

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Spartanburg County

Honorable Brian M. Gibbons, Circuit Court Judge

ROBERT T. GENTRY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000761

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Robert Tyrell Gentry,) 2019-GS-42-2448
6 Defendant.) January 13 - 15, 2020
7) Spartanburg, South Carolina
8
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11

12 B E F O R E:

13 HONORABLE J. DERHAM COLE, JUDGE; and a jury
14

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

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24 Circuit Court Reporter
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1 (Proceedings January 13, 2020)

2 THE COURT: All right. Are there any matters we need
3 to address prior to the jury panel being brought around for
4 selection?

5 MR. FARR: I do, Your Honor.

6 THE COURT: Okay.

7 MR. FARR: I've got a couple of matters.

8 I do however hand up -- I'll hand you a case, Judge.
9 I've already handed it to Ms. Wells, Judge.

10 This is a P.C.R., Judge, that just came down. I know
11 Ms. Wells wants to introduce a tape or the interview.

12 Judge, I'm making it very sure that I'm objecting to
13 anything that is mentioned about this previous
14 investigation for accessory which he's already been charged
15 with. And I know she's redacted it. There is a
16 position --

17 THE COURT: Redacted what?

18 MR. FARR: Redacted the -- the audio of the interview.

19 THE COURT: Okay.

20 MR. FARR: She -- she plans on introducing that,
21 Judge. And I know I sent her an email already. And part
22 of that redaction is that the F.B.I. agent already speaks
23 about, you know, you are already here about their
24 investigation. I do think that's still cutting it kind of
25 close, Judge, with what the Supreme Court has said about

1 any mention of any other investigation. I think it's
2 cutting it close, because you've got the city there for
3 their investigation, but then you've the F.B.I. agent for
4 this case.

5 I think -- I think it's going to confuse the jury and
6 prejudice my client in the standpoint that there's two
7 investigations going on during this interview.

8 The F.B.I. agent is interviewing for this case, and
9 this case only, but at the very beginning he mentions the
10 city's case for accessory. And I think that's -- I think
11 that needs to be excluded from the discussion when the
12 F.B.I. agent testifies and again when the city testifies,
13 Judge.

14 I think the Supreme Court in the P.C.R. that just came
15 down is that it shouldn't be mentioned, and plus we have
16 two different agencies going on.

17 THE COURT: well, I don't -- I don't disagree with
18 that. I thought we'd already resolved that issue in
19 chambers.

20 MS. WELLS: Your Honor, what the state has done here
21 is we have redacted. And I have a copy of the transcript
22 that we would offer as -- for the jury that would read
23 along with the interview that Special Agent Robert Hamod
24 conducted with this defendant.

25 And as I stated previously in chambers, the state has

1 absolutely no intention, and, in fact, has admonished all
2 of the state's witnesses not to bring up the nature of this
3 previous investigation. And there's nothing in this
4 interview, the redacted interview, that the state would
5 intend to admit or the redacted -- or the transcript of the
6 redacted interview that mentions the nature of the previous
7 investigation.

8 However, there is no way for the state to tell the
9 case, this case before the Court today, without explaining
10 how we got here, which is there was another investigation
11 and that this -- that Mr. Gentry was a witness.

12 THE COURT: I know that, but I thought we'd agreed to
13 resolve that by the witnesses simply saying that they were
14 involved in an investigation and through that investigation
15 that did not involve this defendant that they thought he
16 might be a potential witness or have information so they
17 simply contacted him to find out if he did have information
18 and as a result of that contact this case came about.

19 MS. WELLS: That's correct, Judge.

20 In the interview that Special Agent Hamod conducted
21 with this defendant he says, "Now, these guys" -- talking
22 about the city -- "have spoken with you about their case
23 and you have given them information that you have on that.
24 The reason why I'm here is they gave me a call when they
25 were conducting your investigation. They got your phone

1 and they searched your phone." So this is a quote from --
2 from Special Agent Hamod, what he's talking to the
3 defendant during the interview on February the 13th of
4 2019.

5 "And they told you that what they found on your phone
6 concerning their case, correct, there was another item that
7 came across while they were conducting their investigation.
8 So they call me in to take a look at it. Any idea -- any
9 idea what you think I'm here for? Okay. It's been a
10 while. You go back in your phone. It would be about a
11 year ago that this took place."

12 So all he's saying is you've spoken with these
13 officers about this investigation which their officers are
14 already going to say, on previously testified, we spoke to
15 him about an investigation. They're going to have, because
16 we talked about that. They -- I don't see any other way we
17 can tell it. Otherwise, it sounds like --

18 THE COURT: well, I think the point --

19 MS. WELLS: -- people are randomly searching
20 telephones.

21 THE COURT: I send -- I get that, but the point
22 Mr. Farr is making is that when you refer to them
23 involving -- talking to him involving another investigation
24 it might -- they might infer from that that we're talking
25 about an investigation of this defendant, and we know that

1 that can't be permitted in this case.

2 So that's the reason I suggested earlier, as I've
3 already stated, that you simply say they contacted him,
4 they were involved in another investigation unrelated to
5 this and unrelated to him but believed that based on their
6 investigation that he might have some information that
7 could assist them in the other investigation, so they
8 talked to him and as a result of that discussion this came
9 up.

10 MS. WELLS: Right.

11 THE COURT: That way it didn't put him in the middle
12 of another investigation other than by telling the jury
13 that he -- he potentially had information that they were
14 interested in.

15 MS. WELLS: And I don't think that the -- the portion
16 that the state has left in here does any -- any -- does
17 anything to suggest that there are any other investigations
18 into this defendant.

19 THE COURT: Okay. Well, all of these witnesses are
20 going to testify live, are they not?

21 MS. WELLS: They are, they are, Your Honor.

22 THE COURT: Did you make clear with the witnesses?

23 MR. FARR: Yes, Your Honor. I think you made that
24 clear. I just -- I -- because she intended --

25 THE COURT: Well, I'm talking about through their

1 examination --

2 MR. FARR: Yes, sir, yes, sir.

3 THE COURT: -- can't be made clear that we're not
4 talking about him being investigated. We're talking about
5 him having, potentially having, information.

6 MR. FARR: Yes, sir.

7 MS. WELLS: And I can certainly stop the audio and say
8 the investigation you're speaking of is where Mr. Gentry
9 was a witness, correct, that's correct, and then go on.

10 If there's any concern that it suggests that there's a
11 third investigation, I don't think that when it's played in
12 real time that there's any suggestion of that.

13 THE COURT: Well, the only danger I see is the
14 potential for -- why is it necessary to -- to play that
15 audio if the witnesses are here to testify?

16 MS. WELLS: Well, Judge, it's the defendant's
17 statement. It's the -- it's the --

18 THE COURT: Well, I get that, but they're going to
19 testify about it, aren't they?

20 MS. WELLS: Yes, sir. But the state thinks that -- I
21 mean, I think it's important, one, we have the burden to
22 show the statement was freely and voluntarily made, and,
23 two, that the defendant, in fact, did confess and here we
24 have a recording of it. So we think it's important for us
25 to be able to play that.

1 THE COURT: That's well and good. So then you're not
2 going to ask the witnesses about it. You're just going to
3 play the recording?

4 MS. WELLS: We're going to -- I mean, obviously, we
5 have to authenticate the recording, Your Honor.

6 THE COURT: In other words, you're not going to ask
7 the witnesses what the defendant said. You're just going
8 to play the recording?

9 MS. WELLS: That's correct.

10 THE COURT: Are you going -- are you going to put it
11 before the jury twice through their testimony and then
12 through a recording?

13 MS. WELLS: Judge, the way that I would do it is there
14 are two of the agents that are testifying that were present
15 for the interview.

16 THE COURT: Right.

17 MS. WELLS: And with Investigator Reece who is
18 present, I'm just going to say you were there when Miranda
19 was conducted. And I'm not going to ask him any questions
20 about this statement.

21 THE COURT: Okay.

22 MS. WELLS: As to Special Agent Hamod, I am going to
23 talk to him about how he got involved in the case and then
24 going to speak with this defendant.

25 Obviously, this defendant was in jail. We all know

1 we're not going to talk about that, and references to him
2 being in jail have been removed from this recording.

3 And then we're going to walk through it in real time
4 and we're going to play it once. I'm not going to ask him
5 walk out the statement and then play it. We're going to
6 play it for the jury.

7 THE COURT: All right. So the statement that the
8 defendant is alleged to have -- the statement that the
9 defendant is alleged to have made or that is attributed to
10 him will be provided to the jury solely through the audio
11 tape?

12 MS. WELLS: Through the audio tape, Your Honor.

13 THE COURT: Okay.

14 MR. FARR: Judge, I -- since we're here, I'm going to
15 object to that too, because that's bolstering, Judge.
16 That's -- why are you going to have him testify if we're
17 going to play an audio?

18 THE COURT: Well, they're just setting up how they
19 came to talk to him and then they -- they're not going to
20 -- from what I understood Ms. Wells saying is she's not
21 going to ask them what he said.

22 She's going to ask them how it came to be that he
23 provided a statement and did he give you one and is this it
24 on the audio. In other words, they won't be testifying
25 twice about it. They'll just be playing the audio.

1 MS. WELLS: Well, if there are any -- I mean, I -- I
2 don't want to box myself in and not be able to ask
3 questions if we need to stop.

4 THE COURT: I'm not trying to box you in, but I'm
5 asking. I want to know because Mr. Farr has an objection
6 to this.

7 MS. WELLS: Well, if -- if the Court thinks that it's
8 disconcerting we can take a moment and go back and cut just
9 this portion out, but I don't know how we're going to --
10 it's not -- it wouldn't be a very long portion, but it
11 would take me a moment to do it. I mean, I -- I provided
12 this to Mr. Farr several months ago in anticipation of
13 trial in October and no -- and I would have removed this
14 previously if --

15 MR. FARR: Judge, I actually got the email. I sent it
16 to her. I told her that I think this part needs to be
17 taken out. It's at the 2-minute mark. And she said I
18 believe I can get that in. That's per the e-mails.

19 THE COURT: Well, I thought you objected to it.
20 That's why we're having this conversation.

21 MR. FARR: Yeah.

22 MS. WELLS: So, I mean, I can go back and take it out.
23 I don't know at this point that Special Agent --

24 THE COURT: Go back and take what out?

25 MS. WELLS: I can get -- take out the portion that

1 says, "Now, these guys have spoken to you about their case
2 and you have given them the information that you have on
3 that. The reason why I'm here is they gave me a call --"

4 THE COURT: All right. I'm not concerned about that
5 portion of it --

6 MS. WELLS: Okay.

7 THE COURT: -- so long as you -- and of course I'm
8 sure Mr. Farr will -- but I need you to do it also -- makes
9 it clear through examining the witness that this
10 investigation was simply talking to the defendant as a
11 potential witness to provide some information that might
12 help him through a totally separate independent
13 investigation.

14 MS. WELLS: Absolutely, Judge. And Special Agent
15 Hamod and I have already discussed the importance of
16 explaining that this is -- that we're talking to this
17 defendant as a witness and for no other reason.

18 THE COURT: Good. Because, as I say, in other words,
19 since we're talking about this ahead of time and we all
20 understand what the parameters are and what the
21 restrictions are, if somebody messes up and it comes out
22 differently that's prejudicial to this defendant, this case
23 will stop.

24 MS. WELLS: All of my witnesses are here, Judge, and
25 I've admonished them previously during the trial

1 preparation.

2 THE COURT: It will stop if Mr. Farr makes the proper
3 motion.

4 MR. FARR: Yes, sir.

5 THE COURT: Okay.

6 MR. FARR: Next, Your Honor, is the actual video
7 itself. As she has redacted everything she keeps -- I know
8 we discussed this earlier.

9 I'm objecting to the text message itself. I believe
10 the text message that was sent to my client from this Kenzo
11 guy is hearsay. It is a statement that is provided by
12 somebody outside of this court for the truth of the matter
13 asserted, which is the truth of the video, whether or not
14 it is an adult and a child in that video, Judge.

15 And the reason I say that is because even in the
16 redacted part they refer to this text message.

17 The agent says, "Didn't this individual send you a
18 text of a video?" That's why it is hearsay, Judge.
19 They're using this person's name they -- even in the
20 redacted portions of this stuff they probably talk about
21 this Kenzo guy multiple times and everything else. And
22 it's always referred to as a text message. And from there
23 they even say, "Did he send you a text message?" And he
24 goes, "I don't know."

25 "Did they send you a video of a child?"

1 He's like, "Oh, I remember that now."

2 It is hearsay because they're trying to get a video
3 that it was sent from somebody else for the truth of the
4 matter asserted today, which is to prove whether or not
5 that video that somebody else sent my client is -- is an
6 adult and a minor.

7 Judge, I do believe the state does not have an
8 exemption how this is not hearsay. And it's not saved to
9 his phone. It is through a text message.

10 It'd be different, Judge, if it was saved to a file on
11 his phone, because then it is an admission that he saved
12 this thing. This was not saved in a storage. This is a
13 text message that is referred to by all of the agents.
14 It's always a text message, never saved, anything else.

15 THE COURT: well, sounds like to me under your
16 argument it would still be hearsay.

17 MR. FARR: It is hearsay, Judge.

18 THE COURT: I'm talking about even if he saved it to
19 his phone. why wouldn't that be hearsay if under your
20 argument that it's simply being used to prove the truth of
21 the matter asserted and it's on a phone?

22 MR. FARR: I think I got my words twisted up, Judge.
23 I'm sorry.

24 It is a text message, Judge.

25 THE COURT: Right.

1 MR. FARR: And they are trying to use that text
2 message from somebody else for the truth of the matter
3 asserted, and they have not given any examples of how it's
4 not hearsay.

5 THE COURT: well, they're trying to use the video, as
6 I understand it.

7 MR. FARR: Yes, sir.

8 THE COURT: Not a message but a video --

9 MR. FARR: And a video --

10 THE COURT: -- containing a message.

11 MR. FARR: Correct, Your Honor, which would still be
12 hearsay.

13 THE COURT: Okay. well, that's what I'm trying to
14 find out from you.

15 Tell me how -- what the difference is between that
16 being hearsay and if he saved it to his phone would not be
17 hearsay.

18 MR. FARR: Judge, case law as stated in this is that
19 there's a difference once you have it on your phone and
20 it's not communication where somebody else is communicating
21 to you.

22 He's taking a video that is, like, stored on his
23 thing, like, it wouldn't be hearsay because he's the one
24 that properly did it. And this is a text message that was
25 sent to him through a text message.

1 THE COURT: He saved a communication?

2 MR. FARR: Text message is not saved, Judge.

3 THE COURT: I know.

4 MR. FARR: Yes, sir.

5 THE COURT: But what I'm hearing you're saying that it
6 would not be hearsay any longer because it would not be a
7 communication. But it's a saved communication.

8 MR. FARR: The video wouldn't be.

9 THE COURT: Okay. Well, how did he get it?

10 MR. FARR: Somebody sent it to him.

11 THE COURT: Isn't that a communication under your
12 argument and theory?

13 MR. FARR: It is communication, Judge.

14 THE COURT: Okay. But you said that if he saved it
15 himself from that text it would no longer be a
16 communication.

17 MR. FARR: Because he's taking it out of that text
18 message, which is communication.

19 THE COURT: Okay. I'm not sure I can see the
20 difference there. We'll let Ms. Wells explain it to me.

21 MS. WELLS: Your Honor, as the Court well knows,
22 hearsay is an out of sort -- out of court statement made to
23 prove the truth of the matter asserted.

24 This is not a statement. Judge, it is a video with no
25 text. It was transmitted to this defendant's phone and was

1 stored in his phone.

2 So what happens when someone had -- when any one of us
3 has a cell phone that data is stored with the phone on the
4 phone in the text message.

5 This defendant did not delete this message. He stored
6 that message, and therefore it was stored on his cell
7 phone.

8 When he gave the consent to search to Investigator
9 Chris Taylor he gave consent to search his cell phone.
10 This information was stored on that cell phone, and Officer
11 Inderjit Kaur who is one of the forensic examiners over at
12 this, the police department, because it was a -- because it
13 was stored on the phone was able to produce all of the data
14 from the telephone.

15 It is not hearsay. It is a video. It's the same as
16 if the state intended to introduce basic -- that's
17 basically what we're going to do, is we're going to
18 introduce the entire phone and then pull that video out for
19 the jury to see as opposed to the rest of that stuff on his
20 phone. But it is -- it is stored with the phone; it is
21 part of the phone; and it is the same.

22 Once you -- once you pull this information off you
23 can't edit it and you can't change it; you can't alter it;
24 you can't delete it; and that's what we'll -- that's what
25 the testimony will be here today. And that this is, again,

1 it's not hearsay. We've -- and because it's not a
2 statement. It is something that's attached to this phone
3 as part -- as part of the data.

4 THE COURT: Anything else?

5 MR. FARR: Judge, the last thing is I'm going to
6 object to the phone extraction.

7 There's over 30,000 pages. Those are all hearsay.
8 Judge, this is about a video. All of that 29,999 other
9 documents are all hearsay and not relevant to this case.

10 MS. WELLS: Well, then I would assume that he would
11 stipulate to the admission of the video, because the state
12 cannot put in the video properly with -- cannot
13 authenticate the video without first producing the phone
14 dump that allowed the video to be located.

15 So if he wants to stipulate to the video, then that's
16 not a problem for the state if he'll stipulate to the
17 admissibility of the video, stand alone. Then we certainly
18 don't need to admit the entirety of the phone dump, but I'm
19 not hearing that that -- that they're willing to do that,
20 and therefore the state has no choice but to put in the
21 entirety of the phone dump.

22 THE COURT: Well, he's already objected to the
23 admissibility of the -- of the video but -- but he may not
24 object to stipulating that the video was obtained by virtue
25 of an extraction from the phone.

1 MR. FARR: We'll get to that point, Judge, but I'm not
2 -- I just don't want -- I'm objecting to the whole --

3 THE COURT: Get to the --

4 MR. FARR: -- entire phone --

5 THE COURT: -- point.

6 MR. FARR: I'm just objecting to the whole entire
7 phone extraction, Judge, of the 29. This is not the video.

8 THE COURT: What's the objection to that?

9 MR. FARR: To the video?

10 THE COURT: To the extraction.

11 MR. FARR: Judge --

12 THE COURT: You said you object to the entire
13 extraction.

14 MR. FARR: Yeah, the 29,999.

15 THE COURT: What's the basis of that objection?

16 MR. FARR: It's all irrelevant, Judge. There's a lot
17 of stuff that if they go back there --

18 THE COURT: Well, you -- you're objecting to the
19 admission of it.

20 MR. FARR: Yes, yes, Your Honor.

21 THE COURT: Okay. Well, I'm talking about the
22 extraction of it.

23 MR. FARR: I mean, that's -- she's going to testify to
24 that.

25 THE COURT: Well, that's what I'm saying.

1 MR. FARR: My client will stipulate to the extraction.

2 THE COURT: They're not going to introduce anything
3 but the video.

4 MR. FARR: Okay.

5 MS. WELLS: well, I mean, so long as -- so long as we
6 all agree that we don't have to introduce it. I -- the
7 state actually did intend to introduce the extraction
8 because the state felt like it had to to properly let -- to
9 authenticate the video but if you'll -- I mean, the --

10 THE COURT: well, that can be authenticated without
11 introducing 29,000 --

12 MS. WELLS: Yeah. It -- it's --

13 THE COURT: -- items that are not relevant to the
14 case.

15 MS. WELLS: It's a thumb drive, I mean, but it -- but
16 that thumb -- that extraction contains the video.

17 THE COURT: well, I know, but it wouldn't be any
18 different than if you had a box of documents. You could
19 say we had a box of documents, we searched through it and
20 we found this one that's admissible and relevant.

21 MS. WELLS: Okay.

22 THE COURT: You wouldn't introduce every document in
23 that box that had nothing to do with the case.

24 MS. WELLS: We can do that, Judge.

25 MR. FARR: Thank you, Your Honor.

1 THE COURT: That's how I understand technology. I
2 could -- I put it in a file cabinet.

3 MR. FARR: Yes, sir.

4 THE COURT: Okay.

5 MS. WELLS: Your Honor, we just wanted -- the only
6 thing the state would ask to put on the record is whether
7 or not the defense wishes to make a motion to suppress the
8 defendant's statement and if not just covering the --

9 THE COURT: All right. This is a statement that the
10 state asserts was provided to law enforcement on what day,
11 what time and to whom?

12 MS. WELLS: Your Honor, this statement was provided on
13 February 13th of 2019 at 10:06 a.m. It was provided it
14 was -- this interview took place at the Spartanburg County
15 Detention Center where this defendant, Mr. Gentry, was an
16 inmate.

17 In the interview the Miranda in the interview -- the
18 Miranda was done by Special Agent Robert Hamod with the
19 Federal Bureau of Investigation, Greenville office. And
20 with him during that interview was Investigator William
21 Reece of the Spartanburg Police Department.

22 THE COURT: All right. Mr. Farr, you know what
23 statement they're referring to.

24 MR. FARR: Yes, Your Honor. It's the audio from his
25 interview.

1 THE COURT: Okay. And do you have any objections to
2 the admission of the statement?

3 MR. FARR: To the audio statement or to the one that
4 she wants to introduce as the typed-up one?

5 THE COURT: Are there --

6 MR. FARR: There's two different ones. There's an
7 audio, and she's also got one that's been transcribed.

8 THE COURT: Well, it's the same statement.

9 MR. FARR: Yes, yes, Your Honor.

10 THE COURT: Okay. I'm -- well, I'm asking if you have
11 any objection to the statement.

12 MR. FARR: Your Honor, after talking to my client --

13 THE COURT: Let's don't talk about the form right now.

14 MR. FARR: Yes, sir.

15 THE COURT: Just the statement itself.

16 MR. FARR: Well, Judge, so I put on the record to
17 cover myself and cover my client, we went through the
18 statement. He was read his Miranda rights. There is no
19 defect to his actual statement that he gave.

20 THE COURT: Is there anything that you've learned
21 through your representation of Mr. Gentry that would lead
22 you to believe, and does he assert, that any statement that
23 was provided was not voluntarily given?

24 MR. FARR: That was not voluntarily given?

25 THE COURT: Yes, sir.

1 MR. FARR: No, Your Honor. It was not --

2 THE COURT: In other words, does he -- does he agree
3 with the state's assertion that whatever statement he made
4 was freely and voluntarily made by him?

5 MR. FARR: Yes, Your Honor.

6 THE COURT: Okay. So he -- you discussed it with him,
7 and he does not request a hearing on the admission of the
8 statement based upon its voluntariness or involuntariness.

9 MR. FARR: Correct, Your Honor.

10 THE COURT: Okay. All right. Now, as far as the form
11 goes, do you have an objection to the form? It would be
12 introduced to the jury.

13 MR. FARR: I would object to the one that she had
14 transcribed for the mere fact that she wants the jury to
15 follow along.

16 The thing is, Judge, it is typed up and it's got other
17 people's statements in here, not just my client's. It's
18 got the F.B.I. agent. It's got Investigator Reece also in
19 there.

20 THE COURT: But the -- is it an accurate transcript of
21 what's on the -- the audio that's going to be introduced?

22 MR. FARR: Yes, Your Honor.

23 THE COURT: Okay.

24 MR. FARR: I just think it's bolstering. Again,
25 Judge, if we're going to play the audio why get three --

1 three different times to keep bolstering the statement?

2 THE COURT: Well, maybe -- maybe I'm not
3 understanding, but I think I understand.

4 They're not intending to introduce the transcript as
5 an exhibit. They're simply wanting the jury to have it
6 while the audio is being played so that they can follow
7 clearly and understand what the audio is -- is stating.
8 And then after that's completed those transcripts will be
9 taken back up. They won't be introduced as an exhibit.

10 MR. FARR: Okay. Yes, Your Honor.

11 THE COURT: So that -- are you okay with that?

12 MR. FARR: Not really, but I object to it just for the
13 mere fact I don't think that they should have a transcript
14 of what's going on. I think the audio is pretty clear.

15 THE COURT: All right. Well, as I say, it's only
16 going to be permitted while the audio is being played.

17 It's not an exhibit. It's simply an aid, like a
18 demonstrative aid, to assist the jury in understanding the
19 transcript. And I'm -- I'm allowing that based upon your
20 statement to me that it is an accurate transcript. Is that
21 a fair statement?

22 MR. FARR: Yes, Your Honor.

23 THE COURT: Okay. So the jury can use the transcript
24 to aid them while they're listening to the audio, but it
25 will not be made an exhibit. The transcript will not be an

1 exhibit.

2 Okay. What else?

3 MS. WELLS: Nothing else from the state, Your Honor.

4 MR. FARR: Nothing else from the defense.

5 THE COURT: All right. Bring the jury around, please,
6 sir.

7 (The following takes place in the presence of the jury
8 venire.)

9 THE COURT: Good afternoon, ladies and gentlemen of
10 the jury panel.

11 We are ready to begin with jury selection in the first
12 case that's going to require some of your participation.
13 The title of the case is the State vs. Robert Tyrell
14 Gentry.

15 Mr. Gentry has been charged or accused by the
16 prosecutor by way of this indictment -- any person who's
17 accused of a crime where the jurisdiction lies in this
18 court is brought here by way of a document called an
19 indictment. It's just like an arrest warrant. It's the
20 charging paper.

21 In this particular case the defendant is Robert Tyrell
22 Gentry, and he's charged with a violation of Section
23 16-15-410 of the South Carolina Code of Laws.

24 And that particular statute provides that a person is
25 guilty of the crime of third degree sexual exploitation of

Jury qualification

1 a minor if, knowing the character or content of the
2 material, that person possesses material that contains a
3 visual representation of a minor engaging in sexual
4 activity.

5 So the state has made those allegations by way of this
6 indictment. And as to those allegations and as to that
7 charge the defendant has entered a plea of not guilty.

8 A plea of not guilty places upon the state the burden
9 of proving the allegations that they have made by way of
10 the indictment that they have brought.

11 The burden is upon the state to establish each of the
12 essential elements of the crime that they have alleged
13 against the defendant, and therefore the burden is upon the
14 state to establish the defendant's guilt to the
15 satisfaction of 12 jurors beyond a reasonable doubt before
16 any verdict of guilty could be returned as to the charge
17 brought against the defendant.

18 So we're going to be selecting 13 of you. There'll be
19 12 primary jurors and one additional juror to serve as an
20 alternate in the case.

21 By way of your participation you'll be called upon to
22 listen carefully to testimony that will come from the
23 witness stand by way of witnesses being called to testify
24 and provide information; also, to consider any other
25 evidence that might be introduced during the course of the

1 trial.

2 At the trial's conclusion I'll instruct the jury fully
3 on the law as it relates to the criminal law generally, as
4 it relates to this particular crime specifically. The jury
5 is going to be asked to go back, to consider the evidence,
6 decide the facts, apply the law and arrive at a fair and
7 impartial decision, whatever that decision might be.

8 Now, before we begin with jury selection in the case
9 I've got some folks to introduce to you. These are people
10 that are involved in the trial. That includes the
11 defendant; that includes the lawyers; that includes any
12 potential witness.

13 And so as these folks are introduced for your benefit
14 I need to find out if you have any connection in any
15 fashion whatsoever with any person whatsoever.

16 That means do you have any familial connection by
17 blood or marriage; do you attend church with any of these
18 folks, and also any members of their respective families;
19 do you or did you attend school with them; do you or did
20 you work at the same place where they may have worked; do
21 you or did you socialize with them in any fashion; or do
22 you know them in any fashion, have you met them anywhere
23 under any circumstances?

24 So I need to know if you have any connection with the
25 persons that will be introduced, and then after I finish

Jury qualification

1 with those introductions I'll ask you some additional
2 questions in order to determine if there's any particular
3 reason why any one of you jurors could not be fair and
4 impartial in this case.

5 Now, first of all, as I told you, the defendant --
6 that is the person who has been accused of having committed
7 the crime -- is Robert Tyrell Gentry.

8 Mr. Gentry, if you will, please, stand and face the
9 jury panel so that they may see who you are.

10 (Whereupon, the defendant stood.)

11 THE COURT: All right. Mr. Gentry is represented by
12 Zachary Farr. Mr. Farr is Mr. Gentry's lawyer. He will be
13 assisting him during the course of the trial of this case.

14 (Whereupon, Mr. Farr stood.)

15 THE COURT: Presenting the case on behalf of the state
16 is Jennifer Wells. She is one of the assistant circuit
17 solicitors for the Seventh Judicial Circuit. She'll be
18 presenting the case on behalf of the state.

19 (Whereupon, Ms. Wells stood.)

20 THE COURT: Potential witnesses to be called during
21 the trial include Investigator William Reece with the
22 Spartanburg City Police Department; Officer Inderjit Kaur
23 also with the Spartanburg Police Department; Officer
24 Douglas Stokes with the Spartanburg Police Department;
25 Investigator Chris Taylor with the Spartanburg Police

1 Department; Special Agent Robert Hammond -- Hamod -- excuse
2 me -- with the federal bureau of investigation.

3 Are there any other potential witnesses to be called
4 by the state?

5 MS. WELLS: Not from the state, Your Honor.

6 THE COURT: By the defendant?

7 MR. FARR: No, Your Honor.

8 THE COURT: All right. Now, does any juror have any
9 connection with anybody who has just been identified or
10 introduced?

11 I also need to know if you have any connection with
12 anybody else who is employed in the Seventh Judicial
13 Circuit Solicitor's Office.

14 Okay. I've got three standing.

15 I'll start with you, ma'am, and I'll work across.
16 Your name and number, please.

17 JUROR NO. 105: Renni Mayes, 105.

18 THE COURT: 105?

19 JUROR NO. 105: Yes, sir.

20 THE COURT: All right. And who is it that you have
21 some connection with?

22 JUROR NO. 105: Mr. Gentry.

23 THE COURT: Mr. Gentry. And how is it that you know
24 Mr. Gentry? Is it through family, friends, school, church
25 or some other circumstance?

Jury qualification

1 JUROR NO. 105: School.

2 THE COURT: School. Y'all went to school together?

3 JUROR NO. 105: Yes, sir.

4 THE COURT: All right. Is there anything about that
5 fact or that connection that would in any way interfere
6 with your ability to be fair and impartial in this case if
7 you were selected to serve as a juror in it?

8 JUROR NO. 105: No, sir.

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

10 Yes, sir.

11 JUROR NO. 103: 103, Thomas Massey. Mr. Gentry and
12 this officer, Taylor, Investigator Taylor.

13 THE COURT: Okay. And how do you know Mr. Gentry?

14 JUROR NO. 103: Mr. Gentry -- family and church.

15 THE COURT: Okay. And would that connection have any
16 bearing upon your decision in the case if you were
17 selected?

18 JUROR NO. 103: I would be fair but -- but I don't
19 know if that would be like a good thing.

20 THE COURT: Well, here's my question.

21 Do you think that your connection with the defendant
22 through family and church is likely to interfere with your
23 ability to be fair and impartial as a juror in the case?
24 In other words, would it affect your judgment in the case?

25 JUROR NO. 103: I would say no.

1 THE COURT: well, the answer would be yes or no.

2 JUROR NO. 103: I would say no.

3 THE COURT: You would say no?

4 JUROR NO. 103: I would say no.

5 THE COURT: well, is it fair to say that there's not a
6 reasonable probability that your connection with the
7 defendant and/or his family would influence your decision
8 in this case?

9 JUROR NO. 103: The answer would be no to the -- to
10 the question that is presented to me.

11 THE COURT: Okay. So you could be fair and impartial.

12 JUROR NO. 103: That's correct.

13 THE COURT: All right. Now, you said you also knew
14 Investigator Taylor.

15 JUROR NO. 103: That is correct.

16 THE COURT: And how do you know Investigator Taylor?

17 JUROR NO. 103: Through church and the community.

18 THE COURT: Okay. Is there anything about that
19 connection that would have any bearing upon your decision
20 in this case if you were selected?

21 JUROR NO. 103: If for guilty, I would say no. So to
22 be straightforward with the answer yes or no, it would be
23 no.

24 THE COURT: Okay. So that connection will not impact
25 your decision in this case either.

Jury qualification

1 JUROR NO. 103: It would not.

2 THE COURT: Okay. Thank you. You may be seated.

3 Yes, ma'am.

4 JUROR NO. 19: Nineteen. Lisa Garrett in the

5 solicitor's office is a cousin of mine.

6 THE COURT: Lisa Garrett is your cousin. All right.

7 would that have any bearing in your decision in this case

8 if you were selected?

9 JUROR NO. 19: No, sir.

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

11 Anybody else need to respond to a question about

12 having knowledge of any of the -- or connection with any of

13 the people identified or any members of the solicitor's

14 office? If so, please stand.

15 (No response.)

16 THE COURT: All right. Now, as you know or as you've

17 heard, this is a crime which is alleged to have been

18 committed by the defendant which involves the sexual

19 exploitation of a minor child.

20 Is there any member of the jury panel who has ever

21 been the victim of, as well as any member of your immediate

22 family -- let me preface the question by defining an

23 immediate family member as a parent, a spouse, a child or

24 sibling -- parent, spouse, child or sibling.

25 Have you or any members of your immediate family as I

1 just defined it ever been the victim of, or have you or
2 that family member ever been accused of, having committed
3 any type of offense similar to sexual exploitation of a
4 minor or any other unlawful criminal sexual conduct type
5 offenses? Have you or that family member been the victim
6 of such or you or that family member ever been accused of
7 having committed such? If so, please stand.

8 (No response.)

9 THE COURT: All right. None responding.

10 Has any member of the jury panel or any members of
11 your immediate family as I just defined it ever been
12 employed as any type of law enforcement officer by any law
13 enforcement agency, civilian and/or military? You or a
14 family member ever been employed as any type of law
15 enforcement officer? If so, please stand.

16 Okay. I'm going to start to my right, and I'll work
17 my way across the room.

18 I'll start with you, sir, on the front row.

19 JUROR NO. 55: Aaron Fedewa, 55. I was U.S. Navy
20 police.

21 THE COURT: Would it have any bearing in your
22 decision?

23 JUROR NO. 55: No.

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

25 Yes, ma'am.

Jury qualification

1 JUROR NO. 5: My father is a retired chief of police.
2 My brother is currently a police officer and my sister is
3 retired military.

4 THE COURT: All right. I need your name and number,
5 please.

6 JUROR NO. 5: Lisa Anthony, No. 5.

7 THE COURT: No. 5. Would any those connections have
8 any bearing in your decision?

9 JUROR NO. 5: No, sir.

10 THE COURT: Thank you. Be seated.

11 Yes, ma'am.

12 JUROR NO. 139: 139, Jessie Sadler. I'm separated,
13 but my husband is in the Army overseas.

14 THE COURT: All right. Would that have any bearing in
15 your decision?

16 JUROR NO. 139: No, sir.

17 THE COURT: Thank you. Be seated.

18 Yes, ma'am.

19 JUROR NO. 57: Fifty-seven. My husband is
20 ex-military, and I have a brother-in-law who is on the
21 police force now.

22 THE COURT: And what police department?

23 JUROR NO. 57: City.

24 THE COURT: Spartanburg city?

25 JUROR NO. 57: Uh-huh.

1 THE COURT: Would that have any bearing in your
2 decision in this case?

3 JUROR NO. 57: No, sir.

4 THE COURT: Do you know any of these officers from the
5 city?

6 JUROR NO. 57: No, sir.

7 THE COURT: Okay. You may be seated.

8 Yes, ma'am. Next.

9 JUROR NO. 143: No. 143. My uncle is/was the sheriff
10 in El Paso, Texas. And I have several former military
11 members of my family.

12 THE COURT: All right. Would any of those connections
13 have any bearing in your decision?

14 JUROR NO. 143: No.

15 THE COURT: Thank you. Be seated.

16 Yes, ma'am.

17 JUROR NO. 140: Lori Seay, 140. My husband is a, was
18 a former Marine.

19 THE COURT: Would that have any bearing in your
20 decision?

21 JUROR NO. 140: No.

22 THE COURT: Thank you. Be seated.

23 Yes, ma'am.

24 JUROR NO. 25: Patricia Bryson, No. 25. My husband is
25 a state trooper.

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1 THE COURT: And stationed in Spartanburg?

2 JUROR NO. 25: On the SIP team in Cherokee County now.

3 THE COURT: Okay. would that have any bearing in your
4 decision?

5 JUROR NO. 25: No, sir.

6 THE COURT: Thank you. Be seated.

7 Next row.

8 JUROR NO. 131: Terra Rhodes, 131. My dad was a
9 retired police officer.

10 THE COURT: And what department?

11 JUROR NO. 131: Woodruff.

12 THE COURT: would that have any bearing in your
13 decision?

14 JUROR NO. 131: No, sir.

15 THE COURT: Thank you. Be seated.

16 Yes, ma'am.

17 JUROR NO. 144: Amanda Sikes, 144. My uncle is a
18 former police officer and works for the solicitor's office
19 now, and I'm a former dispatcher.

20 THE COURT: All right. And would --

21 JUROR NO. 144: Spartanburg county.

22 THE COURT: All right. would either of those
23 connections have any bearing in your decision?

24 JUROR NO. 144: No, sir.

25 THE COURT: Thank you. Be seated.

1 Yes, ma'am.

2 JUROR NO. 164: Mia Thompson, 164. My father-in-law
3 was with -- retired assistant director of the F.B.I.

4 THE COURT: And would that have any bearing in your
5 decision?

6 JUROR NO. 164: No, sir.

7 THE COURT: Thank you. Be seated.

8 JUROR NO. 175: Anthony Williams, 175. My oldest son
9 is employed by Spartanburg County -- deputy.

10 THE COURT: All right. Would that have any bearing in
11 your decision?

12 JUROR NO. 175: No, sir.

13 THE COURT: Thank you. Be seated.

14 All right. Ladies and gentlemen, you have heard what
15 the case is about. You've also been introduced to those
16 persons who are going to be participating in it.

17 Is there anything about the nature of the case itself,
18 that is what is alleged against the defendant, that would
19 prevent any juror from being able to be fair and impartial
20 if you were selected to serve as a juror in this particular
21 case? If so, please stand.

22 (No response.)

23 THE COURT: Has any member of the jury panel already
24 formed an opinion as what you think the ultimate outcome
25 ought to be in this case based upon what you've heard up to

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1 this point or based upon any other consideration? Have you
2 already made up your mind as to what you think the ultimate
3 decision ought to be? If so, please stand.

4 (No response.)

5 THE COURT: Does any member of the jury panel know of
6 any reason whatsoever why you feel like you could not be
7 fair and impartial if you were selected to serve as a juror
8 in this particular case? If so, please stand.

9 (No response.)

10 THE COURT: None responding.

11 Any other questions requested by the state?

12 MS. WELLS: One moment, please, Your Honor.

13 (Pause.)

14 MS. WELLS: Your Honor, we request that you would ask
15 state's proposed voir dire No. 16.

16 MR. FARR: I'm going to object to that, Your Honor.

17 THE COURT: I'm going to decline to ask it.

18 MS. WELLS: Thank you, Your Honor.

19 THE COURT: Anything else?

20 MS. WELLS: No, sir, Your Honor.

21 THE COURT: All right. What about the defense? Any
22 additional questions requested?

23 MR. FARR: No, Your Honor. You -- you hit all of the
24 same ones.

25 THE COURT: Okay.

1 MR. FARR: The ones I handed to you.

2 THE COURT: All right. The way a jury is selected in
3 criminal court -- it's different than civil court. In
4 criminal court the computer -- the computer always selects
5 the panel, but in a criminal case the computer selects you
6 individually and randomly, and you'll be asked to come
7 forward as your name is called, and you'll take a stance
8 out here in the middle of the floor.

9 Each side has the opportunity to have you excused from
10 serving in the case, or both may agree to have you seated
11 for service in the case.

12 If either side asks that you be excused from serving
13 you can simply go back and have a seat where you are now.

14 If both agree to have you seated for service in the
15 case you'll be having a seat in that jury box to your right
16 and to my left.

17 So please come forward as your name is called and
18 you'll be instructed whether you are to be excused or
19 accepted for service in the case.

20 THE CLERK: As I call your name, please come forward
21 and stand facing the attorneys' tables.

22 No. 136, Jill Ritchings.

23 What says the state?

24 MS. WELLS: Please present the juror.

25 THE CLERK: What says the defense?

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1 THE COURT: Wait just a minute. Both sides get
2 strikes.

3 MR. FARR: Please seat this juror, Your Honor.

4 THE CLERK: No. 86, Deborah Johnson.

5 What says the state?

6 MS. WELLS: Please present the juror.

7 THE CLERK: What says the defense?

8 MR. FARR: Please seat this juror.

9 THE CLERK: No. 23, Dwight Brownlee.

10 What says the state?

11 MS. WELLS: Beg the Court's indulgence.

12 (Pause.)

13 MS. WELLS: Please excuse Mr. Brownlee from service in
14 this case.

15 THE CLERK: No. 16, William Blanton.

16 What says the state?

17 MS. WELLS: Please present the juror.

18 THE CLERK: What says the defense?

19 MR. FARR: Please seat this juror.

20 THE CLERK: No. 82, Benjamin Henson.

21 What says the state?

22 MS. WELLS: Please present this juror.

23 THE CLERK: What says defense?

24 MR. FARR: Please seat this juror.

25 THE CLERK: No. 131, Terra Rhodes.

1 what says the state?

2 MS. WELLS: Please present the juror.

3 THE CLERK: what says the defense?

4 MR. FARR: Please excuse this juror.

5 THE CLERK: No. 98, Braulio Lempitsky.

6 what says the state?

7 MS. WELLS: Please present the juror.

8 THE CLERK: what says the defense?

9 MR. FARR: Please excuse this juror.

10 THE CLERK: No. 110, Sharon Miller.

11 what says the state?

12 MS. WELLS: Please present Ms. Miller.

13 THE CLERK: what says the defense?

14 MR. FARR: Please seat this juror.

15 THE CLERK: No. 7, Kofi Appiah.

16 what says the state?

17 MS. WELLS: Please present Kofi Appiah.

18 THE CLERK: what says the defense?

19 MR. FARR: Please excuse this juror.

20 THE CLERK: No. 103, Thomas Massey.

21 what says the state?

22 MS. WELLS: Please excuse Rev. Massey from service in
23 this case.

24 THE CLERK: No. 118, Sonia Moss.

25 what says the state?

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1 MS. WELLS: Please present Ms. Moss.

2 THE CLERK: What says the defense?

3 MR. FARR: Please seat this juror.

4 THE CLERK: No. 57, Letha Fleenor.

5 What says the state?

6 MS. WELLS: Please present the juror.

7 THE CLERK: What says the defense?

8 MR. FARR: Please excuse this juror.

9 THE CLERK: No. 66, Jason Geneau.

10 What says the state?

11 MS. WELLS: Please present the juror.

12 THE CLERK: What says the defense?

13 MR. FARR: Please seat this juror.

14 THE CLERK: No. 184, Ricky Wyke.

15 What says the state?

16 MS. WELLS: Please present the juror.

17 THE CLERK: What says the defense?

18 MR. FARR: Please excuse this juror.

19 THE CLERK: No. 53, Thomas Evins.

20 What says the state?

21 MS. WELLS: Please excuse Mr. Evins from service in
22 this case.

23 THE CLERK: No. 157, Paul Talledo.

24 What says the state?

25 MS. WELLS: Please present the juror.

1 THE CLERK: What says the defense?

2 MR. FARR: Please seat this juror.

3 THE CLERK: No. 115, Victor Morgan.

4 What says the state?

5 MS. WELLS: Please present Mr. Morgan.

6 THE CLERK: What says the defense?

7 MR. FARR: Please seat this juror.

8 THE CLERK: No. 141, Hannah Sellars.

9 What says the state?

10 MS. WELLS: Please present the juror.

11 THE CLERK: What says the defense?

12 MR. FARR: Please seat this juror.

13 THE CLERK: No. 18, Kathy Booker.

14 What says the state?

15 MS. WELLS: Please present Ms. Booker.

16 THE CLERK: What says the defense?

17 MR. FARR: Please seat this juror.

18 THE CLERK: No. 19, Cynthia Boyce.

19 What says the state?

20 MS. WELLS: Please present this juror.

21 THE CLERK: What says the defense?

22 MR. FARR: Please excuse this juror.

23 MS. WELLS: Objection. Out of order, Your Honor.

24 THE COURT: I've got you exhausted on your strikes.

25 Ma'am, come back. Have a seat in the jury box. You

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1 can have a seat in the jury box.

2 Did I miscount?

3 MS. WELLS: No, sir, Your Honor.

4 THE CLERK: And for the alternate, 133, Sherry Rice.

5 what says the state?

6 MS. WELLS: Please present Ms. Rice.

7 THE CLERK: What says the defense?

8 MR. FARR: Please seat this juror.

9 (Whereupon, a jury was impaneled.)

10 THE COURT: All right. Those who have been selected,
11 I'll ask you to please go with the bailiff to a jury room,
12 and I'll bring you back shortly to begin with the trial.

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

15 THE COURT: Are there any matters that need to be
16 addressed regarding jury selection by the state?

17 MS. WELLS: No, sir, Your Honor.

18 THE COURT: By the defendant?

19 MR. FARR: No, Your Honor.

20 (Whereupon, the remaining members of the jury venire
21 were excused.)

22 THE COURT: All right. Any matters to address prior
23 to the jury being sworn?

24 MS. WELLS: Not from the state, Your Honor.

25 MR. FARR: Not from the defense, Your Honor.

1 THE COURT: Okay. We are going to take ten minutes
2 before we start. We will be at ease for ten minutes.

3 (Whereupon, a recess was taken.)

4 THE COURT: All right. Any matters to address before
5 to the jury comes in?

6 MS. WELLS: Not from the state, Your Honor.

7 MR. FARR: Not from the defense, Your Honor.

8 THE COURT: Okay. Bring them in. Ask Ms. Moss to
9 take the foreperson's seat.

10 (The following takes place in the presence of the
11 jury.)

12 THE COURT: Ladies and gentlemen, we are ready to
13 begin with the trial of the case for which each of you have
14 been selected.

15 Ms. Moss, I'm going to ask you to serve as the
16 foreperson of the jury. As the foreperson you'll have
17 three specific duties that none of the other jurors will
18 have.

19 First of all, you'll be asked to serve as the
20 spokesperson for the jury, and that just means if something
21 comes up during the trial that needs to be brought to my
22 attention, you or one of your fellow jurors has some
23 difficulty, problem or question, you're going to be the
24 person to let me know of that fact. You do directly if
25 you're here in the courtroom. You do it through the

1 bailiff if you're outside of the courtroom.

2 Secondly, you'll be called upon to preside over jury
3 deliberations when that time comes at the trial's
4 conclusion.

5 In other words, after all of the evidence has been
6 received in the case and I've instructed you on the law
7 that's applicable in the case and you go back to begin your
8 deliberations at the end of the trial you'll preside over
9 that process in the jury room simply to ensure that those
10 deliberations are carried out in some orderly fashion.

11 And, thirdly, you'll be called upon to actually write
12 the verdict or the decision of the jury. You'll do that on
13 a verdict form that I'll provide you at the trial's
14 conclusion on which you will indicate the jury's unanimous
15 decision.

16 The foreperson has those specific duties that I've
17 just indicated. That doesn't mean that she's any more
18 important than any of you other jurors, and that's because
19 the decision of a jury is the unanimous and consensus
20 opinion of all 12 jurors, and so all of you will have an
21 equal say and an equal vote in what the ultimate decision
22 will be in this case.

23 Someone simply has to be delegated those
24 responsibilities that I have just indicated, and I have
25 delegated those to the foreperson in making her the

1 foreperson. But all of you jurors are equally important so
2 far as the ultimate decision in this case is concerned,
3 because, as I've stated, the verdict has to be unanimous.
4 All of you must be in agreement.

5 Now, Ms. Rice, you've been selected as an alternate
6 juror. The function of an alternate juror is to take the
7 place of one of the original 12 jurors if, during the trial
8 of the case, one of these 12 cannot continue to serve for
9 some reason. And if one is precluded from continuing as a
10 juror because of an illness, an emergency or some other
11 unforeseen circumstance you will be called upon to take the
12 person's place. In that event you would become the twelfth
13 juror. And if that were to occur, then you participate
14 throughout the trial including the jury deliberations at
15 the trial's conclusion.

16 If however when the time does come for jury
17 deliberations the original 12 are able to perform that
18 function your service would end and you would not
19 participate any further, and that's because the decision of
20 a jury is that of 12. No more than 12 are permitted to
21 engage in that deliberation process.

22 But it is important that you pay just as careful
23 attention as we ask of all of the jurors in this case
24 because it does occur from time to time for one reason or
25 another one of these 12 may be unable to continue. In that

Jury sworn

1 event you become the twelfth.

2 So we do appreciate your participation as an alternate
3 juror, just as we appreciate the participation of each of
4 you jurors who have been selected for the purpose of
5 deciding the verdict in this particular case.

6 You may swear the panel.

7 (Whereupon, the jury was duly sworn.)

8 THE COURT: As you know, each of you have been
9 selected to decide the verdict in the case of the State vs.
10 Robert Tyrell Gentry.

11 Also, as each of you have been informed, Mr. Gentry
12 has been accused by the prosecutor by way of this
13 indictment with having committed the offense of the sexual
14 exploitation of a minor in the third degree.

15 They allege between February of 2018 and January of
16 2019 he did commit that offense in that he did, knowing the
17 character or content of the material, possess such material
18 that contained a representation of a minor engaged in
19 sexual activity.

20 As to those allegations and as to that charge, as I've
21 told you, Mr. Gentry has entered a plea of not guilty. A
22 plea of not guilty therefore places upon the state the
23 burden of proving the allegations that they have made by
24 way of the indictment, the burden of proving the essential
25 elements of the crime that has been alleged against the

1 defendant; and therefore the burden is upon the state to
2 establish his guilt to the satisfaction of you 12 jurors
3 beyond a reasonable doubt before a verdict of guilty could
4 be returned.

5 Every person who is accused of a crime is always
6 presumed innocent of the charge. That presumption of
7 innocence remains with any defendant, as it does with this
8 defendant, from the time that he is placed under arrest and
9 throughout the course of the criminal process and even
10 throughout the course of the actual trial in the case.

11 That presumption of innocence will be with Mr. Gentry
12 even at the time that you go back to begin with your
13 deliberations in the case at the trial's conclusion.

14 That presumption of innocence will be with him in that
15 jury room, and it'll be with him forever unless you 12
16 jurors determine that he is no longer entitled to that
17 presumption of innocence.

18 In other words, after you have carefully considered
19 all of the evidence introduced during the course of the
20 trial, and from that evidence you have been able to
21 determine the material facts that relate to the allegations
22 supporting the charge, and after determining those facts
23 you apply the law that I will have provided you, if you 12
24 jurors unanimously determine that his guilt has been proven
25 beyond a reasonable doubt, then he would no longer be

1 entitled to that presumption of innocence. But it is only
2 if, unless and until you are satisfied of his guilt beyond
3 a reasonable doubt that the presumption of innocence would
4 no longer be applicable.

5 Now, the way the trial will proceed is this in a
6 moment the lawyers will address you in what are called
7 opening statements.

8 There are two occasions in the trial of the case where
9 lawyers are permitted to address the jury. That is at the
10 beginning of the trial before any evidence has been
11 introduced, then again at the conclusion of the trial after
12 all of the evidence has been received.

13 But please keep in mind, as I've just indicated, the
14 lawyers' statements occur outside of the evidence, and so
15 the lawyers' statements are not evidence and you are not to
16 rely upon the lawyers' statements as any evidence to
17 support a fact in issue in the case.

18 The evidence comes in between the opening and the
19 closing statements of the lawyers, but you should listen to
20 what the lawyers have to say even though it's not evidence
21 because their statements do serve a purpose.

22 The opening statements serve to provide you with a
23 basic understanding as to what this case is about from both
24 the perspective of the state and of the defense so that
25 you'll have some context in which to place the evidence

1 that we will be receiving shortly thereafter.

2 The closing statements occur after all of the evidence
3 has been received. And, again, while those statements are
4 not evidence, those statements will afford the lawyers an
5 opportunity to discuss with you the evidence that you have
6 seen and heard during the course of the trial. And through
7 that discussion each will be trying to persuade you or to
8 convince you that the evidence in the case does or does not
9 support a particular decision.

10 It's in between the opening and the closing statements
11 accomplished by the lawyers that we actually receive the
12 evidence upon which you will base your determination of
13 fact and ultimately your decision in the case.

14 The state has the burden of proof, as you know,
15 because they brought the accusation. The state will
16 therefore go forward first in its presentation of evidence.

17 After the state has concluded with its presentation
18 any person accused of a crime has an opportunity to take
19 the witness stand and testify or to call a witness or
20 introduce other evidence, but please understand that in a
21 criminal case the burden is never upon a defendant or a
22 person accused of a crime to prove that he or she is not
23 guilty or he or she is innocent because in some cases that
24 might not be possible.

25 And therefore in a criminal trial a defendant does not

1 have to take the witness stand or call witnesses or
2 introduce evidence because a defendant has no burden.

3 However, every person accused of a crime is always
4 afforded an opportunity to testify or to call a witness or
5 introduce evidence. They simply are not required to do so.

6 But after all of the evidence has been received during
7 the trial you'll hear the final summations of the lawyers,
8 and then I'll instruct you fully on the law as it relates
9 to the criminal law generally and as it relates to this
10 particular crime specifically, and then you'll be asked to
11 go back and to begin with your deliberations.

12 Through that process you're simply going to be called
13 upon through the exercise of good judgment and common sense
14 conscientiously applied to the testimony and evidence in
15 the case to determine the facts that relate to the
16 allegations.

17 After determining those facts apply the law that I
18 will have given you and decide whether or not the
19 defendant's guilt has been proven beyond a reasonable
20 doubt. If it has, then the verdict is guilty. And if it
21 has not, then the verdict is not guilty.

22 All we ask for you to do is to pay careful attention
23 throughout the course of the trial. Give every witness the
24 same degree of attention as they testify, because one of
25 your prerogatives as a juror in deciding the facts of the

1 case is to evaluate and to assess the credibility of
2 witness testimony.

3 And so in your evaluation of a witness' testimony you
4 can believe -- you can believe everything that they say,
5 you can believe none of what they say, you can believe part
6 of what they say and disregard some other part of what they
7 say.

8 You could believe one witness as opposed to more, or
9 more as opposed to one. But whatever your good judgment
10 and common sense tells you is the most believe and credible
11 testimony is the testimony you should accept, and you
12 should reject any testimony or other evidence that you find
13 not to be credible or believable.

14 It's also important that you keep an open mind
15 throughout the course of the trial, and that just means
16 that you are not begin making up your minds or formulating
17 your opinions as to what you think the ultimate decision in
18 the case ought to be until all of the evidence has been
19 received, until you've been instructed by me as to the law
20 and until you've been asked to go back and to begin with
21 your deliberations.

22 That is the process that has been designed over the
23 last 240-some-odd years to ensure that you can arrive at a
24 fair and impartial decision based upon the evidence
25 received and the law that's applicable.

1 So I do want to thank you in advance for your
2 participation, as well as for your careful attention. I
3 would ask that you please give the lawyers your attention
4 now as they give you their opening statements.

5 Ms. Wells.

6 MS. WELLS: Thank you, Your Honor. May it please the
7 Court.

8 THE COURT: Yes, ma'am.

9 MS. WELLS: On January 29th of 2019 Investigator
10 William Reece with the Spartanburg Police Department was
11 reviewing some electronic evidence that he had obtained
12 with his partner from a potential witness in a case, and
13 while he was reviewing that electronic evidence he came
14 across a video. This video contains a graphic depiction of
15 a young girl performing oral sex on an adult male.

16 Possession of this type of material is illegal, and
17 because of that and because of the special nature of this
18 kind of crime, Investigator Reece reached out to Special
19 Agent Robert Hamod who works for the Federal Bureau of
20 Investigations, and the bulk of his career has been spent
21 investigating crimes against children mostly that are
22 conducted electronically.

23 Investigator Reece and Investigator -- and Special
24 Agent Hamod went and spoke to the person who the -- this
25 electronic evidence belonged to. It came out of a

1 telephone. That person is the defendant in this case
2 Mr. Gentry.

3 They spoke with Mr. Gentry on February 13th of 2019
4 about what they found on his phone. And you're going to
5 have an opportunity to hear what he told them during that
6 interview.

7 And, quite frankly, that, ladies and gentlemen, is why
8 we are here today. As you know already, I've introduced
9 myself to you, and the Court has told you who I am. My
10 name is Jennifer Wells. I'm a prosecutor. In South
11 Carolina we call ourselves assistant solicitors. Otherwise
12 it's district attorneys or assistant common-law attorneys.
13 But here we're assistant solicitors.

14 And it's my job to bring forth all of the relevant
15 evidence to you, the finders of fact in this case, so that
16 you can make a determination about the truth of what
17 happened here.

18 Now, how are we going to do that? Evidence comes in
19 many forms. It may come to you, and it will come to you in
20 this case, from sworn testimony from this witness stand.
21 Witnesses will take the stand, and you will have an
22 opportunity to hear them take an oath. And they will tell
23 you what they know about this case.

24 It's also going to come to you, unfortunately in this
25 case, in the form of the video. And it will come to you in

opening statements

1 this case in an audio recording of the defendant's
2 interview that was conducted by Special Agent Hamod and
3 Investigator Reece.

4 Now, who is going to bring you that evidence? well,
5 first you're going to hear from Investigator Chris Taylor.
6 Investigator Taylor initially had an opportunity to speak
7 to Mr. Gentry while he was looking into another case
8 unrelated to Mr. Gentry at all where Mr. Gentry was a
9 potential witness. And he will tell you how he spoke with
10 him and he asked for consent to search his phone and
11 Mr. Gentry gave him permission to search his phone.

12 And you'll hear that actually Investigator Taylor was
13 not the one who actually did the phone search. But you're
14 going to hear from another investigator with the City of
15 Spartanburg, Investigator -- we call her -- Indy -- Indy
16 Kaur.

17 And she -- it's her job -- she's a forensic cell-phone
18 investigator, and she takes cell phones and she extracts
19 the data from them for law enforcement officers to use
20 during their investigation. She'll tell you how she does
21 that and the significance of how that data is captured.

22 And then once you've had an opportunity to hear from
23 her you're going to hear from Investigator Reece, and he'll
24 tell you about how he reviewed the information that
25 Investigator Kaur obtained from Mr. Gentry's phone.

1 And then you'll finally hear from Special Agent Robert
2 Hamod from the F.B.I., and he's going to tell you about the
3 interview that he conducted with Mr. Gentry.

4 And, ladies and gentlemen, I submit to you that once
5 you've heard all of this information you will find this
6 defendant guilty. When you hear all of the information
7 this case will be yours. The state will rest and you'll
8 have an opportunity to take this information, most of it,
9 back in the jury room with you for you to make your
10 determination of what happened in this case.

11 And what I will tell you and the Court, Judge Cole has
12 already touched upon it, what I would urge each and every
13 one of you to do is use your common sense.

14 Every -- each one of you comes to this courtroom today
15 with a different background, a different upbringing, a
16 different way of looking at things. But use the sense that
17 you use every single day to make important decisions when
18 you're evaluating this evidence.

19 This case is important to Mr. Gentry. It is important
20 to the state. And we would that you use your best judgment
21 and your best common sense as you evaluate the evidence in
22 this case.

23 And, again, I submit to you once you do that that you
24 will find Mr. Gentry guilty. And I'm going to come back
25 before you at the end of this case and ask you to do

1 exactly that. Thank you.

2 THE COURT: Mr. Farr.

3 MR. FARR: Your Honor, may it please the Court --
4 Ms. Wells.

5 It's been a long day, I know. We've all been here
6 since 8:30 some of us, some of us before then.

7 I appreciate Ms. Wells telling y'all to listen to all
8 of the evidence. I really want y'all to listen to all of
9 the evidence.

10 This is a unique case. What they're going to tell you
11 and what she's already alluded to is my client gave it over
12 to them. That's what she's alluded to. But they're also
13 going to have to figure out why he gave it to them and
14 everything else. But this is all based on intent, what is
15 his intent, okay, what's his criminal intent in this case.

16 They're going to produce, as you see, all of these
17 individuals. They're going to talk to you about his
18 interview and everything else.

19 But listen to the intent. Truly listen to the intent.
20 I don't get into the whole common sense thing and
21 everything else because everybody that is picked on a jury,
22 I think everybody understands they have common sense to
23 look at the evidence that is presented before them and to
24 make a judgment about whether or not my client has a
25 criminal intent to violate the South Carolina statute in

1 this case. That's what they've got to present to y'all.

2 Okay. And she's already alluded to you that she's
3 going to play some audio of an interview. Again, listen to
4 his intent.

5 And as I was introduced earlier by Judge Cole, I used
6 to be an assistant solicitor. I did it over for five years
7 before I went over to private practice. I've been in
8 private practice for almost four years now.

9 I work down the street off Reidville Road, or now it's
10 John B. White Boulevard. I work for the Victoria Law Firm.
11 Most of my practice in there is criminal, family and
12 federal work.

13 And at the end of this I'm going to ask y'all to find
14 my client not guilty. Okay. And I appreciate y'all's
15 time.

16 THE COURT: Ms. Wells.

17 MS. WELLS: Thank you, Your Honor.

18 Your Honor, the state's first witness is Investigator
19 Chris Taylor.

20 CHRIS TAYLOR, having been
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MS. WELLS

23 Q Investigator Taylor, where are you employed?

24 A Spartanburg Police Department.

25 Q And how long have you been employed there?

Chris Taylor
Direct examination by Ms. Wells

1 A Over 20 years.

2 Q And what is your current assignment with the
3 Spartanburg Police Department?

4 A Investigations.

5 Q And how long have you been in investigations?

6 A Over 20 years now.

7 Q And, in fact, you have been in investigations long
8 enough to retire and come back as an investigator, is that
9 correct?

10 A Yes, ma'am.

11 Q All right. Now, back in May of 2018 were you also an
12 investigator at that point in time with the Spartanburg
13 Police Department?

14 A Yes, ma'am.

15 Q And during the course of an investigation did you have
16 an opportunity to speak to the defendant in this case,
17 Robert Gentry, as in his role as a potential witness in a
18 case?

19 A Yes, ma'am.

20 Q And that occurred on or about May 21st of 2018?

21 A Yes.

22 Q Where did you meet with Mr. Gentry?

23 A City hall.

24 Q And where is city -- is city hall located in the City
25 of Spartanburg?

1 A Yes, ma'am. 145 West Broad Street.

2 Q And is it located in the County of Spartanburg?

3 A Yes, ma'am.

4 Q And when you met with Mr. Gentry there, where did you
5 meet with him?

6 A In the interview room at city hall.

7 Q And did you ask for consent to search his telephone?

8 A Yes. I did.

9 Q And do y'all have a particular form that y'all use
10 when you're getting consent to search something from a
11 potential witness?

12 A Yes. We do.

13 Q And did you use that form in this case?

14 A Yes, ma'am.

15 Q And did you go through that form with Mr. Gentry?

16 A Yes, ma'am.

17 Q And did he indicate to you that he understood what he
18 was agreeing to do?

19 A Yes. He did.

20 Q And did you have a witness with you that day?

21 A Yes. That was Investigator Nelson.

22 Q And that's Investigator Louis Nelson with the City of
23 Spartanburg?

24 A Yes, ma'am.

25 Q And he's one of the -- there are several investigators

Chris Taylor
Direct examination by Ms. Wells

1 with the city, but he's particularly your partner, is that
2 correct?

3 A Yes, ma'am.

4 Q Okay.

5 MS. WELLS: Your Honor, may I approach the witness?

6 THE COURT: You may.

7 Q Investigator Taylor, I'm showing you what's been
8 marked for identification purposes as State's Exhibit 1.
9 Take a look at that and tell me if you recognize it.

10 A Yes, ma'am. I do.

11 Q And what is State's Exhibit 1?

12 A It's a Spartanburg Police Department consent to search
13 authorization form.

14 Q Okay. And is this the form that you just spoke about
15 going over with Mr. Gentry back in May of 2018?

16 A Yes, ma'am.

17 Q Okay. And is -- this is the actual original form that
18 you went through with him?

19 A Yes. It is.

20 Q Okay. Any changes, additions, deletions to the form
21 since you filled it out back in May of 2018?

22 A No, ma'am.

23 Q Okay.

24 MS. WELLS: Your Honor, we'd offer government -- I
25 mean, State's Exhibit 1 at this time and ask for permission

1 to publish.

2 MR. FARR: No objection, Your Honor.

3 THE COURT: It's admitted.

4 (Consent to search iPhone 7 marked State's Exhibit No.
5 1.)

6 MS. WELLS: Your Honor, we're going to do this the
7 old-fashioned way.

8 I'm going to hand this out, and y'all can pass it
9 around.

10 Q Okay. And you were specifically looking to -- look at
11 Mr. Gentry's iPhone 7 Plus, is that correct?

12 A Yes, ma'am.

13 Q All right. And the search form is obviously before
14 the members of the jury. And did you search -- when you
15 search a phone do you do that yourself?

16 A No, ma'am.

17 Q Okay. Who does that for you generally?

18 A That would be Investigator Kaur.

19 Q And did Investigator -- did you take this phone to
20 Investigator Kaur that day?

21 A Yes, ma'am.

22 Q Can you tell the members of the jury how that -- how
23 that worked at that time at the City of Spartanburg?

24 A At that time as far as when the defendant signed a
25 form, and I took it to Investigator Kaur, it was -- she was

Chris Taylor
Direct examination by Ms. Wells

1 just across the hallway from me at the time. So we were
2 just going a couple of offices down at the time.

3 Q So you took the form and the telephone?

4 A Yes, ma'am.

5 Q And you provided it to Investigator Kaur?

6 A Yes, ma'am.

7 Q And then what did you do?

8 A After that I went back and talked to the defendant.

9 Q Okay. And did Investigator Kaur let you know when the
10 search of the telephone was done?

11 A Yes, ma'am.

12 Q And what did you do with the phone when the search was
13 complete?

14 A I returned it to the defendant.

15 Q And was that the same day back on May the 21st of
16 2018?

17 A Yes, ma'am.

18 Q Did you take possession of the search, the telephone,
19 that Investigator Kaur had completed?

20 A No, ma'am.

21 MS. WELLS: May I have a moment, please, Your Honor?

22 THE COURT: You may.

23 (Pause.)

24 MS. WELLS: Your Honor, I have no further questions
25 for Investigator Taylor.

1 THE COURT: Mr. Farr.

2 MR. FARR: Your Honor, may it please the Court -- Ms.
3 wells.

4 CROSS-EXAMINATION

5 BY MR. FARR

6 Q My client just gave you the cell phone?

7 A After he signed the receipt, yes, sir.

8 Q So he just handed it over to you. Was it his new
9 phone or old phone.

10 A I'm not sure, sir.

11 Q So you don't know. Y'all took both of them, correct?

12 A We just took that phone on that date.

13 Q Was it his old or new phone?

14 A I'm not sure. It's an iPhone 7. That's the one we
15 took from him that day.

16 Q So you don't know if it was an old phone or a new
17 phone.

18 A No, sir.

19 Q And after you made a copy of his phone you handed it
20 back, his phone back, to him?

21 A Yes, sir.

22 Q Okay. And at that time would have been May -- May
23 21st of 2018.

24 A Yes, sir.

25 Q Okay. And, again, you don't know if this was his old

1 phone or new phone.

2 A No, sir.

3 MR. FARR: That's all the questions I have, Your
4 Honor.

5 MS. WELLS: I have no followup, Your Honor.

6 THE COURT: Step down.

7 MS. WELLS: Your Honor, to call the next witness I
8 may -- depending on how far we get in the testimony, I may
9 need to use the television for demonstrative purposes for
10 the jury so that they can see what she did with this phone.

11 THE COURT: Okay.

12 MS. WELLS: So I didn't know if the Court wants me to
13 take a moment to set that up now or --

14 THE COURT: About how long will it take you?

15 MS. WELLS: Just a few -- just a -- I don't think --
16 most everything is over there. We just have to plug it in.

17 THE COURT: You just want to bring it out. Go ahead.

18 MS. WELLS: Yes, sir.

19 (Pause.)

20 MS. WELLS: Your Honor, may I make an inquiry of the
21 jury as to whether they can all see the screen?

22 THE COURT: Well, they won't know until you put
23 something on it.

24 MS. WELLS: We're getting to that point.

25 (Pause.)

1 MS. WELLS: Now may I make the inquiry that there's
2 something to the screen, Judge?

3 THE COURT: Sure.

4 Can everybody see?

5 (Whereupon, all jurors responded in the affirmative.)

6 THE COURT: Good.

7 MS. WELLS: All right. Your Honor, the state would
8 call Investigator Inderjit Kaur to the stand, please.

9 INDERJIT KAUR, having been
10 first duly sworn, testified as follows:

11 DIRECT EXAMINATION BY MS. WELLS

12 Q Investigator Kaur, I've just managed to place this
13 television just so that I cannot see you.

14 So where are you employed?

15 A City of Spartanburg Police Department.

16 Q And how long have you been with the City of
17 Spartanburg Police Department?

18 A A little over five years.

19 Q And prior to coming on board with the Spartanburg
20 Police Department, where were you employed?

21 A U.S. Army.

22 Q And how long were you in the U.S. Army?

23 A About five years.

24 Q Now, what's your current -- what's your title with the
25 City of Spartanburg?

1 A Forensic analysis investigator.

2 Q And I want to direct your attention back to May of
3 2018. Were you working in that role as a forensic analysis
4 investigator --

5 A Yes.

6 Q -- at that time?

7 A Yes. I was.

8 Q And do you have -- did you have a background in
9 forensics?

10 A Yes. From the military.

11 Q Okay. Can you tell the jury a little bit about that?

12 A So I had experience using the forensic machine and
13 also analyze cell phone data, and that's how I was
14 introduced with the same type of job description at the
15 city.

16 Q And back in May of 2018 where was the forensics
17 division located at the Spartanburg --

18 A At the city hall.

19 Q At city hall?

20 A Uh-huh.

21 Q And that's here in Spartanburg County, correct?

22 A Yes. It is.

23 Q And y'all are now across the street, and you have kind
24 of your own separate location, is that right?

25 A Correct.

1 Q Directing your attention specifically back to May the
2 21st of 2018, did you receive a request from Investigator
3 Chris Taylor to -- I'm going to use a common term -- dump a
4 phone?

5 A Correct.

6 Q And when we say to -- someone asked me to dump a
7 phone, what does that mean?

8 A I just extract the data or the machine that I use --
9 forensic machine that I'm using at the time extracts the
10 data from the cell phone.

11 Q And did Investigator Taylor bring you anything when he
12 made that request?

13 A A consent to search.

14 Q And did he bring a -- something that he wanted you to
15 search?

16 A Yes. The phone with it.

17 Q And what type of phone was it?

18 A An iPhone 7 Plus.

19 Q And do you know who that phone belonged to?

20 A Yes. The owner, Tyrell Gentry.

21 Q And I see you're referring to some notes there. Are
22 those -- is that your report?

23 A It's the extraction report, yes, ma'am.

24 Q And you said that you have a device or you said a --
25 maybe device is not the right word. You have an instrument

1 that you use to do this type of data extraction?

2 A Yes.

3 Q Can you tell the jury about this device and how it
4 works?

5 A So they -- one of the many devices that we use is --
6 in this case is the Cellebrite machine, and it's
7 forensically sound. It's proven that it can take the data
8 from a phone and take snapshots of it and put it into a
9 readable data that we can use at a later time.

10 Q And that's called a Cellebrite?

11 A That's the -- yes, the name.

12 Q And when this Cellebrite device extracts the data from
13 the phone, and you said it puts it into a report. Is
14 that --

15 A Yes.

16 Q Is that -- and what happens with that report?

17 A I put it in evidence and one of the investigators,
18 whoever is assigned to it, will take a look at it.

19 Q So you don't actually analyze the data that's taken
20 off the phone.

21 A Unless I'm asked to, but normally I just move on to
22 the next case.

23 Q And in this case were you asked to review the data
24 that was extracted from this phone?

25 A Yes.

1 Q So can you explain to the jury the process of how you
2 get from having the phone with data on it to having a
3 Cellebrite report? How does that work?

4 A So when I get the consent to search in this case I'll
5 hook the phone up to the machine, let it do its job. And
6 then when all of that's done it takes a while for the
7 computer to burn the report to a C.D. Once that C.D. is
8 burned I'll put it into evidence, and its paperwork, and
9 that's about it.

10 Q And does the length of time -- is there a correlation
11 between the length of time it takes to burn the C.D. and
12 the amount of data on the telephone?

13 A Yes. The more data that's on the device, the longer
14 it'll take for me to burn the C.D. because there's only
15 eight gigs that I'm able to record on a C.D. at a time.
16 And a phone has a lot, a lot more.

17 Q And the data, once it's obtained from the phone and
18 placed into this report, could you go back in later and
19 delete items from that report or add items to that report?

20 A No, ma'am. Can view it, but that's about it.

21 Q So when you -- when the data is pulled off this phone,
22 just to make sure I got this correct -- once you pull the
23 data off the phone that it's basically dumped, like you
24 can't manipulate it, you can't change it, you can't add to
25 it, you can't take away from it.

1 A It's a published book. It's your life story, or
2 whoever the owner is.

3 MS. WELLS: May I approach the witness, Your Honor?

4 THE COURT: You may.

5 MS. WELLS: May we approach?

6 THE COURT: Yes.

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

9 Q Investigator Kaur, to be able to operate the
10 Cellebrite -- not every investigator is given a Cellebrite
11 to use, is that right?

12 A That's correct.

13 Q Did you have to go attend classes?

14 A Yes.

15 Q How long were those classes? How long were -- of the
16 training did it take?

17 A It's quite long. There's about three different
18 classes. Each has different special elite ability.

19 One is just for you to be able to use the machine. The
20 other certification is you can explain what you're looking
21 at and kind of put it into a term that everyone can
22 understand versus the software engineering term.

23 Q And was there a third one?

24 A The third one basically makes you kinda like a Ph.D.
25 in -- in that Cellebrite.

1 Q Okay. And so have you been certified to use the
2 Cellebrite?

3 A Yes, ma'am.

4 Q And how long have you been certified to use the
5 Cellebrite?

6 A It's a -- the current certification is two years long.

7 Q Okay. So do you have -- then you have to go back?

8 A Yes. Each class has a -- a minimum numbers that you
9 have to come back to class and refamiliarize yourself in
10 it.

11 Q So to learn new software, to learn new terminology,
12 learn new phone systems?

13 A Software, just like phones, changes every so often.

14 MS. WELLS: Your Honor, now I'm going to --

15 MR. FARR: I.D. purposes, yes.

16 MS. WELLS: May I approach?

17 THE COURT: You may.

18 Q Investigator Kaur, I'm going to show you what's been
19 marked for identification purposes as State's Exhibit No. 2
20 and ask if you recognize that.

21 A I do, yes.

22 Q Okay. I'm going to open it up and ask if you
23 recognize what's inside of it as well.

24 A Yes. I do.

25 Q Okay. How are you able to recognize that?

1 A We viewed it earlier today, and I initialed and I
2 dated it.

3 Q And what is State's Exhibit No. 2?

4 A It's the actual phone extraction of the iPhone 7.

5 Q And this is the phone extraction that you conducted
6 back on May 21st of 2018 of Mr. Gentry's telephone.

7 A Correct.

8 Q All right.

9 MS. WELLS: Your Honor, I'm going to ask to show a
10 portion of this to the jury, not -- only just so she can
11 explain what the report looks like and how she conducted
12 it. But outside of that we're not going to admit anything.
13 Not admitting this per our prior conversation.

14 May the witness leave the witness stand?

15 THE COURT: She may.

16 Be sure you speak up and let the court reporter see
17 where you are, see your face that is.

18 (Whereupon, the witness left the stand.)

19 Q Investigator Kaur, I'm going to open this, and then it
20 might be easier for you to come over here and drive, so to
21 speak, so that you can explain to the jury what -- what
22 this is.

23 A When I'm officially done with the actual cell phone
24 extraction I'll take the report and burn it to a C.D. In
25 this case it's a U.S.B. drive.

1 I'll label it the case number and the owner's name to
2 help me remember at a later time.

3 This video file is the initial report. Anything else
4 outside is what you can click on. It's a hyper link that's
5 in the actual report.

6 So, say, if there's pictures, voice mails, time lines,
7 time-wise, they all have their respective folders. I don't
8 create this. This is what's generated after the phone
9 extraction is done.

10 Q So this is created by the Cellebrite software and the
11 device --

12 A Correct.

13 Q -- as it is dumping the phone information, correct?

14 A Correct.

15 Q Okay. And so in the P.D.F. that's on this end of row
16 two, which is labeled I3P3, that is the actual report. And
17 in this case it's thirty some thousand pages, is that
18 correct?

19 A Yes. It's 217 -- 2.17 gigabits.

20 Q All right. And so that report is also not generated
21 by you, but that's generated by the Cellebrite device as
22 well.

23 A Correct.

24 Q All right. And this is a portion of which you cannot
25 go into this and make any additions, subtractions,

1 deletions, editing, splicing, anything like that, correct?

2 A No, ma'am.

3 Q All right. So, and then this is the documentation
4 that you then place into evidence for another investigator
5 to look at.

6 A Correct.

7 Q All right.

8 MS. WELLS: May I have a moment, please, Your Honor?

9 THE COURT: Yes, ma'am.

10 (Pause.)

11 Q Is there anything else significant about this that you
12 think is important for the jury to know to understand the
13 underlying technology or software or anything like that?

14 A I mean, it's self-explanatory.

15 Q Okay. You can take a seat.

16 (Whereupon, the witness returned to the stand.)

17 Q And, Investigator Kaur, back in May of 2018, on the
18 21st, when you got done with capturing this data and you
19 disconnected the phone from the Cellebrite, what did you do
20 with the phone?

21 A I gave it back to Investigator Taylor.

22 Q All right. And what did you do then with the
23 statement?

24 A Once it was ready to be copied onto a C.D., that's
25 exactly what I did, burned a copy and put it into evidence.

1 Q Okay.

2 MS. WELLS: Beg the Court's indulgence.

3 (Pause.)

4 MS. WELLS: Your Honor, those are all the questions I
5 have for Investigator Kaur at this time.

6 MR. FARR: Your Honor, may it please the Court,
7 Ms. Wells.

8 CROSS-EXAMINATION

9 BY MR. FARR

10 Q How long have you been with the city?

11 A About five years, a little over.

12 Q And when you first got there did you start with the
13 analytics of Cellebrite?

14 A No. It was patrol and then it was Cellebrite.

15 Q Okay. And from there you were just taking a cell
16 phone and getting the data off the cell phone.

17 A Yes. Correct.

18 Q And from there Ms. Wells said earlier in this case
19 there was over 30,000 pages.

20 A Yes.

21 Q Okay. And we took it from an iPhone 7.

22 A Yes. iPhone 7.

23 Q And you don't know. Was that his new phone or old
24 phone?

25 A I -- I don't know. I'm not familiar with any of that

1 information.

2 Q Okay. And you took the extraction of this phone, this
3 iPhone 7, on May 21st of 2018.

4 A Yes.

5 Q Okay. Again, you just took the data off the phone.

6 A Yes. That was it.

7 Q Then you gave the phone back to Investigator Taylor.

8 A Correct.

9 Q Thank you.

10 MR. FARR: That's all the questions I have, Your
11 Honor.

12 MS. WELLS: I have no further questions for this
13 witness. May she be excused?

14 THE COURT: She may be.

15 Thank you. Step down.

16 MS. WELLS: This is probably a good point in time to
17 break.

18 (Whereupon, the witness was excused.)

19 THE COURT: We're going to recess for the afternoon.

20 Let me caution you now that you've been selected and
21 the case has begun that you're not permitted to talk about
22 the case with anybody, including your fellow jurors.
23 You're only permitted to discuss the case at the time that
24 you've been asked to begin deliberations.

25 So during the overnight recess don't discuss it with

1 family or friends. Don't discuss it even among yourselves
2 when you return until the deliberation process takes place.
3 And I'll let you know when that time comes.

4 Also, you have to base your decision upon what you see
5 and hear during the trial. You can't supplement your
6 wealth of knowledge by conducting your own outside research
7 or doing your own investigation into any issue that might
8 arise during the trial.

9 So you can't conduct research, whether it be in the
10 form of books or periodicals. You can't go on the
11 internet. You can't supplement your wealth of knowledge
12 that does not come from witnesses and evidence introduced
13 during the trial itself.

14 So be certain that you don't discuss the case. Don't
15 conduct any research. Don't do your own investigation.

16 I don't know if there'll be any media coverage
17 relating to the case, but you can't allow yourselves to be
18 exposed to or influenced by any type of media coverage of
19 the trial. So no television, radio or newspaper.

20 With that do have a good evening, and please report to
21 the jury assembly room -- to the jury assembly room.
22 Report there at 9:30 in the morning -- 9:30 in the morning.
23 Have a good evening.

24 (The following takes place outside the presence of the
25 jury.)

1 THE COURT: Court is in recess until 9:30 in the
2 morning.

3 END OF PROCEEDINGS JANUARY 13, 2020
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1 (Proceedings January 13, 2020)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Any matters to address before the jury is
5 brought in?

6 MS. WELLS: Not from the state, Your Honor.

7 MR. FARR: I would like to talk about the possibility
8 of her playing audio, Judge, but I can do that at the time
9 she tries to play it.

10 THE COURT: You want to talk about what?

11 MR. FARR: The possibility of her playing the audio,
12 but, I mean, I can wait and make my objection at that
13 proper time.

14 THE COURT: Well, what do you need to discuss about
15 it?

16 MR. FARR: Your Honor, she wants to play the thing. I
17 do believe under 403 -- I do believe it will be prejudicial
18 to my client when the F.B.I. agent talks about his concerns
19 on the video. Also, he gives his opinion about the law,
20 which I think would be misleading to the jury.

21 THE COURT: You referencing the discussion we had
22 yesterday about him expressing an opinion on the audio?

23 MR. FARR: Yes, sir. That's what I was talking --
24 that's when I told you I forgot to argue about the law.

25 THE COURT: Okay. What about that, Ms. Wells? Can

1 that be redacted?

2 MS. WELLS: Your Honor, we can redact any portion of
3 this. It will just take me a few minutes to redact that
4 portion. I'm not sure when he says --

5 THE COURT: You knew what his concern was yesterday.

6 MS. WELLS: Well, Judge, he said that he had an issue
7 with the agent rendering his opinion. He never said where
8 that opinion --

9 THE COURT: May I see the transcript?

10 MS. WELLS: Yes, Your Honor, if I can approach.

11 THE COURT: Let me have it. She'll make a copy of it.

12 MR. FARR: That was the one I asked to approach I told
13 you I forgot, so.

14 MS. WELLS: So --

15 MR. FARR: I have the numbers.

16 MS. WELLS: So I'm not sure where this --

17 THE COURT: Tell me what page it is on the transcript.

18 MR. FARR: It's on page, I'd say page, seven, Judge,
19 where we start middle of it about the agent. Goes on.

20 "The other thing I need to mention to you is obviously
21 from your lack of concern you didn't realize that that is
22 illegal to you -- for you to possess."

23 That's one part I've asked to exclude. So I think
24 that's his opinion. I think that's going to mislead the
25 jury.

1 MS. WELLS: I don't think it's anyone's opinion. I
2 mean, this agent's been an agent for over 20 years. I
3 think that is a fact that he knows. This is his job that
4 he has had for 20-some-odd years with the F.B.I. that it is
5 illegal to possess child pornography. So that's not an
6 opinion. That's a fact.

7 THE COURT: well, he's -- he's commenting upon what he
8 perceives to be the mental impression of the defendant, it
9 looks like. Says, "I need to mention, obviously, from your
10 lack of concern." What -- that's a -- that's a -- that's
11 not a fact. That's an impression he's giving from his
12 discussion with the defendant. He's not just commenting
13 upon something that's on a -- on that video. He's making a
14 comment about his impression of the defendant.

15 MS. WELLS: well, I don't think that's what Mr. Farr
16 objected to, Your Honor. I mean, I think he objected to
17 the --

18 THE COURT: "The other thing I need to mention to you
19 is, obviously, your lack of concern, you didn't realize
20 that that's illegal."

21 MS. WELLS: It was my -- I thought he was objecting to
22 the comment that if the possession was illegal. Obviously,
23 if the -- I mean.

24 THE COURT: I'm not concerned about that. I'm going
25 to tell them it's illegal. That's the issue in the case --

1 MS. WELLS: That's correct.

2 THE COURT: -- whether or not he possessed illegal
3 material. It is illegal to possess child pornography. We
4 can agree on that. But what I'm concerned about here is
5 his impression as to the defendant's state of mind about
6 it.

7 MS. WELLS: Well, I mean, I think it -- as the Court
8 noted, it's -- I mean, I don't know. I mean, he says
9 it's -- what appears to him to be a lack of concern. I
10 don't know that it's not that he can't make that statement.
11 I mean, it's his present sense impression of the defendant
12 at the time that he made the statement, so.

13 THE COURT: I'm not going to permit that.

14 MS. WELLS: Okay. Well, it's going to take -- I've
15 got --

16 MR. FARR: Judge, I've got some other ones. Page
17 eight.

18 THE COURT: Is this a copy of the transcript that I
19 can have?

20 MS. WELLS: Yes, sir, Your Honor.

21 MR. FARR: Page eight if you go to the very bottom,
22 first big paragraph at the very bottom, where it says, "But
23 when you got -- got it it's, again, something that's
24 illegal. It's like possessing drugs whether you use them
25 or not. You're caught with a kilo of cocaine, you're not

1 caught -- kilo. It still works the same way with child
2 pornography."

3 I think that goes to -- he's arguing the law, and I
4 think that's going to mislead the jury about his -- his
5 thing. I think that's up to Ms. Wells to do in closing,
6 not for the agent to give them basically, like, hey, this
7 is the law. I think that's -- I mean, that's for you to
8 tell them, Judge, as well, not for the agent.

9 MS. WELLS: I make the statement argument, Judge. I
10 mean, he's telling him it's illegal to possess it and he
11 gives an analogy. I don't think that's inappropriate.

12 THE COURT: well, what's the point of it? It's --
13 it's -- you know, it's -- the fact of the matter is the law
14 is it's not illegal under this statute. It is not illegal
15 to possess it unless you possess it knowing the character
16 or content of it. So there's more to it than just the fact
17 of possession. So that's an improper statement.

18 It's not like possessing drugs, just having it in your
19 possession. You have to possess drugs with the knowledge
20 of the character of the drugs.

21 So that's not a -- that's not a correct statement of
22 the law. It's just -- I mean, I understand he's discussing
23 it with the defendant, but we're talking about introducing
24 something into evidence, and that's just not a correct
25 statement. And -- and the witness doesn't get to tell the

1 jury what the law is anyway.

2 MR. FARR: I would note right up under there too he
3 says it's illegal even if you got it, you didn't want it,
4 you should have gone and reported. I would make the same
5 argument. Judge, that's up to you.

6 THE COURT: well, that's no different. That's the
7 same. That's the same as the analysis we've already
8 conducted.

9 MR. FARR: Same thing. Go back to page nine, Judge.
10 Look at the top.

11 THE COURT: The concern I have with that -- as I say,
12 I'm not concerned with somebody saying, well, it's illegal,
13 you can't have child pornography. That's true. The jury's
14 been told that. But this says he should have reported it.
15 I don't know that there's any obligation to report it.

16 Is there, Ms. Wells?

17 MS. WELLS: Not that I'm aware of, Judge, other than I
18 think that if you received pornography that you did not
19 want and you did not want to get charged with it, perhaps
20 that would have been a wise thing to do and if --

21 THE COURT: well, I'm not saying it's not a wise thing
22 to do, but my point is he's saying that you're obligated to
23 do it, and you're not. You can destroy it. But if you
24 receive something --

25 MS. WELLS: I'm not saying it's the only choice,

1 Judge.

2 THE COURT: -- and delete it, then you wouldn't have
3 to report it to anybody. In fact, if you reported it to
4 anybody they might charge you with possessing it.

5 MS. WELLS: So can we -- okay. I -- moving back to
6 page seven. I mean, I know that Mr. Farr has other
7 objections and of course this is -- would have been great
8 to talk about yesterday, but so what portion of that --

9 THE COURT: I thought y'all ought to discuss this
10 overnight.

11 MS. WELLS: So, no, sir.

12 THE COURT: All right. We're on page seven?

13 MS. WELLS: So the other -- so is this -- I'm just
14 trying to figure out how to take these portions out and not
15 have the --

16 THE COURT: All right. Here's what I want y'all to
17 do since y'all haven't done it.

18 I want you and Mr. Farr to go through this transcript
19 and discuss it, and he'll tell you exactly what he thinks
20 ought to be redacted. And if you agree, it can be
21 redacted. If you disagree, then y'all can come back and
22 tell me those portions that you disagree with.

23 MS. WELLS: Okay. When we do this -- I already have a
24 previously redacted portion. I think I have this saved on
25 my laptop. I'm going to have to have the special agent

1 listen to it and initial it so that we can introduce it in
2 court so that it's just going to just -- I'm just advising
3 the Court it's going to take more than five or ten minutes
4 to get this situated.

5 THE COURT: The agent's got to initial what?

6 MS. WELLS: I need him to be able to -- to be able to
7 authenticate the video for the state to be able to properly
8 admit it.

9 THE COURT: well, he should -- yeah. He should be
10 involved in the discussions with y'all so he'll know what's
11 in and what's out.

12 MS. WELLS: So okay. All right.

13 THE COURT: Y'all have a look at it and let me know
14 when you're through.

15 (Whereupon, a recess was taken.)

16 THE COURT: All right. Are we ready for the jury?

17 MS. WELLS: Your Honor, if I can just have one moment
18 to make sure my laptop shuts down before they come in so
19 that it doesn't make any inadvertent noises.

20 (Pause.)

21 MS. WELLS: Okay. Now we're ready.

22 THE COURT: Bring them in.

23 (The following takes place in the presence of the
24 jury.)

25 THE COURT: Good morning, ladies and gentlemen.

1 As you know, when we recessed yesterday the state had
2 begun with their presentation of evidence. So we will
3 continue with that presentation this morning.

4 MS. WELLS: May it please the Court, Your Honor.

5 THE COURT: Ms. Wells.

6 MS. WELLS: Your Honor, the state's next witness is
7 Investigator William Reece, and we need one moment after he
8 takes -- after he's sworn and takes the stand to get the
9 television back in front of the jury.

10 WILLIAM REECE, having been
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MS. WELLS

13 Q Investigator Reece, where are you employed?

14 A Spartanburg City Police.

15 Q And how long have you been with the Spartanburg
16 Police -- City Police?

17 A Just short of 24 years.

18 Q And you've held various roles in the Spartanburg
19 Police Department during that time?

20 A I have.

21 Q And what's your current assignment?

22 A Assigned to criminal investigation division and
23 detective.

24 Q And I want to direct your attention back to early
25 2019 -- January and February of 2019. What role did you

William Reece
Direct examination by Ms. Wells

1 hold with the City of Spartanburg at that point?

2 A Investigator with the city.

3 Q And during that time were you working on an
4 investigation that identified Mr. Gentry, the defendant in
5 this case, as a potential witness?

6 A I was.

7 Q And I want to direct your attention specifically back
8 to January 29th of 2019. What type of investigation in
9 that case where Mr. Gentry was a potential witness were you
10 conducting on that day?

11 A I was conducting the -- a review of the phone
12 extraction.

13 Q And when you say the phone extraction, can you be more
14 specific? Which particular phone extraction?

15 A Mr. Gentry's phone, iPhone 7 Plus.

16 Q And how did you obtain that phone extraction?

17 A Obtained it from Investigator Kaur, our forensics.

18 Q And that was Investigator Kaur who testified before
19 the Court yesterday?

20 A It is, yes.

21 Q Now, are you certified in Cellebrite?

22 A I am.

23 Q Can you tell the jury what -- what that means for the
24 purposes of -- of your investigative work?

25 A Basically, Cellebrite, my certification is the

1 analytics side of Cellebrite, which is going in and
2 actually pulling the data from the cell phones. And
3 it's -- the course is, I think, like a 3-day course if I
4 remember right for the certification.

5 Q And you have to maintain that certification --

6 A Yes.

7 Q -- to continue to be able to work with Cellebrite.

8 So you're reviewing the electronic evidence that was
9 obtained from Mr. Gentry's telephone.

10 A Correct.

11 Q And how do you review that evidence?

12 A There's several ways to review it. This particular
13 evidence in this particular phone was just doing an overall
14 search for data within the phone.

15 Q And while you were doing a search for particular data
16 from Mr. Gentry's phone did you come across a conversation
17 that this defendant had with an individual by the name of
18 Kenzo?

19 A I did.

20 Q And during your review of that conversation with this
21 individual --

22 MR. FARR: Your Honor, I'm going to object. As stated
23 previously, hearsay. She's talking about a conversation.

24 THE COURT: You're going into the conversation?

25 MS. WELLS: Judge, I'm going to ask him what he found,

William Reece
Direct examination by Ms. Wells

1 just specifically as to a particular item.

2 THE COURT: Found where?

3 MS. WELLS: In the search of this conversation.

4 THE COURT: The phone.

5 MS. WELLS: Yes, sir.

6 THE COURT: Okay. Overruled.

7 Q So while you were looking at this conversation or this
8 information between this defendant and this individual by
9 the name of Kenzo did you find something that you were
10 obviously not expecting to find?

11 A I did.

12 Q And what was that?

13 A On the extraction, basically, it's a -- it's a file,
14 and the file was listed as like a capital I.M.G. for image,
15 9492.MOV for movie.

16 Q And did you open that file?

17 A I did.

18 Q And what did you find it to contain?

19 A Child pornography.

20 MS. WELLS: May I approach, Your Honor?

21 MR. FARR: Your Honor, I would -- I would have the
22 same objection as earlier. Again, I'd make an objection to
23 hearsay.

24 MS. WELLS: And the government would renew its
25 previous argument.

1 THE COURT: One second.

2 (Pause.)

3 THE COURT: Mr. Farr, your sole objection is under
4 Rules 80 --

5 MR. FARR: Your Honor, for hearsay I think it's 80 --

6 THE COURT: Do you want to go 801 and two?

7 MR. FARR: Yes, sir. I do -- do you know -- it's
8 hearsay for the mere fact that it is a statement that
9 they're trying to use out of court declaring as this
10 individual, detective, just testified to is that it was a
11 conversation.

12 That would go to part of hearsay, is that you're using
13 a statement, because they said conversation. That's
14 exactly what he testified to. Because he said that, it
15 brings in hearsay.

16 They're trying to use an out-of-court person to now
17 get in the statement, which is again hearsay. They're
18 trying to use it for the truth of the matter asserted at
19 this point.

20 THE COURT: And the state's position is that it's not.

21 MS. WELLS: That's correct, Your Honor.

22 THE COURT: Overruled.

23 MR. FARR: Judge, I would also argue under evidence
24 Rule 901 for authenticity of this video. They have not
25 laid a foundation for that.

William Reece
Direct examination by Ms. Wells

1 MS. WELLS: Your Honor, the state would disagree. The
2 state has absolutely properly laid a proper foundation for
3 this by putting up all of the witnesses from the time this
4 phone was seized until the time this video was discovered.

5 THE COURT: Overruled.

6 MS. WELLS: Thank you, Your Honor.

7 Q I'm now going to show you what's been marked for
8 identification purposes as State's Exhibit No. 3 and ask if
9 you'll take a look at that and tell me if you can recognize
10 it.

11 A I do.

12 Q And how are you able to recognize it?

13 A By my initials and date.

14 Q And what is Government, I mean, State's Exhibit No. 3?

15 A It's a video that's pulled from the phone extraction.

16 Q With that same file name that you testified to
17 previously?

18 A Yes.

19 MS. WELLS: Your Honor, we'd offer State's Exhibit 3
20 at this time and ask for permission to publish.

21 MR. FARR: Same objections, Your Honor.

22 THE COURT: It's admitted over that objection.

23 MS. WELLS: Thank you, Your Honor.

24 (Video from iPhone 7+ sent February 4, 2018 marked
25 State's Exhibit No. 3.)

1 Q Investigator Reece, before -- before we play this
2 video, is it fair to say this is a video that's graphic?

3 A It's very graphic, yes.

4 Q When you observed this video on the defendant's phone,
5 what did you do?

6 A Basically, the very next day is when I contacted the
7 F.B.I.

8 Q And did you contact anybody specifically at the
9 F.B.I.?

10 A I think originally I actually spoke with the -- the
11 agent in charge, the F.B.I., and I spoke with Mr. Bob
12 Hamod.

13 Q And did you talk to Special Agent Hamod about what you
14 had observed?

15 A I did.

16 Q And based on that conversation did you do anything?

17 A We were able to meet, and he watched this video, and
18 we set up a date to go and actually do an interview.

19 Q So you set up a time to interview Mr. Gentry about
20 this particular video.

21 A Correct.

22 Q And did that interview occur on February 13th of 2019?

23 A Yes.

24 Q And you were present with Special Agent Hamod when
25 that interview occurred?

William Reece
Direct examination by Ms. Wells

1 A I was.

2 Q And were you -- and was Mr. Gentry advised of his
3 Miranda rights prior to that interview?

4 A He was.

5 Q And who did that? who advised him of the Miranda --
6 of Miranda?

7 A That would have been Agent Hamod.

8 Q And did -- over the course of your career how many
9 times have you advised someone personally of their Miranda
10 rights?

11 A That'd be hundreds.

12 Q And based on your training and experience did you find
13 that this defendant had any -- did he understand his
14 Miranda rights?

15 A He did.

16 Q And did he, in fact, sign a piece of paper agreeing to
17 waive his Miranda rights?

18 A Yes.

19 Q And you were present for both the execution of the
20 Miranda waiver and the interview?

21 A I was.

22 Q And have you attempted to find Kenzo, the person who
23 sent this video?

24 A This is still an active case. And, yes, we have
25 several times looked for Kenzo.

1 Q And have you been able to do that to this point?

2 A Not to this date.

3 MS. WELLS: Can I have a moment, please, Your Honor?

4 (Pause.)

5 MS. WELLS: Your Honor, I don't have any further
6 questions for Investigator Reece at this time.

7 MR. FARR: Your Honor, may it please the Court --
8 Ms. Wells.

9 CROSS-EXAMINATION

10 BY MR. FARR

11 Q When did you first get the file, the extraction of my
12 client's phone? When was the first date?

13 A The first date itself, I do not remember. The -- the
14 date of this particular incident is on the 29th of January.

15 Q So you don't remember when you first got the file from
16 the phone extraction.

17 A Correct. It's --

18 THE COURT: Excuse me just a minute.

19 Let me see the lawyers, please.

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

22 THE COURT: Mr. Alford, can you bring that podium out
23 before they move the television?

24 (Pause.)

25 THE COURT: Mr. Farr.

1 MR. FARR: Yes, sir. Your Honor, may it please the
2 Court -- Ms. Wells.

3 BY MR. FARR

4 Q I'm going to go back.

5 You were a detective at the point of January 29th of
6 2019.

7 A Before, yeah, before that, correct.

8 Q And you heard. You were in here yesterday that Mr.
9 Investigator Taylor got the phone extraction on May of
10 2018.

11 A I think it was the 21st or something.

12 Q Of 2018.

13 A Correct.

14 Q And from that phone extraction, when did that phone
15 extraction come to your desk for your review?

16 A I don't remember the exact date. A file as big as
17 this particular phone extraction would have taken days.

18 Q In the ten months from May to January 29th do you know
19 roughly about what point in time you started reviewing that
20 phone extraction?

21 A It would have been months after it was extracted.

22 Q A few months after, correct?

23 A Give or take, that area.

24 Q And at what point did you call the federal bureau?
25 Was it on January 29th of 2019?

1 A It would have been the next day, which was the 30th.

2 Q So this phone extraction has been setting in y'all's
3 evidence for over ten months.

4 A Yes, sir.

5 Q Okay. And as you discussed earlier, it's over 30,000
6 pages?

7 A Correct, of files, yeah.

8 Q And you're certified in Cellebrite.

9 A Correct.

10 Q And you know Ms. Wells yesterday showed a diagram of
11 the file.

12 A Right.

13 Q Okay. On that file there's different folders.

14 A Correct.

15 Q Correct? And there was one that was not a folder. It
16 was the documents of the 30,000 pages.

17 A Correct.

18 Q Okay. And you talked about doing a search, correct?

19 A Correct.

20 Q Okay. Did you look in those folders first for saved
21 data?

22 A It's -- it's a process, and I'll kinda explain to you
23 a little bit. For every investigation it's different how
24 deep we'll actually look into certain phones. It's
25 according to what the investigation is. So if we're

1 looking at -- I can give you an example, I guess. In this
2 particular incident the --

3 MR. FARR: Judge, I'm going to object to this because
4 he's going into an example. I just asked did he look in
5 the folders or the actual 30,000 pages of documents.

6 THE COURT: Okay. Well, reask your question, and
7 let's confine it to the -- response to the question.

8 MR. FARR: Yes, Your Honor.

9 Q Did you search those folders, those six folders that
10 were showed yesterday?

11 A I went through multiple folders. So the six folders
12 you're talking about, I would have to look at what name
13 files you're giving those.

14 Q All right. And you put the phone extraction on a
15 U.S.B. thumb drive, correct?

16 A I think it was on an external hard drive, an external
17 drive.

18 Q Okay. And when you look through those folders is
19 there a search engine for those folders?

20 A Yes. You can do an overall search of the whole
21 document.

22 Q Okay. And in those 30,000 pages you did a search
23 engine.

24 A Correct.

25 Q Okay. And through those 30,000 pages you found one

1 conversation that had this video on it.

2 A Correct.

3 Q Okay. In your investigation of this phone, the 30,000
4 pages, did you find any other pictures that had child porn
5 as you described earlier?

6 A No, not to that extent, no, sir.

7 Q Okay. In the 30,000 pages of this phone extraction
8 was there anything stored as saved as a video?

9 A The video is saved to the actual phone data, yes, sir.

10 Q Is it saved like to his archives or anything like
11 that?

12 A If -- if you pulled up your cell phone under your
13 images that file would be there. So it is saved to the
14 phone.

15 Q Okay. Did you find it under his saved images?

16 A I pulled it up under messages, under chats.

17 Q But you didn't look for the saved video. You looked
18 through a chat, correct?

19 A Well, that's how I stumbled upon it, but it does show
20 where it is saved to the actual hard drive of the phone.

21 Q Okay.

22 MR. FARR: Your Honor, may I approach the witness with
23 this?

24 Q I'm going to give you two things. I'm showing you two
25 documents. One has already been marked but just for

1 purposes that you can see the unredacted part and what I'm
2 going to ask you about, what has not been redacted. Just
3 so you can see, I'm going to let you review both.

4 (Pause.)

5 A I'm sorry.

6 Q You're fine. Just the top part. That's just the...

7 (Pause.)

8 A There's other messages here. That's why I was trying
9 to figure out which one you want me to look at. The one
10 that's the side?

11 Q Yes, sir. The phone. I just gave you one that's
12 unredacted and one that's redacted. Does that look
13 familiar to you?

14 A Yes, yes, sir.

15 Q Okay.

16 MS. WELLS: Your Honor, for clarification purposes it
17 might be helpful if the defense marked both exhibits so
18 that we know which one he's referring to for the record.

19 THE COURT: Well, they haven't been introduced yet.
20 Are you going to introduce them?

21 MR. FARR: Just this one that's already been marked,
22 the one that has been redacted.

23 THE COURT: Okay. But it has not been introduced.

24 MR. FARR: No, sir. It has not.

25 Q Looking at the two pages that's been--

1 THE COURT: Do you want to make that exhibit as a
2 court's exhibit? Does that have anything to do with the
3 other?

4 MR. FARR: It's just -- this is just an unredacted one
5 so just so he's familiar to what...

6 THE COURT: Okay. Let's make that a court's exhibit.
7 You can use it, but I need it as a court's exhibit.

8 MR. FARR: Yes, sir.

9 (Email marked Court's Exhibit No. 1.)

10 Q The defendant's that's been marked as No. 1 is a
11 redacted version of Court's Exhibit No. 1. Is that
12 correct?

13 A Yes, sir.

14 Q Okay. And that's been marked as Defendant's No. 1.
15 Is that the conversation that you were talking about
16 earlier?

17 A Correct.

18 Q Okay. And in that conversation that's through the
19 thing that you did your search engine with, through the
20 30,000 pages, is there a conversation in there that my
21 client asked for that video per the text messages?

22 A Per the text messages, no, sir.

23 Q Okay. And that would be a conversation that a video
24 was sent to my client, correct, from Kenzo?

25 A Correct.

1 Q Okay. And on the next page, page two of exhibit --
2 Defense Exhibit No. 1 -- is my client making a statement to
3 Kenzo?

4 A Correct.

5 Q Okay. And that is the conversation that you testified
6 to earlier, bare accusation of the conversation that you
7 found.

8 A Correct.

9 Q Okay.

10 MR. FARR: At this time, Judge, I would like to
11 introduce this as Defense Exhibit No. 1 that's been
12 redacted.

13 MS. WELLS: No objection, Your Honor.

14 THE COURT: It's admitted.

15 (Email marked Defendant's Exhibit No. 1.)

16 MR. FARR: Judge, at this time I would like to publish
17 it to the jury.

18 THE COURT: You may.

19 Q And you were there on February 13th of 2019 with the
20 federal agent.

21 A I was.

22 Q Okay. And while y'all were in that interview did
23 y'all show him the text-message conversation?

24 A No. Did not.

25 Q So you did not show him that. And that interview from

1 the time y'all got the phone was actually one year ago,
2 from 2018 to 2019.

3 A Correct.

4 Q And you testified earlier that there was no other
5 things that related to child porn on his phone that had
6 those 30,000 pages.

7 A Correct.

8 Q And did he send this video to anybody else?

9 A No, sir. Not that I am aware of.

10 Q Okay. And he received this text message.

11 A Correct.

12 Q And this was his old cell phone?

13 A It's an iPhone 7.

14 Q And you have his new cell phone, correct?

15 A Yes. There is an another cell phone, correct.

16 Q Did y'all run a search on that new cell phone?

17 MS. WELLS: Your Honor, may we approach?

18 THE COURT: Yes, ma'am.

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

21 Q Let me ask you a question.

22 During an interview if somebody misspeaks about your
23 words do you correct them?

24 MS. WELLS: Objection. Relevance.

25 THE COURT: Excuse me just a minute.

1 I've got a disturbance going on in the courtroom.

2 Is there a problem back there?

3 THE BAILIFF: There seemed to be.

4 (Pause.)

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

7 MR. FARR: That's all the questions I have, Your
8 Honor.

9 MS. WELLS: I don't have any redirect of this witness,
10 Your Honor.

11 THE COURT: You may step down.

12 MS. WELLS: Your Honor, at this time we may need to
13 take a brief break because of the next witness that the
14 state has.

15 THE COURT: Okay. Let me ask the jury to please go to
16 your jury room. Don't talk about the case.

17 We've got some technical issues that have to be
18 addressed so that some type of evidence can be presented to
19 you. We're having some difficulty being able to present
20 that. So we'll resolve those issues and then we'll bring
21 you back. Okay.

22 (The following takes place outside the presence of the
23 jury.)

24 THE COURT: All right. We'll be at ease while y'all
25 resolve those issues.

1 (Whereupon, a recess was taken.)

2 THE COURT: Bring the jury in.

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

5 THE COURT: Thank you for our patience, ladies and
6 gentlemen.

7 We still have not been able to resolve the technical
8 issues that we have. So I'm going to let y'all go to
9 lunch, and we'll get those resolved during the lunch
10 period. So you're going to be excused now.

11 Keep in mind my caution I've previously given you.
12 You're to have no discussions about the case with any
13 person whatsoever including your fellow jurors.

14 Don't conduct any research, don't do our own
15 investigation into any issue.

16 Do have a good lunch. Please report to the jury
17 assembly room this afternoon at 2:30, 2:30 this afternoon.
18 Hopefully by then it'll all be resolved and we can
19 continue.

20 Okay. Thank you again for your patience. We'll see
21 you at 2:30.

22 (The following takes place outside the presence of the
23 jury.)

24 THE COURT: Court is in recess until 2:30.

25 (Whereupon, a recess was taken.)

1 THE COURT: Are we ready for the jury?

2 MS. WELLS: Yes, sir. The state's ready.

3 MR. FARR: Yes, Your Honor.

4 THE COURT: Bring them in.

5 All of our technical issues have been resolved?

6 MS. WELLS: Yes, sir, Your Honor. We've tested the
7 audio and Mr. Farr has reviewed both the newly redacted
8 video/audio and the transcript with no objections.

9 THE COURT: Very good.

10 MR. FARR: That is correct, Your Honor.

11 MS. WELLS: Your Honor, I also have the unredacted
12 version of this that I'm going to offer as Court's Exhibit
13 2 before -- I'll offer it at this time. I'll give it to
14 the court reporter.

15 THE COURT: Okay.

16 MS. WELLS: Thank you.

17 (Unredacted DVD marked Court's Exhibit No. 2.)

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

20 THE COURT: Good afternoon, ladies and gentlemen.

21 I think we have all of the issues resolved, so we'll
22 continue with the state's presentation.

23 MS. WELLS: Thank you, Your Honor. May it please the
24 Court.

25 State would call Special Agent Robert Hamod to the

1 stand, please.

2 ROBERT HAMOD, having been
3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MS. WELLS

5 Q Special Agent Hamod, where are you employed?

6 A With the F.B.I.

7 Q And how long have you been employed with the F.B.I.?

8 A Over 28 years.

9 Q And what's your role or assignment or title with the
10 F.B.I.?

11 A Right now I'm assigned to work crimes against
12 children.

13 Q And crimes against children under the F.B.I.'s purview
14 means what?

15 A We work a number of violations but primarily child
16 pornography.

17 Q And how long have you been assigned to the
18 crimes-against-children section?

19 A Well, I work in a small office in Greenville. It's
20 called a resident agency. It's a satellite office out of
21 our Columbia division.

22 I've worked a number of different types of crime
23 including violent crime, white-collar, as well as crimes
24 against children.

25 Unfortunately, there's been a large increase in the

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Direct examination by Ms. Wells

1 amount of crimes against children, so right now I
2 predominantly work that.

3 Q And based on your current duties with the F.B.I. did
4 that cause you to have contact with the defendant in this
5 case, Mr. Gentry?

6 A Yes.

7 Q I want to direct your attention back to, I'm going to
8 say, the end of January of last year, 2019. Were you put
9 in touch with Investigator William Reece from the
10 Spartanburg Police Department?

11 A Yes. I was.

12 Q And what was the nature of the contact that you had
13 with Investigator Reece?

14 A He had informed me that in the process of working one
15 of their cases that they had discovered child pornography
16 on someone's phone.

17 Q And did he -- was he asking you to do anything in
18 particular?

19 A He asked me take a look at it and see if there was
20 something that we could -- we could do federally with it.

21 Q And were you able to -- when you say take a look at
22 it, what did he want you to look at?

23 A The video that was shown to the jury.

24 Q And did you have an opportunity to view that back in
25 January or early February of 2019?

1 A Yes. I did.

2 Q And after viewing that, what did you decide that you
3 needed? what did you do next?

4 A I took a look at it, determined that it was indeed
5 child pornography in my opinion.

6 I then presented the information to the United States
7 Attorney's Office.

8 Q Once you reviewed the video did you -- did you present
9 it to the U.S. Attorney's Office before you had an
10 opportunity to speak with Mr. Gentry?

11 A I did not. I waited until I spoke with Mr. Gentry.

12 Q Okay. And do you recall what day you interviewed him?

13 A I believe it was February the 13th of 2019.

14 Q All right. And you and Investigator Reece met with
15 Mr. Gentry here in Spartanburg?

16 A Yes. We did.

17 Q And based on the nature of the case did you advise
18 Mr. Gentry of his Miranda rights?

19 A Yes. I did.

20 Q And is that common for you to do when you interview
21 someone about most crimes?

22 A It depends, but in this case I made the determination
23 to go and do that.

24 Q All right. And is there a form that you use that you
25 go through with individuals when you advise them of their

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Direct examination by Ms. Wells

1 Miranda rights?

2 A Yes. There is.

3 MS. WELLS: Your Honor, may I approach?

4 MR. FARR: We have no objection, Your Honor.

5 Q Now, Special Agent Hamod, I'm showing you what's been
6 marked for identification purposes as State's Exhibit 6.

7 Do you recognize that?

8 A Yes. I do.

9 Q And that is the advice of rights form that's part of
10 your F.B.I. official paperwork that y'all use, is that
11 correct?

12 A That's correct.

13 Q Okay.

14 MS. WELLS: Your Honor, we'd offer State's Exhibit 6
15 at this time.

16 THE COURT: It's admitted without objection.

17 MS. WELLS: Thank you, Your Honor.

18 (Waiver of rights dated February 13, 2019, marked
19 State's Exhibit No. 6.)

20 MS. WELLS: We'd ask for permission to publish at the
21 appropriate time.

22 THE COURT: You may.

23 Q Special Agent Hamod, can you walk through this advice
24 of rights for the members of the jury, the questions that
25 you ask and how you generally go through this with

1 individuals when you're preparing to do an interview with
2 them?

3 A Typically, when I do this I start off. I fill out the
4 location where we're conducting the interview, the date and
5 the time that I -- at the current moment before I start
6 reading the rights.

7 At the -- I'll go through, and typically I read the
8 rights to the individual. I've seen it in some cases where
9 the officer or agent will have the person read the rights
10 themselves. But just to be on the safe side, I read them to
11 the individual.

12 When I get down to the waiver portion I'll -- I'll read
13 that, and then I'll try and explain that to them, what that
14 means.

15 Q Okay. And are those generally the steps that you took
16 in this case before you interviewed Mr. Gentry?

17 A Yes.

18 Q And did you have a witness present with you for the
19 advice of rights back February 13th of 2019?

20 A Yes.

21 Q And who was that?

22 A That was Detective Reece.

23 Q All right. And is he -- is it his signature that is
24 on the second line of the witness portion of this advice of
25 rights form?

Robert Hamod
Direct examination by Ms. Wells

1 A Yes. It is.

2 Q And over the course of your 28-some-odd years -- I
3 think you said 28.

4 A Yes.

5 Q Okay. Twenty-eight-and-some-odd years with the
6 federal bureau of investigation how -- approximately how
7 many times have you advised individuals of their Miranda
8 warnings?

9 A A lot. I have no idea, but a lot.

10 Q More than 50 times?

11 A Oh, yes.

12 Q More than a hundred times?

13 A Yes.

14 Q Okay. Several hundred times?

15 A I have no idea. I'm sorry.

16 Q That's fine. And based on your experience did
17 Mr. Gentry have any issues understanding the rights as he
18 was provided -- as they were provided to him?

19 A No.

20 Q And did he, in fact, sign this form and agree to waive
21 these rights and speak with you without an attorney
22 present?

23 A Yes. He did.

24 MS. WELLS: Your Honor, I'm going to publish this to
25 the jury at this time.

1 Q And, in fact, was this waiver of rights recorded?

2 A Yes.

3 Q And, in fact, this entire interview was recorded, is
4 that correct?

5 A Yes.

6 Q And how did you -- how do you record your interviews
7 when you do record them?

8 A In this particular case I used a portable recorder,
9 digital recorder.

10 Q And then a copy of that interview was provided to the
11 Spartanburg Police Department for their safekeeping, is
12 that correct?

13 A Yes.

14 Q I'm going to show you what's been marked for
15 identification purposes as State's 4. I'm going to have
16 you take a look at that and tell me. I should pull this out.
17 Tell me if you can recognize that.

18 A Yes. I do.

19 Q Okay. And how are you able to recognize it?

20 A My initials and the date are on there.

21 Q Okay. And that's the date that you had an opportunity
22 to review this, and it's a fair and accurate recording of
23 the interview that you made back on February the 13th of
24 2019?

25 A Yes.

Robert Hamod
Direct examination by Ms. Wells

1 Q All right.

2 MS. WELLS: Your Honor, we'd offer State's Exhibit 4
3 at this time and ask for permission to publish.

4 MR. FARR: Judge, she only asked for I.D. purposes at
5 that point. She didn't lay a foundation about anything
6 further. She just said for I.D. purposes.

7 But I still renew my motion. Under 403 this is
8 prejudicial as this is just -- when I say prejudicial, this
9 is just cumulative of evidence that he can still testify
10 to. And they're just bolstering their evidence at this
11 point under 403.

12 THE COURT: Overruled.

13 MR. FARR: Yes, sir.

14 MS. WELLS: Thank you, Your Honor.

15 Q I'm also going to show you what's been marked for
16 identification purposes as State's Exhibit 5. I'm going to
17 ask if you recognize State's 5.

18 A Yes. I do.

19 Q Okay. What is -- what is State's -- how are you able
20 to recognize State's Exhibit 5?

21 A Again, my initials and the date are on the document.

22 Q Okay. And you had an opportunity to review this
23 document on the date indicated on the document where you
24 initialed that you -- that you reviewed this document?

25 A Yes.

1 Q Okay. What is State's Exhibit 5?

2 A It's a written transcript of the audio.

3 Q Okay. And you had an opportunity to listen to this
4 transcript along with the audio?

5 A Yes.

6 Q And, in fact, you -- it was your office with your
7 guidance that helped prepare this transcript, is that
8 correct?

9 A Yes.

10 Q And to the best of your knowledge and understanding
11 and your ability to understand the audio is this transcript
12 a fair and accurate transcription of the audio that is
13 captured on State's Exhibit 4?

14 A Yes. It is.

15 MS. WELLS: Your Honor, we'd offer State's Exhibit 5
16 for demonstrative purposes only to assist the jury in
17 understanding State's Exhibit 4. And we will take up all
18 copies at the end as the state understands that the audio
19 is the evidence in this case.

20 THE COURT: Well, make that a court's exhibit as
21 opposed to a state's exhibit.

22 MS. WELLS: Yes, sir, Your Honor, yes, sir.

23 I'm going to leave this and we will do that.

24 MR. FARR: I just have the objection to make sure
25 that's not going to be a state's exhibit, Judge.

1 I know it's ruled earlier.

2 MS. WELLS: We offer, only offering it, for
3 identification purposes only. We now would move all of
4 those into the record prior to resting, or we can make it a
5 court's exhibit, however, whatever pleases the Court.

6 THE COURT: All right. It'll be made a court's
7 exhibit.

8 MS. WELLS: Yes, sir, Your Honor.

9 (Exhibit was never submitted to be marked.)

10 THE COURT: Ladies and gentlemen, what's occurring
11 here is that there's an Exhibit No. 4 that's an audio
12 recording which is going to be played for you here in the
13 courtroom.

14 That exhibit has been admitted into evidence, and
15 therefore it will be with you when you go back to begin
16 with your deliberations at the trial's conclusion.

17 While that exhibit is being played here in court you
18 are going to be provided a transcript of that recording so
19 that you can follow along while that recording is being
20 played here in court so that way you won't miss something
21 in the event you were unable to hear something.

22 But those transcripts will not be in the jury room
23 when you go back because you're going to have the actual
24 recording, and you can listen to it as many times as you
25 need to. But you will have the transcript here solely for

1 the purposes of assisting you in following along with the
2 recording as it's being played.

3 Now, Mr. Farr, I know you have an objection to it, but
4 you don't object to its accuracy, do you?

5 MR. FARR: No, Your Honor.

6 THE COURT: Okay.

7 MS. WELLS: Your Honor, there should be extra copies
8 for the members of the jury.

9 THE COURT: well, let's just -- let's just hand out 13
10 because they don't need any extras.

11 MS. WELLS: well, I'll take them up at the end once
12 they get passed down, and then we'll publish State's 4.

13 (Pause.)

14 MS. WELLS: Your Honor, I've taken up the extras.

15 (Whereupon, State's Exhibit 4 was played for the jury.)

16 Q Special Agent Hamod, I'm going to stop this right
17 here.

18 what is going on? There's some silence here. what is
19 going on during the silence?

20 A He's -- the defendant is going ahead and signing the
21 advice of rights form, as well as Detective Reece.

22 Q Okay.

23 THE COURT: Excuse me.

24 Let me ask you to get closer to that black microphone.
25 You can move it if you need to.

1 Q If you could, repeat that answer, please.

2 A The defendant is signing the -- the waiver of rights
3 form, the advice of rights form, and also Detective Reece
4 is signing the form as well.

5 Q Okay. And you are interviewing Mr. Gentry because he
6 was a potential witness in another case, is that your
7 understanding? And it was during the potential, when he
8 was a potential witness in another case, that this
9 information came to light, correct?

10 A That is correct.

11 Q Okay.

12 (Whereupon, State's Exhibit 4 was played for the jury.)

13 Q I'm going to pause it for one second here. I want to
14 ask you a question.

15 You said that you hadn't seen the video and that you
16 didn't think Investigator Reece had seen the video. Had you
17 seen the video?

18 A Yes, off the defendant's phone. What I meant was I
19 hadn't seen it on the internet exclusive of this case.

20 Q Okay.

21 (Whereupon, State's Exhibit 4 was played for the jury.)

22 Q Special Agent Hamod, that was your interview with the
23 defendant back on February 13th of 2019.

24 A Yes.

25 Q And you stated previously you had presented this to

1 the U.S. Attorney's Office for prosecution.

2 A Yes. I did.

3 Q And that's the federal prosecutor's office, is that
4 correct?

5 A That's correct.

6 Q And did they decline prosecution of this case?

7 A They did.

8 Q Have you had other child pornography cases denied by
9 the U.S. Attorney's Office?

10 A Yes. I have.

11 Q Generally because it's a single-image case?

12 A Yes, in this particular case.

13 MR. FARR: Your Honor, I'm going to object. She is
14 getting into --

15 THE COURT: Sustained.

16 MR. FARR: Thank you.

17 MS. WELLS: No further questions. Those are all the
18 questions I have of Special Agent Hamod at this time.

19 MR. FARR: Your Honor, may it please the Court -- Ms.
20 wells.

21 CROSS-EXAMINATION

22 BY MR. FARR

23 Q You testified at the very beginning of this to
24 Ms. wells about that you watched the video, correct?

25 A Yes.

1 Q Okay. And then part of her questioning was is the
2 video a fair and accurate depiction of the interview,
3 correct?

4 A Is the --

5 Q The video. She asked you if that was a fair and
6 accurate depiction of the interview you had with my client.

7 A I -- I don't recall that particular question. I
8 believe she was talking about the -- the audio C.D. that
9 she played just a minute ago.

10 Q Correct. Which would be the interview, would be a
11 fair and accurate depiction of the C.D. that you had.

12 A Yes. But it was redacted.

13 Q Okay. I understand that. But I'm -- but she said was
14 it a fair and accurate depiction of the C.D. that you had
15 that was just played.

16 A Yes.

17 Q Okay. And I know she asked you about it.

18 You put on the interview that when you were talking to
19 my client, "I obviously didn't see the video." That's what
20 you stated on the audio that was just played.

21 A That is correct.

22 Q Okay. And going through this interview that you had,
23 when you did the interview and you were sitting down with
24 my client did you hand him the text messages?

25 A I don't believe I did, no.

1 Q You didn't. And this was when the city had the phone
2 back in May of 2018. And this interview was February of
3 2019, correct?

4 A That's correct.

5 Q Okay. And you already said it was over a year time.

6 A Yes.

7 Q And during that over-that-year-time and interview you
8 didn't hand him the text messages that showed that there
9 was a video sent to him to refresh his memory?

10 A No.

11 Q Okay. And did you look at the thing that they talked
12 about earlier? I know you've been sitting in here. The
13 30,000 pages?

14 A I looked through some of those, yes.

15 Q And did you see that this video was sent from my
16 client, like did he send it out from your investigation?

17 A I did not see that, no.

18 Q So he did not disseminate this video to anybody else
19 per your investigation.

20 A As far as I could tell.

21 Q And it was by a text message?

22 A That is my understanding, yes.

23 Q I know that Ms. Wells whenever that was played -- you
24 said you, obviously, didn't watch the video. She asked you
25 did you watch it, and you said from my client's cell phone,

1 is that correct?

2 A I watched it from the report that was produced from
3 the cell phone.

4 Q Okay. And you talk about the report. Was it just in
5 that 30,000 pages of the report?

6 A I was provided that, but when I saw the video I
7 believe it was at Detective Reece's office.

8 Q Okay. And through your investigation there was no
9 other videos of children on his cell phone that depicted
10 pornography.

11 A None that I could find.

12 Q Do you remember, was it January of 2019 when you got a
13 call from Investigator or Detective Reece from the City of
14 Spartanburg?

15 A I believe it was, yes.

16 Q Okay. And once you did your interview did that cut
17 off your investigation?

18 A It was shortly thereafter.

19 Q Okay. And from February of 2019 until today has
20 Detective Reece reached out to you on this case?

21 A I -- I don't recall specifically.

22 Q Okay. And you do work for the F.B.I.

23 A I do.

24 Q Okay. And do y'all have a lot of resources?

25 A We like to think we do, yes.

1 Q Okay. And with your resources and with the city's
2 resources were y'all able to find Mr. McKenzie Woodruff in
3 Spartanburg?

4 A I did not, and it's my understanding that Detective
5 Reece did not.

6 Q Okay. And, again, as stated earlier, federal charges
7 were declined.

8 A That is correct.

9 Q Okay.

10 MR. FARR: Give me one second, Your Honor.

11 (Pause.)

12 MR. FARR: Your Honor, that's all the questions I
13 have.

14 MS. WELLS: Just briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. WELLS

17 Q Special Agent Hamod, defense counsel asked you about
18 showing the defendant text messages when you did the
19 interview. Was that something that you -- is that an
20 investigative technique that you would normally use?

21 A Not typically in these type of cases.

22 Q And why not?

23 A Because it would involve potentially showing the
24 person child pornography.

25 Q And he also asked you about the federal charges were

1 declined?

2 A Yes.

3 Q why were the federal charges declined?

4 MR. FARR: Your Honor --

5 THE COURT: Sustained. We've already been through
6 that.

7 MR. FARR: Thank you.

8 MS. WELLS: Your Honor, he asked the question again.

9 THE COURT: I know, but that's because you asked it
10 first. And then I sustained the objection to it.

11 MS. WELLS: I have no further questions.

12 May this witness be excused, Your Honor?

13 THE COURT: He may be.

14 Step down.

15 (Whereupon, the witness was excused.)

16 MS. WELLS: May I have a moment, please, Your Honor?

17 THE COURT: Yes, ma'am.

18 MS. WELLS: If I could have the jury pass all of the
19 transcripts to the end, and we can take those back up.

20 THE COURT: Okay.

21 (Pause.)

22 MS. WELLS: Your Honor, with the exception of moving a
23 couple of items into evidence as court's exhibits, the
24 state rests.

25 THE COURT: All right. Ladies and gentlemen, that is

1 all of the testimony or other evidence to be offered by the
2 state, at least in their case in chief.

3 Before we go any further I've got some legal matters
4 I'll need to address with the lawyers, so the case is not
5 over yet.

6 So you still can't discuss it, but I'll take a short
7 break to cover those matters, and then we'll bring you back
8 to continue with the balance of the trial.

9 So please retire to your jury room, but do not talk
10 about the case.

11 (The following takes place outside the presence of the
12 jury.)

13 THE COURT: What do you have to introduce?

14 MS. WELLS: Your Honor, I have Court's Exhibit 2,
15 which is the unredacted portion of the interview that we
16 just played. That's been previously marked as Court's 2.

17 And then what was previously marked -- and I provided
18 these to the court reporter -- we had marked as State's
19 Exhibit 5 for identification purposes only but will now
20 make that a Court's Exhibit 3 if it pleases the Court,
21 which is the transcript.

22 THE COURT: That's the transcript that the jury had?

23 MS. WELLS: That's correct, Your Honor.

24 And then the other item, I think, is setting right,
25 which was previously marked for identification purposes as

1 State's Exhibit 2. That's the phone extraction report
2 thumb drive. I can make that a court's exhibit as well as
3 opposed to state's exhibit for identification purposes.

4 THE COURT: Okay.

5 MS. WELLS: And that -- so I would want to move all of
6 that in at this time, and then formally rest. And we can
7 fix the paperwork as to the stickers at the next break.

8 MR. FARR: Judge, I guess I might be confused the way
9 it's worded. It's -- she's not moving into the case.
10 She's just saying, hey, I'm making this a court's exhibit,
11 correct?

12 THE COURT: Well, I'm not sure what she's saying, but
13 here's the thing. If it's a court's exhibit the jury will
14 not have it.

15 MR. FARR: Yes, sir.

16 THE COURT: Okay.

17 MR. FARR: I just -- I just -- the word she is saying
18 is move in.

19 THE COURT: I know they're court's exhibits. The jury
20 will not have those.

21 All right. Mr. Farr, do you have any motions or other
22 matters to address?

23 MR. FARR: I do, Your Honor.

24 I have a motion for a directed verdict. I've taken
25 everybody's testimony and looking back from Investigator

1 Taylor, the analyst, Detective Reece and federal agent,
2 Judge, going through all of this they've never established
3 that this took place in the City of Spartanburg. Nobody
4 testified or anything.

5 All they testified to is that my client came to city
6 hall and dropped off his phone. Doesn't say that per the
7 definition knowingly possessed it in the City of
8 Spartanburg. No one ever testified to that. They just
9 said he dropped off his phone. I know that none of them
10 ever said that.

11 Investigator Taylor -- he didn't ask him any
12 questions. It was just that he was come there and asked to
13 drop off his phone. Judge, no one ever stated that it was
14 in the City of Spartanburg.

15 So I'm asking for a directed verdict that they didn't
16 meet that.

17 And they haven't met their burden that my client
18 knowingly possessed per the statute or anything of that.
19 They haven't met their burden on that, Judge. So I'm
20 asking you for a directed verdict in this matter at this
21 time.

22 THE COURT: Okay.

23 MS. WELLS: Thank you, Your Honor.

24 Your Honor, the state did establish jurisdiction
25 through two witnesses. The first of that is Investigator

1 Taylor. He testified that he seized this phone from the
2 defendant at the City of Spartanburg Police Department,
3 which the state established is also in the county of
4 Spartanburg.

5 That phone contained this evidence. Investigator
6 Taylor didn't know it, but it was obviously then
7 Investigator Kaur testified that she took this evidence too
8 and that this report was generated from the possession of
9 the phone, and that possession of the phone occurred here
10 in Spartanburg. So the state has proven jurisdiction in
11 this case.

12 Additionally, Your Honor, the state has put forth
13 evidence on each element of this crime. We have put forth
14 evidence that he knew the character or content of the
15 material, which is -- the state would submit is the first
16 element of this crime.

17 The defendant admitted in his interview that he knew
18 about this video, that he had seen it on -- people talking
19 about it on facebook and other places, that he, in fact,
20 asked about it and asked about the video and had it sent to
21 him.

22 We also established that he possessed the material.
23 He admitted to possessing the material. He talks about
24 that in his interview as well.

25 And, finally, the state has established this contains

1 a visual representation of a minor engaged in sexual
2 activity. There is no doubt in this video that this is a
3 child who is six years old or younger, and there is no
4 doubt that that is sexual activity that is engaged in.
5 That is oral sex between a 6-year-old and an adult male.

6 So, Judge, the state has put forth evidence on each
7 element of the crime, as well as established jurisdiction,
8 and we would ask the Court deny the defense motion.

9 THE COURT: Would you like to respond?

10 MR. FARR: Judge, that they called somebody in to drop
11 off the phone doesn't establish jurisdiction. Judge, I
12 mean, they're telling you to come here. I don't think that
13 gives you the right to say jurisdiction. Because it's in
14 city hall where he drops off the phone is not establishing
15 jurisdiction. So I would say that they can't do that per
16 the testimony. I would ask you still again to get a
17 directed verdict in this matter at this point.

18 THE COURT: I think the evidence reasonably
19 establishes that the offense occurred here in Spartanburg
20 County. So your motions for a directed verdict are denied.

21 MR. FARR: Yes, Your Honor.

22 THE COURT: Any others?

23 MR. FARR: Judge, just to renew all my other previous
24 motions during the thing about the evidence, just all of
25 the hearsay, prejudicial and all of that. Just renew that

1 again.

2 THE COURT: All right. Motions for directed verdict
3 or those grounds is also denied.

4 Have you talked to the defendant about his right to
5 testify or not?

6 MR. FARR: I did, Your Honor, and we have had many
7 discussions about that.

8 THE COURT: And does he indicate to you a preference?

9 MR. FARR: Your Honor, at this time he said he would
10 like to take the stand. But if you could give me five
11 minutes to talk to him, I would like to talk to him real
12 quick just to make sure.

13 THE COURT: Okay. Mr. Gentry, you've heard me talk to
14 your lawyer about your right to testify, as well as not
15 testify.

16 Any time that you are charged with a crime, as you are
17 today, when the case comes to trial, and of course at any
18 time during the course of the process, you always have an
19 absolute right to remain silent.

20 Nobody can ever require that you make any statement;
21 nobody can require that you testify during the trial;
22 nobody can require that you answer any questions that
23 relate to the charges, at least certainly not any question
24 that might tend to incriminate you or to prove you guilty
25 of a crime the state claims you committed.

1 So you have an absolute right to remain silent.
2 Nobody can make you take the witness stand in this case. I
3 can't make you, the prosecutor can't make you, your own
4 lawyer can't make you.

5 At the same time, if you wish to testify to provide
6 this jury with any additional information now is the only
7 opportunity that you will have to do so.

8 So you can't wait until the jury reaches their
9 decision and then change your mind about what you want to
10 do.

11 So you have to make a decision now as to whether or
12 not you wish to testify during the trial of this case.

13 But it's your choice; it's your decision. Nobody can
14 make it for you.

15 If you take the witness stand and you testify during
16 the trial you've got to answer all of the questions that
17 are asked of you not only about by your lawyer but also by
18 the prosecutor to the extent that those questions are
19 relevant and responses are admissible. But you'll have to
20 answer all relevant questions even if the responses to
21 those questions might tend to prove you guilty of a crime
22 the state claims you committed.

23 If you make the decision not to testify during this
24 trial I'm going to instruct the jury that they can't hold
25 that against you, they can't consider it in any fashion,

1 they can't allow it to influence their decision, they can't
2 hold it against you, and they can't even discuss it during
3 their deliberations because the burden is not on you to
4 prove anything. The burden is on the state to prove your
5 guilt, as I've already told you.

6 Do you understand your right to testify, as well as
7 not testify?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And do you understand it's your decision
10 and you're the one that has to make it?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Have you and Mr. Farr had an opportunity
13 to discuss the advantages and disadvantages of testifying,
14 as well as not testifying?

15 THE DEFENDANT: Yes, sir. We have.

16 THE COURT: And do you appreciate what those
17 advantages and disadvantages are?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And do you wish to take some additional
20 time to talk to Mr. Farr about your decision?

21 THE DEFENDANT: Yes, sir. A couple of minutes.

22 THE COURT: All right. We'll take that break, and
23 then we'll resume.

24 When you come back I'll ask you what you're going to
25 do.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. We'll be at ease for ten minutes.

3 (Whereupon, a recess was taken.)

4 THE COURT: All right. Mr. Farr, have you and
5 Mr. Gentry discussed his testifying?

6 MR. FARR: Yes, Your Honor, we have discussed that.

7 THE COURT: And what does he indicate?

8 MR. FARR: He -- he has at this time said he would
9 prefer not to take the stand at this time.

10 THE COURT: Does not wish to testify?

11 MR. FARR: Yes, Your Honor.

12 THE COURT: All right. Mr. Gentry, you heard what
13 Mr. Farr told me?

14 THE DEFENDANT: Yes, sir. I did.

15 THE COURT: And of course I told you before I took the
16 break that you were going to have time to think about it
17 and talk to Mr. Farr.

18 You and he discussed it and you decided you do not
19 wish to testify?

20 THE DEFENDANT: That's true.

21 THE COURT: And is that a decision that you made of
22 your own free will and accord?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Has anybody pressured you into that
25 decision?

1 THE DEFENDANT: No, sir.

2 THE COURT: Has anybody forced you into that decision?

3 THE DEFENDANT: No, sir.

4 THE COURT: Has anybody even given you an opinion as
5 to what they think you ought to do about that decision?

6 THE DEFENDANT: No, sir.

7 THE COURT: You made that decision on your own?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And you're satisfied with it?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. You got any other witnesses?

12 MR. FARR: No, Your Honor.

13 THE COURT: Y'all got any instruction requests?

14 MS. WELLS: We don't have any specific requests to
15 charge.

16 we'd ask for the Court's usual charge on reasonable
17 doubt. I searched for requests to charge in the -- in the
18 law on this case.

19 Outside of asking for the Court just to charge the
20 elements, I don't think that there is any specific requests
21 that the state would have as I couldn't find any, quite
22 frankly, requests-to-charge documents either in Judge
23 Anderson's guidance or through a search of other legal --

24 THE COURT: I'm not suggesting I needed any. I'm just
25 asking if you had any others.

1 MS. WELLS: So, Judge, outside of that if -- and I
2 apologize to the Court.

3 It's been a few months to try a case before Your
4 Honor. Does the Court provide the attorneys with a copy of
5 the charge prior to closing?

6 THE COURT: No, ma'am.

7 MS. WELLS: Okay.

8 THE COURT: I'll be happy to talk to y'all about it if
9 you want to.

10 MS. WELLS: Okay.

11 MR. FARR: I was the same way. I tried to look for
12 Judge Anderson's, and there was nothing in there, Judge, so
13 whatever the normal thing is and just what the statute is.

14 THE COURT: All right. How long do you think you're
15 going to need to argue?

16 MS. WELLS: Judge, well, defense put in an exhibit, so
17 state would have the opportunity to present rebuttal.

18 So I think the state's closing would be -- I can't
19 imagine it would take any more than 15 minutes, and I am
20 trying to be generous. I don't think it would take much
21 more than that.

22 THE COURT: Okay.

23 MS. WELLS: And the rebuttal, I don't think we would
24 take more than five.

25 THE COURT: All right.

1 MR. FARR: I'd say, just to give myself, safe side
2 would be somewhere between 15 to 30 minutes just to be on
3 the safe side.

4 THE COURT: All right. Well, doesn't look like we're
5 going to be able to get through before 5:00 o'clock, and
6 the jury would have to stay here.

7 So we'll do -- we'll argue and charge in the morning,
8 and we will discuss any kind of instruction requests once
9 they leave.

10 MS. WELLS: Yes, sir.

11 THE COURT: But in the meantime, we'll bring the jury
12 back. Y'all will rest in front of the jury, and then I'll
13 excuse them.

14 Bring the jury back.

15 MR. FARR: Do I need to renew my --

16 THE COURT: You can.

17 (The following takes place in the presence of the
18 jury.)

19 THE COURT: Ladies and gentlemen, as you know, the
20 state has rested in their presentation.

21 So we'll now proceed with any additional evidence, if
22 there be any, to be offered by the defense.

23 Mr. Farr.

24 MR. FARR: Your Honor, may it please the Court -- Ms.
25 wells.

1 At this time, Judge, the defense rests.

2 THE COURT: That is all the testimony and the other
3 evidence to be offered in the trial of the case, and
4 therefore what remains to be done are the lawyers' final
5 summations, after which I'll provide you with the legal
6 instruction, and then you'll begin with your deliberations.

7 Now, because that's likely to take longer than what we
8 have left for the afternoon we're going to begin with that
9 in the morning at 9:30. So you're going to be excused for
10 the balance of today.

11 I'll ask that you please report to the jury assembly
12 room at 9:30 in the morning, and at that time we'll
13 conclude with the lawyers' final summations, my instruction
14 as to the law and then your deliberations.

15 So keep in mind during the overnight recess you still
16 can't discuss the case with anybody.

17 You can't conduct any research or do your own
18 investigation into any issue, and you can't permit
19 yourselves to be exposed to any type of media coverage that
20 might relate to the case.

21 Okay. Have a good evening. We'll see you in the
22 morning at 9:30.

23 (The following takes place outside the presence of the
24 jury.)

25 THE COURT: Court is in recess until 9:30 in the

1 morning.

2 I'll see the lawyers in chambers.

3 END OF PROCEEDINGS JANUARY 14, 2020

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1 (Proceedings January 15, 2020)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Are we ready for the jury?

5 MS. WELLS: The state's ready, Your Honor.

6 MR. FARR: Your Honor, I just -- since I rested
7 yesterday I just wanted to renew my motion for a directed
8 verdict and my other prior motions for -- that I was ever
9 ruled on for my objections for the discovery that came in.

10 THE COURT: All right. Nothing has changed so far as
11 my decisions are concerned.

12 MR. FARR: Yes, Your Honor.

13 THE COURT: Thank you.

14 All right. Bring the jury in, please, sir.

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

17 THE COURT: Good morning, ladies and gentlemen.

18 As you know, when we recessed yesterday all of the
19 evidence had been received, and therefore what now remains
20 to be done are the lawyers' final summations, after which
21 I'll instruct you on the law, and you'll begin with your
22 deliberations.

23 Now, the way that is accomplished, the state goes
24 forward first to provide you with their position in the
25 case, the defense follows that, and then the state is

146 closing arguments

1 permitted a brief reply argument to the defense's position.

2 So please -- and after that I'll give you the law, and
3 then you'll begin deliberations.

4 So please give the lawyers your attention now as they
5 give you their final summations.

6 Ms. Wells.

7 MS. WELLS: Thank you, Your Honor. May it please the
8 Court.

9 One moment, please, Your Honor. We are waiting for
10 the T.V. to catch up with the laptop.

11 (Pause.)

12 MS. WELLS: Thanks for your patience, ladies and
13 gentlemen.

14 As I told back what seems like a long time ago on
15 Monday, I'm going to stand back before you this morning and
16 ask you to find Mr. Gentry guilty on the charges of sexual
17 exploitation with a minor in the third degree.

18 Now, I want to talk to you for a few minutes this
19 morning about what the law is in this case, and I want to
20 remind you what I believe Judge Cole told you. And if he
21 hasn't, he's going to tell you.

22 Y'all are the judges of the facts in this case. Judge
23 Cole is the judge of the law, and you have to take the law
24 as Judge Cole gives it to you. And then you take that law
25 and you apply it to the facts of the case. And then you

1 can render your verdict of guilty, which the state submits
2 you will do, or not guilty.

3 So what is the law in South Carolina as to sexual
4 exploitation of a minor in the third degree?

5 well, the state must prove first that the defendant
6 had in his actual or constructive possession -- and I'm
7 going to talk to you about what those terms mean -- any
8 type of sexually explicit material. So in possession of
9 sexually explicit material.

10 Second, that the material possessed depicted a visual
11 representation of a minor engaged in sexual activity.

12 So you're possessing it, it's a minor and that minor
13 is engaged in sexual activity; and that the defendant had
14 knowledge of the character or the content of the material
15 found to be in his possession. So that's the knowledge of
16 the element, that he knew what that item in his possession
17 contained.

18 Now, I want to just briefly walk back through the
19 timeline of this case with y'all, and I think you're
20 familiar with it, but it's been a few witnesses, and we had
21 a little bit of a break yesterday.

22 So, first, y'all recall that back on May 21st of 2018
23 Investigator Chris Taylor with the Spartanburg Police
24 Department had an opportunity to interview the defendant
25 because he was a potential witness in a case unrelated to

1 this that Investigator Taylor and Investigator Reece were
 2 looking into, and that the defendant came in to the
 3 Spartanburg Police Department and that he voluntarily met
 4 with Investigator Taylor, and during that conversation,
 5 that interview that he did as a potential witness,
 6 Investigator Taylor asked for and received a written
 7 consent to search Mr. Gentry's telephone.

8 And then that telephone was then dumped by -- I call
 9 it dumped. That's probably a very casual term. The
 10 electronic evidence was removed from the phone by
 11 Investigator Indy Kaur. And that also happened on May
 12 21st of 2018.

13 And then as the investigators told you, sometimes that
 14 can take time to get into the system, but in this case
 15 during the ongoing investigation into this other totally
 16 unrelated case where Mr. Gentry might have been a witness,
 17 Investigator William Reece with the city back -- it was
 18 late January, January 29th of 2019, was reviewing some
 19 evidence of the defendant's phone and during that review
 20 while he was looking for something else he described it as
 21 stumbled, I think, literally stumbled, across this image
 22 that I'm sorry that I had to show y'all yesterday.

23 It is graphic. There is no doubt that that is a
 24 minor -- her hair, her face, her hands. It was hard for me
 25 to show y'all, and I know it's hard for y'all. That is a

1 minor child who was having someone do that to them. And
2 you can tell from watching that video that's just another
3 Tuesday for her, this was just another day of the week.
4 This is what her life was and this is what she was used to.

5 And during that -- so Investigator Reece finds that
6 and he finds some related text messages to that sending of
7 that video to the defendant. And he picks up the phone and
8 he calls the F.B.I. the next day and says, hey, listen,
9 I've got child pornography on this phone, I need somebody
10 to come and look at it.

11 So the F.B.I. sends Special Agent Bob Hamod, Robert
12 Hamod, who testified before y'all yesterday, and he reviews
13 it and says that's child pornography, we need to go talk to
14 this guy.

15 So they set up a time to talk to Mr. Gentry again, and
16 that happens on February the 13th of 2019.

17 They interview him, and Special Agent Hamod walks
18 through his Miranda rights with him, makes sure that he
19 understands them. That's on the recording that y'all will
20 have back with you in the jury room. And you can listen to
21 that and make sure that he understands what he's doing.
22 And then they start to talk. So that's the timeline that
23 we're working with in this case.

24 So what from that? What of those facts? How do we
25 get to the verdict in this case?

1 well, first, let's look at the first element, that the
2 defendant had in his actual or constructive possession any
3 type of sexually explicit material.

4 So lawyers are going to lawyer. Lawyers like to use
5 big words and phrases and what we call it sometimes terms
6 of art that they have a meaning in the law that maybe they
7 don't necessarily have in everybody's day-to-day life.

8 And actual and constructive possession can be one of
9 those what lawyers -- you know, with our words -- like
10 to -- they -- they have their own specific meaning in the
11 law. So I want to talk to you about what that means.

12 Actual possession -- and I have like three things in
13 my hands right now. I have this pen; I have my glasses if
14 all a sudden I can't see things up close any more; and I
15 have my notes since my PowerPoint is not working.

16 So these -- I am actually possessing all of these
17 items. This is actual possession. I have control over
18 these items. I am in actual physical custody of each one
19 of these things.

20 So, and I know what they are. I know this is a pen.
21 It's my special purple pen. I know these are my glasses
22 because they are always -- they're either serving as a
23 headband for me or they're in my hand and I'm fiddling with
24 them. I know what this is because I prepared it before I
25 came into court. So I know what all of these things are,

1 and I am in actual possession of them because I have them
2 on me physically.

3 Okay. So then you have constructive possession, and
4 that's when a person who is not in actual physical custody
5 of an item exercises dominion and control over the item or
6 has the right to exercise dominion and control over the
7 item or the location where the item is located with
8 knowledge of its presence.

9 Okay. A whole bunch of words there, right? So let's
10 break it down.

11 So I have a notepad. It's setting over there. I have
12 been taking notes to keep things in my mind as we've gone
13 through the trial, questions I might want to come back and
14 ask later, things I think I might want to say to y'all.

15 I am in constructive possession of that notepad. I
16 can walk over there. It's mine. It actually has my name
17 on it. I have all of my notes on it. I can go over there
18 and move it around. I'm in control of that.

19 I'm probably in constructive possession of my cell
20 phone. It is not in this courtroom right now. As we all
21 know, there's a very strict rule about bringing cell phones
22 in here. But I know where it is.

23 I have control over all of that stuff. And I can go
24 into my phone and manipulate the data in my phone. I can
25 do that when it's in my hand whether or not -- and I can do

1 that when it's not in my hand via laptops or access through
2 Apple or things like that. So the things on there are --
3 I'm in constructive possession of them even when I'm not in
4 actual possession of my phone.

5 So those are the two types of possession under the law
6 and the two types of possession under the law in this case.
7 So actual and construction -- constructive.

8 So the question then for the first element of the
9 crime is was the defendant in actual or constructive
10 possession of sexually explicit material.

11 I submit to you the answer to that is yes. It was on
12 his phone that he gave consent to search to, that he
13 physically brought into the police station and physically
14 handed, as Investigator Taylor testified, handed him the
15 phone and walked it in there.

16 He had that video in his possession on his phone in
17 his text messages from the time that he received it back on
18 February the 4th of 2018 until the time that he turned --
19 the time that that phone was no longer in his custody,
20 whenever that was.

21 So you have a range of time in your indictment. He
22 was in possession of that phone during that range of time.

23 Okay. So he had actual possession over the physical
24 phone and the items in the physical phone because those
25 items, all of that data, was dumped, was extracted by

1 special -- by Investigator Kaur. So what he was in
2 possession of on his phone came to law enforcement via the
3 removal of those items or the copying of those items onto
4 this 30,000 page electronic document that Investigator Kaur
5 talked about. So that's how you get to the possession
6 element in this case.

7 So the next question that you have is did the material
8 possessed depict a visual representation of a minor engaged
9 in sexual activity. Yes.

10 There's no question that what you saw yesterday was a
11 minor. There is no -- a minor is anybody under the age of
12 18. That little girl is nowhere close to 18. She's
13 probably six -- six tops. Was that sexual activity? Yes,
14 yes. That should be -- that element should not take any
15 time.

16 Finally, what you have to look at is the final element
17 of this case, which is the defendant had knowledge of the
18 character or the content of the material found to be in his
19 possession.

20 How do we know that he had knowledge of the character
21 or content of the material found to be in his possession?
22 This is a possession case, y'all, and I want to be clear
23 about that.

24 The state is not -- the state in this case does not
25 have to show the defendant created this material or the

1 defendant knew that the material was created but -- or if
2 he was any part of the creation, did he ask for it to be
3 created or that he encouraged anyone to create it or that
4 he knew this child or that he knew this man that was
5 involved in it.

6 The state doesn't have to prove any of that. That is
7 not the state's burden in this case. The state's burden in
8 this case is to show the defendant possessed it and that he
9 knew what it was when he possessed it. That's what the
10 state's burden is here.

11 So I want to be clear on that. It is not a creation
12 of a child pornography case. That's a whole different
13 story. This is a possession of this particular image.

14 And how do we know that he possessed it and had
15 knowledge of the character or the content of the material
16 of the -- that he possessed?

17 I'm going to direct you back to his audio interview.
18 And y'all -- y'all had an opportunity to listen to that in
19 its entirety yesterday.

20 And what did he say? He said -- they said, you know,
21 where was -- where -- how did you get this, and he said --
22 and he's talking about the guy. He said -- first off he
23 was like I don't know, I don't know, Kenzo, I'm not sure.
24 And then he says it's the video of the child with the adult
25 performing the sex act.

1 what do you hear? Oh, oh, yeah, that one because he
2 knew, because he knew what it was, because he knew the
3 content of what was on it, possessed on his phone, even if
4 he had forgotten about it. Even if he had forgotten about
5 it he still possessed it.

6 You can still possess things in your house. You might
7 have something in your closet that you stuck in the back of
8 your closet, your year book from, you know, for me from
9 1992 from high school. I might forget that I have that,
10 but I still possess it because it's setting in the back of
11 my closet in my bedroom. But I'm still in possession of
12 it.

13 So even if he forgot that he possessed it until he was
14 reminded, he still possessed it.

15 So he says, oh, oh, yeah, and then they talked about
16 it. And Mr. Gentry says I think it was just South
17 Carolina, I mean, I can't -- can't remember. But that
18 dude, he got convicted. I don't think they really did
19 anything to him.

20 Everybody was surfacing that video -- everybody was
21 surfacing that video and that's how I ended up with it. He
22 said everybody was surfacing.

23 And y'all use your own -- you get to decide what that
24 means. But in the context of the conversation everybody is
25 talking about this on social media. People are talking

1 about it on facebook, and that's how I ended up with it
2 because everybody's talking about it.

3 And Investigator Reece says why do you think he sent
4 you the video. And what did Mr. Gentry say? Cause I asked
5 about it. I asked. I mean, I think I asked about it.

6 I was, man, what's everybody talking about and what's
7 this man done did or whatever. And somebody ended up
8 sending it to him via Kenzo and then he sent it to me.

9 He knew exactly what he was asking for. He knew
10 because everybody was talking about it on facebook. And
11 what is criminal -- well, this is not the criminal part.
12 This is kinda just the disguising part.

13 But is that he -- this little girl had somebody do
14 this to her, and he asked somebody to send it to him out of
15 morbid tortuosity. He just wanted to see how bad it was,
16 how bad was this that everybody's talking about this man
17 making this little girl perform oral sex on him.

18 Oh, that's just fun for him. That's just good times.
19 Everybody's just talking about it on facebook. Good times.
20 Not good times for her and now not good times for him. It
21 is criminal; it is illegal.

22 And how do you know that he possessed it? The defense
23 put in their exhibit, Exhibit 1. And I was hoping I could
24 show it to you up here. You're going to have it back with
25 you in the jury room, and y'all can read those text

1 messages between the defendant and Kenzo.

2 Kenzo sends him the text I.M.G. 9492.MOV. And he gets
3 that text at 4:31:16. 4:33:23. So about two minutes
4 later -- y'all saw the video. What, 30 seconds -- 30
5 seconds. So enough time to watch it once, watch it twice?

6 And he, this defendant, Mr. Gentry, sends a text to
7 Kenzo. And I can't even say all the words that are in this
8 text message, but I'll highlight for you what you're going
9 to read.

10 Stupid ass, N word, S-M-F-H. They goin' fry his ass.
11 He watched it. How else does he know that they're going to
12 fry this guy's ass except that he watched that video?

13 He asked about it. His cousin sent it to him. And
14 then he watched it and that he kept it in his text messages
15 until the F.B.I. asked him about it. That's this case,
16 y'all.

17 Kenzo writes back, "Most definitely going to. He know
18 he fucked." Mr. Gentry tells you exactly how he's guilty
19 of this crime in his interview with law enforcement. He
20 tells you, oh, yes, that's right, that video was.

21 Now, he wasn't arguing about how it was on his phone.
22 It doesn't matter just like -- just like Special Agent
23 Hamod told him on the interview. It doesn't matter how you
24 have it on your phone. When you have text messages on your
25 phone like that you keep them forever. You keep them

1 forever.

2 And there's -- you know you can scroll through the
3 images in your text message. Click on an image and then
4 you can scroll through all the images that you have of that
5 person that you texted that you texted to him that saved on
6 your phone.

7 It's in your possession. You had it in there until
8 you delete it or you notify somebody that someone sends you
9 porn that you didn't want and you want them to come and
10 take it off your phone.

11 Ladies and gentlemen, the state has proven every
12 single element of this case to y'all, and I submit we've
13 proven it to you, as the judge will charge you, beyond a
14 reasonable doubt. And that means you have to be firmly
15 convinced that the state -- that Mr. Gentry has done the
16 things that the state has alleged and that the law applies
17 to those things. And I believe that this is -- this
18 evidence should firmly convince you of his guilt.

19 As I said to you before, I hope you that you'll use
20 your common sense. I hope that you use the good judgment
21 that you use every single day to make decisions about this
22 case as you would anything that's important to you, because
23 this case is important. But I'm going to ask you now and
24 I'm going to ask you when I come up to talk to you one more
25 time to find this defendant guilty. Thank you.

1 THE COURT: Mr. Farr.

2 MR. FARR: Your Honor, may it please the Court --

3 Ms. Wells.

4 I didn't do a fancy presentation. I know it didn't
5 work or anything, but I'm going to speak to you about what
6 has progressed over the past two days, and we're in the
7 third days of closing arguments.

8 I told y'all that this is a unique case. The reason I
9 said that is because this case is exploitation of a minor.
10 That is they haven't proved their case. This case, what
11 the statute is for, is to stop pedophiles and --

12 MS. WELLS: Objection. That's facts outside the
13 record.

14 THE COURT: Contain your argument to what was
15 established by the evidence in the case.

16 MR. FARR: Yes, sir.

17 As she stated earlier, Judge Cole is going to give the
18 law. He's going to read you the law. He's going to read
19 you the statute. What you do with that statute is, is that
20 then you take that statute and you get the facts and you
21 apply the facts to the statute.

22 What you-all's job is is that y'all go in the back.
23 Y'all talk about what was discussed, what was recorded and
24 what these agents and everybody else talked about.

25 Y'all have to decide the credibility of each and every

1 witness. If you don't believe somebody, then y'all can
2 exclude that. If you do believe somebody, you may weigh
3 that stronger. Y'all talk about that. Y'all will discuss
4 those facts. Then you take whatever facts that y'all
5 believe gives more weight, less weight and you apply it to
6 the statutes.

7 Okay. I know she gave you a timeline and everything
8 else.

9 Investigator Taylor spoke first. My client was a
10 potential witness. Not being investigated or anything of
11 that. He volunteered himself to the city to help them out
12 in a case for them. He gave his phone over and let them do
13 whatever. They had the phone for over 12 months.

14 Okay. And then Agent Kaur spoke, and what she did
15 was -- and the best description I can give you for her
16 analytics is that she did a, basically a, mirror of my
17 client's phone. Basically if you stand in a mirror, that's
18 the same thing that she did. They say phone dump, but it
19 is a mirror of my client's phone. Anything that he had on
20 there, it is a mirror. So it looks like a cell phone when
21 you go through the 30,000 pages. It is just like a cell
22 phone. You go through every little thing.

23 And then Agent Reece got on the stand and he talked
24 about, you know, back and forth. I asked him multiple
25 times when did he get the file, when did he get the file,

1 because if you go back and listen to Investigator Taylor,
2 once he got a copy of the phone that day from Agent Kaur he
3 put it in the file for Agent Reece on May of 2018.

4 So if he talked and they are saying he reviewed it
5 back in January of 2019, so he sat on it for ten whole
6 months not doing anything on a case, just sitting there,
7 and then he decided he wanted to look through his phone,
8 over 30,000 pages searching and everything else. Just
9 happened to come across a small text message.

10 Okay. When I had Agent Reece up here, and I did enter
11 in this, and this was entered in for me because they were
12 talking about conversations and everything else.

13 I asked Agent Reece about this. I said was there
14 anything from my client in the text message or anything
15 else that presented that he asked for the video. That is
16 the best evidence to say whether or not my client asked for
17 that video.

18 Okay. The reason I showed him that is because that is
19 the very first communication with his cousin McKenzie
20 Woodruff, because I had Agent Hamod stand up here, and
21 after I did my cross-examination the solicitor went back
22 and asked, "In your typical interview do you hand somebody
23 evidence?" And Agent Hamod said no, because that's child
24 porn.

25 This is the text message. Do you see anything on the

1 very beginning of this text message that is child porn? Is
2 there anything that you can see that would give an
3 indication that this is child porn? Okay. There's no
4 indication.

5 So handing this over to my client after a year time to
6 help refresh his memory, the reason I give you that is
7 because Agent Hamod also stood on the thing during that
8 audio, and the solicitor goes did you watch the video. He
9 said yes. But he also had a transcript. And after I --
10 she paused it after he said I obviously didn't watch the
11 video when he was talking to my client, she was able to
12 cure that lying on the stand.

13 MS. WELLS: Objection.

14 MR. FARR: So --

15 THE COURT: Sustained.

16 Don't characterize it.

17 MR. FARR: Yes, Your Honor.

18 So he stood on the thing, and she asked him did he
19 watch the video. He said yes. Then the audio said I
20 obviously didn't watch the video. So she had it incorrect
21 when he said I watched it from my client's phone. But
22 Agent Taylor said he gave my client's phone back on May
23 21st of 2018.

24 So then I asked him again where did you watch it. He
25 said he watched through the 30,000 pages is when he was

1 going through it and said he watched it. Then I said so
2 you went through the 30,000 pages to clarify it. He said,
3 nah, I actually went to Detective Reece's office to
4 actually watch it.

5 And they describe this video as I.N.G. I can't
6 fold -- pardon me -- and y'all can look at this when you go
7 back there. Does I.N.G. stand for anything? Does it say
8 anything? Is there any acknowledgment that he is sending
9 him a video of a -- as y'all know -- an adult and a child?
10 Is there anything in that text message that says that he is
11 sending in that video?

12 I know the solicitor wants to harp on this testimony
13 through the audio and everything else, but, again, my
14 client during the interview did not have his text messages
15 to refresh his memory.

16 And then through that whole audio when you go back
17 there and listen to it did they ever ask him during that
18 audio describe what's on the video? Do you know what was
19 sent to you from his cousin? They had it under -- the
20 title of it is Kenzo. Did they ever ask him to describe
21 it?

22 Agent Hamod said what it was, but did they ever say or
23 ask him what was on the -- pictured, what does it depict?
24 And she wants to argue about this, but if you take it in
25 her context, because he didn't have his text messages, he

1 goes I think I asked about it. You got to think. This is
2 a year old. You know, and the best conversation we have is
3 right there.

4 As Agent Reece said, my client didn't ask for that.
5 He even said I said did he ask to have that video sent to
6 him through the text messages. He said no. Nothing else
7 presented. That is the communication, that is the
8 conversation.

9 She also -- she also wants to say that because
10 everybody says something about it -- you got to think.
11 That text is from 2018.

12 A year later he was interviewed in 2019. They didn't
13 reference whether 2018 or reference 2019, because he says
14 that dude got convicted with what happened in there. But
15 they didn't go reference did he have knowledge at that
16 point, did he have knowledge, was he talking in the context
17 of 2018 or 2019. They didn't ever ask him that through the
18 audio.

19 They also want to say just because it was floating
20 around facebook. There's lot of stuff that floats around
21 facebook. Okay. But this case hinges on knowing. They
22 wanted to cover that up and say, you know, the very last
23 element is knowing.

24 Okay. If you take their definition of knowing, okay,
25 I cut it off right there. I do apologize, but that is just

1 the video. Okay. That's just the video. You will get to
2 see that.

3 By their definition alone if it's right there they're
4 saying he had knowledge and he possessed it. But what they
5 didn't tell you about and what they haven't told you about
6 is she's probably going to rebut and everything else. You
7 got to click on it.

8 Okay. At the time that it was sent to him it is an
9 I.N.G. There is nothing on there that would depict a child
10 and an adult. Nothing. The only way you know what's on
11 there is you got to click on it.

12 So the statute, does he have knowledge at the time it
13 was sent of what's on there, the answer is no. So they
14 haven't proved their case, because the example is you get
15 an email sent from somebody. You click on it. Oh, shit.
16 Okay. You see what he says. Oh, shit. That dude is going
17 to fry. Oh, shit mama, because in there.

18 And he even says when you go back to the audio he
19 doesn't know what this dude has done. Okay. But you got
20 to remember. 2018, 2019.

21 He describes it in there, meaning I don't know what
22 that dude was doing. You know, everybody has talked about
23 it. These records are 2019 because that's when they
24 interviewed. It's been a year passed. He had more
25 knowledge and everything else, but to get to knowledge you

1 got to click on it. They're not going to talk to you about
2 that. That's a statute, because he has got to knowingly
3 accept that, and at that time he had no knowledge what was
4 on that video. Okay. No knowledge.

5 You heard Agent Reece talk about 30,000 pages, one
6 text nearly 30,000 pages, ladies and gentlemen. He had no
7 knowledge until you click on the video. No knowledge.
8 Absolutely none.

9 They went through there. Nothing saved of any child
10 porn or anything. Nothing in there about him sending this
11 out or anything like that. Nothing of him sending agents
12 this video. Nothing. No other -- no other criminal
13 activity that involves this case in anything, anything.
14 That's from Agent Reece stating that.

15 Because it even goes further. I know the solicitor's
16 office read it. It also talks about knowledge. What's
17 this man done, did, whatever? No knowledge, because,
18 again, didn't ask him to describe it, what he was asking
19 back. If that's what you want to believe that he had
20 knowledge, but, again, to have knowledge he has to click on
21 that video.

22 Now, I keep saying it. What this man done, did,
23 whatever, again, Agent Hamod interviewing him with 28 years
24 of experience working for the federal government for child
25 porn didn't ask him to describe the video but what he's

1 asking for, because it goes to knowledge. He didn't want
2 to do that.

3 And, again, as Agent Hamod said, because, again, it
4 goes to knowledge. I'm reading exactly from this
5 transcript. And he messed up, and you'll hear it in the
6 audio once you listen to it.

7 My client at the very beginning says before I got shut
8 off and everything else that's what they did and
9 everything. So that's it.

10 Agent Hamod goes, okay, but this did come from
11 McKenzie Woodruff. He pauses, and you'll hear it in the
12 video. He pauses because he knows he just said he had no
13 knowledge of what was being sent.

14 But then he goes, I mean, technically both of you can
15 be charged. Okay. He caught himself because he's already
16 helping him out by saying he had no knowledge because
17 somebody sent it to him and he had the text message. As
18 they testify, he never asked for it to be accepted.

19 If he had the text message in front of him he would
20 have said, hey, and at the very end when Agent Reece asked
21 him he goes I think I asked him but I'm not sure. But if
22 he had in front of him because it's not child porn, that
23 little piece of paper, he would have said, oh, because
24 there's no other conversation. Nothing else was presented.
25 Was there ever a conversation? He never presented any

1 other text messages in evidence of him ever talking about
2 this.

3 They're talking about knowledge, and I know the
4 solicitor's office asked Agent Reece about McKenzie
5 Woodruff.

6 Detective Reece stood over here and said this is still
7 an active investigation. No. It is not. I can tell you
8 how it's not.

9 MS. WELLS: Objection. Facts not in evidence. In
10 fact, facts contrary to evidence.

11 MR. FARR: Judge --

12 THE COURT: Don't argue with me --

13 MR. FARR: Yes, sir.

14 THE COURT: -- when I'm talking to her.

15 MR. FARR: Okay.

16 THE COURT: You may proceed.

17 MR. FARR: Yes, sir.

18 The reason I say that is because Agent Hamod, I asked
19 him on cross-examination. I asked him about the F.B.I.
20 resources. And y'all remember he kind of laughed and said
21 F.B.I. got a lot of resources.

22 And then my next question was during this 12-month
23 period did Agent Reece, Detective Reece, ever reach out.
24 Exact words were not sure. But then I asked him about his
25 investigation. His exact words were shortly after the

1 interview we closed our case.

2 we learned in law school about how to do direct
3 examination and cross-examinations, questions to ask, not
4 to ask, questions to benefit one side, questions not to ask
5 to help the other side. Also, you don't ask a why question
6 that you don't know the answer to.

7 I say that because the state in this case had Agent
8 Hamod talk about the federal charge. He spoke about -- he
9 had the evidence, which was here, and he took the evidence
10 to an A.U.S.A. which is an assisted --

11 MS. WELLS: Objection, Your Honor. The defense
12 objected to this.

13 THE COURT: Sustained, sustained, sustained.

14 MR. FARR: Okay. They wouldn't bring federal criminal
15 charges.

16 MS. WELLS: Objection. The defense objected to this.

17 THE COURT: I sustained that objection.

18 MR. FARR: Can we approach, Judge?

19 THE COURT: Yes.

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

22 MR. FARR: The solicitor talks about common sense,
23 which I told this case ain't about common sense. But you
24 heard Agent Hamod testify. Use your common sense in that.
25 Please listen to the audio that my client with -- and I,

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1 the defense attorney, ask you to listen to Agent Hamod's
2 testimony again. Listen all the way to the very end.

3 what I'm asking you with your common sense is to find
4 my client not guilty. They haven't proved their statutes;
5 they haven't proved it and everything else. Please find my
6 client not guilty. Thank you.

7 THE COURT: Ms. wells.

8 MS. WELLS: Thank you. Just briefly, Your Honor.

9 Ladies and gentlemen, Investigator Reece said this
10 case is still active. That's because Investigator Reece
11 works for the city of Spartanburg Police Department. He
12 does not work for the F.B.I. The F.B.I. can do whatever
13 they want to with their case.

14 MR. FARR: Your Honor, I'm going to object to this
15 because she objected during my --

16 THE COURT: Let's don't talk about that. I've already
17 sustained the objection more than once.

18 MS. WELLS: I'm only -- I'm only talking about the
19 investigation. That's not anything else.

20 THE COURT: well, let's don't talk about the other
21 agency.

22 MS. WELLS: Yes, sir.

23 This is an ongoing city investigation. Investigator
24 Reece works for the Spartanburg Police Department. He
25 testified from this stand that it is an ongoing

1 investigation. And that is the end of that.

2 The defense wants to tell you you can read into the
3 law whatever the intent of the legislature who created it
4 was. You can't do that in this case.

5 And the judge is going to tell you you have to take
6 the law as the judge, as Judge Cole, gives it to you, not
7 using your own personal feelings about that.

8 That was part of that oath that you took when you took
9 the stand. When you took the oath to be jurors you were
10 going to render your verdict according to the law.

11 You have to put your own personal feelings aside about
12 this law if you have them to render a verdict in this case.
13 And you have to follow the law and the statutes and the
14 elements as the Court gives it to you. You can't read
15 anything that the defense wants you to read into it into
16 the law.

17 This phone was not in evidence for more than 12
18 months. And even if it were, it doesn't matter. The fact
19 of the matter is, is that this phone stored child
20 pornography.

21 And, thank God, it was only one imagine of child
22 pornography, but child pornography, nonetheless. And it
23 stayed on that phone, and it was on there. And, sure,
24 there's no rush to look at it, because I don't know, but, I
25 mean, I would love for my officers to have E.S.P.

1 MR. FARR: Your Honor, I will object. She's using I
2 as a personal thing herself, as she objected to me too.

3 THE COURT: Okay. Don't -- don't make a personal
4 reference.

5 MS. WELLS: It would be lovely if law enforcement
6 could have E.S.P. and be able to define just from looking
7 at a phone whether or not it possessed child pornography,
8 but, unfortunately, I don't know or I -- it's not clear
9 that many officers have that ability to just define from
10 looking at a phone that belongs to a potential witness in a
11 case that they should somehow define over that period of
12 time that there is child pornography on that phone.

13 Officers can't do that and the officers didn't do in
14 this case. But when it came time to look at the phone
15 what, in fact, did they find while not looking for child
16 pornography but looking for something else? Child
17 pornography that the defendant possessed.

18 The defense wants to make some hay, or attempt to,
19 over the fact that there's no text message prior to this
20 one about, hey, can you send me that child porn that
21 everyone's talking about on facebook.

22 well, hey. Maybe there's a reason that there wouldn't
23 be, because who would want to send that text message? Hey,
24 send me that child pornography. You know, maybe that's a
25 phone call. Maybe you see somebody out. Maybe you run

1 into them at the Q.T. or you see somebody at church on
2 Sunday or you run into them at your aunt's house. And
3 you're like, hey, have you heard about or seen all of that
4 stuff on facebook. Yeah, man. Well, I know that dud. You
5 do? Yeah. I have the video. Hey, send it to me.

6 People actually have real conversations still today.
7 People still actually talk on the telephone. Text message
8 is not the only mechanism we have to communicate with each
9 other.

10 So it is a no moment that there is no text message
11 asking for the porn because the porn appears. The magical
12 porn ferry did not put this on his phone. It got there
13 because exactly how he told you it got there. He asked for
14 it. He asked for it, and that's in the audio.

15 And I know that they would really love for you not to
16 take into consideration the actual words the defendant used
17 when he was interviewed by the F.B.I., but it's there and
18 those are his words. And you get to listen to them and you
19 get to use them and determine what he meant.

20 And they want you to think that the F.B.I. came in
21 here and lied about this one image of child pornography.

22 MR. FARR: Your Honor, objection. Judge, she's
23 talking about the F.B.I. and everything else.

24 MS. WELLS: Defense's words.

25 THE COURT: Overruled.

1 Go ahead.

2 MS. WELLS: They want you -- that he came in here and
3 lied about the -- apparently any number of things on this
4 one case that they have closed.

5 what makes sense? I mean, no wonder they don't want
6 you to use your common sense because that doesn't make
7 common sense that the F.B.I. -- and if somebody has watched
8 the news, the F.B.I. has bigger fish to fry right now.

9 So what makes sense? What makes sense is that when
10 the defendant was confronted with what the image on his
11 phone that his cousin had sent him was he said, oh, yeah,
12 that image. And then he started remembering a whole lot of
13 things about that image. Oh, yeah. Everybody was
14 surfacing this on facebook. Everybody was talking about
15 it.

16 He knew what it was for sure when he received it. And
17 I don't even think the -- I mean, the defense misapprehends
18 the law. He didn't have to ask for it for you to find him
19 guilty. He had to receive it and watch it and keep it, and
20 he had to know what it was when he watched it.

21 Now, there's no questions that this is child
22 pornography. This is a small child and an adult male, and
23 this is a sexual act.

24 Did he watch it? Yes, because he talks about all of
25 the stuff he knows about it. And, in fact, they do talk to

1 him about what is on the video. And he says it's a black
2 man. It's a black man, right? The defendant knew. He
3 knew what that video contained.

4 He talks to the agents about it for an extended period
5 of time. And y'all heard it yesterday, about what that
6 video contained and how he came to be interested in that
7 video and how all of these -- and then how the video came
8 to him. I asked for it -- I asked for it.

9 We know the defendant clicked on it because he sends a
10 text acknowledging how bad it was. We know that.

11 He had knowledge. He acknowledged what the video was
12 when he received it and then he kept it and he stored it.
13 It was stored on his phone.

14 He possessed it, and he possessed it for an extended
15 period of time. And when he turned his phone in months
16 later to the Spartanburg Police Department it was on his
17 phone. And when they removed that data from his phone
18 there's that message, and it's right there and it's stored.

19 Ladies and gentlemen, find him guilty. Thank you.

20 THE COURT: Madam forelady and ladies and gentlemen of
21 the jury, you of course have heard and see all the evidence
22 in the case.

23 You've now heard the final summations of the lawyers,
24 and therefore it now becomes my duty and obligation to
25 instruct you on the law that's applicable in the case, and

1 then you'll be asked to go back and to begin with your
2 deliberations.

3 Through that process you're simply going to be called
4 upon through the exercise of good judgment and common sense
5 conscientiously applied to the testimony and evidence in
6 the case to determine the facts as they relate to the
7 material allegations, apply the law that I will have
8 provided you and determine whether or not the defendant's
9 guilt has been proven beyond a reasonable doubt.

10 It is your exclusive prerogative to determine what the
11 facts are. You do that through your own common sense
12 examination and evaluation of all of the testimony and the
13 other evidence received during the course of the trial.

14 You 12 jurors alone will decide what weight, value and
15 effect to give to any particular witness' testimony or
16 other evidence in the case.

17 Your sole obligation under your oath as a juror is to
18 render a fair and impartial decision based upon the
19 evidence presented during the trial of the case and the law
20 that's applicable as I will have provided it to you.

21 Now, as you know, in this case the defendant is Robert
22 Tyrell Gentry. As you know, he's been accused by the
23 prosecutor by way of this indictment with having committed
24 the crime of third degree sexual exploitation of a minor.

25 The state alleges in the indictment that the defendant

1 did here in Spartanburg County between February of 2018 and
2 January of 2019 commit that offense in that he did, knowing
3 the character or content of certain material he possessed,
4 that material contained a representation of a minor
5 engaging in sexual activity in violation of Section
6 16-15-410 of the South Carolina Code of Laws.

7 Now, as I've already told you, that indictment is the
8 charging paper. It is not evidence in the case. It does
9 not establish anything; it does not prove anything. It is
10 simply the means by way which any person who is formally
11 accused of a crime in this court is brought to this court
12 for disposition of that case.

13 The indictment also of course serves to put a person
14 charged with a crime on notice as to what crime the state
15 claims they have committed, and that's done by way of the
16 indictment. But the indictment is not evidence in the
17 case. You're not to consider it as such.

18 The indictment will be in the jury room, however,
19 because on the indictment, Madam Forelady, you're going to
20 be called upon to indicate the jury's decision, and you'll
21 do that on the back of the indictment in the lower
22 left-hand corner.

23 You'll see the word verdict, and it's beneath that
24 word that you're going to indicate the jury's unanimous
25 decision in this case. But other than serving as the

1 verdict form the indictment serves no purpose so far as you
2 jurors are concerned.

3 As you know, the defendant in response to the
4 indictment has entered a plea of not guilty. And, as I've
5 told you, that plea of not guilty has placed upon the state
6 the burden of proving the allegations that they have made
7 by way of the indictment, the burden of proving each of the
8 essential elements of the crime that they allege the
9 defendant has committed; and therefore the burden is upon
10 the state to establish the defendant's guilt to the
11 satisfaction of you 12 jurors beyond a reasonable doubt
12 before a verdict of guilty could be returned.

13 Every person accused of a crime -- and it does not
14 matter how serious the offense might be for which that
15 person stands charged -- every person accused of a crime is
16 presumed to be innocent of that charge.

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

22 As I think I've already told you, that presumption of
23 innocence will be with the defendant even as you go back
24 into your jury room to begin with your deliberations in
25 this case after I conclude with this instruction.

1 That presumption of innocence will be with him in that
2 jury room, and it'll be with him forever unless you 12
3 jurors determine that he's no longer entitled to that
4 presumption of innocence.

5 In other words, after you have carefully considered
6 all of the evidence received during the course of the
7 trial, and from that evidence you have been able to
8 determine the facts that relate to the material allegations
9 alleged that support the crime which is alleged against the
10 defendant, and after deciding those facts you apply the law
11 that I will have provided you, if you 12 jurors unanimously
12 determine that his guilt as to that charge has been proven
13 beyond a reasonable doubt, then he would no longer be
14 entitled to the presumption of innocence. But it is only
15 if, unless and until you are satisfied of his guilt beyond
16 a reasonable doubt that the presumption of innocence would
17 no longer be applicable.

18 Now, the burden is never upon a defendant or a person
19 accused of a crime to prove that they are not guilty or to
20 prove that they are innocent because in some cases that
21 might not be possible.

22 The burden is always upon the state because they have
23 made the accusation and they have brought the charge to
24 prove the defendant's guilt to your satisfaction beyond a
25 reasonable doubt.

1 So while the state does have the burden of proving a
2 defendant's guilt to your satisfaction beyond a reasonable
3 doubt, that doesn't mean that the state has to prove his
4 guilt beyond all doubt or beyond any possible doubt, but it
5 does require the state to prove his guilt to your
6 satisfaction beyond any reasonable doubt.

7 The term reasonable doubt should be given its plain
8 and ordinary meaning. A reasonable doubt is the kind of
9 doubt that would cause a reasonable person to hesitate to
10 act upon the information provided.

11 A defendant in a criminal trial is entitled to any
12 reasonable doubt that arises from the evidence or lack of
13 evidence in a case. And if, upon any factual issue
14 essential to a finding of a verdict of guilty, you have
15 some reasonable doubt as how that issue should be resolved,
16 it would be your duty to resolve that reasonable doubt in
17 favor of the defendant and to find him not guilty.

18 Proof beyond a reasonable doubt is proof that leaves
19 you firmly convinced of the defendant's guilt. There are
20 very few things in the world that we can know with absolute
21 certainty, and in a criminal case the law does not require
22 proof that overcomes every possible doubt.

23 If, based on your consideration of all of the evidence
24 received during the course of this trial, you are firmly
25 convinced that that evidence establishes that the defendant

1 is guilty of the crime for which he is charged, then you
2 must find the defendant guilty of that charge.

3 If, on the other hand, you think there is a real
4 possibility that the defendant is not guilty of the crime
5 with which he is now charged, then you must give him the
6 benefit of that doubt and return a verdict of not guilty.

7 Now, as you are the sole judges of the facts in this
8 case you are therefore necessarily the sole judges of the
9 credibility and the believability of each witness that has
10 testified during the course of the trial.

11 There are a number of factors which you should
12 consider in arriving at your assessment as to a particular
13 witness' credibility, so I'm going to list those factors
14 for you.

15 You should consider the demeanor of the witness, that
16 is how the witness appeared to you as the witness testified
17 from that witness stand. Was the witness straightforward
18 in responding to questions, or was the witness hesitant or
19 evasive in responding to questions that were posed of the
20 witness?

21 Simply put, did the witness appear to you to be
22 telling the truth and to have knowledge of the facts to
23 which that witness has testified.

24 You should also consider whether or not the testimony
25 of a witness is consistent, or is it inconsistent with that

1 witness' own testimony or with other testimony or other
2 evidence received during the course of the trial?

3 You should also consider how a witness came to know
4 the facts to which that witness has testified. In other
5 words, what was that particular witness' opportunity and
6 ability to perceive the existence of those facts to which
7 that witness has testified by having previously used his or
8 her senses, and then what is that particular witness'
9 ability to be able to come into court and to accurately
10 recollect to you as to what they have previously perceived.

11 You should also consider any bias or prejudice or
12 interest that a witness might have with respect to a case.
13 In other words, do you find some reason that a particular
14 witness would come into court and would testify one way or
15 another to help or hurt one side or the other. And you may
16 consider any interest that a witness might have in the
17 outcome of the case if you determine that a witness does
18 have such an interest and you further find that that
19 interest would bear upon that particular witness'
20 credibility.

21 You should also consider whether or not the testimony
22 of a witness is strengthened, or is weakened by other
23 testimony or other evidence received during the course of
24 the trial.

25 Now, you as the finders of the fact and you as the

1 judges of the credibility of each witness that has
2 testified during this trial are permitted to believe as
3 much or as little of what a witness has testified to as you
4 deem is appropriate in the exercise of good judgment and
5 common sense.

6 And so you may believe everything that a witness
7 testified to; you may choose to believe none of it. You
8 may believe one portion of a witness' testimony and reject
9 some other portion of that same witness' testimony.

10 In a given case you could believe one witness as
11 opposed to several, or several as opposed to one. But
12 whatever your good judgment and common sense tells you is
13 the most believe and credible testimony is the testimony
14 and evidence that you should accept, and you should reject
15 any testimony or other evidence that you find not to be
16 credible or believable.

17 Again, your sole objective is to simply render a fair
18 and impartial trial based upon the evidence presented, or
19 the lack of evidence for that matter, and the law that's
20 applicable as I will have provided it to you.

21 Now, the same law that provides that you are the
22 judges of the facts also provides that I am the judge of
23 the law. And that simply means that nobody's going to tell
24 you how to arrive at your determination of fact in this
25 case.

1 You simply do that through the exercise of good
2 judgment and common sense conscientiously applied to the
3 testimony and the evidence received during the course of
4 the trial.

5 You must however under your oath as a juror accept the
6 law as I provide it to you as being the law that you are to
7 apply in the case.

8 In other words, you're never to concern yourself with
9 what you thought the law was before you came to serve as a
10 juror this week or what you think the law ought to be.

11 Under your oath as a juror you must simply accept the
12 law as I provide it to you as being the law that you are to
13 apply in the case, and then you simply take that law and
14 you apply it to the facts as you 12 jurors have determined
15 those facts to be based upon your common sense examination
16 of the evidence received during the course of the trial.

17 Now, in this case, as you are aware, the defendant is
18 charged with the third degree sexual exploitation of a
19 minor.

20 That's a statutory offense, and it's set forth in
21 16-15-410. So I'm going to read the applicable parts of
22 that statute to you, and then I'll define for you and
23 explain to you what is necessary to be proven in order for
24 a person to be found guilty of a violation of that
25 particular statute.

1 A statutory law just simply means that it's been set
2 forth in those blue volumes you see over there.

3 Every year the legislature meets from January until
4 June. During the course of that session they pass a number
5 of laws and rules and regulations that govern our conduct
6 in a variety of ways.

7 Some of these statutes that they pass are what are
8 referred to as penal statutes or criminal-penalty statutes,
9 and that just means that the legislature passes a law
10 prohibiting us from engaging in certain types of activity.

11 Where we are found to have engaged in that activity in
12 violation of the law, then it subjects us to some form of
13 punishment or penalty for having violated the statute.

14 Please understand however that you are never to be
15 concerned with punishment or penalty. That's not something
16 that you ever decide routinely in most cases. And so
17 you're never to concern yourself with any punishment or
18 penalty that might result from any decision that you make.

19 Your sole function and your obligation under your oath
20 as a juror is to simply determine whether or not a
21 defendant has been proven guilty of a crime beyond a
22 reasonable doubt, and you do that without regard to any
23 consequence of that decision that you make.

24 But in this case, as I told you, the defendant is
25 charged with a violation of Section 16-15-410 of the Code

1 of Laws of South Carolina, which is entitled the sexual
2 exploitation of a minor in the third degree.

3 That particular code section says an individual
4 commits the offense of third degree sexual exploitation of
5 a minor if, knowing the character or the content of the
6 material, he possesses material that contains a visual
7 representation of a minor engaged in sexual activity.

8 So I repeat. An individual commits the crime of third
9 degree sexual exploitation of a minor if, knowing the
10 character or content of the material, he possesses material
11 that contains a visual representation of a minor engaging
12 in sexual activity.

13 And therefore in order for the defendant to be found
14 guilty of a violation of this particular section of law
15 there are what I would describe as three essential elements
16 that must be established in this case to your satisfaction
17 beyond a reasonable doubt.

18 First of all, it must be proven that the defendant had
19 in his actual or constructive possession any type of
20 sexually explicit material.

21 Secondly, it must be proven that the material shown to
22 have been possessed by the defendant depicted a visual
23 representation of a minor engaged in sexual activity.

24 And, thirdly, it must be proven that the defendant had
25 knowledge of the character or content of that material

1 found to be in his possession.

2 The act of possession may be actual or it may be
3 constructive.

4 Actual possession of an item occurs when the item is
5 proven to have been in the actual physical custody or
6 control of the persons charged with possession of that item
7 so long as he did have knowledge of its presence.

8 Constructive possession of an item, on the other hand,
9 occurs when a person, although not in actual physical
10 custody of that item, exercises dominion and control over
11 the item or has the right to exercise dominion and control
12 over that item or of the location or place where the item
13 is found to be so long as he had knowledge of its presence.

14 It must be further proven that the defendant had
15 knowledge of the character or content of the material found
16 to have been in his actual or constructive possession.

17 In other words, it must be proven that the defendant
18 not only had a particular thing in his actual or
19 constructive possession but that he also knew he had that
20 item and he knew what the item was.

21 And therefore in this particular case that would
22 require that the evidence establishes beyond a reasonable
23 doubt that the defendant did have in his actual or
24 constructive possession a video and that he knew the video
25 showed a minor engaged in sexual activity.

1 State law defines a minor as any person who is under
2 the age of 18 years.

3 Ladies and gentlemen, you are further instructed -- I
4 emphasize to you -- that the fact that a defendant does not
5 take the witness stand and testify during the course of a
6 criminal trial is not a fact or circumstance that the jury
7 may consider in the slightest degree against a defendant.

8 As I told you, the burden is on the state because
9 they've made the accusation and they brought the charge to
10 prove a defendant guilty beyond a reasonable doubt.

11 The burden is never upon a person charged with a crime
12 to prove that they are not guilty or to prove that they are
13 innocent because in some cases that might not be possible.

14 And therefore you may not draw any conclusion nor draw
15 any inference from that the fact that a defendant does not
16 testify during the course of the trial, nor may that fact
17 or circumstance be considered by you in any fashion
18 whatsoever in your determination as to whether or not his
19 guilt has been proven, nor may you even discuss that fact
20 while you are engaged in your deliberations in this case.

21 Now, Madam Forelady and ladies and gentlemen of the
22 jury, I am not in any way concerned with what your decision
23 is, but, as I've stated, the verdict has to be unanimous.
24 All of you must be in agreement before any decision may be
25 rendered and returned to the Court.

1 In this particular case you have two potential verdict
2 forms. Those two potential verdict forms are guilty and
3 not guilty.

4 So whatever that decision is of the jury, Madam
5 Forelady, if you'll indicate that on the back of the
6 indictment.

7 As I say, in the lower left-hand corner you'll see the
8 word verdict. It's beneath that word that you'll indicate
9 the jury's decision in the case. It has to be unanimous.

10 Once you have made that decision and you inserted that
11 verdict form in the space provided, you'll sign your name
12 as the foreperson. You're the only juror that has to sign
13 the verdict form. And you'll also put the appropriate
14 date. And today's date is January 15th of 2020.

15 Now, during deliberations there may come a time where
16 you have a question about the evidence in the case, the
17 facts of the matter.

18 Please understand that I am never permitted to address
19 factual issues. I can't talk about the facts; I can't
20 discuss the facts; I can't give you any guidance about the
21 facts. You have to determine the facts from the evidence
22 presented during the course of the trial, and I'm not
23 permitted to comment upon that.

24 If however you have a question about a witness'
25 testimony and you think that question can be answered by

1 having a witness' testimony replayed in its entirety or in
2 just part if that's all you need, we can bring you back
3 into the courtroom to have a witness' testimony reheard.

4 I do not have transcripts of the witness' testimony,
5 so I can't send transcripts of the witness' testimony back
6 with you. But if you need to rehear a witness' testimony,
7 we can bring you back into the courtroom for that purpose.

8 Now that the case is closed no additional evidence can
9 be received. Sometimes juries ask to see something else or
10 to have something else that they think might be helpful but
11 it hasn't been introduced into evidence. No more evidence
12 can be introduced now.

13 So even if there's something out there somewhere that
14 exists that would help you, you can't have it because the
15 case is closed. So don't inquire about any evidence that
16 has not been introduced, because even if it did exist I
17 couldn't give it to you.

18 All of the exhibits which have been introduced will be
19 verified by myself and the lawyers and the court reporter.
20 So everything that has been introduced during the trial of
21 this case should be in the jury room. If for some reason
22 we miss something and you think it was introduced, you let
23 me know. And if it was, we'll find it if you don't have
24 it. But everything should be verified before it goes back.

25 You will have a computer so that you can play a video

1 and/or audio should you need to during your deliberations.
2 So that'll be available for you. And you'll do that in the
3 jury room.

4 I don't know if we have any smokers on the jury. But
5 if we do, you can smoke during deliberations, but you can't
6 smoke in the jury room. You can't smoke in the courthouse.
7 You have to go outside for that purpose even if it's
8 raining.

9 So if you need to smoke, let the bailiff know, and he
10 or she will take those who need to smoke outside to
11 accomplish that purpose. But you are instructed that
12 deliberations may not be engaged in unless all 12 jurors
13 are present so that all may participate.

14 So if at any time a juror is absent for some
15 authorized purpose the deliberations have to stop, and they
16 may only resume when all 12 are present to participate.

17 It's not lunchtime yet, but I don't know how long your
18 deliberations will take. You don't either because you
19 haven't started yet. But I will tell you this. If you get
20 a point during deliberations that you think it's necessary
21 or desirable to order lunch, it usually takes just over an
22 hour or so to order lunch, have it prepared and brought to
23 the jury room for your benefit.

24 So while it's probably not time to order lunch now,
25 when you do go back you can talk about ordering lunch if

1 you want to, but just keep in mind during your
2 deliberations that it takes a little over an hour for all
3 of that to be done. So just have that in mind as you make
4 that decision should you need to.

5 I think that covers everything, but if it doesn't I'm
6 sure one of these lawyers will remind me that I failed to
7 provide you with some information that I should have. And
8 if they do and I agree, I'll bring you back to provide you
9 with that additional information.

10 If I don't need to bring you back for any reason I'll
11 simply send word by way of the bailiff that you may begin
12 deliberations. And in that event the bailiff will bring to
13 the jury room all of the exhibits which have been
14 introduced during the trial.

15 And to you, Madam Forelady, the bailiff will also
16 bring the indictment which will serve as the verdict form.

17 So before we get started on deliberations, right now
18 I'm going to ask the jury to retire to the jury room. Do
19 not begin deliberations until I send you word to do so.

20 (Whereupon, the jury retired to deliberate at
21 11:18 a.m.)

22 THE COURT: Are there any exceptions taken to the
23 instruction or requests for additions to the instruction by
24 the state?

25 MS. WELLS: No, sir, Your Honor.

1 THE COURT: By the defendant?

2 MR. FARR: No, Your Honor.

3 THE COURT: Let me ask y'all to verify the exhibits,
4 please.

5 And is that the laptop that will go back with the
6 audio and video?

7 MS. WELLS: Yes, sir, Your Honor.

8 (Pause.)

9 THE COURT: Are all of the exhibits accounted for?

10 MS. WELLS: Yes, sir, Your Honor.

11 MR. FARR: Yes, sir.

12 THE COURT: All right. Let me see y'all.

13 (Bench conference held off the record.)

14 THE COURT: We'll be at ease for five minutes.

15 (Whereupon, a recess was taken.)

16 THE COURT: Bring me Ms. Rice.

17 (The following takes place with the alternate juror,
18 No. 21, Sherry A. Rice.)

19 THE COURT: Ms. Rice, as you know, you're the
20 alternate juror, and therefore you're not able to
21 participate in the deliberations because the original 12
22 are apparently able to do that. So that's going to
23 conclude your service for the trial of this case.

24 The jury is going to be calling back in and probably
25 coming back this afternoon. But since you've served in a

1 case I'm going to give you the option if you want to come
2 back or if you'd rather take the rest of the day off. I'm
3 going to give you that choice.

4 THE JUROR: I'd rather take the rest of the day off.

5 THE COURT: Okay. All right. So you won't need to
6 come back this afternoon, but you'll need to call back
7 tonight after 6:00 o'clock to receive further reporting
8 information.

9 THE JUROR: Okay.

10 THE COURT: But thank you for your participation in
11 this case.

12 All right. Any other matters to address before the
13 jury begins deliberations?

14 MS. WELLS: Not from the state, Your Honor.

15 MR. FARR: No, Your Honor.

16 THE COURT: Okay. Tell the jury to begin
17 deliberations and notify us when they've concluded.

18 We will be at ease while the jury is deliberating.

19 (Whereupon, a recess was taken.)

20 THE COURT: I'm told the jury has reached a decision.
21 Are we ready to receive it?

22 MS. WELLS: The state is, Your Honor.

23 MR. FARR: Yes, Your Honor.

24 THE COURT: All right. Bring them in, please.

25 (Whereupon, the jury returned to the courtroom at

1 12:25 p.m. to report its verdict.)

2 THE COURT: Madam Forelady, have and your fellow
3 jurors reached a unanimous verdict?

4 THE FOREPERSON: We have, Your Honor.

5 THE COURT: Have you reflected that decision on the
6 back of the indictment as requested?

7 THE FOREPERSON: Yes.

8 THE COURT: Did you sign your name and date it?

9 THE FOREPERSON: I have.

10 THE COURT: If you will, please, hand that up by way
11 of the bailiff.

12 You may publish the verdict.

13 THE CLERK: In Court of General Sessions, Case
14 No. 2019-GS-42-2448, the State vs. Robert Tyrell Gentry,
15 indictment for sexual exploitation of a minor, third
16 degree, the verdict is guilty. This is signed by the
17 foreperson and dated today's date.

18 Ladies and gentlemen of the jury, if this is your
19 verdict and still your verdict, please raise your right
20 hand.

21 (Whereupon, all jurors responded in the affirmative.)

22 THE CLERK: So say you all.

23 THE COURT: Does the defendant wish to have the jury
24 polled?

25 MR. FARR: Yes, Your Honor.

1 THE COURT: Okay. Poll the jury please, ma'am.

2 THE CLERK: Yes, sir.

3 Ladies and gentlemen of the jury, I will pose a
4 question to you, after which I will ask you to stand and
5 answer the question, the question being is this your
6 verdict and still your verdict.

7 No. 136, Ritchings.

8 THE JUROR: Yes.

9 THE CLERK: No. 86, Johnson.

10 THE JUROR: Yes.

11 THE CLERK: No. 16, Blanton.

12 THE JUROR: Yes.

13 THE CLERK: No. 82, Henson.

14 THE JUROR: Yes.

15 THE CLERK: No. 110, Miller.

16 THE JUROR: Yes.

17 THE CLERK: No. 118, Moss.

18 THE JUROR: Yes.

19 THE CLERK: No. 66, Geneau.

20 THE JUROR: Yes.

21 THE CLERK: No. 157, Talledo.

22 THE JUROR: Yes.

23 THE CLERK: No. 115, Morgan.

24 THE JUROR: Yes.

25 THE CLERK: No. 141, Sellars.

1 THE JUROR: Yes.

2 THE CLERK: No. 18, Booker.

3 THE JUROR: Yes.

4 THE CLERK: No. 19, Boyce.

5 THE JUROR: Yes.

6 THE CLERK: Your Honor, the jury has been polled.

7 THE COURT: Are there any other matters to address
8 with the jury present?

9 MS. WELLS: Not from the state, Your Honor.

10 MR. FARR: Not from the defense.

11 (Whereupon, the trial jury was excused.)

12 THE COURT: All right. Anything to be addressed prior
13 to imposition of sentence?

14 MR. FARR: Just renew my motions again, and then a
15 motion for a new trial.

16 THE COURT: All right. Those motions are denied.

17 MS. WELLS: And I have a sentencing sheet, Your Honor.
18 Just beg the Court's indulgence.

19 MR. FARR: Judge, I would ask before that would you
20 consider to defer this sentence.

21 He does have other pending charges. The reason I ask,
22 I think I'd be doing an injustice to my client due to the
23 statute, how it is read for sentencing purposes.

24 If he is sentenced today and goes to the Department of
25 Corrections, if that's what happens, he will not get

1 credit, any more credit, for the other charge that's still
2 pending. It was stopped due to that. And I'm asking if
3 you would defer it because they are up for trial from what
4 they've said in court before is April. That's just three
5 months away.

6 THE COURT: Well, I'm not going to defer it that long.

7 MR. FARR: Yes, Your Honor.

8 THE COURT: But I'll be happy for you to discuss it
9 with your client during the lunch recess. And you can let
10 me know this afternoon if you've made any progress towards
11 a resolution.

12 MR. FARR: Yes, sir.

13 THE COURT: All right. I'm going to pick a jury at
14 2:30.

15 MR. FARR: Yes, sir.

16 THE COURT: So y'all can have until, let's say,
17 3:30 to discuss it.

18 MR. FARR: Okay.

19 THE COURT: And then you can come back and let me
20 know.

21 MR. FARR: Yes, sir. Thank you.

22 (Whereupon, a recess was taken.)

23 THE COURT: Anything further on behalf of the state?

24 MS. WELLS: Your Honor, we would just say that the
25 Court has seen and heard all of the evidence in this case.

1 This video is particularly atrocious. We would ask
2 the Court to take that into consideration in sentencing
3 this defendant.

4 As the Court is aware, this defendant has no prior
5 record.

6 So outside of that I would -- I did want to point out
7 to the Court that the officers and investigators who worked
8 this case came back for the sentencing. This is a case
9 that was disturbing to them and that it was an important
10 case to the City of Spartanburg Police Department.

11 THE COURT: Okay. The defendant has no record.

12 MS. WELLS: That's correct, Your Honor.

13 THE COURT: There's no indication, no evidence nor
14 indication nor belief, that he was in any way responsible
15 for its making or participated in it or had any connection
16 with it. Is that true?

17 MS. WELLS: That's correct, Your Honor. He -- the
18 state's position is that he learned about it through
19 internet postings and requested it for his own edification,
20 I suppose.

21 THE COURT: And there's no indication or evidence that
22 he did or intended to distribute it to anyone else, is that
23 true?

24 MS. WELLS: There is no evidence that he distributed
25 it to anyone else, Your Honor.

1 THE COURT: Okay. And how long was it before -- how
2 long was it that he received it until it was found?

3 MS. WELLS: It was -- he received it in February of
4 2018. The phone was dumped in May of 2018, and
5 investigators discovered it while they were working on this
6 other case where this defendant is charged in January of
7 2019.

8 THE COURT: Okay. All right. Mr. Farr.

9 MR. FARR: Your Honor, may it please the Court.

10 My client was served with this warrant while in jail
11 on April 22nd of 2018. I have 268 days credit for him.
12 That's counting today.

13 Judge, as you know, I know Ms. Wells knew my intent
14 during closing about the legislative intent for this thing,
15 about this is really for pedophiles. And I think she just
16 asked and what you've been asking. This wasn't anything
17 that he was out there saying, hey, I want child porn.

18 I know there was what -- what was discussed about an
19 inclination that something was going on and he did receive
20 it. They got him guilty of this, of receiving a child and
21 everything else.

22 But, Judge, he didn't send it out and everything else
23 I think by his text message saying this is sick stuff and
24 everything else. I think that's an indication about what
25 his text message was back about this was sick.

1 I'm asking you -- no disrespect to the Court -- I
2 would ask for time served, give 268, but I would ask you to
3 be lenient. I would ask for a 3-year sentence in this
4 matter.

5 Judge, he has no record. I do believe the -- what
6 they convicted him of, I would ask for a 3-year offense.
7 The reason I ask that is he's going to be a registered sex
8 offender, Judge. That is basically a lifetime sentence as
9 long as he's in the State of South Carolina.

10 I can't tell you if he goes to another state or
11 something like that what their requirements are, but in the
12 State of South Carolina he is a lifetime registry.

13 That is a life sentence, Judge, so I'm asking you to
14 be very lenient. No record and stuff like that. With 268
15 days and for a 3-year sentence, Judge, if you impose
16 anything else after that like probation, again, just be
17 lenient on that because this is a lifetime registry.

18 Judge, and I do have his mom who would like to speak
19 about sentencing, Judge, just very brief.

20 THE COURT: Okay.

21 SHENA GENTRY: My name is Shena Gentry. Tyrell is my
22 youngest son.

23 Your Honor, I ask, I beg for you to be lenient with my
24 child. He has never been in any trouble at all. As she
25 just stated, he's never had any -- anything against his

1 record.

2 He has a daughter that's turning three years old on
3 Friday. This is just something someone else sent to him.
4 He didn't even own the phone any more.

5 I beg of you to be lenient on my child.

6 THE COURT: All right. Thank you, ma'am.

7 MR. FARR: My client would just like to speak very
8 briefly, Judge.

9 THE COURT: Okay. Mr. Gentry.

10 THE DEFENDANT: Your Honor, I just ask that you please
11 be lenient to me.

12 Like I said, I don't have a background. I've never
13 been in any trouble. I did everything as far as schooling.
14 Graduated high school, went to college, stayed out of
15 trouble then. And I just ask you to be as lenient as
16 possible, please. Thank you.

17 MS. WELLS: Your Honor, if I can respond to one thing
18 Mr. Farr suggests briefly, which is I'm not aware that the
19 legislature said that this was just for child -- that -- I
20 don't believe that that is true.

21 The fact of the matter is, is that the children who
22 are preyed upon by people who make this pornography are
23 just as victimized when people share this out of pure
24 curiosity as they are when people share it for any other
25 reason.

1 THE COURT: If there wasn't a market for it nobody
2 would be making it except for themselves.

3 MS. WELLS: So.

4 THE COURT: So I get -- I mean, the legislature's
5 trying to prevent it from being made and possessed.

6 MS. WELLS: That's correct, Your Honor.

7 THE COURT: Okay. Anything else?

8 MR. FARR: No, Your Honor.

9 THE COURT: On Indictment 2019-02448, an indictment
10 for sexual exploitation of a minor, wherein you have been
11 found guilty by the jury of that offense, the Sentence of
12 the Court is you, Robert Tyrell Gentry, be confined to the
13 South Carolina Department of Corrections for a period of
14 ten years.

15 However, that sentence shall be suspended upon the
16 service of three years and the payment of \$100 plus the
17 costs and assessments followed by three years probation
18 supervision.

19 Give him credit for any time he's entitled to pursuant
20 to 24-13-40. And the first 90 days of release will be
21 pursuant to the Spartanburg County Home Detention Program.

22 MR. FARR: Thank you, Your Honor.

23 THE COURT: Mr. Gentry, you have a right to appeal the
24 verdict of the jury and the Sentence of the Court. If you
25 want to, you have to do it within ten days of today's date.

1 Mr. Farr can advise you about that.

2 MR. FARR: Thank you.

3 MS. WELLS: And, Your Honor, the Court -- I mean, I
4 don't think the Court has to order him to be on the
5 registry, but it's with the understanding he will be
6 ordered to register as a sex offender?

7 THE COURT: well, I don't think that's discretionary.
8 So it's automatic as I understand it. Is it not?

9 MS. WELLS: I believe it's automatic. There's was --
10 there's a case --

11 THE COURT: well, is there -- is there a place on the
12 sentencing sheet to check that? Because what's the statute
13 number?

14 MS. WELLS: I think it's the 17.

15 May I approach, Your Honor? I can't think of the
16 statute off the top of my head. 17-25-45.

17 THE COURT: No.

18 (Bench conference held off the record.)

19 THE COURT: Sex offender registration is apparently
20 automatic pursuant to 23-3-430, but I've included that on
21 the sentencing sheet, notwithstanding that fact.

22 MS. WELLS: Thank you, Your Honor.

23 END OF REQUESTED TRANSCRIPT OF RECORD

24

25

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 13th, 14th and 15th days of January 2020.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

October 22, 2020

s/Linda D. Moffitt

Linda D. Moffitt
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF

Robert Tyrell Gentry #382135

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2020-CP-42-03305

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 concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Kirkland CI SCDC
2. Name and location of Court which imposed sentence Spartanburg County Courthouse
180 Magnolia St.
3. Name(s) of co-defendant(s) (if any) None
Spartanburg, SC 29304
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) 2019G54202448. Sexual Exploitation of Minor, 3rd degree
 (b) _____
 (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) 1-15-2020
 (b) SCDOC (3yrs)

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(D) Home Detention (90 days)

(c) Probation (3yrs)

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

NO

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

- i. _____
 ii. _____
 iii. _____

(b) the result in each such Court to which you appealed:

- i. _____
 ii. _____
 iii. _____

(c) the date of each such result:

- i. _____
 ii. _____
 iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. _____
 ii. _____
 iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) Lawyer never stated what an appeal was.
 (b) I didn't know the grounds of filing an appeal.
 (c) Didn't have access to Law Library at Kirkland

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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- (a) Coerced Jurors
 (b) Inaffecting Assistant of Council
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) The seriousness of my 1st case coerced the jurors (continued)
 (b) My Lawyer didnt fight the fact I never owned (continued) →
 (c) _____ on back

12. Prior to this application have you filed with respect to this conviction: _____

- (a) any petition in a State Court under South Carolina Law? No
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
 ii. _____
 iii. _____
 iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. _____
 ii. _____
 iii. _____

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1. (A) because my 1st case of Accessory before and after the fact of Murder was brought up during trial, (as stated in trial transcript). Two investigators lied on the stand. The fact I never had an arrest record wasn't brought up. (B) the cell phone after I gave it to the police. Also the fact there was no proof that I watched the video nor did I ask for the video and the video was never saved to my phone and never sent by me. They made a copy of my old phone in May 2018, I returned the phone to T-Mobile afterwards and received a new phone. Date of offense is wrong and the warrant date is off. Also the Feds clearly stated they didn't want the case. I never possessed the phone anymore before the date of the offense. Phone was copied May 18, 2018, date of offense was January 2019, I was arrested February 12, 2019 on different charges, May 2019 I was served a warrant for Sexual Exploitation of Minor. The person who sent the video was never questioned nor arrested. I was charged with a crime I didn't commit nor knew anything about.

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iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Due to Covid-19 I had no access the Law Library or my(b) Lawyer.

(c) _____

17. Were you represented by an attorney at any time during the course of:

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- (a) your arraignment and plea? No
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Zachary J. Farr Bar # SCB100925
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Trial
 - ii. Sentencing
 - iii. _____

19. State clearly the relief you seek in filing this application:

Sentence overturned and relief from Sex offender Registry.

20. Are you now under sentence from any other court that you have not challenged?

No

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Revised 3/2003

STATE OF SOUTH CAROLINA

County of Spartanburg

VERIFICATION

I, _____, 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.

SWORN to and subscribed before me this 23
day of September, 2020.

Theresa D. King (L.S.),
Notary Public

My Commission Expires: 12-1-2025

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**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.


Applicant

SWORN or affirmed to and subscribed before me this
23 day of September, 2020


Notary Public

My Commission Expires: 12-1-2025

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Robert T. Gentry, SCDC No. 382135

Applicant,

v.

The State of South Carolina

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2020-CP-42-03305

**RETURN AND MOTION FOR
A MORE DEFINITE STATEMENT**

NOW COMES Respondent, the State of South Carolina, making its return to Applicant Robert T. Gentry's September 28, 2020 application for post-conviction relief. Respondent would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is currently detained in the Spartanburg County Detention Center, where he awaits trial on separate charges. Applicant was indicted by the Spartanburg County Grand Jury at its May 2019 term for third degree sexual exploitation of a minor. Applicant was represented by J. Zachary Farr, Esq., and the case was prosecuted by Solicitor Barry Barnette, Esq., of the Seventh Circuit Solicitor's Office. On January 15, 2020 Applicant proceeded to trial before the Honorable J. Derham Cole. Applicant was convicted as indicted of third degree sexual exploitation of a minor and sentenced to ten years' imprisonment, suspended upon service of three years with an additional three years of probation with the first ninety days upon relief to be served in the home detention program. Applicant did not appeal his conviction or sentence.

II. FACTUAL HISTORY

The following report prepared by a Spartanburg County Sheriff's Deputy states the following facts:

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MY W. COX

On 2/13/2019, Agent Bob Hammon (FBI) and I spoke with [Applicant] at the Spartanburg County Jail. Agent Hammon advised Mr. Gentry of his Miranda Rights and he agreed to speak with us. Mr. Gentry stated that he asked his cousin Kezo to send him a video that he had heard about on the news about child pornography. Mr. Gentry stated that he was just curious about the video. Mr. Gentry stated that the video was sent to him after he requested it.

III. CURRENT APPLICATION

In his current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Lawyer never stated what an appeal was.
2. I didn't know the grounds of filing an appeal.
3. Didn't have access to Law Library at Kirkland.
4. Cohersed Jurors
 - a. The seriousness of my 1st case cohersed the jurors because my 1st case of Accessory before and after the fact of Murder was brought up during trial, (as stated in trial transcript). Two investigators lied on the stand. The fact I never had an arrest record wasn't brought up.
5. Inaffecting Asistant of Council
 - a. My Lawyer didn't fight the fact I never owned the cell phone after I gave it to the police. Also the fact there was no proof that I watched the video nor did I ask for the video and the video was never saved to my phone and never sent by me. They made a copy of my old phone in May 2018, I returned the phone to T-Mobile afterwards and received a new phone. Date of offense is wrong and the warrant date is off. Also the Feds clearly stated they didn't want the case. I never possessed the phone anymore before the date of the offense. Phone was copied May 18, 2018, date of offense was January 2019, I was arrested February 12, 2019 on different charges, May 2019 I was served a warrant for sexual exploitation of minor. The person who sent the video was never questioned nor arrested. I was charged with a crime I didn't commit nor knew anything about.

Attached and incorporated herein are Applicant's records from the Spartanburg County Clerk of Court's Office, his records from the South Carolina Department of Corrections, the trial transcript, and the current application for post-conviction relief. Respondent reserves the right to alter or amend this return upon receipt of any relevant materials.

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FBI FED
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SPARTANBURG COUNTY
JAIL IN COX

IV. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

Respondent interprets Applicant's allegations as ineffective assistance of counsel due to his trial counsel's failure to inform him of his right to appeal, failure to execute an appeal, failure to object to information about his criminal history being presented at trial, and failure to object to issues with the dates on the charging documents. Respondent asserts that these allegations are without merit.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984); *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann §17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel's performance was

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deficient; and second, that the deficient performance prejudiced the applicant. *Id.* at 668; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel’s representation fell below an objective standard of “reasonableness under prevailing professional norms.” *Cherry v. State*, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, “does not guarantee perfect representation . . . only a ‘reasonably competent attorney.’” *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (quoting *Strickland*, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel’s conduct so undermined the proper functioning of the adversarial process: that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” *Harrington*, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689; see also *Yarborough v. Gentry*, 540 U.S. 1, 6 (2003). (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of

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hindsight.”). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspectives at the time. *Id.* Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance. *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts “must not judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct. *Strickland*, 466 U.S. at 690. An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment.” *Id.* The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” *Id.*

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-90; see also *Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and

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The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. 466 U.S. at 691-92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance 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.” *Strickland*, 466 U.S. at 694. Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to deprive the defendant of a fair trial.” *Id.* at 687 (emphasis added).

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result

is being challenged.” *Id.* at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” *Id.* at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

Respondent submits that Applicant cannot satisfy either requirement of the *Strickland* test for either of his claims of ineffective assistance of counsel. Nevertheless, the allegations likely raise issues not conclusively refuted by the record. Therefore, Respondent requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. MOTION FOR A MORE DEFINITE STATEMENT

Respondent notes additional, unclear, allegations contained in Applicant’s application, including an allegation that he has been denied access to the Kirkland Correctional Institution’s law library, an allegation that investigators lied under oath, and an allegation that he is actually innocent of the subject offense giving rise to his conviction. The precise nature and facts surrounding these allegations are unclear. Applicant has failed to set forth sufficient facts to “support each ground” or to explain with specificity the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to “*specifically set forth the grounds upon which the application is based.*” S.C. Code Ann. §17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts and legal basis upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore,

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CLERK OF COURT

Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI. GENERAL DENIAL

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VII. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *See Id.* at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

Pursuant to §17-27-750 of the South Carolina Code, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Further, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

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 SHERMAN COUNTY COX

VIII. CONCLUSION

WHEREFORE, the State requests that this Court require Applicant to amend his application to provide specificity regarding his claims before holding an evidentiary hearing on the claims of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

WILLIAM H. RAY
Assistant Attorney General

By: /s/ William H. Ray
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

December 29, 2020

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SOUTH CAROLINA
JAMES W. COX

State of South Carolina	)	
	)	
County of Spartanburg	)	
Robert T. Gentry,	)	2020-CP-42-03305
	)	
Applicant,	)	
	)	
v.	)	Transcript
	)	
State of South Carolina,	)	of
	)	
Defendant.	)	Post-Conviction
	)	Relief Hearing
	)	
	)	
	)	
	)	
	)	
	)	

Date: June 1, 2021

Time: 1:32 p.m.

Location: Spartanburg County Courthouse 180 Magnolia
Street, Spartanburg, SC 29306

Reported by
Amber Payne, CVR

APPEARANCES

Presiding: The Honorable Brian M. Gibbons

For the Applicant:

Rodney Richey, Esq.
Richey and Richey Law Firm
33 Market Point Drive
Greenville, SC 29607

For the Defendant:

William Ray, Esq.
Assistant Attorney General
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Columbia, SC 29201

Also Present:

James Zachary Farr, Esq.
Assistant Attorney General
Chelsey Marto, Esq.

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EXHIBITS

There were no exhibits marked during the course of this hearing.

1 PROCEEDINGS

2 THE COURT: All right, Mr. A.G., if you'll
3 introduce the case.

4 MR. RAY: Thank you, Your Honor. May it please the
5 Court. This is the matter of "Robert T. Gentry
6 versus The State of South Carolina." It is Case
7 Number 2020-CP-42-03305. Mr. Gentry is currently
8 incarcerated with the Department of Corrections --
9 or I'm sorry -- currently incarcerated at the
10 Detention Center where he is awaiting trial on
11 separate charges.

12 He was indicted by the Spartanburg County
13 Grand Jury in May of 2019 for a third-degree sexual
14 exploitation of a minor. He was represented by Mr.
15 Zachary Farr, and the case was prosecuted by, I
16 believe it's Miss -- Ms. Wells, both of which are
17 here today.

18 On January 15, 2020, Applicant proceeded to
19 trial before the Honorable Judge Cole. He was
20 convicted as indicted of third-degree sexual
21 exploitation of a minor, and he was sentenced to
22 ten years imprisonment, suspended upon service of
23 three years with an additional three years of
24 probation with the first 90 days upon relief to be
25 served under home detention. He did not file an

1 appeal or a conviction.

2 He filed this application on September 28th of
3 2020. He raised several allegations, and we move
4 for a more definite statement in our return. We
5 have not received any formal, written allegations,
6 but my understanding is his counsel intends to put
7 those allegations on the record this afternoon.
8 And with that, I will go ahead and cede the floor
9 to Mr. Richey.

10 THE COURT: All right, Mr. Richey. I'm glad to
11 hear from you.

12 MR. RICHEY: Thank you, Your Honor. If it pleases
13 the Court. Your Honor, we -- we're going to raise
14 the issue. This is a -- a case where a phone had
15 this pornography on it. We're going to -- we'll
16 raise the issue that my client at trial -- it was
17 never brought forth that he never watched the
18 video, that the case was not properly prepared; and
19 that the -- that the phone was left in police
20 custody for a long duration of time before the item
21 was taken from it; and that he was not -- that
22 should have been in the trial that he was not the
23 owner of the phone at the time the stuff was taken.
24 And that's --

25 THE COURT: All right.

1 MR. RICHEY: And that's our issues, and I -- I'm
2 ready to go forward and call Mr. Gentry.

3 THE COURT: All right. Is the State ready to go
4 forward?

5 MR. RAY: Yes, Your Honor.

6 THE COURT: All right. Call your --

7 (To The Witness) Sir, come on up. Up here by
8 me.

9 (WHEREUPON, the witness is sworn.)

10 THE COURT: Thank you. Have a seat there.

11 DIRECT EXAMINATION

12 BY MR. RICHEY:

13 Q Sir, can you state your name, please?

14 A Robert Tyrell Gentry.

15 Q And where are you incarcerated right now?

16 A At Spartanburg County Detention Center.

17 Q And you're not incarcerated on these particular
18 charges, are you?

19 A No, sir.

20 Q You're incarcerated on another State case?

21 A Yes, sir.

22 Q And what type of sentence did you receive?

23 A I received ten years, suspended to three years.

24 Q And -- and the -- the three-year sentence
25 incarceration part, you have satisfied that; is

1 that correct?

2 A Yes, sir.

3 Q And do you have a probation that's associated with

4 that case?

5 A Yes, sir.

6 Q Okay. And you've filed an -- and you know if you

7 are successful, you'll get a new trial today. You

8 understand that, right?

9 A Yes, sir.

10 Q And that's what you want to do?

11 A Yes, sir. I do.

12 Q Okay. You filed an application for post-conviction

13 relief; is that correct?

14 A Yes, sir. I did.

15 Q And you filed this based off the representation

16 that your lawyer gave you in your trial, correct?

17 A Yes, sir.

18 Q And you believe that based off his representation,

19 that you should be entitled to a new trial,

20 correct?

21 A Yes, sir.

22 Q This case -- this case, just briefly in the facts,

23 this is a case where the police was doing an

24 investigation on an unrelated case; is that

25 correct?

- 1 A Yes, sir.
- 2 Q And they asked for your phone during the
3 investigation of that case; is that correct?
- 4 A Yes, sir.
- 5 Q And did you provide that phone?
- 6 A Yes, sir. I did.
- 7 Q What type of phone was it?
- 8 A iPhone 7.
- 9 Q Okay. And when you gave them that phone, do you
10 know what they did with it?
- 11 A They made a copy -- made a -- basically a copy of
12 the phone.
- 13 Q Okay. And on that phone, was there any information
14 on that phone that they seized?
- 15 A Yes, sir.
- 16 Q And was that a picture?
- 17 A Yeah. A video.
- 18 Q A video? And did you know when they took the video
19 off the phone?
- 20 A May -- May 21st in 2018.
- 21 Q Was it some time after you gave them the phone?
- 22 A Yes, sir.
- 23 Q Okay. And -- and when you prepared for trial, did
24 you and your lawyer discuss the length between the
25 time they had the phone and the time the video was

1 taken off?

2 A Slightly.

3 Q When you say "slightly," what's slightly?

4 A As far as, you know, how long they've had the cell

5 phone.

6 Q Okay. And do you believe that was a big point in

7 your trial?

8 A Yeah. Yes, sir.

9 Q And why do you believe that?

10 A The -- for the duration of how long they had the

11 video and didn't say anything about it until other

12 charges were brought upon me.

13 Q Okay. So you're saying they just held the -- the

14 video and never said anything?

15 A Yes, sir.

16 Q And then they presented it to you how?

17 A By letting me know, basically, if I didn't have any

18 more information for my other -- my other charge,

19 that they were probably going to bring charges up

20 against me for the -- for the video on my phone.

21 Q So it's your position that the -- the -- that video

22 was held to try to get you to assist in the other

23 case?

24 A Yes, sir.

25 Q And did you assist in the other case?

- 1 A No, sir.
- 2 Q Okay. Do you -- do you believe that your -- your
3 lawyer should have questioned more of that time
4 frame?
- 5 A Yes, sir.
- 6 Q And the person that sent you the video, do you know
7 anything about them being charged or not?
- 8 A They were not.
- 9 Q They were not?
- 10 A No, sir. They were not.
- 11 Q Okay. And did you talk to your lawyer about them
12 not being charged?
- 13 A Not really. No, sir.
- 14 Q Okay. Do you believe that your lawyer properly
15 prepared his case?
- 16 A Yes, sir. He did.
- 17 Q You think he prepared it properly?
- 18 A Yes, sir.
- 19 Q Okay. Do you have complaints about his
20 representation?
- 21 A Yes, sir.
- 22 Q And what's that?
- 23 A Fighting the fact that -- that we were fighting a
24 few things still -- the position --
- 25 Q Don't stand so -- can you come close to the

1 microphone?

2 THE COURT: Yeah, just talk normally. You're fine.

3 A That we should have fought, you know, like I said,
4 the duration of them having my phone, the fact that
5 I didn't own the phone anymore after the fact, and,
6 basically, they had used the video against me.

7 Q Okay. So -- so once they had the phone, you were
8 no longer in ownership of the phone, correct?

9 A Correct.

10 Q And -- and you got another phone, right?

11 A Yes, sir.

12 Q Okay. And you believe your lawyer did not properly
13 delve into that fact that you were not the owner of
14 the phone at the time?

15 A Yes, sir.

16 Q And, also, did you have any type of arrest record
17 at that time?

18 A No, sir.

19 Q And do you believe that he properly put that
20 information before the Court?

21 A No, sir.

22 Q Okay. And you wanted him to do that?

23 A Yes, sir.

24 Q Okay. Was it a issue about this case being
25 federal?

1 A No, sir.

2 Q Okay. So the defendant -- do you know whether they
3 wanted to accept the case or not?

4 A They didn't.

5 Q Okay. But you believe that you are entitled to a
6 new trial, don't you?

7 A Yes, sir.

8 Q Okay. Thank you. Answer any questions the
9 Attorney General has for you.

10 THE COURT: All right. Mr. Ray?

11 CROSS-EXAMINATION

12 BY MR. RAY:

13 Q All right, Mr. Gentry. What was your attorney's
14 name?

15 A Zach Farr.

16 Q Zach Farr? How did you first come to meet Mr.
17 Farr?

18 A Through other inmates.

19 Q Through other inmates? So you hired him; is that
20 correct?

21 A Yes, sir.

22 Q Okay. And about how many times did you meet with
23 him prior to trial?

24 A Quite a few times.

25 Q Quite a few times? And did you have a lot of

1 discussions about the case with him?

2 A Yes, sir. We did.

3 Q And what sort of things did you discuss?

4 A Basically, the content that's in my case.

5 Q Okay. Did you discuss possible defenses he might
6 have of these charges?

7 A A few.

8 Q And you -- did you tell him that you felt like he
9 needed more time to prepare or anything like that?

10 A No. I didn't feel I had any right -- right to tell
11 him to -- that.

12 Q Okay. Did you tell him that you had never watched
13 the video in question?

14 A Yes, sir.

15 Q You did?

16 But I'm a little confused about the phone
17 itself. Was it your phone prior to you giving it
18 to the police?

19 A Yes, sir.

20 Q Okay. How did you come to obtain the video on your
21 phone?

22 A It was sent to me by -- through text message.

23 Q It was sent to you through a text message?

24 A Yes, sir.

25 Q Was it sent to you by someone you know, or --

1 A Yes, sir.

2 Q And was it just randomly sent to you?

3 A Yes, sir.

4 Q Was it -- were you the only recipient of the video,
5 or was it in a group chat?

6 A I'm the only recipient.

7 Q You were the only recipient?

8 A As far as in my phone.

9 Q Okay. But were there other people in the
10 conversation?

11 A No. Just me and him.

12 Q Just you? Okay. Did you -- you said you didn't
13 watch the video; is that correct?

14 A Yes, sir.

15 Q Did you know what was in the video?

16 A No, sir.

17 Q Okay. Did you delete the video off of your phone?

18 A No, sir.

19 Q Okay. But, ultimately, the video was on your
20 phone, correct?

21 A Yes, sir.

22 Q Okay. And when you turned it over to the police,
23 was that the county police? Was it the FBI? Was
24 it SLED? Who did you give your phone to?

25 A To the county police.

1 Q Okay. And did they advise you of your rights at
2 the time that you have the right to remain silent
3 and Miranda?
4 A Yes, sir.
5 Q Okay. So you voluntarily turned the phone over?
6 A Yes, sir. Dealing with another case; not with this
7 case.
8 Q Okay. And about how long did it take until you
9 were aware that they had finished searching the
10 phone?
11 A That they brought the other charge over.
12 Q Well, just from the time you handed them the phone,
13 did you ever get the phone back?
14 A I did right there, yes, sir.
15 Q Oh, they gave it to you back the --
16 A Yes.
17 Q -- same day?
18 A Yes, sir.
19 Q Okay. Do you know what their search entailed of
20 the phone?
21 A It was -- like I said, it was dealing with another
22 case. Assume (verbatim) they were looking,
23 specifically, for a person's text messages --
24 Q Okay.
25 A -- but I'm not the person they got the video out

1 of.

2 Q Okay. And so did they tell you anything about that
3 at -- at the time that they found anything on the
4 phone?

5 A No, sir. Not until a year later.

6 Q Okay. And so Mr. Farr was retained by you,
7 specifically, on these charges; is that correct?

8 A Yes, sir.

9 Q Not in relation to the -- the other ones that --

10 A Yeah.

11 Q -- were ongoing? Okay.

12 Now, you said that you did not mention any
13 other people not being charged, to your attorney?

14 A I did.

15 Q You did?

16 A Yeah.

17 Q Just to be clear, you -- you did tell your attorney
18 that the person who sent you the video was not
19 charged?

20 A Yes, sir.

21 Q Okay. Did he tell you anything about that?

22 A No, sir.

23 Q No? So you're saying that the police or the State
24 used this crime as leverage to get you to cooperate
25 on another offense?

1 A Yes, sir.

2 Q And did you speak with your attorney about that?

3 A No, sir.

4 Q No. Did he say anything to you about that?

5 A Slightly, but he's not in the right to say too
6 much, you know, because he was -- he's not
7 representing me on the other charges.

8 Q Okay.

9 A So he can only speak with me, you know, with the
10 charges he's representing me on.

11 Q Okay. Now this question about your prior record,
12 did you have a prior record?

13 A No, sir.

14 Q You did not? What do you think the importance of
15 that is?

16 A Most people with charges like what I have --

17 Q Uh-huh.

18 A -- they have some kind of previous record dealing
19 with that, or they find multiple images or videos,
20 something. I have no record. I've never been in
21 any trouble.

22 Q Okay.

23 A I'm in school, so . . .

24 Q Not until after this offense; is that right?

25 A Yes, sir. Not till after.

1 Q Okay. And did you speak with your attorney about
2 that?

3 A Yes, sir.

4 Q And did you -- did you request that he -- he inform
5 the Court or propose any -- any mitigating
6 evidence?

7 A No, sir.

8 Q You didn't ask him to do that?

9 A Unh-unh.

10 Q Okay. And the FBI was involved in this case; is
11 that correct?

12 A Slightly, yes, sir.

13 Q Okay. You haven't been charged with any federal
14 crimes, have you?

15 A No, sir. No.

16 Q Did you speak with your attorney about the
17 involvement of the FBI?

18 A Yes, sir.

19 Q Okay. And was there anything that you wish he had
20 done differently in that regard?

21 A No, sir.

22 Q No? Okay.

23 Now one last thing, and I'm not -- still not
24 exactly clear on -- on this issue. You said there
25 was another phone; is that correct? That you had

- 1 afterwards?
- 2 A Yes, sir. Once I was arrested on other charges,
- 3 months later --
- 4 Q Uh-huh.
- 5 A -- I had been had a new phone, so I ended up giving
- 6 them that phone.
- 7 Q Okay.
- 8 A They had that phone for over two and a half years
- 9 now.
- 10 Q Okay. So the phone in which you have the
- 11 incriminating video --
- 12 A Uh-huh.
- 13 Q -- that gives rise to these charges, you gave it to
- 14 the police. It was then given back to you?
- 15 A Yes, sir.
- 16 Q What happened to it after that?
- 17 A I ended up getting a new phone.
- 18 Q Okay. Why did you get a new phone?
- 19 A The phone I had was already old.
- 20 Q Okay.
- 21 A So I ended up getting a new one.
- 22 Q Did the -- did the police ever take that phone
- 23 back?
- 24 A They -- they ended up taking the phone.
- 25 Q They did?

1 A Yeah.

2 Q Okay. And so . . .

3 MR. RAY: Just one moment, Your Honor.

4 THE COURT: All right.

5 Q Now, did I hear you properly? I just want to make

6 sure. You said you were -- you were not the owner

7 of the phone at the time you gave it to the police,

8 or you were the owner of the phone?

9 A I was -- yes, sir. I was.

10 Q It was your phone?

11 A Yes, sis. It was my phone.

12 Q Okay.

13 A By the time charges were brought up, I was not the

14 owner.

15 Q You just didn't still have that?

16 A Yeah. I didn't -- I didn't have that same phone.

17 Q Okay. But at the time the police found the video?

18 A Yes, sir. It was mine.

19 Q Okay. And did your attorney tell you anything

20 about that in particular?

21 A No. Not really, no, sir.

22 Q Did he -- did he tell you that there was any

23 relevance or any reason why the fact that you had a

24 new phone might benefit you at trial?

25 A No, sir.

1 Q No? Okay.

2 MR. RAY: No further questions, Your Honor.

3 THE COURT: Redirect?

4 MR. RICHEY: I just want to --

5 REDIRECT EXAMINATION

6 BY MR. RICHEY:

7 Q Sir, did you testify at your trial?

8 A No, sir. I did not.

9 Q Okay. Thank you.

10 THE COURT: All right.

11 MR. RICHEY: No other questions.

12 THE COURT: Thank you, sir. You can step down.

13 (WHEREUPON, the witness is excused.)

14 MR. RICHEY: We'll call -- we'll call Mr. Farr.

15 THE COURT: Okay.

16 (WHEREUPON, the witness is sworn.)

17 THE COURT: Thank you. Have a seat.

18 DIRECT EXAMINATION

19 BY MR. RICHEY:

20 Q Sir, will you state your name, please?

21 A James Zachary Farr.

22 Q And, sir, do you recall representing Mr. Gentry's
23 case?

24 A Yes, sir.

25 Q And how -- how long was your representation in

1 terms of length?

2 A Probably about seven to eight months.

3 Q Okay. And do you believe, in that time, you had
4 adequate time to discuss the case with him?

5 A Yes, sir.

6 Q Okay. And at the trial itself, I'm just going --
7 I'm going to ask some of these issues we have here.
8 At the trial itself, do you believe there was a
9 issue in the time that they got the phone from him
10 until the time that they sprung this video? Would
11 that raise any red flags to you?

12 A No, sir.

13 Q Okay. Can you tell me why?

14 A Because it was his phone when he gave it over. The
15 length of it didn't matter.

16 Q Did -- did he tell you, at all times, this was his
17 phone?

18 A Yes.

19 Q Okay. What about the second phone he got? Do you
20 know anything about the second phone that he got?

21 A The phone -- that -- that phone had nothing to do
22 with the case that I was working on.

23 Q Okay. And -- and did he offer to have that second
24 phone searched or anything?

25 A No. He did not.

1 Q Okay. In terms of your preparation for the case,
2 do you feel like you went through the discovery
3 adequate enough where he could understand it?

4 A Yes, sir.

5 Q Okay. Do you believe he did understand it?

6 A Yes, sir.

7 Q Okay. And this -- this notion about this other
8 case that he has, did y'all discuss how that case
9 related to this case?

10 A No. No. We did not.

11 Q Well -- now, this case -- was this case used as
12 leverage against him on the first -- the other
13 case?

14 A Any conversation we had about that, which -- about
15 leverage, is correct. I would get Mr. Johnson
16 involved for that.

17 Q And Mr. Johnson is -- is his other attorney on the
18 other case?

19 A Correct.

20 Q Okay. And the issue about him testifying and not
21 testifying, did you discuss that with him?

22 A I did.

23 Q And he -- he made an issue about his prior record
24 being -- being clean. I use the phrase "clean."
25 And he wanted that injected into the trial. Is

1 there a way he could have done that?

2 A If he testified, yes.

3 Q And -- and can you tell me the discussions y'all
4 had with him to testify or not testify that you had
5 with him?

6 A Our discussion was that I prepped him to testify,
7 but during trial, once I eliminated almost 20
8 minutes of the FBI interview, and we got it down
9 to, basically, three minutes of him testifying, me
10 and his discussion -- we thought it was best him
11 not to testify since he, basically, testified
12 through the FBI audio.

13 Q And -- and y'all made the decision that, that was
14 sufficient-enough testimony?

15 A Yes.

16 Q Okay. And did you -- do you know whether he
17 understood that if he did not testify, then the
18 jury would not hear about this record, this lack of
19 record he has?

20 A That part we went into just a little bit, but it
21 was more or less that we testified earlier in the
22 trial that they were investigating a crime that he
23 had nothing to do with, and he didn't have any
24 other charges with the City of Spartanburg.

25 Q And did you ever discuss with him about anything

1 that deals with him watching the video or not
2 watching the video, how that impacted his case?

3 A Yeah. We discussed that.

4 Q And -- and do you believe that not watching the
5 video impacted his case?

6 A What do you mean by watching the video?

7 Q Well, okay. He alleges that he never watched the
8 video. He got it sent to him.

9 Well, let me ask you this question this way:
10 Was there any evidence that he actually watched the
11 video? Did he?

12 A Through talking to him and the text messages, yes,
13 he clicked on the video.

14 Q Uh-huh. Did y'all discuss how it affected his
15 case?

16 A Yes, we did.

17 Q All right. And did you believe that, that had
18 negative effects -- severely negative on his case
19 or positive?

20 A Positive.

21 Q Okay. And did he -- did he ever tell you he didn't
22 know the video was on the -- on his phone? Did he
23 ever tell you that?

24 A When I first started the representation, he said he
25 did not realize it was on his phone.

1 Q Okay. And then -- I think you testified then
2 during subsequent things, you found that he clicked
3 on the video?

4 A Correct.

5 Q Do you believe he understood the charges and the
6 penalties that he was facing?

7 A Yes, sir.

8 Q Thank you. Answer any questions the Attorney
9 General has.

10 THE COURT: All right.

11 CROSS-EXAMINATION

12 BY MR. RAY:

13 Q Mr. Farr, how are you?

14 A I'm doing well. How about yourself?

15 Q I'm doing all right. How long you been practicing
16 law?

17 A This will be going on my ninth year.

18 Q Ninth year? How much of that has been criminal?

19 A All nine.

20 Q All nine? So when did you first meet Mr. Gentry?

21 A June of -- June of 2019.

22 Q Okay. And he hired you?

23 A Yes. Yes, sir.

24 Q Okay. Specifically, for this -- this charge?

25 A Yes, sir.

1 Q Okay. About how many times did you meet with him?

2 A I know, just from my notes, about ten times. And
3 then, the week of trial, probably had to be about
4 every day to get him ready.

5 Q Okay. And did you explain -- you went through all
6 the discovery in the case with him?

7 A Yes, sir.

8 Q And did you explain the elements of the offense to
9 him?

10 A Yes, sir.

11 Q Specifically the -- the fact that possession --
12 knowing possession of the video is sufficient for a
13 conviction?

14 A Yes, sir.

15 Q And you said that he initially told you he did not
16 know that the video was on his phone?

17 A Yes. Because he told me that he'd never save it to
18 his phone.

19 Q Okay.

20 A So that's where the whole knowledge part about him
21 not knowing it was on his phone.

22 Q Okay. And then you later came to find out that he
23 had clicked on the video?

24 A Per the text messages that I got when I got the
25 copy of his cell phone, yes.

- 1 Q Okay. The text messages relative to the video, the
2 same conversation?
- 3 A Correct.
- 4 Q Okay. And was it just him and one other person in
5 this conversation or was it a group?
- 6 A I thought there was more than one person.
- 7 Q Okay.
- 8 A But I'd have to look in my notes, but I thought it
9 was more than one person.
- 10 Q Okay. So did you have any sort of thoughts or
11 considerations or strategy for defending against
12 this charge at trial, just specifically, on the
13 claim that he did not watch the video?
- 14 A Correct.
- 15 Q Okay. Did -- and you discussed that with him?
- 16 A I did.
- 17 Q Okay. Now, were you aware that the other
18 individuals in this conversation were not charged
19 with a crime?
- 20 A Yes.
- 21 Q And you -- did you discuss that with Mr. Gentry?
- 22 A I did.
- 23 Q Did you believe that that was relative -- or
24 relevant to his defense?
- 25 A It was relevant.

1 Q Okay. Did you think that -- I'm sorry.

2 MR. RAY: Just one -- just one moment, Your Honor.

3 THE COURT: Okay.

4 Q So did you discuss the -- any discussions about the

5 leverage issue with the -- the subsequent charges

6 that he was facing?

7 A We did discuss those.

8 Q You did. And -- but you, largely, just left it to

9 his -- his counsel on that case, right?

10 A Anything like that, I involved Mr. Johnson in the

11 conversations.

12 Q Okay. So you were privy to the conversations or --

13 A A few.

14 Q -- or a few of them?

15 A Yes.

16 Q Okay.

17 A Yeah.

18 Q And did you give him any advice regarding any --

19 any of -- of those issues, or --

20 A Which issues? The --

21 Q The issues of -- of leveraging this charge against

22 him in order to gain cooperation?

23 A I didn't give him any advice because I had still

24 left that to Mr. Johnson --

25 Q Okay.

1 A -- because that dealt with his charge.

2 Q Okay. Now, let me ask you about the second phone.

3 Were you aware that he had another phone? I mean,

4 did that -- did that seem like anything that was

5 pertinent?

6 A Yes. He did tell me about the second phone, and I

7 did -- did bring it up in trial.

8 Q Okay. And what was the -- what was the relevance

9 of the -- the other phone?

10 A To explain to them he had a different phone, and I

11 know the State objected to that --

12 Q Uh-huh.

13 A -- and we had a sidebar with Judge Cole. I do know

14 that.

15 Q Okay. Now, as far as his prior record is

16 concerned, did you discuss his prior record with

17 him or lack thereof?

18 A I did.

19 Q Okay. And did you see any way to bring that up,

20 maybe in a sentencing context or as mitigation?

21 A We did during sentencing, but I thought we got very

22 close in trial to say he didn't have any criminal

23 history from the standpoint nobody was

24 investigating him for any crimes that he did --

25 Q Uh-huh.

1 A -- at the time during trial.

2 Q Okay.

3 A That was brought up through -- I think the
4 investigators were allowed to bring that up.

5 Q Okay. And did you take efforts to make sure that
6 he was not framed as a suspect in -- in these other
7 crimes?

8 A Yes. We took that up at the very beginning of
9 trial.

10 Q Okay. And what did you do in that regard?

11 A Filed a motion or a oral motion to Judge Cole about
12 limiting the information that can come in about how
13 they got his cell phone, originally, because we
14 were on a very, I would say, thin line and the
15 standpoint, what could come in about how they
16 received his phone. And we were --

17 Q Uh-huh.

18 A -- and Judge Cole limited the State of -- about his
19 file. And that's where we came into the point
20 where Judge Cole told the State what they could
21 talk about, and I know the investigators were in
22 court at that time, as well, about the limited
23 ability of what they could testify to.

24 Q Okay. And you spoke with him about his
25 constitutional right to testify?

1 A Yes.

2 Q Okay. And he -- he understood all the --

3 A Yes. We were at the annex and then came back over
4 to the courthouse.

5 Q Okay. And whose decision was it that he not
6 testify?

7 A It's ultimately his, because we put him -- he stood
8 up in front of Judge Cole, and Judge Cole gave him
9 the opportunity whether or not to testify.

10 Q Okay. And he understood that; is that correct?

11 A Yes.

12 Q Okay. And did you believe that, that was a
13 decision that was in his best interest, not to
14 testify?

15 A I did.

16 Q Okay.

17 MR. RAY: No further questions, Your Honor.

18 THE COURT: All right.

19 MR. RICHEY: No other witnesses.

20 THE COURT: All right. Thank you, sir. You can
21 step down.

22 (WHEREUPON, the witness was excused.)

23 THE COURT: Applicant rests. Any further evidence
24 or testimony from the State?

25 MR. RAY: No, Your Honor.

1 THE COURT: All right. Let's hear argument from
2 Mr. Richey.

3 APPLICANT'S CLOSING STATEMENT

4 MR. RICHEY: Thank you, Your Honor. May it please
5 the Court. Your Honor, I -- I think to kind of
6 crystalize all of this. I think his main issue in
7 here is during the trial, he did not testify. And
8 by not testifying, he was unable to show that he
9 had a clean prior criminal history.

10 Two, that he never watched the phone and that
11 he never asked for the video. In this case, that's
12 the only way he's going to be able to get that type
13 of evidence in is through him. And so, in looking
14 at this, his issue would be that he should have
15 testified in the case so he could bring up this
16 additional information. Thank you, Your Honor.

17 THE COURT: All right. Thank you. Mr. A.G.?

18 STATE'S CLOSING STATEMENT

19 MR. RAY: Your Honor, we've -- we've heard
20 testimony here today that he was informed of his
21 right to testify. He was aware that it was his
22 decision that his -- his statements made to police
23 investigators were presented, at least in part, and
24 effectively covered much of what he would have
25 testified to.

1 We've heard that the evidence of his prior
2 record was presented in mitigation regarding his
3 sentence and was also pretty well-covered given the
4 fact that the -- his defense counsel made efforts
5 to make sure he was only presented as a witness,
6 not a suspect to these other offenses, which he was
7 ultimately charged with.

8 There the -- the applicant has not proved
9 prejudice from his counsel's performance in failing
10 to call him to testify, or in his handling of the
11 cell phone itself. We've heard that he was
12 properly advised, and he certainly has not proved
13 that he was prejudiced by any of this, given that
14 his counsel was not deficient in the first
15 instance.

16 And with that being said, we would
17 respectfully request that the Court deny these
18 allegations.

19 THE COURT: And I agree with the State. After
20 considering the testimony and evidence presented
21 and my review of the file, I find that the
22 applicant has failed to meet his burden of proof of
23 prejudice, and I, therefore, deny this application
24 and dismiss this P.C.R. case, all right?

25 MR. RAY: Thank you, Your Honor.

1 THE COURT: That's the order of the Court. Mr.

2 A.G., if you'll prepare an order. That --

3 MR. RAY: Absolutely.

4 THE COURT: That concludes this hearing.

5 MR. RICHEY: Thank you, Your Honor.

6 THE COURT: Good luck to you, sir.

7 THE APPLICANT: Thank you.

8 (Whereupon the within hearing was

9 concluded at 2:02 p.m.)

10 (*This transcript may contain quoted material.

11 Such material is reproduced as read or quoted

12 by the speaker.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

CERTIFICATE

Be it known that Amber J. Payne took the foregoing proceeding and hereby attests:

that I was then and there a notary public in and
for the State of South Carolina-at-large;

that the witness was first duly sworn to testify to the truth, the whole truth, and nothing but the truth, concerning the matter in the controversy aforesaid;

that the foregoing transcript represents a true, accurate, and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

that I am neither a relative nor an employee of any of the parties hereto, nor of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action;

that, if a recording of an event was supplied by another party for purposes of transcription and I was not present during that event, the foregoing pages were transcribed to the best of my skill and ability; additionally, any identifications of speakers were provided to me by the party supplying the recording;

that, in the event of a nonappearance by the witness, the foregoing details for the nonappearance are accurate.

In witness thereof, I have hereunto affixed my signature and title.

Amber J. Payne, CVR

Date: 9/16/2021
Notary public for South Carolina
My commission expires August 12, 2029

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Robert T. Gentry, SCDC NO. 382135
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2020-CP-42-0330

ORDER OF DISMISSAL

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

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This matter comes before this Court by way of Applicant Robert T. Gentry's post-conviction relief application filed September 28, 2020. Respondent made its return on December 29, 2020, requesting an evidentiary hearing be convened. An evidentiary hearing was held on June 1, 2021, at Spartanburg County Courthouse. Rodney Richey, Esquire, represented Applicant. Assistant Attorney General William Ray of the South Carolina Attorney General's Office represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel J. Zachary Farr, also testified. After reviewing all records and evidence before this Court, this Court finds Applicant has not met his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant was indicted by the Spartanburg County Grand Jury at its May 2019 term for third-degree sexual exploitation of a minor. Applicant was represented by J. Zachary Farr, Esquire, and the case was prosecuted by Assistant Solicitor Jennifer Wells of the Seventh Circuit Solicitor's Office. On January 15, 2020 Applicant proceeded to a jury trial before the Honorable J. Derham Cole, where he was convicted as indicted. Judge Cole sentenced Applicant to ten years'

imprisonment, suspended upon service of three years with an additional three years of probation with the first ninety days upon relief to be served in the home detention program. Applicant did not appeal his conviction or sentence.¹

Summary of Relevant Facts

In January, 2019 Applicant was being investigated for his role in a deadly shooting that took place in Spartanburg, South Carolina. (Tr. 1 – Tr. 16).² Spartanburg Police Department Investigator Chris Taylor testified that he met with Applicant on May 21, 2018 at the Spartanburg City Hall. (Tr. 64, 11 – Tr. 65, 6). He asked for consent to search Applicant's cell phone, which Applicant agreed to before executing a consent to search authorization form. (Tr. 65, 7 – Tr. 66, 13). He then took the form and the phone to Investigator Inderjit Kaur, who was across the hallway, to be searched. (Tr. 66, 14 – Tr. 68, 6). The phone was searched and returned directly to Applicant that same day. (Tr. 68, 9-20).

Investigator Kaur testified that she was given the phone by Investigator Taylor and asked to "dump" the phone, meaning to extract its data. (Tr. 72, 16 – Tr. 73, 10). She extracted the data, compiled it into a written report, saved the report to a CD, and placed the report in to evidence. (Tr. 74, 3 – Tr. 75, 9). She explained that once the data is pulled off the phone it cannot be manipulated or changed. (Tr. 75, 21-25).

Investigator William Reece testified that he conducted a review of the extraction report compiled by Investigator Kaur. (Tr. 94, 7-17). During his review he discovered a text message

¹ Applicant was incarcerated in the South Carolina Department of Corrections and was released on October 30, 2020.

² Applicant was in the custody of the Spartanburg County Sheriff's Office at the time of his PCR hearing while he awaited trial for two accessory to murder charges (2019-GS-42-02503; 2019-GS-42-02504). A Spartanburg County jury convicted him of both charges on June 17, 2021, and he was sentenced to thirty years' imprisonment, and fifteen years' imprisonment on each indictment, respectively.

conversation between Applicant and another individual named Kenzo containing child pornography in video format. (Tr. 96, 7-19). On cross-examination he clarified that the video was not saved to the phone's video folder, but was instead only in the text message conversation. (Tr. 105, 7-21). He contacted the FBI, arranged a meeting with a special agent, and set up a time to interview Applicant about the contents of the video. (Tr. 99, 6-21). The interview took place in February, 2019, and Applicant was read his *Miranda* rights before being questioned. (Tr. 99, 22 – Tr. 100, 21). FBI Special Agent Robert Hamod testified that he attended the interview after being told by Investigator Reece that child pornography had been found on Applicant's phone. (Tr. 114, 3-16). He stated that the US Attorney's Office had declined to prosecute the matter. (Tr. 125, 1-12).

During the interview with Investigator Reece he was questioned about why he was sent the video in the first place, and he stated that he asked about it. (Tr. 156, 3-8). The evidence at trial showed that Applicant clicked on the video and viewed it because he sent a message to the sender acknowledging how bad it was. (Tr. 157, 6-12; Tr. 175, 9-13).

Current Action before this Court

In his PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. "Lawyer never stated what an appeal was."
2. "I didn't know the grounds for filing an appeal."
3. "Didn't have access to Law Library at Kirkland."
4. "Cohered Jurors"
 - a. "The seriousness of my 1st case cohered the jurors because my 1st case of Accessory before and after the fact of Murder was brought up during trial, (as stated in trial transcript). Two investigators lied on the stand. The fact that I never had an arrest record wasn't brought up."
5. "Inaffecting Asistant of Council"
 - a. "My Lawyer didn't fight the fact that I never owned the cell phone after I gave it to the police. Also the fact there was no proof that I watched the video nor did I ask for the video and the video was never saved to my phone and never sent by me."

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They made a copy of my old phone in May 2018, I returned the phone to T-Mobile afterwards and received a new phone. Date of offense is wrong and the warrant date is off. Also the Feds clearly stated they didn't want the case. I never possessed the phone anymore before the date of offense was January 2019, I was arrested February 12, 2019 on different charges, May 2019 I was served a warrant for sexual exploitation of minor. The person who sent the video was never questioned nor arrested. I was charged with a crime I didn't commit nor knew anything about."

At the PCR hearing, Applicant proceeded forward on the following allegations:

1. Ineffective Assistance of Counsel
 - a. Counsel never brought forth the fact that Applicant did not watch the video.
 - b. Counsel was not properly prepared.
 - c. Counsel never mentioned the issue that the phone was left with the police for a significant period of time.
 - d. Counsel did not address the fact that Applicant was not the owner of the phone at the time of the case.
 - e. Counsel did not call Applicant to testify about his lack of a prior record.

All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Summary of the Testimony

During direct examination, Applicant alleged that his trial counsel was ineffective because his counsel did not inform the jury that Applicant did not watch the pornographic video. Applicant also alleged that his trial counsel did not properly prepare for the trial, nor did his trial counsel inform the jury that Applicant was not the owner of the phone during the time of the trial and that the police had possession of the phone for almost a year prior to when he was indicted. Applicant also mentioned during this evidentiary hearing that he failed to tell his trial counsel about the fact that the individual who sent him the pornographic video was not charged. Applicant alleged that one of his biggest complaints about his trial counsel was the fact that it was not mentioned that he had no prior criminal history.

During cross examination, Applicant testified that he never told his trial counsel that he

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needed more time to prepare his defense. Applicant also testified that he did not watch the video and did not know what was in it, which is why he voluntarily gave his phone to Spartanburg Police Department when they were investigating his involvement in another case. Applicant stated that he was given his phone back the same day that he voluntarily gave it to the police and was not told until almost a year later what the police had found on it. Applicant also stated that he does not think he should have been convicted because he did not have a prior record, and that even though Applicant did not ask his trial counsel to present it, thought it should have been stated during his trial.

Trial counsel Zachary Farr testified he has been practicing law for nine years and has practice criminal law for the entire time. During direct examination, Mr. Farr stated that the fact that Applicant got a second phone after the police took his first phone and gave it back had nothing to do with the charges against the Applicant. Mr. Farr went on to say, in regard to Applicant's record not being brought up during trial, that Applicant could have raised that if he wanted to by offering to testify at trial, which the Applicant waived. However, Mr. Farr also mentioned that Applicant did testify through his interview with the FBI, where it was mentioned that he did not have a prior record and the jury had access to this interview. Mr. Farr stated that the fact that Applicant did not watch the video was discussed, but it did not impact his case, because that was not one of the elements that the prosecution had to prove at trial. In addition, based on the texts following the video, Mr. Farr determined that it seemed as though Applicant did watch the video. Mr. Farr testified that he believed Applicant understood the charges against him and the penalties he faced.

During cross examination, Mr. Farr again mentioned that Applicant's text messages indicated that he watched the video, as well as the fact that he discussed how not watching the

video would impact the case. Mr. Farr stated that he knew other people involved in the distribution of the video were not charged and how it was relevant to the defense, as well as the fact that Applicant got another phone after the police took his first one, but that the prosecutor objected to bringing up the other phone. Mr. Farr also stated how Applicant's prior record was brought up during mitigation and that the investigators that testified at trial mentioned how Applicant had not been convicted, nor had he been investigated of any other crimes. Mr. Farr concluded his testimony with the fact that it was Applicant's decision to not testify at trial.

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. Before this Court are the Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, and this PCR action's records. 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 conclusion of law as required by South Carolina Code Annotated Section 17-27-70 and -80.

Ineffective Assistance of Counsel, Generally

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

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Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRPC ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters "only in the rarest case" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Failure to Inform the Jury that Applicant did not Watch the Video

Applicant alleges that his trial counsel provided constitutionally ineffective assistance for failing to inform the jury that, although he did knowingly possess the video depicting child pornography, he did not watch the video. This allegation is without merit.

As laid out by § 16-15-410 of the Code of Laws of South Carolina, "An individual commits the offense of third degree sexual exploitation of a minor if, knowing the character or content of the material, he possesses material that contains a visual representation of a minor engaging in sexual activity or appearing in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation." The Sixth Amendment right to counsel does not extend so far as to require counsel to present defense that are unsupported by the evidence or the law. See *Arnette v. State*, 306 S.C. 556, 413 S.E.2d 803 (1992) (holding that an Applicant is not entitled to relief because counsel did not advise him of a frivolous defense)

The law only requires proof that a criminal defendant knowingly possess child sexual exploitation materials to be convicted of third degree sexual exploitation of a minor. Whether the defendant actually viewed the materials is not an element of the offense. It was shown through evidence presented at trial that Applicant received the video via text message, and kept it on his phone. Applicant's counsel testified at the evidentiary hearing that he knew it did not matter

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whether Applicant watched the video. Instead, what mattered, and what counsel argued, was that Applicant did not know the character of the video sent to him. Applicant's counsel testified that this argument was unsuccessful because evidence showed Applicant had actually clicked on the button to play the video. The defense Applicant claims should have been asserted is therefore not supported by the law nor the facts and evidence of his specific case. Therefore, Applicant has failed to establish that counsel's performance was deficient for attempting to defend against the charge by arguing that he never watched the video.

Furthermore, Applicant has not proven that he was prejudiced by his counsel's performance because there is no reasonable probability that the outcome of his trial would have been different had his attorney made a greater effort to show that he did not watch the video. Applicant has not shown that any reasonable jury could have found that he did not commit the crime, because none of the evidence suggests he was not knowingly in possession of child sexual abuse materials. Therefore, this Court finds that the allegation is without merit, post-conviction relief is denied on these grounds, and the application dismissed with prejudice.

Failure to Properly Prepare for Trial

Applicant alleges that his counsel provided constitutionally ineffective assistance for failing to properly prepare a defense. This allegation is without merit.

To establish counsel failed to adequately prepare for trial, applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. *Jackson v. State*, 329 S.C. 345, 495 S.E.2d 768 (1998). An applicant is not entitled to relief where no evidence is presented at the PCR hearing to show how additional preparation would have had any possible effect on the result at trial. *Skeen v. State*, 325 S.C. 210, 481 S.E.2d 129 (1997).

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At the evidentiary hearing, Applicant himself refuted this claim and testified that he did believe his trial counsel had enough time before trial and was properly prepared. He explained that he had retained counsel and had met with him quite a few times. He stated that his counsel had reviewed the discovery and evidence against him, as well as possible defenses. He stated that never told counsel that he believed more time was needed to prepare. Applicant did not produce any evidence at the hearing of additional defenses or beneficial evidence may have been developed had his counsel had more time.

Counsel confirmed that he been retained by Applicant around June, 2019, and they met to discuss the case frequently before trial. They discussed the discovery in the case and he believed the video was sufficient for a conviction. He indicated that he was prepared for trial. Therefore, Applicant has not shown that his counsel was deficient or that his counsel's performance prejudiced him in any way for failing to properly prepare for trial. Therefore, this Court finds that the allegation is without merit, post-conviction relief is denied on these grounds, and it is dismissed with prejudice.

Counsel's Handling of the Cell Phone

Applicant alleges that his counsel failed to properly present evidence that the cell phone containing the incriminating video was left with police for some extended period of time, and also that his counsel failed to show that he was not the owner of the cell phone at the time of his trial. This allegation is without merit.

As mentioned above, counsel need not present frivolous defenses unsupported by the facts, law, or evidence to fulfill the Sixth Amendment obligation to provide effective representation. Here, Applicant alleges that his counsel should have done *something* different regarding his cell phone, but the requested actions he asserts counsel should have taken would have had no effect on



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the outcome of his trial. At trial it was shown that Applicant's phone was voluntarily turned over to the police so that it could be searched. All of the data was collected, reduced to a 30,000 page record, and the phone was returned to him on the same day. The assertion that it somehow took too long to search the phone or that the phone was left in the possession of the police is entirely immaterial to his guilt, and counsel was under no obligation to make such an argument.

Furthermore, the argument that Applicant was not the owner of the phone at the time of trial is just as immaterial. He was indicted for the crime of third degree sexual exploitation of a minor because he owned the phone at the time of the offense. He admitted at the PCR hearing that he owned the phone when he gave it to police and there is no evidence or reason to believe that purchasing a new phone later would have somehow excused or mitigated the crime. Nevertheless, the record shows that trial counsel *did* cross-examine three witnesses about whether the phone in question was Applicant's old or new phone. (Tr. 69, 8-18; Tr. 81, 21 – Tr. 82, 1; Tr. 109, 12-16). The allegation that trial counsel failed to properly show that Applicant was somehow not the owner of the phone at the time is clearly without merit.

As such, Applicant has failed to prove that his counsel was deficient in his handling and presentation of evidence regarding Applicant's ownership and possession of the cell phone. He has also failed to show any reasonable probability that the outcome of his trial would have been different had his counsel acted differently. Therefore, this Court finds that the allegation is without merit, post-conviction relief is denied on these grounds, and the application is dismissed with prejudice.

Failure to Call Applicant to Testify at Trial

Applicant alleges that his counsel provided constitutionally ineffective assistance for failing to call him to testify, making him incapable of showing the jury that he did not watch the



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video or have a prior record, resulting in a guilty verdict. This allegation is without merit.

"The right to testify on one's own behalf at a criminal trial is guaranteed by the Fifth, Sixth, and Fourteenth Amendments." *State v. Wright*, 416 S.C. 353, 372, 785 S.E.2d 479, 489 (Ct. App. 2016) (citing *Rock v. Arkansas*, 483 U.S. 44, 51-52 (1987)). However, the right to present testimony is not without limitation. *Rivera*, 402 S.C. at 242, 741 S.E.2d at 703; *Rock*, 483 U.S. at 55. This right may be waived, and all that is necessary for a defendant to waive the right is to know that a right to testify exists. *United States v. McMeans*, 927 F.2d 162, 163 (4th Cir. 1991). Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 530 (1992).

In the present case, Applicant was informed of his constitutional right to testify, as well as his right to remain silent by the trial judge. (Tr. 136, 13 – Tr. 139, 5). His counsel initially indicated that Applicant wished to testify, however after a brief discussion Applicant changed his mind and indicated that he did not wish to take the stand. (Tr. 139, 8 – Tr. 140, 10). During the evidentiary hearing, Applicant's trial counsel testified that he believed it was in Applicant's best interest to not testify at trial. Applicant's counsel thought Applicant should remain silent because Applicant's interrogation with the FBI largely introduced the contents of his purported testimony, namely, Applicant's lack of a prior record and Applicant's claim that he did not watch the video.

As for deficiency, Applicant was free to testify if he wished. His counsel advised him that it might not be in his best interest, per the defense strategy. This Court finds that counsel exercised reasonable professional judgment in furtherance of a reasonable trial strategy by advising Applicant not to testify. This Court also finds that Applicant's decision was his and his alone, made freely, knowingly, and voluntarily after being informed of his rights by the Court and after being allowed an opportunity to discuss it with his counsel.



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Applicant has also failed to show he was prejudiced by his counsel's advice, or his counsel's failure to call him to testify, because no testimony was proffered at the PCR hearing. Instead, his only asserted reason for wanting to testify was to state that he had no prior record. The jury effectively heard this testimony by way of his statements made to an FBI agent during the investigatory interview which ultimately led to the subject charges.

Applicant told the trial judge that he made this decision on his own free will and without any pressure from someone else. (Tr. 139, 8 – Tr. 140, 10). The record is clear that Applicant was informed of his right to testify and knowingly waived this right with competent advice of counsel. He has therefore failed to establish deficiency or prejudice, this Court finds that the allegation is without merit, post-conviction relief is denied on these grounds, and the application is dismissed with prejudice.

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Conclusion

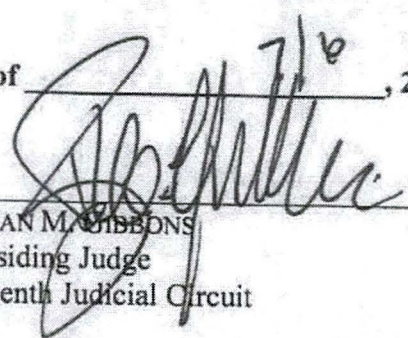
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

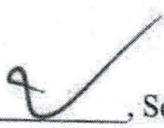
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application is denied and dismissed with prejudice; and
2. Applicant remain remained remanded to the custody of the South Carolina Department of Corrections

AND IT IS SO ORDERED this _____ day of 7/10, 2021.

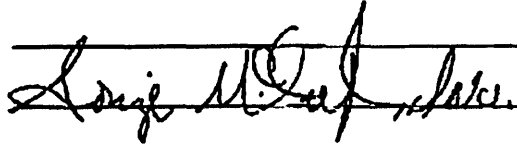

BRIAN M. GIBBONS
Presiding Judge
Seventh Judicial Circuit

, South Carolina.

FILED
2021 JUL 12 AM 9:31
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

WITNESSES

Spartanburg City Police Department



ARREST WARRANT NUMBER

2019A4210101234

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

12/15/2019

VERDICT

Guilty



Foreperson of Petit Jury

Date:

01/15/2020

DOCKET NO.

19-GS-42-2448

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAY 06 2019

TERM

THE STATE

v.

ROBERT TYRELL GENTRY

Indictment for

SEXUAL EXPLOITATION OF MINOR
THIRD DEGREE

SC Code: 16-15 0410

CDR Code: 0381

Class FEL/F

CLERK OF COURT
SPARTANBURG COUNTY

2019 MAY -8 PH 3:14

INDICTMENT

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

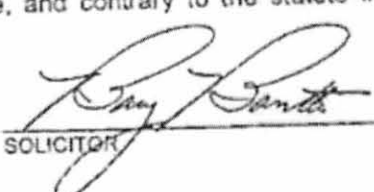
MAY 03 2019

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

SEXUAL EXPLOITATION OF MINOR, THIRD DEGREE

That the Defendant, Robert Tyrell Gentry, did in the City of Spartanburg located in Spartanburg County between the dates of February 4, 2018 and January 29, 2019, commit the offense of Third Degree Sexual Exploitation of a Minor, in that knowing the character or content of the material, he possessed material that contained a representation of a minor engaging in sexual activity: to wit: IMG_9492.mov in violation of Section §§16-15-410, CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR