

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
J. Mark Hayes, II, Presiding Judge

Appellate Case No. 2012-213435

DONALD HUGH JOHNSON, 322348,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

RECEIVED

MAY 6 2013

S.C. Supreme Court

**APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI**

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 Donald Hugh Johnson,) 2006-GS-42-1618-1622
7 Defendant.) June 11 - 13, 2007
8) Spartanburg, South Carolina
9
10 B E F O R E:
11
12 HONORABLE J. DERHAM COLE, JUDGE; and a jury
13
14 A P P E A R A N C E S:
15
16 ALAN WILSON, ESQUIRE
17 DAVID MATTHEW STUMBO, ESQUIRE
18 Attorneys for the State
19
20 ANDREW J. JOHNSTON, ESQUIRE
21 Attorney for the Defendant
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23
24
25
Linda D. Moffitt
Circuit Court Reporter

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Jury qualification

1 (Proceedings June 11, 2007)

2 THE COURT: Bring the jury around, please, sir.

3 (The following takes place in the presence of the jury
4 venire.)

5 THE COURT: Y'all eight standing give numbers.

6 THE JUROR: Eight.

7 THE JUROR: 113.

8 THE JUROR: 107.

9 THE JUROR: 69.

10 THE JUROR: 116.

11 THE JUROR: 185.

12 THE COURT: Wait a minute. We have got to be sure we
13 have got these right, now.

14 THE JUROR: 185.

15 THE JUROR: 60.

16 THE COURT: 60.

17 THE JUROR: 195.

18 THE COURT: 195.

19 THE JUROR: 188.

20 THE COURT: 188. All right. I've got 13, 107, 69,
21 116, 185, 60, 195 and 188. Right?

22 All right. Those eight, y'all are excused until 2:00
23 o'clock. I need for you to report back to the jury
24 assembly room at 2:00 o'clock this afternoon. Okay. Thank
25 you. We will see you then.

Jury qualification

1 (Whereupon, a portion of the jurors were excused due to
2 lack of seating space in the courtroom.)

3 THE COURT: All right. Call your first case please,
4 sir.

5 MR. WILSON: Thank you, Your Honor. May it please the
6 Court.

7 The state calls Indictment No. 2006-GS-42-1618, the
8 State vs. Donald Johnson, indicted for criminal sexual
9 conduct with a minor in the second degree; the state calls
10 Indictment No. 2006-GS-42-1619, the State vs. Donald Hugh
11 Johnson, indicted for criminal sexual conduct with minors
12 in the second degree; state calls Indictment No.
13 2006-GS-42-1620, the State vs. Donald Johnson, indicted for
14 criminal sexual conduct with a minor in the second degree;
15 the state calls Indictment No. 2006-GS-42-1621, the State
16 vs. Donald Johnson, indicted for contributing to the
17 delinquency of a minor; the state calls Indictment No.
18 2006-GS-42-1622, the State vs. Donald Johnson, indicted for
19 committing or attempting lewd act upon a child under 16
20 years of age.

21 THE COURT: All right. Ladies and gentlemen, as
22 you've heard, the first case that's been called that's
23 going to require some of your participation is the case of
24 the State vs. Donald Hugh Johnson.

25 As you heard, he has been accused by the prosecutor

Jury qualification

1 with having committed the crime of criminal sexual conduct
2 with a minor in the second degree in three separate
3 indictments, also one indictment for contributing to the
4 delinquency of a minor, and a final indictment with
5 committing or attempting a lewd act upon a child under the
6 age of 16 years.

7 Now, as to each of those indictments and as to the
8 allegations contained therein and as to the charges that
9 are set forth the defendant, Donald Hugh Johnson, has
10 entered a plea of not guilty.

11 That plea of not guilty places upon the state the
12 burden of proving the allegations that are set forth in
13 each indictment, the burden of proving each of the
14 essential elements that constitutes the crimes that have
15 been alleged by way of these indictments; and therefore the
16 burden is upon the state to establish the defendant's guilt
17 to the satisfaction of 12 jurors beyond a reasonable doubt
18 before any verdict of guilty could be returned as to any of
19 the five separate indictments.

20 Therefore we are going to be selecting 13 of you
21 jurors. There will be 12 primary jurors and one alternate
22 juror. And of course by way of your selection you're going
23 to be called upon to listen to the testimony that will be
24 presented during the trial of the case, to consider any
25 other evidence that is introduced during the trial of the

Jury qualification

1 case.

2 At the trial's conclusion you'll be called upon to
3 evaluate all of that evidence, to decide the credibility of
4 witnesses' testimony, to determine what you believe to be
5 the true facts as they relate to these allegations.

6 Once you determine what you believe to be the true
7 facts, you will apply the law that I will provide you at
8 the trial's conclusion, and then after deliberations you
9 will determine whether or not the state has proven the
10 defendant to be guilty of any crime beyond a reasonable
11 doubt.

12 If such proof has been made beyond a reasonable doubt,
13 then your verdict would be guilty as to that particular
14 charge or indictment. And if the state has failed in that
15 proof, then your verdict would be not guilty as to that
16 particular charge or that particular indictment.

17 So I'm going to be asking you some questions. The
18 purpose of these questions is to determine whether or not
19 there is some reason why any one of you jurors should not
20 be selected to participate in the trial of this particular
21 case.

22 And so as these questions are asked I'm going to ask
23 that you please respond by standing, and I will address
24 those matters with you individually in the event that that
25 should become necessary.

Jury qualification

1 All right. In this case, as you have been told, the
2 defendant, the person who is accused of each of these
3 crimes, is Donald Hugh Johnson.

4 Mr. Johnson, if you will, stand and face the jury
5 panel, please, sir.

6 (Whereupon, the defendant and Mr. Johnston stood.)

7 THE COURT: Mr. Johnson is the gentleman standing to
8 your left. The one standing to your right is Andy
9 Johnston. He is Mr. Johnson's lawyer. He'll be assisting
10 him in the trial of this case.

11 Thank you. You may be seated.

12 The person who is alleged to have been the victim of
13 these particular acts set forth in the indictments is one
14 Victim h. She is not present in the courtroom, but
15 her name is VICTIM. That's VICTIM.

16 The reason I am identifying these people for you is
17 I'm going to be asking you shortly if you know any of these
18 people. So if you know somebody by that same name, then
19 you let me know. And we'll bring her in the courtroom so
20 you can see who she is and determine whether or not you
21 know her.

22 Presenting the case on behalf of the state are Alan
23 Wilson and David Stumbo with the South Carolina Attorney
24 General's Office. And they'll be presenting the case for
25 the state.

Jury qualification

1 In addition to the person who is alleged to be the
2 victim, that being *VICTIM*, and the defendant,
3 Donald Johnson, there are other persons who are potential
4 witnesses that might be called during the course of this
5 trial.

6 I'm going to list those names for you so that you will
7 know who those potential witnesses are. And then
8 afterwards I'll ask you if you know any of these people who
9 have been identified. And that includes not just the
10 witnesses or the defendant or the person alleged to be the
11 victim, but that includes the lawyers too.

12 So the following are potential witnesses in addition
13 to Ms. *VICTIM* and the defendant, Mr. Johnson: Elizabeth
14 Phillips; Wanda Diane Phillips; Kevin Bobo with the
15 sheriff's department; Nicki Cantrell with the sheriff's
16 department; Steven Calhoun with the sheriff's department;
17 Dominick Baird with the sheriff's department; Sharon
18 Fitzgerald Wright; Roy Furr, a physician; Jenol Johnson;
19 Glenn Kennedy; A. D. Gilbert; and Stan Lawson.

20 Now, does any juror know any of those persons who have
21 just been identified for your benefit? That includes the
22 lawyers themselves. If so, please stand. If you know any
23 of these people.

24 All right. Anybody else? I need for you to stand now
25 if you know any person who has just been identified.

Jury qualification

1 All right. I'll start to my right, and I'll work
2 across the room. If you will, give me your name and your
3 juror number and then tell me what person or persons you
4 know.

5 JUROR NO. 125: Juror 125, Debra Sellars. I know
6 Dominick and I know Kevin Bobo.

7 THE COURT: And would either of those facts interfere
8 in any way with your ability to be fair and impartial in
9 the trial of this case?

10 JUROR NO. 125: No, sir.

11 THE COURT: Thank you. Be seated.

12 Yes, ma'am.

13 MR. JOHNSTON: Your Honor, she also knows me. I don't
14 know if she understood that aspect of your question. But
15 she also does know me.

16 THE COURT: Well, the question was do you know anybody
17 who has been identified, and I think I said including the
18 lawyers in this case.

19 JUROR NO. 129: I know Andy Johnson.

20 THE COURT: Okay. All right. Yes, ma'am.

21 JUROR NO. 129: I'm Juror 129. Andy Johnston.

22 THE COURT: All right. And would that fact in any way
23 interfere with your ability to be fair and impartial?

24 JUROR NO. 129: No.

25 THE COURT: All right. Thank you. Be seated.

Jury qualification

1 Yes, sir.

2 JUROR NO. 141: I'm Juror 141. I know a girl by the
3 name of Diane Phillips, but I'm not sure if it's the same
4 one.

5 THE COURT: All right. That is Wanda Diane Phillips.
6 What's her connection with the case?

7 MR. JOHNSTON: She is the aunt of the alleged victim,
8 sir.

9 THE COURT: All right. She's the aunt of *VICTIM*
10 Do you know?

11 JUROR NO. 141: I don't know where they're living.

12 MR. WILSON: Your Honor, she would be probably in her
13 mid to upper 50's.

14 THE COURT: And where would she live?

15 MR. WILSON: She lives in Gaffney.

16 JUROR NO. 141: No.

17 THE COURT: That's not it. Okay. Thank you.
18 Yes, ma'am.

19 JUROR NO. 6: I know Andy Johnston. I'm No. 6.

20 THE COURT: All right. And would that have any
21 bearing upon your decision?

22 JUROR NO. 6: No, sir.

23 THE COURT: Thank you. Be seated.

24 Yes, ma'am.

25 JUROR NO. 124: 124. About three of the last ones

Jury qualification

1 that you called. Kevin Bobo, Stan Lawson.

2 THE COURT: What was your number?

3 JUROR NO. 124: 124.

4 THE COURT: All right. You know Kevin Bobo and Stan
5 Lawson.

6 JUROR NO. 124: Right. Somebody else, I thought.

7 THE COURT: A. D. Gilbert, Glenn Kennedy.

8 JUROR NO. 124: Glenn Kennedy.

9 THE COURT: All right. How do you know these people?

10 JUROR NO. 124: My husband is a police officer.

11 THE COURT: Okay. Would it have any bearing upon your
12 decision in this case?

13 JUROR NO. 124: Absolutely not.

14 THE COURT: All right. Thank you. Be seated.

15 Yes, ma'am.

16 JUROR NO. 174: Juror 174. I know the attorney, Mr.
17 Johnston.

18 THE COURT: And would that have any bearing upon your
19 decision in this case?

20 JUROR NO. 174: No, sir.

21 THE COURT: All right. Thank you. Be seated.

22 Yes, sir.

23 JUROR NO. 149: Juror 149. I know Andy Johnston and I
24 know Kevin Bobo.

25 THE COURT: Would either of those facts have any

Jury qualification

1 bearing upon your decision in this case?

2 JUROR NO. 149: No, Your Honor.

3 THE COURT: Thank you. Be seated.

4 Now, as I told you, in this case the defendant is
5 charged with the crimes of criminal sexual conduct in the
6 second degree on *VICTIM*.

7 The state alleges those events occurred on or about
8 August the 1st of 2001 and January the 10th of 2002, also
9 between January the 11th of 2002 and January the 10th of
10 2004, and also between the dates of January the 11th of
11 2002 and January the 10th of 2004.

12 They allege that the defendant engaged in a sexual
13 battery with the minor child, *VICTIM* and they also
14 allege that he committed a lewd act upon that minor child;
15 and they allege that he contributed to her delinquency by
16 wilfully encouraging, aiding or causing her or influencing
17 her to violate the laws of the State of South Carolina by
18 engaging in sexual behavior and encouraged her to use
19 alcohol in violation of the law.

20 And these events are alleged to have occurred where in
21 Spartanburg County?

22 MR. WILSON: Your Honor, these incidents would have
23 occurred in Greer.

24 THE COURT: In Greer, South Carolina. At a residence
25 or what?

Jury qualification

1 MR. WILSON: Yes, Your Honor.

2 THE COURT: What street address?

3 MR. WILSON: Drive, Your Honor.

4 THE COURT: Drive?

5 MR. WILSON: Yes, Your Honor.

6 THE COURT: Okay. All right. Has any juror -- do you
7 think you've heard, seen or read anything about this
8 particular case? Do you have any information from any
9 source, media or otherwise, about the facts that might
10 relate to this case? If so, I would ask that you please
11 stand.

12 (No response.)

13 THE COURT: Has any member of the jury panel ever been
14 a witness or been told that you might be a witness in a
15 case that was being handled by the 7th Judicial Circuit
16 Solicitor's Office? If so, please stand.

17 JUROR NO. 177: Juror 177. May I approach the bench?

18 THE COURT: Yes, ma'am.

19 (Bench conference held off the record with juror and
20 counsel.)

21 THE BAILIFF: 125, Your Honor.

22 THE COURT: All right. Juror 125. You've been told
23 you might be a witness in a case?

24 JUROR NO. 125: I have been a witness before, Your
25 Honor.

Jury qualification

1 THE COURT: Okay. Would it have any bearing upon your
2 decision in this case?

3 JUROR NO. 125: No, Your Honor.

4 THE COURT: Okay. Thank you.

5 JUROR NO. 156: Juror 156.

6 THE COURT: Yes, ma'am.

7 JUROR NO. 156: Can I approach the bench, Your Honor?

8 THE COURT: Yes, ma'am.

9 (Bench conference held off the record with juror and
10 counsel.)

11 THE COURT: Is there any member of the jury panel who
12 is a member of or do you contribute money or money to, to
13 any organizations that might be classified as law
14 enforcement support types of organizations? And those
15 include Mothers Against Drunk Drivers, Citizens Against
16 Violent Crime or any other similar type of organization.
17 Are you a member of any such or do you contribute time or
18 money to such organizations? If so, please stand.

19 All right. Name and number, please.

20 JUROR NO. 186: Katie Orgon, 186. I haven't been
21 active lately, but I was the founder of the Spartanburg
22 County Mothers Against Drunk Driving, and active for about
23 ten years in a previously state chairman and on the
24 national council.

25 THE COURT: Would that have any bearing upon your

Jury qualification

1 decision in this case?

2 JUROR NO. 186: No. See, I was --

3 THE COURT: Okay. Thank you, ma'am.

4 Yes, ma'am.

5 JUROR NO. 170: I support BETH, 170.

6 THE COURT: And you are?

7 JUROR NO. 170: I'm sorry. 170, Seslin Camp.

8 THE COURT: Would that have any bearing upon your
9 decision in the case?

10 JUROR NO. 170: Uh-uh.

11 THE COURT: Thank you. Be seated.

12 125.

13 JUROR NO. 125: Yes, sir. I've been president of the
14 police benevolence association.

15 THE COURT: Would that have any bearing upon your
16 decision in this case?

17 JUROR NO. 125: No, sir.

18 THE COURT: Thank you. Be seated.

19 Has any member of the jury panel or any member of your
20 immediate family ever been employed as a law enforcement
21 officer? Whether now or in the past, have you or a family
22 member ever been employed as a law enforcement officer, and
23 are you related to any such person who has been or is now
24 employed as a law enforcement officer? If so, please
25 stand, if you or a family member has ever been employed as

Jury qualification

1 a law enforcement officer or you are related to any person
2 who is now or has been employed.

3 Everybody standing? Anybody else? I wonder why that
4 is. Every time I ask anybody else, somebody else will
5 stand up. And I don't know what I could change about that
6 question. But does everybody understand what I'm asking?
7 I want to know if you or a family member has ever been
8 employed as a law enforcement officer or you are in any way
9 related to anybody who has been employed as a law
10 enforcement officer.

11 Okay. Anybody else? All right. I'm going to start
12 to my left. I'll work across the room by row. So if you
13 will, give me your name and number, please, ma'am.

14 JUROR NO. 148: My name is Tedra Wans, No. 148.

15 THE COURT: All right. How does the question relate
16 to you?

17 JUROR NO. 148: I've had an uncle that worked in the
18 detention center and I've had a retired uncle who was an F.
19 B. I. agent.

20 THE COURT: All right. Would that have any bearing
21 upon your decision?

22 JUROR NO. 148: No, sir.

23 THE COURT: Thank you. Be seated.

24 Yes, ma'am.

25 JUROR NO. 199: My father and my brother both worked

Jury qualification

1 for the Spartanburg County police department.

2 THE COURT: All right. And I'm not sure who you are.

3 JUROR NO. 199: Oh, I'm sorry. 199.

4 THE COURT: Would that have any bearing upon your
5 decision in this case?

6 JUROR NO. 199: I don't see how.

7 THE COURT: All right.. Thank you. Be seated.

8 Yes, ma'am.

9 JUROR NO. 163: I'm Juror 163. My husband is a former
10 employee of the Spartanburg County police department.

11 THE COURT: All right. Would that have any bearing
12 upon your decision in this case?

13 JUROR NO. 163: No.

14 THE COURT: Thank you. Be seated.

15 Yes, ma'am.

16 JUROR NO. 44: No. 44. And my brother works at the
17 Woodruff county police department.

18 THE COURT: Would that have any bearing upon your
19 decision?

20 JUROR NO. 44: No, Your Honor.

21 THE COURT: Thank you. Be seated.

22 Yes, ma'am, in the blue.

23 JUROR NO. 109: 109. My ex, two sister-in-laws and
24 one brother-in-law worked for Spartanburg County.

25 THE COURT: Would that have any bearing upon your

Jury qualification

1 decision?

2 JUROR NO. 109: No.

3 THE COURT: Thank you. Be seated.

4 Are y'all on the same row?

5 THE JUROR: No. Oh, we were.

6 THE COURT: No. I'm talking about with the lady that
7 just gave it.

8 THE JUROR: No, not with her.

9 THE COURT: Let me go over here.

10 Yes, ma'am.

11 JUROR NO. 120: 120. My grandpa was a police officer.

12 THE COURT: Where?

13 JUROR NO. 120: That I don't know. That's why I
14 didn't stand. I never met him. I don't know.

15 THE COURT: You don't know if it was around here.

16 JUROR NO. 120: Right.

17 THE COURT: Okay. Thank you. You may -- would it
18 affect your judgment in the case?

19 JUROR NO. 120: No.

20 THE COURT: Thank you. Be seated.

21 Yes, ma'am.

22 JUROR NO. 176: Juror 176. My son-in-law and two
23 cousins are police officers.

24 THE COURT: Employed where?

25 JUROR NO. 176: One is in Campobello and one is in

Jury qualification

1 Greenville and one is in Cowpens.

2 THE COURT: Would that have any bearing upon your
3 decision?

4 JUROR NO. 176: No.

5 THE COURT: Thank you. Be seated.

6 Yes, ma'am.

7 JUROR NO. 124: 124. My Grandfather Long was the
8 captain of the chain gang for many, many years. And my
9 husband is now with Spartanburg County.

10 THE COURT: Would that have any bearing upon your
11 decision?

12 JUROR NO. 124: No, sir.

13 THE COURT: Thank you. Be seated.

14 Yes, sir.

15 JUROR NO. 184: Bobby Hubbard, 184. I have a maternal
16 aunt who is a police officer in Arlington, Kentucky.

17 THE COURT: Would that have any bearing upon your
18 decision?

19 JUROR NO. 184: No, sir.

20 THE COURT: Thank you. Be seated.

21 Yes, ma'am.

22 JUROR NO. 77: Juror 77. My sister used to be a city
23 police officer.

24 THE COURT: In Spartanburg?

25 JUROR NO. 77: Yes.

Jury qualification

1 THE COURT: And her name was what?

2 JUROR NO. 77: Tina Gosnell.

3 THE COURT: Tina?

4 JUROR NO. 77: It used to be Tina Cogdill, but now
5 it's Tina Gosnell.

6 THE COURT: Okay. Would that have any bearing upon
7 your decision?

8 JUROR NO. 77: No, sir.

9 THE COURT: Thank you. Be seated.
10 Yes, sir.

11 JUROR NO. 149: Juror 149. My father worked as an
12 officer in the early 60's at the police department.

13 THE COURT: Would that have any bearing upon your
14 decision?

15 JUROR NO. 149: No, Your Honor.

16 THE COURT: Thank you. Be seated.
17 Yes, sir.

18 JUROR NO. 72: 72. My brother is a trainer for the
19 State Department of Corrections.

20 THE COURT: Would that have any bearing upon your
21 decision?

22 JUROR NO. 72: No.

23 THE COURT: Thank you. Be seated.
24 Yes, sir.

25 JUROR NO. 164: 164. My father was a Spartanburg city

Jury qualification

1 policeman for over 20 years.

2 THE COURT: His name was what?

3 JUROR NO. 164: J. E. Lineberry.

4 THE COURT: Would that have any bearing upon your
5 decision?

6 JUROR NO. 164: No, sir.

7 THE COURT: Thank you. Be seated.

8 Yes, ma'am.

9 JUROR NO. 55: No. 55. My father was a policeman in
10 Lyman in the 70's.

11 THE COURT: Would that have any bearing upon your
12 decision?

13 JUROR NO. 55: No, sir.

14 THE COURT: Okay. Thank you. Be seated.

15 JUROR NO. 12: Your Honor --

16 THE COURT: Yes, ma'am.

17 JUROR NO. 12: I just wanted to make the question
18 clear. Was that immediate family, because I heard someone
19 mention of cousins.

20 THE COURT: Let's say anybody anywhere in the world.

21 JUROR NO. 12: Okay. Well, my cousin is a Laurens
22 County sheriff.

23 THE COURT: All right. And your number is what?

24 JUROR NO. 12: I'm No. 12.

25 THE COURT: No. 12. Would that have any bearing upon

Jury qualification

1 your decision?

2 JUROR NO. 12: No, sir.

3 THE COURT: Thank you. Be seated.

4 Now, I've told you what this case is about to some
5 extent, very basic facts not intending to be a full
6 recitation of the facts that might be substantiated by
7 evidence in the case. But I've told you that the defendant
8 is accused of having committed the crimes of criminal
9 sexual conduct, engaging in a sexual battery with a minor
10 in violation of the law, of course; commission of a lewd
11 act upon a child; and contributing to the delinquency of a
12 minor.

13 Is there any member of the jury panel, whether it be
14 you or an immediate family member? And an immediate family
15 member being a spouse, a parent, a child or a sibling -- a
16 spouse, a parent, a child or a sibling. I need to know if
17 you or any immediate family member as I have just defined
18 it for you has ever been the victim of any type of crime
19 that involved allegations of sex abuse, or have you or any
20 immediate family member ever been accused of having
21 committed any type of crime that involved allegations of
22 sex abuse, a victim or an accused, you or a family member
23 involving allegations of sexual abuse. If so, please
24 stand.

25 All right. We've got eight jurors standing. Is that

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1 all of them, eight?

2 All right. Now, those who are standing, you can tell
3 me about it where you are or you can come down here if
4 you'd all prefer. If you want to come down here and let me
5 know how that question applies to you, I'll be happy for
6 you to come down here and tell me; or you can stay where
7 you are if you'd prefer. That's up to you.

8 I'll start on one row and work my way back.

9 Would you prefer to come down here? Okay.

10 JUROR NO. 199: 199.

11 THE BAILIFF: 199, Your Honor.

12 (Bench conference held off the record with juror and
13 counsel.)

14 THE COURT: Next.

15 THE BAILIFF: 130, Your Honor.

16 THE COURT: Juror 199 is excused from service.

17 (Bench conference held off the record with juror and
18 counsel.)

19 THE COURT: Next.

20 THE BAILIFF: 11, Your Honor.

21 (Bench conference held off the record with juror and
22 counsel.)

23 THE BAILIFF: 124, Your Honor.

24 (Bench conference held off the record with juror and
25 counsel.)

Jury qualification

1 THE BAILIFF: 115, Your Honor.

2 (Bench conference held off the record with juror and
3 counsel.)

4 THE COURT: Next.

5 THE BAILIFF: 146, Your Honor.

6 (Bench conference held off the record with juror and
7 counsel.)

8 THE BAILIFF: 95, Your Honor.

9 (Bench conference held off the record with juror and
10 counsel.)

11 THE BAILIFF: 125, Your Honor.

12 (Bench conference held off the record with juror and
13 counsel.)

14 THE BAILIFF: No. 50, Your Honor.

15 (Bench conference held off the record with juror and
16 counsel.)

17 THE BAILIFF: 193, Your Honor.

18 (Bench conference held off the record with juror and
19 counsel.)

20 THE BAILIFF: 174, Your Honor.

21 (Bench conference held off the record with juror and
22 counsel.)

23 THE COURT: Does any member of the jury panel have any
24 background by way of employment or otherwise, or do you
25 have any specialized training or education in the fields of

Jury qualification

1 law, psychology and/or counseling? If so, please stand.

2 All right. Let me start over here to me left. I will
3 work across and work back. I will need your numbers again,
4 please.

5 JUROR NO. 129: 129.

6 THE COURT: All right.

7 JUROR NO. 129: I am a supervisor over drug and
8 alcohol counselors with the Alcohol and Drug Commission.
9 And I have been there 24 years.

10 THE COURT: Okay. Thank you, ma'am.

11 Yes, ma'am.

12 JUROR NO. 163: I'm Juror 163. I have a double major,
13 and psychology is one of those majors. And I have been a
14 counselor at Spartanburg in the past.

15 THE COURT: Thank you. Be seated.

16 Yes, sir.

17 JUROR NO. 189: Juror 189. I'm currently going to
18 school for a psychology major.

19 THE COURT: Okay. Thank you. Be seated.

20 Yes, sir.

21 JUROR NO. 11: 11.

22 THE COURT: 11 has already been excused, so you won't
23 need to answer any additional questions. But thank you.

24 Who is next? Mr. Wood.

25 JUROR NO. 149: 149. I'm an attorney.

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1 THE COURT: All right. Thank you. Be seated.

2 Yes, ma'am.

3 JUROR NO. 160: 160. I have a minor in psychology.

4 THE COURT: Thank you. Be seated.

5 Yes, ma'am.

6 JUROR NO. 171: 171. I'm a psychology major.

7 THE COURT: Thank you. Be seated.

8 125.

9 JUROR NO. 125: I have a bachelor of arts degree in
10 psychology and I've worked in the past 15 years as an
11 advocate. So I have a lot of specialized training.

12 THE COURT: All right. Thank you. Be seated.

13 Yes, sir.

14 JUROR NO. 172: 172. Bachelor of arts in psychology.

15 THE COURT: Thank you. Be seated.

16 All right. Ladies and gentlemen, understanding who
17 the participants are, understanding who the lawyers are,
18 understanding who the witnesses are, understanding
19 basically what the case is about and the nature of the
20 case, does any member of the jury panel have any reason
21 whatsoever why you believe you could not be fair and
22 impartial to both sides in this case if you are selected to
23 serve as a juror? If you have any reason whatsoever why
24 you think you could not be fair to one or both sides, I'm
25 going to ask that you please stand.

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1 (No response.)

2 THE COURT: All right. Any other questions requested
3 by the state?

4 MR. WILSON: None from the state, Your Honor.

5 THE COURT: From the defendant?

6 MR. JOHNSTON: No, Your Honor.

7 THE COURT: All right. Now, ladies and gentlemen, as
8 we select a jury, your names are typed on slips of paper.
9 They're going to be randomly drawn from the jury drum. And
10 as your name is called you're going to be asked to come
11 forward and just stand in the middle of the floor about two
12 paces past the desk where the lawyers are seated right in
13 the middle.

14 Each side has an opportunity to have you seated for
15 service in the case or excused from service in the case.
16 If either side asks that you be excused, you can go back
17 and have a seat where you are now.

18 If both sides agree to have you seated for service in
19 the case, you'll be having a seat in the jury box to your
20 right and to my left.

21 So if you'll please simply come forward as your name
22 is called you'll be instructed if you're to be seated or
23 excused from service in the case.

24 (Whereupon, a jury was impanelled.)

25 THE COURT: All right. Those who were selected, I'm

Jury qualification

1 going to ask you to go with a bailiff to a jury room, and
2 I'll bring you back in just a few minutes to excuse you for
3 lunch.

4 (The following takes place outside the presence of the
5 jury.)

6 THE COURT: Any matters to be addressed regarding jury
7 selection by the state?

8 MR. WILSON: None from the state, Your Honor.

9 THE COURT: From the defendant?

10 MR. JOHNSTON: No, Your Honor.

11 (Whereupon, the remaining members of the jury venire
12 were excused.)

13 THE COURT: Okay. Bring the jury back in. Ask
14 Mr. Lineberry to take the foreperson's seat.

15 (The following takes place in the presence of the
16 jury.)

17 THE COURT: All right. Ladies and gentlemen, we are
18 going to recess for lunch.

19 Mr. Lineberry, I'm going to ask you to serve as the
20 foreperson of the jury, and so you'll always occupy that
21 seat that you're in now.

22 Ms. Huggins, you're the alternate juror. You'll
23 always occupy that seat you're in now.

24 The other seats are not assigned seats. You can stay
25 in the one you're in now, or you can pick another one if

1 you'd like. But let's don't get in a dispute about the
2 seats. But those two are designated the foreperson's and
3 the alternate juror's.

4 We're going to recess for lunch. We're going to ask
5 you to report back to that jury room that you've just been
6 shown to. Please be back there at 2:30 afternoon, 2:30
7 this afternoon. Report back to that jury room.

8 If you're not sure how to get there, you're not sure
9 where you are in the courthouse, talk to the bailiffs
10 before you leave. They'll provide you with those
11 instructions and directions.

12 Okay. Do not discuss the case in any fashion with any
13 person. You can only discuss it during jury deliberations
14 and after you've reached a decision. But until that time
15 comes you can't discuss it during the course of this trial.

16 Okay. With that, have a good lunch. We'll see you at
17 2:30 this afternoon.

18 (The following takes place outside the presence of the
19 jury.)

20 THE COURT: All right. Any matters to address before
21 we recess for lunch?

22 MR. WILSON: Your Honor, the state has a few matters
23 we would like to take up.

24 This, as Your Honor already knows this, case involves
25 a lot of illicit conduct over four years. And we're going

1 to talk about a lot of prior bad acts or bad acts outside
2 the four corners of that document that are part of that
3 illicit conduct. And so we would like Your Honor, you
4 know, to make a ruling on the admission of non-indicted bad
5 acts.

6 THE COURT: Okay.

7 MR. WILSON: That's the first issue we have, Your
8 Honor.

9 THE COURT: Okay. Well, you'll have to tell me what
10 you're going to offer so I can rule on it.

11 MR. WILSON: Well, Your Honor, first of all, what
12 we're going to be talking about is that if you look at the
13 indictments, the indictments refer to particular sex acts.

14 For instance, there's going to be testimony that
15 VICTIM traveled or was driving or being driven by the
16 defendant on numerous times and during each of those times
17 was having her perform oral sex on him, or she was, or vice
18 versa.

19 There were numerous times when he would digitally
20 penetrate her or, you know, watch her take a shower. I
21 mean, there's lots. It's the same conduct. A lot of it's
22 mentioned in the indictments, but it's the same illicit
23 conduct that's been continuing for four years.

24 So if we're talking about -- the indictment might talk
25 about a particular incident where she was penetrated with a

1 vibrator. It might have happened several other times, and
2 she will probably testify to that.

3 So we wanted to make sure that, you know, under
4 404(b), common scheme or plan, and also under, under, under
5 res gestae, we're going to, we will ask Your Honor to allow
6 that to be talked about.

7 There is also case law, State vs. Mathis and State vs.
8 Weaverling, is what we're relying on for Your Honor to make
9 a decision.

10 THE COURT: Mr. Johnston.

11 MR. JOHNSTON: Well, Your Honor, if they're offering
12 it to, my understanding is that Rule 404(b) controls other
13 crimes, wrongs or acts.

14 If they can show that these other crimes, wrongs or
15 acts are admissible to show motive, identity, the existence
16 of a common scheme or plan, the absence of mistake or
17 accident or intent, then they might be admissible.
18 Otherwise, we would argue they are not admissible.

19 MR. WILSON: Your Honor, there are numerous occasions
20 where he uses drive, I'm-going-to-run-to-the-store or
21 get-gas or teach-her-how-to-drive as an excuse to have her
22 perform oral sex on him or for him to perform oral sex on
23 her.

24 There is substantial case law in South Carolina that
25 backs up the continuous illicit conduct over a long period

1 of time that these other prior bad acts are part of a
2 common scheme or plan.

3 He, he would call over there to have her come and stay
4 for the weekend. And this is every other weekend probably
5 in the summer and at least once, you know, during the
6 school year. On holidays she was spending time with him.

7 He was using this time, the same, you know, excuses to
8 drive her somewhere, to go take her shopping so that she
9 could model thongs for him, everything, all the time that
10 he spent with her. And she's going to testify that nearly
11 every single time she was with him he abused her sexually
12 in every way, in some kind of way.

13 So we're going to have to talk about that because that
14 is the entire nature of their relationship for four years,
15 is that she is being used sexually by him.

16 And the state picked several, several incidences to
17 indict him on. We could have gone and hunted for dozens,
18 maybe even over a hundred, pieces of, kinds of abuse to
19 indictment him on. But we chose those. But those are
20 representative of a continuous illicit conduct.

21 In State vs. McClellan it refers to continued illicit
22 intercourse forced upon the victim by the defendant -- and
23 this is one victim and one defendant -- and their
24 relationship together for four years. This isn't multiple
25 victims here, Your Honor.

1 THE COURT: Well, let me have whatever cases you want
2 me to look at.

3 MR. JOHNSTON: Your Honor, as they hand them up, if I
4 could just get the name of the case.

5 MR. WILSON: I have got a copy for you.

6 MR. JOHNSTON: They have got a copy for me. Thank
7 you, Your Honor.

8 MR. WILSON: There you are, Your Honor. Here is what
9 we have got.

10 THE COURT: All right. What else do we have?

11 MR. WILSON: Your Honor, we have an issue of the
12 victim's sexual history.

13 The defendant -- actually before I want to go to that,
14 Your Honor, I would like the -- the defendant gives a
15 statement to the police, and we might, the state feels that
16 we might, need to have a Jackson vs. Denno to determine
17 the, for Your Honor to determine the, voluntariness of that
18 statement.

19 We don't know if it's going to be used or not in the
20 trial, but that is a housekeeping matter. In an abundance
21 of caution, we would like for Your Honor to go ahead and
22 make a determination by the Jackson vs. Denno hearing.

23 THE COURT: Well, does the defense admit he gave a
24 statement?

25 MR. JOHNSTON: Yes, sir, Your Honor.

1 THE COURT: Does the defendant contest the
2 voluntariness of it?

3 MR. JOHNSTON: No, Your Honor.

4 THE COURT: All right. That's not an issue.

5 MR. WILSON: Thank you, Your Honor.

6 And in that statement, Your Honor, the defendant
7 mentions and talks about the victim, VICTIM 's
8 sexual, prior sexual and current sexual, activities with
9 her boyfriend.

10 And the state would argue that the Rape Shield
11 Statutes, Rule 412, would be a bar to him discussing any
12 other sexual activity because it's not, it's not designed
13 to -- first of all, consent is not an issue. So the
14 consensual conduct between her and her grandfather is not
15 an issue.

16 It doesn't determine any kind of -- there's no D. N.
17 A. So, I mean, when this comes out, this is several weeks
18 later. And it has no, it's not relevant to the
19 relationship between the girl and her grandfather.

20 MR. JOHNSTON: Your Honor, we have an issue with that.

21 They have chosen to charge him with contributing to
22 the delinquency of a minor, which is of course outside the
23 Rape Shield Statute.

24 Her sexual history could possibly be a defense to that
25 charge if she was, in fact, already delinquent or became

1 delinquent through means other than the contact that she
2 had with the defendant. That would be highly probative of
3 the issue of whether or not the defendant contributed to
4 her delinquency.

5 THE COURT: Is that your sole objection to the
6 exclusion of that evidence?

7 MR. JOHNSTON: It's the only one that I have at this
8 time, yes, sir.

9 THE COURT: All right. I'm going to grant the state's
10 motion to exclude references to any sexual contact or
11 behavior with her boyfriend unless it's otherwise shown to
12 be relevant on any issue.

13 Anything else?

14 MR. WILSON: Nothing from the state, Your Honor.

15 MR. JOHNSTON: Your Honor, we move to quash the
16 contributing to the delinquency of a minor indictment
17 because it does not set forth all the elements of the
18 offense, and therefore we move to quash.

19 THE COURT: All right. I'll look at it. What is it?
20 You just say all the elements aren't present?

21 MR. JOHNSTON: Yes, sir, Your Honor. The element that
22 I'm particularly concerned about is it just simply says
23 that he encouraged her to engage in sexual behavior and/or
24 did encourage and/or provide VICTIM with alcohol.

25 That does not go to the statutory, or the statutory

1 factors set forth in 16-17-490 are not named therein. So
2 therefore all the elements are not set forth.

3 THE COURT: All right, Mr. Wilson. It says did
4 knowingly and wilfully encourage, aid or cause, or did an
5 act or acts which caused or influenced her to violate the
6 laws of the State of South Carolina. Why doesn't that fit
7 the definition in 16-17-490? And he is over 18.

8 MR. JOHNSTON: Yes, sir.

9 THE COURT: I'm going to deny your motion. I think
10 it's cause.

11 All right. Anything else?

12 MR. JOHNSTON: No, sir, not at this time.

13 THE COURT: All right. Court's in recess until 2:30.

14 The defendant is on bond, as I take it. Any objection
15 to the defendant remaining on bond?

16 MR. WILSON: No objection.

17 THE COURT: And if you fail to appear --

18 MR. JOHNSTON: And, Your Honor, if I could, I wonder
19 if they would also extend that courtesy over to the
20 overnight recess or if I should need to make arrangements
21 to have his bondsman here this afternoon.

22 THE COURT: Yeah. Well, whether they agree or not --

23 MR. JOHNSTON: Yes, sir.

24 THE COURT: -- the bondsman is going to have to be
25 here to tell me that he or she is going to continue.

1 MR. JOHNSTON: I'll have him here, sir. Thank you,
2 sir.

3 (Whereupon, a recess was taken.)

4 THE COURT: Mr. Johnston, have you had a chance to
5 digest the cases that were submitted to the Court by
6 Mr. Wilson?

7 MR. JOHNSTON: Yes, sir, I have.

8 THE COURT: Do you believe that they support the
9 proposition that the testimony he intends to offer is
10 admissible under state law?

11 MR. JOHNSTON: Most likely, yes, sir.

12 THE COURT: All right. I agree. I think the cases
13 clearly support the admission of that type of testimony.

14 Now, you know, I can only go on without taking the
15 testimony outside the presence of the jury -- I have to
16 assume that the testimony as it's been described is that
17 it's the same and similar acts occurring at or near the
18 same time as these acts are alleged to have occurred but
19 the conduct is the same or essentially the same and it goes
20 to show a common scheme or pattern of behavior.

21 Okay. Any other matters to address before the jury is
22 brought in?

23 MR. WILSON: None from the state, Your Honor.

24 MR. JOHNSTON: Not from the defense.

25 THE COURT: Okay. Bring them in.

1 (The following takes place in the presence of the
2 jury.)

3 THE COURT: Good afternoon, ladies and gentlemen.

4 As you know, we are now ready to begin with the trial
5 of the case for which you were selected.

6 Mr. Lineberry, as I told you earlier, I'm going to ask
7 you to serve as the foreperson of the jury. And as the
8 foreperson you're going to have three specific duties that
9 none of the other jurors will have.

10 Number one, you're going to be asked to serve as the
11 spokesperson for the jury. And so if during the trial
12 something arises that needs to be brought to my attention,
13 that is you or a fellow juror has some difficulty or
14 problem or question, if you'll let the bailiff know, he'll
15 let me know, and I will try to address any problem or
16 answer any question that you may have.

17 Secondly, you're going to be asked to preside over the
18 jury deliberations when the time comes for those
19 deliberations. And that of course won't be until the end
20 of the trial after all of the evidence has been received
21 and I have instructed you fully on the law that's
22 applicable in cases of this nature.

23 But when that time comes to go back to begin
24 deliberating you're asked to provide over that process in
25 the jury room simply to ensure that it's carried out in

1 some orderly fashion.

2 And, thirdly, you'll be asked to actually write the
3 verdicts or the decisions of the jury, and you'll indicate
4 those decisions on a verdict form that I'll provide you as
5 you go back to deliberate and upon which you will indicate
6 the jury's unanimous decision as to each of the separate
7 charges.

8 Now, the foreperson has those specific duties that
9 I've just indicated. That does not however mean that the
10 foreperson is any more important than any of you other
11 jurors, because the decisions of a jury are the unanimous
12 consensus opinions of all 12 jurors, and so all of you are
13 going to have an equal say and equal vote in what the
14 ultimate decisions in this case will be.

15 Someone simply has to be delegated those
16 responsibilities that I have just indicated, and I have
17 delegated those to Mr. Lineberry in appointing him as the
18 foreperson. But all of you jurors are equally important so
19 far as the ultimate decisions in this case are concerned,
20 because, as I've stated, your decisions have to be
21 unanimous. All of you have to be in agreement.

22 Now, Ms. Huggins, you've been selected as an alternate
23 juror. And, as you know or as I told you earlier, the
24 function of an alternate is to take the place of one of the
25 original 12 in the event one of these 12 cannot continue to

1 serve for some reason.

2 So it is important that you pay just as careful
3 attention as we ask of all of the jurors, because it does
4 occur from time to time for one reason or another one of
5 the original 12 may be called away. In that event you
6 would be called upon to become the 12th. So it is
7 important that you pay just as careful attention as we ask
8 of all of the jurors in the case.

9 You may swear the jury.

10 (Whereupon, the jury was duly sworn.)

11 THE COURT: All right. Ladies and gentlemen, as you
12 know, you've been selected for the purpose of deciding the
13 verdicts in the case of the State vs. Donald Hugh Johnson.

14 As you are aware, he has been accused by the state of
15 having committed five separate and distinct criminal
16 offenses, although they may have arisen out of one event or
17 some course or sequence of events.

18 The five separate charges are exactly that. They are
19 five separate charges. And so you will consider each of
20 the indictments separately as it relates to the evidence
21 and the law that's applicable to each. And so in this case
22 you'll be called upon to arrive at five separate and
23 distinct decisions.

24 Those decisions will be indicated on the back of the
25 indictments, Mr. Foreman, in a place where there is a space

1 for you to indicate the jury's unanimous decision as to
2 that particular charge.

3 And depending upon your determination of fact and your
4 application of the law, your decisions in the case as to
5 each of the indictments may be the same and they may be
6 different. That'll depend upon your determination of fact
7 and then your application of the law to the facts as you
8 determine them to be.

9 But Mr. Johnson, as you know, has been accused by the
10 state in three indictments with the offense of criminal
11 sexual conduct with a minor in the second degree.

12 He is also charged in one indictment with the
13 commission or attempting to commit a lewd act upon a child
14 under 16 years of age; and he's also charged with
15 contributing to the delinquency of a minor.

16 Now, as you are aware, as to each of those charges he
17 has entered a plea of not guilty. And, as I told you, that
18 plea of not guilty places upon the state because they
19 brought the charges to establish his guilt to the
20 satisfaction of you 12 jurors beyond a reasonable doubt
21 before any verdict of guilty could be returned as to a
22 particular indictment.

23 These indictments are not evidence in the case.
24 They're not proof of anything. The indictments will be in
25 the jury room because it is on the back of each indictment,

1 Mr. Foreman, that you're going to be asked to indicate the
2 jury's decision as it relates to that particular
3 indictment.

4 But other than serving as the verdict forms, the
5 indictments serve no purpose so far as you jurors are
6 concerned. They're not evidence; they're not proof of
7 anything. They'll simply be in the jury room to serve as
8 the verdict form in each of the separate cases.

9 Any time a person is accused of a crime, and it
10 doesn't matter whether it's a less serious or more serious
11 crime, any time a person is accused of having committed any
12 crime under the law and the constitution of this state and
13 of the United States, every person accused of a crime is
14 presumed to be innocent.

15 That presumption of innocence remains with every
16 defendant, as it does with this defendant, from the time
17 that he is placed under arrest and throughout the course of
18 the criminal process and even throughout the course of the
19 actual trial in the case.

20 That presumption of innocence is going to be with Mr.
21 Johnson even at the time that you go back into your jury
22 room at this trial's conclusion to begin with your
23 deliberations in this case.

24 That presumption of innocence will be with him in that
25 jury room, and it will remain with him forever unless you

1 12 jurors determine that he's no longer entitled to that
2 presumption of innocence. That is after you carefully
3 considered all the evidence in the case, and after you've
4 applied the law, if you 12 jurors unanimously determine
5 beyond a reasonable doubt that his guilt has been proven as
6 to a particular charge, then under those circumstances he
7 would no longer be entitled to the presumption of
8 innocence.

9 But it's only if, unless and until you are satisfied
10 of his guilt beyond a reasonable doubt that the defendant
11 would no longer be entitled to that presumption of
12 innocence.

13 Now, the way the trial will proceed is that in a
14 moment the lawyers are going to address you in what are
15 called opening statements.

16 There are two occasions in a trial where lawyers are
17 permitted to address the jury, and that is at the beginning
18 of the trial before any evidence has been introduced and
19 then again at the conclusion of the trial after all of the
20 evidence has been received.

21 Keep in mind however that the lawyers' statements are
22 not evidence in the case. You can't consider their
23 statements as being any evidence upon which you will base a
24 decision, because the lawyers aren't witnesses to anything.

25 The lawyers will not be testifying under oath. They

1 won't be subjected to direct and cross-examination as each
2 of the witnesses will be that will testify from the witness
3 stand. And so they're not going to be telling you anything
4 they know of their own personal knowledge or experience
5 that relates to this case. So what they tell you is not
6 evidence. You should however listen to what they have to
7 say because the statements do serve a purpose.

8 The opening statements serve to provide you with a
9 basic understanding as to what this case is about from the
10 perspective of each side so that you'll have some context
11 in which to place the evidence that we will be receiving
12 shortly thereafter.

13 The closing statements occur after all of the evidence
14 has been received.

15 Now, again, those statements aren't evidence. But it
16 does permit the lawyers an opportunity to discuss with you
17 the evidence that you've seen and heard during the trial.
18 And through that discussion each will have an opportunity
19 to try to persuade you or to convince you that that
20 evidence does or does not support a particular decision.
21 And it's in between those opening and the closing
22 statements that we actually receive the evidence upon which
23 you will base your decision.

24 The state has the burden of proof, so therefore they
25 will go forward first in their presentation of evidence.

1 Once the state has concluded in its presentation the
2 defendant has the same opportunity to testify and to
3 present evidence by way of witnesses being called and
4 otherwise. But a defendant is not under any obligation to
5 testify or to present evidence, because the burden is never
6 upon a defendant to prove that he is not guilty or to prove
7 that he is innocent because in many cases that might not
8 even be possible. A defendant however is afforded an
9 opportunity to testify and to present evidence should he or
10 she wish to do so.

11 But the fact that a defendant does not testify in a
12 criminal trial is not a factor that may be considered by a
13 jury in any way, nor may that fact be held against the
14 defendant or considered in any fashion in your resolving
15 this case and coming to a verdict.

16 After all of the evidence is received, after you hear
17 the final summations of the lawyers, I'll then instruct you
18 the law in detail as it relates to cases of this nature.
19 Then you'll go back, begin your deliberations.

20 Through that process you will carefully examine all of
21 the evidence, you will evaluate the testimony of each
22 witness, you will determine what evidence you find to be
23 the most credible. That's the evidence you will accept.
24 You will reject any evidence or testimony that you find not
25 to be credible or believable.

1 Once you evaluate all of that evidence, you decide
2 those facts, you'll then apply the law that I will have
3 provided you. And you will determine whether or not the
4 defendant's guilt has been proven beyond a reasonable doubt
5 as to each of the separate charges that have been brought
6 against him.

7 If his guilt has been proven beyond a reasonable
8 doubt, then your verdict would be guilty as to that
9 particular charge. If the state has failed to satisfy you
10 beyond a reasonable doubt as to his guilt as to a
11 particular indictment, then your verdict would be not
12 guilty as to that particular charge.

13 So all that we ask for you to do is to pay careful
14 attention throughout the course of the trial. Give each
15 witness the same degree of attention as they testify,
16 because, as I've told you, one of your duties might very
17 well be to evaluate the testimony. And if there's a
18 conflict in testimony, you get to resolve that conflict.
19 You get to decide what's the most credible testimony and
20 what testimony, if any, is not.

21 But it's important that you give every witness the
22 same degree of attention so that when you go back to begin
23 your deliberations you'll be in a proper position to be
24 able to fairly evaluate each of the witness' testimony in
25 light of not only that particular witness' testimony but in

1 light of all of the evidence and all of the testimony
2 received during the trial of the case.

3 It's also important that you keep an open mind
4 throughout course of the trial. And by that I simply mean
5 that you are not to begin making up your minds or
6 formulating your opinions as to what you think the ultimate
7 decisions in this case ought to be until all of the
8 evidence has been received, until I have instructed you on
9 the law and until you've been asked to go back and begin
10 with your deliberations in this case. That is the process
11 that is designed for you 12 jurors to arrive at a fair and
12 just decision in the case.

13 So I do want to thank you in advance for your
14 participation, as well as your careful attention. I would
15 ask that you please give the lawyers your attention now as
16 they give you their opening statements.

17 Mr. Stumbo.

18 MR. STUMBO: Thank you, Your Honor. May it please the
19 Court.

20 THE COURT: Yes, sir.

21 MR. STUMBO: Family ties, secret-wise and destroyed
22 lives.

23 This case is the story of two people. It starts out
24 as a family story. The defendant, Donald Johnson, is one
25 of the players involved. The second person is his

Opening statements

1 step-granddaughter, *Victim* She's also in the
2 courtroom here today.

3 When I say family ties, what are grandparents supposed
4 to do with their grandchildren? What are they supposed to
5 teach them? Teach them how to tie their shoes, teach them
6 how to ride a bike, teach them how to hook a worm so they
7 can go fishing, teach them how to drive a car when they get
8 older.

9 What did Donald Johnson teach his granddaughter? He
10 taught her how to play strip poker, taught her how to model
11 thongs that he bought for her in front of him. He taught
12 her how to use a vibrator, and for four years he taught her
13 how to perform oral sex on him over and over and over
14 again.

15 Instead of teaching his granddaughter the good things
16 in life, Donald Johnson subjected his granddaughter to some
17 of the most humiliating and degrading actions you can
18 imagine. And *VICTIM*'s life will never be the same.

19 Donald Johnson committed his deeds in secret in the
20 dark. He never thought anybody would find out about them.
21 He used sham, he used manipulation and he used fear as his
22 henchman to keep these things that he did in the dark where
23 nobody else would know about them. He used the fact that
24 he was a former police officer as a weapon.

25 But he didn't count on one thing, ladies and

Opening statements

1 gentlemen. He didn't count on the fact that ~~VICTIM~~ ^{VICTIM} would
2 grow up. And VICTIM is going to stand before you in this
3 courtroom here this week and set the story straight on what
4 happened between the time she was 13 years old and 17 years
5 old and what she had to go through.

6 I want you to listen to her story very carefully,
7 ladies and gentlemen. She's going to tell you her story in
8 great detail, not because she wants to, not because she
9 wants to remember the things that happened to her, because
10 it's time for her to tell the world the story of what
11 happened so that Donald Johnson will be held accountable
12 for it.

13 And I want you to listen to the level of detail that
14 she gives, ladies and gentlemen. That's going to be very
15 important as you hear her story. I want you to see the
16 evidence that comes forward that's going to be laid out in
17 front of you to corroborate every detail of her story. And
18 as you see the evidence laid out for you, ladies and
19 gentlemen, the deeds of Donald Johnson are being brought
20 from the darkness out into the light.

21 The judge has already told you this and will explain
22 this again at the end of the trial. It's the state's
23 burden in this case. Mr. Wilson and I, it's our task here
24 to prove beyond a reasonable doubt, and you will hear that
25 term thrown around a lot. I want you to remember that.

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1 The evidence as it is going to be shown to you in this
2 case I am very confident, and we gladly bear the burden in
3 this case, I'm confident that as the evidence is laid out
4 you're going to have every tool you need to go back into
5 that jury room after this case is over and find Donald
6 Johnson guilty of all five charges we charged him with --
7 three counts of criminal solicitation of a minor during
8 criminal sexual conduct with a minor in the second degree,
9 one count of lewd act, committing a lewd act on a minor,
10 and one count of contributing to the delinquency of a
11 minor. That's a lot of legal mumbo jumbo that I just threw
12 at you.

13 Right now, ladies and gentlemen, I want you to focus
14 on the facts as you hear those. At the end of this case
15 the judge is going to again instruct you on what the
16 elements of those, all of those, things I just listed out
17 are. You can apply the facts, the law to those facts, and
18 come up with a decision that he's guilty of all five of
19 those things he's charged with.

20 I want you to think about the evidence. And I
21 remember when I was a kid I used to like to play
22 connect-the-dots. You know, you see those in the coloring
23 books and different work books.

24 What we're going to be doing, Mr. Wilson and I, during
25 the course of this afternoon and maybe tomorrow is throwing

Opening statements

1 a lot of dots out on a page for you as you listen to the
2 evidence. And you have a chance at the end of the trial to
3 connect those dots and tie together what the truth is.

4 That's all we are asking you to do, ladies and
5 gentlemen, is to find the truth in this case. Hold Donald
6 Johnson accountable and find him guilty of every one of
7 these charges. Thank you.

8 THE COURT: Mr. Johnston.

9 MR. JOHNSTON: May it please the Court.

10 Mr. Foreman and ladies and gentlemen of the jury, all
11 of you received a jury summons here today, and it has some
12 of the same similarities and some differences to
13 invitations that you may have received in your life,
14 invitations to a birthday party, to a wedding, to a
15 graduation.

16 One of the differences is that if you didn't go to the
17 wedding or the graduation or the birthday party you
18 wouldn't be in any trouble, you wouldn't be in any trouble.
19 But it is an opportunity, and that's what it's like, an
20 invitation that you may have received in the past.

21 The jury summons that you received, ladies and
22 gentlemen, is an invitation to do justice, an invitation to
23 do justice in this case.

24 The evidence is going to show that you should accept
25 this invitation to do justice. And there is but one way

Opening statements

1 that you can do justice in this case, and that is to render
2 verdicts of not guilty. Let me explain.

3 In this country the government, the state, must always
4 prove its allegations beyond any reasonable doubt. That,
5 ladies and gentlemen, means that before you can render a
6 verdict of guilty their case to you must be presented as
7 one of a case 100 percent free of reasonable doubt.

8 Let me say that again. Before you can find Don
9 Johnson guilty of any crime their case to you has to be
10 100 percent free of reasonable doubt. If there's any
11 reasonable doubt at all the Court will instruct you that it
12 is your sworn duty to render a verdict of not guilty.

13 These sorts of cases are perhaps the hardest to
14 defend, a case in which there is an allegation of sexual
15 misconduct. But, ladies and gentlemen, one of the reasons
16 that they are hardest to defend is because they are the
17 easiest to allege.

18 In this case the chief evidence that they're going to
19 bring to you is simply what are the claims of the
20 prosecuting witness, the claims of the prosecuting witness
21 VICTIM who is the step-granddaughter of my client,
22 Don Johnson.

23 In this case you will hear that there is no scientific
24 evidence to support the allegations that VICTIM is
25 making. In fact, there is no corroboration at all of any

Opening statements

1 of her allegations.

2 And in fact, ladies and gentlemen, I will argue to you
3 at the conclusion of this case that her allegations go
4 against our own common ordinary everyday experiences.

5 This is not a case in which a small child has come
6 forward with allegations. This is a young lady who says
7 that these things happened to her when she was between the
8 ages of 13 and 17.

9 The evidence in this case will not show that this is a
10 slow young lady but, in fact, is a young lady who attended
11 school and had a boyfriend. This is not a case in which it
12 is alleged that there is some sort of confusion between
13 child and parental roles that would cause a child to be
14 hesitant to come forward with some kind of allegation.

15 In fact, what the evidence in this case is going to
16 show is that there was absolutely no reason why if these
17 things were happening the way that VICTIM is going
18 to tell you today, that she had every opportunity to come
19 forward with the allegations. But what, in fact, happened
20 was she didn't come forward with the allegations until it
21 suited her, until she had a purpose to reveal these
22 allegations.

23 This young lady was raised in a rather strict home,
24 raised by her grandmother, a grandmother with old-fashioned
25 values, a grandmother who also raised my client's wife,

Opening statements

1 Jenol Johnson, for Jenol is that grandmother's daughter as
2 well.

3 Jenol recalled how unpleasant it was to be raised with
4 all of these strict regulations upon a young girl, a young
5 girl who is just coming forward to that time of life when
6 we all might experience some rebellion. Even the most
- 7 conservative of us might experience some of that, that is
8 the teenage years. In any event, her reason for coming
9 forward with this allegation is part of the whole story in
10 this case.

11 She came forward with this allegation because she did
12 it as a complaint, a protest towards the strict regulation
13 of her by her grandmother.

14 In fact, before this day *Victim* did everything
15 she could to go to the home of Jenol and Don Johnson
16 because there she experienced some of the freedoms that she
17 did not have while she was at home.

18 The evidence will show that she was there at every
19 opportunity that she had to be in their home. The evidence
20 will further show that she often initiated, she often
21 initiated, being in the home of Don and Jenol Johnson.

22 So the day that these allegations are revealed she
23 goes to her grandmother, again, the strict grandmother I
24 was telling you about, and says I want to go to the
25 mountains with my boyfriend's mother. She is forbidden

Opening statements

1 from doing so.

2 The grandmother tells her, no, I'm not going to let
3 you go. And she says, well, you let me go to Don and
4 Jenol's house and Don has been molesting me for years.

5 Ladies and gentlemen, it was simply a protest against
6 the strict rules that she has. And because she is now
7 stuck with that allegation, she can't go back on it.

8 What corroboration will they have? None, ladies and
9 gentlemen. We're going to get into some rather unpleasant
10 testimony concerning her description of Don Johnson's
11 private parts. This is their big shiny piece of evidence,
12 that she's able to identify certain characteristics of Don
13 Johnson's private parts.

14 The only thing is, ladies and gentlemen, the
15 information that she provided turned out not to be correct.
16 So even that one aspect of corroboration they might have
17 been able to give you doesn't stand up to the light of day.

18 I'm going to ask you to accept the invitation in this
19 case, to end this nightmare for Don Johnson, to send him
20 home. And I will ask you, I will invite you, to find him
21 not guilty and thereby send him home. Thank you.

22 THE COURT: Mr. Wilson.

23 MR. WILSON: Thank you, Your Honor. May it please the
24 Court. The state calls *VICTIM*

25

-- VICTIM --
Direct examination by Mr. Wilson

1 ASHLEY WANDA DIANE WARMOTH,
2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. WILSON

4 Q VICTIM, can you hear me okay from there?

5 A Yes.

6 Q Okay. Just for the jury, state your full name.

7 A VICTIM

8 Q VICTIM, where do you currently live?

9 A With my great-grandmother.

10 Q Okay. And where is that?

11 A In Gaffney.

12 Q Are you -- you're living there right now.

13 A Yes.

14 Q Were you living there in August of 2001?

15 A Yes.

16 Q And you said you were living there with your
17 great-grandmother?

18 A Yes.

19 Q Was she your legal guardian?

20 A Yes.

21 Q Was she your legal guardian in August of 2001?

22 A Yes.

23 Q How long has she been your legal guardian?

24 A Since I was two years old.

25 Q And you are currently enrolled in school?

VICTIM

Direct examination by Mr. Wilson

- 1 A Yes.
- 2 Q Where are you going to school?
- 3 A Spartanburg Community College.
- 4 Q VICTIM, what year and day were you born?
- 5 A January 11th, 1988.
- 6 Q Okay. And what is your relationship to the defendant,
- 7 Donald Johnson?
- 8 A He is my step-grandfather.
- 9 Q Who did he marry?
- 10 A My grandmother.
- 11 Q And what's her name?
- 12 A Jenol.
- 13 Q Do you remember when they got married?
- 14 A About 14 or so, been about 14 years maybe.
- 15 Q So you would say the early 90's when you were real
- 16 little?
- 17 A Yes.
- 18 Q Is your step-grandfather in the courtroom right now?
- 19 A Yes, he is.
- 20 Q Can you tell the jury where he is sitting?
- 21 A Right over there.
- 22 MR. WILSON: Let the record reflect that Ashley just
- 23 pointed out the defendant, Donald Johnson.
- 24 Q Have you ever been to the defendant's home?
- 25 A Yes.

VICTIM

Direct examination by Mr. Wilson

1 Q Where is it located? What, where does he, where does
2 he and your grandmother live? Where do they live? Do you
3 know the street address?

4 A Oh, Drive.

5 Q And where is that?

6 A I don't know if it's in Woodruff, or I don't know the
7 exact.

8 Q Spartanburg County?

9 A Yes, yes.

10 Q Now, let's talk about August of 2001. How old were
11 you in August of 2001?

12 A I was 13 years old.

13 Q Okay. And what happened to your great-grandfather
14 that month?

15 A He passed away.

16 Q And so your great-grandfather died in August of 2001?

17 A Yes.

18 Q Were you over at your step-grandfather's house around
19 the time that this occurred?

20 A Yes.

21 Q I want to talk about the weekend, about the weekend in
22 August, when you were over at your step-grandfather's
23 house.

24 Did you have any health concerns at that time, that
25 weekend? Did you have any, did you notice any marks or

VICTIM

Direct examination by Mr. Wilson

1 anything yourself that you were concerned about?

2 A Yes, yes. I was in the shower, and I noticed a purple
3 spot on my right breast. And I got dressed and went
4 outside on the porch where Donald was sitting waiting on
5 Jenol to get home from work.

6 And he could tell that something was wrong with me, and
7 he asked me what was wrong. And I told him, you know, it's
8 no big deal, I'll just wait until Jenol gets home. And he
9 told me it's okay, you can tell me. So I told him that I
10 had a spot on my breast. And so we went into the house into
11 their bedroom. And I pulled up my shirt and my bra to the
12 side to where he could see the spot.

13 Q Were you exposing your breast?

14 A Not my whole breast, no.

15 Q Just pulled it enough for him to see it, the spot?

16 A Right, yes.

17 Q All right. Continue.

18 A And he put both of his hands on it and was feeling. I
19 guess he was feeling for lumps or something. I don't know.

20 And when he moved my little shirt off my breasts and
21 started feeling I knew, you know, that wasn't right. And I
22 started crying and run back to my bedroom. And he followed
23 me in there and told me that he liked doing that and wanted
24 to do it some more.

25 So he had us go in the living room, and so he could see

VICTIM

Direct examination by Mr. Wilson

1 out the window when Jenol, because it was about time for her
2 to come home from work.

3 Q Real quick. Where does Jenol work?

4 A Mary Black Hospital.

5 Q Does she work a lot or was she working a lot at this
6 time?

7 A Yes.

8 Q Now, keep going.

9 A And we went in the living room. And when we was in
10 the bedroom he had me take my clothes off. And then I went
11 in the living room so he could see out the window to see
12 when Jenol was coming home. And he started fondling on my
13 breasts and was feeling in between my legs.

14 Q Were you wearing any undergarments at this time?

15 A No.

16 Q So you were completely naked?

17 A Yes.

18 Q What happened next? Did he stick his finger inside of
19 you?

20 A Yes.

21 MR. JOHNSTON: Your Honor, object to leading the
22 witness.

23 THE COURT: Sustained.

24 Q What did he do next, VICTIM?

25 A He started feeling on my breasts and we went --

VICTIM

Direct examination by Mr. Wilson

1 (Pause.)

2 Q Do you need a moment? Did he do anything else besides
3 rub your breasts, VICTIM?

4 A He -- I think, I think we went back. I don't know if
5 we went back to the bedroom or if it was in the living
6 room, but he stuck his finger in my vagina.

7 Q At what point did he quit?

8 A When he thought Jenol was coming home.

9 Q Now, let's talk about later this same weekend. Did
10 Jenol leave the house at other times that weekend?

11 A Yes.

12 Q Do you remember where she was?

13 A She went with her friends that she works with at Mary
14 Black Hospital. They went to go eat dinner.

15 Q Did you and Don play any card games?

16 A Yes.

17 Q What did you play?

18 A We played strip poker.

19 Q Tell us about that.

20 A We were playing cards at first, and he asked me if I
21 had ever played strip poker. And I told him no. And so we
22 played. And I got down to where I had no shirt on and no
23 bra. And he started feeling on my breasts across the
24 table. And I told him I didn't want to play any more.

25 Q Did you stop playing at that time?

VICTIM

Direct examination by Mr. Wilson

1 A Yes.

2 Q When you would stay over there did he ever come into
3 your room in the morning?

4 A Yes, he did.

5 Q And how would he wake you up?

6 A He would crawl in the bed behind me and put his arm up
7 my shirt and feel on my breasts and put his hand down my
8 pants and feel on me down there and stick his finger in me.

9 Q How often did this happen?

10 A Every time I went down there.

11 Q Were you clothed? What do you normally sleep in?

12 A A t-shirt and a pair of shorts.

13 Q Did you keep those clothes on when he would come in
14 there?

15 A No. He would have me take them off.

16 Q Did Don, did the defendant, ever talk to you about
17 performing certain sex acts?

18 A Yes. He asked me one morning of that weekend if I had
19 ever performed a B. J. And at the time I didn't know what
20 that was. He told me. He told me that's when a girl puts
21 their mouth on their penis and sucks and licks it.

22 Q Okay. So you never knew what a B. J. was before this
23 time.

24 A No.

25 Q Can you tell us about -- this is going to be

VICTIM

Direct examination by Mr. Wilson

1 difficult, Ashley. Can you tell us about the first time?

2 A That same weekend. That morning he came in there and
3 was feeling up my shirt and took off my shorts and --

4 Q What was he wearing?

5 A He had on scrubs and a white t-shirt, scrub pants and
6 a white t-shirt. And that's when he had asked me if I had
-7 ever performed a B. J. before. And I told him no, I didn't
8 know what it was. And he took his scrub pants off and his
9 underwear and laid down on my bed and had me grab his penis
10 and told me to put it in his (sic) mouth and just start
11 sucking it.

12 Q How long did that last?

13 A Just a few minutes.

14 Q Did he climax?

15 A Yes he did.

16 Q What happened?

17 A I ran to the bathroom. Well, when he climaxed, he had
18 me, he grabbed me on the shoulders and was moaning, I
19 guess, and was squeezing on my arms. And I ran to the
20 bathroom and spit it out and I gaged and about threw up.
21 And when I went back in there, he told me that that was
22 part of it, that all the women that's ever done it to him
23 would gag and throw up.

24 Q Did he ever or around that time -- were you upset at
25 that time?

VICTIM

Direct examination by Mr. Wilson

1 A Yes, I was.

2 Q Did he tell you to conceal the fact that you were
3 upset?

4 A Yes. He told me. He had me to go in the bathroom and
5 wash my face.

6 Q Why did he tell you to do that?

7 A So Jenol wouldn't come home and see that I had been
8 crying.

9 Q And this was on the first weekend.

10 A Yes.

11 Q How old were you, again, on this weekend?

12 A Thirteen years old.

13 Q Was that the first weekend you saw him naked from the
14 waist down?

15 A Yes.

16 Q VICTIM, at one point you gave a description of your
17 step-granddad's penis and pelvic region.

18 A Yes.

19 Q Okay. Can you explain for us? Well, let me ask this
20 question. Go ahead and explain for the jury. Just give
21 the same description that you gave to the police.

22 A He has strawberry blonde, reddish pubic hair. It's
23 wiry. His penis is uncircumcised. He has a freckle on top
24 of his penis that you can't see unless the skin is pulled
25 back. And he has a white wart-like mole on the inside of

VICTIM

Direct examination by Mr. Wilson

1 his right thigh.

2 Q Now, let me interrupt you real quick. When you gave
3 your report did you say it was on the inside of his right
4 thigh?

5 A No. I said it was on his left.

6 Q So if you're between his legs looking directly at his
7 pelvic region, what, what, where would the mole be?

8 A On my left.

9 Q On your left. His right thigh.

10 A Correct.

11 Q So when you said --

12 MR. JOHNSTON: Your Honor, object to leading the
13 witness.

14 THE COURT: Don't lead the witness.

15 Q Did you mistake the side at that point?

16 A Yes, I did, yes.

17 Q Did you mean his right thigh?

18 A Yes, I did.

19 Q Did you mean it was to the left as you look at it?

20 A Correct.

21 Q Did your family ever talk about Donald's penis or
22 pelvic region?

23 A No.

24 Q Did they ever joke about it?

25 A No.

VICTIM

Direct examination by Mr. Wilson

1 Q Did you grow up in a strict home?

2 A Yes, I did.

3 Q Is your great-grandmother very old fashioned?

4 A Yes, she is.

5 Q Would Don make -- did anyone ever joke with him or
6 about him about this public area?

7 A No.

8 Q Did he ever talk to you about his and Jenol's sex
9 life?

10 A Yes, he did.

11 Q What did he tell you about it?

12 A He told me that he can't -- they don't have sex that
13 much any more because he's a diabetic and his penis can't
14 get all the way hard and just enough to ejaculate but not
15 hard, you know, to penetrate me or anybody. And because of
16 that he told me that Jenol gets upset because he can't get
17 hard and makes her feel bad because she feels like it's her
18 fault and he won't -- she won't let him touch her sexually.
19 He told me that Jenol has had a hysterectomy.

20 Q Okay. VICTIM, before August of 2001 how often did you
21 go to your step-grandfather's house?

22 A About every other weekend or during the summer.

23 Q Was it before? Those are before the summer of 2001?

24 A Oh, before that just hardly ever, just during the
25 summer.

VICTIM

Direct examination by Mr. Wilson

1 Q After the weekend that you had the purple spot on your
2 breasts and this started, how often did you start going?

3 A Every other weekend.

4 Q How often did the abuse, the sexual abuse, happen when
5 you went over there?

6 A Every time I went over there.

7 Q Did you, did you and your step-grandfather ever go
8 driving?

9 A Yes.

10 Q Tell us about that.

11 A Before I got my permit or it was when I had my permit,
12 getting my license, I really can't remember, but he would
13 let us go driving behind the house. And then he would
14 fondle my breasts, you know, not, you know.

15 Q Who was driving?

16 A I was.

17 Q Was he teaching you how to drive?

18 A Yes.

19 Q Keep going.

20 A And we, when I got my driver's license we, would, he
21 would take me driving because I liked to drive Jenol's car.
22 And we would go in her car at nighttime, go get gas.

23 And he would take me to the subdivision right below
24 their house. I think it was Willow Creek. And it was under
25 construction at the time. And he would pull over in an

VICTIM

Direct examination by Mr. Wilson

1 empty cul-de-sac and have me cut the car and the lights off.

2 And he would pull out his penis and get me to suck it.

3 Q Was he ever driving?

4 A During?

5 Q You said that sometimes you would be driving.

6 A Yes.

7 Q And he would have you drive to an empty cul-de-sac
8 where there was some construction.

9 A Yes.

10 Q Go ahead.

11 A And like on Sundays when he would take me home, we
12 would go off the Cowpens exit. And he would be driving.
13 And we would take the back roads where there was really no,
14 that many cars coming down the road, and he would pull his
15 penis out and have me suck it.

16 Q While he was driving?

17 A Yes.

18 Q Would he ever climax?

19 A Yes, he would. After he climaxed he would pull the
20 car, car over and have me spit it out because I told him I
21 couldn't swallow it. And he would carry napkins in his
22 glove compartment to where he would have something to clean
23 up with.

24 Q Did this happen when you were 14 years old?

25 A Yes.

VICTIM

Direct examination by Mr. Wilson

1 Q When did you turn 14?

2 A It was --

3 Q When is your birthday?

4 A January 11th.

5 Q Okay. So you were born in 1988?

6 A Yes.

7 Q And how old would you have been in, on January 11th of
8 2002?

9 A I would have been 14.

10 Q And during this year is when he would take you
11 driving?

12 A Yes.

13 Q Did it happen after you got your license?

14 A Well, when I had my permit we would go driving behind
15 the house and he wouldn't because I, he wouldn't rub, he
16 would fondle my breasts but he wouldn't have, he tried his
17 best not to distract me when I was driving because I was
18 just learning how to drive. But after I got good at
19 driving that's when he would.

20 Q You are fine. Take your time. Were you ever outside
21 the car when he had you perform oral sex on him?

22 A No.

23 Q So where were you, on cul-de-sacs?

24 A We were inside the car.

25 Q And why were you inside the car?

VICTIM

Direct examination by Mr. Wilson

1 A So nobody would see us.

2 Q Did he ever do oral sex on you after you turned 15?

3 A Yes.

4 Q How often? Was it once a month?

5 A It was just about every weekend we went down there.

6 Q Did you ever perform oral sex on him after you turned
7 15?

8 A Yes.

9 Q Did you ever take a shower with him in the room?

10 A Yes.

11 Q Tell me about that.

12 A I would be in the shower and I would have the curtain
13 pulled to where he couldn't see in, and he would come in
14 there and pull the curtain back. And the way their shower
15 is, you can see through it but not clearly. But you could
16 see that somebody is in there. And he would stand there
17 and watch me. And then he would go and sit on the bed.

18 And when I got out I would start getting ready. And I
19 would have my towel on. And he would sit on the bed, on the
20 foot of the bed, and watch me get ready. And then he would
21 come in there and have me drop my towel. And he would start
22 sucking on my breasts and grabbing on my butt and rubbing
23 down near my vagina and would finger me.

24 Q Did he ever ask you for oral sex after a shower?

25 A Yes.

VICTIM

Direct examination by Mr. Wilson

1 Q Did he ever talk to you about, did he ever talk to you
2 about the way you groomed yourself?

3 A Yes.

4 Q What would he say?

5 A He told me that because I shaved and kept myself clean
6 he didn't like a girl to have down there, shave it off,
7 because he told me that it reminded him of a little kid and
8 that he liked hair on it because it reminded him of a
9 woman.

10 Q Did he ever teach you any other sexual positions?

11 A Yes. He taught me how to do 69.

12 Q And what is that position?

13 A It's when the guy lays on his back and the girl lays
14 on top with her pelvic area in the guy's face and the guy's
15 pelvic area in the girl's face.

16 Q Did you and Don ever do that?

17 A Yes.

18 Q Do you remember how many times or how often?

19 A Just a few.

20 Q Did you and Donald ever have sexual intercourse?

21 A No.

22 Q Did he ever try to have sexual intercourse with you?

23 A Yes, he did.

24 Q Do you remember approximately how old you were when
25 this attempt happened?

VICTIM
Direct examination by Mr. Wilson

1 A Around 15 maybe.

2 Q Tell, tell me about that incident when he tried to
3 have sexual intercourse with you.

4 A It was the time, right around the time, Jenol was on
5 her way home from work. Don called her to see how long she
6 was going to be before she got home from work. And we went
7 in their bedroom. And he cracked the blinds where he could
8 see out the window and had me get in the doggie style
9 position.

10 Q And describe the position you were in.

11 A Where I was on my hands and knees.

12 Q And why did he have you get in that position?

13 A So he could see out the window to see when Jenol was
14 coming home.

15 Q Okay. Keep going.

16 A And he went in the bathroom and got a latex glove and
17 put it on his penis and tried to penetrate me with it, but
18 he couldn't because he couldn't get it hard I guess because
19 he couldn't get a full hard on because of his diabetes or
20 sugar or whatever.

21 Q Is that what he told you?

22 A Yes. And his private. He was nervous because Jenol
23 was on her way home.

24 Q Why did he use a rubber glove and not a condom?

25 A Because they don't have to have condoms.

VICTIM

Direct examination by Mr. Wilson

1 Q Did he insert his penis inside of you?

2 A No.

3 Q Did he try?

4 A He tried but he couldn't get it in.

5 Q Did he rub it against your vagina?

6 A Yes, he did.

7 Q Did Don ever use sex toys on you?

8 A Yes. He -- Jenol has a dark pink vibrator with a
9 black knob on the end and it was -- Don told me that it was
10 a joke or like a gag gift from people from work because
11 they know that Don can't have sex, can't get a hard on. So
12 I guess they gave her that for a joke.

13 Q Can you describe it again?

14 A It is dark pink with a black end on it from where you
15 put the batteries in.

16 Q VICTIM, I am going to show you something. I want you
17 to identify this for me. Do you recognize that?

18 A Yes.

19 Q Is this the vibrator that he used on you?

20 A Yes, it is.

21 Q The same one?

22 A Yes.

23 MR. WILSON: Your Honor, we would like to offer this
24 as State's Exhibit No. 1.

25 MR. JOHNSTON: Your Honor, I think they can offer it

VICTIM

Direct examination by Mr. Wilson

1 for identification at this time but the chain of custody is
2 not complete.

3 MR. WILSON: Your Honor, we don't need a chain of
4 custody.

5 THE COURT: I thought she just identified it. Do you
6 have any other objection?

7 MR. JOHNSTON: No, sir.

8 THE COURT: It is admitted.

9 (Vibrator marked State's Exhibit No. 1.)

10 Q Did he ever use this vibrator on you?

11 A Yes, he did.

12 Q I want you to tell about the first time he used this
13 vibrator on you.

14 A We were in the living room watching T. V., and that's
15 when he told me about the vibrator. And he went in Jenol's
16 room and got it and came in there and started rubbing,
17 turned it on and started rubbing, it all over me and then
18 started around at my pelvic area and penetrated me with it.

19 Q How often did he use it on you?

20 A Just a few times.

21 Q Did it ever hurt?

22 A Yes. I remember the last time I guess he got too
23 excited, and was in and out. And the end of it hurt me and
24 I hollered out. And I told him to stop because it hurt.

25 Q VICTIM, did you ever resist him at all during the

VICTIM

Direct examination by Mr. Wilson

1 first couple of years?

2 A Yes, I did.

3 Q You did?

4 A Yes.

5 Q How did you resist?

6 A I telling, I would tell him to stop and that he, he
7 would get mad at himself because of what he was doing to
8 me. And he would tell me that he's sorry and he would
9 never do it again. And I believed him. But then he would
10 keep doing it.

11 Q Would you ever get in his face?

12 A Yes. I would get in his face to tell me to hit me so
13 I would at least have some way to prove that he was
14 touching me.

15 Q Did your step-grandfather ever take you shopping?

16 A Yes, he did.

17 Q Did he take you sometimes with Jenol?

18 A Sometimes.

19 Q Did he ever take you with your boyfriend?

20 A Yes.

21 Q Did he ever take you when you were by yourself?

22 A Yes, he did.

23 Q What kind of clothes would he buy you?

24 A He would buy me bras and thongs.

25 Q Did he buy you those things when your boyfriend or

VICTIM

Direct examination by Mr. Wilson

1 Jenol were with you?

2 A No.

3 Q Did he ever buy you school clothes?

4 A Yes.

5 Q Did you ever model those thongs and bras for him?

6 A Yes.

7 Q Why?

8 A Because he told me to.

9 Q Let's talk about real quick, you have a boyfriend,
10 correct?

11 A Yes.

12 Q What's his name?

13 A Mark P

14 Q Is he in the courtroom right now?

15 A Yes, he is.

16 Q How long have you two been dating?

17 A About five years.

18 Q Do you remember about when you started dating?

19 A February 18th of 2002.

20 Q About how long after the abuse started did you start
21 dating your boyfriend, ball park?

22 A Just a few months maybe.

23 Q How often did you and Don talk on the phone between
24 August of 2001 and August of 2005?

25 A He called me every day around 4:00 o'clock when I got

VICTIM

Direct examination by Mr. Wilson

1 home from school.

2 Q How long did you talk for?

3 A We talked at least until Jenol got home, and he would
4 let me go, and then later he would call me back.

5 Q Did you have more freedom at their house?

6 A Yes, I did.

7 Q When you were going over there did you, did you expect
8 this to happen?

9 A No, I didn't.

10 Q When you went over there every weekend did you think
11 it would happen the next weekend? Did you expect to be
12 sexually abused when you would go over to his house?

13 A At first, no.

14 Q How about later?

15 A After it started, yes.

16 Q When you talked on the phone with Donald, tell me
17 about the conversations.

18 A He was telling me that instead, he always told me
19 instead of saying miss you on the phone, he would say my my
20 because my, I always thought my grandma would pick up the
21 phone and hear and I was scared that she would hear
22 something. And there would be times that he would have me
23 check the phone to see if she was on it. And then he would
24 tell me how much he misses feeling on my breasts and
25 things.

VICTIM

Direct examination by Mr. Wilson

1 Q What else did he say? Do you remember him saying
2 anything else about your breasts? Let me ask this
3 question. Did you ever threaten him?

4 A Yes.

5 Q How old were you when you threatened to tell? Do you
6 remember how old you were?

7 A Not exactly.

8 Q When you did threaten, what was his response to you?

9 A He told me because he was an ex-cop nobody would
10 believe me, they would believe him because he was an ex-cop
11 and if I ever took him to court all he had to do was get
12 reasonable doubt in one juror's head, at least one, to
13 prove his innocence.

14 Q What did Don and Jenol think about Mark?

15 A They didn't really like him.

16 Q What did, did he ever talk to you about if people
17 asked you questions about your relationship with him? Did
18 he ever tell you anything about what to say?

19 A About?

20 Q Did he ever tell you how to respond to people if they
21 ever asked any suspicious questions?

22 A He always had me to make up excuses, be prepared.

23 Q I want to talk to you about how this all came out.
24 Did you have an argument with your great-grandmother in
25 August of 2005?

VICTIM

Direct examination by Mr. Wilson

1 A Yes.

2 Q What was that argument about?

3 A I wanted to go to Cherokee with my boyfriend's mother
4 and his little cousins.

5 Q And what did your great-grandmother say?

6 A She told me no, and I asked her why. I said you don't
7 trust me, and then she said, no, not that I don't trust
8 them. She said I just don't want you going down there.

9 I told her, I said grandma, I said the very ones you do
10 trust are the ones you shouldn't. And the ones that you do
11 trust, don't trust, is the ones you should.

12 Q Is that when you told her?

13 A That's when I told her that Don had been molesting me
14 since I was 13 years old.

15 Q Before you told anybody did you have any medical
16 condition or did you have any problems with your health?

17 A Yes. My chest would always hurt me. And my
18 grandmother took me to the doctor, and they done an E. K.
19 G. on me and couldn't find anything.

20 And after I came out with all of this to my
21 grandmother, she took me back to the doctor and had me
22 explain to my doctor why, when I went the first time he
23 asked me if I was under any stress, and I lied and told him
24 no. And then after I came out, my grandma took me to the
25 doctor and had me explain to him why I was stressed out and

VICTIM

Direct examination by Mr. Wilson

1 my chest was hurting. And I told him that Don had been, my
2 grandfather had been, molesting me since I was 13 years old.
3 And my doctor told me --

4 MR. JOHNSTON: Your Honor, I object to what the doctor
5 said.

6 THE COURT: Don't tell us what the doctor said.

7 Q Did the doctor prescribe you anything after you told
8 him what happened?

9 A Yes.

10 Q What did he prescribe you?

11 A Anxiety medicine.

12 Q Did you ever go, after this came out did you ever go,
13 to counseling?

14 A Yes.

15 Q Who did you see?

16 A Sharon Wright.

17 Q Did Don ever give you alcohol?

18 A Yes.

19 Q When would he give you alcohol?

20 A It only happened a couple of times. It was when Jenol
21 was home at the time, and Jenol would be sitting in the
22 living room getting ready to eat supper. And they'd eat
23 spaghetti, and they would drink wine. And Don would ask me
24 to sip it so I'd know what alcohol would taste like. And
25 Jenol wouldn't let him. But when she left and went in the

VICTIM

Direct examination by Mr. Wilson

1 living room he would hand it to me. And me being a
2 teenager, I was going to try it.

3 Q Did this happen a lot?

4 A Just a couple of times.

5 Q Was it always just wine?

6 A No. He had me try Jack Daniels too.

7 Q Did he ever get you drunk?

8 A No.

9 Q Why not?

10 A I guess because he didn't know how I would react to
11 alcohol.

12 Q Ashley, why didn't you say no to Don or tell people
13 about the abuse during that four-year period?

14 A Because he had it in my head wouldn't nobody believe
15 me.

16 Q Were you scared?

17 A Yes.

18 Q Were you embarrassed?

19 A Yes, I was.

20 Q Did you ever feel threatened by him?

21 A Yes. I remember one time sitting at the supper table
22 at Don and Jenol's house. And this was a little after my
23 great-grandfather passed away. And I asked Don. I said if
24 my great-grandmother would die and left me that house would
25 you get mad if I had my boyfriend move in. And he said,

VICTIM
Cross-examination by Mr. Johnston

1 yes, I'd be mad. And he told me that he would come and
2 burn the house down with us in it.

3 Q Why didn't you tell your great-grandmother about the
4 four years of sexual abuse?

5 A I was scared.

6 Q Why were you scared to tell her?

7 A Because I was scared nobody would believe me.

8 Q Were you scared for her health?

9 A Yes.

10 Q Do you still think about this today, VICTIM ?

11 A Yes, I do.

12 Q How has the four years of sexual abuse by your
-13 step-grandfather affected your life?

14 A It's affected my school work; it's affected my
15 relationship with my boyfriend and my great-grandmother.

16 Q I have no further questions. Please answer any
17 questions Mr. Johnston has for you, VICTIM. Thank you.

18 CROSS-EXAMINATION

19 BY MR. JOHNSTON

20 Q Young lady, do you remember talking to Investigator
21 Kevin Bobo about your grandfather's private parts?

22 A Yes.

23 Q Do you remember what you told him?

24 A I could probably already guess what you're going to
25 say.

VICTIM

Cross-examination by Mr. Johnston

1 Q That won't be necessary. Do you remember what you
2 told him?

3 A Yes.

4 Q Okay. Tell me.

5 A I told Detective Bobo that the freckle on his penis
6 was on the top, but I don't know if he misunderstood me,
7 but he typed on there that it was on the side.

8 Q Okay. You told Investigator Bobo, Detective Bobo,
9 that there is a freckle on your step-grandfather's penis,
10 is that right?

11 A Correct.

12 Q And where did you tell him was the location of that
13 freckle?

14 A I told him it was on the top.

15 Q On the top of the head of the penis, is that right?

16 A It's like maybe right below the head. It's not on the
17 head.

18 Q Okay. But, in any event, you told him that. But
19 you're telling us that he wrote it up wrong, is that right?

20 A Yes.

21 Q And you knew that was a very important aspect of this
22 case, did you not?

23 A At the time I was just giving my statement.

24 Q Well, you knew he was taking down what you said,
25 right?

Victim

Cross-examination by Mr. Johnston

1 A Correct.

2 Q He was investigating something, right?

3 A Correct.

4 Q And you told him that you could describe your
5 grandfather's private parts, am I correct?

6 A Yes.

7 Q But when you described it to him he wrote it down
8 wrong, right?

9 A Yes.

10 Q Now, is that the only thing you told him about your
11 grandfather's private parts?

12 A I told him that when I was trying to describe it to
13 him and tell him where these freckles and these wart-like
14 moles were. I guess we got, he got it confused or
15 something. I don't know. But I know with the wart-like
16 mole that I said was on his left side, it's on my left when
17 I look at him down there on his right.

18 Q Okay. And what part of the body did you say it was
19 on?

20 A On his thigh or on his butt cheek, right in that area.

21 Q Okay. Well, you know the difference between the thigh
22 and the butt cheek, don't you?

23 A Yes.

24 Q Which did you say?

25 A I think I said butt cheek.

Victim
Cross-examination by Mr. Johnston

1 Q Okay. Not thigh, correct?

2 A Correct.

3 Q And you know the difference.

4 A Yes.

5 Q You knew the officer was investigating this very
6 important matter, right?

7 A Uh-huh.

8 Q And he wanted you to describe in as close of detail as
9 you possibly could these unusual characteristics.

10 A Yes.

11 Q Am I right?

12 A Yes.

13 Q But on these two unusual characteristics you got them
14 wrong. Or did he get them wrong?

15 A I remember telling him that the freckle was on top of
16 his penis. But the wart-like mole, I messed up and said it
17 was on the left side of his thigh. But when I looked at
18 it, it was on my left.

19 Q I understand about the my-left, your-left thing. I
20 understand about that.

21 What I'm asking you is you told us that you know the
22 difference between the butt cheek and a thigh. And you know
23 they're different things. You have told us that. What I
24 want to know is what did you tell him.

25 A On the butt cheek.

Uddim

Cross-examination by Mr. Johnston

1 Q It's not on the -- have you seen the photographs?

2 A No, I have not.

3 MR. JOHNSTON: Your Honor, I would like to have this
4 marked for identification.

5 (Photograph marked Defendant's Exhibit No. 1 for
6 Identification.)

7 Q Now, you say that you have been in intimate positions
8 with your step-grandfather on too many occasions to
9 recount, is that right?

10 A Correct.

11 Q And that you have given him oral sex.

12 A Yes.

13 Q Correct? And that you have been in the 69 position
14 with him where you're face to face with his private parts.

15 A Correct.

16 Q Am I correct?

17 A Correct.

18 Q And you've seen these distinctive marks that we have
19 been talking about many, many times.

20 A Yes.

21 Q Am I correct?

22 A Yes.

23 Q That's how you were able to provide such an accurate
24 description of him, is that correct?

25 A Yes.

Wilson

Cross-examination by Mr. Johnston

1 Q Of course you didn't provide an accurate description,
2 did you? I'm showing you what's been marked as Defendant's
3 No. 1. There are two photographs there. Take a moment and
4 just look at that, please. I'm asking you about the
5 photograph on the right.

6 MR. WILSON: Your Honor, may I see the photographs?

7 MR. JOHNSTON: Absolutely.

8 MR. WILSON: I just want to see what you're showing.

9 Q Do you see a mole there?

10 A Yes.

11 Q It isn't on his butt cheek, is it, ma'am?

12 A No.

13 Q It's on his thigh, am I correct?

14 A Correct.

15 Q And you know the difference, because you've told me.

16 A Well, when he was laying down the way his butt would
17 overlap on his thigh, it was just, it was close together.

18 Q Okay. Do you recall having told Investigator Bobo
19 that your step-grandfather had a white mole or a wart on
20 the inside of his left buttock that you can only see if you
21 are looking between his legs from the front?

22 A Correct.

23 Q You've seen the photograph I've just showed you, is
24 that right, ma'am?

25 A Yes.

Uddim

Cross-examination by Mr. Johnston

1 Q You're telling us that the first time that anything
2 happened between you and your step-grandfather was where
3 you came to him and asked him about the mole on your
4 breast, is that right?

5 A Correct.

6 Q And that nothing from what I have read in your
7 statement ever happened before that, am I correct?

8 A Yes.

9 Q And you're telling us that within a matter of minutes
10 from that you were completely unclothed and engaged in
11 sexual activity. Is that what you're telling us?

12 A Yes.

13 Q And when was that, young lady?

14 A August of 2001.

15 Q August of 2001. And when did you tell your
16 grandmother about this?

17 A It was Labor Day Weekend.

18 Q Of what year?

19 A It would have been 2005.

20 Q Okay. So just about four years, am I correct?

21 A Correct.

22 Q During that four years you talked to him on the phone.

23 A Yes.

24 Q Almost every day.

25 A Yes.

Uddini
Cross-examination by Mr. Johnston

- 1 Q You went to his house every other weekend.
- 2 A Yes.
- 3 Q Spent time in the summer with him too, didn't you?
- 4 A Yes.
- 5 Q Sometimes you spent as much as a week in their home
- 6 during the summer, didn't you?
- 7 A Yes.
- 8 Q Also spent time on the holidays.
- 9 A Yes.
- 10 Q Just about always, at least during the school year,
- 11 every other weekend though, am I correct?
- 12 A Yes.
- 13 Q You never told anybody in August of 2001.
- 14 A No.
- 15 Q Nor September, nor October, nor November, nor December
- 16 of 2001, did you?
- 17 A No.
- 18 Q And during all of 2002 -- January, February, March,
- 19 April, May -- didn't tell anybody.
- 20 A No.
- 21 Q June, July, August, that summer, 2002, you didn't say
- 22 anything to anyone, did you?
- 23 A No.
- 24 Q Fall of 2002, didn't say anything then either.
- 25 A No.

Vicini
Cross-examination by Mr. Johnston

1 Q Winter of 2002 and over into 2003 never said anything
2 to anyone.

3 A No.

4 Q First time, in 2003, did you say anything to anybody?

5 A No.

6 Q Last time?

7 A No.

8 Q Of 2003?

9 A No.

10 Q January of 2004?

11 A No.

12 Q February?

13 A No.

14 Q March?

15 A No.

16 Q April?

17 A No.

18 Q May?

19 A No.

20 Q June, July or August?

21 A No.

22 Q Until September of 2004.

23 A Yes.

24 Q And how old were you at that time, young lady?

25 A Seventeen years old.

Ukemi

Cross-examination by Mr. Johnston

1 Q You're in regular classes in school, aren't you?

2 A Yes.

3 Q When did you start dating Mark?

4 A February 8th of 2002.

5 Q And you've dated him all through this time from that
6 day forward, am I correct?

7 A Yes.

8 Q So in addition to the time that you spent at your
9 step-grandparents' home, you also spent time with your
10 boyfriend, am I correct?

11 A At Don's house, yes.

12 Q Okay. You only spent time with your boyfriend at
13 Don's house.

14 A And we would meet at the mall.

15 Q You and your boyfriend.

16 A And Don.

17 Q And Don. Is it fair to say that Don encouraged you to
18 see Mark?

19 A No.

20 Q No? I'm sorry? Did you say no?

21 A Repeat the question, please.

22 Q Is it fair to say that Don encouraged you to see your
23 boyfriend Mark?

24 A Explain it.

25 Q Explain the question?

Johnston
Cross-examination by Mr. Johnston

- 1 A Please.
- 2 Q Okay. All right. Well, let's start with this. Your
3 grandmother that you lived with, she was like your legal
4 guardian, right?
- 5 A Yes.
- 6 Q She was not enthusiastic about you dating, correct?
- 7 A Correct.
- 8 Q Was it Mark in particular or just boys in general?
- 9 A Boys in general.
- 10 Q Okay. And even up after you turned 16 and 17 years of
11 age, she still wasn't enthusiastic about you having a
12 boyfriend, was she?
- 13 A No.
- 14 Q Did Don take you to meet your boyfriend?
- 15 A Yes.
- 16 Q Did your boyfriend come to Don and Jenol's home?
- 17 A Yes.
- 18 Q Did he eat dinner with you guys, your boyfriend?
- 19 A Yes.
- 20 Q Is it fair to say that Don made it easier for you and
21 your boyfriend to spend time together?
- 22 A Yes.
- 23 Q So do you know what I mean by encourage you to spend
24 time with him? Do you know what I mean by that now?
- 25 A Yes.

Udine

Cross-examination by Mr. Johnston

- 1 Q Okay. So is it fair to say that Don encouraged you to
2 see your boyfriend, spend time with him?
- 3 A Yes.
- 4 Q It's pretty strict over there at your grandmother's
5 house, wasn't it?
- 6 A Yes.
- 7 Q She wasn't crazy about you learning to drive, was she?
- 8 A No.
- 9 Q Who took you to get your learner's permit?
- 10 A Don did.
- 11 Q Who took you to get your driver's license?
- 12 A Him and my grandmother did.
- 13 Q By that time your grandmother had come around?
- 14 A She had to sign for me.
- 15 Q Okay. Who got her to sign for you?
- 16 A I guess herself. She --
- 17 Q Did Don talk to her about it?
- 18 A Yes.
- 19 Q Did he try to help persuade her that you should be
20 able to drive?
- 21 A Yes.
- 22 Q How did your Aunt Wanda feel about Don?
- 23 A They got along but they --
- 24 Q Does she like him?
- 25 A I guess so.

1 *Victim*

Cross-examination by Mr. Johnston

1 Q You've never heard her talk and express her feelings
2 that she didn't like Don?

3 A She would tell me that, well, tell us that I guess
4 they were too much alike.

5 Q That she and Don were too much alike?

6 A With their opinions, yes.

7 Q She, your Aunt Wanda, lived with your grandmother, is
8 that correct? Did she live with your grandmother?

9 A My Aunt Wanda?

10 Q Yes.

11 A No.

12 Q She spent a lot of time there.

13 A When we had dinners, yes.

14 Q Who took you down to the sheriff's office when you
15 made your initial complaint?

16 A My Aunt Wanda.

17 Q And do you remember filling out a form called a victim
18 impact statement?

19 A Yes.

20 Q And do you remember putting on there that your Aunt
21 Wanda wanted to be involved in this case?

22 A I didn't write it. She did.

23 Q She wrote it. Okay. And she's not your guardian, is
24 she?

25 A No.

Johnston

Cross-examination by Mr. Johnston

1 Q That's your grandmother, correct?

2 A Great-grandmother.

3 Q Great grandmother.

4 MR. JOHNSTON: Your Honor, I would like to have these
5 marked as one exhibit for identification.

6 MR. WILSON: No objection from the state to the
7 photographs, Your Honor.

8 MR. JOHNSTON: In that event, I'll offer them into
9 evidence.

10 THE COURT: All right. They're admitted.

11 (Three photographs marked Defendant's Exhibit No. 2.)

12 Q Examine these three photographs for me, please, what
13 have been marked as Defendant's Exhibit No. 2.

14 A That's when we were at the lake.

15 Q Okay. Well, first of all, tell me who is in the
16 photographs.

17 A Me and my step-grandfather.

18 Q You and the defendant in this case, Don Johnson.

19 A Yes.

20 Q And where are you?

21 A At Lake Greenwood.

22 Q And what are you doing there?

23 A We're putting up those little foam metals around those
24 metal posts so when they parked the boat it wouldn't
25 scratch it.

Johnston

Cross-examination by Mr. Johnston

1 Q And tell me when that was --

2 A It was --

3 Q -- to the best of your ability.

4 A -- maybe 2004, maybe.

5 Q Okay. 2004. It's hot weather, isn't it, from the
6 photographs?

7 A Yes.

8 Q So it must be at least the spring, more likely the
9 summer.

10 A Yes.

11 Q Or the late fall, or the early fall, am I correct?

12 A Yes.

13 Q And so if it's the summer or the late fall -- well,
14 actually it couldn't be the late fall because Labor Day is
15 when these allegations came out, right?

16 A Yes.

17 Q So it's got to be the summer, am I correct?

18 A Yes.

19 Q That's right before you made this complaint, right?

20 A Yes.

21 Q You and he are working together in that particular
22 photograph, aren't you?

23 A Yes.

24 Q Not unhappy, are you?

25 A I was inside.

Victim
Cross-examination by Mr. Johnston

1 Q How old were you when the first time that you say your
2 step-grandfather used this vibrator, this State's Exhibit
3 No. 1 or whichever, anyway, this vibrator? How old were
4 you?

5 A I really don't remember.

6 Q Have you given a statement in the past that said you
7 did know how old you were?

8 A I was around 14 or 15.

9 Q Have you ever said that, in fact, you were age 16 on
10 that?

11 A He used it on me all of -- well.

12 Q Pardon me?

13 A I really can't remember how old exactly I was.

14 Q All right. Do you deny having told the Spartanburg
15 County Sheriff's Office that you were 16 when he used the
16 vibrator on you?

17 A This happened years ago. I can't remember.

18 Q Okay. Well, do you remember telling them that?

19 A Yes.

20 Q Okay. Were you telling the truth?

21 A He used it on me at 16, yes.

22 Q Okay. Well, were you telling the truth when you said
23 that it, that was the first time it happened?

24 A I don't remember.

25 Q All right. I ask you to look at this document and see

Victim
Cross-examination by Mr. Johnston

1 if you have ever seen it before.

2 A Says age 16 used a vibrator.

3 Q First of all, I want to know if you have ever seen
4 this document before.

5 A Yes.

6 Q What is it?

7 A It was when me and my aunt went down and --

8 Q It's the statement you gave to the police, isn't it?

9 A Yes.

10 Q About this incident.

11 A Yes.

12 Q And you were trying to be truthful and provide as much
13 information as you possibly could.

14 A Yes.

15 Q Correct?

16 A Yes.

17 Q Now, read that line to yourself, please.

18 A Yes, okay.

19 Q Okay. Now, do you remember having said that at age 16
20 he began using the vibrator on you?

21 MR. WILSON: Your Honor, I object. May we approach
22 real quick?

23 THE COURT: Yes.

24 (Bench conference held off the record in the presence
25 of the jury but out of the hearing of the jury.)

Victim
Cross-examination by Mr. Johnston

1 THE COURT: You may continue.

2 Q I want you to read this whole document to yourself.
3 Let me know when you're finished.

4 (Pause.)

5 A Okay.

6 Q Did you say in that statement that you were discussing
7 the issues about other sexual activity, then you said,
8 "This progressed to him performing oral sex on me"?

9 A Yes.

10 Q And then you said, "At age 16 he used a vibrating
11 dildo and penetrated me."

12 A Yes.

13 Q Is that what you said?

14 A Yes.

15 Q Is that the truth?

16 A Like I said, I don't remember the exact age.

17 Q Well, that is your statement, your signature that's on
18 the bottom of that page, am I correct?

19 A Yes.

20 Q And it does say at the bottom you represent this to be
21 the truth, the whole truth and nothing but the truth so
22 help you God. You did say that, didn't you?

23 A Yes.

24 Q Now, you've lied about this before, haven't you?

25 A What do you mean, lied?

Johnston

Cross-examination by Mr. Johnston

1 Q Well, on your direct examination you said that you
2 lied to Dr. Furr.

3 A Yes.

4 Q You did lie to Dr. Furr, didn't you?

5 A Yes.

6 Q You lied to him when it suited you.

7 A I lied to him because I didn't want nobody to know.

8 Q Now, are you saying that Don Johnson has physically
9 threatened you before?

10 A Yes. He's gotten so mad he would ball up his fist and
11 his face turn red and want to hit me.

12 Q And you said that you wanted him to hit you.

13 A Yes.

14 Q You wanted him to hit you so that you could get some
15 proof, right?

16 A Yes.

17 Q Some proof that he hit you.

18 A Yes.

19 Q And how old were you when you thought about how you
20 would like to get some proof?

21 A Well, when that day happened I was 17, when I got in
22 his --

23 Q Pardon me?

24 A When I got in his face I was 17.

25 Q When did you turn 17?

Victim

Cross-examination by Mr. Johnston

1 A January of 2005.

2 Q January of 2005. So you first thought of that in
3 January of 2005, but you never came forward with these
4 allegations until September of 2005, am I correct?

5 A Yes.

6 Q All right. Do you remember telling the police about
7 why you never came forward?

8 A Yes.

9 Q And why is that?

10 A Because he had in my head that wouldn't nobody believe
11 me, they'd believe him. He had me scared.

12 Q He had you scared.

13 A Yes.

14 Q You testified today that he told you that you
15 mentioned casually that you and your boyfriend might get a
16 particular house and that he was going to burn the house
17 down with y'all in it.

18 A Yes.

19 Q That's a pretty shocking thing, isn't it?

20 A Yes.

21 Q And that stands out in your mind, doesn't it?

22 A Yes.

23 Q Do you remember giving an eight-page statement, not
24 the one page that we just had a minute ago?

25 A Yes.

Uddin

Cross-examination by Mr. Johnston

1 Q But an eight-page statement about this situation?

2 A And that wasn't in it.

3 Q That's exactly right. It's not in there, is it? Am I
4 correct?

5 A Yes.

6 Q It's not in there. In fact, do you remember what the
7 reason was that you said in here that you wouldn't or that
8 you didn't want to -- about the reasons that Don told you
9 he didn't want you to talk about this?

10 A What do you mean?

11 Q In fact, isn't it true that you often threatened to
12 tell on him? Is that right?

13 A Yes.

14 Q And in your statement you said that you threatened to
15 tell on him several times.

16 A Yes.

17 Q Do you remember what you said about what his response
18 to that was?

19 A For me go ahead and tell, wouldn't nobody believe me.

20 Q Because he was a police officer, am I correct?

21 A Yes.

22 Q So you were even talking about this very issue in this
23 eight-page statement.

24 A Yes.

25 Q But you left out this whole part about how he

Victim
Cross-examination by Mr. Johnston

1 threatened you that he was going to come and burn the house
2 down with you and your boyfriend in it.

3 A We were sitting at the dinner table, and he said it in
4 front of me and Jenol jokingly. But I started crying and
5 telling him be for real, it's not funny. And he just
6 grinned.

7 Q So you're telling us now it was just a joke.

8 A To him it was a joke, but to me it wasn't funny.

9 Q Well, you didn't share that with the jury when you
10 were recounting that earlier yourself about how it was at
11 the dinner table and that at least he thought it was a
12 joke, did you?

13 A No.

14 Q The day that you told your grandmother this, where was
15 it you wanted to go?

16 A To Cherokee.

17 Q Up to North Carolina?

18 A Yes.

19 Q Not Cherokee County.

20 A Cherokee, yeah, the mountains.

21 Q And she told you no, didn't she?

22 A Yes.

23 Q And that made you mad.

24 A Yes.

25 Q You were 17 years old.

Victim
Cross-examination by Mr. Johnston

1 A Yes.

2 Q Your boyfriend wasn't even going to be there.

3 A Correct.

4 Q She still wouldn't let you go.

5 A Yes.

6 Q She said no.

7 A Yes.

8 Q It made you mad.

9 A Yes.

10 Q That's when you said you won't let me go with the
11 people where you don't have anything to worry about, you
12 only let me go with the people that you have something to
13 worry about, or words to that effect, isn't that true?

14 A Yes.

15 Q And at first your great-grandmother acted like she
16 really didn't hear what you said.

17 A Yes.

18 Q Even though you said Don's been molesting me since I
19 was age 13.

20 A Yes.

21 Q Then who did you call?

22 A My Aunt Wanda.

23 Q Please answer any other questions.

24

25

Victim

Redirect examination by Mr. Wilson

1 REDIRECT EXAMINATION

2 BY MR. WILSON

3 Q VICTIM, I want you to read this to yourself starting
4 at this bracket and ending at this bracket.

5 (Pause.)

6 Q Have you read that sentence, including the underlined
7 part?

8 A Yes.

9 Q You told the investigator when you gave your statement
10 that you could see a white mole or wart on the inside of
11 Don's left butt cheek, correct?

12 A Yes.

13 Q Did you also say you could only see it if you're
14 between his legs?

15 A Yes.

16 Q Can you see someone's butt cheek if they're sitting on
17 their butt looking between their legs?

18 A Yes.

19 Q You can see their butt cheek if you're between their
20 legs?

21 A The underneath.

22 Q VICTIM, where was that mole or wart on Don's person?

23 A On his thigh.

24 Q You said butt cheek.

25 A Yes.

Wilson

Redirect examination by Mr. Wilson

1 Q Did you mean butt cheek?

2 A No.

3 MR. JOHNSTON: Your Honor, I object to leading the
4 witness.

5 MR. WILSON: That's a question, yes-or-no question,
6 Your Honor.

7 THE COURT: That's not leading. Overruled.

8 Q Did you mean butt cheek?

9 A No.

10 Q You said you could see it only if you're between his
11 legs, correct?

12 A Correct.

13 Q Did Don let you drive?

14 A Yes.

15 Q Did Don teach you how to drive?

16 A Yes.

17 Q Don let you drink alcohol?

18 A Yes.

19 Q Did Don let you see Mark when your great-grandmother
20 wouldn't let you see Mark?

21 A Yes.

22 Q *Wilson*, did you try to hide or suppress your secret
23 life with Don from the world?

24 A Yes.

25 Q Did you try to hide it from your great-grandmother?

Wilson
Redirect examination by Mr. Wilson

- 1 A Yes.
- 2 Q Did you try to hide it from your doctor?
- 3 A Yes.
- 4 Q Did you try to hide it from your friends?
- 5 A Yes.
- 6 Q Did you hide it from your boyfriend?
- 7 A Yes.
- 8 Q Did you hide it from your aunt?
- 9 A Yes.
- 10 Q Did you hide it from your friends at school?
- 11 A Yes.
- 12 Q When you first told your grandmother what had
13 happened, how would you describe? And what did you say in
14 your statement?
- 15 A That she was in shock.
- 16 Q When you wrote your statement -- how many statements
17 did you give to the police? Did you give one that first
18 weekend that you told?
- 19 A Yes.
- 20 Q Did you give another one another weekend?
- 21 A Yes.
- 22 Q Did you, did you put four years of information in both
23 of those statements?
- 24 A Yes.
- 25 Q Did you put everything that ever happened to you or

Victim
Redirect examination by Mr. Wilson

1 was ever said to you in four years of abuse in those
2 statements?

3 A Yes.

4 Q Every last little word, every little thing that ever
5 happened to you?

6 A Yes.

7 Q Right here, that sentence, does it say he began using
8 the vibrator on you at age 16?

9 A No.

10 Q Does it just say at age 16?

11 A Yes.

12 Q Did he use it before?

13 A Yes.

14 Q Did you tell Aunt Wanda about the abuse before you
15 told your great-grandmother?

16 A No.

17 Q So Aunt Wanda found out after you told your
18 grandmother.

19 MR. JOHNSTON: Your Honor, object to the leading.

20 THE COURT: Sustained.

21 Q Did she find out after the great-grandmother?

22 A Yes.

23 MR. WILSON: No further questions, Your Honor.

24 MR. JOHNSTON: I have no additional questions.

25 THE COURT: Thank you. You may step down.

Victor

Redirect examination by Mr. Wilson

1 Let me see y'all just a minute.

2 (Bench conference held off the record in the presence
3 of the jury but out of the hearing of the jury.)

4 THE COURT: All right. Ladies and gentlemen, we are
5 going to take a short break before we go any further. So
6 please go to your jury room.

7 But remember what I told you earlier. Don't talk
8 about the case. You can't discuss it until you're involved
9 in jury deliberations.

10 So no discussion of the case while you're in the jury
11 room during the break. If you need something to drink or
12 whatever, let the bailiff know. They'll provide that for
13 you.

14 (The following takes place outside the presence of the
15 jury.)

16 THE COURT: Court is in recess for 15 minutes.

17 (Whereupon, a recess was taken.)

18 THE COURT: All right. Are we ready for the jury?
19 Okay. Bring them in.

20 (The following takes place in the presence of the
21 jury.)

22 THE COURT: All right. Mr. Wilson.

23 MR. WILSON: Thank you, Your Honor. The state calls
24 Sharon Wright.

25

Sharon Fitzgerald Wright
Direct examination by Mr. Wilson

1 SHARON FITZGERALD WRIGHT,
2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. WILSON

4 Q Ms. Wright, where do you currently work?

5 A Bethany Counseling Center.

6 Q How long have you been there?

7 A Since December of last year.

8 Q Where did you work before that?

9 A Affiliated Counseling.

10 Q And how long were you at Affiliated Counseling?

11 A Since 2002.

12 Q Do you have any other work experience in this area?

13 A I worked at Cherokee Mental Health Center for a couple
14 of years prior to that.

15 Q Tell us about your undergraduate education.

16 A I have a B. A. from Limestone College in counseling
17 and psychology.

18 Q Do you have any advanced degrees?

19 A I have a graduate degree in counseling and psychology.

20 Q Do you have any other special training?

21 A I'm a licensed professional counselor, a national
22 board certified counselor. I am a certified child
23 therapist. I have had training to do forensic evaluations.

24 Q Okay. Can you tell us some of your special licenses
25 or certifications that you currently possess?

Sharon Fitzgerald Wright
Direct examination by Mr. Wilson

1 A Cognitive behavioral therapist, domestic violence
2 counselor and certified forensic counselor.

3 Q How many professional seminars or workshops have you
4 attended?

5 A More than 50. To maintain a licensure in South
6 Carolina you have to have 15 hours of continuing education
7 credit each year that you practice.

8 Q Are you currently up to date?

9 A Yes.

10 Q Were you up to date in 2005-2006?

11 A Yes.

12 Q Have you ever been out of date with your
13 certifications?

14 A No.

15 Q What would you classify as your specialized field of
16 practice?

17 A Trauma and abuse; working children and women's issues;
18 child sex abuse; accommodation syndrome; posttraumatic
19 stress disorder, which encompass a lot of acute stress
20 disorder, anxiety and depressive issues.

21 Q Tell us about accommodation syndrome and delayed
22 disclosure.

23 A Child sex abuse accommodation syndrome is the clinical
24 term used to describe a series of behaviors typically seen
25 in children who have been sexually abused within a family

Sharon Fitzgerald Wright
Direct examination by Mr. Wilson

1 situation. It's used to describe behaviors in incestuous
2 relationship only.

3 THE COURT: Let me ask you to please speak into that
4 microphone because we're having a hard time hearing over
5 here.

6 THE WITNESS: Okay. I'm sorry.

7 A The child sex abuse accommodation syndrome talks about
8 typical behaviors that are witnessed from the clinical
9 standpoint in children that have been sexually abused.

10 It's five parts. It can be part one, two, three, four
11 or all five. There is a lot of secrecy involved because
12 they're afraid to tell. They fear for themselves; they fear
13 for their family; they fear for the perpetrator because
14 usually it's a loved member of society, a family member.

15 Another part of it is because it's done in secrecy,
16 then they also, there's a helplessness there because there's
17 not an adult around to validate your thoughts and your
18 feelings about what's going on.

19 And when a child is perpetrated against sexually, they
20 don't have the words to describe because they're too young
21 and immature to understand what the sex is all about.

22 Q Let me stop you real quick. Let me ask you this
23 question.

24 Is these syndromes and this area of practice that
25 you're talking about, is it or are they subject to peer

Sharon Fitzgerald Wright
Direct examination by Mr. Wilson

1 review or publication?

2 A Yes, they are.

3 The, the child sex abuse accommodation theory is
4 around, I guess, maybe, I don't know, from 1983 maybe,
5 written by a doctor of the reasons children usually keep
6 secrets and they delay the telling of what's happened to
7 them.

8 This is something that's been noted in my own practice
9 over the years. This is something noted in a lot of
10 literature, in books, in other -- other counselors that I
11 work with have noticed this also.

12 It's not uncommon for someone in their 40's or 50's to
13 finally disclose childhood sex abuse or teenage sex abuse.
14 That's happened in my own practice several times.

15 Q Have you ever testified as an expert before in child
16 abuse accommodation syndrome in a court of law?

17 A Yes.

18 Q How many times have you testified as an expert?

19 A Twelve or 15 times. I've been called to testify
20 probably twice that amount, but things get settled out of
21 court, and I didn't have to testify.

22 Q What courts? Was it in civil court, I mean, family
23 court?

24 A Criminal court and family court.

25 Q Family court and criminal court.

Sharon Fitzgerald Wright
Direct examination by Mr. Wilson

1 A Uh-huh.

2 Q Have you had contact with VICTIM ?

3 A Yes.

4 Q Under what circumstances have you had contact with
5 her?

6 A There was a referral made from the solicitor's office,
7 and then later her grandmother called and set up an
8 appointment for me to see her. I'm her counselor.

9 Q How many sessions have you had with VICTIM?

10 A Maybe 12, 13, 14. I've had several phone contacts,
11 and occasionally I'd run into her somewhere like out
12 eating, where she worked.

13 Q Of your official sessions, what was the average length
14 of each session?

15 A Most were an hour, some were an hour and a half. Once
16 or twice they were two-hour sessions.

17 MR. WILSON: Your Honor, at this time we would ask
18 that Ms. Wright be qualified as an expert in child sexual
19 abuse accommodation syndrome.

20 THE COURT: Any objection?

21 MR. JOHNSTON: Your Honor, we think she can offer her
22 opinion.

23 THE COURT: Okay. She is so qualified.

24 Q When you met with Ashley during those sessions, what
25 did she disclose to you?

Sharon Fitzgerald Wright
Direct examination by Mr. Wilson

1 A She disclosed that part of the reason she was referred
2 was because she was very angry, she was very uptight, she
3 was having chest pain, a lot of anxiety, sleep problems;
4 that a family member had perpetrated against her and that
5 she had held it secret because she feared for the results
6 of telling. She said that the perpetration began right
7 after her great --

8 MR. JOHNSTON: Your Honor, I would object.

9 THE COURT: Let me see y'all just a minute.

10 (Bench conference held off the record in the presence
11 of the jury but out of the hearing of the jury.)

12 Q Did VICTIM disclose to you that she was sexually
13 abused?

14 A Yes.

15 Q Did she give you a time or a timeframe of when that
16 abuse occurred?

17 A Yes.

18 Q And what was that timeframe?

19 A Right after the death of her grat-grandfather and for
20 about four years thereafter.

21 Q Okay. Did she give you a location that that abuse
22 occurred at?

23 A It had happened in the abuser's home; it had happened
24 in a car or truck.

25 MR. JOHNSTON: Your Honor, may we approach?

Sharon Fitzgerald Wright
Direct examination by Mr. Wilson

1 (Bench conference held off the record in the presence
2 of the jury but out of the hearing of the jury.)

3 Q What kind of information do you rely on when you treat
4 your patients or people who have dealt with sex abuse?

5 A I do an assessment to help me decide what areas need
6 to be dealt with in therapy, oftentimes medication needed.
7 And we deal with the thought patterns and deal with the
8 feelings that the patient has about whatever has happened.

9 In this particular case with VICTIM we dealt with the
10 anxiety, we dealt with the anger and we dealt with the
11 depression issues.

12 Part of being sexually abused is that you feel violated
13 and you're angry. And if you hold this anger in you can
14 become clinically depressed. And there's a lot of anger can
15 be displayed at inappropriate times to inappropriate people.
16 And that was what she was describing and that's what we
17 worked on.

18 Q Do you actually deal with the sex abuse itself?

19 A The effects of the sex abuse.

20 Q Now, a minute ago you were talking about accommodation
21 syndrome. How is that related to delayed disclosure? And
22 what is delayed disclosure?

23 A Delayed disclosure is when the victim at some point
24 decides to disclose that they have been abused.

25 Frequently, it's delayed in a small child because they

Sharon Fitzgerald Wright
Direct examination by Mr. Wilson

1 don't know what's happened. So, you know, six months to a
2 year after maybe they start talking about some things when
3 they have the words to describe it.

4 With older children and teenagers, and teenagers and
5 adults, sometimes it goes on for years and years and years
6 without being disclosed. It's not uncommon that it's not
7 disclosed. Most victims do not disclose any time soon after
8 the perpetrator, have been perpetrated against.

9 THE COURT: Ma'am, please use that microphone, please.

10 THE WITNESS: Okay.

11 A I primarily have worked with victims for the past 15
12 years, and anywhere from two years to maybe 40 years the
13 disclosure is typically delayed. And they delay because
14 they're fearful of the consequences of themselves, they're
15 fearful of the family situation, they're fearful of the
16 person that they love if it's a family member that's
17 perpetrated against them.

18 When -- part of the secrecy is, is that no one knows
19 what's gone on. And you hold it in, and eventually you end
20 up blaming yourself. You should have told, you ought to
21 have known better. And you start -- there's a self-load
22 that goes along with that, and that's where the anger and
23 the depression comes from. The secrecy is what protects the
24 victim initially and protects the perpetrator also.

25 There's a helpless feeling that goes along with it

Sharon Fitzgerald Wright
Direct examination by Mr. Wilson

1 because if you tell thus and so can happen. Frequently, the
2 victim has been told not to say things because something can
3 happen. They've been warned.

4 And in a family situation and you're dealing with a
5 perpetrator being a family member, you're taught by society
6 and your family to love your elders, to respect your elders,
7 to mind your elders. And it goes against a person's
8 conscience to betray a trusting relationship.

9 And most victims have a love-hate relationship with the
10 person in the family that's perpetrated against them because
11 this person has also loved them and done good things for
12 them.

13 Q Is it abnormal for somebody to wait several years to
14 disclose some type of sexual abuse?

15 A No. That's common.

16 Along with the syndrome is the helplessness of not
17 knowing what to say after the fact, because bad matters get
18 worse. You don't have anybody to validate your thoughts and
19 feelings to.

20 Nobody helps you process what's happened. You feel
21 entrapped and you start making accommodations. You start
22 lying to yourself, you start being in a group. You may get
23 angry. You're all different things a person can do. They
24 avoid the person that's hurt them or they avoid social
25 circumstances.

Sharon Fitzgerald Wright
Direct examination by Mr. Wilson

1 They do whatever they have to do to make the situation
2 work to keep from telling. They act like everything is fine
3 when it's not sometimes.

4 Also, part of that is the delayed disclosure which is
5 very common. And also common is the decision to say it
6 didn't really happen. So there's a lot of conflict in the
7 victim because they've been taught one thing and something
8 else happens. And children are not equipped emotionally or
9 cognitively to deal with sex.

10 Q When you say children, what age groups are we talking
11 about? Let me ask you this question. Let me rephrase the
12 question. Would VICTIM have fallen in --

13 A Yes.

14 Q -- that age group?

15 A Yes.

16 Q Did you ever discuss with VICTIM why it took her so
17 long to come forward in general terms?

18 A Uh-huh. She, first of all she, didn't think she would
19 be believed, and she gave me reasons why she thought she
20 wouldn't be believed. But I think one of the most
21 important reasons she didn't disclose was that she had just
22 lost her grandfather. And these are the two people since
23 she was age two that had been her parent figures.

24 Q I am sorry. Grandfather?

25 A Great-grandfather.

Sharon Fitzgerald Wright
Direct examination by Mr. Wilson

1 Q Great-grandfather.

2 A And he had just died and the family was in a crisis
3 state. And she was fearful that if she told her elderly
4 great-grandmother what happened that she would die also and
5 she'd lose everybody. She's very protective of her family.
6 She loves her family.

7 Q In your opinion did VICTIM's behavior seem consistent
8 or normal for a victim her age and in her circumstances?

9 A Yes.

10 Q Ms. Wright, are you being paid right now to be here
11 today in this courtroom?

12 A No.

13 Q So you're here free of charge.

14 A Social obligation. I'm here, yeah. I'm not being
15 paid, not compensated in any way.

16 Q Have you only worked for the prosecution or the state
17 in the past?

18 A No. I'm a counselor. I don't work for the state.
19 I've testified for the prosecution side, as well as the
20 defense side before. Is that what you're asking me?

21 Q Yes, ma'am. You answered my question. I have no
22 further questions. Please answer any questions that Mr.
23 Johnston has for you.

24

25

Sharon Fitzgerald Wright
Cross-examination by Mr. Johnston

1 CROSS-EXAMINATION

2 BY MR. JOHNSTON

3 Q Who did you say you got your referral from?

4 A Came through the solicitor's office.

5 Q The solicitor's office. Now, who is the solicitor's
6 office?

7 A It came from the victim advocate at the solicitor's
8 office.

9 Q Okay. Well, who are they? They're the prosecutors,
10 aren't they? They're the prosecutors. They don't happen
11 to be prosecuting in this case, but you'll agree with me as
12 a general rule the cases are prosecuted by the solicitor's
13 office in Spartanburg and Cherokee counties. Are you aware
14 of that?

15 A I'm aware of that.

16 Q Okay. Now, who was paying you? I understand you're
17 here with us today for free. Who paid you before this?

18 A SOVA funds.

19 Q SOVA funds.

20 A Solicitor's office, the victims assistance.

21 Q How about state office of victim assistance?

22 A State office.

23 Q Okay. State office of victim assistance paid your
24 bill.

25 A Uh-huh.

Sharon Fitzgerald Wright
Cross-examination by Mr. Johnston

1 Q Correct?

2 A Correct.

3 Q I guess by the name that implies that they don't pay
4 for people who aren't victims or people they don't think
5 are victims, do they?

6 A I don't know what that implies.

7 Q Okay. Well, you do agree that the name of it is the
8 state office of victim assistance.

9 A Uh-huh.

10 Q And that they paid your bill.

11 A Uh-huh.

12 Q The name of it is not the state office of purported
13 victims assistance, is it?

14 A SOVA.

15 Q Okay. I only have a minute to peruse your notes. How
16 many occasions did you discuss with this young lady why she
17 didn't disclose? Well, first of all, how many times did
18 you meet with her?

19 A I don't have my notes with me. There's, I'm not sure,
20 ten or 12 or 13.

21 (Pause.)

22 Q Okay. Now, that you have your notes, can you answer
23 that?

24 A You're asking me how many times I met with her?

25 Q Yes, ma'am.

Sharon Fitzgerald Wright
Cross-examination by Mr. Johnston

1 A There were 12 times plus an assessment time. A total
2 of 13.

3 Q How many times did you write, did you record your
4 discussions with her regarding this late disclosure point?
5 I'm not asking you how many times you talked with her about
6 it. I am asking you --

7 A I'm not sure without going through each note with a
8 fine tooth comb.

9 Q Do that for me. I would like for you to tell me how
10 many times you recorded a conversation, made a note, a
11 contemporaneous note, about that issue.

12 (Pause.)

13 A I don't see in here where I recorded that we discussed
14 it at all.

15 Q All right. So is it fair to say then that during the
16 12 times that you met with her and the assessment that you
17 didn't record one single note regarding your interpretation
18 of this young lady's reasons for late disclosure?

19 A I would not typically put down my interpretation of
20 anything necessarily. These notes are here to, to give
21 somebody else a heads-up as to what's going on in case they
22 had to see her in crisis or to meet standards for
23 documentation. I do a lot of counseling, and none of it is
24 written down.

25 Q Do you recall me asking you what your normal practice

Sharon Fitzgerald Wright
Cross-examination by Mr. Johnston

1 is on that?

2 A Do I recall what?

3 Q Do you recall me asking you what your normal practice
4 is, whether or not you would usually record that? Do you
5 remember me asking you that?

6 A No.

7 Q What did I ask you?

8 A You asked me how many times I documented what you
9 talked about.

10 Q Actually, I asked you isn't it true that you never
11 documented it one time.

12 A I never documented it at all, you're right.

13 Q What's your definition of a child, or in professional
14 circles? I won't ask specifically for yours. But in
15 professional circles of counselors, what's the definition
16 of a child?

17 A Someone under the age of consent to sign legal
18 documents. You have --

19 Q Someone under the age of consent to sign legal
20 documents?

21 A Legal documents -- is considered a child.

22 Q And in the state of South Carolina that is what?

23 A Probably 18.

24 Q Eighteen. Therefore is it your position that if
25 you're under 18 you're a child?

Sharon Fitzgerald Wright
Cross-examination by Mr. Johnston

1 A You're an adult or you're a child, although there's
2 teenage years to consider. You've got different
3 developmental issues at each age level.

4 Q We could agree, couldn't we, that a 17-year-old is
5 much less of a child than a six-year-old?

6 A Usually, yes.

7 Q Are you familiar with the term adolescent?

8 A Yes.

9 Q What is adolescent to you?

10 A An adolescent would be someone around the age of 12 or
11 13 to 17 or 18.

12 Q All right. What do you call them after they get 13?

13 A They're adolescents.

14 Q Pardon me?

15 A They are an adolescent, but that still as opposed to
16 child-adult, they're still a child.

17 Q Okay. Because they lack the legal consent to sign a
18 document.

19 A Right.

20 Q Would you agree with me that it is much easier to
21 cloak a small child in a cloak of secrecy than a 15, 16 or
22 17 year old person would be?

23 A Not necessarily. Small children talk.

24 Q Okay. Well, will you agree with me that it's often
25 easier to control a small child than to control a teenager?

Sharon Fitzgerald Wright
Cross-examination by Mr. Johnston

1 A In what context -- control?

2 Q Well, how about this? Do you have children?

3 A Yes.

4 Q Okay. Was it easier to get them to do what you wanted
5 them to do when they were little kids than when they became
6 to be teenagers?

7 A Usually, yes.

8 Q Okay. You would agree with me that teenagers often
9 have a mind of their own.

10 A Children do too, yes.

11 Q Yes. But speaking within generalities, you would have
12 to agree that a teenager is much closer to being an adult
13 than a child, a child under the age of ten or 11.

14 A Usually, yes.

15 Q Now, you say that the way VICTIM handled this
16 situation is consistent with her having been abused.

17 A Is consistent with many, many, many, the majority of
18 abused, children, adults. The delayed disclosure is
19 typical.

20 Q Okay. It doesn't, of course, foreclose the
21 possibility that she is lying though, does it, ma'am?

22 A I can't say she was lying or not lying. I was not
23 there.

24 Q Yes, ma'am. Are you telling us that if a person who
25 has been subject to abuse tells right away that that's

Sharon Fitzgerald Wright
Cross-examination by Mr. Johnston

1 inconsistent with having been abused?

2 A No. I'm saying that the majority of victims delay the
3 disclosure.

4 Q But you're not telling me that it's inconsistent if
5 they tell right away, are you?

6 A I'm not saying that it is or it isn't. I'm saying
7 that the majority of abused victims delay the disclosure.

8 Q Well, but my question was do you agree that immediate
9 disclosure is not inconsistent with being abused.

10 A I'm not going to agree or disagree with that.

11 Q Okay. How about if they tell different stories? Is
12 that inconsistent?

13 A Victims who have been victimized over a period of time
14 typically will add more details as they tell the story
15 later as they disclose more and more, where the initial
16 disclosure is more limited.

17 Q All right. So how about if they don't tell anything
18 at all?

19 A Some never tell.

20 Q Pardon me?

21 A Some never tell.

22 Q Okay. So what you're telling us is that it's
23 consistent if people never tell. It's consistent if they
24 tell part and then add details later, and then it's
25 consistent if they tell after it's all over with. Correct?

Sharon Fitzgerald Wright
Cross-examination by Mr. Johnston

1 A I didn't use the word consistent. You did.

2 Q Well.

3 A I'm saying typical.

4 Q Typical.

5 A It is also typical that if there is going to be a
6 disclosure made, typically it's done when the child matures
7 and begins to lead a life of their own and do not want to
8 be controlled as much as they would have put up with as a
9 child.

10 Q So you're telling me that little kids who say that
11 something happened to them are lying?

12 A No.

13 Q Well, you said typically they don't tell it until they
14 become more mature. That's what you told me.

15 A I'm saying to you that the majority of victims delay
16 the disclosure and the ones that choose to tell will be
17 more likely to tell during adolescence, older adolescents
18 as they become more mature and responsible.

19 Q What is the name of the study that you're relying on
20 for that statement?

21 A I guess I'm relying on my personal experience as being
22 a therapist for 20 years.

23 Q All right, well, okay.

24 A The child abuse, I've got several studies.

25 Q Okay. I am asking you for the name of the study that

Sharon Fitzgerald Wright
Cross-examination by Mr. Johnston

1 says -- and let me make sure that I have this correct --
2 that typically -- and by typically I guess you mean, what,
3 more than half? What's typical?

4 A I don't have statistics to say what is typical.

5 Q Well, you used the word typical, so I'm asking you.
6 What's the definition of typical?

7 A In the practice, my practice, I'm dealing with
8 primarily victims.

9 Q Yes.

10 A Probably three-fourths have delayed the disclosure, if
11 not more.

12 Q Okay. Now, are you holding, holding this out
13 exclusively-based on your experience, or are you telling me
14 that there have been scientific studies to validate this
15 opinion?

16 A There is, there are scientific studies to validate a
17 lot of theories having to do with limited disclosure and
18 having to do with delayed disclosures.

19 Q I'm looking for the study that says that the typical
20 child sexual abuse victim makes a late disclosure, looking
21 for that study.

22 A Roland Summit, M. D., wrote about that and the child
23 sex abuse accommodation syndrome.

24 Q And your testimony is that he said that that was
25 typical.

Sharon Fitzgerald Wright
Cross-examination by Mr. Johnston

1 A That delayed disclosure of sex abuse victims tends to
2 be the norm. But then if it doesn't get told, how can you
3 compare one to the other if the other never is told? I'm
4 speaking from a clinical standpoint, not doing statistic
5 studies.

6 Q How about those people who suffer abuse that don't
7 even remember it? How about those people?

8 A Well, I wouldn't know anything about them because I
9 don't know them. If they don't remember it, they don't
10 tell me.

11 Q Well, I notice you have a book that you asked for
12 Ashley to do some studies from.

13 A Uh-huh. "Courage to Heal."

14 Q "Courage to Heal."

15 A Uh-huh.

16 Q Doesn't that book deal with people who can't even
17 remember that they've been abused?

18 A This book deals with victims. And many women that I
19 have worked with, and in that particular book, talk about
20 they think something happened, they've got memories of this
21 and memories of that. And they talk about how you can get
22 the memories to come forward if you're one of these women.

23 Q You prescribed a book to do, for VICTIM to do,
24 readings in.

25 A Uh-huh.

Elizabeth Phillips
Direct examination by Mr. Stumbo

1 Q A book that talks about how people who can't really
2 remember they've been abused need to remember it so they
3 can get better. Isn't that right?

4 A Those are not the chapters we majored on, no. That's
5 just part of the book.

6 Q Well, those are chapters in the books, aren't they?

7 | A Well, there are chapters in a lot of books.

8 Q Yes, ma'am. Please answer any other questions.

9 MR. WILSON: No further questions.

10 THE COURT: You may step down.

11 Have you got a short witness?

12 MR. STUMBO: Yes, sir, Your Honor. I believe we can
13 get one more.

14 Your Honor, the state calls Ms. Elizabeth Phillips to
15 the stand.

16 ELIZABETH PHILLIPS, having
17 been first duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. STUMBO

19 Q Good afternoon, Ms. Phillips. How are you?

20 | A Okay. ...

21 Q Thank you for being here today. Could you state your
22 whole name just for the court reporter there?

23 | A Elizabeth Phillips.

24 Q Where do you currently live, Ms. Phillips?

25 A  in Gaffney, South Carolina.

Elizabeth Phillips
Direct examination by Mr. Stumbo

- 1 Q Okay. And what's your relationship to VICTIM?
- 2 A That's my great-granddaughter.
- 3 Q Okay. Do you -- have you been VICTIM's legal guardian
- 4 in the past?
- 5 A Yes.
- 6 Q How long have you been her legal guardian?
- 7 A Well, she has been with me since '90, but it was '92,
- 8 I think.
- 9 Q How old was she when she first came to live with you?
- 10 A Two years old.
- 11 Q And you are her great-grandmother, you said.
- 12 A Yeah, yes.
- 13 Q Her grandmother is Jenol?
- 14 A Jenol.
- 15 Q And that's your daughter?
- 16 A Yes.
- 17 Q And I believe Wanda, is she your daughter as well?
- 18 A Yes.
- 19 Q Okay. And what's VICTIM doing right now? Is she
- 20 currently living with you?
- 21 A Yes.
- 22 Q And, Ms. Phillips, is she in school right now?
- 23 A She's going to college.
- 24 Q She still lives with you.
- 25 A Yes.

Elizabeth Phillips
Direct examination by Mr. Stumbo

1 Q And how -- she is 19 at this point, is that correct?

2 A Yeah.

3 Q She lives with you voluntarily? She wants to live
4 with you?

5 A Yes.

6 Q Okay. Ms. Phillips, I'm going to ask you about your
7 husband. What was his name?

8 A Summie Phillips.

9 Q And how long were you and Mr. Summie married?

10 A We got married in '45 and he passed away in 2001.

11 Q So you were married for 46 years.

12 A Yes, sir.

13 Q And your husband, you said he died in 2001. Do you
14 remember, what month did he pass away?

15 A August the 7th.

16 Q August the 7th of 2001?

17 A Yes.

18 Q And, Ms. Phillips, before August of 2001 when your
19 husband passed, your husband Summie passed, did VICTIM go
20 over very often to Don and Jenol's house?

21 A Not often, not often.

22 Q Okay.

23 A But they would take them on vacations every year.

24 Q Now, after Mr. Summie died did she, did VICTIM go
25 over to Don and Jenol's very often after that?

Elizabeth Phillips
Direct examination by Mr. Stumbo

- 1 A Yes.
- 2 Q Okay. About how often?
- 3 A Well, it varied, like be every other, every week or
4 every other weekend or two or three times a month, you
5 know. I didn't.
- 6 Q Was it VICTIM that would ask to go over there?
- 7 A No. Usually Don called me. VICTIM wouldn't hardly
8 ask. She wouldn't ask me. Don called me and asked me
9 could she go.
- 10 Q Okay. How many times? Did you go very often? Did
11 you often go to Don and Jenol's house?
- 12 A No.
- 13 Q Did they come to your house?
- 14 A They come to my house.
- 15 Q For family dinners?
- 16 A Yeah, holidays, and then in between.
- 17 Q Do you remember any discussions or any time during the
18 family dinners where the topic of Don's pelvic region would
19 come up?
- 20 A No. I never heard it.
- 21 Q No joking about that sort of thing?
- 22 A No. I never heard it.
- 23 Q I'm going to take you to just a couple of years ago
24 and go back to around Labor Day Weekend of August of 2005.
25 Do you remember having a disagreement with or an argument

Elizabeth Phillips
Direct examination by Mr. Stumbo

1 with Ashley that, before that weekend?

2 A Yes.

3 Q And what, what was that argument about?

4 A Well, it wasn't really an argument. She asked me
5 could she go to the mountains with her boyfriend's mother
6 and two other children, and I told her she couldn't go.
7 And, you know, so that was what it was about.

8 Q Okay. Ms. Elizabeth, did you find out anything as a
9 result of that argument that you didn't know about before?

10 A Yes.

11 Q And what was that?

12 A That Don had been molesting her.

13 MR. JOHNSTON: Your Honor, I object.

14 THE COURT: Sustained.

15 Q Is there anything that happened during that argument
16 that you learned something? Did you learn anything after
17 that argument?

18 A Yes.

19 Q Okay. VICTIM told you something?

20 A Yes.

21 Q It was something that you didn't know about before.

22 A Yes, and --

23 Q And as a result of that did you call anybody after
24 that?

25 A Well, we called my daughter Wanda and she came over.

Elizabeth Phillips
Direct examination by Mr. Stumbo

1 And that's the only one we talked to about it.

2 Q Okay. Well, with this new thing that you learned,
3 this information that you found out about, was it shocking
4 to you?

5 A I was numb for a long time, for days.

6 Q And what, what did you determine to do based on this,
7 what you had learned about?

8 A For her to go make a report of the incidents.

9 Q Okay. Was this, is this, this is Labor Day Weekend.
10 Did you go the first time with VICTIM to the police
11 station?

12 A No, sir. I wasn't able to go. So I had my daughter
13 to take her -- Wanda.

14 Q Later on after that, this time, during that week, did
15 you go to the police station after that?

16 A We went, but I don't remember the time, when I think
17 it was Mr. Bobo or somebody called us to come and make a
18 statement.

19 Q Investigator Bobo?

20 A Yes.

21 Q And did you make a statement to him?

22 A Yes.

23 Q How is your relationship with the defendant, Don
24 Johnson, or how was it prior to the time you learned this,
25 this information?

Elizabeth Phillips
Direct examination by Mr. Stumbo

1 A It was good.

2 Q How is your relationship since then?

3 A I don't know how to answer that. We don't, I mean,
4 they hadn't been one really.

5 Q Okay. Thank you, Ms. Elizabeth.

6 MR. STUMBO: I have no further questions, Your Honor.

7 THE COURT: Wait just a minute. We have got some
8 other questions for you.

9 MR. JOHNSTON: Your Honor, I have no questions for
10 this witness.

11 THE COURT: Well, okay.

12 All right. Ladies and gentlemen, we're going to
13 recess for the afternoon.

14 Let me caution you as you go. When you go home, I'm
15 sure you may have a spouse or a child or a neighbor or some
16 other friend that understands you have jury duty and they
17 want to know what you're doing down here, did you get
18 picked in a case, what's it about.

19 You can't discuss it. As I told you, you can talk
20 about it after-you reach a decision all you want to or as
21 little as you want to. But until you have reached your
22 decision you can't discuss it with anybody. So if you go
23 home and somebody wants to talk about it, just tell them
24 you can't talk about it. You can't discuss it until it's
25 over.

Elizabeth Phillips
Direct examination by Mr. Stumbo

1 Also, you are not to conduct any research or do your
2 own investigation into any issue that might arise during
3 ~~the trial.~~ In other words, if a question comes up and you
4 think, well, I need an answer to that question and I'm
5 going to look it up on the internet or read a newspaper
6 article or book, you can't do that. No independent
7 research, no independent investigation.

8 Also, there may be something on the television, may be
9 something in the newspaper, may be something on the radio
10 about the case. I don't know whether they will be or not,
11 but there could be.

12 So you're to avoid any type of media coverage and
13 exposure as it relates to the case, because it might be
14 something on there that could influence your judgment. It
15 might not even be correct. So avoid any type of media
16 exposure, avoid any type of discussions. Do not conduct
17 any independent research or do your investigation.

18 Do have a good evening however, and please report back
19 to your jury room at 9:30 in the morning, 9:30 in the
20 morning. Have a good afternoon.

21 (The following takes place outside the presence of the
22 jury.)

23 THE COURT: All right. Any other matters to address
24 before we conclude?

25 MR. WILSON: None from the state, Your Honor.

Elizabeth Phillips
Direct examination by Mr. Stumbo

1 MR. JOHNSTON: Your Honor, I only have one matter
2 regarding Mr. Johnson's bond. As I told you earlier, he
3 has been out on bond throughout the course of this
4 proceeding.

5 THE COURT: All right.

6 MR. JOHNSTON: I have his bondsman here today,
7 Mr. Glenn Kennedy, who originally signed the bond.
8 Mr. Kennedy advises me that if the Court will permit
9 Mr. Johnson to remain out on bond until the conclusion of
10 the trial that he will agree to continue to act as surety
11 therefor.

12 THE COURT: All right. Does the state want to be
13 heard on the defendant's request to remain on bond?

14 MR. WILSON: The state does not oppose this, Your
15 Honor.

16 THE COURT: All right. Mr. Kennedy, do you understand
17 you're still under the same obligation you assumed when you
18 signed that bond until the case is over?

19 THE BONDSMAN: Yes, sir.

20 THE COURT:- Okay. Anything further?

21 MR. JOHNSTON: No, sir. Thank you, Your Honor.

22 MR. WILSON: No, Your Honor.

23 THE COURT: Court is in recess until 9:30 in the
24 morning.

25 END OF PROCEEDINGS JUNE 11, 2007

Kevin Gregory Bobo
Direct examination by Mr. Stumbo

1 (Proceedings June 12, 2007)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Any matters that need to be addressed
5 before the jury is brought in?

6 MR. WILSON: Nothing from the state, Your Honor.

7 MR. JOHNSTON: Nothing from the defense, Your Honor.

8 THE COURT: Okay. Bring them in, please.

9 (The following takes place in the presence of the
10 jury.)

11 THE COURT: Good morning, ladies and gentlemen.

12 As you know, when we recessed yesterday the state was
13 involved in the presentation of their evidence. So we're
14 going to continue with that presentation this morning.

15 Mr. Stumbo.

16 MR. STUMBO: Thank you, Your Honor.

17 The state would call Investigator Kevin Bobo to the
18 stand.

19 KEVIN GREGORY BOBO, having
20 been first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. STUMBO

22 Q Good morning, Investigator Bobo.

23 A Good morning.

24 Q Could you state your full name for the record?

25 A Kevin Gregory Bobo.

Kevin Gregory Bobo
Direct examination by Mr. Stumbo

1 Q And where are you currently employed?

2 A Spartanburg County Sheriff's Office.

3 Q And what's your role there at the sheriff's office?

4 A Now I'm a sergeant over juvenile cases, child abuse
5 cases, sexual assault cases and white-collar-crime cases.

6 Q How long have you been employed at the sheriff's
7 office?

8 A Nineteen and a half years.

9 Q Could you give the jury just a brief overview of your
10 law enforcement background generally?

11 A I started my law enforcement career as a juvenile
12 probation officer with the Department of Juvenile Justice
13 in Spartanburg County in 1987. I was there for two and a
14 half years.

15 I came to the sheriff's office in 1989. I did three
16 years of uniform patrol. I was in investigations for eight
17 years. I started out working juveniles, child abuse, sexual
18 assault cases and went to violent crime and homicide cases
19 for a year and a half. And then I was a sergeant over the
20 burglary task force and investigations.

21 THE COURT: Excuse me just a minute. Let me ask you
22 to speak more directly. Push that microphone up a little
23 bit and keep your face projected toward the microphone
24 because we're not picking it up.

25 THE WITNESS: Okay. I'm sorry.

Kevin Gregory Bobo
Direct examination by Mr. Stumbo

1 A After my eight years in investigations I was uniform
2 patrol lieutenant on the third shift. Then I was -- they
3 created a second-shift sergeant's position in
4 investigations. I went back to that. And then I was a
5 senior investigator at the solicitor's office for four
6 years before going back to the sheriff's office two years
7 ago.

8 Q Okay. And do you have any areas of specialized
9 training? Have you gone to classes or any kind of seminars
10 for law enforcement generally?

11 A I have a bachelor's degree in psychology from Clemson
12 University, basic law enforcement certification. I've been
13 to numerous child abuse, rape-investigation classes. And
14 then we're required to have 40 hours of continuing
15 education credits per year to maintain our certification.

16 Q Okay. You've maintained your certification.

17 A Yes, sir.

18 Q What level of experience do you have? And you've
19 already talked about this briefly, but what level of
20 experience do you have specifically investigating child
21 abuse or child exploitation cases?

22 A Out of all of the cases I have investigated during my
23 career I've investigated these type cases the most.

24 Q Okay. Did you have an occasion to become involved in
25 the investigation of the defendant, Donald Johnson?

Kevin Gregory Bobo
Direct examination by Mr. Stumbo

1 A Yes, sir.

2 Q How did you become involved in that investigation?

3 A I was assigned the case to follow up on to investigate
4 after Uddin and her aunt filed a police report with the
5 desk officer over the weekend back in '05.

6 Q Okay. That was September of '05?

7 A Yes, sir.

8 Q Who came in to file the report, do you know?

9 A I believe Uddin and her aunt filed the original
10 report when they came in to the desk officer.

11 Q And how did you get involved after that?

12 A Any time a report is filed, once it's signed off by a
13 uniform patrol supervisor it is sent upstairs to
14 investigations. And then a detective supervisor will
15 assign that case to those detectives who work those type of
16 cases.

17 Q Okay. So you had received an initial report from the
18 uniform officer?

19 A Correct, yes, sir.

20 Q And you began your investigation at that point.

21 A Yes, sir.

22 Q What did you do? What was the first step you took in
23 your investigation?

24 A I called Uddin's great-grandmother, Ms. Phillips, and
25 asked when they could come to the office.

Kevin Gregory Bobo
Direct examination by Mr. Stumbo

1 With the report being filed on the weekend, I'm not
2 sure exactly when the first part of that week I called her.
3 But then they came in to the office I believe on
4 September the 9th of '05.

5 Q And that was a Friday?

6 A Yes, sir, I believe it was. I believe it was a Friday
7 morning.

8 Q Okay. When they came into your office, did you
9 interview them?

10 A I talked to all three of them together in a conference
11 room off of the investigative division, and then I took
12 VICTIM to a separate room to take her statement.

13 Q Okay. You talked to VICTIM first?

14 A I talked to all three of them first, and then I took
15 VICTIM to another room where she and I could talk
16 more privately.

17 Q Did you take a statement, a written statement, from
18 VICTIM ?

19 A Yes, sir. I typed it as she dictated it to me.

20 Q Okay. Subsequent to that did you take a statement
21 from Ms. Phillips, VICTIM's great-grandmother?

22 A What I asked them to do, I explained to them what I
23 needed in a statement. And while I was taking VICTIM's
24 statement, I left Ms. Phillips and the great-grandmother
25 and the aunt in the conference room. And they wrote their

Kevin Gregory Bobo
Direct examination by Mr. Stumbo

1 statements while I was taking VICTIM 's.

2 Q Was the statement given by VICTIM completely voluntary
3 on her part?

4 A Yes, sir.

5 Q Was anyone else present while you were taking VICTIM's
6 statement, or was it just you and her?

7 A It was just me and her. And all the interrogation
8 rooms in our office were busy that day. So we ended up
9 using a small conference room on the other side of the
10 building behind the sheriff's secretary.

11 Q How detailed was VICTIM's statement?

12 A Very detailed.

13 Q How long was it?

14 A Eight pages.

15 Q Based on your training and experience, is the amount
16 of detail given by a victim important?

17 A Yes, sir.

18 Q Why is that important?

19 A In cases where you don't have physical --

20 MR. JOHNSTON: Your Honor, may we approach?

21 THE COURT: Yes, sir.

22 (Bench conference held off the record in the presence
23 of the jury but out of the hearing of the jury.)

24 Q Investigator Bobo, can you describe VICTIM's emotional
25 state when she was giving you her statement?

Kevin Gregory Bobo
Direct examination by Mr. Stumbo

1 A She was shy, embarrassed to talk at first. I
2 explained to her that I have been doing this a while and I
3 understood her hesitation but that specifically based on
4 the time delay and from when this had started to when it
5 was over it was important that we get as much detail in a
6 statement as possible.

7 She would get upset during the taking of the statement.
8 We would have to take a break. I would have to ask her
9 points of clarification. Sometimes she or I would get stuff
10 out of order and we would have to go back and attempt to
11 correct that. So the process of taking that eight-page
12 statement took several hours.

13 Q You also at this point had statements from the
14 great-grandmother.

15 A Yes, sir.

16 Q And Wanda?

17 A Yes, sir.

18 Q And based on the eight-page statement from VICTIM and
19 these other statements, what did you determine to do next?

20 A I prepared a search warrant for Mr. Johnson's
21 residence and also for his person.

22 Q Okay. Why did you prepare the search warrant for the
23 residence?

24 A From the details she gave in her statement, she talked
25 about a comforter and a pink vibrator that should be at the

Kevin Gregory Bobo
Direct examination by Mr. Stumbo

1 house. And the search warrant was prepared to try to
2 retrieve those items.

3 Q Okay. Did you, did you obtain the search warrant?

4 A Yes, sir.

5 Q Did you execute the search warrant?

6 A No, sir. Two of my fellow detectives executed the
7 search warrant.

8 Q And why was that? What were you doing during, during
9 that time?

10 A I was taking Mr. Johnson's statement while the other
11 two detectives took his wife back to the house to execute a
12 search warrant for the residence.

13 Q Let me show you what's been marked as State's Exhibit
14 1.

15 A Yes, sir.

16 Q Could you identify what's in that bag for the jury?

17 A Yes, sir. It's a pink vibrator with a black bottom
18 like VICTIM described in her statement that was recovered,
19 I believe, underneath a bathroom counter at the residence.

20 Q Okay. And this was brought back to you at the
21 sheriff's department?

22 A Yes, sir, along with the comforter.

23 Q Did you log these into evidence?

24 A I did.

25 Q You brought them here to court.

Kevin Gregory Bobo
Direct examination by Mr. Stumbo

1 A Yes, sir.

2 Q The search warrant that you obtained for Mr. Johnson's
3 person, why was it important to obtain that search warrant
4 and execute the warrant?

5 A It was important because, one, VICTIM was able to
6 describe the area in such detail; and, two, to corroborate
7 her statement that the way she described his pelvic region
8 is the way it looked.

9 Q What were you looking for in his pelvic region?

10 A She talked about, even though he was white-headed on
11 top, he still had strawberry blonde pubic hair. She also
12 talked about a mole or a freckle. And she also talked
13 about his penis being uncircumcised. And she talked about
14 a white mole or wart on the inside of his butt cheek or
15 thigh.

16 Q Did you have an opportunity to talk to Mr. Johnson
17 before you executed this search warrant?

18 A Yes, sir. I took his statement while the other two
19 detectives were at the house with his wife.

20 Q Just to give us an idea of the timeframe here, you
21 obtained the search warrants first.

22 A Yes, sir.

23 Q And at that point did you try to find Mr. Johnson?

24 A Yes. And he and his wife -- the first time we went to
25 the house there was no one home. When we went back a

Kevin Gregory Bobo
Direct examination by Mr. Stumbo

1 second time a neighbor came up to us and told us he was
2 getting their mail and paper because they were at the lake.
3 And that neighbor contacted them. And then later on that
4 day they came to the sheriff's office.

5 Q How long did it take between the time you got the
6 search warrant until the time you found Mr. Johnson and he
7 came in to the office?

8 A I prepared the search warrants on September the
9 13th of '05. Judge Gowan signed those on September the
10 14th of '05. And they were executed on September the
11 15th of '05.

12 Q So Mr. Johnson came in on the 15th to your office.

13 A Yes, sir.

14 Q And at that time did you interview Mr. Johnson?

15 A Yes, sir.

16 Q Did you advise the defendant of his Miranda rights?

17 A I did.

18 Q Did the defendant appear to understand his rights --

19 A Yes, sir.

20 Q -- as you read them?

21 A Yes, sir.

22 Q Did he waive his rights?

23 A He did.

24 Q In writing or orally?

25 A In writing.

Kevin Gregory Bobo
Direct examination by Mr. Stumbo

- 1 Q Okay. Was there another officer in the room that
2 witnessed him waiving his rights?
- 3 A Yes, sir, Investigator Steve Calhoun.
- 4 Q Did the defendant ever invoke his right to remain
5 silent?
- 6 A No, sir.
- 7 Q Did he ever ask for an attorney?
- 8 A No, sir.
- 9 Q Did you ever promise him anything in exchange for him
10 making this statement?
- 11 A No, sir.
- 12 Q Did you coerce him in any way?
- 13 A No, sir.
- 14 Q To the best of your knowledge the defendant's
15 statement was freely given.
- 16 A Yes, sir.
- 17 Q Voluntarily. Did he give you a written statement?
- 18 A He requested that I write it as he dictated it to me.
19 And so I typed his statement as well.
- 20 Q Did he sign?
- 21 A Yes, sir.
- 22 Q Did he review and sign that statement?
- 23 A Yes, sir.
- 24 Q Is there anything that you learned from his statement
25 that was important in your investigation?

Kevin Gregory Bobo
Direct examination by Mr. Stumbo

1 A He stated VICTIM would know about certain
2 characteristics of his pelvic area because it was a common
3 topic of discussion around the dinner table and VICTIM
4 would have heard other family members kidding him about it.

5 Q About his, about he was uncircumcised?

6 A I believe the specific characteristic was something
7 about a burn mark on the head of his penis.

8 Q Anything that he mentioned about the story VICTIM told
9 earlier on the stand about when she had the lump on her --
10 the purple spot on her breasts?

11 A Yes, sir. He recalled that time and he remembered
12 VICTIM being worried about that. And he told her to let
13 her grandmother, his wife, look at it when she got home
14 that afternoon.

15 Q What did he have to say about VICTIM's boyfriend or
16 Aunt Wanda? Take your time, Investigator Bobo, with your
17 notes.

18 Let me rephrase the question. Did he give any reason
19 for why VICTIM would accuse him of molesting her for four
20 years?

21 A He said it was because VICTIM didn't get to go to the
22 mountains with her boyfriend's mother and he felt like her
23 aunt had put her up to saying this because her aunt, his
24 sister-in-law, never liked him.

25 Q Okay. After you interviewed the defendant, is this

Kevin Gregory Bobo
Direct examination by Mr. Stumbo

1 when you executed the search warrant on his pubic region?

2 A Yes, sir.

3 Q Were you present at the time?

4 A Yes, sir, I was present. The officer, Dominick Baird,
5 who took the pictures was present, and also Investigator
6 Calhoun was present.

7 Q What were you able to observe at that time about his
8 pubic region that was important to your investigation?

9 A Once he pulled his pants down, his pubic hair was
10 strawberry blonde. His penis was uncircumcised. And he
11 did have that place on the upper inner thigh that VICTIM
12 had described.

13 MR. STUMBO: Beg the Court's indulgence, Your Honor.

14 (Pause.)

15 Q Investigator Bobo, I'm going to show you three
16 pictures on placards here.

17 MR. STUMBO: And, Your Honor, if I may mark these for
18 identification purposes as State's Exhibit 2, 3 and 4.

19 THE COURT: Okay.

20 (Photographs marked State's Exhibits Nos. 2, 3 and 4
21 for Identification.)

22 Q Investigator Bobo, if you could, this is State's
23 Exhibits 2, 3 and 4. If you could, identify those for the
24 jury.

25 A Exhibit 4 is a picture of a mole or a freckle on the

Kevin Gregory Bobo
Direct examination by Mr. Stumbo

1 shaft of his penis.

2 Q Uh-huh.

3 A Exhibit 3 is a picture of his uncircumcised penis.

4 Exhibit 2 is a picture of the wart or mole on the inside of
5 his upper right thigh.

6 Q And are these pictures fair and accurate
7 representations of what you observed that day --

8 A Yes, sir.

9 Q -- on the defendant?

10 A Yes, sir.

11 MR. STUMBO: Your Honor, at this time the state would
12 move Exhibits 2, 3 and 4 into evidence.

13 MR. JOHNSTON: No objection, sir.

14 THE COURT: They are admitted.

15 (Photographs marked State's Exhibits Nos. 2, 3 and 4.)

16 MR. STUMBO: Your Honor, permission to publish these
17 to the jury.

18 THE COURT: You may.

19 MR. STUMBO: If we could dim the lights.

20 Q Investigator Bobo --

21 MR. STUMBO: Your Honor, if the witness may step off
22 the witness stand briefly.

23 THE COURT: He may.

24 (Whereupon, the witness left the stand.)

25 Q All right. Investigator Bobo, I want to put on the

Kevin Gregory Bobo
Direct examination by Mr. Stumbo

1 screen what's been marked as State's Exhibit 3. Is this
2 the defendant's pubic region?

3 A Yes, sir.

4 Q And it is -- there is strawberry blonde pubic hair?

5 A Yes, sir.

6 Q Uncircumcised?

7 A Yes, sir.

8 Q I show you what's been marked as State's Exhibit
9 No. 4. Now, were there any distinguishing marks on here
10 that you observed?

11 A Yes, sir, the mole or freckle right there.

12 Q Is that consistent with what *Wolfe* described to you?

13 A Yes, sir.

14 Q I want to show you what's been marked as State's
15 Exhibit 2. This is underneath on his thigh. Could you
16 point out any distinguishing marks on here for the court?

17 A Yes, sir. The white mole or wart she talked about is
18 right there on his inner right thigh. And he had to hold
19 his scrotum out of the way for us to take a picture of it.

20 Q Would you be able to see that if he hadn't pulled his
21 genitalia out of the way?

22 A No, sir.

23 Q Thank you, Investigator Bobo. You can return to the
24 witness stand.

25 (Whereupon, the witness returned to the stand.)

Kevin Gregory Bobo
Direct examination by Mr. Stumbo

1 Q Just a couple of more questions, Investigator Bobo.

2 Where -- you talked about a search warrant being
3 executed on the defendant's residence. Where was his
4 residence located?

5 A It's at Drive in Greer.

6 Q Is that in Spartanburg County?

7 A Yes, sir. You go down Reidville Road from 101 toward
8 the county line and take a left on Perry Road near Burnview
9 Baptist church. And after about a quarter or half a mile
10 runs to the right off of Perry Road.

11 Q After you executed a search warrant on the residence
12 and took these photos that we have just seen, what did you
13 determine to do at that point?

14 A I presented the case to a magistrate to see if I had
15 enough probable cause for signing an arrest warrant.

16 Q Did you obtain that arrest warrant?

17 A I did.

18 Q What was, what did you charge the defendant with?

19 A Criminal sexual conduct in the second degree.

20 Q And that was based on what fact, if you could list
21 those?

22 A Based on the detailed statement from VICTIM and that
23 these pictures and the search warrant at the house
24 corroborated key points of her statement.

25 Q Referring back to the last picture we looked at with

Kevin Gregory Bobo
Cross-examination by Mr. Johnston

1 the mole, could you see that mole when you walked into the
2 room that day to execute the search warrant? Was there,
3 could you have just walked in -- if the defendant was naked
4 could you have seen the mole?

5 A No.

6 Q Would he have had to have been in a certain position
7 for you to see --

8 MR. JOHNSTON: Your Honor, object to leading the
9 witness.

10 THE COURT: Sustained.

11 MR. STUMBO: Withdrawn, Your Honor.

12 Q Why was that important to you?

13 MR. JOHNSTON: Your Honor, that's been asked and
14 answered.

15 THE COURT: Sustained.

16 MR. STUMBO: No further questions, Your Honor.

17 Q Please answer any questions Mr. Johnston may have.

18 CROSS-EXAMINATION

19 BY MR. JOHNSTON

20 Q Investigator Bobo, in the eight-page statement that
21 *Victim* gave did you and she, or did she, discuss and you
22 write down information concerning why she did not come
23 forward about these allegations earlier?

24 A Yes, sir. I believe I did.

25 Q In that eight-page statement did she say anything

Kevin Gregory Bobo
Cross-examination by Mr. Johnston

1 about how the defendant, Mr. Johnson, had threatened to
2 burn down a house?

3 A No, sir.

4 Q You would, of course, have been interested to know
5 whether or not there had been any physical threats against
6 Ashley, wouldn't you?

7 A Yes, sir.

8 Q You asked her if there had been any physical threats
9 toward her, didn't you?

10 A I don't remember if I specifically asked her that
11 question or not.

12 Q It would have been important to know that though,
13 wouldn't it?

14 A Yes, sir.

15 Q And you did ask her why she hadn't come forward
16 before.

17 A Yes, sir.

18 Q Did she ever say anything like, "It was because he
19 always told me that all he would need is for one juror to
20 have a reasonable doubt about his guilt"?

21 A No, sir.

22 Q The information about Mr. Johnson's private parts was
23 a key aspect to your investigation, am I correct?

24 A Yes, sir.

25 Q This was information that you knew you needed to

Kevin Gregory Bobo
Cross-examination by Mr. Johnston

1 obtain as correctly and precisely as possible --

2 A Yes, sir.

3 Q -- because it was so key.

4 A Yes, sir.

5 Q You have testified that you are very experienced as a
6 police officer. I believe you said you had been doing this
7 some 19 years.

8 A Yes, sir.

9 Q You have special experience working with juveniles.

10 A Yes, sir.

11 Q And you have special experience working with cases in
12 which persons are alleged to have been sexually assaulted.

13 A Yes, sir.

14 Q Using your experience in both these sorts of cases and
15 your work with juveniles, you took VICTIM in and reassured
16 her when you began to discuss these allegations.

17 A Yes, sir.

18 Q To put her at ease.

19 A Attempted to, yes, sir.

20 Q Attempted to. So that you might obtain, again, the
21 most precise and correct information that you would need
22 for your investigation.

23 A Yes, sir.

24 Q I believe you said that at some time she would get
25 upset and you would stop and y'all would take a break.

Kevin Gregory Bobo
Cross-examination by Mr. Johnston

1 A Yes, sir.

2 Q And I believe you said that sometimes you would even
3 have to stop and go back if you would get something a
4 little mixed up or confused.

5 A Yes, sir.

6 Q And you would have to go back and correct it.

7 A Yes, sir.

8 Q And she gave you a lot of information, as you
9 testified. It was an eight-page typedwritten statement --

10 A Yes, sir.

11 Q -- that she gave. Now, as to this wealth of detail
12 that you obtained from her after you put her at ease and in
13 trying to focus on this very important aspect of the
14 investigation, that being Mr. Johnson's private parts, did
15 she provide you information about Mr. Johnson's private
16 parts and their appearance?

17 A Yes, sir.

18 Q Did you take that information and go before a
19 magistrate asking for a search warrant?

20 A I did.

21 Q And is it fair to say that when you go in front of a
22 magistrate that you actually swear to the information that
23 you provide him?

24 A Yes, sir.

25 Q Not that you know the information you're providing is

Kevin Gregory Bobo
Cross-examination by Mr. Johnston

1 true but that the information you have obtained is,
2 according to what you have found out, true.

3 A Yes, sir.

4 Q Do you remember what, how you described Mr. Johnson's
5 private parts when you appeared before the magistrate?

6 A What I put in my search warrants was that his penis
7 was uncircumcised but when the foreskin is pulled back or
8 Johnson's penis is erect you can see a brown freckle near
9 the head of the penis and that he had a white mole or wart
10 on the inside of his left buttock that you could only see
11 from looking between his legs from the front and that his
12 pubic hair is strawberry blonde in color.

13 Q Now, you took the most precise information that you
14 had to the magistrate, did you not?

15 A Yes, sir.

16 Q You did not tell the magistrate that you had
17 information that VICTIM had described the mole as being on
18 Mr. Johnson's butt cheek or thigh, did you?

19 A I put, I informed Judge Gowan it was left buttock.

20 Q Yes. You didn't say anything about the thigh, did
21 you?

22 A No, sir.

23 Q Because you were providing him the information that
24 Ashley had given you.

25 A Yes, sir.

Kevin Gregory Bobo
Cross-examination by Mr. Johnston

1 Q She said -- what did she say about that mole?

2 A She said you can only -- "He has a white mole or wart
3 on the inside of his left butt cheek that you can only see
4 if you are between his legs."

5 Q On the inside of his left butt cheek.

6 A Yes, sir.

7 Q That's what she said.

8 A Yes, sir.

9 Q This isn't the left or this isn't the inside where
10 this mole is. This isn't the left side of his butt cheek,
11 is it?

12 A No, sir. It's the right side of his thigh.

13 Q All right. So the two most important aspects of its
14 location she got wrong.

15 A Yes, sir.

16 Q What did she say about the other mark on his penis?

17 A There's a brown freckle on the side of his penis just
18 below the head.

19 Q Did you ever ask Mr. Johnson if he had had any medical
20 procedures performed in that area on him?

21 A Yes, sir. I believe he volunteered that information.

22 Q What did he say?

23 A That she may know about the scar on his penis because
24 the family used to kid him about it in front of her.

25 Q Do you know -- did you ask him how he might have

Kevin Gregory Bobo
Redirect examination by Mr. Stumbo

1 gotten that scar?

2 A Seems like I remember him telling me he had some type
3 of procedure where he had something burned off.

4 Q Did you ask him when that happened?

5 A If I did, I don't remember.

6 Q Or who performed it?

7 A No, sir. We didn't get that detailed about it.

8 Q Please answer any other questions.

9 REDIRECT EXAMINATION

10 BY MR. STUMBO

11 Q Just a couple of follow-up questions, Investigator
12 Bobo, as to the mark on the inside of the leg. You said
13 left; she said left. Is the fact that it's on the right,
14 what difference does that make to you? Does that make any
15 difference in your determination of this case?

16 A No, sir. The main thing I was concerned about, it was
17 there. And the only way she could know it was there is if
18 she had been close enough down there to see it.

19 Q As far as his left, is it when you're looking at it
20 from the front, I believe, let me show you the way you
21 describe it to the magistrate in the affidavit and read
22 straight from this if you can read that underlined portion
23 there.

24 A "You could only see it if you were looking between his
25 legs from the front."

Kevin Gregory Bobo
Recross-examination by Mr. Johnston

1 Q Okay. So if you're looking at it from the front, what
2 side is it on, the right or the left?

3 A On the left.

4 Q So in your view did VICTIM accurately describe the
5 mark?

6 A Yes, sir.

7 MR. STUMBO: No further questions, Your Honor.

8 RECROSS-EXAMINATION

9 BY MR. JOHNSTON

10 Q You have been an investigator, as you said, for 19
11 years.

12 A Yes, sir.

13 Q And you have experience in criminal sexual conduct
14 cases.

15 A Yes, sir.

16 Q Are you telling us that you didn't account when you
17 were asking her about the position of this very key
18 information, that you didn't verify with her, "Now, are you
19 talking about my left or his left?"

20 A No, sir. We didn't get that detailed about it.

21 Q You didn't get that detailed about it.

22 A No, sir.

23 Q You didn't think that was important?

24 A I thought the existence of it was important. Exactly
25 where it was located was not as important to me.

Kevin Gregory Bobo
Recross-examination by Mr. Johnston

1 Q Well, you did think that its location, left side or
2 right side, was significant enough to include it in your
3 application for the search warrant.

4 A Yes, sir.

5 Q You didn't simply say down there or on his leg or
6 something like that.

7 A No, no, sir. I went on what VICTIM told me when I
8 presented it to a magistrate.

9 Q But you never bothered to ask her, "Now, when you say
10 left, you mean left looking at him, or his left?"

11 MR. STUMBO: Your Honor, this has been asked and
12 answered.

13 MR. JOHNSTON: I'll withdraw. No further questions,
14 Your Honor.

15 THE COURT: Thank you. You may step down.

16 MR. WILSON: Your Honor, at this time the state will
17 rest.

18 THE COURT: All right. Ladies and gentlemen, that's
19 all of the testimony or evidence to be offered by the
20 state, at least in their case in chief.

21 Before we go further I've got some matters to address
22 with the lawyers. So I'll ask you to please go to your
23 jury room. Do not yet discuss the case in any fashion.
24 I'll bring you back shortly to continue.

25 (The following takes place outside the presence of the

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1 jury.)

2 THE COURT: All right. Mr. Johnston, any motions or
3 other matters to address?

4 MR. JOHNSTON: Yes, sir, Your Honor.

5 Your Honor, we would make a motion for a directed
6 verdict of not guilty on the contributing to the
7 delinquency of a minor count, there being no evidence that
8 there was encouragement for this young lady to deport
9 herself so as to wilfully injure or endanger his or her
10 morals or health or the morals of health of others.

11 We also would make a motion for a directed verdict on
12 the, a directed verdict of not guilty on the lewd act
13 charge.

14 The lewd act -- actually I'm sorry, Your Honor. I
15 didn't mean to say the lewd act charge. I meant one of the
16 three criminal sexual conduct counts, that one being the
17 one which references the specific act committed in that the
18 defendant did penetrate the victim with a vibrator.

19 Your Honor, the evidence in the case shows that that
20 activity occurred after the alleged victim was 16 years of
21 age and therefore not subject to being made illegal by the
22 criminal sexual conduct law.

23 THE COURT: Mr. Wilson.

24 MR. WILSON: Your Honor, Mr. Johnston said to Your
25 Honor earlier that it happened at 16 years of age or that

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1 it began at 16 years of age. Ms. VICTIM never said that.
2 She just stated that that was an age at which it happened.

3 She also stated on the stand that the penetration with
4 the vibrator happened on quite a number of occasions. And
5 that goes to the weight, not the admissibility. That is
6 for the jury to decide.

7 As far as contributing to the delinquency of a minor,
8 playing strip poker, giving her alcohol against the wishes
9 of her guardian, buying her thongs and having her model
10 while she would take a shower, that goes to causing or
11 engaging her to purport herself as to wilfully endanger the
12 morals or health. So we would disagree with Mr. Johnston
13 on those motions.

14 MR. JOHNSTON: Your Honor, I'm sorry. I have one
15 additional point.

16 Two of these indictments, Your Honor, are somewhat
17 duplicative, one of the other. They both reference --
18 basically, in order for me to prepare a defense in terms of
19 what he is charged with.

20 The only real difference between at least two of these
21 indictments is that one contains -- let me put it to you
22 this way, Your Honor. They both say that Mr. Johnson
23 required her to perform fellatio upon him.

24 THE COURT: When you say both, you're referring to
25 which two indictments?

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1 MR. JOHNSTON: Your Honor, I will have to tell you
2 that I would have to look at the Court's copies because
3 mine don't have numbers on both pages. So if I can look at
4 the Court's copy, I can reference to you by number. I'll
5 hand it right back to you.

6 THE COURT: Okay.

7 MR. JOHNSTON: I'm referencing, Your Honor, 2006-1619
8 and 2006-1618.

9 THE COURT: Okay.

10 MR. JOHNSTON: We would argue, Your Honor, that they
11 are duplicative of one another.

12 THE COURT: Well, you know they're different time
13 periods.

14 MR. JOHNSTON: Yes, sir.

15 THE COURT: And they're not inclusive. One does not
16 include the other.

17 MR. JOHNSTON: Yes, sir.

18 THE COURT: Well, doesn't that make it nonduplicative?

19 MR. JOHNSTON: Possibly, yes, sir.

20 THE COURT: One alleges August the 1st of 2001 to
21 January the 10th of 2002. The other begins January the
22 11th of 2002 until January 10 of 2004.

23 MR. JOHNSTON: Yes, sir.

24 THE COURT: So different time periods.

25 MR. JOHNSTON: Yes, sir.

1 THE COURT: All right. Anything else?

2 MR. JOHNSTON: No, sir.

3 THE COURT: All right. Each of those motions for a
4 directed verdict are denied based upon the law and the
5 evidence that has been submitted.

6 All right. Anything else we need to address before we
7 continue?

8 MR. WILSON: Nothing from the state, Your Honor.

9 MR. JOHNSTON: Your Honor, I don't know if this is a
10 good time to do this or not.

11 Mr. Johnson and I have been discussing whether or not
12 he will testify. I believe that it is his intent to
13 testify unless he's changed over the night's recess when he
14 and I spoke about it yesterday afternoon. But perhaps at
15 this time the Court would like to advise him on the record.

16 THE COURT: Okay. Mr. Johnson, as you may be aware,
17 when you're charged with a criminal offense you have an
18 absolute right to remain silent.

19 By that I simply mean nobody can make you take the
20 witness stand. Nobody can require that you testify. You
21 don't have to answer any questions that relate to these
22 charges.

23 You have an absolute right to remain silent and to
24 require the state to come into court with sufficient
25 evidence to establish your guilt to the satisfaction of

1 this jury beyond a reasonable doubt, and you don't have to
2 assist the state in their efforts to prove your guilt by
3 testifying or making statements or answering questions that
4 might have a tendency to prove your own guilt.

5 Now, if you elect not to testify I would instruct the
6 jury, as I think I already have, but I would do it again.
7 I would tell them that they may not consider that fact in
8 any way whatsoever during their deliberations or in their
9 determination as to whether or not the evidence in this
10 case establishes your guilt beyond a reasonable doubt.

11 At the same time, if you make the decision to testify
12 you'll have to answer not only your lawyer's questions but
13 you'll have to answer the state's lawyers' questions even
14 if the responses to those questions might have a tendency
15 to prove you guilty of one or more of these crimes.

16 Now, do you understand that you have an absolute right
17 to remain silent?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand that if you choose not
20 to testify I will instruct the jury they may not hold that
21 against you or consider that fact in any way?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand that if you make the
24 decision to testify you have to answer each of the lawyer's
25 questions even if those responses might tend to prove you

1 guilty?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Have you and Mr. Johnston had ample time
4 to discuss the advantages and disadvantages of your
5 testifying, as well as your not testifying?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And do you appreciate what those
8 advantages and disadvantages are?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And have you made a decision about whether
11 or not you will testify?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Is that a decision that you made of your
14 own free will and accord?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And do you understand that nobody can make
17 that decision for you? Only you can make it.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You may seek, you may accept advice from
20 your lawyer or other persons about whether or not you ought
21 to testify, but notwithstanding their advice you have to
22 accept the responsibility of the decision because you are
23 the person that's going to bear the brunt of that decision,
24 whatever it might be.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Now, you've indicated you've made a
2 decision. What is your decision?

3 THE DEFENDANT: I am going to testify.

4 THE COURT: You are going to testify?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you made that decision on your own?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: After careful and adequate reflection?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Has anybody forced you into that decision?

11 THE DEFENDANT: No, sir.

12 THE COURT: Has anybody pressured you into that
13 decision?

14 THE DEFENDANT: No, sir.

15 THE COURT: And you have made that decision freely and
16 voluntarily?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Considering everything?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you have any questions you need to ask
21 me about your decision?

22 THE DEFENDANT: No, sir.

23 THE COURT: Do you need to discuss it with your lawyer
24 any further?

25 THE DEFENDANT: No, sir.

Jenol Johnson
Direct examination by Mr. Johnston

1 THE COURT: All right. Thank you. You can be seated.

2 We're going to take ten minutes before we continue.

3 Any other matters we need to address?

4 MR. JOHNSTON: Not from the defense.

5 THE COURT: Okay. Ten minutes.

6 (Whereupon, a recess was taken.)

7 THE COURT: Are we ready for the jury?

8 MR. JOHNSTON: The defense is ready.

9 MR. WILSON: The state is ready.

10 THE COURT: All right. Bring them in.

11 (The following takes place in the presence of the
12 jury.)

13 THE COURT: Ladies and gentlemen, as you know, the
14 state has rested in their presentation. So we're now going
15 to proceed with the presentation by the defense.

16 Mr. Johnston.

17 MR. JOHNSTON: Your Honor, the defense call Jenol
18 Johnson.

19 JENOL JOHNSON, having been
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. JOHNSTON

22 Q Tell us your name, please.

23 A Jenol Johnson.

24 Q Are you related to Donald Johnson?

25 A He is my husband.

Jenol Johnson
Direct examination by Mr. Johnston

- 1 Q How long have you all been married?
- 2 A Will be 14 years this year.
- 3 Q Do you work?
- 4 A I do.
- 5 Q What type of work do you do?
- 6 A I'm a registered nurse at Mary Black Hospital.
- 7 Q And do you do any specialized type of nursing?
- 8 A Right now I'm working in the wound center.
- 9 Q Have you and Don been happy over the years?
- 10 A Yes, sir.
- 11 Q Have there been any problems between your family --
- 12 and by that I mean you and Don -- and your family?
- 13 A With me and Don, we've never had any problems. When
- 14 Don and I started dating and going out my family really
- 15 didn't particularly like him.
- 16 Q And when you're speaking of your family, explain for
- 17 us what your relationship is to VICTIM ..
- 18 A VICTIM is my son's daughter. She's my granddaughter.
- 19 Q And what is your son's name?
- 20 A David Warmoth.
- 21 Q Is he present here in the courtroom today?
- 22 A No, sir.
- 23 Q And who is VICTIM 's mother?
- 24 A Gail Warmoth.
- 25 Q And is she present in the courtroom today?

Jenol Johnson
Direct examination by Mr. Johnston

1 A No, sir.

2 Q How did VICTIM come to live with your mother?

3 A VICTIM was basically staying with me for a while when
4 we found out that Gail had been mistreating VICTIM and her
5 other sister. We had the Courts review and take them away
6 from her when she was about two years old.

7 Q Now, the lady that testified here yesterday in the
8 wheelchair, who is that to you?

9 A She is my mother.

10 Q And what is her name?

11 A Elizabeth Phillips.

12 Q And are there any other people that are associated
13 with your mother as far as family is concerned?

14 A My sister, Wanda.

15 Q And what is Wanda's last name?

16 A She is Wanda Phillips.

17 Q And has your sister, Wanda Phillips, ever expressed
18 her dislike for your husband, Don?

19 A Yes, sir.

20 Q How and when?

21 A Usually whenever we go for family visits. She doesn't
22 like him, I guess, because they kind of argue. They're too
23 much alike. They kind of argue back and forth as far as
24 their, their points of view.

25 One time she even told me she didn't understand how I

Jenol Johnson
Direct examination by Mr. Johnston

1 could be married to him, that he smelled. She just didn't
2 understand why I would marry somebody like that.

3 Q And does your husband have any physical problems?

4 A Yes, sir.

5 Q What kind of problems does he have?

6 A He has had bypass; he's diabetic.

7 Q And because of his diabetes, does that sometimes cause
8 some hygiene problems?

9 A The diabetes does, and he sweats a lot, and he does
10 perspire. Sometimes you might get the fruity breath or the
11 odor on the breath, yes.

12 Q Has there ever been controversy between your sister
13 Wanda and you and your husband about money issues?

14 A There's been occasions where I have given my sister
15 money because I've always wanted to try to help her out. I
16 tried to give money to my sons. Wanda gets mad with mama
17 because mama is trying to take care of my son. So mama is
18 trying to keep him up.

19 You know, we've argued over money matters as far as
20 trying to get mama to stop taking care of my kids, which
21 they're grown men now. And we just, which we realized that,
22 you know, I didn't want my children to take everything my
23 mama had.

24 Of course Wanda has been with mama too, and mama has
25 even talked to me about how Wanda has taken money from her.

Jenol Johnson
Direct examination by Mr. Johnston

1 And mama is just tired of trying to raise everybody's kids
2 and doing everything for everybody else, which I can
3 understand that.

4 Q Does Wanda have a good source of income?

5 A No, sir.

6 Q Has there been controversy about what might happen to
7 your mother's estate?

8 A There was. I didn't know anything about it until we
9 were over at mama's one day eating, and Don and them were
10 talking about that, that Wanda had mentioned that she felt
11 like that if anything happened to mama that she deserved
12 what mama had and that I didn't deserve any because I
13 already had a job and that I could make it on my own.

14 And I think Don had spoken up and said that that wasn't
15 right, even though I had a job that he felt like that if
16 mama felt like that she wanted to divide or let me have
17 something, that was it. And I told Don that if that's the
18 way she felt, I mean, I didn't want anything.

19 Q Now, that was when things were good --

20 A Yeah.

21 Q -- between you and your mother, am I correct?

22 A Uh-huh.

23 Q How have things been between you and your mother since
24 VICTIM has made these allegations against Don?

25 A I have not seen my mama until today, yesterday, in

Jenol Johnson
Direct examination by Mr. Johnston

1 court. I can't go visit because VICTIM is there. I've
2 tried talking to mama on the phone, but I think I've called
3 her twice. But I can't talk to her because I get upset,
4 and I know it probably upsets her too. So I, I've stayed
5 away from my mama.

6 She's been in the hospital. VICTIM called me one time
7 while this was going on. She called me crying. I guess it
8 was about 2:30 in the morning. I can't remember how late it
9 was, and said that she was afraid that grandma might die
10 because she thought she had a heart attack.

11 I had called mama's sister, Brenda, to see what was
12 happening. And Brenda said mama was in the hospital, said
13 but she was all right. And I said, I mentioned, something
14 about coming up there to see her. I think she was in
15 Gastonia. And I got a phone call back and said that I
16 didn't need to come up there, that mama was being discharged
17 that night, but it was nighttime. So I took it upon myself
18 to think that they didn't want me around anyway.

19 Q Were you surprised to see your mother in a wheelchair?

20 A Yes, sir. I know that when she goes shopping and
21 stuff she's in a wheelchair.

22 Q What was your relationship with VICTIM when she was a
23 child?

24 A Everything was fine. She enjoyed coming to the house.
25 We took her to the beach; we took her shopping. We

Jenol Johnson
Direct examination by Mr. Johnston

1 basically did just about anything that she wanted to do.

2 Q Because she was your --

3 A My granddaughter.

4 Q -- granddaughter. Was the home that you were raised
5 in strict?

6 A Yes, sir.

7 Q Tell us about that.

8 A I really didn't start dating, I guess, until I was
9 about 17. If I did date it was like a double date. I
10 think our time to be in was around 10:00 o'clock. I really
11 didn't date. I think I went with, I dated, two people.

12 One was Frank Pritchard who has passed away, and then I
13 dated my first husband. It was always with a double date.

14 Q In retrospect, did you think that your upbringing was
15 unnecessarily strict?

16 A I think it was. I think it was because everybody else
17 seemed to have a little more freedom, you know, in what
18 they could do and stuff.

19 Q Now, the same person that raised you, who were they
20 raising?

21 A Mama's mama. She was strict on mama and them. Of
22 course they had so many children they --

23 Q I didn't mean that. I'm sorry. The person that
24 raised you was who?

25 A Elizabeth and Summie Phillips.

Jenol Johnson
Direct examination by Mr. Johnston

1 Q All right. And who was raising VICTIM?

2 A My mama, Elizabeth.

3 Q Did you see some of the same things that you felt were
4 unnecessary with you with the regulations that were being
5 placed on VICTIM?

6 A Yeah, yes, sir.

7 Q Did you try to do anything about that?

8 A Yes.

9 Q What did you do?

10 A When she started getting into her teens and stuff and
11 she wanted to go out with friends, she would call. And we
12 would, you know, try to at least take her out. We invited
13 her boyfriend, Mark, up to the house, his mother, so that
14 we could meet them.

15 Q Now, was that something that your mother would have
16 approved of?

17 A No. She didn't like Mark; she didn't like Mark's
18 mother. And the reason why I say that is when VICTIM would
19 be talking on the telephone to Mark, a lot of times they
20 stayed in a lot of arguments. They would fuss and fight
21 over the phone. And mama felt like that if you're going to
22 argue with somebody like that on the phone at an early age
23 you didn't need to be around them. So that's basically, I
24 think, what mama based not wanting VICTIM to go out with
25 Mark and being around them.

Jenol Johnson
Direct examination by Mr. Johnston

1 Q Did VICTIM begin to spend a lot of time in your home?

2 A Yes, sir.

3 Q Tell me what you remember about that.

4 A When VICTIM was smaller we used to go on the weekends
5 just to see VICTIM And then as she got a little older, in
6 her like eight, nine, then I was at a point to where, you
7 know, you could manage younger kids. And we would go to
8 the beach and things like that.

9 And then when VICTIM was seeing that, you know, how
10 good me and Don were together and that you could have fun,
11 she started wanting to come up to the house.

12 And we would take her places. She would get to do
13 things and go out with people. She would always call us
14 wanting to come over to the house, spend the night. I mean,
15 it was like, you know, it was like a family. I mean, we had
16 fun together.

17 Q Were she and Don close?

18 A Yes, sir.

19 Q Tell us about that.

20 A They were like buddies, I mean, talking buddies. They
21 shared events that happened.

22 He was interested in her schooling. He would talk to
23 teachers at school trying to, you know, help her bring up
24 her grades. I mean, like --

25 Q Did y'all have a computer?

Jenol Johnson
Direct examination by Mr. Johnston

1 A We have. We got us a computer. I guess it was around
2 2000. I don't remember how long, when we got the computer.
3 But, yeah, when we got the computer she'd come over and
4 play games. She'd shoot pool with whoever was on line.
5 They shot pool together. She'd talk. We had a speaker
6 phone, so she got to talk to people on line. I think she
7 was talking to James. That was a friend of hers.

8 Q Did she have a computer at your mother's home?

9 A No. Somebody gave her one but it didn't work.

10 Q Did Don try to help her with school?

11 A All the time, yes.

12 Q Did you ever call her?

13 A -- On occasion I did, but not that much.

14 Q Did Don ever call her?

15 A Don would call her only when *VICTIM* called. *VICTIM*
16 would call our home after she would get off school.

17 Now, mama had her phone -- she was restricted on the
18 phone because *VICTIM* stayed on the phone a lot. Mama got
19 tired of her being on the phone because nobody could call
20 mama and get in to mama. So the line was always busy.

21 So we told *VICTIM* and then too it was long distance
22 for *VICTIM* to call us. And when it would come up on the
23 phone bill, you know, mama would tell her not to call long
24 distance.

25 So what we did was, everybody was long distance from us

Jenol Johnson

Direct examination by Mr. Johnston

1 from where we lived at. So we told VICTIM any time you need
2 to call us, call us and hang up and then we'll call you
3 back. So that's how we called. Or Don called every day
4 whenever she got out of school and stuff or when she needed
5 us. That's when we called her.

6 Q Would you often be there while Don spoke with her?

7 A Yes, sir. I would be either in the recliner or in the
8 kitchen.

9 There were many of a day that I would come home from
10 work and he'd be talking and I'd look at him and say, you
11 know, who is on, you know. I'd look at him, and I'd say
12 VICTIM on the phone, and he'd say yeah. And they'd be
13 talking. And you could hear them talking about how school
14 is or what kind of problems that she had with Mark that day
15 or just, you know, all kind of little things like that, how
16 was school.

17 She was always wanting somebody to talk to her and, you
18 know, just care about her, I guess. She felt like that she
19 wasn't, you know, getting care, that type of, I guess loving
20 family at home.

21 She would call crying a lot of times wanting us to come
22 and pick her up. She would call that she was bored, that
23 she would want to come up there and stay with us.

24 And then there were times I couldn't talk to my mama.
25 So Don would say call and ask your mama can she come. I

Jenol Johnson
Direct examination by Mr. Johnston

1 says I can't talk to mama. I get upset whenever I have to
2 call and ask mama for things, because I don't like asking
3 her for things because she's done so much for me.

4 And so Don, he would call. A lot of times Don would
5 tell me. He'd say this just doesn't look right with me
6 calling all the time. I says I know it, Don, I said but my
7 stomach gets so upset whenever I have to call and talk to
8 mama. VICTIM's stomach gets upset whenever she has to talk
9 to mama.

10 Q During the time that VICTIM was age 13 to 17, how much
11 time did she spend in your home?

12 A At my house she was either up there like when school
13 was out. It would depend on if -- the way I worked and
14 stuff, it would depend on my schedule, you know, whether or
15 not she'd come and spend the weekend. Basically, it was
16 like school vacation and all weekends.

17 Q What affect did your schedule have on whether or not
18 VICTIM came?

19 A Well, if I was at work I didn't want. You know,
20 VICTIM didn't come up there. I mean, I was at work on the
21 weekends, and I used to work 12-hour shifts.

22 Q Did you ever see any signs that your husband, Don, was
23 interested sexually in VICTIM?

24 A No, sir.

25 Q Did you ever see anything that made you suspect there

Jenol Johnson
Direct examination by Mr. Johnston

1 was sexual activity going on?

2 A No, sir.

3 Q Did you ever see VICTIM afraid of Don?

4 A No.

5 Q Fearful of him?

6 A No.

7 Q Did she ever express that when she came to your house
8 she didn't ever want to be alone with Don?

9 A No, because there's been so many times that I even
10 come home and times that they don't even know. You know,
11 sometimes my hours, I might get off early. I'd come home.
12 They'd be swinging on the porch, they'd be in there
13 watching T. V. I mean, I was around them the whole time.
14 They'd cut up. They'd play. They'd go out in the yard,
15 play on the computer, watch T. V.

16 I never saw anything out of the ordinary, nothing that
17 would even make me think something was wrong.

18 Q VICTIM ever say anything to you about it?

19 A No, never. Not once has she ever even said anything.

20 Q Has VICTIM ever been deceptive with you?

21 A I don't know how to answer that. I don't.

22 Q Was there an instance in which she was deceptive with
23 you?

24 A I can't think.

25 Q Did she ever tell you she was going somewhere and then

Jenol Johnson
Direct examination by Mr. Johnston

1 you found out she actually was doing something else?

2 A I know that one time, well, I know that she was at
3 school. We had found out that, at school I found that out,
4 that she had missed some days and she didn't go to school
5 and we had all found that out. I found that out through
6 mama and them, that she had missed school and laid out.

7 Q All right.

8 A Mama even told me once that --

9 Q Don't tell us what someone else said.

10 A Okay.

11 Q Now, your husband, Don, was he the kind of person you
12 could kid with?

13 A Yeah, all the time.

14 Q Did you all ever kid and tease with him about
15 sensitive private matters?

16 A Everybody picked on Don and kidded him, yes, sir.

17 Q About what kinds of things?

18 A Well, I know like when we would go, everybody would
19 gather at mama's house usually for family get-togethers.
20 And right before he was to have this surgery to take this
21 area off of his penis, we were all there. It was in May.
22 I think it was even like on Mother's Day.

23 We were all there -- my sons, mama, Chris, David,
24 Chris' girlfriend and her kids. And we were all sitting
25 around the table. And I told mama and them that Don was

Jenol Johnson
Direct examination by Mr. Johnston

1 going to have to go and have surgery. And she said what
2 kind of surgery. And I said, well, he's going to have this
3 mole taken off and everybody --

4 Q Taken off where?

5 A His penis.

6 Q Okay.

7 A And everybody says, well, just make sure the knife
8 don't slip or do you think it will hurt anything if the
9 knife does slip. I mean, everybody started laughing at the
10 table. I mean, he's always the butt end of, of jokes. We
11 always aggravate him and make fun of him.

12 Q Would VICTIM -- would it have been possible for VICTIM
13 to have heard these discussions?

14 A Victim is at the table with us. We were all in the
15 kitchen.

16 Q Has there ever been any discussions about the color of
17 his pubic hair?

18 A Yes. I think at one discussion, I think everybody, we
19 were at, like I say, it's at the kitchen table, again,
20 whenever we first started going together.

21 We were laughing and talking about, well, I was talking
22 about me, about having to dye my hair because Don likes, you
23 know, likes for me to die my hair. And we started laughing
24 around the table.

25 And I said, well, I even dye Don's hair. And they

Jenol Johnson
Direct examination by Mr. Johnston

1 said, you know, that was funny, you ought to stop doing
2 that. I said, well, I said he doesn't need to die his hair.
3 And they asked what color his hair would be, and we said
4 strawberry blonde. He had strawberry blonde hair. He had a
5 mustache that was strawberry blonde. Even his chest hair
6 was strawberry blonde. He'd wear shorts. You could see his
7 chest hair. It was strawberry blonde.

8 Q When you had a discussion about the procedure that he
9 had done, do you remember when that was?

10 A It was in 2001. Dr. Bruce Bass -- we went in. We
11 noticed a spot on the head of his penis. I didn't know
12 what it was. You know, I didn't know if it was cancerous
13 or not. So I made an appointment for him to see Dr. Bruce
14 Bass to check it out.

15 Q And where precisely on his penis was it?

16 A It was right on the, right on the head, right about
17 the point, about the left head of the penis.

18 Q Not the shaft.

19 A No.

20 Q Did you and Don have sex together?

21 A Yes, sir.

22 Q He was diabetic.

23 A Yes.

24 Q Did that affect things?

25 A It does, but, you know, we had sex. I mean, you know,

Jenol Johnson
Direct examination by Mr. Johnston

1 with diabetes you can have different types of sex. We had
2 oral sex with the, I mean, you know, we were still loving
3 and cared for each other. I mean, we had sex.

4 Q I'm going to show you what's been marked as State's
5 Exhibit No. 1. Tell us about that.

6 A That was a gag gift that the girls had given me, I
7 think, when I had first gone down to the wound center.
8 They were all sitting around and discussing. We just,
9 women sit around and talk about crazy stuff anyway. And
10 they were talking about their sex lives and things that
11 they had done and what they had. And I thought, well,
12 y'all are crazy things, you know. I says y'all haven't got
13 any sense.

14 Well, it was my birthday, and they had bought me this.
15 And I thought it was so funny. I said what in the world are
16 y'all buying that crazy thing for, I don't need it.

17 Well, I had even joked and had it setting out on the
18 counter. One of the doctors came in, and I had turned it on
19 and let him look at it. And, I mean, it was just funny. It
20 was funny that I got it. It was funny that they gave it to
21 me. Not that I, I didn't need it or anything. I mean, you
22 know, there was nothing wrong with the way that Don and I
23 were having sex.

24 Q Did you discuss your acquisition of State's Exhibit
25 No. 1 in your home?

Jenol Johnson
Direct examination by Mr. Johnston

- 1 A Yes. I had brought, well, VICTIM was even over there,
2 I believe, when I brought it home. It was in a bag. Don
3 was sitting at the bar. VICTIM was coming up the hallway.
4 I sat it down. I said you're not going to believe what
5 they gave me for my birthday. And I opened it up. I turned
6 it on first just so the bag would. And when I pulled it
7 out, VICTIM had seen it. And she wanted to know what it
8 was. I says you don't really need to know, you know, what
9 it is. But I think eventually I told her, you know, what it
10 was. VICTIM asked a lot of questions. She wants to know
11 things.
- 12 Q Did you keep State's Exhibit No. 1?
- 13 A Yes, I did.
- 14 Q Did you and your husband actually use it together?
- 15 A Yes. We do.
- 16 Q Where did you keep it?
- 17 A I know one time I had it in my panty drawer, and then
18 I put it. When I use it and I take to clean it, I had put
19 it in the sink, up under the sink.
- 20 Q Does VICTIM rummage?
- 21 A Yes. She likes to look through things.
- 22 Q Do you believe that your husband is sexually normal?
- 23 A Yes.
- 24 Q Have you and he had a good marriage?
- 25 A Yes.

Jenol Johnson
Cross-examination by Mr. Stumbo

1 Q Please answer any questions.

2 CROSS-EXAMINATION

3 BY MR. STUMBO

4 Q Good morning, Ms. Jenol. I'm David Stumbo. I believe
5 we met.

6 You love your husband, don't you?

7 A Yes, I do.

8 Q Do you love *Victim*

9 A Yes.

10 Q How often did *VICTIM* come to your house for the
11 weekend before your father passed away?

12 A I can't remember that far back, but I know she did
13 come to visit, but I don't know how often.

14 Q How often did she come to visit after your father
15 passed away? Often?

16 A Yes.

17 Q Very often?

18 A She missed daddy. Daddy was about the only one that
19 she felt like she could talk to.

20 Q Almost every weekend? Would that be fair to say?

21 A Maybe every other weekend, yeah.

22 Q You talked about your job. What were your work hours
23 like? Do you work 12-hour shifts?

24 A Before I went to the -- let's see. I went to the
25 wound center in 2002. Two years before that, probably two

Jenol Johnson
Cross-examination by Mr. Stumbo

1 and a half years before that, I worked 12-hour shifts until
2 about 2000. In 2001 I was out of work most probably I
3 would say about four months, out of both of ~~those~~ years.

4 Q Did you ever work those shifts on the weekends?

5 A Yes.

6 Q So on the weekends when VICTIM was at y'all's house.
7 So Don and VICTIM were at the house alone quite often.

8 A Not that often, no, but there were weekends that they
9 were together.

10 Q Did Don ever go pick her up at your mother's house and
11 bring her back?

12 A Uh-huh, yes.

13 Q And they would be alone in the car.

14 A Yes.

15 Q Let's talk about family dinners and get-togethers that
16 we discussed briefly a second ago.

17 You said that you grew up in a strict household. Did
18 your mother ever discuss, allow for discussions, about
19 penises at the dinner table?

20 A No.

21 Q Would y'all tell --

22 A We didn't even discuss sex. I, I, when we went to
23 school, we basically found out what sex was by school.

24 Q So help me understand this. You grew up in a strict
25 household, but y'all joked about your husband's genitals at

Jenol Johnson
Cross-examination by Mr. Stumbo

1 the dinner table?

2 A Uh-huh, yes, we did.

3 Q Okay. You joke about the mole. You saw the picture
4 of that mole that's on the kind of the inside of his thigh
5 under his scrotum. Did you joke about that at the dinner
6 table?

7 A No, uh-uh.

8 Q But VICTIM knew about that mold. You heard her
9 testimony.

10 A I was, I was told that.

11 Q Did you ever ask your mother not to file charges
12 against Don?

13 A I called my mother and I told her that the things that
14 VICTIM had said were not true. I didn't ask her not to
15 file charges.

16 Q Did you tell her that Don had threatened to kill
17 himself?

18 A When that happened I had called mama. We had just
19 listened to everything that was said, and we were all
20 crying and upset that night.

21 I had gone into the phone, and I had talked to my mama
22 on the phone, and I was crying. And I told her that
23 anything that was done and was said was not true.

24 And I had went into the bedroom, and Don was sitting
25 there crying and couldn't believe what VICTIM had done. And

Jenol Johnson
Cross-examination by Mr. Stumbo

1 the drawer was open. And I know what's at that drawer. And
2 I never said that Don was going to kill himself. I said
3 that everybody over here is so upset that we can't believe
4 what was being said by VICTIM.

5 Q Well, let's talk about the -- that's your vibrator on
6 the table.

7 A Yes.

8 Q You discussed that with VICTIM? Y'all talked about
9 that?

10 A She came through and saw it and she opened up my bag,
11 yeah.

12 Q She knew. You showed her where it was under the sink.

13 A No, I did not.

14 Q That's where you kept it, right?

15 A I kept it hid in the back corner behind. There's a
16 lot of, it's where I keep like rollers and things. And
17 it's hid over to the back.

18 Q You talked about your and Don's sex life. Did his
19 physical problem affect his sex drive or his libido, I
20 guess?

21 A Once in a while, yes, not always.

22 Q Did he have a problem getting an erection?

23 A No.

24 Q You testified about strict conditions at your mother's
25 house.

Jenol Johnson
Cross-examination by Mr. Stumbo

1 A Uh-huh.

2 Q You were raised in that same environment, right?

3 A Uh-huh.

4 Q Did you ever think about making up a story about
5 somebody sexually abusing you?

6 A I was never --

7 MR. JOHNSTON: Your Honor, I would object to that as
8 being argumentative and immaterial.

9 THE COURT: Sustained.

10 Q Let's go back to the family situation.

11 You said at your house ~~VICTIM~~ had all the freedom, much
12 more freedom at your and Don's house, correct?

13 A Uh-huh, she did.

14 Q You let Mark, her boyfriend, come over from time to
15 time.

16 A Yeah.

17 Q Help me understand this. She has more freedom at your
18 house, but you believe that the story that she has made up
19 about your husband is completely fabricated.

20 A Yes, I do.

21 Q So you believe that all of the details she gave is a
22 complete, a complete lie.

23 A Uh-huh.

24 MR. JOHNSTON: Your Honor, I'm going to object to
25 pitting the witnesses against one another.

Jenol Johnson
Redirect examination by Mr. Johnston

1 THE COURT: Sustained.

2 MR. STUMBO: Withdrawn, Your Honor.

3 Q If she had more freedom at your house, you would
4 acknowledge that her making up a story would essentially
5 take away that freedom. She hasn't been back over to your
6 house since, has she?

7 A No.

8 Q Is that kind of like biting the hand that feeds you?

9 A Whenever you're taking it to court and accusing
10 somebody that you love and knowing it's not true, that's
11 why I've not seen her. That's true. She --

12 Q She loved all of that freedom you gave her at your
13 house --

14 A Uh-huh.

15 Q -- by making this story up.

16 A Uh-huh.

17 MR. STUMBO: No further questions, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. JOHNSTON

20 Q How old was she when these allegations came out?

21 A Let's see. Seventeen.

22 Q And how old is she now?

23 A Nineteen.

24 MR. JOHNSTON: No other questions.

25 THE COURT: You may step down.

Donald Hugh Johnson
Direct examination by Mr. Johnston

1 MR. JOHNSTON: Your Honor, we call the defendant,
2 Donald Johnson.

3 DONALD HUGH JOHNSON, having
4 been first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. JOHNSTON

6 Q Tell us your name, please.

7 A Donald Johnson.

8 Q And where do you live, Mr. Johnson?

9 A Drive in Greer.

10 Q And do you work?

11 A No, sir.

12 Q And are you retired?

13 A Yes, sir.

14 Q And where are you retired from?

15 A Spartanburg City Police Department.

16 Q How long were you with the Spartanburg City Police
17 Department?

18 A Twenty-five years.

19 Q Is it fair to say that you really never had any other
20 adult work other than as a police officer?

21 A Basically.

22 Q And what type of work did you do when you worked for
23 the city police department?

24 A Well, I was in the patrol division probably for eight
25 or ten years, and probably the rest of the time I was in

Donald Hugh Johnson
Direct examination by Mr. Johnston

- 1 the traffic division.
- 2 Q And have you been married?
- 3 A Yes, sir.
- 4 Q How many times have you been married?
- 5 A Three times.
- 6 Q And most recently who have you married?
- 7 A Jenol.
- 8 Q And how long have you and Jenol been married?
- 9 A Almost 14 years.
- 10 Q Have you also served in the military?
- 11 A In the Reserves, Army Reserves, I did.
- 12 Q And how long were you in the Army Reserves?
- 13 A Six and a half years.
- 14 Q And when was that?
- 15 A About '60 to about '66.
- 16 Q How did you get along with Jenol's family?
- 17 A Everybody, I got along with everybody, decent with
- 18 everybody except Wanda. Now, me and Wanda --
- 19 Q Who is Wanda?
- 20 A That's Jenol's sister. She didn't like me.
- 21 Q And how did you know she didn't like you?
- 22 A She would tell me.
- 23 Q Okay.
- 24 A She would basically say I don't like you.
- 25 Q Did you get a feeling from her of why she didn't like

Donald Hugh Johnson
Direct examination by Mr. Johnston

1 you or --

2 A Well, the things that -- we just argue, I guess. I
3 mean, when I would say, -- she would say something, and I
4 would say something back to her. And then the next thing
5 you know we'd be arguing. And Ms. Phillips would tell us
6 to shut up. And, you know, we just, we just, I guess, just
7 didn't get along.

8 Q Did you and she ever have any conflicts about money?

9 A Yes, sir.

10 Q Tell us about that.

11 A Well, just like my wife is talking about, basically
12 what she was talking about, that, that when grandma was
13 going to pass away and every --

14 Q Now, hold on a second. Explain to us who it is you
15 had this conversation with.

16 A With Wanda.

17 Q Okay.

18 A Wanda was saying that if grandma passed away that she
19 would want everything that grandma had. And I told her, I
20 said, Wanda, that's not right. I said if grandma wants to
21 leave Jenol something, I said, hey, we're not going to give
22 it to you. And that's when she come back with, my gosh, I
23 mean, you know, y'all, she works and you're retired and I
24 don't have that much money, which I knowed Wanda didn't
25 have that much money, and because she called over there.

Donald Hugh Johnson
Direct examination by Mr. Johnston

1 She called the hospital one time to Jenol and told her she
2 was --

3 MR. WILSON: Objection. Hearsay. -

4 THE COURT: Sustained.

5 Q You don't need to tell us about that.

6 A Okay.

7 Q Did you try to get along with Wanda?

8 A Fairly much, yes, sir. I tried to get along with her
9 because we had to be around each other.

10 Most of mine and Wanda, I felt like, now, maybe she
11 feels different, but I felt like we was more kiddingly than
12 we was really at each other's throat. We was jokingly.
13 But, I mean, you know, we'd get heated sometimes, but I
14 don't feel like she got mad that she was going to kill me or
15 nothing. But, you know, but we just didn't get along. I
16 mean, if she said left, I'd probably say right, you know.
17 We just didn't get along.

18 Q Did she ever express her feelings about your
19 relationship with VICTIM? Did she ever say anything about
20 that to you?

21 A She would say. She told me a lot of times. She'd say
22 that since VICTIM had been coming over there at your house,
23 she said I just feel like that you must be doing something
24 because that's why she wants to come over to your house.
25 And I said what are you talking about. And she said you

Donald Hugh Johnson
Direct examination by Mr. Johnston

1 know what I'm talking about.

2 MR. WILSON: I'm going to object, Your Honor.
3 Hearsay.

4 A Well, she told me.

5 THE COURT: Well, I sustain the objection.

6 Q Now, what were your observations about the upbringing
7 that Ashley had in her grandmother's home, her
8 great-grandmother's home?

9 A Real strict, real strict.

10 Q And have you and your wife talked about your wife's
11 upbringing?

12 A Yes, sir.

13 Q And did your wife seem to resent the strict upbringing
14 that your wife had had?

15 A Yes, sir.

16 Q Did that cause you and your wife to do anything with
17 Ashley?

18 A Yes, sir. That's the reason we did things with
19 VICTIM because my wife said she didn't want, she wanted
20 VICTIM to have kind of a normal life. And, you know, we
21 would, you know, we would go get VICTIM. VICTIM would call
22 and want to come over, and we'd go get her.

23 Q When she would come to your home did she have freedoms
24 that she didn't have in her great-grandmother's home?

25 A Yes, sir.

Donald Hugh Johnson
Direct examination by Mr. Johnston

1 Q Tell us about those.

2 A Well, I taught her to drive and I --

3 Q Was that against her --

4 A Yeah, her mother, Ms. Phillips, she didn't want her to
5 drive. She said she didn't need to drive, if she needed to
6 drive, you know, hey, she would learn herself, when time
7 come she would learn.

8 So VICTIM would call and she'd say, you know, come and
9 get me. When she got about 15 years old, well, let's say
10 14, before she could get her permit and everything, she
11 would want me to come over and let her drive, and I would.
12 And in behind the house there they's a subdivision like in
13 behind the house, and it's got a couple of cul-de-sacs and
14 all in behind the house. And I'd let her drive over there.

15 Well, I did her sister also. I mean, I done her
16 sister. Her sister came over a lot to the house too,
17 VICTIM's sister.

18 Q And what's her sister's name?

19 A Heather, Heather W ~~W~~ .

20 Q And how old is Heather now?

21 A I want to say about 17 or 18. I'm not sure. She's 17
22 or 18 now.

23 I let her drive. I would let her drive the car. What
24 I would do, well, my wife bought a sports car, and naturally
25 them being teenagers they wanted to drive the sports car.

Donald Hugh Johnson
Direct examination by Mr. Johnston

1 And so I would carry them down there. We would have to go
2 one at a time, you know, down there. And I would carry
3 Heather down there and, you know, she would drive. And then
4 I'd bring her back and get VICTIM and she would drive.
5 Naturally, they would be, they'd start fussing who drove the
6 longest and, you know, my time again, and, you know, it was
7 just things like that.

8 Q Did you allow her to see her boyfriend?

9 A Yes, sir.

10 Q And what did you do to let her see her boyfriend?

11 A Well, like you say, Mark called over to the house just
12 about 24-7 when she was over there. And he'd want to meet
13 her. She'd want to go meet Mark.

14 And so I'd carry her to the mall, or I would carry her
15 out to Westgate Mall and meet Mark and his mother. And his
16 mother she'd have, she had some kin folks that lived down
17 there close by. And she'd go to them and I'd kinda hang
18 around the mall.

19 And I would kid. And I'd say, look, I'm going to be
20 sitting in the middle of the mall, I said I want to see some
21 smiling faces about every 20 minutes, and jokingly. We'd do
22 things like that, half jokingly. And they'd come by and
23 they'd say we're checking in, you know, and just, you know,
24 but I done it to keep an eye on them.

25 Q Did he ever come to your home?

Donald Hugh Johnson
Direct examination by Mr. Johnston

1 A Yes, sir.

2 Q Have supper?

3 A Yes, sir, several times.

4 Q Did you try to do things for VICTIM?

5 A Yes, sir.

6 Q What did you do?

7 A Bought her anything she wanted just about, probably
8 spoiled her.

9 Q Did you help her with her school work?

10 A Yes, sir. I guess when she was in about the 9th grade
11 or something like that she was failing, and so I called, I
12 called.

13 I went over there to the school to see about it. They
14 wouldn't let me. You know, they wouldn't talk to me. So I
15 had to go. We call it grandma's. So if I say grandma, I'm
16 talking about Ms. Phillips over here. And I went to see
17 Ms. Phillips. And I told her, I said, they won't let me,
18 they won't talk to me about her grades or anything, you have
19 to call and put my name on the list. And so she did. She
20 called over there.

21 And so we were going to the beach. And so we, me and
22 my wife, we done paid for two weeks at the beach. And if
23 VICTIM had to go to summer school, we wouldn't have been
24 able to go to the beach, you know, or without her.

25 And so I went and talked to the counselor and

Donald Hugh Johnson
Direct examination by Mr. Johnston

1 everything. And I got her. She made something like a diary
2 like of the beach trip, and then if, and they do a
3 checkbook, which anything, we bought anything, VICTIM would
4 have to do a checkbook and everything, and learn her to do
5 that. That she would go ahead and see that she passed and
6 let her go up into the 10th grade and everything.

7 So I helped VICTIM the whole two weeks we was down
8 there. I made sure she would that. And again we'd make up
9 what we'd spend, little money, where she, you know, make
10 more checks and everything and run a total.

11 And, and she would have, she would have projects. I
12 think about the 10th and 11th grade she would have these
13 science projects. And you would have to buy all of these
14 things and put it together. And we would have to be
15 together a lot to do work on it. We done it a lot over at
16 Ms. Phillips' house, and a lot of times we would do it over
17 at the house.

18 And, like you say, I helped VICTIM all I could. I
19 treated Ashley like she was my daughter. I helped her,
20 anything she wanted, anything I could help her with, I would
21 help her do it, and why she --

22 Q Did you and she talk on the phone a lot?

23 A Yes, sir. She would call me. She'd call me. She'd
24 call just like the signal was. We called it a signal. It
25 was long distance. And she would call and let it ring

Donald Hugh Johnson
Direct examination by Mr. Johnston

1 twice and then hang up. And I would call her. And we'd
2 probably do that five or six times a week. And, again, she
3 would be telling me about school and about her and Mark and
4 things that Mark would say to her. And if I remember
5 correctly, she said that I didn't like Mark.

6 MR. WILSON: Objection.

-7 THE COURT: Sustained.

8 Q Are you real close to your kids, Mr. Johnson?

9 A My kids?

10 Q Yes, sir.

11 A Yes, sir. One of them, I am. The other two, no.

12 Q The one that you're close to, boy or girl?

13 A Boy.

14 Q Are you kind of lonely too, Mr. Johnson?

15 A Yes, sir.

16 Q What did you think when you heard that VICTIM had made
17 an allegation against you that you were sexually abusing
18 her?

19 A I couldn't believe it. I just couldn't believe she
20 would do that. I, I just don't know what would make her,
21 would say that. I don't know why she would even think
22 that. Just shocked me.

23 Q Did you and your wife have a good relationship?

24 A Yes, sir.

25 Q Did you and your wife have sex?

Donald Hugh Johnson
Direct examination by Mr. Johnston

1 A Yes, sir.

2 Q You're a diabetic though, aren't you?

3 A Yes, sir.

4 Q Did that cause any complications with sex?

5 A At times. Sometimes, yes.

6 Q Did you and your wife try to work through those?

7 A Yes, sir.

8 Q Did you and she, did you and your wife, ever use that
9 vibrator together?

10 A Probably at times before. We have before, but not
11 regular, whatever, maybe half a dozen times, just guessing.

12 Q Ashley described certain things about your private
13 parts.

14 A Yes, sir.

15 Q Do you remember what you told Investigator Bobo about
16 where she may have come upon this knowledge?

17 A Yes, sir. I told him that we was over at -- the
18 doctor burned that little place off next on, to my penis,
19 at the head of the penis, that he burned that off. And we
20 was over at grandma's, over there eating, one time.

21 And right before I had it she was telling I had to go
22 have surgery. And then everybody, Wanda and all of them,
23 was kidding me about it, which, again, they kidded. We
24 kidded. And it was a joke. I mean, it was a joke to us.

25 Q All right. You're a white-headed man.

Donald Johnson
Cross-examination by Mr. Wilson

1 A Yes, sir.

2 Q Ever any jokes about whether or not you were
3 white-headed everywhere?

4 A Not no joke about it, not that I know of.

5 Q Was there ever any statements about it?

6 A Not that I know of.

7 Q Well, your chest area, what color is it?

8 A It's kind of strawberry. It's got strawberry in it.

9 It's white and kinda of a lightish brown.

10 Q Is it as white as the hair on top of your head?

11 A No, sir; no, sir. It's whiter on top of my head than
12 it is anywhere.

13 Q Yes, sir. Did you ever touch VICTIM in a sexual way?

14 A No, sir.

15 Q Please answer any questions.

16 CROSS-EXAMINATION

17 BY MR. WILSON

18 Q Let's go over this again. When you were just talking
19 with Mr. Johnston, you said that your mother-in-law,
20 Ms. Elizabeth sitting back there, was a very strict woman,
21 correct?

22 A She was strict on VICTIM. I thought she was more
23 stricter than she should.

24 Q Was she strict on your wife?

25 A Yes, sir. That's what Jenol tells me.

Donald Johnson
Cross-examination by Mr. Wilson

1 Q Would she let VICTIM see her boyfriend?

2 A No, sir. She did towards the end. I say about the
3 last couple of weeks she would let her see it, and I think
4 that's what teed VICTIM off because she wouldn't let her go
5 that time.

6 Q We're going to get to that in just a second.

7 A Okay.

8 Q You bought VICTIM clothes.

9 A Yes, sir.

10 Q Often?

11 A Just about everything she got, me and my wife would
12 buy them.

13 Q You, you let VICTIM drive too, didn't you?

14 A Yes, sir.

15 Q When she was 14?

16 A Yes, sir.

17 Q And is it also true that you let her have a lot more
18 freedom than her great-grandmother gave her?

19 A Yes, sir.

20 Q You spoiled her, you said.

21 A Yes, sir.

22 Q You said you give her anything or let her do anything
23 she wanted to do.

24 A Yes, sir, within reason.

25 Q You were kinda of her ticket to freedom, so to speak,

Donald Johnson
Cross-examination by Mr. Wilson

1 weren't you?

2 A Yes, sir. I was talking freedom.

3 Q A lot of freedom.

4 Let's go to your statement. You went in and you gave a
5 statement, correct?

6 A Yes, sir.

7 Q And after you gave this statement the police took some
8 photographs of you, is that correct?

9 A Yes, sir.

10 Q So the statement came first.

11 A Yes, sir.

12 Q In your statement you said that the family used to kid
13 you about a burn mark, is that correct?

14 A Yes, sir.

15 Q Did the family kid you about a wart, mole-like mark,
16 beneath your scrotum?

17 A No, sir.

18 Q They didn't? Okay. That photo that was taken that we
19 saw earlier, that photo was taken the day you spoke to the
20 police, correct?

21 A Yes, sir.

22 Q You had a mole or something removed from the head of
23 your penis?

24 A Yes, sir.

25 Q That was before that picture was taken.

Donald Johnson
Cross-examination by Mr. Wilson

- 1 A Yes, sir.
- 2 Q Correct?
- 3 A Yes, sir.
- 4 Q That's a freckle right there on the side of your penis
5 right beneath the fold of skin that we saw, correct?
- 6 A Yes, sir.
- 7 Q Did, did the family joke about the little
8 insignificant freckle beneath the head of your penis?
- 9 A No, sir.
- 10 Q Did you joke with VICTIM about it?
- 11 A No, sir.
- 12 Q The reason you didn't tell them, they joke with you
13 about, the reason you didn't say in your statement that the
14 family picked on you about the wart or the freckle is
15 because you didn't know that's what VICTIM had told them,
16 isn't that correct?
- 17 A Told who?
- 18 Q The police.
- 19 A I don't understand. Repeat that. I don't understand
20 what you're talking about.
- 21 Q Let me rephrase the question. You told them that the
22 family had picked on you --
- 23 A Them being the police.
- 24 Q -- about a burn mark.
- 25 A Them being the police.

Donald Johnson
Cross-examination by Mr. Wilson

- 1 Q Yes. You told the police that the family had picked
2 on you about a burn mark.
- 3 A Yes, sir.
- 4 Q That's the only thing they ever joked with you about,
5 isn't that correct?
- 6 A Yes, sir.
- 7 Q They never joked about the wart.
- 8 A No, sir.
- 9 Q Or the freckle.
- 10 A No, sir.
- 11 Q You said that Wanda doesn't like you very much, right?
- 12 A Yes, sir.
- 13 Q Why was it that she didn't like you? Was it
14 because --
- 15 A Because me and her didn't get along.
- 16 Q Was it because she didn't coward like your wife did,
17 what you said, correct?
- 18 A No. I didn't say that.
- 19 Q You didn't say that?
- 20 A No, sir, I didn't say because she didn't coward like
21 my wife did.
- 22 Q Did you ever say Wanda doesn't like you because you
23 don't coward like your wife does?
- 24 A No, sir.
- 25 Q Well, if you would, this is your statement, correct?

Donald Johnson
Cross-examination by Mr. Wilson

1 A Okay, okay.

2 Q What is the statement? Read right there starting with
3 "Wanda." What does that say?

4 A This says --

5 Q Read from this right here.

6 A Okay, yes, sir. I'm going to read word for word.
7 This says, "Wanda has never liked me because I don't coward
8 to her like my wife does."

9 Q That's what I just asked you.

10 A Well, yes, sir, you're right then. I thought you said
11 that my wife cowarded to me. That's what I thought you was
12 getting at.

13 Q VICTIM was over at your house a lot, wasn't she?

14 A Yes, sir.

15 Q Would you -- is it safe to say she was over there
16 every weekend or every other weekend during the summer?

17 A Not every weekend. Probably, she would probably,
18 average about every other weekend.

19 Q In fact, she would spend several weeks at a time at
20 your house during the summer, didn't she?

21 A Ever once in a while, but very seldom she was --

22 Q And she would spend lots of weeks at a time, wouldn't
23 she?

24 A Well, we'd -- she would -- grandma wouldn't let her
25 spend weeks over there. She'd let her spend --

Donald Johnson
Cross-examination by Mr. Wilson

1 Q Did she spend weeks at a time with you, yes or no?

2 A Sir, I'm trying to.

3 Q Answer the question.

4 A I'd have to say, yes, at one time she probably has,
5 yes, yes, sir.

6 Q Now, do you need to explain your yes answer?

7 A Yes, sir, I do.

8 Q All right. Please explain it.

9 A Okay. What I was saying, that grandma would not let
10 her spend two weeks over there a lot of times because most
11 of the time she'd have things for her to do at home. She'd
12 have to come home, that type of stuff.

13 VICTIM would probably stay over there a lot more if we
14 would let her and grandma would let her.

15 Q You're a retired police officer.

16 A Yes, sir.

17 Q You know a lot about the law, don't you?

18 A Not a lot, sir.

19 Q How long were you on the police force?

20 A Twenty-five years.

21 Q So you know a little bit about the law.

22 A A little bit, yes, sir.

23 Q More than a teenage girl.

24 A Yes, sir.

25 Q What is your -- your wife works at Mary Black?

Donald Johnson
Cross-examination by Mr. Wilson

- 1 A Correct.
- 2 Q Hospital?
- 3 A Correct.
- 4 Q How long has she worked there?
- 5 A About 22 years.
- 6 Q So you're retired.
- 7 A Yes, sir.
- 8 Q Stay-at-home husband.
- 9 A Yes, sir.
- 10 Q She's a working woman.
- 11 A Yes, sir.
- 12 Q Shifts go for what, 12 hours? Her shifts are what,
13 about 12 hours?
- 14 A Well, sir, give me a timeframe.
- 15 Q To the best of your recollection, how long would she
16 be at work at a time?
- 17 A When is what I'm saying. See, about 2002 she went to
18 work at the wound center.
- 19 Q All right. 2002?
- 20 A Okay. She, she would work from, she would work from
21 8:30 in the morning until 5:00 in the afternoon, Monday
22 through Thursday.
- 23 Q How long did she work in 2003?
- 24 A She had been working it ever since that.
- 25 Q So there was not a time that she was working more?

Donald Johnson
Cross-examination by Mr. Wilson

- 1 A Before that, sir, that's when she was working more.
- 2 Q Okay, all right. You said that VICTIM has never seen
3 this on your penis that looks like a scar mark, correct?
- 4 A No, sir.
- 5 Q How could VICTIM see a mole or a wart beneath your
6 scrotum that she could only see from looking directly at
7 you? How could she see that? How would she know that?
8 Who joked with her about that? Who discussed that with
9 her?
- 10 A This I don't know, sir. I don't know. That's where I
11 got burnt.
- 12 Q That's not where you got burned.
- 13 A It's not? Okay, okay.
- 14 Q I mean up under your scrotum is where you got burnt?
- 15 A No, sir. It's on the head of the penis, is where I
16 got burnt.
- 17 Q VICTIM came to you in August of 2001 with a problem,
18 didn't she?
- 19 A Yes, sir.
- 20 Q She had a purple spot on her breast.
- 21 A Yes, sir.
- 22 Q And you were touching the purple spot to determine if
23 there was a lump there, correct?
- 24 A Yes, sir.
- 25 Q Did you tell Jenol about this spot?

Donald Johnson
Cross-examination by Mr. Wilson

1 A Yes, sir.

2 Q You were very upset when VICTIM told the police that
3 you had been sexually abusing her.

4 A Yes, sir.

5 Q You don't know why she would tell the world that, do
6 you?

7 A I've got, I've got my ideas why I think she did, but I
8 don't know.

9 Q What's your idea?

10 A I think because grandma wouldn't let her go with Mark
11 to the mountains.

12 Q How long has VICTIM been dating Mark?

13 A Four or five years.

14 Q Five years?

15 A Somewhere in that neighborhood.

16 Q Mark is here today, isn't he?

17 A Yes, sir.

18 Q So you're saying that because Elizabeth back here in
19 the wheelchair wouldn't let VICTIM go to the mountains for
20 a weekend with her boyfriend's mom and his friends, you're
21 saying that she would make up detailed information about
22 you sexually abusing her for four years?

23 A Sir, what I'm saying is this. I think the reason,
24 when grandma would not let her go to the mountains with
25 them, she said because grandma didn't like them. Me and

Donald Johnson
Cross-examination by Mr. Wilson

1 grandma got along wonderful. She said you won't let me go
2 with people that are not abusing me but you'll let me go to
3 people that have been abusing me since I was 13 years old.

4 Q Mr. Johnson, why would VICTIM throw away the one shot
5 at freedom that she has to hang out with her boyfriend and
6 do whatever she wants? Why would she throw that away? You
7 were that ticket. Why would she throw that away?

8 A To get her way.

9 Q You were giving her her way. Her grandmother was
10 giving her way.

11 A Her grandma wouldn't let her go. You've got to know
12 VICTIM. If VICTIM don't get her way, she'll do anything to
13 get her way.

14 Q How was telling the world that you sexually abused her
15 for four years helping get her way? What is the benefit?

16 A To make me look bad and him look good.

17 Q How does it make you look good?

18 A Mark.

19 Q So to make him look good she has to give specific
20 intimate details of four years of sexual abuse to make him
21 look good?

22 A She did; she did.

23 Q You said Wanda didn't like you.

24 A Yes, sir.

25 Q But not enough to kill you.

Donald Johnson
Cross-examination by Mr. Wilson

1 A No. I said that figure of speech, yes.

2 Q You were using that figuratively. I don't think you
3 meant that or we're to believe that.

4 A Yeah.

5 Q I will give you that. You think Wanda doesn't like
6 you enough to have, to put VICTIM up to telling the police
7 that you've been sexually abusing her and having oral sex
8 with her and using a vibrator on her for four years? You
9 think she doesn't like you that much?

10 A Yes, sir, she would do that, yes, sir.

11 Q That's a whole lot of -- that's a whole lot of
12 information to give just because she doesn't like somebody.

13 A I think they was together. They both did. They both
14 got together and did it.

15 Q So VICTIM --

16 A When VICTIM started, when VICTIM said it, told
17 grandma, and then grandma wouldn't do anything, she called
18 Wanda. And then Wanda came over. And that's when to me
19 it's like a snowball. That's when it started. And it got
20 bigger as it went down.

21 Q When Wanda came over?

22 A Yes, sir.

23 Q So VICTIM -- let me back up. VICTIM told Elizabeth
24 that you sexually molested her, correct?

25 A Yes, sir.

Donald Johnson
Cross-examination by Mr. Wilson

1 Q And they called Wanda, correct?

2 A To my knowledge VICTIM called Wanda.

3 Q If your daughter came to you and said so and so
4 sexually molested me or so and so raped me, what would you
5 do?

6 A I would handle it myself. I would go see the person.
7 I would go talk to the person.

8 Q Would you?

9 A I would, yes, sir. I would go talk to the person. If
10 it was you, I'd come to you and said, look, you're being
11 accused of this, let me hear your side of the story. I
12 wouldn't run to the police with a story, no, sir. I
13 wouldn't do that.

14 Q So if somebody -- if your daughter described very
15 intimate details about my body that nobody can know, you
16 wouldn't go to the police.

17 A If you could explain it to me, I wouldn't.

18 Q I'm going to close right now. Before I do I want to
19 ask you one last thing.

20 You can't explain to this jury how VICTIM knew about
21 that wart up under your scrotum and you can't explain to
22 this jury how she knew about that minute freckle beneath the
23 head of your penis, can you?

24 A Yes, sir. The scrotum, I can tell you. I just
25 happened to think about that, because I didn't remember.

Donald Johnson
Cross-examination by Mr. Wilson

1 Q I'll listen to it.

2 A I didn't remember you. I didn't remember you saying
3 scrotum. I thought you were talking about on the head of
4 the penis.

5 Q No, sir. I am talking --

6 A I understand, sir. I understand what you're saying.
7 I understand what you're saying.

8 Q I am talking about the wart right here.

9 A I understand what you're saying, yes, sir, right there
10 on the side, right there, that one right there.

11 Q Okay.

12 A Okay. I was taking a shower.

13 Q Okay.

14 A I am a diabetic. I lost that. It looks like a dead
15 piece of skin. It feels like a dead piece of skin. I
16 scratched it. When I scratched it, it started bleeding. I
17 tried to stop it. I tried to stop it from bleeding. I
18 couldn't.

19 I put my shorts on. I called VICTIM and I said,
20 'VICTIM, I can't get this to stop, will you put a band-aid
21 on it for me?' She said okay. And she put a band-aid on it
22 for me. I told my wife; I told my wife.

23 Q You're saying your wife put a band-aid on this when
24 you scratched it?

25 A No, ma'am. I'm saying, I said that VICTIM did.

Donald Johnson
Cross-examination by Mr. Wilson

1 Q I mean, I'm sorry. You're saying VICTIM put a
2 band-aid on this?

3 A Yes, sir.

4 Q This is the first I've heard of this. Did you tell
5 the police? Did you tell your attorney this?

6 A Yes, I did.

7 MR. JOHNSTON: Your Honor, I have a matter of law.

8 A Yes, yes, I did.

9 THE COURT: Just a minute, just a minute. Let me see
10 y'all.

11 (Bench conference held off the record in the presence
12 of the jury but out of the hearing of the jury.)

13 THE COURT: Rephrase your question.

14 MR. WILSON: Thank you, Your Honor. I'll withdraw the
15 previous question.

16 Q Two years ago VICTIM gave a statement detailing
17 intimate details including this wart under your scrotum.
18 How long have you known that she gave those details?

19 A When my attorney read it to me.

20 Q Okay. And when was that?

21 A A year and a half ago.

22 Q You're telling me that you had your teenage
23 granddaughter put a band-aid on the mole displayed in this
24 picture and that's where her knowledge came from?

25 A Sir, what I'm saying is I had shorts on. I wasn't

Donald Johnson
Cross-examination by Mr. Wilson

1 like that picture is showing her.

2 Q How does VICTIM put a band-aid on a bleeding mole
3 under your scrotum without your shorts being off?

4 A Very easily, sir, very easy. That's not, that's
5 not --

6 Q Did she stick her hands under your shorts?

7 A That's not under my scrotum, sir. No, sir, yes. It's
8 about that far, sir. It's about that far.

9 Q Okay. It's about that far.

10 A Yeah. And my shorts comes up to here, sir.

11 Q It's not under your scrotum, but you're lifting your
12 scrotum up when the picture is taken.

13 A Sir, it is that far.

14 Q Sir.

15 A Okay.

16 Q Your granddaughter put a band-aid on, on that mold.

17 A Yes, sir.

18 Q That's what you're saying your excuse is.

19 A That's not an excuse, sir. That's a fact.

20 Q That's your reason.

21 A Yes, sir.

22 Q That's interesting.

23 MR. WILSON: No further questions.

24

25

Donald Johnson
Redirect examination by Mr. Johnston

1 REDIRECT EXAMINATION

2 BY MR. JOHNSTON

3 Q Why, why is it important for a diabetic not to bleed?

4 A You bleed to death maybe, probably.

5 Q Okay. Do diabetics bleed faster?

6 A Yes. I bleed, I bleed freely. I can just hit myself.

7 You see these all over here. And I'll bleed. And VICTIM

8 constantly. Birds. We had birds. They'd bite me on the

9 legs, on the back, different things. And VICTIM, and

10 VICTIM, she was wanting to be a nurse. And she would, and

11 she would put band-aids on them. And that's the reason I

12 didn't think that much about her doing that.

13 Q Would you be able to see that mole on your thigh? If

14 you just pulled up your shorts and pulled up your

15 underwear, would you be able to see that?

16 A Yes, sir. You'd be able to see it if I had shorts on
17 if you just looked at it.

18 Q I'm going to show you what's been marked as

19 Defendant's Exhibit No. 2, this photograph.

20 A Yes, sir.

21 Q Do you remember that?

22 A Yes, sir.

23 Q Look at this other photograph. Do you remember that?

24 A Yes, sir.

25 Q In one of those pictures you've got on like a long

Donald Johnson
Redirect examination by Mr. Johnston

1 kind of shorts. What are those?

2 A Swim suit.

3 Q Okay. And how far does that come down your leg?

4 A Almost to my kneecap.

5 Q You wouldn't be able to see that mole up under those
6 shorts, would you?

7 A No, sir; no, sir. -

8 Q Okay. Now, how about this photograph where you're
9 facing towards the camera?

10 A Yes, sir.

11 Q Is that the same pair of pants?

12 A Yes, sir.

13 Q What's different about them?

14 A They're up.

15 Q Rolled up?

16 A Well, it's because of the water. It's just kind of
17 slid up, you know, when I got in the water.

18 Q Okay. Have you got them pulled up where they're not
19 in the water?

20 A Yes, sir.

21 Q Could you see that mole?

22 A You could just about see it from there.

23 Q And who else is in that photograph with you?

24 A Ashley.

25 Q Did you think you were exposing yourself indecently?

Donald Johnson
Recross-examination by Mr. Wilson

1 A No, sir.

2 Q Please answer any other questions.

3 RECROSS-EXAMINATION

4 BY MR. WILSON

5 Q I didn't get to see where you were pointing. Where
6 can you almost see?

7 A Right there.

8 Q Hold on one second. Point to me where you can almost
9 see.

10 A I would say right about there. I didn't say you
11 could. I said you almost could.

12 Q So right here. This picture with your shorts, you can
13 see.

14 A I didn't say you could see.

15 Q You can almost see the mole that you have to lift your
16 scrotum to be able to take a picture of.

17 A I wouldn't have to lift my scrotum.

18 MR. WILSON: No further questions.

19 MR. JOHNSTON: No other questions, Your Honor.

20 THE COURT: You may step down.

21 MR. JOHNSTON: The defense calls Stan Lawson.

22 JOHN STANLEY LAWSON, having
23 been first duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. JOHNSTON

25 Q Tell us your name, please.

John Stanley Lawson
Direct examination by Mr. Johnston

1 A John Stanley Lawson.

2 Q And are you working?

3 A I work part time for the City of Spartanburg in the
4 court system.

5 Q And are you also retired?

6 A Yes. I am a retired police officer.

7 Q How long were you with the police department?

8 A Twenty-nine years, five months, and nine days.

9 Q And what did you do there?

10 A I was a police officer. I was, I retired as a
11 sergeant. I worked in every division in the police
12 department except new promotions.

13 Q During the time that you worked with the police
14 department did you come to know Donald Johnson?

15 A I met Don in 1973-1974 when he came on the police
16 department.

17 Q Did you work with him closely over the years?

18 A I was his immediate supervisor for maybe four years in
19 traffic division.

20 Q And you retired when?

21 A I retired in 1995 in September.

22 Q And when did Don retire?

23 A He retired in December of '95.

24 Q Have you and he continued to be friends since your
25 respective retirements?

John Stanley Lawson
Cross-examination by Mr. Stumbo

1 A Yes. A bunch of us retiring officers go to Hardees
2 for breakfast on Tuesdays and Thursdays. And twice a month
3 we go out to eat at Fatz in the evenings.

4 Q Are you familiar with Don Johnson's reputation in the
5 community for telling the truth?

6 A Yes, sir.

7 Q What is that reputation?

8 A To my knowledge he has always had a good reputation
9 for telling the truth. He, he worked for me for several
10 years. Never had any complaints on him. He did his job.
11 And I never had anybody come to me to complain about
12 anything that was not truthful.

13 Q Please answer any questions.

14 MR. STUMBO: Just briefly, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. STUMBO

17 Q Mr. Lawson, I'm David Stumbo. I don't believe we met
18 before today. Just one question for you.

19 Were you ever around when the defendant and *VICTIM* were
20 home alone?

21 A No, sir.

22 MR. STUMBO: No further questions, Your Honor.

23 MR. JOHNSTON: Your Honor, I don't have any further
24 questions from him. We would ask for him to be excused if
25 he desires.

Alton D. Gilbert
Direct examination by Mr. Johnston

1 THE COURT: He may be.

2 (Whereupon, the witness was excused.)

3 MR. JOHNSTON: The defense calls A. D. Gilbert.

4 ALTON D. GILBERT, having been
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. JOHNSTON

7 Q Tell us your name, please.

8 A Alton D. Gilbert.

9 Q And do you work?

10 A No, sir.

11 Q Are you retired?

12 A Yes, sir.

13 Q From where are you retired?

14 A Spartanburg City Police Department.

15 Q How long were you with them?

16 A I worked with them 22 years, and I had military time.

17 And when I retired I had 26 years.

18 Q When did you retire?

19 A In December the 31st, 1990.

20 Q During the time that you worked with the Spartanburg
21 City Police Department did you have occasion to meet and
22 work with Don Johnson?

23 A Yes, I did.

24 Q Tell us what type of work you were doing versus what
25 he was doing.

Alton D. Gilbert
Cross-examination by Mr. Stumbo

1 A When I first met Don he was a reserve officer, and he
2 would come and ride with different officers. I was in
3 patrol at that time. And occasionally he would ride with
4 me and patrol in the territories.

5 Q Okay. Have you and he been friendly and continued to
6 see one another since you retired in 1990 and he retired in
7 '95?

8 A Yes, we have.

9 Q What do you all do together now?

10 A Well, we meet occasionally, as Mr. Lawson stated, for
11 breakfast a couple of times a week, and a couple of times a
12 month for supper.

13 Q Are you familiar with Mr. Don Johnson's reputation in
14 the community for telling the truth?

15 A Yes, sir.

16 Q What is that reputation?

17 A As far as I know he has always been honest, he's been
18 a caring person, cared for his sister when she was gravely
19 ill and took care of her affairs.

20 Q Please answer any questions.

21 CROSS-EXAMINATION

22 BY MR. STUMBO

23 Q Just briefly, Mr. Gilbert. I'm David Stumbo. I don't
24 believe we have met before today.

25 Mr. Gilbert, were you ever around the defendant's

Alton D. Gilbert
Cross-examination by Mr. Stumbo

1 residence when he was at home with VICTIM ?

2 A No, sir.

3 MR. STUMBO: No further questions, Your Honor.

4 THE COURT: You may step down.

5 MR. JOHNSTON: We would ask for him to be excused if
6 he desires.

7 THE COURT: He may be.

8 MR. JOHNSTON: Your Honor, the defense calls Glenn
9 Kennedy.

10 GLENN KENNEDY, having been
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. JOHNSTON

13 Q Tell us your name, please.

14 A Glenn Kennedy.

15 Q Do you work, Mr. Kennedy?

16 A No, sir. I'm retired.

17 Q And where did you retire from?

18 A I retired from the city public safety department in
19 1988.

20 Q And what was your rank when you retired?

21 A I was a lieutenant over the traffic division.

22 Q During the course of time that you worked for the city
23 public safety department would you have occasion to meet
24 and work with Don Johnson?

25 A Yes, daily. I had to grade him every year. I was

Glenn Kennedy
Direct examination by Mr. Johnston

1 real close with all of the traffic people. And we were
2 friends.

3 Q Do you continue to be friends with him since your
4 retirement in '88 and his retirement in '95?

5 A I complained to him about calling me every day at
6 10:00 o'clock at night until my wife gets up and goes to
7 work on the third shift at 12:00. Every day.

8 Q And why does he call you every day at 10:00 o'clock?

9 A We just talk about the lake. He's got a place at the
10 lake, and I have. We talk about old times at the police
11 department. We think, talk about policemen that are sick.
12 He'll say did you see so and so, obituary was in the paper
13 today or this kind of stuff. We're just about like we did
14 when we was on the police department. We continue that
15 every day.

16 Q Are you familiar with his reputation in the community
17 for telling the truth?

18 A Yes, I am.

19 Q What is that reputation, sir?

20 A As far as I know it's been impeachable (sic).

21 Q Does that mean good?

22 A Good, excellent, yeah.

23 Q Please answer any questions.

24

25

Glenn Kennedy
Cross-examination by Mr. Stumbo

1 CROSS-EXAMINATION

2 BY MR. STUMBO

3 Q Just briefly, Mr. Kennedy. Were you ever around the
4 defendant's house when he and VICTIM were home alone?

5 A I'm never at the house, but he picked me up to go to
6 Hardees when she was in the car one day. And I -- the only
7 other time I saw her, she was at his place at the lake, but
8 never at the house.

9 Q Never at his house when she and him were alone.

10 A No.

11 MR. STUMBO: No further questions, Your Honor.

12 MR. JOHNSTON: I have no other questions. I ask for
13 him to be excused if he desires.

14 THE COURT: You may step down. You may also be
15 excused.

16 (Whereupon, the witness was excused.)

17 MR. JOHNSTON: The defense rests.

18 THE COURT: Any reply?

19 MR. WILSON: None, no, Your Honor.

20 THE COURT: All right. Ladies and gentlemen, that's
21 all of the testimony or other evidence to be offered in the
22 trial of the case.

23 What does remain to be accomplished are the final
24 summations given by the lawyers, after which I'll give you
25 a detailed legal instruction on the law. And then you'll

1 begin deliberations.

2 Because of the hour, we're going to recess now. We
3 will resume with that at 1:45, at 1:45 this afternoon.
4 That's a quarter till 2:00. It's 12:20 right now.

5 So in the meantime continue to follow my instruction.
6 Don't discuss the case with anybody in any fashion. Do not
7 permit anyone to discuss the case with you. Do not permit
8 yourselves to be exposed to any type of media coverage that
9 might relate to the case. Do not conduct any research or
10 do your own investigation into any issue.

11 Please be back in your jury room not later than 1:45,
12 1:45 this afternoon. Have a good lunch.

13 (The following takes place outside the presence of the
14 jury.)

15 THE COURT: Motions or other matters to address?

16 MR. JOHNSTON: Your Honor, I don't have any motions.
17 I would like to talk with you about your charge. I don't
18 know if you want to do that now or if you want to do it
19 when you return.

20 THE COURT: Yeah. We can do it right now. Do you all
21 want to meet back in chambers?

22 MR. JOHNSTON: That will be fine, sir.

23 THE COURT: Okay, all right. Court is in recess until
24 1:45.

25 I'll need to see the lawyers in chambers.

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1 (Whereupon, a recess was taken.)

2 THE COURT: Are there any matters we need to address
3 before the jury is brought in?

4 MR. WILSON: Nothing from the state, Your Honor.

5 MR. JOHNSTON: Nothing from the defense.

6 THE COURT: Okay. Bring them in.

7 (The following takes place in the presence of the
8 jury.)

9 THE COURT: Good afternoon, ladies and gentlemen.

10 As you know, what remains to be done are the lawyers'
11 final summations, after which I'll instruct you on the law.
12 And then you'll begin your deliberations.

13 So please give the lawyers your attention now as they
14 give you their final summations.

15 Mr. Johnston.

16 MR. JOHNSTON: May it please the Court.

17 Mr. Foreman, ladies and gentlemen of the jury, the
18 pencil that we use every day to write things down is
19 different than the writing instrument that you will be
20 using to write your verdicts in this case.

21 There are probably two differences. One is you'll
22 probably be using an ink pen, but the second is the eraser
23 that is present on the pencil will not be present on your
24 writing instrument. That is if you when writing your
25 verdicts should make a mistake, it cannot be undone. Any

Closing arguments

1 mistake that you make cannot be erased.

2 Don Johnson came into this courthouse yesterday an
3 innocent man. If you follow the judge's instructions in
4 this case and if you consider carefully the evidence that
5 has been presented to you in this matter, I submit that he
6 will go out today the same way that he came in, an innocent
7 man.

8 Remember, in order for you to write a verdict of
9 guilty you must be convinced that the state has presented a
10 case to you which is one hundred percent free of reasonable
11 doubt. That is, ladies and gentlemen, if there is any
12 reasonable doubt as to Don's guilt, you will have no
13 choice. It will be your duty to write verdicts of not
14 guilty in this case.

15 Now, what corroboration have they brought to you of
16 this young lady's testimony? They have presented VICTIM
17 ~~—~~, and she has made her claims. She has made her
18 statements.

19 Ladies and gentlemen, I submit to you that anyone can
20 make a claim, anyone can make a statement, anyone can make
21 an accusation and anyone can be accused.

22 What evidence have they brought to you to support her
23 accusations? First of all, there is no scientific evidence
24 in this case. If there were some type of D. N. A. evidence
25 or fingerprints or something like that that we could rely

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1 on that an expert can take the stand and testify that
2 within their scientific knowledge what this young lady has
3 said is true or most likely could be true, ladies and
4 gentlemen, that sort of evidence might give a person a
5 comfort zone. That is they might be able to look into the
6 mirror tonight or tomorrow and say to themselves there
7 wasn't any reasonable doubt because there was scientific
8 evidence to support these accusations. But, ladies and
9 gentlemen, as we know, there isn't any scientific evidence
10 in this case.

11 In fact, the only evidence that they brought to
12 corroborate -- now, what does that word corroborate mean?
13 Corroborate means to support a claim, to make a claim more
14 believable.

15 What evidence have they brought to you in an attempt
16 to corroborate this young lady's claims? The only
17 evidence, ladies and gentlemen, they've brought you is what
18 she claimed was going to be depicted on this man's
19 genitals, ladies and gentlemen. That is the only evidence
20 they've brought to you in an attempt to corroborate her
21 claims.

22 And remember this is the young lady who appreciates
23 corroboration. How do we know this young lady appreciates
24 corroboration and takes it into account in determining when
25 and if to make an accusation? Do you remember her

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1 statement? I wanted him to hit me so I'd have proof that
2 he had touched me. This is a young lady, ladies and
3 gentlemen, who gave thought to how an accusation might be
4 supported.

5 So what does she do? She attempts to describe this
6 man's genitals. And then the pictures of his genitals are
7 taken by the police.

8 Now, ladies and gentlemen, she got the information
9 wrong. The descriptions that she gave, while having some
10 basis, are not sufficient to corroborate her story,
11 because, ladies and gentlemen, she simply didn't get it
12 right.

13 Do you remember when she got on the stand and she
14 talked about the mark on Don's penis? Even on the witness
15 stand she couldn't decide whether or not she'd said it was
16 on the head of the penis, on the side of the penis, on the
17 left side or the right side. And this, ladies and
18 gentlemen, is someone with whom she claims to have
19 performed oral sex upon regularly over the course of four
20 years.

21 Then she describes the mole on his leg. Ladies and
22 gentlemen, the prosecution in this case would have you
23 believe that Mr. Johnson had to go through some great
24 motion of swooping up his scrotum so that this mole might
25 even be seen.

Closing arguments

1 Ladies and gentlemen, I simply submit to you that they
2 asked him to pull up his scrotum so that it might be more
3 easily photographed.

4 I submit to you, ladies and gentlemen, that there are
5 any number of ways that she could have known, first of all,
6 of this mark she says, which is on his penis, because if
7 you remember there was discussion about him having had an
8 operation to remove a mole from somewhere on his penis, and
9 that if you look at this photograph here, Defendant's
10 Exhibit No. 2, he is in the water. He's with VICTIM. His
11 shorts are rolled up evidently in an attempt to keep them
12 from getting wet because the same series of photographs,
13 he's got on the shorts that are longer. Here he's in the
14 water. They're rolled up.

15 Ladies and gentlemen, I submit to you she could very
16 easily have seen the mole that day based just on this one
17 photograph taken at random.

18 But, ladies and gentlemen, how do we know that she's
19 not telling the truth about that? Two ways. One, she said
20 explicitly that this mole was under his butt cheek, under
21 his butt cheek, ladies and gentlemen, implying that it
22 would be seen if he lifted up his butt cheek.

23 We also know, ladies and gentlemen, that she got it
24 wrong when she said what side it was on.

25 Detective Bobo has 19 years of law enforcement

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1 experience. He's worked with juveniles specifically, and
2 he's worked with sexual assault type cases more than any
3 other case.

4 He sat down with her carefully discussing things,
5 putting her at ease, stopping when he needed to, making
6 sure that he had the details right, yet their presentation
7 to you in this case is that he failed to account for, well,
8 was it your left or his left.

9 That's what they want you to believe, ladies and
10 gentlemen, that this officer didn't ask that all-important
11 question about evidence which he candidly admits was
12 crucial in this case.

13 Ladies and gentlemen, I submit to you that this
14 supposed description of Mr. Johnson's genitals is worthless
15 to you as corroboration, is worthless to you as support,
16 especially in light of the testimony that as part of family
17 lore and as part of joking around, these things came up in
18 the family, that they were talked about, that they were
19 kidded about and that Don was teased at the end of any
20 number of good-natured jokes, both his surgery and his
21 anatomy.

22 Now, I'm sure the attorney general is going to get up
23 here and tell you, well, she knew what color his hair was.
24 Well, ladies and gentlemen, how hard is that?

25 Look again at this photograph. See the proximity in

Closing arguments

1 which these people lived with one another. I submit to you
2 not hard at all for her to be able to know that the hair
3 down below is different than the hair on the top.

4 She knows about their sex life. She knows that
5 Mr. Johnson has a problem with erections. She testified
6 about that. Well, apparently this was a pretty open home
7 where sex was discussed openly, part of the
8 we-are-not-as-strict-as-your-grandmother situation.

9 But, ladies and gentlemen, I don't know if you watched
10 television lately, but it seems that every other commercial
11 is for some type of cure for erectile dysfunction, which is
12 caused, according to our commercials, among other things,
13 by diabetes. It doesn't take a rocket scientist to figure
14 that out, that if Don has diabetes he certainly may have
15 had erectile dysfunction.

16 Ladies and gentlemen, this young lady was not a child.
17 Our expert therapist says that a child is any person who
18 can't sign a legal document with authority in South
19 Carolina.

20 Well, that might be some kind of legal definition,
21 ladies and gentlemen, but I think you all know the
22 difference between a child and adolescent and a young
23 woman.

24 In this case, ladies and gentlemen, we are not dealing
25 with a child; we are not dealing with someone who is slow

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1 in mentality; we are not dealing with someone who is
2 otherwise handicapped in her social abilities.

3 This is a strongheaded, strong-willed young woman who
4 went to school, had a boyfriend and, in fact, snuck around
5 to have a boyfriend for two years before her custodial
6 grandmother, her custodial parent, would allow her to see
7 that young man.

8 I submit to you, ladies and gentlemen, that it does
9 not make sense, that it goes against our everyday normal
10 experiences and common sense to think that this young woman
11 would submit to these unwanted sexual experiences from an
12 elderly man for four years without a complaint, without a
13 whimper.

14 Now, they are going to rely again on the therapist who
15 came in here and said, well, we got this thing called a
16 child sexual abuse accommodation syndrome and that explains
17 why she delayed reporting because children will delay
18 reporting sometimes for years.

19 Ladies and gentlemen, this isn't a delayed reporting
20 situation. This is a young woman who, if her statements
21 are true, endured this continually over a long period of
22 time regularly and went over there every chance she could.
23 Every time she had the opportunity by the evidence of
24 everyone in this case she wanted to go to Don and Jenol's
25 house.

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1 I submit to you, ladies and gentlemen, that if there
2 was really all of this sexual abuse occurring she would not
3 have wanted to go. This is not a matter of delayed
4 reporting. This is a matter of something being untrue,
5 because it doesn't work with our common sense.

6 Now, you've got to consider the source on some things.
7 And if you recall, this lady, the therapist, who referred
8 VICTIM over to see her, who referred her? The solicitor's
9 office, the prosecutor's office referred VICTIM to her.

10 Do you really think that they were going to try to
11 pick someone out who would be neutral, or did they try to
12 pick someone out who they thought would be supportive of
13 their case, of their theory of this case?

14 She gets paid also by the state office of Victim
15 Assistance, not the state office of not-victim assistance.

16 I submit to you, ladies and gentlemen, that if she
17 wrote in to the state office of Victim Assistance and said
18 I don't think this girl is a victim, I think she is lying,
19 they are not going to pay. And you can take that into
20 consideration in determining her credibility.

21 I also submit to you that this is a woman who
22 prescribes a book to VICTIM called "A Courage to Heal."
23 When I asked her about it, asked her about some of the
24 things that were in that book, asked her about the theory
25 of aspects of that book being that there's people that will

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1 refuse but just don't remember it, she said, oh, well, I
2 didn't, I didn't give her those chapters to work out of.

3 - Ladies and gentlemen, that shows you her bias, her
4 lack of credibility on this point. I would also say that
5 apparently the main reason she was brought here was to
6 testify about why VICTIM never told this before.

7 Well, you remember I asked her to look through her
8 notes. She sat there. She flipped page after page after
9 page. And I said tell me where in all of those pages you
10 wrote down what VICTIM told you about why she didn't tell.
11 Looked through page after page, 12 visits and an
12 assessment. Not one single recorded piece of information
13 about why VICTIM didn't tell.

14 You notice the one witness the state didn't call? The
15 aunt, Wanda Phillips, the witness whose name ran throughout
16 the course of events in the case but that the state chose
17 not to call. Wanda showed up when Grandmother Phillips
18 took no action. When Wanda showed up, what did she do?
19 She carried VICTIM to the police department to make a
20 report.

21 You remember I asked VICTIM about that victim impact
22 statement. Who filled that out for you? Wanda. Wanda
23 filled that out for me.

24 Wanda doesn't like Don. Everybody admits that.
25 Sometimes in a family situation little things build up over

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1 time causing people not to like one another, not to be able
2 to get along. Sometimes it causes just downright
3 resentment.

4 And, ladies and gentlemen, then you throw in the
5 aspect of money. The Bible says the love of money is the
6 root of all evil. Wanda figures that because she doesn't
7 have much money and she doesn't have a job and because
8 Jenol is a nurse and Don has his retirement that she ought
9 to come into whatever grandmother leaves, all of it. Don
10 doesn't think it's right. Don speaks up, I don't think
11 that's right.

12 Well, look at the situation now. Here we are two
13 years away. The family is estranged. Jenol doesn't even
14 talk to her mother any more. Who do you think is in a
15 better position to get what grandma leaves behind now?

16 This young lady, I submit to you, was raised in a
17 strict home, but the reins were starting to be loosened on
18 her.

19 The reason for the attraction to Don and Jenol's home
20 was the fact of, that there was fewer restrictions there.
21 But, again, a couple of weeks before the great revelation
22 grandmother had started allowing VICTIM to see her
23 boyfriend.

24 But then all of a sudden after she had been letting
25 her see him, VICTIM comes in and says I want to go to

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1 Cherokee, North Carolina, with Mark's mama and Mark won't
2 even be there. Grandma, resorting back to her stricter
3 days, says no.

4 VICTIM in a flash of anger, in an attempt to protest
5 what she thinks is an unfair rule, says you don't trust me
6 with the people that are good to me, you do trust me with
7 the people who abuse me. Who abuses me? Don. He's been
8 abusing me since age 13.

9 Ladies and gentlemen, from that point it was on. That
10 was an allegation that could not be retracted, especially
11 after the involvement of Aunt Wanda, especially after Aunt
12 Wanda took her to the police station.

13 Why would VICTIM destroy this haven from strict
14 regulation? Ladies and gentlemen, very simple. She no
15 longer needed it. Remember by the time this happens she's
16 way over 17, on the way to 18 and granny is slacking up.
17 And now she is 19 and can do what she wants. It's simply a
18 matter of she didn't need it any more.

19 And remember what Don said on the witness stand? If
20 Ashley doesn't get her way, watch out.

21 Ladies and gentlemen, we had three police officers
22 from the city of Spartanburg, all retired, all with
23 spotless records, come here and testify that in their long
24 experience with Don Johnson both in work and in just
25 everyday life that he had a reputation for telling the

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1 truth, that his word could be counted on.

2 There is one aspect of Judge Cole's instruction to you
3 that--I wish to especially commend to you. I believe that
4 he will instruct you something along this line. Evidence
5 of good character alone may constitute reasonable doubt --
6 evidence of good character alone may constitute reasonable
7 doubt. Because, ladies and gentlemen, the law recognizes
8 that at the end of the day we only have our good names and
9 our reputations that we've built over years to protect us.

10 Over in England the prosecution, the government, the
11 state, is called the crown. I understand that in the
12 oldest courthouse in England is the following statement:
13 In this hallowed place of justice the crown never loses,
14 for when the liberty of an Englishman is preserved against
15 false testimony the crown wins.

16 That made me think of these young men who come up here
17 from Columbia to prosecute this case. They seem to be fair
18 and honorable men, and perhaps, ladies and gentlemen, you
19 would like to see them win.

20 The same applies here as applies in England. No
21 matter what your verdict, they win. These men here at this
22 table win because, ladies and gentlemen, even though you
23 return the verdicts of not-guilty that I ask you, for the
24 state will not have lost its case, because any time justice
25 is done the state, society, and all of us win.

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1 For the last one and a half years, ladies and
2 gentlemen, Don Johnson's fate has been in my hands. In a
3 few minutes after the judge has instructed you on the law
4 he will send you into another room to deliberate your
5 verdicts. At that time, ladies and gentlemen, his fate
6 will be in your hands.

7 I ask you, ladies and gentlemen, to find this good
8 man, this truthful man, not guilty. I ask you to let him
9 go home. He's had enough. His family has had enough. Let
10 him go home. Thank you.

11 MR. WILSON: May it please the Court.

12 THE COURT: Mr. Wilson.

13 MR. WILSON: Family ties, secret lives and destroyed
14 lives. That is what this case is about, ladies and
15 gentlemen.

16 Mr. Stumbo gave an opening yesterday morning, and you
17 heard it. And he posed a couple of questions to you. What
18 are grandfathers supposed to teach their granddaughters?
19 How to fish, put worm on a hook, how to drive a car -- this
20 one actually did -- how to tie their shoes, ride a bicycle.
21 That's what they're supposed to teach their granddaughters.

22 What did Donald Johnson teach his granddaughter? What
23 was his family tie to her? He taught her how to model
24 thongs; he taught her how to use a vibrator; play strip
25 poker; perform oral sex on a grown man. That's what he

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1 taught her.

2 We used the connect-a-dot analogy in the opening
3 yesterday. Mr. Stumbo told you to figure out the truth of
4 this case, finding the truth is a lot like that childhood
5 game of connect the dots. And the dots are the pieces of
6 evidence. They're the testimony that you hear.

7 And we as the state, we're going to throw those at
8 you. And you're going to use your own common sense, your
9 logic and your life experience, and you're going to connect
10 each piece of evidence logically in using your common
11 sense.

12 And you're going to draw a picture. And we're going
13 to help you right now in the closing. We're going to help
14 you draw that picture. And you're going to see a picture,
15 ladies and gentlemen.

16 First of all, I want to talk to you about reasonable
17 doubt. I was listening intently yesterday, and Mr.
18 Johnston, who I find to be a very good lawyer, gave you,
19 gave you a legal definition of reasonable doubt.

20 And in a minute the judge is going to instruct you on
21 the law. He's going to instruct you on the standard of
22 proof that the state must meet. And that standard of
23 proof, basically all that standard of proof is how certain
24 you must be of the defendant's guilt, beyond a reasonable
25 doubt. And that burden is on us. Ladies and gentlemen,

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1 that is a burden that we gladly bear.

2 But yesterday in his opening, and in his closing just
3 a few minutes ago, it's kind of like that boilerplate
4 language you got to see at the bottom of an ad. It says
5 you have to be one hundred percent free, one hundred
6 percent, pause, free of reasonable doubt. Focus on the one
7 hundred percent. You can't have any doubt.

8 The law says that the state does not have to prove
9 beyond all doubt or beyond any doubt, just beyond a
10 reasonable doubt.

11 And what is a reasonable doubt? A reasonable doubt is
12 what would cause a reasonable person to hesitate to act.
13 It would cause a reasonable person to say someone is not
14 guilty. We just have to get beyond that.

15 There are very few things in the world that we know
16 beyond all doubt. And the law does not require that we
17 have it, does not require a stricter standard on the state.

18 Now, I submit to you, ladies and gentlemen, we'll
19 stand toe to that standard that he said too. We'll stand
20 toe to toe with any standard of doubt because we believe
21 our case, our evidence exceeds every reasonable doubt.

22 Now, I'm going to talk to you about the law. The
23 first law, there's five indictments, ladies and gentlemen.
24 There's three counts of criminal sexual conduct with a
25 minor in the second degree; there's a committing or

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1 attempting to commit a lewd act on a minor; and there's
2 contributing to the delinquency of a minor.

3 The elements of the first crime that Donald Johnson is
4 charged with is we have to prove sexual battery. In just a
5 second I'm going to give you a definition of sexual
6 battery. But we have to prove that element to you beyond a
7 reasonable doubt.

8 The second element is we have to prove that the
9 victim, that is VICTIM, was between the ages of 11 and 14
10 years old.

11 The next part of the C. S. C. or criminal sexual
12 conduct in the second degree is when VICTIM turns 15 the
13 law requires an additional element. We still have to prove
14 sexual battery just like we did up here, but they have the
15 "and" here. And we have to prove the actor is in a
16 position of familial, custodial or official authority to
17 coerce the victim to submit, or is simply older than the
18 victim.

19 So if we prove to you that VICTIM is between 11 and 14
20 on one of the indictments and, excuse me, if we prove that
21 she was between basically 11 and 15, and we prove the
22 sexual battery, and we prove that Donald Johnston was older
23 than her at the time, we have proven to you all the
24 elements. Those are the elements for criminal sexual
25 conduct.

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1 Now, the two words that are underlined, sexual
2 battery, what is a sexual battery? There is a legal
3 definition. ~~It~~ means sexual intercourse, cunnilingus,
4 fellatio, anal intercourse or any intrusion, however
5 slight, on any part of a person's body or of any object
6 into the genital or anal openings of another person.
7 Obviously, medical examinations don't count.

8 Basically oral sex on the man or on the woman, any
9 kind of intrusion, be it with a vibrator or a finger, that
10 is a sexual battery. That is the element of criminal
11 sexual conduct that we have to prove to you.

12 The next, the next crime that we talked about is
13 committing or attempting a lewd act upon a minor. There
14 are some elements here.

15 We have to prove that the defendant, Donald Johnson,
16 is over 14 years old. We have to prove that at the time
17 that this happened that VICTIM was under 16 years
18 old.

19 Then the next element we have to prove, that the
20 defendant wilfully commits or attempts to commit a lewd or
21 lascivious act. He has to intend to commit an act that's
22 lewd or lascivious. And in a minute we're going to talk
23 about what lewd and lascivious means.

24 And he has to do this act upon or with, upon or with
25 the body or parts of the victim, basically watching her

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1 take a shower, running a vibrator or playing strip poker
2 with her so he can see her naked, upon or with the body,
3 lewd or lascivious.

4 What does lewd and lascivious meant, mean? I went to
5 dictionary, American Heritage. Lewd, preoccupied with sex
6 and sexual desires, lustful, obscene, indecent.
7 Lascivious, giving to or expressing lust, lecherous,
8 exciting sexual desires, salacious. That's the kind he has
9 to prove.

10 With this right here we don't have to prove a sexual
11 battery. That is not an element of lewd act. That is only
12 reserved for C. S. C. with a minor second degree.

13 Contributing to the delinquency of a minor is the last
14 crime that Mr. Johnson has been charged with. These are
15 the elements. That he's over 18; that he knowingly and
16 wilfully encouraged, aided or attempted, or caused to do
17 any act which shall cause or influence a minor to deport
18 herself as to wilfully injure, endanger her morals or
19 health.

20 Ladies and gentlemen, this looks like a busy slide
21 right here, but basically I just flipped through each
22 individual law with you.

23 We have five indictments right here, three C. S. C.
24 seconds, a lewd act and contributing to the delinquency of
25 a minor. And then I basically in a bullet format as simple

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1 as I could get it down for you, I have done one, two, and
2 then numbered them all the way down to the bottom to prove
3 the elements.

4 Over here are the facts that we have to prove.
5 Remember, the victim is between 11 and 14. First fact,
6 victim was 13 years of age between August 1 of 2001 --
7 that's the month this all started, that's the month that
8 Summie Phillips died -- through January the 10th of 2002.

9 Now, by January the 10th of 2002. When VICTIM was on
10 the stand, when did she say her birthday was? She was born
11 on — the — of 1988. Well, the very next day she,
12 she clicked over an age. She turned 14. She was 13 for
13 the first four or five months of this abuse.

14 This is the first right here. This is the first
15 indictment. In this first indictment we have these dates.
16 We have to prove to you digital penetration, that the
17 defendant digitally penetrated her.

18 And we're going to talk about how we're going to prove
19 that. But I just wanted you to remember what she said,
20 that he digitally penetrated her during this time and that
21 he had the victim perform oral sex on him.

22 That was a sexual battery, those two elements. If we
23 prove those two elements of those two facts, then he's
24 guilty of criminal sexual conduct with a minor second
25 degree.

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1 The next criminal sexual conduct with minor
2 indictment, the victim is between 14 and 15. And remember
3 we still have to prove the sexual battery like right here,
4 but there's that big "and". We have to prove that extra
5 element. That the defendant had familial authority or was
6 older. I submit to you that Donald Johnson is older.

7 And right here, if you look right here, from August of
8 2001 when Summie died to the day before she turned 14, that
9 is the first block in time for the first indictment.

10 Now, come down here. Next day, ——— of 2002.
11 That's the day that she turns 14. The difference between
12 these two indictments and this indictment up here is that
13 this indictment covers from her birthday in 2002 when she's
14 14 all the way to 2004 when she turns, that's the day
15 before she turns, 16. That's the two-year span. That's
16 only a four-month span. Two-year span. And down here,
17 same thing. She turns 14; she turns 16. So these two
18 indictments are two years.

19 Remember VICTIM. This happened over four years.
20 Okay. She couldn't give specific dates, but it happened
21 numerous times, countless weekends.

22 So we have the two-year block in time. And it's
23 during that two-year block in time, we have the same, the
24 same elements. We have to prove her age between 14 and 15,
25 and then we also have to prove the sexual battery and that

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1 he had, that he was older.

2 The sexual battery. Well, he digitally penetrated her
3 every other weekend. You heard her testify, testify to it.
4 He had her perform oral sex on him, and he performed oral
5 sex on her.

6 Remember she talked about going to the cul-de-sac. He
7 would take her driving. He would pull off to the side of
8 the road, and there he would have her give him, as she
9 called it, a B. J. Same down here. The only difference
10 with the sexual battery digital is this up here, digital
11 and oral penetration. We're talking about the vibrator.

12 Now, Mr. Johnson said, or when the defense was talking
13 earlier in the trial they said, that it began at 16 years
14 of age. *VICTIM*. The sentence on her statement says at 16
15 years old, when I was 16 years old, he used it on me.

16 But she said it happened a lot. She can't remember
17 which date in that two-year period that it happened, but
18 she knows that it happened. And it happened when she was
19 16. Then it happened before. And she testified to that.

20 Ladies and gentlemen, he inserted a vibrator. So if
21 you believe beyond a reasonable doubt that he inserted a
22 vibrator between these dates and that he digitally
23 penetrated her and had oral sex with her and had her
24 perform oral sex on him during those dates, and you believe
25 those elements beyond a reasonable doubt, then he is guilty

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1 of those three counts of criminal sexual conduct with a
2 minor in the second degree.

3 Lastly, lewd act on a minor. Lewd act is a little
4 different. Remember the elements for what we have to prove
5 on age are a little different, and also the fact that there
6 is no sexual battery. We just have to prove that the
7 defendânt was over 14 years of age. And I'm just going to
8 say he's over 14 years of age at this time. We have to
9 prove that the victim was under 16 years of age.

10 And then the third element, the defendant commits lewd
11 or lascivious acts on victim, on the victim upon or with
12 the body of the victim.

13 The third fact here. He bought her panties and bras
14 for her to model for him. He taught her how to play strip
15 poker. He watched the victim take a shower. He rubbed a
16 vibrator all over her.

17 And he has to have the intent to arouse the sexual
18 desires of himself or her. Why else do all of these
19 things?

20 And last, defendant is over 18 and the victim is a
21 minor. First, that's the first element. And between those
22 dates that element is met.

23 And then the last element is knowingly and wilfully
24 encourage, aid or cause to do any act which shall cause or
25 influence a minor to deport herself as to wilfully injure

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1 or endanger her morals or health.

2 He encouraged her to engage in the sexual behavior.
3 He put her in the position. And we're going to talk about
4 why she was going over there. But he was a
5 step-grandfather. He is a grandfather figure. He
6 encouraged it. He contributed to it. He gave her alcohol
7 when the rest, when the wife and everyone else was telling
8 him not to. He contributed.

9 All right. Ladies and gentlemen, right now we're
10 going to start the process. We have talked about the law.
11 Now I am going to do my best to argue to you why the state
12 believes this man is guilty of sexually abusing his
13 step-granddaughter.-

14 Connecting the dots, the analogy that we used. I'm
15 going to give you -- back up. I'm going to give you some
16 questions that I want you to ask yourself. But before I
17 give you those questions I want to tell you a little story,
18 and I'm going to come back to the story as we talk.

19 Two men are walking down the street one day. They
20 come across a mud puddle. And in that, the mud puddle is
21 only 4 inches deep with water. And at the bottom of that
22 mud puddle there's a shiny gold coin setting there at the
23 bottom of that puddle. And one of the guys looks over at
24 his buddy and says I tell you what, I beat you \$20 I can
25 make that gold coin disappear without touching, without

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1 touching the coin, or getting my hand wet. And the guy
2 goes, hey, I'll take that bet, and I bet you can't do it.

3 He says all right. He walks over, grabs a stick and
4 scribbles all the mud around the coin, and all of a sudden
5 the water is muddy and you could no longer see the coin.
6 He made the coin disappear. He made the coin disappear.

7 Ladies and gentlemen, that's what's going on right
8 here. I just listened to this closing and I listened to
9 two days of testimony.

10 Mr. Johnston is a very capable lawyer, but the thing
11 is he doesn't want you to see the gold coin. He doesn't
12 want you to see the truth. He wants you to think about
13 Bible quotes, he wants you to think about erectile
14 disfunction commercials and he wants you to think about the
15 victim advocate lying so that she can send, you know, she
16 can get a man punished for a crime he didn't commit.

17 That's what he wants you to think, that the victim
18 advocate has got nothing better to do, that the state is
19 this evil conglomerate corporation and we want to see
20 people put away.

21 He wants to split hairs, scribble the water up, the
22 muddy water. You can't see the gold coin. Was it a butt
23 cheek or was it a thigh, even when she described exactly
24 where it was, even if she used the incorrect terminology.

25 Who is in the will that Wanda wants, wants to be in

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1 the will, wants to keep Jenol out. Think about all of
2 those things. Scribble up the mud so you can't see the
3 gold coin, so you can't see the truth. -

4 The first question that's going to help you connect
5 dots, what is VICTIM's motive? What would Don have you
6 believe her motive is? What was the argument?

7 Here you've got a great-grandmother who would not let
8 her granddaughter go away for the weekend with her
9 boyfriend's mom and some other kids. So VICTIM is going to
10 teach him a lesson and stick it to him and make up a 4-year
11 lie of sexual abuse to teach him a lesson. Detailed sexual
12 abuse over four years.

13 Let's look at the logic. You've got a 13 --
14 17-year-old girl who lives with her great-grandmother
15 because she comes from a broken home. The
16 great-grandmother is raising her.

17 Everybody that's taking a stand up here will tell you
18 great-grandmother is very old fashioned, great-grandmother
19 is strict, great-grandmother doesn't let her do anything.
20 Great-grandmother basically is suppressing her.

21 But she's got the cool grandfather. She can go over
22 to his house and do whatever she wants. You heard him say
23 it. They bought her anything she wanted, taught her how to
24 drive when she was 14 years old, let her have alcohol,
25 bought her clothes, let her do anything, let her see her

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1 boyfriend, let her run around with her boyfriend behind
2 great-grandmother's back.

3 Teenage girls. Of course. But if Donald is her
4 freedom ticket, and that's what the argument is, that she
5 had freedom with him and didn't have freedom with her, why
6 would she shoot herself in the foot? He would have you
7 believe that VICTIM is manipulative and that she come up
8 with all of this. But, I mean, what does a manipulative
9 teenager want, ladies and gentlemen?

10 It's been a while since I've been a teenager, but from
11 what I remember, what I wanted, was when I tried to
12 manipulate my mom and dad, is I wanted free to do what I
13 wanted to do. That's what manipulative teenagers want.

14 Why would a manipulative teenager, so to speak, like
15 VICTIM want to take away her freedom ticket? Why would
16 she, why would she throw him under the bus and why would
17 she throw him under the bus to that degree? Why not just
18 say granddad touched me, granddad pulled me into the bushes
19 and molested me, granddad got me really drunk?

20 Why four years of detailed information, ladies and
21 gentlemen? Why would she want to throw that freedom away?
22 Why? I know that she is 17 and a half years old, but she's
23 still living with her grandmother. Still living under the
24 rules. Now, she is an adult woman now, but she's still 17
25 years old still, still high school, still living with her

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1 grandmother when she told. Why would she throw that away?

2 That's the first line of logic.

3 Aunt Wanda. A little bit ago the defense said why

4 hasn't the state called Aunt Wanda. And he has talked

5 about Aunt Wanda putting all of these ideas into VICTIM's

6 head. They could have called Aunt Wanda. Anybody can call

7 a witness in court. They could have called Aunt Wanda to

8 cross-examine her, or, excuse me, direct her and try to

9 find out if what he said was true. Muddy the waters.

10 Let's not let you see that golden coin, don't see the

11 truth.

12 Let's look at Aunt Wanda. VICTIM is going to lie so

13 that her aunt can get in the will? And she's going to make

14 up four years of detailed sexual abuse? What benefit does

15 VICTIM get from making this up?

16 These are the questions that I want you to ask

17 yourself. Follow the logic. Go to the logical conclusion.

18 Connect the dots. What benefit does VICTIM get for making

19 this up?

20 If she's lying, then she's just told all of you and

21 everybody in the courtroom and the whole world that for

22 four years she performed degrading sexual, sick disgusting

23 acts on her step-grandfather. If she's telling the truth,

24 she was a teenage girl who was subjected to performing

25 sick, degrading sexual acts on her grandfather for four

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1 years. It's a lose-lose situation. She gets nothing for
2 it.

3 And think about it. She risked a relationship with a
4 boyfriend who she's still dating five years later, and two
5 years after this report came out. She risked her
6 relationship with her great-grandmother, with her Aunt
7 Wanda. She lost her relationship with her grandmother and
8 her step-grandfather. Where is the benefit? What benefit
9 does VICTIM get from making all of this up? There
10 is no benefit. Why would VICTIM wait to report the abuse?

11 There's two sides to this, and there's probably two
12 questions you're asking yourself. One is why does anybody
13 wait to disclose, and another question you're probably
14 asking that probably as a subheading under this, why would
15 somebody keep going back to that abuse.

16 Ladies and gentlemen, the young woman you see in here
17 today, 19-year-old VICTIM is not the same child
18 she was. She is not the same person she was 2001. In 2001
19 she was a 13-year-old child, all right, a teenager, 14, 15,
20 16, 17. She grew up. She was an older child.

21 She was a child. She did not have the maturity, the
22 emotional maturity, she didn't have the intellect at the
23 time, that she has now. She didn't have the perspective of
24 age and hindsight of age. She didn't have all the things
25 she has now.

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1 You're probably asking why would VICTIM keep going
2 back to a sexual abuse situation. First of all, I want to
3 say something the judge may instruct you on the law.
4 Consent is no defense. At her age she can't. Even if
5 she's wanting to, it's still against the law to have sex
6 with somebody at her age at that time. So let's just get
7 that off the table. But why would she keep going back?

8 Well, everybody that got up here said
9 great-grandmother never let her go anywhere,
10 great-grandmother wouldn't let her do anything, she was
11 strict. Don and Jenol let her do whatever she wanted to.
12 She had no place else to go.

13 Maybe she did a cost benefit analysis in her head.
14 Maybe she thought to herself I have got nothing to do but
15 sit at home and watch the paint dry. At least over at Don
16 and Jenol's they're buying me presents, they're buying me
17 school clothes, they are giving me everything I want,
18 teaching me to drive at 14.

19 She had no place else to go, and she was, she was a
20 13-year-old child. She was embarrassed. Let's also not
21 forget the role. Remember what VICTIM testified that Don
22 told her, the role he played in her life.

23 He's an ex or, excuse me, a retired policer. And what
24 did he say to her? I'm a retired police officer, they're
25 not going to believe you, go ahead and tell.

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1 How does a child? Now, we're not, we're not talking
2 adults. We're not talking about adults here. We're
3 talking about a child. How does a child process that kind
4 of information?

5 She also said that she worried about her
6 great-grandmother's health. She just lost her
7 great-grandfather. She's living with her great-grandmother
8 telling her that she's being sexually -- she's worried
9 about that.

10 Something else that he told her that I thought was
11 interesting, and she told, she said this on the stand. I
12 never heard it before until when she said it. She also
13 remembered at one time he told her all he needed was the
14 one juror to have reasonable doubt and you can get off.

15 Twenty-five years on the police force. You're not a
16 lawyer, but 25 years as a police officer, you know the law.
17 He knows the standard of proof. He kept her under his
18 thumb. She was his personal sex toy, his private sex toy,
19 and he kept her under his thumb. He coerced her. It's not
20 hard to control a teenage girl, especially when you're
21 showering her with gifts, ladies and gentlemen.

22 She told you that she at times, she would say no to
23 him. She told you that she told him to stop at times. She
24 even said at times he would look at her and he would say
25 I'm mad at myself. Are you mad at me? No. I'm mad at

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1 myself for what I'm doing to you. And he would go and do
2 it again later that day. But she hesitated.

3 She asked him to stop. He would tell her he would
4 stop, but then he'd do it again. She just had to accept
5 it. This was her life. And that's what she did. She
6 accepted it. I can't come out because then I'll blow up a
7 nuclear bomb on my whole family. And if I, if I, if I just
8 keep going over there and keep quiet I can at least have
9 some of the things I want, some of the freedoms.

10 This is a bullet that I've been wanting to talk about
11 for a while now. How did VICTIM know very intimate details
12 about the defendant's pelvic area? Corroboration. Mr.
13 Johnston used that term, corroboration.

14 And going back to my muddy-the-waters analogy, he
15 wants you to focus on the fact that when VICTIM wrote her
16 statement she said that it was under his left butt cheek if
17 you're looking at him from the front between his legs. If
18 you're between his legs, you can see it under his left butt
19 cheek.

20 Everybody knows butt cheeks aren't on the front of us.
21 They are on the back of us. She described where it was,
22 and she described it as you're looking at it, left butt
23 cheek. Well, pointing to the left, it's his right.

24 Anybody can know what color someone's pubic hair is.
25 You know what? We're not even saying that's a def now.

Closing arguments

1 But she knew things, she knew other things.

2 You saw the pictures. And I want to apologize. The
3 pictures were graphic, and they were hard to make out for
4 everybody here. And we don't throw these up in your face
5 for you to be grossed out and to be offended. We throw
6 them up there so that you can see that there's no way a
7 child or anybody can see a wart or a mole that you have to
8 lift your scrotum to be able to see.

9 And also Don talked. In Don's statement he said that
10 it was a burn mark on the head of his penis. He never
11 mentioned, he never explained. He had almost two years
12 since that statement, and he single-space typed. He never
13 mentioned a little fact that, oh, yeah, I cut myself down
14 there and it started bleeding so I had my granddaughter
15 come and put a band-aid on the mole that is about two
16 inches beneath or two inches underneath my scrotum. He
17 didn't put that in there. That's kind of important.

18 What it was, ladies and gentlemen, is he got scared
19 and he had to explain that knowledge. I asked him how did
20 she know, how did she know, how did she know. Well, I just
21 remembered something. I just remembered. I can't believe
22 I forgot. I cut myself one time.

23 And here's another thing, ladies and gentlemen, I
24 thought was interesting. The defense was talking earlier,
25 and they were talking about left-right versus butt-cheek

Closing arguments

1 versus thigh.

2 Well, according to Donald Johnson, VICTIM definitely
3 knew that it was there because she apparently put a
4 band-aid on it. So that argument goes out the window. You
5 can't have it both ways. You can't say that she put a
6 band-aid on it but then she, she didn't corroborate. Did
7 you pick up on that? Did you pick up on that? The
8 argument doesn't hold water.

9 He got scared, and he had to think up a last-minute
10 excuse to explain why they knew there was a mole or a wart
11 underneath this scrotum and that you can't see it. You
12 can't see it. You can say you almost see it under his
13 shorts. Look at the picture. Muddy the waters. Don't see
14 the golden coin. Look at the shorts. You can almost see
15 it.

16 Nobody up here ever talked that took the stand, they
17 never talked about the mole or the wart. They never talked
18 about the freckle. Remember when you saw the picture of
19 the freckle. Talked about a burn mark that was off the
20 head of the penis. VICTIM talked about a freckle on the
21 side just below the head that you can see when the skin is
22 pulled. If the skin is sagging, you can see the freckle on
23 the side of his penis.

24 Minute details that aren't even things that you'd joke
25 about. Even if you wanted to joke about something that

Closing arguments

1 personal, why would you joke about a freckle on someone's
2 genitalia? She wouldn't have known that. She knew about a
3 small freckle that was there after ~~he~~ had his operation.
4 You can't explain that away.

5 Remember she explained where it was. She's
6 butt-cheek, and she said to the left, which we already
7 explained that away. And she explained where it was. And
8 she knew about the freckle.

9 And here's another thing. No one that took the stand,
10 Jenol or *VICTIM* or Don, no one, they talked about joking at
11 family functions or at the dinner table, but nobody ever
12 explained, said that they joked about him being
13 uncircumcised. She knew that too.

14 Some people got up here and they talked about what a
15 good guy he is and how he's got a reputation for truth and
16 veracity, that they think that he's a type of person that
17 would tell the truth.

18 They were never asked if he was the kind of person
19 that would molest a little girl. They were just asked if
20 he's the kind of person that would the truth.

21 Ladies and gentlemen, these are nice people sitting
22 back here, and they're good people. They're friends of Mr.
23 Johnson. They like him. His wife is in love with him.
24 She loves him. They don't want to see him go to jail.
25 They don't want to see him get punished for anything. They

Closing arguments

1 don't want to see him get in trouble. So of course they're
2 going to come up here and say good things.

3 Bottom line is when somebody commits a heinous crime
4 they don't bring an audience with them. You don't bring
5 your friends to see you doing your darkest deeds. And
6 that's what he did to VICTIM dark deeds on *Victim* No one
7 was there but Don and VICTIM, just like we said. No
8 audience, no witnesses. Nobody can say they were there.

9 Jenol was a nurse who worked. Don is a retired police
10 officer. He's a stay-at-home husband. He had plenty of
11 time to have, to have, to have with VICTIM by themselves.

12 He talked about the connect-the-dots, to give you a
13 logic. Ask the questions, ladies and gentlemen. Ask the
14 questions, follow the logic.

15 What was the motive? What was VICTIM's motive? There
16 is no motive. The motive is to tell the truth if there is
17 a motive at all. What benefit does VICTIM get? What is
18 the benefit she gets from being here today and talking
19 about her step-grandfather's wart and talking about
20 performing oral sex on her grandfather, talking about him
21 performing oral sex on her, playing strip poker, having him
22 insert a vibrator. What is the benefit? There is no
23 benefit.

24 She's either going to walk out of here today as a girl
25 who is a liar and lying about sex abuse or she's going out

Closing arguments

1 of here today as a girl who is a victim of sex abuse.

2 There's no benefit. None.

3 By the way, every question you ask about her, ask it
4 on the other side. What are the motives and what are the
5 benefits? How can she know about that freckle on the side
6 of the penis? No one ever talked about it. Can't explain
7 it. How did she know he was uncircumcised? No one ever
8 talked about it. No one ever showed her that. No one ever
9 told her about it. How did she know about the wart?
10 Nobody could explain it until today.

11 And then there's the defendant's last-minute effort to
12 stop the truth. And that's when he was up here. Oh, oh,
13 oh, yeah, I do remember. I cut myself, my wart was
14 bleeding and I had to have her put a band-aid on it two
15 inches underneath my scrotum near my butt cheek and my
16 crotch.

17 VICTIM 's life was destroyed by this man.
18 That's what we are talking about, ladies and gentlemen.
19 Family ties. What were their family ties? Secret lies. A
20 little girl trying to figure out what's the right thing to
21 do.

22 She did one thing that Don never thought about. She
23 grew up. She got the perspective, she got the
24 understanding, she got the courage. And she grew up and
25 she told the truth.

Jury charge

1 She got in a fight with her grandmother about going
2 away because her grandmother trusted the person who was
3 abusing her and didn't trust the people who weren't.
4 That's what that was about, four years of detailed sexual
5 abuse just so she can get him for her great-grandmother not
6 letting her go on a trip two years ago.

7 One last thing, and I'm going to step down. Remember
8 the gold coin. Don't let the muddy waters cover it up.
9 See the truth.

10 Back when Don had his power over VICTIM back when he
11 was controlling her, he told her something, and I mentioned
12 it earlier, and she mentioned it yesterday. All I need is
13 one juror to have reasonable doubt in their head and I get
14 off. Please find him guilty. Thank you.

15 THE COURT: All right. Mr. Foreman and ladies and
16 gentlemen of the jury, you of course have heard and seen
17 all of the evidence. You've now heard the final summations
18 of the lawyers.

19 I am going to instruct you on the law that's
20 applicable in the case, and then, as you know, you'll be
21 asked to go back and begin with your deliberations. And
22 through that process you'll examine the evidence, decide
23 the facts, apply the law and arrive at a fair and just
24 decision in the case.

25 It is your exclusive duty to determine what the facts

Jury charge

1 are. And you do through your own common sense examination
2 and evaluation of all of the testimony and the other
3 evidence received during the trial of this case.

4 And you 12 jurors alone will decide what weight, value
5 and effect to give to any particular testimony or even
6 portion of testimony. Your sole objective is to simply
7 reach the truth in the matter. And by doing that you will
8 have fulfilled your obligations as jurors. And that is to
9 give both the state and the defendant a fair and impartial
10 trial.

11 Now, in this case, as you are aware, the defendant has
12 been accused of five separate and distinct offenses. They
13 are set forth in five separate and distinct indictments.
14 You are going to be called upon to consider each of those
15 indictments separately and to render a verdict based upon
16 the evidence as it relates to each indictment separately
17 and the law that's applicable.

18 But in this case, as you know, the defendant has been
19 charged by the state by way of those indictments with the
20 offenses of criminal sexual conduct with a minor in the
21 second degree on three of those indictments.

22 The state has charged the defendant with the crime of
23 committing or attempting to commit a lewd act upon a child
24 under the age of 16 on one additional indictment; and the
25 state has alleged that the defendant committed the crime of

Jury charge

1 contributing to the delinquency of a minor in the last and
2 final indictment.

3 Now, as I told you, these indictments are going to be
4 in the jury room because it's on the back of those
5 indictments, Mr. Foreman, that you're going to be asked to
6 indicate the jury's unanimous decision as to that
7 particular indictment.

8 But other than serving as the verdict form, the
9 indictments serve no purpose so far as you 12 jurors are
10 concerned. As I told you, they are not evidence of
11 anything; they are not proof of anything. They simply put
12 the defendant on notice as to what the state claims he has
13 done by way of the commission of some criminal offense.
14 And they will be in the jury room, on which you will
15 indicate the jury's verdict. So for your purposes they
16 serve as the verdict form. But they serve no other
17 function so far as you jurors are concerned.

18 Now, as you are well aware, as to each of the charges
19 that are set forth in the indictment the defendant has
20 entered pleas of not guilty as to each indictment. And
21 that plea of not guilty has placed upon the state the
22 burden of proving each of the allegations that are set
23 forth in each of those indictments, the burden of proving
24 each of the essential elements that make up each of those
25 crimes that are alleged; and therefore the burden is upon

Jury charge

1 the state to establish the defendant's guilt to the
2 satisfaction of you 12 jurors beyond a reasonable doubt
3 before any verdict of guilty can be returned as to any
4 particular indictment.

5 The burden is never upon a defendant or a person
6 accused of a crime to prove that they are not guilty or to
7 prove that they are innocent because in many cases that
8 might not be possible. The burden is always upon the state
9 because they bring a charge against another to establish
10 that person's guilt beyond a reasonable doubt.

11 You are further instructed, and it is a vital,
12 important and cardinal rule of law, that every defendant in
13 a criminal trial, it doesn't matter how serious the offense
14 might be, that person shall always be presumed innocent of
15 any charge brought against that person. And that
16 presumption of innocence remains with any defendant, as it
17 does with this defendant, from the time that he is placed
18 under arrest and throughout the course of the criminal
19 process and even throughout the course of the actual trial
20 in the case.

21 And as I told you, that presumption of innocence is
22 going to be with Mr. Johnson even as you go back into your
23 jury room to begin with your deliberations in this case.
24 And as I told you, that presumption of innocence will be
25 with him in that jury room, and it will remain with him

Jury charge

1 forever unless you 12 jurors determine that he's no longer
2 entitled to that presumption of innocence.

3 That is after you've carefully considered all the
4 evidence in the case and from that evidence you determined
5 the credible evidence, and from that evidence you've
6 decided the facts, and after deciding the facts you apply
7 the law, if you 12 jurors unanimously determine that his
8 guilt has been proven beyond a reasonable doubt as to a
9 particular indictment, then under those circumstances he
10 would no longer be entitled to that presumption of
11 innocence. But it's only if, unless and until you 12
12 jurors are satisfied of his guilt beyond a reasonable doubt
13 that he would no longer be entitled to that presumption of
14 innocence.

15 Now, while the state does have the burden of proving a
16 defendant's guilt beyond a reasonable doubt, that doesn't
17 mean that the state is required to prove a defendant's
18 guilt beyond all doubt or beyond any possible doubt. But
19 it does require the state to prove his guilt to your
20 satisfaction beyond a reasonable doubt.

21 The term reasonable doubt should be given its plain
22 and ordinary meaning. A reasonable doubt is the kind of
23 doubt that would cause a reasonable person to hesitate to
24 act upon the information provided.

25 A defendant is entitled to any reasonable doubt that

Jury charge

1 arises from the evidence or lack of evidence in a case.
2 And if upon any factual issue essential to a finding of a
3 verdict of guilty you have some reasonable doubt as to how
4 that issue should be resolved, it would be your duty to
5 resolve that reasonable doubt in favor of the defendant.

6 If therefore upon your consideration of the whole case
7 you have a reasonable doubt as to the defendant's guilt as
8 it relates to a particular indictment, you must resolve
9 that reasonable doubt in his favor and return a verdict of
10 not guilty.

11 And, on the other hand, after you've considered all
12 the evidence in the case and applied the law, if you have
13 no reasonable doubt as to the defendant's guilt as it
14 relates to a particular indictment, then of course it would
15 be your corresponding duty to convict the defendant or to
16 find him guilty of any crime that has been proven to your
17 satisfaction beyond a reasonable doubt.

18 Now, the same law that provides that you are the
19 judges of the facts also provides that I am the judge of
20 the law. And that simply means nobody is going to tell you
21 how to arrive at your determination of fact in this case.
22 You do that, as I have stated, through the exercise of good
23 judgment and common sense conscientiously applied to the
24 testimony and the evidence received during the trial of
25 this case.

Jury charge

1 You must however under your oath as a juror accept the
2 law as I give it to you as being the law that is applicable
3 in this particular case. In other words, you are not to
4 concern yourself with what you thought the law was before
5 you came to serve as a juror this week or what you think
6 the law ought to be.

7 Under your oath you must simply accept the law as I
8 give it to you as being the law that is applicable in this
9 case. And then you simply take that law and you apply it
10 to the facts as you 12 jurors determine those facts to be
11 based upon your common sense examination and evaluation of
12 the testimony and evidence in the case.

13 Now, in this case, as in every case, because you are
14 the sole judges of the facts you are therefore necessarily
15 the sole judges of the credibility, that is the
16 believability, of each witness that has testified during
17 the trial of this case.

18 So you 12 jurors alone will decide what weight, value
19 and effect to give to any particular testimony or other
20 evidence in the case. Again, your sole objective is to
21 simply reach the truth in the matter. And by doing that
22 you will have fulfilled your obligations.

23 But in your determination and your evaluation as to
24 the credibility of a witness' testimony there are some
25 factors which you should consider in making that

Jury charge

1 determination. And those factors include the demeanor of
2 the witness, that is how the witness appeared to you as the
3 witness testified from that witness stand.

4 Was the witness straightforward in responding to
5 questions, or was the witness hesitant or evasive in
6 responding to those questions that were asked of that
7 witness? Simply put, did the witness appear to you to be
8 telling the truth and to have knowledge of the facts to
9 which that witness has testified.

10 You may also consider whether or not the testimony of
11 a witness is consistent, or is it inconsistent with that
12 witness' testimony provided in court and consistent or
13 inconsistent with other statements made outside of court,
14 as well as whether or not a witness' testimony is
15 consistent or inconsistent with other testimony and other
16 evidence received during the trial of the case.

17 You may also consider how the witness came to know the
18 facts to which that witness has testified. That is what
19 was that particular witness' opportunity and ability to
20 perceive the existence of those facts to which they have
21 testified by having previously used their senses, and then
22 what is that witness' ability to be able to come into court
23 and to accurately recollect to you as to what they have
24 previously seen or heard, or felt for that matter.

25 You may also consider any bias or prejudice or

Jury charge

1 interest that a witness might have in the case. And by
2 that I simply mean do you find some reason that a
3 particular witness would come into court and would testify
4 one way or another to help or to hurt one side or the
5 other.

6 You may consider any interest that a witness might
7 have in the outcome of the case if you determine that a
8 witness does have such an interest and you find that that
9 interest would bear upon that particular witness'
10 credibility. You may also consider whether or not the
11 testimony of a witness is strengthened, or is it weakened
12 by other testimony or other evidence received during the
13 trial of the case?

14 Now, where, as in this case, there has been presented
15 during the trial evidence of the good character and/or the
16 good reputation of the defendant, such evidence may in and
17 of itself create a reasonable doubt as to the guilt of the
18 defendant; and therefore you should consider that evidence
19 along with all of the other evidence presented during the
20 trial of the case in making your determination as to
21 whether or not the defendant's guilt has been proven beyond
22 a reasonable doubt.

23 Now, you as the finders of the fact and you as the
24 judges of the credibility of each witness are permitted to
25 believe as much or as little of what a witness has

Jury charge

1 testified to as you deem is appropriate; and therefore you
2 may believe everything that a witness testified to, you may
3 choose to believe none of it. You may believe one portion
4 of a witness' testimony and reject some other portion of
5 that same witness' testimony.

6 In a case you may believe one witness as opposed to
7 several, or several as opposed to one. Whatever your good
8 judgment and common sense tells you is the most believable
9 testimony is the testimony you should accept, and, as I've
10 stated, you should reject any evidence that you find not to
11 be credible or believable. Again, your sole objective is
12 to reach the truth in the matter. And it should not matter
13 from what source that truth may come, whether it be from a
14 witness for the state or a witness for the defendant or a
15 combination of testimony and evidence received from both
16 sides in the case.

17 Now, there are five separate indictments. One
18 indictment charging criminal sexual conduct in the second
19 degree relates to a code section, a statutory provision,
20 set forth in Section 16-3-655, Subsection 2.

21 Two of the criminal sexual conduct indictments relate
22 to a separate code section, or it's in the same code
23 section, but it's a separate paragraph. And that is
24 16-3-655, Paragraph 3.

25 Then there is a separate code section for committing

Jury charge

1 or attempting a lewd act upon a child and another code
2 section setting forth the crime of contributing to the
3 delinquency of a minor.

4 I'm going to first instruct you on the law as it
5 relates to the code section referencing criminal sexual
6 conduct with a minor in the second degree. I'll begin with
7 the first provision, which is paragraph two.

8 I'll then go to the second provision, which is
9 paragraph three. I'll then instruct you on the law as it
10 relates to the commission of a lewd act. And then I'll
11 instruct you on the law as it relates to contributing to
12 the delinquency of a minor.

13 Now, Section 16, well, let me start with -- Indictment
14 2006-1618 is an indictment that alleges the defendant has
15 violated Section 16-3-655, Subsection 2.

16 That indictment alleges that Donald Johnson did in
17 Spartanburg County between August the 1st of 2001 and
18 January the 10th of 2002 engage in a sexual battery as
19 defined in the law, and I'll define that for you, with a
20 victim who was 14 years of age or less but who was at least
21 11 years of age.

22 Now, Section 16-3-655, Subsection 2, of the Code of
23 Laws of South Carolina provides that a person is guilty of
24 criminal sexual conduct in the second degree if the actor,
25 the defendant, engages in a sexual battery -- I'll define

Jury charge

1 that for you shortly -- with a victim, a person who is
2 subject to criminal sexual conduct, and that victim is 14
3 years of age or less but is at least 11 years of age.

4 Therefore before a verdict of guilty could be returned
5 on this particular indictment it would be necessary that
6 the state has satisfied you beyond a reasonable doubt of
7 each of the following two essential elements: Number one,
8 they must establish that the defendant engaged in sexual
9 battery; secondly, they must prove that the victim of the
10 sexual battery was 14 years of age or less but was at least
11 11 years of age at the time of the sexual battery.

12 Indictments 2006-1619 and 1620 allege a violation of
13 16-3-655, Subsection 3. And the facts that are alleged
14 might be different so far as the facts supporting what a
15 sexual battery is, and I am going to define that for you.
16 But so far as those two indictments are concerned, the same
17 code section is being alleged as having been violated by
18 the defendant.

19 Section 16-3-655, Subsection 3, provides that a person
20 is guilty of criminal sexual conduct in the second degree
21 if the actor, the defendant, engages in sexual battery with
22 a victim who is at least 14 years of age but who is less
23 than 16 years of age and the actor, being the defendant, is
24 in a position of familial, custodial or official authority
25 to coerce the victim to submit to sexual battery, or the

Jury charge

1 actor is older than the victim.

2 Therefore under the statute before a verdict of guilty
3 could be returned as to each of those particular
4 indictments it would be necessary that the state has proven
5 to your satisfaction beyond a reasonable doubt that the
6 defendant engaged in a sexual battery and the victim was at
7 least 14 years of age but was less than 16 years of age at
8 the time of the sexual battery and the defendant was in a
9 position of familial, custodial or official authority to
10 coerce the victim to submit, or the defendant was older
11 than the victim.

12 Now, Section 16-3-651 of the Code of Laws also
13 provides definitions for certain terms which are set forth
14 in the criminal sexual conduct statutes. And those
15 definitions include a definition for the term actor. And,
16 as I've told you, actor means a person accused of criminal
17 sexual conduct. In this case the defendant in this case.
18 The term victim refers to a person alleging to have been
19 subjected to criminal sexual conduct.

20 And, thirdly, the term sexual battery means sexual
21 intercourse, cunnilingus, fellatio, anal intercourse or any
22 intrusion, however slight, of any part of a person's body
23 or of any object into the genital or anal openings of
24 another person's body except when that intrusion is
25 accomplished for medically recognized treatment. And the

Jury charge

1 terms cunnilingus and fellatio refer to stimulation of the
2 female and the male genitalia through oral contact.

3 Now, with regard to each of these three indictments
4 charging criminal sexual conduct in the second degree,
5 consent is not an issue in the trial of this case. Under
6 the law a minor under the age of 16 years is not legally
7 capable of voluntarily consenting to a sexual battery
8 committed by an adult.

9 Now, the charge of commission or attempting to commit
10 a lewd act upon a child under 16, that is set forth in
11 Section 16-15-140 of the Code of Laws. And that particular
12 code section provides as follows: It is unlawful for a
13 person over the age of 14 years to wilfully and lewdly
14 commit or attempt a lewd or lascivious act upon or with the
15 body or its parts of a child under the age of 16 years with
16 the intent of arousing, appealing to or gratifying the
17 lusts or passions or sexual desires of the person or of the
18 child, or of both for that matter.

19 Now, within the meaning of that statute, wilfully is
20 defined as an act which is done with a bad purpose without
21 just cause or legal excuse. It may be further defined as
22 an act which is done intentionally, knowingly and
23 purposefully without justifiable excuse as distinguished
24 from an act done carelessly, thoughtlessly, accidentally or
25 inadvertently.

Jury charge

1 Lewd is defined as obscene, lustful or indecent. It's
2 a term importing a lascivious intent. It signifies that
3 form of immorality which has relation to moral impurity or
4 that which is carried on in a wilful and wanton manner
5 eager for sexual indulgence. And the term lascivious is
6 defined as an act tending to incite lust.

7 It is further defined and synonomous with lewd,
8 indecent or obscene and tending to deprave the morals with
9 respect to sexual relations.

10 So in order for the defendant to be found guilty of
11 the crime of commission of a lewd act upon a child it would
12 be necessary that the state has proven to your satisfaction
13 that the defendant was over the age of 14 years, that he
14 did wilfully and lewdly commit or attempt a lewd^a or
15 lascivious act upon a person under the age of 16 years and
16 did so with the intent of arousing, appealing to or
17 gratifying the lusts or passions or sexual desires of
18 himself, the defendant, or of the child, or both for that
19 matter.

20 And the last indictment charges the crime of
21 contributing to the delinquency of a minor. And that
22 criminal offense is set forth in 16-17-490 of the Code of
23 Laws.

24 And that code section provides as follows: It shall
25 be unlawful for any person who is over the age of 18 years

Jury charge

1 to knowingly and wilfully encourage, aid or cause, or to do
2 any act which shall cause or influence a minor to violate
3 any law or any municipal ordinance, or to so deport himself
4 or herself as to wilfully injure or endanger his or her
5 morals or health or the morals or the health of others.

6 Now, Mr. Foreman, and ladies and gentlemen of the
7 jury, I am not in any way concerned with what your
8 decisions are, but I do tell you that the verdicts of the
9 jury must be unanimous, that is all 12 of you must be in
10 agreement before any verdict may be returned as to any
11 particular indictment.

12 As I told you, you've got five separate indictments.
13 You will be called upon to render a verdict as to each of
14 those separate indictments.

15 Those verdicts may be the same, they may be different.
16 That will depend upon your determination of fact based upon
17 the evidence presented and then your application of the law
18 as it relates to that particular indictment.

19 But as to each of the separate indictments you have
20 two possible verdict forms, and those two possible verdict
21 forms are guilty or not guilty.

22 So Mr. Foreman, whatever you and your fellow jurors'
23 unanimous verdict is, I'm going to ask that you indicate
24 that in the space provided. You'll notice on the back of
25 each of these indictments in the lower left-hand corner

Jury charge

1 there's the word verdict. And it's beneath that word that
2 you'll indicate the jury's decision, guilty or not guilty,
3 as to each indictment.

4 There's also a place for you to insert your signature
5 as the foreperson of the jury, and also a place for you to
6 insert the appropriate date.

7 Now, let me tell you that during your deliberations if
8 you have any question about the evidence or the facts of
9 the case, I am not permitted to answer those questions.
10 I'm not permitted to respond to any question you have about
11 the facts.

12 Now that you're going back to begin deliberating
13 there's no additional evidence that may be received. Even
14 if it were to exist, it could not be provided to you now
15 because you're going back to deliberate.

16 If you do have some question about the facts or
17 evidence or testimony and you think that that question can
18 be answered by your having testimony replayed in whole or
19 in part, then I can bring you back into the courtroom and
20 have that testimony of a witness replayed in whole or in
21 part if that'll assist you in answering any question you
22 might have.

23 We don't have any transcripts available, so I can't
24 send you a witness' transcript back there. But if you do
25 need to have some testimony of a witness replayed, if

Jury charge

1 you'll let us know what you'd like to hear we'll try to
2 have the court reporter locate that testimony. And we'll
3 bring you back into the courtroom to rehear that testimony.

4 If at any time you have a question about the law
5 that's applicable, I can always answer those questions. So
6 if you have a question about the law, you need an
7 additional explanation, you need a clarification or some
8 assistance in understanding the law that you are to apply,
9 I can respond to those questions.

10 So if at any time you have anything you need to
11 address to me, Mr. Foreman, if you'll write it on a piece
12 of paper, provide it to the bailiff, he'll provide it to
13 me, and I'll address it as the need arises.

14 I don't know if we have any smokers on the jury, but
15 if we do have any smokers you can smoke during
16 deliberations, but you can't smoke in the jury room.

17 So if you feel compelled to smoke, you'll have to be
18 taken outside in order to accomplish that. But understand
19 that if any juror is absent for some authorized purpose the
20 deliberations have to stop, and they may only resume when
21 all 12 jurors are present so that all may participate.

22 Now, I'm going to ask you to go back with the
23 exception of Ms. Huggins. I'll ask the 12 primary jurors
24 to go back to the jury room.

25 Do not yet begin your deliberations. I've got some

Jury charge

1 matters I'll need to address with the lawyers. If I don't
2 need to bring you back for any reason I'll simply send word
3 by way of the bailiff that you can begin your
4 deliberations.

5 In that event, Mr. Foreman, he'll bring to you all of
6 the exhibits, as well as the indictments which shall serve
7 as the verdict forms.

8 So please retire to your jury room, but do not begin
9 deliberating until I send you word to do so.

10 (Whereupon, the jury retired to deliberate at ..
11 3:30 p.m.)

12 (Whereupon, the alternate juror was excused.)

13 THE COURT: Are there any exceptions taken to the
14 instruction or requests for additions to the instruction by
15 the state?

16 MR. WILSON: None from the state, Your Honor.

17 THE COURT: By the defendant?

18 MR. JOHNSTON: No, Your Honor.

19 THE COURT: Let me ask y'all to verify the exhibits
20 before they go back, please.

21 (Pause.)

22 MR. JOHNSTON: They appear to be in order, sir.

23 THE COURT: All of the exhibits are accounted for?

24 MR. WILSON: Yes, Your Honor.

25 THE COURT: All right. If you will, send the exhibits

Verdict

1 and the verdict forms back.

2 Tell the jury to begin their deliberations and notify
3 us when they have concluded.

4 We will be at ease while the jury is deliberating.

5 (Whereupon, a recess was taken.)

6 THE COURT: All right. I'm told the jury has reached
7 a decision.

8 Are we ready to receive the verdicts?

9 MR. WILSON: We are.

10 MR. JOHNSTON: The defense is ready.

11 THE COURT: All right. Let me caution everybody.

12 I don't know what the verdict is, but notwithstanding
13 what the verdict might be, there will be no disruptions in
14 the courtroom. Any disruptions will be dealt with as
15 contempt of court. So if you don't think you can control
16 your emotions, you need to leave now.

17 All right. Bring the jury in, please, sir.

18 (Whereupon, the jury returned to the courtroom at
19 4:05 p.m.)

20 THE COURT: Mr. Foreman, have you and your fellow
21 jurors reached a unanimous decision as to each of the
22 separate indictments?

23 THE FOREMAN: Your Honor, yes, we have.

24 THE COURT: And have you indicated those decisions on
25 the back of the indictment as requested?

Verdict

1 THE FOREMAN: Yes, sir, we have.

2 THE COURT: Did you sign your name as the foreperson
3 and place the appropriate date on it?

4 THE FOREMAN: Yes, sir.

5 THE COURT: If you will, please hand those verdict
6 forms up by way of the bailiff.

7 You may publish the verdicts.

8 THE CLERK: State of South Carolina, County of
9 Spartanburg, the State vs. Donald Hugh Johnson, Indictment
10 No. 2006-GS-42-1618, indictment for criminal sexual conduct
11 with a minor in the second degree, the verdict is guilty.
12 Signed by the foreperson and dated today's date.

13 As to Indictment 2006-GS-42-1619, the State of South
14 Carolina vs. Donald Hugh Johnson, indictment for criminal
15 sexual conduct with a minor in the second degree, the
16 verdict is guilty. It is signed by the foreperson and
17 dated today's date.

18 As to Indictment 2006-GS-42-1620, the State vs. Donald
19 Hugh Johnson, indictment for criminal sexual conduct with a
20 minor in the second degree, the verdict is guilty. Signed
21 by the foreperson and dated today's date.

22 Indictment 2006-GS-42-1621, the State of South
23 Carolina vs. Donald Hugh Johnson, indictment for
24 contributing to the delinquency of a minor, the verdict is
25 guilty. Signed by the foreperson and dated today's date.

Verdict

1 Indictment 2006-GS-42-1622, the State vs. Donald Hugh
2 Johnson, indictment for committing or attempting lewd act
3 upon a child under 16, the verdict is guilty. Signed by
4 the foreperson and dated today's date.

5 Ladies and gentlemen of the jury, if these are your
6 verdicts and still your verdicts, please raise your right
7 hand.

8 (Whereupon, all responded in the affirmative.)

9 THE CLERK: So say y'all.

10 THE COURT: Does the defendant wish to have the jury
11 polled?

12 MR. JOHNSTON: Yes, sir.

13 THE COURT: Poll the jury, please, ma'am.

14 THE CLERK: Ladies and gentlemen of the jury, I will
15 pose a question to you, after which I'll ask that you
16 please stand individually and answer, my question being is
17 this your verdicts and still your verdicts.

18 Juror No. 141, Charles Waddell, please stand. This is
19 your verdict and still your verdict.

20 THE JUROR: Yes.

21 THE CLERK: Juror No. 151, Susan Dickson.

22 THE JUROR: Yes.

23 THE CLERK: Juror No. 125, Deborah Sellars.

24 THE JUROR: Yes.

25 THE CLERK: Juror No. 120, Carmyn Roundtree.

Verdict

1 THE JUROR: Yes.
2 THE CLERK: Juror No. 169, Adam Rogers.
3 THE JUROR: Yes.
4 THE CLERK: Juror No. 164, James Lineberry.
5 THE JUROR: Yes.
6 THE CLERK: Juror No. 101, Virginia Motts.
7 THE JUROR: Yes.
8 THE CLERK: Juror No. 30, Allison Dry.
9 THE JUROR: Yes.
10 THE COURT: Is that 30 or 130?
11 THE CLERK: I have 30.
12 Juror No. 135, Ebony Steen.
13 THE JUROR: Yes.
14 THE CLERK: Juror No. 22, Saveth Chea.
15 THE JUROR: Yes.
16 THE CLERK: Juror No. 189, Taylor Gaskins.
17 THE JUROR: Yes.
18 THE CLERK: Juror No. 83, Monica Kyles.
19 THE JUROR: Yes.
20 THE CLERK: Your Honor, the jury is polled.
21 THE COURT: All right. Any other matters we need to
22 address with the jury present?
23 MR. WILSON: Nothing from the state, Your Honor.
24 MR. JOHNSTON: No, Your Honor.
25 (Whereupon, the trial jury was excused.)

Sentence

1 THE COURT: All right. Any matters to address prior
2 to the imposition of sentence?

3 MR. WILSON: No matters from the state, Your Honor.

4 MR. JOHNSTON: Your Honor, we would just like to
5 simply address you before you sentence. Other than that,
6 no, sir.

7 THE COURT: Okay, all right. Y'all prepare the
8 sentencing sheets, please, and let me know when they're
9 done.

10 (Whereupon, a recess was taken.)

11 THE COURT: All right. Anything further on behalf of
12 the state?

13 MR. WILSON: Nothing from the state, Your Honor.

14 THE COURT: The defendant?

15 MR. JOHNSTON: Your Honor, Don stands before you
16 having been convicted by the jury, but I ask that you still
17 be merciful to him.

18 I would ask the Court to consider his age. He is 66
19 years of age. He has health problems, diabetes and heart
20 trouble.

21 He did serve honorably in the U. S. Army Reserve six
22 and a half years during the Vietnam era. He also has came
23 out and retired from the Spartanburg City Public Safety
24 Department after 25 years of honorable service.

25 He has no criminal record of any kind, and I would ask

Sentence

1 the Court to consider of course that any time a law
2 enforcement officer is incarcerated that additional
3 cautions have to be taken and that whatever time a law
4 enforcement officer does serve is harder time than another
5 individual might serve because of the nature of the beast.
6 So I would ask you to consider those things.

7 THE COURT: Well, that might be appropriate,
8 Mr. Johnston.

9 MR. WILSON: Your Honor, I didn't mean to interrupt
10 you.

11 I misspoke. I believe the victims did want to address
12 the Court, as well as two members of the family. I
13 apologize.

14 THE COURT: Okay. Well, that's why I asked.

15 MR. WILSON: I misspoke.

16 WANDA PHILLIPS: May we approach you?

17 THE COURT: Sure.

18 THE VICTIM: Nobody in this courtroom will know how I
19 feel inside. It's affected my family. We argue all the
20 time. And it's affected my relationship with my boyfriend.

21 I still have anxiety and depression. It's affected my
22 school work. And I've got a lifetime I've got to live with
23 this.

24 I still have problems meeting people. I can't. I'm
25 scared of people. I'm ashamed of myself. I hate myself

Sentence

1 for it. I feel like it's my fault. I'm just so glad it's
2 over with.

3 I appreciate everything everybody has done for me.
4 I'm just so happy. Thank you.

5 THE COURT: All right. Well, you understand it's not
6 your fault? And I'm sure you have been told that. It is
7 not your fault. Okay?

8 THE VICTIM: Yes, sir.

9 THE COURT: Good luck to you.

10 THE VICTIM: Yes, sir. Thank you.

11 MR. WILSON: Great-grandmother, Elizabeth Phillips,
12 would like to address Your Honor.

13 THE COURT: Okay.

14 ELIZABETH PHILLIPS: Hi, Judge.

15 THE COURT: Ms. Phillips.

16 ELIZABETH PHILLIPS: I just want to tell you what it
17 has done to my family.

18 I'm 78 years old. And he's given me the rest of my
19 life, a sentence. He's gave VICTIM a life sentence. And
20 the way I feel, I think he needs to be, have a life
21 sentence, because he's not in no better, worser health than
22 anybody else is.

23 He's ruined VICTIM. She'll never be able to have a
24 regular relationship with anybody because of this because
25 she thinks about it every day. Thank you.

Sentence

1 THE COURT: All right. Thank you, Ms. Phillips.

2 WANDA PHILLIPS: Your Honor, I am Wanda Phillips. And
3 Don Johnson is my brother-in-law.

4 He was found guilty of molesting his granddaughter
5 over a period of four years by a jury of his peers who
6 considered the factual evidence presented in this trial.

7 Don Johnson is a pedophile. He committed the acts of
8 a sexual predator repeatedly over time. He was logical,
9 calculating and systematic. And he was fully aware of the
10 consequences. He was a retired policeman. He was fully
11 aware.

12 And he also committed these acts with the health
13 problems that he has today he had at the same time that did
14 not deter him.

15 Society dictates our lives. Pedophilia is becoming
16 commonplace. As a society we must learn to acknowledge
17 evil and measure out a justifiable harsh sentence with no
18 empathy or mercy, because he has shown no one sympathy,
19 empathy or mercy in committing these crimes. Thank you.

20 THE COURT: All right. Thank you, ma'am.

21 Anything else on behalf of the state?

22 MR. WILSON: Nothing else from the state, Your Honor.

23 THE COURT: All right. Mr. Johnston.

24 MR. JOHNSTON: Your Honor, I don't have anything else
25 to say to you. I think Mr. Johnson wanted to say one thing

Sentence

1 to you.

2 THE COURT: All right, Mr. Johnson.

3 THE DEFENDANT: Sir, I'm just sorry everything
4 happened about this incident. I'm sorry about it.

5 THE COURT: All right, sir.

6 Does anybody else want to speak on behalf of Mr.
7 Johnson?

8 MR. JOHNSTON: No, sir, Your Honor.

9 THE COURT: Okay. All right. On Indictment
10 2006-1618, the State vs. Donald Hugh Johnson, an indictment
11 for criminal sexual conduct with a minor in the second
12 degree, wherein you have been found guilty by the jury,
13 Sentence of the Court is you, Donald Hugh Johnson, be
14 confined to the South Carolina Department of Corrections
15 for a period of 18 years.

16 Indictment 2006-1619, also an indictment for criminal
17 sexual conduct with a minor in the second degree, 18 years.

18 Indictment 2006-1620, criminal sexual conduct with a
19 minor in the second degree, 18 years.

20 Indictment 2006-1622, commission of a lewd act upon a
21 child, 15 years.

22 Indictment 2006-1621, contributing to the delinquency
23 of a minor, three years.

24 Mr. Johnson, you have a right to appeal the verdicts
25 of the jury and the imposition of sentence by the Court.

Sentence

1 You must file any notice of your intention to appeal those
2 decisions within ten days of today's date.

3 All right. Anything further?

4 MR. JOHNSTON: No, sir. Thank you, Your Honor.

5 END OF REQUESTED TRANSCRIPT OF RECORD
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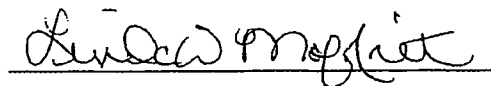
Certificate

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh 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 cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 11th and 12th days of June 2007.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

December 11, 2007



Linda D. Moffitt
Circuit Court Reporter

Date: June 11, 2007
 County: Spokane

VOIR DIRE

Case No: 2006-SS-42-1618-1622 Judge: Cole
 /State: State State/Pl's. Atty: Alan Wilson
David M. Atumko
 Defendant: Donald Hugh Defense Atty: Andy Johnston
Johnson, W/M
 Court Reporter: Linda D. Moffitt

or No.	Name	Sex	Race	*Court	Strikes		
					Plaintiff	Defense	Accept
141	Charles B. Walder	m	w		✓	✓	yes
151	Aaron Dickson	F	w		✓	✓	yes
125	Dorothy Walters	F	w		✓	✓	yes
120	Carmen Binterree	F	w		✓	✓	yes
169	Adam Rogers	m	w		✓	✓	yes
164	James Lineberry	m	w		✓	✓	yes
101	Virginia Motes	F	w		✓	✓	yes
191	Mary Hopfing	F	w		✓	X	no
148	Deidra Winsor	F	w		✓	X	no
30	Alison Ing	F	w		✓	✓	yes
174	Gaylea Turner	F	w		X		no
173	Cecil Dunaway	m	w		X		no
135	Elmya Allen	F	w		✓	✓	yes
108	Lerra Phillips	F	w		X		no
22	Janeth Clea	F	U		✓	✓	yes
160	Valerie Cowan	F	w		X		no
176	Phyllis Nelson	F	w		✓	X	no
189	Taylor Gaskins	m	w		✓	✓	yes

like the jurors "for cause"

County: San Francisco

VOIR DIRE

5C No: 2006-SD-42-1618-1622

Judge: Col

./State: State

State/Pl's. Atty: Alan Wilson

David M. Stumew

Defendant: Donald Johnson

Defense Atty: Andy Johnston

میں

int Reporter: Linda D. Moffitt

[illegible]

on the court column please indicate who made the motion to strike the jurors "for cause"

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Donald Hugh Johnson,

Appellant.

Appeal From Spartanburg County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2009-UP-606
Submitted December 1, 2009 – Filed December 22, 2009

AFFIRMED

Tara Shurling, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
and Assistant Attorney General Deborah R. J. Shupe,
all of Columbia, for Respondent.

PER CURIAM: Donald Hugh Johnson appeals his convictions for three counts of criminal sexual conduct with a minor in the second degree, one count of contributing to the delinquency of a minor, and one count of committing or attempting a lewd act upon a child under sixteen. Johnson argues the trial court erred in allowing the Victim's testimony about Johnson's attempt to have sexual intercourse with her because Johnson was charged with less egregious crimes. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authority: State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-4 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal.").

AFFIRMED.

WILLIAMS, PIEPER, and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



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The South Carolina Court of Appeals

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1015 SUMTER STREET
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FAX: (803) 734-1839
www.sccourts.org

January 7, 2010

REMITTITUR

The Honorable Marcus W. Kitchens
180 Magnolia Street
PO Box 3483
Spartanburg, SC 29304-3483

Re: The State v. Johnson, Donald Hugh
2006-GS-42-01618 2006-GS-42-01619 2006-GS-42-01620
2006-GS-42-01621 2006-GS-42-01622

Dear Mr. Kitchens:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

The Exhibits being returned are: State's Exhibits 2, 3, 4 (photographs). Please sign attached copy of this letter and return to acknowledge receipt of these items.

Sincerely,

A handwritten signature in cursive script, appearing to read "Renee S. Johnson".

Renee S. Johnson
Administrative Specialist

JAG/TG/rj

cc: Tara Shurling, Esquire
Assistant Attorney General Deborah R. J. Shupe

Receipt Acknowledgement:

Name: _____ Date: _____

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Donald Hugh Johnson, #322348)
 Applicant,)

v.)

THE STATE OF SOUTH CAROLINA,)
 Respondent.)

APPLICATION FOR
 POST-CONVICTION RELIEF

INSTRUCTIONS – READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make 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. Applicants 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: Broad River Correctional Institution, 4460 Broad River Road, Columbia, South Carolina 29210
2. Name and location of Court which imposed sentence Spartanburg County General Sessions Court
3. Name(s) of co-defendant(s) (if any) : N/A
4. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2006-GS-42-1618- Criminal Sexual Conduct with Minors, Second Degree
 - (b) 2006-GS-42-1619- Criminal Sexual Conduct with Minors, Second Degree
 - (c) 2006-GS-42-1620- Criminal Sexual Conduct with Minors, Second Degree
 - (d) 2006-GS-42-1621- Contributing to Delinquency of a Minor
 - (e) 2006-GS-42-1622- Committing or Attempting Lewd Act Upon Child Under Sixteen

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5. The date upon which sentence was imposed and the terms of the sentence:

- (a) June 12, 2007- Eighteen (18) years concurrent.
- (b) June 12, 2007- Eighteen (18) years concurrent.
- (c) June 12, 2007- Eighteen (18) years concurrent.
- (d) June 12, 2007- Three (3) years concurrent.
- (e) June 12, 2007- Fifteenth (15) years concurrent.

6. Check whether a finding of guilty was made

- (a) after a plea of guilty _____
- (b) after a plea of not guilty Yes
- (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence? Yes

8. If you answered "yes" to (7), list

(a) the name of each Court to which you appealed:

- i. South Carolina Court of Appeals.
- ii. N/A
- iii. N/A

(b) the result in each such Court to which you appealed:

- i. Affirmed
- ii. N/A
- iii. N/A

(c) the date of each such result:

- i. December 22, 2009
- ii. N/A
- iii. N/A

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. Unpublished Opinion No. 2009-UP-606

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ii. N/A

iii. N/A

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) N/A

(c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) The Applicant received Ineffective Assistance of Counsel prior and during his trial in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution.

(b) The judgment and sentence against the Applicant were entered in violation of his right to due process of law and effective assistance of counsel.

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Counsel failed to provide client effective assistance of counsel prior to and during his trial proceeding. Inasmuch as Counsel failed to recognize errors which occurred during his trial, and therefore failed to make appropriate objections, and supporting legal arguments relating thereto. Counsel's failure to make these objections may have changed the outcome of the Applicant's trial and deprived him of the opportunity to have these issues addressed on their merits on direct appeal.

(b) _____

(c) _____

12. Prior to this application, have you filed with respect to this conviction:

(a) any petitions in a State Court under South Carolina law? n/a

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief? n/a

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? n/a

(d) any other petitions, motions or applications in this or any other Court? n/a

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13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. n/a

ii. n/a

iii. n/a

iv. n/a

(b) the name and location of the Court in which each was filed:

i. n/a

ii. n/a

iii. n/a

iv. n/a

(c) the disposition thereof:

i. n/a

ii. n/a

iii. n/a

iv. n/a

(d) the date of each such disposition:

i. n/a

ii. n/a

iii. n/a

iv. n/a

(e) if know, citations of any written opinions or orders entered pursuant to each such disposition:

i. n/a

ii. n/a

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iii. n/a

iv. n/a

14. Has any ground set forth in (10) been previously presented to this or any other Court, State of Federal, in any petition, motion or application which you have filed? NO

15. If you answered "yes" to (14), identify:

(a) which grounds have been presented:

i. n/a

ii. n/a

iii. n/a

(b) the proceedings in which each ground was raised:

i. n/a

ii. n/a

iii. n/a

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Collateral review through PCR represents the first appropriate opportunity the Applicant has had to raise these issues.

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes

(e) preparation, presentation or consideration of any petitions, motions, or applications with respect to this conviction, which you filed? yes

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(*Handwritten signature*)

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Andrew J. Johnston, Esquire, P. O. Box 3252, Spartanburg, SC 29304.

ii. Tara Dawn Shurling, Esquire, 3614 Landmark Dr., Ste. D, Columbia SC 29204

iii. n/a

(b) the proceedings at which each such attorney represented you:

i. Trial and Sentencing

ii. Appeal to the South Carolina Court of Appeals. The Applicant has executed a waiver of any claim of ineffective assistance of counsel against appellate counsel. See Attachment.

iii. _____

19. State clearly the relief you seek in filing this application. Vacation of judgments and sentences. Applicant seeks a new trial.

20. Are you now under sentence from any other court that you have not challenged? no

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TARA DAWN SHURLING, PA

Attorneys and Counselors at Law

3614 Landmark Drive

Suite D

Columbia, South Carolina 29204

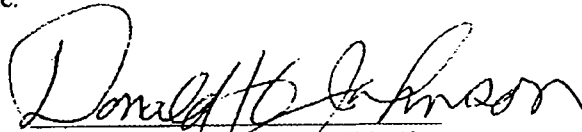
(803) 738-8622

Fax (803) 738-1600

E-Mail: tdslaw@shurlinglaw.com

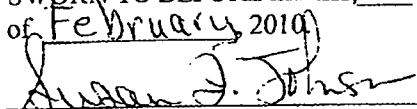
Jeremy A. Thompson
Associate Attorney

I Donald H. Johnson, 322348 have recently completed the direct appeal process. I have decided to file an application for Post-Conviction Relief challenging my judgment and sentence. I have hired Attorney Tara Dawn Shurling to represent me in my Post-Conviction Relief action. Prior to hiring Ms. Shurling, she advised me that among the allegations that can be raised in a Post-Conviction Relief case would be an allegation of ineffective assistance of appellate counsel. Ms. Shurling further advised that since she was my lawyer throughout the direct appeal process I should not hire her to perfect a Post-Conviction Relief action on my behalf unless I was certain that I had no complaints about the quality of her representation on appeal. She specifically advised me that hiring her as my Post-Conviction Relief counsel would require that I waive any claims against her as appellate counsel. I hereby expressly waive my right to present any Sixth Amendment claim that I received ineffective assistance of counsel on direct appeal in context of my Post-Conviction Relief action. I have not been coerced in any way to make this decision and affirmatively state that my decision to hire Ms. Shurling as Post-Conviction Relief counsel has been freely and voluntarily made.


DONALD H. JOHNSON, 322348

FILED
CLERK OF COURT
SOUTH CAROLINA
2010 OCT -6 AM 11:31
M. HOPE BLACKLEY

SWORN TO BEFORE me this 24 day
of February, 2010

 (L.S.)
Notary Public for South Carolina

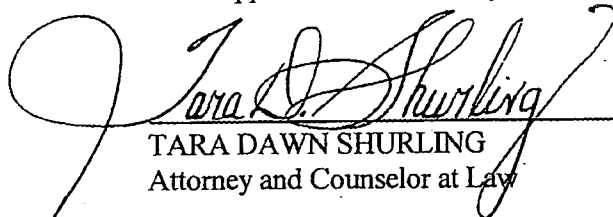
My Commission Expires: March 5, 2018

STATE OF SOUTH CAROLINA

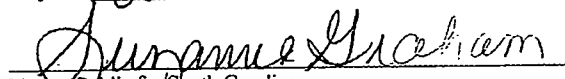
VERIFICATION

COUNTY OF SPARTANBURG

I, Tara Dawn Shurling, retained counsel for the Applicant, 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. The Applicant *does not* desire the assistance of a court-appointed PCR attorney.


TARA DAWN SHURLING
Attorney and Counselor at Law

SWORN to and subscribed before me this 4th
day of October, 2010.


Notary Public for South Carolina
My Commission Expires: 3/12/2013

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 OCT -6 AM 11:31
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Donald Hugh Johnson, # 322348,	)	2010-CP-42-5375
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the Application for Post-Conviction Relief filed October 6, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. The Applicant was indicted at the May 2006 term of the Court of General Sessions for Spartanburg County for three counts of criminal sexual conduct with a minor, second degree (2006-GS-42-1618, 2006GS-42-1619, 2006-GS-1620), contributing to delinquency of a minor (2006-GS-42-1621), and committing or attempting lewd acts upon child under sixteen (2006-GS-42-1622). He was represented by Andrew J. Johnston, Esquire. On June 12, 2007 the Applicant proceeded to trial after which he was found guilty as indicted. He was sentenced by the Honorable J. Derham Cole to confinement for a period of eighteen (18) years for each of the three criminal sexual conduct with minors, second degree, three (3) years for contributing to the delinquency of a minor and fifteen (15) years for committing or attempting lewd act upon child under sixteen, all to run concurrent.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v.

Johnson, Op. No. 2009-UP-606 (S.C. Ct. App. filed December 22, 2009). The Remittitur was returned January 7, 2010.

Attached herewith and incorporated herein by reference are the records of the Spartanburg County Clerk of Court regarding the subject conviction(s), the Applicant's records from the Department of Corrections, the Applicant's trial transcript, and the Applicant's appellate records.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel;
 - a. Counsel failed to recognize errors which occurred during his trial, and therefore failed to make appropriate objections, and supporting legal arguments relating thereto. Counsel's failure to make these objections may have changed the outcome of the Applicant's trial and deprived him of the opportunity to have these issues addressed on their merits on direct appeal.
2. The judgment and sentence against the Applicant were entered in violation of his right to due process of law and effective assistance of counsel.

III.

The Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. 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 upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland 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, 305 S.E.2d 247 (1983).

IV.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

V.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By:


Attorneys for the Respondents
P.O. Box 11549
Columbia, S.C. 29211

July 15, 2011

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

Donald Hugh Johnson,

2010-CP-42-5375

Applicant,

v.

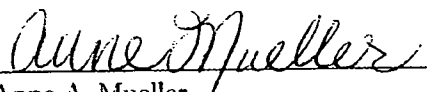
CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Tara D. Shurling, Esquire
Law Offices of Tara Dawn Shurling, PA
3614 Landmark Drive, Suite D
Columbia, South Carolina 29204


Anne A. Mueller
Legal Assistant for the Respondent

DATED this 15th day of July, 2011.

WITNESSES

Investigator Kevin Bobo

1. ☒ PREPARED

2. ☒ PRESENT

3. ☒ CHECKED

4. ☒ CHECKED

5. ☒ CHECKED

6. ☒ CHECKED

7. ☒ CHECKED

8. ☒ CHECKED

9. ☒ CHECKED

10. ☒ CHECKED

11. ☒ CHECKED

12. ☒ CHECKED

13. ☒ CHECKED

14. ☒ CHECKED

15. ☒ CHECKED

16. ☒ CHECKED

17. ☒ CHECKED

18. ☒ CHECKED

19. ☒ CHECKED

20. ☒ CHECKED

21. ☒ CHECKED

22. ☒ CHECKED

23. ☒ CHECKED

24. ☒ CHECKED

25. ☒ CHECKED

26. ☒ CHECKED

27. ☒ CHECKED

28. ☒ CHECKED

Docket Number 2006-GS-42-

The State of South Carolina
County of Spartanburg

COURT OF GENERAL SESSIONS

May 2006 Term

THE STATE

vs.

DONALD HUGH JOHNSON

DEFENDANT

INDICTMENT FOR

CRIMINAL SEXUAL CONDUCT WITH
MINORS, SECOND DEGREE

CDR Code: 396

S.C. CODE §16-3-655

ACTION OF GRAND JURY

True Bill

Amy E. Cronican

Foreperson of Grand Jury

Date: 05-11-06

VERDICT

Guilty

James B. Fineberry

Foreperson of Petit Jury

Date: 6-12-07

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness

C.C.C. Pls. And G.S.

FILED
2006 MAY 15 PM 3:50
CLARK KITCHENS

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAY 11 2006, the
Grand Jurors of Spartanburg County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH MINORS, SECOND DEGREE

That Donald Hugh Johnson, did in Spartanburg County, South Carolina, between the time on or about August 1, 2001, and January 10, 2002, engage in sexual battery, as defined in S.C. Code Ann. § 16-3-651, with the thirteen year old victim, VICTIM, with date of birth , 1988, who was fourteen years of age or less but who was at least eleven years of age, to wit: the defendant did digitally penetrate the victim and/or did cause the victim to perform fellatio upon the defendant, in violation of §16-3-655 (2), CODE OF LAWS OF SOUTH CAROLINA (1976), as amended.

Against the peace and dignity of the State, and contrary to the common law in such cases made and provided.



HENRY MCMASTER (ERM)
SOUTH CAROLINA ATTORNEY

Computer

325

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
 STATE VS.
DONALD HUGH JOHNSON
 AKA:
 Race: W Sex: M Age:
 DOB: 1-5-41 SS#:
 Address: 268 Red Raven Dr
 City, State, Zip Greer SC 29651
 DL# SID#

INDICTMENT/CASE#: 2006 -GS- 42 1618
 A/W#: K 069415
 Date of Offense: 8/1/02 - 1/10/02
 S.C. Code #: 16-3-655
 CDR Code #: 0131916
☐ CASE RESTORED
 SENTENCE
☒ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ LEADS
 TO: CSC WITH MINOR 240

in violation of § 16-3-655 of the S.C. Code of Laws, bearing CDR Code # 0131916
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
 ATTEST:

Clara Wilson
 Solicitor A. A. G.

Donald Johnson
 Defendant

Richard [Signature]
 Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
 which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
 Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
 Total: \$ plus 20% fee: \$
 Payment Terms:
☐ set by SCDPPPS

PTUP: days/hours Public Service Employment

Obtain GED
 Attend Voc. Rehab. or Job Corp.
 May serve W/E beginning
 Substance Abuse Counseling
 Random Drug/Alcohol Testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ beginning
 \$ paid to Public Defender Fund
 Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP
 Requires \$500 be paid to Clerk during probation.

Recipient:
 *Fine: \$
 \$14-1-206 (Assessments 107.5%) \$
 \$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 \$14-1-211(A)(2) (DUI Surcharge) \$100 \$
 \$56-5-2995 (DUI Assessment) \$12 \$
 \$35.13 (Public Def/Prob) \$500 \$
 \$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 50.00
 \$33.7, 1B TP (Drug Court Surcharge) \$100 \$
 \$50-21-114(BUI Breath Test Fee) \$50 \$
 \$56-5-2942(J) (Vehicle Assessment) \$40/ea \$
 3% to County (if paid in installments) \$
 TOTAL \$ 128.1

PRESIDING JUDGE

Judge Code: 01513Sentence Date: Aug. 12, 2007

R. [Signature]
 Clerk of Court/ Deputy Clerk

Court Reporter:

Trial Began 6-11-07
Trial ended 6-12-07

Judge: Blunkham Cole
CL: Linda Moffitt 326
6-11-07

THE STATE) In the Spartanburg
Alcon Jackson / AC's) General
David Stoner) Sessions Court
Against)
Donald Hugh Johnson) Charged with 2006-1168
Andy Johnston, Attorney) thru 2006-11622
Defendant)

1. Charles Waddell #141
2. Susan B. Dickson #151
3. Rebecca Lewis #125
4. Campy Rountree #120
5. Adam Rogers #169
6. James Dineberry #164 - foreperson
7. Virginia Mott #101
8. Allison Wray #30
9. Ebony Steen #135
10. Muech Clea #22
11. Jayar Bashins #189
12. Dierica Kyles #83
- ALL: Veronica Huggins #71

EXCUSED BY COURT	EXCUSED BY STATE	EXCUSED BY DEFENDANT
13	174	191
107	173	148
69	108	176
116	160	156
185		
60		
195		
188		
199		

Deputy
Amphius
Deslitt

Deputy
B. Dyles

Deputy
M. Ennis

STATE V. [illegible]

1. ASHLEY WARMON
2. Shawn Wright
3. Christopher Phillips
4. Ken Bono / 50

Defense Listeners

1. Samuel Johnson
2. Donald Johnson
3. Stan Johnson
4. A.O. Duvert
5. Dennis Kennedy

COUNTY OF SPARTANBURG

THE STATE OF SOUTH CAROLINA

Against

Defendant

JURY

INDICTMENT FOR

2006-1618 Jure
2006-1622

Judge: William Cole
cl. Linda Moffett
6-11-07

328

ARREST WARRANT

Computer

K-069415

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
SPARTANBURG COUNTY

05-15205 THE STATE
against

JOHNSON, DONALD HUGH

Address: 2008 K-2 RAYVIEW DRIVE
GREER, SC 29651

Phone: SSN: -

Sex: M Race: W Height: 6'00" Weight: 240

DL State: DL #: Agency ORI#: -

DOB: 02/10/1941

Prosecuting Agency: BOBO, KEVIN

Offense: SEX / CRIMINAL SEXUAL CONDUCT

WITH MINOR - VIC Offense Code: 0395

Code/Ordinance Sec. 16-03-0655(B)

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to law.

Date: Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant JOHNSON, DONALD HUGH
on 09/20/05

Signature of Constable/Law Enforcement Officer
G. P. P.

RETURN WARRANT TO:

JOHN POOLE

180 MAGNOLIA STREET

SPARTANBURG, SC 29306

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
SPARTANBURG COUNTY

AFFIDAVIT CASE # K069415

Form Approved by
Supreme Court
April 21, 2005
SCCA 818

Personally appeared before me the affiant BOBO, KEVIN

being duly sworn deposes and says that defendant JOHNSON, DONALD HUGH

did within this county and state on 08/01/01-08/12/05 violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of SPARTANBURG

in the following particulars:

DESCRIPTION OF OFFENSE: SEX / CRIMINAL SEXUAL CONDUCT WITH MINOR - VIC
16-03-0655(B)

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
THE DEFENDANT DID COMMIT A SEXUAL BATTERY UPON ONE ~~UNIDENTIFIED~~ MALE, SAID VICTIM BEING THIRTEEN YEARS OF AGE AT THE TIME THE INCIDENT
STARTED.

AFFIANT'S BELIEF IS BASED UPON POLICE INVESTIGATION.

Signature of Affiant

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
SPARTANBURG

Affiant's Address: SHERIFF'S OFFICE
Affiant's Telephone: 000-0000

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

I, appearing from the above affidavit, that here, are, reasonable grounds to believe that

on 08/01/01-08/12/05 defendant JOHNSON, DONALD HUGH

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of SPARTANBURG as set forth below.
DESCRIPTION OF OFFENSE: SEX / CRIMINAL SEXUAL CONDUCT WITH MINOR - VIC
16-03-0655(B)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of his execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me
on SEPTEMBER 20, 2005

Judge's Address: 180 MAGNOLIA STREET
SPARTANBURG, SC 29306
Judge's Telephone: 864-596-2564
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

Signature of Issuing Judge
JOHN POOLE

ORIGINAL

COMMONWEALTH

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
STATE OF SOUTH CAROLINA

Ticket or Warrant No.: K069415
IN THE () COURT OF GENERAL SESSIONS
() MAGISTRATE'S COURT
() MUNICIPAL COURT OF

329

Name of Defendant: Donald Johnson
CSC w/minor

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE
(Bail Proceeding Form 2)

Offense Charged:

At a bail proceeding conducted by undersigned judge, for the defendant named above, it was determined by the court (check one or both):

- ☐ The release of the defendant on recognizance will not reasonably assure his appearance as required.
☐ The release of the defendant on recognizance will result in an unreasonable danger to the community.
This determination was based upon the following findings of fact:

(Considerations: Nature and circumstances of the offense charged, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.)

THEREFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.
2. That the above named defendant be released from custody provided as follows (check one):

CASH IN LIEU OF BOND

- ☐ The defendant, acknowledging himself to be indebted to the State of South Carolina, deposits \$_____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

- ☐ The defendant acknowledges himself to be indebted to the State of South Carolina in the sum of \$_____, his release to be obtained by payment to the court of _____% of this bond in cash, this amount being \$_____. The defendant will be obligated to the State in the full amount of \$_____ such sum to be levied on his real and personal property for the use of the State, should he fail to perform the conditions of this Order.

APPEARANCE RECOGNIZANCE WITH SURETY

- ☒ The defendant will provide good and sufficient surety approved in the court, in the form set forth on the reverse side, acknowledging an indebtedness to the State in the amount of \$45,000

3. That the defendant shall appear at (check one)

☒ the term of the court of general sessions beginning on [Date:] 12/2/05 at [Time:] 9 o'clock A.M., at [Place:] 180 Municipal Building
and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.

☐ the session of magistrate/municipal (circle one) court beginning on [Date:] _____ at [Time:] _____ o'clock _____ M., at [Place:] _____ If no final disposition is made during that session, the defendant shall appear on other dates and places as ordered by the court.

Initials of Defendant: [Signature]

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described on the reverse side which are marked.

Signature of Judge: [Signature]

Date: 9/20/05

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, including any conditions included on the reverse side of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that, if I fail to appear before the court as required, an additional criminal charge will be instituted against me. If the failure to appear is in connection with a felony charge, or while awaiting sentence, or pending appeal or certiorari after conviction, the penalty is a fine of not more than \$5,000 or imprisonment for not more than five years, or both; if I fail to appear in connection with a misdemeanor charge, the penalty is a fine of not more than \$1,000 or imprisonment for not more than one year, or both.

I acknowledge the receipt of a copy of this Order and understand the conditions of my release and the penalties applicable to me in the event I violate any condition of the Order or fail to appear as required.

Address: 208 Red Raven Dr.

City/State: GREEN SC

Social Security Number/Telephone No.: 247-6434, 968-0862

Signature of Defendant: [Signature]

Date: 9/20/05

Attorney Representing Accused (if known)

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED.

Original copy for the Trial Court - Copy for the Defendant

FORM CONTINUES ON BACK

SCCA/511 (3/90)

247-643474

SPECIAL CONDITIONS OF RELEASE

- a. ☐ Placement in custody. The defendant is placed in the custody of: _____
Name of person or organization

Address _____ City _____ State/Zip _____ Telephone _____
who agrees (1) to supervise the defendant in accordance with conditions set forth by the court, (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears.

Signature of Custodian (If Appointed)

Date

- b. ☐ Restrictions on Travel, Association, or Residence. The defendant will comply with each of the following conditions: _____

- c. ☐ Part-time Release. The defendant will be released from custody from _____ o'clock, _____ M. to _____ o'clock, _____ M. on _____
_____ at _____ on condition that he return to the custody of _____ as designated.

- d. ☐ Other Conditions. The defendant will comply with the following other conditions of release: _____

HE MUST APPEAR FOR YOUR INITIAL APPEARANCE HEARING AT THE SPARTANBURG
COUNTY JUDICIAL CENTER, 180 MAGNOLIA STREET, 2nd FLOOR, EAST COURTROOM, ON,

12/2/05 9am

APPEARANCE RECOGNIZANCE WITH SURETY

On the 20 day of Sept, 2005, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of \$125,000 such sum to be levied on his real and personal property for the use of the State, if the within named defendant shall fail in performing the conditions of this Order.

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein, over all his debts and liabilities, and exclusive of property exempt from execution.

GLENN E. KESOR, DANKE & KESOR
Name of Surety (Printed or Typed)

[Signature]
Signature of Surety

14 BROOKLAND CT
Address of Surety

[Signature]
Signature of Judge

SPARTANBURG, SC 29301
City/State/Zip

9/20/05
Date

Form Approved by
S.C. Attorney General
Section 17-15-40
March 4, 2000

2005 SEP 22 PM 4:36
CLERK'S OFFICE
CLERK

AGENCY I.D.
SC0420000

INCIDENT REPORT

CASE NUMBER

NCIC

INO. 331

2005090220

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. CRIMINAL SEXUAL CONDUCT		☒ YES ☐ NO	☐ YES ☐ NO	RESIDENCE		☐ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☐ Soc. Public ☐ Other ☐ Unknown ☐ Police Off.
2. ...		☐ YES ☐ NO	☐ YES ☐ NO			
3. ...		☐ YES ☐ NO	☐ YES ☐ NO			
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)				ZIP CODE	WEAPON TYPE	
288 RED RAVEN DR. GREEK S.C.				29651		
INCIDENT DATE		24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK
08/01/0800		081255	1700	090305	1730	
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE
PHILLIPS WANDA		#1 IL #2 #3	☒ YES ☐ NO	WF		55
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	
400 FARMER ST.		GAFFNEY	SC	29340	CHEROKEE	
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE
WANDA DIANE VICTIM		#1 56P #2 #3	☒ YES ☐ NO	WF		17
HEIGHT WEIGHT HAIR EYES		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.				
503 135 BROWN HAIR		DOB 1-1-88				
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	
957 LYMAN ST.		GAFFNEY	SC	29340	CHEROKEE	
VISIBLE INJURY (VICT. #) ☐ YES ☒ NO EXPLAIN -		COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☒ NO				
VICTIM (NO. 1) USING: ALCOHOL ☐ YES ☒ NO DUNK. DRUGS: ☐ YES ☒ NO DUNK. TYPE:		TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/SPLASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED ☐ J - This Jurisdiction S - State O - Out of State U - Unknown				
SUBJECT NO. 1		NAME (LAST, FIRST, MIDDLE)				
☐ SUSPECT ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS		JOHNSON DONALD HUGH				
		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.				
		668-6862 H				
		ADDRESS				
		223 RED RAVEN DR.				
		CITY				
		GREEK				
		STATE				
		SC				
		ZIP CODE				
		29651				
		LOCATION NO.				
		32				
		SUBJECT (NO. 1) USING: ALCOHOL ☐ YES ☒ NO DUNK. ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO DATE/TIME OF OFFENSE DATE/TIME OF ARREST				
		DRUGS: ☐ YES ☒ NO DUNK. TYPE: TOTAL # ARRESTED				
NARRATIVE						
WANDA PHILLIPS CAME TO SHERIFF'S OFFICE WITH HER GREAT NIECE VICTIM TO MAKE A REPORT OF CRIMINAL SEXUAL CONDUCT. A. WARMOTH STATES THAT HER STEP GRAND FATHER HAS SEXUALLY ABUSED HER SINCE AUGUST OF 2001 SHE WROTE VOLUNTARY STATEMENT DETAILING THE PROGRESS OF SEXUAL ABUSE THAT OCCURRED THE LAST OCCURANCE WAS ON 081205. THESE THINGS HAPPENED DURING WEEKENDS AND HOLIDAYS WHEN SHE VISITED HER GRAND MOTHER.						
PROPERTY (ST.)		TOTAL VALUE				
TYPE (GROUP)						
STOLEN						
DAMAGED						
BURNED						
RECOVERED						
SEIZED						
SUBJECT IDENTIFIED ☐ YES ☒ NO		SUBJECT LOCATED ☐ YES ☒ NO		☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY		DATE		UNIT NUMBER		DATE
REPORTING OFFICER(S)		DATE		UNIT NUMBER		DATE
BISHOP, Bill		090305		05		7/4/05
FOLLOW-UP INVESTIGATION ☐ YES ☒ NO		OFFICER		DATE		UNIT NUMBER
		Sgt. E. McK...		7/4/05		464

INVESTIGATION

AGENCY I.D.
SCD 420000

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

2005090220

NCIC 332
INCL ENTO

☐ ORIGINAL REPORT	☒ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY
☒ MODIFIES ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY
PAGE 1 OF 1 PAGES.			

VICT/SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)	VICTIM RELATIONSHIP TO SUBJECT:			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH	
	☐ VICTIM # 1	[REDACTED]	Stepgranddaughter			100 U	W	F	17	01/18/88	N	
VICT/SUBJ. I.D. OVERFLOW	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.						
	☐ RUNAWAY	503	135	Bro	Haz							
	☐ WANTED	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE	EVENING PHONE			
	☐ WARRANT	207 Lyman St.		Gaffney	SC	29340	0/J	489-5154				
	☐ ARREST	VICTIM NO. 1	VISIBLE INJURY: ☐ NO ☐ YES		COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES		VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK		☐ TWO-MAN VEHICLE ☐ DETECTIVE/PLASANT ☐ ALONE			
	☐ JAIL	EXPLAIN:		☐ NO ☐ YES		DRUGS: ☐ NO ☐ YES TYPE: ☐ UNK		☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASSISTED				
	☐ SUMMONS	SUBJECT NO. 1		USING ALCOHOL: ☐ NO ☐ YES		USING DRUGS: ☐ NO ☐ YES TYPE: ☐ UNK						
	☐	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT:			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH
	☐	Johnson, Donald Hugh					100 U	W	M	64	01/01/41	N
	☐	☐ SUBJECT # 1	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.					
☐	☐ RUNAWAY	600	240	Wht	Blu	SS# 47-64-7434						
☐	☐ WANTED	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE	EVENING PHONE			
☐	☐ WARRANT	208 Red Raven Dr.		Greer	SC	29651	32	968-0862	483-2164			
☐	☐ ARREST	VICTIM NO. 1	VISIBLE INJURY: ☐ NO ☐ YES		COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES		VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK		☐ TWO-MAN VEHICLE ☐ DETECTIVE/PLASANT ☐ ALONE			
☐	☐ JAIL	EXPLAIN:		☐ NO ☐ YES		DRUGS: ☐ NO ☐ YES TYPE: ☐ UNK		☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASSISTED				
☐	☐ SUMMONS	SUBJECT NO. 1		USING ALCOHOL: ☐ NO ☐ YES		USING DRUGS: ☐ NO ☐ YES TYPE: ☐ UNK						
☐	☐	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT:			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH

On 090905, I took voluntary statements from victim, her aunt, the complainant, and victim's great grandmother, her legal guardian. Based on those statements, on 091305, I drew up search warrants for suspect's home and his person, and both were signed by Judge Gowan. Once those search warrants were signed, I kept checking suspect's residence to see if he was home in an attempt to execute those warrants, but he wasn't at home, and there was repeatedly no answer at his home number. On 091505, I-33, Steve Calhoun and I went to suspect's residence with 2 uniform patrol deputies in another attempt to execute those warrants. A neighbor of suspect's approached us and informed suspect and his wife were at Lake Greenwood for the week. Apparently, that neighbor contacted suspect because later that same day, suspect called me and informed he was on his way to my office from the lake. Once suspect arrived at the office, he was advised of his rights, and after he signed a pre-interrogation waiver form, he gave me a voluntary statement, denying ever touching victim in any sexual way. While he and I were completing his statement, I-33 and I-29, Nicki Cantrell, took suspect's wife back to their

NARRATIVE	STATUS	TYPE	VIN AND/OR LICENSE NO.		BOAT HULL NO. AND/OR REG. NO.		
	☐ STOLEN	☐ VEHICLE					
	☐ RECOVERED	☐ GUN	SERIAL AND/OR OWNER APPLIED NO.		STATE		
	☐ FOUND	☐ BOAT	YEAR OF REGISTRATION		YEAR OF EXPIRATION	YEAR	
	☐ TOWED	☐ LICENSE PLATE	MODEL		STYLE	COLOR	
	☐ SUSPECT	☐ SECURITIES/BONDS/STOCKS	NICKING		DENOMINATION	ISSUER	
	☐ VICTIM	☐ ARTICLE	MISCELLANEOUS		SECURITIES DATE		
	TYPE (GROUP)		TOTAL VALUE				
	STOLEN						
	DAMAGED						
BURNED							
RECOVERED							
SEIZED							
SUBJECT IDENTIFIED		SUBJECT LOCATED		☒ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ EX-CLEAR UNDER 18	
☒ YES ☐ NO		☒ YES ☐ NO				☐ ARRESTED 18 AND OVER ☐ EX-CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY							
REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER
Kevin Bobo		092005	I-15				
				FOLLOW-UP OFFICER			
				INVESTIGATION DYES ☐ NO			

AGENCY I.D.
SC0420000

SUPPLEMENTARY REPORT

CASE NUMBER

2005090220

NCIC

INQ. 333

☐ ORIGINAL
REPORT
☐ MODIFIES
ORIGINAL

☒ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 2 of PAGES

Case: Criminal Sexual Conduct

Victim: Ashley Warnock

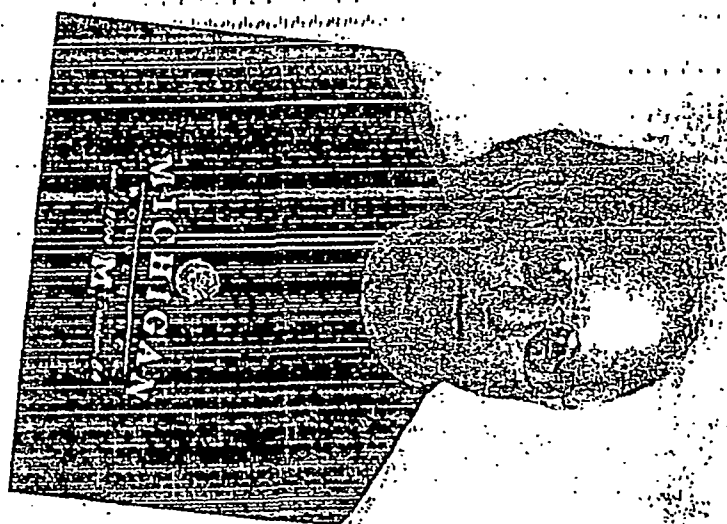
Suspect: Donald Johnson

house in Greer to execute the search warrant for the residence. I-33 and I-29 recovered the quilt and the pink vibrator that victim described in her statement. Once they got back, I-33 executed my search warrant for suspect's person, and suspect's penis was uncircumcised, there was a mark on the head of his penis, his pubic hair was strawberry blond in color, and he did have a white mole or wart on the inside of one of his buttocks. All those physical characteristics suspect has are the ones victim detailed in her statement. Suspect stated he was willing to take a polygraph examination, which I scheduled for today at 1400, but I receive notice yesterday from attorney Andy Johnston that he now represents suspect, and that he would not be coming in to take a polygraph. Johnston also requested that I notify him once a warrant was signed, and that he would have suspect turn himself in. I will discuss this case with a magistrate, since there is no way victim can know this much detail about suspect's person from accidentally walking in on him in a bedroom or bathroom. I-53, Dominick Baird, took the pictures of suspect on 091505, and suspect had to hold his scrotum up out of the way so that I-53 could photograph the white mole or wart on the inside of suspect's buttock.

NARRATIVE

SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☒ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE-NO CUSTODY									
REPORTING OFFICER(S)		DATE		UNIT NUMBER		APPROVING OFFICER		DATE	
Kevin Bobo		092005		I-15					
						FOLLOW-UP INVESTIGATION DYES ☐ NO		OFFICER	

SH106



Donald Hugh Johnson

Name of Defendant

K069415

Warrant/Ticket Nos.

County/Municipality of

Spartanburg

Charges:

CSC w/ MINOR
2nd

Trial Court:

☒ General Sessions☐ Magistrate☐ Municipal Court

CHECKLIST FOR MAGISTRATES AND MUNICIPAL JUDGES

DIRECTIONS: Magistrates and municipal court judges must use this checklist for ALL GENERAL SESSIONS CASES and for ALL MAGISTRATE AND MUNICIPAL COURT CASES IN WHICH BOND HAS BEEN SET BY A JUDGE. The judge should attach this checklist to the charging document (arrest warrant or uniform traffic ticket) when the defendant first appears before a judge for a bond hearing or first appearance, and complete the appropriate sections.

☒ ☒

BAIL PROCEEDING

FIRST APPEARANCE (Non-Bailable Offenses)

class c felony
no more 20 years

1. Form used at bail proceeding

a. Bond Form I (personal recognizance)

b. Bond Form II (surety, cash, percentage)

c. None (Non-Bailable Offense)

2. For cases in which bond is set, defendant was informed:

a. Warrant for arrest will be issued for violation of any condition of bail bond order.

b. His right and obligation to be present at trial and that trial will proceed in his absence if he fails to attend.

c. Failure to appear in court as required will result in institution of additional criminal charges. For failure to appear in connection with a felony, additional charge has penalty of fine of not more than \$5,000 or imprisonment for not more than five (5) years, or both. For failure to appear in connection with a misdemeanor, additional charge has penalty of fine of not more than \$1,000 or imprisonment for not more than one (1) year, or both.

3. For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days:

a. Orally

b. In writing

(NOTE: Defendant must be informed of right both orally and in writing)

4. Defendant was informed of the right to trial by jury.

5. In all general sessions cases and in all magistrate or municipal cases in which a prison sentence is likely to be imposed, defendant was informed of the following:

a. Charges against defendant and nature of the charges.

b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel

c. (Optional: Local procedures may require judge to refer defendants to indigency screener. If so, (note referral here) Required to appear before _____ on _____, 20____ for appointment of counsel.)

Appearance or
Hearing Date:

9/20/05

Judge's Signature

APPLICATION TO ACT AS ACCOMMODATION BONDSMAN
(PLEASE PRINT)

NAME: GLENN E. KENNEDY
MAILING ADDRESS: 14 BROOKLAND CT. SPARTANBURG, S.C. 29301
TELEPHONE: 864 576 0821 DRIVER'S LICENSE/ID NO: GT 520350

ADDRESS OF PROPERTY TO BE USED FOR BOND
14 BROOKLAND CT. SPARTANBURG, S.C. 29301

ALL OWNERS OF THIS PROPERTY: GLENN E. & DIANNE T. KENNEDY
PERSON YOU WISH TO BOND DOUGLAS HUGH JOHNSON

I MAKE THE FOLLOWING CERTIFICATIONS TO THE COURT.

1. I am at least eighteen (18) years of age.
2. I am a South Carolina resident.
3. I have not received, and will not receive, any money or any other thing of value to act as a bondsman.
4. I am not a law enforcement officer, judicial officer, attorney, probation or parole officer, jailer, employee of any court of this state.
5. I own the above-listed real estate, subject to the following debts, liabilities, and exemptions.

	AMOUNT
a. Outstanding balance on mortgage:	\$ <u>31,000 115,000 Credit</u>
b. Recorded judgements or liens where I or other owners have been sued:	\$ <u>0</u>
c. Bonds previously signed within the last three years: <u>0</u>	

PERSON BONDED

- d. Do you or a dependant use this real estate as a residence?

yes
no

\$ 5000

I understand that if the defendant for whom I sign a bond does not appear in court when required or otherwise violates any condition of his bond, my property can be sold by the State to satisfy the amount of the bond. I also understand that I can be charged with a criminal offense if any of the above representations are false.

DATE Oct 20 1980

SIGNATURE Glenn E. Kennedy

COURT USE ONLY

ASSESSED VALUE OF PROPERTY
- TOTAL DEBTS, LIABILITIES & EXEMPTIONS
NET EQUITY

\$ 120,000
\$ 5,000
\$ 115,000

MAXIMUM ALLOWABLE BOND

\$ 115,000
45,000
70,000 *LEW*

SOUTH CAROLINA
 DEPARTMENT OF PUBLIC SAFETY
 DRIVER'S LICENSE

KENNEDY, DIANNE R
 DATE OF BIRTH: 03/01/1965
 SPARTANBURG, SC 293013736

DL#: 004598978
 Expires: 10-16-2006

Class: D Hgt: 6-03 Wgt: 115
 Sex: F DOB: 03/01/1965
 Issued: 08-10-2001 142059 R 3

Dianne Kennedy
 Governor

RESTRICTIONS: A



SOUTH CAROLINA
 DEPARTMENT OF MOTOR VEHICLES
 DRIVER'S LICENSE

KENNEDY, GLENN EUGENE
 DATE OF BIRTH: 03/01/1937
 SPARTANBURG, SC 293013736

DL#: C00960280
 Expires: 03-01-2010

Class: D Hgt: 6-00 Wgt: 235
 Sex: M DOB: 03/01/1937
 Issued: 03-01-2005 142087 R 4

Glenn E. Kennedy
 Governor

RESTRICTIONS: None



State of South Carolina)
)
 County of Spartanburg)

IN THE MAGISTRATE COURT



NOTICE OF INITIAL APPEARANCE

You must attend an Initial Appearance to be held at the Spartanburg County Judicial Center at a time and date that appears on your Appearance Bond. The location for this appearance is the East Courtroom on the second floor of the Judicial Center, 180 Magnolia Street, Spartanburg, South Carolina.

THIS ATTENDANCE IS MANDATORY AND FAILURE TO APPEAR WILL RESULT IN A BOND VIOLATION AND A BENCH WARRANT ISSUED FOR YOUR ARREST.

Should you not obtain a lawyer for any reason, at the Initial Appearance, you must remain in court until excused by the court, and you must report for each succeeding term of court until your case is ended.

The date and time of your Initial Appearance is:

12/2/05 9 AM

Judge's Signature

Date

9/20/05

Defendant's Signature

Defendant's Name (printed)

Donald Johnson

Andy Johnson Attorney

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

The Honorable J. Derham Cole, Circuit Court Judge

Case Nos. 06-GS-42-1618, 06-GS-42-1619, 06-GS-42-1620,
06-GS-42-1621, 06-GS-42-1622

The State,.....Respondent

v.

Donald Hugh Johnson,.....Appellant

NOTICE OF INTENT TO APPEAL

Donald Hugh Johnson appeals his convictions and sentences in this case. The sentences were imposed by the Honorable J. Derham Cole on June 12, 2007. Appellant received notice of the same on that date.

June 19, 2007.



ANDREW J. JOHNSTON

PO BOX 3252

SPARTANBURG, SC 29304

(864) 591-1093

ATTORNEY FOR APPELLANT

Other Counsel of record:

Alan Wilson, Esquire

Assistant Attorney General

Office of the Attorney General

PO Box 11549

Columbia, SC 29201

SHERRILL CIVIL

2007 JUN 20 PM 4:07

Media Coverage of Court Proceedings

STATE OF SOUTH CAROLINA

COUNTY OF: SpartanburgDonald Johnson ^{-vs-}IN THE COURT OF: Judge Cole

Request for Electronic and Photographic Coverage Of Judicial Proceedings

Pursuant to Rule 605, South Carolina Appellate Court Rules, the undersigned hereby requests permission to use equipment in order to record, photograph or televise all or portions of the proceedings in the above captioned case.

Consistent with Rule 605, the undersigned desires to use the following equipment:

Camera, tripod

The proceedings that the undersigned desires to record, photograph or televise commence on:

6/11/07

The personnel who will be responsible for the operation of this equipment are:

Jason Parker - Chris Cato

The undersigned hereby certifies that the operation of the equipment and the conduct of the personnel will be in conformity with Rule 605.

This 11th day of July, 2007.



(Individual Signature)

WSPA

(Representing/ Firm)

Reporter

(Position)

ZSO International DrSpartanburg, SC 29150

(Address)

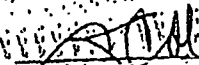
(864) 644-5874

(Telephone Number)

RECEIVED BY:

Approved

Date:

6/11/07
Presiding Judge

STATE OF SOUTH CAROLINA)

)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG)

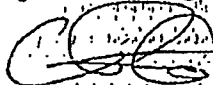
)

IN RE: RULE 605, SOUTH CAROLINA)
 APPELLATE COURT RULES: BROAD-)
 CASTING, TELEVISION, RECORDING,)
 OR PHOTOGRAPHING PROCEEDINGS)
 IN COURT.)

CERTIFICATION

I, Chris Cato, the news director or editor of the below-indicated television, radio, newspaper, or other news-reporting agency, company, or network do hereby certify that the undersigned operator of the equipment, intended to be employed in any authorized electronic and/or photographic recording of a court proceeding, has been instructed with regards to the proper conduct and proper operation of equipment so as to be in strict conformity with *Rule 605, South Carolina Appellate Court Rules*, relating to the coverage of court proceedings by any news-gathering or news-reporting agency.

I, Chris Cato, employed by the below-indicated television, radio, newspaper, or other news-reporting agency, company, or network and the operator of equipment, intended to be employed in the authorized electronic and/or photographic recording of a court proceeding, do hereby certify that I have read the applicable court rule and I have been instructed with regards to and understand the proper conduct and proper operation of equipment required of an operator in order to be in strict compliance with *Rule 605, South Carolina Appellate Court Rules*, relating to the coverage of court proceedings by any news-gathering or news-reporting agency.



NEWS DIRECTOR or EDITOR

WSPA News Channel 7

FIRM OR COMPANY

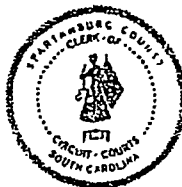
June 11, 2007



EQUIPMENT OPERATOR

WSPA

FIRM OR COMPANY

**MARC KITCHENS**

CLERK OF COURT
SPARTANBURG COUNTY
POST OFFICE BOX 3483
SPARTANBURG, SOUTH CAROLINA 29304

Telephone
864/596-2591
Fax Number
864/596-2239

GAIL MOFFITT

Assistant Clerk of Court

SEALED DOCUMENT AND/OR EXHIBIT FORM

THE FOLLOWING SEALED DOCUMENT AND/OR EXHIBITS WERE ACCEPTED BY:

Angie ClementFROM: Donald JohnsonDATE: 6-12-07CASE # 2006-GS-42-11618-11622State vs Donald Johnson1 envelope



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
 ATTORNEY GENERAL

March 29, 2006

The Honorable Marcus W. Kitchens
 Clerk of Court, Spartanburg County
 Post Office Box 3483
 180 Magnolia Street
 Spartanburg, South Carolina 29304-3483

Re: State v. Donald Hugh Johnson

Dear Mr. Kitchens:

Please find enclosed an original and two copies each of Motion for Discovery, Request for Notice of Intention to Offer a Necessity Defense, Request for Notice of Alibi Defense, and Notice of Insanity Defense or Plea of Guilty but Mentally Ill. I would appreciate your filing the originals and returning the clocked copies in the envelope provided for your convenience.

By copy of this letter, I am serving the same upon Andrew J. Johnston, attorney for the defendant.

Sincerely,

A large, stylized handwritten signature in dark ink, appearing to read "Elizabeth R. McMahon".

Elizabeth R. McMahon
 Assistant Attorney General

ERM/tp

Enclosures

cc: Andrew J. Johnston

MARC KITCHENS

2006 MAR 31 PM 2:17

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
STATE OF SOUTH CAROLINA,)
VS.)
DONALD HUGH JOHNSON,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS

Warrant No.: K-069415

PROSECUTIVE REQUEST
FOR DISCOVERY

TO: Andrew J. Johnston, Attorney for Defendant

WHEREAS, the State of South Carolina, by and through the Office of Attorney General, has complied with the defendant's request for the disclosure of evidence by the prosecution as provided under Rule 5, subdivision (a)(1), SCRCrimP.:

THE STATE OF SOUTH CAROLINA by and through the Office of Attorney General, requests, pursuant to Rule 5 subdivision (b)(1), SCRCrimP., that the defendant's attorney make the following immediately available to the Office of Attorney General for his inspection and copying:

(A) All books, papers, documents, photographs, tangible objects, or copies thereof which are within the possession, custody and control of the defendant and which the defendant intends to introduce in chief at trial.

(B) The results or reports of physical or mental examinations of scientific tests or experiments made in connection with this case, or copies thereof, within the possession or control of the defendant which the defendant intend to introduce in chief at trial or which were prepared by a witness whom the defendant intends to call at trial where the results or reports relate to his/her testimony.

Respectfully submitted,

HENRY MCMASTER
ATTORNEY GENERAL

MARK KITCHENS

By: Elizabeth R. McMahon

Assistant Attorney General

Columbia, South Carolina

March 29, 2006.

FILED
CLERK OF COURT
SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

Warrant No.: K-069415

**PROSECUTIVE REQUEST FOR
NOTICE OF ALIBI DEFENSE**

TO: Andrew J. Johnston, Attorney for Defendant

PURSUANT to Rule 5(e) SCRCrimP., Notice of Alibi, the State requests from the defendant written notice of the defendant's intention to offer an alibi defense to the offense which defendant Donald Hugh Johnson, allegedly committed, namely criminal sexual conduct with a minor in the second degree.

PURSUANT to Rule 5(e)(1) SCRCrimP, if the defendant intends to offer an alibi defense, please state the specific place or places the defendant claims to have been at the time of the alleged offense(s) and the names and addresses of the witnesses upon whom the defendant intends to rely in establishing such alibi. The State further requests all reciprocal discovery to which it is entitled under Rule 5.

Respectfully submitted,

HENRY MCMASTER
ATTORNEY GENERAL

MARC KITCHENS

Elizabeth R. McMahon

Assistant Attorney General

0016148 31 PM 2:18

Columbia, South Carolina

FILED
CLERK OF COURT
SPRINGFIELD COUNTY

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	Warrant No.: K-069415
	)	
DONALD HUGH JOHNSON,	)	
	)	
Defendant.	)	PROSECUTIVE REQUEST FOR NOTICE
	)	OF INTENTION TO OFFER A
	)	NECESSITY DEFENSE

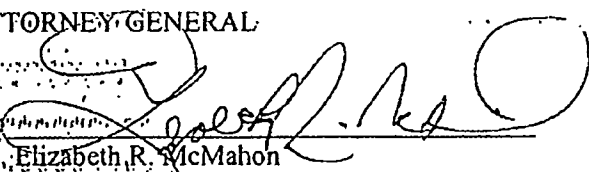
TO: Andrew J. Johnston, Attorney for Defendant

PURSUANT to State vs. Cole, 403 S.E. 2d 117 (1991), the State requests that the defendant supply written notice of intention to offer a necessity defense. If the defendant intends to offer the affirmative defense of necessity, please state the nature of the act or occurrence which constituted the necessity. Please also state the names and addresses of witnesses upon whom the defendant intends to rely in establishing the defense of necessity.

The State further requests all reciprocal discovery to which it is entitled under Rule 5.

Respectfully submitted,

HENRY MCMASTER
ATTORNEY GENERAL

By: 
Elizabeth R. McMahon
Assistant Attorney General

Columbia, South Carolina

March 29, 2006

MARC KITCHENS

2006 MAR 31 PM 2:18

FILED
CLERK OF COURT
SPARTANBURG COUNTY

CERTIFICATE OF SERVICE

I, Maria Therese E. Padua, an employee of the S.C. Attorney General's Office, on behalf of Elizabeth R. McMahon, Attorney for the State of South Carolina, do hereby certify that on the 29th day of March 2006, I served the Attorney for the Defendant with a Request for Discovery, Request for Notice of Intention to Offer a Necessity Defense, Request for Notice of Alibi Defense, and Notice of Insanity Defense or Plea of Guilty but Mentally Ill, by mailing a copy of same by the United States Mail, with sufficient postage attached to:

Andrew J. Johnston
Attorney and Counsel at Law
184 North Daniel Morgan Avenue
Post Office Box 3252
Spartanburg, SC 29304-3252



Maria Therese E. Padua
Legal Assistant

MARC KITCHENS

2006 MAR 31 PM 2:18

FILED
CLERK OF COURT
SPARTANBURG COUNTY

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG	)	
	)	NOTICE OF GENERAL APPEARANCE
STATE OF SOUTH CAROLINA,	)	
	)	
VS	)	WARRANT NO: K069415
	)	CSC WITH A MINOR
DONALD HUGH JOHNSON	)	
	)	
<u>DEFENDANT.</u>	)	

YOU WILL PLEASE TAKE NOTICE, that the undersigned counsel represents the above-named Defendant, in matters relating to the above charges. Please direct all further communications relating to the Defendant and the charges to me, or to my office.

Andrew J. Johnston
 Andrew J. Johnston

Attorney for Defendant
 P O Box 3252
 Spartanburg, SC 29304-3252
 (864) 591-1093

Spartanburg, SC

September 27, 2005

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2005 SEP 27 AM 9:38
 MARC KITCHENS

which are material to the preparation of his defense, or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from, or belonging to, the Defendant.

4. Any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the Attorney for the prosecution [or the prosecutor], 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.

5. All statements, oral or written, made by prosecution witnesses or prospective witnesses.

REQUEST FOR *BRADY* AND OTHER FAVORABLE MATERIAL

YOU WILL PLEASE TAKE NOTICE that the Defendant, through his undersigned counsel, requests the following information and, if not received, will move before the presiding Judge of the appropriate jurisdiction, ten (10) days after the service of this request, or as soon thereafter as counsel can be heard, for an Order compelling the production of:

1. Any and all exculpatory information that is, now, or has been, or may come to the attention of the prosecution, police or any other person or agency associated with the prosecution in this case, until the conclusion of this matter by trial and appeal, as required under the mandate of *Brady vs Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963).

2. Any information or evidence which might tend to mitigate the offense(s) with which the Defendant is charged, to reduce his punishment, or to show that the Defendant is guilty only of a lesser offense.

3. Copies of any and all records, memoranda and documents, as well as the statement of the prosecutor and all appropriate state, federal and local law enforcement agencies and associated agencies or persons, as to:

(a) Any and all promises, rewards or inducements made to all witnesses by the prosecution, or other investigative agency, without regard to whether they will testify at the trial herein; included are offers of assistance with any conditions of the witness' present or future incarceration and any offers of assistance relative to the witness' release from incarceration, whether by parole or otherwise; and

(b) Any offers or grants as to any witnesses of immunity, lack of prosecution or reduced punishment in this or any other case, or as to loss of property, fine, forfeiture, whether directly related or not; and

(c) Whether any witness who has or will give a statement to any investigative agency, or at trial, has ever been psychiatrically hospitalized or undergone psychiatric examination, treatment, mental status examination or care, and, if so, a list of names and addresses of the psychiatrist, hospitals and copies of any and all relevant records and reports; and

(d) Any inconsistent statements of a particular witness or between witnesses; and

(e) Any and all "rap" sheets or histories of arrests and/or convictions of any state's witness, co-defendant or any unindicted co-conspirator; and

(f) Any statement or admission by a state's witnesses with respect to the witness' memory or loss thereof; and

(g) Any threats or other indications of possible reprisal or any unfavorable consequences which have been made to a state's witness offered to influence the testimony of such witness by the prosecution or any prosecution agent. This request includes, but is not limited to, whether the possibility of any criminal charges being made against such witness or member of the witness' family has been posed to such witness.

For the purposes of this Request, the Defendant asserts that any item requested herein is material to the preparation of the defense in this case. This request is based upon the United States Supreme Court decision in *Brady*, its progeny, as well as the language and spirit of *Giglio vs.*

United States, 405 U.S. 150, 92 S.Ct. 763 (1972); *United States vs. Tashman*, 478 F.2d 129 (5th Cir. 1973); and *Napue vs. Illinois*, 360 U.S. 264, 79 S.Ct. 1173 (1959).

REQUEST FOR IMPEACHMENT EVIDENCE

YOU WILL PLEASE TAKE NOTICE that the Defendant, through his undersigned counsel, requests the following information and if not received, will move before the presiding Judge of the appropriate jurisdiction, ten (10) days after the service of this request, or as soon thereafter as counsel can be heard, for an Order compelling the production of any and all impeachment information that is now, or has been, or may come to the attention of the prosecution, police or any other person or agency associated with the prosecution in this case, until the conclusion of this matter by trial and appeal, as required under the mandate of *Kyles v. Whitley*, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed. 2nd 49 (1995). See also, *U.S. v. Bagley*, 473 U.S. 667, 105 S. Ct. 3375 (1985). This request includes impeachment evidence as to the testimony of any state's witness or to any argument or position, which might be taken by the prosecution at trial.

DEMAND FOR IN COURT APPEARANCE OF ALL STATE'S WITNESSES UNDER

RULE 6 SCRCrimP

Pursuant to Rule 6, SCRCrimP, Defendant hereby gives notice to the prosecution that the in-court appearance of all witnesses is demanded for the purpose of personally testifying. This demand includes any chemical or drug analysts and all witnesses in a chain of custody.



ANDREW J. JOHNSTON
ATTORNEY FOR THE DEFENDANT
POST OFFICE BOX 3252

SPARTANBURG, SOUTH CAROLINA 29304
(864) 591-1093

SPARTANBURG KITCHENS

2005 SEP 27 AM 9:39

SPARTANBURG COUNTY

SPARTANBURG, South Carolina



Victim Notification Information

SPARTANBURG COUNTY SHERIFF'S OFFICE

AGENCY I.D. SCO 420000

Victim Information		Case #
Name of Victim:	<u>WARMOTH ASHLEY</u>	Victim is ☐ deceased or ☐ minor
Mailing Address:	<u>107 WILMAN ST. GAFNEY SC 29340</u>	
Telephone #: (H)	<u>489-5154</u>	(B) _____ Emergency # _____
Relative or Contact Person:	<u>PHILLIP WANPA</u>	
Mailing Address:	<u>1100 ELMORE ST. GAFNEY SC 29340</u>	
Telephone #: (H)	<u>423-9948</u>	(B) _____ Emergency # _____
Additional Information or Comments: _____		

In order for Law Enforcement to make a reasonable attempt to contact you of the arrest or detention and of the appropriate bond or other pretrial release hearing or procedure, it is your responsibility to notify the appropriate agency of any change in your address or phone number.

The information given on this form will be provided to the jail, prison, detention or holding facility having physical custody of the defendant. It will also be made available to the prosecuting agency and the Department of Juvenile Justice System, if the defendant is a juvenile.

Court Date Information (if available at time of report)	
State vs _____	Warrant # / Ticket # _____
Date and Time: _____	Location: _____

An arrest or juvenile detention can occur anytime during a 24 hour period. Arraignment may take place within several hours of the arrest. A juvenile detention hearing is usually held within 48 hours of the detention, excluding holidays and weekends. Please, check the boxes below if you do or do not wish to be notified.

I do ☒ I do not ☐ wish to be notified when the defendant is arrested and when arraignment or juvenile detention hearing may take place, anytime day or night.

I do ☒ I do not ☐ wish to be contacted when bond is set, anytime day or night.

I do ☒ I do not ☐ wish to be contacted when the defendant is released from jail, anytime day or night.

As a victim of crime I have received a copy of the Victim Notification Information Form provided to me by the Spartanburg County Sheriff's Office and I agree that the victim information is correct. I have also received a copy of the 1997 Victims and Witness Services Statute.

Signature of person receiving information	Date
<u>[Signature]</u>	<u>9-3-05</u>
Signature of Reporting Officer	Date
<u>[Signature]</u>	<u>090305</u>

WARRANT/DETENTION SCREENING/GREEN COPY OF TRAFFIC TICKET

VICTIM NOTIFICATION OF ARREST/BOND HEARING/RELEASE

WARRANT # 1609415 VICTIM LaMoth, Ashley SUSPECT Johnson, Donald

ARREST/DETENTION

DATE 9/20/05 TIME NOTIFIED 1512 BY Grant PERSON CONTACTED Contact Person

ATTEMPTS:

DATE _____ TIME NOTIFIED _____ BY _____ PERSON CONTACTED _____

DATE _____ TIME NOTIFIED _____ BY _____ PERSON CONTACTED _____

DATE _____ TIME NOTIFIED _____ BY _____ PERSON CONTACTED _____

COMMENTS: Notified victim of arrest/arraign of suspect.

BOND HEARING/JUVENILE DETENTION HEARING

DATE OF BOND HEARING _____ TIME _____ LOCATION _____

RESET DATE _____ TIME _____ LOCATION _____

DATE OF JUVENILE DETENTION HEARING _____ TIME _____ LOCATION _____

RESET DATE _____ TIME _____ LOCATION _____

ATTEMPTS:

DATE _____ TIME NOTIFIED _____ BY _____ PERSON CONTACTED _____

DATE _____ TIME NOTIFIED _____ BY _____ PERSON CONTACTED _____

DATE _____ TIME NOTIFIED _____ BY _____ PERSON CONTACTED _____

COMMENTS: _____

RELEASE/TRANSFER/ESCAPE

DATE _____ TIME NOTIFIED _____ BY _____ PERSON CONTACTED _____

ATTEMPTS:

DATE _____ TIME NOTIFIED _____ BY _____ PERSON CONTACTED _____

DATE _____ TIME NOTIFIED _____ BY _____ PERSON CONTACTED _____

COMMENTS: _____

VICTIM NOTIFICATION FORM

355

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

STATE OF SOUTH CAROLINA

vs.

Johnson, Donald

Check and complete one of the following:



A representative of the Spartanburg County Detention Facility, (the facility having custody of the Defendant), acknowledges that a reasonable attempt was made to notify the victim(s) sufficiently in advance of the bond hearing.

Name of Victim(s)

Wormoth, Ashley

(minor)

OR



A representative of the Spartanburg County Detention Facility, (the facility having custody of the Defendant),* indicates the victim(s) did not wish to be notified of the bond hearing.

Name of Victim(s)

A Grant

(Representative's Signature)*

[Signature]
(Judge's Signature)

* Or the arresting officer if Defendant is brought directly before the Judge.

WITNESSES

SENTENCE HAZARD ☒
Investigator Kevin Bobo ☒

ARREST WARRANT NUMBER

(K-06915)
Direct

- 1. CAPTURED ☒
- 2. ~~FILED~~ ☒
- 3. CHARGE WAIVED ☒
- 4. CHARGE FILED ☒
- 5. ASSIGNED TO COURT ☒
- 6. FINE ☒

ACTION OF GRAND JURY

True Bill

Angie Cronan

Foreperson of Grand Jury
Date: 05-11-06

VERDICT

Guilty

James B. Spivey

Foreperson of Petit Jury
Date: 06-12-07

Docket Number 2006-GS-42-1619

The State of South Carolina
County of Spartanburg

COURT OF GENERAL SESSIONS

May 2006 Term

THE STATE

VS.

DONALD HUGH JOHNSON

DEFENDANT

INDICTMENT FOR

CRIMINAL SEXUAL CONDUCT WITH
MINORS, SECOND DEGREE

CDR Code: 397

S.C. CODE §16-3-655

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I, _____ hereby appear in my own proper person and plead guilty to the within indictment or to _____

Defendant

Witness

C.C.C. Pls. And G.S.

2006 MAY 15 PM 3:55
MARCO HATCHERS

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAY 11 2006, the
Grand Jurors of Spartanburg County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH MINORS, SECOND DEGREE

That Donald Hugh Johnson, did in Spartanburg County, South Carolina, between the time on or about January 11, 2002, and January 10, 2004, engage in sexual battery, as defined in S.C. Code Ann. § 16-3-651, with the victim, ~~Ashey~~ ~~Warmoth~~, with date of birth ~~January 11~~, 1988, who was at least fourteen years of age but who was less than sixteen years of age. The defendant was in a position of familial, custodial, or official authority to coerce the victim to submit or was older than the victim, to wit: the defendant did cause the victim to perform fellatio upon the defendant and/or the defendant did perform cunnilingus upon the victim, in violation of §16-3-655 (3), *CODE OF LAWS OF SOUTH CAROLINA* (1976), as amended.

Against the peace and dignity of the State, and contrary to the common law in such cases made and provided.



HENRY MCMASTER (ERM)
SOUTH CAROLINA ATTORNEY

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

SPARTANBURG

VS.

DONALD HUGH JOHNSON

AKA:

Race:

W

Sex:

M

Age:

DOB:

11-9-41

SS#:

Address:

2006 Red Raven Dr.

City, State, Zip

Greer 29651

DL#

SID#

INDICTMENT/CASE#:

2006

GS-

42

1619

AW#:

K1069415

Date of Offense:

1/11/02 - 1/10/04

S.C. Code §:

16-3-655

CDR Code #:

0131917

☐ CASE RESTORED

SENTENCE

☐ PLEA☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: CSC WITH MINOR 2

in violation of § 16-3-655 of the S.C. Code of Laws, bearing CDR Code # 0131917

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Clerk of Court
A.A.G.

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$

\$14-1-206 (Assessments 107.5%) \$

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$

\$56-5-2995 (DUI Assessment) \$12 \$

\$35.13 (Public Def/Prob) \$500 \$

\$73.3, 1B TP (Law Enforce. Funding) \$25 \$0.00

\$33.7, 1B TP (Drug Court Surcharge) \$100 \$

\$50-21-114 (BUI Breath Test Fee) \$50 \$

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$

TOTAL \$128.13

Clerk of Court/Deputy Clerk

Court Reporter: Linda M. Pickett

SCCA/217 (2/2006)

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

PRESIDING JUDGE

Judge Code:

Sentence Date:

2006 12 13



RECEIVED
JAN 07 2010 359
ATTORNEY GENERALS
OFFICE

The South Carolina Court of Appeals

JEANETTE F. BAIBER
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMNER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1500
FAX: (803) 734-1579
www.sccourts.org

January 7, 2010

REMITTITUR

The Honorable Marcus W. Kitchens
180 Magnolia Street
PO Box 3483
Spartanburg, SC 29304-3483

Re: The State v. Johnson, Donald Hugh
2006-GS-42-01618 ✓ 2006-GS-42-01619 ✓ 2006-GS-42-01620 ✓
2006-GS-42-01621 ✓ 2006-GS-42-01622 ✓

Dear Mr. Kitchens:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

The Exhibits being returned are: State's Exhibits 2, 3, 4 (photographs). Please sign attached copy of this letter and return to acknowledge receipt of these items.

Sincerely,

Renee S. Johnson
Administrative Specialist

cc: Tara Shurling, Esquire
Assistant Attorney General Deborah R. J. Shupe

Receipt Acknowledgement:

Name: _____ Date: _____

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent.

v.

Donald Hugh Johnson,

Appellant.

Appeal From Spartanburg County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2009-UP-606
Submitted December 13, 2009 – Filed December 22, 2009

AFFIRMED

~~'Tara Shurling of Columbia' for Appellant.~~

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, and Assistant Attorney General Deborah R. J. Shupe, all of Columbia, for Respondent.

PER CURIAM: Donald Hugh Johnson appeals his convictions for three counts of criminal sexual conduct with a minor in the second degree, one count of contributing to the delinquency of a minor, and one count of committing or attempting a lewd act upon a child under sixteen. Johnson argues the trial court erred in allowing the Victim's testimony about Johnson's attempt to have sexual intercourse with her because Johnson was charged with less egregious crimes. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authority: State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-4 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal.").

AFFIRMED.

WILLIAMS, PIEPER, and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JEANETTE F. BARBER
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
WWW.SCCOURTS.ORG

January 7, 2010

REMITTITUR

The Honorable Marcus W. Kitchens
180 Magnolia Street
PO Box 3483
Spartanburg, SC 29304-3483

Re: The State v. Johnson, Donald Hugh
2006-GS-42-01618 2006-GS-42-01619 2006-GS-42-01620
2006-GS-42-01621 2006-GS-42-01622

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Sincerely,

Renee S. Johnson
Renee S. Johnson

Administrative Specialist

cc: Tara Shurling, Esquire
Assistant Attorney General Deborah R. L. Shupe

Receipt Acknowledgement

Name: Charles Shupe Date: 1/11/10

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

The State,

Respondent,

v.

Donald Hugh Johnson,

Appellant.

Appeal From Spartanburg County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2009-UP-606,
Submitted December 1, 2009 – Filed December 22, 2009.

AFFIRMED

Tara Shurling, of Columbia, for appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
and Assistant Attorney General Deborah R. J. Shupe,
all of Columbia, for Respondent.

PER CURIAM: Donald Hugh Johnson appeals his convictions for three counts of criminal sexual conduct with a minor in the second degree, one count of contributing to the delinquency of a minor, and one count of committing or attempting a lewd act upon a child under sixteen. Johnson argues the trial court erred in allowing the Victim's testimony about Johnson's attempt to have sexual intercourse with her because Johnson was charged with less egregious crimes. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authority: State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-4 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal.").

AFFIRMED.

WILLIAMS, PIEPER, and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JEANETTE F. BARBER
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TELEPHONE: (803) 734-1890
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www.sccourts.org

January 7, 2010

REMITTITUR

The Honorable Marcus W. Kitchens
180 Magnolia Street
PO Box 3483
Spartanburg, SC 29304-3483

Re: The State v. Johnson, Donald Hugh
2006-GS-42-01613 2006-GS-42-01619 2006-GS-42-01620
2006-GS-42-01621 2006-GS-42-01622

Dear Mr. Kitchens:

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Sincerely,

Renee S. Johnson
Administrative Specialist

JAG/TG/rj

cc: Tara Shurling, Esquire
Assistant Attorney General Deborah R. J. Shupe

Receipt Acknowledgement:

Name:

Charles Shupe

Date:

1/11/10



W/366

06-1628

HENRY MCMASTER
ATTORNEY GENERAL

February 5, 2010

The Honorable Ponda Caldwell
Post Office Box 3483
Spartanburg, South Carolina 29304-3483

RE: State v. Donald Hugh Johnson

Dear Ms. Caldwell:

In its Opinion No. 09-UP-606, filed December 22, 2009, the South Carolina Court of Appeals affirmed the above appeal. The Remittitur has been sent to the Spartanburg County Clerk of Court. Therefore, with this letter, we are closing our direct appeal file in this matter.

This Office has verified through the South Carolina Department of Corrections' computer that Mr. Johnson is presently incarcerated.

Please ensure that the conviction and sentence have been carried out.

Sincerely,

Deborah R.J. Shupe
Assistant Attorney General

DRJS:erd

Enclosure

cc: Susan Porter, Esquire
David M. Tatársky, Esquire
Ms. Trisha Allen, Victim Services

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 FEB 10 PM 2:48

W

WITNESSES

Investigator Kevin Bobo
Spartanburg

INDEXED
CHECKED W.A. CLARKE
CHECKED SIGNATURES
ARREST WARRANT NUMBER
(K-06913) FIC VIOLATIONS COPY
Direct

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: 05-11-07
VERDICT
Guilty
James B. DeLobering
Foreperson of Petit Jury
Date: 6-12-07

Docket Number 2006-GS-42-1620

The State of South Carolina
County of Spartanburg

COURT OF GENERAL SESSIONS

May 2006 Term

THE STATE

VS.

DONALD HUGH JOHNSON

DEFENDANT

INDICTMENT FOR

CRIMINAL SEXUAL CONDUCT WITH
MINORS, SECOND DEGREE

CDR Code: 397
S.C. CODE §16-3-655

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness

C.C. B. And G.S.

2006 MAY 15 PM 3:50
MARC KITCHENS

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAY 11 2006, the
Grand Jurors of Spartanburg County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH MINORS, SECOND DEGREE

That Donald Hugh Johnson, did in Spartanburg County, South Carolina, between the time on or about January 11, 2002, and January 10, 2004, engage in sexual battery, as defined in S.C. Code Ann. § 16-3-651, with the victim, Ashley Warner, with date of birth January 11, 1988, who was at least fourteen years of age but who was less than sixteen years of age. The defendant was in a position of familial, custodial, or official authority to coerce the victim to submit or was older than the victim, to wit: the defendant did penetrate the victim with a vibrator in violation of §16-3-655 (3), CODE OF LAWS OF SOUTH CAROLINA (1976), as amended.

Against the peace and dignity of the State, and contrary to the common law in such cases made and provided.


HENRY MCMASTER (ERM)
SOUTH CAROLINA ATTORNEY

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE VS.
DONALD HUGH JOHNSON
AKA: W
Race: W Sex: M Age:
DOB: 12-4-41 SS#:
Address: 208 Red Raven Dr
City, State, Zip: GREER 29651
DL# SID#

INDICTMENT/CASE#: 2006 -GS- 42 - 1620
AW#: K 069415
Date of Offense: 1-11-02 - 1-10-04
S.C. Code §: 16-3-655
CDR Code #: 0131917
☐ CASE RESTORED
SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS

TO: CSC WITH MINOR 2

in violation of § 16-3-655 of the S.C. Code of Laws, bearing CDR Code # 0131917

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Alan Wilson Solicitor A.A.G.
Donald H. Johnson Defendant
James H. Johnson Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived; ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☒ set by SCDPPPS:

Recipient:

*Fine: \$

\$14-1-206 (Assessments 107.5%) \$

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$

\$56-5-2995 (DUI Assessment) \$12 \$

\$35.13 (Public Def/Prob) \$500 \$

\$73-3, 1B TP (Law Enforce. Funding) \$25 \$ 05.00

\$33-7, 1B TP (Drug Court Surcharge) \$100 \$

\$50-21-114(BUI Breath Test Fee) \$50 \$

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2

Sentence Date: June 12, 2007

Court Reporter: Shirley H. Hight

SCCA/217 (2/2006)

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant



The South Carolina Court of Appeals

JEANETTE F. BARBER
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMMIT STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
WWW.SCCOURTS.ORG

January 7, 2010

REMITTITUR

The Honorable Marcus W. Kitchens
180 Magnolia Street
PO Box 3483
Spartanburg, SC 29304-3483

Re: The State v. Johnson, Donald Hugly
2006-GS-42-01618 2006-GS-42-01619 2006-GS-42-01620
2006-GS-42-01621 2006-GS-42-01622

Dear Mr. Kitchens:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

The Exhibits being returned are: State's Exhibits 2, 3, 4 (photographs). Please sign attached copy of this letter and return to acknowledge receipt of these items.

Sincerely,

Renee S. Johnson
Administrative Specialist

JAG/IG/rj

cc: Tara Shurling, Esquire
Assistant Attorney General Deborah R. J. Shupe

Receipt Acknowledgement:

Name: Charles Hardy Date: 1/11/10

WITNESSES

Investigator Kevin Bobo

SENTENCE MADE

ARREST MADE

FILED

JURY

JURY

JURY

JURY

JURY

JURY

JURY

JURY

JURY

JURY

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JURY

JURY

JURY

JURY

JURY

ACTION OF GRAND JURY*Tina Bill**Amy E. Lunsden*

Foreperson of Grand Jury

Date: 05-11-06

VERDICT*Guilty**James B. Deneberry*

Foreperson of Petit Jury

Date:

6-12-07

Docket Number 2006-GS-42-1621

The State of South Carolina
County of SpartanburgCOURT OF GENERAL SESSIONS

May 2006 Term

THE STATE

VS.

DONALD HUGH JOHNSON

DEFENDANT

INDICTMENT FORCONTRIBUTING TO DELINQUENCY
OF A MINOR

CDR Code: 48

S.C. CODE §16-17-490

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I, _____, hereby appear in my own proper person and plead guilty to the within indictment or to _____

Defendant

Witness:

C.C.C. Pls. And G.S.

FILED
2006 MAY 15 PM 3:50
MARC HITCHENS

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAY 11 2006, the
Grand Jurors of Spartanburg County present upon their oath:

CONTRIBUTING TO DELINQUENCY OF A MINOR

That Donald Hugh Johnson, did in Spartanburg County, South Carolina, between the time on or about August 1, 2001, and January 10, 2005, being a person over eighteen years of age between August 1, 2001, and January 10, 2005, did knowingly and willfully encourage, aid or cause or did an act or acts which caused or influenced one Ashley Warmoth, with date of birth January 19, 1988, being a minor under (17) seventeen years of age, to violate the laws of this State of South Carolina to wit: the defendant did encourage Ashley Warmoth to engage in sexual behavior and/or did encourage and/or provide Ashley Warmoth with alcohol in violation of §16-17-490, *CODE OF LAWS OF SOUTH CAROLINA* (1976), as amended.

Against the peace and dignity of the State, and contrary to the common law in such cases made and provided.


HENRY MCMASTER (ERM)
SOUTH CAROLINA ATTORNEY

Computer

373

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Spartanburg

VS.
Donald Hugh Johnson

AKA:

Race: W Sex: M Age: 66

DOB: 01/15/1944 SS#:

Address: 206 Don Kappa Dr.

City, State, Zip Greer, SC 29651

DL# SID#

INDICTMENT/CASE#:

2006 GS- 42 1621

AW#: Direct Indictment

Date of Offense: 03/01/2005 - 01/10/2005

S.C. Code §: 16-17-490

CDR Code #: 0101418

☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Contributing to the Delinquency of a Minor

in violation of § 16-17-490 of the S.C. Code of Laws, bearing CDR Code # 0101418

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Alan Wilson

Solicitor Asst. AG

Donald H Johnson

Defendant

William Cole

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%) \$ _____

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$700.00

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

\$56-5-2995 (DUI Assessment) \$12 \$ _____

\$ 35.13 (Public Def/Prob) \$500 \$ _____

\$73.3; 1B TP (Law Enforce. Funding) \$25 \$55.00

\$33.7; 1B TP (Drug Court Surcharge) \$100 \$ _____

\$50-21-114(BUI Breath Test Fee) \$50 \$ _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea. \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

William Cole

2101513

June 12, 2007

Clerk of Court/ Deputy Clerk

Court Reporter: Linda Ruff

SCCA/217 (2/2006)

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant



The South Carolina Court of Appeals

JEANETTE F. BARBER
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 7, 2010

REMITTITUR

The Honorable Marcus W. Kitchens
180 Magnolia Street
PO Box 3483
Spartanburg, SC 29304-3483

Re: The State v. Johnson, Donald Hugh
2006-GS-42-01618 2006-GS-42-01619 2006-GS-42-01620
2006-GS-42-01621 2006-GS-42-01622

Dear Mr. Kitchens:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

The Exhibits being returned are: State's Exhibits 2, 3, 4 (photographs). Please sign attached copy of this letter and return to acknowledge receipt of these items.

Sincerely,

Renee S. Johnson
Renee S. Johnson
Administrative Specialist

JAG/TG/rj

cc: Tara Shurling, Esquire
Assistant Attorney General Deborah R. J. Shupe

Receipt Acknowledgment:

Name:

Charlotte Hardy

Date:

1/11/10

WITNESSES

Investigator Kevin Bobo

SEAL UNDER WATER
1. RETURNED
2. CARD INDEXED
3. INDEXED
4. INDEXED
5. CHECKED
6. ARREST WARRANT NUMBER
7. ASSESSMENT AND
K-06915
TRANSCRIPTIONS COPY

ACTION OF GRAND JURY

True Bill

Angie E. Currier

Foreperson of Grand Jury
Date: 05-11-06

VERDICT

Guilty

James B. Dineberry

Foreperson of Petit Jury
Date: 6-12-07

Docket Number 2006-GS-42-1622

The State of South Carolina
County of Spartanburg

COURT OF GENERAL SESSIONS

May 2006 Term

THE STATE

VS.

DONALD HUGH JOHNSON

DEFENDANT

INDICTMENT FOR

COMMITTING OR ATTEMPTING
LEWD ACT UPON CHILD UNDER
SIXTEEN

CDR Code: 2468

S.C. CODE §16-15-140

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I, _____ hereby appear in my own proper person and plead guilty to the within indictment or to _____

Defendant

Witness:

C.C.C. PIs. And G.S.

FILED
2006 MAY 15 PM 3:50
MARC HITCHENS

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG)

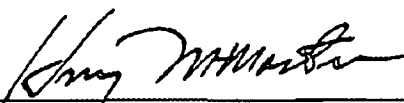
INDICTMENT

At a Court of General Sessions, convened on MAY 11 2006, the
Grand Jurors of Spartanburg County present upon their oath:

COMMITTING OR ATTEMPTING LEWD ACT UPON CHILD UNDER SIXTEEN

That Donald Hugh Johnson, being over fourteen (14) years of age, did in Spartanburg County, South Carolina, between the time on or about August 1, 2001, and January 10, 2004, wilfully and lewdly commit or attempt to commit a lewd and lascivious act upon or with the body, or its parts, of Ashley Warmoth, date of birth January 11, 1988, a minor child under the age of sixteen (16) years at the time of the said incident, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the person or of the child, in violation of §16-15-140, CODE OF LAWS OF SOUTH CAROLINA (1976), as amended.

Against the peace and dignity of the State, and contrary to the common law in such cases made and provided.


HENRY MCMASTER (ERM)
SOUTH CAROLINA ATTORNEY

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Spartanburg
 STATE Donald VS. Hugh Johnson
 AKA:
 Race: W Sex: M Age: 66
 DOB: 01/05/1941 SS#: [REDACTED]
 Address: [REDACTED]
 City, State, Zip: Greer, SC 29615
 DL# _____ SID# _____

Computer

2006 INDICTMENT/CASE#: 16 22
 GS: 42
 AWW#: Direct Indictment
 Date of Offense: 08/01/2001 - 01/10/2004
 S.C. Code §: 16-15-140
 CDR Code #: 21 41 6 18
☐ CASE RESTORED
☐ SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Lewd Act on a Minorin violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2, 4, 6, 8
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Alan Wilson
 Solicitor Asst. AG

Donald H. Johnson
 Defendant

[Signature]
 Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*, the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms:

☐ set by SCOPPPS

Obtain GED

Attend Voc. Rehab. or Job Corp:

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$ 35.13 (Public Del/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

PRESIDING JUDGE

Judge Code: 2 1 0 1 5 1 3Sentence Date: June 12, 2007

Clerk of Court Deputy Clerk

Court Reporter: [Signature]

SCCA/217 (2/2006)

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant



The South Carolina Court of Appeals

JEANETTE F. BARBER
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
WWW.SCCOURTS.ORG

January 7, 2010

REMITTITUR

The Honorable Marcus W. Kitchens
180 Magnolia Street
PO Box 3483
Spartanburg, SC 29304-3483

Re: The State v. Johnson, Donald Hugh
2006-GS-42-01618 2006-GS-42-01619 2006-GS-42-01620
2006-GS-42-01621 2006-GS-42-01622

Dear Mr. Kitchens:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

The Exhibits being returned are: State's Exhibits 2, 3, 4 (photographs). Please sign attached copy of this letter and return to acknowledge receipt of these items.

Sincerely,

Renee S. Johnson
Administrative Specialist

cc: Tara Shurling, Esquire
Assistant Attorney General Deborah R. J. Shupe

Receipt Acknowledgement:

Name: Charles Shupe Date: 1/11/10

7376

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 11/30/10
DMCOMITA RELEASE DATE SCREEN C048593

SCDC# > 7322348 LOC: BROAD RIVER

JOHNSON, DONALD HUGH SCDC CLASSIFICATION... VIOLENT

OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY... Y

SEXUAL PREDATOR...: PENDING

DNA STATUS...: COMPLETED

GPS REQUIREMENT...: Y

PREA DECISION...:

CURRENT SENTENCE: 018-00-000

CONSECUTIVE SENTENCE ...: N

018-00-000

CURRENT SENT START DATE: 06/12/2007

PROJECTED COMPLETION DATES

MAXOUT DATE ...: 09/25/2022

CURRENT EWC ...: 3 F 5

YOA SIX YEAR DATE: / /

CURRENT EEC ...: NOT CURRENTLY EARNING EEC

INITIAL PAROLE DATE: 00/00/0000

NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED ...: 000000

LABOR CREW/WORK PROG DATE: 99/99/9999

TOTAL EARNED WORK CREDITS ...: 000297

LABOR CREW DISQ REASON:

TOTAL EDUCATION CREDITS ...: 000000

CURRENT OR PRIOR SEX CONDUCT CONVICT

TOTAL EXTRA EARNED CREDITS ...: 000

TOTAL SERVICE TIME EARNED ...: 001248

PFKEYS: 5: HISTORY OF DATE CHANGES

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 11/30/10

C0485

JOHNSON, DONALD HUGH FBI # 195959KC7 SID# SC01654333 SCTC # 322348

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ...: BROAD RIVER CORR. INST.

SECURITY/CUST.: 3 MINIMUM IN

CURR INCARC SENT...: 18 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: YES SEPREQ

SOCIAL SECURITY #...: 247647434

DORM.....: C0141B

RACE....:W SEX....:M

PROJ MAXOUT DATE: 09/25/2022

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: WARDKEEPER ASSISTANT

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 3F5 EEC LEVEL:

ASSIGNMENT...: WARD HELPER

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 69 DATE OF BIRTH...: 1/5/41

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE			COUNTY	SENTENCE			U/NU	CATEGORY
	YRS	MOS	DYS		START				
CONTRIB DELINQ MINOR	3	0	0	SPARTANBUR	6/12/20	7	N		2
CRIM SEX COND.W/MINOR(2N	18	0	0	SPARTANBUR	6/12/20	7	U		4
LEWD ACT/CHILD UNDER 16	15	0	0	SPARTANBUR	6/12/20	7	N		4
CRIM SEX COND.W/MINOR(2N	18	0	0	SPARTANBUR	6/12/20	7	U		4

PRIOR COMMITMENTS OVER 90 DAYS:

INMATE HAS NO PRIORS

DETAINERS (HOLD,WANTED,NOTIFY):

NO DETAINERS

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES WHILE IN CUSTODY

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

NO NON-ASSAULTIVE DISCIPLINARY HISTORY

HISTORY OF MOVEMENTS:

DATE	LOCATION	STATUS	REASON
12/ 6/ 7	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
12/ 6/ 7	KIRKLAND	INCARCERATED	MEDICAL
11/20/ 7	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
11/20/ 7	KIRKLAND	INCARCERATED	MEDICAL
9/18/ 7	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
9/12/ 7	MCCORMICK	INCARCERATED	ADMINISTRATIVE
6/13/ 7	KIRKLAND	INCARCERATED	R&E PROCESSING
6/13/ 7	PERRY	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB	START	END	TERMINATION	JOB
DESCRIPTION	DATE	DATE	REASON	LVL
WARDKEEPER ASSISTANT	09/27/07	0/ 0/ 0		YF5

HISTORY OF EARNED EDUCATION CREDITS:

EEC	START	END	TERMINATION
DESCRIPTION	DATE	DATE	REASON

NO SCHOOL ASSIGNMENTS

***** END OF REPORT *****

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Spartanburg

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

INDICTMENT/CASE#:

2006

GS-

42

1621

AW#:

Direct Indictment

Date of Offense:

08/01/2005 - 01/10/2005

S.C. Code §:

16-17-490

CDR Code #:

0101418

☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Contributing to the Delinquency of a Minor

in violation of § 16-17-490 of the S.C. Code of Laws, bearing CDR Code #

0101418

☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Ethan Wilson

Solicitor Asst. AG

Donald H. Johnson

Defendant

[Signature]

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:

\$14-1-206 (Assessments 107.5%) \$ _____

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

\$56-5-2995 (DUI Assessment) \$12 \$ _____

\$35.13 (Public Def/Prob) \$500 \$ _____

\$73.3, 1B TP (Law Enforce. Funding) \$25 \$50.00

\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

\$50-21-114(BUI Breath Test Fee) \$50 \$ _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: _____

☒ Appointed PD or appointed other counsel, \$35.13 TP
 Requires \$500 be paid to Clerk during probation.

 A CERTIFIED COPY
 PRESENTING JUDGE
 Judge [Signature]

CLERK Sentence Date: _____

SPARTANBURG COUNTY

DATED: _____

Green - Collection

Canary - Probation

Pink - Defendant

Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

SCCA/217 (2/2006)

White - Clerk

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

VS.

AKA:

Race:

Sex:

Age:

DOB:

SSN:

Address:

City, State, Zip

DL#

SID#

INDICTMENT/CASE#:

2006

GS:

42

1622

AW#:

Direct Indictment

Date of Offense:

09/01/2001 - 01/10/2004

S.C. Code §:

16-15-140

CDR Code #:

2141618

☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Lewd Act on a Minorin violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2141618☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

William W. O'Brien
Solicitor Asst. AGDonald Hugh Johnson
Defendant[Signature]
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$100

\$100

\$12

\$500

\$25

\$100

\$50

\$40/ea

\$100

\$100

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

A CERTIFIED COPY

PRESIDING JUDGE

Judge

Sentence Date

Clerk of Court/Deputy Clerk
Court Reporter: [Signature]

SCCA/217 (2/2006)

White - Clerk

Green - Probation

Pink - Defendant

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
 STATE OF SOUTH CAROLINA VS. RONALD HUGH JOHNSON
 AKA: _____
 Race: W Sex: M Age: _____
 DOB: 12-3-41 SS#: _____
 Address: 208 KEN KIRK DR
 City, State, Zip: GREEN 29651
 DL# _____ SID# _____

INDICTMENT/CASE#: 2006 GS-42-1619
 AWW#: K1069415
 Date of Offense: 1/11/02 - 1/10/04
 S.C. Code §: 16-3-655
 CDR Code #: 131917
☐ CASE RESTORED
 SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: CSC WITH MINOR 2In violation of § 16-3-655 of the S.C. Code of Laws, bearing CDR Code # 131917
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor A.H.G.Defendant Ronald H. JohnsonAttorney for Defendant [Signature]

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
 which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
§ 35.13 (Public Def/Prob)	\$500	\$
\$73.3, 1B TP (Law Enforce. Funding)	\$25	\$0.00
\$33.7, 1B TP (Drug Court Surcharge)	\$100	\$
\$50-21-114(BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$
TOTAL		\$128.00

PTUP _____

days/hours Public Service Employment _____

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☒ Appointed PD or appointed other counsel, §35.13 TP
 Requires \$500 be paid to Clerk during probation.

A CERTIFIED COPY JUDGE

Judge Code: 121561513Sentence Date: June 13, 2007

CLERK OF COURT

SPARTANBURG COUNTY

Dated: 6-13-07 D.C.Clerk of Court/Deputy Clerk: [Signature]Court Reporter: [Signature]

SCCA/217 (2/2006)

White - Clerk

Pink - Defendant

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE VS.

INDICTMENT/CASE#:

DONALD HUGH JOHNSON7006 -GS- 42 - 11020AKA: AKAAW#: K 01-7-115Race: Black / Sex: M Age: Date of Offense: 1-11-02 - 1-10-04DOB: 11-3-41 SS#: S.C. Code §: 16-3-655Address: 215 KEN RAY RDCDR Code #: 0131917City, State, Zip: GREEN 29651☐ CASE RESTOREDDL# SID#

SENTENCE

☐ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADSTO: CSC WITH MINOR 721in violation of § 16-3-655 of the S.C. Code of Laws, bearing CDR Code # 0131917☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

William A. G.
Solicitor A.A.G.Donald H. Johnson
DefendantWilliam A. G.
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 19 days/months/years or ☐ under the Youthful Offender Act not to exceed 7 years and/or-to-pay-a-fine-of-\$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

☐ set by SCDPPPS

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning\$ paid to Public Defender FundOther:

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$ 35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$128.13

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.Clerk of Court/Deputy Clerk
William A. G.Court Reporter: William A. G.

SCCA/217 (2/2006)

White - Clerk

A CERTIFIED COPY
PRESIDING JUDGE
Judge's Signature: William A. G.
Sentence Date: 12/12/07
CLERK OF COURT
SPARTANBURG COUNTY
GATED 0-12-11 D.C.

Probation

Pink - Defendant

COURT OF COMMON PLEAS

2010-CP-42-05375

DONALD HUGH JOHNSON,

Applicant,

-VS-

THE STATE OF SOUTH CAROLINA,

Respondent.

TRANSCRIPT OF RECORD

September 22, 2011
Spartanburg, South Carolina

Ordered: September 30, 2011

Delivered: November 18, 2011

B E F O R E:

THE HONORABLE J. MARK HAYES, II, Presiding Judge.

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

MS. TARA DAWN SHURLING, Esquire
Attorney for the Applicant

MS. SUZANNE H. WHITE, Esquire
Assistant Attorney General for the Respondent

Pamela Faucette
Circuit Court Reporter

PAMELA FAUCETTE, CVR - (864) 574-9534 or (336) 260-2864

I N D E X O F W I T N E S S E S

Mr. Andrew Johston, Esquire

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Mr. Donald Hugh Johnson

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I N D E X O F E X H I B I T S

Applicant's Exhibits:

Marked:

Received:

(None)

Respondent's Exhibits

Marked:

Received:

(None)

Court's Exhibits

Marked:

Received:

(None)

Page:

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Reporter's Note: This transcript may contain quoted
material. Such material is reproduced as read or quoted
by the speaker.

1 September 22, 2011

2:40 P.M.

2 (Off-the-Record Comments)

3 (Mr. Johnson is brought into the courtroom.)

4 MS. SHURLING: Your Honor, during the post-
5 conviction relief hearing, would it be possible for my
6 client to have his handcuffs off?

7 (Deputy Bennett shakes his head negatively.)

8 THE COURT: Security is indicating no.

9 MS. SHURLING: Could he have one hand off and the
10 other one -- I just need him to be able to write me
11 notes.

12 DEPUTY: I'm sure he can write.

13 MS. SHURLING: Oh, okay. Thank you.

14 MS. WHITE: Your Honor, this is the case of *Donald*
15 *Hugh Johnson vs. The State of South Carolina*, case number
16 2010-CP-42-5375. He's represented today by Tara
17 Shurling.

18 Mr. Johnson was indicted in May of '06 on three
19 counts of criminal sexual conduct with a minor second
20 degree, lewd act on a minor, and contributing to the
21 delinquency of a minor.

22 He proceeded to trial and was tried before The
23 Honorable Judge Cole, at which point he was convicted by
24 a jury on all charges.

25 He received concurrent sentences of eighteen (18)

1 years on each of the CSC with a minor charges, fifteen
2 (15) years on the lewd act charge, and three (3) years on
3 contributing to the delinquency of a minor. So, it
4 totaled eighteen (18) years on all charges.

5 An appeal was filed. His conviction and sentences
6 were confirmed and a remittitur was submitted January 7th
7 of two thousand and ten (2010).

8 His PCR was filed October 6th, two thousand and ten
9 (2010). And the allegations were ineffective assistance
10 of counsel in that counsel failed to recognize errors
11 which occurred during the trial. And, therefore, failed
12 to make appropriate objections and supporting legal
13 arguments;

14 Failure to make these objections may have changed
15 the outcome of the trial and deprived the Applicant of
16 the opportunity to have these trials -- excuse me -- have
17 these issues addressed on their merits on direct appeal.

18 And that the judgement and the sentence were entered
19 in violation of his right to due process and ineffective
20 assistance of counsel.

21 And, at this point, I will turn it over to Ms.
22 Shurling.

23 MS. SHURLING: Good afternoon, Your Honor. The
24 Applicant has generally alleged that he received
25 ineffective assistance of counsel prior to and during his

1 jury trial. We've made specific reference to the failure
2 to preserve certain issues for appellant review.

3 Your Honor, I would note for the record, as a
4 threshold matter, that I represented Mr. Johnson on
5 direct appeal.

6 As is my custom, when a client inquires as to
7 whether they can hire me to handle collateral review
8 through post-conviction relief after I have already
9 served as counsel on direct appeal, I explain the post-
10 conviction relief system to them quite carefully,
11 including the fact that allegations of ineffective
12 assistance of appellate counsel, under the -- both the
13 Sixth Amendment and *Edits v. Musey* (phonetic) and its
14 prodigy are among the issues that can be raised in a PCR.

15 I explain that, with that in mind, if he should not
16 hire me as his PCR lawyer, unless he was confident that
17 he had no specific complaints about me and the quality of
18 representation I had provided for him on direct appeal.

19 Once he assured me that he did not, and that he
20 wanted me to be his post-conviction relief lawyer, I
21 drafted a waiver expressly waiving any allegations of
22 ineffective assistance of appellant counsel, which he
23 executed. And it was appended to the PCR application.

24 So, I wanted the record to be very clear on the fact
25 that I had taken great caution in agreeing to be retained

1 in this matter until that issue was resolved.

2 Your Honor, I would inquire as to whether you have a
3 copy of the appellant brief that was filed in this case
4 and the opinion of the Court of Appeals, which was issued
5 on December 22nd, two thousand, nine (2009).

6 MS. WHITE: I do know that the appellant opinion is
7 in there. And I believe that Your Honor should have the
8 brief as well.

9 I know the opinion is attached to each of the
10 indictments, Your Honor.

11 THE COURT: The opinion that ---

12 MS. WHITE: The Court of Appeals ---

13 THE COURT: Right.

14 MS. WHITE: Okay. Tara, to be honest, I'm not sure
15 if your brief is included in the Court's records.

16 THE COURT: I have the filed brief of the
17 Appellant.

18 MS. WHITE: Yes, that would be it.

19 MS. SHURLING: I believe that's it. Thank you.
20 Your Honor, for purposes of this proceeding, I am going
21 to assume, then, that the final brief of Appellant and
22 the opinion of the Court of Appeals are part of the
23 record that is before the Court and that there's no need
24 for me to introduce those documents as exhibits for the
25 Applicant.

MR. ANDREW JOHNSTON, ESQ. - DIRECT by MS. SHURLING Page 7

1 THE COURT: Without objection?

2 MS. WHITE: Without objection, yes.

3 THE COURT: All right.

4 MS. SHURLING: Thank you. Your Honor, at this time,
5 we would call trial counsel, Andrew Johnston, as the
6 Applicant's first witness.

7 THE COURT: If you'll come around and place your
8 left hand on the Bible and raise your right hand and let
9 me swear you in.

10 (The witness stepped forward to be sworn.)

11 (The witness complied with the Court's request.)

12 (Whereupon,

13 ANDREW JOHNSTON, ESQUIRE

14 first being duly sworn, testified as follows:)

15 THE COURT: Thank you, sir. Please have a seat in
16 the chair and pull the chair up to the microphone.

17 DIRECT EXAMINATION by MS. SHURLING: 2:37 P.M.

18 Q. Thank you. Would you state your name into the
19 record, please, sir?

20 A. Andrew Johnston.

21 Q. And, Mr. Johnston, back in June of two thousand,
22 seven (2007), approximately how long had you been practicing
23 law?

24 A. Well, I started in November of 1985, so, whatever
25 the math says from there.

MR. ANDREW JOHNSTON, ESQ. - DIRECT by MS. SHURLING Page 8

1 Q. That's good enough.

2 A. Okay.

3 Q. Can you give us a little bit of background
4 concerning your career? Did you start out in private
5 practice?

6 Did you work for the public defender or -- or a
7 solicitor's office?

8 A. Yes, ma'am, I will. I spent one year in private
9 practice in Darlington County. Then, I came to Spartanburg
10 and I was with Spartanburg Legal Aid for about two (2) years.

11 Then, I went to the solicitor's office here in
12 Spartanburg. I was with the Seventh Circuit Solicitor's
13 Office about two (2) years.

14 Then, I went into private practice with a law firm,
15 stayed there about three years. Then, in 1994, I went into
16 private practice by myself.

17 Q. Approximately what percentage of your practice,
18 during the time period, when these charges were arose,
19 appropriately what percentage of your practice involved
20 criminal defense?

21 A. I would say very roughly sixty-five percent (65%).

22 Q. Thank you. Can you recall how soon after your
23 client's arrest or before arrest, if that's when it happened,
24 you were hired in connection with these allegations?

25 A. I can tell you that I was hired on -- (examines

MR. ANDREW JOHNSTON, ESQ. - DIRECT by MS. SHURLING Page 9

1 documents) -- I was officially retained on September 27th, two
2 thousand, five (2005).

3 But I don't have -- I can't tell you, as I sit here,
4 what date Mr. Johnson was arrested. I can tell you that, as I
5 recall, it was fairly early in the legal process, but I do not
6 believe it was prior to arrest. I believe he had been
7 arrested at that time.

8 Q. And were you able to secure bond for your client?

9 A. To the best of my recollection -- and I don't -- I
10 really can't say for sure, I think he had already been
11 released on bond. But I don't remember for sure.

12 It's possible that they were going to get a warrant
13 for him and I assisted in him getting out. I just don't
14 remember.

15 He didn't stay in jail for any extended period of
16 time from my thoughts.

17 Q. Thank you. This case didn't proceed to trial until
18 June of two thousand, seven (2007). During the time period
19 between, when the young lady originally made these allegations
20 and when the case made its way to trial, were there any plea
21 negotiations in this case?

22 A. I don't know that -- I'll tell you what I remember
23 occurred. Whether or not they arise to the level of
24 negotiations I can't say.

25 Mr. Johnson, first of all, he was very reluctant to

MR. ANDREW JOHNSTON, ESQ. - DIRECT by MS. SHURLING Page 10

1 enter into any kind of a plea. He did not -- he was adamant
2 that he did not commit these acts and he certainly wouldn't --
3 didn't indicate he was willing to plead guilty if he would
4 have to serve any time.

5 The case was being prosecuted by the Attorney
6 General's Office. I believe the present attorney general of
7 our state was, in fact, the lead prosecutor on the case at
8 that time.

9 He was not the attorney general of the state at that
10 time. I think he was an assistant or something like that.

11 But, in any event, we talked, as lawyers do, about
12 possible resolutions of -- of the case.

13 Q. Let me interrupt you for a second ---

14 A. Yes, ma'am.

15 Q. --- to give His Honor appropriate background.

16 A. Yes, ma'am.

17 Q. Why was this case tried by the special prosecution
18 unit at the attorney general's office instead of the
19 Spartanburg County Solicitor's Office?

20 A. Mr. Johnson had been a long time police officer at
21 the City of Spartanburg. And I believe that it was Mr. Gowdy,
22 who was the solicitor at that time -- it was his practice
23 that, if a -- a policeman or a former policeman got -- picked
24 up charges that he would recuse himself, so to speak, and ask
25 for the attorney general to prosecute. I guess, so, that he

MR. ANDREW JOHNSTON, ESQ. - DIRECT by MS. SHURLING Page 11

1 wouldn't raise any bad feelings between his office and local
2 law enforcement.

3 So, it went to the attorney general's office. And I
4 -- I don't know how Mr. Wilson got it, but he ended up with
5 it.

6 Q. Okay. And, so, the reason for it being prosecuted
7 by the attorney general's office didn't have anything to do
8 with any particularly heinous nature of the case or anything;
9 it was more to do with your client's background in law
10 enforcement?

11 A. That's my understanding. All -- although I -- I
12 wasn't on the inside of that decision. From the outside,
13 that's what I think it was. And I think that's what I was
14 told.

15 Q. Okay. Now, of course, the specific lawyer that
16 handled this case, as you say, was -- was Alan Wilson and
17 David Mathers Stumbo (phonetic)?

18 A. Yes, ma'am.

19 Q. And Mr. Stumbo was likewise with the Office of the
20 Attorney General?

21 A. Yes, ma'am.

22 Q. You have indicated that you believe there were some
23 general discussions with them about different scenarios as how
24 these charges might play out. Did those discussions ever
25 include any specific offer for a plea?

MR. ANDREW JOHNSTON, ESQ. - DIRECT by MS. SHURLING Page 12

1 A. Not to the best of my recollection. The only thing
2 I can is, they may have made some sort of a generalized offer
3 of, "We'll recommend concurrent sentencing," or something like
4 that, which -- which really isn't very helpful in a case of
5 this nature.

6 I can tell you what I do remember though. We were
7 talking about what -- you know, if -- both sides, if they can
8 avoid a trial usually would like to avoid a trial if that's
9 possible.

10 So, we began to talk about possible resolutions. We
11 had at least one possible resolution and that was this: Judge
12 Kenny Goode was in Spartanburg and was holding court at a -- a
13 fairly regular basis.

14 You know, he would be here for a couple of weeks
15 and, then, he would leave. And, then, he would come back.

16 So, I don't remember who it was that suggested that
17 Judge Goode might be someone that we could resolve this case
18 before. I don't know if it was me. I don't know if it threm.

19 But we -- me and Mr. Wilson and perhaps Mr. Stumbo
20 -- I can't say for sure he was there -- we went and talked to
21 Judge Goode about the case.

22 As lawyers sometimes do with judges, "Okay, Judge,
23 we have a case." They say what their side would show. I say
24 what my side would show. "Hypothetically speaking, Judge,
25 what do you -- what would you do with something like this?"

MR. ANDREW JOHNSTON, ESQ. - DIRECT by MS. SHURLING Page 13

1 And it was my recollection of that meeting that
2 Judge Goode seemed to indicate he might give Mr. Johnson
3 probation if he were to plead guilty.

4 They -- they didn't want that. They didn't like
5 that one bit. So, I think they sort of basically told me,
6 "Well, we're not going to do that."

7 The other thing is, even if they had allowed that, I
8 don't know if I could have gotten Mr. Johnson to -- to enter
9 the plea.

10 But, if I had, had that opportunity, I would have
11 given it my best shot to try to get him to -- to do it that
12 way.

13 Q. Well, you raise an interesting question.

14 A. Yes, ma'am.

15 Q. There is no constitutional right to a plea bargain,
16 is there?

17 A. Not that I'm aware of, no.

18 Q. And there is a constitutional right to trial by a
19 jury, correct?

20 A. Yes, ma'am.

21 Q. Is there anything to prohibit any defendant from
22 entering a plea straight up as indicted at anytime?

23 A. That's a very tricky question there. I don't know
24 that I have the answer for that. But this is something that I
25 have seen and struggled with over the years.

MR. ANDREW JOHNSTON, ESQ. - DIRECT by MS. SHURLING Page 14

1 I would definitely agree that, if a defendant's case
2 is up for trial, he has the right to plead guilty straight up.
3 He doesn't need the -- the acquiescence of -- of the
4 prosecutor to do so.

5 But how to get, in front of a particular judge on a
6 particular occasion, that is -- that's a quandary.

7 So, I can tell you there's no constitutional right
8 to pick a particular -- or I think there's no constitutional
9 right for me to pick up a particular judge, or for a defendant
10 to pick a particular judge, to say, "I want to plead in front
11 of him, and -- and no other."

12 I -- I don't think there's a right to that.

13 Q. Likewise, there have been many due process arguments
14 advanced, have there not, that the State shouldn't have the
15 right to avoid a particular judge or pick a particular judge
16 either; isn't that true?

17 A. I'm -- I am sure that they have. And heretofore in
18 South Carolina we have had some developments in Spartanburg,
19 and perhaps other parts of the state, but I'm really only
20 mostly here, that deal with who controls the docket.

21 As a young lawyer, it was unquestioned that the
22 solicitor controlled the docket. And, if he didn't want -- he
23 said what judge you went in front of; what judge you went in
24 front of for a plea, what judge you went in front of for a
25 trial.

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1 That was his choice exclusively in -- in -- in my
2 experience. Recently, in the last few years, there is now a
3 docket system here where the Court creates the docket.

4 And, while the case isn't assigned to a particular
5 judge, often a given defendant ends up being in front of a
6 particular judge due to that -- that specific order.

7 Q. Well, let's go back to two thousand, seven (2007),
8 okay?

9 A. Yes.

10 Q. Did you consider -- given the favorable feedback you
11 had received from Judge Goode, did you consider contacting the
12 chief administrative judge for General Sessions Court and
13 saying "I have a client who is ready to plead straight up as
14 indicted. We'd like to be put on the docket for guilty pleas
15 this week"?

16 A. I don't recall whether I considered it or not. But
17 I did not do it.

18 Whether I considered it -- I mean, I don't recall
19 sitting down and wrestling with the question. It might have
20 gone through my mind; sitting down and wrestling with it,
21 probably not.

22 Q. Did you ever discuss with your client the fact that
23 Judge Goode appeared to be -- at least had given some
24 indication that he might be predisposed to give him probation?

25 A. I do not remember whether I did or not. I can only

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1 tell you that it's my recollection of the thing -- of the
2 situation in this case was that Mr. Johnson really didn't want
3 to plea even if he knew he was going to get probation.

4 But -- but, again, if I had thought I had a clear
5 shot to do that, I would have tried with all that I could to
6 persuade him to do that.

7 But -- but it -- there were two things that needed
8 to come together. One, I needed to get in front of that
9 judge. Two, Mr. Johnson needed to agree to plea.

10 And I didn't really have a fix on either of those.
11 So, getting them together at the same time was hard -- would
12 have been hard.

13 Q. Can you tell me, other than a claim of actual
14 innocence, if there were any other specific factors that
15 caused Mr. Johnson to be adverse to any plea that could
16 conceivably result in him serving time?

17 A. Well, I -- I believe that he was getting government
18 benefits I think. And he would have lost his government
19 benefits.

20 I'm not a hundred percent (100%) sure about that,
21 but it seems like that.

22 The other thing is, as I mentioned before, he's a
23 policeman. And policemen have a tough time behind bars,
24 tougher than -- than the general public so to speak.

25 Q. In representing -- pardon me.

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1 A. Yes, ma'am?

2 Q. In representing your client, did you do any research
3 into what South Carolina and its sister states do, in terms of
4 policies or procedures in place, dealing with the
5 incarceration of law enforcement officers?

6 A. I -- I don't recall having done any formal research
7 into that question. I can tell you that I was of the opinion
8 then, and under the opinion now, that, as a general rule,
9 policemen are placed in some sort of a protective type of
10 custody.

11 That is -- I know that's how it's done at the
12 Spartanburg County Detention Facility. If they have someone
13 there like that, they keep them in a special -- they call it
14 "Pod 5."

15 It's -- it's special protective custody. And I
16 believe ---

17 Q. And you will -- pardon me.

18 A. -- that SCDC does it as well. But I -- but I didn't
19 research that.

20 Q. You were aware that your client was very afraid of
21 being put in a penal environment with people that he, as a law
22 enforcement officer, had arrested or been responsible for
23 putting in jail?

24 A. Oh, no doubt.

25 Q. Did you talk to anyone in the solicitor's office or

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1 at SCDC about what options might be available to ensure that
2 he did not have to go in a South Carolina prison?

3 A. No, ma'am, I did not.

4 Q. Do you ever remember knowing about or researching
5 something called the South Carolina Interstate Compact?

6 A. No, ma'am, I'm unfamiliar with that.

7 Q. If you had known that South Carolina had a specific
8 Interstate Compact, with sister states, to provide for inmates
9 to be traded out with neighboring states in situations like
10 this, so, that they could serve their time in an environment
11 where they were not likely to be with people they had
12 arrested, would you have looked into that further?

13 A. Well, yes, ma'am. I mean any way that I could help
14 make his stay less bad, I would want to do that.

15 Q. In retrospect, do you think you should have at least
16 asked the chief administrative judge if your client could
17 plead straight up?

18 A. In retrospect, yes.

19 Q. Thank you. And, in retrospect, do you think you
20 should have asked someone at SCDC, what pro -- programs,
21 policies, procedures, were in place to provide safe
22 incarceration for law enforcement officers?

23 A. Well, I am not familiar with the program you just
24 mentioned. So, if there is -- and I'm not doubting that there
25 is, but assuming that there is such a program as that and I

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1 didn't know about it, I think it would have been useful for me
2 to have known about that.

3 And, if there was something I could have done to
4 have gotten him into that program, I don't know what -- what
5 -- what they want you to do or what -- how to bring it up --
6 if by doing so I could have helped him with that;

7 So, yes, if I had known about it, and if I could
8 have helped him, I should have.

9 Q. And you do agree that the fear of going to prison
10 with people that he had arrested or been involved in
11 investigating was one of the big factors in him being
12 unwilling to even consider a plea?

13 A. Yes, I -- I do agree with that. But, the flip side
14 of that is, if we can plea and not get any time, or only get a
15 modest amount of time, that's also something that one should
16 consider if one is in that position.

17 Q. Certainly. But, as a lawyer and your client as a
18 law-enforcement officer would be familiar, would he not, that
19 sometimes people are brought in for probation violation based
20 on relatively minor infractions?

21 A. Oh, they're definitely brought in for relatively
22 minor infractions. Now, whether or not that actually ends --
23 ends up in a full revocation or a partial revocation where
24 they go to jail, probably not as common.

25 But, yes, I'm sure he realized -- would have

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1 realized that, even if placed on probation if he didn't do
2 what he was supposed to he could still face prison time,
3 sure.

4 (Brief Pause)

5 Q. Okay. Well, let's move on just a little bit. Prior
6 to this trial, the special prosecutor filed a motion in
7 limine.

8 And I'm not entirely sure that should have been a
9 proper caption because rather than it being a motion to limit
10 -- as "in limine" would imply -- testimony, it was a motion
11 designed to have approved in advance their introduction of
12 testimony from the victim that the defendant had allegedly
13 attempted actual sexual intercourse with her on occasions that
14 were not the subject of these charges. Do you recall that?

15 A. I really don't recall it being the subject of a
16 motion in limine. I did go back and review the transcript
17 about the testimony by the victim wherein she claimed that Mr.
18 Johnson had attempted sexual intercourse with her; I believe
19 she said age 15.

20 I did go back and review that in the transcript.
21 But, as far as the motion in limine as I sit here now, I have
22 no recollection of that.

23 If you can show me or -- or point me towards a -- a
24 part of the record, that might help me to remember.

25 MS. SHURLING: Your Honor, a moment's indulgence.

1 (Off-the-Record Discussion)

2 Q. (By Ms. Shurling) If we look at the record on
3 appeal, Page 2.

4 A. Now, I am -- I do not have the record on appeal.
5 What I am holding is just the transcript from the trial. So,
6 I don't know if you have different pagination or not.

7 Q. If you'll give me one second ---

8 A. Yes, ma'am.

9 Q. --- I may be able to locate it for you.

10 A. Yes, ma'am.

11 (Brief Pause)

12 Q. If you would, look at Page 33, Line 22 ---

13 A. Okay.

14 Q. --- going over to the top of Page 34 ---

15 A. Yes, ma'am.

16 Q. --- Line 5.

17 (Brief Pause)

18 THE COURT: Page 33 did you say?

19 MS. SHURLING: Yes, Your Honor, 33, Line 22, going
20 over -- when it's initially brought up would be through
21 34 approximately Line 5.

22 A. Yes, ma'am, I -- I have that here.

23 Q. Okay. And you were aware that, that was before the
24 jury was sworn?

25 A. If I can look at the record, I can be sure of that.

1 (Brief pause while the witness examines document.)

2 A. Yes, that looks to be before the jury is sworn based
3 on what I'm looking at here.

4 Q. And as such it would be -- and as I've said I'm not
5 entirely sure calling it a motion in limine is appropriate,
6 but it was a pre-trial motion made before the swearing of the
7 jury?

8 A. Yes, ma'am.

9 Q. Are you aware of what the Supreme Court's position
10 is concerning arguments made prior to a jury is sworn on a
11 motion of this sort?

12 A. That the judge's ruling at that point is merely
13 preliminary. And it can be re-examined at -- at a later time
14 when the specific evidence is sought to be introduced. Is
15 that what...?

16 Q. Yes. And is it not also true that the Court has
17 expressly held, three or four times a year it seems, that
18 arguments made pro or con, on an evidentiary issue before the
19 jury is sworn, do not preserve the issue for appellant review
20 unless they are renewed at the time the evidence is addressed
21 during the trial?

22 A. I agree with that.

23 Q. And did you object to this evidence during this
24 trial?

25 A. I do not recall having done so, but the transcript

1 will speak for itself.

2 Q. Have you read the Appellant decision in this case?

3 A. No, ma'am, I haven't sat down and read it, no,
4 ma'am.

5 MS. SHURLING: May I approach, Your Honor?

6 THE COURT: (Nods affirmatively.)

7 (Document handed to the witness.)

8 A. Yes, ma'am, I've read it now.

9 Q. And would you agree that the Court of Appeals found
10 that this issue was not properly preserved for appeal?

11 A. Yes, ma'am, I would agree with that.

12 Q. In retrospect, should you have raised the objection
13 at the appropriate moment?

14 A. Yes, ma'am.

15 Q. Okay. And are you familiar with the -- well, let me
16 back up for a second.

17 Have you had an opportunity to review the case law
18 on the question of the admission of prior bad act evidence
19 where that evidence addresses acts even more egregious than
20 those for which the defendant is indicted?

21 A. I have not done any specific research on that issue
22 for today's testimony if that's what you mean. I have, in the
23 past, handled many cases, done a lot of research, on 404(b)
24 questions.

25 Q. Okay.

1 A. The specific point that you just mentioned is not
2 one with which I am familiar.

3 Q. Okay. Which raises another question: The young
4 lady in this case gave an eight-page statement, when she
5 finally reported this behavior, first to a family member and,
6 then, to law enforcement, correct?

7 A. She gave a written statement. It's exact length,
8 I'll trust you to that.

9 MS. SHURLING: Your Honor, just for the record, the
10 transcript from the trial proceedings reflect that she
11 gave an eight-page statement.

12 There are multiple references that I've seen
13 throughout this record. But specifically on Page 105,
14 Line 2, and shortly thereafter, there are references,
15 multiple references, to it being a lengthy eight-page
16 statement.

17 A. I don't dispute that in any way.

18 Q. (By Ms. Shurling) And that statement did not, did
19 it, include any allegations that you client had ever attempted
20 to have actual sexual intercourse with her, did it?

21 A. You are correct; actual penile/vaginal sexual
22 intercourse, yes, ma'am.

23 Q. Okay. When did the solicitor's office first put
24 you on notice that she had made additional statements claiming
25 that there had been an attempt at actual penile penetration?

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1 A. I cannot answer that question. I don't know.

2 Q. Do you recall whether you were surprised by this at
3 trial or was it...?

4 A. Well, surprised in the legal sense or surprised in
5 the just a human conduct sense?

6 Q. I understand that you've already testified you don't
7 remember exactly when you were notified. But is it your
8 recollection that you were surprised by this new claim at or
9 shortly before trial?

10 A. I cannot remember when specifically or even if I was
11 provided with that information. I cannot tell you at what
12 point.

13 So, if -- I -- I would say this: If I were not --
14 was not given the specific notice of it prior to trial, then,
15 I would be legally surprised at trial when the testimony comes
16 out or when they announced right before trial that it's going
17 to come out.

18 In terms of -- of just human observation, I didn't
19 think that conduct was that far afield from the other things
20 that were being claimed.

21 Q. I believe that it was your testimony a few moments
22 ago that you certainly, as most criminal lawyers, would have
23 to say they have done a lot of research on 404(b) issues?

24 A. Yes, ma'am, over the years I certainly have. I --
25 and I cannot claimed to have mastered it in any way, shape, or

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1 form.

2 Q. I believe that would be *Rockwise* (phonetic) and
3 *Greenwood* (phonetic) would be the only one I know that has.
4 Anyway ---

5 A. To the extent that a moving target can be mastered.

6 Q. Eloquently put, sir. Now, did I also understand you
7 to say that the specific question of whether prior bad act
8 testimony, which the State purports to rise to the level of
9 common scheme or plan, can be admitted if it includes
10 allegations or behavior that's arguably more egregious than
11 that for which the Defendant is already on trial?

12 A. I -- I can truthfully tell you that the concept of
13 greater egregiousness is not one I have encountered. It may
14 be very present in the law and I just don't know about it.
15 But -- but that particular part of the analysis is not one
16 that I knew about then nor now.

17 Q. Okay. So ---

18 A. It sounds like a good argument however and I can
19 certainly see where it might have a legal basis. But I just
20 can't -- I'm not familiar with it.

21 Q. When you found out that the State was going to seek
22 to introduce these additional allegations, under some theory
23 of common scheme or plan, why didn't you ask for a continuance
24 to allow you time to do adequate research on that important
25 point of law?

1 A. In retrospect, it certainly sounds like something I
2 should have done.

3 Q. Thank you. Do you recall the young lady's specific
4 testimony about the encounter that involved attempted
5 intercourse?

6 A. I don't recall it; however, I did read it in the
7 transcript.

8 MS. SHURLING: Your Honor, a moment's indulgence.

9 (Off-the-Record Discussion)

10 Q. Do you have your transcript up there?

11 A. Yes, ma'am.

12 Q. Could I get you to look at Page 76?

13 A. Yes, ma'am.

14 Q. Well, actually, 75.

15 A. Yes, ma'am.

16 Q. Starting at Line 20 ---

17 A. Yes, ma'am.

18 Q. --- going forward to 77, Line 4?

19 A. Yes, ma'am. Do you want me to read that to myself?

20 Q. No, I don't.

21 A. Okay.

22 Q. What I want to ask you is, in addition to the fact
23 that this testimony claimed -- involved a claim of attempted
24 actual penile penetration intercourse, was there anything else
25 specific about this testimony that would have been troubling

1 to you?

2 (Brief Pause)

3 A. Well, I know there's the issue of the inability to
4 maintain an erection due to diabetes. And that was an issue
5 that was raised at other points during the trial. I don't
6 know if that's what you mean or not.

7 MS. SHURLING: Again, Your Honor, I do apologize; if
8 you would give me one quick moment.

9 Q. (By Ms. Shurling) Could I get you, sir, to flip
10 over to Page 64, earlier in the victim's testimony?

11 A. Yes, ma'am.

12 Q. Would you read for us, please, Lines 9 through 13?

13 A. Out loud or to myself?

14 Q. Out loud.

15 A. "Answer: And we went in the living room. And, when
16 we was in the bedroom, he had me take my clothes off. And,
17 then, I went in the living room, so, he could see out the
18 window to see when Jenol was coming home.

19 "And he started fondling on my breasts and was
20 feeling in between my legs."

21 Q. And I apologize. I apologize to everyone. I
22 actually had you read a little more of that than I -- than was
23 absolutely necessary.

24 A. Yes, ma'am.

25 Q. But would you agree that Lines 10 through 12, this

1 young woman is claiming that the Defendant very specifically
2 had been going to a room where he could look out the window
3 and keep out -- watch out for his wife returning home from
4 work?

5 A. I do agree with that, yes, ma'am.

6 Q. Let's go back to the testimony about the attempted
7 sexual intercourse incident ---

8 A. Yes, ma'am.

9 Q. --- on Page 76. Would you read -- and I'll let you
10 read it to yourself for the moment -- Lines 7 through 14?

11 (The witness complied with the request.)

12 A. Yes, ma'am, I've read it.

13 Q. Okay.

14 A. There -- there is a similar ---

15 Q. Claim.

16 A. --- claim. Yes, ma'am, I agree with that.

17 Q. So, this testimony involving the more egregious act
18 of attempted penile penetration also had the added benefit for
19 the State that it included an attempt to establish this so-
20 called pattern of -- of having sex in a location in a manner
21 that allowed him to keep watch for his wife?

22 A. I don't disagree with that.

23 MS. SHURLING: Okay. Now, this is a tough part.

24 And I apologize to everybody.

25 My mother says my job makes me discuss in public

1 things she wishes I didn't even talk about in mixed
2 company. But sometimes we have to.

3 A. Yes, ma'am.

4 Q. (By Ms. Shurling) This young lady claimed that my
5 client made her get down on her hands and knees and that he
6 subsequently attempted intercourse with her doggie style,
7 correct?

8 A. That's what it says, yes, ma'am.

9 Q. And her justification -- or rather her explanation,
10 for why he put her in that particular position, was what?

11 A. So, he could look out the window, through the
12 blinds, to -- to see if his wife were coming home.

13 Q. When you cross examined the young woman, did it
14 occur to you to cross examine her concerning how your client,
15 in a male superior facing forward position, would have any
16 better vantage point doggie style than missionary?

17 A. No, ma'am. That didn't occur to me.

18 Q. In actuality, they would result in the same vantage
19 point, with regard to the window, wouldn't they, sir?

20 A. I think so, although I guess there are a number of
21 variables that could factor into that situation. But -- but I
22 -- I can't really say.

23 I mean, I don't disagree with you. I -- perhaps
24 it's a point that merited further examination.

25 Q. Okay. And we've already covered quickly the fact

1 that it just didn't occur to you to ask for a recess to
2 research that issue? And you did not think to renew an
3 objection to it after the evidence began to unfold at trial?

4 A. You are correct.

5 Q. Okay. Now, did you go to the home where all of this
6 activity was alleged to have occurred?

7 A. No, ma'am, I did not.

8 Q. Did you observe photographs of the interior of the
9 house?

10 A. I do not recall having done so.

11 Q. Did you familiarize yourself with the size of the
12 house?

13 A. Not unless ---

14 Q. The floor plan -- pardon me. Madam Court Reporter,
15 I apologize.

16 A. Not unless it otherwise appeared in the discovery
17 materials.

18 Q. Okay. This young woman claimed to be familiar with
19 three basic physical traits concerning your client's private
20 parts, did she not?

21 A. She definitely claimed a certain familiarity. How
22 many points there were, as I sit here now, I can't tell you.
23 But I won't disagree that it was three (3) if you say three
24 (3).

25 Q. One of the traits that she testified she was

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1 familiar with was the fact that your client was uncircumcised;
2 is that...?

3 A. I believe that that is correct, yes, ma'am.

4 Q. Why didn't -- well, let me back track for a moment.
5 I apologize. During this time period, it was her testimony
6 that she visited your client's home approximately every other
7 weekend?

8 A. Yes, I do recall that.

9 Q. Why didn't you question her concerning other
10 opportunities, through inadvertence just living in the same
11 house with someone, that she might have had to see your client
12 naked and thereby know of his uncircumcised state?

13 A. Well, I -- as I sit here now, I don't think that,
14 that would have been a particularly persuasive angle.

15 As -- as a general rule, an adult male with, at
16 least a teenage daughter -- a teenage girl, I would think that
17 there wouldn't be a whole lot of opportunity to actually get a
18 good enough look to be able to determine circumcised or
19 uncircumcised.

20 I mean, I would think that, that would be somewhat
21 unlikely. But I would have based my thoughts about that
22 question on whatever the client had told me.

23 If he had told me, at some point, "Hey, you know, we
24 were very open around our home. I would walk around without
25 clothes on.

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1 "She would come in the bathroom while I was doing
2 the things that you do in the bathroom, taking a bath or
3 whatever," then, I might have seized upon that better.

4 Q. Now, you did introduce testimony or -- and -- and I
5 believe also cross examined the young lady about the fact that
6 she had overheard, at the dinner table, discussion about
7 surgery your client was about to have on his genitals?

8 A. You are correct. And that was based on what the
9 client told me. He mentioned that to me.

10 I believe that was collaborated by his wife. I
11 can't remember specifically, but that this sort of
12 conversation had occurred and that she would have heard what
13 was discussed.

14 And that, as a result, she would have gained some
15 knowledge of his private parts that she wouldn't otherwise
16 have done so.

17 MS. SHURLING: A moment's indulgence, Your Honor.

18 (Brief Pause)

19 MS. SHURLING: I apologize, Judge. A flag fell off.
20 It won't take me but a second to find this.

21 (Brief Pause)

22 Q. I'm going to move on to something else for a moment.

23 A. Yes, ma'am.

24 Q. Your client testified at trial. Was that something
25 you advised him to do, not to do? What was your position on

1 him testifying?

2 A. I think it was a bad idea.

3 Q. Okay. Prior, to the point in the trial when your
4 client was going to be asked to make a decision concerning
5 that, ---

6 A. Yes, ma'am.

7 Q. --- did you discuss with him the types of questions
8 that the prosecution would be likely to ask when it was their
9 turn?

10 A. That is generally one thing that I discuss, in terms
11 of -- or with a client who is facing the decision of whether
12 or not he should testify in his own defense or not.

13 Of course, one can't think of everything that they
14 can ask or that they might ask. But I would like to think
15 that I am able to get, you know, some of the more important
16 points that I think the person is going to be faced with.

17 And, in his particular situation, he had some things
18 to tell, in his part of the story, that I didn't think sounded
19 good.

20 Q. With specific reference to the trial transcript,
21 Page 223, going over to ---

22 THE COURT: Page 223?

23 Q. Two, twenty-three (223) to 224.

24 A. Yes, ma'am.

25 Q. At some point, the prosecution asked him to explain

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1 how the prosecuting witness would be aware of some -- certain
2 physical attributes of his genitalia.

3 A. Yes, ma'am.

4 Q. And he subsequently offered an explanation found, at
5 224 Lines 14 through about 22, where he recounted an incident
6 where he had scratched the top off a mole and had uncontrolled
7 bleeding ---

8 A. Yes, ma'am, I ---

9 Q. --- and so forth and so on?

10 A. I recall.

11 Q. Had he ever discussed that particular factual
12 scenario with you prior to trial?

13 A. Yes, it is my belief that he had discussed it with
14 me.

15 Q. And had you discussed ---

16 A. And that the story that he recounted is basically
17 what he had recounted to me.

18 Q. And had you discussed with him your view as to how
19 that particular testimony would play with the jury?

20 A. I can't recall specifically what I said to him. But
21 it is my belief that I would put this in the category of,
22 "This doesn't sound good; this overall doesn't sound good.

23 "The jury will not be impressed with this particular
24 testimony and, in fact, probably will not like it, may not
25 believe it."

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1 It would've been better to have him -- him having
2 not testify at all. And, then, just let me comment in my
3 closing about what her claims were.

4 Because, if I'm not mistaken, she actually had
5 misidentified something about his genitalia that turned out
6 not to be correct if memory serves me correctly.

7 It would have been better to have let me handle it
8 that way rather than him testifying about it because I didn't
9 think he could tell that story well.

10 It didn't sound good; couldn't tell it well. But he
11 wanted to tell it. And there we are.

12 Q. This young woman had, in fact, described another
13 freckle or mole or some imperfection as being on the top of
14 your client's penis. And some kind of mark was subsequently
15 photographed on the side of the shaft of his penis; is that
16 correct?

17 A. It -- it wasn't in the place where she said it was.

18 Q. And she had described a wart or mole of some sort as
19 being inside his left -- sorry for the language, Your Honor --
20 butt cheek ---

21 A. Yes, ma'am.

22 Q. --- correct?

23 A. Yes, ma'am.

24 Q. And you were able to subsequently draw the Court's
25 attention -- the jury's attention to the fact that, when your

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1 client was physically examined, as part of the police
2 investigation, he had a mole of some sort on the inside of his
3 right thigh?

4 A. Yes, ma'am.

5 Q. Okay.

6 A. You're correct.

7 Q. So, you had been able to attack the accuracy of her
8 description in that manner?

9 A. To that extent, yes, ma'am.

10 Q. Isn't it also true that the testimony of the victim
11 herself indicated that -- according to her own testimony, that
12 the first time any kind of inappropriate physical contact took
13 place between her and her step-grandfather was when she had
14 voluntarily bared a part of her breast to him to show him
15 something on her breast?

16 A. I remember that part of the story. And I believe
17 that you are correct.

18 Q. Okay.

19 A. That there was something about she felt that she
20 might have some sort of, I don't know, pre-cancerous condition
21 or something like that and wanted him to examine it, touch it,
22 or something.

23 And he told me that, that did occur. And, that, in
24 fact, he later told his wife, "Hey, I want to let you know
25 that this is what happened."

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1 Q. And the young woman at trial admitted that that's
2 how the first encounter had begun?

3 A. As far as I can -- I'll take your word for it, yes,
4 ma'am.

5 MS. SHURLING: A moment's indulgence, Your Honor.

6 (Brief Pause)

7 MS. SHURLING: Your Honor, I will provide that page
8 cite in a few moments. I don't want to delay the
9 proceeding to find it.

10 Q. (By Ms. Shurling) How about before trial? How much
11 notice did you have that they were getting ready to try this
12 case?

13 A. I don't remember. If I could, look in my file ---

14 Q. Please do.

15 A. --- kind of see what I -- what I have about that.
16 I'm trying to remember how we did things, at that time, in
17 terms of notice.

18 As I was mentioning earlier, now we have a docket.
19 The docket comes out fourteen (14) days before the court.

20 And, so, if your case is on the docket, you know
21 where -- where you -- how likely it is that your case might
22 come up. At that time, we were not under anything like that.

23 (Brief pause while Mr. Johnston examines file.)

24 A. I do not see anything right here that would tell me
25 like, you know, a letter. Sometimes you get a letter saying

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1 that the State is going to call this trial such and such a
2 court date. I can't -- but I don't see anything like that.

3 There would have had to have been some advance
4 notice in the situation because the solicitor would be giving
5 up his -- his court time, so to speak, to let the attorney
6 general come up here and try this case.

7 So, I -- I do not remember notice being a big issue
8 in this case. Sometimes it is, but I don't remember.

9 Q. While you're looking, for whatever it is you're
10 trying to find, ---

11 A. Yes, ma'am.

12 MS. SHURLING: Your Honor, I would note for the
13 record the page reference that I was looking for a moment
14 ago, with regard to the complaining witness showing her
15 breast or a portion thereof to the Defendant, is on Pages
16 62 and 63 of the trial record.

17 A. The -- the case was pending a -- a long time. I do
18 not remember that I got unfair notice in this particular
19 situation. I don't remember anything about that.

20 Q. Okay. Do you know -- can you tell from your file
21 how you notified your client that it was getting ready to go
22 to trial?

23 A. No, ma'am, I -- I can't. But I cannot tell you that
24 I've done an exhaustive analysis of it for that particular
25 point.

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1 Sometimes we send letters. Sometimes we make phone
2 calls. So, I can't tell you specifically how that was
3 accomplished here.

4 Q. Did you ---

5 A. I do -- I do know that he had witnesses that he
6 wanted to subpoena. And they were friends of his.

7 And we needed to make the arrangements to get those
8 witnesses there and for any that needed subpoenas. I don't
9 think any of them were refusing to come, but sometimes people
10 want a subpoena. We were able to make those arrangements.

11 (Brief Pause)

12 Q. Did you have discussions with your client concerning
13 what your defense strategy was going to be at trial?

14 A. Well, I know we had many discussions about the case
15 and about the evidence in the case. Whether or not I told
16 him, "Hey, at trial we're going to try to do X, Y, and Z," I
17 don't know whether I told him that or not, no, ma'am.

18 Q. How about the discovery materials in this case, did
19 you provide your client with his own copy of them?

20 A. I do not think so. However, if he had requested
21 one, I would have been happy to have given it to him. But it
22 is not something I do in every case.

23 What I try to do, however, is, is to always, as the
24 discovery material comes in -- sometimes it comes in all in
25 one group; sometimes it trickles in -- is to, at a minimum,

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1 read it to the client, so, he knows what it says.

2 Q. Read -- when you say, "Read it to the client," you
3 mean physically read every ---

4 A. Yes, ma'am.

5 Q. --- bit of the discovery to them?

6 A. Well, when -- I mean, I guess if I thought something
7 wasn't important. Sometimes, you know, you have something in
8 there that's not -- "I arrested the Defendant without
9 incident," or something like that, that wouldn't be important
10 for me to read to him.

11 But, as far as anything the police wrote about the
12 investigation that they did -- that they do in a case, I read
13 that to the client.

14 If there are witness statements, I read all of the
15 witness statements to the client. If there are scientific
16 tests or anything like that, I would at least summarize them
17 and say, "Here's a test. This is what they say it says."

18 Q. Is this conversation normally one that takes place
19 in person or on the phone?

20 A. In person.

21 Q. Okay. And, if you are dealing with a client who is
22 literate ---

23 A. Yes, ma'am.

24 Q. --- relatively well educated, do you let them read
25 it for themselves?

1 A. If they want to.

2 Q. If they want to? Okay.

3 A. If they ask for a copy, they can have it. The only
4 time that I do not give copies is in federal cases where there
5 is an order saying you cannot disseminate the discovery
6 material to your client.

7 In every other case, if a client asks for a copy of
8 it, they can have it.

9 Q. Thank you.

10 MS. SHURLING: One moment's indulgence, Your Honor.

11 (Off-the-Record Discussion)

12 MS. SHURLING: No further questions, Your Honor.

13 Thank you, Mr. Johnston.

14 THE WITNESS: Yes, ma'am.

15 MS. SHURLING: Thank you, Your Honor.

16 CROSS EXAMINATION by MS. WHITE:

3:44 P.M.

17 Q. Okay. Mr. Johnston, if we can go back a little bit
18 and start off with -- do you need a break to stand up for a
19 moment?

20 A. No, ma'am, but if you could bring me a glass of
21 water, I would really appreciate it.

22 Q. I certainly could.

23 (Off-the-Record Comments)

24 (Brief Pause while witness is given water.)

25 A. Thank you very much.

1 Q. You're welcome.

2 (Brief Pause)

3 Q. Going back to -- starting at the beginning, I guess,
4 with the testimony on your direct, when we're talking about
5 the background and you said you practiced about sixty-five
6 percent (65%) criminal law at this point, when you started
7 this trial?

8 A. Yes, ma'am.

9 Q. How -- talk to us about what types of cases. Had
10 you handled criminal sexual conduct cases prior to or at the
11 same time?

12 A. Yes, ma'am. I have handled them many times. And
13 cases -- these are extremely serious cases, but cases even
14 more serious than that; murder cases, capital cases. And,
15 then, many, many less serious cases.

16 Q. And, so, in your practice, even in representing
17 folks on other CSC charges, lewd act, I know you've
18 represented some of the Internet Crimes Against Children
19 cases; is that correct?

20 A. Yes, ma'am, although that's come about since this
21 case.

22 Q. Okay.

23 A. But you are correct.

24 Q. So, you've had some experience in other cases
25 dealing with issues of the cases -- or research having to do

1 with sexual conduct and criminal sexual conduct?

2 A. Yes, ma'am, definitely.

3 Q. Including both minor and adults or...?

4 A. Both, yes, ma'am.

5 Q. Okay.

6 A. Although more minor cases. The adult cases, there
7 aren't -- aren't too many of them, but I have handled them.

8 Q. In your experience, have most of yours pled or gone
9 to trial?

10 A. Well, let's see. I've tried a lot of them. They
11 are -- they are the hardest cases.

12 Some -- they are amongst the hardest cases to work
13 out for any number of reasons.

14 They're cases where feelings run high, where often
15 the victims have strong expectation and requests of what they
16 think should happen to the Defendant.

17 The penalties are potentially very severe. And the
18 allegation are I will just use the word, "ugly."

19 I mean, they're often -- even the least serious
20 cases ugly, but they often get very, very ugly.

21 So, getting back to your original question, some of
22 them go to trial, some of them plea; few of them get
23 dismissed.

24 Q. So, in regards to plea negotiations, was -- were you
25 surprised that this was one that plea negotiations weren't

1 necessarily something that were I guess readily offered by the
2 State?

3 A. Was I surprised about that?

4 Q. Yes.

5 A. No, not in the least.

6 Q. All right.

7 A. It -- it -- it would not have been an easy case. It
8 is a case which probably could have been resolved, but it
9 would have required a good bit of effort on their part to
10 resolve it.

11 And I don't think they were interested in doing that
12 because of -- of what was represented to me, the strong
13 feelings that the victim and the victim's family had about the
14 case.

15 Q. And, in your mind, did that have to do with
16 relationships ---

17 A. Yes.

18 Q. --- of the victim and -- and the perpetrator?

19 A. And other members of her family.

20 Q. Okay.

21 A. I -- I don't know if it's in the record yet or not,
22 but Mr. Johnson was married to a lady. And this young lady I
23 believe was her niece if I am ---

24 Q. Granddaughter.

25 A. Granddaughter?

1 Q. Yes.

2 A. Was her granddaughter. And there was an element
3 within her family -- well, I think there were some people in
4 her family who just didn't like Mr. Johnson for one thing.

5 But there was an element of protectiveness for this
6 young lady. And they were very angry about what had been
7 alleged.

8 Q. And do you recall the -- the victim in the case had
9 -- had, had some difficulty growing up. In fact, she was
10 living and was -- her great-grandmother was her guardian; is
11 that correct?

12 A. I believe that that's correct, yes, ma'am.

13 Q. Okay. So, she was not being raised by her mother or
14 her father at the time?

15 A. No, no.

16 Q. Okay.

17 A. And she -- according to what I found out from the
18 case, both sides said this: She spent a lot of time with Mr.
19 Johnson and his wife.

20 And I don't know, if that created resentment and
21 jealousy on the part of the people that she -- perhaps the
22 rest of the family that she was spending so much time with
23 them; I don't know. But it was there.

24 Q. Okay.

25 A. And that was one of the reasons why it was -- it

1 would have been difficult to really get together and work out
2 a plea that would have been satisfactory to Mr. Johnson and
3 would also have been satisfactory to the State.

4 Q. In regards to the plea negotiations, you've
5 mentioned Judge Goode at the time you felt might have been
6 favorable as a plea judge. But the State ---

7 A. Based only on what he told us.

8 Q. Right. And -- and the State, at that time, after
9 what he said, didn't appear to want to proceed with any kind
10 of plea at that time?

11 A. The -- they -- they did not want that to happen.

12 Q. And, at the time when you met with them, your
13 understanding, as to your client's wishes, were that he didn't
14 want that to happen?

15 A. He wanted a trial. That's -- that's -- from the --
16 from the very beginning, he never told me anything else.

17 But that is something that sometimes changes,
18 especially if you can give the client an option to do
19 something else other than face trial because, when you go to
20 trial, one of two things can happen:

21 You can be acquitted and you're happy, or you can
22 get convicted. If you get convicted, you get a lot -- you can
23 get a lot of time. Mr. Johnson was not a young man.

24 Q. Now, one of the things that has been mentioned was
25 his concern over actually serving time because of his past as

1 a police officer. Was that his only concern, or was it issues
2 having to do with his credibility and wanting to protect his
3 reputation in the community?

4 A. Well, nobody wants to go to prison. I've learned
5 that, and for good reason. Mr. Johnson especially did not to
6 go to prison because of his -- of the fact that he had been a
7 police officer.

8 And I'm -- I'm not sure about this, but I believe he
9 knew that he was going to be in -- what -- what would be the
10 term, special protection -- protective custody.

11 And protective custody is hard on a person because
12 your human contact is so -- so limited.

13 So -- and that was really one of the arguments I was
14 making to Judge Goode. And Judge Goode seemed impressed by
15 that argument.

16 Judge Cole, on the other hand, seemed very
17 unimpressed with that argument.

18 But -- but getting back on what you were saying, I
19 think the thing about his credibility and his standing in the
20 community, that's what prevented me from working with him to
21 try to get a plea whereby he wouldn't get any time or he
22 wouldn't get nearly as much as he ended up getting.

23 Q. And do you believe he wanted to tell his side of the
24 story? Is that what you believed at that point potentially?

25 A. Well, he didn't want to say that he had done these

1 things of which he was accused. And that could be for one or
2 two reasons: One, he didn't do them. Or two, he was
3 embarrassed about having done them.

4 (Brief Pause)

5 Q. And, in your conversations with him, you talked a
6 little bit about issues of -- well, let me go back. Let me
7 follow kind of the line of -- of what you've testified here
8 today already.

9 Ms. Shurling pointed -- now, we talked a little bit
10 about the State's pre-trial motion having to do with prior bad
11 acts and allowing -- having Judge Cole kind of making a ruling
12 about them introducing other acts than those that were
13 specifically alleged in the indictment.

14 A. Yes, ma'am. What ---

15 Q. Obviously -- oh, I'm sorry.

16 A. What I interpreted that to mean is that they wanted
17 to check something out with the Court and make sure it was
18 admissible before they admitted it during trial because, if
19 they didn't, and then, admitted it during trial, and the judge
20 found it to be improper, then, we would be looking at a
21 mistrial.

22 Q. Okay. Now, obviously, the big issue we talked about
23 was the testimony regarding an attempted sexual intercourse.

24 There was never testimony that the victim and the
25 Defendant in this matter actually had sexual intercourse; is

1 that correct?

2 A. Not penile/vaginal intercourse, no, ma'am.

3 Q. Okay. In the pre-trial motion -- at one point
4 earlier today it was mentioned that the pre-trial motion
5 specifically mentioned the sexual intercourse.

6 Now -- and I've gone through the pages -- and I know
7 you said you necessarily haven't had a chance to review, but
8 do you recall in the pre-trial motion did they ever
9 specifically mention that they were going to raise an issue
10 that she was going to make a claim that he had attempted
11 sexual intercourse with her?

12 A. I don't have an independent recollection of it, but
13 I'll be glad to take a look at the transcript and see if that
14 helps me any. Can you direct me to the page that you're
15 talking about?

16 Q. Yes, Pages 33 through 41. And I think you can kind
17 of skim through Mr. Wilson's arguments through there, the only
18 place we're kind of looking.

19 A. Yes, ma'am.

20 (Brief pause while witness examines document.)

21 A. All right. Well, I see that I certainly made my
22 position clear on Page 35 about how I saw Rule 404(b),
23 addressing what they were talking about.

24 And I said at that time, "If they can show that
25 these other crimes or wrongful acts are admissible to show

1 motive, identify, existence of a common scheme or plan, the
2 absence of mistake or accident and intent, then, they might be
3 admissible. Otherwise, we would argue that they're not
4 admissible." (Phonetic)

5 Then, Mr. Wilson goes on. He discusses a couple of
6 cases with the Court, hands them up.

7 Q. And I'll kind of point you to ---

8 A. And I got -- I got lost with the part about
9 where ---

10 Q. Right.

11 A. --- where you said ---

12 Q. Okay. And I'll point you down -- the only reference
13 that I could find to sexual intercourse during this argument
14 was at the bottom of 36. But that is actual reference to the
15 facts of a particular case unrelated to the facts of this
16 case.

17 A. I -- I -- you are correct.

18 Q. And -- and I might have missed something, but to me
19 -- and I wanted to -- to see if this is your same recollection
20 -- the -- the indictments reference -- there are three
21 criminal sexual conduct with a minor second degree; is that
22 correct?

23 A. Yes, ma'am.

24 Q. A lewd act upon a minor?

25 A. Yes, ma'am.

1 Q. And a contributing to the delinquency of a minor?

2 A. That is my recollection, yes, ma'am.

3 Q. Each of those essentially refers to one act in the
4 indictment or ---

5 A. Well, no, not necessarily -- I disagree with that
6 statement.

7 Q. Okay. Let me rephrase. One of the criminal sexual
8 conducts refers to oral sex acts. One refers to penetration
9 using a vibrator.

10 The lewd act abides by the definition in the
11 indictment for lewd act.

12 In reference to what Mr. Wilson is arguing in this,
13 it appears that he is indicating that there dozens, if not
14 hundreds, of similar acts ---

15 A. Yes.

16 Q. --- that fit into each of those indictments. Is
17 that your belief of his argument?

18 A. Yes. And I believe that, that would be in accord
19 with the allegations; the overall theory of the State's case
20 and the discovery material that had been shared with me in --
21 in advance.

22 This wasn't a situation where she alleged, you know,
23 there were -- you know, just something happened just three (3)
24 times and I know exactly when it was and this is exactly what
25 happened.

1 This was something that went on allegedly over a
2 course of years. And that she might not always remember --
3 had remembered when it was or -- in terms of a date or
4 something like that.

5 Q. And, so, at this point, your reference and your
6 argument that you just referenced having to be with 404(b), it
7 appears that you were trying to indicate that you understood,
8 if they were referencing those issues, multiple -- you know,
9 multiple issues of the same arguments in the indictment that
10 -- that you would think those probably did fit within 404(b)?

11 A. Yes, ma'am.

12 Q. Okay. Now, at the time, had they specifically said,
13 "And the victim also claims he attempted sexual intercourse,"
14 and, you know, all of this had come up, would that have raised
15 a flag with you?

16 A. Well, the way I'm thinking about it was that, that
17 wasn't that far outside of what the other claims she was
18 making were.

19 I mean, yes, it was one specific incident where she
20 said that it almost came to penile/vaginal intercourse, and
21 that may have been the only time that, that happened.

22 But it -- but the thing about it was, it didn't
23 actual occur. There was no penile/vaginal intercourse.

24 It was more of touching or rubbing or whatever you
25 want to call it, which was not that far afield from the -- all

1 of the other allegations that she was making.

2 Q. And I'm going read you that -- the indictment for
3 the lewd act charge, "Committing or attempting a lewd act upon
4 a child under sixteen (16)."

5 The actual language in the indictment saying,
6 "Willfully and lewdly commit or attempt to commit a lewd or
7 lascivious act upon or with the body or its parts of the
8 victim, a minor child under the age of sixteen (16), with the
9 intent of arousing, appealing, or gratifying a lust, passions
10 and sexual desires of the person or child."

11 Obviously, you're not a judge or not the Court of
12 Appeals or not the Supreme Court, but could attempting sexual
13 intercourse have fit within that definition in your mind
14 or...?

15 A. I -- I guess it's possible. One usually sees it
16 that, if that sort of allegation is made, it's usually charged
17 differently. It would usually be charged as attempted
18 criminal sexual conduct.

19 But I think it does arguably fit within the
20 definition of lewd act on a minor because that's a very, very
21 broad statute.

22 Q. At the time that the actual testimony ended up being
23 presented, during the victim's direct, obviously, we've noted
24 that you didn't object to it at that point?

25 A. No, ma'am.

1 Q. Other testimony was being presented about the acts
2 that had occurred that were being alleged in the indictments.
3 Did -- did that hit you as something that you should have
4 objected to at the time?

5 A. Well, now as we sit here, I say yes, I should have.
6 But, at the time, when things -- when the fur is flying fast
7 so to speak, it didn't seem like that significant a point in
8 light of all of the other stuff that was being said.

9 Q. So, it was not a conscious decision on your -- your
10 -- your behalf, I guess, not to make an objection?

11 A. Not that I recall, no, ma'am.

12 (Brief Pause)

13 Q. In regards to the issues raised about the testimony
14 about whether or not someone was in a living room to look out
15 the window versus in the bedroom to look out the window, there
16 are several times, I believe, throughout the victim's
17 testimony, both direct and maybe...

18 I'm not sure on cross, but at least during direct,
19 that there were at least three times that she mentioned that
20 she was placed in a position with the Applicant where he
21 wanted to be at a location to look out the window.

22 Is that ---

23 MS. SHURLING: I'm sorry. Could you give me a
24 page reference ---

25 MS. WHITE: You want me to point you to a reference?

1 MS. SHURLING: -- and a line number too?

2 MS. WHITE: Sure. There is -- let me get to the
3 direct here.

4 (Brief Pause)

5 MS. WHITE: All right. We're looking at -- and
6 you've got the Page 64.

7 MS. SHURLING: Uh-huh (affirmative).

8 MS. WHITE: And Page 76.

9 MS. SHURLING: Seventy-six (76).

10 MS. WHITE: And there is also -- give me one second,
11 Your Honor.

12 (Brief Pause)

13 MS. WHITE: I think it might have been on cross. If
14 you'll give me one moment, Your Honor.

15 (Brief Pause)

16 MS. WHITE: And it may have been on direct.

17 (Brief Pause)

18 MS. WHITE: And I apologize. I think it was just
19 the two.

20 MS. SHURLING: Thank you, Your Honor.

21 Q. (By Ms. White) The two times that she mentioned
22 that they were in front of a window ---

23 A. Yes, ma'am.

24 Q. --- to look outside, to look out to look, is that
25 something that you think would have been something that you

1 normally would have objected to?

2 A. Well, my rule about objecting is, if I think it
3 would hurt me and I think I can keep it out and I can come up
4 with a reason, I'm going to object.

5 So, either I didn't think it would hurt or I didn't
6 have a basis.

7 (Brief Pause)

8 Q. Now, you attempted to cross examine the witness and
9 attack credibility issues; is that right?

10 A. Yes, ma'am.

11 Q. Was that your main line of defense in that, in -- in
12 attacking the victim's testimony?

13 A. Yes, because that's basically what the case turned
14 upon. There was no scientific evidence or anything like that.
15 The Defendant hadn't made a damaging statement to law
16 enforcement. It -- really the -- the -- it -- it turned on
17 her credibility.

18 Now, there was some attempt at collaboration there
19 with the photographs of -- of his private parts. But it
20 wasn't a persuasive -- it wasn't persuasive collaboration in
21 my mind.

22 So, again, I think the case turned on her
23 credibility.

24 Q. Okay. And let me ask you real quick about the
25 statement he gave to the police and the photographs. He was

1 not represented by an attorney at the time he gave his
2 statement or consented to allowing the photographs; is that
3 right?

4 A. Not to my knowledge.

5 Q. Okay.

6 A. I think they had a search warrant for the
7 photographs. I don't think he allowed it. I think they had a
8 search warrant. But I don't remember for sure.

9 Q. Okay. The physical traits, of his private areas,
10 those were things she was able to identify and that were
11 brought out obviously through various witnesses.

12 They had an investigator who was the one that took
13 the photos and the victim who testified; is that correct?

14 A. Yes, although, as was brought up earlier ---

15 Q. Right.

16 A. --- there were some discrepancies in what she
17 alleged things were and what they actually turned out to be.

18 Q. Now, the -- the ---

19 A. And there were some ex -- there was at least an
20 explanation for some of it about the conversation in the
21 family about the medical procedure he was going to undergo and
22 she was a witness to that. So, she would have gotten that
23 information that way.

24 Q. And not to -- to belabor the point, but there were
25 several -- there was a burn mark on the penis that refreshed

1 -- referenced I think the medical procedure; is that correct?

2 A. Yes, the -- the -- the doctor used some sort of heat
3 to remove the anomaly whatever it was. And it left what we
4 called a burn mark.

5 Q. And that was the issue that was brought up by both
6 his wife and himself that they claimed was discussed at the
7 dinner table. And that was the reason that the victim would
8 have known about it outside of seeing it?

9 A. Something to that effect, yes, ma'am.

10 Q. Okay. Explanation for uncircumcised, the effect the
11 freckle that was on the penis and the other wart or mole on
12 the inside of the leg, no real explanation for those other
13 than the explanation given, at the end of his testimony, which
14 was I cut myself or scraped -- or scratched myself. I was
15 bleeding and she had to put a band aid on my leg ---

16 A. All right. Now, you're ---

17 Q. --- to your knowledge? Did I run through too
18 quickly?

19 A. You kind of lost -- you kind of lost me with that
20 question.

21 Q. Let me go one at a time.

22 A. Yes, ma'am.

23 Q. Uncircumcised ---

24 A. Yes, ma'am.

25 Q. --- the only explanation offered during the trial --

1 in fact, no other explanation offered as to how she knew that
2 at the trial; is that correct?

3 A. I don't remember that, but -- but every man is
4 either circumcised or uncircumcised. So, it -- it may not be
5 that hard to guess which. I don't know.

6 Or it could have been discussed at some point; I
7 don't know.

8 Q. And I guess what I was asking at the -- the State
9 asked him several times on his testimony, once he got up on
10 the stand, if he could explain why she knew that.

11 A. And it was a hard thing to explain and he couldn't
12 do it.

13 Q. And he didn't do it. In regards to the -- there was
14 a freckle that was identified I believe that was also on that
15 same general area, asked several times on his cross, by the
16 State, he could not explain, again, and there was no other
17 explanation other than victim's testimony I think?

18 A. I don't recall any other, no.

19 Q. Okay. And, in regards to the other wart or mole, he
20 offered the explanation, at the end of his testimony, and that
21 was the explanation offered other than her testimony; is that
22 correct?

23 A. That's all I recall.

24 Q. Okay. And, in regards to talking with him about
25 testifying, you said you -- you did discuss with him the

1 options.

2 You did talk with him about -- or you generally at
3 least speak with your clients about what types of questions
4 that they're going to be asked?

5 A. In a general -- in a general fashion, and in this
6 particular case, these issues that we're talking about here,
7 about the identification of these I'll call them anomalies or
8 whatever they are, about his private parts, that was obviously
9 going to be something that would be -- that he was going to
10 have to explain if he took the stand.

11 Q. Okay.

12 A. And he -- he knew that.

13 Q. And you did discuss that with him?

14 A. Yes, ma'am. I mean, this was a central -- this was
15 a central aspect of this case. They had photographs of -- of
16 this man's private parts.

17 And these were displayed in court on one of those
18 projector things that they use. I mean, this was a major
19 aspect of this case.

20 Q. Do you recall -- I -- I noted in the -- in the cross
21 examination, that the State had asked him twice before he gave
22 his reason on Pages 213 and 219, and, then, when he finally
23 gave the explanation of scratching himself in the shower on
24 223. They had asked him twice before to explain the wart or
25 the mole.

1 A. Yes, ma'am.

2 Q. Obviously, you all had discussed these issues. Any
3 reason why you think he didn't -- was he nervous you think?
4 Obviously, on the stand he would be nervous, but he didn't
5 give any explanation to begin with.

6 (Brief Pause)

7 A. All right. I'm a little confused by your question.

8 Q. Okay.

9 A. What ---

10 Q. He had -- and let me I guess rephrase this from the
11 sense that the -- the story of the scratching and the bleeding
12 and the band aid ---

13 A. Yes, ma'am, the -- the take away for that for me was
14 about how he had her put the band aid on ---

15 Q. Right.

16 A. --- the victim.

17 Q. That wasn't obviously given in a statement to the
18 police?

19 A. It -- I don't remember whether it was in his
20 statement to the police or not.

21 Q. Okay. Not had -- had not been brought up
22 essentially until the point at trial?

23 A. Unless it was in his statement. And, again, I
24 apologize. I do not recall whether it was or not.

25 Q. Okay.

1 A. But, if he didn't tell the police that, then, nobody
2 would have known that except us.

3 Q. Okay. And, then, he was asked twice before. And --
4 and maybe -- it sounds a little confused; he sounds a little
5 confused on the stand, but he didn't bring that up until the
6 third time he was asked ---

7 A. Yes, ma'am.

8 Q. --- on the stand. Do you -- is that an issue that
9 you think harmed him at trial?

10 A. Definitely. And -- and the other thing is I -- I
11 think most people find that, that is somewhat implausible,
12 the whole scenario.

13 Q. You ---

14 A. I mean, I can't tell somebody, you know, "No, you
15 can't testify to that because I find it implausible." I mean,
16 I can say, "Hey, are you sure this is the way it happened?"

17 But if they say, "Yeah, that's the way it happened,"
18 then, that's what I got to go with.

19 Q. And you're his attorney, but ultimately, whose
20 choice is it whether or not he -- the -- the Defendant in a
21 case is going to testify?

22 A. It is always the Defendant's choice.

23 Q. All right.

24 (Brief Pause)

25 A. And that is why I always try to have that decision

1 confirmed on the record, whether the Defendant is going to
2 testify or he is going to exercise his right to remain silent.

3 I try always to remember to ask the Court to have a
4 colloquy with the Defendant to make sure that, that is being
5 done properly and with full knowledge.

6 Q. You did call a couple of witnesses for character?

7 A. Yes, ma'am, and we also called his wife.

8 Q. And did you think those were helpful in the case?

9 A. I don't think they hurt. I don't think they hurt
10 us, but I don't think that they were particularly helpful.

11 I mean, I would say it was neutral in the overall --
12 in the overall context of what -- of what issues were being
13 portrayed there.

14 Q. Okay.

15 A. Now, I think his wife was helpful.

16 Q. Okay.

17 (Brief Pause)

18 MS. WHITE: I think that's all I have at this time,
19 Your Honor.

20 THE COURT: Any redirect limited to what she went
21 into?

22 MS. SHURLING: Pardon?

23 THE COURT: Any redirect limited to what she went
24 into?

25 MS. SHURLING: Yes, please.

1 THE COURT: Okay.

2 REDIRECT EXAMINATION by MS. SHURLING:

4:15 P.M.

3 Q. The Respondent asked questions about the -- the lack
4 of explanation for this young woman knowing about your client
5 being uncircumcised. Do you remember that line of
6 questioning?

7 A. Yes, ma'am, I do.

8 Q. Okay. Could I get you to take a look at Page 190 --

9 A. Yes, ma'am.

10 Q. --- of your direct examination of Jenol Johnson,
11 your client's wife?

12 A. Yes, ma'am.

13 Q. And specifically when she's talking about the
14 surgery that her husband had to have.

15 A. Yes, ma'am.

16 Q. Let's look at lines 7 through 11. Could you read
17 that out loud for us?

18 A. On Page 190?

19 Q. Correct.

20 A. All right. Seven through 11?

21 Q. Correct.

22 A. "Answer: And everybody says, "Well, just make sure
23 the knife don't slip or do you think it will hurt anything if
24 the knife does slip?

25 "I mean, everybody started laughing at the table. I

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1 mean, he's always the butt end of jokes. We would always
2 aggravate him and make fun of him."

3 Q. If you're talking about an uncircumcised male, and a
4 surgery that is going to involve using a scapel in the genital
5 area of the end of the penis, did you consider that it was
6 possible that some of that playful dinnertime conversation
7 could have involved a reference to his foreskin and being
8 uncircumcised?

9 (Brief Pause)

10 A. Well, I have no knowledge thankfully of surgery to
11 the penis. But I would think that they -- that how it works
12 is that the penis -- that the glands would be -- or the
13 foreskin would be retracted from the glands in any case before
14 you would perform the surgery.

15 So, I think it would go the same way circumcised or
16 uncircumcised.

17 Q. And I apologize. I -- I'm just obviously less than
18 articulate. I'm not talking about the actual medical
19 procedure or the actual surgery that was going to be
20 performed;

21 I'm saying that, if your client's wife says they're
22 at the dinner table joking about a surgery and a scapel being
23 used near the end of his penis and better hope that thing
24 doesn't slip, did it occur to you that, that very -- that kind
25 of conversation involving kidding around, if you will about

1 what could happen accidentally in a surgery, could very easily
2 have involved a reference to him being uncircumcised?

3 A. Well, the reason I elicited that particular
4 testimony was based on that -- because the young lady knew it
5 had a curve that, that would be some potential knowledge on
6 her part as to the physical layout of things. That was what I
7 was doing.

8 As far as circumcised or uncircumcised, I -- I was
9 using that more on the burn mark and -- and that kind of
10 thing.

11 But whether or not it applied to the circumcised or
12 uncircumcised, I didn't think of that. And maybe it would; I
13 don't know.

14 Q. In the testimony at trial, there are references to
15 the fact that he was not circumcised. There's a reference to
16 this wart or mole that the young lady described as being
17 inside his left butt cheek.

18 A. Yes, ma'am.

19 Q. And, then, there's a reference to something I
20 believe she described as a -- a freckle or something on his --
21 at the top of his pants, correct?

22 A. You are correct.

23 Q. And it is the freckle description that was
24 subsequently explained as actually being a surgical scar from
25 where something was burnt off; isn't that accurate?

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1 A. You are correct, yes, ma'am.

2 Q. So, there aren't four attributes; there are only
3 three (3); the -- the freckle references and the surgical scar
4 reference are, in fact, the same one?

5 A. The same one; you -- you are correct.

6 Q. Okay.

7 (Brief Pause)

8 Q. Again, I don't dispute that the solicitor's pre-
9 trial motion doesn't specifically refer to vaginal/penile
10 penetration. And we've -- we've all looked over that just now
11 and it doesn't ---

12 A. Yes, ma'am.

13 Q. --- does it?

14 A. No, ma'am.

15 Q. Okay. But, when the allegation of penile
16 penetration did -- or an attempt at penile penetration did
17 come up during this trial, did you even consider objecting
18 under existing South Carolina case law to the introduction of
19 testimony concerning prior bad acts and not the subject of
20 indictment that were more egregious than the acts for which he
21 was on trial?

22 A. I have no recollection of considering it. And,
23 obviously, the transcript will show that I didn't actually do
24 it.

25 Q. And, had you been familiar with the cases that I

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1 referred to in my brief, wherein the Court has -- has said
2 that exceeding the scope with testimony concerning matters
3 more egregious is impermissible, would you have objected to
4 that?

5 (Brief Pause)

6 A. Probably, yes, ma'am.

7 Q. Okay. Now, Respondent has made the point that you
8 -- you can't object to everything. And -- and the thing about
9 the window being sort of secondary, that she had mentioned
10 once before that he had moved from one room to another, so, he
11 could look out the window.

12 And that was an aside in the testimony about the
13 attempted intercourse as well, correct?

14 A. You are correct.

15 Q. So, if you had objected and articulated a proper
16 ground with supporting authority, to that testimony coming in,
17 then, the additional bit about -- and -- and that time he was
18 wanting to look out the window as well, would not have come
19 in?

20 A. Yes, they would have been -- if one -- if one part
21 was out, yes, then, I think both parts would have been out.
22 I'm confident of that.

23 Q. Okay. Now, in your practice ----

24 A. Yes, ma'am?

25 Q. --- do all of your people that plead guilty start

1 out saying from the get go they want to plead guilty?

2 A. Oh, no.

3 Q. Do you not, in fact ---

4 A. Some do, some do, but not -- as -- as a matter of
5 fact, when we start out, we usually don't get to the "Are you
6 pleading guilty" part.

7 Usually, you hear about the case, you hear about
8 their background. Then, at a later time, we get to discovery,
9 share the discovery with them.

10 Then, kind of at that point, we're trying to figure
11 out, "Is this a plea or is this a trial?"

12 And, of course, what offers are we going to make,
13 what are the statutory parameters? Is there a mandatory
14 minimum? All of those things that have to be considered.

15 Q. Isn't it true that it's not at all uncommon to have
16 a client that starts out saying it'll snow in the bad place
17 before they'd plea and they end up pleading?

18 A. Oh, yeah, it happens all the time.

19 Q. Okay. And, as part of your practice, do you
20 sometimes explore possible plea bargains on behalf of your
21 client even if your client has indicated they have no interest
22 in pleading?

23 A. Absolutely, as I did in this case. Or not -- at
24 least made some attempts towards that.

25 Q. And, again, once you found out that one of the big

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1 considerations in your client's mind would be his safety, if
2 he were ever incarcerated, you did nothing to investigate
3 possible procedures and programs in place that could have
4 allowed him to serve his time elsewhere?

5 A. You're correct.

6 Q. Okay.

7 A. The only option I knew that would have been
8 available to him -- and really it wasn't an option, it was
9 just their policy.

10 I -- I -- it was my belief that he was going to be
11 -- that if he were incarcerated, that he would be placed in
12 protective custody at some level, which would be good in terms
13 of preserving his safety, but bad in terms of quality of life.

14 Any -- any time in the Department of Corrections is
15 bad, but I can imagine protective custody as being worse
16 because of the isolation.

17 Q. Certainly. Now, the Respondent has asked you some
18 questions that -- to which you responded that you didn't think
19 the allegation of attempted vaginal/penile intercourse was
20 actually that diverse from the other allegations. Did I
21 understand your testimony?

22 A. You are correct. It -- it is diverse in the sense
23 of it is a different act. But it seemed to go along with the
24 whole theme of what was being suggested had occurred.

25 Q. Well, would you agree with me, sir, that most people

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1 do not consider that they have, for example, lost their
2 virginity until they have had actual penile intercourse?

3 A. I'm confident that they believe they haven't lost
4 their virginity until they have had actual penile -- at least
5 females.

6 Q. And, if you were dealing with a -- a -- an
7 adolescent girl, someone who claims things have been happening
8 to her since very early in adolescence and young teenage
9 years, the fact that someone attempted vaginal/penile
10 intercourse would carry the inference of such grave
11 consequences, wouldn't it?

12 A. If losing one's virginity is a grave consequence,
13 yes.

14 Q. Would you not agree that losing one's virginity, as
15 the result of a sexual assault, would be a pretty sad and
16 grave consequence?

17 A. Well, I don't -- either way it would be bad.

18 Q. Okay. Now -- and -- and there's been some
19 questioning about the fact that, you know, I mean, after all,
20 they didn't actually have intercourse; he couldn't get an
21 erection.

22 It was -- the questions that were asked almost
23 suggest that it was just more fondling, correct? I mean, did
24 -- let me rephrase that.

25 A. I got lost with that question. I'm sorry.

1 Q. Was there anything about this young lady's testimony
2 that would give you to believe that the attempt of intercourse
3 was genuine; that it was an actual attempt at intercourse?

4 A. Do -- let me see if I understand your question. Do
5 I think that from her testimony that -- did she think it was
6 an actual attempt at intercourse?

7 Q. Was it reasonable to infer from her testimony, if
8 believed, that it was an actual attempt to penetrate her with
9 his penis?

10 A. Yes. I believe that it would be such a reasonable
11 inference.

12 Q. And, in fact, she claimed ---

13 A. And, then, had he been physically able of
14 consummating the act, he would have done so according to her
15 testimony.

16 Q. And, in fact, in her testimony she claimed that, in
17 the absence of condoms, he fashioned a condom from a part of a
18 latex glove; isn't that true?

19 A. Yes. There was -- I -- I read that. But, frankly,
20 I did not understand what that was -- what that exactly was
21 referencing. I still don't und -- can't shed any light on
22 that for you.

23 Q. Well, she said that he put a latex glove on his
24 penis before trying to put his penis in her.

25 A. Okay. All right. And, so, you're -- I mean, that's

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1 sounds like a homemade version of a -- of a condom to me
2 certainly.

3 Q. And the need for a barrier of any sort on the
4 penis ---

5 A. Would ---

6 Q. --- would be testimony that would be intended to
7 infer what?

8 A. That he intended penetration or he was optimistic
9 about penetration no doubt.

10 Q. And trying to protect the young lady from...?

11 A. I presume pregnancy, but of course, there are other
12 things as well.

13 (Brief Pause)

14 Q. Your client had told you the explanation that's been
15 addressed on cross about scratching the top off a mole and it
16 bleeding and getting his step-granddaughter to put a band aid
17 on it to stop the bleeding?

18 A. Yes, ma'am, he did.

19 Q. The young lady had testified to being comfortable
20 enough with her grandfather to expose her breast to him to
21 show him something she was afraid was a problem, hadn't she?

22 A. Yes, although I can't tell you from here that it was
23 a full exposure of the breast like a woman would have if she
24 were to go to the doctor or something like that.

25 I don't know if it was intended that it was pulling

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1 the shirt back from or -- or what. I can't say.

2 Q. Well -- and I can tell you the record will, in fact,
3 demonstrate that she said she exposed a portion of ---

4 A. Okay.

5 Q. --- her breast.

6 A. Yes, ma'am.

7 Q. But would you disagree that that's testimony from
8 which a jury could infer that this young lady was sufficiently
9 comfortable with her grandfather that she would expose even a
10 part of her breast to show him something she was afraid was
11 wrong with it?

12 A. Yes, I do agree with that.

13 Q. And, when your client was asked on cross to explain
14 how this woman could have known about the mole, looking at
15 Pages 223 and 224 ---

16 A. Yes, ma'am.

17 Q. --- he relays having asked her to put a band aid on
18 it?

19 A. You are correct.

20 (Brief Pause)

21 MS. SHURLING: A moment's indulgence.

22 (Brief Pause)

23 Q. (By Ms. Shurling) On Page 227, on your redirect, you
24 bring out -- Lines 13 through 17 -- the fact that, although
25 your client said he had just taken a shower, he had put on his

1 shorts before he asked her to put the band aid on him?

2 A. Yes, ma'am.

3 Q. So, not unlike the girl partially exploding --
4 exposing her breast, your client was saying that he had put on
5 his underwear and that he was getting her to put a band aid on
6 a place way up high on his right thigh, correct?

7 A. Yes. I -- I understand that, that was his theory.
8 I just didn't think it would -- I didn't think it would work.
9 It didn't work.

10 Q. I understand. My next question, though, was did you
11 consider arguing that the young lady's testimony about talking
12 to her grandfather about there being something wrong with her
13 breast and baring at least a part of her breast to her
14 grandfather and letting him see it was indicative of them
15 being comfortable with each other in the context of -- you
16 know, in -- in the family home that she felt comfortable with
17 her grandfather and felt comfortable enough to let him see
18 this place on her breast?

19 A. Ab -- absolutely. And I think just for me
20 personally I find that within the normal realm of human
21 experience. It was what his testimony was that I found fell
22 outside that.

23 Q. Well ---

24 A. But that was just my personal -- and lots of times,
25 as a lawyer, you hear something and you think, "That doesn't

1 sound good." But you still try to argue it and you don't let
2 anybody know what you think.

3 Q. Certainly. But my point -- and I'm -- it's been a
4 long day and we're all tired. And I'm sorry I'm not being as
5 articulate as I should be.

6 But your client insisted on testifying, correct?

7 A. Yes.

8 Q. And he gave what he insisted to be the truth?

9 A. You're correct.

10 Q. Testimony about how that happened?

11 A. Yes, you are correct.

12 Q. And you already knew that, when he had told you
13 that, it had struck you as implausible at best and awkward and
14 uncomfortable at worse?

15 A. You're right.

16 Q. Okay. And my question is: Did you consider arguing
17 to the jury that, "I understand how you might react to that at
18 first blush, but remember this is a -- a grandfather and a
19 young lady that are comfortable enough with each other, as
20 family members, that she was comfortable showing him a part of
21 her breast when she thought something was wrong with it.

22 "And he's cut himself. There's nobody there to help
23 him. He -- he has on his underwear; perhaps bad judgement."

24 But did you consider arguing that the young woman's
25 testimony about the episode with exposing her breast could be

1 evidence of the fact that she was comfortable enough with him
2 physically, and he with her, that it might not be that bizarre
3 for him to ask her to put a band aid on him?

4 A. I do not recall whether I considered it or not. But
5 I will concede the point that the argument you make could be
6 made with a straight face.

7 MS. SHURLING: Thank you very much. A moment's
8 indulgence.

9 (Brief Pause)

10 MS. SHURLING: Nothing further, Your Honor.

11 MS. WHITE: Your Honor, may I have a brief recross?

12 THE COURT: Limited to what she went into.

13 MS. WHITE: Yes, Your Honor. I just want to -- to
14 clarify a couple of issues.

15 RECROSS EXAMINATION by MS. WHITE:

4:35 P.M.

16 Q. Number one, I know Ms. Shurling referred to her as a
17 woman. The victim in the case, at the time these events
18 occurred, she was between the ages of thirteen (13) and
19 seventeen (17); is that correct?

20 A. That is correct.

21 Q. Would you consider that a woman?

22 A. Well, seventeen (17), yes; thirteen (13), no.

23 Q. Okay.

24 A. Where the change comes, I can't say.

25 Q. And the -- the issue with the exposing of a partial

1 part of her breast was at thirteen (13); is that correct?

2 A. I believe that, that is the story.

3 Q. Okay. And I just want to refer you back to Page 63
4 to -- to clarify when we are talking about whether or not she
5 was comfortable in a situation with this step-grandfather.

6 A. Yes, ma'am.

7 Q. Did the victim not ---

8 A. You said Page 63?

9 Q. Yes, sir, Page 63.

10 A. All right.

11 Q. Did the victim not first testify that she had told
12 her grandfather, when he asked what was wrong, that she didn't
13 want to say anything; she was going to wait till her
14 grandmother got home, Lines 7 through 9?

15 (Brief pause while witness reviews document.)

16 A. Yes.

17 Q. Okay. So, initially ---

18 A. The way -- the way she's describing it, it's like he
19 more insist -- not insisted, but kind of suggested, "Hey, you
20 want me to take a look? It's okay," something to that -- that
21 effect.

22 Q. So, from her testimony, she didn't come straight out
23 and say, "Would you, please, look at this," initially?

24 A. No.

25 Q. Okay. And, then, obviously, her testimony does go

1 through -- she does say she -- she did show him partially part
2 of her breast to show him the spot; is that correct?

3 A. That is correct. That is what she testified to.

4 Q. And, then, if you'll look down at the bottom, you'll
5 note -- or, if you can, look and see when it says that he
6 moved the shirt off her breast and started feeling on them,
7 she knew that something wasn't right.

8 She did, then, cry and run back to her bedroom, at
9 which point he followed her; is that correct?

10 A. That is what her testimony was ---

11 Q. Okay.

12 A. --- yes, ma'am.

13 MS. WHITE: Okay. That's all, Your Honor.

14 MS. SHURLING: Nothing further, Your Honor.

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

16 (The witness complied with the Court's request.)

17 THE COURT: We're going to take a short recess.

18 We'll come back in a few minutes.

19 MS. SHURLING: Thank you, Your Honor.

20 (Whereupon, a brief recess was taken from 4:37 p.m.
21 to 4:53 p.m.)

22 (Off-the-Record Comments)

23 THE COURT: Will the lawyers approach a moment?

24 (No Response)

25 THE COURT: Will the lawyers approach?

1 MS. WHITE: Yes, sir.

2 MS. SHURLING: Oh, certainly, Your Honor.

3 (Whereupon, a bench conference was had with both
4 attorneys present.)

5 MS. SHURLING: One moment's indulgence, Your Honor.

6 (Off-the-Record Discussion)

7 MS. SHURLING: Your Honor, at this time I would call
8 the Applicant to the stand.

9 THE COURT: Sir, just come right up here.

10 MS. SHURLING: Mr. Johnson, please, come around.

11 (The witness complied with the Court's request.)

12 THE COURT: If you would, sir, just walk up to the
13 Bible that's over here at the ledge and place your left
14 hand on the Bible and raise your right hand as best you
15 can.

16 (Whereupon,

17 DONALD HUGH JOHNSON

18 having first been duly sworn, testified as follows:)

19 THE COURT: Thank you. Just have a seat in the red
20 chair and pull the red chair up to the microphone.

21 (The witness complied with the Court's request.)

22 DIRECT EXAMINATION by MS. SHURLING: 4:54 P.M.

23 Q. State your full name for the record.

24 A. Donald Hugh Johnson.

25 Q. Mr. Johnson, you heard me earlier today say that you

1 had executed a waiver of any claims of ineffective assistance
2 of appellate counsel in order for me to represent you in this
3 PCR?

4 A. Yes, ma'am.

5 Q. Is that accurate?

6 A. Yes, ma'am.

7 Q. Did I, in any way, coerce you or -- or threaten you
8 or promise you anything in exchange for that waiver?

9 A. No, ma'am.

10 Q. Okay.

11 THE COURT: Officer Bennett, will you ---

12 (Deputy adjusts microphone)

13 THE COURT: Thank you.

14 (Off-the-Record Comments)

15 MS. SHURLING: Thank you, Your Honor.

16 Q. Mr. Johnson, you and I have talked before about the
17 fact that for a big man you are fairly soft-spoken. I need
18 you to speak up a little bit, so, everybody can hear you,
19 okay?

20 A. Okay.

21 Q. All right. A little bit more.

22 A. Okay.

23 Q. All right. Much better. Thank you. I told you
24 there would come a day when we would have to go over this in
25 court.

1 I realize I've already gone over it with you till
2 you're sick of it. But let's do it one more time.

3 Have I gone over with you the statutory provisions
4 for each of the crimes you were indicted for?

5 A. Yes, ma'am.

6 Q. And have I explained to you the potential penalties
7 for every indictment you were facing?

8 A. Yes, ma'am.

9 Q. And have I explained to you the difference between
10 consecutive and concurrent time?

11 A. Yes, ma'am.

12 Q. Did I also explain to you that, if you were blessed
13 with a victory in a Post-Conviction Relief case, the prize
14 that we would win would be what?

15 A. (No Response)

16 Q. What did I tell you it would be?

17 A. That we can -- we would either maybe get a time
18 served or maybe we could go to another place to serve time if
19 they convicted me of anything.

20 Q. Okay. Let's -- let's back up. What is the thing
21 that the judge grants us if we win the PCR?

22 A. A new trial.

23 Q. That's what I'm looking for. And did I explain to
24 you that, when your case was remanded for a new trial, the new
25 judge would not be bound by the sentence that you received at

1 this guilty plea?

2 A. Yes, ma'am.

3 Q. I mean, at this trial? Excuse me.

4 A. Yes, ma'am.

5 Q. And we talked about a case called *State vs. Louis*
6 *Hilton* (phonetic), remember that?

7 A. Vaguely.

8 Q. Okay. I explained to you that, if your case were
9 retried and you were convicted once, again, did I not, that
10 the judge at the retrial would not be bound by the penalty you
11 received following your first trial?

12 A. Yes, ma'am.

13 Q. And I explained to you that, if you happened to be
14 before Judge Cole again, that Judge Cole could not give you a
15 more lengthy sentence without offering on the record some
16 explanation for why he found the necessary and appropriate
17 penalty to be different from what he had given you the first
18 time?

19 A. Yes, ma'am.

20 Q. But I also told you, did I not, that, if you were to
21 get any other Circuit Court Judge, they could give you any
22 penalty they wanted within the statutory minimums and maximums
23 for each of those indictments?

24 A. Yes, ma'am.

25 Q. And also that it would be possible -- while Judge

1 Cole ran them concurrent, it would be possible that another
2 judge might run them consecutive?

3 A. Yes, ma'am.

4 Q. And we sat and played with the numbers about what
5 your total exposure was?

6 A. Yes, ma'am.

7 Q. All right. In light of that, you elected to go
8 forward with this PCR action; is that true?

9 A. Yes, ma'am.

10 Q. Is that still your desire here today?

11 A. Yes, ma'am.

12 Q. Even in light of the risk of getting substantially
13 more time if you were re-convicted?

14 A. Yes, ma'am.

15 Q. Okay. Got that on the record. Now, you've heard
16 some discussion here today about the fact that you didn't want
17 to plead guilty?

18 A. Yes, ma'am.

19 Q. Is that true?

20 A. Yes, ma'am.

21 Q. And is it fair to say you asserted your innocence
22 all along?

23 A. Yes, ma'am.

24 Q. But, by the time you went to trial, were you
25 familiar with what was being said about you and -- and what

1 your step-granddaughter was claiming you had done to her?

2 A. Yes, ma'am.

3 Q. And did your lawyer explain to you that it was
4 pretty much going to come down to a credibility contest?

5 A. Yes, ma'am.

6 Q. Did he explain to you that the jury could decide
7 they believed her not you and you could get convicted of a
8 lot of these crimes and get a lot of time?

9 A. Yes, ma'am.

10 Q. You heard your lawyer say one of the reasons you
11 didn't want to plea was because of your career in law
12 enforcement; is that true?

13 A. Yes, ma'am.

14 Q. Were you afraid of being incarcerated in South
15 Carolina?

16 A. Yes, ma'am, because I ---

17 Q. And don't get me wrong; I know you're -- nobody
18 wants to be incarcerated anywhere ---

19 A. Thank you.

20 Q. --- but were you particularly afraid of being
21 incarcerated in South Carolina?

22 A. Yes, ma'am.

23 Q. And why was that, sir?

24 A. Because, again, I was a police officer here and I
25 probably put some of those guys in prison. And, then, I ---

1 Q. And how long ---

2 A. I would -- I would have a big chance of running into
3 some of them.

4 Q. Okay. Let me explain something to you. Remember
5 when we were talking about coming to court I explained to you
6 how that nice lady has to take down every word we say?

7 A. Yes, ma'am.

8 Q. So, when I ask you a question, wait until I finish
9 talking before you start answering. And I'll try to do the
10 same thing. I mess up some too.

11 All right. So, that's why you were afraid. How
12 many years were you a law enforcement officer?

13 A. Twenty-seven (27) years.

14 Q. And you were, in addition to your active years of
15 service as a enforcement officer, you were a State Constable
16 for an additional three (3) or four (4) years?

17 A. Yes, ma'am.

18 Q. Okay. Did your lawyer ever tell you that he had had
19 discussions with Judge Goode about what kind of penalty he
20 envisioned himself giving if this case came up before him?

21 A. I don't remember him telling me he talked to a
22 judge, but I was under the impression that he talked to the
23 attorney general. And the attorney general said a year in
24 prison and three (3) years house arrest.

25 Q. Okay. During any of those discussions, did he ever

1 tell you that he would explore the possibility of you being
2 able to serve any time you might get in another state?

3 A. No, ma'am.

4 Q. If he had been able to explain to you that there was
5 an option available that might would allow an agreement
6 whereby you could serve any time you got, in a neighboring
7 state, would that have made a difference in whether or not you
8 were willing to consider a plea bargain?

9 A. Yes, ma'am. If he had told me that, I'd considered
10 a plea bargain quicker than I would the -- you know, if they
11 were going to give me anything, yes, ma'am.

12 Q. Okay. Now, I understand that -- that it's your
13 position, and always has been and still is, that you're
14 innocent.

15 But, in light of the risk of being convicted at
16 trial and getting a lot of time, would you had pled if you had
17 known you could serve the sentence you got out of state?

18 A. Yes, ma'am.

19 Q. And your lawyer never gave you that option?

20 A. No. No, he didn't.

21 Q. I've gone over your case with you thoroughly over
22 the last couple of years, haven't I?

23 A. Yes, ma'am.

24 Q. In the course of this lengthy hearing today, have I
25 raised all of the points that you wanted me to raise?

1 A. Yes, ma'am.

2 Q. You do understand that you get one PCR hearing --
3 barring some pretty extraordinary circumstances, you get one
4 shot at PCR?

5 A. Yes, ma'am.

6 Q. Are you comfortable that I have raised all of the
7 issues that you wanted me to raise?

8 A. Yes, ma'am.

9 Q. Is ---

10 MS. SHURLING: Nothing further, Your Honor.

11 MS. WHITE: Just briefly, Your Honor.

12 CROSS EXAMINATION by MS. WHITE:

5:06 P.M.

13 Q. Mr. Johnson, just quickly, in -- during your time as
14 of law enforcement officer, were you primarily employed as a
15 -- in the traffic division?

16 A. Yes, ma'am, about the last ten (10) years traffic
17 division.

18 Q. Okay. So, were you ever employed as an investigator
19 or a detective?

20 A. No.

21 Q. Okay. So, most of your time was spent on the road
22 doing traffic stops?

23 A. Right.

24 Q. Okay. And, if you went to a retrial on this case,
25 your testimony I guess you're saying would remain that you are

1 innocent; is that correct?

2 A. Yes, ma'am.

3 A. Okay. And have you told anyone, during this time
4 since you've been in prison, that you'd change your testimony,
5 that you're guilty or anything?

6 (Brief Pause)

7 A. Yes.

8 Q. Okay. And would that change whether or not you
9 wanted to go and plead guilty or proceed to trial?

10 A. Ma'am, I -- I would say what I -- when I told my
11 wife that, what I meant by that right there was that Ashley
12 wasn't as young as she said she was. And -- when we was
13 talking about the breast and all.

14 I told her, I said, "I have no idea when that
15 happened." I said, "I know it happened." And -- and -- and I
16 told my lawyer.

17 And -- and he said I told him that to get the time
18 that when it did happen because I believe he said fifteen
19 (15). I don't know.

20 Q. Okay. So, your testimony is, when you told Jenol
21 that you were guilty, you were referring only to an incident
22 that you might have touched VICTIM's breast and nothing else
23 involving the situation?

24 A. No, ma'am.

25 Q. Okay. Thank you.

1 MS. WHITE: Nothing further, Your Honor.

2 MS. SHURLING: Nothing further, Your Honor.

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

4 (Witness complied with the Court's request.)

5 MS. SHURLING: Your Honor, while my client is coming
6 back around, I have made reference here today to the
7 Interstate Compact. I believe it's actually called the
8 Interstate Compact on Detainers.

9 I would represent to the Court, as an officer of the
10 Court, that I am familiar with it because I was court
11 appointed to represent a South Carolina law enforcement
12 officer that was being housed in Florida under the
13 compact for his safety. That's how I happened to become
14 familiar with that.

15 I don't have the specific provision. I believe that
16 it's codified, but I would ask that the record be held
17 open until the end of next week to give me an
18 opportunity.

19 I will contact David Tatarsky, who is chief legal
20 counsel for SCDC, and get the specific citation or
21 provision for the Interstate Compact and get Your Honor a
22 copy of it, which I will provide the Court and send a
23 copy to the Clerk of Court to have made as an exhibit to
24 this record as well.

25 And, of course, I'll provide the Respondent a copy

ARGUMENTS OF COUNSEL

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1 as well.

2 MS. WHITE: No objection to that, Your Honor.

3 THE COURT: All right.

4 MS. SHURLING: Generally speaking, Your Honor --
5 first, the Applicant rests, Your Honor, except that I
6 would reserve arguments for the conclusion of the hearing
7 and then, possible briefing.

8 We can discuss that after we see what, if any, case
9 the Respondent wants to put up.

10 MS. WHITE: And, Your Honor, the Respondent has no
11 other witnesses and will not call Mr. Johnson in reply at
12 this time.

13 THE COURT: Okay.

14 ARGUMENTS OF COUNSEL

15 MS. SHURLING: Your Honor, I would just allege
16 generally that my client has alleged that he received
17 ineffective assistance of counsel prior to and during his
18 jury trial.

19 He has specifically alleged that trial counsel's
20 failure to recognize legal error that occurred during his
21 trial and raise an appropriate objection resulted in a
22 situation that might have changed the outcome of the
23 trial.

24 And even, if it had not, would have made that issue
25 available for a ruling on the merits on direct appeal

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1 whereas, as it was, left plain error, it resulted in a
2 finding by the Court of Appeals that the issue was not
3 preserved.

4 With regard to his general allegation that there
5 various aspects of the manner in which Counsel
6 represented him prior to and during this trial, we will
7 rely on the record as it's developed here today for the
8 specific individual allegations.

9 It's been a long hearing, Your Honor. And I would
10 request, and would hope that the Respondent would agree,
11 that we be permitted to submit bench briefs or proposed
12 orders, whichever format Your Honor prefers, outlining
13 our respective positions in this case.

14 **MS. WHITE:** Your Honor, Respondent has no objection
15 to that. I think that would be fine and would ask for
16 just for you to give us a time limit and -- that you
17 would want us to submit those in and -- and what format
18 in which you would want us to do that.

19 And I'll -- in regards to argument, Your Honor, I
20 would say that obviously the State submits that Andy
21 Johnston is an experienced trial attorney.

22 He has not only represented people from Magistrate
23 Court to Federal Court to capital cases, but has also
24 done numerous, numerous cap -- criminal sexual conduct
25 cases and was well prepared and well versed in -- in the

ARGUMENTS OF COUNSEL

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1 research for this case.

2 Obviously, in a case like this, there's got to be
3 not only a showing of deficient -- deficient
4 representation but that, that deficient representation
5 led to prejudice.

6 And that the outcome of the trial would have changed
7 had Mr. Johnston not made these or had he made these
8 specific differences in his strategy or in his
9 representation.

10 The State would submit that, in this case, not only
11 were -- we think, if there were any objections missed or
12 anything that -- that he missed, that they were very few
13 and far between.

14 But that based, on the overwhelming evidence we
15 would submit was offered in this matter, that the jury
16 found the credibility issue against the Applicant.

17 And, unfortunately, there was no prejudice based on
18 that -- any alleged deficiency on Mr. Johnston's behalf.
19 And, therefore, we would just offer our brief, then, in
20 support asking that you deny the application.

21 MS. SHURLING: And, Your Honor, I'll be -- be happy
22 to make my appropriate arguments concerning the level of
23 prejudice resulting from the errors.

24 I will note for the record that I too believe trial
25 counsel to be an extremely competent and well regarded

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1 defense attorney. I don't dispute that.

2 However I believe that, on the facts of this
3 particular case, he made certain errors and omissions
4 which combined together to deprive my client of the right
5 to reasonable professional assistance of counsel.

6 And beyond that simple statement, I will rely on the
7 arguments to be advanced in a bench brief.

8 THE COURT: All right. What I -- what I would like,
9 so, that -- so, that we don't extend this proceeding too
10 long, I -- I'm going to, instead of asking for briefs,
11 how about submission of proposed orders?

12 MS. SHURLING: Happy to do that, Your Honor.

13 THE COURT: That way I -- I can work from the
14 orders. I need -- probably Defense Counsel needs to
15 focus on -- my understanding is, is that, if I find that
16 by -- by trial counsel not adequately preserving the
17 record, thereby preventing an appeal, that I also have to
18 make a determination that the -- that, if that issue went
19 on appeal, that it also would have been found in the
20 Applicant's favor.

21 So, you're going to need to focus on that as -- as
22 well. Because not only -- because the record is clear.
23 I mean, the Court of Appeals said this issue was not
24 preserved.

25 So, you got to address, "Okay, if they had addressed

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1 it, would they have found error? And naturally, as the
2 State says, if the -- if that is deficient, and they
3 would reverse, that it also has to be -- needs to be
4 showing maybe in the order that says that it would not
5 have mattered to the outcome of the trial or it would
6 have mattered to the outcome of the trial. So...

7 **MS. SHURLING:** I -- I will happily address both the
8 merits of the issue and standard conciser (phonetic)
9 analysis ---

10 **THE COURT:** Uh-huh (affirmative).

11 **MS. SHURLING:** --- as well, Your Honor.

12 **THE COURT:** All right. All right. And I look
13 forward to the information on the Interstate Compact.

14 **MS. SHURLING:** Thank you, Your Honor.

15 **THE COURT:** Thank you all very much.

16 **MS. WHITE:** What time frame, Your Honor, would you
17 like them submitted?

18 **THE COURT:** If -- if -- you say you're going to need
19 till bout a week, two weeks from today to get the
20 Interstate Compact information back?

21 **MS. SHURLING:** I should be able to get it within two
22 weeks, Your Honor.

23 **THE COURT:** All right. I have to -- unfortunately,
24 if that's the case, do you -- do you think that it would
25 be possible -- that will be...

1 (Brief Pause)

2 THE COURT: Would it be possible for me to have the
3 proposed orders by the 31st of October?

4 MS. SHURLING: Your Honor, I believe given how many
5 issues were raised today, and the complexity of the
6 testimony, it was my intent to check with your court
7 reporter to see how backed up she is and how long it
8 would -- she's making a face. How long would it take me
9 to get a transcript?

10 COURT REPORTER: It's going to be awhile. I'm --
11 I'm behind. I'm pretty far behind.

12 THE COURT: About how long, a month?

13 COURT REPORTER: Oh, gosh, probably two if not
14 longer.

15 THE COURT: Two?

16 COURT REPORTER: Yeah. You know, we get two months,
17 and ---

18 THE COURT: All right. Then, if I ask them to give
19 me the orders -- the proposed orders by December the 1st?

20 COURT REPORTER: I'll try. That's all I can tell
21 you.

22 THE COURT: All right. Let's go with December the
23 1st. If by chance the lack of the transcript -- you all
24 have not been able to get it, write me a letter advising
25 me of that and we'll extend the time.

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MS. SHURLING: Thank you, Your Honor.

MS. WHITE: Thank you, Your Honor.

THE COURT: All right. And I will keep -- I'm not
-- I am not taking it under advisement yet until I've
heard from you all. All right. Thank you.

MS. WHITE: Thank you, Your Honor.

MS. SHURLING: Thank you.

(Whereupon, the proceeding concluded at 5:15 p.m.)

REPORTER'S CERTIFICATE

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the Court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 98, were transcribed by me and represent a complete and accurate transcription of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

November 18, 2011


Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF SPARTANBURG)

Donald Hugh Johnson, #322348)
 Applicant,)

2010-CP-42-5375

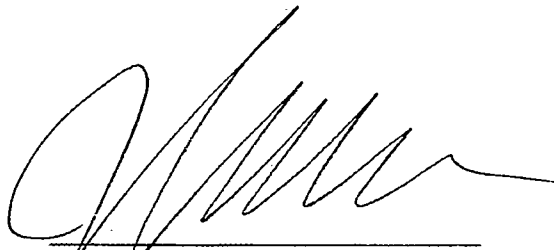
v.)

ORDER

THE STATE OF SOUTH CAROLINA,)
 Respondent.)

This Post-Conviction Relief matter was heard on September 22, 2011. The Applicant was represented by Tara Dawn Shurling and the Respondent was represented by Suzanne H. White, Assistant Attorney General. During this evidentiary hearing, Counsel for the Applicant asked that this record be held open for a copy of the Interstate Compact dealing with the exchange of prisoners between South Carolina and other states. That request was granted. Counsel has obtained a copy of the document in question and has requested this Court's Order directing the Clerk of Court to file the document as Petitioner's Exhibit Number One. Inasmuch as this request is consistent with the previous ruling of this Court from the bench, Counsel's request is reasonable and appropriate. Accordingly, the Spartanburg County Clerk of Court is hereby directed to accept for filing a copy of the Interstate Compact from Counsel Shurling to be marked as Petitioner's Exhibit Number One.

IT IS SO ORDERED.


 J. Mark Hayes, II
 Circuit Court Judge
 Seventh Judicial Circuit

12/9, 2011
Spartanburg, South Carolina.

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 SPARTANBURG COUNTY
 2011 DEC 12 AM 10:16
 M. HOPE BLACKLEY

Westlaw.

Page 1

Code of Laws of South Carolina 1976 Annotated Currentness
Title 24. Corrections, Jails, Probations, Paroles and Pardons
→ Chapter 11. Interstate Corrections Compact
→ § 24-11-10. Short title.

This chapter may be cited as the Interstate Corrections Compact.

→ § 24-11-20. Compact enacted into law; form.

INTERSTATE CORRECTIONS COMPACT

The Interstate Corrections Compact is hereby enacted into law and entered into by this State with any other states legally joining therein in the form substantially as follows:

Article I. Purpose and Policy

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

Article II. Definitions

As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" means a state party to this compact in which conviction or court commitment was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.

(d) "*Inmate*" means a male or female offender who is committed, under sentence to or confined in a penal or correctional institution.

(e) "*Institution*" means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates as defined in (d) above may lawfully be confined.

Article III. Contracts

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.

2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof and the crediting of proceeds from or disposal of any products resulting therefrom.

4. Delivery and retaking of inmates.

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

Article IV. Procedures and Rights

(a) Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of the other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; *provided*, that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify the record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of such inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which the inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. The record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his

status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

Article V. Acts Not Reviewable in Receiving State: Extradition

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

Article VI. Federal Aid

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provisions; *provided*, that if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

Article VII. Entry into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall enter into force and become effective and binding as to any other of the states upon similar action by such state.

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Article VIII. Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the compact and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until one year after the notices provided in the statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

Article IX. Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a non-party state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

Article X. Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

→ § 24-11-30. Authority and duties of Director of Department of Corrections.

The Director of the State Department of Corrections is hereby authorized and directed to do all things necessary or incidental to the carrying out of the compact in every particular and he may in his discretion delegate this authority to such deputies or assistants he may designate.

END OF DOCUMENT

CERTIFIED COPY
M. Hope Blackley
 CLERK OF COURT
 STANTON COUNTY
 D.C.
 1/13/12

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 STANTON COUNTY
 2012 JAN 13 AM 10:40
 M. HOPE BLACKLEY



TARA DAWN SHURLING, PA

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February 14, 2012

The Honorable M. Hope Blackley
Clerk of Court for Spartanburg County
PO Box 3483
Spartanburg, SC 29304-3483

RE: Donald Hugh Johnson, 322348 v. State of South Carolina; 2010-CP-42-5375.

Dear Ms. Blackley:

Please find enclosed an original and two (2) copies of the Applicant's Proposed Order in the above referenced matter. If you would be so kind as to file the original and return the clocked copies to our office in the enclosed self-addressed stamped envelope provided for your convenience. If you should have any questions or concerns please feel free to contact our office. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Tara Dawn Shurling".

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg

Enclosures

cc: The Honorable J. Mark Hayes, II, Circuit Court Judge (w/enclosure)
Suzanne White, Assistant Attorney General (w/enclosure)
Donald Hugh Johnson, # 322348 (w/enclosure)
Randall S. Johnson (w/enclosure)

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STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Donald Hugh Johnson, 322348

☒ Applicant,

v.

The State Of South Carolina

☐ Respondent.

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-42-5375

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

492

Plaintiff's Attorney:
Tara Dawn Shurling, Bar No. 5099
Address:
3614 Landmark Drive Suite D
Columbia, South Carolina 29204
phone: 803-738-8622 fax: 803-738-1600
e-mail: other:

Defendant's Attorney:
Suzanne White, Bar No.
Address:
P.O. Box 11549 Columbia, South Carolina
phone: 803-734-3737 fax:
e-mail: other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Applicant / ☐ Respondent

Date Submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:

- ☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF SPARTANBURG)

Donald Hugh Johnson, #322348)
 Applicant,)

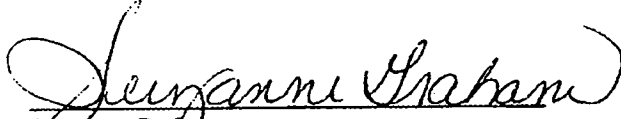
2010-CP-42-5375

v.)

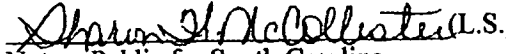
CERTIFICATE OF SERVICE

THE STATE OF SOUTH CAROLINA,)
 Respondent.)

The undersigned hereby certifies that one copy of the Applicant's Proposed Order in the above-entitled case has been served upon the Honorable J. Mark Hayes, II, Circuit Court Judge, by U. S. Mail with correct postage to 180 Magnolia Street, Spartanburg, SC 29306, this the 14th day of February, 2012.


 Suzanne Graham
 Paralegal to Tara Dawn Shurling

SWORN TO BEFORE me this 14th day
 of February, 2012.


 Notary Public for South Carolina
 My Commission Expires: Jan 16, 2017

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 M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF SPARTANBURG)

Donald Hugh Johnson, #322348) 2010-CP-42-5375
 Applicant,)
))
 v.) APPLICANT'S PROPOSED ORDER
))
 THE STATE OF SOUTH CAROLINA,)
 Respondent.)
 _____)

THIS MATTER comes before the Court by way of an Application for Post-Conviction Relief filed on October 6, 2010. The State filed its Return on July 15, 2011. An evidentiary hearing was convened on September 22, 2011, during which the Applicant was present and represented by Tara Dawn Shurling, Esquire and the State was represented by Assistant Attorney General, Suzanne White.

I. PROCEDURAL HISTORY

The Applicant is incarcerated in the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's orders of commitment. He was indicted by the Spartanburg County Grand Jury at the May 2006 term of court for three counts of criminal sexual conduct (CSC) with a minor, second degree (2006-GS-42-1618, 1619, 1620) and one count of contributing to delinquency of a minor (2006-GS-42-1621), and one count of committing or attempting a lewd act upon a child under sixteen (2006-GS-42-1622). On June 12, 2007, the Applicant proceeded to trial by jury. He was represented in the Court of General Sessions by Andrew J. Johnston, Esquire. The Applicant was found guilty as charged and sentenced to eighteen (18) years imprisonment on each charge of criminal sexual conduct with a minor, second degree, three (3) years for contributing to delinquency of a minor and fifteen (15) years for committing or

attempting a lewd act upon a child under sixteen. All sentences were ordered to run concurrently. A timely Notice of Appeal was filed on the Applicant's behalf. The South Carolina Court of Appeals affirmed the Applicant's convictions and sentences. State v. Johnson, Op. No. 2009-UP-606, (S.C. Ct. App. filed December 22, 2009). The Remittitur was issued January 7, 2010.

II. ALLEGATIONS RAISED

In his Application for Post-Conviction Relief filed October 6, 2010, the Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. The Applicant received ineffective assistance of counsel prior and during his trial in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution.
2. The judgment and sentence against the Applicant were entered in violation of his right to due process of law and effective assistance of counsel.

At the evidentiary hearing convened in this case, the Applicant also specifically alleged that:

1. Trial counsel was ineffective for failing to adequately research and give the client information on provisions of the Interstate Corrections Compact that might be available to protect the Applicant, a former South Carolina police officer, if he were incarcerated.
2. Trial counsel was ineffective for failing to relay to the Applicant a conversation that he had with a sitting General Sessions judge, who indicated that he would be inclined to give probation as a sentence if the Applicant were to enter a guilty plea.
3. Trial counsel was ineffective for failing to object, at any and all appropriate times after the jury was sworn, to the introduction of evidence of prior bad acts by the State.

III. EVIDENCE BEFORE THE COURT

At the Post-Conviction Relief hearing held in this case, the Applicant presented his own testimony as well as testimony from defense counsel, Andrew J. Johnston. In addition to this testimony, the Court had before it a transcript of the Applicant's June 12, 2007 trial, a copy of the

records of the Spartanburg County Clerk of Court regarding the subject convictions, and a copy of the Applicant's records with the South Carolina Department of Corrections. What follows below are the findings of fact and rulings of law made by this Court in accordance with the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 *et seq.* (1985).

IV. STANDARD OF REVIEW

This Application for Post-Conviction Relief generally raises numerous specific allegations of ineffective assistance of counsel. The burden of proof is on the Applicant in a Post-Conviction Relief proceeding to prove the allegations raised in his Application for Relief and at his Post-Conviction Relief hearing. Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rule 71.1(e), SCRCP. In evaluating an Application for Post-Conviction Relief, the moving party must demonstrate that trial counsel (1) failed to provide him with reasonable professional assistance of counsel under the prevailing standards for attorneys representing clients in criminal matters; and (2) that he was prejudiced by the errors and omissions of counsel such that he was deprived of a fair trial. Strickland v. Washington, 466 U.S. 668 (1984). In other words, the Applicant must show that but for counsel's errors and omissions, there is a reasonable probability that the result at trial would have been different. Id.; Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). A reasonable probability has been defined by our Supreme Court as a probability sufficient to undermine confidence in the outcome of the trial. Ard v. Catoe, 372 S.C. 318, 330, 642 S.E.2d 590, 596 (2007).

On the one hand, where trial counsel articulates a valid reason for employing certain trial strategies, such conduct should not be deemed ineffective assistance of trial counsel. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). On the other hand, counsel may not explain away errors and omissions

which acted to prejudice his client's ability to receive a fair trial simply by labeling them matters of trial strategy or tactics. In the case of Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002), the Supreme Court of South Carolina found that

Counsel must articulate a **valid** reason for employing a certain strategy to avoid a finding of ineffectiveness. Where counsel articulates a strategy, it is measured against an objective standard of reasonableness.

(Emphasis in original) (internal citations omitted).

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Failure to Research and Inform Applicant of Interstate Corrections Compact and Other Means of Protection Afforded to Former Police Officers

The Applicant testified that one of his primary concerns, prior to trial, was the danger he might face in prison as a former law enforcement officer. The Applicant served in law enforcement for twenty-seven years and additionally was a State Constable for three or four years. PCR Tr. p. 87, ll. 11-17. The Applicant was afraid of serving time in South Carolina because his past efforts as an officer may have resulted in the incarceration of some of his potential fellow inmates. PCR Tr. p. 86, ll. 10-25. Trial counsel acknowledged this consideration was clearly a significant factor in the Applicant's consideration of possible pleas in this case, and admitted that he should have asked someone with the South Carolina Department of Corrections what programs were available to cover such situations. PCR Tr. p. 18, l. 7- p. 19 l. 8.

The trial attorney was aware of the Applicant's concerns for his safety and welfare in prison based on his former service as a police officer. PCR Tr. p. 16, ll. 13-24. He testified that he did not investigate procedures or programs, in place at the time, which might have provided some enhanced protection in prison. PCR Tr. p. 70, l. 25-p. 71, l. 5. Trial counsel believed that the Applicant would

be placed in some nature of protected custody, but worried that the isolation of this protective status would only worsen the Applicant's experience in prison. PCR Tr. p. 71, ll. 7-16.

There was a readily available solution addressing the Applicant's concerns over serving jail time and entering a guilty plea that trial counsel failed to investigate. The Interstate Corrections Compact found at S.C. Code Ann. § 24-11-10 *et seq.* provides that this State may send an inmate to another state, party to this Compact, when this State decides that it is necessary or desirable to transfer that inmate in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment. At the evidentiary hearing, trial counsel testified that he was unfamiliar with the Interstate Corrections Compact. He further testified that he would have inquired into the Compact, if he had known that it provided for inmates to be transferred to neighboring states. PCR Tr. p. 18, ll. 4-15. A number of states near South Carolina are party to the Interstate Compact. North Carolina, one of the many member states, has its version of the Compact codified at N.C. Gen. Stat. Ann. § 148-119 *et seq.* (1979).

On the facts of this case, trial counsel's failure to disclose these sentencing possibilities with his client was ineffective assistance of counsel. The United States Supreme Court has determined that counsel has a constitutional duty to give certain advice concerning a guilty plea: the sentence that could or would result from the plea, the higher sentence that could result from a conviction at trial and the chances that a conviction could be obtained. See McMann v. Richardson, 397 U.S. 759, 769-71 (1970); Brady v. U.S., 397 U.S. 742, 756-57 (1970). A defendant would naturally need to know, before entering an un-negotiated plea or accepting a plea offer, the terms of any sentence he is likely to face upon entry of the plea versus a conviction at trial.

Trial counsel's failure to communicate this sentencing possibility prejudiced the Applicant in his contemplation of entering a plea versus going to trial. The Applicant asserted, in his PCR

testimony, that he would have pled guilty, his claim to innocence notwithstanding; if he had known that he could serve any imprisonment out of state. PCR Tr. p. 88, ll. 9-20. This Court finds that trial counsel was ineffective in not exploring the sentencing possibilities contained in the Interstate Corrections Compact and grants the Applicant's requested relief on this ground.¹

Failure to Inform Applicant of Sitting Judge's Inclination to Give Probationary Sentence

As discussed previously, *infra*, one of the Applicant's primary concerns, prior to trial, was the danger he might face in prison, due to his former career as a law enforcement officer. The trial attorney testified that he was aware of this concern and its significance to the Applicant's hesitance to plead guilty. PCR Tr. p. 16, ll. 13-24, p. 17, ll. 20-24, p. 19, ll. 9-13, p. 70, l. 25- p. 71, l. 5.

Trial counsel testified that he and opposing counsel had approached a sitting judge in talks about a possible resolution to the criminal charges. PCR Tr. p. 11, l. 22-p. 13, l. 6. During that conversation the attorneys posed hypothetical inquiries to the sitting judge to gage the potential sentence that judge might be inclined to give upon entry of a guilty plea. The sitting judge indicated that he might give the Applicant a probationary sentence. PCR Tr. p. 11, l. 22-p. 13, l. 6. Trial counsel testified that the State was not pleased with this information and decided not to extend a plea offer. Nevertheless, Trial counsel admitted at the evidentiary hearing that a defendant can chose to enter a straight guilty plea, at any time, without the agreement of the prosecutor. PCR Tr. p. 13, l. 21-p. 14, l. 4. Trial counsel admitted that he did not make any attempt to get his client on the docket for a plea entry in front of that particular sitting judge. PCR Tr. p. 15, ll. 10-21. He further testified that he did not recall if he had conveyed the subject matter of the conversation to the Applicant. PCR Tr. p. 15, ll. 22-p. 16, l. 3. Trial counsel testified that he was unsure if he could get the Applicant to plead guilty and if he could get that plea entered in front of that particular judge, but he

¹ Trial Counsel's failure to explore this possibility also resulted in his failure to even attempt to secure a plea deal that could have included participation in this program.

offered no testimony from which we can determine that he made an attempt to do either of these things. He acknowledged in his PCR testimony that, in retrospect, he should have at least asked the sitting judge if his client could enter a straight up guilty plea. PCR Tr. p. 18, ll. 15-18.

The information, if conveyed to the Applicant, would likely have affected his decision to take his chances at trial. The Applicant initially testified at the evidentiary hearing that he did not want to enter a plea, as he had maintained his innocence throughout this matter. PCR Tr. p. 85, ll. 15-23. That being said, the Applicant also testified that he was aware of the damaging testimony being offered against him and the fact that the jury's verdict would likely turn upon a decision of credibility. PCR Tr. 85, l. 24-p. 86, l. 9. The Applicant testified that he was not aware of the conversation between trial counsel and the sitting judge concerning potential sentences, prior to trial. PCR Tr. 87, ll. 18-23.²

Trial counsel was ineffective for not communicating to the Applicant the information that he had received from the sitting circuit court judge. The Supreme Court of this State has found that it is incumbent upon a defense attorney to communicate with his client so that his client is enabled to make an informed decision on any proposals from the State. Davie v. State, 381 S.C. 601, 609, 675 S.E.2d 416, 420 (2009). This manner of communication is required by professional standards of performance established on a national and state-wide scale. See Id. It is logical to conclude that an attorney would, likewise, be required to communicate any information that he has received that is likely to affect the defendant's ability to form an informed decision on whether to proceed to trial or enter a guilty plea. In the instant case, the failure by counsel was the failure to communicate the likely result of entering a straight-up guilty plea in front of the sitting circuit court judge. This

² As previously noted, trial counsel's failure to advise the Applicant of his possible participation in the Interstate Corrections Compact negatively impacted his consideration of entering pleas in this case. Knowledge of this safety net, coupled with the strong possibility of a probationary sentence, would likely have influenced the Applicant's consideration of entering pleas.

information certainly would have impacted the Applicant's decision on whether to consider an un-negotiated guilty plea, as opposed to taking his chances at trial. This Court finds that defense counsel's failure to communicate this information was ineffective assistance of counsel.

The Applicant was prejudiced by defense counsel's failure to share the information that had been revealed in his conversation with the sitting judge. This Court finds that the Applicant has already presented evidence, as discussed *infra*, that he was aware of the risk of going to trial and that one of his primary concerns was the fear of serving time in prison. This information and the possibility of serving a probationary sentence was, based on the Applicant's testimony, vital to his consideration of whether to proceed to trial. The Applicant was prejudiced by defense counsel's failure to disclose these communications, as he was convicted at trial and sentenced to serve time in prison. Trial counsel's failure in this regard is related to his failure to research and present to his client information concerning his possible participation in the Interstate Corrections Compact inasmuch as the client should have been aware that if the sentencing judge did not ultimately give him a probationary sentence, he could request to serve his sentence out of state. The Court grants the Applicant's requested relief on this ground of ineffective assistance of counsel.

Failure to Object, after Swearing of Jury, to Introduction of Prior Bad Act Evidence

Trial counsel did not properly preserve his objection to inadmissible evidence by renewing it, contemporaneously, after the swearing of the jury. At trial, trial counsel objected, in a motion *in limine*, to the State's proposed introduction of testimony by the Victim that the Applicant had attempted to have actual vaginal intercourse with her. Trial Tr. p. 34, l. 9-p. 36, l. 25. Unfortunately for the Applicant, trial counsel did not renew this objection contemporaneously with the testimony being offered. The pretrial ruling upon a motion *in limine* is not a final determination, and the party seeking to object to the introduction of evidence must make a contemporaneous objection, when the

evidence comes in, to preserve the objection for appellate review. State v. Moses, 390 S.C. 502, 511, 702 S.E.2d 395, 400 (Ct. App. 2010).

Counsel must provide a valid reason for employing a certain strategy to avoid a finding of ineffectiveness. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995). The failure to object was ineffective assistance of counsel on the part of trial counsel and cannot be explained away as trial strategy. Defense counsel, himself, recognized the failure to object and did not attempt to elucidate any trial strategy. Counsel testified to the fact that the judge's ruling at the time of his objection was preliminary, and he agreed with PCR counsel that he would have to have contemporaneously renewed the objection to preserve it. PCR Tr. p. 20, l. 5-p. 23, l. 14. He further agreed that he should have raised the objection at the "appropriate moment." PCR Tr. p. 23, ll. 9-14. Trial counsel was all the more ineffective in failing to challenge this damaging testimony, considering his knowledge of the Applicant's health condition, which prevented the Applicant from maintaining an erection. PCR Tr. p. 27, l. 22-p. 28, l. 6.

The Applicant was prejudiced in that the issue of the admission of the testimony, a strong issue, was not properly preserved. On direct appeal, the South Carolina Court of Appeals found that the issue of the admissibility of victim's testimony concerning Applicant's alleged attempt to have sexual intercourse with her was not preserved. The State v. Donald Hugh Johnson, Op. No. 2009-UP-606 (S.C. Ct. App. filed Dec. 22, 2009). The Court of Appeals affirmed the Applicant's convictions on that basis. Id.

A challenge to the admission of the Victim's testimony regarding attempted actual intercourse would have been a strong issue on appeal. In a criminal sexual conduct case, common scheme or plan evidence will be admitted on a generalized basis only where there is a pattern of continuous illicit conduct. State v. Whitener, 228 S.C. 244, 89 S.E.2d 701 (1955); see also State v.

McClellan, 283 S.C. 389, 323 S.E.2d 772 (1984). In other words, “[e]vidence of a defendant’s prior and subsequent illicit sexual activities when closely similar to the charged offense is admissible.” State v. Weaverling, 337 S.C. 460, 469, 523 S.E.2d 787, 791 (Ct. App. 1999); see also State v. Kirton, 381 S.C. 7, 671 S.E.2d 107 (2008).

In order to admit evidence of the prior bad act, it must be shown by clear and convincing evidence that the defendant committed the act. Weaverling, *supra*. Even if the prior bad act falls under a Rule 404(b), SCRE, exception and is shown by clear and convincing evidence, the trial court must still exclude evidence of the prior bad act if the probative value of the bad act is outweighed by the danger of unfair prejudice to the defendant. *Id.*; see also Rule 403, SCRE.

Trial counsel admitted, at the evidentiary hearing, that the Victim’s testimony surpassed the acts charged against the Applicant in that she testified that he tried to actually penetrate her with his penis. PCR Tr. p. 24, ll. 3-22; p. 29, ll. 17-22. The Applicant has submitted that the disparity between the acts charged and the Victim’s testimony concerning alleged attempted penetration is significant enough to have made this evidence inadmissible under the weight of case authority and a Rule 404(b) prejudice versus probative value analysis. The Court finds that trial counsel was ineffective for failing to preserve an objection to this testimony and grants the Applicant’s requested relief on this ground.

VI. CONCLUSION

This Application for Post-Conviction Relief is hereby granted. The Applicant’s convictions and sentences are vacated, and this matter is remanded to the Spartanburg County Clerk of Court of General Sessions for a new trial.

IT IS SO ORDERED.

J. Mark Hayes, II
Presiding Circuit Judge
Seventh Judicial Circuit

This ____ day of February, 2012
Spartanburg County, South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG) IN THE COURT OF COMMON PLEAS

Donald Hugh Johnson, #322348)
Applicant,)

2010-CP-42-5375

y.

CERTIFICATE OF SERVICE

THE STATE OF SOUTH CAROLINA,)
Respondent.)

The undersigned hereby certifies that one copy of the Applicant's Proposed Order in the above-entitled case has been served upon opposing counsel, Suzanne White, Assistant Attorney General, by U. S. Mail with correct postage to Post Office Box 11549, Columbia, SC 29211, this the 14th day of February, 2012.

Suzanne Graham
Suzanne Graham
Paralegal to Tara Dawn Shurling

SWORN TO BEFORE me this 14th day
of February, 2012.

Sharon H. McCallister (L.S.)

Notary Public for South Carolina

My Commission Expires: Oct. 16, 2017

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)

Donald Hugh Johnson, #322348)
Applicant,)

2010-CP-42-5375

v.

CERTIFICATE OF SERVICE

THE STATE OF SOUTH CAROLINA,)
Respondent.)

The undersigned hereby certifies that one copy of the Applicant's Proposed Order in the above-entitled case has been served upon the Honorable J. Mark Hayes, II, Circuit Court Judge, by U. S. Mail with correct postage to 180 Magnolia Street, Spartanburg, SC 29306, this the 14th day of February, 2012.


Suzanne Graham
Paralegal to Tara Dawn Shurling

SWORN TO BEFORE me this 14th day
of February, 2012.

Sharon M. McAllister (L.S.)
Notary Public for South Carolina

My Commission Expires: Jan 11, 2017

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Donald Hugh Johnson, # 322348,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2010-CP-42-5375

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 6, 2010. The Respondent made its Return on or about July 15, 2011. An evidentiary hearing into the matter was convened on September 22, 2011, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Tara D. Shurling, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Testifying for the State was Andrew J. Johnston, Esquire. This Court also had before it a copy of the records from the Spartanburg County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, the Return, and the trial transcript. PCR Counsel for Applicant also provided the Court with a document regarding the Interstate Compact Act, which was introduced as Applicant's Exhibit #1.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. The Applicant was indicted at the May 2006 term of the Court of General Sessions for Spartanburg County for

three counts of criminal sexual conduct with a minor, second degree (2006-GS-42-1618, 2006GS-42-1619, 2006-GS-1620), contributing to delinquency of a minor (2006-GS-42-1621), and committing or attempting lewd acts upon child under sixteen (2006-GS-42-1622). He was represented by Andrew J. Johnston, Esquire. On June 12, 2007 the Applicant proceeded to trial after which he was found guilty as indicted. He was sentenced by the Honorable J. Derham Cole to confinement for a period of eighteen (18) years for each of the three criminal sexual conduct with minors, second degree, three (3) years for contributing to the delinquency of a minor and fifteen (15) years for committing or attempting lewd act upon child under sixteen, all to run concurrent.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Johnson, Op. No. 2009-UP-606 (S.C. Ct. App. filed December 22, 2009). The Remittitur was returned January 7, 2010.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully the following reasons:

1. Ineffective assistance of trial counsel;
 - a. Counsel failed to recognize errors which occurred during his trial, and therefore failed to make appropriate objections, and supporting legal arguments relating thereto. Counsel's failure to make these objections may have changed the outcome of the Applicant's trial and deprived him of the opportunity to have these issues addressed on their merits on direct appeal.
2. The judgment and sentence against the Applicant were entered in violation of his right to due process of law and effective assistance of counsel.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court notes that the Applicant voluntarily waived any claims of ineffective assistance of appellate counsel at his hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). 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 upon as having produced a just result." Stackhouse v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this



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prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing Strickland*. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "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).

This Court finds that the Applicant has failed to meet his burden of proof as to the allegations that Counsel was ineffective in this matter. Applicant alleged that Counsel was ineffective for failing to properly investigate plea negotiations. Counsel testified that the Applicant was very reluctant to enter into any kind of plea because the Applicant was always very adamant that he was innocent and wanted to serve no jail time. Counsel testified that he and the prosecutor of the case did meet with Judge Goode at one time in regards to resolving the case and when a hypothetical sentence of probation was discussed the prosecutor from the Attorney General's office would not agree. In addition, Counsel testified that he did not believe he could even get the Applicant to agree to accept a plea with only probation because the Applicant wanted a trial. Counsel testified that the Applicant could have plead straight up once he came up on the trial docket, but Counsel indicated the concern would have been which judge the Applicant was pleading in front of. Counsel testified that he does not recall if he discussed with the Applicant checking with court administration regarding getting the Applicant's case on the docket before Judge Goode or not. The Applicant agreed that he did not want to plead guilty and that he claimed innocence the entire time. The Applicant also testified that Counsel fully explained to the Applicant that a trial would be a credibility contest and the Applicant ran the

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risk of receiving a lengthy sentence. Applicant acknowledged that he had admitted guilt to his estranged wife, the victim's grandmother, but claimed it was only in relation to the initial interaction with the victim.

Applicant also alleged that Counsel was ineffective for not investigating the Interstate Compact Act, which could have been an option for Applicant to be transferred to an out of state prison once he was sentenced to either prison time or probation. Counsel testified that he was not aware of that Act and did not talk with anyone about the option of Applicant going to another state's prison system. The Applicant testified that he was afraid of being incarcerated in South Carolina because of his years of experience in law enforcement. However, Applicant acknowledged that during many years he was employed solely as a traffic officer. Applicant testified that he would have considered a plea bargain had someone given him the option of serving his time in another state.

This Court finds the testimony of Counsel to be very credible, while the Applicant's testimony lacks credibility as to his willingness to plead only if he could serve his sentence in another state. This Court finds that it is clear that the Applicant was adamant as to his innocence and did not want to plead guilty, but wanted to proceed to trial in an attempt to clear his name. This Court finds that Counsel attempted plea negotiations, but based upon his client's wishes, did not pursue those, but prepared for trial. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). The Applicant has failed to demonstrate that if Counsel had researched the Interstate Compact Act that it would have been applicable to the Applicant's case or affected the plea negotiations in any way. There is nothing to indicate that Applicant's situation would have qualified for or that

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participation in this program could have been a requirement as a part of a plea bargain. Further, it is clear that this Act was not a consideration in whether or not Applicant decided to plead or proceed to trial. Therefore, this Court finds that this claim is denied and dismissed.

The Applicant also alleged that Counsel failed to properly object to the victim's testimony regarding the Applicant's prior bad acts. Counsel testified that he objected and argued against the testimony during pre-trial motions, but acknowledged that in retrospect he probably should have raised an additional objection during trial, in particular, when the victim mentioned the Applicant attempting sexual intercourse with the victim. Counsel testified that he has handled many 404(b) questions and research previously and although the victim had never referenced any attempted intercourse, at the time of her trial testimony he did not think the reference was that big of an issue and could have potentially fit within the parameters of the lewd act charge. Counsel testified that in the overall scheme of the testimony, the testimony regarding attempted sexual intercourse was not far from the testimony as to other conduct. Counsel also testified that he did not object because at the time he either did not think the testimony could hurt the case or he thought there was no basis for an objection. This Court finds that Counsel was not ineffective for not raising an additional objection to the victim's testimony regarding prior bad acts of the Applicant. Even if Counsel was deficient in failing to renew his objection at the time of the victim's testimony, this Court can find no prejudice resulting from this deficiency. The trial court had ruled pre-trial that the victim's testimony regarding other sexual acts of the Applicant was admissible for purposes of establishing continued illicit conduct over the years and a common scheme or plan. Furthermore, the South Carolina Supreme Court and the South Carolina Court of Appeals have previously found prior bad act evidence properly admitted under the common scheme or plan exception, in particular as it relates to cases



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involving cases where prior bad acts indicate escalating sexual abuse and misconduct. State v. Clasby, 385 S.C. 148, 157, 682 S.E.2d 892, 897 (2009). Therefore, this Court finds that the Applicant suffered no prejudice from Counsel's failure to object to the victim's testimony.

Counsel testified that he did not focus on cross-examination as to the victim's testimony regarding her positions at the time the Applicant was alleged to have attempted the sexual intercourse either. Additionally, Counsel saw no reason to bring further attention to this part of the victim's testimony. In regards to failure to effectively cross-examine the victim, Counsel also testified that he did not think it would be persuasive to cross-examine the victim regarding any additional opportunities she would have had to see the Applicant naked for purposes of explaining how she could describe his genital area. Counsel testified that he focused on attacking the victim on her credibility and various inconsistencies in her statements and testimony. The nature and scope of cross-examination is inherently a matter of trial tactics. United States v. Nersesian, 824 F.2d 1294, 1321 (2nd Cir. 1987). "[A] defendant has a 'burden of supplying sufficiently precise information,' of the evidence that would have been obtained had his counsel undertaken the desired investigation and of showing 'whether such information would have produced a different result.'" United States v. Rodriguez, 53 F.3d 1439, 1442 (7th Cir. 1995). The Applicant did not present any testimony showing the victim's answers to cross-examination would have been different had Counsel asked the victim additional questions on cross-examination. Accordingly, the Applicant has not shown that a different approach to cross-examination would have been beneficial to the defense.

This Court finds that Counsel was well prepared for the case and it is clear from the record and testimony presented during the PCR hearing that Counsel worked diligently in representing the Applicant. Counsel researched and was prepared to cross examine each State's

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witness extensively in attempts to attack credibility and reliability. Therefore, this Court cannot find that Counsel was ineffective in his representation of the Applicant and the claim is denied and dismissed.

Summary

This Court finds in regards to the allegations of ineffective assistance of counsel, the Applicant's testimony is not credible, while also finding Counsel's testimony is very credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. *see* Heiser *supra*. Therefore, this allegation is denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty

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(30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 24 day of February, 2012.

J. Mark Hayes II
Presiding Judge

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
2010-CP-42-5375

516

DONALD HUGH JOHNSON, #322348)
Applicant.)

v.)

THE STATE OF SOUTH CAROLINA,)
Respondent.)

RULE 59(e) SCRCP, MOTION TO
ALTER OR AMEND

NOW COMES the Applicant in the above-captioned case, acting by and through undersigned counsel, respectfully moving this Court pursuant to Rule 59(e), SCRCP, to alter or amend its Order of Dismissal filed February 23, 2012. The Application for Post-Conviction Relief in this matter was filed on October 6, 2010. The State filed its Return on July 15, 2011. An evidentiary hearing was convened on September 22, 2011, in which the State was represented by Suzanne H. White of the South Carolina Attorney General's Office and the Applicant was represented by Attorney Tara Dawn Shurling. In support of this motion, the Applicant would show unto this Honorable Court the following:

The Applicant respectfully submits that there is one item in this Court's Order that needs to be amended.

The Order references one of the specific allegations of ineffectiveness of counsel raised by the Applicant as: "Counsel was ineffective for failing to properly investigate plea negotiations." Order at 4. The Applicant asserts that this language does not accurately represent nor preserve for appellate review his actual allegation. The Applicant presented evidence to support his allegation that trial counsel was ineffective for failing to communicate to the Applicant a conversation between the attorneys and a sitting judge, where the judge indicated the potential for a probationary sentence if a guilty plea were entered. PCR Tr. p. 11, l. 22-26. Trial Counsel testified that he had no recollection of conveying the substance of that

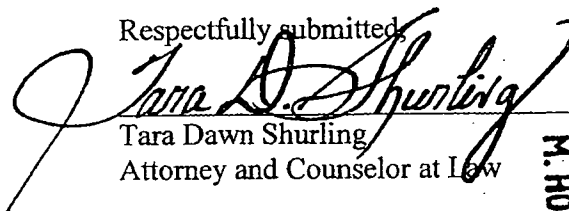
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conversation to the Applicant. PCR Tr. p. 15, ll. 22- p. 16, l. 3. The Applicant testified that he was not made aware of this conversation with Judge Goode. PCR Tr. p. 87, ll. 18-23. In his PCR testimony, trial counsel admitted that he did not even attempt to ascertain the likelihood of getting "straight-up" guilty pleas on the docket in front of this particular sitting judge. PCR Tr. p. 15, l. 10-p. 16, l. 3. He acknowledged that, in retrospect, he should have at least asked the judge if the Applicant could enter straight up pleas. PCR Tr. p. 18, ll. 15-18. The significance of this specific allegation rests in the fact that the Applicant was gravely concerned about serving time in prison, because he was a former member of law enforcement. PCR Tr. p. 87, ll. 11-17. The record supports the Applicant's claim that he would likely have altered his decision to go to trial, and would have contemplated straight-up pleas, if he had known that a probationary sentence was possible, and that there was a possibility that he could serve any active sentence he did receive outside South Carolina.

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For this reason, the Applicant now prays that this Court might amend its Order pursuant to Rule 59(e), SCRCP, grant relief and remand the Applicant's case to the Spartanburg County Court of General Sessions for a new trial. In the alternative the Applicant would respectfully request that the Court issue an Amended Order of Dismissal correcting the item presented above. The Applicant would assert that his request for an Amended Order is necessary in order to fully preserve all of his arguments for appellate review.

Respectfully submitted,


Tara Dawn Shurling
Attorney and Counselor at Law

3614 Landmark Dr., Suite A
Columbia, S.C. 29204
(803) 738-8622
(803) 738-1600 (fax)
tdslaw@shurlinglaw.com

M. HOPE BLACKLEY

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Attorney for the Applicant

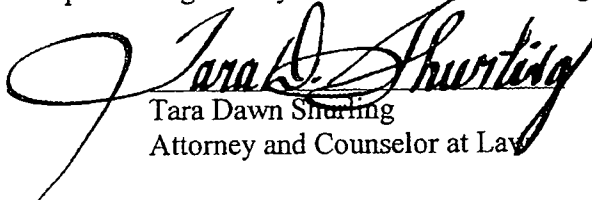
This 6th day of March, 2012.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
Donald Hugh Johnson, 322348,	)	CASE NO.: 2010-CP-42-5375.
	)	
Applicant,	)	
v.	)	CERTIFICATE OF SERVICE
	)	
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	

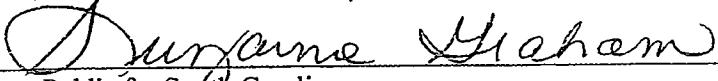
The undersigned hereby certifies that a true copy of the Rule 59(e) Motion to Alter or Amend in the above matter has been served on the Honorable J. Mark Hayes, II, presiding judge, this 6th day of March, 2012, by mailing one (1) copy in a stamped envelope properly addressed to:

The Honorable J. Mark Hayes, II
Circuit Court Judge for the Seventh Circuit
180 Magnolia Street
Spartanburg, SC 29306

The original having been sent to the Spartanburg County Clerk of Court for filing.


Tara Dawn Shurling
Attorney and Counselor at Law

SWORN TO BEFORE ME this 6th day of
March, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: 3/12/2013

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STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Donald Hugh Johnson, 322348,)

CASE NO.: 2010-CP-42-5375.

Applicant,)

v.)

CERTIFICATE OF SERVICE

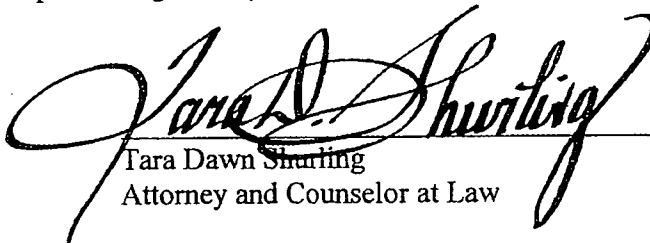
STATE OF SOUTH CAROLINA,)

Respondent.)

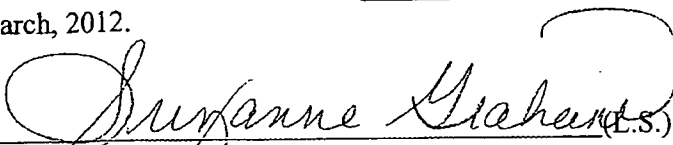
The undersigned hereby certifies that a true copy of the Rule 59(e) Motion to Alter or Amend in the above matter has been served on opposing counsel this the 6th day of March, 2012, by mailing one (1) copy in a stamped envelope properly addressed to:

Suzanne H. White
Assistant Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211

The original having been sent to the Spartanburg County Clerk of Court for filing.


Tara Dawn Shurling
Attorney and Counselor at Law

SWORN TO BEFORE ME this 6th day of
March, 2012.


Notary Public for South Carolina

My Commission Expires: 3/12/2013

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Donald Hugh Johnson, # 322348,	)	2010-CP-42-5375
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION TO DISMISS
	)	MOTION TO ALTER OR AMEND
State of South Carolina,	)	DENIAL OF PCR PETITION
	)	
Respondent.	)	
	)	

This matter comes before the Court by way of the Applicant's Motion pursuant to Rule 59(e), SCRCPP, in which he asks the Court to alter or amend its Order dismissing his Application for post-conviction relief (PCR). The Respondent (the State) would submit the following:

I.

The Respondent submits that the Order of Dismissal of the Honorable J. Mark Hayes II, dated December 29, 2010, contains the findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003), and Rule 52(a) SCRCPP. See also, McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

Applicant argues that the Order does not accurately address and rule on the Applicant's argument that Counsel was ineffective for failing to communicate a conversation between a sitting judge and the attorneys of the case to the Applicant regarding a potential probationary sentence if Applicant were to plead guilty. Respondent submits that although questions were asked of Counsel in regards to the conversation and whether or not he communicated that conversation with the Applicant, Applicant did not present that as an allegation in either his post-conviction relief application or through his testimony at the hearing. Rather, during the hearing, Applicant testified that he did not recall Counsel discussing with him any conversation with the

judge, but that he "was under the impression that [Counsel] talked with the attorney general. And the attorney general said one year in prison and three years house arrest." (PCR Tr. p. 87). Applicant also testified that he was afraid of being incarcerated in South Carolina. PCR Counsel then asked if Counsel had discussed with the Applicant the possibility of him serving time in a prison in another state other than South Carolina and Applicant testified that he would have considered a plea offer quicker had he discussed the possibility of serving time out of state. (PCR Tr. p. 88). There is never any testimony from the Applicant that he felt Counsel was ineffective for failing to convey the specific conversation regarding a possibility of a probationary sentence or any testimony that indicates that he would have considered pleading guilty had he been told of that possibility.

Therefore, Respondent submits that the Order of Dismissal properly ruled upon the allegations raised in the application and at the hearing as they were presented to the Court and should not be amended.

II.

WHEREFORE, having made its Return to the motion, the State requests that the relief requested in the Motion be denied and that said Motion be dismissed.

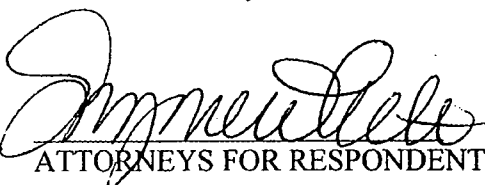
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

BY: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

March 21, 2012.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

Donald Hugh Johnson,

2010-CP-42-5375

Applicant,

v.

CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Tara D. Shurling, Esquire
Law Offices of Tara Dawn Shurling, PA
3614 Landmark Drive, Suite D
Columbia, South Carolina 29204


Anne A. Mueller
Legal Assistant for the Respondent

DATED this 21st day of March, 2012.

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
Donald Hugh Johnson, # 322348,)
Applicant,)
vs.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2010-CP-42-5375

ORDER

This matter comes before the Court by way of Applicant's Motion to Alter or Amend, Rule 59(e), SCRPC. The Respondent made its Return to this response on March 21, 2012.

The Order of Dismissal in this matter was signed by me on February 21, 2012. Based upon careful reconsideration of all the evidence in this case, including review of the transcript of the hearing, and upon full consideration of Applicant's Motion and Respondent's Return, this Court is not persuaded to alter or amend the judgment.

This Court finds that the Order contains the findings of facts and conclusions of law as required by S.C. Code Ann. §17-27-80 (2003), and Rule 52(a) SCRPC. See also, McCoy v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Therefore, this Court finds that the Order of Dismissal, which was filed on February 23, 2012, shall stand as it was written.

AND IT IS SO ORDERED this 31st day of October, 2012.

J. Mark Hayes II
Presiding Judge
Seventh Judicial Circuit

Spartanburg South Carolina

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
J. Mark Hayes, II, Presiding Judge

2010-CP-42-5375

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S.C. Supreme Court

DONALD HUGH JOHNSON, 322348

Applicant,

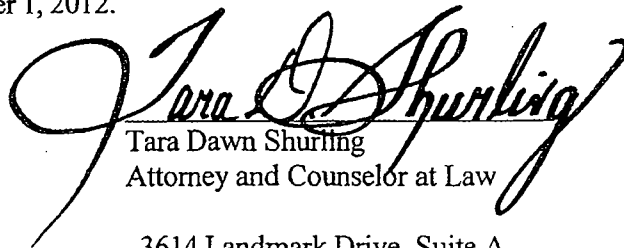
v.

THE STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

NOW COMES the Applicant in the above-captioned Post-Conviction Relief matter, acting by and through his undersigned counsel, giving notice of his appeal from the Order of Dismissal denying his Post-Conviction Relief filed February 23, 2012, and the Order Denying the Applicant's Motion to Alter or Amend pursuant to Rule 59(e) SCRCP which was filed with the Spartanburg County Clerk of Court on November 1, 2012.


Tara Dawn Shurling
Attorney and Counselor at Law

3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803)738-8622
(803)738-1600 FAX

ATTORNEY FOR APPLICANT

This 14th day of November, 2012.

Other Counsel of Record:
Suzanne H. White, Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211
Attorney for Respondent
(803) 734-3737

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
J. Mark Hayes, II, Presiding Judge

2010-CP-42-5375

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S.C. Supreme Court

DONALD HUGH JOHNSON, 322348

v.

Applicant,

THE STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Applicant's Notice of Appeal in the above-entitled cause has been served upon opposing counsel, Suzanne H. White, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 14th day of November, 2012.

Sharon McCollister

Sharon McCollister
Paralegal to Tara Dawn Shurling

SWORN TO BEFORE me this 14th day
of November 12, 2012.

Duane Graham (L.S.)

Notary Public for South Carolina

My Commission Expires:

3/12/2013

LAW OFFICE OF



TARA DAWN SHURLING, PA

Attorney and Counselor at Law

3614 Landmark Drive

Suite A

Columbia, South Carolina 29204

(803) 738-8622

(Fax) (803) 738-1600

E-Mail: tdslaw@shurlinglaw.com

May 6, 2013

VIA HAND DELIVERY

RECEIVED

MAY 6 2013

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

S.C. Supreme Court

RE: Donald Hugh Johnson, 322348 v. State of South Carolina; 2010-CP-42-5375.

Dear Mr. Shearouse:

Enclosed for filing please find the original and one copy of the Appendix and the Certificate of Service in the above-captioned case. I would appreciate you returning one (1) clocked copy of the Appendix cover and Certificate of Service to my courier. I will either be filing the Petition for Writ of Certiorari or a Motion for Extension of time later today. I hope to complete this petition on today's date. However, I will mail an extension request later today if that proves impossible. Thank you for your assistance in this matter. I remain,

Sincerely yours,

A handwritten signature in cursive script that reads "Tara Dawn Shurling".

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sm

Enclosures

cc: Suzanne H. White, Assistant Attorney General (w/enclosure)
Donald Hugh Johnson, 322348 (w/enclosure)
Randy Scott Johnson (w/enclosure)

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
J. Mark Hayes, II, Presiding Judge

Appellate Case No. 2012-213435

RECEIVED

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S.C. Supreme Court

DONALD HUGH JOHNSON, 322348,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

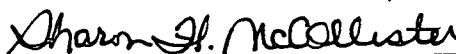
The undersigned hereby certifies that a copy of the Appendix in the above-entitled case has been served upon opposing counsel, Suzanne H. White, Assistant Attorney General, Office of the Attorney General, by hand-delivery this 6th day of May, 2013.



PATRICIA EDWARDS

Legal Assistant to Tara Dawn Shurling

SWORN TO BEFORE me this 6th day
of May, 2013.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: Jan. 16, 2017