

Original PCR Application

Amendment to Application
by Ola Johnson

FORM 5

STATE OF SOUTH CAROLINA

County of Kershaw

James Wayne Miller

Full name and prison number (if any) of Applicant

#367454
v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2019-CP-28-2

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make 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 Broad River Correctional Inst
2. Name and location of Court which imposed sentence Kershaw County
Courthouse, Camden, S.C.
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-GS-28-1381
 - (b) 2012-GS-28-1382

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MAR 03 2023
S.C. SUPREME COURT

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2019 MAR 11 PM 2:06
JAMES C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

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2019 MAR 11 PM 2:26

JANET C. HASTY
CLERK OF COURT
MERCER COUNTY S.C.

5. The date upon which sentence was imposed and the terms of the sentence:

(a) March 18, 2016 10 years + 20 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. S.C. Court of Appeals

ii. S.C. Supreme Court for Writ of Certiorari

iii. _____

(b) the result in each such Court to which you appealed:

i. denied

ii. denied

iii. _____

(c) the date of each such result:

i. 5-24-2018

ii. 9-21-2018

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. unknown

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: see attachments (8 pages)
- (a) unlawful arrest/police brutality
- (b) ineffective Counsel
- (c) judge bias

11. State concisely and in the same order the facts which support each of the grounds set out in (10): see attachments (8 pages)
- (a) _____
- (b) _____
- (c) _____

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CLERK OF COURT
BERKLEY COUNTY, S.C.

12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

- 5
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) my appellate attorney said these issues were
(b) more for PCR than the direct appeal.
(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
(b) your trial, if any? Yes
(c) your sentencing? Yes
(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

Yes - Appeal

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. Neil Riley - (Public Defender)
Kershaw County Courthouse, Camden, SC
ii. Anna Rawl Good, LLC - (Trial Court)
Law Ofc of Victor Li, 2127 Park St, Columbia, SC 29201-213
iii. Susan Barber Hackett Appellate Defender
P.O. Box 11589, Columbia, SC 29211-1589

- (b) the proceedings at which each such attorney represented you:

- i. initial Bond hearings

- ii. Trial Court

- iii. Appellate Defender

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**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress:
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

James W Miller
Applicant

SWORN or affirmed to and subscribed before me this
6th day of March, 2019.

Jerome A. Wasy
Notary Public

My Commission Expires: March 8, 2028

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JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

19. State clearly the relief you seek in filing this application:

I am requesting Post Conviction Relief for a new & fair trial with proper and thorough representation of my innocence.

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of _____)

VERIFICATION

JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

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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.

James W Miller

SWORN to and subscribed before me this 6th day of March 2019.

Gerrit W. Wasfi (L.S.)
Notary Public

My Commission Expires: March 8, 2020

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- a. I believe that my arrest was unlawful and that I experienced police brutality.
- b. My counsel did not advocate for my basic civil rights inside the court room
- c. My counsel did not defend that my basic needs be met in the court room
- d. My counsel did not plan or prepare for my defense
- e. My counsel did not meet with me to prepare and counsel me for my defense
- f. My counsel failed to investigate or call witnesses at hand for my defense
- g. My counsel would not allow me to testify for my defense
- h. My counsel erroneously allowed my police interrogation video to be submitted to the court.
- i. My counsel failed to object to statements in closing argument by the solicitor or present my requested statements/questions in her closing argument.
- j. The Judge showed bias to my defense.

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CLERK OF COURT
Kershaw County, S.C.

11.

a.

1. I was arrested without probable cause, and due only to an accusation made by my angry and very upset 17 year old daughter, and the officers assuming that I was guilty because I surrendered voluntarily. There were 3 officers walking briskly toward me with their hands on their guns and my Daughter said to me that they were there for me. I had a holster on and I wanted to make sure that they knew that I was not armed. The officers said that I acted as if I knew why they were there. My wife had just told me that they were there so she could file a report on a gun that we had lost while horseback riding and that she would take care of it. She even went out with the gun box in her hand. I had no reason to think otherwise. She testified to this along with other statements that would have validated my actions if my counsel would have re-cross examined her and the officers. I thought that I or we, were in trouble for the lost gun since I, and those in my house were not allowed to have guns present. My wife purchased the guns.

2. The RO put me in the back of the police car in August with the windows up. He then proceeded to turn the heat on and left me locked in. (He offered testimony without being ask, that the air was on). I had on long jeans and apparel suited for horseback riding. I still

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have the clothes in reserve. I asked my counsel repeatedly to get the dash cam video. The light was blinking. I also was not read my Miranda Rights in the car as the RO claimed.

b.

My counsel failed to request specific instructions concerning my appearance in the courtroom. I was taken back into custody at the start of the trial without warning, even though I had not violated my probation for 3 years, with and without an ankle monitor. I was not given fresh clean clothes or grooming items for the entire duration of the trial. I wore the same dirty suit every day in court. The jail put me in the drunk bin with another man with only a metal or concrete bench. I slept in my wheelchair sitting up. I was not given a shower or any grooming items. I could not shower, shave, or brush my teeth for the entire week. My clothes and beard were unkempt and my hair was dirty. They also took the band that held back my hair causing it to randomly fall in wiry strings. It was as if they all wanted me to look like a dirty man. I was dirty, tired, hungry, and in severe pain.

c.

1. My counsel failed to make sure that my basic needs be met in the courtroom. I was in severe pain from a recent back injury that occurred while I was hauling lumber and building a two story deck. I had a Doctor's note to excuse me from work and school that my attorney withheld from the Judge. The Judge ordered a shock belt to be put on my waist for no apparent reason, further intensifying my pain. I was already in a wheel chair and could not walk. I was given no breaks even though the judge said at the beginning, that she would take frequent breaks in order for me to be more comfortable. No one followed through on this. When there were breaks, I sat in the courtroom alone (except for the guard) with no water, food, or bathroom breaks, causing me much discomfort and constipation, which further intensified my pain. My attorney ask if I was getting lunch on the first day and the judge said that it would have to come from the jail, but no one followed through. The last day after observing me, my aunt stayed in the courtroom while the others left. She loudly asks me if I had eaten anything. I discreetly shook my head fearing that I would get shocked. (I had only 2 small breakfasts at the jail for the entire week, no lunch, and no supper since it had already been served when I got back to the jail.) She then asks the officer why I was not getting food, for which he replied, "That he had no orders for food or breaks for me". She then demanded that it was my basic civil right to be provided food. He left and came back approx. 30 minutes later with a brown paper bag containing 2 bologna sandwiches. I had started eating one when the judge entered and the court was in session, so I could not finish. Please check the courtroom video.

2. The judge said that I could only have one of the 4 medications that my doctor had prescribed but the jail would not release it saying that they don't administer narcotics at the jail. It wasn't until the last day before deliberations began, that my attorney asks that I be allowed something for my pain. The judge replied that while she wasn't a doctor, she "knew" that those meds should not be taken together (even though they were legally prescribed) and allowed me to take one of my prescribed meds before I left.

d.

1. My Counsel had a large file of pictures, social media posts, private messages, and letters from people (describing to me what was going on) that were presented to her from family and friends that would have called the victim's and her mother's credibility into question. These items would have contradicted many inconsistent statements that my accusers made while testifying, had she presented them. One example was that my accusers claimed that they were isolated and had no friends. They had many friends and were supervised, not isolated, which the many pictures would have revealed. She also withheld pictures, comments and private messages that would have raised doubt regarding the other testimonies of my accuser's. My counsel failed to investigate other concerns that she was made aware of through the years. I preserve other examples that were withheld in court to discuss with counsel.

2. My counsel waited until the Friday before court was to begin on Monday to get the discovery. I had requested for her to release the discovery documents throughout the 3 years for my family and I to review in order to offer important information. She ignored my requests. There are many statements that I and others could have challenged if we had been given access to the discovery. From what I remember, the judge ruling at my bond hearing told the solicitor to have the full discovery and DNA investigation available in 30 days. That was 3 years prior. My attorney never followed through on this order. In court it was clear that my attorney had not spent much time reviewing the discovery contents, or the other information that she was given in detail. My aunt received a copy several weeks after trial. I still have not seen the discovery.

3. My counsel failed to seek records from DSS, Hospital Visits, or follow up exams.

4. My attorney went to trial with no co-counsel. She had said before that she would have assistance. My aunt told her on the first day (Monday) that she (attorney) was not prepared and needed help especially since there were 2 working for the prosecution and that they were prepared. She replied "It's okay; the jury will see the 2 solicitors as bullying since I am alone." This can be confirmed.

FOR RECORD
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JANET G. HARTY
CLERK OF COURT
PERMAN COUNTY, NC

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e.

1. My counsel had 3 years to prepare me for a defense. She waited until the Thursday before court to make a morning appointment, even though we kept inquiring to meet with her over the years. That Thursday morning, I could not stand, walk or drive. My aunt sent repeated requests to give us another time to come so that she could drive from Charlotte, N.C., to pick me up in Camden, and then drive me to Columbia. She (my aunt) also asks if she could come and consult with my attorney herself and have me on audio or video. She did not respond except to say that she had to pick up the discovery the next day (Friday).

2. During the trial breaks, she (attorney) did not consult with me in preparation, ask questions, or review my files. Instead she was reading a book.

f.

1. My counsel would not contact or prepare any witnesses for my defense, this was requested along with a list of people, several times during the 3 years, and again on the first day of court. During the trial, there were people present, (family and friends) who were willing to testify on my behalf. The first day of court, my aunt told her that the prosecution was prepared and that she (attorney) was not, and that she needed to call witnesses. My aunt also mentioned that the social worker from DSS was not there and that she needed to be subpoenaed. She replied something to the effect of, their case being weak and her strategy was to challenge their evidence. The state did not call DSS to testify. All of this can be confirmed.

2. My attorney failed to subpoena Sally Williamson, the forensic interviewer. The statements that were made to her by both daughters were different than in the testimonies that they gave in court and could have brought such testimony into question. The state did not call Sally Williamson.

3. My attorney failed to advise me, and schedule a polygraph and mental exam, even though she was requested to by my aunt. I also requested a polygraph several times while being held in detention after my arrest.

Note: The only witness that the prosecution could find to testify against me was my next door neighbor who also hated me due to property disputes. There were several witnesses in court that loved me, and my family, that would have testified on my behalf.

g.

1. My counsel would not allow me to testify even though I made several requests to do so. She also told my supporters in the courtroom to convince me to not get on the stand due to

my condition and because I was not prepared (this can be confirmed). She had just ask the Judge to allow my pain meds due to my discomfort (pg 555 556).

2. The jury did not have the needed opportunity to hear me declare and argue for my innocence, where there was no evidence, only negative DNA, and where the circumstantial evidence was not overwhelming, and mainly based on opinions, hypothesis, and phenomenon. I preserve further details to discuss with counsel.

h.

My counsel allowed my police interrogation video to be presented as evidence even though I had requested an attorney, lawyer or counselor (counsel) several times in the interview while continuing to be interrogated. She also did not object to a redacted version of the interview to be shown to the jury, where as my request for help, a lawyer, attorney, and counselor was redacted.

i.

1. My counsel failed to re-cross examine witnesses after inaccuracies were made.

2. My counsel failed to bring up comments made by the investigators in my case and discrepancies in their testimony and written statements.

3. My counsel failed to question diagnostic comments from the medical doctor, Dr. Susan Luberoff, or to seek other expert opinion in the matter.

4. My counsel failed to ask Dr. Susan Luberoff very obvious questions as to this accusation and the physical exam or seek other expert opinions. She said she was saving the obvious questions to bring up in her closing statements, which she did not.

5. My counsel failed to re-cross examine Dr. Susan Luberoff after she changed her statement (pg 355, 356) from saying that her diagnosis was based on what she was told and not from the exam evidence itself. There are more matters concerning this exam that I would like to discuss with counsel.

6. My counsel failed to re-cross examine the police officers comments that were based on assumptions, after the testimony of the accuser and her mother, that would have brought their credibility and actions into question. I would like to discuss this further with counsel.

7. My counsel did not object to inaccuracies (falsehoods and misquotes) presented in the solicitor's closing arguments. I would like to further approach this with counsel.

01 MAR 2019
JANET C. ASHLEY
CLERK OF COURT
KERSHAW COUNTY, SC
MAR 11 AM 2:06

8. My counsel did not object to the prosecutor emphasizing to the juror's, in her closing statement that my accuser did not need to corroborate her story by additional evidence. I believe that this statement took the burden to consider unreasonable doubt away from the jurors.

9. My counsel did not object to my accuser's twin sister testifying in the presence of her mother in the courtroom. This twin daughter was initially in support of me. She was afraid of her mother finding out that she had called her aunt and my aunt to tell them what was happening. (These witnesses would have testified to such if they had been allowed). My attorney was aware of this due to an email and a phone conversation that was sent to her, (attorney) concerning this before my bond hearing, which my daughter attended. She also visited me in jail. I believe her testimony was a result of her being intimidated with her mother's presence in the courtroom. (The judge did allow the victim and her mother to be sequestered from each other's testimony).

10. In closing argument, we had requested that my attorney add a very important question to her argument, for which she left out. After the closing argument, my aunt asks her why she left out the most obvious and important "piece of the puzzle" of the entire trial. She replied, "I forgot, but the jurors will figure it out". They didn't.

11. My counsel seemed disinterested in my defense and treated me with disregard at trial. She frequently brought up questions while cross examining witnesses and then just dropped the matter, and moved on without pause. She also failed to recognize the many contradictory statements that she could have revisited during cross or used in re-cross examinations had she sought them. At the beginning of trial, she commented to me that she and the solicitor were neighbors and played ball together. She, the solicitor and the judge were friends on social media. I believe this affected her performance in my defense and I (and others) viewed her actions as seeming to not want the judge or solicitors to be upset with her.

J.

1. I believe that the judge was biased toward me from the beginning with regard to my treatment, my appearance, my basic needs, and comments made.

2. I believe that the jurors were pressured to save time and come to a verdict before going into weekend deliberations. To begin with the judge commenting to the jurors before deliberation "I do not anticipate this trial going beyond this week if anyone was concerned about it bleeding over into Monday, that's not any sort of anticipation. That's not on the radar screen that that would happen in this case". (pg 552, line 18-21)

3. The jurors were struggling. They came back with a request (2:45, pg 636) to see the transcripts of mother Tammy and daughter Britly and daughter Breana, the interview videos, State's comments from closing statements, Officer Dill's testimony, Officer Houser, and Arc's doctor statement. She commented that that was a lot of testimony that would take a lot of time, and perhaps they could whittle it down. (My counsel failed to argue this). The judge told the juror's that that would be hours of testimony and sent them back to review their request. They came back with a smaller requests thereby deleting all above, except for Britly and the mothers testimony, and the first 3 arresting officers. I believe that it would have been favorable to my defense for the juror's to review the Arc doctor, Breana, and Officer's Dill's testimony. My attorney failed to object.

4. At 5:05 the jurors requested to "SEE" the laws for reasonable doubt (pg 640, 641). The judge again discouraged this by saying that she was suppose to send the entire charge but she had a lot of scratch outs that she would have to go edit, and that there's nothing wrong with her just rereading the reasonable doubt portion to them. My counsel failed to argue this even though the jurors requested to seeing it on paper. Some people (like me for instance) understand writing better than listening. The jurors also questioned how long they would be staying tonight. The judge told the jurors that we are here for the long haul as long as it takes until you come to a verdict. (pg 644 6-11)

5. 8:00 the jurors ask what if you don't feel persuaded and your decision is final (pg 645, 14-15). The judge seemed agitated, and replied, "When I declare a mistrial, nobody wins. It means that this case is going to be retried and 12 other people will sit in the very same seats that ya'll are sitting in and hear the same testimony and evidence that ya'll received, and there's no reason to think that they would be smarter or more capable to reach a verdict." (pg 646, 1-10). She then later reneged on staying for the long haul, and said that they would break at midnight, until noon the next day.

She later said, again, (pg 647, 19) "Like I said, Nobody wins when there is a mistrial, okay"? I think that the jurors were intimidated by these comments. (I later found out that she was not well during my trial.)

6. Next day. A request was made for more testimony regarding Dr. Luberoff findings and what the findings say equivocally (pg 649, 18-22.) and the hard copy of the definitions of the charges. One juror was reported for writing notes outside of the courtroom. The judge said well, I don't need to see your notes as long as they are just your feelings and thoughts (pg 653, 25). The notes were neither examined nor recorded. My attorney failed to inspect the notes.

7. Around 4:15-4:30 my attorney said that the judge was going to talk to the jurors one more time. At 4:42, on Friday evening, they came back with a verdict, as predicted by the judge, before the deliberations began. What did she say to the jurors on her last visit.

8. Page 670, 14-19. After the verdict was read and before sentencing, the judge quoted, "I think my sentence speaks for itself, but I do want to say one thing that I think is important and that is to Ms. Maynard. "I believe you. I believe you." Some of the jurors were viewed as being distressed outside of the court by others. I request that the jurors be interviewed regarding feeling pressured to come to a verdict before Friday evening and what did the judge say during her last visit to them, on Friday evening before the 5:00 closing.

I believe and preserve, that there are additional claims with supporting evidence for PCR but I do not have collateral counsel, or the funds for expert services and investigative claims that were neglected to be done before trial.

This PCR claim is later than I would have liked to submit, due to frequent extended lockdowns, preventing me from gathering info, communicating, and seeking advice. I am innocent. I have never touched or been accused of touching anyone inappropriately in my entire life of 42 years. Please send counsel.

FOR RECORD
2019 MAR 11 PM 2:26
JACOB C. HASTY
CLERK OF COURT
SARASOTA COUNTY, S.C.

16

STATE OF SOUTH CAROLINA)
)
) IN THE COURT OF COMMON PLEAS
COUNTY OF KERSHAW)
) FIFTH JUDICIAL CIRCUIT

JAMES WAYNE MILLER,)
)
) CASE NO.: 2019-CP-28-00236

Applicant,)
)
)

v.)
)
)

CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA,)
)
)

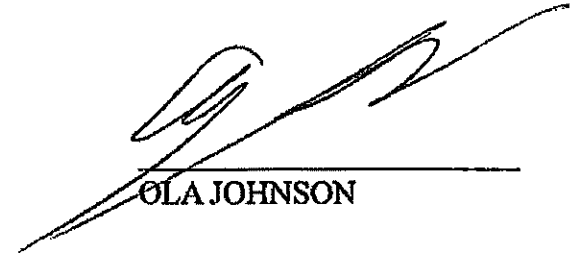
Respondent.)
)
)

FILED FOR RECORD
2022 MAR 21 AM 11:29
JAMES Q. HASTY
CLERK OF COURT
KERSHAW COUNTY, SC

I, Ola Johnson, hereby certify that on March 18, 2022, I served a copy of the
AMENDMENT TO APPLICATION FOR POST CONVICTION RELIEF on William Blitch,
Assistant Attorney General by email and by depositing the same in the U.S. mail to the following
address:

William Blitch, Assistant Attorney General
SC Attorney General's Office
P.O. Box 11549
Columbia, S.C. 29211

318-22
Date


OLA JOHNSON

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF KERSHAW	)	FIFTH JUDICIAL CIRCUIT
 JAMES MILLER,	)	 CASE NO.: 2019-CP-28-00236
	)	
Applicant,	)	
	)	
v.	)	AMENDMENT TO APPLICATION
	)	FOR POST CONVICTION RELIEF
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

FILED FOR RECORD
2022 MAR 21 AM 11:29
JANET C. HASTY
CLERK OF COURT
Kershaw County, S.C.

Applicant, by and through his undersigned attorney, hereby amends his application for Post-Conviction Relief. This amended complaint adopts and includes all grounds in the original application filed March 11, 2019, by Applicant. Applicant further alleges as additional grounds regarding his claim of ineffective assistance of counsel as to Anna Good and Susan B. Hackett as follows:

1. Applicants counsel Good failed to get trial continued due to applicants pain medication from Dr. Julie Taylor and failed to present paperwork related to this to the trial judge.

2. Appellate counsel raise the issue of judge allowing hearsay from Cpl. Brooks Houser re victims mothers statement to him re victims statements (p122, line14).
3. Applicants counsel Good failed to object to hearsay testimony from Officer Houser regarding CAD information "mother had found out recently that her husband had forced their daughter to have sexual intercourse" (p120, Line 11-13) and defendants statement "whatever she says, that's what happened. If she said it, it's not a lie". (P.125, Line 17-19 p.133, Lines 9-10).
4. Applicants counsel Good failed to object to hearsay testimony from Officer Houser regarding victims statement.(p131, Line 24-25, p132, Lines 1-8).
5. Applicants counsel Good failed to object to hearsay testimony from Officer Scott regarding defendants statement "whatever she says, that's what happened. If she said it, it's not a lie". (P.147, Line 19-20).
6. Applicants counsel Good failed to object to hearsay and to object to the solicitor misstating testimony by asking Officer Hathaway about defendant stating "whatever she says is true" (166,Lines 14-15) following testimony by Hathaway defendant stated "whatever she said" (p164, Lines 5-6).
7. Applicants counsel Good failed to object to testimony from the victim regarding the Applicant showing her a "porn video" as evidence of other crimes that the Applicant was not on trial for (p 217, Line 16-21).

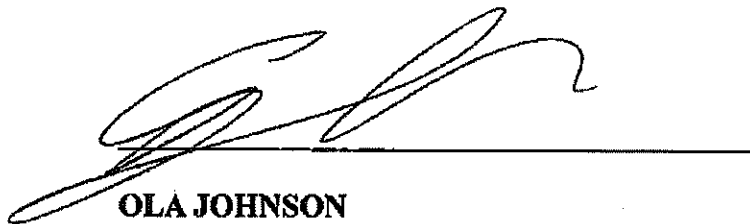
8. Applicants counsel Good failed to object to hearsay testimony from Tammy Price regarding victim answer to the question "is he touching you", "every day" (p 299, Lines 1-2) and statements from victim regarding the assault (p 310, Lines 17-21, (p 311 Lines 10-18).
9. Applicants counsel Good failed to object to hearsay testimony from Tammy Price regarding defendants statement "it wasn't all his fault" (307, Lines 3-5).
10. Applicants counsel Good failed to object to hearsay testimony from Tammy Price regarding defendants statements as hearsay and evidence of other crimes stating "just make it go away. I will pay you whatever you want" (p 311 Lines 25, p 312 Lines 1-3).
11. Applicants counsel Good failed to object to hearsay testimony from Tammy Price regarding defendants statements as hearsay and prejudicial regarding statements religious views and reading the Bible (p 313, Lines 5-14).
12. Applicants counsel Good failed to object to improper bolstering offered by the states witness Dr. Susan Luberoff regarding her review of a medical examination of the victim along with "her (victims) history" to be "consistent with sexual abuse" (p. 352, Lines 12-14). (*Farid A. Mangal v. State of South Carolina*, 781 S.E.2d 732).
13. Applicants counsel Good failed to object to a leading question and prejudicial statement calling for speculation by the witness Martha Penrod "what part of James body was touching (victim) ?" "So would that be his genitalia?" Followed by the answer "yes I guess you could say that" (p 452, Lines 9-10, 14-15).

14. Applicants counsel Good failed to object to hearsay by Capt. Steven Knafelc "I received a phone call from Tammy, She just told me of something on some carpeting some bed spreads" (p465, Line 3-5).
15. Applicants counsel Good failed to call an expert in child abuse assessment or child abuse pediatrics to counter the opinions of the states witnesses in these areas. *Bobby Joe Reeves v. State of South Carolina* 782 S.E. 2d 747.
16. Applicants counsel Good failed to object to the admissibility of defendants statement and to a leading question to Inv. Dill by the state, "did he say he needed to get his story on the same page as hers ?" (p532, Lines 21-23).
17. Applicants counsel Good failed to object to the jury charge as unconstitutionally coercive for failing to instruct the jury that they should not surrender their conscientiously held beliefs simply for the sake of reaching a verdict . Also the charge mentioned that the case would have to be retried in the event of a mistrial (p. 645, Line 24,25 to p. 646 Lines 1) and did not advise the jury that they have a right to not reach a verdict. *The State v. Billy Lemurces Taylor*, 829 S.E.2D 723.
18. Applicants counsel Good failed to object to the states closing as instructing the jury as to the law under S.C. Code Sec. 16-3-657 as prejudicial and as it caused confusion and an unconstitutional comment on the facts not allowed in a jury charge. (p.568, Lines 14-17) *State v Witherspoon* 795 SE2d 685 (S.C. 2016).

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19. Applicants counsel Good failed to call character witnesses for the defense including Michael B. Norwood.

20. Furthermore, the Applicant requests that he be permitted to Amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



OLA JOHNSON

Attorney for Applicant

P.O. Box 549

Lexington, SC 29071

803-360-8692 Phone

olajohnsonlaw@gmail.com

This 18 day of March, 2022

The Supreme Court of South Carolina

PRO SE Response

James Wayne Miller (00367454)

Petitioner

Vs

South Carolina

Case No. 2019-CP-28-00236

Appellate Case No: 2022-000753

Dear Honorable Justices of The Supreme Court of South Carolina,

My name is Pamela Edwards. I am helping James Wayne Miller with this opportunity to submit a Pro Se response to the denial of PCR and Writ of Certiorari. As is the case of many inmates, James was at a loss as to how and where to start, could gain no assistance or guidance from any other sources, including the law library, and did not have access to important documents and discovery that were denied him concerning this trial. This is combined with the fact that he cannot sit for long hours due to his deteriorating medical condition, including an unattended back injury and the mental effects of the chronic pain. I could find no instructions of how to construct this properly either, so I have written a response to the dismissal from the PCR court and the incorrect statements from Anna Good Browder, with each page in order along with other information that was neglected to be presented at both trials. I apologize for any errors in the construction. I simply did not know how to do this properly.

I would also like to clarify that the phone ringing at the beginning of PCR court was not mine and was only assumed to be mine by the court reporter.

Note: Defense Attorney Anna Good is now Anna Good Browder. Since she was Anna Good during trial and on the trial transcript, I refer to her as Anna Good or just Anna.

Cathy Harrelson is now Cathy Payne, but I refer to her as Cathy Harrelson or just Cathy.

Tammy Miller is now Tammy Price but I refer to her as Tammy Miller or just Tammy.

PCR Dismissal, Issues Before This Court, PCR Application

Dismissal Pg 17, Ln 9. Ineffective assistance of counsel for counsel Good's failure to object to hearsay and to object to the solicitor misstating testimony by asking Officer Hathaway about defendant stating "Whatever she says is true"

Response: (Tr. pg 166, Ln. 14-16). Cavanaugh, "And again the person that you heard at Wild Turkey Lane saying "whatever she said is true, whatever she said is true, can you point him out?" *What Hathaway actually said*, (Tr. pg.164, Ln. 5-6) Officer Hathaway, "I overheard him say several times whatever she said. Whatever she said." This was deceptive and bolstering for Cavanaugh to insert "true" to the comments. It was a ploy that she used throughout the trial, especially in her closing argument. What part registered in the minds of the jurors? These statements by the State were conveying to the jurors that the officers believed what the mother, Tammy, had "told" them since they had not yet spoken to the victim. Tammy did not inform the officers that she had just told James that they were there for the lost gun report, which she validated on Tr. pg. 301, 307. The statement from the officer also became hearsay and was verified as to that, after Tammy's testimony. If Anna had reviewed the officer's actual statements, (which were still bolstering) she would have known this. Hathaway heard these statements from talking to the other officers when he arrived at the scene, as argued further down. Anna failed to object to a false, bolstering, hearsay, comment.

Dismissal Pg 19, 20, "This court has heard the testimony presented at the hearing and was able to observe the witnesses presented, which allowed the Court to scrutinize the credibility of all witnesses presented.

Response: I find this comment coming from a judge to be highly derogatory against Mike Norwood and myself, since we were the only defense witnesses. Neither Mike nor I were prepared to testify, but even still, the trained professionals are no more credible than we are. We also had no concerns of our reputation at a State level job, or among our peers. This comment about Anna Goods credibility was made throughout the PCR decision.

Dismissal Pg. 20, Unlawful Arrest, Police Brutality. (Allegation 1) Judge, "These issues are more statements regarding his discontent with his arrest. They are not raised as claims of ineffective assistance of counsel. PCR is not a substitute for an appeal."

Response: This is more than just discontent with James' arrest and more about the false statements and actions toward James Miller from the beginning when the officers arrived, which the videos could have confirmed. Anna Good was asked multiple times to get the police car videos. James insisted from the beginning that the officer put him in the police car, turned the heat on, did not read him his Miranda rights as was claimed, and that the officer's had to call a locksmith to come and unlock the car to get him out, in August. James insisted that the light was blinking. Anna Good could have presented the video to show the officer's actions

toward James due to the information that Tammy gave and also withheld from them. It could have explained why James saw them as threatening. The officers said that James wasn't under arrest, but their actions would've told a different story of why James thought that he was. Tr. pg 137, 6-10, Cross by Good, "Your patrol car has a video, correct?" Houser, "I'm, I can't remember if it did or not honestly." Q. "If it had a video, would you have been running your video?" Houser, "Yes." What was the point in asking this question to Houser, if she didn't follow through? Anna did this throughout the trial. They were all traffic cops. Traffic cops have videos and body cams. At the PCR trial, she said she requested the videos but didn't hear back. She failed to get a court order for the release of the videos. She had 3.8 years to get it. Anna Good failed to do an investigation. Does it cost to get a video? Why is the video being suppressed?

Dismissal Page 25, Failure to Call Witnesses (Allegation 2)

Applicant raises various claims for failing to call various individuals as witnesses.

Response: At the PCR hearing, I (Pamela Edwards) was called to testify by PCR attorney, Ola Johnson. I was not informed that I would be testifying until I arrived at PCR court which put me in a high state of anxiety as to not being prepared. The main witnesses that I repeatedly asked Anna Good and Ola Johnson to call to testify were Mike Norwood, Cathy Harrelson Payne (Henry's mother), and Debbie Perry, (now deceased, who was the sister of Britly's mom, Tammy Price). These witnesses were much more involved in the situation than I was. I have attached email copies of those requests to Anna Good. There were also many verbal requests including on the first day of trial court. I have also attached letters that were written to James from these witnesses, while he was at KCDC, SCDC, and before and after trial, including text messages between myself and Debbie Perry. Debbie Perry would have been the most crucial witness at trial and PCR court, which you will see in att.71-78. She was involved from the beginning, including being the caller to 911 on the day of James' arrest, (as requested by Tammy), and from helping Tammy and keeping her children after. Anna Good had the letters from Mike Norwood (att. 95-106) and Cathy Harrelson Payne (att.79-90), so how she determined that they and Debby Perry had nothing to offer without ever investigating or speaking to them is beyond any reasonable thinking. (The PCR judge addresses this again on pg 27). Anna Good simply did not want to take the time to investigate. When Breana (twin sister) was staying with her aunt Debbie, she and Debbie called me. They wanted to know what was happening with James. They both wanted to talk to Anna. I called and emailed Anna of this, to which she replied; "just have her write it down and get it notarized" (att. 61). I informed Ola Johnson that Debbie had cancer and requested that he get an affidavit from her while she was still willing and able in 2020, but he waited and she died in April of 2021. He did get an affidavit from Cathy Harrelson Payne (att. 91-94) and Mike Norwood (att. 107-112). **"At a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case."** *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007). Anna Good testified in PCR court that the witnesses that I requested had nothing to offer, even

though she never talked to them. She also said that the social worker had nothing pertinent to offer, even though she never talked to her. On PCR pg., 92, she comments, **"WE" thought about calling witnesses potentially but none of them had any information about whether sexual abuse actually occurred. It would have just been as to the credibility of the victim which "WE" already brought out on cross with ALL the information I had been given from Ms. Edwards, Facebook posts, that sort of things.** Not true. There was no "WE" since Anna never discussed her strategy with us. This case was all about the credibility of Britly and her mother and Anna needed to call witnesses to challenge it. She did not bring all that out on cross but at least she is admitting that I gave her a lot of information, "Facebook post, that sort of things" but she used only one, which was a Facebook post of Britly being excited to go on a trip with James to get a truck. My attached emails will verify that I repeatedly told her to call the same witnesses and their testimonies would have been just as reliable and possibly more influential, (esp. Debbie Perry) as the hostile neighbor, and only witness, Martha Penrod. Martha's testimony was only what she assumed from having a judgmental attitude against someone that she hated. She had no interactions with the family at all, except in heated moments. Martha Penrod, did not have "information about whether sexual abuse actually occurred." The available defense witnesses interacted with James and the family often and would have been much more reliable. There was no one, no family nor friends in support of Tammy and Britly, although James had many, even in the courtroom. When Anna Good told the solicitors and the Trial court that she would not be calling witnesses, the State and their witnesses knew that they could say anything they wanted, and not be challenged. **Amendment VI. To have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.**

Dismissal Page 26 "Initially, applicant failed to present the testimony of the forensic interviewer or experts at the PCR hearing."

Response: Ola Johnson (PCR attorney) was asked to get the forensic videos and to interview Sallie Williamson. He did not, and these were situations that were out of James's control, when no one would honor his or my requests to subpoena the examiner or present the videos. I received copies of the forensic interviews and other discoveries that I had not seen before, from Anna Good, after the court trial in 2016. I was heartsick and angry that Anna Good had failed to challenge so many discrepancies and inconsistencies in the testimonies of Britly, Breana and mom Tammy, compared to the forensic interviews. It was obvious that Anna had not viewed or studied the interviews. In the State's closing argument, Tr. pg. 573, line 16-19, Cavanaugh, stated to the jury, **"We can't just show you that two and a half hour interview that Britly gave to The CARE House."** Why couldn't they show it? They could have if they wanted to, and according to my timing it wasn't 2 ½ hours long, but closer to an hour. Tr. pg 236, Ln 4-5, Britly, **"I think maybe I was maybe talking to her an hour, maybe more."** Is it not unusual for the prosecution to not present the forensic interview of a child over 12, in order to enhance the

credibility of the victim (Britly was 17), especially when their case is weak? **"The forensic interview should be admissible to enhance the credibility of child's testimony and is precisely why admission is proper."** 17-23-175 Admissibility of out of court statement of child under twelve; determination of trustworthiness; notice to adverse party. There was no compelling reason to deny James access to the forensic interviews well before trial, unless to provide the state with a tactical advantage, by prohibiting his ability to prepare for a defense. The suppression of the interviews was a deprivation of his 14th amendment right to due process of law, which has been recognized by many state and federal courts, in order for him to present and prepare for a defense. He was not aware of the many statements that were made in the forensic interviews before trial that were inconsistent with their false and corroborated statements 3.8 years later, and it could have allowed him to offer information toward his defense. Perhaps Anna didn't request and receive the forensic interviews before Friday March 11, 2016, when she went to view the state's discovery, since she continued to ignore our requests to see them over the years. I asked her in Feb. 2013 to get the forensic interviews, for which she replied that there may not be any (email attached). I had noticed that Detective Knalfec wrote in his police statement, that the Victim was very "reveling" in the forensic interview (att.118), and reminded Anna that according to Knalfec's statement, there must be a forensic interview. I requested to see the interview again in April 2014. The forensic interview should now be considered "New Discovery" since it was never disclosed to the defendant. James still has not seen the forensic interview. **Brady v. Maryland, 373 U.S 83 (1963) the United States Supreme Court ruled that the Due Process Clause of the United States Constitution requires pre-trial disclosure of all exculpatory information in criminal prosecution.**

Dismissal Page 26 The PCR judge wrote that I acknowledged in PCR court that I was called to testify at mitigation. I did not acknowledge that I was called. I was not "called" to testify during sentencing at mitigation (see Tr. pg 666, Ln 18-21). On PCR page 61, Ln 20-22, I said **"none of us were called"**. Anna did not inform us, advise us, or call any of us, including Mike Norwood, to testify at mitigation. Even though we were shocked and unprepared, we volunteered.

Page 26, PCR Judge, "However he (Michael Norwood) acknowledged he was never behind closed doors with Applicant and the victim and that at his mother's house he was not with them at all times."

Response: This is referring to cross by Mr. Blitch to Anna Good Browder, on PCR Tr. pg 68, Ln 8-12) but it disregards Michael's statement on PCR pg 71, Ln 7-11, **"everybody there did go in and use the restroom there, but my mother was present and my brother was there, but obviously no one followed them into the restroom. If they had gone into the restroom together, I'm sure it would raised some sort of suspicions"**. This exchange was from one of Britly's stories that James took her into the bathroom at Mrs. Norwood's house while they were

roofing, with Mrs. Norwood, Mike, Mike's brother, and other workers in and around the home. This also contradicts the victim's claims that the defendant kept her isolated and was always paranoid that someone would find out. On PCR Tr. pg 114, Ln 4 thru 19, Anna Good Browder says that she didn't know that it was Mr. Norwood's mother's house, but in her trial closing argument, (Tr.pg. 615, Ln 9,10) she quotes, **"Where is Ms. Norwood? Is she here to testify about seeing them at her house or anything? No."** (Why didn't Anna call Ms. Norwood to testify)? Tr. pg 197, Ln.14, Britly, **"We were working on Mike Norwood's mom's house."** Also on PCR pg 114, Anna admits that she did not research this. She did not study the forensic interview either and she was not paying attention in court.

Page 26, Anna Good Browder testified that she considered calling me and Mr. Norwood, but that we did not have anything to offer and referred back to "her " strategy. Again, how would she know that if she didn't interview anyone? We never discussed whether I should testify. It was Mike, Cathy, and Debbie Perry that I continued to request that she interview and call to testify. **Council's conduct was deficient because council "believed the witnesses would not add much to petitioner's defense.** *Lounds v. State 670 S.E. 2d (S.C. 2008) 2011-196208. PCR manual, pg 294.*

Page 26, 27, "Trial counsel testified her strategy was to portray Applicant as controlling and that the victim was seeking to get away from him. Testimony about her having lots of friends would not have been beneficial to that strategy."

Response: Anna never discussed with us "her strategy of portraying James as controlling." If she had, we would not have agreed to it since he wasn't controlling, Tammy was, which witnesses could have validated. James did what Tammy told him to do, not the reverse. Anna decided this on her own along with other decisions that she should have discussed with us, during the 3+ years. If this was truly part of her strategy, to characterize James as controlling, it was detrimental to the defense of James Miller. I told Anna from the beginning that this was about Tammy and her wanting to get away, which the exhibits would have verified. The witnesses and exhibits that she had, could have also verified that they had lots of friends and activities and would have therefore contradicted the many false claims in their testimonies and brought into question the credibility of the victim and her mother.

Dismissal Page 28, Failure to Investigate or Prepare Defense (Allegation 2d-g, 2k)

Response: I have attached emails to Anna Good with requests to obtain DSS records and medical records (att. 62,63). Both Anna Good and Ola Johnson were requested to get files from DSS and to interview Ellen Chestnut, the social worker, whom I spoke to in the early days after the arrest and again right before Tammy Miller left town. She informed me that if Tammy left town, that she would have to register with DSS in Florida to follow up. On PCR Tr. pg 96, Ln. 23-25, Anna admits that on Feb. 7th, 2013, she subpoenaed files from DSS, but never received them. Then on PCR pg 97, she says that she wasn't given any information that there was

anything pertinent in the files. How would she know that it wasn't pertinent if she never saw the files, and why else would I have kept telling her to get the files and to interview the social worker, including on the first day of court? I told her about my conversation with the social worker. This was both of the attorney's responsibility as James's lawyers and James had no control over their decisions to not do as we asked. If it had favored the State in any way, the records and case worker from DSS would have been presented by the State. Anna Good failed to get a court order for the DSS files? Why are the DSS files being concealed? James Miller has also requested the DSS records by writing to DSS, including most recently and still cannot get a response. The PCR court said that James didn't provide records or witnesses from DSS, but how can that be done if no one will respond. Anna Good failed to investigate or to prepare for the defense of James Miller. James was never allowed to view the DSS records in order to prepare for his defense and protect his Constitutional Due Process Rights, the DSS records should now be considered "New Discovery."

Dismissal Page 28, PCR Judge, "As to the polygraph, the results would have been inadmissible at trial on the question of innocence or guilt."

Response. We were aware that a polygraph cannot be used as to the question of innocence or guilt, but it could have carried some weight as to James' character and truthfulness. It was not just a polygraph that Anna referred to at PCR, but a psychosexual examination as well, that we requested (att.59). James was trying to prove his innocence. A psychosexual exam could have verified whether or not James was likely to commit such a crime. It could have also explained how likely it would be for a 37 year old father of 5, after never having any suspicions or accusations from anyone, including the victim's female friends and many female members of his family, to suddenly decide to attack his strong willed rebellious 17 yr. old daughter that was just told that she couldn't see her boyfriend anymore, instead of her meek twin, or 8 year old sister. At the PCR trial, pg. 90, Ln 22-25, Anna says that she did not call experts because we didn't have the money. At the PCR trial (pg. 62), I read my email from Anna concerning our conversation for an expert, which read. **"He also has mentioned to me that he is definitely interested in a polygraph and Dr, McKee, but I told him we would try to deal with the bond stuff first and then go from there"**. Money was no excuse to not investigate or seek experts since the state has a fund for that purpose, besides the fact that she had spent no funds and very little time on this case, except to request records in the early days, which she never followed up on. Tammy started selling all of James' possessions right away, including his truck, trailer, tools and equipment, and emptied their personal and business bank accounts in order to get out of town as quickly as possible. James became indigent overnight. **"Thus although the State is not required to provide the indigent with unlimited funding, it must ensure that the defendant has competent counsel and the services of experts necessary to a meaningful defense."** *Ake v. Oklahoma, 470 U.S. 68 (1985) Reversed.*

Dismissal Page 29, "Trial counsel indicated that she did not give copies of the discovery to Applicant "At his request" because he did not want other inmates to see it."

Response: This was early Feb. 2013, while Applicant was incarcerated at Kershaw County jail. Anna verified this on (PCR Tr. Pg 84, Ln 23-25). After Applicant was released on bond, he and I requested numerous times to see the full discovery other than what I had sent her initially (Emails attached). She had 3.8 years to show us the full discovery and go over it. I requested the rest of the discovery again after getting James's POA, to which she replied that she still couldn't send it to me but would send it to James. James called her and gave her permission to also send it to me, but she still did not send it to either of us. At the bond hearing in March of 2013, Judge Benjamin ordered that all discoveries, including DNA, were to be available within 30 days. Anna did not pursue this even though we requested numerous times to meet with her and go over it, but each time we were told that it's too early, and the longer this sits the better (att. 62, 63). It was not better for this trial to sit for 3 years and 8 months, since witnesses move, they forget, and they die. Whether it was because of the State or Anna Good, James's right to a speedy trial was violated, especially in a trial of this nature.

Dismissal Page 29, "She also testified she provided discovery to Ms. Edwards and received notes back and had discussion with both Ms. Edwards and Applicant regarding the discovery.

Response: This is false. I had repeatedly requested additional discovery from Anna Good before trial for James and me to review, especially since she wasn't meeting with us after so many requests. I had received some basic discovery from Mike Norwood that he had acquired from the public defender, Neil Riley, which only contained the police officer's statements, the written police statements of Britly and Tammy Miller and the physical exam from Dr. Susan Luberoff. It was I who shared these with Anna Good so that she could get an early start reviewing them before she received her requested discovery. I sent this along with bullet points of my concerns and questions, not in the reverse as she claimed in PCR court. Anna testified (PCR pg 85, Ln 11) that she sent me the discovery and that I even sent her bullet points in return. I have attached email exchanges to verify that this is not what happened. The PCR court continued to say that counsel's testimony was credible. It was not.

Dismissal Page 30, Failure to Have Co-Counsel

Response: In the beginning when I took Anna Good her first payment installment and signed the agreement, we met for approx. 30 min. in which I informed her of the information that I had, and of what I and others thought about who was really responsible for this charge. The first and only time that James and I met with her, in November of 2015, when trial was scheduled once again for Dec. 14, 2015, she had her partner with her and said he would be assisting her. Soon after I arrived, she informed us that the trial had been canceled and there was no use in going over things and preparing too early, we then spoke briefly and left. She had not even bothered to contact us before I drove 4 hours and wasted my day and James missed a day of work. If Anna Good would have had co-counsel at trial, she would not have missed so

many conflicting statements from Britly, her sister and mother, the police officers, and other witnesses. An assistant or co-counsel could have brought these discrepancies to her attention and interacted with the client and others just like the state was doing. I told her on the first day of court that she needed help up there, especially since the state has 2, and that she was not prepared. PCR Judge, "This court is unaware of any requirement that counsel have co-counsel at trial." This is still reckless, and I have never seen a **criminal** trial where there were not 2 attorneys for the defense, even in indigent defense cases. Anna did not want to spend her time or money on this case.

Dismissal Page 30, 31, Failure to Allow Applicant to Testify (Allegation 21-m)

Response: James wanted to testify to explain the many false statements from the witnesses and the assuming opinions and statements of the officers. Anna was concerned that he was not prepared, and asked me, my sister, and his friend to convince him to not testify. The judge also told him (Tr. pg. 558, Ln. 12-14) **"I will allow the state to introduce your record to attack your credibility."** The judge then asks him if he wanted to consult with his family (Tr. Pg 559), and James replied that he would like to consult with us. He turned around and looked at us. My sister and I stared back blankly while in thought, his friend shook her head. He then turned around. This all took place in what seemed to be less than 1 minute. We were shocked. Anna should have asked for a break in order for us to consult and have a conversation. My sister and I felt that James should testify after seeing so many trial mistakes, but we did not get the much needed opportunity to discuss this with him, and James didn't get the needed opportunity to declare his innocence.

Dismissal Page 32, Failure to Suppress Statements (Allegation 2n) "She indicated she attempted to have videos suppressed because of references to the need for counsel."

Response: It was James' constitutional right to ask for "counsel." Tr. Pg 60-61, James repeatedly asks for help in his police interrogation while Detective Dill continues to question him. James tells officer Dill that he's going to have to ask for some help. Dill continues to question. He then says "Like a counselor or appointed attorney or something". Dill continues to question. This is verified on Tr. Pg 43, **Justin Dill: "The defendant says I'm going to have to wait and get some help"** Ln 22, **"He says I guess maybe a counselor or an appointed attorney or something"**. Pg 44, Ln 8-9 Cavanaugh, "what does he say to you at that point?" Dill **"I can't admit to nothing, I don't know where I'm at"** Dill "You don't know where you are?" James, **"Yeah, mentally I don't, so I'm gonna have to have some help."** Cavanaugh, "So later on about a minute and a half later when he said, 'I'm gonna have to wait and get some help and then follow up with a counselor, an appointed attorney', when he said counselor, **what did you think he meant by counselor?"** Dill, **"I guess like a guidance counselor or just someone to talk to."** This is another example of Cavanaugh slipping in a non-truth of "then follow up with a counselor." Dill was a detective. It is absurd that he thought James was asking for a guidance counselor. He knew what James was

trying to get across and yet continued to question him. The Court determined that this request was ambiguous (Tr. page 86, Ln 21 -25). James was trying to ask for help 3 times, in the only way that he knew how. He was distraught (Dill admitted that he was crying and upset), had mental fatigue, and a low level (8th grade) of education. *Butler*, 441 U.S. 369 (1979) **"Even when a right so fundamental as that to counsel at trial is involved, the question of waiver must be determined on the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused."** Pg. 441 U.S. 375

"A counselor at law is a person who gives advice and deals with various issues, particularly in legal matters. It is a title often used interchangeably with the title of lawyer." How could it be beneficial for James to have his request for a lawyer redacted? It is common sense to ask for a lawyer or counselor and everybody knows that in today's world. The common citizen does not deem asking for counsel as being guilty, (as the attorneys were implying) but instead as a constitutional right. It was not more damaging to show him requesting "help, a counselor, or appointed attorney or something," than it was to play his statements, after those requests were made. If the video was to be allowed, it should have been allowed in its entirety.

Dismissal Pg 32, "this court finds he has failed to show how this prejudiced the outcome of this case when the redactions were for his benefit. See *State vs. Mazique*, 419, S.C. 282,298,797 S.E. 2d 730,738 (Ct. App. 2016)."

ResponseThe PCR court referring to *Mazique* here is not comparable to James' case whereas in *Mazique*, the State redacted the parts of other crimes and the investigation of the other crimes. James's redaction by the state was only of him asking for a lawyer, a counselor, or something, so again how could it be beneficial to him. Anna admitted, after the judge asked her twice, (Tr. pg 61, 87), that she did not view the redacted video; even after she had ample time to view it. Since the video was played, the jurors should have been able to see James ask for help while he continued to be questioned. The state wanted it removed because the jurors might have seen it as a constitutional rights violation, not that he must be guilty for asking for counsel, as they implied. The argument of *Jackson v Denno* continues on Tr. pg 57-61, 85-88, where the judge decides it was an ambiguous request to ask for a lawyer, a counselor or something, and allows the redacted video to be shown to the jurors, but then she agrees to put the entire video in the court exhibit at the end of trial (pg 553), at the State's request. If it were to be played then the entire video should have been played. However, the video should not have been played at all, James' statements should have been suppressed, and his constitutional rights were violated. Cavanaugh also emphasized the importance of this video in her closing argument including on Tr. pg 592 Ln. 18, where she falsely stated that James admitted that he had his hand "inside her leg" when he actually said "on her leg," which is verified in Detective Dill's written statement. (att. 127) Anna did not object. *Jackson v. Denno*, 378 U.S. 368 (1964), **"In those cases where without the confession, the evidence is insufficient, the defendant should not be convicted if the jury believes the confession but finds it to be involuntary. The jury, however, may find it**

difficult to understand the policy forbidding reliance upon a coerced but true confession and an issue which may be argued in the jury room."

Dismissal Page 33 (Allegations 2o-q, 2s-t) Failure to Adequately Cross-examine Witnesses. Trial counsel failed to raise discrepancies in the testimony and written statements of investigators, failed to question comments from the State's medical expert and should have conducted re-cross examination on witnesses regarding the inaccuracies and discrepancies in their testimony.

Response: The prosecution focused on the day of James's arrest, his surrendering and the comments that he made to the police officers. (Tr. pg 301,302) Tammy told James that the police were coming about the lost gun that he had lost in a field, while they were horseback riding. (Tr. Pg 23) Cpl Houser testified that when he noticed James on the dock talking to Britly, "we (Houser, Scott and Wilson) approached Mr. Miller and our effort was at the time to separate him from his daughter and to detain him". Pg. 24, "when he saw us approach, he began to walk toward us and then unhook his belt, take everything out of his pockets and turn around and placed his hands on his head. This was without any commands of any type". He continued to answer that he never told James why they were there. Tr. Pg. 135, "myself and the other deputies, we went to separate him from Britly and detain him. Pg. 124, "At that point we escorted him to my patrol car and placed him in the back seat and he was detained. I advised him of his Miranda rights. Tr. Pg 126, "the vehicle was running as well as the air conditioning" (In trial motions he said that he didn't know if the air was on). Tr. Pg. 145, Dep. Justin Scott, "And knowing what I knew, I didn't want the victim and the possible suspect to interact, you know for her safety, so that's when I walked down there, I didn't want the suspect to approach the victim, I didn't know what would happen, for the safety of the victim and to keep the suspect from getting close, I wanted to separate him from her". Tr. Pg 155, Dep. Wilson, "myself along with the other deputies moved down the hill. It's a pretty steep incline. He was never advised that he was under arrest." Deputy Justin Scott, Tr. Pg 145, "knowing what I knew or knowing what the victim's mother Tammy had already told us, I didn't want the victim and the possible suspect to interact, you know for her safety." Ln. 19, Scott, "I just- I didn't- knowing what I knew, what the victim's mother Tammy had told me, I didn't want the suspect to approach the victim." Tr. Pg 305 Ln 12, Tammy Price, "I started freaking out and telling them they better hurry up and get down there because I thought he was going to kill her". Ln. 17, Solicitor: "DID you know whether or not he had a gun". Ln 17. Tammy: "I thought he did because he had it on him five minutes ago". So do all of these officer's statements not suggest that James might have seen the officers coming towards him as threatening when he surrendered? Why else would they have immediately detained him and locked him in the police car? James was ambushed. Tammy took the gun to James while he was in the shower and told him to put it on before they went horseback riding (Britly verifies this in her forensic interview). Tammy told the officer's that James had a gun but she didn't tell them

that she told James that they were there about the lost gun. Was Tammy setting everybody up? The state was presenting it as though James knew why the police were there because he was guilty of the accused crime, even though Britly and every officer said they didn't tell him why they were there. Only Tammy told him why the police were there. Tr. pg 232 Ln 3-4, Cavanaugh **"Did you tell him that you told your mom?" Britly, "No."** The testimonies of these officer's conveyed to the jurors that the officer's believed what "the mother told them," thereby bolstering the credibility of the victim and her mother. The officer's relied on the mother's statement to them, to arrest James, not knowing what information she withheld from them. If Anna was paying attention, she would have called all of the officer's back in for recross after Tammy's and Britly's testimony; since this made everything that the officer's said "hearsay." Tammy's and Britly's testimonies verified that James legitimately thought that they were there for the lost gun and that he had no idea of the crime that he was being accused of.

Tr. pg 306, Ln 18-21 Direct by Cavanaugh. Tammy, "Well when they pulled up they told me they couldn't just arrest him, and that's what made me collapse initially. I was like, 'Oh my God. He's not going to admit that he did it so u can't leave him with us because he's gonna kill us!'" Tammy said this knowing that James had no idea what the police were really there for and that he was not a threat. This is another statement that would explain why the officer's appeared to be threatening to James. Why didn't they tell Tammy that she could leave? She stayed at her sister's often and could have easily gone there or to the Harrelson's. The officers could have waited with her while she prepared to leave. None of the officers said that Tammy collapsed. Why would Tammy not protect Britly and keep her with her, instead of leaving her alone at the dock? Because she knew that Britly was not in any danger from James.

Tr. pg 167, Hathaway, "When I arrived on scene, I got out with the other deputies. We talked for a few moments. At that point the defendant was in the back of Corporal Brook's car. At that time I did get out of my car. I talked with them. He was in the backseat of the car. And then shortly thereafter he was placed in the back of my car." Cross by Good, pg 166,167, "You stated when you heard him say whatever she said, was he in your vehicle at that point or at the scene?" Hathaway, "No, ma'am. It was at the scene. Good, "He never said that in your vehicle?" Hathaway, "No ma'am." (Anna dropped it.) Why didn't she ask how he heard James's comments if James was in the back of the police car when he arrived, with the car running and the air conditioning on and then that James didn't make any comments to him in the car? He got the comments from the other officer's. This then became hearsay, and Anna Good should have questioned further. She relied on the juror's to figure it out.

Cpl Houser, Tr.Pg 125 Ln 18, "he stated, whatever she says, that's what happened. If she said it, it's not a lie." Justin Scott, Pg 141, Ln 3-4, "He said that whatever she says, that's what happened. If she said it, it's not a lie." He repeats this on pg 147, Ln 19-20. **Dep. Thomas Hathaway, Pg 164 Ln 5-6, "I overheard him say several times whatever she said. Whatever she**

said". In Houser's written statement, he inserts ("his daughter") at each comment, even though that was not what James actually said. Houser, "Mr. Miller was handcuffed behind his back. Handcuffs were checked for fit and double locked. Deputy Wilson escorted Mr. Miller to patrol vehicle for investigative purposes. (Why would James not think that he was under arrest?) After observing Mr. Miller's demeanor and hearing his statements, I believe he knew why law enforcement was there. (James only knew what Tammy had told him and Britly said that she didn't tell James why they were there). "In my opinion based on experience, his actions were not that of an innocent person." The officers had already decided on James' guilt and treated him as such, due to the information that Tammy gave and also withheld from them. Officer Cody Wilson testified that he didn't know if James was put in handcuffs and that James was not under arrest, even though they all claimed that he was read his Miranda Rights. Houser, Tr. pg 131, 9-10, "I tell whoever is writing the statement to make sure that whatever they say is truthful." This comment also bolstered Britly and Tammy.

Tr. pg 302 Ln 24 25, Cavanaugh, "So the police come and you went outside?" Tammy, "Yes." pg. 303 Ln 1-5 Q. "With the gun box?" A, "Yes ma'am." Q, "did he say anything to you before you went outside." A, "No ma'am." The state relied heavily on the officer's statements, even in the closing argument. This significance of this weight is verified by the jurors asking to rehear the 3 officer's statements in deliberation. Anna Good failed to adequately cross examine witnesses.

Det. Dill also testified that James was not under arrest and was free to leave at any time, when they put him in detention. On Tr. pg 527 8-23, he said that James was given his Miranda Rights that included that he could leave at any time. Cavanaugh and Dill presented a sample Miranda form that they said included "free to leave" into exhibits. However, I have attached an actual copy of the form that James signed, and nowhere does it state that he is free to leave at any time. Anna had this copy as well. Why would James not think that he was under arrest when he was put in "double locked" handcuffs, supposedly read his rights, put in the back of the police car with the heat on, then taken to the detention center, interrogated, then sent back to the detention center? James thought that he was under arrest due to the false pretenses of Dill and the other officers. Tr.pg 533, Cavanaugh, "And at that point did you place James under arrest?" Dill, "I did" Cavanaugh, "And when he first came in, he was not under arrest. He was detained; is that correct?" Dill, "Yes." This was around 4:51 pm on 8-11-2012, pg 534. James was illegally detained and not officially under arrest until the next day. This was a violation of James' constitutional rights.

These are more reasons as to why Anna should have gotten the police video. Houser testified that he didn't know whether or not the car had a video camera, Houser was a patrol deputy, Wilson was a patrol deputy, and Hathaway was a road deputy. Would it not be highly unlikely to not have a camera in a traffic patrol car, or body cam? If it was to the state's advantage, the videos would have been produced.

Tammy Price, Tr. Pg 301 Ln 10-25, Pg 302 Ln 1-2. **"I proceeded to go inside and act like nothing was wrong** (after she testified that she was crying and upset on the dock and Britly said that she was crying and hysterical, before she went in (Tr. pg 229, Ln 14-15). Was her face and eyes not red and swollen)? Tr. pg. 301, Tammy, **"I asked him if he was, you know, about ready to go. I went inside and made sure everything was fine and at that point he laid back down on the couch. Uhm. I sat down beside him for a couple minutes and touched him because I knew what was fixing to happen and I knew my world was fixing to get taken from me. I told him, I said, Oh, the police are here. We lost a gun previously like two weeks ago. He was riding a horse and I guess it fell out of his holster and I called to report it missing and they never did come out to get the serial numbers so when they pulled up, I told him, oh, they're finally here to get the serial numbers. I proceeded to go outside with the gun box acting like that's what I was gonna do."** Tr. Pg 307, Ln 3, **"He said it wasn't all his fault and he ask me for one last kiss".** This is also another example of hearsay and Tammy knew that she could say anything she wanted. Ln 12-13, **"He thought, initially he thought they were there for the gun".** (Another statement verifying that James legitimately thought that they were there for the lost gun). His statements were from him protecting his wife since it was her gun, and not that he was guilty of the accusations that he knew nothing of, as the state kept trying to project. James knew the officers hadn't spoken to Britly, but instead he saw them by the house talking to Tammy.

PCR TR. pg 104, Ln 1-10, Anna Browder testified in PCR court, that this was the first time that she had heard about the lost gun. If that was the case, she did not listen to anything that we told her, nor did she pay attention at trial. However, she actually referred to the lost gun in her trial closing argument, Tr. Pg 617, 12-16; Anna, **"Tammy testified she told James it was about the lost gun"** Tr. pg 619 7-10 **"Tammy told him it's about the gun so he goes down there to Britly."** Tr pg 619, Ln 23-24, **"He's saying what Tammy has told him. It's about the gun."** Anna was not being credible in PCR court.

Martha Penrod testified that she could see down to the dock and into James yard. The prosecution presented pictures of a winter scene with no leaves on the trees. She testified that the first time she talked to anyone was 3 weeks prior to court when the investigator came to her door (Tr. pg 459). The pictures that were entered into the exhibits presented a deceptive view of the scene and were zoomed in to make the dock appear much closer than it was. You can see the up close leaves on the camera lens to verify. I gave Anna pictures that were taken a few days after James' arrest in August, of Britly in their yard with large trees heavily laden with summer leaves in the background. (att.163). Anna had already verified that Martha couldn't see a very far distance in court and could have presented contradictory pictures to back it up. She could have questioned Detective Knalfec about any pictures that he would have taken in the summer, when he went to the scene 2 weeks after James' arrest, after Tammy called him to come get the DNA evidence that "she" had found. Why didn't he go earlier? He admits on Tr. pg. 469 that he didn't do an Investigative Report or an actual written report. Why didn't he go talk to Mrs.

Norwood or Barbara Lane, since Britly claimed that assaults happened at their houses? He wasn't taking this accusation seriously. Anna should have asked him more about his apathy towards this case and in court. Anna failed to investigate the scene. *Gibson v State* 514 S.E. 2d 320 (S.C. 1999)

Other conflicts. Tr. pg 195 Ln 14-16, Direct by Cavanaugh, Britly, "I was the only one there to help so it was my place to continue to go and help provide for the family." On Tr. pg. 277, Tammy says that she helped James, "because I was with him or she was with him. He never went to work alone." Tammy, pg 289, Ln 17, "When we weren't working, that's when we did our schoolwork." Tammy pg 323, 21-23, "Well, I was at home when I wasn't at work with him." I could have testified that Breana also worked with James and assisted him at jobs for me, and other family members. Breana didn't think it was fair that Britly was earning money and not her, since James paid them to work.

Conflict. Tr. pg 263, Britly, Cross by Good, Q. "So you never told your mother anywhere he would have ejaculated on the floor or the couch or anywhere?" A. "No." Tr pg 310 Ln 12, Tammy, Direct by Cavanaugh, Q. "Did you learn more details as far as about where it might have occurred?" A. "Yes ma'am." Q. "Did she tell you where?" A. "Yes ma'am." Q. Where did she say it happened?" A. "Uhm, it happened in the truck. It happened in my bed. It happened on the couch. It happened in the house next door because we had both houses, her room, and other places in Camden." They didn't have their stories straight because they were sequestered. This is also why Breana should have been sequestered from her mom and Britly. Cross by Good to Tammy, Pg 335, Q. "So your testimony is that you and Britly spoke about it and Britly told you all these details." A. "Uhm. Some details. But we did get into where and when and how did this happen. Yes ma'am, we did." Why didn't Anna bring up that Britly said that she didn't tell Tammy any details? These conflicting statements could have at least been visited in her closing argument. Tammy called Detective Knaltec to come get the evidence that she had found. Cathy Harrelson described in her letter to James at KCDC, that she observed Tammy playing CSI. See also the emails between me and Cathy. I told Anna multiple times to call Cathy to testify.

Conflict. PCR Amendment #10, 11. Tr Pg 236,237, Britly, Direct by Cavanaugh, Q. "Did he contact you after he was arrested that day?" A. "No." Q. "Okay. Do you know if he tried?" A. "I don't know." Tr Pg 311,312, Tammy, Direct by Cavanaugh, Q. "After he was arrested that day, did you have any further contact with James?" A. Briefly, Yes ma'am. He kept calling the house and calling the house and calling the house, uhm, like an idiot and uhm, he would say, you know, just make it go away. I'll leave you guys alone. I'll pay you whatever you want. Just, you know, I'll leave you alone. Just make it go away is what he would say." Q. Did you let him talk to Britly?" A. "I did put her on the phone I think once. I thought that if I did that, that he would

say, I'm sorry." Q. "So that's why you did it?" A. "Yes, ma'am. Something that would hopefully give her some kind of closure and also kind of put *the nail in the coffin*, I guess." Q. "Did you go see him at the jail after that?" A. "Uhm, I had a title to a vehicle uhm that I needed him to sign so that I could sell it." (This was just few days after James was arrested and only charged at this point, but she's already selling everything, to get out of town!) Pg 313, A. "Uhm, he had his bible in his hand and told me that he had found God. So he did that and uhm, told me that I wasn't being the wife I'm suppose to be because apparently somebody told him to read Proverbs and he was very distraught trying to rip off his clothes. And at one point, I just kind of chuckle at him because he was acting ridiculous. I turned around and said "I love you and I walked away." Anna should have objected to this entire statement of hearsay and the reference to religion.

PCR Tr. pg. 109, Anna, Cross by Johnson, "No. I mean, I didn't see a problem with the testimony there." There is also no evidence that this happened. I had asked Anna from the beginning to get the jail logs. **Tammy**, Cross by Good, Pg 335, Q. "You actually put Britly on the phone with him?" A. "I did one time, yes, ma'am. Q. "That didn't concern you that you're gonna put your daughter who he's allegedly assaulted over and over again on the phone?" A. "Uhm, my reasoning for doing it was, one, hoping that he would apologize or, two, hope that he would say, well, he was sorry. Say something that I know that we wouldn't be here today." Was all that he had to do was to say that he was sorry? Anna dropped it.

Dismissal Pg 33. "She (trial counsel) testified she was able to bring out all of the relevant and important information during cross examination consistent with their overall trial strategy."

Response: Anna Good did not bring out all the relevant information during cross-examination of the expert witness, and should have consulted with independent experts before planning "her" trial strategy, especially since the state uses Dr. Susan Luberoff and Allison Foster often. She had 3 years of experience working for the Richland County DA, so she should have known that the State's expert witness's testimonies have canned testimony, to appease the state. **"She had a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case.** *Ard v Catoe* 372 S.C. 318'331,642, SE 2d 590 596 2007. We wanted Anna to bring up how it was possible that Britly did not become pregnant, and only had a notch on her hymen, along with no discharge, (ref; physical exam report) if she had been raped constant, hundreds, thousands of times (ref. Britly forensic interview and Tr. testimony). I told her several times to ask the questions since I was not concerned about possible miscarriages because I knew that she didn't follow up with a doctor, as she was advised to do by Dr. Susan Luberoff. I had previously sent Anna an email asking her to get the follow up medical records. This is verified before trial, on Tr. Pg. 97 Ln 20-25, Cavanaugh, **"The victim did indicate to me that she's never been seen by a doctor that has officially told her that she's had a miscarriage"**. Anna could have used this to her advantage and discredited the victim. Why didn't Britly follow Dr.

Luberoff's recommendation to see a gynecologist for further diagnosis? Because she knew nothing was there. In Britly's forensic interview, she describes the day when Tammy took her to the hospital that Tammy had described to her what a miscarriage was. Even if the state had brought up "3 miscarriages in a year" how likely would it have been, for a healthy 17 year old girl with excellent grades, no behavior changes, only a notch on her hymen and no discharge to have had 3 miscarriages? I was the one that actually asked Tammy how was it possible that Britly did not become pregnant if she was constantly raped. That is when Tammy posted on FB public status that she was taking Britly to the hospital for a pregnancy test. Tammy testified that she didn't take Britly to the hospital (Tr. pg 309) but Britly said that she did go to the hosp (Tr. page 234). Britly also stated that she got a pap smear by the doctor in Columbia but Dr. Susan Luberoff said that she didn't. If Anna Good had called in an independent medical expert; these questions and more could have been asked. PCR, pg 90, when Anna was asked if she ever considered calling and bringing in her own experts, she replied, (Ln 22 -25, Pg 91, Ln 1-4) **"I considered it and had spoken with him about it, however, because I was detained, they could not afford to pay for an expert. However, I was familiar enough with, because I had been doing CSC with the Richland County Solicitor's Office before I went into private practice, what an expert would testify to so we got all the points we needed on cross examination that any expert that we would have called would have testified to."** Anna Good never spoke to us about this. She is also not trained in the field of medicine and does not have medical knowledge just because she worked for Richland County for 3 years. She wasn't experienced enough to be able to rebut the state's expert testimony and she could not possibly know what an independent medical expert would testify to if she never asked the questions or sought the answers to begin with. She should have also known that the experts that the State uses would testify to the state's advantage. Does it cost anything to seek medical records which she also failed to do? She could have requested indigent funds from the state as well, if James couldn't afford to pay, as discussed previously. It is no excuse to do nothing. She spent no time and no money on this case. *Bobby Joe Reeves v. S.C. (2015)* **"If Reeves was indigent and could not afford to pay for an expert, the South Carolina Office of Indigent Defense could have provided the funds needed to secure an expert witness. S.C. Code Ann 17-3-50 (B) (2003),"**Upon a finding of ex parte proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant, the court shall authorize the defendant's attorney to obtain such services on behalf of the defendant and shall order the payment from funds available to the Office of Indigent Defense, of fees and expenses... *Bobby Joe Reeves* also had a private attorney but no more available funds. *Reversed.*

Dismissal Page 34, Failure to Object to Closing Arguments

Response, Tr. pg 95 Ln 18-25, pg 96 Ln 1-2. After the solicitor asked the judge to include 16-3-657 in her charge, the judge replied, **"So as a judge I will not instruct the jury on that statute. However, I will not prevent the State from arguing what is the law of our state and**

that is that a victim's testimony does not have to be corroborated. I just believe it's difficult to charge that without making it seem as if the burden of proof has shifted, and as the judge I would want to be very careful to keep the burden of proof on the state. But I, of course, will allow the State to argue what the statute is passed by our legislature in the state." Tr. pg 568, Cavanaugh closing statement, **"But the law does state as it relates to criminal sexual conduct in the State of South Carolina, the testimony of the victim need not be corroborated."** Tammy Miller Price knew this since she had been through a CSC trial, 3 years earlier, against her dad (Tr. court pg.321,322), she testified that it was in 2006, but it was 2008 and the trial was in 2009, which is verified in the attached "Indictment of Jimmy Blessing." It was a way for the prosecution to sneak in a very damaging statute, especially when a case is weak, where there is no evidence, only negative DNA and where the circumstantial evidence was not overwhelming. In allowing the State to reference the law the judge could not be impeached. It insinuated to the jurors that Britly should be believed first. It shifted the burden of proof to James, who was expected to prove his innocence against his accuser who was protected by the law of 16-3-657. This was cumulative against the fact that Anna didn't investigate or provide a defense for the jurors to consider otherwise. Anna should have at the very least revisited the statement in her closing argument. If the jurors would have had more information and testimony from defense witnesses, they would have had more to lean on and not just Britly's and the prosecutor's statements.

Dismissal Pg 35, Failure to Object to Mother in Courtroom (Allegation 2v)

Response: Anna Good knew that Breana was intimidated by her mother. When Breana was visiting her aunt Debbie Perry, she called me wanting to visit James and attend his bond hearing. She was concerned that detective Knalfec and the solicitor would tell her mom. I informed Anna of this in an email (att. 61), so she was aware of Breana being afraid of her mom. After reassuring Breana that we would protect her, she did visit James in detention, and attended the hearing along with Debbie Perry's husband, son, and 12 more supporters. If Anna had prepared and studied the forensic interviews, she would have noticed that Breana had a completely different response in court than she did in the private interview that she gave 3 days after James arrest 3.8 yrs earlier, and could have challenged the discrepancies. Breana was obviously unsettled, being that she had 47, "I don't remember", "I don't know", and "I'm not sure" answers to the questions at trial. If Anna had read Breana's forensic interview, she could have reminded Breana of her past statements, including her statement that **"James did sleep in Britly's bed, but she wasn't in there. She would leave"**. Other forensic statements by Breana, "She (Britly) hid it so well, and I don't understand how, she is not the type to let someone take control over her, she's not. She is very strong. I don't understand why she didn't just knock him out, call the police, just hide. They both hid it amazingly. I'm just baffled." Pg 18, "Her nickname was Shee Ra because she was so strong and she would go to work with him." Pg. 19, "That is a question I have had in my mind for awhile ever since I heard about this and honestly, I

would try my best to stop it or let somebody know what is going on. Let somebody know, because with Britly I don't understand why she couldn't tell me or my mom." Tr. pg 362,16-17, Direct by Senn, Q. "How would you describe Britly?" A. "Uhm, she's very head strong. Very stubborn. She's a go-getter." Tr. Pg 367, Ln. 2 "She was always angry almost." Pg 386,16-17, Q. "Did Britly have a gun?" A. "She did." Ln. 24-25, "But you're sure Britly had a gun too, correct?" A. "Yes." Why was James not concerned about Britly having her own gun since she could have shot him, at any time, if he was abusing her, especially since she was always angry? Mike Norwood could have testified that Britly carried a knife and a gun. Anna Good failed to object to mother in the courtroom considering the information that she was given prior. She failed to adequately cross examine witnesses.

Dismissal Pg 35, Failure to Consult or Participate (Allegation 2h, 2x)

Response: Anna Good did not consult with any of us during the trial except to briefly ask us to convince James not to testify. She admits on PCR Tr. pg 97 that she was reading a book in the morning and at the 1½ hour lunch breaks, but she says not during trial or trial breaks. We were all concerned about her lack of attention and saw her reading a book, while on breaks. Instead of reading a book, she should have taken every opportunity to review, consult and advise James, his family, and the available witnesses that were present, especially after her failure of not preparing him or any witnesses for trial. She could have also discussed "her strategy" with us since she never had before. James was sitting in the courtroom alone at every break and recess, and she should have used every spare minute to that advantage. She could have also spent time with me, so that I could have made her aware of the conflicts that she was missing and the evidence of them that she should have had in her folder, especially since she didn't have co-counsel or assistance. I told her that the State was prepared and she was not, and that she needed help, while walking up the steps to court. I also told her, "you have got to call witnesses." It was obvious that she was not attentive in the courtroom considering the many failures. She should be required to show proof that she consulted and met with us as she claimed, concerning her strategy and more. PCR Tr. Pg 89. Q. "Was he able to assist you in the defense?" Anna, "I don't recall if he spoke a lot during the trial. I always give my clients during the trial a notepad, a piece of paper, so if they want to write anything during the trial because I don't want them speaking over a witness obviously for the jury to look over, to write it down and let me know so I always keep those notes. I have no notes from him during the trial so he didn't write anything down." James was dealing with the mental stress of his back pain that was exacerbated by sitting in the chair for up to 12 hours a day. *"Pain affects memory and concentration. It interferes with the memory trace needed to hold information for processing, and long term storage. It affects not only one's ability to remember, but also to concentrate and focus in the moment."* ChicagoNeuroPain.com

Dismissal Pg 36, Failure to Present Documentation. (Allegation 4) Judge, "She testified Respondent's exhibit 1 was the only documentation Applicant provided her and she gave it to the trial court for consideration during her motion for continuance." Pg 37, "Pamela Edwards also testified that Applicant had medical issues with his back and that court exhibits 1-4 detailed those conditions and treatment. However she testified she assumed but did not know if trial counsel had the paperwork at trial."

Response: What I actually said, "I'm assuming. I didn't look over the paperwork. I wasn't up there beside her so I do not know." What I do know is that she was sent the paperwork before trial. The only pieces of paper that we are refuting are the ones that said "excuse from work and school" and the one that said every day smoker, because Anna said it would make James look bad. PCR Tr. pg. 102, Anna Cross by Johnson, when asked why she didn't call the doctor or any medical witnesses about James' condition. Anna falsely states. "I didn't have any of that information until that morning when they handed me "a" piece of paper to hand to the judge." It was way more than "a" piece of paper. This can be verified by my att. email and also at the very beginning of the trial transcript when Anna and Cavanaugh refer to meeting in the Judge's chambers before court and then the judge reads off James' MRI, doctor's comments and his prescribed meds in motions. Anna also had ample time during and after the first day of trial and the next morning to call the doctor. Anna was not being credible in PCR court.

Dismissal Pg 38, Failure to Object to Hearsay (Allegation 6-9, 11-14, 16,18)

Response: Please refer back to the response from pg. 33. After Tammy's testimony about James thinking that the police were there about the lost gun and that Britly verified the same in her testimony and in her forensic interview, all of the comments, "whatever she said", "whatever she said is true", "whatever she said it's not a lie", "if she said it its true," became hearsay, since they were based on a false premise and were insinuated by the State to mean that James was admitting guilt of a crime that he was not yet aware of.

Rule 801 (d)(1)(D) "where the declarant is the alleged victim and the statement is limited to time and place." This does not apply to the officers and Tammy. Each one of the officer's stated, "That it seemed as if he knew why we were there!" All that James knew was that it was about the lost gun, because that's what Tammy had told him, which she admitted to in court. James was protecting Tammy since she bought the guns and he thought that she was in trouble about the gun. The officer's were never informed of what Tammy had told James. The State presented the comments to try and prove that James was admitting guilt of a crime that he was not aware of. Anna said in PCR court that it was the first time she heard about the gun as discussed previously. Anna was not paying attention in trial court.

Dismissal Pg 40, Failure to Object to Doctor's Testimony. (Allegation 12) PCR Judge, "counsel testified she did not want to bring attention to the statement by the doctor but sought to challenge it on cross-examination."

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Response: This is a lame excuse and “more” attention should have been brought to the doctor’s conflicting statements? Re-direct by the State, **“And in that finding along with her history consistent with sexual abuse?”** The doctor replied **“It is”**. This statement was after the doctor answered in cross from Anna that without the history, it wasn’t consistent with sexual abuse, and Anna should have re-crossed about the doctors previous confirmation that it wasn’t consistent. More attention should have also been brought as to where that history came from, since the physical exam could not determine sexual abuse of a 17 year old girl that was raped “constant, hundreds, thousands, of times, with no behavior changes, excellent grades in school, and a normal psychological exam, in her assessment report.” This is also where an independent medical expert should have been available.

Mangal vs. State, “The family doctor explained that based on his nearly fifty years of practice, he expected the hymen of a sexually active person to not remain intact.” Britly had a notch on her hymen. “Throughout the trial Anna asks a few questions and then just drops the matter, just as she did here.

Tr. pg 338, Ln 9-17, Tammy, cross by Good, Q. “And who is Mark Stokes?” A. Uhm that is the son of the Norwood’s neighbors.” Q. “How old is he?” A. 24, then maybe. I’m not—“Q. “About 24 at the time?” A. “I think so.” (He was 23.) Q. “Didn’t he spend the night with y’all after this happened?” A. “Yes ma’am, he did.” Tammy let 23 yr. old Mark Stokes spend the night at their house 2 days after James’ arrest. Anna dropped it.

Mangal vs. State 2012-212701. Dr. Henderson: “Based on the history that she shared with me and based on my examination I felt that it was consistent...that she had been abused.” “I can’t say that the actual result that I saw was caused by the penis, but based on the history that she shared, and she denies any other kind of trauma to that area...my conclusion is... as I stated.” Trial counsel testified there was no reason he did not object to Dr. Henderson’s answer and he stated that it may have had a significant impact on the jury. *Reversed and Remanded*. The Supreme Court later reinstated the PCR court’s order denying relief to *Mangal*, due only to a procedural default. *Mangal* is similar to James Miller’s case.

Yancy Thompson v S.C. 2014-001611, pg 9 & 11. “First, Dr. Luberoff testified there was physical evidence Victim had been sexually abused or had sustained penetrating vaginal trauma. (Same words she used in James’ trial.) While Dr, Luberoff’s testimony supports a finding that victim was sexually abused, the physical evidence cited by Dr. Luberoff did not constitute overwhelming evidence-or any evidence at all, for that matter-that *Petitioner* was the perpetrator.” Fourth, “The PCR court cited the “absence of contradictory testimony” as part of its basis for concluding there was overwhelming evidence of guilt. The PCR court erred as a matter of law considering the lack of contradictory testimony, as this finding suggests *Petitioner*-who neither testified nor introduced any other evidence-had the burden of

producing evidence at his criminal trial that would contradict the evidence introduced by the State. At all times during a criminal trial, the State has the burden of proving a defendant's guilt beyond a reasonable doubt. At no time does a defendant assume the burden of either contradicting the State's evidence or proving himself not guilty. Since a criminal defendant does not have the burden of presenting contradictory evidence during his criminal trial, the absence of contradictory testimony should not have been considered by the PCR court in its prejudice analysis." *Reversed*.

Dismissal Pg 41, "However in this case there is more than just the testimony of the victim."

Response: The only other testimonies were from the mother and twin sister whose testimonies were different 3.8 years later than in their forensic and police interviews that were given right after James' arrest. The hostile neighbor, who couldn't see very well, couldn't have possibly seen details that she claimed from so far away with summer leaves on the trees. The officer's were commenting based on a false assumption by what they had been told by the mother, not knowing that she withheld valuable information from them. Dr. Susan Luberoff admitted that her examination didn't prove anything without the *history*. Dr. Allison Foster's testimony was based on opinions, hypothesis, phenomenon, and peer reviewed studies, which Cavanaugh referred to 14 times in her closing, "just like Allison Foster said." Detective Knalfec didn't even bother to do an Investigation Report or an actual report. The many DNA samples all came back negative, even though it wasn't a clean house.

Remember, Tr. Pg 338, Tammy admitted that she let 23 yr. old, Mark Stokes stay overnight at their house 2 days later. What mother does that after what her family has supposedly been through? Where did Britly get mono? She didn't go to school. No one in the family, including James, had mono. Who did she get it from? Her FB profile says she loves to party. She told the forensic interviewer that she likes to hang out. She said in her Arc confidential questionnaire, that she has drank beer and liquor. Yet in court, Britly, Breana, and Tammy, all said that they were sheltered, isolated, and controlled, even though they all had very active lives. The attached pictures and posts, which Anna Good had, would have told a very different story if she would have presented them or called defense witnesses.

Dismissal Pg 42, Corroboration

Response: Of course the testimonies of the victim, mother and twin sister were corroborated with each other, 3.8 years later, after a plan was revised, but again compare them to the forensic interviews where Breana said, "**He did sleep in her bed, but not when she was in there, she would leave.**" Tr. pg 248 In 6, **Britly** "I had a full size bed here by the windows." Tr. pg 365, **Breana**, "Uhm my bed was located towards the window by the lake on one side of the room and hers was on the other side of the room by the door leading into the hallway." Redirect by Cavanaugh, pg 265, **Britly**, "I had a full size bed by the windows." Cavanaugh, "So

yall's beds were on opposite sides of the room?" **Britly**, "Yes." Why was Britly claiming her bed was far away by the window and Breana said it was right by the door? Why the deception? How did Tammy not hear all this going on in a small house in a bed by the doorway? Why didn't Anna bring out this discrepancy? How does lying in a hammock or hugging someone in broad daylight with people around, make them a molester, unless you want them depicted in such a way? Hammocks squeeze and sink. A lot of people would be in trouble. Hammocks would be banned. Tammy says she and James weren't having sex, but again she leaves out vital information that she had just had a hysterectomy, which Britly confirms in her forensic interview, pg 10. Throughout the trial, Britly, Breana, and Tammy said they were afraid of James because he always carried a gun, but in the forensic interviews and in trial court they all testified that he had never hurt or harmed them in any way. Tr. pg 199, Ln. 7-10, Cavanaugh, "Now you said he always carried a gun. Did he ever directly threaten you with that gun?" **Britly**, "Not directly." Q. "You said he never threatened you with it directly. Did it still scare you that the gun was there?" A. "I was very scared." Tr. pg 237 8-12, **Britly**, Q. "Did he ever try to hit you or display any sort of direct violence against you?" A "No", Q "But you were still scared?" A. "Yes." **Britly**, forensic interview, pg 9, "He has never made me feel uncomfortable or anything." "He has never made any of us feel awkward." Forensic Pg. 10, "No, he has never threatened, never" "He has never been violent; he has never hit any of us." "I've never seen him touch another person." Tr. Pg 273, 17-20, **Tammy** Cross by Cavanaugh, Q. "Did he ever physically abuse the kids or hit the kids or anything like that?" A. "Other than spanking, no." Pg 300 11-15, Q. **Tammy**, "Did he ever physically harm you?" A. "He's never physically harmed me, no ma'am." Q. Can you explain where that fear came from that day?" A. "I was always worried with him wearing a gun." None of them ever mentioned that he always carried a gun or that they were afraid of him carrying a gun before trial, even though they had plenty of opportunity to do so in their written police statements, police interviews, and physical and forensic interviews. This was corroborated 3.8 years later because their case was weak. They were Tammy's guns! If Anna had prepared and studied her files, especially the forensic interviews, she would have recognized the conflicts and could have argued them. Remember, Breana said that Britly had a gun, that she was stubborn, headstrong, and angry. Anna missed all of this. James carried a tool belt and nail bag on his waist, (which defense witnesses could have verified). How could he also have strapped on a gun, which then grew to 2 guns, according to Tammy on Tr. pg. 321. Lastly, the PCR Judges last paragraph's comment proves nothing other than jealous rivalry between teenage twin sisters.

Dismissal Pg 43, Response: These "corroborative" stories that the Judge is referring to about what other witnesses saw, (Britly, Breana, Tammy, and Martha) depict more that James was doing everything right out in the open without any fear of anyone seeing or thinking that he was doing anything lewd or criminal. Unlike Britly's testimony that he was always paranoid that someone would find out and that he kept her isolated. Please see the attached pictures of friends (there are many more) that were always around. Even Martha said that the family

always had people and children around. Here the judge also refers back to the officer's statements on arrest day and was argued on previous pages.

Dismissal Pg 43, Response: As to Dr. Luberoff providing evidence of physical trauma and penetrative injury, please also refer back to the argument on the previous pages. Again Dr. Luberoff confirmed that she could not state that Britly was abused without the history. She also stated on Tr. pg 351-352, "If we see an interruption in the hymen that goes all the way to the vagina wall, all the way through the hymen and to the vagina wall, then that's actually diagnostic of penetrating trauma to the vagina. **Britly's interruption wasn't all the way to the vaginal wall so all by itself it doesn't a hundred percent mean that it's from trauma and that's when we put the history with what we are actually seeing.**" Cavanaugh, "And is that finding along with her history consistent with sexual abuse?" Dr. "It is." Then under cross by Anna, "And based on your examination without any history or anything else you cannot state that she was abused, can you?" Doctor, "**Based on the examination, no.**" Then on re-cross by Cavanaugh, "Again, Dr. Luberoff based on the history that was provided to you regarding—first of all, again why was she referred to the Assessment and Resource Center?" Dr. "For a concern of sexual abuse." Cavanaugh, "And you obtained that history regarding these sexual abuse allegations?" Dr. "Yes." Cavanaugh, "And based on that history combined with that injury what is it consistent with?" A. Dr. "Sexual abuse. I did make a diagnosis of sexual abuse." These comments are very conflicting and confusing, which is why Anna should have re-directed after this exchange, to verify once again that the physical exam was nothing without the shared history. She should have also verified it again in her closing argument. Cavanaugh kept putting a lot of emphasis on the "history" at trial and in her closing argument. Cavanaugh in closing, Pg 586, 22-25, "**And what did Dr. Luberoff find? A notch on Britly's hymen at the 7:00 position. Combine that with Britly's sexual abuse history and that is consistent with penetrating trauma. Ladies and gentlemen, it doesn't get too much straight forward than that.**" The doctor's comments are canned testimony, as she frequently testifies for the State, just as she did in the trial of Yancy Thompson v. S.C. 2014, 2017 (att.). This is also another example as to why Anna Good should have called in her own medical expert witness. An independent expert could have explained more about the hymen with only a notch that didn't go all the way through to the vaginal wall after "constant" sex. An independent expert could have also answered the question as to whether masturbation could have caused the notch, since girls are more likely to masturbate than boys. Read Britly's story on pg 12 of her forensic interview, describing a time that she says James found a tube of lube under her bed and told her mom that she and Erica were messing with each other. This was Tammy, and Britly is admitting more about what she was up to and what Tammy and James were dealing with. James worked, Tammy stayed home. Anna Good failed to call expert witnesses.

Dismissal Pg 43, "This court finds the neighbor, Martha Penrod, also provided corroborative testimony. She testified she noticed unusual behavior between Applicant and victim."

Response: Martha Penrod was an 8th grade Jr. High school teacher, and if she saw these supposed events, then why didn't she report it. Teachers are trained to watch for and report abuse. She said that she just went inside because it seemed private. The State said that she twice reported abuse to the police, but instead it was during a very angry and heated exchange, that she blurted out a vile comment because James had called the police on Martha's husband for driving over and destroying James' new fence supplies and gate. The second time was when James called the police during the twins 17th birthday party, when Martha's husband came out and was threatening and cursing at the kids and then threatened Rodney Harrelson with a shotgun. Martha testified that she had called the police on them. Where are the police reports? If she did indeed call the police and made such an accusation, the officers would have been obligated to make a report of it and start an immediate investigation of sexual abuse. If there were any reports, the state would have produced them. Martha admits that James's friends were there (Mike Norwood included) along with Tammy's sister, Debbie Perry, who was willing to testify and that I repeatedly ask Anna to call to testify. Martha's testimony is based on an angry heated moment against someone that she had property disputes with and more. Tammy admitted that Martha had problems with their family. Martha's testimony was no more credible than any witness for the defense would have been and Anna should have called those witnesses to testify. She also had 3 days of trial to seek the actual police reports which again is why she needed an investigator or co-counsel. Martha Penrod winked at Tammy when she walked past her after testifying. She said that she and Tammy had a conversation after James was arrested. It wouldn't have been hard to get her on board. Tr. Pg. 295, Ln 17-21, Tammy Price, direct by Cavanaugh. "How did you get along with Martha?" A. Uhm, It was touchy. Uhm, she didn't seem to care for us for some reason too much and uhm, I spoke to her. Uhm, she was never like nasty to me or mean but there were some issues between our family and her." Anna Good failed to adequately cross examine witnesses. She failed to investigate.

Dismissal Pg 44, Failure to Object to Prior Bad Act

Response: This was a prior bad act for which no evidence was presented. Why didn't the detectives get the computer and James's cell phone to prove that this happened? Why didn't Tammy or Britly produce the evidence since they had the computer and cell phones including James' that would have contained such a video? This is another story that actually brings more attention to the rebellion that they were dealing with concerning Britly. Anna admitted initially on PCR Tr. pg 106,107, that it appeared to be evidence of a prior bad act, before she went on the defense of why she allowed it. She didn't even bring the video up in her cross examinations of Britly or Tammy, so it doesn't make sense that "it was part of her strategy to allow the video, in order to show that the victim made up the allegations." What did she think she was showing by not bringing it into question? Tammy was the one that was always snooping on the children. An obvious example of this is in her forensic interview with Sally Williamson. Forensic summary, pg 4, "Mom recalls little things now that were red flags, like finding "dirty music" on Britly's iPod

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and when mom talked to dad about it he shrugged it off and minimized it." This statement revealed more about Tammy and what she was doing than it does James. I could have testified about a situation that I had with Britly regarding porn as well, if Anna would have taken the time to consult with us during breaks.

Dismissal Pg 45, Failure to Object to Leading Question (Allegation 15)

Response: This was a leading question. Martha Penrod had already described that she saw James's leg around the victim. The state wanted to make it appear more vulgar. If this even happened, just because James had his leg across her back and one leg hanging down on the dock in plain sight, does not mean his genitalia was touching Britly or intending to. Anna should have asked more questions about how much detail Martha could have actually seen from the distance of her deck, through the summer trees, which Anna had pictures of. Anna failed to investigate the scene. Cavanaugh had so many other leading questions, especially to Britly, that it would be impossible to list them all.

Dismissal Pg 46 Failure to Object to Jury Instructions

Response: Tr. 645, Ln 14-21, Judge, **"I have another note from a juror. The juror is concerned, what happens if everybody can't come to an agreement? Uhm, that's not expected to come at a time when you have been deliberating for so many hours."** (The jurors went in at 1:40, broke for supper, and sent the note at 8:00 pm, so basically they had only been deliberating for less than 5 hours). Is 5 hours considered "so many hours" for a criminal trial? I find this to be intimidating to the jurors. The jurors note read, **"What if you don't feel persuaded and your decision is Final. What is going to happen?"** The judge responded, **"I mean, if it's not going to be an all guilty or an all not guilty, if you can't come to a unanimous verdict, then I would have to declare a mistrial. When I declare a mistrial, nobody wins. It just means that this case is going to have to be retried and 12 other people will be selected from Kershaw County who would sit in the very same seats that ya'll are sitting in and they would hear the same evidence that ya'll received, and there's no reason to think that there would be 12 smarter people or that they would be 12 more capable people to reach a verdict. And so I say that to tell you that I hope that you will continue to deliberate. I understand that it may not be a unanimous verdict. I do want to let you know that you can't be forced into a unanimous verdict."** PCR Tr Pg 94 17-25, Anna, Cross by Blitch, "And one of the responses that was given by Judge Gee was kind of akin to an Allen Charge in which she explained that if the jury wasn't able to reach a verdict, it would be a mistrial; that it would be up to the prosecutor as to whether to retry it and have a different jury come in. (leading question) and then she specifically indicated that they were to remain with their convictions." This is totally false and deceptive to the PCR court since nowhere did the Tr. Judge say that it would be up to the prosecutor as to whether or not to retry the case. Please read the entire trial page. PCR Pg 112 Ln 18, Anna, Cross by Mr. Johnson, **"So since that charge was saying something, the judge was**

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saying something to the jury that was not true, why did you not object to that?" Anna, "I mean, she went on to say stay with your convictions, and it's up to the State to decide whether to retry it again later I believe." Here Anna is also being deceptive since that statement was not included by the judge. However, both the DA and Anna are validating here that the statement should have been included. This is another example as to why inmates cannot possibly defend themselves against an attorney or state prosecutor that wants to win at all costs, even to the point of deception.

Tr. Pg 633, Ln 9, Jury charge, "Your verdict must be unanimous." Pg 633, Ln 16-17 "It is important that you attempt to reach a unanimous verdict but of course only each of you can do so after having made your own decision. Pg 634, Ln 5-6 Jury Charge, "Ladies and gentlemen, your verdict must be a unanimous one." Pg 647, Try your very hardest to come to a unanimous verdict because like I said, nobody wins when there's a mistrial, okay. These comments sound to have been intimidating and confusing to the jurors. Tr. Pg 552, (Friday before deliberations began). Trial Judge, "I do not anticipate this trial going beyond this week so if anybody is worried about it bleeding over into Monday, that's not on any sort of anticipation. That's not on the radar screen that that would happen in this case." Was the trial judge insinuating to the jurors that she believed that it would be an obvious and quick verdict? This was a display of prejudice when compounded with the other above statements. What significance did the comments, coming from a Judge, hold in the minds of the jurors? *Queried v. United States*, 289 U.S. 466, 470 (1933) ("The influence of the trial judge on the jury 'is necessarily and properly of great weight' and 'his lightest word or intimation is received with deference, and may prove controlling.'")

Billy Lemurces Taylor, Appellant case No. 2016-000549. "Also telling the jury the case will "have" to be retried is misleading. A hung jury often acts as an alarm bell to all but the unthinking, awakening one side (sometimes both) to weaknesses in their case, which can lead to a plea deal rather than a new trial. All of this adds up to the conclusion that the charge unduly pressured the jury."

Dismissal Pg. 47 PCR Judge, "Significantly, she told them: "As I told you in your instructions, you are to remain with your convictions and that is okay."

Response: The PCR court inserts here what the prior instruction that the judge was referring to might have been. The judge did not tell the jurors significantly what instruction that she was referring to nor did she reread the instruction that she gave at approx. 1:40 pm that afternoon. She only referred to it, after she said "this case will have to be retried" on Tr. pg. 646, at almost 12:00 am, to very tired jurors. What part of the jury charge did the jurors remember 10 hours later?

Pg. 47, "What if you don't feel persuaded and your decision is "final". What is going to happen?" Perhaps the jurors didn't know how to word the question correctly. "Final" seems pretty clear and does not seem like "a general question about the effect of a possible deadlock" as the PCR judge implied. The jurors were pressured to continue on. There were 4 jury holdouts.

Dismissal Pg. 48, Judicial Bias

Response: The judge seemed indifferent towards James from the beginning. Tr. pg 15, On Monday, after she was told about James's condition, she denied a continuance. She read off his MRI results from Dr. Scott Kerns, which included; inflammatory response and can cause pain, facets; DJD can cause pain, compression on a nerve root that's described as right sided radiculopathy. She read off his prescribed pain medications. We had evidence of James with an appt. (att.) with Carolina Neurosurgery and Spine Center in Charlotte, N.C., set for Tuesday, (for which it's hard to get in quickly and only as the result of viewing his MRI), that she would not allow him to attend. The state went into how they had flown in Britly from Virginia, Breana from California, and Tammy from Florida. Tr. pg 15, Judge, "Okay. All right. The motion for continuance is denied. This case has been pending since 2012." The judge was more concerned about the money that the state had spent, flying everyone in, than she was about the defendant, with a painful and debilitating back injury that prevented him from participating in his defense in order to receive a fair trial.

Tr. Judge, "I understand that the defendant is in pain and we will take breaks necessary during the trial. I myself recently had surgery. We'll need to take breaks and so we will do our best to accommodate Mr. Miller with regard to his back pain, but that's no reason to continue this trial." If the judge would have let James go to his hard to achieve appointment at a highly reputable spine center the next day, the seriousness of his injury could have been confirmed or not. It would have only taken a half of a day, just like it did when the judge started court late the next day because of her appointment for a CT scan. There were no breaks for James. Tr. Pg 239, Ln 18, first day of trial, Good, "Do they have lunch for him?" Judge, "I'm sorry?" Good, "Do they have lunch for him?" Judge, "I need to ask that question to the—Do we have someone from the jail here? Someone will have to bring him lunch then. Okay. We are at lunch break then." This was a complete and obvious disregard of James' needs. No one was from the jail there. No one brought James lunch that day or any day until I demanded it on Friday. Anna inquired about lunch for him only on Tues. which was not delivered. I asked the guard why James was not getting food on Friday, and was told that there were no orders for food or breaks for him. I told the guard that it was a basic civil right to be provided food. He came back with a brown paper bag about 30 minutes later with 2 bologna sandwiches. The court was back in session shortly after he started eating so he could not finish.

James was not allowed any of his 4 medications all week until Anna asked for the first time at 4:30 pm on Thursday evening. There was a discussion about the medication on Tuesday but the detention center would not allow his medication to be given. A conversation about the different meds was exchanged late on Thurs., Tr. pg.555, 556, Judge, "Now, I'm not a doctor but I happen to have a lot of experience with surgeries and pain medication ...", "Again, I'm not a doctor but I don't think you're suppose to take them at the same time, I would suggest that the jail, they would be in custody of his medication. He can go ahead and take one of the pain pills now." The jail had already said that they don't give medications at the jail. James sat in the wheelchair all day, every day, including 12 straight hours on Thursday, with an injured back, with no breaks and no medication. No one called the doctor to verify his medications or to inquire if he was able to sit long hours without causing further injury to his back. The State, Cavanaugh, mocked James to the juror's by insinuating that James was faking his back injury. Tr. Pg 173, Ln 9-11, Cavanaugh to Britly, "So you can see that he's in a wheelchair today. Throughout your childhood was he in a wheelchair?" Britly, "Never." Cavanaugh to Tammy, "Was he in a wheelchair during this marriage?" Tammy, "No." Of course he wasn't. He had just hurt his back the previous week and she knew it. Even though the judge read off his MRI report and medications in motions, she nor Anna, still did not object to this vile assault from the solicitor. Were the jurors led to believe that James was faking his back injury? James continues to suffer from the debilitating condition of his back, which has continued to deteriorate, leading to nerve damage and a loss of sensation to his legs and feet, due to medical neglect. I have attached a letter confirming this, from one of the doctors that James saw this year. He actually had to write to the doctor personally, inquiring about the prognosis of his back and the Doctor's recommendation, since SCDC is concealing his medical records from him. He continues to be told that they are scheduling his surgery with a neurologist but nothing happens. This situation was also argued on direct appeal, as to not allowing a continuance. I have listed the other comments that the judge made on the other pages.

Pg. 49, Failure to Object to Limitations on Testimony Replayed

Response: At 2:45 pm, Thursday, the jurors requested, Pg 636, "Could we get a transcript of the mother Tammy, and the daughter Britly? Would like to view the interview videos, State's comments from their closing statements, Officer Dill's testimony, Officer Houser, doctor from the ARC's statement?" Page 638, 2:57 pm, Judge, "What we can do for you is we can replay any testimony you want replayed. But it would be y'all coming back into the courtroom and us finding it on the tape recorder or the audio that we have and replaying that testimony. I don't know if you want all of that testimony replayed to you (They had just asked for it all). That would be hours of testimony and that's fine. We can absolutely do it but I didn't know if it made a difference to you once you found out we didn't have a transcript you could read. So what I'm going to do is I'll let you as a group discuss what I just told you." These comments were passive-aggressive. Did the judge convey a message to the jurors that it was going to be a lot of

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trouble to find and play the video and that it would take many hours to hear it. Even though she slipped in that they could do it and it's fine if they want to hear it, what part resonated in their minds? They came back 3 hours later at 5:05 pm, with a request "Can we see the laws for reasonable doubt?" Judge, "I'm going to reread to you my charge regarding reasonable doubt." This included, "There are very few things in this world that we know with absolute certainty and in criminal cases the law does not require proof that overcomes every possible doubt." Next the jurors requested their revised list of videos which only included the mother and Britly, and the first 3 officer's. Did the jurors feel pressured by the judge and possibly other jurors to not take so much time listening to the videos. The reporter didn't seem to have a problem getting the short list together to watch, as was implied earlier. It was important to see the doctor's conflicting testimony again, and it could have questioned the discrepancies in her testimony. It also would have been beneficial to see the conflicting statements of Breana and Officer Dill. Judge 5:55, "Someone asks the bailiff how long y'all would be staying here tonight. You are now in deliberations. We will stay as long as we need to stay until you all can come to a verdict. So we are in here for the long haul, as long as it takes for y'all, okay? Thank you." Did the judge convey to the jurors that she didn't think it would take very long to come to a verdict? Did the jurors think that they would be there all night if they listened to the videos? Did they have to come to a verdict? Did they feel pressured to come to a verdict? After the videos were played, they came back with the question, **"What if you don't feel persuaded and your decision is final."** After that discussion, the judge said "we need to break at about midnight," after having said earlier, "we are here for the long haul until you reach a verdict. "

Other Conflicts

Tr. Pg 526, Ln. 2, Justin Dill, Direct by Cavanaugh, "Okay. Did you actually go to the Miller's house?" Dill, "No ma'am, not that day." Pg 549 Ln 25 – Pg 550 Ln 1-5, Dill, "It's my understanding he put his hands up behind his head, actually took everything out of his pockets, pulled his pockets out and put his hands behind his head is my understanding." (This was hearsay.) Cavanaugh, "And that was after you went down to the dock, right?" Dill, "Yes ma'am." Dill said he wasn't there that day, and then he said that he was. This was confusing and Anna should have re-crossed.

Tr. Pg. 531, Cavanaugh, "Did he appear to be under any stress or distress? Sorry. Not stress. Distress at the time as far as did he appear to be hot or incapable of understanding what you were saying?" Dill, "Not that I recall." Pg 533, Cavanaugh, "And he indicated to you that he didn't know where he was at. Did he appear coherent to you?" Dill, "Yes Ma'am." Cavanaugh, "Did he know that he was at the sheriff's office?" Dill, "Absolutely." Pg. 543, Ln.18-20, Cross by Good, " Do you recall the first thing he said while he was crying was—Let me make sure I get it right—"why would they want to get rid of me?" Ln 22, "And then you came into the room at that point and what was his demeanor? He was crying and upset?" Dill, "Yes, ma'am." Good,

"Did he seem overwhelmed?" Dill, "That's fair to say." Good, "Then after that interview ended, the second one when you brought him back from the detention center began, he was still crying?" Dill, "He began to cry, yes ma'am." Good, Pg. 546, Ln 4, "Okay. And he continued to cry throughout both interviews?" Dill, "Yeah, He cried on and off. Yes ma'am." Good, Ln. 7, "And despite the crying and being completely overwhelmed with everything and wondering why they would do this, you continued to push him saying just tell me what happened? Tell me what happened, correct?" Dill, "Yes ma'am." Why was Dill saying that James was coherent and not distressed to Cavanaugh, and then admits that James was crying and upset on cross?

Throughout the trial and in her closing argument, Cavanaugh kept repeating, that James's admitted that he had his hand inside Britly's leg, inside her thigh. Tr. page, 539, Ln. 4, Dill, "he woke up with his hand on the inside of her leg, or on her leg." But in Dill's police notes, (see att. 127) he writes that James said he woke up with his hand "on" her leg & that's it. There's a big difference between on her leg, inside her leg, and inside her thigh. Anna should have objected and clarified to each one of these statements throughout the trial. The State wanted to make it as vile as they could to the jurors. Tr. pg 532, Ln. 21-23, (This is also part of the PCR app.)

Cavanaugh, "In fact, what did he say about what happened? Did he say that he needed his story on the same page as hers?" Dill, "Yes, he said he didn't want his to differ from hers." Who is "hers" at this point as well? If Anna paid attention to Dill's written statement and the video, she could have argued what James actually said. On PCR Tr. pg 104, Anna herself quoted that James said in his police interrogation, "That Brittany wouldn't lie." If even Anna was deceived about what was actually said, what did the jurors hear?

Conflict: Tr. pg. 205 **Britly** direct by Cavanaugh, Q. "How did you hide those bruises?" A. "I just wore baggy clothes to cover them up." Cross by Good, Tr. pg. 257, Q. "And you stated that you would get bruises. Y'all live by the lake, correct? What would you wear when you would go swimming?" A. "Uhm, we had to wear board shorts and swim shirts." **Tammy**, Tr pg 328, Q. "And you said you saw a couple bruises on her arms and legs, What kind of bathing suit was she wearing?" A. "She would always wear a two piece." Q. "Do you mean a bikini?" A. "Yes." **Breana**, Tr. pg 386, Q. "Did Britly ever wear a bikini?" A. "We would if we were sunbathing." Q. "Did you notice any bruises?" A. "No." Tr. pg 454, **Martha Penrod**, Q. "What kind of swimsuits were they wearing?" A. "Two piece." Q. "Did you notice any bruises on Britly?" A. "I was never—I don't remember being close enough to see any bruises." Anna dropped it. She could at least have brought attention to this conflict in her closing argument.

Conflict: Henry Harrelson. Cavanaugh continued to make comments throughout her directs and in her closing argument, about the 12-13 year old little boy. They all knew that Henry was 15+ at the time. **Britly**, forensic interview, pg. 12, "They have a 15 yr old son and we became good friends." Pg 13, "the breaking point was this 15 yr. old boy that you know, I'm... he is my best friend." 3.8 years later, Britly, Tr pg 221, Ln 14-21, "There was their eldest son. I can't

remember if he was 13 or 14." Q. "And how old was this little boy?" A. "13 or 14." Tr pg 226, Ln 16, Q. "And you said that he was jealous of the little 13 year old, right?" A. "He was extremely jealous." Cross by Good, Tr. Pg 260, Ln 14-18 Q. "You were upset because of this Henry fellow, right?" A. "No." Q. "Didn't your father just tell you that he caught you the night before and he didn't want you dating this Henry boy?" A. "I wasn't dating him." Britly forensic interview pg 12, "He was scared because we (she and Henry) were getting really close and he was scared that I would tell him (Henry) so he pushed him away too." **Tammy**, direct by Cavanaugh, Tr. pg 296, 12-24. A. "and then the oldest was 12 or 13." Q. "Who is the oldest?" A. "Henry." Q. "How old was Henry?" A. "He was 12 or 13, uhm, 4 feet tall, freckles, braces, a little country sweet little boy." Pg. 297, 1-2, "Just a little boy." He had not hit puberty yet." **Cavanaugh**, closing argument, Tr. Pg. 598, " And this Henry, Henry Harrelson, this 14 yr. old prepubescent little boy that they were family friends with." **Breana**, Cross by Senn, pg 374, 9-10, Q. "How old was Henry?" A. "Henry was 14." **Dill**, Cross by Good, pg. 546, Q. "And at that point, he told you about the Harrelson boy, correct?" A. "The 15 year old, yes ma'am. That they had been arguing about that." Pg 549, Ln 13, A. "He kept referring back to; I'm assuming the 15 yr old boy." Dill also commented on the 15 year old boy in his written police notes (att. 127).

After all of this deception, that Henry was 12-13 and 14, and all of the confirmations that he was actually 15+, and after I told her in the beginning about the 15 yr. old boy, Anna Good says in her closing argument, "And he starts talking about the Harrelson boy. I want you to think about 14 year old boys today. Just because she was 16 and he was 13 or 14 doesn't mean that they were any different in size in development." If Anna Good was deceived herself, by the repeated false testimonies and the State's false comments, that Henry was 13 or 14, even though she knew that he was 15 (close to 16), what resonated in the minds of the jurors? They were left thinking that James was jealous of a little 13 or 14 year old boy. It was ridiculous to say that there is not a big difference between a 13-14 yr old boy and a 16 yr. old girl. Anna had in her file, pictures (att. 141,142,144) that I had sent her that she could have presented of this "prepubescent little boy" to expose this deception. Anna Good's own false description in her closing argument was prejudicial to James. Cathy Harrelson, whom I continued to tell her to call to witness, was Henry's mother. Anna needed co-counsel to help her keep the facts straight.

Conflict: Arrest Day. Britly direct by Cavanaugh, Tr. pg. 225, 8-13, Q. "Describe how the day was progressing." A., "Uhm, well, that evening there were plans to go to the Harrelson's to ride horses and "my mom and dad were arguing." I don't know what about, but my mom came into my bedroom and she cont. to say..." Objection. Pg 226, Q. "Did James say anything about why you couldn't go?" A. "No" Q. "And were you upset?" A. "Uhm because he had convinced my mother of the facts, but what he thought was going on. That's why I was upset is because she was convinced of what was going on with the Harrelson boy." Q. "And you said earlier that he was jealous of the little 13 year old boy, right?" Pg 228, 4-5, "I told her that he has been

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touching me." Ln 9-10, "And I said, 'We need you. I need you.'" Pg. 229, Ln 22-25, Q. "So what did you say to your mom after you told her?" A. "I just—That, I need her and that she just has to stay with us."

Tammy, direct by Cavanaugh, Pg. 297, Ln 10, A. "Uhm, Britly and her father got into some kind of scuffle or argument. I'm not sure to this day what was said but uh, but then he came in and said that she's not going and she's not allowed to ever go there again." Pg 299, 1-2 "I said what is wrong? I said, 'Is he touching you, and she said every day.'" Direct by Good, Q. "You stated that she came forward to you that she was in an argument with her father." A. "A spat is what I would say." Q. "Over this boy Henry about everybody going to the Harrelson's?" A. "It had nothing to do with Henry." Why was she suddenly denying that it was about Henry after so much emphasis was put on Henry in the previous statements? Why did Tammy ask Britly, "is he touching you," just because Britly was crying and upset? Why did Tammy wait until everyone was mad and angry to ask that question? Why was Britly worried about Tammy leaving them? Anna had in her file, that she could have presented at this time, Facebook private messages that Tammy had sent to James, apologizing and asking for forgiveness, for what "she" had put their family through, that her sister tried to warn her, and that she was going to be a better wife (Att. 128,129).

Dill written statement, "He said me, Britly, and my wife been fussing for a few weeks." He also said that James said in the interview that Britly has been emotional and that he and Tammy have noticed that.

Conflict: Britly, Cross by Good, TR. Pg. 262, Q. "And as soon as you get down to Florida, you got a boyfriend, didn't you?" A. "Not immediately." Q. "How long afterwards?" A. "A couple months." (Anna had FB post of this that revealed that it was right away.) Q. "And did somebody end up moving in after that with your mother?" A. "I can't remember." Q. "Do you remember a guy named Jason?" A. "He didn't move in to Melissa's house." Q. "Okay, but your mom started dating him when ya'll moved to Florida?" A. "It was several months after from what I remember and understand." **Breana**, cross by Good, Pg 391, Q. "And where did ya'll live in Florida?" A. "We lived with our friends that were in Florida already." (This was the family of Breana's boyfriend whom she is now married to.) Q. "How long did you live with them?" A. "I want to say 3 weeks to a month." **Tammy** cross by Good, Pg 336, Q. "Who did you move in with in Florida?" A. "I got my own house, I didn't move in with anybody." Q. "You didn't move in with some friends when you first moved down there." A. "I spent 2 nights, I found a house in 2 days, so no ma'am, I did not live with them." Q. "What were their names?" A. "Melissa and Ryan Albrook. (Alberque). Pg. 337, "When did you start dating Jason Price?" A. "2 months after I moved down there. Q. "Did Mr. Price move in with you?" A. "Yes ma'am." Anna dropped it but should have questioned harder. This is another example of why she needed co-counsel and an investigator. Jason Price moved in with them right away. (See FB att.) But whether it was right

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away or 2 months later, what mother let's a man that she supposedly just met and that she couldn't possibly know much about, move in with her and her 5 children after what they have just been through. Five children including one 8 yr old girl, 2 young boys, and 17 year old teenage girls, one of which had just been sexually assaulted by a man that they loved and trusted their entire lives and who had never harmed them in any way. Any mother would have been paranoid and suspicious, and would not have trusted anyone around her children, especially so soon. There were two little boys and a little girl dealing with this horrible thing that their father, (who had never harmed them) was accused of, and then a strange man that they did not know moves into their home. Tammy helped their son Collin (10 yrs. old at the time of James' arrest) get emancipated at 14 years old so that he could be out on his own and not have to go to school.

Why was Tammy so anxious to get to Florida? Why was she so comfortable selling everything immediately when James was only arrested and charged but not convicted? She even conned me into helping her get a van because "DSS was coming to take her kids if she didn't have a car," when in actuality she wanted a van to get out of town. (See FB PM.) Why was she so secure in thinking that James would never be released or found not guilty? Perhaps because she had just gone through this with her dad 3 years earlier and she knew the ropes (att. 134).

I told Anna from the beginning that this was about Tammy, wanting to get away to Florida for some reason. Tr. pg 313, Tammy, "Oh my, I got everything sold. I had no money. I had no job so I had to sell everything we had, "to try to get away." Then she admits on Tr. pg 319, Ln 24-25, "I got a settlement when my mother passed away." Why did she have to get away? Her only family, and friends were right there in S.C. where she was. Why would she want to take her kids away from their friends and family, and move them to an unfamiliar place, far away, after all that they had been through, one month later? Why was she so secure in thinking she could manage alone with 5 children in another state without any support? Anna should have asked many more questions, presented pictures from her files, and brought more attention to this.

Back to, Tr. pg. 301, 10-18, Tammy, "Uhm I sat down beside him for a couple minutes and touched him because I knew what was fixing to happen and I knew that my world was fixing to get taken from me." How did she know what was fixing to happen? Why would she tenderly touch him if she truly thought that he raped her daughter? Why did she chuckle and say "I love you" when she left the jail after asking James to sign over the deed to his work truck? James was ambushed and had no idea that day what was going on. Tammy also posted on her Facebook page, 9/12/12 (one month after James was arrested), **"Today turned out to be freaking great. I love meeting new people. Looks like it is packing time because we are pushing up our moving date to NEXT WEEK!! Yea, bye bye South Carolina and hello to the rest of MY life."** (att.135) Anna had this in her file as well. This was all about Tammy. You will see the

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drama in her testimony. Tammy's beloved sister and only family member, Debbie Perry continued to say to James and me, "I'm so sorry for what my sister has done." (See the att. letters and text messages). She doesn't say "Britly."

In PCR Court, Anna Good Browder had an excuse for everything that she did not do, mostly that it didn't go along with her strategy, but the fact remains that she did nothing to investigate or prepare for the adequate defense of James Miller. In doing so, she violated her lawyer's oath, which included; "To my clients, I pledge faithfulness, competence, diligence, good judgment and prompt communication."

The record of this trial shows that the jurors did not receive the much needed information to come to a fair and just verdict. They were struggling and seeking answers. They had nothing for which to base what they were instinctively feeling, except the vicious, inflammatory attack and false statements from the state. The numerous errors and failures that were committed in this trial; failure to call experts; failure to do a proper investigation; the lack of adequate cross and re-cross examinations of the police officers, detectives, witnesses, and doctors; allowing multiple hearsays; allowing a claim of a previous crime for which there is no evidence of; the failure to call witnesses for the defense; no assistant or co-counsel; unlawful arrest; presenting a police interview after the defendant asked for counsel multiple times; failure to provide James with full discovery, including Forensic interviews, DSS records, and police car videos; failure to seek medical and hospital records including follow up exams with OBGYN and DSS; combined with the prejudicial comments and treatment by the judge; denied James Wayne Miller his constitutional right to a fair trial. Could any trial be won with even a few of these errors?

Strickland v Washington 466 U.S. at 695, "The question is whether there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt."

*Note, The attachments that I have enclosed are just a sampling of what Anna Good had in her files. The pictures and postings depict an active family life with friends, family, activities, and normal teenage clothing, unlike what was described in court by Britly, her sister, and mother.

Thank you for the opportunity to present this Pro Se response to the Supreme Court of South Carolina.

With Respect,

Pamela Edwards

James Wayne Miller, #367454

James Wayne Miller
#367454
I'm innocent
June 27, 2023

2nd copy

Dear Camden lock and Key

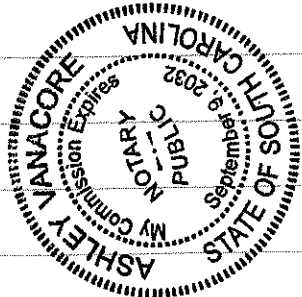
My name is James Miller, I was
Arrested at my lake House at
1785 Wild Turkey Rd in Wateree Hills
off of Hwy 97, It's lake front

The officers had locked me in
the car, (back of cop car) that morning
and they called you guys to come
out and unlock the cop car.

I'm in need of a copy of the
invoice or bill or receipt that
shows you came to my residents.

P.S Please make copy of this letter
and return with letter and invoice
and Envelope is enclosed so it
does not cost you.

Thank You James Miller



Ashley Vanacore
expires 9/9/32

2nd Copy

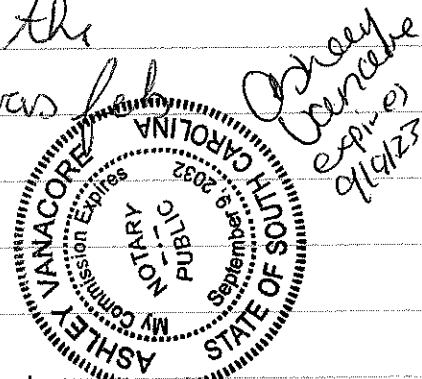
Dear Ellen Chestnut or to whom it
may concern

① My name is James Miller. I was
arrested on Aug 12, 2012 at my
lake house at 1785 Wild Turkey rd in
Waterlee Hills off ~~off~~ of Hwy 97. I
spoke to Ellen Chestnut at Kcdc
shortly after being arrested. I'm
still in Prison for a crime that
never happened. I'm innocent

② I'm requesting a copy of all DSS
records that you have on file about
the meetings and interview's with
me, Tammy Lynn Miller, Britly Miller,
and rest of my family and friends.
My Attorney Anna Goel Subpoenaed
these records and never received them.
I need them for my Pro Se and
Habeas Corpus case against the
State. Date of Subpoena was Feb
7, 2013

PS Please make copy of this letter
and return with records
and letters.

Thank you James Miller
367484



2nd copy

①

Dear Kershaw County clerk of Court

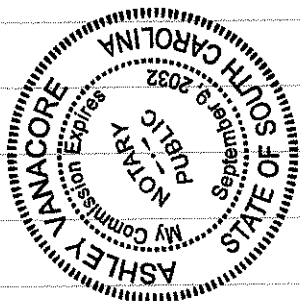
①

I'm requesting a copy of the Subpoenas that were issued on or about Feb 7, 2013 to Anna Good for the DSS files, jail logs, facebook records as listed in this email and also in court transcripts from trial and PCR trial.

②

I'm requesting a copy of the request for funds from Ola Johnson for the private investigator (Mark H Jones) There should be a order or invoice of some kind.

P.S Please make copy of this and return with requested items.



James Miller
367454

Ashley Vanacore

Expires 9/9/32

2nd Copy

Dear Anna Good

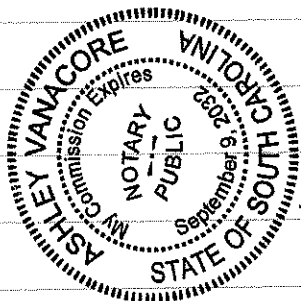
① I'm requesting a copy of a full Discovery including the missing pages from the Arc Di's report, pages 1, 4, 8, 9, 12 are missing.

② I'm requesting a copy of the Court Transcripts from the Bond Hearing Judge Benjamin.

James Miller
3C7455

P.S please make copy of this letter and return with listed items

JY



Ashley Vanacore
emg9/9/32

2nd Copy

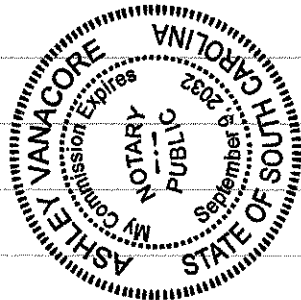
Dear Kershaw County Sheriff's Office

Enclosed are some items in
requesting from you.

James W. Miller
367454

P.S. Please make copy
of this letter and return
with requested items.

Thank You



Ashley Vanacore
expires 9/9/32

2nd Copy

① Dear Oler Johnson

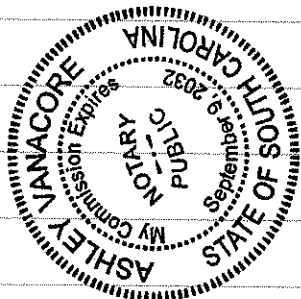
① I'm requesting all the information you have that I and my family provided you for my PCR case.

② I'm also requesting copies of the affidavits that the investigator printed out from Mike Norwood and Kathy Hansen that you withheld from PCR Hearings on April 1st 2022

③ Please Print all information off of flash drive that Pam Edwards provided also. I need this information for my Pro Se and Habeas Corpus Case.

P.S Please copy this letter and return with requested items

Thank You
James Miller
307459



Ashley Vanacore
Expires 9/9/32

Emails between Anna Good
and Pam Edwards

Julie Taylor

From: Scott Kerns [scottkerns@me.com]

Sent: Wednesday, March 09, 2016 8:42 AM

To: Julie Taylor

Cc: Suzie Kerns

Subject: MRI lumbar spine DOS 3/8/16

James Miller (12-14-76)

1. Left central disc herniation at L4/5, extending behind superior endplate of L5. Causes compression of thecal sac.
2. Right foraminal disc herniation at L5/S1, compressing right L5 nerve root. This is significant. He describes to me a right-sided radiculopathy.
3. Spondylolysis at L5 without spondylolisthesis.
4. Facet DJD at L5/S1 bilaterally. Contributes to compression of L5 nerve root on right. Facet DJD can cause pain in and of itself.
5. Modic type I endplate changes, far right lateral, at L5/S1 in conjunction with #2 above. This is an inflammatory response and can cause pain.

These are copies of the original
5 pgs of medical papers. They
were stapled together (Left upper
corner) Anna had staple removed
by prosecutor and then ^{shown} withheld
from Judge.



Sentinel Health Partners

Work/School Excuse

Primary Care Division
244 Haile Street
Camden S.C. 29020
432-1996

710 DeWitt Drive
Lugoff S.C. 29078
438-7566 or 438-1805

216 E. Marion Street
Kershaw S.C. 29067
475-3475 or 475-3350

2689 Hwy 1 South
Elgin S.C. 29045
438-7698

Family Practice
J. Carl Kearsa M.D.
Gordon E. Pennebaker M.D.
M. W. Kang, M.D.
James M. Timmons M.D. (ret.)
G. Holmes M.D.
Jennifer Carter, PA-C
Lisa Cuyburn NP

General Practice
Ken Lovette M.D.

Internal Medicine/Pediatrics
Paula L. Belmar M.D.
Eva Marie Reynolds, FNP

Internal Medicine
John B. DuBose M.D. (ret.)
Jack F. Scheuer, Jr., M.D.
James C. McAlpine Jr., M.D.
Tatullah F. Holmstrom, M.D.
Cynthia A. Witherding, M.D.
Julie A. Taylor, M.D.
Anita DuBose RN, MN, ACNP
Anne Blake RN, MSN, FNP
Lauren Taylor, PA-C

OB/GYN
1800 Robertis St.
Camden, SC 29020

John L. Moore M.D.
Leland King, M.D.

Ophthalmology
615 Laurens St.
Camden, SC 29020

Daniel Skufca, M.D.
William H. Moore, O.D.

PHYSICIAN: MD Julie A. Taylor, M.D.

FOR: Miller, James W

Date of Birth: 12/14/1976

Address:

1175 BARN OWL ROAD

CAMDEN, SC 29020

Phone number:

ALLERGIES: Drug Allergies. No Known.

DATE: 03/09/2016

The above named patient was seen in our office on 03/09/2016.

Please excuse from work/school from 3-9-16 through 3-18-16

Dr.

Electronically signed by: MD Julie A. Taylor, M.D. 3/09/2016 14:25

This is what she withheld

①

Subjective

Patient is a brand new patient who has health insurance but it does not cover preventative issues. He is here exclusively at present because of chronic episodic low back pain, on-going for over a year, acute exacerbations which temporarily improve. No known inciting factors. He does a lot of lifting/stooping, ect for his job in construction. He has associated "burning" paresthesias down his right leg. He has tried Lortab from a friend as well as Morphine in the past, of which he was intolerant, and several other narcotic pain medications. Lortab 7.5mg worked the best. He has tried Flexeril and Zanaflex and Ibuprofen 800mg, none of which were effective. He has had recent flare for the last couple of days, limiting his ability to ambulate and do his job. He got on health insurance to undergo MRI for further evaluation and assessment and treatment for this issue.

Objective

Comfortable appearing male in no current significant acute distress. In mild to moderate distress, patient hunching over and having some difficulty with ambulating because of pain and discomfort. Moderate pain with right leg raising present

Assessment

1. presumable LS spine disc disease with right lower extremity radiculopathy
2. health maintenance

Discussion

1. Will get MRI of his LS spine as soon as this can be authorized and meanwhile give him a trial of Medrol dose pack, which he does endorse he believes he has tried in the past which were quite effective. Will also give him Rx for Lortab and give him samples of Vimovo to take 1 po bid with meals to see if this is effective and

have him try to minimize lifting, bending, stooping, ect and use prn heat to his lower back. Will await further input depending findings from the MRI

2. Patient will defer anything else presently given his lack of insurance coverage for such

Plan

Care Plan

Medications

Follow Up

follow up as directed after MRI report is obtained or prn

Transcribed by arh

Electronically signed by Julie A. Taylor, M.D.



Sentinel Health Partners
Medical Summary For Miller, James W Page 1 of 1

Address	1175 BARN OWL ROAD CAMDEN, SC 29020	DOB	12/14/1976
Home phone		Age	39
Cell phone	(843) 709-4943	Chart #	125236
		Date	3/11/2016

ALLERGIES

Drug Allergies. No Known.

PROBLEMS

ACTIVE PROBLEMS:

Low back pain ICD10: M54.5 ICD9: 724.2 Onset: presumable radiculopathy / disc disease
2. Current every day smoker ICD10: F17.210 ICD9: 305.1 Onset:

INACTIVE PROBLEMS:

MEDICATIONS

Current Meds: None.

Morol Dosepak: 4 mg tablet SIG- take as directed

Lortab 7.5/500: 500 mg-7.5 mg tablet SIG- 1 tab(s) every 4-6 hours as needed

SURGERIES

FAMILY HISTORY

Family History - 1st Degree Relatives:

INTERVENTIONS

HM: Colonoscopy:

PSA:

Screen AAA (age 65):

LDCT:

Hep C Screen:

Tetanus Booster:

Flu Shot:

Zostavax:

Pneumonia Shot:

SOCIAL HISTORY

TOBACCO: Status: Current every day smoker ICD10: F17.210 Tobacco - current smoker. #1034F Relates Dx- Modifiers-
Performed: 3/03/2009 INTERVENTION: BEHAV CHNG SMOKING 3-10 MIN. #99406 Related Dx- Modifiers- Place of Service:
Performed: 3/03/2016

ALCOHOL: ETOH:

MARITAL:

HOME:

DIET:

LIFESTYLE:

EDUCATION:

JOBS:

MILITARY SERVICE:

HIPAA: Permission to leave a message on answering machine: 843-709-4943

Release info to: No one listed on 2016 upd.

ADVANCED DIRECTIVE:

That's why she said

Emails to Anna Good

pam edwards <pamedecor@gmail.com>

Jan 26, 2013, 9:45 PM

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to anna

Hi Anna, I'm sorry it has taken me so long to get back to you. I just finally got the discovery for James Miller. I asked Neil Riley numerous times (Since Oct.) for it and even got Power of Attorney from James to receive it. Still, he did not send it but gave it to a friend of James' without question on 12-28-2012. The friend in turn sent it to me. It has also taken me awhile to gather my resources. We are not a wealthy family by any means but still a very passionate one. If you think you can help us, I would like to set up an appointment asap. James' mental state is deteriorating at the rate to cause concern. I am available Mon, Tues, or Thurs. this week if you would like to meet. I am advancing you what I have noted in the discovery to look over. The bullets are what is in the actual discovery, the rest are my notes and research. I also have much more info for you that I will hand deliver. I can also send more ahead to save time in our meeting. I have alot of research and am willing to do more with direction. Let me know if you are still interested and if you truly think that you can help us in this matter.

Sincerely, Pam Edwards

On Wed, Nov 14, 2012 at 8:50 PM, pam edwards <pamedecor@gmail.com> wrote:

Anna testified in PCR court that she sent me the discovery and then I sent her bullet points.

Feb 5, 2013,

7:46 PM

anna@annagoodlaw.com

to me

Hey Pam--

Just wanted to touch base with you. I went and saw James today. He is doing well. I also received the discovery from the solicitor's office. I haven't been through it yet to see if anything is missing but I plan to start doing that in the next couple of days. We are going to try to go up for a bond hearing the week of March 11 in front of Judge Benjamin. He also mentioned to me he is definitely interested in the polygraph and Dr. McKee but I told him we would try to deal with the bond stuff first then go from there. That will also give me time to go through his discovery. I will also be subpoenaing the Facebook information, the jail logs, and the DSS file. Let me know if you need anything in the meantime. Thanks!

Anna

Anna R. Good

Law Office of Anna Good, LLC

1720 Main Street, Suite 303

James kept requesting a
polygraph + Psychosexual exam,
even while in detention @
KCDC,
Anna didn't pursue either.

anna@annagoodlaw.com

Feb 5, 2013, 8:07 PM

60,

to me

You're welcome. I will let you know. I have to wait to draft it so we don't get stuck in front of a different judge. As soon as it is scheduled I will email you. Also, I just went through the discovery...not much different from what you gave me except there is A LOT missing. I have attached the letter here that I am mailing tomorrow to the solicitor to get what is missing. The discovery they gave me on the MIRP is literally just the warrant, nothing else. Anyway, you'll see what else I am asking for. Some of it may not exist (forensic interview or videos/audios, but I always ask and James says he thinks he was recorded.

Anna said in PCR Court that she sent me the discovery in the beginning. Here she admits that I sent it to her. Only thing she ever sent me was after the trial was over.

pam edwards <pamedecor@gmail.com>

Feb 5, 2013, 8:55 PM

to anna

We know that there was a forensic interview because Detective Knafelc referred to it in his search warrant comment when he said that "the victim was very revelling in the forensic interview on Aug. 15." He also noted that the wife had called because "she" had found DNA evidence. Also in the letter from Cathy Harrelson, Cathy noted that Tammy was tampering with evidence. In the first bond hearing, Tammy read a letter to the judge that she had written (she told me that she and Britly stayed up all night writing it). James thinks that was recorded also, since no one seems to have that letter.

pam edwards <pamedecor@gmail.com>

Feb 18, 2013,
12:16 PM

to Anna

Hi Anna, Just wanted to check in with you to see if you were able to acquire what you were seeking and if you discovered anything new to use. I also meant to ask you if you were going to have another expert look over the medical findings especially concerning Britly having Mono and not James. Let me know if there is anything that I can do.

anna@annagoodlaw.com

Fri, Mar 1,
2013, 2:02 PM

to me

Hey Pam--As we had discussed before, we have filed for a bond setting for James on his criminal charges. This bond setting has been set for **Tuesday, March 12, at 9:00 am** at the Kershaw County Courthouse in Camden.

pam edwards <pamedecor@gmail.com>

Mar 3, 2013,
1:05 PM

to anna

Is there a certain court room to look for?

Also, Detective Knafelc is still in contact with Tammy (the mom) and Breana is afraid that Tammy will find out that she is talking to us. She is very afraid of her. If she comes to the hearing, can we prevent him from feeding info to Tammy?

**PCR - Didn't object to Breana Testifying with Mother in Courtroom!*

pam edwards <pamedecor@gmail.com>

Mar 4, 2013,
9:53 AM

to anna

* Okay! I will convince her that we will protect her. I am going to try to pick her up on Sunday, so I will let you know Sunday or Monday what to plan for. Mike said that Breana is going to try to visit James on Saturday if she can get a way there. Were you able to get the jail log to see if Tammy violated the restraining order? Thanks,P

anna@annagoodlaw.com

to me

I did get the jail records but it doesn't show her as going to see him at all. I just took a cursory look through them though so it may be that it was somewhere that I wasn't looking. I will look at it closer when I am

preparing for the bond. But, I do have the jail visitor logs.

I haven't received the DSS file yet.

Mar 4, 2013,
11:36 AM

never did this.

anna@annagoodlaw.com

462
Tue, Mar 26, 2013,
10:48 AM

to me

Hey--

Regarding Breana, see if you can get her to write a statement as to what all she knows. If you can get it notarized, great, but if not, just the information in written form will be great.

** I called Anna and requested she meet with Breana and Debbie Perry.*

anna@annagoodlaw.com

Fri, Jul 19, 2013,
12:53 PM

to me

hey--

** time was not on our side- people move, people forget & people die. 3.8 yrs.*
just wanted to touch base with you guys and see how things were going. no updates right now. we of course are letting this case sit as long as we can because time is on our side in cases like this. if you guys need anything, just let me know. i am usually easier by email because i have been in court every single day for the last two weeks. hope you have a great weekend! #1

pam edwards <pamedecor@gmail.com>

Tue, Apr 8, 2014,
11:54 AM

to Anna

I just wanted to check in with you to see if there is anything new happening. Have you gotten and read the full discovery, DSS report, DNA results, Britly's physical exam? The waiting and not knowing is so frustrating. We are already up to \$3300.00 to the monitor company and the monitor has kept James from some good job opportunities.

Asking again 14 months after I hired her.

anna@annagoodlaw.com

Wed, Apr 9, 2014,
11:36 AM

to me

Hey Pam--

See my responses below in blue.

From: pam edwards <pamedecor@gmail.com>

Date: Tue, April 08, 2014 11:54 am

To: Anna Good <anna@annagoodlaw.com>

#2 again. The longer these things sit. The better.

I just wanted to check in with you to see if there is anything new happening. Nothing is currently happening on the case, which is a good thing in my opinion. Usually the longer these things sit, the better. *

63

Have you gotten and read the full discovery, DSS report, DNA results, Britly's physical exam? I have received the discovery in the case and been over it. It has been a while, so I will go back and look at it again just to make sure I have everything.

She didn't. She waited until the last minute to "cram" the info.
The waiting and not knowing is so frustrating. We are already up to \$3300.00 to the monitor company and the monitor has kept James from some good job opportunities. I actually spoke to James about this a while back because we discussed potentially going back to amend the bond, but we decided not to bring it up since it would put his case back on the radar and push it when the longer it sits the better.

#3 Anna is the one who kept "blowing" us off. Not us blowing her off.
pam edwards <pamedecor@gmail.com> Apr 9, 2014, 1:30 PM

to Anna

Can I see the reports? I have Jame's POA.

anna@annagoodlaw.com

Apr 10, 2014, 1:59 PM

to me

No. I can give James a copy and if he wants to share with you he can. I know you have his power of attorney but for purposes of what I am allowed to give to who, since James is capable, I have to give him a copy.

James called her but she still didn't send discovery to either of us.
pam edwards <pamedecor@gmail.com>

Apr 10, 2014, 5:31 PM

to Anna

Understandable. I will talk to him about it. I feel that it is time to review since it has been so long and could come up at any time.

Thanks, Pam

anna@annagoodlaw.com

Aug 6, 2014, 4:08 PM

to me

Hey--

The trial has been scheduled for November 3. I am going to go ahead and get the trial notebook together then will get with James to get him down here and start prepping for trial.

Trial was canceled.

64

pam edwards <pamedecor@gmail.com>

Aug 6, 2014,
5:03 PM

to Anna

Thanks for the info. I gave James a head up that you would be in touch. I will be picking him up and coming also to review, and also for support.

pam edwards <pamedecor@gmail.com>

Fri, Feb 6, 2015,
10:21 AM

to Anna

Hi Anna,

Are we still on for a March court date? If so, when?

Let me know if you need anything that will help.

I hope your surgery and recovery went well.

Pam Edwards

*2nd scheduled court,
Canceled*

anna@annagoodlaw.com

Feb 6, 2015,
10:44 AM

to me

Hey-- No. The solicitor on the case is no longer on the case (which I think is a good thing). That recently happened in the last two weeks so I have actually been in contact with the Kershaw Solicitor's office to find out who is taking over and when, etc. I am hearing it will be June. I have also emailed them a copy of the motion to amend the bond so that we can try to get that scheduled in the meantime to handle trying to get the GPS off. *She didn't bother to tell us that it was canceled*

anna@annagoodlaw.com

May 26, 2015,
3:48 PM

to me

Hey Pam-- I had a status conference this morning on James' case. His trial date is now set for August 10, 2015. Just wanted to let you guys know.

pam edwards <pamedecor@gmail.com>

3rd scheduled court,
Fri, Jul 31, 2015,
9:42 AM

to Anna

Hi Anna,

Is the court date still Aug 10 and do you have a date and time scheduled for pretrial prep? Thanks, Pam Edwards *Asking to meet again.*

anna@annagoodlaw.com

65
Jul 31, 2015,
9:44 AM

to me

Hmmmm...
Hey-- I had a note on my desk to call James today. Actually, I talked to the solicitor the other day and we can't do it that week now due to the fact she is in trial in Richland. (I am happy with this though because school has started back yet so there will be tons of teachers on the jury if we went August 10, which I don't want.) HOWEVER, she has agreed to do the motion to take the GPS monitoring off of him since we can't do the trial that week. I don't know which day that will be yet that week, but I will let you know as soon as I know. *Didn't bother to contact us again.*

pam edwards <pamedecor@gmail.com>

Fri, Jan 15, 2016,
12:56 PM

to Anna

What about that new court date?

Anna Good <anna@annagoodlaw.com>

* Jan 18, 2016,
8:14 AM

to me

4th scheduled court.
The new trial date is March 14. * *She had 2 month's to start preparing James and witnesses for trial. Waited till last minute.*

pam edwards <pamedecor@gmail.com>

Jan 18, 2016,
9:18 AM

to Anna

OK. I will try to be at one of the trial preps. Thanks P
She waited until the last minute to schedule a prep for trial. Appt was Thurs. Mar. 10. Court started on 3-14-16

pam edwards <pamedecor@gmail.com>

Thu, Mar 10, 2016,
6:05 PM

to Anna

Hi Anna,

Sorry to bother you after hours. James is really in bad shape and we have been trying to get him in to see a neurosurgeon all day. After sending all of his reports and waiting all day, the one he was referred to says that they don't work with his insurance provider. I spoke with a nurse today at "Carolina Neurosurgery & Spine", in Charlotte. She looked at his MRI and said he does need surgery asap. She is checking to see if

66
they can accept his coverage or refer him to someone who can. They won't send a letter to you until he is accepted as a patient, and a treatment plan has been established. We were really looking forward to meeting you today and moving forward. Is there anyway that I can come meet with you and have James on conference to prepare? I will get him to you, and in court, in a wheel chair if necessary. He is literally crawling and taking some very strong prescriptions. *She never answered my request.*

PCR Trial. Anna said we kept blowing her off about meeting her.

Anna Good <anna@annagoodlaw.com>

Mar 11, 2016,
7:36 AM

to me

We are talking to the judge today so I have to tell them about everything. I need something as soon as you receive it. Very detailed. Even if he can come to court he is going to be all drugged up and that doesn't help me. I need him to testify.

The state is ready. They are flying them up from Florida. The state is paying for it.

\$ money \$
Sent from my iPhone

pam edwards <pamedecor@gmail.com>

Mar 11, 2016,
8:56 AM

to Anna

★
Do you need anything else from me? I can come. James cannot even get up today. We are still trying to get an appt.

I know this seems coincidental but I promise you, it is legitimate and very serious.

Told her again that I could meet with her.
No response.

anna@annagoodlaw.com

Mar 11, 2016,
9:05 AM

to me

I know. That is why I need something from the doctor explaining everything. To everyone else it is going to look like a way to get out of trial, but if we have something from the doctor explaining, it legitimizes it. Just get it to me ASAP. I am on the way to the solicitor's office now to go over the discovery notebook, let them in on the situation and talk to the judge probably.

why is she just now going over the discovery notebook?

pam edwards <pamedecor@gmail.com>

Mar 11, 2016,
9:36 AM

to Anna

So far, earliest appt is Tues. In Charlotte. neurosurgeons are hard to get in to see. And still waiting to see if they even take his ins. I think he should go to the emergency room.

B7

in Columbia. Hopefully then someone would have to see him and you would have your documents. Thoughts?

Anna Good <anna@annagoodlaw.com>

Mar 11, 2016,
10:16 AM

to me

Yes. Take him to the emergency room. I need specifics from some kind of doctor as to what is going on, medicines he is prescribed and their effects on him.

pam edwards <pamedecor@gmail.com>

Mar 11, 2016,
11:30 AM

to Anna

He went to Kershaw emergency room. They sent him to Lexington Hosp in Richland since they can't treat his level of injury. Lexington has neurosurgeon on staff. He is on the way there but an hour away. He can't walk and his hands have gone numb. Will update. Hoping he will get admitted. He thinks his back is broken.

pam edwards <pamedecor@gmail.com>

Mar 11, 2016,
12:50 PM

to Anna

Predicted 8 hour wait at Hosp so don't know if you can get anything in time. James has been at every single court date and not once in 3 years did he violate his probation or monitor. That should stand for something.

pam edwards <pamedecor@gmail.com>

Sat, Mar 12, 2016,
11:04 AM

to Anna

Call witnesses!

He is going to fax you the papers he has. He will see the neuro surgeon Tuesday. It is a miracle that he got in at Carolina Neurosurgery & Spine and only then by us knowing people. He could not wait 8 hrs in a chair in the emergency room so he had to leave. Only people coming in ambulance were given priority. If you want him to come to court, we will try to find a wheel chair and get him there unless there is one at the courthouse. Do you know? If they continue with the trial with him under duress and medicated, can't we file for a mistrial? Tell me what to do and how many people you want there. Are you going to subpoena anyone, Mike, Cathy, Tammy's sister? I and they know what was going on after his arrest more than he does. What fax do you want the papers sent to today?

If it is not enough, tell me plan B.

*Call witnesses! Mike, Cathy,
Tammy's sister. (Debbie Perry)*

Anna Good <anna@annagoodlaw.com>

168
Mar 12, 2016,
3:54 PM

to me

He has to be at court unless I have something from a doctor saying he cannot physically be there. Also for purposes of showing he is on heavy medication, I again need something from a doctor indicating what medicine it is, why it is necessary and it's effect on him. I need something to give the judge.

On Mar 12, 2016 4:02 PM, pam edwards <pamedecor@gmail.com> wrote:

Will a picture of the prescription bottle and description pamphlet of the drug do? It is weekend and no Dr's. Available. What time is court? We have also not prepared for a defense.

She had 3.8 yrs to meet with us and start preparing. 1 day was not going to prepare James for trial

pam edwards <pamedecor@gmail.com>

Mar 14, 2016,
5:37 AM

to Anna

I am leaving soon to go get James and all his prescriptions and papers. I am 2 hrs away. What time are you meeting judge? What time is court?

Anna Good <anna@annagoodlaw.com>

Mar 14, 2016,
7:25 AM

to me

I will be there between 9 and 9:15

pam edwards <pamedecor@gmail.com>

Mar 14, 2016,
8:04 AM

to Anna

We are here. Where shall we meet. I have prescription bottles and papers and appt verification and James.

69

3/14/
16

Mon.
1st day
of court.

pam edwards <pamedecor@gmail.com>

to Anna

I had to email her to get answers since she didn't discuss anything with us. She still didn't answer.

Curious. Why didn't Deal think it was important to take all notes with such a serious charge and at what point did they tell James what he was being accused of. Ask James what his level of education and vocabulary is and was he communicating help the best way he could. If it even matters now.

Anna Good <anna@annagoodlaw.com>

3/15/
16

to me

Any update?

Sent from my iPhone

pam edwards <pamedecor@gmail.com>

3/15/
16

to Anna

*

He is still at Palmetto ER. Been there since 9 last night and still not seen. I told him to not take anymore meds so he can be coherent to testify. The state did their homework. They have all the witnesses. I think you to need to call some like Tammy's sister and Mike and Cathy H. I don't feel good about this at all. Heading that way now.

Tues
2nd day

*3-15-16 Request to call witnesses.
Tammy's sister, Mike, Cathy H.*

Anna Good <anna@annagoodlaw.com>

3/15/
16

to me

✓



79
pam edwards <pamedecor@gmail.com>

James Miller File

3 messages

secretary@annagoodlaw.com <secretary@annagoodlaw.com>
To: pamedecor@gmail.com

Wed, Apr 20, 2016 at 12:58 PM

Hello,

James Miller file is ready for pick up. The address is below.

Thank you,

Pattie M. Clifton-Hart
Paralegal
LAW OFFICE OF DEON O'NEIL, LLC
LAW OFFICE OF ANNA GOOD, LLC
2127 Park Street
PO Box 7284
Columbia, SC 29202
(803) 661-6758
Fax: (803) 403-8752

pam edwards <pamedecor@gmail.com>
To: secretary@annagoodlaw.com

Wed, Apr 20, 2016 at 1:41 PM

Hello,
Why can it not be mailed to me? I am 2 hours away.
Pam Edwards
4518 Elderberry Ct.
Matthews, N.C. 28104
[Quoted text hidden]

secretary@annagoodlaw.com <secretary@annagoodlaw.com>
To: pam edwards <pamedecor@gmail.com>

Wed, Apr 20, 2016 at 4:26 PM

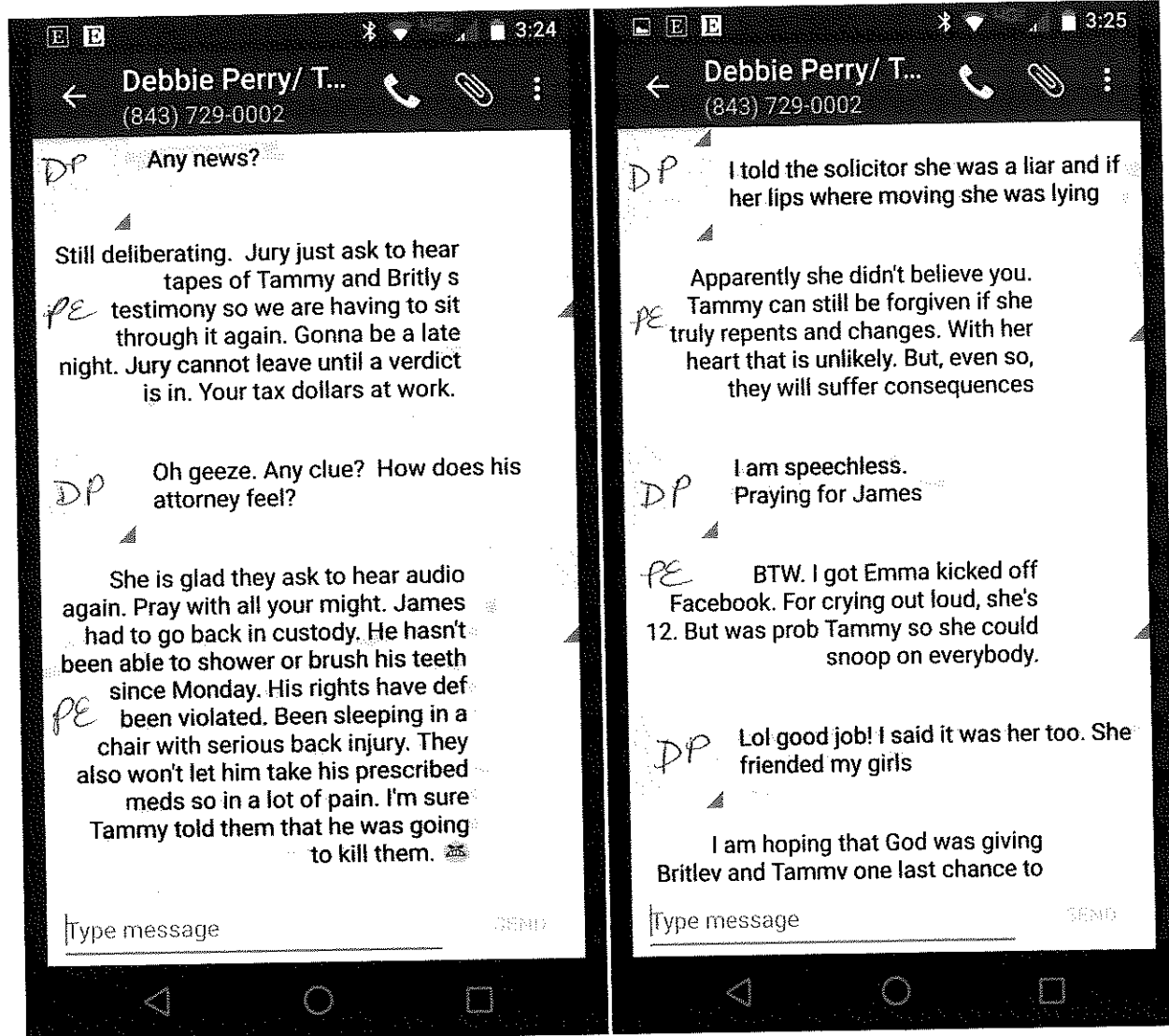
I mailed it off today.
[Quoted text hidden]

*This is when I received full discovery
after many requests. / month after
the trial. PE*

71-78

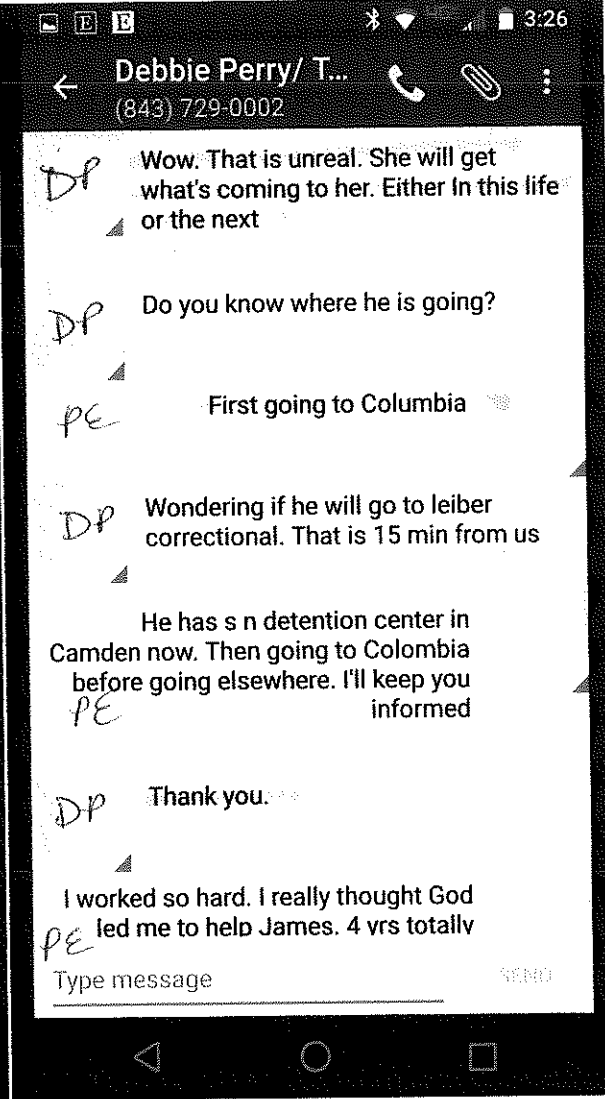
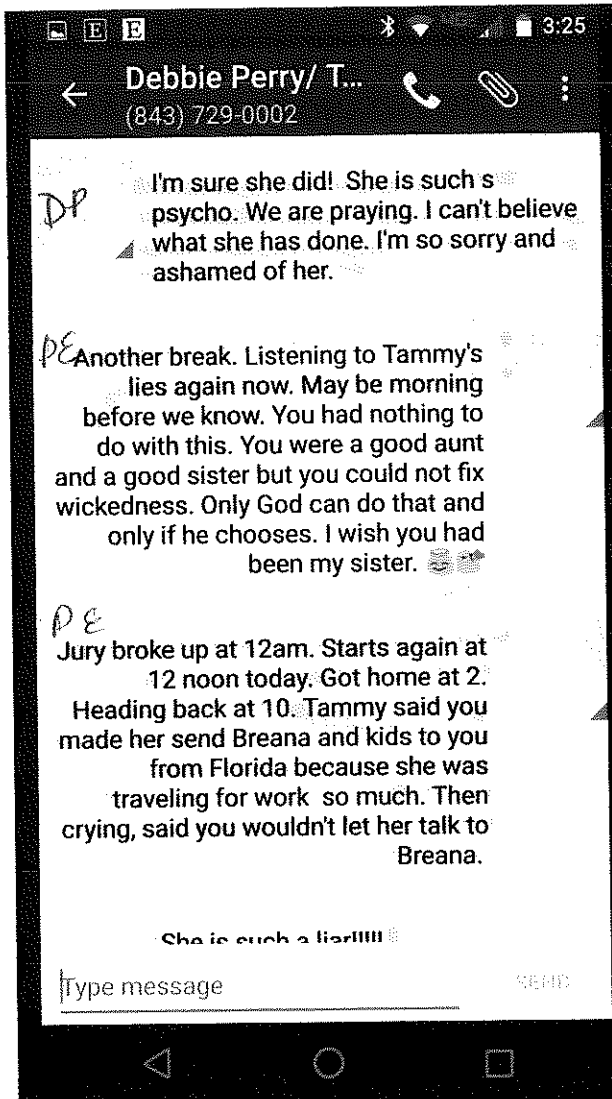
Text messages between Pam Edwards
and Debbie Perry, the sister and only
family member of Tammy Miller Price.

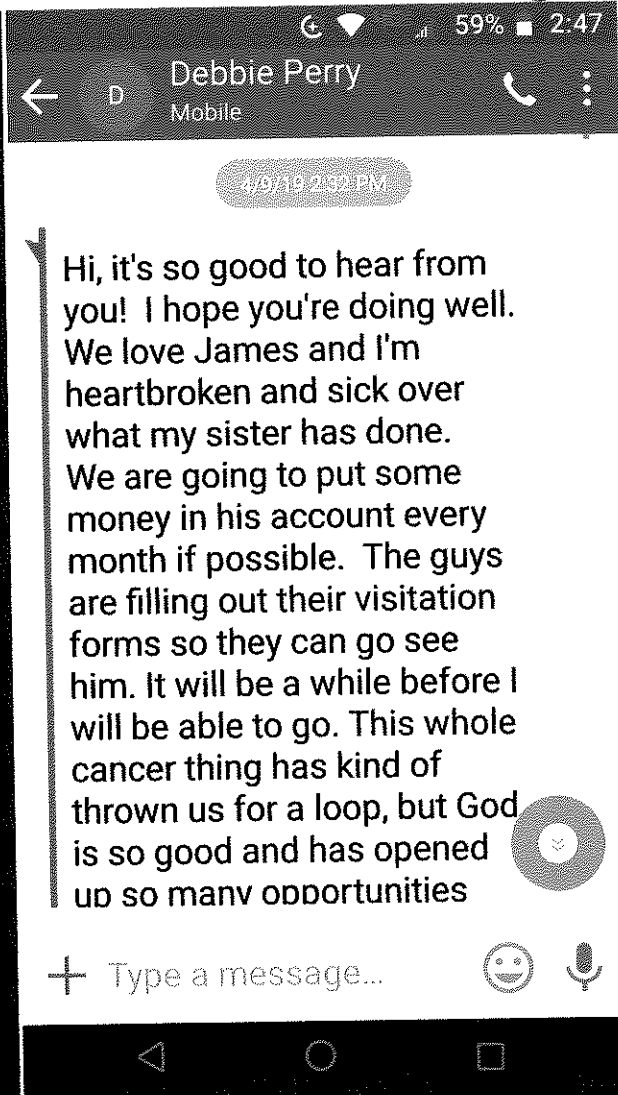
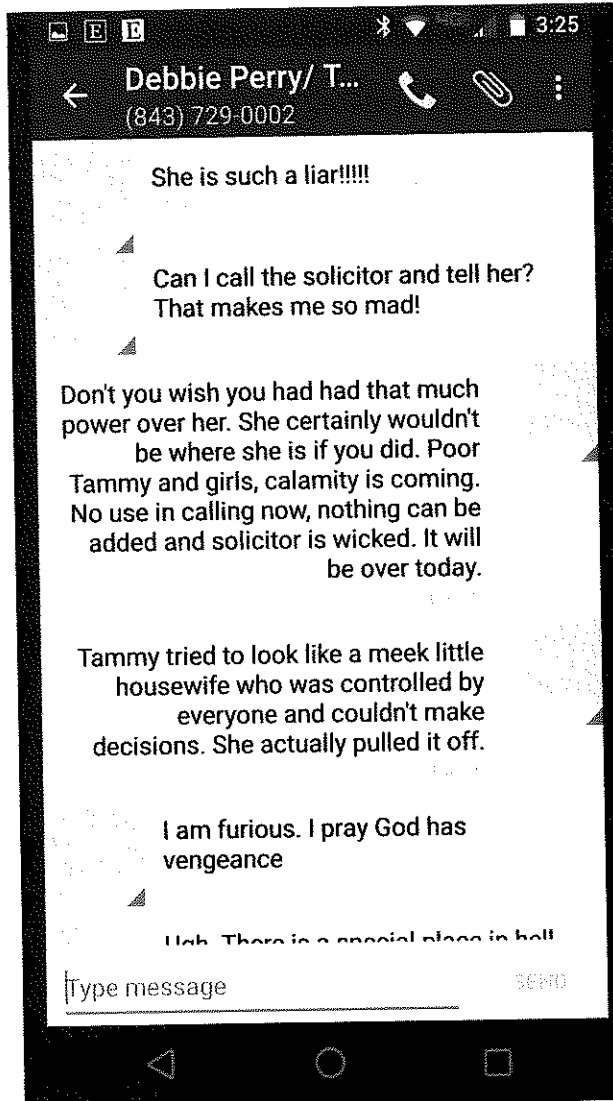
Letters from Debbie Perry, Scott
Perry (Debbie's husband) and Zack Perry,
(Debbie's son.)



Texts messages between Pam Edwards and Debbie Perry (mom, Tammy Miller's sister.) Anna Good was requested many times to call Debbie Perry to testify. In PCR Court Anna said that the witnesses had nothing pertinent to offer, even though she never spoke to them.

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* Text messages between Pam Edwards and
Debbie Perry (Tammy Miller's sister)

S. Perry
169 E. Main St
Maclegville, SC
29448

Debbie + Scott
Tammy's Sister +
Bro-in-law

The Perrys
1301 Bennett Cir
Holly Hill SC 29059

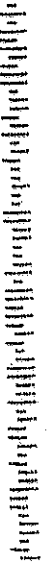
Zach

Wife

Tammy's
Nephew +
Wife

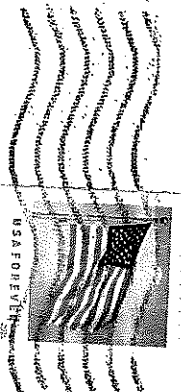
James W Miller 367454
MLT 1029-B
Box 4460 Broad River Rd.
Columbia, SC
29210

29210-401250

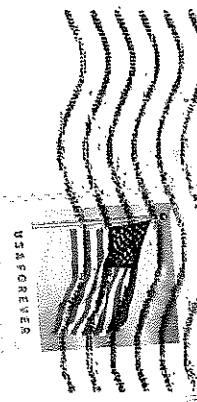


COLUMBIA SC 290

09 MAR 2019 PM 2.1

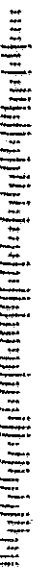


CHARLESTON SC 294
13 MAR 2019 PM 1.1



James W Miller 367454
MLT 1029-B
Box 4460 Broad River Rd
Columbia SC 29210

29210-401250



7/6

These witnesses were crucial
to be called to testify. PE

From
Scott Perry
Tammy's
Bro-in-law
(76)

Brother James

I am sorry for taking so long
to respond, but Debbie has breast cancer
and we got your letter just before we
were heading out of town. We went to
a clinic in Mexico that specializes in
cancer treatment, and everything went
well.

~~I~~ We know you didn't do what
they said you did, and still can't
believe what happened to you. And I
sure hope you get a new Fair Trial.
Zack and his wife are also writing
you a letter, and they are expecting
a baby boy this April, so I will
have three grandchildren soon.

And I will be glad to send you
the money that you need and I will
get that in there as soon as I can.

I sure hope your health will get
better so you can return to the man
I once knew. Zack and I want to
come and visit with you soon

* Tammy Miller's bro-in-law.
This was Tammy's only family.

✓
over >

(18)

Dear Uncle James,

I think about you all the time and I hate feeling so helpless about your situation. Several of us wrote to you a while back but I'm not sure you ever got our letters. My dad and I have been wanting to come see you for a while now but I think there was some confusion about where you were. If there is anything me and Jess can do to help please let us know. I am sure we will see you soon and prayers never stop.

I have bought my first house and I can't wait for you to see it. Me and Jess are also expecting a baby boy at the end of April, his name will be Archer. We have three cats which came from Taylor's cats which all came from Lilo.

I really wish there was something I could do to help, please let me know if there is. You still have an entire family on your side that wants nothing more than to see justice served up on a silver platter. I guess you can call this part of the blessing's curse. Stay strong and stay positive, I have faith the these wrongs will be made right and life can begin again. You are very much loved and again, prayers go up every day for you. I hope to hear from you soon.

With love,

your nephew, Zack

* Tammy's nephew, Zack Perry.
Son of Debbie & Scott.

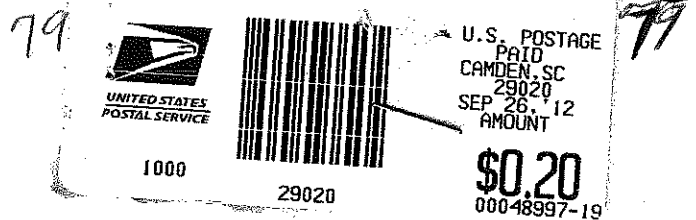
Tammy's sister's (Debbie Perry)
son Zack Perry

Letters to James Miller from family
friends, Cathy + Rodney Harrelson, after
James' arrest.

Emails to Pam Edwards from Cathy
Harrelson.

Telephone interview with Cathy
(Harrelson) Payne.

James,



Where to begin? Well, I'll start by trying to fill you in and answer some questions you've asked in your letters. First off, let me tell you we are no longer in contact with any of your family. We cut ties, and are now unfortunately on their "enemy list". I also want you to know, Rodney and I have read all your letters. We talk with Mike and Tina regularly and piece together our contact with you/your family, and we compare to their contact with you/your family, and we all four are still SO CONFUSED. The big question is~who's telling the truth & who's telling a lie. We ALL agree Tammy nor Britly are NOT and have NOT acted as "victims" during this whole mess. We just can't wrap our heads around the fact that : (1) If you did what they say you did, "How the heck does someone do that to their daughter"? (2) If they are both lying about all this, "Who could do this to their father/husband, and WHY?

I'll start from the day you were arrested. Shortly after Tammy and the kids left to return home from riding Breanna's horse for the first time, Tammy called Rodney's cell in a panic. Later I found out she had tried calling our home number and my cell, but got no answers. When Rodney answered, he was walking back to the mancave from the horse pasture. She told him she needed me and him to leave the kids and come over right away. She said something terrible had happened. She was crying and upset. Although I was very concerned, I told Rodney to go and then call me if I was needed too. I did not want to leave the kids alone, and plus Tammilee's dad was about to pull up anytime. I didn't want him to come up and find all our kids home alone. So a few minutes went by and I was very anxious to hear what happened. My mind was racing, wondering, what could it be. Did someone drown? Did someone die? I had no idea what it could be. Then, I couldn't wait any longer so I called Rodney. He stepped outside or away from them and told me what had happened. He said you'd been arrested and they called the cops because Britly told her mom that you had been sexually molesting her for over a year. Of course we were all in SHOCK, to put it mildly. Total shock. Rodney came back home, and then I called Tammy. She and I talked and thought it would be best for her and the kids to get away from their house for the night and come spend the night with us. Thinking back, and knowing what I know now (their behavior through all this mess) I'm seeing all the signs of "odd" behavior that was occurring from the very beginning. This was just hours after she had you arrested. Yes, they would break down and cry occasionally, but for the most part, they acted like normal.

Tammy got straight onto her cell phone and stayed on it most of the time she was here. I don't know who she talked to, but she wasted no time spreading the news to y'all's family, friends, and the community. I heard she even went up to the store by the shop and told them~you molested your daughter. Here again, looking back, I find it odd that she talk so openly, willingly, and be so matter of fact about all of this ~ sometimes to total strangers. I don't know if you remember before all this went down, but there had been talk about her wanting us to go try a church that was mostly African Americans. Turns out somehow she had met the man that scrapes y'all's road. He is a nice old black

8/15

do. To us, we could not see where she was doing anything she NEEDED to be doing. She would even say herself the things she needed to do. She sounded like she had a plan, and would even tell us, "tomorrow I'm doing this, or that", but it seemed to never get done. What she needed to be doing to finding a job for her and the girls, finding a way to get a car, and pay her rent~Job, transportation, and shelter. Those should be her three main goals. But instead, she was, and from what I can tell she still is, all over the place. She's selling this and that. She's got Mark helping her, whom I think I would trust him no further than I can throw him (which aint far). They seem to be spending the money as fast as they get it. They're spending money on stupid stuff and being "rebelious" they call it getting those nose rings and planning on getting tatoos. Who does all that crap at a time like this? The behavoir I would expect from a mother of 5 kids who's life has been turned upside down would be to get things in order and keep the kids on their normal routine as much as possible to give them as much securtiy as possible right now. She's telling the kids way too much too soon. Those little people have no way to process all that is going on. All they know is "My mother knows everything, and if she says it, it must be true". These kids have been so sheltered and controlled all their lives, they are like robots. They don't know how to think for themselves, and she's not being the role model they need at a time like this. But aside from all the spending, Tammy had began spening ALOT of time with MARK. She came over one morning, the Wed. after your arrest (3 days later), bragging about, "Guess who spent the night on my couch"? Mark. She went on and on about how sweet he was. That he didn't try nothing. He just was being a "friend". It did not take long for us to start getting really suspicious of them. He was with her almost everytime she came over. We went out on the boat once, and he came too. Rodney does not care for Mark to start with, and he did not want him there, but it did not seem to be an option. While out on the boat, Britly broke down and began to cry. We assumed it had to do with all this stuff. Then next thing you know, we look at the back of the boat and Tammy was laying on the back mat while Mark was sitting on the back seat and they were holding hands!!!!!! We were disgusted. That really got us talking with Tina and Mike. "What the hell is she doing"? Even if she is "just friends" like you say, this man is spending the night at their house, holding hands with their mom, ~how are these kids supposed to inturpret that? Once Tammy got off the boat, Rodney and I had a moment with him and I asked him "What the HELL he thought he was doing! He talked back to me like I was crazy. I told him to watch it or I would put my foot up his ass. He just laughed. Later that night or the next night, everyone came over to hang out, your crew, Mike and Tina, and of course Mark. Your crew left and Mike and Tina and me and Rodney had a chance to talk to Mark. Trying to talk some since into him. He denied anything was happending or that he planned for anything to happen. They were just friends he said. We none believed him, and he was not all that conviencing. Well, he went back to Tammy, being the little brat he is, telling her crap like, he's not allowed over at our place no more, and that we said they CAN'T be together, when what we really were saying was~ if they want to spend time together as friends, they should do it only around us ~other people~ not alone. Well, Tammy came over the next morning and expressed her dismay in the way we talked to her Mark. She said the same things he did, denying anything was going on. I told her, he twisted our words around to make it sound like he was a victim of our criticizm, and I explained to her that our advice to them was, if they must be together, make sure it's around other adults. I told her it doesn't look right to her kids or any of us for them to be together "alone" all the time. We told her and Mike kept telling Mark, they were heading for trouble, that the two of them "hanging out" so soon could give the investigators the idea that this was all a set up so she

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keep these kids sheltered from this mess, or to provide them with any stability. I don't know Tammy's sister, but at this point, I'm thinking the kids might be better off with their aunt just so they won't be exposed to all this drama EVERY MINUTE OF EVERYDAY! But, I still couldn't help but think ~"what kind of mother leaves her children with her sister (signs her parental rights over mind you) all the way in another city, then comes back to "take care of things" (with: Mark), and selling everything you own, and at this point, they were given like two weeks to move out of the lake house, so now she had the excuse she had to pack. She also used the excuse, she was not able to get their school work done because she had been SO busy, so she felt it was best to SIGN THEM OVER so she could get stuff done????????

Then at some point she met with someone else working the case~not sure exactly when this was or what the meeting was about, but it was not too long after she and the girls met with the investigator. She called me after this meeting to fill me in on what she was told. She apparently met with some kind of psychologist who had analyzed you. She was told that you said you were molested by your mother when you were young. She said the person told her that, "if your husband were to get out of jail, you and your family were highly likely to experience a murder suicide " (meaning, you would find them and kill them and then kill yourself). She said the person also told her that you might try to plead insanity, which might carry around 5 years in the state hospital. Once you were released from that, the authorities would consider putting them (her and the kids) in the witness protection program to keep them safe from you. Then, what she said next is what did it for me. After I got off the phone with her that time, I called Rodney and told him what she had said. We both concluded we had to cut loose of this whole thing. She basically called me and said, "look, my husband's a nut case, he may or may not get out of jail, and ~Oh, he will most likely come kill us". Call me crazy, but I had enough.

This very same day, I read on FB Tammy and Britly's post that Britly got her drivers license that day. Tammy was going to let Britly come over while her and Mark went to Sandhill to take back the gun cabinet. I asked Tammy if she would come when Britly does because I needed to talk to her about something. She asked, "am I in trouble". I told her no, it's nothing like that. She agreed to come, she said she was also having to pick up a cat from a lady who got one from the litter to rehome. I'm not sure what happened there, but Tammy needed to borrow our pet taxi to use when she got the cat when they meet they lady at Sandhill. So with in a few minutes Britly pulls up in the white milk truck, she was excited about getting her driver's license. Tammy had said on the phone that someone was offering them a place to stay on a "pay what you can" basis, and that on top of Britly getting her drivers license, this was they best day they've had in a long time. I hated to ruin it for them, but they had put me and my family in a dangerous position. I can remember setting my alarm at night thinking, "what if James shows up"? We never used to set the alarm here. I would find myself thinking, we better change the lock on the gate and get a new one incase James comes around here. But according to them, they were being told you'll never see the light of day again, at there was nothing to worry about. But, Tammy's behavior with the irratic spending, her questionable "relationship" with Mark, and her dragging her feet to accomplish any of her three main goals to keep her family in tact (shelter, transportation, and a job)~

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the less, she still didn't see where she was to blame for it ALL. So, over the next three weeks Henry and Britly continued talking on the phone and facebook. Britly would fill him in and he would let us know what all the crazy stuff Tammy was still up to. One day they were moving to somewhere like Missouri (I think), then Lugoff, then Florida~ the kids stayed at her sister's house a good 1-2 weeks. Not exactly sure, because I didn't keep up with the days. Then, one day Britly told Henry that the kids were coming back home (I'm not sure if it was/is for good or not) that Saturday or Sunday. All this over the Labor Day weekend. Tammy had posted the y'all's tube and several life jackets for sale on FB. Tina read the post and thought to call and ask if any of the life jackets were ours? Tammy said she did have some of ours and some of Henry's swimsuits that she would leave at the end of the dock, because Tina told her we were planning to go out in the boat that Sunday. When we drove up to get our stuff, Colin was on the dock. Next thing you know, most all the kids and came out, but not down to the dock, except Britly (she may have been there when we drove up~cant remember), but Britly got into the boat to check out he radio speakers for us~they had stopped working (AGAIN!~that's another story in itself), but she was not able to fix it. Mike, being his crazy self told her we were here to kidnap her, and started driving off. Of course he was kidding. Britly saw Tammy coming 1/2 down the dock looking very pissed and so Britly asked to go back. When we dropped her off at the dock, Colin saw fit to spit at us. Mike took that very personally, and wondered just, "What was that mom telling her kids about us". When did we get so bad, he had to spit on us? But he's a kid and they've all been through hell and he's dealing the best way he knows how. That night Tammy made sure to let Rodney know once again that, "our family has done enough to hurt theirs and for us to stay away from them." She said emma has still not stopped crying since she saw us on the boat. We felt bad, and said we were sorry and for her not to worry, we will stay away. She has since blocked and defriended us all on FB. Just a few nights after that, Henry and Britly were facebook messaging and Britly starts talking trash about us. Telling Henry his parents and friends (meaning Mike and Tina) are nothing but a bunch of drunks. That kind of ruffled Henry's feathers. He wondered why she all of a sudden was lashing out at him. He had not done anything. I told him, by the words that were being said, it would not surprise me if that were actually Tammy typing on Britly's message board. Over the weekend, Henry overheard the daily/weekly update me, Rodney, Tina, and Mike discuss when we're together, trying to each take our peice of this crazy puzzle to make since out of any of this. He heard Mike or Tina say, they heard (?), Mark was kicked out by Tammy becuase he was caught making a move on Britly. Well, Mike has been straight up with Tammy and Mark this whole time letting them know just how stupid they both are being, and that Mark is not only after Tammy, but Britly as well. So this caught Henry's attention, and once Britly started saying mean things to him, he confronted her about Mark making a move on her. To his surprise, Britly told him that it was not Mark making the move on her, it was her making the move on him? Henry wound up telling her he doesn't want anything to do with her anymore and to have a nice life. They've since blocked and defriended him too.

Mark took it upon himself to confront Mike about what Henry said. Now Mark and Mike are on the outs and their friendship is over. As far as we know, Tammy and Mark are still on???? or is that Britly and Mark???? I'm not telling you all this to stir you crazy while you sit in jail, I just want you to know just

(9)

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I tell you, it's always something around here. I know you asked about Tamilee in your letter. Her finger healed up nicely, and she comes over still. She's done remarkable through all this. She's shown she's a tough and strong little girl. We like her alot. We don't encourage the kids to have friends over like we used to. We were super lucky we did not get our pants sued off with Tamilee's accident. Her parents have been great about it. They have had every opportunity to sue us, even had lawyers approach them, and they said no way. So we don't encourage alot of company, this place seems to be kind of dangerous~ alot for kids to get into. Just last week Jake shot himself in the eye with an airsoft gun, and injured himself. He was out of school all last week. Thank God he is going to make a full recovery. That was another stroke of luck. But, like I said it's always something crazy happening here. I read too in your letters the hell you are living in there. I hate that for you. I also hate the fact that our Government is so screwy too. Believe me, I just went throught the so called "Justice System", and you don't have to tell me, it aint worth a crap. None of us know what to believe in this whole thing, and you would hope we could count on our "Justice Stystem" to clear things up, but I saw first hand how you can get booked for something you're not guilty of. I hope that does not happen here. I hope the truth will set you free my friend. If indeed it does, please know we don't think badly of you. Yes, you made the news and are being labled a child molester ~but if you are truly innocent, I am praying with all my heart, the truth will be shown~without a shadow of a doubt. I want you to understand, we have decided to stay out of this. Yes, we care about what happens to you, but we've been through too much to take sides at this point. I hope you can understand. I was so glad to see you have found your way to God's word. He is powerful. He is all of what that Good Book tells you he is, and whether we help you or not, or Mike helps you or not, He is in controll. If it's meant for you to be free, He will make that happen. Be sure to keep your faith in Him, it will be hard at times, especially when you feel so alone, but He's all you got, man.

We'll be here to try and keep you company and show you someone does care about you in there. I'll be glad to put money in your canteen. I'll ask Mike how that works. But as far a calling and stuff, let's just lay low on that right now. Because we can't make you any promises at this point. I'm glad to hear you talk about your future and how you'll live when you get out. I hope that day will come soon. But know too, that after all that has happened, it would not be possible to have you live here with us. It's been a long hard road trying to break free of all this, and we don't want to expose our kids to dealing with all this again. Like it or not, once Tammy got word of you being here, the drama would start back up, and we just want to be left alone. That's why we moved here, to get away from all the drama. Like I said already, we don't know exactly what's going on, and we pray the courts and figure this one out. In the meantime, for what it's worth, we're here to help you get by day to day. We'll write you and send some pictures. I plan to get you some pictures copied of your sweet children and some memories we may have shared during the times we a hung out. To read your letters about wanting to touch your kids faces and hold them is heatbreaking to me. Especially when you say you're having trouble remembering what xman's face looks like. I know what you're saying though, and I feel for you. So for now my friend, I'll do what I can by setting you up some funds to make the best life you can while you're there. And feel free to write as often as you like and we'll write as often as we can. Mike and Rodney talk regularly and

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I would ask how it is going but I know the answer for that. Just thought I would give you a letter to read. ⁸⁹
Kind of give you an update since our last letter. We still have no contact with Tammy or your kids. They think we have done them dirty so they left. She has sold everything you had. Sold the conexx plus everything in it for 3000, sold your van with all tools in it. I did tell her I wanted your big air compressor out of it to make up for the 1000 I loaned ya, so I do have that, but all your stuff is gone even your cloths. Sure seems funny how she just buried you before you went to court. We were all surprised by their lack of emotions for someone who has been raped for the past year. We all still confused on why she would ruin your life if this was not true, and if it was true why did she always want to be around ya. Don't make no since.

I know you are going crazy in there, I would be too, as much as we loved the outdoors I just cant imagine. We do not have Bre's horse. Mike tried to ride my big black mare magic and fell off her three times! Ha!. He be hobbling around for a week now. I did not find the gun, it is either in a bail of hay or the farmer got it and lied that he did not see it, but its gone.

I don't think you were a bad father, protective yes, bad no! your sons will realize that. If ^I see them or talk to them I will tell them how much you love and miss them. I know you feel alone, but you are not, we were quick to pass judgment on you too, but as the evidence comes out we feel we may have written you off too quick. It was just we could not believe someone would leave you to rot in a cell if it really did not happen.

We doing a lot on the farm. Put in 300 bales of hay, built me some chicken coops, running some fence down the garden to keep donkeys out, cutting wood for winter. So much to do and not enough time to get it done. It will be turning dark soon so all work will have to wait till weekend.

Mike has become a good friend of mine and he tells me about yalls conversations. Hopefully we can get you some legal help, but I am not a rich man, I live check to check and my family cost a lot to run. But don give up on us. We will see what we can come up with. I do miss your help around the farm. I did not have to worry about nothing when you were around, now I having to try and do it all. I was willing to take care of your kids and Tammy, but she showed her true colors and we told here she cant stay on our land as long as Mark was in the picture. I cant stand that ass hole.

Anyway when im at around the bon fire smoking, drinking JD and mist I think of you and our good times. The past year was a blast with you and I don't regret none of it.

Talk to you later, Hang in there

Rodney.

OCT 03, 2012

A Rodney Harrelson

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I kept telling Anna to talk to Cathy and have her testify
Cathy Harrelson <cathyspigsfly@yahoo.com>
(Payne)

Tue, Oct 23,
2012, 5:20 PM

to me

I figured as much- just terrible! James ' does t deserve this! Just let the man be- they have their freedom - for all we know that might be their plan- to never show their face again. Free from family, housing, \$, - even clothes! Now that's a way to clean someone out- these gals are unbelievable!

Is the attorney for James going to meet with u again before the trial? I'd like to come if possible and see what his strategy is and see if there's anything he's missed.

As far as Tammy and her crew know, we're still sitting here with our knees shaking waiting for James to come get us. We've had zero contact with them. They have no idea we're in our way to solving their puzzle! I'd love nothing more than to bust in while they're on the stand and have them EXPLAIN some things!!

Cathy Harrelson

Cathy Harrelson <cathyspigsfly@yahoo.com>

Tue, Oct 30, 2012,
6:49 AM

to me

Wow, that's hard to read. We got a letter from James over the weekend, and in it he mentioned he hoped he would be there if anything happened to his mom. Do u think those girls even know how bad off she is? It wouldn't matter anyway :(their hearts are so cold - nothing could phase them- eventually their joy ride WILL come to a halt-

Looking foward to meeting with you- hope to help all I can. In James' letter he said he's hoping to get out on bond at this hearing- did I understand him right?

Cathy Harrelson

In PCR court, Anna said the witnesses had nothing pertinent to offer even though she never talked to them.

Telephone Interview with Cathy Payne

On May 20, 2021, at telephone interview was conducted with Cathy Payne. Ms. Payne's contact number is (803) 374-7170. At the time of the incident Ms. Payne was married to Rodney Harrelson and has since divorced and remarried.

Full Name: Cathy Kalin Payne fka Cathy Harrelson

Address: 657 Hamlin Way, Irmo, SC 29063

I asked Ms. Payne to summarize how she knows the defendant. Ms. Payne recalled that the families met around January 2012 while Ms. Payne was visiting a family lake house near the Millers. Around June 2012, Ms. Payne and her family moved from Florence to the Camden area near the Millers. From that point on the families spent a lot of time together as Ms. Payne had several kids and so did the Miller's. Ms. Payne added that her son, Henry "had a thing for Britly." "Out of the blue on a Saturday," a call was received from Tammy Miller explaining what had happened and that James Miller had been arrested. Ms. Payne added that when they first heard about the incident, "our hearts poured out to her." Ms. Payne continued that given the details she had received from Tammy Miller about what was being alleged to have occurred, she felt Tammy Miller's behavior that followed was "strange." A few days after the initial news of the incident, Ms. Payne recalls that Tammy Miller called to say that she had received a letter from James Miller and that he was going to get out of prison and come and "I've been trying to rack my brain to remember if she said he was going to come kill them or what. But I remember that what she said scared me." Ms. Payne continued that the information she received from Tammy Miller was confusing; that James Miller was in the psychiatric ward being treated and that this was the information she has gotten from them. Ms. Payne continued that the incident occurred quite a few years ago and she was trying to remember the details as best she could. Ms. Payne added that Tammy Miller made a point to tell her that James had threatened her son (Henry Harrelson). At this point Ms. Payne advises the decision was made that her family need to steer clear of the Miller family and that her son (Henry) needed to "call off" whatever it was he had going on with Britly. Ms. Payne recalls that they had just bought a new vehicle and she invited Tammy Miller over to offer her their

Telephone Interview with Cathy Payne

old van as Tammy Miller did not had suitable transportation to carry her kids around. When Tammy Miller came over, Ms. Payne advised her that the families would need to "cut ties" as Ms. Payne was not sure all that was going on with the Millers but wanted to protect her family; at that point Ms. Payne told Tammy Miller about the van and that they had decided to give it to her; Ms. Payne handed Tammy Miller the keys. Once the old van was offered, Tammy Miller rebuffed the offer and left the keys and departed. Ms. Payne recalls that Tammy Miller arrived with Mark Stokes (driving) and left with Mark Stokes after refusing the keys. Ms. Payne opined that she felt like Mark Stokes and Tammy Miller had "something going on" prior to the arrest and added that she also thought Mark Stokes had "something going on" with Britly.

Ms. Payne described James Miller as "controlling" with his family. Ms. Payne explained that she never really got to know James Miller that well but her ex-husband (Rodney Harrelson) was good friends with him (James Miller).

Ms. Payne continued that James Miller was controlling and didn't let the girls wear bikinis and that they went swimming in shorts and t-shirts. After the arrest, Ms. Payne described the actions and behavior of Tammy Miller and the twins as "going off the deep-end." "They got too happy too quick" to have gone through such a traumatic experience. Ms. Payne advised that while she did not attend the entire trial, she never heard sufficient evidence to believe that James Miller was guilty. Ms. Payne continued that the behavior of Tammy Miller and "the girls" was not that of having been traumatized.

Ms. Payne commented that she "had heard" that "when the cops picked him up in August, they made him sit in the car and turned up the heat to punish him." Ms. Payne continued that while she did not attend the trial, she felt James Miller's attorney did not "do a good job" and if there is "anyway that trial could be redone, it should."

Ms. Payne commented that when she saw James Miller with Britly that she saw "a normal father-daughter relationship; nothing weird"

Telephone Interview with Cathy Payne

Ms. Payne commented that she remembers Tammy Miller being involved in holistic medicine and all-natural foods. Ms. Payne added that when the kids were together, hers would be eating snacks and drinking colas while the Miller children did not. Ms. Payne continued that even so, she never noted anything strange in the Miller children's behavior and added "they were happy."

I asked Ms. Payne how I could make contact with her ex-husband, Rodney Harrelson. Ms. Payne advised that he works in Rock Hill and his contact information may be on the Rock Hill city website.

I asked Ms. Payne if she knew of anyone else that I should speak with concerning the incident. Ms. Payne advised the when Tammy had moved away and James Miler was out on bond, he was dating a woman named Nancy Truesdale. I asked if she could provide contact information for Ms. Truesdale and Ms. Payne advised that Truesdale was getting married on Saturday (05/22/2021) and she would give her my contact information.

I asked Ms. Payne if she would have considered Tammy Miller a religious person. Ms. Payne advised she did not and that Tammy Miller "would lie and would lie with a straight face." Ms. Payne added that Tammy Miller would start projects and never finish.

I asked Ms. Payne if she had any information concerning Tammy Miller wanting to get a manufactured home and move it onto their property. Ms. Payne advised that she was not.

I asked M. Payne if she had any information on how Tammy Miller was able to made the quick move to Pensacola, Fl. Ms. Payne commented that a fast as that trip occurred, she feels like it was pre-planned and the fact that everything was posted on social media more

Telephone Interview with Cathy Payne

or less confirmed that belief. Ms. Payne advised that she was unaware that Tammy Miller or the girls had social media accounts prior to the arrest.

I asked Ms. Payne if she had any further information or comments on the incident. Ms. Payne advised that she could not think of anything.

I made sure that Ms. Payne had all my contact information and asked if I could contact her again if I had further questions.

Letters to James from Mike (Michael)
Norwood after arrest.

Interview with Michael B. Norwood

I spoke with Aunt Pam. She is waiting ⁽²⁾
on Discovery to be sent to her. I think ⁽⁹⁶⁾
she is gonna study it before she hires
lawyer for sure. Looks like its gonna be
that Good lawyer from Columbia. Pam wants
to have pointers for lawyer. Anyway I know it
ain't fast enough but it looks like the
Calvary is coming. Pray I can make alot
of money to help her financially. I know
your good for it James. Hell, I wouldn't
even want money from you. You have already
paid in full. You are a giver not a taker
a doer not a slacker. Its those qualities
in you that I love the most. Wish I
had a brother like you. I know it could
proobly never happen; but, I was just thinking
if Collin gets to be too big and ^{too} mean as I

think he is. Mommy won't be able to ③
handle him. I want you to know your family
is mine as far as I'm concerned. ⑨⑦
I would do my best to help any of them.
I think of Collin as a son and X-man
is so cool. Emma is going to be
drop dead beautiful. Breana is so talented
artistically and Britt is just totally
cool/^{ROBBED}_{BY} Tammy is nuts and I love you
all. I think Britt would have kicked your
ass, cut you with a razor knife, and
shot u if these accusations were true.
Maybe I'm wrong but that is one
tuff girl. There wasn't nothing stopping
her from turning you into Holy parts,
Laugh out loud if you can. Please
don't stop writing me. Write more. I gotta
go. Friend who happens to be dead now. ✓

He was a good dude. If he ⁽⁹⁹⁾ ⁽⁹⁾
were still alive he would have got
u out for me by now. He wouldn't
even hesitate and he would steal ~~the~~
from his own family if he had
too. He was the kind of man that
knew they were gonna take it out
of his ass sooner or later. And
they did too. When he died they sold
his kickass house, cars, property, land,
guns & Hell they even kept a chomo's
shirt I gave him off my back. ~~It~~
They didn't give his son or
daughter nothin. Screwed YO. Any
way write back for me if you can.
We got to be bigger & bolder than life.

JUST CLOSE YOUR ¹⁰¹
~~✿~~ EYES

YOU ARE IN
MY THOUGHTS AND
PRAYERS.

NOTHING CATCHES
JESUS BY
SURPRISE!!

✓

Whats up Brother, I am tore up ^{about} (103)
this crap too. I want you to know
I am working on your case. I
have not given up on you, nor will
I, I expect the same from you! Setting
up meetings w judges + PD Riley.
Judge has returned my call but Riley
has not. Will speak to judge next week.
I hope that he will help us. I cry
too. We will get together again on this
world and the next, I know I just don't
get it because I am not in your shoes.
I will help you. We will live again.
We will work again. We will replace your
tools. Everything I have is yours
as well. I Love you. I miss you, I need
your help. Right now you need mine.
I am trying. Have spoken with
* To James from Mike Norwood
over >

~~* letter from Mike Norwood wanted to testify.~~
~~come to court expecting to testify. - Anne wouldn't call him.~~ ^{PE} (3)

think he is. Mommy won't be able to ⁽¹⁰⁵⁾ handle him. I want you to know your family is mine as far as I'm concerned.

I would do my best to help any of them. I think of Collin as a son and X-Man is so cool. Emma is going to be drop dead beautiful. Breana is so talented artistically and Britt is just totally cool/^{ROBBED}BY Tammy is nuts and I love you all. I think Britt would have kicked your ass, cut you with a razor knife, and shot u if these accusations were true. Maybe I'm wrong but that is one tuff girl. There wasn't nothing stopping her from turning you into Holy parts, Laugh out loud if you can. Please don't stop writing me. Write more. I gotta old friend who happens to be dead now.

05/21/2021

An interview was conducted with Michael B. Norwood on Friday, May 21, 2021. This interview was conducted on Hwy 601 near Lugoff, SC in the parking lot of the Waffle House. This interview was conducted by Investigator Mark H. Jones.

Mr. Norwood identified himself as Michael B. Norwood, Registered Forester, address of 2168 #A, John G. Richards Road, Camden, SC 29020; (803) 427-1368. (Note: records indicate the provided address as a business address and a home address for Mr. Norwood of 2025 Lakeshore Road, Camden, SC 29020)

I asked Mr. Norwood how he knows Mr. Miller. Mr. Norwood advised that he met James and his wife after they had the twins, when they were both 15 years old. Mr. Norwood added, "They didn't have no education; no schooling. And, James was carrying that whole load on his back." Mr. Norwood continued that James had moved near where his business is located and had offered to sell Mr. Norwood some materials (nails) because he was in a "money pinch." Mr. Norwood recalled that after a time (when the girls were about 5 to 6 years of age) the carpentry business had "dried up" locally and James moved with the family to Summerville, SC. On the girl's 16th birthday, James invited me down for their birthday party. Mr. Norwood went to Summerville with his family and he and his family stayed with the Miller's in a camper (belonging to Miller). According to Mr. Norwood, the friendship was "rekindled" and Mr. Miller told him he wanted to move back to the Camden area. Mr. Norwood recalls Mr. Miller and he looked for and found a place for Mr. Miller to move his family. Mr. Norwood added that he assisted Mr. Miller in finding some work and after only a short while he (Mr. Norwood) was actually working with Mr. Miller. Mr. Norwood recalls that after a short time, both of the girls worked with he and Mr. Miller. Mr. Norwood noted the Mr., Miller was a "hard driver" and required a lot of the girls. Mr. Norwood noted that in the entire time he was around the girls, there was never any indication of inappropriate behavior. Mr. Norwood added that on occasion, he would be left working alone with the girls. Mr. Norwood opined that if he was molesting one or

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both of his daughters, he would never leave them alone with another man as they might "tell something." Mr. Norwood also pointed out that Mr. Miller was offered a plea bargain and that he was of the opinion that a guilty person would take the plea bargain while an innocent person would not. Mr. Norwood added that he did not think a plea bargain would have been offered if the State had a strong case. Mr. Norwood continued that if the state's case had been strong, why did part of the jury hold out and not convict. Mr. Norwood opined that he felt like the only reason the guilty verdict had been reached was due to the hold-out jurors "wearing out." Mr. Norwood advised that he had attended part of the trial to hear the truth come out and what he had heard was not the truth. Mr. Norwood concluded that "Britly carried a razor knife in her back pocket and she wasn't no sissy girl. She could take care of herself and I don't think she would allow anything to go on."

I asked Mr. Norwood if he was familiar with Martha Penrod. Mr. Norwood advised that he was and that Ms. Penrod and Mr. Miller were "in conflict from the start." Mr. Norwood advised that once the Miller family moved in, he felt this was disagreeable to Ms. Penrod. Mr. Norwood added that Mr. Penrod had "accosted" the Miller children for walking on the powerline that connected parts of the neighborhood. Mr. Norwood stated that he had heard that Ms. Penrod told Mr. Miller, "we've got a plan for you." Mr. Norwood added the Mr. Miller had constructed a fence between the properties to try and achieve peace, but, "they were enemies." Mr. Norwood advised he had never heard any direct statements from Ms. Penrod concerning any inappropriate activity between members of the Miller family. Mr. Norwood concluded that he had heard Ms. Penrod offer testimony that inappropriate activity was observed around the dock area of the Miller property from her porch, but there was no direct line of sight from the porch to the dock. Mr. Miller advised that the inappropriate activity was never reported to anyone prior to the trial.

I asked Mr. Miller if he was familiar with Mark Stokes. Mr. Norwood advised that he was one of the neighbors and that he thought Stokes "had a thing" for Britly. Mr. Norwood

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(110)

when they were alone and the only times he had "seen it" was when all the family were around. Mr. Norwood continued that he had let his daughters spend the night at the Miller house and would never had done that had he seen anything inappropriate.

I asked Mr. Norwood if he had ever been interviewed by law enforcement concerning this matter. Mr. Norwood stated, "No, not a peep."

I asked Mr. Norwood if he was familiar with Debbie Perry. Mr. Norwood advised he had heard of her but did not know her; never met her.

I asked Mr. Norwood if he had ever seen Mr. Miller with illegal drugs or noted any indications of drug activity. Mr. Norwood advised that sometimes Mr. Miller "might have some pot." Mr. Norwood added that Mr. Miller worked hard and could not have worked that way had he been involved with drugs.

I asked Mr. Norwood if he had ever heard Tammy Miller make a statement that it was easy to take someone down on these types of charges. Mr. Norwood answered in the affirmative and went on to explain, "well, not in those words exactly; but she did bring similar charges against her father." Mr. Norwood added that Tammy Miller asked him, "What are the chances that I would have to deal with my father molesting my sone and my husband molesting my daughter?" Mr. Miller commented that Ms. Miller would allow her son (Collin) to be alone with him and showed no concern that anything would happen.

I asked Mr. Norwood if he had ever heard Ms. Miller tell anyone that Mr. Miller was deceased after the arrest. Mr. Norwood replied that he had not. Mr. Norwood added that

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indicated that he was aware that Stokes was spending the night on the couch at the Miller property after Mr. Miller's arrest. Mr. Norwood added that he advised Stokes that his actions were not smart and that he should stay away from the situation.

I asked Mr. Norwood if Stokes had told him that he was sleeping on the couch. Mr. Norwood advised that he had not but that he presumed that was where he slept. Mr. Norwood continued that after the arrest, "Tammy was hustling all the churches and selling everything." Mr. Norwood added that Ms. Miller had taken Britly to "the bait shop and told everyone in the bait shop that her daughter was 'getting fucked by her daddy.' Now who in the (pause) would do that? That would be a shameful secret; I wouldn't walk in the bait shop and tell everybody in the bait shop that!" Mr. Norwood indicated that Stokes was currently a welder and formerly had been a correctional guard. Mr. Norwood concluded that Stokes was "not the sharpest knife in the drawer but he's not a bad boy."

I asked Mr. Norwood if he had any personal knowledge of Ms. Miller being a religious person. Mr. Norwood advised that Ms. Miller was into holistic medicine and organic foods but not religion. Mr. Norwood added that after the arrest Ms. Miller started "going to all the churches; and she'd get a thousand from this one and a thousand from that one." I asked Mr. Norwood if the fact that Ms. Miller was obtaining monies from churches was of his own personal knowledge and he replied, "No, that's what I heard."

I asked Mr. Norwood if he was aware how Ms. Miller had been able to made the sudden move to Florida. Mr. Norwood advised that "she sold everything" and that he "had heard" there was some connection to some guy in Florida.

I asked Mr. Norwood if he was personally aware or saw any indications of abuse in the Miller family. Mr. Norwood replied that he was not but added that the only thing he had seen was Britly being overly affectionate with Mr. Miller; he added that this was never

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(111)

Mr. Miller had told him (in a letter) that he was being abused in prison and that a female guard had allowed two male prisoners to rape him but letting them into his cell at 4 AM. Mr. Norwood added, "he's damaged; he's permanently damaged." Mr. Norwood added that he felt Mr. Miller was a victim and had been moved in prison several times for his protection.

I asked Mr. Norwood if he had anything to add that we had not talked about. Mr. Norwood responded by saying, "I think the fact that my children stayed in his home and I trusted him with my children says it all. All my children liked him" Mr. Norwood added, "this is personal information and you might want to leave this out, but I think James was molested as a child by his mother." Mr. Norwood then added that the second assault was supposed to have occurred at Mr. Norwood's mother's house. Mr. Norwood indicated that his brother was upstairs while the work was ongoing. Mr. Norwood states that courtroom testimony was that his mother, "was an elderly lady who stays upstairs all the time." Mr. Norwood advised that his mother is an elderly lady, but that she "stays downstairs all the time." Mr. Norwood recalls the testimony was that the assault occurred downstairs while his mother was supposed to be upstairs. Mr. Norwood states that the testimony was not correct as his mother does not go upstairs. Mr. Norwood does not recall anytime any two people working went in to the house together. Mr. Norwood added, "I read the discovery; James gave me the discovery. That's how worried he was that I was going to find out. I read the reports and nothing indicated that any abuse had occurred, much less that it occurred every day for a couple of years."

Mr. Miller added the law enforcement had never interviewed any of the workers at the house or his Mother or brother.

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I asked Mr. Norwood if he had any personal knowledge of any of the events at the Miller house the day of the arrest. Mr. Norwood indicated that he had "heard the story." Mr. Norwood added that James Miller had "told him" that after law enforcement arrived, Britly told Mr. Miller, "Daddy I'm sorry. I did it and I can't take it back."

I asked Mr. Norwood, based on what he personally had seen in the trial, if he thought Mr. Miller had an adequate defense. Mr. Norwood recalls that he felt the defense was inadequate and that "his attorney" never called witnesses and never spoke with him or anyone else connected with the case. Mr. Norwood advised that Mr. Miller had advocates in court and that Mr. Miller was warned by the bailiff to stop "looking at them." Mr. Norwood states that he felt the trial was like a "lynch mob."

I asked if he had any personal knowledge of any bias from the judge in the trial. Mr. Norwood advised that other than being a female he did not.

I asked Mr. Norwood if there was anything else he could add. Mr. Norwood advised that if there had been any indication that Mr. Miller was a child molester, he would never have gotten near his kids. Mr. Norwood added that he felt the trial testimony he heard was "he said, she said" and there was never any real evidence presented.

I made sure that Mr. Norwood had my contact information and advised him to contact me if he thought of anything else or anyone else I needed to speak with in this matter.

James Miller

Proof of scheduled appt. with Carolina 113
Neurosurgery & Spine Assoc. CNSA, 3-15-2016

Recent medical evaluation & recommendation
from W. Daniel Westerkam, MD 114-116

James Booking Picture from newspaper
article. 117

Signed statement of "Miranda Rights"
which does not include, "free to
leave at anytime" as Det. Dill 126
testified too.

Detective Knaltec's Affidavit 118

FB comments to James. 119-125

James FB posts.

Interview notes from Det. Dill pg 127
"on her leg" "me, Britly & wife
been fussing few weeks."
"Britly's boyfriend"

Appointment

Time 1:15 P

James appointment with CNSA 3.15.2016

ent/Event Chain

New Patient

Resources

Deshmukh

DINO MLP-Jhappkins/Jones

Dyer

Service Location

CNSA Charlotte Office

Description

Miller, James

Details

Procedure with Resident

Appointment Kept

Cancelled Reason:

User Defined

Reason for Visit

Surgery Consult

Imaging Status

Eligibility

ICD10 Dx Code

ICD10 Status

Last

Miller

Middle

Birth Date 12/14/1976

Address

1175 Barn Owl Road

City

Camden

County

KERSHAM

Evening Phone (843) 709-4943

Week Day Phone

Rate

Unknown

Religion

Church

Referring Physician

Vinay Deshmukh MD FACS

Referring Physician

Vinay Deshmukh MD FACS

Encounter Number

Date

First

James

Age 39 yrs

Sex Male

State

SC

Zip

29020

Contact Preference

Comments

Comments

Language

English

Church

Referring Physician

Vinay Deshmukh MD FACS

Referring Physician

Vinay Deshmukh MD FACS

Encounter Number

Date

photo of appt schedule from Carolina NeuroSurgery

PHYSICAL MEDICINE AND REHABILITATION
ELECTRODIAGNOSTIC EVALUATION

114

PATIENT: James Miller

DATE OF EVALUATION: 10/13/2020

ADDENDUM 11/30/2022

I received a letter from Mr. James Miller requesting a surgical evaluation for his back pain. I think a Neurosurgical or Orthopedic evaluation is appropriate for the S1 Radiculopathy and L5 Pars Defect noted in the original evaluation (copy included). Your consideration in this matter is greatly appreciated.



W. Daniel Westerkam, MD
Physical Medicine and Rehabilitation

896-006
10-14-20

PHYSICAL MEDICINE AND REHABILITATION
ELECTRODIAGNOSTIC EVALUATION

(115)

PATIENT: James Miller

DATE OF EVALUATION: 10/13/2020

REASON FOR EVALUATION: Back and leg pain.

HISTORY OF PRESENT ILLNESS: Mr. Miller is a 43-year-old gentleman complaining of low back pain that radiates into his legs. The right leg is worse than the left. The patient states symptoms occurred after an injury in 2016. He had a piece of wood on his shoulder and jumped off a deck. When he landed, he experienced severe pain. He has an MRI which shows a right lateral disk protrusion/herniation at L5-S1 as well as bilateral pars defects at L5.

PHYSICAL EXAM: He has atrophy in both lower extremities and tenderness along the lumbar spine. Reflexes are 2+ at the knees and 1+ at the left ankle but absent at the right ankle.

ELECTRODIAGNOSTIC EVALUATION

NERVE CONDUCTION STUDIES: Nerve conduction studies are as follows:

NERVE	DISTAL LATENCY milliseconds	AMPLITUDE millivolts	NERVE CONDUCTION VELOCITY meters per second
Right peroneal nerve, extensor digitorum brevis to the ankle (motor)	5.6	2.6	
Right peroneal nerve, extensor digitorum brevis to the fibular head (motor)	13.3	1.8	40
Right tibial nerve, adductor hallucis to the ankle (motor)	5.9	2.4	
Right superficial peroneal nerve, ankle to the shin (sensory)	3.0	6.2	
Right sural nerve, ankle to the calf (sensory)	3.1	7.5	
Left peroneal nerve, extensor digitorum brevis to the ankle (motor)	6.0	8.6	
Left peroneal nerve, extensor digitorum brevis to the fibular head (motor)	13.8	4.8	42
Left tibial nerve, adductor hallucis to the ankle (motor)	6.1	4.8	
Left superficial peroneal nerve, ankle to the shin (sensory)	3.1	12	
Left sural nerve, ankle to the calf (sensory)	3.0	15	

PHYSICAL MEDICINE AND REHABILITATION
ELECTRODIAGNOSTIC EVALUATION

116

PATIENT: James Miller

DATE OF EVALUATION: 10/13/2020

Right H-reflex, calf to the popliteal fossa (motor)	Unresponsive		
Left H-reflex, calf to the popliteal fossa (motor)	33.12		

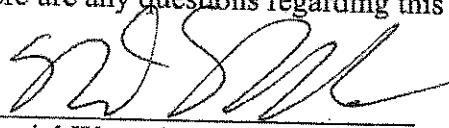
Summary: The right H-reflex is unresponsive. Compound motor action potentials on the right peroneal nerve are small compared to the left side.

ELECTROMYOGRAPHIC EXAMINATION: Right gastrocnemius: Insertional activity is normal. Muscle at rest is normal. No fibs, no sharp waves, and no fasciculations. Motor unit action potentials show normal shape, size, and amplitude. Recruitment pattern is incomplete. Right extensor hallucis longus, anterior tibialis, vastus medialis, and iliopsoas: Insertional activity is normal. Muscle at rest is normal. No fibs, no sharp waves, and no fasciculations. Motor unit action potentials show normal shape, size, and amplitude. Recruitment pattern is full. Left iliopsoas, vastus medialis, anterior tibialis, gastrocnemius, and extensor hallucis longus: Insertional activity is normal. Muscle at rest is normal. No fibs, no sharp waves, and no fasciculations. Motor unit action potentials show normal shape, size, and amplitude. Recruitment pattern is full.

Summary: Weakness is noted in the right gastrocnemius.

CONCLUSION: This is an abnormal study. There is electrodiagnostic evidence of a right S1 radiculopathy. I suspect the patient has spinal stenosis around L5. Patient seems to be very unsteady on his feet. Therefore, I would recommend a walker with standing or ambulating or handheld assistance. He should also use a shower chair so that he does not fall in the shower.

If there are any questions regarding this examination, please do not hesitate to call.


W. Daniel Westerkam, MD
Physical Medicine and Rehabilitation

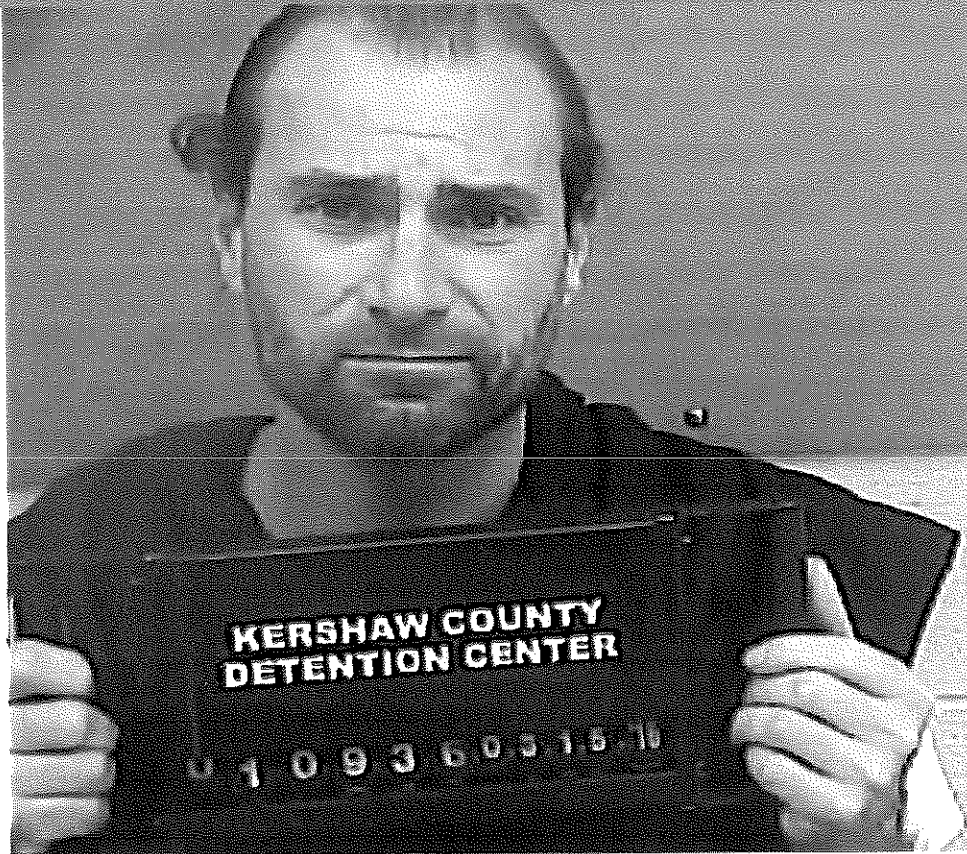
www.chronicle-independent.com



Chronicle-Independent.com



Crime-Police-Fire



James Wayne Miller (KCDC website photo)



*James's
booking picture
after leaving court*

Man found guilty of incest sentenced to 30 years in prison

✓

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

AFFIDAVIT

Personally appeared before me, one Steve Knafelc, who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

ANY AND ALL EVIDENCE THAT MIGHT BE RELATED TO A SEXUAL CRIME THAT OCCURRED INSIDE THE RESIDENCE. THIS TO INCLUDE ANY AND ALL AREAS OF THE RESIDENCE WHERE DEOXYRIBONUCLEIC ACID (DNA) MAY BE APPLIED.

DESCRIPTION OF PREMISES (PERSON, PLACE, OR THING)
TO BE SEARCHED

A LIGHT TAN TWO STORY HOUSE, WHICH IS LIGHT TAN IN COLOR. THE DWELLING HOUSE DOES HAVE A WOODEN PORCH LOCATED ON THE FRONT OF THE RESIDENCE. THE ADDRESS TO THIS RESIDENCE IS 1785 WILDTURKEY RD, LOCATED IN CAMDEN KERSHAW COUNTY SOUTH CAROLINA.

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

THE KERSHAW COUNTY SHERIFFS OFFICE IS ACTIVELY INVESTIGATING A CRIMINAL SEXUAL CONDUCT (INCEST) INVOLVING THE DEFENDANT MR. JAMES WAYNE MILLER. THE DEFENDANT IS CURRENTLY IN THE KERSHAW COUNTY DETENTION CENTER FOR THESE CHARGES. THIS INVESTIGATOR DID RECEIVE A CALL FROM THE DEFENDANTS WIFE ON 08-23-2012 THAT PERTAINED TO SEVERAL "SPOTS" ON THE COMFORTER OF THE VICTIM, WHICH IS LOCATED ON HER BED, ALSO ACCORDING TO THE WIFE, THERE POSSIBLY IS "SPOTS" ON THE COUCH AND ON THE CARPET. A FORENSIC INTERVIEW WAS CONDUCTED ON THE VICTIM IN THIS CASE ON AUGUST 15, 2012, AND DURING THAT INTERVIEW THE VICTIM WAS VERY REVELING AS IT PERTAINED TO WHERE THESE SEXUAL ACTS DID OCCUR. THIS TO INCLUDE THE VICTIMS BED, AND ON THE COUCH. THIS INVESTIGATOR BELIEVES THAT THE "SPOTS" POSSIBLY COULD CONTAIN SOME SORT OF DNA POSSIBLY FROM THE DEFENDANT AND OR THE VICTIM IN THIS CASE. THIS SEARCH WARRANT IS OF GREAT NEED FOR THE CRIMINAL CASE THAT IS IN EFFECT.

Sworn to and Subscribed before me

This 27 day of August, 2012

Signature of Judge

Lt. Steve Knafelc

January 2012

Kanapolis trip
(119)

January 25

Ok i'm leaving for Kanapolis in the morning for 2 days to get britly and breanas new motor for there new truck , this is going to be so much fun im not going to be able to sleep . Not the most practical first truck but hey , we only live once and they are worth every 1000 I spend from here on out . I love you girls!!



Rodney Harrelson Be careful driving man! You going alone?

January 25 at 9:12pm · Like

• Beena Miller no, Britly is going with him!

January 25 at 9:14pm · Like

• Britly Miller Yeah I get to have fun too! *

January 25 at 9:39pm · Like



James Miller shared a link.

March 28

Gotye - Somebody That I Used To Know (feat. Kimbra) - official video

www.youtube.com

Film clip for the Gotye song Somebody That I Used To Know, featuring Kimbra from the album Making Mirrors. Buy Somebody That I Used To Know here: <http://www....>

> Britly Miller Good song!

see Britly's testimony
Pg 257 @ Ln 1825
258

Q "You stated that you were happy to go?"
A "I can't remember, And even if I wereto say that
What else am I going to say? I don't want to go?
I'm not happy?"
Q "You wouldn't have to post anything on Facebook
about it, would you?"

March 28 at 2:12pm ·

✓

Feb 7 June 2012

120

Tim Kelley wrote on your timeline.
June 17 at 11:47am

*Tim Kelley was family friend since
youth of Tammy + Debbie Perry.*

James, I wanted to take a moment and wish you a very happy and special Father's Day!!! You have done an amazing job raising your children and being there for them day after day!!! I pray for you and your family daily and I hope that you will be blessed and rewarded for all of the energy and effort that you have given to your marriage and children!!! Have a wonderful day!!!

Taylor Perry wrote on your timeline.
June 17 at 1:01pm
Happy fathers day!:)

*original post
attached*

1. James Miller
2. March 31
3. If someone prays for patients, do you think god gives them patients or does he give them the opportunity to be patient? if we prayed for courage, would he give it to us or does he give us the opportunity to be courageous? if someone prayed for a family to be close do you think god zaps warm fuzzy feelings into us or does he give them the opportunity to love each other and be together as a whole?

James Miller

1. March 30
2. You know as i sit and look at this big body of water in front of me it means nothing without the other 5 , hmmm man i love my family , miss ya so much , im lost without you.

James Miller

March 27

Today i have enjoyed my families company . They truly are very unique. i love you !
Britly Miller We all had a good time today
March 27 at 7:38pm · Like

Erika Filipiak posted to James Miller

February 26 near Summerville, Sc

jamiee! i miss you duude. i cant wait to come up and visit you guys againnn! (: ♥

*sheltered
no friends!*

James Miller

✓

Comments
on James
Birthday 12-14-2011

(12)

Happy Birthdays!

- James Miller thank you ,when are you going to come visit the lake?

Dec

"He wouldn't let us have friends."

James Miller

November 22, 2011

This life is so wonderful, im glad ive got 6 wonderful people to finish it with.

James Miller

James Loved his family.

October 27, 2011

I ♥ my family

Britly's
friend

> Erika Filipiak posted to James Miller

> Britly's friend. "No friends."

October 25, 2011 near Summerville, SC

> Jameyyyy. I miss you♥ (: *

James Miller

October 5, 2011 via mobile

Hope my family has fun sitting in the house while I go trolling:'(

James Miller

October 1, 2011 via mobile

Fishing with 3 women :)

"Britly. He would only take me fishing"

(123)

James Miller thanks ,are you still playing

- December 14, 2011 at 5:39pm · Like
- Jennifer Baker Catoe no..i just dont have time anymore :(

December 15, 2011 at 5:46pm ·

Britly's friend → carolann Kelien > Carolann is the one they (B4B4T) claimed was in the porn video.

- December 14, 2011 at 5:39pm
- happy birthday!!!
-
- James Miller thank you chic
- December 14, 2011 at 5:40pm ·
-

Britly's friend →

Erika Filipiak

- December 14, 2011 at 5:37pm

> HAPPY BIRTHDAY JAMIE!!!!!! I MISS YOU SO MUCH AND I LOVE YOU... Can't wait to see you guys again! ♥ (:

(Britly)
She testified that Erika's mother was on drugs so she wasn't allowed to see her. Erika's mom was a Christian woman. Why lie?

- James Miller thank you ,we will see you soon.

December 14, 2011 at 5:40pm ·

* > Erika Filipiak you're welcome! (:

December 14, 2011 at 5:52pm ·



Stephanie Teague

December 14, 2011 at 5:14pm

If someone prays for patients do you think God gives them patience or does He give them the opportunity to be patient? If we pray for our churches, would He give it as or does He give us the opportunity to be churchless? If someone prays for a family, do we choose to be churchless? I have heard many people say that if we choose to do you think God sends warm fuzzy feelings into us or does He give them the opportunity to love each other and be together as a whole?

Like · Comment

James Miller
 2024-2025

You know as I sit and look at this big body of water in front of me it means nothing without the other 5, hummmm man I love my family, miss ya so much, I'm lost without you.

Like - Comment

一、

James Miller
March 27, 1901

Today I have enjoyed my families company. They truly are very unique. I love you!

Like : **Commen**

Exko Ekipak : James Miller
February 26 near Sunnyside, SC

thamizh ! miss you daude. i cant wait to come up and visit you guys again!!!!!! (: ♡

James loved his family. Britly testified that James wouldn't let her be friends with Erica bc her mom was on drugs. (Not true)

Status

 Photo

Place

Life Event

Like · Comment · Share

513

James Piller shared a link
March 23 5:2

Goby - Somebody That I Used To Know (feat Kimbra) - official video
www.youtube.com

Film clip for the Glee song *Somebody That I Used To Know*, featuring
 Dianna Agron from the album *Making Mirrors*. Buy *Somebody That I Used To
 Know* here: <http://jsworx.com>.....

Unlike · Comment · Share

James Miller was tagged in 5 photos
March 12, 2012

www.facebook.com/photo.php?fbid=3666905560183&set=p.3666905560183&type=1&relevant_count=

<https://mail.google.com/mail/u/0/?tab=wm#label/James%2F+misc/FMfcgxcbMXSvBvczrqWrMWbwHnJZggKn?projector=1>

125

8:46pm

James Miller

im sorry for what ever ive done to upset u ,i love you with all my heart and then much much more please forgive me i really do expect alot from you but you know this .you are a very important part of me and i dont mean to be so hard on you ,i will try to ease off for our sake for this long haul .i hope you have a great time with this party .i love you britly miller!!!!!!!!!!!!

" Sheltered - No Friends " Party "

9:14pm

Britly Miller

im not mad. Ilove you too

April 21

April 21
2012

7:57pm

James Miller

you better be behaving your self missy

Britly Miller

IM SO FUNNY. A

8:46pm

James Miller

i know thats y i love u

8:46pm

Britly Miller

Hehe

126

STATEMENT OF MIRANDA RIGHTS

- ☒ 1. You have the right to remain silent.
- ☒ 2. Anything you say can and will be used against you in a court of law.
- ☒ 3. You have the right to talk to a lawyer and have him/her present with you while you are being questioned.
- ☒ 4. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish.
- ☒ 5. You can decide at any time to exercise these rights and not answer any questions or make any statements.

Law Justin Dill
Officer's Name and Title

☒ This is to certify that I have read or have had read to me the above statements of my rights. I understand each of these rights, and having these rights in mind I waive them and willingly make a statement. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

X JM

Witnessed by:
Law Justin Dill
Officer's Name and Title
KCSO
Officer's Department
8/16/12 Date
5:05 PM Time

James was not under arrest until the day after.

No mention that he was free to go at any time as Dill testified to. Dill said it was in the Miranda that James signed. James did not know that he wasn't under arrest. (put in handcuffs, police car & taken to detention)

2nd Interview

JAMES MILLER @ KCSO

8/6/12

(127)

→ moved from Charleston. wife living @ home
me & Britley were staying in camper.
woke up w/ my hand on her leg & that's it.
me Britley & wife have been fursing few weeks.

→ Rodney - the Hasselton's son. Britley's Boy Friend
Live over off of CORNER HORTON RD.

* Hand on
leg.
Solicitor kept
saying inside
of thigh!
Anna said
nothing!
Why lie?

Private Messages between
James and Tammy Miller

~~State of South Carolina
vs Jimmy Blessing
(Tammy Millers dad)~~

March 30

March 30

128

2:29pm

Tammy Blessing Miller

* Tammy's admission that she is the problem

I hope you have a good evening and please really think about what I have said. I am truly sorry and take full responsibility for my actions, and now I'm asking you for forgiveness. Please forgive all the mean words, all the mean looks, all the lies and all the times I took your actions as you trying to hurt me. I know you love me and i was to blind to see it.

You are an amazing person and together we will do great things. I love you and hope you can open your heart and start to understand the bigger picture.

March 30

March 30

5:40pm

James Miller

* James forgiving

ive been trying

March 31

9:47am

James Miller

i love you good lookin

Tammy Blessing Miller

I love you more

1:14pm

James Miller

i love you much much more hug girls again for me and x we r going fishing call marks phone if im needed

March 30

March 30

129

5:40pm

James Miller

ive been trying

1:14pm

James Miller

i love you much much more hug girls again for me and x we r going fishing call marks phone if im needed

1:28pm

Tammy Blessing Miller

hope you catch alot your phone will not stop ringing, now I know why you slipped it in my pocket..lol. Love ya babe and please call me latter, I need to hear your voice 2:35pm

James Miller

were home to windy

March 31

• 9:08pm

March 31

Tammy Blessing Miller

Tammy admitting she's responsible for their problems.

Just sitting here thinking of you. I have so much to say to you, it's killing me to wait. Im so sorry it has took me this long to see the damage I have caused in our family. My sister tried to tell me many times but I guess I had to go through what I have to be able to see it my self. I will be the wife you deserve, not the wife I used to be, the wife I was meant to be. When I think about back when I say you loved me I realized it was because I was happy, I respected you, made you happy and in return you adored me. Then I let the bitterness take over and became something I shouldn't have. Again I'm so sorry and I have faith you will once again look in my eyes and see the girl you fell in love with 17 years ago. I will finish this tomorrow conversation tomorrow. I love you babe

10:01pm

130

James Miller

we will be ok i promise are the girls ok have you heard from them
ARK one act random kindness

10:05pm

Tammy Blessing Miller

I know we will be more Than ok, we will be amazing! With me behind you we can not fail. Love you! Yes, the girls are helping take the set down. They are fine.

10:11pm

James Miller

oh kiss yourself in the mirror for me and x man
what time are you going to b here tomorrow

10:17pm

Tammy Blessing Miller

I will (: and as soon as I can, I'm so ready to come home. We are going downtown to church, was thinking about the park but might skip that part so that I can head home, depends on the kiddos. And Erica will not be coming with us.

10:21pm

James Miller

oh ok cant wait to c ya ,maybe its for a reason she is not coming

Tammy Blessing Miller

Maybe, I think I could have gotten around this but did not feel like I should. I would like to have this week without other influences around.

(131)

10:31pm

James Miller

ok im shutting down comp goodnite i love you

10:33pm

Tammy Blessing Miller

It's taking to long for your messages to come through. What are you doing, beside talking to me

10:34pm

James Miller

i would like to say goodnite to girls so ill wait. eating rice on couch with collin and watching spiderman

Britly Breana Tammy said James didn't do anything with Collin.

10:38pm

Tammy Blessing Miller

They are eating now at the cast party, hope they will be on way before to long. They are close to the mall. Tell Collin we said hi and we miss him

She is going to text me when they are on the way home. I will let you know when
"Sheltered. No friends. No activities"

11:08pm

Tammy Blessing Miller

They are on the way

April 1

April 1

6:30am

Tammy Blessing Miller

V

Thank you more than you will ever know, I needed to hear that from you. I was really ready to give up and get your money back for the web site. I will press on, because I know we can make money with not to much effort once this gets moving smoothly. I love you so very much babe<3

133

June 4 9:38am

June 4

James Miller

hey ther my beautiful and loving woman i love you what u doin

9:47am

Tammy Blessing Miller

I love you more.

August 12 1:51pm

Aug 11. Day of arrest. James was on computer at 1:51. Compare to officers printed timeline.

James Miller

i love you so much and im sorry for being a butt head the last few weeks .

James apologizing for being a butt head.
Too late.

Tammy Blessing Miller

Facebook post, after arrest
move to Florida

Jason Price

Tammy's Dad's Judgement

State of South Carolina

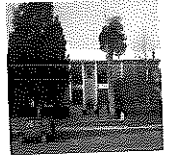
vs

Jimmy Blessing



Kershaw County
Fifth Judicial Circuit
Public Index

134



Kershaw County Home Page South Carolina Judicial Department Home Page SC.GOV Home Page

Tammy Blessing Miller's Dad

Switch View

State of South Carolina VS Jimmy Blessing

Case Number:	2008CP2801395	Court Agency:	Common Pleas	Filed Date:	11/26/2008
Case Type:	Common Pleas	Case Sub Type:	Sexual Predator 510	File Type:	Jury
Status:	Judgment	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Disposition Judge:	Cooper, G. Thomas Jr.
Disposition:	Judgment	Disposition Date:	11/10/2009 *		
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
State of South Carolina	Order/Order Waiving Annual Review Hearing	Order		06/26/2012-09:46		
State of South Carolina	Order/Order Waiving Annual Review Hearing	Order		04/15/2011-11:11		
State of South Carolina	Order/Order of Commitment	Order		11/10/2009-11:18	11/10/2009-11:18	
State of South Carolina	Order/Order to Transport	Order		09/17/2009-15:42	11/10/2009-15:42	
Blessing, Jimmy	Order/Order to Transport	Order		07/17/2009-11:13	11/10/2009-11:13	
Speedy, George W.	Order/Motion & Order to Leave to Engage Independent Expert	Order		07/14/2009-16:05	11/10/2009-16:05	
State of South Carolina	Order/Order to Transport	Order		07/02/2009-16:09	11/10/2009-16:09	
State of South Carolina	Order/Continuance for (60) days	Order		03/27/2009-16:05	11/10/2009-16:05	
State of South Carolina	Service/Affidavit Of Service on Jimmy Blessing	Filing		01/28/2009-14:29	11/10/2009-14:29	
State of South Carolina	Service/Certificate Of Service on attorney Atkinson	Filing		01/23/2009-13:45	11/10/2009-13:45	
State of South Carolina	Jury Trial Requested	Filing		01/23/2009-13:42	11/10/2009-13:42	
State of South Carolina	Order/Order for Evaluation	Order		01/21/2009-11:37	11/10/2009-11:37	
State of South Carolina	Order/Court appointed Attorney	Order		01/09/2009-11:40	11/10/2009-11:40	
State of South Carolina	Order/Probable Cause	Order		01/09/2009-11:36	11/10/2009-11:36	
State of South Carolina	Petition/No Filing Fee	Filing		11/26/2008-10:46	11/10/2009-10:46	
State of South Carolina	Summons	Filing		11/26/2008-10:46	11/10/2009-10:46	

CMSWeb 6.1

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TR pg 322 Ln 9-15 Tammy Cross by Good, Q "And in fact you put your father away in jail for that, correct?" A Uhm, no ma'am, I didn't." Q He is in prison, correct? A Uhm, he is in prison and I did make the call to police." Q. "When was that?" A. That was 2006." It was 2008, (she knew) and the trial was 2011, 3yrs prior to calling the police on James. IN KERSHAW Co! ✓

Why Lie?

Sent: Wednesday, September 12, 2012 2:51 PM
Subject: new post

Tammy Blessing Miller

1 month after arrest

9/12/12

135

Today turned out to be freaking great. I love meeting new people. Looks like it is packing time because we are pushing up our moving date to **NEXT WEEK!!** Yea, bye bye South Carolina and hello to the first day of

the rest of MY life

Tammy excited to get out of town to start "her" new life. Sold everything, including James work truck + trailer, tools, destroyed and sold his personal possessions, family memorabilia and heirlooms, and clothing. Emptied bank accounts + forged James name on titles. All in one month with 5 children to manage. Planned?

Tammy Lynn Blessing

September 17, 2012 moving day

Why was she so confident that James wouldn't get out of jail?

He was only charged at this point. Why the hurry to leave all family + friends.



printed

(3) Beena Miller

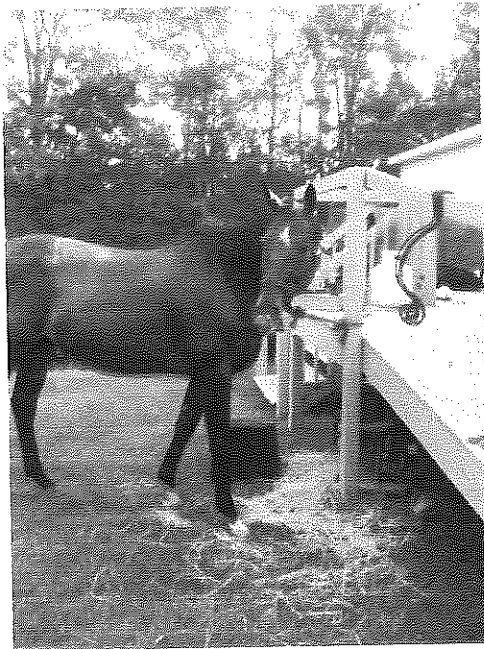
136

This was Aug. 7, 2012.
 The move to Florida was being planned
 before Jame's arrest & accusation on Aug 11, 2012.
 Melissa Alberque is who they were staying
 with when they got there. She is now
 Breana's mother-in-law.

Plot
 Aug 7, 2012



Beena Miller
 August 7, 2012



3

Share



Melissa Alberque Pretty soon we w
 be riding miles of trails

5y



"Pretty soon we will be
 riding miles of Trails."

Sept 14

Ready to move

137

Britly Miller

I still can't believe this is actually happening. o.O



Tammy Blessing Miller

OMG I am so freaking board stiff!!!!!!!!!!!!!!!!!!!!!! HELP ME!

Like · · about an hour ago ·

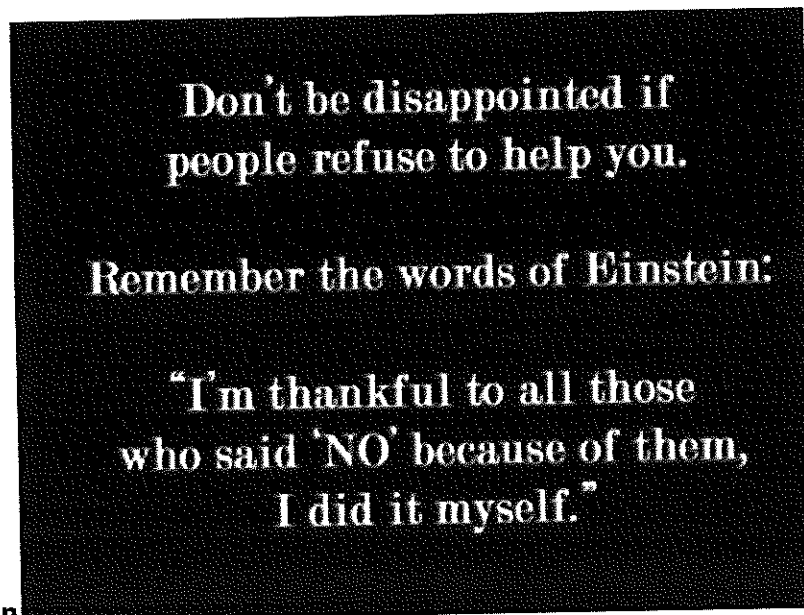
Ryan N Melissa Alberque Few more days ;)

^ Breanna's in laws now.

Like · · 4 minutes ago ·

Sept 17

Tammy Blessing Miller shared Funny Bone Industries's photo.

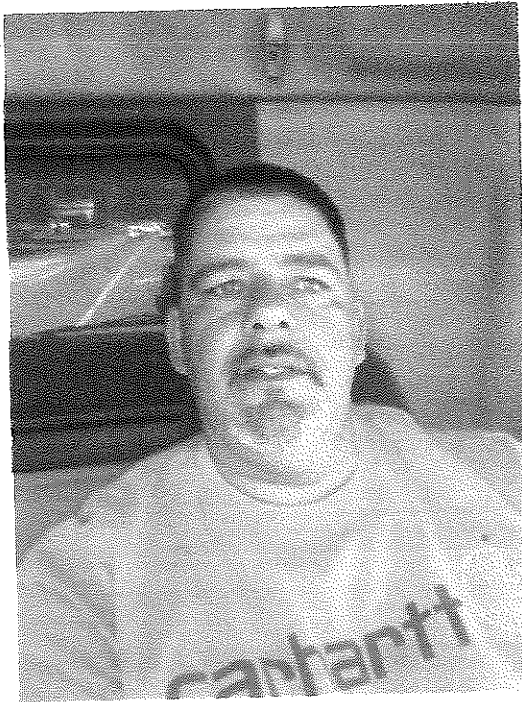


Amen

November 6, 2012

Nov 6 2012

Jason Price



138

Timeline

Now

Now ▼

Do you know Jason?

Jason moved in with them right after they got to Florida. This was on Jason's FB. That's a really quick relationship for someone that just went through such a trauma. Especially her children.

To see what he shares with friends, send him a friend request.

About

Worked at APAC-Southeast/Gulf Coast

Studied at J. M. Tate High School

Lives in Pensacola, Florida

From Pensacola, Florida

In a relationship with Tammy Bear

Tammy Miller

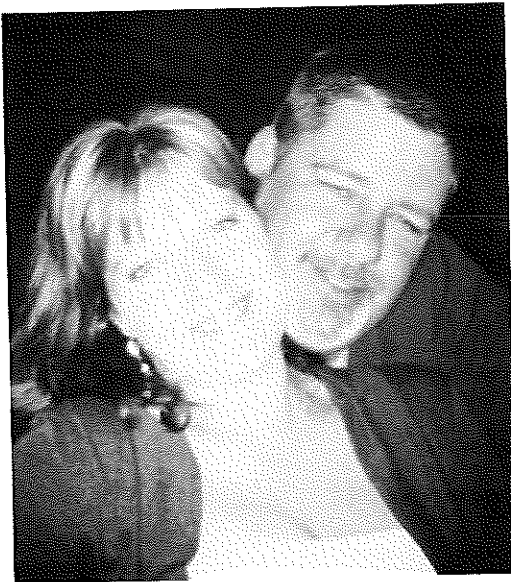
139

1. Worked at My Father's Vineyard
2. Past: Roads Inc
2.
 1. Went to J. M. Tate High School
3.
 1. Lives in Pensacola, Florida
4.
 1. From Pensacola, Florida
5.
 1. In a relationship

- 2.
3. Celebrating!

* What were they
celebrating if
they just met?

Jason Price changed his profile picture.



Tammy Bear became friends with Jason Price.

November 6, 2012

Tammy Miller.

Britly, Breana, Facebook Posts

Henry 141 142 144

Friends

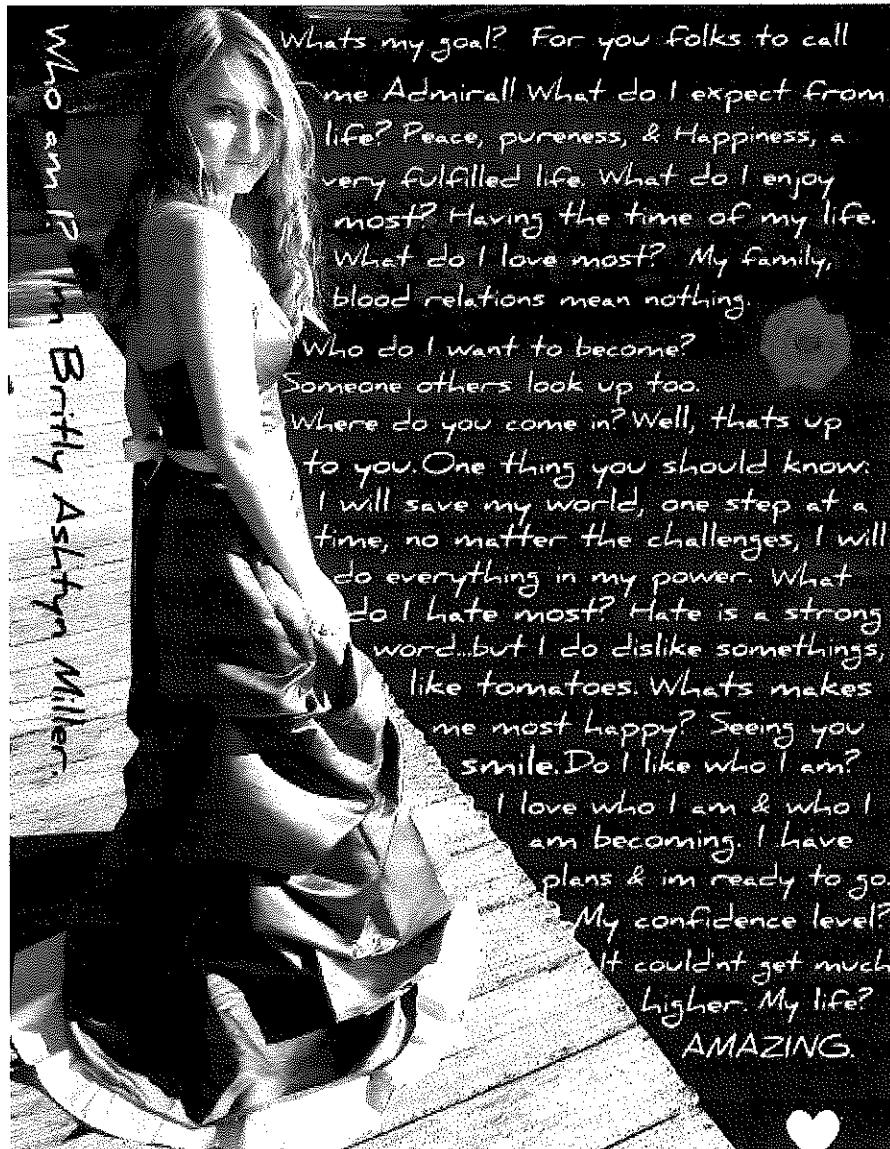
clothing

bikini's

recreation

Britly FB Profile

140



- o
- o
- o
- o I am me. I never change myself to suit somebody Else's expectations. I love life, my family, and my friends. I am a loyal friend to have, ill never do you wrong, & ill stay by you no matter what. But most of all, I love to party and have a good time. There's never a dull moment with me(:
- o Born on June 4

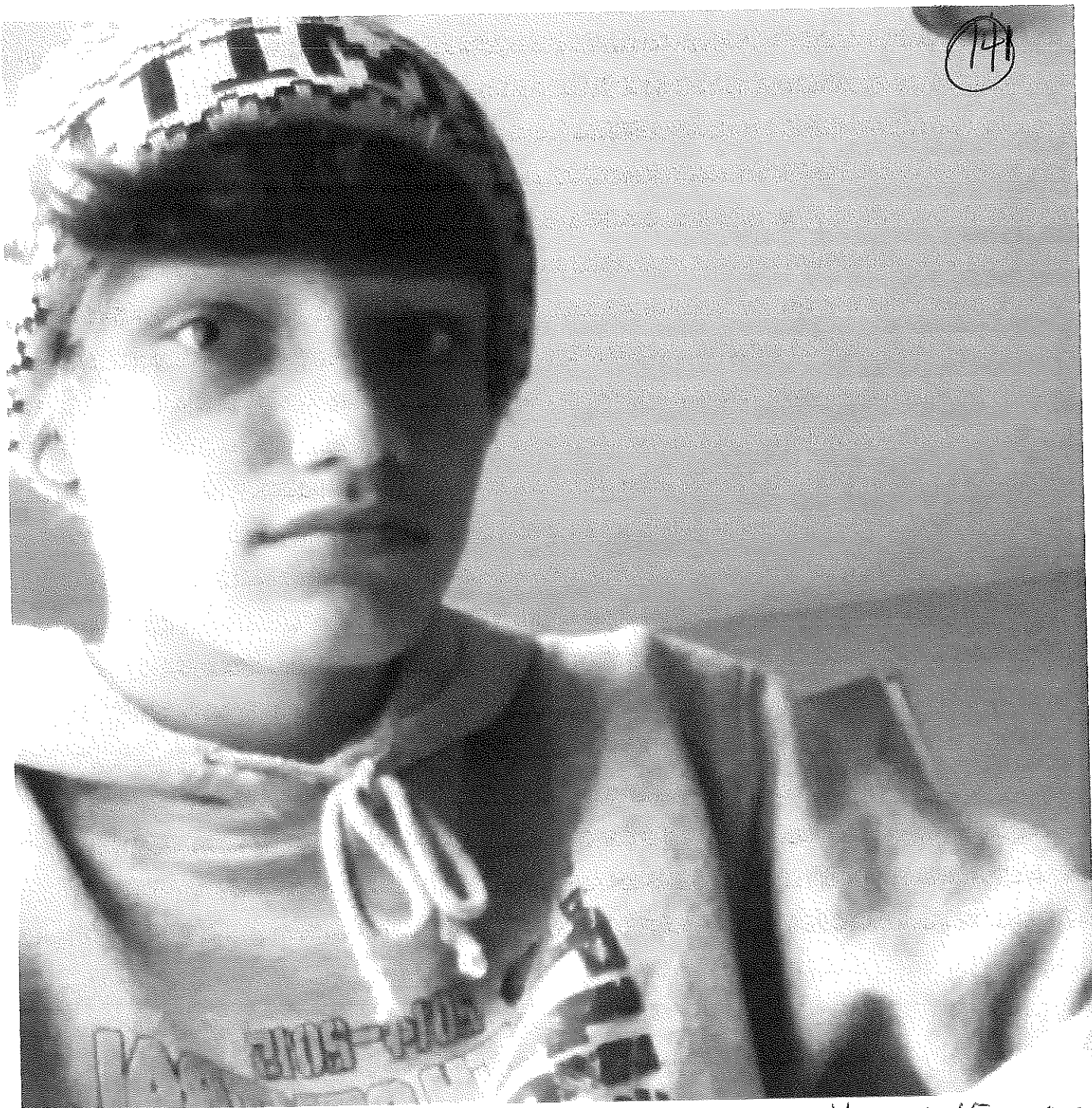
• FemaleFavorite Quotes

I'll stop loving you the day a mute woman tells a deaf man that a blind girl saw a paralyzed boy walk on water.

<3 "You know you're in love when you can't fall asleep at night, because reality is finally better than your dreams.

" Dr.Seuss "Well behaved women rarely ever make history"-Marilyn Monroe

o



Brittly's BF.

Henry 15 yrs old.

transcript
pg 296 297
Tammy testified that Henry "was 12 or 13" (She knew he
was 15) "four foot tall, freckles, braces. Just a little boy"
"Had not hit puberty yet." (How would she know?)
Why Lie?



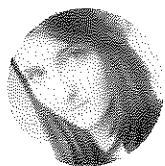
https://m.facebook.com



142



Profile Pictures



Beena Miller

Profile Pictures · Jan 7, 2012 ·

[View Full Size](#) · [More Options](#)

Miller children with Harrelson children. This is Henry, top right, 7 mos prior to James arrest. 15 yrs old not 12-13 as Britly and Tammy testified in court. Why lie?

143



Beena Miller
July 9, 2012

1

5 C

Share



Virginia Hays Sanders awww!!! you got another dog??????

6y



Beena Miller Yes!!

6y



Virginia Hays Sanders awww!!! Does Oliver like her? I hope so! I miss my old boy!

6y



Beena Miller Yes! he is ok with her! he and Bella love each other!!

6y



Virginia Hays Sanders aww well thats good!!

6y

Ref - DNA Analysis.
Solidator said fluids
could b DNA from
James. No one Ask
about the many
animals that they
had. Dogs cats kittens
birds + no cleaning.

Anna had these PG

(144)



pam edwards <pamedecor@gmail.com>

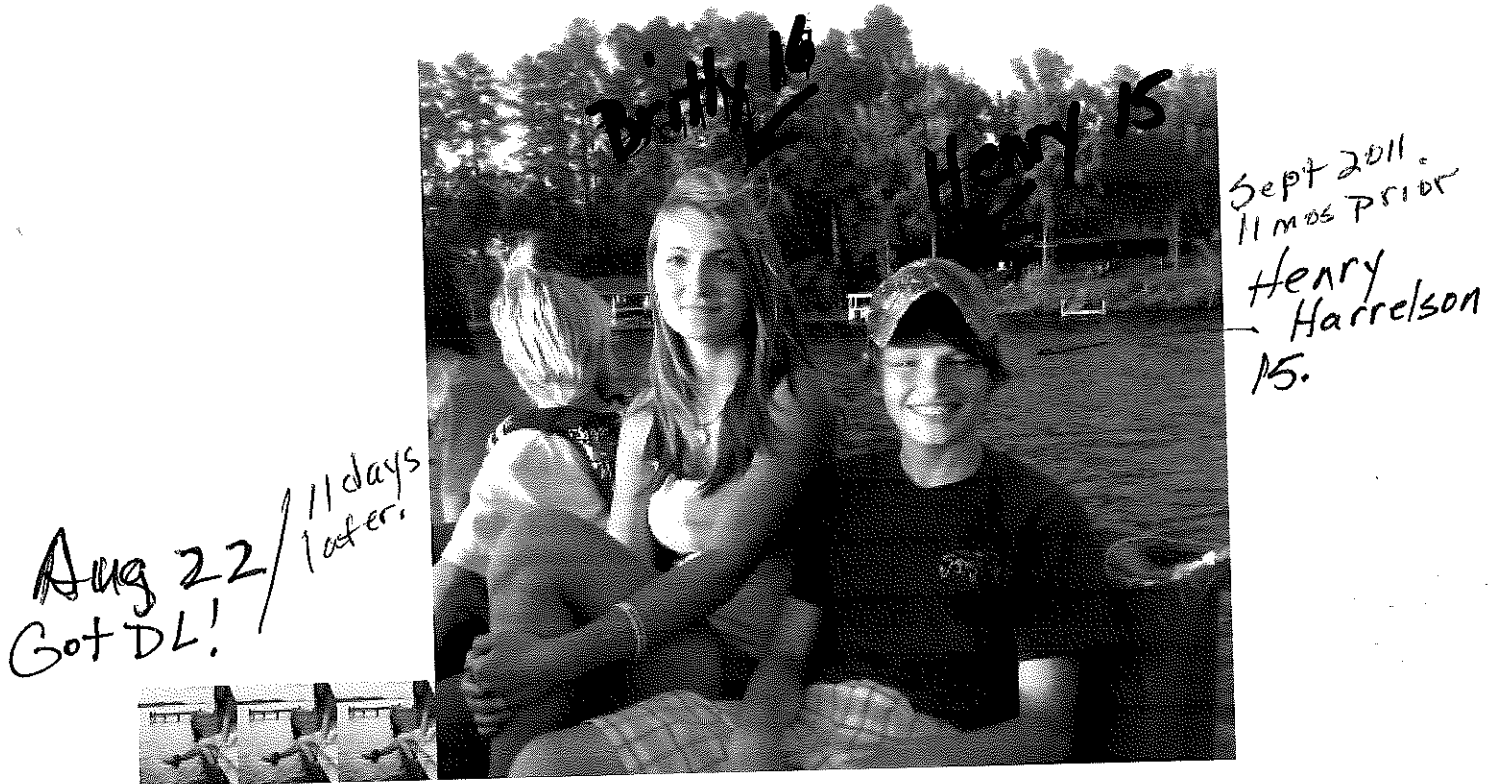
miller postings

1 message

pam edwards <pamedecor@gmail.com>
To: pam edwards <pamedecor@gmail.com>

Picture posted Sept 2012

Sun, Sep 30, 2012



Favorite Quotes

I'll stop loving you the day a mute woman tells a deaf man that a blind girl saw a paralyzed boy walk on water. ' know you're in love when you can't fall asleep at night, because reality is finally better than your dreams." Dr. Se behaved women rarely ever make history"-Marilyn Monroe

Britly Miller

August 22

I GOT MY DRIVERS LICENSE :)
Britly Miller

August 22

I'm so lost.

1:50pm

James Miller

I love you so much and im sorry for hurting your heart ,you will allways be my angel ,please
never hate me ,i love you

August 11

2012 before arrest.

private FB message
to Britly

This was after James told Britly that she
couldn't see Henry anymore.
After the message he went down to the dock
to talk to Britly.

At 1:50pm James was on the computer and
not watching out the door like they said
in court.

Ref> the time stamps on the officer's
statements.

145

✓

They took the boys dad away!

146

facebook

https://www.facebook.com/britly.miller?ref=ts

They testified that James wouldn't take his sons fishing. Only Britly. No

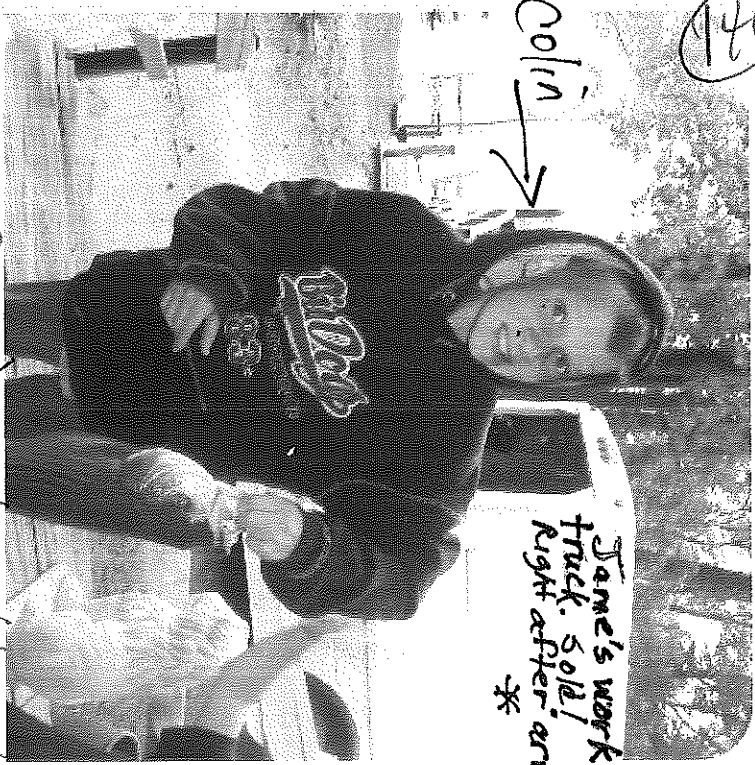
Jennifer Home

Britly Miller Timeline 2012 Highlights

April 22 10:00 TR pg 213 Cavanaugh's Br. H'y

His face is priceless. Collin caught his first striped, Silas! — with Tammy Blessing Miller.

946



Share Britly Miller answered 2 questions.

They (BBT) took Collin's father away!

Photos of Britly fishing.

Why lie?

April 2 10:00

Did you taste a bar of soap yet? Lol

TR pg 213 Q "Didn't your brothers want to go?"
A. "They did."
Q "Would he take them?"
A. "NO"
Q "Why?"
A. "Well, they were little made too much noise he said."

Britly Miller shared a link.
March 3 10:00

This is amazing. IM GOING TO DO IT... Anybody going to join me?
World's Largest Rope Swing
www.youtube.com

Check out the making of this video on my second channel!!! :)
http://youtube.com/dewingraham Downloaded the song from the video on iTunes!!! It was made by 'Ca...

Share

Britly Miller
March 1 near Camden, SC 10:00

Flying to get ready for a BEAST photoshoot with Breana Miller :)
Thank you Tina Crenshaw Norwood for letting us use the dresses!!!

No friends!
Isolated!
↓ sheltered!

Why lie?

5 6

1 Chat (000)

Sponsored by
Cranberry Splash



Here's your chance to win a 3-month supply of Sierra Mist Cranberry Splash! Enter today!!
Roxanne Barfield likes Sierra Mist.



147

TR pg 266

Brittly

Breana

couldn't
wear,
bikinis!

Copy text from image X

Jul 18, 2010

TR pg 257 Brittly,
"If we were going
somewhere on the boat,
we would have to
cover up."

pg 266 - Brittly "we had to
wear board shorts
& swim shirts."
why lie?

More Options

148

"We were only allowed to wear board shorts and T-shirts." Court Transcript. Britly.

Breana

Britly



Beena Miller
September 30, 2011

With Britly Miller.

3

5

Boyfriends
Dad
now father-
in-law.



Ryan Alberque LO
Breana, I like your tr

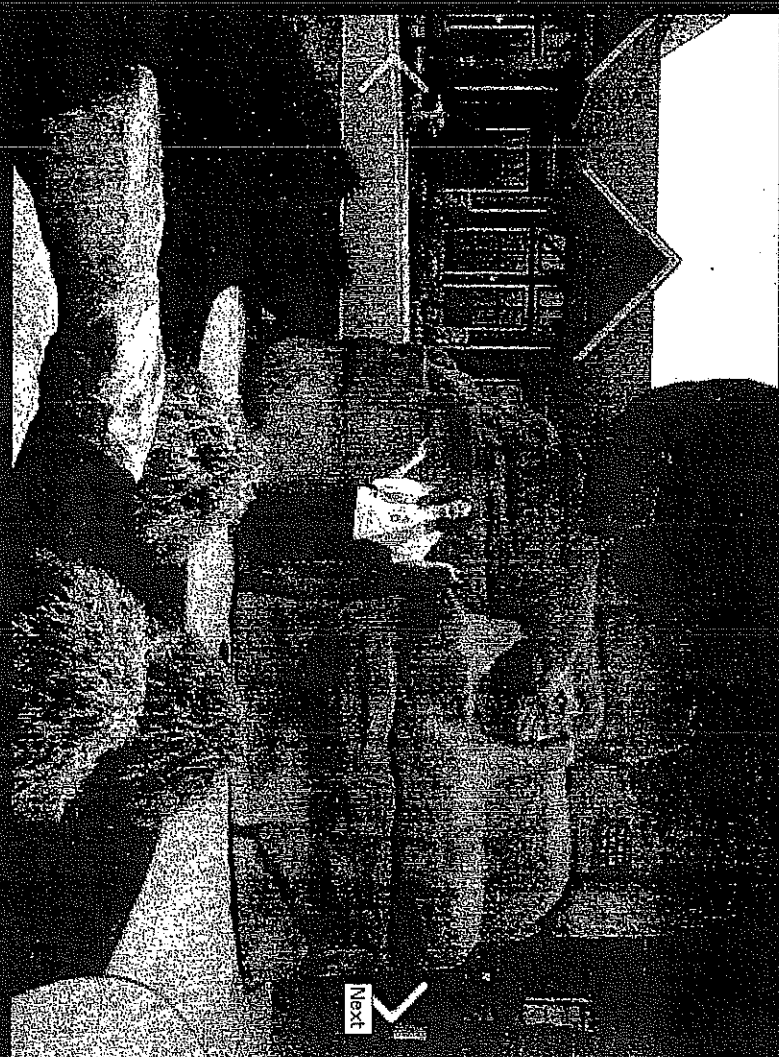
7y



Beena Miller thank

7y

Normal Teenage clothing
why lie?



Photos of Britly Miller

Tag Photo options Share



Britly Miller
January 28 via mobile

2012

In front of the Wolf Lodge Hotel!!! That place had a water park in it!

Share

5 people like this.



Carolann Keilen I love your shirt ♥ haha
January 28 at 1:20pm



Ttee Scdm you guys were so close to my house I can't believe you didn't come to see me or even call
January 28 at 9:02pm

"We didn't do anything as a family."

Sponsored

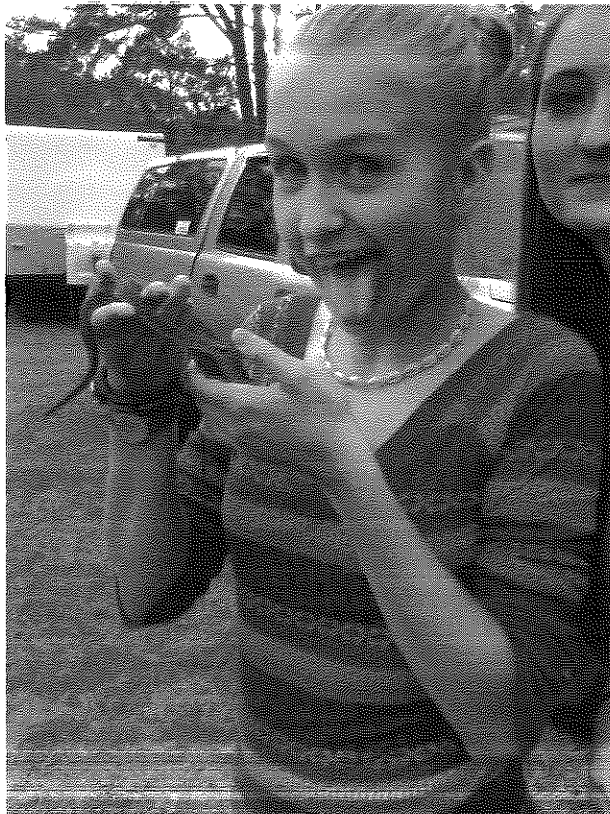
See All



The Art Institutes
Who will create tomorrow's hit movies? With a focused education, it can be you.

All testified didn't do anything as a family

Britly's friend Erika (150)



Beena Miller
December 9, 2011

1

Share



Jamie Elaine Higginson I have that shirt!

7y



Callum Smyth Awwh look at little er

7y



Callum Smyth A Dina

7y



Callum Smyth Dinosaur??? Freakin correct

7y

Britly's friend Erika. No friends!
James Truck and Trailer in Background.
Tammy sold everything forged James' name
and got out of town. James was only
charged at this time.
Britly, "He wouldn't let me hang around
Erica because her mom was on drugs." (Lie)
Why lie?

Friends, Dogs Cats Kittens / fluids

Neg

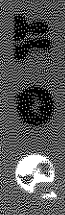
151

f Beena Miller



Home

Find Friends



Secure

https://www.facebook.com/beena.miller.2/photos?set=1685156777%3A10000746089227%3A1519406571&source_ref=pb_friends_11

Bookmarks

etsy.com

Welcome | USPS

Bank of America | Ho

Facebook

ebay

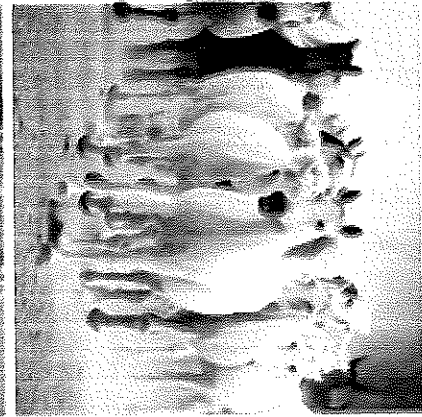
Data Use Policy

Inbox (253) - pinned

Semmon



No Friends
Carliann
+ Breana



Type here to search



No friends / snelfterd wif me.

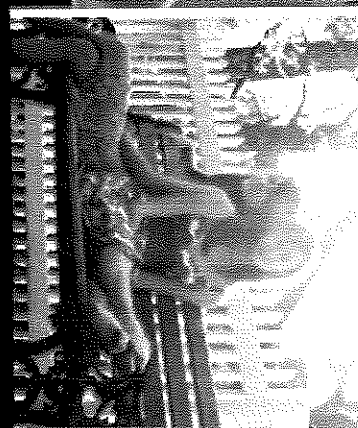
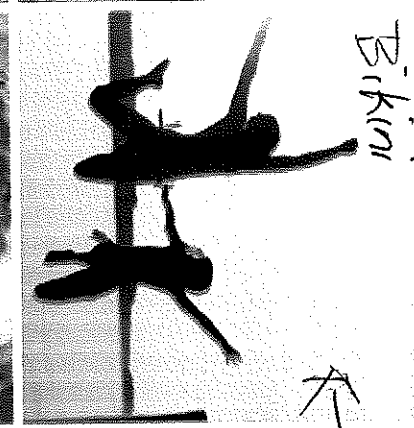
152

Beena Miller

A

Post Home Find Friends

Like Comment Share



Type here to search



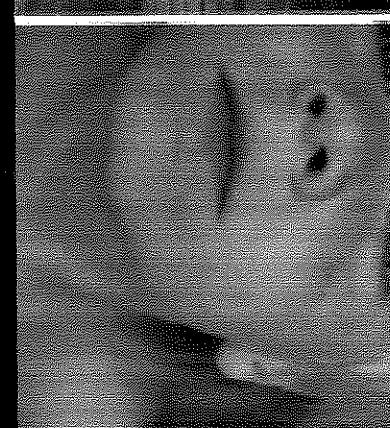
No friends/sheltered

f Beena Miller

Q

[Pam](#) [Home](#) [Find Friends](#) [11](#) [8](#)

153



No friends
Isolated
sheltered

No + friends! Isolated!

Secure https://www.facebook.com/beenamiller2/photos/?list=1685156777963A10000074609221795A1519406571&source_ref=pb_friends_4

Apps ★ Bookmarks [etsy.com](#) Welcome | USPS [Bank of America](#) | Facebook [eBay](#) [Data Use Policy](#) [Mailbox \(25\)](#) - [pinned](#) [Sendmail](#)

f Beena Miller

Q

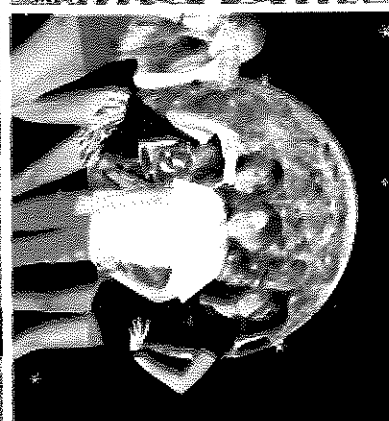
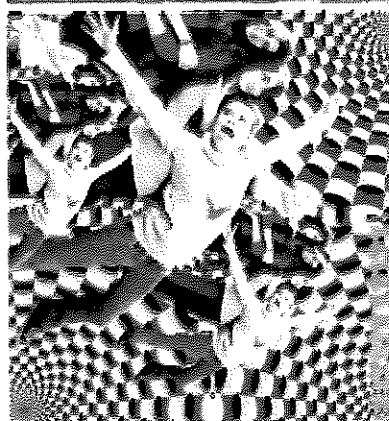
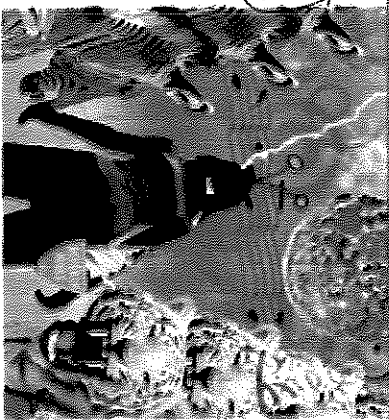
50 Pan Home Find Friends

21

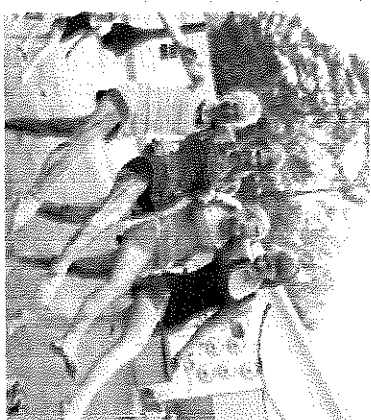
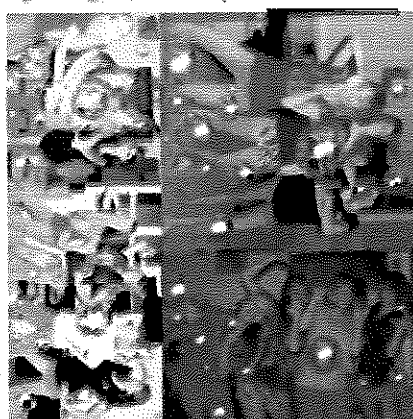
3

3

154



No friends
Isolated
Sheltered



Type here to search

9

2

No friends/sheltered/1501atca

155



No friends

156



Beena Miller
March 22, 2010

poses!!!! — with Britany Grande, Amanda Rose
Kimble, Kaitlyn Servello Hulzer and Kristina Wright.

5

2 Comments

Share

Amanda Rose Kimble This is pretty cool!

5y

"Isolated, No friends."

31



4G



56%



3:15

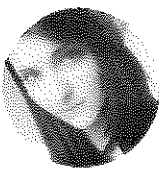
157



https://m.facebook.com



Cover Photos



Beena Miller

(Breana)

Cover Photos · Aug 11, 2012 ·
after arrest,

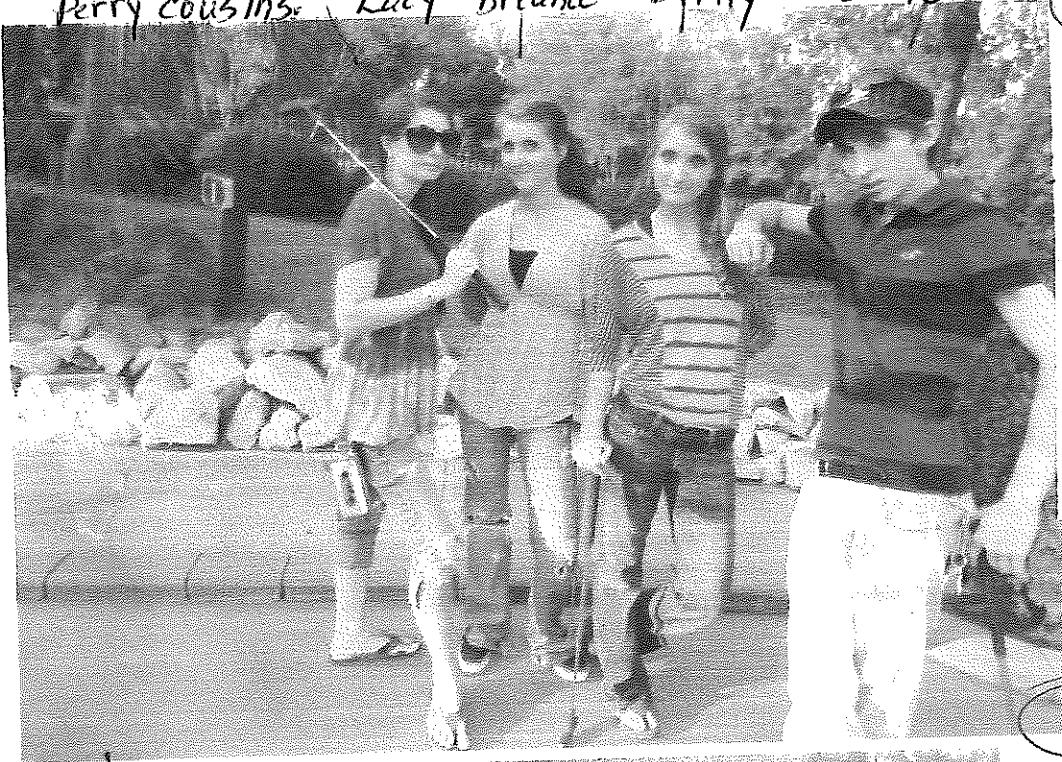
[View Full Size](#) · [More Options](#)

TR pg 254 3-5 "Uhm I can't remember if we stayed at the house the rest of the day or if we went somewhere. I can't remember. She got to go horseback riding at the Harrelsons."

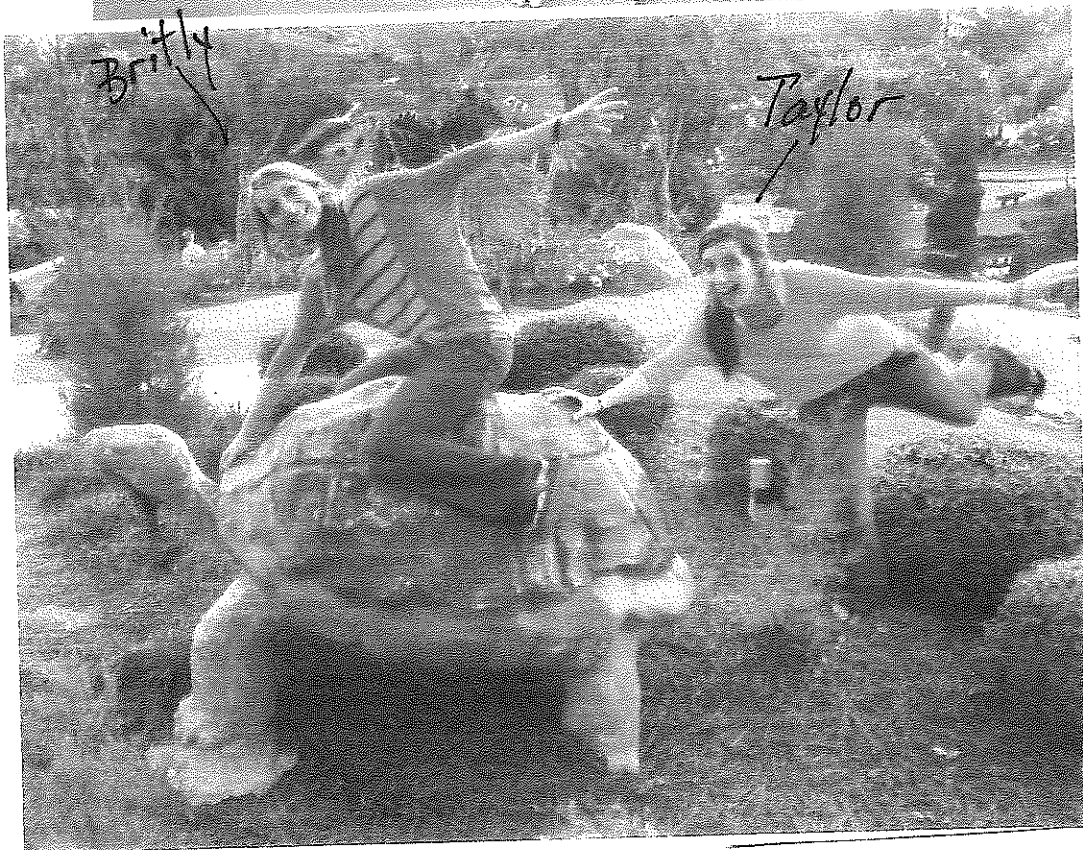
Aug 15 After arrest on Aug 11, 2012

3 days later Perry cousins: Lacy Breana Britly Zack

158



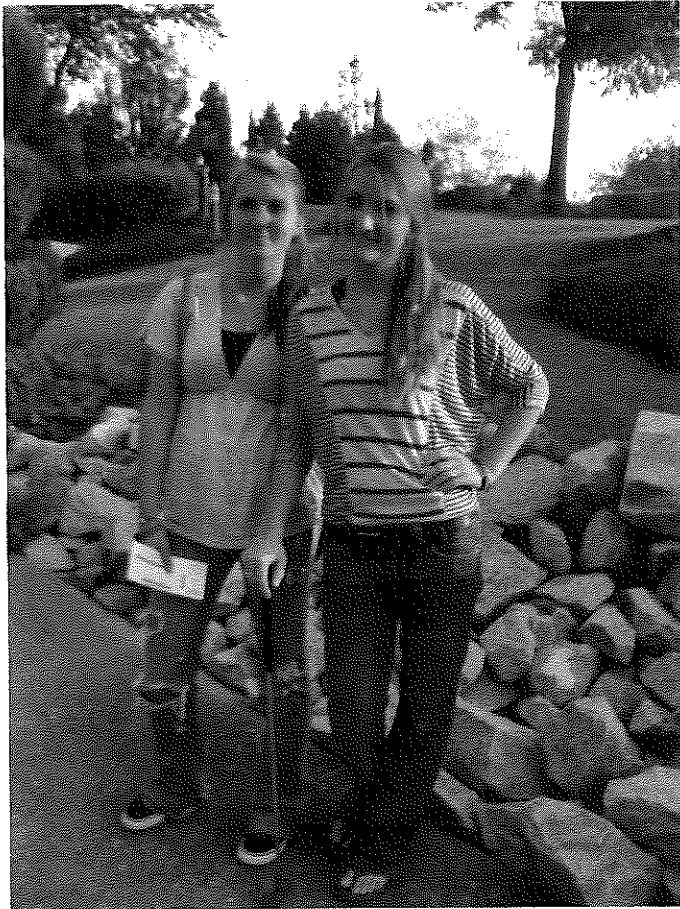
Aug 15



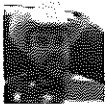
Britly having fun. Tramatized?

(159)

With Mae Merz, Beena Miller, Britly Miller and Zack Perry at Frankie's Fun Park.



*Britly on right
Breana on left.*



Rodney Harrelson U girls look very nice ! !!! Very pretty!

August 19 at 11:11pm Taylor Perry

August 20

gorgeous classy woman!! — with Britly Miller



160

Brittly on Right
Breana on left

After James'
* Arrest 8-11-2012

August 15

4 days later,
After arrest.



➤ Brittly

August 15

(161)



Britly Miller August 22

I GOT MY DRIVERS LICENSE :)

Britly Miller

August 22 2012

I'm so lost..

September 1

I want something similar to this, but lower and a slightly different design. I love the white ink



162

Tammy Blessing Miller and 2 others like this.
September 1

I may be lying in the gutter, but I'm staring at the stars.

Britly Miller

September 9
The sooner people open there eyes to reality, the better. It may be hard to accept, but that's life. Get over yourselves, please

Thursday

On my way to Charleston!:)

Britly Miller

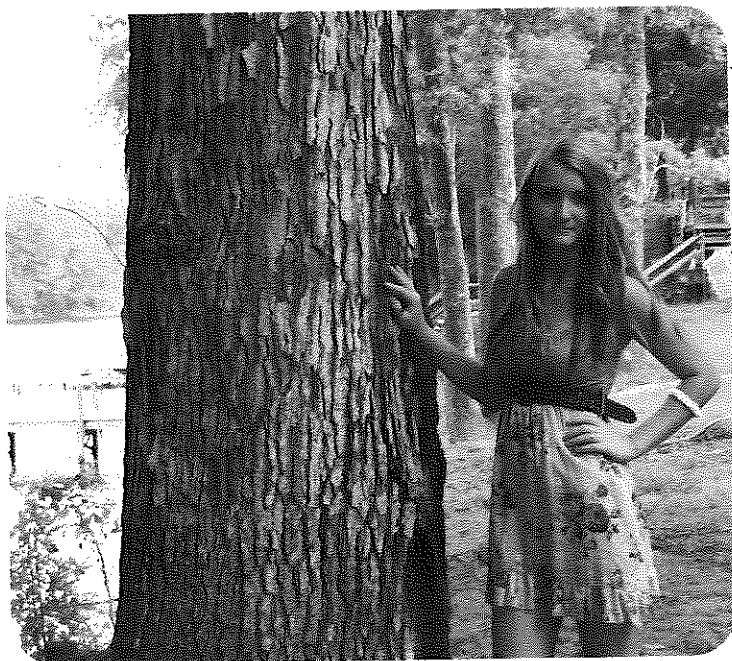
(163)



← summer trees

Britly

Taylor Perry Girl that dress is SHORT



Summer trees

← Martha's house behind trees.
How did Martha see detail?

→ Britly

September 4 at 1:04pm • 1



Beena Miller i said the same THING!!

September 4 at 1:37pm •

Taylor Perry It's not only short in the back but it's uber short in front too

164



Beena

friend


Beena Miller
August 1, 2011

01

Share

No friends.
"We could only wear 't-shirt'
board shorts and T-shirts."
"No friends" why lie?

31 52% 4:13 3 Comments

Share



Beena Miller

August 31, 2011 at 9:34 AM · 🌐

Me dad and britly went fishing last night.. I caught the 2 biggest fish 😊 hehe

Share



Beena Miller

August 30, 2011 at 9:40 AM · 🌐

Putting sprite on a slug makes it slime 10 times more than it does already.....

3

Share



Beena Miller

August 28, 2011 at 4:11 PM · 🌐



31 53% 4:08 https://m.facebook.com



James Miller

big party

8 yrs More



PHONES OF THE WEEKEND!!

2

5 Comments



Tina Crenshaw Norwood

Yep, mine's the old motorola in the middle. My oldest was just giving me a hard time about it today.



31 51% 4:16 https://m.facebook.com



Beena Miller

May 10, 2011 at 9:54 AM · 🌐

4:30 in the morning is just way to early for me. Heading to GA with my dad(:

Share



Lacie Parker

What are you going to GA for?

9 yrs More



Beena Miller

We are picking up a trailer! But we are on our way home now. Haha(:

9 yrs More



31 53% 4:09 https://m.facebook.com



Beena Miller

September 24, 2011 at 10:36 AM · 🌐

PARTY PARTY
PARTY...YEAH! Virginia Hays Sanders 😊

1

Share



Beena Miller

September 23, 2011 at 9:05 PM · 🌐

having a party? HECK YES!
XD

2

5 Comments

Share



Beena Miller

September 23, 2011 at 6:42 PM · 🌐



165

Britly, Breana Tammy testified that James only did things with Britly. Only fished with Britly and that he didn't like people. They couldn't have friends + were sheltered & isolated.

why lie?

(166)

(BAT)

They said that James didn't like people. James loved everybody, mostly his family. Britly, Beena, Tammy testified that they were isolated, controlled & had no friends. Why lie?



Beena Miller

September 26, 2013 ·

PHONES OF THE WEEKEND!!! — with Britly, Tina Crenshaw Norwood, Tammy Lynn Blessing, Virginia Hays Sanders and Britly Miller.

2

5 Comments

Share



Tina Crenshaw Norwood Yep, mine's the oldi motorola in the middle. My oldest was just giving me a hard time about it today.

7y



Carolann Kelien one of those is DEFINITELY an ipod!

7y



Virginia Hays Sanders yeahh my phones at the end my dad's is the 2nd one, and the first one is a GPS

7y



Seth VanDeventer Williams Why did you have all of those?

7y

167

Having a great time in Charleston so far!

excited to move to
Florida

€,'€,'水,?,?	AQBDv3rS	{"actor":"1000004" 1
-------------	----------	------------------------

Breana Miller, Tammy Blessing Miller and 9 others like this.

- Tammy Blessing Miller
- 2 more sleeps

€,'€,'水,?,?	AQAcbtP	{"actor":"1000003" 1
-------------	---------	------------------------

Like · · 43 minutes ago ·

- o married
- o Breana Miller and Skeeter Keeter like this.



o

Skeeter Teeter was Melissa Alberque's son. They were staying w/ them when they moved to Florida. Skeeter + Breana are now married.

Breana Miller THEN ONLY 1 TOMORROW!!!! LETS HURRY UP AND GO TO BED!

37 minut

36 minutes ago · Like · 2

es ago · Like



o

Breana Miller JK IM TO EXCITED TO GO TO BED!!!

(Breana Post)

September 8 2012

Hey, Im not going to make it back before i leave for FL!

Britly standing up for Breana
to set things straight. (168)

This was right before
move to florida,
9-8-2012



Britly Miller You do realize that this will be the last time you would ever see us. Its kinda sad you wouldn't take time off something you do all the time to see breana, Seeing as shes your "best friend". :(Im sorry I had to say this

Sunday at 7:26am

Virginia Hays Sanders Omg. I can't believe you said that...wow. If she wants to message me, we can talk. But seriously, Sunday at 8:17am via mobile

Victoria Taylor Kennedy I would appreciate if you didn't act that way towards my friend!

Sunday at 9:55am via mobile · 1



Britly Miller Seriously? Everything I said is true and you know it, Look hays I love you and I'm not going to get into this mess with you again, I was just pointing out that we are leaving. And as far as Breana goes, she came to me so confused because she thought you were her best friend, but then you couldn't take off hunting to see her-something you do all the time- Everyone knows I don't sugar-coat things and I'm going to say what needs to be said. I'm sorry If you don't believe me you can talk with Breana your self. I'm just looking out for her. And Vitoria, You don't know me, you don't know this situation. So please leave it alone, I'm not being mean to her, Just setting things straight.

Sunday at 10:05am · 3

Britly
bullying.
"says what need to be said"

✓

Breanna finally with
Skeeter Keeter (Justin)

Sept 27 2012 (164)

after arriving in Florida.



Kimmi Brown what?! i know nothing of this!!
September 27 at 5:20pm · 1

Ryan N Melissa Alberque <3 about time <3
September 27 at 5:34pm · 2



Skeeter Keeter I know!! <3
September 27 at 6:16pm · 1

> Now Breanna's in-laws.
> Breanna's husband.



Virginia Hays Sanders I'm so happy for Y'all!!!! :)
September 28 at 6:21pm



Skeeter Keeter Thanks!!
September 28 at 9:23pm · 1



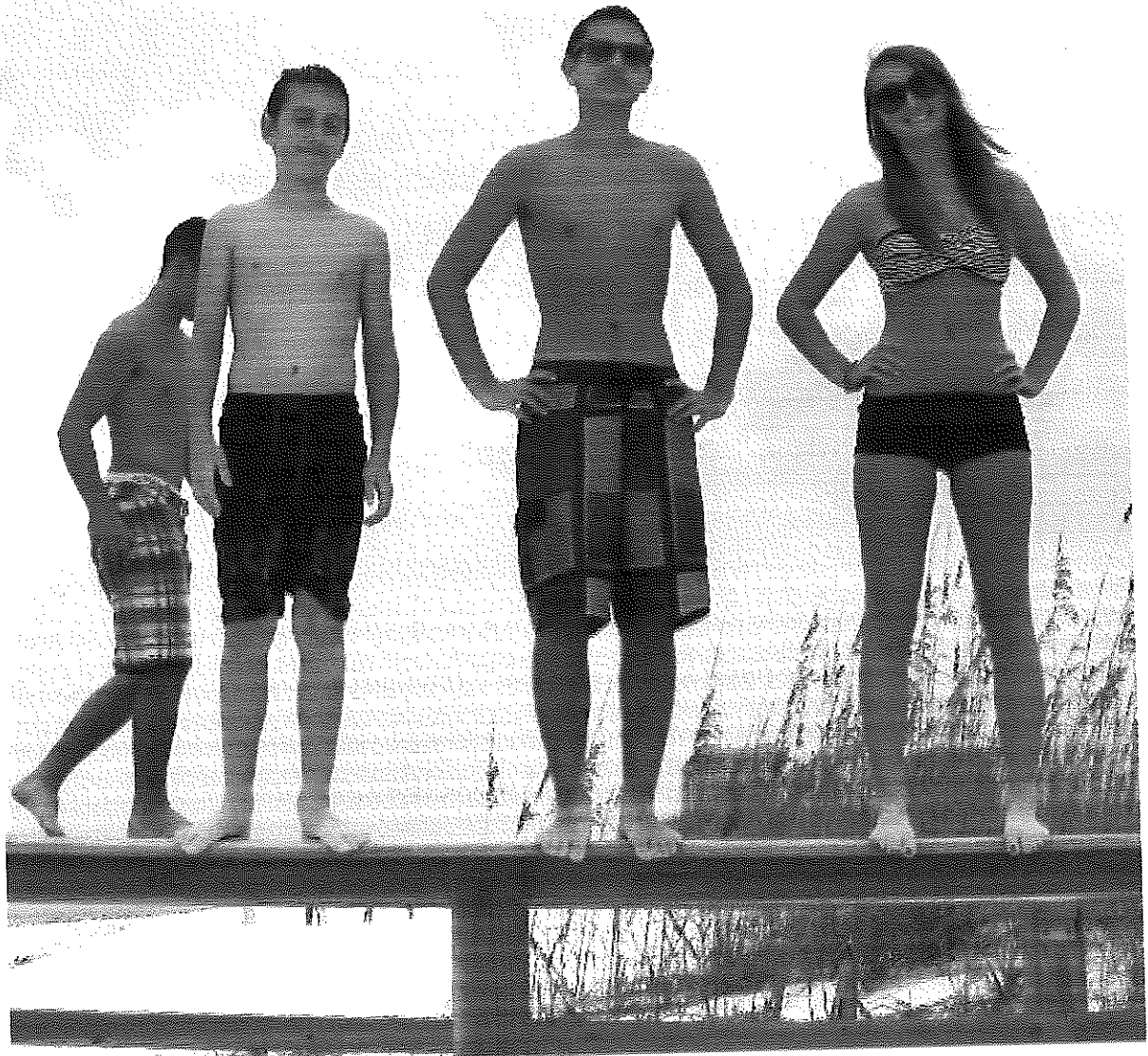
Avery Inocente Yay!!! ((:
October 6 at 7:41pm · 1

(Justin)
Skeeter Teeter is the son
of Melissa Alberque whom
they stayed with when they
got to Florida.

"Florida"
Tyler

Brittly

(170)



Tyler Maynard

Sept 29

September 29, 2012

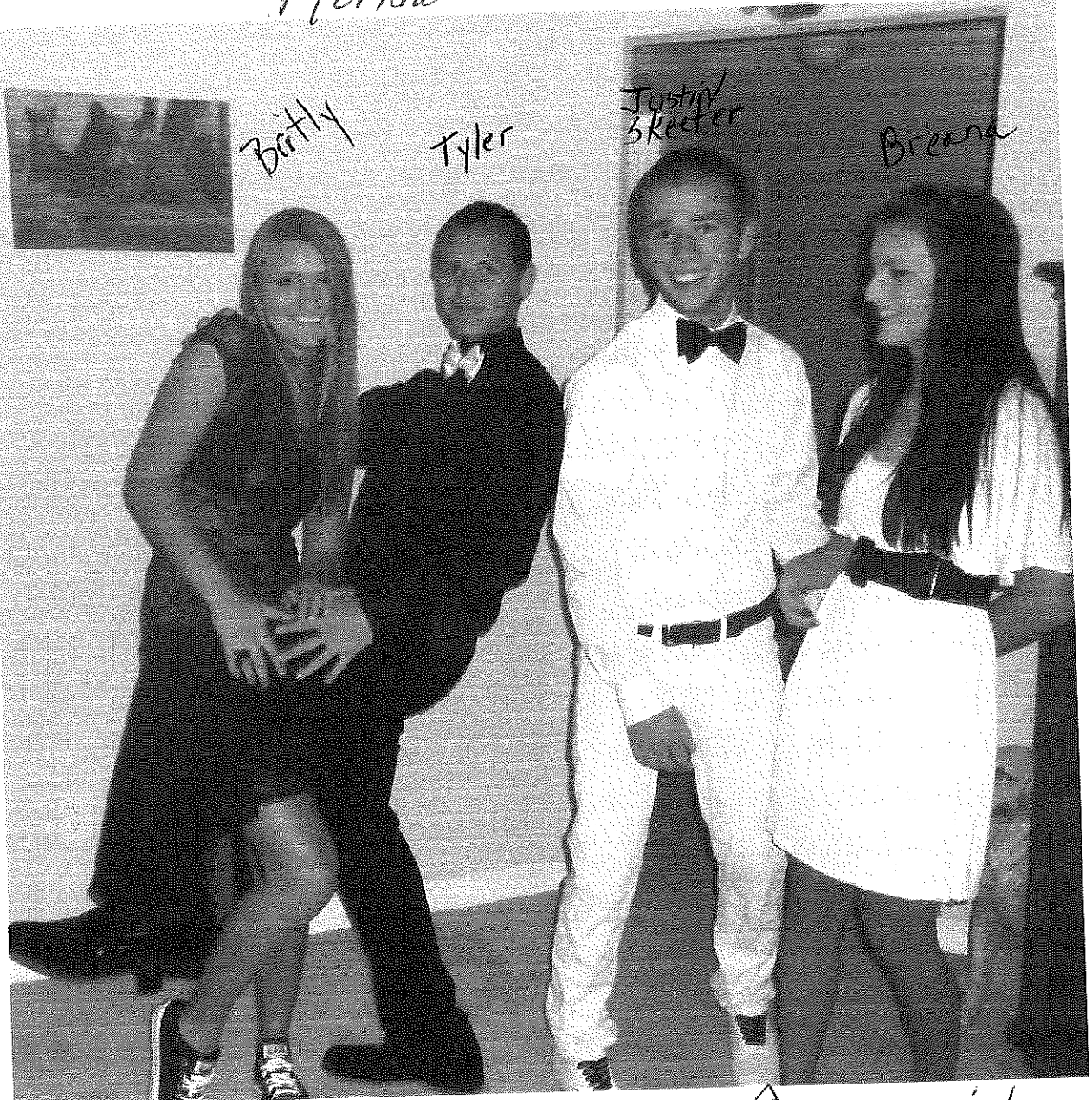
Tyler Maynard

March 9, 2013

Now married
Brittly testified that she met Tyler
several month's after they got to
Florida

Happy!
Florida Both are married
to these guys.

(17)



Tyler Maynard

October 13, 2012

↑ now married

↑ now married

1 Plaintiff

STATE OF FLORIDA,

XRef-ID: 2836

172

2 Defendant

MILLER, BRITLY ASHTYN

XRef-ID:

W F

06/04/1995

EMAIL ADDRESSES

DivE@sa01.org

PARTY CHARGE SUMMARY

Rcd	Chg/ Cnt	Phase	Charge Description	Charge Disposition	Disposition Date
1	1	Initial	RETAIL THEFT 300 MORE DOLS COORDINATES OTHERS	ARREST	06/06/2014

DOCKETS

Rcd	Date	Description	Document Tag #
1	06/06/2014	ARREST SEQ: 1 - (812.015(8A)) RETAIL THEFT 300 MORE DOLS COORDINATES OTHERS	
2	06/09/2014	CASE FILED 06/09/2014 CASE NUMBER 2014 CF 002380 B	
3	06/09/2014	JUDGE JONES, MICHAEL: ASSIGNED	
4	06/09/2014	ARRAIGNMENTS SET FOR 06/27/2014 AT 8:30 AM IN MC/ , JDG: JONES, MICHAEL	
5	06/09/2014	ARREST DATE: 6/6/2014	
6	06/09/2014	ARREST REPORT FILED	
7	06/09/2014	PROFESSIONAL BOND C570135469 POSTED \$1,000.00	
8	06/09/2014	PROBABLE CAUSE WARRANT FILED	

EVENTS

Rcd	Date	Start Time	End Time	Event Type	Judge	Result
1	06/27/2014	8:30:00 AM	8:30:00 AM	ARRAIGNMENTS	JONES, MICHAEL ,	
M.C. BLANCHARD JUDICIAL BUILDING						

FINANCIAL SUMMARY - COSTS AND FINES

No Information available - See Dockets

RECEIPTS

No Information available - See Dockets

CITATIONS

None

CRIMINAL OBTS

PARTY CHARGE SUMMARY

Rcd	Chg/ Cnt	Phase	Charge Description	Charge Disposition	Disposition Date
1	1	Initial	RETAIL THEFT 300 MORE DOLS COORDINATES OTHERS	ARREST	06/06/2014

CHARGE NUMBER 1

Britly Breana
Felony shoplifting

173

[Search Again]

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**Escambia County Florida Clerk of the Circuit Court
Courtviewer Records Search**

Rcd	Case Number	Name	Party Type	Case Type	File Date	Disposition
1	2014 CF 002380 A	MILLER, BREANA MICHELLE	DEF	FELONY	06/09/2014	OPEN
Division / Judge: E / JONES, MICHAEL						
Offense Statute Charge Description Lvl/Deg Citation						
05/21/2014 812.015(8a) RETAIL THEFT 300 MORE DOLS COORDINATES OTHERS						
Complaint #: ECSO14012568						

**Escambia County Florida Clerk of the Circuit Court
Courtviewer Records Search**

Rcd	Case Number	Name	Party Type	Case Type	File Date	Disposition
1	2014 CF 002380 B	MILLER, BRITLY ASHTYN	DEF	FELONY	06/09/2014	OPEN
Division / Judge: E / JONES, MICHAEL						
Offense Statute Charge Description Lvl/Deg Citation						
05/21/2014 812.015(8a) RETAIL THEFT 300 MORE Level F DOLS COORDINATES OTHERS Degree T						
Complaint #: ECSO14012568						

**Escambia County Florida Clerk of the Circuit Court
Courtviewer Records Search**

CASE

Case Number	2014 CF 002380 B	Case Judge	E / JONES, MICHAEL
Case Type		File Date	06/09/2014
Case Action Code	RETAIL THEFT 300 MORE DOLS COORDINATES OTHERS	Case Status	OPEN

PARTIES

Rcd	Party Type	Name	Race	Gender	D.O.B. / D.O.D.
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Medical findings
cited cases.

Yancey Thompson v. SC

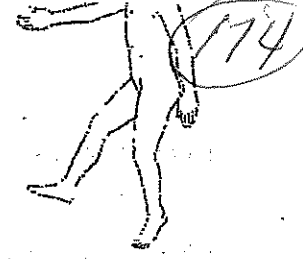
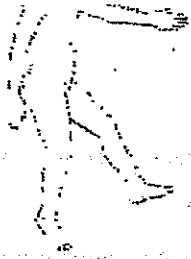
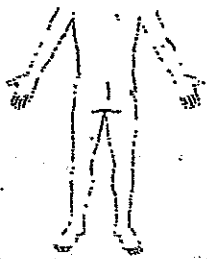
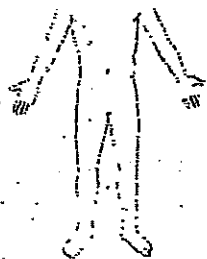
Lounds v. SC

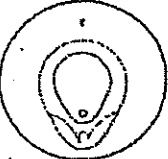
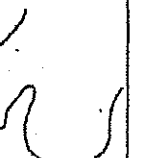
Billy Lemurces Taylor

Farid A Mangal v SC

Nathaniel Witherspoon

Bobby Joe Reeves



Skin Findings/Comments: ☐ Photos	
small scars both forearms "I had laser surgery to remove warts"	
Female Genital Exam Findings  Colposcope: ☒ Exam ☐ Photos Positioning: ☒ Supine ☐ Prone KC Other stirrups Tanner: (SMR) PH ☐ 1 ☐ 2 ☐ 3 ☒ 4 ☐ 5 B ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☒ 5  Hymen: ☒ Annular ☐ Crescentic ☒ Estrogenized ☐ Fimbriated ☒ Redundant ☐ Septate ☐ Microperforate/Imperforate ☐ Other: Specify: _____	Male Genital Exam Findings     Colposcope: ☐ Exam ☐ Photos Positioning: ☐ Supine ☐ Prone KC Other _____ Tanner: (SMR) PH ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 G ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 Circumcision: ☐ Yes ☐ No
Comments: wide, smooth except deep notch at 7 nearly to vaginal wall cervix appears normal, with questionable circular vs fishmouth os no discharge	Comments: "Questionable" circular? No discharge? while "raped constantly" JE
☐ Child declined/refused anogenital exam Date: _____	

Cavanaugh and Dr. Luberoft kept referring to the shape of the hymen and the "notch." Anna needed an outside expert to testify to what these findings actually meant. This was in her files that I sent her.

over >

Mono most often spreads by kissing. That's because the virus that causes mono can be found in your mouth. It lives in your saliva (spit) and mucus.

When you kiss someone, you are mixing your saliva with theirs. If you have mono and share saliva, you are sharing the virus too. Kissing or having sex with someone with mono makes you more likely to get the infection.

The hymen is a membrane that surrounds or partially covers the external vaginal opening. It forms part of the vulva, or external genitalia, and is similar in structure to the vagina.^{[1][2][3]} In children, although a common appearance of the hymen is crescent-shaped, many shapes are possible.^[1]

HYMEN

Anna Good failed to investigate and seek the opinion of an independent medical expert, as requested.

The effects of sexual intercourse and childbirth on the hymen are variable. If the hymen is sufficiently elastic, it may return to nearly its original condition. In other cases, there may be remnants (carunculae myrtiliformes), or it may appear completely absent after repeated penetration.^{[3][4][5]} Additionally, the hymen may be lacerated by disease, injury, medical examination, masturbation or even physical exercise. For these reasons, it is not possible to definitively determine whether or not a girl or woman is a virgin by examining her hymen.^{[2][4][5]}

Development

By the time a girl reaches school age, the hymen becomes thin, smooth, delicate, and nearly translucent. It is also very sensitive to touch; a physician who must swab the area should avoid the hymen and swab the outer vulval vestibule instead.^[6]

Past neonatal stage, the diameter of the hymenal opening (measured within the hymenal ring) is widening by approximately 1 mm for each year of age.^[8] During puberty the hymenal opening can also be enlarged by tampon, menstrual cup use, pelvic examinations with a speculum, regular physical activity or sexual intercourse.^[1] Once a girl reaches puberty, the hymen tends to become very elastic. In one survey, only 43% of women reported bleeding the first time they had intercourse, indicating that the hymens of a majority of women are sufficiently opened.^[1]

^[6] Prepubescent girls' hymenal openings come in many shapes, depending on hormonal and activity level, the most common being crescentic (posterior rim): no tissue at the 12 o'clock position; crescent-shaped band of tissue from 1–2 to 10–11 o'clock, at its widest around 6 o'clock. From puberty onwards, depending on estrogen and activity levels, the hymenal tissue may be thicker, and the opening is often fimbriated or erratically shaped.^[7] In cases of suspected rape or child sexual abuse, a detailed examination of the hymen may be performed, but the condition of the hymen alone is often inconclusive. In younger children, a torn hymen will typically heal very quickly. In adolescents, the hymenal opening does extend from natural causes and variation in shape and appearance increases.

medical evaluation → "No discharge."
pg 8

176

Vaginal discharge serves an important housekeeping function in the female reproductive system. Fluid made by glands inside the vagina and cervix carries away dead cells and bacteria. This keeps the vagina clean and helps prevent infection.

Having vaginal discharge is normal and healthy – and necessary. It should really be renamed "vaginal self-cleansing fluid" because that is essentially what it does: it flushes out the old skin and other unneeded fluids (that's a nice way to say "semen") and keeps everything in balance.

Anna Goot failed to call in her own
Medical Expert.

176,

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Yancey Thompson, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2014-001611

ON WRIT OF CERTIORARI

Appeal from Lexington County
R. Lawton McIntosh, Circuit Court Judge

Opinion No. 27785
Submitted October 16, 2017 – Filed March 21, 2018

REVERSED

Appellate Defender Robert M. Pachak, of Columbia, for
Petitioner.

Attorney General Alan M. Wilson and Senior Assistant
Attorney General Melody Jane Brown, of Columbia, for
Respondent.

JUSTICE JAMES: We granted a writ of certiorari to review the circuit court's denial of Petitioner's application for post-conviction relief (PCR).¹ We reverse the

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

/

the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 694).

In a PCR case, this Court will uphold the PCR court's factual findings if there is any evidence of probative value in the record to support them. *Sellner v. State*, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016). However, this Court gives no deference to the PCR court's conclusions of law, and we review those conclusions de novo. *Jamison v. State*, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014).

A. Deficient Performance

The PCR court's deficiency findings were based upon an analysis of the South Carolina Rules of Evidence governing hearsay and upon the common law barring inadmissible bolstering testimony; because these findings—in this case—are conclusions of law, we review them de novo.

Failure to Object to Inadmissible Hearsay Testimony

In his application and during the PCR hearing, Petitioner claimed trial counsel rendered ineffective assistance by failing to object to inadmissible hearsay testimony given by DSS caseworker Elfering. The PCR court did not address this allegation in its order. Petitioner raised the issue again in his motion for reconsideration made pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. The PCR court again did not address the issue. Petitioner raises the issue again before this Court; therefore, the issue is properly before us.

Ms. Elfering testified at trial that she spoke with Victim about each allegation against Petitioner and that Victim "revealed to me that she was being sexually abused by [Petitioner]." Trial counsel did not object to this testimony. Petitioner contends this testimony was inadmissible hearsay which served to improperly corroborate Victim's testimony.

Petitioner also claims trial counsel was ineffective in failing to object to inadmissible hearsay testimony provided by Dr. Alicia Benedetto, a clinical psychologist who conducted the forensic interview of Victim at the request of law enforcement.² Dr. Benedetto was qualified by the trial court as an expert in clinical

² The audio and visual recording of Victim's forensic interview was not offered into evidence by the State, presumably because Victim was twelve years old at the time of the interview. See S.C. Code Ann. § 17-23-175 (2014) (permitting the admissibility of certain out-of-court statements of a child under the age of twelve).

Failure to Object to Inadmissible Bolstering Testimony

The PCR court ruled trial counsel was deficient in failing to object to testimony of Detective Traci Barr and Dr. Benedetto that impermissibly bolstered the credibility of Victim. We agree.

Detective Barr of the Lexington County Sheriff's Department testified at trial that she investigates child exploitation cases and that she conducted an investigation in this case. Detective Barr testified about her "specialized training" in child exploitation cases and testified she was trained in forensic interviewing of children who claim to be victims of sexual abuse. She did not conduct the forensic interview in this case, but she testified she watched the audio-visual recording of the forensic interview conducted by Dr. Benedetto and reviewed the medical findings of Dr. Susan Luberoff, who conducted a physical examination of Victim after Victim reported she was sexually abused. In the forensic interview, as testified to by Dr. Benedetto, Victim identified Petitioner as the perpetrator of the sexual abuse and provided other details. Detective Barr testified Victim's disclosures in the forensic interview were consistent with her own training and experience, and she testified the physical findings of sexual abuse recorded by Dr. Luberoff corroborated the account given by Victim during the forensic interview. The PCR court correctly ruled trial counsel was deficient in not objecting because this testimony impermissibly bolstered Victim's testimony. The State did not contest the PCR court's finding in its brief to this Court.

As previously noted, Dr. Benedetto conducted the forensic interview of Victim and was qualified by the trial court as an expert in clinical psychology and child sexual abuse assessment. She testified she has conducted perhaps a thousand forensic interviews of children who are possible victims of physical, sexual, or psychological abuse. She explained the process she follows in conducting a forensic interview and explained what certain terms mean and how she applies them in reaching her conclusions. She testified Victim suffered from post-traumatic stress disorder (PTSD) based upon the significant emotional distress and "genuine, just palpable grief" exhibited by Victim during the interview. When asked by the solicitor to explain her overall findings to the jury, Dr. Benedetto testified that while most interviews conducted of alleged child abuse victims are determined to be "problematic,"³ less than one-third of these interviews are found to be "compelling" for some form of abuse. She went on to testify that Victim's "interview was ruled

³ Dr. Benedetto did not explain what the term "problematic" means in her profession.

psychiatrist to give an opinion as to the victim's credibility. *Id.* at 394, 377 S.E.2d at 302. We recently concluded in *Briggs v. State*, 421 S.C. 316, 325, 806 S.E.2d 713, 718 (2017), that after *State v. Dawkins* was decided in 1989, the law was "clear that no witness may give an opinion as to whether the victim is telling the truth." More specifically, we held that after *State v. Dawkins* was decided:

[R]easonably competent trial counsel should know to object—absent a valid trial strategy—when a forensic interviewer gives testimony that indicates the witness believes the victim, but does not serve some other valid purpose. When the testimony directly conveys the witness's opinion that the victim is telling the truth, it is obviously improper bolstering.

Briggs, 421 S.C. at 325, 806 S.E.2d at 718.

Also, *State v. Dempsey*, 340 S.C. 565, 532 S.E.2d 306 (Ct. App. 2000), was decided by the court of appeals eight years before Petitioner's jury trial. Dempsey was charged with first degree CSC with a minor. A child sexual abuse counselor testified he conducted thirteen counseling sessions with the minor victim and that no statements from the victim would lead him to believe the victim was not telling the truth about being sexually abused. *Id.* at 568, 532 S.E.2d at 308. The counselor also testified that when a child says he has been sexually abused, the child is telling the truth approximately 95% of the time. *Id.* at 569, 532 S.E.2d at 308. Dempsey was convicted and appealed. The *Dempsey* court cited *State v. Dawkins* and concluded the counselor's testimony improperly vouched for the minor victim's credibility. *Id.* at 571, 532 S.E.2d at 309. The *Dempsey* court also quoted with approval this pointed directive from the Supreme Court of Oregon:

We have said before, and we will say it again, this time with emphasis—no psychotherapist may render an opinion on whether a witness is credible in any trial in this state. The assessment of credibility is for the trier of fact and not for psychotherapists.⁴

⁴ The quotation of the pointed directive from the Supreme Court of Oregon used by the *Dempsey* court was originally quoted in *State v. Morgan*, 326 S.C. 503, 515, 485 S.E.2d 112, 119 (Ct. App. 1997). However, the *Morgan* court made small errors in transcribing the quoted language. These errors carried forward in *Dempsey*. The

assault cases in which a witness provides inadmissible hearsay testimony. In 2008, when Petitioner's criminal case was tried, there was a bright-line rule of finding prejudice when trial counsel failed to object to inadmissible hearsay testimony identifying the defendant as the perpetrator. *See Jolly v. State*, 314 S.C. 17, 21, 443 S.E.2d 566, 569 (1994); *Dawkins v. State*, 346 S.C. 151, 156–57, 551 S.E.2d 260, 263 (2001). However, by the time Petitioner's PCR hearing was held in 2013, a majority of this Court agreed the bright-line rule should no longer control and concluded that in a direct appeal, a harmless error analysis should be employed when reviewing the admission of hearsay testimony that improperly corroborates the victim's testimony in a sexual assault case. *See State v. Jennings*, 394 S.C. 473, 482, 716 S.E.2d 91, 95–96 (2011) (Kittredge, J., concurring), and 394 S.C. at 483, 716 S.E.2d at 96 (Toal, C.J., dissenting) (collectively overruling *Jolly* and its progeny to the extent those cases impose a categorical or per se rule precluding a finding of harmless error). Similarly, in a PCR case, trial counsel's deficient failure to object to such testimony does not remove an applicant's burden to prove prejudice. As part of the prejudice analysis, the PCR court and the reviewing court must therefore consider the strength of the State's case apart from the inadmissible evidence to which trial counsel deficiently failed to object.

Citing "the combination of the physical evidence, [Victim's] credible testimony that provided precise details of the offenses, [Mother's] credible testimony, and the lack of contradictory testimony," the PCR court ruled trial counsel's deficient performance could not reasonably have affected the outcome of the trial. In so finding, the PCR court seems to have concluded these four points constitute overwhelming evidence of Petitioner's guilt. We now address these four factual findings in turn and conclude that none of them, either standing alone or when considered together, constitute overwhelming evidence of Petitioner's guilt.

First, Dr. Luberoff testified there was physical evidence Victim had been sexually abused or had sustained "penetrating vaginal trauma." While Dr. Luberoff's testimony supports a finding that Victim was sexually abused, the physical evidence cited by Dr. Luberoff did not constitute overwhelming evidence—or any evidence at all, for that matter—that *Petitioner* was the perpetrator.

Second, the PCR court found Victim's *trial* testimony was credible. While we defer to the PCR court's credibility findings as to witnesses who testified before the PCR court, we do not defer to the PCR court's credibility findings as to witnesses who did not testify before the PCR court. The PCR court reviewing the trial transcript is in no better position than we are to determine the credibility of trial witnesses or otherwise assess the strength of the State's case; consequently, we give

At no time does a defendant assume the burden of either contradicting the State's evidence or proving himself not guilty. *See Lowry v. State*, 376 S.C. 499, 505, 657 S.E.2d 760, 763 (2008) (noting the Due Process Clauses of the Fifth and Fourteenth Amendments "protect an accused against conviction unless the State supplies proof beyond a reasonable doubt of each element necessary to constitute the crime with which the accused is charged") (emphasis added). Since a criminal defendant does not have the burden of presenting contradictory evidence during his criminal trial, the absence of contradictory testimony should not have been considered by the PCR court in its prejudice analysis.

We conclude Petitioner's jury trial was infected by the type of improper corroborating evidence warned of in *State v. Barrett*, 299 S.C. 485, 487, 386 S.E.2d 242, 243 (1989). In *Barrett*, as here, there was physical evidence suggesting a child victim was sexually abused. *Id.* A DSS social worker was improperly allowed to testify to the details of the sexual abuse reported to her by the victim. *Id.* at 486, 386 S.E.2d at 243. Other than this testimony, the State relied solely upon the victim's testimony to establish the details of the crime and the identity of Barrett as the perpetrator. *Id.* at 487, 386 S.E.2d at 243. The State asserted that any error was harmless because the inadmissible testimony was "merely cumulative" to the victim's testimony. *Id.* We held, "[I]t is precisely this cumulative effect which enhances the devastating impact of improper corroboration. Accordingly, admission of the evidence mandates reversal of the conviction." *Id.* Although a direct appeal, *Barrett* is strikingly similar to the instant case. Here, other than the hearsay testimony referenced above (and the inadmissible bolstering testimony discussed herein), the only evidence pointing to Petitioner as the perpetrator was Victim's testimony. As was the case in *Barrett*, the cumulative effect of the hearsay testimony undeniably enhanced its devastating impact. As a whole, the properly admitted evidence of Petitioner's guilt was not strong enough to overcome trial counsel's failure to object to the inadmissible hearsay testimony of Ms. Elfering and Dr. Benedetto. We therefore hold there is no evidentiary support for the PCR court's conclusion that Petitioner was not prejudiced by trial counsel's errors.

Inadmissible Bolstering Testimony

The devastating prejudicial effect of Dr. Benedetto's improper bolstering testimony is likewise clear. We addressed similar circumstances in *Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010). PCR applicant Smith was convicted of second degree CSC with a minor. *Id.* at 564, 689 S.E.2d at 630. During Smith's jury trial, the forensic interviewer testified without objection that she found the child victim "believable" and that the victim had no reason "not to be truthful." *Id.* at 564, 689

We hold trial counsel was deficient for not objecting to both the inadmissible hearsay testimony and inadmissible testimony which improperly bolstered Victim's credibility. We hold there is no probative evidence in the record to support the PCR court's findings that Petitioner was not prejudiced by these deficiencies. Therefore, we **REVERSE** the PCR court's denial of post-conviction relief and remand to the court of general sessions for a new trial.

BEATTY, C.J., KITTREDGE, HEARN and FEW, JJ., concur.

Lounds v. State

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

Anthony M. Lounds, Petitioner,

v.

State of South Carolina, Respondent.

ON WRIT OF CERTIORARI

Appeal From Greenville County
John C. Few, Circuit Court Judge

Opinion No. 26571
Submitted October 22, 2008 – Filed December 15, 2008

REVERSED AND REMANDED

Appellate Defender LaNelle C. DuRant, of South Carolina Commission on Indigent Defense, Division of Appellate Defense, of Columbia, for Petitioner.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, and Assistant Attorney General Karen Ratigan, all of Columbia, for Respondents.

JUSTICE WALLER: In this post-conviction relief (PCR) case, we granted certiorari to review the PCR court's denial of relief to petitioner, Anthony M. Lounds. We reverse and remand for a new trial.

FACTS

Petitioner was indicted for armed robbery and kidnapping. A jury found petitioner not guilty of armed robbery but convicted him on the kidnapping charge. He was sentenced to life without parole (LWOP).

At trial, Todd Garrett testified that on February 18, 2000, petitioner entered his warehouse in Greenville County and inquired about a job. When Garrett replied that petitioner would have to submit an application at the company's office located a few blocks away, petitioner "stepped a little bit closer and pulled a gun out of his left hand pocket, kept it to his side and said, give me your money." Garrett stated he only had a couple of dollars in his wallet. Another man who had been standing in the doorway approached, and helped petitioner pat Garrett down. Garrett testified that petitioner asked where the rest of the money was, and he said he had a little bit in a bank account. According to Garrett, petitioner and the other man pulled him up, and led him out of the warehouse to Garrett's truck.

Garrett testified that once in his truck, petitioner found a knife and held it to his neck while the other man drove the truck. After Garrett told them he did not have an ATM card and would have to go into the bank, Garrett then suggested they could go to his parents' house to find some money there. Garrett explained that he believed his life was in danger if he did not "get them something."

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After parking the truck in his parents' driveway, Garrett, petitioner, and the other man exited the truck. Garrett advised the other man that the keys to the house were on the keychain left in the truck. When the man went back to retrieve the keys, Garrett punched petitioner in the face and ran away. He noticed that the men had gotten back into his truck and were coming back after him. Once Garrett made it to a store, he called police and reported the incident.

The police officer left after taking Garrett's statement. Garrett testified that he and his father decided to "ride through the neighborhoods" to find the perpetrators or his truck. They located the truck and told police its location. The truck was impounded and a forensic investigation revealed a fingerprint on the rearview mirror that matched petitioner. Garrett identified petitioner from a photo line-up and then again at trial. Garrett testified he had never seen petitioner before the day of the incident.

Petitioner testified in his own defense and related a much different account. According to petitioner, Garrett had bought crack cocaine from him on several occasions from 1999 to 2000, and Garrett owed petitioner about five hundred fifty dollars in connection with the drug deals. Petitioner testified that he went to Garrett's place of business on February 18, 2000, and asked for his money. Petitioner stated he did not have a gun, he did not threaten Garrett in any way, and he was not looking for any trouble. When pressed on whether he had a weapon, petitioner stated that he did not need a weapon since "there was [sic] two people."

Petitioner further explained that Garrett "volunteered to go to his people's home" to get some money. According to petitioner, it was Garrett who drove the truck, and when he stopped it, he "got out and took off running." Petitioner took the truck back to Garrett's warehouse and suggested that Garrett had moved the truck to the location where police found it. The following colloquy then took place:

Q. You did not commit this crime here?

A. No, sir, I didn't. If anything you can find me guilty of is taking his truck. I did that. You know what I'm saying? I had to get back to my location. That's how my fingerprint got on that window.

Q. All right. And you don't make money by robbing people? You sell drugs?

A. Yes, Sir. Got various drug charges to prove it.

On reply, the State recalled Garrett who denied ever buying or using crack cocaine.

During deliberations, the jury returned to the courtroom with a request for a recharge on kidnapping. A few hours later, the jury again returned with a request to rehear petitioner's testimony in full. Ultimately, the jury reached its verdict of not guilty on the armed robbery charge, but guilty on the kidnapping charge. Because of a prior conviction, the trial court sentenced petitioner to LWOP.[1]

Petitioner directly appealed, but the Court of Appeals dismissed the appeal. *State v. Lounds*, Op. No. 2003-UP-408 (S.C. Ct. App. filed June 18, 2003).

Thereafter, petitioner filed for PCR. Petitioner raised several issues at the hearing, including that trial counsel was ineffective for failing to investigate and prepare for trial, and for making improper comments during closing argument. The PCR court denied relief and also subsequently denied petitioner's motion to alter or amend the judgment.

ISSUES

1. Did the PCR court err in failing to find counsel ineffective for inadequate preparation?
2. Did the PCR erroneously find that counsel's closing argument comments were not improper?

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DISCUSSION

In order to prove counsel was ineffective, the PCR applicant must show: (1) counsel's performance was deficient; and (2) there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668 (1984); *Rhodes v. State*, 349 S.C. 25, 561 S.E.2d 606 (2002). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. *Id.* Moreover, "when a defendant's conviction is challenged, 'the question is whether there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt.'" *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (quoting *Strickland v. Washington*, 466 U.S. at 695).

In a PCR proceeding, the burden is on the applicant to prove the allegations in his application. E.g., *Bannister v. State*, 333 S.C. 298, 509 S.E.2d 807 (1998). This Court will uphold the findings of the PCR court if there is any evidence of probative value to support them. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989). However, if no probative evidence supports these findings, the Court will not uphold the findings of the PCR court. *Jackson v. State*, 355 S.C. 568, 570, 586 S.E.2d 562, 563 (2003). Furthermore, this Court will reverse the PCR court's decision when it is controlled by an error of law. *Pierce v. State*, 338 S.C. 139, 145, 526 S.E.2d 222, 225 (2000).

1. Inadequate preparation

Petitioner argues that trial counsel was ineffective for failing to adequately prepare for petitioner's trial, especially given the fact that counsel had ample notice this was an LWOP case. We agree.

A criminal defense attorney has a duty to perform a reasonable investigation. *Ard v. Catoe*, 372 S.C. at 331, 642 S.E.2d at 597. "[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." *Id.* at 331-32, 642 S.E.2d at 597 (internal quotes and citation omitted).

Petitioner's trial took place on December 4 – 5, 2001. At the outset, trial counsel Greg Newell informed the court that petitioner's family was "supposed to bring several witnesses with them" for petitioner. Counsel then requested a continuance because he had "found out the names of these people just this morning" and therefore had not had a chance to subpoena them. (emphasis added).

Newell discussed witnesses for the defense a few other times during trial. After a pretrial hearing, Newell advised the trial court there were two witnesses who would be arriving in the afternoon, but two others who were "not available." Newell offered his opinion that the unavailable witnesses would not "add much" to petitioner's case, although he informed the trial court that the witnesses would be able to connect Garrett with petitioner through drug dealing. Later that afternoon, counsel requested assistance to locate a witness named Elaine Sara Hawkins who was in detention. Hawkins, however, was unable to be located either that day or the following day. Newell told the court that he had spoken to the two other witnesses, but contended they would not "add that much" to the case. As a result, petitioner was the sole defense witness.

Garrett testified that once in his truck, petitioner found a knife and held it to his neck while the other man drove the truck. After Garrett told them he did not have an ATM card and would have to go into the bank, Garrett then suggested they could go to his parents' house to find some money there. Garrett explained that he believed his life was in danger if he did not "get them something."

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After parking the truck in his parents' driveway, Garrett, petitioner, and the other man exited the truck. Garrett advised the other man that the keys to the house were on the keychain left in the truck. When the man went back to retrieve the keys, Garrett punched petitioner in the face and ran away. He noticed that the men had gotten back into his truck and were coming back after him. Once Garrett made it to a store, he called police and reported the incident.

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Petitioner further explained that Garrett "volunteered to go to his people's home" to get some money. According to petitioner, it was Garrett who drove the truck, and when he stopped it, he "got out and took off running." Petitioner took the truck back to Garrett's warehouse and suggested that Garrett had moved the truck to the location where police found it. The following colloquy then took place:

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During deliberations, the jury returned to the courtroom with a request for a recharge on kidnapping. A few hours later, the jury again returned with a request to rehear petitioner's testimony in full. Ultimately, the jury reached its verdict of not guilty on the armed robbery charge, but guilty on the kidnapping charge. Because of a prior conviction, the trial court sentenced petitioner to LWOP.[1]

Petitioner directly appealed, but the Court of Appeals dismissed the appeal. State v. Lounds, Op. No. 2003-UP-408 (S.C. Ct. App. filed June 18, 2003).

Thereafter, petitioner filed for PCR. Petitioner raised several issues at the hearing, including that trial counsel was ineffective for failing to investigate and prepare for trial, and for making improper comments during closing argument. The PCR court denied relief and also subsequently denied petitioner's motion to alter or amend the judgment.

Furthermore, both the trial transcript and petitioner's PCR testimony inescapably point to the conclusion that Newell simply had not adequately prepared the defense case. Newell himself admitted to the trial court he had only learned of defense witnesses that morning, and therefore they had neither been interviewed nor subpoenaed. Petitioner corroborated this at the PCR hearing when he stated Newell had only spoken to him about the case on the morning of trial. 187

We hold the evidence clearly shows that Newell inadequately prepared for trial. See *Ard v. Catoe*, supra (at a minimum, counsel has the duty to interview potential witnesses). This was unreasonable in light of the fact that Newell had several months' notice that petitioner was facing LWOP if convicted. Therefore, we find counsel deficient in this regard.

As to the prejudice resulting from counsel's deficient performance, we believe petitioner clearly was prejudiced by Newell's failure to subpoena and call witnesses who would have supported petitioner's own testimony at trial. With its not-guilty verdict on the armed robbery charge, the jury necessarily rejected several aspects of Garrett's account, and accepted as true certain parts of petitioner's testimony. Moreover, the jury's questions during deliberations indicate it also struggled with whether petitioner was guilty of kidnapping. Thus, we find that if additional witnesses had confirmed petitioner's testimony, there is a reasonable likelihood the result of the trial would have been different on the kidnapping count. *Strickland v. Washington*, supra.

Accordingly, the PCR court erred in not finding ineffective assistance of counsel on this issue. See *Jackson v. State*, supra (if no probative evidence supports the PCR court's findings, this Court will not uphold the findings of the PCR court) *Pierce v. State*, supra (the PCR court's decision will be reversed when it is controlled by an error of law).

2. Counsel's closing argument comments

Petitioner also argues the PCR court erred in not finding counsel ineffective for certain comments made during closing argument. We agree.

During closing argument, Newell essentially tried to point out the inconsistencies and improbabilities in Garrett's account. However, he also offered his own characterization of petitioner's testimony, as follows:

But what it comes down to is two different stories...

The victim told a story. And his story was that there was an armed robbery. And in the course of that armed robbery he was taken to his parents' home, let out, escaped, and then called the police. My client's story is, and he admitted, I deal drugs. I admit that I'm a criminal in that respect, but I did not do this armed robbery. I came there to collect some money I was owed. The guy had built up an account, I mean, and it was getting too big. And I wanted my money. And I brought along a little muscle.... I brought along a little muscle with me. Two against one, hey, we're going to — we want our money. You owe us money. We want our money. A little bit of leaning, not necessarily beating him up. But I'm standing there, two big guys, I need my money. Okay.

(Emphasis added).

At the PCR hearing, petitioner testified that Newell "repeatedly pounded his right fist into his left palm in a display of use of force to the jury." According to petitioner, Newell pounded his fist as he said, "I brought along a little muscle." Petitioner further maintained he told Newell that he did not rob or kidnap Garrett and had not threatened Garrett in any way; petitioner specifically denied he had told Newell he went with some "muscle." In addition, petitioner stated that Newell's comments,

According to the State, both petitioner and Newell had been served written notice of the State's intent to seek an LWOP sentence on May 3, 2001. Additionally, Newell was served again with notice on October 18, 2001. Therefore, Newell had several months' notice petitioner was facing a LWOP sentence if convicted.

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At the PCR hearing, petitioner testified that Newell had not done anything to investigate his case. Significantly, petitioner stated Newell had met with him only once – on the morning of trial. Although Newell had represented petitioner in a probation violation matter in August 2001, petitioner testified Newell never discussed the armed robbery and kidnapping charges at all.

Petitioner further explained that on the morning of trial, he gave Newell the names of witnesses who could identify Garrett as someone with whom he had dealt. Petitioner said Newell showed him some discovery that morning, but Newell did not discuss the file; he simply asked petitioner to look it over and if petitioner saw anything, to let him know.

Petitioner presented two other witnesses at the PCR hearing. George Lounds, petitioner's brother, testified that Garrett and petitioner bought and used drugs together. George stated that Newell spoke to him before trial, and said he would get back to him, but George never heard back from Newell. According to George, if Newell had called him to the stand, he would have testified about the connection between Garrett and petitioner. Moreover, George stated he was surprised when he learned that petitioner had been charged with robbing and kidnapping Garrett because the two of them were "always together" hanging out and smoking together at a crack house.

Preston Lounds, petitioner's nephew, testified that he had seen Garrett purchase drugs and had also seen petitioner and Garrett together in Garrett's truck. Preston further testified he was at the courthouse during petitioner's trial, but Newell never spoke to him.

Newell did not testify at the PCR hearing. The State attempted to subpoena Newell for the PCR hearing, but was unable to successfully serve him.[2]

The PCR court found that "trial counsel adequately conferred with [petitioner], conducted a proper investigation, and was competent in his representation." The PCR court suggested that because Newell told the trial court the witnesses would not "add anything to the defense case," it was a strategic reason to not call the witnesses. Moreover, the PCR court found it unlikely that George and Preston's testimony "would have overcome the victim's testimony at trial."

We find there is no probative evidence to support the PCR court's findings on this issue.

We have recognized that when counsel articulates a valid reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel. *Ingle v. State*, 348 S.C. 467, 560 S.E.2d 402 (2002); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). The validity of counsel's strategy is reviewed under "an objective standard of reasonableness." *Ingle*, 348 S.C. at 470, 560 S.E.2d at 402.

In the instant case, however, Newell did not articulate a strategy because he did not testify at the PCR hearing. Although Newell did state to the trial court he believed the witnesses would not add much to petitioner's defense, we find this was not objectively reasonable given the defense theory of the case. The only defense Newell presented to the jury was that petitioner and Garrett knew each other through drug dealing. If witnesses other than petitioner were willing to testify to this fact, certainly that would have added significantly to the credibility of petitioner's case. Thus, we find the PCR court erred in finding that Newell offered an objectively valid strategic reason not to call these witnesses.

Lounds 6

coupled with the fist-pounding, gave the jury the impression that petitioner used force, which is an element of kidnapping.[3]

The PCR court found that Newell's comments were not improper as he was "simply presenting to the jury an alternate explanation of events that was implied from [petitioner's] own testimony."

In our opinion, there is no probative evidence to support the PCR court's findings on this issue. While Newell's comments were not an outright admission of kidnapping, they significantly departed from petitioner's own testimony which was that Garrett "volunteered to go to his people's home" to get some money. The pounding of Newell's fist into his palm only served to highlight the inference that petitioner and the other man had threatened the use of force. This form of argument did not advocate in petitioner's favor, but rather tended to support the State's theory on kidnapping. Therefore, we hold Newell's closing argument comments were improper and constituted deficient performance.

We further find petitioner was prejudiced by Newell's closing argument. Both petitioner and Garrett testified that they went from the warehouse to Garrett's parents' home in the truck. Thus, the elements at issue were petitioner's intent, force, and the victim's consent. Petitioner's credibility was crucial as to these elements. The jury clearly struggled with whether petitioner was guilty of kidnapping as evidenced by its requests for a recharge on kidnapping and the replaying of petitioner's testimony. Yet, petitioner's own counsel damaged the defense case because the closing argument did not support petitioner's account of what had happened. Cf. *Ingle v. State*, 348 S.C. at 472, 560 S.E.2d at 403 (where defense counsel put up a witness who gave testimony contradictory to the petitioner's defense and was therefore "quite damaging" to the defense, the Court found ineffective assistance of counsel). In other words, we find there is a reasonable probability that, but for counsel's improper closing argument comments, the result of the trial would have been different. *Strickland v. Washington*, supra.

CONCLUSION

The PCR court erred in not finding that counsel was ineffective. Accordingly, we reverse the denial of PCR and remand for a new trial.

REVERSED AND REMANDED.

TOAL, C.J., PLEICONES, BEATTY and KITTREDGE, JJ., concur.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Billy Lemurces Taylor, Appellant.

Appellate Case No. 2016-000549

Appeal From Greenville County
Robin B. Stilwell, Circuit Court Judge

Opinion No. 5655
Submitted February 1, 2019 – Filed June 12, 2019

REVERSED AND REMANDED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson, Deputy
Attorney General Donald J. Zelenka, Senior Assistant
Deputy Attorney General Melody Jane Brown, Assistant
Attorney General Alphonso Simon, Jr., Assistant
Attorney General Samuel Marion Bailey, all of
Columbia, and Solicitor William Walter Wilkins, III, of
Greenville, for Respondent.

HILL, J.: Seven hours and twenty minutes into their deliberations following four days of trial, the jury in Billy L. Taylor's criminal trial informed the trial court they were at an impasse. The trial court sent the jury home for the night. The next morning, the trial court gave the jury a charge derived from *Allen v. United States*,

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164 U.S. 492 (1896). Taylor objected to the charge and moved for a mistrial. Two-and-a-half hours later the jury returned with a guilty verdict. Taylor now appeals, contending his motion for a mistrial should have been granted, and the *Allen* charge was unconstitutionally coercive. We agree the *Allen* charge was coercive and reverse.

I.

Taylor was tried for the attempted murders of Brittany Jeeter and Ashley Hiott, the murder of Rodney Nesbit, and the possession of a weapon during the commission of a violent crime. The jury began deliberating at noon on the fourth day of trial, and soon the jury asked a question about the "hand of one, hand of all" charge. After further instruction, the jury resumed deliberations at 1:50 p.m. They returned to the courtroom at 7:20 p.m. after sending a note advising they were at an impasse. The note also contained an apparent tally of successive votes the jury had taken, indicating the latest vote was 10-2 in favor of conviction on the murder charge, 8-4 for conviction on the attempted murder charges, and 11-1 for conviction on the weapon charge. The trial court sent the jury home for the night. The next morning, the trial court gave the following charge:

Ladies and gentlemen, I recognize that last night you sent me a note that indicated that you were at an impasse and you told me the division that you had in that note as well.

Now, I understand that the decision that you have to make is very difficult. And when you get 12 people together, it's difficult to have 12 people agree. Particularly, when you come from different walks of life and you're just thrown together on a jury, it's difficult to make that decision. I know that, oftentimes, it's difficult for two people, just two people to make a decision. It's hard for my wife and I to figure out what we're going to eat for supper sometimes. So, this decision, I recognize is hard.

But understand that it's important that you come to a decision in this case. Understand that both the State and the Defense have extended significant resources and time and effort to get to this point. Also, know that the State and the County has extended resources to get to this point as well. And if you're unable to come to a verdict in this

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matter, then, essentially, we'd be left with having to do it all over again, extending additional resources, time and effort. Now, ladies and gentlemen, I will tell you that there are no 12 other people in the County of Greenville who are more capable or competent to come to a decision in this matter than the 12 of you are.

Now, again, I understand it's hard to come to a decision. But those of you who are in the majority should listen to the people in the minority. Those of you who are in the minority should listen to the people in the majority. You should take into consideration your respective positions and you should come to a decision in this matter. Again, it really would be a waste of time, effort and resources for us to have to do all of those over again. So, I'm going to ask you to go back to your jury room and resume your deliberations. . . .

After the jury left the courtroom at 9:10 a.m., Taylor moved for a mistrial and also objected to the *Allen* charge on the ground that it was unduly coercive. He asked the court to instruct the jurors that a hung jury was "a legitimate end of a criminal trial" and sometimes the result of the State's burden to prove its case beyond a reasonable doubt. The trial court denied Taylor's motions. The jury returned a guilty verdict at 11:43 a.m.

II.

A. Mistrial

We first address Taylor's argument that the trial judge abused its discretion by giving an *Allen* charge rather than declaring a mistrial. A trial court should declare a mistrial as a last resort, when all other alternatives have been exhausted. A mistrial is a drastic step, "an extreme measure which should be taken only where an incident is so grievous that the prejudicial effect can be removed in no other way." *State v. Herring*, 387 S.C. 201, 216, 692 S.E.2d 490, 498 (2009).

The trial court was well within its discretion in refusing to declare a mistrial simply because the jury, after some seven hours of deliberation, announced an impasse. We review the decision with deference to the trial court's superior position to observe the courtroom atmosphere, the jury's demeanor, and the tenor and rhythm of the trial.



The trial court has several ways to respond to a deadlocked jury, including delivering an *Allen* charge. In fact, the trial judge has a duty to urge the jury—without pressuring or coercing them—to reach a verdict. *State v. Williams*, 344 S.C. 260, 263, 543 S.E.2d 260, 262 (Ct. App. 2001). We find no error in the trial court's choice to deny Taylor's mistrial motion.

B. Allen Charge

According to Taylor, the trial court's *Allen* charge was coercive because it did not tell the jurors not to give up their honestly held beliefs simply to reach a verdict, it targeted the minority "holdout" jurors, and pressured them by stating a mistrial would be a waste of time and resources. He further complains the charge did not inform the jurors they have a right not to reach a verdict.

Because a criminal defendant's right to due process is violated by a charge that coerces a jury to reach a verdict, courts have long struggled with what to tell a deadlocked jury. The substance of the original *Allen* charge was described as instructing the jury that:

in a large proportion of cases absolute certainty could not be expected; that, although the verdict must be the verdict of each individual juror, and not a mere acquiescence in the conclusion of his fellows, yet they should examine the question submitted with candor, and with a proper regard and deference to the opinions of each other; that it was their duty to decide the case if they could conscientiously do so; that they should listen, with a disposition to be convinced, to each other's arguments; that, if much the larger number were for conviction, a dissenting juror should consider whether his doubt was a reasonable one which made no impression upon the minds of so many men, equally honest, equally intelligent with himself. If, [on] the other hand, the majority were for acquittal, the minority ought to ask themselves whether they might not reasonably doubt the correctness of a judgment which was not concurred in by the majority.

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Allen, 164 U.S. at 501. The original *Allen* charge was upheld, but with time and experience courts questioned its latent coercive force, particularly when trial judges tinkered with the original version. See *United States v. McElhiney*, 275 F.3d 928, 937–38 (10th Cir. 2001) (canvassing the history and evolution of *Allen* charge); *United States v. Rogers*, 289 F.2d 433, 435 (4th Cir. 1961) (Haynsworth, J.) (noting original *Allen* charge "approaches ultimate permissible limits"), *abrogated on other grounds by Bell v. United States*, 462 U.S. 356 (1983).

The United States Supreme Court continues to approve *Allen*-type charges, see *Jones v. United States*, 527 U.S. 373, 382 n.5 (1999), but many states have banned the original *Allen* charge, with some embracing a charge developed by the American Bar Association (ABA) that must be given to juries before deliberation begins. Thomas & Greenbaum, *Justice Story Cuts the Gordian Knot of Hung Jury Instructions*, 15 Wm. & Mary Bill of Rts. J. 893, 914–16 (2007). Versions of the charge vary in the federal circuits, but all circuits allow them, though several recommend the ABA version. See *Lowenfield v. Phelps*, 484 U.S. 231, 238 n.1 (1988) ("All of the Federal Courts of Appeals have upheld some form of a supplemental jury charge.").

Although labelled the "dynamite" charge because of its proven ability to "blast a verdict out of a jury otherwise unable to agree," *United States v. Bailey*, 468 F.2d 652, 666 (5th Cir. 1972), the label could just as well describe the *Allen* charge's success in blowing up otherwise error-free trials by introducing volatile elements into the fluid and emotionally charged atmosphere prolonged jury deliberations often create. Like dynamite, the charge must be handled with extreme care.

South Carolina approves the use of a modified *Allen* charge, which must be neutral and even-handed, instruct both the majority and minority to reconsider their views, and cannot be directed at the jurors in the minority. *Workman v. State*, 412 S.C. 128, 130, 771 S.E.2d 636, 638 (2015); *Green v. State*, 351 S.C. 184, 194, 569 S.E.2d 318, 323 (2002). A trial judge has a duty to urge jurors to reach a verdict, but must do so in a way that does not coerce them, eroding their independence and impartiality. No set definition of coercion has emerged; instead, we detect its presence by viewing the charge in context and in light of four factors: (1) whether the charge speaks "specifically to minority jurors"; (2) whether the charge includes "you must return a verdict" type language; (3) whether there was an "inquiry into the jury's numerical division," which is generally coercive; and (4) whether the time between when the charge was given and when the jury returned a verdict demonstrates coercion. See *Tucker v. Catoe*, 346 S.C. 483, 492–95, 552 S.E.2d 712, 717–18 (2001) (per curiam).

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Like most multi-factor constructs, the *Tucker* test does not tell us the relative weight each factor carries, nor is the list of factors exclusive. *Id.* at 491, 552 S.E.2d at 716 (emphasizing the coercion inquiry "is very fact intensive"); *Workman*, 412 S.C. at 130, 771 S.E.2d at 638 (stating coerciveness must be gauged by context and circumstances).

As to the first *Tucker* factor, the charge did not in the abstract single out the minority jurors. We cannot rest on the abstract, however, and must examine the charge in the context and setting it was given. Under the circumstances here, analysis of this first factor is shaded by considerations related to the third factor's concern with knowledge of the jury's numerical split, which we will soon take up.

As to the second factor, the charge instructed the jurors "it's important that you come to a decision in this case," and "you should come to a decision in this matter." This skirts close to the language found coercive in *Jenkins v. United States*, 380 U.S. 445, 446 (1965) (reversing and remanding case for a new trial because the charge told the jury "[y]ou have got to reach a decision in this case"). There is a glaring difference between the trial court's obligation to tell jurors they have a duty to *attempt* to reach a unanimous verdict and telling them they "should come to a decision." Our supreme court has even cautioned trial judges "against using the following language: 'with the hope that you can arrive at a verdict.'" Because jurors are not required to reach a verdict after expressing that they are deadlocked, we believe this language could potentially be construed as being coercive." *State v. Williams*, 386 S.C. 503, 515 n.7, 690 S.E.2d 62, 68 n.7 (2010).

Because the trial judge is the authority figure in the courtroom, jurors look to the trial judge for guidance not only on the law, but for matters such as courtroom conduct and protocol, even permission for breaks, meals, and telephone calls. Recognizing the enormous power such influence can wield and its capacity to compromise impartiality, our constitution forbids the trial judge from commenting on the facts. *See* S.C. Const., art. V, § 21 ("Judges shall not charge juries in respect to matters of fact, but shall declare the law."). It is precisely because jurors scrutinize the trial judge's statements and instructions—a scrutiny that becomes more acute amidst heated deliberations—that the trial judge should couch them in as neutral and dispassionate terms as language and context permit. Even an otherwise benign remark, such as "you should come to a decision," could be interpreted by a rational juror that the trial judge believes the result is obvious, or at least capable of unanimous agreement. *See Quercia v. United States*, 289 U.S. 466, 470 (1933) ("The influence of the trial judge on the jury 'is necessarily and properly of great

weight' and 'his lightest word or intimation is received with deference, and may prove controlling.'").

The third *Tucker* factor asks whether there has been inquiry into the numerical division of the jury. A trial court cannot, of course, ask the jury to reveal its division. *State v. Middleton*, 218 S.C. 452, 457–58, 63 S.E.2d 163, 165–66 (1951). Here the trial judge wisely did not inquire further into the specifics of the split when the jury volunteered its vote tally. The trial judge prefaced his *Allen* charge by acknowledging "you told me the division you had." So the jury knew the trial judge knew they stood 10-2 in favor of conviction on the murder charge and how they were divided on the others. This bears on our coercion analysis, for a jury laboring under such knowledge might interpret the trial judge's comments as aimed at the minority. See, e.g., *Brewster v. Hetzel*, 913 F.3d 1042, 1054–55 (11th Cir. 2019) ("Pressure on jurors, especially on holdout jurors, is increased when the instructions to keep trying to reach unanimity come from a judge who knows how split the jury is and in which direction. . . . The problem exists whether the judge asked for the information or the jury disclosed it without any prompting. If the jury is aware that the court knows it is divided in favor of convicting the defendant, and the court repeatedly instructs the jury to continue deliberating, the jurors in the minority may feel pressured to join the majority in order to placate the judge."). It is not coercive to give an *Allen* charge simply because the jury volunteers how it is split, see *Williams*, 344 S.C. at 264–65, 543 S.E. 2d at 263, but the trial court's knowledge of the split is relevant. In *Tucker*, the jury twice informed the trial court of its numerical split before the *Allen* charge. 346 S.C. at 485–87, 552 S.E.2d at 713–14. The supreme court noted while the trial court did not actively inquire into the jury's division, it "failed to instruct the jurors not to disclose their division in the future." *Id.* at 494, 552 S.E.2d at 717. The court concluded "knowledge of the jury's numerical division combined with knowledge of its decisional disagreement, followed by an *Allen* charge directed, at least in part, to minority jurors, is impermissibly coercive." *Id.* at 494, 552 S.E.2d at 717–18.

During its instruction on the law after closing arguments, the trial court can instruct the jury that if it encounters division it should not disclose its numerical split. *Williams*, 386 S.C. at 515 n.7, 690 S.E.2d at 68 n.7 ("[T]o alleviate problems in future cases where the jury is deadlocked, we would advise trial judges to instruct the jurors not to disclose their numerical division."). Should the jury later report a deadlock and disclose its split, the trial court should tell the jury not to reveal its numerical division again and craft any *Allen* charge mindful of how it may be interpreted given the division. This makes an already subtle task even more delicate. See *United States v. Vanvliet*, 542 F.3d 259, 268 (1st Cir. 2008) (refusing to hold jury's volunteering of division reversible error; "Instead, the district court's

knowledge of the numerical division of jurors . . . might create a coercive situation if circumstances suggest that minority or 'holdout' jurors likely would infer that the court is directing the *Allen* charge specifically at them, and implying that they should vote with the majority to get the case settled expeditiously").

The fourth *Tucker* factor in determining whether an *Allen* charge is unconstitutionally coercive is whether the time between the charge and the verdict demonstrates coercion. This factor is notoriously difficult to apply without indulging in speculation given the secrecy of jury deliberations. Here, the jury returned its guilty verdict two-and-a-half hours later, which does not dispel the likelihood of coercion. We have no way of knowing what went on in the jury room, but we do know that less than three hours after the *Allen* charge, the jury transformed from a body significantly divided on five serious felony charges involving multiple victims into one united by complete unanimity. *Tucker* found a one-and-a-half hour interval suggested coercion when there was only one juror holding out, and (as here) the jury had been hung since late the previous afternoon. 346 S.C. at 494, 552 S.E.2d at 718.

The *Tucker* criteria have never been deemed comprehensive. The most troubling thing about the charge here is what it did not say: it did not tell the jurors they should not surrender their conscientiously held beliefs simply for the sake of reaching a verdict, an essential message that sometimes saves borderline charges from crossing the line into coercion. See *Buff v. S.C. Dep't of Transp.*, 342 S.C. 416, 423, 537 S.E.2d 279, 283 (2000) (finding trial court properly instructed a deadlocked jury by "inform[ing] the jury of the desirability of reaching a verdict . . . yet remind[ing] the jury no juror should surrender his or her conscientious conviction simply to reach a unanimous verdict"); *Blake by Adams v. Spartanburg Gen. Hosp.*, 307 S.C. 14, 18, 413 S.E.2d 816, 818 (1992) ("[A] trial judge has the duty to ensure that no juror feels compelled to sacrifice his conscientious convictions in order to concur in the verdict."). Nor did the trial judge's initial charge at the end of the trial remind the jurors not to surrender their conscientious beliefs during deliberations. The original *Allen* charge included such a statement, and courts have routinely held its absence reversible error. See Note, *Due Process, Judicial Economy & the Hung Jury: A Reexamination of the Allen Charge*, 53 Va. L. Rev. 123, 128 (1967) ("Almost without exception the courts have required that the charge contain the statement that 'no juror should yield his conscientious conviction' or words to that effect."). The Fourth Circuit has observed that if the original *Allen* charge were "stripped of its complementary reminder that jurors were not to acquiesce in the views of the majority or to surrender their well-founded convictions conscientiously held, it might readily be construed by the minority of the jurors as coercive, suggesting to

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them that they should surrender their views in deference to the majority and concur in what really is a majority, rather than a unanimous, verdict." *Rogers*, 289 F.2d at 435; *see also Smalls v. Batista*, 191 F.3d 272, 279 (2d Cir.1999) ("[A] necessary component of any *Allen*-type charge requires the trial judge to admonish the jurors not to surrender their own conscientiously held beliefs."); *United States v. Scott*, 547 F.2d 334, 337 (6th Cir. 1977) ("The reminder that no juror should merely acquiesce in the majority opinion is . . . one of the most important parts of the *Allen* charge."); *United States v. Mason*, 658 F.2d 1263, 1268 (9th Cir. 1981) ("It is essential in almost all cases to remind jurors of their duty and obligation not to surrender conscientiously held beliefs simply to secure a verdict for either party.").

The charge here also overemphasized the cost and expense of a retrial. While it is not error to tell the jury that a retrial will be costly, *see State v. Singleton*, 319 S.C. 312, 316, 460 S.E.2d 573, 575–76 (1995), the Fourth Circuit has warned such statements are disfavored and should not be overbearing. *United States v. Hylton*, 349 F.3d 781, 788 (4th Cir. 2003); *see also McElhiney*, 275 F.3d at 945 (holding comments on cost of retrial can be coercive if overstressed). Also, telling the jury the case will "have" to be retried is misleading. A hung jury often acts as an alarm bell to all but the unthinking, awakening one side (sometimes both) to weaknesses in their case, which can lead to a plea deal rather than a retrial.

A trial court is not, however, required to advise the jury they have a right to not reach a verdict. *See, e.g., United States v. Arpan*, 887 F.2d 873, 876 (8th Cir. 1989); *but see United States v. Manning*, 79 F.3d 212, 222 (1st Cir. 1996) (requiring *Allen* charge to include instruction that jury has the right to fail to agree).

All of this adds up to the conclusion that the charge unduly pressured the jury. We are certain the trial court had the best intentions, but from our perspective the *Allen* charge was unconstitutionally coercive. We therefore reverse and remand this case for a new trial.

REVERSED AND REMANDED.¹

WILLIAMS and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Farid A. Mangal, Petitioner,

*comparable to James
Miller transcript pg
352 353*

v.

State of South Carolina, Respondent.

Appellate Case No. 2012-212701

*physical exam
bolstering*

ON WRIT OF CERTIORARI

Appeal From Spartanburg County
J. Mark Hayes, II, Trial Court Judge
J. Derham Cole, Post-Conviction Relief Judge

Opinion No. 5372
Heard November 3, 2015 – Filed December 30, 2015

REVERSED AND REMANDED

John R. Ferguson, of Cox Ferguson & Wham, LLC, of
Laurens, for Petitioner.

Attorney General Alan McCrory Wilson, Assistant
Deputy Attorney General Suzanne Hollifield White, and
Assistant Attorney General Alicia A. Olive, all of
Columbia, for Respondent.

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MCDONALD, J.: In 2007, Farid A. Mangal was convicted of first-degree criminal sexual conduct (CSC) with a minor, two counts of second-degree CSC, lewd act upon a minor, and incest. He appeals from the denial and dismissal of his application for post-conviction relief (PCR), arguing (1) trial counsel was ineffective for failing to object to bolstering, (2) trial counsel was ineffective for failing to move for a mistrial in response to bolstering, (3) trial counsel was ineffective for failing to object to the qualification of a forensic interviewer as an expert, (4) trial counsel's performance as a whole was deficient and prejudicial, (5) the PCR court erred in finding the bolstering issue was not raised, and (6) PCR counsel was ineffective for not sufficiently raising the bolstering issue. We reverse and remand.

FACTS

Victim, who was nineteen years old at the time of the 2007 trial, testified that her father (Petitioner) sexually abused her from the time she was ten years old until she was sixteen. The first instance of alleged abuse occurred when Petitioner took her into a bedroom, forced her to remove her pants, and rubbed his penis around her anal area. Victim stated there was "some sort of penetration" on this occasion, but not full penetration. Victim testified that after such abuse began, it occurred nearly every day when she came home from school. According to Victim, she was fourteen or fifteen the first time full penetration occurred, and Petitioner took her virginity. Victim stated Petitioner used condoms occasionally and once pointed out a freckle on the shaft of his penis. According to Victim, the abuse became more painful and aggressive as she aged. Victim stated she initially disclosed the abuse to her brother (Brother) after she refused Petitioner's advances one night, and Petitioner took out his anger on Brother the next day.

On cross-examination, trial counsel questioned Victim extensively concerning inconsistencies in her story and her dislike for Petitioner's strict parenting methods.¹ Victim acknowledged that once Petitioner was out of the house, she began drinking, smoking, and had to seek counseling. Victim was presented with testimony from a 2005 family court hearing where she stated she began cutting herself because she was unhappy about her accusations against Petitioner. In this

¹ Victim testified that Petitioner did not let her date or have friends, and would not allow her to talk on the phone, have pets, or celebrate Christmas. Additionally, family members testified that Petitioner was physically abusive.

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prior family court testimony, Victim stated she did not want to get Petitioner in trouble, she just wanted him away from her.

Brother testified there were numerous occasions over the years when Petitioner took Victim into a locked room for twenty or thirty minutes, and Victim would leave the room visibly upset and crying and would go to the bathroom.

Pediatrician Dr. Nancy Henderson testified as an expert "in the examination, diagnosis, and treatment of child sexual abuse." Dr. Henderson testified she examined Victim in July 2004 and discovered a "marked narrowing" on a portion of Victim's hymen, which she believed was "a sign of some type of penetration." During her testimony, the following exchange occurred:

[The State:] Doctor Henderson, do you have an opinion, within a reasonable degree of medical certainty based upon your education, training, and experience and based upon your findings on examination of [Victim], whether those findings are consistent with a penetrating injury?

[Dr. Henderson:] Based on the history that she shared with me and based on my examination I felt that it was consistent . . . that she had been abused.

[The State:] All right. Also opinion as to whether she was sexually abused, that opinion is?

[Dr. Henderson:] That she had been, yes, sir.

Dr. Henderson further testified that there could be "full penetration without any kind of trauma to the hymenal tissue" due to the effects of estrogen on the tissue during puberty. When asked whether this case involved "narrowing [of the hymen] consistent with penetration," Dr. Henderson stated, "Yes, sir."

When asked whether she could tell the jury that her findings were the "result of penetration by a penis," Dr. Henderson responded, "I can't say that the actual result that I saw was caused by the penis, but based on the history that she shared, and she denies any other kind of trauma to that area . . . my conclusion is . . . as I stated." When asked whether she based her decision on possibly untrue

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information she received from Victim, Dr. Henderson stated, "I based it on the information received by my patient, which is invaluable information any doctor receives when they are examining a patient." When asked whether she assumed Victim's information was true, Dr. Henderson responded, "Based on the way she shared it and all the information that she shared, yes." Dr. Henderson acknowledged that she learned there were allegations that Petitioner engaged in vaginal and anal intercourse with Victim and that the abuse began at age ten. Finally, Dr. Henderson stated that it varied between females as to whether a hymen or remnants of a hymen remained after childbirth or prolonged sexual intercourse, and that she had seen many sexually active teenagers with normal examination results.

The State also presented testimony from forensic interviewer Wiley Garrett, who was qualified as an expert in forensic interviewing without objection. Garrett testified that Victim's disclosure was "clear, consistent, and compelling."

Trial counsel's theory of the case was that Victim and Victim's mother (Mother) fabricated the abuse allegations because Victim wanted freedom from Petitioner's strict parenting and Mother wanted to continue having an extra-marital affair. Petitioner testified in his defense, denied the allegations against him, and stated that Victim and Mother "had a plan . . . going on."

Mother admitted that when Petitioner was arrested, she gave police a statement indicating Victim had disclosed the abuse to her but Victim stated she had not allowed penetration or oral sex. Mother also made a drawing of Petitioner's penis and indicated there was a dark marking like a mole or a freckle on the head of his penis but not on the shaft. During cross-examination, Mother stated that she believed Victim's allegations.

Petitioner's family doctor testified about a January 2002 record created by a former doctor in his practice that stated Victim's hymen was intact. The family doctor explained that based on his nearly fifty years of practice, he expected the hymen of a sexually active person to not remain intact. Dr. Medlock also stated that another record indicated that on September 29, 2003, Victim had a rectal examination that was within normal limits.

Finally, a detention center employee who inspected Petitioner's penis testified that he did not recall seeing a freckle or a mole on Petitioner's penis.

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STANDARD OF REVIEW

"In a PCR proceeding, the burden is on the applicant to prove the allegations in his application." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). "Any evidence of probative value to support the PCR court's factual findings is sufficient to uphold those findings on appeal." *Lee v. State*, 396 S.C. 314, 320, 721 S.E.2d 442, 446 (Ct. App. 2011). Thus, an appellate court "gives great deference to the PCR court's findings of fact and conclusions of law." *Porter v. State*, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). "If matters of credibility are involved, then this court gives deference to the PCR court's findings because this court lacks the opportunity to directly observe the witnesses." *Lee*, 396 S.C. at 319, 721 S.E.2d at 445.

LAW/ANALYSIS

"In order to receive relief for ineffective assistance of counsel, a defendant must make two showings." *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011). "First, he must show that his trial counsel's performance was deficient, meaning that 'counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment.'" *Id.* (quoting *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). "Second, he must demonstrate that this deficiency prejudiced him to the point that he was deprived of a fair trial whose result is reliable." *Id.*

I. Preservation of Bolstering Issue²

Petitioner argues the PCR court erred in finding the bolstering issue was not raised because PCR counsel questioned trial counsel on the subject, and PCR counsel raised the issue again in his Rule 59(e), SCRCP, motion. We agree.

At the PCR hearing, trial counsel admitted that he did not object when Dr. Henderson was asked whether her findings were consistent with a penetrating injury and she responded that she believed Victim was abused. On cross-examination, trial counsel stated he expected Dr. Henderson to opine that Victim was abused because her testimony was "canned testimony." Trial counsel explained that he had been in cases with Dr. Henderson before, and he probably

² We have chosen to analyze Petitioner's Issue 5 first and then address Issues 1 and 2 together.

should have objected when she gave an opinion on the ultimate issue. On redirect, trial counsel was asked if the comment struck "a cord as improper bolstering" during trial, and trial counsel stated it did not. During PCR counsel's summation, he stated that Dr. Henderson's opinion that abuse occurred should have received an objection because it was improper vouching. PCR counsel also cited case law supporting his position.

The PCR court's order did not address the issue concerning Dr. Henderson's testimony; thus, Petitioner filed a Rule 59(e) motion requesting a specific ruling on the bolstering issue. The PCR court then issued an order stating it would not alter or amend its judgment and "[a]lthough [Petitioner] alleges that the issues in the [m]otion were raised at the hearing[,] . . . this [c]ourt finds that the issues were not presented . . . in the application or in an amendment and no testimonial evidence from [Petitioner] was presented in support of these allegations."

The Uniform Post-Conviction Procedure Act provides that "[a]ll grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application." S.C. Code Ann. § 17-27-90 (2014). However, in *Simpson v. Moore*, the supreme court considered an issue that was not raised specifically in a petitioner's application. 367 S.C. 587, 599–600, 627 S.E.2d 701, 707–08 (2006). The supreme court noted that during the PCR hearing, both the petitioner's trial counsel and a witness for the State testified about the issue. *Id.* at 599, 627 S.E.2d at 707–08. The supreme court held that petitioner "should have been permitted to amend his PCR application to conform to the evidence presented." *Id.* at 599, 627 S.E.2d at 708.

Similarly, we hold the issue here concerning Dr. Henderson's testimony is preserved for our consideration. Not only was trial counsel questioned and cross-examined about the issue during the PCR hearing, PCR counsel specifically mentioned it again during his concluding remarks. When the PCR court's order failed to address the issue, PCR counsel took appropriate action to preserve it by requesting a ruling in a Rule 59(e) motion. *See Humbert v. State*, 345 S.C. 332, 337, 548 S.E.2d 862, 865 (2001) (holding when a PCR court fails to rule on an issue, the petitioner must file a Rule 59(e), SCRCP, motion requesting a ruling on the issue to preserve it for review).

Accordingly, we hold the bolstering issue—as it related to Dr. Henderson's testimony—is preserved for review. However, we find any bolstering issues

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related to other witnesses are unpreserved because they were not raised in Petitioner's PCR application, the PCR hearing, or in the Rule 59(e) motion. *See id.* at 338, 548 S.E.2d at 866 (holding arguments not raised to and ruled upon by the PCR court are not preserved for review).

II. Bolstering

Because the bolstering issue as it relates to Dr. Henderson's testimony was preserved, we must next determine whether trial counsel was ineffective for failing to object or move for a mistrial in response to Dr. Henderson's comments.

"The law is clear that it is improper for a witness to give testimony as to his or her opinion about the credibility of a child victim in a sexual abuse matter." *State v. Hill*, 394 S.C. 280, 294, 715 S.E.2d 368, 376 (Ct. App. 2011) (citing *State v. Dawkins*, 297 S.C. 386, 393-94, 377 S.E.2d 298, 302 (1989); *State v. Dempsey*, 340 S.C. 565, 568-71, 532 S.E.2d 306, 308-09 (Ct. App. 2000)).

At the PCR hearing, trial counsel admitted he did not object when Dr. Henderson was asked whether her findings were consistent with a penetrating injury and she responded that she believed Victim was abused. Trial counsel testified there was no reason he did not object to Dr. Henderson's answer, and he stated that it may have had a significant impact on the jury. On cross-examination, trial counsel reiterated that the case centered on credibility, and he did not remember any physical evidence against Petitioner.

At trial, Dr. Henderson was qualified as an expert "in the examination, diagnosis, and treatment of child sexual abuse." Thus, it was proper for her to opine that based on her examination, Victim's injuries were consistent with sexual abuse. *See* Rule 702, SCRE ("If . . . specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."); *cf. State v. Douglas*, 380 S.C. 499, 504, 671 S.E.2d 606, 609 (2009) (finding no prejudice from a forensic interviewer's allegedly improper testimony when there was also evidence that a pediatric nurse practitioner examined the victim and determined she had vaginal tearing and scarring consistent with past penetration). However, she stated her opinion was based not only on her examination, but also "on the history that [Victim] shared with [her]." Directly after this comment, Dr. Henderson opined that Victim had been sexually abused. On cross-examination, Dr. Henderson elaborated on these

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statements and testified that "based on the history that [Victim] shared, and she denies any other kind of trauma to that area . . . my conclusion is . . . as I stated."

When asked whether she based her decision on possibly untrue information from Victim, Dr. Henderson stated, "I based it on the information received by my patient, which is invaluable information any doctor receives when they are examining a patient." When asked whether she assumed Victim's information was true, Dr. Henderson responded, "Based on the way she shared it and all the information that she shared, yes."

We believe there is no other way to interpret these comments other than to mean that Dr. Henderson believed Victim was truthful. *See State v. Chavis*, 412 S.C. 101, 109, 771 S.E.2d 336, 340 (2015) (finding a child abuse assessment expert's recommendation that the defendant should not be around the victim for any reason was improper because it could only be interpreted as the expert's believing the victim's sexual abuse claims); *State v. Jennings*, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011) (finding an expert's reports were erroneously admitted when there was "no other way to interpret the language used in the reports other than to mean the forensic interviewer believed the children were being truthful"); *Dempsey*, 340 S.C. at 568–72, 532 S.E.2d at 308–10 (finding a child sex abuse expert's testimony improperly vouched for a victim's credibility when the expert concluded victim was reliable and the expert testified that a very high rate of children who made sex abuse allegations were truthful); *Dawkins*, 297 S.C. at 393–94, 377 S.E.2d at 302 (holding a psychologist's testimony indicating he believed a victim's allegations were genuine was improper). Accordingly, Dr. Henderson's testimony was improper bolstering, and trial counsel was deficient for failing to object to it or otherwise bring it to the trial court's attention.

Additionally, we find Petitioner is able to demonstrate prejudice. *See Strickland*, 466 U.S. at 694 (defining prejudice as a reasonable probability that but for trial counsel's errors, the result of the proceeding would have been different). As trial counsel admitted, the case lacked physical evidence and hinged on credibility. *See Jennings*, 394 S.C. at 480, 716 S.E.2d at 94–95 (holding the erroneous admission of reports that contained vouching language was not harmless when the children's credibility was the most critical determination in the case) (citing *State v. Ellis*, 345 S.C. 175, 178, 547 S.E.2d 490, 491 (2001) ("An . . . improper opinion which goes to the heart of the case is not harmless."))). During the trial itself, trial counsel repeatedly sought to attack Victim's credibility through cross-examination, and his

theory of the case was that the abuse allegations were fabricated by Victim and Mother. Given a lack of physical evidence, we believe Dr. Henderson's testimony was critical because she explained how Victim—who claimed full penetration occurred on multiple occasions—had a narrowed but otherwise intact hymen. As a result, Dr. Henderson's improper testimony insinuating that she found Victim credible was particularly prejudicial.

Accordingly, we reverse the PCR court's finding that trial counsel was not ineffective for failing to object or move for a mistrial in response to bolstering testimony given by Dr. Henderson.

In light of our decision regarding the bolstering issue, we decline to address Petitioner's remaining arguments. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when the disposition of prior issues is dispositive).

CONCLUSION

We reverse the PCR court's dismissal of Petitioner's PCR application and remand to the trial court for a new trial.

REVERSED AND REMANDED.

SHORT and GEATHERS, JJ., concur.

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The State, Respondent,

v.

Nathaniel Witherspoon, Petitioner.

Appellate Case No. 2016-000306

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Charleston County
The Honorable Deadra L. Jefferson, Circuit Court Judge,

Opinion No. 27675
Submitted October 4, 2016 – Filed November 2, 2016

REVERSED

Chief Appellate Defender Robert Michael Dudek, of
Columbia, for Petitioner.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Mark Reynolds Farthing, both of
Columbia; and Solicitor Scarlett Anne Wilson, of
Charleston, for Respondent.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

*Coercion
Allen Charge*

e, Respondent,

Billy Lemurces Taylor, Appellant.

Appellate Case No. 2016-000549

Appeal From Greenville County
Robin B. Stilwell, Circuit Court Judge

Opinion No. 5655

Submitted February 1, 2019 – Filed June 12, 2019

REVERSED AND REMANDED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson, Deputy
Attorney General Donald J. Zelenka, Senior Assistant
Deputy Attorney General Melody Jane Brown, Assistant
Attorney General Alphonso Simon, Jr., Assistant
Attorney General Samuel Marion Bailey, all of
Columbia, and Solicitor William Walter Wilkins, III, of
Greenville, for Respondent.

HILL, J.: Seven hours and twenty minutes into their deliberations following four days of trial, the jury in Billy L. Taylor's criminal trial informed the trial court they were at an impasse. The trial court sent the jury home for the night. The next morning, the trial court gave the jury a charge derived from *Allen v. United States*,

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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Bobby Joe Reeves, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2011-187246

ON WRIT OF CERTIORARI

Appeal From Richland County
Alison Renee Lee, Circuit Court Judge

Opinion No. 5359
Heard June 1, 2015 – Filed November 12, 2015

REVERSED

Jeremy Adam Thompson, of Law Office of Jeremy A.
Thompson, LLC, of Columbia, for Petitioner.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Megan Harrigan Jameson, of
Columbia, for Respondent.

SHORT, J.: Bobby Joe Reeves was convicted of first-degree criminal sexual conduct (CSC) with a minor and lewd act upon a child. He appeals from the denial and dismissal of his application for post-conviction relief (PCR), arguing the PCR

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court erred in finding his trial counsel was not ineffective for failing to investigate and present the testimony of a gynecological expert witness. We reverse.

FACTS

Reeves was tried September 17-18, 2002. At the trial, during a video interview, Victim¹ testified Reeves lived with her and her mother in South Carolina. After she and her mother moved to Georgia, Victim stated she visited Reeves every other weekend. Reeves picked her up in Georgia and took her to stay at his house in South Carolina or her mother drove her to South Carolina. She testified she thought of Reeves as a father figure. Victim testified that during her visits with Reeves, he would "touch her private" with his hands and "sometimes with his private." He would "rub his private on [her] private." She was not wearing clothes when these incidents occurred and sometimes Reeves also was not wearing clothes. She explained Reeves would occasionally ask her to "suck his private" and when she did, "yellow stuff would come out." She stated the "yellow stuff" would "sometimes [go] in [her] mouth" and other times it would go "on [her] private." According to Victim, the weekend of July 4, 2000, was the last time she saw Reeves. She stated Reeves "stuck his finger up [her]" for the first time during that weekend. She testified she was four years old when Reeves began touching her. She told her mother about the sexual abuse after her last visit with Reeves.

Dawn Bridgett, Victim's mother, testified she and Victim moved in with Reeves when Victim was eight months old because they needed a place to live. Bridgett stated Victim and Reeves continued to spend time together after she and Victim moved to Georgia. She recalled the last time Victim saw Reeves was the weekend of July 4, 2000. Bridgett drove Victim to South Carolina and Victim did not want Bridgett to leave. Victim was also "very clingy" when she returned to Georgia. Reeves contacted Bridgett to schedule a visit with Victim toward the latter part of July 2000, but Victim refused to go to Reeves' home. When Bridgett questioned Victim about her decision, Victim discussed incidences that occurred in Reeves' bedroom.² After the conversation, Bridgett called her sister and the police. On the

¹ Victim was ten years old at the time of the incident and twelve years old at the time of trial.

² The trial court limited Bridgett's testimony to "date, time, place, and nature but not any names." Therefore, Bridgett did not testify regarding the specific details of her conversation with Victim, only "[she] played a game with [Victim]. [She] named events, and [Victim] told [her] whether it happened[.]"

following Monday, Bridgett took Victim for a medical examination with Dr. Dennis Bash. Several weeks later, Bridgett took Victim for a medical examination with Dr. Maureen O'Brien Claiborne.³

Dr. Bash, an expert in the field of emergency room pediatric care, testified he examined Victim on July 31, 2000. Dr. Bash stated he observed what "appeared to be a healing scar" on Victim's hymen. When asked, "Could you date or in any way tell how much earlier that time [sic] had been inflicted," Dr. Bash responded, "The only thing that you can say about that is that it had time to heal so that it was at least one week before that and probably longer." Dr. Bash opined any kind of penetration, penile or digital, would have caused the injuries. Further, Dr. Bash agreed the healing scar was consistent with some kind of penetration approximately thirty days earlier. During cross-examination, Dr. Bash admitted he did not find any bruising, bite marks, claw marks, or sperm on Victim during the examination. Further, he stated, in "cases where . . . it's been a long time period in-between the time that – whatever happened supposedly happened in that time they presented to us – we just do a basic screening evaluation and always recommend that they follow-up in the sexual abuse clinic." On re-direct examination, Dr. Bash maintained he would not have expected to see any bruising or sperm even if he had conducted the examination thirty days prior.

Jodi Lee Lashley, the Child Advocate Program Director at Children's Advocacy Center for Abused Children, testified she conducted a forensic interview of Victim on August 11, 2000. Lashley testified Victim stated she was made to "perform oral sex," "touch the private of the person," and "the person touched her private." Lashley testified Victim stated the incidents took place at a male's home and the male had a roommate named "Jessie."⁴ According to Lashley, Victim explained the sexual abuse began occurring when she was four or five years old and the last incident occurred during her last visit with the male. Lashley testified she did not observe any signs that Victim was coached to say something during her interview.

Dr. Claiborne, an expert in pediatrics, testified she examined Victim on August 28, 2000. Dr. Claiborne stated she examined Victim and took cultures because none

³ Dr. Claiborne's name is also spelled Clayborne in the record.

⁴ Victim testified Reeves had a roommate named "Jessie" who was at the home during her visits. Additionally, Jessie Wheaton testified at trial, and stated he and Reeves had been roommates, and "[they had] been living together now off and on, a couple of time[s] in different places."

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were taken in the emergency room. Dr. Claiborne explained, "On [Victim's] genital exam, her hymen appeared normal. She [did not] have any tears or scars. She [did not] have any unusual discharge. And the rectal area also appeared to have normal appearance and tone." Dr. Claiborne acknowledged her examination of Victim took place one month after Dr. Bash's initial evaluation and her results were normal. Dr. Claiborne explained it is common to see normal exams in these types of cases. She elaborated,

What we know is that an awful lot of child abuse, sexual abuse in younger children, is not the violent rape kind of things that you sometimes see in adults or in older kids. A lot of the time in younger kids, it is more of a coercion kind of thing. And, you know, yes[,] penile may not leave terrible scars and stuff. But then you're also dealing with children who have never had consensual sex. So they don't know exactly what's all the way inside them, what is part of the way inside them[,] and what's trying to get inside of them. So, yes, we normally see normal exams. Most kids who have been sexually abused will have normal exams.

Dr. Claiborne opined healing would be in the process or would have taken place two months after the incident. She explained, "It would depend upon the degree of healing. If this had been a violent rape, I would [have] expect[ed] . . . bleeding and suturing, I would expect that I would see a lot of evidence." Finally, when asked if her findings, two months after the fact, were consistent with a child who had been digitally penetrated, Dr. Claiborne responded, "Yes." On cross-examination, she admitted her results were also consistent with the possibility that nothing happened to Victim.

Dr. Carl Brunie, an expert in child psychiatry and Victim's psychiatrist, testified regarding the behavioral changes he noticed in Victim before and after the alleged incident occurred. He stated he began treating Victim in 1999 because she had a history of anger, self-directed aggression, and biting herself. She had threatened to hurt herself, burned her arms with an eraser, suffered from frequent nightmares, exhibited mood swings, experienced significant anxiety, and often expressed fears of some harm coming to her mother. He explained that during his treatment "[he] felt like there was history that [he] was missing" and "the picture became considerably clearer after [Victim's] mother reported to [him] that Victim had

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disclosed the history of sexual abuse." He testified Victim's condition deteriorated after the disclosure as she began to have more nightmares, became depressed and sad, and "would get in the fetal position sucking her thumb, acting like a much younger child."

During closing arguments, the State argued:

But remember what Dr. Bash said when he examined Victim about three weeks after the last time she had seen [Reeves]. There was healing scar tissue in her hymen. Ten year old girls who have not been sexually molested do not have healing scar tissue in their hymen. There is no other explanation other than she was penetrated. A ten year old. We're not talking about a grown woman, a sexually active woman. We're talking about a ten year old. That just doesn't happen on its own. And that is a fact [the defense] cannot overcome.

The State repeated:

[Victim] told you about digital penetration. . . . And again, 100 percent corroborated by the medical evidence. Three weeks later when a doctor examined her, a doctor who's a pediatric specialist and finds healing scar tissue. It just doesn't happen on its own; not on a ten year old; not in an unsexually active ten year old. It's just not going to be there. . . . Dr. Bash examines Victim on that day and finds healing scar tissue. Again, there's no other explanation for it other than Victim had been penetrated by something. And that's undisputed testimony.

The jury convicted Reeves of first-degree CSC with a minor and lewd act upon a child, and the trial court sentenced him to concurrent fifteen-year sentences. Reeves filed a direct appeal, and this court affirmed. *See State v. Reeves*, Op. No. 2005-UP-099 (S.C. Ct. App. filed Feb. 10, 2005). Reeves filed an application for PCR, which the PCR court dismissed on February 3, 2011, after a hearing. Reeves filed a petition for a writ of certiorari, which this court granted on January 31, 2014. Reeves now requests that this court grant him post-conviction relief and vacate his convictions and sentences.

STANDARD OF REVIEW

An appellate court must affirm the factual findings of the PCR court if they are supported by any probative evidence in the record. *Hyman v. State*, 397 S.C. 35, 42, 723 S.E.2d 375, 378 (2012). "However, reversal is appropriate where the PCR court's decision is controlled by an error of law." *Id.*

LAW/ANALYSIS

Reeves argues his trial counsel was ineffective in failing to investigate and present the testimony of a gynecological expert witness. We agree.

Trial counsel must provide reasonably effective assistance under prevailing professional norms. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). "[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* at 690. To receive relief, the applicant must show (1) counsel was deficient and (2) counsel's deficiency caused prejudice. *Stalk v. State*, 383 S.C. 559, 560-61, 681 S.E.2d 592, 593 (2009). Prejudice is defined as "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 693. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* "Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim." *Id.* at 700.

At the PCR hearing, Dr. Fredrick Morris Thompson, an expert in gynecology, testified on Reeves' behalf. Dr. Thompson testified injuries in the vaginal area do not necessarily heal quicker than any other area of the body. According to Dr. Thompson, there are multiple ways a trauma may occur in the vaginal area. He stated, "[S]ex is certainly not – or sexual play is not the only way [sic] the vagina can be injured." He explained injuries can occur through accidental injury, self-mutilation, or a fall. Further, Dr. Thompson opined that girls, more than boys, are given to masturbation, and in the course of masturbation, they could potentially injure themselves. However, he admitted there was no way to document what caused Victim's injury. He recalled he thought Dr. Bash described Victim's injuries as a minor laceration near the opening of the vaginal area. When asked about Dr. Bash's ability to see a physical injury on Victim one month after the incident, Dr. Thompson stated,

If it was a significant health-threatening injury, it probably would be fairly evident. If it was a minor laceration, a tear, it – you know, it could be in various stages of healing, and I know that there's [sic] ways of categorizing bruises to determine how long the bruise has been there. I don't think that was described in [Dr. Bash's] examination. A laceration would be very difficult to date, I think exactly, as to how long it had been there, and certainly difficult to say what exactly had caused that particular injury if there was not any other evidence of trauma.

As to Dr. Claiborne's testimony stating her findings were consistent with some kind of penetration even though the medical exam results were normal, Dr. Thompson stated, "I think it would be very difficult to make a statement as to could physical abuse [have] occurred or not if there were no signs to lead you to believe there was anything out of the ordinary." According to Dr. Thompson, the injury to Victim would have had to be fairly substantial in order to be seen a month after the injury. Further, when asked if an injury observed thirty days after the incident is something he would expect a person to seek medical attention for, Dr. Thompson responded,

Again, you're given someone who may or may not have the expected degree of intelligence. There's a fear involved. There's all sorts of reasons why people fail to seek medical attention, but if your child was bleeding, I would think this would alarm them enough that they would probably want to go to a caregiver of some sort. Again, there's a lot of pain involved. Again, there would probably be some reaction.

However, he opined he would not expect to see the injury thirty days after the incident if it was a fairly minor laceration.

Trial counsel testified he received Reeves' case from his partner in 2002. He asserted the State made an offer of five years' probation, which Reeves declined because he was adamant he had not done anything wrong. Trial counsel maintained he no longer had his notes and file for this case because the file was

destroyed, and he could not remember many details about the case. Trial counsel admitted he did not consult with an expert prior to trial even though he knew the State would attempt to admit evidence of a physical trauma. When asked if a medical expert would have been helpful to counteract the State's expert witnesses, trial counsel explained,

It might have, sir. As I remember, [Reeves] was making payments to my partner because he didn't have a lot of money at the time. I do not remember – I remember – I think I saw [Reeves], met with [Reeves] several times before we actually got ready for the trial. He had provided me with a witness list, a long list of people who, you know, would have helped him out. I do not remember whether he did that at my request or he just had it ready for me when I met with him. We decided to go that route. I started going down the list. If I'm correct, the entire defense was that [Victim's] mom had been convicted, [sic] against [Reeves] because [Reeves] had said, 'I don't like the lifestyle. You're not treating [Victim] well. I want you out of my house', if I remember correctly.

When asked again, trial counsel reiterated, "Sir, all I remember is there was a question about money. I know I never did talk to an expert, but whether [Reeves] and I talked about that, I cannot tell you."

The PCR court found Reeves failed to prove trial counsel was ineffective for failing to interview and present a medical expert at trial. The PCR court noted trial counsel testified he had not retained a medical expert because Reeves did not have the funds to do so. The PCR court stated, "A doctor could not state with certainty the exact cause of the injuries discovered and the determination of the cause of the injury was a question for the jury." Further, the PCR court stated, "Dr. Thompson's testimony did not make it any less likely that [Reeves] had committed the crime, in fact, the substance of his testimony at the PCR hearing only confirmed that the cause of the injuries was unclear." Accordingly, the PCR court denied and dismissed this ineffective assistance of counsel claim.

"[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at

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691. "[A]t a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007) (emphasis omitted) (citation omitted). "[A] particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Strickland*, 466 U.S. at 691. "[S]trategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." *Id.* at 690-91. "[C]ounsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions[.]" *Id.* at 691.

"[T]he United States Supreme Court has held that the defendant must have 'a fair opportunity to present his defense,' thereby requiring the State to provide the 'basic tools' for an adequate defense to an indigent defendant." *Bailey v. State*, 309 S.C. 455, 459, 424 S.E.2d 503, 506 (1992) (quoting *Ake v. Oklahoma*, 470 U.S. 68 (1985)). "Thus, although the State is not required to provide the indigent defendant with unlimited funding, it must ensure that the defendant has competent counsel and the services of experts necessary to a meaningful defense[.]" *Id.*

South Carolina Code section 17-3-50 (B) (2003) provides in pertinent part:

Upon a finding in ex parte proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant, the court shall authorize the defendant's attorney to obtain such services on behalf of the defendant and shall order the payment, from funds available to the Office of Indigent Defense, of fees and expenses not to exceed five hundred dollars as the court considers appropriate.

An applicant is only entitled to fees to pay for expert witnesses if the applicant shows a need for the expert testimony. *Thames v. State*, 325 S.C. 9, 11, 478 S.E.2d 682, 683 (1996). The mere possibility the applicant could find a witness somewhere to support an allegation is insufficient to warrant authorization of funds. *Id.* Where counsel articulates a valid trial strategy for failing to call an expert witness to testify at trial, such conduct will not be deemed ineffective. *Legare v. State*, 333 S.C. 275, 281, 509 S.E.2d 472, 475 (1998).



In *Dempsey v. State*, the State called a therapist at the Low Country Children's Center to testify as an expert on child sexual abuse. 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005). The therapist opined the victim had been sexually abused. *Id.* In addition, the State presented expert testimony from a doctor who performed the victim's physical examination. *Id.* The doctor testified she found no physical evidence the victim was sexually abused, but it was likely that if someone was assaulted in the manner in which the victim alleged, there would be no physical evidence of the assault. *Id.* Dempsey's counsel did not call an expert to rebut the State's expert testimony because he believed the lack of physical evidence of abuse, by itself, was enough to rebut the State's expert testimony. *Id.* Our supreme court found Dempsey's counsel's decision not to call an expert witness to rebut the State's expert witness was a legitimate trial strategy. *Id.* Accordingly, the court held the PCR court erred in granting relief on the basis that trial counsel was ineffective in failing to call an expert witness on child sexual abuse. *Id.*

In this case, we find trial counsel was deficient because he should have discussed hiring a medical expert with Reeves to more thoroughly challenge the State's medical evidence presented at trial. *See Strickland*, 466 U.S. at 691 ("[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary."). Trial counsel admitted he did not consult with an expert prior to trial even though he knew the State would attempt to admit evidence of a physical trauma. Trial counsel recalled he failed to meet with an expert witness because "there was a question about money," but he also stated he could not recall whether he discussed this issue with Reeves at all.⁵ Trial counsel could not recall much else about the case or his trial strategy, and he no longer had his notes and file for this case because the file was destroyed. We also find trial counsel did not provide a legitimate trial strategy for failing to consult with an expert before trial or call a medical expert witness to testify at trial. *Contra Dempsey*, 363 S.C. at 370, 610 S.E.2d at 815 (finding a trial counsel's decision not to call an expert witness to rebut the state's expert witness was a

⁵ If Reeves was indigent and could not afford to pay for an expert, the South Carolina Office of Indigent Defense could have provided the funds needed to secure an expert witness. *See* S.C. Code Ann. § 17-3-50 (B) (2003) ("Upon a finding in ex parte proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant, the court shall authorize the defendant's attorney to obtain such services on behalf of the defendant and shall order the payment, from funds available to the Office of Indigent Defense, of fees and expenses . . .").

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legitimate trial strategy and holding the PCR court erred in granting relief on the basis that trial counsel was ineffective in failing to call an expert witness on child sexual abuse); *Legare*, 333 S.C. at 281, 509 S.E.2d at 475 (stating that where counsel articulates a valid trial strategy for failing to call an expert witness to testify at trial, such conduct will not be deemed ineffective); *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (providing an attorney's performance is not deficient if it is reasonable under professional norms).

We further find Reeves was prejudiced by his trial counsel's deficiency. *See Strickland*, 466 U.S. at 700 ("Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim."). Reeves presented evidence of prejudice through Dr. Thompson's testimony at the PCR hearing. Although Dr. Thompson admitted there was no way to document what was the cause of Victim's injury, he provided additional ways the injury could have occurred, including self-infliction or by accident. These additional theories were not presented during trial. In fact, the State, in its closing arguments, repeatedly argued, "There is no other explanation [for the injury] other than she was penetrated. . . . And that is a fact [the defense] cannot overcome. . . . that's undisputed testimony." Further, Dr. Thompson opined Victim's scars would have had to have been substantial to be seen one month after the incident. However, at trial, Dr. Bash's testimony does not indicate the injury was substantial.

CONCLUSION

Accordingly, we find the evidence does not support the PCR court's finding that Reeves failed to prove his counsel was ineffective. Further, we find counsel's ineffectiveness was prejudicial to Reeves.

REVERSED.

LOCKEMY and MCDONALD, JJ., concur.

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