ ANY REPORTS
19 THAT LAW ENFORCEMENT MAY HAVE PUT TOGETHER, WITHOUT READING ANY
20 STATEMENTS GIVEN BY WITNESSES OR THE ALLEGED VICTIM? IS THAT
21 COMMON IN YOUR FIELD?

22 A I THINK IT'S COMMON IF YOU'RE NOT TESTIFYING SPECIFIC TO THE
23 CASE ITSELF, IF YOU'RE NOT TESTIFYING ABOUT THE DETAILS OF THE
24 CHILD AND THE POLICE REPORTS. I'VE NEVER MET THE VICTIM. I'VE
25 NEVER SEEN THE VICTIM, SO I DON'T KNOW WHO THE VICTIM IS. ALL

MATTERS AND MOTIONS

1 I'M TESTIFYING IS BASED UPON WHAT I DO ON A REGULAR BASIS AND HOW
2 I DO THE THINGS THAT I DO.

3 MR. CREECH: YOUR HONOR, I HAVE NO FURTHER QUESTIONS.

4 MS. KEDNOCKER: YOUR HONOR, I HAVE TO BE JUST COMPLETELY
5 CANDID WITH THE COURT. FOR COMPLETE DISCLOSURE, MS. LOFTIS AND
6 I, THE LIMITED -- SHE HAS NEVER MET THE VICTIM. THE LIMITED
7 CONVERSATIONS WE HAVE HAD HAVE BEEN SUCH AS THIS, THE EVIDENCE IN
8 THIS CASE, IF IT WERE TO SHOW THE VICTIM IN THIS CASE DELAYED
9 REPORTING, IS THAT COMMON OR UNCOMMON? THAT'S WHAT I WANT TO ASK
10 HER. YOU KNOW, I WANT TO SAY, IN THIS CASE MY VICTIM GAVE A MORE
11 DETAILED ACCOUNT ONE TIME THAN ANOTHER. IN YOUR EXPERIENCE IS
12 THAT COMMON OR UNCOMMON? YOU KNOW, THAT IS THE -- IT'S KIND OF
13 THE QUESTION OF IF THE EVIDENCE IN THIS CASE WERE TO SHOW DELAYED
14 REPORTING, ONE ACCOUNT MORE DETAILED THAN THE OTHER, THERE'S --
15 AND I CAN LIMIT IT TO SEVERAL QUESTIONS, IF YOUR HONOR WANTS TO.
16 IT'S PROBABLY ABOUT FIVE THAT I WAS GOING TO ASK HER. BUT I DID
17 WANT COMPLETE DISCLOSURE BECAUSE WHEN I HAVE SPOKEN WITH HER ON
18 THE PHONE, THE TWO TIMES THAT I HAVE, IT HAS BEEN THE
19 CONVERSATION OF, IN THIS CASE THE VICTIM DELAYED REPORTING. IN
20 YOUR EXPERIENCE IS THAT COMMON OR UNCOMMON? AND, YOU KNOW,
21 THAT'S THE WAY I USED IT IN A PREVIOUS TRIAL. I JUST WANTED TO
22 LET YOUR HONOR KNOW THAT.

23 THE COURT: OKAY. THANK YOU, SIR -- MA'AM.

24 ALL RIGHT. I FIND THAT UNDER RULE 702 HER TESTIMONY IS
25 ADMISSIBLE. IT'S RELEVANT. SHE'S QUALIFIED. AND IT'S RELIABLE.

MATTERS AND MOTIONS

1 BASED ON THE JONES FACTORS ACCORDING TO THE PROFFER THAT HAS BEEN
2 LAID DOWN HAS BEEN ADEQUATE INDICIA OF RELIABILITY GIVEN THE
3 STUDY THAT SHE REFERRED TO, THE ADVOCACY CENTER TRAINING SHE'S
4 HAD AND THAT THE METHODOLOGY IS USED COMMONLY IN HER FIELD. SO I
5 FIND THAT UNDER *STATE VERSUS COUNCIL* THE TESTIMONY IS ADMISSIBLE.

6 I ALSO FIND THAT UNDER RULE 403 THE PROBATIVE VALUE IS NOT
7 SUBSTANTIALLY OUTWEIGHED BY ANY PREJUDICIAL IMPACT. GIVEN THE
8 LIMITED NATURE OF THIS TESTIMONY AND THAT IT'S ALSO BEEN APPROVED
9 BY *STATE VERSUS WEAVERLING*, THIS SPECIFIC TYPE OF TESTIMONY WAS
10 UPHELD ALTHOUGH THERE WAS NO CHALLENGE MADE UNDER *STATE VERSUS*
11 *COUNCIL* OR RULE 702 IN THAT CASE.

12 FINALLY, AS TO THE RULE 5 ISSUE, MR. CREECH POINTED OUT THAT
13 THIS COULD BE A TRIAL BY AMBUSH, AND HE MAY BE CORRECT. BUT RULE
14 5 DOESN'T PROHIBIT TRIAL BY AMBUSH AS TO WITNESSES. THERE IS NO
15 REPORT, PAPERWORK THAT'S BEEN GENERATED BY THIS WITNESS; SO THERE
16 IS NO RULE 5 VIOLATION. SO SHE CAN TESTIFY. AND IS THERE
17 ANYTHING ELSE BEFORE WE BRING THE JURY IN?

18 MS. KEDNOCKER: NO, SIR, YOUR HONOR.

19 MR. CREECH: JUST NOTE OUR OBJECTIONS.

20 THE COURT: ALL RIGHT. THANK YOU, SIR. YES, MA'AM.

21 MS. KEDNOCKER: YOUR HONOR, ONE LAST THING TO BE CLEAR.
22 DID YOU WANT -- I THINK IT'S FIVE QUESTIONS. DID YOU WANT ME TO
23 TELL YOU WHAT THOSE ARE OUTSIDE THE PRESENCE OR IT'S LIMITED JUST
24 TO THEM?

25 THE COURT: NO, THAT'S FINE, UNLESS YOU WANT TO---

MATTERS AND MOTIONS

1 MS. KEDNOCKER: THAT'S FINE.

2 MR. CREECH: WELL, AND I JUST WANT TO MAKE CLEAR THAT SHE
3 IS NOT GOING TO TESTIFY THAT THIS CHILD'S BEHAVIOR IS---

4 MS. KEDNOCKER: NO.

5 MR. CREECH: ---NORMAL WITH OTHER CHILD'S BEHAVIOR AND
6 OTHER VICTIM'S BEHAVIOR. SHE CAN TESTIFY, I THINK, TO -- I MEAN,
7 THE QUESTION THAT WAS ASKED IN THIS---

8 THE COURT: WELL---

9 MR. CREECH: ---WEAVERLING WAS, BASED ON YOUR TRAINING AND
10 EXPERIENCE IS IT UNCOMMON FOR PAST VICTIMS OF SEXUAL ABUSE TO
11 BECOME OFFENDERS THEMSELVES? THAT'S NOT UNCOMMON.

12 MS. KEDNOCKER: YOUR HONOR, IF YOU'D LIKE ME TO REPHRASE
13 IT, INSTEAD OF SAYING, IF THE EVIDENCE IN THIS CASE WERE TO SHOW,
14 I DON'T HAVE TO DO THAT. THAT'S WHAT THE JUDGE WANTED ME TO DO
15 THE OTHER TIME. I CAN STATE IT MORE LIKE, IN YOUR EXPERIENCE IS
16 IT COMMON OR UNCOMMON FOR CHILDREN TO DELAY REPORTING? AND NOT
17 EVEN MENTION A REFERENCE TO THE VICTIM.

18 THE COURT: OKAY. WELL, THAT'S FINE.

19 MS. KEDNOCKER: ALL RIGHT. I'LL DO IT THAT WAY.

20 THE COURT: THANK YOU. OKAY. I GUESS YOU NEED TO COME
21 BACK DOWN SO WE CAN RE-SWEAR IN FRONT OF THE JURY.

22 YOU CAN BRING THEM ON IN. THANK YOU.

23 MS. KEDNOCKER: YOUR HONOR, CAN THE WITNESSES WHO HAVE
24 TESTIFIED COME IN AT THIS POINT OR DO YOU WANT THEM STILL
25 SEQUESTERED?

MEREDITH LOFTIS -- DIRECT BY MS. KEDNOCKER

1 THE COURT: WELL, I DON'T KNOW WHO HE'S GOING TO CALL.

2 MS. KEDNOCKER: OKAY. THEN WE'LL LEAVE IT.

3 THE COURT: JUST KEEP THEM OUT THERE.

4 MS. KEDNOCKER: ALL RIGHT.

5 (JURY REENTERS COURTROOM AT 2:43 P.M.)

6 THE COURT: OKAY. YES, MA'AM, MS. KEDNOCKER.

7 MS. KEDNOCKER: THANK YOU, YOUR HONOR.

8 THE STATE CALLS MEREDITH LOFTIS.

9 MEREDITH LOFTIS, HAVING BEEN DULY SWORN,
10 TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION BY MS. KEDNOCKER:

12 Q MS. LOFTIS, WHERE ARE YOU CURRENTLY EMPLOYED?

13 A I'M AN INDEPENDENT CONTRACTOR FOR MYSELF. I WORK FOR
14 PETTIGRU COUNSELING ASSOCIATES HERE IN GREENVILLE, AND I ALSO
15 WORK FOR THE CHILDREN'S ADVOCACY CENTER IN SPARTANBURG. I DO
16 INDIVIDUAL AND FAMILY THERAPY.

17 Q AND WHAT IS YOUR, I GUESS, JOB TITLE OR POSITION IN DOING
18 FAMILY THERAPY?

19 A I'M A LICENSED PROFESSIONAL COUNSELOR..

20 Q ALL RIGHT. NOW, THE SERVICES -- YOU HAVE A GREENVILLE
21 OFFICE AND ONE IN SPARTANBURG; IS THAT CORRECT?

22 A YES, MA'AM.

23 Q AND WHAT SERVICES -- CAN YOU GO THROUGH THE DIFFERENT
24 SERVICES THAT ARE OFFERED AT THESE LOCATIONS?

25 A I PROVIDE INDIVIDUAL, FAMILY AND SOME GROUP COUNSELING,

MEREDITH LOFTIS -- DIRECT BY MS. KEDNOCKER

1 SPECIFICALLY AT PETTIGRU I PROVIDE CHILD ADOLESCENT PSYCHOTHERAPY
2 WHERE I TREAT CHILDREN WITH A VARIETY OF DISORDERS -- ADHD,
3 DIVORCE REACTION, TRAUMA, PHYSICAL AND SEXUAL ABUSE. IN
4 SPARTANBURG AT THE CHILDREN'S ADVOCACY CENTER IT'S STRICTLY
5 CHILDREN WHO HAVE BEEN SEXUALLY ABUSED OR SEVERELY PHYSICALLY
6 ABUSED, AND WE PROVIDE INDIVIDUAL, FAMILY AND GROUP.

7 Q OKAY. AND SOME OF THIS MAY SOUND A LITTLE REDUNDANT, BUT
8 CAN YOU GO THROUGH YOUR WORK EXPERIENCE AND TRAINING?

9 A OKAY. I HAVE A BACHELOR OF SCIENCE DEGREE IN YOUR BASIC
10 LEVEL PSYCHOLOGY FROM PENN STATE UNIVERSITY. I HAVE A MASTERS OF
11 ARTS DEGREE IN COUNSELING. I RECEIVED MY NATIONAL -- OR MY STATE
12 CERTIFIED LICENSE AS A LICENSED PROFESSIONAL COUNSELOR. I'VE
13 TAUGHT PSYCHOLOGY AT GREENVILLE TECH. I'VE WORKED IN FOSTER CARE
14 FOR FIVE YEARS, AND I'VE BEEN IN PRIVATE PRACTICE FOR THE LAST
15 FOUR AND A HALF TO FIVE YEARS.

16 Q AND DO YOU HAVE ANY SPECIAL TRAINING IN THE AREA OF CHILD
17 SEXUAL ABUSE AND ASSAULT?

18 A I DO. EVERY YEAR WE ARE REQUIRED BY LAW TO GET ABOUT 20
19 HOURS OF CONTINUING EDUCATION TO KEEP UP OUR LICENSE. AND THE
20 MAJORITY OF HOURS THAT I GET ARE IN CHILD SEXUAL ABUSE OR POST-
21 TRAUMATIC STRESS DISORDER, AND I RECEIVE A LOT OF THOSE HOURS VIA
22 OUR ORGANIZATIONS WITHIN THE STATE AND ALSO AT THE NATIONAL
23 CHILDREN'S ADVOCACY CENTER IN HUNTSVILLE, ALABAMA.

24 Q CAN YOU TALK TO ME A LITTLE BIT ABOUT THE NATIONAL
25 CHILDREN'S ADVOCACY CENTER IN HUNTSVILLE? WHAT IS THAT

MEREDITH LOFTIS -- DIRECT BY MS. KEDNOCKER

1 INSTITUTION OR PLACE? HOW IS IT SIGNIFICANT TO YOUR TREATMENT OF
2 CHILDREN WHO HAVE BEEN SEXUALLY ABUSED?

3 A HUNTSVILLE, THE NATIONAL CHILDREN'S ADVOCACY CENTER IS THE
4 PLACE TO BE IF YOU WANT TO LEARN ABOUT HOW TO TREAT CHILDREN AND
5 VICTIMS OF SEXUAL ABUSE OR SEVERE PHYSICAL ABUSE. THEY HAVE
6 NATIONALLY RECOGNIZED TRAININGS AND CERTIFICATIONS IN FORENSIC
7 WORK, IN COGNITIVE THERAPY AND MEDICAL EXAMS. WHEN I FIRST
8 STARTED, THAT'S WHERE I WAS SENT TO GO TO TRAIN.

9 Q AND ARE THERE ANY OTHER PUBLICATIONS THAT YOU RELY ON
10 HEAVILY IN YOUR FIELD WHEN YOU ARE TREATING OR TRYING TO TREAT
11 CHILDREN WHO HAVE BEEN SEXUALLY ASSAULTED OR ABUSED?

12 A WE DO. THERE'S A VARIETY OF DIFFERENT PUBLICATIONS WE USE.
13 THE ONE THAT I USE ON A REGULAR BASIS IS THE CHILD SEXUAL ABUSE
14 ACCOMMODATION SYNDROME. WOULD YOU LIKE FOR ME TO EXPLAIN WHAT
15 THAT IS?

16 Q SURE.

17 A OKAY. BASICALLY IT WAS A PUBLICATION THAT WAS DONE ON A
18 STUDY ABOUT WHY CHILDREN WAIT TO DISCLOSE SEXUAL ABUSE, THE
19 DELAYED REPORTING OF SEXUAL ABUSE, WHAT HAPPENS, WHY CHILDREN DO
20 THE THINGS THAT THEY DO THAT EXPLAINS THE SHAME AND THE DOUBT,
21 THE BLAME, THE HELPLESSNESS, THE SECRECY.

22 Q HAVE YOU GIVEN OR PARTICIPATED IN TRAINING IN THIS FIELD,
23 TREATING CHILDREN WHO HAVE BEEN SEXUALLY ASSAULTED?

24 A YES, I HAVE.

25 Q CAN YOU EXPLAIN SOME OF THAT?

MEREDITH LOFTIS -- DIRECT BY MS. KEDNOCKER

1 A I'VE ATTENDED MANY TRAININGS SPECIFIC TO CHILD SEXUAL ABUSE.
2 IT'S NOT UNCOMMON TO STAY CURRENT OF ALL THE DIFFERENT
3 PUBLICATIONS THAT COME OUT AND ALSO THE NEWEST TRAININGS THAT YOU
4 CAN GET.

5 Q DO YOU HAVE OCCASION TO CONSULT WITH OTHER PROFESSIONALS IN
6 YOUR FIELD RELATED TO CHILD SEXUAL ASSAULT AND ABUSE?

7 A WE DO. SPECIFICALLY, AT PETTIGRU WE DO -- EVERY TWO WEEKS
8 WE DO CASE STAFFINGS ON ALL OF OUR CLIENTS. AND THEN AT THE
9 CHILDREN'S ADVOCACY CENTER WE DO WHAT WE CALL THE CHILD ABUSE
10 RESPONSE TEAM, CART STAFFING. AND WHAT IT IS IS IT'S MEMBERS
11 FROM ALL DIFFERENT AGENCIES -- DSS, CAC, DJJ, THE GUARDIAN AD
12 LITEM'S OFFICE, THE SOLICITOR'S OFFICE -- WHERE WE COME TOGETHER
13 AND WE LOOK AT CASES AND WE STAFF THEM BASED UPON DIFFERENT
14 PEOPLE'S OPINIONS. I'VE HAD ONES THAT I HAVE PRESENTED, AND THEN
15 OTHERS PRESENT THEIRS AND I GIVE MY OPINION ON THEIRS.

16 Q HOW MANY YEARS HAVE YOU TREATED CHILDREN WHO HAVE BEEN
17 SEXUALLY ASSAULTED OR ABUSED?

18 A IN MY FIVE YEARS OF PRIVATE PRACTICE, ABOUT THREE AND A
19 HALF.

20 Q AND CAN YOU GIVE AN ESTIMATE ABOUT HOW MANY CHILDREN YOU
21 HAVE ACTUALLY MET WITH AND COUNSELED THROUGH THOSE YEARS?

22 A I'VE ESTIMATED AROUND 70 CHILDREN.

23 Q HAVE YOU EVER TESTIFIED IN THE COURTS OF THIS STATE BEFORE?

24 A YES, I HAVE.

25 Q AND WHICH COURTS HAVE YOU TESTIFIED IN?

MEREDITH LOFTIS -- DIRECT BY MS. KEDNOCKER

1 A CHEROKEE COUNTY, UNION COUNTY, SPARTANBURG COUNTY, ANDERSON
2 COUNTY AND GREENVILLE COUNTY.

3 Q HOW MANY TIMES HAVE YOU TESTIFIED?

4 A A LOT. ABOUT -- I'D SAY MAYBE 20, 25.

5 Q OKAY.

6 MS. KEDNOCKER: YOUR HONOR, AT THIS TIME THE STATE MOVES TO
7 ADMIT THIS WITNESS AS AN EXPERT IN THE FIELD OF CHILD SEXUAL
8 ASSAULT AND ABUSE.

9 MR. CREECH: I JUST NOTE OUR PREVIOUS OBJECTIONS.

10 THE COURT: OKAY. SHE'S QUALIFIED. YES, MA'AM. GO AHEAD.

11 Q MS. LOFTIS, IN YOUR TRAINING AND EXPERIENCE IS IT COMMON OR
12 UNCOMMON FOR A CHILD VICTIM OF SEXUAL ASSAULT TO DELAY REPORTING
13 FROM THE INITIAL ASSAULT?

14 A IT'S VERY COMMON, AND MORE SPECIFICALLY IT DEPENDS ON THE
15 CHILD THEMSELVES, THEIR PERSONALITY, THEIR AGE, THE LEVEL OF
16 SUPPORT THAT THEY HAVE WITHIN THEIR FAMILY.

17 Q AND CAN YOU GIVE SOME OF THE REASONS WHY CHILDREN DON'T
18 TELL?

19 A THERE'S ESSENTIALLY MANY REASONS. THE MOST OBVIOUS ARE, YOU
20 KNOW, THE SHAME AND DOUBT, THE FEAR OF BEING NOT BELIEVED, THE
21 CONFUSION SURROUNDING AN ABUSE REPORT. THERE'S THE FEAR OF BEING
22 EMBARRASSED BY EVERYONE, EVERYONE KNOWING, SOMEONE NOT BELIEVING
23 YOU, THE FEAR OF NOT BEING PROTECTED BY A PARENT, THE FEAR OF
24 SOMETHING BAD HAPPENING TO A PARENT OR SOMEONE YOU LOVE OR
25 YOURSELF.

MEREDITH LOFTIS -- DIRECT BY MS. KEDNOCKER

1 Q MS. LOFTIS, IS IT COMMON OR UNCOMMON IN YOUR TRAINING AND
2 EXPERIENCE FOR THE ABUSER TO BE A FAMILY MEMBER OF THE CHILD
3 VICTIM?

4 A IT'S VERY COMMON. MORE OFTEN THAN NOT IT IS.

5 Q WHAT ARE SOME OF THE ISSUES INVOLVED WITH THAT?

6 A MAINLY IT'S THE CONTROL AND THE MANIPULATION. IN MY
7 EXPERIENCE IN CLIENTS THAT I'VE TREATED I WOULD SAY PROBABLY
8 ABOUT 80 TO 90 PERCENT OF THE CHILDREN THAT I'VE TREATED HAVE HAD
9 INCESTUAL SEXUAL ABUSE.

10 Q IN YOUR TRAINING AND EXPERIENCE IS IT COMMON OR UNCOMMON FOR
11 A CHILD TO GIVE A MORE DETAILED ACCOUNT AS TIME GOES ON THAN THEY
12 INITIALLY GIVE TO LAW ENFORCEMENT?

13 A IT'S VERY COMMON. I THINK YOU HAVE TO LOOK AT THE SETTING
14 IN WHICH CHILDREN ARE DISCLOSING. YOU KNOW, IF A CHILD HAS BEEN
15 SEXUALLY ABUSED, YOU HAVE TO LOOK AT MANY DIFFERENT THINGS. YOU
16 LOOK AT IF THEY'VE BEEN CONTROLLED OR MANIPULATED. YOU LOOK AT
17 THE FACT AS TO WHERE THEY'RE DISCLOSING AT, IF THEY'RE DISCLOSING
18 IN A ROOM FULL OF PEOPLE. FOR EXAMPLE, IF YOU WERE ASKED TO
19 EXPLAIN IN A ROOMFUL OF STRANGERS YOUR LAST SEXUAL EXPERIENCE,
20 YOU KNOW, WITH YOUR HUSBAND OR PARTNER, THINK OF HOW EMBARRASSING
21 THAT WOULD BE AND HOW HARD AND DIFFICULT THAT WOULD BE TO
22 REMEMBER EVERY SINGLE DETAIL. SO IT'S NOT UNCOMMON FOR KIDS TO
23 NOT REMEMBER SPECIFIC DETAILS.

24 Q AND IN YOUR TRAINING AND EXPERIENCE IN A SITUATION WHERE
25 THERE HAVE BEEN REPEATED SEXUAL ASSAULTS IS IT COMMON FOR A CHILD

1 NOT TO BE ABLE TO REMEMBER OR EVEN TELL ALL THE DETAILS WHEN THEY
2 FIRST COME FORWARD?

3 A IT'S VERY -- CAN YOU REPEAT THE QUESTION?

4 Q IN A SITUATION WHERE THERE IS REPEATED SEXUAL ASSAULT, IN
5 YOUR TRAINING AND EXPERIENCE IS IT COMMON FOR A CHILD NOT TO GET
6 ALL THE DETAILS OF EVERY SINGLE SEXUAL ASSAULT WHEN THEY DISCLOSE
7 OR DOES THAT COME OUT IN TIME AS THEY'RE WORKING THROUGH THERAPY
8 OR THAT KIND OF SITUATION?

9 A IT DOES COME OUT IN TIME. IT COMES OUT IN MANY DIFFERENT
10 WAYS. A LOT OF TIMES WHEN THERE IS SEVERE SEXUAL ABUSE WHERE
11 THERE IS MORE THAN ONE INCIDENT MAYBE LESS THAN FIVE OR MORE THAN
12 TEN -- IT DEPENDS ON HOW MANY TIMES AND THE INTENSITY AND THE
13 AMOUNT OF CONTROL. IT'S VERY COMMON FOR CHILDREN TO PIECEMEAL
14 DISCLOSURE. THEY BRING BACK PIECES, FLASHBACKS, INTRUSIVE
15 THOUGHTS OF THINGS THAT COME UP. SPECIFICALLY, THEY MAY NOT
16 REMEMBER THE FIRST TIME BUT THEY MAY REMEMBER THE SIXTH OR
17 SEVENTH TIME. IT DEPENDS UPON WHAT LEVEL THEY'RE AT, THEIR
18 DEVELOPMENT LEVEL, HOW FAR THEY ARE COGNITIVELY AND EMOTIONALLY
19 IN THEIR DEVELOPMENTAL STAGES.

20 Q IN YOUR TRAINING AND EXPERIENCE IS IT COMMON OR UNCOMMON FOR
21 A PERPETRATOR TO THREATEN A VICTIM OR IN SOME WAY MAKE THEM FEEL
22 THEY CAN'T TELL?

23 MR. CREECH: OBJECTION, YOUR HONOR.

24 MS. KEDNOCKER: THAT'S STANDARD---

25 MR. CREECH: SHE'S NOT BEEN QUALIFIED IN THIS REGARD.

MEREDITH LOFTIS -- DIRECT BY MS. KEDNOCKER

1 THE COURT: WELL...

2 MS. KEDNOCKER: THIS GOES TO THE HALLMARKS OF SEXUAL
3 ASSAULT AND ABUSE AND WHAT THE STANDARDS ARE.

4 THE COURT: ALL RIGHT. I'M GOING TO SUSTAIN THE OBJECTION.
5 GO AHEAD.

6 Q ALL RIGHT. MS. LOFTIS, IN THIS CASE, HAVE YOU EVER MET THE
7 VICTIM IN THIS CASE, Minor

8 A NO.

9 Q AND YOUR TESTIMONY IN COURT TODAY IS GENERAL BACKGROUND
10 INFORMATION ABOUT SEXUAL ASSAULT?

11 A YES.

12 Q SO YOU HAVE NEVER MET THE JULIANS, ANY MEMBER OF THE FAMILY;
13 IS THAT ACCURATE?

14 A THAT'S CORRECT.

15 Q IN YOUR TRAINING AND EXPERIENCE HAVE YOU HAD OCCASION TO
16 TREAT MALE VICTIMS OF SEXUAL ASSAULT?

17 A YES.

18 Q AND WHAT ARE SOME OF THE ISSUES THAT GO ALONG WITH MALE
19 VICTIMS?

20 A ESSENTIALLY THE BIGGEST ISSUE THAT I ENCOUNTER IS THE SHAME
21 AND THE DOUBT. MOST OF THE TIME, DEPENDING UPON THE CHILD'S AGE,
22 IF IT'S A PREADOLESCENT TEENAGER, AN ADOLESCENT TEENAGER THAT'S
23 BEEN SEXUALLY ABUSED OR HAS REPORTED SEXUAL ABUSE, THERE'S THE
24 FEAR OF BEING PERCEIVED AS HOMOSEXUAL AND THAT EVERYONE WILL LOOK
25 AT THEM AS BEING GAY. THAT'S THE BIGGEST ISSUE THAT I SEE.

1 MS. KEDNOCKER: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

2 THE COURT: CROSS EXAMINATION, MR. CREECH?

3 MR. CREECH: THANK YOU, YOUR HONOR.

4 CROSS EXAMINATION BY MR. CREECH:

5 Q MS. LOFTIS, AGAIN, YOU'VE NEVER MET THIS VICTIM IN THIS
6 CASE; IS THAT CORRECT?

7 A CORRECT.

8 Q AND YOU SAY IT DEPENDS -- A LOT OF THE ANSWERS TO YOUR
9 QUESTIONS AND A LOT OF THE ANSWERS TO YOUR CONCLUSIONS DEPEND ON
10 THIS ALLEGED ADOLESCENT -- OR THE ADOLESCENT HIMSELF, IS THAT
11 CORRECT, AND HIS BEHAVIOR PATTERNS AND TRAITS; IS THAT RIGHT?

12 A CORRECT.

13 Q OKAY. SO YOU'RE NOT HERE TESTIFYING ABOUT THE ALLEGED
14 VICTIM IN THIS CASE AT ALL; IS THAT RIGHT?

15 A THAT'S RIGHT.

16 Q AND YOU WERE NEVER ABLE TO LOOK AT ANY LAW ENFORCEMENT
17 REPORTS OR ANYTHING LIKE THAT?

18 A NO.

19 Q OKAY. NOW, YOU SAID EARLIER THAT IT'S NOT UNCOMMON FOR THEM
20 TO GET A MORE DETAILED REPORT LATER ON, IS THAT RIGHT, AS OPPOSED
21 TO INITIALLY TO LAW ENFORCEMENT?

22 A YES.

23 Q OKAY. ALL RIGHT. SO IT WOULD BE NOT THE REPORT TO LAW
24 ENFORCEMENT WOULD NOT HAVE DETAILS BUT THE REPORTS TO OTHERS
25 WOULD HAVE DETAILS, MORE DETAILS; IS THAT CORRECT?

MEREDITH LOFTIS -- CROSS BY MR. CREECH

1 A IN SOME CASES, YES.

2 Q YOU'VE NEVER MET WITH ANY OF THE FAMILY MEMBERS IN THIS
3 CASE; IS THAT RIGHT?

4 A NO, I HAVE NOT.

5 Q HAVE YOU EVER LOOKED -- OR DID YOU LOOK AT ANY OF THE
6 ALLEGED VICTIM'S SCHOOL RECORDS OR ANY OTHER KIND OF RECORDS ON
7 HIS BEHALF?

8 A NO, I NEVER MET THE VICTIM.

9 Q OKAY. YOU NEVER LOOKED AT ANY KIND OF MEDICAL RECORDS OF
10 HIS?

11 A NO.

12 MR. CREECH: YOUR HONOR, I HAVE NO FURTHER QUESTIONS FOR
13 THIS WITNESS.

14 THE COURT: THANK YOU, SIR.

15 MS. KEDNOCKER: NONE FROM THE STATE, YOUR HONOR.

16 THE COURT: ALL RIGHT. THANK YOU, MS. LOFTIS. YOU CAN
17 STEP DOWN, MA'AM.

18 MS. KEDNOCKER: YOUR HONOR, MAY THIS WITNESS BE EXCUSED?

19 THE COURT: OKAY.

20 MR. CREECH: WITHOUT OBJECTION.

21 THE COURT: ALL RIGHT. YES, MA'AM, YOU ARE EXCUSED.

22 OKAY. YOU CAN CALL YOUR NEXT WITNESS, MS. KEDNOCKER.

23 (WITNESS EXCUSED AT 2:55 P.M.)

24 MS. KEDNOCKER: THE STATE CALLS STEVE JULIAN.

25 STEVE JULIAN, HAVING BEEN DULY

STEVE JULIAN -- DIRECT BY MS. KEDNOCKER

1 SWORN, TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION BY MS. KEDNOCKER:

3 Q GOOD AFTERNOON, MR. JULIAN.

4 A GOOD AFTERNOON.

5 Q WHERE DO YOU LIVE?

6 A SIMPSONVILLE.

7 Q AND HOW LONG HAVE YOU LIVED IN SIMPSONVILLE?

8 A FOR THE LAST SIX YEARS -- EIGHT YEARS.

9 Q BEFORE THAT WHERE DID YOU LIVE?

10 A I WAS IN THE U.S. MILITARY.

11 Q OKAY. ARE YOU MARRIED?

12 A NO, DIVORCED.

13 Q WHEN DID YOU DIVORCE?

14 A 1998.

15 Q DO YOU HAVE ANY CHILDREN OF THAT DIVORCE?

16 A I HAVE TWO BOYS.

17 Q WHAT ARE THEIR NAMES?

18 A Minor AND ASHTON.

19 Q SINCE 1998 WHEN YOU DIVORCED DO YOU HAVE ANY OTHER CHILDREN?

20 A I HAVE A LITTLE GIRL. SHE'S FIVE YEARS OLD. SHE STAYS WITH
21 HER MOTHER.

22 Q OKAY. WHAT'S HER NAME?

23 A HALAYA.

24 Q AND WHEN YOU DIVORCED IN 1998 WAS THERE A PERIOD OF TIME
25 THAT YOU -- HALAYA'S MOM WAS WITH YOU?

STEVE JULIAN -- DIRECT BY MS. KEDNOCKER

1 A YES, MA'AM.

2 Q DO YOU KNOW A MAN NAMED RANDALL LANE SMITH, SR.?

3 A YES, MA'AM.

4 Q WHO IS HE?

5 A HE IS MY BROTHER-IN-LAW, MARRIED TO MY SISTER.

6 Q AND HOW LONG HAVE YOU KNOWN HIM?

7 A ROUGHLY PROBABLY 18, 19 YEARS.

8 Q THROUGHOUT THE YEARS THAT YOU'VE KNOWN HIM, HOW WOULD YOU
9 CHARACTERIZE Y'ALL'S RELATIONSHIP, HOW YOU GOT ALONG?

10 A FAIR. JUST A NORMAL BROTHER-IN-LAW RELATIONSHIP.

11 Q OKAY. SO YOU SAY FAIR, JUST GOT ALONG---

12 A WELL, WE GOT ALONG. WE REALLY HAD NOTHING IN COMMON BUT WE
13 GOT ALONG.

14 Q OKAY. SO YOU STATED THAT YOU'RE A SINGLE PARENT; IS THAT
15 CORRECT?

16 A YES, MA'AM.

17 Q I WANT TO TAKE YOU BACK TO 2003. BACK IN 2003 WAS HALAYA'S
18 MOTHER IN THE PICTURE AT THAT POINT?

19 A NO, MA'AM, WE SEPARATED EARLIER THAT YEAR.

20 Q SO AT THAT -- AND HALAYA WENT TO GO LIVE WITH HER MOM; IS
21 THAT CORRECT?

22 A YES, MA'AM.

23 Q SO IN 2003 YOU HAD SOLE CUSTODY OF ASHTON AND Minor

24 A YES, MA'AM.

25 Q WHERE DO YOU WORK, SIR?

STEVE JULIAN -- DIRECT BY MS. KEDNOCKER

1 A I WORK FOR ALLTEL.

2 Q AND WHAT IS YOUR JOB?

3 A NETWORK TECHNICIAN.

4 Q IN YOUR JOB AS A NETWORK TECHNICIAN FOR ALLTEL WHAT WERE
5 YOUR WORK HOURS BY THEN?

6 A FLEX HOURS. SOMETIMES WE WORKED DAYS. SOMETIMES WE WORKED
7 NIGHTS. AND SOMETIMES WE WORKED BOTH.

8 Q WERE YOU ON CALL DURING THAT TIME?

9 A YES, MA'AM.

10 Q AND WHEN WERE YOU ON CALL?

11 A IT ROTATES ABOUT EVERY FIVE WEEKS.

12 Q OKAY. GOING BACK TO THE FALL OF 2003, DID YOU HAVE TO WORK
13 SOMETIMES AT NIGHT WHEN YOU WERE NOT AT HOME?

14 A YES, MA'AM.

15 Q AND ON THOSE NIGHTS WHEN YOU WERE AWAY FROM THE HOUSE WHERE
16 DID YOUR BOYS STAY?

17 A THEY STAYED WITH MY SISTER AND THE DEFENDANT.

18 Q ARE YOU AWARE -- SPEAKING OF YOUR SISTER, WHAT IS YOUR
19 SISTER'S NAME?

20 A NANCY SMITH.

21 Q BACK IN THE FALL OF 2003 ARE YOU AWARE OF WHERE YOUR SISTER
22 WORKED?

23 A SHE WORKED FOR WAL-MART.

24 Q DOES SHE STILL CURRENTLY WORK FOR WAL-MART?

25 A YES, MA'AM.

STEVE JULIAN -- DIRECT BY MS. KEDNOCKER

1 Q BACK IN 2003 DO YOU KNOW OR ARE YOU AWARE OF HER WORK
2 SCHEDULE?

3 A SHE WORKS MAINLY THIRD.

4 Q AND THIRD SHIFT WOULD BE WHICH HOURS?

5 A FROM ABOUT 10:00 TO ABOUT 7:00 IN THE MORNING.

6 Q ON THE NIGHTS THAT YOU HAD THE BOYS STAY OVER AT NANCY AND
7 RANDY'S HOUSE THAT NANCY HAD TO WORK, WHO WAS PRESENT IN THE
8 HOME?

9 A SHE WOULD BE THERE UNTIL SHE WENT TO WORK. WELL, BOTH OF
10 THEM WERE MAINLY THERE UNTIL SHE WENT TO WORK, AND THEN HE WAS
11 THERE BY HIMSELF WITH THEM.

12 Q AND AGAIN, AROUND WHAT TIME DID SHE GO TO WORK?

13 A ANYWHERE FROM 10:00, 10:15. 10:30.

14 Q AND THAT'S 10:00 AT NIGHT?

15 A YES, MA'AM.

16 Q MR. JULIAN, CAN YOU REMEMBER EVER BECOMING AWARE THAT YOUR
17 SON Minor WAS SEXUALLY ASSAULTED?

18 A YES, MA'AM.

19 Q I WANT TO TAKE YOU BACK TO THE TIME WHEN YOU FOUND OUT. DO
20 YOU REMEMBER WHEN THAT WAS?

21 A IT WAS ON A SATURDAY AFTERNOON. I DON'T REMEMBER. I JUST
22 KNOW IT WAS PROBABLY THE FIRST OR SECOND WEEK IN DECEMBER. I
23 DON'T REMEMBER THE EXACT DATE. I JUST KNOW IT WAS A SATURDAY
24 BECAUSE I WAS WORKING.

25 Q AND WHAT YEAR WAS IT?

STEVE JULIAN -- DIRECT BY MS. KEDNOCKER

1 A 2003.

2 Q HOW DID YOU FIRST HEAR ABOUT IT?

3 A WELL, MY SISTER CALLED ME AND SHE SAID, I JUST NEED YOU TO
4 COME BY OUR HOUSE.

5 Q OKAY.

6 A SO---

7 Q WITHOUT GOING INTO WHAT SHE SAID TO YOU -- BECAUSE THAT
8 WOULD BE HEARSAY---

9 A I JUST WENT BY HER HOUSE.

10 Q OKAY. YOUR SISTER CALLS YOU. WHEN YOU WERE COMING OVER TO
11 THE HOUSE DID YOU HAVE ANY IDEA AT THAT POINT WHAT WAS GOING ON?

12 A NO, MA'AM.

13 Q AND DID YOU HAVE ANY SUSPICIONS ABOUT WHAT IT MIGHT BE
14 ABOUT?

15 A NO, MA'AM.

16 Q WHEN YOU GOT TO THE HOUSE CAN YOU TELL THIS JURY WHAT YOU
17 FOUND OUT?

18 A I WENT INTO THE KITCHEN. I DON'T EXACTLY REMEMBER IF THE
19 KIDS WERE AROUND. I DON'T REMEMBER SEEING THEM.

20 (PAUSE) MY SISTER PULLED ME INTO THE KITCHEN AND SHE SAID, "I'VE
21 GOT SOMETHING TO TELL YOU." I THOUGHT IT WAS DEALING WITH MY
22 YOUNGER SON. I THOUGHT HE HAD DONE SOMETHING STUPID LIKE HE --
23 BECAUSE HE HAD BEEN IN AND OUT OF TROUBLE.

24 Q YOUR YOUNGEST SON'S NAME IS?

25 A YES, MA'AM.

STEVE JULIAN -- DIRECT BY MS. KEDNOCKER

1 Q WHAT IS IT?

2 A ASHTON.

3 Q OKAY. YOU THOUGHT IT WAS ABOUT HIM.

4 A SO SHE TOLD ME WHAT Minor HAD TOLD HER, AND I JUST WENT
5 NUMB. I COULDN'T SAY NOTHING. I COULDN'T TALK OR NOTHING. I
6 JUST STOOD THERE AND STARED AT THE WALL. ALL I COULD JUST -- ALL
7 I COULD IMAGINE WAS THAT PERVERT STANDING OVER MY SON.

8 MR. CREECH: OBJECTION, YOUR HONOR.

9 MS. KEDNOCKER: OKAY. OKAY.

10 THE COURT: ALL RIGHT. LET ME SEE THE LAWYERS UP HERE REAL
11 QUICK.

12 (BENCH CONFERENCE OFF RECORD)

13 MS. KEDNOCKER: BEG THE COURT'S INDULGENCE ONE MOMENT.

14 Q ALL RIGHT. MR. JULIAN -- AND LET'S TRY TO LIMIT ANY---

15 A YES, MA'AM.

16 Q OKAY. AFTER YOU LEFT NANCY'S HOUSE THAT NIGHT -- SO AT THIS
17 POINT HAS Minor TOLD YOU ANYTHING ABOUT WHAT HAPPENED TO HIM?

18 A Minor HADN'T SAID NOTHING TO ME YET.

19 Q ALL RIGHT. WHAT DID YOU DO AT THAT POINT?

20 A I JUST GOT MY BOYS. I GOT IN MY TRUCK AND I JUST LEFT. I
21 DIDN'T SAY NOTHING TO MY SISTER. I JUST LEFT AND STARTED
22 DRIVING.

23 Q OKAY. DID YOU EVENTUALLY -- DID YOU TALK WITH Minor ABOUT
24 THE INCIDENT?

25 A LATER THAT NIGHT.

STEVE JULIAN -- DIRECT BY MS. KEDNOCKER

1 Q OKAY. AND DID Minor INDICATE TO YOU THE PLACE OR PLACES.
2 WHERE THIS SEXUAL ASSAULT TOOK PLACE?

3 A YES, MA'AM. HE SAID IT TOOK PLACE IN THE BEDROOM.

4 Q DID HE INDICATE TO YOU THE TIME OR TIME FRAME OF THE ABUSE?

5 A HE SAID IT WAS AFTER NANCY WENT TO WORK---

6 Q OKAY. JUST---

7 A LATE AT NIGHT.

8 Q AND OVER WHAT SPAN OF TIME?

9 A A COUPLE MONTHS.

10 Q OKAY. WHEN YOU FIRST GOT THIS NEWS -- AND LET ME TAKE YOU
11 BACK TO WHEN YOU WERE AT NANCY'S HOUSE. HAD THE POLICE BEEN
12 CALLED AT THIS POINT?

13 A NO, MA'AM.

14 Q ALL RIGHT. WHO, IF ANYONE, EVENTUALLY CONTACTED THE
15 AUTHORITIES?

16 A I DID.

17 Q WHEN DID YOU CONTACT THE AUTHORITIES?

18 A I BELIEVE, IF I'M CORRECT, SUNDAY. IT WAS EITHER THAT NIGHT
19 OR -- I BELIEVE IT WAS THAT NIGHT -- OR THAT MORNING. IT WAS
20 EITHER SATURDAY NIGHT OR THE FOLLOWING SUNDAY MORNING.

21 Q SO YOU CONTACTED THE AUTHORITIES. DID THEY COME OUT TO YOUR
22 HOUSE?

23 A YES, MA'AM.

24 Q AND THEY SPOKE -- WHO CAME OUT TO YOUR HOUSE, DO YOU KNOW?

25 A I BELIEVE IT WAS THE OFFICER -- I CAN'T REMEMBER THE

STEVE JULIAN -- DIRECT BY MS. KEDNOCKER

1 OFFICER. I CAN'T REMEMBER HIS NAME. BUT MR. WATKINS FROM DSS
2 CAME OUT WITH HIM.

3 Q OKAY. AND YOU SAID AN OFFICER---

4 A COUNTY. HE WAS A MEMBER OF THE COUNTY THAT CAME OUT.

5 Q ALL RIGHT. MR. JULIAN, AT THAT POINT DID YOU SPEAK WITH THE
6 OFFICERS AND TELL THEM WHAT YOU KNEW?

7 A YES, MA'AM.

8 Q DID YOU END UP TAKING Minor TO GET A MEDICAL EXAM?

9 A YES, MA'AM. THE FOLLOWING MONDAY AFTERNOON I TOOK HIM TO
10 THE E.R. IN GREENVILLE.

11 Q AND WHO ALL WENT TO THE E.R.?

12 A Minor ASHTON, LAYNE AND MY SISTER, ME AND MY SISTER
13 NANCY.

14 Q OKAY. SINCE THIS CAME OUT -- LET ME -- ON DECEMBER 12TH WHEN
15 YOU CAME OVER TO YOUR SISTER NANCY'S HOUSE -- AND YOU JUST
16 TESTIFIED YOU PICKED THE BOYS UP -- ON THAT SATURDAY WAS THIS
17 DEFENDANT PRESENT?

18 A NO, MA'AM.

19 Q ALL RIGHT. AND BETWEEN DECEMBER 12TH AND WHEN HE WAS
20 ARRESTED ON DECEMBER 24TH, DID YOU SEE THIS DEFENDANT?

21 A NOT TILL THE DAY HE GOT PICKED UP.

22 Q ALL RIGHT. IN THAT TIME FRAME -- MR. JULIAN, LET ME ASK YOU
23 THIS, HOW MANY YEARS AGAIN DID YOU SAY YOU KNOW THIS DEFENDANT?

24 A APPROXIMATELY ABOUT OVER 18 YEARS.

25 Q AND DURING THOSE YEARS THAT YOU'VE KNOWN THIS DEFENDANT HAVE

STEVE JULIAN -- DIRECT BY MS. KEDNOCKER

1 YOU HAD OCCASION TO SPEAK WITH HIM ON THE TELEPHONE?

2 A YES, MA'AM.

3 Q HOW MANY TIMES WOULD YOU SAY YOU'VE SPOKEN WITH HIM ON THE
4 TELEPHONE?

5 A NUMEROUS OF TIMES.

6 Q ARE YOU FAMILIAR WITH THIS DEFENDANT'S VOICE AND WHAT IT
7 SOUNDS LIKE ON THE TELEPHONE?

8 A YES, MA'AM.

9 Q AND ARE YOU CERTAIN THAT YOU CAN RECOGNIZE THIS DEFENDANT'S
10 VOICE ON THE TELEPHONE?

11 A YES, MA'AM.

12 Q BETWEEN THAT TIME FRAME OF DECEMBER 12TH AND WHEN HE WAS
13 ARRESTED WERE YOU EVER PRESENT AT NANCY'S HOUSE WHEN THIS
14 DEFENDANT CALLED THE HOME?

15 A YES, MA'AM.

16 Q CAN YOU TELL ME, WHO ANSWERED THE PHONE WHEN THIS DEFENDANT
17 CALLED?

18 A HIS SON LANE.

19 Q HOW DID YOU BECOME A PARTY OR LISTENING TO THIS PHONE
20 CONVERSATION?

21 A LANE MOTIONED FOR ME TO PICK UP THE RECEIVER OF THE OTHER
22 PHONE.

23 Q AND WITHOUT TELLING ME WHAT LANE STATED DURING THIS PHONE
24 CONVERSATION DID THIS DEFENDANT MAKE ANY STATEMENT ABOUT YOUR SON
25 Minor THAT YOU HEARD DURING THIS PHONE CONVERSATION?

STEVE JULIAN -- DIRECT BY MS. KEDNOCKER

1 A HE SAID Minor ASKED FOR IT AND THAT HE STARTED KISSING ME
2 FIRST.

3 Q MR. JULIAN, I'M SHOWING YOU WHAT'S MARKED AS STATE'S EXHIBIT
4 4. HAVE YOU EVER SEEN THIS LETTER BEFORE?

5 A NOT TILL A WEEK AGO UNTIL YOU SHOWED IT TO ME.

6 Q YOU DID NOT RECEIVE THIS LETTER BACK ON JAN 13TH, 2004?

7 A NO, MA'AM.

8 Q HAVE YOU GOTTEN TO READ THROUGH IT NOW?

9 A I READ IT IN YOUR OFFICE THAT DAY.

10 Q OKAY. I WANT YOU TO THINK BACK TO THE TIME PERIOD OF
11 JANUARY 13TH, 2004. WERE THERE ANY PROBLEMS GOING ON BETWEEN YOU
12 AND THIS DEFENDANT?

13 A NONE WHATSOEVER.

14 Q WAS THERE ANYTHING GOING ON BETWEEN YOU TWO THAT HE NEEDED
15 TO ASK YOUR FORGIVENESS FOR?

16 A NO, MA'AM.

17 Q SIR, GOING BACK TO YOUR SONS, YOU SAID WHEN YOU WENT OVER
18 THERE YOU THOUGHT MAYBE ASHTON WAS IN TROUBLE. CAN YOU TELL THE
19 COURT WHERE ASHTON IS THESE DAYS?

20 A HE IS RIGHT NOW SERVING TIME IN A BOOT CAMP FOR VIOLATING A
21 COURT ORDER.

22 Q SO ASHTON IS THERE. Minor IS IN THE HOME WITH YOU BY
23 HIMSELF NOW?

24 A YES, MA'AM.

25 Q IN THE TWO YEARS THAT HAVE COME AND GONE SINCE THIS FIRST

STEVE JULIAN -- DIRECT BY MS. KEDNOCKER

1 HAPPENED HAVE YOU NOTICED A DIFFERENCE IN THE BEHAVIOR OF Minor
2 FROM 2003 TO NOW?

3 A WHEN THIS FIRST CAME OUT Minor WAS REAL SHY. HE WOULDN'T
4 EVEN TALK TO ME ABOUT A LOT OF STUFF. HE JUST STAYED TO HIMSELF.
5 HE WOULD COME HOME FROM SCHOOL AND I KEPT -- I JUST LET HIM -- HE
6 WOULD GO TO SLEEP. I DIDN'T SAY NOTHING TO HIM TILL I FOUND OUT
7 HE WOULD GET UP -- HE WOULD WAIT TILL I WAS ASLEEP AND HE WOULD
8 GET UP AND HE WOULD STAY UP ALL NIGHT LONG. HE WOULD STAY IN HIS
9 ROOM WITH THE LIGHT ON. HE WOULD NOT GO NOWHERE. HE WOULDN'T DO
10 NOTHING. HE WOULDN'T CAUSE NO PROBLEMS. HE JUST COULDN'T -- HE
11 WOULDN'T SLEEP. COME TO FIND OUT, HE WAS LOCKING HIS DOOR IN MY
12 OWN HOUSE. I WENT TO HIM AND ASKED HIM WHY AND HE TOLD ME. I
13 SAID, "SON, YOU AIN'T GOT TO DO THAT HERE. I PROMISE YOU NOBODY
14 WILL EVER HURT YOU AGAIN," AND I MEAN THAT.

15 Q OKAY. AND JUST IN TALKING ABOUT---

16 MR. CREECH: OBJECTION.

17 Q HE IS GOING TO---

18 MR. CREECH: I OBJECT TO THE LAST COMMENT BY THE WITNESS
19 AND ASK IT BE STRUCK FROM THE RECORD.

20 THE COURT: ALL RIGHT. OKAY. LADIES AND GENTLEMEN, JUST
21 DISREGARD THE TESTIMONY REGARDING ANY STATEMENTS MADE BY THE
22 VICTIM THAT WERE JUST TESTIFIED TO. THOSE WOULD NOT CONSTITUTE
23 EVIDENCE IN THIS CASE AND YOU ARE INSTRUCTED TO NOT CONSIDER THEM
24 IN ANY WAY. ALL RIGHT. YES, MA'AM.

25 Q JUST GOING BACK TO HIS DEMEANOR BETWEEN WHEN THIS HAPPENED

STEVE JULIAN -- CROSS BY MR. CREECH

1 AND NOW, YOU STATED HE USED TO BE SHY. HAVE YOU SEEN A CHANGE IN
2 HIS BEHAVIOR IN THE LAST TWO YEARS?

3 A YES, MA'AM, FOR THE BETTER. HE HAS GOT WHERE HE WILL SPEAK
4 UP. HE HAS OPENED HIMSELF UP. HE WILL TALK TO CERTAIN PEOPLE
5 ABOUT WHAT'S GOING ON. HE DON'T LOOK OVER HIS SHOULDER ANYMORE.
6 HE WALKS WITH MORE CONFIDENCE. HE'S NOT WORRIED ABOUT ANYTHING,
7 TO A SENSE. I MEAN, HE'S STILL WORRIED ABOUT THIS, BUT HE
8 CARRIES HIMSELF A LOT BETTER THAN WHAT HE DID.

9 MS. KEDNOCKER: MR. JULIAN, I HAVE NO FURTHER QUESTIONS.
10 PLEASE ANSWER ANY QUESTIONS DEFENSE MAY HAVE.

11 THE COURT: YES, SIR, MR. CREECH.

12 MR. CREECH: THANK YOU, YOUR HONOR.

13 CROSS EXAMINATION BY MR. CREECH:

14 Q MR. JULIAN, NOW, AT THE TIME Minor WAS GOING TO SCHOOL AT
15 MAULDIN MIDDLE SCHOOL; IS THAT CORRECT?

16 A YES, SIR.

17 Q ALL RIGHT. AND DID YOU HAVE HIM ASSIGNED TO THAT SCHOOL?

18 A YES, SIR.

19 Q HOW WERE YOU ABLE TO DO THAT?

20 A HE WAS USING MY SISTER'S AND THE DEFENDANT'S ADDRESS.

21 Q ALL RIGHT. AND DID YOU GO TO THE SCHOOL DISTRICT AND TELL
22 THEM THAT HE WOULD BE LIVING AT THAT ADDRESS?

23 A YES, SIR, THEY KNEW IT.

24 Q AND WAS HE LIVING AT THAT ADDRESS?

25 A NO, SIR.

STEVE JULIAN -- CROSS BY MR. CREECH

1 Q AND WAS THERE ANY REASON WHY YOU WANTED HIM TO GO TO---

2 A YEAH, BECAUSE I DID NOT WANT HIM GOING TO BECK MIDDLE
3 SCHOOL.

4 Q AND WHY WAS THAT?

5 A BECAUSE BECK MIDDLE SCHOOL IS NOT A GOOD -- TO ME, IT WAS
6 NOT A -- MAULDIN MIDDLE WAS A BETTER SCHOOL THAN BECK MIDDLE.

7 Q AND DID YOU TELL THE SCHOOL DISTRICT THAT WHEN YOU WENT
8 TO---

9 A YES, SIR, AND WITH HIS COMPREHENSION PROBLEM, THAT WAS ONE
10 OF THE REASONS HE COULD STAY IN THAT SCHOOL.

11 Q WAS HE IN A SPECIAL EDUCATION CLASS?

12 A HE WAS IN THE LEARNING DISABILITY CLASS, SIR.

13 Q DO YOU KNOW IF HE WAS EVER DIAGNOSED AS EMOTIONALLY
14 HANDICAPPED?

15 A NO, SIR, HE'S NOT.

16 Q HAVE YOU MET WITH SCHOOL OFFICIALS TO TALK TO THEM?

17 A YES, SIR.

18 Q DID YOU EVER HAVE A CONFERENCE WITH THEM?

19 A YES, SIR, EVERY QUARTER.

20 Q AND WAS Minor EVER TOLD THAT HE WAS, IN FACT, EMOTIONALLY
21 HANDICAPPED?

22 A NO, SIR, HE WASN'T.

23 Q HE WAS NOT?

24 A NO, SIR.

25 Q YOU NEVER TOLD HIM THAT; IS THAT CORRECT?

STEVE JULIAN -- CROSS BY MR. CREECH

1 A NO, SIR, HE'S NEVER BEEN TOLD THAT.

2 Q DO YOU KNOW IF SCHOOL OFFICIALS TOLD HIM THAT?

3 A NO, SIR, THEY DIDN'T. FAR AS I KNOW THEY DIDN'T.

4 Q AND HE WAS IN SPECIAL EDUCATION CLASSES AT SCHOOL, CORRECT?

5 A YES, SIR.

6 Q AND HE WAS -- DO YOU KNOW WHY HE WOULD SAY HE WAS

7 EMOTIONALLY HANDICAPPED?

8 A I GUESS BECAUSE OF THE WAY THE PAPERWORK'S WRITTEN THAT THE

9 CLASS IS FOR MOSTLY HANDICAPPED OR LEARNING DISABILITY. BUT THE

10 REASON THAT HE IS IN THERE IS BECAUSE HE HAS A COMPREHENSION

11 PROBLEM.

12 Q PRIOR TO THESE -- HIM STARTING SCHOOL THAT YEAR HAD YOU EVER

13 SEEN ANY KIND OF OUTBURSTS WITH Minor

14 A NO, SIR.

15 Q HAD YOU EVER SEEN ANY KIND OF BEHAVIORAL PROBLEMS?

16 A NO, SIR.

17 Q HAVE YOU EVER FOUND Minor TO BE UNTRUTHFUL?

18 A NO, SIR.

19 Q NEVER?

20 A NEVER.

21 Q NOT ONE TIME?

22 A NOT ONE TIME.

23 Q YOU WERE WORKING AT THIS TIME AT NIGHT; IS THAT CORRECT?

24 A YES, SIR.

25 Q WERE YOU WORKING FIVE DAYS A WEEK AT NIGHT?

STEVE JULIAN -- CROSS BY MR. CREECH

1 A SOMETIMES MORE..

2 Q AND WAS IT THEREFORE NECESSARY FOR Minor TO GO OVER TO HIS
3 AUNT AND UNCLE'S HOUSE; IS THAT RIGHT?

4 A YES, SIR. HE WAS UNDERAGE AND HE COULDN'T STAY BY HIMSELF.

5 Q AND DID YOU KNOW---

6 THE COURT: HOLD ON JUST A SECOND. HOLD ON JUST A SECOND.

7 MS. KEDNOCKER: I APOLOGIZE. MAY WE APPROACH JUST BRIEFLY?

8 THE COURT: SURE.

9 (BENCH CONFERENCE OFF RECORD FROM 3:13 TO 3:14 P.M.)

10 Q DID YOU EVER WONDER WHERE Minor WOULD BE SLEEPING OR
11 SPENDING THE NIGHT WHEN HE WAS OVER AT RANDY AND NANCY'S?

12 A NO, IT NEVER CROSSED MY THOUGHT.

13 Q DID YOU EVER ASK HIM, WELL, WHERE DID YOU SLEEP LAST NIGHT?

14 A NO, SIR, I HAD NO REASON TO.

15 Q OKAY. NOW, HE WAS AT SCHOOL DURING THE DAY AND YOU WERE
16 WORKING AT NIGHT; IS THAT RIGHT?

17 A YES, SIR.

18 Q SO MOST OF THE TIME THAT YOU SPENT WITH HIM WAS ON WEEKENDS?

19 A NO, SIR, I -- I SPENT A LOT OF TIME WITH HIM, SIR.

20 Q AND YOU WERE WORKING MAYBE FIVE TO SEVEN DAYS A WEEK AT
21 NIGHT?

22 A IT VARIED EVERY WEEK. I CAN'T SAY THAT I WORKED EVERY NIGHT
23 BECAUSE I DIDN'T WORK EVERY NIGHT.

24 Q AND HOW LONG HAD THIS WORK SCHEDULE BEEN GOING ON PRIOR TO
25 THE SCHOOL YEAR STARTING?

STEVE JULIAN -- CROSS BY MR. CREECH

1 A THAT YEAR. WE WAS DOING A BIG -- A LOT OF WORK ON THE
2 NETWORK. IT WAS GOING ON FOR ABOUT SIX MONTHS.

3 Q SIX MONTHS OF WORKING AT NIGHT?

4 A SOMETIMES. DAYS AND NIGHTS.

5 Q AND Minor WOULD BE IN SCHOOL DURING THE DAY?

6 A YES, SIR.

7 Q HAD YOU TALKED WITH RANDY AND NANCY ABOUT THIS ARRANGEMENT
8 PRIOR TO GOING TO THE SCHOOL DISTRICT?

9 A YES, SIR. I TALKED TO MY SISTER.

10 Q ALL RIGHT. AND SHE WAS OKAY WITH THAT; IS THAT RIGHT?

11 A YES, SIR.

12 Q AND YOU ANTICIPATED WORKING AT NIGHT FOR AN EXTENDED PERIOD
13 OF TIME; IS THAT RIGHT?

14 A OFF AND ON.

15 Q AND IT WAS THE SAME WITH ASHTON AS WELL?

16 A YES, SIR.

17 Q HAVE YOU -- PRIOR TO THESE ALLEGATIONS HAVE YOU EVER TAKEN
18 Minor TO COUNSELING?

19 A NO, SIR.

20 Q HAVE YOU TAKEN HIM TO COUNSELING SINCE---

21 A HE'S GETTING IT THROUGH MY CHURCH.

22 Q ---MR. SMITH WAS ARRESTED?

23 A HE'S GETTING IT THROUGH MY CHURCH, SIR.

24 Q ALL RIGHT. AND WHAT CHURCH IS THAT?

25 A WORLD LIFE DELIVERANCE IN SIMPSONVILLE.

STEVE JULIAN -- CROSS BY MR. CREECH

- 1 Q OKAY. AND WHO IS THE COUNSELOR THERE THAT HE IS SEEING?
- 2 A APOSTLE RONALD PHILLIPS.
- 3 Q ALL RIGHT. AND IS THAT MEDICAL THERAPY?
- 4 A SPIRITUAL.
- 5 Q ALL RIGHT. DID YOU EVER REFUSE TO TAKE HIM TO A THERAPIST
- 6 OF PSYCHOLOGIST?
- 7 A NO, SIR, I HAVEN'T.
- 8 Q HAS HE EVER BEEN TO A THERAPIST OR PSYCHOLOGIST?
- 9 A WHEN DSS SAID HE HAD TO GO TO ONE, BUT I NEVER RETURNED
- 10 BECAUSE HE'S GETTING MORE HELP THROUGH GOD THAN HE IS THAT
- 11 ANYBODY COULD HELP HIM WITH.
- 12 Q ALL RIGHT. AND YOU NEVER TOOK HIM BACK TO THE THERAPIST; IS
- 13 THAT CORRECT?
- 14 A NO, SIR.
- 15 Q ALL RIGHT. DID YOU KNOW OR DID Minor EVER TELL YOU THAT
- 16 RANDY HAD YELLED AT HIM?
- 17 A NO, SIR.
- 18 Q DID YOU EVER SEEN RANDY YELL AT Minor
- 19 A NOT REALLY.
- 20 Q NOT REALLY? DID YOU NOT---
- 21 A I MEAN, I'VE SEEN HIM YELL. BUT IF HE DID, IT WASN'T IN MY
- 22 PRESENCE.
- 23 Q DID YOU EVER SEE HIM YELL AT NANCY?
- 24 A YEAH, PLENTY OF TIMES.
- 25 Q AND WOULD YOU AGREE THAT RANDY HAS A TEMPER?

STEVE JULIAN -- REDIRECT BY MS. KEDNOCKER

1 A THAT HE FLIES OFF THE HANDLE SOMETIMES.

2 Q HE FLIES OFF THE HANDLE SOMETIMES?

3 A YEAH.

4 Q WHEN HE FLEW OFF THE HANDLE HAVE YOU EVER SEEN HIM DO THAT
5 TOWARDS HIS SON?

6 A YES.

7 Q ALL RIGHT. AND TOWARDS NANCY; IS THAT RIGHT?

8 A UH-HUH (AFFIRMATIVE).

9 Q DID HE EVER FLY OFF THE HANDLE AT YOU?

10 A UH-UH (NEGATIVE).

11 Q NEVER ONE TIME?

12 A (INDICATES NEGATIVE RESPONSE)

13 Q ALL RIGHT.

14 MR. CREECH: YOUR HONOR, THAT'S ALL THE QUESTIONS I HAVE
15 FOR MR. JULIAN.

16 THE COURT: ALL RIGHT. YES, MA'AM, MS. KEDNOCKER. ANY
17 REDIRECT?

18 REDIRECT EXAMINATION BY MS. KEDNOCKER:

19 Q AND, MR. JULIAN, HAVE YOU AND -- JUST TO CLARIFY -- RANDY
20 EVER GOTTEN INTO -- HAS HE EVER DONE ANYTHING -- YOU JUST SAID HE
21 DIDN'T YELL AT Minor DID HE EVER YELL AT ANY OF YOUR OTHER
22 CHILDREN?

23 A HE YELLED AT MY TWO -- EXCUSE MY FRENCH BUT HE TOLD MY TWO-
24 YEAR-OLD---

25 Q OKAY. AND LET'S NOT GO INTO---

STEVE JULIAN -- REDIRECT BY MS. KEDNOCKER

1 A HE TOLD MY DAUGHTER -- YES. YES.

2 Q DID HE EVER YELL AT ANY OF YOUR OTHER CHILDREN?

3 A YES.

4 Q AND HOW LONG AGO WAS THAT?

5 A THIS WAS PROBABLY EARLIER IN 2003.

6 Q WAS THAT ANY TIME NEAR -- SO THAT'S THE ONE TIME RANDY
7 YELLED AT YOUR TWO-YEAR-OLD, RIGHT?

8 A RIGHT.

9 Q WAS THAT ANY TIME NEAR WHEN THESE CHARGES CAME OUT IN
10 DECEMBER 2003?

11 A NO, MA'AM.

12 MS. KEDNOCKER: I HAVE NO FURTHER QUESTIONS.

13 THE COURT: RECROSS?

14 MR. CREECH: NO QUESTIONS, YOUR HONOR.

15 THE COURT: THANK YOU. SIR, YOU CAN STEP DOWN.

16 (WITNESS STEPS DOWN AT 3:18 P.M.)

17 MS. KEDNOCKER: YOUR HONOR, AT THIS TIME THE STATE RESTS.

18 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I HAVE

19 ANOTHER LEGAL MATTER TO TAKE UP AND IF YOU WOULD JUST GO BACK TO

20 THE JURY ROOM BRIEFLY AND WE'LL BE RIGHT BACK WITH YOU. SORRY

21 WE'RE HAVING YOU COME IN AND OUT SO MUCH, BUT AS I WARNED YOU,

22 THAT MIGHT HAPPEN. SO APPRECIATE YOUR INDULGENCE. AND PLEASE

23 DON'T DISCUSS THE CASE. CONTINUE TO KEEP AN OPEN MIND.

24 (JURY EXITS COURTROOM AT 3:18 P.M.)

25 THE COURT: OKAY. THE STATE HAS COMPLETED THEIR CASE. ANY

MATTERS AND MOTIONS

1 MOTIONS AT THIS TIME?

2 MR. CREECH: YES, YOUR HONOR. MR. STEVE JULIAN CALLED MY
3 CLIENT A PERVERT. I OBJECTED AT THE TIME. I ALSO HAVE A MOTION
4 TO MOVE FOR A MISTRIAL BASED ON THAT COMMENT. IT'S CLEARLY
5 IMPROPER CHARACTER EVIDENCE IN THIS CASE. SO WE WOULD ASK THAT
6 YOU GRANT A MISTRIAL IN THIS CASE FOR THAT COMMENT.

7 YOUR HONOR, WE ALSO MOVE FOR A DIRECTED VERDICT AS TO LACK
8 OF SUBSTANTIAL EVIDENCE. THE STATE HAS NOT BROUGHT FORTH
9 SUBSTANTIAL EVIDENCE. WE WOULD ARGUE THERE IS A LACK OF EVIDENCE
10 IN THIS CASE AND ASK FOR YOU TO GRANT A DIRECTED VERDICT.

11 THE COURT: ALL RIGHT, SIR. THE MOTION FOR A MISTRIAL, THE
12 STATEMENT APPEARED TO BE SOMETHING VOLUNTEERED AND WAS IN THE
13 FORM OF SOME CONCLUSORY STATEMENT RATHER THAN ANY KIND OF FACTUAL
14 EVIDENCE THAT WAS BROUGHT OUT IMPROPERLY, AND I RESPECTFULLY DENY
15 YOUR MOTION FOR A MISTRIAL BECAUSE IT'S NOT THE KIND OF THING
16 THAT WOULD UNDERMINE THE FUNDAMENTAL FAIRNESS OF THIS PROCEEDING
17 OR OTHERWISE MERIT A MISTRIAL.

18 AND AS FOR YOUR MOTION FOR DIRECTED VERDICT, IT'S
19 RESPECTFULLY DENIED. I THINK THERE IS AMPLE EVIDENCE TO LET THE
20 CASE GO FORWARD AT THIS TIME.

21 ANYTHING FURTHER AT THIS TIME?

22 MS. KEDNOCKER: NONE FROM THE STATE, YOUR HONOR.

23 THE COURT: ALL RIGHT. AND, MR. CREECH, IT'S NOW 3:20. I
24 DON'T KNOW WHAT YOUR CASE IS OR WHAT YOU'RE GOING TO PRESENT.
25 BUT DO YOU HAVE ANY IDEA HOW LONG YOUR CASE WILL TAKE?

MATTERS AND MOTIONS

1 MR. CREECH: YOUR HONOR, IT WILL -- YOU KNOW, I'M THINKING
2 PROBABLY 30 MINUTES, 45 MINUTES.

3 THE COURT: ALL RIGHT. AND IS YOUR CLIENT GOING TO TESTIFY
4 OR NOT TESTIFY?

5 MR. CREECH: MY CLIENT IS GOING TO TESTIFY, YOUR HONOR.

6 THE COURT: OKAY. ALL RIGHT. LET ME INQUIRE ABOUT THAT.
7 BEFORE I DO THAT, THOUGH, LET ME -- ARE Y'ALL GOING TO BE
8 PREPARED TO DO YOUR CLOSING ARGUMENTS THIS AFTERNOON?

9 MR. CREECH: YOUR HONOR, WE'LL BE READY, YES.

10 THE COURT: ARE YOU GOING TO BE READY, MS. KEDNOCKER?

11 MS. KEDNOCKER: I CAN BE. I WOULD ASK HONESTLY THAT WE
12 HAVE A BRIEF RECESS SO THAT I CAN GET TOGETHER A FEW THOUGHTS, IF
13 YOUR HONOR WOULD ALLOW THAT.

14 THE COURT: OKAY. ALL RIGHT. WELL, WE'LL SEE WHERE WE
15 ARE.

16 MS. KEDNOCKER: I CERTAINLY WOULDN'T MIND IF WE DID IT IN
17 THE MORNING.

18 THE COURT: WE MAY END UP DOING THAT. THAT'S WHAT I WAS
19 JUST THINKING.

20 MS. KEDNOCKER: I MEAN, THAT WOULD BE THE STATE'S
21 PREFERENCE, BUT WE CAN BE READY. WE'D JUST ASK FOR A 15-MINUTE
22 BREAK.

23 THE COURT: ALL RIGHT. WELL, WE'LL SEE WHERE WE ARE AFTER
24 ALL OF THE EVIDENCE IS IN.

25 IS THERE ANY JURY CHARGES Y'ALL PROPOSE AT THIS TIME? I

MATTERS AND MOTIONS

1 DON'T THINK THERE IS ANY WAY WE'RE GOING TO GET THE CASE TO THE
2 JURY TODAY. THE ONLY THING I WAS THINKING ABOUT DOING IS DOING
3 THE CLOSING ARGUMENTS. BUT IT MAY BE BETTER TO DO IN THE MORNING
4 AS WELL. DOES ANYBODY HAVE ANY JURY CHARGES?

5 MS. KEDNOCKER: YES, SIR, JUDGE. THE STATE HAS ONE, AND IT
6 WOULD BE THE NO CORROBORATION CHARGE. IT'S A STANDARD CHARGE, AS
7 YOUR HONOR KNOWS, IN CSC CASES -- I'LL HAND ONE TO DEFENSE
8 COUNSEL -- BASICALLY, UNDER 16-3-657, THAT THE TESTIMONY OF A
9 VICTIM NOT BE CORROBORATED.

10 THE COURT: THANK YOU. (PAUSE) ALL RIGHT. MR. CREECH,
11 OBVIOUSLY I HAVE MY STANDARD CHARGES. DOES ANYBODY HAVE ANY
12 OTHER CHARGES OTHER THAN THIS CHARGE?

13 MR. CREECH: I DO NOT, YOUR HONOR.

14 THE COURT: ALL RIGHT. WHAT IS YOUR POSITION ON THIS
15 CHARGE THAT THE STATE HAS PROPOSED?

16 MR. CREECH: YOUR HONOR, I DON'T THINK THAT THAT IS A
17 PROPER CHARGE IN FRONT OF THE JURY BECAUSE IT'S KIND OF YOUR --
18 THE JURY COULD CONSTRUE THAT AS YOU GIVING YOUR OPINION ON WHAT
19 THE STATE HAS TO PROVE IN THIS CASE TO PREVAIL. SO I WOULD ASK
20 THAT YOU NOT CHARGE THAT, YOUR HONOR. IT WOULD ALMOST BE A
21 CHARGE ON THE FACTS IS MY POSITION.

22 MS. KEDNOCKER: YOUR HONOR, THE STATE'S POSITION WOULD BE
23 IT IS THE LAW OF THIS STATE BY STATUTE AND IT IS A STANDARD
24 CHARGE. THERE'S MANY MISCONCEPTIONS ABOUT CHILD SEXUAL ASSAULT
25 CASES WHERE PEOPLE THINK THERE SHOULD BE A MILLION PIECES OF

MATTERS AND MOTIONS

1 EVIDENCE. AND THE BOTTOM LINE IS THE LEGISLATURE IN THIS STATE
2 DECIDED THAT THE VICTIM ALONE IS ENOUGH TO CONVICT, AND I THINK
3 THAT THE JURY SHOULD BE ALLOWED TO HEAR THAT THAT IS THE LAW IN
4 OUR STATE.

5 THE COURT: OKAY. WELL, I'D BE INCLINED TO CHARGE IT JUST
6 BECAUSE IT IS STATUTORY LAW. IT WOULDN'T CONSTITUTE A CHARGE ON
7 THE FACTS BECAUSE I'M NOT MAKING ANY OTHER STATEMENT ABOUT IT
8 OTHER THAN READING THE STATUTE.

9 AND THE -- ARE THERE ANY LESSER INCLUDED OFFENSES THAT---

10 MR. CREECH: YES, YOUR HONOR. WE'D ASK THAT YOU CHARGE
11 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE AND ASSAULT
12 AND BATTERY.

13 THE COURT: ALL RIGHT. WHAT IS THE STATE'S POSITION ON
14 THAT?

15 MS. KEDNOCKER: YOUR HONOR, THE STATE'S POSITION IS THAT
16 ASSAULT AND BATTERY IS DEFINITELY NOT AN OPTION IN THIS CASE.
17 HONESTLY, FROM LISTENING TO THE FACTS IN THIS CASE ASSAULT AND
18 BATTERY I DON'T BELIEVE TO BE APPROPRIATE. THE STATE -- I
19 BELIEVE THAT THE JURY WOULD BELIEVE THAT THIS DEFENDANT WAS
20 EITHER SEXUALLY ASSAULTED OR NOT. THERE WAS CLEAR TESTIMONY OF
21 NUMEROUS ANAL PENETRATION, ORAL SEX. THAT WOULD BE THE STATE'S
22 POSITION.

23 THE COURT: WHAT ABOUT THE ABHAN CHARGE?

24 MS. KEDNOCKER: YOUR HONOR, THE STATE RECOGNIZES THAT THERE
25 IS CASE LAW ON POINT THAT IS REVERSIBLE IF YOU DON'T GIVE THAT

RANDALL LANE SMITH, SR. -- BY THE COURT

1 CHARGE WHEN THERE IS EVIDENCE TO SUBSTANTIATE THE ABHAN. BUT IN
2 THIS CASE IT APPEARS THAT THE EVIDENCE WOULD SUBSTANTIATE A
3 CRIMINAL SEXUAL CONDUCT WITH A MINOR OR NOT. BUT THAT'S
4 CERTAINLY YOUR HONOR'S CALL.

5 THE COURT: ALL RIGHT. WELL, GIVEN THAT THE JURY CAN
6 REJECT OR ACCEPT WHATEVER TESTIMONY THEY CHOOSE, I WILL -- I'M
7 GOING TO CHARGE BOTH THE LESSER INCLUDED OFFENSES.

8 NOW, ANYTHING ELSE ON THE CHARGES BEFORE I INQUIRE ABOUT MR.
9 SMITH'S DESIRE TO TESTIFY OR NOT TESTIFY?

10 MR. CREECH: NOTHING FROM THE DEFENSE, YOUR HONOR.

11 THE COURT: OKAY. ALL RIGHT. MR. SMITH, IF YOU WOULD
12 STAND UP, SIR, AND MS. TROUP WILL SWEAR YOU IN.

13 RANDALL LANE SMITH, SR., HAVING BEEN DULY
14 SWORN, TESTIFIED AS FOLLOWS:

15 BY THE COURT:

16 Q ALL RIGHT, SIR. JUST BY WAY OF BACKGROUND, TELL ME, HOW OLD
17 ARE YOU, SIR?

18 A FIFTY YEARS OLD.

19 Q HOW FAR DID YOU GO IN SCHOOL?

20 A SECOND YEAR AT WOFFORD.

21 Q AND, MR. SMITH, DID YOU HAVE ANY ALCOHOL OR DRUGS OR
22 MEDICATION IN THE PAST 48 HOURS?

23 A NO, SIR.

24 Q AND ARE YOU UNDER THE TREATMENT OF ANY PSYCHIATRIST OR
25 PSYCHOLOGIST AT THIS TIME?

RANDALL LANE SMITH, SR. -- BY THE COURT

1 A NO, SIR, I'M NOT.

2 Q ALL RIGHT. AND DO YOU HAVE ANY PHYSICAL OR MENTAL OR
3 EMOTIONAL PROBLEM THAT WOULD KEEP YOU FROM UNDERSTANDING WHAT'S
4 HAPPENING HERE TODAY?

5 A NO. I MEAN, JUST TWO HOURS OF SLEEP LAST NIGHT.

6 Q OKAY.

7 A THEY DIDN'T GET MY CPAP MACHINE TO ME.

8 Q ALL RIGHT. AND, MR. SMITH, DO YOU -- IF AT ANY TIME WHEN
9 I'M ASKING YOU QUESTIONS IF YOU DON'T UNDERSTAND THE QUESTION I
10 ASK YOU, JUST LET ME KNOW AND I'LL TRY TO REPHRASE IT SO YOU CAN
11 UNDERSTAND IT. AND IF YOU HAVE ANY QUESTIONS AT ANY TIME, YOU
12 CAN ASK ME OR YOU ARE FREE TO CONFER WITH MR. CREECH. BUT I NEED
13 TO KNOW, SIR, WHETHER YOU INTEND TO TESTIFY IN THIS CASE, AND I'M
14 GOING TO ASK YOU SOME QUESTIONS TO MAKE SURE YOU UNDERSTAND THE
15 CONSEQUENCES OF CHOOSING TO TESTIFY AND ALSO THAT YOU KNOW THAT
16 YOU HAVE THE RIGHT NOT TO TESTIFY. DO YOU UNDERSTAND THAT, SIR?

17 A YES, SIR.

18 Q AND HAVE YOU TALKED WITH MR. CREECH ABOUT YOUR
19 CONSTITUTIONAL RIGHT TO REMAIN SILENT?

20 A YES, SIR, WE HAVE.

21 Q AND DO YOU UNDERSTAND THAT RIGHT?

22 A YES, SIR, I CERTAINLY DO.

23 Q AND DO YOU UNDERSTAND BOTH THE STATE AND THE FEDERAL
24 CONSTITUTION GIVE YOU THE ABSOLUTE RIGHT TO REMAIN SILENT AND NOT
25 INCRIMINATE YOURSELF AND NOT SAY A WORD DURING THIS TRIAL? DO

RANDALL LANE SMITH, SR. -- BY THE COURT

1 YOU UNDERSTAND THAT, SIR?

2 A YES, SIR, I DO.

3 Q AND DO YOU UNDERSTAND THAT IF YOU CHOSE NOT TO TESTIFY I
4 WOULD TELL THE JURY THEY COULDN'T HOLD THAT AGAINST YOU IN ANY
5 WAY, AND I WOULD INSTRUCT THE JURY THAT IT IS THE LAW THAT THEY
6 COULD NOT TAKE INTO ACCOUNT THE FACT THAT YOU HAD NOT TESTIFIED
7 OR EVEN DISCUSS THE FACT THAT YOU HAD NOT TESTIFIED DURING THEIR
8 DELIBERATIONS? DO YOU UNDERSTAND THAT?

9 A YES, SIR, I UNDERSTAND THAT.

10 Q AND, MR. SMITH, DO YOU FURTHER UNDERSTAND THAT IF YOU DO
11 CHOOSE TO TAKE THE STAND YOU WILL BE SUBJECT TO CROSS EXAMINATION
12 JUST LIKE ANY OTHER WITNESS AND THE SOLICITOR CAN ASK YOU
13 QUESTIONS AND INQUIRE INTO THE FACTS AND TRY TO IMPEACH YOU AND
14 OTHERWISE CROSS EXAMINE YOU AND TRY TO MAKE YOU LOOK THAT YOU ARE
15 NOT CREDIBLE IN FRONT OF THE JURY? DO YOU UNDERSTAND THAT, SIR?

16 A YES, SIR. I FULLY EXPECT THAT.

17 Q OKAY. AND YOU UNDERSTAND THAT IF YOU CHOOSE NOT TO TESTIFY
18 AND IF YOU DIDN'T PRESENT ANY EVIDENCE YOU WOULD HAVE THE RIGHT
19 TO HAVE YOUR LAWYER MAKE THE LAST ARGUMENT IN FRONT OF THE JURY?
20 IN OTHER WORDS, YOUR LAWYER WOULD BASICALLY HAVE THE LAST WORD IN
21 THIS CASE. DO YOU UNDERSTAND THAT?

22 A YES, SIR.

23 Q AND IF YOU TESTIFY YOU DON'T GET THE LAST WORD; THE
24 SOLICITOR WILL GO LAST IN THEIR ARGUMENT. DO YOU UNDERSTAND
25 THAT?

RANDALL LANE SMITH, SR. -- BY THE COURT

1 A THAT I DIDN'T KNOW, BUT I UNDERSTAND THAT NOW.

2 Q OKAY. AND HAVE YOU TALKED TO MR. CREECH ABOUT THE STRATEGY
3 OF TESTIFYING OR NOT TESTIFYING?

4 A WE'VE DISCUSSED IT, YES, SIR.

5 Q ALL RIGHT. DO YOU NEED ANY MORE TIME TO TALK WITH HIM ABOUT
6 THAT?

7 A I THINK IT WOULD BE WISE.

8 Q ALL RIGHT. WHY DON'T YOU TALK TO HIM?

9 A OKAY. CAN WE TALK IN PRIVATE?

10 Q SURE. YOU SURE CAN.

11 THE COURT: WE'LL TAKE A SHORT RECESS AND JUST LET ME KNOW.
12 WE'LL TAKE ABOUT A 10-MINUTE BREAK. IF YOU NEED LONGER THAN
13 THAT, IF YOU NEED TO -- MR. CREECH, JUST LET ME KNOW. ALL RIGHT?

14 MR. CREECH: THANK YOU, YOUR HONOR.

15 THE COURT: THANK YOU.

16 DEFENDANT: THANK YOU, SIR.

17 (A RECESS WAS TAKEN FROM 3:29 TO 3:54 P.M.)

18 THE COURT: OKAY. MR. CREECH, HAS YOUR CLIENT MADE UP HIS
19 MIND ABOUT WHETHER HE WANTS TO TESTIFY OR NOT TESTIFY?

20 MR. CREECH: YOUR HONOR, THERE ARE -- I DON'T KNOW IF THE
21 STATE IS TRYING TO -- GOING TO USE ANY KIND OF BAD ACTS TO TRY TO
22 IMPEACH MY CLIENT, BUT WE'D LIKE TO KNOW IF THE STATE IS GOING TO
23 DO THAT AND HAVE YOUR RULING WHETHER IT'S CLEAR AND CONVINCING
24 BEFORE WE...

25 THE COURT: WELL, I DON'T KNOW.

RANDALL LANE SMITH, SR. -- BY THE COURT

1 MS. KEDNOCKER: YOUR HONOR, I HAVE ABSOLUTELY NO IDEA WHAT
2 HE'S TALKING ABOUT AS TO BAD ACTS, BUT, I MEAN, IF IT'S -- I
3 DON'T KNOW. IT DEPENDS ON WHAT COMES OUT IN TESTIMONY AND IF
4 IT'S RELEVANT AND IF I KNOW ABOUT IT, AND THEN I IMPEACH HIM
5 ABOUT IT. BUT I DON'T KNOW WHAT BAD ACT HE MIGHT BE TALKING
6 ABOUT.

7 THE COURT: WELL, IF THERE ARE OTHER INSTANCES SIMILAR IN
8 NATURE TO WHAT HE'S CHARGED WITH -- IS THAT WHAT YOU'RE TALKING
9 ABOUT, MR. CREECH?

10 MR. CREECH: I AM, YOUR HONOR.

11 THE COURT: OKAY. THEN UNLESS HE OPENED THE DOOR TO THAT
12 THROUGH HIS TESTIMONY, IT WOULDN'T COME IN.

13 MS. KEDNOCKER: AND, YOUR HONOR, I SEE WHERE HE'S GOING
14 NOW. IF HE DID OPEN THE DOOR, THE STATE WOULD -- AND MADE ANY
15 COMMENTARY THAT WOULD OPEN THE DOOR, THE STATE WOULD. WE'D
16 NATURALLY APPROACH YOUR HONOR FIRST AND MAKE SURE THAT IT WAS
17 OKAY, BUT WE WOULD MOVE TO TRY TO IMPEACH HIM WITH THE TWO PRIOR
18 CHARGES THAT HE HAS, ONE FOR LEWD ACT -- AND OF COURSE WE
19 WOULDN'T DO ANY SPECIFICS, BUT WE WOULD SAY, ISN'T IT A FACT THAT
20 YOU ARE CURRENTLY CHARGED WITH LEWD ACT AND THAT YOU HAVE ANOTHER
21 CHARGE FOR CRIMINAL SEXUAL CONDUCT PENDING? BUT THAT WOULD ONLY
22 BE IF HE OPENED THE DOOR. AND WE WOULD -- I WOULD APPROACH YOUR
23 HONOR TO MAKE SURE THAT YOU FELT THAT HE HAD.

24 THE COURT: SO, YOU KNOW, HE MAY OR MAY NOT -- HE WOULD
25 HAVE TO OPEN THE DOOR THROUGH HIS OWN TESTIMONY AND THEN WHETHER

RANDALL LANE SMITH, SR. -- BY THE COURT

1 IT CAME IN OR NOT WOULD HAVE TO BE RULED ON AT THAT TIME. BUT
2 CERTAINLY THAT'S A RISK HE TAKES IF HE TESTIFIES IN A CERTAIN
3 WAY. AND HE DOES OPEN HIMSELF UP TO CROSS EXAMINATION, AND HE
4 CAN'T PICK AND CHOOSE WHAT HE GETS CROSS EXAMINED WITH IF HE
5 OPENS UP THAT PARTICULAR AVENUE OF INQUIRY. SO DOES THAT HELP?

6 MR. CREECH: IT DOES, YOUR HONOR.

7 THE COURT: OKAY

8 MR. CREECH: CAN I TAKE JUST A SECOND?

9 THE COURT: SURE.

10 MR. CREECH: (OFF RECORD DISCUSSION WITH DEFENDANT)

11 OKAY, YOUR HONOR. WE'RE READY. READY WHEN YOU ARE.

12 THE COURT: ALL RIGHT. WELL, LET'S SEE. MR. SMITH, SIR,
13 YOU CAN STAY WHERE YOU ARE BUT YOU'RE STILL UNDER OATH. HAVE YOU
14 DECIDED WHAT YOU'RE GOING TO DO?

15 DEFENDANT: YES, SIR.

16 MR. CREECH: STAND UP.

17 DEFENDANT: YES, SIR, I DECIDED TO TESTIFY. I'M WORRIED
18 ABOUT CREDIBILITY IF I DON'T.

19 THE COURT: OKAY. AND DO YOU HAVE ANY QUESTIONS OF ME
20 REGARDING YOUR RIGHT TO TESTIFY OR NOT TESTIFY?

21 DEFENDANT: NO, SIR. THE ONLY THING I WAS CONCERNED ABOUT
22 IS OPENING THE DOOR FOR THE PROSECUTION, AND THAT'S KIND OF A
23 HAIRLINE SITUATION, I SUPPOSE. IT DOES TROUBLE ME BUT, YOU KNOW,
24 I WAN THEM TO HEAR FROM MY LIPS THAT I'M NOT GUILTY OF THIS.

25 THE COURT: ALL RIGHT. AND CERTAINLY THE DECISION IS YOURS

RANDALL LANE SMITH, SR. -- BY THE COURT

1 AND YOURS ALONE.

2 DEFENDANT: YES, SIR.

3 THE COURT: BUT I JUST WANT TO MAKE SURE YOU UNDERSTAND THE
4 PROS AND CONS OF DOING IT AND THE RIGHTS THAT ARE INVOLVED AND
5 MAKE SURE YOUR DECISION IS VOLUNTARY AND MADE WITH FULL
6 KNOWLEDGE.

7 ALL RIGHT, SIR. YOU'VE UNDERSTOOD ALL MY QUESTIONS?

8 DEFENDANT: YES, SIR.

9 THE COURT: ALL RIGHT. THANK YOU.

10 OKAY. ANYTHING FURTHER BEFORE WE BRING THE JURY IN?

11 MS. KEDNOCKER: NOTHING FROM THE STATE.

12 MR. CREECH: YOUR HONOR, I APPRECIATE YOU GIVING US THE
13 CHANCE TO TALK.

14 THE COURT: SURE.

15 MR. CREECH: AND I SPOKE WITH HIM FOR A GOOD 25 OR 30
16 MINUTES. I APPRECIATE THAT, YOUR HONOR.

17 THE COURT: OKAY. ALL RIGHT. AND YOU'VE HAD ENOUGH TIME
18 TO TALK WITH MR. CREECH, HAVEN'T YOU?

19 DEFENDANT: YES, SIR.

20 MS. KEDNOCKER: YOUR HONOR, COULD I RAISE JUST ONE ISSUE?

21 THE COURT: SURE.

22 MS. KEDNOCKER: THERE ARE A VARIETY OF OTHER LETTERS THAT
23 THIS DEFENDANT DID WRITE FROM JAIL. THE STATE ONLY INTRODUCED
24 TWO OF THEM INTO TRIAL. BUT DEPENDING ON WHAT HE SAYS, THERE IS
25 SOME IMPEACHABLE INFORMATION IN THOSE LETTERS. I JUST WANTED TO

RANDALL LANE SMITH, SR. -- DIRECT BY MR. CREECH

1 MAKE THE COURT AWARE OF THAT. A LOT OF IT IS IRRELEVANT AND
2 WOULDN'T COME IN. THE STATE DOESN'T HAVE ANY INTENTION TO.

3 THE COURT: OKAY. BRING THE JURY IN.

4 (JURY ENTERS COURTROOM AT 4:00 P.M.)

5 THE COURT: OKAY. ALL RIGHT, LADIES AND GENTLEMEN. THE
6 STATE HAS FINISHED WITH THEIR PRESENTATION OF THE EVIDENCE. AND
7 AT THIS TIME, MR. CREECH, ON BEHALF OF MR. SMITH, GO AHEAD, SIR.

8 MR. CREECH: THANK YOU, YOUR HONOR. THE DEFENSE CALLS
9 RANDALL SMITH.

10 THE COURT: ALL RIGHT. COME AROUND, SIR.

11 RANDALL LANE SMITH, SENIOR, HAVING BEEN
12 DULY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION BY MR. CREECH:

14 Q THANK YOU, MR. SMITH. IF YOU WILL, JUST SPEAK INTO THE
15 MICROPHONE SO WE CAN HEAR YOU CLEARLY.

16 A OKAY.

17 Q MR. SMITH, WHERE WERE YOU BORN AND RAISED?

18 A I WAS BORN AND RAISED IN ANDERSON, SOUTH CAROLINA.

19 Q AND WHO ARE YOUR PARENTS?

20 A MY FATHER IS REVEREND CALVIN SMITH. MY MOTHER IS JEANNE
21 SMITH.

22 Q ALL RIGHT. AND WHAT IS YOUR FATHER'S OCCUPATION?

23 A HE IS A RETIRED BAPTIST MINISTER BUT SERVING AS AN INTERIM
24 PASTOR IN HIS RETIREMENT.

25 Q AND AT WHAT CHURCH, DO YOU KNOW?

RANDALL LANE SMITH, SR. -- DIRECT BY MR. CREECH

1 A BETHEL BAPTIST CHURCH IN OCONEE -- EXCUSE ME, WESTMINSTER.
2 IT'S IN OCONEE COUNTY.

3 Q AND, RANDALL, WHERE DID YOU GROWN UP?

4 A I GREW UP MOSTLY IN ANDERSON. I GRADUATED HIGH SCHOOL IN
5 ABBEVILLE.

6 Q AND FROM HIGH SCHOOL DID YOU THEN GO ON TO COLLEGE?

7 A I WENT TO WOFFORD IN SPARTANBURG.

8 Q ALL RIGHT, AND AFTER SPARTANBURG WHERE DID YOU BEGIN TO
9 WORK?

10 A ONE OF MY FIRST JOBS WAS WITH MILLIKEN CHEMICALS AND BASF
11 CHEMICALS. I HAD BASICALLY BEEN IN THE CHEMICAL BUSINESS UNTIL
12 LATER I CHANGED CAREERS AND BECAME A PHOTOGRAPHER.

13 Q OKAY. AND WHEN DID YOU BECOME A PHOTOGRAPHER?

14 A ABOUT 19 YEARS AGO, FULL TIME.

15 Q NOW, YOU WERE ARRESTED ON DECEMBER THE 24TH, 2003?

16 A THAT'S CORRECT.

17 Q AND YOU WERE CHARGED AS THE INDICTMENT HAS BEEN INDICTED AS
18 CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE; IS THAT CORRECT?

19 A THAT'S CORRECT.

20 Q MR. SMITH, DID YOU EVER TOUCH Minor IN AN INAPPROPRIATE
21 WAY?

22 A NO, NEVER.

23 Q DID YOU EVER HAVE SEXUAL INTERCOURSE WITH HIM?

24 A NO, I CERTAINLY DID NOT.

25 Q DID YOU EVER DO ANYTHING OF A SEXUAL NATURE WITH HIM?

RANDALL LANE SMITH, SR. -- DIRECT BY MR. CREECH

1 A OF COURSE NOT. NO.

2 Q WHEN DID YOU FIRST MEET NANCY?

3 A I MET NANCY AT A WAFFLE HOUSE BACK IN 1986. WE WERE MARRIED
4 ABOUT SIX WEEKS AFTER OUR FIRST DATE.

5 Q AND WHEN DID YOU FIRST HAVE CHILDREN?

6 A OUR FIRST CHILD WAS BORN DECEMBER 21ST, 1987 -- OUR FIRST TWO
7 CHILDREN. WE HAD TWINS. ONE OF THEM ONLY LIVED TWO WEEKS.

8 Q AND WHAT WERE THE NAMES OF YOUR TWINS?

9 A RANDALL LANE SMITH, ROMAN NUMERAL TWO, AND JOHN SCOTT.

10 Q ALL RIGHT. AND YOU SAID JOHN SCOTT PASSED AWAY?

11 A JOHN SCOTT PASSED AWAY, YES.

12 Q DID YOU THEN HAVE ANOTHER CHILD?

13 A YES, THAT'S RIGHT. OUR DAUGHTER NASTASHA CAME ALONG ABOUT
14 TEN AND A HALF MONTHS LATER.

15 Q NOW, WHEN YOU WERE ARRESTED WHERE WERE YOU LIVING -- OR
16 WHERE WERE YOU AND NANCY LIVING AT THE TIME?

17 A PREVIOUSLY WE HAD BEEN LIVING ON BELLWOOD FARMS LANE, BUT I
18 HAD MOVED OUT. NANCY HAD BASICALLY KICKED ME OUT.

19 Q AND BELLWOOD FARMS LANE, WHERE WAS THAT LOCATED?

20 A IT'S BELLWOOD ESTATES. IT'S AN APARTMENT COMPLEX OF SORTS.
21 THEY'RE DUPLEXES, NOT A TYPICAL APARTMENT COMPLEX. BUT IT'S JUST
22 OFF WOODRUFF ROAD JUST PAST BUTLER.

23 Q WHO LIVED THERE?

24 A MY WIFE, MYSELF, MY SON AND DAUGHTER.

25 Q AND WHO STAYED WITH YOU?

RANDALL LANE SMITH, SR. -- DIRECT BY MR. CREECH

1 A MY NIECES -- I MEAN, EXCUSE ME, MY NEPHEWS. MY NIECES AS
2 WELL WERE OFTEN OVER THERE. WE HAD LOTS OF OTHER KIDS IN THE
3 NEIGHBORHOOD. OUR KIDS HAD LOTS OF FRIENDS AND CONSTANTLY HAD
4 OTHER TEENAGERS THERE DURING THE DAY AND SPENDING THE NIGHT AS
5 WELL.

6 Q HOW MANY NIGHTS A WEEK DID Minor AND ASHTON STAY AT YOUR
7 HOUSE?

8 A IT VARIED. SOMETIMES ONE NIGHT A WEEK AND SOMETIMES IT
9 WOULD BE FIVE OR SIX NIGHTS A WEEK. SOMETIMES IT WAS DURING THE
10 WEEK ONLY AND OTHER TIMES IT WOULD BE DURING THE WEEKEND. IT
11 DEPENDS ON---

12 Q WHEN DID THEY BEGIN STAYING AT YOUR HOUSE?

13 A WELL, THEY WOULD STAY AFTER SCHOOL OFTEN, I GUESS, FOR ABOUT
14 TWO YEARS PRIOR TO THE ALLEGATIONS. THEY WERE THERE -- WELL,
15 LET'S SEE, 2001 IN JUNE WHEN WE MOVED IN -- 2002, EXCUSE ME, WHEN
16 WE MOVED IN, THEY WOULD COME IN A LOT THERE AND SPEND THE NIGHT
17 OFF AND ON. BUT IT BECAME MORE FREQUENTLY IN THE LAST SIX MONTHS
18 PRIOR TO THE ALLEGATIONS.

19 Q AND HOW MANY BEDROOMS WERE IN THIS HOUSE?

20 A THREE BEDROOMS AND THREE BATHS.

21 Q AND WERE ALL THE BEDROOMS UP ON THE -- WHAT FLOOR?

22 A ALL THE BEDROOMS WERE ON THE SECOND FLOOR. THERE WAS ONE
23 BATHROOM DOWNSTAIRS BUT TWO BATHROOMS UPSTAIRS.

24 Q AND WHO SLEPT IN THE BED WITH YOU?

25 A PATRICK DID ON OCCASION WHEN NANCY WAS NOT WORKING. HE WAS

RANDALL LANE SMITH, SR. -- DIRECT BY MR. CREECH

1 TOO BIG TO FIT ON THE LOVESEATS. WE HAD TO LOVESEATS IN THE
2 LIVING ROOM, AND HE WOULD HAVE TO SLEEP IN A FETAL POSITION ON
3 THOSE. HE WAS JUST TOO BIG TO FIT THERE. AND I HAD SUGGESTED
4 THAT IF HE WANTED TO SLEEP THERE HE WOULD BE ALLOWED TO. IT
5 WOULD NOT BE A PROBLEM. NANCY DID NOT SEEM TO HAVE A PROBLEM
6 WITH IT.

7 Q ALL RIGHT. DID YOU TELL NANCY THAT Minor WAS SLEEPING IN
8 THE SAME BED?

9 A WELL, THAT AND SHE CAME HOME EVERY AFTERNOON -- OR EVERY
10 MORNING TO FIND HIM IN BED THERE. SHE WOULD WAKE THE KIDS UP TO
11 TAKE THEM -- OR TO SEND THEM OFF TO SCHOOL. SHE OBVIOUSLY KNEW
12 IT.

13 Q DID SHE EVER TELL YOU OR SAY TO YOU, Minor SHOULD NOT BE
14 SLEEPING IN THERE?

15 A NO. SHE WAS UPSET -- SHE DIDN'T WANT HIM SLEEPING IN THERE,
16 YOU KNOW, LIKE ON THE WEEKENDS. WHEN SHE WOULD COME HOME SHE
17 WOULD MAKE HIM LEAVE TO GO DOWNSTAIRS TO SLEEP ON THE SETTEE OR
18 THE LOVESEAT, WHEN SHE CAME HOME ON SATURDAYS, BECAUSE HE WOULD
19 BE THERE ASLEEP ON SATURDAY NIGHT WHILE SHE WAS AT WORK AND THEN
20 WHEN SHE WOULD COME HOME AT SEVEN O'CLOCK, YOU KNOW, IN THE
21 MORNING, THEN SHE WOULD MAKE HIM LEAVE AND GO DOWNSTAIRS.

22 Q OKAY. NOW, SHE KICKED YOU OUT OF THE HOUSE. DO YOU
23 REMEMBER APPROXIMATELY WHEN THAT WAS PRIOR TO YOUR BEING
24 ARRESTED?

25 A IT WAS JANUARY -- EXCUSE ME, DECEMBER THE 13TH.

RANDALL LANE SMITH, SR. -- DIRECT BY MR. CREECH

1 Q OKAY. AND DID YOU HAVE ANY PLACE TO GO?

2 A I WENT TO -- ONE OF MY FRIENDS FROM HIGH SCHOOL AND COLLEGE
3 LIVED IN SPARTANBURG, AND THAT'S WHERE I TOLD HER I WOULD BE.

4 Q ALL RIGHT. AND AFTER THERE WERE YOU - WHERE DID YOU GO FROM
5 THERE?

6 A I WENT TO ATLANTA. I'M A PHOTOGRAPHER AND I KNEW QUITE A
7 FEW PHOTOGRAPHERS IN ATLANTA, AND I FELT LIKE I COULD FIND WORK
8 THERE. SINCE MY BASE OF OPERATIONS WAS THERE IN OUR HOME I
9 BASICALLY HAD NO BUSINESS OR NO WORK. I WAS BASICALLY UNEMPLOYED
10 WITHOUT, YOU KNOW, A BASE TO OPERATE. SO I WENT TO ATLANTA TO
11 LOOK FOR WORK.

12 Q AND WERE YOU ABLE TO SUBSEQUENTLY OBTAIN EMPLOYMENT?

13 A YES, I DID. I FOUND A JOB AT A COMPANY CALLED SACRED IMAGES
14 PHOTOGRAPHY. THEY BASICALLY TRAVEL AND SET UP IN MALLS IN
15 VARIOUS DIFFERENT LOCATIONS. NEW ORLEANS AND BIRMINGHAM AND
16 MERIDIAN, MISSISSIPPI, WERE PLACES WHERE THEY SET UP.

17 Q AND DID YOU THEN GO TO NEW ORLEANS TO GET THE JOB?

18 A YES, I DID.

19 Q ALL RIGHT. DID YOU ALSO GO TO BIRMINGHAM AS WELL AND WORK
20 FOR THAT COMPANY?

21 A YES, AFTER TWO NIGHTS IN NEW ORLEANS I WENT TO BIRMINGHAM
22 AND WORKED THERE FOR ONE DAY JUST PRIOR TO CHRISTMAS.

23 Q DO YOU REMEMBER CALLING NANCY AND TELLING HER THAT YOU WERE
24 COMING HOME?

25 A YES. I WAS ON MY WAY BACK. I HAD PLANNED TO SPEND THE

1 NIGHT IN ATLANTA BECAUSE, YOU KNOW, IT WAS A FAIRLY LONG DRIVE
2 AND IT WAS LATE AT NIGHT. I CALLED TO LET HER KNOW THAT I WAS
3 HEADED BACK TO GREENVILLE, THAT I WOULD SEE HER ON CHRISTMAS EVE,
4 AND I WANTED TO TRY TO SPEND SOME TIME WITH HER AND THE KIDS AND
5 TRY TO SORT OUT OUR DIFFERENCES.

6 Q OKAY. NOW, DID NANCY EVER TELL YOU THAT SHE HAD GONE TO THE
7 SHERIFF'S OFFICE OR THAT THERE WAS A WARRANT OUT FOR YOUR ARREST?

8 A NO. SHE TOLD ME THAT DSS HAD GOTTEN INVOLVED, BUT SHE DID
9 NOT SAY ANYTHING ABOUT THE SHERIFF'S OFFICE, OTHER THAN SHE SAID
10 THAT---

11 MS. KEDNOCKER: YOUR HONOR, I'M GOING TO OBJECT TO HEARSAY
12 HERE.

13 THE COURT: SUSTAINED.

14 Q OKAY. THEN ON DECEMBER THE 24TH DID YOU MEET WITH NANCY?

15 A YES, I DID.

16 Q AND DID YOU MEET WITH HER AT BELLWOOD FARMS LANE?

17 A RIGHT. SHE HAD SAID---

18 MS. KEDNOCKER: I HAVE TO OBJECT AGAIN TO HEARSAY, JUDGE.

19 A OKAY.

20 THE COURT: YES, MA'AM. SUSTAINED.

21 Q YOU MET WITH HER AT BELLWOOD FARMS. AND THEN AFTER MEETING
22 WITH HER WHAT WERE YOUR PLANS?

23 A TO MEET AT TWO O'CLOCK. THIS WAS AT ONE O'CLOCK, AND AT TWO
24 O'CLOCK WE PLANNED TO MEET AT PERKINS RESTAURANT.

25 Q ALL RIGHT. AND DID YOU GO TO PERKINS AT TWO O'CLOCK?

RANDALL LANE SMITH, SR. -- DIRECT BY MR. CREECH

1 A YES, I DID.

2 Q ALL RIGHT. AND WAS IT THERE THAT YOU WERE ARRESTED?

3 A THAT'S WHERE I WAS ARRESTED.

4 Q ALL RIGHT. DID YOU PUT UP ANY KIND OF FIGHT OR STRUGGLE?

5 A NO, I DIDN'T.

6 Q ALL RIGHT. NOW, YOU WERE THEN INCARCERATED; IS THAT
7 CORRECT?

8 A THAT'S CORRECT.

9 Q ALL RIGHT. AND DID YOU WRITE NANCY A LETTER?

10 A I DID. I WROTE SEVERAL.

11 Q ALL RIGHT. DID YOU WRITE STEVE A LETTER AS WELL?

12 A YES, I DID. I SENT IT TO NANCY.

13 Q OKAY. PRIOR TO THESE ALLEGATIONS HAD YOU HAD WHAT'S CALLED
14 AN ANGER MANAGEMENT PROBLEM?

15 A UNFORTUNATELY I DID.

16 Q DID YOU REGRET HAVING THAT PROBLEM?

17 A VERY MUCH.

18 Q DO YOU REMEMBER YELLING AT Minor AT ALL?

19 A YES. I YELLED AT Minor SOME BUT NOT AS MUCH AS HIS
20 YOUNGER BROTHER OR MY KIDS OR MY WIFE.

21 Q ALL RIGHT. AND LOOKING BACK ON IT DO YOU WISH YOU HAD NEVER
22 YELLED AT YOUR WIFE LIKE YOU DID?

23 A I REGRET IT VERY MUCH.

24 Q NOW, AS TO ASHTON, YOU SAID YOU YELLED AT HIM AS WELL; IS
25 THAT RIGHT?

RANDALL LANE SMITH, SR. -- CROSS BY MS. KEDNOCKER

1 A THAT'S CORRECT.

2 Q NOW, RANDY, ARE YOU -- WHERE ARE YOU CURRENTLY LIVING?

3 A I'VE BEEN LIVING WITH MY PARENTS AT DRIVE IN

4 ANDERSON, SOUTH CAROLINA. THAT'S WHERE MY PARENTS LIVE NOW.

5 THEY JUST BOUGHT A NEW HOUSE ABOUT THREE MONTHS AGO.

6 Q AND WHAT EFFORTS ARE YOU TAKING TO BECOME GAINFULLY

7 EMPLOYED?

8 A WELL, FOR NOW I'M BASICALLY HELPING MY FATHER AROUND THE:

9 HOUSE, HELPING KEEP THE HOUSE CLEAN. I'VE DONE SOME LANDSCAPING

10 AND SOME REMODELING. HE HAD SOME FRENCH DOORS, AND I'VE BEEN

11 DOING SOME WORK AROUND THE HOUSE FOR MY FATHER.

12 Q OKAY. AND YOU NEVER TOUCHED Minor IS THAT CORRECT?

13 A NEVER.

14 MR. CREECH: THANK YOU, YOUR HONOR. I HAVE NO FURTHER

15 QUESTIONS.

16 THE COURT: ALL RIGHT. CROSS EXAMINATION, MS. KEDNOCKER.

17 MS. KEDNOCKER: THANK YOU, YOUR HONOR.

18 CROSS EXAMINATION BY MS. KEDNOCKER:

19 Q GOOD AFTERNOON, MR. SMITH.

20 A GOOD AFTERNOON.

21 Q SO LET'S GO BACK. YOU AGREE THAT Minor SLEPT IN THE BED

22 WITH YOU?

23 A YES, I DO.

24 Q AND YOU AGREE WITH THE FACT -- THERE WAS EARLIER TESTIMONY

25 YOU SLEEP WITH A BREATHING MACHINE THAT MAKES NOISE?

RANDALL LANE SMITH, SR. -- CROSS BY MS. KEDNOCKER

1 A THAT'S CORRECT.

2 Q THAT'S TRUE.

3 A IT DOESN'T MAKE AS MUCH NOISE AS WAS DESCRIBED.

4 Q IT MAKES NOISE. YOU AGREE WITH THE FACT THAT Minor DID
5 SLEEP IN THERE, YOU HAD A BREATHING MACHINE. WERE THERE THREE
6 DRESSERS IN THAT ROOM?

7 A NO. THERE'S A TABLE. ACTUALLY, IT WAS A COPY CAMERA. IT
8 WAS JUST THE TABLE. THE CAMERA WAS NOT THERE. THERE WAS A
9 CREDENZA WHICH HAD OFFICE SUPPLIES IN IT. AND THEN THERE WAS AN
10 OLD STEREO THAT LOOKS LIKE A DRESSER, BUT IT WAS A STEREO. I GOT
11 A BIG ZENITH CABINET STEREO WHEN I WAS 13.

12 Q YOU WOULD AGREE WITH THE FACT THAT WHEN YOU SLEPT IN THERE
13 THE DOOR WAS SHUT MANY TIMES; IS THAT CORRECT?

14 A NO, THE DOOR WAS NOT SHUT.

15 Q OKAY. LET'S GO BACK TO THE NIGHT IN QUESTION. YOU REMEMBER
16 THE BIG FIGHT WITH NANCY; IS THAT ACCURATE?

17 A YES, I DO.

18 Q AND LET'S GO BACK A LITTLE BIT BEFORE THAT. AND WE'RE GOING
19 TO COME BACK TO THE FIGHT. BUT YOU REMEMBER THAT NIGHT AT LEAST
20 IN THE PHONE CALL FROM YOUR SON AND TALKING TO HIM ON THE PHONE;
21 IS THAT ACCURATE?

22 A YES.

23 Q SO YOUR SON CALLS YOU. DID HE CALL YOU FROM THE CHURCH?

24 A HE CALLED ME FROM THE CHURCH ON THE CELL PHONE, CORRECT.

25 Q OKAY. SO HE CALLS YOU FROM THE CHURCH ON HIS CELL PHONE --

RANDALL LANE SMITH, SR. -- CROSS BY MS. KEDNOCKER

1 A CELL PHONE. AND AT THAT POINT YOU'D AGREE THAT YOU WENT DOWN
2 TO THE CHURCH TO SEE WHAT WAS GOING ON WITH THE BOYS?

3 A YES. AND THE REASON I DID THAT WAS SO THAT I DIDN'T WAKE UP
4 NANCY. SHE WAS SLEEPING LATE SO SHE COULD GO TO -- SHE WAS GOING
5 TO WORK LATE THAT NIGHT.

6 Q AND ISN'T IT A FACT THAT WHEN YOU GOT DOWN THERE YOU TOLD

7 Minor AND LANE, "DON'T GET ME IN TROUBLE," ISN'T THAT A FACT?

8 A I SAID SOMETHING SIMILAR TO THAT BUT NOT THOSE EXACT WORDS.
9 I SAID, "DON'T TRY TO GET ME IN TROUBLE WITH A BUNCH OF LIES" IS
10 WHAT I SAID.

11 Q OKAY. OKAY. SO YOU -- THEIR STORY SO FAR IS JUST MIRRORING
12 YOURS. YOU SAID, "DON'T GET ME IN TROUBLE WITH A BUNCH OF LIES"?

13 A RIGHT.

14 Q ALL RIGHT. SO AT THAT POINT YOU LEAVE AND YOU GO BACK TO
15 THE HOUSE. YOU AGREE WITH WHAT MS. SMITH TESTIFIED TO, THAT'S
16 WHEN YOU TWO -- MS. SMITH LEAVES? YOU SAW HER LEAVING THE HOUSE,
17 RIGHT?

18 A UH-HUH (AFFIRMATIVE). RIGHT.

19 Q SHE GOES AWAY AND SHE'S DOWN AT THE CHURCH FOR THIS PERIOD
20 OF TIME; IS THAT -- DO YOU AGREE WITH THAT?

21 A RIGHT.

22 Q OKAY. SO NOW WE GO FAST FORWARD TO THE POINT WHERE YOU AND
23 MS. SMITH, YOUR WIFE NANCY, START GETTING INTO THIS ARGUMENT,
24 OKAY?

25 A UH-HUH (AFFIRMATIVE).

RANDALL LANE SMITH, SR. -- CROSS BY MS. KEDNOCKER

1 Q OKAY. WOULD YOU AGREE WITH THE FACT THAT THE ARGUMENT WAS
2 ABOUT NANCY COMING IN AND SAYING, WHAT THE 'F' DID YOU DO TO
3 Minor

4 A SHE SAID THAT. YES, SHE DID.

5 Q AND WHEN SHE SAID, WHAT THE 'F' DID YOU DO TO Minor YOU
6 STARTED DENYING IT; IS THAT ACCURATE?

7 A I SAID, I DIDN'T DO ANYTHING TO Minor

8 Q OKAY. BUT ISN'T IT A FACT THAT IN THAT CONVERSATION THAT
9 YOU AGREE TOOK PLACE IN THAT CONVERSATION YOU ENDED UP SAYING,
10 "YOU KNOW WHAT, Minor ASKED FOR IT"?

11 A I DID NOT SAY THAT.

12 Q AND DIDN'T YOU SAY, "HE STARTED KISSING ME"?

13 A NO, I DID NOT SAY THAT.

14 Q AND DIDN'T YOU SAY THAT YOU WOULD HAVE ENJOYED IT MORE IF HE
15 WOULD HAVE COOPERATED?

16 A OF COURSE I DIDN'T SAY THAT. THAT'S AN OUTRIGHT LIE.

17 Q NO. IN THAT CONFRONTATION WITH YOUR WIFE DID YOUR WIFE PULL
18 OUT THE SCISSORS OR DID SHE NOT?

19 A NO, SHE PULLED THE SCISSORS OUT THE NEXT MORNING.

20 Q OH, OKAY. ALL RIGHT. SO, SO FAR THE STORIES ARE MATCHING
21 UP PRETTY CLOSELY. THE NEXT MORNING IS SATURDAY, CORRECT?

22 A CORRECT.

23 Q AND YOU LOAD UP AND YOU TAKE OFF; IS THAT ACCURATE?

24 A THAT'S CORRECT.

25 Q WHERE DID YOU GO AT THAT POINT? IS IT CORRECT THAT YOU LEFT

RANDALL LANE SMITH, SR. -- CROSS BY MS. KEDNOCKER

1 THE STATE? YOU TESTIFIED YOU WENT---

2 A NO, I WENT TO SPARTANBURG FOR ABOUT THREE OR FOUR DAYS TO
3 STAY WITH MY FRIEND JONATHAN, AND I INFORMED MY WIFE THAT'S WHERE
4 I WOULD BE.

5 Q ALL RIGHT.

6 A SHE KNEW FULL WELL WHERE I WAS AT.

7 Q NOW LET'S GO TO ANOTHER POINT. FROM DECEMBER 12TH WHEN YOU
8 LEFT THAT HOUSE TILL DECEMBER 24TH WHEN YOU GOT PICKED UP BY THE
9 S.W.A.T. TEAM, DURING THAT PERIOD OF TIME YOU WOULD AGREE WITH
10 THE FACT THAT YOU CALLED BACK TO THE HOUSE NUMEROUS TIMES,
11 CORRECT?

12 A I CALLED THE HOUSE A FEW TIMES, BUT ONLY WHEN I KNEW THAT I
13 WOULD REACH NANCY. I DIDN'T WANT TO BOTHER THE KIDS.

14 Q AND DURING THAT SPAN OF TIME YOU SPOKE TO YOUR SON ON THE
15 PHONE; IS THAT CORRECT?

16 A ON THE WAY BACK FROM BIRMINGHAM I SPOKE TO MY SON, CORRECT.

17 Q AND DURING THAT PHONE CONVERSATION ISN'T IT A FACT THAT YOUR
18 SON Minor SAID, "DAD, WHY DID YOU START WITH Minor

19 A I THINK YOU PHRASED THAT WRONG. YOU SAID Minor INSTEAD OF
20 LANE.

21 Q LANE, I'M SORRY. ISN'T IT A FACT THAT YOUR SON ASKED YOU
22 THAT?

23 A WHAT WAS IT HE ASKED AGAIN? SAY IT AGAIN, PLEASE.

24 Q "WHY DID YOU START WITH Minor AND YOU SAID, "Minor
25 ASKED FOR IT." IS THAT NOT ACCURATE?

RANDALL LANE SMITH, SR. -- CROSS BY MS. KEDNOCKER

1 A THAT'S NOT ACCURATE. I DID NOT SAY THAT.

2 Q YOU DID NOT SAY THAT?

3 A THAT'S CORRECT. I DID NOT SAY THAT.

4 Q ALL RIGHT. LET'S FAST FORWARD TO YOU GET INCARCERATED. YOU
5 GET ARRESTED ON DECEMBER 24TH. THAT'S CHRISTMAS EVE, RIGHT?

6 A CORRECT.

7 Q AND THAT IS A HOLIDAY, IT'S A FAMILY HOLIDAY. IT'S A BAD
8 DAY TO GET ARRESTED.

9 A NOT A GOOD DAY, NO.

10 Q OKAY. MR. SMITH, DO YOU THINK OF YOURSELF AS A SMART -- A
11 RELATIVELY INTELLIGENT MAN?

12 A FAIRLY.

13 Q I MEAN, YOU DON'T THINK OF YOURSELF AS A NON-INTELLIGENT
14 PERSON, RIGHT?

15 A OF COURSE NOT.

16 Q YOU WOULD CONSIDER YOURSELF A PRETTY SAVVY, IN YOUR
17 BUSINESS, YOU'VE STATED -- YOU HAVE A PRETTY ILLUSTRIOUS,
18 IMPRESSIVE BUSINESS CAREER FROM WHAT YOU HAVE STATED.

19 A I HAVE HAD, YES.

20 Q AND SO IN THAT BUSINESS CAREER YOU HAVE TO BE PRETTY SMART
21 AND PRETTY SAVVY TO GET BY AND EXCEL AND EXCEED, CORRECT?

22 A MORE OR LESS, YES, THAT'S TRUE.

23 Q WELL, LET'S TALK ABOUT YOUR ANGER MANAGEMENT PROBLEM.

24 A OKAY.

25 Q SO YOU GET ARRESTED ON DECEMBER 24TH AND YOU NOW ARE CHARGED

1 WITH HAVING SEX WITH YOUR NEPHEW.

2 A UH-HUH (AFFIRMATIVE).

3 Q WAS THAT HORRIFYING TO YOU?

4 A IT WAS TERRIBLY FRIGHTENING, YES.

5 Q RIGHT. I MEAN, YOU'RE A SMART MAN, RIGHT? YOU'RE A SMART
6 MAN?

7 A I'M NOT A DUMB MAN, I SHOULD SAY, I GUESS.

8 Q JUST INDICATED THAT YOU ARE A SMART, INTELLIGENT PERSON.

9 A RIGHT.

10 Q SO AS YOU'RE SITTING IN JAIL ACCUSED OF HAVING SEX WITH YOUR
11 NEPHEW -- I'M SHOWING YOU WHAT'S MARKED AS STATE'S EXHIBIT 4. DO
12 YOU RECOGNIZE THIS? TAKE YOUR TIME.

13 A OKAY. ALL RIGHT. YES.

14 Q DO YOU REMEMBER WRITING THIS LETTER TO STEVE JULIAN?

15 A YES, I DID.

16 Q AND, MR. SMITH, IT IS YOUR TESTIMONY TO THIS JURY THAT
17 HAVING BEEN ARRESTED ON DECEMBER 24TH, 2003, WITH THIS CHARGE OF
18 SEXUALLY ASSAULTING YOUR NEPHEW YOU FELT COMPELLED ON JANUARY
19 13TH, 2004, TO ASK FORGIVENESS FOR YELLING AT ASHTON AND Minor
20 IS THAT WHAT THIS IS?

21 A AND HIS DAUGHTER HALAYA. THAT IS PROBABLY THE WORST
22 OFFENSE, THAT I YELLED AT A TWO-YEAR-OLD.

23 Q RIGHT. AND YOU YELLED AT THE TWO-YEAR-OLD ALMOST A YEAR
24 BEFORE; THAT WOULD BE ACCURATE?

25 A IT WAS ABOUT TWO WEEKS PRIOR TO THE ACCUSATIONS.

RANDALL LANE SMITH, SR. -- CROSS BY MS. KEDNOCKER

1 Q RIGHT. YOU'RE A SMART MAN. SO YOU FEEL THAT, "I HOPE YOU
2 CAN FIND IT IN YOURSELF TO FORGIVE ME. I'VE WAITED A FEW WEEKS
3 TO WRITE YOU IN HOPES THAT SOME OF YOUR ANGER MIGHT DIMINISH."
4 WERE YOU REFERRING BACK TO WHEN YOU FIRST GOT ARRESTED ON
5 DECEMBER 24TH? BECAUSE STEVE WAS PRETTY ANGRY, RIGHT?

6 A I'M SURE HE WAS, YES.

7 Q OKAY. SO IF STEVE IS REALLY ANGRY ON DECEMBER 24TH, 2003,
8 AND YOU'RE REFERRING BACK TO "I'VE WAITED A FEW WEEKS TO WRITE
9 YOU," YOU'RE REFERRING BACK TO THE FACT THAT YOU GOT PICKED UP
10 FOR HAVING SEX WITH HIS SON; ISN'T THAT A FACT?

11 A NO.

12 Q AND ISN'T IT A FACT, SIR, THAT IN THIS LETTER WHERE YOU TALK
13 ABOUT MISTAKES, "THE BOOK TEACHES THAT EVEN OUR WORST MISTAKES
14 SERVE AS A MEANS TO TEACH US, TO MAKE US BETTER AND STRONGER."
15 SO ON THAT DAY WHEN YOU'RE SITTING IN JAIL YOU ARE COMPELLED
16 BECAUSE YOU'RE JUST SO UPSET ABOUT YELLING AT HIS KIDS, THAT'S
17 YOUR MISTAKE?

18 A I HAD JUST READ A CHAPTER ON ANGER MANAGEMENT.

19 Q RIGHT.

20 MS. KEDNOCKER: YOUR HONOR, I HAVE NO FURTHER QUESTIONS.

21 MR. CREECH: NO REDIRECT, YOUR HONOR.

22 THE COURT: OKAY. YOU CAN STEP DOWN. THANK YOU VERY MUCH.

23 (WITNESS STEPS DOWN AT 4:20 P.M.)

24 THE COURT: YES, SIR, MR. CREECH.

25 MR. CREECH: YOUR HONOR, THE DEFENSE RESTS.

MATTERS AND MOTIONS

1 THE COURT: ALL RIGHT. OKAY. ANYTHING FURTHER FROM THE
2 STATE AT THIS TIME?

3 MS. KEDNOCKER: NO, SIR, YOUR HONOR.

4 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU'VE HEARD
5 ALL THE EVIDENCE YOU'RE GOING TO HEAR IN THIS CASE. AND GIVEN
6 THE HOUR, THE ONLY THING THAT IS REMAINING IN TERMS OF THE TRIAL
7 IS THE FINAL ARGUMENTS OF THE LAWYERS AND INSTRUCTION ON THE LAW
8 AND THAT COULD TAKE SOME TIME AND PROBABLY PUT US INTO THE
9 EVENING. SO WHAT WE'RE GOING TO DO IS, IF YOU WOULD, JUST COME
10 BACK AT NINE O'CLOCK IN THE MORNING AND WE WILL CONCLUDE THE CASE
11 AT THAT TIME. YOU WILL HEAR THE FINAL ARGUMENTS OF THE LAWYERS.
12 I'LL GIVE YOU THE LAW THAT APPLIES TO THE CASE, AND THEN THE CASE
13 WILL BE IN YOUR HANDS FOR A VERDICT AND FOR A DECISION.

14 OVERNIGHT, OF COURSE, REMEMBER NOT TO DISCUSS THIS CASE WITH
15 ANYONE. DON'T DO ANY OUTSIDE INVESTIGATION, AND CONTINUE TO KEEP
16 AN OPEN MIND BECAUSE YOU HAVEN'T HEARD THE ENTIRE CASE YET.

17 WITH THAT, HAVE A GOOD EVENING. THANK YOU VERY MUCH.

18 (JURY EXITS FOR THE DAY AT 4:20 P.M.)

19 THE COURT: OKAY. ANYTHING FURTHER BEFORE WE BREAK FOR THE
20 EVENING?

21 MS. KEDNOCKER: NO, SIR, YOUR HONOR.

22 MR. CREECH: YOUR HONOR, AT THIS TIME I WOULD JUST RENEW MY
23 MOTION FOR A DIRECTED VERDICT AT THE CLOSE OF THE CASE.

24 THE COURT: ALL RIGHT. YES, SIR, MR. CREECH. THANK YOU,
25 SIR. AND IT IS AGAIN DENIED RESPECTFULLY.

MATTERS AND MOTIONS

1 I DO HAVE A PROPOSED CHARGE ON THE VARIOUS SUBSTANTIVE LEGAL
2 PRINCIPLES THAT I WILL HAND TO Y'ALL SO YOU CAN HAVE THEM, IF
3 Y'ALL WANT TO COME GET THOSE. OTHERWISE, I'LL SEE YOU IN THE
4 MORNING. THANK YOU.

5 MS. KEDNOCKER: THANK YOU, JUDGE. WHAT TIME DID YOU SAY?

6 THE COURT: NINE O'CLOCK.

7 (TRIAL RECESSED FOR THE DAY AT 4:22 P.M.)

8 (TRIAL RESUMED AT 9:04 A.M. ON 11/9/05)

9 THE COURT: GOOD MORNING. I'M GOING TO LET Y'ALL LOOK AT
10 THE VERDICT FORM. AND IS THERE ANY DISCUSSION ABOUT THE CHARGES,
11 JURY CHARGES?

12 MS. KEDNOCKER: YOUR HONOR, JUST THE---

13 THE COURT: SHE'S GOING TO HAVE TO BE ABLE TO HEAR WHAT YOU
14 SAY SO...

15 MS. KEDNOCKER: OKAY. JUST THE---

16 THE COURT: SHE CAN'T HEAR YOU.

17 MS. KEDNOCKER: I'M SORRY. LET ME GRAB MY NOTES REAL
18 QUICK. THE PART ABOUT CONSENT, YOU'RE TALKING ABOUT --

19 MAY IT PLEASE THE COURT, YOUR HONOR, AS TO JURY CHARGES.
20 AND I ASSUME YOUR HONOR IS PICKING NUMBER ONE UNDER THE VICTIM IS
21 AT LEAST 11 YEARS OF AGE BUT NOT MORE THAN 14?

22 THE COURT: RIGHT.

23 MS. KEDNOCKER: CONSENT AT THE BOTTOM. "CONSENT,
24 WILLINGNESS, INDIFFERENCE OR IGNORANCE ON THE PART OF THE MINOR,
25 IF ANY, AS TO WHAT WAS TAKING PLACE DOES NOT IN ANY WAY AFFECT

MATTERS AND MOTIONS

1 THE CRIMINAL CHARGE OF CRIMINAL SEXUAL CONDUCT WITH A MINOR
2 BECAUSE AN UNMARRIED WOMAN UNDER THE AGE OF 14 CANNOT LEGALLY
3 CONSENT TO SEXUAL INTERCOURSE." IT SEEMS A LITTLE -- THAT SEEMS
4 A LITTLE CONFUSING.

5 THE COURT: YEAH, I THINK I WOULD PROBABLY---

6 MS. KEDNOCKER: I DON'T THINK THERE IS ANY ISSUE OF CONSENT
7 IN THIS CASE, AND---

8 THE COURT: RIGHT.

9 MS. KEDNOCKER: BUT IT'S NOT ABOUT A WOMAN; IT'S ABOUT A
10 BOY, AND HE CAN'T CONSENT UNDER THE AGE OF 16, SO...

11 THE COURT: OKAY.

12 MS. KEDNOCKER: AND THEN THE STATE WOULD REQUEST YOUR
13 ALTERNATE CHARGE ON REASONABLE DOUBT, THE FIRMLY CONVINCED
14 CHARGE.

15 THE COURT: YEAH, I'LL GIVE THAT.

16 MS. KEDNOCKER: OKAY.

17 MR. CREECH: YOUR HONOR, AS TO THE VERDICT FORM, I WOULD
18 ASK THE COURT TO SUBMIT A VERDICT FORM THAT JUST SAYS EITHER
19 GUILTY OF CSC, GUILTY OF ASSAULT AND BATTERY OF A HIGH AND
20 AGGRAVATED NATURE, GUILTY OF ASSAULT AND BATTERY OR NOT GUILTY,
21 BECAUSE THE WAY THIS IS SET UP, NOT GUILTY OF CSC, AND NEXT IS
22 SAYS, IF YOU ANSWER NOT GUILTY, PROCEED TO QUESTION TWO. I THINK
23 THE QUESTION IS WHETHER HE'S GUILTY OF ANY OF THESE THREE
24 OFFENSES OR HE'S NOT GUILTY.

25 THE COURT: WELL, I UNDERSTAND THAT. I'LL EXPLAIN IT TO

MATTERS AND MOTIONS

1 THEM IN THE JURY INSTRUCTION THAT THEY HAVE TO DECIDE EACH --
2 HAVE TO DECIDE THE INDICTED CHARGE BUT THEY CAN GO AND CONSIDER
3 THE LESSER INCLUDED OFFENSE. IF I JUST GIVE THEM THOSE THREE AND
4 DON'T PUT THAT ON THE VERDICT FORM, THEN THERE IS A CHANCE THEY
5 MIGHT COME BACK WITH SOME INCONSISTENT VERDICT. THAT'S WHAT I
6 WAS TRYING TO AVOID. DO YOU UNDERSTAND WHAT I'M SAYING?

7 MR. CREECH: I DO, YOUR HONOR.

8 MS. KEDNOCKER: AND, YOUR HONOR, JUST TO CLARIFY, YOUR
9 HONOR IS GOING TO EXPLAIN NATURALLY THE ABHAN, THE LESSER
10 INCLUDED, IT'S SOMETHING THEY COULD FIND OTHER THAN CSC. THE
11 STATE ARGUED EARLIER THAT WE DON'T THINK ABHAN IS APPROPRIATE,
12 BUT YOUR HONOR IS GOING TO CHARGE THAT.

13 THE COURT: RIGHT.

14 MS. KEDNOCKER: OKAY.

15 THE COURT: OKAY. LET ME -- IF Y'ALL ARE FINISHED WITH
16 THOSE CHARGES, LET ME GET AT LEAST ONE OF YOU TO GIVE ME A COPY
17 BACK BECAUSE I DON'T HAVE ANOTHER COPY.

18 MS. KEDNOCKER: OH, YOUR HONOR, THE ONLY -- ON THE LAST
19 PAGE I DID NOT BELIEVE YOUR HONOR WAS CHARGING ASSAULT AND
20 BATTERY. I DON'T BELIEVE THERE IS ANYTHING TO SUBSTANTIATE THAT.
21 I MEAN, POSSIBLY -- THE STATE'S POSITION WAS THAT THIS IS CSC OR
22 NOT CSC.

23 THE COURT: RIGHT.

24 MS. KEDNOCKER: I UNDERSTAND YOUR HONOR'S RULING THAT YOU
25 DO WANT TO GIVE THE LESSER INCLUDED OFFENSE OF ABHAN, BUT I THINK

MATTERS AND MOTIONS

1 THERE IS ABSOLUTELY NO WAY YOU COULD THINK THAT A SIMPLE ASSAULT
2 AND BATTERY HAPPENED HERE. THAT'S JUST THE STATE'S POSITION.

3 THE COURT: RIGHT.

4 MS. KEDNOCKER: THERE WAS TESTIMONY OF RUBBING AND
5 FONDLING. THAT'S MORE OF A LEWD ACT TYPE CHARGE. BUT I JUST
6 DON'T THINK ABHAN WOULD BE APPROPRIATE HERE.

7 THE COURT: YOU MEAN SIMPLE ASSAULT AND BATTERY?

8 MS. KEDNOCKER: SIMPLE ASSAULT AND BATTERY.

9 THE COURT: WHAT ABOUT THAT, MR. CREECH?

10 MR. CREECH: YOUR HONOR, THERE IS EVIDENCE IN THE RECORD
11 FROM THE WITNESS AND FROM OTHERS THAT THERE WAS JUST A TOUCHING.
12 AN UNCONSENSUAL TOUCHING IS A SIMPLE ASSAULT AND BATTERY.

13 THE COURT: WHAT ABOUT THE DIFFERENCE IN THE AGES?

14 MR. CREECH: WELL, THAT IS A CIRCUMSTANCE OF AGGRAVATION.
15 BUT AGAIN, AN UNCONSENSUAL TOUCHING, YOU KNOW, IS NOT -- THEY'RE
16 GOING TO HAVE TO CONSIDER WHETHER OR NOT IT'S AN ACT OF VIOLENT
17 INJURY OR AN ACT OF VIOLENT ASSAULT, I THINK IS HOW ASSAULT AND
18 BATTERY IS CLASSIFIED. BUT I THINK IF THERE IS AN UNCONSENSUAL
19 TOUCHING, THAT'S, YOU KNOW, WHAT'S BEEN TESTIFIED TO AND THAT
20 WOULD GIVE RISE TO A CHARGE OF ASSAULT AND BATTERY,

21 MS. KEDNOCKER: YOUR HONOR, I JUST WOULD THOROUGHLY
22 DISAGREE THAT THE EVIDENCE IN THIS CASE, AGAIN, IS CSC. HE
23 TESTIFIED NUMEROUS TIMES TO ANAL PENETRATION, ORAL SEX, DIGITAL
24 PENETRATION. THE CONCEPT THAT THERE IS EVIDENCE TO SUPPORT A
25 SIMPLE -- A SIMPLE ASSAULT AND BATTERY IS NOT SUPPORTED BY THE

MATTERS AND MOTIONS

1 RECORD HERE. I THINK THE ABHAN CHARGE THERE IS A DIFFERENCE IN
2 THE SEXES. THERE IS A SIZE DISPARITY IN THE PARTIES POSSIBLY
3 THAT COULD SUBSTANTIATE THAT. BUT A SIMPLE ASSAULT AND BATTERY
4 IS NOT SUPPORTED BY THE RECORD.

5 THE COURT: WELL, HOW COULD YOU HAVE A SIMPLE ASSAULT AND
6 BATTERY, MR. CREECH? I'M STILL TRYING TO FIGURE THAT OUT. I
7 DON'T KNOW HOW THE JURY COULD NOT FIND THAT THERE WAS DISPARITY
8 IN THE AGES. THERE IS NO TESTIMONY OTHER THAN THE DEFENDANT IS
9 50 AND I BELIEVE THIS VICTIM WAS, WHAT, 13 OR 14 AT THE TIME?

10 MS. KEDNOCKER: HE WAS 12, YOUR HONOR, AND TURNED 13.

11 THE COURT: OKAY. I MEAN, THERE IS NO EVIDENCE TO BASE
12 THAT ON, IS THERE? THEY COULD FIND HIM NOT GUILTY ON EITHER ONE
13 OBVIOUSLY. BUT THEY COULD FIND HIM GUILTY OF ASSAULT AND BATTERY
14 OF A HIGH AND AGGRAVATED NATURE AS A LESSER INCLUDED OF CSC. BUT
15 I DON'T SEE WHAT EVIDENCE THERE WOULD BE TO SUPPORT A CHARGE ON A
16 SIMPLE ASSAULT AND BATTERY GIVEN THE FACT THAT THERE IS
17 UNDISPUTED EVIDENCE ABOUT THE AGGRAVATING CIRCUMSTANCE OF THE
18 DISPARITY IN AGES.

19 MR. CREECH: WELL, YOUR HONOR, AGAIN, GREAT DISPARITY IN
20 THE AGES, IS THAT GOING TO BE A JURY QUESTION AS TO WHAT THAT
21 DISPARITY IS?

22 THE COURT: WELL, I DON'T KNOW -- WELL---

23 MR. CREECH: YOU KNOW, BUT -- YEAH. SO I -- I THINK THE
24 CIRCUMSTANCE OF AGGRAVATION GOES TO GREAT DISPARITY BETWEEN THE
25 AGES OR PHYSICAL CONDITION OF THE PARTIES. TAKING THEM TOGETHER,

MATTERS AND MOTIONS

1 I MEAN, IF A 95-YEAR-OLD MAN TOUCHES AN INFANT THAT DOESN'T
2 NECESSARILY MAKE IT ABHAN.

3 THE COURT: WELL---

4 MS. KEDNOCKER: YOUR HONOR, I JUST WOULD STATE FOR THE
5 RECORD, THIS MAN WAS ALMOST -- LET ME NOT MISSTATE -- 48 YEARS
6 OLD. THIS CHILD WAS 12. AND THERE IS NO DOUBT THERE IS A
7 DISPARITY IN THE SIZE, THE PHYSICAL CHARACTERISTICS, THE AGE OF
8 THESE PARTIES. ABHAN, I WOULD STILL CONTEND, IS NOT APPROPRIATE
9 TO BE CHARGED, BUT I UNDERSTAND YOUR HONOR'S RULING. ASSAULT AND
10 BATTERY IS CLEARLY NOT APPLICABLE UNDER THE FACTS IN THIS CASE.

11 MR. CREECH: AND A JURY MAY WELL BELIEVE THAT THERE WAS NOT
12 A GREAT DISPARITY IN AGES. THAT'S A QUESTION FOR THE JURY TO
13 DETERMINE, AND THAT'S WHY WE'D ASK THAT JUST AN ASSAULT AND
14 BATTERY CHARGE BE INCLUDED.

15 MS. KEDNOCKER: YOUR HONOR, IN THIS CASE THE DEFENDANT HAS
16 PRETTY MUCH GOTTEN ON THE STAND. HE WAIVED HIS FIFTH AMENDMENT
17 RIGHTS, AND HE BASICALLY SAID THIS DID NOT HAPPEN. OKAY? SO IN
18 THIS CASE YOU EITHER HAVE THIS HAPPENED, WHICH THE STATE'S
19 POSITION IS THIS IS A CSC AND THIS IS A RAPE, OR THIS DIDN'T
20 HAPPEN, WHICH IS WHAT THE DEFENDANT'S CASE IS. I DON'T EVEN KNOW
21 HOW WE'RE GOING TO ARGUE THAT WITH A STRAIGHT FACE. BUT ASSAULT
22 AND BATTERY IS NOT APPROPRIATE HERE.

23 THE COURT: WELL, I'M GOING TO CHARGE IT. ALL RIGHT. ONE
24 OF Y'ALL GIVE ME BACK A COPY OF MY CHARGE SO I CAN HAVE ONE,
25 PLEASE.

CLOSING ARGUMENTS -- BY MR. CREECH

1 MS. KEDNOCKER: HERE YOU GO, YOUR HONOR.

2 THE COURT: ALL RIGHT. IS THERE ANYTHING FURTHER BEFORE WE
3 BRING THE JURY IN?

4 MS. KEDNOCKER: NOTHING FROM THE STATE.

5 MR. CREECH: NOTHING FROM THE DEFENSE.

6 THE COURT: OKAY. YES, MA'AM.

7 (JURY ENTERS COURTROOM AT 9:14 A.M.)

8 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN. AS I TOLD
9 YOU YESTERDAY, THE STATE AND DEFENSE HAVE COMPLETED THEIR
10 PRESENTATION OF THE EVIDENCE. YOU ARE NOT GOING TO HEAR ANY MORE
11 EVIDENCE IN THE CASE. NOW IT IS TIME FOR THE CLOSING ARGUMENTS
12 OF THE ATTORNEYS. SO AT THIS TIME WE WILL HAVE THE CLOSING
13 ARGUMENTS.

14 YES, SIR, MR. CREECH.

15 MR. CREECH: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
16 COURT, MS. KEDNOCKER.

17 GOOD MORNING, LADIES AND GENTLEMEN. (JURY RESPONDS) IT IS
18 A PLEASURE TO BE BACK HERE IN FRONT OF YOU, AND WE'VE CLOSED THE
19 CASE AND NOW IT'S TIME FOR US TO TELL YOU WHAT WE THINK THIS CASE
20 IS ABOUT. AND, LADIES AND GENTLEMEN, THIS CASE IS JUST ABOUT
21 ALLEGATIONS WITHOUT PROOF. IT'S ABOUT DIFFERENT VERSIONS OF WHAT
22 MAY OR MAY NOT HAVE HAPPENED. IT'S ABOUT A FAMILY, A MARRIAGE IN
23 TURMOIL, AND THAT MARRIAGE WAS IN TURMOIL LONG BEFORE THESE
24 ALLEGATIONS EVER SURFACED. IT'S ABOUT HOW WE'VE HEARD DIFFERENT
25 THINGS FROM DIFFERENT WITNESSES. AND IT'S ABOUT INNUENDO AND

CLOSING ARGUMENTS -- BY MR. CREECH

1 TWISTING THINGS AND TAKING THINGS OUT OF CONTEXT. AND AT THE END
2 OF THE DAY, LADIES AND GENTLEMEN, THE STATE IN THIS CASE HAS BEEN
3 UNABLE TO OFFER SUBSTANTIAL, SOLID PROOF, UNBIASED PROOF, PROOF
4 THAT YOU CAN BASE YOUR VERDICT ON, PROOF -- WHAT WE CALL IN THE
5 LAW, PROOF BEYOND A REASONABLE DOUBT.

6 LADIES AND GENTLEMEN, THE JUDGE -- AFTER YOU HEAR FROM US,
7 THE JUDGE IS GOING TO INSTRUCT YOU ON THE LAW, AND HE'S GOING TO
8 TELL YOU ABOUT ALL OF THE CHARGES IN THIS CASE. AND THE FIRST
9 CHARGE HE'S GOING TO TELL YOU ABOUT, LADIES AND GENTLEMEN, IS
10 WHAT MR. RANDALL SMITH HAS BEEN INDICTED FOR, AND THAT'S WHAT WE
11 CALL CRIMINAL SEXUAL CONDUCT -- I'M JUST GOING TO USE THE
12 ABBREVIATION CSC -- IN THE SECOND DEGREE. AND HE'S ALSO GOING TO
13 TELL YOU ABOUT LESSER INCLUDED CHARGES THAT ARE ALSO GOING TO BE
14 -- THAT YOU'RE ALSO GOING TO BE INSTRUCTED ON. ONE OF THOSE IS
15 CALLED AGGRAVATED ASSAULT, AND THEN FINALLY HE'S GOING TO TELL
16 YOU ABOUT JUST SIMPLE ASSAULT AND BATTERY. AND HE'S GOING TO
17 ALSO TELL YOU, LADIES AND GENTLEMEN, ABOUT NOT GUILTY. OKAY?

18 ANY TIME STATE BRINGS A CASE -- ANY TIME THE STATE BRINGS A
19 CASE -- THEY HAVE TO PROVIDE PROOF BEYOND A REASONABLE DOUBT.
20 AND THE JUDGE SAID THIS IN HIS OPENING CHARGE TO YOU. HE SAID,
21 YOU KNOW, WHEN YOU COME INTO A COURTROOM, YOU DON'T LEAVE YOUR
22 COMMON SENSE AT THE DOOR. YOU BRING YOUR COMMON SENSE WITH YOU.
23 AND IF YOU COME IN HERE AND LOOK AT THIS CASE WITH YOUR COMMON
24 SENSE AND YOU HEAR THE ALLEGATIONS, ESPECIALLY THE NUMBER OF
25 TIMES THIS IS ALLEGED TO HAVE OCCURRED AND THE LOCATION WHERE IT

CLOSING ARGUMENTS -- BY MR. CREECH

1 HAS OCCURRED, LADIES AND GENTLEMEN, YOU KNOW, SOMEBODY WOULD HAVE
2 HEARD SOMETHING IN THIS SMALL APARTMENT OVER THIS PERIOD OF TIME.
3 SOMEBODY WOULD HAVE HEARD SOMETHING. SOMEBODY WOULD HAVE SEEN
4 SOMETHING. SOMEBODY WOULD HAVE -- THERE WOULD BE MORE EVIDENCE,
5 ALL RIGHT? AND THIS IS JUST NOT THIS EVIDENCE. THERE WOULD HAVE
6 BEEN MEDICAL EVIDENCE HAD THIS HAPPENED 25 OR 26 TIMES. THERE
7 WOULD HAVE BEEN MEDICAL EVIDENCE. AND THAT'S JUST COMMON SENSE.
8 THERE WOULD HAVE BEEN EVIDENCE THAT THIS HAPPENED. THERE HAS TO
9 THIS DATE BEEN NO EVIDENCE ASIDE FROM THIS TESTIMONY THAT THIS
10 EVER HAPPENED.

11 IF YOU LOOK AT THE WITNESSES AND WHAT CAN HAPPEN IN A CASE
12 LIKE THIS IS THAT THE ADOLESCENT IN THIS CASE SAID SOMETHING TO
13 HIS COUSIN, AND MAYBE HE REGRETTED SAYING THAT. BUT THEN THE
14 ADOLESCENT WHEN HE SAID IT TO HIS COUSIN, HIS COUSIN THEN MADE A
15 DECISION TO GO TELL THE MOTHER -- OR THE COUSIN'S MOTHER, THE
16 DEFENDANT'S WIFE. AND THEN THE DEFENDANT'S WIFE WENT AND TOLD
17 THE FATHER AND THIS THING SPUN OUT OF CONTROL, AND IT SPUN OUT OF
18 CONTROL TO THE EXTENT THAT THE ADOLESCENT WHO MADE THE INITIAL
19 ALLEGATION WASN'T ABLE TO CONTROL IT, BECAUSE THEN THEY GO THE
20 LAW ENFORCEMENT, AND THEY TAKE THIS ADOLESCENT TO LAW ENFORCEMENT
21 AND THEY TELL HIM, IF YOU'RE LYING, ALL RIGHT, THEN WE'RE GOING
22 TO CHARGE YOU. WE'RE GOING TO CHARGE YOU WITH LYING FOR THIS.
23 AT THAT POINT WHAT INCENTIVE AT ALL DID THIS ADOLESCENT HAVE TO
24 SAY, OKAY, I'M LYING? HE'S BEEN TOLD HE'S GOING TO BE CHARGED
25 WITH A CRIME IF HE IS LYING, AND THE EVENTS GO ON AND ON AND ON

CLOSING ARGUMENTS -- BY MR. CREECH

1 BEYOND HIS CONTROL AT THAT POINT.

2 BUT IF YOU GO BACK TO THE VERY BEGINNING AND THE INITIAL
3 ALLEGATIONS, THIS ALLEGATION WAS THAT HE TOUCHED ME. HE TOUCHED
4 ME. THAT'S WHAT THEY SAID AT FIRST, HE TOUCHED ME. HE THEN MET
5 WITH LAW ENFORCEMENT AND GAVE A MORE DETAILED VERSION. A MONTH
6 LATER OR SO HE THEN MET WITH A MEDICAL DOCTOR AND DID NOT TELL
7 THE MEDICAL DOCTOR NUMEROUS FACTS THAT HE TOLD TO LAW
8 ENFORCEMENT. WHEN NANCY SMITH HEARD THAT HE TOUCHED ME AND THEN,
9 SHE HEARD ALL THESE -- AND THEN ALL THESE OTHER ALLEGATIONS COME
10 OUT, WHAT DOES NANCY SMITH DO? AFTER MR. SMITH WAS ARRESTED AND
11 WAS DOWN IN THE JAIL, NANCY SMITH GOES AND VISITS HIM IN THE
12 JAIL. AFTER HEARING ALL OF THESE HORRIBLE ALLEGATIONS, SHE GOES
13 DOWN TO THE JAIL AND VISITS HIM. SHE WRITES HIM LETTERS. SHE
14 WRITES HIM LETTERS. SHE GOES TO SEE HIM AFTER HEARING ALL OF
15 THESE ALLEGATIONS. SO YOU HAVE TO WONDER, I MEAN, IS THIS -- WAS
16 IT AS SERIOUS AT FIRST AS IT LATER BECAME? WHY WOULD SHE GO DOWN
17 THERE AND SEE HER HUSBAND AND TALK TO HIM, WRITE HIM LETTERS
18 AFTER HEARING THESE ALLEGATIONS AND HEARING THE INITIAL
19 ALLEGATIONS IF SHE DIDN'T HAVE SOME QUESTION, SOME CONCERN ABOUT
20 THE TRUTH OR THE VALIDITY OF THE ALLEGATIONS OR IF THE
21 ALLEGATIONS WEREN'T AS SERIOUS AT FIRST? WHEN LAW ENFORCEMENT
22 HEARD ABOUT THE ALLEGATIONS, LAW ENFORCEMENT NEVER WENT TO THE
23 APARTMENT TO COLLECT BEDSPREADS, SHEETS, CLOTHING. THEY NEVER
24 WENT TO THE APARTMENT TO TAKE PICTURES. THEY NEVER WENT TO THE
25 APARTMENT TO LOOK AT THE LAYOUT OF THE ROOM TO SEE IF IN FACT THE

CLOSING ARGUMENTS -- BY MR. CREECH

1 ROOM WAS LAID OUT JUST AS THE ADOLESCENT SAID. THEY NEVER TOOK
2 ANY KIND OF LOTION INTO EVIDENCE. NONE OF THAT WAS DONE IN THIS
3 CASE. AND YOU HAVE TO WONDER, IF THAT WAS NOT DONE, DID LAW
4 ENFORCEMENT REALLY THINK THAT THESE ALLEGATIONS WERE SERIOUS BACK
5 THEN? LOOK AT WHAT SOME OF THE KEY WITNESSES DID IN THIS CASE
6 WHEN THEY FIRST HEARD ABOUT THE ALLEGATIONS, AND I THINK IF YOU
7 LOOK AT THAT AND JUDGE BASED ON THEIR CONDUCT THAT THESE
8 ALLEGATIONS THEY DID NOT TAKE SERIOUSLY, AND MAYBE THE
9 ALLEGATIONS WEREN'T AS SERIOUS AT FIRST AND THEN IT'S BECOME
10 SOMETHING THAT'S SNOWBALLED BEYOND THE CONTROL OF ANYBODY THAT
11 HAS CONTROL OVER THE CASE. SO I WOULD ASK THAT YOU CONSIDER
12 THAT.

13 Minor OF COURSE, HAS GIVEN DIFFERENT VERSIONS. AND WHAT
14 THIS CASE BOILS DOWN TO, AS YOU CAN TELL, IS Minor VERSION --
15 Minor SAYING THAT THIS HAPPENED AND RANDALL SMITH SAYING THIS
16 DID NOT HAPPEN. SO WHEN YOU LOOK AT THE -- IT'S A HE SAID --
17 IT'S ONE WITNESS VERSUS ANOTHER WITNESS. AND ANYONE CAN COME
18 INTO COURT AND SAY THAT SOMEBODY DID SOMETHING. IT'S VERY EASY
19 TO MAKE AN ALLEGATION. IT REALLY IS. ANYBODY CAN ALLEGE THAT
20 SOMETHING HAPPENED. BUT THEN YOU HAVE TO START LOOKING AT, WELL,
21 IS THIS ONE PERSON'S STORY VERSUS ANOTHER PERSON'S STORY OR IS
22 THIS ONE PERSON'S STORY VERSUS WHAT HE TOLD ONE PERSON AND THEN
23 WHAT HE TOLD ANOTHER PERSON AND THEN TOLD ANOTHER PERSON? KEY
24 FACTS WERE LEFT OUT ALONG THE WAY. EACH KEY WITNESS THAT HE TOLD
25 THIS TO HE LEFT OUT KEY FACTS, DIDN'T TELL ABOUT CERTAIN THINGS.

CLOSING ARGUMENTS -- BY MR. CREECH

1 AND THAT GOES NOT ONLY TO WHETHER THESE ALLEGATIONS ARE TRUE BUT
2 IT GOES TO THIS: WHAT IS IT THAT HE IS ALLEGING? TO ONE PERSON
3 HAS HE ALLEGED A CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE,
4 AND THAT INVOLVES PENETRATION. TO ONE PERSON HAS HE JUST ALLEGED
5 AGGRAVATED ASSAULT? THE JUDGE WILL TELL YOU WHAT THAT MEANS. TO
6 ANOTHER PERSON HAS HE JUST SAID THAT THIS IS JUST SIMPLE ASSAULT
7 AND BATTERY, YOU KNOW, THAT THERE WAS JUST A TOUCHING? SIMPLE
8 ASSAULT AND BATTERY, LADIES AND GENTLEMEN, IS JUST AN UNLAWFUL
9 TOUCHING OF ONE PERSON BY ANOTHER WITHOUT PERMISSION.

10 SO THAT'S WHAT'S KEY ABOUT THE CASE. WHAT IS IT THAT
11 Minor IS SAYING WHAT HAPPENED? BECAUSE HE SAID TO VARIOUS
12 WITNESSES THROUGHOUT THIS CASE IT COULD BE THIS, IT COULD BE
13 THIS, IT COULD BE THIS (INDICATING). AND THE STATE HAS COME IN
14 HERE AND SAID, YOU KNOW, YOU KIND OF -- WE'LL SHUFFLE THE CUPS
15 AROUND AND YOU CAN -- YOU CAN KIND OF JUDGE FOR YOURSELVES WHAT
16 IT IS AS OPPOSED TO A SINGLE COHERENT VERSION OF WHAT HAS
17 HAPPENED. SO IF YOU BELIEVE Minor ON ONE ACCOUNT, IT COULD BE
18 ASSAULT AND BATTERY. IF WE BELIEVE HIM COMPLETELY, IT COULD BE
19 AGGRAVATED ASSAULT. IT COULD BE THIS (INDICATING).

20 SO THAT'S WHY IT'S KEY AS TO WHAT HE'S SAYING, BECAUSE THE
21 STATE HAS TO PROVE ITS CASE AND HAS THE BURDEN OF PROOF. AND THE
22 SOLE EVIDENCE IN THIS CASE IS WHAT Minor IS SAYING, AND THAT IS
23 THE KEY TO HOW YOU'RE GOING TO DECIDE WHETHER ANY OF THESE APPLY,
24 WHETHER ONE APPLIES, WHETHER THE OTHER ONE APPLIES OR WHETHER THE
25 THIRD ONE APPLIES OR WHETHER THIS IS JUST NOT ENOUGH PROOF.

CLOSING ARGUMENTS -- BY MR. CREECH

1 MR. SMITH, LADIES AND GENTLEMEN, IN THIS CASE WAS CHARGED
2 WITH THIS AND THEY ALLEGE THAT HE DID THIS. HE CAME IN THIS
3 COURTROOM AND HE TOOK THIS WITNESS STAND. HE DID NOT HAVE TO DO
4 THAT. EVERY ONE OF US ENJOYS A RIGHT UNDER THE FIFTH AMENDMENT
5 NOT TO TESTIFY AT ALL. HE TOOK THE WITNESS STAND AND HE
6 TESTIFIED. HE TOLD YOU HE DID NOT DO THIS. THIS PROSECUTOR
7 RIGHT HERE HAD THE OPPORTUNITY TO CROSS EXAMINE MR. SMITH AND ASK
8 HIM NUMEROUS QUESTIONS, AND SHE DID. HE OPENED HIMSELF UP TO
9 CROSS EXAMINATION. HE OPENED HIMSELF UP TO BE EXAMINED BY THE
10 STATE ON THIS CHARGE ALTHOUGH HE DID NOT HAVE TO DO THAT. AND HE
11 TOLD YOU IN VERY PLAIN, SIMPLE LANGUAGE THAT THIS DID NOT HAPPEN.

12 NOW, Minor THERE HAS BEEN SOME EVIDENCE ADMITTED TO WHAT
13 -- YOU KNOW, HOW MUCH TIME HE WAS SPENDING OVER AT THE HOUSE AND
14 THE REASON FOR DOING THAT. BUT IF YOU LOOK AT THIS AND YOU LOOK
15 AT ALL THE FACTS IN THIS CASE AND IF YOU'RE RANDALL SMITH --
16 OKAY? -- YOU ARE MARRIED. YOU HAVE TWO KIDS. YOU LIVE IN A
17 SMALL APARTMENT. YOU HAVE A NUMBER OF CHILDREN -- YOU HAVE TWO
18 CHILDREN. YOU OWN YOUR OWN BUSINESS. AND ANYBODY THAT OWNS
19 THEIR OWN BUSINESS KNOWS HOW STRESSFUL THAT IS. YOUR MARRIAGE IS
20 IN TURMOIL. YOU ALSO ARE TAKING CARE OF YOUR BROTHER-IN-LAW'S
21 CHILDREN AS WELL. STEVE WORKED ALL NIGHT. THE KIDS WERE IN
22 SCHOOL DURING THE DAY. WHO'S GETTING THEM UP AND TAKING CARE OF
23 THEM AND GETTING THEM TO SCHOOL DURING THE DAY? WHO IS TAKING
24 CARE OF THEM AT NIGHT AND AFTER SCHOOL -- I MEAN, IN THE
25 AFTERNOON WHEN THEY COME HOME? ALL OF THAT WAS LEFT TO RANDALL

CLOSING ARGUMENTS -- BY MR. CREECH

1 SMITH. ALL OF THAT WAS LEFT TO RANDALL SMITH. ALL OF THAT WAS
2 AGAIN IN THE CONTEXT OF A SMALL APARTMENT, A MARRIAGE IN TURMOIL.
3 AND YOU CAN UNDERSTAND HOW STRESSFUL THAT SITUATION WOULD BE.

4 DOES HE REGRET SAYING SOME OF THE THINGS THAT HE SAID TO HIS
5 WIFE AND HIS CHILDREN? YES, HE DOES. BUT THAT'S WHERE WE GET
6 INTO THIS PART OF INNUENDO. THE LETTERS THAT THEY'RE TALKING
7 ABOUT HE WROTE, YOU KNOW, THOSE LETTERS WERE ADDRESSED TO STEVE
8 AND THEY WERE ADDRESSED TO NANCY. THEY WERE NEVER ADDRESSED TO
9 Minor OR ANYBODY ELSE. AND HE EXPLAINED TO YOU ON THE WITNESS
10 STAND WHAT HE WAS TRYING TO TALK ABOUT, BUT THE STATE IS TWISTING
11 THAT TO FIT ITS VERSION OF THE FACTS. WITHOUT SOLID PROOF, WITH
12 THE WORD OF ONE WITNESS THE STATE IS THEN TRYING TO TWIST THINGS
13 AND TO RELY ON INNUENDO. SPECULATION. THAT'S PURE SPECULATION.
14 WOULD YOU WANT A VERDICT IN THIS CASE BASED ON PURE SPECULATION
15 AND GUESSING WHAT SOMEBODY MAY OR MAY NOT HAVE MEANT? BECAUSE
16 THAT'S WHAT YOU'RE GOING TO HAVE TO DO. YOU'RE GOING TO HAVE TO
17 GUESS. YOU'RE GOING TO HAVE TO GUESS. IN THE ABSENCE OF SOLID
18 PROOF, YOU'RE GOING TO HAVE TO GUESS.

19 IS THAT PROOF BEYOND A REASONABLE DOUBT? IN A CRIMINAL CASE
20 WHEN SOMEONE'S LIBERTY IS AT STAKE THE GOVERNMENT IS REQUIRED TO
21 BRING PROOF BEYOND A REASONABLE DOUBT. THAT IS A SUBSTANTIAL
22 BURDEN UNDER THE LAW, AND THE JUDGE IS GOING TO TELL YOU THAT.
23 IN THIS CASE YOU ARE LEFT GUESSING, AND YOU'RE LEFT WITH HAVING
24 TO GUESS, HAVING TO GUESS AS TO WHAT HAPPENED. THAT IS NOT
25 PROOF. THAT IS SPECULATION. AND THAT IS WHY RANDALL SMITH IS

CLOSING ARGUMENTS' -- BY MR. CREECH

1 NOT GUILTY IN THIS CASE.

2 THE MEDICAL WITNESSES IN THIS CASE, LADIES AND GENTLEMEN,
3 CANNOT SAY THAT THIS DID HAPPEN. THEY CANNOT COME IN HERE AND
4 SAY THIS HAPPENED. NANCY HENDERSON, WHO PERFORMED THE CHRONIC
5 SEXUAL ABUSE EXAM HAD A LIST OF QUESTIONS OF WHAT THEY LOOK FOR,
6 AND Minor NEVER MADE A DISCLOSURE TO HER OF KEY FACTS. KEY
7 FACTS. BUT HE DID SAY TO THE LAW ENFORCEMENT INVESTIGATOR. THE
8 STATE THEN BROUGHT IN A PSYCHOLOGIST WHO HAD NEVER MET, NOT ONE
9 TIME, NEVER MET WITH Minor NEVER REVIEWED ANY RECORDS IN THIS
10 CASE, NEVER TALKED TO LAW ENFORCEMENT ABOUT THE CASE, DID
11 NOTHING. SHE IS SPECULATING. SHE WAS ABSOLUTELY -- CANNOT GIVE
12 ANY KIND OF OPINION ON THE FACTS IN THIS CASE. AND SHE SAID, SHE
13 SAID WHEN SHE TESTIFIED, THAT IT COMES DOWN TO THE INDIVIDUAL
14 CHILD AND THE INDIVIDUAL CASE BEFORE SHE CAN REALLY GIVE AN
15 OPINION. AND IT'S GOING TO DEPEND A LOT ON THAT CHILD, AND IF
16 THAT CHILD HAS HAD ANY OTHER BEHAVIORAL ISSUES OR ANY OTHER
17 MENTAL ISSUES OR EMOTIONAL ISSUES. AND SHE NEVER SPOKE WITH THE
18 CHILD IN THIS CASE, WITH THE ADOLESCENT IN THIS CASE, NEVER
19 TALKED TO HIM ABOUT THAT. BUT SHE SAID THAT IT'S COMMON FOR THEM
20 TO GIVE A VERY LIMITED DISCLOSURE AT FIRST, MAYBE A LIMITED
21 DISCLOSURE TO LAW ENFORCEMENT, AND THEN A MUCH MORE DETAILED
22 DISCLOSURE LATER TO SOMEONE ELSE, TO LIKE A MEDICAL PERSON.
23 REMEMBER WHEN SHE SAID THAT? NOW, WHAT HAPPENED HERE IS THAT HE
24 GAVE WHAT THEY SAY IS A VERY -- IS A DISCLOSURE TO LAW
25 ENFORCEMENT AND THEN LEFT OUT FACTS LATER THAT HE GAVE TO LAW

CLOSING ARGUMENTS -- BY MR. CREECH

1 ENFORCEMENT.

2 SO AGAIN, THAT LEAVES YOU WITH THIS: WHAT IS IT THAT THEY
3 ARE ALLEGING HAPPENED? WHAT IS IT THAT Minor IS SAYING
4 HAPPENED? DID Minor SAY THIS IS ASSAULT AND BATTERY OR
5 AGGRAVATED ASSAULT, SEXUAL CONDUCT? THAT'S JUDGING JUST THE
6 STATE'S CASE. IF YOU WILL REMEMBER, THE SOLICITOR CAME UP BEFORE
7 AND SHE SAID -- WHEN SHE GAVE HER OPENING STATEMENT -- THAT IN
8 2003, THE BEGINNING OF 2003 Minor WAS A NORMAL CHILD,
9 EVERYTHING WAS -- NOTHING HAPPENED BEFORE THIS. AGAIN, WE DIDN'T
10 KNOW OF HIS SPECIAL EDUCATION STATUS AND WE DIDN'T KNOW THAT HE
11 WAS IN A CLASS FOR EMOTIONALLY HANDICAPPED CHILDREN. WE DID NOT
12 KNOW ABOUT THE TURMOIL THAT HAD COME OUT IN THE MARRIAGE OR IN
13 THE FAMILY. WE DIDN'T KNOW THE STRESSFUL SITUATION THAT WAS
14 INVOLVED. IT WAS ONLY AFTER THE STATE PUT UP ITS CASE THAT WE
15 DID FIND ALL THAT OUT, AND IT'S AFTER I QUESTIONED THESE
16 WITNESSES THAT WE FOUND ALL THAT OUT.

17 SO THIS IS NOT A CASE OF A CHILD WITHOUT A HISTORY -- OR A
18 HISTORY OF TURMOIL. AND THIS IS WHO WE ARE RELYING ON IN THIS
19 CASE IS THIS ONE CHILD'S WORD, THIS ONE ADOLESCENT'S WORD. STEVE
20 JULIAN TESTIFIED THAT HIS SON, Minor HAS NEVER BEEN UNTRUTHFUL
21 WITH HIM BEFORE, NEVER BEEN UNTRUTHFUL. ALL OF US KNOW AND
22 PROBABLY ALL OF US HAVE BEEN UNTRUTHFUL WITH OUR PARENTS AT ONE
23 POINT. AND THAT'S JUST COMMON SENSE. BUT I THINK THAT GOES TO
24 SHOW THAT WHAT STEVE JULIAN AND WHAT NANCY SMITH - WHAT THEY ARE
25 WILLING TO SAY AND THE EXTENT THAT THEY ARE WILLING TO GO TO TO

CLOSING ARGUMENTS -- BY MR. CREECH

1 TELL YOU SO THAT YOU HOPE THAT THEY -- THAT YOU WILL BELIEVE THEM
2 TO GET A CONVICTION IN THIS CASE. THEY HAVE A MOTIVE. THEY HAVE
3 A BIAS IN THE CASE. AND THERE IS NO EVIDENCE UNBIASED EVIDENCE,
4 NO EVIDENCE WITHOUT MOTIVE, NO SOLID EVIDENCE THAT THIS EVER
5 HAPPENED IN THIS CASE. IT JUST DEFIES COMMON SENSE. SOMEBODY
6 WOULD HAVE HEARD SOMETHING. THERE WAS NO EVIDENCE IN TERMS OF
7 BEDSPREADS, BED SHEETS OR CLOTHING OR TOWELS OR ANYTHING EVER
8 TAKEN FROM THE APARTMENT TO ANALYZE FOR THE PRESENCE OF ANYTHING.
9 NOTHING LIKE THAT WAS DONE IN THE CASE, AND THAT HAS TO LEAVE YOU
10 WITH QUESTION AS REALLY, YOU KNOW, WHAT WAS THE INITIAL
11 ALLEGATION?

12 THINGS CAN SPIN OUT OF CONTROL FOR AN ADOLESCENT WHO TELLS
13 SOMETHING TO HIS COUSIN. AN ADOLESCENT WOULD NEVER REALIZE OR
14 UNDERSTAND WHAT COULD HAPPEN IN THE END. AND HE WOULD HAVE NO
15 CONTROL OVER IT, NO WAY TO STOP IT. IT'S JUST A CASE OF THINGS
16 GETTING OUT OF HAND. AND IF YOU LOOK AT THE BEHAVIOR OF LAW
17 ENFORCEMENT AND THE VICTIM WHO WENT TO SEE MR. SMITH DOWN IN
18 JAIL, YOU KNOW, THEY DIDN'T TAKE THESE ALLEGATIONS SERIOUSLY AT
19 FIRST.

20 WE HEARD FROM THE DEFENDANT'S SON, RANDALL LANE SMITH, II,
21 AND AGAIN HE SAYS THAT THERE WERE THINGS SAID BY MR. SMITH.
22 OKAY. LANE SMITH, OF COURSE, ALSO ADMITTED -- OF COURSE HE
23 DIDN'T TELL YOU THIS AT FIRST -- BUT HE ADMITTED THAT HE HAS
24 PHONED IN A BOMB THREAT BEFORE AND HE'S ENGAGED IN THAT KIND OF
25 CONDUCT. AND THERE IS NO EVIDENCE HE EVER INFORMED LAW

CLOSING ARGUMENTS -- BY MS. KEDNOCKER

1 ENFORCEMENT THAT HE HAD TALKED WITH HIS FATHER ABOUT THIS. SO
2 AGAIN, YOU'RE LEFT WITH THE WORD OF THIS ONE WITNESS WHO HAS
3 SERIOUS CREDIBILITY PROBLEMS IN TERMS OF HIS PAST BEHAVIOR.

4 THERE IS NO SOLID PROOF IN THE CASE. THERE IS NO MEDICAL
5 EVIDENCE IN THE CASE. AND THAT, LADIES AND GENTLEMEN, IS JUST --
6 IT'S NOT PROOF BEYOND A REASONABLE DOUBT. LISTEN TO THE JUDGE'S
7 CHARGES. I CANNOT GET BACK UP HERE AND SPEAK TO YOU. THE
8 SOLICITOR WILL GO NEXT. BUT I WOULD ASK THAT WHEN YOU HEAR HER
9 TALK ABOUT THIS CASE AND YOU HEAR HER TALK ABOUT LETTERS AND YOU
10 HEAR HER TALK ABOUT OTHER THINGS, ASK YOURSELF, WAS THIS JUST THE
11 WORD OF A WITNESS? I MEAN, ARE THEY INTERPRETING WHAT RANDALL
12 SMITH WROTE IN THE LETTER AND IS THAT THEIR SPECULATION? IS THAT
13 THEIR INTERPRETATION? IS THAT PROOF BEYOND A REASONABLE DOUBT OR
14 IS THAT PROOF BASED ON SUSPICION AND INNUENDO?

15 LADIES AND GENTLEMEN, IN THIS CASE I WOULD ASK YOU THAT FIND
16 RANDALL LANE SMITH, SR., NOT GUILTY OF THESE CHARGES, AND THAT IS
17 BASED ON NO PROOF. THANK YOU.

18 THE COURT: THANK YOU, MR. CREECH.

19 YES, MA'AM, MS. KEDNOCKER.

20 MS. KEDNOCKER: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
21 COURT.

22 THE COURT: YES, MA'AM.

23 MS. KEDNOCKER: GOOD MORNING. (JURORS RESPOND) "I FELT
24 LIKE I LOST MY SELF CONTROL, MY DIGNITY, EVERYTHING." DO YOU
25 REMEMBER THOSE WORDS? DO YOU REMEMBER THE 15-YEAR-OLD BOY ON

CLOSING ARGUMENTS -- BY MS. KEDNOCKER

1 MONDAY WHO SPOKE THOSE WORDS? HE IS Minor AND HE IS
2 THE VICTIM IN THIS CASE, AND THAT'S WHAT Minor TOLD YOU HE FELT
3 LIKE ONE TIME AFTER THIS DEFENDANT SEXUALLY ASSAULTED HIM. WHAT
4 IS THIS CASE ABOUT? IT'S ABOUT A BOY AND THIS DEFENDANT AND THE
5 REPEATED SEXUAL ASSAULTS THAT Minor ENDURED.

6 LADIES AND GENTLEMEN, I APPRECIATE YOUR SERVICE. I TOLD YOU
7 THAT AT THE BEGINNING OF THIS CASE YOU WERE GOING TO HEAR
8 TESTIMONY THAT PROBABLY MANY OF YOU HAVE NEVER HEARD. YOU DIDN'T
9 ASK TO BE HERE. YOU GOT PLUCKED OUT OF YOUR LIVES. AND WE
10 APPRECIATE THE FACT THAT YOU'RE ON THIS JURY. YOU'VE HAD TO HEAR
11 TERMS, TERMINOLOGY, SITUATIONS POSSIBLY YOU'VE NEVER THOUGHT
12 ABOUT, AND IT MIGHT HAVE BEEN DISTURBING TO YOU. IT'S DISTURBING
13 TO EVERYONE.

14 AND TO DEFENSE COUNSEL'S NOTION THAT LAW ENFORCEMENT DOESN'T
15 TAKE THIS SERIOUSLY, I CAN TELL YOU THE STATE TAKES THIS
16 EXCEPTIONALLY SERIOUSLY. THAT THERE IS NO PROOF? NO PROOF?
17 LADIES AND GENTLEMEN, EVERY DEFENDANT IS ENTITLED TO A FAIR
18 TRIAL. AND THE EVIDENCE IN THIS CASE ALSO DICTATES THAT WHEN THE
19 STATE MEETS ITS BURDEN, WHICH IS PROOF BEYOND A REASONABLE DOUBT
20 THAT EVERY VICTIM DESERVES JUSTICE.

21 WHAT IS REASONABLE DOUBT? JUDGE HILL IS GOING TO INSTRUCT
22 YOU ON THAT. REASONABLE DOUBT IS HARD TO DEFINE SOMETIMES, BUT
23 BASICALLY IT'S WHEN YOU ARE FIRMLY CONVINCED OF SOMEONE'S GUILT.
24 THERE ARE FEW THINGS THAT ANY ONE OF US KNOW IN LIFE WITH ALL
25 CERTAINTY. FEW THINGS. BUT IT'S WHEN YOU SAY TO YOURSELF, YOU

CLOSING ARGUMENTS -- BY MS. KEDNOCKER

1 KNOW WHAT? I AM FIRMLY CONVINCED THAT THAT MAN SEXUALLY
2 ASSAULTED THAT CHILD. CONVICT HIM.

3 THE STATE HAS TO PROVE TO YOU THE ELEMENTS OF CRIMINAL
4 SEXUAL CONDUCT WITH A MINOR, AND BASICALLY THAT IS WHEN THERE IS
5 A SEXUAL BATTERY, AS I TOLD YOU, ON A CHILD WHO IS 14 YEARS OF
6 AGE OR LESS BUT AT LEAST 11. SEXUAL BATTERY -- AND YOU'VE HEARD
7 GRAPHIC WORDS -- IT'S FELLATIO, CUNNILINGUS. THESE ARE WORDS
8 YOU'RE GOING TO HEAR JUDGE HILL SAY. IT'S KIND OF HARD TO LISTEN
9 TO THEM, I KNOW. IT'S BASICALLY ORAL SEX, ANAL INTERCOURSE,
10 VAGINAL INTERCOURSE.

11 IN THIS CASE DEFENSE ATTORNEY DISCUSSED CRIMINAL SEXUAL
12 CONDUCT. THAT IS WHAT THIS DEFENDANT IS CHARGED WITH. THERE ARE
13 LESSER INCLUDED OFFENSES OF IT: ASSAULT AND BATTERY OF A HIGH
14 AND AGGRAVATED NATURE, ABHIAN, ASSAULT AND BATTERY. IF YOU
15 BELIEVE THE VICTIM AND THE OTHER EVIDENCE IN THIS CASE, THIS
16 DEFENDANT IS GUILTY OF CRIMINAL SEXUAL CONDUCT WITH A MINOR. THE
17 EVIDENCE IN THIS CASE IS THAT HE ANALLY PENETRATED THIS CHILD.
18 HE PERFORMED ORAL SEX ON THIS CHILD. ONE TIME HE PUT HIS FINGER
19 IN THIS CHILD. NUMEROUS TIMES DID THESE SEXUAL ASSAULTS TAKE
20 PLACE.

21 THE STARTING POINT IN ANY PROSECUTION FOR CRIMINAL SEXUAL
22 CONDUCT, WHICH THE DEFENSE ATTORNEY DID NOT MENTION TO YOU BUT
23 YOU NEED TO UNDERSTAND UNDER THE LAW OF THIS STATE, IS THIS:
24 UNDER THE LAW OF THIS STATE THE TESTIMONY OF A VICTIM DOES NOT
25 HAVE TO BE CORROBORATED. WHAT THAT MEANS IS THAT IN A CASE OF

CLOSING ARGUMENTS -- BY MS. KEDNOCKER

1 CRIMINAL SEXUAL CONDUCT YOU, IF YOU BELIEVE THE VICTIM, CAN
2 CONVICT ON THE VICTIM'S TESTIMONY ALONE. NOW, WHY IS THAT? WHY
3 WOULD THE LEGISLATURE DECIDE THAT THAT NEEDS TO BE THE LAW OF
4 THIS STATE? BECAUSE IT MAKES SENSE. AND WITHOUT THAT THINK
5 ABOUT THE CRIME. WHEN DOES THIS HAPPEN? THE EVIDENCE IN THIS
6 CASE, IT'S BEHIND CLOSED DOORS. PEOPLE LIKE RANDALL SMITH DON'T
7 GO INTO A CHURCH PARKING LOT AT 12 O'CLOCK NOON AND RAPE A CHILD.
8 THEY DON'T DO IT. THEY DO IT IN A BEDROOM WHEN HIS WIFE IS AT
9 WORK, WHEN THE KID IS 12. THAT'S WHEN IT HAPPENS.

10 MR. CREECH: YOUR HONOR, I OBJECT TO THAT LINE OF ARGUMENT.
11 IT'S OUTSIDE OF THE RECORD.

12 MS. KEDNOCKER: YOUR HONOR, IT'S SUPPORTED BY THE RECORD.

13 THE COURT: ALL RIGHT. OVERRULED. GO AHEAD.

14 MS. KEDNOCKER: SO, LADIES AND GENTLEMEN, THE STARTING
15 POINT IS THAT THE VICTIM'S TESTIMONY DOESN'T EVEN NEED TO BE
16 CORROBORATED IF YOU BELIEVE THE VICTIM.

17 NOW, CONSIDER THE CASE YOU HAVE. NO PROOF? LOOK AT WHAT
18 YOU HAVE. IN THIS CASE MUCH OF IT BOILS DOWN TO CREDIBILITY.
19 WHAT IS THE MOTIVE OF Minor TO LIE? DEFENSE COUNSEL JUST DID
20 TELL YOU ABOUT THAT THE DEFENDANT DIDN'T HAVE TO TESTIFY. HE
21 NEVER HAS TO TESTIFY. BUT AT THE END OF THE DAY WHAT HE
22 TESTIFIED TO IS, I DIDN'T DO IT.

23 SO WE'RE KIND OF LEFT HERE: I DIDN'T DO IT. Minor IS
24 LYING. I HATE TO SAY IT THAT WAY, BUT THAT'S THE WAY IT BREAKS
25 DOWN. AND IN THIS CASE WHAT WOULD BE THE MOTIVE? CAN YOU THINK

CLOSING ARGUMENTS -- BY MS. KEDNOCKER

1 HOW HARD IT MUST BE TO BE Minor AND TO COME INTO A COURT? IT'S
2 NERVE WRACKING POSSIBLY FOR PEOPLE JUST TO STAND UP AND SAY THEIR
3 NAME IN A GROUP. BUT CAN YOU IMAGINE COMING IN WITH THIS?
4 HAVING TO GET IN FRONT OF PEOPLE YOU DON'T KNOW, YOU'RE 15 YEARS
5 OLD, AND DISCUSS THE FACT THAT YOUR UNCLE ROLLED YOU OVER AND PUT
6 HIS PENIS IN YOUR BOTTOM? WHO DOES THAT FOR NO REASON? THERE IS
7 NO MOTIVE WHATSOEVER TO SUPPORT WHY A CHILD WOULD MAKE THAT UP.

8 AND LET'S THINK ABOUT HIS LIFE. THIS HAS BEEN NO PICNIC THE
9 LAST TWO YEARS FOR Minor THE PAST TWO YEARS HE HAS DEALT WITH
10 THE POLICE. HE'S DEALT WITH PROSECUTORS. YOU HEARD DR. NANCY
11 HENDERSON TALK ABOUT THE EXAMS HE HAD TO GO THROUGH. IT'S
12 PROBABLY MORE DETAILS THAN YOU WANTED, BUT IT WAS STRICTLY TO
13 BRING HOME THE POINT THAT THIS CHILD HAS BEEN CONSISTENT AND THIS
14 HAS BEEN NO PICNIC FOR HIM.

15 ON THE OTHER HAND, CONSIDER THIS, SPEAKING OF CREDIBILITY IN
16 A CASE, THE DEFENDANT TESTIFIED. AND WHAT YOU NEED TO KEEP IN
17 MIND, THE KEY TO ANY CRIMINAL PROSECUTION IS THAT THE BURDEN OF
18 PROOF RESTS SQUARELY ON THE STATE. THAT NEVER, EVER CHANGES.
19 AND IT SHOULDN'T. WE WELCOME THE BURDEN. AS I TOLD YOU FROM THE
20 BEGINNING OF THIS TRIAL, WE WELCOME IT. BUT WHAT WAS CHANGED
21 WHEN THIS DEFENDANT DECIDED TO TESTIFY IS THIS: YOU GET TO
22 ASSESS HIS CREDIBILITY LIKE ANYONE ELSE. WHAT IS HIS MOTIVE WHEN
23 HE GOT ON THAT WITNESS STAND? WHO HAS MORE MOTIVE TO NOT BE
24 TRUTHFUL WITH YOU? IS IT A 15-YEAR-OLD BOY WHO HAS TO TELL THE
25 MOST HUMILIATING STORY OF HIS LIFE OR IS IT THIS DEFENDANT? YOU

CLOSING ARGUMENTS -- BY MS. KEDNOCKER

1 GET TO ASSESS THAT.

2 I WANT YOU TO GO BACK IN CONSIDERING Minor THIS IS NOT A
3 CASE OF NO PROOF. AS I TOLD YOU BEFORE, IN MANY CASES IT'S JUST
4 THE VICTIM'S TESTIMONY. BUT YOU HAVE SO MUCH MORE THAN THAT.
5 Minor TOLD YOU DETAILED TESTIMONY. HE REMEMBERED THE FIRST
6 TIME. I BELIEVE HE SAID HE HAD A GREENVILLE GROWL T-SHIRT AND
7 PLAYBOY PAJAMAS. I DON'T KNOW WHERE HE GOT THOSE. BUT THAT'S
8 WHAT HE REMEMBERS, BECAUSE THAT'S THE FIRST TIME THIS DEFENDANT
9 SEXUALLY ASSAULTED HIM. HE REMEMBERS HIM TOUCHING HIS LEGS AND
10 GETTING HIGHER AND SUCKING HIS PENIS AND KISSING HIM. HE
11 REMEMBERS ALL OF THIS. HE REMEMBERS THE TIMES THAT HE ROLLED HIM
12 OVER AND PERFORMED ANAL SEX ON HIM. AS TO THE FACT -- Minor
13 GAVE A STATEMENT TO LAW ENFORCEMENT. BUT AS TO THE FACT THAT
14 DETAILS CAME OUT AFTER THE FACT, Minor REMEMBERED LATER THAT A
15 CONDOM WAS USED ONE TIME AND THAT THIS DEFENDANT PUT HIS FINGER
16 IN HIM ONE TIME.

17 YOU HEARD EXPERT TESTIMONY ABOUT WHY. IMAGINE, Minor
18 Minor GOES IN. HE'S BEEN HOLDING THIS IN FOR THREE MONTHS AND
19 HE FINALLY DISCLOSES IT TO HIS COUSIN. IT'S HAPPENED REPEATEDLY.
20 YOU HEARD LORRAINE HENDERSON'S TESTIMONY ABOUT HOW DIFFICULT IT
21 WAS FOR THIS CHILD BEING REPEATEDLY SEXUALLY ASSAULTED. AND HE
22 COULDN'T GET OUT EVERY SINGLE DETAIL OF EVERY SINGLE ASSAULT?
23 THAT MAKES SENSE. WHO WOULD? YOU GET THE GIST OF IT OUT. BUT
24 IF A DETAIL COMES OUT HERE OR THERE, THE EXPERT TESTIFIED THAT IS
25 TO BE EXPECTED AND THAT IT TAKES WEEKS AND YEARS SOMETIMES FOR

CLOSING ARGUMENTS -- BY MS. KEDNOCKER

1 PEOPLE TO WORK THROUGH THESE KINDS OF THINGS.

2 AS TO THE MEDICAL TESTIMONY, DEFENSE COUNSEL IN THIS CASE IN
3 THEIR OPENING STATEMENT MADE A BIG POINT TO SAY THERE IS NO
4 MEDICAL EVIDENCE. YOU POSSIBLY REMEMBER THAT. WELL, YOU HAD TWO
5 DOCTORS GET ON THE STAND, DR. POLLEY AND DR. NANCY HENDERSON,
6 EXPLAIN TO YOU THAT IT IS NORMAL, PARTICULARLY WITH A BOY,
7 BECAUSE AS DR. POLLEY TESTIFIED -- I KNOW THIS IS MORE GRAPHIC
8 TESTIMONY BUT -- THE ANUS IS AN ORGAN. IT EXPANDS. AND IT'S
9 VERY NORMAL NOT TO HAVE ANY EVIDENCE. HE EVEN TESTIFIED TO THE
10 FACT THAT THERE COULD HAVE BEEN A SEXUAL ENCOUNTER ON ONE DAY AND
11 THE NEXT DAY THERE BE NO EVIDENCE WHATSOEVER. BOTH DOCTORS WERE
12 CONSISTENT WITH THE FACT THAT BECAUSE HIS EXAM CAME BACK NORMAL
13 IN NO WAY SAID THAT THIS ASSAULT DIDN'T HAPPEN, THAT IT IS
14 CONSISTENT TO HAVE A NORMAL EXAM AND FOR A CHILD TO BE SEXUALLY
15 ASSAULTED.

16 AND WHAT DEFENSE COUNSEL MENTIONED ABOUT DR. HENDERSON, DR.
17 HENDERSON EXPLAINED TO YOU THE PURPOSE OF HER TALKING WITH THE
18 CHILD. SHE'S IN THERE TRYING FROM A MEDICAL PERSPECTIVE TO
19 FIGURE OUT WHAT SHE NEEDS TO DO WITH THE CHILD, AS SHE EXPLAINED
20 TO YOU. SHE HAS A CONVERSATION. IF THE CHILD DOESN'T OFFER UP
21 CERTAIN DETAILS, IT'S NOT THAT THE CHILD IS BEING INCONSISTENT.
22 HE'S IN THERE WITH A DOCTOR. HE'S HAVING TO TAKE -- DO AN EXAM,
23 AS SHE EXPLAINED TO YOU, LAYING ON A TABLE. HE MAY NOT TELL
24 EVERY SINGLE DETAIL THAT SUDDENLY TWO YEARS LATER IN A COURT A
25 DEFENSE ATTORNEY MAY THINK IS SIGNIFICANT.

CLOSING ARGUMENTS -- BY MS. KEDNOCKER

1 LADIES AND GENTLEMEN, GOING BACK TO THE DEFENDANT IN THIS
2 CASE AND THE NO PROOF, NO EVIDENCE THAT WE JUST HEARD ABOUT. NOT
3 ONLY DO WE HAVE THE VIVID, GRAPHIC TESTIMONY OF Minor
4 BUT THIS DEFENDANT WANTS TO TALK ABOUT INNUENDO, WANTS TO TALK
5 ABOUT THE STATE'S JUST DRAWING CONCLUSIONS. WELL, LET'S JUST GO
6 BACK THROUGH THINGS. I DIDN'T EXPECT IT, BUT WHEN THE DEFENDANT
7 TESTIFIED WHAT DID YOU HEAR AT THE BEGINNING OF THIS TRIAL?

8 Minor

9 MR. CREECH: OBJECTION, YOUR HONOR. "I DIDN'T EXPECT THE
10 DEFENDANT TO TESTIFY"---

11 MS. KEDNOCKER: OKAY. THIS---

12 MR. CREECH: ---CLEARLY OUTSIDE THE RECORD.

13 THE COURT: HOLD ON JUST A SECOND. THE JURY WILL DISREGARD
14 THAT ARGUMENT. GO AHEAD, MA'AM.

15 MS. KEDNOCKER: OKAY.

16 AT THE BEGINNING OF THIS TRIAL Minor TESTIFIED ABOUT THE
17 NIGHT THAT HE DISCLOSED THIS, THAT HE WENT DOWN TO THE CHURCH.
18 HE FOUND HIS COUSIN LANE. HE LET OUT WHAT HAD BEEN GOING ON WITH
19 HIM. LANE TESTIFIED ABOUT AT THAT POINT HE CALLS HIS MOM, AND
20 THIS DEFENDANT ANSWERS THE PHONE. WELL, GUESS WHAT? THIS
21 DEFENDANT SAID, YEAH, YEAH, I REMEMBER THAT NIGHT. I DO REMEMBER
22 THAT NIGHT. AND THEN HE REMEMBERS THAT HE JUST HAPPENED TO GO
23 DOWN TO THE CHURCH TOO. AND THEN THE DEFENDANT ALSO REMEMBERS
24 THAT WHEN HE GOT DOWN TO THE CHURCH, THE BOYS -- WHEN ASKED,
25 "ISN'T IT TRUE THAT WHEN YOU GOT TO THE CHURCH YOU TOLD THE BOYS

CLOSING ARGUMENTS -- BY MS. KEDNOCKER

1 'DON'T GET ME IN TROUBLE'?" AND HE SAYS, "NO, NO, NO. I SAID,
2 'DON'T GET ME IN TROUBLE FOR THOSE LIES.'" HE MIRRORS THE
3 TESTIMONY OF ALL THE STATE'S -- OF THE STATE'S WITNESSES EXCEPT
4 FOR ONE POINT. THE PART THAT MAKES HIM A CRIMINAL, HE DOESN'T
5 ADMIT TO. WHO WOULD EXPECT HIM TO? THAT'S NOT WHAT THE STATE IS
6 EXPECTING HIM TO DO.

7 LADIES AND GENTLEMEN, THE LETTERS IN THIS CASE ARE
8 SIGNIFICANT. THEY ARE IMPORTANT. YOU HAVE TO KEEP IN MIND
9 Minor TOLD LANE WHAT HAPPENED. NANCY CAME DOWN. HER
10 TESTIMONY, LANE'S TESTIMONY, Minor IS PRETTY MUCH LENT
11 CREDIBILITY BECAUSE THE DEFENDANT IS ADMITTING TO IT ALL
12 HAPPENING TOO, JUST THE PART THAT MAKES HIM LOOK BAD, THAT MAKES
13 HIM LOOK LIKE A CRIMINAL. RANDY SMITH -- RANDALL SMITH---

14 MR. CREECH: OBJECTION, YOUR HONOR. SHE'S JUST---

15 MS. KEDNOCKER: RANDALL---

16 THE COURT: ALL RIGHT. GO AHEAD.

17 MS. KEDNOCKER: EXCUSE ME. I'M SORRY, JUDGE.

18 RANDALL LANE SMITH ADMITS TO THE ARGUMENT WITH HIS WIFE.
19 RANDALL LANE SMITH ADMITS TO THE FACT SCISSORS WERE BROUGHT OUT.
20 YOU ALSO HEARD TESTIMONY RANDALL SMITH LEFT ON DECEMBER 12TH AND
21 HE WAS GONE. HE WAS LEAVING TO GO DIFFERENT PLACES. HE -

22 THERE'S TESTIMONY FROM HIS SON THAT MR. SMITH CALLED BACK TO
23 THE HOUSE AND AT THAT POINT STEVE WAS OVER THERE. STEVE PICKS UP
24 THE PHONE WHEN LANE TELLS HIM TO. YOU HEARD STEVE JULIAN
25 TESTIFY. HE TESTIFIED TO YOU THAT HE HEARD THIS DEFENDANT WHEN

CLOSING ARGUMENTS -- BY MS. KEDNOCKER

1 ASKED, "WHY DID YOU START WITH Minor "HE ASKED FOR IT. HE
2 STARTED KISSING ME." DO YOU THINK STEVE JULIAN HAD ANY REASON TO
3 COME IN HERE AND MAKE THAT UP?

4 SPEAKING OF NANCY, THERE IS NO EVIDENCE TO SUPPORT SOME
5 MARRIAGE IN TURMOIL, NOT THAT THAT WOULD BE RELEVANT TO WHAT
6 HAPPENED WITH Minor -- HE'S THE NEPHEW -- BUT AS NANCY TOLD YOU
7 AT TRIAL, DEFENSE COUNSEL ASKED, "ISN'T IT TRUE YOU'RE DIVORCED?"
8 SHE WAS LIKE, "WELL, NO, ACTUALLY I'M STILL MARRIED." NANCY
9 SMITH, AS SHE TESTIFIED, DID NOT EVEN FILE FOR DIVORCE UNTIL
10 APRIL 2005. IT HAS NOTHING TO DO WITH THIS CASE. A YEAR AND A
11 HALF LATER SHE'S FILING FOR DIVORCE. IT DOESN'T HAVE ANYTHING TO
12 DO WITH THIS CASE. THIS IS THE NEPHEW. THIS IS Minor CASE,
13 WHERE HE IS THE VICTIM IN THIS CASE.

14 I WANT YOU TO GO BACK TO THE LETTERS THAT DEFENSE COUNSEL
15 WANTS YOU JUST NOT TO PAY ANY ATTENTION TO, THEY DON'T MEAN
16 ANYTHING. LADIES AND GENTLEMEN, IT IS VERY SIGNIFICANT WHAT THIS
17 DEFENDANT WROTE. HE TESTIFIED TO YOU -- AND YOU GET TO JUDGE HIS
18 CREDIBILITY -- HE HAS AN ANGER MANAGEMENT PROBLEM. AN ANGER
19 MANAGEMENT PROBLEM. I ASKED YOU AT THE BEGINNING OF THIS TRIAL
20 -- OR I TOLD YOU THAT THE MOST IMPORTANT TOOL YOU BRING TO THIS
21 CASE IS YOUR GOOD OLD PLAIN COMMON SENSE, AND EACH ONE OF YOU HAS
22 IT WITH YOU. THE DEFENDANT, WHEN HE ADMITTED, "YES, I WROTE THIS
23 LETTER. I SURE DID. AND I WROTE IT TO THE VICTIM'S FATHER. I
24 WROTE IT TO STEVE," HE ADMITTED THAT ON THE STAND.

25 THERE IS ALSO TESTIMONY -- AND WE ALL KNOW -- THAT HE WAS

CLOSING ARGUMENTS -- BY MS. KEDNOCKER

1 ARRESTED CHRISTMAS EVE. SO RANDALL LANE SMITH ON CHRISTMAS EVE
2 IS PICKED UP ON THIS HORRIBLE CHARGE, A CHARGE OF RAPING AN 11 --
3 EXCUSE ME, 12-, 13-YEAR-OLD, HIS NEPHEW. HE IS SITTING IN JAIL.
4 HE IS THINKING ABOUT THIS. ISN'T HE MAD? WHAT IS HE THINKING?
5 HE'S NOT MAD. HE'S NOT FESTERING. WHAT HE'S THINKING ABOUT IS,
6 AS HE TESTIFIED TO YOU, HE HAS AN ANGER MANAGEMENT PROBLEM AND
7 IT'S BEEN BURNING INSIDE HIM FOR THE LAST COUPLE WEEKS AS HE SITS
8 INCARCERATED FACING THE CHARGE FOR DOING THIS TO HIS NEPHEW TO
9 WRITE THIS, "I WANT YOU TO KNOW THAT I AM SORRY. I HOPE YOU CAN
10 FIND IT IN YOURSELF TO FORGIVE ME. I NEVER MEANT TO HURT ANYONE.
11 I'VE WAITED WEEKS TO WRITE YOU IN HOPES THAT SOME OF YOUR ANGER
12 MIGHT DIMINISH. I FELT IN TIME IT MIGHT BE MORE SINCERE." SO
13 HE'S WAITED WEEKS BECAUSE OF, I BELIEVE HIS TESTIMONY IS, HE HAD
14 YELLED AT ONE OF STEVE'S CHILDREN. THAT'S WHAT'S BURNING IN HIS
15 HEART? NO. POSSIBLY HE HAS A MOMENT WHERE HE FEELS GUILT. WHO
16 KNOWS WHY HE WROTE THIS, BUT HE DID.

17 YOU GO DOWN, HE'S TALKING ABOUT MIRACLES. "IF THESE
18 MIRACLES CAN HAPPEN, I THINK ALL OF YOU CAN FORGIVE ME, AND I
19 BELIEVE THAT I CAN MAKE CHANGES IN MY LIFE THAT ARE NOT SHORT OF
20 BEING A MIRACLE." SO BY HIS TESTIMONY HE NEEDS A MIRACLE TO GET
21 OVER HIS ANGER MANAGEMENT PROBLEM AND NOT YELL AT CHILDREN. AT
22 STEVE'S CHILDREN? NO, NO. THAT'S NOT WHAT HE NEEDS A MIRACLE.
23 "YOU'RE A BIG STRONG GUY BUT YOU HAVE A HEART TOO. I HOPE YOU
24 CAN FIND A PLACE INSIDE IT TO FORGIVE ME." THIS IS TO STEVE. "I
25 HOPE YOU ALL CAN. I'M TRYING TO LEARN FROM MY MISTAKES. THE

CLOSING ARGUMENTS -- BY MS. KEDNOCKER

1 BOOK TEACHES THAT EVEN OUR WORST MISTAKES SERVE AS A MEANS TO
2 TEACH US AND MAKE US STRONGER."

3 LADIES AND GENTLEMEN, THIS IS NOT ABOUT AN ANGER MANAGEMENT
4 PROBLEM AND THIS IS NOT ABOUT HIM YELLING AT STEVE'S TWO-YEAR-
5 OLD, HALAYA. FOR ONE MOMENT IN TIME THIS DEFENDANT MUST HAVE
6 FELT SORRY FOR WHAT HE DID. HE MUST HAVE. OR POSSIBLY HE WAS
7 PLAYING ON STEVE'S EMOTIONS. WHO KNOWS EXACTLY WHAT WAS GOING
8 THROUGH HIS HEAD.

9 AND THEN YOU GO TO THE LETTER TO NANCY AND HE GOES ON IN
10 HERE, YOU CAN SEE, "IF I THOUGHT THEY WOULD NOT HAVE ARRESTED ME,
11 I WOULD HAVE TURNED MYSELF IN. I KNOW I'M -- I NEVER MEANT TO
12 PUT YOU IN THIS KIND OF SITUATION." TO NANCY, "I NEVER MEANT TO
13 PUT YOU IN THIS KIND OF SITUATION." IT SEEMS LIKE HE'S TAKING A
14 LITTLE RESPONSIBILITY HERE.

15 "I MISS YOU. I'M NOT HOLDING MY BREATH." THIS IS HOW
16 MANIPULATING AND SELFISH HE IS AT THAT POINT. "IF YOU MISS ME
17 HALF AS MUCH, YOU WOULD FIND A WAY TO MAKE THIS ALL GO AWAY."

18 AND THE PART IN HERE, "IF YOU GET THE CHARGES DROPPED, YOU
19 COULD ALWAYS RE-FILE IF I DIDN'T BEHAVE. I'M ON MEDICATION AND
20 IT SEEMS TO CLEAR MY THINKING." "IF I DIDN'T BEHAVE." THAT'S
21 WHAT YOU WRITE ON JAN 25TH, 2004 BECAUSE YOU HAVE AN ANGER
22 MANAGEMENT PROBLEM? NO.

23 LADIES AND GENTLEMEN, IN THIS LETTER HE WROTE, "I WISH THIS
24 WOULD BE LIKE THE FIFTIES OR SIXTIES. EVERYTHING WOULD JUST GET
25 SWEEPED UNDER THE RUG AND LIFE WOULD GO ON. THAT WAS THE WAY OF

CLOSING ARGUMENTS -- BY MS. KEDNOCKER

1 THE SOUTH. I HAD HOPED THAT AFTER A MONTH IN HERE YOU MIGHT
2 AGREE WITH THIS." AND THEN HE GOES ON, "I BELIEVE THAT YOU LOVE
3 ME. AND ONCE WE GET TO TALK, I THINK THAT YOU CAN FORGIVE ME."
4 THIS ISN'T JUST ABOUT GETTING FORGIVENESS FROM STEVE, AS HE
5 TESTIFIED TO, FOR AN ANGER MANAGEMENT PROBLEM AT ALL.

6 LADIES AND GENTLEMEN, THE EVIDENCE IN THIS CASE IS STRONG.
7 IT IS OVERWHELMING AND IT IS BY -- IT IS PROOF BEYOND A
8 REASONABLE DOUBT. I BRING YOU BACK TO THE BEGINNING, WHICH IS IN
9 A CRIMINAL SEXUAL CONDUCT CASE IF YOU BELIEVE THE VICTIM, YOU CAN
10 CONVICT ON THE VICTIM'S UNCORROBORATED TESTIMONY. THAT'S THE
11 STARTING POINT. AND LUCKILY FOR YOU, YOU HAVE SO MUCH MORE THAN
12 THAT TO RETURN A VERDICT THAT BRINGS JUSTICE IN THIS CASE. YOU
13 HAVE THE TESTIMONY OF LANE, WHAT HE HEARD THIS DEFENDANT SAY ON
14 THE PHONE, STEVE HEARING WHAT THIS DEFENDANT SAID ON THE PHONE,
15 THE NIGHT AT THE CHURCH, ALL OF IT CORROBORATED EVEN BY THIS
16 DEFENDANT'S OWN MOUTH. YOU HAVE THIS DEFENDANT PRETTY MUCH JUST
17 ASKING FOR FORGIVENESS. FOR WHAT? FOR WHAT HE DID TO Minor
18 JMinor .

19 THIS IS NOT THE FIFTIES AND THIS IS NOT THE SIXTIES. THIS
20 IS NOVEMBER 9TH, 2005. AND THIS IS NOT GETTING SWEEPED UNDER THE
21 RUG. THIS IS OUT THERE FOR ALL OF US TO SEE. ALL OF US SEE IT.
22 TODAY IS THE DAY THAT I ASK YOU TO TELL THIS DEFENDANT THAT THE
23 WORST MISTAKE OF HIS LIFE WAS HAVING SEX WITH HIS NEPHEW. THANK
24 YOU.

25 THE COURT: ALL RIGHT. THANK YOU, MS. KEDNOCKER.

JURY CHARGE

1 LADIES AND GENTLEMEN, NOW THAT YOU'VE HEARD ALL THE EVIDENCE
2 AND YOU'VE HEARD ALL THE ARGUMENTS OF THE ATTORNEYS, IT IS NOW MY
3 DUTY TO INSTRUCT YOU ON WHAT THE LAW IS THAT APPLIES TO THIS
4 CASE. I WILL TELL YOU THAT IT IS YOUR DUTY TO FIND THE FACTS
5 FROM ALL OF THE EVIDENCE IN THIS CASE, AND TO THOSE FACTS YOU
6 MUST APPLY THE LAW AS I GIVE IT TO YOU. AND YOU SHOULD NOT BE
7 CONCERNED WITH WHAT THE LAW SHOULD BE BUT WITH WHAT IT IS. AND
8 JUST AS YOU ARE THE SOLE JUDGES OF THE FACTS AND I WOULDN'T
9 INVADE YOUR RIGHT TO DETERMINE THE FACTS, YOU WOULD NOT INVADE MY
10 RIGHT TO DETERMINE THE LAW AND TELL YOU WHAT THE LAW IS.

11 NOW, YOU MUST NOT BE INFLUENCED IN DETERMINING THE FACTS AND
12 REACHING YOUR VERDICT BY ANY PERSONAL LIKES OR DISLIKES,
13 OPINIONS, PREJUDICES OR UNDUE SYMPATHY. THAT MEANS YOU MUST
14 DECIDE THIS CASE SOLELY ON THE EVIDENCE YOU'VE HEARD HERE IN THIS
15 COURTROOM AND ACCORDING TO THE LAW. AND YOU WILL RECALL, YOU
16 TOOK AN OATH PROMISING TO DO JUST THAT AT THE BEGINNING OF THIS
17 TRIAL. IN FOLLOWING THESE INSTRUCTIONS YOU MUST FOLLOW ALL OF
18 THEM AND NOT SINGLE OUT SOME AND IGNORE OTHERS, BECAUSE THEY ARE
19 ALL EQUALLY IMPORTANT. AND YOU MUST NOT READ INTO THESE
20 INSTRUCTIONS OR INTO ANYTHING I MAY HAVE SAID OR DONE DURING THIS
21 TRIAL AS INDICATING THAT I HAVE ANY FEELING OR OPINION AS TO WHAT
22 VERDICT YOU SHOULD RETURN OR WHAT THE FACTS ARE, BECAUSE AS I'VE
23 TOLD YOU, THAT'S A MATTER ENTIRELY FOR YOU TO DECIDE. YOU AND
24 YOU ALONE ARE THE JUDGES OF WHAT THE FACTS ARE.

25 NOW, HOW DO YOU DECIDE WHAT THE FACTS ARE? YOU DO IT BY

JURY CHARGE

1 EVALUATING AND WEIGHING THE EVIDENCE YOU HAVE HEARD DURING THIS
2 TRIAL. THERE IS NO WAY FOR YOU TO WEIGH EVIDENCE IN THE LITERAL
3 SENSE. I CAN'T GIVE YOU A SET OF SCALES TO TAKE BACK IN THE JURY
4 ROOM WITH YOU. IT IS, INSTEAD, ENTIRELY A MENTAL PROCESS, AND
5 YOU WEIGH AND EVALUATE EVIDENCE SIMPLY BY USING YOUR GOOD COMMON
6 SENSE AND SOUND JUDGMENT.

7 NOW, AT THE BEGINNING OF THIS CASE I TOLD YOU THAT MR. SMITH
8 HAD PLED GUILTY TO THE INDICTMENT AND THAT THE INDICTMENT IS NOT
9 EVIDENCE OF ANYTHING, AND IT'S NOT PROOF OF ANYTHING. AND IN
10 ORDER FOR HIM TO BE CONVICTED, YOU MUST DETERMINE THAT THE STATE
11 HAS PROVEN EACH ELEMENT OF THE CHARGE AGAINST HIM BEYOND A
12 REASONABLE DOUBT. AND I'M GOING TO GO OVER WITH YOU THE TERM
13 REASONABLE DOUBT IN JUST A FEW MINUTES. AND I'M ALSO GOING TO
14 OVER WITH YOU THE TERM PRESUMED INNOCENT BECAUSE, AS I TOLD YOU
15 BEFORE, HE'S PRESUMED INNOCENT AND WILL REMAIN THAT WAY UNLESS
16 AND UNTIL YOU DETERMINE HIS GUILT BEYOND A REASONABLE DOUBT.

17 I WILL DEFINE THOSE LEGAL TERMS FOR YOU IN JUST A MINUTE,
18 BUT BEFORE I DO THAT I WANT TO TALK A LITTLE MORE ABOUT THE
19 EVIDENCE BECAUSE, AS I'VE TOLD YOU BEFORE, YOU HAVE TO DETERMINE
20 THE FACTS FROM THE EVIDENCE.

21 AND AS I TOLD YOU IN THE OPENING INSTRUCTIONS I GAVE YOU,
22 THE EVIDENCE CONSISTS OF THE SWORN TESTIMONY OF WITNESSES, BOTH
23 ON DIRECT AND CROSS EXAMINATION, REGARDLESS OF WHO CALLED THE
24 WITNESS, AND ANY EXHIBITS THAT HAVE BEEN ENTERED INTO EVIDENCE IN
25 THIS CASE. THERE ARE CERTAIN THINGS THAT ARE NOT EVIDENCE AND

JURY CHARGE

1 THAT YOU MAY NOT CONSIDER IN DETERMINING THE VERDICT. THE
2 ARGUMENTS AND STATEMENTS BY LAWYERS ARE NOT EVIDENCE BECAUSE
3 LAWYERS ARE NOT WITNESSES. WHAT THEY SAID DURING THEIR
4 STATEMENTS AND CLOSING ARGUMENTS AND OTHER TIMES IS INTENDED TO
5 HELP YOU INTERPRET THE EVIDENCE BUT IT IS NOT IN ITSELF EVIDENCE.
6 IF THE FACTS AS YOU REMEMBER THEM DIFFER FROM THE WAY THE LAWYERS
7 HAVE STATED THEM, YOUR MEMORY OF THEM CONTROLS. LIKEWISE, THE
8 QUESTIONS AND OBJECTIONS BY LAWYERS ARE NOT EVIDENCE. THE
9 LAWYERS HAVE A DUTY TO THEIR CLIENTS TO OBJECT WHEN THEY FEEL
10 EVIDENCE IS INADMISSIBLE, AND DON'T HOLD THAT AGAINST THEM, AND
11 DON'T BE INFLUENCED BY THAT IN ANY WAY.

12 NOW, ANY TESTIMONY THAT HAS BEEN EXCLUDED OR STRICKEN OR
13 THAT YOU'VE BEEN INSTRUCTED TO DISREGARD DOES NOT CONSTITUTE
14 EVIDENCE, AND YOU SHOULD NOT CONSIDER IT, AND YOU MAY NOT
15 CONSIDER IT IN DETERMINING YOUR VERDICT. AND LIKEWISE, ANYTHING
16 YOU MAY HAVE SEEN OR HEARD WHILE COURT WAS NOT IN SESSION IS NOT
17 EVIDENCE.

18 NOW, LADIES AND GENTLEMEN, IN ADDITION TO THE SOURCES OF
19 EVIDENCE THERE ARE ALSO DIFFERENT TYPES OF EVIDENCE THAT THE LAW
20 RECOGNIZES. THERE ARE TWO TYPES OF EVIDENCE WHICH ARE GENERALLY
21 PRESENTED DURING A TRIAL, THAT IS, DIRECT EVIDENCE AND
22 CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE IS THE TESTIMONY OF A
23 PERSON WHO HAS DIRECT PROOF OF A FACT, SUCH AS THE TESTIMONY OF
24 AN EYEWITNESS. CIRCUMSTANTIAL EVIDENCE IS INDIRECT EVIDENCE.
25 THAT IS, PROOF FROM A CHAIN OF FACTS FROM WHICH YOU COULD FIND

JURY CHARGE

1 THAT ANOTHER FACT EXISTS EVEN THOUGH IT HAS NOT BEEN PROVEN
2 DIRECTLY. YOU ARE ENTITLED TO CONSIDER BOTH KINDS OF EVIDENCE.

3 LET ME GIVE YOU A BRIEF EXAMPLE OF THE DIFFERENCE BETWEEN
4 DIRECT AND CIRCUMSTANTIAL EVIDENCE THAT MAY BE HELPFUL TO YOU.
5 DIRECT EVIDENCE, AS I'VE SAID, PROVES A FACT DIRECTLY, SUCH AS
6 THE TESTIMONY OF A WITNESS WHO SAW A JET PLANE FLYING ACROSS THE
7 SKY. SOME EVIDENCE PROVES A FACT INDIRECTLY OR CIRCUMSTANTIALLY,
8 SUCH AS TESTIMONY OF A WITNESS WHO SAW ONLY A WHITE TRAIL OF THE
9 KIND THAT JETS OFTEN LEAVE. THIS INDIRECT EVIDENCE IS SOMETIMES
10 REFERRED TO AS CIRCUMSTANTIAL EVIDENCE.

11 IN EITHER INSTANCE EACH WITNESS' TESTIMONY IS EVIDENCE THAT
12 A JET PLANE FLEW ACROSS THE SKY AND THE LAW PERMITS YOU TO GIVE
13 EQUAL WEIGHT TO BOTH. BUT IT IS FOR YOU TO DECIDE HOW MUCH
14 WEIGHT TO GIVE ANY EVIDENCE. IT IS FOR YOU TO DECIDE WHETHER A
15 FACT HAS BEEN PROVEN BY DIRECT OR CIRCUMSTANTIAL EVIDENCE. IN
16 MAKING THAT DECISION YOU MUST CONSIDER ALL OF THE EVIDENCE IN
17 LIGHT OF REASON, COMMON SENSE AND EXPERIENCE.

18 NOW, IN DECIDING WHAT THE FACTS ARE YOU MUST CONSIDER ALL
19 THE EVIDENCE, AND YOU MUST NECESSARILY DECIDE WHICH TESTIMONY TO
20 BELIEVE AND WHICH TESTIMONY NOT TO BELIEVE. YOU MAY DISBELIEVE
21 ALL OR ANY PART OF ANY WITNESS' TESTIMONY. YOU MAY BELIEVE ALL
22 OF IT. YOU MAY BELIEVE NONE OF IT. AND I TOLD YOU IN THE
23 BEGINNING SOME THINGS YOU MIGHT TAKE INTO ACCOUNT IN DETERMINING
24 THE CREDIBILITY OR BELIEVABILITY OF WITNESSES. I'VE TALKED ABOUT
25 DEMEANOR. I'VE TALKED ABOUT BIAS OR MOTIVE OR INTEREST IN THE

JURY CHARGE

1 THE PRESUMPTION OF INNOCENCE HAS BEEN LIKENED TO A ROBE OF
2 RIGHTEOUSNESS THAT IS PLACED AROUND THE SHOULDERS OF THE
3 DEFENDANT. IT REMAINS WITH HIM UNTIL THE HAS BEEN STRIPPED FROM
4 HIM BY EVIDENCE SATISFYING YOU OF GUILT BEYOND A REASONABLE
5 DOUBT. NOW, THE PRESUMPTION OF INNOCENCE IS NOT A MERE LEGAL
6 PHRASE OR SOME TECHNICALITY OR THEORY. IT IS A SUBSTANTIAL RIGHT
7 TO WHICH EVERY DEFENDANT IS ENTITLED UNLESS YOU, THE JURY, ARE
8 SATISFIED FROM THE EVIDENCE OF GUILT BEYOND A REASONABLE DOUBT.

9 NOW, WHAT IS A REASONABLE DOUBT IN THE LAW? A REASONABLE
10 DOUBT IS DEFINED AS THE KIND OF DOUBT THAT WOULD CAUSE A
11 REASONABLE PERSON TO HESITATE TO ACT IN A MATTER THEY DEEMED
12 IMPORTANT IN THEIR OWN AFFAIRS. THE STATE HAS THE BURDEN OF
13 PROVING A DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. AND SOME
14 OF YOU MAY HAVE SERVED AS JURORS IN CIVIL CASES WHERE YOU WERE
15 TOLD THAT IT WAS ONLY NECESSARY TO PROVE THAT A FACT IS MORE
16 LIKELY TRUE THAN NOT TRUE IN ORDER FOR ONE SIDE TO PREVAIL, SUCH
17 AS BY THE GREATER WEIGHT OF THE EVIDENCE. BUT I WILL TELL YOU
18 THAT IN CRIMINAL CASES THE STATE'S PROOF MUST BE MUCH MORE
19 POWERFUL THAN THAT. IT MUST BE BEYOND A REASONABLE DOUBT.

20 PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU
21 FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. THERE ARE VERY FEW
22 THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY, AND IN
23 CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT OVERCOMES
24 EVERY POSSIBLE DOUBT. IF BASED ON YOUR CONSIDERATION OF THE
25 EVIDENCE YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF

JURY CHARGE

1 THE CRIME CHARGED, YOU MUST FIND THE DEFENDANT GUILTY. ON THE
2 OTHER HAND, IF YOU THINK THERE IS A REAL POSSIBILITY THE
3 DEFENDANT IS NOT GUILTY, YOU MUST GIVE THE DEFENDANT THE BENEFIT
4 OF THAT DOUBT AND FIND HIM NOT GUILTY.

5 NOW, MR. SMITH IS CHARGED WITH SECOND DEGREE CRIMINAL SEXUAL
6 CONDUCT WITH A MINOR, AND I'M GOING TO DEFINE THAT OFFENSE FOR
7 YOU AND SET FORTH THE ELEMENTS THAT THE STATE WOULD HAVE TO PROVE
8 BEYOND A REASONABLE DOUBT IN ORDER TO OBTAIN A CONVICTION ON THAT
9 COUNT. AND THEN I'M GOING TO ALSO DEFINE FOR YOU TWO LESSER
10 INCLUDED OFFENSES THAT YOU MAY CONSIDER IF YOU DO NOT BELIEVE THE
11 STATE HAS PROVEN SECOND DEGREE CRIMINAL SEXUAL CONDUCT WITH A
12 MINOR BEYOND A REASONABLE DOUBT.

13 SECOND DEGREE CRIMINAL SEXUAL CONDUCT WITH A MINOR IS WHAT
14 MR. SMITH IS CHARGED WITH. THE STATE MUST PROVE BEYOND A
15 REASONABLE DOUBT, IN ORDER TO CONVICT HIM, THAT THE DEFENDANT
16 ENGAGED IN A SEXUAL BATTERY WITH THE VICTIM. A SEXUAL BATTERY IS
17 DEFINED AS SEXUAL INTERCOURSE, CUNNILINGUS, FELLATIO, ANAL
18 INTERCOURSE OR ANY INTRUSION, HOWEVER SLIGHT, OF ANY PART OF A
19 PERSON'S BODY OR OF ANY OBJECT INTO THE GENITAL OR ANAL OPENINGS
20 OF ANOTHER PERSON'S BODY EXCEPT WHEN THE INTRUSION IS
21 ACCOMPLISHED FOR MEDICALLY RECOGNIZED TREATMENT OR DIAGNOSTIC
22 PURPOSES. THE STATE MUST THEN PROVE BEYOND A REASONABLE DOUBT
23 THAT THE VICTIM WAS AT LEAST 11 YEARS OLD BUT NOT MORE THAN 14
24 YEARS OLD AT THE TIME OF THE SEXUAL BATTERY. CONSENT,
25 WILLINGNESS, INDIFFERENCE OR IGNORANCE ON THE PART OF THE MINOR,

JURY CHARGE

1 CLERK DID AS WELL. YOU KNOW WHAT HE IS CHARGED WITH, BUT I
2 REMIND YOU AGAIN THAT THE FACT THAT HE WAS ARRESTED, CHARGED AND
3 INDICTED IS NOT EVIDENCE IN THIS CASE AND CANNOT BE CONSIDERED BY
4 YOU AS EVIDENCE OF GUILT AND CANNOT BE INTERPRETED BY YOU TO
5 CREATE ANY PRESUMPTION OR INFERENCE OF GUILT OR SUSPICION OF
6 GUILT. THE INDICTMENT IS SIMPLY THE FORMAL WRITTEN INSTRUMENT
7 THAT BRINGS THE CASE TO TRIAL AND LETS THE DEFENDANT KNOW WHAT HE
8 IS CHARGED WITH. AND IT HAS NO VALUE WHATSOEVER, BECAUSE ONCE HE
9 PLED NOT GUILTY THAT PUT THE BURDEN OF PROOF ON THE STATE. AND
10 YOU WILL HAVE TO DETERMINE WHETHER THE STATE HAS MET THEIR
11 BURDEN. BUT BY PLEADING NOT GUILTY HE IS PRESUMED INNOCENT, AS
12 ANY PERSON IS WHO IS CHARGED WITH A CRIMINAL OFFENSE, AND HE IS
13 NOT REQUIRED TO PROVE HIMSELF INNOCENT OR TO OFFER ANY
14 EXPLANATION WHATSOEVER. AND I WILL TELL YOU THAT IT IS AN
15 IMPORTANT RULE OF LAW THAT THE DEFENDANT IN A CRIMINAL TRIAL, NO
16 MATTER HOW SERIOUS THAT CHARGE MAY BE, WILL ALWAYS BE PRESUMED TO
17 BE INNOCENT OF THE CRIME FOR WHICH THE INDICTMENT WAS ISSUED
18 UNLESS AND UNTIL GUILT HAS BEEN PROVEN BY EVIDENCE SATISFYING YOU
19 OF THAT GUILT BEYOND A REASONABLE DOUBT. THE PRESUMPTION OF
20 INNOCENCE DOES NOT END WHEN YOU BEGIN YOUR DELIBERATIONS, BUT IT
21 ACCOMPANIES THE DEFENDANT THROUGHOUT THE TRIAL AND REMAINS WITH
22 HIM UNLESS AND UNTIL YOU REACH A VERDICT OF GUILT BASED ON
23 EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.
24 I'M GOING TO DEFINE THE TERM REASONABLE DOUBT FOR YOU IN JUST A
25 MOMENT.

JURY CHARGE

1 IF ANY, AS TO WHAT WAS TAKING PLACE DOES NOT IN ANY WAY AFFECT
2 THE CHARGE OF CRIMINAL SEXUAL CONDUCT WITH A MINOR, BECAUSE A
3 MINOR UNDER THE AGE OF 14 IN THE EYES OF THE LAW CANNOT LEGALLY
4 CONSENT TO SEXUAL INTERCOURSE.

5 NOW, LADIES AND GENTLEMEN, IF YOU FIND THAT THE STATE HAS
6 NOT PROVEN THAT THE DEFENDANT IS GUILTY OF CRIMINAL SEXUAL
7 CONDUCT WITH A MINOR IN THE SECOND DEGREE, YOU MUST THEN
8 DETERMINE WHETHER THE STATE HAS PROVED THAT THE DEFENDANT IS
9 GUILTY OF THE LESSER OFFENSE OF ASSAULT AND BATTERY OF A HIGH AND
10 AGGRAVATED NATURE. INCLUDED WITHIN THE OFFENSE OF CRIMINAL
11 SEXUAL CONDUCT WITH A MINOR SECOND DEGREE IS THE LESSER OFFENSE
12 OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE.

13 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE IS AN
14 UNLAWFUL ACT OF VIOLENT INJURY TO THE PERSON OF ANOTHER
15 ACCOMPANIED BY CIRCUMSTANCES OF AGGRAVATION. AN ASSAULT OCCURS
16 WHEN A PERSON UNLAWFULLY ATTEMPTS OR OFFERS TO COMMIT A VIOLENT
17 INJURY UPON ANOTHER PERSON AND HAD THE PRESENT ABILITY TO
18 COMPLETE THE ATTEMPTED INJURY. AN ASSAULT IS THE INTENTIONAL
19 CREATION OF A REASONABLE FEAR OF IMMEDIATE BODILY HARM. IT'S NOT
20 NECESSARY THAT THE ATTEMPTED INJURY OR HARM ACTUALLY TAKE PLACE.
21 FOR EXAMPLE, IF I WALK UP TO YOU AND WHEN WE ARE WITHIN ARM'S
22 REACH I DRAW BACK TO HIT YOU, THAT IS AN ASSAULT. A BATTERY IS
23 THE UNLAWFUL TOUCHING OF ANOTHER PERSON BY A PERSON WHO HAS
24 COMMITTED THE ASSAULT. AN UNLAWFUL TOUCHING CAN BE CAUSED BY A
25 PART OF THE ACCUSED'S BODY OR BY ANY OBJECT THE ACCUSED PUTS IN

JURY CHARGE

1 OUTCOME OF THE CASE. AND I'M NOT GOING TO GO OVER THAT AGAIN
2 WITH YOU, BUT I WILL SAY THAT IN DECIDING CREDIBILITY OR
3 BELIEVABILITY YOU MAY BELIEVE ALL OR PART OR NONE OF A WITNESS'
4 TESTIMONY. YOU MAY BELIEVE ONE WITNESS OVER SEVERAL OR SEVERAL
5 OVER ONE. MOST CERTAINLY, THOUGH, YOU DO NOT DETERMINE THE
6 MATTER OF CREDIBILITY BY COUNTING UP THE NUMBER OF WITNESSES WHO
7 MAY HAVE TESTIFIED ON BEHALF OF THE PARTIES IN THIS CASE, BECAUSE
8 YOUR SOLE OBJECTIVE IS TO DETERMINE THE FACTS, AND IT DOES NOT
9 MATTER TO YOU WHETHER FACTS COME FROM A WITNESS FOR THE STATE OR
10 A WITNESS FOR THE DEFENDANT.

11 NOW, YOU'VE HEARD TESTIMONY IN THIS TRIAL FROM PERSONS
12 DESCRIBED AS EXPERTS, AND I TOLD YOU EARLIER THAT EXPERTS CAN
13 GIVE OPINION TESTIMONY IF THEY ARE QUALIFIED. AND EXPERT OPINION
14 TESTIMONY SHOULD BE JUDGED BY YOU JUST AS ANY OTHER TESTIMONY,
15 AND THAT IS, YOU MAY ACCEPT IT OR REJECT IT AND GIVE IT AS MUCH
16 WEIGHT AS YOU THINK IT DESERVES, CONSIDERING THE WITNESS'
17 EDUCATION AND EXPERIENCE, THE REASONS GIVEN FOR THE OPINION AND
18 ALL THE OTHER EVIDENCE IN THIS CASE. YOU DO NOT EVEN HAVE TO
19 ACCEPT THE UNCONTRADICTED TESTIMONY OF AN EXPERT BECAUSE YOU ARE
20 THE JUDGES OF THE CREDIBILITY OF THE WITNESSES.

21 NOW, LADIES AND GENTLEMEN, LET ME GO NOW TO SOME OF THE
22 SUBSTANTIVE PRINCIPLES OF LAW THAT APPLY IN THIS CASE. AND I
23 WILL TELL YOU AGAIN THAT MR. SMITH HAS BEEN CHARGED WITH CRIMINAL
24 SEXUAL CONDUCT WITH A MINOR SECOND DEGREE, AND I READ THE
25 INDICTMENT TO YOU AT THE BEGINNING OF THE TRIAL AND I BELIEVE THE

JURY CHARGE

1 MOTION. A BATTERY IS THE COMPLETION OF THE ASSAULT BY USING OR
2 APPLYING FORCE TO ANOTHER PERSON, HOWEVER SLIGHT, IN A RUDE,
3 ANGRY OR RESENTFUL MANNER WITHOUT LEGAL JUSTIFICATION FOR DOING
4 SO. USING MY EARLIER EXAMPLE, IF I CARRY THROUGH THE ASSAULT BY
5 HITTING YOU, THAT IS DEFINED AS A BATTERY.

6 NOW, THE STATE MUST ALSO PROVE A CIRCUMSTANCE OF AGGRAVATION
7 IN ORDER TO CONVICT SOMEONE OF ASSAULT AND BATTERY OF A HIGH AND
8 AGGRAVATED NATURE. THE CIRCUMSTANCES OF AGGRAVATION MAY INCLUDE
9 -- AND THIS LIST IS NOT EXHAUSTIVE -- BUT THEY MAY INCLUDE THE
10 USE OF A DEADLY WEAPON WITH THE INTENT TO COMMIT A FELONY, THE
11 INFLICTION OF SERIOUS BODILY INJURY, A GREAT DISPARITY BETWEEN
12 THE AGES OR PHYSICAL CONDITIONS OF THE PARTIES, A DIFFERENCE IN
13 THE GENDERS OF THE PARTIES, THE TAKING OF INDECENT LIBERTIES OR
14 FAMILIARITIES WITH A FEMALE THROUGH THE USE OF FORCE, PURPOSEFUL
15 INFLICTION OF SHAME AND DISGRACE, AND THE RESISTANCE OF LAWFUL
16 AUTHORITIES.

17 NOW, LADIES AND GENTLEMEN, BASED ON YOUR REVIEW OF EVIDENCE,
18 IF YOU HAVE A REASONABLE DOUBT AS TO WHETHER THE DEFENDANT IS
19 GUILTY OF THE GREATER OFFENSE OF CRIMINAL SEXUAL CONDUCT WITH A
20 MINOR SECOND DEGREE OR THE LESSER OFFENSE OF ASSAULT AND BATTERY
21 OF A HIGH AND AGGRAVATED NATURE, YOU MUST RESOLVE THAT DOUBT IN
22 THE DEFENDANT'S FAVOR AND FIND HIM GUILTY OF THE LESSER OFFENSE.

23 IF YOU FIND THE STATE HAS FAILED TO PROVE THAT THE DEFENDANT
24 IS GUILTY OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE,
25 YOU MUST THEN DECIDE WHETHER THE STATE HAS PROVED THE DEFENDANT

JURY CHARGE

1 IS SIMPLE ASSAULT AND BATTERY. SIMPLE ASSAULT AND BATTERY
2 CONTAINS ALL OF THE ELEMENTS OF ASSAULT AND BATTERY THAT I JUST
3 READ TO YOU -- EXCUSE ME, ALL OF THE ELEMENTS OF ASSAULT AND
4 BATTERY OF A HIGH AND AGGRAVATED NATURE THAT I JUST READ TO YOU
5 EXCEPT THE CIRCUMSTANCE OF AGGRAVATION.

6 INCLUDED WITHIN THE OFFENSE OF ASSAULT AND BATTERY OF A HIGH
7 AND AGGRAVATED NATURE IS THE LESSER OFFENSE OF SIMPLE ASSAULT AND
8 BATTERY. SIMPLE ASSAULT AND BATTERY IS DEFINED AS THE UNLAWFUL
9 ACT OF VIOLENT INJURY TO ANOTHER PERSON WITHOUT ANY CIRCUMSTANCE
10 OF AGGRAVATION. AND AGAIN, IF YOU HAVE A DOUBT AS TO WHETHER THE
11 DEFENDANT IS GUILTY OF THE GREATER OFFENSE OF ASSAULT AND BATTERY
12 OF A HIGH AND AGGRAVATED NATURE OR THE LESSER OFFENSE OF SIMPLE
13 ASSAULT AND BATTERY, YOU MUST RESOLVE THAT DOUBT IN MR. SMITH'S
14 FAVOR AND FIND HIM GUILTY OF THE LESSER OFFENSE. BUT IF YOU FIND
15 THE STATE HAS FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT THE
16 DEFENDANT IS GUILTY OF EITHER CRIMINAL SEXUAL CONDUCT IN THE
17 SECOND DEGREE, ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
18 NATURE OR ASSAULT AND BATTERY, YOU MUST FIND HIM NOT GUILTY.

19 NOW, LADIES AND GENTLEMEN, I TALKED TO YOU EARLIER ABOUT THE
20 CREDIBILITY OF WITNESSES AND TOLD YOU THAT YOU AND YOU ALONE
21 GAUGE WHETHER A WITNESS IS BELIEVABLE OR CREDIBLE AND THAT
22 APPLIES TO EVERY WITNESS WHO TESTIFIED IN THIS CASE. THE SOUTH
23 CAROLINA CODE SECTION 16-3-657 STATES THAT THE TESTIMONY OF THE
24 VICTIM IN A CRIMINAL SEXUAL CONDUCT CASE NEED NOT BE
25 CORROBORATED. HOWEVER, AS I'VE ALREADY TOLD YOU, YOU MUST

JURY CHARGE

1 DETERMINE THE CREDIBILITY OR BELIEVABILITY OF EACH WITNESS YOU
2 HAVE HEARD.

3 NOW, LADIES AND GENTLEMEN, LET ME GIVE YOU A FEW FINAL
4 INSTRUCTIONS BEFORE YOU CAN BEGIN YOUR DELIBERATIONS. YOU DON'T
5 SERVE AS JURORS IN THIS CASE OR ANY CASE TO BE PARTISANS OR
6 ADVOCATES FOR EITHER SIDE. BOTH SIDES IN THIS CASE CHOSE YOU
7 BECAUSE THEY BELIEVE YOU CAN BE FAIR AND IMPARTIAL AND DECIDE
8 THIS CASE BASED ON THE EVIDENCE AND THE EVIDENCE ALONE WITHOUT
9 ANY BIAS OR PREJUDICE OR PRECONCEIVED NOTIONS. THAT MEANS YOU
10 ARE TO USE YOUR EXPERIENCES IN LIFE, YOUR GOOD COMMON SENSE AND
11 YOUR SENSE OF LOGIC AND REASON. AND ONCE YOU DO THAT, YOU WILL
12 BE ABLE TO DETERMINE THE FACTS OF THIS CASE. AND ONCE YOU HAVE
13 DECIDED THE FACTS, YOU WILL TAKE IT AND APPLY THE LAW I HAVE JUST
14 GIVEN YOU. AND WHEN YOU HAVE DONE THAT, YOU WILL ANSWER THE
15 QUESTION OF WHETHER THE STATE HAS MET ITS BURDEN OF PROVING EACH
16 ELEMENT OF THE OFFENSE BEYOND A REASONABLE DOUBT.

17 NOW LET ME SAY SOMETHING ABOUT YOUR DELIBERATIONS. IF YOU
18 WENT TO THE DICTIONARY AND LOOKED UP THE WORD DELIBERATION, YOU
19 WOULD SEE IT DEFINED AS A CAREFUL CONSIDERATION OR WEIGHING UP
20 WITH A VIEW TO DECISION. AND I ALREADY TALKED TO YOU A LITTLE
21 BIT ABOUT EVALUATING AND WEIGHING EVIDENCE, SO YOU GET THE IDEA.
22 BUT THE GENIUS OF OUR JURY SYSTEM IS THAT IT ALLOWS 12 GOOD MEN
23 AND WOMEN FROM 12 DIFFERENT BACKGROUNDS, LIFE EXPERIENCES AND
24 PERSPECTIVES TO CONSIDER THE EVIDENCE, TALK ABOUT IT AND
25 ULTIMATELY REACH A VERDICT.

JURY CHARGE

1 WE CALL THEM DELIBERATIONS FOR A REASON. YOU ARE TO
2 CONSIDER THE EVIDENCE IN THIS CASE CAREFULLY AND DELIBERATELY AND
3 DISCUSS IT IN A CALM, THOROUGH AND COURTEOUS MANNER. AND
4 REMEMBER, YOU ARE NOT PARTISANS OR ADVOCATES FOR EITHER SIDE,
5 FAVORING ONE SIDE OVER THE OTHER. YOU ARE JUDGES, JUDGES OF THE
6 FACTS, AND YOUR SOLE INTEREST IS TO FIND WHAT THOSE FACTS ARE
7 FROM THE EVIDENCE YOU HAVE HEARD IN THIS COURTROOM AND DETERMINE
8 WHETHER THE STATE HAS MET ITS BURDEN OF PROOF. LISTEN TO THE
9 VIEWS OF ALL YOUR FELLOW JURORS, CONSIDER OTHER PEOPLE'S POINTS
10 AND POINTS OF VIEW AND TALK THROUGH AND DISCUSS THE EVIDENCE.

11 AND REMEMBER, IF YOU ARE DOING SOMETHING DELIBERATELY,
12 YOU'RE NOT IN A BIG HURRY, AND YOU SHOULD NOT BE IN A HURRY HERE.
13 THIS CASE IS IMPORTANT TO BOTH SIDES, AND THIS IS THEIR ONLY DAY
14 IN COURT.

15 NOW, LADIES AND GENTLEMEN, EACH OF YOU MUST DECIDE THE CASE
16 FOR YOURSELF, BUT YOU SHOULD DO SO ONLY AFTER YOU HAVE
17 IMPARTIALLY CONSIDERED ALL THE EVIDENCE, DISCUSSED IT FULLY AND
18 LISTENED TO THE VIEWS OF YOUR FELLOW JURORS. IT IS IMPORTANT
19 THAT YOU ATTEMPT TO REACH A UNANIMOUS VERDICT BUT, OF COURSE,
20 ONLY IF EACH OF YOU CAN DO SO AFTER HAVING MADE YOUR OWN
21 CONSCIENTIOUS DECISION.

22 NOW, LADIES AND GENTLEMEN, I'M GOING TO GO OVER THE VERDICT
23 FORM. I'M GOING TO ASK MS. DAILEY TO HAND THIS VERDICT FORM TO
24 MR. SANFORD, THE FOREPERSON, AND I'LL GO OVER IT WITH HIM.

25 (PAUSE)

JURY CHARGE

1 NOW, AS YOU WILL RECALL, I DEFINED FOR YOU THREE OFFENSES.
2 THE FIRST OFFENSE WAS THE CHARGE OF CRIMINAL SEXUAL CONDUCT WITH
3 A MINOR SECOND DEGREE, AND THAT IS THE FIRST CHARGE YOU WILL
4 CONSIDER. IF YOU DETERMINE THAT THE STATE HAS PROVEN EACH
5 ELEMENT OF THAT CHARGE BEYOND A REASONABLE DOUBT, YOU WOULD BE
6 REQUIRED TO FIND THE DEFENDANT GUILTY. IF YOU FOUND THAT THE
7 STATE HAD NOT PROVEN EACH ELEMENT BEYOND A REASONABLE DOUBT, YOU
8 WOULD BE REQUIRED TO FIND MR. SMITH NOT GUILTY. AND, OF COURSE,
9 I HAVE TO PUT NOT GUILTY OR GUILTY -- I HAVE TO PUT ONE OF THEM
10 FIRST, SO DON'T ATTACH ANY SIGNIFICANCE TO THAT IN ANY OF THESE.
11 BUT IF YOU DO DECIDE THAT THE STATE HAS NOT MET ITS BURDEN OF
12 PROOF AS TO THAT FIRST CHARGE, YOU WOULD THEN GO AND CONSIDER THE
13 LESSER INCLUDED OFFENSE OF ASSAULT AND BATTERY OF A HIGH AND
14 AGGRAVATED NATURE AND DETERMINE WHETHER THE STATE HAD MET ITS
15 BURDEN OF PROOF AS TO THE ELEMENTS FOR THAT OFFENSE. AND IF YOU
16 DECIDED THE STATE HAD NOT DONE THAT, THEN YOU WOULD GO TO THE
17 THIRD AND FINAL OFFENSE, WHICH IS THE LESSER INCLUDED OFFENSE OF
18 ASSAULT AND BATTERY AND DETERMINE WHETHER THE STATE HAD PROVEN
19 THAT. ON THE OTHER HAND, IF YOU DETERMINE THAT THE STATE HAD
20 PROVEN BEYOND A REASONABLE DOUBT EACH ESSENTIAL ELEMENT OF THE
21 CHARGE OF CRIMINAL SEXUAL CONDUCT WITH A MINOR SECOND DEGREE,
22 THEN YOU WOULD BE REQUIRED TO FIND MR. SMITH GUILTY AND YOU WOULD
23 NOT NEED TO ANSWER QUESTION TWO OR THREE. AND LIKEWISE, IF YOU
24 FOUND MR. SMITH NOT GUILTY OF CRIMINAL SEXUAL CONDUCT WITH A
25 MINOR SECOND DEGREE BUT GUILTY OF ASSAULT AND BATTERY OF A HIGH

JURY CHARGE

1 AND AGGRAVATED NATURE, YOU WOULD NOT NEED TO GO TO QUESTION
2 THREE.

3 SO YOU ARE AUTHORIZED, SIR, TO FILL OUT THE VERDICT FORM, OF
4 COURSE, ONLY WHEN THE JURY HAS REACHED A UNANIMOUS VERDICT. AND
5 WHEN YOU HAVE DONE THAT, THERE'S A SWITCH BACK THERE AND YOU CAN
6 GET THE BAILIFF'S ATTENTION AND THEY'LL COME AND WE'LL TAKE YOU
7 BACK IN THE COURTROOM AND ANNOUNCE THE VERDICT.

8 IF IT BECOMES NECESSARY DURING YOUR DELIBERATIONS TO
9 COMMUNICATE WITH ME, AS I TOLD YOU, YOU JUST DO THAT BY NOTE.
10 PLEASE DON'T TELL ME AT ANY TIME HOW THE JURY STANDS NUMERICALLY
11 OR OTHERWISE. AND I WILL HAVE TO COMMUNICATE WITH YOU IN OPEN
12 COURT OR THROUGH A NOTE AS WELL.

13 NOW, AS I'VE TOLD YOU, YOUR VERDICT MUST BE UNANIMOUS. AND
14 I HAVE TO GO OVER NOW WITH THE ATTORNEYS THE CHARGE I'VE JUST
15 GIVEN YOU BECAUSE, BELIEVE IT OR NOT, FOR AS LONG AS I'VE BEEN
16 TALKING I MAY HAVE LEFT SOMETHING OUT, AND THEY WILL BE QUICK TO
17 TELL ME. BUT PLEASE GO BACK TO YOUR JURY ROOM AT THIS TIME.
18 HAND THAT VERDICT FORM BACK TO MS. DAILEY AND DO NOT BEGIN YOUR
19 DELIBERATIONS AT THIS TIME. BUT WHEN I SEND BACK THE EXHIBITS
20 AND THE VERDICT FORM, THAT WILL BE YOUR SIGNAL AND YOU CAN BEGIN
21 YOUR DELIBERATIONS. THANK YOU VERY MUCH FOR YOUR ATTENTION.

22 (JURY EXITS COURTROOM AT 10:19 A.M.)

23 THE COURT: WOULD YOU MIND GETTING THE ALTERNATE (TO MADAME
24 CLERK) .

25 ALL RIGHT. ARE THERE ANY OBJECTIONS OR EXCEPTIONS TO THE

MATTERS AND MOTIONS

1 CHARGE?

2 MS. KEDNOCKER: NONE FROM THE STATE, YOUR HONOR.

3 MR. CREECH: NONE FROM THE STATE, YOUR HONOR. I WOULD --
4 I'D LIKE TO MAKE A MOTION FOR A MISTRIAL. SHE REFERRED TO MY
5 CLIENT TWICE AS A CRIMINAL IN HER CLOSING ARGUMENT. I DID OBJECT
6 ONE TIME.

7 THE COURT: YES, SIR.

8 MR. CREECH: I'D JUST LIKE TO PUT THAT MOTION ON THE
9 RECORD, YOUR HONOR.

10 THE COURT: ALL RIGHT. I UNDERSTAND. I'M GOING TO
11 RESPECTFULLY DENY YOUR MOTION IN THE CONTEXT OF THE CLOSING
12 ARGUMENT. I THINK I INSTRUCTED THEM TO DISREGARD THE REFERENCE
13 AND, AGAIN, I DON'T THINK IT WOULD RISE TO THE LEVEL MERITING A
14 MISTRIAL. ALL RIGHT.

15 MS. KEDNOCKER: JUDGE HILL, I APOLOGIZE. I JUST WANT TO
16 CHECK ONE THING WITH DEFENSE COUNSEL. ONE OF MY FELLOW ASSISTANT
17 SOLICITORS THOUGHT HE HEARD DURING THE CHARGE YOU SAY THAT THE
18 DEFENDANT HAD PLED GUILTY. I---

19 MR. CREECH: YEAH. YOUR HONOR, AT SOME POINT YOU SAID --
20 WHEN YOU WERE TELLING THEM ABOUT THE INDICTMENT YOU SAID THE
21 DEFENDANT PLED GUILTY TO THE INDICTMENT.

22 MS. KEDNOCKER: ALL RIGHT. WE NEED TO FIX THAT, IF YOUR
23 HONOR WANTS TO.

24 MR. CREECH: THEN YOU CAME BACK AND SAID, TWICE, I THINK,
25 THE DEFENDANT HAS PLED NOT GUILTY TO THE INDICTMENT.

MATTERS AND MOTIONS

1 THE COURT: WELL, ALL RIGHT.

2 MS. KEDNOCKER: I JUST WANTED TO BRING IT UP. IF DEFENSE
3 COUNSEL HEARD THAT AND HE'S FINE, THEN...

4 THE COURT: I'LL BE GLAD TO BRING THEM BACK AND REPEAT THAT
5 TO THEM. IF I MISSPOKE, IT'S ENTIRELY POSSIBLE. IT WON'T BE THE
6 LAST TIME.

7 MS. KEDNOCKER: OKAY.

8 THE COURT: DO YOU WANT ME TO BRING THEM BACK IN?

9 MR. CREECH: YES, YOUR HONOR.

10 THE COURT: OKAY. BRING THEM BACK IN.

11 (ALTERNATE REENTERS COURTROOM)

12 THE COURT: JUST HAVE A SEAT. I THINK THE JURY IS GOING TO
13 -- YOU MIGHT WANT TO WAIT SO THEY CAN WALK BESIDE YOU. I'VE GOT
14 TO RECHARGE YOU ON PART OF THE LAW REAL QUICK. ALL RIGHT? THANK
15 YOU.

16 MS. KEDNOCKER: AND THE OTHER THING, YOUR HONOR, I BELIEVE
17 AT ONE POINT YOU SAID, IF YOU HAVE A DOUBT AS TO ANY OF THESE
18 CHARGES YOU MUST FIND IN FAVOR OF THE DEFENDANT. IT WOULD BE A
19 REASONABLE DOUBT, AS ANY OF THESE CHARGES, YOU'D HAVE TO FIND IN
20 FAVOR OF THE DEFENDANT.

21 THE COURT: OKAY.

22 (JURY REENTERS COURTROOM AT 10:23 A.M.)

23 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I MAY HAVE
24 MISSPOKE AT SOME POINT WHEN I WAS INSTRUCTING YOU EARLIER. AND
25 IF I DID, I APOLOGIZE. BUT I TOLD YOU AT ONE POINT, I BELIEVE,

RECHARGE

1 THAT THE DEFENDANT PLED GUILTY TO THIS INDICTMENT, AND THAT
2 OBVIOUSLY WAS A MISSTATEMENT. I TOLD YOU REPEATEDLY HE HAS PLED
3 NOT GUILTY TO THIS INDICTMENT. SO THERE IS NO DISPUTE
4 WHATSOEVER. HE HAS PLED NOT GUILTY. THAT PUTS THE BURDEN OF
5 PROOF ON THE STATE. AND AS I TOLD YOU, HE'S PRESUMED INNOCENT
6 AND CAN ONLY BE CONVICTED IF THE STATE PROVES EACH AND EVERY
7 ELEMENT OF THE OFFENSE BEYOND A REASONABLE DOUBT. BUT IF I
8 MISSPOKE, I APOLOGIZE. BUT HE HAS PLED NOT GUILTY THROUGHOUT
9 THIS CASE, OF COURSE.

10 AND LET ME TELL YOU ONE OTHER FINAL THING. YOU HAVE HEARD
11 ALL THE EVIDENCE YOU'RE GOING TO HEAR. YOU'RE NOT GOING TO HEAR
12 FROM ANY MORE WITNESSES. THERE ARE NOT GOING TO BE ANY MORE
13 EXHIBITS. THE RECORD IS CLOSED, SO YOU HAVE TO MAKE YOUR
14 DECISION BASED ON THE RECORD AS IT STANDS NOW AND DETERMINE THE
15 FACTS FROM THAT EVIDENCE.

16 SO THANK YOU VERY MUCH. SORRY FOR THE INCONVENIENCE IN
17 BRINGING YOU BACK OUT. JUST GO BACK TO YOUR JURY ROOM AND AGAIN
18 WAIT JUST ONE SECOND TO MAKE SURE THAT YOU CAN BEGIN YOUR
19 DELIBERATIONS. WHEN YOU GET THE VERDICT FORM, THAT WILL BE YOUR
20 SIGNAL. THANK YOU.

21 (JURY EXITS COURTROOM AT 10:24 A.M.)

22 THE COURT: ALL RIGHT. SHE NEEDS TO STAY OUTSIDE JUST ONE
23 SECOND.

24 BAILIFF: OKAY.

25 THE COURT: ALL RIGHT. ANY OBJECTIONS OR EXCEPTIONS TO

MATTERS AND MOTIONS

1 THAT SUPPLEMENTAL CHARGE?

2 MS. KEDNOCKER: NONE FROM THE STATE, YOUR HONOR.

3 MR. CREECH: NO, YOUR HONOR.

4 THE COURT: ALL RIGHT. OKAY. YOU CAN BRING HER RIGHT IN.
5 THANK YOU VERY MUCH.

6 OKAY. MS. PATTERSON, YOU ARE THE ALTERNATE AND THE LAW
7 DOESN'T ALLOW YOU TO BE IN THE JURY ROOM DURING THE
8 DELIBERATIONS, BUT WE APPRECIATE YOU BEING HERE AND LISTENING TO
9 THE TESTIMONY.

10 WHAT TIME DO THEY NEED TO BE BACK?

11 MADAME CLERK: 10:30.

12 THE COURT: 10:30. SO YOU CAN JUST ACTUALLY GO ON
13 DOWNSTAIRS BECAUSE WE HAVE ANOTHER CASE COMING UP. BUT WE
14 APPRECIATE YOUR SERVICE. YOU GAVE US THE PEACE OF MIND TO KNOW
15 WE'D BE ABLE TO FINISH THE CASE IN CASE SOMETHING HAPPENED TO
16 SOMEONE ON THE JURY. SO THANK YOU VERY MUCH.

17 THE COURT: OKAY. ALL RIGHT. Y'ALL NEED TO GET TOGETHER
18 AND MAKE SURE THE EXHIBITS ARE CORRECT BEFORE THEY ARE BROUGHT
19 BACK TO THE JURY. (PAUSE)

20 MS. KEDNOCKER: THANK YOU, JUDGE.

21 THE COURT: THANK YOU.

22 (DELIBERATIONS BEGIN AT 10:25 A.M.)

23 (AT EASE FROM 10:25 TO 11:25 A.M.)

24 THE COURT: OKAY. WE HAVE A VERDICT. I KNOW THIS HAS BEEN
25 AN EMOTIONAL CASE, AND I APPRECIATE THE FINE JOB BOTH ATTORNEYS

VERDICT

1 HAVE DONE IN THIS CASE. IF ANYBODY DOESN'T THINK THEY CAN
2 CONTAIN THEMSELVES WHEN THE VERDICT IS READ, NOW IS THE TIME TO
3 LEAVE SO I DON'T HAVE TO TAKE CARE OF IT.

4 ALL RIGHT. BRING THE JURY IN.

5 (JURY ENTERS COURTROOM AT 11:27 A.M.)

6 THE COURT: ALL RIGHT. MR. FOREMAN, HAS THE JURY REACHED A
7 UNANIMOUS VERDICT, SIR?

8 FOREMAN: YES, YOUR HONOR.

9 THE COURT: OKAY. IF YOU WOULD HAND THE VERDICT FORM TO
10 MS. DAILEY, WE WILL RECEIVE THE VERDICT.

11 FOREMAN: (COMPLIES)

12 THE COURT: OKAY. MADAME CLERK, IF YOU WOULD PUBLISH THE
13 VERDICT.

14 MADAME CLERK: YOUR HONOR, THIS IS CASE 2004-GS-23-6874.
15 THE STATE OF SOUTH CAROLINA VERSUS RANDALL LANE SMITH. AS TO THE
16 CHARGE OF CRIMINAL SEXUAL CONDUCT WITH A MINOR SECOND DEGREE, WE,
17 THE JURY, BY UNANIMOUS CONSENT FIND THE DEFENDANT, RANDALL LANE
18 SMITH, GUILTY. AND IT IS SIGNED BY CHRISTOPHER SANFORD,
19 FOREPERSON.

20 LADIES AND GENTLEMEN OF THE JURY, IF YOU AGREE THIS IS THE
21 VERDICT YOU REACHED YOUR DELIBERATION ROOM, WOULD YOU PLEASE
22 RAISE YOUR RIGHT HAND. (PAUSE) (ALL JURORS COMPLY)

23 THE COURT: ALL RIGHT. ANYTHING FROM THE STATE BEFORE THE
24 JURY IS DISCHARGED?

25 MS. KEDNOCKER: NOTHING FROM THE STATE, YOUR HONOR.

VERDICT

1 THE COURT: FROM THE DEFENSE?

2 MR. CREECH: YOUR HONOR, WE JUST ASK THE JURY BE POLLED.

3 THE COURT: ALL RIGHT. YES, MA'AM. IF YOU WOULD, POLL THE
4 JURY.

5 MADAME CLERK: YES. I WILL ASK YOU TWO QUESTIONS. NUMBER
6 ONE: IS THIS THE VERDICT YOU REACHED IN YOUR DELIBERATION ROOM?
7 AND IS IT YOUR VERDICT NOW? AND I NEED FOR YOU TO RESPOND YES OR
8 NO. AS I CALL YOUR NAME, PLEASE STAND AND GIVE ME YOUR ANSWER.

9 TERRY SANDOR, ARE THESE YOUR VERDICTS -- IS THIS YOUR
10 VERDICT AND IS IT NOW?

11 JUROR NUMBER 110: YES.

12 MADAME CLERK: THANK YOU.

13 SHARON BELK, WAS THIS YOUR VERDICT IN THE DELIBERATION ROOM?

14 JUROR NUMBER 5: YES.

15 MADAME CLERK: IS IT YOUR VERDICT NOW?

16 JUROR NUMBER 5: YES.

17 MADAME CLERK: THANK YOU.

18 FRANK WILSON, WAS THIS YOUR VERDICT IN THE DELIBERATION
19 ROOM?

20 JUROR NUMBER 140: YES.

21 MADAME CLERK: IS IT NOW?

22 JUROR NUMBER 140: YES.

23 MADAME CLERK: THANK YOU.

24 JENNIFER SMITH, WAS THIS YOUR VERDICT THEN?

25 JUROR NUMBER 153: YES.

VERDICT

1 MADAME CLERK: IS IT NOW?
2 JUROR NUMBER 153: YES.
3 MADAME CLERK: THANK YOU.
4 JAMES MCNULTY, WAS THIS YOUR VERDICT THEN?
5 JUROR NUMBER 69: YES.
6 MADAME CLERK: IS IT NOW?
7 JUROR NUMBER 69: YES.
8 MADAME CLERK: THANK YOU.
9 THOMAS PHILLIPS, WAS THIS YOUR VERDICT THEN?
10 JUROR NUMBER 89: YES.
11 MADAME CLERK: IS IT NOW?
12 JUROR NUMBER 89: YES.
13 MADAME CLERK: THANK YOU.
14 CHRISTOPHER SANFORD, WAS THIS YOUR VERDICT THEN?
15 JUROR NUMBER 111: YES.
16 MADAME CLERK: IS IT NOW?
17 JUROR NUMBER 111: YES.
18 MADAME CLERK: THANK YOU.
19 BRENDA WHITNEY, WAS THIS YOUR VERDICT THEN?
20 JUROR NUMBER 136: YES.
21 MADAME CLERK: IS IT NOW?
22 JUROR NUMBER 136: YES.
23 MADAME CLERK: THANK YOU.
24 BRENDAN NIX, WAS THIS YOUR VERDICT THEN?
25 JUROR NUMBER 81: YES.

VERDICT

1 MADAME CLERK: IS IT NOW?

2 JUROR NUMBER 81: YES.

3 MADAME CLERK: THANK YOU.

4 CALVIN ROACH, WAS IT YOUR VERDICT THEN?

5 JUROR NUMBER 104: YES.

6 MADAME CLERK: IS IT NOW?

7 JUROR NUMBER 104: YES.

8 MADAME CLERK: THANK YOU.

9 CHRISTINE CAPOBIANCO, WAS THIS YOUR VERDICT THEN?

10 JUROR NUMBER 8: YES.

11 MADAME CLERK: IS IT NOW?

12 JUROR NUMBER 8: YES.

13 MADAME CLERK: THANK YOU.

14 CHRIS -- LET'S SEE. JIMMY MANN, WAS THIS YOUR VERDICT THEN?

15 JUROR NUMBER 152: YES.

16 MADAME CLERK: IS IT NOW?

17 JUROR NUMBER 152: YES.

18 MADAME CLERK: THANK YOU.

19 THE COURT: ALL RIGHT. ANYTHING FURTHER AT THIS TIME FROM

20 THE DEFENSE?

21 MR. CREECH: NOTHING AT THIS TIME, YOUR HONOR.

22 THE COURT: OKAY. THANK YOU, MR. CREECH.

23 LADIES AND GENTLEMEN, THANK YOU FOR YOUR SERVICE ON THIS

24 CASE. I KNOW IT'S NOT AN EASY THING TO SIT IN JUDGMENT AND WE

25 ASK JURORS TO DO DIFFICULT THINGS OFTEN. AND HOPEFULLY YOU WILL

MATTERS AND MOTIONS

1 NEVER HAVE TO BE SITTING AT ONE OF THESE TABLES ONE DAY OR
2 ACCUSED OF DOING SOMETHING OR HAVING BEEN HURT BY SOMEONE. BUT
3 IF YOU DID, I KNOW IF YOU LOOKED ACROSS THE ROOM OF THE COURTROOM
4 HERE AND LOOKED IN THE JURY BOX THE LAST THING YOU'D WANT TO SEE
5 WAS 12 PEOPLE WHO DIDN'T HAVE ANYTHING BETTER TO DO. WE'VE HAD
6 TO TAKE YOU AWAY FROM YOUR HOMES AND YOUR FAMILIES AND YOUR JOBS
7 AND YOUR OTHER DAILY PURSUITS. WE KNOW IT'S BEEN AN
8 INCONVENIENCE FOR YOU, AND WE KNOW IT'S BEEN A BURDEN ON YOU. SO
9 I THANK YOU FOR PERFORMING YOUR SERVICE. THE SYSTEM RELIES ON
10 YOU, AND THE PEOPLE IN THIS CASE HAVE RELIED ON YOU TO MAKE THIS
11 DECISION. SO WE CERTAINLY APPRECIATE YOU BEING HERE. THERE ARE
12 STILL SOME OTHER CASES THAT COULD COME UP. SO DO THEY NEED TO GO
13 BACK DOWNSTAIRS?

14 MADAME CLERK: YES, SIR.

15 THE COURT: OKAY. YEAH. YOU NEED TO GO BACK DOWNSTAIRS TO
16 THE JURY ROOM AND YOU'LL GET FURTHER INSTRUCTIONS AT THAT TIME.
17 THANK YOU AGAIN. SO YOU ARE DISCHARGED AT THIS TIME FROM THIS
18 CASE.

19 (JURY DISMISSED AT 11:31 A.M.)

20 THE COURT: OKAY. ANYTHING FROM THE STATE AT THIS TIME?

21 MS. KEDNOCKER: THE ONLY THING WOULD BE THE VICTIMS IN THIS
22 CASE, I BELIEVE, WOULD LIKE TO ADDRESS THE COURT AT THE
23 APPROPRIATE TIME.

24 THE COURT: ALL RIGHT. ANY POST-TRIAL MOTIONS?

25 MR. CREECH: YES, YOUR HONOR. I WOULD RENEW MY MOTION FOR

SENTENCING

1 A DIRECTED VERDICT, AND I ALSO MOVE FOR A NEW TRIAL IN THIS CASE
2 BASED ON THE LACK OF SUBSTANTIAL EVIDENCE IN THE CASE.

3 THE COURT: ALL RIGHT. THANK YOU. YOUR MOTIONS ARE
4 RESPECTFULLY DENIED. IS HE READY FOR SENTENCING AT THIS TIME?

5 MR. CREECH: YES, YOUR HONOR, HE IS. WE JUST NEED A
6 SENTENCING SHEET.

7 (PAUSE)

8 THE COURT: OKAY. IS THE STATE READY TO PROCEED?

9 MS. KEDNOCKER: YES, SIR, YOUR HONOR, WE ARE.

10 THE COURT: ALL RIGHT. IF THERE ARE VICTIMS WHO WISH TO
11 SPEAK, I'LL BE GLAD TO HEAR FROM ANYBODY. YOU JUST NEED TO STAY
12 BEHIND THE BAR RIGHT THERE WHEN YOU ADDRESS ME, AND PLEASE STATE
13 YOUR NAME FOR THE RECORD SO WE HAVE IT.

14 I CERTAINLY APPRECIATE EVERYONE'S DECORUM THROUGHOUT THIS
15 TRIAL, AND I APPRECIATE YOU CONTINUING THAT DURING THIS PART OF
16 THE TRIAL.

17 OKAY. COME ON AROUND.

18 MR. CREECH: THANK YOU, YOUR HONOR.

19 THE COURT: OKAY. YES, MA'AM, MS. KEDNOCKER.

20 MS. KEDNOCKER: MAY IT PLEASE THE COURT, YOUR HONOR. AS
21 YOUR HONOR KNOWS, THIS IS STEVE JULIAN AND HIS SON Minor
22 WOULD YOU LIKE FOR THEM TO ADDRESS THE COURT AT THIS TIME?

23 THE COURT: SURE. THAT WOULD BE FINE.

24 MR. STEVE JULIAN: GOOD AFTERNOON, YOUR HONOR.

25 THE COURT: YES, SIR.

SENTENCING

1 MR. STEVE JULIAN: I JUST WANT TO SAY THESE PAST TWO YEARS
2 HAVE BEEN A TREMENDOUS DOWNFALL IN MY SON'S LIFE. THIS MAN HAS
3 THRUST HIM INTO SOMETHING THAT HE DID NOT NEED TO BE THRUST INTO.
4 HE TOOK THE TRUST AND THE ABILITY OF MY SON AND JUST DESTROYED
5 IT. HE TRIED TO DESTROY MY SON WITH THIS ACT THAT HE COMMITTED.
6 HE HAS ALSO BEEN ACCUSED AND CHARGED WITH MY YOUNGER SON DOING
7 THE SAME THING THAT WAS NOT BROUGHT UP IN COURT. THIS MAN HAS
8 DETERMINEDLY TRIED TO RUN AND GET CAUGHT AGAIN AND AGAIN. AND I
9 JUST ASK THE COURT IF YOU WOULD PLEASE USE YOUR JUDGMENT AND
10 CONFINE HIM TO THE MAXIMUM THAT COULD BE DONE, YOUR HONOR.

11 THE COURT: THANK YOU, MR. JULIAN.

12 MS. KEDNOCKER: YOUR HONOR, THE STATE'S POSITION WOULD BE
13 THAT THIS HAS BEEN A TERRIBLY DIFFICULT CASE. THIS DEFENDANT
14 CERTAINLY HAD EVERY RIGHT TO GO TO TRIAL AND HE DID AND PLEAD NOT
15 GUILTY. BUT WE AT THIS POINT -- A JURY OF 12 OF HIS PEERS HAVE
16 CONVICTED HIM. BASED ON THE CHARGES HERE THAT HE'S BEEN
17 CONVICTED ON, WE WOULD ASK FOR THE MAXIMUM TIME AS WELL.

18 THE COURT: ALL RIGHT. AND THIS IS ZERO TO TWENTY; IS THAT
19 RIGHT?

20 MS. KEDNOCKER: YES, SIR, YOUR HONOR.

21 THE COURT: OKAY. ALL RIGHT. ANYONE ELSE WANT TO ADDRESS
22 THE COURT AS TO SENTENCING AT THIS TIME? I'LL BE GLAD TO HEAR
23 FROM ANYBODY. IS THAT ALL?

24 MS. KEDNOCKER: YES, SIR.

25 THE COURT: OKAY. YES, SIR, MR. CREECH.

SENTENCING

1 MR. CREECH: THANK YOU, YOUR HONOR. AND WE'D ASK THAT YOU
2 GIVE HIM LESS THAN 20 YEARS. HE JUST EXERCISED HIS
3 CONSTITUTIONAL RIGHT TO A JURY TRIAL IN THIS CASE, YOUR HONOR.
4 WE'D ASK THAT YOU NOT CONSIDER THAT IN SENTENCING AT ALL.

5 YOUR HONOR, HE'S 50 YEARS OF AGE. HE'S LIVED HIS LIFE --
6 IT'S MY UNDERSTANDING HE HAS NO PRIOR CRIMINAL RECORD. HE'S BEEN
7 GAINFULLY EMPLOYED THROUGHOUT HIS LIFE. HE WENT TWO YEARS TO
8 WOFFORD COLLEGE. HE WORKED AS A CHEMIST AND HE WORKED AS A
9 PHOTOGRAPHER AND WORKED IN THAT FIELD A NUMBER OF YEARS.

10 YOUR HONOR, WE'D JUST ASK THAT YOU GIVE HIM LESS THAN 20
11 YEARS IN THIS CASE BECAUSE OF HIS AGE AND SO THAT -- YOU KNOW,
12 TAKING INTO THE -- TAKING THAT INTO CONSIDERATION, WE FEEL THAT
13 YOU CAN METE OUT PUNISHMENT IN THIS CASE WITHOUT HAVING TO GIVE
14 THE MAX.

15 THE COURT: OKAY. THANK YOU, SIR.

16 YES, SIR, MR. SMITH. I'LL BE GLAD TO HEAR ANYTHING YOU WANT
17 TO TELL ME.

18 DEFENDANT: AT THIS TIME I HAVE NOTHING TO SAY, YOUR HONOR.
19 THANK YOU.

20 THE COURT: ALL RIGHT. OKAY. WELL, THERE ARE A LOT OF
21 THINGS I DON'T UNDERSTAND, SENSELESS THINGS THAT HAPPEN. BUT I
22 DO UNDERSTAND THE PAIN THAT CRIME INFLECTS ON PEOPLE AND THE TOLL
23 IT TAKES ON INNOCENT PEOPLE WHO DID NOTHING TO BRING IT ON,
24 ESPECIALLY WHEN THEY'RE VULNERABLE. AND GIVEN THE EXTENT OF THIS
25 CONDUCT -- AND I'M NOT -- IT DOESN'T MATTER TO ME ONE WAY OR THE

SENTENCING

1 OTHER WHETHER HE PLED GUILTY OR HAD A JURY TRIAL. I'M NOT TAKING
2 THAT INTO ACCOUNT WHATSOEVER. BUT BASED ON WHAT I'VE HEARD HERE
3 IN THE TRIAL AND THE TESTIMONY, THE SENTENCE OF THE COURT IS YOU
4 BE COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD
5 OF 20 YEARS. THANK YOU VERY MUCH.

6 MS. KEDNOCKER: THANK YOU, YOUR HONOR.

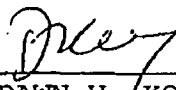
7 -----END OF REQUESTED TRANSCRIPT OF RECORD_(a)-----
8

CERTIFICATE

I, THE UNDERSIGNED, DAWN V. KOFFSKEY, OFFICIAL COURT REPORTER FOR THE 13TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 8TH AND 9TH DAYS OF NOVEMBER 2005.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

JUNE 30, 2006



DAWN V. KOFFSKEY
COURT REPORTER

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

D. Garrison Hill, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RANDALL LANE SMITH, SR.,

APPELLANT

FINAL BRIEF OF APPELLANT

JOSEPH L. SAVITZ, III
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. The trial judge committed reversible error by refusing to exclude the testimony of the State's expert in child sexual abuse, where neither her existence as an expert nor the substance of her testimony regarding the general behavior of sexually-abused children was disclosed to the defense until she was called as a witness at Smith's trial to help bolster the State's case, as this prosecutorial "strategy" violated Rule 5(a), SCRCrimP ("disclosure of evidence by the prosecution"), and denied Smith basic due process of law.

2. The trial judge committed reversible error by refusing to direct a mistrial after the purported victim's father described Smith as "that pervert," as this testimony improperly placed Smith's character in issue in violation of Rule 404, SCRE.

STATEMENT OF FACTS

On November 7 through 9, 2005, Randall Lane ("Randy") Smith, Sr., stood trial in Greenville County, before Judge D. Garrison Hill and a jury, on an indictment (04-GS-23-6874) charging him with second-degree criminal sexual conduct with a minor. The purported victim and chief complaining witness was Smith's nephew, who testified that Smith, who was in his late forties at the time, had sodomized him "[m]aybe twenty-five to twenty-six times" from August to December of 2003, when he was twelve. ROA p. 9, line 23 – p. 17, line 17. Smith, who had no prior record (ROA p. 214, line 6), flatly denied the allegations, characterizing them as "a bunch of lies." ROA p. 184, line 20 – p. 185, line 1; ROA p. 193, lines 6-13. The medical evidence did not support the State's case. ROA p. 55, lines 1-8. In addition to second-degree CSC with a minor, the judge instructed the jury on assault and battery of a high and aggravated nature and simple assault and battery. The jury nevertheless found Smith guilty as charged, and the judge sentenced him to imprisonment for twenty years.

ARGUMENT

I.

The trial judge committed reversible error by refusing to exclude the testimony of the State's expert in child sexual abuse, where neither her existence as an expert nor the substance of her testimony regarding the general behavior of sexually-abused children was disclosed to the defense until she was called as a witness at Smith's trial to help bolster the State's case, as this prosecutorial "strategy" violated Rule 5(a), SCRCrimP ("disclosure of evidence by the prosecution"), and denied Smith basic due process of law.

This case was essentially a credibility contest between Smith and his accuser, since the medical evidence did not indicate that any sexual abuse had occurred, much less the ongoing pattern of abuse he described. In an effort to remedy this deficiency, the State called a last-minute surprise witness, a pediatrician who had never met the purported victim nor examined any evidence or reports in the case. ROA p. 146, line 10 – p. 147, line 10. Her area of expertise was something called "the child sexual abuse accommodation syndrome," which she defined as

why children wait to disclose sexual abuse; the delayed reporting of sexual abuse; what happens; why children do the things that they do that explains the shame and the doubt, the blame, the helplessness, the secrecy.

ROA p. 153, lines 9-21. But more than being an expert in this area, the witness was a professional advocate with a "focus on sexual abuse with children and adolescents." ROA p. 139, lines 11-16.

Characterizing the State's tactics as "trial by ambush," defense counsel asked the judge "to exclude this witness under the provisions of Rule 5, [SCRCrimP.] based on that."

ROA p. 135, lines 20-23. She explained:

I don't even know her name, to be completely honest with you. I know it's on the witness list ... [b]ut I was never informed of this witness or the nature of her testimony until right before we broke for lunch. I've never been given a report. I've never been told by the Solicitor that there would be this type of witness, who was going to testify to behavior of sexual assault victims. ... [N]othing has been disclosed about this witness [or] the substance of her testimony.

ROA p. 135, lines 4-19. All Rule 5 required, the Assistant Solicitor responded, was that "we had to give prior notice that we were going to use reports, examinations. This witness has never examined this child. There is no examination out there to be had." ROA p. 135, line 25 – p. 136, line 6. Then she had trouble qualifying the witness as an expert. ROA p. 141, line 23 – p. 143, line 14.

Ultimately, the judge allowed the witness to testify, holding, "[A]s to the Rule 5 issue, [defense counsel] pointed out that this could be a trial by ambush, and he may be correct. But Rule 5 doesn't prohibit trial by ambush as to witnesses." ROA p. 148, line 24 – p. 149, line 20.

The State's expert then testified that children who have been sexually abused behave much like the purported victim in Smith's case had behaved. ROA p. 155, line 10 – p. 158, line 25. (*State v. Weaverling*, 337 S.C. 460, 523 S.E.2d 787, 794 (Ct. App. 1999), addresses the admissibility of "behavioral evidence concerning rape trauma.") The Assistant Solicitor expressly argued in closing that the expert's testimony explained the inconsistencies in the

purported victim's accusations and bolstered the State's case. ROA p. 205, line 13 – p. 206, line 1.

Contrary to the stated belief underlying the trial judge's ruling, trial by ambush is frowned upon in criminal (and civil) cases in South Carolina, "particularly where the record demonstrates the prosecutor knew what the witness would say several days in advance of the testimony." *State v. Barroso*, 320 S.C. 1, 462 S.E.2d 862, 867 (Cl. App. 1995), reversed on other grounds, 328 S.C. 268, 493 S.E.2d 854 (1997). The intent behind Rule 5 was to curtail prejudicial trial by ambush by either side. See, for example, *State v. Landon*, 370 S.C. 103, 634 S.E.2d 660 (2006), and *State v. Kennerly*, 331 S.C. 442, 503 S.E.2d 214 (Cl. App. 1998). To some extent, Rule 5 and the Due Process Clause of the Fourteenth Amendment overlap. See *State v. Proctor*, 358 S.C. 417, 595 S.E.2d 476 (2004).

The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. Due process does not mandate any particular form or procedure. Instead, due process is a flexible concept, and the requirements of due process in a particular case are dependent upon the importance of the interest involved and the circumstances under which the deprivation may occur.

State v. Owens, 346 S.C. 637, 552 S.E.2d 745, 759 (2001), quoting *South Carolina Department of Social Services v. Holden*, 319 S.C. 72, 459 S.E.2d 846, 849 (1995), overruled on other grounds by *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). Moreover, "debate between adversaries is often essential to the truth-seeking function of trials." *Gardner v. Florida*, 430 U.S. 349, 361 (1977). Returning to Rule 5, it should be noted that Subsection (a)(2) does exclude the substance of an expert's testimony from disclosure.

Since this case was a credibility contest and the surprise expert's testimony was explicitly used to bolster the credibility of the complaining witness, defense counsel should have been afforded an opportunity to contest that testimony under both Rule 5 and the Due Process Clause of the Fourteenth Amendment. Due to the State's strategy of omission in this regard, the trial judge should have excluded the testimony of its expert. His failure to do so entitles Smith to a new trial.

2.

The trial judge committed reversible error by refusing to direct a mistrial (or give the jury a curative instruction) after the purported victim's father described Smith as "that pervert," as this testimony improperly placed Smith's character in issue in violation of Rule 404, SCRE.

The State's final witness was the purported victim's father, who described Smith as "that pervert." ROA p. 163, lines 6 and 7. Defense counsel objected and moved for a mistrial, stating, "It's clearly improper character evidence in this case." ROA p. 163, lines 8-12; ROA p. 64, lines 2-6. The trial judge denied the motion because, in his opinion, "the statement appeared to be something volunteered and was in the form of some conclusory statement rather than any kind of factual evidence that was brought out improperly." ROA p. 180, lines 11-17. Nor did he give a curative instruction directing the jury to disregard the witness' comment. ROA p. 163, lines 13-15.

Rule 404(a) provides, "Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion." Subsection (b) states, "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." Under Rule 404, the State cannot prove a specific instance of CSC by introducing evidence suggesting the defendant is "a sexual pervert" in general. *State v. Nelson*, 331 S.C. 1, 501 S.E.2d 716 (1998); see, also, *State v. Blassingame*, 221 S.C. 169, 69 S.E.2d 601 (1952).

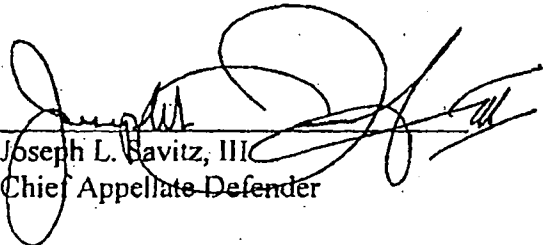
In order to receive a mistrial, the defendant must show error and undue prejudice. *State v. Harris*, 340 S.C. 59, 530 S.E.2d 626 (2000). "Generally, a curative instruction to

disregard the testimony is deemed to have cured any alleged error." *State v. Walker*, 366 S.C. 643, 623 S.E.2d 122, 129 (Ct. App. 2005). An improper attack on a defendant's credibility is less likely to be deemed harmless where his credibility is "of paramount importance in his defense." *State v. Morris*, 289 S.C. 294, 345 S.E.2d 477, 479 (1986).

Here, the purported victim's father called Smith "that pervert." The judge did not instruct the jury to disregard this improper comment. Moreover, Smith was the only witness who testified in his defense, so his credibility was outcome determinative. The Assistant Solicitor herself acknowledged that the case boiled down to a credibility contest between Smith and his accuser. ROA p. 181, lines 15-22; ROA p. 199, lines 15-22. Smith recognized that he would only be acquitted if the jury heard "from my lips that I'm not guilty of this." ROA p. 182, lines 21-24.

Under these circumstances, the victim's father's gratuitous character slur could not have been harmless error. For this reason, the Court should reverse Smith's conviction and remand for a new trial.

Respectfully submitted,



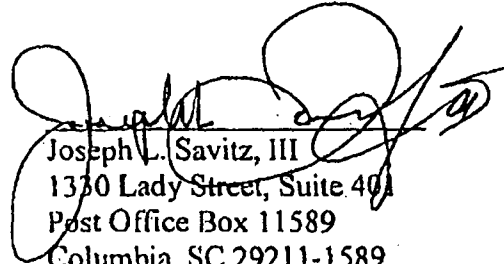
Joseph L. Savitz, III
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This 4th day of February, 2008.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

February 4, 2008



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

D. Garrison Hill, Circuit Court Judge

THE STATE,

RESPONDENT,

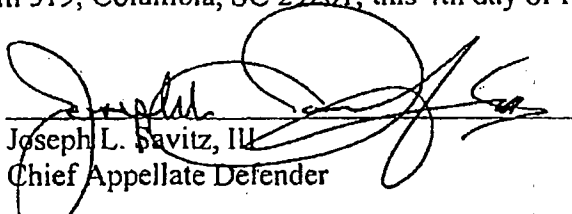
V.

RANDALL LANE SMITH, SR.,

APPELLANT

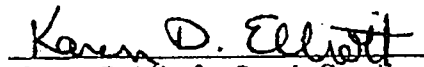
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 4th day of February, 2008.


Joseph L. Savitz, III
Chief Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 4th day of February, 2008.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: March 19, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
D. Garrison Hill, Circuit Court Judge

THE STATE,

Respondent,

vs.

RANDALL LANE SMITH, SR.,

Appellant.

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STATEMENT OF ISSUES ON APPEAL

I.

Rule 5(a), SCRCrimP, did not require the State to disclose the identity or testimony of a child sexual abuse expert witness, and the circuit court did not abuse its discretion in allowing the expert's testimony at trial.

II.

The circuit court did not abuse its discretion in denying Smith's motion for a mistrial after the Victim's father referred to Smith as a "pervert," because the limited testimony was not elicited by the State and was not so egregious as to preclude a fair trial.

STATEMENT OF THE CASE

On September 21, 2004, the Greenville County Grand Jury indicted Appellant Randall Lane Smith, Sr., on one count of second degree criminal sexual conduct with a minor. The matter was called for a jury trial on November 7, 2005, before the Honorable D. Garrison Hill, Circuit Court Judge.

Appellant was convicted as charged, and sentenced to twenty years incarceration. This appeal followed.

STATEMENT OF FACTS

On December 12, 2003, the thirteen year old nephew (the "Victim") of Appellant Randall Lane Smith, Sr. ("Smith"), disclosed to relatives that Smith had sexually molested him. Smith was arrested on December 24, 2003, and the Greenville County Grand Jury indicted him on September 21, 2004, on one count of second degree criminal sexual conduct with a minor. (Indictment 2004-GS-23-6874; Record on Appeal [R.], pp. 216-217). The case was called for a jury trial on November 7, 2005, before the Honorable D. Garrison Hill, Circuit Court Judge.

The Victim testified that over a period of several months in the fall of 2003, beginning when he was twelve years old, Smith sexually assaulted him on multiple occasions, and the assaults included oral sex and anal intercourse. He stated Smith used lotion during anal intercourse. (Trial Transcript [TT], pp. 67-75, 90-91; Record on Appeal [R.], pp. 9-17, 32-33).

The Victim testified he did not tell anyone what Smith was doing because he was afraid they would not believe him, or they would stop being around him because they thought he was homosexual and let Smith molest him. He was also afraid his father would get very angry if he found out. He stated the last assault occurred on December 11, 2003. (TT, pp. 73-75; R., pp. 15-17).

On December 12, 2003, the Victim finally told his brother and his cousin (Smith's son) about the molestation. His cousin called home and spoke with Smith, who immediately drove to their location and begged the Victim not to tell the police. The Victim subsequently told his aunt (Smith's wife) about the molestation, and she forced Smith to leave the house

the next day. (TT, pp. 76-80, 187-193, 210-217; R., pp. 18-22, 68-74, 89-96).

An emergency room physician testified he examined the Victim on December 15, 2003, and did not find any evidence of an "acute" assault. He stated, however, that due to the nature of the human anorectal region, which is made to expand for normal excretory functions, the lack of positive findings in a case of anal penetration does not indicate there was no assault. He also stated that use of a lubricant during the assault(s) would make positive findings during a subsequent exam less likely. (TT, pp. 166-173, 178-180; R., pp. 50-57, 63-64).

Nancy Henderson, M.D. ("Dr. Henderson"), was qualified as an expert in child sexual abuse and pediatrics. She testified she examined the Victim on January 15, 2004, and he disclosed he was sexually abused repeatedly over a period of several months. She stated children commonly do not disclose sexual abuse immediately, and may wait years before disclosing the abuse. (TT, pp. 248-253; R., pp. 125-130).

Dr. Henderson performed a "chronic exam" on the Victim, which included talking with him, getting his medical history, and performing a complete physical examination. The Victim's physical examination results were normal, which Dr. Henderson testified was "very, very common" in cases of anal penetration. (TT, pp. 254-257; R., pp. 131-134).

The State then called Meredith Loftis ("Loftis") to testify as an expert on "the hallmarks of child sexual assault." Smith objected on the ground the State had not turned over any reports or examination results from Loftis as required by Rule 5, SCRCrimP, but he did acknowledge her name was "on the witness list." The State contended disclosure was not required under Rule 5 because Loftis had not examined the Victim or issued any reports, and she was only going to testify about certain background factors of child sexual assault.

(TT, pp. 265-268; R., pp. 135-138).

After hearing Loftis' qualifications *in camera*, the circuit court determined she was qualified as an expert and her testimony was admissible under State v. Weaverling.¹ The court found there was no Rule 5 violation since Loftis did not generate any report or other paperwork that would have to be disclosed under Rule 5. (TT, pp. 269-279; R., pp. 139-149).

Loftis was then qualified before the jury as an expert in the field of child sexual assault and abuse, and testified it was common for children to delay reporting sexual assaults. She also testified that after they disclose sexual abuse, it was very common for a child victim to give more detailed accounts of the abuse over time. Loftis stated she never met or examined the Victim or any members of his family, and her testimony went only to general background information about child sexual assault. (TT, pp. 281-290; R., pp. 151-160).

The circuit court submitted the case to the jury on the indicted charge, as well as the lesser included offenses of assault and battery of a high and aggravated nature and simple assault and battery. The jury convicted Smith of second degree criminal sexual conduct with a minor, and the circuit court sentenced him to twenty years incarceration. This appeal followed.

¹337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999).

ARGUMENT

I. Rule 5(a), SCRCrimP, did not require the State to disclose the identity or testimony of a child sexual abuse expert witness, and the circuit court did not abuse its discretion in allowing the expert's testimony at trial.

Smith contends the circuit court erred in admitting Loftis' testimony because her identity and the substance of her testimony was not disclosed to the defense until she was called as a witness at trial, which violated Rule 5, SCRCrimP. On the contrary, Rule 5 did not require pre-trial disclosure of that information.

Upon the request of a defendant, Rule 5(a)(1)(D), SCRCrimP, requires the prosecution to permit the inspection and copying of "any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are in the possession, custody, or control on the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial" (emphasis supplied). The prosecution does not have to disclose the substance of statements made by prospective prosecution witnesses. Rule 5(a)(2), SCRCrimP.

The admissibility of evidence is left to the trial court's sound discretion. , State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002); State v. Mattison, 352 S.C. 577, 575 S.E.2d 852 (Cl. App. 2003). The trial court's ruling regarding the admissibility of evidence will not be reversed on appeal absent a prejudicial abuse of discretion amounting to an error of law. State v. Cheatham, 349 S.C. 101, 561 S.E.2d 618 (Cl. App. 2002). The qualification of an expert witness and admissibility of the expert's testimony are also matters within the trial

court's discretion. State v. Douglas, 367 S.C. 498, 626 S.E.2d 59, 63-64 (Ct. App. 2006) (citations omitted); Weaverling, 523 S.E.2d at 794; *see also* State v. Jamison, 372 S.C. 649, 643 S.E.2d 700, 701 (Ct. App. 2007).

In this case, Rule 5 did not require the State to disclose Loftis' existence as a prospective prosecution witness prior to trial, or the substance of her anticipated testimony. Smith's counsel acknowledged, however, that Loftis' name was on the State's witness list for trial. Since Loftis did not testify until almost the end of the second day, Smith had ample opportunity to inquire about, and prepare for, her testimony.²

In addition, it is undisputed Loftis never interviewed or examined Victim or his family, and never prepared any report or other written documentation in connection with this case or her testimony.³ Since there was no written documentation or report relating to her

²Smith's reliance on State v. Barroso, 320 S.C. 1, 462 S.E.2d 862 (Ct. App. 1005), as support for his contention the State engaged in "trial by ambush" as to Loftis, is misplaced. In Barroso, the State questioned a prosecution witness about threats made to the witness' wife, purportedly to imply the defendants were behind the threats. The Supreme Court found the testimony at issue was irrelevant because there was nothing connecting the threats to the defendants, and the prosecutor "engaged in 'trial by ambush'" because the prosecutor knew what the witness would say several days before trial but did not advise the defense. *Id.* at 876. In this case, however, the assistant solicitor informed the circuit court she only met Loftis the day of trial, and only talked to her about her testimony a couple of times by telephone. (TT, pp. 266-267, 278; R., pp. 136-137, 148). Further, as noted above, Loftis was on the State's list of potential trial witnesses, and the State was not attempting to raise any improper inference with her testimony.

³Smith misstates the record regarding Loftis' area of expertise, and misrepresents her professional status. Loftis was qualified as an expert in the field of child sexual assault and abuse, not "the child sexual abuse accommodation syndrome," which is the name of a publication regarding a study on children's delayed reporting of sexual abuse. (TT, pp. 281-285; R., pp. 151-155). Further, rather than testifying she is a "professional advocate with a 'focus on sexual abuse with children and adolescents,'" Loftis testified the individual and family therapy she provides at the Children's Advocacy Center focuses on sexual abuse with children and adolescents. (TT, p. 269; R., p. 139).

testimony, Rule 5(a)(1)(D) did not require disclosure of her identity or testimony, and the circuit court properly determined there was no Rule 5 violation.⁴ See State v. Trotter, 322 S.C. 537, 473 S.E.2d 452, 454-55 (1996) (Rule 5 did not require disclosure of rape counselor's notes of counseling sessions with victim, or even the fact that an examination had occurred; only medical reports or test results are encompassed within the Rule's requirements).

In South Carolina, behavioral evidence is admissible in cases involving sexual assault.

Expert testimony concerning common behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts is admissible. Such testimony is relevant and helpful in explaining to the jury the typical behavior patterns of adolescent victims of sexual assault. It assists the jury in understanding some of the aspects of the behavior of victims and provides insight into the sexually abused child's often strange demeanor.

Weaverling, 523 S.E.2d at 794 (internal citations omitted); see also State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993) (mental health counselor properly qualified as an expert and allowed to testify regarding rape trauma syndrome); State v. Bray, 342 S.C. 23, 535 S.E.2d

⁴Assuming for argument only that Rule 5 did require the State to disclose Loftis' identity and the substance of her anticipated testimony. Smith was not prejudiced by the admission of her testimony at trial. The gist of Loftis' testimony was that children commonly delay in reporting sexual abuse, and will often provide "piecemeal" disclosures. Prior to Loftis' testimony, Dr. Henderson testified, without objection, that "most often children do not disclose right away," and they wait "hours, weeks and often months, sometimes even years" before they disclose sexual abuse. (TT, p. 253; R., p. ____). Thus, Loftis' testimony was essentially cumulative to Dr. Henderson's testimony, and Smith was not prejudiced. See State v. Landon, 370 S.C. 103, 634 S.E.2d 660, 663 (2006) (violation of Rule 5 is not reversible unless prejudice is shown); State v. Wyatt, 317 S.C. 370, 453 S.E.2d 890, 891 (1995) (error in admitting evidence was harmless because the erroneously admitted evidence was cumulative to other evidence in the record).

636 (2000) (witness was qualified as an expert in counseling victims of child abuse). Personal interviews or examinations of the victim are not required before the expert can give behavioral evidence testimony. Weaverling, 523 S.E.2d at 794.

Loftis only testified about general behavioral characteristics of child sexual assault. She testified on direct and cross examination that she did not interview or examine the Victim or his family, and she did not offer any opinion, expert or otherwise, on whether the Victim had been sexually assaulted. (TT, pp. 288-290; R., pp. 158-160). The circuit court acted within its discretion in allowing Loftis' testimony, and its ruling should be affirmed.

II. The circuit court did not abuse its discretion in denying Smith's motion for a mistrial after the Victim's father referred to Smith as a "pervert," because the limited testimony was not elicited by the State and was not so egregious as to preclude a fair trial.

Smith also contends the circuit court erred in denying his motion for a mistrial after the Victim's father referred to him as a "pervert," and notes the court did not give a curative instruction for the jury to disregard the comment. The record supports the circuit court's determination that the comment at issue did not deprive Smith of a fair trial, and reveals that Smith never requested a curative instruction.

The decision to grant or deny a mistrial is committed to the sound discretion of the trial judge, whose decision will not be overturned on appeal absent an abuse of discretion. State v. Beckham, 334 S.C. 302, 513 S.E.2d 606, 610 (1999); State v. Ward, 374 S.C. 606, 649 S.E.2d 145, 148 (Ct. App. 2007). The court should only grant a mistrial when absolutely necessary, and the defendant shows both error and resulting prejudice that can be removed no other way. Ward, 649 S.E.2d at 148; State v. Edwards, 373 S.C. 230, 644 S.E.2d 66, 69 (Ct. App. 2007).

The Victim's father stated that in December 2003, his sister (Smith's wife) called him to come over to her house because she had something to tell him, and he thought it involved his younger son (the Victim's brother). (TT, pp. 294-95; R., pp. 161-162). When the assistant solicitor simply reiterated the testimony about him believing the issue involved the younger son, the Victim's father stated:

So she told me what [Victim] had told her, and I just went numb. I couldn't say nothing. I couldn't talk or nothing. I just stood there and stared at the wall. All I could just – all I could imagine was that pervert standing over my son.

(TT, p. 296; R., p. 163).

Smith objected, and the circuit court held a bench conference. After the conference, the State instructed the witness to limit his testimony, and continued with its direct examination.⁵ Smith did not ask the circuit court to instruct the jury to disregard the witness' reference to him as a pervert. (TT, p. 296; R., p. 163).

After the State rested its case, Smith moved for a mistrial based on the "pervert" reference. The circuit court found the witness' comment was volunteered, and it was a conclusory statement rather than evidence the State elicited improperly. The court further found the comment was "not the kind of thing that would undermine the fundamental fairness of this proceeding." (TT, p. 310; R., p. 180). After the court denied the motion, Smith still did not request a curative instruction to the jury.⁶

The record amply supports the circuit court's findings. The comment was an unsolicited, isolated statement by the Victim's father. After the bench conference, the assistant solicitor instructed the witness to limit his comments, and there were no similar statements. Clearly, an isolated statement by the Victim's father, who would understandably be emotional, did not warrant the extraordinary relief of a mistrial. See Ward, 649 S.E.2d at 148 (State's isolated reference to the shooter using a "gangster hold" did not warrant a mistrial).

⁵What occurred during the bench conference was never put on the record.

⁶Smith cannot now claim prejudice from the circuit court's failure to give a curative instruction since he never requested one. See State v. Smith, 307 S.C. 376, 415 S.E.2d 409, 419 (Ct. App. 1992) (curative instruction is not required until an objection is sustained and the objecting party timely requests a curative instruction).

The circuit court expressly considered the impact of the witness's statement on the fairness of the trial, and appropriately determined it was not so prejudicial as to undermine the proceeding. Therefore, the circuit court did not abuse its discretion in denying Smith's motion for a mistrial, and its determination should be affirmed.

CONCLUSION

Based on the foregoing, Respondent respectfully submits that Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

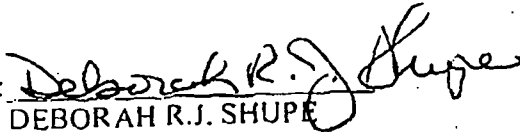
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February 4, 2008

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
D. Garrison Hill, Circuit Court Judge

THE STATE,

Respondent,

vs.

RANDALL LANE SMITH, SR.,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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February 4 2008

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Randall Lane Smith, Sr.,

Appellant.

Appeal From Greenville County
D. Garrison Hill, Circuit Court Judge

Unpublished Opinion No. 2008-UP-673
Submitted December 1, 2008 – Filed December 9, 2008

AFFIRMED

Chief Appellate Defender Joseph L. Savitz, III, of
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Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,

Assistant Attorney General Deborah R.J. Shupe, all of Columbia; and Solicitor Robert M. Ariail, of Greenville, for Respondent.

PER CURIAM: Randall Lane Smith, Sr., appeals his conviction and sentence for criminal sexual conduct with a minor, second degree, arguing the circuit court erroneously permitted a listed witness the State did not identify as an expert to testify as to her expert opinions at trial and erroneously refused to declare a mistrial after one of the State's witnesses described Smith as "that pervert." We affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to the issue of whether the circuit court erred in admitting the testimony of the State's expert in child sexual abuse: Rule 5(a)(1), SCRCrimP (requiring the State to disclose upon a defendant's request "books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof," as well as "any results or reports of physical or mental examinations, and of scientific tests or experiments" possessed by the State and intended for use as evidence at trial); State v. Landon, 370 S.C. 103, 108, 634 S.E.2d 660, 663 (2006) ("A violation of Rule 5 is not reversible unless prejudice is shown."); State v. Douglas, 367 S.C. 498, 507, 508, 626 S.E.2d 59, 63-64 (Ct. App. 2006) cert. granted June 7, 2007 (holding a circuit court's decision to admit expert testimony will not be reversed on appeal absent an abuse of discretion and a showing of both error and prejudice affecting the jury's decision); State v. Weaverling, 337 S.C. 460, 474, 523 S.E.2d 787, 794 (Ct. App. 1999) (finding expert testimony and behavioral evidence "concerning common behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts" are "admissible as rape trauma evidence to prove a sexual offense occurred" as long as their probative value outweighs any prejudicial effect).

2. As to the issue of whether the circuit court erred in refusing to declare a mistrial: State v. Price, 368 S.C. 494, 499, 629 S.E.2d 363, 366 (2006) (holding an appellate court will not set aside a conviction if the circuit

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

court's error was harmless); State v. Stanley, 365 S.C. 24, 33, 34, 615 S.E.2d 455, 460 (Ct. App. 2005) (placing the decision to grant or deny a the extraordinary remedy of a mistrial within the sound discretion of the circuit court, and requiring a showing of both error and resulting prejudice to support a mistrial).

AFFIRMED.

HEARN, C.J., SHORT and KONDUROS, JJ., concur.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Court of Appeals

Opinion No. 2008-UP-673 (S.C. Ct. App. filed 12/9/2008)
D. Garrison Hill, Circuit Court Judge
04-GS-23-6874

THE STATE,

RESPONDENT,

V.

RANDALL LANE SMITH, SR.,

PETITIONER

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

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ISSUES PRESENTED

1. The trial judge committed reversible error by refusing to exclude the testimony of the State's expert in child sexual abuse, where neither her existence as an expert nor the substance of her testimony regarding the general behavior of sexually-abused children was disclosed to the defense until she was called as a witness at Smith's trial to help bolster the State's case, as this prosecutorial "strategy" violated Rule 5(a), SCRCrimP ("disclosure of evidence by the prosecution"), and denied Smith basic due process of law.

2. The trial judge committed reversible error by refusing to direct a mistrial after the purported victim's father described Smith as "that pervert," as this testimony improperly placed Smith's character in issue in violation of Rule 404, SCRE.

STATEMENT OF FACTS

On November 7 through 9, 2005, Randall Lane ("Randy") Smith, Sr., stood trial in Greenville County, before Judge D. Garrison Hill and a jury, on an indictment (04-GS-23-6874) charging him with second-degree criminal sexual conduct with a minor. The purported victim and chief complaining witness was Smith's nephew, who testified that Smith, who was in his late forties at the time, had sodomized him "[m]aybe twenty-five to twenty-six times" from August to December of 2003, when he was twelve. ROA p. 9, line 23 – p. 17, line 17.

Smith, who had no prior record (ROA p. 214, line 6), flatly denied the allegations, characterizing them as "a bunch of lies." ROA p. 184, line 20 – p. 185, line 1; ROA p. 193, lines 6-13. The medical evidence did not support the State's case. ROA p. 55, lines 1-8.

In addition to second-degree CSC with a minor, the judge instructed the jury on assault and battery of a high and aggravated nature and simple assault and battery. The jury nevertheless found Smith guilty as charged, and the judge sentenced him to imprisonment for twenty years.

On direct appeal to the South Carolina Court of Appeals, Smith argued:

1. The trial judge committed reversible error by refusing to exclude the testimony of the State's expert in child sexual abuse, where neither her existence as an expert nor the substance of her testimony regarding the general behavior of sexually-abused children was disclosed to the defense until she was called as a witness at Smith's trial to help bolster the State's case, as this prosecutorial "strategy" violated Rule 5(a), SCRCrimP ("disclosure of evidence by the prosecution"), and denied Smith basic due process of law.
2. The trial judge committed reversible error by refusing to direct a mistrial after the purported victim's father described Smith as "that pervert," as this testimony improperly placed Smith's character in issue in violation of Rule 404, SCRE.

The Court affirmed in a per curiam opinion. *State v. Randall Lane Smith, Sr.*, Unpublished Opinion 2008-UP-673, filed December 9, 2008, and denied rehearing by written order dated January 26, 2009.

ARGUMENT

1.

The trial judge committed reversible error by refusing to exclude the testimony of the State's expert in child sexual abuse, where neither her existence as an expert nor the substance of her testimony regarding the general behavior of sexually-abused children was disclosed to the defense until she was called as a witness at Smith's trial to help bolster the State's case, as this prosecutorial "strategy" violated Rule 5(a), SCRCrimP ("disclosure of evidence by the prosecution"), and denied Smith basic due process of law.

This case was essentially a credibility contest between Smith and his accuser, since the medical evidence did not indicate that any sexual abuse had occurred, much less the on-going pattern of abuse he described. In an effort to remedy this deficiency, the State called a last-minute surprise witness, a pediatrician who had never met the purported victim nor examined any evidence or reports in the case. ROA p. 146, line 10 – p. 147, line 10. Her area of expertise was something called "the child sexual abuse accommodation syndrome," which she defined as

why children wait to disclose sexual abuse; the delayed reporting of sexual abuse; what happens; why children do the things that they do that explains the shame and the doubt, the blame, the helplessness, the secrecy.

ROA p. 153, lines 9-21. But more than being an expert in this area, the witness was a professional advocate with a "focus on sexual abuse with children and adolescents." ROA p. 139, lines 11-16.

Characterizing the State's tactics as "trial by ambush," defense counsel asked the judge "to exclude this witness under the provisions of Rule 5, [SCRCrimP,] based on that." ROA p. 135, lines 20-23. She explained:

I don't even know her name, to be completely honest with you. I know it's on the witness list ... [b]ut I was never informed of this

witness or the nature of her testimony until right before we broke for lunch. I've never been given a report. I've never been told by the Solicitor that there would be this type of witness, who was going to testify to behavior of sexual assault victims. ... [N]othing has been disclosed about this witness [or] the substance of her testimony.

ROA p. 135, lines 4-19. All Rule 5 required, the Assistant Solicitor responded, was that "we had to give prior notice that we were going to use reports, examinations. This witness has never examined this child. There is no examination out there to be had." ROA p. 135, line 25 – p. 136, line 6. Then she had trouble qualifying the witness as an expert. ROA p. 141, line 23 – p. 143, line 14.

Ultimately, the judge allowed the witness to testify, holding, "[A]s to the Rule 5 issue, [defense counsel] pointed out that this could be a trial by ambush, and he may be correct. But Rule 5 doesn't prohibit trial by ambush as to witnesses." ROA p. 148, line 24 – p. 149, line 20.

The State's expert then testified that children who have been sexually abused behave much like the purported victim in Smith's case had behaved. ROA p. 155, line 10 – p. 158, line 25. (*State v. Weaverling*, 337 S.C. 460, 523 S.E.2d 787, 794 (Ct. App. 1999), addresses the admissibility of "behavioral evidence concerning rape trauma.") The Assistant Solicitor expressly argued in closing that the expert's testimony explained the inconsistencies in the purported victim's accusations and bolstered the State's case. ROA p. 205, line 13 – p. 206, line 1.

Contrary to the stated belief underlying the trial judge's ruling, trial by ambush is frowned upon in criminal (and civil) cases in South Carolina, "particularly where the record demonstrates the prosecutor knew what the witness would say several days in advance of the testimony." *State v. Barroso*, 320 S.C. 1, 462 S.E.2d 862, 867 (Ct. App. 1995), reversed on other grounds, 328 S.C. 268, 493 S.E.2d 854 (1997). The intent behind Rule 5 was to curtail prejudicial trial by ambush by either side. See, for example, *State v. Landon*, 370 S.C. 103, 634 S.E.2d 660 (2006), and *State v. Kennerly*, 331 S.C. 442, 503 S.E.2d 214 (Ct. App. 1998). To some extent, Rule 5 and the Due

Process Clause of the Fourteenth Amendment overlap. See *State v. Proctor*, 358 S.C. 417, 595 S.E.2d 476 (2004).

The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. Due process does not mandate any particular form or procedure. Instead, due process is a flexible concept, and the requirements of due process in a particular case are dependent upon the importance of the interest involved and the circumstances under which the deprivation may occur.

State v. Owens, 346 S.C. 637, 552 S.E.2d 745, 759 (2001), quoting *South Carolina Department of Social Services v. Holden*, 319 S.C. 72, 459 S.E.2d 846, 849 (1995), overruled on other grounds by *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). Moreover, "debate between adversaries is often essential to the truth-seeking function of trials." *Gardner v. Florida*, 430 U.S. 349, 361 (1977). Returning to Rule 5; it should be noted that Subsection (a)(2) does exclude the substance of an expert's testimony from disclosure.

Since this case was a credibility contest and the surprise expert's testimony was explicitly used to bolster the credibility of the complaining witness, defense counsel should have been afforded an opportunity to contest that testimony under both Rule 5 and the Due Process Clause of the Fourteenth Amendment. Due to the State's strategy of omission in this regard, the trial judge should have excluded the testimony of its expert. His failure to do so entitles Smith to a new trial.

2.

The trial judge committed reversible error by refusing to direct a mistrial (or give the jury a curative instruction) after the purported victim's father described Smith as "that pervert," as this testimony improperly placed Smith's character in issue in violation of Rule 404, SCRE.

The State's final witness was the purported victim's father, who described Smith as "that pervert." ROA p. 163, lines 6 and 7. Defense counsel objected and moved for a mistrial, stating, "It's clearly improper character evidence in this case." ROA p. 163, lines 8-12; ROA p. 64, lines 2-6. The trial judge denied the motion because, in his opinion, "the statement appeared to be something volunteered and was in the form of some conclusory statement rather than any kind of factual evidence that was brought out improperly." ROA p. 180, lines 11-17. Nor did he give a curative instruction directing the jury to disregard the witness' comment. ROA p. 163, lines 13-15.

Rule 404(a) provides, "Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion." Subsection (b) states, "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." Under Rule 404, the State cannot prove a specific instance of CSC by introducing evidence suggesting the defendant is "a sexual pervert" in general. *State v. Nelson*, 331 S.C. 1, 501 S.E.2d 716 (1998); see, also, *State v. Blassingame*, 221 S.C. 169, 69 S.E.2d 601 (1952).

In order to receive a mistrial, the defendant must show error and undue prejudice. *State v. Harris*, 340 S.C. 59, 530 S.E.2d 626 (2000). "Generally, a curative instruction to disregard the testimony is deemed to have cured any alleged error." *State v. Walker*, 366 S.C. 643, 623 S.E.2d 122, 129 (Cl. App. 2005). An improper attack on a defendant's credibility is less likely to be

deemed harmless where his credibility is "of paramount importance in his defense." *State v. Morris*, 289 S.C. 294, 345 S.E.2d 477, 479 (1986).

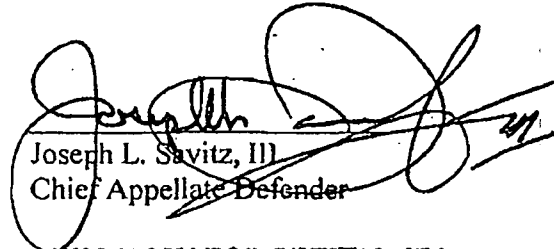
Here, the purported victim's father called Smith "that pervert." The judge did not instruct the jury to disregard this improper comment. Moreover, Smith was the only witness who testified in his defense, so his credibility was outcome determinative. The Assistant Solicitor herself acknowledged that the case boiled down to a credibility contest between Smith and his accuser. ROA p. 181, lines 15-22; ROA p. 199, lines 15-22. Smith recognized that he would only be acquitted if the jury heard "from my lips that I'm not guilty of this." ROA p. 182, lines 21-24.

CONCLUSION

As best counsel can determine from the Court of Appeals' summary unpublished opinion, it found that neither of these two errors was unduly prejudicial and thus harmless. The Court appears to have misapprehended that, as the Assistant Solicitor prosecuting the case herself acknowledged, the case was a credibility contest between Smith and his accuser. The medical evidence did not support the accusations. The surprise expert's testimony was explicitly used to bolster the credibility of the complaining witness. The purported victim's father described Smith as "that pervert." Errors bolstering a complaining witness or disparaging the character of a defendant are rarely harmless where the credibility of those parties is the crux of the case. See, for example, *State v. Morris*, 289 S.C. 294, 345 S.E.2d 477 (1986).

Neither of the two errors in this case could have been harmless. For this reason, the Court should grant certiorari and ultimately reverse Smith's conviction.

Respectfully submitted,



Joseph L. Savitz, III
Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 27th day of March, 2009

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

D. Garrison Hill, Circuit Court Judge

Opinion No. 2008-UP-673 (S.C. Ct. App. filed 12/9/2008)
04-GS-23-6874

THE STATE,

RESPONDENT,

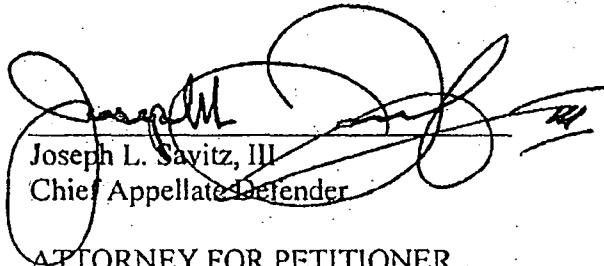
V.

RANDALL LANE SMITH, SR.,

APPELLANT

CERTIFICATE OF SERVICE

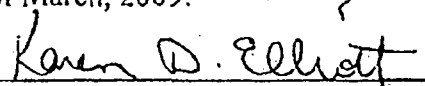
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on Deborah R.J. Shupe, Esquire, and the S.C. Court of Appeals this 27th day of March, 2009.



Joseph L. Sayitz, III
Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 27th day
of March, 2009.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: March 19, 2017

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal From Greenville County
D. Garrison Hill, Circuit Court Judge

THE STATE,

Respondent,

vs.

RANDALL LANE SMITH, SR.,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI
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STATEMENT OF ISSUES PRESENTED

I.

Rule 5(a), SCRCrimP, did not require the State to disclose the identity or testimony of a child sexual abuse expert witness, and the Court of Appeals properly held the circuit court did not abuse its discretion in allowing the expert's testimony at trial.

II.

The Court of Appeals properly held the circuit court did not abuse its discretion in denying Smith's motion for a mistrial after the Victim's father referred to Smith as a "pervert," because the comment was not so egregious as to preclude a fair trial.

STATEMENT OF THE CASE

On December 12, 2003, the thirteen year old nephew (the "Victim") of Appellant Randall Lane Smith, Sr. ("Smith"), disclosed to relatives Smith had sexually molested him. Smith was arrested on December 24, 2003, and the Greenville County Grand Jury indicted him on September 21, 2004, on one count of second degree criminal sexual conduct with a minor. (Indictment 2004-GS-23-6874; Record on Appeal [R.], pp. 216-217). The case was called for a jury trial on November 7, 2005, before the Honorable D. Garrison Hill, Circuit Court Judge.

The Victim testified that over a period of several months in the fall of 2003, beginning when he was twelve years old, Smith sexually assaulted him on multiple occasions, and the assaults included oral sex and anal intercourse. He stated Smith used lotion during anal intercourse. (Trial Transcript [TT], pp. 67-75, 90-91; Record on Appeal [R.], pp. 9-17, 32-33).

The Victim further testified he did not tell anyone what Smith was doing because he was afraid they would not believe him, or they would stop being around him because they thought he was homosexual and let Smith molest him. He was also afraid his father would get very angry if he found out. He stated the last assault occurred on December 11, 2003. (TT, pp. 73-75; R., pp. 15-17).

On December 12, 2003, the Victim finally told his brother and his cousin (Smith's son) about the molestation. His cousin called home and spoke with Smith, who immediately drove to their location and begged the Victim not to tell the police. The Victim subsequently told his aunt (Smith's wife) about the molestation, and she forced Smith to leave the house

the next day. (TT, pp. 76-80, 187-193, 210-217; R., pp. 18-22, 68-74, 89-96).

An emergency room physician testified he examined the Victim on December 15, 2003, and did not find any evidence of an "acute" assault. He stated, however, that due to the nature of the human anorectal region, which is made to expand for normal excretory functions, the lack of positive findings in a case of anal penetration does not indicate there was no assault. He also stated that use of a lubricant during the assault(s) would make positive findings during a subsequent exam less likely. (TT, pp. 166-173, 178-180; R., pp. 50-57, 63-64).

Nancy Henderson, M.D. ("Dr. Henderson"), was qualified as an expert in child sexual abuse and pediatrics. She testified she examined the Victim on January 15, 2004, and he disclosed he was sexually abused repeatedly over a period of several months. She stated children commonly do not disclose sexual abuse immediately, and may wait years before disclosing the abuse. (TT, pp. 248-253; R., pp. 125-130).

Dr. Henderson performed a "chronic exam" on the Victim, which included talking with him, getting his medical history, and performing a complete physical examination. The Victim's physical examination results were normal, which Dr. Henderson testified was "very, very common" in cases of anal penetration. (TT, pp. 254-257; R., pp. 131-134).

The State then called Meredith Loftis ("Loftis") to testify as an expert on "the hallmarks of child sexual assault." Smith objected on the ground the State had not turned over any reports or examination results from Loftis as required by Rule 5, SCRCrimP, but he did acknowledge her name was "on the witness list." The State contended disclosure was not required under Rule 5 because Loftis had not examined the Victim or issued any reports.

and she was only going to testify about certain background factors of child sexual assault. (TT, pp. 265-268; R., pp. 135-138).

After hearing Loftis' qualifications *in camera*, the circuit court determined she was qualified as an expert and her testimony was admissible under State v. Weaverling.¹ The court found there was no Rule 5 violation since Loftis did not generate any report or other paperwork that would have to be disclosed under Rule 5. (TT, pp. 269-279; R., pp. 139-149).

Loftis was then qualified before the jury as an expert in the field of child sexual assault and abuse, and testified it was common for children to delay reporting sexual assaults. She also testified that after initially disclosing sexual abuse, it was very common for a child victim to give more detailed accounts of the abuse over time. Loftis stated she never met or examined the Victim or any members of his family, and her testimony went only to general background information about child sexual assault. (TT, pp. 281-290; R., pp. 151-160).

The jury convicted Smith of second degree criminal sexual conduct with a minor, and the circuit court sentenced him to twenty years incarceration. This appeal followed.

In an unpublished opinion filed December 9, 2008, the South Carolina Court of Appeals affirmed Smith's conviction pursuant to Rule 220(b), SCACR, and subsequently denied his Petition for Rehearing by Order filed January 26, 2009. (App. pp. 1-3, 7). On March 27, 2009, Smith petitioned this Court for a writ of certiorari to review the Court of Appeals decision.

¹337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999).

ARGUMENT

I. Rule 5(a), SCRCrimP, did not require the State to disclose the identity or testimony of a child sexual abuse expert witness, and the Court of Appeals properly held the circuit court did not abuse its discretion in allowing the expert's testimony at trial.

Smith contends the circuit court erred in admitting Loftis' testimony because her identity and the substance of her testimony was not disclosed to the defense until she was called as a witness at trial, which violated Rule 5, SCRCrimP. On the contrary, Rule 5 did not require pre-trial disclosure of that information.

Upon the request of a defendant, Rule 5(a)(1)(D), SCRCrimP, requires the prosecution to permit the inspection and copying of "any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are in the possession, custody, or control on the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial" (emphasis supplied). The prosecution does not have to disclose the substance of statements made by prospective prosecution witnesses. Rule 5(a)(2), SCRCrimP.

The admissibility of evidence is left to the trial court's sound discretion. State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002); State v. Mattison, 352 S.C. 577, 575 S.E.2d 852 (Cl. App. 2003). The trial court's ruling regarding the admissibility of evidence will not be reversed on appeal absent a prejudicial abuse of discretion amounting to an error of law.

State v. Cheatham, 349 S.C. 101, 561 S.E.2d 618 (Ct. App. 2002). The qualification of an expert witness and admissibility of the expert's testimony are also matters within the trial court's discretion. Weaverling, 523 S.E.2d at 794; *see also* State v. Jamison, 372 S.C. 649, 643 S.E.2d 700, 701 (Ct. App. 2007).

In this case, Rule 5 did not require the State to disclose Loftis' existence as a prospective prosecution witness prior to trial, or the substance of her anticipated testimony. Smith's counsel acknowledged, however, that Loftis' name was on the State's witness list for trial. Since Loftis did not testify until almost the end of the second day, Smith had ample opportunity to inquire about, and prepare for, her testimony.

In addition, it is undisputed Loftis never interviewed or examined Victim or his family, and never prepared any report or other written documentation in connection with this case or her testimony.³ Since there was no written documentation or report relating to her testimony, Rule 5(a)(1)(D) did not require disclosure of her identity or testimony, and the circuit court properly determined there was no Rule 5 violation. *See* State v. Trotter, 322 S.C. 537, 473 S.E.2d 452, 454-55 (1996) (Rule 5 did not require disclosure of rape counselor's notes of counseling sessions with victim, or even the fact that an examination had occurred; only medical reports or test results are encompassed within the Rule's

³Smith misstates the record regarding Loftis' area of expertise, and misrepresents her professional status. Loftis was qualified as an expert in the field of child sexual assault and abuse, not "the child sexual abuse accommodation syndrome," which is the name of a publication regarding a study on children's delayed reporting of sexual abuse. (TT, pp. 281-285; R., pp. 151-155). Further, rather than testifying she is a "professional advocate with a 'focus on sexual abuse with children and adolescents,'" Loftis testified the individual and family therapy she provides at the Children's Advocacy Center focuses on sexual abuse with children and adolescents. (TT, p. 269; R., p. 139).

requirements).

Assuming for argument only that Rule 5 did require disclosure of Loftis' identity (beyond her inclusion on the State's witness list) and the substance of her anticipated testimony, Smith was not prejudiced by the admission of her testimony at trial. The gist of Loftis' testimony was that children commonly delay in reporting sexual abuse, and will often provide "piecemeal" disclosures. Prior to Loftis' testimony, Dr. Henderson testified without objection, that "most often children do not disclose right away," and they wait "hours, weeks and often months, sometimes even years" before they disclose sexual abuse. (TT, p. 253; R., p. ____). Thus, Loftis' testimony was essentially cumulative to Dr. Henderson's testimony, and Smith was not prejudiced. See State v. Landon, 370 S.C. 103, 634 S.E.2d 660, 663 (2006) (violation of Rule 5 is not reversible unless prejudice is shown); State v. Wyatt, 317 S.C. 370, 453 S.E.2d 890, 891 (1995) (error in admitting evidence was harmless because the erroneously admitted evidence was cumulative to other evidence in the record).

Smith's reliance on State v. Barroso, 320 S.C. 1, 462 S.E.2d 862 (Ct. App. 1005), as support for his contention the State engaged in "trial by ambush" as to Loftis, is misplaced. In Barroso, the State questioned a prosecution witness at trial about threats made to the witness' wife, purportedly to imply the defendants were behind the threats. The Supreme Court found the testimony at issue was irrelevant because there was nothing connecting the threats to the defendants, and the prosecutor "engaged in 'trial by ambush'" because the prosecutor knew what the witness would say several days before trial but did not advise the defense. *Id.* at 876.

In this case, the assistant solicitor informed the circuit court she only met Loftis the

day of trial, and only talked to her about her testimony a couple of times by telephone. (TT, pp. 266-267, 278; R., pp. 136-137, 148). Further, as noted above, Loftis was on the State's list of potential trial witnesses, and the State was not attempting to raise any improper inference with her testimony.

In South Carolina, behavioral evidence is admissible in cases involving sexual assault.

Expert testimony concerning common behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts is admissible. Such testimony is relevant and helpful in explaining to the jury the typical behavior patterns of adolescent victims of sexual assault. It assists the jury in understanding some of the aspects of the behavior of victims and provides insight into the sexually abused child's often strange demeanor.

Weaverling, 523 S.E.2d at 794 (internal citations omitted); *see also State v. Schumpert*, 312 S.C. 502, 435 S.E.2d 859 (1993) (mental health counselor properly qualified as a expert and allowed to testify regarding rape trauma syndrome); State v. Bray, 342 S.C. 23, 535 S.E.2d 636 (2000) (witness was qualified as an expert in counseling victims of child abuse). Personal interviews or examinations of the victim are not required before the expert can give behavioral evidence testimony. Weaverling, 523 S.E.2d at 794.

Loftis only testified about general behavioral characteristics of child sexual assault. She testified on direct and cross examination that she did not interview or examine the Victim or his family, and she did not offer any opinion, expert or otherwise, on whether the Victim had been sexually assaulted. (TT, pp. 288-290; R., pp. 158-160). The circuit court acted within its discretion in allowing Loftis' testimony, the Court of Appeals properly affirmed the circuit court's ruling, and further review is not warranted.

II. The Court of Appeals properly held circuit court did not abuse its discretion in denying Smith's motion for a mistrial after the Victim's father referred to Smith as a "pervert," because the comment was not so egregious as to preclude a fair trial.

Smith also contends the circuit court erred in denying his motion for a mistrial after the Victim's father referred to him as a "pervert," and notes the court did not give a curative instruction for the jury to disregard the comment. The record supports the circuit court's determination the comment at issue did not deprive Smith of a fair trial, and reveals Smith never requested a curative instruction.

The decision to grant or deny a mistrial is committed to the sound discretion of the trial judge, whose decision will not be overturned on appeal absent an abuse of discretion. State v. Beckham, 334 S.C. 302, 513 S.E.2d 606, 610 (1999); State v. Ward, 374 S.C. 606, 649 S.E.2d 145, 148 (Ct. App. 2007). The court should only grant a mistrial when absolutely necessary, and the defendant shows both error and resulting prejudice that can be removed no other way. Ward, 649 S.E.2d at 148; State v. Edwards, 373 S.C. 230, 644 S.E.2d 66, 69 (Ct. App. 2007).

The Victim's father testified when his sister (Smith's wife) called him to come over to her house because she had something to tell him, he thought it involved his younger son (the Victim's brother). (TT, pp. 294-95; R., pp. 161-162). When the assistant solicitor simply reiterated the testimony about him believing the issue involved the younger son, the Victim's father stated:

So she told me what [Victim] had told her, and I just went numb. I couldn't say nothing. I couldn't talk or nothing. I just stood there and stared at the wall. All I could just – all I could imagine was that pervert standing over my son.

(TT, p. 296; R., p. 163).

Smith objected, and the circuit court held a bench conference. After the conference, the State instructed the witness to limit his testimony, and continued with its direct examination.¹ Smith did not ask the circuit court to instruct the jury to disregard the witness' reference to him as a pervert. (TT, p. 296; R., p. 163).

After the State rested its case, Smith moved for a mistrial based on the "pervert" reference. The circuit court found the witness' comment was volunteered, and it was a conclusory statement rather than evidence the State elicited improperly. The court further found the comment was "not the kind of thing that would undermine the fundamental fairness of this proceeding." (TT, p. 310; R., p. 180). After the court denied the motion, Smith still did not request a curative instruction to the jury.²

The record amply supports the circuit court's findings. The comment was an unsolicited, isolated statement by the Victim's father. After the bench conference, the assistant solicitor instructed the witness to limit his comments, and there were no similar statements. Clearly, an isolated statement by the Victim's father, who was understandably emotional, did not warrant the extraordinary relief of a mistrial. See Ward, 649 S.E.2d at 148 (State's isolated reference to the shooter using a "gangster hold" did not warrant a mistrial).

¹What occurred during the bench conference was never put on the record.

²Smith cannot now claim prejudice from the circuit court's failure to give a curative instruction since he never requested one. See State v. Smith, 307 S.C. 376, 415 S.E.2d 409, 419 (Ct. App. 1992) (curative instruction is not required until an objection is sustained and the objecting party timely requests a curative instruction).

The circuit court expressly considered the impact of the witness's statement on the fairness of the trial, and appropriately determined it was not so prejudicial as to undermine the proceeding. Therefore, the circuit court did not abuse its discretion in denying Smith's motion for a mistrial, the Court of Appeals properly affirmed the circuit court's ruling on this issue, and further review is not warranted.

CONCLUSION

Based on the foregoing, Respondent respectfully submits the Petition for Writ of Certiorari to the Court of Appeals should be denied.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DEBORAH R.J. SHUPE
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BY: 
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ATTORNEYS FOR RESPONDENT

April 17, 2009

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal From Greenville County
D. Garrison Hill, Circuit Court Judge

THE STATE,

Respondent,

vs.

RANDALL LANE SMITH, SR.,

Petitioner.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the Return to Petition for Writ of Certiorari to the Court of Appeals on Petitioner by depositing two copies in the United States mail, postage prepaid, addressed to:

Joseph L. Savitz, III, Esquire
Chief Attorney
SC Commission on Indigent Defense
Division of Appellate Defense
P. O. Box 11589
Columbia, S. C. 29211

I further certify that all parties required by Rule to be served have been served.

This 17th day of April, 2009.

Ellen R. DuBois
ELLEN R. DuBOIS
Assistant Attorney General

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1498

October 7, 2009

Chief Appellate Defender Joseph L. Savitz, III
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: The State v. Smith, Randall Lane
2004-GS-23-06874

Dear Counsel:

The Court has issued the following Order on your Petition for Writ of Certiorari in the above entitled matter:

"Petition for Writ of
Certiorari Denied.

s/ Jean H. Toal C.J.
For the Court

October 7, 2009."

By copy of this letter we are advising all interested parties of the action of the Court in this matter.

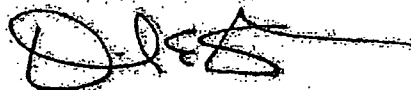
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ATTORNEY GENERAL'S
OFFICE

Chief Appellate Defender Joseph E. Savitz, III

Page Two

October 7, 2009

Very truly yours,



CLERK

DES/dmh

cc: ✓ Assistant Attorney General Deborah R. J. Shupe

The Honorable Robert Mills Ariail

The Honorable Paul B. Wickensimer

The Honorable Jeannette Barber

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Greenville)Randall Lane Smith 312339)

Full name and prison number, if any, of applicant.)

v.)

The State)

Name of Respondent)

APPLICATION FOR

POST-CONVICTION RELIEF

2010-CP-23- 8027

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
2010 SEP 27 P 12:54

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 it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant 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 applicant was convicted.

1. Place of detention (SCDC) McCormick Correctional Inst.
386 Redemption Way, McCormick, SC 29899
2. Name and location of Court which imposed sentence Court of General Sessions, Greenville,
SC
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
(a) 2004-GS-23-6878 CSCM 2nd deg. 16-03-655(2)
(b) _____
(c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
(a) November 8, 2005 - 20 years
(b) _____
(c) _____

5. 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 _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? Yes _____
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
- i. SC Court of Appeals _____
- ii. The Supreme Court of SC _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Reaffirmed _____
- ii. Cert denied _____
- iii. _____
- (c) the date of each such result:
- i. December 9, 2008 _____
- ii. October 7, 2009 _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Conviction was in violation of SC Constit. and the 5th, 6th, 8th and 14th Amend. of the US Const.
- (b) The Court was without jurisdiction _____
- (c) Prosecutorial misconduct _____
- (d) Ineffective assistance of trial and appellate counsel/s _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) See attached pages 3(a) and 3(b)

(b) See attached pages 3(b) to 3(d)

(c) See Pages 3(e) to 3(g)

(d) See pages 3(h) to 3(p)

11. 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 petitions in State or Federal Courts for habeas corpus or post-conviction relief?

No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) NO

(d) any other petitions, motions or applications in this or any other Court?

No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. NA

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. NA

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. NA

ii. _____

iii. _____

iv. _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) Applicant asserts that his conviction was in violation of his rights granted and guaranteed by the South Carolina Constitution and the 5th, 6th, 8th, and 14th Amendments to the US Constitution.

i. Applicant was denied counsel for arraignment and as a result his bond was set excessively high.

ii. At a subsequent bond hearing to ask for a lesser bond, he was denied bond due to a fraudulent letter shown to the judge. The defendant was in video court and was unable to challenge said letter.

iii. Due process and equal protection was denied the applicant as he was held without bond or indictment for an excessive time.

iv. Applicant was further denied bond at a third hearing 18 months after his arrest due to extrinsic fraud upon the court and was further denied due process.

v. Applicant was denied a preliminary hearing even though he requested one in a timely manner; on or about the third day after his arrest. Applicant understands that a preliminary hearing is not a Constitutional right, and however it is a statutory law and that is part of due process. § 22-5-320 and Article I, § 11 of the state's Constitution.

vi. Applicant's right to a speedy trial was denied. Trial was almost 23 months after his arrest.

vii. Applicant was without bail for 19 months and this prejudiced his ability to procure witnesses in his favor.

10(a) continued

viii. The rules in SCRCrimP are by definition due process in the State of South Carolina; and the prosecution violated Rule 3(c) and (d). Warrants are to be acted upon by the solicitor within 90 days of receipt from the Clerk of Court. Rule 3(d) states "The solicitor may petition the circuit court for an order delaying action on the warrant, as set forth above, for successive 90 day periods if the circuit court specifically finds good cause for such delay for each successive ninety day period." Additionally 3(e) states, "Any action taken pursuant to paragraph (b), (c), and (d) above shall be entered in the records of the Clerk of Court..."

Applicant was arrested on 12-24-03 and his indictment was not true billed on 9-21-04. This was 273 days after his arrest warrant and into the fourth 90 day period without the required approval of the court. Had the solicitor filed the required motions to extend the warrant, the applicant would have been afforded the right to be heard on each successive 90 day delay. Also the court would have to find good cause to grant the extension. Since no motions were filed, good cause was not shown and applicant was denied due process. Applicant asserts that the warrant had expired and the indictment is a nullity.

10(b) The Court was without jurisdiction to hear the case.

i. The applicant filled out the request form for a preliminary hearing at the Greenville County Detention Center on or about 12-26-03 asking for a preliminary hearing. Applicant is aware that a preliminary hearing is

Not a constitutional right, however it is a statutory law and as such it is a part of due process. See § 22-5-320. The solicitor had 273 days to a preliminary hearing before he presented the case to the grand jury. This should have been ample time to do so.

In St v Funderburk the Supreme Court wrote, "We think it elementary, with no need for citation of authority, that the acts of a court with respect to matters as to which it has no jurisdiction are void. The jurisdiction of a grand jury is co-extensive with the criminal jurisdiction of the court in which it is impaneled and for which it is to make inquiry." The court held that since no preliminary hearing was held and the defendant had requested it in a timely manner, the magistrates court still held jurisdiction and the indictment was a nullity and subject matters may be raised at any time, even on the first appeal. This case is still cited in the SC State Constitution, 2010 edition.

The State's Attorney General's remark in § 22-5-320 states, "A municipal judge who issues an arrest warrant in a matter beyond his jurisdiction has a duty to hold a preliminary hearing when such is properly demanded." As such as it is in this case, the applicant claims that he is being illegally deprived of his liberty and his conviction and sentence should be vacated.

- ii. Rule 3(c) and (d) were ignored by the solicitor. If Rule 5 is sacrosanct, Rule 3 should be just as important as it comes before Rule 5. Applicant asserts that Rule 3

is part of due process entitled to each of us. For the warrant to have still been valid at the time it was presented to the grand jury, the solicitor would have had to have filed three separate motions to extend the warrant and as stated the court must find good cause for each successive delay. Since a motion was required the applicant would have had a chance to be heard on this issue and applicant contends that since the warrant had expired the indictment is a nullity.

As to the Equal Protection Clause, former Ware Shoals High School Principal Jane Blackwell, had her warrant for obstruction of justice, dismissed with prejudice by a judge in a Greenwood court, in March or April of 2009. Counsel for Ms Blackwell presented argument to the court that more than ninety days had passed and the validity of the warrant had expired. The court agreed and as such the applicant contends that he is entitled to the same protections as Ms Blackwell.

Therefore the applicant is being held illegally because the indictment was obtained from an expired warrant and it is a nullity and the court was without jurisdiction to try the case and his conviction and sentence should be vacated

- i. The applicant alleges fraud upon the court by the prosecutor at this third bond hearing. Applicant was at the time being held without bond and the prosecutor asked the judge to continue his case without bond because she needed more time to have DNA evidence tested that she stated was going to convict the defendant. The defendant had already volunteered a DNA blood sample to the prosecution knowing his DNA was not on the condom being tested. Applicant alleges that this statement was a deliberate attempt to keep him incarcerated further without bond by extrinsic fraud.

The prosecutor already knew that this condom was irrelevant to this case because it contained both female vaginal epithelial cells as well as semen. The defendant was not charged having sex with a female, but was charged with having sex with a male. Further proof the prosecutor knew this is the fact that she had already sampled and tested the defendant's wife's DNA and it was a partial match to the epithelial cells. Furthermore, the only additional testing of DNA was of a blood sample of the defendant's daughter; obviously another female.

- ii. Applicant further asserts that the prosecutor misstated the truth about the DNA at trial, during preliminary motions. She also convinced applicant's counsel to agree

not to mention the tested condom at trial. Page 8 of the T.T. lines 19-22 She states to the court, "Your Honor, At the end of ~~of~~ the day, they [SLED] can't determine whose DNA is on that condom. They can't tell if it's definitely male, but it could be female, it might not be." This is obviously not true or she would not have tested the DNA of two females. SLED's analysis report states, "semen indicated," and the epithelial cells were a partial match to the wife's DNA.

This is a further fraud upon the court to try and cover her deception at the bond hearing. The prosecutor's veracity is so suspect as to have denied the applicant any ~~a~~ guarantee of a fair trial. If the court can't depend on an officer of the court to be truthful, it's a given that the applicant was unfairly treated. Prosecutor's agreement with counsel not to mention ^{the} condom left out an avenue for counsel's impeachment of the applicant's wife and her agenda to convict him, because she brought the condom to the investigator.

- iii. Applicant contends that his wife was working as an agent of the State as an end run around the 5th Amendment. She admits in her testimony ~~that~~ on page 233 of the TT, lines 16 and 17 that, "The reason why I wrote him was hoping he would put in writing what he did." Again on page 225 of the TT she stated in lines 3 and 4 "... and I was already told to make sure that I try to talk him back into coming back into the state." This is an admission that she was working with and for the state. She also made statements over the phone

10(c) iii. continued

to the defendant while he was incarcerated at CDC, that if he would just write to her and to her brother Steve and simply say he was sorry without saying why, that she would have the charges dropped. These are the letters the prosecution used to convict the applicant and it was a fraudulent end run around Miranda and the 5th Amendment.

Applicant contends that either the investigator or a prosecutor compelled his wife to do this and that she alone was not so clever as to have done this. Additionally the prosecutor failed to turn over all of the letters he wrote to his wife. These are letters that explained specifically what he was sorry about. These were omitted from discovery; a Rule 5 violation, and they were exculpatory.

Conspicuously missing was a letter the believes was forged. This is the letter his wife showed the judge at his second bond hearing where his bond was denied. Applicant's wife showed a letter to the judge that she claimed he wrote and that it stated that he would kill her and their two children if he got out on bond. If this letter were real the prosecutor could have used it to attack his character. So why was it not included or why was it not analysed by the State's handwriting expert who testified? The applicant's contention is that this was a fraudulent means to convict him and it was prejudicial.

10(d) Ineffective assistance of trial and appellate Counsels.

- i. Trial counsel allowed the above issues listed in sections 10(a), (b), and (c) to go unchallenged. This was prejudicial to the applicant.
- ii. Counsel waited 14 months to file a motion for a faster and speedy trial and the applicant was being held without bond and had asked to file the motion at least 6 months prior.
- iii. Counsel failed to obtain his medical records from his doctors. This was prejudicial because the records could have been used to impeach both the complaining witness and his wife. The records could also have been used to direct questions to the State's medical experts, especially the fact that he was being treated for erectile dysfunction and it would have not have been possible for him to have committed the alleged anal assaults.
- iv. Counsel failed to procure expert witness testimony to counter the State's medical experts and psych experts. He at least could have procured affidavits from the applicants doctors. This was very prejudicial to the applicant.
- v. Counsel failed to investigate the complaining witness.
- vi. Counsel failed to investigate the father of the complaining witness. The applicant informed counsel he knew the father has been investigated at least twice by DSS for abuse of his two sons and also neglect. Also the father had bragged how he had threatened and intimidated the DSS case workers.

- Vii. Counsel was poorly prepared to crossexamine the witness
- Viii. Counsel failed to attack the credibility of the complaining witness and the applicant's wife. As the prosecutor stated this was a contest of credibility between the applicant and his accuser. Even though the testimony of the accuser was contradictory counsel never even pointed this out to the witness or the jury; same with the wife.
- ix. Counsel was made aware of the applicant's erectile dysfunction yet failed to question the State's medical experts or to argue that it would not have been possible for him to have committed the alleged anal assaults. He also could have questions about how many assaults it would have taken for medical evidence to show abuse that could be seen by the doctors.
- X. The applicant informed counsel that not all of the letters written to his wife had been turned over to the defense. Dawn Edwards warned the applicant to ask his lawyer to make sure he requested the rest of the letters. She also stated that she was not to analyse certain letters. He believes one of those was a forgery.

10 (d) Continued

xi. Counsel failed to ask for curative ^{instructions} ~~objection~~ on his objections; nor did he point out that the ^{court} judge did not rule on some objections. This was pointed out by the State's Response to applicants appeal. The brother-in-law referred to the applicant as "that pervert," and in the State's response on appeal pointed out that the judge called both parties to the bench off record and he neither ruled on the objection or ~~did he~~ give a curative instruction. This was prejudicial both at trial and again on appeal.

xii. Counsel failed to object in a timely manner to a great deal of hearsay that should not have been covered by exception; especially from the applicant's wife. As soon as a witness said, "he said," he should have stood and cut off the statement with an objection.

xiii. ^{clearly} The applicant's wife ~~clearly~~ had an agenda to convict him and he had pointed this out in both letters and conversation with counsel; yet counsel failed to pursue this. He did ask about divorce but did not explore this as a motive for her actions and slander.

xiv. Counsel should have filed a motion in limine to preclude use of the word "victim," as it is prejudicial. The common understanding of the term "victim," certainly

Implies that a person has been the subject of a particular wrong or crime and its use under these circumstances improperly suggest that a crime has been committed such that the presumption of innocence is jeopardized. It also bolsters the credibility of the accuser when he is referred to as "the victim." This is burdenshifting and many state and federal courts have dealt with this issue. Most prefer the term "complaining witness" or "accuser" to even "the alleged victim." The 6th Amendment guarantees one's right to confront the "witnesses against him," not his victims.

The court, the prosecution, and especially the Counsel for defense should never use the word "victim" as it shows their belief that a crime has befallen this person. Yet applicant's counsel in his opening statement on page 56 II lines 17 and 18, defense counsel says, "Now, Patrick, the person in this case, the victim in this case..." If he was to call anyone in this case "the victim," it should have been his client. It's as if he believes the complaining witness was the ^{sup} subject of a crime. How can this not be prejudicial? And this was in the first minutes of the trial. He also used the word "victim" in his closing argument.

The judge also used the word "victim" on page 301 in an instruction to disregard hearsay by the "victim" and several times in his final instructions to the jury. The prosecutor used it repeatedly. The jury heard "victim" no less than 25 times during the trial. Instructions to the jury should avoid the word "victim". See U.S. v. Safley, 408 F2d 603, 605.

- XV. Counsel failed to object to the judge's improper comment when he introduced the prosecutor. Page 49 of the Tl line 25, the judge says, "Ms Kednocker is one of the 'fine' assistant solicitors we have in this circuit." This was improper bolstering and is a prejudicial error. While not grounds for reversal it is cumulative.
- XVI. Counsel failed to object several times when the prosecution sought to bolster sympathy for the complaining witness and his father when she repeatedly pointed out his mother had abandoned him and for describing his father as a single parent. This was prejudicial and was not objected.
- XVII. During Voir Dire it became apparent that one of the potential jurors had to be rejected due to her previous involvement with applicant's family in another allegation against him. The odds of her even being in the jury pool are astronomical and ^{are} suspect to the applicant. This juror, Ms Carol Pee had been the foster parent to the applicants' daughter in a custody battle with the maternal grandparents who had sued the applicant and his wife for custody. DSS investigated the allegations for nearly 3 years. The Child finally admitted to the therapist that she had been coerced to make the false claims against her parents and ^{she} was returned to her parents.

Ms Pee admitted to talking to the applicant's wife and the other witness in the hallway in the presence of the other jurors. The mere fact that the applicant's wife was

and the other witnesses were in close proximity to the jurors leads the applicant to suspect that the jury pool may have been tainted. With the wife's obvious agenda and deception she may have said things that the jurors should not have heard.

The applicant addressed this concern with counsel and he refused to call this issue into question with the court. On page 245 of the TT the judge did admonish the jurors not to speak to any of the witnesses in the halls. He, however, did not address this with the witnesses. Counsel failed to protect the applicant's rights and interest and this raises the question: was the applicant prejudiced by this?

Xviii Applicant was his only witness and had to testify with at the end of the second day of the trial with less than two hours of sleep. The applicant suffers from severe sleep apnea and is required to sleep at all times with a CPAP medical device as he stops breathing as soon as he dozes off to sleep. On page 41, of the trial TT, lines 7-10, the judge instructs Deputy McCall, "And the Detention Center is instructed to take care of him, whatever health needs at this time. So just make sure that -- if some problem or some accommodation needs to be made, please let me know about that, All right?"

At the beginning of the second day the applicant informed counsel about being exhausted and physically ill. Counsel refused to inform the court. Applicant was kept in the 'drunk tank' til about 3 AM then was moved

to the infirmary at about 3:30 AM where he was finally given a bed and his CPAP device. The applicant was awakened for breakfast at 5:00 AM then moved to the "court hold tank" till about 7:00 AM, when he was transported to the courthouse to wait in a cell for court to start. Applicant's apnea is so severe that his doctor advised him not to even nap without the CPAP.

The applicant had to struggle to stay awake in court due to sleep deprivation and was not alert or focused. He was not fully able to assist in his own defense. Due to his apnea condition he suffers from symptoms similar to narcolepsy. It adversely affects cognition and memory. Sleep deprivation is recognized by the United Nations as a form of torture, and the applicant felt tortured during the second day of trial; perhaps for him the most important day of the trial as he had to take the witness stand in his own behalf.

The applicant took the witness stand at 4:00 PM. He informed the judge that he had only had two hours sleep. Since it was so late in the day his counsel should have asked the court to recess for the day; the applicant asked him to ask. He refused. Applicant contends this was not too much to ask since the court had already agreed to hear closing arguments the next day.

Furthermore it is the applicant's contention that since his credibility was of paramount importance, he was unfairly prejudiced by exhaustion and sleep deprivation. He could not remember all that he wanted to say to the jury nor could he properly respond to questions from his counsel or the prosecutor. It was almost like being under the influence of a drug or alcohol.

This was extremely ~~prede~~ prejudicial to the applicant and he ask that his trial and conviction be reversed or vacated.

- ix. The applicant repeatedly ask his counsel to setup a poly graph exam with the prosecution. He refused, while the applicant is aware that such exams are not admissable in court he feels that once he passed the exam, and he was confident that he would, the prosecution would have had to be more careful and a lot of the perjured testimony would not have been stated on the witness stand. Applicant avows that this adversely prejudiced his trial.
- xx. Counsel's closing argument sounded at times more like that of a prosecutor than that of defense. He pointed out testimony that would allow them to convict on the lesser included charges and it made him appear more guilty than innocent. The applicant declares this to have been prejudicial.
- xxi. Appellate counsel failed to raise the previously mentioned jurisdictional issues on appeal. As stated in St. Funderburk and many others, "matters of jurisdiction may be raised at any time, even on the first appeal." This deprived the applicant of his right to address these issues in a more timely fashion and was prejudicial.
- xxii. Applicant informed appellate counsel that Judge Konduros should have been disqualified to hear his appeal as she not only heard his divorce some few months prior, but she also was the attorney for DSS in his custody battle with his daughter.

The applicant means no disrespect to Judge Konduros nor does he feel that she would consciously be prejudiced against him, however due to the volume of cases she has dealt with she may have had some subconscious prejudice, however slight. Appellate counsel took no action.

xxiii. Closing issue while the applicant posits that many single issues merit vacation of of his conviction and sentence, the cumulative weight of all the issues ^{brought} ~~brought~~ forth above must bear benefit for the applicant. The applicant further ask that the court appoint him counsel for a PCR hearing as he is not an attorney. With all of this in mind he respectfully asks the court to rule on every issue and find in his favor as he still maintains that he is innocent of his charge and conviction.

(d) the date of each such disposition:

- i. NA
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. NA
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. NA
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. NA
- ii. _____
- iii. _____

15. If any ground set forth in (9) 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) These issues were not addressable on appeal
- (b) Although jurisdiction could have been appealed counsel failed to do so
- (c) These issues were not addressable on appeal
- (d) same as A+c

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? No
- (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 application with respect to this conviction, which you filed? None

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Thomas M. Creech, Jr P.O. Box 10411, Greenville, SC 29603

ii. Joseph L. Savitz, III P.O. Box 11589 Columbia, SC 29211-1589

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial & Sentence Court of General Sessions

ii. SC Court of Appeals and SC Supreme Ct

iii. _____

18. State clearly the relief you seek in filing this application.

Vacation of conviction and sentence

19. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Greenville)

Randall Lane Smith 312339)

✓)

The State)

Application For

POST-CONVICTION RELIEF

CERTIFICATE OF SERVICE

I, Randall Lane Smith, SCDC # 312339, certify that I have served the Greenville County Clerk of Court a copy of my application for Post-Conviction Relief by depositing said copy in the United States Mail addressed to:

Greenville County Clerk of Court
305 E. North St. Rm 224
Greenville, SC 29601-2121

I further certify that I have requested the clerk to forward clock stamped copies to all parties including myself.

This 16 day of September, 2010.

Sworn to and subscribed before me

This 16 day of September, 2010

J C Franklin

Notary Public for South Carolina

My Commission Expires: 12.16.2019

Randall Lane Smith

Randall Lane Smith 312339
Applicant

2010-CP-23-

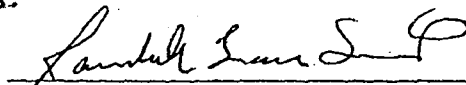
8027

STATE OF SOUTH CAROLINA)

COUNTY OF Greenville)

VERIFICATION

I, Randall Lane Smith 312339, 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. This document contains 22 pages.



Sworn to and subscribed before me

This 16 day of Sept, 2010.
J C Frankli L.S.

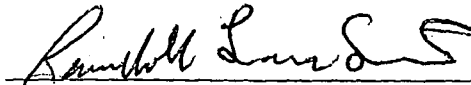
Notary Public for South Carolina

My Commission Expires 12-16-2019

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Randall Lane Smith 312339, 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 proceeding or give security therefor.



Applicant

Sworn to and subscribed before me

This 16 day of Sept, 2010.
 L.S.

Notary Public for South Carolina

My Commission Expires: 12-16-2019

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
C.A.No. 2010-CP-23-8027

Randall Lane Smith)
SCDC# 312339)

Applicant ,)

v)

State of South Carolina)

Respondant)

AMENDMENT TOPIC
APPLICATION (First)

Pro se

FILED
CLERK OF COURT
GREENVILLE CO. S.C.
JAN 17 AM 10:52

ENTERED COMPUTER

Applicant, amending for the first time, his application for Post Conviction Relief, dated, September 27, 2010, further alleges as additional grounds to his claims as follows:

1. Defense counsel was ineffective for denying the applicant the opportunity to confront his accuser's motives to lie, thus denying him his Sixth Amendment right through the Fourteenth Amendment. Credibility was the central issue in this case and the prosecution brought motive to lie as an issue in her summation.
2. Counsel was ineffective for not objecting to the prosecution's pitting and badgering the applicant on cross-examination.
3. Counsel was ineffective for asking for a continuance motion in October before the actual trial in November of 2005. Had counsel not asked for a continuance, the letters used against the applicant should have been

SCANNED

by Rule 5, (Brady,) as the prosecution had faxed the 35 pages of letters to Counsel on Sunday, the day before the trial was to begin in October of 2005.

4. Counsel was ineffective for not asking for a Jackson-Denno hearing to exclude the above mentioned letters.

5. Counsel was ineffective for not asking for a ruling on his objection to the prosecutor's character assault on the applicant in her summation. He was further ineffective when asking for a mistrial on this while the jury was out of the courtroom. The judge denied the motion stating that he gave a curative instruction to the jury, which not only did he not do, he failed to even rule on the objection. Counsel should have asked for a review of the transcript tape.

6. Counsel was defective for not filing a § 17-23-90 motion on the applicant's behalf in March of 2004, thus violating the applicant's rights under Article I, § 3, § 9, and § 11, of the S.C. Constitution and his Fifth, Sixth, and Fourteenth Amendment rights in the U.S. Constitution.

7. Counsel was ineffective due to conflicts of interest.

8. Counsel was ineffective for not conducting an independent investigation of this case nor did he interview any potential witnesses.

9. Counsel was ineffective for not anticipating the prosecution's use of expert witness on sex abuse behavior as it is common trial practice.

10. Appellate counsel was ineffective for not raising the character assault in the prosecutor's summation on appeal.

11. Appellate counsel was ineffective for not raising the issue of the jury charge on § 16-3-657, on appeal. Defense counsel at trial objected to this charge and the applicant had asked appellate counsel to argue this issue and preserve it for higher judicial review.

Summation

The applicant is not an attorney and is further handicapped with a lack of adequate legal resources. He is limited to only a few hours of law library time ^{per month} and said library is extremely limited as most caselaw is at least ten years old. He has no access to modern legal research methods such as E-mail, West Law online, Lexis-Nexis, Google, Yahoo!, etc on the internet. He has no access to a computer or printer, or even a typewriter.

This places an undue burden on the applicant as any issue he might fail to raise due to a lack of knowledge is forever forfeited on any higher review. The applicant ask that the above issues be added to his application for PCR, and that they be reviewed by the court. He also ask to preserve his right to further amend his application should it be necessary.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Randall Lane Smith

SCDC No. 312339

Applicant

v

State of South Carolina

Respondant

IN THE COURT OF COMMON PLEAS

C.A. No. 2010-CP-23-8027

AMENDMENT TO PCR
APPLICATION (First)

Pro se

2012 JAN 17 AM 10:52
FILED-CLERK OF COURT
GREENVILLE CO., S.C.
MAIL ROOM

CERTIFICATE OF SERVICE

I, Randall Lane Smith, SCDC No. 312339, Certify that I have served the Greenville County Clerk of Court with a copy of my amendments to my application for Post Conviction Relief dated September 27, 2010, Depositing said copy of amendments in the U. S. Mail addressed to:

Greenville County Clerk of Court
305 E. North St., Rm 224
Greenville, SC 29601-2121

I further request the clerk's office to forward clock stamped copies to all parties including myself.

This the 30th day of December, 2011

Sworn to and subscribed before me
this 30th day of December, 2011

Randall Lane Smith
Randall Lane Smith 312339
Applicant

Joyce R Young
Notary Public for S. Carolina
My Commission expires 10-11-2021

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Randall Lane Smith,)
S.C.D.C. No. 312339,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2010-CP-23-8027

RETURN

FILED
CLERK OF COURT
GREENVILLE CO. SC

In response to the post-conviction relief application filed September 27, 2010, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the September 2004 term of General Sessions for second-degree criminal sexual conduct with a minor (2004-GS-23-6874). Thomas M. Creech, Jr., Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On November 8, 2005, the Honorable D. Garrison Hill sentenced the Applicant to twenty (20) years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Joseph L. Savitz, III, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Smith, Op. No. 2008-UP-673 (S.C. Ct. App. filed December 9, 2009). Appellate counsel filed a petition for writ of

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a p p t att 4

certiorari at the South Carolina Supreme Court. By order dated October 7, 2009, the Supreme Court denied the petition.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failed to challenge constitutional issues, jurisdiction, and prosecutorial misconduct.
 - b. Failed to file a timely motion for speedy trial.
 - c. Failed to obtain the Applicant's medical records.
 - d. Failed to obtain expert testimony.
 - e. Failed to investigate victim.
 - f. Failed to investigate victim's father.
 - g. Failed to properly cross-examine witnesses.
 - h. Failed to attack credibility of both the victim and the Applicant's wife.
 - i. Failed to question the State's expert witness regarding the Applicant's erectile dysfunction.
 - j. Failed to examine all of the letters from the Applicant's wife.
 - k. Failed to ask for curative instructions.
 - l. Failed to object to hearsay.
 - m. Failed to properly question the Applicant's wife about her motives.
 - n. Failed to file a motion in limine to preclude use of the word "victim."
 - o. Failed to object to the judge's improper comment when he introduced the solicitor.
 - p. Failed to object to the State's bolstering.
 - q. Failed to object to one of the jurors.
 - r. Failed to inform the judge that the Applicant was exhausted and physically ill during trial and could not properly assist in his defense.
 - s. Failed to schedule a polygraph examination.
 - t. Gave a prejudicial closing argument.

2. Ineffective assistance of appellate counsel:
 - a. Failed to raise jurisdictional issues.
 - b. Failed to move to disqualify Judge Konduros from the panel.
3. Court was without jurisdiction:
 - a. Was denied a preliminary hearing.
 - b. Violation of Rule 3, SCRCrimP.
4. Prosecutorial misconduct:
 - a. At the third bond hearing, the solicitor stated the case should be continued without bond because more time was needed to run a DNA test. This was untrue because this test had already been performed.
 - b. Solicitor misstated the truth about the DNA evidence during pre-trial motions.
 - c. The State compelled his wife to work against him (as an agent of the State).
5. Violation of United States and South Carolina Constitutions:
 - a. Was denied counsel for arraignment.
 - b. Denied bond due to a fraudulent letter shown to the judge.
 - c. Held without bond or indictment for an excessive time.
 - d. Denied bond at third hearing due to extrinsic fraud upon the court.
 - e. Denied a preliminary hearing.
 - f. Denied the right to speedy trial.
 - g. Was without bail for nineteen months, which affected the ability to procure witnesses.
 - h. Violation of Rule 3, SCRCrimP.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441,

442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent 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) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

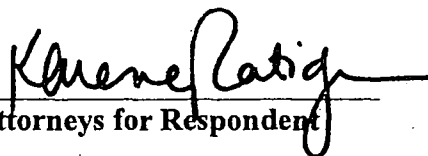
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

February 4, 2011

1 STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
2 COUNTY OF GREENVILLE) 2010-CP-23-8027
3)
4 Randall Smith) TRANSCRIPT OF RECORD
5)
6 -vs-)
7 State of South Carolina)

8 October 31, 2012
9 Greenville, South Carolina

10 B E F O R E:

11 THE HONORABLE R. MARKLEY DENNIS, Judge.

12 A P P E A R A N C E S

13 Caroline Horlbeck, Esquire
14 Attorney for the Applicant

15 Karen Ratigan, Esquire
16 Assistant Attorney General
17 Attorney for the Defendant

18 CAROLINE HISKELL
19 Thirteenth Circuit Court Reporter
20
21
22
23
24
25

I N D E X

WITNESSES

DIR

CROSS

Randall Smith
Thomas Creech, Jr.4
20

26

E X H I B I T S

APPLICANT'S

ID

IN EVIDENCE

1 SLED Report
2 Letter15
2727
28

Smith versus State of South Carolina

P R O C E E D I N G S

MS. RATIGAN: May it please the Court, this is the case of Randall Smith versus State of South Carolina, docket no. 2010-CP-23-8027. Mr. Smith was indicted for second degree criminal sexual conduct with a minor. He was represented by Mr. Creech seated to my right.

The case was brought to trial in November 2005 before Judge Hill. The applicant was found guilty. On November 8th of 2005, Judge Hill levied a 20 year sentence. The case was appealed.

The Court of Appeals affirmed the conviction and the sentence in December of 2009. His appellant attorney then filed a petition with the Supreme Court. The Supreme Court denied that petition October 7, 2009 and the State is ready to proceed.

I would note, again, for Your Honor's information and just for the record, the victim and his mother are here to observe today.

THE COURT: Thank you.

All right, you are Mr. Randall Smith?

APPLICANT SMITH: Yes, sir.

THE COURT: And you are prepared to go forward here today?

APPLICANT SMITH: Yes, sir.

Smith versus State of South Carolina

1 THE COURT: You may proceed.

2 MS. HORLBECK: Your Honor, applicant will
3 call Randall Smith.

4 THE CLERK: Mr. Smith, step over here to the
5 Bible, please.

6 Place your left hand on the Bible and raise
7 your right hand.

8 RANDALL SMITH, having been duly sworn,
9 testified as follows:

10 You may be seated. State your full name for
11 the record.

12 THE WITNESS: Randall Wayne Smith, Senior.

13 DIRECT EXAMINATION

14 BY MR. SMITH:

15 Q. Mr. Smith, who represented you on this charge?

16 A. Mr. Thomas Creech.

17 Q. Did Mr. Creech review discovery with you?

18 A. Yes, ma'am.

19 Q. Did he provide you a copy of discovery?

20 A. Not all of it.

21 Q. What parts did he not provide you a copy of?

22 A. I never saw the indictment and I never saw the
23 DNA evidence and there were several other things I never
24 saw.

25 Q. During his representation, did you discuss the

Smith versus State of South Carolina

1 case and make a decision about whether this would be a
2 plea or a trial?

3 A. Yes, ma'am. I all along refused to plead.

4 Q. During his representation, did you decide to go
5 to trial?

6 A. Yes, ma'am.

7 Q. And you were convicted?

8 A. Yes, ma'am.

9 Q. And then did you file this petition for post
10 conviction relief?

11 A. Yes, ma'am.

12 Q. Just to clarify and alleviate some confusion,
13 Minor is your nephew or who is Minor

14 A. Minor is my former brother-in-law's son and my
15 nephew on my wife's family's side.

16 Q. And also the victim in this case?

17 A. The alleged victim.

18 Q. And Nancy, who is Nancy?

19 A. She's my ex-wife.

20 Q. Who is Lane?

21 A. Lane is my son.

22 Q. Now, Mr. Smith, in your petition, one of the
23 things you alleged was an allegation about some letters
24 that you wrote. Did you write some letters while you were
25 at the jail?