

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Orangeburg County

Honorable Kristi Lea Harrington, Circuit Court Judge

LINDY LAMONT JONES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000975

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JUNE 8, 9, 10, 2009	1
INDICTMENT AND SENTENCE SHEET	374
FINAL BRIEF OF APPELLANT FILED MAY 7, 2010.....	377
FINAL BRIEF OF RESPONDENT FILED MAY 21, 2010.....	390
STATE V. JONES, 2011-UP-396 (S.C.CT.APP. FILED AUGUST 19, 2011).....	406
APPLICATION FOR POST-CONVICTION RELIEF (2011-CP-38-1240)	408
RETURN (2011-CP-38-1240).....	415
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED OCTOBER 31, 2012	421
ORDER OF DISMISSAL FILED DECEMBER 6, 2012.....	448
PRO SE RULE 59 (e) FILED DECEMBER 28, 2012	456
MOTION TO ALTER OR AMEND FILED JANUARY 11, 2013	458
RETURN TO MOTION TO ALTER OR AMEND DATED JANUARY 15, 2013.....	476
ORDER DENYING APPLICANT’S MOTION TO ALTER OR AMEND FILED FEBRUARY 11, 2013	481
NOTICE OF INTENT TO APPEAL DATED FEBRUARY 21, 2013	486
ORDER TRANSFERRING CASE TO THE COURT OF APPEALS (RULE 243)	488
ORDER FROM COURT OF APPEALS DISMISSING APPLICATION FOR POST- CONVICTION RELIEF AS UNTIMELY FILED MARCH 21, 2014	494
ORDER FROM SUPREME COURT DISMISSING PRO SE MOTION FOR REINSTATING THE APPEAL FILED MAY 13, 2014.....	496
APPLICATION FOR POST-CONVICTION RELIEF (2014-CP-38-682)	498
RETURN AND PARTIAL MOTION TO DISMISS (2014-CP-38-682)	505

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED DECEMBER 14, 2017	512
AMENDED CONSENT ORDER GRANTING RIGHT TO SEEK BELATED APPELLATE REVIEW PURSUANT TO <u>AUSTIN V. STATE</u>	520

ORIGINAL

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF ORANGEBURG

FIRST JUDICIAL CIRCUIT

CASE NO. 05-GS-38-1816
05-GS-38-1817

STATE OF SOUTH CAROLINA)

versus)

LINDY LAMONT JONES,)

DEFENDANT)

TRANSCRIPT OF RECORD

DATE:

JUNE 8, 9, 10, 2009

BEFORE:

HONORABLE JAMES C. WILLIAMS, JR., PRESIDING JUDGE

AND A JURY.

APPEARANCES:

BRYAN JEFFRIES, ESQUIRE
TOMMY SCOTT, ESQUIRE

ASSISTANT SOLICITORS

FOR THE STATE

MARY FORD, ESQUIRE
DOUG MELLARD, ESQUIRE

PUBLIC DEFENDERS

FOR THE DEFENDANT

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I N D E XEXAMINATION OF: DIRECT CROSS REDIRECT RECROSS

RE: JACKSON-DENNY HEARING

ANTHONY TYRONE THOMPSON
IN CAMERA

SOL. JEFFRIES 9

MS. FORD 25

LYNETTE NICOLE JONES
IN CAMERA

MS. FORD 31

SOL. JEFFRIES 36

SHARON ROBINSON
IN CAMERA

MS. FORD 39

LINDY LAMONT JONES
IN CAMERA

MS. FORD 43

SOL. JEFFRIES 50

PAGE

RE: JACKSON-DENNO HEARING

ARGUMENT BY MS. FORD 57

ARGUMENT BY SOL. JEFFRIES 59

RULING BY THE COURT 60

I N D E X (CONTINUED)

<u>EXAMINATION OF:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>

RE: TRIAL				

Minor				

SOL. SCOTT	139		169	

MS. FORD		154		172

DR. DEBORAH J.P. REYES				

SOL. JEFFRIES	175, 190			

MR. MELLARD		183		

DR. ELIZABETH L.H.B. GIBBS				

SOL. SCOTT	208		228	

MS. FORD		221		

HEATHER R. FALCO HOOK				

SOL. JEFFRIES	233			

PATRICIA EIKHOFF				

SOL. SCOTT	240			

MR. MELLARD		245		

BETTY WALKER BUTLER				

SOL. SCOTT	248			

MS. FORD		252		

I N D E X (CONTINUED)

<u>EXAMINATION OF:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>

CATHERINE LEISY

SOL. SCOTT	254		260	

MS. FORD		258		

ANTHONY TYRONE THOMPSON

SOL. JEFFRIES	263			

LINDY L. JONES
IN CAMERA

THE COURT	281			

I N D E X (CONTINUED)

	<u>PAGE</u>
OPENING STATEMENT BY SOLICITOR SCOTT	130
OPENING STATEMENT BY MS. FORD	135
CLOSING ARGUMENT BY SOLICITOR JEFFRIES	298
CLOSING ARGUMENT BY MS. FORD	323
CHARGE BY THE COURT	329
VERDICTS OF THE JURY	361
SENTENCE OF THE COURT	369

I N D E X (CONTINUED)E X H I B I T S

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
EXHIBITS FOR JACKSON-DENNO HEARING ONLY:			
ST. 1	ADVICE OF RIGHTS	7	18
ST. 2*	DEFENDANT'S ORIGINAL UNREDACTED STATEMENT DATED 8/16/05*	7	21
EXHIBITS FOR TRIAL:			
ST. 1	ADVICE OF RIGHTS	123	274
ST. 2	DEFENDANT'S STATEMENT (REDACTED) DATED 8/16/05	125	275
ST. 3	DIAGRAM		217
CT. 1	LIST OF MANDATORY REPORTERS FROM JURY POOL PURSUANT TO SECTION 63-7-310 OF THE CODE OF LAWS		121
CT. 2	UNREDACTED STATEMENT OF DEFENDANT *(ORIGINALLY PREMARKED AS STATE'S TWO BUT REMARKED AS COURT'S 2)		123
CT. 3	NOTE FROM JURY AND ANSWER IN WRITING BY THE COURT		349
CT. 4	NOTE FROM JURY at 2:10 p.m.		349
CT. 5	NOTE FROM JURY at 2:45 p.m.		355

NOTE: ALL COURT'S EXHIBITS ATTACHED TO THE ORIGINAL
OF THIS TRANSCRIPT.

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DATE:
JUNE 8, 2009
(The following takes place
in camera.)
(State's Exhibit One,
Advice of Rights,
State's Exhibit Two,
Defendant's Statement,
marked for identification.)

SOLICITOR JEFFRIES: I'VE PROVIDED
THE CAPTION TO THE COURT REPORTER. MAY I APPROACH,
YOUR HONOR?

THE COURT: YES, SIR.

SOLICITOR JEFFRIES: THIS IS THE
ORIGINAL STATEMENT.

THE COURT: AND THIS IS A JACKSON-
DENNO HEARING FOR LINDY LAMONT JONES?

SOLICITOR JEFFRIES: IT IS, YOUR
HONOR.

THE COURT: AND I'LL BE GLAD TO
HEAR YOU. CALL YOUR WITNESS.

SOLICITOR JEFFRIES: YOUR HONOR,
THE STATE WOULD CALL DEPUTY ANTHONY THOMPSON.

THE COURT: COME AROUND, PLEASE,
SIR. RIGHT OVER THERE, IF YOU WOULD PLACE YOUR LEFT

1 HAND ON THE BIBLE AND RAISE YOUR RIGHT.

2 (Whereupon, Anthony Tyrone Thompson
3 is duly sworn.)

4 THE COURT: ALRIGHT, SIR, HAVE A
5 SEAT AND STATE YOUR FULL NAME, PLEASE.

6 WITNESS: ANTHONY TYRONE THOMPSON.

7 (NOTE: Blank lines on this page do not indicate any
8 part of record has been omitted. Headers on testimony
9 pages and hard page breaks between testimony are now
10 required by the Court. See next ensuing page for
11 sequential continuation of record.)

DIRECT, IN CAMERA, ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

9

DIRECT EXAMINATION, IN CAMERA, OF ANTHONY TYRONE
THOMPSON BY SOLICITOR JEFFRIES:

Q. DEPUTY THOMPSON, WHERE ARE YOU CURRENTLY
EMPLOYED?

A. RICHLAND COUNTY SHERIFF'S DEPARTMENT.

Q. AND HOW LONG HAVE YOU BEEN WITH THE RICHLAND
COUNTY SHERIFF'S OFFICE?

A. TWO YEARS.

Q. AND WHERE DID YOU WORK IMMEDIATELY PRECEDING
THAT?

A. ORANGEBURG COUNTY SHERIFF'S OFFICE.

Q. AND WHAT POSITION DID YOU HOLD AT THE ORANGEBURG
COUNTY SHERIFF'S OFFICE?

THE COURT: EXCUSE ME ONE MINUTE.
ONE MINUTE.

SOLICITOR JEFFRIES: YOUR HONOR,
MAY I APPROACH?

THE COURT: YES, SIR.

(Whereupon, a bench conference
is had out of the hearing of
the court reporter.)

Q. I'M SORRY, WHEN DID YOU LAST WORK FOR THE
ORANGEBURG COUNTY SHERIFF'S DEPARTMENT?

A. COULD YOU REPEAT THAT?

Q. WHEN DID YOU LAST WORK FOR ORANGEBURG COUNTY

DIRECT. IN CAMERA. ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

10

1 SHERIFF'S DEPARTMENT?

2 A. MARCH OF O-SEVEN.

3 Q. AND IN MARCH OF C-SEVEN, WHAT WAS YOUR POSITION
4 AT THE ORANGEBURG COUNTY SHERIFF'S DEPARTMENT?

5 A. I WAS A SEX CRIMES INVESTIGATOR.

6 Q. OKAY. AND AS A SEX CRIMES INVESTIGATOR YOU
7 PRIMARILY INVESTIGATED SEXUAL ASSAULTS, IS THAT
8 CORRECT?

9 A. YES, SIR.

10 Q. AND BACK IN AUGUST OF TWO THOUSAND AND FIVE,
11 WOULD YOU HAVE BEEN A SEX ASSAULT INVESTIGATOR AT
12 THAT TIME?

13 A. YES, I WAS.

14 Q. AND WERE YOU INVOLVED BACK IN AUGUST OF TWO
15 THOUSAND FIVE IN THE INVESTIGATION OF AN ALLEGED
16 SEXUAL ASSAULT INVOLVING Minor [REDACTED] ?

17 A. I WAS.

18 Q. AND HOW DID YOU FIRST BECOME INVOLVED IN THAT
19 INVESTIGATION?

20 A. I WAS NOTIFIED BY THE ON CALL SUPERVISOR THAT
21 NIGHT, COOPER ETHRIDGE.

22 Q. AND DID YOU REPORT OR RESPOND OUT THAT NIGHT?

23 A. NO, I DIDN'T.

24 Q. WHEN DID YOU FIRST ACTUALLY HAVE AN OPPORTUNITY
25 TO WORK THE CASE, SO TO SPEAK?

DIRECT, IN CAMERA, ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

11

1 A. THE VERY NEXT DAY, ON AUGUST SIXTEENTH.

2 Q. AND ARE YOU AWARE OF WHEN THE INCIDENT WAS
3 SUSPECTED TO HAVE HAPPENED?

4 A. IT HAPPENED ON AUGUST FIFTEENTH.

5 Q. AND WHERE DID IT HAPPEN?

6 A. [REDACTED] LAQUINTA DRIVE, HERE IN ORANGEBURG
7 COUNTY.

8 Q. OKAY. AND WHO WAS THE SUSPECT INVOLVED, ACCUSED
9 WITH THE ASSAULT?

10 A. LINDY LAMONT JONES.

11 Q. AND DID YOU AT SOME POINT SPEAK WITH MR. LINDY
12 JONES ABOUT THIS INCIDENT?

13 A. YES, I DID.

14 Q. AND WHEN WAS THAT?

15 A. I SPOKE WITH HIM ON THE MORNING OF AUGUST
16 SIXTEENTH AS WELL.

17 Q. OKAY. AND WHERE WOULD THAT HAVE BEEN?

18 A. THAT WAS AT THE ORANGEBURG COUNTY LAW COMPLEX.

19 Q. AND PRIOR TO SPEAKING -- DID YOU SPEAK TO HIM ON
20 THE PHONE OR FACE TO FACE?

21 A. I DID. INITIALLY I SPOKE WITH HIM ON THE PHONE
22 AND SCHEDULED A TEN O'CLOCK APPOINTMENT.

23 Q. OKAY. WHEN DID YOU ACTUALLY SCHEDULE THAT
24 APPOINTMENT, ON THE SEVENTEEN OR -- I'M SORRY, ON
25 THE SIXTEENTH?

DIRECT, IN CAMERA, ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

12

1 A. ON THE SIXTEENTH, YES.

2 Q. SO, YOU SPOKE TO HIM ON THE PHONE AND IN PERSON
3 ON THE SAME DAY?

4 A. ON THE SAME DAY, YES, SIR.

5 Q. OKAY. AND WHERE DID Y'ALL MEET IN PERSON?

6 A. WE MET AT THE ORANGEBURG COUNTY LAW COMPLEX.

7 Q. AND WHEN YOU MET WITH HIM DID HE ALREADY KNOW AT
8 THIS POINT WHAT YOU WERE SPEAKING TO HIM ABOUT?

9 A. YES, SIR.

10 Q. WAS HE ALREADY TOLD OF THE ACCUSATION?

11 A. YES, SIR.

12 Q. AND WHAT TIME DID YOU MEET WITH HIM IN PERSON FOR
13 THIS INTERVIEW?

14 A. I MET WITH HIM AT APPROXIMATELY NINE O'CLOCK THAT
15 MORNING.

16 Q. AROUND NINE O'CLOCK?

17 A. YES, SIR.

18 Q. NOW, WAS HE UNDER ARREST AT THIS TIME?

19 A. NO, HE WASN'T.

20 Q. OKAY. SO, THIS WAS PART OF YOUR CONTINUING
21 INVESTIGATION?

22 A. YES, IT WAS.

23 Q. AND WHEN HE CAME TO THE ORANGEBURG COUNTY LAW
24 COMPLEX FOR YOU TO INTERVIEW WHO ALL WAS THERE
25 FOR THE INTERVIEW?

DIRECT, IN CAMERA, ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

13

1 A. HE WAS ACCOMPANIED BY MS., HIS GIRLFRIEND, I
2 THINK HER NAME IS SHARON ROBINSON.

3 Q. AND WHEN YOU ACTUALLY INTERVIEWED HIM WHO WAS
4 PRESENT?

5 A. IT WAS JUST THE TWO OF US.

6 Q. JUST YOU AND MR. JONES?

7 A. YES, SIR.

8 Q. NOW, YOU SAID HE WASN'T UNDER ARREST, BUT WHAT,
9 IF ANYTHING, DID YOU DO REGARDING HIS
10 CONSTITUTIONAL RIGHTS BEFORE YOU SPOKE TO HIM?

11 A. I ADVISED HIM OF HIS MIRANDA RIGHTS.

12 Q. AND THIS WAS EVEN THOUGH HE WAS NOT UNDER ARREST?

13 A. YES, SIR.

14 Q. WHEN DID YOU ADVISE HIM OF THOSE RIGHTS?

15 A. AFTER WE WENT THROUGH THE INITIAL, GETTING OUR
16 BASIC INFORMATION, I ADVISED HIM OF HIS RIGHTS
17 SHORTLY THEREAFTER.

18 Q. AND BY BASIC INFORMATION YOU MEAN HIS KIND OF
19 DEMOGRAPHIC INFORMATION, NAME, BIRTHDAY, AND
20 THOSE TYPE OF THINGS?

21 A. NAME, EXACTLY, YES, SIR.

22 Q. AND IF YOU WOULD, TELL THE COURT, TELL THE JUDGE
23 WHAT MIRANDA RIGHTS YOU GAVE MR. LINDY JONES BACK
24 ON AUGUST SIXTEENTH, TWO THOUSAND FIVE?

25 A. OKAY. I ADVISED HIM OF THE FULL MIRANDA RIGHTS.

DIRECT, IN CAMERA, ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

14

1 DO YOU HAVE A COPY OF THAT?

2 SOLICITOR JEFFRIES: MAY I APPROACH
3 THE WITNESS?

4 THE COURT: YES, SIR.

5 MS. FORD: OBJECTION, YOUR HONOR,
6 HE SHOULD KNOW THE MIRANDA THAT HE GAVE MR. JONES.

7 A. WELL, I ADVISE HIM OF, HE HAD THE RIGHT TO REMAIN
8 SILENT, HE HAD THE RIGHT TO HAVE AN ATTORNEY
9 PRESENT DURING QUESTIONING IF HE WISHED TO HAVE
10 ONE PRESENT. IF HE COULD NOT AFFORD A LAWYER HE
11 HAD, WE WOULD HAVE THE OPPORTUNITY OF APPOINTING
12 HIM A LAWYER IF HE COULD NOT AFFORD ONE. AND HE
13 HAD THE OPPORTUNITY TO STOP ANSWERING ANY
14 QUESTION AT ANYTIME UNTIL HE HAD A LAWYER
15 PRESENT.

16 Q. OKAY. AND IS THAT WHAT YOU ADVISED MR. JONES OF
17 ON AUGUST SIXTEENTH, TWO THOUSAND FIVE?

18 A. YES, SIR.

19 Q. NOW, WHAT DID YOU TELL HIM YOU WANTED TO TALK TO
20 HIM ABOUT?

21 A. ABOUT THE ALLEGATIONS INVOLVING [REDACTED]
22 [REDACTED] Minor, SEXUAL ASSAULT ALLEGATIONS.

23 Q. AND WHAT, IF ANY, DETAILS DID YOU GIVE HIM AS TO
24 WHAT SHE HAD SAID HE DID?

25 A. I DIDN'T GIVE HIM ANY DETAILS.

DIRECT, IN CAMERA, ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

15

1 Q. OKAY. AND AFTER YOU ADVISED HIM OF THOSE RIGHTS
2 ORALLY DID YOU HAVE HIM, DID HE AGREE TO WAIVE
3 THOSE RIGHTS AND AGREE TO TALK TO YOU?

4 A. YES, HE DID.

5 Q. AND THIS ALL TOOK PLACE AT THE LAW COMPLEX THAT
6 MORNING?

7 A. YES, IT DID.

8 Q. NOW, IN YOUR EXPERIENCE AS A LAW ENFORCEMENT
9 OFFICER AND AS AN INVESTIGATOR HAVE YOU HAD THE
10 OPPORTUNITY IN THE PAST TO SPEAK TO INDIVIDUALS
11 WHO ARE UNDER THE INFLUENCE OF DRUGS OR ALCOHOL?

12 A. YES, I HAVE.

13 Q. AND DID MR. JONES APPEAR TO BE UNDER THE
14 INFLUENCE OF ANY DRUGS OR ALCOHOL?

15 A. NO, HE DIDN'T.

16 Q. DID HE APPEAR COHERENT?

17 A. YES, HE DID.

18 Q. DID HE APPEAR TO UNDERSTAND THE QUESTIONS YOU
19 WERE ASKING HIM?

20 A. YES, SIR.

21 Q. AND COULD YOU UNDERSTAND HIS RESPONSES?

22 A. YES.

23 Q. HE WAS CLEAR?

24 A. YES, SIR.

25 Q. DID YOU THREATEN MR. JONES OR COERCE HIM IN ORDER

DIRECT, IN CAMERA, ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

16

1 TO GET HIM TO FIRST WAIVE HIS RIGHTS AND TALK TO
2 YOU?

3 A. NO.

4 Q. DID YOU COERCE HIM OR THREATEN HIM IN ORDER FOR
5 HIM TO GIVE YOU THAT WRITTEN STATEMENT?

6 A. NO, SIR.

7 Q. DID YOU DEPRIVE HIM OF ANY CREATURE COMFORTS SUCH
8 AS FOOD OR WATER?

9 A. NO, I DIDN'T.

10 Q. WOULD HE HAVE HAD THE OPPORTUNITY OR BEEN ALLOWED
11 TO GO TO THE RESTROOM OR GIVEN WATER IF HE HAD
12 ASKED FOR IT?

13 A. YES, SIR.

14 Q. DID YOU PROMISE HIM ANYTHING - - -

15 A. NO.

16 Q. --- THAT YOU WOULD WORK SOMETHING OUT FOR HIM IN
17 ORDER TO GET HIS STATEMENT?

18 A. NO, I DIDN'T.

19 Q. DID HE TELL YOU HE WANTED TO GIVE YOU HIS ACCOUNT
20 OF WHAT HAPPENED?

21 A. YES, SIR.

22 Q. DID HE EVER DURING THE COURSE OF YOUR MEETING
23 WITH HIM STOP AND INDICATE TO YOU THAT HE DIDN'T
24 WANT TO SPEAK ANYMORE, OR THAT HE WANTED AN
25 ATTORNEY?

DIRECT, IN CAMERA, ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

17

1 A. NO, HE DIDN'T.

2 Q. NOW, YOU SAID ONE OF THE RIGHTS YOU ADVISE HIM OF
3 WAS AN ATTORNEY. AT ANY POINT DID HE ASK FOR AN
4 ATTORNEY?

5 A. NO, HE DIDN'T.

6 Q. IF HE HAD ASKED FOR AN ATTORNEY WHAT WOULD HAVE
7 HAPPENED?

8 A. THE INTERVIEW WOULD HAVE BEEN OVER.

9 Q. AND DID HE ULTIMATELY GIVE YOU A STATEMENT AS TO
10 WHAT HAPPENED INVOLVING Minor [REDACTED]?

11 A. YES, HE DID.

12 Q. AN ACCUSATION OF SEXUAL ASSAULT?

13 A. YES, HE DID.

14 Q. AND DID HE REDUCE THAT STATEMENT TO WRITING?

15 A. YES, HE DID.

16 Q. NOW, YOU INDICATED YOU FIRST GAVE HIM HIS MIRANDA
17 RIGHTS AND YOU TOLD THE COURT WHAT THOSE RIGHTS
18 WERE THAT YOU GAVE HIM. DID YOU MEMORIALIZE THAT
19 WRITING ANYWHERE?

20 A. YES, I DID. IT WAS STANDARDIZED FORM THAT I USED
21 WHEN I WAS AN INVESTIGATOR AT ORANGEBURG COUNTY.

22 Q. LET ME SHOW YOU WHAT'S BEEN LABELED AS STATE'S
23 EXHIBIT NUMBER ONE AND ASK YOU IF YOU RECOGNIZE
24 WHAT I'M SHOWING YOU?

25 A. YES, I DO.

DIRECT, IN CAMERA, ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

18

1 Q. WHAT DO YOU RECOGNIZE THAT AS?

2 A. I RECOGNIZE THIS AS THE MIRANDA RIGHTS FORM THAT
3 WE USED AT THE SHERIFF'S DEPARTMENT HERE IN
4 ORANGEBURG?

5 Q. AND SPECIFICALLY, WHOSE MIRANDA RIGHTS ARE THOSE
6 AND FROM WHAT TIME FRAME?

7 A. THESE ARE MR. LINDY JONES'S MIRANDA RIGHTS WHICH
8 WERE GIVEN TO HIM ON AUGUST SIXTEENTH AT
9 NINE:ZERO NINE A.M.

10 SOLICITOR JEFFRIES: YOUR HONOR,
11 AT THIS TIME I WOULD MOVE STATE'S EXHIBIT NUMBER ONE,
12 I'D ASK TO MOVE IT INTO EVIDENCE FOR THE PURPOSES OF
13 THIS HEARING.

14 THE COURT: ANY OBJECTION?

15 MS. FORD: NO OBJECTION.

16 THE COURT: ALRIGHT, IT'S

17 ADMITTED.

18 (State's Exhibit One
19 marked and filed.)

20 Q. NOW, DEPUTY THOMPSON, IS THAT CORRECT NOW, YOU'RE
21 A DEPUTY WITH THE RICHLAND COUNTY SHERIFF'S
22 OFFICE?

23 A. YES, SIR, YES, SIR.

24 Q. OKAY. LET ME FIRST POINT YOUR ATTENTION TO THE
25 TOP OF THE ADVICE OF RIGHTS FORM WHERE IT SAYS,

DIRECT, IN CAMERA, ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

19

1 PLACE, WHERE DOES IT INDICATE THIS INTERVIEW TOOK
2 PLACE?

3 A. THE LAW COMPLEX.

4 Q. AND WHAT DATE DOES IT INDICATE?

5 A. AUGUST SIXTEENTH, TWO THOUSAND FIVE.

6 Q. AND WHAT TIME?

7 A. NINE:ZERO NINE.

8 Q. AND THEN BELOW THAT I BELIEVE IT INDICATES THE
9 MIRANDA RIGHTS - - -

10 A. YES, IT DOES.

11 Q. --- THAT YOU WOULD HAVE GIVEN HIM?

12 A. YES, SIR.

13 Q. AND WHO, IF ANYONE, INITIALED NEXT TO THOSE
14 MIRANDA RIGHTS?

15 A. MR. LINDY JONES INITIALED BESIDE ALL FIVE.

16 Q. AND BELOW IT SAYS, "I UNDERSTAND MY RIGHTS,"
17 WHOSE SIGNATURE IS THAT?

18 A. MR. LINDY JONES.

19 Q. AND I BELIEVE BELOW THAT YOU HAVE A WAIVER OF
20 RIGHTS?

21 A. YES, IT IS.

22 Q. WHO, IF ANYONE, INITIALED THAT PORTION?

23 A. MR. LINDY JONES INITIALED BEFORE AND AFTER.

24 Q. AND WHOSE SIGNATURE ON THE BOTTOM?

25 A. MR. LINDY JONES.

DIRECT, IN CAMERA, ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

20

1 Q. AND NOW, AS TO MR. JONES'S WRITTEN STATEMENT,
2 WHAT TIME DID HE PROVIDE THAT?

3 A. APPROXIMATELY NINE:ZERO NINE -- EXCUSE ME,
4 NINE:SIXTEEN OR SOMEWHERE AROUND THERE.

5 COURT REPORTER: I'M SORRY,
6 NINE:SIXTEEN WHAT?

7 A. I THINK ABOUT NINE:SIXTEEN THAT MORNING, I'M NOT
8 SURE OF THE EXACT TIME.

9 Q. AND THAT WOULD HAVE BEEN A COUPLE OF MINUTES
10 AFTER YOU GAVE HIM HIS ADVICE OF HIS
11 CONSTITUTIONAL MIRANDA RIGHTS?

12 A. YES, SIR.

13 Q. WHO PHYSICALLY WROTE THE STATEMENT HE GAVE?

14 A. MR. LINDY JONES WROTE THE STATEMENT.

15 Q. AND HE WAS ABLE TO WRITE THE STATEMENT ENTIRELY
16 ON HIS OWN?

17 A. YES, SIR.

18 Q. DID HE PROVIDE THAT STATEMENT ENTIRELY WHILE HE
19 WAS IN YOUR PRESENCE?

20 A. YES, HE DID.

21 Q. AND DID YOU THREATEN OR COERCE HIM INTO GIVING
22 YOU THAT STATEMENT?

23 A. NO, I DIDN'T.

24 Q. DID YOU PROMISE HIM ANYTHING TO GET THAT
25 STATEMENT?

DIRECT, IN CAMERA, ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

21

1 A. NO, I DIDN'T.

2 Q. AND TO YOUR KNOWLEDGE WAS THAT STATEMENT THAT HE
3 WROTE GIVEN FREELY AND VOLUNTARILY?

4 A. YES, SIR.

5 Q. LET ME SHOW YOU STATE'S EXHIBIT NUMBER TWO
6 LABELED FOR IDENTIFICATION AND ASK IF YOU
7 RECOGNIZE IT?

8 A. YES, SIR, I DO.

9 Q. AND WHAT DO YOU RECOGNIZE THAT AS?

10 A. I RECOGNIZE THIS AS THE STATEMENT THAT MR. LINDY
11 JONES GAVE THAT MORNING.

12 Q. AND DOES IT FAIRLY AND ACCURATELY DEPICT, IS THAT
13 THE SAME DOCUMENT THAT HE WOULD HAVE USED ON THAT
14 DAY?

15 A. YES, SIR.

16 SOLICITOR JEFFRIES: AT THIS TIME
17 I'D MOVE TO ADMIT STATE'S EXHIBIT NUMBER TWO INTO
18 EVIDENCE FOR PURPOSES OF THIS HEARING.

19 THE COURT: ANY OBJECTION?

20 MS. FORD: NO, YOUR HONOR.

21 THE COURT: ADMITTED WITHOUT
22 OBJECTION.

23 COURT REPORTER: STATE'S TWO.

24 (State's Exhibit Two
25 marked and filed.)

DIRECT, IN CAMERA, ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

22

- 1 Q. NOW, DOES THE STATEMENT ITSELF INDICATE WHAT DAY
2 IT'S GIVEN?
3 A. YES, IT DOES.
4 Q. AND WHAT DATE IS THAT?
5 A. AUGUST SIXTEENTH, TWO THOUSAND FIVE.
6 Q. AND YOU INDICATED IT WAS AT NINE:SIXTEEN?
7 A. YES, IT WAS.
8 Q. AND THE PLACE WAS THE LAW COMPLEX?
9 A. YES, IT WAS.
10 Q. DOES IT INDICATE THE INDIVIDUAL WHO WAS GIVING
11 THE STATEMENT'S NAME?
12 A. YES, IT DOES, LINDY LAMONT JONES.
13 Q. OKAY. NOW, LET ME ASK YOU, DOES IT ALSO LIST HIS
14 DATE OF BIRTH AND AGE?
15 A. IT DOES.
16 Q. PHONE NUMBER AND ADDRESS?
17 A. IT DOES.
18 Q. AND AGAIN, IS THERE A PORTION WHERE HE INITIALS
19 THAT HE UNDERSTANDS HIS CONSTITUTIONAL RIGHTS?
20 A. YES, THERE IS.
21 Q. AND I BELIEVE IN THE MIDDLE PORTION OF THE
22 DOCUMENT IT INDICATES WHO, IF ANYONE, ADVISED HIM
23 OF THESE RIGHTS, WHO DOES THAT INDICATE?
24 A. IT INDICATES, INVESTIGATOR A. T. THOMPSON.
25 Q. AND THAT WOULD HAVE BEEN YOU?

DIRECT, IN CAMERA, ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

23

1 A. YES, SIR.

2 Q. HOW MANY PAGES IS THE WRITTEN STATEMENT?

3 A. THREE PAGES.

4 Q. AND WHAT TYPE OF FORMAT IS IT WRITTEN IN, IS IT
5 QUESTION AND ANSWER OR TOTALLY NARRATIVE?

6 A. IT'S TOTALLY NARRATIVE.

7 SOLICITOR JEFFRIES: YOUR HONOR,
8 AT THIS TIME I'D ASK TO PUBLISH THE STATEMENT.

9 THE COURT: WHY?

10 SOLICITOR JEFFRIES: WELL, NO, I'VE
11 ACTUALLY GIVEN YOU A COPY SO WE DON'T NEED TO PUBLISH
12 IT, YOUR HONOR.

13 Q. AT THE END OF THE STATEMENT DOES IT INDICATE
14 ANYTHING FURTHER ALONG THE LINES OF HIS, THE
15 VOLUNTARY NATURE OF IT?

16 A. YES, IT DOES. THERE IS A SECTION RIGHT AFTER THE
17 NARRATIVE PART INDICATING, FREE AND VOLUNTARY
18 STATUS.

19 Q. AND DOES IT INDICATE WHO, IF ANYONE, WITNESSED
20 THE STATEMENT?

21 A. IT DOES.

22 Q. AND WHO WOULD THAT HAVE BEEN?

23 A. IT WAS ME.

24 Q. NOW, DURING THE PROCESS OF HIM ACTUALLY WRITING
25 THIS STATEMENT AND PROVIDING IT TO YOU DID HE

DIRECT, IN CAMERA, ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

24

1 EVER STOP WHILE WRITING, OR WHILE HE WAS IN YOUR
2 PRESENCE AND INDICATE HE WANTED AN ATTORNEY?

3 A. . NO, HE DIDN'T.

4 Q. DID HE EVER STOP AND SAY HE NO LONGER WANTED TO
5 COMPLETE THIS STATEMENT?

6 A. NO, HE DIDN'T.

7 Q. DID HE EVER TRY TO STOP THE INTERVIEW AT ANY
8 POINT?

9 A. NO, HE DIDN'T.

10 Q. DID YOU OR ANYONE ELSE IN YOUR PRESENCE, AND YOU
11 INDICATED IT WAS JUST THE TWO OF YOU IN THE ROOM?

12 A. YES, SIR.

13 Q. DID ANYONE, BEFORE HE ENTERED THE ROOM OR AFTER,
14 DID ANYONE ATTEMPT TO INTIMIDATE HIM OR COERCE
15 HIM?

16 A. NO, SIR.

17 Q. AND TO YOUR KNOWLEDGE WAS THE STATEMENT HE GAVE
18 FREELY AND VOLUNTARILY GIVEN?

19 A. YES, SIR.

20 SOLICITOR JEFFRIES: I'D ASK THAT
21 YOU ANSWER ANY QUESTIONS THE DEFENSE MIGHT HAVE.

22 THE COURT: CROSS-EXAMINE.

23 (NOTE: Blank lines on this page do not indicate any
24 part of record has been omitted.)

CROSS, IN CAMERA - ANTHONY TYRONE THOMPSON
BY MS. FORD

25

CROSS-EXAMINATION, IN CAMERA, OF ANTHONY TYRONE

THOMPSON BY MS. FORD:

Q. IS IT DETECTIVE OR DEPUTY THOMPSON?

A. DEPUTY THOMPSON.

Q. DEPUTY THOMPSON. OKAY. SO, YOU MET WITH MR.
JONES ON AUGUST SIXTEENTH AT ABOUT NINE A.M.?

A. YES, MA'AM.

Q. BUT YOU HAD A TEN O'CLOCK APPOINTMENT?

A. YES, MA'AM.

Q. SO, HE WAS JUST EARLY OR - - -

A. HE WAS EARLY, YES, MA'AM.

Q. AND YOU MET WITH HIM AT THE COMPLEX?

A. YES, MA'AM.

Q. AND YOU SAID THAT HIS GIRLFRIEND, SHARON, WAS
WITH HIM?

A. YES, MA'AM.

Q. WAS ANYONE ELSE WITH HIM?

A. NOT THAT I CAN REMEMBER.

Q. OKAY. WAS HIS SISTER, LYNETTE JONES, WITH HIM?

A. POSSIBLY. AGAIN, I DON'T REMEMBER.

Q. OKAY. SO, YOU NEVER SPOKE WITH HIS SISTER,
LYNETTE JONES, TO THE BEST OF YOUR KNOWLEDGE?

A. WELL, I HAVE SPOKEN WITH HIS SISTER, BUT I DON'T
REMEMBER IF IT WAS ON THAT MORNING.

Q. ON THAT MORNING. OKAY. HOW MANY SHEET'S DID YOU

CROSS. IN CAMERA - ANTHONY TYRONE THOMPSON
BY MS. FORD

26

1 GIVE MR. JONES TO SIGN THAT DAY, HOW MANY
2 DIFFERENT SHEETS OF PAPER?

3 A. I KNOW I GAVE HIM THE MIRANDA FORM, AND THE
4 STATEMENT FORM IS THE TWO THAT I REMEMBER.

5 Q. OKAY. SO, WHICH ONE DID YOU GIVE TO HIM FIRST?

6 A. WE WENT THROUGH THE MIRANDA RIGHTS, WELL, MY
7 STANDARD PRACTICE WAS TO READ THE STATEMENT, THE
8 ACTUAL MIRANDA RIGHTS MYSELF. THEN I WOULD HAVE
9 THE SUSPECT OR DEFENDANT READ HIS OR HERSELF OUT
10 LOUD. I WOULD HAVE THAT PERSON INITIAL BY EACH
11 ONE, THEN I WOULD ALLOW THAT PERSON TO SIGN THE
12 TOP PART. I WOULD READ THE WAIVER OF RIGHTS
13 PART, THE BOTTOM PORTION MYSELF, HAVE HIM READ IT
14 OUT LOUD. HE INITIALED BEFORE THE FIRST WORD AND
15 AFTER THE LAST WORD AND SIGNS AFTER HE
16 ACKNOWLEDGES THAT HE UNDERSTANDS AND HE IS
17 WAIVING HIS RIGHTS.

18 Q. OKAY. SO, THIS IS THE FIRST SHEET THAT YOU GAVE
19 HIM?

20 A. YES, MA'AM.

21 Q. AND IT HAS FIVE SMALL LINES ON IT, RIGHT?

22 A. YES, MA'AM.

23 Q. AND THAT WOULD BE FOR INITIALS?

24 A. EXACTLY.

25 Q. AND THEN HE HAS SEVERAL, IT LOOKS LIKE TWO

CROSS, IN CAMERA - ANTHONY TYRONE THOMPSON
BY MS. FORD

27

1 SIGNATURE SPOTS WHICH WOULD BE FOR MR. JONES,
2 RIGHT?

3 A. YES, MA'AM.

4 Q. OKAY. WHAT WAS THE NEXT THING THAT YOU GAVE HIM
5 TO SIGN?

6 A. WE DIDN'T SIGN ANYTHING AT THAT POINT. THAT'S
7 WHEN WE WENT INTO THE ACTUAL STATEMENT.

8 Q. OKAY. ALRIGHT. WHERE DID THIS ALL TAKE PLACE,
9 WAS IT IN A ROOM?

10 A. IT WAS IN AN OFFICE, YES, MA'AM.

11 Q. OKAY. THROUGHOUT THIS ENTIRE QUESTIONING DID YOU
12 EVER CHANGE ROOMS?

13 A. NO, MA'AM.

14 Q. YOU NEVER CHANGED ROOMS. OKAY. SO, THE NEXT
15 THING THAT YOU WENT TO PAPER-WISE, YOU TALKED
16 TO HIM FOR A LITTLE BIT AND THEN YOU WENT TO, YOU
17 GAVE HIM THAT AFFIDAVIT, CORRECT?

18 A. YES, MA'AM.

19 Q. WHICH IS, I BELIEVE, STATE'S EXHIBIT TWO.

20 MS. FORD: CAN I HOLD THAT FOR
21 JUST ONE SECOND? THANK YOU, SIR.

22 SOLICITOR JEFFRIES: YOU'RE
23 WELCOME.

24 Q. OKAY. SO, IT SAYS, ORANGEBURG COUNTY SHERIFF'S
25 OFFICE CENTRAL INVESTIGATIVE DIVISION DEFENDANT

CROSS, IN CAMERA - ANTHONY TYRONE THOMPSON
BY MS. FORD

28

1 AFFIDAVIT, CORRECT?

2 A. YES, MA'AM.

3 Q. OKAY. AND AT THE TOP IT'S GOT THE DATE, THE
4 TIME, PLACE, DEFENDANT NAME, AGE, DATE OF BIRTH,
5 PHONE AND ADDRESS, RIGHT?

6 A. YES, MA'AM.

7 Q. WHO FILLED IN THAT TOP PART, WAS IT MR. JONES?

8 A. MR. JONES, YES, MA'AM.

9 Q. ALRIGHT. AND THEN IT'S GOT OTHER LINES HERE,
10 CORRECT, FOR THE INITIALS?

11 A. YES, MA'AM.

12 Q. OKAY. AND IT'S GOT, "THESE RIGHTS ABOVE," AND
13 INITIALED HERE, "I'VE BEEN ADVISED OF THE RIGHTS
14 BY INVESTIGATOR THOMPSON OF THE ORANGEBURG COUNTY
15 SHERIFF'S OFFICE AND WISH TO MAKE A STATEMENT."
16 WHO FILLED IN THIS PART RIGHT HERE?

17 A. I FILLED IN THAT PART.

18 Q. SO, YOU FILLED IN THAT, THAT YOU GAVE HIM HIS
19 RIGHTS?

20 A. YES, MA'AM.

21 Q. AND YOU TESTIFIED THAT YOU GAVE THOSE TO HIM
22 ORALLY, CORRECT?

23 A. ORALLY AND IN WRITING.

24 Q. OKAY. DID YOU ALSO GIVE HIS RIGHTS TO HIM ORALLY
25 FIRST?

CROSS, IN CAMERA - ANTHONY TYRONE THOMPSON
BY MS. FORD

29

1 A. I DID.

2 Q. OTHER THAN THESE TWO DOCUMENTS HERE, STATE'S
3 EXHIBIT ONE AND STATE'S EXHIBIT TWO, ANYTHING
4 ELSE YOU HAD HIM SIGN?

5 A. NO, MA'AM, NOTHING.

6 Q. NOTHING ELSE.

7 MS. FORD: I DON'T HAVE ANY OTHER
8 QUESTIONS RIGHT NOW. THANK YOU.

9 THE COURT: REDIRECT?

10 SOLICITOR JEFFRIES: NO, YOUR
11 HONOR.

12 THE COURT: THANK YOU, SIR, YOU
13 MAY STEP DOWN.

14 DO YOU HAVE ANOTHER WITNESS?

15 SOLICITOR JEFFRIES: NO, YOUR
16 HONOR.

17 THE COURT: ALRIGHT. ANY
18 TESTIMONY OR EVIDENCE FROM THE DEFENSE?

19 MS. FORD: YES, YOUR HONOR.

20 THE COURT: ALRIGHT.

21 MS. FORD: THE FIRST WITNESS,
22 LYNETTE JONES.

23 THE COURT: COME AROUND, MS. JONES.
24 PUT YOUR LEFT HAND ON THE BIBLE, PLEASE, AND RAISE
25 YOUR RIGHT.

1 (Whereupon, Lynette Nicole Jones
2 is duly sworn.)

3 THE COURT: THANK YOU, MA'AM, HAVE
4 A SEAT AND STATE YOUR FULL NAME, PLEASE.

5 WITNESS: IT'S LYNETTE NICOLE
6 JONES.

7 (NOTE: Blank lines on this page do not indicate any
8 part of record has been omitted. Headers on testimony
9 pages and hard page breaks between testimony are now
10 required by the Court. See next ensuing page for
11 sequential continuation of record.)

DIRECT, IN CAMERA - LYNETTE NICOLE JONES
BY MS. FORD

31

DIRECT EXAMINATION, IN CAMERA, OF LYNETTE NICOLE

JONES BY MS. FORD:

Q. THANK YOU, MS. JONES. WHAT WERE YOU DOING ON THE
MORNING OF AUGUST SIXTEENTH, TWO THOUSAND AND
FIVE?

A. AT WHAT TIME?

Q. THAT MORNING, ABOUT NINE A.M.?

A. NINE A.M., WE WAS AT THE SHERIFF'S OFFICE.

Q. OKAY. WHO DID YOU GO TO THE COMPLEX WITH?

A. SHARON AND LINDY.

Q. OKAY.

A. SHARON ROBINSON, LINDY JONES AND MYSELF.

Q. OKAY. AND YOU ARE RELATED TO THEM HOW, HOW DID
YOU COME TO TAKE THEM?

A. LINDY JONES IS MY BROTHER AND SHARON ROBINSON IS
HIS GIRLFRIEND.

Q. OKAY. DID YOU GO INSIDE TO THE COMPLEX?

A. YES.

Q. OKAY. DID YOU KNOW ANYONE AT THE COMPLEX WHEN
YOU GOT THERE?

A. YES.

Q. OKAY. WHO DID YOU KNOW?

A. OFFICER THOMPSON.

Q. OKAY. DID YOU TALK TO OFFICER THOMPSON?

A. YES.

DIRECT, IN CAMERA - LYNETTE NICOLE JONES
BY MS. FORD

32

1 Q. OKAY. WHERE DID YOU TALK TO HIM?

2 A. WHEN YOU ENTER THE SHERIFF'S DEPARTMENT IT'S A
3 DOOR, WHEN YOU WALK IN IT'S A DOOR AND AN OFFICE.

4 Q. OKAY. ALRIGHT. WHO ALL WAS IN THIS AREA THAT
5 YOU WERE TALKING TO HIM?

6 A. LINDY, SHARON AND MYSELF.

7 Q. OKAY.

8 A. AND MR. THOMPSON.

9 Q. OKAY. HOW LONG DID YOU TALK TO HIM IN THIS
10 LITTLE AREA, IN THIS ROOM?

11 A. IT WAS BRIEFLY, IT WAS ABOUT FIVE OR TEN MINUTES.

12 Q. FIVE OR TEN MINUTES, OKAY. DURING THIS TIME WAS
13 ANYTHING HANDED TO MR. JONES?

14 A. LINDY, YES.

15 Q. OKAY. WHAT, WHAT DID YOU SEE, WHAT KIND OF PAPER
16 WAS IT?

17 A. IT WAS JUST A PIECE OF PAPER THAT HAD SOME LINES
18 ON IT AND SOME SIGNATURES.

19 Q. OKAY.

20 A. AND HE WAS ASKED TO FILL IT OUT.

21 Q. OKAY. THIS IS MARKED STATE'S EXHIBIT ONE, DOES
22 THIS LOOK LIKE THE SHEET OF PAPER - - -

23 MS. FORD: MAY I APPROACH?

24 THE COURT: YES.

25 A. YES.

DIRECT, IN CAMERA - LYNETTE NICOLE JONES
BY MS. FORD

33

1 Q. OKAY. THIS SAYS THAT THIS IS THE CRIMINAL
2 INVESTIGATIVE DIVISION. IT HAS RIGHTS. THAT'S
3 EXACTLY WHAT YOU SAW?

4 A. YES.

5 Q. OKAY. ALRIGHT. WHAT, IF ANYTHING, WAS SAID
6 ABOUT THIS PIECE OF PAPER?

7 A. NOTHING WAS SAID IN MY PRESENCE.

8 Q. NOTHING WAS SAID IN YOUR PRESENCE?

9 A. NO.

10 Q. OKAY. WHO, WHO HANDED WHO THIS PIECE OF PAPER?

11 A. OFFICER THOMPSON.

12 Q. HANDED IT TO MR. JONES?

13 A. YES.

14 Q. OKAY.

15 A. AND HE DID ASK FOR A CLIP BOARD AND AN INK PEN.

16 Q. OKAY.

17 COURT REPORTER: HE ASKED FOR
18 WHAT?

19 A. A CLIP BOARD AND AN INK PEN.

20 Q. OKAY. DID YOU SEE MR. JONES INITIAL THIS PAPER?

21 A. YES.

22 Q. DID YOU SEE HIM SIGN THAT PAPER?

23 A. YES.

24 Q. OKAY. SO, NOTHING WAS SAID IN YOUR PRESENCE
25 ABOUT, ANYTHING ABOUT MR. JONES'S RIGHTS THAT YOU

DIRECT, IN CAMERA - LYNETTE NICOLE JONES
BY MS. FORD

34

1 HEARD?

2 A. NO.

3 Q. OKAY. BUT YOU SAW HIM SIGN AND INITIAL THAT
4 PIECE OF PAPER?

5 A. YES.

6 Q. OKAY. WHILE MR. JONES WAS SIGNING THAT SHEET OF
7 PAPER AND INITIALING THAT WHAT WERE YOU DOING?

8 A. WE WERE STANDING.

9 Q. OKAY. WERE YOU TALKING TO ANYONE?

10 A. NOT AT THAT TIME.

11 Q. OKAY. WHEN YOU LEFT THAT ROOM WAS THIS PAPER
12 SIGNED?

13 A. YES.

14 Q. OKAY. IT WAS COMPLETELY FILLED OUT AS YOU SEE IT
15 NOW?

16 A. YES.

17 Q. OKAY. DURING THAT TIME YOU WERE IN THAT AREA DID
18 YOU EVER HEAR DEPUTY THOMPSON TELL MR. JONES THAT
19 HE HAD THE RIGHT TO REMAIN SILENT?

20 A. NOT IN MY PRESENCE.

21 Q. OKAY. THAT HE HAD THE RIGHT TO AN ATTORNEY?

22 A. NO.

23 Q. OKAY. THAT IF HE COULDN'T AFFORD ONE, ONE WOULD
24 BE APPOINTED TO HIM?

25 A. NO.

DIRECT, IN CAMERA - LYNETTE NICOLE JONES
BY MS. FORD

35

1 Q. THAT IF HE WANTED TO ANSWER ANY QUESTIONS HE
2 COULD STOP AT ANYTIME, DID YOU HEAR HIM TELL HIM
3 THAT?

4 A. NO.

5 Q. DID HE TELL HIM THAT HE COULD STOP IF HE WANTED
6 AN ATTORNEY, ANYTHING LIKE THAT?

7 A. NO.

8 Q. ALRIGHT. SO, AT NO TIME BEFORE -- WELL, BEFORE
9 YOU LEFT THAT ROOM IT WAS SIGNED, CORRECT?

10 A. NO.

11 Q. I'M SORRY?

12 A. SAY THAT AGAIN?

13 Q. I'M SORRY, I DON'T MEAN TO BE CONFUSING. WHEN YOU
14 LEFT THAT ROOM THIS WAS COMPLETELY FILLED OUT?

15 A. IT WAS COMPLETELY FILLED OUT.

16 THE COURT: PLEASE REFER TO IT BY
17 NUMBER BECAUSE WE'VE GOT TWO EXHIBITS.

18 MS. FORD: I'M SORRY, YOUR HONOR,
19 THIS IS STATE'S EXHIBIT ONE.

20 THE COURT: OKAY.

21 MS. FORD: I HAVE NO FURTHER
22 QUESTIONS FOR MS. JONES.

23 THE COURT: CROSS-EXAM.

24 (NOTE: Blank lines on this page do not indicate any
25 part of record has been omitted.)

CROSS, IN CAMERA - LYNETTE NICOLE JONES
BY SOL. JEFFRIES

36

CROSS-EXAMINATION, IN CAMERA - LYNETTE NICOLE

JONES BY SOLICITOR JEFFRIES:

Q. MS. JONES, - - -

A. LYNETTE IS FINE.

Q. OKAY. I'M BRYANT JEFFRIES. AND YOU'RE THE
DEFENDANT, MR. LINDY JONES'S SISTER?

A. YES.

Q. AND YOU SAID THAT SHARON IS YOUR - - -

A. IS HIS GIRLFRIEND, SISTER-IN-LAW, THEY'VE BEEN
TOGETHER FOR TWELVE YEARS.

Q. GIRLFRIEND, I'VE GOT YOU. NOW, DID YOU GROW UP
WITH MR. JONES?

A. I DID.

Q. OKAY. YOU'RE FAMILIAR WITH HIS HANDWRITING?

A. VERY.

Q. OKAY. WHO'S OLDER, YOU OR MR. JONES?

A. HE IS.

Q. AND DID HE COMPLETE SCHOOL?

A. YES.

Q. COMPLETE HIGH SCHOOL?

A. YES.

Q. SO, HE CAN READ AND WRITE?

A. YES.

Q. NOW, YOU DIDN'T GO INTO THE INTERVIEW ROOM WHERE
MR. THOMPSON, INVESTIGATOR THOMPSON SPOKE TO MR.

CROSS, IN CAMERA - LYNETTE NICOLE JONES
BY SOL. JEFFRIES

37

1 JONES?

2 A. WE WERE AT THE DOOR OF THE INTERVIEW ROOM.

3 Q. OKAY. BUT WHEN THEY WENT IN THERE TOGETHER IT
4 WAS JUST THE TWO OF THEM?

5 A. CORRECT.

6 Q. AS FAR AS YOU KNOW?

7 A. YES.

8 Q. YOU WEREN'T IN THERE. AND YOU SAID, WHO ASKED
9 FOR A CLIP BOARD?

10 A. LINDY JONES.

11 Q. WOULD THAT HAVE BEEN TO WRITE HIS STATEMENT WITH?

12 A. TO SIGN THAT FIRST PAPER.

13 Q. OKAY. AND YOU WEREN'T WITH HIM WHEN HE ACTUALLY
14 GAVE HIS STATEMENT, THE WRITTEN STATEMENT?

15 A. THE WRITTEN STATEMENT, NO.

16 SOLICITOR JEFFRIES: NOTHING
17 FURTHER, YOUR HONOR.

18 THE COURT: REDIRECT?

19 MS. FORD: NOTHING, YOUR HONOR.

20 THE COURT: YOU CAN STEP DOWN.
21 FURTHER WITNESSES?

22 MS. FORD: YES, YOUR HONOR, WE'D
23 CALL SHARON ROBINSON.

24 THE COURT: COME AROUND, PLEASE.
25 PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR

1 RIGHT.

2 (Whereupon, Sharon Robinson
3 is duly sworn.)

4 THE COURT: THANK YOU, MA'AM, HAVE
5 A SEAT AND STATE YOUR FULL NAME, PLEASE.

6 WITNESS: SHARON ROBINSON.

7 (NOTE: Blank lines on this page do not indicate any
8 part of record has been omitted. Headers on testimony
9 pages and hard page breaks between testimony are now
10 required by the Court. See next ensuing page for
11 sequential continuation of record.)

DIRECT, IN CAMERA - SHARON ROBINSON BY MS. FORD

39

DIRECT EXAMINATION, IN CAMERA, OF SHARON ROBINSON

BY MS. FORD:

Q. THANK YOU, MS. ROBINSON. WHAT WERE YOU DOING ON
THE MORNING OF AUGUST SIXTEENTH, TWO THOUSAND
FIVE, ABOUT NINE A.M.?

A. I WENT TO THE COMPLEX, THE LAW COMPLEX WITH LINDY
JONES AND LYNETTE JONES.

Q. OKAY. DID YOU ALSO GO INSIDE THE COMPLEX?

A. YES, I DID.

Q. OKAY. DID YOU OR ANYONE YOU WERE WITH KNOW
ANYONE AT THE COMPLEX?

A. YES. LINDY JONES AND LYNETTE JONES KNEW
DETECTIVE THOMPSON.

Q. OKAY. DO YOU HAPPEN TO KNOW HOW THEY KNOW HIM?

A. THEY SAID THEY KNEW HIM FROM WHERE THEY LIVED.

Q. OKAY. DID YOU WALK INTO A ROOM WITH LYNETTE AND
MR. JONES AND DETECTIVE THOMPSON?

A. YES, I DID.

Q. OKAY. HOW LONG WERE YOU IN THAT ROOM?

A. I WAS IN THE ROOM FOR ABOUT - - -

COURT REPORTER: I'M SORRY.

A. I WAS IN THE ROOM FOR ABOUT FIFTEEN, SIXTEEN
MINUTES.

Q. OKAY. ALRIGHT. AND WHILE YOU WERE IN THAT ROOM
WAS ANYONE TALKING WITH EACH OTHER?

DIRECT, IN CAMERA - SHARON ROBINSON BY MS. FORD

40

1 A. YES.

2 Q. WHO WAS TALKING?

3 A. LYNETTE JONES AND DETECTIVE THOMPSON.

4 Q. OKAY. DURING THAT TIME THAT THEY WERE TALKING
5 WAS ANYTHING HANDED TO MR. JONES?

6 A. YES, IT WAS.

7 Q. OKAY. WHAT WAS HANDED TO HIM?

8 A. A WHITE FORM WITH TWO LINES ON IT FOR HIM TO
9 SIGN.

10 Q. OKAY. IT'S MARKED STATE'S EXHIBIT ONE, IS THIS
11 THE FORM THAT YOU SAW?

12 A. YES.

13 Q. OKAY. DID YOU SEE MR. JONES INITIAL THAT PAPER?

14 A. YES.

15 Q. DID YOU SEE HIM SIGN THIS PAPER?

16 A. YES.

17 Q. AT ANYTIME BEFORE HE INITIALED OR SIGNED THAT
18 PAPER DID DETECTIVE, EXCUSE ME, OR DEPUTY
19 THOMPSON ADVISE HIM OF HIS RIGHTS?

20 A. NO.

21 Q. DID HE EVER TELL HIM THAT HE HAD THE RIGHT TO
22 REMAIN SILENT, THAT ANYTHING HE WOULD SAY COULD
23 BE USED AGAINST HIM?

24 A. NO.

25 Q. DID HE HAVE, DID HE TELL HIM THAT HE HAD THE

DIRECT, IN CAMERA - SHARON ROBINSON BY MS. FORD

41

1 RIGHT TO AN ATTORNEY, THAT HE COULD, BEFORE THEY
2 ASKED HIM ANY QUESTIONS HE COULD HAVE AN ATTORNEY
3 WITH HIM - - -

4 A. NO.

5 Q. --- DID HE SAY THAT? DID HE TELL HIM IF HE
6 COULDN'T AFFORD AN ATTORNEY ONE WOULD BE
7 APPOINTED FOR HIM?

8 A. NO.

9 Q. DID HE TELL HIM THAT IF HE DECIDES TO ANSWER
10 QUESTIONS WITHOUT A LAWYER PRESENT HE WOULD HAVE
11 THE RIGHT TO STOP ANSWERING AT ANYTIME?

12 A. NO.

13 Q. DID HE SAY THAT IF, THAT HE HAD THE RIGHT TO STOP
14 ANSWERING UNTIL HE TALKED TO AN ATTORNEY?

15 A. NO.

16 Q. SO, HE NEVER GAVE THOSE RIGHTS TO HIM, MEANING
17 MR. JONES, BEFORE MR. JONES SIGNED IT?

18 A. NO.

19 Q. OKAY.

20 MS. FORD: THAT'S ALL THE
21 QUESTIONS I HAVE FOR YOU, MS. ROBINSON, PLEASE ANSWER
22 ANY QUESTIONS THEY MAY HAVE.

23 THE COURT: CROSS-EXAM.

24 SOLICITOR JEFFRIES: I DON'T HAVE
25 ANY QUESTIONS, YOUR HONOR.

1 THE COURT: THANK YOU, MA'AM, YOU
2 MAY STEP DOWN.

3 ANY ADDITIONAL EVIDENCE?

4 MS. FORD: YES, YOUR HONOR, WE'D
5 CALL LINDY JONES.

6 THE COURT: COME AROUND, PLEASE,
7 SIR. PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR
8 RIGHT.

9 (Whereupon, Lindy Lamont Jones
10 is duly sworn.)

11 THE COURT: ALRIGHT, SIR, HAVE A
12 SEAT. THANK YOU, SIR.

13 (NOTE: Blank lines on this page do not indicate any
14 part of record has been omitted. Headers on testimony
15 pages and hard page breaks between testimony are now
16 required by the Court. See next ensuing page for
17 sequential continuation of record.)

DIRECT, IN CAMERA - LINDY LAMONT JONES
BY MS. FORD:

43

DIRECT EXAMINATION, IN CAMERA, OF LINDY LAMONT

JONES BY MS. FORD:

Q. MR. JONES, WHEN WERE YOU CONTACTED TO GO TO THE
LAW COMPLEX TO SEE THE SHERIFF?

A. WHEN WAS I CONTACTED? EARLY, I THINK IT WAS THAT
NIGHT, OR EARLY THAT MORNING.

Q. OKAY. WHO CONTACTED YOU?

A. DETECTIVE THOMPSON.

Q. OKAY. AND YOU KNOW DETECTIVE THOMPSON, RIGHT?

A. YES, MA'AM.

Q. HOW DO YOU KNOW HIM?

A. FROM THE NEIGHBORHOOD, AND BEING AT THE VFW, I
BEEN IN THERE A COUPLE OF TIMES WITH HIM AND MY
SISTER.

Q. OKAY. ALRIGHT. WHEN HE CONTACTED YOU WHAT WERE
YOU TOLD TO DO?

A. I WAS TOLD TO BE AT THE LAW COMPLEX OFFICE AT
NINE O'CLOCK TO SPEAK WITH HIM ABOUT THE MATTER,
ABOUT THE CASE.

Q. WHO WAS WITH YOU WHEN YOU WENT TO THE COMPLEX?

A. MY GIRLFRIEND, SHARON, AND MY SISTER, LYNETTE
JONES.

Q. OKAY. ABOUT WHAT TIME DID YOU GO THERE?

A. NINE, A COUPLE OF MINUTES AFTER NINE O'CLOCK.

Q. OKAY. WHO DID YOU SEE WHEN YOU WENT INTO THE

DIRECT, IN CAMERA - LINDY LAMONT JONES
BY MS. FORD:

44

1 COMPLEX?

2 A. WHEN WE WALKED IN WE SPOKE WITH SOMEBODY AT THE
3 FRONT, I THINK, AND THEY WENT AND GOT HIM AND
4 SHOOK MY HAND, LIKE, WHAT'S GOING ON. MY SISTER
5 SPOKE TO HIM, AND WE WENT RIGHT, IT'S A LITTLE
6 ROOM RIGHT AS SOON AS YOU COME IN, IT'S LIKE A
7 LITTLE ROOM RIGHT THERE.

8 Q. OKAY. WHO ALL WAS IN THAT AREA, THAT ROOM?

9 A. ME, MYSELF, OFFICER THOMPSON, SHARON AND LYNETTE.

10 Q. WAS ANYONE TALKING WHEN YOU FIRST WENT INTO THAT
11 ROOM?

12 A. WHEN I FIRST WENT INTO THE ROOM?

13 Q. YES.

14 A. YEAH, HE WAS HAVING A CONVERSATION WITH MY SISTER
15 ABOUT SOMETHING.

16 Q. OKAY. ABOUT HOW LONG DID THEY TALK?

17 A. FIVE, TEN MINUTES.

18 Q. OKAY. DID ANYONE HAND YOU ANYTHING WHILE DEPUTY
19 THOMPSON AND YOUR SISTER, LYNETTE JONES, WERE
20 TALKING?

21 A. YEAH. THOMPSON HANDED ME A PIECE OF PAPER WITH
22 THE LINES ON IT.

23 Q. OKAY. THIS IS MARKED STATE'S EXHIBIT ONE, DOES
24 THIS LOOK LIKE THE SHEET OF PAPER THAT HE HANDED
25 YOU?

DIRECT, IN CAMERA - LINDY LAMONT JONES
BY MS. FORD:

45

1 A. YES.

2 Q. OKAY. DID HE EVER TELL YOU -- WELL, WHAT DID HE
3 TELL YOU TO DO WITH THIS SHEET OF PAPER?

4 A. HE TOLD ME I NEEDED TO INITIAL BY ALL THE LITTLE
5 LINES, FILL OUT THE TOP, PLACE, TIME, DATE, TIME,
6 INITIAL BY ALL THE LINES, SIGNATURE, I NEED YOU
7 TO INITIAL HERE AND HERE AT THE LEFT OF THE
8 STATEMENT, AND THEN SIGN HERE.

9 Q. OKAY. DID HE EVER TELL YOU OR ADVISE YOU ORALLY
10 THAT YOU HAD THE RIGHT TO REMAIN SILENT?

11 A. NO, MA'AM.

12 Q. OKAY. DID HE TELL YOU THAT YOU HAD THE RIGHT TO
13 TALK TO AN ATTORNEY FOR ADVICE BEFORE HE ASKED
14 YOU ANY QUESTIONS?

15 A. NO, MA'AM.

16 Q. DID HE TELL YOU IF YOU COULDN'T AFFORD AN
17 ATTORNEY ONE WOULD BE APPOINTED?

18 A. NO, MA'AM.

19 Q. DID HE TELL YOU THAT YOU HAD THE RIGHT TO STOP
20 ANSWERING QUESTIONS AT ANYTIME?

21 A. NO, MA'AM.

22 Q. OKAY. SO, AFTER HE TOLD YOU BASICALLY TO INITIAL
23 AND SIGN, WHAT DID DEPUTY THOMPSON, WHAT DID HE
24 DO?

25 A. HE, AT THAT TIME, THEY STEPPED OUT OF THE ROOM,

DIRECT, IN CAMERA - LINDY LAMONT JONES
BY MS. FORD:

46

1 AND WELL, HE EXCUSED THEM OUT OF THE ROOM AND HAD
2 ME AND HIM IN THE ROOM TOGETHER. AND AS HE SAT
3 DOWN HE HAD ANOTHER PIECE OF PAPER. HE SAID,
4 OKAY, LINDY, HERE'S THE DEAL. WITH THIS PIECE
5 AND THESE CHARGES THAT'S PENDING AGAINST YOU, YOU
6 COULD GET TWENTY YEARS, SO I NEED YOU TO TELL ME
7 EVERYTHING.

8 Q. OKAY. BEFORE HE TOLD YOU THAT HAD YOU ALREADY
9 SIGNED THIS SHEET OF PAPER?

10 A. YES, I HAD ALREADY SIGNED THAT.

11 Q. OKAY. ALRIGHT. SO, AT THAT POINT WHAT DID YOU
12 DO, DID YOU TELL DETECTIVE THOMPSON?

13 A. YEAH, I TOLD HIM BRIEFLY ABOUT THE EVENTS THAT
14 HAPPENED THAT NIGHT, AND HE SAID, WELL, I NEED
15 YOU TO PUT THAT IN A STATEMENT. AND HE TOOK ME
16 FROM THE ROOM I WAS IN TO ANOTHER ROOM.

17 Q. OKAY. AT ANYTIME BEFORE YOU WROTE THAT STATEMENT
18 DID DETECTIVE, OR DEPUTY THOMPSON, DID HE ORALLY
19 ADVISE YOU OF YOUR RIGHTS AGAIN?

20 A. NO.

21 Q. OKAY. SO, YOU SAY THAT YOU WENT FROM THAT FIRST
22 ROOM TO A SECOND ROOM, CORRECT?

23 A. YES.

24 Q. AND IN THAT SECOND ROOM HE ASKED YOU, THAT YOU
25 WERE GOING TO NEED TO WRITE THINGS THAT YOU HAD

DIRECT, IN CAMERA - LINDY LAMONT JONES
BY MS. FORD:

47

1 ALREADY TALKED ABOUT, CORRECT?

2 A. YES.

3 Q. OKAY. THIS IS MARKED STATE'S EXHIBIT TWO, IT
4 SAYS, ORANGEBURG COUNTY SHERIFF'S OFFICE, CENTRAL
5 INVESTIGATIVE DIVISION, DEFENDANT AFFIDAVIT. IT'S
6 GOT ALL SORTS OF INFORMATION, DATE, TIME, PLACE,
7 NAME, ADDRESS, DATE OF BIRTH, PHONE NUMBER, IS
8 THAT CORRECT?

9 A. YES, MA'AM.

10 Q. OKAY. WHO FILLED OUT THIS TOP PART?

11 A. I FILLED OUT THE TOP PART.

12 Q. OKAY. IT ALSO HAS SOME WORDS HERE WITH SOME
13 SMALL LINES.

14 A. YEAH, HE TOLD ME TO INITIAL ALL OF THOSE, HE WAS
15 STANDING THERE AND HE SAID, I NEED YOU TO
16 INITIAL HERE, ALL THESE LITTLE LINES. AND HE PUT
17 HIS NAME ON IT RIGHT THERE. AND THEN I INITIALED
18 THE FRONT -- WELL, I WROTE IT AND THEN HE HAD ME
19 INITIAL AFTER I WAS FINISHED WRITING THE
20 STATEMENT WHERE YOU SEE THE INITIALS ON THE SIDE.

21 Q. OKAY. AT ANYTIME BEFORE YOU WROTE THIS STATEMENT
22 HERE DID DEPUTY THOMPSON ADVISE YOU OF YOUR
23 RIGHTS ORALLY?

24 A. NO.

25 Q. MR. JONES, DID YOU UNDERSTAND THAT WITH THIS

DIRECT, IN CAMERA - LINDY LAMONT JONES
BY MS. FORD:

49

1 FIRST SHEET OF PAPER, STATE'S EXHIBIT ONE, DID
2 YOU UNDERSTAND THAT YOU WERE SIGNING?

3 A. NO, MA'AM.

4 Q. OKAY. DID YOU EVEN READ IT?

5 A. NO, MA'AM.

6 Q. OKAY. WITH THIS SECOND SHEET OF PAPER MARKED
7 STATE'S EXHIBIT TWO, DID YOU READ ANY OF THIS
8 INFORMATION?

9 A. NO, MA'AM, I HAVE PROBLEMS WITH READING, SO I HAD
10 TO REPEAT TWICE. I WAS SUPPOSED TO GRADUATE THE
11 YEAR BEFORE MY SISTER, I GRADUATED THE YEAR AFTER
12 MY SISTER.

13 Q. OKAY.

14 A. I HAVE COMPLICATION WITH READING, COMPREHENSION.

15 Q. DID YOU UNDERSTAND THIS TOP PORTION HERE, IT
16 TALKS ABOUT YOUR RIGHTS ARE AS FOLLOWS, DID YOU
17 UNDERSTAND THAT?

18 A. NO, MA'AM.

19 Q. OKAY. THIS ALL HAPPENED PRETTY FAST, DIDN'T IT?

20 A. YES, MA'AM, EVERYTHING WAS QUICK, YES.

21 Q. WERE YOU NERVOUS BEING THERE?

22 A. YES.

23 Q. WOULD IT BE FAIR TO SAY YOU WERE SCARED BEING
24 THERE?

25 A. YES, MA'AM.

DIRECT, IN CAMERA - LINDY LAMONT JONES
BY MS. FORD:

49

1 Q. OKAY. SO, IT'S YOUR TESTIMONY TODAY THAT AT NO
2 TIME DID DEPUTY THOMPSON ORALLY EXPLAIN TO YOU
3 YOUR RIGHTS AND ASKED YOU IF YOU UNDERSTOOD THEM?

4 A. NO, HE DIDN'T.

5 Q. OKAY.

6 MS. FORD: I HAVE NO FURTHER
7 QUESTIONS. PLEASE ANSWER ANY QUESTIONS THAT MR.
8 JEFFRIES HAS.

9 THE COURT: CROSS-EXAM.

10 SOLICITOR JEFFRIES: THANK YOU.

11 (NOTE: Blank lines on this page do not indicate any
12 part of record has been omitted. Headers on testimony
13 pages and hard page breaks between testimony are now
14 required by the Court. See next ensuing page for
15 sequential continuation of record.)

CROSS, IN CAMERA - LINDY LAMONT JONES
BY SOL. JEFFRIES

50

CROSS-EXAMINATION, IN CAMERA, OF LINDY LAMONT

JONES BY SOLICITOR JEFFRIES:

Q. MR. JONES, MY NAME IS BRYAN JEFFRIES.

A. HOW ARE YOU DOING?

Q. HOW ARE YOU DOING? NOW, WHEN YOU WENT INTO THE
ROOM TO WRITE YOUR STATEMENT IT WAS JUST YOU AND
INVESTIGATOR THOMPSON, IS THAT CORRECT?

A. YES.

Q. OKAY. AND YOU SAID YOU HAVE TROUBLE READING?

A. YES, SIR.

Q. OKAY. NOW, YOU USED TO WORKED IN LAW
ENFORCEMENT, ISN'T THAT CORRECT?

A. HUH?

Q. YOU USED TO WORK IN LAW ENFORCEMENT?

A. BRIEFLY. I WAS - - -

Q. A DETENTION CENTER GUARD?

A. YES.

Q. OKAY. SO, YOU'RE SOMEWHAT FAMILIAR WITH LAW
ENFORCEMENT AND RIGHTS AND THAT TYPE OF THING?

A. NO, SIR.

Q. NO, OKAY. .

A. THAT WAS ONLY BRIEFLY, MAYBE TWO AND A HALF,
MAYBE THREE MONTHS. I DIDN'T REALLY GET INTO IT.

Q. WHO DO YOU LIVE WITH?

A. HUH?

CROSS, IN CAMERA - LINDY LAMONT JONES
BY SOL. JEFFRIES

51

1 Q. WHO DO YOU LIVE WITH?

2 A. SHARON.

3 Q. OKAY. DOES SHE HAVE TO WRITE FOR YOU AND READ
4 FOR YOU OR CAN YOU DO THAT ON YOUR OWN?

5 A. I CAN DO IT SOMETIMES, YOU KNOW, SOMETIMES I GET
6 IT. IF I DON'T I'LL ASK HER.

7 Q. AND LET ME UNDERSTAND NOW, YOU DON'T DENY WHAT'S
8 IN THE STATEMENT, THAT'S YOUR VERSION OF WHAT
9 HAPPENED, RIGHT?

10 A. SIR?

11 Q. THE STATEMENT YOU GAVE, YOU WROTE THIS, RIGHT,
12 THIS IS STATE'S EXHIBIT NUMBER TWO?

13 A. YEAH, I WROTE IT.

14 Q. THAT'S YOUR HANDWRITING?

15 A. YES, SIR. THAT'S MY HANDWRITING.

16 Q. OKAY. YOU WROTE ALL THAT, ALL THREE PAGES?

17 MS. FORD: OBJECTION, YOUR HONOR,
18 WE'RE HERE TO SEE IF THIS STATEMENT WAS GIVEN
19 VOLUNTARILY AND FREELY, NOT TO VERIFY WHAT'S ACTUALLY
20 IN THAT STATEMENT.

21 SOLICITOR JEFFRIES: THIS GOES TO
22 WHETHER OR NOT IT'S VOLUNTARY, IF HE WROTE IT.

23 MS. FORD: HE'S ALREADY SAID THAT
24 HE HAD, HE DID WRITE IT.

25 SOLICITOR JEFFRIES: I'M NOT

CROSS, IN CAMERA - LINDY LAMONT JONES
BY SOL. JEFFRIES

52

1 ASKING HIM WHAT'S IN IT, I'M JUST ASKING IF HE WROTE
2 IT.

3 THE COURT: THAT'S FINE, YOU CAN
4 ASK HIM IF HE WROTE IT, AND IF THAT STATEMENT, IF WHAT
5 HE WROTE IS ON THIS PAPER, BUT DON'T ASK HIM ABOUT THE
6 CONTENT OF IT.

7 SOLICITOR JEFFRIES: I'M NOT
8 ASKING HIM ABOUT THE CONTENT.

9 Q. ALL THREE OF THESE PAGES YOU WROTE?

10 A. YES, SIR.

11 Q. AND YOU TOLD DETECTIVE THOMPSON THE TRUTH, RIGHT?

12 A. SIR?

13 Q. YOU TOLD HIM THE TRUTH?

14 MS. FORD: OBJECTION, YOUR HONOR,
15 THAT'S GOING TO THE SUBSTANCE.

16 THE COURT: YES, THAT'S GETTING TO
17 THE CONTENT OF THE STATEMENT. I DON'T THINK THAT'S
18 RELEVANT.

19 Q. OKAY. NOW, YOU DIDN'T STOP AT ANY POINT AND TELL
20 ANYONE THAT YOU DIDN'T UNDERSTAND WHAT WAS ON THE
21 TOP OF THE WRITING, DID YOU, ON THE TOP OF THE
22 DOCUMENT?

23 A. ON THE TOP OF THE DOCUMENT?

24 Q. YEAH. WHEN HE - - -

25 A. NO.

CROSS, IN CAMERA - LINDY LAMONT JONES
BY SOL. JEFFRIES

53

- 1 Q. EVERYTHING YOU SIGNED AND INITIALED YOU SAY YOU
2 DIDN'T READ?
- 3 A. NO, I DIDN'T READ IT.
- 4 Q. OKAY. SO, IT'S JUST YOUR POLICY, YOUR PRACTICE
5 TO JUST SIGN AND INITIAL THINGS THAT YOU HAVEN'T
6 READ?
- 7 A. NO, IT'S JUST LIKE I SAID, I KNOW DETECTIVE
8 THOMPSON FROM BEING AROUND THE NEIGHBORHOOD AND
9 BEING WITH HIM IN THE CLUB AND STUFF, AND I
10 DIDN'T THINK HE WOULD DO ANYTHING TO HARM ME OR
11 HURT ME.
- 12 Q. OKAY. AND HE DIDN'T FORCE YOU TO WRITE IT, HE
13 DIDN'T THREATEN YOU?
- 14 A. YEAR, WELL, HE DID THREATEN ME.
- 15 Q. HOW DID HE THREATEN ME?
- 16 A. WHEN WE WAS IN THE LITTLE ROOM HE TOLD ME HE HAD
17 A PIECE OF PAPER, HE SAID, WITH THIS RIGHT HERE
18 AND WHAT YOU'RE CHARGED WITH, I CAN SEE TO IT
19 THAT YOU GET TWENTY YEARS.
- 20 Q. THAT'S NOT WHAT YOU TESTIFIED TO EARLIER, BUT
21 THAT'S YOUR TESTIMONY NOW?
- 22 A. YES, HE DID SAY THAT.
- 23 Q. HE TOLD YOU YOU COULD GET UP TO TWENTY YEARS?
- 24 A. UH HUH.
- 25 Q. AND YOU'VE BEEN ARRESTED BEFORE, ISN'T THAT

CROSS, IN CAMERA - LINDY LAMONT JONES
BY SOL. JEFFRIES

54

1 CORRECT?

2 A. YES.

3 Q. SO, YOU'VE HAD YOUR MIRANDA RIGHTS READ TO YOU
4 BEFORE, YOU'RE FAMILIAR WITH THEM?

5 MS. FORD: OBJECTION, YOUR HONOR,
6 TO THE RELEVANCE, THE MATTER THAT WE'RE HERE TO
7 DISCUSS RIGHT NOW, IT HAS NO RELEVANCY.

8 THE COURT: WHAT WAS THE QUESTION?

9 SOLICITOR JEFFRIES: HE'S BEEN
10 ARRESTED BEFORE, HE'S HAD HIS MIRANDA RIGHTS READ TO
11 HIM BEFORE.

12 THE COURT: THAT'S RELEVANT. HE
13 SAID HE DIDN'T UNDERSTAND THEM, AND THEN HE SAID HE
14 DIDN'T READ THEM.

15 Q. YOU'VE BEEN ARRESTED BEFORE?

16 A. YEAH, FROM BEFORE. YEAH, I'VE BEEN ARRESTED
17 BEFORE.

18 Q. AND ANYTIME YOU'RE ARRESTED, YOU UNDERSTAND,
19 YOU'RE READ YOUR MIRANDA RIGHTS, IS THAT RIGHT?

20 A. YEAH, WELL, THEY'LL TELL YOU YOU HAVE THE RIGHT
21 TO REMAIN SILENT, BUT I DON'T KNOW ABOUT MIRANDA
22 RIGHTS.

23 Q. OKAY. LET ME EXPLAIN THEM TO YOU, YOUR RIGHT TO
24 REMAIN SILENT, THAT'S A MIRANDA RIGHT, DO YOU
25 UNDERSTAND THAT?

CROSS, IN CAMERA - LINDY LAMONT JONES
BY SOL. JEFFRIES

55

- 1 A. UH HUH.
- 2 Q. YOUR RIGHT TO AN ATTORNEY, THAT'S A MIRANDA
- 3 RIGHT, DO YOU UNDERSTAND THAT?
- 4 A. UH HUH.
- 5 Q. YOUR RIGHT TO STOP TALKING IS A MIRANDA RIGHT, DO
- 6 YOU UNDERSTAND THAT?
- 7 A. YES.
- 8 Q. OKAY. SO, YOU DID UNDERSTAND THAT WHEN YOU WERE
- 9 TALKING TO DETECTIVE THOMPSON?
- 10 A. I DID UNDERSTAND IT.
- 11 Q. YOU UNDERSTOOD THAT YOU DIDN'T HAVE TO GIVE A
- 12 STATEMENT?
- 13 A. HUH UH.
- 14 Q. YOU UNDERSTOOD WHAT I JUST TOLD YOU, THAT YOU
- 15 HAVE A RIGHT TO REMAIN SILENT?
- 16 A. YES, - - -
- 17 Q. AND HE TOLD YOU - - -
- 18 A. --- BUT ON THAT MORNING HE NEVER READ NONE OF
- 19 THAT STUFF TO ME.
- 20 Q. AND YOU WEREN'T UNDER ARREST, IS THAT CORRECT?
- 21 A. I DON'T KNOW, I WAS TOLD TO COME TO THE POLICE
- 22 OFFICE, I DON'T KNOW WHETHER I WAS UNDER ARREST
- 23 OR NOT.
- 24 Q. YOU JUST DON'T KNOW. YOU CAME IN OF YOUR OWN
- 25 FREE WILL, IS THAT RIGHT?

CROSS, IN CAMERA - LINDY LAMONT JONES
BY SOL. JEFFRIES

56

1 A. YEAH, HE CALLED ME AND TOLD ME TO BE THERE AT
2 NINE O'CLOCK, AND I WAS THERE AT NINE OR A LITTLE
3 AFTER.

4 Q. AND YOU WEREN'T IN CUFFS?

5 A. SIR?

6 Q. YOU WEREN'T IN HAND CUFFS?

7 A. NO.

8 Q. AND YOU WEREN'T DRESSED OUT IN A JUMP SUIT?

9 A. NO.

10 Q. AND YOU KNEW WHY YOU WERE THERE, Y'ALL HAD SPOKEN
11 BEFORE, RIGHT?

12 A. I SPOKE WITH AN OFFICER THAT NIGHT, ETHRIDGE I
13 THINK HIS NAME WAS, A SHERIFF'S DEPUTY.

14 COURT REPORTER: WHAT WAS HIS
15 NAME?

16 A. ETHRIDGE, CAPTAIN, OR, HE WAS A DEPUTY.

17 THE COURT: YOU NEED TO SPEAK A
18 LITTLE LOUDER.

19 A. OKAY, HE WAS A DEPUTY, ETHRIDGE I THINK HIS NAME
20 WAS.

21 THE COURT: OKAY.

22 Q. AND HE TOLD YOU WHAT YOU WERE ACCUSED OF, YOU
23 KNEW WHY YOU WERE THERE?

24 A. YEAH, I KNOW WHY I HAD TO GO SPEAK WITH THOMPSON
25 ABOUT.

57

1 SOLICITOR JEFFRIES: OKAY. NOTHING
2 FURTHER OF THIS WITNESS.

3 THE COURT: REDIRECT?

4 MS. FORD: NONE, YOUR HONOR.

5 THE COURT: THANK YOU, SIR, YOU
6 CAN STEP DOWN.

7 FURTHER EVIDENCE?

8 MS. FORD: NO, YOUR HONOR.

9 THE COURT: ANYTHING IN REPLY?

10 SOLICITOR JEFFRIES: NO, YOUR
11 HONOR.

12 THE COURT: I'LL BE GLAD TO HEAR
13 YOUR ARGUMENT. I NEED TO HEAR YOUR ARGUMENT FIRST,
14 IT'S YOUR MOTION TO EXCLUDE.

15 MS. FORD: THANK YOU, YOUR HONOR.

16 ARGUMENT BY MS. FORD

17 YOUR HONOR, IT'S THE DEFENSE'S
18 POSITION THAT THE STATEMENT SHOULD BE EXCLUDED BECAUSE
19 IT WAS NOT FREELY AND VOLUNTARILY GIVEN. TO BEGIN, MR.
20 JONES WAS NOT GIVEN HIS MIRANDA RIGHTS PROPERLY, AS
21 REQUIRED BY MIRANDA VERSUS ARIZONA AND THE FIFTH AND
22 SIXTH AMENDMENTS OF THE CONSTITUTION. LYNETTE JONES,
23 SHARON ROBINSON AND MR. JONES HAVE ALL TESTIFIED, SAYING
24 THAT WHEN DEPUTY THOMPSON HANDED HIM THIS FIRST SHEET OF
25 PAPER WHICH YOU'VE MARKED AS STATE'S EXHIBIT ONE, HE

1 HANDED IT TO HIM AND KEPT TALKING WITH MS. LYNETTE
2 JONES. AT NO TIME DID HE ADVISE HIM OF HIS RIGHTS, HE
3 JUST HANDED HIM A SHEET OF PAPER AND TOLD HIM TO SIGN
4 IT. AN INDIVIDUAL MUST BE ADVISED OF THEIR RIGHTS WHEN
5 THEY'RE IN CUSTODY. CLEARLY, MR. JONES WAS IN CUSTODY,
6 HE WAS TOLD TO BE AT THE LAW COMPLEX, TOLD TO BE THERE
7 AT NINE O'CLOCK. HE WAS AWARE THERE WAS AN ONGOING
8 INVESTIGATION, AND THAT HE WAS THE SUBJECT OF THAT
9 INVESTIGATION. AN INDIVIDUAL CAN'T ADVISE HIMSELF OF
10 HIS OWN MIRANDA RIGHTS. AND FOR THAT REASON WE BELIEVE
11 THAT IT SHOULD BE EXCLUDED.

12 IF THE COURT IS INCLINED TO RULE
13 THAT MIRANDA WASN'T NECESSARY WITH THIS FIRST MIRANDA
14 THAT WAS GIVEN, IT'S OUR POSITION THAT THE COURT MUST
15 LOOK TO STATE VERSUS NAVY, IT'S A TWO THOUSAND - - -

16 THE COURT: I'M NOT INCLINED TO FIND
17 THAT HE DIDN'T HAVE TO HAVE MIRANDA. HE WAS IN CUSTODY
18 AND HE WAS BEING QUESTIONED. IT WAS NECESSARY THAT HE BE
19 AFFORDED MIRANDA PROTECTION. SO, YOU DON'T NEED TO
20 ARGUE THAT. I'M ON YOUR SIDE ON THAT.

21 MS. FORD: THANK YOU, YOUR HONOR.
22 IT'S OUR POSITION THAT TESTIMONY HERE TODAY, THAT MR.
23 JONES DIDN'T KNOWINGLY AND INTELLIGENTLY WAIVE HIS
24 RIGHTS AS HE'S REQUIRED TO. HE DIDN'T HAVE THE BENEFIT
25 OF BEING PROPERLY ADVISED OF HIS RIGHTS. HE DIDN'T

59

1 UNDERSTAND THE RIGHTS AS THEY WERE GIVEN TO HIM. IT'S
2 OUR POSITION THAT IT WASN'T FREELY AND VOLUNTARILY GIVEN
3 AS IS REQUIRED, BECAUSE HE DIDN'T KNOW OR UNDERSTAND THE
4 RIGHTS THAT HE WOULD BE GIVING UP IF HE WROTE A
5 STATEMENT. FOR THOSE REASONS, YOUR HONOR, WE'D ASK THAT
6 THE STATEMENT BE SUPPRESSED AND EXCLUDE FROM THE TRIAL.

7 THE COURT: MR. JEFFRIES:

8 ARGUMENT BY SOLICITOR JEFFRIES

9 YOUR HONOR, THE EVIDENCE FROM
10 INVESTIGATOR THOMPSON WAS THAT ON AT LEAST THREE
11 OCCASIONS THE DEFENDANT WAS ADVISED OF HIS RIGHTS. HE
12 WAS ADVISED OF HIS RIGHTS ORALLY BEFORE THE INTERVIEW
13 STARTED, HE WAS THEN AGAIN ADVISED OF HIS MIRANDA RIGHTS
14 WHERE HE INITIALED AT EACH MIRANDA RIGHT AND SIGNED THAT
15 HE UNDERSTOOD HIS RIGHTS. HE SIGNED THAT HE WAS WAIVING
16 HIS RIGHTS, INITIALED THAT HE WAS WAIVING HIS RIGHTS.
17 YOUR HONOR, IF I COULD HAND UP THAT ADVICE OF RIGHTS,
18 STATE'S EXHIBIT NUMBER ONE, BECAUSE I DON'T THINK I GAVE
19 YOU A COPY OF THIS. MAY I APPROACH, YOUR HONOR?

20 THE COURT: YES, SIR.

21 SOLICITOR JEFFRIES: YOUR HONOR, ON
22 THAT DOCUMENT ALONE IT INDICATES WHERE HE WAS ADVISED OF
23 EACH OF HIS MIRANDA RIGHTS AND HAS WAIVED THOSE RIGHTS.
24 DETECTIVE THOMPSON TESTIFIED THAT EVEN PREVIOUS TO THAT
25 HE GAVE HIM HIS MIRANDA RIGHTS. I AGREE WITH THE COURT

1 AS WELL AS MS. FORD THAT THIS WAS A SITUATION WHICH HIS
2 MIRANDA RIGHTS WOULD HAVE NEEDED TO HAVE BEEN PROVIDED
3 TO HIM, AND THAT HE WAS, EVEN IF NOT UNDER ARREST, IN A
4 SITUATION WHERE HE MAY HAVE NOT FELT FREE TO LEAVE. BUT
5 THERE WAS NO EVIDENCE OF COERCION, NO EVIDENCE THAT A
6 PROMISE WAS MADE TO HIM, NO DURESS IN ORDER TO GIVE HIS
7 STATEMENT. HE INDICATED ON THE STAND, THIS IS HIS
8 STATEMENT. HE INDICATED THAT HE UNDERSTOOD HIS RIGHTS.
9 HE'S BEEN A LAW ENFORCEMENT OFFICER, HE UNDERSTANDS. HE
10 TESTIFIED THAT HE UNDERSTANDS THOSE RIGHTS. HE CAN READ
11 AND WRITE. HE INDICATED THAT HE HAS SOME TROUBLE
12 READING. HE NEVER INDICATED THAT, BY HIS OWN ADMISSION,
13 TO DETECTIVE THOMPSON. GIVEN THE TOTALITY OF
14 CIRCUMSTANCES I DON'T THINK THERE'S ANY QUESTION THAT
15 THE STATEMENT WAS FREELY AND VOLUNTARILY GIVEN.

16 THE COURT: ANYTHING ELSE?

17 MS. FORD: NOTHING, YOUR HONOR.

18 THE COURT: ALRIGHT.

19 RULING OF THE COURT ON JACKSON V. DENNO

20 I FIND THAT THE STATEMENT WAS FREELY
21 AND VOLUNTARILY GIVEN. I FIND THAT HE WAS IN CUSTODY, OF
22 COURSE, AND REQUIRED THE READING OF THE MIRANDA. IT'S
23 SIMPLY NOT BELIEVABLE THAT HE SIGNED ALL OF THESE
24 WITHOUT READING THEM. HE PUT HIS INITIALS FIVE TIMES ON
25 STATE'S EXHIBIT ONE, AND SAYS HE DIDN'T READ ANY OF THAT

61

1 OR DIDN'T UNDERSTAND IT. AND THEN, ON THE STATEMENT
2 ITSELF HE PUT HIS INITIALS FOUR TIMES, AND STATES HE
3 DOESN'T READ VERY WELL. WELL, IF YOU LOOK AT THE
4 STATEMENT, THE STATEMENT IS VERY WELL WRITTEN, VERY
5 INTELLIGENTLY WRITTEN. SOME WORDS USED THERE AND THE
6 PHRASEOLOGY AND THE WORDING OF THE STATEMENT AND THE
7 HANDWRITING ITSELF ARE NOT THAT OF SOMEBODY WHO DOESN'T
8 KNOW HOW TO READ OR DOESN'T READ VERY WELL. SO, I DON'T
9 PLACE MUCH CREDIBILITY IN HIS STATEMENT THAT HE DIDN'T
10 UNDERSTAND WHAT HE WAS READING. SO, I DO FIND THAT HE
11 WAS GIVEN ALL OF THE RIGHTS REQUIRED BY MIRANDA.
12 THERE'S NO EVIDENCE THAT HE WAS COERCED IN ANY WAY
13 WHATSOEVER, THAT HE WAS OFFERED ANYTHING OR PROMISED
14 ANYTHING OR THREATENED IN ANY MANNER WHATSOEVER. SO, I
15 FIND THE STATEMENT WAS FREELY AND VOLUNTARILY GIVEN,
16 THAT HE KNOWINGLY AND INTELLIGENTLY WAIVED HIS RIGHT TO
17 REMAIN SILENT.

18 ALRIGHT, WHAT ELSE?

19 SOLICITOR JEFFRIES: YOUR HONOR,
20 WHILE WE'RE ON THE RECORD IT WOULD PROBABLY BE A GOOD
21 IDEA TO GO AHEAD AND PUT ON THE RECORD THE CONVERSATION
22 WE HAD IN CHAMBERS AS IT RELATES TO THE RAPE PROTOCOL,
23 I'M SORRY, THE RAPE SHIELD, AND I BELIEVE MS. FORD HAS
24 AN ARGUMENT SHE WANTED TO PUT ON THE RECORD.

25 THE COURT: ALRIGHT.

1 MS. FORD: IT WAS MY UNDERSTANDING
2 THAT WE WERE GOING TO DO THAT TOMORROW MORNING WITH MR.
3 SCOTT, BUT IT DOESN'T MATTER.

4 THE COURT: ALRIGHT, THAT'S FINE.
5 SO, IS THERE ANYTHING ELSE IN THIS CASE?

6 SOLICITOR JEFFRIES: NOTHING THAT WE
7 CAN'T DO QUICKLY TOMORROW MORNING.

8 THE COURT: ALRIGHT. THAT WILL BE
9 FINE.

10 (Recess for the day.)

11 DATE:

12 JUNE 9, 2009

13 THE COURT: ALRIGHT, SOLICITOR, YOU
14 MAY CALL YOUR CASE.

15 SOLICITOR SCOTT: MAY IT PLEASE THE
16 COURT, YOUR HONOR, AT THIS TIME THE STATE CALLS THE CASE
17 OF THE STATE VERSUS LINDY LAMONT JONES, INDICTMENT
18 NUMBER 2005-GS-38-1816, LEWD ACT ON A MINOR, INDICTMENT
19 NUMBER 2005-GS-38-1817, CRIMINAL SEXUAL CONDUCT WITH A
20 MINOR, SECOND DEGREE.

21 THE COURT: ALRIGHT, DO YOU HAVE THE
22 INDICTMENTS?

23 SOLICITOR SCOTT: YES, YOUR HONOR.

24 THE COURT: I'VE GOT THEM.

25 ALRIGHT, LADIES AND GENTLEMEN, AS

1 YOU'VE HEARD, THE STATE HAS CALLED TWO CASES AGAINST MR.
2 LINDY LAMONT JONES. THE STATE HAS PREPARED THESE TWO
3 INDICTMENTS CHARGING MR. JONES WITH THESE CRIMES. I'M
4 GOING TO READ YOU THESE INDICTMENTS IN JUST A MINUTE,
5 AND THEN I'M GOING TO ASK YOU SOME QUESTIONS ABOUT THIS
6 CASE. UNDER OUR SYSTEM, LADIES AND GENTLEMEN, BOTH THE
7 STATE AND THE DEFENSE, UNDER ALL CRIMINAL JUSTICE
8 SYSTEMS ARE ENTITLED TO WHAT WE CALL A FAIR AND
9 IMPARTIAL JURY. WHAT WE MEAN BY THAT IS A JURY THAT CAN
10 MAKE THEIR DECISION IN THIS CASE BASED SOLELY ON THE
11 TESTIMONY AND THE EVIDENCE THAT YOU HEAR IN THIS
12 COURTROOM ON THIS CASE AND THAT YOU CAN FOLLOW MY
13 INSTRUCTIONS TO YOU ON THE LAW. IT MEANS A JURY WHICH
14 WOULD NOT BE INFLUENCED BY SOME EXPERIENCE YOU MAY HAVE
15 HAD OR YOU MAY BE AWARE OF THAT WOULD AFFECT YOUR
16 DECISION IN THIS CASE. SO, I'M GOING TO ASK YOU A
17 NUMBER OF QUESTIONS. YOU'RE STILL UNDER OATH, YOU'RE
18 REQUIRED TO RESPOND TO THE QUESTIONS. IF IT IS OF A
19 PERSONAL OR PRIVATE NATURE, AGAIN, YOU CAN COME FORWARD
20 AND SPEAK WITH ME PRIVATELY ABOUT IT, BUT PLEASE DO NOT
21 WITHHOLD ANY INFORMATION THAT MIGHT BE REQUIRED BY ANY
22 OF THE QUESTIONS THAT I ASK. IF YOU ARE NOT CERTAIN
23 WHETHER YOU SHOULD SPEAK UP OR NOT JUST SPEAK UP AND LET
24 ME DECIDE WHETHER THAT'S SIGNIFICANT OR NOT.

25 I'M GOING TO READ YOU THE

1 INDICTMENTS. THE INDICTMENTS ARE NOT EVIDENCE, THEY ARE
2 SIMPLY DOCUMENTS DRAWN UP BY THE STATE TO ADVISE THE
3 DEFENDANT OF THE CHARGES HE IS FACING SO HE CAN PREPARE
4 A PROPER DEFENSE TO THESE CHARGES. TO THE CHARGES
5 CONTAINED IN THESE TWO INDICTMENTS HE HAS PLED NOT
6 GUILTY. THAT PLACES THE BURDEN OF PROVING HIM GUILTY
7 BEYOND A REASONABLE DOUBT ON THE STATE. THE DEFENDANT
8 IS NEVER REQUIRED TO PROVE HIMSELF INNOCENT, SO PLEASE
9 REMEMBER THAT AS I READ YOU THE ALLEGATIONS CONTAINED IN
10 THE INDICTMENTS, BUT IT'S NECESSARY THAT I TELL YOU WHAT
11 THE CHARGES ARE SO THAT YOU CAN ANSWER MY QUESTIONS IN
12 JUST A FEW MINUTES.

13 FIRST, LADIES AND GENTLEMEN,
14 INDICTMENT NUMBER 2005-GS-38-1816 CHARGES MR. JONES WITH
15 LEWD ACT, OR ATTEMPTING OR COMMITTING A LEWD ACT ON A
16 CHILD UNDER SIXTEEN. THE ALLEGATIONS ARE THAT IN
17 ORANGEBURG COUNTY, ON OR BETWEEN JUNE FIRST, TWO
18 THOUSAND AND FIVE, AND AUGUST FIFTEENTH, TWO THOUSAND
19 AND FIVE, THE DEFENDANT, LINDY LAMONT JONES, BEING OVER
20 THE AGE OF FOURTEEN YEARS, DID WILLFULLY AND LEWDLY
21 COMMIT OR ATTEMPT TO COMMIT A LEWD OR LASCIVIOUS ACT
22 UPON THE BODY OF Minor [REDACTED], A CHILD UNDER THE AGE
23 OF SIXTEEN YEARS, WITH THE INTENT OF AROUSING, APPEALING
24 TO OR GRATIFYING THE LUST OR PASSIONS OR SEXUAL DESIRES
25 OF HIMSELF OR THE CHILD.

1 THE SECOND INDICTMENT IS INDICTMENT
2 2005-GS-38-1817, AND THE ALLEGATIONS ARE THAT IN
3 ORANGEBURG COUNTY, ON OR ABOUT AUGUST FIFTEENTH, TWO
4 THOUSAND FIVE, THE DEFENDANT, LINDY LAMONT JONES, DID
5 ENGAGE IN SEXUAL BATTERY UPON A MINOR WHO WAS AT LEAST
6 FOURTEEN YEARS OF AGE OR LESS, BUT LESS THEN SIXTEEN
7 YEARS OF AGE, AND THAT THE DEFENDANT WAS IN A POSITION
8 OF FAMILIAL, CUSTODIAL OR OFFICIAL AUTHORITY TO COERCE
9 THE VICTIM TO SUBMIT OR WAS OLDER THAN THE VICTIM, Minor

10 [REDACTED]
11 TO THESE CHARGES, AS I SAID, LADIES
12 AND GENTLEMEN, HE HAS PLED NOT GUILTY.

13 MR. JONES, WOULD YOU STAND, PLEASE,
14 AND FACE THE JURY SO THEY CAN IDENTIFY YOU.

15 (Whereupon, defendant stands.)

16 THE COURT: THANK YOU, SIR, YOU MAY
17 BE SEATED.

18 LADIES AND GENTLEMEN, IS THERE ANY
19 MEMBER OF THE JURY PANEL RELATED BY BLOOD, CONNECTED BY
20 MARRIAGE, CLOSE PERSONAL FRIEND, HAVE ANY KNOWLEDGE OR
21 ACQUAINTANCE WITH MR. LINDY LAMONT JONES? IF YOU KNOW
22 MR. JONES IN ANY CAPACITY WHATSOEVER WOULD YOU PLEASE
23 STAND.

24 (Negative response from jury panel.)

25 THE COURT: MR. JONES IS BEING

1 REPRESENTED IN THE TRIAL TODAY BY MS. SARA FORD AND MR.
2 DOUG MELLARD. THEY ARE MEMBERS OF THE STAFF OF THE
3 PUBLIC DEFENDER'S OFFICE WHO IS STANDING BEFORE YOU AT
4 THIS TIME.

5 THANK YOU, YOU MAY BE SEATED.

6 IS THERE ANY MEMBER OF THE JURY
7 PANEL RELATED BY BLOOD, CONNECTED BY MARRIAGE, CLOSE
8 PERSONAL FRIEND, HAVE ANY KNOWLEDGE OR ACQUAINTANCE WITH
9 MS. FORD OR MR. MELLARD, OR ANY OTHER MEMBERS OF THE
10 PUBLIC DEFENDER STAFF -- AND I HAVE THOSE -- JUST ONE
11 SECOND, LET ME READ THE OTHER NAMES, MS. PEGGY HINDS,
12 MS. JILL ULLMAN, ASH CHISOLM, THOSE ARE ALL ATTORNEYS.
13 OTHER MEMBERS OF THEIR STAFF, MS. DEBORAH MARTIN, LINDA
14 EASTERLIN, CARLOS HOLBACK, CRYSTAL PEAL, AND LAURIN
15 DRIGGERS. IF YOU KNOW ANY OF THESE INDIVIDUALS IN ANY
16 CAPACITY WHATSOEVER WOULD YOU PLEASE STAND.

17 (Affirmative response from jury panel.)

18 THE COURT: YES, SIR, YOUR NAME AND
19 NUMBER.

20 JUROR DIAS: KIERAN DIAS, I THINK
21 I'M NUMBER THIRTY-NINE. I'M CLOSE PERSONAL FRIENDS WITH
22 SARA FORD'S FAMILY.

23 THE COURT: ALRIGHT. AND WOULD THAT
24 AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR FOR
25 BOTH THE STATE AND THE DEFENSE IN THIS CASE?

67

1 JUROR DIAS: I DON'T THINK SO.

2 THE COURT: ALRIGHT, THANK YOU, SIR.

3 YES, MA'AM?

4 JUROR HOLLIDAY: I KNOW A LOT OF
5 THOSE ATTORNEYS OVER THERE FROM WORKING IN THE
6 COURTROOM.

7 THE COURT: ALRIGHT, AND YOUR NAME
8 AND NUMBER?

9 JUROR HOLLIDAY: BARBARA HOLLIDAY,
10 EIGHTY-SEVEN.

11 THE COURT: ALRIGHT, MS. HOLLIDAY,
12 WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND
13 IMPARTIAL JUROR IN THIS CASE?

14 JUROR HOLLIDAY: NO, SIR.

15 THE COURT: THANK YOU, MA'AM, YOU
16 ARE QUALIFIED TO SERVE.

17 ANYONE ELSE?

18 (Negatived response from jury panel.)

19 THE COURT: LADIES AND GENTLEMEN,
20 THE STATE IS BEING REPRESENTED, THE CASE IS BEING
21 PROSECUTED BY MR. TOMMY SCOTT AND MR. BRYAN JEFFRIES,
22 WHO ARE STANDING BEFORE YOU, MR. SCOTT ON YOUR LEFT, MR.
23 JEFFRIES ON YOUR RIGHT.

24 THANK YOU, GENTLEMEN.

25 THEY ARE BOTH MEMBERS AND ATTORNEYS

1 IN THE SOLICITOR'S OFFICE. THE OTHER ATTORNEYS IN THAT
2 OFFICE INCLUDE MS. CRYSTAL CHAPMAN, KELLY BURBAGE, GLENN
3 JUSTICE, DON SORENSON AND ROB CLARIDAY. THE OTHER
4 MEMBERS OF THE SUPPORT STAFF ARE MS. WANDA CARROWAY,
5 DELL FOWLER, JENNIFER JACQUES, DARLENE SIMMONS, CAROLYN
6 MIDDLETON, ROBERT ROBINSON, WALT TURNER, DONNA CUTTINO,
7 ANGIE MARTIN, TAMMY CRAVEN, AND JUDY HILDERBRAND. IF
8 YOU KNOW ANY OF THOSE INDIVIDUALS IN ANY CAPACITY
9 WHATSOEVER WOULD YOU PLEASE STAND.

10 (Affirmative response from jury panel.)

11 THE COURT: ALRIGHT.

12 JUROR HOLLIDAY: BARBARA HOLLIDAY,
13 EIGHTY-SEVEN.

14 THE COURT: YES, MA'AM.

15 JUROR HOLLIDAY: I KNOW ALL OF THEM
16 FROM WORKING IN THE COURTROOM.

17 THE COURT: ALRIGHT. AND WOULD THAT
18 AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN
19 THIS CASE?

20 JUROR HOLLIDAY: NO, SIR.

21 THE COURT: THANK YOU, MA'AM.

22 YES, SIR?

23 JUROR GREEN: I KNOW DARLENE
24 SIMMONS.

25 THE COURT: YOUR NAME AND NUMBER,

1 PLEASE?

2 JUROR GREEN: I'M JOSEPH GREEN,
3 NUMBER SEVENTY-FIVE.

4 THE COURT: ALRIGHT. AND YOU KNOW
5 MS. SIMMONS?

6 JUROR GREEN: YES, SIR.

7 THE COURT: AND WOULD THAT AFFECT
8 YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS
9 CASE?

10 JUROR GREEN: I DON'T THINK SO.

11 THE COURT: WELL, ARE YOU CERTAIN IT
12 WOULD NOT?

13 JUROR GREEN: UH HUH.

14 THE COURT: SHE'S NOT INVOLVED IN
15 THIS CASE WHATSOEVER.

16 JUROR GREEN: NO.

17 THE COURT: ALRIGHT, THANK YOU, SIR.
18 YES, MA'AM?

19 JUROR ANTLEY: JOYCE ANTLEY, NUMBER
20 TWO, I WENT TO SCHOOL WITH ANGIE MARTIN.

21 THE COURT: WITH WHO?

22 JUROR ANTLEY: ANGIE MARTIN.

23 THE COURT: ANGIE MARTIN. WOULD
24 THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL
25 JUROR IN THIS CASE?

1 JUROR ANTLEY: NO, SIR.

2 THE COURT: THANK YOU, MA'AM.

3 YES, SIR?

4 JUROR FAIREY: I KNOW SEVERAL.

5 THE COURT: NAME AND NUMBER?

6 JUROR FAIREY: IT'S ALLEN FAIREY,
7 FORTY-EIGHT.

8 THE COURT: ALRIGHT, SIR.

9 JUROR FAIREY: AND AS A MATTER OF
10 FACT, MY - - -

11 THE COURT: YOU KNOW SEVERAL MEMBERS
12 OF THE STAFF?

13 JUROR FAIREY: YES, SIR.

14 THE COURT: ALRIGHT, SIR. AND WOULD
15 THAT AFFECT YOUR DECISION IN THIS CASE?

16 JUROR FAIREY: THAT WOULD NOT.

17 THE COURT: ALRIGHT, THANK YOU, SIR.
18 ANYONE ELSE?

19 (Negative response from jury panel.)

20 THE COURT: LADIES AND GENTLEMEN,
21 I'M GOING TO GIVE YOU THE NAMES OF SOME OTHER
22 INDIVIDUALS WHO MAY TESTIFY AS WITNESSES IN THIS CASE.
23 I'M GOING TO ASK THEM TO STAND IF THEY ARE IN THE
24 COURTROOM -- DO WE HAVE THE DEFENSE WITNESSES? WHEN I
25 CALL THEIR NAMES I WOULD ASK THAT YOU STAND IF YOU KNOW

71

1 THEM. PLEASE DO NOT WAIT UNTIL I HAVE READ ALL OF THE
2 NAMES BUT STAND IMMEDIATELY IF YOU RECOGNIZE SOMEONE OR
3 THINK YOU MIGHT RECOGNIZE THAT PERSON. ALL OF THESE
4 PEOPLE WILL NOT BE IN THE COURTROOM BECAUSE WE CAN'T USE
5 THEM ALL THE FIRST THING THIS MORNING, BUT THE ONES WHO
6 ARE IN THE COURTROOM I WOULD ASK THAT THEY STAND WHEN I
7 CALL THEIR NAMES. FIRST, THE VICTIM IN THE CASE, MS.

8 Minor -- MS. Minor, I'M SORRY, Minor
9 Minor. MS. Minor, WOULD YOU STAND AND FACE THE
10 JURY SO THEY CAN IDENTIFY YOU, PLEASE. THANK YOU,
11 MA'AM, YOU MAY BE SEATED. SHARON ROBINSON. THANK, Y6OU
12 MA'AM. LYNETTE JONES. MELVA ROBINSON. THANK YOU,
13 MA'AM. ADRIANNE DULY, THANK YOU, MA'AM. CATHERINE
14 LEISY. AND THE FOLLOWING ARE MEMBERS OF THE -- OR
15 FORMER - - -

16 (Affirmative response from jury panel.)

17 THE COURT: YES, MA'AM, YOUR NAME
18 AND NUMBER?

19 JUROR ROBINSON: IVY ROBINSON,
20 NUMBER ONE FIFTY.

21 THE COURT: ALRIGHT, AND WHO IS IT
22 THAT YOU KNOW?

23 JUROR ROBINSON: Minor, MELVA.

24 THE COURT: ALRIGHT. AND THE FACT
25 THAT YOU KNOW THEM, WOULD THAT HAVE ANY EFFECT ON YOUR

1 ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE
2 FOR BOTH THE STATE AND THE DEFENSE?

3 JUROR ROBINSON: YES, IT WOULD.

4 THE COURT: ALRIGHT, I'LL EXCUSE YOU
5 FROM SERVING ON THIS CASE, BUT REMAIN WITH US FOR RIGHT
6 NOW, PLEASE, MA'AM.

7 YES, MA'AM, YOUR NAME AND NUMBER?

8 JUROR CONWAY: JULIET CONWAY,
9 TWENTY-NINE.

10 THE COURT: ALRIGHT.

11 JUROR CONWAY: I KNOW Minor
12 AND MELVA ROBINSON.

13 THE COURT: ALRIGHT. AND WOULD THAT
14 FACT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL
15 JUROR IN THIS CASE?

16 JUROR CONWAY: YES, SIR.

17 THE COURT: ALRIGHT. YOU HAVE SEAT,
18 BUT REMAIN WITH US. I'LL EXCUSE YOU FROM SERVING ON
19 THIS CASE.

20 YES, SIR, YOUR NAME AND NUMBER?

21 JUROR GUINYARD: BERNARD GUINYARD,
22 SEVENTY-EIGHT.

23 THE COURT: YES, SIR.

24 JUROR GUINYARD: I KNOW SHARON
25 ROBINSON.

73

1 THE COURT: WOULD THAT AFFECT YOUR
2 ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

3 JUROR GUINYARD: NO, SIR.

4 THE COURT: THANK YOU, SIR, YOU RE
5 QUALIFIED TO SERVE.

6 YES, MA'AM?

7 JUROR CLARK: LENA CLARK, MY NUMBER
8 IS TWENTY-FIVE. I KNOW Minor [REDACTED], MELVA ROBINSON
9 AND SHARON ROBINSON.

10 THE COURT: ALRIGHT. AND WOULD THAT
11 AFFECT YOUR ABILITY IO BE A FAIR AND IMPARTIAL JUROR IN
12 THIS CASE?

13 JUROR CLARK: YES, IT WOULD.

14 THE COURT: ALRIGHT, I'LL EXCUSE
15 YOU. JUST HAVE A SEAT. THANK YOU, MA'AM.

16 PLEASE STAND IF YOU NEED TO SPEAK
17 NOW. WHEN I CALL THESE NAMES I WANT YOU TO STAND AS
18 SOON AS I CALL THEIR NAMES, DON'T WAIT UNTIL I CALL A
19 BUNCH OF NAMES AND THEN STAND. NO, SIR, SHE'S FIRST,
20 YOU STAND RIGHT THERE.

21 YES, MA'AM, YOUR NAME AND NUMBER?

22 JUROR PAYNE: MY NAME IS KATHY
23 KIMPSON PAYNE, MY NUMBER IS ONE THIRTY-EIGHT. THE FIRST
24 YOUNG LADY YOU CALLED I DON'T KNOW HER NAME BUT I KNOW
25 HER GRANDMOTHER.

1 THE COURT: ALRIGHT. AND WOULD THAT
2 AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN
3 THIS CASE?

4 JUROR PAYNE: YES.

5 THE COURT: IT WOULD. THANK YOU,
6 MA'AM, JUST BE SEATED AND I'LL EXCUSE YOU FROM SERVING
7 ON THIS CASE.

8 YES, SIR, YOUR NAME AND NUMBER?

9 JUROR DRAYTON: I WANTED TO KNOW IF
10 THE YOUNG MAN IS EMPLOYED WITH SARA LEE.

11 THE COURT: YOU WANT TO KNOW WHAT?

12 MS. FORD: IS HE EMPLOYED WITH SARA
13 LEE.

14 THE COURT: WELL, YOU MEAN THE
15 DEFENDANT?

16 JUROR DRAYTON: YES, YOUR HONOR.

17 THE COURT: ALRIGHT, SIR, I DON'T
18 KNOW, BUT IF HE WAS?

19 JUROR DRAYTON: WE WORKED TOGETHER,
20 I DON'T RECALL HIM DIRECTLY, BUT I THINK HE WAS A
21 GENTLEMAN THAT WAS EMPLOYED THERE.

22 THE COURT: ALRIGHT, IF HE WAS
23 THERE, WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND
24 IMPARTIAL JUROR?

25 JUROR DRAYTON: NO.

75

1 THE COURT: ALRIGHT, SIR, YOUR NAME
2 AND NUMBER, PLEASE?

3 JUROR DRAYTON: DRAYTON, NUMBER
4 FORTY-TWO.

5 THE COURT: ALRIGHT, THANK YOU, SIR.
6 ANYONE ELSE THAT KNOWS ANY OF THE WITNESSES WHOSE NAMES
7 I'VE ALREADY CALLED?

8 (Negative response from jury panel.)

9 THE COURT: LADIES AND GENTLEMEN, I
10 WILL CALL THESE OTHER WITNESSES. IF YOU KNOW ANY OF
11 THESE PLEASE STAND WHEN I CALL THEIR NAMES, DON'T WAIT
12 UNTIL I'VE GOTTEN ALL DOWN THE LIST. IT'S A LOT EASIER
13 IF YOU WILL STAND IF YOU THINK YOU KNOW THIS PERSON.

14 NOW, THE FIRST -- THERE'S A LIST OF
15 PEOPLE WHO ARE NOW OR FORMERLY WITH THE ORANGEBURG
16 COUNTY SHERIFF'S OFFICE. PATRICIA EIKOFF. THEY ARE NOT
17 IN THE COURTROOM SO YOU JUST -- I DON'T THINK ANY OF
18 THEM ARE HERE, NOT YET. BUT PATRICIA EIKOFF IS THE
19 FIRST ONE. RHONDA BAMBERG. ANTHONY THOMPSON, HE NOW
20 WORKS IN RICHLAND COUNTY. JEANIA JEFFCOAT. KIM PUGH.
21 GERALD CARTER. BETTY BUTLER. CATHERINE LEISY. JOHN
22 BURNETTE. THOSE LAST THREE, LADIES AND GENTLEMEN, ARE
23 WITH SLED, STATE LAW ENFORCEMENT DIVISION, THAT WAS
24 BETTY BUTLER, CATHERINE LEISY AND JOHN BURNETTE. THEY
25 ARE NOT WITH THE SHERIFF'S OFFICE BUT WITH SLED.

1 HEATHER FALCO HOOK. MS. HOOK IS STANDING OVER TO YOUR
2 LEFT. THANK YOU, MA'AM.

3 (Affirmative response by jury panel.)

4 THE COURT: YES, MA'AM, YOUR NAME
5 AND NUMBER?

6 JUROR ROBINSON: IVY ROBINSON,
7 NUMBER ONE FIFTY.

8 THE COURT: DID I EXCUSE YOU?

9 JUROR ROBINSON: UH HUH.

10 THE COURT: IDID, SO YOU DON'T NEED
11 TO STAND UP AGAIN. JUST BE PATIENT WITH US A FEW
12 MINUTES. OKAY?

13 LADIES AND GENTLEMEN, GEORGE
14 NICHOLSON, WHO WORKS WITH AT&T. DR. ELIZABETH GIBBS,
15 FROM CHARLESTON. DR. DEBORAH REYES, R-E-Y-E-S, FROM
16 COLUMBIA. IF YOU KNOW ANY OF THOSE INDIVIDUALS PLEASE
17 STAND.

18 (Negative response from jury panel.)

19 THE COURT: LADIES AND GENTLEMEN, IS
20 THERE ANY MEMBER OF THE JURY PANEL WHO IS RELATED BY
21 BLOOD OR MARRIAGE OR A FORMER EMPLOYEE OF ANY LAW
22 ENFORCEMENT AGENCY? IF YOU OR ANY MEMBER OF YOUR FAMILY
23 WAS FORMERLY EMPLOYED OR NOW EMPLOYED BY ANY LAW
24 ENFORCEMENT AGENCY, OR IF YOU ARE RELATED BY BLOOD OR
25 MARRIAGE OR VERY CLOSE PERSONAL FRIENDS TO ANY MEMBER OF

1 ANY LAW ENFORCEMENT AGENCY WOULD YOU PLEASE STAND.

2 (Affirmative response from jury panel.)

3 THE COURT: YES, SIR, YOUR NAME AND
4 NUMBER.

5 JUROR HEBERT: WILLIAM HEBERT,
6 EIGHTY-FIVE.

7 THE COURT: YES, SIR.

8 JUROR HEBERT: MY FATHER IN LAW IS
9 A RETIRED STATE TROOPER.

10 THE COURT: WOULD THAT AFFECT YOUR
11 ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

12 JUROR HEBERT: NO, SIR.

13 THE COURT: THANK YOU, SIR.

14 YES, SIR, YOUR NAME AND NUMBER?

15 JUROR GREEN: MERVIN GREEN, SEVENTY-
16 SIX. I WAS A CORRECTIONAL OFFICER HERE IN ORANGEBURG
17 AND MY COUSIN IS A CAPTAIN IN THE SHERIFF'S DEPARTMENT
18 HERE IN ORANGEBURG.

19 THE COURT: AND WOULD ANY OF THOSE
20 FACTS AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL
21 JUROR IN THIS CASE?

22 JUROR GREEN: NO, IT WOULDN'T.

23 THE COURT: THANK YOU, SIR.

24 YES, MA'AM?

25 JUROR WEEKS: JACQUELINE WEEKS, ONE

1 NINETY-FIVE, MY SON'S GRANDFATHER IS A DEPUTY WITH THE
2 ORANGEBURG COUNTY SHERIFF'S DEPARTMENT.

3 THE COURT: AND WOULD THAT AFFECT
4 YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS
5 CASE?

6 JUROR WEEKS: NO.

7 THE COURT: THANK YOU, MA'AM.

8 YES, MA'AM?

9 JUROR SIMMONS: RONDA SIMMONS, ONE
10 SIXTY-ONE. MY HUSBAND WAS EMPLOYED WITH COLLETON COUNTY
11 POLICE DEPARTMENT.

12 THE COURT: WOULD THAT AFFECT YOUR
13 ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS CASE?

14 JUROR SIMMONS: NO, SIR.

15 THE COURT: THANK YOU.

16 YES, MA'AM?

17 JUROR GOLDSMITH: DAISY GOLDSMITH,
18 MY BROTHER IS CURRENTLY UNEMPLOYED, HE WAS AN OFFICER AT
19 THE ORANGEBURG DETENTION CENTER.

20 THE COURT: AND WHAT WAS YOUR NAME?

21 JUROR GOLDSMITH: DAISY GOLDSMITH.

22 THE COURT: ALRIGHT, MS. GOLDSMITH,
23 WOULD THAT AFFECT YOUR ABILITY TO BE A FAIR AND
24 IMPARTIAL JUROR IN THIS CASE?

25 JUROR GOLDSMITH: NO, SIR.

1 THE COURT: THANK YOU, MA'AM.

2 IS ANY MEMBER OF THE JURY PANEL
3 EMPLOYED BY OR FORMERLY EMPLOYED BY, OR HAVE A CLOSE
4 FRIEND OR BLOOD RELATIVE EMPLOYED BY ANY PROSECUTORIAL
5 AGENCY SUCH AS THE ATTORNEY GENERAL, THE SOLICITOR IN
6 ANY COUNTY OR DISTRICT OR ANY PROSECUTING OFFICER IN ANY
7 TYPE OF COURT, EITHER CIVIL OR MILITARY? IF YOU OR A
8 CLOSE FRIEND WAS EMPLOYED BY -- A CLOSE FRIEND OR
9 RELATIVE, OR PROSECUTOR, PLEASE STAND.

10 (Affirmative response from jury panel.)

11 THE COURT: YES, SIR, YOUR NAME AND
12 NUMBER?

13 JUROR DIAS: KIERAN DIAS, NUMBER
14 THIRTY-NINE. ANGELA GARRICK USED TO BE A PROSECUTOR
15 HERE AND NOW IN LEXINGTON COUNTY, AND WE'RE VERY CLOSE
16 PERSONAL FRIENDS.

17 THE COURT: AND WOULD THAT AFFECT
18 YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS
19 CASE?

20 JUROR DIAS: NO.

21 THE COURT: THANK YOU, SIR.

22 NOW, LADIES AND GENTLEMEN, I HAVE
23 READ THESE INDICTMENTS WHICH DESCRIBE THESE ACTIONS OR
24 ALLEGED CONDUCT WHICH OCCURRED IN AUGUST AND JUNE OF TWO
25 THOUSAND AND FIVE HERE IN ORANGEBURG COUNTY. IT MAY

1 HAVE BEEN SOME PUBLICITY IN THE NEWSPAPER ABOUT THIS
2 CASE AT THE TIME IT HAPPENED OR SOMETIME SUBSEQUENT TO
3 THAT, OR YOU MAY HAVE HEARD ABOUT IT FROM SOME OTHER
4 SOURCE. IF YOU KNOW ANYTHING ABOUT THIS CASE FROM ANY
5 SOURCE WHATSOEVER WOULD YOU PLEASE STAND AT THIS TIME.
6 IF YOU EVER HEARD ANYBODY TALKING ABOUT IT OR REMEMBER
7 ANY NEWSPAPER ARTICLE, ANYTHING FROM ANY SOURCE, PLEASE
8 STAND.

9 (Negative response from jury panel.)

10 THE COURT: IS ANY MEMBER OF THE
11 JURY PANEL OR A CLOSE MEMBER OF YOUR FAMILY OR A FRIEND
12 EVER BEEN ACCUSED OF, OR A VICTIM OF ANY TYPE OF SEXUAL
13 ASSAULT OR ANY OTHER SERIOUS CRIME. I'M NOT TALKING
14 ABOUT SOMETHING LIKE SPEEDING OR SOMETHING OF THAT
15 NATURE, BUT ANY TYPE OF SEXUAL ASSAULT OR OTHER SERIOUS
16 CRIME, IF YOU OR A CLOSE MEMBER OF YOUR FAMILY OR A
17 FRIEND HAS EVER BEEN ACCUSED OF, OR A VICTIM OF ANY SUCH
18 CRIME WOULD YOU PLEASE STAND.

19 (Negative response from jury panel.)

20 THE COURT: IS THERE ANY MEMBER OF
21 THE JURY PANEL WHO IS NOW OR FORMERLY A MEMBER OF ANY
22 ORGANIZATION SUCH AS CAVE, CITIZENS AGAINST VIOLENT
23 CRIME, MADD, MOTHERS AGAINST DRUNK DRIVING, SADD, PEOPLE
24 AGAINST RAPE, PEST, DARKNESS TO LIGHT, PARENTS EMPOWERED
25 TO SAVE TEENS, OR ANY SIMILAR ORGANIZATION, WOULD YOU

1 PLEASE STAND.

2 (Negative response from jury panel.)

3 THE COURT: IS THERE ANY MEMBER OF
4 THE JURY PANEL A MANDATORY REPORTER OF CHILD ABUSE OR
5 NEGLECT PURSUANT TO SOUTH CAROLINA STATUTE. SOUTH
6 CAROLINA HAS A STATUTE THAT CERTAIN PERSONS ARE REQUIRED
7 BY LAW TO REPORT ANY EVIDENCE THEY MIGHT HAVE OF CHILD
8 ABUSE. IF YOU ARE ONE OF THOSE PERSONS WHO IS A
9 MANDATORY REPORTER WOULD YOU PLEASE STAND.

10 (Negative response from jury panel.)

11 THE COURT: IS THERE ANY MEMBER OF
12 THE JURY PANEL WHO HAS ANY SPECIAL TRAINING IN --
13 MEDICAL TRAINING REGARDING A SEXUAL ASSAULT? IF SO,
14 WOULD YOU PLEASE STAND.

15 (Negative response from jury panel.)

16 THE COURT: HAS ANY MEMBER OF THE
17 JURY PANEL EVER BEEN ON A JURY BEFORE, EITHER IN A CIVIL
18 OR CRIMINAL CASE? IF SO, WOULD YOU PLEASE STAND.

19 (Affirmative response from jury panel.)

20 THE COURT: YES, SIR, YOUR NAME AND
21 NUMBER?

22 JUROR PHILLIPS: GREG PHILLIPS,
23 NUMBER ONE FORTY-ONE.

24 THE COURT: WAS IT A CIVIL CASE OR
25 A CRIMINAL CASE?

1 JUROR PHILLIPS: I'VE SERVED BOTH.

2 THE COURT: WOULD ANYTHING ABOUT
3 THOSE EXPERIENCES AFFECT YOUR ABILITY TO BE A FAIR AND
4 IMPARTIAL JUROR IN THIS CASE?

5 JUROR PHILLIPS: NO, SIR.

6 THE COURT: THANK YOU, SIR, YOU ARE
7 QUALIFIED TO SERVE.

8 YES, SIR, YOUR NAME AND NUMBER?

9 JUROR DAISE: LARRY DAISE, NUMBER
10 THIRTY-TWO.

11 THE COURT: WAS IT CIVIL OR
12 CRIMINAL?

13 JUROR DAISE: CIVIL.

14 THE COURT: WOULD ANYTHING ABOUT
15 THAT AFFECT YOUR ABILITY TO BE A FAIR AND IMPARTIAL
16 JUROR IN THIS CASE?

17 JUROR DAISE: NO, IT WOULDN'T.

18 THE COURT: THANK YOU.

19 YES, MA'AM?

20 JUROR MILLER: MELVIENA MILLER, ONE
21 TWO THREE, AND IT'S CIVIL.

22 THE COURT: CIVIL. WOULD ANYTHING
23 ABOUT THAT EXPERIENCE AFFECT YOUR ABILITY TO BE A FAIR
24 AND IMPARTIAL JUROR IN THIS CASE?

25 JUROR MILLER: NO, SIR.

1 THE COURT: THANK YOU.

2 YES, MA'AM, BEHIND THE POST, I CAN'T
3 SEE YOU.

4 JUROR DWIGHT: MARY DWIGHT, NUMBER
5 FORTY-FOUR. CRIMINAL.

6 THE COURT: AND WOULD THAT AFFECT
7 YOUR ABILITY TO BE A FAIR AND IMPARTIAL JUROR IN THIS
8 CASE?

9 JUROR DWIGHT: NO, SIR.

10 THE COURT: THANK YOU, MA'AM.

11 YES, MA'AM?

12 JUROR STEVENSON: RHONDA STEVENSON,
13 ONE SEVENTY ONE. CIVIL.

14 THE COURT: AND WOULD THAT AFFECT
15 YOUR ABILITY TO SERVE IN THIS CASE?

16 JUROR STEVENSON: NO, SIR.

17 THE COURT: THANK YOU.

18 YES, MA'AM?

19 JUROR GOLDSMITH: DAISY GOLDSMITH,
20 CIVIL.

21 THE COURT: WOULD THAT AFFECT YOUR
22 ABILITY TO SERVE IN THIS CASE?

23 JUROR GOLDSMITH: NO, SIR.

24 THE COURT: THANK YOU, MA'AM.

25 YES, MA'AM? WAIT A MINUTE. THEY

1 KEEP POPPING UP. YES, MA'AM, IN THE YELLOW DRESS, AND
2 SPEAK A LITTLE LOUDER?

3 JUROR PAYNE: KATHY PAYNE, NUMBER
4 ONE THIRTY-EIGHT. I SERVED ON BOTH ABOUT TEN OR FIFTEEN
5 YEARS AGO.

6 THE COURT: AND WOULD THAT AFFECT
7 YOUR ABILITY TO SERVE AS A FAIR AND IMPARTIAL JUROR IN
8 THIS CASE?

9 JUROR PAYNE: NO, YOUR HONOR.

10 THE COURT: THANK YOU, MA'AM.

11 JUROR WEEKS: JACQUELINE WEEKS,
12 NUMBER ONE NINETY-FIVE, CRIMINAL ABOUT SIX YEARS AGO,
13 NO, IT WOULDN'T AFFECT ME.

14 THE COURT: THANK YOU, MA'AM.

15 YES, SIR?

16 JUROR KENNERLY: HOLLIS KENNERLY, ONE
17 O FOUR, CIVIL, NO EFFECT.

18 THE COURT: THANK YOU, SIR.

19 YES, SIR?

20 JUROR BAPTISTE: JOHN BAPTISTE,
21 EIGHT, CRIMINAL, NO EFFECT.

22 THE COURT: THANK YOU, SIR.

23 YES, MA'AM, IN THE BACK? DID YOU
24 CHANGE YOUR MIND?

25 JUROR: I NEVER SERVED.

95

1 THE COURT: HAS ANY MEMBER OF THE
2 JURY PANEL EVER RECEIVED ASSISTANCE FROM ANY TYPE OF
3 VICTIM'S ADVOCACY PROGRAM? IF SO, WOULD YOU PLEASE
4 STAND.

5 (Negative response from jury panel.)

6 THE COURT: LADIES AND GENTLEMEN,
7 YOU'VE HEARD THE ALLEGATIONS IN THIS CASE. THEY ARE
8 VERY SERIOUS ALLEGATIONS FOR BOTH THE STATE AND THE
9 DEFENDANT IN THIS CASE. IF THERE'S ANYTHING ABOUT THE
10 NATURE OF THESE ALLEGATIONS THEMSELVES WHICH WOULD MAKE
11 IT DIFFICULT FOR YOU TO SERVE AS A FAIR AND IMPARTIAL
12 JUROR FOR BOTH THE STATE AND THE DEFENSE WOULD YOU PLEASE
13 STAND.

14 (Negative response from jury panel.)

15 THE COURT: IS THERE ANY MEMBER OF
16 THE JURY PANEL THAT NEEDS TO SPEAK WITH ME PRIVATELY
17 ABOUT ANY OF THE MATTERS ABOUT WHICH I HAVE ALREADY
18 ASKED YOU? IF SO, WOULD YOU PLEASE STAND.

19 (Negative response from jury panel.)

20 THE COURT: DOES ANY MEMBER OF THE
21 JURY PANEL KNOW OF ANY REASON WHATSOEVER THAT YOU CAN'T
22 GIVE BOTH THE STATE AND THE DEFENSE IN THIS CASE A FAIR
23 AND IMPARTIAL TRIAL? IF YOU CAN'T BASED YOUR DECISION
24 IN THIS CASE SOLELY ON THE TESTIMONY AND THE EVIDENCE
25 THAT YOU HEAR IN THIS COURTROOM AND FOLLOW MY

1 INSTRUCTIONS TO YOU ON THE LAW, IF YOU KNOW OF ANY
2 REASON THAT MIGHT INTERFERE WITH YOUR ABILITY TO DO THAT
3 WOULD YOU PLEASE COME FORWARD AND SHARE THAT WITH ME AT
4 THIS TIME.

5 (Negative response from jury panel.)

6 THE COURT: IS THERE ANYTHING ELSE
7 FROM THE STATE?

8 SOLICITOR SCOTT: NO, YOUR HONOR.

9 THE COURT: FROM THE DEFENSE?

10 MS. FORD: NOTHING, YOUR HONOR.

11 THE COURT: ALRIGHT. NOW, LADIES
12 AND GENTLEMEN, THIS IS HOW WE PROCEED. UNDER OUR LAW
13 BOTH THE STATE AND THE DEFENSE HAS A RIGHT TO EXCUSE A
14 CERTAIN NUMBER OF PEOPLE FROM SERVING ON THE JURY. THEY
15 CAN DO THIS FOR ANY REASON THAT THEY WANT TO. THEY DO
16 NOT HAVE TO GIVE ANY REASON TO EXCUSE YOU FROM SERVING
17 ON THE JURY. SO, IN JUST A MINUTE THE CLERK IS GOING TO
18 DRAW YOUR NAMES RANDOMLY, THE CLERK USES A COMPUTER TO
19 DO THIS AND PRINT OUT A LIST FROM YOUR GROUP, A RANDOM
20 SELECTION. WE WILL CALL YOUR NAME IF IT'S ON THAT LIST,
21 WE WILL ASK YOU TO COME FORWARD, STAND RIGHT UP HERE IN
22 THE FRONT BY THIS LITTLE WALL BY THE COURT REPORTER AND
23 WATCH THAT DOOR BACK THERE. THE ATTORNEYS NEED TO GET
24 ONE LAST LOOK AT YOU BEFORE THEY DECIDE WHETHER THEY
25 WOULD EXERCISE ONE OF THEIR EXCUSES, OR WE CALL THEM

87

1 STRIKES, OR WHETHER THEY WOULD PRESENT YOU TO SERVE ON
2 THE JURY. I KNOW YOU'LL FEEL A LITTLE SELF-CONSCIOUS
3 WHILE THEY'RE LOOKING AT YOU, I'M SURE I PROBABLY WOULD,
4 I NEVER HAVE HAD TO DO THAT, BUT I NEVER HAVE LOST A
5 JUROR, NEVER HAVE HAD ONE THAT DIDN'T MAKE IT THROUGH
6 THAT EPISODE. SO, BE PATIENT WITH US WHEN WE DO THAT,
7 AND IT WILL JUST TAKE A FEW MINUTES FOR THE STATE TO GET
8 READY. WE USED TO DO IT REAL EASY, WE HAD ALL THE NAMES
9 IN A BASKET LIKE BINGO BALLS AND WE WOULD PULL THEM OUT,
10 BUT NOW THEY HAVE TO GET ALL THIS COMPUTER PRIMED UP
11 AND, OF COURSE, THOSE OF YOU I EXCUSED FROM SERVING THEY
12 HAVE TO COME OFF OF THAT LIST, SO, IT TAKES JUST A
13 MINUTE TO DO THAT. WE'RE STILL TRYING TO GET THIS
14 SYSTEM -- IT'S KIND OF A NEW SYSTEM. SO, WE'LL BE AT
15 EASE FOR JUST A FEW MINUTES.

16 ALRIGHT, ARE YOU READY?

17 CLERK: YES. NUMBER ONE FORTY-NINE,
18 OLA RIVERS. WHAT SAYS THE STATE?

19 SOLICITOR SCOTT: PLEASE PRESENT MS.
20 RIVERS.

21 CLERK: WHAT SAYS THE DEFENSE?

22 MS. FORD: PLEASE EXCUSE MS. RIVERS.

23 CLERK: YOU MAY HAVE A SEAT BACK IN
24 THE AUDIENCE.

25 NUMBER ONE NINETY-FIVE, JACQUELINE

1 WEEKS. WHAT SAYS THE STATE?

2 SOLICITOR SCOTT: PLEASE PRESENT MS.

3 WEEKS.

4 CLERK: WHAT SAYS THE DEFENSE?

5 MS. FORD: PLEASE EXCUSE MS. WEEKS.

6 CLERK: PLEASE HAVE A SEAT BACK IN
7 THE AUDIENCE.

8 NUMBER ONE NINETY-TWO, LAWRENCE
9 WASHINGTON. WHAT SAYS THE STATE?

10 SOLICITOR SCOTT: PLEASE PRESENT MR.

11 WASHINGTON.

12 CLERK: WHAT SAYS THE DEFENSE?

13 MS. FORD: PLEASE SEAT MR.

14 WASHINGTON.

15 CLERK: YOU MAY BE SEATED IN THE
16 JURY BOX, MR. WASHINGTON.

17 FIFTY-SEVEN, RITA FOGLE. WHAT SAYS
18 THE STATE?

19 SOLICITOR SCOTT: PLEASE PRESENT MS.

20 FOGLE.

21 CLERK: WHAT SAYS THE DEFENSE?

22 MS. FORD: PLEASE SEAT MS. FOGLE.

23 CLERK: YOU MAY BE SEATED IN THE
24 JURY BOX, MS. FOGLE.

25 ONE FIFTY-EIGHT, DEMETRICIA SCOTT.

1 WHAT SAYS THE STATE?

2 SOLICITOR SCOTT: PLEASE PRESENT MS.
3 SCOTT.

4 CLERK: WHAT SAYS THE DEFENSE?

5 MS. FORD: PLEASE EXCUSE MS. SCOTT.

6 CLERK: YOU MAY RETURN TO YOUR SEAT,
7 MS. SCOTT.

8 I UNDERSTAND SEVEN AND EIGHT ARE NOT
9 GOOD. NINETY-THREE, KALINA JENKINS.

10 SOLICITOR SCOTT: I'M SORRY, EIGHT
11 IS OKAY.

12 CLERK: EIGHT IS GOOD?

13 SOLICITOR SCOTT: YES.

14 THE COURT: SIR?

15 SOLICITOR SCOTT: HE SAID NUMBER
16 EIGHT IS NOT A GOOD NUMBER.

17 CLERK: I DON'T MEAN THAT'S THE --
18 WELL, IT'S NOT THE JURY NUMBER. I'M JUST SAYING THAT,
19 TELLING THEM THAT ON THE LIST THAT THESE NUMBERS ARE NOT
20 GOOD.

21 THE COURT: THAT'S ANOTHER NAME THAT
22 SHOULD NOT BE ON THE LIST AT ALL, IT'S JUST, IT'S NOT A
23 JUROR, NUMBER SEVEN -- OR EIGHT, THAT, THOSE TWO NAMES
24 ON THIS LIST ARE NOT JURORS IN THIS PANEL.

25 CLERK: WHAT SAYS THE STATE?

1 SOLICITOR SCOTT: THAT'S MS.

2 JENKINS?

3 CLERK: YES, KALINA JENKINS.

4 SOLICITOR SCOTT: PLEASE PRESENT MS.

5 JENKINS.

6 CLERK: WHAT SAYS THE DEFENSE?

7 MS. FORD: PLEASE SEAT MS. JENKINS.

8 CLERK: YOU MAY BE SEATED IN THE

9 JURY BOX, MS. JENKINS.

10 NUMBER FORTY, RICHARD DICKERSON.

11 WHAT SAYS THE STATE?

12 SOLICITOR SCOTT: PLEASE EXCUSE MR.

13 DICKERSON.

14 CLERK: YOU MAY RETURN TO YOUR SEAT,

15 MR. DICKERSON.

16 NUMBER ELEVEN IS NOT GOOD. NUMBER

17 FIFTY, ERNESTINE FELDER. WHAT SAYS THE STATE?

18 SOLICITOR SCOTT: PLEASE PRESENT MS.

19 FELDER.

20 CLERK: WHAT SAYS THE DEFENSE?

21 MS. FORD: PLEASE SEAT MS. FELDER.

22 CLERK: YOU MAY BE SEATED IN THE

23 JURY BOX, MS. FELDER.

24 THIRTEEN AND FOURTEEN ARE NOT GOOD.

25 NUMBER EIGHTY-FIVE, WILLIAM HEBERT. WHAT SAYS THE

1 STATE?

2 SOLICITOR SCOTT: PLEASE PRESENT MR.
3 HEBERT.

4 CLERK: WHAT SAYS THE DEFENSE?

5 MS. FORD: PLEASE SEAT MR. HEBERT.

6 CLERK: YOU MAY BE SEATED IN THE
7 JURY BOX, MR. HEBERT.

8 EIGHTY-SEVEN, BARBARA HOLLIDAY.
9 WHAT SAYS THE STATE?

10 SOLICITOR SCOTT: PLEASE PRESENT MS.
11 HOLLIDAY.

12 CLERK: WHAT SAYS THE DEFENSE?

13 MS. FORD: PLEASE EXCUSE MS.
14 HOLLIDAY.

15 CLERK: YOU MAY RETURN TO YOUR SEAT,
16 MS. HOLLIDAY.

17 SEVENTY-SIX, MERVIN GREEN. WHAT
18 SAYS THE STATE?

19 SOLICITOR SCOTT: PLEASE PRESENT MR.
20 GREEN.

21 CLERK: WHAT SAYS THE DEFENSE?

22 MS. FORD: PLEASE SEAT MR. GREEN.

23 CLERK: YOU MAY BE SEATED, MR.
24 GREEN, IN THE JURY BOX.

25 NUMBER FORTY-EIGHT, ALLEN FAIREY.

1 WHAT SAYS THE STATE?

2 SOLICITOR SCOTT: PLEASE PRESENT MR.
3 FAIREY.

4 CLERK: WHAT SAYS THE DEFENSE?

5 MS. FORD: PLEASE EXCUSE MR. FAIREY.

6 CLERK: YOU MAY RETURN TO YOUR SEAT,
7 MR. FAIREY.

8 ONE THIRTY-SIX, SYLVIA OLIVER. WHAT
9 SAYS THE STATE?

10 SOLICITOR SCOTT: PLEASE PRESENT MS.
11 OLIVER.

12 CLERK: WHAT SAYS THE DEFENSE?

13 MS. FORD: PLEASE EXCUSE MS. OLIVER.

14 CLERK: YOU MAY RETURN TO YOUR SEAT,
15 MS. OLIVER.

16 ONE O FOUR, HOLLIS KENNERLY. WHAT
17 SAYS THE STATE?

18 SOLICITOR SCOTT: PLEASE PRESENT MR.
19 KENNERLY.

20 CLERK: WHAT SAYS THE DEFENSE?

21 MS. FORD: PLEASE SEAT MR. KENNERLY.

22 CLERK: YOU MAY BE SEATED IN THE
23 JURY BOX, MR. KENNERLY.

24 NUMBER THIRTY-NINE, KIERAN DIAS.
25 WHAT SAYS THE STATE?

93

1 SOLICITOR SCOTT: PLEASE EXCUSE MR.
2 DIAS.

3 CLERK: YOU MAY RETURN TO YOUR SEAT,
4 MR. DIAS.

5 ONE SIXTY-ONE, RONDA SIMMONS.
6 THE COURT: I HAVE TWO AND SIX.

7 CLERK: WHAT SAYS THE STATE?

8 SOLICITOR SCOTT: PLEASE PRESENT MS.
9 SIMMONS.

10 CLERK: WHAT SAYS THE DEFENSE?

11 MS. FORD: PLEASE EXCUSE MS.
12 SIMMONS.

13 CLERK: YOU MAY RETURN TO YOUR SEAT,
14 MS. SIMMONS.

15 ONE THIRTY-FIVE, ALICE OEFFINGER.
16 WHAT SAYS THE STATE?

17 SOLICITOR SCOTT: PLEASE PRESENT MS.
18 OEFFINGER.

19 CLERK: WHAT SAYS THE DEFENSE?

20 MS. FORD: PLEASE SEAT MS.
21 OEFFINGER.

22 CLERK: YOU MAY BE SEATED IN THE JURY
23 BOX.

24 ONE SEVENTEEN, RANDY MCMANUS. WHAT
25 SAYS THE STATE?

1 SOLICITOR SCOTT: PLEASE PRESENT MR.
2 MCMANUS.

3 CLERK: WHAT SAYS THE DEFENSE?

4 MS. FORD: PLEASE EXCUSE MR. MCMANUS.

5 CLERK: YOU MAY RETURN TO YOUR SEAT,
6 MR. MCMANUS.

7 SEVENTEEN, YOLANDA BRYANT. WHAT
8 SAYS THE STATE?

9 SOLICITOR SCOTT: PLEASE PRESENT MS.
10 BRYANT.

11 CLERK: WHAT SAYS THE DEFENSE?

12 MS. FORD: PLEASE SEAT MS. BRYANT.

13 CLERK: YOU MAY BE SEATED IN THE
14 JURY BOX, MS. BRYANT.

15 ONE SEVENTY-ONE, RHONDA STEVENSON.
16 WHAT SAYS THE STATE?

17 SOLICITOR SCOTT: PLEASE PRESENT MS.
18 STEVENSON.

19 CLERK: WHAT SAYS THE DEFENSE?

20 MS. FORD: PLEASE SEAT MS.
21 STEVENSON.

22 CLERK: YOU MAY BE SEATED IN THE
23 JURY BOX, MS. STEVENSON.

24 NUMBER ONE, EFFIE AIKEN. WHAT SAYS
25 THE STATE?

1 SOLICITOR SCOTT: PLEASE PRESENT MS.

2 AIKEN.

3 CLERK: WHAT SAYS THE DEFENSE?

4 MS. FORD: PLEASE SEAT MS. AIKEN.

5 CLERK: YOU MAY BE SEATED IN THE
6 JURY BOX, MS. AIKEN.

7 ONE SEVENTY-SEVEN, JUDI SUTCLIFFE.
8 WHAT SAYS THE STATE?

9 SOLICITOR SCOTT: PLEASE PRESENT MS.
10 SUTCLIFFE.

11 CLERK: WHAT SAYS THE DEFENSE?

12 MS. FORD: PLEASE SEAT THE JUROR.

13 CLERK: YOU MAY BE SEATED IN THE
14 JURY BOX, MS. SUTCLIFFE.

15 THE COURT: GIVE US TWO ALTERNATES,
16 PLEASE, AND THE STRIKES WILL BE ONE AND TWO FOR EACH.

17 CLERK: ONE TWENTY-THREE, MELVIENA
18 MILLER. WHAT SAYS THE STATE?

19 SOLICITOR SCOTT: PLEASE PRESENT MS.
20 MILLER.

21 CLERK: WHAT SAYS THE DEFENSE?

22 MS. FORD: PLEASE EXCUSE MS. MILLER.

23 CLERK: YOU MAY RETURN TO YOUR SEAT,
24 MS. MILLER.

25 SEVENTY-FOUR, DEQUINTEN GRAYTON.

1 WHAT SAYS THE STATE?

2 SOLICITOR SCOTT: PLEASE PRESENT MR.
3 GRAYTON.

4 CLERK: WHAT SAYS THE DEFENSE?

5 MS. FORD: PLEASE SEAT MR. GRAYTON.

6 CLERK: YOU MAY BE SEATED, MR.
7 GRAYTON.

8 NUMBER EIGHT, JOHN BAPTISTE. WHAT
9 SAY THE STATE?

10 SOLICITOR SCOTT: PLEASE PRESENT MR.
11 BAPTISTE.

12 CLERK: WHAT SAYS THE DEFENSE?

13 MS. FORD: PLEASE SEAT MR. BAPTISTE.

14 CLERK: YOU MAY BE SEATED IN THE JURY
15 BOX.

16 THE COURT: ALRIGHT, LET ME SEE THE
17 LAWYERS IN THE BACK CHAMBERS A MINUTE.

18 LADIES AND GENTLEMEN, WE'VE GOT TO,
19 I NEED TO TALK TO THESE LAWYERS. INSTEAD OF TRYING TO
20 WHISPER UP HERE WE'RE GOING TO STEP INTO THE BACK.
21 Y'ALL JUST SIT RIGHT WHERE YOU ARE, AND WE WON'T BE BUT
22 A FEW MINUTES.

23 (Whereupon, the following
24 takes place in chambers.)

25 THE COURT: ARE YOU READY?

1 COURT REPORTER: YES, SIR.

2 THE COURT: ALRIGHT. WHEN THE
3 COMPUTER PRINTED THE NAMES OF THE JURORS RANDOMLY IT
4 ADDED NAMES THAT ARE NOT ON THIS JURY PANEL. I DON'T
5 KNOW WHERE IT GOT THEM, BUT IN THE STRIKING THE LAST
6 ALTERNATE THAT WAS SELECTED, IT WAS ACTUALLY NUMBER
7 THIRTY-NINE ON THIS LIST OF JURORS, AND OUT OF THOSE
8 THIRTY-NINE, ONE, TWO, THREE, FOUR, FIVE, SIX, SEVEN,
9 EIGHT, NINE, TEN, ELEVEN, TWELVE, THIRTEEN, FOURTEEN OF
10 THOSE PEOPLE ARE NOT ON THIS JURY PANEL. SO THAT'S WHAT
11 MR. EDMOND WAS SAYING WHEN HE WAS SAYING THAT SEVEN
12 AND EIGHT AND NUMBER THREE WERE NOT ON THE JURY. I DON'T
13 KNOW WHERE IT GOT THOSE NAMES. BUT THE JURY THAT HAS
14 BEEN SELECTED ARE ALL MEMBERS OF THE JURY PANEL THAT
15 WERE PROPERLY SUMMONED THIS WEEK AND WERE VOIR DIRED AND
16 QUALIFIED TO SERVE ON THE JURY. THERE'S NO QUESTION IN
17 MY MIND THAT THEY WERE RANDOMLY PRINTED ON THIS JURY
18 LOG. I MEAN, THEY, THERE'S NO QUESTION IN MY MIND. SO,
19 I DON'T KNOW WHAT HAPPENED, WE DON'T HAVE ANY REAL
20 COMPUTER EXPERTS OUT THERE ON THIS MACHINE. BUT THERE'S
21 NO QUESTION IN MY MIND THAT WE GOT A JURY RANDOMLY
22 SELECTED FROM THAT PANEL. BUT IF EITHER OF YOU HAVE A
23 PROBLEM WITH THIS I'LL MAKE THEM GO BACK AND TRY TO
24 PRINT ANOTHER LIST AND WE'LL JUST START OVER.

25 SOLICITOR SCOTT: I DON'T HAVE

1 ANYTHING IN THE WAY OF JURY SELECTION. I DON'T KNOW OF
2 ANYTHING REGARDING A BATSON OR ANYTHING.

3 THE COURT: MS. FORD?

4 MS. FORD: WE DON'T HAVE ANY
5 OBJECTION EITHER, YOUR HONOR.

6 THE COURT: WELL, I THINK IT'S A
7 FAIR JURY. IT'S KIND OF A STRANGE THING THAT WE GOT
8 ALL THESE EXTRA NAMES MINGLED IN HERE, BUT WE ELIMINATED
9 ALL THOSE NAMES. OBVIOUSLY, WE DON'T HAVE ANYBODY ON
10 THE JURY THAT WASN'T SUMMONED HERE FOR THIS WEEK OF
11 SERVICE AND QUALIFIED. ALRIGHT, I JUST WANTED TO PUT
12 THAT ON THE RECORD AND EXPLAIN THAT TO Y'ALL OUTSIDE THE
13 PRESENCE OF THE JURY WHAT IT WAS, AND TELL YOU THE NAMES
14 THAT AREN'T ON THERE.

15 ALRIGHT.

16 SOLICITOR SCOTT: ARE WE GOING TO
17 OPEN, OR DISMISS THEM OR - - -

18 THE COURT: I DON'T THINK SO. WE'LL
19 DO THE PRETRIALS. I'LL SEND THEM ON BACK HOME UNTIL
20 THIS AFTERNOON, AND WE'LL DO THE PRETRIALS.

21 (Whereupon, the following
22 takes place in open court
23 in the presence of the jury.)

24 THE COURT: ALRIGHT, LADIES AND
25 GENTLEMEN, WE ARE NOT GOING TO START THIS TRIAL UNTIL

1 TWO:THIRTY THIS AFTERNOON, SO WE'RE GOING TO LET YOU GO
2 TO LUNCH AT THIS TIME. FOLLOW THE BAILIFF OUT THROUGH
3 THE BACK. THE BAILIFF WILL SHOW YOU HOW TO GET -- SHOW
4 YOU WHERE THE JURY ROOM IS BACK THERE, AND THEY WILL
5 TAKE YOU OUT AROUND ANOTHER HALL AND YOU'LL COME OUT
6 INTO THE MAIN HALL. WHEN YOU COME BACK YOU COME
7 STRAIGHT TO THE JURY ROOM, AND PLEASE BE THERE AT
8 TWO:THIRTY.

9 NOW, DO NOT DISCUSS THIS CASE WITH
10 ANYONE. DO NOT GO BACK SOMEWHERE AND TRY TO GOOGLE OR
11 SOMETHING AND FIND OUT SOMETHING ABOUT THIS CASE. I
12 TOLD YOU EARLIER THAT YOU MUST MAKE YOUR DECISION BASED
13 SOLELY ON THE TESTIMONY AND THE EVIDENCE THAT YOU HEAR
14 IN THIS COURTROOM. SO, IF YOU GO OUT AND TRY TO DO YOUR
15 OWN INVESTIGATION YOU WOULD NOT BE QUALIFIED TO CONTINUE
16 TO SERVE ON THIS JURY. SO, YOU DON'T DO ANYTHING
17 OUTSIDE OF THIS COURTROOM INVOLVING THIS CASE. YOU DO
18 NOT DISCUSS IT WITH ANYBODY. IF YOU GO TO LUNCH AND SEE
19 A FRIEND AND YOU SAY, I'M SERVING ON THE JURY AND I
20 CAN'T TALK ABOUT IT, BECAUSE YOU MIGHT TELL THEM WHAT
21 THE CASE IS AND ALL OF A SUDDEN THEY HAVE AN OPINION
22 ABOUT THE CASE AND THEY KNOW ALL ABOUT THE FACTS OF THE
23 CASE, AND YOU WOULD NO LONGER BE QUALIFIED TO SERVE ON
24 THIS JURY. SO, IT'S EASY TO PREVENT THAT, YOU JUST
25 DON'T TALK ABOUT THE CASE WITH ANYBODY. AND SO, WE'LL

1 SEE YOU AT TWO:THIRTY. THANK YOU VERY MUCH. ONE
2 SECOND BEFORE YOU LEAVE.

3 LADIES AND GENTLEMEN WHO WERE NOT
4 SELECTED ON THIS CASE I'M GOING TO EXCUSE YOU ALSO, AND
5 I'M GOING TO ASK YOU TO CALL THE CALL IN NUMBER AFTER
6 SIX O'CLOCK THIS AFTERNOON. NOW, WE DO NOT ANTICIPATE
7 THAT WE WILL NEED YOU IN THE MORNING, BUT THINGS CHANGE
8 MOMENTARILY IN THIS COURTROOM. WE MIGHT VERY WELL NEED
9 YOU AT NINE:THIRTY IN THE MORNING, I DON'T KNOW, IF I
10 KNEW NOW I WOULD TELL YOU AND YOU WOULDN'T HAVE TO WORRY
11 ABOUT IT. BUT THAT'S WHY WE HAVE THIS TELEPHONE SET UP.
12 NOW, THERE'S ONLY ONE LINE AND THERE'S PROBABLY FORTY OF
13 YOU OUT THERE, SO IF ALL OF YOU CALL AT SIX O'CLOCK,
14 THIRTY-NINE OF YOU ARE GOING TO GET A BUSY SIGNAL. BUT
15 IT WILL BE ON THERE ALL NIGHT LONG. JUST BE PATIENT AND
16 YOU'LL FINALLY GET A MESSAGE, AND IT WILL SAY, PLEASE BE
17 IN THE COURTROOM AT NINE:THIRTY IN THE MORNING, OR IT
18 WILL SAY, CALL BACK AFTER SIX O'CLOCK TOMORROW
19 AFTERNOON. I DON'T KNOW WHAT IT'S GOING TO SAY, BUT YOU
20 FOLLOW WHATEVER INSTRUCTIONS YOU FIND.

21 THANK YOU VERY MUCH, YOU ARE EXCUSED
22 AT THIS TIME.

23 AND YOU ON THE JURY PANEL ARE ALSO
24 EXCUSED. WE'LL SEE Y'ALL AT TWO:THIRTY.

25 (Whereupon, the jury

1 leaves the courtroom and
2 the following takes place
3 out of the presence of
4 the jury.)

5 THE COURT: ALRIGHT, SHUT THE DOORS,
6 PLEASE. ALRIGHT, WE HAVE SOME PRETRIAL ISSUE THAT WE
7 NEED TO DISCUSS.

8 SOLICITOR SCOTT: YES, YOUR HONOR.

9 THE COURT: FROM THE STATE?

10 SOLICITOR SCOTT: YOUR HONOR, I
11 BELIEVE WE DID THE JACKSON V. DENNO YESTERDAY.

12 THE COURT: YES, SIR.

13 SOLICITOR SCOTT: AND WE FIGURED OUT
14 THE REDACTION ON THE LAST SENTENCE OF THE STATEMENT
15 REGARDING THE POLYGRAPH.

16 THE COURT: ALRIGHT, SIR.

17 SOLICITOR SCOTT: I WOULD ALSO POINT
18 OUT THAT THE STATE HAS FILED A MOTION IN LIMINE BASED
19 UPON OUR STATE'S RAPE SHIELD STATUTE, AND WE WOULD ASK
20 THAT THAT BE ENFORCED BY THE STATUTE, THAT ANY TESTIMONY
21 REGARDING, ESPECIALLY REGARDING THE TWO THOUSAND AND TWO
22 ALLEGATIONS AGAINST JEROME CRAMER IN WHICH THE VICTIM,
23 Minor IS THE SAME VICTIM AS IN THIS CASE. AND
24 THAT WOULDN'T JUST INCLUDE REFERENCES TO THE ACTUAL
25 INCIDENT BUT ALSO REFERENCES TO THE MEDICAL EVIDENCE

1 FROM THAT CASE.

2 THE COURT: WELL, AS WE DISCUSSED IN
3 CHAMBERS YESTERDAY, I THINK OFF THE RECORD, THE VICTIM
4 IN THIS CASE WAS INVOLVED IN AN INCIDENT IN TWO THOUSAND
5 AND TWO, THREE YEARS BEFORE THE INCIDENT INVOLVED IN
6 THIS TRIAL TODAY, AND AS A RESULT OF THE TWO THOUSAND
7 AND TWO INCIDENT THERE WAS A SCARRING OR TEARING ON THE
8 HYMEN WHICH WAS DETECTED IN THE MEDICAL EXAM WHICH WAS
9 DONE IN REFERENCE TO THIS CASE. IS THAT RIGHT?

10 SOLICITOR SCOTT: THAT'S CORRECT,
11 YOUR HONOR.

12 THE COURT: ALRIGHT. YES, MA'AM,
13 MS. FORD, I'LL BE GLAD TO HEAR YOU ON THAT QUESTION.

14 MS. FORD: THANK YOU, YOUR HONOR.
15 WE ALSO FILED A MOTION TO INCLUDE EVIDENCE OF THE TWO
16 THOUSAND AND TWO ALLEGATIONS THAT WE SPOKE ABOUT
17 YESTERDAY.

18 THE COURT: YES, MA'AM.

19 MS. FORD: TO BEGIN, YOUR HONOR, WE
20 SPOKE ABOUT THIS, THE AFFIDAVITS THAT WERE SUBMITTED TO
21 GET THE ARREST WARRANT FOR MR. JONES ALLUDED TO, OR AS
22 STATED, FORENSIC MEDICAL EXAMINATION REVEALED THAT THE
23 VICTIM HAD HEALED INJURIES CONSISTENT WITH PREVIOUS
24 TRAUMA TO THE PELVIC AREA. IT WAS ALSO STATED ON THE
25 ARREST WARRANT. AS MR. SCOTT HAS SAID, THERE WAS A TWO

1 THOUSAND TWO ALLEGATION, THERE WAS A TWO THOUSAND TWO
2 MEDICAL EXAMINATION. IT WAS FOUND THAT THERE WAS A BLUNT
3 FORCE PENETRATING TRAUMA TO MS. Minor S HYMEN. IT
4 WOULD BE OUR POSITION THAT IF ANY OF THE WITNESSES OR
5 THE STATE GOT INTO ANY EVIDENCE CONCERNING THE PREVIOUS
6 LACERATIONS, THE PREVIOUS INJURIES WE WOULD USE THE TWO
7 THOUSAND TWO MEDICAL EXAMINATION TO REFUTE THAT
8 TESTIMONY, TO REFUTE THAT MR. JONES HAD ANYTHING TO DO
9 WITH CAUSING THAT INJURY.

10 FURTHER, YOUR HONOR, IT'S OUR
11 CONTENTION THAT THE MEDICAL EXAMINATION FALLS OUTSIDE
12 THE SCOPE OF THE RAPE SHIELD LAW. IT ONLY APPLIES TO
13 SEXUAL CONDUCT AND THE VICTIM'S MORALITY, NOT
14 NECESSARILY MEDICAL EXAMINATIONS. WE BELIEVE THE
15 EVIDENCE FOUND IN THE MEDICAL EXAMINATION FROM TWO
16 THOUSAND TWO IS RELEVANT BECAUSE IT'S PART OF THE
17 SIGNIFICANT FINDINGS OF THE MEDICAL EXAMINATION THAT WAS
18 DONE IN TWO THOUSAND AND FIVE.

19 WE'D ALSO ALLEGE UNDER STATE VERSUS
20 FINLEY AND STATE VERSUS LANG THAT THE TWO THOUSAND TWO
21 ALLEGATIONS BRING QUESTIONS OF MS. Minor S
22 SEXUAL KNOWLEDGE, THAT SHE WOULD HAVE THE SEXUAL
23 KNOWLEDGE NECESSARY TO BRING THESE ALLEGATIONS WITHOUT
24 THAT KNOWLEDGE NECESSARILY COMING FROM DEFENDANT, MR.
25 LINDY JONES. AND WE WOULD ALSO BRING FORTH THAT

1 EVIDENCE TO SHOW THAT FACT. YOUR HONOR, WE'VE RELIED ON
2 STATE VERSUS FINLEY, WHICH OFFERED, OR WHICH HELD, THE
3 EVIDENCE OF THE VICTIM'S SEXUAL CONDUCT IS ADMISSIBLE IF
4 IT'S OFFERED FOR A PURPOSE OTHER THAN TO ATTACK A
5 VICTIM'S MORALITY. WE'RE NOT DOING THAT IN THIS CASE,
6 YOUR HONOR, WE WOULDN'T PROPOSE TO DO THAT ANYWAY, WE
7 WOULD CERTAINLY COMPLY WITH THE RAPE SHIELD STATUTE, BUT
8 WE WOULD OFFER THAT EVIDENCE TO REFUTE ANY ALLEGATIONS
9 THAT MR. JONES CAUSED ANY INJURY TO MS. Minor S HYMEN
10 WHICH WAS FOUND IN TWO THOUSAND AND TWO AND ALSO IN TWO
11 THOUSAND AND FIVE. AND WE WOULD ALSO OFFER THE EVIDENCE
12 FROM STATE VERSUS GROVENSTEIN, THAT THE SEXUAL
13 EXPERIENCE OF A CHILD IS RELEVANT TO DEMONSTRATE THAT
14 SHE MAY HAVE HAD THE ABILITY TO TESTIFY ABOUT ALLEGED
15 SEXUAL CONDUCT.

16 FOR THOSE REASONS, YOUR HONOR, WE
17 WOULD BELIEVE THAT THE TWO THOUSAND TWO ALLEGATIONS
18 SHOULD BE ALLOWED.

19 THE COURT: ALRIGHT. YOUR FIRST
20 REQUEST THAT IT WOULD BE ALLOWED IN IN RESPONSE TO ANY
21 TESTIMONY THAT COMES IN FROM THE STATE ABOUT THE SCAR,
22 AND I AGREE WITH YOU ON THAT. I DON'T THINK THE STATE
23 HAS ANY INTENTION OF BRINGING THAT IN, AND I DON'T THINK
24 IT SHOULD BE IN. I DON'T THINK IT'S RELEVANT TO
25 ANYTHING IN THIS CASE BASED ON WHAT I'VE HEARD THUS FAR

105

1 ABOUT THIS CASE. BUT IF THAT WERE TO COME IN YOU WOULD
2 CERTAINLY A RIGHT TO BRING OUT THE TWO THOUSAND AND TWO
3 INCIDENT TO EXPLAIN THE SOURCE OF THAT SCAR. DO YOU
4 AGREE WITH THAT, MR. SCOTT?

5 SOLICITOR SCOTT: CERTAINLY, YOUR
6 HONOR.

7 THE COURT: ALRIGHT. SECONDLY, AS
8 TO WHETHER YOU SHOULD BE ABLE TO GET IT IN IN YOUR CASE,
9 I'VE READ THE THREE CASES THAT YOU'VE CITED, LANG,
10 GROVENSTEIN, IS IT LANGLEY -- LANG AND FINLEY, AND I
11 THINK THE FACTS IN THIS CASE ARE A GOOD BIT DIFFERENT
12 FROM ANY OF THOSE THREE CASES. I UNDERSTAND THERE ARE
13 CERTAIN CIRCUMSTANCES UNDER WHICH PRIOR SEXUAL CONDUCT
14 CAN BE ADMITTED, BUT I DON'T THINK THEY APPLY IN THIS
15 CASE. THIS YOUNG LADY WAS FOURTEEN WHEN THESE ALLEGED
16 ACTS OCCURRED. I DON'T THINK THE JURY IS GOING TO HAVE
17 ANY GREAT MYSTERY ABOUT WHERE SHE MIGHT HAVE LEARNED
18 KNOWLEDGE ABOUT SEXUAL MATTERS AT AGE FOURTEEN IN
19 TODAY'S SOCIETY, I WISH IT WERE. SO, I DON'T THINK THAT
20 APPLIES IN THIS CASE, AND SO I WOULD DENY THAT MOTION,
21 THAT YOU BE ALLOWED TO BRING THAT IN YOURSELF.

22 NOW, ANYTHING ELSE FROM THE DEFENSE,
23 PRETRIAL?

24 MS. FORD: YES, YOUR HONOR, WE HAVE
25 A NUMBER OF PRETRIAL MOTIONS. I DON'T KNOW IF THE STATE

1 HAS FINISHED, IF THAT'S ALL THAT THEY HAD. BUT WE'RE
2 PREPARED TO GO FORWARD ON A NUMBER OF MOTIONS, YOUR
3 HONOR.

4 SOLICITOR SCOTT: THAT'S ALL WE
5 HAVE, YOUR HONOR.

6 THE COURT: YES, MA'AM.

7 MS. FORD: THANK YOU, YOUR HONOR.
8 OUR FIRST MOTION IS TO EXCLUDE THE USE OF THE TERM,
9 VICTIM, THROUGHOUT THE TRIAL. YOUR HONOR, IT'S WELL
10 ESTABLISHED THAT A DEFENDANT WHEN HE'S FACING TRIAL HE'S
11 PRESUMED INNOCENT UNTIL HE'S PROVEN GUILTY. IT'S OUR
12 CONTENTION THAT TO CALL SOMEBODY A VICTIM IMPROPERLY
13 CHARACTERIZES THAT A CRIME HAS, IN FACT, OCCURRED.
14 THERE'S AN ELEMENT OF VICTIMIZATION, AND THERE IS NO
15 VICTIM UNTIL AND IF THE JURY FINDS THAT A CRIME, IN
16 FACT, HAS OCCURRED. WE BELIEVE IT'S PREJUDICIAL TO THE
17 DEFENDANT, YOUR HONOR, TO CALL MS. **Minor** A VICTIM
18 WHEN THE JURY, THEY ARE THE FACT FINDERS. IF THEY FIND
19 THAT A CRIME HAS OCCURRED THEN SHE WOULD, IN FACT, BE A
20 VICTIM, BUT UNTIL AND IF THEY DO THAT IT'S OUR
21 CONTENTION THAT IT'S A PREJUDICIAL TERM AND WE WOULD ASK
22 THAT IT NOT BE ALLOWED THROUGHOUT THIS TRIAL.

23 SOLICITOR SCOTT: YOUR HONOR, NO
24 MATTER WHAT THIS CASE WAS I WOULD ARGUE THAT WE SHOULD
25 BE ALLOWED TO USE THE WORD, VICTIM, BUT ESPECIALLY IN

107

1 THIS CASE, BECAUSE THE WORD, VICTIM, IS ACTUALLY DEFINED
2 BY STATUTE IN THE CST STATUTES. SIXTEEN, DASH, THREE,
3 DASH, SIX FIFTY-ONE SAYS, VICTIM MEANS THE PERSON
4 ALLEGING TO HAVE BEEN SUBJECTED TO CRIMINAL SEXUAL
5 CONDUCT. IT IS A STATUTORY TERM PASSED BY OUR
6 LEGISLATURE.

7 THE COURT: I THINK THAT, I AGREE
8 WITH MR. SCOTT ON THAT BECAUSE THAT WILL BE PART OF MY
9 CHARGE, I MEAN, BY LAW I HAVE TO CHARGE THAT DEFINITION.
10 AND SO, I DENY THAT MOTION.

11 MS. FORD: THANK YOU, YOUR HONOR.
12 OUR NEXT MATTER IS A MOTION TO SEQUESTER ALL WITNESSES.
13 YOUR HONOR, THE ALLEGATIONS IN THIS CASE ARE VERY
14 SPECIFIC. OBVIOUSLY, WE'RE GOING TO BE RELYING ON
15 PERSONAL KNOWLEDGE OF THE WITNESSES, NOT THEM HEARING
16 OTHER WITNESSES.

17 THE COURT: ALRIGHT, TELL ME WHICH
18 WITNESSES BY NAME YOU WANT TO SEQUESTER.

19 MS. FORD: YOUR HONOR, WE WOULD ASK
20 TO SEQUESTER - - -

21 THE COURT: WHO IS THE CASE OFFICER?

22 SOLICITOR SCOTT: ANTHONY THOMPSON.

23 THE COURT: ALRIGHT. AND OFFICER
24 THOMPSON WOULD NOT BE SEQUESTERED. AND THEN, OF COURSE,
25 THE VICTIM WOULD NOT BE SEQUESTERED.

1 MS. FORD: YOUR HONOR, WE WOULD ASK
2 TO SEQUESTER MELVA ROBINSON, HEATHER FALCO HOOK - - -

3 THE COURT: ALRIGHT, WHO IS MS.
4 HOOK?

5 SOLICITOR SCOTT: SHE IS THE TEACHER
6 THAT THE INCIDENT WAS REPORTED TO INITIALLY.

7 THE COURT: WHAT NOW?

8 SOLICITOR SCOTT: SHE IS THE TEACHER
9 THAT THE INCIDENT, THAT THE VICTIM REPORTED - - -

10 THE COURT: TEACHER?

11 SOLICITOR SCOTT: YES.

12 MS. FORD: SHE'S THE COMPLAINANT,
13 YOUR HONOR, INITIALLY.

14 THE COURT: OKAY. DO YOU OBJECT TO
15 SEQUESTERING THE TEACHER?

16 SOLICITOR SCOTT: NO.

17 THE COURT: OKAY. WHO ELSE, MS.
18 FORD?

19 MS. FORD: ANY OTHER LAW ENFORCEMENT
20 THAT WOULD TESTIFY, YOUR HONOR, DR. ELIZABETH GIBBS, AND
21 DR. DEBORAH REYES, WE WOULD ASK THAT THEY WOULD ALL BE
22 SEQUESTERED.

23 SOLICITOR SCOTT: I HAVE NO
24 OBJECTION TO THE LAW ENFORCEMENT. DR. GIBBS AND DR.
25 REYES WILL BE TWO EXPERTS.

109

1 THE COURT: HAVE THEY HAD ANY
2 CONTACT WITH EACH OTHER?

3 SOLICITOR SCOTT: NOT TO MY
4 KNOWLEDGE. ONE WORKS IN CHARLESTON AND ONE WORKS IN
5 COLUMBIA.

6 THE COURT: WELL, IT'S PERFECTLY
7 ACCEPTABLE FOR ONE EXPERT TO SIT IN THE COURTROOM AND
8 LISTEN AT ANOTHER EXPERT TESTIFY AND THEN BASE THEIR
9 EXPERT TESTIMONY ON WHAT THAT EXPERT WITNESS SAID.
10 AND THESE ARE NOT THE KIND OF PEOPLE YOU WOULD
11 NORMALLY THINK WOULD BE SUSCEPTIBLE, THAT THEIR
12 TESTIMONY WOULD BE INFLUENCED BY SOMEBODY. SO, I
13 DON'T THINK THERE'S ANY POINT IN SEQUESTERING THE
14 EXPERT WITNESSES, THEY ARE NOT FACT WITNESSES IN THE
15 CASE IN THE SENSE THAT THEY COULD BE FEEDING OFF OF
16 EACH OTHER.

17 MS. FORD: YOUR HONOR, I
18 UNDERSTAND THAT. IN NO WAY ARE WE SAYING THAT THEY
19 WOULD DO THAT, THAT THEY MIGHT, IN FACT, DO THAT, YOU
20 KNOW, I DON'T KNOW WHAT TESTIMONY WOULD COME FROM
21 THAT. BUT SPECIFICALLY, YOUR HONOR, HEATHER FALCO
22 HOOK AND MELVA ROBINSON ARE POSSIBLE, THEY ARE FACT
23 WITNESSES.

24 THE COURT: I'LL SEQUESTER MS.
25 ROBINSON AND MS. HOOK. OKAY. AND ALL LAW ENFORCEMENT

1 OFFICERS EXCEPT THE CASE OFFICER.

2 MS. FORD: THANK YOU, YOUR HONOR.

3 THE COURT: AND SO, WHAT ABOUT --
4 ARE THERE ANY OTHERS? I JUST WANT -- I DON'T WANT ANY
5 MISUNDERSTANDING ABOUT WHO'S SUPPOSED TO BE
6 SEQUESTERED.

7 SOLICITOR SCOTT: YOUR HONOR, I
8 WOULD JUST POINT OUT THAT MELVA ROBINSON IS NOT ON THE
9 STATE'S WITNESS LIST.

10 THE COURT: WELL, BUT SHE SHOULD
11 BE SEQUESTERED BECAUSE SHE'S ON THE DEFENSE WITNESS
12 LIST AND SHE'S A FACT WITNESS ABOUT THE CASE. AND
13 THIS APPLIES TO BOTH STATE'S WITNESSES AND DEFENSE'S
14 WITNESSES. NOW, I DON'T KNOW ABOUT ANY OF THE OTHER
15 DEFENSE'S WITNESSES OR ANY OTHERS THAT YOU THINK
16 SHOULD BE SEQUESTERED.

17 SOLICITOR SCOTT: WELL, IF WE'RE
18 GOING TO SEQUESTER MELVA ROBINSON, THE VICTIM'S
19 MOTHER, I WOULD ALSO REQUEST THAT SHARON ROBINSON - -
20 -

21 THE COURT: WELL, DO YOU OBJECT TO
22 SEQUESTERING HER?

23 SOLICITOR SCOTT: MELVA ROBINSON?
24 I PERSONALLY WOULD LIKE TO HAVE THE VICTIM'S MOTHER IN
25 THE COURTROOM.

1 THE COURT: BUT DOES SHE KNOW
2 ANYTHING ABOUT THE FACTS IN THE CASE? I UNDERSTAND
3 SHE WAS NOT AT HOME.

4 MS. FORD: NO, YOUR HONOR, SHE
5 WASN'T AT HOME IS MY UNDERSTANDING, AT THE TIME, BUT
6 SHE DOES BRING A LOT OF FACTUAL INFORMATION, BOTH HOW
7 MS. **Minor** WAS ACTUALLY AT THE RESIDENCE, WHAT
8 HAPPENED DIRECTLY AFTER LAW ENFORCEMENT WAS CALLED IN,
9 SHE IS ABLE TO TESTIFY TO THOSE, AND I THINK THE OTHER
10 FOLKS WILL BE TESTIFYING TO THAT BEFORE THAT, AND WE
11 CERTAINLY WOULDN'T WANT TO JEOPARDIZE ANY OF MS. MELVA
12 ROBINSON'S PERSONAL KNOWLEDGE, AND WE WOULD ASK HER TO
13 TESTIFY ON HER PERSONAL KNOWLEDGE.

14 THE COURT: ALRIGHT, WELL, I'LL
15 SEQUESTER HER.

16 SOLICITOR SCOTT: SO, I GUESS,
17 YOUR HONOR, I WOULD ASK THAT SHARON ROBINSON, LYNETTE
18 ROBINSON, OR LYNETTE JONES, ADRIEN DULY BE
19 SEQUESTERED ALSO, FROM THE DEFENSE'S WITNESS LIST.

20 THE COURT: ANY OBJECTION TO THAT?

21 MS. FORD: NO OBJECTION, YOUR
22 HONOR.

23 THE COURT: ALRIGHT. OKAY. SO,
24 SHARON ROBINSON, LYNETTE ROBINSON, MELVA ROBINSON,
25 ADRIENNE DULY, HEATHER FALCO HOOK AND ALL LAW

1 ENFORCEMENT OFFICERS EXCEPT THE CASE OFFICER, ANTHONY
2 THOMPSON. AND YOU WOULDN'T APPLY THAT TO SLED
3 OFFICERS, WOULD YOU?

4 MS. FORD: YOUR HONOR, IT'S MY
5 UNDERSTANDING THAT THE SLED OFFICERS WON'T BE HERE
6 UNTIL TOMORROW. I EXPECT TO BE - - -

7 THE COURT: WELL, WE'VE STILL GOT
8 TO KNOW.

9 MS. FORD: THAT WON'T APPLY, YOUR
10 HONOR.

11 THE COURT: JUST THE LOCAL
12 OFFICERS. ALRIGHT.

13 SOLICITOR JEFFRIES: JUDGE, COULD
14 I JUST INQUIRE ABOUT ONE OF THE INDIVIDUALS ON THE
15 DEFENSE'S WITNESS LIST, LYNETTE ROBINSON? IS THAT
16 LYNETTE JONES THAT TESTIFIED IN PRETRIAL?

17 MS. FORD: IT IS LYNETTE JONES.

18 SOLICITOR JEFFRIES: SO, IT'S
19 JONES, NOT ROBINSON?

20 MS. FORD: YES, THAT'S RIGHT.

21 THE COURT: IS SHE IN THE
22 COURTROOM? DID SHE STAND UP WHEN I CALLED THEIR
23 NAMES?

24 SOLICITOR SCOTT: I DON'T THINK
25 SHE WAS IN THE COURTROOM.

113

1 THE COURT: OKAY. ALRIGHT, MS.
2 FORD, ANYTHING, WHAT'S NEXT?

3 MS. FORD: THANK YOU, YOUR HONOR.
4 WE ALSO HAVE A MOTION TO ADMIT THE DNA TESTING
5 RESULTS. THE STATE COLLECTED EVIDENCE TO BE TESTED
6 BASED UPON Minor S STATEMENT. IT WAS
7 COLLECTED, IT WAS SENT OFF TO SLED, AND THE RESULTS
8 HAVE RETURNED. WE WOULD MOVE TO ADMIT THAT EVIDENCE
9 WITHOUT HAVING, OR WITHOUT IT BEING NECESSARY TO HAVE
10 EACH INDIVIDUAL, THE STATE'S CHAIN OF CUSTODY. WE
11 DON'T FEEL THAT THE STATE CAN OBJECT TO THEIR OWN
12 CHAIN OF CUSTODY OR THEIR OWN TESTING PROCEDURES, AND
13 WE WOULD MOVE THAT IT BE ADMITTED.

14 SOLICITOR SCOTT: NO OBJECTION.

15 THE COURT: OKAY.

16 MS. FORD: YOUR HONOR, WE'D ALSO
17 MOVE TO DISCLOSE THE CRIMINAL HISTORY OF ANY WITNESSES
18 THAT WERE REQUESTED LAST WEEK. I HAVEN'T RECEIVED
19 THAT AS OF YET AND I WOULD ASK FOR THAT.

20 SOLICITOR SCOTT: YOUR HONOR, I
21 THINK WE'RE REQUIRED TO TELL THEM OF ANYBODY'S PRIOR
22 RECORD, I DO NOT THINK WE'RE REQUIRED TO GIVE THEM AN
23 ACTUAL RAP SHEET. I TOLD MS. FORD THIS MORNING THAT
24 NONE OF THE WITNESSES HAVE A PRIOR RECORD. MS. MELVA
25 ROBINSON DOES HAVE A PENDING CHARGE WHICH I KNOW THE

1 PUBLIC DEFENDER'S OFFICE IS AWARE OF. I DID NOT RUN
2 RAP ON SHARON ROBINSON BECAUSE I DID NOT HAVE HER --
3 FIRST OF ALL BECAUSE SHE'S NOT ON OUR WITNESS LIST;
4 SECOND OF ALL BECAUSE I DIDN'T HAVE HER INFORMATION. I
5 WOULD REQUEST THAT I BE GIVEN DATES OF BIRTH AND
6 SOCIAL SECURITY NUMBERS FOR THE WITNESSES ON THE
7 DEFENDANT'S WITNESS LIST SO THAT I CAN RUN RAPS.
8 ALSO, I DID NOT RUN RAP SHEETS ON ELIZABETH GIBBS OR
9 DEBORAH REYES, THE TWO DOCTORS THAT WILL BE TESTIFYING
10 IN THIS CASE.

11 THE COURT: ALRIGHT. HE'S SAYING
12 THAT NONE OF THE STATE'S WITNESSES HAVE ANY CRIMINAL
13 CONVICTIONS, AND HE'S REQUESTING YOU PROVIDE HIM WITH
14 SOCIAL SECURITY NUMBERS AND DATES OF BIRTH ON YOUR
15 WITNESSES.

16 MS. FORD: THE DEFENDANT WILL BE
17 HAPPY TO DO THAT, YOUR HONOR. WE WOULD JUST REQUEST,
18 SINCE THE STATE HAS THE ABILITY TO RUN THESE RAP
19 SHEETS, WE DON'T HAVE THAT SAME ABILITY - - -

20 THE COURT: THEY'LL RUN THEM. YOU
21 JUST NEED TO GIVE THE DATE OF BIRTH AND SOCIAL
22 SECURITY NUMBERS.

23 MS. FORD: WE'LL CERTAINLY DO
24 THAT, YOUR HONOR.

25 THE COURT: ALRIGHT. OKAY.

115

1 MS. FORD: BUT WE WOULD ALSO
2 REQUEST THE RAP SHEETS OF ANY AND ALL OF THEIR
3 WITNESSES.

4 THE COURT: WHY DO YOU WANT THE
5 RAP SHEETS? I DON'T KNOW WHAT'S ON THERE BUT, I MEAN,
6 IF THERE WAS SOME CHARGE THAT WAS DROPPED IT CAN'T BE
7 USED AGAINST THEM, YOU COULDN'T USE IT AGAINST THEM,
8 SO WHY DO YOU WANT THE PHYSICAL RAP SHEET OTHER THAN
9 THE STATE'S CERTIFICATION THAT THEY DON'T HAVE ANY
10 CONVICTIONS?

11 MS. FORD: YOUR HONOR, THEY'RE
12 ABLE TO GAIN THAT KNOWLEDGE OF OUR WITNESSES, WE FEEL
13 THAT IN THE INTEREST OF FAIRNESS AND JUSTICE, WE FEEL
14 THAT WE SHOULD HAVE THE SAME EXACT OPPORTUNITY AS THE
15 STATE.

16 SOLICITOR SCOTT: I'LL BE MORE
17 THAN HAPPY TO TURN THEM OVER TO YOUR HONOR, BUT I DO
18 NOT FEEL LIKE WE'RE REQUIRED UNDER LAW TO PROVIDE THEM
19 ACTUAL COPIES OF RAP SHEETS.

20 THE COURT: I WOULDN'T REQUIRE
21 THEM TO GIVE YOU THE RAP SHEETS. IF YOU WANT ME TO
22 LOOK AT THEM AND SEE IF IT'S SOMETHING MYSTERIOUS ON
23 THE RAP SHEETS I'LL BE GLAD TO DO THAT, BUT I MEAN,
24 YOU COULD CERTAINLY DO IT, I'M SURE YOU COULD DO THAT
25 IF YOU WANTED TO DO IT. YOU MIGHT NOT BE ABLE TO DO

1 IT YOURSELF, BUT YOU COULD HAVE IT DONE. I DON'T SEE
2 ANY POINT IN HAVING THE RAP SHEETS. THE WHOLE
3 QUESTION IS CONVICTIONS THAT CAN BE USED AGAINST THEM
4 TO IMPEACH THEM. SO, I WOULDN'T REQUIRE THEM TO GIVE
5 YOU THE PHYSICAL RAP SHEETS.

6 MS. FORD: THANK YOU, YOUR HONOR.

7 OUR NEXT MOTION IS TO SUPPRESS THE
8 STATEMENT OF HEATHER FALCO HOOK, FOR THREE REASONS,
9 YOUR HONOR. IN THE FIRST PARAGRAPH IT REFERENCES THAT
10 Minor HAS BEEN HONEST WITH ME ABOUT MUCH THAT
11 HAS TAKEN PLACE IN HER LIFE.

12 THE COURT: OKAY, WELL, I HAVEN'T,
13 I DON'T KNOW ANYTHING ABOUT ANY STATEMENT BY MS. HOOK.

14 SOLICITOR JEFFRIES: WE'RE NOT
15 GOING TO -- WE DON'T INTEND TO PUT ANY STATEMENT OF
16 WITNESSES INTO EVIDENCE, OR WE MIGHT BE ABLE TO KIND
17 OF COUCH THAT RIGHT THERE, UNLESS IT'S ALONG THE LINES
18 OF AN IMPEACHMENT. IN OTHER WORDS, IN OUR CASE IN
19 CHIEF WE DON'T, YOU KNOW, OBVIOUSLY, WE'RE NOT GOING
20 TO PUT IN STATEMENTS.

21 THE COURT: WELL, IT'S NOT PROPER
22 TO PUT IN A STATEMENT.

23 SOLICITOR JEFFRIES: RIGHT.

24 MS. FORD: WE JUST HAD TO CLARIFY
25 THAT, YOUR HONOR.

1 THE COURT: ARE YOU TALKING ABOUT
2 THE WRITTEN PIECE OF PAPER, NOW?

3 MS. FORD: YES, YOUR HONOR.

4 THE COURT: THEY HAVE NO INTENTION
5 OF OFFERING THAT. I DON'T KNOW UNDER WHAT
6 CIRCUMSTANCES THEY COULD POSSIBLY OFFER IT, BUT IF
7 THEY GET TO THAT POINT THEY'LL NOTIFY THE COURT SO WE
8 CAN DEAL WITH IT.

9 MS. FORD: THANK YOU, YOUR HONOR.
10 OUR NEXT MOTION WOULD BE TO LIMIT THE STATEMENT OF
11 DEBORAH REYES. SHE IS THE PSYCHIATRIST, PSYCHOLOGIST
12 WHO CONDUCTED THE EXAM, FORENSIC EXAM OR INTERVIEW
13 WITH MS. Minor. YOUR HONOR, IT'S OUR
14 POSITION THAT TESTIMONY SHOULD BE LIMITED TO JUST THE
15 TWO THOUSAND FIVE ALLEGATION. HER REPORT REFERENCES
16 PREVIOUS ALLEGATIONS OF SEXUAL ABUSE OF MS. Minor
17 AND WE WOULD ASK THAT -- THE STATE HAS TOLD YOU THAT
18 THEY HAVE NO INTENTIONS OF PLACING THAT INTO EVIDENCE.
19 HOWEVER, WE WOULD ARGUE THAT IT SHOULD BE LIMITED TO
20 JUST THE TWO THOUSAND FIVE INCIDENT, AND HER TESTIMONY
21 SHOULD BE LIMITED TO JUST THAT, AND NOT ANY PREVIOUS
22 ALLEGATIONS THAT COULD BE CONSTRUED TO BE FROM THE
23 DEFENDANT.

24 THE COURT: THAT WOULD SEEM TO BE
25 APPROPRIATE.

1 SOLICITOR SCOTT: YOUR HONOR, WE
2 WOULD AGREE THAT HER TESTIMONY WOULD BE, SHOULD BE
3 LIMITED TO TIME AND PLACE REGARDING THE ALLEGATIONS. I
4 WOULD POINT OUT STATE VERSUS JEFFCOAT THAT SAYS,
5 REGARDING OUR HEARSAY RULES, THAT THE RULE RENDERS A
6 HEARSAY STATEMENT POTENTIALLY ADMISSIBLE IF IT IS
7 CONSISTENT WITH DECLARANT'S TRIAL TESTIMONY AND IS
8 OFFERED TO REBUT AN EXPRESSED OR IMPLIED CHARGE
9 AGAINST THE DECLARANT OF RECENT FABRICATION OR
10 IMPROPER INFLUENCE OR MOTIVE: SO, I MEAN, I DID SORT
11 OF THINK ABOUT THAT BEFORE TODAY. I MEAN, THERE ARE
12 OTHER EXCEPTIONS THAT WE FEEL WOULD ALLOW MS. REYES TO
13 TESTIFY TO MORE DETAILS ABOUT WHAT THE VICTIM TOLD HER
14 ON REDIRECT IF IT BECOMES, I MEAN, I GUESS IT DEPENDS
15 ON THE CROSS-EXAMINATION.

16 THE COURT: WELL, THAT, I MEAN,
17 THAT'S NOT A CASE LAW THAT'S ONE OF THE PUBLISHED
18 EXCEPTIONS TO THE HEARSAY RULE.

19 SOLICITOR SCOTT: RIGHT.

20 THE COURT: IF IT APPLIES I'LL BE
21 GLAD TO DEAL WITH IT AT THAT TIME.

22 SOLICITOR SCOTT: IT WOULD BE A
23 PRIOR CONSISTENCY.

24 MS. FORD: YOUR HONOR, OUR FINAL
25 MOTION WOULD BE TO, TO KEEP MS. Minor 'S FAMILY FROM

119

1 THE FIRST TWO ROWS NEXT TO THE JURY. YOUR HONOR, IT -

2 - -

3 THE COURT: NOW, I GRANTED YOU ONE
4 ROW. WHY DO YOU WANT TWO? THAT WILL PUT THEM HALFWAY
5 BACK.

6 MS. FORD: YOUR HONOR, WE'RE NOT
7 TRYING TO KEEP THEM OUT OF THE COURTROOM.

8 THE COURT: I'LL ASK THEM NOT TO
9 SIT ON THE FIRST ROW. I THINK THAT'S REASONABLE.

10 MS. FORD: THANK YOU, YOUR HONOR.
11 WE HAVE NO FURTHER PRETRIAL
12 MOTIONS, YOUR HONOR.

13 THE COURT: ALRIGHT. WE'LL BE
14 READY TO GO, THEN, AT TWO:THIRTY. OH, WAIT A MINUTE,
15 WAIT A MINUTE. YOU ASKED ME EARLIER TO ELIMINATE FROM
16 THE JURY POOL ALL MEMBERS OF THE JURY POOL WHO WERE
17 REQUIRED REPORTERS UNDER THE ABUSE REPORT STATUTE, AND
18 WE DISCUSSED THAT IN CHAMBERS AND I TOLD YOU THAT I
19 WOULD NOT DO THAT. I JUST DON'T THINK THAT'S
20 APPROPRIATE TO TAKE ALL OF THEM OFF THE JURY LIST TO
21 START WITH AND DECLARE THEM UNQUALIFIED TO SERVE . AND
22 WE DISCUSSED IT IN CHAMBERS AND I TOLD YOU THAT I
23 WOULD ASK THE QUESTION TO ASK ALL OF THEM TO STAND AND
24 IF ANYBODY STOOD THEN I WOULD ASK THEM IF THAT WOULD
25 ANY EFFECT ON THEIR ABILITY TO BE A FAIR AND IMPARTIAL

1 JUROR. I DID ASK THAT QUESTION AND I DID NOT GET ANY
2 RESPONSE FROM ANY OF THE JURORS, ALTHOUGH OBVIOUSLY,
3 THERE WERE SOME JURORS WHO ARE STATUTORILY REQUIRED TO
4 REPORT ABUSE. HOWEVER, A LOT OF THEM DON'T EVEN KNOW
5 IT, YOU KNOW. SO, ANYHOW, I WANTED TO PUT THAT ON THE
6 RECORD. IS THERE ANYTHING ELSE YOU WANT TO ADD ABOUT
7 THAT?

8 MS. FORD: NOTHING, YOUR HONOR.

9 THE COURT: ALRIGHT, WELL, YOU
10 MADE THE REQUEST AND FURNISHED ME A LIST OF THE
11 JURORS, AND I'LL GIVE THE COURT THAT LIST, THE COURT
12 REPORTER, THAT WILL BE COURT'S ONE?

13 COURT REPORTER: YOU SAID
14 SOMETHING EARLIER ABOUT MARKING SOMETHING AS COURT'S
15 ONE, - - -

16 THE COURT: I DID?

17 COURT REPORTER: --- DO YOU
18 REMEMBER WHAT THAT WAS, MS. FORD? AND I THINK IT
19 MIGHT HAVE - - -

20 THE COURT: THAT WAS YEAR BEFORE
21 LAST.

22 SOLICITOR SCOTT: WHAT ABOUT THE
23 DEFENDANT'S STATEMENT? I WASN'T HERE YESTERDAY.

24 COURT REPORTER: THEY JUST TALKED
25 ABOUT IT BRIEFLY.

121

1 MR. MELLARD: WELL, WAIT A MINUTE,
2 NOW, THAT STATEMENT IS NOT REDACTED.

3 SOLICITOR SCOTT: THAT'S RIGHT.
4 THAT'S FINE, THAT'S WHY I THOUGHT IT WAS - - -

5 THE COURT: BUT THAT WOULDN'T BE A
6 COURT'S EXHIBIT. I THINK THIS IS COURT'S ONE.

7 COURT REPORTER: OKAY.

8 THE COURT: AND THAT IS A LIST OF
9 THE JURORS WHICH THE DEFENSE REQUESTED THAT I
10 ELIMINATE FROM THE JURY POOL BASED ON THE FACT THAT
11 THEY APPEAR TO BE MANDATORY REPORTERS UNDER SECTION
12 SIXTY-THREE, DASH, SEVEN, DASH, THREE TEN.

13 (Court's Exhibit One
14 marked and filed.)

15 SOLICITOR JEFFRIES: WHILE WE'RE
16 TALKING ABOUT THAT, I THINK AT THIS POINT WE'LL GO
17 AHEAD AND MARK THE DEFENDANT'S STATEMENT, THE REDACTED
18 STATEMENT. THE ORIGINAL STATEMENT IS ALREADY IN
19 EVIDENCE AS STATE'S EXHIBIT FOR IDENTIFICATION
20 PURPOSES AND FOR THE PURPOSE OF THE JACKSON V. DENNO
21 HEARING.

22 THE COURT: WELL, WHY DON'T YOU
23 SUBSTITUTE THAT ONE?

24 SOLICITOR JEFFRIES: WELL, BOTH
25 NEEDS TO BE IN THE EVIDENCE, IS THAT CORRECT?

1 THE COURT: WELL, I DON'T KNOW WHY
2 IT WOULD, BUT IF YOU WANT IT IN MAKE IT, COURT'S TWO.

3 SOLICITOR JEFFRIES: THE FIRST,
4 THE ORIGINAL?

5 THE COURT: THE ORIGINAL ONE
6 THAT'S NOT GOING TO THE JURY.

7 SOLICITOR JEFFRIES: OKAY.

8 THE COURT: COURT'S EXHIBITS DO
9 NOT GO TO THE JURY. OTHERS, IF THEY'RE ADMITTED, DO.

10 SOLICITOR JEFFRIES: OKAY.

11 THE COURT: I DON'T KNOW WHY YOU
12 WANT IT IN, BUT I DON'T HAVE ANY OBJECTION TO IT BEING
13 IN.

14 COURT REPORTER: TELL ME WHAT TO
15 MARK COURT'S ONE, I MEAN, COURT'S TWO.

16 THE COURT: NO, COURT'S ONE HAS
17 ALREADY -- THAT WOULD BE COURT'S TWO.

18 SOLICITOR JEFFRIES: THIS ONE,
19 THIS WILL NOW BE COURT'S TWO, AND WE WILL CHANGE - - -

20 COURT REPORTER: OKAY, WELL, LET
21 ME PUT THAT ON. DON'T LEAVE ME.

22 MS. FORD: YOUR HONOR, JUST TO
23 CLARIFY - - -

24 COURT REPORTER: JUST A MINUTE,
25 I'VE GOT TO GET THIS DONE.

1 (Court's Exhibit Two,
2 Defendant's Unredacted Statement,
3 marked and filed.)
4 (State's Exhibit One,
5 Advice of rights
6 marked or identification.)

7 THE COURT: THAT'S THE ONE THAT
8 HAS THE REDACTION?

9 SOLICITOR JEFFRIES: NO, THIS IS
10 THE ORIGINAL.

11 THE COURT: WELL, WHY IS IT A
12 COURT'S EXHIBIT AT ALL?

13 COURT REPORTER: ALRIGHT, WELL
14 I'LL PUT ANOTHER STICKER ON TOP OF IT, AND I THINK
15 THAT WAS, IS THAT THE DEFENDANT'S STATEMENT?

16 SOLICITOR JEFFRIES: NO, THIS IS
17 THE ADVICE OF RIGHTS.

18 COURT REPORTER: OKAY. THAT WAS
19 ONE, SO I'LL MAKE IT ONE AGAIN.

20 THE COURT: WAIT A MINUTE.
21 COURT'S ONE IS THE LIST OF JURORS. OKAY. THAT'S JUST
22 EIGHT OR TEN JURORS. THAT'S COURT'S ONE. NOW,
23 COURT'S TWO IS THE ORIGINAL STATEMENT MADE BY THE
24 DEFENDANT.

25 COURT REPORTER: AND THAT'S A

1 COURT'S EXHIBIT?

2 THE COURT: THAT'S RIGHT.

3 COURT REPORTER: OKAY.

4 THE COURT: NOW, THAT SHOULD BE
5 ALL THE COURT'S EXHIBITS WE'VE GOT.

6 SOLICITOR JEFFRIES: THAT'S RIGHT.

7 THE COURT: ONE AND TWO.

8 COURT REPORTER: OKAY.

9 THE COURT: NOW, IF YOU WANT TO
10 PREMARK SOME OF THOSE OTHERS; THAT'S FINE, BUT THOSE
11 ARE THE ONLY TWO COURT'S EXHIBITS WE'VE GOT.

12 SOLICITOR JEFFRIES: THAT'S RIGHT.
13 BUT NOW, THIS IS GOING TO BE STATE'S EXHIBIT TWO.

14 THE COURT: YOU JUST WANT HER TO
15 PREMARK THAT?

16 SOLICITOR JEFFRIES: THAT'S RIGHT.

17 COURT REPORTER: DO YOU WANT IT
18 FOR ID OR NOT?

19 THE COURT: OKAY, STATE'S ONE IS
20 THE ADVICE OF RIGHTS.

21 COURT REPORTER: YES, SIR.

22 THE COURT: AND STATE'S TWO IS THE
23 DEFENDANT'S STATEMENT.

24 COURT REPORTER: OKAY. STATE'S
25 TWO, ID.

1 (State's Exhibit Two,
2 Defendant's Redacted Statement,
3 marked for identification.)

4 THE COURT: OKAY, COURT'S EXHIBIT
5 NUMBER ONE IS THE LIST OF THE JURORS THAT THE DEFENSE
6 REQUESTED THAT THE COURT EXCUSE BECAUSE THEY WERE ON
7 THE LIST OF MANDATORY REPORTERS PURSUANT TO SECTION
8 SIXTY-THREE, DASH, SEVEN, DASH, THREE TEN.

9 COURT'S TWO IS THE ORIGINAL
10 STATEMENT OF THE DEFENDANT DATED -- WHAT'S THE DATE ON
11 IT OVER THERE?

12 MS. FORD: IT SHOULD BE AUGUST
13 SIXTEENTH, TWO THOUSAND AND FIVE.

14 THE COURT: AUGUST SIXTEENTH, TWO
15 THOUSAND AND FIVE. THAT STATEMENT IS MADE A COURT'S
16 EXHIBIT BECAUSE IT HAS BEEN REDACTED, AND THE REDACTED
17 STATEMENT WHICH WILL BE OFFERED BY THE STATE HAS BEEN
18 PREMARKED AS STATE'S EXHIBIT TWO. OKAY?

19 COURT REPORTER: YES, SIR.

20 THE COURT: ALRIGHT, ANYTHING
21 ELSE? NOW, WE'LL BE IN RECESS UNTIL TWO:THIRTY. IF
22 Y'ALL COME BACK A FEW MINUTES EARLY YOU MIGHT HAVE
23 SOME OTHER EXHIBITS YOU CAN GET MARKED.

24 SOLICITOR SCOTT: DO WE NEED TO
25 TAKE UP HIS CUSTODY STATUS AT THIS POINT OR WAIT UNTIL

1 THE END OF THE DAY?

2 THE COURT: HE'S NOT IN CUSTODY?

3 MS. FORD: NO, YOUR HONOR.

4 THE COURT: YES, SIR, HE'LL HAVE
5 TO BE RETAINED. WHERE IS THE DEPUTY BACK THERE?

6 MS. FORD: YOUR HONOR, JUST FOR
7 THE RECORD WE WOULD OBJECT TO MR. JONES BEING TAKEN
8 INTO CUSTODY AT THIS POINT. WE'VE NEVER HAD ANY
9 TROUBLE WITH HIM COMING BACK DOING EXACTLY WHAT HE
10 NEEDS TO DO. WE FEEL THAT THAT'S A QUESTION THAT
11 SHOULD BE TAKEN UP THIS EVENING AT THE END OF THE DAY.

12 THE COURT: WELL, I'M GOING TO
13 HAVE HIM TAKEN INTO CUSTODY. IF YOU GET THE -- THE
14 FIRST THING I'LL REQUIRE IF I CONSIDER LETTING HIM OUT
15 TONIGHT WOULD BE THE BONDSMAN HAS TO CALL THE CLERK
16 AND SAY THEY'LL STAY ON THE BOND, AND THEN I'LL HEAR
17 YOU IF THE BONDSMAN DOES THAT, AS TO WHETHER HE SHOULD
18 BE ALLOWED TO GO HOME TONIGHT. BUT SINCE HE
19 TECHNICALLY DOESN'T HAVE ANY BOND RIGHT NOW HE'S GOING
20 TO HAVE TO STAY HERE. BUT IF YOU WANT TO GET THE
21 BONDSMAN TO CALL THE CLERK AND VERIFY THAT TO ME THEN
22 I'LL HEAR YOU THIS AFTERNOON WHEN WE RECESS ABOUT
23 WHETHER HE SHOULD BE HELD IN CUSTODY OR RELEASED.

24 MS. FORD: THANK YOU, YOUR HONOR.

25 THE COURT: ALRIGHT, WE'RE IN

1 RECESS UNTIL TWO:THIRTY.

2 (Recess)

3 THE COURT: IS THE STATE READY?

4 SOLICITOR SCOTT: THE STATE'S READY.

5 THE COURT: IS THE DEFENSE READY?

6 MS. FORD: YES, YOUR HONOR.

7 THE COURT: ALRIGHT, BRING IN THE
8 JURY, PLEASE.

9 (Whereupon, the jury enters
10 the courtroom and the following
11 takes place in the presence
12 of the jury.)

13 THE COURT: GOOD AFTERNOON, LADIES
14 AND GENTLEMEN. THE ALTERNATES CAN SIT ON THAT BACK ROW.
15 YOU CAN SIT ANYWHERE BACK THERE YOU WANT TO. THE REST
16 OF YOU, WHEN YOU COME IN JUST FILE ALL THE WAY DOWN AND
17 HAVE A SEAT AND YOU WON'T HAVE TO STEP OVER EACH OTHER.

18 IF YOU WOULD STAND AT THIS TIME,
19 PLEASE, THE CLERK WILL ADMINISTER TO YOU THE JUROR'S
20 OATH.

21 CLERK: PLEASE RAISE YOUR RIGHT
22 HAND, PLEASE.

23 (Whereupon, the jury is
24 duly sworn and impaneled.)

25 CLERK: THANK YOU.

1 THE COURT: I DON'T KNOW IF ANY OF
2 Y'ALL HAVE EVER SERVED ON A JURY BEFORE. I KNOW YOU'VE
3 ALL BECOME EXPERTS IN T.V. JUSTICE. WELL, THIS IS NOT
4 T.V., LADIES AND GENTLEMEN, IT DOESN'T HAVE ANY
5 RELATIONSHIP TO WHAT GOES ON ON T.V. YOU NEED TO FORGET
6 ABOUT ALL THAT STUFF YOU SEE ON T.V., IT JUST HAVE ANY
7 BASIS IN FACT. THIS IS THE REAL THING.

8 AS I TOLD YOU, THE STATE HAS CHARGED
9 THE DEFENDANT IN THIS CASE WITH TWO CRIMES, TWO CHARGES,
10 AND HE HAS PLED NOT GUILTY TO THOSE CHARGES. THAT
11 PLACES THE BURDEN ON THE STATE, THE BURDEN OF PROVING
12 HIM GUILTY BEYOND A REASONABLE DOUBT, BECAUSE ALSO AS I
13 TOLD YOU HE IS PRESUMED TO BE INNOCENT. HE DOES NOT
14 HAVE TO PROVE ANYTHING, THE STATE HAS TO PROVE HIM
15 GUILTY.

16 NOW, THE STATE HAVING THE BURDEN,
17 THE STATE GOES FIRST. AND THEN, THE FIRST THING THAT WE
18 WILL HAVE WILL BE THE OPENING STATEMENTS. THEY WILL BE
19 RELATIVELY BRIEF, HOPEFULLY NOT OVER TEN MINUTES OR SO,
20 AND THE SIDES WILL GIVE YOU KIND OF A BRIEF OUTLINE OF
21 WHAT THEY THINK THE EVIDENCE IS GOING TO SHOW IN THIS
22 CASE KIND OF SO YOU WILL KNOW WHAT TO EXPECT. THEN THE
23 STATE WILL PUT UP ITS CASE. THEY WILL CALL WITNESSES,
24 I'M SURE THEY'LL HAVE SOME EXHIBITS TO INTRODUCE,
25 HOWEVER THEY CHOOSE TO INTRODUCE EVIDENCE TO PROVE THE

1 CASE. ONCE THE STATE FINISHES THE DEFENDANT, MR. JONES,
2 HAS AN OPPORTUNITY TO TESTIFY OR PUT UP ANY EVIDENCE IF
3 HE CHOOSES TO DO SO, BUT HE DOES NOT HAVE TO DO SO. BUT
4 IF HE CHOOSES TO DO SO HE WOULD DO THAT AFTER THE STATE
5 FINISHES. THEN AFTER YOU'VE HEARD ALL OF THE TESTIMONY,
6 ALL OF THE EVIDENCE THE ATTORNEYS WILL COME BACK TO YOU
7 AND THEY WILL MAKE THEIR CLOSING ARGUMENTS, AND THEN
8 I'LL CHARGE YOU ON THE LAW. NOW, IN THE CLOSING
9 ARGUMENTS THE ATTORNEYS WILL TRY TO PERSUADE YOU TO SEE
10 THE FACTS IN THIS CASE IN FAVOR OF THEIR RESPECTIVE
11 POSITIONS. YOU ARE THE JUDGES OF THE FACTS WHICH MEANS
12 YOU DETERMINE THE TRUTH, YOU DETERMINE WHAT ACTUALLY
13 HAPPENED. THAT'S YOUR JOB. I'M THE JUDGE OF THE LAW,
14 I PRESIDE, I RULE ON EVIDENTIARY MATTERS. I MAY HAVE TO
15 ASK YOU TO STEP OUT TO THE JURY ROOM A MINUTE WHILE I
16 TAKE UP A LEGAL MATTER, I'M SURE YOU'VE SEEN THAT ON
17 T.V., TOO. AND THEN ONCE YOU'VE HEARD ALL THE EVIDENCE
18 I WILL CHARGE YOU ON THE LAW, I WILL TELL YOU WHAT THE
19 LAW IS DEPENDING UPON WHAT YOU FIND THE FACTS TO BE IN
20 THIS CASE, AND THEN YOU CAN BEGIN YOUR DELIBERATIONS.

21 NOW, AS I TOLD YOU A COUPLE OF TIMES
22 YOU MUST BASE YOUR DECISION IN THIS CASE SOLELY ON THE
23 TESTIMONY AND THE EVIDENCE THAT YOU HEAR IN THE CASE.
24 THE LAW ALSO PROVIDES THAT YOU MUST CONSIDER ALL OF THE
25 EVIDENCE, THE FIRST WITNESS, THE LAST WITNESS. YOU MUST

1 CONSIDER THE OPENINGS AND CLOSINGS AND MY CHARGE TO YOU
2 ON THE LAW. AND SO, UNTIL YOU HAVE ALL OF THAT
3 INFORMATION YOU ARE NOT IN A POSITION TO START MAKING A
4 DECISION ON THE CASE. AND THAT IS ANOTHER REASON THAT
5 I ASK YOU NOT TO TALK ABOUT THE CASE EVEN AMONG
6 YOURSELVES. IF YOU START TALKING ABOUT THE CASE AFTER
7 YOU'VE HEARD THE FIRST WITNESS OR THE SECOND WITNESS
8 YOU'LL START FORMING AN OPINION ABOUT THE CASE, YOU WILL
9 MAKE UP YOUR MIND ABOUT THE CASE, AND THAT WOULD BE
10 IMPROPER FOR YOU TO DO THAT UNTIL YOU HAVE HEARD ALL OF
11 THE EVIDENCE AND ALL THE REST OF THE PROCEEDINGS OF THE
12 TRIAL. SO, PLEASE REMEMBER THE REASON FOR MY ADMONITION
13 THAT YOU NOT TALK ABOUT THE CASE.

14 PLEASE GIVE THE ATTORNEYS YOUR
15 ATTENTION AT THIS TIME. THE STATE WILL ADDRESS YOU
16 FIRST, MR. SCOTT, THEN THE ATTORNEY FOR THE DEFENDANT,
17 AND THEN WE'LL BEGIN OUR TESTIMONY

18 MR. SCOTT.

19 SOLICITOR SCOTT: MAY IT PLEASE THE
20 COURT.

21 THE COURT: YES, SIR.

22 OPENING STATEMENT BY SOLICITOR SCOTT

23 LADIES AND GENTLEMEN OF THE JURY,
24 DURING THE SUMMER OF TWO THOUSAND AND FIVE **Minor**
25 **[REDACTED]** WAS SEXUALLY ABUSED BY THE DEFENDANT, LINDY

1 JONES. YOU WILL HEAR AT THE TIME OF THE INCIDENT **Minor**
2 WAS FOURTEEN YEARS OF AGE, AND THE DEFENDANT, WHO WAS
3 BASICALLY AN UNCLE TO HER, WAS TWENTY-NINE YEARS OLD.
4 AND FOR HIS ACTIONS THAT SUMMER THE DEFENDANT HAS BEEN
5 CHARGED WITH ONE COUNT OF CRIMINAL SEXUAL CONDUCT WITH
6 A MINOR, SECOND DEGREE, AND ONE COUNT OF LEWD ACT. AND
7 WHAT THE STATE OF SOUTH CAROLINA IS ASKING YOU TO DO
8 TODAY IS TO HOLD THE DEFENDANT ACCOUNTABLE AND
9 RESPONSIBLE FOR HIS ACTIONS.

10 AS YOU'VE HEARD, MY NAME IS TOMMY
11 SCOTT, I'LL BE REPRESENTING THE STATE IN THIS CASE.
12 SEATED NEXT TO ME IS MR. BRYAN JEFFRIES, WE'RE BOTH
13 ASSISTANT SOLICITORS HERE IN ORANGEBURG COUNTY. ALSO
14 SEATED AT THE STATE'S TABLE IS ANTHONY THOMPSON, HE WAS
15 THE INVESTIGATOR ON THIS CASE. ON THE SECOND ROW IN THE
16 RED SWEATER IS THE VICTIM, **Minor**, AND I POINT
17 HER OUT TO YOU, LADIES AND GENTLEMEN, BECAUSE JUST AS
18 TODAY IS LINDY JONES'S DAY IN COURT IT'S ALSO **Minor**
19 **Minor** S DAY IN COURT.

20 BEFORE WE TALK ANYMORE ABOUT THE
21 FACTS IN THIS CASE I WANT TO TALK ABOUT A COUPLE POINTS
22 OF LAW, AND I PROMISE TO BE BRIEF BECAUSE AT THE END OF
23 THE TRIAL JUDGE WILLIAMS IS GOING TO INSTRUCT YOU ON
24 WHAT THE LAW IS. AND IT GOES WITHOUT SAYING THAT IF
25 ANYTHING I SAY DIFFERS FROM WHAT JUDGE WILLIAMS TELLS

1 YOU, YOU TAKE THE LAW ACCORDING TO JUDGE WILLIAMS.
2 BECAUSE JUST AS YOU ARE THE SOLE FINDERS OF FACTS IN
3 THIS CASE, JUDGE WILLIAMS DETERMINES THE LAW.

4 NOW, THE FIRST TWO POINTS OF LAW I
5 WANT TO TALK ABOUT ARE THE OFFENSES THAT THE DEFENDANT'S
6 BEEN CHARGED WITH. AND I HAVE TO ADMIT THESE OFFENSES
7 GET SOMEWHAT CONVOLUTED BECAUSE IN BOTH DEFENSES THE
8 VICTIM'S AGE AS WELL AS THE DEFENDANT'S AGE IS AN
9 ELEMENT OF THE CRIME. THE FIRST CHARGE IS CRIMINAL
10 SEXUAL CONDUCT WITH A MINOR; SECOND DEGREE. OUR LAW
11 SAYS THAT IT IS UNLAWFUL FOR A PERSON TO ENGAGE IN
12 SEXUAL BATTERY WITH A VICTIM WHO IS BETWEEN THE AGES OF
13 SIXTEEN AND FOURTEEN IF THE DEFENDANT IS OLDER THAN THE
14 VICTIM, OLDER THAN EIGHTEEN YEARS OF AGE.

15 SEXUAL BATTERY, LADIES AND
16 GENTLEMEN, IT CAN MEAN SEXUAL INTERCOURSE, BUT IT
17 DOESN'T HAVE TO MEAN SEXUAL INTERCOURSE. IT CAN BE ANY
18 INTRUSION, HOWEVER SLIGHT, INTO THE GENITALIA OF THE
19 VICTIM.

20 LEWD ACT, LADIES AND GENTLEMEN, THE
21 STATUTE ON LEWD ACT SAYS, IT IS UNLAWFUL FOR A PERSON TO
22 WILLEFULLY AND LEWDLY COMMIT OR ATTEMPT TO COMMIT A LEWD
23 ACT ON A PERSON UNDER THE AGE OF SIXTEEN IF THE PERSON
24 COMMITTING THE ACT IS OVER THE FOURTEEN WITH THE INTENT
25 OF AROUSING OR APPEALING TO THE LUST OR PASSIONS OF

1 EITHER THE VICTIM OR THE ACTOR.

2 SO, THOSE ARE THE TWO OFFENSES THE
3 DEFENDANT'S BEEN CHARGED WITH. THAT'S NOT THE FIRST
4 TIME YOU'RE GOING TO HEAR THE LAW IN THIS CASE, BUT I
5 WANTED TO SORT OF GIVE YOU AN IDEA OF SOME OF THE
6 ELEMENTS, SOMETHING TO LOOK FOR WHEN YOU HEAR THE
7 TESTIMONY HERE TODAY.

8 THE LAST POINT OF LAW I WANT TO TALK
9 ABOUT IS THE BURDEN OF PROOF IN THIS CASE. THE STATE,
10 AS IN ALL CRIMINAL CASES, HAS THE BURDEN OF PROOF. IT'S
11 THE STATE'S RESPONSIBILITY TO PROVE THE DEFENDANT
12 GUILTY. AND WE MUST CONVINCE YOU, THE JURY, OF THE
13 DEFENDANT'S GUILT, AND WE MUST CONVINCE YOU BEYOND A
14 REASONABLE DOUBT. WHAT DOES BEYOND A REASONABLE DOUBT
15 MEAN? IT MEANS SIMPLY AFTER HEARING ALL THE EVIDENCE IF
16 YOU ARE FIRMLY CONVINCED, FIRMLY CONVINCED OF
17 DEFENDANT'S GUILT IT'S YOUR RESPONSIBILITY TO FIND HIM
18 GUILTY. LIKEWISE, IF YOU'RE NOT FIRMLY CONVINCED OF THE
19 DEFENDANT'S GUILT IT'S YOUR RESPONSIBILITY TO FIND HIM
20 NOT GUILTY. I SUBMIT THAT AFTER HEARING ALL THE FACTS
21 IN THIS CASE YOU'LL BE MUCH MORE THAN JUST FIRMLY
22 CONVINCED OF HIS GUILT.

23 LET'S TALK ABOUT A FEW OF THE FACTS
24 TO JUST KIND OF GIVE YOU A ROAD MAP OF WHERE THE CASE IS
25 GOING. Minor, AS YOU WILL HEAR, BACK IN THE

1 SUMMER OF TWO THOUSAND AND FIVE, SHE WAS FOURTEEN YEARS
2 OF AGE. SHE LIVED WITH HER MOTHER ALONG WITH TWO
3 YOUNGER SIBLINGS. YOU WILL HEAR HOW HER MOTHER WORKED
4 AT NIGHT IN COLUMBIA AND LIVED IN ROWESVILLE. HER
5 MOTHER WORKED IN COLUMBIA. SHE WOULD LEAVE THE CHILDREN
6 DURING THAT SUMMER WITH THE VICTIM'S AUNT, THE MOTHER'S
7 SISTER, SHARON ROBINSON. AND YOU WILL HEAR HOW THE
8 DEFENDANT, LINDY JONES, WAS, PROBABLY STILL IS THE
9 BOYFRIEND OF SHARON ROBINSON. AND YOU WILL HEAR HOW
10 THAT SUMMER WHILE THE VICTIM WAS STAYING THERE YOU WILL
11 HEAR HOW THE DEFENDANT, LINDY JONES, SEXUALLY ASSAULTED
12 HER ON TWO OCCASIONS. THE FIRST TIME HAPPENED IN THE
13 BATHROOM OF THE RESIDENCE, THE SECOND TIME HAPPENED IN
14 THE DEFENDANT'S BEDROOM. AND YOU WILL HEAR, AFTER THE
15 SECOND INCIDENT OCCURRED **Minor** [REDACTED] CALLED HER
16 TEACHER, TOLD HER TEACHER WHAT HAPPENED, AND YOU WILL
17 HEAR HOW THE TEACHER CALLED THE POLICE AND THE POLICE
18 RESPONDED THAT NIGHT. AT THAT POINT **Minor** WAS TAKEN TO
19 CHARLESTON FOR A MEDICAL EXAMINATION. YOU'LL HEAR THE
20 RESULTS OF THAT MEDICAL EXAMINATION FROM THE WITNESS
21 STAND. YOU WILL ALSO HEAR ABOUT THE WORK INVESTIGATOR
22 THOMPSON PUT IN ON THIS CASE.

23 IN CLOSING I WANT TO THANK YOU FOR
24 YOUR ATTENTION HERE. IT'S AN IMPORTANT CASE, AN
25 IMPORTANT CASE FOR THE DEFENDANT, AN IMPORTANT CASE FOR

135

1 THE VICTIM. ALL WE ASK IS THAT YOU DO A FEW SIMPLE
2 THINGS, LISTEN TO THE EVIDENCE THAT YOU HEAR FROM THIS
3 WITNESS STAND, LISTEN TO THE LAW AS JUDGE WILLIAMS GIVES
4 IT TO YOU AT THE END OF THE TRIAL, AND WHEN IT'S TIME
5 FOR YOU TO DELIBERATE, USE YOUR COMMON SENSE AND RENDER
6 A VERDICT THAT SPEAKS THE TRUTH. AND I SUBMIT THAT IF
7 YOU DO THOSE THINGS, GIVE A TRUTHFUL VERDICT, YOU WILL
8 FIND THE GUILTY OF ONE COUNT OF LEWD ACT AND ONE COUNT
9 OF CSC WITH A MINOR, SECOND DEGREE.

10 THANK YOU.

11 THE COURT: THANK YOU, SIR.

12 YES, MA'AM, MS. FORD.

13 MS. FORD: THANK YOU, YOUR HONOR,
14 MAY IT PLEASE THE COURT.

15 THE COURT: YES, MA'AM.

16 OPENING STATEMENT BY MS. FORD

17 WHEN YOU FIRST HEAR THE STATE'S
18 DETAILS OF THIS CASE IT SOUNDS TERRIBLE, AWFUL, TRAGIC.
19 ANYTIME A YOUNG PERSON IS INJURED OR HARMED OR RAPED
20 IT'S A TRAGEDY. BUT LADIES AND GENTLEMEN, IN THIS CASE
21 THAT'S SIMPLY NOT WHAT HAPPENED. THERE'S NOTHING SO
22 POWERFUL AS TRUTH, AND OFTEN NOTHING SO STRANGE AS THE
23 TRUTH.

24 I'M SARA FORD, AND ALONG WITH DOUG
25 MELLARD, REPRESENT MR. LINDY JONES. MR. JONES SITS HERE

1 AN INNOCENT MAN ACCUSED OF TERRIBLE CRIMES. HE DOESN'T
2 HAVE TO COME IN HERE AND CONVINCE YOU THAT HE'S
3 INNOCENT, THAT'S THE STATE'S JOB. THEY MUST PROVE TO
4 YOU BEYOND A REASONABLE DOUBT THAT MR. JONES IS GUILTY
5 OF CRIMINAL SEXUAL CONDUCT WITH A MINOR, SECOND DEGREE,
6 AND LEWD ACT.

7 YOU'RE GOING TO HAVE THE OPPORTUNITY
8 TO HEAR EVIDENCE FROM THIS WITNESS STAND. THE JUDGE IS
9 GOING TO GIVE YOU SOME INSTRUCTIONS, AND AFTER WE'RE ALL
10 FINISHED IN HERE YOU'LL HAVE THE OPPORTUNITY TO
11 DELIBERATE, AND SOME OF YOU, WELL, ALL OF YOU WILL THINK
12 ABOUT WHAT YOU HEARD FROM THAT WITNESS STAND. YOU'LL
13 THINK AND CONSIDER, AND SOME OF YOU MIGHT SAY, MAYBE,
14 MAYBE. BUT MAYBE ISN'T GOOD ENOUGH. THE STATE MUST
15 CONVINCE YOU BEYOND A REASONABLE DOUBT THAT MR. JONES IS
16 GUILTY OF EACH ELEMENT OF BOTH OF THE CRIMES THAT HE'S
17 ACCUSED OF. WE SUBMIT TO YOU THAT THAT'S A BURDEN THE
18 STATE WILL NOT BE ABLE TO OVERCOME.

19 THE EVIDENCE IS GOING TO SHOW A LOT
20 OF DIFFERENT THINGS. THE EVIDENCE IS GOING TO SHOW THAT
21 DURING THIS INCIDENT THAT Minor [REDACTED] IS CLAIMING
22 THAT SHE WAS ASSAULTED THERE WERE OTHER PEOPLE IN THE
23 HOME. THE EVIDENCE IS GOING TO SHOW THAT DESPITE THESE
24 ALLEGATIONS THAT MR. JONES ASSAULTED HER ON AUGUST
25 FIFTEENTH, TWO THOUSAND FIVE, FOR A PERIOD OF THREE

1 MINUTES, THERE IS NO EVIDENCE OF SEMEN OR PUBLIC HAIR
2 FOUND. IN FACT, THE EVIDENCE IS GOING TO SHOW THAT
3 THERE IS NO DNA EVIDENCE THAT SHOWS MR. JONES DID
4 ANYTHING TO MS. Minor . AND DESPITE THE FACT
5 THAT MS. Minor CONTENDS THAT SHE FOUGHT MR.
6 JONES, SHE PUSHED HIM, SHE HIT HIM, IN FACT, SHE DUG HER
7 FINGERS INTO HIS EYES, SCRATCHED HIS EYES. THEY TOOK
8 FINGERNAIL SCRAPINGS FROM UNDERNEATH HER HANDS AND THE
9 EVIDENCE IS GOING TO SHOW THERE'S NO DNA THAT BELONGS TO
10 ANYONE OTHER THAN Minor . LADIES AND GENTLEMEN,
11 MR. JONES DID NOT SEXUALLY ASSAULT Minor .

12 IT'S OFTEN SAID THAT HYSTERIA TRUMPS
13 EVIDENCE. I ASK THAT YOU DON'T GET WRAPPED UP IN THESE
14 ALLEGATIONS. I ASK THAT YOU WAIT, THAT YOU EXAMINE THE
15 EVIDENCE THAT YOU HEAR FROM THIS WITNESS STAND. I ASK
16 YOU TO PAY CLOSE ATTENTION TO THE WITNESSES, THAT YOU
17 TEST THEIR CREDIBILITY, YOU DETERMINE IF THEY'RE
18 SPEAKING THE TRUTH. I MOSTLY ASK THAT YOU USE COMMON
19 SENSE, COMMON SENSE TO DETERMINE WHAT HAPPENED IN THIS
20 CASE.

21 LIKE I SAID, AND LIKE MR. SCOTT
22 SAID, THEY HAVE THE BURDEN OF PROOF. MR. JONES, AS HE
23 SITS OVER HERE IS AN INNOCENT MAN. AND WE'RE FIRMLY
24 CONVINCED THAT AFTER HEARING ALL THE EVIDENCE AND
25 TESTIMONY FROM THIS WITNESS STAND YOU WILL COME TO THAT

1 SAME CONCLUSION AND FIND THAT HE IS INNOCENT AND ALLOW
2 HIM TO WALK OUT OF THIS COURTROOM AN INNOCENT MAN.

3 THANK YOU.

4 THE COURT: THANK YOU, MA'AM.

5 YOU MAY CALL YOUR WITNESS.

6 SOLICITOR SCOTT: THE STATE CALLS

7 Minor.

8 THE COURT: COME AROUND, PLEASE,
9 MA'AM. PLEASE COME RIGHT OVER HERE, PLACE YOUR LEFT
10 HAND ON THE BIBLE AND RAISE YOUR RIGHT.

11 (Whereupon, Minor
12 is duly sworn.)

13 THE COURT: THANK YOU, MA'AM, SIT
14 DOWN AND STATE YOUR FULL NAME FOR US.

15 WITNESS: Minor.

16 THE COURT: THANK YOU, MS. Minor,
17 REMEMBER THAT THIS LADY HAS TO WRITE DOWN ALL THE
18 ANSWERS TO YOUR QUESTIONS, AND WHEN YOU SHAKE YOUR HEAD
19 SHE CAN'T WRITE THAT DOWN, SO PLEASE REMEMBER TO SAY YES
20 OR NO, AND TALK LOUD ENOUGH SO EVERYBODY CAN HEAR YOU.

21 WITNESS: YES, SIR.

22 THE COURT: THANK YOU, MA'AM.
23 ALRIGHT, COUNSELOR.

24 SOLICITOR SCOTT: THANK YOU, YOUR
25 HONOR.

DIRECT - Minor BY SOL. SCOTT

139

DIRECT EXAMINATION OF Minor

BY SOLICITOR SCOTT:

Q. Minor, HOW OLD ARE YOU?

A. EIGHTEEN.

Q. WHAT IS YOUR DATE OF BIRTH?

A. [REDACTED]

Q. AND ARE YOU IN SCHOOL?

A. JUST GRADUATED.

Q. WHERE DID YOU GRADUATE FROM?

A. ORANGEBURG-WILKERSON HIGH.

Q. TELL THE JURY WHAT KIND OF EXTRA CURRICULAR
ACTIVITIES YOU WERE INVOLVED IN AT O-W?

A. ROTC, DRILL TEAM, COLOR GUARD TEAM, TUTOR, CHESS
CLUB, DECCA.

Q. WHO DO YOU LIVE WITH?

A. MY GRANDMOTHER.

Q. HOW LONG HAVE YOU LIVED WITH YOUR GRANDMOTHER?

A. TWO AND A HALF YEARS.

Q. AND WHAT'S HER NAME?

A. VIOLA KING.

Q. IS THAT YOUR MOTHER'S MOTHER OR YOUR FATHER'S
MOTHER?

A. MY FATHER'S MOTHER.

Q. IS SHE IN THE COURTROOM TODAY?

A. YES, SIR.

DIRECT - Minor [REDACTED] BY SOL. SCOTT

140

1 Q. WOULD YOU POINT HER OUT TO THE JURY?

2 A. SHE'S RIGHT THERE WITH THE BLACK HAT ON.

3 Q. WHAT'S YOUR MOTHER'S NAME?

4 A. MELVA ROBINSON.

5 Q. OKAY. AND IS SHE HERE TODAY?

6 A. YES, SIR.

7 Q. IS SHE IN THE COURTROOM RIGHT NOW?

8 A. NOT AT THIS PRESENT MOMENT, SIR.

9 Q. OKAY. DO YOU HAVE ANY BROTHERS OR SISTERS?

10 A. YES, SIR.

11 Q. HOW MANY?

12 A. FOUR BROTHERS AND THREE SISTERS. TOZEME IS TEN,
13 JERRORD IS FOURTEEN, LAVOIR IS THIRTEEN, AND
14 MARQUIS IS TWENTY-ONE, LATASHA IS TWENTY-THREE,
15 LAVONDA IS EIGHTEEN, AND CHETERICA IS FOURTEEN.

16 Q. DO YOU WORK?

17 A. YES, SIR.

18 Q. WHERE DO YOU WORK?

19 A. ARBY'S.

20 Q. HOW LONG HAVE YOU WORKED AT ARBY'S?

21 A. IN JULY IT WILL BE A YEAR.

22 Q. AND HOW MANY HOURS A WEEK DO YOU WORK?

23 A. ABOUT THIRTY SOMETHING.

24 Q. THIRTY SOMETHING?

25 A. YES, SIR.

DIRECT - Minor [REDACTED] BY SOL. SCOTT

141

1 Q. HOW MANY HOURS A WEEK WERE YOU WORKING WHEN YOU
2 WERE IN SCHOOL?

3 A. ABOUT TWENTY SOMETHING, SOMETIMES IT WOULD BE LESS
4 THAN THAT, MAYBE TEN, IT DEPENDS ON HOW THE LABOR
5 IS.

6 Q. WHAT ARE YOUR PLANS AT THE END OF THE SUMMER?

7 A. TO GO TO MIDLAND STATE AND MAJOR IN HUMAN
8 SERVICES, JOIN THE NAVY ROTC PROGRAM AND JOIN THE
9 NAVY.

10 Q. HAVE YOU ALREADY BEEN ACCEPTED AT MIDLAND STATE?

11 A. YES, SIR.

12 Q. OKAY. DO YOU KNOW THE DEFENDANT, LINDY JONES?

13 A. YES, SIR.

14 Q. HOW DO YOU KNOW MR. JONES?

15 A. HIM AND MY AUNT DATES, OH WELL, DATES NOW AND
16 PREVIOUSLY.

17 Q. OKAY. WHO IS YOUR AUNT?

18 A. SHARON ROBINSON.

19 Q. HOW LONG WOULD YOU SAY YOU'VE KNOWN MR. JONES?

20 A. ABOUT SEVEN OR EIGHT YEARS, MAYBE MORE.

21 Q. LET ME TURN YOUR ATTENTION TO THE SUMMER OF TWO
22 THOUSAND AND FIVE. IN MAY OF TWO THOUSAND AND
23 FIVE WHAT GRADE WERE YOU FINISHING?

24 A. JUST FINISHED EIGHTH GRADE.

25 Q. AND WHERE DID YOU GO TO SCHOOL FOR EIGHTH GRADE?

DIRECT - Minor [REDACTED] BY SOL. SCOTT

142

- 1 A. BETHUNE-BOWMAN MIDDLE HIGH SCHOOL.
- 2 Q. WHO WAS HEATHER FALCO?
- 3 A. SHE WAS MY EIGHTH GRADE ENGLISH TEACHER.
- 4 Q. AND HOW LONG WAS SHE YOUR TEACHER?
- 5 A. IT WAS HER FIRST YEAR AT THE SCHOOL, SO JUST THAT
- 6 YEAR, SIR.
- 7 Q. WERE YOU CLOSE TO MS. FALCO?
- 8 A. YES, SIR.
- 9 Q. DID YOU HAVE HER PHONE NUMBER?
- 10 A. YES, SIR.
- 11 Q. DID YOU EVER CALL HER?
- 12 A. YES, SIR.
- 13 Q. WHY WOULD YOU CALL HER?
- 14 A. JUST TO HAVE CONVERSATIONS, TO GET ADVICE FOR THE
- 15 THINGS I WAS GOING THROUGH, OR WHATEVER, JUST TO
- 16 TALK.
- 17 Q. OKAY. HOW OFTEN WOULD YOU TALK TO HER?
- 18 A. EVERY DAY.
- 19 Q. WHO WERE YOU LIVING WITH WHEN YOU WERE IN THE
- 20 EIGHTH GRADE?
- 21 A. MY MOTHER.
- 22 Q. AND WHERE WAS YOUR HOME?
- 23 A. ROWESVILLE.
- 24 Q. WAS YOUR MOTHER WORKING AT THE TIME?
- 25 A. YES, SIR.

DIRECT - Minor [REDACTED] BY SOL. SCOTT

143

1 Q. DID SHE WORK AT NIGHT OR DURING THE DAY?

2 A. SHE WOULD GOT TO WORK WHILE I WAS IN SCHOOL, SHE
3 WOULD GET OFF LATE AT NIGHT, WELL, AROUND ABOUT
4 ONE O'CLOCK IN THE MORNING SHE WOULD BE BACK IN
5 ORANGEBURG SOMEWHERE AROUND THAT TIME.

6 Q. WHERE WOULD YOU STAY DURING THE SUMMER?

7 A. AT MY AUNT SHARON'S HOUSE.

8 Q. OKAY. AND WHAT TIME WOULD YOUR MOTHER PICK YOU UP
9 FROM YOUR AUNT -- IS IT SHARON OR - - -

10 A. SHARON.

11 Q. SHARON. WHAT TIME WOULD YOUR MOTHER PICK YOU UP
12 FROM YOUR AUNT'S HOUSE?

13 A. ONE SOMETHING IN THE MORNING, TWELVE SOMETHING,
14 ONE O'CLOCK. IT WAS LATE.

15 Q. WHERE WAS YOUR AUNT LIVING?

16 A. LAQUINTA DRIVE.

17 Q. AND WHERE IS THAT?

18 A. ON THREE O ONE IN ORANGEBURG.

19 Q. IS THAT IN ORANGEBURG COUNTY?

20 A. YES, SIR.

21 Q. WHAT ABOUT YOUR YOUNGER SIBLINGS, WHERE WOULD THEY
22 STAY?

23 A. THEY WOULD BE THERE WITH ME AS WELL, SIR.

24 Q. WAS YOUR AUNT SHARON WORKING?

25 A. YES, SIR.

DIRECT - Minor [REDACTED] BY SOL. SCOTT

144

1 Q. WAS SHE ALWAYS THERE WHEN YOU AND YOUR SIBLINGS
2 WERE THERE?

3 A. THE MAJORITY OF THE TIME BUT NOT ALWAYS.

4 Q. WHAT ABOUT THE DEFENDANT, LINDY JONES, WAS HE
5 WORKING?

6 A. YES, SIR.

7 Q. DID HE WORK AT NIGHT OR DURING THE DAY?

8 A. NIGHT TIME, SIR.

9 Q. WAS LINDY JONES EVER THE ONLY ADULT IN THE HOME
10 WHEN YOU AND YOUR SIBLINGS WERE THERE AT YOUR
11 AUNT'S HOUSE?

12 A. NOT ALL THE TIME, BUT THAT WEEK THE INCIDENT
13 HAPPENED AND JUST SOMETIMES, NOT OFTEN.

14 Q. OKAY. HOW WOULD LINDY ACT TOWARDS YOU WHEN NO
15 OTHER ADULTS WERE IN THE HOUSE?

16 A. BEFORE THE INCIDENT OR THE WEEK OF THIS, LIKE
17 DURING THAT TIME?

18 Q. WELL, TELL ME ABOUT BEFORE THE INCIDENT?

19 A. HE WAS COOL, WE PLAYED VIDEO GAMES, PLAYED
20 BASKETBALL, WE'D GO SEE HIS SONS PLAY, THEY WAS IN
21 THE LITTLE LEAGUE OR SOFTBALL OR WHATEVER, WE
22 WOULD GO SEE THEM PLAY. HE WASN'T A BAD PERSON.

23 Q. HOW DID THIS CHANGE DURING THAT SUMMER?

24 A. WE, ALL OF THIS HAPPENED, LIKE, INSTANTLY. IT
25 WASN'T LIKE, REALLY, LIKE HIM, LIKE HIS ATTITUDE

DIRECT - Minor [REDACTED] BY SOL. SCOTT

145

1 CHANGED, BUT LIKE, YOU KNOW, BEHAVIOR-WISE, YOU
2 KNOW, HE WOULD, LIKE, TOUCH MY BUTT OR MY CHEST OR
3 SOMETHING LIKE THAT. AND THEN IT JUST LED TO
4 OTHER THINGS.

5 Q. DID HE EVER TOUCH YOU WITH JUST MORE THAN HIS
6 HANDS?

7 A. YES, SIR.

8 Q. HOW MANY TIMES?

9 A. I'M NOT SURE.

10 Q. OKAY. DO YOU RECALL ANY OF THE INCIDENCES WHERE
11 HE TOUCHED YOU WITH MORE THAN JUST HIS HANDS?

12 A. YES, SIR.

13 Q. WHEN WAS THE FIRST TIME IT HAPPENED?

14 A. WHEN I WAS IN THE RESTROOM GETTING SOME VISINE ONE
15 DAY, AND HE CAME UP BEHIND ME AND PLACED HIS
16 PRIVATE AREA ON MY, WELL, I WAS STANDING UP, SO
17 FROM THE BACK HE CAME BEHIND ME AND PLACED HIS
18 PRIVATE AREA ON MY BUTT.

19 Q. WERE YOUR CLOTHES ON OR WERE THEY OFF WHEN HE DID
20 THAT TO YOU?

21 A. THEY WERE ON.

22 Q. THEY WERE ON?

23 A. YES, SIR.

24 Q. WHEN HE PLACED HIS PRIVATE AREAS ON YOU DID HE DO
25 ANYTHING WITH YOUR CLOTHING?

DIRECT - Minor [REDACTED] BY SOL. SCOTT

146

1 A. WITH MY CLOTHING, SIR?

2 Q. YES.

3 A. I DON'T REMEMBER THAT, SIR.

4 Q. OKAY. WHEN HE PLACED HIS PRIVATE AREA ON YOU WERE
5 YOU STANDING UP OR WERE YOU ON THE FLOOR?

6 A. I WAS ON THE FLOOR.

7 Q. HOW DID YOU END UP ON THE FLOOR?

8 A. I DON'T REMEMBER. I JUST KNOW THAT I WAS FACING
9 THE TOILET. THERE WAS A LITTLE WINDOW AND THERE
10 WAS A SHOWER AND THERE WAS THE TUB RIGHT THERE,
11 AND I WAS LOOKING STRAIGHT OUT THE WINDOW WHEN THE
12 INCIDENT HAPPENED AND I WAS ON MY KNEES.

13 Q. HOW DID YOU END UP ON YOUR KNEES?

14 A. I DON'T REMEMBER.

15 Q. OKAY. WELL, TELL ME WHAT HAPPENED, YOU SAID HE
16 PLACED HIS PRIVATES ON YOU, TELL THE JURY WHAT
17 HAPPENED?

18 A. HIS PRIVATES, HE PLACED HIS PRIVATE AREA -- WELL,
19 HE WAS FORCING HIMSELF INSIDE OF ME FROM THE BACK
20 BEHIND, HE WAS BEHIND ME AND I WAS ON MY KNEES, HE
21 WAS FORCING HIS PRIVATE AREA INSIDE OF ME, AND I
22 WAS, LIKE, RUNNING FROM IT, LIKE, YOU KNOW, LIKE,
23 SQUINCHING UP BECAUSE IT WAS HURTING, AND THE MORE
24 I SQUINCHED UP IT WAS LIKE THE MORE HE WAS FORCING
25 HIMSELF INSIDE OF ME. AND HE STOPPED ON HIS OWN,

DIRECT - Minor [REDACTED] BY SOL. SCOTT

147

1 LIKE, I WAS TELLING HIM TO STOP, OR WHATEVER, BUT
2 YOU KNOW, HE CONTINUED TO DO IT, HE WAS DOING IT,
3 AND HE STOPPED WHEN HE WANTED TO. AND WHEN HE
4 STOPPED I PULLED UP MY CLOTHES AND I LEFT. AND AT
5 THAT TIME I WAS GETTING READY TO LEAVE TO GO TO
6 COLUMBIA WITH MS. FALCO BECAUSE MY MOTHER HAD
7 AGREED THAT I COULD GO TO THE MALL AND STUFF WITH
8 HER. SO, I WAS WAITING ON HER TO PICK ME UP, SIR.

9 Q. OKAY. DID YOU CONSENSUALLY ENGAGE IN ANY SORT OF
10 SEXUAL ACTIVITY WITH MR. JONES?

11 A. NO, SIR.

12 Q. WHO WAS IN THE RESTROOM FIRST, YOU OR MR. JONES?

13 A. I WAS, SIR.

14 Q. DID YOU INVITE HIM INTO THE RESTROOM?

15 A. NO, SIR.

16 Q. HOW MANY TIMES DID YOU TELL HIM TO STOP?

17 A. I CAN'T RECALL, MORE THAN ONCE.

18 Q. DID YOU EXPERIENCE ANY PAIN AFTER THIS INCIDENT?

19 A. THAT PARTICULAR INCIDENT?

20 Q. YES.

21 A. I MEAN, MY PRIVATE AREA IN THE BACK HURT A LITTLE
22 BIT, BUT NOTHING LIKE REALLY, REALLY BAD WITH THIS
23 ONE.

24 Q. OKAY. AFTER THIS INCIDENT HAPPENED DID YOU TELL
25 ANYBODY?

148

1 A. NOT DIRECTLY CAME OUT AND TELL ABOUT THE WHOLE
2 PARTICULAR INCIDENT BUT, YOU KNOW, I TOLD MS.
3 FALCO THAT, OR MRS. HOOK THAT - - -

4 Q. WHEN YOU SAY, MRS. HOOK, WHO ARE YOU REFERRING TO?

5 A. MY EIGHT GRADE ENGLISH TEACHER.

6 Q. MS. FALCO?

7 | A. YES, SIR.

8 Q. OKAY.

9 A. I TOLD HER THAT, YOU KNOW, THAT HE WAS LIKE, I
10 GUESS, MAKING PASSES AT ME, I DIDN'T REALLY COME
11 OUT AND TELL BECAUSE I DIDN'T WANT TO RUIN MY
12 FAMILY OR, YOU KNOW, BRING ANY PROBLEMS INTO THE
13 HOME, THEIR HOME OR WHATEVER. I JUST TOLD HER, YOU
14 KNOW, THAT, YOU KNOW, HE WAS JUST, THE THINGS HE
15 WAS DOING WASN'T RIGHT BUT I DIDN'T WANT TO, YOU
16 KNOW, COME OUT AND TELL WHAT HAPPENED.

17 Q. DID YOU SPECIFICALLY TELL HER THAT HE HAD PLACED
18 HIS PENIS INSIDE OF YOU?

19	A. NO, SIR.

20 Q. DID AN INCIDENT LIKE THIS HAPPEN AGAIN?

21 A. YES, SIR.

22 Q. TELL THE JURY ABOUT THE SECOND TIME THIS HAPPENED?

23 A. THE SECOND TIME IT HAPPENED IT WAS ONE NIGHT, THAT
24 PARTICULAR WEEK MY AUNT HAD WENT ON A DIFFERENT
25 SHIFT AT HER JOB. MOST OF THE TIME SHE WOULD

DIRECT - Minor [REDACTED] BY SOL. SCOTT

149

1 USUALLY BE THERE WITH US, BUT AT THAT TIME SHE HAD
2 TOOK ON A MANAGER'S POSITION AT BURGER KING, AND
3 THEY HAD CHANGED HER WORK HOURS. I THINK SHE WAS,
4 LIKE, CLOSING AND STUFF LIKE THAT. SO, YOU KNOW,
5 SHE WASN'T ABLE TO BE THERE THAT PARTICULAR NIGHT
6 WITH US OR DURING THAT PARTICULAR WEEK. AND HE HAD
7 ASKED ME TO WAKE HIM UP FOR WORK, AND I SAID,
8 OKAY. AND I DID HAD TALKED TO MRS. HOOK, OR MS.
9 FALCO PREVIOUSLY THAT NIGHT, AND I WAS LAYING ON
10 THE COUCH ASLEEP, AND I WOKE UP TO WAKE HIM UP FOR
11 WORK, AND HE TOLD ME TO COME BACK IN FIVE MINUTES
12 AND WAKE HIM UP, AND I SAID, OKAY. AND I WENT
13 BACK AND LAY DOWN ON THE COUCH. WHEN THE FIVE
14 MINUTES WAS UP I WENT BACK IN THE ROOM TO WAKE HIM
15 UP BUT HE WAS ALREADY AWOKEN, AND HE WAS STANDING
16 THERE WITH NO CLOTHES ON AND HE ASKED ME TO COME
17 HERE. AND YOU KNOW, I WAS, LIKE, YOU KNOW, WHY,
18 YOU KNOW, I DIDN'T WANT TO GO OVER THERE. AND HE
19 WAS, LIKE, COME HERE, AND I WENT, AND HE STARTED
20 UNRAVELING LIKE MY PANTS, MY BELT OR WHATEVER, AND
21 LIKE, HE ALREADY HAD UNBUTTONED MY STUFF, AND I
22 WAS, LIKE, TRYING TO HOLD ONTO MY CLOTHES, AND HE
23 JERKED THEM DOWN. WHEN HE JERKED THEM DOWN MY
24 PANTS AND MY PANTIES CAME DOWN AT THE SAME TIME,
25 AND HE PUSHED ME ON THE BED. AND WHEN HE PUSHED

DIRECT - Minor [REDACTED] BY SOL. SCOTT

150

1 ME ON THE BED MY LEGS WENT UP AND HE GRABBED MY
2 LEGS, FORCING HIMSELF INSIDE OF ME, AND I WAS
3 TELLING HIM TO STOP, AND HE CONTINUED TO DO IT.
4 AND I WAS HITTING HIM, LIKE, PUNCHING HIM, BUT YOU
5 KNOW, THAT DIDN'T STOP HIM FROM DOING WHAT HE WAS
6 DOING. IT WAS, LIKE, THE MORE I WAS HITTING HIM
7 THE MORE IT WAS HURTING. SO, THAT'S WHEN I POKED
8 HIS EYES, I DIDN'T SCRATCH HIS EYES, I JUST, LIKE,
9 DID LIKE THAT, YOU KNOW, TO MAKE HIM STOP, BUT HE
10 DIDN'T STOP. AND HE STOPPED IT WHEN IT WANTED TO,
11 AND YOU KNOW, I WAS TELLING HIM, YOU KNOW, DON'T
12 DO IT, STOP, WHATEVER, AND HE DIDN'T. AND THEN,
13 LIKE, THREE MINUTES LATER HE STOPPED, AND I GOT
14 UP, AND I PUT MY CLOTHES ON. I PUT MY CLOTHES ON
15 AND HE ASKED ME WAS I MADE AT HIM OR SOMETHING
16 LIKE THAT, AND I WAS, LIKE, YOU KNOW, GET OUT OF
17 MY FACE. AND I WENT AND LAY BACK ON THE COUCH,
18 AND HE WENT IN THE ROOM AND HE WAS -- WELL, HE
19 STAYED IN THE ROOM AND HE WAS PUTTING ON HIS
20 CLOTHES AND STUFF FOR WORK. AND THEN HE SAID
21 THAT, BEFORE HE LEFT, YOU KNOW, HE TOLD ME TO LOCK
22 THE DOOR BEHIND HIM. AND HE SAID THAT WE WOULD
23 TRY IT AGAIN TOMORROW. SO, AFTER HE HAD LEFT I
24 GOT UP AND LOCKED THE DOOR, AND THEN I WENT AND
25 GOT BACK ON THE CHAIR AND I CALLED MS. FALCO AND I

DIRECT - Minor [REDACTED] BY SOL. SCOTT

151

1 TOLD HER WHAT HAD HAPPENED. AND AFTER THAT,
2 ABOUT, I WENT BACK TO SLEEP AND ABOUT AN HOUR, OR
3 AN HOUR AND A HALF MAYBE, I'M NOT SURE HOW LONG
4 AFTER THAT THE COPS CAME KNOCKING AT THE DOOR.
5 AND AFTER THAT MY FAMILY - - -

6 Q. LET ME STOP YOU FOR A MINUTE, DID YOU ASK MS.
7 FALCO TO CALL THE POLICE?

8 A. NO, SIR, I DIDN'T.

9 Q. DID YOU, WERE YOU EXPECTING THE POLICE TO ARRIVE
10 AT THE HOUSE THAT NIGHT?

11 A. NO, SIR, NOT AT ALL.

12 Q. DID YOU EXPERIENCE ANY PAIN AFTER THIS INCIDENT?

13 A. YES, SIR. I WENT TO THE RESTROOM AND IT WAS
14 REALLY LIKE WHEN I PEE IT WAS, LIKE, REALLY,
15 REALLY HURTING, IT WAS STINGING, AND IT JUST WAS,
16 IT WAS SORE LIKE, SO I PUT IT, LIKE, A NAPKIN
17 THERE AND THEN I PULLED UP MY CLOTHES AND I WENT
18 AND LAY BACK ON THE CHAIR.

19 Q. OKAY. LET ME ASK YOU, ON EITHER THE BATHROOM
20 INCIDENT OR THE INCIDENT IN THE BEDROOM DID YOU
21 EVER SEE MR. JONES EJACULATE?

22 A. NO, SIR.

23 Q. AND YOU TESTIFIED AFTER THIS INCIDENT YOU CALLED
24 MS. FALCO?

25 A. YES, SIR.

DIRECT - [REDACTED] Minor BY SOL. SCOTT

152

1 Q. AND YOU SAID THAT WASN'T THE FIRST TIME YOU'D
2 SPOKEN TO HER THAT NIGHT?

3 A. NO, SIR.

4 Q. WHAT DID Y'ALL TALK ABOUT THE FIRST TIME YOU
5 CALLED HER THAT NIGHT?

6 A. I'M NOT SURE BUT IT WASN'T NOTHING LIKE THAT. WE
7 PROBABLY WAS JUST HAVING A REGULAR CONVERSATION.

8 Q. OKAY. WHAT HAPPENED AFTER THE POLICE SHOWED UP?

9 A. MY STATEMENT WAS TAKEN, AND THEN MY AUNT AND
10 MOTHER AND THOSE ARRIVED PRETTY MUCH AROUND ALMOST
11 THE SAME TIME. THEY BOTH WAS, LIKE, COMING IN,
12 LIKE MAYBE TEN, FIFTEEN, TWENTY MINUTES AFTER EACH
13 OTHER, AND YOU KNOW, THEY ASKED, THEY WAS ASKING
14 WHAT WAS HAPPENING, AND THEY WAS, LIKE,
15 QUESTIONING ME, BUT I DIDN'T REALLY SAY TOO MUCH,
16 BUT WE WAS ESCORTED TO CHARLESTON WHERE THEY DID
17 THE RAPE, THEY USED A RAPE KIT ON ME TO EXAMINE MY
18 PRIVATE AREA.

19 Q. OKAY. DO YOU REMEMBER MEETING WITH THE DOCTOR
20 THAT NIGHT?

21 A. YES, SIR, I REMEMBER.

22 Q. DID YOU TELL THE DOCTOR WHAT HAPPENED?

23 A. YES, SHE ASKED ME A FEW QUESTIONS AND I ANSWERED
24 THEM.

25 Q. OKAY.

DIRECT - Minor [REDACTED] BY SOL. SCOTT

153

1 SOLICITOR SCOTT: I BEG THE COURT'S
2 INDULGENCE.

3 Q. FINALLY, Minor [REDACTED], THE PERSON THAT YOU SAID PUT HIS
4 PRIVATES INSIDE OF YOU ON TWO OCCASIONS DURING THE
5 SUMMER OF TWO THOUSAND AND FIVE, IS HE IN THE
6 COURTROOM TODAY?

7 A. YES, SIR.

8 Q. CAN YOU IDENTIFY HIM FOR THE JURY?

9 A. RIGHT THERE, SIR, WITH THE RED SHIRT ON.

10 SOLICITOR SCOTT: THANK YOU, MS.

11 [REDACTED]
12 THE COURT: CROSS-EXAMINE.

13 (NOTE: Blank lines on this page do not indicate any
14 part of record has been omitted. Headers on testimony
15 pages and hard page breaks between testimony are now
16 required by the Court. See next ensuing page for
17 sequential continuation of record.)

CROSS - Minor BY MS. FORD

154

CROSS-EXAMINATION OF Minor

BY MS. FORD:

Q. MS. Minor, I'M SARA FORD, I'M JUST GOING TO ASK
YOU A FEW QUESTIONS, OKAY?

A. YES, MA'AM.

Q. YOU OFTEN WENT TO YOUR AUNT SHARON'S HOUSE, RIGHT?

A. YES, MA'AM.

Q. OKAY. AND YOUR BROTHERS WERE ALWAYS WITH YOU WHEN
YOU WENT OVER THERE?

A. YES, MA'AM.

Q. OKAY. ON AUGUST FIFTEENTH, TWO THOUSAND AND FIVE,
YOUR BROTHERS WERE IN THE HOUSE, RIGHT, ON THE
DATE OF THE AUGUST INCIDENT?

A. WHICH INCIDENT IS THAT, THE LAST ONE?

Q. YES, MA'AM.

A. YES, THEY WERE THERE.

Q. THEY WERE THERE. AND THEY WERE ABOUT TEN OR
ELEVEN YEARS OLD AT THAT TIME?

A. NO, THEY WERE YOUNGER THAN THAT, MAYBE -- YEAH,
MAYBE NINE, EIGHT, SOMETHING LIKE THAT.

Q. OKAY. ALRIGHT. AND SHARON ROBINSON'S SONS WERE
IN THE HOUSE AS WELL, WEREN'T THEY?

A. YES, MA'AM.

Q. OKAY. ALRIGHT. SO, YOU STATED THAT YOU WENT TO
GO WAKE UP LINDY JONES AT NINE:THIRTY, RIGHT?

CROSS - Minor BY MS. FORD

155

1 A. I'M -- YES, SOMEWHERE AROUND THAT TIME, MA'AM.

2 Q. OKAY. AND YOU SAID THAT HE TOLD YOU TO WAKE HIM
3 UP, RIGHT?

4 A. YES, MA'AM.

5 Q. OKAY. AND HE SAID, FIVE MORE MINUTES?

6 A. YES, MA'AM.

7 Q. SO, YOU WENT BACK IN, AND YOU TESTIFIED THAT HE
8 WAS STANDING THERE NAKED, RIGHT?

9 A. YES, MA'AM.

10 Q. OKAY. AND INSTEAD OF WALKING OUT YOU JUST STOOD
11 THERE?

12 A. NO, HE -- WHEN I WALKED TO THE DOOR, LIKE, I SEEN
13 HIM, I SAW HIM AND HE WAS, LIKE, COME HERE, AND I
14 WAS, LIKE, YOU KNOW, WHAT FOR, OR WHATEVER, AND HE
15 WAS JUST, LIKE, COME HERE, OR WHATEVER. AND I WENT
16 BUT, YOU KNOW, I WASN'T EXPECTING NOTHING LIKE
17 THAT TO HAPPEN, LIKE, FOR HIM TO DO THAT.

18 Q. SO, INSTEAD OF -- HE SAYS, COME HERE, SO INSTEAD
19 OF WALKING OUT WHEN YOU SEE A NAKED MAN IN A ROOM,
20 YOU GO THERE TOWARDS HIM, RIGHT?

21 A. I DIDN'T, I MEAN - - -

22 Q. IS THAT WHAT YOU TESTIFIED TO?

23 A. YOU MEAN, NOT NECESSARILY. LIKE, IF I SEE A NAKED
24 MAN, I MEAN, - - -

25 Q. I'M JUST TRYING TO UNDERSTAND WHAT YOU TESTIFIED

CROSS - Minor BY MS. FORD

156

1 TO, BECAUSE YOU TESTIFIED AND YOU SAID THAT YOU
2 SAW HIM, HE WAS NAKED, RIGHT?

3 A. YEAH, HE WAS PUTTING - - -

4 Q. AND YOU WENT IN?

5 A. --- HE WAS GETTING READY TO PUT ON HIS CLOTHES OR
6 WHATEVER, I'M NOT SAYING, LIKE, YEAH.

7 Q. SO, YOU STAYED IN THAT ROOM INSTEAD OF WALKING OUT
8 WHEN YOU SAW THAT HE WAS NAKED, RIGHT?

9 A. I WAS NEVER IN THE ROOM, I WAS AT THE DOOR.

10 Q. OKAY. BUT YOU SAW THAT HE WAS NAKED AND INSTEAD
11 OF WALKING AWAY YOU STOOD RIGHT THERE?

12 A. I DIDN'T STOOD THERE, WHEN I GOT TO THE DOOR HE
13 ASKED ME TO COME HERE, SO I DIDN'T STOOD THERE I
14 JUST WAS, LIKE, YOU KNOW, IT'S NOT LIKE I WAS
15 STANDING THERE LOOKING AT HIM.

16 Q. OKAY. YOU STATED THAT HE PUSHED YOU ON THE BED
17 AND YOU WERE TRYING TO GET AWAY, RIGHT?

18 A. YES, HE PUSHED ME ON THE BED AND I WAS TRYING TO
19 GET AWAY. I WASN'T, LIKE, -- WHEN HE PUSHED ME ON
20 THE BED HE GOT ON TOP OF ME. I WAS TRYING TO GET
21 HIM OFF OF ME.

22 Q. OKAY. AND YOU SAID THAT YOU HIT HIM AND PUNCHED
23 HIM, RIGHT?

24 A. YES.

25 Q. AND YOU SAID YOU PUT YOUR FINGERS IN HIS EYES?

CROSS - Minor [REDACTED] BY MS. FORD

157

1 A. I POKED.

2 Q. OKAY. DIDN'T YOU TELL MS. FALCO THAT YOU
3 SCRATCHED HIM IN THE EYES?

4 A. NO, I TOLD HER THAT I POKED HIM, WELL, I PUT MY
5 FINGER IN HIS EYES, I NEVER STATED WHETHER I
6 SCRATCHED HIM OR POKED HIM.

7 Q. YOU DIDN'T TELL DR. REYES THAT YOU SCRATCHED HIM
8 IN THE EYES?

9 A. NO, I SAID I POKED HIM, OR I PLACED MY FINGERS IN
10 HIS EYES, LIKE THAT.

11 Q. OKAY. SO, YOU HAD YOUR FINGERS IN SOMEONE'S EYES
12 FOR ABOUT HOW LONG?

13 A. I'M NOT SURE, MA'AM.

14 Q. OKAY. YOU TESTIFIED THAT, YOU SAID THIS ENTIRE
15 INCIDENT HAPPENED, IT WAS ABOUT THREE MINUTES,
16 RIGHT?

17 A. NO, I SAID HE WAS ON TOP -- YEAH, HIM BEING ON TOP
18 OF ME.

19 Q. ABOUT THREE MINUTES?

20 A. IT WASN'T LONG, IT WASN'T, I'M NOT SURE HOW LONG
21 IT WAS, BUT I DID APPROXIMATELY THREE, FOUR
22 MINUTES, I'M NOT SURE.

23 Q. WELL, FOUR YEARS AGO YOU SAID IT WAS AT LEAST
24 THREE MINUTES. THREE MINUTES IS A LONG TIME,
25 ISN'T IT?

158

2 Q. WELL, WE COULD SIT HERE FOR THREE MINUTES AND WE'D
3 BE SILENT FOR A LONG TIME, WOULDN'T YOU SAY?

5 Q. OKAY. YOU SAID AFTER THE INCIDENT WAS OVER WITH
6 YOU WENT OUT AND YOU WENT TO SLEEP, RIGHT?

11 Q. OKAY. AFTER YOU TALKED WITH MS. FALCO YOU WENT TO
12 SLEEP, RIGHT?

13 A. YES, AND IN BETWEEN SOMEWHERE IN THAT TIME I ALSO
14 WENT TO THE RESTROOM AS WELL.

15 Q. OKAY. LET'S TALK ABOUT MS. FALCO. WHEN YOU FIRST
16 MET HER WHEN YOU WERE IN HER CLASS YOU DIDN'T GET
17 ALONG WITH HER VERY WELL, DID YOU?

18 A. NO, MA'AM, I DIDN'T.

19 Q. IN FACT, YOU GOT IN TROUBLE IN HER CLASS A LOT,
20 RIGHT?

21 A. YES, MA'AM, I DID.

22 Q. AND YOUR MOM HAD TO GO TO SCHOOL A LOT BECAUSE YOU
23 WERE GETTING IN TROUBLE IN HER CLASS, RIGHT?

24 A. YES, MA'AM.

25 Q. IN FACT, YOU WERE SUSPENDED A LOT FROM SCHOOL?

CROSS - Minor [REDACTED] BY MS. FORD

159

1 A. YES, MA'AM, I WAS.

2 Q. OKAY. BUT YOU WROTE A PAPER FOR MS. FALCO AND
3 SOMEHOW YOUR RELATIONSHIP CHANGED, RIGHT?

4 A. NO, THAT'S NOT WHAT HAPPENED. SHE JUST FELT LIKE
5 THAT THERE WAS SOMETHING, I MEAN, AT THAT
6 PARTICULAR TIME I WAS TROUBLED, I HAD A LOT GOING
7 ON IN MY LIFE. SO, SHE JUST FELT LIKE THERE WAS
8 SOMETHING THAT WAS ALLOWING ME TO ACT THAT WAY IN
9 HER PARTICULAR CLASS BECAUSE SHE WAS THE ONLY
10 TEACHER THAT I WOULD ACT UP IN CLASS THAT I WOULD
11 GET IN TROUBLE IN, AND - - -

12 Q. BUT YOUR RELATIONSHIP CHANGED, RIGHT?

13 A. YES, MA'AM, IT DID.

14 Q. AND YOU BECAME BUDDIES?

15 A. YES, MA'AM, IT DID.

16 Q. OKAY. SHE STARTED PAYING A LOT OF ATTENTION TO
17 YOU, RIGHT?

18 A. YES, MA'AM.

19 Q. SO MUCH ATTENTION THAT SHE WOULD TALK TO YOU ON
20 THE TELEPHONE FOR HOURS?

21 A. IF IT WAS NECESSARY, YES, MA'AM.

22 Q. AND YOU TESTIFIED EARLIER THAT YOU TALKED TO HER
23 EVERY DAY?

24 A. YES, MA'AM.

25 Q. AND THIS IS YOUR EIGHTH GRADE TEACHER, A GROWN

CROSS - Minor BY MS. FORD

160

1 WOMAN, TALKING TO YOU, YOU WERE FOURTEEN AT THE
2 TIME, RIGHT?

3 A. YES, MA'AM.

4 Q. AND TALKING TO YOU FOR HOURS EVERY DAY?

5 A. YES, MA'AM.

6 Q. DID SHE TEXT YOU?

7 A. NO, MA'AM.

8 Q. SHE NEVER TEXTED YOU?

9 A. NO, MA'AM.

10 Q. YOUR MOM NEVER FOUND TEXTS FROM HER STATING THAT
11 SHE LOVED YOU?

12 A. NOT IN MY EIGHTH GRADE YEAR.

13 SOLICITOR SCOTT: YOUR HONOR, I'M
14 GOING TO OBJECT

15 A. THAT WASN'T MY EIGHTH GRADE YEAR.

16 THE COURT: WAIT, MA'AM, WAIT ONE
17 SECOND.

18 Y'ALL APPROACH THE BENCH.

19 (Whereupon, a bench conference
20 is had out of the hearing of
21 the jury and court reporter.)

22 Q. MS. Minor, YOUR MOTHER NEVER FOUND TEXT
23 MESSAGES SAYING THAT SHE LOVED YOU?

24 A. YES, BUT THAT WAS NOT MY EIGHTH GRADE YEAR, THAT
25 HAPPENED AFTER I WAS ALREADY INTO THE NINTH GRADE.

CROSS - Minor [REDACTED] BY MS. FORD

161

1 THAT'S WHEN I RECEIVED A CELL PHONE, I WAS IN THE
2 NINTH GRADE. THIS DID NOT HAPPEN AT THAT
3 PARTICULAR TIME, MA'AM.

4 Q. SO, SHE NEVER SAID THAT SHE LOVED YOU ON YOUR
5 MOTHER'S CELL PHONE?

6 A. YES, SHE HAS. ON MY MOTHER'S CELL PHONE, I DON'T
7 REMEMBER THAT.

8 Q. YOU DON'T REMEMBER THAT?

9 A. BUT SHE HAS, LIKE, WRITTEN ME, LIKE, SHE'S SENT,
10 LIKE, CARDS IN THE MAIL SAYING THAT SHE'S PRAYING
11 FOR ME, AND EVERYTHING LIKE THAT, AND YES, THEY
12 ALWAYS SAY, LOVE, HEATHER FALCO.

13 Q. OKAY. ALRIGHT. YOU STATED THAT YOU'VE BEEN --
14 HAVE YOU EVER BEEN TO MS. FALCO'S HOUSE?

15 A. YES, MA'AM, I HAVE.

16 Q. OKAY. AND YOU WENT OUT TO THE MOVIES AND DINNER
17 WITH HER, IS THAT RIGHT?

18 A. WE WENT TO THE MALL ONE DAY, AND ONE NIGHT, YES,
19 WE DID WENT TO THE MOVIES AS WELL.

20 Q. YOUR MOM WAS CONCERNED ABOUT YOU SPENDING SO MUCH
21 TIME TALKING ON THE PHONE AND SPENDING SO MUCH
22 TIME WITH MS. FALCO, WASN'T SHE?

23 A. YES, MA'AM, SHE WAS.

24 Q. OKAY. DID SHE TELL YOU THAT SHE THOUGHT MS. FALCO
25 WAS A LESBIAN AND DIDN'T WANT YOU TO TALK TO HER

CROSS - Minor BY MS. FORD

162

1 ANYMORE?

2 A. YES, MA'AM.

3 SOLICITOR SCOTT: OBJECTION.

4 THE COURT: I SUSTAIN THE OBJECTION.

5 Q. DID IT UPSET YOU THAT YOUR MOTHER DIDN'T WANT YOU
6 TO SEE MS. FALCO OR TALK TO HER?

7 A. YES, MA'AM, IT DID.

8 Q. DID THIS HAPPEN RIGHT BEFORE THE AUGUST FIFTEENTH
9 INCIDENT?

10 A. I'M NOT SURE.

11 Q. LET'S TALK ABOUT THE MEDICAL EXAMINATION, MS.
12 Minor.

13 A. UH HUH.

14 Q. YOU DIDN'T COMPLAIN OF ANY PAIN BEFORE YOU GOT TO
15 DR. GIBBS' OFFICE, DID YOU?

16 A. I DON'T RECALL, I DON'T KNOW, MA'AM.

17 Q. YOU DON'T RECALL. OKAY. YOU MADE SURE TO
18 COMPLAIN ABOUT YOUR PAIN ONCE YOU GOT THERE,
19 RIGHT?

20 A. WELL, WHEN WE WAS ON OUR WAY TO CHARLESTON?

21 Q. ONCE YOU GOT TO CHARLESTON, YOU COMPLAINED - - -

22 A. I WAS ASLEEP THE WHOLE WAY THERE, MA'AM.

23 Q. OKAY. WELL, LET'S TALK ABOUT WHEN YOU ACTUALLY
24 GOT THERE - - -

25 A. UH HUH.

CROSS - Minor [REDACTED] BY MS. FORD

163

1 Q. --- AT DR. GIBBS'S OFFICE, YOU COMPLAINED ABOUT
2 PAIN, DIDN'T YOU?

3 A. I'M NOT SURE, I DON'T REMEMBER.

4 Q. YOU DON'T REMEMBER. OKAY. WELL, DO YOU REMEMBER
5 IF THIS IS THE FIRST TIME YOU HAD HAD A PELVIC
6 EXAMINATION?

7 A. NO, I KNOW IT WASN'T THE FIRST.

8 Q. OKAY. IT WASN'T THE FIRST?

9 A. NO, MA'AM.

10 Q. SO, IT SHOULDN'T HAVE SURPRISED YOU THE METHOD
11 THAT DR. GIBBS USED, SHOULD IT HAVE?

12 A. NO, NOT REALLY, BUT - - -

13 Q. LET ME REPHRASE, YOU KNEW WHAT TO EXPECT WHEN SHE
14 CONDUCTED HER EXAMINATION, RIGHT?

15 A. I MEAN, - - -

16 SOLICITOR SCOTT: I'M GOING TO
17 OBJECT, YOUR HONOR.

18 THE COURT: Y'ALL APPROACH THE BENCH
19 AGAIN.

20 (Whereupon, a bench conference
21 is had out of the hearing of
22 the jury and the court reporter.)

23 THE COURT: LADIES AND GENTLEMEN,
24 PLEASE RETIRE TO YOUR JURY, I HAVE A MATTER OF LAW TO
25 TAKE UP OUTSIDE OF YOUR PRESENCE. PLEASE DO NOT TALK

CROSS - Minor [REDACTED] BY MS. FORD

164

1 ABOUT THE CASE.

2 (Whereupon, the jury retires
3 to the jury room and the following
4 takes place out of the presence
5 of the jury.)

6 THE COURT: ALRIGHT, YOU ASK HER THE
7 QUESTIONS NOW THAT YOU WANT TO ASK HER.

8 MS. FORD: YOUR HONOR, I ASKED HER
9 IF SHE'D HAD A PELVIC EXAM BEFORE, SO THE METHODS USED
10 BY DR. GIBBS TO EXAMINE HER WEREN'T SURPRISING TO HER.

11 THE COURT: ALRIGHT. OKAY, YOU
12 ASKED THAT, AND DID SHE ANSWER IT?

13 MS. FORD: YES, SIR, SHE SAID, YES,
14 SHE HAD A PELVIC EXAM BEFORE, BUT THAT SHE DIDN'T KNOW
15 IF IT -- SHE GOT CONFUSED THERE. SO I WANTED TO CLARIFY
16 AND ASK HER, THE METHOD THAT DR. GIBBS USED TO EXAMINE
17 HER, SHE'D ALREADY HAD A PELVIC EXAM SO SHE KNEW WHAT
18 WAS GOING TO HAPPEN DURING A PELVIC EXAMINATION.

19 THE COURT: WELL, IF YOU'RE TRYING
20 TO RELATE THIS BACK TO SOME RAPE PROTOCOL EXAM THAT SHE
21 HAD IN TWO THOUSAND AND TWO, WE'RE NOT GOING THERE.

22 MS. FORD: NO, YOUR HONOR, I'M NOT
23 TRYING TO, BUT ANYWAY, THE PURPOSE - - -

24 THE COURT: ALRIGHT, THEN IF SHE HAD
25 SOME NORMAL PELVIC EXAMINATION HOW IN THE WORLD WOULD

CROSS - Minor BY MS. FORD

165

1 SHE KNOW WHETHER A RAPE PROTOCOL EXAMINATION WOULD BE
2 THE SAME AS AN ORDINARY PELVIC EXAM BY A DOCTOR, HOW
3 WOULD SHE KNOW THAT?

4 MS. FORD: YOUR HONOR, I'M ASKING IF
5 SHE, -- HER REACTION DURING THIS EXAM WAS NOTED AS
6 UNUSUAL.

7 THE COURT: OKAY.

8 MS. FORD: I'M ASKING, IT SHOULDN'T
9 HAVE SURPRISED HER WHAT WAS GOING TO HAPPEN DURING THIS
10 EXAM BECAUSE SHE'D ALREADY HAD ONE BEFORE. FOR HER TO
11 ACT IN SUCH AN UNGSUAL MANNER YOU WOULD THINK THAT
12 SOMETHING WAS WRONG. AND I JUST WANTED TO CLARIFY THAT
13 SHE'D ALREADY HAD ONE BEFORE, SHE KNEW WHAT TO EXPECT
14 DURING A PELVIC EXAM, YET SHE REACTED ACCORDING TO DR.
15 GIBBS IN AN UNUSUAL WAY.

16 THE COURT: WELL, THE --

17 SOLICITOR SCOTT: YOUR HONOR, SHE
18 TESTIFIED ON DIRECT THAT SHE WAS EXPERIENCING SO MUCH
19 PAIN SHE PLACED NAPKINS ON HER GENITALIA. SHE SAID IT
20 HURT BAD AFTER THE INCIDENT HAPPENED.

21 THE COURT: I JUST, I MEAN, I DON'T
22 SEE HOW YOU COULD EXPECT HER TO KNOW WHAT TO EXPECT IN
23 A RAPE PROTOCOL EXAM, AND I'M NOT GOING TO ALLOW YOU TO
24 ASK THAT QUESTION IN FRONT OF THE JURY. YOU KNOW, YOU
25 MIGHT EXPLORE WITH THE DOCTOR, THE DOCTOR MIGHT KNOW

166

MS. FORD: YES, YOUR HONOR.

MA'AM, YOU DO NEED TO SPEAK A LITTLE

WITNESS: YES, SIR.

THE COURT: BECAUSE IT'S HARD FOR ME
TO HEAR. I'M BEHIND YOU, YOU SEE, AND I CAN'T SEE YOUR
FACE, AND I NEED TO HEAR.

WITNESS: YES, SIR.

(Whereupon, the jury enters
the courtroom and the following

CROSS - Minor BY MS. FORD

167

1 takes place in the presence
2 of the jury.)

3 THE COURT: ALRIGHT, YOU MAY
4 PROCEED.

5 MS. FORD: THANK YOU, YOUR HONOR.

6 Q. MS. Minor, I HAVE JUST A COUPLE OF OTHER
7 QUESTIONS FOR YOU. YOU TESTIFIED EARLIER THAT AT
8 SOME POINT DURING THE SUMMER LINDY JONES FORCED
9 HIMSELF ON YOU IN A BATHROOM, RIGHT?

10 A. UH HUH, YES, MA'AM.

11 Q. AT SOME POINT DURING THE SUMMER OF TWO THOUSAND
12 AND FIVE?

13 A. YES, MA'AM.

14 Q. YOU DON'T REMEMBER WHEN?

15 A. NO, MA'AM.

16 Q. YOU SAID ORIGINALLY WHEN YOU TESTIFIED EARLIER
17 THAT HE PLACED HIS PRIVATE AREA ON YOUR BUTT BUT
18 YOUR CLOTHES WERE ON, RIGHT?

19 A. YES, MA'AM, WHEN I WAS IN THE RESTROOM?

20 Q. UH HUH.

21 A. YES, MA'AM.

22 Q. SO, YOUR CLOTHES WERE ON DURING THAT INCIDENT?

23 A. YES, MA'AM, I THINK SO, YES, MA'AM.

24 Q. OKAY. BECAUSE IT SEEMED LIKE YOU WERE HAVING A
25 HARD TIME REMEMBERING, I JUST WANTED TO MAKE SURE,

CROSS - Minor BY MS. FORD

168

1 YOUR CLOTHES WERE ON?

2 A. I REALLY DON'T -- I REMEMBER THE INCIDENT BUT I
3 DON'T REMEMBER EVERYTHING THAT HAPPENED IN THE
4 INCIDENT.

5 Q. SO, YOU DON'T REMEMBER REALLY WHAT HAPPENED IN THE
6 INCIDENT, THEN, IS WHAT YOU'RE SAYING?

7 A. NOT THAT INCIDENT, NO, MA'AM.

8 Q. SO, YOU DON'T REALLY REMEMBER WHAT HAPPENED
9 EARLIER?

10 A. NO, I REMEMBER SOME OF THE INCIDENT, I DON'T
11 REMEMBER EVERY DETAIL OF IT, NO, I DON'T.

12 Q. OKAY. SO, YOU DON'T REMEMBER. OKAY.

13 MS. FORD: I BEG THE COURT'S
14 INDULGENCE, YOUR HONOR.

15 THE COURT: ALRIGHT.

16 MS. FORD: I HAVE NO FURTHER
17 QUESTIONS, YOUR HONOR.

18 THE COURT: REDIRECT?

19 SOLICITOR SCOTT: YES, YOUR HONOR.

20 (NOTE: Blank lines on this page do not indicate any
21 part of record has been omitted. Headers on testimony
22 pages and hard page breaks between testimony are now
23 required by the Court. See next ensuing page for
24 sequential continuation of record.)

169

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Q. **Minor**, I BELIEVE YOU TESTIFIED ON DIRECT WHEN I WAS UP HERE EARLIER REGARDING THE BATHROOM INCIDENT?

Q. YOU SAID AFTER THAT INCIDENT OCCURRED YOU PULLED UP YOUR PANTS AND LEFT THE BATHROOM, IS THAT CORRECT?

Q. OKAY. SO, WHEN HE PLACED HIS PENIS INSIDE OF YOU
IN THE BATHROOM - - -

Q. --- WERE YOUR PANTS ON OR OFF?

Q. THEY WERE DOWN?

Q. OKAY. MS. FORD ASKED YOU ON CROSS-EXAMINATION WHETHER OR NOT YOU WERE EXPERIENCING ANY PAIN BEFORE YOU GOT DOWN TO CHARLESTON TO SEE DR. GIBBS. DID YOU PLACE -- YOU TESTIFIED ON DIRECT THAT YOU PLACED TISSUE ON YOUR PRIVATE AREA?

A. YES, SIR, IT WAS, I PUT, YEAH, I PUT TISSUE IN MY
-- BEFORE I PULLED THEM UP, YES, SIR.

Q. AND WHY DID YOU PUT TISSUE ON YOUR PRIVATE AREA?

REDIRECT - Minor [REDACTED] BY SOL. SCOTT

170

- 1 A. BECAUSE IT WAS BURNING AND HURTING.
- 2 Q. AND WHERE WERE YOU WHEN YOU PUT TISSUE IN YOUR
- 3 PRIVATE AREA?
- 4 A. I WAS IN THE RESTROOM.
- 5 Q. OF?
- 6 A. OF THEIR HOUSE, ON LAQUINTA DRIVE.
- 7 Q. OKAY. DO YOU RECALL MEETING WITH INVESTIGATOR
- 8 ANTHONY THOMPSON ABOUT TWELVE HOURS, OR THE
- 9 FOLLOWING DAY AFTER THIS INCIDENT?
- 10 A. YES, SIR.
- 11 Q. DID YOU GIVE HIM A STATEMENT?
- 12 A. YES, SIR.
- 13 Q. IN YOUR STATEMENT DID YOU TELL INVESTIGATOR
- 14 THOMPSON WHETHER YOU SCRATCHED LINDY JONES IN HIS
- 15 EYES OR POKED HIM IN HIS EYES?
- 16 A. I'M NOT -- POKED HIM, I KNOW I DIDN'T SCRATCH HIM,
- 17 NOT THAT I - - -
- 18 Q. OKAY. AND IN THE INCIDENT IN THE BEDROOM, I
- 19 BELIEVE YOU TESTIFIED THAT YOU WENT TO THE BEDROOM
- 20 AND MR. JONES WAS STANDING THERE WITH NO CLOTHES
- 21 ON?
- 22 A. YES, SIR.
- 23 Q. AND AT THAT POINT HE SAID, COME HERE?
- 24 A. YES, SIR.
- 25 Q. AND HOW LONG, HOW MUCH TIME ELAPSED AFTER HE SAID,

REDIRECT - Minor [REDACTED] BY SOL. SCOTT

171

1 COME HERE, UNTIL HE GRABBED YOU LIKE YOU TESTIFIED
2 ON DIRECT?

3 A. I'M NOT SURE, SIR, NOT LONG.

4 Q. NOT LONG?

5 A. NO, SIR.

6 SOLICITOR SCOTT: NO FURTHER
7 QUESTIONS.

8 THE COURT: RE-CROSS?

9 (NOTE: Blank lines on this page do not indicate any
10 part of record has been omitted. Headers on testimony
11 pages and hard page breaks between testimony are now
12 required by the Court. See next ensuing page for
13 sequential continuation of record.)

RECROSS - Minor [REDACTED] BY MS. FORD

172

1 RECROSS-EXAMINATION OF Minor [REDACTED]

2 BY MS. FORD:

3 Q. MS. Minor [REDACTED], YOU SAID THAT YOU HAD YOUR FINGERS
4 IN MR. JONES'S EYES, RIGHT?

5 A. THEY WASN'T INSIDE HIS EYES, THEY WAS ABOVE, RIGHT
6 HERE.

7 Q. OKAY. SO, YOU HAD YOUR, WAS IT YOUR FINGERS, YOUR
8 THUMBS?

9 A. I'M NOT SURE WHAT FINGER IT WAS, BOTH -- I'M NOT
10 SURE WHICH ONE IT WAS.

11 Q. BUT YOU'RE SURE YOU HAD THEM PUSHING INTO MR.
12 JONES'S EYES?

13 A. YES, I WAS PUSHING THEM INTO HIS EYES.

14 Q. FOR THE ENTIRE TIME OF THE AUGUST FIFTEENTH, TWO
15 THOUSAND FIVE, INCIDENT?

16 A. NO, IT WAS NOT THE WHOLE ENTIRE INCIDENT. PART OF
17 THE INCIDENT I WAS HITTING HIM, AND HE DIDN'T STOP
18 SO THEN I DECIDED TO DO THAT, THINKING THAT HE
19 WOULD STOP.

20 Q. AND NONE OF THE OTHER PEOPLE IN THE HOUSE HEARD
21 ANYTHING, DID THEY?

22 A. NOT THAT I KNOW OF.

23 SOLICITOR SCOTT: OBJECTION, YOUR
24 HONOR.

25 A. I DON'T KNOW.

RECROSS - Minor [REDACTED] BY MS. FORD

173

1 THE COURT: WAIT A MINUTE, MA'AM.

2 SIR?

3 SOLICITOR SCOTT: OBJECTION. IT
4 CALLS FOR SPECULATION.

5 A. THEY WERE IN THE BED.

6 THE COURT: WAIT A MINUTE, MA'AM.
7 HOW WOULD SHE KNOW WHAT SOMEBODY
8 HEARD?

9 MS. FORD: IT'S WITHDRAWN, YOUR
10 HONOR. I HAVE NO FURTHER QUESTIONS.

11 THE COURT: THANK YOU, MA'AM, YOU
12 MAY STEP DOWN.

13 YOU MAY CALL YOUR NEXT WITNESS.

14 SOLICITOR JEFFERIES: THE STATE CALLS
15 DR. DEBORAH REYES.

16 (Whereupon, the witness
17 enters the courtroom.)

18 THE COURT: GOOD MORNING, DR. REYES,
19 PLEASE COME ON DOWN HERE AND PLACE YOUR LEFT HAND ON THE
20 BIBLE AND RAISE YOUR RIGHT.

21 (Whereupon, Dr. Deborah Jean P. Reyes
22 is duly sworn.)

23 WITNESS: MY NAME IS DEBORAH JEAN P.
24 REYES.

25 THE COURT: AND HOW DO YOU SPELL

1 YOUR LAST NAME?

2 WITNESS: R-E-Y-E-S.

3 THE COURT: THANK YOU, MA'AM.

4 ALRIGHT, COUNSELOR.

5 (NOTE: Blank lines on this page do not indicate any
6 part of record has been omitted. Headers on testimony
7 pages and hard page breaks between testimony are now
8 required by the Court. See next ensuing page for
9 sequential continuation of record.)

DIRECT - DR. DEBORAH J.P. REYES BY SOL. JEFFRIES

175

DIRECT EXAMINATION OF DR. DEBORAH J.P. REYES

BY SOLICITOR JEFFRIES:

Q. WHAT'S YOUR OCCUPATION, DR. REYES?

A. I'M A CLINICAL PSYCHOLOGIST.

Q. AND WHERE ARE YOU CURRENTLY WORKING? AND I KNOW THAT'S A RELATIVE TERM IN YOUR SITUATION.

A. YES. AS OF THIS WEEK I'M WORKING AT THE VETERAN'S AFFAIRS MEDICAL CENTER AT DORN.

Q. OKAY. WELL, I'M GOING TO TAKE YOU BACK TO TWO THOUSAND AND FIVE, WHERE WERE YOU WORKING?

A. AT THE DICKERSON CENTER.

Q. AND WHERE IS THAT?

A. THAT'S IN WEST COLUMBIA.

Q. AND WHAT'S THE PURPOSE OF THE DICKERSON CENTER, WHAT DO THEY DO THERE?

A. THE DICKERSON CENTER IS A CHILD ADVOCACY CENTER. SO, WE HELP IN THE INVESTIGATION OF ISSUES RELATING TO ABUSE. WE PROVIDE A CHILD FRIENDLY ATMOSPHERE WHERE WE CAN TALK TO CHILDREN AND DO FORENSIC INTERVIEWS ABOUT THE POSSIBILITY THAT THE CHILD MAY HAVE BEEN ABUSED. WE ALSO PROVIDE THERAPY AND MEDICAL EXAMS.

Q. AND YOU SAID IT'S IN COLUMBIA?

A. WEST COLUMBIA.

Q. WEST COLUMBIA. SO, IT'S IN NO WAY RELATED TO ANY

1 LAW ENFORCEMENT AGENCY?

2 A. NO.

3 Q. OKAY. IT'S NOT RELATED TO THE FIRST CIRCUIT
4 SOLICITOR'S OFFICE?

5 A. NO, IT'S A NON-PROFIT AGENCY. WE GET REFERRALS
6 FROM DIFFERENT LAW ENFORCEMENT AGENCIES AND DSS.

7 Q. IF YOU WOULD, TELL THIS JURY ABOUT YOUR
8 PROFESSIONAL BACKGROUND AND EXPERIENCE?

9 A. I GOT A BACHELORS DEGREE IN NINETEEN EIGHTY-EIGHT
10 REGARDING EDUCATION FOR THE HEARING IMPAIRED. THEN
11 I GOT A MASTERS DEGREE IN NINETEEN NINETY IN
12 DEAFNESS REHAB COUNSELING. I WORKED AS A THERAPIST
13 FOR ABOUT EIGHT YEARS AND THEN WENT BACK TO
14 SCHOOL. I GOT A MASTERS DEGREE IN CLINICAL
15 PSYCHOLOGY IN TWO THOUSAND AND ONE, AND THEN A
16 PH.D. IN CLINICAL PSYCHOLOGY IN TWO THOUSAND AND
17 FIVE.

18 Q. AND IF YOU WOULD, TELL THE JURY, I GUESS YOUR
19 PROFESSIONAL BACKGROUND, ANY COURSES, SEMINARS OR
20 CERTIFICATES YOU'VE RECEIVED DEALING WITH CHILD
21 ABUSE, SPECIFICALLY SEXUAL ASSAULT?

22 A. THROUGH THE YEARS I'VE ATTENDED A VARIETY OF
23 DIFFERENT TRAININGS ON TREATING SEXUAL ABUSE. IT
24 WAS A PRIMARY RESPONSIBILITY IN MY TREATMENT
25 BEFORE GETTING MY PH.D. AS PART OF MY INTERNSHIP

DIRECT - DR. DEBORAH J.P. REYES BY SOL. JEFFRIES

177

1 THAT I DID AT HALL I WORKED AT THE ASSESSMENT
2 RESOURCE CENTER WHICH IS ANOTHER CHILD ADVOCACY
3 CENTER, AND I DID SIX MONTHS INTERNSHIP WHERE I
4 WAS BEING SUPERVISED ON DOING FORENSIC INTERVIEWS
5 THERE. I ALSO ATTENDED A FINDING WORDS COURSE
6 WHICH IS A NATIONALLY RECOGNIZED TRAINING ON
7 RATAAC, WHICH IS A SPECIFIC TRAINING ON DOING
8 FORENSIC INTERVIEWING WITH CHILDREN. SINCE THEN
9 I'VE ATTENDED TWO OR THREE ADVANCED FORENSIC
10 TRAINING COURSES, A VARIETY OF DIFFERENT SEMINARS,
11 CONFERENCES.

12 Q. AND HAVE YOU, YOURSELF, BEEN A TRAINER OR A
13 TEACHER INVOLVED WITH, REGARDING CHILD SEXUAL
14 ASSAULT?

15 A. I'VE TRAINED, PROVIDED TRAINING AT THE DEPARTMENT
16 OF JUVENILE JUSTICE ABOUT FOUR OR FIVE TIMES ON
17 TREATING CHILDREN WHO HAVE BEEN SEXUALLY ABUSED.

18 Q. AND COULD YOU TELL THE JURY ABOUT ANY PROFESSIONAL
19 ORGANIZATIONS, AFFILIATIONS, OR PUBLICATIONS,
20 SPEAKING ENGAGEMENTS YOU'VE ATTENDED OR CONDUCTED
21 RELEVANT TO CHILD ABUSE, OR SEXUAL ABUSE?

22 A. I AM A MEMBER OF THE CHILDREN'S JUSTICE ACT TASK
23 FORCE WHICH IS SUPPOSED TO HELP GUIDE HOW FEDERAL
24 MONEY IS SPENT ON THE ISSUE OF CHILD SEXUAL ABUSE
25 IN THE STATE OF SOUTH CAROLINA. I AM A CURRENT

DIRECT - DR. DEBORAH J.P. REYES BY SOL. JEFFRIES

178

1 MEMBER OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION.
2 I WAS PREVIOUSLY A MEMBER OF THE SOUTH CAROLINA
3 SOCIETY ON PREVENTION OF CHILD ABUSE. I THINK THAT
4 MY MEMBERSHIP DUES ARE, I NEED TO PAY THEM. I
5 THINK I'VE COVERED EVERYTHING.

6 Q. OKAY. APPROXIMATELY HOW MANY CHILD VICTIMS OF
7 SEXUAL ASSAULT OR ABUSE HAVE YOU PERSONALLY
8 COUNSELED?

9 A. PROVIDING THERAPY I'VE PROBABLY PROVIDED THERAPY
10 TO ABOUT A HUNDRED AND FIFTY TO A HUNDRED AND
11 SEVENTY-FIVE CHILDREN AND ADULTS, ADULTS WHO WERE
12 SURVIVORS OF SEXUAL ABUSE, AND THAT'S ACROSS,
13 THAT'S SINCE MY MASTER'S DEGREE. SO, THAT'S
14 ACROSS MANY YEARS. AND YOU WERE ASKING ABOUT
15 THERAPY, RIGHT?

16 Q. RIGHT.

17 A. OKAY.

18 Q. HOW MANY YEARS HAVE YOU BEEN IN PRACTICE AS A
19 THERAPIST?

20 A. I'VE BEEN IN PRACTICE AS A MASTERS LEVEL THERAPIST
21 SINCE NINETEEN NINETY, BUT THEN WORKING, AFTER I
22 GOT MY PH.D., SINCE TWO THOUSAND AND FIVE.

23 Q. AND HOW HAVE YOU BEEN DOING FORENSIC INTERVIEWS?

24 A. I'VE BEEN DOING FORENSIC INTERVIEWS SINCE TWO
25 THOUSAND AND FOUR.

DIRECT - DR. DEBORAH J.P. REYES BY SOL. JEFFRIES

179

1 Q. OKAY. APPROXIMATELY HOW MANY PATIENTS IN GENERAL
2 HAVE YOU TREATED IN YOUR CAREER, SO TO SPEAK?

3 A. PATIENTS OR FORENSIC INTERVIEWS?

4 Q. WELL, PATIENTS FIRST.

5 MR. MELLARD: YOUR HONOR, I OBJECT.

6 MAY WE APPROACH?

7 THE COURT: YES, SIR.

8 (Whereupon, a bench conference
9 is had out of the hearing of
10 the jury and court reporter.)

11 Q. LET ME REPHRASE MY LAST QUESTION, AND AS FAR AS
12 CHILD ABUSE OR CHILD VICTIM SEXUAL ABUSE CASES,
13 HOW MANY HAVE YOU COUNSELED GENERALLY UP UNTIL
14 NOW?

15 A. I THINK IT'S ABOUT A HUNDRED AND SOMETHING.

16 THE COURT: MA'AM, I'M SORRY, BUT I
17 CAN'T HEAR YOU.

18 A. I'M SORRY.

19 THE COURT: I KNOW YOU'RE LOOKING AT
20 HIM, AND YOU SHOULD LOOK AT HIM, BUT THAT MAKES IT
21 HARDER FOR ME TO HEAR YOU - - -

22 A. OKAY.

23 THE COURT: --- SO, IF YOU COULD
24 JUST TALK A LITTLE LOUDER, SOMEONE ON THE JURY MIGHT BE
25 HAVING THAT PROBLEM, BUT SINCE I CAN'T SEE YOU I CAN'T

DIRECT - DR. DEBORAH J.P. REYES BY SOL. JEFFRIES

180

1 HEAR YOU, AND I NEED TO HEAR YOU. OKAY?

2 A. OKAY.

3 THE COURT: I'M GETTING OLD AND
4 DEAF.

5 A. I CAN APPRECIATE THAT, I'LL BACK UP A LITTLE.

6 THE COURT: AND WE DON'T HAVE A PA
7 SYSTEM. WE'RE TRYING TO RAISE THE MONEY NOW, MAYBE SOME
8 OF THIS STIMULUS MONEY OR SOMETHING, SO WE CAN GET THE
9 MONEY TO PUT A PA SYSTEM IN.

10 A. OKAY. APPROXIMATELY A HUNDRED AND SEVENTY-FIVE
11 CLIENTS.

12 Q. OKAY. AND WOULD THAT NUMBER BE DRASTICALLY
13 DIFFERENT GOING BACK TO TWO THOUSAND AND FIVE, OR
14 WHAT WOULD IT BE BACK THEN?

15 A. FOR TREATING THERAPY CASES, THE VAST MAJORITY, IT
16 WOULD PROBABLY BE AT LEAST A HUNDRED AND FIFTY OF
17 THOSE OCCURRED BEFORE TWO THOUSAND AND FIVE.

18 Q. OKAY. AND APPROXIMATELY HOW MANY FORENSIC
19 INTERVIEWS HAVE YOU DONE - - -

20 A. TO DATE?

21 Q. --- UP UNTIL TO DATE AND THEN WE'LL ASK ABOUT - -
22 -

23 A. OKAY. FORENSIC INTERVIEWS, I'VE CONDUCTED ABOUT
24 TWO HUNDRED AND FIFTY FORENSIC INTERVIEWS.

25 Q. AND HOW ABOUT IN TWO THOUSAND AND FIVE, WHAT WOULD

DIRECT - DR. DEBORAH J.P. REYES BY SOL. JEFFRIES

181

1 THAT NUMBER HAVE BEEN, APPROXIMATELY?

2 A. ARE YOU TALKING SPECIFICALLY ABOUT - - -

3 Q. SPECIFICALLY FORENSIC INTERVIEWS.

4 A. PRIOR TO THE -- THAT WOULD HAVE BEEN PROBABLY -- I
5 NEED TO DO A LITTLE MATH IN MY HEAD.

6 THE COURT: ALRIGHT, TAKE YOUR TIME.

7 A. I WOULD SAY ABOUT SEVENTY.

8 Q. OKAY. AND HAVE YOU EVER BEEN QUALIFIED AND
9 TESTIFIED IN COURTS IN SOUTH CAROLINA AS AN EXPERT
10 WITNESS?

11 A. YES.

12 Q. AND APPROXIMATELY HOW MANY TIMES HAVE YOU BEEN
13 QUALIFIED AS AN EXPERT AND TESTIFIED?

14 A. ABOUT FIVE OR SIX TIMES.

15 Q. AND WHAT AREAS WOULD THOSE HAVE BEEN IN?

16 A. FORENSIC INTERVIEWING, CHILD CLINICAL PSYCHOLOGY,
17 AND THE ASSESSMENT AND TREATMENT OF CHILD SEXUAL
18 ABUSE.

19 Q. OKAY. AND IN TWO THOUSAND FIVE WOULD YOU HAVE
20 ALREADY BEEN QUALIFIED IN COURTS IN SOUTH CAROLINA
21 AS AN EXPERT?

22 A. NO.

23 Q. OKAY. HAVE YOU -- SO, ALL OF YOUR TESTIMONY HAS
24 BEEN SINCE THEN?

25 A. YES.

DIRECT - DR. DEBORAH J.P. REYES BY SOL. JEFFRIES

182

1 Q. OKAY. AND THAT'S FORENSIC INTERVIEWING AND THE
2 OTHER TOPICS YOU'VE BEEN QUALIFIED AS AN EXPERT?

3 A. CORRECT. I DID FACT TESTIFYING PRIOR TO THAT BUT
4 I DID NOT QUALIFY AS AN EXPERT UNTIL AFTER THAT
5 TIME.

6 Q. OKAY.

7 SOLICITOR JEFFRIES: YOUR HONOR, I'D
8 OFFER DR. REYES AS AN EXPERT IN THE FIELD OF CHILD
9 SEXUAL ABUSE COUNSELING AND ALSO FORENSIC INTERVIEWING.

10 THE COURT: ANY VOIR DIRE?

11 MR. MELLARD: JUST A FEW QUESTIONS.

12 THE COURT: SURE.

13 (NOTE: Blank lines on this page do not indicate any
14 part of record has been omitted. Headers on testimony
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16 required by the Court. See next ensuing page for
17 sequential continuation of record.)

CROSS - DR. DEBORAH J.P. REYES BY MR. MELLARD

183

CROSS-EXAMINATION OF DR. DEBORAH J. P. REYES

BY MR. MELLARD:

Q. YOU GOT YOUR PH.D. IN TWO THOUSAND FIVE, IS THAT CORRECT?

A. YES.

Q. OKAY. AND YOU'D JUST STARTED WORKING AT THE DICKERSON CENTER IN TWO THOUSAND AND FIVE?

A. YES.

Q. OKAY. AND IN TWO THOUSAND AND FIVE YOU WERE NOT QUALIFIED AS AN EXPERT, IS THAT CORRECT?

A. I'M NOT SAYING THAT I WAS NOT QUALIFIED.

Q. YOU HAD NOT BEEN QUALIFIED IN A COURT OF LAW AT THAT TIME?

A. I HAD NOT GONE THROUGH THAT PROCESS. OTHER PEOPLE HAVE QUALIFIED AS A FORENSIC INTERVIEWER AFTER COMPLETING THE FINDING WORDS, SO I DON'T KNOW WHETHER I WOULD HAVE QUALIFIED OR NOT AT THAT POINT, I JUST HAD NOT GONE THROUGH THE PROCESS.

Q. OKAY. SO, YOU DON'T KNOW WHETHER YOU WOULD HAVE OR NOT, CORRECT?

A. RIGHT.

Q. BUT YOU HAD TESTIFIED BUT YOU'D JUST TESTIFIED AS A FACT WITNESS?

A. NO, I -- PRIOR TO THAT IN OTHER JOBS I TESTIFIED AS A FACT WITNESS ABOUT OTHER ISSUES, BUT I HAD

CROSS - DR. DEBORAH J.P. REYES BY MR. MELLARD

184

1 NOT BEEN CALLED TO COURT ABOUT FORENSIC
2 INTERVIEWING. OFTEN THERE'S A DELAY BETWEEN THE
3 TIME YOU ACTUALLY HAVE THE INTERVIEW AND IT GETS
4 TO COURT, SO - - -

5 Q. OKAY.

6 A. --- I HAD NOT BEEN CALLED YET.

7 Q. I BELIEVE YOU SAID YOU GOT SOME RATAAC, R-A-T-A-C,
8 TRAINING, WHEN WAS THAT TRAINING DONE?

9 A. TWO THOUSAND AND FOUR.

10 MR. MELLARD: OKAY. THANK YOU.

11 THE COURT: ALRIGHT. DO YOU OBJECT?

12 MR. MELLARD: YES, SIR, I DO.

13 THE COURT: DO YOU WANT TO BE HEARD
14 OUTSIDE THE PRESENCE OF THE JURY?

15 MR. MELLARD: YES, SIR, I DO.

16 THE COURT: ALRIGHT, LADIES AND
17 GENTLEMEN, STEP OUT TO THE JURY ROOM A MINUTE, PLEASE,
18 DO NOT TALK ABOUT THE CASE.

19 (Whereupon, the jury retires
20 to the jury room and the following
21 takes place outside the presence
22 of the jury.)

23 THE COURT: ALRIGHT, SIR, I'LL HEAR
24 YOUR OBJECTION.

25 MR. MELLARD: YES, SIR. WE WOULD

185

1 JUST SAY THAT AS OF TWO THOUSAND AND FIVE SHE WAS NOT AN
2 EXPERT. SHE RENDERED AN OPINION IN THIS CASE IN TWO
3 THOUSAND AND FIVE. SHE MAY BE CONSIDERED AN EXPERT AS
4 OF TWO THOUSAND NINE, BUT AS OF TWO THOUSAND FIVE SHE
5 HAD JUST RECENTLY GOTTEN HER PH.D., SHE HAD JUST STARTED
6 WORKING AT THIS DICKERSON CENTER, SHE HAD JUST RECENTLY
7 GOT THE R-A-T-A-C TRAINING, RATAAC TRAINING, WHICH WAS
8 THE BASIS OF HOW SHE CONDUCTED THIS INTERVIEW. AND IN
9 TWO THOUSAND FIVE SHE HAD NOT BEEN QUALIFIED IN THE
10 COURTS OF THIS STATE AS AN EXPERT. SO, AS OF TWO
11 THOUSAND AND FIVE I WOULD SAY SHE WAS NOT AN EXPERT,
12 YOUR HONOR.

13 THE COURT: YES, SIR?

14 SOLICITOR JEFFRIES: YOUR HONOR, I
15 WOULD JUST, YOU KNOW, HER TESTIMONY WAS THAT ALL OF THE
16 RELEVANT TRAINING THAT WOULD QUALIFY HER AS AN EXPERT
17 TOOK PLACE BEFORE TWO THOUSAND FIVE, AND FOR WHATEVER
18 REASON THE POWERS THAT BE GAVE HER THE AUTHORITY TO DO
19 THESE FORENSIC INTERVIEWS IN TWO THOUSAND FIVE BASED ON
20 THAT TRAINING AND EXPERIENCE. THEREFORE, SHE WAS DOING
21 THE QUALIFICATIONS, DOING THE EXPERT BUSINESS OF DOING
22 THESE FORENSIC INTERVIEWS SO THAT LATER ON SHE'D BE ABLE
23 TO BE QUALIFIED AS AN EXPERT TO BE ABLE TO TESTIFY AS TO
24 HER FINDINGS IN THOSE INTERVIEWS. SO, I DON'T THINK
25 THERE'S ANY QUESTION THAT BASED ON HER TESTIMONY OF THE

1 TRAINING AND EDUCATION THAT SHE HAD BEFORE STARTING TO
2 DO THESE FORENSIC INTERVIEWS THAT -- AND SHE'S SINCE
3 BEEN QUALIFIED AS AN EXPERT, SHE'S NEVER BEEN, IT'S
4 NEVER COME UP THAT SHE WAS DENIED, IT'S JUST THAT SHE
5 WAS NEVER OFFERED AS AN EXPERT UP UNTIL AFTER TWO
6 THOUSAND FIVE, OR IN TWO THOUSAND FIVE, BUT ALL OF HER
7 RELEVANT TRAINING AND EXPERIENCE HAD HAPPENED BEFORE
8 THAT. AND SHE HAS SINCE BEEN QUALIFIED, OFFERED AS AN
9 EXPERT AND TESTIFIED AS AN EXPERT IN COURTS IN SOUTH
10 CAROLINA. SO, IT WOULD BE THE STATE'S POSITION THAT
11 SHE'S QUALIFIED AS AN EXPERT, SHE'D DONE THE FORENSIC
12 INTERVIEWS BASED ON THOSE QUALIFICATIONS AND SHE'S ABLE
13 TO TESTIFY AS AN EXPERT.

14 THE COURT: ANYTHING IN REPLY?

15 MR. MELLARD: NO.

16 THE COURT: WELL, SHE TESTIFIED THAT
17 IN TWO THOUSAND FIVE I THINK SHE HAD ALREADY HAD THE
18 TRAINING, SHE HAD DONE SEVENTY INTERVIEWS, AND I THINK
19 THAT QUALIFIES HER AS AN EXPERT IN TWO THOUSAND AND FIVE
20 ON THOSE ISSUES. NOW, SOME OF THE ISSUES THAT I, FROM
21 WHAT Y'ALL SAID AT THE BENCH CONFERENCE THAT SHE'S GOING
22 TO TESTIFY TO WOULD HAVE NOTHING TO DO WITH TWO THOUSAND
23 AND FIVE. I MEAN, IF SHE'S GOING TO -- ONE THING YOU
24 TOLD ME SHE WAS GOING TO TESTIFY TO IS DELAYED
25 REPORTING. I MEAN, THAT WOULDN'T HAVE ANYTHING TO DO

187

1 WITH TWO THOUSAND AND FIVE OR TWO THOUSAND AND TWO, IT'S
2 THE SAME. THAT'S AN AREA OF SCIENTIFIC LAW UNRELATED TO
3 THIS CASE BASICALLY DIRECTLY RELATED -- INDIRECTLY
4 RELATED, OF COURSE, BUT NOT DIRECTLY RELATED. SO, IT
5 WOULDN'T MATTER WHEN SHE WAS QUALIFIED AS AN EXPERT IN
6 THAT FIELD. BUT I FIND WHEN SHE CONDUCTED THE INTERVIEW
7 THAT SHE WAS QUALIFIED AS AN EXPERT IN THE COURT'S
8 OPINION, AND OF COURSE, PRIMARILY YOUR ARGUMENT GOES TO
9 THE WEIGHT OF THE TESTIMONY AND WHAT CREDIBILITY OR
10 WEIGHT THE JURY SHOULD GIVE IT, WHICH IS CERTAINLY A
11 MATTER FOR YOU TO ARGUE TO THE JURY. BUT I FIND SHE'S
12 QUALIFIED TO TESTIFY TO THE MATTERS THAT THE STATE HAS
13 INDICATED THEY'RE GOING TO QUERY HER ABOUT.

14 ALRIGHT, BRING THE JURY IN.

15 AND THIS WAS INTERVIEWING TECHNIQUES
16 AND WHAT, NOW?

17 SOLICITOR JEFFRIES: IT WAS ACTUALLY
18 FORENSIC INTERVIEWS - - -

19 BAILIFF: YOUR HONOR, THE JURY IS
20 COMING IN.

21 THE COURT: WELL, IT DOESN'T MATTER,
22 I'M GOING TO TELL THEM ANYHOW. FORENSIC INTERVIEW?

23 SOLICITOR JEFFRIES: AND CHILD
24 SEXUAL ABUSE COUNSELING.

25 THE COURT: THOSE TWO AREAS.

1 SOLICITOR JEFFRIES: YES, YOUR
2 HONOR.

3 (Whereupon, the jury enters
4 the courtroom and the following
5 takes place in the presence
6 of the jury.)

7 THE COURT: ALRIGHT, LADIES AND
8 GENTLEMEN, THIS WITNESS HAS BEEN OFFERED AS AN EXPERT IN
9 FORENSIC INTERVIEWING AND IN CHILD SEXUAL ABUSE
10 COUNSELING. I FIND THAT SHE'S QUALIFIED TO TESTIFY AS
11 AN EXPERT IN THOSE FIELDS. WHAT THAT MEANS IS THIS,
12 ORDINARILY A WITNESS CANNOT GIVE YOU AN OPINION. MOST
13 WITNESSES ARE LIMITED TO TESTIFY ONLY WHAT THEY KNOW OF
14 THEIR OWN FIRST HAND KNOWLEDGE AND EXPERIENCE, AND CAN'T
15 GIVE YOU AN OPINION. BUT SOME WITNESSES BECAUSE OF THEIR
16 TRAINING, EDUCATION, BACKGROUND, EXPERIENCE, CAN BE
17 QUALIFIED BY THE COURT AND ALLOWED TO GIVE YOU AN
18 OPINION WITHIN THEIR FIELD OF EXPERTISE. AND SO, I FIND
19 THAT SHE'S QUALIFIED TO TESTIFY AND GIVE YOU AN OPINION
20 IN THOSE MATTERS. IF SHE'S ASKED SHE CAN GIVE YOU THE
21 REASONS FOR THOSE OPINIONS.

22 NOW, AS I'LL TELL YOU LATER ON, AND
23 AFTER ALL THE EVIDENCE, WHEN I'M CHARGING YOU ON THE
24 LAW, IT'S UP TO YOU ULTIMATELY TO DETERMINE THE
25 CREDIBILITY OF ALL WITNESSES. IT'S UP TO YOU TO

189 .

1 DETERMINE THE WEIGHT YOU WOULD GIVE THE TESTIMONY YOU
2 WOULD GIVE THE TESTIMONY WITNESS, AND THAT APPLIES TO
3 LAY WITNESSES AS WELL AS TO EXPERT WITNESSES. BUT I
4 FIND SHE'S QUALIFIED TO TESTIFY.

5 ALRIGHT, YOU MAY PROCEED.

6 SOLICITOR JEFFRIES: THANK YOU, YOUR
7 HONOR.

8 (NOTE: Blank lines on this page do not indicate any
9 part of record has been omitted. Headers on testimony
10 pages and hard page breaks between testimony are now
11 required by the Court. See next ensuing page for
12 sequential continuation of record.)

DIRECT - DR. DEBORAH J.P. REYES BY SOL. JEFFRIES

190

DIRECT EXAMINATION OF DR. DEBORAH J.P. REYES

BY SOLICITOR JEFFRIES CONTINUES:

Q. DR. REYES, WHAT IS A FORENSIC INTERVIEW?

A. A FORENSIC INTERVIEW IS GENERALLY ANY INTERVIEW THAT'S RELATED TO SOMETHING TO THE COURT. SPECIFICALLY, WHEN WE TALK ABOUT THEM AS INTERVIEWS THAT ARE HELPING INVESTIGATION OR TYPICALLY DONE WITH CHILDREN OR SOMETIMES WITH ADOLESCENTS AND SOMETIMES WITH ADULTS THAT MIGHT HAVE SOME KIND OF SPECIAL NEEDS THAT MAKE IT DIFFICULT FOR THEM TO GIVE THEIR STATEMENT TO THE POLICE OFFICER.

Q. AND SPECIFICALLY, THE TYPE OF FORENSIC INTERVIEWS YOU DID, DID THEY DEAL WITH SEXUAL ABUSE AT THE DICKERSON CENTER?

A. THE RA-TAC PROTOCOL ADDRESSES EITHER PHYSICAL OR SEXUAL ABUSE, YES.

Q. AND THAT RATAAC STYLE OR TYPE OF INTERVIEW, IS THAT THE TYPE THAT Y'ALL DID AT THE DICKERSON CENTER WHEN YOU WERE THERE?

A. YES.

Q. AND IF YOU WOULD, KIND OF DESCRIBE TO THE JURY WHAT THAT RATAAC STYLE OF INTERVIEWING IS.

A. RATAAC IS A NATIONALLY RECOGNIZED SEMI-STRUCTURE INTERVIEWING STYLE. IT STANDS FOR FIVE COMPONENTS

DIRECT - DR. DEBORAH J.P. REYES BY SOL. JEFFRIES

191

1 OF THE INTERVIEW. WHEN I SAY IT'S SEMI-STRUCTURE
2 IT MEANS THAT WE DON'T ALWAYS ASK THE EXACT SAME
3 QUESTION TO EVERY PERSON, WE'RE LOOKING AT
4 DIFFERENT THINGS FOR EACH CHILD. WE MIGHT CHANGE
5 SOME OF THE QUESTIONS BASED ON HOW OLD THE CHILD
6 IS OR HOW THE CHILD IS PRESENTING INFORMATION.
7 THE FIRST PORTION OF THE INTERVIEW IS THE R. IT
8 STARTS WITH JUST THE BUILDING REPORT TO GET THE
9 CHILD COMFORTABLE, OR A PERSON COMFORTABLE IN
10 DISCUSSING INFORMATION. DURING THAT TIME I'M ALSO
11 ASSESSING TO SEE HOW THEY'RE ABLE TO GIVE ME
12 INFORMATION. IS THERE ANY COMMUNICATION PROBLEMS?
13 WHAT KIND OF LANGUAGE DO THEY TYPICALLY USE? WHAT
14 KIND OF DETAILS ARE THEY ABLE TO GIVE ME IN JUST
15 KIND OF GENERAL QUESTIONS THAT I ASK? THE SECOND
16 PART OF IT IS ANATOMY IDENTIFICATION. WE USUALLY
17 USE THIS WITH VERY YOUNG CHILDREN WHERE WE HAVE
18 THEM LABEL THE PARTS OF THE BODY SO THAT WHEN
19 WE'RE TALKING ABOUT SOMETHING I KNOW THAT WE'RE
20 TALKING ABOUT THE SAME THING. AND I, WITH THE
21 FORENSIC INTERVIEWING WE'RE SUPPOSED TO AVOID ANY
22 LEADING QUESTIONS OR MAKE ANY ASSUMPTION ABOUT
23 WHAT THE CHILD IS SAYING. SOMETIMES KIDS MAY USE
24 AN ADULT WORD AND HE WOULD BE MEANING SOMETHING
25 ELSE. SO, WE'RE TRYING TO CLARIFY THOSE TYPES OF

DIRECT - DR. DEBORAH J.P. REYES BY SOL. JEFFRIES

192

1 INFORMATION. SO, A IS ANATOMY IDENTIFICATION. T
2 IS WHAT WE CALL A TOUCH INQUIRY WHERE WE'RE ASKING
3 OPEN ENDED QUESTIONS TO FIND OUT IF SOMETHING HAS
4 HAPPENED. AND WE, FOR YOUNGER CHILDREN WE WOULD
5 ACTUALLY ASK ABOUT DIFFERENT TYPES OF TOUCHES.
6 WITH OLDER CHILDREN WE DO IT DIFFERENTLY BECAUSE
7 ADOLESCENTS ARE ABLE TO KIND OF GIVE US THE
8 INFORMATION MORE DIRECTLY. THEN THE SECOND A IS
9 WHAT WE WOULD CALL ABUSE CLARIFICATION. IF THE
10 CHILD MAKES A STATEMENT THAT WE THINK THERE IS
11 ABUSE THEN WE MAY ASK MORE SPECIFIC QUESTIONS TO
12 MAKE SURE WE CLARIFY AND UNDERSTAND WHAT HAPPENED.
13 AND THEN, C IS CONCLUSION. WE'RE TRYING TO GIVE
14 THE CHILD SOME SAFETY INFORMATION THAT, SAY, YOU
15 KNOW, PUT THEM BACK TOGETHER AND JUST END THE
16 PROCESS.

17 Q. AND ARE OTHER PERSONS PRESENT OTHER THAN YOU AND
18 THE CHILD DURING THESE FORENSIC INTERVIEWS?

19 A. DURING THE FORENSIC INTERVIEW NO ONE IS PRESENT IN
20 THE ROOM. WE'RE TRYING TO AVOID ANY POSSIBILITY
21 OF SOME EXTERNAL PRESSURE TO SAY SOMETHING OR TO
22 NOT SAY SOMETHING. AND OFTEN WE DON'T EVEN
23 UNDERSTAND ANOTHER PERSON'S PRESENCE ON A CHILD'S
24 STATEMENT. A MOM OR SOMEBODY MAY BE VERY
25 SUPPORTIVE AND ENCOURAGING AND YET THAT CHILD MAY

DIRECT - DR. DEBORAH J.P. REYES BY SOL. JEFFRIES

193

1 LOVE THAT PARENT SO MUCH AND THINK THAT THEY WOULD
2 FALL APART IF THEY KNEW THE TRUTH. SO, THEY MAY
3 NOT SAY SOMETHING. SO, AS ONE OF THE PRECAUTIONS
4 WE KEEP EVERYBODY OUT OF THE ROOM. IT'S JUST THE
5 INTERVIEWER AND THE CHILD. WE DO ALLOW PEOPLE WHO
6 ARE PART OF AN INVESTIGATION TEAM TO MONITOR
7 THROUGH A CAMERA SYSTEM IN A DIFFERENT ROOM, AND
8 THAT'S PART OF THE INVESTIGATION IF THEY NEED TO
9 ASK ANY OTHER QUESTIONS.

10 Q. AND YOU MAY HAVE TOUCHED ON THIS BEFORE, BUT WHAT
11 TYPE OF QUESTIONS DO YOU USE IN THAT INTERVIEW?

12 A. WE USE NON-LEADING, OPEN ENDED QUESTIONS
13 TYPICALLY. WE'RE TRYING TO AVOID THE ISSUE OF
14 SUGGESTIBILITY. THIS IS AN ISSUE THAT ACTUALLY
15 OCCURS MORE FREQUENTLY FOR SOMEBODY WHO'S UNDER
16 TEN YEARS OLD. BY THE TIME YOU'RE TEN YEARS OLD
17 THE RESEARCH SHOWS THAT YOU BASICALLY HAVE THE
18 SAME, OR SIMILAR REPORTER STYLE AS AN ADULT DOES.
19 BUT WHEN YOU HAVE A REAL LITTLE KID YOU KNOW HOW
20 YOU MIGHT SAY, IS IT RAINING OUTSIDE? AND THEY'RE
21 SHAKING THEIR HEAD, YES. AND THAT WOULD BE CALLED
22 MORE OF A LEADING QUESTION. SO, A NON-LEADING
23 QUESTION WOULD BE MORE OPEN-ENDED, HOW IS THE
24 WEATHER? WHERE WE'RE NOT GIVING THEM THE ANSWER
25 THAT WE WANT THEM TO SAY. SO, OUR INTERVIEWERS

DIRECT - DR. DEBORAH J.P. REYES BY SOL. JEFFRIES

194

1 ARE TRAINED TO TRY TO ASK OPEN QUESTION IN A NON-
2 LEADING MANNER.

3 Q. AMONGST CHILD ABUSE PROFESSIONALS SUCH AS YOURSELF
4 WHAT, WHAT IS MEANT BY THE TERM, DELAYED
5 REPORTING, OR DELAYED DISCLOSURE, WHAT DO Y'ALL
6 MEAN - - -

7 MR. MELLARD: OBJECTION, YOUR HONOR.

8 THE COURT: YES, SIR?

9 MR. MELLARD: MAY WE APPROACH?

10 THE COURT: YES, SIR, SURE.

11 (Whereupon, a bench conference
12 is had out of the hearing of
13 the jury and court reporter.)

14 Q. AGAIN, WHAT IS THE TERM, DELAYED DISCLOSURE,
15 DELAYED REPORTING, WHAT DOES THAT MEAN TO CHILD
16 ABUSE PROFESSIONALS SUCH AS YOURSELF?

17 A. DELAYED DISCLOSURE ACTUALLY HAS TWO DIFFERENT
18 TERMS OR MEANINGS. IN RESEARCH WE'RE LOOKING FOR
19 AT LEAST A FIVE YEAR GAP FROM THE EVENT, THE TIME
20 THIS OCCURRED THE CHILD HAS DISCUSSED OVER FIVE
21 YEARS, BUT IN GENERAL PRACTICE WHEN WE TALK ABOUT
22 DELAYED DISCLOSURE WE'RE TALKING ABOUT ANYTIME A
23 CHILD TALKS ABOUT OR TELLS SOMEBODY WHAT HAPPENED
24 AND IT'S NOT IMMEDIATELY AFTER THE EVENT. SO,
25 SOMETIMES THAT CAN BE -- WE'RE LOOKING AT NOT

DIRECT - DR. DEBORAH J.P. REYES BY SOL. JEFFRIES

195

1 THEIR FIRST OPPORTUNITY. USUALLY, AN IMMEDIATE
2 DISCLOSURE WOULD BE THE FIRST OPPORTUNITY THE
3 CHILD HAD TO TELL SOMEONE THEY WOULD TELL THEM.
4 SO, ANYTHING THAT WAS OUTSIDE, IT COULD BE A
5 COUPLE OF DAYS, IT COULD BE A COUPLE OF MONTHS, IT
6 COULD BE A COUPLE OF YEARS.

7 Q. OKAY. AND IN YOUR TRAINING AND EXPERIENCE HOW
8 COMMON IS THIS TYPE OF DELAYED DISCLOSURE, DELAYED
9 REPORTING, THE LAST ONE YOU JUST DESCRIBED?

10 A. THE DELAYED DISCLOSURE IS ACTUALLY THE MOST COMMON
11 DISCLOSURE, A REPORT STYLE. IT'S A VERY DIFFICULT
12 THING FOR A CHILD TO DISCUSS SEXUAL ABUSE, AND
13 THERE'S -- DEPENDING ON THE CHILD'S AGE WE COME
14 INTO DIFFERENT PROBLEMS. WHEN WE'RE VERY YOUNG,
15 PRESCHOOL AGE, CHILDREN DON'T EVEN KNOW THAT IT'S
16 WRONG, SO THEY MAY NOT EVEN KNOW THAT THEY SHOULD
17 TELL SOMEBODY. OFTEN THOSE TYPES, WHEN WE --
18 THEY'RE MORE LIKELY TO TELL IMMEDIATELY BECAUSE
19 THEY DON'T KNOW IT'S WRONG, BUT THOSE ARE OFTEN
20 ACCIDENTAL. THEY SAY SOMETHING, SOMEBODY SAYS,
21 WHAT, HOW DO YOU KNOW THAT? AND THEY, THERE'S AN
22 ACCIDENTAL DISCLOSURE. AS THE CHILD STARTS TO GET
23 A LITTLE BIT OLDER THEY HAVE THE SENSE THAT
24 SOMETHING ABOUT IT IS WRONG BUT THEY DON'T REALLY
25 UNDERSTAND IT THE WAY AN ADULT WOULD UNDERSTAND

DIRECT - DR. DEBORAH J.P. REYES BY SOL. JEFFRIES

196

1 IT, THAT IT'S THE OTHER PERSON'S FAULT. SO,
2 THERE'S A SENSE OF SHAME AND GUILT. OFTEN, EVEN
3 OUR OWN KIND OF PREVENTATIVE TRAINING PROGRAMS
4 THAT WE SEND OUT THERE, JUST SAY NO, GIVES A CHILD
5 THE FEELING THAT THEY'RE SUPPOSED TO STAND UP AND
6 SAY NO TO AN ADULT. AND IT'S VERY HARD FOR A YOUNG
7 CHILD TO STAND UP TO AN ADULT, PARTICULARLY IF
8 THEY'RE SOMEBODY IN THE FAMILY SYSTEM. SO, WE
9 WOULD HAVE, THEN A CHILD TAKES ON THAT GUILT THAT
10 THEY WERE AT FAULT FOR NOT SAYING NO, AND NOT
11 STANDING UP AND STOPPING THIS PERSON. SO, THEY
12 MAY FEEL SHAME AND NOT DISCUSS IT RIGHT AWAY.
13 CHILDREN ALSO HAVE FEARS ABOUT WHAT'S GOING TO
14 HAPPEN WHEN THEY TELL. THEY MIGHT BE AFRAID THAT
15 THE FAMILY SYSTEM MAY FALL APART, THAT SOMEBODY
16 MIGHT LOSE THEIR JOB, THERE MIGHT BE ISSUES OF
17 FUNDING, THERE MIGHT BE THE FAMILY ACTUALLY,
18 PEOPLE LEAVE, STRESS ON THE FAMILY, WORRY ABOUT
19 OTHERS. SO, OFTEN A CHILD WILL AVOID TRYING TO
20 CAUSE THIS MUCH TROUBLE, BECAUSE THEY DON'T SEE A
21 GREATER SENSE OF SOCIAL RESPONSIBILITY TO PREVENT
22 A PERSON TO ABUSE SOMEBODY ELSE. THEY DON'T
23 UNDERSTAND IT LIKE AN ADULT WOULD, THEY JUST SEE
24 THAT THERE'S A PROBLEM AND SO THEY OFTEN WILL JUST
25 TRY TO AVOID IT, OR SEE IF THEY CAN SOLVE IT

DIRECT - DR. DEBORAH J.P. REYES BY SOL. JEFFRIES

197

1 THEMSELVES, NOT BE AROUND THAT PERSON, OR JUST SEE
2 IF THEY CAN BE VERY QUIET AND AVOID IT. TO GET
3 BACK TO YOUR -- ALL THESE DIFFERENT ELEMENTS CAN
4 MAKE IT MORE LIKELY THAT A PERSON WILL DO A
5 DELAYED DISCLOSURE. IN FACT, IF WE LOOK AT, KIND
6 OF SOME ANONYMOUS STUDIES ABOUT HOW PEOPLE TOLD, A
7 THIRD OF THE PEOPLE NEVER TELL THAT THEY'VE BEEN
8 SEXUALLY ABUSED, A THIRD WAIT FIVE TO TEN YEARS TO
9 TELL, AND A THIRD WILL TELL SOMETIME IN THEIR
10 CHILDHOOD. AND THOSE, THAT'S WHY I'M SAYING IN
11 RESEARCH THEY'RE NOT CONSIDERED DELAYED. BUT IF
12 YOU LOOK AT THAT ELEMENT OF PEOPLE TELLING IN
13 THEIR CHILDHOOD, THE MOST COMMON WAY IT'S BEING
14 DISCUSSED IS BY ACCIDENTAL DISCLOSURE AND NOT
15 INTENTIONAL.

16 Q. AND HOW ABOUT PARTIAL DISCLOSURES AND PARTIAL
17 STATEMENTS, ARE YOU FAMILIAR WITH THAT TERM?

18 A. YES. WE OFTEN CALL THESE TENTATIVE DISCLOSURES,
19 OR IT COULD BE PARTIAL DISCLOSURES. IT'S BASICALLY
20 WHEN YOU ARE AFRAID OF SOMETHING YOU MIGHT PUT OUT
21 A LITTLE BIT OF THE INFORMATION TO SEE HOW OTHER
22 PEOPLE ARE GOING TO RESPOND OR TO SEE ALMOST EVEN
23 HOW YOU WILL BE ABLE TO HANDLE SAYING THE
24 INFORMATION. AND BASED ON HOW PEOPLE RESPOND YOU
25 MAY KIND OF HOLD BACK AND NOT SAY ANYTHING MORE.

DIRECT - DR. DEBORAH J.P. REYES BY SOL. JEFFRIES

198

1 YOU MIGHT EVEN WHAT WE RECALL RECALL, DENY IT, NO,
2 IT DIDN'T HAPPEN, IF YOU FELT LIKE PEOPLE ARE
3 GETTING UPSET OR YOU ARE WORRIED ABOUT THE
4 RESPONSES. WHEN WE GO TO THE POOL AND WE'RE
5 AFRAID OF IT, WE KIND OF PUT OUR TOES IN, TEST THE
6 WATER, SEE HOW IT IS, IF WE DON'T LIKE IT WE PULL
7 IT OUT. AND SO, OFTEN IN THE DISCLOSURE OF SEXUAL
8 ABUSE WHAT WE MOST OFTEN SEE IS IT'S A DISCLOSURE
9 PROCESS, IT'S NOT A ONE TIME EVENT. BUT A PERSON
10 WILL TELL A LITTLE BIT AND THEN AS THEY FEEL MORE
11 COMFORTABLE, AND SOMETIMES JUST AS THEY GET OLD
12 ENOUGH TO FEEL MORE CONFIDENT AND TO BE ABLE TO
13 STAND UP TO SOME OF THOSE FEARS, OR THEY MIGHT
14 START TO WORRY ABOUT OTHER PEOPLE, THEN THEY
15 PROVIDE MORE INFORMATION.

16 Q. HOW IS A CHILD'S DISCLOSURE, HOW CAN A CHILD'S
17 DISCLOSURE BE, BE AFFECTED WHEN THE PERPETRATOR OR
18 THE SUSPECT IS A FAMILY MEMBER OR CLOSE TO THE
19 FAMILY?

20 A. THIS IS A VERY DIFFICULT PROCESS. FIRST, MOST
21 CHILDREN, EVEN OUR ADOLESCENTS, WE LOOK -- THEY
22 HAVE BEEN TRAINED TO LOOK AT FAMILY MEMBERS, ADULT
23 FAMILY MEMBERS TO TELL THEM WHAT'S RIGHT AND
24 WRONG. THEY TELL THEM, YOU KNOW, THERE'S SUPPORT.
25 THE FIRST PART OF IT IS, YOU LOOK TO THAT PERSON

DIRECT - DR. DEBORAH J.P. REYES BY SOL. JEFFRIES

199

1 TO GIVE YOU GUIDANCE ON HOW TO HANDLE DIFFICULT
2 SITUATIONS AND WHAT IS APPROPRIATE AND WHAT'S NOT
3 APPROPRIATE. SO, JUST THE FACT THAT A PERSON IS A
4 FAMILY MEMBER CAN BE VERY CONFUSING TO THE PERSON.
5 SOMETIMES THERE'S A SENSE THAT OTHER PEOPLE MAY BE
6 AWARE OF IT WHEN THEY AREN'T IN THAT A CHILD MAY
7 HAVE THE SENSE THAT, OH, HE SAW ME LOOKING, OR SHE
8 SAW HIM LOOKING AT ME THAT WAY, SO SHE MUST KNOW.
9 AND SO, THERE'S KIND OF A SENSE THAT PEOPLE
10 ALREADY KNOW AND HAVE ACCEPTED IT. AND SO,
11 THEY'RE FEELING LIKE THE PERSON THAT THEY SHOULD
12 GO AND TELL ALREADY KNOWS AND THERE'S NOTHING TO
13 DO ABOUT IT, THERE'S A SENSE OF HOPELESSNESS ABOUT
14 WHAT, WHAT THE EFFECT IF THEY TELL. THERE'S ALSO,
15 KIDS HAVE A VERY STRONG FEAR IF THIS PERSON IS
16 EITHER A LOVED ONE OR SOMEBODY CLOSE TO THE PERSON.
17 THEY LOVE, THEY HAVE A FEAR ABOUT THAT PERSON
18 GOING TO JAIL. THEY MAY WANT THE EVENT TO STOP
19 BUT THEY DON'T NECESSARILY WANT TO PUNISH THE
20 PERSON. AND THEY DON'T HAVE THAT GREATER SENSE OF
21 WHAT THAT MEANS AND WHY THIS PERSON SHOULD HAVE TO
22 HAVE THAT PUNISHMENT. SO, THERE'S THAT VERY MIXED
23 FEELING ABOUT WHAT KIND OF IMPACT THIS IS GOING TO
24 HAVE. THE ADDITIONAL FEAR OF UPSETTING FAMILY
25 MEMBERS WHEN THEY FIND OUT CAN CAUSE, IT'S MORE

DIRECT - DR. DEBORAH J.P. REYES BY SOL. JEFFRIES

200

1 LIKELY WHEN THE PERSON IS A FAMILY MEMBER TO HAVE
2 A DELAYED DISCLOSURE OR NO DISCLOSURE AT ALL.

3 Q. AND DO YOU NECESSARILY EXPECT A COMPLETE
4 DISCLOSURE WHEN YOU INTERVIEW, SAY, AN ADOLESCENT?

5 A. WELL, OUR ADOLESCENTS ARE BETTER AT INTERVIEWING
6 THAN THE YOUNGER CHILDREN. BUT I'D LIKE TO REMIND
7 ADULTS THAT WE ALL AREN'T VERY GOOD AT
8 INTERVIEWING. IT'S, WHEN YOU ASK A QUESTION, IF I
9 ASK YOU WHAT DID YOU EAT LAST WEEK IT WOULD BE
10 KIND OF HARD TO REMEMBER EVERY SINGLE DETAIL. WE
11 OFTEN LOOK AT KIND OF WHAT'S IMPORTANT, YOU KNOW,
12 IF I WENT TO A BIRTHDAY PARTY OR WE WENT OUT TO
13 DINNER I CAN RECALL THOSE THINGS A LITTLE BIT
14 BETTER. SO, THINGS THAT ARE ATTACHED TO
15 IMPORTANCE WILL COME OUT. AND THEN WE FIND THAT
16 THE WAY I ASK YOU QUESTIONS IS GOING TO PULL OUT
17 DIFFERENT INFORMATION. SO, DEPENDING ON ONE EVEN
18 TO THE NEXT, THERE'S, YOU MAY HAVE DIFFERENT
19 DETAILS COMING OUT JUST BASED ON MULTIPLE
20 INTERVIEWS. THE OTHER COMPONENT OF THAT IS JUST
21 HOW EMOTIONAL OR READY THE PERSON IS TO BE ABLE TO
22 DISCUSS IT, HOW UPSET THEY ARE BY THE EVENT. SO,
23 WE KIND OF, JUST TESTING THE WATER WE OFTEN SEEK
24 KIND OF A SMALL AMOUNT OF INFORMATION INITIALLY
25 BROUGHT OUT AND THEN A LITTLE MORE INFORMATION

DIRECT - DR. DEBORAH J.P. REYES BY SOL. JEFFRIES

201

1 BROUGHT OUT AS THE PERSON FEELS THAT THEY ARE
2 GETTING THE APPROPRIATE SUPPORT AND LIFE ISN'T
3 FALLING APART. HOWEVER, THERE MAY BE SOME EVENTS
4 THAT AN ADOLESCENT NEVER TELLS JUST BECAUSE OF
5 THEIR OWN FEAR OF SOMEBODY ELSE KNOWING AND KIND
6 OF FEELINGS OF SHAME THAT THAT MEANS SOMETHING BAD
7 ABOUT THEM.

8 Q. NOW, LET ME TAKE YOU BACK SPECIFICALLY, DO YOU
9 RECALL DOING A FORENSIC INTERVIEW ON **Minor**
10 **[REDACTED]** BACK IN SEPTEMBER OF TWO THOUSAND FIVE?

11 A. YES, I DO.

12 Q. AND SPECIFICALLY, WAS THAT ON SEPTEMBER
13 THIRTEENTH, TWO THOUSAND FIVE?

14 A. CAN I REFER TO MY NOTES?

15 Q. YES. I'D ASK THAT YOU DO.

16 THE COURT: MA'AM?

17 A. CAN I REFER TO MY INTERVIEW?

18 THE COURT: YES, MA'AM, YOU MAY.

19 A. YOU SAID SEPTEMBER THIRTEENTH, TWO THOUSAND FIVE?

20 Q. THAT'S CORRECT.

21 A. YES, SIR.

22 Q. AND WHAT PERSON OR WHAT AGENCY REFERRED YOUNG MS.
23 **[REDACTED]** TO YOU?

24 A. IT WAS INVESTIGATOR ANTHONY THOMPSON FROM
25 ORANGEBURG COUNTY SHERIFF'S DEPARTMENT.

DIRECT - DR. DEBORAH J.P. REYES BY SOL. JEFFRIES

202

1 Q. OKAY. AND SO YOU MET WITH MS. Minor . IN YOUR
2 OPINION WAS SHE COMPETENT TO DO THE INTERVIEW WITH
3 YOU?

4 A. YES. CHILDREN OVER THE AGE OF TEN HAVE GOOD
5 SKILLS IN GIVING INFORMATION. DURING THE
6 INTERVIEW I DIDN'T SEE ANY CONCERNS ABOUT LANGUAGE
7 DEVELOPMENT OR ANY DEVELOPMENTAL PROBLEMS THAT
8 WOULD INTERFERE WITH HER ABILITY TO PROVIDE
9 INFORMATION, AND SHE HAD AN UNDERSTANDING OF WHAT
10 IT MEANT TO TELL THE TRUTH AND HAD PROVIDED A
11 PROMISE TO DO THAT.

12 Q. OKAY. AND THIS INTERVIEW WAS IN REFERENCE TO AN
13 ALLEGED SEXUAL ASSAULT ON WHAT DATE, IF YOU COULD
14 TELL ME?

15 A. I THINK THE REPORT THAT WAS GENERATED WAS AUGUST
16 SIXTEENTH, O-FIVE, BUT I BELIEVE THE EVENT
17 OCCURRED ON THE EVENING PRIOR TO THAT.

18 Q. SO, IT WOULD HAVE BEEN AUGUST FIFTEENTH, TWO
19 THOUSAND FIVE?

20 A. YES.

21 Q. AND YOU SAID IT WAS IN THE EVENING, SO THAT MAY BE
22 WHERE THE CONFUSION WAS, WHAT SIDE OF MIDNIGHT WE
23 WERE TALKING ABOUT. AND WHAT PRECAUTIONS DO YOU
24 TAKE TO PREVENT ANY TYPE OF INFLUENCE,
25 SPECIFICALLY IN THE CASE OF MS. Minor ?

DIRECT - DR. DEBORAH J.P. REYES BY SOL. JEFFRIES

203

1 A. WE INTERVIEWED HER ALONE. WITH HER, AT HER AGE I
2 ACTUALLY JUST STARTED OUT WITH A VERY OPEN ENDED
3 QUESTION, CAN YOU TELL ME WHAT HAPPENED. AND SO,
4 I JUST ALLOWED HER TO PROVIDE INFORMATION WITHOUT
5 ASKING A LOT OF SPECIFIC QUESTIONS.

6 Q. OKAY. AND THE, AS WE SAID, THE ACTUAL INCIDENT
7 DATE WOULD HAVE BEEN AUGUST FIFTEEN, TWO THOUSAND
8 FIVE. ARE YOU AWARE OF WHAT THE INCIDENT LOCATION
9 WAS THAT SHE MADE THE ALLEGATION ABOUT?

10 A. SHE SAID IT WAS AT HER AUNT'S HOUSE, AND - - -

11 Q. IN THAT SPOT SHE SAID HER AUNT'S HOUSE?

12 A. YES.

13 Q. AND WITHOUT GOING INTO, YOU KNOW, THE ENTIRE
14 INTERVIEW, DID SHE ALSO TELL YOU OF ANOTHER
15 INCIDENT?

16 A. SHE DISCUSSED SEVERAL INCIDENTS OCCURRING OVER THE
17 SUMMER OF TWO THOUSAND AND FIVE, AND SHE TOLD ME
18 OF ANOTHER SPECIFIC INCIDENT THAT OCCURRED IN
19 JUNE, TWO THOUSAND AND FIVE.

20 Q. OKAY. AND DID SHE SAY WHERE THAT JUNE, TWO
21 THOUSAND FIVE, INCIDENT OCCURRED?

22 A. MAY I LOOK BACK AT MY NOTES?

23 Q. SURE, ABSOLUTELY.

24 A. I BELIEVE THAT WAS IN HER AUNT'S HOUSE AS WELL.

25 Q. OKAY. ALSO AT HER AUNT'S HOUSE. OKAY. DID YOU

DIRECT - DR. DEBORAH J.P. REYES BY SOL. JEFFRIES

204

1 DOCUMENT THE CHILD'S, MS. **Minor** 'S DISCLOSURE ON
2 ANY FORM, AND IS THAT THE FORM YOU'RE REVIEWING
3 NOW?

4 A. YES, I WROTE A FORENSIC INTERVIEW AND SHE HAD
5 PROVIDED A PARTIAL WRITTEN STATEMENT.

6 Q. OKAY. AND LET ME ASK YOU, DID YOU, WAS THERE
7 ANYTHING ABOUT HER DISCLOSURE THAT WOULD CAUSE YOU
8 TO BELIEVE THAT IT WAS THE RESULT OF ANY THIRD
9 PARTY INFLUENCE?

10 A. NO.

11 Q. AND IN YOUR OPINION WAS HER DISCLOSURE AFFECTED
12 ANY WAY BY SUGGESTIBILITY OR COACHING BY ANYONE?

13 A. NO.

14 Q. AND AGAIN, YOU DON'T HAVE TO TELL ME, AND IN FACT,
15 YOU CAN'T NECESSARILY TELL ME WHAT ALL SHE TOLD
16 YOU, BUT WHAT, IF ANY, RECOMMENDATIONS DID YOU
17 MAKE FOLLOWING HER DISCLOSURE TO YOU AFTER THE
18 INTERVIEW?

19 A. I RECOMMENDED THAT SHE RECEIVE THERAPY TO ADDRESS
20 THE SEQUELLA OF SEXUAL ABUSE.

21 Q. AND DO YOU DO THAT IN ALL CASES?

22 A. NO.

23 Q. AND WHY, IF ANYTHING, ABOUT HER DISCLOSURE DID YOU
24 FEEL THE NEED TO GIVE HER THAT REFERRAL?

25 A. I PROVIDED HER AN ASSESSMENT ON SOME JUST

DIRECT - DR. DEBORAH J.P. REYES BY SOL. JEFFRIES

205

1 BASICALLY ASKING QUESTIONS ABOUT JUST EMOTIONAL
2 RESPONSES, AND SHE HAD SEVERAL ELEVATED SCALES
3 THAT WOULD INDICATE CONCERNS ABOUT ANXIETY,
4 DEPRESSION, ANGER, AND WHAT WE CALL
5 DISASSOCIATION, WHICH IS KIND OF WANTING TO NOT
6 THINK ABOUT THINGS IN GENERAL. WE OFTEN SEE THIS
7 RELATED TO TRAUMA.

8 Q. OKAY. AND SO - - -

9 SOLICITOR JEFFRIES: I BEG THE
10 COURT'S INDULGENCE.

11 THAT'S ALL THE QUESTIONS I HAVE.
12 PLEASE ANSWER ANY QUESTIONS THAT THE DEFENSE MIGHT HAVE.
13 THANK YOU VERY MUCH.

14 THE COURT: CROSS-EXAM.

15 MR. MELLARD: WE DON'T HAVE ANY
16 QUESTIONS, YOUR HONOR.

17 THE COURT: ALRIGHT, THANK YOU,
18 MA'AM, YOU MAY BE EXCUSED. THANK YOU FOR COMING.

19 WITNESS: THANK YOU.

20 THE COURT: LADIES AND GENTLEMEN,
21 WE'LL TAKE A SHORT BREAK AT THIS TIME. PLEASE RETIRE TO
22 YOUR JURY ROOM. PLEASE DO NOT TALK ABOUT THE CASE.

23 GET YOUR NEXT WITNESS LINED UP,
24 PLEASE, SIR.

25 (Whereupon, the jury retires

DIRECT - DR. DEBORAH J.P. REYES BY SOL. JEFFRIES

206

1 to the jury room and the following
2 takes place out of the presence
3 of the jury.)

4 (Recess)

5 THE COURT: IS THE STATE TO PROCEED?

6 SOLICITOR SCOTT: YES, YOUR HONOR.

7 THE COURT: DEFENSE?

8 MS. FORD: YES, YOUR HONOR.

9 THE COURT: BRING IN THE JURY,
10 PLEASE.

11 BAILIFF: ONE MOMENT PLEASE.

12 THE COURT: MA'AM?

13 BAILIFF: ONE MOMENT, PLEASE,
14 THEY'RE NOT QUITE READY.

15 (Whereupon, the following
16 takes place in the presence
17 of the jury.)

18 BAILIFF: YOUR HONOR, ALL OF THE
19 JURORS ARE IN THE JURY BOX.

20 THE COURT: NEXT WITNESS.

21 SOLICITOR SCOTT: THANK YOU, YOUR
22 HONOR. THE STATE CALLS DR. ELIZABETH GIBBS.
23 (Whereupon, the witness
24 enters the courtroom.)

25 THE COURT: COME AROUND, DR. GIBBS,

207

1 PLEASE. IF YOU WOULD, PUT YOUR LEFT HAND ON THE BIBLE
2 AND RAISE YOUR RIGHT, PLEASE.

3 (Whereupon, Dr. Elizabeth L.H.B. Gibbs
4 is duly sworn.)

5 THE COURT: THANK YOU, MA'AM. STATE
6 YOUR FULL NAME, PLEASE.

7 WITNESS: DR. ELIZABETH LYNN HARVEY
8 BAKER GIBBS, G-I-B-B-S.

9 THE COURT: ALRIGHT, COUNSELOR.

10 SOLICITOR SCOTT: THANK YOU.

11 (NOTE: Blank lines on this page do not indicate any
12 part of record has been omitted. Headers on testimony
13 pages and hard page breaks between testimony are now
14 required by the Court. See next ensuing page for
15 sequential continuation of record.)

DIRECT - DR. ELIZABETH L.H.B.GIBBS BY SOL. SCOTT

208

DIRECT EXAMINATION OF DR. ELIZABETH L.H.B.

GIBBS BY SOLICITOR SCOTT:

Q. DR. GIBBS, WHERE ARE YOU EMPLOYED?

A. I'M EMPLOYED FOR ACCOUNTS RECOVERY MANAGEMENT.

Q. AND WHAT IS YOUR OCCUPATION?

A. I'M A FORENSIC PEDIATRICIAN.

Q. AND WHERE WERE YOU EMPLOYED IN TWO THOUSAND AND FIVE?

A. I WAS EMPLOYED BY CAROLINA FORENSIC MEDICINE AS MEDICAL DIRECTOR OF CHILDREN'S MEDICAL ASSESSMENT CENTER, AND THAT WAS IN NORTH CHARLESTON.

Q. OKAY. AND WHAT WERE YOUR DUTIES -- AND THAT'S KIND OF WHAT WE REFER TO AS CMAC?

A. YES.

Q. AND WHAT WERE YOUR DUTIES AT CMAC?

A. I PERFORMED FORENSIC MEDICAL EXAMS FOR PEOPLE THAT, OR CHILDREN WHERE THERE WERE ALLEGATIONS OR CONCERNS ABOUT CHILD PHYSICAL ABUSE, CHILD SEXUAL ABUSE, ADULT SEXUAL ASSAULT AND DOMESTIC VIOLENCE, AND I ALSO SUPERVISED PEOPLE THAT DID EXAMS.

Q. HOW MANY SEXUAL ASSAULT EXAMINATIONS HAVE YOU PERFORMED DURING YOUR CAREER?

A. I DON'T HAVE AN EXACT NUMBER. I KNOW THAT OVER THE PERIOD OF MY CAREER I'VE SEEN JUST UNDER TEN THOUSAND FORENSIC EXAMS OR SUPERVISED THEM, AND

DIRECT - DR. ELIZABETH L.H.B. GIBBS BY SOL. SCOTT

209

1 CERTAINLY, THE MAJORITY OF THEM WERE FOR CHILD
2 SEXUAL ABUSE, BUT I DON'T HAVE AN EXACT NUMBER.

3 Q. CAN YOU TELL THE JURY ABOUT YOUR EDUCATIONAL
4 BACKGROUND AND YOUR TRAINING?

5 A. I RECEIVED A BS DEGREE IN BIOLOGY FROM THE
6 UNIVERSITY OF SOUTH CAROLINA IN NINETEEN EIGHTY-
7 TWO, AND THEN WENT TO THE UNIVERSITY OF SOUTH
8 CAROLINA SCHOOL OF MEDICINE WHERE I RECEIVED MY
9 M.D. DEGREE. THEN I WENT TO GREENVILLE MEMORIAL
10 HOSPITAL AND DID A ROTATING OR A TRANSITIONAL
11 INTERNSHIP YEAR. I WENT BACK TO RICHLAND MEMORIAL
12 HOSPITAL AND FINISHED MY PEDIATRIC RESIDENCY IN
13 DECEMBER OF NINETEEN EIGHTY-NINE.

14 Q. HAVE YOU RECEIVED ANY SPECIAL TRAINING RELATING TO
15 CHILD SEXUAL ASSAULT EXAMINATIONS?

16 A. IN NINETEEN EIGHTY-NINE I WENT OUT TO HARBOR UCLA
17 AND UNIVERSITY OF SAN DIEGO, AND -- OR UNIVERSITY
18 OF CALIFORNIA AT SAN DIEGO, AND LEARNED HOW TO DO
19 FORENSIC EXAMS THERE, AND THAT WAS IN NINETEEN
20 EIGHTY-NINE.

21 Q. HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT IN THE
22 FIELD OF CHILD SEXUAL ASSAULT EXAMINATIONS?

23 A. YES, I HAVE.

24 Q. APPROXIMATELY HOW MANY TIMES?

25 A. I QUITE KEEPING TRACK OF THE NUMBER WHEN IT

DIRECT - DR. ELIZABETH L.H.B.GIBBS BY SOL. SCOTT

210

1 REACHED FIFTY IN NINETEEN NINETY-FOUR.

2 Q. NINETEEN NINETY-FOUR?

3 A. UH HUH.

4 SOLICITOR SCOTT: YOUR HONOR, AT
5 THIS TIME I'D OFFER DR. GIBBS AS AN EXPERT IN THE FIELD
6 OF CHILD SEXUAL ASSAULT EXAMINATIONS.

7 THE COURT: ANY VOIR DIRE?

8 MS. FORD: NO, YOUR HONOR, NO
9 OBJECTION.

10 THE COURT: ALRIGHT, I FIND THAT
11 SHE'S QUALIFIED IN THAT FIELD WITH THE SAME RESULTS AS
12 I EXPLAINED TO YOU EARLIER, LADIES AND GENTLEMEN.

13 ALRIGHT, COUNSELOR.

14 SOLICITOR SCOTT: THANK YOU, YOUR
15 HONOR.

16 Q. DR. GIBBS, WHAT IS A CHILD SEXUAL ASSAULT
17 EXAMINATION?

18 A. IT'S AN EXAM THAT, WELL, THERE'S REALLY TWO
19 DIFFERENT TYPES WITH SOME SIMILARITIES. THE FIRST
20 ONE IS AN ACUTE CHILD SEXUAL ASSAULT EXAM, AND THE
21 SECOND ONE IS THE CHRONIC. AND THE ACUTE, IF
22 THERE HAVE BEEN ALLEGATIONS THAT AN INCIDENT
23 OCCURRED, SOMEBODY WAS WORRIED THAT AN INCIDENT
24 OCCURRED WITHIN SEVENTY-TWO HOURS OF THE EXAM THEN
25 WE WOULD DO THE, GET A PAST MEDICAL HISTORY, ALSO

DIRECT - DR. ELIZABETH L.H.B.GIBBS BY SOL. SCOTT

211

1 GET A FORENSIC MEDICAL HISTORY ABOUT WHAT
2 HAPPENED, THEN WE -- OR WHAT CONCERNS THAT THEY
3 HAD OR SYMPTOMS THEY HAD, AND THEN WE WOULD DO A
4 PHYSICAL EXAM LOOKING EYES, EARS, NOSE, THROAT,
5 HEART, LUNG, BUT PAYING SPECIAL ATTENTION TO
6 DIFFERENT AREAS LIKE THE SKIN, THE MOUTH, THE
7 GENITAL AREA AND THE ANAL AREA. AND IN THE ACUTE,
8 IF IT'S LESS THEN, LIKE, LESS THAN SEVENTY-TWO
9 HOURS THEN WE WOULD LOOK FOR PHYSICAL EVIDENCE ON
10 THEIR BODY IN THE FORM OF LIKE SEMEN OR LUBRICANTS
11 OR SOMETIMES DEBRIS FROM BEING IN THE WOODS, YOU
12 KNOW, THINGS LIKE THAT, HAIRS. IF IT'S MORE THAN
13 SEVENTY-TWO HOURS FROM THE INCIDENT OF CONCERN
14 THEN THOSE THINGS ARE, ARE LIKELY NOT TO BE THERE
15 AND WE DON'T COLLECT THOSE. WE ALSO DON'T COLLECT
16 CLOTHING. SO, THAT'S THE DIFFERENCE.

17 Q. THAT'S THE DIFFERENCE BETWEEN AND ACUTE AND
18 CHRONIC EXAMINATION?

19 A. YES.

20 Q. OKAY. WHAT IS A RAPE KIT?

21 A. A RAPE KIT IS ACTUALLY THE KIT THAT WE USE DURING
22 AN ACUTE EXAM, AND IT JUST HAS THE MATERIALS
23 NEEDED TO COLLECT THE SAMPLES FROM THE ORAL, THE
24 ANAL, THE RECTAL AREA, HAIR, YOU KNOW, THE THINGS
25 THAT I TALKED ABOUT FOR PHYSICAL EVIDENCE. IT'S

DIRECT - DR. ELIZABETH L.H.B.GIBBS BY SOL. SCOTT

212

1 JUST KEPT IN A BOX. AFTER WE DO THE EXAM AND WE
2 COLLECT THE MATERIALS WE LET THE SWABS DRY AND
3 THEN WE PUT THEM IN THE BOX PACKAGED IN A SPECIAL
4 WAY AND THEN SEAL THE BOX AND PUT IT IN AN
5 EVIDENCE ROOM, AND THE RAPE KIT IS ACTUALLY THE
6 BOX ITSELF.

7 Q. DID YOU HAVE AN OPPORTUNITY TO EXAMINE **Minor**
8 **[REDACTED]** ON AUGUST SIXTEENTH, TWO THOUSAND AND
9 FIVE?

10 A. YES.

11 Q. AND WHAT TIME DID THAT EXAMINATION TAKE PLACE?

12 A. SOMETIME BETWEEN THREE:THIRTY AND FOUR:THIRTY IN
13 THE MORNING.

14 Q. AND WHERE DID THAT EXAMINATION TAKE PLACE?

15 A. AT CHILDREN'S MEDICAL ASSESSMENT CENTER IN NORTH
16 CHARLESTON.

17 Q. AND WHAT TYPE OF EXAMINATION DID YOU PERFORM ON
18 **Minor** ?

19 A. WE DID THE ACUTE CHILD SEXUAL ABUSE EXAM.

20 Q. ACUTE MEANING?

21 A. MEANING, THAT THE INCIDENT OF CONCERN HAD OCCURRED
22 WITHIN SEVENTY-TWO HOURS, AND SO WE DID THE
23 GENERAL PHYSICAL EXAM AND THEN WE ALSO USED THE
24 KIT OR THE BOX TO COLLECT THE SAMPLES.

25 Q. PRIOR TO BEGINNING THE PHYSICAL EXAM DID YOU SPEAK

DIRECT - DR. ELIZABETH L.H.B. GIBBS BY SOL. SCOTT

213

1 WITH **Minor** CONCERNING ANY PAIN OR SYMPTOMS,
2 COMPLAINTS, AND RECENT MEDICAL HISTORY?

3 A. YES.

4 Q. AND WHAT IS THE PURPOSE OF OBTAINING THIS
5 INFORMATION FROM THE PATIENT?

6 A. YOU KNOW, FIRST OF ALL TO KIND OF GET AN IDEA
7 ABOUT WHAT HAPPENED TO, YOU KNOW, TO HER BODY.
8 ALSO WHAT KIND OF SYMPTOMS WAS SHE HAVING THAT
9 MIGHT NEED TO BE TREATED. AND THEN THE THIRD
10 REASON WOULD BE TO KNOW WHERE TO LOOK FOR
11 DIFFERENT TYPES OF EVIDENCE.

12 Q. WHAT, IF ANY, STATEMENTS DID **Minor** MAKE THAT YOU
13 USED IN YOUR DIAGNOSIS AND YOUR TREATMENT?

14 A. SHE SAID THE INCIDENT OF CONCERNED HAPPENED
15 BETWEEN NINE AND TEN O'CLOCK OF, IT WAS REALLY I
16 GUESS THE NIGHT BEFORE. IT WOULD BE -- WE SAW HER
17 IN THE MORNING OF AUGUST SIXTEENTH, AND THIS WOULD
18 HAVE HAPPENED AT NINE TO TEN O'CLOCK THAT NIGHT
19 BEFORE. SO, IT WOULD BE KIND OF LIKE WITHIN
20 SEVERAL HOURS. SHE WAS WEARING THE SAME CLOTHES
21 THAT SHE HAD ON AT THE TIME WHENEVER SHE CAME.
22 SHE HAD HAD SOMETHING TO DRINK AND HAD URINATED
23 AFTER THE INCIDENT. SHE SAID THAT SOMEONE HAD PUT
24 HIS PENIS INTO HER PRIVATES, REFERRING TO THE
25 GENITAL AREA. SHE SAID THAT IT HURT A LOT. SHE

214

22 A. OKAY. I'M GOING TO DRAW THE FEMALE GENITALIA, A
23 DIAGRAM OF THEM FIRST, BEFORE I TALK ABOUT WHAT
24 HER FINDINGS WERE. THESE ARE THE LARGER OUTER
25 FATTY LIPS CALLED THE LABIA MAJORA, AND I'LL LABEL

DIRECT - DR. ELIZABETH L.H.B.GIBBS BY SOL. SCOTT

215

1 THOSE L-MAJ. THEN YOU'VE GOT THE SMALL INNER LIPS
2 THAT IN SOMEONE WHO'S, YOU KNOW, ALREADY HAVING
3 PERIODS, AND SHE WAS, COMES DOWN AND JOINS DOWN
4 TOWARD THE BACK. THE LITTLE SMALLER LIPS ARE CALL
5 THE LABIA MINORA, AND I'LL LABEL THOSE L-MIN.
6 THEN HERE'S THE CLITORIS, AND THE CLITORAL HOOD.
7 I'M DRAWING THE URETHRA, WHICH IS WHERE THE URINE
8 EMPTIES OUT FROM THE BLADDER, AND I'LL LABEL THAT,
9 U, AND THEN I'M GOING TO DRAW THE OPENING TO THE
10 VAGINA, I'LL COME BACK TO THAT IN A MINUTE. WHERE
11 THESE LIPS COME TOGETHER ON THE OUTSIDE IS CALLED
12 THE POSTERIOR FOURCHETTE, AND I'LL LABEL THAT P-F,
13 THERE'S A LITTLE VALLEY HERE WHERE THE STRUCTURES,
14 THE LIPS ON THE OUTSIDE ARE COVERED BY OUTSIDE
15 SKIN, AND IT'S LIKE THE SKIN ON YOUR ARM. IT'S
16 REALLY LIKE THE OUTSIDE OF THE SKIN ON YOUR FACE.
17 ONCE YOU GET INTO THE STRUCTURES THAT ARE AROUND
18 THE OPENING TO THE VAGINA, THAT'S INSIDE SKIN, AND
19 THE INSIDE SKIN IS THE LIKE THE SKIN THAT'S ON THE
20 INSIDE OF YOUR MOUTH, SO THAT IF YOU TAKE YOUR
21 TONGUE AND PUT IT ON YOUR CHEEK IT'S WET, IT'S
22 REAL -- IT STAYS MOIST, IT'S REAL VASCULAR, AND IT
23 STRETCHES USUALLY PRETTY WELL. AND THAT'S SKIN
24 THAT'S MEANT FOR THE INSIDE. SO, THIS AREA IS SET
25 DOWN INSIDE OF THESE OUTER STRUCTURES. THE
26 OPENING TO THE VAGINA IS DOWN INSIDE THE OUTER
27 STRUCTURES BY ABOUT THREE QUARTERS TO THREE

DIRECT - DR. ELIZABETH L.H.B.GIBBS BY SOL. SCOTT

216

1 EIGHTHS OF AN INCH, AND THIS AREA IS COVERED BY
2 INSIDE SKIN. THERE'S A VALLEY, KIND OF ALMOST
3 LIKE A SLING OF INSIDE SKIN THAT CONNECTS THE
4 OPENING TO THE VAGINA TO THE OUTSIDE, AND THAT
5 VALLEY IS CALLED THE FOSSA NAVICULARIS, AND I'LL
6 LABEL THAT F-N. THE OPENING TO THE VAGINA, I'LL
7 DRAW IN A LITTLE MORE DETAIL OVER HERE, THERE IS A
8 PIECE OF INSIDE SKIN, COMICOSA, THAT GOES AROUND
9 THE OPENING THE OUTSIDE OF THE OPENING TO THE
10 VAGINA. IT CAN BE ALL THE WAY AROUND OR IT CAN BE
11 JUST IN THE BACK HALF, BUT THAT'S WHAT THE
12 ENTRANCE TO THE VAGINA LOOKS LIKE. THERE IS AN
13 AREA CALLED THE PERINEUM THAT'S BETWEEN THE VAGINA
14 AND THE ANUS, AND I'LL LABEL THAT, P, AND THEN
15 YOU'VE GOT THE OPENING TO THE ANUS, AND I'LL LABEL
16 THAT, A. WHAT SHE HAD WAS RIGHT IN THE FOSSA
17 NAVICULARIS, IN THE MIDLINE WAS AN ACUTE
18 LACERATION. AND THAT JUST MEANS THAT THERE WAS A
19 SPLITTING OF THE SKIN SO THAT THE UNDERLYING
20 STRUCTURES WERE EXPOSED, LIKE IF YOU WERE TO HAVE
21 A SPLIT OF THE SKIN IN ANY OTHER AREA. AND THAT'S
22 WHAT SHE HAD. ALL THE OTHER STRUCTURES WERE
23 NORMAL FOR ANY ACUTE TRAUMA.

24 SOLICITOR SCOTT: YOUR HONOR, I'D
25 LIKE TO HAVE THIS MARKED AND ADMITTED INTO EVIDENCE.

DIRECT - DR. ELIZABETH L.H.B.GIBBS BY SOL. SCOTT

217

1 THE COURT: ANY OBJECTION?

2 MS. FORD: NO OBJECTION, YOUR HONOR.

3 THE COURT: ALRIGHT, THAT WILL BE
4 STATE'S THREE?

5 COURT REPORTER: YES, SIR.

6 THE COURT: STATE'S THREE WITHOUT
7 OBJECTION.

8 (State's Exhibit Three
9 marked and filed.)

10 Q. DR. GIBBS, WOULD YOU ALWAYS EXPECT TO FIND
11 EVIDENCE OF TRAUMA FOLLOWING A SEXUAL ASSAULT?

12 A. NO.

13 Q. WHY NOT?

14 A. BECAUSE LIKE I SAID, THOSE AREAS ARE REAL
15 VASCULAR, PARTICULARLY IN A GIRL ONCE SHE'S
16 STARTED HAVING HER PERIOD OR STARTED DEVELOPING.
17 AND SHE WAS, SHE WAS WHAT'S CALLED TANNER STAGE
18 FOUR TO FIVE, MEANING THAT, TANNER STAGE ONE IS
19 PRE-PUBITAL, AND NO PUBIC HAIR, NO ESTROGESATION,
20 YOU KNOW, NO BREAST BUDS. TANNER STAGE FIVE IS
21 ADULT LIKE. SO, SHE WAS -- TANNER STAGE THREE IS
22 ABOUT WHERE A GIRL STARTS HAVING PERIODS, SO SHE
23 WAS ABOVE THAT, SHE WAS TANNER STAGE FOUR OR FIVE.
24 WHY THAT'S IMPORTANT IS THAT ONCE THE ESTROGEN
25 STARTS TO TAKE EFFECT ON THE GENITAL AREA OF A

DIRECT - DR. ELIZABETH L.H.B.GIBBS BY SOL. SCOTT

218

1 FEMALE THEN THE SKIN GETS THICKER, GETS MORE
2 ELASTIC. IT STRETCHES. THERE'S A DISCHARGE THAT
3 SERVES AS A NATURAL LUBRICANT. IT REALLY IS KIND
4 OF MADE FOR INTERCOURSE OR FOR PENETRATION. SO --
5 AND THERE'S ALSO OTHER REASONS, YOU KNOW,
6 SOMETIMES THE CONTACT MAY NOT BE OF A FORCE, A
7 FORCEFUL NATURE ENOUGH TO CAUSE, YOU KNOW, TO
8 CAUSE FINDINGS. THERE'S ALL KINDS OF REASONS WHY,
9 BUT NO, YOU DON'T ALWAYS SEE PHYSICAL EVIDENCE
10 WHEN THERE'S BEEN A SEXUAL ASSAULT.

11 Q. AND YOU SAID YOU OBSERVED AN ACUTE LACERATION AT
12 THIS POINT RIGHT HERE?

13 A. YES, IN THE FOSSA NAVICULARIS.

14 Q. OKAY. AND WHAT DO YOU MEAN BY ACUTE, AGAIN?

15 A. LACERATIONS IN THAT AREA USUALLY HEAL REALLY
16 QUICKLY. LIKE I SAID, IT'S VERY VASCULAR AND IT
17 HEALS REALLY FAST. IT'S UNUSUAL FOR THOSE TO LAST
18 MORE THAN THREE TO FIVE DAYS. SO, WHAT I CAN TELL
19 BY LOOKING AT IT, IT LIKELY HAPPENED WITHIN THREE
20 TO FIVE DAYS OF THE EXAM.

21 Q. WERE YOUR FINDINGS CONSISTENT WITH BLUNT FORCE
22 TRAUMA TO THE INSIDE OF **Minor**'S GENITALIA?

23 A. YES.

24 Q. WERE YOUR FINDINGS CONSISTENT WITH WHAT **Minor** TOLD
25 YOU HAPPENED TO HER?

DIRECT - DR. ELIZABETH L.H.B.GIBBS BY SOL. SCOTT

219

1 A. YES.

2 Q. AND BASED ON THE THOUSANDS OF EXAMINATIONS THAT
3 YOU HAVE CONDUCTED, IS THIS A COMMON PLACE TO
4 OBSERVE TRAUMA IF ANY TRAUMA CAN BE OBSERVED?

5 A. IF YOU'RE GOING TO HAVE TRAUMA DURING A SEXUAL
6 ASSAULT THAT INVOLVES ANY TYPE OF PENETRATION THE
7 MOST COMMON AREA IS IN THAT FOSSA NAVICULARIS.

8 Q. CAN YOU DESCRIBE **Minor**'S DEMEANOR DURING THE
9 EXAMINATION?

10 A. SHE WAS VERY, SHE WAS VERY UPSET, SHAKING,
11 TREMBLING.

12 Q. DID YOU ADMINISTER ANY PAIN MEDICATIONS?

13 A. YES, LITOCANE IT WAS JUST SORT OF A NUMBING
14 TOPICAL JELL.

15 Q. IS THIS COMMON?

16 A. NO.

17 Q. IT'S NOT COMMON TO HAVE TO HAVE APPLY PAIN ME
18 MEDICATION?

19 A. NO.

20 Q. WHAT DID YOU DO WITH THE RAPE KIT WHEN YOU
21 FINISHED?

22 A. I PUT IT IN -- I SEALED IT AND SIGNED THE SEAL,
23 AND THEN PUT IT IN OUR REFRIGERATOR WHICH WAS
24 LOCKED IN OUR EVIDENCE ROOM IN NORTH CHARLESTON.

25 SOLICITOR SCOTT: NO FURTHER

DIRECT - DR. ELIZABETH L.H.B.GIBBS BY SOL. SCOTT

220

1 QUESTIONS.

2 A. THANK YOU.

3 THE COURT: CROSS-EXAM.

4 (NOTE: Blank lines on this page do not indicate any
5 part of record has been omitted. Headers on testimony
6 pages and hard page breaks between testimony are now
7 required by the Court. See next ensuing page for
8 sequential continuation of record.)

CROSS - DR. ELIZABETH L.H.B.GIBBS BY MS. FORD

221

1 CROSS-EXAMINATION OF DR. ELIZABETH L. H. B.

2 GIBBS BY MS. FORD:

3 Q. GOOD AFTERNOON, DR. GIBBS.

4 A. GOOD AFTERNOON.

5 Q. YOU'VE BEEN A PHYSICIAN FOR ABOUT TWENTY YEARS,
6 RIGHT?

7 A. YES.

8 Q. AND YOU'VE EXAMINED THOUSANDS OF CASES INVOLVING
9 ALLEGATIONS OF SEXUAL ASSAULT, RIGHT?

10 A. YES.

11 Q. OKAY. ARE YOU PART OF AN ADVOCACY CENTER?

12 A. NO.

13 Q. WHY NOT?

14 A. WE HAD A DIFFERENT MODEL THAN THE CHILD ADVOCACY
15 CENTERS, AND IN OUR MODEL WE -- OUR PHILOSOPHY WAS
16 TO GET INFORMATION AND TO GET IT VERY QUICKLY, AND
17 ALSO THE SAME IS TRUE FOR EVIDENCE. AND THEN, WE
18 DID NOT, WE DID NOT PROVIDE ADVOCACY AFTER THAT.
19 OURS WAS REALLY AN INVESTIGATION ASSESSMENT TYPE
20 OF MODEL.

21 Q. DO YOU CONSIDER ADVOCACY CENTERS TO BE BIASED IN
22 ANY WAY?

23 A. THAT'S KIND OF A LOADED QUESTION. I HAVE NOT BEEN
24 A BIG FAN OF ADVOCACY CENTERS IN THE PAST, I GUESS
25 PROBABLY SINCE ABOUT TWO THOUSAND, NINETY-EIGHT TO

1 TWO THOUSAND. I THINK IT'S VERY DIFFICULT TO
2 PROVIDE ADVOCACY, WHICH IS CERTAINLY NEEDED, BUT I
3 THINK IT'S VERY DIFFICULT TO PROVIDE ADVOCACY
4 WHILE AT THE SAME TIME TRYING TO PROVIDE OBJECTIVE
5 INFORMATION FOR AN INVESTIGATION. I THINK THAT
6 SOMETIMES THOSE ARE IN CONFLICT, AND IT WOULD BE
7 VERY DIFFICULT, AND I THINK IT IS SOMETIMES
8 DIFFICULT TO TRY AND SEPARATE THAT OUT.

9 Q. SO, THE DICKERSON CENTER WOULD BE AN ADVOCACY
10 ORGANIZATION?

11 SOLICITOR SCOTT: YOUR HONOR, I'M
12 GOING TO OBJECT, I MEAN, THIS IS OUTSIDE THE SCOPE OF
13 WHAT SHE'S BEEN QUALIFIED AS AN EXPERT IN.

14 THE COURT: Y'ALL COME UP HERE A
15 MINUTE.

16 (Whereupon, a bench conference
17 is had out of the hearing of
18 the jury and court reporter.)

19 Q. LET'S TALK ABOUT AUGUST SIXTEENTH, TWO THOUSAND AD
20 FIVE.

21 A. OKAY.

22 Q. YOU EXAMINED **Minor** ROBINSON ABOUT THREE:THIRTY,
23 FOUR:THIRTY THAT MORNING?

24 A. YES.

25 Q. OKAY. AND YOU CONDUCTED A PHYSICAL EXAM OF HER

CROSS - DR. ELIZABETH L.H.B.GIBBS BY MS. FORD

223

- 1 PRIOR TO THE GENITAL EXAM, IS THAT CORRECT?
- 2 A. YES.
- 3 Q. OKAY. YOU DIDN'T SEE ANY BRUISING ON Minor
- 4 [REDACTED], DID YOU?
- 5 A. NOT ANY SIGNIFICANT BRUISING.
- 6 Q. OKAY. YOU DIDN'T SEE ANY SCRATCHES?
- 7 A. NO.
- 8 Q. OKAY. DID YOU SEE ANY INJURIES TO HER ARMS?
- 9 A. NO.
- 10 Q. OKAY. IF YOU'D SEEN THAT YOU WOULD HAVE NOTED
- 11 THAT IN YOUR REPORT?
- 12 A. IF WE SAY, YOU KNOW, LIKE BRUISING THAT'S SORT OF
- 13 NORMAL BRUISING THAT YOU SEE ON PEOPLE WE WOULD
- 14 NOT HAVE WRITTEN THAT DOWN, BUT IF WE HAD NOTICED
- 15 BRUISING THAT WAS SIGNIFICANT THAT WOULD LIKELY BE
- 16 RELATED TO AN INCIDENT THEN WE WOULD HAVE NOTED
- 17 THAT, YES.
- 18 Q. OKAY. BUT THERE WAS NO NOTATION OF THAT IN YOUR
- 19 REPORT?
- 20 A. NO.
- 21 Q. YOU DID NOTE THAT THERE WAS A LACERATION TO THE
- 22 FOSSA NAVICULARIS, CORRECT?
- 23 A. YES.
- 24 Q. OKAY. AND THAT'S RIGHT HERE?
- 25 A. CORRECT.

1 Q. AND THAT LACERATION WAS VERY SMALL, AND TO THE
2 MIDLINE?

3 A. IT'S HARD TO BE ABLE TO USE THE TERM, SMALL, IN
4 RELATION TO THAT AREA. IT'S SORT OF ALL RELATIVE.
5 AS FAR AS LACERATIONS GO, IT WAS SORT OF A TYPICAL
6 LACERATION OF THE FOSSA NAVICULARIS, I WOULD
7 REALLY CALL IT SMALL OR LARGE. BUT OF COURSE,
8 THAT AREA ITSELF IS PRETTY SMALL, SO IT WOULD
9 DEPEND ON YOUR REFERENCE.

10 Q. OKAY. COULD THE FOSSA NAVICULARIS BE CONSIDERED A
11 GUIDING WAY FOR THE PENIS TO ENTER THE VAGINA?

12 A. YES, USUALLY IN INTERCOURSE USUALLY THE PENIS WILL
13 HIT SOMEWHERE IN THE AREA OF THE FOSSA NAVICULARIS
14 AND THEN IT SORT OF GUIDES IT INTO THE OPENING OF
15 THE VAGINA.

16 Q. SO, A PENIS COULD HAVE CAUSED THAT INJURY WITHOUT
17 ACTUALLY PENETRATING THE VAGINA?

18 A. CORRECT.

19 Q. COULD OTHER THINGS HAVE CAUSED A LACERATION TO THE
20 FOSSA NAVICULARIS OTHER THAN A PENIS?

21 A. YES.

22 Q. COULD STRETCHING CAUSE A LACERATION?

23 A. LIKE A SPLITTING TYPE OF INJURY, SOMETIMES THAT
24 DOES HAPPEN IN THE FOSSA NAVICULARIS?

25 Q. HOW ABOUT INFECTION?

CROSS - DR. ELIZABETH L.H.B. GIBBS BY MS. FORD

225

- 1 A. IF THERE'S AN INFECTION THAT CAUSES FRIABILITY OR
2 WHERE THAT AREA GETS WHERE IT TEARS PRETTY EASILY,
3 THEN YES, AN INFECTION -- WELL, THE INFECTION
4 DOESN'T CAUSE IT BUT IT MAKES IT EASIER FOR THAT
5 AREA TO BE INJURED.
- 6 Q. HOW ABOUT USING A TAMPON AND MISSING, COULD THAT
7 HAVE CAUSED THAT?
- 8 A. THAT HAS HAPPENED IN THE PAST, YES.
- 9 Q. OKAY. HOW ABOUT Minor ██████████ MASTURBATING,
10 COULD THAT HAVE CAUSED THAT?
- 11 A. ADOLESCENTS SOMETIMES DO MASTURBATE, AND THAT CAN
12 CAUSE IT, YES.
- 13 Q. OKAY. SO, YOU DON'T KNOW WHAT CAUSED THIS
14 LACERATION, YOU JUST KNOW THAT THERE IS A
15 LACERATION?
- 16 A. THE LACERATION THAT I SAW WAS CONSISTENT WITH THE
17 HISTORY THAT SHE GAVE ME, BUT CAN I LOOK AT THE
18 LACERATION ITSELF AND TELL YOU EXACTLY WHAT CAUSED
19 IT? NO. I HAVE NO ABILITY TO DO THAT, ONLY WITH
20 THE HISTORY.
- 21 Q. LET'S TALK ABOUT Minor ██████████'S DEMEANOR WHEN
22 SHE CAME FOR YOUR EXAM. WHAT WAS HER DEMEANOR
23 WHEN YOU FIRST BEGAN THAT EXAM?
- 24 A. LET ME MAKE SURE I'VE GOT IT -- SHE WAS QUITE
25 COOPERATIVE WITH THE EXAM UNTIL WE GOT TO THE

1 GENITAL AREA. ONCE WE GOT TO THE GENITAL EXAM SHE
2 WAS CRYING WITH PAIN, SAYING THAT IT HURTS. SHE
3 WAS SHAKING, HER LEGS WERE QUIVERING AND THEN SHE
4 WAS QUIVERING ALL OVER DURING THE GENITAL EXAM.

5 Q. DID YOU FIND HER BEHAVIOR A-TYPICAL FOR MOST CASES
6 YOU'VE SEEN?

7 A. YES.

8 Q. AND WHY IS THAT?

9 A. IN MOST OF THE CASES THAT I SEE THAT LEVEL OF A
10 PHYSICAL SHOW OF ANXIETY REALLY IS PRETTY UNUSUAL.
11 NOW, IT DOES HAPPEN BUT IT'S PRETTY UNUSUAL. SO,
12 YOU KNOW, I NOTED IT. MOST OF THE TIME I DON'T
13 REALLY NOTE ONE WAY OR ANOTHER, BUT FOR HERS IT
14 WAS, WAS VERY UNUSUAL FOR WHAT I NORMALLY SAW.

15 Q. OKAY. IN FACT, YOU WEREN'T ABLE TO COLLECT ALL OF
16 THE SAMPLES YOU NORMALLY DO BECAUSE OF HER
17 REACTION, IS THAT RIGHT?

18 A. CORRECT.

19 Q. OKAY. AND WAS THAT UNUSUAL?

20 A. THAT IS UNUSUAL, YES.

21 Q. AND IS THAT UNUSUAL FOR A LACERATION OF WHAT YOU
22 SAW HER REACTION TO BE THAT WAY?

23 A. YES.

24 MS. FORD: I BEG THE COURT'S
25 INDULGENCE, YOUR HONOR.

CROSS - DR. ELIZABETH L.H.B.GIBBS BY MS. FORD

227

I'VE NO FURTHER QUESTIONS.

THE COURT: REDIRECT?

SOLICITOR SCOTT: JUST BRIEFLY.

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REDIRECT - DR. ELIZABETH L.H.B. GIBBS
BY SOL. SCOTT

228

REDIRECT EXAMINATION OF DR. ELIZABETH L.H.B.

GIBBS BY SOLICITOR SCOTT:

Q. DR. GIBBS, IS IT UNCOMMON NOT TO SEE BRUISING TO
THE SKIN OR OTHER AREAS OF A VICTIM WHO HAS JUST
BEEN SEXUALLY ABUSED?

A. NO, IN THE VAST MAJORITY OF SEXUAL ASSAULTS YOU'RE
NOT GOING TO HAVE BRUISING OR EVIDENCE TO THE
SKIN.

Q. OKAY. AND AGAIN, WAS Minor 'S ACCOUNT OF
WHAT SHE TOLD YOU HAD HAPPENED TO HER CONSISTENT
WITH THE INJURIES THAT YOU OBSERVED?

A. YES.

SOLICITOR SCOTT: NO FURTHER
QUESTIONS.

MS. FORD: NONE, YOUR HONOR.

THE COURT: THANK YOU, MA'AM, YOU
MAY STEP DOWN. YOU MAY BE EXCUSED, THANK YOU FOR
COMING.

WITNESS: THANK YOU.

THE COURT: HOW LONG IS YOUR NEXT
WITNESS? Y'ALL APPROACH THE BENCH.

(Whereupon, a bench conference
is had out of the hearing of
the jury and the court reporter.)

THE COURT: LADIES AND GENTLEMEN,

229

1 IT'S NOT QUITE QUITTING TIME BUT I DON'T WANT TO KEEP
2 YOU HERE REAL LATE, SO WE'LL QUIT AT THIS TIME AND WE'LL
3 START BACK AT NINE:THIRTY IN THE MORNING. PLEASE
4 REMEMBER, DO NOT TALK ABOUT THE CASE, DON'T TRY TO FIND
5 OUT ANYTHING ABOUT THE CASE. YOU FORGET ABOUT THE CASE
6 UNTIL YOU COME BACK IN THE MORNING. PLEASE BE IN THE
7 JURY ROOM AT NINE:THIRTY. THANK YOU VERY MUCH, YOU'RE
8 EXCUSED AT THIS TIME.

9 (Whereupon, the jury leaves
10 the courtroom for the day
11 and the following takes
12 place out of the presence
13 of the jury.)

14 THE COURT: ALRIGHT, DID YOU CONTACT
15 THE BOND PERSON?

16 MR. MELLARD: YOUR HONOR, WE HAVE --
17 NO, WE TRIED TO CALL HIS CELL NUMBER, WE DIDN'T GET AN
18 ANSWER, AND WE INFORMED HIM THAT HE NEEDED TO BE HERE,
19 WE LEFT A MESSAGE THAT HE NEEDED TO BE HERE AT FIVE
20 O'CLOCK AND LET YOU KNOW IF HE'S GOING TO STAY ON THE
21 BOND OR NOT.

22 THE COURT: WELL, HE'S GOT TEN
23 MINUTES. I CAN'T, I MEAN, I CAN'T LET THE DEFENDANT GO
24 IF HIS BONDSMAN IS NOT GOING TO AGREE TO STAY ON HIS
25 BOND. SO, I'LL BE HERE IN THE OFFICE. Y'ALL KEEP HIM

1 HERE ABOUT TWELVE MORE MINUTES AND LET'S SEE WHAT
2 HAPPENS.

3 ALRIGHT, ANYTHING ELSE FROM THE
4 STATE?

5 SOLICITOR SCOTT: ARE YOU GOING TO
6 MAKE AN INQUIRY FROM THE BONDSMAN WHEN HE GETS HERE?

7 THE COURT: YES.

8 SOLICITOR SCOTT: OKAY. THANK YOU,
9 YOUR HONOR. NOTHING ELSE FROM THE STATE.

10 THE COURT: FROM THE DEFENSE?

11 MS. FORD: NO, YOUR HONOR.

12 THE COURT: ALRIGHT. WE'LL BE IN
13 RECESS UNTIL NINE:THIRTY IN THE MORNING.

14 MR. MELLARD: YOUR HONOR, ON THAT
15 CASE WE WERE TRYING, THE BONDSMAN IS NOT GOING TO BE
16 HERE.

17 THE COURT: ALRIGHT, SIR, WELL,
18 WE'RE GOING TO HAVE TO KEEP HIM. ALRIGHT, WE'LL SEE YOU
19 IN THE MORNING AT NINE:THIRTY.

20 (Recess for the day.)

21 DATE:

22 JUNE 10, 2009

23 THE COURT: IS THE STATE READY?

24 SOLICITOR SCOTT: YES, YOUR HONOR.

25 THE COURT: HAVE YOU GOT YOUR

1 WITNESS HERE?

2 SOLICITOR SCOTT: YES, YOUR HONOR.

3 THE COURT: IS THE DEFENSE READY?

4 MS. FORD: WE ARE, YOUR HONOR.

5 THE COURT: BRING THE JURY, PLEASE.

6 (Whereupon, the jury enters
7 the courtroom and the following
8 takes place in the presence of
9 the jury.)

10 THE COURT: GOOD MORNING, LADIES AND
11 GENTLEMEN, I HOPE YOU ALL HAD A GOOD NIGHT. WE'RE
12 READY TO PROCEED.

13 COUNSELOR, CALL YOUR WITNESS.

14 SOLICITOR JEFFRIES: THANK YOU, YOUR
15 HONOR, THE STATE CALLS HEATHER HOOK.

16 THE COURT: PLEASE COME UP HERE,
17 PLACE YOUR LEFT HAND ON THAT BIBLE AND RAISE YOUR RIGHT
18 HAND, PLEASE.

19 (Whereupon, Heather Renee Falco Hook
20 is duly sworn.)

21 THE COURT: THANK YOU, MA'AM. HAVE
22 A SEAT RIGHT THERE, AND STATE YOUR FULL NAME AND SPELL
23 YOUR LAST NAME FOR US, PLEASE.

24 WITNESS: OKAY. MY NAME IS HEATHER
25 RENEE FALCO HOOK.

THE COURT: ALRIGHT, COUNSELOR.

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DIRECT - HEATHER R. FALCO HOOK BY SOL. JEFFRIES

233

DIRECT EXAMINATION OF HEATHER R. FALCO HOOK

BY SOLICITOR JEFFRIES:

Q. I THINK YOU JUST STATED IT, BUT YOUR MAIDEN NAME
IS FALCO?

A. YES, SIR.

Q. AND WHEN WERE YOU MARRIED?

A. IT WOULD BE THREE YEARS AGO THIS JULY, SO TWO
THOUSAND SIX, JULY, TWO THOUSAND SIX.

Q. YOU'RE STILL FAIRLY A NEWLYWED?

A. YES.

Q. AND BACK IN TWO THOUSAND AND FIVE IT WOULD HAVE
BEEN HEATHER FALCO, IS THAT CORRECT?

A. YES, SIR.

Q. AND WHERE ARE YOU CURRENTLY EMPLOYED?

A. CURRENTLY I'M WITH LEXINGTON DISTRICT FIVE, IRMO
HIGH SCHOOL.

Q. AND WHAT DO YOU DO?

A. I'M A FRESHMAN TEACHER, I ACTUALLY TEACH NINTH
GRADE.

Q. AND WHAT EDUCATION HAVE YOU RECEIVED IN ORDER TO
BE AN EDUCATOR IN SOUTH CAROLINA?

A. I HAVE A BACHELOR'S OF ART. I'M CERTIFIED IN
ENGLISH, AND THIS IS MY, I'M ENDING MY FIFTH YEAR
ACTUALLY TEACHING IN PUBLIC SCHOOL.

Q. OKAY. AND WERE YOU TEACHING IN PUBLIC SCHOOL BACK

DIRECT - HEATHER R. FALCO HOOK BY SOL. JEFFRIES

234

1 IN THE SCHOOL YEAR OF TWO THOUSAND FOUR-TWO
2 THOUSAND FIVE?

3 A. YES, SIR, I TAUGHT AT THE BETHUNE-BOWMAN MIDDLE
4 HIGH SCHOOL, EIGHTH GRADE.

5 Q. THAT'S HERE IN ORANGEBURG COUNTY?

6 A. ORANGEBURG FIVE.

7 Q. DOWN IN BOWMAN?

8 A. YES.

9 Q. OKAY. AND DID YOU KNOW A YOUNG LADY, OR DO YOU
10 KNOW A YOUNG LADY NAMED Minor [REDACTED]?

11 A. YES, SIR.

12 Q. AND WHEN DID YOU FIRST MEET MS. Minor [REDACTED]?

13 A. I WOULD HAVE MET HER I GUESS AUGUST, TWO THOUSAND
14 AND FOUR. SHE WAS A STUDENT IN MY EIGHTH GRADE
15 CLASS ROOM.

16 Q. OKAY. AND YOU WERE HER TEACHER?

17 A. YES, SIR, THAT WHOLE YEAR SHE WAS IN MY CLASS.

18 Q. ALRIGHT. AND DID SHE, DID YOU HAVE A
19 RELATIONSHIP, DID Y'ALL TALK OUTSIDE OF SCHOOL?

20 A. NOT UNTIL THE END OF THE YEAR, BUT AT THE END OF
21 THE YEAR, AND THEN AFTER FOR ABOUT, ALMOST A FULL
22 YEAR, YES.

23 Q. OKAY. AND WOULD SHE CONFIDE IN YOU THINGS THAT
24 WERE GOING ON IN HER LIFE?

25 A. YES, SIR.

DIRECT - HEATHER R. FALCO HOOK BY SOL. JEFFRIES

235

1 Q. LET ME ASK YOU, YOU SAID AFTER THE SCHOOL YEAR,
2 WERE YOU CONTINUING TO TEACH, WERE YOU COMING BACK
3 TO BETHUNE-BOWMAN FOR THE NEXT YEAR?

4 A. NO, SIR, I ACTUALLY MOVED TO COLUMBIA AND I WENT
5 TO LEXINGTON DISTRICT TWO AND TAUGHT AT FULMER
6 MIDDLE SCHOOL.

7 Q. OKAY. AND OVER THAT SUMMER AFTER YOU LEFT
8 BETHUNE-BOWMAN, DID YOU CONTINUE TO TALK TO **Minor**
9 **[REDACTED]**?

10 A. YES, SIR.

11 Q. NOW, YOU SAID YOU WERE LIVING IN COLUMBIA BY THE
12 END OF THAT SUMMER, TWO THOUSAND FIVE?

13 A. YES. I MOVED I THINK IN JULY ACTUALLY.

14 Q. LET ME TAKE YOU BACK TO SPECIFICALLY AUGUST, TWO
15 THOUSAND FIVE, AND EVEN MORE SPECIFICALLY, AUGUST
16 FIFTEENTH, TWO THOUSAND FIVE. DO YOU RECALL
17 TALKING WITH **Minor** **[REDACTED]** THAT EVENING?

18 A. YES, SIR. IT WAS COMMON TO ACTUALLY TALK TO HER,
19 AND WE TALKED, IT WAS ABOUT NINE O'CLOCK PROBABLY
20 MAYBE JUST BEFORE NINE THAT WE HAD A CONVERSATION
21 FOR ABOUT FIFTEEN MINUTES.

22 Q. OKAY. AND WHAT WAS HER DEMEANOR DURING THAT
23 CONVERSATION?

24 A. IT WAS LIKE NORMAL, SHE, SHE TYPICALLY JUST TALKED
25 TO ME ABOUT FRIENDS, SCHOOL. SCHOOL HAD JUST

INTERVIEW - HEATHER R. FALCO HOOK BY SOL. JEFFRIES

236

1 STARTED. WE PROBABLY TALKED A LOT ABOUT JUST
2 SCHOOL GETTING STARTED.

3 Q. OKAY. LET ME STOP YOU, I DON'T WANT YOU TO GO TOO
4 FAR INTO THAT.

5 A. OKAY.

6 Q. BUT THAT WAS AROUND WHAT TIME?

7 A. IT WAS CLOSE TO NINE O'CLOCK THAT NIGHT.

8 Q. AND WAS THAT THE LAST CALL YOU RECEIVED FROM **Minor**
9 THAT NIGHT?

10 A. NO, SIR.

11 Q. WHEN DID SHE CALL YOU?

12 A. SHE CALLED ME BACK, IT WAS APPROXIMATELY AN HOUR
13 LATER, MAYBE FIFTY MINUTES, BUT CLOSE TO AN HOUR
14 LATER.

15 Q. OKAY. AND WHAT WAS HER DEemeanOR DURING THAT
16 SECOND CALL?

17 A. SHE WAS VERY RESERVED, VERY QUIET. I COULD TELL
18 THAT SHE WAS VERY UPSET, EVEN CRYING. SHE WOULD
19 BARELY TALK AT FIRST, ACTUALLY.

20 Q. AND AGAIN, I'M NOT GOING TO ASK YOU WHAT SHE SAID,
21 BUT HOW LONG DID YOU SPEAK?

22 A. IT WAS A LENGTHY CONVERSATION OF ABOUT THIRTY
23 MINUTES, SOMEWHERE AROUND THIRTY MINUTES.

24 Q. NOW, WHEN SHE CALLED YOU THE FIRST TIME AND THE
25 SECOND TIME, WERE YOU AWARE OF WHERE SHE WAS

DIRECT - HEATHER R. FALCO HOOK BY SOL. JEFFRIES

237

1 CALLING FROM?

2 A. SHE WAS AT HER AUNT'S HOUSE, SHE TYPICALLY STAYED
3 THERE.

4 Q. NOW AGAIN, YOU CAN'T TELL ME WHAT SHE TOLD YOU,
5 OKAY, YOU UNDERSTAND THAT?

6 A. YES.

7 Q. BUT WHAT, IF ANYTHING, DID YOU DO AFTER YOU TALKED
8 TO **Minor** [REDACTED] THAT SECOND TIME, AUGUST
9 FIFTEENTH, TWO THOUSAND FIVE?

10 A. WELL, I FELT THAT I HAD TO CALL THE POLICE.

11 Q. AND DID YOU DO THAT?

12 A. YES, SIR.

13 Q. WHO, IF ANYONE ELSE, DID YOU CALL?

14 A. I BELIEVE I CALLED THE GUIDANCE COUNSELOR FROM THE
15 SCHOOL, OR I CALLED THE SCHOOL TO LEAVE A MESSAGE
16 FOR HER.

17 Q. AND THAT WAS THAT SAME EVENING, AUGUST FIFTEENTH,
18 TWO THOUSAND FIVE?

19 A. YES, SIR, BOTH CALLS.

20 Q. AND DID YOU HAVE THE OPPORTUNITY AT ANY LATER
21 POINT TO MEET WITH ANYONE IN LAW ENFORCEMENT IN
22 REFERENCE TO WHAT **Minor** HAD TOLD YOU?

23 A. YES, SHORTLY AFTER, I CAN'T REMEMBER HOW LONG
24 AFTER, BUT I MET WITH ANTHONY THOMPSON.

25 Q. IS THAT INVESTIGATOR THOMPSON WHO IS SITTING AT

DIRECT - HEATHER R. FALCO HOOK BY SOL. JEFFRIES

238

1 THE TABLE HERE TODAY?

2 A. YES.

3 Q. AND DID YOU TELL INVESTIGATOR THOMPSON WHAT **Minor**
4 HAD TOLD YOU?

5 A. YES, SIR.

6 Q. AND DID YOU ALSO PROVIDE INVESTIGATOR THOMPSON A
7 WRITTEN STATEMENT ABOUT THE EVENTS THAT SHE HAD
8 TOLD YOU?

9 A. I SURE DID.

10 SOLICITOR JEFFRIES: I BEG THE
11 COURT'S INDULGENCE.

12 I DON'T HAVE ANY FURTHER QUESTIONS,
13 BUT PLEASE ANSWER ANY QUESTIONS THAT DEFENSE MIGHT HAVE.
14 THANK YOU.

15 MR. MELLARD: WE HAVE NO QUESTIONS,
16 YOUR HONOR.

17 THE COURT: ALRIGHT, THANK YOU FOR
18 COMING, MA'AM, YOU MAY STEP DOWN AND YOU MAY BE EXCUSED.

19 SOLICITOR SCOTT: THE STATE CALLS
20 PATRICIA EIKHOFF.

21 SOLICITOR JEFFRIES: YOUR HONOR, IS
22 SHE FREE TO STAY IN THE COURTROOM NOW?

23 THE COURT: YEAH, SURE.

24 MS. EIKHOFF, PLEASE.

25 (Whereupon, the witness

1 enters the courtroom.)

2 THE COURT: GOOD MORNING. IF YOU'D
3 COME AROUND, AND YOU SEE THAT BIBLE, IF YOU'D PLACE YOUR
4 LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT.

5 (Whereupon, Patricia Eikhoff
6 is duly sworn.)

7 THE COURT: THANK YOU VERY MUCH,
8 STATE YOUR FULL NAME, PLEASE, AND SPELL YOUR LAST NAME.

9 WITNESS: PATRICIA EIKHOFF, E-I-K-H-
10 -O-F-F.

11 THE COURT: THANK YOU.

12 ALRIGHT, COUNSELOR.

13 SOLICITOR SCOTT: THANK YOU, YOUR
14 HONOR.

15 (NOTE: Blank lines on this page do not indicate any
16 part of record has been omitted. Headers on testimony
17 pages and hard page breaks between testimony are now
18 required by the Court. See next ensuing page for
19 sequential continuation of record.)

DIRECT - PATRICIA EIKHOFF BY SOL. SCOTT

240

DIRECT EXAMINATION OF PATRICIA EIKHOFF

BY SOLICITOR SCOTT:

Q. WHERE ARE YOU EMPLOYED?

A. I'M EMPLOYED WITH ORANGEBURG COUNTY SHERIFF'S OFFICE.

Q. AND HOW LONG HAVE YOU WORKED FOR THE SHERIFF'S OFFICE?

A. FIVE YEARS.

Q. AND WHAT IS YOUR CURRENT POSITION WITH THE SHERIFF'S OFFICE?

A. MY CURRENT POSITION IS AS AN INVESTIGATOR IN CRIMINAL INVESTIGATION DIVISION.

Q. AND WHAT ARE YOUR DUTIES AND RESPONSIBILITIES AS AN INVESTIGATOR? AND SPEAK UP SO THAT THEY CAN HEAR YOU.

A. MY DUTIES AS AN INVESTIGATOR NOW IS TO INVESTIGATE FELONIES, CRIMES, MAKE ARRESTS, SPEAK WITH VICTIMS AND GET A DETAILED INCIDENT REPORT, EXCUSE ME, I MEAN, NOT INCIDENT REPORT BUT A VICTIM STATEMENT, AND ALSO, WITNESSES, A DETAILED WITNESS STATEMENT AND POSSIBLY TALK WITH A SUSPECT.

Q. OKAY. SO THAT WAS YOUR, THOSE ARE YOU DUTIES AND -
- THAT'S YOUR DUTIES AND RESPONSIBILITIES AS AN INVESTIGATOR. WHAT WAS YOUR POSITION WITH THE SHERIFF'S OFFICE BACK IN AUGUST OF TWO THOUSAND

DIRECT - PATRICIA EIKHOFF BY SOL. SCOTT

241

1 AND FIVE?

2 A. I WAS A DEPUTY SHERIFF ON THE ROAD ON PATROL.

3 Q. AND WHAT WERE YOUR DUTIES AND RESPONSIBILITIES AS A
4 DEPUTY JUST ON ROUTINE PATROL.

5 A. I WOULD GET CALLS FROM THE SHERIFF'S OFFICE IN
6 REFERENCE TO DIFFERENT INCIDENTS, AND I WOULD GO
7 TO THE LOCATION WHERE THE INCIDENT WAS, AND I
8 WOULD TALK TO VICTIMS, WE'D SECURE THE SCENE,
9 GATHER EVIDENCE, AND TURN IT OVER TO AN
10 INVESTIGATOR IN THE CRIMINAL INVESTIGATION
11 DIVISION.

12 Q. LET ME TURN YOUR ATTENTION TO AUGUST FIFTEENTH,
13 TWO THOUSAND AND FIVE, DID YOU HAVE THE
14 OPPORTUNITY TO RESPOND TO A REPORT OF CRIMINAL
15 SEXUAL CONDUCT?

16 A. YES.

17 Q. AND WHERE DID YOU RESPOND?

18 A. [REDACTED] LAQUINTA.

19 Q. IS THAT IN ORANGEBURG COUNTY?

20 A. YES.

21 Q. AND DO YOU REMEMBER WHAT TIME YOU ARRIVED, DO YOU
22 HAVE YOUR NOTES IN FRONT OF YOU?

23 A. YES, SIR, I DO.

24 Q. DO YOU REMEMBER WHAT TIME YOU ARRIVED AT [REDACTED]

25 [REDACTED] LAQUINTA?

DIRECT - PATRICIA EIKHOFF BY SOL. SCOTT

242

1 A. ELEVEN:TWENTY-ONE P.M.

2 Q. AND ULTIMATELY WHAT TIME DID YOU DEPART THE SCENE
3 THAT NIGHT?

4 A. ONE:0-ONE A.M.

5 Q. OKAY. AND WHAT DID YOU DO WHEN YOU ARRIVED AT THE
6 SCENE?

7 A. I SPOKE WITH THE VICTIM.

8 Q. OKAY. CAN YOU DESCRIBE HER DEMEANOR?

9 A. SHE WAS CRYING, UPSET.

10 Q. OKAY. WHAT DID YOU DO AFTER MAKING CONTACT WITH -
11 - AND WHEN I SAY THE VICTIM, WHO ARE YOU REFERRING
12 TO?

13 A. Minor [REDACTED].

14 Q. OKAY. AND WHAT DID YOU DO AFTER MAKING CONTACT
15 WITH MS. Minor [REDACTED]?

16 A. I GATHERED INFORMATION IN REFERENCE TO A CRIMINAL
17 SEXUAL CONDUCT WITH A MINOR TO MAKE AN INCIDENT
18 REPORT.

19 Q. ULTIMATELY, WHAT DID YOU DO, DID YOU TURN THIS
20 CASE OVER TO AN INVESTIGATOR?

21 A. YES, I DID.

22 Q. OKAY.

23 A. ONCE THAT'S DONE I TURN IT OVER TO AN
24 INVESTIGATOR.

25 Q. AND WHO DID YOU TURN THIS CASE OVER TO?

DIRECT - PATRICIA EIKHOFF BY SOL. SCOTT

243

- 1 A. INVESTIGATOR ANTHONY THOMPSON.
- 2 Q. OKAY. WHILE ON THE SCENE DID YOU MAKE CONTACT
- 3 WITH SHARON ROBINSON?
- 4 A. YES.
- 5 Q. AND DO YOU RECALL WHETHER SHE WAS AT THE HOME WHEN
- 6 YOU ARRIVED OR WHETHER SHE ARRIVED LATER?
- 7 A. I DON'T RECALL.
- 8 Q. OKAY. DID YOU REQUEST PERMISSION TO SEARCH THE
- 9 RESIDENCE FROM HER?
- 10 A. YES.
- 11 Q. OKAY. AND DID SHE GIVE YOU PERMISSION?
- 12 A. YES.
- 13 Q. AND WHAT ITEMS, IF ANY, DID YOU TAKE INTO
- 14 EVIDENCE?
- 15 A. I COLLECTED TWO SHEETS FROM THE BEDROOM.
- 16 Q. OKAY. AND WHAT DID YOU DO WITH THESE SHEETS?
- 17 A. I TURNED THEM OVER TO ORANGEBURG COUNTY SHERIFF'S
- 18 OFFICE EVIDENCE.
- 19 Q. OKAY. AND BACK TO MS. Minor IN THIS CASE, WHAT
- 20 WAS DONE WITH HER THAT NIGHT, DO YOU RECALL?
- 21 A. SHE WAS TRANSPORTED TO CHARLESTON FOR AN
- 22 EVALUATION.
- 23 Q. AND WAS THAT THE EXTENT OF YOUR INVOLVEMENT IN
- 24 THIS CASE?
- 25 A. YES.

1 SOLICITOR SCOTT: NO FURTHER
2 QUESTIONS, YOUR HONOR.

3 THE COURT: CROSS-EXAM?

4 MR. MELLARD: YES, SIR, I HAVE A
5 QUESTION.

6 (NOTE: Blank lines on this page do not indicate any
7 part of record has been omitted. Headers on testimony
8 pages and hard page breaks between testimony are now
9 required by the Court. See next ensuing page for
10 sequential continuation of record.)

CROSS - PATRICIA EIKHOFF BY MR. MELLARD

245

CROSS-EXAMINATION OF PATRICIA EIKHOFF

BY MR. MELLARD:

Q. IT'S MY UNDERSTANDING THAT YOU WERE A DEPUTY
SHERIFF AT THE TIME?

A. YES, SIR.

Q. OKAY. AND YOU WENT OUT AND YOU SPOKE TO THE
VICTIM, ISN'T THAT CORRECT?

A. YES.

Q. AT ANY POINT WHILE YOU WERE THERE DID MR. LINDY
JONES SHOW UP?

A. I BELIEVE HE SHOWED UP AS WE WERE LEAVING, AND THAT
WAS AFTER THE VICTIM HAD LEFT TO GO TO CHARLESTON.

Q. OKAY. NOW, YOU'RE THERE INVESTIGATING A POTENTIAL
CRIME, IS THAT CORRECT?

A. YES, SIR.

Q. OKAY. AND DID YOU TAKE ANY PICTURES OF MS.
Minor ?

A. NO, SIR.

Q. OKAY. YOU DIDN'T TAKE ANY PICTURES OF ANY CUTS ON
MS. Minor ?

A. NO, SIR.

Q. NO BRUISES ON MS. Minor ?

A. NO, SIR.

Q. OKAY. AND I ASSUME, AS A DEPUTY SHERIFF, IF YOU
WOULD HAVE SEEN THOSE THINGS YOU WOULD HAVE TAKEN

CROSS - PATRICIA EIKHOFF BY MR. MELLARD

246

1 PICTURES, IS THAT CORRECT?

2 A. YES, SIR.

3 Q. OKAY. YOU SAID MR. LINDY JONES CAME WHEN YOU WERE
4 GETTING READY TO LEAVE?

5 A. YES, SIR.

6 Q. OKAY. DID YOU TAKE ANY PICTURES OF MR. LINDY
7 JONES?

8 A. NO, SIR.

9 Q. NO BRUISES, CUTS, SCRAPES, SCRATCHES, YOU TOOK NO
10 PICTURES OF ANYTHING?

11 A. NO, SIR, HE WAS REQUESTED TO TALK WITH
12 INVESTIGATOR THOMPSON.

13 MR. MELLARD: OKAY. THANK YOU.

14 THE COURT: REDIRECT?

15 SOLICITOR SCOTT: NO, YOUR HONOR.

16 THE COURT: THANK YOU, MA'AM, YOU
17 MAY STEP DOWN AND YOU MAY BE EXCUSED.

18 NEXT WITNESS, PLEASE.

19 SOLICITOR SCOTT: THE STATE CALLS
20 BETTY BUTLER.

21 (Whereupon, the witness
22 enters the courtroom.)

23 THE COURT: COME RIGHT AROUND HERE,
24 PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT
25 HAND.

1 (Whereupon, Betty Walker Butler
2 is duly sworn.)

3 THE COURT: PLEASE HAVE A SEAT AND
4 STATE YOUR FULL NAME.

5 WITNESS: BETTY WALKER BUTLER.

6 THE COURT: THANK YOU, MA'AM.

7 (NOTE: Blank lines on this page do not indicate any
8 part of record has been omitted. Headers on testimony
9 pages and hard page breaks between testimony are now
10 required by the Court. See next ensuing page for
11 sequential continuation of record.)

DIRECT - BETTY WALKER BUTLER BY SOL. SCOTT

248

DIRECT EXAMINATION OF BETTY WALKER BUTLER

BY SOLICITOR SCOTT:

Q. GOOD MORNING.

A. GOOD MORNING.

Q. WHERE ARE YOU EMPLOYED?

A. SOUTH CAROLINA STATE LAW ENFORCEMENT DIVISION,
ALSO KNOWN AS SLED.

Q. AND HOW LONG HAVE YOU WORKED AT SLED?

A. THIRTEEN YEARS.

Q. AND WHAT'S YOUR CURRENT POSITION?

A. FORENSIC TECHNICIAN IN THE EVIDENCE PROCESSING
UNIT.

Q. AND WHAT ARE YOUR DUTIES AS A FORENSIC TECHNICIAN?

A. AS A FORENSIC TECHNICIAN WE EXAMINE EVIDENCE FOR
BLOOD, SEMEN, HAIRS, FIBERS, GLASS, DIFFERENT
OTHER BODY FLUIDS, IT DEPENDS ON THE PARTICULAR
CASE. WHEN IT'S A POSSIBILITY THAT IT'S BLOOD THE
SWABS WOULD TURN PINK. IF IT'S A POSSIBILITY OF
SEMEN, THE SWABS WOULD TURN PURPLE, AND THAT'S HOW
WE KNOW WHETHER IT'S POSITIVE OR NEGATIVE.

Q. WILL YOU TELL THE JURY ABOUT YOUR TRAINING AS A
FORENSIC TECHNICIAN IN THE FIELD OF EVIDENCE
PROCESSING?

A. MY TRAINING IN THE FIELD OF EVIDENCE PROCESSING,
WE GO THROUGH HUNDREDS OF ITEMS, WE ARE TRAINED BY

DIRECT - BETTY WALKER BUTLER BY SOL. SCOTT

249

1 A COURT QUALIFIED FORENSIC TECHNICIAN AND
2 LIEUTENANT ON HUNDREDS OF DIFFERENT ITEMS. WE HAVE
3 TO HAVE A COMPETENCY TEST BEFORE WE GO ON LINE,
4 AND EACH YEAR WE HAVE A SUFFICIENCY TEST THAT WE
5 HAVE TO DO.

6 Q. HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT IN
7 EVIDENCE PROCESSING?

8 A. YES, I HAVE.

9 Q. APPROXIMATELY HOW MANY TIMES?

10 A. FIVE TIMES.

11 SOLICITOR SCOTT: YOUR HONOR, AT
12 THIS TIME I'D OFFER MS. BUTLER AS AN EXPERT IN THE FIELD
13 OF EVIDENCE PROCESSING.

14 THE COURT: ANY VOIR DIRE?

15 MS. FORD: NONE, YOUR HONOR.

16 THE COURT: ANY OBJECTION?

17 MS. FORD: NO.

18 THE COURT: I FIND THAT SHE'S
19 QUALIFIED IN THE FIELD OF EVIDENCE PROCESSING AS AN
20 EVIDENCE TECHNICIAN, WITH THE SAME RESULTS AS I
21 EXPLAINED TO YOU EARLIER, LADIES AND GENTLEMEN.

22 Q. MS. BUTLER, DID YOU RECEIVE SOME ITEMS FOR
23 ANALYSIS, AND I THINK IT'S SLED LAB NUMBER L ZERO
24 NINE ZERO SIX FIVE ZERO?

25 A. YES, I DID.

DIRECT - BETTY WALKER BUTLER BY SOL. SCOTT

250

1 Q. WHAT ITEMS DID YOU RECEIVE?

2 A. I RECEIVED ITEM TWO POINT ZERO, WHICH WAS A SHIRT,
3 ITEM THREE POINT ZERO, WHICH IS A BRA, ITEM FOUR
4 POINT ZERO, WHICH IS JEANS, ITEM FIVE POINT ZERO,
5 WHICH IS A BLACK SHEET, ITEM SIX POINT ZERO, A
6 FITTED SHEET, AND ITEM SEVEN POINT ZERO, WHICH IS
7 PANTIES.

8 Q. OKAY.

9 COURT REPORTER: WHICH IS WHAT?

10 A. PANTIES.

11 Q. WERE THESE ITEMS -- HOW WERE THESE ITEMS PACKAGED
12 WHEN YOU RECEIVED THEM?

13 A. THEY WERE IN A BOX SEALED WITH DATE AND INITIALS.

14 Q. OKAY. AND DID YOU HAVE THE OPPORTUNITY TO EXAMINE
15 THESE ITEMS?

16 A. YES, I DID.

17 Q. AND WHAT WERE THE RESULTS OF YOUR EXAMINATION?

18 A. ONCE I EXAMINED THE ITEMS THEY CAME UP NEGATIVE
19 FOR THE POSSIBILITY OF SEMEN.

20 Q. OKAY. LET ME ASK YOU, AS AN EXPERT IN EVIDENCE
21 PROCESSING, IF A SUBJECT DID NOT EJACULATE WOULD
22 YOU EXPECT TO FIND EVIDENCE OF SEMEN?

23 A. NO, I WOULD NOT.

24 SOLICITOR SCOTT: NO FURTHER
25 QUESTIONS.

DIRECT - BETTY WALKER BUTLER BY SOL. SCOTT

251

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THE COURT: CROSS-EXAM.

MS. FORD: THANK YOU, YOUR HONOR,
MAY IT PLEASE THE COURT.

THE COURT: YES, MA'AM.

(NOTE: Blank lines on this page do not indicate any
part of record has been omitted. Headers on testimony
pages and hard page breaks between testimony are now
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sequential continuation of record.)

CROSS - BETTY WALKER BUTLER BY MS. FORD

252

CROSS-EXAMINATION OF BETTY WALKER BUTLER

BY MS. FORD:

Q. GOOD MORNING, MS. BUTLER.

A. GOOD MORNING.

Q. SO, YOU TESTED A SHIRT, BRA, PANTS, FLAT SHEET, FITTED SHEET, AND PANTIES, RIGHT?

A. YES.

Q. AND YOU FOUND NO EVIDENCE OF SEMEN, CORRECT?

A. CORRECT.

Q. OKAY. DID YOU FIND ANY FIBERS?

A. WE, IN THIS CASE WE WASN'T LOOKING FOR FIBERS.

Q. OKAY. DID YOU FIND ANY HAIR?

A. IN THIS CASE WE WASN'T LOOKING FOR HAIR.

Q. OKAY. YOU DIDN'T FIND ANY OTHER BODILY FLUIDS?

A. IT'S A POSSIBILITY IT WAS FLUID BECAUSE IT FLUORESCED. WHEN I SAY, FLUORESCED, WE PUT EACH ITEM UNDERNEATH AN ALTERNATE LIGHT SOURCE, WHEN ANYTHING, BODY FLUIDS, IT WOULD FLUORESCCE AND WE WOULD CIRCLE THAT ITEM AND WE WOULD TEST THE ITEM THAT WAS FLUORESCED UNDERNEATH THE LIGHT.

Q. SO, YOU FOUND NO DNA ON ANY OF THESE THINGS THAT YOU IDENTIFIED AND EXAMINE?

A. NOT DNA, I FOUND, I FIND DIFFERENT CIRCLES THAT FLUORESCED UNDERNEATH AN ALTERNATE LIGHT SOURCE.

Q. BUT YOU FOUND NO SEMEN ON ANY OF THESE ITEMS?

CROSS - BETTY WALKER BUTLER BY MS. FORD

253

1 A. NO, I DID NOT.

2 MS. FORD: NO FURTHER QUESTIONS.

3 THE COURT: REDIRECT?

4 SOLICITOR SCOTT: NO, YOUR HONOR.

5 THE COURT: THANK YOU, MS. BUTLER,
6 YOU MAY BE EXCUSED, THANK YOU FOR COMING.

7 NEXT WITNESS, PLEASE.

8 SOLICITOR SCOTT: THE STATE CALLS
9 CATHERINE LEISY.

10 (Whereupon, the witness
11 enters the courtroom.)

12 THE COURT: COME AROUND HERE, PLACE
13 YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT HAND,
14 PLEASE.

15 (Whereupon, Catherine Leisy
16 is duly sworn.)

17 THE COURT: THANK YOU, MA'AM, HAVE
18 A SEAT, STATE YOUR FULL NAME AND SPELL YOUR LAST NAME,
19 PLEASE.

20 WITNESS: YES, SIR. CATHERINE
21 LEISY, L-E-I-S-Y.

22 THE COURT: THANK YOU.

23 (NOTE: Blank lines on this page do not indicate any
24 part of record has been omitted.)

DIRECT - CATHERINE LEISY BY SOL. SCOTT

254

DIRECT EXAMINATION OF CATHERINE LEISY

BY SOLICITOR SCOTT:

Q. GOOD MORNING.

A. GOOD MORNING.

Q. WHERE ARE YOU EMPLOYED?

A. I'M EMPLOYED BY THE SOUTH CAROLINA LAW ENFORCEMENT
DIVISION ALSO KNOWN AS SLED.

Q. AND WHAT IS YOUR POSITION AT SLED?

A. I'M A FORENSIC DNA ANALYST ASSIGNED TO THE DNA AND
SEROLOGY UNIT.

Q. AND TELL THE JURY ABOUT YOUR DUTIES AND
RESPONSIBILITIES AT SLED?

A. MY RESPONSIBILITIES INCLUDE PROCESSING FORENSIC
CASES, GENERATING REPORTS BASED ON THE RESULTS AND
CONCLUSIONS DRAWN, AND TESTIFYING TO THOSE RESULTS
IF NECESSARY.

Q. HOW LONG HAVE YOU WORKED AT SLED?

A. FOR A LITTLE OVER THREE YEARS.

Q. AND WILL YOU TELL THE JURY ABOUT YOUR EDUCATIONAL
BACKGROUND AS WELL AS YOUR TRAINING IN THE FIELD
OF SEROLOGY AND DNA ANALYSIS?

A. I HAVE A BACHELOR OF SCIENCE DEGREE IN GENETIC
ENGINEERING FROM CEDAR CREST COLLEGE IN ALTOWN,
PENNSYLVANIA. PRIOR TO MY EMPLOYMENT WITH SLED I WAS
AS A FORENSIC DNA ANALYST WITH A PRIVATE DNA

DIRECT - CATHERINE LEISY BY SOL. SCOTT

255

1 LABORATORY IN MARYLAND FOR APPROXIMATELY FOUR
2 YEARS, AND I AM REQUIRED TO ATTEND ANNUAL TRAINING
3 TO MAINTAIN PROFICIENCY IN TESTS REGULARLY USED IN
4 DNA TESTING.

5 Q. HAVE YOU EVER BEEN QUALIFIED AS AN EXPERT IN
6 SEROLOGY AND DNA ANALYSIS?

7 A. YES, I HAVE.

8 Q. APPROXIMATELY HOW MANY TIMES?

9 A. IN THE STATE OF SOUTH CAROLINA FIVE TIMES, AND
10 OVERALL I'VE TESTIFIED APPROXIMATELY TWENTY TIMES
11 THROUGHOUT THE COUNTRY.

12 Q. OKAY.

13 SOLICITOR SCOTT: YOUR HONOR, AT
14 THIS TIME I'D OFFER MS. LEISY AS AN EXPERT IN THE FIELD
15 OF SEROLOGY AND DNA ANALYSIS.

16 THE COURT: ANY OBJECTION?

17 MS. FORD: NO OBJECTION, YOUR HONOR.

18 THE COURT: I FIND THAT SHE'S AN
19 EXPERT IN THE FIELD OF SEROLOGY AND DNA ANALYSIS.

20 Q. DID YOU RECEIVE A SEXUAL ASSAULT EVIDENCE
21 COLLECTION KIT ON Minor [REDACTED]?

22 A. YES, I DID.

23 Q. AND HOW WAS THIS KIT PACKAGED WHEN YOU RECEIVED
24 IT?

25 A. IT WAS PACKAGED WITHIN A HEAT SEALED POUCH THAT

DIRECT - CATHERINE LEISY BY SOL. SCOTT

256

1 WAS LABELED WITH THE INITIALS AND DATE OF WHEN IT
2 WAS SEALED.

3 Q. DID YOU HAVE THE OPPORTUNITY TO EXAMINE THE
4 CONTENTS OF THIS?

5 A. I DID.

6 Q. AND WHAT WERE THE RESULTS OF YOUR EXAMINATION?

7 A. THERE WERE NO SPERMATOZOA IDENTIFIED ON THE
8 VAGINAL AND ORAL SMEARS THAT WERE INCLUDED WITHIN
9 THE KIT. THERE WAS NO SEMEN IDENTIFIED ON THE
10 VAGINAL SWABS OR ON THE MISCELLANEOUS BODY FLUID
11 WHICH WAS IDENTIFIED AS TOILET TISSUE FROM A
12 GENITAL AREA. NO DNA PROFILE FOREIGN TO Minor
13 WAS DEVELOPED FROM THE FINGERNAIL
14 SCRAPINGS FROM MS. Minor N'S RIGHT OR LEFT HANDS,
15 AND NO HUMAN DNA WAS OBTAINED FROM POSSIBLE HAIR
16 COLLECTED IN THE PUBIC HAIR COMBINGS.

17 Q. I'D LIKE TO ASK YOU JUST A HYPOTHETICAL, MS.
18 LEISY, IF I WERE TO PUT MY FINGERS IN YOUR EYES
19 WOULD YOU EXPECT TO FIND YOUR DNA UNDERNEATH MY
20 FINGERNAILS?

21 A. IT WOULD BE POSSIBLE TO COLLECT DNA IN THAT
22 FASHION.

23 Q. OKAY. WHAT FACTORS MIGHT AFFECT WHETHER OR NOT WE
24 FOUND YOUR DNA UNDERNEATH MY FINGERNAILS?

25 A. THAT COULD BE AFFECTED BY WHETHER OR NOT AN

257

Q. SO, THERE COULD, WHEN YOU SAY YOU ANALYZED [Minor]
[REDACTED]'S, OR THE FINGERNAIL SCRAPINGS FROM [Minor]
[REDACTED], YOU'RE TELLING THIS JURY THAT THERE
COULD HAVE BEEN OTHER DNA PRESENT BUT IT COULD
HAVE BEEN MASKED BECAUSE IT WAS FROM ACTUALLY
[Minor] [REDACTED]'S FINGERNAILS? THAT IS A
POSSIBILITY, YES.

QUESTIONS.

THE COURT: CROSS-EXAM.

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CROSS - CATHERINE LEISY BY MS. FORD

258

CROSS-EXAMINATION OF CATHERINE LEISY

BY MS. FORD:

Q. GOOD MORNING.

A. GOOD MORNING.

Q. SO, YOU TESTED THE EVIDENCE KIT, CORRECT?

A. YES, I DID.

Q. AND YOU'VE DONE THAT LOTS OF TIMES, RIGHT?

A. CORRECT.

Q. SO, YOU FOUND NO SEMEN ON ANY OF THE SMEARS THAT YOU DID, RIGHT, OR THAT YOU EXAMINED?

A. CORRECT. NO, THERE WAS NO SEMEN ON THE VAGINAL SWABS OR THE MISCELLANEOUS BODY FLUID TISSUES.

Q. OKAY. AND OBVIOUSLY, DURING THE EXAM THERE MUST HAVE COMBED FOR PUBLIC HAIR, AND YOU FOUND NOTHING BELONGING TO ANYONE OTHER THAN **Minor**, IS THAT RIGHT?

A. ON THE PUBLIC HAIR COMBINGS THERE WAS ONE POSSIBLE HAIR. UPON TESTING THAT I WAS NOT ABLE TO OBTAIN ANY HUMAN DNA.

Q. NO HUMAN DNA. OKAY. LET'S TALK ABOUT THE FINGERNAIL SCRAPINGS. YOU TESTED BOTH FROM THE RIGHT AND LEFT HANDS, CORRECT?

A. THAT'S CORRECT.

Q. OKAY. AND YOU FOUND NO DNA THAT WAS NOT **Minor**'S DNA, CORRECT?

CROSS - CATHERINE LEISY BY MS. FORD

259

1 A. THAT'S CORRECT.

2 Q. AND YOU WOULD EXPECT IF SOMEONE HAD SCRAPED
3 SOMEONE OR HAD SOMEONE, HAD THEIR FINGERS IN
4 SOMEONE'S EYES THAT YOU COULD ANTICIPATE FINDING
5 DNA BELONGING TO SOMEONE ELSE, RIGHT?

6 A. IT'S A POSSIBILITY, YES.

7 Q. BUT IT WASN'T THERE HERE?

8 A. CORRECT. I HAVE NO INDICATION OF AN INDIVIDUAL
9 OTHER THAN **Minor** **[REDACTED]** ON THOSE FINGERNAIL
10 SCRAPINGS.

11 MS. FORD: THANK YOU. NO FURTHER
12 QUESTIONS.

13 SOLICITOR SCOTT: JUST ONE FOLLOW-UP
14 QUESTION.

15 THE COURT: YES, SIR.

16 (NOTE: Blank lines on this page do not indicate any
17 part of record has been omitted. Headers on testimony
18 pages and hard page breaks between testimony are now
19 required by the Court. See next ensuing page for
20 sequential continuation of record.)

REDIRECT - CATHERINE LEISY BY SOL. SCOTT

260

REDIRECT EXAMINATION OF CATHERINE LEISY

BY SOLICITOR SCOTT:

Q. WILL YOU EXPLAIN TO THE JURY, WHEN YOU SAY THE RESULTS OF YOUR EXAMINATION WAS THAT THERE WAS NO HUMAN DNA ON THE ONE HAIR THAT YOU FOUND?

A. WE, AFTER PERFORMING A DNA EXTRACTION ON AN ITEM AS I PERFORMED ON THE HAIR, WE RUN A TEST THAT MEASURES APPROXIMATELY HOW MUCH DNA WAS OBTAINED FROM THAT EXTRACTION. WHEN THAT TEST SHOWS THAT NO DNA WAS OBTAINED OUR STANDARD CONCLUSION FOR THAT IS NO HUMAN DNA BECAUSE THAT PARTICULAR TEST IS SPECIFIC TO HUMAN.

Q. OKAY. SO, YOU'RE NOT -- WHEN YOU SAY THERE WAS NO HUMAN DNA DETECTED YOU'RE NOT SAYING THAT IT WAS A NON-HUMAN - - -

MS. FORD: OBJECTION, HE'S LEADING HER.

THE COURT: ASK DIRECT QUESTIONS, PLEASE.

SOLICITOR SCOTT: I'M SORRY.

Q. COULD THE HAIR HAVE BEEN FROM SOMETHING OTHER THAN HUMAN?

A. IT IS POSSIBLE, WHEN WE EXAMINE HAIRS FROM PUBLIC HAIR COMBINGS OR FROM ANYWHERE ELSE WE DON'T MAKE THAT DISTINCTION NECESSARILY. IF IT'S POSSIBLE

REDIRECT - CATHERINE LEISY BY SOL. SCOTT

261

1 THAT THERE APPEARS TO BE ENOUGH SKIN CELLS ON THE
2 ROOT OF THE HAIR WE'LL GO AHEAD AND PROCESS IT,
3 AND THEN DETERMINING FROM THE TEST WHETHER OR NOT
4 HUMAN DNA WAS PRESENT.

5 SOLICITOR SCOTT: THAT'S ALL I HAVE.

6 THE COURT: RECROSS?

7 MS. FORD: NONE, YOUR HONOR.

8 THE COURT: THANK YOU, MA'AM, AND
9 YOU MAY BE EXCUSED IF YOU'D LIKE. THANK YOU FOR COMING.

10 WITNESS: THANK YOU, SIR.

11 THE COURT: CALL YOUR NEXT WITNESS,
12 PLEASE.

13 SOLICITOR JEFFRIES: MAY IT PLEASE
14 THE COURT, YOUR HONOR.

15 THE COURT: YES, SIR.

16 SOLICITOR JEFFRIES: THE STATE CALLS
17 ANTHONY THOMPSON.

18 THE COURT: COME AROUND, OFFICER
19 THOMPSON. PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE
20 YOUR RIGHT HAND.

21 (Whereupon, Anthony Tyrone Thompson
22 is duly sworn.)

23 THE COURT: THANK YOU, SIR, HAVE A
24 SEAT RIGHT THERE, AND STATE YOUR FULL NAME FOR US.

25 WITNESS: ANTHONY TYRONE THOMPSON.

1 THE COURT: THANK YOU.

2 ALRIGHT, COUNSELOR.

3 SOLICITOR JEFFRIES: THANK YOU, YOUR
4 HONOR.

5 (NOTE: Blank lines on this page do not indicate any
6 part of record has been omitted. Headers on testimony
7 pages and hard page breaks between testimony are now
8 required by the Court. See next ensuing page for
9 sequential continuation of record.)

DIRECT - ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

263

DIRECT EXAMINATION OF ANTHONY TYRONE THOMPSON

BY SOLICITOR JEFFRIES:

Q. INVESTIGATOR, OR NOW IT'S DEPUTY THOMPSON?

A. YES, IT IS.

Q. AND YOU'RE NOW WITH THE RICHLAND COUNTY SHERIFF'S
OFFICE?

A. YES, SIR.

Q. AND WHEN YOU WERE HERE IN ORANGEBURG WITH THE
SHERIFF'S OFFICE YOU WERE AN INVESTIGATOR?

A. I WAS.

Q. OKAY. AND LET ME ASK YOU, HOW LONG HAVE YOU BEEN
AT THE RICHLAND COUNTY SHERIFF'S OFFICE?

A. I'VE BEEN THERE TWO YEARS.

Q. AND IMMEDIATELY BEFORE THAT DID YOU WORK HERE IN
ORANGEBURG WITH THE SHERIFF'S OFFICE?

A. YES, I DID.

Q. AND WHEN YOU WERE WITH THE ORANGEBURG COUNTY
SHERIFF'S OFFICE YOU WERE AN INVESTIGATOR?

A. YES, I WAS.

Q. WHAT TYPE OF CRIMES PRIMARILY DID YOU INVESTIGATE
AS AN INVESTIGATOR IN ORANGEBURG?

A. I DEALT WITH SEX CRIMES, ALL SEX CRIMES, DEALING
WITH SEXUAL ASSAULTS, ANY SEXUAL ASSAULTS WITH
MINORS.

Q. OKAY. LET ME ASK YOU SPECIFICALLY IN AUGUST OF

DIRECT - ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES.

264

1 TWO THOUSAND AND FIVE WERE YOU WORKING AS A SEX
2 ASSAULT INVESTIGATOR?

3 A. YES, I WAS.

4 Q. AND WERE YOU INVOLVED IN AUGUST, TWO THOUSAND
5 FIVE, IN AN INVESTIGATION ALLEGING A SEXUAL
6 ASSAULT INVOLVING Minor [REDACTED]?

7 A. YES, I WAS.

8 Q. AND LET ME ASK YOU HOW YOU FIRST BECAME INVOLVED
9 IN THE INVESTIGATION?

10 A. I WAS NOTIFIED THE NIGHT OF THE ORIGINAL INCIDENT
11 REPORT BY CORPORAL ETHRIDGE.

12 Q. AND DID YOU GO OUT AND RESPOND TO THE INCIDENT
13 LOCATION THE NIGHT YOU WERE CALLED?

14 A. NO, I DIDN'T.

15 Q. OKAY. HOW DID YOU FOLLOW UP THE NEXT DAY?

16 A. I FOLLOWED UP THE NEXT DAY BY MAKING CONTACT WITH
17 THE, WELL, AT THAT TIME THE SUSPECT, MR. LINDY
18 JONES, AND HIS GIRLFRIEND, MS. SHARON ROBINSON.

19 Q. AND EVEN BEFORE THAT WERE YOU BRIEFED BY THE
20 DEPUTIES THAT RESPONDED AND WHO DID THE SORT OF
21 PRELIMINARY INVESTIGATION, DID THEY BRIEF YOU ON
22 WHAT WAS GOING ON?

23 A. I WAS BRIEF BY CORPORAL ETHRIDGE, YES.

24 Q. OKAY. AND YOU SAID YOU SPOKE WITH THE SUSPECT THE
25 FOLLOWING DAY?

DIRECT - ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

265

1 A. YES, I DID.

2 Q. AND THAT WAS LINDY JONES?

3 A. YES, IT WAS.

4 Q. AND AS THE ASSIGNED INVESTIGATOR WOULD YOU HAVE
5 BEEN, WOULD YOU HAVE RECEIVED ANY EVIDENCE THAT
6 WAS RECOVERED AT SOME POINT DURING THE
7 INVESTIGATION?

8 A. YES, I WAS.

9 Q. OKAY. AND THERE'S BEEN SOME EVIDENCE ABOUT SOME
10 SHEETS THAT WERE TAKEN, AND THERE'S BEEN SOME
11 EVIDENCE ABOUT A RAPE PROTOCOL KIT. WOULD AT SOME
12 POINT THAT HAVE COME INTO YOUR POSSESSION?

13 A. THE SHEETS, NO, THE RAPE PROTOCOL, YES.

14 Q. OKAY. AND THOSE SHEETS WOULD HAVE BEEN SENT
15 WHERE?

16 A. THEY WOULD HAVE BEEN SENT FROM MY EVIDENCE ROOM TO
17 SLED.

18 Q. OKAY. AND THAT RAPE PROTOCOL KIT, WOULD THAT HAVE
19 BEEN SENT TO SLED?

20 A. I PERSONALLY PICKED THE RAPE KIT UP FROM
21 CHARLESTON AND PUT IT INTO OUR EVIDENCE AND THEN
22 IT WAS SUBSEQUENTLY TRANSFERRED TO SLED.

23 Q. OKAY. AND SPEAKING IN GENERAL ABOUT, YOU KNOW,
24 EVIDENCE SEIZED AT AN INCIDENT LOCATION IN A
25 CRIMINAL SEXUAL CONDUCT CASE, ARE YOU ALWAYS ABLE

DIRECT - ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

266

1 TO OBTAIN DNA EVIDENCE?

2 A. NO, SIR.

3 MR. MELLARD: OBJECTION. HE'S NOT AN
4 EXPERT AS TO WHETHER THEY CAN OBTAIN DNA OR NOT. ALL HE
5 KNOWS IS WHAT IS REPORTED TO HIM, HE DOESN'T KNOW HOW
6 IT'S OBTAINED. HE'S JUST, HE'S A FACT WITNESS NOT AN
7 EXPERT WITNESS.

8 THE COURT: WELL, LAY SOME FOUNDATION
9 IF YOU NEED TO DO THAT.

10 SOLICITOR JEFFRIES: WELL, YOUR
11 HONOR, I ASKED HIM OF HIS EXPERIENCE.

12 THE COURT: OTHERWISE, I SUSTAIN THE
13 OBJECTION.

14 Q. IN YOUR EXPERIENCE AS A CRIMINAL SEXUAL ASSAULT
15 INVESTIGATOR ARE YOU ALWAYS ABLE TO OBTAIN DNA IN
16 THE CASES YOU INVESTIGATE?

17 A. NO, SIR.

18 THE COURT: THAT WOULD BE CASES HE
19 INVESTIGATES, I THINK HE CAN ANSWER THAT QUESTION.

20 Q. AND IS SEMEN ALWAYS FOUND IN THE CRIMINAL SEXUAL
21 CONDUCT INVESTIGATIONS YOU'VE DONE?

22 A. NO, SIR.

23 Q. AND ARE YOU -- STRIKE THAT QUESTION. NOW, WHEN
24 YOU FIRST BECAME INVOLVED AND WAS ASSIGNED TO THE
25 INVESTIGATION HAD **Minor** [REDACTED], THE VICTIM,

DIRECT - ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

267

1 ALREADY BEEN ASSISTED BY OTHER SHERIFF'S OFFICE
2 PERSONNEL?

3 A. YES, SIR, SHE WAS TRANSPORTED BY JEANIA JEFFCOAT,
4 ONE OF OUR VICTIM'S ADVOCATES, TO NORTH CHARLESTON
5 THAT NIGHT OF THE INCIDENT.

6 Q. AND WHAT WAS SHE GOING DOWN TO NORTH CHARLESTON
7 FOR?

8 A. TO HAVE THE RAPE PROTOCOL PERFORMED.

9 Q. AND WOULD SHE HAVE BEEN TREATED THAT SAME NIGHT AS
10 WELL?

11 A. YES, SIR.

12 Q. AND THAT WOULD HAVE BEEN AT THE SAME PLACE AS THE
13 RAPE PROTOCOL?

14 A. YES, SIR.

15 Q. AND SO, YOU DIDN'T SPEAK THAT FIRST DAY TO THE
16 VICTIM, [Minor], IS THAT CORRECT?

17 A. I SPOKE WITH HER THE DAY AFTER.

18 Q. OKAY. AND BEFORE YOU SPOKE TO [Minor] HAD
19 SHE ALREADY SPOKEN TO OTHER SHERIFF'S OFFICE
20 PERSONNEL?

21 A. YES.

22 Q. AND YOU, YOURSELF, INTERVIEWED HER AT A LATER
23 TIME?

24 A. I DID.

25 Q. WOULD IT HAVE BEEN A TIME WHILE THE INCIDENT WAS

DIRECT - ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

268

1 STILL FRESH IN HER MIND?

2 A. YES, SIR.

3 Q. AND WE'LL GET BACK TO THAT SHORTLY. WHEN WAS THIS
4 INCIDENT SUSPECTED TO HAVE HAPPENED?

5 A. ON THE NIGHT OF AUGUST FIFTEENTH, TWO THOUSAND
6 FIVE.

7 Q. AND WHERE WAS IT SUSPECTED TO HAVE HAPPENED?

8 A. [REDACTED] LAQUINTA DRIVE HERE IN ORANGEBURG
9 COUNTY.

10 Q. OKAY. AND LET ME KIND OF TAKE YOU BACK, WHAT DID
11 YOU DO WHEN YOU WERE FIRST ASSIGNED, THAT
12 FOLLOWING DAY?

13 A. THAT FOLLOWING MORNING ON AUGUST THE SIXTEENTH,
14 THE FIRST THING I DID WAS CONTACT THE SUSPECT.

15 Q. HOW DID YOU CONTACT HIM?

16 A. BY TELEPHONE.

17 Q. OKAY. AND AT THAT POINT IN TIME WAS HE ALREADY
18 AWARE OF WHAT HE WAS ACCUSED OF?

19 A. YES, SIR, HE WAS.

20 Q. AND DID YOU HAVE AN OPPORTUNITY TO SPEAK TO HIM IN
21 PERSON THAT DAY AS WELL?

22 A. I DID.

23 Q. AND LET ME ASK YOU, WHEN YOU'RE GIVEN PRELIMINARY
24 INFORMATION AND YOU'RE ASSIGNED TO THE
25 INVESTIGATION, WERE YOU AT SOME POINT MADE AWARE

DIRECT - ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

269

1 OF MR. LINDY JONES'S AGE?

2 A. YES, I WAS.

3 Q. AND WHAT WAS HIS AGE?

4 A. HE WAS TWENTY-NINE AT THE TIME.

5 Q. AND WERE YOU AWARE OF MS. Minor [REDACTED] S AGE?

6 A. YES, SIR.

7 Q. WHAT WAS HER AGE?

8 A. IT WAS FOURTEEN AT THE TIME, EXCUSE ME.

9 Q. DO YOU NEED WATER OR ANYTHING?

10 A. I'M GOOD.

11 Q. AND YOU SAID YOU MET WITH THE DEFENDANT, LINDY
12 JONES, ON AUGUST SIXTEENTH, TWO THOUSAND FIVE?

13 A. YES, SIR.

14 Q. WHERE WOULD THAT HAVE BEEN?

15 A. THAT WOULD HAVE BEEN AT THE ORANGEBURG COUNTY LAW
16 COMPLEX.

17 Q. AND YOU TESTIFIED HE HAD ALREADY BEEN TOLD OF THE
18 ACCUSATION?

19 A. YES, SIR.

20 Q. WAS HE UNDER ARREST WHEN HE CAME IN TO TALK TO YOU
21 ON AUGUST SIXTEENTH?

22 A. NO, HE WASN'T.

23 Q. SO, THIS WAS PART OF YOUR CONTINUING
24 INVESTIGATION?

25 A. YES, IT WAS.

DIRECT - ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

270

1 Q. AND WHEN YOU INTERVIEWED MR. JONES WHO WAS PRESENT
2 DURING THAT INTERVIEW?

3 A. IT WAS JUST THE TWO OF US IN MY OFFICE WHEN I
4 INTERVIEWED HIM.

5 Q. OKAY. AND ALTHOUGH HE WASN'T UNDER ARREST WHAT,
6 IF ANYTHING, DID YOU DO REGARDING HIS
7 CONSTITUTIONAL RIGHTS BEFORE YOU SPOKE TO HIM?

8 A. I ADVISED HIM OF HIS MIRANDA RIGHTS ORALLY AND IN
9 WRITING.

10 Q. PLEASE TELL THIS JURY WHAT YOU ADVISE HIM OF AS IT
11 PERTAINS TO HIS MIRANDA RIGHTS?

12 A. OKAY, I ADVISED HIM THAT HE HAD THE RIGHT TO
13 REMAIN SILENT. I ALSO ADVISED HIM THAT THE HAD
14 THE RIGHT TO HAVE AN ATTORNEY PRESENT. I ADVISED
15 HIM THAT HE HAD THE RIGHT TO HAVE AN ATTORNEY
16 APPOINTED IF HE COULDN'T AFFORD ONE. AND I
17 ADVISED HIM THAT HE HAD THE RIGHT TO STOP
18 ANSWERING ANY QUESTIONS AT ANYTIME. AND MY
19 FOLLOWUP QUESTION AFTER I READ THOSE FOUR TO HIM
20 WAS, DID HE UNDERSTAND HIS RIGHTS.

21 Q. DID HE SEEM TO UNDERSTAND THOSE RIGHTS?

22 A. YES, SIR.

23 Q. WHAT DID YOU TELL HIM YOU WANTED TO TALK TO HIM
24 ABOUT?

25 A. I WANTED TO TALK WITH HIM ABOUT THE ALLEGATIONS OF

DIRECT - ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

271

1 SEXUAL ASSAULT INVOLVING Minor [REDACTED], HIS
2 QUOTE, UNQUOTE, NIECE.

3 Q. AND WHAT, IF ANY, DETAILS DID YOU GIVE HIM ABOUT
4 WHAT HER ACCUSATION WAS?

5 A. I DIDN'T GIVE HIM ANY.

6 Q. WHY IS THAT?

7 A. IT'S JUST COMMON PRACTICE. ONCE I SPEAK WITH THE
8 VICTIM I GET HIS OR HER SIDE OF THINGS, AND THEN
9 WHEN I SPEAK WITH A SUSPECT I LIKE TO GET THEIR
10 SIDE OF THINGS, AND THEN COLLECTIVELY PUT THEM
11 TOGETHER.

12 Q. OKAY. AND AFTER ORALLY AND IN WRITING ADVISING
13 HIM OF HIS MIRANDA RIGHTS DID HE WAIVE THOSE
14 RIGHTS AND AGREE TO TALK TO YOU?

15 A. YES, HE DID.

16 Q. AND THIS ALL TOOK PLACE AT THE LAW COMPLEX - - -

17 A. YES, SIR.

18 Q. --- ON AUGUST SIXTEENTH, TWO THOUSAND FIVE?

19 A. YES, SIR, IT DID.

20 Q. NOW, YOU TESTIFIED THAT ONE OF THE RIGHTS YOU
21 ADVISED MR. JONES OF WAS HIS RIGHT TO HAVE AN
22 ATTORNEY?

23 A. YES, SIR.

24 Q. DID HE AT ANY POINT ASK TO HAVE AN ATTORNEY DURING
25 THAT INTERVIEW?

DIRECT - ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

272

1 A. NO, HE DIDN'T.

2 Q. DID HE EVER WHILE HE WAS GIVING YOU AN ACCOUNT OF
3 WHAT HAD HAPPENED, AND IN HIS WRITTEN STATEMENT,
4 EVER STOP AND INDICATE HE WANTED AN ATTORNEY?

5 A. NO, SIR.

6 Q. DID HE INDICATE HE WANTED TO GIVE YOU AN ACCOUNT,
7 HIS SIDE OF THE STORY?

8 A. YES, SIR.

9 Q. AND DID HE REDUCE THAT STATEMENT TO WRITING?

10 A. YES, HE DID.

11 Q. AND YOU INDICATED THAT YOU GAVE HIM BOTH HIS
12 ADVICE OF CONSTITUTIONAL RIGHTS, MIRANDA RIGHTS,
13 IN WRITING AND ORALLY?

14 A. YES, I DID.

15 Q. DID YOU GIVE HIM ANY DOCUMENT, TO DOCUMENT THAT HE
16 HAD BEEN ADVISED OF HIS MIRANDA RIGHTS?

17 A. I DID. WE HAVE A STANDARDIZED MIRANDA FORM THAT
18 WE USE AT THE SHERIFF'S DEPARTMENT. I USED THAT
19 FOR HIS ADVISEMENT OF RIGHTS AND HIS WAIVER OF
20 RIGHTS. ON THE WAIVER OF RIGHTS PORTIONS IT'S
21 JUST A, TWO I THINK, TWO OR THREE SENTENCE
22 PARAGRAPH. WHAT I DID, A COMMON PRACTICE OF MINE,
23 WITH NO OTHER DEPUTY, OR EXCUSE ME, NO OTHER
24 INVESTIGATOR WOULD DO, THE FIRST WORD AND THE LAST
25 WORD IN THAT PARAGRAPH I WOULD HAVE THE SUSPECT

DIRECT - ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

273

1 INITIAL BEFORE AND AFTER. AFTER I WOULD READ IT
2 TO HIM OR HER I WOULD ALLOW THEM TO READ IT, AND I
3 WOULD HAVE THEM INITIAL, LIKE I SAY, BEFORE THE
4 FIRST WORD AND AFTER THE LAST WORD.

5 Q. WHY DO YOU DO THAT?

6 A. IT'S JUST OUT OF COMMON PRACTICE, JUST TO MAKE
7 SURE THAT THEY DO ACKNOWLEDGE THAT THEY DID READ
8 IT AND THAT I DID EXPLAIN IT TO HIM. AND THEN I
9 WOULD HAVE HIM SIGN THAT PORTION OF THE FORM.

10 Q. OKAY. LET ME SHOW YOU WHAT'S BEEN LABELED AS
11 STATE'S EXHIBIT NUMBER ONE, AND LET ME ASK YOU IF
12 YOU RECOGNIZE THAT DOCUMENT?

13 A. YES, I DO.

14 Q. WHAT DO YOU RECOGNIZE IT AS?

15 A. THIS IS THE MIRANDA FORM FROM MR. LINDY JONES IN
16 THIS INVESTIGATION.

17 Q. AND DOES IT FAIR AND ACCURATELY, IS IT THE SAME
18 FORM YOU GAVE HIM BACK ON AUGUST FIFTEENTH --
19 AUGUST SIXTEENTH, TWO THOUSAND FIVE?

20 A. YES, IT IS.

21 SOLICITOR JEFFRIES: OKAY, AT THIS
22 TIME, YOUR HONOR, I'D ASK TO MOVE STATE'S EXHIBIT NUMBER
23 ONE INTO EVIDENCE.

24 MR. MELLARD: NO OBJECTION.

25 COURT REPORTER: WOULD YOU HAND IT

DIRECT - ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

274

1 TO ME. DID I TAKE IT OFF?

2 MR. MELLARD: SUBJECT TO MY PREVIOUS
3 OBJECTION.

4 THE COURT: ALRIGHT, SUBJECT TO YOUR
5 PREVIOUS OBJECTIONS WHICH WERE OVERRULED, IT'S ADMITTED.

6 COURT REPORTER: STATE'S ONE.

7 SOLICITOR JEFFRIES: STATE'S EXHIBIT
8 NUMBER ONE.

9 (State's Exhibit Number One
10 marked and filed.)

11 Q. NOW, AS TO THE ACTUAL WRITTEN STATEMENT HE GAVE
12 YOU, WHAT TIME OF THE DAY DID HE PROVIDE THAT?

13 A. APPROXIMATELY NINE:SIXTEEN THAT MORNING.

14 Q. WHO PHYSICALLY WROTE THE STATEMENT HE PROVIDED?

15 A. MR. LINDY JONES.

16 Q. AND TO YOUR KNOWLEDGE WAS THAT STATEMENT GIVEN
17 FREELY AND VOLUNTARILY?

18 A. YES, SIR.

19 Q. LET ME SHOW YOU STATE'S EXHIBIT NUMBER TWO AND ASK
20 YOU - - -

21 MR. MELLARD: LET ME SEE THAT FIRST.

22 Q. --- ASK YOU IF YOU RECOGNIZE STATE'S EXHIBIT
23 NUMBER TWO?

24 A. YES, I DO.

25 Q. WHAT DO YOU RECOGNIZE THAT AS?

275

A. YES.

A. YES, SIR.

DIRECT - ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

276

1 Q. WHAT TIME WAS THAT?

2 A. NINE:SIXTEEN.

3 Q. AND WHAT TYPE OF FORMAT IS THE STATEMENT IN, IS IT
4 QUESTION AND ANSWERING, OR IS IT JUST HIS
5 NARRATIVE OF WHAT HAPPENED?

6 A. IT'S HIS NARRATIVE OF WHAT HAPPENED.

7 Q. OKAY. ALRIGHT, DID YOU WRITE ANY PART OF THE
8 STATEMENT?

9 A. NO, I DIDN'T.

10 Q. HOW MANY PAGES IS THE STATEMENT?

11 A. IT'S THREE.

12 SOLICITOR JEFFRIES: YOUR HONOR, AT
13 THIS TIME I'D ASK TO PUBLISH THE STATEMENT.

14 THE COURT: ALRIGHT.

15 Q. INVESTIGATOR THOMPSON, I'D ASK YOU TO READ THAT
16 STATEMENT TO THE JURY THAT THE DEFENDANT GAVE YOU
17 BACK ON AUGUST SIXTEENTH, TWO THOUSAND FIVE.

18 A. OKAY. THIS STATES, "ON AUGUST THE FIFTEENTH, TWO
19 THOUSAND AND FIVE, I WAS ASLEEP IN MY ROOM RESTING
20 FOR WORK. I WAS AWOKEN ABOUT NINE:FORTY-FIVE, GIVE
21 OR TAKE A FEW MINUTES, BY SOMEBODY PLAYING WITH MY
22 PRIVATE AREA AT THAT TIME. I DIDN'T KNOW WHO IT
23 WAS. I ASSUMED THAT IT WAS MY GIRLFRIEND, SHARON,
24 BEING THAT SHE WAS THE ONLY WOMAN ALLOWED IN OUR
25 BEDROOM WHILE IN THERE. THE FEMALE GOT ON TOP OF

DIRECT - ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

277

1 ME AS IF SHE WAS TRYING TO RIDE ME. I PROCEEDED TO
2 ENGAGE IN SEXUAL INTERCOURSE WITH THE FEMALE,
3 ASSUMING IT WAS MY GIRLFRIEND, SHARON. WHEN I
4 ATTEMPTED TO PUT MY PENIS IN IT WOULDN'T FIT. I
5 ASKED HER, WHAT'S WRONG WITH YOU? THE FEMALE
6 LAUGHED, AND WHEN SHE DID I RECOGNIZED HER VOICE
7 AND I IMMEDIATELY PUSHED HER OFF OF ME AND TURNED
8 THE LIGHTS ON. WHEN I DID THIS I NOTICED IT WAS
9 MY NIECE, Minor I GOT REALLY UPSET AND TOLD HER
10 TO GET OUT OF MY ROOM. SHE THEN ASKED ME WAS I
11 GOING TO HAVE SEX WITH HER. I SAID, HELL, NO, AND
12 GET OUT. SHE LEFT AND CAME BACK IN AND ASKED ME
13 WAS I GOING TO TELL HER MOTHER. I SAID, YES. I
14 THEN TURNED ON THE T.V. TO CHECK THE TIME, IT WAS
15 NINE:FORTY-SEVEN. I QUICKLY GOT DRESSED AND RUSHED
16 OFF TO WORK, BEING AS I HAD TO BE THERE AT TEN. I
17 WENT TO WORK AND WORKED UNTIL A LITTLE AFTER
18 TWELVE. THAT'S WHEN THE SECURITY GUARD APPROACHED
19 ME AND ASKED ME WAS I LINDY. I SAID, YEAH. HE
20 SAID, IT'S A FEMALE OUTSIDE AT THE GUARD SHACK. I
21 WENT OUTSIDE AND IT WAS MY SISTER. SHE SAID THAT
22 THE SHERIFF WAS AT MY HOUSE. I LEFT WORK AND WENT
23 TO TALK TO THE SHERIFF."

24 Q. AND WAS THAT STATEMENT FREELY AND VOLUNTARILY
25 GIVEN BY THE DEFENDANT, LINDY JONES?

DIRECT - ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

278

1 A. YES, IT WAS.

2 Q. NOW, BEFORE SPEAKING TO THE DEFENDANT, MR. JONES,
3 AND TAKING HIS STATEMENT, HE WAS ALREADY AWARE OF
4 WHAT THE ALLEGATION WAS, WHAT HE WAS ACCUSED OF?

5 A. YES, HE WAS.

6 Q. AND ISN'T IT TRUE THAT HE CAME HOME THE NIGHT OF
7 THE INCIDENT WHEN HE WAS CONTACTED BY LAW
8 ENFORCEMENT?

9 A. YES, HE DID.

10 Q. SO, HE KNEW WHEN HE CAME IN WHAT SHE HAD SAID HE
11 DID?

12 A. EXACTLY, YES, SIR.

13 Q. NOW, YOU TESTIFIED THAT IN HIS STATEMENT HE
14 INDICATES HE TOLD HIS NIECE, AS HE CALLED HER, HE
15 WAS GOING TO TELL HER MOTHER?

16 A. YES.

17 Q. AND DID HE TELL ANYONE WHAT HAPPENED AFTER IT
18 HAPPENED, TO YOUR KNOWLEDGE?

19 A. NOT TO MY KNOWLEDGE, NO.

20 Q. HE WENT TO WORK?

21 A. YES, HE DID.

22 Q. AND WHAT HAPPENED THAT CAUSED HIM TO LEAVE WORK?

23 A. HE WAS APPROACHED BY THE SECURITY GUARD, AND ASKED
24 HIM WAS HE LINDY, AND TOLD HIM IT WAS A FEMALE AT
25 THE GATE.

DIRECT - ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

279

1 MR. MELLARD: OBJECTION, THAT CALLS
2 FOR HEARSAY.

3 SOLICITOR JEFFRIES: IT'S ACCORDING
4 TO HIS STATEMENT, YOUR HONOR.

5 THE COURT: WHAT WAS THE QUESTION?

6 SOLICITOR JEFFRIES: THE QUESTION
7 WAS, WHAT CAUSED HIM TO LEAVE WORK AND COME HOME
8 ACCORDING TO HIS STATEMENT?

9 THE COURT: WHAT CAUSED WHAT?

10 SOLICITOR JEFFRIES: WHAT CAUSED THE
11 DEFENDANT TO LEAVE WORK AND COME HOME, ACCORDING TO HIS
12 STATEMENT?

13 THE COURT: WELL, IF THERE'S ANY
14 STATEMENT HE DOESN'T NEED TO ANSWER THE QUESTION.

15 SOLICITOR JEFFRIES: THANK YOU, YOUR
16 HONOR.

17 Q. AND WAS MR. JONES, WHEN HE WAS EVENTUALLY BOOKED
18 INTO THE JAIL, WHAT DATE OF BIRTH WAS USED?

19 A. [REDACTED], NINETEEN SEVENTY-SIX.

20 Q. AND WHAT AGE WOULD THAT HAVE MADE HIM?

21 A. TWENTY-NINE.

22 Q. NOW, WHO WAS THE INDIVIDUAL THAT ORIGINALLY CALLED
23 THE SHERIFF'S OFFICE TO MAKE A COMPLAINT ABOUT
24 THIS INCIDENT?

25 MR. MELLARD: OBJECTION, HE WOULDN'T

DIRECT - ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

280

1 KNOW THAT. IT'S HEARSAY.

2 SOLICITOR JEFFRIES: YOUR HONOR, HE
3 WOULD KNOW FOR THIS INVESTIGATION.

4 THE COURT: WELL, IF HE'S THE CASE
5 OFFICER HE WOULD KNOW WHO MADE THE CALL, WE'RE NOT -- HE
6 CAN ANSWER THAT QUESTION.

7 A. IT WAS MS. HEATHER FALCO, AND IT'S NOTED ON THE
8 ORIGINAL INCIDENT REPORT AS WELL.

9 Q. MS. HEATHER FALCO?

10 A. YES, IT WAS.

11 Q. WOULD THAT HAVE BEEN NOW MS. HEATHER HOOK WHO
12 TESTIFIED EARLIER?

13 A. YES, SIR.

14 Q. WHO WAS SHE IN RELATIONSHIP TO THE VICTIM?

15 A. SHE WAS A FORMER TEACHER AND A CURRENT MENTOR OF
16 MS. Minor [REDACTED].

17 Q. OKAY. AND IS SHE THE INDIVIDUAL THAT THIS
18 DISCLOSURE WAS ORIGINALLY MADE TO?

19 A. YES, SIR.

20 Q. DID YOU HAVE AN OPPORTUNITY TO INTERVIEW HER?

21 A. YES, I DID.

22 Q. AND WHEN WAS THAT?

23 A. THAT WAS ON AUGUST THE SEVENTEENTH.

24 Q. AND WHERE WAS THAT?

25 A. THAT WAS AT HER APARTMENT IN COLUMBIA ON ST.

DIRECT - ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

281

1 ANDREWS ROAD.

2 Q. AND WAS SHE ABLE TO CONFIRM THE TIME AND PLACE
3 THIS INCIDENT HAPPENED?

4 A. YES, SHE WAS.

5 Q. CONSISTENT WITH THE DEFENDANT, EVEN?

6 A. YES, SHE WAS, AND IT WAS CONSISTENT.

7 Q. THAT IT TOOK PLACE AT HIS HOME?

8 A. SHE STATED HER AUNT'S HOME, **Minor** S
9 AUNT'S HOME.

10 Q. OKAY. AND IS IT YOUR UNDERSTANDING THAT THAT WAS
11 THE SAME HOME THAT THE DEFENDANT LIVED IN?

12 MR. MELLARD: YOUR HONOR, THIS IS
13 HEARSAY, IT'S A STATEMENT FROM FALCO TO HIM.

14 SOLICITOR JEFFRIES: I'LL MOVE ON,
15 YOUR HONOR.

16 THE COURT: ALRIGHT, I SUSTAIN THE
17 OBJECTION.

18 SOLICITOR JEFFRIES: THANK YOU, YOUR
19 HONOR.

20 Q. NOW, DON'T TELL ME WHAT SHE SAID, OBVIOUSLY, ABOUT
21 WHAT **Minor** TOLD HER, BUT THIS ADDRESS AT
22 **LAQUINTA STREET**, IS THAT HERE IN
23 ORANGEBURG?

24 A. YES, IT IS.

25 SOLICITOR JEFFRIES: I BEG THE

DIRECT - ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

282

1 COURT'S INDULGENCE.

2 Q. DID YOU ALSO HAVE THE OPPORTUNITY TO INTERVIEW
3 Minor [REDACTED]?

4 A. YES, I DID.

5 Q. AND DID SHE, DID SHE ALSO TELL YOU WHAT SHE TOLD
6 THE OTHER LAW ENFORCEMENT OFFICERS PREVIOUS TO
7 THAT?

8 A. YES, SHE DID.

9 Q. OKAY. NOW, YOU INDICATED EARLIER THAT SHE WAS
10 TAKEN THE NIGHT OF THE INCIDENT DOWN TO NORTH
11 CHARLESTON FOR A FORENSIC MEDICAL EXAM. DID YOU
12 HAVE AN OPPORTUNITY TO FOLLOW UP WITH THE DOCTOR
13 THAT DID THAT EXAM AND REVIEW HER REPORT?

14 A. YES, I DID.

15 Q. AND THAT WAS DR. GIBBS?

16 A. IT WAS.

17 Q. WHAT, IF ANY OTHER, PROFESSIONALS WOULD Minor [REDACTED]
18 [REDACTED] HAVE BEEN REFERRED TO IN REFERENCE TO
19 THIS CASE?

20 A. SHE WAS REFERRED TO THE DICKERSON CENTER AS WELL
21 AND INTERVIEWED BY DR. REYES.

22 Q. OKAY. AND THAT WAS DR. REYES WHO TESTIFIED
23 EARLIER YESTERDAY?

24 A. YES.

25 Q. DID YOU ALSO DO YOUR INVESTIGATION FOLLOWUP WITH

DIRECT - ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

283

1 DR. REYES AND REVIEW HER REPORT?

2 A. YES, I DID.

3 SOLICITOR JEFFRIES: I BEG THE
4 COURT'S INDULGENCE.

5 Q. SO, AFTER YOU RECEIVED THE DEFENDANT'S STATEMENT
6 FIRST THEN YOU INTERVIEWED THE VICTIM, IS THAT
7 CORRECT?

8 A. THAT'S CORRECT.

9 Q. AND ALSO INTERVIEWED MS. FALCO HOOK?

10 A. THAT'S CORRECT.

11 Q. AND THEN YOU ALSO RECEIVE A SEXUAL ASSAULT EXAM?

12 A. THAT'S CORRECT.

13 Q. AT THAT POINT DID YOU HAVE ANY QUESTION ABOUT THE
14 IDENTITY OF THE PERPETRATOR AFTER THOSE
15 INTERVIEWS?

16 MR. MELLARD: OBJECTION. MAY WE
17 APPROACH?

18 THE COURT: YES, SIR.

19 (Whereupon, a bench conference
20 is had out of the hearing of
21 the jury and court reporter.)

22 Q. AFTER DOING THOSE INTERVIEWS, THE DEFENDANT'S
23 INTERVIEW, THE VICTIM'S INTERVIEW, AND AFTER
24 GETTING THE MEDICAL EXAM, WHAT IF ANYTHING DID YOU
25 DO ON AUGUST TWENTY-THIRD, TWO THOUSAND FIVE?

DIRECT - ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

284

1 A. I ARRESTED LINDY LAMONT JONES.

2 Q. WHAT WAS HE CHARGED WITH?

3 A. HE WAS CHARGED WITH LEWD ACTION UPON A MINOR AND
4 CRIMINAL SEXUAL CONDUCT, SECOND DEGREE, WITH A
5 MINOR.

6 Q. AND AFTER YOU ARRESTED HIM, IF I'M CORRECT, YOU
7 THEN RECEIVED THE FORENSIC INTERVIEW FROM DR.
8 REYES, IS THAT CORRECT?

9 A. THAT'S CORRECT.

10 Q. AND AFTER RECEIVING THAT INTERVIEW REPORT DID YOU
11 HAVE ANY HESITATION ABOUT HAVING CHARGED THE
12 DEFENDANT WITH THOSE TWO - - -

13 MR. MELLARD: OBJECTION.

14 THE COURT: ON WHAT GROUNDS?

15 MR. MELLARD: THE GROUNDS WE JUST
16 TALKED ABOUT IN FRONT OF YOU. I CAN PUT IT ON THE
17 RECORD IF THE COURT WOULD LIKE.

18 THE COURT: ALRIGHT, LADIES AND
19 GENTLEMEN, HOW ABOUT STEP OUT TO THE JURY ROOM A FEW
20 MINUTES. PLEASE DO NOT TALK ABOUT THE CASE.

21 (Whereupon, the jury retires
22 to the jury room and the following
23 takes place out of the presence
24 of the jury.)

25 THE COURT: ALRIGHT, SIR.

DIRECT - ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

285

1 MR. MELLARD: YES, SIR, I MEAN, WHAT
2 WE'VE GOT HERE IS A SITUATION WHERE THEY'RE ASKING HIM
3 CERTAIN FACTS, DID YOU DO THIS, DID YOU DO THIS, DID YOU
4 DO THIS? AND NOW THEY'RE STARTING TO GET HIM TO GIVE
5 OPINIONS, DID YOU HAVE ANY HESITATION WHATSOEVER IN
6 DOING THIS? DID YOU, YOU KNOW, WE TALKED ABOUT THE
7 PERPETRATOR AT THE BENCH. HE HAS TESTIFIED AS TO THE
8 FACTS, BUT NOW THEY'RE TAKING THOSE FACTS AND THEY'RE
9 WANTING HIM TO DRAW A CONCLUSION BASED ON THOSE FACTS.
10 AND HE'S NOT AN EXPERT IN DRAWING A CONCLUSION, HE'S A
11 FACT WITNESS. AND SO, TO THE EXTENT THAT THEY'RE TRYING
12 TO MAKE HIM AN EXPERT, HE AIN'T AN EXPERT. SO, WE WOULD
13 JUST ASK THAT THEY LIMIT IT TO FACTS, NOT WHAT'S IN HIS
14 MIND, NOT HIS CONCLUSIONS, NOT HIS OPINIONS. THAT'S MY
15 OBJECTION.

16 THE COURT: YES, SIR?

17 SOLICITOR JEFFRIES: I'M DONE, YOUR
18 HONOR.

19 THE COURT: SO, YOU'RE NOT GOING TO
20 ASK HIM THE QUESTION?

21 SOLICITOR JEFFRIES: NO. WHEN THEY
22 COME BACK I'M JUST GOING TO TURN HIM OVER TO THEM.

23 THE COURT: ALRIGHT, I SUSTAIN THE
24 OBJECTION.

25 BRING THE JURY BACK. I DOUBT IF

DIRECT - ANTHONY TYRONE THOMPSON
BY SOL. JEFFRIES

286

1 WE'RE GOING TO GET THEM BACK THIS QUICK. LET ME SEE,
2 HOW MANY MORE WITNESSES HAVE Y'ALL GOT?

3 SOLICITOR SCOTT: THIS IS IT.

4 THE COURT: THIS IS THE LAST ONE?

5 BAILIFF: THEY'RE READY, YOUR HONOR.

6 THE COURT: YES, MA'AM, BRING THEM
7 IN.

8 (Whereupon, the jury enters
9 the courtroom and the following
10 takes place in the presence
11 of the jury.)

12 THE COURT: ALRIGHT, YOU MAY
13 CONTINUE.

14 SOLICITOR JEFFRIES: I DON'T HAVE
15 ANY FURTHER QUESTIONS FOR YOU. PLEASE ANSWER ANY
16 QUESTIONS THE DEFENSE MIGHT HAVE. THANK YOU VERY MUCH.

17 THE COURT: ALRIGHT. CROSS-EXAM.

18 MR. MELLARD: WE HAVE NO QUESTIONS,
19 YOUR HONOR.

20 THE COURT: THANK YOU, SIR, YOU CAN
21 STEP DOWN.

22 YOU MAY CALL YOUR NEXT WITNESS.

23 SOLICITOR SCOTT: YOUR HONOR, AT
24 THIS TIME THE STATE RESTS.

25 THE COURT: ALRIGHT, LADIES AND

287.

1 GENTLEMEN, THE STATE HAS RESTED. THAT MEANS THEY'VE,
2 OFFERED ALL THE TESTIMONY AND EVIDENCE THEY'RE GOING TO
3 OFFER AT THIS TIME, SO, WE'RE GOING TO TAKE A LITTLE
4 BREAK. YOU CAN GO ON BACK TO YOUR JURY ROOM. PLEASE DO
5 NOT TALK ABOUT THE CASE, WE HAVE A COUPLE OF LEGAL
6 MATTERS WE NEED TO TAKE UP BEFORE WE PROCEED FURTHER
7 WITH THE CASE. SO, PLEASE RETIRE TO THE JURY ROOM,
8 PLEASE DO NOT TALK ABOUT THE CASE. WE'LL TAKE OUR
9 MORNING BREAK AT THIS TIME. I'M SURE THEY'VE GOT DONUTS
10 AND COOKIES AND CAKES AND ALL KIND OF NICE THINGS BACK
11 THERE. THEY DON'T HAVE THEM FOR ME, MAYBE THEY HAVE
12 THEM FOR Y'ALL.

13 (Whereupon, the jury retires
14 to the jury room and the following
15 takes place out of the presence
16 of the jury.)

17 THE COURT: ANY MOTIONS?

18 MS. FORD: YOUR HONOR, AT THIS TIME
19 THE DEFENSE WOULD MAKE A MOTION FOR A DIRECTED VERDICT
20 ON THE LEWD ACT AND THE CSC WITH A MINOR, SECOND DEGREE,
21 YOUR HONOR. IT'S OUR POSITION THAT THE STATE HAS FAILED
22 TO PRESENT EVIDENCE OF THE ELEMENTS OF EACH CAUSE OF
23 ACTION. CONCERNING THE LEWD ACT, YOUR HONOR, WE CAN'T
24 TELL WHEN THIS ACTUALLY OCCURRED. EVIDENCE HAS SHOWN
25 ALLEGEDLY THAT HE WENT TO A BATHROOM AND COMMITTED A

1 LEWD ACT. YOUR HONOR, THERE'S NO PHYSICAL EVIDENCE THAT
2 BACKS UP THAT ALLEGATION. IT'S OUR POSITION THAT THEY'VE
3 FAILED TO PRESENT EVIDENCE ON THE LEWD ACT AT ALL. IT
4 WASN'T REPORTED TO THE POLICE AT THE TIME, AND FOR THOSE
5 REASONS WE'D MOVE FOR A DIRECTED VERDICT ON THE LEWD
6 ACT, YOUR HONOR.

7 CONCERNING THE CRIMINAL SEXUAL
8 CONDUCT WITH A MINOR, SECOND, YOUR HONOR, THERE'S NO
9 EVIDENCE OF A SEXUAL BATTERY THAT'S BEEN PRESENTED.
10 ACCORDING TO DR. GIBBS THERE WAS A LACERATION TO THE
11 FOSSA NAVICULARIS. YOUR HONOR, THAT IS NOT THE GENITAL
12 OPENING, THAT'S OUTSIDE THE GENITAL OPENING AND AS THE
13 LAW STATES, THE SEXUAL BATTERY MUST BE AN INTRUSION UPON
14 THE GENITAL OPENING OF THE VICTIM. AND IN THIS CASE NO
15 EVIDENCE HAS BEEN PRESENTED THAT WOULD SHOW THAT.

16 YOUR HONOR, FURTHER WE WOULD SAY
17 THAT -- I'M SORRY TO GO BACK TO THE LEWD ACT, YOUR
18 HONOR, BUT NO INTENT HAS ALSO BEEN SHOWN ON THE PART OF
19 THE DEFENDANT, WHICH IS REQUIRED AS PART OF THE STATUTE
20 FOR LEWD ACT, NONE OF THAT HAS BEEN SHOWN.

21 THE COURT: UNDER WHAT PART NOW?

22 MS. FORD: I'M SORRY, YOUR HONOR, I
23 WENT BACK TO THE LEWD ACT, I APOLOGIZE.

24 THE COURT: OKAY.

25 MS. FORD: BUT NO EVIDENCE HAS BEEN

289

1 SHOWN THAT THE DEFENDANT WILLFULLY OR LEWDLY COMMITTED
2 THIS LEWD ACT, AND FURTHER, NO EVIDENCE HAS BEEN SHOWN
3 THAT HE INTENDED TO DO THAT. SO, YOUR HONOR, FOR ALL
4 THOSE REASONS WE'D MOVE FOR A DIRECTED VERDICT ON THE
5 LEWD AND ON THIS CSC WITH A MINOR, SECOND.

6 THE COURT: YES, SIR?

7 SOLICITOR SCOTT: YOUR HONOR, I
8 THINK TAKING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO
9 THE STATE, I MEAN, I THINK THERE IS SUFFICIENT EVIDENCE
10 JUST BASED ON THE VICTIM'S TESTIMONY. MS. FORD
11 MENTIONED SOMETHING ABOUT THE TIME FRAME, I THINK THE
12 EXPANDED TIME FRAMES ARE PERMISSIBLE IN CSC CASES. I
13 THINK THE VICTIM TESTIFIED YESTERDAY REGARDING THE BATH
14 ROOM INCIDENT THAT HE PULLED DOWN HER PANTS. I MEAN, I
15 CERTAIN THINK THAT IS CIRCUMSTANTIAL EVIDENCE OF INTENT,
16 WHICH IS ALL YOU USUALLY HAVE OF INTENT IS
17 CIRCUMSTANTIAL EVIDENCE.

18 WE WOULD JUST RELY ON THE VICTIM'S
19 TESTIMONY AS WELL AS ALL THE CORROBORATING TESTIMONY OF
20 DR. GIBBS REGARDING THE INCIDENT IN THE BEDROOM.

21 THE COURT: ANYTHING ELSE?

22 MS. FORD: YOUR HONOR, CONCERNING
23 THE CRIMINAL SEXUAL CONDUCT WITH A MINOR, SECOND, WE
24 WOULD JUST RENEW OUR POSITION THAT THE FOSSA NAVICULARIS
25 IS OUTSIDE THE GENITAL OPENING.

1 THE COURT: WELL, DIDN'T THE VICTIM
2 TESTIFY THAT SHE WAS PENETRATED? I THINK SO.

3 MS. FORD: SHE MAY HAVE TESTIFIED TO
4 THAT.

5 SOLICITOR SCOTT: DR. GIBBS
6 TESTIFIED THAT IT WAS CONSISTENT WITH A PENETRATING
7 INJURY.

8 THE COURT: WELL, I THINK THE VICTIM
9 DID ALSO, BUT I THINK THERE'S SUFFICIENT EVIDENCE TO
10 MAKE IT A JURY QUESTION, AND I WOULD DENY YOUR MOTIONS.

11 ALRIGHT, MR. JONES, WOULD YOU STAND,
12 PLEASE.

13 (NOTE: Blank lines on this page do not indicate any
14 part of record has been omitted. Headers on testimony
15 pages and hard page breaks between testimony are now
16 required by the Court. See next ensuing page for
17 sequential continuation of record.)

EXAM, IN CAMERA - LINDY L. JONES BY THE COURT

291

EXAMINATION, IN CAMERA, OF LINDA L. JONES

BY THE COURT:

Q. MR. JONES, THE STATE HAS FINISHED PUTTING UP THEIR CASE. I DON'T KNOW WHETHER YOUR LAWYERS HAVE SOME OTHER WITNESSES WHO ARE GOING TO TESTIFY OR NOT, BUT YOU HAVE A RIGHT TO TESTIFY IF YOU WANT TO TESTIFY.

THE COURT: DOES HE HAVE ANY RECORD, SOLICITOR?

SOLICITOR SCOTT: NOT TO MY KNOWLEDGE, YOUR HONOR.

Q. IF YOU TESTIFY YOU CAN BE CROSS-EXAMINED BY THE STATE'S ATTORNEYS JUST LIKE YOUR ATTORNEYS CROSS-EXAMINED THE STATE'S WITNESSES.

A. YES, SIR.

Q. YOU ALSO HAVE A RIGHT NOT TO TESTIFY. THAT IS YOUR CONSTITUTION RIGHT TO REMAIN SILENT, TO REQUIRE THE STATE TO PROVE YOU GUILTY BEYOND A REASONABLE DOUBT. IF YOU CHOOSE NOT TO TESTIFY I WILL TELL THE JURY THAT THAT IS THE EXERCISE OF A CONSTITUTIONAL RIGHT, AND THAT THEY CANNOT HOLD THAT AGAINST YOU IN ANY WAY WHATSOEVER. I WILL ASK THAT THEY NOT EVEN DISCUSS THAT FACT WHEN THEY BEGIN THEIR DELIBERATIONS. DO YOU UNDERSTAND YOUR RIGHT TO TESTIFY?

EXAM, IN CAMERA - LINDY L. JONES BY THE COURT

292

1 A. YES, SIR.

2 Q. DO YOU UNDERSTAND YOUR RIGHT NOT TO TESTIFY?

3 A. YES, SIR.

4 MR. MELLARD: YOUR HONOR, WE'RE
5 GOING TO NEED A MINUTE TO TALK TO HIM ABOUT THAT.

6 THE COURT: I'LL LET YOU TALK WITH
7 HIM.

8 Q. AND YOU SHOULD TALK WITH THEM, AND DISCUSS IT WITH
9 YOUR ATTORNEYS, AND I'M SURE YOU'VE ALREADY
10 DISCUSSED IT WITH HIM BUT -- AND YOU SHOULD HEAR
11 WHAT THEY HAVE TO SAY, BUT THE FINAL DECISION AS
12 TO WHETHER YOU SHOULD TESTIFY OR NOT SHOULD BE
13 YOUR OWN DECISION AND NOT YOUR ATTORNEY'S OR
14 SOMEONE ELSE'S, DO YOU UNDERSTAND THAT?

15 A. YES, SIR.

16 THE COURT: ALRIGHT, WE'LL TAKE
17 ABOUT TEN MINUTES. YOU'RE GOING TO HAVE SOME OTHER
18 WITNESSES ANYHOW, AREN'T YOU? OR YOU DON'T KNOW YET?

19 MS. FORD: PROBABLY, YOUR HONOR.

20 THE COURT: ALRIGHT, WE'LL TAKE
21 ABOUT TEN MINUTES.

22 (Recess)

23 Q. MR. JONES, HAVE YOU DISCUSSED WITH YOUR ATTORNEYS
24 WHETHER OR NOT YOU WOULD TESTIFY?

25 A. YES, SIR.

EXAM. IN CAMERA - LINDY L. JONES BY THE COURT

293

1 Q. AND HAVE YOU REACHED A DECISION?

2 A. YES, SIR.

3 Q. AND WHAT IS YOUR DECISION?

4 A. I CHOOSE NOT TO TESTIFY.

5 Q. YOU'RE NOT GOING TO TESTIFY?

6 A. NO, SIR.

7 Q. NOW, IS THAT YOUR DECISION?

8 A. YES, SIR.

9 Q. HAS ANYBODY PRESSURED YOU INTO MAKING THAT
10 DECISION?

11 A. NO, SIR.

12 THE COURT: THAT'S FINE. I FIND
13 HE'S FREELY, VOLUNTARILY, KNOWINGLY, AND INTELLIGENTLY
14 WAIVED HIS RIGHT TO TESTIFY, AND HE'S MADE THIS DECISION
15 AFTER HE CONSULTED WITH HIS ATTORNEYS.

16 ALRIGHT, SIR, YOU MAY HAVE A SEAT.

17 ALRIGHT, WHAT I'M GOING TO DO IS,
18 I'M GOING TO BRING THE JURY BACK IN AND I'M GOING TO
19 EXPLAIN TO THEM, YOU KNOW, THAT YOU HAVE A RIGHT TO
20 TESTIFY AND OFFER EVIDENCE. AND I'M GOING TO RECOGNIZE
21 YOU, AND YOU'LL SAY, THE DEFENSE RESTS, - - -

22 MS. FORD: YES, YOUR HONOR.

23 THE COURT: --- AND I'LL TAKE IT
24 FROM THERE. AND I'LL TELL THEM IT WILL BE ABOUT THIRTY
25 MINUTES.

1 BRING THE JURY BACK.

2 (Whereupon, the jury enters
3 the courtroom and the following
4 takes place in the presence
5 of the jury.)

6 THE COURT: ALRIGHT, LADIES ND
7 GENTLEMEN, AS I TOLD YOU, THE STATE HAS RESTED, AND NOW
8 THE DEFENSE HAS AN OPPORTUNITY IF THEY DESIRE TO OFFER
9 ANY TESTIMONY OR EVIDENCE.

10 YES, MA'AM, MS. FORD.

11 MS. FORD: THE DEFENSE RESTS, YOUR
12 HONOR.

13 THE COURT: ALRIGHT. LADIES AND
14 GENTLEMEN, THE DEFENSE HAS RESTED, WHICH MEANS THAT THEY
15 DON'T CHOOSE TO OFFER ANY TESTIMONY AND EVIDENCE. AND
16 I TOLD YOU, THAT'S THEIR RIGHT, THEY DON'T HAVE TO OFFER
17 ANY EVIDENCE OR TESTIMONY WHATSOEVER, THE BURDEN IS ON
18 THE STATE TO PROVE MR. JONES GUILTY IN THIS CASE.

19 SO, YOU'VE HEARD NOW ALL OF THE
20 TESTIMONY AND EVIDENCE THAT YOU'RE GOING TO HEAR IN THIS
21 CASE. IT REMAINS NOW FOR THE ATTORNEYS TO MAKE THEIR
22 CLOSING ARGUMENTS TO YOU, AND THEN I WILL CHARGE YOU ON
23 THE LAW, AND YOU CAN BEGIN YOUR DELIBERATIONS.

24 WE NEED TO TAKE A LITTLE BREAK, AND
25 IT'S GOING TO PROBABLY BE THIRTY MINUTES OR SO BEFORE WE

295

1 CAN START BACK. IN THE MEANTIME, SOMEBODY FROM THE
2 CLERK'S OFFICE OR ONE OF THESE BAILIFFS WILL IN THERE IN
3 JUST A FEW MINUTES AND TAKE YOUR LUNCH ORDER. WE'RE
4 GOING TO BUY YOU LUNCH TODAY. NOW, DON'T GET TOO
5 EXCITED ABOUT THAT, WE HAVE A VERY LIMITED BUDGET, BUT
6 WE WILL FEED YOU, BECAUSE ONCE WE DO THAT WE DON'T WANT
7 YOU LEAVING THE COURTHOUSE AGAIN UNTIL YOU BEGIN YOUR
8 DELIBERATIONS. AND SO, WE'LL COME BACK PROBABLY AROUND
9 A FEW MINUTES AFTER ELEVEN, AND PROBABLY BY THE TIME YOU
10 GET READY, WE FINISH IN THE COURTROOM YOUR LUNCH WILL BE
11 HERE AND THEN YOU CAN BEGIN YOUR DELIBERATIONS. SO,
12 JUST RETIRE TO THE JURY ROOM BUT PLEASE REMEMBER, DO NOT
13 TALK ABOUT THE CASE, AND JUST BE PATIENT UNTIL WE CAN
14 GET YOUR ORDERS TAKEN AND GET READY TO ROLL. PLEASE
15 FOLLOW THE BAILIFF TO THE JURY ROOM.

16 MADAM BAILIFF, DO YOU HAVE THE
17 ORDERS OR - - -

18 BAILIFF: I WILL GET THEM.

19 THE COURT: ALRIGHT, SHE'LL TAKE
20 CARE OF THAT, SHE WILL GET YOUR LUNCH ORDER. WHERE ARE
21 WE GOING, THE BIDDY BANQUET?

22 BAILIFF: WHATEVER.

23 THE COURT: TELL THEM WHAT THE
24 OPTIONS ARE. THERE ARE NOT A WHOLE LOT.

25 BAILIFF: OKAY.

1 (Whereupon, the jury retires
2 to the jury room and the
3 following takes place out of
4 the presence of the jury.)

5 THE COURT: ALRIGHT, WE'LL BE IN
6 RECESS IN THIS CASE UNTIL ELEVEN:FIFTEEN.

7 (Recess)

8 THE COURT: ALRIGHT, IN REGARD TO
9 THE CHARGE, MY STANDARD CHARGE, AS YOU'VE ALL HEARD AS
10 FAR AS REASONABLE DOUBT, CREDIBILITY, BURDEN OF PROOF,
11 AND I'LL CHARGE THE STATUTE ON LEWD ACT AND I'LL CHARGE
12 THE STATUTE ON CSC WITH A MINOR, AND THE LESSER
13 INCLUDED, ASSAULT WITH INTENT TO COMMIT CSC WITH A
14 MINOR. I'LL CHARGE GENERAL INTENT. WHAT ELSE HAD WE
15 TALKED ABOUT?

16 SOLICITOR SCOTT: CORROBORATION.

17 THE COURT: CORROBORATION, AND AGE OF
18 CONSENT.

19 MR. MELLARD: AND I THINK ALSO THAT
20 THE DEFENDANT DOESN'T HAVE TO TESTIFY.

21 THE COURT: YES, SIR. ALRIGHT.
22 ANYTHING ELSE? I DON'T THINK THERE WAS ANYTHING YOU
23 REQUESTED THAT I HAVEN'T AGREED TO CHARGE.

24 MR. MELLARD: THERE'S A -- NO.

25 THE COURT: SIR?

1 MS. FORD: NOTHING.

2 THE COURT: ANYTHING ELSE FROM THE
3 STATE THEN?

4 SOLICITOR SCOTT: NO, YOUR HONOR.

5 THE COURT: ALRIGHT, BRING THE JURY
6 IN. I'VE GOT TO PICK UP A PAPER OFF MY DESK WHILE THE
7 JURY'S COMING IN.

8 (Whereupon, the jury enters
9 the courtroom and the following
10 takes place in the presence
11 of the jury.)

12 THE COURT: ALRIGHT, LADIES AND
13 GENTLEMEN, AS I TOLD YOU, YOU'VE HEARD ALL OF THE
14 TESTIMONY AND THE EVIDENCE THAT YOU'RE GOING TO HEAR.
15 IT REMAINS NOW FOR THE ATTORNEYS TO GIVE YOU THEIR
16 CLOSING ARGUMENTS, AND THEY'RE TRY TO PERSUADE YOU TO
17 SEE THE FACTS IN THIS CASE IN FAVOR OF THEIR RESPECTIVE
18 POSITIONS. AS I TOLD YOU, YOU ARE THE JUDGES OF THE
19 FACTS, YOU HAVE TO DETERMINE THE TRUTH ABOUT THE MATTERS
20 OF WHICH YOU'VE HEARD TESTIFY. WHAT THE ATTORNEYS TELL
21 YOU IS NOT EVIDENCE, JUST LIKE THE QUESTIONS THEY ASK IS
22 NOT EVIDENCE. EVIDENCE THAT YOU WILL BASE YOUR
23 DECISION ON IS THAT TESTIMONY THAT COMES FROM WITNESSES
24 WHO WERE PLACED UNDER OATH AND TESTIFIED FROM THAT
25 STAND, AND THE EXHIBITS WHICH YOU WILL HAVE WITH YOU IN

1 THE JURY ROOM WHEN YOU BEGIN YOUR DELIBERATIONS. BUT
2 WHAT THE LAWYERS TELL YOU IS IMPORTANT. THEY HAVE A
3 GOOD GRASP OF THE FACTS IN THE CASE, THEY HAVE A GOOD
4 GRASP OF THE LAW THAT APPLIES TO THE CASE, AND SO PLEASE
5 GIVE THEM YOUR ATTENTION AS THEY ADDRESS YOU AT THIS
6 TIME. THE STATE WILL GO FIRST, FOLLOWED BY THE
7 DEFENDANT, UNDER OUR RULES.

8 ALRIGHT, SOLICITOR, YOUR MAY
9 PROCEED.

10 SOLICITOR JEFFRIES: MAY IT PLEASE
11 THE COURT, YOUR HONOR?

12 THE COURT: YES, SIR.

13 SOLICITOR JEFFRIES: I BEG THE
14 COURT'S INDULGENCE WHILE I SET UP A LITTLE BIT HERE.
15 JUDGE, ARE YOU GOING TO BE ABLE TO SEE THE JURY IF I PUT
16 A BOARD UP HERE?

17 THE COURT: I DON'T NEED TO SEE
18 THEM.

19 SOLICITOR JEFFRIES: OKAY.

20 CLOSING ARGUMENT BY SOLICITOR JEFFRIES

21 LADIES AND GENTLEMEN, WHAT YOU GOT
22 TO SEE IN THIS COURTROOM THIS WEEK WAS KIND OF SPECIAL,
23 KIND OF UNIQUE, BECAUSE YOU GOT TO SEE A COUPLE OF
24 THINGS. YOU GOT TO SEE BOTH A TREMENDOUS, A TREMENDOUS
25 ACT OF COURAGE, BUT YOU ALSO GOT TO SEE AND HEAR ABOUT

299

1 A DESPICABLE ACT OF COWARDICE. YOU GOT TO HEAR ABOUT
2 COURAGE FROM Minor, EIGHTEEN YEARS OLD, THIS
3 HAPPENED FOUR YEARS AGO, SHE'S LIVED WITH IT FOR THE LAST
4 FOUR YEARS. AND SHE CAME IN HERE THIS WEEK AND TOLD
5 TWELVE STRANGERS THAT SHE'S NEVER MET BEFORE THE
6 INTIMATE DETAILS ABOUT HOW THAT MAN, A MAN THAT SHE
7 CONSIDERED HER UNCLE, HOW HE ABUSED HER NOT ONLY ONCE
8 BUT ON TWO OCCASIONS, SEXUALLY ASSAULTED HER TWO TIMES.
9 AND SHE CAME IN HERE AND TOLD Y'ALL THAT, AND YOU KNOW
10 IT WASN'T EASY FOR HER, BUT SHE TOLD YOU THE SAME THING
11 SHE TOLD THE SHERIFF'S DEPARTMENT, THE SAME THING SHE
12 TOLD DR. REYES AND DR. GIBBS, INVESTIGATOR THOMPSON WAY
13 BACK IN TWO THOUSAND FIVE. THAT'S COURAGE. THEY SAY IF
14 YOU DON'T STAND FOR SOMETHING YOU'LL FALL FOR ANYTHING.
15 SHE STOOD UP AND SHE POINTED AT HIM, AND SHE SAID,
16 THAT'S THE MAN THAT DID IT. YOU COULD TELL SHE DIDN'T
17 WANT TO TESTIFY, SHE'S NOT THE ONE THAT CALLED THE
18 POLICE. I MEAN, SOMEBODY SHE CARED ABOUT, SHE SAID HE
19 WAS FINE IN THE BEGINNING, THEY HAD A GOOD RELATIONSHIP.
20 HE GO TO BALL GAMES WITH THEM, PLAY VIDEO GAMES, BUT
21 SOMETHING CHANGED. THAT'S COURAGE.

22 BUT YOU ALSO GOT TO HEAR ABOUT THE
23 DESPICABLE, THE DESPICABLE ACT OF COWARDICE. WHAT COULD
24 BE MORE COWARDLY THAN ABUSING A FOURTEEN YEAR OLD - - -

25 MS. FORD: OBJECTION, YOUR HONOR.

1 SOLICITOR JEFFRIES: --- CHILD.

2 THE COURT: WAIT A SECOND. WHAT'S
3 YOUR OBJECTION?

4 MR. MELLARD: COULD WE APPROACH,
5 YOUR HONOR?

6 MS. FORD: MAY WE APPROACH?

7 THE COURT: YES, SIR.

8 (Whereupon, a bench conference
9 is had out of the hearing of
10 the jury and court reporter.)

11 SOLICITOR JEFFRIES: WHAT COULD BE
12 MORE COWARDLY THAN ABUSING A FOURTEEN YEAR OLD CHILD
13 WHO'S IN YOUR CUSTODY? AND THEN THEY COME IN HERE THIS
14 WEEK AND THEY TRY TO ABUSE HER AGAIN. THEY TALK ABOUT
15 MAYBE SHE WAS MASTURBATING. THEY TRIED TO QUESTION HER
16 RELATIONSHIP WITH HER TEACHER, TRIED TO INSINUATE,
17 SPECULATE THAT THERE WAS SOMETHING INAPPROPRIATE.

18 AND YOU KNOW, LET'S GO BACK TO WHEN
19 THIS FIRST HAPPENED BACK IN TWO THOUSAND AND FIVE. YOU
20 KNOW, HE DID IT THE FIRST TIME AND SHE DIDN'T TELL. HE
21 HAD NO REASON TO THINK SHE WOULD TELL THE SECOND TIME.
22 BUT WHEN LAW ENFORCEMENT DID FIND OUT AND THEY WENT TO
23 INTERVIEW HIM, WHAT DOES HE DO? DOES HE TAKE
24 RESPONSIBILITY FOR WHAT HE DID? NO, HE DOESN'T. WHAT'S
25 THE MAKE OF ANY GOOD COWARD? BLAME THE VICTIM. SHE

301

1 TRIED TO GET IN BED WITH ME. BLAME THE VICTIM. THAT'S
2 COWARDICE.

3 NOW, I WANT TO INTRODUCE MYSELF, I
4 HAVEN'T HAD THE OPPORTUNITY TO SPEAK DIRECTLY TO YOU
5 THIS WEEK. MY NAME IS BRIAN JEFFRIES, I LIVE HERE IN
6 ORANGEBURG WITH MY WIFE AND FAMILY, I'M AN ATTORNEY WITH
7 JEFFRIES LAW FIRM, AND AS YOU'VE HEARD, I'M ALSO AN
8 ASSISTANT SOLICITOR WITH THE FIRST CIRCUIT SOLICITOR'S
9 OFFICE. I WANT TO THANK YOU ON BEHALF OF FIRST CIRCUIT
10 SOLICITOR'S OFFICE, ON BEHALF OF THE ORANGEBURG COUNTY
11 SHERIFF'S OFFICE, AND ON BEHALF OF Minor [REDACTED] AND
12 HER FAMILY. AND I SAY THAT BECAUSE I THANK YOU FOR YOUR
13 TIME AND ATTENTION. I'VE WATCHED YOU, THAT'S PART OF MY
14 JOB IS TO WATCH THE JURY AND MAKE SURE THEY'RE PAYING
15 ATTENTION, AND Y'ALL HAVE BEEN VERY ATTENTIVE. YOU'VE
16 LISTENED TO ALL OF THE WITNESSES, YOU'VE LISTENED TO THE
17 JUDGE, YOU'VE LISTENED TO THE LAWYERS ARGUING BACK AND
18 FORTH, SO I KNOW MR. MELLARD, MS. FORD, MR. JONES, MY
19 CO-COUNSEL, MR. SCOTT, JUDGE WILLIAMS, EVERYBODY JOINS
20 ME IN THANKING YOU FOR YOUR TIME AND ATTENTION. I KNOW
21 YOU DIDN'T VOLUNTEER TO BE HERE TODAY, THERE'S PROBABLY
22 A HUNDRED DIFFERENT PLACES YOU WOULD RATHER BE, BUT I
23 CAN TELL YOU THAT YOUR PRESENCE IN THIS COURTROOM IS
24 CRUCIAL TO OUR SYSTEM OF JUSTICE. OUR COURT SYSTEM
25 WOULD COME TO A SCREECHING HALT IF WE DIDN'T HAVE FAIR

1 MINDED INDIVIDUALS FROM THE COMMUNITY TO COME IN AND
2 DECIDE THESE CASES.

3 NOW, I THINK IT WAS WINSTON
4 CHURCHILL WHO SAID, AND I'M PARAPHRASING IT, YOU KNOW,
5 JURY SERVICE IS THE GREATEST SERVICE YOU CAN PROVIDE FOR
6 YOUR COUNTRY IN TIMES OF PEACE. WHAT THAT MEANS IS,
7 OUTSIDE OF FIGHTING IN THE MILITARY DURING WAR TIMES,
8 THERE'S NO GREATER SERVICE THAN YOU CAN PROVIDE THAN
9 JURY SERVICE. AND OF COURSE, WE'RE A COUNTRY AT WAR
10 RIGHT NOW. WHILE OUR MEN AND WOMEN OF THE VARIOUS ARMED
11 SERVICES ARE OVERSEAS FIGHTING FOR OUR FREEDOM YOU SIT
12 HERE AND DEFEND OUR COMMUNITY AGAINST DOMESTIC ENEMIES,
13 THOSE WHO WISH US EVIL, THOSE WHO DO EVIL. THEY SAY
14 VIGILANCE IS THE COST OF FREEDOM. WELL, YOU'VE BEEN
15 VIGILANT THIS WEEK AND THAT'S VERY MUCH APPRECIATED.

16 I ALSO WANT TO APOLOGIZE IF I'VE
17 SAID OR DONE ANYTHING DURING THE COURSE OF THIS TRIAL
18 THAT'S OFFENDED ANYONE IN THIS COURTROOM. AND I DON'T
19 THINK THAT'S NECESSARILY BEEN THE CASE THIS WEEK, BUT
20 SOMETIMES WHEN I TRY A CASE I GET EXCITED, GET A LITTLE
21 ANIMATED, I GET KIND OF LOUD, BUT THAT'S JUST THE WAY I
22 DO MY JOB, AND I APOLOGIZE IF I OFFENDED ANYBODY. BUT
23 DON'T HOLD IT AGAINST THE STATE OF SOUTH CAROLINA, AND
24 PLEASE DON'T HOLD IT AGAINST **Minor** [REDACTED] AND HER
25 FAMILY FOR THE WAY I DO MY JOB. WE ALL HAVE JOBS IN

303

1 THIS COURTROOM, AND MY JOB ALONG WITH MR. SCOTT AS
2 PROSECUTORS IS TO PRESENT THE RELATIVE EVIDENCE TO YOU
3 ALL TO DECIDE THIS CASE. CONTRARY TO WHAT MANY PEOPLE
4 THINK, IT'S NOT A PROSECUTOR'S JOB TO JUST SEEK
5 CONVICTION, IT'S TO SEEK JUSTICE. BELIEVE IT OR NOT, I
6 HAVE THE RESPONSIBILITY OF MAKING SURE HE RECEIVES A
7 FAIR TRIAL, MAKING SURE HIS RIGHTS ARE PROTECTED. NOW,
8 MR. MELLARD AND MS. FORD OF THE PUBLIC DEFENDER'S
9 OFFICE, REPRESENT THE DEFENDANT AS DEFENSE ATTORNEYS.
10 THEIR JOB IS TO ZEALOUSLY REPRESENT THEIR CLIENT, TO
11 ZEALOUSLY REPRESENT THEIR CLIENT. THEIR ALLEGIANCE IS
12 TO HIM, AND HIM ALONE. JUDGE WILLIAMS IS THE NEUTRAL
13 THIRD PARTY. AS YOU'VE HEARD BEFORE, HE'S THE SOLE
14 JUDGE OF THE LAW, AND WILL INSTRUCT YOU ON THE LAW IN
15 THIS CASE AT THE APPROPRIATE TIME, AND HE ACTS AS A SORT
16 OF REFEREE BETWEEN THE ATTORNEYS, MAKING SURE, KEEPING
17 US STRAIGHT. AND HE'S GOING TO INSTRUCT YOU ON THE LAW,
18 AND HE DECIDES DURING THE TRIAL ALL ISSUES OF LAW, ALL
19 ISSUES OF EVIDENCE.

20 I SUBMIT TO YOU, LADIES AND
21 GENTLEMEN, WE'VE DONE OUR JOB. MR. SCOTT AND I HAVE
22 PRESENTED THE RELATIVE EVIDENCE TO YOU. WE MADE SURE,
23 AND JUDGE WILLIAMS HAS MADE SURE THAT HE HAS RECEIVED A
24 FAIR TRIAL. HIS RIGHTS HAVE BEEN PROTECTED, AND I
25 SUBMIT TO YOU THAT MS. FORD AND MR. MELLARD HAVE

1 ZEALOUSLY REPRESENTED HIM. HE RECEIVED AN EXCELLENT
2 DEFENSE HERE THIS WEEK. BUT AS WE CLOSE HERE TODAY IT'S
3 GOING TO BE YOU ALL, IT'S GOING TO BE YOUR TURN TO DO
4 YOUR JOB. AND YOUR JOB IS MORE IMPORTANT THAN ANYONE
5 ELSE IN THIS COURTROOM, BECAUSE JUST LIKE JUDGE WILLIAMS
6 IS THE SOLE JUDGE OF THE LAW, AS YOU'VE HEARD, YOU ALL,
7 INDIVIDUALLY AND COLLECTIVELY ARE ALSO JUDGES, YOU JUDGE
8 THE FACTS. YOU DECIDE WHAT HAPPENED BACK IN TWO THOUSAND
9 FIVE DURING THAT SUMMER BETWEEN JUNE AND AUGUST, AND ON
10 AUGUST FIFTEENTH, YOU DECIDE WHAT HAPPENED. HOW DO YOU
11 DO THAT? YOU DO THAT BY WEIGHING THE EVIDENCE THAT YOU
12 HEARD FROM THIS WITNESS STAND, WEIGHING THE TESTIMONY,
13 JUDGING THE CREDIBILITY OF THE WITNESSES.

14 NOW, I'M GOING TO TALK TO YOU
15 BRIEFLY ABOUT THE LAW, I'M GOING TO TALK TO YOU ABOUT
16 THE FACTS AND HOW TO APPLY THOSE FACTS TO THE LAW. MR.
17 MELLARD OR MS. FORD IS GOING TO COME UP HERE AND DELIVER
18 THEIR CLOSING ARGUMENT WHEN I SIT DOWN, AND THEN I'M NOT
19 GOING TO HAVE ANOTHER OPPORTUNITY TO SPEAK TO YOU. ALL
20 I ASK IS THAT YOU GIVE ME YOUR ATTENTION, AND GIVE THEM
21 YOUR ATTENTION, AND DON'T FORGET WHAT I TOLD YOU JUST
22 BECAUSE I'VE SAT DOWN AND HAVEN'T HAD A CHANCE TO TALK
23 TO YOU AGAIN. DON'T FORGET THE EVIDENCE THAT YOU'VE
24 HEARD. DON'T LET THEM TURN YOUR ATTENTION TO THINGS
25 THAT AREN'T EVIDENCE IN ORDER TO CONFUSE THE ISSUE.

1 AFTER WE'VE BOTH SPOKEN JUDGE WILLIAMS IS GOING TO
2 INSTRUCT YOU ON THE LAW, AND THIS CASE IS GOING TO BE
3 YOURS TO DECIDE.

4 ONE THING YOU REALIZE PRETTY QUICKLY
5 WHEN YOU GET BACK IN THAT DELIVERY ROOM -- BACK IN YOUR
6 JURY ROOM TO DELIBERATE, THAT YOU WON'T HAVE ANY
7 INCIDENT REPORTS, ANY DEPOSITIONS. YOU WILL HAVE THE
8 DEFENDANT'S STATEMENT, THAT'S AN ADMISSIBLE PIECE OF
9 EVIDENCE. BUT YOU'VE HEARD ABOUT OTHER REPORTS, AND YOU
10 WON'T HAVE THAT, AND THE REASON THAT IS, IS BECAUSE IN
11 THIS STATE AND IN ANY STATE IN OUR COUNTRY WHEN AN
12 INDIVIDUAL IS CHARGED WITH A CRIMINAL OFFENSE HE HAS THE
13 RIGHT TO CONFRONT EACH AND EVERY WITNESS AGAINST HIM.
14 AND BY CONFRONT, I MEAN HE HAS AN OPPORTUNITY TO HAVE
15 HIS ATTORNEYS CROSS-EXAMINE THE WITNESSES SO THAT YOU
16 CAN JUDGE THEIR CREDIBILITY. SO, IT'S BETTER THAN ANY
17 STATEMENT, YOU GOT TO SEE THE LIVE TESTIMONY IN THIS
18 COURTROOM. AND WE DO THAT SO THAT Y'ALL CAN JUDGE THE
19 CREDIBILITY.

20 NOW, HOW DO YOU JUDGE CREDIBILITY?
21 WELL, FIRST OF ALL, LET ME TELL YOU, IT'S NO SCHOOL YOU
22 AN GO TO, NO CORRESPONDENCE CASE -- CORRESPONDENCE
23 COURSE THAT YOU CAN TAKE IN ORDER TO BECOME A GOOD
24 JUROR, BUT I SUBMIT TO YOU AND Y'ALL JUDGE CREDIBILITY
25 EVERY DAY. YOU DO IT AT HOME, AT WORK, ON THE STREET,

1 THOSE OF YOU HAVE CHILDREN OR GRANDCHILDREN, NIECES OR
2 NEPHEWS, YOU'RE EXPERTS AT CREDIBILITY, BECAUSE YOU HAVE
3 TO BE ABLE TO LOOK AT THE CHILD AND DETERMINE IF THEY'RE
4 TELLING YOU SOMETHING IS TRUE OR IS NOT TRUE, OR PART OF
5 THE TRUTH OR NONE OF THE TRUTH. SO, YOU JUDGE PEOPLE'S
6 CREDIBILITY EVERY DAY. BUT A COUPLE OF THINGS YOU CAN
7 LOOK AT, AND THE JUDGE IS GOING TO INSTRUCT YOU ON THIS.
8 IN DETERMINING CREDIBILITY A COUPLE OF THINGS YOU CAN
9 LOOK FOR OUT OF THE WITNESS ON THE STAND. AND I HOPE
10 YOU WERE KIND OF TAKING NOTE OF THESE THINGS WHEN THE
11 WITNESSES WERE TESTIFYING. LOOK AT THE Demeanor OF THE
12 WITNESS, ARE THEY FIDGETY, ARE THEY FORTHRIGHT, OR
13 HESITANT? WHAT'S IMPORTANT IS, WAS THE TESTIMONY OF THE
14 WITNESS CONSISTENT? WAS IT CONSIST WITH OTHER
15 TESTIMONY? WAS IT CONSISTENT WITH THE EVIDENCE? WAS
16 THE TESTIMONY OF AN EYE WITNESS CORROBORATED; OR
17 EXAMPLE, **Minor** [REDACTED], SHE TOLD YOU SHE HAD BEEN
18 SEXUALLY ASSAULTED BY LINDY JONES. THEN YOU HEAR FROM
19 DR. GIBBS. SHE WASN'T THERE, SHE DIDN'T SEE IT, BUT SHE
20 TOLD YOU THE INJURIES THAT SHE SAW IN HER MEDICAL EXAM
21 WERE CONSISTENT WITH WHAT SHE HAD BEEN TOLD BY **Minor**
22 [REDACTED]. THEN ASK YOURSELF, DOES THE WITNESS HAVE
23 REASON TO BE BIASED OR PREJUDICED? AND I SUBMIT TO YOU,
24 LADIES AND GENTLEMEN, THE WITNESSES FOR THE MOST PART
25 THAT THE STATE PRESENTED TO YOU ARE PROFESSIONAL, THEY

307

1 DON'T HAVE ANY DOG IN THE FIGHT, NO FRIENDS TO REWARD,
2 NO ENEMIES TO PUNISH. THEY'RE JUST DOING THEIR JOB AND
3 THE TESTIFIED TRUTHFULLY. THAT'S WHAT YOU LOOK FOR IN
4 CREDIBILITY.

5 I ALSO WANT TO TALK TO YOU ABOUT TWO
6 TYPES OF EVIDENCE THAT THE JUDGE IS GOING TO INSTRUCT
7 YOU ABOUT, DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.
8 NOW, DIRECT EVIDENCE IS WHEN A WITNESS TESTIFIES TO WHAT
9 THEY SAW, HEARD, SMELLED, TASTED, TOUCHED, THAT'S DIRECT
10 EVIDENCE. BUT THERE'S ALSO CIRCUMSTANTIAL EVIDENCE, AND
11 WHAT CIRCUMSTANTIAL EVIDENCE IS, IS WHEN TESTIMONY OR
12 WHEN EVIDENCE LEADS YOU TO INFER ANOTHER FACT, THAT'S
13 CIRCUMSTANTIAL EVIDENCE. AN EXAMPLE OF THAT IS, YOU'RE
14 LIVING SOMEWHERE, NOT IN SOUTH CAROLINA, SOMEWHERE UP
15 NORTH, IT'S WINTER TIME. RIGHT BEFORE YOU GO TO SLEEP
16 YOU LOOK OUT IN THE FRONT YARD AND ALL YOU SEE IS GREEN
17 GRASS AND THE SIDEWALK AND THE STREET. YOU GOT TO
18 SLEEP, YOU WAKE UP THAT NEXT DAY AND THAT SAME LAWN IS
19 COVERED IN WHITE SNOW. IT'S NOT SNOWING AS YOU'RE
20 LOOKING OUT BUT YOU CAN INFER THAT OVERNIGHT IT SNOWED.
21 YOU DIDN'T SEE IT SNOW, BUT YOU CAN MAKE THAT INFERENCE.
22 AND IN THIS CASE, AGAIN, I'LL GO BACK TO DR. GIBBS AND
23 Minor . Minor TOLD DR. GIBBS THAT SHE
24 WAS SEXUALLY ASSAULTED BY LINDY JONES. DR. GIBBS DIDN'T
25 SEE IT, BUT SHE SAW THE MEDICAL EVIDENCE THAT WAS

1 CONSISTENT WITH THAT, SO YOU CAN INFER THE FACT THAT SHE
2 WAS SEXUALLY ASSAULTED. THE TWO TYPES OF EVIDENCE ARE
3 EQUAL UNDER THE LAW, DIRECT AND CIRCUMSTANTIAL, YOU
4 TREAT THEM THE SAME.

5 NOW, LET'S TALK ABOUT WHAT THE
6 DEFENDANT'S CHARGED WITH, CRIMINAL SEXUAL CONDUCT WITH
7 A MINOR, SECOND DEGREE, SEXUAL BATTERY - AND I'M GOING
8 TO TALK TO YOU A LITTLE BIT MORE IN A SECOND ABOUT
9 SEXUAL BATTERY -- WITH A VICTIM WHO IS AT LEAST FOURTEEN
10 YEARS OF AGE AND LESS THAN SIXTEEN. AS YOU HEARD, **Minor**
11 **[REDACTED]** WAS FOURTEEN YEARS OLD WHEN THIS HAPPENED. AND
12 YOU TAKE THOSE TWO, A SEXUAL BATTERY WHERE THE VICTIM IS
13 FOURTEEN YEARS OF AGE, AND THEN THE INDIVIDUAL
14 COMMITTING THAT BATTERY IS A PERPETRATOR IN THE POSITION
15 OF FAMILIAL, CUSTODIAL, OR OFFICIAL AUTHORITY. IN THIS
16 CASE YOU HEARD THAT THE DEFENDANT WAS THE VICTIM'S
17 AUNT'S BOYFRIEND, THEY CONSIDERED EACH OTHER UNCLE-
18 NIECE; OR YOU CAN CONSIDER THAT THE VICTIM SUBMITTED TO
19 THE PERPETRATOR AND THAT PERPETRATOR WAS OLDER THAN THE
20 VICTIM, THERE'S NO QUESTION THAT HE WAS SIGNIFICANTLY
21 OLDER THAN THE VICTIM. AND I'M GOING TO TALK TO YOU
22 ABOUT SEXUAL BATTERY HERE, THAT'S A LEGAL TERM. A
23 SEXUAL BATTERY MEANS SEXUAL INTERCOURSE. IN THIS CASE
24 THAT'S WHAT WE'RE TALKING ABOUT. IT CAN ALSO BE
25 CUNNILINGUS, FELLATIO OR ANAL INTERCOURSE, BUT WE'RE

309

1 SPECIFICALLY TALKING ABOUT SEXUAL INTERCOURSE, OR ANY
2 INTRUSION, ANY INTRUSION, HOWEVER SLIGHT. THERE WAS
3 SOME TESTIMONY THIS WEEK ABOUT HOW FAR THAT THIS RAPE
4 WENT, HOW FAR HIS PENIS WENT INTO HER VAGINA. BUT THE
5 JUDGE WILL INSTRUCT YOU THAT ANY INTRUSION, HOWEVER
6 SLIGHT, OF ANY PART OF A PERSON'S BODY OR ANY OTHER
7 OBJECT INTO THE GENITAL OR ANAL OPENING OF ANOTHER
8 PERSON'S BODY IS A SEXUAL BATTERY. SO, THE FACTS FIT
9 THE LAW IN THIS CASE.

10 THE JUDGE IS ALSO GOING TO INSTRUCT
11 YOU ON CONSENT. YOU KNOW, THERE WAS SOME TESTIMONY THIS
12 WEEK ABOUT, IN THE DEFENDANT'S STATEMENT ABOUT WHETHER
13 THE VICTIM TRIED TO HAVE SEX WITH HIM. AND OF COURSE,
14 THE STATE IS ALLEGING HE TRIED TO FORCE, AND DID FORCE
15 INTERCOURSE ON HER. AND THE JUDGE WILL TELL YOU THAT A
16 FOURTEEN YEAR OLD CANNOT CONSENT TO SEXUAL INTERCOURSE
17 IN THE STATE OF SOUTH CAROLINA. A MINOR UNDER SIXTEEN
18 YEARS OF AGE IS NOT LEGALLY CAPABLE OF VOLUNTARILY
19 CONSENTING TO A SEXUAL BATTERY. AND AGAIN, A SEXUAL
20 BATTERY IS SEXUAL INTERCOURSE -- NOT LEGALLY CAPABLE OF
21 CONSENTING TO A SEXUAL BATTERY COMMITTED BY AN OLDER
22 PERSON. AGAIN, THERE'S NO QUESTION HE WAS AN OLDER
23 PERSON. THE FACTS FIT THE LAW.

24 THE JUDGE IS GOING TO ALSO TELL YOU
25 THAT THE TESTIMONY OF A VICTIM DOES NOT HAVE TO BE

1 CORROBORATED. IN OTHER WORDS, HER TESTIMONY ALONE IS
2 ENOUGH FOR YOU TO CONSIDER HIS GUILT. OKAY? IT'S NOT
3 ENOUGH FOR YOU TO AUTOMATICALLY HAVE TO SAY HE'S GUILTY,
4 BUT YOU CAN JUST BASED ON HER TESTIMONY FIND HIM GUILTY.
5 IT DOES NOT NEED TO BE CORROBORATED, ALTHOUGH IN THIS
6 CASE IT HAS BEEN CORROBORATED AS I SAID A MOMENT AGO,
7 BUT IT DOESN'T HAVE TO BE. YOU CAN CONSIDER THE
8 VICTIM'S TESTIMONY ALONE, AND SHE DOES, IN FACT, TESTIFY
9 THAT THE DEFENDANT SEXUALLY ABUSED HER. NOW, THAT'S
10 CRIMINAL SEXUAL CONDUCT WITH A MINOR.

11 HE'S ALSO CHARGED WITH LEWD ACT.
12 AND THE CODE OF LAWS HERE IN SOUTH CAROLINA DEFINES A
13 LEWD ACT AS WILLFULLY AND LEWDLY COMMITTING OR
14 ATTEMPTING TO COMMIT A LEW OR LASCIVIOUS ACT ON THE BODY
15 OF A CHILD UNDER THE AGE OF SIXTEEN, AND HER AGE IS
16 FOURTEEN. SO, ATTEMPTING OR INDEED PENETRATING OR FULLY
17 COMMITTING THE ACT OF A SEXUAL BATTERY IS A LEWD ACT.
18 AND HE'S CHARGED WITH LEWD ACT BECAUSE THERE'S A
19 QUESTION AS TO WHETHER OR NOT THAT INCIDENT IN THE BATH
20 ROOM WAS AN ENTIRELY, ENTIRE ACT OF CRIMINAL SEXUAL
21 CONDUCT OR A LEWD ACT. IN ANY EVENT HE WAS TRYING TO
22 FORCE HIMSELF ON HER. IT'S THE STATE'S POSITION THAT AT
23 THE VERY LEAST IT'S A LEWD ACT. SO, WE WOULD ASK YOU TO
24 FIND HIM GUILTY OF A LEWD ACT ALONG WITH CRIMINAL SEXUAL
25 CONDUCT WITH A MINOR.

311

1 NOW, LADIES AND GENTLEMEN, I'VE
2 NEVER SERVED ON A JURY. BECAUSE I'M A LAWYER, IT'S
3 PROBABLY UNLIKELY THAT I EVER WILL. I'VE NEVER BEEN
4 CALLED TO, AND LAWYERS DON'T NECESSARILY MAKE THE BEST
5 JURORS. I THINK IT WOULD BE DIFFICULT FOR ME TO BE A
6 GOOD JUROR, YOU HAVE TO BE ABLE TO LISTEN LIKE Y'ALL
7 DID, LISTEN THE WITNESSES, LISTEN TO THE JUDGE, LISTEN
8 TO THE LAWYERS, AND YOU NEVER HAVE AN OPPORTUNITY TO
9 SPEAK OR ASK ANY QUESTIONS. MY WIFE SAYS I DON'T
10 LISTEN, SO I PROBABLY WOULDN'T BE A GOOD JUROR. BUT
11 WHAT'S IRONIC IS THAT AT THE END OF THIS CASE IT WILL BE
12 YOUR VOICE THAT SPEAKS THE LOUDEST IN THIS COURTROOM.
13 AND I'M GOING TO ASK YOU TO USE THAT VOICE TO FIND HIM
14 GUILTY.

15 NOW I WANT TO TALK TO YOU ABOUT THE
16 DEFENDANT'S DEFENSE IN THIS CASE. YOU KNOW, WHEN I'M
17 PREPARING FOR A TRIAL SUCH AS THIS, IN THE DAYS BEFORE
18 THE TRIAL, YOU KNOW, I FIND MYSELF HAVING TO ANTICIPATE,
19 HAVING TO GUESS WHAT THE DEFENSE IS GOING TO BE. THEY
20 DON'T HAVE TO TELL US. AND IN THIS CASE IT SEEMS LIKE
21 THE DEFENSE IS A MOVING TARGET. IT'S CHANGED
22 THROUGHOUT. IT SEEMS AS THOUGH AT ONE POINT THE DEFENSE
23 WAS, THIS IS JUST A BIG CONSPIRACY THEORY. ALL THESE
24 PEOPLE CAME TOGETHER TO GO GET LINDY JONES, TO GET HIM
25 IN TROUBLE. BUT THAT DEFENSE HAS A LOT OF PROBLEMS.

1 FIRST OF ALL, YOU'VE HEARD, Minor [REDACTED] ISN'T THE ONE
2 THAT CALLED THE POLICE. SHE DIDN'T WANT TO CALL THE
3 POLICE. BUT SHE ULTIMATELY, WHEN SHE DID TALK TO THE
4 POLICE WHEN SHE MET WITH THEM AFTER THEY HAD BEEN CALLED
5 SHE GAVE THEM A TRUTHFUL STATEMENT. SO, SHE'S NOT A
6 PART OF ANY CONSPIRACY. SHE SAID HE WASN'T A BAD GUY UP
7 UNTIL THEN. THE OTHER PROBLEM WITH THAT IS, IF THIS IS
8 A CONSPIRACY, THEN HE'S IN ON IT, TOO, BECAUSE HIS OWN
9 STATEMENT, AS YOU'RE HEARD, HAS HIM IN THE BED WITH HER
10 TRYING TO HAVE SEX WITH HER. NOW, OF COURSE, HIS
11 STATEMENT, HE CAN'T HAVE SEX WITH HER BECAUSE HE'S TOO
12 BIG, HE CAN'T GET IN. HE THINKS IT'S HIS GIRLFRIEND, IT
13 DIDN'T FIT. HE MAKES A QUICK DEFENSE IN SAYING HE
14 THOUGHT HIS GIRLFRIEND WAS IN THE BED WITH HIM. THE
15 PROBLEM WITH THAT, LADIES AND GENTLEMEN, IS, IT'S
16 ABSOLUTELY AND UTTERLY ABSURD, IT'S A RIDICULOUS DEFENSE
17 TO SAY THAT YOU THINK YOU'RE IN BED WITH YOUR GIRLFRIEND
18 WHEN IT'S A FOURTEEN YEAR OLD, TO THINK THAT YOUR
19 GIRLFRIEND IS COMING TO HAVE SEX WITH YOU WHEN YOU'RE
20 SUPPOSED TO BE AT WORK. IT'S ABSURD, LADIES AND
21 GENTLEMEN. HE CAN'T SMELL HER, HE CAN'T SEE HER, HE
22 CAN'T FEEL HER? SHE'S FOURTEEN YEARS OLD, HE DOESN'T
23 KNOW WHO HE'S TRYING TO PUT HIS PENIS INSIDE OF? IT'S
24 UTTERLY RIDICULOUS. SO, THEY MOVE AWAY FROM THAT. THEY
25 MOVE AWAY FROM THAT DEFENSE AND SAY, WELL, I'LL TELL YOU

313

1 WHAT, LET'S MAKE IT, THERE'S NO DNA DEFENSE. THEY SAID
2 THEY DIDN'T FIND ANY DNA. YOU HEARD FROM INVESTIGATOR
3 THOMPSON, YOU DON'T ALWAYS FIND DNA. YOU HEARD FROM THE
4 INDIVIDUALS FROM SLED, ONLY IF THERE'S TISSUE OR SOME
5 OTHER MATERIAL TRANSFERRED WILL YOU FIND DNA. YOU SEE,
6 WHAT YOU'VE GOT TO UNDERSTAND IS, WHEN HE'S FIRST TOLD
7 WHAT HE'S CHARGED WITH, WHAT HE'S ACCUSED OF, HE DOESN'T
8 KNOW IF THEY'RE GOING TO FIND DNA OR NOT. THAT'S WHEN
9 HE COMES UP WITH THAT FIRST RIDICULOUS STORY. HE'S
10 THINKING IN HIS MIND -- FIRST OF ALL, HE'S VICTIMIZED
11 HER ONE, SHE NEVER TOLD, BUT THIS TIME THEY FOUND OUT.
12 HE'S THINKING, WELL, I KNOW I SEXUALLY ASSAULTED HER, I
13 KNOW I PENETRATED. THEY MAY FIND DNA, SO I HAVE TO AT
14 LEAST ADMIT I WAS THERE. THAT'S WHEN HE COMES UP WITH
15 HIS FIRST STORY, IT DIDN'T FIT. BUT NOW THEY'RE COMING
16 TO COURT THIS WEEK KNOWING, AFTER FOUR YEARS HE'S HAD TO
17 THINK ABOUT THAT DEFENSE, HE REALIZES IT'S RIDICULOUS,
18 REALIZES IT'S NOT A DEFENSE. THEY COME UP WITH NO DNA.
19 THE PROBLEM WITH THAT IS, WHAT DOES IT MATTER, WHAT DOES
20 IT MATTER IF THERE'S ANY DNA WHEN HE ADMITS TO BEING IN
21 THE BED WITH HER, ADMITS TO PUTTING HIS PENIS IN HER?
22 FOR THEM TO COME BACK AND SAY, THERE'S NO DNA, THE TWO
23 THINGS DON'T FIT. YOU CAN'T HAVE IT BOTH WAYS. WHICH IS
24 YOUR DEFENSE? IS IT THAT YOU DIDN'T DO IT, OR IS IT
25 THAT I DID IT BUT THERE'S NO DNA? IT DOESN'T MAKE

1 SENSE. SO, THEY MOVE AWAY FROM THAT A LITTLE BIT AND
2 THEY GO WITH, WELL, THERE'S NO PHYSICAL EVIDENCE, NO
3 ABSOLUTE PHYSICAL EVIDENCE. THEY ASKED DR. GIBBS COULD
4 THE INJURIES HAVE BEEN CAUSED BY A TAMPON, COULD IT HAVE
5 BEEN FROM MASTURBATION? AGAIN, WHAT DOES THAT MATTER
6 WHEN HE ADMITTED BACK IN TWO THOUSAND AND FIVE HAVING
7 SEX WITH HER? IT'S JUST THAT IT DIDN'T FIT. HE DIDN'T
8 KNOW WHO IT WAS, BUT HE ADMITTED TO SLEEPING WITH HER,
9 BEING IN THE BED WITH HER, TRYING TO HAVE SEX WITH HER.
10 AND YOU HEARD THAT THERE WAS PHYSICAL EVIDENCE. YOU
11 HEARD THAT THERE WAS A LACERATION IN HER VAGINAL AREA
12 CONSISTENT WITH BLUNT FORCE TRAUMA. SO THAT DEFENSE
13 DOESN'T WORK. SO, I GUESS THEY HAVE TO COME BACK TO THE
14 ORIGINAL, IT DIDN'T FIT. IT WASN'T MY GIRLFRIEND, I
15 THOUGHT IT WAS, DEFENSE. NOW, LADIES AND GENTLEMEN, IF
16 YOU BELIEVE THAT, IF YOU BELIEVE THAT HE DIDN'T KNOW WHO
17 HE PUT HIS PENIS INSIDE OF, EVEN THOUGH SHE WAS FOURTEEN
18 YEARS OLD AND HE'S A GROWN MAN, HE COULDN'T SMELL,
19 COULDN'T SEE HER, IF YOU BELIEVE THAT THEN FIND HIM NOT
20 GUILTY AND SEND HIM ON HIS WAY. BUT TO DO THAT YOU HAVE
21 TO IGNORE ALL OF THE CREDIBLE EVIDENCE, THE ONLY
22 CREDIBLE EVIDENCE IN THIS CASE FROM THE STATE'S
23 WITNESSES ON THIS WITNESS STAND. I SUBMIT TO YOU IT'S
24 THE SPIT BALL DEFENSE BECAUSE NO ONE DEFENSE WORKS IN
25 THIS CASE FOR THEM. SO, INSTEAD OF GOING WITH ONE GOOD

315

1 DEFENSE THEY JUST GO WITH SEVERAL DIFFERENT DEFENSES TO
2 TURN YOUR ATTENTION TO ANYTHING OTHER THAN THE COLD,
3 HARD FACTS. LIKE THE SHELL GAME, GET THE JURY LOOKING
4 OVER HERE, WHEN THE EVIDENCE IS OVER HERE. IT'S THE SPIT
5 BALL DEFENSE, JUST THROW AS MUCH AGAINST THE WALL AND
6 SEE IF ANYTHING STICKS.

7 DON'T LET THEM DO IT, LADIES AND
8 GENTLEMEN. I'M ASKING YOU TO RENDER YOUR VERDICT BASED
9 ON THE FACTS. WHAT HIS STATEMENT IS, THAT HE THOUGH IT
10 WAS HIS GIRLFRIEND IS WHAT I CALL THE AGE OLD ART OF
11 CONFESSING GUILT. YOU ADMIT A SMALL PART OF WHAT YOU
12 DID IN ORDER TO AVOID THE GREATER PUNISHMENT FOR THE
13 GREATER ACTS YOU DID. HE KNOWS HE SEXUALLY ASSAULTED
14 HER, AND HE KNOWS SHE WENT TO THE POLICE AND SHE'S GOING
15 TO HAVE A SEX EXAM, SO HE SAYS, WELL, I HAVE TO ADMIT
16 THAT I HAD SEX WITH HER, SO I'LL JUST SAY I THOUGHT IT
17 WAS SOMEBODY ELSE. YOU ADMIT A SMALL PART TO TRY TO
18 AVOID THE GREATER PENALTY.

19 LET'S TALK ABOUT THE CREDIBLE
20 EVIDENCE IN THIS CASE, LET'S TALK ABOUT THE STATE'S
21 WITNESSES. THESE ARE THE WITNESSES YOU HEARD FROM FROM
22 THE STATE, AND I'M GOING TO START WITH Minor.
23 SHE TESTIFIED SHE WAS RAPED ON TWO ACCOUNTS BY THE
24 DEFENDANT, THAT HE STOPPED WHEN HE WANTED TO STOP. SHE
25 SAID IN THE SECOND INCIDENT, YES, SHE TRIED TO POKE HER

1 HANDS IN HIS EYE, BUT THAT DIDN'T STOP HIM, HE STOPPED
2 WHEN HE WANTED TO STOP. SHE TESTIFIED, OR YOU ACTUALLY
3 HEARD HER SAY THAT AS FAR AS THE FIRST INCIDENT SHE
4 DIDN'T GOT TO THE POLICE. SHE DIDN'T GO TO THE POLICE
5 IN EITHER INCIDENT, SHE DIDN'T WANT TO RUIN HER FAMILY,
6 SHE DIDN'T WANT TO GET ANYBODY IN TROUBLE. BUT WHEN
7 CONFRONTED WITH THE TRUTH AND THE ALLEGATION WAS OUT
8 THERE SHE TOLD THEM THE TRUTH, AND THAT'S WHY WE'RE
9 HERE. SHE DIDN'T WANT THE POLICE CALLED, BUT YOU HEARD
10 THAT WHEN THE POLICE CAME AND THEY TOOK HER DOWN TO
11 CHARLESTON, DR. GIBBS TESTIFIED SHE WAS IMMENSE PAIN.
12 SHE WAS SHAKING, SHE HAD TO PUT TISSUE DOWN THERE TO TRY
13 TO EASE TH PAIN. THAT WAS Minor [REDACTED], SHE SAID HE
14 STOPPED WHEN HE WANTED TO STOP.

15 AND YOU HEARD FROM DR. DEBORAH
16 REYES. AND WHAT WAS IMPORTANT ABOUT HER TESTIMONY, I
17 WANTED HER TO TALK TO YOU ABOUT DELAYED DISCLOSURE
18 BECAUSE YOU'VE HEARD SHE NEVER TOLD. Minor [REDACTED]
19 NEVER DIRECTLY TOLD THE POLICE WHAT HAD HAPPENED. SHE
20 EVENTUALLY TOLD HER TEACHER AND THAT'S HOW THE POLICE
21 BECAME INVOLVED. AND DR. REYES TOLD YOU THAT IN MOST
22 CHILD SEXUAL ASSAULTS THEY NEVER TELL. AND AGAIN,
23 THAT'S EVIDENCE THAT CORROBORATES WHAT Minor [REDACTED]
24 TOLD YOU, AND IT CORROBORATES THE REASON SHE BEHAVED THE
25 WAY SHE DID, AND THE REASON SHE NEVER TOLD. SHE SAID

317

1 THAT'S ESPECIALLY TRUE, DR. REYES DID, ABOUT INDIVIDUALS
2 IN YOUR FAMILY, CLOSE FAMILY FRIEND OR INDIVIDUALS WHO
3 ARE ACTUALLY IN YOUR FAMILY. AND SHE SAID THAT **Minor**
4 **[REDACTED]** S DISCLOSURE TO HER DID NOT APPEAR TO BE
5 INFLUENCED BY ANY OUTSIDE INFLUENCE.

6 NOW, LET'S TALK ABOUT DR. GIBBS.
7 SHE TESTIFIED THAT THE INJURY THAT SHE NOTED TO **Minor**
8 **[REDACTED]** BACK IN TWO THOUSAND AND FIVE WAS CONSISTENT
9 WITH THE ASSAULT THAT **Minor** DISCLOSED TO HER. SHE GAVE,
10 **Minor** GAVE DR. GIBBS THE SAME VERSION SHE HAD GIVEN TO
11 LAW ENFORCEMENT, THE SAME VERSION SHE GAVE TO, LATER ON
12 TO DR. REYES, THE SAME THINGS SHE TOLD HER TEACHER. AND
13 DR. GIBBS TESTIFIED THAT IT WAS CONSISTENT WITH BLUNT
14 FORCE TRAUMA TO THE INSIDE FOSSA NAVICULARIS PORTION OF
15 HER VAGINAL AREA. SHE SAID THAT THE VICTIM WAS SHAKING,
16 IN PAIN, SHE HAD TO GIVE HER PAIN MEDICATION. YOU
17 RECALL THAT TESTIMONY.

18 YOU HEARD FROM HEATHER FALCO, NOW
19 HEATHER HOOK. SHE TOLD YOU THE SAME THING ABOUT AUGUST
20 FIFTEENTH, THAT THE VICTIM CALLED HER ONCE AND
21 EVERYTHING WAS FINE, NORMAL CONVERSATION. SHE CALLED
22 BACK IN AN HOUR AND I SUBMIT TO YOU THAT'S RIGHT AFTER
23 THE DEFENDANT HAD SEXUALLY ASSAULTED HER, THIS TIME IN
24 THE ROOM, FORCED HIMSELF INTO HER. SHE CALLED THIS TIME
25 AND SHE WAS QUIET, UPSET, CRYING. AND YOU KNOW WHAT SHE

1 TOLD MS. FALCO, BECAUSE SHE TOLD YOU WHAT SHE TOLD MS.
2 FALCO, THAT THAT MAN HAD RAPED HER. MS. FALCO
3 IMMEDIATELY CALL THE POLICE, SHE FOLLOWED UP, GAVE A
4 WRITTEN STATEMENT TO INVESTIGATOR THOMPSON.

5 YOU HEARD FROM AGENT BUTLER FROM
6 SLED. SHE TOLD YOU THAT YOU WOULDN'T EXPECT TO FIND DNA
7 UNLESS THERE WAS SOME TYPE OF TRANSFER OF MATERIAL. IF
8 THERE'S NO EJACULATION YOU DON'T EXPECT TO FIND DNA.
9 AGAIN, WHAT DOES IT MATTER WHEN HE ADMITS BEING IN THE
10 BED WITH HER AND TRYING TO PUT HIS PENIS INSIDE OF HER.
11 EVEN IF HE GIVES A BOGUS REASON FOR DOING IT HE ADMITS
12 TO DOING THAT MUCH. BUT THEY WANT TO FOCUS YOUR
13 ATTENTION ON, WHERE IS THE DNA? WHAT DOES IT MATTER?
14 AND AGENT LEISY TESTIFIED, AGAIN, YOU WOULDN'T ALWAYS
15 EXPECT TO FIND DNA IF NO TISSUE WAS EXCHANGED.

16 THEN YOU HEARD FROM DETECTIVE
17 THOMPSON, INVESTIGATOR THOMPSON. HE TOLD YOU HOW HE
18 CONDUCTED HIS INVESTIGATION. HE FIRST INTERVIEWED THE
19 DEFENDANT, GOT THAT STORY FROM HIM, A BOGUS STORY. HE
20 HEARD FROM THE VICTIM, HEARD FROM MS. FALCO, TOOK
21 STATEMENTS FROM THEM. HE TOLD YOU THAT WHEN HE TALKED
22 TO THE DEFENDANT, THE DEFENDANT ALREADY KNEW WHAT HE WAS
23 CHARGED WITH, ALREADY WHAT HE WAS -- NOT CHARGE WITH
24 BECAUSE HE WASN'T CHARGED AT THAT POINT, BUT HE KNEW
25 WHAT HE WAS ACCUSED OF. HE KNEW THAT SHE SAID HE HAD

319

1 SEXUALLY ASSAULTED HER, FORCEFULLY RAPED HER. SO AGAIN,
2 THAT'S WHY HE CRAFTS THIS STORY WHERE HE HAS TO ADMIT TO
3 AT LEAST BEING IN THE BED WITH HER. AND YOU HEARD
4 INVESTIGATOR THOMPSON, AND THIS WAS IMPORTANT, WHEN HE
5 TOLD YOU THAT THE DEFENDANT IN HIS STATEMENT SAYS, HE
6 TOLD THE VICTIM HE DIDN'T WANT TO HAVE SEX WITH HER AND
7 HE WAS GOING TO TELL HER AUNT. BUT THEN YOU DON'T SEE
8 ANYWHERE IN HIS STATEMENT WHERE HE TOLD HER AUNT, HE
9 TOLD HIS GIRLFRIEND. HE GOES TO THE WORK AND IT'S NOT
10 UNTIL THE POLICE COME AND GET HIM THAT HE THEN STARTS TO
11 CRAFT THIS STORY HE COMES UP WITH.

12 THAT'S THE STATE'S WITNESSES.

13 NOW, THE DEFENSE, AS YOU'LL HAVE IN
14 THAT JURY ROOM, HIS STATEMENT, AND I'M GOING TO READ IT
15 FOR YOU ONE TIME REALLY QUICK, BUT YOU'LL HAVE THIS BACK
16 IN THE JURY ROOM WITH YOU. AND I WANT YOU TO LOOK AT IT
17 AND ASK YOURSELF IF IT MAKES SENSE. "ON AUGUST
18 FIFTEENTH, TWO THOUSAND FIVE, I WAS ASLEEP IN MY ROOM
19 RESTING FOR WORK. I WAS AWOKEN NINE:FORTY-FIVE, GIVE OR
20 TAKE A FEW MINUTES, BY SOMEBODY PLAYING WITH MY PRIVATE
21 AREA. AT THE TIME I DIDN'T KNOW WHO IT WAS. I ASSUMED
22 THAT IT WAS MY GIRLFRIEND, SHARON, BEING THAT SHE WAS
23 THE ONLY WOMAN ALLOWED IN OUR BEDROOM WHILE I'M IN
24 THERE. THE FEMALE GOT ON TOP ON ME AND WAS TRYING TO
25 RIDE ME. I PROCEEDED TO ENGAGE IN SEXUAL INTERCOURSE

1 WITH THE FEMALE, ASSUMING IT WAS MY GIRLFRIEND, SHARON.
2 WHEN I ATTEMPTED TO PUT MY PENIS IN IT WOULDN'T FIT, AND
3 I ASKED HER WHAT WAS WRONG WITH HER, WHAT IS WRONG WITH
4 YOU? THE FEMALE LAUGHED, AND WHEN SHE DID I RECOGNIZED
5 HER VOICE. I IMMEDIATELY PUSHED HER OFF OF ME, TURNED
6 THE LIGHTS ON. WHEN I DID NOTICE IT WAS MY NIECE, **Minor**
7 I GOT REALLY UPSET AND TOLD HER TO GET OUT OF MY ROOM.
8 SHE THEN ASKED ME IF I WAS GOING TO SLEEP WITH HER. I
9 SAID, HELL, NO, AND GOT OUT. SHE LEFT AND CAME BACK IN
10 AND ASKED ME WAS I GOING TO TELL HER MOTHER. I SAID,
11 YES." HE NEVER TELLS HER MOTHER. YOU HEARD THE
12 TESTIMONY. HE THEN GOES ON TO SAY, I TURNED ON THE T.V.
13 TO CHECK THE TIME AND IT WAS NINE:FORTY-SEVEN. I QUICKLY
14 GOT DRESSED AND RUSHED OFF TO WORK BEING THAT I HAD TO
15 BE THERE AT TEN." BUT HE WANTS YOU TO BELIEVE HIS
16 GIRLFRIEND CAME IN THERE AT NINE:FORTY-FIVE TO HAVE SEX
17 WITH HIM WHEN HE'S SUPPOSED TO BE AT WORK AT TEN. HE
18 THEN SAID, "I WENT TO WORK AND WORKED UNTIL A LITTLE
19 AFTER TWELVE, WHEN THE SECURITY GUARD APPROACHED ME AND
20 ASKED ME WAS I LINDY. I SAID, YEAH, AND HE SAID,
21 THERE'S FEMALE OUTSIDE AT THE GUARD SHACK. I WENT
22 OUTSIDE, IT WAS MY SISTER. SHE THEN SAID THE SHERIFF
23 WAS AT MY DOOR. I LEFT WORK TO TALK TO THE SHERIFF."
24 REMEMBER, AT THIS POINT HE ALREADY KNOWS, WHEN HE GIVES
25 THIS STATEMENT, HE ALREADY KNOWS THAT SHE SAID HE HAD

321

1 SEX WITH HER. HE KNOWS SHE'S ON THE WAY DOWN TO
2 CHARLESTON TO GET A MEDICAL EXAM. I SUBMIT TO YOU HE HAD
3 TO AT LEAST ADMIT TO HAVING SEX WITH HER. BUT AT THE
4 SAME TIME HE CAN'T ADMIT TO THAT BECAUSE THAT'S A CRIME.
5 SO, HE WANTS TO CHANGE IT AROUND AND SAY HE DOESN'T KNOW
6 WHO SHE WAS. IT'S THE ART OF CONFESSING GUILT, AND IT
7 GOES BACK TO BIBLICAL TIMES. DON'T LET HIM DO IT.

8 HOW IS THERE ANY DOUBT? HOW IS
9 THERE ANY DOUBT, MUCH LESS A REASONABLE DOUBT, THAT THAT
10 MAN NOT ONCE BUT TWICE SEXUALLY ASSAULTED **Minor**
11 **[REDACTED]** AND THE FIRST TIME HE DID IT BECAUSE HE
12 THOUGHT HE COULD. FOR WHATEVER REASON HE THOUGHT HE
13 COULD, AND HE THOUGHT HE COULD GET AWAY WITH IT. AND LO
14 AND BEHOLD, BACK IN JUNE, TWO THOUSAND FIVE, NOTHING
15 HAPPENED, SHE NEVER TOLD, HE DID GET AWAY WITH IT, OR AT
16 LEAST HE THOUGHT. AND THEN ON AUGUST FIFTEENTH, TWO
17 THOUSAND AND FIVE, HE SEXUALLY ASSAULTS HER AGAIN IN THE
18 BEDROOM, FORCES HIMSELF INTO HER. SHE POKES HIM IN HIS
19 EYES TO GET HIM OFF OF HER. AND WHY DID HE DO IT THE
20 SECOND TIME? I SUBMIT TO YOU, BECAUSE HE KNEW HE COULD.
21 HE HAD ALREADY DONE IT ONCE AND HE HAD GOTTEN AWAY WITH
22 IT, SO HE KNEW HE COULD DO IT AGAIN. HE WAS WRONG. HE
23 WAS WRONG THIS TIME.

24 THIS HASN'T BEEN A LONG TRIAL. I
25 KNOW IT'S FELT LIKE IT HAS, BUT WHEN YOU COMPARE IT TO

1 TRIALS THAT LAST WEEKS, SOMETIMES MONTHS, SOMETIMES MORE
2 THAN A YEAR THAT YOU READ ABOUT OR SEE ON T.V., BUT I
3 IMPLORE YOU, DON'T LET THE FACT THAT THIS HAS BEEN A
4 SHORT TRIAL IN ANY WAY LEAD YOU TO BELIEVE THAT IT'S NOT
5 AN IMPORTANT CASE. IT'S A VERY IMPORTANT CASE. AS MR.
6 SCOTT TOLD YOU BEFORE, THIS IS THE DEFENDANT, LINDY
7 JONES'S DAY IN COURT. HE'S CHARGED WITH TWO VERY
8 SERIOUS OFFENSES. AND IT'S IMPORTANT TO THE STATE
9 BECAUSE THIS IS OUR ONE AND ONLY OPPORTUNITY TO HOLD HIM
10 RESPONSIBLE FOR WHAT HE DID. AND IT'S IMPORTANT TO
11 Minor AND HER FAMILY. SHE'S EIGHTEEN YEARS OLD
12 NOW, SHE'S MOVING ON WITH HER LIFE. THIS IS HER
13 OPPORTUNITY FOR CLOSURE.

14 HOW IS THERE ANY DOUBT, MUCH LESS A
15 REASONABLE DOUBT? THE ONLY REASONABLE CONCLUSION THAT
16 YOU CAN REACH IN THIS CASE IS THAT HE SEXUALLY ASSAULTED
17 HER ON TWO OCCASIONS. HE'S GUILTY OF CRIMINAL SEXUAL
18 CONDUCT WITH A MINOR, AND LEWD ACT. HE JUST THOUGHT HE
19 COULD GET AWAY WITH IT. SHOW HIM HE'S WRONG. SHOW HIM
20 THE TIME FOR LYING, THE TIME FOR BLAMING THE VICTIM, THE
21 ART OF CONFESSING GUILT, SHOW HIM HIS TIME IS OVER.
22 SHOW Minor THAT HER COURAGE WAS NOT IN VAIN.

23 IN A FEW MINUTES YOU'RE GOING TO BE
24 ASKED, AFTER YOU HEAR FROM THE DEFENDANT AND JUDGE
25 WILLIAMS, YOU'RE GOING TO BE ASKED TO RENDER A VERDICT.

323

1 THE WORD, VERDICT, COMES FROM THE LATIN PHRASE, TO SPEAK
2 THE TRUTH. ALL WE ASK IS THAT YOU GO BACK THERE AND
3 LISTEN TO EACH OTHER, YOU WORK THIS OUT, YOU USE YOUR
4 COMMON SENSE, AND BRING US BACK A VERDICT THAT SPEAKS
5 THE TRUTH. AND I SUBMIT TO YOU IF YOU DO THAT THE ONLY
6 TRUTHFUL VERDICT YOU CAN RENDER IN THIS CASE IS THAT
7 HE'S GUILTY.

8 THANK YOU FOR YOUR TIME.

9 THE COURT: THANK YOU, SIR.

10 MS. FORD:

11 MS. FORD: THANK YOU, YOUR HONOR.

12 MAY IT PLEASE THE COURT?

13 THE COURT: YES, MA'AM.

14 CLOSING ARGUMENT BY MS. FORD

15 LADIES AND GENTLEMEN OF THE JURY,
16 THANK YOU. THANK YOU FOR YOUR ATTENTION, THANK YOU FOR
17 BEING HERE.

18 AT THE BEGINNING OF THE TRIAL I TOLD
19 YOU THAT THERE'S NOTHING SO POWERFUL AS THE TRUTH, AND
20 OFTEN NOTHING SO STRANGE. IN THIS CASE WHAT LINDY JONES
21 TOLD DEPUTY THOMPSON IS THE TRUTH. YOU MIGHT THINK IT'S
22 STRANGE BUT IT IS THE TRUTH.

23 THE STATE WANTS US TO TALK ABOUT
24 FACTS. WELL, LET'S DO THAT, LET'S GET RIGHT INTO THOSE
25 FACTS. LET'S LOOK AT Minor N'S TESTIMONY. SHE

1 TESTIFIED THAT SHE OFTEN WENT TO HER AUNT AND UNCLE'S
2 HOUSE. SHE WENT THERE THROUGHOUT THE SUMMER, AND SHE
3 CLAIMS THAT AT SOME POINT IN THE SUMMER LINDY JONES
4 SEXUALLY ASSAULTED HER IN THE BATHROOM. WHEN? WE DON'T
5 KNOW, NEITHER DOES SHE. SHE COULDN'T TELL US. HOW?
6 SHE SEEMS TO HAVE TROUBLE REMEMBERING THAT. AT ONE
7 POINT SHE TELLS US THAT HER CLOTHES WERE ON WHEN MR.
8 JONES TRIED TO ASSAULT HER. THEN AFTER SOME LEADING
9 FROM THE STATE SHE SAYS, OH, NO, THEY WERE OFF. THE
10 ONLY CONSISTENT THING IS THAT SHE DOESN'T REMEMBER.
11 MAYBE SHE DOESN'T REMEMBER BECAUSE IT DIDN'T HAPPEN.

12 CONCERNING THE ALLEGATIONS OF AUGUST
13 FIFTEENTH, TWO THOUSAND FIVE, SHE TESTIFIED THAT SHE
14 WENT TO WAKE MR. JONES UP. SHE SAID HE SAID, FIVE MORE
15 MINUTES. SO, SHE GOES BACK IN AFTER FIVE MINUTES. SHE
16 SAYS HE WAS AWAKE AND HE WAS NAKED. AND YOU HEARD HER
17 UP ON THE WITNESS STAND. WHAT DID YOU DO? SHE SAID SHE
18 JUST STOOD THERE. DID SHE LEAVE? DID SHE RUN? DID SHE
19 WALK AWAY? NO. SHE STOOD THERE WHILE, AS SHE ALLEGES,
20 A NAKED MAN IS STANDING THERE SAYING, COME ON OVER HERE.
21 DOES THAT MAKE SENSE? DOES THAT MAKE ANY SENSE? A
22 NAKED MAN IS STANDING IN FRONT OF YOU TELLING YOU, COME
23 HERE, AND YOU JUST STAND THERE. I SUBMIT TO YOU, LADIES
24 AND GENTLEMEN, THAT MAKES ABSOLUTELY NO SENSE.

25 SHE ALSO TESTIFIED THAT HE GRABBED

325

1 HER, HE HELD HER DOWN, WITH FORCE, SHE CLAIMS FOR THREE
2 OR FOUR MINUTES. BUT YOU HEARD TESTIMONY FROM DR.
3 GIBBS, FROM INVESTIGATOR EIKHOFF, A NUMBER OF PEOPLE,
4 THERE WERE NO BRUISES, NO SCRATCHES, NO NOTHING. IN A
5 STRUGGLE FOR THREE OR FOUR MINUTES THERE'S NO EVIDENCE
6 ON EITHER MS. Minor OR MR. JONES OF A STRUGGLE,
7 NOTHING? DR. GIBBS TESTIFIED THAT IF THERE HAD BEEN SHE
8 WOULD HAVE TAKEN PICTURES. THERE ARE NO PICTURES.
9 INVESTIGATOR EIKHOFF SAID IF SHE HAD SEEN ANYTHING, OF
10 COURSE, SHE WOULD HAVE NOTED THAT, SHE WOULD HAVE TAKEN
11 PICTURES. THERE'S NONE OF THAT, NO EVIDENCE OF A
12 STRUGGLE, THREE OR FOUR MINUTE STRUGGLE. YOU SAY MS.
13 Minor, YOU'VE SEEN MR. JONES. THERE'S A BIG
14 DIFFERENCE IN THEIR SIZE. YOU THINK IN A THREE OR FOUR
15 MINUTE STRUGGLE THERE WOULD BE SOME BRUISING, SOME
16 EVIDENCE OF THAT, AND THERE IS NONE.

17 MS. Minor CLAIMS THAT SHE HAD HER
18 FINGERS IN LINDY JONES'S EYES, SHE HAD THEM IN HIS EYES
19 FOR THREE OR FOUR MINUTES UNTIL HE STOPPED. BUT THE
20 STATE'S OWN WITNESSES SAID, THERE'S NO EVIDENCE OF
21 ANYTHING UNDERNEATH HER FINGERNAIL SCRAPINGS THAT THEY
22 TESTED, NOTHING. NOTHING. THE STATE'S TRYING TO TELL
23 YOU THAT YOU MIGHT NOT FIND DNA EVIDENCE, IT MIGHT NOT
24 BE THERE. WELL, LADIES AND GENTLEMEN, I SUBMIT TO YOU
25 THAT IF AN INDIVIDUAL HAS SEXUAL INTERCOURSE WITH

1 ANOTHER PERSON FOR THREE OR FOUR MINUTES THERE'S GOING
2 TO BE SOME EVIDENCE OF THAT, SOME PHYSICAL EVIDENCE OF
3 THAT, SOME DNA EVIDENCE OF THAT, AND THERE'S NOT. THE
4 STATE'S TRYING TO GET AWAY FROM THAT. THE STATE WOULDN'T
5 HAVE TAKEN THE RAPE EXAMINATION KIT TO SLED AND HAD THEM
6 TEST IT UNLESS THEY THOUGHT THERE'S GOING TO BE SOME
7 EVIDENCE IN THERE TO SUPPORT OUR CASE. BUT THE STATE
8 WAS SURPRISED WHEN THEY FOUND OUT THERE'S NOTHING, NO
9 SEMEN, NO PUBLIC HAIR, NO BODILY FLUID OF ANY KIND FOUND
10 IN THAT RAPE EXAMINATION KIT, NOTHING UNDERNEATH THE
11 FINGERNAILS OF Minor . THEY EVEN TESTED THE BED
12 SHEETS, HER CLOTHES, AND THERE WAS NOTHING. THE STATE
13 SAID, OH, DON'T EXPECT THAT. DOES THAT MAKE SENSE? SHE
14 CLAIMS THAT SHE HAD SEX WITH HIM FOR THREE OR FOUR
15 MINUTES AND THERE'S NOTHING? I SUBMIT TO YOU THAT
16 DOESN'T MAKE ANY SENSE.

17 LADIES AND GENTLEMEN, MR. JONES DID
18 NOT HAVE SEX WITH Minor FOR THREE OR FOUR
19 MINUTES. WHAT HE TOLD DEPUTY THOMPSON IS THE TRUTH.
20 AND THE LACK OF DNA EVIDENCE SUPPORTS HIS THEORY,
21 SUPPORTS HIS STATEMENT, SUPPORTS WHAT HE TOLD THEM THE
22 DAY THAT THIS HAPPENED, AND WHAT HE IS STILL SAYING.

23 MR. JEFFRIES SAID THAT, HE REFERRED
24 TO AN EXAMPLE OF SNOW COMING TO A CONCLUSION. HE SAID
25 IF YOU LOOK OUT AND YOU SEE THE GREEN, AS GRASS. AND

327

1 THEN YOU WAKE UP THE NEXT MORNING, THERE'S SNOW. BUT
2 THERE'S ONLY WAY FOR SNOW TO GET ON THAT GROUND. RIGHT?
3 IT HAS TO FALL FROM THE SKY. WELL, HE WAS TRYING TO
4 TALK ABOUT DR. GIBBS'S TESTIMONY, SAYING THAT THAT
5 LACERATION WAS ONLY CAUSED BY ONE THING. BUT LADIES AND
6 GENTLEMEN, YOU HEARD, JUST AS I DID, FROM THIS WITNESS
7 STAND. DR. GIBBS SAID, COULD IT HAVE BEEN CAUSED BY
8 SEXUAL ASSAULT? YES. IT COULD HAVE BEEN CAUSED ALSO BY
9 INFECTION, BY STRETCHING, BY MASTURBATION, BY USING A
10 TAMPON AND MISSING. THIS ISN'T LIKE THE SNOW, IT'S NOT
11 CUT AND DRY LIKE THAT. IT'S MORE COMPLEX THAN WHAT THE
12 STATE WAS TRYING TO ALLEGE.

13 LET'S TALK ABOUT MS. FALCO, MS.
14 HOOK. SHE WAS IN COLUMBIA, [Minor] WAS LIVING HERE.
15 [Minor] SAID ON THIS WITNESS STAND THAT HER MOTHER WAS
16 CONCERNED ABOUT HER RELATIONSHIP WITH HER, THAT SHE
17 DIDN'T WANT HER TALKING TO HER, SPENDING ANY TIME WITH
18 HER. BUT THEY KEPT COMMUNICATING. AND MS. FALCO
19 REPORTED THESE ALLEGATIONS SUBMITTED TO HER BY [Minor]
20 [REDACTED] BECAUSE SHE HAS TO. SHE'S A TEACHER, SHE'S
21 REQUIRED BY LAW, WHETHER SHE BELIEVES AN ALLEGATION OR
22 SHE DOESN'T BELIEVE AN ALLEGATION, BUT SHE HAS TO REPORT
23 IT. SHE MUST REPORT IT.

24 I SPOKE BRIEFLY ABOUT INVESTIGATOR
25 EIKHOFF, THAT SHE SAW NO INJURIES, THAT SHE SAW NO

1 BRUISING. SHE DIDN'T SEE ANY EVIDENCE OF THIS THREE OR
2 FOUR MINUTE STRUGGLE THAT Minor [REDACTED] ALLEGED
3 HAPPENED. THE SAME WITH DEPUTY THOMPSON. HE DIDN'T SEE
4 ANYTHING. HE DIDN'T KNOW WHAT HAPPENED UNTIL THE NEXT
5 DAY WHEN HE TOOK LINDY JONES'S STATEMENT. AND LINDY
6 JONES TOLD HIM THE TRUTH. HE TOLD HIM THAT HE THOUGHT
7 ON THAT NIGHT, HE WAS ASLEEP, HE WOKE UP AND IN A GROGGY
8 STATE OBVIOUSLY, AND SOMEONE FONDLING HIS GENITALS. HE
9 THOUGHT IT WAS HIS GIRLFRIEND BECAUSE THAT'S HOW THEY
10 HAD SEX. AND AS SOON AS HE REALIZED WHAT HAPPENED, AS
11 SOON AS HE REALIZED IT WASN'T HIS GIRLFRIEND, HE PUSHED
12 HER OFF, DEMANDED SHE LEAVE THE ROOM. LADIES AND
13 GENTLEMEN, YOU MIGHT THINK THAT'S CRAZY BUT THAT'S WHAT
14 HAPPENED IN THIS CASE. HE DIDN'T INTEND TO HARM Minor
15 [REDACTED], THERE WAS NO INTENT TO ASSAULT HER. IT WAS A
16 MISTAKE. AND I SUBMIT TO YOU THAT THE DNA EVIDENCE, OR
17 LACK OF DNA EVIDENCE SUPPORTS THE TRUTH THAT MR. JONES
18 TOLD TO DEPUTY THOMPSON.

19 THIS IS A CASE ABOUT PROOF. THIS IS
20 A CASE NOT OF ALLEGATIONS, NOT OF RUMOR, BUT OF PROOF.
21 SOMETIMES YOU'RE AT HOME, WATCH T.V., YOU HEAR
22 SOMETHING, YOU MAKE UP YOUR MIND ABOUT IT. YOU HEAR A
23 RUMOR ABOUT SOMEONE. YOU MIGHT BELIEVE IT, MAYBE NOT.
24 BUT THAT'S OUTSIDE OF THIS COURTROOM, OUTSIDE OF THOSE
25 DOORS. WHEN YOU SIT IN THIS JURY BOX YOU MUST LISTEN TO

1 THE FACTS, FACTS, NOT CONJECTURE, NOT ALLEGATIONS, NOT
2 INNUENDO, NOT RUMOR, FACTS. AND LADIES AND GENTLEMEN,
3 THE FACTS THAT YOU HEARD IN THIS CASE, THE FACTS THAT
4 WERE PRESENTED TO YOU SHOW THAT MR. JONES IS NOT GUILTY
5 OF A LEWD ACT, HE'S NOT GUILTY OF CRIMINAL SEXUAL
6 CONDUCT WITH A MINOR. ALL WE HAVE HERE ARE ALLEGATIONS
7 THAT HAVE BEEN SUBSTANTIATED BY WHAT?

8 MR. JONES WALKED IN HERE AN INNOCENT
9 MAN. HE SITS OVER THERE, HE IS AN INNOCENT MAN. THE
10 STATE MUST INTRODUCE FACTS, NOT ALLEGATIONS, IN ORDER TO
11 TAKE AWAY THE PRESUMPTION OF INNOCENCE. LADIES AND
12 GENTLEMEN, I SUBMIT TO YOU THAT AFTER EXAMINING THE
13 FACTS, THE LACK THEREOF, THAT YOU WILL FIND MR. JONES
14 NOT GUILTY. LADIES AND GENTLEMEN, MR. JONES IS NOT
15 GUILTY, AND AFTER DELIBERATING I BELIEVE YOU WILL COME
16 TO THE RIGHT CONCLUSION AND FIND HIM INNOCENT AND ALLOW
17 HIM TO WALK OUT OF THESE DOORS AN INNOCENT MAN.

18 THANK YOU.

19 THE COURT: THANK YOU, MA'AM.

20 CHARGE BY THE COURT

21 LADIES AND GENTLEMEN, AS YOU KNOW
22 NOW, THE STATE HAS PREPARED TWO INDICTMENTS AGAINST MR.
23 JONES IN THIS CASE. THE FIRST ONE CHARGES HIM WITH
24 COMMITTING A LEWD ACT ON A MINOR. THE SECOND ONE
25 CHARGES HIM WITH CRIMINAL SEXUAL CONDUCT WITH A MINOR

1 UNDER THE AGE OF SIXTEEN YEARS. NOW, YOU WILL HAVE
2 THESE INDICTMENTS WITH YOU IN THE JURY ROOM, BUT AS I
3 TOLD YOU EARLIER, THESE INDICTMENTS ARE NOT EVIDENCE,
4 THESE INDICTMENTS ARE DOCUMENTS DRAWN UP BY THE STATE TO
5 PROVIDE THE DEFENDANT NOTICE OF THE CHARGES HE IS
6 FACING.

7 THE IMPORTANT THING ABOUT THESE
8 INDICTMENTS IS THAT TO THE CHARGES CONTAINED THERE HE
9 HAS PLED NOT GUILTY. NOW, THAT PLACES THE BURDEN OF
10 PROVING HIM GUILTY ON THE STATE. IT IS IMPORTANT THAT
11 YOU REMEMBER, A PERSON CHARGED WITH A CRIMINAL OFFENSE
12 IS NEVER REQUIRED TO PROVE HIMSELF INNOCENT. IT IS A
13 VITAL RULE OF LAW THAT THE DEFENDANT IN A CRIMINAL
14 TRIAL, NO MATTER HOW GREAT OR HOW SERIOUS MAY BE THE
15 OFFENSE WITH WHICH HE IS CHARGED, MUST ALWAYS BE
16 PRESUMED INNOCENT UNTIL HIS GUILT HAS BEEN PROVEN BEYOND
17 A REASONABLE DOUBT. THIS PRESUMPTION OF INNOCENCE
18 REMAINS WITH THE DEFENDANT AT ALL TIMES FROM THE MOMENT
19 OF HIS APPEARANCE IN THIS COURTROOM, THROUGHOUT THE
20 TRIAL, UNTIL YOU, THE JURY, HAVE, UPON THE TESTIMONY
21 PRESENTED IN THIS COURTROOM REACHED A VERDICT OF GUILTY
22 BEYOND A REASONABLE DOUBT, FOR IT IS YOUR DUTY, LADIES
23 AND GENTLEMEN, IF YOU ARE NOT SO CONVINCED, TO FIND HIM
24 NOT GUILTY. BY THE SAME TOKEN, IT IS YOUR DUTY, IF YOU
25 ARE CONVINCED, TO FIND HIM GUILTY.

1 SO, IF THE BURDEN OF PROOF ON THE
2 STATE IS TO PROVE HIM GUILTY BEYOND A REASONABLE DOUBT,
3 WELL, WHAT DO WE MEAN BY BEYOND A REASONABLE DOUBT?
4 WELL, SOME OF YOU MIGHT HAVE SERVED AS JURORS IN A CIVIL
5 CASE, AND YOU WERE TOLD IT IS ONLY NECESSARY TO PROVE
6 THAT A FACT IS MORE LIKELY THAN NOT TRUE. WE CALL THAT
7 PROOF BY THE PREPONDERANCE OF THE EVIDENCE. BUT IN
8 CRIMINAL CASES THE STATE'S PROOF MUST BE GREATER THAN
9 THAT. PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT
10 LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT.
11 THERE ARE VERY FEW THINGS IN THIS LIFE THAT WE KNOW WITH
12 ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES
13 NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT.
14 IF BASED ON YOUR CONSIDERATION OF ALL OF THE EVIDENCE IN
15 THE CASE YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS
16 GUILTY THEN YOU MUST FIND HIM GUILTY. ON THE OTHER
17 HAND, IF YOU THINK THERE'S A REAL POSSIBILITY THAT HE IS
18 NOT GUILTY, YOU MUST GIVE HIM THE BENEFIT OF ANY
19 REASONABLE DOUBT AND FIND HIM NOT GUILTY.

20 NOW, LADIES AND GENTLEMEN, AS I TOLD
21 YOU EARLIER, YOU ARE THE JUDGES OF THE FACTS IN THE
22 CASE. YOU MUST DETERMINE THE TRUTH IN THE CASE. AND TO
23 DO THAT YOU MUST BE THE JUDGES OF THE CREDIBILITY OR THE
24 BELIEVABILITY OF THE WITNESSES WHO'VE TESTIFIED IN THIS
25 CASE. AND YOU ARE THE ONLY ONES WHO CAN JUDGE THEIR

1 CREDIBILITY OR BELIEVABILITY. I DON'T HAVE A RIGHT TO
2 EXPRESS AN OPINION ABOUT THE BELIEVABILITY OR THE
3 CREDIBILITY OF THE WITNESSES OR THE WEIGHT OF THE
4 EVIDENCE OF WHAT YOUR VERDICT SHOULD BE IN THIS CASE.
5 IN ORDER TO DETERMINE THE CREDIBILITY OR THE
6 BELIEVABILITY OF THE WITNESSES YOU SHOULD CONSIDER MANY
7 THINGS:

8 THE Demeanor OR THE Manner OF TESTIFYING.

9 WAS THE WITNESS FORTHRIGHT, OR WAS THE
10 WITNESS HESITANT IN THEIR TESTIMONY?

11 DID THE WITNESS HAVE REASON TO BE BIASED OR
12 PREJUDICED?

13 WAS A WITNESS'S TESTIMONY CONTRADICTED, ON
14 ONE HAND, OR WAS IT CORROBORATED AND SUPPORTED ON
15 THE OTHER?

16 WHAT WAS THE WITNESS'S OPPORTUNITY FOR
17 OBSERVATION AND KNOWLEDGE OF THE MATTERS ABOUT
18 WHICH THEY'VE TESTIFIED?

19 HOW REASONABLE WAS THE WITNESS'S TESTIMONY
20 WHEN CONSIDERED IN THE LIGHT OF THE OTHER EVIDENCE
21 WHICH YOU DO BELIEVE?

22 YOU DON'T DETERMINE THE CREDIBILITY OR BELIEVABILITY BY
23 COUNTING WITNESSES. YOU CAN BELIEVE ONE WITNESS AGAINST
24 MANY, OR MANY AGAINST ONE. YOU CAN BELIEVE ALL OF A
25 WITNESS'S TESTIMONY OR NONE OF A WITNESS'S TESTIMONY, OR

1 PART OF A WITNESS'S TESTIMONY. JUST KEEP IN MIND THAT
2 YOU WOULD EVALUATE THE TESTIMONY AND CREDIBILITY OF
3 WITNESSES JUST AS YOU DO IN YOUR RELATIONSHIP WITH YOUR
4 FELLOW MAN, AND BEARING IN MIND THAT YOU SHOULD GIVE THE
5 DEFENDANT THE BENEFIT OF ANY REASONABLE DOUBT.

6 NOW, LADIES AND GENTLEMEN, WHILE THE
7 COURT ORDINARILY DETERMINES THE ADMISSIBILITY OF
8 EVIDENCE, I INSTRUCT YOU THAT AS REGARDING THE ALLEGED
9 STATEMENT MADE BY THE DEFENDANT THAT YOU, LADIES AND
10 GENTLEMEN OF THE JURY, MAKE THE ULTIMATE DETERMINATION
11 OF WHETHER OR NOT THE DEFENDANT MADE THAT STATEMENT, AND
12 IF HE DID MAKE IT, WHETHER HE WAS WARNED OF HIS
13 CONSTITUTIONAL RIGHTS, AND WHETHER HE KNOWINGLY AND
14 INTELLIGENTLY WAIVED HIS CONSTITUTIONAL RIGHTS, AND
15 WHETHER THE DEFENDANT WAS MADE BY THE DEFENDANT
16 VOLUNTARILY AND OF HIS OWN FREE WILL. AND FINALLY, YOU
17 MUST DETERMINE JUST WHAT WEIGHT, IF ANY, SHOULD BE GIVEN
18 TO THAT STATEMENT. YOU MUST DETERMINE IF THE STATEMENT
19 WAS THE PRODUCT OF AN ESSENTIALLY FREE AND UNCONSTRAINED
20 CHOICE BY ITS MAKER. IF YOU DETERMINE IT WAS, AND THE
21 BURDEN IS UPON THE STATE TO PROVE THIS FACT, AS ALL
22 OTHER FACTS, BEYOND A REASONABLE DOUBT, THEN YOU MUST
23 GIVE IT SUCH FURTHER CONSIDERATION AS YOU DEEM PROPER.
24 IF YOU DETERMINE THE STATEMENT WAS NOT THE FREE AND
25 VOLUNTARILY WILLED EXPRESSION OF THE DEFENDANT, THEN YOU

1 SHOULD NOT CONSIDER THE STATEMENT AT ALL. IN
2 DETERMINING WHETHER A STATEMENT WAS FREELY AND
3 VOLUNTARILY GIVEN YOU SHOULD CONSIDER BOTH THE
4 CHARACTERISTICS OF THE ACCUSED AND THE DETAILS OF THE
5 INTERROGATION, OFTEN REFERRED TO AS THE TOTALITY OF THE
6 CIRCUMSTANCES. YOU SHOULD CONSIDER THE AGE OR THE YOUTH
7 OF THE ACCUSED, HIS EDUCATION, OR LACK THEREOF, HIS
8 MENTAL ABILITY OR CAPACITY, HIS BACKGROUND, HIS
9 ENVIRONMENT, THE ADVICE OR THE LACK THEREOF OF HIS
10 CONSTITUTIONAL RIGHTS, INCLUDING THE RIGHTS KNOWN AS THE
11 MIRANDA WARNINGS CONCERNING HIS RIGHT TO REMAIN SILENT;
12 THAT A STATEMENT COULD BE USED AGAINST HIM IN A COURT OF
13 LAW; HIS RIGHT TO HAVE A LAWYER PRESENT; IF INDIGENT,
14 HIS RIGHT TO HAVE A LAWYER APPOINTED TO REPRESENT HIM;
15 AND THE FACT THAT HE COULD STOP MAKING A STATEMENT AT
16 ANYTIME. OTHER FACTORS ARE THE PLACE AND THE LENGTH OF
17 THE DETENTION OF THE INTERROGATION AND THE NATURE OF
18 THAT QUESTIONING. YOU MUST CAREFULLY SCRUTINIZE ALL OF
19 THE SURROUNDING CIRCUMSTANCES, AND BEFORE YOU GIVE ANY
20 WEIGHT TO THE STATEMENT YOU MUST BE SATISFIED BEYOND A
21 REASONABLE DOUBT THAT IT WAS MADE BY THE ACCUSED,
22 UNINFLUENCED BY PROMISE OF REWARD, BY THREAT OF INJURY
23 OR ANY DIMINUTION OF HIS RIGHTS.

24 LADIES AND GENTLEMEN, THERE ARE TWO
25 TYPES OF EVIDENCE FROM WHICH YOU CAN REACH A DECISION IN

1 THIS CASE. ONE IS BY DIRECT EVIDENCE AND THE OTHER IS
2 BY CIRCUMSTANTIAL EVIDENCE. BY DIRECT EVIDENCE THE LAW
3 MEANS THE TESTIMONY OF PERSONS WHO HAVE PERCEIVED ITS
4 EXISTENCE BY MEANS OF ONE OF THEIR FIVE SENSES AND HAVE
5 COME INTO COURT AND TESTIFIED TO WHAT THEY HAVE SEEN, OR
6 HEARD, OR TASTED, OR SMELLED, OR TOUCHED. THOSE WOULD
7 BE THE USE OF OUR FIVE SENSES. AND IT'S EVIDENCE THAT
8 IS PRODUCED WITHOUT THE AID OF ANY INFERENCES.

9 CIRCUMSTANTIAL EVIDENCE INVOLVES
10 TESTIMONY OR EVIDENCE OF SURROUNDING FACTS FROM WHICH
11 ONE MAY OR MAY NOT INFER THAT A FACT HAS BEEN OR HAS NOT
12 BEEN ESTABLISHED. CIRCUMSTANTIAL EVIDENCE CAN EXIST
13 WHERE CERTAIN FACTS ARE KNOWN THROUGH ONE OR MORE OF THE
14 FIVE SENSES, AND THESE GIVE RISE TO THE LOGICAL
15 INFERENCE THAT OTHER FACTS EXIST WITHOUT DIRECTLY
16 PROVING THOSE FACTS. AN ILLUSTRATION I ALWAYS GIVE IS,
17 IF YOU GO BACK IN THE JURY ROOM AND YOU SEE WATER ON THE
18 WINDOW SILL AND ON THE WINDOW AND RUNNING DOWN THE
19 SIDEWALK, YOU COULD SAY, WELL, GOSH, IT MUST HAVE RAINED
20 WHILE I WAS IN THAT COURTROOM. WELL, YOU DIDN'T USE ANY
21 OF YOUR FIVE SENSES TO SEE IT RAIN. YOU DIDN'T HEAR IT
22 RAIN, FEEL IT RAIN, SMELL IT RAIN, AS YOU CAN MANY
23 TIMES, BUT YOU DID USE THOSE SENSES TO SEE OTHER THINGS.
24 YOU SAW THE WATER RUNNING DOWN THE STREET, THE WATER ON
25 THE GRASS, ON THE SIDEWALK, ON THE WINDOW. THAT'S

1 CIRCUMSTANTIAL THAT IT RAINED. THAT'S ALL WE MEAN BY
2 CIRCUMSTANTIAL EVIDENCE. YOU USE IT EVERY DAY YOU JUST
3 DON'T CALL IT THAT.

4 ON A CONTESTED ISSUE, AS I SAID, YOU
5 MAY HAVE SOME DIRECT AND SOME CIRCUMSTANTIAL, BUT THE
6 LAW DOESN'T MAKE ANY DISTINCTION BETWEEN THE WEIGHT OR
7 THE VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL
8 EVIDENCE, NOR IS A GREATER DEGREE OF CERTAINTY REQUIRED
9 OF CIRCUMSTANTIAL EVIDENCE THAN DIRECT EVIDENCE. YOU
10 SHOULD WEIGH ALL OF THE EVIDENCE IN THE CASE, AND AFTER
11 WEIGHING ALL OF THE EVIDENCE IN THE CASE, IF YOU ARE NOT
12 CONVINCED OF THE GUILT OF THE DEFENDANT BEYOND A
13 REASONABLE DOUBT YOU MUST FIND HIM NOT GUILTY.
14 CONVERSELY, IF YOU ARE CONVINCED OF THE GUILT OF THE
15 DEFENDANT BEYOND A REASONABLE DOUBT AFTER WEIGHING ALL
16 OF THE EVIDENCE, THEN YOU MUST FIND HIM GUILTY.

17 NOW, LADIES AND GENTLEMEN, THE SAME
18 CONSTITUTION AND LAW WHICH MAKE YOU THE JUDGES OF THE
19 FACTS IN THE CASE MAKE ME THE JUDGE OF THE LAW IN THE
20 CASE. AND I'M THE ONLY JUDGE OF THE LAW JUST LIKE YOU
21 ARE THE ONLY JUDGE OF THE FACTS. AND IF WHAT I TELL YOU
22 THE LAW IS DOESN'T AGREE WITH WHAT YOU THOUGHT THE LAW
23 WAS, OR EVEN IF IT DOESN'T AGREE WITH WHAT YOU THINK
24 THE LAW OUGHT TO BE, YOU MUST PUT ASIDE YOUR OPINION OF
25 THE LAW, ACCEPT THE LAW AS I GIVE IT TO YOU, APPLY THAT

1 TO THE FACTS THAT YOU FIND TO BE IN THIS CASE, AND REACH
2 YOUR VERDICT IN THAT MANNER.

3 NOW, LADIES AND GENTLEMEN, ONE
4 ELEMENT THAT STATE MUST ALWAYS PROVE IN A CRIMINAL TRIAL
5 IS THAT OF CRIMINAL INTENT. CRIMINAL INTENT IS A STATE
6 OF MIND WHICH OPERATES JOINTLY WITH AN ACT OR OMISSION
7 IN THE COMMISSION OF A CRIME. CRIMINAL INTENT IS A
8 MENTAL STATE OF CONSCIOUS WRONGDOING. IT INCLUDES THOSE
9 CONSEQUENCES WHICH REPRESENT THE VERY PURPOSE FOR WHICH
10 AN ACT IS DONE OR THOSE CONSEQUENCES WHICH ARE KNOWN TO
11 BE SUBSTANTIALLY CERTAIN TO RESULT, REGARDLESS OF ONE'S
12 DESIRE. INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE
13 DEFENDANT IN OTHER CIRCUMSTANCES FROM WHICH YOU MAY
14 NATURALLY AND REASONABLY INFER INTENT. CRIMINAL INTENT
15 MUST BE PROVEN BY THE STATE BEYOND A REASONABLE DOUBT.

16 NOW, LADIES AND GENTLEMEN, I WANT TO
17 EXPLAIN TO YOU THE LEGAL DEFINITIONS OF THESE TWO
18 CHARGES AGAINST THE DEFENDANT IN THE CASE. AND THE
19 FIRST IS COMMITTING OR ATTEMPTING TO COMMIT A LEWD ACT
20 UPON A CHILD UNDER SIXTEEN. AND THAT IS A VIOLATION,
21 LADIES AND GENTLEMEN, OF SECTION SIXTEEN, DASH, FIFTEEN,
22 DASH, ONE FORTY OF THE CODE OF LAWS. THAT'S LAWS PASSED
23 BY OUR LEGISLATURE, AND IT PROVIDES AS FOLLOWS: "IT IS
24 UNLAWFUL FOR A PERSON OVER THE AGE OF FOURTEEN YEARS TO
25 WILLFULLY AND LEWDLY COMMIT OR ATTEMPT A LEWD OR

1 LASCIVIOUS ACT UPON OR WITH THE BODY OR ITS PARTS OF A
2 CHILD UNDER THE AGE OF SIXTEEN YEARS WITH THE INTENT OF
3 AROUSING, APPEALING TO OR GRATIFYING THE LUST OR
4 PASSIONS OR SEXUAL DESIRES OF THE PERSON OR OF THE
5 CHILD." THE STATE MUST PROVE EACH OF THOSE ELEMENTS,
6 LADIES AND GENTLEMEN, THEY MUST PROVE THAT THE ALLEGED
7 PERPETRATOR WAS OVER THE AGE OF FOURTEEN; THAT HE
8 WILLFULLY AND LEWDLY COMMITTED OR ATTEMPTED TO COMMIT A
9 LEWD OR LASCIVIOUS ACT; THAT IT WAS UPON THE BODY OF A
10 CHILD WHO WAS UNDER THE AGE OF SIXTEEN; AND THAT IT WAS
11 DONE WITH THE INTENT OF AROUSING, APPEALING TO OR
12 GRATIFYING THE LUST OR PASSIONS OR SEXUAL DESIRES OF THE
13 PERSON OF THE DEFENDANT OR OF THE CHILD.

14 LADIES AND GENTLEMEN, THE LAW DEFINES LEWD TO
15 MEAN OBSCENE OR INDECENT, TENDING TO MORAL
16 IMPURITY OR WANTONNESS.

17 IT DEFINES LASCIVIOUS AS CONDUCT TENDING TO
18 EXCITE LUST.

19 THAT, LADIES AND GENTLEMEN, IS THE DEFINITION OF LEWD
20 ACT OR ATTEMPTING TO COMMIT A LEWD ACT.

21 NOW, LADIES AND GENTLEMEN, THE
22 SECOND CHARGE WITH WHICH THE DEFENDANT IS CHARGED IS
23 CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE. AND THAT
24 IS ALSO A STATUTORY CRIME, LADIES AND GENTLEMEN, AND
25 IT'S SECTION SIXTEEN, DASH, THREE, DASH, SIX FIFTY-FIVE

1 OF THE CODE OF LAWS OF THE STATE OF SOUTH CAROLINA. AND
2 IN PERTINENT PART THAT PROVIDES, "A PERSON IS GUILTY OF
3 CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE SECOND
4 DEGREE IF THE ACTOR ENGAGES IN SEXUAL BATTERY WITH A
5 VICTIM WHO IS AT LEAST FOURTEEN YEARS OF AGE BUT WHO IS
6 LESS THAN SIXTEEN YEARS OF AGE, AND THE ACTOR IS IN A
7 POSITION OF FAMILIAL, CUSTODIAL OR OFFICIAL AUTHORITY TO
8 COERCE THE VICTIM TO SUBMIT, OR IS OLDER THAN THE
9 VICTIM." NOW, LADIES AND GENTLEMEN, I NEED TO DEFINE
10 CERTAIN OF THOSE TERMS FOR YOU:

11 ACTOR AS USED IN THE STATUTE, LADIES AND
12 GENTLEMEN, MEANS A PERSON ACCUSED OF CRIMINAL
13 SEXUAL CONDUCT. THAT IS THE ACTOR.

14 VICTIM, LADIES AND GENTLEMEN, MEANS THE
15 PERSON ALLEGING TO HAVE BEEN SUBJECTED TO CRIMINAL
16 SEXUAL CONDUCT.

17 SEXUAL BATTERY, LADIES AND GENTLEMEN, MEANS
18 SEXUAL INTERCOURSE, CUNNILINGUS, FELLATIO, ANAL
19 INTERCOURSE, OR ANY INTRUSION, HOWEVER SLIGHT, OF
20 ANY PART OF A PERSON'S BODY OR OF ANY OBJECT INTO
21 THE GENITAL OR ANAL OPENINGS OF ANOTHER PERSON'S
22 BODY EXCEPT WHEN SUCH INTRUSION IS ACCOMPLISHED
23 FOR MEDICALLY RECOGNIZED TREATMENT OR DIAGNOSTIC
24 PURPOSES.

25 SO, LADIES AND GENTLEMEN, THE ELEMENTS THAT THE STATE

1 HAS TO PROVE IN THE CRIMINAL SEXUAL CONDUCT CASE ARE
2 THAT THE ACTOR ENGAGED IN A SEXUAL BATTERY, THAT THE
3 VICTIM WAS AT LEAST FOURTEEN YEARS OF AGE BUT WAS LESS
4 THAN SIXTEEN YEARS OF AGE, AND THAT THE ACTOR WAS EITHER
5 IN A POSITION OF FAMILIAL, CUSTODIAL, OR OFFICIAL
6 AUTHORITY TO COERCE THE VICTIM, OR THAT THE ACTOR WAS
7 OLDER THAN THE VICTIM. AND THE STATE MUST PROVE EACH OF
8 THOSE ELEMENTS BEYOND A REASONABLE DOUBT.

9 NOW, LADIES AND GENTLEMEN, THE LAW
10 DOES NOT REQUIRE THAT THE TESTIMONY OF THE VICTIM BE
11 CORROBORATED IN CASES OF THIS NATURE.

12 I FURTHER CHARGE YOU, LADIES AND
13 GENTLEMEN, THAT MINORS UNDER THE AGE OF SIXTEEN ARE NOT
14 LEGALLY CAPABLE OF VOLUNTARILY CONSENTING TO A SEXUAL
15 BATTERY COMMITTED BY AN OLDER PERSON.

16 THAT, LADIES AND GENTLEMEN, IS THE
17 DEFINITION OF CRIMINAL SEXUAL CONDUCT WITH A MINOR IN
18 THE SECOND DEGREE.

19 NOW, LADIES AND GENTLEMEN, THAT
20 CHARGE ALSO CONTAINS WITH IT WHAT WE CALL A LESSER
21 INCLUDED CHARGE, AND THE LESSER INCLUDED CHARGE ON THAT
22 INDICTMENT WOULD BE AN ASSAULT WITH INTENT TO COMMIT
23 CRIMINAL SEXUAL CONDUCT WITH A MINOR. BASICALLY, ITS AN
24 ATTEMPT TO COMMIT, WITHOUT BEING SUCCESSFUL IN
25 COMMITTING THE CRIMINAL SEXUAL CONDUCT WITH A MINOR.

341

1 AND SO, WHEN YOU BEGIN YOUR
2 DELIBERATIONS, LADIES AND GENTLEMEN, I'LL FIRST TAKE THE
3 LEWD ACT CHARGE. THERE ARE ONLY TWO POSSIBLE VERDICTS
4 ON THE LEWD ACT INDICTMENT, AND THERE'S NO ORDER, NO
5 SIGNIFICANCE IN THE ORDER IN WHICH I EXPLAIN THEM TO
6 YOU. IF YOU FIND THE STATEMENT HAS PROVED THE ELEMENTS
7 OF LEWD ACT, OR ATTEMPTING OR COMMITTING A LEWD ACT ON
8 A CHILD UNDER SIXTEEN BEYOND A REASONABLE DOUBT THEN
9 YOUR VERDICT WOULD BE GUILTY. IF YOU FIND THE STATE
10 HAS FAILED TO PROVE ALL OF THOSE ELEMENTS THEN YOUR
11 VERDICT WOULD BE NOT GUILTY.

12 NOW, ON THE OTHER INDICTMENT, LADIES
13 AND GENTLEMEN, THE CRIMINAL SEXUAL CONDUCT WITH A MINOR
14 WITH THE VICTIM UNDER SIXTEEN YEARS OF AGE, THERE ARE
15 THREE POSSIBLE VERDICTS. IF YOU FIND THAT THE STATE HAS
16 PROVEN THE ELEMENTS OF CRIMINAL SEXUAL CONDUCT WITH A
17 MINOR, WHICH INCLUDES A SEXUAL BATTERY, AND THE VICTIM
18 BEING LESS THAN THE SIXTEEN, THE ACTOR BEING OLDER OR IN
19 A POSITION OF FAMILIAL CUSTODY, THEN IF YOU FIND THE
20 STATE HAS PROVED ALL OF THOSE ELEMENTS THEN YOU WOULD
21 FIND HIM GUILTY OF CRIMINAL SEXUAL CONDUCT IN THE SECOND
22 DEGREE. IF YOU FIND THE STATE HAS PROVEN THAT THERE WAS
23 AN ASSAULT -- AN ASSAULT IS SIMPLY AN ATTEMPT TO DO HARM
24 -- THERE WAS AN ASSAULT WITH AN INTENT TO COMMIT THE
25 CRIMINAL SEXUAL CONDUCT WITH A MINOR BUT IT WAS NOT

1 COMPLETED FOR SOME REASON, THEN YOU COULD FIND THE
2 DEFENDANT GUILTY OF ASSAULT WITH INTENT TO COMMIT
3 CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE SECOND
4 DEGREE. IF YOU FIND THAT THE STATE HAS FAILED TO PROVE
5 THE ELEMENTS OF EITHER OF THOSE, OF COURSE, YOUR VERDICT
6 WOULD BE NOT GUILTY. NOW, AGAIN, THERE'S NO
7 SIGNIFICANCE IN THE ORDER IN WHICH I HAVE STATED THOSE
8 VERDICTS, YOU HAVE TO STATE ONE BEFORE THE OTHER IF
9 YOU'VE GOT MORE THAN ONE THING TO STATE.

10 DO YOU PRONOUNCE YOUR NAME HEBERT?

11 JUROR HEBERT: YES, SIR.

12 THE COURT: I THOUGHT PROBABLY YOU
13 DID. I'M GOING TO ASK YOU IF YOU WOULD ACT AS OUR
14 FOREMAN IN THIS JURY. THAT SIMPLY MEANS THAT YOU WOULD
15 PRESIDE AS THE JURY BEGINS ITS DELIBERATION. ONCE THE
16 JURY HAS REACHED ITS DECISION IN THE CASE IT WOULD BE
17 YOUR DUTY TO REPORT THAT ON BEHALF OF THE JURY.

18 YOUR DECISION, LADIES AND GENTLEMEN,
19 MUST BE UNANIMOUS. THERE WILL BE TWELVE OF YOU
20 DELIBERATING, ALL TWELVE OF YOU MUST AGREE BEFORE ANY
21 VERDICT CAN BE REPORTED ON BEHALF OF THIS JURY.

22 AND YOU WILL HAVE WITH YOU, MR.
23 FOREMAN, THESE INDICTMENTS. ON ONE SIDE IS, JUST
24 DESCRIBES THE CRIME, THE ELEMENTS OF THE CRIME. ON THE
25 OTHER SIDE IS THE TITLE, KIND OF A TITLE PAGE, AND IT'S

343

1 KIND OF DESIGNED TO BE FOLDED LIKE THIS, THAT'S THE
2 REASON IT'S IN THREE COLUMNS. BUT DOWN THERE ON THIS
3 CORNER, WHICH WOULD BE THE BOTTOM LEFT HAND CORNER,
4 THERE'S A LITTLE BLOCK THAT SAYS, VERDICT. NOW, I HAVE
5 WRITTEN THE TWO POSSIBLE VERDICTS, EITHER GUILTY OR NOT
6 GUILTY, ON THE LEWD OR LASCIVIOUS ACT CHARGE. YOU WOULD
7 SIMPLY CIRCLE ONE OR STRIKE THE OTHER ONE OUT, WHATEVER
8 YOU CHOOSE TO DO TO MAKE IT CLEAR TO THE COURT WHAT YOUR
9 VERDICT IS IN THAT CASE. NOW, ON THE OTHER ONE I HAVE
10 WRITTEN THE THREE POSSIBLE VERDICTS. THE FIRST ONE
11 SAYS, GUILTY, CSC, -- WHICH MEANS, CRIMINAL SEXUAL
12 CONDUCT, I DIDN'T HAVE ROOM TO WRITE THAT WHOLE THING,
13 GUILTY, CSC WITH A MINOR. THE SECOND ONE IS, GUILTY,
14 ASSAULT WITH INTENT TO COMMIT, CSC WITH A MINOR. AND
15 THE THIRD IS, NOT GUILTY. AND I HAVE PUT THEM IN THE
16 ORDER OF SEVERITY, JUST RANDOMLY, WITHOUT ANY
17 PARTICULAR, BUT THERE IS NO LEGAL SIGNIFICANCE IN THE
18 ORDER IN WHICH I HAVE PUT THEM OTHER THAN THAT.

19 NOW, IF YOU HAVE ANY QUESTIONS
20 DURING YOUR DELIBERATIONS PLEASE WRITE THOSE DOWN ON A
21 SHEET OF PAPER AND GIVE THEM THE BAILIFF. THE BAILIFF
22 WILL BRING THEM TO ME AND I'LL TAKE WHATEVER ACTION IS
23 NECESSARY UNDER THE CIRCUMSTANCES.

24 IF WE HAVE ANY SMOKERS AND THE
25 SMOKERS NEED TO GO OUT AND SMOKE, KNOCK ON THE DOOR,

1 TELL THE BAILIFF THE SMOKERS NEED A BREAK. SHE CAN TAKE
2 THE SMOKERS OUTSIDE AND THEY CAN SMOKE. WHEN THE
3 SMOKERS LEAVE THE REST OF YOU MUST STOP YOUR
4 DELIBERATIONS, ALL TWELVE OF YOU MUST BE THERE BEFORE
5 YOU CAN DELIBERATE ON THIS CASE.

6 WHEN YOU'VE REACHED A VERDICT YOU
7 SIMPLY KNOCK ON THE DOOR, TELL THE BAILIFF YOU'VE
8 REACHED A VERDICT. YOU DO NOT TELL THE BAILIFF WHAT THE
9 VERDICTS ARE, YOU DO NOT PASS UP THE INDICTMENTS, BUT
10 SHE'LL NOTIFY ME, I'LL BRING YOU BACK IN THE COURTROOM
11 AND YOU WILL PASS UP THE INDICTMENTS, OR THE VERDICT
12 FORMS IN THE COURTROOM.

13 NOW, IN JUST A SECOND I'M GOING TO
14 ASK YOU TO RETIRE TO YOUR JURY ROOM, BUT I'M GOING TO
15 ASK YOU ONE MORE TIME NOT TO TALK ABOUT THE CASE. I MUST
16 DISCUSS MY INSTRUCTIONS TO YOU WITH THE ATTORNEYS.
17 SOMETIMES I DON'T DO IT RIGHT. I MAY NEED TO BRING YOU
18 BACK OUT AND CORRECT SOME ERROR I HAVE MADE, I MAY NEED
19 TO TELL YOU SOMETHING IN ADDITION TO WHAT I'VE ALREADY
20 TOLD YOU IF I'VE FORGOTTEN TO DO THAT. IF I NEED TO
21 BRING YOU BACK OUT I WILL DO THAT VERY QUICKLY. IF I DO
22 NOT NEED TO DO THAT I WILL SEND IN TO YOU THE
23 INDICTMENTS AND THE EXHIBITS. WHEN YOU GET THE
24 INDICTMENTS AND THE EXHIBITS THEN YOU CAN BEGIN YOUR
25 DELIBERATIONS, BUT NOT UNTIL THAT TIME.

345

1 NOW, I ASKED THEM TO HAVE THE LUNCH
2 READY BY ONE, SO IT MIGHT BE HERE NOW, I DON'T KNOW, IT
3 MIGHT BE HERE SHORTLY. BUT AS SOON AS WE GET THE LUNCH
4 WE'LL SEND IT IN TO YOU AND YOU CAN DELIBERATE WHILE
5 YOU'RE EATING, OR YOU CAN TAKE A BREAK, OR WHATEVER YOU
6 NEED TO DO, I'LL LEAVE THAT ENTIRELY UP TO Y'ALL. BUT
7 WHEN THE LUNCH GETS HERE WE'LL GET IT TO YOU VERY
8 PROMPTLY.

9 SO, PLEASE, MR. FOREMAN, IF YOU
10 WOULD RETIRE TO THE JURY ROOM BUT DO NOT BEGIN YOUR
11 DELIBERATIONS UNTIL YOU'VE RECEIVED THE MESSAGE AND THE
12 EXHIBITS AND INDICTMENTS FROM THE BAILIFF.

13 AND THE TWO ALTERNATES, PLEASE, I
14 WILL ASK YOU TO STAY OVER IN THE GRAND JURY ROOM. YOU
15 CANNOT GO BACK IN THE JURY ROOM WITH THE JURY WHILE
16 THEY'RE DELIBERATING, BUT I NEED YOU TO STAY BACK THERE
17 FOR A LITTLE WHILE UNTIL WE KIND OF SEE WHAT'S GOING ON.
18 AND YOU DON'T NEED TO TALK ABOUT THE CASE EITHER AT ALL.
19 YOU TWO ALTERNATES CANNOT TALK ABOUT THE CASE, PERIOD.

20 ALRIGHT, PLEASE RETIRE TO THE JURY
21 ROOM.

22 (Whereupon, the jury retires
23 to the jury room and the following
24 takes place out of the presence
25 of the jury.)

1 THE COURT: I FORGOT TO CHARGE THEM
2 ON THE RIGHT TO REMAIN SILENT. AND WHAT ELSE DID I
3 FORGET?

4 MR. MELLARD: THAT WAS THE ONE WE
5 WERE GOING TO TALK TO YOU ABOUT, THE DEFENDANT DID NOT
6 TESTIFY.

7 THE COURT: I SAW THAT AS SOON AS I
8 LOOKED AT MY NOTES. ANYTHING ELSE Y'ALL KNOW?

9 SOLICITOR SCOTT: NO, YOUR HONOR.

10 THE COURT: ALRIGHT, BRING THEM
11 BACK.

12 MR. MELLARD: WELL, YOUR HONOR, - -

13 -

14 MS. FORD: YOUR HONOR, - - -

15 THE COURT: WAIT A MINUTE, WAIT A
16 MINUTE.

17 MR. MELLARD: WE WOULD JUST LIKE TO
18 NOTE FOR THE RECORD THAT WE HAD PREVIOUSLY OBJECTED TO
19 THE CHARGE OF ASSAULT WITH INTENT TO COMMIT CRIMINAL
20 SEXUAL CONDUCT.

21 THE COURT: ALRIGHT, OKAY. BRING
22 THEM BACK.

23 (Whereupon, the jury enters
24 the courtroom and the following
25 takes place in the presence

1 of the jury.)

2 THE COURT: ALRIGHT, LADIES AND
3 GENTLEMEN, THE LAST COUPLE OF PAGES OF MY CHARGE I JUST
4 FORGOT TO LOOK DOWN AFTER I TOLD YOU ABOUT THOSE TWO
5 INDICTMENTS.

6 LADIES AND GENTLEMEN, BECAUSE A
7 DEFENDANT IN A CRIMINAL TRIAL IS PRESUMED INNOCENT THE
8 LAW NEVER IMPOSES UPON A DEFENDANT THE BURDEN OR DUTY OF
9 TESTIFYING OR CALLING ANY WITNESSES OR PRODUCING ANY
10 EVIDENCE. THE DEFENDANT IN A CRIMINAL TRIAL HAS THE
11 ABSOLUTE RIGHT UNDER THE CONSTITUTION OF THE UNITED
12 STATES AND THE STATE OF SOUTH CAROLINA NOT TO TAKE THE
13 WITNESS STAND AND TESTIFY OR PRESENT ANY OTHER EVIDENCE.
14 THE EXERCISE BY THE DEFENDANT OF THIS RIGHT MUST NOT BE
15 CONSIDERED BY YOU IN ANY WAY AGAINST THE DEFENDANT, AND
16 SHOULD PLAY NO ROLE WHATSOEVER IN YOUR DISCUSSIONS OR
17 YOUR DELIBERATIONS. NO INFERENCE OF ANY KIND MAY BE
18 DRAWN FROM THE DEFENDANT'S EXERCISE OF HIS
19 CONSTITUTIONAL RIGHT NOT TO TESTIFY OR TO PRESENT ANY
20 EVIDENCE. I WOULD ASK THAT YOU NOT EVEN DISCUSS THAT
21 WHEN YOU BEGIN YOUR DELIBERATIONS.

22 YOU HAVE BEEN SELECTED AS FAIR AND
23 IMPARTIAL JURORS, YOU HAVE SWORN TO IMPARTIALLY TRY AND
24 DETERMINE THE FACTS OF THIS CASE, AND WHEN YOU COMPLY
25 WITH YOUR OATH TO DO SO THEN NO ONE WILL HAVE A RIGHT TO

1 CRITICIZE YOUR VERDICT AND YOU WILL HAVE FULLY
2 DISCHARGED YOUR DUTY AS JURORS. YOU ARE TO DECIDE THIS
3 CASE ACCORDING TO THE TESTIMONY YOU HAVE HEARD FROM THE
4 LIPS OF THE WITNESSES ALONG WITH THE OTHER EVIDENCE, THE
5 EXHIBITS WHICH HAVE BEEN INTRODUCED. YOU MUST DECIDE
6 THE ISSUES IN THIS PROCEEDING WITHOUT BIAS AND WITHOUT
7 PREJUDICE TO ANY PARTY. YOU CANNOT ALLOW YOURSELF TO BE
8 GOVERNED BY PASSION, BY UNFAIR SYMPATHY, BY PREJUDICE
9 FOR OR AGAINST ANY PERSON, BY PUBLIC OPINION OR ANY
10 OTHER ARBITRARY FACTOR. BOTH THE STATE AND THE
11 DEFENDANT HAVE A RIGHT TO EXPECT THAT YOU WILL CAREFULLY
12 AND IMPARTIALLY CONSIDER ALL OF THE EVIDENCE IN THE CASE
13 AND THAT YOU WILL FOLLOW MY INSTRUCTIONS TO YOU ON THE
14 LAW AS YOU REACH YOUR VERDICT IN THIS CASE.

15 SO, WITH THAT, MR. FOREMAN, YOU CAN
16 RETIRE AND I'LL BE SENDING IN TO YOU THE VERDICT FORMS
17 AND THE EXHIBITS IN JUST A MINUTE. AND I UNDERSTAND THE
18 LUNCH IS BACK THERE?

19 BAILIFF: I DIDN'T SEE IT.

20 THE COURT: SOMEBODY TOLD ME --
21 MAYBE IT'S IN THE COURTHOUSE, IT WILL BE THERE QUICKLY.
22 ALRIGHT, PLEASE RETIRE TO THE JURY ROOM.

23 (Whereupon, the jury retires
24 to the jury room and the following
25 takes place outside the presence

1 of the jury.)

2 THE COURT: ANY ADDITIONS OR
3 EXCEPTIONS FROM THE STATE?

4 SOLICITOR SCOTT: NO, YOUR HONOR.

5 THE COURT: ANY OTHER ADDITIONS OR
6 EXCEPTIONS FROM THE DEFENSE?

7 MS. FORD: NONE, YOUR HONOR.

8 THE COURT: ALRIGHT, WE'LL BE AT
9 EASE UNTIL WE HEARD FROM THE JURY.

10 (Whereupon, the jury begins
11 their deliberations at 12:50 p.m.)

12 (Recess)

13 (Whereupon, the jury sends in
14 a note, which was answered in
15 writing by the Court and marked
16 and filed as Court's Exhibit Three.)

17 (Recess)

18 (Whereupon, the jury sends in
19 another note at 2:10 p.m.,
20 marked as Court's Exhibit Four.)

21 THE COURT: ALRIGHT, WE HAVE A NOTE
22 FROM THE JURY THAT SAYS, "IS THE DEFENDANT'S STATEMENT
23 ADMITTING STATUTORY RAPE OR CSC W/MINOR, AND ARE THEY
24 THE SAME?" AND WE DISCUSSED THIS IN CHAMBERS. MY
25 PROPOSAL IS TO EXPLAIN TO THE JURY AS BEST I CAN THAT

1 THERE IS NO SUCH CRIME TODAY LABELED STATUTORY RAPE.
2 BUT THE CRIMES THAT WERE FORMERLY STATUTORY RAPE HAVE
3 BEEN CODIFIED BY STATUTES PASSED BY OUR LEGISLATURE, AND
4 THAT CSC WITH A MINOR WOULD BE ONE OF THOSE TYPES OF
5 CRIMES, BUT THERE IS NOTHING TODAY CALLED STATUTORY
6 RAPE. AND AS FAR AS WHAT THE DEFENDANT'S STATEMENT IS,
7 I'LL TELL THEM THAT THAT IS FOR THEM TO DETERMINE WHAT
8 THAT STATEMENT MEANS, THAT'S A FACTUAL QUESTION FOR
9 THEM TO DECIDE. ANY PROBLEMS WITH THAT FROM THE STATE?

10 SOLICITOR JEFFRIES: NONE FROM THE
11 STATE, NO OBJECTION, FROM THE STATE.

12 THE COURT: FROM THE DEFENSE?

13 MS. FORD: YOUR HONOR, WE DO OBJECT.
14 IT'S OUR POSITION THAT THE JURY HAS EVERYTHING THAT THEY
15 NEED BOTH FACTUALLY, AND THE LAW TO MAKE THEIR DECISION
16 AND WE BELIEVE THAT THAT QUESTION IS IRRELEVANT, THEY'VE
17 GOT EVERYTHING THAT THEY NEED. SO, WE WOULD OBJECT TO
18 CHARGING THE JURY AGAIN OR EXPLAINING ANY OF THAT.

19 THE COURT: ALRIGHT, I OVERRULE YOUR
20 OBJECTION. BRING THE JURY IN.

21 BAILIFF: DO YOU WANT THE ALTERNATES
22 ALSO?

23 THE COURT: YES.

24 MS. FORD: YOUR HONOR, CAN WE GET
25 THE DEFENDANT?

1 THE COURT: YES, PLEASE DO.

2 (Whereupon, the defendant

3 enters the courtroom.)

4 (Whereupon, the jury enters

5 the courtroom and the following

6 takes place in the presence of

7 the jury.)

8 THE COURT: ALRIGHT, MR. FOREMAN,
9 I'VE GOT YOUR NOTE, AND IT'S NOT AS SIMPLE AN ANSWER AS
10 YOU THINK IT IS, NOTHING EVER IS IN THE LAW. CERTAIN OF
11 OUR CRIMINAL STATUTES HAVE BEEN CODIFIED, AND WHAT THAT
12 MEANS IS THAT THE LEGISLATURE PASSED LAWS DEFINING
13 CERTAIN CRIMES. IN SOUTH CAROLINA WE ARE GOVERNED
14 PRIMARILY BY WHAT WE CALL THE COMMON LAW. THE COMMON
15 LAW CAME OVER FROM ENGLAND, AND IT'S BASED PRIMARILY ON
16 COURT DECISIONS. AND THE COURTS DETERMINED OVER THE
17 YEARS WHAT CRIME EXISTED. WELL, AT DIFFERENT POINTS
18 THROUGH THE HISTORY OF OUR STATE, AND EVERYWHERE ELSE
19 THE SAME WAY, THE LEGISLATURE HAS SAID, WELL, THIS IS
20 WHAT IT HAS MEANT FOR ALL THESE YEARS BUT WE WANT TO
21 WRITE IT DOWN NOW AND CODIFY IT. AND SO, STATUTORY RAPE
22 IS ONE OF THOSE CRIMES. A QUICK EXAMPLE WOULD BE
23 BURGLARY. UNDER THE OLD COMMON LAW THERE WAS JUST A
24 CRIME OF BURGLARY. WELL, THE STATUTE -- THE LEGISLATURE
25 SAID, WE NEED TO MAKE SOME DISTINCTIONS BETWEEN THE

1 TYPES OF BURGLARY. SO, THE LEGISLATURE SAID, BURGLARY
2 IS ENTERING A DWELLING AT NIGHT WITHOUT CONSENT WITH
3 INTENT TO COMMIT A CRIME, THAT'S BURGLARY IN THE FIRST
4 DEGREE. BURGLARY IN THE SECOND DEGREE IS ENTERING A
5 DWELLING IN THE DAYTIME, OR A BUILDING AT NIGHT WITHOUT
6 CONSENT, WITH INTENT TO COMMIT A CRIME. BURGLARY IN THE
7 THIRD DEGREE IS ENTERING A BUILDING IN THE DAYTIME. YOU
8 SEE THAT, THAT'S BURGLARY, THIRD. SO, THERE ARE
9 DEGREES, FIRST DEGREE, SECOND DEGREE, THIRD DEGREE,
10 RATHER THAN JUST HAVING BURGLARY. WELL, THE OLD CRIME
11 THAT USED TO BE CALLED STATUTORY RAPE DOESN'T EXIST
12 ANYMORE, BUT CSC, SECOND DEGREE, WITH A MINOR IS ONE OF
13 THOSE CRIMES THAT WOULD HAVE BEEN COVERED BY THE OLD
14 STATUTORY RAPE CRIME AS IT EXISTED PRIOR TO THESE LAWS
15 BEING PASSED BY OUR STATE.

16 NOW, I HOPE THAT WILL ANSWER YOUR
17 QUESTION. YOU REALLY DON'T NEED TO BE TOO CONCERNED
18 ABOUT STATUTORY RAPE. I DEFINED FOR YOU WHAT THE
19 ELEMENTS OF CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE
20 SECOND DEGREE ARE. BUT I'M JUST TRYING TO ANSWER YOUR
21 QUESTION SO THAT YOU'LL KNOW WHAT I'M EXPLAINING TO YOU.
22 BUT YOU REALLY NEED TO PUT STATUTORY RAPE OUT OF YOUR
23 MIND AND CONCENTRATE ON THE ELEMENTS OF CRIMINAL SEXUAL
24 CONDUCT IN THE SECOND DEGREE. THAT'S WHAT HE'S CHARGED
25 WITH.

353

1 NOW, THE OTHER PART OF YOUR QUESTION
2 ABOUT WHAT THE DEFENDANT'S STATEMENT DOES, THAT IS A
3 QUESTION OF FACT. YOU HAVE TO DETERMINE, NUMBER ONE,
4 REMEMBER WHAT I TOLD YOU, WHETHER HE MADE THE STATEMENT,
5 WHETHER HE MADE IT FREELY, VOLUNTARILY, KNOWINGLY AND
6 INTELLIGENTLY AFTER HE HAD BEEN ADVISED OF HIS RIGHTS.
7 AND THEN YOU HAVE TO DETERMINE WHAT IT MEANS. THAT'S A
8 FACTUAL QUESTION, I CAN'T TELL YOU WHAT THAT STATEMENT
9 MEANS. THAT'S ENTIRELY UP TO YOU TO DETERMINE. YOU
10 HAVE THE STATEMENT, DON'T YOU?

11 JURY FOREMAN: YES, SIR.

12 THE COURT: SO, YOU READ THAT AND
13 YOU MAKE THAT DETERMINATION. THAT'S A QUESTION OF FACT,
14 THAT'S NOT FOR THE COURT TO GET INVOLVED IN. I KNOW YOU
15 DON'T THINK -- I KNOW YOU WANTED A SHORT AND SIMPLE
16 ANSWER, WHICH I CAN'T GIVE YOU. BUT DOES THAT ANSWER
17 YOUR QUESTION, YOU THINK?

18 JURY FOREMAN: I THINK SO.

19 THE COURT: IF YOU HAVE ANYTHING
20 ELSE WRITE IT DOWN AND I'LL TRY TO DO BETTER.

21 ALRIGHT, THANK YOU VERY MUCH.

22 THE ALTERNATES CAN STAY RIGHT THERE
23 A SECOND.

24 (Whereupon, the jury retires
25 to the jury room and the following

1 takes place out of the presence
2 of the jury.)

3 THE COURT: NOW YOU TWO GENTLEMEN
4 WHO ARE ALTERNATES, I KIND OF KEPT YOU BACK THERE AS
5 INSURANCE. IF ONE OF OUR JURORS GETS SICK, AND YESTERDAY
6 WE LEARNED FROM ANOTHER JUDGE THAT HAD A JURY
7 DELIBERATING AND ONE OF THE JUROR'S HUSBAND COMES IN AND
8 SAID, MY WIFE'S SISTER DIED, I NEED TO GET MY WIFE.
9 WELL, IF WE HAVE TO LOSE A JUROR WE WOULD HAVE TO TRY
10 THIS WHOLE CASE AGAIN. THAT'S THE REASON I'VE BEEN KIND
11 OF KEEPING YOU BACK THERE. SO HOW ABOUT STAY WITH US A
12 LITTLE BIT LONGER. IT'S JUST GOOD INSURANCE FOR US THAT
13 IF SOMETHING HAPPENS WE MIGHT BE ABLE TO PUT ONE OF
14 Y'ALL ON THAT JURY INSTEAD OF HAVING TO DECLARE A
15 MISTRIAL AND THEN TRY THE WHOLE CASE AGAIN, STARTING
16 OVER FROM SCRATCH. SO, PLEASE BEAR WITH US A LITTLE BIT
17 LONGER. BUT Y'ALL CAN'T TALK ABOUT THE CASE. ALRIGHT,
18 THANK YOU VERY MUCH. Y'ALL RETURN TO THE GRAND JURY
19 ROOM. YOU'LL BE KEPT SEPARATED.

20 (Whereupon, the alternate
21 jurors retire to the grand jury
22 room.)

23 THE COURT: ANY EXCEPTIONS FROM THE
24 STATE?

25 SOLICITOR SCOTT: NO, YOUR HONOR.

355

1 THE COURT: FROM THE DEFENSE?

2 MS. FORD: YOUR HONOR, I JUST RENEW
3 MY PREVIOUS OBJECTION.

4 THE COURT: ALRIGHT, WELL, I THINK
5 THEY HAD -- I UNDERSTAND BUT I THINK THEY DESERVE AN
6 ANSWER, AND I THINK MY ANSWER WAS APPROPRIATE. OF
7 COURSE, I DO.

8 ALRIGHT, THIS CASE WILL BE IN RECESS
9 UNTIL WE HEAR FROM THE JURY.

10 (Recess)
11 (Whereupon, the jury sends
12 in another note at 2:45 p.m.,
13 marked as Court's Exhibit Five.)

14 THE COURT: ALRIGHT, I'M SORRY, I'VE
15 GOT ANOTHER NOTE IN THIS CASE. I NEED THE DEFENSE
16 LAWYERS.

17 SOLICITOR JEFFRIES: THEY'RE BACK
18 THERE.

19 THE COURT: I DON'T NEED TO SEE THEM
20 BACK THERE I NEED TO SEE THEM OUT HERE.
21 (Whereupon, defense attorneys
22 enter the courtroom.)

23 THE COURT: WE HAVE ANOTHER NOTE.
24 IT SAYS, "PLEASE SEND BACK THE DEFINITION ON CSC WITH A
25 MINOR." THE LAST TIME I DID THAT I GOT REVERSED BECAUSE

1 I DIDN'T SEND THE ENTIRE CHARGE BACK. AND SO, I THINK,
2 I THINK THE BEST THING IS FOR ME TO RECHARGE THEM ON CSC
3 WITH A MINOR. NOW, I CAN SEND THEM BACK BASICALLY WHAT
4 Y'ALL GAVE ME FROM THE CHARGE, WHICH IS THE CHARGE ON
5 CSC WITH A MINOR. IF BOTH THE STATE AND THE DEFENDANT
6 AGREES I DON'T MIND SENDING IT BACK IN WRITING, BUT I
7 DON'T THINK THAT'S A GOOD IDEA BASED ON THE PRESENT
8 STATE OF THE LAW, TO SEND BACK A PORTION OF THE CHARGE
9 WITHOUT THE REST.

10 MS. FORD: YOUR HONOR, MAY WE
11 APPROACH?

12 THE COURT: YES, MA'AM.

13 (Whereupon, a bench conference
14 is held out of the hearing of
15 the court reporter.)

16 THE COURT: THEY WANT CSC WITH A
17 MINOR, SECOND DEGREE. BRING THE JURY IN, PLEASE.

18 (Whereupon, the jury enters
19 the courtroom and the following
20 takes place in the presence
21 of the jury.)

22 THE COURT: LADIES AND GENTLEMEN, I
23 CAN'T GIVE YOU IN WRITING A PORTION OF MY CHARGE.
24 THAT'S JUST AGAINST THE RULES, THEY WON'T LET ME DO
25 THAT, BECAUSE THEY YOU'LL GIVE THAT, THAT YOU'LL THINK

357

1 WHAT I'VE GIVEN YOU IN WRITING IS MORE IMPORTANT THAN
2 EVERYTHING ELSE I'VE TOLD YOU, SO I'M NOT ALLOWED TO DO
3 THAT. THAT MIGHT SEEM LIKE A SIMPLE SOLUTION BUT I JUST
4 CAN'T DO IT. SO, WHAT I'M GOING TO DO IS, I'M GOING TO
5 CHARGE YOU AGAIN ON CRIMINAL SEXUAL CONDUCT WITH A
6 MINOR, WHICH MEANS I'M GOING TO EXPLAIN TO YOU WHAT IT
7 MEANS.

8 ALRIGHT, GIVE THAT TO THE
9 FOREPERSON. YOU LOOK AT THAT AS I EXPLAIN TO YOU WHAT
10 THE LEGAL DEFINITION FROM THE STATUTE IS, AND I THINK
11 THAT WILL PROBABLY GIVE YOU WHAT YOU WANT THROUGH THE
12 BACK DOOR.

13 (Whereupon, the Court hands
14 the Jury Foreman the Indictment.)

15 THE COURT: ALRIGHT, A PERSON IS
16 GUILTY OF CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE
17 SECOND DEGREE IF THE ACTOR ENGAGES IN SEXUAL BATTERY
18 WITH A VICTIM WHO IS AT LEAST FOURTEEN YEARS OF AGE BUT
19 WHO IS LESS THAN SIXTEEN YEARS OF AGE, AND THE ACTOR IS
20 IN A POSITION OF FAMILIAL, CUSTODIAL, OR OFFICIAL
21 AUTHORITY TO COERCE THE VICTIM TO SUBMIT, OR IS OLDER
22 THAN THE VICTIM. THE STATE MUST PROVE -- AND OF COURSE,
23 I WENT OVER THESE DEFINITIONS WITH YOU EARLIER, AND I'M
24 GOING BACK OVER THOSE RIGHT QUICK.

25 THE ACTOR IS THE PERSON ACCUSED OF

1 CRIMINAL SEXUAL CONDUCT.

2 THE VICTIM IS THE PERSON ALLEGING TO
3 HAVE BEEN SUBJECT TO CRIMINAL SEXUAL CONDUCT.

4 SEXUAL BATTERY MEANS SEXUAL
5 INTERCOURSE, CUNNILINGUS, FELLATIO, ANAL INTERCOURSE OR
6 ANY INTRUSION, HOWEVER SLIGHT, OF ANY PART OF A PERSON'S
7 BODY OR OF ANY OBJECT INTO THE GENITAL OR ANAL OPENINGS
8 OF ANOTHER PERSON'S BODY EXCEPT WHEN SUCH INTRUSION IS
9 ACCOMPLISHED FOR MEDICALLY RECOGNIZED TREATMENT OR
10 DIAGNOSTIC PURPOSED. THAT'S WHAT WE MEAN BY SEXUAL
11 BATTER.

12 NOW, LET'S LOOK AT THE DEFINITION
13 AGAIN. A PERSON IS GUILTY OF CRIMINAL SEXUAL CONDUCT
14 WITH A MINOR IN THE SECOND DEGREE IF THE ACTOR ENGAGES
15 IN A SEXUAL BATTERY, THAT'S JUST WHAT I CHARGED YOU,
16 WITH A VICTIM WHO IS AT LEAST FOURTEEN YEARS OLD BUT
17 LESS THAN SIXTEEN YEARS OLD, AND THE ACTOR EITHER, ONE
18 OR THE OTHER, IS IN A POSITION OF FAMILIAL, CUSTODIAL OR
19 OFFICIAL AUTHORITY TO COERCE THE VICTIM TO SUBMIT OR IS
20 OLDER THAN THE VICTIM. THOSE ARE THE ELEMENTS THE STATE
21 HAS TO PROVE BEYOND A REASONABLE DOUBT.

22 DO YOU THINK THAT WILL HELP YOU NOW?

23 JURY FOREMAN: I HOPE SO.

24 THE COURT: WELL, I DO, TOO. I'M NOT
25 TRYING TO BE DIFFICULT BUT WE'VE GOT RULES WE HAVE TO

359

1 PLAY BY. SO, IF YOU HAVE ANY OTHER QUESTIONS JUST WRITE
2 THEM DOWN AND I'LL BE GLAD TO DEAL WITH THEM THE BEST I
3 CAN.

4 JURY FOREMAN: THANK YOU, SIR.

5 THE COURT: THANK YOU FOR YOUR
6 PATIENCE.

7 (Whereupon, the jury retires
8 to the jury room and the following
9 takes place out of the presence
10 of the jury.)

11 THE COURT: ANY EXCEPTIONS FROM THE
12 STATE?

13 SOLICITOR SCOTT: NONE, YOUR HONOR.

14 THE COURT: FROM THE DEFENSE?

15 MS. FORD: YES, YOUR HONOR. WE
16 OBJECT TO THE FACT THAT YOU GAVE THE FOREMAN THE
17 INDICTMENT TO FOLLOW ALONG AS YOU WERE READING AS YOU
18 WERE CHARGING THE JURY. WE OBJECT TO THAT. ALSO, YOUR
19 HONOR, WE OBJECT TO THE CHARGE WITHOUT THE GENERAL
20 INTENT CHARGE THAT YOU PREVIOUSLY GAVE, WE BELIEVE THAT
21 THEY GO HAND IN HAND, THE ONE YOU PREVIOUSLY CHARGED
22 EARLIER. AND IT'S OUR POSITION THAT WE WOULD ASK THAT
23 YOU WOULD DO THAT IN ADDITION TO THE CHARGE THAT YOU
24 JUST READ TO THEM.

25 THE COURT: WELL, I THINK -- I NOTE

1 YOUR OBJECTIONS, I OVERRULE YOUR OBJECTION. I THINK WHAT
2 I TOLD THEM WAS SUFFICIENT. I DIDN'T CHARGE THEM ON
3 CORROBORATION OR THE OTHER THINGS THAT I CHARGED THEM
4 BEFORE. ALL THEY WANTED WAS THE DEFINITION OF CRIMINAL
5 SEXUAL CONDUCT WITH A MINOR, SECOND DEGREE, AND I THINK
6 THAT'S WHAT I GAVE THEM. AND THEY HAVE THE INDICTMENTS,
7 BY LAW THEY HAVE TO HAVE THE INDICTMENT WITH THEM. AND
8 I THINK, YOU KNOW, IF HE WOULD HAVE READ THE INDICTMENT
9 HE PROBABLY WOULDN'T HAVE SENT IN THE LAST QUESTION.
10 THAT'S WHAT I WAS TRYING TO POINT OUT TO HIM BECAUSE
11 IT'S RIGHT THERE FOR HIM. BUT I NOTE YOUR OBJECTION.
12 SO, THIS CASE WILL BE IN RECESS UNTIL WE HEAR FROM THE
13 JURY AGAIN.

14 (Recess)

15 THE COURT: ALRIGHT, I THINK WE HAVE
16 A VERDICT. IS THE STATE READY TO RECEIVE THE VERDICT?

17 SOLICITOR JEFFRIES: YES, YOUR
18 HONOR.

19 THE COURT: IS THE DEFENSE READY?

20 MS. FORD: YES, YOUR HONOR.

21 THE COURT: NOW, I DON'T KNOW WHO WE
22 HAVE HERE IN THE LINE OF FAMILIES ON EITHER SIDE OF THIS
23 CASE BUT WE WILL NOT TOLERATE ANY TYPE OF EMOTIONAL
24 OUTBURSTS WHEN THE VERDICT IS ANNOUNCED. IF YOU HAVE
25 DIFFICULTY CONTROLLING YOURSELF I WOULD SUGGEST YOU JUST

361

1 STEP OUT IN THE HALL, IT WON'T BE BUT A FEW MINUTES AND
2 YOU CAN FIND OUT WHAT THE VERDICT IS. BUT IF YOU CREATE
3 SOME DISTURBANCE IN THIS COURTROOM YOU'RE GOING TO BE
4 SPENDING THE NIGHT OVER AT THE COMPLEX.

5 BRING THE JURY IN.

6 (Whereupon, the jury returns
7 with a verdict at 4:50 p.m.)

8 THE COURT: MR. FOREMAN, HAVE YOU
9 REACHED A VERDICT?

10 JURY FOREMAN: WE HAVE, YOUR HONOR.

11 THE COURT: AND IS IT UNANIMOUS?

12 JURY FOREMAN: YES, SIR.

13 THE COURT: WOULD YOU PASS IT TO THE
14 BAILIFF, PLEASE. THANK YOU, SIR -- MA'AM, I MEAN.

15 VERDICTS OF THE JURY

16 THE COURT: ALRIGHT, ON INDICTMENT
17 2005-GS-38-1816, THE STATE VERSUS LINDY LAMONT JONES,
18 THE CHARGE IS LEWD ACT ON A MINOR. THE VERDICT OF THE
19 JURY IS NOT GUILTY.

20 SIR, YOU DIDN'T SIGN THESE. COME UP
21 HERE AND SIGN THEM.

22 JURY FOREMAN: YES, SIR.

23 THE COURT: THANK YOU, SIR.

24 ON INDICTMENT 2005-GS-38-1817, THE
25 STATE VERSUS LINDY LAMONT JONES, CRIMINAL SEXUAL CONDUCT

1 WITH A MINOR UNDER THE AGE OF SIXTEEN YEARS, THE VERDICT
2 IS GUILTY OF AN ASSAULT WITH INTENT TO COMMIT CRIMINAL
3 SEXUAL CONDUCT WITH A MINOR.

4 ANY REQUEST TO POLL THE JURY?

5 MS. FORD: YES, YOUR HONOR.

6 THE COURT: ALRIGHT, LADIES AND
7 GENTLEMEN, I'M GOING TO ASK YOU TWO QUESTION. THE FIRST
8 QUESTION IS, WERE THESE YOUR VERDICTS? AND THE SECOND
9 QUESTION IS, ARE THESE STILL YOUR VERDICTS? AND YOU
10 JUST ANSWER APPROPRIATELY.

11 MR. FOREMAN, WERE THESE YOUR
12 VERDICTS?

13 JURY FOREMAN: YES, SIR.

14 THE COURT: ARE THEY STILL YOUR
15 VERDICTS?

16 JURY FOREMAN: YES, SIR.

17 THE COURT: MA'AM, WERE THESE YOUR
18 VERDICTS?

19 JUROR: YES, SIR.

20 THE COURT: ARE THEY STILL YOUR
21 VERDICTS?

22 JUROR: YES, SIR.

23 THE COURT: MA'AM, WERE THESE YOUR
24 VERDICTS?

25 JUROR: YES, SIR.

363

1 THE COURT: ARE THEY STILL YOUR
2 VERDICTS?

3 JUROR: YES, SIR.

4 THE COURT: SIR, WERE THESE YOUR
5 VERDICTS?

6 JUROR: YES, SIR.

7 THE COURT: ARE THEY STILL YOUR
8 VERDICTS?

9 JUROR: YES, SIR.

10 THE COURT: SIR, WERE THESE YOUR
11 VERDICTS?

12 JUROR: YES, SIR.

13 THE COURT: ARE THEY STILL YOUR
14 VERDICTS?

15 JUROR: YES, SIR.

16 THE COURT: MA'AM, WERE THESE YOUR
17 VERDICTS?

18 JUROR: YES, SIR.

19 THE COURT: ARE THEY STILL YOUR
20 VERDICTS?

21 JUROR: YES, SIR.

22 THE COURT: MA'AM, WERE THESE YOUR
23 VERDICTS?

24 JUROR: YES, SIR.

25 THE COURT: ARE THEY STILL YOUR

1 VERDICTS?

2 JUROR: YES, SIR.

3 THE COURT: MA'AM, WERE THESE YOUR

4 VERDICTS?

5 JUROR: YES, SIR.

6 THE COURT: ARE THEY STILL YOUR

7 VERDICTS?

8 JUROR: YES, SIR.

9 THE COURT: MA'AM, WERE THESE YOUR

10 VERDICTS?

11 JUROR: YES, SIR.

12 THE COURT: ARE THEY STILL YOUR

13 VERDICTS?

14 JUROR: YES, SIR.

15 THE COURT: MA'AM, WERE THESE YOUR

16 VERDICTS?

17 JUROR: YES, SIR.

18 THE COURT: ARE THEY STILL YOUR

19 VERDICTS?

20 JUROR: YES, SIR.

21 THE COURT: MA'AM, WERE THESE YOUR

22 VERDICTS?

23 JUROR: YES, SIR.

24 THE COURT: ARE THEY STILL YOUR

25 VERDICTS?

365

1 JUROR: YES, SIR.

2 THE COURT: SIR, WERE THESE YOUR
3 VERDICTS?

4 JUROR: YES, SIR.

5 THE COURT: ARE THEY STILL YOUR
6 VERDICTS?

7 JUROR: YES, SIR.

8 THE COURT: ALRIGHT, THE ENTIRE JURY
9 HAS BEEN POLLED AND THE VERDICT STANDS.

10 LADIES AND GENTLEMEN, THAT CONCLUDES
11 YOUR SERVICE ON THIS CASE. IF YOU WANT TO TALK ABOUT IT
12 NOW YOU'RE WELCOME TO TALK ABOUT IT, BUT YOU DON'T HAVE
13 TO. IF SOMEBODY CONTACTS YOU AND WANTS YOU TO DISCUSS
14 HOW YOU REACHED YOUR VERDICT ON THIS CASE YOU ARE
15 WELCOME TO DO THAT BUT YOU DON'T HAVE TO DO IT. AND IF
16 YOU MAKE IT CLEAR TO THEM THAT YOU DON'T WANT TO DISCUSS
17 IT AND SOMEBODY PERSISTS IN TRYING TO TALK TO YOU ABOUT
18 IT, YOU REPORT THAT BACK TO THE CLERK OF COURT'S OFFICE
19 AND WE'LL DEAL WITH THAT PERSON APPROPRIATELY.

20 THIS WILL CONCLUDE YOUR SERVICE FOR
21 THE WEEK. YOU'LL BE GETTING A LITTLE CHECK IN THE MAIL,
22 EVEN THOUGH YOU'VE BEEN HERE, WELL, TWO DAYS, I GUESS.
23 DON'T SPEND IT UNTIL YOU GET IT AND SEE EXACTLY HOW MUCH
24 IT IS. IT'S LIKE I TOLD THE OTHER GUY, IT'S NOT GOING
25 TO BE THAT MUCH. BUT WE APPRECIATE YOUR SERVICE. AND

1 PRIMARILY YOU GET THE THANKS OF THE PEOPLE OF ORANGEBURG
2 COUNTY. WE COULD NOT HAVE OUR SYSTEM UNLESS WE HAD YOU
3 OR SUCH AS YOU WHO COME IN AND ARE WILLING TO SERVE ON
4 THE JURY. AND IF YOU NEED AN EXCUSE FOR WORK YOU MIGHT
5 CAN GET IT FROM THE CLERK, I THINK THEY CLOSE AT FIVE.
6 IF NOT, GIVE THE BAILIFF YOUR NAME AND WE'LL SEE THAT
7 THE CLERK MAILS YOU AN EXCUSE FOR WORK IF YOU NEED ONE.

8 DO YOU HAVE ANY QUESTIONS? IF NOT,
9 YOUR ARE EXCUSED, YOU ARE FREE TO GO. YOU CAN GO BACK
10 OUT THIS WAY. IF YOU WANT TO COME BACK IN THE COURTROOM
11 WE'RE GOING TO HAVE A FEW MOTIONS I'M SURE, AND THEN THE
12 SENTENCE IN JUST A FEW MINUTES, YOU'RE WELCOME TO COME
13 RIGHT BACK IN IF YOU'D LIKE, BUT YOU ARE FREE TO LEAVE.
14 THANK YOU VERY MUCH FOR YOUR SERVICE, AND ESPECIALLY THE
15 ALTERNATES, THANK YOU FOR YOUR PATIENCE. ALRIGHT, YOU
16 ARE EXCUSED.

17 (Whereupon, the jury leaves
18 the jury box.)

19 THE COURT: ALRIGHT, ANY MOTIONS?

20 MR. MELLARD: YES, SIR, AT THIS TIME
21 WE WOULD RENEW ALL MOTIONS WE MADE DURING TRIAL,
22 ESPECIALLY OUR MOTIONS FOR DIRECTED VERDICT. IN ADDITION
23 WE WOULD ALSO MAKE A MOTION FOR A NEW TRIAL. IT'S OUR
24 POSITION THAT ASSAULT WITH INTENT TO COMMIT CRIMINAL
25 SEXUAL CONDUCT WITH A MINOR SHOULD HAVE NEVER BEEN

1 CHARGED. WE DON'T BELIEVE THAT THERE IS ANY EVIDENCE TO
2 SUPPORT A CONVICTION ON THAT PARTICULAR CHARGE, YOUR
3 HONOR. AND FINALLY, WE WOULD MAKE A MOTION, IN A RUSH
4 TO JUDGEMENT, THAT THE COURT DIDN'T HAVE JURISDICTION OF
5 IT.

6 THE COURT: ON WHAT GROUNDS DOES THE
7 COURT NOT HAVE JURISDICTION?

8 MR. MELLARD: AS FAR AS THE ASSAULT
9 WITH INTENT TO COMMIT CRIMINAL SEXUAL CONDUCT.

10 THE COURT: OH, OKAY.

11 MR. SCOTT, DO YOU WISH TO BE HEARD,
12 OR MR. JEFFRIES?

13 SOLICITOR SCOTT: YOUR HONOR, WE
14 THINK THERE WAS MORE THAN SUFFICIENT EVIDENCE FOR THE
15 JURY'S VERDICT. I THINK THE CHARGE OF ASSAULT --
16 CHARGING THE JURY ON THE LESSER INCLUDED OFFENSE OF
17 ASSAULT WITH INTENT TO COMMIT CSC, SECOND DEGREE, WITH
18 A MINOR WAS MORE THAN PROPER. THERE WAS, I THINK, THERE
19 WAS SEVERAL QUESTIONS THAT WERE ASKED REGARDING
20 PENETRATION, WHETHER OR NOT IT WAS SUFFICIENT
21 PENETRATION, AND I THINK THAT COULD HAVE BEEN AN ISSUE
22 FOR THE JURY, AND I THINK THAT, IN AND OF ITSELF
23 WARRANTED THE CHARGE OF THE LESSER INCLUDED OFFENSE OF
24 ASSAULT WITH INTENT TO COMMIT CSC, SECOND DEGREE, WITH
25 A MINOR.

1 THE COURT: ALRIGHT, SIR, I AGREE.
2 I THINK IT WAS A JURY QUESTION, AND I THINK THE JURY
3 RESOLVED THE QUESTION OF PENETRATION IN FAVOR OF YOUR
4 CLIENT. AND, BUT I THINK THERE WAS SUFFICIENT, I THINK
5 IT WAS A PROPER CHARGE, AND I THINK IT WAS A GOOD
6 VERDICT, AND CERTAINLY SUFFICIENT EVIDENCE TO SUPPORT
7 THAT VERDICT. AND AS FAR AS THE OTHER MOTIONS THAT
8 YOU'VE MADE, I WOULD DENY YOUR MOTION TO CHANGE ANY OF
9 THOSE DECISIONS OR RULINGS THAT I PREVIOUSLY MADE IN THE
10 COURT.

11 ALRIGHT, WHO WANTS -- MR. SCOTT,
12 DOES ANYBODY ELSE WANT TO SPEAK ON BEHALF OF THE STATE?

13 SOLICITOR SCOTT: I BEG THE COURT'S
14 INDULGENCE. YOUR HONOR, THE FAMILY DOES NOT WISH TO BE
15 HEARD. I WOULD POINT OUT, YOU KNOW, SOME FACTS THAT DID
16 NOT COME IN. OBVIOUSLY, I THINK WE DISCUSSED IT IN
17 CHAMBERS, THE DEFENDANT DID FAIL THE POLYGRAPH IN THIS
18 CASE FOR WHATEVER THAT'S WORTH. FROM MY CONVERSATIONS
19 WITH THE FAMILY AND PREPARING THIS CASE FOR TRIAL WE
20 ALSO BELIEVE THAT BEFORE THIS INCIDENT HAPPENED THE
21 DEFENDANT HAD KNOWLEDGE THAT THE VICTIM HAD BEEN
22 PREVIOUSLY SEXUALLY ABUSED BY THAT OTHER DEFENDANT, THE
23 TWO THOUSAND AND TWO ALLEGATIONS THAT WAS THE SUBJECT OF
24 THE MOTION IN LIMINE. AND THAT WOULD BE ALL FROM THE
25 STATE. WE'D ASK THAT YOU SENTENCE HIM APPROPRIATELY,

1 YOUR HONOR.

2 THE COURT: ALRIGHT, DO YOU HAVE THE
3 SENTENCE SHEET FOR ME?

4 SOLICITOR SCOTT: I DO, IT'S NOT
5 TOTALLY FILLED OUT.

6 THE COURT: ALRIGHT. I'LL BE GLAD
7 TO HEAR FROM YOU, MS. FORD, MR. MELLARD, BOTH OF YOU,
8 EITHER OF YOU, AND ANYBODY ELSE WHO WANTS TO SPEAK ON
9 BEHALF OF THE FAMILY.

10 MS. FORD: THANK YOU, YOUR HONOR.
11 BRIEFLY, YOUR HONOR, MR. LINDY JONES DID NOT HAVE ANY
12 CRIMINAL HISTORY WHICH WE ARE AWARE OF. HE'S THE FATHER
13 OF FIVE CHILDREN. YOUR HONOR, MR. JONES SUBMITS HIMSELF
14 TO THE MERCY OF THIS COURT AND ASKS FOR THE COURT'S
15 MERCY IN SENTENCING, YOUR HONOR.

16 THE COURT: ANYBODY ELSE WANT TO
17 SPEAK?

18 MS. FORD: NO, YOUR HONOR, HE HAS A
19 NUMBER OF FAMILY MEMBERS THAT ARE HERE, BUT THEY DO NOT
20 WISH TO ADDRESS THE COURT.

21 THE COURT: ALRIGHT.

22 SENTENCE OF THE COURT

23 INDICTMENT 2005-GS-38-1817, THE
24 STATE VERSUS LINDY LAMONT JONES, YOU'VE BEEN CONVICTED
25 OF ASSAULT WITH INTENT TO COMMIT CRIMINAL SEXUAL CONDUCT

1 WITH A MINOR IN THE SECOND DEGREE. THE SENTENCE OF THE
2 COURT IS THAT YOU BE COMMITTED TO THE STATE DEPARTMENT
3 OF CORRECTIONS FOR A PERIOD OF SIXTEEN YEARS.

4 GOOD LUCK TO YOU, SIR.

5 SOLICITOR SCOTT: THANK YOU, YOUR
6 HONOR.

7 THE COURT: ALRIGHT, COURT'S IN
8 RECESS UNTIL NINE:THIRTY IN THE MORNING.

CERTIFICATE

I, THE UNDERSIGNED, MRS. HARRY A. WALKER, OF ROWESVILLE, SOUTH CAROLINA, OFFICIAL COURT REPORTER FOR THE FIRST 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 CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE EIGHTH, NINTH AND TENTH DAYS OF JUNE, 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

DATE: SEPTEMBER 7, 2009

Harry A. Walker
(MRS.) HARRY A. WALKER

COUNTY: ORANGEBURG DATE: JUNE 8, 2009
 Case No.: 05-GS-38-1816 & 1819

VOIR DIRE

Judge: JAMES C. WILLIAMS, JR.

Pl./State: STATE OF SOUTH CAROLINA State/Pl's.Atty: TOMMY SCOTT, ESQUIRE
BRYAN JEFFRIES, ESQUIRE

Defendant: LINDY LAMONT JONES Defense Atty: SARA FORD, ESQUIRE
DOUG MELLARD, ESQUIRE

Court Reporter: (Mrs.) Harry A. Walker

Juror No.	Name	Strikes	Race	Sex	Pl.	Def.	Accept
149	OLA RIVERS		B	F			X
195	JACQUELINE WEEKS		W	F			X
192	LAWRENCE WASHINGTON		B	M			X
57	RITA FOGLE		B	F			X
158	DEMETRICA SCOTT		B	F			X
93	KALINA JENKINS		B	F			X
40	RICHARD DICKERSON		B	M		X	
50	ERNESTINE FELDER		B	F			X
85	WILLIAM HEBERT		W	M			X
87	BARBARA HOLLIDAY		W	F			X
76	MERVIN GREEN		B	M			X
48	ALLEN FAIREY		W	M			X
136	SYLVIA OLIVER		B	F			X
104	HOLLIS KENNERLY		W	M			X
39	KIERAN DIAS		W	M		X	

COUNTY: ORANGEBURG
 Case No.: 05-GS-38-1816 & 1819

DATE: JUNE 8, 2009

VOIR DIRE

Judge: JAMES C. WILLIAMS, JR.

Pl./State:
STATE OF SOUTH CAROLINA

State/Pl's Atty:
TOMMY SCOTT, ESQUIRE
BRYAN JEFFRIES, ESQUIRE

Defendant:
LINDY LAMONT JONES

Defense Atty:
SARA FORD, ESQUIRE
DOUG MELLARD, ESQUIRE

Court Reporter: (Mrs.) Harry A. Walker

Juror				Strikes:		
No.	Name	Race	Sex	Pl.	Def.	Accept
161	RONDA SIMMONS	B	F			X
135	ALICE OEFFINGER	W	F			X
117	RANDY MCMANUS	W	M			X
17	YOLANDA BRYANT	B	F			X
171	RHONDA STEVENSON	W	F			X
1	EFFIE AIKEN	B	F			X
177	JUDI SUTCLIFFE	W	F			X
ALTERNATE NO. 1						
123	MELVIENA MILLER	B	F			X
74	DEQUINTEN GRAYTON	B	M			X
ALTERNATE NO. 2						
8	JOHN BAPTISTE	W	M			X

WITNESSES

A Thompson

Orangeburg County Sheriff

ARREST WARRANT NUMBER
H661699

Arrested: August 23, 2005

ACTION OF GRAND JURY

TRUE BILL

APR 15 2009

Foreperson of Grand Jury

Date: April 15, 2009

VERDICT

~~Guilty~~ ~~CSC w/ Minor~~

Assault with Intent

Guilty ~~Attempt~~ to Commit CSC w/ Minor

~~Not Guilty~~

Foreperson of Petit Jury

Date:

DOCKET NO. 2005GS38-1817

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

April 13, 2009 TERM

THE STATE
vs.

Lindy Lamont Jones

Indictment for

CRIMINAL SEXUAL CONDUCT WITH
MINOR - VICTIM UNDER 16 YRS OF
AGE

SC Code: 16-3-655(3)

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

374

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment
or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST: TRUE COPY

Winnie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

APR 15 2009

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)

INDICTMENT
 2005GS38-1817

At a Court of General Sessions, convened on April 13, 2009 the Grand Jurors of
 Orangeburg County present upon their oath:

**CRIMINAL SEXUAL CONDUCT WITH MINOR - VICTIM UNDER 16 YRS OF
 AGE**

That in Orangeburg County, South Carolina, on or about August 15, 2005, the
 Defendant, Lindy Lamont Jones, did engage in sexual battery upon a minor who
 was at least fourteen (14) years of age or less but less than sixteen (16) years of
 age in that the defendant was in a position of familial, custodial, or official
 authority to coerce the victim to submit or was older than the victim, **Minor**

██████████. This offense in violation of Section 16-3-655 of the South Carolina
 Code of Laws, as amended

Against the peace and dignity of the State, and contrary to the statute in
 such case made and provided.

A TRUE COPY
Wanda B. Clark
 CLERK OF COURT
 ORANGEBURG COUNTY, SC

Thomas B. Scott, III
 Thomas B Scott, III, Solicitor

376

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF UPPER MERITT
STATE

VS.

LINDY LAMONT JONES

AKA:

Race: B Sex: M Age: _____

DOB: _____ SS#: _____

Address: _____

City, State, Zip: _____

DL# _____ SID# _____

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ ~~NOT~~TO: ASSAULT w/ INTENT TO COMMIT CSC 2nd DEGREE WITH A MINORin violation of § 16-3-656 of the S.C. Code of Laws, bearing CDR Code # 0254☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Ther. A. R. R. R. 5991

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 16 months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ set by SCOPPPS _____

Attend Voc. Rehab. or Job Corp. _____

Recipient: _____

May serve WE beginning _____

Substance Abuse Counseling ☐

*Fine:

Random Drug/Alcohol Testing ☐

\$14-1-206 (Assessments 107.5%) \$ _____

Fine may be pd. in equal, consecutive weekly/monthly

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

pmts. of \$ _____

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

Beginning _____

\$56-5-2995 (DUI Assessment) \$12 \$ _____

\$ _____ paid to Public Defender Fund

\$56-1-286 (DUI Breath Test) \$25 \$ _____

Other: _____

\$35.13 (Public Def/Prob) \$500 \$ _____

\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

\$50-21-114(BUI Breath Test Fee) \$50 \$ _____

☐ Appointed PD or appointed other counsel, \$35.13 TP, requires \$500 be paid to Clerk during probation.

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

\$90.11 TP (SCCJA Surcharge) \$5 \$ 5.00PRESIDING JUDGE James C. Williams3% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90Judge Code: 0114Clerk of Court/ Deputy Clerk Marion L. EdgemondSentence Date: June 10, 2009Court Reporter: Harry D. Walker

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County

James C. Williams, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LINDY JONES,

APPELLANT

FINAL BRIEF OF APPELLANT

ELIZABETH A. FRANKLIN-BEST
Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR APPELLANT.

TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUES ON APPEAL.....	3
STATEMENT OF THE CASE	4
ARGUMENT	5
CONCLUSION.....	10
CERTIFICATE OF COUNSEL	11

TABLE OF AUTHORITIES

Cases

<u>Carter v. State</u> , 329 S.C. 355, 495 S.E.2d 773, 777 (1998)	7
<u>Hopper v. Evans</u> , 456 U.S. 605, 102 S.Ct. 2049, 72 L.Ed.2d 367 (1982)	9
<u>Keeble v. United States</u> , 412 U.S. 205, 93 S.Ct. 1993, 36 L.Ed.2d 844 (1973).....	9
<u>State v. Elliot</u> , 346 S.C. 603, 552 S.E.2d 727, 734 (2001)	7
<u>State v. Ferguson</u> , 302 S.C. 269, 395 S.E.2d 182 (1990)	8
<u>State v. Manos</u> , 179 S.C. 45, 183 S.E. 582 (1936).....	8
<u>State v. McFadden</u> , 342 S.C. 629, 539 S.E.2d 387, (2000).....	7
<u>State v. Mims</u> , 286 S.C. 553, 335 S.E.2d 237, 237 (1985).....	8
<u>State v. Tyndall</u> , 2336, S.C. 8, 21, 518 S.E.2d 278, 285 (Ct. App. 1999).....	9
<u>United States v. Bailey</u> , 444 U.S. 394, 405 (1980)	9

Statutes

S.C. Code Ann. §16-3-655 (1976)	5, 6
S.C. Code Ann. §16-3-656.....	7
S.C. Code Ann. §44-53-370 (e)(6)(d) (Supp. 1999)	7

Constitutional Provisions

<i>United States Constitution, Amendment 14</i>	9

STATEMENT OF ISSUES ON APPEAL

Did the trial court judge err when he charged with the jury, over defense objection, with assault with intent to commit criminal sexual conduct with a minor (AWCSC) as a lesser-included offense of criminal sexual conduct with a minor, 2nd degree because AWCSC is not a lesser-included offense of CSC with a minor, 2nd degree?

STATEMENT OF THE CASE

Lindy Jones was indicted by the Orangeburg County grand jury for criminal sexual conduct with a minor, 2nd degree and committing or attempting lewd act upon a child under 16. (He was also indicted for criminal sexual conduct, 1st degree and kidnapping, but the state elected not to go forward on those charges). He was tried between June 8th- 10th, 2009 before the Honorable James C. Williams and a jury. He was represented by Mary Ford and Doug Mellard, Esquires. He was acquitted of the lewd act charge, and found guilty assault with intent to commit criminal sexual conduct with a minor, 2nd degree. He was sentenced to 16 years incarceration.

This appeal timely follows.

ARGUMENT

The trial court judge erred when he charged with the jury, over defense objection, with assault with intent to commit criminal sexual conduct with a minor (AWCSC) as a lesser-included offense of criminal sexual conduct with a minor, 2nd degree because AWCSC is not a lesser-included offense of CSC with a minor, 2nd degree.

Lindy Jones was indicted for criminal sexual conduct with a minor, 2nd degree and lewd act with a minor. Pursuant to S.C. Code Ann. §16-3-655 (1976):

A person is guilty of criminal sexual conduct with a minor in the second degree if: (1) the actor engages in sexual battery with a victim who is fourteen years of age or less but who is at least eleven years of age; or (2) the actor engages in sexual battery with a victim . . . and the actor is in a position of familial, custodial, or official authority to coerce the victim to submit or is older than the victim.

At trial, the state appeared to be proceeding under the “older than the victim” theory of criminal sexual conduct with a minor, 2nd degree. ROA p. 1, ll. 4-14. At the end of the trial, the judge submitted assault with intent to commit criminal sexual conduct to the jury. Counsel objected to the jury charge:

MR. MELLARD: We would just like to note for the record that we had previously objected to the charge of assault with intent to commit criminal sexual conduct.

ROA p. 43, ll. 17-20.

The judge charged the jury with the following:

So, ladies and gentlemen, the elements that the state has to prove in the criminal sexual conduct case are that the actor engaged in a sexual battery, that the victim was at least fourteen years of age but was less than sixteen years of age, and that the actor was either in a position of familial, custodial, or official authority to coerce the victim, or that the actor was older than the victim. And the state must prove each of those elements beyond a reasonable doubt . . .

Now, ladies and gentlemen, that charge also contains with it what we call a lesser included charge, and the lesser included charge on that indictment would be an assault with intent to commit criminal sexual conduct with a minor. Basically, it's an attempt to commit, without being successful, in committing the criminal sexual conduct with a minor. . .

If you find that the state has proven the elements of criminal sexual conduct with a minor, which includes a sexual battery, and the victim being less than the sixteen, the actor being older or in a position of familial custody, then if you find the state has proved all of those elements then you would find him guilty of criminal sexual conduct in the second degree. If you find the state has proven that there was an assault—an assault is simply an attempt to do harm—there was an assault with an intent to commit the criminal sexual conduct with a minor but it was not completed for some reason, then you could find the defendant guilty of assault with intent to commit criminal sexual conduct with a minor in the second degree. If you find that the state has failed to prove the elements of either of those, of course, your verdict would be not guilty.

ROA p. 38, l. 25- p. 41, l. 6.

The jury acquitted Jones of the charge of lewd act, and found him guilty of the AWCSC. Respectfully, the trial court judge erred when he charged the jury that AWCSC is a lesser included offense of criminal sexual conduct with a minor, 2nd degree and appellant should be granted a new trial.

Legislative Intent

Both offenses—criminal sexual conduct with a minor, 2nd degree and assault with intent to commit criminal sexual conduct—are statutory offenses. Criminal sexual conduct with a minor; aggravating and mitigating circumstances; penalties; repeat offenders is codified at S.C. Code Ann. 16-3-655 (1976). Criminal sexual conduct; assaults with intent to commit is codified at S.C. Code Ann. 16-3-656 (1976).

AWCSC is not a lesser-included offense of criminal sexual conduct with a minor, 2nd degree because the legislature has not specifically provided that it be considered a lesser-included. Other statutory schemes expressly provide for lesser-included offenses. See S.C. Code Ann. §44-53-370 (e)(6)(d) (Supp. 1999) (possession with intent to distribute specified controlled substances is lesser included offense of trafficking upon possession.) See State v. McFadden, 342 S.C. 629, 633, n.4, 539 S.E.2d 387, 389, n.4 (2000); State v. Elliot, 346 S.C. 603, 615, n.22, 552 S.E.2d 727, 734, n.22 (2001) (Pleicones, J., *dissenting*).

S.C. Code Ann. §16-3-656 merely prescribes the penalties to be imposed for the conviction of an assault with intent to commit criminal sexual conduct, and does not expressly provide that the offense is a lesser-included of criminal sexual conduct with a minor, 2nd degree. For this reason, it was error for the trial court judge to charge the jury as if it were a lesser-included offense.

Elements test

AWCSC is also not a lesser-included offense than CSC with a minor, 2nd degree because the two offenses contain different elements. The test for determining when an offense is a lesser included offense of another is whether the greater of the two offenses includes all the elements of the lesser offense. Elliot, supra; Carter v. State, 329 S.C. 355, 362, 495 S.E.2d 773, 777 (1998).

Criminal sexual conduct with a minor in the second degree occurs if: (1) the actor engages in sexual battery with a victim who is fourteen years of age or less but who is at least eleven years of age; or (2) the actor engages in sexual battery with a victim who is at least fourteen years of age but who is less than sixteen years of age and the actor is in a

position of familial, custodial, or official authority to coerce the victim to submit or is older than the victim.

AWCSC occurs when there is an “assault with intent to commit” criminal sexual conduct. Assault is “an unlawful attempt or offer to commit a violent injury upon another person, coupled with the present ability to complete the attempt or offer by a battery.” State v. Mims, 286 S.C. 553, 554, 335 S.E.2d 237, 237 (1985). Indeed, the judge charged the jury that an assault “is simply an attempt” to do harm to the victim. ROA p. 40, l. 23.

AWCSC requires the additional element of “assault with intent to commit” a sexual battery. The “assault with intent to commit” or “attempt” is an additional element possessed by AWCSC that is lacking in the “greater offense” criminal sexual conduct with a minor, 2nd degree. For this reason, AWCSC is not a lesser-included offense of CSC with a minor, 2nd degree.

Additionally, the two charges require different mental states. Criminal sexual conduct with a minor, 2nd degree does not expressly describe which mental state is required for conviction. The South Carolina Supreme Court has recognized that the legislature may declare an act criminal regardless of the mental state of the actor. State v. Ferguson, 302 S.C. 269, 395 S.E.2d 182 (1990); State v. Manos, 179 S.C. 45, 183 S.E. 582 (1936). AWCSC, however, expressly requires an “intent to commit” the illegal act; in this case, the completed sexual battery. To be guilty of AWCSC, one has to expressly intend to commit a completely sexual battery. The AWCSC, then, requires a “heightened culpability” that CSC with a minor, 2nd degree does not.

In certain narrow classes of crimes . . . heightened culpability has been thought to merit special attention. Thus, the statutory and common law of homicide often distinguishes, either in setting the “degree” of the crime or

in imposing punishment, between a person who knows that another person will be killed as the result of his conduct and a person who acts with the specific purpose of taking another's life . . . Similarly, where a defendant is charged with treason, this Court has stated that the Government must demonstrate that the defendant acted with a purpose to aid the enemy. . . . Another such example is the law of inchoate offenses such as attempt and conspiracy, where a heightened mental state separates criminality itself from otherwise innocuous behavior.

United States v. Bailey, 444 U.S. 394, 405 (1980) (internal citations omitted).

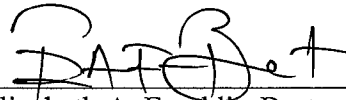
Since AWCSC requires a heightened culpability that CSC with a minor, 2nd degree lacks, it cannot properly be considered a lesser-included offense. The judge's charging the offense, over defense counsel objection, denied appellant his right to due process.

"Due process requires that a lesser included offense be charged when the evidence warrants it but only if the evidence would permit a jury rationally to find the defendant guilty of the lesser offense." State v. Tyndall, 2336, S.C. 8, 21, 518 S.E.2d 278, 285 (Ct. App. 1999); *United States Constitution, Amendment 14*. See also Hopper v. Evans, 456 U.S. 605, 102 S.Ct. 2049, 72 L.Ed.2d 367 (1982); Keeble v. United States, 412 U.S. 205, 93 S.Ct. 1993, 36 L.Ed.2d 844 (1973). Since AWCSC contains elements that are not present in CSC with a minor, 2nd degree, a jury could not rationally find appellant guilty of it. The state did not present, nor did the judge charge, the jury that they would have to find that appellant had a heightened culpability with respect to that crime. Respectfully, appellant asks this Court to reverse his convictions and remand his case for trial.

CONCLUSION

For the preceding reasons, appellant respectfully asks this Court to reverse his convictions and remand his case for trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "E. Franklin-Best", written over a horizontal line.

Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT.

This 7th day of May, 2010.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 7th, 2010



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County

James C. Williams, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

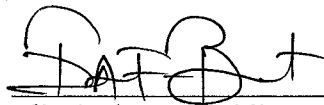
V.

LINDY JONES,

APPELLANT

CERTIFICATE OF SERVICE

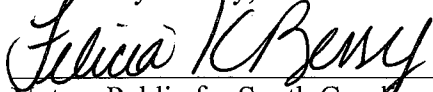
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon William L. Blich, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 7th day of May, 2010.



Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 7th day of May, 2010.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 15, 2010.

STATE OF SOUTH CAROLINA**IN THE COURT OF APPEALS**

Appeal From Orangeburg County
Hon. James C. Williams, Jr., Circuit Court Judge

The State,

Respondent,

v.

Lindy Lamont Jones,

Appellant.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 2

STATEMENT OF FACTS 3

ARGUMENT 5

 I. The trial court properly charged assault with intent to
 commit criminal sexual conduct with a minor, second
 degree, as a lesser included offense of criminal sexual
 conduct with a minor, second degree. Further, the
 issue is not preserved for review on appeal. 5

CONCLUSION 10

TABLE OF AUTHORITIES

Cases:

<u>State v. Bridgers</u> , 329 S.C. 11, 495 S.E.2d 196 (1997)	9
<u>State v. Burton</u> , 356 S.C. 259, 589 S.E.2d 6 (2003)	7
<u>State v. Collins</u> , 228 S.C. 537, 91 S.E.2d 259 (1956)	9
<u>State v. Elliott</u> , 346 S.C. 603, 552 S.E.2d 727 (2001)	8, 9
<u>State v. Freiburger</u> , 366 S.C. 125, 620 S.E.2d 737 (2005)	6
<u>State v. Gatlin</u> , 208 S.C. 414, 38 S.E.2d 238(1946)	9
<u>State v. Gentry</u> , 363 S.C. 93, 610 S.E.2d 494 (2005)	8
<u>State v. Haselden</u> , 353 S.C. 190, 577 S.E.2d 445 (2003)	6
<u>State v. Hiott</u> , 276 S.C. 72, 276 S.E.2d 163(1981)	8
<u>State v. Johnson</u> , 324 S.C. 38, 476 S.E.2d 681(1996)	5
<u>State v. Johnson</u> , 363 S.C. 53, 609 S.E.2d 520 (2005)	5
<u>State v. Northcutt</u> , 372 S.C. 207, 641 S.E.2d 873 (2007)	7
<u>State v. Pauling</u> , 322 S.C. 95, 470 S.E.2d 106 (1996)	5
<u>State v. Rice</u> , 375 S.C. 302, 652 S.E.2d 409 (Ct. App. 2007)	6
<u>State v. Sosbee</u> , 371 S.C. 104, 637 S.E.2d 571 (Ct. App. 2006)	8
<u>State v. Stewart</u> , 283 S.C. 104, 320 S.E.2d 447(1984)	8
<u>State v. Torrence</u> , 305 S.C. 45, 406 S.E.2d 315 (1991)	9

Other Authorities:

S.C. Code Ann. § 16-3-655 (Supp. 2008)	7, 8
S.C. Code Ann. §§ 16-3-651 to 16-3-659.1 (Supp. 2008)	9

STATEMENT OF ISSUES ON APPEAL

The trial court properly charged assault with intent to commit criminal sexual conduct with a minor, second degree, as a lesser included offense of criminal sexual conduct with a minor, second degree. Further, the issue is not preserved for review on appeal.

STATEMENT OF THE CASE

Appellant proceeded to a jury trial on indictments for attempting or committing a lewd act upon a child and criminal sexual conduct with a minor in the second degree. The Honorable James C. Williams, Jr., presided over the trial from June 8-10, 2009. The jury found Appellant not guilty of the lewd act charge and guilty of the lesser included offense of assault with intent to commit criminal sexual conduct with a minor in the second degree. (T.361-362; R.44-45). Judge Williams sentenced Appellant to sixteen years incarceration. This appeal follows.

STATEMENT OF FACTS

Appellant dated the child victim's aunt, whom she would stay with while her mother was working late. (T.141; 143; R.4; 6). Usually the child victim's aunt was home with Appellant, the child victim, and the child victim's siblings. The aunt, however, would occasionally work a different shift and not be present at the home, so the child victim would stay with Appellant. (T.143-144; R.6-7).

On two occasions when Appellant was the only adult in the home, he assaulted the child victim. On one occasion, he placed or attempted to place his penis into the child victim's anus. She testified he put his penis to her anus when she had clothes on, but later he put his penis into her anus after he clothes were down. The child victim admitted she did not remember all details of the incident. (T.145-147; 167-169; R.8-10; 17-19).

On the second occasion, the child victim was asked to wake Appellant up at a certain time so he could get ready for work. When she went in to wake him, he told her to return in five minutes. She returned and Appellant was already awake. He was standing nude in the bedroom waiting on her. He told her to come over and when she got close, he pulled her pant and panties down. (T.149; R.12). He put her on the bed and had sexual intercourse with the child victim. (T.149-150; R.12-13).

Appellant left the home for work and, once he was gone, the child victim called a teacher with whom she had become friends to report what took place. (T.150-151; R.13-14). The teacher called police, who responded to the scene. (T.151-152; R.14-15). The child victim was taken to Charleston for an examination. (T.212; R.22).

Dr. Gibbs testified she performed the examination on the child victim. (T.212-214; R.22-24). She indicated the child victim had a tear of the fossa navicularis. Dr. Gibbs indicated a tear to this area of the genitalia would be consistent with the child victim's reported sexual assault. (T.215-216; 218-219; 228; R.25-26; 28-29; 34). She also admitted the tear could occur in ways unrelated to sexual assault and could occur without actual penetration by Appellant. (T.224-225; R.30-31).

ARGUMENT

- I. The trial court properly charged assault with intent to commit criminal sexual conduct with a minor, second degree, as a lesser included offense of criminal sexual conduct with a minor, second degree. Further, the issue is not preserved for review on appeal.**

Appellant contends the trial court erred in charging the jury on assault with intent to commit criminal sexual conduct with a minor in the second degree (ACSC) because he maintains it is not a lesser included offense of criminal sexual conduct with a minor in the second degree (CSC). For multiple reasons, this issue is clearly not preserved for review on appeal. The issue also fails on the merits because ACSC is a lesser included offense of CSC and was properly charged by the trial court.

PRESERVATION

Appellant failed to properly preserve the issue raised in his brief for review on appeal. First, Appellant did not properly object to the charge when given the opportunity by the trial court. To preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court. See State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005) (citing State v. Johnson, 324 S.C. 38, 41, 476 S.E.2d 681, 682 (1996)). If a party fails to properly object, the party is procedurally barred from raising the issue on appeal. Id. at 59; 609 S.E.2d at 523 (citing State v. Pauling, 322 S.C. 95, 99, 470 S.E.2d 106, 109 (1996)). The trial court explained on the record the charge he plan to give to the jury, including charging the law of ACSC. The trial court then asked: “Alright, anything else?” (T.296; R.35). Appellant’s trial counsel responded: “Nothing.” (T.297; R.36). Accordingly, the record does not reflect any objection raised by Appellant.

Next, Appellant failed to raise on the record any specific ground for an objection. “[A]n objection must be on a specific ground. A general objection which does not specify the particular ground on which the objection is based is insufficient to preserve a question for review.” State v. Rice, 375 S.C. 302, 323, 652 S.E.2d 409, 419 (Ct. App. 2007). Even if Appellant’s objection after the jury charge is contemporaneously offered, it does not raise any specific ground on which the objection is based. He merely “note[s] for the record that we had previously objected to the charge of assault with intent to commit criminal sexual conduct.” (T.346; R.43).

The “previous objection,” however, does not appear in the Record and counsel’s vague reference does not provide this Court any basis upon which to review the object. Based on the Record before this Court, the objection could have been based on the specific wording of the charge, the lack of evidence to support the charge, or any number of grounds. Nothing indicates the ground raised by counsel was the one now raised on appeal.

Finally, even if the issue was contemporaneously raised and sufficiently specific, the issue raised on appeal is different from the issue raised to the trial court. Appellant cannot raise one issue at trial and argue a different issue on appeal. See State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005) (holding an issue not preserved when one ground is raised to the trial court and another ground is raised on appeal); State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (finding issue not preserved when appellant did not object to testimony at trial on the grounds raised on appeal, that it was improper character evidence, but objected only on the basis of relevancy).

After the jury returns a verdict of guilty to ACSC, Appellant moves for a new trial. As grounds for his new trial, he contends ACSC should not have been charged to the jury because “[w]e don’t believe that there is any evidence to support a conviction on that particular charge.” (T.366-367; R.46-47). This is the only possible indication found in the Record on Appeal of the possible basis for his objection to the charge on ACSC. The motion does not even reference the argument that ACSC is not properly charged as a lesser included offense of CSC. As a result, even if Appellant is given every benefit of the doubt regarding his objection, he is attempting to raise a different ground on appeal from the one raised at trial. As a result, the issue is still not preserved for review.

MERITS

On the merits, the issue also fails. The test for determining whether an offense is a lesser included offense of a charged crime is whether the greater of the two offenses includes all the elements of the lesser offense. State v. Northcutt, 372 S.C. 207, 215, 641 S.E.2d 873, 877 (2007). If the lesser offense contains an element not included in the greater offense, then it is not a lesser included offense of the greater offense. Id. When an offense fails to meet the elements test, the appellate court may nevertheless construe it as a lesser included offense if the offense has traditionally been considered a lesser included offense of the greater offense charged. See State v. Burton, 356 S.C. 259, 264, 589 S.E.2d 6, 8 (2003).

According to section 16-3-655:

(B) A person is guilty of criminal sexual conduct with a minor in the second degree if:

(1) the actor engages in sexual battery with a victim who is fourteen years of age or less but who is at least eleven years of age; or

(2) the actor engages in sexual battery with a victim who is at least fourteen years of age but who is less than sixteen years of age and the actor is in a position of familial, custodial, or official authority to coerce the victim to submit or is older than the victim.

S.C. Code Ann. § 16-3-655(B) (Supp. 2008). “An assault with intent to commit criminal sexual conduct with a minor . . . is more aptly designated as an “attempt” to commit criminal sexual conduct with a minor.” State v. Sosbee, 371 S.C. 104, 109, 637 S.E.2d 571, 573 (Ct. App. 2006); see also, State v. Elliott, 346 S.C. 603, 552 S.E.2d 727 (2001), *overruled on other grounds*, State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

The elements of the offenses are the same, except ACSC is an unsuccessful attempt to commit CSC. An unsuccessful attempt would logically be included in the elements of a successful attempt. As a result, ACSC is a proper lesser included offense of CSC under the elements test. Additionally, an attempt to commit a crime has long been held to be a lesser included offense of the main offense. See State v. Hiott, 276 S.C. 72, 80, 276 S.E.2d 163, 167 (1981) (finding attempted armed robbery is a lesser included of armed robbery); see also, Elliott, 346 S.C. at 616, 552 S.E.2d at 734 (Pleicones, J. dissenting).

Further, the historical common law provides support for the finding ACSC is a lesser included of CSC. As the South Carolina Supreme Court explained in Elliott, the predecessor crime to ACSC is assault with intent to rape or ravish (AIR). Elliott, 346 S.C. 603, 607, 552 S.E.2d 727, 729 (“The predecessor to ACSC was assault with intent to ravish (AIR).”) (citing See State v. Stewart, 283 S.C. 104, 109, 320 S.E.2d 447, 451 (1984)). In the same vein,

when the legislature enacted the comprehensive criminal sexual battery act in 1977,¹ it replaced the crime of rape with the various crimes for criminal sexual conduct. AIR has long been considered a lesser included offense of the crime of rape. *See e.g., State v. Collins*, 228 S.C. 537, 91 S.E.2d 259 (1956); *State v. Gatlin*, 208 S.C. 414, 418-419, 38 S.E.2d 238, 240 (1946), *overruled on other grounds by*, *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991). As a result, the historical common law supports the trial court's finding ACSC is a lesser included offense of CSC, and if the legislature had intended ACSC not to be a lesser included, the legislature could have provided that ACSC not be treated as a lesser offense of CSC. *See e.g., Elliott*, 346 S.C. at 607, 552 S.E.2d at 729 (citing *State v. Bridgers*, 329 S.C. 11, 495 S.E.2d 196 (1997) (the legislature is presumed to be aware of the common law)).

The designation of ACSC as a lesser included offense of CSC is supported by the elements test, the rule that an attempted offense is a lesser included offense of the main offense, and the historical common law precedent involving AIR as a lesser included offense of rape. Accordingly, the trial court did not err in charging ACSC as a lesser included offense of CSC.

¹1977 Act No. 157, now codified at S.C. Code Ann. §§ 16-3-651 to 16-3-659.1 (Supp. 2008).

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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Summerville, South Carolina 29483
(843) 871-2640

BY: 
William M. Blitch, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

May 21, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Orangeburg County
 Hon. James C. Williams, Jr., Circuit Court Judge

The State,

Respondent,

v.

Lindy Lamont Jones,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

HENRY DARGAN McMASTER
 Attorney General

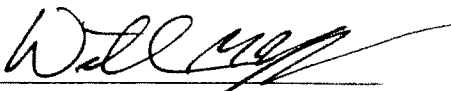
JOHN W. McINTOSH
 Chief Deputy Attorney General

SALLEY W. ELLIOTT
 Assistant Deputy Attorney General

WILLIAM M. BLITCH, JR.
 Assistant Attorney General

DAVID M. PASCOE, JR.
 Solicitor, First Judicial Circuit

140 N. Main Street, Suite 102
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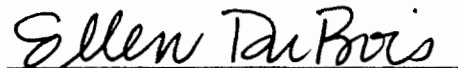
Appellant.

PROOF OF SERVICE

I, ELLEN DuBOIS, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Elizabeth A. Franklin-Best, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
P. O. Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.
This 21st day of May, 2010.



ELLEN DuBOIS
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Lindy Jones,

Appellant.

Appeal From Orangeburg County
James C. Williams, Jr., Circuit Court Judge

Unpublished Opinion No. 2011-UP-396
Submitted August 1, 2011 – Filed August 19, 2011

AFFIRMED

Appellate Defender Elizabeth A. Franklin-Best, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John McIntosh, Assistant Deputy
Attorney General Salley W. Elliott, and Assistant
Attorney General William M. Blich, Jr., all of

Columbia; and Solicitor David M. Pascoe, Jr., of Summerville, for Respondent.

PER CURIAM: Lindy Jones appeals his conviction for assault with intent to commit criminal sexual conduct with a minor. Jones argues the trial court erroneously instructed the jury assault with intent to commit criminal sexual conduct is a lesser included offense of criminal sexual conduct with a minor in the second degree. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities: Rule 20(b), SCRCrimP ("[T]he parties shall be given the opportunity to object to the giving [of] . . . an instruction Any objection shall state distinctly the matter objected to and the grounds for objection. Failure to object in accordance with this rule shall constitute a waiver of objection."); State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) (finding an issue is preserved for appellate review when it was raised to and ruled upon by the trial court, and the argument presented was on the same ground); and State v. Benton, 338 S.C. 151, 156-57, 526 S.E.2d 228, 231 (2000) (holding an issue regarding a jury charge is not preserved on appeal when appellant argued one ground at trial and argues another ground on appeal).

AFFIRMED.

SHORT, WILLIAMS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Orangeburg)Lindy Lamont Jones 335250)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

ORANGEBURG COUNTY, SC)
CLERK OF COURT)

ATTEST: TRUE COPY)

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution
990 Wisacky Hwy Bishopville SC 29010
2. Name and location of Court which imposed sentence Orangeburg
County Court house
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2006 S-38-1817 Assault w/in tent to commit CSC 2nd
ATTEST: TRUE COPY
Winnif B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) June 10, 2009 16 years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. August 19, 2011
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion 2011-UP-00396
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Denial of Effective Assistance of Counsel
- (b) US Constitutional Violation(s) 14th
- (c) US Constitutional Violation(s) 14th
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel failed to properly object to jury charge
- (b) lack of subject matter
- (c) Denial of Due process and equal protection
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. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. lack of subject matter
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. Direct appeal
- 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) PCR issues
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? no
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
N/A

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. Sarah Ford, Public Defender's office
P.O. Box 1112 Orangeburg, S.C. 29116
 ii. Doug mellard, Public Defender's office
P.O. Box 1112 Orangeburg, S.C. 29116
 iii. Elizabeth A. Franklin-Best Appellate Defense
P.O. Box 11589, Columbia, SC 29211
 (b) the proceedings at which each such attorney represented you:
 i. Trial and Sentencing
 ii. Trial and Sentencing
 iii. S.C. Court of Appeals

19. State clearly the relief you seek in filing this application:

Based on the foregoing the Conviction and
sentence be vacated in the interest of
Justice

20. Are you now under sentence from any other court that you have not challenged?

no

STATE OF SOUTH CAROLINA)

County of Orangeburg)

VERIFICATION

I, Lindy Lamont Jones # 335250, 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.

[Signature]

SWORN to and subscribed before me this 9
 day of Sept. 2011.

[Signature] (L.S.)
 Notary Public

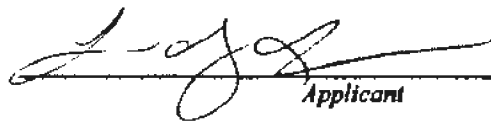
My Commission Expires: 5-16-14

2011 SEP 12 A 7:30
 FILED FOR RECORD
 WINNIE B. CLARK
 CLERK OF COURT
 ORANGEBURG, SC

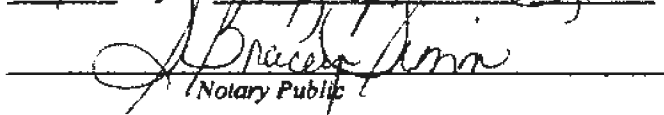
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Lindy Lamont Jones #335250, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
day of Sept, 2011.


Notary Public

My Commission Expires: 5-16-14

2011 SEP 12 A 7:30
FILED FOR RECORD
WINNIEA B. CLARK
CLERK OF COURT
ORANGE COUNTY, SC

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	
	)	
	)	2011-CP-38-1240
	)	
Lindy Lamont Jones, #335250,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	(Appointment of Counsel Requested)
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed September 12, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. The Applicant was indicted for Criminal Sexual Conduct with a Minor – Victim Under 16 Years of Age (2005-GS-38-1817). Applicant was represented by Sara Ford, Esquire, and Doug Mellard, Esquire, represented him. Applicant proceeded to a jury trial and was convicted of Assault with Intent to Commit Criminal Sexual Conduct with a Minor. On June 10, 2009, the Honorable James C. Williams, Jr., sentenced Applicant to sixteen (16) years imprisonment.

A notice of appeal was filed and an appeal perfected. Applicant's conviction and sentence were affirmed. State v. Jones, Op. No. 2011-UP-396 (S.C. Ct. App. filed August 19, 2011). The Remittitur was sent on September 8, 2011.

Attached herewith and incorporated herein are the records of the Orangeburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. "Counsel failed to properly object to jury charge."
2. "U.S. Constitutional Violation(s) 14th."
 - a. "Lack of subject matter."
 - b. "Denial of due process and equal protection."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary

hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

The Applicant has claimed that the trial court lacked subject matter jurisdiction. Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); See also U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). See also S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, 363 S.C. 93, 610 S.E.2d 494; Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveness. See S.C. Code §§ 17-27-45, -90 (2003).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494. However, “[c]ircuit

courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 363 S.C. at 101, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

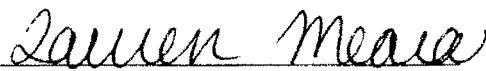
Feb 14, 2012.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	
	)	
	)	2011-CP-38-1240
	)	
LINDY LAMONT JONES, 335250,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

C. Bradley Hutto, Esquire
Williams & Williams
Post Office Box 1084
Orangeburg, SC 29115

DATED this 14th day of February, 2012.


 Lauren Meara, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG 2011-CP-38-1240.

LINDY LAMONT JONES)
Applicant,) TRANSCRIPT OF RECORD
-vs-)
STATE OF SOUTH CAROLINA,) October 31, 2012
Respondent.) St. George, South Carolina

B E F O R E:

The Honorable Carmen T. Mullen, Judge.

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

Charles Williams, Esquire
Attorney for the Petitioner

Megan Harrigan, Esquire
Attorney for the Respondent

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

1	I N D E X				
2	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
3	Lindy Lamont Jones	4	13	--	--
4	Robert Mellard	13	16	18	21
5	Sarah Ford	22	25	--	--
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1 (October 31, 2012.)

2 MS. HARRIGAN: This is the matter of Lindy
3 Lamont Jones versus the State of South Carolina docket,
4 2011-CP-38-1240. Applicant was indicted for criminal
5 sexual conduct with a minor, victim under 16 years of
6 age, by the Orangeburg County grand jury, and he was
7 represented by Sarah Ford and Doug Mellard. Applicant
8 proceeded to a jury trial and was convicted of the charge
9 of assault with intent to commit CSC with a minor.

10 On June 10, 2009 the Honorable James C.
11 Williams, Jr. Sentenced Applicant to 16 years'
12 imprisonment. A notice of appeal was filed and an appeal
13 was perfected that South Carolina Court of Appeals
14 affirmed Applicant's conviction and sentence, and the
15 remitter was set on September 8, 2011. Applicant filed a
16 timely application for post-conviction relief on
17 September 12, 2011, alleging that counsel was ineffective
18 for failing to properly object to the jury charge
19 regarding fault with intent to commit criminal sexual
20 conduct with a minor, he cited a lack of subject matter
21 jurisdiction and denial of his due process and equal
22 protection rights.

23 The State made its return on February 14,
24 2012, and the applicant is represented in this action by
25 Charles Williams, appearing on behalf of Bradley Hutto.

1 THE COURT: Thank you.

2 MR. WILLIAMS: May it please the Court: I
3 would like to call Mr. Lindy Jones.

4 LINDY JONES,
5 having been first duly sworn,
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. WILLIAMS:

9 Q. Good morning, Mr. Jones. How are you?

10 A. Good morning. Doing all right.

11 Q. Mr. Jones, where are you currently located, or
12 housed?

13 A. Lee County, Lee Correctional Institution in
14 Bishopville, South Carolina.

15 Q. And we spoke yesterday in Orangeburg County,
16 correct?

17 A. Yes, sir.

18 Q. Are you still wishing to proceed with a
19 PCR hearing this morning?

20 A. Yes, sir.

21 Q. Are you aware of the charges that were dismissed
22 at the time this case was heard?

23 A. Yes, sir.

24 Q. And you're aware it is the potential that those
25 charges could be brought back up if you were to succeed

1 on this PCR?

2 A. No, sir, I was not aware.

3 Q. May I beg the Court's indulgence?

4 Just so we're clear, this is what I was trying to
5 explain to you, that even though those charges were
6 dismissed at the time, I don't believe they were
7 dismissed with prejudice, so if you were to succeed on
8 your PCR, there is the potential that you could be
9 subject to being retried on the kidnapping charge as
10 well.

11 THE COURT: Yes, sir. You are correct.
12 Okay? And you understand you would be facing the same
13 exposure that those charges would carry. I just want to
14 make sure you understand.

15 The effect of this at a PCR, sir, no one can
16 change your sentence here. We can either go ahead and
17 grant you a new trial, but what he's trying to tell you
18 is at that point you would be facing the original
19 kidnapping charge and the CSC with a minor charge and
20 their sentences.

21 So in those two cases, obviously, you could
22 be looking at up the full amount. The kidnapping is up
23 to -- is it 30 years?

24 THE COURT: I believe it's years and the
25 CSC with a minor, I just want to make sure you understand

1 and appreciate that.

2 THE WITNESS: I think I was already facing
3 them. They just dismissed them for whatever reason.

4 THE COURT: What you need to understand is
5 the only result of this hearing for ineffective
6 assistance of trial is to grant you a new trial. If I
7 grant you a new trial, you agree you would facing the
8 original charges.

9 Now, of course, whether or not a jury
10 convicted you on those charges is another issue, but I
11 want to make sure that you understand that the
12 possibility would be that if this were granted and you
13 went to trial, you could end up facing a much more severe
14 sentence. Do you understand that?

15 MR. WILLIAMS: If I just may clarify one more
16 thing, I do believe in the beginning you might have been
17 charged with CSC with a minor; however, at trial they
18 proceeded on CSC second --

19 THE WITNESS: No, I was charged with CSC with
20 first degree. It's just CSC first degree, and then it's
21 CSC second degree with a minor.

22 BY MR. WILLIAMS:

23 Q. Right. So just to be clear, I know that we've
24 talked about the CSC second, and you understand you were
25 found not guilty of that, but the CSC first, it could

1 potentially, if they feel that the facts warrant that
2 charge, they could pursue that charge at a later date.

3 You're aware of that, correct?

4 A. Yes, sir.

5 Q. Okay. Mr. Jones, could you explain to the Court
6 why your attorneys, or attorney, was ineffective at the
7 time of this trial.

8 A. Well, my attorney was ineffective at trial because
9 my attorney failed to make a timely objection to the
10 charge of assault with intent to commit, being charged as
11 a lesser included of criminal sexual conduct second
12 degree with a minor.

13 Q. Why do you feel it was a mistake for him not to
14 object to that jury trial?

15 A. He should have objected to the charge because
16 assault with intent does not carry with it the battery
17 that's required by the CSC second degree with a minor,
18 and throughout the trial, they proved beyond a reasonable
19 doubt that the sexual battery took place, so for that
20 assault with intent to come in the evidence at trial
21 wouldn't support a conviction on it because it's not a --
22 the battery took place, so the greater crime took place,
23 but he charged me with a lesser charge that I can't be
24 found guilty on it because it doesn't carry the battery.

25 Q. Just to try and clarify that for the Court a

1 little bit, what I believe you're trying to say is that
2 there was evidence produced by yourself, a doctor, and
3 the victim that indicated there was a battery in this
4 case?

5 A. Yes.

6 Q. However, you're saying that you were found guilty
7 of a charge that suggested that there was an attempted
8 battery but the battery didn't occur so that charge
9 shouldn't be supported by the evidence.

10 A. Yes. It wouldn't be supported by the evidence.

11 Q. And you testified to the fact that it did happen,
12 correct?

13 A. I never testified, but --

14 Q. Gave a statement, I believe?

15 A. I gave a statement.

16 Q. You gave a statement, but there was just a
17 question as to how the occurrence -- what transpired --

18 A. Exactly, the events leading up to the criminal
19 sexual conduct.

20 Q. How could you think it would have gone differently
21 with adequate representation?

22 A. With adequate representation, I believe counsel
23 would have objected in a timely manner and raised grounds
24 as to why he objected to the charge.

25 Q. So did counsel object to the charge?

1 A. He objected to the charge, but he did not raise
2 any grounds as to why he objected. He stated that he had
3 made a previous objection to the charge of assault with
4 intent to commit, but there was no previous objection,
5 and the objection he made he didn't raise any grounds as
6 to why he was even objecting to the charge.

7 Q. So as far as you know, there was no objection made
8 prior to that, he just claimed that, but you aren't aware
9 of what may have taken place behind chamber doors or
10 anything, correct?

11 A. Yeah. Behind chamber doors, I don't know what
12 happened. I'm not included in that, so --

13 Q. All right. What is it today, the relief are you
14 seeking?

15 A. Today the relief that I am seeking is for this to
16 be reversed and vacated because in my study and my
17 opinion that the trial Court didn't have subject matter
18 jurisdiction to try me for assault with intent to commit
19 because they didn't have an indictment for that charge at
20 the time the jury was sworn in, and that is not a lesser
21 included offense of criminal sexual conduct second degree
22 with a minor.

23 Q. And when you say the Court didn't have subject
24 matter jurisdiction, in essence you're saying that the
25 evidence could not possibly have supported a jury charge

1 of that fashion; is that correct? Is that what you --

2 A. What I'm saying is they didn't have an indictment
3 for the charge with assault with intent to commit at the
4 time the jury was sworn in. They said the charge is a
5 lesser included offense of criminal sexual conduct second
6 degree, which is not, so therefore it should have been on
7 a presentment of an indictment, but it's not on the
8 presentment of an indictment, so therefore they violated
9 my due process of law by not obtaining that. I didn't
10 waive that presentment.

11 Q. Okay. And what grounds do you have to believe
12 that the assault with intent to commit criminal sexual
13 conduct is not a lesser included?

14 A. For me to be guilty with intent to commit, the
15 sexual battery must not take place. During the course of
16 the trial, the sexual battery took place; therefore, I
17 cannot be found guilty of a that charge, a lesser charge,
18 where they said the crime didn't take place where the
19 cite actually took place, and the State proved that
20 beyond a reasonable doubt.

21 Q. Well, not that a crime took place, that the
22 battery took place.

23 A. Yeah, yes.

24 Q. Do you have anything further you wish to share
25 regarding your claim for ineffective assistance of

1 counsel?

2 A. That trial counsel is ineffective for failing to
3 object and request that the trial Court charge the jury
4 with all the elements for the charge of assault with
5 intent to commit, even if it is a lesser included
6 offense.

7 Looking at the records, the trial judge said that
8 basically it's an attempt to -- basically, it's an
9 attempt to commit without being successful, but he did
10 not explain the intent -- he didn't explain the intent
11 part of it, the culpability or any of that to a jury, and
12 a rational jury can't find you guilty unless they know
13 all the elements, and the State must prove all the
14 elements beyond a reasonable doubt.

15 THE COURT: I understand. Okay. I got it.

16 MR. WILLIAMS: All right. I have no further
17 questions at this time, Your Honor.

18 THE COURT: That is the sole issue?

19 MR. WILLIAMS: Yes, Your Honor, and if I can
20 point --

21 THE COURT: What is your second issue?

22 THE WITNESS: I thought I raised it, subject
23 matter jurisdiction, that the Court didn't have -- they
24 didn't have an indictment for the charge.

25 MR. WILLIAMS: I think the two issues is one,

1 that the evidence doesn't support the charge that was
2 charged to the jury, and the second issue would be even
3 if it was a lesser included offense, in the judge's jury
4 instructions, he clearly outlines the elements of
5 criminal sexual conduct second, and when he gets to the
6 assault with intent to commit sexual conduct, it was
7 glossed over.

8 And I believe his argument is that the
9 elements of that crime were not properly conveyed to the
10 jury so that they understood exactly what they were
11 trying him for.

12 THE COURT: Okay.

13 MR. WILLIAMS: Is that correct?

14 THE COURT: I do see your second was
15 constitutional violation, including lack of subject
16 matter jurisdiction, correct? Okay.

17 MR. WILLIAMS: Is there anything further you
18 wish to share at this time?

19 THE WITNESS: We already talked about a trial
20 counsel fairly object to the jury charge, right?

21 THE COURT: Yes.

22 MR. WILLIAMS: That's correct.

23 THE WITNESS: And raised grounds as to why he
24 objected.

25 MR. WILLIAMS: That's correct. All right.

1 Please answer any questions the State may have.

2 CROSS-EXAMINATION

3 BY MS. HARRIGAN:

4 Q. Thank you. May it please the Court: So your
5 testimony here today is that you're admitting that the
6 State proved beyond a reasonable doubt that a sexual
7 battery did take place.

8 A. Yes. At trial, they proved that.

9 Q. Okay. And you gave a statement to police that you
10 and the minor victim did have a sexual encounter, but you
11 believed it was your girlfriend at the time, correct?

12 A. Yes.

13 MS. HARRIGAN: No further questions, Your
14 Honor.

15 THE COURT: Anything further?

16 MR. WILLIAMS: Nothing further, Your Honor.

17 THE COURT: All right. You may step down,
18 sir.

19 MR. WILLIAMS: At this time we would like to
20 call Mr. Doug Mellard.

21 THE COURT: Come forward, Mr. Mellard.

22 ROBERT DOUGLAS SIMMONS MELLARD,

23 having been first duly sworn,

24 was examined and testified as follows:

25 DIRECT EXAMINATION

1 BY MR. WILLIAMS:

2 Q. Good morning -- good afternoon, Mr. Mellard.

3 A. Good afternoon.

4 Q. Just a couple quick questions regarding this case.

5 Did you research whether assault with intent to
6 commit criminal sexual conduct was a lesser included
7 offense?

8 A. I don't believe we researched it. I did not
9 research it. I believe that was something that was
10 brought up during the trial right before the jury was
11 instructed.

12 Q. Okay. When you refer to this time it was brought
13 up right before trial, did you timely object to the jury
14 trial of the assault with intent?

15 A. I think what happened was usually the way Judge
16 Williams ran his court, he would say, Okay, we're going
17 in chambers. We're going to talk about these jury
18 instructions. I'm going to instruct, A, B, C, D, and E.

19 And we would say, Well, Judge, we don't think you
20 should instruct this thing, and then we would argue about
21 it in chambers.

22 And he would say, Well, I'm going to do it anyway.
23 You can later on put it on the record if you want to.

24 Q. Okay. So did you in chambers state a ground for
25 your objection?

1 A. Honestly, I don't remember.

2 Q. Okay.

3 A. I'm sure we argued about it, but I can't tell you
4 what the ground is. I do know that -- I think I made a
5 post-trial motion that the facts didn't support that
6 charge, and I assume, based on that, that's probably what
7 I argued in chambers.

8 Q. Okay. Was there any due diligence you could have
9 performed to learn whether or not the jury charge was
10 proper, any additional due diligence you performed?

11 A. Not with the time period we were given to do it
12 in.

13 Q. Okay. Is it your belief that the evidence
14 presented at trial warranted the charge of assault with
15 intent to commit criminal sexual conduct second?

16 A. Judge Williams thought it did. I probably thought
17 it did. But my thing is, I don't like to give the jury a
18 lot of different options. You know, if it's a certain
19 case, I want them to either decide yes or no. I don't
20 want to have where they can split the baby, so if they
21 split the baby, I usually split the baby, so I like all
22 or nothing trials.

23 Q. Do you recall -- and I know this has been a while
24 back, but do you recall whether or not all the elements
25 of assault with intent to commit criminal sexual conduct

1 second were charged to the jury, allowing them to make a
2 proper decision as to base his guilt or innocence?

3 A. Honestly, I don't recall that.

4 Q. Okay.

5 MR. WILLIAMS: I believe that's all I have.

6 CROSS-EXAMINATION

7 BY MS. HARRIGAN:

8 Q. How long have you been practicing law?

9 A. Since 1997.

10 Q. What percentage of your practice would you say is
11 criminal law?

12 A. Right now I'm a public defender, so it's 100
13 percent.

14 Q. So you were appointed in this matter?

15 A. Yes.

16 Q. In regard's to Applicant's allegation of your
17 failure to object to the jury charge, you recall that you
18 recall that you did have a discussion with Judge Williams
19 in chambers regarding the assault with intent to?

20 A. Right.

21 Q. And you can't recall the exact grounds, but your
22 normal practice was if you have an objection, you have
23 grounds for that, correct?

24 A. Yeah. And like I said, I think at post trial I
25 think I stated that we didn't feel there were grounds

1 supporting that. The facts didn't support it. I'm not
2 really sure, but I remember reading that in the
3 transcript.

4 MS. HARRIGAN: For the Court's clarification,
5 a post-trial motion was made in regards to this
6 allegation on pages 366 and 367.

7 BY MS. HARRIGAN:

8 Q. And you told the judge in this post-trial motion
9 that you didn't believe there was any evidence to convict
10 on this charge and that he shouldn't have been charged,
11 correct?

12 A. Yeah, I think that's what is in there.

13 Q. How many times, roughly, had you appeared before
14 Judge Williams for a trial prior to this one?

15 A. I couldn't tell you. I started -- I think I
16 started 2002 with the public defender's office. I
17 couldn't tell you how many trials I've tried since then,
18 but he was our resident judge, so it's been quite a few.

19 Q. And his standard practice is to do these in
20 chambers, discussions of the jury charges?

21 A. He usually knows what he's going to charge, and
22 you can go in and argue otherwise, but generally he
23 charges what he says he's going to charge.

24 Q. Normally when you come back on to the record
25 following these in chambers discussions, when your

1 objections are stated for the record, does Judge Williams
2 normally vary from what he had told the attorneys in
3 chambers, just normally sticks with, Your objection's
4 overruled?

5 A. Oh, yeah.

6 Q. Do you believe that if you had stated specific
7 grounds in regard to your objection on charging assault
8 with intent to commit CSC that it would have made any
9 difference?

10 A. Not at the trial level it wouldn't have made any
11 difference.

12 MS. HARRIGAN: No further questions, Your
13 Honor.

14 MR. WILLIAMS: Just real briefly.

15 REDIRECT EXAMINATION

16 BY MR. WILLIAMS:

17 Q. In response to that last question, I know you
18 indicated that not at the trial level it wouldn't have
19 made a difference, but at the appellate level, would it
20 have made -- possibly made a difference considering there
21 is a requirement that the objection be stated with
22 specificity?

23 A. I think it could have been given an issue.
24 Whether it was a good issue or not, I don't know, but it
25 would have given an issue.

1 Q. And one other thing I would just like to point
2 out. I believe earlier you said -- and it may have been
3 I misheard, but that you didn't believe that there was a
4 problem with the evidence supporting this charge, but
5 just to be clear, you did file a post-trial motion, so it
6 was clear that you did believe that the evidence didn't
7 support a charge of --

8 A. Generally, it doesn't matter whether you're
9 convicted on, those are my grounds for making that
10 motion, so that's going to be my standard post-trial
11 motion.

12 Q. But you did honestly believe that there was not
13 enough evidence to support a finding of guilt on that
14 charge, correct?

15 A. I think -- I really can't remember. I know --
16 it's kind of like you said: You know, the overwhelming
17 evidence was like you said. So I didn't want them to
18 have a chance to split that baby. I really -- I wanted
19 it up or down. That was our best chance.

20 THE COURT: And did anyone request that
21 charge or did Judge Williams do that on his own after the
22 testimony came out?

23 THE WITNESS: I don't know. I know I didn't
24 request it.

25 THE COURT: Has anyone found or looked in the

1 transcript to see if it was requested by the State?

2 MS. HARRIGAN: I don't believe the State
3 requested it. I think Judge Williams just on his own --

4 THE WITNESS: And that's pretty consistent
5 with how Judge Williams used to do things.

6 THE COURT: Was that determined before he
7 heard the facts of the case or --

8 THE WITNESS: No, no, no. He would hear the
9 facts, and then we would take a break and then he would
10 say, This is what I'm going to charge.

11 THE COURT: Okay.

12 BY MR. WILLIAMS:

13 Q. Just to add one more question to clarify for the
14 judge, y'all did present an expert doctor who gave
15 testimony as to a tear in the genitalia --

16 A. Yeah, Dr. Gibbs, I believe.

17 Q. Which was consistent with a battery occurring,
18 correct?

19 A. Well, here is the thing: I would assume --
20 Dr. Gibbs was the person that we talked to, so when we
21 talked to Dr. Gibbs, we're, like, is this consistent with
22 this? Is there any other things that could be consistent
23 with this? So I don't really know what exactly she
24 testified to.

25 THE COURT: I read it in here, and she said

1 it could be caused by other things. I don't think anyone
2 could ever say it was a result of penetration. There are
3 other reasons and ways it could be torn, so -- I don't
4 think they could say that. It can be consistent with --
5 there are other things that can also cause it.

6 BY MR. WILLIAMS:

7 Q. Just what I'm trying to point out is also the
8 defendant gave a statement indicating there was a
9 battery, correct?

10 A. Yes.

11 Q. And the victim also claimed there was a battery,
12 so it's relatively uncontroverted that there was a
13 battery in this case?

14 A. I would say if you believe this statement, you
15 believe the victim, then that is true.

16 Q. And the doctor's statement also corroborates that,
17 correct?

18 A. It tends to go that way.

19 MR. WILLIAMS: All right. Nothing further.

20 RECROSS-EXAMINATION

21 BY MS. HARRIGAN:

22 Q. Just briefly, Your Honor.

23 Based on the victim's statement that a battery
24 occurred and the Applicant's own statements, the jury
25 could have concluded that a CSC in the first degree had

1 occurred, correct?

2 A. That's kind of what we were worried about.

3 Q. And he was convicted of a lesser included offense.

4 A. That's correct.

5 MS. HARRIGAN: No additional questions.

6 THE COURT: Okay. Anything further?

7 MR. WILLIAMS: Nothing further, Your Honor.

8 THE COURT: You can step down.

9 MR. WILLIAMS: Just real briefly, we'd like
10 to call Ms. Sarah Ford.

11 SARAH ELIZABETH FORD,

12 having been first duly sworn,

13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. WILLIAMS:

16 Q. Good afternoon, Ms. Ford.

17 A. Good afternoon.

18 Q. You've heard some of the testimony prior, and I
19 just had a couple quick questions for you.

20 Were you also assisting or were you lead counsel
21 in this case?

22 A. I was appointed to Mr. Jones' case, and
23 Mr. Mellard was assisting with the trial.

24 Q. Similar questions: Were you able to research
25 whether assault with intent to commit criminal sexual

1 conduct second was a lesser included offense of criminal
2 sexual conduct second?

3 A. We didn't have the opportunity to do that. Based
4 on my recollection of the trial, and as Mr. Mellard had
5 stated, it was Judge Williams' practice to get both the
6 State and the defense in chambers to discuss the charges.

7 We had our list of what we wanted to request to
8 charge, the State also had their list, and he basically
9 would tell us, I'm going to charge one, three, seven,
10 eight, and nine. We could go back and forth and argue
11 about it. Based on my recollection, the State asked for
12 the lesser included of the assault with intent to commit
13 CSC, and then we were ready to go charge the jury, so we
14 didn't have any opportunity to do any research.

15 Q. So just if I'm clear on that, were you in the
16 judge's chambers when this took place?

17 A. I was.

18 Q. And you were there when Mr. Mellard made an
19 objection in chambers?

20 A. I think it was probably -- I know Mr. Mellard made
21 that objection on the record, but we certainly were both
22 participating in the discussion in chambers.

23 Q. All right. Did you offer to make a timely
24 objection to the charge during the trial?

25 A. I did not. Mr. Mellard made the objection.

1 Q. Okay. Are you aware of why there were no grounds
2 for the objection stated?

3 A. I don't recall specifically why there were no
4 grounds stated. I do know that in my experience with
5 Judge Williams, once he heard your argument, whether it
6 be in chambers or not, he was ready to move forward, and
7 I don't recall if he -- not to say that he would cut off
8 Mr. Mellard, but it could be possible that it was one of
9 those situations. I don't remember.

10 Q. Taking into consideration the timing and the time
11 factor in this, do you think there was any additional due
12 diligence that you could have performed to discover
13 whether or not that was a proper charge to the jury?

14 A. I don't think so, not within the time constraints.

15 Q. Okay. Do you believe that the evidence in this
16 case warranted the charge of assault with intent?

17 A. I think that there was certainly evidence to
18 support it, to go to the jury. I think with the lewd act
19 charge, it's committing a lewd act or attempting to
20 commit a lewd act, which you could also argue could be
21 assault with intent to commit CSC.

22 So I think that it was certainly -- we certainly
23 didn't want that charge to go to the jury, but I do think
24 that there was sufficient evidence to allow that lesser
25 included.

1 MR. WILLIAMS: Okay. Nothing further.

2 THE COURT: Yes, ma'am?

3 MS. HARRIGAN: Just briefly, Your Honor, if
4 it May it please the Court.

5 CROSS-EXAMINATION

6 BY MS. HARRIGAN:

7 Q. The State did not request this charge on the
8 record ever, correct?

9 A. I don't believe so.

10 Q. It was just in chambers?

11 A. Correct.

12 Q. So you didn't have an opportunity on the record to
13 object when the State requested this charge, correct?

14 A. Correct.

15 MS. HARRIGAN: Okay. No further questions,
16 Your Honor.

17 THE COURT: Sir?

18 MR. WILLIAMS: One moment, Your Honor,
19 please.

20 REDIRECT EXAMINATION

21 BY MR. WILLIAMS:

22 Q. Okay. Ms. Ford, do you know when the judge
23 indicated that he was going to make that charge and
24 charge assault with intent to commit criminal sexual
25 conduct to the jury, why did you or Mr. Mellard not make

1 an objection at that time?

2 A. I don't believe that the judge at any time said,
3 These are the things I'm going to charge, you know, and
4 then went ahead and did that.

5 I believe when we came out of chambers,
6 Mr. Mellard did object to the charge of that, but I
7 believe the judge at that point said, you know, Your
8 objection is noted and kind of went forward with the
9 initial charges, starting with, you know, the burden of
10 proof through intent, through, you know, CSC second with
11 a minor, lewd act, and so forth.

12 MR. WILLIAMS: All right. Thank you very
13 much. No further questions.

14 MS. HARRIGAN: No questions, and the State
15 has no witnesses to call.

16 THE COURT: Both of you may be excused.
17 Anything further, y'all? Nothing?

18 MS. HARRIGAN: Nothing, Your Honor.

19 THE COURT: I'll let you know with a proposed
20 order.

21 - - -

22 (Whereupon, the proceedings were concluded.)

23 - - -

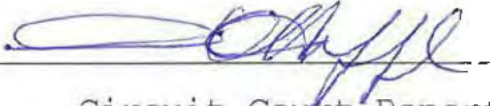
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I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Orangeburg County, South Carolina, on the 31st of October 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 20, 2013


Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Lindy Lamont Jones, #335250,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2011-CP-38-1240

ORDER OF DISMISSAL

2012 OCT -6 PM 3:14

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed September 12, 2011. The Respondent made its Return on February 14, 2012. An evidentiary hearing into the matter was convened on October 31, 2012, at the Dorchester County Courthouse. The Applicant was present at the hearing and was represented by Charles Williams, Esquire, appearing on the behalf of C. Bradley Hutto, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. The Applicant was indicted for Criminal Sexual Conduct with a Minor - Victim under 16 Years of Age (2005-GS-38-1817). Applicant was represented by Sara Ford, Esquire, and Doug Mellard, Esquire. On June 8-10, 2009, Applicant proceeded to a jury trial and was convicted of the lesser included offense of Assault with Intent to Commit Criminal Sexual Conduct with a Minor. On June 10, 2009, the Honorable James C. Williams, Jr., sentenced Applicant to sixteen years imprisonment.

ATTEST: TRUE COPY

Wingy B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

A notice of appeal was filed and an appeal perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Jones, Op. No. 2011-UP-396 (S.C. Ct. App. filed August 19, 2011). The Remittitur was sent on September 8, 2011.

In his application and at the evidentiary hearing, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel for failing to properly object to the jury instruction on assault with intent to commit criminal sexual conduct with a minor; and
2. Lack of subject matter jurisdiction, because the evidence did not support a conviction of assault with intent to commit criminal sexual conduct with a minor.

TESTIMONY PRESENTED

At the evidentiary hearing, the Applicant testified on his own behalf. Applicant also presented testimony from trialcounsel, Sara Ford, Esquire, and Doug Mellard, Esquire. This Court also had before it a copy of the Applicant's trial transcript, Applicant's appellate records, the records of the Orangeburg County Clerk of Court, and the Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified that his trial counsel was ineffective for failing to object to the jury instruction of assault with intent to commit criminal sexual conduct with a minor. Applicant stated that the minor victim in this case was his live-in girlfriend's niece. Applicant testified that he gave a statement to the police that he did have a sexual encounter with the minor victim, but he believed it was his girlfriend and stopped the encounter as soon as he realized it was the minor victim. Applicant testified that he believed the State proved beyond a reasonable doubt that a sexual battery took place, and therefore the trial court erred in instructing the jury on assault with intent to commit criminal sexual conduct on a minor. Additionally, Applicant testified that assault with intent to commit criminal sexual

conduct with a minor is not a lesser included offense of criminal sexual conduct with a minor, and therefore should not have been charged to the jury. He acknowledged that trial counsel did object to the jury instruction of assault with intent to commit criminal sexual conduct with a minor, but that the objection was insufficient to preserve the issue for appellate review as it did not state the grounds on the record.

Applicant also testified that the trial court lacked subject matter jurisdiction, as there was insufficient evidence to support his conviction of assault with intent to commit criminal sexual conduct with a minor. Applicant stated that the evidence presented at trial was sufficient to establish that a sexual battery or criminal sexual conduct with a minor had occurred, and therefore there was no subject matter jurisdiction to convict him of assault with intent to commit criminal sexual conduct with a minor.

Following Applicant's testimony, trial counsel Doug Mellard, Esquire, testified. He stated that he has been practicing law since 1997 and his practice is exclusively criminal defense. Mellard testified that before the trial he did not research whether assault with intent to commit criminal sexual conduct with a minor is a lesser included offense of criminal sexual conduct with a minor, but he believes that there was enough evidence to convict him of assault with intent to commit criminal sexual conduct with a minor. Mellard testified that based on the evidence presented at trial, including the minor victim's testimony, Applicant's statement to police, and Applicant's testimony at trial, there was enough evidence to convict Applicant of criminal sexual conduct with a minor as indicted.

Mellard testified that he has tried numerous cases before Judge Williams and that Judge Williams' routine practice was to hold jury charge conferences in-chambers and off the record. Mellard testified that in this case, Judge Williams held the jury charge conference in-chambers

and off the record. Mellard testified that when the State proposed the jury charge of "assault with intent to commit criminal sexual conduct with a minor," he objected to the charge. He elaborated that he objected to this specific charge because he did not believe that there was any evidence to support a conviction on this charge. He testified that Judge Williams overruled his objection, but that he renewed his objection on the record after Judge Williams charged the jury. Mellard testified that he renewed the motion for directed verdict and made a motion to for a new trial at the close of trial based on his previous objections to the charge of assault with intent to commit criminal sexual conduct with a minor. He stated that he believed this was enough to preserve his objection to the assault with intent to commit criminal sexual conduct with a minor charge.

Following trial counsel Mellard's testimony, trial counsel Sara Ford, Esquire testified. Ford testified that the State requested the charge of assault with intent to commit criminal sexual conduct with a minor during the in-chambers charge conference. Ford testified that the charge was never requested on the record, so there was not an opportunity for her or co-counsel Mellard to object on the record. Ford testified that Judge Williams' standard practice was to conduct all charge conferences in-chambers and off the record, as he did in this matter. Ford testified that co-counsel Mellard objected to this charge during the in-chambers discussion, as well as on the record after Judge Williams instructed the jury. Ford testified that Mellard also made a post-trial motion for a new trial based on his previous objection to this jury charge. She testified that she does think that there was enough evidence for this charge to have gone to the jury and to convict Applicant.

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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms."

Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action. The Applicant has failed to prove that either trial counsel Mellard or Ford were ineffective in their representation of the Applicant for failing to properly object to the jury charge of assault with intent to commit criminal sexual conduct with a minor. Mellard objected to the assault with intent to commit criminal sexual conduct with a minor charge both on and off the record. Additionally, Mellard made a post-trial motion for a new trial based on the assault with intent to commit criminal sexual conduct with a minor charge and stated specific grounds on the record. Mellard and Ford testified that they believed that Mellard's objections properly preserved the issue for appeal. This Court finds that Counsel's performance was reasonable and effective.

Additionally, this Court finds that the Applicant has failed to establish any prejudice resulting from trial counsel's alleged ineffective assistance of counsel. Applicant testified that the State proved beyond a reasonable doubt that a sexual battery took place. Additionally, he testified that was involved in a sexual encounter with the minor victim. Mellard testified that he believes there was sufficient evidence to convict Applicant of criminal sexual conduct with a minor, as well as the lesser included offense of assault with intent to commit criminal sexual conduct with a minor. Therefore, this Court finds that this allegation of ineffective assistance of counsel must be denied and dismissed.

Subject Matter Jurisdiction

Applicant alleges that the trial court lacked subject matter jurisdiction because the evidence presented at trial did not support a conviction of assault with intent to commit criminal sexual conduct with a minor. This Court find that this allegation must be dismissed with prejudice, as it is not a proper ground for post-conviction relief. S.C. Code Ann. § 17-27-20(a) states:

(a) Any person who has been convicted of, or sentenced for, a crime and who claims:

- (1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
- (2) That the court was without jurisdiction to impose sentence;
- (3) That the sentence exceeds the maximum authorized by law;
- (4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
- (5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
- (6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. *Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.*

(emphasis added). It is clear under the statute that post-conviction relief is not the proper avenue to attack the sufficiency of evidence. Accordingly, this Court must dismiss this ground as improper under the Uniform Post-Conviction Relief Act.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his

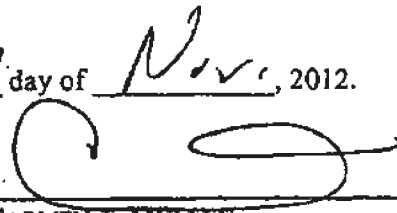
application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 29 day of Nov., 2012.


CARMEN T. MULLEN
Presiding Judge
First Judicial Circuit

Beaufort, South Carolina.

Lindy Lamont June 4, 2012 #335250
Applicant,

v.

State of South Carolina
Respondent

Case No. 2011-CP-38-1240

APPLICANT'S MOTION
TO ALTER OR AMEND

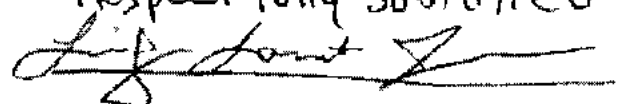
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Now Comes the Applicant in the above Captioned action, acting by and through Undersigned Counsel respectfully moving this Court, pursuant to Rule 54(e) of the South Carolina Rules of Civil Procedure to alter or Amend its Order of Dismissal filed in this matter on November 24, 2012. In support of this motion the Applicant would show unto this Honorable Court the following: While the Order of Dismissal denies some of the Allegations Raised at the (PCR) hearing. It does not address all Allegations Raised at the (PCR) hearing. Listed below are additional Allegations Raised at the hearing but not ruled upon.

- (1) Did Trial Court lacked Subject Matter Jurisdiction to try and Convict Applicant for Assault with intent to Commit a criminal sexual conduct when there was no indictment charging him with that particular charge at the time the jury was sworn in.
- (2) Is Assault with intent to Commit a Criminal Sexual Conduct a lesser included offense of CSC 2nd degree. Because the greater does not contain all the elements of the lesser offense.

- (3) Trial Counsel was ineffective for failing to object to the 457 Jury instruction of assault with intent to commit criminal sexual conduct with a minor on the record (see trial transcript pg 296-297) being charged as a lesser included offense of CSC 2nd degree with a minor because by a preponderance of evidence the sexual battery did take place.
- (4) Did the trial judge err when he charged the jury with assault with intent to commit to commit criminal sexual conduct after it was proven by the victim's testimony, the doctor (Dr Gibbs) testimony and medical examination, and the statement made to police by the defendant that the sexual battery did take place.
- (5) Trial Counsel was ineffective for failing to object and request that the judge give a curative instruction because the judge never instructed the jury with all the elements to the charge of assault with intent to commit a criminal sexual conduct.

For all the above reasons the Applicant prays that this Court alter or amend its Order of Dismissal pursuant to rule 59(e) of the south carolina Rules of Civil procedure, and Grant the relief that applicant is entitled to

Respect fully Submitted


Lindsey Lamont Jones
#335250
990 Wisacky Hwy
Bishopville, S.C. 29010

CCo

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

Lindy Lamont Jones,)
Plaintiff,)

v.)

State of South Carolina,)
Defendant.)

IN THE COURT OF COMMON PLEAS

Case No.: 2011-CP-38-1240

APPLICANT'S MOTION TO
ALTER OR AMEND

2013 JAN 11 PM 2:20

NOW COMES THE APPLICANT in the above captioned action, acting by and through undersigned counsel respectfully moving this Court, pursuant to Rule 59 (e) of the South Carolina Rules of Civil Procedure to alter or amend its Order of Dismissal filed in this matter on November 29, 2012. In support of this motion the applicant would show unto this Honorable Court the following: While the Order of Dismissal denies some of the allegations raised at the PCR hearing. It does not address all allegations raised at the PCR hearing. Listed below are additional allegations raised at the hearing but not ruled upon.

- (1) Did trial court lack subject matter jurisdiction to try and convict applicant for assault with intent to commit criminal sexual conduct when there was no indictment charging him with that particular charge at the time the jury was sworn in?
- (2) Is assault with intent to commit a criminal sexual conduct a lesser included offense of criminal sexual conduct second degree because the greater does not contain all the elements of the lesser offense?
- (3) Trial counsel was ineffective for failing to object to the jury instruction of assault with intent to commit criminal sexual conduct with a minor on the

ATTEST: TRUE COPY

Wynne B. Clark

CLERK OF COURT
ORANGEBURG COUNTY, SC

record (see trial transcript pg 296-297) being charged as a lesser included offense of criminal sexual conduct second degree with a minor because by a preponderance of evidence the sexual battery did take place.

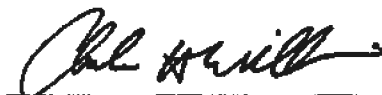
- (4) Did the trial judge err when he charged the jury with assault with intent to commit to criminal sexual conduct after it was proven by the victim's testimony, the doctor's (Dr. Gibbs) testimony and medical examination, and the statement made to police by the Defendant that the sexual battery did take place?
- (5) Trial counsel was ineffective for failing to object and request that the judge give a curative instruction because the judge never instructed the jury with all the elements to the charge of assault with intent to commit a criminal sexual conduct.

In support of this Motion, please find Exhibits A, B, C, and D attached with the Motion.

For all the above reasons the Applicant prays that this Court alter or amend its Order of Dismissal pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, and grant the relief that applicant is entitled to.

January 11, 2013

Orangeburg, South Carolina



Charlie H. Williams, III, Esquire
WILLIAMS & WILLIAMS
1281 Russell Street (29115)
Post Office Box 1084
Orangeburg, South Carolina 29116
Tel: 803.534.5218
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Email: chwilliamsiii@williamsattys.com

Exhibits:

- A. Victim's Testimony
- B. Doctor's Testimony
- C. Judge Williams' Jury Instructions and Transcript
- D. Indictment # 2005GS38-1817, Arrest Warrant # H-661699 and Sentencing Sheet

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CLERK OF COURT
ORANGEBURG COUNTY, SC

ATTEST: TRUE COPY

Wingia B. Clark

CLERK OF COURT
ORANGEBURG COUNTY, SC

Exhibit A – Victim's Testimony

Brief Summary:

Victim testified that during the months of Jun-Aug15, 2005 she was sexually assaulted despite her repeated attempts to get away. She was able to leave only after Defendant finished doing what he was doing.

Case No. 2011-CP-38-1240
Trial Transcript Pgs. 144-153

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ATTEST: TRUE COPY

Wingja B. Clark

CLERK OF COURT
ORANGEBURG COUNTY, SC

DIRECT - Minor BY SOL. SCOTT

Q. DID SHE WORK AT NIGHT OR DURING THE DAY?

A. SHE WOULD GOT TO WORK WHILE I WAS IN SCHOOL, SHE WOULD GET OFF LATE AT NIGHT, WELL, AROUND ABOUT ONE O'CLOCK IN THE MORNING SHE WOULD BE BACK IN ORANGEBURG SOMEWHERE AROUND THAT TIME.

Q. WHERE WOULD YOU STAY DURING THE SUMMER?

A. AT MY AUNT SHARON'S HOUSE.

Q. OKAY. AND WHAT TIME WOULD YOUR MOTHER PICK YOU UP FROM YOUR AUNT -- IS IT SHARON OR --

A. SHARON.

Q. SHARON. WHAT TIME WOULD YOUR MOTHER PICK YOU UP FROM YOUR AUNT'S HOUSE?

A. ONE SOMETHING IN THE MORNING, TWELVE SOMETHING ONE O'CLOCK. IT WAS LATE.

Q. WHERE WAS YOUR AUNT LIVING?

A. LAQUINTA DRIVE.

Q. AND WHERE IS THAT?

A. ON THREE O ONE IN ORANGEBURG.

Q. IS THAT IN ORANGEBURG COUNTY?

A. YES, SIR.

Q. WHAT ABOUT YOUR YOUNGER SIBLINGS, WHERE WOULD THEY STAY?

A. THEY WOULD BE THERE WITH ME AS WELL, SIR.

Q. WAS YOUR AUNT SHARON WORKING?

A. YES, SIR.

DIRECT - Minor BY SOL. SCOTT

144

Q. WAS SHE ALWAYS THERE WHEN YOU AND YOUR SIBLINGS WERE THERE?

A. THE MAJORITY OF THE TIME BUT NOT ALWAYS.

Q. WHAT ABOUT THE DEFENDANT, LINDY JONES, WAS HE WORKING?

A. YES, SIR.

Q. DID HE WORK AT NIGHT OR DURING THE DAY?

A. NIGHT TIME, SIR.

Q. WAS LINDY JONES EVER THE ONLY ADULT IN THE HOME WHEN YOU AND YOUR SIBLINGS WERE THERE AT YOUR AUNT'S HOUSE?

A. NOT ALL THE TIME, BUT THAT WEEK THE INCIDENT HAPPENED AND JUST SOMETIMES, NOT OFTEN.

Q. OKAY. HOW WOULD LINDY ACT TOWARDS YOU WHEN NO OTHER ADULTS WERE IN THE HOUSE?

A. BEFORE THE INCIDENT OR THE WEEK OF THIS, LIKE DURING THAT TIME?

Q. WELL, TELL ME ABOUT BEFORE THE INCIDENT?

A. HE WAS COOL, WE PLAYED VIDEO GAMES, PLAYED BASKETBALL, WE'D GO SEE HIS SONS PLAY, THEY WAS IN THE LITTLE LEAGUE OR SOFTBALL OR WHATEVER, WE WOULD GO SEE THEM PLAY. HE WASN'T A BAD PERSON.

Q. HOW DID THIS CHANGE DURING THAT SUMMER?

A. WE, ALL OF THIS HAPPENED, LIKE, INSTANTLY. IT WASN'T LIKE, REALLY, LIKE HIM, LIKE HIS ATTITUDE

DIRECT Minor [REDACTED] BY SOL. SCOTT

1 CHANGED, BUT LIKE, YOU KNOW, BEHAVIOR-WISE
2 KNOW, HE WOULD, LIKE, TOUCH MY BUTT OR MY CHEST
3 SOMETHING LIKE THAT. AND THEN IT JUST LED
4 OTHER THINGS.

5 Q. DID HE EVER TOUCH YOU WITH JUST MORE THAN HIS
6 HANDS?

7 A. YES, SIR.

8 Q. HOW MANY TIMES?

9 A. I'M NOT SURE.

10 Q. OKAY. DO YOU RECALL ANY OF THE INCIDENTS WHERE
11 HE TOUCHED YOU WITH MORE THAN JUST HIS HANDS?

12 A. YES, SIR.

13 Q. WHEN WAS THE FIRST TIME IT HAPPENED?

14 A. WHEN I WAS IN THE RESTROOM GETTING SOME VISINE ONE
15 DAY, AND HE CAME UP BEHIND ME AND PLACED HIS
16 PRIVATE AREA ON MY, WELL, I WAS STANDING UP, SO
17 FROM THE BACK HE CAME BEHIND ME AND PLACED HIS
18 PRIVATE AREA ON MY BUTT.

19 Q. WERE YOUR CLOTHES ON OR WERE THEY OFF WHEN HE DID
20 THAT TO YOU?

21 A. THEY WERE ON.

22 Q. THEY WERE ON?

23 A. YES, SIR.

24 Q. WHEN HE PLACED HIS PRIVATE AREAS ON YOU DID HE DO
25 ANYTHING WITH YOUR CLOTHING?

146
DIRECT Minor [REDACTED] BY SOL. SCOTT

A. WITH MY CLOTHING, SIR?

Q. YES.

A. I DON'T REMEMBER THAT, SIR.

Q. OKAY. WHEN HE PLACED HIS PRIVATE AREA ON YOU WERE
YOU STANDING UP OR WERE YOU ON THE FLOOR?

A. I WAS ON THE FLOOR.

Q. HOW DID YOU END UP ON THE FLOOR?

A. I DON'T REMEMBER. I JUST KNOW THAT I WAS FACING
THE TOILET. THERE WAS A LITTLE WINDOW AND THERE
WAS A SHOWER AND THERE WAS THE TUB RIGHT THERE,
AND I WAS LOOKING STRAIGHT OUT THE WINDOW WHEN THE
INCIDENT HAPPENED AND I WAS ON MY KNEES.

Q. HOW DID YOU END UP ON YOUR KNEES?

A. I DON'T REMEMBER.

Q. OKAY. WELL, TELL ME WHAT HAPPENED, YOU SAID HE
PLACED HIS PRIVATES ON YOU, TELL THE JURY WHAT
HAPPENED?

A. HIS PRIVATES, HE PLACED HIS PRIVATE AREA -- WELL,
HE WAS FORCING HIMSELF INSIDE OF ME FROM THE BACK
BEHIND, HE WAS BEHIND ME AND I WAS ON MY KNEES, HE
WAS FORCING HIS PRIVATE AREA INSIDE OF ME, AND I
WAS, LIKE, RUNNING FROM IT, LIKE, YOU KNOW, LIKE,
SQUINCHING UP BECAUSE IT WAS HURTING, AND THE MORE
I SQUINCHED UP IT WAS LIKE THE MORE HE WAS FORCING
HIMSELF INSIDE OF ME. AND HE STOPPED ON HIS OWN,

1 LIKE, I WAS TELLING HIM TO STOP, OR WHATEVER.
2 YOU KNOW, HE CONTINUED TO DO IT, HE WAS DOING IT
3 AND HE STOPPED WHEN HE WANTED TO. AND WHEN
4 STOPPED I PULLED UP MY CLOTHES AND I LEFT. AND
5 THAT TIME I WAS GETTING READY TO LEAVE TO GO
6 COLUMBIA WITH MS. FALCO BECAUSE MY MOTHER HAD
7 AGREED THAT I COULD GO TO THE MALL AND STUFF WITH
8 HER. SO, I WAS WAITING ON HER TO PICK ME UP, SIR.

9 Q. OKAY. DID YOU CONSENSUALLY ENGAGE IN ANY SORT OF
10 SEXUAL ACTIVITY WITH MR. JONES?

11 A. NO, SIR.

12 Q. WHO WAS IN THE RESTROOM FIRST, YOU OR MR. JONES?

13 A. I WAS, SIR.

14 Q. DID YOU INVITE HIM INTO THE RESTROOM?

15 A. NO, SIR.

16 Q. HOW MANY TIMES DID YOU TELL HIM TO STOP?

17 A. I CAN'T RECALL, MORE THAN ONCE.

18 Q. DID YOU EXPERIENCE ANY PAIN AFTER THIS INCIDENT?

19 A. THAT PARTICULAR INCIDENT?

20 Q. YES.

21 A. I MEAN, MY PRIVATE AREA IN THE BACK HURT A LITTLE
22 BIT, BUT NOTHING LIKE REALLY, REALLY BAD WITH THIS
23 ONE.

24 Q. OKAY. AFTER THIS INCIDENT HAPPENED DID YOU TELL
25 ANYBODY?

1 NOT DIRECTLY CAME OUT AND TELL ABOUT THE WHOLE
2 PARTICULAR INCIDENT BUT, YOU KNOW, I TOLD MS.
3 FALCO THAT, OR MRS. HOOK THAT - - -

4 Q. WHEN YOU SAY, MRS. HOOK, WHO ARE YOU REFERRING TO?

5 A. MY EIGHT GRADE ENGLISH TEACHER.

6 Q. MS. FALCO?

7 A. YES, SIR.

8 Q. OKAY.

9 A. I TOLD HER THAT, YOU KNOW, THAT HE WAS LIKE, I
10 GUESS, MAKING PASSES AT ME, I DIDN'T REALLY COME
11 OUT AND TELL BECAUSE I DIDN'T WANT TO RUIN MY
12 FAMILY OR, YOU KNOW, BRING ANY PROBLEMS INTO THE
13 HOME, THEIR HOME OR WHATEVER. I JUST TOLD HER, YOU
14 KNOW, THAT, YOU KNOW, HE WAS JUST, THE THINGS HE
15 WAS DOING WASN'T RIGHT BUT I DIDN'T WANT TO, YOU
16 KNOW, COME OUT AND TELL WHAT HAPPENED.

17 Q. DID YOU SPECIFICALLY TELL HER THAT HE HAD PLACED
18 HIS PENIS INSIDE OF YOU?

19 A. NO, SIR.

20 Q. DID AN INCIDENT LIKE THIS HAPPEN AGAIN?

21 A. YES, SIR.

22 Q. TELL THE JURY ABOUT THE SECOND TIME THIS HAPPENED?

23 A. THE SECOND TIME IT HAPPENED IT WAS ONE NIGHT, THAT
24 PARTICULAR WEEK MY AUNT HAD WENT ON A DIFFERENT
25 SHIFT AT HER JOB. MOST OF THE TIME SHE WOULD

1 USUALLY BE THERE WITH US, BUT AT THAT TIME SHE
2 TOOK ON A MANAGER'S POSITION AT BURGER KING.
3 THEY HAD CHANGED HER WORK HOURS. I THINK SHE
4 LIKE, CLOSING AND STUFF LIKE THAT. SO, YOU KNOW
5 SHE WASN'T ABLE TO BE THERE THAT PARTICULAR WEEK.
6 WITH US OR DURING THAT PARTICULAR WEEK. AND HE
7 ASKED ME TO WAKE HIM UP FOR WORK, AND I SAID
8 OKAY. AND I DID HAD TALKED TO MRS. HOOK, OR
9 FALCO PREVIOUSLY THAT NIGHT, AND I WAS LAYING
10 THE COUCH ASLEEP, AND I WOKE UP TO WAKE HIM UP
11 WORK, AND HE TOLD ME TO COME BACK IN FIVE MINUTES
12 AND WAKE HIM UP, AND I SAID, OKAY. AND I WENT
13 BACK AND LAY DOWN ON THE COUCH. WHEN THE FIVE
14 MINUTES WAS UP I WENT BACK IN THE ROOM TO WAKE
15 UP BUT HE WAS ALREADY AWOKEN, AND HE WAS STANDING
16 THERE WITH NO CLOTHES ON AND HE ASKED ME TO COME
17 HERE. AND YOU KNOW, I WAS, LIKE, YOU KNOW, WHY
18 YOU KNOW, I DIDN'T WANT TO GO OVER THERE. AND HE
19 WAS, LIKE, COME HERE, AND I WENT, AND HE STARTED
20 UNRAVELING LIKE MY PANTS, MY BELT OR WHATEVER. AND
21 LIKE, HE ALREADY HAD UNBUTTONED MY STUFF, AND
22 WAS, LIKE, TRYING TO HOLD ONTO MY CLOTHES, AND HE
23 JERKED THEM DOWN. WHEN HE JERKED THEM DOWN MY
24 PANTS AND MY PANTIES CAME DOWN AT THE SAME TIME
25 AND HE PUSHED ME ON THE BED. AND WHEN HE PUSHED

ME ON THE BED MY LEGS WENT UP AND HE GRABBED MY
LEGS, FORCING HIMSELF INSIDE OF ME, AND I WAS
TELLING HIM TO STOP, AND HE CONTINUED TO DO IT.
AND I WAS HITTING HIM, LIKE, PUNCHING HIM, BUT YOU
KNOW, THAT DIDN'T STOP HIM FROM DOING WHAT HE WAS
DOING. IT WAS, LIKE, THE MORE I WAS HITTING HIM
THE MORE IT WAS HURTING. SO, THAT'S WHEN I POKED
HIS EYES, I DIDN'T SCRATCH HIS EYES, I JUST, LIKE,
DID LIKE THAT, YOU KNOW, TO MAKE HIM STOP, BUT HE
DIDN'T STOP. AND HE STOPPED IT WHEN IT WANTED TO,
AND YOU KNOW, I WAS TELLING HIM, YOU KNOW, DON'T
DO IT, STOP, WHATEVER, AND HE DIDN'T. AND THEN,
LIKE, THREE MINUTES LATER HE STOPPED, AND I GOT
UP, AND I PUT MY CLOTHES ON. I PUT MY CLOTHES ON
AND HE ASKED ME WAS I MADE AT HIM OR SOMETHING
LIKE THAT, AND I WAS, LIKE, YOU KNOW, GET OUT OF
MY FACE. AND I WENT AND LAY BACK ON THE COUCH,
AND HE WENT IN THE ROOM AND HE WAS -- WELL, HE
STAYED IN THE ROOM AND HE WAS PUTTING ON HIS
CLOTHES AND STUFF FOR WORK. AND THEN HE SAID
THAT, BEFORE HE LEFT, YOU KNOW, HE TOLD ME TO LOCK
THE DOOR BEHIND HIM. AND HE SAID THAT WE WOULD
TRY IT AGAIN TOMORROW. SO, AFTER HE HAD LEFT I
GOT UP AND LOCKED THE DOOR, AND THEN I WENT AND
GOT BACK ON THE CHAIR AND I CALLED MS. FALCO AND I

DIRECT - Minor BY SOL. SCOTT

1 TOLD HER WHAT HAD HAPPENED. AND AFTER THAT
2 ABOUT, I WENT BACK TO SLEEP AND ABOUT AN HOUR
3 AN HOUR AND A HALF MAYBE, I'M NOT SURE HOW LONG
4 AFTER THAT THE COPS CAME KNOCKING AT THE DOOR
5 AND AFTER THAT MY FAMILY - - -

6 Q. LET ME STOP YOU FOR A MINUTE, DID YOU ASK
7 FALCO TO CALL THE POLICE?

8 A. NO, SIR, I DIDN'T.

9 Q. DID YOU, WERE YOU EXPECTING THE POLICE TO ARRIVE
10 AT THE HOUSE THAT NIGHT?

11 A. NO, SIR, NOT AT ALL.

12 Q. DID YOU EXPERIENCE ANY PAIN AFTER THIS INCIDENT?

13 A. YES, SIR. I WENT TO THE RESTROOM AND IT WAS
14 REALLY LIKE WHEN I PEE IT WAS, LIKE, REALLY
15 REALLY HURTING, IT WAS STINGING, AND IT JUST WAS
16 IT WAS SORE LIKE, SO I PUT IT, LIKE, A NAPKIN
17 THERE AND THEN I PULLED UP MY CLOTHES AND I WENT
18 AND LAY BACK ON THE CHAIR.

19 Q. OKAY. LET ME ASK YOU, ON EITHER THE BATHROOM
20 INCIDENT OR THE INCIDENT IN THE BEDROOM DID YOU
21 EVER SEE MR. JONES EJACULATE?

22 A. NO, SIR.

23 Q. AND YOU TESTIFIED AFTER THIS INCIDENT YOU CALLED
24 MS. FALCO?

25 A. YES, SIR.

DIRECT - Minor BY SOL. SCOTT

152

Q. AND YOU SAID THAT WASN'T THE FIRST TIME YOU'D
SPOKEN TO HER THAT NIGHT?

A. NO, SIR.

Q. WHAT DID Y'ALL TALK ABOUT THE FIRST TIME YOU
CALLED HER THAT NIGHT?

A. I'M NOT SURE BUT IT WASN'T NOTHING LIKE THAT. WE
PROBABLY WAS JUST HAVING A REGULAR CONVERSATION.

Q. OKAY. WHAT HAPPENED AFTER THE POLICE SHOWED UP?

A. MY STATEMENT WAS TAKEN, AND THEN MY AUNT AND
MOTHER AND THOSE ARRIVED PRETTY MUCH AROUND ALMOST
THE SAME TIME. THEY BOTH WAS, LIKE, COMING IN,
LIKE MAYBE TEN, FIFTEEN, TWENTY MINUTES AFTER EACH
OTHER, AND YOU KNOW, THEY ASKED, THEY WAS ASKING
WHAT WAS HAPPENING, AND THEY WAS, LIKE,
QUESTIONING ME, BUT I DIDN'T REALLY SAY TOO MUCH,
BUT WE WAS ESCORTED TO CHARLESTON WHERE THEY DID
THE RAPE, THEY USED A RAPE KIT ON ME TO EXAMINE MY
PRIVATE AREA.

Q. OKAY. DO YOU REMEMBER MEETING WITH THE DOCTOR
THAT NIGHT?

A. YES, SIR, I REMEMBER.

Q. DID YOU TELL THE DOCTOR WHAT HAPPENED?

A. YES, SHE ASKED ME A FEW QUESTIONS AND I ANSWERED
THEM.

Q. OKAY.

DIRECT - Minor BY SOL. SCOTT

SOLICITOR SCOTT: I BEG THE COURT

INDULGENCE.

Q. FINALLY, Minor, THE PERSON THAT YOU SAID TO
PRIVATES INSIDE OF YOU ON TWO OCCASIONS DURING
SUMMER OF TWO THOUSAND AND FIVE, IS HE IN
COURTROOM TODAY?

A. YES, SIR.

Q. CAN YOU IDENTIFY HIM FOR THE JURY?

A. RIGHT THERE, SIR, WITH THE RED SHIRT ON.

SOLICITOR SCOTT: THANK YOU.

Minor

THE COURT: CROSS-EXAMINE.

(NOTE: Blank lines on this page do not indicate
part of record has been omitted. Headers on testimony
pages and hard page breaks between testimony are
required by the Court. See next ensuing page for
sequential continuation of record.)

CROSS Minor BY MS. FORD

takes place in the presence
of the jury.)

THE COURT: ALRIGHT, YOU MAY

PROCEED.

MS. FORD: THANK YOU, YOUR HONOR.

Q. Minor I HAVE JUST A COUPLE OF OTHER
QUESTIONS FOR YOU. YOU TESTIFIED EARLIER THAT AT
SOME POINT DURING THE SUMMER LINDY JONES FORCED
HIMSELF ON YOU IN A BATHROOM, RIGHT?

A. UH HUH, YES, MA'AM.

Q. AT SOME POINT DURING THE SUMMER OF TWO THOUSAND
AND FIVE?

A. YES, MA'AM.

Q. YOU DON'T REMEMBER WHEN?

A. NO, MA'AM.

Q. YOU SAID ORIGINALLY WHEN YOU TESTIFIED EARLIER
THAT HE PLACED HIS PRIVATE AREA ON YOUR BUTT BUT
YOUR CLOTHES WERE ON, RIGHT?

A. YES, MA'AM, WHEN I WAS IN THE RESTROOM?

Q. UH HUH.

A. YES, MA'AM.

Q. SO, YOUR CLOTHES WERE ON DURING THAT INCIDENT?

A. YES, MA'AM, I THINK SO, YES, MA'AM.

Q. OKAY. BECAUSE IT SEEMED LIKE YOU WERE HAVING A
HARD TIME REMEMBERING, I JUST WANTED TO MAKE SURE,

Exhibit B – Doctor's Testimony

Brief Summary:

Doctor Gibbs testified that she examined the victim hours after the sexual assault and found injuries consistent with blunt-forced trauma. She also found a laceration to the *fossa navicularis*, which is the entrance way into the vagina, proving that sexual battery had occurred.

Case No. 2011-CP-38-1240
Trial Transcript Pgs. 212-219

1 JUST KEPT IN A BOX. AFTER WE DO THE EXAM AND
2 COLLECT THE MATERIALS WE LET THE SWABS DRY
3 THEN WE PUT THEM IN THE BOX PACKAGED IN A SPECIAL
4 WAY AND THEN SEAL THE BOX AND PUT IT IN
5 EVIDENCE ROOM, AND THE RAPE KIT IS ACTUALLY
6 BOX ITSELF.

7 Q. DID YOU HAVE AN OPPORTUNITY TO EXAMINE
8 [REDACTED] ON AUGUST SIXTEENTH, TWO THOUSAND
9 FIVE?

10 A. YES.

11 Q. AND WHAT TIME DID THAT EXAMINATION TAKE PLACE?

12 A. SOMETIME BETWEEN THREE:THIRTY AND FOUR:THIRTY
13 THE MORNING.

14 Q. AND WHERE DID THAT EXAMINATION TAKE PLACE?

15 A. AT CHILDREN'S MEDICAL ASSESSMENT CENTER IN
16 CHARLESTON.

17 Q. AND WHAT TYPE OF EXAMINATION DID YOU PERFORM?

18 **Minor**

19 A. WE DID THE ACUTE CHILD SEXUAL ABUSE EXAM

20 Q. ACUTE MEANING?

21 A. MEANING, THAT THE INCIDENT OF CONCERN HAD OCCURRED
22 WITHIN SEVENTY-TWO HOURS, AND SO WE DID
23 GENERAL PHYSICAL EXAM AND THEN WE ALSO USED
24 KIT OR THE BOX TO COLLECT THE SAMPLES.

25 Q. PRIOR TO BEGINNING THE PHYSICAL EXAM DID YOU SPEAK

WITH **Minor** CONCERNING ANY PAIN OR SYMPTOMS,
COMPLAINTS, AND RECENT MEDICAL HISTORY?
YES.

Q. AND WHAT IS THE PURPOSE OF OBTAINING THIS
INFORMATION FROM THE PATIENT?

A. YOU KNOW, FIRST OF ALL TO KIND OF GET AN IDEA
ABOUT WHAT HAPPENED TO, YOU KNOW, TO HER BODY.
Q. ALSO WHAT KIND OF SYMPTOMS WAS SHE HAVING THAT
MIGHT NEED TO BE TREATED. AND THEN THE THIRD
REASON WOULD BE TO KNOW WHERE TO LOOK FOR
DIFFERENT TYPES OF EVIDENCE.

Q. WHAT, IF ANY, STATEMENTS DID **Minor** MAKE THAT YOU
USED IN YOUR DIAGNOSIS AND YOUR TREATMENT?

A. SHE SAID THE INCIDENT OF CONCERNED HAPPENED
BETWEEN NINE AND TEN O'CLOCK OF, IT WAS REALLY I
GUESS THE NIGHT BEFORE. IT WOULD BE -- WE SAW HER
IN THE MORNING OF AUGUST SIXTEENTH, AND THIS WOULD
HAVE HAPPENED AT NINE TO TEN O'CLOCK THAT NIGHT
BEFORE. SO, IT WOULD BE KIND OF LIKE WITHIN
SEVERAL HOURS. SHE WAS WEARING THE SAME CLOTHES
THAT SHE HAD ON AT THE TIME WHENEVER SHE CAME.
SHE HAD HAD SOMETHING TO DRINK AND HAD URINATED
AFTER THE INCIDENT. SHE SAID THAT SOMEONE HAD PUT
HIS PENIS INTO HER PRIVATES, REFERRING TO THE
GENITAL AREA. SHE SAID THAT IT HURT A LOT. SHE

DIRECT - DR. ELIZABETH L.H.B. GIBBS BY SOL. SCOTT

1 SAID THAT SHE WAS BEING HELD DOWN BY THIS
2 AND THAT SHE PUT HER FINGERS TO HIS EYES TO
3 TO LET HER UP. THAT HE DID NOT PUT HIS MOUTH
4 HER PRIVATES, OR GENITAL OR ANAL AREA, AND SHE
5 NOT HAVE TO PUT HER MOUTH ON HIM, AND THAT
6 WAS NO ANAL CONTACT. SHE SAID THAT IT HADN'T
7 PEE SINCE THE INCIDENT OCCURRED BUT SHE HAD
8 HAD A BOWEL MOVEMENT AND THAT SHE DIDN'T HAVE
9 PAIN IN THE ANAL AREA.

10 Q. DID YOU NOTICE ANY TISSUE IN HER PRIVATE AREA?

11 A. ANY LIKE TOILET PAPER TISSUE?

12 Q. CORRECT.

13 A. YES.

14 Q. OKAY.

15
16 SOLICITOR SCOTT: YOUR HONOR, CAN I

17 I HAVE THE WITNESS STEP DOWN?

18 THE COURT: YES, SIR.

19 Q. DR. GIBBS, USING THIS SKETCH PAD CAN YOU TELL THE
20 JURY ABOUT YOUR EXAMINATION OF **Minor**

21 A. YES. CAN I STAND HER?

22 Q. CERTAINLY.

23 A. OKAY. I'M GOING TO DRAW THE FEMALE GENITAL
24 DIAGRAM OF THEM FIRST, BEFORE I TALK ABOUT
25 HER FINDINGS WERE. THESE ARE THE LARGER, OILY
FATTY LIPS CALLED THE LABIA MAJORA, AND I'LL

DIRECT - DR. ELIZABETH L.H.B. GIBBS BY SOL. SCOTT

215

THOSE L-MAJ. THEN YOU'VE GOT THE SMALL INNER LIPS
THAT IN SOMEONE WHO'S, YOU KNOW, ALREADY HAVING
PERIODS, AND SHE WAS, COMES DOWN AND JOINS DOWN
TOWARD THE BACK. THE LITTLE SMALLER LIPS ARE CALLED
THE LABIA MINORA, AND I'LL LABEL THOSE L-MIN.
THEN HERE'S THE CLITORIS, AND THE CLITORAL HOOD.

I'M DRAWING THE URETHRA, WHICH IS WHERE THE URINE
EMPTIES OUT FROM THE BLADDER, AND I'LL LABEL THAT,
U, AND THEN I'M GOING TO DRAW THE OPENING TO THE
VAGINA. I'LL COME BACK TO THAT IN A MINUTE. WHERE
THESE LIPS COME TOGETHER ON THE OUTSIDE IS CALLED
THE POSTERIOR FOURCHETTE, AND I'LL LABEL THAT P-F,
THERE'S A LITTLE VALLEY HERE WHERE THE STRUCTURES,

THE LIPS ON THE OUTSIDE ARE COVERED BY OUTSIDE
SKIN, AND IT'S LIKE THE SKIN ON YOUR ARM. IT'S
REALLY LIKE THE OUTSIDE OF THE SKIN ON YOUR FACE.

ONCE YOU GET INTO THE STRUCTURES THAT ARE AROUND
THE OPENING TO THE VAGINA, THAT'S INSIDE SKIN, AND
THE INSIDE SKIN IS THE LIKE THE SKIN THAT'S ON THE
INSIDE OF YOUR MOUTH, SO THAT IF YOU TAKE YOUR
TONGUE AND PUT IT ON YOUR CHEEK IT'S WET, IT'S
REAL -- IT STAYS MOIST, IT'S REAL VASCULAR, AND IT
STRETCHES USUALLY PRETTY WELL. AND THAT'S SKIN
THAT'S MEANT FOR THE INSIDE. SO, THIS AREA IS SET
DOWN INSIDE OF THESE OUTER STRUCTURES. THE
OPENING TO THE VAGINA IS DOWN INSIDE THE OUTER
STRUCTURES BY ABOUT THREE QUARTERS TO THREE

DIRECT - DR. ELIZABETH L.H.B. GIBBS BY SOL. SCOTT

EIGHTHS OF AN INCH, AND THIS AREA IS COVERED
INSIDE SKIN. THERE'S A VALLEY, KIND OF OPENING
LIKE A SLING OF INSIDE SKIN THAT CONNECTS
OPENING TO THE VAGINA TO THE OUTSIDE, AND
VALLEY IS CALLED THE FOSSA NAVICULARIS, AND
LABEL THAT F-N. THE OPENING TO THE VAGINA
DRAW IN A LITTLE MORE DETAIL OVER HERE, THERE
PIECE OF INSIDE SKIN, COMICOSA, THAT GOES AROUND
THE OPENING THE OUTSIDE OF THE OPENING TO
VAGINA. IT CAN BE ALL THE WAY AROUND OR IT CAN
JUST IN THE BACK HALF, BUT THAT'S WHAT
ENTRANCE TO THE VAGINA LOOKS LIKE. THERE IS
AREA CALLED THE PERINEUM THAT'S BETWEEN THE VAGINA
AND THE ANUS, AND I'LL LABEL THAT, P, AND
YOU'VE GOT THE OPENING TO THE ANUS, AND I'LL LABEL
THAT, A. WHAT SHE HAD WAS RIGHT IN THE
FOSSA NAVICULARIS, IN THE MIDLINE WAS AN ACUTE
LACERATION. AND THAT JUST MEANS THAT THERE WAS
SPLITTING OF THE SKIN SO THAT THE UNDERLYING
STRUCTURES WERE EXPOSED, LIKE IF YOU WERE TO
A SPLIT OF THE SKIN IN ANY OTHER AREA. AND THAT
WHAT SHE HAD. ALL THE OTHER STRUCTURES, NO
NORMAL FOR ANY ACUTE TRAUMA.

SOLICITOR SCOTT: YOUR HONOR, I
LIKE TO HAVE THIS MARKED AND ADMITTED INTO EVIDENCE.

DIRECT - DR. ELIZABETH L.H.B. GIBBS BY SOL. SCOTT

217

THE COURT: ANY OBJECTION?

MS. FORD: NO OBJECTION, YOUR HONOR.

THE COURT: ALRIGHT, THAT WILL BE

STATE'S THREE?

COURT REPORTER: YES, SIR.

THE COURT: STATE'S THREE WITHOUT

OBJECTION.

(State's Exhibit Three
marked and filed.)

Q. DR. GIBBS, WOULD YOU ALWAYS EXPECT TO FIND
EVIDENCE OF TRAUMA FOLLOWING A SEXUAL ASSAULT?

A. NO.

Q. WHY NOT?

A. BECAUSE LIKE I SAID, THOSE AREAS ARE REAL
VASCULAR, PARTICULARLY IN A GIRL ONCE SHE'S
STARTED HAVING HER PERIOD OR STARTED DEVELOPING.
AND SHE WAS, SHE WAS WHAT'S CALLED TANNER STAGE
FOUR TO FIVE, MEANING THAT, TANNER STAGE ONE IS
PRE-PUBITAL, AND NO PUBIC HAIR, NO ESTROGENATION,
YOU KNOW, NO BREAST BUDS. TANNER STAGE FIVE IS
ADULT LIKE. SO, SHE WAS -- TANNER STAGE THREE IS
ABOUT WHERE A GIRL STARTS HAVING PERIODS, SO SHE
WAS ABOVE THAT, SHE WAS TANNER STAGE FOUR OR FIVE.
WHY THAT'S IMPORTANT IS THAT ONCE THE ESTROGEN
STARTS TO TAKE EFFECT ON THE GENITAL AREA OF A

1 FEMALE THEN THE SKIN GETS THICKER, GETS
2 ELASTIC. IT STRETCHES. THERE'S A DISCHARGE
3 SERVES AS A NATURAL LUBRICANT. IT REALLY IS
4 OF MADE FOR INTERCOURSE OR FOR PENETRATION. SO
5 AND THERE'S ALSO OTHER REASONS, YOU KNOW
6 SOMETIMES THE CONTACT MAY NOT BE OF A FORCEFUL
7 FORCEFUL NATURE ENOUGH TO CAUSE, YOU KNOW,
8 CAUSE FINDINGS. THERE'S ALL KINDS OF REASONS
9 BUT NO, YOU DON'T ALWAYS SEE PHYSICAL EVIDENCE
10 WHEN THERE'S BEEN A SEXUAL ASSAULT.

11 Q. AND YOU SAID YOU OBSERVED AN ACUTE LACERATION
12 THIS POINT RIGHT HERE?

13 A. YES, IN THE FOSSA NAVICULARIS.

14 Q. OKAY. AND WHAT DO YOU MEAN BY ACUTE, AGAIN?

15 A. LACERATIONS IN THAT AREA USUALLY HEAL REALLY
16 QUICKLY. LIKE I SAID, IT'S VERY VASCULAR AND IT
17 HEALS REALLY FAST. IT'S UNUSUAL FOR THOSE TO LAST
18 MORE THAN THREE TO FIVE DAYS. SO, WHAT I CAN TELL
19 BY LOOKING AT IT, IT LIKELY HAPPENED WITHIN THREE
20 TO FIVE DAYS OF THE EXAM.

21 Q. WERE YOUR FINDINGS CONSISTENT WITH BLUNT FORCE
22 TRAUMA TO THE INSIDE OF **Minor**'S GENITALIA?

23 A. YES.

24 Q. WERE YOUR FINDINGS CONSISTENT WITH WHAT **Minor**
25 YOU HAPPENED TO HER?

A. YES.

Q. AND BASED ON THE THOUSANDS OF EXAMINATIONS THAT
YOU HAVE CONDUCTED, IS THIS A COMMON PLACE TO
OBSERVE TRAUMA IF ANY TRAUMA CAN BE OBSERVED?

A. IF YOU'RE GOING TO HAVE TRAUMA DURING A SEXUAL
ASSAULT THAT INVOLVES ANY TYPE OF PENETRATION THE
MOST COMMON AREA IS IN THAT FOSSA NAVICULARIS.

Q. CAN YOU DESCRIBE **Minor**'S DEemeanor DURING THE
EXAMINATION?

A. SHE WAS VERY, SHE WAS VERY UPSET, SHAKING,
TREMBLING.

Q. DID YOU ADMINISTER ANY PAIN MEDICATIONS?

A. YES, LITOCANE IT WAS JUST SORT OF A NUMBING
TOPICAL JELL.

Q. IS THIS COMMON?

A. NO.

Q. IT'S NOT COMMON TO HAVE TO HAVE APPLY PAIN ME
MEDICATION?

A. NO.

Q. WHAT DID YOU DO WITH THE RAPE KIT WHEN YOU
FINISHED?

A. I PUT IT IN -- I SEALED IT AND SIGNED THE SEAL,
AND THEN PUT IT IN OUR REFRIGERATOR WHICH WAS
LOCKED IN OUR EVIDENCE ROOM IN NORTH CHARLESTON.

SOLICITOR SCOTT: NO FURTHER

Exhibit C – Judge Williams’ Jury Instructions

Brief Summary:

The Judge clearly instructed trial counsel of what he was going to charge to the jury, giving trial counsel opportunity to object to the charge of Assault with Intent to Commit Criminal Sexual Conduct on the record, thus making counsel ineffective for failing to object on the record, preserving the issue for appellate review and causing the judge to err because it was proven by testimony and medical examination that sexual battery had occurred.

Case No. 2011-CP-38-1240
Trial Transcript Pgs. 296-297

REDIRECT - DR. ELIZABETH L.H.B. GIBBS
BY SOL. SCOTT

REDIRECT EXAMINATION OF DR. ELIZABETH L.H.B.
GIBBS BY SOLICITOR SCOTT:

Q. DR. GIBBS, IS IT UNCOMMON NOT TO SEE BRUISES
THE SKIN OR OTHER AREAS OF A VICTIM WHO HAS
BEEN SEXUALLY ABUSED?

A. NO, IN THE VAST MAJORITY OF SEXUAL ASSAULT, YOU
NOT GOING TO HAVE BRUISING OR EVIDENCE
SKIN.

Q. OKAY. AND AGAIN, WAS Minor S ACCOUNTING
WHAT SHE TOLD YOU HAD HAPPENED TO HER CONSISTENT
WITH THE INJURIES THAT YOU OBSERVED?

A. YES.

SOLICITOR SCOTT: NO FURTHER
QUESTIONS.

MS. FORD: NONE, YOUR HONOR.

THE COURT: THANK YOU, MA'AM. YOU
MAY STEP DOWN. YOU MAY BE EXCUSED, THANK YOU FOR
COMING.

WITNESS: THANK YOU.

THE COURT: HOW LONG IS YOUR NEXT
WITNESS? Y'ALL APPROACH THE BENCH.
(Whereupon, a bench conference
is had out of the hearing of
the jury and the court reporter.)

THE COURT: LADIES AND GENTLEMEN,

296

(Whereupon, the jury retires
to the jury room and the
following takes place out of
the presence of the jury.)

THE COURT: ALRIGHT, WE'LL BE IN
RECESS IN THIS CASE UNTIL ELEVEN:FIFTEEN.

(Recess)

THE COURT: ALRIGHT, IN REGARD TO
THE CHARGE, MY STANDARD CHARGE, AS YOU'VE ALL HEARD AS
FAR AS REASONABLE DOUBT, CREDIBILITY, BURDEN OF PROOF,
AND I'LL CHARGE THE STATUTE ON LEWD ACT AND I'LL CHARGE
THE STATUTE ON CSC WITH A MINOR, AND THE LESSER
INCLUDED, ASSAULT WITH INTENT TO COMMIT CSC WITH A
MINOR. I'LL CHARGE GENERAL INTENT. WHAT ELSE HAD WE
TALKED ABOUT?

SOLICITOR SCOTT: CORROBORATION.

THE COURT: CORROBORATION, AND AGE OF
CONSENT.

MR. MELLARD: AND I THINK ALSO THAT
THE DEFENDANT DOESN'T HAVE TO TESTIFY.

THE COURT: YES, SIR. ALRIGHT.
ANYTHING ELSE? I DON'T THINK THERE WAS ANYTHING YOU
REQUESTED THAT I HAVEN'T AGREED TO CHARGE.

MR. MELLARD: THERE'S A -- NO.

THE COURT: SIR?

1 MS. FORD: NOTHING.

2 THE COURT: ANYTHING ELSE FROM
3 STATE THEN?

4 SOLICITOR SCOTT: NO, YOUR HONOR.

5 THE COURT: ALRIGHT, BRING THE

6 IN. I'VE GOT TO PICK UP A PAPER OFF MY DESK WHILE
7 JURY'S COMING IN.

8 (Whereupon, the jury enters
9 the courtroom and the following
10 takes place in the presence
11 of the jury.)

12 THE COURT: ALRIGHT, LADIES
13 GENTLEMEN, AS I TOLD YOU, YOU'VE HEARD ALL OF
14 TESTIMONY AND THE EVIDENCE THAT YOU'RE GOING TO HEAR.
15 IT REMAINS NOW FOR THE ATTORNEYS TO GIVE YOU THEIR
16 CLOSING ARGUMENTS, AND THEY'RE TRY TO PERSUADE YOU
17 SEE THE FACTS IN THIS CASE IN FAVOR OF THEIR RESPECTIVE
18 POSITIONS. AS I TOLD YOU, YOU ARE THE JUDGES OF THE
19 FACTS, YOU HAVE TO DETERMINE THE TRUTH ABOUT THE MATTER
20 OF WHICH YOU'VE HEARD TESTIFY. WHAT THE ATTORNEYS SAY
21 YOU IS NOT EVIDENCE, JUST LIKE THE QUESTIONS THEY ASK
22 NOT EVIDENCE. EVIDENCE THAT YOU WILL BASE YOUR
23 DECISION ON IS THAT TESTIMONY THAT COMES FROM WITNESSES
24 WHO WERE PLACED UNDER OATH AND TESTIFIED FROM THE
25 STAND, AND THE EXHIBITS WHICH YOU WILL HAVE WITH YOU.

LASCIVIOUS ACT UPON OR WITH THE BODY OR ITS PARTS OF A
CHILD UNDER THE AGE OF SIXTEEN YEARS WITH THE INTENT OF
AROUSING, APPEALING TO OR GRATIFYING THE LUST OR
PASSIONS OR SEXUAL DESIRES OF THE PERSON OR OF THE
CHILD." THE STATE MUST PROVE EACH OF THOSE ELEMENTS,
LADIES AND GENTLEMEN, THEY MUST PROVE THAT THE ALLEGED
PERPETRATOR WAS OVER THE AGE OF FOURTEEN; THAT HE
WILLFULLY AND LEWDLY COMMITTED OR ATTEMPTED TO COMMIT A
LEWD OR LASCIVIOUS ACT; THAT IT WAS UPON THE BODY OF A
CHILD WHO WAS UNDER THE AGE OF SIXTEEN; AND THAT IT WAS
DONE WITH THE INTENT OF AROUSING, APPEALING TO OR
GRATIFYING THE LUST OR PASSIONS OR SEXUAL DESIRES OF THE
PERSON OF THE DEFENDANT OR OF THE CHILD.

LADIES AND GENTLEMEN, THE LAW DEFINES LEWD TO
MEAN OBSCENE OR INDECENT, TENDING TO MORAL
IMPURITY OR WANTONNESS.

IT DEFINES LASCIVIOUS AS CONDUCT TENDING TO
EXCITE LUST.

THAT, LADIES AND GENTLEMEN, IS THE DEFINITION OF LEWD
ACT OR ATTEMPTING TO COMMIT A LEWD ACT.

NOW, LADIES AND GENTLEMEN, THE
SECOND CHARGE WITH WHICH THE DEFENDANT IS CHARGED IS
CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE. AND THAT
IS ALSO A STATUTORY CRIME, LADIES AND GENTLEMEN, AND
IT'S SECTION SIXTEEN, DASH, THREE, DASH, SIX FIFTY-FIVE

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

)
)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Lindy Lamont Jones, #335250,
Applicant,

)
)

Case No. 2011-CP-38-1240

v.

)
)

**RETURN TO “APPLICANT’S
MOTION TO ALTER OR AMEND”**

State of South Carolina,
Respondent.

)
)

)
)

Respondent, by and through undersigned counsel, making its Return to “Applicant’s Motion to Alter or Amend,” would respectfully show unto this Court:

I.

Applicant was indicted for Criminal Sexual Conduct with a Minor – Victim under 16 Years of Age (2005-GS-38-1817). Applicant was represented by Sara Ford, Esquire, and Doug Mellard, Esquire. On June 8-10, 2009, Applicant proceeded to a jury trial and was convicted of the lesser included offense of Assault with Intent to Commit Criminal Sexual Conduct with a Minor. On June 10, 2009, the Honorable James C. Williams, Jr., sentenced Applicant to sixteen years imprisonment.

A notice of appeal was filed and an appeal perfected. The South Carolina Court of Appeals affirmed Applicant’s conviction and sentence. State v. Jones, Op. No. 2011-UP-396 (S.C. Ct. App. filed August 19, 2011). The Remittitur was sent on September 8, 2011.

II.

Applicant filed an application for post-conviction relief on September 12, 2011, alleging that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel for failing to properly object to the jury instruction on assault with intent to commit criminal sexual conduct with a minor; and
2. Lack of subject matter jurisdiction, because the evidence did not support a conviction of assault with intent to commit criminal sexual conduct with a minor.

The State made its Return on February 14, 2012, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on October 31, 2012, at the Dorchester County Courthouse. The Applicant was present at the hearing and was represented by Charles Williams, Esquire, appearing on the behalf of C. Bradley Hutto, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. By written order signed on November 29, 2012 and filed on December 6, 2012, the Court denied and dismissed Applicant's post-conviction relief application with prejudice. A copy of this Order was served on Applicant's counsel of record, C. Bradley Hutto, Esquire, on December 12, 2012.

On December 28, 2012, Applicant filed a *pro se* "Applicant's Motion to Alter or Amend." This *pro se* document was received by Respondent on January 2, 2013. On January 11, Applicant, through his counsel, filed a subsequent "Motion to Alter or Amend", asserting the same position as in Applicant's *pro se* motion; respondent received this motion on January 15, 2012.

III.

Applicant's motion is not timely filed and should be summarily dismissed. "A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRPC. Applicant's counsel of record, C. Bradley Hutto, Esquire, was mailed a copy this Court's Order of Dismissal on December 12, 2012. Applicant's

pro se motion was filed on December 28, 2012. Applicant's subsequent motion was filed on January 11, 2013. As this motion was not properly filed by counsel until nearly a month after the filed document was served on Applicant's counsel, this motion should be dismissed as untimely.

V.

Applicant moves this Court to alter or amend its Order of Dismissal, asserting five allegations that were "raised at the hearing but not ruled upon." Respondent will respond to each additional allegation below.

1. Applicant asserts that the following allegation "Did Trial Court lacked [sic] Subject Matter Jurisdiction to try and convict Applicant for Assault with Intent to commit a criminal sexual conduct when there is no indictment charging him with that particular charge at the time the jury was sworn in" was presented at the post-conviction relief hearing but not ruled upon. This assertion is without merit. This allegation was directly addressed in this Court's Order of Dismissal. *See* Order of Dismissal p. 7. In its Order, this Court properly ruled that Applicant's claims that "the trial court lacked subject matter jurisdiction because the evidence presented at trial did not support a conviction of assault with intent to commit criminal sexual conduct with a minor" must be "dismissed as not a proper ground for relief under the Uniform Post-Conviction Relief Act. S.C. Code Ann. § 17-27-20(a)."
2. Applicant asserts that the following allegation, "Is Assault with intent to Commit Criminal Sexual Conduct a lesser included offense of CSC 2nd degree. Because the greater does not contain all the elements of the lesser offense." was presented at the post-conviction relief hearing but not ruled upon. This assertion is without merit. This

court). Applicant has failed to raise an allegation that was properly raised but not ruled upon by this Court.

IV.

WHEREFORE, having made its Return to the motion, the State requests that the relief requested in the Motion be denied and that said Motion be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

BY: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

January 15, 2013.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	
	)	
	)	2011-CP-38-1240
LINDY LAMONT JONES, 335250,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return to "Applicant's Motion to Alter or Amend"** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

The Honorable Carmen T. Mullen
102 Ribaut Road
Post Office Drawer 1128
Beaufort, SC 29901

Charles H. Williams, III, Esquire
Williams & Williams
Post Office Box 1084
Orangeburg, SC 29115

DATED this 15th day of January, 2013.

Lauren Meara
 Lauren Meara, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Lindy Lamont Jones, #335250,
Applicant,

Case No. 2011-CP-38-1240

v.

ORDER DENYING APPLICANT'S MOTION
TO ALTER OR AMEND

State of South Carolina,
Respondent.

This matter comes before this Court by way of Applicant's "Motion to Alter or Amend," asking this Court to alter or amend its Order of Dismissal of his application for post-conviction relief.

I.

Applicant was indicted for Criminal Sexual Conduct with a Minor – Victim under 16 Years of Age (2005-GS-38-1817). Applicant was represented by Sara Ford, Esquire, and Doug Mellard, Esquire. On June 8-10, 2009, Applicant proceeded to a jury trial and was convicted of the lesser included offense of Assault with Intent to Commit Criminal Sexual Conduct with a Minor. On June 10, 2009, the Honorable James C. Williams, Jr., sentenced Applicant to sixteen years imprisonment.

A notice of appeal was filed and an appeal perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Jones, Op. No. 2011-UP-396 (S.C. Ct. App. filed August 19, 2011). The Remittitur was sent on September 8, 2011.

Applicant filed an application for post-conviction relief on September 12, 2011, alleging that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel for failing to properly object to the jury instruction on assault with intent to commit criminal sexual conduct with a minor; and
2. Lack of subject matter jurisdiction, because the evidence did not support a conviction of assault with intent to commit criminal sexual conduct with a minor.

The State made its Return on February 14, 2012, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on October 31, 2011, in Orangeburg County

(1406)

ATTEST: TRUE COPY
Wingie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

Courthouse. The Applicant was present at the hearing and was represented by Charles Williams, Esquire, appearing on the behalf of C. Bradley Hutto, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. By written order signed on November 29, 2012 and filed on December 6, 2012, this Court denied and dismissed Applicant's post-conviction relief application with prejudice. A copy of this Order was served on Applicant's counsel of record, C. Bradley Hutto, Esquire, on December 12, 2012.

On December 28, 2012, Applicant filed a *pro se* "Applicant's Motion to Alter or Amend." On January 11, Applicant, through his counsel, filed a subsequent "Motion to Alter or Amend", asserting the same position as in Applicant's *pro se* motion. The State made its Return on January 15, 2013, asking that this Motion be denied.

II.

This Court finds that Applicant's motion is not timely filed and must be dismissed. "A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRPC. Applicant's counsel of record, C. Bradley Hutto, Esquire, was mailed a copy this Court's Order of Dismissal on December 12, 2012 Applicant's *pro se* motion was filed on December 28, 2012. Applicant's subsequent motion was filed on January 11, 2013. As this motion was not properly filed until nearly a month after the filed document was served on Applicant's counsel, this motion must be dismissed as untimely.

III.

This Court finds that each ground on which Applicant requests that this Court alter or amend its Order of Dismissal is without merit. Below are this Court's findings in regards to each allegation raised in Applicant's *pro se* "Motion to Alter or Amend":

1. Applicant asserts that the following allegation "Did Trial Court lacked [sic] Subject Matter Jurisdiction to try and convict Applicant for Assault with Intent to commit a criminal sexual conduct when there is no indictment charging him with that particular charge at the time the jury was sworn in" was presented at the post-conviction relief hearing but not ruled upon. This Court finds that assertion is without merit. This allegation was directly addressed in this Court's Order of Dismissal. *See* Order of Dismissal p. 7. In its Order, this Court properly ruled that Applicant's claims that "the trial court lacked subject matter jurisdiction because the evidence presented at trial did not support a conviction of assault with intent to commit criminal sexual conduct with a minor" must be "dismissed as not a proper ground for relief under the Uniform Post-Conviction Relief Act. S.C. Code Ann. § 17-27-20(a)."
2. Applicant asserts that the following allegation, "Is Assault with intent to Commit Criminal Sexual Conduct a lesser included offense of CSC 2nd degree. Because the greater does not contain all the elements of the lesser offense." was presented at the post-conviction relief hearing but not ruled upon. This Court finds that this assertion is without merit. This allegation was not raised in Applicant's application for post-conviction relief, nor was it raised as a ground for relief at the evidentiary hearing. Therefore, this Court's Order of Dismissal properly encompasses and ruled upon only the issues presented to the court, not allegations which were not presented. Additionally, this allegation is not a proper ground for relief under the Uniform Post-Conviction Relief Act. S.C. Code Ann. § 17-27-20(a)."
3. Applicant asserts that the following allegation, "Trial Counsel was ineffective for failing to object to the Jury instruction of assault with intent to commit criminal sexual conduct with a minor on the record (see trial transcript pg 296-297) being charged as a lesser included offense of CSC 2nd degree with a minor because by a preponderance of the evidence the sexual battery did take place"

8/8/5

was presented at the post-conviction relief hearing but not ruled upon. This Court finds that this assertion is without merit. This allegation was directly addressed in this Court's Order of Dismissal. *See* Order of Dismissal p. 5-6.

4. Applicant asserts that the following allegation, "Did the trial court err when he charged the jury with assault with intent to commit to commit criminal sexual conduct after it was proven by the victim's testimony, the doctor (Dr. Gibbs) testimony and medical examination, and the statement made to police by the defendant that the sexual battery did take place" was presented at the post-conviction relief hearing but not ruled upon. This Court finds that this assertion is without merit. This allegation was not raised in Applicant's application for post-conviction relief, nor was it raised as a ground for relief at the evidentiary hearing. Therefore, this Court's Order of Dismissal properly encompasses and ruled upon only the issues presented to the court, not allegations which were not presented. Additionally, this allegation is not a proper ground for relief under the Uniform Post-Conviction Relief Act. S.C. Code Ann. § 17-27-20(a)."
5. Applicant asserts that the following allegation, "Trial Counsel was ineffective for failing to object and request that the judge give a curative instruction because the judge never instructed the jury with all the elements of the charge of assault with intent to commit a criminal sexual conduct" was presented at the post-conviction relief hearing but not ruled upon. This Court finds that this allegation is without merit. This allegation was not raised in Applicant's application for post-conviction relief, nor was it raised as a ground for relief at the evidentiary hearing. Therefore, this Court's Order of Dismissal properly encompasses and ruled upon only the issues presented to the court, not allegations which were not presented.



This Court's Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRCP. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

Additionally, in this motion, Applicant requests that this Court "grant the relief that applicant is entitled to." Applicant is not requesting an alteration or amendment to the Order. Rather, Applicant is asking the Court to reconsider its ruling and grant Applicant post-conviction relief on these five grounds. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to preserve issues raised to but not ruled upon by the trial court). Applicant has failed to raise an allegation that was properly raised but not ruled upon by this Court. Having carefully reviewed the entire record in this matter, this Court finds that no basis for altering or amending is prior ruling.¹ Therefore, this Court hereby denies the Applicant's Motion in its entirety, and affirms the previous Order of Dismissal.

This Court notes that if the Petitioner desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served within thirty days of the service of this Order. Petitioner is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND, IT IS SO ORDERED this 1 day of Feb, 20



CARMEN T. MULLEN
Presiding Judge
First Judicial Circuit

Rigdon, South Carolina

¹ The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction relief file, since oral argument will not aid the Court in reaching its decision. See Rule 59(f), SCRCP.



IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge
CASE NO. 2011-CP-38-1240

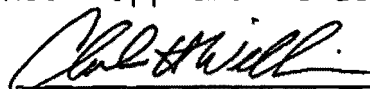
LINDY LAMONT JONES, Inmate No. 335250 Appellant

v.

STATE OF SOUTH CAROLINA..... Respondent.

NOTICE OF APPEAL

Lindy Jones appeals the Order of the Honorable Carmen T. Mullen dated November 29, 2012. Appellant received written notice of entry of this Order on December 14, 2012, and subsequently filed a Motion to Alter or Amend on December 28, 2012. Appellant received written notice of the Order of the Honorable Mullen denying the Motion to Alter or Amend on February 19, 2013. Mr. Jones now wishes to appeal the Order dated November 29, 2012.



Charlie H. Williams, III, Esquire
WILLIAMS & WILLIAMS
Post Office Box 1084
Orangeburg, SC 29116
(803) 534-5218
Attorneys for Appellant

Other Counsel of Record:
Megan E. Harrison, Esquire
Office of Attorney General
P.O. Box 11549
Columbia, SC 29211

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

CASE NO. 2011-CP-38-1240

LINDY LAMONT JONES, Inmate No. 335250 Appellant

v.

STATE OF SOUTH CAROLINA..... Respondent.

PROOF OF SERVICE OF NOTICE OF APPEAL

I certify that I have served the Notice of Appeal on the Office of the Attorney General by depositing a copy of it in the United States Mail, postage prepaid on February 21, 2013, addressed to this attorney of record Megan E. Harrison, P.O. Box 11549, Columbia, SC 29211.

February 21, 2013



Charlie H. Williams, III, Esquire
WILLIAMS & WILLIAMS
P.O. Box 1084
Orangeburg, SC 29116
Attorneys for Appellant

The Supreme Court of South Carolina

RE: TRANSFER OF CASES FROM SOUTH
CAROLINA SUPREME COURT TO THE COURT OF
APPEALS

ORDER

Pursuant to Rule 243(1), SCACR, the following post-conviction relief cases are hereby transferred to the South Carolina Court of Appeals:

<u>Appellate Case Number</u>	<u>Case Name</u>
1. 2012-212734	Ricky Lee Hatcher v. State
2. 2012-209540	Jerome-Curtis Buckson v. State
3. 2012-207809	Nathaniel Suber v. State
4. 2012-207247	Charles McCormick v. State
5. 2012-206670	Luther Brian Marcus v. State
6. 2011-204374	Herman Belton v. State
7. 2011-202768	LaVelle Weaver v. State
8. 2011-195210	Tonnie Baldwin v. State
9. 2012-213472	Ricky Dean Duncan v. State
10. 2012-213423	Jose Antonio Anzaldo v. State
11. 2012-213326	Jeremy T. Durant v. State
12. 2012-213323	Adrian Franklin v. State
13. 2012-213322	Carlos Gonzales-v. State
14. 2012-213312	Eric LaGeorge Mouzon v. State
15. 2012-213235	Robert Edgar Upchurch v. State
16. 2012-213200	William Outlaw v. State
17. 2012-213167	Jeremy J. Jeter v. State
18. 2012-213133	Sherman Boyd v. State
19. 2012-213131	Waddell McGhee v. State
20. 2012-213130	Ken Lucero v. State
21. 2012-213072	Giles Belcher v. State
22. 2012-212964	Marques A. Durant v. State
23. 2012-212912	Robert L. Foster v. State

24.	2012-212911	Jimmy Belton v. State
25.	2012-212909	James E. Kennedy v. State
26.	2012-212880	Marvin Mims v. State
27.	2012-212848	Rodddregus Wells v. State
28.	2012-212793	Jeffery Augustine v. State
29.	2012-212751	Robert Bostic v. State
30.	2012-212702	Samuel Emanuel Stokes v. State
31.	2012-212701	Farid A. Mangal v. State
32.	2012-212698	Marquita Smith v. State
33.	2012-212676	Whelthy McKune v. State
34.	2012-212671	John W. Floyd v. State
35.	2012-212608	Adrian Allen v. State
36.	2012-212602	Oscar Fortune v. State
37.	2012-212589	Clarence Collins v. State
38.	2012-212576	Edward Whitner v. State
39.	2012-212557	Luis Ozorio v. State
40.	2012-212553	Stephens Smalls v. State
41.	2012-212552	Lawerence K. Smith, Jr. v. State
42.	2012-212550	Marcus J. Parker v. State
43.	2012-212521	Eugene Santiago v. State
44.	2012-212506	Lakendrick K. Leverette v. State
45.	2012-212504	Nicolas Brown v. State
46.	2012-212418	James Edward Roseboro v. State
47.	2012-212417	Alēx Brice Graham v. State
48.	2012-212416	Jovon Brown v. State
49.	2012-212414	Islam Dunn v. State
50.	2012-212412	Donna Marie Redding v. State
51.	2012-212410	Gary Michael Piper v. State
52.	2012-212409	Raymond Kelley v. State
53.	2012-212402	Octavious C. Neeley v. State
54.	2012-212399	Walter Durham v. State
55.	2012-212398	Jomer Hill v. State
56.	2012-212397	Steven D. Denton v. State
57.	2012-212396	Martina R. Putnam v. State
58.	2012-212316	Theodore Kyinoo v. State
59.	2012-212314	Antwon Garrett v. State
60.	2012-212310	Charles Gory v. State
61.	2012-212308	George N. Moses v. State
62.	2012-212306	Michael Shane Johnson v. State
63.	2012-212305	Herman D. McKnight v. State
64.	2012-212301	Elkin Perez v. State
65.	2012-212179	Alton Docherty v. State
66.	2012-212177	Craig M. Brannon v. State
67.	2012-212175	Favian Alfonzo Hayes v. State

68.	2012-212173	Dwayne Housey v. State
69.	2012-212164	William D. Hoyles v. State
70.	2012-212163	Sherman Graham v. State
71.	2012-212161	Roger Nickeya Johnson v. State
72.	2012-212153	Sintari A. Summers v. State
73.	2012-212149	James J. Abercrombie v. State
74.	2012-212147	Lawrence Reyes Waller v. State
75.	2012-212117	Vincent A. Pitts v. State
76.	2012-212097	Damion Curry v. State
77.	2012-212094	Desmond Briggs v. State
78.	2012-212093	Jose Eloy Tello v. State
79.	2012-212092	Charles Ray Dean v. State
80.	2012-212091	David L. Bacchus v. State
81.	2012-212086	Chas Lamous Smith v. State
82.	2012-212084	Kevin King v. State
83.	2012-212083	Heyward Robinson v. State
84.	2012-212080	Antonio M. Williams v. State
85.	2012-212075	Donques Hood v. State
86.	2012-212074	Donald Wetherall v. State
87.	2012-212073	Antonio Barton v. State
88.	2012-212072	Wayne Morris Hibbert v. State
89.	2012-211647	Sherman Dewalt v. State
90.	2012-211629	Myra Christenbury v. State
91.	2012-211390	John Douglas Alexander v. State
92.	2012-211388	Benjamin Garrick v. State
93.	2012-211386	Jason Moulton v. State
94.	2012-211291	James A. McClellan v. State
95.	2012-211288	James Marion Branham v. State
96.	2012-211093	Sterling Green v. State
97.	2012-211091	Darryl Frierson v. State
98.	2012-211087	Christopher Ray Nolan v. State
99.	2012-210227	James Clayton Helms v. State
100.	2012-210226	Timothy T. Kinard v. State
101.	2012-210213	Walter C. Kelly v. State
102.	2012-210209	Vincent L. Neumon v. State
103.	2012-210168	Lisa Ann Blakeney v. State
104.	2012-209535	Trico D. Thompson v. State
105.	2012-209533	George R. Lindsey, Jr. v. State
106.	2012-209530	John Lewis Mills v. State
107.	2012-209507	David Bryant Richards v. State
108.	2012-209506	Norman J. Hayes v. State
109.	2012-208888	Cedric T. Smith v. State
110.	2012-208639	Darian G. Reddish v. State
111.	2012-208631	Thomas Osborne v. State
112.	2012-208630	Timothy Earl Green v. State

113.	2012-208629	Dorothy Harden v. State
114.	2012-208626	Ruben Ramirez v. State
115.	2012-208013	Virgil Lee Culbreath v. State
116.	2012-208009	Jose N. Alvarenga v. State
117.	2012-207807	Harold Lee Greer Jr. v. State
118.	2012-207561	Dwayne R. Clark v. State
119.	2012-207560	Nathan Luckett v. State
120.	2012-207554	James C. Cobbett, III v. State
121.	2012-206673	Angela M. Vaughn v. State
122.	2012-206649	James L. Farrow v. State
123.	2012-206047	Fernando F. Young v. State
124.	2012-205987	Lazarus M. Brannon v. State
125.	2011-203247	Michael-Lathan v. State
126.	2011-203229	Tobias Chano Lee v. State
127.	2011-202771	Harrison Sanders v. State
128.	2011-202766	Helen Marie Douglas v. State
129.	2011-201592	Joseph Morrison, III v. State
130.	2012-213492	Kenneth Epps v. State
131.	2011-199421	Dominique D. Moore v. State
132.	2011-199420	Donald Carter v. State
133.	2011-199419	Quandelle J. Wilson v. State
134.	2011-199412	Carmen Latrice Rice v. State
135.	2011-196598	Dayvonn A. Valentine v. State
136.	2011-190110	Luzenski Allen Cottrell v. State
137.	2013-000410	Lindy L. Jones v. State
138.	2013-000365	Samuel Abiodun v. State
139.	2012-213324	Terrance A. Baker v. State
140.	2012-213158	James Corbett v. State
141.	2012-213515	Odis D. State
142.	2012-212825	Johnny L. Friazer v. State
143.	2012-212750	Jeremy McPhail v. State
144.	2012-212699	Jovian McRant v. State
145.	2012-212503	John Barbare v. State
146.	2012-212170	Mark Lowery v. State
147.	2012-212088	Andre Martin v. State
148.	2012-211088	Kevin L. Grant v. State
149.	2011-202772	Antonio Glover v. State
150.	2011-203631	Michael Bohannon v. State

IT IS SO ORDERED.


C.J.
FOR THE COURT

Columbia, South Carolina

July 29, 2013

cc: Chief Appellate Defender Robert M. Dudek
Deputy Chief Appellate Defender Wanda H. Carter
Appellate Defender Robert M. Pachak
Appellate Defender Kathrine H. Hudgins
Appellate Defender LaNelle C. DuRant
Appellate Defender Susan B. Hackett
Appellate Defender Benjamin J. Tripp
Appellate Defender Carmen V. Ganjehsani
Appellate Defender David Alexander
Assistant Deputy Attorney General Salley W. Elliott
Assistant Attorney General John W. Whitmire
Assistant Attorney General Tyson A. Johnson
Assistant Attorney General Suzanne H. White
Assistant Attorney General Ashleigh R. Wilson
Assistant Attorney General Megan E. Harrigan
Assistant Attorney General Karen C. Ratigan
Assistant Attorney General Daniel F. Gourley
Assistant Attorney General David A. Spencer
Assistant Attorney General J. Rutledge Johnson
John Benjamin Aplin, Esquire
Tricia Blanchette, Esquire
J. Falkner Wilkes, Esquire
John R. Ferguson, Esquire
Tara D. Shurling, Esquire
Joel F. Stroud, Esquire
Thomas W. Dunaway, III, Esquire
Beattie B. Ashmore, Esquire
John D. Dalgado, Esquire
Franklin G. Shuler, Esquire
Paul Archer, Esquire
Dwight C. Moore, Esquire
Tommy Thomas, Esquire
James R. Snell, Esquire
Ricky Dean Duncan
Jose Antonio Anzaldo
Jeremy T. Durant
Adrian Franklin
Robert E. Upchurch
Jeremy J. Jeter
Sherman Boyd

Waddell McGhee
Giles Belcher
Marques A. Durant
Robert L. Foster
James E. Kennedy
John W. Floyd
Adrian A. Allen
Lakendrick K. Leverette
Nicolas Brown
Alex B. Graham
Islam Dunn
Raymond Kelley
Walter Durham
Charles Gory
Herman D. McKnight
Alton Docherty
William D. Hoyles
Sherman Graham
Sintati A. Summers
James J. Abercrombie
Desmond Briggs
Heyward Robinson
Donques Hood
Sherman Dewalt
John D. Alexander
Benjamin Garrick
Timothy E. Green
Jose N. Alvarenga
Michael Lathan
Dayvonn A. Valentine
Lindy L. Jones
Terrance A. Baker
James Corbett
Brain Less
Johnny L. Frazier
Jeremy McPhail
Mark Lowery
Michael Bohannan
Jeffery Augustine
Kenneth Epps
The Honorable Jenny Kitchings

The South Carolina Court of Appeals

Lindy L. Jones, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2013-000410

ORDER

RECEIVED

MAR 21 2014

SC OFFICE OF
APPELLATE DEFENSE

Lindy L. Jones appeals the trial court's November 29, 2012 order dismissing his application for post-conviction relief. This appeal is untimely and must be dismissed.

A party wishing to appeal an order of the circuit court must serve a notice of appeal on all respondents "within thirty (30) days after receipt of written notice of entry of the order or judgment." Rule 203(b)(1), SCACR. A timely Rule 59(e), SCRCP, motion to alter or amend the judgment stays the time for appeal until the appellant receives "written notice of entry of the order granting or denying such motion." Rule 59(f), SCRCP; Rule 203(b)(1), SCACR. Such a motion "shall be served not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRCP. If "[t]he last day of the period . . . is a Saturday, Sunday[,] or a state or federal holiday, . . . the period runs until the end of the next day which is neither a Saturday, Sunday[,] nor such holiday." Rule 6(a), SCRCP; Rule 263(a), SCACR. When a post-trial motion is not timely served, the time for appeal is not stayed. *Canal Ins. Co. v. Caldwell*, 338 S.C. 1, 6, 524 S.E.2d 416, 418 (Ct. App. 1999). Failure to timely serve a notice of appeal "divests this court of subject matter jurisdiction and results in dismissal of the appeal." *Id.* at 5, 524 S.E.2d at 418.

Here, Jones received written notice of entry of the trial court's order of dismissal on December 14, 2012. Because the tenth day after this notice fell on Christmas Eve, a state holiday, the period for Jones to file a motion to alter or amend the order

extended until December 27, 2012.¹ However, Jones filed his motion on December 28, 2012. Thus, the motion did not stay the time for appeal, and the period for Jones to serve his notice of appeal expired on January 14, 2013.² Because Jones did not serve his notice of appeal until February 21, 2013, this appeal is untimely and must be dismissed. *See Caldwell*, 338 S.C. at 5-6, 524 S.E.2d at 418.

AND IT IS SO ORDERED.


FOR THE COURT

Columbia, South Carolina

cc: Megan Elizabeth Harrigan, Esquire
Robert M. Pachak, Esquire
Lindy Lamont Jones, #335250

FILED
March 21, 2014

¹ December 25, 2012, and December 26, 2012 were also state holidays.

² January 13, 2013 was the thirtieth day after Jones received written notice of the order of dismissal; however, that being a Sunday, the period extended until the following day.

The Supreme Court of South Carolina

Lindy L. Jones, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2014-001015

Lower Court Case No. 2011-CP-38-01240

RECEIVED

MAY 13 2014

SC OFFICE OF
APPELLATE CLERK

ORDER

By order dated March 21, 2014, the South Carolina Court of Appeals dismissed the appeal in this matter finding that the notice of appeal had not been timely served. Because petitioner was represented by counsel, the Court of Appeals properly refused to act on a motion for reinstatement filed *pro se* by the petitioner. *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010); *Jones v. State*, 348 S.C. 13, 558 S.E.2d 517 (2002); *State v. Stuckey*, 333 S.C. 56, 508 S.E.2d 564 (1998); *Foster v. State*, 298 S.C. 306, 379 S.E.2d 907 (1989). When no petition for reinstatement or rehearing was filed by petitioner's counsel within the time specified by Rule 221 of the South Carolina Appellate Court Rules, the Court of Appeals properly sent the remittitur on April 24, 2014.¹

Petitioner has now filed a *pro se* motion asking this Court to reinstate the appeal. The motion is stricken and dismissed since the sending of the remittitur ended appellate jurisdiction and no further motion can be considered in this matter.

¹ Before the Court of Appeal the Appellate Case Number was 2013-000410.

Wise v. South Carolina Dept. of Corrections, 372 S.C. 173, 642 S.E.2d 551 (2007).


C.J.
FOR THE COURT

Columbia, South Carolina
May 13, 2014

cc: ~~Robert M. Pachak, Esquire~~ LY
Megan Elizabeth Harrigan, Esquire
Alan McCrory Wilson, Esquire
Mr. Lindy Lamont Jones, #335250
The Honorable Jenny Abbott Kitchings

FORM 5

2014-CP-38-682

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF Orangeburg)Lindy Lamont Jones #335250)

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

ATTEST: TRUE COPY

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 Turbeville Correctional Institution
2. Name and location of Court which imposed sentence Orangeburg Court of General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 16-3-656 Assault with Intent to Commit
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) June 10, 2009 16 years
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Appellate Court _____
- ii. Court of Common Pleas Orangeburg _____
- iii. South Carolina Supreme Court _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed Affirmed _____
- ii. Dismissed _____
- iii. Transferred to Court of Appeals Dismissed _____
- (c) the date of each such result:
- i. Not preserved for there review Dismissed August 19, 2011 _____
- ii. Dismissed November 29, 2012 _____
- iii. Transferred to Court of Appeals Dismissed as untimely March 21, 2014 _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A _____
- ii. N/A _____
- iii. N/A _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A _____
- (b) N/A _____
- (c) N/A _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of PCR Counsel 6th Amendment (Violation)
 (b) Ineffective Assistance of PCR Counsel 6th Amendment (Violation)
 (c) Ineffective Assistance of PCR Counsel 6th Amendment (Violation)

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) PCR Counsel failed to subpoena witnesses/Produce Exhibits
 (b) PCR Counsel failed to file a timely Motion to alter or Amend 59(e)
 (c) PCR Counsel Failed to timely file For Appellate Review

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? yes
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? yes
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? yes

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. Writ of Certiorari for Review of Post Conviction
 ii. PCR Ineffective Assistance of Trial Counsel
 iii. Motion to alter or Amend 59(e)
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. South Carolina Supreme Court
 ii. Orangeburg County Court of Common pleas
 iii. Orangeburg County Court of Common pleas
 iv. _____
 (c) the disposition thereof:
 i. Transferred to Court of appeals Dismissed as untimely
 ii. Dismissed
 iii. As Answered and As Dismissed as untimely

- iv. _____
- (d) the date of each such disposition:
- i. March 21, 2014
- ii. November 29, 2012
- iii. Feb 11, 2013
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
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. N/A
- ii. N/A
- iii. N/A
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. N/A
- iii. N/A
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) PCR Counsel failed to subpoena witnesses / PCR issues
- (b) PCR Counsel failed to file a timely Motion to alter or Amend 59(e) / PCR issues
- (c) PCR Counsel failed to file timely file for Appellate Review / PCR issues
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction; which you filed? Yes

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. Charles H Williams III P.O. Box 1084 Orangeburg SC 29116
- ii. _____
- iii. _____

- (b) the proceedings at which each such attorney represented you:

- i. PCR Evidentiary hearing
- ii. _____
- iii. _____

X 19. State clearly the relief you seek in filing this application:

To have My Motion to alter or amend / And my Appellate Review Granted

20. Are you now under sentence from any other court that you have not challenged?

NO

→ 19. To have a new evidentiary hearing (PCR)

STATE OF SOUTH CAROLINA)

County of)

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 12th
day of May, 2014.

Emily Holte (L.S.)
Notary Public

My Commission Expires: 4-27-2016

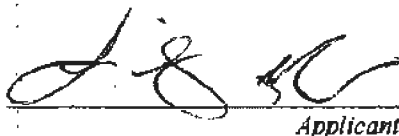
FILED 5-14-14 @ 12:00pm

S/ Wierja B. Clark
Clerk of Court
Orangburg County SC

**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 thereof.

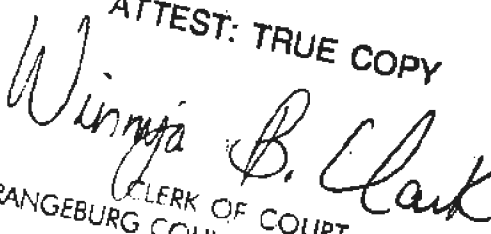

Applicant

SWORN or affirmed to and subscribed before me this

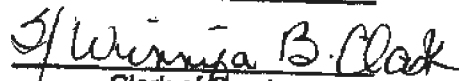
27th day of May, 2014


Notary Public

My Commission Expires: 4-27-2016

ATTEST: TRUE COPY

CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

FILED 5-14-14 @ 12:00pm


Clerk of Court
Orangburg County SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	IN THE FIRST JUDICIAL CIRCUIT
	)	
	)	
Lindy Lamont Jones, #335250,	)	Case No.: 2014-CP-38-0682
Applicant,	)	
	)	
v.	)	RETURN AND PARTIAL MOTION TO
	)	DISMISS
State of South Carolina,	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed by Lindy Lamont Jones ("Applicant") on May 14, 2014, would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. In April 2009, the Orangeburg County Grand Jury indicted Applicant for criminal sexual conduct with a minor, victim 16 years of age or under (2005-GS-38-1817). Sara Ford, Esquire, and Doug Mellard, Esquire, represented Applicant. Assistant Solicitors Bryan Jeffries, Esquire, and Tommy Scott, Esquire, prosecuted the case. On June 8-10, 2009, Applicant proceeded to trial before the Honorable James C. Williams, Jr. The jury found Applicant guilty of the lesser included offense of assault with intent to commit criminal sexual conduct with a minor. Judge Williams sentenced Applicant to imprisonment for sixteen years.

Applicant filed a timely notice of appeal. Elizabeth A. Franklin-Best, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on August 19, 2011. State v. Jones, Op. No. 2011-UP-396 (S.C. Ct. App. filed August 19, 2011). The remittitur was returned to the circuit court on September 8, 2011.

2011-CP-38-1240

In his first application, Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. "Counsel failed to properly object to jury charge."
2. "U.S. Constitutional Violation(s) 14th."
 - a. "Lack of subject matter."
 - b. "Denial of due process and equal protection."

Respondent filed its return on February 14, 2012. An evidentiary hearing into the matter was convened on October 31, 2012, at the Dorchester County Courthouse. Applicant was present at the hearing and was represented by Charles Williams, Esquire, appearing on behalf of C. Bradley Hutto, Esquire. Megan E. Harrigan, Esquire, of the South Carolina Attorney General's Office, represented the Respondent. On November 29, 2012, the Honorable Carmen T. Mullen, issued the order of dismissal denying Applicant's application for post-conviction relief.

On February 21, 2013, Charlie H. Williams, III, Esquire filed a petition for writ of certiorari in the Supreme Court of South Carolina on behalf of Applicant. The Supreme Court of South Carolina transferred the case to the South Carolina Court of Appeals. On March 21, 2014, by written order, the South Carolina Court of Appeals denied the petition. The Remittitur was issued on April 24, 2014.

Attached to this Return and incorporated by reference are the records of the Orangeburg County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, Applicant's previous PCR records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. ALLEGATIONS

In his second and current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. “Ineffective Assistance of PCR Counsel”
 - a. “PCR Counsel failed to subpoena witnesses/produce exhibits”
 - b. “PCR Counsel failed to file a timely motion to alter of Amend. 59(e)”
2. Austin Claim
 - a. “PCR Counsel failed to timely file for appellate review”

III. AUSTIN CLAIM

Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. Based on the Court of Appeals order, PCR counsel failed to timely file Applicant’s motion to alter or amend by December 27, 2012. Thus, the time to file Applicant’s notice of appeal was not stayed by Applicant’s motion to alter or amend and was due on January 14, 2013. PCR counsel filed Applicant’s notice of appeal on February 21, 2013. Respondent concedes PCR counsel erred and Applicant was denied his right to an appeal by that error. Therefore, Respondent does not contest Applicant’s Austin claim.

IV. SUCCESSIVE APPLICATION

Respondent submits all other allegations in the application for Post-Conviction Relief beyond Austin review should be summarily dismissed because it is a successive application for post-conviction relief and raises a claim that is not proper for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended

application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Respondent submits this application should also be dismissed because it raises a claim that is not proper for post-conviction relief.

Respondent interprets "ineffective PCR process" as ineffective assistance of counsel. Applicant's contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief and is not a sufficient claim to warrant a successive application. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722 (1991).

The South Carolina Supreme Court in Aice v. State held that the PCR rules "contemplate an adjudication on the merits of the original petition, one bite at the apple as it were." 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991) (citing Gamble v. State, 298 S.C. 176, 178, 379 S.E.2d 118, 119 (1989)). Finality must be realized at some point in order to achieve a semblance of effectiveness in dispensing justice. Id. at 451, 409 S.E.2d at 395. The Court in Aice further held that "the contention that prior PCR counsel was ineffective is not per se a "sufficient reason" allowing for a successive PCR application under § 17-27-90." Id. at 452, 409 S.E.2d at 394.

Respondent submits the Applicant's contention that prior PCR counsel was ineffective is not *per se* a sufficient reason warranting a successive PCR application under '17-27-90. This Court should summarily dismiss this allegation with prejudice.

V. STATUTE OF LIMITATIONS

Respondent submits that all allegations beyond Austin review should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant was sentenced on June 10, 2009. The remittitur was returned on September 8, 2011. This application was filed on May 14, 2014, which was well after the one-year statutory filing period expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, Respondent submits that this Court should summarily dismiss these allegations for failure to file within the time mandated by the Post-Conviction Procedure Act.

VII. CONCLUSION

WHEREFORE, Respondent moves to dismiss all allegations beyond Austin review in the application because they are successive, they were filed after the statute of limitations had expired, and they are improper because post-conviction relief is not the proper ground for Applicant's relief sought. Furthermore, Respondent requests an evidentiary hearing solely on the issue of Applicant's request for a belated appeal of his first application for post-conviction relief pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

RUSTON W. NEELY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

August 14, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	
	)	2014-CP-38-0682
	)	
LINDY L. JONES, #335250	)	
	)	
Applicant.	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL.
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D. Waller, Esquire
 Giese Law Firm
 1315 Blanding Street
 Columbia, SC 29201

DATED this the 14th day of August, 2017.



Deonna Rogers, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF ORANGEBURG) CASE NO. 2014-CP-38-0682
3 LINDY LAMONT JONES,)
4 Plaintiff,) Transcript of Record
5 vs.)
6 THE STATE OF SOUTH) Date: December 14, 2017
7 CAROLINA,)
Defendants.

8 * * * * *

10 B E F O R E:

11 The Honorable Kristi Harrington

19 * * * * *

21 Denise J. Lauder, RPR

22 Ninth Judicial Circuit

1 A P P E A R A N C E S

2

3 REPRESENTING THE APPLICANT:

4 JONATHAN D. WALLER, ESQUIRE

5 1116 Blanding Street

6 Suite 2B

7 Columbia, SC 29201-2840

8

9 REPRESENTING THE DEFENDANT:

10

11 RUSTON NEELY, ESQUIRE

12 S.C. Attorney General's Office

13 205 E Main St

14 Lexington, SC, 29072-3557

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1	INDEX	
2		Page No.
3	PROCEEDINGS.....	4
4	REPORTER'S CERTIFICATE.....	8

5

6

7

8

9

INDEX OF EXHIBITS

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(No exhibits were offered or
marked for identification.)

1 (The following proceedings were had
2 12/14/17, 11:19 a.m., Dorchester County
3 Courthouse.)

4 MR. NEELY: Your Honor, the next case
5 the State would call is Lindy Lamont Jones versus
6 the State of South Carolina. That is Case No.
7 2014-CP-38-0682.

8 THE COURT: All right.

9 MR. NEELY: It's my understanding that
10 Mr. Jones is asking for a belated appeal via State
11 v Austin. I'm in possession of an affidavit -- an
12 e-mailed affidavit by the attorney who admits that
13 his filing of the notice of appeal was one day late
14 as indicated by the order from the Supreme Court of
15 South Carolina; therefore, the State would have no
16 objection. It does consent to a belated review
17 under Austin v State for Mr. Jones.

18 THE COURT: Only under the Austin
19 claim; is that correct?

20 MR. NEEL: That's correct, Your Honor.

21 THE COURT: Mr. Waller, I'm happy to
22 hear from you.

23 MR. WALLER: Thank you, Your Honor.
24 You know, this case is a little bit procedurally
25 interesting to the extent Mr. Jones has already had

1 a post-conviction relief case. At the conclusion
2 of that case, his attorney attempted to file a
3 59(e) motion.

4 There were some arguments that were
5 taken differently than I believe were presented,
6 maybe some items left out. So Mr. Jones' attorney
7 attempted to file a 59(e); however, he filed that
8 too late and it was not preserved for appeal.

9 Your Honor, as you know, a 59(e) motion
10 was filed, the tolling of the time limits to file
11 an appeal did not take place and the appeal was
12 subsequently filed late as well. Mr. Jones had not
13 had an appeal; however, the issues that he had
14 intended to raise and preserve for appeal in that
15 59(e) motion are not preserved.

16 Your Honor, if he is allowed to have
17 the office review what I believe the State is
18 consenting to, we would ask the Court -- this Court
19 and the Court of Appeal to review their previous
20 cases of McCray v State, that's held at 408 SE2d
21 241, 305 S.C. 329; as well as Pruitt v State, 310
22 S.C. 254, 423 SE2d 127. That was a 1992 case.

23 And, Your Honor, we would ask the State
24 to take the position they held in Simmons v State,
25 416 S.C. 584, 788 SE2d 220. That's a 2016 case

1 where the State actually suggested that the Court
2 of Appeals remand back to the original PCR Court to
3 address the issues that were not preserved for
4 appeal.

5 Your Honor, Mr. Jones maintains and,
6 has the entire time I've represented him, he just
7 wants the original issues he raised ruled upon and
8 ruled upon the way they were presented. And so he
9 would ask that you grant the Austin review and that
10 the issues that were attempted to be raised in the
11 59(e) motion, however were not preserved, those be
12 addressed on the appeal as well.

13 THE COURT: Mr. Neely, anything else I
14 need to make a finding on the record about
15 concerning this matter? You agree that the PCR
16 counsel failed to timely file his motion probably
17 due to the holidays? Is that the understanding?

18 MR. NEELY: Yes, Your Honor. I believe
19 he filed on the 28th and it was due the 27th of
20 December. I don't believe the State can consent or
21 ask the Court to consider Mr. Waller's position
22 until it's on appeal; however, we are consenting to
23 the Austin grant and the attorney's mistake of
24 filing the notice of appeal one day late.

25 THE COURT: All right. Mr. Waller,

1 anything further?

2 MR. WALLER: Nothing further, Your
3 Honor.

4 THE COURT: And you will prepare the
5 order?

6 MR. WALLER: I will, Your Honor.

7 THE COURT: All right. Mr. Jones, good
8 luck to you.

9 THE APPELLANT: Thank you.

10 THE COURT: Thank you.

11 (These proceedings were concluded at
12 11:24 a.m.)

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1 CERTIFICATE OF REPORTER

2

3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereto affixed my
12 official seal this 27th day of September, 2019 at
13 Charleston, Charleston County, South Carolina.

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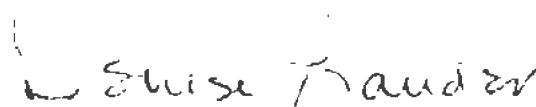
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Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
February 27, 2028

FILED FOR RECORD
WINNIE B. CLARK

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG) FOR THE FIRST JUDICIAL CIRCUIT

Lindy Lamont Jones, #335210) CA No. 2014-CP-38-0682
Applicant)

CLERK OF COURT
ORANGEBURG, SC

vs.)

**AMENDED¹ CONSENT ORDER GRANTING
RIGHT TO SEEK BELATED APPELLATE
REVIEW PURSUANT TO AUSTIN V. STATE²**

State of South Carolina,)
Respondent.)

This matter comes before the Court by way of an application for post-conviction relief filed on May 14, 2014, by Applicant Lindy Lamont Jones, seeking belated appellate review of the denial of his initial post-conviction relief action. In response, Respondent made its Return on August 14, 2017. An evidentiary hearing on the matter was convened on December 14, 2017, before the Honorable Kristi L. Harrington, then-circuit court judge. The sole issue before the Court was whether Applicant was entitled to seek belated appellate review of the denial of his first post-conviction relief action pursuant to Austin and the State consented to their limited relief. At the conclusion of the hearing, Judge Harrington granted relief and asked Applicant to submit a proposed order for the Court's review.

It appears Judge Harrington then signed an order granting Applicant the right to seek belated appellate review and this order was sent to the Orangeburg County Clerk of Court for filing. The public index reflects that a "Consent Order Granting Right to Seek Belated Appellate Review" was filed on May 7, 2018, but a copy of this order was not sent to either party.

¹ As will be discussed below, an original order granting Applicant the right to seek belated appellate review was signed by Judge Harrington and sent directly to the Orangeburg County Clerk of Court's Office for filing, and there is a notation on the public index that the order was filed on May 7, 2018, but the Clerk's Office cannot find a copy of the order. Neither party has a copy of the order, and, accordingly, this amended order is being issued with the consent of both parties.

² Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991)

Additionally, the order cannot be located by the clerk's office.

Judge Harrington then retired from the bench before the original order could be located or an amended order was issued. Accordingly, this Court is issuing this order pursuant to Rule 63, SCRPC, with the consent of both parties. As provided in Rule 63, SCRPC, this Court has been provided with and thoroughly reviewed the entire record, including the transcript of the evidentiary hearing before Judge Harrington. After this review of the record, this Court certifies familiarity with the record and determines that the matter may be completed based on the record without prejudice to the Applicant or Respondent. Moreover, this Court determines Applicant has established he is entitled to seek belated appellate review of the denial of his first post-conviction relief proceeding. Specific findings of fact and conclusions of law are set forth below as required pursuant to S.C. Code Ann. § 17-27-80.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted at the April 2009 term of the Orangeburg County Grand Jury for criminal sexual conduct with a minor-victim 16 years of age or under (2005-GS-38-1817). He was represented by Assistant Public Defenders Sara Ford and Douglas Mellard of the Orangeburg County Public Defender's Office. Assistant Solicitors Bryan Jeffries and Tommy Scott of the First Circuit Solicitor's Office prosecuted the case. On June 8-10, 2009, Applicant proceeded to a jury trial before the Honorable James C. Williams, Jr., circuit court judge, wherein Applicant was convicted of the lesser-included offense of assault with intent to commit criminal sexual conduct with a minor. Applicant was sentenced by Judge Williams to a term of imprisonment of sixteen years.

A notice of appeal was filed on the Applicant's behalf. Appellate Defender Elizabeth A.

Franklin-Best of the South Carolina Commission on Indigent Defense-Office of the Appellate Defense represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on August 19, 2011. State v. Jones, Op. No. 2011-UP-396 (S.C. Ct. App. filed August 19, 2011). The Remittitur was returned to the circuit court on September 8, 2011.

First PCR Application: 2011-CP-38-1240

Applicant filed his first PCR application, alleging the following grounds for relief:

1. Ineffective assistance of counsel.
 - a. "Counsel failed to properly object to jury charge."
2. "U.S. Constitutional Violation(s) 14th."
 - a. "Lack of subject matter."
 - b. "Denial of due process and equal protection."

Respondent filed its return on February 14, 2012. An evidentiary hearing was held on October 31, 2012, before the Honorable Carmen T. Mullen, circuit court judge. Charles H. Williams, III, Esquire, appearing on behalf of C. Bradley Hutto, Esquire, represented Applicant. Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office, represented Respondent. Judge Mullen denied and dismissed the application with prejudice by written order signed November 29, 2012, and filed on December 6, 2012. Applicant, though counsel, was served with this order on December 12, 2012.

On December 28, 2012, Applicant filed a *pro se* motion pursuant to Rule 59(e), SCRCPP, to alter or amend the judgment. On January 11, 2013, counsel Williams filed a subsequent motion to alter or amend. Respondent made its return to the motion and asked that it be summarily dismissed as untimely and without merit. By order filed on February 11, 2013, Judge

Mullen issued an order summarily dismissing the motion as untimely and without merit.

Applicant then filed an appeal of the denial of his post-conviction relief action. The Supreme Court of South Carolina transferred the case to the South Carolina Court of Appeals pursuant to Rule 243(l), SCACR. On March 21, 2014, the South Carolina Court of Appeals dismissed the appeal as untimely. The Remittitur was issued on April 24, 2014. Applicant then attempted to file his own *pro se* motion to reinstate the appeal, which was stricken because he was represented by counsel.

ALLEGATIONS IN CURRENT ACTION

In his current application, Applicant alleges he is being held in custody unlawfully for the following reason:

1. "Ineffective Assistance of PCR Counsel"
 - a. "PCR Counsel failed to subpoena witnesses/produce exhibits"
 - b. PCR Counsel failed to file a timely motion to alter of Amend. 59(e)"
2. Austin Claim
 - a. "PCR Counsel failed to timely file for appellate review"

Respondent made its return on August 14, 2017, consenting to Applicant's ability to seek belated appellate review pursuant to Austin. Attached to this return were the records from Applicant's general sessions matter, direct appeal, prior post-conviction relief action and subsequent appeal, and the records from this current action.

This Court has reviewed all these records in addition to the transcript from the proceeding before Judge Harrington in accordance with Rule 63, SCRCP.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety, including the transcript from the evidentiary hearing. After this thorough review of the record as required under Rule 63, SCRCP, this Court finds no additional proceedings are necessary and a ruling can be rendered based on

the record. Furthermore, this Court determines Applicant has established he is entitled to seek belated appellate review of the denial of his first post-conviction relief proceeding. Specific findings of fact and conclusions of law are set forth below as required pursuant to S.C. Code Ann. § 17-27-80.

Applicant alleges he was denied the right to seek an appeal following the dismissal of his previous post-conviction relief application. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his or her PCR application.

After review of the facts and circumstances surrounding the waiver of Applicant's right to appeal the denial of allegations in Applicant's post-conviction relief application, the parties below have consented to the granting of an appeal of Applicant's first post-conviction relief application (2011-CP-38-1240) pursuant to Austin. The parties agree Applicant did not voluntarily waive his right to seek an appeal of the post-conviction relief court's denial and dismissal of Applicant's first application for post-conviction relief. Based on the documents submitted from the previous PCR file, it appears to the parties and this Court Applicant did not freely and voluntarily waive the right to appeal his first application for post-conviction relief, and PCR counsel failed to file a timely Notice of Appeal of the application.

At the hearing before Judge Harrington, Counsel for Applicant attempted to argue Marlar v. State, 653 S.E.2d 266, 375 S.C. 407 (S.C., 2007), McCray v. State, 408 S.E.2d 241, 305 S.C. 329 (S.C., 1991), Pruitt v. State, 423 S.E.2d 127, 310 S.C. 254 (S.C., 1992), and Simmons v. State, 788 S.E.2d 220, 416 S.C. 584 (S.C., 2016) in support of Applicant's position that the issues not ruled upon in his original PCR should be ruled upon. Judge Harrington previously found this issue was not properly before the Court and as such declined to rule on Applicant's

arguments. This Court agreed.

Based upon the foregoing, this Court finds granting Applicant's request to seek belated appellate review of his first PCR (2011-CP-38-1240) pursuant to Austin, is warranted. Counsel for the State and Applicant's current PCR counsel consented to the granting of leave to pursue a PCR appeal in this matter. Applicant's current PCR counsel is instructed to file a Notice of Appeal with the South Carolina Supreme Court pursuant to Rule 243, SCACR.

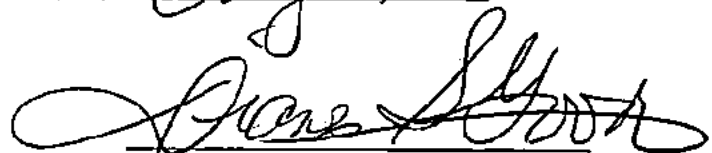
This Court also grants Respondent's motion to dismiss, with prejudice, all allegations beyond Austin review as they are successive, filed after the expiration of the statute of limitations, and are improper because they fail to state a claim cognizable under the Uniform Post Conviction Relief Procedure Act. S.C. Code Ann §17-27-10 to -160.

IT IS THEREFORE ORDERED:

1. Applicant remain in the custody of the South Carolina Department of Corrections; and
2. Applicant is granted the right to seek a belated appellate review of his initial post-conviction relief action (C/A No. 2011-CP-38-1240) pursuant to Austin.

AND IT IS SO ORDERED this 18 day of August, 2021.

 South Carolina.


DANE S. GOODSTEIN
Resident Judge
First Judicial Circuit