

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

RECEIVED

Jan 21 2021

S.C. SUPREME COURT

The Honorable Robert E. Hood, Circuit Court Judge

Appellate Case No. 2020-001171

Michael Clayton, Jr.

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THE FAIRFIELD COUNTY CLERK OF COURT’S OFFICE: PCR EXHIBIT #4 (CD OF INTERVIEW); PCR EXHIBIT #5 (MENTAL EVALUATION).

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
)
 -VS-)
)
 MICHAEL LEE CLAYTON,)
)
)
 DEFENDANT.)
 _____)

2018-GS-20-00181 & 00265

TRANSCRIPT OF RECORD

AUGUST 27, 2018
WINNSBORO, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOHN C. HAYES, III

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

ATTORNEY FOR PLAINTIFF:

JULIE HALL,
ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

GEORGE SPEEDY, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>

(No Exhibits Were Presented During This Hearing)

1 **MS. HALL:** May it please the Court?

2 **THE COURT:** Yes, ma'am.

3 **MS. HALL:** Before you is Michael Clayton with his
4 attorney, George Speedy. He is pleading guilty -- pleading
5 guilty under Alford versus North Carolina or North Carolina
6 versus Alford on the following indictments; Indictment
7 number 2018-GS-20-181, which is a true billed indictment for
8 criminal sexual conduct with a minor in the second degree.

9 He's waiving presentment on 2018-GS-20-265, also for
10 criminal sexual conduct with a minor, second degree. The
11 State is recommending probation in this case, but I'll talk
12 about that more as the time comes.

13 **THE COURT:** How old are you, Mr. Clayton?

14 **MR. CLAYTON:** 39.

15 **THE COURT:** You're represented by Mr. Speedy?

16 **MR. CLAYTON:** Yes, sir.

17 **THE COURT:** Satisfied with his service?

18 **MR. CLAYTON:** Yes, Your Honor.

19 **THE COURT:** Now, the indictment ending in 245 -- I'm
20 sorry. The indictment ending in -- have you sworn him yet?

21 **MADAM CLERK:** No, sir.

22 **THE COURT:** Okay.

23 **MADAM CLERK:** If you'll raise your right hand, please.
24 Put your left hand on the Bible. Do you solemnly swear or
25 affirm that the testimony you give this Court will be the

1 truth, the whole truth and nothing but the truth so help you
2 God?

3 **MR. CLAYTON:** I do.

4 **MADAM CLERK:** Thank you.

5 **THE COURT:** The indictment ending in -- it's 2018
6 ending in 181 has not been before the Grand Jury of
7 Fairfield County. And you have the right to have it
8 reviewed by the Grand Jury. Do you wish to have that charge
9 reviewed by the Grand Jury or give up that right?

10 **MR. CLAYTON:** I'll give up that right, Your Honor.

11 **MS. HALL:** Your Honor, if I could -- I think the 181
12 has been, but the 265 hasn't. I just want to make sure
13 we're clear about that.

14 **THE COURT:** Okay. It has. All right. Well, what
15 about 265?

16 **MS. HALL:** 265, he's waiving because the charge has
17 been altered.

18 **THE COURT:** All right. On the indictment, 181, that is
19 a true bill. On 265, that charge has not been before the
20 Grand Jury. That is the charge you're pleading guilty to,
21 criminal sexual conduct with a minor, second degree. Do you
22 wish to have that charge reviewed by the Grand Jury or give
23 up that right?

24 **MR. CLAYTON:** I will give up that right, Your Honor.

25 **THE COURT:** He's indicated by his initials he's waiving

1 presentment.

2 I understand from your attorney that you wish to enter
3 a plea of guilt under the Alford doctrine, is that correct?

4 **MR. CLAYTON:** Yes, Your Honor.

5 **THE COURT:** That means to me that while you're
6 maintaining your innocence you have decided it's in your
7 best interest based on the State's recommendation and your
8 feeling that were you to go to trial a jury most probably or
9 likely would find you guilty. Am I correct? Is that why
10 you're entering your plea?

11 **MR. CLAYTON:** Yes, Your Honor.

12 **THE COURT:** And you live in Columbia?

13 **MR. CLAYTON:** Yes, Your Honor.

14 **THE COURT:** Indictment ending in 265 alleges that
15 between the years of 2007 and 2009 you engaged in a sexual
16 battery with a minor, 14 years of age, who was at least 11
17 in violation of the laws of this State. You understand
18 that?

19 **MR. CLAYTON:** Yes, Your Honor.

20 **THE COURT:** Indictment ending in 181 alleges that you
21 did -- both of these are alleged to have occurred here in
22 Fairfield County -- between 2005 and 2009 did engage in
23 battery with a second minor, 14 years of age, but at least
24 11. You understand that charge?

25 **MR. CLAYTON:** Yes, Your Honor.

1 **THE COURT:** What do these carry?

2 **MS. HALL:** Zero to 20.

3 **THE COURT:** These carry up to 20 years in jail. They
4 are violent and they are most serious. Violent is a type of
5 crime that if you are incarcerated on these charges you
6 would be ineligible for certain programs non-violent
7 offenders can participate in. It also would -- are these 85
8 percent?

9 **MS. HALL:** Yes, sir. That's my understanding.

10 **THE COURT:** Yes. Violent means that you would be
11 unable to participate in programs which non-violent inmates
12 are allowed to participate in. This is a no parole offense,
13 which means you would have to serve at least 85 percent of
14 your sentence before you could be released early into an
15 early release program with supervised supervision.

16 These are most serious offenses. That means that you
17 have, in essence, one strike against you under sort of what
18 sometimes people refer to as the three-strikes, you're out
19 law. That is if you get two most serious or a combination
20 of three serious and most serious offenses, you'd be subject
21 to being incarcerated for life without parole. That is a
22 true life sentence. Do you understand all that? That
23 applies to both of them. You understand that?

24 **MR. CLAYTON:** Yes, Your Honor.

25 **THE COURT:** How do you plead to -- and I'll use their

1 initials -- criminal sexual conduct with the minor with the
2 Minor Child 1 ?

3 MR. CLAYTON: Guilty under Alford, Your Honor.

4 THE COURT: How do you plead to criminal sexual conduct
5 with a minor -- with the minor being initials -- initials
6 Minor Child 2 ?

7 MR. CLAYTON: Guilty under Alford, Your Honor.

8 THE COURT: Other than the recommendation of a
9 probationary sentence, has anyone made any other promise or
10 threats to cause you to enter today your plea of guilt to
11 these charges?

12 MR. CLAYTON: No, Your Honor.

13 THE COURT: Are you today under the influence of
14 anything that would cause you to be intoxicated?

15 MR. CLAYTON: No, Your Honor.

16 THE COURT: Are you entering your plea today to these
17 charges, Mr. Clayton, freely and voluntarily?

18 MR. CLAYTON: Yes, Your Honor.

19 THE COURT: Mr. Clayton, you have a right to a trial by
20 jury on these charges. And you are presumed innocent of
21 these charges until such time as the State is able to prove
22 to a jury, if it can, your guilt beyond a reasonable doubt.
23 As to the charges you have the right to remain silent, the
24 right to confront the witnesses against you and you have the
25 right to have your witnesses made to come into court to

1 testify for you. Do you understand you had these rights?

2 **MR. CLAYTON:** Yes, Your Honor.

3 **THE COURT:** Do you have any questions about them?

4 **MR. CLAYTON:** No, Your Honor.

5 **THE COURT:** I advise you that by entering pleas of
6 guilt you're giving up these rights. You're also giving up
7 any defense that you might have to these charges. Do you
8 understand that?

9 **MR. CLAYTON:** Yes, Your Honor.

10 **THE COURT:** Knowing all those things and understanding
11 that your plea is under Alford, how do you plead to the
12 charge with Minor Child 1

13 **MR. CLAYTON:** Guilty under Alford, Your Honor.

14 **THE COURT:** How do you plead to the charge involving
15 Minor Child 2

16 **MR. CLAYTON:** Guilty under Alford, Your Honor.

17 **THE COURT:** Had you served any time on this already?

18 **MR. CLAYTON:** About 24 hours, Your Honor.

19 **THE COURT:** Okay. All right. Listen while I'm told
20 the facts.

21 **MS. HALL:** Your Honor, in 2000 -- well, it kind of
22 starts before that, the -- to the two victims from a family
23 of four children. Their mother, whose name is Toba Clayton,
24 had -- they'd left a physically abusive relationship with
25 their biological father back in Pennsylvania. When the

1 mother took the children and came to South Carolina, they
2 moved to here because of their -- they had family
3 connections here.

4 In 2003 Toba Clayton met the defendant and moved in
5 with him the same year. This incident started around 2004
6 with the girls. They two -- they have two younger brothers,
7 who were also living in the house at the time.

8 The home where they were living, the girls' rooms were
9 right across -- and, of course, I'm couching this in terms
10 of Alford. I mean, this is what the State would show if we
11 had gone to trial. The girls' rooms were right across from
12 one another. And over a period of about -- from the time,
13 you know, that -- I guess that -- it started in 2004 until
14 the time that the girls turned -- well, when they moved to
15 Prosperity, it started with one. And when they moved --
16 when the other one turned 18, it stopped with her. But it
17 continued on the entire time they lived in Fairfield County.

18 The defendant would come down the hall, he would spend
19 time in one of the girl's bedrooms. And he would then go
20 across the hall to the other girl's bedrooms, according to
21 them, spending approximately ten minutes in each girl's
22 bedroom.

23 During that time he would -- and basically the
24 allegations as it occurred in the -- are reflected in the
25 indictment. He would digitally penetrate them, and grope

1 them and make them touch his penis. They -- and when I say
2 digitally penetrated, that was vaginally.

3 Again, this was a chronic thing. It went on over a
4 course of years. They knew -- each of them knew what was
5 happening to the other. They never really talked about it.

6 Had the State gone to trial in this case, we would have
7 had a delayed disclosure expert come and testify. And I've
8 done a lot of reading about that, and it's very interesting.

9 And, you know, this was so chronic over a time, the
10 State's position is that it was normalized by the defendant
11 and that these girls -- he took care of them. I mean, he
12 was their step-father. He bought them clothes. He put a
13 roof over their head. He made sure they did their homework.

14 And in that -- in many ways, as it goes to that, the
15 State would present evidence that he was also very, very
16 controlling over their uses of phones, which is -- which is
17 consistent with abuse of any kind. Controlling over the use
18 of the telephone, controlling over what they wore.

19 And so, as I stated before, this went on over an
20 extended period of time. But when it started with the

21 [REDACTED] Minor Child 2 [REDACTED], her birthday was [REDACTED]
22 of 1995. So when this started in 2005 she was ten. And it
23 continued until she was approximately 14.

24 And with [REDACTED] Minor Child 1 [REDACTED], she was -- her
25 birthday was [REDACTED] of 1993. It started with her

1 when she was approximately 11 and continued until -- until
2 they moved from Fairfield County into Newberry County where
3 it continued even still then until she turned 18 and moved
4 out.

5 It took these girls a long -- they didn't say anything
6 -- there had been incidences where one -- and another thing
7 that the State would have shown when they came to trial is
8 at one point their mother did come home and saw the
9 defendant coming out of **Minor Child 1** room with an erection. She
10 had come home early from work and surprised the defendant.
11 So there was evidence that this had been going on. It was
12 just, again, failure of adults on the parts of these
13 children to stand up for them and do the right thing.

14 At some point they ended up -- they moved in and out of
15 the house a couple of times. And they -- but for the most
16 part they lived -- and the indictments reflect that.

17 At some point in compliance with State v. Baker the
18 State sent these indictments back to the Grand Jury since it
19 was such a long time-frame, but the defendant did have --
20 did have access to them during all of this time, that that
21 -- the State's position is that does comply with State v.
22 Baker in terms of the time-frame of the actual incidents
23 occurring.

24 In 2009 the State would have presented evidence that
25 **Minor Child 2** disclosed to her friend, Meredith Suber, who would

1 have come to court and testified that she did disclose to
2 her that was -- again, at that time she was about 14, and
3 she had talked about it having happened in the past.

4 What brought them to actually come to the police with
5 this -- it was the younger child was actually the one who
6 finally came forward and told the police. Their -- the
7 mother and the defendant divorced.

8 The mother had found out in early 2016 that the
9 defendant had been having a sexual relationship with his
10 best friend's daughter. And she was of age. And it was
11 consensual by -- as far as we know. And she was -- she
12 became pregnant with a child. And that was what caused the
13 -- Toba Clayton to seek a divorce against the defendant.

14 The defendant had -- their divorce was final on January
15 the 21st of 2016. She -- they came to the Fairfield County
16 Sheriff's Department on January the 23rd of 2016 immediately
17 after the divorce.

18 But what prompted the whole thing was they found out in
19 March that the defendant was going to have a baby girl with
20 this new paramour and that that child was to be born in July
21 of 2016. And everything they've said to law enforcement,
22 everything they've said to me, and it's reflected in their
23 victim impact statement, which I will pass up and make a
24 part of the Court's record, is that that was what caused
25 them to come to the police.

1 And in 2011, again, they had -- one of them confided in
2 their paternal -- in their biological father. He called
3 Newberry County and reported it, and nothing ever happened
4 with that report. So there had been along the course of
5 time many reports or at least tellings of things going on.
6 And nothing was done until they finally decided to take
7 matters into their own hands. And that's what brings us
8 here today.

9 **THE COURT:** All right. Mr. Clayton, I'm not asking you
10 to admit those facts, but is it your understanding that
11 those would be the facts that would be presented to the jury
12 if you went to trial?

13 **MR. CLAYTON:** Yes, Your Honor.

14 **THE COURT:** All right. Well, I accept your plea. I
15 find it is freely, voluntarily, knowingly and intelligently
16 entered, entered with advice of competent counsel with whom
17 you're satisfied and a factual basis is sufficient to
18 support the pleas.

19 Do either of the victims want to say anything?

20 MS. HALL: Yes, sir. This is Minor Child 1. It's
21 [REDACTED].

22 **Minor Child 1** : I hated every sexual encounter that we
23 had. I hated every encounter where he gained sexual
24 gratification from me without my permission. I hope that he
25 will think of me until the last breath that he takes.

1 I have suffered enough with this. And it's time for
2 the healing to take place. I never wanted this to happen.
3 And I definitely don't want it to happen to anybody else. I
4 would like the Court to take into consideration the pain
5 that my sister and I have had and are still living with
6 today. No child should go through this.

7 **THE COURT:** Thank you.

8 **MS. HALL:** Okay. And **Minor Child 2**, she declines
9 the opportunity to speak. I do have their victim impact
10 statements. I would like to hand those up to the Court.

11 **THE COURT:** Okay. Mr. Speedy?

12 **MR. SPEEDY:** Yes, sir, I've seen those.

13 **THE COURT:** All right.

14 **MS. HALL:** And, Your Honor, you know, it's like I said,
15 they've come to us every time. It's -- we just don't want
16 this to happen to somebody else. And the truth is is that
17 if the defendant were to be -- which they have -- they have
18 also stated that they have absolutely no interest in seeing
19 him go to prison initially for this.

20 But the issue, too, is with their desire to have it not
21 happen to anybody else, as the Court knows, if he went
22 straight to prison he would never receive any sexual
23 offender counseling. And so that is what the State and the
24 victims hope that he will receive ---

25 **THE COURT:** All right.

1 **MS. HALL:** --- and that this will prevent this -- him
2 from doing this to anybody else in the future.

3 **THE COURT:** Okay. Yeah, I've neglected, I think, to
4 tell you, Mr. Clayton, that this will require that you be on
5 the Sexual Offender Registry. You understand that?

6 **MR. CLAYTON:** I understand that, Your Honor.

7 **THE COURT:** And on the Child Abuse and Neglect
8 Registry. You understand that?

9 **MR. CLAYTON:** I understand that.

10 **THE COURT:** Do you still, knowing those things, enter
11 your plea to both of these charges under Alford?

12 **MR. CLAYTON:** Yes, Your Honor.

13 **THE COURT:** So you still plead guilty?

14 **MR. CLAYTON:** Yes, Your Honor.

15 **THE COURT:** All right. Mr. Speedy.

16 **MR. SPEEDY:** Yes, sir, Your Honor. As Michael's told
17 you, he's 39 years old. He's presently single, but engaged.
18 He does have a new child. He works for Saluda Hill
19 Landscaping.

20 He actually was -- had worked for SC&G for, I think, 18
21 years before that, but because of his arrest was terminated
22 from them, but had the job with Saluda Hill Landscapers,
23 which is in Lexington County. He's a nursery division
24 manager. He manages other employees as well as manages the
25 products and the materials that they -- that they bring in.

1 He is approximately -- has an equivalent of a second
2 year college education. He actually received a full Citadel
3 scholarship where he attended for a period of time and then
4 he's -- has the equivalent of two years now. He makes about
5 thirty-eight thousand dollars (\$38,000.00) a year.

6 He's been very cooperative. And, of course, I
7 understand the Court's -- the Court has had these situations
8 before -- lots of times, I'm sure. And this decision was
9 very difficult for him to make. But under the circumstances
10 surrounding everything, it was the decision that should be
11 made. And we agree with that. And I told him that I agree
12 with this decision 100 percent.

13 We'd ask you to impose the recommendation. We did
14 specifically say -- I think, Your Honor, under the statute
15 there's no GPS monitoring, but it is discretionary with the
16 Court. And we've sort of talked about not having it. I
17 don't think they're insisting on it. So I would ask that
18 you put no GPS monitoring. That was a consideration that
19 also added to our decision to -- to enter this plea.

20 **THE COURT:** All right. Mr. Clayton, anything you want
21 to say?

22 **MR. CLAYTON:** No, Your Honor.

23 **THE COURT:** All right. The sentence on each of these
24 are the same. They're to run concurrent. They are for five
25 years suspended with five years probation, giving you credit

1 for one day. You're to be on the Sex Offender Registry,
2 Child Abuse Neglect Registry. This can be transferred to
3 Richland County. And no GPS monitoring.

4 **MS. HALL:** Your Honor, we'd also ask for a no contact
5 provision ---

6 **THE COURT:** All right. You're to have no contact with
7 the victims.

8 **MS. HALL:** Directly or indirectly.

9 **THE COURT:** Directly or indirectly. You understand
10 that?

11 **MR. CLAYTON:** Yes, Your Honor.

12 **THE COURT:** All right.

13 **MS. HALL:** And, Your Honor, I know that they probably
14 will require this through probation, but I would also like
15 for it to be a part of the court order that he -- that he
16 attend and complete successfully sexual offender counseling.

17 **THE COURT:** Any problem with that, Mr. Clayton?

18 **MR. CLAYTON:** No, Your Honor.

19 **THE COURT:** I've added complete sex offender
20 counseling. All right. Thank you.

21 **MR. SPEEDY:** Thank you, Your Honor.

22 (Hearing Ended at 1:38 pm)

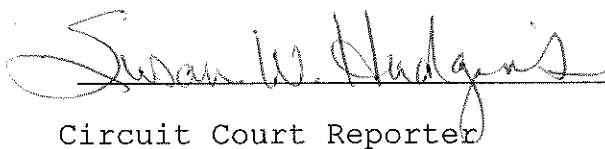
23 (End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Sixth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Fairfield County, South Carolina, on the 27th day of August 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 13, 2019

A handwritten signature in cursive script, reading "Susan W. Hudgins", is written over a horizontal line.

Circuit Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

MICHAEL CLAYTON

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2019 MAR 19 AM 9:15
Plaintiff(s)

2019 - CP - 20 - 109

vs.

FAIRFIELD COUNTY
CLERK OF COURT
JUDY M. BONDYAPPLICATION FOR
POST-CONVICTION RELIEF

STATE OF SOUTH CAROLINA

Defendant(s)

Submitted By: Dayne C. Phillips, Esq.

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Other: 803-272-4503

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NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ General (130) ☐ Breach of Contract (140) ☐ Fraud/Bad Faith (150) ☐ Failure to Deliver/Warranty (160) ☐ Employment Discrim (170) ☐ Employment (180) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) ☐ Previous Notice of Intent Case # 20 - NI - ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Assault/Battery (370) ☐ Slander/Label (380) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☒ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699) ☐ Sexual Predator (510) ☐ Permanent Restraining Order (680)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Pre-Suit Discovery (670)		

Submitting Party Signature:

Dayne Phillips

Date: March 15, 2019

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA
 COUNTY OF FAIRFIELD

MICHAEL CLAYTON
 Applicant,

v.

State of South Carolina

2019 MAR 19 AM 9:15
 FAIRFIELD COUNTY
 CLERK OF COURT
 JUDY M. ECHOLS

SIXTH JUDICIAL CIRCUIT

Case No. 2019-CP-20-109

APPLICATION FOR
 POST-CONVICTION RELIEF

As required by Rule 71.1(b), SCRCP, this application is in conformity with Form 5 of the SCRCP Appendix of Forms.

1. Place of Detention: Applicant is not detained in the South Carolina Department of Corrections.
2. Name and location of Court which imposed sentence: Fairfield County Court of General Sessions, 101 South Congress Street, Winnsboro, SC 29180.
3. Name(s) of co-defendant(s) (if any): There are no co-defendants.
4. The indictment number(s) upon which and the offenses for which sentence was imposed:
 - (a) 2018-GS-20-00181 (Criminal Sexual Conduct with a Minor, 2nd Degree).
 - (b) 2018-GS-20-00265 (Criminal Sexual Conduct with a Minor, 2nd Degree).
5. The date upon which the sentence was imposed and the terms of the sentence:
 - (a) August 27, 2018.
 - (b) Five (5) years suspended to Five (5) years probation for indictment number 2018-GS-20-00181.
 - (c) Five (5) years suspended to Five (5) years probation for indictment number 2018-GS-20-00265 (concurrent).
6. A finding of guilty was made:
 - (a) After a guilty plea pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970) before the Honorable John C. Hayes, III.

7. Did you appeal from the judgment of conviction and/or the imposition of the sentence?
 - (a) No.
8. If you answered "yes" to number (7), list:
 - (a) The name of each Court to which you appealed:
 - i. N/A.
 - (b) The result in each Court to which you appealed:
 - i. N/A.
 - (c) The date of each result:
 - i. N/A.
 - (d) If known, citations of any written opinions or ordered entered pursuant to such result:
 - i. N/A.
9. If you answered "no" to number (7), state your reasons for not appealing:
 - (a) No issues preserved for direct appellate review.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) Plea Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. See S.C. Code § 17-27-20(A)(1), (4), and (6). Plea Counsel's unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Plea Counsel's errors, Applicant would not have pled guilty. See *Hill v. Lockhart*, 474 U.S. 52 (1985) (applying the *Strickland v. Washington*, 466 U.S. 668 (1984) standard to guilty plea challenges of ineffective assistance of counsel).
11. State concisely and in the same order the facts which support each of the grounds set out

in number (10):

- (a) Plea Counsel's acts or omissions included, but not are not limited to the following allegations:
- (i) Applicant did not voluntarily, knowingly, or intelligently plead guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970). See *Boykin v. Alabama*, 395 U.S. 238 (1969).
 - (ii) Plea Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant's defense. See *Wiggins v. Smith*, 539 U.S. 510 (2003). Specifically, Plea Counsel failed interview critical witnesses who could have challenged the credibility of the State's witnesses and could have undermined the State's evidence when it was reasonable and necessary to do so in preparation for trial. See *Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008); *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008); *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004); *Reeves v. State*, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015); *Cf. Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995).
 - (iii) Plea Counsel failed to adequately prepare for trial by not interviewing witnesses who could have testified regarding Applicant's good character and reputation when it was reasonable and necessary to present this evidence at trial and request a jury instruction on good character and reputation. See *State v. Harrison*, 343 S.C. 165, 539 S.E.2d 71 (Ct. App. 2000); *Cf. Stalk v. State*, 383 S.C. 559, 681 S.E.2d 592 (2009).
 - (iv) Plea Counsel also failed to adequately prepare for trial by not reviewing pictures in

Applicant's possession that would have contradicted portions of the complaining witnesses' statements to the police.

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 Federal Habeas Corpus or Post-Conviction Relief? No. Applicant has not previously filed an application for Post-Conviction Relief or Petition for Writ of Habeas Corpus in either state or federal court.
 - (c) Any petition in the Supreme Court of the United States for certiorari other than petitions, if any, already specified in number (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 number (12), list with respect to each petition, motion, or application:
 - (a) The specific nature thereof:
 - i. Not applicable.
 - (b) The name and location of the Court in which each was filed:
 - i. Not applicable.
 - (c) The disposition thereof:
 - i. Not applicable.
 - (d) The date of each such disposition:
 - i. Not applicable.
14. Has any ground set forth in number (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 number (14), identify:
 - (a) The grounds which have been presented:

i. Not applicable.

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

i. Not applicable.

16. If any ground set forth in number (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) Post-Conviction Relief is the proper forum and remedy for these allegations because the grounds for relief presented in this application are evidence of ineffective assistance of counsel, not preserved for appellate review, or were not appropriate to raise or were not properly raised on Direct Appeal.

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

(a) Your plea hearing? Yes.

(b) Your trial? No.

(c) Your sentencing? Yes.

(d) Your appeal, if any, from the judgment of conviction and/or imposition of the sentence? No.

(e) Preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? Yes.

18. If you answered "yes" to one or more parts of number (17), list:

(a) The name and address of each attorney who represented you:

(i) George Speedy, Esq., 708 Lafayette Avenue, Camden, SC 29020.

(ii) Dayne C. Phillips, 1614 Taylor Street, Ste D., Columbia, SC 29201.

(b) The proceedings at which each attorney represented you:

(i) George Speedy represented Applicant at the plea hearing (Plea Counsel).

(ii) Dayne C. Phillips is currently representing Applicant on this application for Post-Conviction Relief.

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

Applicant seeks Post-Conviction Relief by vacating his convictions and sentences and remanding the indictments for a new trial based on ineffective assistance of counsel.

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

No. Applicant is not under sentence from any other court.

[Applicant's Verification to Follow]

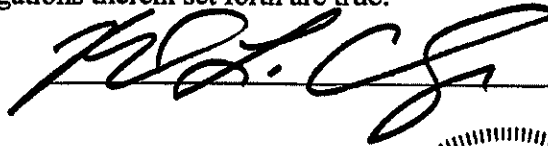
STATE OF SOUTH CAROLINA

County of Fairfield

)
)
)

VERIFICATION

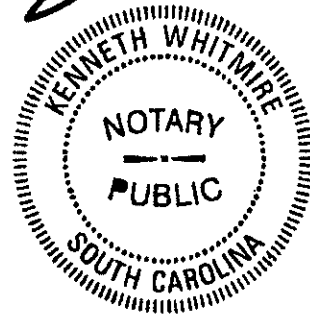
I, Michael Clayton, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 14th
day of March, 2019.



Notary Public (L.S.)



My Commission Expires: My Commission Expires June 12, 2027

2019 MAR 19 AM 9:16
FAIRFIELD COUNTY
CLERK OF COURT
JUDY M. EDWARDS

7 of 7

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the within and foregoing Application for Post-Conviction Relief by depositing a true and correct copy of the same via first-class mail, postage prepaid, upon all parties as follows:

Alan Wilson, S.C. Attorney General
South Carolina Attorney General's Office
1000 Assembly Street, Room 519
Columbia, SC 29201

The Honorable Judy M. Bonds
Fairfield County Clerk of Court
P.O. Drawer 299
Winnsboro, SC 29180

2019 MAR 19 AM 9:16
FAIRFIELD COUNTY
CLERK OF COURT
JUDY M. BONDS

By: 

Toby Whitmire

Law Clerk for Dayne C. Phillips, Esq.

1614 Taylor Street, Suite D.
Columbia, SC 29201
C: (803) 386-1596
F: (803) 380-8035
lawclerk.whitmire@gmail.com

March 15, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FAIRFIELD	)	FOR THE SIXTH JUDICIAL CIRCUIT
	)	
	)	2019-CP-20-0109
Michael Clayton,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief (PCR) action commenced by Michael Clayton on March 19, 2019, the State makes this return:

I. PROCEDURAL HISTORY

Applicant is currently on probation. Applicant was indicted at the August 2018 term of the Fairfield County Grand Jury for second-degree criminal sexual conduct (CSC) with a minor (2018-GS-20-181). Applicant was represented by George Speedy, Esquire. On August 27, 2018, Applicant pleaded pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), to two counts of second-degree CSC with a minor before Judge John C. Hayes, III. Applicant waived presentment of the additional second-degree CSC with a minor charge at the plea hearing. Judge Hayes accepted Applicant's guilty plea and sentenced him to concurrent terms of imprisonment for five years on each charge, suspended upon the service of five years' probation. Applicant did not appeal his plea or sentence.

Applicant commenced this PCR action on March 19, 2019.

II. FACTS

Applicant's charges stem from his relationship with T.C. (Mother) and her two daughters, the victims. Mother and her children moved into Applicant's home in 2003. The victims had

separate bedrooms across the hall from one another. In 2004, Applicant began visiting each victim's room. Applicant would enter one victim's bedroom, stay in the room for about ten minutes, and then transition to the other victim's bedroom. Both victims reported Applicant digitally penetrated their vaginas, groped them, and made them touch his penis on several occasions during his visits to their bedrooms over the course of several years. (Plea Tr. 10–11). These incidents occurred from age ten to fourteen on one victim, and eleven to eighteen on the other victim. (Plea Tr. 12).

III. ALLEGATIONS

Applicant alleges ineffective assistance of counsel rendering his guilty plea unknowing and involuntary. Applicant asserts plea counsel was deficient in several aspects, and contends he would not have pleaded guilty but for plea counsel's alleged deficiencies. Applicant alleges plea counsel was deficient for:

1. Failure to conduct a reasonable investigation and develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant's defense;
 - a. Failure to interview critical witnesses who could have challenged the credibility of the State's witnesses and could have undermined the State's evidence when it was reasonable and necessary to do so in preparation for trial.
 - b. Failure to interview potential character witnesses;
 - c. Failure to review pictures Applicant possessed that would have contradicted portions of the complaining witness's statements to the police.

Applicant requests relief in the form of a new trial.

For the purposes of this return, the State incorporates the Fairfield County Clerk of Court records, the plea transcript, and the PCR application. The State reserves the right to amend its return upon receipt of any relevant materials.

IV. RESPONSE TO INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant's allegation of ineffective assistance of counsel is without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). “The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985).

The test for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *Alford*, 400 U.S. at 31. Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). However, counsel is presumed to have adequately assisted the applicant and exercised reasonable professional judgment in making decisions in the case. *Edwards*, 392 S.C. at 456, 710 S.E.2d at 64. “[W]here counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.” *Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

“[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624

(1999). Plea counsel is not deficient for advising a defendant to plead guilty based on what counsel believes the sentence would be if the defendant were convicted at trial. *See Bennett v. State*, 371 S.C. 198, 204–05, 638 S.E.2d 673, 676 (2006). To prove prejudice, the applicant must show a reasonable probability he would not have pleaded guilty and would have insisted on going to trial absent plea counsel’s alleged deficiency. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

The record does not directly disprove Applicant’s allegations of ineffective assistance of counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

V. ANY FUTURE AMENDMENTS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to the Uniform Post-Conviction Relief Act¹ and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)–(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCP.

¹ S.C. Code Ann. §§ 17-27-10 to -160.

VI. RESPONSE TO ANY AND ALL OTHER ALLEGATIONS

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VII. REQUEST FOR AN EVIDENTIARY HEARING

WHEREFORE, the State requests an evidentiary hearing be held on the claims of ineffective assistance of plea counsel.

Respectfully submitted,

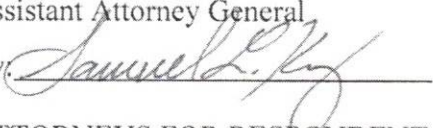
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

SAMUEL L. KEY
Assistant Attorney General

July 3, 2019

By: 

ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FAIRFIELD	)	
	)	
	)	2019-CP-20-0109
MICHAEL CLAYTON	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Dayne C. Phillips, Esquire
Price Benowitz LLP
1614 Taylor Street, Suite D
Columbia, South Carolina 29201

DATED this 3rd Day of July, 2019.



Eva Cook, Legal Assistant
For Respondent

COUNTY OF FAIRFIELDMichael Clayton

2020 JAN 16 10:12

Plaintiff(s)

FAIRFIELD COUNTY
CLERK OF COURT
JUDY M BORDS

vs.

CIVIL ACTION COVERSHEET

2019 - CP - 20 - 0109

State of South Carolina

Defendant(s)

AMENDED APPLICATION FOR
POST-CONVICTION RELIEFSubmitted By: Dayne Phillips, Esq.
Address: 1614 Taylor Street, Suite D.
Columbia, SCSC Bar #: 77712
Telephone #: 803-807-0234 (direct)
Fax #: 803-380-8035
Other: 803-272-4503 (office)
E-mail: dayne@pricebenowitz.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. **This form is NOT required to be filed in E-Filed Cases.**

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ General (130) ☐ Breach of Contract (140) ☐ Fraud/Bad Faith (150) ☐ Failure to Deliver/ Warranty (160) ☐ Employment Discrim (170) ☐ Employment (180) ☐ Other (199) _____	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20____-NI-_____ ☐ Notice/ File Med Mal (230) ☐ Other (299) _____	Torts - Personal Injury ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Assault/Battery (370) ☐ Slander/Libel (380) ☐ Other (399) _____	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499) _____
Inmate Petitions ☒ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599) _____	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899) _____	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Incapacitated Adult Settlement (790) ☐ Other (799) _____	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999) _____
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699) _____ ☐ Sexual Predator (510) ☐ Permanent Restraining Order (680) ☐ Interpleader (690)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Pre-Suit Discovery (670)		

Submitting Party Signature: Dayne PhillipsDate: January 13, 2020

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

MICHAEL CLAYTON,
Applicant,

v.

State of South Carolina

) IN THE COURT OF COMMON PLEAS
)
) SIXTH JUDICIAL CIRCUIT
) FAIRFIELD COUNTY
) CLERK OF COURT
) JUDY M BOND Case No. 2019-CP-20-0109
)
) AMENDED APPLICATION FOR
) POST-CONVICTION RELIEF
)
)
)
)

As required by Rule 71.1(b), SCRCP, this application is in conformity with Form 5 of the SCRCP Appendix of Forms.

1. Place of Detention: Applicant is not detained in the South Carolina Department of Corrections.
2. Name and location of Court which imposed sentence: Fairfield County Court of General Sessions, 101 South Congress Street, Winnsboro, SC 29180.
3. Name(s) of co-defendant(s) (if any): There are no co-defendants.
4. The indictment number(s) upon which and the offenses for which sentence was imposed:
 - (a) 2018-GS-20-00181 (Criminal Sexual Conduct with a Minor, 2nd Degree).
 - (b) 2018-GS-20-00265 (Criminal Sexual Conduct with a Minor, 2nd Degree).
5. The date upon which the sentence was imposed and the terms of the sentence:
 - (a) August 27, 2018.
 - (b) Five (5) years suspended to Five (5) years probation for indictment number 2018-GS-20-00181.
 - (c) Five (5) years suspended to Five (5) years probation for indictment number 2018-GS-20-00265 (concurrent).
6. A finding of guilty was made:
 - (a) After a guilty plea pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970) before the Honorable John C. Hayes, III.

7. Did you appeal from the judgment of conviction and/or the imposition of the sentence?
 - (a) No.
8. If you answered "yes" to number (7), list:
 - (a) The name of each Court to which you appealed:
 - i. N/A.
 - (b) The result in each Court to which you appealed:
 - i. N/A.
 - (c) The date of each result:
 - i. N/A.
 - (d) If known, citations of any written opinions or ordered entered pursuant to such result:
 - i. N/A.
9. If you answered "no" to number (7), state your reasons for not appealing:
 - (a) No issues preserved for direct appellate review.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) Plea Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. See S.C. Code § 17-27-20(A)(1), (4), and (6). Plea Counsel's unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Plea Counsel's errors, **Applicant would not have pled guilty and went to trial.** See *Hill v. Lockhart*, 474 U.S. 52 (1985) (applying the *Strickland v. Washington*, 466 U.S. 668 (1984) standard to guilty plea challenges of ineffective assistance of counsel).

11. State concisely and in the same order the facts which support each of the grounds set out in number (10):
- (a) Plea Counsel's acts or omissions included, but not are not limited to the following allegations:
 - (i) Applicant did not voluntarily, knowingly, or intelligently plead guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970). See *Boykin v. Alabama*, 395 U.S. 238 (1969).
 - (ii) Plea Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant's defense. See *Wiggins v. Smith*, 539 U.S. 510 (2003). Specifically, Plea Counsel failed interview critical witnesses who could have challenged the credibility of the State's witnesses and could have undermined the State's evidence when it was reasonable and necessary to do so in preparation for trial. See *Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008); *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008); *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004); *Reeves v. State*, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015); *Cf. Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995).
 - (iii) Plea Counsel failed to adequately prepare for trial by not interviewing witnesses who could have testified regarding Applicant's good character and reputation when it was reasonable and necessary to present this evidence at trial and request a jury instruction on good character and reputation. See *State v. Harrison*, 343 S.C. 165, 539 S.E.2d 71 (Ct. App. 2000); *Cf. Stalk v. State*, 383 S.C. 559, 681 S.E.2d 592 (2009).

- (iv) Plea Counsel also failed to adequately prepare for trial by not reviewing pictures in Applicant's possession that would have contradicted portions of the complaining witnesses' statements to the police.
- (v) Plea Counsel failed to conduct a reasonable investigation for not interviewing the law enforcement officer who received the report filed in Newberry County by the victim's biological father and for not conducting any further investigation into this complaint when this law enforcement agency did not pursue charges against Applicant. See *Lounds*, 380 S.C. 454, 670 S.E.2d 646; *McKnight*, 378 S.C. 33, 46, 661 S.E.2d 354, 360.
- (vi) Applicant involuntarily pled guilty based on Plea Counsel's failure to adequately prepare for trial, Counsel's decision to change his unreasonable trial strategy immediately before trial, and Counsel's erroneous and unduly coercive advice to plead guilty the morning of trial. See generally *Alexander v. State*, 303 S.C. 539, 542-43, 402 S.E.2d 484, 485-86 (1991 (finding the petitioner's own testimony that he would have proceeded to trial but for counsel's misadvice as to sentencing was "the only evidence in the record on this point" and was sufficient to satisfy the prejudice prong of the *Strickland* test); see also *McKnight*, 378 S.C. at 46, 661 S.E.2d at 360 (finding "[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State."); *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding "counsel must articulate a valid reason for employing a certain strategy to avoid a finding

of ineffectiveness, and where counsel articulates a strategy, it is measured under an objective standard of reasonableness”).

- (vii) Applicant involuntarily pled guilty based on Plea Counsel’s failure to advise him regarding all the sentencing consequences of his guilty plea. Specifically, Applicant pled guilty under *North Carolina v. Alford*, 400 U.S. 25 (1970) to offenses that required him to be on the sex offender registry, which also required that Applicant comply with specific conditions of supervision and attend specific treatment demanding he accept responsibility for the offenses with polygraph testing (despite that he maintained his innocence at the plea hearing pursuant to the *Alford* plea). Plea Counsel did not review the specific conditions of sex offender registry with Applicant nor did Counsel tell him about the specific treatment requiring him to accept responsibility. See generally *Alexander*, 303 S.C. at 542-3, 402 S.E.2d at 485-86 (1991 (finding the petitioner's own testimony that he would have proceeded to trial but for counsel's misadvice as to sentencing was “the only evidence in the record on this point” and was sufficient to satisfy the prejudice prong of the *Strickland* test); *Jackson v. State*, 342 S.C. 95, 97—98, 535 S.E.2d 926, 927 (2000) (citing *Alexander* with approval and finding the petitioner satisfied the prejudice prong by simply providing testimony that he would not have pled guilty, but for trial counsel's misadvice); *Smith v. State*, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006) (“The defendant's undisputed testimony that he would not have pled guilty to the charges but for trial counsel's advice is sufficient to prove that defendant would not have pled guilty.”).

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 Federal Habeas Corpus or Post-Conviction Relief? No. Applicant has not previously filed an application for Post-Conviction Relief or Petition for Writ of Habeas Corpus in either state or federal court.
 - (c) Any petition in the Supreme Court of the United States for certiorari other than petitions, if any, already specified in number (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 number (12), list with respect to each petition, motion, or application:
- (a) The specific nature thereof:
 - i. Not applicable.
 - (b) The name and location of the Court in which each was filed:
 - i. Not applicable.
 - (c) The disposition thereof:
 - i. Not applicable.
 - (d) The date of each such disposition:
 - i. Not applicable.
14. Has any ground set forth in number (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 number (14), identify:
- (a) The grounds which have been presented:
 - i. Not applicable.
 - (b) The proceedings in which each ground was raised:

i. Not applicable.

16. If any ground set forth in number (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) Post-Conviction Relief is the proper forum and remedy for these allegations because the grounds for relief presented in this application are evidence of ineffective assistance of counsel, not preserved for appellate review, or were not appropriate to raise or were not properly raised on Direct Appeal.

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

(a) Your plea hearing? Yes.

(b) Your trial? No.

(c) Your sentencing? Yes.

(d) Your appeal, if any, from the judgment of conviction and/or imposition of the sentence? No.

(e) Preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? Yes.

18. If you answered "yes" to one or more parts of number (17), list:

(a) The name and address of each attorney who represented you:

(i) George Speedy, Esq., 708 Lafayette Avenue, Camden, SC 29020.

(ii) Dayne C. Phillips, 1614 Taylor Street, Ste D., Columbia, SC 29201.

(b) The proceedings at which each attorney represented you:

(i) George Speedy represented Applicant at the plea hearing (Plea Counsel).

(ii) Dayne C. Phillips is currently representing Applicant on this application for Post-Conviction Relief.

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

Applicant seeks Post-Conviction Relief by vacating his convictions and sentences and remanding the indictments for a new trial based on ineffective assistance of counsel.

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

No. Applicant is not under sentence from any other court.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the within and foregoing Amended Application for Post-Conviction Relief by depositing a true and correct copy of the same via first-class mail, postage prepaid, upon all parties as follows:

Samuel Key, Esq.
South Carolina Attorney General's Office
1000 Assembly Street, Room 519
Columbia, SC 29201

The Honorable Judy M. Bonds
Fairfield County Clerk of Court
P.O. Drawer 299
Winnsboro, SC 29180

2020 JAN 16 10:12
FAIRFIELD COUNTY
CLERK OF COURT
JUDY M. BONDS

By: Courtney Powers
Courtney Powers
Paralegal to Dayne C. Phillips, Esq.

1614 Taylor Street, Suite D.
Columbia, SC 29201
C: (803) 216-5561
F: (803) 380-8035
courtney@pricebenowitz.com

January 13, 2020

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELDMichael ClaytonState of South Carolina

Submitted By: Dayne Phillips, Esq.
 Address: 1614 Taylor Street, Suite D.
Columbia, SC

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2019 - CP - 20 - 0109

SECOND AMENDED APPLICATION
 FOR POST-CONVICTION RELIEF

2020 JAN 22 PM 2:01
 FAIRFIELD COUNTY
 CLERK OF COURT
 JUDY M BOND

SC Bar #: 77712
 Telephone #: 803-807-0234 (direct)
 Fax #: 803-380-8035
 Other: 803-272-4503 (office)
 E-mail: dayne@pricebenowitz.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ General (130) ☐ Breach of Contract (140) ☐ Fraud/Bad Faith (150) ☐ Failure to Deliver/ Warranty (160) ☐ Employment Discrim (170) ☐ Employment (180) ☐ Other (199) _____	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 _____ -NI- _____ ☐ Notice/ File Med Mal (230) ☐ Other (299) _____	Torts - Personal Injury ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Assault/Battery (370) ☐ Slander/Libel (380) ☐ Other (399) _____	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499) _____
Inmate Petitions ☒ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599) _____	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899) _____	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Incapacitated Adult Settlement (790) ☐ Other (799) _____	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999) _____
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699) _____ ☐ Sexual Predator (510) ☐ Permanent Restraining Order (680) ☐ Interpleader (690)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Pre-Suit Discovery (670)		

Submitting Party Signature: Dayne PhillipsDate: January 17, 2020

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

MICHAEL CLAYTON

Applicant,

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

SIXTH JUDICIAL CIRCUIT

Case No. 2019-CP-20-0109

SECOND AMENDED APPLICATION FOR
POST-CONVICTION RELIEF

As required by Rule 71.1(b), SCRCP, this application is in conformity with Form 5 of the SCRCP Appendix of Forms.

1. Place of Detention: Applicant is not detained in the South Carolina Department of Corrections.
2. Name and location of Court which imposed sentence: Fairfield County Court of General Sessions, 101 South Congress Street, Winnsboro, SC 29180.
3. Name(s) of co-defendant(s) (if any): There are no co-defendants.
4. The indictment number(s) upon which and the offenses for which sentence was imposed:
 - (a) 2018-GS-20-00181 (Criminal Sexual Conduct with a Minor, 2nd Degree).
 - (b) 2018-GS-20-00265 (Criminal Sexual Conduct with a Minor, 2nd Degree).
5. The date upon which the sentence was imposed and the terms of the sentence:
 - (a) August 27, 2018.
 - (b) Five (5) years suspended to Five (5) years probation for indictment number 2018-GS-20-00181.
 - (c) Five (5) years suspended to Five (5) years probation for indictment number 2018-GS-20-00265 (concurrent).
6. A finding of guilty was made:
 - (a) After a guilty plea pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970) before the Honorable John C. Hayes, III.

7. Did you appeal from the judgment of conviction and/or the imposition of the sentence?
 - (a) No.
8. If you answered "yes" to number (7), list:
 - (a) The name of each Court to which you appealed:
 - i. N/A.
 - (b) The result in each Court to which you appealed:
 - i. N/A.
 - (c) The date of each result:
 - i. N/A.
 - (d) If known, citations of any written opinions or ordered entered pursuant to such result:
 - i. N/A.
9. If you answered "no" to number (7), state your reasons for not appealing:
 - (a) No issues preserved for direct appellate review.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) Plea Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. See S.C. Code § 17-27-20(A)(1), (4), and (6). Plea Counsel's unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Plea Counsel's errors, Applicant would not have pled guilty and went to trial. See *Hill v. Lockhart*, 474 U.S. 52 (1985) (applying the *Strickland v. Washington*, 466 U.S. 668 (1984) standard to guilty plea challenges of ineffective assistance of counsel).

11. State concisely and in the same order the facts which support each of the grounds set out in number (10):
- (a) Plea Counsel's acts or omissions included, but not are not limited to the following allegations:
 - (i) Applicant did not voluntarily, knowingly, or intelligently plead guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970). See *Boykin v. Alabama*, 395 U.S. 238 (1969).
 - (ii) Plea Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant's defense. See *Wiggins v. Smith*, 539 U.S. 510 (2003). Specifically, Plea Counsel failed interview critical witnesses who could have challenged the credibility of the State's witnesses and could have undermined the State's evidence when it was reasonable and necessary to do so in preparation for trial. See *Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008); *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008); *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004); *Reeves v. State*, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015); *Cf. Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995).
 - (iii) Plea Counsel failed to adequately prepare for trial by not interviewing witnesses who could have testified regarding Applicant's good character and reputation when it was reasonable and necessary to present this evidence at trial and request a jury instruction on good character and reputation. See *State v. Harrison*, 343 S.C. 165, 539 S.E.2d 71 (Ct. App. 2000); *Cf. Stalk v. State*, 383 S.C. 559, 681 S.E.2d 592 (2009).

- (iv) Plea Counsel also failed to adequately prepare for trial by not reviewing pictures in Applicant's possession that would have contradicted portions of the complaining witnesses' statements to the police.
- (v) Plea Counsel failed to conduct a reasonable investigation for not interviewing the law enforcement officer who received the report filed in Newberry County by the victim's biological father and for not conducting any further investigation into this complaint when this law enforcement agency did not pursue charges against Applicant. See *Lounds*, 380 S.C. 454, 670 S.E.2d 646; *McKnight*, 378 S.C. 33, 46, 661 S.E.2d 354, 360.
- (vi) Applicant involuntarily pled guilty based on Plea Counsel's failure to adequately prepare for trial, Counsel's decision to change his unreasonable trial strategy immediately before trial, and Counsel's erroneous and unduly coercive advice to plead guilty the morning of trial. See generally *Alexander v. State*, 303 S.C. 539, 542-43, 402 S.E.2d 484, 485-86 (1991 (finding the petitioner's own testimony that he would have proceeded to trial but for counsel's misadvice as to sentencing was "the only evidence in the record on this point" and was sufficient to satisfy the prejudice prong of the *Strickland* test); see also *McKnight*, 378 S.C. at 46, 661 S.E.2d at 360 (finding "[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State."); *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding "counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness, and where counsel articulates a strategy,

it is measured under an objective standard of reasonableness”).

(vii) Applicant involuntarily pled guilty based on Plea Counsel’s failure to advise him regarding all the sentencing consequences of his guilty plea. Specifically, Applicant pled guilty under *North Carolina v. Alford*, 400 U.S. 25 (1970) to offenses that required him to be on the sex offender registry, which also required that Applicant comply with specific conditions of supervision and attend specific treatment demanding he accept responsibility for the offenses with polygraph testing (despite that he maintained his innocence at the plea hearing pursuant to the *Alford* plea). Plea Counsel did not review the specific conditions of sex offender registry with Applicant nor did Counsel tell him about the specific treatment requiring him to accept responsibility. See generally *Alexander*, 303 S.C. at 542-3, 402 S.E.2d at 485-86 (1991 (finding the petitioner's own testimony that he would have proceeded to trial but for counsel's misadvice as to sentencing was “the only evidence in the record on this point” and was sufficient to satisfy the prejudice prong of the *Strickland* test); *Jackson v. State*, 342 S.C. 95, 97—98, 535 S.E.2d 926, 927 (2000) (citing *Alexander* with approval and finding the petitioner satisfied the prejudice prong by simply providing testimony that he would not have pled guilty, but for trial counsel's misadvice); *Smith v. State*, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006) (“The defendant's undisputed testimony that he would not have pled guilty to the charges but for trial counsel's advice is sufficient to prove that defendant would not have pled guilty.”).

(viii) Plea Counsel failed to interview Lt. Garrett Lominack and Inv. Robert Dennis of the Newberry County Sheriff’s Office regarding the complaint filed by the

victim's biological father, and their investigation into the complaint.

- (ix) Please Counsel failed to interview Investigator Castles of the Fairfield County Sheriff's Office regarding his investigation in this case.
- (x) Plea Counsel failed to interview Tova Clayton, Meredith Suber, Cindy Long, and Roger Long, regarding the allegations of the victim's disclosure of Applicant's sexual abuse.
- (xi) Plea Counsel abandoned his role as defense counsel by failing to conduct a reasonable investigation and adequately prepare for trial. *United States v. Cronin*, 466 U.S. 648, 659 (1984); *See Nance v. Ozmint*, 367 S.C. 547, 548-52, 626 S.E.2d 878, 878-80 (2006) (holding that "pre-se prejudice occurs if there has been a constructive denial of counsel," which arises when defense counsel's deficient performance constitutes "a classic example of a complete breakdown in the adversarial process"); *see also Green v. State*, 351 S.C. 184, 196, 569 S.E.2d 318, 324 (2002) (holding that although an applicant "must ordinarily show actual prejudice, he may be relieved of that burden if counsel's ineffectiveness is so pervasive as to render a particularized prejudice inquiry unnecessary").

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 Federal Habeas Corpus or Post-Conviction Relief? No. Applicant has not previously filed an application for Post-Conviction Relief or Petition for Writ of Habeas Corpus in either state or federal court.
- (c) Any petition in the Supreme Court of the United States for certiorari other than

petitions, if any, already specified in number (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 number (12), list with respect to each petition, motion, or application:

(a) The specific nature thereof:

i. Not applicable.

(b) The name and location of the Court in which each was filed:

i. Not applicable.

(c) The disposition thereof:

i. Not applicable.

(d) The date of each such disposition:

i. Not applicable.

14. Has any ground set forth in number (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 number (14), identify:

(a) The grounds which have been presented:

i. Not applicable.

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

i. Not applicable.

16. If any ground set forth in number (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) Post-Conviction Relief is the proper forum and remedy for these allegations because the grounds for relief presented in this application are evidence of ineffective assistance of counsel, not preserved for appellate review, or were not appropriate to raise or were not properly raised on Direct Appeal.

17. Were you represented by an attorney at any time during the course of:
- (a) Your plea hearing? Yes.
 - (b) Your trial? No.
 - (c) Your sentencing? Yes.
 - (d) Your appeal, if any, from the judgment of conviction and/or imposition of the sentence? No.
 - (e) Preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? Yes.
18. If you answered "yes" to one or more parts of number (17), list:
- (a) The name and address of each attorney who represented you:
 - (i) George Speedy, Esq., 708 Lafayette Avenue, Camden, SC 29020.
 - (ii) Dayne C. Phillips, 1614 Taylor Street, Ste D., Columbia, SC 29201.
 - (b) The proceedings at which each attorney represented you:
 - (i) George Speedy represented Applicant at the plea hearing (Plea Counsel).
 - (ii) Dayne C. Phillips is currently representing Applicant on this application for Post-Conviction Relief.
19. State clearly the relief you seek in filing this application:
- Applicant seeks Post-Conviction Relief by vacating his convictions and sentences and remanding the indictments for a new trial based on ineffective assistance of counsel.
20. Are you now under sentence from any other court that you have not challenged?
- No. Applicant is not under sentence from any other court.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the within and foregoing Second Amended Application for Post-Conviction Relief by depositing a true and correct copy of the same via first-class mail, postage prepaid, upon all parties as follows:

Samuel Key, Esq.
South Carolina Attorney General's Office
1000 Assembly Street, Room 519
Columbia, SC 29201

The Honorable Judy M. Bonds
Fairfield County Clerk of Court
P.O. Drawer 299
Winnsboro, SC 29180

2020 JAN 22 PM 2:01
FAIRFIELD COUNTY
CLERK OF COURT
JUDY M. BONDS

By: Courtney Powers
Courtney Powers
Paralegal to Dayne C. Phillips, Esq.

1614 Taylor Street, Suite D.
Columbia, SC 29201
C: (803) 216-5561
F: (803) 380-8035
courtney@pricebenowitz.com

January 17, 2020

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF LANCASTER
4 2019-CP-29-00109
5 Michael Clayton, Jr.
6 Vs.
7 State of South Carolina
8
9 Lancaster, South Carolina
10 January 30, 2020
11 Before the Honorable Robert Hood
12 APPEARANCES
13 For the State: Samuel Key
14 For the Applicant: Dane Phillips
15
16 Reported by: Michael C. Watkins
17 Official Court Reporter
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1 THE COURT: We're on the record in 2019-CP-20-0109.
2 This is Michael Clayton versus the State of South Carolina.
3 Is Mr. Clayton present?

4 MR. PHILLIPS: Yes, Your Honor.

5 THE COURT: Keep your seat. Thank you, Mr. Phillips, I
6 appreciate that. Thank you for being here, Mr. Clayton.
7 Mr. Clayton is represented by Dane Phillips of the private
8 bar, and the State is present and represented by Samuel Key
9 of the South Carolina Attorney General's Office. And is
10 everybody ready to go forward?

11 MR. PHILLIPS: Yes, Your Honor.

12 THE COURT: Okay.

13 MR. KEY: Yes, Your Honor.

14 THE COURT: All right. Who wants to start with a
15 little bit of background?

16 MR. KEY: I will, Your Honor.

17 THE COURT: Okay.

18 MR. KEY: May it please the Court? Mr. Clayton filed
19 this PCR application on March 19th of 2019. He's currently
20 on probation. He was indicted at the August 2018 term of
21 the Fairfield County Grand Jury for second degree criminal
22 sexual conduct with a minor and he was represented by George
23 Speedy. On August 27th, 2018, he pleaded pursuant to North
24 Carolina versus Alford to two counts of second degree CSC
25 with a minor before Judge John C. Hayes. He waived

1 presentment of the second, second degree CSC with a minor
2 charge at the plea hearing. Judge Hayes accepted
3 applicant's plea and sentenced him to concurrent terms of
4 imprisonment for five years on each charge suspended upon
5 the service of five years of probation. He did not appeal
6 his plea or sentence. Just -- Mr. Clayton is here today, he
7 is represented by Dane Phillips. As a housekeeping matter
8 there has been a -- the initial application, the amended
9 application and the second amended application, it's my
10 understanding that the second amended application
11 includes -- encompasses all of the allegations from the
12 previous two, and I would just ask that Mr. Phillips clarify
13 that we are going forward on the allegations in the second
14 amended application.

15 THE COURT: Okay. All right. Mr. Phillips, good
16 morning.

17 MR. PHILLIPS: Good morning, Your Honor. That's
18 correct, we are proceeding on the second amended application
19 that was filed on January 2nd of 2020.

20 THE COURT: And you filed that one?

21 MR. PHILLIPS: Yes, Your Honor.

22 THE COURT: Okay. Great. Wonderful. Thank you. I
23 appreciate you doing that. Normally when I come into these
24 hearings those are usually filed, you know, the morning of,
25 not the attorney, so --

1 MR. PHILLIPS: In all fairness to the attorney
2 general's office I tried to get it to them as soon as
3 possible before the plea hearing.

4 THE COURT: Thank you, very much.

5 MR. PHILLIPS: With that, Your Honor, I will start to
6 go through the allegations that are presented in that
7 application. Plea counsel denied applicant's right to
8 effective assistance of counsel as guaranteed by the Sixth
9 and Fourteenth Amendments of the United States Constitution,
10 in Article One, Section Three and Fourteen of the South
11 Carolina Constitution. Plea counsel's unreasonably
12 deficient performance prejudiced applicant because there is
13 a reasonable probability that but for plea counsel's errors
14 applicant would not have pled guilty and would have went to
15 trial pursuant to Hill versus Lockhart, applying the
16 Strickland v. Washington standard. And, Your Honor, one
17 housekeeping matter before I get into the specific
18 allegations, I would like to make a motion to sequester the
19 witnesses.

20 THE COURT: Okay. And who are the potential witnesses?

21 MR. PHILLIPS: Your Honor, may I approach?

22 THE COURT: Sure, of course.

23 MR. PHILLIPS: I had noticed right before you came out
24 I had not brought that right back there with me.

25 THE COURT: Any objection to the sequestration from the

1 State?

2 MR. KEY: Your Honor, the only objection the State
3 would have would be the sequestration of George Speedy, the
4 plea counsel. These allegations are against his
5 representation. I believe he needs to hear the testimony to
6 know what the allegations are about to respond in the
7 defense.

8 THE COURT: All right. Mr. Phillips, what's your
9 position on that?

10 MR. PHILLIPS: I'll leave that in your discretion. I
11 realize I do want to add one more that I don't think will be
12 necessary but is present, it's our private investigator,
13 Dave Anatra, who is present in the courtroom sitting at
14 counsel's table. I would like for him to stay as well,
15 again, at Your Honor's discretion.

16 THE COURT: Okay. I'll allow Mr. Speedy and Mr. Anatra
17 to stay in the courtroom, otherwise is Tova Clayton here?

18 MR. KEY: Yes, Your Honor. And she is represented by
19 the South Carolina Victims Advocacy Network and she is
20 represented by Terry Bailey who is also present.

21 THE COURT: Okay. All right. Ms. Clayton will need to
22 step outside. And is there a Robert Dennis here?
23 Investigator Dennis, if you would step outside, please.
24 Garrett Lominack, or Garrett Lominack? If anyone sees him
25 he needs to be outside. Karen Castles. Would you step

1 outside, please, Ms. Castles? Tiffany Drew. Thank you,
2 Ms. Drew. Barry Glymph. Thank you, Mr. Glymph. Kevin
3 Chalk. Thank you, Mr. Chalk. Gwen Ray? Thank you,
4 Ms. Ray. Marsha Valasco. Thank you, Ms. Valasco. And then
5 Michael Clayton, Sr. Is there a Michael Clayton, Sr.?
6 Would you step outside, please, sir? And then, of course,
7 Mr. Michael Clayton, Jr. is the applicant; is that right?

8 MR. PHILLIPS: Yes, Your Honor.

9 THE COURT: Okay. Great. Thank you.

10 MR. PHILLIPS: Thank you, Your Honor.

11 THE COURT: I believe that we've complied with the
12 sequestration order? No one that's left in the courtroom
13 should have been any of those names that I just read; is
14 that right? Okay. And then no one in the courtroom is
15 allowed to discuss what happens in court with any of those
16 witnesses until the proceeding is over. Once the proceeding
17 is over, assuming I hear all of the testimony that I need
18 to, you will be allowed to talk with them about it. But
19 between now and then you can't talk to anybody outside about
20 what happens here in court. Okay. Everyone good with that
21 that's left in the courtroom? Okay. Thank you very much.
22 Yes, sir, Mr. Phillips.

23 MR. PHILLIPS: Thank you, Your Honor. Specifically for
24 allegation number one, that applicant did not voluntarily,
25 knowingly or intelligently plead guilty pursuant to North

1 Carolina versus Alford. Specifically, that applicant
2 voluntarily pled guilty based on plea counsel's failure to
3 adequately prepare for trial. Counsel's decision to change
4 an unreasonable trial strategy immediately before trial, and
5 counsel's erroneous and unduly coercive advice to plead
6 guilty on the morning of trial. Citing Boykin v. Alabama --
7 and I'll give the actual specifics cites, Your Honor. It's
8 in the application, but if Your Honor wants I can go ahead
9 and give the specific cites to you if you're taking notes.

10 THE COURT: I'm tracking you right along on page three
11 of the second amended application.

12 MR. PHILLIPS: Perfect. Thank you, Your Honor. And
13 then citing the other cases; Alexander v. State, McKnight v.
14 State, and Roseboro v. State regarding trial strategy.
15 Applicant involuntary pled guilty based on plea counsel's
16 failure to advise him regarding all of the sentencing
17 consequences of his guilty plea. Specifically applicant
18 pled guilty under North Carolina vs. Alford to offenses that
19 required him to be on the sex offender registry, which also
20 required that applicant comply with specific conditions of
21 supervision and attend specific treatment demanding he
22 accept responsibility for the offenses with polygraph
23 testing, despite that he maintained his innocence at the
24 plea hearing pursuant to the Alford plea. Plea counsel did
25 not review the specific conditions of sex offender registry

1 with applicant, nor did counsel tell him the specific
2 treatment requiring him to accept responsibility, again,
3 citing the previous Alexander case, Jackson v. State, as
4 well as Smith v. State. We'll save the rest for argument.
5 Moving on to the next allegation. Plea counsel failed to
6 conduct a reasonable investigation and to develop all
7 available, relevant and admissible or mitigating evidence in
8 preparation of the applicant's defense. Specifically, plea
9 counsel failed to interview critical witnesses who could
10 have challenged the credibility of the State's witnesses and
11 could have undermined the State's evidence when it was
12 reasonable and necessary to do so in preparation for trial.
13 Plea counsel failed to interview Investigator Castles of the
14 Fairfield County Sheriff's Office regarding her
15 investigation in this case, and that was a typo on there, I
16 have his, it is her, Ms. Karen Castles. Plea counsel failed
17 to interview Tova Clayton, Meredith Suber, Cindy Long and
18 Roger Long regarding the allegation of the victim's
19 disclosure of applicant's allege sexual abuse, citing
20 Wiggins v. Smith, Rounds v. State, McKnight v. State,
21 Vangolen (phonetically) v. State, and Reeves v. State. For
22 the next allegation, plea counsel failed to adequately
23 prepare for trial by not interviewing witnesses who could
24 have testified regarding applicant's good character and
25 reputation when it was reasonable and necessary to present

1 this evidence at trial, and request if went to trial a jury
2 instruction on good character and reputation. Again, citing
3 the resent case, Pantovich v. State. That, I believe, is
4 not included in the application. The cite for that is
5 427SC555, and then 832, Southeast Second 596, 2019. And
6 then rehearing was denied September 27th, 2019. State v.
7 Harrison, which is included in the application. Plea
8 counsel failed to conduct a reasonable investigation for not
9 interviewing the law enforcement officer who received the
10 report filed in Newberry County by the victim's biology
11 father, and for not conducting any further investigation
12 into this complaint when this law enforcement agency did not
13 pursue charges against the applicant. Plea counsel failed
14 to interview Lieutenant Garrett Lominack, and Investigator
15 Robert Dennis of the Newberry County Sheriff's Office
16 regarding the complaint filed by the victim's biological
17 father and their subsequent investigation into this
18 complaint, citing the previous cases for failure to
19 investigate. The next allegation essentially is plea
20 counsel abandoned his role as defense counsel by failing to
21 conduct a reasonable investigation and adequately prepare
22 for trial when coupled with an unreasonable trial strategy,
23 citing United States v. Braunig with Nance v. Ozmint. And
24 as far as critical stages, we'll get into the arguments with
25 that additional. But that is all of the allegations that

1 are before the Court, Your Honor.

2 THE COURT: All right. Thank you. Are you ready to
3 call your first witness?

4 MR. PHILLIPS: Yes, Your Honor.

5 THE COURT: Okay.

6 MR. PHILLIPS: The applicant calls Tova Clayton.

7 THE COURT: Could we get Ms. Clayton?

8 (Break in proceedings.)

9 THE COURT: Yes, sir, Mr. Key?

10 MR. KEY: Your Honor, as I previously stated, Ms.
11 Clayton is represented by Terry Bailey of the South Carolina
12 Victims Assistance Network and I believe she would like to
13 be heard. Ms. Bailey?

14 THE COURT: The lawyer?

15 MR. KEY: Yes.

16 THE COURT: Okay. Where is she? What's the lawyer's
17 name?

18 MR. KEY: Terry Bailey.

19 MS. BAILEY: Your Honor, I'm Terry Bailey with the
20 South Carolina Victims Assistance Network here on behalf of
21 the first witness, Ms. Tova Clayton.

22 THE COURT: Okay.

23 MS. BAILEY: I would like to move to quash the subpoena
24 this morning for the reason that Ms. Clayton has no
25 firsthand knowledge of anything that happened at the plea

1 agreement -- at the plea hearing.

2 THE COURT: Okay. Mr. Phillips?

3 MR. PHILLIPS: She was interviewed by law enforcement.
4 She was a critical witness in the investigation of the case,
5 our allegations are failure to investigate. She is a
6 critical witness that, in my opinion, would have bearing and
7 if this case would have went to trial would have testified.

8 THE COURT: What is her role in the case?

9 MR. PHILLIPS: Specifically she was married to the
10 applicant, the --

11 THE COURT: She was married to Mr. Clayton.

12 MR. PHILLIPS: That's correct. The victims in the case
13 are her daughters, they all lived in the same home and she
14 was interviewed. She was a critical witness. The
15 daughters' statements --

16 THE COURT: She was interviewed as part of the
17 investigation of the case against Mr. Clayton.

18 MR. PHILLIPS: Absolutely.

19 THE COURT: Okay. All right. Yes, ma'am, Ms. Bailey?

20 MS. BAILEY: Your Honor, this is going to be extremely
21 damaging and very detrimental to her rights to be respected
22 as a witness in this case.

23 THE COURT: How is that?

24 MS. BAILEY: Going through this, what happened all of
25 these years ago and again today in the courtroom is asking

1 her to relive these events when her testimony is marginal.
2 The lawyer knows whether or not he testified -- whether he
3 interviewed her, and any information that she has can be
4 gotten through Mr. Bogan.

5 THE COURT: Who is Mr. Bogan?

6 MS. BAILEY: The attorney for Mr. Clayton. Mr. Speedy,
7 excuse me, Mr. Speedy.

8 THE COURT: How can Mr. Speedy testify as to what Ms.
9 Clayton knew or didn't know?

10 MS. BAILEY: He can say whether or not he interviewed
11 her.

12 THE COURT: But if the allegation is that Mr. Speedy
13 should have interviewed her and did not interview her, then
14 how can Mr. Speedy testify as to what Ms. Clayton would have
15 said?

16 MS. BAILEY: The question is whether or not he should
17 have interviewed her.

18 THE COURT: That's not the only question. The question
19 is not only should he have interviewed her, it was -- you
20 just can't say he should have interviewed her, the applicant
21 has the obligation and legal burden of proof prejudice. So
22 playing Monday morning quarterback and saying that they
23 should have taken a timeout doesn't count. You have to say
24 they should have taken a timeout and this is why they were
25 prejudiced. Mr. Speedy would have no way of knowing what

1 Ms. Clayton has to say if Mr. Speedy never interviewed Ms.
2 Clayton. So the applicant has a two-pronged burden under
3 Strickland vs. Washington in the United States Supreme Court
4 to only prove that the standard fell below that of a
5 reasonable attorney, but that this also caused prejudice to
6 the applicant. So what about that, Ms. Bailey?

7 MS. BAILEY: Your Honor, I just think you have to
8 balance the danger to the witness versus what the lawyer
9 would have testified and what the lawyer would have done.

10 THE COURT: Okay. All right. Your motion to quash the
11 subpoena is hereby denied. Thank you very much, Ms. Bailey.
12 All right. Ms. Clayton, please come forward and be sworn
13 in.

14 The witness, TOVA CLAYTON, was first duly sworn and
15 Testified as follows:

16 THE COURT: Will you spell your first name for us,
17 please?

18 THE WITNESS: Tova, T-o-v-a.

19 THE COURT: All right. Thank you. And Clayton is your
20 last name?

21 THE WITNESS: Yes, sir.

22 THE COURT: Thank you, Ms. Clayton. Mr. Phillips,
23 whenever you're ready.

24 MR. PHILLIPS: Thank you, Your Honor.

25 DIRECT EXAMINATION

1 BY MR. PHILLIPS:

2 Q Good morning, Ms. Clayton.

3 A Good morning.

4 Q Certainly we're not here to harass you and certainly
5 not trying to do anything more than have this due process
6 hearing. Okay. So specifically, you gave a statement in
7 this case to law enforcement.

8 A Yes.

9 Q And you remember giving a statement to law enforcement.

10 A Yes. Ms. Castles, yes.

11 Q Did you give any other statements to anyone else?

12 A No.

13 Q So it was just Ms. Castles?

14 A Uh-huh.

15 Q When did you find out about the alleged sexual abuse?

16 A I can't tell you years, because -- exact dates because
17 it's been so long. **Minor Child 1** had already moved out of the
18 house and it was still **Minor Child 2** was still in school
19 when my mother told me, and then I had a conversation with
20 Michael. I just don't remember the exact dates.

21 Q So your mother was the first person to tell you that
22 there was alleged sexual abuse.

23 A Yes.

24 Q And who was she referring to?

25 A **Minor Child 1**

1 Q Minor Child 1 Who is --

2 THE COURT: Is Minor Child 1 your mom or is Minor Child 1 one of
3 your children?

4 THE WITNESS: Minor Child 1 it one of my children.

5 THE COURT: Okay. Thank you.

6 Q And that was the very first time you ever had any
7 knowledge of the sexual abuse.

8 A Any knowledge, yes.

9 Q You never walked in and saw Mr. Clayton in that room
10 performing a sexual act in any way.

11 A I never seen him performing, no.

12 Q You knew you saw him walk out of the room and have an
13 erection.

14 A Yes, I did see that.

15 Q You just testified that the first time you had any
16 knowledge about this incident was from the grandmother.

17 A That is when I had verbal confirmation, yes.

18 Q The same night.

19 A No, it was not the same night. It was awhile later
20 when my mother actually came to me.

21 Q You did not walk in the room and see anything.

22 A I seen Michael walk out of Minor Child 1 room as I was
23 going to the hallway with an erection, yes.

24 Q When did this happen?

25 A Minor Child 1 was -- both of the girls were still in school,

1 so it was when we were still living in Fairfield County
2 numerous years ago.

3 Q And so you just testified that the first time you
4 learned about it was when **Minor Child 1** moved out and before you
5 saw him leaving their room in the middle of the night with
6 an erection. When was the first time you told somebody
7 about this?

8 A The first person I talked to was Michael.

9 Q When is the first time you ever told law enforcement or
10 anyone else? The first time I saw this was the plea
11 hearing.

12 A When I talked to Ms. Castles. That's when the first
13 time I talked to law enforcement.

14 Q Are you testifying now under oath that you told Ms.
15 Castles you saw him leave the room with an erection?

16 A I told her I seen him leaving the room and I questioned
17 **Minor Child 1** and Michael.

18 Q That's your memory.

19 A Yes, it is.

20 Q And if that's not true, if you didn't tell Ms. Castles
21 that?

22 A I'm pretty sure we discussed that.

23 Q In the video interview with Ms. Castles --

24 A Uh-huh.

25 Q -- you said you didn't find out until they were 18.

1 A Yeah. **Minor Child 1** was already out of school, so yeah, she
2 would be around 17 or 18.

3 Q And you said she handed you a letter because you didn't
4 know the details?

5 A No, that was **Minor Child 2** **Minor Child 2** handed me a letter and
6 gave me all of the full details, meaning when it happened.
7 Not dates, but what had happened.

8 Q In the same interview you told Investigator Castles
9 that **Minor Child 2** has not opened up and **Minor Child 1** just started.

10 A Opened up to --

11 Q Telling the details.

12 A What I mean by this is, what I mean by details, sir, is
13 that she had told me --

14 THE COURT: Who is she?

15 THE WITNESS: **Minor Child 2** excuse me.

16 A **Minor Child 2** had told me nothing had happened. And when her
17 18th birthday, she handed me a letter and stated that
18 Michael touched her inappropriately. I did not know details
19 as far as everything that happened, when it exactly
20 happened, I don't know any of those.

21 Q So **Minor Child 2** had told you at one point that nothing
22 happened.

23 A Correct.

24 Q When was that?

25 A When I found out about **Minor Child 1**

1 Q And let's narrow down and try to be as specific as
2 possible. When did you find out about **Minor Child 1**

3 A **Minor Child 1** moved out at 17. I still can't give you a
4 date, I'm sorry.

5 Q Do you think around when she moved out?

6 A She moved out and moved in with my parents for a little
7 while. I'm sorry, I don't have the exact dates, and I
8 apologize.

9 Q How about as best you know the exact date of when you
10 saw him leaving the room with the erection?

11 A I know it was before Easter but I don't remember the
12 year.

13 Q Before Easter --

14 A I don't remember the year.

15 Q 2015? 16?

16 A No. It was a little earlier than that. Because we
17 moved to Bachman Chapel, I don't know, approximately 12
18 years. So approximate -- I'm sorry, I can't give you an
19 exact --

20 Q But **Minor Child 2** initially told you nothing happened.

21 A Correct.

22 Q And as far as when **Minor Child 2** told you something happened,
23 do you have a date in mind as far as when that occurred?

24 A Well, it was **[REDACTED]**, that's her birthday, but I
25 can't give you the year. She gave me a letter.

1 Q And how old was she?

2 A She was 18 when she gave me the letter.

3 Q And if she testified -- or excuse me, if she in her
4 interview to the police said she was 15 when she told you --

5 A No, that is incorrect.

6 Q That's incorrect?

7 A It was not 15.

8 Q When you saw him walk out of that room with an
9 erection, what did you do?

10 A I got very angry and started yelling asking him what
11 had happened and what was going on. I got told I was
12 overreacting. And I went into the **Minor Child 1** room and I
13 started questioning her. Then I loaded her and my son up
14 and went to the lake and met my mother and my sister and I
15 continued to question her and question her. My mother was
16 questioning her.

17 Q And if **Minor Child 1** and **Minor Child 2** said that you did nothing
18 after catching anything in the act, would that be a lie?

19 A I did not go to law enforcement because I was told that
20 I was overreacting and nothing was happening.

21 Q By who?

22 A By Michael and by **Minor Child 1** at the time.

23 Q Who else did you tell about the erection? The first
24 time I read about it was in the plea hearing in the factual
25 base, it's nowhere else.

1 A Okay. The first time I told anybody about the
2 erection?

3 Q Seeing him walk out of the room with the erection.

4 A It would probably be my mother, because that would have
5 been the same evening.

6 Q Now, we got a lot of dates getting thrown around here
7 with several different people. We have Minor Child 2 we have

8 Minor Child 1 --

9 A Uh-huh.

10 Q -- we have your grandmother.

11 A My mother.

12 Q You said the first time you learned about it, the
13 grandmother tells you about it.

14 A Uh-huh.

15 Q That's not the same time period you're testifying to as
16 to what Minor Child 2 said or did as far as the letter, correct?

17 A Correct.

18 Q As far as the night where you said now on the witness
19 stand as far as seeing him come out of the room with an
20 erection, that is not the same night as the grandmother
21 talking to you.

22 MR. KEY: Objection, Your Honor, I believe he's
23 leading.

24 THE COURT: Okay. Overruled as to that. But I'm
25 getting confused between mother and grandmother. When you

1 say mother you mean your own mother?

2 THE WITNESS: I mean my mother, I'm sorry.

3 THE COURT: And what is her name?

4 THE WITNESS: Jane.

5 THE COURT: Jane what?

6 THE WITNESS: Barefoot.

7 THE COURT: And I'm not -- I'm trying to track and
8 follow. I don't know anything about this case at all other
9 than what I've heard this morning. So if you could say Ms.
10 Jane Barefoot, and I know she's your mama and she's your
11 daughter's grandmother but that will help me process through
12 it.

13 THE WITNESS: I will do my best to.

14 THE COURT: And it's okay if you don't -- I'm not
15 holding you to some exact standard, but it will help me
16 track who everybody is until I figure all that out.

17 MR. PHILLIPS: And I'll do the same.

18 THE COURT: Okay.

19 MR. PHILLIPS: Thank you, Your Honor.

20 Q And so the night that Jane Barefoot tells you that
21 something happened with **Minor Child 1** that's not the same night
22 that you saw Michael come out of the room.

23 A No.

24 Q Which happened first?

25 A With all of those? It would have been me seeing

1 Michael, then us going to the lake and questioning **Minor Child 1**
2 and me telling my own mother -- I'm sure I told her about
3 the incident, and then quite some time after that. Because
4 we had moved to a new county and everything before my mother
5 actually told me. I'm sorry, Jane.

6 Q Did you ever tell **Minor Child 2** back in 2012 that you were
7 sorry it happened?

8 A 2012? No.

9 Q Before she was 18?

10 A No. I had asked her if anything had happened and she
11 said, "No, mom, I would have told you."

12 Q So you never told her in 2012, "I'm sorry this
13 happened. I love you and I wish it never would have
14 happened."

15 A No, that was **Minor Child 1**

16 Q You're saying that's what **Minor Child 1** said.

17 A **Minor Child 1** and I had a conversation after everything came
18 out and I told her I'm so sorry that this ever happened to
19 her.

20 Q And if that's what **Minor Child 2** told a mental health
21 counselor in 2012, that wouldn't be true?

22 A Not regarding Michael that I'm aware of.

23 Q As far as when it first happened you said nothing -- I
24 mean, be clear, you said you went into the room, there was
25 anger, you moved out --

1 A I did not go into the room.

2 Q Did not go into the room.

3 A I was walking down the hallway, he was exiting her
4 room.

5 Q Afterwards. What did you do afterwards?

6 A I got upset, started yelling, asking questions, "What's
7 going on."

8 Q And did you tell any of this to Investigator Castles?

9 A I'm sure we talked about that.

10 Q And if you didn't?

11 A I'm pretty sure we did.

12 Q Why didn't you report it?

13 A Why didn't I report it? Because my child was telling
14 me nothing was happening. My husband at the time was
15 telling me nothing was happening, I was overreacting.

16 Q **Minor Child 1** told you nothing was happening as well?

17 A That's correct.

18 Q Did you tell that to Investigator Castles?

19 A Yes.

20 Q And if you didn't?

21 A I did.

22 Q Did you know about a complaint that was filed in 2011
23 with Newberry County?

24 A Yeah, I found out about that.

25 Q How did you find out?

1 A My ex-husband called me.

2 Q When did he call you?

3 A It was after the filing of that and everything. We
4 were in Bachman Chapel. We were in Newberry County at that
5 point.

6 Q In 2011?

7 A Probably, 2011 or 2012, yeah. Somewhere around in
8 there.

9 Q So your -- their biological father, your ex-husband,
10 calls you --

11 A Uh-huh.

12 Q -- and says he's filing a complaint for sexual abuse
13 with Newberry County?

14 A He said that he called Newberry County and had a talk
15 to them --

16 MR. KEY: Objection, Your Honor, it's hearsay. She's
17 testifying to what her ex-husband told her.

18 THE COURT: Mr. Phillips?

19 MR. PHILLIPS: Not going to the truth.

20 THE COURT: All right, sustained. I mean, overruled.
21 She can answer the question.

22 A He called me, he was yelling and screaming and said
23 that he was calling Newberry County -- or he had called
24 Newberry County and told them about what Michael had done to

25 Minor Child 1

1 Q Did you ever seek to anybody from Newberry?

2 A No.

3 Q Did this happen before or after the erection incident?

4 A Way after.

5 Q This happened way after.

6 A We were over in Newberry County.

7 Q So probably a couple of years?

8 A I guess. I can't tell you dates, I'm sorry.

9 Q In the timeline, when did this happen in relation to
10 Ms. Jane Barefoot telling you, the Newberry County report?

11 A I'm trying to remember. My mother -- my mother said
12 something to me prior to that and it was only like a few
13 weeks.

14 Q Prior?

15 A Uh-huh.

16 Q When you were getting a divorce with Mr. Clayton, what
17 was your grounds for divorce?

18 A Adultery.

19 Q What year did you get a divorce?

20 A 15/16, I think. Yeah, somewhere around there.

21 Q Did you put anything in your affidavit in the divorce
22 that was submitted in the divorce about this alleged sexual
23 abuse?

24 A I don't remember.

25 MR. PHILLIPS: Your Honor, may I approach the witness?

1 THE COURT: Sure.

2 MR. PHILLIPS: Your Honor, may I approach?

3 THE COURT: Yes, sir, of course.

4 MR. PHILLIPS: I have a copy for you as well.

5 THE COURT: Okay. Thank you.

6 Q Please take your time and read that affidavit.

7 A No. There is nothing in here about that.

8 Q Specifically you stated in the affidavit you couldn't
9 have asked for a better friend or partner.

10 A At that time, yes. When we got together he was my best
11 friend.

12 Q And this is 2015 when you were putting this in the
13 affidavit.

14 A He was my best friend.

15 Q "Michael was like an angel sent from God."

16 A When we met, yes, absolutely.

17 Q You talked about wanting a baby with him.

18 A Yes.

19 Q Talking about having your tubes untied.

20 A I did, yes.

21 Q And y'all did try to start a family.

22 A Yes. That was before I found out everything, yes.

23 Q In 2013 after the dates we were just discussing, there
24 was a Mother's Day where you kind of rekindled your
25 relationship, is that fair to say?

1 A I wouldn't consider it actually rekindled.

2 Q Your words, "I realized then that my best friend was
3 back." Is that true?

4 A Best friend, yes.

5 Q Then you found out later that the marriage was
6 essentially over and that at that point he is with another
7 woman and she was pregnant, is that fair to say?

8 A Yes. Yes.

9 Q And that she was pregnant.

10 A Yes. Uh-huh.

11 Q Could you describe the living situation that you had
12 with Michael starting back from about 2011? Because you
13 moved out several times; is that correct?

14 A No, I moved out once.

15 Q You only moved out one time from this house?

16 A Uh-huh.

17 Q And at one point there was how many people living in
18 the house that was related to you?

19 A Numerous. He went up to Pennsylvania and got my cousin
20 and his wife and brought them down so they could make a
21 fresh start. My mother's furnace went out so he actually
22 went and picked her up and brought her to the house to stay
23 so she was warm. Same with my sister and her son.

24 Q How many total of your family members were in that
25 house at one time?

1 A Counting me and my children?

2 Q Yes.

3 A Okay. Ten at the time.

4 Q In your affidavit you say that things started to change
5 in 2015 with him; is that correct?

6 A Yeah.

7 Q Going to the text messages that were sent, you were
8 shocked that he wanted a divorce.

9 A I wasn't shocked that he wanted a divorce. I know what
10 the text messages said. We had a long conversation
11 regarding that.

12 MR. PHILLIPS: Your Honor, may I approach?

13 THE COURT: Yes.

14 MR. PHILLIPS: Your Honor, for a housekeeping matter
15 before we get into any further.

16 Q Going back to that affidavit, is that your affidavit,
17 Ms. Clayton?

18 A Yeah, that's my affidavit.

19 MR. PHILLIPS: Your Honor, we would like to mark that
20 as Applicant's Exhibit Number 1 and move it into evidence.

21 THE COURT: Any objection?

22 MR. KEY: No objection, Your Honor.

23 THE COURT: All right. Applicant's Number 1 is
24 admitted without objection.

25 (The affidavit was received as Applicant's 1.)

1 Q Would you review the text messages I just handed you?

2 A Yeah, I remember this.

3 Q So those are the text messages between you and Michael?

4 A Uh-huh.

5 MR. PHILLIPS: Your Honor, at this time we would like
6 to mark that exhibit as Applicant's Exhibit Number 2 and
7 move it into evidence.

8 THE COURT: Any objection?

9 MR. KEY: No, Your Honor.

10 THE COURT: Applicant's Exhibit Number 2 admitted
11 without objection.

12 (The text messages were received as Applicant's 2.)

13 Q In your affidavit you say these text messages occurred
14 on January 6th, 2016; is that right?

15 A I don't know a date, there's not any on here.

16 Q It's not on the text messages, it was in that
17 affidavit. I apologize for not clarifying that for you.

18 A I'm sorry, I don't remember the date.

19 Q If it's in your affidavit, would you assume that's a
20 correct date?

21 A If it's in the affidavit, yes.

22 Q When Michael states in the text message that he would
23 like to get divorced, what's your response?

24 A "On what grounds?"

25 Q And what's his response?

1 A "On the grounds that we haven't had a marriage in four
2 years."

3 Q What does he continue to say?

4 A That he doesn't see a reason to continue to be married.

5 Q And then your response?

6 A I said, "We do have a marriage. Wow."

7 Q And then what's your next response?

8 A "I'm shocked, actually speechless."

9 Q So you were shocked.

10 A I'm shocked that he actually asked for the divorce,
11 because I'd already been in contact with a lawyer.

12 Q Have you ever told anybody that?

13 A No.

14 Q You were upset?

15 A Well, yeah. That's a part your life ending but --

16 Q The man you've accused of molesting your daughters.

17 A I can't help what he's done in his past.

18 Q You said you expected it, you had already talked to a
19 lawyer, flipping your response, "Yes, sir. I never expected
20 this." Is that your response?

21 A That is my response.

22 Q And what's his response?

23 A "I really don't see how."

24 Q And what's his follow-up?

25 A "You have your life, I have mine. Only two (sic) they

1 intersect is bills or Wyatt."

2 Q And who's Wyatt?

3 A My son.

4 Q And then you say, "I can't believe you have me upset at
5 work like this."

6 A Uh-huh.

7 Q "I'm honestly amazed you're upset." This is coming
8 from Michael.

9 A Uh-huh.

10 Q Your response is that you're crying like a baby?

11 A I was.

12 Q And you had already seen a lawyer for a divorce?

13 A I did.

14 Q So you didn't even know what to say. You were
15 devastated.

16 A I was upset, yes.

17 Q Said, "Truly, I am devastated. Shocked." And this is
18 from 2016, January 6th of 2016 where at any point between
19 say 2010 and 2014 you have alleged that you have walked in,
20 or walked by and saw him coming out of your children's
21 bedroom with an erection. That your mother, Jane Barefoot,
22 had told you at some point during that timeline that
23 something had happened to **Minor Child 1**

24 A Yes.

25 Q And both **Minor Child 2** and **Minor Child 1** had told you nothing had

1 happened initially.

2 A Yes.

3 Q Yet you had never made a report to law enforcement and
4 said any of that.

5 A No.

6 Q In fact, when you met with Ms. Castles you didn't go
7 into those details either.

8 A I could swear we spoke about it because we discussed
9 going to the lake.

10 Q He told you, "You always said to tell you if I wasn't
11 happy. I haven't been happy with the situation in a long
12 time and I'm ready to move forward."

13 A Uh-huh.

14 Q And then you asked him about marriage vows and his
15 response is, "They did matter -- or, "Yeah, they did, then
16 you ditched me for two years after being over the top
17 mentally abusive for months. You only came back because you
18 were fighting with your mother." Is that true?

19 A That's what it says. That's what his message said.

20 Q At no point in the divorce proceedings or in the
21 divorce decree do you put any allegation as to regards of
22 sexual abuse towards your children.

23 A No.

24 Q Why?

25 A Because that was between him and I. We were divorcing

1 because he had another child on the way and we had already
2 parted ways.

3 Q It was because of that right there. Because he had
4 another child with another woman, not because he ever
5 molested your children, is that fair to say?

6 A He asked for the divorce and I granted it.

7 Q And was it two days or three days after the divorce
8 this complaint of sexual abuse is filed against him?

9 A I know it was after the divorce but I don't know the
10 time frame.

11 MR. PHILLIPS: Just a moment, Your Honor.

12 (Break in proceedings.)

13 Q The divorce was finalized on June 21st of 2016.

14 A Okay.

15 Q And on June 23rd your daughter Minor Child 2 calls the
16 Fairfield County Sheriff's Office and makes these
17 allegations two days later?

18 A Okay.

19 Q Is that true?

20 A I guess so. If you have the dates, then yes.

21 Q And at no point did you ever call law enforcement.

22 A No.

23 MR. PHILLIPS: Just a moment, Your Honor. I want to
24 shore up one thing real quick.

25 THE COURT: Yes, sir.

1 (Break in proceedings.)

2 MR. PHILLIPS: All right. Apologize, Your Honor.

3 Q I'm going to kind of end with kind of a timeline of
4 your relationship with Mr. Clayton; is that fair?

5 A Okay.

6 Q All right. You met Mr. Clayton back in 2003?

7 A That would be correct.

8 Q Met on a website Hot or Not?

9 A Uh-huh.

10 Q You and your children began staying at his house
11 regularly in December of 2003?

12 A Yeah.

13 Q Officially you moved in with him and his grandmother in
14 June of 2004?

15 A That's probably accurate.

16 Q Around that time you had lost your job for about two
17 years and you were unemployed and stayed in the home?

18 A Uh-huh.

19 Q At that time the girls were staying where in the house?

20 A They had their own room down the hall.

21 Q Initially they were in the living room; is that right?
22 Because the grandmother was in the home.

23 A Yes, because the heat went out. He didn't have heat at
24 his house, we had space heaters.

25 Q He proposed to you on the 4th of July in 2005?

1 A It was around the 4th of July, yes.

2 Q Married October 21st of 2005?

3 A Yes.

4 Q In June of 2006 you went back to work and Tiffany Drew
5 started baby sitting the kids some?

6 A It wasn't that often.

7 Q But sometimes Tiffany Drew babysat?

8 A Uh-huh. Because usually Michael's grandmother babysat
9 them. No, nevermind, that was before.

10 Q In August of 2006 the girls at that point did have
11 separate bedrooms?

12 A Yes.

13 Q Grandmother had passed away and they got separate
14 bedrooms? In March of 2008 you let -- he allows your
15 parents to move in after their house burned down?

16 A Yes.

17 Q In 2009 you moved to Prosperity?

18 A 09/10, yes.

19 Q In March/April of 2011 is when you decide, both you and
20 Michael, that you want to have a baby, you have a procedure
21 and start trying to have a family, a child your own?

22 A Uh-huh.

23 Q June of 2011 is when Minor Child 1 graduated from
24 Mid-Carolina High School?

25 A Yeah, 2011.

1 Q September of 2011 your cousin, Jeremy, and his wife
2 move into the home from Pennsylvania?

3 A I just don't know the dates, but yes.

4 Q At that point around November **Minor Child 1** moves out, has
5 moved out? She's graduated and she moves out of the home?

6 A I would say it was before that. She graduated in June
7 and I think she might have moved out in July, maybe August.

8 Q April of 2012 your mother, your sister, your sister's
9 boyfriend, and two children all move into his home?

10 A Her sister's boyfriend was only there for a week and a
11 half until he went to stay with his family.

12 Q And then your dad was there on the weekends because he
13 was a truck driver?

14 A He was there twice a month, yes.

15 Q And that's April of 2012?

16 A Somewhere around there.

17 Q In June of 2012 **Minor Child 2** graduated from Mid-Carolina High
18 School?

19 A Yes.

20 Q At that point he -- there was a period of time where he
21 moved out to a hotel for a couple of weeks?

22 A I know he went and stayed somewhere, I have no idea
23 where.

24 Q Around October of 2012 after Michael had kicked out the
25 family members is when you quit kind of staying at the house

1 altogether?

2 A I had already moved into the living room by then, and
3 we found a place to move to.

4 Q You moved in with your mother in October of 2012?

5 A I did.

6 Q In 2013 Michael sent you a text, he was real close to
7 your sons, saying that if they wanted to spend some time
8 with him hunting and fishing and doing that kind of thing on
9 the weekends, totally their decision, if they wanted to they
10 could.

11 A Yeah. Because he knew they were having problems in
12 school, yes.

13 Q And they said yes?

14 A Yes.

15 Q And they went hunting and fishing with him on the
16 weekends?

17 A Not every weekend, no, but they had some time with him.

18 Q Every other weekend?

19 A They had spent time with him, yes.

20 Q And this is all after the grandmom had told you about
21 and after you had seen the erection --

22 A Yes.

23 Q -- that you let your sons go back and stay with him on
24 the weekend?

25 A Yes.

1 Q And you didn't call law enforcement?

2 A No.

3 Q In May of 2013 someone sent you a picture of Michael
4 with another woman?

5 A Yes.

6 Q Would you say that's kind of the start of the end of
7 the relationship for sure, even though you weren't living in
8 the same home?

9 A No. I would say our relationship was -- we were still
10 friendly only because the boys. Both the boys have -- one
11 has ADD and the other one has ADHD, and Michael seemed to be
12 the only one that could talk to Wyatt. But yes, I did
13 receive a picture and a phone call regarding that.

14 Q But then after that, about a year after that, May of
15 2014, you moved back into his home.

16 A I did move back into the home.

17 Q And then also **Minor Child 1** Sierra, which is their cousin?

18 A My sister.

19 Q And her children start staying at the home for days at
20 a time off and on.

21 A I don't remember if **Minor Child 1** stayed there or not. My
22 sister did come over with me for awhile.

23 Q Did **Minor Child 1** ever come over at any point in time?

24 A To visit, yeah. I just don't remember her staying
25 there.

1 Q So **Minor Child 1** did come over to the house -- and this is
2 all after -- in 2014 after all of these allegations
3 occurred, after everybody had moved out she graduated.

4 A Yes. Yes. Yes.

5 Q 2014, you had called him and said would he take care of
6 the boys if you had to go to jail, do you remember that?

7 A Uh-huh, I do.

8 Q Because you got into a big fight with **Minor Child 1** and
9 punched her in the face?

10 A I did not punch her, I smacked her across the face.
11 She actually had hit me and I smacked her across the face,
12 yes.

13 Q Now, let's fast-forward another year, March of 2015.
14 **Minor Child 2** your other daughter, asked to move back into the
15 house with her boyfriend's family after the house fire?

16 A Yeah, she asked to stay. She ended up not staying, she
17 stayed in a hotel.

18 Q Was that because Michael said she couldn't?

19 A No. The fire -- the insurance company got them a
20 hotel.

21 Q But in March of 2015, **Minor Child 2** and her boyfriend tried to
22 move back into Michael's home.

23 A She asked me could she stay a night.

24 Q At that point, say in October of 2015, Michael started
25 asking for you and your mother to pay rent at his home?

1 A Yes. Utilities, not rent, yes.

2 Q And you didn't?

3 A No, I did.

4 Q In January of 2016 is when he text you that he wanted a
5 divorce.

6 A Correct.

7 Q And you had received a picture stating that essentially
8 he had been with another woman.

9 A Correct.

10 Q And you got information from a person that this other
11 woman was pregnant.

12 A Correct.

13 Q The divorce is finalized on June 21st of 2016.

14 A Yes.

15 Q Two days later **Minor Child 2** files a report for sexual
16 allegations with the Fairfield County Sheriff's Office.

17 A Okay.

18 Q On June 23rd.

19 A All right.

20 Q Is there anything else you want to add? I mean,
21 anything else that you didn't tell the investigators that
22 occurred over that period of time?

23 A Nothing that I can think of.

24 MR. PHILLIPS: Just a moment, Your Honor.

25 (Break in proceedings.)

1 Q Just two more dates, I apologize. On March 28th of
2 2015, you and Minor Child 1 went to a benefit that he organized,
3 do you remember that, for a friend that was badly burned?

4 A No. That is not why we were there, no.

5 Q But you were there?

6 A We were at the front of the restaurant, not the back of
7 the restaurant, but yes.

8 Q In the divorce you asked for 900 a month in alimony but
9 you didn't get it?

10 A It wasn't even about the money, but yes.

11 Q You didn't get the alimony?

12 A No.

13 MR. PHILLIPS: No further questions, Your Honor.

14 THE COURT: All right. Cross examination?

15 CROSS EXAMINATION

16 BY MR. KEY:

17 Q Good morning.

18 A Morning.

19 Q Is your last name Harclerode now?

20 A No, it's Clayton.

21 Q It's Clayton still.

22 A Yes.

23 Q Just wanted to make sure I called you by the correct
24 name. All right. Ms. Clayton, you testified on direct that
25 you never saw Mr. Clayton ever inappropriately touching your

1 daughters, correct?

2 A Correct.

3 Q The only thing you did see was him leave your older
4 daughter's room with an erection.

5 A Correct.

6 Q But you never saw anything else.

7 A No.

8 Q Okay. And you learned from -- the first time you
9 learned that he was inappropriately touching your daughters
10 was from your mother.

11 A Yes, Jane Barefoot.

12 Q Okay. And so that was information that she told you.

13 A Correct.

14 Q And then you spoke to your daughters about it.

15 A Correct.

16 Q And eventually they also just told you what happened.

17 A Just recently, yes.

18 Q But you never saw anything other than the erection.

19 A No.

20 Q Okay. Before Mr. Clayton pled guilty, was the
21 solicitor's conference -- or the solicitor's office in
22 contact with you about any plea negotiations or plea offers?

23 A She did contact me, because I was subpoenaed.

24 Q Okay. And did you tell the solicitor what plea offer
25 you were okay with?

1 A No, not me. It wasn't up to me.

2 Q Do you know if your daughters did?

3 A Yes. My daughters spoke with her.

4 Q Okay. And do you know if the State recommended he
5 serve any particular sentence?

6 A I wasn't at the plea hearing, so I'm not --

7 Q Okay. You weren't there.

8 MR. KEY: No further questions, Your Honor.

9 THE COURT: Redirect?

10 MR. PHILLIPS: No, Your Honor.

11 THE COURT: Thank you, Ms. Clayton, you may step down.
12 And you may call your next witness.

13 MS. BAILEY: Your Honor, can this witness be excused?

14 MR. PHILLIPS: Yes, sir, Your Honor. I do not expect
15 to call her as a witness.

16 THE COURT: All right.

17 MR. PHILLIPS: I have no objection.

18 THE COURT: All right. Ms. Clayton, you are excused
19 from your subpoena, thank you very much.

20 MR. PHILLIPS: Investigator Robert Dennis of the
21 Newberry County Sheriff's Office.

22 The witness, ROBERT DENNIS, was first duly sworn and
23 Testified as follows:

24 DIRECT EXAMINATION

25 BY MR. PHILLIPS:

1 THE WITNESS: Robert Dennis of the Newberry County
2 Sheriff's Office, Major.

3 Q Good morning, Investigator Dennis, thanks for being
4 here. Could you explain what your role was with the
5 Newberry County Sheriff's Office back in 2011?

6 A In 2011 I was captain over the investigations unit. My
7 role was to review reports, and then assign reports to
8 investigators for investigation.

9 MR. PHILLIPS: Your Honor, may I approach?

10 THE COURT: Yes.

11 Q Did you receive a report dated December 7th of 2011?

12 A We did. This report actually came in on December the
13 8th of 2011. It was taken by the night shift on 12/7 and
14 was a phone call from a Kevin Harclerode. I hope I said
15 that right.

16 Q And what did the complaint allege?

17 A The officer that took the report was Deputy Chris
18 Keller who was employed at the Newberry Sheriff's Office at
19 that time, he now is employed by the department of natural
20 resources. He took that report, and I'll read. "Reporting
21 deputy received a call from the complainant in reference to
22 a possible sexual assault. The complainant stated that his
23 four children live at the listed location with their mother
24 and stepfather. The complainant stated that his 18 year old
25 daughter came to visit him and began to explain how her

1 stepfather, Michael Clayton, had touched her in an
2 inappropriate manner in the past. The complainant stated
3 that he was shocked and disturbed by this and spoke with her
4 about reporting the matter. The complainant stated that she
5 indicated that she would, but so far has not done so. The
6 complainant stated that he felt as if it was his obligation
7 as a parent to make a report and have the matter
8 investigated. The complainant indicated this incident may
9 have taken place years earlier. The complainant stated that
10 confronting the subject at this point would only cause
11 problems, and also mentioned that his daughter would not
12 talk about the matter unless it was in a private setting.
13 The complainant does not know if this has happened to any
14 other children. The complainant also stated that his
15 daughter advised him that her mother walked in on the
16 incident but failed to confront the subject. Reporting
17 deputy noted the ages of the other three children as 16, 10
18 and 13. Reporting deputy cleared."

19 Q And specifically, so it did state that the complainant
20 stated that his daughter advised him that her mother had
21 walked in on the incident but failed to confront the
22 subject?

23 A Yes, sir. That is the next to the last line.

24 Q And is that an accurate and fair depiction of the
25 report that you had as the investigator on this lead?

1 A That I have in front of me, yes, sir.

2 MR. PHILLIPS: Your Honor, I would like to mark that as
3 Applicant's Exhibit Number -- I think we're at 3, and move
4 it into evidence.

5 MR. KEY: No objection.

6 THE COURT: All right. Applicant's 3 admitted without
7 objection.

8 (The report was received as Applicant's 3.)

9 Q What investigation did you do in this case?

10 A I believe we actually spoke to Mr. Kevin and tried to
11 find out exactly where this could have occurred. It was
12 probably the following week that I had received a call from
13 Fairfield, that they were actually investigating the case.
14 It appeared that the incident happened more so in Fairfield
15 than in the Newberry County area.

16 Q So you said you received a call the following week in
17 2011?

18 A I believe it was probably some time around that time.
19 Once this report was filed as information possible, I don't
20 think there was much follow-up on it other than calling to
21 try to ascertain where the incident happened. And I know I
22 spoke with Investigator Castles on several different
23 occasions about the incident.

24 Q Were you aware that the investigation in Fairfield
25 didn't start until five years later in 2016?

24 A No, sir, not without having information that would
25 validate. I don't go and talk with a suspect unless I have

1 information from the victim to validate the location of
2 where it would happen to give us jurisdiction.

3 Q And that's the same address for the suspect, Michael
4 Clayton?

5 A [REDACTED].

6 Q Did you ever try to reach out to Mr. Clayton?

7 A No, sir.

8 Q So it's your testimony that you didn't try to speak
9 with [REDACTED] Minor Child 1, I apologize if I'm not pronouncing
10 that right, the alleged victim?

11 A No, sir. We did not talk to her at that time.

12 Q Or her mother?

13 A No, sir.

14 Q Or the alleged suspect?

15 A No, sir.

16 Q But you did talk to the complainant, the biological
17 father?

18 A Kevin.

19 Q And specifically, did he give you anything additional
20 not contained in this complaint?

21 A No, sir.

22 Q Just that it was a sexual assault.

23 A Other than not knowing exactly where it occurred at and
24 could have occurred earlier, and still not knowing where
25 that was at because of moving.

1 Q You had this allegation, or this complaint listed as
2 unfounded.

3 A That's correct.

4 Q Why did you ultimately make that determination?

5 A This was taken as an information report and was
6 unfounded by the road unit, which is Chris Keller and the
7 lieutenant that was over the road, Garrett Lominack, because
8 there was no information to support that something happened
9 in Newberry County.

10 Q So Garrett Lominack, he's the supervisor?

11 A For the road.

12 Q And he's the one who approved this?

13 A He approves this report for spelling, grammar and
14 different things, making sure that the information is in
15 there that has been received by the deputy. And then he
16 signs off on it as the reviewer, and then I sign off as a
17 reviewer as well as an investigator.

18 Q And as a follow-up investigator, who makes the
19 determination of unfounded?

20 A The investigator.

21 Q That would be you?

22 A That's correct.

23 Q And so you made the determination that it was
24 unfounded?

25 A I left it as unfounded. It was already unfounded, it

1 remained unfounded.

2 Q And Lieutenant Garrett Lominack's role in this whole --
3 you said he just reviewed it for spelling errors?

4 A That's correct. Chris Keller is the initiator of the
5 report, Lominack is the reviewer for spelling, grammar,
6 other report, and then I'm the final check and balance.

7 Q He didn't do any additional investigation?

8 A No, sir.

9 MR. PHILLIPS: Just a moment, Your Honor.

10 (Break in proceedings.)

11 MR. PHILLIPS: No further questions, Your Honor.

12 THE COURT: Cross?

13 CROSS EXAMINATION

14 BY MR. KEY:

15 Q Good morning, Major Dennis.

16 A Good morning.

17 Q Is that your correct rank?

18 A Yes, sir.

19 Q So there was an incident report processed by the
20 Newberry County Sheriff's Office, and the incident alleged
21 that Michael Clayton had -- inappropriately had touched one
22 of the girls, correct?

23 A That's correct.

24 Q Okay. And then in your investigation -- or not -- in
25 the sheriff's office investigation there came to be an issue

1 of whether it happened in Newberry County or in Fairfield
2 County?

3 A That is correct.

4 Q And was Mr. Clayton ever charged with anything in
5 Newberry County?

6 A No, sir, he was not.

7 Q You spoke to Investigator Castles in Fairfield County
8 at some point?

9 A That's correct.

10 Q But there were no charges brought in Newberry.

11 A No, sir.

12 Q And the person who reported, the complainant, was
13 Mr. Clayton's wife's ex-husband, correct?

14 A Kevin, yes, sir.

15 MR. KEY: No further questions.

16 THE COURT: Redirect?

17 MR. PHILLIPS: Very brief.

18 REDIRECT EXAMINATION

19 BY MR. PHILLIPS:

20 Q Did you know Kevin was the ex-husband?

21 A He had -- we knew that he was the father of the child
22 and that he was no longer married to the lady -- or the
23 mother of **Minor Child 1**

24 Q And it was your testimony under oath before that it was
25 about a week later you got a call from Fairfield?

1 A I would say so. You know, it's hard whenever you start
2 with these investigations of keeping up with them,
3 especially when they're rolling in one right after the
4 other. Could it have been longer? Sure it could have.

5 Q How much longer do you think?

6 A I wouldn't want to say.

7 MR. PHILLIPS: No further questions, Your Honor.

8 THE COURT: Okay. Thank you very much, Major. Any
9 objection to him being excused? Mr. Phillips?

10 MR. PHILLIPS: He's excused. Is Lominack here?

11 THE WITNESS: No, he is not.

12 MR. PHILLIPS: He was subpoenaed but he thought it was
13 next week, Investigator Dennis. I think we pretty much
14 covered it. I might cut him lose, too, I think we got
15 everything we needed.

16 The witness, KAREN CASTLES, was first duly sworn and
17 Testified as follows:

18 DIRECT EXAMINATION

19 BY MR. PHILLIPS:

20 Q Good morning, Investigator Castles, how are you?

21 A Good.

22 Q You were the lead investigator in a case with the
23 suspect, Michael Clayton?

24 A Yes, sir.

25 Q What was the date that that complaint was filed?

1 A It looks like June 23rd of 2016.

2 Q At what point did you speak with Investigator Dennis
3 from the Newberry County Sheriff's Office?

4 A I don't know if I spoke with him. I know I spoke with
5 an Investigator Lominack, I spoke with him on 11/8 of 2016.

6 Q So you have no notes that you spoke with Investigator
7 Dennis?

8 A No, sir.

9 Q During the course of your investigation, were you aware
10 that the divorce had been finalized between Mr. Clayton and
11 Tova, the mother of the children, two days prior to the
12 complaint being filed?

13 A It did come out during the investigation.

14 Q When did you find out as far as the timing of all of
15 that, and how did you find out?

16 A I believe Tova told me. I believe Mr. Clayton told me
17 in his interview, and I believe Tova told me in hers as
18 well.

19 Q She specifically told you during the interview that,
20 "They're probably going to say it's because of this
21 divorce."

22 A I'm not sure. I did not review the video before I came
23 today. I know I do have some notes, I can refer to them
24 quickly if you would like --

25 Q Absolutely --

1 A -- and see if they are in there.

2 Q Take your time.

3 A I don't have it noted about the divorce in the notes
4 that I took from the video. I just have the dates listed of
5 when they moved in together, when they married, when they
6 move out, when they moved to Prosperity, when they
7 separated, moved out for two years, and then two years ago
8 they moved back in together.

9 Q As far as Newberry was concerned, what information did
10 you find out about that prior complaint from 2011?

11 A They forwarded me a copy of the initial report. I
12 asked -- I called, and when I spoke with Lominack I asked
13 him if there was a follow-up report done or any
14 investigation and he said not to his knowledge. I was just
15 asking if there were additional pages to the report or
16 anything, and he said no.

17 Q Did you ever speak to the biological father, Kevin
18 Harclerode?

19 A I remember speaking with Mr. Harclerode on the phone.
20 I don't have it documented. It seems like I remember
21 speaking with him but I did not document whether I did or
22 not.

23 Q And as best as you can remember, did you also obtain
24 through the course of your investigation Minor Child 2 mental
25 health records?

1 A Yes.

2 Q And you reviewed those?

3 A Yes.

4 Q And through your statements that you collected from
5 Mr. Clayton, you took two statements from Mr. Clayton?

6 A Correct.

7 Q One statement from Tova Clayton?

8 A Yes, sir.

9 Q One statement from **Minor Child 2**

10 A Yes, sir.

11 Q One statement from **Minor Child 1**

12 A Yes.

13 Q Two statements from Sierra?

14 A I guess so. It seems like I only took one.

15 Q That's fine, it's inconsequential. And a statement
16 from Jane Barefoot?

17 A Yes.

18 Q In reviewing your investigation and using those
19 statements, was there any discussion about Tova seeing Mr.
20 Clayton with an erection coming out of one of the girl's
21 rooms?

22 A Yes.

23 Q Where did you have that?

24 A I don't know. I know -- I remember that from one of
25 the interviews.

1 Q Well, let's break them down.

2 A Okay.

3 Q From your notes, did it occur during the interview with
4 Ms. Tova?

5 A Not according to my notes.

6 Q So as far as you know to the best of your knowledge
7 during that video recorded interview, she didn't tell you
8 anything about catching or seeing Mr. Clayton coming out of
9 one of her daughter's rooms with an erection?

10 A Not according to my notes, no.

11 MR. PHILLIPS: And, Your Honor, I guess for
12 housekeeping, we were in chambers and we discussed the
13 matter of I've put on a USB drive as well a disk and
14 provided to the Court the videotaped interviews for Ms.
15 Castles in her investigation of Tova Clayton, **Minor Child 1** and
16 **Minor Child 2** for the Court's review. The attorney general's
17 office have stipulated to the authenticity that those were
18 the videos that were collected as part of the law
19 enforcement's investigation. We would like to mark that.
20 And I have -- see what the best way to do this -- because I
21 provided one disk to the attorney general's office, and I
22 gave Your Honor a disk and the USB drive. If Your Honor
23 sees fit, we can mark the disk and you can keep the USB
24 drive, that way the record is sufficient.

25 THE COURT: That's perfectly fine. We'll get that.

1 That will be Applicant's Number 4 and it will be admitted
2 without objection. And we've checked with the USB, we're
3 able to play the USB, so that's a format that we can use.
4 Thank you.

5 MR. PHILLIPS: Thank you, Your Honor. And obviously if
6 you have any trouble with that --

7 THE COURT: Yes, sir.

8 Q So through that investigation, do you have anywhere in
9 your notes where that information was provided to you?

10 A I found it while you were going through, it looks like
11 an in an interview with **Minor Child 1** She made reference to a
12 hard penis, mom and him fought, took kids to go to the
13 grandmother's.

14 Q In anywhere during the course of your investigation,
15 did Tova Clayton tell that **Minor Child 2** and **Minor Child 1** initially
16 denied that anything was going on with Mr. Clayton, with
17 Michael?

18 A Yes.

19 Q At what point did she say that?

20 A She said she had asked **Minor Child 2** when **Minor Child 2** was 17 and
21 she denied it. And **Minor Child 1** said that she told her mom
22 around 2012 when there was an initial disclosure made, I
23 believe, to the grandmother, then the grandmother to the
24 mom, and the mom talked to **Minor Child 1** and they talked about it
25 and she told her mom everything. But I think from there mom

1 asked Minor Child 2 but Minor Child 2 denied it.

2 Q And so we kind of lay out the timeline since we kind of
3 ran into this before. We have Minor Child 2 we have Minor Child 1 we
4 have grandmom, Jane, and then we have Tova, that's the
5 mother.

6 A Uh-huh.

7 Q Do you have a timeline as to when all of these things
8 occurred?

9 A Let's see. So around 2012, I believe, is when Minor Child 1
10 told the grandmother Jane. I don't have a sheet breaking
11 down exactly how old the children were. But then when
12 Minor Child 2 was around 17 years old is when Tova asked her about
13 being touched and she denied it to her then.

14 Q As far as the allegation from Minor Child 1 of when the
15 mother saw the erect penis or however it was phrased, do you
16 have a timeline on that?

17 A It was during the -- she said it was around Easter is
18 when she did that. I believe there was one or two
19 references to around Easter time. She just remembers being
20 dressed up, and when she saw that Tova took the children to
21 Jane and they stayed there, and then she came -- or she
22 came -- and they came back home.

23 Q Do you have a year?

24 A It was when Minor Child 1 was around 13 or 14. It wasn't a
25 hard -- I don't know if I ever figured out the exact

1 timeline. If I did -- if I didn't, the solicitor did during
2 trial prep, she had it laid out. But I don't know if I had
3 the actual timeline.

4 Q Twelve to 13?

5 A Somewhere in there, yes, sir.

6 MR. PHILLIPS: Moment, Your Honor.

7 (Break in proceedings.)

8 MR. PHILLIPS: May I approach, Your Honor?

9 THE COURT: Of course.

10 Q Please review the document that I've handed you.

11 (Break in proceedings.)

12 Q Have you had a chance to review it?

13 A I was still reading the highlighted part.

14 Q I'm sorry, take your time.

15 A Okay.

16 Q So what was -- what is that document?

17 A It looks like a mental health document on Minor Child 2

18 [REDACTED]

19 Q And is that document one of the set of documents that
20 you obtained throughout the course of your investigation of
21 this case?

22 A Yes, sir, I believe so.

23 Q And does it accurately and fairly depict the type of
24 documents that you picked up from the Beckman Center for
25 Mental Health Services?

1 A Yes, sir.

2 Q For **Minor Child 2** The line in there that says that it was
3 only before coming to therapy that she had told her mother
4 and that her mother said, "I'm sorry that this happened. I
5 love you and I wish it never happened." Is that in the
6 report? It's about three quarters of the way down in the
7 second paragraph.

8 A I guess so. I guess it's a typo, or is that what MO
9 stands for?

10 Q Shorthand. Just like for **Minor Child 2** it's CL, like client.

11 A But you said Tova said something in here? I'm sorry,
12 I'm just not --

13 Q I will clarify for you. That **Minor Child 2** had told to the
14 counselor that her mother had told her, "I'm sorry this
15 happened. I love you and wish it never happened." Is that
16 what's contained in that report?

17 A No. I don't see anything that -- there's no -- okay,
18 I'm sorry. "I'm very sorry this happened and that her" --

19 Q Specifically that **Minor Child 2** didn't tell her mother until
20 after therapy, and then said that specific statement that
21 her mother responded, "I'm very sorry this happened. I love
22 you, I wish it never happened."

23 A Yes, it's in there. That whoever -- and then the MO
24 that's referring to is her mom? I don't know, and it
25 doesn't say in there. It doesn't note that that's who

1 they're referring to so --

2 Q Did you ever do any investigation related to what was
3 contained in the mental health records?

4 A No.

5 Q Did you ask Tova any questions about this?

6 A No.

7 MR. PHILLIPS: Your Honor, I would like this marked as
8 Applicant's Exhibit 6 (sic) and moved into evidence. Is it
9 5?

10 THE COURT: Any objection?

11 MR. KEY: Your Honor, I don't have an objection to it
12 coming into evidence, I believe, through this witness. He
13 has laid a proper foundation and the document has been
14 authenticated. I would ask that because this is the
15 victim -- one of the victim's mental health records that
16 this be an exhibit under seal.

17 MR. PHILLIPS: And I was actually going to ask that as
18 well since it's not properly redacted, that it be held under
19 seal. And for that matter I think possibly the disk as well
20 needs to be under seal since it's not -- it's a video
21 recording of two minors.

22 THE COURT: So Applicant's Exhibit Number 5 is admitted
23 without objection. Applicant's Exhibit Number 4 and
24 Applicant's Exhibit Number 5 are admitted under seal.

25 (The CD and records was received as Applicant's 4 and

1 5.)

2 Q And last thing.

3 MR. PHILLIPS: Your Honor, may I approach?

4 THE COURT: Of course.

5 Q Will you take a look at these two documents?

6 A Yes, sir.

7 Q What are those documents?

8 A It's the initial report and my work product and
9 personal notes for the case.

10 Q Do these fairly and accurately depict your
11 investigative notes in this case?

12 A Yes.

13 Q And your report?

14 A Yes, sir.

15 MR. PHILLIPS: Your Honor, I would like to move those
16 as Applicant's Exhibits 6 and 7. They're two separate
17 stapled so that will make it easy.

18 THE COURT: Any objection?

19 MR. KEY: No objection, Your Honor.

20 THE COURT: All right. Applicant's 6 and 7 admitted
21 without objection.

22 (The reports were received as Applicant's 6 and 7.)

23 Q Last thing. As far as your investigation is concerned
24 you said you knew that the divorce had been finalized two
25 days before the complaint. You were also aware that Tova

1 wanted, just a few years before that, to have a baby with
2 Mr. Clayton?

3 A Mr. Clayton may have told me that in our initial
4 interview, because we were going through family dynamics and
5 I think he told me. I don't believe anyone else told me.

6 Q That she had her tubes untied and they tried to have a
7 child together?

8 A Yeah. I think he told me that in our initial
9 interview.

10 Q During your investigation as far as Meredith Suber is
11 concerned, did she ever tell you that she had allegedly
12 slept with Michael Clayton?

13 A Yes.

14 Q And she was a good friend of which child?

15 A Of **Minor Child 2**

16 Q And so **Minor Child 2** is the one who filed the complaint two
17 days after the divorce?

18 A Yes.

19 Q And through your investigation you found that **Minor Child 2**
20 good friend, best friend, however you want to describe it,
21 when she was legally of age claimed she had a sexual
22 relationship with Michael Clayton?

23 A Yes.

24 Q Did you ever question **Minor Child 2** about that as far as her
25 motive of whether she knew that to be true and why she

1 decided to file the complaint two days after the divorce?

2 A She stated she filed the complaint due to the defendant
3 having a new born daughter and she was concerned about the
4 new born daughter being molested like she was is what she
5 told me why her complaint was filed; or, you know, that's
6 why they came forward. And she knew that Meredith had done
7 that and they hadn't spoken since the affair between
8 Meredith and Mr. Clayton.

9 Q She confirmed that?

10 A Yeah. She said that they hadn't spoken, that they had
11 fallen out since **Minor Child 2** found out that Meredith and Mr.
12 Clayton had had an intimate relationship.

13 Q And that happened before the complaint?

14 A Yes.

15 MR. PHILLIPS: No further questions.

16 THE COURT: All right. How long are you going to be on
17 cross? I'm not holding you to it, Mr. Key, I'm just trying
18 to get a timeline.

19 MR. KEY: Brief.

20 THE COURT: Brief. Okay. All right. Let's go ahead.

21 CROSS EXAMINATION

22 BY MR. KEY:

23 Q Investigator Castles, you received the complaint in
24 this case on January 23rd, 2016?

25 A I think it was June 23rd.

1 Q June 23rd. And you testified that you spoke to Deputy
2 Lominack on November 8th, 2016?

3 A Yes, sir.

4 Q Okay. And you knew that Mr. Clayton and Ms. Clayton
5 had gotten divorced two days before the complaint was filed.

6 A Yes.

7 Q Is it your job to -- is your job to gather the evidence
8 in the case?

9 A Correct.

10 Q Do you have the decision whether or not to actually
11 charge someone with a crime?

12 A I usually consult with the solicitor's office pursuing
13 any charges.

14 Q And you interviewed Mr. Clayton.

15 A Yes, sir.

16 Q Okay. You interviewed the two victims.

17 A Yes, sir.

18 Q And you interviewed Mrs. Clayton.

19 A Yes, sir.

20 Q And that was -- was that before you decided to bring
21 charges against Mr. Clayton?

22 A Yes, sir.

23 Q And do you recall when you got the Newberry incident
24 report sent to you?

25 A It was probably shortly after I spoke, or around that

1 same time around when I had spoken with Lominack but I'm not
2 sure. I don't think I have it documented with -- I don't
3 believe I got it in an email. I can probably go back, but I
4 don't have an exact time frame.

5 Q Did you get that report before the Fairfield County
6 complaint was filed, or did you know of that report?

7 A No. I got the information about it during -- I
8 believe, after talking with **Minor Child 1** and doing her interview,
9 and then reached out to Newberry for information. It was
10 just sort of an ongoing -- after speaking with **Minor Child 1** and
11 finding out there was an investigation I had gotten a copy
12 of the report, and I believe after that report is when I
13 talked to Lominack about were there any additional pages to
14 the report.

15 Q Okay. And Meredith Suber, I believe you said she was
16 the younger daughter's -- **Minor Child 2** friend?

17 A Correct.

18 Q And in your interview with **Minor Child 2** **Minor Child 2** said that
19 they had had a falling out because Meredith had claimed to
20 have had sex with Mr. Clayton?

21 A Correct.

22 Q Did **Minor Child 1** ever say that she told Meredith that Mr.
23 Clayton had done anything inappropriate to her?

24 A **Minor Child 1** ?

25 Q I'm sorry **Minor Child 2**

1 A She did state that **Minor Child 2** had told her about the abuse
2 as -- right after kind of -- right after it happened, so
3 they were young teenagers.

4 Q Meredith did?

5 A Meredith and **Minor Child 2** So **Minor Child 2** had told Meredith
6 about --

7 Q When they were younger?

8 A When they were younger she told her. And so Meredith
9 said she felt guilty about sleeping with Mr. Clayton because
10 of what **Minor Child 2** had told her previously. And then when
11 **Minor Child 2** found out that Meredith had slept with Mr. Clayton
12 she was upset, because Meredith knew everything that he had
13 done to **Minor Child 2** and they no longer talked.

14 Q So Meredith told you that **Minor Child 2** disclosed to her the
15 abuse before they had their falling out.

16 A Correct.

17 Q Did **Minor Child 2** ever say anything about that?

18 A I believe she did because she's the one that gave me
19 Meredith's information, and she said that she had spoken
20 with Meredith and told her about it, and that she provided
21 Meredith's contact information or -- I think she gave me
22 where she used to live and her family's name and I was able
23 to track down Meredith through her father's name in
24 Prosperity.

25 MR. KEY: No further questions, Your Honor.

1 MR. PHILLIPS: Nothing further, Your Honor.

2 THE COURT: All right. Thank you, ma'am, have a nice
3 day. All right. Let's take a little break, about ten
4 minute break.

5 (A break was taken.)

6 The witness, TIFFANY DREW, was first duly sworn and
7 Testified as follows:

8 DIRECT EXAMINATION

9 BY MR. PHILLIPS:

10 Q Please state your name.

11 A Tiffany Drew.

12 Q And if you could, explain your relationship to Michael
13 Clayton.

14 A I'm his cousin.

15 Q And back in what time period were you his neighbor?

16 A I've been living in Blair for 25 years.

17 Q So the same location.

18 A Yes, sir.

19 Q And who lived with Michael?

20 A It was Michael, my grandmother, his mother, Tova,

21 Minor Child 2, Minor Child 1, Austin and Wyatt.

22 THE COURT: Sorry, you went a little fast.

23 Q If you could, just deep breath, slow. So with this --
24 during this time period of you living next door, did you
25 ever babysit for Tova's children?

1 A No, sir. I only have been up there just to see my
2 grandmom and pretty much just hang out around the house.

3 Q And so did you ever, I guess -- let me rephrase -- hang
4 out or somewhat supervise with [Minor Child 1] and [Minor Child 2]

5 A Yes, sir.

6 Q I mean, describe the relationship, your relationship,
7 with [Minor Child 1] and [Minor Child 2] I don't want to do it for you.

8 A They would pretty much tell me anything that I wanted
9 to know. If I asked them a question they will pretty much
10 answer it. We hung out pretty much all week, even before
11 Michael and Tova got married and after the fact they got
12 married.

13 Q So during that time period when they lived next door
14 you spent how much time with them?

15 A Whenever I got home from school from like 4:00 to maybe
16 eight or 9:00 at night.

17 Q And y'all were neighbors and everybody just kind of
18 would do what? What would y'all do in the afternoons?

19 A Pretty much if Michael was at home Michael would take
20 the boys and play football and baseball with them, or me and
21 them sit in the room, they will sit there and tell them
22 something. I'll ask them a question, and one of the
23 questions were -- we're sitting in the kitchen and one of
24 the questions I asked them, "How do you like Michael?"
25 Well, the girl hesitated, which was [Minor Child 2] and [Minor Child 1] told

1 her, "Don't say anything." And the first thing that she
2 says is that she doesn't like Michael. "Why you don't like
3 Michael? Michael makes us mind." I am like, "Okay."

4 Q So let's stop there. When you said makes us mind, were
5 they describing Michael as a disciplinarian?

6 A Yes, sir. Like they'll do chores, or it was something
7 he would ask them to do and they didn't like it.

8 Q And could you explain that? Why did they think he was
9 the disciplinarian of the household?

10 A I'm trying to think of how to put --

11 Q Did Tova discipline **Minor Child 1**

12 A No.

13 Q So --

14 A It was more like a best friend to the girls and to the
15 boys, too. But Michael only spent most of his time with the
16 boys.

17 Q And so when it came to -- how did Michael treat **Minor Child 1**
18 and **Minor Child 2**

19 A He tried to treat them like it was his own daughters
20 and like his own kids, tried to learn responsibility and
21 tried to teach them the right way and just to clean up after
22 yourself, be an adult.

23 Q How would you describe the way he was to **Minor Child 1** and
24 **Minor Child 2**? Like how would you describe him as a father figure?

25 A He was excellent. He never whooped them. Anytime that

1 they did something wrong he did ground them. It was stayed
2 grounded for a week in your bedroom, no video games, no
3 TV's.

4 Q And so you knew **Minor Child 1** and **Minor Child 2** very well?

5 A Yes, sir. I even rode the bus with them, yes, sir.

6 Q So you rode the bus with them to and from school?

7 A Yes, sir.

8 Q And so how would you describe them as people?

9 A They started a lot of stuff on the bus, especially with
10 one of our bus drivers. They had a problem, they that
11 thought she was racist because of the disrespect that they
12 was giving her. The more disrespect they caused on her she
13 would try to get the kids written up, and it was mostly
14 **Minor Child 1** at the time because of her talking back. And it was
15 told to Michael that she was racist and all of this, and
16 it's come to find out that she wasn't racist, she told me
17 that she was just getting tired of disrespect from the
18 girls.

19 Q I guess be more specific, what was their -- you knew
20 them, how would you say -- what was their reputation as far
21 as being truthful?

22 A None. They were always lying about something that
23 happened or that never really happened. I would have a
24 story for once. My family came down from Rock Hill and we
25 were riding (inaudible) -- and Michael, I don't know if you

1 remember that. Well, the kids were in our way and my cousin
2 was driving, they was trying to go around them. Well,
3 instead of going around them, Austin and Wyatt, so did
4 **Minor Child 1** and **Minor Child 2** they ride pairs, they started throwing
5 things at them, and one of little boys actually hit my
6 cousin in the leg with a chain. They went and tell Michael
7 that we was trying to run over them, which wasn't true at
8 all.

9 Q And so given that specific instance where they didn't
10 tell the truth, how many other specific instances can you
11 think of where they lied about something?

12 A The bus driver was one. They had another bus driver
13 that got into another incident, they also claimed that she
14 was racist, and which she was. I don't remember what the
15 incident was about, but she didn't want to talk to Michael,
16 which Michael did talk to her. And Michael didn't want to
17 hear her, because with Michael you have to come with him
18 correct, you have to talk proper english and she wasn't.
19 The only thing she kept on saying was true that, and then
20 Michael just actually walked away because he had enough of
21 it.

22 Q And so going back you said you spent a lot of time with
23 them, every afternoon for several hours, rode the bus to
24 school and from school, and you said they had a reputation
25 for being liars. How would you describe them as people? I

1 mean, you spent a lot of time with them.

2 A Yes. It was like little things they would lie about.

3 It was either -- let's see, it's been so long I would have

4 to kind of refresh my memory a little bit here.

5 Q So specifically you described them in a certain way one

6 time when we spoke. What was the -- and I think it was

7 specifically regarding **Minor Child 1** do you remember? You had a

8 description of **Minor Child 1**

9 A I did, but me being so nervous and everything it is

10 just --

11 Q Well, take your time. It's the way -- you described

12 the way she treated people.

13 A She treated people horribly. She could be your best

14 friend and the next couple of days she would turn her back

15 on you and she lied about something, or you tried to fight

16 her or you would try to do something to her and it wasn't

17 even the case.

18 Q Do you remember saying that she was a manipulator?

19 A She is a manipulator.

20 Q Could you explain that?

21 A She likes to be your best friend and tries to switch

22 stuff around to make you feel sorry for her, and some of the

23 things that she did say is not even true. She likes to get

24 somebody in trouble. She likes to be the instigator of

25 trouble pretty much.

1 Q And she didn't like Michael?

2 A No. Both the girls did not like Michael, no. The boys
3 had a lot of respect for Michael. The youngest boy actually
4 called Michael dad, and so did Austin.

5 Q And again, I know you touched on it earlier, why didn't
6 they like Michael?

7 A Like I said, it was just a disciplinary. They wanted
8 to be with somebody that would let them do whatever they
9 want. Tova was more of the girls' best friend than a
10 mother. Michael was the father figure, the one that was
11 trying to provide them responsibilities, get them to do
12 things on their own and they don't like him.

13 Q How would you describe Michael as a person?

14 A Michael is awesome. Michael will do anything for
15 anybody. He will give you the shirt off his back for
16 anybody. He loves kids. He wouldn't even harm anybody. He
17 wouldn't even harm a fly.

18 Q What was Michael's reputation as far as being a
19 truthful person?

20 A It was somebody you could actually trust. You could
21 tell Michael anything and he wouldn't tell anybody.

22 Q Is there anything else that you would like to add as
23 far as what you observed as far as Michael as a father or
24 Michael as a person?

25 A I do got one thing that my mom did say this morning.

1 If Michael --

2 MR. KEY: Objection, Your Honor, hearsay.

3 THE COURT: Sustained.

4 Q You're not allowed to say what somebody else said.

5 A Okay. I'm sorry.

6 Q It's okay.

7 A But my thing is, and this is me personally, if he did
8 do anything, why are you still saying that that's your dad?
9 Or the fact that your two other kids can be around him. You
10 let them go fishing with him, go hunting, baseball,
11 football, whatever the case may have been. If that was all
12 true, why are you still letting him like see the kids,
13 especially the boys, who adore Michael, who loved Michael?
14 Why?

15 Q And you're referring to Tova?

16 A Yes.

17 Q That you were around when all of this happened
18 allegedly, and then, of course, afterwards and when they
19 were moving in and out of the house?

20 A I was around. I was even around for one incident that
21 happened. Michael came to Blair, and it was him and Tova,
22 they had a red car. He was in the woods hunting with the
23 boys, and me and Tova started talking, and I asked her one
24 day, I said, "What is wrong?" And she looked at me,
25 "Michael messed with my girls, or did something with my

1 girls."

2 MR. KEY: Objection, Your Honor.

3 THE COURT: What's the objection?

4 MR. KEY: Hearsay.

5 THE COURT: Mr. Phillips?

6 MR. PHILLIPS: We're fine with it being struck.

7 THE COURT: Okay. Sustained.

8 MR. PHILLIPS: No further questions, Your Honor.

9 THE COURT: All right. Cross examination?

10 CROSS EXAMINATION

11 BY MR. KEY:

12 Q Ms. Drew, did you ever see anything inappropriate
13 between Mr. Clayton and his daughters, see him doing
14 anything inappropriately?

15 A No.

16 MR. KEY: Okay. No further questions.

17 THE COURT: Redirect?

18 MR. PHILLIPS: No redirect, Your Honor.

19 THE COURT: Thank you, Ms. Drew. That's a good place
20 to break unless you think the next witness is super short.

21 MR. PHILLIPS: Probably not short enough for Your
22 Honor's liking.

23 THE COURT: Okay. Let's go ahead and break for lunch.
24 It' about 12:25 or so, we'll start back at 2:00.

25 (A lunch break was taken.)

1 MR. PHILLIPS: Applicant calls Joseph Glymph.

2 The witness, BARRY GLYMPH, was first duly sworn and

3 Testified as follows:

4 DIRECT EXAMINATION

5 BY MR. PHILLIPS:

6 Q Good afternoon, Barry.

7 A Good afternoon.

8 Q Thank you for coming today. If you could, just tell us
9 a little bit about yourself, just who you are and what you
10 do for a living.

11 A I am Barry Glymph. I work at V.C. Summer Nuclear
12 Plant, been there almost 40 years. Nothing too exciting to
13 say about me, but that's about it.

14 Q And do you know Michael Clayton?

15 A I do.

16 Q How do you know Michael Clayton?

17 A From work. I've known him ever since he started work
18 out there. I think it was about 20 years ago.

19 Q So you've known him for 20 years?

20 A Yeah.

21 THE COURT: Did you say B.C. or V.C.?

22 THE WITNESS: V.C.

23 THE COURT: Like the one in Jenkinsville.

24 THE WITNESS: Yes, sir.

25

1 THE COURT: Okay. Just wanted to make sure I heard
2 that right.

3 Q And so in knowing Michael Clayton for the last 20
4 years, you knew Tova Clayton?

5 A I knew her but not near as well as Michael.

6 Q Mainly would you describe yourself as a friend of
7 Michael's?

8 A Yes.

9 Q And so with that friendship, how long have y'all been
10 good friends for the 20 years?

11 A We hit it off, you know, whenever he came to work out
12 there. I would say close to 20 years.

13 Q As far as his character is concerned, how would you
14 describe him?

15 A He's good natured, a very good natured person.

16 Q As far as trustworthiness in your dealings with him
17 over 20 years, would you consider him a trustworthy person?

18 A Oh yeah, I've trusted him with a lot of things.

19 Q And so again, with your friendship, what's the type of
20 things that you witnessed during your friendship as far his
21 character, specific instances?

22 A I mean, as far as being like a stepfather of whatever
23 he was very good. He was always -- he would -- we covered
24 each other at work. We did two different jobs, but we each
25 did the same job. If he would have to leave then I would

1 cover his area. And I did that quite a bit and it was
2 because he took care of a lot of --

3 Q How would you describe him as a father?

4 A Good.

5 Q And as far as once the divorce -- you knew him whenever
6 he got his divorce?

7 A Yes.

8 Q How would you describe Tova's demeanor during that time
9 period?

10 A To be honest I wasn't around her at that time.

11 Q Why are you testifying here today?

12 A Because he is my friend, I believe in him.

13 Q And specifically when you say you believed in him,
14 you're saying as to what?

15 A I believe that he's a good guy. He would never do
16 anything like that.

17 Q Do you have children of your own?

18 A Yes, I do.

19 Q Would you let Mr. Clayton watch your own children?

20 A I wouldn't think twice about it.

21 MR. PHILLIPS: No further questions, Your Honor.

22 THE COURT: All right. Cross examination?

23 MR. KEY: Nothing from the State, Your Honor.

24 THE COURT: All right. Mr. Glymph, thank you very
25 much, have a nice day. Any objection to this witness being

1 excused from his subpoena?

2 MR. PHILLIPS: None, Your Honor.

3 (Break in proceedings.)

4 THE COURT: Call your next witness.

5 MR. PHILLIPS: Kevin Chalk.

6 The witness, KEVIN CHALK, was first duly sworn and

7 Testified as follows:

8 DIRECT EXAMINATION

9 BY MR. PHILLIPS:

10 Q Good afternoon.

11 A Afternoon.

12 Q Could you please introduce yourself?

13 A My name is Kevin Chalk.

14 Q Give a little bit of your background?

15 A Sure. I work out at the V.C. Summer Plant. I worked
16 with Michael from 2010 until I believe 2017, and we worked
17 in the same department so that's how we met. That's how we
18 became initially acquaintances and then very close friends
19 after that.

20 Q And why would you describe yourself as close friends?

21 A Initially Michael had told me that he was doing some
22 weightlifting out there and I had been wanting to kind of do
23 some physical fitness, so Michael and Barry took me under
24 their wing. We went to the gym daily, and as we did that we
25 kind of formed a close bond. In 2014 I bought a house up in

1 Joanna, which is about 40 miles north of Columbia, and
2 Michael at the time was working part-time at a restaurant
3 bar and invited me to come down while he was working, went
4 down there and started hanging out with him. And that's
5 when we started becoming a lot closer friends. We start
6 doing things outside of the work place. And in I believe
7 2016, maybe January of 2016 when he and his ex-wife were in
8 the process of splitting up, he needed a place to stay and I
9 invited him to stay with me. I think he stayed with me for
10 about five and a half months in my home.

11 Q So as roommates for about five an half months, this is
12 while they were separate or post-divorce time period wise?

13 A This was pre-divorce. I think they were in the process
14 of divorcing at the time. But obviously he wanted to be out
15 of the house and needed somewhere to stay, so I invited him
16 to stay with me. I had plenty -- a spare room.

17 Q Being his roommate and kind of seeing his demeanor on a
18 daily basis and being a close friend, how would you describe
19 his character?

20 A Michael's a funny guy, because when you look at him he
21 is pretty intimidating. He's a big guy, very muscular, and,
22 you know, he might come across as being kind of a tough guy
23 up front. But when you get to know him and you know his
24 personality, he's very laid back. He's got a great sense of
25 humor. I just remember, specifically during that time

1 period, I believe that's when he was expecting his first
2 child, and I'm a father of three so we talked a lot about
3 being a dad, what to expect and things like that, I was kind
4 of telling him what he was going to deal with his first year
5 or two with having a new child and things like that. He's
6 just the kind of guy that will pretty much do anything for
7 you. I moved, he without hesitation volunteered his help to
8 help me move. We've been out on occasions to where he's
9 been, I hate to say protective, but he's the kind of a
10 person that will go to bat for you if you're in a bad
11 situation, things like that.

12 Q Do you believe he is a trustworthy person?

13 A Absolutely.

14 Q Not to take up too much of your time, again, why are
15 you testifying here today?

16 A When I found out what was going on when Michael first
17 told me about it, my first initial reactions was, "You've
18 got to be kidding me." Just based on knowing him and
19 knowing his personality, I just -- there was -- in the back
20 of my head I just knew that there was absolutely no way that
21 this could have been possible. And, you know, I remember
22 telling him many occasions if there's anything I can do to
23 help you out, you know, whether it be a character witness or
24 anything else that I can provide for you, you just say the
25 word. He's helped me out quite a bit and I just wanted to

1 return the favor and let people know what kind of person he
2 is really.

3 Q Did you ever get a phone call from any attorney?

4 A Other than you?

5 Q Yeah, other than me.

6 A No.

7 Q And you have children of your own?

8 A I have three son.

9 Q Would you let Mr. Clayton, Michael, watch your own
10 children?

11 A Absolutely without a doubt. In fact, he's been home
12 with one of my sons on more than one occasion when I wasn't
13 there.

14 MR. PHILLIPS: No further questions, Your Honor.

15 THE COURT: All right. Cross examination?

16 MR. KEY: Nothing from the State, Your Honor.

17 THE COURT: Thank you, Mr. Chalk. Any objection to him
18 being excused from his subpoena, Mr. Phillips?

19 MR. PHILLIPS: No, Your Honor.

20 THE COURT: Mr. Key?

21 MR. KEY: No, sir, Your Honor.

22 THE COURT: You're welcome to stay if you would like
23 to, but you're also free to leave if you would like, Mr.
24 Chalk.

25 The witness, GWEN RAY, was first duly sworn and

1 Testified as follows:

2 DIRECT EXAMINATION

3 BY MR. PHILLIPS:

4 Q Good afternoon, Ms. Ray. Could you introduce yourself?

5 A My name is Gwendolyn Ray and I'm Michael's aunt.

6 Q Ms. Ray, could you kind of describe -- obviously you
7 said your relationship with him is that you're the aunt,
8 describe what you observed as far as his relationship with
9 Tova and her children?

10 A I never saw any kind of animosities out there. The
11 kids always seemed happy, hanging all over him. The two
12 boys, he basically raised. The little one didn't even know
13 his real daddy, that was his daddy. They were always joking
14 around, playing. They've been to my house.

15 Q All of the children?

16 A The boys. The girls have not.

17 Q As far as --

18 A The girls did at another house but not that one.

19 Q As far as being somebody that had been around you
20 during this time period, could you explain the rooms in
21 which the children stayed at different points?

22 A Yes. Let's see --

23 Q I know it's difficult --

24 A My mother stayed in the back bedroom -- my dad's house
25 is five bedrooms. My mom stayed in the last bedroom on the

1 right, my sister stayed in the last bedroom on the left, and
2 I think the girls stayed in the front bedroom, and the boys
3 stayed in the middle bedroom on the right.

4 Q You said the front bedroom was the girls'?

5 A Yeah, and the middle one was the boys'. And Michael
6 and Tova had my dad's room.

7 Q This is the childhood home?

8 A Yes.

9 Q Again, with your observations as far as that is
10 concerned as the aunt, did you ever see anything between
11 2010 and 2015 that could have led you to believe that
12 anything could have gone on between Michael and the
13 children?

14 A Not at all.

15 Q Again, at what point -- you saw the boys staying with
16 Michael even past the separation?

17 A Yes. He still got them every other weekend.

18 Q And I know you're his aunt, but could you describe how
19 Michael was as a father, who he is as a person?

20 A The way it was in their house, Michael took more care
21 of the boys where Tova took care of the girls most of the
22 time. So the boys basically almost went anywhere with
23 Michael. He taught them to fish, to hunt.

24 Q And I guess as far as his demeanor as a father, how
25 would you describe that?

1 A Kind of like my dad, he was strict. He didn't want any
2 mess-ups, I guess, in school or getting with the bad crowds.
3 He made sure they did their chores, that kind of stuff.

4 Q Like a disciplinarian?

5 A Yes. He had features on the TV where they couldn't get
6 on any R rated TV shows or movies.

7 Q Last question. How would you describe his character?

8 A He's been around my kids all of his life, and I have
9 five grandkids and three kids. I would describe his
10 character in the utmost way. I would trust him around any
11 of my kids. He's also been around my friends and their
12 children.

13 Q Is there anything else you would like to add based on
14 what you heard and saw based on his relationship with Tova
15 and her children, or who he is as a person? Is there
16 anything else you would want to add?

17 A Michael has a tender heart. He, I guess, felt sorry
18 for Tova. She had left him for over a year and needed a
19 place to stay so he allowed her to come back. And then she
20 brought her whole family back with her, including her mom
21 and dad, but he still let it happen because he felt sorry
22 for the kids. He took them out of Winnsboro just to put
23 them in a better school district because the schools had
24 gotten so bad in Winnsboro. I did the same thing so I
25 understood. But yes, I think that he has incredible

1 character.

2 Q Thank you.

3 A And I'm not saying that as an aunt, I'm just saying
4 that in general.

5 MR. PHILLIPS: Thank you. No further questions.

6 THE COURT: Cross examination?

7 MR. KEY: Very briefly.

8 CROSS EXAMINATION

9 BY MR. KEY:

10 Q Ms. Ray, you described the, I guess, where everyone's
11 bedrooms were in the house that they lived in. Is that the
12 house that they always lived in?

13 A That's the house that they lived in in Blair in
14 Fairfield County. Now, they moved to Prosperity, I have no
15 idea how the house was arranged there.

16 Q Do you know if the children were ever in different
17 rooms than as you described?

18 A Not until way after my mother died.

19 Q Okay. But at some point after your mother --

20 A Yeah. They were probably up in teenage years by then.

21 Q And then they would have been in different rooms. So
22 the girls wouldn't have been sharing rooms anymore?

23 A No. Right -- and it was right before they actually
24 moved out of Blair he'd put them all in separate rooms.

25 Because the back bedrooms was painted black, but, I mean, it

1 probably was a few months before they moved. They had
2 already started buying a house or trying to get a house in
3 Prosperity.

4 Q Okay.

5 MR. KEY: No further questions, Your Honor.

6 THE COURT: Redirect?

7 MR. PHILLIPS: No, Your Honor.

8 (Break in proceedings.)

9 The witness, MARSHA VALASCO, was duly sworn and
10 Testified as follows

11 DIRECT EXAMINATION

12 BY MR. PHILLIPS:

13 Q Good afternoon, Ms. Valasco.

14 A Good afternoon.

15 Q If you could, state your name and your relationship to
16 Michael Clayton.

17 A My name is Marsha Valasco and Michael is my son.

18 Q If you could, could you describe -- at one point you
19 were living with your son; is that right?

20 A Well, at my parent's house, yes.

21 Q It was a family home?

22 A Yes.

23 Q And how long did you live with your son?

24 A Over a year.

25 Q Do you remember when that was?

1 A It was the year my mother died, which would have been
2 2005.

3 Q Did anyone else live in the home during that time?

4 A Yes.

5 Q Who was that?

6 A Theodore Harrison, [REDACTED] Minor Child 1 [REDACTED], [REDACTED] Minor Child 2 [REDACTED]
7 [REDACTED], Austin [REDACTED], and Wyatt [REDACTED]; my
8 mother, Mary Ann Drew, and myself and my son.

9 Q And during that time period you got to interact with
10 Tova and her children?

11 A Yes, I did.

12 Q On a daily basis?

13 A Yes, I did.

14 Q And excuse me, I mean no offense as far as your current
15 disability, could you describe how your health was back in
16 2005?

17 A Well, my health was okay. But Tova kind of tried to
18 starve me to death, but I survived. My mom snuck me food.

19 Q So if you could, during that time period, could you
20 describe -- and what I mean is, you were able to see where
21 the children were staying, which bedrooms everybody stayed
22 in during that one year period?

23 A Well, yeah. I grew up in that house. I can hear --
24 when you lose your sight you tend to pick up other senses.
25 I could hear very good. When I first moved in there the

1 only beds in the house were Michael's and my mom's, so we
2 were sleeping on a sectional sofa.

3 Q And you're saying the children?

4 A Yes.

5 Q And that was in the living room?

6 A Uh-huh. The den. The living room had never been
7 finished, we had a big den.

8 Q Living with Tova and her children for that year period,
9 how would you describe Tova?

10 A Well, I knew the first time I met Tova that she was out
11 to take my son for everything she could get, but children
12 don't listen to you, their mothers, so I kept my mouth shut.
13 Tova was lazy. She was nasty. She kept the house filthy.
14 She didn't cook. Every time my son would walk in the first
15 thing out of her mouth was, "I want the girls grounded,
16 they've done no cleaning up today." And Michael would stand
17 at the hallway and say, "Girls, you're grounded."

18 Q So Tova made Michael the disciplinarian in the house?

19 A Yeah, she did.

20 Q Did she ever discipline the children?

21 A No. Those girls ran with her like friends. Tova had
22 no friends, she hung with her daughters.

23 Q And if you could, describe for me where everyone stayed
24 again as far as the home, if you could describe the layout.

25 A Okay. Once there were beds in the house, my son -- he

1 got my bed. All right. When you go into the house from the
2 side door, which is the way we all go in, you go into a big
3 den, you go through that, to the left was Michael's room, he
4 and Tova slept in that room. Then you go through the
5 kitchen and it has a door that goes into the hallway **Minor Child 2**
6 and **Minor Child 1** slept in the bedroom on the right, Austin and
7 Wyatt slept in the middle bedroom, my mother slept in the
8 back bedroom and I slept in the one across from her.

9 Q During that one year period, could you describe as far
10 as what you could tell, what was Michael's role as the
11 father? Not just as the disciplinarian, but what was his
12 role in the children's lives.

13 A Well, thanks to Michael they got to go visit their
14 father because he sure didn't come to see them. Money
15 basically. My son never touched his 401-K until they came
16 along and drained him dry.

17 Q During your experience while you lived in the home with
18 them, how would you describe their character as far as Tova
19 is concerned?

20 A The kids' character?

21 Q Well, we'll just take them one by one.

22 A Okay. Tova -- I firmly believed Tova was cheating on
23 Michael the whole time. She would take me to per parents'
24 house with her and the girls and she would ride by, all I
25 know is Tony the drug dealer --

1 MR. KEY: Your Honor, I object.

2 THE COURT: Sustained. All right. Let's move onto
3 something a little bit more relevant.

4 MR. PHILLIPS: Yes, Your Honor.

5 THE WITNESS: I'm sorry, I didn't understand.

6 Q We're not able to go into it any further.

7 A Okay.

8 Q So specifically as far as you living there for that one
9 year period, was there times, again, where your son was, how
10 was the dynamic as far as him being -- was he ever alone
11 with the children when you lived there?

12 A The boys. He took up a lot of time with the boys. The
13 girls hung with their mom.

14 MR. PHILLIPS: Just a moment, Your Honor.

15 (Break in proceedings.)

16 MR. PHILLIPS: No further questions, Your Honor.

17 THE COURT: All right. Cross-examination?

18 MR. KEY: Nothing from the State.

19 THE COURT: All right. Thank you, ma'am. Who is next?

20 MR. PHILLIPS: Michael Clayton, Sr.

21 The witness, MICHAEL CLAYTON, SR., was first duly

22 Sworn and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. PHILLIPS:

25 Q If you could, introduce yourself and explain your

1 relationship to Michael.

2 A Yes. My name is Michael L. Clayton, Sr., and I'm the
3 father of Michael Clayton, Jr.

4 Q To kind of cut to the chase, you were present for the
5 morning of what was going to be Michael's trial?

6 A Yes.

7 Q And so you came -- where do you currently live?

8 A I live in Jamaica Queens, New York.

9 Q Did you live in New York back then?

10 A Yes.

11 Q And so you traveled from New York to South Carolina?

12 A Yes.

13 Q And it was your belief it was for his trial?

14 A Yes.

15 Q And so you were there during his discussions with his
16 lawyer prior to that morning?

17 A Yes.

18 Q And if you could, explain kind of how that unfolded.

19 A Well, that morning we was in a room waiting for the
20 trial and we was talking to his lawyer, and his lawyer was
21 saying that he was going to put Michael on the stand after
22 he was telling Michael that he wasn't going to put him on
23 the stand. And also we was there and he had another lawyer,
24 I don't know the lawyer's name, and that lawyer seemed to be
25 more, they was like pushing or rushing like looking for a

1 decision like, "What are we going to do? Are we going to go
2 to trial or are we going to take the plea that they had
3 offered?" And at that time the second lawyer was more like
4 pushing saying, "Well, you'll be able to go home with your
5 daughter tonight," which he wasn't able to do, we had to
6 stay in a hotel. For us it just seemed like they weren't
7 prepared to go to trial because they didn't give us any kind
8 of preparation or anything.

9 Q Why did you have that feeling that they weren't
10 prepared? What made you feel that way?

11 A What made me feel like that, because it was, like you
12 said, it was no directions taken. It was just like they
13 didn't give us any kind of idea of what was going to happen,
14 and it just seemed like they wasn't ready to go. It was
15 like they -- seemed like it was more of a -- how can I
16 phrase this -- it was more like they wanted him to accept
17 the plea that they was offering him then to go in to trial.
18 Because like I said, the second lawyer was saying that if
19 you accept this you will be able to go home and see your
20 daughter. And it was like more of a pushing situation. It
21 became a panic situation instead of a calm situation.

22 Q If we could, kind of like a timeline, when you first
23 got there that morning you believed your son was going to go
24 to trial. You're there with him and his lawyer. The
25 initial discussion was that they weren't going to present

1 any evidence, that he wasn't going to testify so the lawyer
2 could have last argument?

3 A Correct, that's what they were saying. They didn't
4 want to bring any witnesses or any character witnesses
5 because this way his lawyer, Michael's lawyer, will be able
6 to have the closing argument on the stand.

7 Q At what point did the associate, the second lawyer,
8 kind of change it up and say that they wanted Michael then
9 to testify?

10 A That was after they had spoken to -- I guess they had
11 went out of the room and spoken to whomever they had spoken
12 to, the DA. Because they came back and said, "They want a
13 decision now, hey want a decision now, they want a decision
14 now."

15 Q Did they specifically say, you know, "We're changing
16 things up, we want you to testify?"

17 A Yes.

18 Q Could you provide detail on that?

19 A Well, they said that they would want Michael to say --
20 "Well, if we go to trial we're going to put you on the stand
21 now," which they all of the time said they wasn't going to
22 put him on the stand when they went to trial. It was like
23 maybe five to ten minutes after they had spoken to the
24 prosecutor. It was like maybe five or ten minutes after
25 they had spoken to them, I guess, about the pleas when they

1 came back into the room saying that they needed a decision
2 now. They wanted a decision now. It was like they was
3 pushing or pressuring us to come up with -- change our mind,
4 also.

5 Q And when they came back after that with kind of the
6 final offer of the Alford plea where he would get a
7 recommendation for a probationary sentence and they
8 discussed that he would be on the sex offender registry, did
9 his lawyer ever discuss any of the conditions, as far as the
10 specific conditions, that he was supposed to be under or the
11 treatment that he would have to do as far as sex offender
12 registry that comes with it? Did they go over all of that?

13 A No, sir. We found out that when we went to the
14 probation officer, he's the one that actually informed us on
15 some of the details of what his restrictions would be. The
16 lawyer didn't give us any kind of information on none of
17 that, no paperwork, no nothing.

18 MR. PHILLIPS: Just a moment, Your Honor.

19 (Break in proceedings.)

20 MR. PHILLIPS: No further questions, Your Honor.

21 THE COURT: Cross examination?

22 CROSS EXAMINATION

23 BY MR. KEY:

24 Q Mr. Clayton, you testified that you were there the
25 morning that your son was scheduled to go to trial.

1 A Correct, yes.

2 Q And there was a plea offer made that morning.

3 A Correct, yes.

4 Q Okay. And then his attorneys were discussing with him
5 the plea offers and said we need you to make a decision on
6 whether you want to take the offer or go to trial?

7 A Yes.

8 Q Okay. And then the attorneys left the room, spoke with
9 the State, came back and said the State needs an answer; is
10 that correct?

11 A Correct.

12 Q And I believe you testified that they did -- the
13 attorneys did tell him he would have to be on the sex
14 offender registry, they just didn't tell him what went along
15 with registering as a sex offender?

16 A No, sir. I didn't hear anything like that.

17 Q Okay. Well, did they tell him that he would have to
18 register as a sex offender?

19 A No. I didn't hear that part.

20 MR. KEY: No further questions, Your Honor.

21 MR. PHILLIPS: Briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. PHILLIPS:

24 Q The morning started and the trial strategy was simple,
25 "We're not going to present any evidence, I want last

1 argument." Then out of nowhere it changed, that they wanted
2 Michael to then testify.

3 A Correct, yes.

4 Q And then multiple plea offers came and you said
5 everything felt panicked and pressured.

6 A Yes.

7 MR. PHILLIPS: No further questions.

8 MR. KEY: No recross, Your Honor.

9 THE COURT: All right. Thank you, Mr. Clayton. You're
10 welcome to stay in the courtroom if you would like to or
11 you're also welcome to leave if you would like to, it's
12 completely your choice.

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: Thank you. You may call your next witness.

15 The witness, DAVE ANATRA, was first duly sworn and
16 Testified as follows:

17 DIRECT EXAMINATION

18 BY MR. PHILLIPS:

19 THE COURT: Would you spell your last name for us,
20 please sir?

21 THE WITNESS: Yes, sir, it's A-n-a-t-r-a.

22 Q Good afternoon.

23 A Good afternoon.

24 Q If you could please introduce yourself and explain your
25 role in this case.

1 A My name is Dave Anatra. I am a licensed private
2 investigator for Stillinger Investigations. I was retained
3 by Mr. Clayton to conduct an investigation in order to
4 present information and/or evidence for the hearing we're
5 having today.

6 Q And if you could, could you give your background as far
7 as educational history?

8 A Yes, sir. I have a Bachelor's Degree in Criminal
9 Justice with a double minor in Psychology and Sociology.

10 Q As far as your employment history, could you walk us
11 through that?

12 A Yes, sir. A total of 30 plus years investigations. To
13 break that down even further, 15 years in law enforcement,
14 and over 15 years in doing investigations outside of law
15 enforcement.

16 Q How many investigations have you been a part of in
17 those 30 years?

18 A Hundreds.

19 Q And could you describe the type of investigations
20 you've conducted?

21 A Yes. Investigations; anything from violent crime,
22 sexual assault, abuse, neglect, theft. Just basically the
23 entire gamut of criminal investigations.

24 Q Any investigations regarding children and allegations
25 of sexual assault?

1 A Yes, sir. I did for approximately a year to two years
2 conducted child abuse and neglect investigation.

3 Q And as far as your history, what specific training have
4 you had?

5 A I've had law enforcement, police academy, advanced
6 investigations, basic investigations. And then extensive
7 when it comes to interview, nonconfrontational interviewing
8 specifically.

9 Q Have you had any kind of awards or recognitions as far
10 as being an investigator?

11 A No, nothing specifically that stands out.

12 Q And your training has all been relating to
13 investigations?

14 A Yes, sir.

15 MR. PHILLIPS: Your Honor, at this time I would move to
16 qualify Mr. Anatra as an expert in investigations.

17 THE COURT: Voir dire?

18 VOIR DIRE EXAMINATION

19 BY MR. KEY:

20 Q Mr. Anatra, you were hired by Mr. Clayton to
21 investigate his case for this PCR hearing.

22 A Yes, sir.

23 Q And you said you had 30 plus years of investigating
24 experience?

25 A Yes, sir.

1 Q How many years of that was with law enforcement?

2 A Fifteen.

3 Q So 15 in law enforcement and 15 years private?

4 A Yes, sir.

5 Q Okay. Have you ever testified as an expert in
6 investigations before?

7 A No, sir.

8 Q Okay. Have you ever been offered to testify as an
9 expert in investigations before?

10 A No, sir.

11 Q In your 15 years of being a private investigator, are
12 you usually hired by the defense or the State?

13 A Defense.

14 Q Okay. So most of your role as an investigator has been
15 on the defense side of --

16 A No. Let me clarify my previous statement. Not all 15
17 years has been in the private sector. I spent many years
18 conducting theft investigations as well, which basically I
19 was determined to obtain whether or not we had enough
20 evidence to pursue charges against individuals.

21 Q And that was after you had left law enforcement?

22 A Left law enforcement.

23 Q Okay. How long has it been since your last training in
24 investigations or police work?

25 A Investigations, I'm constantly updating, reading.

1 Formerly, though, you know, that's not a need. However,
2 there is continuing education requirements as a licensed
3 private investigator, so based on those I constantly am
4 obtaining training in order to maintain that certification
5 as a licensed private investigator.

6 MR. KEY: Nothing further, Your Honor.

7 THE COURT: Help me with the purpose of why he needs to
8 be an expert in this. Is it, "If he had been hired this
9 what he could have done." Is it, "This is what law
10 enforcement did wrong." That's where I'm confused.

11 MR. PHILLIPS: As far as narrowing the scope as to
12 based on his review of the evidence and the investigation
13 that he's done, should a private investigator -- should an
14 independent investigation have been done in this case.
15 Essentially should witnesses have been contacted. Now, I
16 understand that that seems to be the crux of a failure to
17 investigate argument in a PCR case, but pretty much the
18 narrow scope what they didn't do, what he saw as an
19 investigator could have done.

20 THE COURT: Okay. What is your position, Mr. Key?

21 MR. KEY: Your Honor, most of the allegations deal with
22 Mr. Speedy's alleged failure to investigate in this case.
23 There has not been a specific allegation that he failed to
24 hire an investigator to go out and meet with these
25 witnesses. So the State's position would be the allegation

1 has not been raised. I believe we can get from Mr. Speedy
2 his investigation, what he pursued in investigating this
3 case without the need of an expert witness.

4 THE COURT: I'm going to let the guy testify. I don't
5 know if you need to change your questions. Okay. I'm just
6 not sure that we need to call him an expert. I don't think
7 it's so far out of the common knowledge of the Court. I
8 think it would be different if you're in front of a jury as
9 to what he could do or what he could not do, or what would
10 have been available, all of those kinds -- I don't want you
11 to change your questioning. He's clearly qualified through
12 education and experience to conduct investigations, to run
13 investigations, to lead investigations, and to do his own
14 investigation. I don't dispute any of that from his
15 training and quality so I'm not really ruling with you or
16 against you. And if you want to object to a specific
17 question as we get down to the road of it, but the Court has
18 seen thousands of criminal investigations both as a
19 prosecutor and as a defense attorney and as a judge, so I
20 feel like if he we start to get down some crazy road I'll
21 stop it, or Mr. Key jumps up and objects. I think -- I'm
22 perfectly fine with him testifying, I just wanted him to
23 understand the purpose of where we were going with him.

24 MR. PHILLIPS: Perfect, Your Honor. And just to put on
25 the record as far as qualifying an expert witness that is

1 going to do non-scientific testimony, there is the two part
2 test, the threshold of whether the qualifications are
3 sufficient and whether the expert's testimony will be
4 reliable. And so under State v. White, 382SC265, we do
5 believe he meets that threshold.

6 THE COURT: I think he does. I think that meets that
7 basic threshold. It's a little quirky area that we don't
8 normally see and I think that's what kind of makes everybody
9 a little bit on edge about it.

10 MR. PHILLIPS: And there's no jury.

11 THE COURT: If it was a criminal trial and he was the
12 lead investigator we wouldn't be qualifying him as an
13 expert. But I think in this scenario the way it's set up,
14 I'm going to -- don't change any of your questions you have,
15 but if -- Mr. Key can object if he needs to based upon the
16 specific questions. But this gentleman certainly has the
17 requisite training, qualification, experience and there's no
18 indication in the record that there's anything but
19 reliability based upon what's in the record at this point.

20 MR. PHILLIPS: Thank you, Your Honor.

21 Q Mr. Anatra, could you explain your investigation in
22 this case; what you reviewed, what evidence you actually
23 looked at and what investigation you subsequently conducted?

24 A Initially I took a look at the transcripts that were
25 provided as far as Mr. Clayton's trial the day of, and any

1 investigations for any witness, interviewing of any
2 witnesses. And interviewing, of course, of the alleged
3 victims, as well as the interviewing of any witnesses or
4 anyone who had knowledge of the allegations that were being
5 made.

6 Q So you reviewed the transcripts, or the transcript?

7 A Yes, sir.

8 Q You reviewed the discovery that was provided, the case
9 file that was provided?

10 A Yes, sir.

11 Q And you reviewed the videos that were provided within
12 that discovery?

13 A Yes, sir.

14 Q Specifically the videos of Tova Clayton, as well as
15 **Minor Child 2** and **Minor Child 1**

16 A Yes, sir.

17 Q Did you review the other videos that were in there?

18 A Yes, sir. All videos there were provided.

19 Q And so far as the case file, to your knowledge what you
20 reviewed was plea counsel's -- the prior attorney's case
21 file that was turned over.

22 A Yes, sir.

23 Q In reviewing that, did you do any subsequent
24 investigation?

25 A Yes, sir, I did. I went out -- first off, I attempted

1 to contact the alleged victims, have conversations with
2 them. They declined to have a conversation with me, which I
3 honored. I went out and attempted to have a conversation
4 with Tova Clayton, she declined. However, I was able to
5 interview law enforcement in Newberry County as well as
6 Fairfield County.

7 Q You interviewed Investigators Dennis and Lominack as
8 well as -- or excuse me, Investigator Lominack in Newberry
9 County, and then Investigator Castles in Fairfield?

10 A That is correct.

11 Q You were not able to speak with Investigator Dennis.

12 A No. I did not speak with investigator Dennis.

13 Q Did you make any other phone calls relating to this
14 trying to track down witnesses?

15 A Yes, sir, I did.

16 Q Who did you try to reach?

17 A There was a young lady who used to be friends with

18 **Minor Child 2** I can't recall her name off the top of my head
19 right now, I believe it was Meredith, I was able to reach
20 out and speak with her. And I was able to speak with Mr.
21 Clayton's cousin.

22 Q In speaking with Meredith, what did she tell you?

23 A She basically stated that her and **Minor Child 2** used to be
24 friends. I asked her if she was aware of any allegations
25 that **Minor Child 2** had made, she said yes. She believes that they

1 were in school at the time when Minor Child 2 had made allegations
2 that Mr. Clayton had -- basically she stated took advantage
3 of her in manners that she didn't feel comfortable
4 discussing.

5 Q Did she explain that her and Minor Child 2 had a falling out?

6 A Yes, she did.

7 Q Did she explain why they had the falling out?

8 A Yes, sir, she did.

9 Q What did she say?

10 A She basically said that when she was 18 her and Mr.
11 Clayton were friends, and at one point in time the two of
12 them did have a romantic interlude.

13 Q And that caused Minor Child 2 to no longer be friends with
14 Meredith?

15 A That is correct.

16 Q Based on your training and experience, is it your
17 opinion that these witnesses should have been tracked down,
18 subpoenaed, brought to court, or at least attempted to be
19 interviewed?

20 A Definitely.

21 MR. KEY: Objection Your Honor.

22 THE COURT: What's the objection?

23 MR. KEY: I believe that's a legal conclusion that
24 should be left up to the Court.

25 THE COURT: Sustained.

1 MR. PHILLIPS: And we would renew it under State vs.
2 White.

3 THE COURT: All right.

4 MR. PHILLIPS: And Rule 702.

5 Q And you were able to subpoena several witnesses that
6 were here today.

7 A Yes, sir.

8 Q And that were able to testify.

9 A Yes, sir.

10 Q And you weren't sequestered so you were here and you
11 were able to hear their testimony.

12 A That is correct.

13 Q Were you able to procure that testimony through those
14 subpoenas?

15 A Yes, sir.

16 MR. PHILLIPS: No further questions, Your Honor.

17 THE COURT: All right. Cross examination?

18 CROSS EXAMINATION

19 BY MR. KEY:

20 Q Mr. Anatra, you were able to locate and speak to, I
21 believe you testified her name was Meredith?

22 A Yes, sir.

23 Q And you spoke to her and she told you that **Minor Child 2** when
24 they were younger, disclosed to her that Mr. Clayton had
25 inappropriately touched her?

1 A She basically alluded to that. But she basically
2 stated that he had taken advantage of her in a way that she
3 wasn't comfortable with.

4 Q And this is when they were younger and in school?

5 A Yes, sir.

6 Q Okay. And then when she got older and was 18, she told
7 you that she and Mr. Clayton had had sexual relations.

8 A Yes, sir.

9 Q Okay. And that that is why she and **Minor Child 2** had a
10 falling out?

11 A Yes, sir.

12 MR. KEY: Nothing further, Your Honor.

13 MR. PHILLIPS: Just a few clarification points.

14 REDIRECT EXAMINATION

15 BY MR. PHILLIPS:

16 Q So in cross when you were talking about the disclosure,
17 it was in referencing Meredith telling you that **Minor Child 2** had
18 confided in her and had told her some things many years ago.
19 It wasn't anything to do with **Minor Child 2** years ago.

20 A Correct.

21 Q Or excuse, me Meredith.

22 A Correct. There was no negative from Meredith as far as
23 Mr. Clayton is concerned.

24 Q And Meredith's statement to you was that she had a
25 falling out with **Minor Child 2** before these charges came out

1 because she had, when she was legal, of legal age, had an
2 affair with Mr. Clayton.

3 A That's correct.

4 Q And they were no longer best friends anymore.

5 A Correct.

6 Q But nothing -- there was nothing with Meredith from
7 years before.

8 A No.

9 MR. PHILLIPS: No further questions.

10 MR. KEY: Nothing, Your Honor.

11 THE COURT: Thank you very much. You may call your
12 next witness.

13 MR. PHILLIPS: Michael Clayton.

14 The witness, MICHAEL CLAYTON, JR., was first duly
15 sworn and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. PHILLIPS:

18 Q Good afternoon.

19 A Good afternoon.

20 Q If you could introduce yourself and give a little bit
21 of background.

22 A My name is Michael Clayton.

23 Q Where are you currently working?

24 A I've worked at V.C. Summer for 20 years, from 1999 up
25 until basically my arrest. I was able to catch on with

1 Saluda Hill Landscapes in Lexington, South Carolina and have
2 been there since February of 2007, so right about three
3 years. I was there roughly a year and I managed to work my
4 way into a senior management position. That's where I
5 currently am.

6 Q If you could, we're going to try to break this up a
7 little bit. If we start with essentially the investigation
8 part of your case, you had many discussions with your
9 lawyer, George Speedy?

10 A I wouldn't say many. Would you like me to begin with
11 Mr. Speedy, or do you want me to go back into the initial
12 contact from Fairfield County?

13 Q I think it's better if we kind of break it down into
14 parts. So if we focus just on your discussion with
15 Mr. Speedy regarding the investigation of the case.

16 A The first time I met with Mr. Speedy, basically just
17 had a discussion of the allegations and basically where we
18 were at that point. My aunt actually paid the retainer to
19 hire him. Once that was done I had a meeting with him to
20 basically kind of go over the allegations and basically my
21 side of the story. Of course, he filed a notice of
22 discovery with the State to basically receive what they had.
23 Once he received all of that he passed it on to me for my
24 review so that I could make notes on basically once -- I was
25 able to basically read what was there, and then also view

1 the police interviews with them, basically make notes. I
2 also put together a timeline of basically events and my
3 marriage with Tova basically from beginning to end.

4 Q Could you describe that in detail? So you provided --
5 you reviewed the discovery and you provided material back to
6 Speedy?

7 A Correct.

8 Q Could you explain what you provided him?

9 A Basically the timeline, again, was basically a
10 breakdown from when I met her all of the way through --
11 basically through my arrest. It started with when I met
12 her, basically when they started coming to my house, when
13 they officially moved in, and then basically other what I
14 would consider significant events throughout that; basically
15 Tova having her tubes untied, was trying to have a baby.
16 After about a year of that she suddenly, I don't know if it
17 was called a midlife crisis, she suddenly started -- she
18 wanted to start going out every weekend, left me at home
19 with the kids, eventually moved out, eventually moved back
20 in. And then once we -- once I then asked her for a divorce
21 she told me she was shocked but she had already spoken to a
22 lawyer, already had papers drawn up, had a preliminary
23 hearing. The judge told me that I had to move out of the
24 house, even though she had not helped me make a payment on
25 the house for over four years and had moved in, out and back

1 in. You know, no mention -- and I made notes on that
2 timeline of things, like I said, specific to the divorce.
3 In fact, listening to the police interview she says the time
4 bounces around as far as when she says that she knew about
5 the potential allegations, but in the divorce she says
6 nothing.

7 Q So you provided him an in-depth outline of kind of the
8 who, what, when, where, how and why of what happened.

9 A Yes.

10 Q And during that -- what was the trial strategy that
11 George Speedy said he was going to pursue?

12 A I was told upon my first meeting with him after the
13 retainer was paid that he was not going to put me on the
14 stand. And typically -- occasionally it might be three or
15 four months and I would hear nothing from him, it was only
16 if there was something new or there was some development and
17 then we would have kind of a brief meeting, usually 30
18 minutes to an hour. I didn't have any real what I would
19 call extensive meetings him until we got a date for trial
20 and we started trial prep. That entire time he was
21 insistent that -- because I said, you know, I do have stuff
22 from the divorce. I went back to Newberry County and got
23 copies of paperwork from the divorce. Like I said, I
24 provided him with this timeline.

25 Q Did he have all of the divorce paperwork?

1 A He did not, I got that for him.

2 Q No. What I'm staying is you provided him --

3 A I did provide it, yes.

4 Q What specifically did you provide him?

5 A I provided her affidavit as well as mine. I believe
6 the paperwork from the preliminary hearing and the paperwork
7 from the divorce itself, as well as things that she had
8 entered into evidence as part of the divorce being text
9 messages, and I think there was maybe some pictures in there
10 as well.

11 Q So Mr. Speedy had all of these?

12 A He did have all of that, yes.

13 Q Did you and him ever review the videos?

14 A I reviewed them on my own, he said that he was going to
15 review them as well, and then we actually got together to
16 review them and basically kind of compared notes. So there
17 was a session where we kind of went through them and
18 basically compared --

19 Q Inconsistencies?

20 A -- inconsistencies in their story. And I talked about,
21 you know, things they said that just weren't accurate.

22 Q And his trial strategy from day one had been that he
23 was going to have last argument and not to present evidence?

24 A Correct. He basically said he didn't want to introduce
25 any evidence or put any witnesses on the stand, that he

1 wanted to maintain last argument. I did tell him, you know,
2 I do have multiple friends, family, people that are willing
3 to testify on my behalf, either character witnesses or
4 people that actually have knowledge of the living situation,
5 and he really didn't show any interest in speaking to any of
6 them because he didn't want to put any of them on the stand.

7 Q But you specifically told him you had character
8 witnesses that you could easily provide to him.

9 A Correct.

10 Q But that didn't fit with the trial strategy?

11 A Did not.

12 Q To your knowledge, did he interview witnesses?

13 A No.

14 Q Did he interview any witnesses to your knowledge?

15 A To my knowledge, no. I remember in one of our meetings
16 he told me that the State had requested a list of potential
17 witnesses. I told him if he wanted me to provide a list of
18 witnesses I could definitely do that. I would assume he
19 never provided that to them because he never asked me for a
20 list.

21 Q With that, do you know whether -- at any point did you
22 ever discuss hiring a private investigator?

23 A We did not.

24 Q Take me to about a week out from trial. You got a plea
25 offer?

1 A About a week after trial?

2 Q No, before. Like leading up to trial you got a plea
3 offer?

4 A Yes. We met several times that week. I believe their
5 initial offer was very similar to the plea I ended up
6 taking. Basically I told him I would not entertain any plea
7 that involved either a felony or registry, me having to go
8 on the registry. You know, he talked about maybe --
9 basically said that the prosecutor said that basically to
10 make them an offer. He said he was thinking about offering
11 I think it was assault two, which is a misdemeanor. I said
12 I would entertain that just to be done with this. He
13 made -- at least he told he made the offer. He said that
14 the solicitor seemed okay with it but she had to discuss it
15 with **Minor Child 1** and **Minor Child 2** And I think it was Saturday, the
16 Saturday before trial he actually got back and said they
17 said no deal.

18 Q So you rejected the initial offer?

19 A Correct.

20 Q And so you proceed to trial?

21 A Yes. Once he told me that they were not willing to do
22 a misdemeanor I said, "I guess we're going to trial."

23 Q Now, going to the morning of trial, you were under the
24 assumption when you got to the courthouse that you were
25 going to trial?

1 A We were going to trial, yes.

2 Q And you believed the trial strategy was that you were
3 not going to testify and that you weren't going to present
4 any witnesses.

5 A That is correct.

6 Q Had you prepared -- did he prep you at all to testify?

7 A No.

8 Q Could you walk through what happened that morning?

9 A Basically we got to the courthouse. He brought us into
10 one of the back meeting conference type rooms off of the
11 courthouse. My mom and dad escorted me in there. Basically
12 the discussions was, he was telling me that he was ready for
13 trial if we wanted to proceed to trial. He said that after
14 talking with -- I think his name was Trey, who was his
15 associate, and I had just met Trey I think that Wednesday or
16 Thursday before trial, first time I had met him -- he said
17 after talking to Trey that they were thinking that they want
18 to put me on the stand. They said I was well spoken and
19 they thought I would do well on the stand. This is the
20 first time he's mentioned possibly putting me on the stand.
21 Up until that point he said that he definitely would not.
22 And we kind of went from there to they started talking about
23 the plea. The original plea had been taken off the table,
24 but he was sure he could get it back on the table, and
25 basically kind of played to my emotions. Talked about the

1 fact that, you know, he'll go home tonight but there's no
2 guarantee that I would if we proceed to trial. Taking a
3 plea may be the best deal, that way I get to go home that
4 night. My family is depending on me. And I started to
5 think about that and I got very emotional because that was
6 very difficult. I've got a young daughter and a fiance that
7 do rely on me, and I started thinking even if he puts me on
8 the stand and I was -- even with no prep I was prepared to
9 go on the stand. But it still -- there's two of them and
10 there's only one of them (sic.) I didn't have any other
11 witnesses come because I was told he would not put any
12 witnesses on the stand. So it's still just --

13 Q Was your emotions charged up?

14 A Very much.

15 Q Do you feel like the fact that the trial strategy
16 changing the morning of trial, you not having any additional
17 witnesses, how did that affect your feelings at that moment?

18 A That definitely threw me off. They've been telling me
19 since day one this is how we're going to do it, now we're
20 literally here and it's changing. It concerned me. I felt
21 that maybe he wasn't prepared. I wasn't sure how much work
22 he had actually put in the case. I know he did have some
23 trouble kind of keeping the girls' names straight with who
24 was who, keeping everybody on their side's name straight
25 with who was who and I just was not -- for the first time I

1 was concerned that, you know, I don't know that he's ready,
2 and if he's not ready I can't win.

3 Q And kind of going into that mindset, what were you
4 thinking? Why were you thinking he's not ready and that you
5 couldn't win? What --

6 A The sudden change of strategy. The fact that he
7 suddenly wants to put me on the stand, and this hasn't been
8 mentioned in the previous year that he's had my case.
9 Again, if he's putting me on the stand, I'm pretty sure that
10 means he's giving up his right to the last argument, so why
11 aren't we putting anyone else on the stand at this point.

12 Q And had you no witnesses.

13 A And we had no witnesses there to go on the stand,
14 because I told everybody you don't need to come, he's not
15 going put anyone on the stand. I said between that and --
16 between that and the emotion involved with the fear of not
17 going home, I did what I thought was the only thing that I
18 could do, which was to take the plea.

19 Q Did the change in trial strategy affect your decision?

20 A Definitely.

21 Q Did the fact that there was no witnesses ready for that
22 change in trial strategy affect your decision?

23 A Definitely. Like I said, I showed up Monday morning
24 ready for trial. Suddenly there was a change in strategy,
25 and, you know, it definitely -- had we showed up for trial

1 and had witnesses available to testify and I been allowed to
2 testify at least, or told I was going to be allowed to
3 testify before that morning and we were in there prepared, I
4 would have never taken a plea.

5 Q So in that same vain, basically kind of walking down
6 the same road, had all of the witnesses been -- at least
7 attempted to be interviewed or subpoenaed, based on the
8 testimony -- again, obviously it's -- we're now here in the
9 future, but if you would have had those witnesses ready,
10 would that have affected your decision-making?

11 A Yes. We would have gone to trial, there would not have
12 been a plea.

13 Q Why would you say that? Why would you have not pled
14 guilty and would have went to trial?

15 A Because I feel that there -- between the
16 inconsistencies in their story and the people to testify on
17 my behalf, both to facts that are going to contradict the
18 things that they're trying to say, plus character witnesses,
19 I would have felt very strongly about my chance to win.

20 Q And you feel that based off the testimony you've heard
21 today?

22 A Correct.

23 Q That if you would have been prepared to present that
24 evidence at the trial you would not have pled guilty?

25 A Yes, that's correct.

1 Q You would have gone to trial?

2 A I would have gone to trial.

3 Q Going to -- George Speedy told you that part of this
4 Alford plea, and it's certainly in the colloquy, you
5 understood an Alford plea meant that you weren't admitting
6 guilt.

7 A Correct.

8 Q And he explained that you would have to register as a
9 sex offender?

10 A He did tell me I would have to be on the registry.

11 Q I mean, you knew that?

12 A Yes.

13 Q That you don't dispute.

14 A Correct.

15 Q Did he ever discuss anything related to the specific
16 conditions of sex offender registry or the treatment that
17 comes with it?

18 A Nothing about any of that. Didn't really find out
19 about any of -- I knew the very basic things about the sex
20 offender registry. You can't live within X number feet of a
21 school. You're not supposed to be around playgrounds. I
22 had a very loose knowledge of what the registry entailed. I
23 did not know the specific details of everything that
24 entailed until we went to the probation office and they
25 began going over the actual list.

1 Q Could you describe in detail the specific conditions
2 that have been shocking to you and the treatment?

3 A Initially one, have to attend counseling, I believe
4 it's for 18 months. Part of the counseling is you're
5 required to -- once you get to a certain point in the
6 counseling you're required to confess and basically tell the
7 story, otherwise you can't continue. Initially I had a
8 7:00 p.m. curfew, I had to be in my home by 7:00 p.m. Not
9 allowed to go anywhere where children may congregate, this
10 includes malls, playgrounds, the beach, church. I cannot
11 attend church without permission. No alcohol whatsoever. I
12 was told that typically probation is you're not supposed to
13 get drunk, but for me they specifically said no alcohol at
14 all. I'm not a big drinker anyway, but that was one of my
15 rules. No pornography. No social media. No risky sex,
16 which they're very vague in what they consider risky sex.

17 Q And as far as the treatment, you said you hit kind of a
18 fork in the road where you had pled under Alford where you
19 didn't have to admit guilt, but now you're kind of in direct
20 contradiction with the treatment of having to accept
21 responsibility. That ran into a lot of problems.

22 A Yes.

23 Q Could you describe that?

24 A Basically I got to a point where I had to basically
25 admit that I did it to continue in the treatment. If I was

1 unwilling to do that then I would have been basically
2 removed or kicked out of the counseling class, and then that
3 would be basically a parole violation, so I could
4 potentially look at being rearrested or possibly going to
5 jail.

6 Q You were threatened with being violated on probation
7 and that you would go back to prison.

8 A Basically, yes.

9 Q When you found that out, how were you when you were
10 told that?

11 A I didn't know what to do, because I was never told that
12 was going to be part of the treatment. You know, I
13 initially thought -- I didn't really know -- I didn't know
14 anything about the counseling class, I just kind of went in
15 there. And the initial part was really quite easy, because
16 basically, the initial part, there's really nothing about,
17 you know, specifics. It's very general basically sex crime
18 knowledge. It's almost like a schoolwork book, so I kind of
19 breezed through that because it was all very simple.

20 Q You didn't even know that the counseling was part of
21 it.

22 A I did not.

23 Q None of that was, any of the specific conditions or the
24 counseling, even discussed prior to your plea.

25 A I found that out once we got into the courtroom and

1 that was one of the conditions that the judge had mentioned.

2 MR. PHILLIPS: Your Honor, may I approach?

3 THE COURT: Yes, sir.

4 Q If you could just read over that. What is the document
5 you're reviewing?

6 A This is the standard sex offender conditions.

7 Q And is that what you were provided after the plea?

8 A This is what I was provided after the plea by the
9 probation -- the initial probation officer from Fairfield
10 County, and then I had to redo that same paperwork once I
11 got to -- once they transferred my probation to Richland
12 County.

13 Q You didn't review this with -- or your lawyer, Mr.
14 Speedy, didn't review this with you prior to the plea?

15 A I do not remember seeing this, no.

16 Q Did he ever discuss with you that the Alford plea --
17 that you would be in the situation of an Alford plea where
18 you didn't have to admit guilt during the plea, but then
19 later have to deal with a counseling session telling you
20 that you have to accept responsibility or it would result in
21 a violation of your probation?

22 A No.

23 MR. PHILLIPS: Your Honor, I would like to mark this as
24 Applicant's Exhibit Number 8 and move it into evidence.

25 THE COURT: Any objection?

1 MR. KEY: No, Your Honor. This just looks like --

2 THE COURT: I think it's just the standard form.

3 MR. KEY: It's the standard form. It's not signed by
4 anyone, it's just --

5 THE COURT: All right. Applicant's 8 admitted without
6 objection.

7 (The form was received as Applicant's 8.)

8 Q Did your form look substantially similar to this?

9 A Yes.

10 Q It fairly and accurately depicts the form you signed?

11 A Correct.

12 Q Did you feel your lawyer was prepared for trial?

13 A No.

14 Q Why?

15 A Again, just things as simple as not being able to keep

16 the names straight on basically their side of the family,

17 not being able to keep track of who was who. It felt like

18 in a lot of our meetings we kind of rehashed the things we

19 had spoken about in previous meetings. I just felt like I

20 was given very basic facts kind of over and over again.

21 Again, the fact that the trial strategy literally changed

22 right before we were supposed to go into the courtroom, that

23 suddenly felt the need to put me on the stand when he had

24 been telling me for a year that he was not going to. The

25 fact that I knew if we went to trial, I'm knowing they've

1 been prepped, I know I have not. I know that we don't have
2 any witnesses there because he told me we would not put any
3 witnesses on the stand. Basically I'm betting my life and
4 my future on his ability to, you know, craft a few nice
5 paragraphs and I'm not going to get my say and they are.

6 Q You felt like that was unduly coercive, that you felt
7 pressured in that situation?

8 A I did.

9 Q Do you know whether he interviewed Tova, the children
10 or any other witnesses?

11 A To my knowledge, no.

12 Q And you specifically told him that you had character
13 witnesses that were ready and available?

14 A I did.

15 Q Did you ever discuss the Newberry County complaint that
16 was filed in 2011?

17 A We had a very brief discussion about that. Basically
18 it was checked unfounded and there was very little to it, so
19 it was a very short. Basically, yeah, there's this report,
20 it was unfounded, there was nothing -- no investigation to
21 go with it so let's move on.

22 MR. PHILLIPS: No further questions, Your Honor.

23 THE COURT: All right. Cross examination.

24 CROSS EXAMINATION

25

1 BY MR. KEY:

2 Q Mr. Clayton, you testified that when you and your
3 attorney first met you discussed the allegations and your
4 side of the story?

5 A Correct.

6 Q Did your attorney explain to you what you were charged
7 with?

8 A Yes.

9 Q So you knew what you were charged with. Did he explain
10 to you the time you were facing if you were convicted at
11 trial?

12 A He did.

13 Q And you testified that he filed a motion for discovery.

14 A Correct.

15 Q And then when he got the first discovery from the State
16 y'all went over that together.

17 A No. He hand delivered to me -- I met him -- actually
18 met him off site. I typically get off work a little bit
19 later and he was already out of the office, he had me meet
20 him at basically a public location to get a copy of it. I
21 then took it and he told me to review it. I took it,
22 reviewed it on my own, and then at some point after that we
23 had a meeting where I basically gave him my notes and what I
24 found in the discovery.

25 Q Okay. So you were able to see the discovery?

1 A I was.

2 Q And then you said there would be periods of time where
3 you and your -- you and Mr. Speedy wouldn't speak, but then
4 he would call and update you if anything new came in?

5 A Usually wouldn't call. Usually I would get a letter in
6 the mail, it was like an out of office or, you know, a note
7 basically that he would email to me, and basically what it
8 would say was call the office to make an appointment.

9 Typically, like I said, it may be three or four months at a
10 time. It was typically -- occasionally I would call just to
11 ask because I hadn't heard from him in awhile. And like I
12 said, the initial few meetings we had very much seemed like
13 we basically were just kind of rehashing the old facts.

14 Q Okay. And you testified that you came up with a
15 timeline from you going through the discovery. Did you ever
16 discuss that timeline with Mr. Speedy?

17 A I did.

18 Q Okay. And y'all talked about how in the interviews the
19 mother and the two girls' stories, there were
20 inconsistencies in the stories.

21 A Correct.

22 Q Okay. And you provided him with all of the court
23 documents from your divorce.

24 A Correct. I traveled to Newberry, got them to pull the
25 original file and made copies of what I needed from that

1 file.

2 Q And you testified that his trial strategy was not to
3 present any witnesses to preserve last argument.

4 A That's correct.

5 Q But you also went through, you and he discussed the
6 inconsistencies and the victims' and the mother's stories.

7 A Correct.

8 Q Did he ever tell you why y'all were going over that?

9 A Why we were going over the inconsistencies?

10 Q Yes.

11 A Did he tell me a reason why? Because basically what we
12 were going for, there's nothing black and white to without a
13 doubt prove that I'm innocent, so we're looking for
14 reasonable doubt. So those inconsistencies would point to
15 reasonable doubt.

16 Q Because their stories were changing.

17 A Correct.

18 Q And you told him that you had character witnesses you
19 wanted him to contact?

20 A Correct.

21 Q And did you give him specific names of people?

22 A I did give him some specific names, some, you know.

23 There were some names I didn't give him because he didn't
24 seem very interested in talking with them. I gave him a

25 couple. I told him my mother my father, my aunt. Again, my

1 aunt paid my retainer, she was actually there the first
2 meeting with him. He didn't show any interest in talking
3 with her any further. I said, "I have multiple witnesses
4 that will testify as to my character." Quite frankly I told
5 him, I said, "I can line up 20 people that will come up to
6 court and testify to my character, or more."

7 Q And you testified y'all never discussed hiring a
8 private investigator?

9 A We did not.

10 Q And Mr. Speedy was retained on this case?

11 A Correct.

12 Q A week before trial you got a plea offer. Was that the
13 first plea offer?

14 A That was the first, yes. I believe that was the first
15 plea offer.

16 Q Okay. And it was similar to what you ended up entering
17 the Alford plea to?

18 A Yes. I'm trying to remember, there may have been a
19 previous offer, I can't be sure on that. But, again, I told
20 Mr. Speedy that I would not entertain any plea that
21 contained -- that basically was either felony or involved
22 registry.

23 Q Okay. And you asked Mr. Speedy to go back to the State
24 and see if they would offer something that wasn't a felony
25 and you didn't have to register as a sex offender for?

1 A Actually what he told me was that once I turned down
2 the existing plea that the solicitor said for us to make an
3 offer. I asked him what he thought, he suggested I think
4 assault two, basically told me what that incumbered, which
5 was a misdemeanor and probation. I said, sure, you know,
6 let's see what they say. The solicitor seemed open to it,
7 and evidently the girls were not. Like I said, I found out
8 about them not taking -- not accepting that on, I believe,
9 Saturday before trial.

10 Q So you rejected that offer and you wanted to go to
11 trial.

12 A Correct.

13 Q And you testified that Mr. Speedy, y'all did no trial
14 prep for you to testify?

15 A That's correct.

16 Q Okay. Because your understanding was there would be no
17 defense witnesses called so Mr. Speedy could have the last
18 argument?

19 A That is correct.

20 Q Okay. So you were ready to go to trial without
21 presenting any witnesses.

22 A Correct. I didn't necessarily think it was the best
23 strategy, but I was trusting that Mr. Speedy had more
24 knowledge than I did in this area.

25 Q Okay. And then the morning of your trial you, your

1 mother, your father, Mr. Speedy, and then his associate,
2 Trey Campbell (sic), is that his last --

3 A I can't remember his last name. I only met him twice.

4 Q But y'all all met in a conference room together.

5 A Correct.

6 Q And that was when the attorneys said they might want
7 for you to testify.

8 A Correct.

9 Q Did they tell you that you had to testify?

10 A No.

11 Q They just told you that they thought you would make a
12 good witness.

13 A Correct.

14 Q Okay. Did they explain to you that you have the right
15 not to testify?

16 A I don't recall him explaining that to me, but that's
17 common knowledge.

18 Q Did you know that you had the right not to testify?

19 A Yes. That's one of my constitutional rights. And
20 again, I had no problem testifying.

21 Q Okay.

22 A I just would have liked to have known that from the
23 beginning or been prepped.

24 Q Okay. And then at some point during that meeting Mr.
25 Speedy said he would try to get the first plea offer back on

1 the table?

2 A Correct.

3 Q And the first offer was reoffered, correct?

4 A It was the same as the first offer or very similar to.

5 Q Okay. Do you know if the State put a timeline on when
6 that offer would expire?

7 A I was not told of a timeline, I knew I had a limited
8 time. Because again, this isn't a week before court or a
9 month before court, we're here for trial. I'm sure the
10 judge is not going to be particularly patient while we sit
11 around and discuss the merits of, you know, whether we
12 should take this deal or not, so I knew it was a limited
13 time offer.

14 Q So you knew you needed to accept the plea offer or go
15 to trial that morning?

16 A Correct.

17 Q Okay. And I believe you testified that Mr. Speedy
18 advised you to take the plea offer.

19 A That morning, yes. Previously, no. In fact, a few
20 weeks before that he specifically told me -- I'll
21 paraphrase, "If I thought they had you dead to rights I
22 would be hammering you to take the deal, I'm not doing that.
23 I think we have enough."

24 Q And you knew that by pleading guilty you would have to
25 register as a sex offender.

1 A Yes.

2 Q But you just didn't know what that entailed, what came
3 along with registering.

4 A Correct.

5 Q Part of the State's recommendation is that you would
6 not have -- the State recommended that you not be placed on
7 GPS monitoring; is that correct?

8 A That's correct.

9 Q And you were not placed on GPS monitoring.

10 A The State recommended that because I told them if
11 whatever plea I was taking involved a GPS monitor that I
12 would not take that deal.

13 Q Okay.

14 A And they ended up recommending we go with CSC second
15 instead of CSC third because of some loophole in the law.
16 Both first and third required an ankle monitor, second does
17 not.

18 Q So you were aware of that.

19 A I was aware that I would not have to wear an ankle
20 monitor, is that the question?

21 Q Right. So even though third is a lesser charge it
22 requires GPS monitoring where is second cannot require GPS
23 monitoring, that's discretionary, you were aware of that.

24 A I was aware of that.

25 Q And you and Mr. Speedy did talk about the Newberry

1 County incident report that was filed.

2 A Briefly, yes.

3 Q And no charges ever came from that.

4 A That's correct.

5 Q And the incident report involved one of the victims in
6 this case.

7 A That's correct.

8 Q Do you have a copy of the transcript?

9 A The transcript --

10 Q Of the plea transcript?

11 A Not in front of me.

12 (Break in proceedings.)

13 Q Okay. Do you recall waiving on one of the charges,
14 waiving presentment to the grand jury?

15 A Yes, I do remember that.

16 Q And you were sworn at the plea hearing?

17 A Sworn in?

18 Q Yes.

19 A Yes.

20 Q On page eight, lines eight through 11, do you recall
21 Judge Hayes asking you if anything other than the
22 recommendation for probation, anyone had promised you
23 anything to get you to take the Alford plea?

24 A You're asking if I remember that?

25 Q Do you remember that?

1 A Yes, I do.

2 Q And you answered?

3 A No.

4 Q Okay. In that same question Judge Hayes asked you if
5 anyone had threatened you into pleading guilty; is that
6 correct?

7 A That's correct.

8 Q And you answered?

9 A No.

10 Q Okay. And you were sworn then just as you're sworn
11 today?

12 A Correct, I was sworn. There were no threats made, they
13 were just -- there are direct threats and there are
14 suggestions.

15 Q Okay. So Mr. Speedy suggested that you plead guilty.

16 A That was his recommendation, yes.

17 Q Or plead under Alford, I'm sorry.

18 A Plead guilty under Alford, that was the recommendation.

19 Q But he did not force you to plead?

20 A He did not force me, no.

21 Q Was it your decision?

22 A Based on the circumstances and the sudden change of
23 trial strategy, yes, it was my decision.

24 MR. KEY: Nothing further, Your Honor.

25 THE COURT: All right. Redirect?

1 MR. PHILLIPS: Thank you, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. PHILLIPS:

4 Q Going directly to the next statement when you said
5 based on the change in circumstances, to be very clear, as
6 far as part of what one of the things the judge talked to
7 you in that colloquy was about whether your plea was
8 voluntary, knowing and intelligent. So focusing on the
9 voluntary part. Did you feel in that moment what you
10 testified to on direct, that because of the lack of
11 preparation the change in trial strategy, which you felt was
12 unreasonable, did you feel like that overborne your will,
13 that you felt unduly coerced at that point that you had no
14 other option because you felt like your chances of winning
15 at trial were zero?

16 A Very much so. I would say that in the technical sense
17 of the judge's statement, voluntary, I still had the option
18 to go to trial, so yes, it's voluntary. But based on these
19 circumstances; the lack of witnesses, the lack of prep, the
20 change of strategy, in my mind I felt like I truly had no
21 other option.

22 Q Had all of those things been put into place, would your
23 position had stayed the same? It was the morning of your
24 trial. Would you have went to trial, proceeded with the
25 trial?

1 A If we were putting witnesses on the stand, if I had
2 known that I was going to be put on the stand and was
3 properly prepped, had we possibly hired an investigator to
4 look into the situation around them, all of those things --
5 had all of those things occurred I would have gone to trial.
6 I would not have taken a plea under any circumstances.

7 Q You also said that plea counsel had encouraged -- up to
8 that point had encouraged you to go to trial.

9 A Correct.

10 Q So he actively wanted you to go to trial. At the very
11 least, he felt strong about going to trial under his
12 strategy.

13 A He did not put it to me to take a deal. Again, he had
14 stressed to me -- like I said, he specifically said to me,
15 "If I thought they had you dead to rights without any doubt
16 I would hammer you to take the deal, and I'm not doing
17 that."

18 Q And you rejected plea offers?

19 A I did reject plea offers.

20 Q One of the things we didn't touch on but it kind of
21 goes to the bearing of all of this, your remedy here, if the
22 PCR is granted, you understand what happens, that you'll be
23 facing these charges -- that again, you could go to trial on
24 these charges and you could go to prison for a very long
25 time, potentially the max sentence for each one of those.

1 A I understand.

2 Q And you're here why?

3 A In the weeks following this plea I tried to make peace
4 with my decision, I've been unable to do so. Number one, I
5 am not guilty; number two, my child is being punished
6 because of this. I can't take her to the park. I can't
7 take her to daycare, pick her up. I'm only going to get to
8 do this once, you know. I can take just about anything
9 that's thrown at me, but it's not fair to her to have to
10 miss out on things that her daddy can't do with her because
11 of this. So why am I here? Like I said, I'm not guilty. I
12 feel like if I get an actual trial where I put people on the
13 stand that will stand up there and say that and point out
14 the inconsistencies in their stories and the lies, I feel
15 like I can win and move on with my life fine.

16 MR. PHILLIPS: No further questions, Your Honor.

17 MR. KEY: Nothing further, Your Honor.

18 THE COURT: All right. Thank you, sir, you may step
19 down. Let's take a little break and then we'll continue.
20 It's about 20 until 4:00, let's start about back in about 10
21 or 15 minutes.

22 (A break was taken.)

23 The witness, GEORGE SPEEDY, was first duly sworn and
24 Testified as follows:

25 DIRECT EXAMINATION

1 BY MR. PHILLIPS:

2 Q Good afternoon, Mr. Speedy.

3 A Yes, sir, good afternoon.

4 Q Thank for being patient. I didn't think it was going

5 to take all day and yet we're here, so I appreciate your

6 patience. Just kind of go straight to the point of the

7 allegations and kind walk them through, kind of each one.

8 As far as the allegation of failure to investigate, did you

9 interview any witnesses?

10 A Did I interview any witnesses? Well, let me try to

11 explain it like this: The first thing I do when I get a

12 case, I interview my client, talk to him and find out what

13 the situation is, and then generally we try to get the

14 discovery before we do anything further than that. Once we

15 get to the discovery, I call it I put it into a can, out of

16 which the State can't fall because if the evidence is not in

17 there then they can't introduce it. And that process, when

18 you call it interview, I talked to, I think, Detective

19 Castles, Detective Lewis, who at the time was at the

20 solicitor's office. I talked to people who had some general

21 knowledge of the actual system itself. But as far as any of

22 the potential witnesses, I think I probably would have

23 gotten the same response that you apparently got is that

24 they wouldn't have talked to me. The two alleged victims

25 wouldn't have talked to me. The mother wouldn't have talked

1 to me so I did not interview them. I was not provided --
2 you have the entire file. As a matter of fact, when you
3 called my office we gave you a copy of the entire file. I
4 don't think we excluded anything but perhaps some personal
5 notes -- some notes of my own, and I may have given you
6 those.

7 Q Everything but notes.

8 A Okay. And you won't find any place in those files the
9 name of Barry Glymph or Kevin Chalk or -- I'm not sure of
10 the other names. He did mention -- we did talk about his
11 cousin at one point in time and his aunt at one point in
12 time. I did talk to both his mother and his father, but
13 that was mainly -- talked to his mother, I think, on the
14 phone maybe a couple times but not about anything in the
15 case, more about procedural stuff. And they were present
16 during the preparation for the plea.

17 Q Did you speak to any of the investigators in Newberry?

18 A You know, let me tell you my theory there. My theory
19 is that I wouldn't have done what you did today. When you
20 put them on the spot you may scratch something that they
21 don't want scratched. And if they go back and investigate
22 these offenses, perhaps some of them take place -- allegedly
23 take place in Newberry County, I wouldn't have done that.
24 The only value I saw -- I got a copy of the report. The
25 only value I saw in that report was that it was unfounded.

1 But by the same token to get that in you had to tell them
2 that there was an allegations from a stepfather. I don't
3 think I was going to take that kind of risk. The risk far
4 outweighed the rewards in that situation.

5 Q So with the Newberry you had made the decision not to
6 interview those witnesses. I guess going to directly to,
7 had your trial --

8 A Absolutely I did not. I made the conscious decision
9 not to talk to them.

10 Q The trial strategy. Had it stayed the same as
11 described kind of from the beginning, that this would be a
12 last argument case?

13 A Strategy didn't start until I had discovery. You know,
14 how are you going to make a trial strategy until you see
15 what the evidence is? Many times my client comes in to me
16 and tells me their side of the story and say, "What do you
17 think?" I say, "If I believe everything you say, we can't
18 lose, now let me see what they've got." Once I see what
19 they've got then I look it over and then a make a trial
20 strategy. That's probably when we made the trial strategy.
21 Because as I looked through this material there were a lot
22 of inconsistencies, things that we could probably hammer in
23 on. And I told him, "I don't ever want to ever put my
24 client on the stand if I can help it." That's probably one
25 of the things -- that is a founding block of my background

1 is I don't want my client on the stand unless it's
2 absolutely necessary. Nor do I want to put other witnesses
3 on the stand. Sort of -- remember what happened here today,
4 I heard a lot of things that I wouldn't have wanted to have
5 heard in a trial, so you're real cautious. What you try to
6 do is you try to be as defensive as you can, pick their case
7 apart, make your final argument when they can't rebut. It's
8 a good strategy. Most trial lawyers who try any cases of
9 any import, usually -- criminal defense lawyers anyway,
10 usually use their strategy.

11 Q Are you aware we're the only state that has that?

12 A I am, and we use it.

13 Q So that's not necessarily true.

14 A No. It's true only when the State has the last
15 argument, but we're not the only state where criminal
16 defense lawyers don't put up any witnesses.

17 Q That's true. I'm just --

18 A That probably almost happens in 75 percent of the
19 cases, not just in South Carolina but all over the country.

20 Q Now, as far as, again, going into what documents you
21 reviewed as far as divorce documents, those kind of things.
22 You didn't feel it was necessary to try to interview Tova or
23 have her subpoenaed in case you went to trial? Because it
24 was the morning of trial. Not to try to get away from the
25 fact that this ultimately resulted in a guilty plea, but

1 when you showed up that morning it was for trial.

2 A Let me go back to the beginning, you're starting to
3 have a compound question right there. But in any event, did
4 I think that it would be important for me to interview Tova?
5 I would have gotten the same response as you got. I had the
6 information, and we discussed that, we were going to get the
7 information in through her. She was going to take the
8 witness stand. We would have asked those questions. We
9 would have asked the questions about the affidavit. We
10 would have put every point that you put there today, except
11 the part about the stuff that hurt us, then we would have
12 got it all in through her testimony.

13 Q Was she subpoenaed?

14 A I wouldn't have subpoenaed her.

15 Q And then if the State doesn't call her, how are you
16 going to procure her for trial?

17 A She was going to be there, I was confident. I was told
18 who the witnesses would be.

19 Q Was this there for the plea hearing?

20 A I don't know if she was there for the -- I don't know.
21 I don't recall that. I heard her say she wasn't there for
22 the plea hearing, but she may have been there previously.
23 That happened over a three or four hour period.

24 Q So to kind of take a step back, and I apologize for
25 interrupting, she wasn't subpoenaed to be there for the

1 trial so you wouldn't not have been able to call her as a
2 witness. You could have, but you couldn't have made her be
3 there, especially when she wasn't at the plea hearing, and
4 that was the morning of trial.

5 A I wouldn't have subpoenaed her because I wouldn't have
6 put her up. But there certainly would have been ways of
7 getting that information in through other people; "When were
8 you divorced?" Really, the important aspect of that was not
9 just the affidavit, but that it occurred just shortly before
10 the allegation was made the second time by the daughter.

11 Q Well, in reviewing the videos and the evidence, there's
12 no other evidence out there that both daughters had
13 initially denied it to Tova until we had the testimony here
14 today.

15 A I'll have to recall -- I'm not -- I don't know. I
16 can't tell you exactly the answer to that, but I was
17 confident that we would have put her on. They would have
18 put her down as a witness. That are, again, the risk/reward
19 factor. You've got to figure out what's the risk and you've
20 got to figure out what's the reward. Those are the
21 decisions we consciously made. We had -- I was looking over
22 my schedule. He had hired me approximately the 1st -- May
23 of 2017, so we had a little over a year, I think, of
24 involvement. We met over 12 times, that's recorded from my
25 calendar, but there were other times that we met. So we had

1 a lot of time to discuss all of these issues.

2 Q Yeah. Definitely don't have any issue as far as the
3 meetings together. As far as the good character evidence,
4 did you ever discuss that with him, that if you were to
5 present good character evidence you could get -- and I know
6 the law is shifting, or it has shifted, but at the time when
7 this trial would have occurred you would have been able to
8 get a jury instruction straight from the judge to the jury
9 telling them that the jury could essentially almost acquit
10 him based on the character evidence that's been presented?

11 A I don't know that I would have presented it the way you
12 just said it, no, I don't know that I did that. But I do
13 know we discussed it. And we, again, discussed the value of
14 putting up those witnesses, how important it was. You know,
15 in this case if you didn't -- if they believed those two
16 girls then it didn't matter what you did after that, you
17 were dead in the water, because that's the meat of this
18 case. And the problem with all of that was that there was
19 some -- there was a lot of reporting that went not just from
20 the girls but were in the therapy sessions that were from 11
21 and 12. So there was a lot of treacherous waters out there
22 to be trying to navigate, and we certainly didn't want to
23 make it any worse than it perhaps would have been.

24 Q And since most of the inconsistencies kind intersect
25 with Tova, how would you have been able to procure that if

1 she didn't testify?

2 A You're assuming she didn't testify, I'm going to assume
3 she was going to testify. I was told she was and she would
4 have. If she didn't, then wouldn't that question come up?
5 "Why isn't the mother up here? Where is she?" You know,
6 that's probably what I would have done. I never -- I'll be
7 honest with you, though, I never entertained the fact that
8 she wasn't going to because I was assured that she was going
9 to be there. They told me who the witnesses were going to
10 be. I have no reason to believe that she would not have
11 been part of their case.

12 Q So you believed that this was a credibility case
13 100 percent. Like you said, if they believed the girls,
14 it's over essentially.

15 A I think it was the girl's credibility case, yes. If
16 they believe the girls it was over.

17 Q Not whether they would have believed Michael if he
18 testified, because initially the trial strategy was for him
19 to not to, but then it changed to --

20 A No, it didn't change, you're wrong. You're assuming
21 that. It did not change.

22 Q Well, could you explain that, then?

23 A Sure. I got there just as prepared to go to trial. I
24 had a just a timeline -- not just a timeline that he's
25 talking about, but I did my own timeline where we

1 interjected along his timeline all of the what we considered
2 inconsistencies. And we had that timeline actually laid out
3 so that when we had testimony the way my plan was, that for
4 each one of them to get up -- it was a long timeline, we had
5 to make it in two pieces because it was so long, that as
6 each of the witnesses would testify we would try to go up
7 there and get them to follow that same timeline, right up to
8 the divorce, right up to the report, everything was lined up
9 in that fashion. So we were very well prepared to go to
10 trial. There was no change in strategy. If I would have
11 changed the strategy it may have been later on if I was
12 going through the testimony and I realized that something
13 came up that I didn't expect, it was unanticipated, it had
14 to be answered then I may have changed the strategy at that
15 point in time. It's doubtful that I would have but I may
16 have.

17 Q I'm sorry, let me clarify and be specific. That
18 morning, did you have the conversation with you and your
19 associate, Trey Cook, about shifting from previous not
20 presenting any witnesses, Michael not testifying, and then
21 saying --

22 A No.

23 Q So you're denying that that conversation took place?

24 A It just didn't happen. That didn't happen. That would
25 be absolutely ludicrous.

1 Q Walk me through what happened then if that didn't take
2 place as far as morning of trial, now we're looking at a
3 plea hearing. Can we --

4 A Well, let's back up. Probably some time Thursday
5 before I got a call from the solicitor's office basically to
6 talk about how we were going to go, what we were going to
7 do. I believe the possibility of plea came up, however I
8 handled it I don't recall. But she finally said to me, "In
9 reality these girls don't really want your client to go to
10 jail. They're just concerned that he now has another
11 daughter and they don't want this to happen to that daughter
12 or some other people, so we're willing to go along with a
13 sentence that's probationary in nature." That started the
14 conversation. And I said, "Well, let's get specific. What
15 are you talking about?" And I think they indicated to me
16 that they would drop it down to thirds, it would be thirds,
17 we would plead, get five years probation, sexual predator
18 list and GPS monitoring. That's how it all started. I
19 think I talked to Michael at some point in time, talked it
20 over with him, let him make the decision. You know, you
21 would have to remember something, I heard them say on the
22 stand that somebody said to him that we were going to go
23 home tonight, and that perhaps is true because I do tell
24 people, "It's not my decision to make. If you're going to
25 plead it's never my decision. I can give you my

1 recommendations, I can tell you that's what I think you
2 ought to do." Now, sometimes if the guilt is so
3 overwhelming he indicated that I might want him to beat him
4 like a drum to get him take the plea. Yeah. I will do that
5 if it's so overwhelming and I think you're going to get a
6 much worse sentence. I couldn't say that in this case, this
7 case could have gone either way. But what I do is I do make
8 sure that it is their decision. So I talked to him about
9 it, he said he didn't want to do it. I said, "Well, why
10 don't we make a counteroffer? Let's test the waters."
11 Because I didn't know -- you know, sometimes when you get
12 these kind of cases people don't want to testify, so I
13 thought maybe we better go fishing and we'd better see if
14 that's the case here, because if that's the case we might be
15 in better shape than we thought. So I called the solicitor
16 back and indicated to her that we would probably entertain
17 something along the line of A and B second, no sexual
18 predator list, no GPS monitoring and probation. She says,
19 "I'll talk to the girls about it." I think maybe I didn't
20 get the -- I planned on preparing for court on both Saturday
21 and Sunday of that week, and then that's where Trey Cook
22 came in. Because when you try a case you need somebody else
23 to -- particularly a hard case, because a DUI you won't need
24 any help, if it's a particularly complex case you need
25 somebody to back you up just in order to make sure that we

1 hear all of the answers to the questions, all of the
2 questions, so you have a backup. He was going to be my
3 backup. So he basically -- we were meeting up in our
4 office, our office at the time here in Lancaster, to go over
5 trial preparation, things that -- I was showing him
6 everything I had. Again, it helped me to show him, because
7 then again, it gives you another look at everything. And I
8 think that morning I got a call from the solicitor's office
9 that said, "No, that's not a go." I said, you know, "We
10 made you our best offer, either take it or leave it." I
11 think I called Michael and I told him that. Don't know if
12 we ever talked about whether he was or wasn't going to take
13 it, but I continued to prepare for trial. I prepared on
14 Saturday and Sunday, was ready. I told him that when we got
15 there. I said, "I was ready to go on this trial as any that
16 I have ever been." And then something about -- the
17 conversation maybe I think started with the solicitor's
18 office, they came back and said, "We took it off the table
19 but we'll put it back on the table if you think your client
20 will do it." And I said, "I will go talk to him. It's not
21 my decision, I will go talk to him." His mom and dad were
22 both present, Trey was there. We talked about it for a long
23 time. As I recall the father was very much in favor of
24 taking the plea, the mother was in favor of not taking the
25 plea, that's the way I recall it. I left several times to

1 go back and forth and negotiate until we got to the point
2 where we all agreed that this is the way he ought to go. He
3 ought to plead guilty to the -- I'm sorry, Alford to the
4 second because they would recommend no GPS monitoring. That
5 was another concession on their part until we got another
6 concession, and we ended up doing the plea.

7 Q Taking it a step back to where we were with talking
8 about the investigation. Did you ever contemplate or
9 recommend hiring a private investigator in this case?

10 A I contemplated hiring a private detective in every case
11 that I have. Did I do it? No.

12 Q Did you discuss it with Michael?

13 A I don't recall. I don't recall whether I did or
14 didn't. If I would have hired one, and what he did is what
15 I saw today, that's not very much. I did pretty much that
16 myself. I wouldn't have gone to see the Newberry people. I
17 probably wouldn't have called -- tried to call the mom or
18 the daughters. There wasn't much else that he did I don't
19 think.

20 MR. PHILLIPS: May I approach, Your Honor?

21 THE COURT: Yes.

22 Q The document that I handed you, does that look familiar
23 from your case file?

24 A I mean, it looks like -- I don't know whether we
25 prepared it or you prepared this document, but it looks like

1 stuff that would be in this case, yeah.

2 Q So it doesn't look familiar from your case file? I
3 didn't prepare it.

4 A I don't know. I didn't go back to look for just the
5 case file on this. I mean, the document could be. It
6 appears to have all of the things that involved this case,
7 but I don't remember this document in particular.

8 Q At the bottom it says essentially the top is "These are
9 the items we have received regarding the above case." And
10 at the bottom it says, "We do not have: First interview
11 with Michael Clayton on September 29th, 2016. The entire
12 polygraph report from October 21st of 2016. And the
13 interview with Meredith Suber on October 7th of 2016." Did
14 you investigate those three things?

15 A Yeah. I know I have the polygraph report here. I
16 haven't looked for the other things, but I did look for that
17 a little earlier. I do have that, so I'm assuming I have
18 the others.

19 Q The video from Meredith Suber?

20 A See, I think the videos -- I think the videos that I
21 sent you were all the originals, and this one involves --
22 and a couple of these have -- couple of them are all in the
23 same video. So I don't know the answer to that question.

24 Q As far as what I had from Michael was one of his
25 interviews, I believe the second video recorded interview.

1 Did you ever obtain the first video recorded interview that
2 Michael gave to the police?

3 A Whatever I gave you is what I obtained.

4 Q Going to the sex offender registry conditions. Did you
5 ever explain to him kind of the problems that arise from an
6 Alford plea and the treatment requiring the acceptance and
7 responsibility?

8 A I never talked in terms of the way he talked about it,
9 but I do know we talked about "You're going to have to have
10 treatment." And I've had past experiences with the dilemma
11 that he says that he had, and it doesn't turn out to be a
12 dilemma. It just means they get to a point where you're not
13 going to get anymore treatment, you can't get into further,
14 you're at an impasse, this is all we can do. But it's not a
15 violation of probation by any means, he is voluntarily on
16 treatment. If he maintains his innocence that's certainly
17 his right to do. But I did talk to him about that he was
18 going to have to receive -- under the registry that he was
19 going to have to register, of course, and that he was going
20 to have certain conditions under probation that he would
21 have to abide by. I remember going over where he couldn't
22 go and those things and you were going to have to have
23 treatment. I don't know that I sat down and had a list for
24 it, but I know that we talked about that.

25 Q You said you spoke with Investigator Castles?

1 A Yeah, probably more than once.

2 Q What did you discuss with her?

3 A Simple things like, "Do you have any other evidence
4 that you haven't given me?" Or, "Is there anything that I
5 need to know that's not in the files," or anything like
6 that."

7 Q Like the first interview of Michael Clayton, like those
8 things?

9 A I don't know whether that was discussed, I don't know.

10 Q I think we've already covered it, but as far as
11 Meredith Suber, you never spoke with her.

12 A I never spoke with her. Again, I think she's an
13 adverse witness, I don't think you would want her.

14 Q As far as the good character witnesses, you didn't want
15 to at least take their statements and just have them even if
16 they weren't necessary?

17 A Do you know how long it takes to take a statement of a
18 good character witness? How long did you talk to them?

19 Q Long enough. They came to my office.

20 A Yeah. Sure. 15 minutes? If we would have changed our
21 strategy, that's what I would have done. We did not change
22 our strategy.

23 Q What specifically was your strategy?

24 A My strategy was to try to pick apart by inconsistencies
25 any of the witnesses they put on the witness stand,

1 including but not limited to the two alleged victims, the
2 mother and anybody else that they put on. The two
3 healthcare -- mental health people, I had a plan for them.
4 I think you've got a copy of it, if I gave it to you. On
5 each witness I put down on my notes all of my -- all of the
6 things that I wanted to make sure I hit on so that I
7 wouldn't miss any. For instance, I had a sheet of specific
8 questions that had to be addressed, one of the things that
9 Trey Cook would have done, he would have checked them off.

10 Q I don't know if I had that.

11 A You may not because these were some of my personal
12 notes. I have it for every one of them. I have one for
13 Tova. I have got them for Jane Barefoot, for Sierra, for
14 the girls, **Minor Child 1** and **Minor Child 2** I was as ready as you can be
15 to try the case, if that's what you're asking me. I don't
16 think that -- like I told him, I wasn't going anywhere, I
17 was going home whether I tried it that week or not. I'm a
18 good trial lawyer, I like trying cases, but I don't like
19 seeing people go to jail for 20 years.

20 MR. PHILLIPS: Just a moment, Your Honor.

21 (Break in proceedings.)

22 Q Kind of the final closing would be that, you know, as
23 far as the law that based on the available evidence, the
24 discovery that you have, that you have a duty, an absolute
25 duty to conduct minimal investigation -- or excuse me, a

1 reasonable investigation based on the evidence that is
2 before you. What specific investigation did you conduct?

3 A I got all of the relevant evidence, note the word
4 relevant, evidence that was available. I studied it for
5 basically hours, watching every one of those tapes over and
6 over again, looking for inconsistencies and for reasons why
7 they might be saying what they're saying. Okay. I didn't
8 do things that I don't think are reasonable, which is go to
9 Newberry, stir up a mess, try to contact victims, make them
10 more angry. I did what I think was appropriate. I have
11 been doing this for 45 years. I've tried two death penalty
12 cases. I've tried probably 15 to 20 criminal sexual conduct
13 cases so I know what I'm doing, and I did it in this case
14 the way I thought it should be done.

15 Q But specifically to answer the question --

16 A I answered the question.

17 Q -- that there wasn't any additional investigation done.

18 A There wasn't additional reasonable investigation done.
19 I did what I think was reasonable, and I still think that.

20 Q Which was no further investigation -- no speaking to
21 any witnesses or anything like that.

22 A I don't know what you're talking about no speaking to
23 any witnesses. I don't know what you mean by that. Do you
24 mean because I didn't speak to **Minor Child 1** and **Minor Child 2** is that
25 what you mean? No, I didn't talk to them.

1 Q You didn't attempt to do any additional investigation.

2 A I didn't attempt -- I can go down the list of what I

3 did and didn't attempt to do. I didn't attempt to talk to

4 Minor Child 1. I didn't attempt to talk to Minor Child 2 I didn't

5 attempt to talk to the Newberry people. I didn't attempt to

6 talk to Meredith. Now, you want to know why? All of them

7 are adverse witnesses who were going to hurt us. I just as

8 soon I don't stir them up. Number one, I don't want

9 Meredith present. Meredith verifies what we were trying to

10 avoid, that's simple. I didn't talk to the two -- I didn't

11 talk to the mental healthcare people, do you know why?

12 Because my questions to them right out of the chute, right

13 out of the chute is if you believed her you're a mandatory

14 reporter, why didn't you report it? Did you think of that?

15 Q I did.

16 A Okay. So you must have done a reasonable

17 investigation.

18 MR. PHILLIPS: No further questions, Your Honor.

19 THE COURT: All right. Cross examination?

20 CROSS EXAMINATION

21 BY MR. KEY:

22 Q Good afternoon, Mr. Speedy.

23 A Good afternoon.

24 Q Thank you for being here. I believe on direct you went

25 through your investigation in this case, how you prepared

1 for this case. Were you aware of the Newberry report?

2 A I was.

3 Q Had you seen the report?

4 A I had.

5 Q And the report was unfounded.

6 A It was.

7 Q And you chose not to pursue that any further.

8 A Absolutely.

9 Q Okay. And I believe you testified that was -- you
10 chose not to pursue that any further because it was one of
11 the daughters against your client, the allegation was?

12 A I saw no value for our side. I saw no value for us,
13 alls I saw was risk. I saw no value.

14 Q And Mr. Clayton testified he gave you everything from
15 his divorce proceeding?

16 A Yes.

17 Q So you saw the text messages.

18 A Yes. I have everything he gave me. Everything he gave
19 me is in the file. I then duplicated it and gave it back to
20 them except perhaps notes or things that I felt were my own
21 work product.

22 Q Okay. And you saw the affidavit?

23 A I did. We talked about it. We talked about those
24 things, he and I.

25 Q And you talked about that with Mr. Clayton.

1 A Yes.

2 Q Okay.

3 A That was part of our strategy. We both felt that -- we
4 both felt that this came out of the divorce situation, that
5 that's where we needed to focus.

6 Q That this came from the divorce.

7 A Yeah. Once the divorce happened, let's unload on
8 Michael.

9 Q And throwing in there that the allegations, or the
10 police report came two days after the divorce was finalized.

11 A That's right. That would have been part of our
12 strategy.

13 Q And you reviewed the interviews with the victims.

14 A Many times.

15 Q And the mother.

16 A Many times.

17 Q And made notes of the inconsistencies in their
18 interviews?

19 A Yes.

20 Q Okay. And you were talking about your strategy in
21 preserving last argument. Did you explain that to Mr.
22 Clayton, why you would want that?

23 A Yeah. Let's don't limit it to just preserving last
24 argument, also not having your client on the witness stand
25 is important.

1 Q And did you advise him that he did have the right to
2 testify?

3 A For me to sit here and say that you don't have the
4 right to testify, I don't know -- I think I just felt like
5 he understood it, that he didn't have to, it was our choice.
6 I just don't remember specifically sitting down and telling
7 him, "You know, you don't have to do this. The constitution
8 says you don't have to do it," no, I don't remember saying
9 that. But I think the way we approached it, it was clear to
10 him what my strategy was going to be.

11 Q In speaking with Mr. Clayton, were you aware that the
12 two sons would still visit him after the allegations were
13 made?

14 A Yeah. That comes out pretty clear in some of the
15 evidence provided.

16 Q Okay. And Tova Clayton was listed as a State's
17 witness.

18 A She was.

19 Q Did you consider cross examining her about that --
20 about the sons still being allowed to visit with Mr.
21 Clayton?

22 A Yes. The fact that we were going to -- that was part
23 of the inconsistencies, "Why would you leave your
24 children -- other children around him if he was an abuser?"

25 Q So part of the inconsistencies was that she still

1 trusted him enough with her sons.

2 A Yes.

3 Q Okay. And this is all hypothetical because he did
4 enter an Alford plea, but would you have asked for a good
5 character charge based on that cross examination?

6 A Okay. I don't know. I think that's -- it's too
7 hypothetical. I would have to think that through. But
8 wouldn't you almost have to offer his character into
9 evidence before you could get that charge? I think you
10 probably do. But I hadn't thought that through.

11 Q Okay. This document that was handed up that lists from
12 your file what you do not have, you said you do not
13 recognize -- or do not remember if this was yours, correct?

14 A I don't remember specifically. But it may have been
15 typed up by one of my paralegals, and we may have been going
16 over it and saying these are the other things that we need.

17 Q Okay. But you knew, or you had the polygraph report.

18 A Yes.

19 Q And did you ever discuss with Mr. Clayton his police --
20 first police interview on September 29th?

21 A I'm sure we did, but for me to say what that was, I
22 mean, I think as I recall it was just that he denied that he
23 did anything inappropriate, didn't make any admissions.
24 Pretty clean as I remember.

25 Q Okay. And it was your testimony that you thought

1 Meredith Suber was an adverse witness.

2 A I think she verified that she basically says that the
3 girls told her something, at least one of the girls, Minor Child 2

4 Q So you would not have called her as a defense witness.

5 A No.

6 Q And you told Mr. Clayton that he would have to register
7 as a sex offender by pleading guilty.

8 A Yes.

9 Q And you testified you did go into some other things
10 about what registering as a sex offender entails.

11 A Basically. I didn't go into that sheet that was
12 presented because I think -- a lot of things -- those change
13 and I really didn't have a copy of it. But I did talk to
14 him about the fact that he had that treatment, that there
15 were things that he would have to do on probation.

16 Q So you told him he would have to register as a sex
17 offender and he would have to go through treatment.

18 A I think I talked about not being around schools and
19 things -- we talked generally about all of the restrictions.

20 Q Okay. And by him pleading to second degree CSC he did
21 not have to have mandatory GPS monitoring.

22 A That was part of the negotiations. We were back and
23 forth and he said he didn't want that, and I said it was
24 mandatory. We figured out it wasn't mandatory for the
25 second, it was just the way to go. I explained that to him,

1 it was a benefit, and he agreed.

2 Q And the judge followed along with the State's
3 recommendation?

4 A He did.

5 Q Sentenced him to five years suspended on five years of
6 probation.

7 A That's correct.

8 Q With no GPS monitoring.

9 A GPS.

10 Q Register as a sex offender.

11 A Yes.

12 Q And register -- or attend counseling.

13 A Yes.

14 Q And you discussed all of that with Mr. Clayton before
15 he entered his Alford plea?

16 A Yes. Both myself and Mr. Cook, Trey Cook, who was my
17 partner at the time.

18 Q And you did speak to Investigator Castles.

19 A I did. You know, it wasn't like I called her up and
20 said, "I'm going to come up and talk to you. I'm in
21 Fairfield County, and when I am I'll talk to them and say,
22 "What else" -- I'll do that when I'm up there on another
23 case, say it's on a Murphy case. "Do you have anything for
24 me? Is there a change? Do you know anything about it?"
25 And she's a good detective, she's very even-handed. She'll

1 give you the information. She doesn't try to weight it one
2 way or the other, she gives it to you, says this is what it
3 is.

4 Q And the State's final plea offer, the offer that was
5 accepted, do you remember if there was a time frame for that
6 before that would expire?

7 A Well, we were going to draw a jury that afternoon.
8 This all started around nine in the morning, I think. I
9 think the jury was coming in at two, so that happened over
10 that period of time. I think we ended up pleading some
11 place probably around lunch time. It was probably a three
12 or four hour period.

13 Q Okay. So the jury selection would have started at two?

14 A Yes.

15 Q And Tova Clayton was originally on the State's witness
16 list.

17 A Yes.

18 Q Are all of the State's witnesses there when -- at the
19 beginning of trial during jury selection?

20 A Not generally. Generally, they have the benefit --
21 they have the benefit of knowing when they're going to call
22 their witnesses. And, of course, I would have sequestered
23 them, as was done here, and they probably wouldn't have been
24 any -- I'm not sure the two alleged victims were there that
25 morning. I'm not sure of that. I never saw them, never

1 talked to them or anything like that. I'm assuming that
2 they maybe were in contact by telephone, don't know how they
3 were contacting. They may have been there or they may not
4 have been, I don't know for a fact.

5 Q Well, the girls were there at the guilty plea.

6 A Yes. I'm talking about during the negotiations, I
7 don't know. It just seems to me -- and I'm trying to
8 recollect back, is that they summonsed them over there.
9 They may have been some place else but they summonsed them
10 to the courthouse itself at some point in time before the
11 plea. They can talk with them by telephone or something,
12 I'm not sure exactly how it was working.

13 Q And you were aware of --

14 MR. KEY: May I approach, Your Honor?

15 Q This is Applicant's 5, it's already in evidence. Had
16 you seen this in your trial preparation?

17 A Yeah. This is from the -- this is a part of the more
18 extensive, as one of many, and all of these marks are
19 indications of abuse. And this one just --

20 Q You've seen that.

21 A Yeah. It comes from that -- this comes from that
22 group.

23 Q One last question, Mr. Speedy. Did you force Mr.
24 Clayton to plead guilty?

25 A Absolutely not. It's just not -- when you go in front

1 of a judge, if you force somebody to do something it's going
2 to come out.

3 Q And did you advise him of his rights to a jury trial,
4 rights to cross examination?

5 A Yes. Yes. And did I recommend him to take the plea?
6 Yes.

7 MR. KEY: No further questions, Your Honor.

8 THE COURT: Redirect?

9 REDIRECT EXAMINATION

10 BY MR. PHILLIPS:

11 Q It's fair to say that a criminal defense attorney has a
12 duty to conduct a reasonable investigation, to discover all
13 reasonably available mitigation evidence, and all reasonably
14 available evidence tending to rebut any aggravating evidence
15 introduced by the State. Did you conduct any investigation
16 to try to collect any of this evidence?

17 A What evidence are you talking about? You tell me
18 particularly what it is you're wanting to know if I looked
19 for it.

20 Q Did you interview any witnesses?

21 A What other witness? Are you telling me -- I don't
22 know -- I can't say out there in the whole world, did I
23 check the whole world out? No, I didn't. But if you'll
24 tell me what specifically I'll address it.

25 Q Outside of the brief conversations you had with

1 Investigator Castles, any other witnesses?

2 A Who?

3 Q That was contained in the discovery, that was
4 reasonably available to look into based on either their name
5 being placed in the discovery somewhere or being led
6 through, again, in the evidence that was provided by the
7 State.

8 A I believe that I talked to everybody that I needed to
9 talk to to have a good understanding of the case, to
10 understand what the probability was for a conviction, what
11 the probability was for an acquittal. I think I had enough
12 information to make those kinds of decisions. I knew what
13 was going to happen. I knew what was going to happen in
14 terms of presentation of evidence.

15 Q And outside of the brief conversations with
16 Investigator Castles and someone from the solicitor's
17 office, there was no other witnesses that were spoken to.

18 A I don't know that there was any other witnesses spoken
19 to, no.

20 MR. PHILLIPS: No further questions.

21 THE COURT: Any follow-up?

22 RECROSS EXAMINATION

23 BY MR. KEY:

24 Q Mr. Speedy, in reviewing the discovery, talking with
25 your client and preparing for this case, did you see the

1 need to go and interview any other witnesses?

2 A I did not.

3 MR. KEY: No further questions.

4 THE COURT: All right. Thank you, Mr. Speedy, you may
5 step down, have a nice day. Thank you for being patient
6 with us today. All right. Anything further from the
7 applicant?

8 MR. PHILLIPS: Nothing in the forms of testimony, Your
9 Honor.

10 THE COURT: All right. From the State?

11 MR. KEY: Nothing from the State.

12 THE COURT: Okay. And how long do you all want to
13 submit proposed orders?

14 MR. PHILLIPS: Right now I'm scheduled as far as --

15 THE COURT: Just tell me what you want.

16 MR. PHILLIPS: Your Honor doesn't like it to go past
17 six months, so can we just say within 90 days and I'll
18 probably have it within 30?

19 THE COURT: Is that okay with you, Mr. Key?

20 MR. KEY: I am fine with that.

21 THE COURT: You can get it to me whenever you get it to
22 me. If something happens and you end up in some trial and
23 you need more time, I'm perfectly fine on giving people
24 extensions. I understand trials come up and family members
25 get sick and all that kind of stuff, and attorney general's

1 office people turn over. I got all of that. If you run
2 into an issue with 90 days, just let us know and we'll be
3 happy to work with you, just don't stop communicating.

4 (End of the hearing.)

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1 I, the undersigned, Michael C. Watkins,
2 Official Court Reporter for the Sixth Judicial
3 Circuit of the State of South Carolina, do hereby
4 certify that the foregoing is a true, accurate and
5 complete transcript of the proceedings had and
6 evidence introduced in the trial of the captioned
7 case relative to appeal the in Court of Common Pleas
8 for Lancaster County, South Carolina, on the 30th
9 day of January, 2020.

10 I do further certify that I am neither of kin, counsel,
11 nor interest to any party hereto.

12

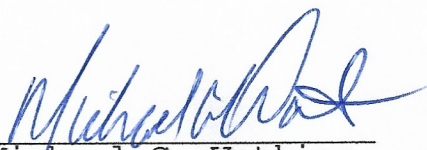
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September 23, 2020

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Michael C. Watkins

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Court Reporter

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF NEWBERRY)
)
 Tova Clayton,)
 Plaintiff)
)
 v.)
)
 Michael Clayton,)
 Defendant.)

IN THE FAMILY COURT
 ELEVENTH JUDICIAL CIRCUIT

CASE NUMBER: 2016-DR-36-35

AFFIDAVIT OF TOVA CLAYTON

Personally appeared before me, Dana Tharp, who being duly sworn, deposes and says: In 2003 I met Michael, the most lovable gentlemen I have ever met. Michael and I dated for a short time before moving in together. I couldn't have asked for a better friend or partner. Michael was like an angel sent from God. This wonderful man took me back to my home town of Pennsylvania to propose. We were each other's rock. I was laid off from work for a year. I spent that time taking care of his grandmother. He has also always helped my family. My parents' house burnt down and we moved them in with us. That's what we did was help each other's family.

After purchasing the house in Newberry County, things were great. We were excited that we had a house of our own. We wanted something the children could always call home. We were like any normal couple. We had our ups and downs.

In 2011, we decided that we wanted a baby. We went through testing and then I had my tubes reverses. We tried for a few months to have a baby, with no luck. I then found out Michael had been with other females, I moved into another bedroom. Michael asked me to leave the house. I moved out of our house and in with my parents. Michael and I didn't speak for about a year.

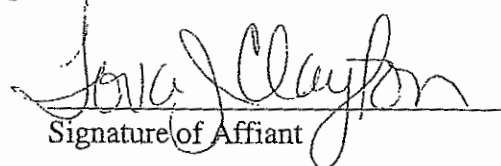
On mother's day of 2013, I received a picture of Michael and Sonny. Michael and I started talking again, meeting at the river to talk. We became friends again, and I told him it would take time for me to forgive him and he needed to be patient. My son Austin had a hunting accident and Michael was there. My mom had triple bypass and Michael was there. I realized then that my best friend was back. My father and I were not seeing eye to eye. I called Michael and he said just come back home, we will figure it all out. So I came back home. 2014 things were great. We were a family again. Going to lunch together, having family dinners at home. One night stands out, the first night we shared a bed again. We went out for drinks at his second job, came home laid in bed just talking and laughing.

I got sick again in August of 2014, Michael being Michael picked up my medication and flowers. Just to cheer me up. Things started changing in January or February of 2015. Michael became distant. He wouldn't eat dinner with me and wasn't spending time with us like before. He started spending time away from home.

One weekend, he told me he was going to the beach with the boys. Knowing now that wasn't true per the pictures. I still tried to involve him in family functions to include the past Christmas. He opened gifts with us in the morning. He said he couldn't stay for dinner because he was getting his mother and going to his aunt's house for dinner.

January 5th, I got a call from one of my administrators for BoSC stating that Michael was dating his best friend's daughter Heather. He also stated that she was pregnant (11 ½ weeks). January 6th, Michael texted me asking for a divorce. January 27th, Michael and I talked and he told me that he was in love with another woman and they are having a baby. He told me that we don't need to go the courts or attorneys because there was nothing to split. My family still to this day is friendly. I will always love Michael but I can't forgive him.

FURTHER AFFIANT SAITH NOT.

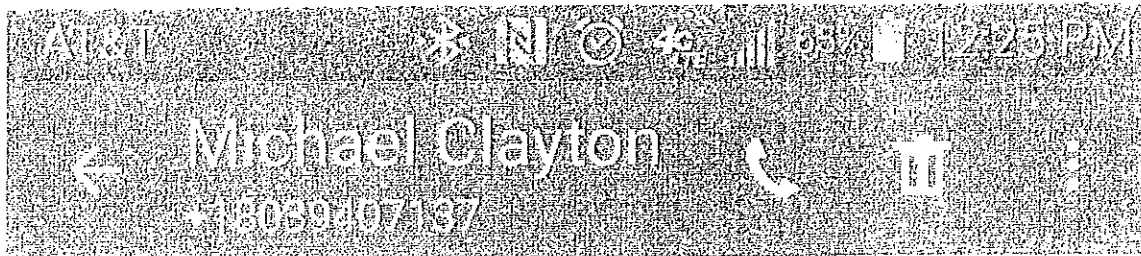

Signature of Affiant

SWORN to and subscribed before me under the penalty of perjury this 29th day of Feb., 2016.



Notary Public for South Carolina

My Commission Expires: 10/20/2025



I'd like to get divorced.

11:39 AM

DO WHAT..on what grounds?

11:39 AM



Uh, the grounds that we don't have a marriage and haven't in about 4 years.

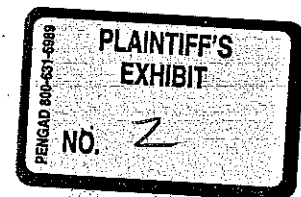
11:40 AM



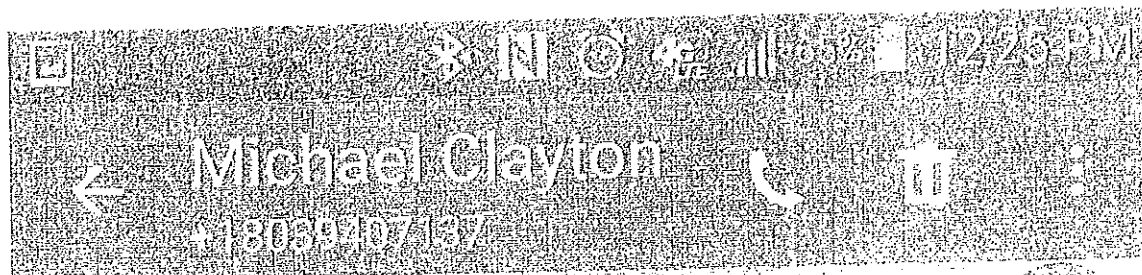
I don't see a reason to continue being married

11:41 AM

We do have a marriage WOW



Enter message



We do have a
marriage....WOW

11:42 AM

I am shocked

11:43 AM

Actually speechless

11:43 AM

Uh.....no, we don't.

11:44 AM

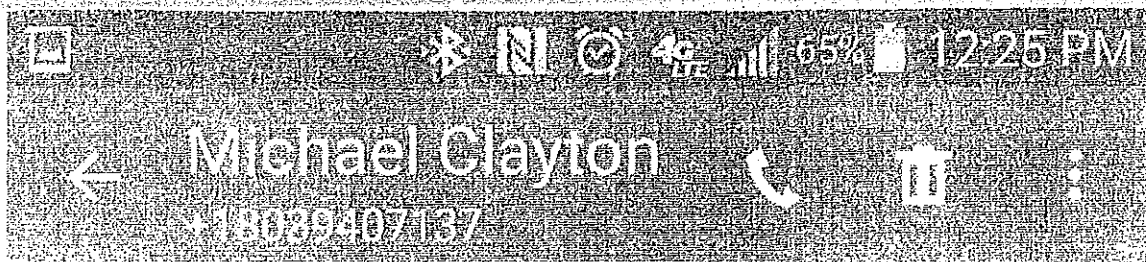
I figured you'd agree
with me, but I guess I
was wrong

11:44 AM

Yes sir you was
wrong..I never



Enter message



Yes sir you was
wrong..I never
expected this

11:45 AM



I really don't see how.

11:47 AM



You have your life, I
have mine. The only
time they intersect is
for bills or Wyatt.

11:49 AM

I can't believe you have
me upset at work like
this

11:52 AM

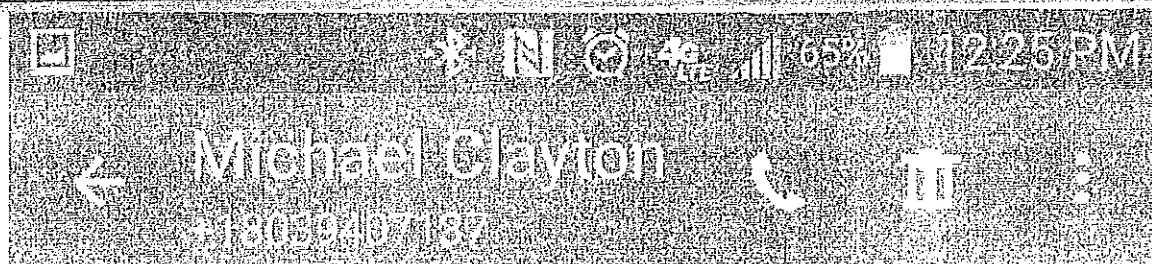


I'm honestly amazed



Enter message





I'm honestly amazed
you're upset.

11:53 AM

Crying like a baby

11:54 AM



Idk what to even say

11:54 AM



Had I thought that
would be the case, I
would have waited
until later.

11:54 AM



I really didn't mean to
upset you.

12:00 PM



Enter message





Just figured it was a formality at this point

12:01 PM

Truly I am devastated...

12:04 PM



I have always loved you

12:04 PM



Well that wasn't my goal here at all.

12:09 PM

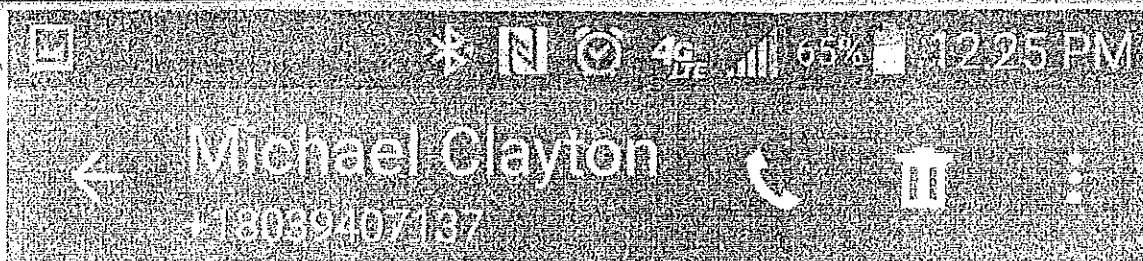


You always said to tell you if I wasn't happy. I haven't been happy with the situation in a



Enter message





You always said to tell you if I wasn't happy. I haven't been happy with the situation in a long time, and I'm just ready to move forward.

12:12 PM



I'm not trying to run you out of the house or anything like that.

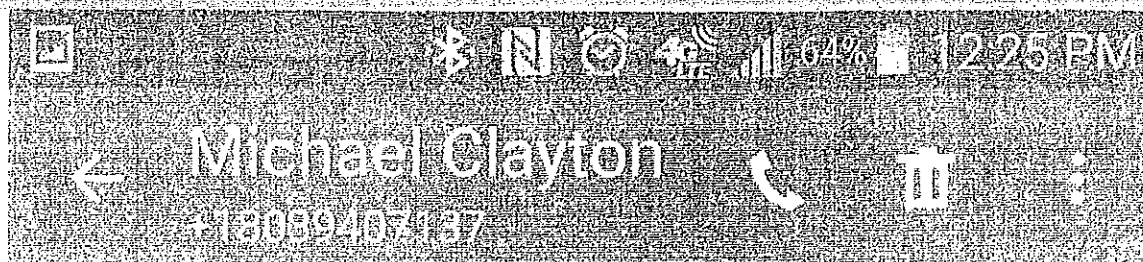
12:13 PM

Michael what did marriage vows say?...better or worse, thru thick and thin...I can't even talk about this anymore today



Enter message





can't even talk about
this anymore today

12:15 PM



Yeah, they did. Then
you ditched me for
two years, after being
over the top mentally
abusive for months.
You only came back
because you were
fighting with your
mother.

12:19 PM



I'm not trying to fight.
I just can't do it
anymore.

12:20 PM

Tue 01/12/2016



Enter message



AGENCY I.D.
SC0360000

NEWBERRY COUNTY SHERIFF'S OFFICE

INCIDENT REPORT

CASE NUMBER

11 - 11448

NCIC

IND. ENT.

E V E N T	INCIDENT TYPE				COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM ☒ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.
	1. INF - POSSIBLE SEXUAL ASSAULT				☒ YES ☐ NO	☐ YES ☐ NO	20		
	2.				☐ YES ☐ NO	☐ YES ☐ NO			
V I C T I M	3.				☐ YES ☐ NO	☐ YES ☐ NO			
	INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)						ZIP CODE	WEAPON TYPE	
	PROSPERITY SC						29127		
	INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK	LOCATION NO.		
	12/07/2011	2115		12/07/2011	2110	12/07/2011 2115 2118 2140			
	COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT	RESIDENT	RACE		
	HARCLERODE, KEVIN				OK	J S O U	W M		
	ADDRESS				CITY	STATE	ZIP CODE		
					NEW PARIS	PA	15554		
	VICTIM'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT	RESIDENT	RACE		
Minor Child 1					D S O U	W F			
HEIGHT				WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		
5-1				130					
ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.		
				PROSPERITY	SC	29127-8582			
S U B J E C T	VISIBLE INJURY (VICT. 1) ☐ YES ☒ NO EXPLAIN -								
	VICTIM (NO. 1) USING: ALCOHOL: ☐ YES ☒ NO ☐ UNK. DRUGS: ☐ YES ☒ NO ☐ UNK.								
	☐ TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/GPL/ASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED J - This Jurisdiction S - State O - Out of State U - Unknown								
	SUBJECT NAME (LAST, FIRST, MIDDLE)				RACE	SEX	AGE		
	CLAYTON, MICHAEL				W	M	00		
	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.								
	ADDRESS				CITY	STATE	ZIP CODE		
					PROSPERITY	SC	29127		
	SUBJECT (NO. 1) USING: ALCOHOL: ☐ YES ☐ NO ☒ UNK. DRUGS: ☐ YES ☐ NO ☒ UNK. TYPE:				ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO		DATE/TIME OF OFFENSE		
					TOTAL # ARRESTED 0		12/07/2011 2115		

Offenses:

POSSIBLE SEXUAL ASSAULT

REPORTING DEPUTY RECEIVED A CALL FROM THE COMPLAINANT IN REFERENCE TO A POSSIBLE SEXUAL ASSAULT. THE COMPLAINANT STATED THAT HIS FOUR CHILDREN LIVE AT THE LISTED LOCATION WITH THEIR MOTHER AND STEP-FATHER. THE COMPLAINANT STATED THAT HIS 18 YEAR OLD DAUGHTER CAME TO VISIT HIM AND BEGAN TO EXPLAIN HOW HER STEP-FATHER MICHAEL CLAYTON HAD TOUCHED HER IN AN INAPPROPRIATE MANNER IN THE PAST. THE COMPLAINANT STATED THAT HE WAS SHOCKED AND DISTURBED BY THIS AND SPOKE WITH HER ABOUT REPORTING THE MATTER. THE COMPLAINANT STATED THAT SHE INDICATED THAT SHE WOULD BUT SO FAR HAS NOT DONE SO. THE COMPLAINANT STATED THAT HE FELT AS IF IT WAS HIS OBLIGATION AS A PARENT TO MAKE A REPORT AND HAVE THE MATTER INVESTIGATED. THE COMPLAINANT INDICATED THAT THIS INCIDENT MAKE HAVE TAKEN PLACE YEARS EARLIER. THE COMPLAINANT STATED THAT CONFRONTING THE SUBJECT AT THIS POINT WOULD ONLY CAUSE PROBLEMS AND ALSO MENTIONED THAT HIS DAUGHTER WOULD NOT TALK ABOUT THE MATTER UNLESS IT WAS IN A PRIVATE SETTING. THE COMPLAINANT DOES NOT KNOW IF THIS HAS HAPPENED TO ANY OF THE OTHER CHILDREN. THE COMPLAINANT ALSO STATED THAT HIS DAUGHTER ADVISED HIM THAT HER MOTHER WALKED IN ON THE INCIDENT BUT FAILED TO CONFRONT THE SUBJECT. REPORTING DEPUTY NOTED THE AGES OF THE OTHER THREE CHILDREN AS 16, 10, AND 13. REPORTING DEPUTY CLEARED.

 PLAINTIFF'S
EXHIBIT

NO. 3

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				TOTAL VALUE	
P	TYPE (GROUP)				
R	Burned				
O	Count/Forged				
P	Dest./Damaged				
E	Recovered				
R	Seized				
T	Stolen				
Y	Unknown				
A D M I N I S T	SUBJECT IDENTIFIED ☐ YES ☒ NO		SUBJECT LOCATED ☐ YES ☒ NO		☐ ACTIVE ☐ ADM. CLOSED
					☒ UNFOUNDED
					☐ ARRESTED UNDER 18
					☐ ARRESTED 18 AND OVER
					☐ EX-CLEAR UNDER 18
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY					
REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER	DATE
DEPUTY CHRIS KELLER		12/07/2011	145	LT. GARRETT LOMINACK	12/07/2011
				FOLLOW-UP INVESTIGATION OFFICER	UNIT NUMBER
				☐ YES ☐ NO INV. ROBERT DENNIS	060
					12/08/2011



Fairfield

FCSO WORK PRODUCT Criminal Investigations

CASE NUMBER: 16-004973**DATE:** 6/18/2018**SUBJECT:** Michael Clayton**CHARGE(S):** Lewd Act (Warrants) and CSC w/Minor (Direct Indictment)**WARRANT(S):** 2016A2010100550 and 2016A2010100551**VICTIMS:** [Minor Child 2] and [Minor Child 1]**OFFICER:** Inv. Karen Castles

Case Incident: On 6/23/2016, Sgt. Truesdale was given a telephone call from dispatch to call the victim, [Minor Child 2]. He made contact with her and she stated that her step-father had sexually assaulted her 9 to 10 years ago.

I made telephone contact with [Minor Child 2] on 6/24/2016 and made an appointment to meet her at the Sheriff's Office on 7/1/2016.

On 7/1/2016, I met with [Minor Child 2] and she stated that her step-father, the defendant, would enter her bedroom at night time to tell her good night and would kiss her, stick his tongue in her mouth, rub her breasts on top of and underneath her nightclothes, rub her vagina with his hand on top of and then underneath her panties and would digitally penetrate her vagina. She said that this happened nightly between the ages of 10 and 12. She said that her sister, [Minor Child 1], who is 2 years older than herself, was also a victim of the defendant and that the defendant would go into [Minor Child 1] room after leaving her room. She said that the family was aware that

[Minor Child 1] had been sexually assaulted by the defendant but that she did not tell the family he was also assaulting her until recently. She said that she did tell her best friend, Meredith Suber, youth pastors, a high school boyfriend (deceased) and her therapist at mental health during and after the assaults. I made contact with [Minor Child 1] and set up an appointment to meet on 7/8/2016.



Fairfield

FCSO WORK PRODUCT **Criminal Investigations**

On 7/8/2016, I met with **Minor Child 1** at the Sheriff's Office and she stated that the touching, kissing and "humping" started when she was 12 or 13 and continued until she was 18 and moved out of the residence. She said that he made her touch his penis at least once. Said the events would happen 1 to 2 times per week. She told her grandmother when she was 13 years old and the grandmother and mother confronted the defendant and he denied all the accusations. She did move in with her grandmother for several days but then moved back home. She remembers it being over Easter weekend. She said that the abuse continued until she was 18 and moved out of the residence. She did also tell a boyfriend, Nick Amick, about the abuse when she was 16. She said that she found out about **Minor Child 2** when she was 18 and felt bad because she felt like she could have stopped it. She said that if she told him no, he would take it out on her siblings. She said that he also touched her in Newberry County.

On 7/28/2016, I spoke with Cierra Barefoot, the victim's aunt, and she stated that when she was 18, the defendant kissed her without permission while standing in her mother's yard waiting on the victim's school bus to arrive. I also spoke with the victim's mother, Tova, who stated that she and the defendant did separate for 2 weeks when **Minor Child 1** was 13 due to the claims that the defendant was molesting her daughter. She said that the defendant told her that she was over reacting and after several weeks they got back together. She said that she asked **Minor Child 2** about the abuse when she was 17 but **Minor Child 2** denied any abuse.

I made contact with the defendant on 9/26/2016 and set up an interview for 9/29/2016. He gave family back ground information and consented to a polygraph. Polygraph was performed on 10/21/2016 and deception was indicated. I interviewed him on 11/18/16 and he again denied touching anyone but wanted a lawyer.

On 11/22/2016, I spoke with **Minor Child 1** about the report from Newberry County that her father filed in 2011. She said that she was never contacted by Newberry and did not know that her father had even filed a report. I spoke with Meredith Suber at the Sheriff's Office and she said that she remember her and **Minor Child 2** talking about the abuse and how it affected **Minor Child 2** when they were younger. She said that she had an affair with the defendant when she was 18 that was alcohol induced and when **Minor Child 2** found out about the affair, she was mad and they haven't spoken since.



Fairfield

FCSO WORK PRODUCT

Criminal Investigations

Records from mental health were obtained and show that **Minor Child 2** did talk about abuse to a therapists around the age of 17/18.

On 1/13/2017, I spoke with Cindy Long, a youth pastor of **Minor Child 2** and she said that in 2012, **Minor Child 2** told her about the abuse and she began accompanying **Minor Child 2** to mental health appointments and her calendar showed she went to appointments on 9/19/2012, 10/26/2012, 12/6/2012, 1/15/2013, 1/23/2013, 2/1/2013 and 2/8/2013. She said she remember **Minor Child 2** talking about the abuse and how afraid she was of night time and that she was having a hard time sleeping.

Warrants were obtained on 12/20/2016.



Fairfield

FCSO WORK PRODUCT
Criminal Investigations



Fairfield

FCSO WORK PRODUCT
Criminal Investigations

7/8/16 1:30pm

Minor Child 1

Boyfriend - Pablo Lazo

(73)

4 years -

Self employed -

Robert Treuwalla
104 W. Horns Rd. -
Chapin
Caregiver -

Prosperity - 29127

(he has 3)

No kids -

Austin - 18

Wyatt - 15/16

Bio - Dad - 2-3 times a year - 6 years - @ 17 years -

Finance @ time told - threatened to take Mom back for brother custody
worried about Brother not here -

← told

Finco - Nick Amick - 16 - 2 year dating - he knew - Supportive but she was still @ home -

Gina - Jane Barefoot - told her @ 13 near Easter.

Same @ Gina -

(Same reaction)

Mom caught him coming out of bedroom
"touching" didn't believe -Stayed @ Gina's for a few days
+ then brought him to Easter -'pushed under rug'
Now supported - believes now.

Back to normal -

Found out about Brooke @ 18 - Brooke felt bad - like it was B's fault -
She couldn't stop him -

Don't talk about it now -

effects - Hatred - I'm mean, heavy hearted - Can't have sex -
Sometimes -

Had any counseling - Wants counseling! Hates everyone -

~~Gina~~ - attempted
Lienza Barefoot -

Newberry -

Meredith - Rumors about sex or Rape - @ 16
Subur in Peak near Dr's office -

Jane Barefoot

7/8/2016 2:45pm

When Michael + Tova Split. - Went to Michael. - He said
 he knew she knew because of treatment. - Doing things to Minor Child 1
 "Sorry I did it"

"If you touched Minor Child 2 I'll kill you"

Anger issues. -

Took Minor Child 2 to psychologist in Newbury. -

desp - no boyfriend. -

touched Boy? - No! -

Minor Child 1

- happiest she
 has seen now. -
 didn't say anything -



Fairfield County Sheriff's Office
350 Columbia Road
Winnsboro, South Carolina 29180
(803) 635-4141



9-29-2016 Michael @ 1pm

TOVA 10/21/2005 married.

All 4 children girls - 10 + 12 boys - A-5 W-3
12/2003

in Blair. - in his house. - Stayed 2 years before that.

Prosperity 8/2009 - Schools. - Minor Child 1 having trouble
in School - Sophomore.

Father did not always get - She was naughty - incident @ school - in Fairfield
discipline - no spankings - time outs + grounding -
Lying - 2 weeks grounding.

Divorced in July - moved out

2011 - Jeremy ^{Black} moved in. a liar; 10/2012 - She moved out w/ 3 kids. - Minor Child 2

2 1/2 mos girl. - Abigail. - moved out. - he got
boys on weekends.

Cashing out back @ him. - girls haven't had much contact

Minor Child 1 mad because he wouldn't let her take car. She moved in + out.

Minor Child 2 - tried to move back in w/ BF + family. He said no.

Minor Child 1 - last spoke - when Austin fell out of tree - 3 years ago.

Minor Child 2 - " " about some time

Waggett - Haven't seen since Divorce - (16 years old)

Austin - let him buy School clothes last year.

"To Protect and Serve"

Eye Contact changed w/ Meredith -

Meredith Subar. - Nothing to do with that. - After graduation -

Summer 2012

Meredith was a doctor. - Minor Child 2 started acting. -
wanted Seas cream. -

Jeremy was hanging out with Meredith -
wife
Jennifer Black. -

Meredith - NO. - She came to visit Minor Child 2 (eyes). -

== Sleepovers. - in Blair 1 or 2. -
Newberry. 1 or 2

== VC Summer - 17 years

Habitat For Humanity. - TOVA

lost job - didn't work for 2 years -
6/2006 - Public Storage

He worked 7:30 - 5pm
m - F m - th

TOVA - took kids to school + she
Brought home. -
She wasn't
working when kids started
Fairfield
School. -

Varied Bedtimes. - on age. -

9pm - Stages kids/baths -

Kids shared rooms. -

Both or one would check on them. - had TV's in room - VCR's

Public Storage - 9:30-6 - varied
Schedule. -

Neither worked @ night -

Doesn't ~~remember~~ remember if Minor Child 1 moved out. when she was 12/14 w/ 1st
accusation. -
No scars on Penis. - 'to his knowledge'

Minor Child 2 2009 Minor Child 2 across hall
- Owned. - moved in. - Minor Child 1 upstairs bedroom. -
Cousin 2011

TOVA still lives there. -

He lives in Colo. -

girls in bedroom - all the time. - kids pile into

Minor Child 1 moved out - then

Minor Child 2 moved upstairs. - then

Minor Child 1 moved back in - Family Room

Minor Child 2

2005
11

4th gr.

Kevin Harclerode - PA.

Moved out then - 4th grade.

around 10 years old - outlier for about
2 years.

Sister 2 years older - prosperity - [REDACTED]

Boyfriend - Colton Shealy -
Current + living with - landscaping

left in 9th grade.

Cashwell - Finance Co. - Papa Geiswiler.
Jed man @ 18 years old.Michael - girl down July
Heather Jones -Mom Tova Clayton - 5th grade -
are divorced - June / 16mom
She left her senior year in H.S.① Aunt - Cierra Bairford -
4 years older than Brooks
Neiberg - Apartment
Attempting② Alcohol / sexual favors -
Meredith Suban -
heard from Brooks
Current Boyfriend

Full prosecution -

10th - Inmate - Bus - mom - Michael - off Bus
may have job - VC Sumner - old sister
Minor Child 1Nighttime - mom sleeping
Not sure - @ Bedtime - sometimes wake up -

Back + forth - couple of times a week - say? - 'Love me' - Kiss -

tongue - feeling - night gowns small clothes -

1st time - asleep + watching movie - grope on chest - pulled up shirt -

chest then - moved under near to side - couple of months - touching -

NO intercourse - her hand on penis under of cloth - with fingers -

Kubbing - couple often w/ penetration - used - - - - -

gave them letter apologizing for not being there he should've been -

Moving to parents - apologized for his behavior -

mental abuse - jealousy attitude - he hated her BF's -

was compliant
w/ house rules -

therapy? - short while - 16 or 17 - Newberry School -

Gina - his Quid there @ different times.

Taking care of Gina until she died -

lightly touch -

Rub + suck -

15 mins -

Nothing rough -

have on PS - just opt use to it -

Never told to stop -

Period? - 12 or 13 -

just before period started -

Demeanor

Bi-plan

Depressed

PTSD

Deprecat

well but in

Self hating -

Cut -

wrists

School - Nothing -

good sports - track
friends - cross country

Current BF - Supportive -

Bedroom - always closed

door when he came in -

+ then left door
open on leaving -

had hole in door -

Had legions + crickets
focused on cricket sounds
during events -

Piedmont Tech

left Gina home

+ moved in

w/ BF + parents -

19 driving -

had BF deceased -

youth

Eddie + Cindy

Long

young life

Avella Presbyterian
Newberry

Punishment - grounding - he was the parent +

did everything for kids on a daily visit -

Sister - typical teenager

Stand in corner -

taking phone away -

take church activities -

Brothers - Bad -

Bought sister a car - sister moved out @ 18

~~Recall~~

left her & went to her sister's room - 10-15 ins. - always both girls. -

Minor Child 2

found out about Cane - 11 or 12. -

told Minor Child 1 - in Minor Child 1 Bedroom. - B walked in & was asked & denied. until 18.

Sister - sex & drugs. -

the other day - last week in June. -

Never stopped. - her in Fairfield & Newberry Co. -

Never talked details. -

TOVA

Mom. - dating Michel. Oct 2003 -

1st asked Minor Child 2 - 17

she denied. -

TOVA

moved in Dec 2003. -

Minor Child 1 told mom 4 years old. -

married Oct 21 2005. -

@ 2012

moved out Aug. 2008 or 2009

to Prosperity. -

moved out for 2 years. lived w/ parents. -

Separated. Mar 4 2016 - court order. -

2 years ago moved back together. -

Found out about

Minor Child 1

Minor Child 1

Gina + the unit asked. - 'Michael touched her'

He came home & they argued. - left in 2 weeks. -

He was shocked & clenching head lights. -

'She was overreacting' - moved into 2nd bed room. - 2 weeks out of home. -

he has scar on penis. - magazines. -

video of him & ep. -

overprotective of girls. -

clothing was modest. -

7/28/2016 2:20 pm

Cienna - Newberry
Boys - 3+5

Tova's sister

ended up in Fairfield Co. 2008 - after house burned. - Never when Jennifer.

had after moved out. Moved to Lexington - [REDACTED]
w/ folks. - @ Fish Hawk. -

1st tried @ 2009. 18 years old.
(Before 19th Birthday)

Cienna 18 -	Minor Child 1 16 -	Minor Child 2 14

catch bus to parents + Michael would pick up from there. -
Pop up @ house - started coming early, - a hour early -
get out a car in house. -
No one else home. - always on time when
mom was there. -

Hugs - squeeze hugs. -

He started kissing on mouth + cheeks. -

Never kissed his back. -

Didn't say anything; didn't ask to stop. -

called mom crying + told her. -

hugging all the time. One time forced kiss. - One time
sister showed up there + got mad he
was there. -

Progression in hugs -

Sister wanted to try + catch
her. - talked on AIM -

"Want to come see you"

"I love you"

"Brought up the past sexual assault"

still around guy after sister found out
@ incident when 17 years old

Minor Child 2 +

Minor Child 1

found out about when after her incident - late 2009

told- nephew had caught him coming out of Minor Child 1 room. + told Sonberdy -
(Austin) 18
Tova called mom flipping out + voice crying. Told ~~everyone~~ ^{nephew} that ~~what~~ 15

Michael tried her. - Tova just found out when Minor Child 2 came out. -

just had baby girl. - a week ago. -

Baby mom - Hopkins/Columbia
Quail Run? Gardner's ferry area

back to Meredith Suber - according to Minor Child 1 happened in Blair -

Brandi Bailey - of before Tova. Was 14 when dating Michael.

Meredith 10/2/2016
@T130

Property - Peak - [REDACTED] - parents still live -
parents know, -

whole - life

met Brooke @ School - grade 9th or 10th -
Mid Carolina -

Best friends -

All in Newberry - happened at a hotel
across @ Shell station - yellow. Every time
Brooke & Meredith were not as close -

1st time 18 years old - out of high school -

previously bought her alcohol -

Random times

Not a virgin @ that time

Smuck out of house - he picked her up down

Birth Control - None, Never pregnant

Road - sometimes he

Consensual sex

had a room sometimes he had

w/ alcohol - (Vodka)

to get one.

He made drinks - sitting & talking -

Knew what was happening most of the time -

Sometimes not -

Never said no - liked alcohol +

last time together - 6 mos or a year -

(sneak out winter + summer)

Minor Child 2

found out through Church and the parents -

No relationship w/ Minor Child 2 since - Friends on Snap chat (used to be)

No Contact w/ Tera - Never had consoling -

Minor Child 2

told Meredith

hand on them (Minor Child 2 + Minor Child 1) -

came in room @ night - Confused -
didn't like it. - Spoke of it every now & again.



Fairfield County Sheriff's Office
350 Columbia Road
Winnsboro, South Carolina 29180
(803) 635-4141



~~00000~~

12/14/2016

Minor Child 2

@ 1:02pm

11 (2006)

12 (2007)

@ 13

13 (2008)

14 (2009)

1st 9 years old
Freaky Friday in their Bed
2004 in their room
Asleep - @ 13 siblings

pretending
just chest
under shirt

No idea when stopped -

probably around period

7th grade - still in
Blair -

Black Cargo Diamond plate
Enclosed -

told Mom @ 18 -

Minor Child 1

12/14/2016

1:36pm

Fondling

11 (2004)

(2008-2009)

18 (2011)

1st time - Birth control

@ 11

DSS in Winnsboro

Fairfield

He is highest both

Newberry.

Stopped - ignore him (took out on Siblings when she rebuffed him)

Grandma @ 13 → Mom home early - had erections - Mom

Knew - later - everything was smoothed over -

started working @ Louis 1/2 way through Senior year -

June 2011 - found her cell phone - she left -

"To Protect and Serve"

Minor Child 1

Buchanan

Wyatt's Room
Party

Austin

Minor Child 2

Minor Child 1

Living Room

Bathroom



Hallway

Kitchen

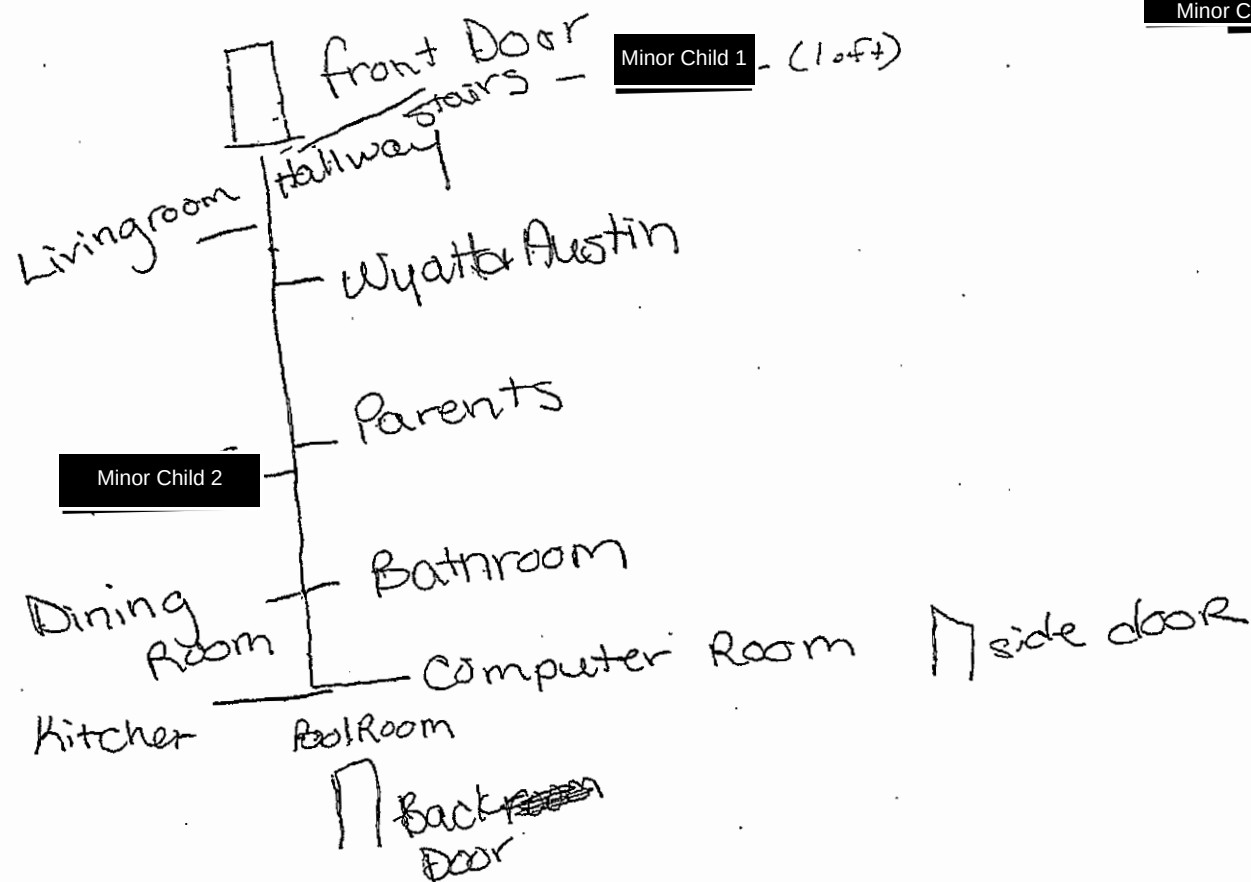
Bedroom

computer



front Door

Minor Child 1 - (10ft)



AGENCY I.D.
SC0200000

INCIDENT REPORT
Fairfield County Sheriff's Office

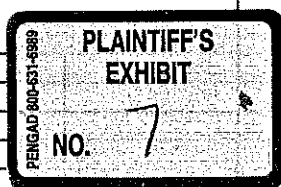
CASE NUMBER

16-004973

NCIC

INQ. ENTD.

EVENT	INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
	1. 11D - Fondling		☒ YES ☐ NO	☐ YES ☐ NO	20(Residence/Home)		☐ Individual ☐ Business ☐ Financial Inst ☐ Government ☐ Relig. Orgn. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.
	2. 13B - Simple Assault		☒ YES ☐ NO	☐ YES ☐ NO	20(Residence/Home)		
	3.		☐ YES ☐ NO	☐ YES ☐ NO			
VICTIM NO. 1	INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)				ZIP CODE	WEAPON TYPE	
	BLAIR, SC				29015-	40-Personal Weapons (Hands, Fists,	
	REPORT DATE	ATTEND. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME	24 HR. CLOCK
	01/01/2005	8:00		12/30/2006	16:00	06/23/2016	18:25
SUBJECT NO. 1	COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE
			#1 #2 #3	J S O U			
	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	
SUBJECT NO. 1	VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE
	Minor Child 2		#1 #2 #3	J S O U	W	F	21
	HEIGHT WEIGHT HAIR EYES		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.				
	4'00" 60 BLK - Black BRO - Brown						
SUBJECT NO. 1	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	
			Irmo	SC	29063-		
	VISIBLE INJURY (VICT. 1) ☐ YES ☒ NO EXPLAIN -		COMPLAINT OF NON-VISIBLE INJURIES: ☐ YES ☒ NO				
	VICTIM (NO. 1): NONE ☒ USING: ALCOHOL ☐ DRUGS ☐ TYPE:						
SUBJECT NO. 1	TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/SPLASMT. ☐ OTHER ☐		ALONE ☐ ASSISTED ☐	* J - This Jurisdiction S - State O - Out of State U - Unknown			
	NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE	ETH.	DATE OF BIRTH
	CLAYTON Jr, MICHAEL		B	M	37	N	
	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.						
SUBJECT NO. 1	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	
			Columbia	SC	29209-		
	SUBJECT (NO. 1) USING: ALCOHOL ☐ COMPUTER EQUIP. ☐ ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO ☐		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST		
	DRUGS ☐ NONE ☒ TOTAL # ARRESTED 0		01/01/2005 8:00				
NARRATIVE	ON THE ABOVE DATE AND TIME I SGT. TRUESDALE WAS GIVEN A 10-21 FROM DISPATCH. UPON CALLING THE						
	COMP. I SPOKE WITH Minor Child 2 SHE STATED THAT SHE HAD CALLED AND SPOKE WITH RICHLAND						
	COUNTY AND THEY ADVISED HER TO CALL US. SHE THEN STATED THAT SHE WANTED TO REPORT A CSC FROM 9 TO						
	10 YEARS AGO WHEN SHE LIVED IN FAIRFIELD COUNTY. SHE STATED THAT HER STEP FATHER (SUBJECT) HAD						
NARRATIVE	DID THINGS TO HER OF THE COURSE OF A 2 YEAR PERIOD WHEN SHE WAS BETWEEN THE AGE OF 10 & 11.						
	THE VICTIM STATED THAT HER STEP FATHER WOULD TOUCH AND RUB ON HER ABOVE AND UNDER HER CLOTHES.						
	SHE WENT ON TO STATE ON A FEW OCCASIONS HER STEP FATHER DID DIGITALLY PENETRATE HER. I THEN						
	EXPLAIN THE PROCESS TO THE VICTIM AND ASKED WHEN SHE COULD COME TO THE SHERIFF'S DEPT. TO GIVEN						
NARRATIVE	HER OFFICIAL WRITTEN STATEMENT. SHE STATED IT WOULD HAVE TO BE ONE DAY NEXT WEEK AS SHE WOULD						
	NEED TO TAKE OFF WORK. I ADVISED HER THAT I WOULD CONTACT A INVESTIGATOR AND ONE WOULD BE CALLING						
	HER TO SET UP A TIME AND DATE FOR THEM TO MET.						
PROPERTY EST.	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY		TOTAL VALUE		
ADMINISTRATIVE	SUBJECT IDENTIFIED		SUBJECT LOCATED		ACTIVE ☐ AOM, CLOSED ☐		ARRESTED UNDER 18 ☐
	☐ YES ☒ NO		☐ YES ☒ NO		☐ UNFOUNDED		ARRESTED 18 AND OVER ☐
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH		2. ☐ NO PROSECUTION		3. ☐ EXTRAJURISDICTION DENIED		4. ☐ VICTIM DECLINES COOPERATION
	5. ☐ JUVENILE - NO CUSTODY						
ADMINISTRATIVE	REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE
	151 - Sergeant BRAD TRUESDALE		06/23/2016	151	1085 - Shannon Legrand		10/03/2016
					FOLLOW-UP INVESTIGATION OFFICER		
					☐ YES ☒ NO 114 - Investigator KAREN CASTLES		114



AGENCY I.D.
SC0200000

SUPPLEMENTAL INCIDENT REPORT
Fairfield County Sheriff's Office

CASE NUMBER

16-004973

NCIC

INQ. ENTD.

☐ ORIGINAL REPORT	☐ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY	PAGE <u>2</u> of <u>4</u> PAGES
☐ MODIFIES ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY	

VICT/SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	Minor Child 1		VICTIM RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	D.O.B.	ETH			
	☐ VICTIM # <u>2</u>			#1 SC	#2	#3	J	O	U	W	F	23		N
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.								
	☐ RUNAWAY	5'01"	120	RED - Red or Au	BRO - Brown									
☐ WANTED	ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.	HOME PHONE		EMPLOYER PHONE				
☐ WARRANT			Prosperity		SC	29127-								
☐ ARREST	☐ VICTIM NO. <u>2</u> VISIBLE INJURY: ☐ NO ☐ YES		☐ COMPLAINT OF NON-VISIBLE INJURIES		☐ VICTIM USING ALCOHOL: ☐ NONE		☐ TWO-MAN VEHICLE ☐ DETECTIVE/SPLASMY		☐ ALONE					
☐ JAIL	EXPLAIN		☐ NO ☐ YES		DRUGS: ☐		☐ ONE-MAN VEHICLE ☐ OTHER		☐ ASSISTED					
☐ SUMMONS	☐ SUBJECT NO. <u> </u> USING: ALCOHOL ☐		☐ DRUGS ☐		TYPE:									
	COMPUTER EQUIP. ☐		NONE ☐											
VICT/SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	D.O.B.	ETH			
	☐ VICTIM # <u>3</u>	Suber, Meredith		#1 AQ	#2	#3	J	O	U	W	F	22		N
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.								
	☐ RUNAWAY	ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.	HOME PHONE		EMPLOYER PHONE			
☐ WANTED			Greenwood		SC	29646-								
☐ WARRANT	☐ VICTIM NO. <u>3</u> VISIBLE INJURY: ☐ NO ☐ YES		☐ COMPLAINT OF NON-VISIBLE INJURIES		☐ VICTIM USING ALCOHOL: ☐ NONE		☐ TWO-MAN VEHICLE ☐ DETECTIVE/SPLASMY		☐ ALONE					
☐ ARREST	EXPLAIN		☐ NO ☐ YES		DRUGS: ☐		☐ ONE-MAN VEHICLE ☐ OTHER		☐ ASSISTED					
☐ JAIL	☐ SUBJECT NO. <u> </u> USING: ALCOHOL ☐		☐ DRUGS ☐		TYPE:									
☐ SUMMONS	COMPUTER EQUIP. ☐		NONE ☐											

I DID CONTACT INV. CASTLES AND INFORM HER OF THE CALL AND THAT SHE WOULD NEED TO CALL AND SET UP A TIME FOR THE VICTIM TO COME TO THE SHERIFF'S DEPT NEXT WEEK.

NOTHING FURTHER AT THIS TIME.

SUPPLEMENT #3 Investigator KAREN CASTLES - 1791 09/30/2016 14:56

I did interview the original victim, her sister, their aunt and a possible childhood friend. I interviewed the suspect and he did agree to a polygraph. The case is still being actively

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY

JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY

VEH/GUN/ECT	STATUS	TYPE	VIN AND/OR LICENSE NO.	BOAT HULL NO. AND/OR REG. NO.
	☐ STOLEN	☐ VEHICLE		
	☐ RECOVERED	☐ GUN	SERIAL AND/OR OWNER APPLIED NO.	STATE
	☐ FOUND	☐ BOAT	YEAR OF REGISTRATION	YEAR OF EXPIRATION
☐ TOWED	☐ LICENSE PLATE	YEAR	MAKE	TYPE
☐ SUSPECT	☐ SECURITIES/BONDS, STOCKS	MODEL	STYLE	COLOR
☐ VICTIM	☐ ARTICLE	BRAND NAME	CALIBER	
		NIC NO.	DENOMINATION	ISSUER
		SECURITIES DATE		
		MISCELLANEOUS		

PROPERTY EST.	TYPE (GROUP)					TOTAL VALUE
	STOLEN					
	DAMAGED					
	BURNED					
	RECOVERED					
	SEIZED					
COUNTERFEIT						

ADMINISTRATIVE	SUBJECT IDENTIFIED	SUBJECT LOCATED	☐ ACTIVE ☐ ADM. CLOSED	☐ ARRESTED UNDER 14	☐ EX-CLEAR UNDER 18
	☐ YES ☐ NO	☐ YES ☐ NO	☐ UNFOUNDED	☐ ARRESTED 18 AND OVER	☐ EX-CLEAR 18 AND OVER
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH		2. ☐ NO PROSECUTION	3. ☐ EXTRADITION DENIED	4. ☐ VICTIM DECLINES COOPERATION
	5. ☐ JUVENILE - NO CUSTODY				
REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER	DATE
151 - Sergeant BRAD TRUESDALE		06/23/2016	151	1085 - Shannon Legrand	10/03/2016
				FOLLOW-UP INVESTIGATION OFFICER	
				☐ YES ☐ NO ☒ 114 - Investigator KAREN CASTLES	114

AGENCY I.D.
SC0200000

SUPPLEMENTARY INCIDENT REPORT
Fairfield County Sheriff's Office

CASE NUMBER

16-004973

NCIC

INQ. ENDO.

☐ ORIGINAL
REPORT
☐ MODIFIED
ORIGINAL

☐ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 3 of 4 PAGES

NARRATIVE

investigated.

ADMINISTRATIVE

SUBJECT IDENTIFIED ☐ YES ☒ NO		SUBJECT LOCATED ☐ YES ☒ NO		☒ ACTIVE ☐ ADM. CLOSED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH		2. ☐ NO PROSECUTION		3. ☐ EXTRADITION DENIED		4. ☐ VICTIM DECLINES COOPERATION
5. ☐ JUVENILE - NO CUSTODY						
REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER
151 - Sergeant BRAD TRUESDALE	06/23/2016	151	1085 - Shannon Legrand		10/03/2016	
			FOLLOW-UP INVESTIGATION OFFICER			
			☐ YES ☒ NO 114 - Investigator KAREN CASTLES		114	

AGENCY I.D. SUPPLEMENTARY INCIDENT REPORT
 SC0200000 Fairfield County Sheriff's Office

CASE NUMBER

16-004973

NOIC

INQ. ENTD.

☐ ORIGINAL REPORT	☐ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY	PAGE <u>4</u> of <u>4</u> PAGES
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Victim(s), Offender(s), Others Involved

☐ COMPLAINANT ☒ VICTIM # <u>4</u> ☐ SUBJECT # ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS ☐	NAME (LAST, FIRST, MIDDLE) Barefoot, Cierra		VICTIM RELATIONSHIP TO SUBJECT #1 OF #2 #3			RESIDENT * J S O U	RACE W	SEX F	AGE 26	D.O.B. [REDACTED]	ETH N
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.						
ADDRESS [REDACTED]		CITY Prosperity		STATE SC	ZIP CODE 29127-	LOCATION NO.	HOME PHONE [REDACTED]	EMPLOYER PHONE [REDACTED]			
☒ VICTIM NO. <u>4</u> VISIBLE INJURY: ☒ NO ☐ YES		COMPLAINT OF NON-VISIBLE INJURIES ☒ NO ☐ YES		VICTIM USING ALCOHOL: ☐ ☒ NONE		☐ TWO-MAN VEHICLE ☐ DETECTIVE/SPLASMT		☐ ALONE			
EXPLAIN		DRUGS: ☐		☐ ONE-MAN VEHICLE ☐ OTHER		☐ ASSISTED					
☐ SUBJECT NO. <u> </u> USING: ALCOHOL ☐		COMPUTER EQUIP. ☐		NONE ☐							

South Carolina Department of Probation, Parole and Pardon Services
Standard Sex Offender Conditions

1. I will register as a sex offender as required by the Code of Laws of South Carolina and as described in the Department's *Notice of Sex Offender Registry*.
2. I will attend, actively participate in, not give cause to be terminated from, and successfully complete any counseling/treatment program, to which I am referred by my agent, which may include polygraph or other treatment related testing, all at my own expense. I waive all rights to confidentiality between myself and my treatment provider, and authorize my treatment provider to disclose to my agent, the Court, the Parole Board, the releasing authority, and/or the hearing officer, information about my attendance and participation in the program. (Must complete Referral Form 1054).
3. I will not have any contact with the victim(s) of my crime, directly or indirectly. This includes but is not limited to physical or face to face contact, contact through letters or written notes, telephone calls, or electronic mail (e-mail), or any contact through a third party, unless such contact is approved in writing by the Court, the Parole Board, or the releasing authority, or the hearing officer. I also will not enter into, travel past, or loiter near a victim's residence or workplace.
4. I will not have any contact with a person under the age of 18, with the exception of my immediate family members and then may only have such contact if approved in advance under conditions set by my treatment provider and my agent. If I have incidental contact with any child, I will be civil and courteous and immediately remove myself from the situation. I will discuss the contact at my next treatment session and will immediately report this contact to my agent.
5. I will not enter into, loiter or work within one thousand (1,000) feet of any area or event frequented by people under the age of 18 including but not limited to: schools, day care centers, playgrounds, arcades, public swimming pools or beaches, shopping malls, theaters, or and festivals, unless approved in advance by my agent.
6. I will not purchase, possess, or use any sexually stimulating or sexually explicit material or device, nor enter into, loiter or work within one thousand (1,000) feet of any place where such material or device is sold or presented as entertainment. This includes but is not limited to adult book stores, sexually explicit internet sites, television services, or telephone services, sex shops, topless bars, strip clubs, and massage parlors.
7. I will permit my agent or a representative of the Department, without a warrant and with or without the assistance of any other law enforcement officer, to search my person, residence, any vehicle I own or have permission to use, and any of my possessions, including computers, cellular telephones, and other electronic devices, for the presence of sexually stimulating or sexually explicit materials or devices prohibited by these conditions, and to seize said materials. Such materials seized shall be considered property of the court, Parole Board, or releasing authority, and shall be safely kept by the Department or other law enforcement agency until any violations concerning the seized materials have been addressed.
8. If permitted by the Department to have computer and internet access, I will abide by the Computer/Internet Use Agreement for Sex Offenders. (Form 1402)
9. I will abide by all curfews as directed by my agent.
10. I will at all times maintain a suitable residence, approved by my agent, which complies with all conditions of my supervision, which may not be within one thousand (1000) feet of any area frequented by people under the age of 18, including but not limited to schools, day care centers, playgrounds, arcades, public swimming pools or beaches, shopping malls, or theaters. I will obtain approval from my agent of my residence and employment and shall obtain prior approval from my agent before changing my residence or employment. I will stay at my approved residence every night and will not sleep or stay overnight anywhere else without prior approval of my agent.
11. I will not consume alcoholic beverages and will submit to alcohol testing as instructed by my agent or treatment provider. I agree that any test results may be used as evidence in any hearing for the violation of the conditions of my supervision and I waive any right to challenge the validity of such results.
12. I will comply with the Department's requirements for any electronic monitoring program which I am ordered to participate in by the Court, the Parole Board, the releasing authority, the hearing officer, or my agent, or as required by statute, all at my own expense.

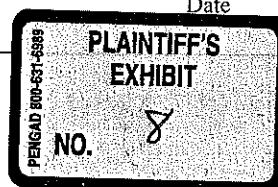
I have read, or had read to me, the above conditions and I understand their meaning. I have received a copy of these conditions. I accept and agree to these conditions and understand that any violation could result in the Court, Parole Board, or releasing authority revoking my supervision and reinstating my sentence or returning me to prison. If I refuse to accept these conditions, I must immediately ask my agent to bring my case before the Court, Parole Board, or releasing authority where I will request that my term of supervision be revoked and my sentence be reinstated or that I be returned to prison. I understand that, if I have objections to any of the above conditions but fail to timely take the actions described above, I will waive any right I may have to challenge these sex offender conditions at any future proceeding.

Offender Signature _____ Date _____

Offender Name (printed) _____

Agent Signature _____ Date _____

Agent Name (printed) _____



THE STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FAIRFIELD)
MICHAEL CLAYTON,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

2020 MAY 12 AM 11:02
FAIRFIELD COUNTY
CLERK OF COURT
JUDY M BOND
Case No.: 2019-CP-20-0109
SIXTH JUDICIAL CIRCUIT

**MEMORANDUM IN SUPPORT OF
POST-CONVICTION RELIEF**

**TO: The Honorable Robert E. Hood
Assistant Attorney General Samuel Key**

The Applicant, by and through the undersigned Counsel, submits this memorandum in support of his Post-Conviction Relief (PCR) action, and the evidence presented during the evidentiary hearing before the Honorable Robert E. Hood at the Lancaster County Courthouse on January 30, 2020. See *Hill v. Lockhart*, 474 U.S. 52 (1985) (citing *Strickland v. Washington*, 466 U.S. 668 (1984)); U.S. Const. amends. V, VI, XIV; S.C. Const. art. I, §§ 3 and 14; See S.C. Code § 17-27-20(A)(1), (4), and (6).

PROCEDURAL HISTORY

On August 21 and October 16, 2018, the Fairfield County Grand Jury indicted Applicant for two counts of Criminal Sexual Conduct with a Minor, Second Degree (2018-GS-20-00181 and 00265).

On August 27, 2018, Applicant initially proceeded to trial but ultimately appeared before the Honorable John C. Hayes, III, and pled guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970). George Speedy, Esq., represented Applicant at the plea hearing. The Plea Court sentenced Applicant to concurrent, five (5) years imprisonment, suspended upon five (5) years probation on each conviction.

Applicant did not file a Notice of Appeal.

On March 19, 2019, Applicant filed his first application requesting PCR. The South Carolina Attorney General's Office filed a Return to the PCR application on July 8, 2019. Applicant subsequently filed Amended PCR applications on January 16 and 22, 2020.

ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant raised the following allegations of ineffective assistance of plea counsel without objection from the State:

- (A) Plea Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. See S.C. Code § 17-27-20(A)(1), (4), and (6). Plea Counsel's unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Plea Counsel's errors, Applicant would not have pled guilty and went to trial. See *Hill v. Lockhart*, 474 U.S. 52 (1985) (applying the *Strickland v. Washington*, 466 U.S. 668 (1984) standard to guilty plea challenges of ineffective assistance of counsel).
- (1) Applicant did not voluntarily, knowingly, or intelligently plead guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970). See *Boykin v. Alabama*, 395 U.S. 238 (1969).
- (2) Plea Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant's defense. See *Wiggins v. Smith*, 539 U.S. 510 (2003). Specifically, Plea Counsel failed interview critical witnesses who could have challenged the credibility of the State's witnesses and could have undermined the State's evidence when it was reasonable and necessary to do so in preparation for trial. See *Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008); *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008); *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004); *Reeves v. State*, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015); *Cf. Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995).
- (3) Plea Counsel failed to adequately prepare for trial by not interviewing witnesses who could have testified regarding Applicant's good character and reputation when it was reasonable and necessary to present this evidence at trial and request a jury instruction on good character and reputation. See *State v. Harrison*, 343 S.C. 165, 539 S.E.2d 71 (Ct. App. 2000); *Cf. Stalk v. State*, 383 S.C. 559, 681 S.E.2d 592 (2009).

- (4) Plea Counsel failed to conduct a reasonable investigation for not interviewing the law enforcement officer who received the report filed in Newberry County by the victim's biological father and for not conducting any further investigation into this complaint when this law enforcement agency did not pursue charges against Applicant. See *Lounds*, 380 S.C. 454, 670 S.E.2d 646; *McKnight*, 378 S.C. 33, 46, 661 S.E.2d 354, 360.
- (5) Applicant involuntarily pled guilty based on Plea Counsel's failure to adequately prepare for trial, Counsel's decision to change his unreasonable trial strategy immediately before trial, and Counsel's erroneous and unduly coercive advice to plead guilty the morning of trial. See generally *Alexander v. State*, 303 S.C. 539, 542-43, 402 S.E.2d 484, 485-86 (1991) (finding the petitioner's own testimony that he would have proceeded to trial but for counsel's misadvice as to sentencing was "the only evidence in the record on this point" and was sufficient to satisfy the prejudice prong of the *Strickland* test); see also *McKnight*, 378 S.C. at 46, 661 S.E.2d at 360 (finding "[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State."); *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding "counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness, and where counsel articulates a strategy, it is measured under an objective standard of reasonableness").
- (6) Applicant involuntarily pled guilty based on Plea Counsel's failure to advise him regarding all the sentencing consequences of his guilty plea. Specifically, Applicant pled guilty under *North Carolina v. Alford*, 400 U.S. 25 (1970) to offenses that required him to be on the sex offender registry, which also required that Applicant comply with specific conditions of supervision and attend specific treatment demanding he accept responsibility for the offenses with polygraph testing (despite that he maintained his innocence at the plea hearing pursuant to the *Alford* plea). Plea Counsel did not review the specific conditions of sex offender registry with Applicant nor did Counsel tell him about the specific treatment requiring him to accept responsibility. See generally *Alexander*, 303 S.C. at 542-3, 402 S.E.2d at 485-86 (1991) (finding the petitioner's own testimony that he would have proceeded to trial but for counsel's misadvice as to sentencing was "the only evidence in the record on this point" and was sufficient to satisfy the prejudice prong of the *Strickland* test); *Jackson v. State*, 342 S.C. 95, 97—98, 535 S.E.2d 926, 927 (2000) (citing *Alexander* with approval and finding the petitioner satisfied the prejudice prong by simply providing testimony that he would not have pled guilty, but for trial counsel's misadvice); *Smith v. State*, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006) ("The defendant's undisputed testimony that he would not have pled guilty to the charges but for trial counsel's advice is sufficient to prove that defendant would not have pled guilty.").

- (7) Plea Counsel failed to interview Lt. Garrett Lominack and Inv. Robert Dennis of the Newberry County Sheriff's Office regarding the complaint filed by the victim's biological father, and their investigation into the complaint.
- (8) Plea Counsel failed to interview Investigator Castles of the Fairfield County Sheriff's Office regarding his investigation in this case.
- (9) Plea Counsel failed to interview Tova Clayton, Meredith Suber, Cindy Long, and Roger Long, regarding the allegations of the victim's disclosure of Applicant's sexual abuse.
- (10) Plea Counsel abandoned his role as defense counsel by failing to conduct a reasonable investigation and adequately prepare for trial. *United States v. Cronin*, 466 U.S. 648, 659 (1984); *See Nance v. Ozmint*, 367 S.C. 547, 548-52, 626 S.E.2d 878, 878-80 (2006) (holding that "pre-se prejudice occurs if there has been a constructive denial of counsel," which arises when defense counsel's deficient performance constitutes "a classic example of a complete breakdown in the adversarial process"); *see also Green v. State*, 351 S.C. 184, 196, 569 S.E.2d 318, 324 (2002) (holding that although an applicant "must ordinarily show actual prejudice, he may be relieved of that burden if counsel's ineffectiveness is so pervasive as to render a particularized prejudice inquiry unnecessary").

PCR Evidentiary Hearing

On January 30, 2020, Applicant appeared before the Honorable Robert E. Hood at the Lancaster County Courthouse for an evidentiary hearing on this PCR action (Fairfield County PCR action). The undersigned Counsel represented Applicant, and Assistant Attorney General Samuel Key represented the State. The following witnesses testified at the evidentiary hearing: Tova Clayton (Applicant's ex-wife); Robert Dennis (Newberry County Sheriff's Office); Karen Castles (Fairfield County Sheriff's Office); Tiffany Drew (Applicant's cousin); Barry Glymph (Applicant's friend); Kevin Chalk (Applicant's friend); Gwen Ray (Applicant's Aunt); Marsha Valasco (Applicant's mother); Michael Clayton, Sr. (Applicant's father); Dave Anatra (private investigator); Michael Clayton, Jr. (Applicant); and George Speedy, Esq. (Plea Counsel).

PCR Exhibits

At the hearing, the PCR Court admitted the following exhibits submitted by Applicant into evidence: (1) Affidavit of Tova Clayton from the divorce; (2) Text messages between Tova and Applicant; (3) Investigator Robert Dennis' report; (4) Minor Child 1's mental health records under seal; (5) Video recorded interviews of Tova, Minor Child 1, and Minor Child 2 under seal; (6) Investigator Castles' initial report; (7) Investigator Castles' notes; and (8) DPPP's standard conditions of sex-offender registry. Although the PCR Court did not watch the recorded interviews during the hearing, the PCR Court did receive a copy of the videos for viewing in preparation of the Court's decision.

Tova Clayton (Applicant's ex-wife)

Applicant's ex-wife and mother of Minor Child 1 and 2, Tova Clayton, testified at the hearing. Specifically, Tova's testimony contained critical omissions and inconsistencies based on her video recorded statement with Investigator Karen Castles of the Fairfield County Sheriff's Office, and Minor Child 1's statements in her mental health records. See Exhibit Nos. 4 and 5 (mental health records and video recorded statements). These omissions and inconsistencies include but are not limited to Tova's knowledge of and failure to do anything about the abuse, Tova seeing Applicant leave her daughter's bedroom with an erection, her daughter's denials of the abuse, the timing of her daughter's disclosures to her and their maternal grandmother, and the living situation in the home (moving in-and-out of the home on numerous times by her, her daughters, and her family members).

Tova admitted that text messages between her and Applicant proved she was shocked when Applicant texted her asking for a divorce. See Exhibit No. 2 (text

messages). Tova also admitted that she “never expected this”, was “crying like a baby”, was “devasted”, and even asked Applicant on “what grounds?” was he seeking a divorce despite the existence of this allegations. Notably, Tova’s affidavit from their divorce failed to mention any abuse, based the grounds for divorce on adultery (Applicant had cheated on her and had a child with another woman), and noted that Applicant was like an Angel sent from God and that she could not ask for a better partner. See Exhibit No. 1 (Affidavit of Tova Clayton).

Furthermore, Tova knew Minor Child 2 filed a complaint with the Fairfield County Sheriff’s Office on June 23, 2016, two days after the divorce decree was issued on June 21, 2016. Tova also was not present on the morning of trial, which ultimately resulted in a plea hearing pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970).

Robert Dennis (Newberry County Sheriff’s Office)

Robert Dennis of the Newberry County Sheriff’s Office testified that the biological father of Minor Child 1, Kevin Harclerode, filed a complaint on December 07, 2011, alleging that Applicant sexually abused his daughter. See Exhibit No. 3 (Investigator Robert Dennis’ report). Notably, Investigator Dennis ultimately determined the complaint was unfounded and closed the investigation.

Karen Castles (Fairfield County Sheriff’s Office)

Investigator Karen Castles of the Fairfield County Sheriff’s Office interrogated Applicant twice and he consistently denied the allegations. Investigator Castles knew that Minor Child 2 filed a complaint with the Fairfield County Sheriff’s Office on June 23, 2016, two days after the divorce decree was issued on June 21, 2016. Investigator Castles also knew that Minor Child 2 was angry at Applicant for having a sexual encounter

with her adult friend, Meredith Suber. See Exhibit Nos. 6-7 (Investigator Castles' initial report and notes). Investigator Castles had also been told about Minor Child 1's mental health treatment, which contained inconsistencies with Tova's recorded interview. See Exhibit Nos. 4 and 5.

Tiffany Drew (Applicant's cousin)

Applicant's cousin, Tiffany Drew, testified that she had lived next door and had spent a lot of time with the Minor Child 1 and Minor Child 2. Ms. Drew also testified that Minor Child 1 and Drew had a reputation for lying and getting people into trouble. She further testified that Applicant was the only disciplinarian for Minor Child 1 and Minor Child 2 and that the girls did not like him for punishing them. Notably, Ms. Drew never saw anything happen that was inappropriate, and that Plea Counsel never spoke to her in preparation for trial.

Barry Glymph (Applicant's friend)

Applicant's co-worker and friend, Barry Glymph, testified that he had known Applicant for 20 years and observed Applicant as a stepfather to the children. Mr. Glymph also testified that Applicant was a good father, and that Tova was devastated when Applicant moved out of the home. Notably, Mr. Glymph testified that he trusted Applicant enough to let Applicant watch his children, and that Plea Counsel never spoke to him in preparation for trial.

Kevin Chalk (Applicant's friend)

Applicant's co-worker and friend, Kevin Chalk, testified that he was roommates with Applicant before the divorce and attested to Applicant's good character. Mr. Chalk also testified that he trusted Applicant enough to let Applicant watch his children, and that

Plea Counsel never spoke to him in preparation for trial.

Gwen Ray (Applicant's Aunt)

Applicant's aunt, Gwen Ray, testified that Tova loved Applicant, and that Applicant was a strict disciplinarian to the children. Ms. Ray also testified as to where Tova and the children stayed in the home (i.e., which bedrooms), and that Applicant and Tova lived in separate rooms after his grandmother died. Ms. Ray further testified that Applicant was rarely alone with the children, and that she trusted Applicant around her children.

Marsha Valasco (Applicant's mother)

Applicant's mother, Marsha Valasco, testified that she lived with Applicant, Tova, and the children in 2005. Ms. Valasco also corroborated that Applicant was the only disciplinarian to the children. She also testified that Tova's relationship with Applicant was related to money and had many negative things to say about Tova.

Michael Clayton, Sr. (Applicant's father)

Applicant's father, Michael Clayton, Sr., testified regarding the morning of trial (which became the plea hearing) that, in his opinion, Plea Counsel was not prepared and changed his trial strategy in court from wanting to not present evidence (to preserve last argument) to having Applicant testify in his own defense without any preparation. Clayton, Sr., also testified that Plea Counsel did not explain the conditions or required treatment of the sex offender registry, and that Applicant felt pressured into pleading guilty.

Dave Anatra (private investigator)

Private investigator, Dave Anatra, testified as to his training and experience in law enforcement and private investigations. The undersigned Counsel moved to qualify Mr.

Anatra as an expert in investigations, citing the factors set forth in *State v. White*, 382 S.C. 265, 676 S.E.2d 684 (2009). The PCR Court did not qualify Mr. Anatra as an expert (believed it was not necessary) but did take his testimony into consideration based on his training and experience. Mr. Anatra also testified as to the investigation that he conducted in this case.

Michael Clayton, Jr. (Applicant)

Applicant, Michael Clayton, Jr., testified that Plea Counsel failed to interview witnesses, failed to prepare him to testify, changed his trial strategy on the morning of trial, never recommended hiring a private investigator, and never discussed the conditions or the required treatment of the sex offender registry. Applicant also testified that Plea Counsel indirectly coerced him into pleading guilty under *Alford* by not having any witnesses subpoenaed for trial, changing his trial strategy of not presenting evidence on the morning of trial, and focusing on his infant daughter and potential prison sentence. Applicant further testified that Plea Counsel failed to interview character witnesses who could have testified on his behalf despite Applicant's participation prior to trial. Notably, Applicant maintained his innocence and testified that had Plea Counsel conducted a reasonable investigation, subpoenaed witnesses, and adequately prepared for trial, and not pressured him on the morning of trial to accept the plea deal, he would not have pled guilty pursuant to *Alford*, 400 U.S. 25 and would have went to trial.

George Speedy, Esq. (Plea Counsel).

Plea Counsel, George Speedy, Esq., admitted that he failed to interview any witnesses in preparation for trial, changed his trial strategy on the morning of trial, and never recommended hiring a private investigator. Plea Counsel also could not remember

whether he reviewed the conditions and required treatment with Applicant prior the plea hearing. Plea Counsel testified that he did not believe any further investigation was necessary.

Briefs in Support

After hearing testimony, the PCR Court allowed the parties to submit briefs instead of immediately presenting arguments in support or against the allegations of ineffective assistance of counsel. The arguments presented in support of PCR are as follows.

STANDARD OF REVIEW

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; *See Hill v. Lockhart*, 474 U.S. 52 (1985) (applying the *Strickland v. Washington*, 466 U.S. 668 (1984) standard to guilty plea challenges of ineffective assistance of counsel and finding ineffective assistance of counsel from a guilty plea where: (1) counsel's advice was not within the range of competence demanded of attorneys in criminal cases; and (2) "there is a reasonable probability that, but for counsel's errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial")); *see also Missouri v. Frye*, 566 U.S. ____, 132 S.Ct. 1399 (2012) (finding the Sixth Amendment right to effective assistance of counsel extends to the consideration of plea offers that lapse or are rejected, and reaffirming *Hill v. Lockhart*); *see also Jamison v. State*, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014) (holding "a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of guilt encompassed in a plea of guilty and the compelling interests in maintaining the finality of guilty-plea convictions.") (emphasis in original)).

To establish ineffective assistance of counsel, an applicant must satisfy the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984) (establishing the standard for ineffective assistance of counsel claims). “First, a [applicant] must show that counsel’s performance was deficient. Under this prong, [t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.” *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989) (internal citations omitted). “The second prong of the *Strickland* test requires a showing that the deficient performance prejudiced the defendant to the extent that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 118, 386 S.E.2d at 625 (internal citations omitted). Therefore, an applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result” when seeking relief based on ineffective assistance of counsel. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting *Strickland*, 466 U.S. at 692).

In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a **preponderance of the evidence**.” *Frasier v. State*, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP) (emphasis added). Strategic “[d]ecisions made [by counsel] in ignorance of relevant, available information cannot be characterized as strategic.” *Weik v. State*, 409 S.C. 214, 236, 761 S.E.2d 757, 768 (2014). “Ordinarily, the existence of ‘overwhelming evidence’ does not automatically preclude a finding of prejudice.” *Smalls v. State*, 422 S.C. 174, 189, 810 S.E.2d 836, 844 (2018). Notably, “for the evidence to be ‘overwhelming’ such that it categorically precludes a finding of prejudice . . . the evidence must include something conclusive,

such as a confession, DNA evidence demonstrating guilt, or a combination of physical and corroborating evidence so strong that the *Strickland* standard of 'a reasonable probability . . . the factfinder would have had a reasonable doubt' cannot possibly be met."

Id. 422 S.C. at 191, 810 S.E.2d at 845.

ARGUMENT

Plea Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution.

Plea Counsel's unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Plea Counsel's errors, Applicant would not have pled guilty and went to trial. *See Hill v. Lockhart*, 474 U.S. 52 (1985) (applying the *Strickland v. Washington*, 466 U.S. 668 (1984) standard to guilty plea challenges of ineffective assistance of counsel). *See* S.C. Code § 17-27-20(A)(1), (4), and (6).

Applicant incorporates all the issues presented and cases cited in his applications for PCR, and the evidence presented at the evidentiary hearing in this memorandum requesting relief.

- I. **Plea Counsel provided ineffective assistance of counsel because Plea Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation for trial by not interviewing critical witnesses.**

"[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 691; *See Wiggins v. Smith*, 539 U.S. 510, 527 (2003). "In assessing the reasonableness of an attorney's investigation, . . . a court must not only consider the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further." *Wiggins*, 539 U.S. at 527. "A criminal defense attorney

has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008).

Furthermore, “while the scope of a reasonable investigation depends on 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.” *Lounds v. State*, 380 S.C. 454, 460, 670 S.C. 646, 649 (2008) (quotation omitted). The duty to conduct a reasonable investigation extends to consulting and possibly presenting expert witnesses. See *McKnight*, 378 S.C. at 46, 661 S.E.2d at 360-61; *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004) (“Petitioner has demonstrated his attorneys erred in failing to adequately investigate and prepare expert testimony about his mental condition as it existed at the time of the murder.”).

In *Lounds v. State*, 380 S.C. at 462, 670 S.E.2d at 650, this Court found that it “was not objectively reasonable given the defense theory of the case” for trial counsel not to call witnesses who would have “added significantly to the credibility of petitioner’s case”. See *Hicks v. State*, 314 S.C. 280, 443 S.E.2d 907 (1994) (finding ineffective assistance of counsel when there is a reasonable probability the result would have been different had trial counsel introduced relevant and favorable evidence at trial).

In this case, Plea Counsel’s performance was deficient, as it fell below an objective standard of reasonableness. *Hill*, 474 U.S. at 57-59; *Cf. Praylow v. Martin*, 761 F.2d 179 (4th Cir. 1985) (provides that a defendant’s stated interest in pleading guilty does not relieve counsel of his duty to investigate possible defenses). Specifically, Plea Counsel failed to

interview critical witnesses who could have challenged the credibility of the State's witnesses, undermined the State's evidence, and presented evidence of good character and reputation when it was reasonable and necessary to present this evidence at trial. *See Wiggins v. Smith*, 539 U.S. 510 (2003); *Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008); *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). It is important to note that Applicant initially proceeded to trial and had previously rejected the State's plea offers with the intent of having a trial.

Plea Counsel failed to conduct a reasonable investigation for not attempting to interview Investigator Robert Dennis of the Newberry County Sheriff's Office who received the report filed in Newberry County by the victim's biological father and for not conducting any further investigation into this complaint when this law enforcement agency did not pursue charges against Applicant ("unfounded"). Plea Counsel also failed to interview Investigator Castles of the Fairfield County Sheriff's Office regarding her investigation in this case. Notably, Plea Counsel also failed to interview Tova Clayton, Meredith Suber, Cindy Long, and Roger Long, regarding the allegations of the victim's disclosure of Applicant's sexual abuse.

Additionally, even if Applicant went to trial, Plea Counsel's performance would have prevented Applicant from being able to request a jury instruction on good character and reputation by not subpoenaing these witnesses to trial. *See State v. Harrison*, 343 S.C. 165, 539 S.E.2d 71 (Ct. App. 2000); *Cf. Stalk v. State*, 383 S.C. 559, 681 S.E.2d 592 (2009); *see also Pantovich v. State*, 427 S.C. 555, 562-64, 832 S.E.2d 596, 600, 601 (2019), *reh'g denied*, (September 27, 2019) (finding for an ineffective assistance claim, the PCR court must "determine whether counsel was ineffective *at the time of the alleged*

error. . . Thus, the court must consider the law as it existed at the time of trial and "not as it has evolved today . . .").

Plea Counsel's decision not to interview witness or conduct any investigation is not objectively reasonable given the type of case where credibility is the key factor in a jury's determination of whether to find Applicant guilty or not guilty. See *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding "counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness, and where counsel articulates a strategy, it is measured under an objective standard of reasonableness").

As to prejudice, Applicant testified that he would not have pled guilty, and that he would have went to trial had Plea Counsel conducted a reasonable investigation and subpoenaed witnesses in his defense. Therefore, Plea Counsel provided ineffective assistance of counsel. See *Hill v. Lockhart*, 474 U.S. 52 (1985) (applying the *Strickland v. Washington*, 466 U.S. 668 (1984) standard to guilty plea challenges based on ineffective assistance of counsel).

II. Applicant involuntarily pled guilty based on Plea Counsel's failure to adequately prepare for trial, Counsel's decision to change his unreasonable trial strategy immediately before trial, Counsel's erroneous and unduly coercive advice to plead guilty on the morning of trial, and Counsel's failure to advise him regarding all the sentencing consequences of his guilty plea.

The United States Supreme Court has held, "Guilty pleas are no more foolproof than full trials to the court or jury. . . . Accordingly, we take great precautions against unsound results." *Brady v. United States*, 397 U.S. 742, 758 (1970). An "unsound result" occurs when a defendant does not knowingly, voluntarily, or intelligently plead guilty. See *Boykin v. Alabama*, 395 U.S. 238 (1969) (finding a guilty plea is voluntarily and knowingly entered into when the accused has a full understanding of the consequences of his plea and the

charges against him); *see also Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999) (finding a defendant must understand the sentencing consequences of his plea for it to be considered voluntarily given).

“In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing.” *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). Specifically, “the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing.” *Holden v. State*, 393 S.C. 565, 572-74, 713 S.E.2d 611, 612-15 (2011).

In this case, Applicant involuntarily pled guilty based on Plea Counsel’s failure to adequately prepare for trial, Counsel’s decision to change his unreasonable trial strategy immediately before trial, Counsel’s erroneous and unduly coercive advice to plead guilty the morning of trial, and Counsel’s failure to advise him regarding all the sentencing consequences of his guilty plea. Notably, Applicant has always maintained his innocence and had provided Plea Counsel with the evidence needed to investigate further. *See United States v. Taylor*, 659 F.3d 339, 347 (4th Cir. 2011) (noting “[a]n *Alford* plea is an arrangement in which a defendant maintains his innocence but pleads guilty for reasons of self-interest.”).

Applicant pled guilty to offenses that required him to register as a sex offender, which also required that Applicant comply with specific conditions of supervision and attend specific treatment demanding he accept responsibility for the offenses (with polygraph testing despite that he maintained his innocence at the plea hearing pursuant to the *Alford* plea). Plea Counsel did not review the specific conditions of sex offender

registry with Applicant nor did Counsel tell him about the specific treatment requiring him to accept responsibility. Therefore, Plea Counsel's unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Plea Counsel's errors, Applicant would not have pled guilty and went to trial. See *Hill*, 474 U.S. 52.

III. Plea Counsel provided ineffective assistance of counsel when he abandoned his role as Defense Counsel by failing to conduct a reasonable investigation and failing to adequately prepare for trial.

In this case, Plea Counsel provided ineffective assistance of counsel when he abandoned his role as Defense Counsel by failing to conduct a reasonable investigation and failing to adequately prepare for trial. See *United States v. Cronin*, 466 U.S. 648, 659 (1984); See *Nance v. Ozmint*, 367 S.C. 547, 548-52, 626 S.E.2d 878, 878-80 (2006) (holding that "pre-se prejudice occurs if there has been a constructive denial of counsel," which arises when defense counsel's deficient performance constitutes "a classic example of a complete breakdown in the adversarial process"); see also *Green v. State*, 351 S.C. 184, 196, 569 S.E.2d 318, 324 (2002) (holding that although an applicant "must ordinarily show actual prejudice, he may be relieved of that burden if counsel's ineffectiveness is so pervasive as to render a particularized prejudice inquiry unnecessary").

[Conclusion and Signature Page to Follow]

CONCLUSION

Based on the foregoing reasons, the undersigned Counsel respectfully requests that this Court grant Applicant's application for PCR. See *Hill v. Lockhart*, 474 U.S. 52 (1985) (citing *Strickland v. Washington*, 466 U.S. 668 (1984)); U.S. Const. amends. V, VI, XIV; S.C. Const. art. I, §§ 3 and 14; See S.C. Code § 17-27-20(A)(1), (4), and (6).

Respectfully submitted,



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ATTORNEY FOR THE APPLICANT

May 8, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the within and foregoing Memorandum in Support of Post-Conviction Relief by depositing a true and correct copy of the same via first-class mail, postage prepaid, upon all parties as follows:

The Honorable Robert E. Hood

P.O. Box 192
Columbia, SC 29202

Samuel Key, Esq.

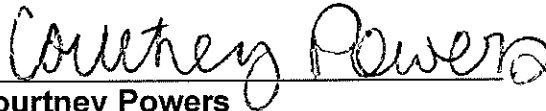
SC Attorney General's Office
1000 Assembly Street, Room 519
Columbia, SC 29201

The Honorable Judy M. Bonds

Fairfield County Clerk of Court
P.O. Drawer 299
Winnsboro, SC 29180

2020 MAY 12 AM 11:02
FAIRFIELD COUNTY
CLERK OF COURT
JUDY M. BONDS

By:



Courtney Powers

Paralegal for Dayne C. Phillips, Esq.

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May 8, 2020

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CLERK OF COURT FAIRFIELD COUNTY
JUDY M. BONDS

Tammy I. Durham
Deputy Clerk of Court

Beverly Bookert
Family Court Deputy

CERTIFICATE OF MAILING

Date: August 3, 2020

RE: Michael Clayton Jr

Dayne Phillips, Attorney
1614 Taylor Street
Suite D
Columbia SC 29201

Case No: 2019-CP-20-00109

Judy M. Bonds, Clerk of Court of Fairfield County, has personally mailed a copy of the *Order of Dismissal* by mailing the same in the United States mail at the United States Post Office, Winnsboro, South Carolina, at 2:00 PM on August 3, 2020, properly addressed to each party named at the address opposite his/her name as set out below, with correct postage prepaid on each:

Samuel L. Key
SC Attorney General's Office
PO Box 11549
Columbia SC 29211

Dayne Phillips
1614 Taylor Street
Suite D
Columbia SC 29201

s/Judy M. Bonds

Judy M. Bonds
Clerk of Court for Fairfield County

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

Michael Clayton, Jr.,

Applicant,

v.

State of South Carolina,

Respondent.

2020 AUG -3 PM 3:52
FAIRFIELD COUNTY
CLERK OF COURT
JUD

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

2019-CP-20-0109

ORDER OF DISMISSAL

I. INTRODUCTION

The matter before the Court is Michael Clayton's (Applicant) post-conviction relief (PCR) action commenced on March 19, 2019. The State made its return on July 8, 2019, requesting an evidentiary hearing on Applicant's allegations of involuntary guilty plea and ineffective assistance of counsel. A hearing into the matter convened on January 30, 2020, at the Lancaster County Courthouse before the undersigned. Applicant was present and represented by Dayne C. Phillips, Esquire. Assistant Attorney General Samuel L. Key represented the State.

At the outset of the hearing, by stipulation, Applicant entered law enforcement's recorded interviews of Tova Clayton, Victim 1, and Victim 2 into evidence under seal. (App's Ex. 5). The following witnesses testified at the hearing: Applicant, George Speedy (Counsel), Tova Clayton, Robert Dennis, Karen Castles, Tiffany Drew, Barry Glymph, Kevin Chalk, Gwen Ray, Marsha Valasco, Michael Clayton, Sr., and Dave Anatra. Also before the Court were the Fairfield County Clerk of Court records of the underlying convictions, the plea transcript, and the PCR application.

After review of the record and all evidence presented, for the reasons stated below, the Court concludes Counsel was neither deficient nor was Applicant prejudiced by Counsel's alleged

deficiencies. Accordingly, the Court denies relief on all allegations and dismisses the action with prejudice.

II. FACTS & PROCEDURAL HISTORY

Applicant is currently on probation. Applicant was indicted at the August 2018 term of the Fairfield County Grand Jury for second-degree criminal sexual conduct (CSC) with a minor (2018-GS-20-181). Applicant was represented by George Speedy (Counsel) of Speedy, Tanner & Atkinson, LLC. Assistant Solicitor Julie Hall prosecuted the case.

On August 27, 2018, Applicant pleaded pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), to two counts of second-degree CSC with a minor before Judge John C. Hayes, III. Applicant waived presentment of the additional second-degree CSC with a minor charge at the plea hearing. (Plea Tr. 4-5).

Applicant's charges stem from his relationship with Tova Clayton (Tova) and her two daughters—Victim 1 and Victim 2.¹ Tova and her four children (Victim 1, Victim 2, child 1, and child 2) moved into Applicant's home in 2003. Victim 1 and Victim 2 had separate bedrooms across the hall from each other. (Plea Tr. 10).

In 2004, Applicant began visiting Victim 1 and Victim 2's rooms separately. Applicant would enter one victim's bedroom, stay in the room for about ten minutes, and then transition to the other victim's bedroom. Victim 1 and Victim 2 both reported Applicant digitally penetrated their vaginas, groped them, and made them touch his penis on several occasions during his visits

¹ The victims are referred to in this order as Victim 1 and Victim 2 pursuant to the Supreme Court's order regarding personal identifiers. *See Re: Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings*, S.C. Sup. Ct. Order filed April 15, 2014 ("If a minor is the victim of a sexual assault or the victim in an abuse or neglect case, the minor's name must be completely redacted and a term such as 'victim' or 'child' should be used.").

to their bedrooms over the course of several years. (Plea Tr. 10-11). Applicant molested Victim 1 from age ten-to-fourteen, and Victim 2 from age eleven-to-eighteen. (Plea Tr. 11-12).

The plea court conducted a thorough plea colloquy at the plea hearing. The plea court explained the meaning of an *Alford* plea. (Plea Tr. 6). The plea court explained “while you’re maintaining your innocence you have decided it’s in your best interest based on the State’s recommendation and your feeling that were you to go to trial a jury most probably or likely would find you guilty.” Applicant understood the meaning of an *Alford* plea. (Plea Tr. 6). The plea court then explained the charges against Applicant and the sentencing exposure Applicant faced. Applicant stated he understood. (Plea Tr. 6–7). Applicant affirmed he had not been promised or threatened into pleading guilty, he was not intoxicated, and he was pleading freely and voluntarily. (Plea Tr. 8). The plea court then explained Applicant’s constitutional rights: to a jury trial; the presumption of innocence; the State always has the burden of proof beyond a reasonable doubt; to remain silent; to confront the State’s witnesses; and the right to present witnesses in defense. (Plea Tr. 8–9). Applicant understood his constitutional rights, and Applicant understood he waived those constitutional rights by pleading guilty. (Plea Tr. 9).

Judge Hayes accepted Applicant’s *Alford* plea and sentenced him to serve concurrent terms of imprisonment for five years on each charge, suspended upon the service of five years’ probation. Applicant did not appeal.

III. ALLEGATIONS

Applicant timely commenced this PCR action on March 19, 2019, alleging ineffective assistance of counsel rendering his *Alford* plea unknowing and involuntary. Applicant asserts Counsel was deficient in several aspects, and contends he would not have plead guilty but for Counsel’s alleged deficiencies. Applicant amended/supplemented his allegations on January 13

and January 17, 2020. At the outset of the PCR hearing, PCR counsel clarified Applicant was proceeding on the issues contained in the second amendment, as all issues previously raised in the original application and first amendment were contained in the second amendment. Therefore, the sum of Applicant's allegations of ineffective assistance of counsel and involuntary guilty plea are as follows:

1. Involuntary guilty plea due to Counsel's:
 - a. Failure to investigate;
 - b. Failure to interview critical witnesses who could have challenged the credibility of the State's witnesses and could have undermined the State's evidence when it was reasonable and necessary to do so in preparation for trial;
 - i. Specifically, Tova Clayton, Meredith Suber, Cindy Long, and Roger Long regarding the allegations of the victims' disclosure of sexual abuse;
 - c. Failure to interview potential character witnesses;
 - d. Failure to review pictures Applicant possessed that would have contradicted portions of the victims' statements to the police;
 - e. Failure to interview the Newberry County law enforcement officers who received the report filed in Newberry County by the victims' biological father and for failing to further investigate the complaint when Newberry County law enforcement did not pursue charges against Applicant;
 - i. Specifically, Lt. Garrett Lominack and Inv. Robert Dennis;
 - f. Failure to adequately prepare for trial;
 - g. Decision to change the trial strategy immediately before trial;
 - h. Erroneous and coercive advice that Applicant plead guilty the morning of trial;
 - i. Failure to advise Applicant of all sentencing consequences; specifically, Applicant would be required to register as a sex-offender, comply with special conditions of supervision, and attend specific treatment demanding he accept responsibility for the offenses with polygraph testing;
 - j. (same as allegation (e)).

Applicant requests relief in the form of a new trial.

IV. PCR TESTIMONY

Tova Clayton

Tova Clayton testified at the PCR hearing.² Tova testified she gave a statement to Investigator Karen Castles of the Fairfield County Sheriff's Department during law enforcement's investigation. Tova testified she learned about the alleged abuse from her mother, Jane Barefoot. When Tova learned of the abuse, Victim 1 had already moved out of the home and into Barefoot's home, and Victim 2 was still in school. Tova did not recall the exact date she learned of the abuse from Barefoot; however, she remembered Barefoot told her before Easter. Tova testified Barefoot told her Applicant abused Victim 1. While Tova never saw the alleged abuse occur, she did recall previously seeing Applicant exit Victim 1's room with an erection.

Tova testified the first person she confronted about seeing Applicant with an erection was Applicant, and she did so immediately after seeing him walk out of Victim 1's room. She testified she told Castles about the erection incident, and she told Castles she confronted Applicant and Victim 1 about the erection incident. Tova stated she got angry and yelled at Applicant and asked him what happened, but Applicant told her she was overreacting. Tova then confronted Victim 1, and Barefoot confronted Victim 1 as well. Tova testified Barefoot was the first outside person she told about the erection incident.

² Tova was present and represented by Terri H. Bailey, Esquire, of the South Carolina Victim Assistance Network. Tova, through counsel, moved to quash the subpoena because Tova was not present at the plea hearing. Applicant responded Tova was a critical witness that would have testified had Applicant's case gone to trial because she was married to Applicant, lived in the same home of the alleged events, and she was interviewed by law enforcement in its investigation. In reply, Tova asserted testifying would be a traumatic event, and anything she would testify to could come into evidence through Counsel. The Court denied Tova's motion to quash the subpoena finding Tova's testimony was critical to the *Strickland* inquiry.

Tova testified she learned of Victim 2's allegations from a letter Victim 2 gave her with details describing the abuse. Tova testified that Victim 2 initially told her nothing happened between Applicant and Victim 1; however, when Victim 2 turned eighteen, she told Tova what happened. Tova testified she told Castles that Victim 1 initially told her nothing happened between her and Applicant.

Tova testified her ex-husband, the victims' biological father, called her about alleged abuse, and she learned that he complained about the alleged abuse to the Newberry County Sheriff's Department. Tova stated her ex-husband filed the complaint long after the erection incident occurred; however, Barefoot had told her about Victim 1's disclosure a few weeks before her ex-husband reported the abuse.

Tova testified about her divorce from Applicant. She recalled the divorce occurred in 2015 or 2016, and the ground for divorce was adultery. After her memory was refreshed, Tova testified she did not put anything about the sexual abuse in her divorce affidavit. Tova stated she made the affidavit before she learned of the sexual abuse. Tova's affidavit was admitted into evidence without objection. (App's Ex. 1).

Tova then testified she and Applicant exchanged text-messages after Applicant filed for divorce. These text-messages were admitted into evidence without objection. (App's Ex. 2). Tova testified she was shocked Applicant filed for divorce because she had already contacted a lawyer about filing for divorce. She testified they were getting divorced because Applicant was having a baby with another woman. The divorce was finalized June 21, 2016. Tova recalled Victim 2 called law enforcement to report the sexual abuse on June 23, 2016, two days after the divorce was final.

Tova gave a timeline of the events that occurred. She and Applicant met over the internet in 2003. Tova moved to South Carolina in December 2003. She officially moved in with Applicant

in June 2004. Applicant proposed on July 4, 2004, and they married in 2005. Tova returned to work in June 2006, and Tiffany Drew would babysit. In August 2006, the victims had separate bedrooms after Applicant's grandmother passed away. In March 2007, Tova's parents moved into the home. Victim 1 graduated high school in June 2011, and she moved out in either June or July of that year. In September 2011, Jeremy, a cousin, moved into the home. Victim 2 graduated high school in June 2012. Tova moved out in October 2012. She would still let her sons, child 1 and child 2, visit and stay with Applicant after she learned of the allegations. Tova moved back in with Applicant a year later. In 2014, Tova asked Applicant if he would take care of her sons if she went to jail for smacking Victim 1. On March 28, 2015, Tova received a text-message from Applicant asking for a divorce. Tova testified she received no alimony from the divorce.

Robert Dennis

Investigator Robert Dennis of the Newberry County Sheriff's Department testified he received a sexual abuse complaint on December 8, 2011, from the victims' father. Dennis explained the father stated his daughter told him she was inappropriately touched by Applicant, and the father told his daughter to she needed to report the abuse to the police. Dennis's report was admitted into evidence without objection. (App's Ex. 3).

Dennis testified he spoke to the father and discovered the incident occurred in Fairfield County, not Newberry County, and did not conduct much follow up investigation besides attempting to discern where the incident occurred. Dennis testified the Solicitor's Office in Fairfield County informed him they were preparing a case, so he stopped investigating. He never attempted to speak to the victims, Applicant, or Tova. Dennis testified he made the determination the allegation was unfounded because there was nothing indicating the events occurred in Newberry County.

Karen Castles

Investigator Karen Castles of the Fairfield County Sheriff's Department recalled receiving a sexual abuse complaint regarding Applicant on June 23, 2016. Castles recalled she spoke to someone at the Newberry County Sheriff's Department regarding a similar complaint on November 8, 2016. Castles stated she received the Newberry report. Castles recalled Tova and Applicant stating in their interviews they had divorced two days before the complaint was filed. Castles's believed she spoke to the victims' father, but she did not have that conversation documented. Castles recalled she reviewed Victim 2's mental health record during her investigation. Victim 2's mental health record and the report of the mental health records were admitted into evidence without objection. (App's Ex. 4, under seal). She also interviewed Applicant once, someone named Ciera twice, Tova once, Jane Barefoot once, Victim 1 once, and Victim 2 once.

Castles recalled Victim 1 told her about the erection incident in her interview, but did not think Tova reported the erection incident. She recalled the erection incident occurred around Easter when Victim 1 was thirteen or fourteen. Castles stated Tova told her that Tova confronted Victim 1 about the abuse when Victim 2 was seventeen; however, Tova stated Victim 2 denied the allegations. Castles recalled Victim 1 informed her she told Tova everything in 2012 after she disclosed the abuse to her grandmother Jane Barefoot. Castles initial report and her notes were entered into evidence without objection. (App's Ex. 6 & 7).

Castles recalled Applicant told her that Tova wanted to have a baby with him, and had her "tubes untied" to try and have a child with him. Castles recalled speaking to Meredith Suber, who was Victim 2's friend, but Suber and Victim 2 had a falling out because Suber slept with Applicant and was pregnant with his child. Castles stated Victim 2 stated she filed the complaint because she

heard Applicant was going to have another child and she did not want the baby to get molested like she did.

Castles clarified she gathered the evidence and consulted with the Solicitor's Office before filing any charges. Further, she conducted all of the interviews before bringing any charges. Castles stated she reached out to the Newberry County Sheriff's Department after Victim 1 mentioned the Newberry charges. Finally, Castles clarified that Suber told her that Victim 2 told Suber about the abuse when they were younger. Suber told Castles she felt guilty for sleeping with Applicant knowing that Applicant abused Victim 2 when they were younger. Castles Clarified Victim 2 disclosed to Suber before their falling out.

Tiffany Drew

Tiffany Drew testified she is Applicant's cousin and lives close to Applicant. Drew recalled Applicant, Tova, Victim 1, Victim 2, child 1, child 2, and Applicant's mother lived in the home. Drew stated she and the victims were friends and hung out every day after school. She stated Applicant would play with the children. Drew testified Victim 2 told her she did not like Applicant because he was a disciplinarian and that Tova did not discipline the children. Drew stated Applicant treated Tova's children as if they were his own children and would discipline them if they acted irresponsibly. Drew recalled an incident between Victim 1, Victim 2, and their bus driver where the victims alleged the bus driver was racist. However, this allegation was unfounded. Drew remembered several other instances where the victims lied. However, Drew never saw Applicant do anything inappropriate.

Barry Glymph

Barry Glymph testified he worked at VC Summer with Applicant for nearly twenty years. Glymph described Applicant as a good step-father, father, and trustworthy person. Glymph

admitted he was testifying because he believed in him, and would not think twice about leaving his children alone with Applicant.

Kevin Chalk

Kevin Chalk also was Applicant's co-worker at VC Summer. Chalk testified he and Applicant were close friends and would work out together daily after work. Chalk testified Applicant lived with him for five-and-a-half months after the divorce. Chalk testified Applicant was generous and trustworthy. Chalk admitted he was Applicant's close friend and would trust him with his children. Chalk testified he did not believe the allegations were true.

Gwen Ray

Gwen Ray testified she is Applicant's aunt. She testified she never saw any animosity towards Applicant from Tova's children, and Applicant basically raised Tova's boys, child 1 and child 2, as his own. She stated Applicant raised the boys and Tova raised the girls. Ray testified Applicant was a strict father. She also testified she trusted Applicant and would feel comfortable letting him watch her children. Ray recalled the victims did not move into their own room until Applicant's grandmother died.

Marsha Valasco

Marsha Valasco testified Applicant is her son. She recalled living with Applicant for over a year in 2005. Valasco recalled Applicant was the disciplinarian in the relationship. Valasco described the layout of the home, and stated that when she lived there the victims shared a room.

Michael Clayton, Sr.

Michael Clayton, Sr., testified he is Applicant's father, and he was present the morning of trial. He stated he traveled from New York to South Carolina for the trial. Clayton testified they were waiting for the trial to start and Counsel stated he was going to put Applicant on the stand to

testify, while another lawyer was pressuring Applicant to decide whether he wanted to go to trial or plead guilty. Clayton testified that, in his opinion, the lawyers seemed unprepared for trial and wanted Applicant to plead guilty. Clayton believed the lawyers were unprepared because earlier they planned not to call any witnesses. He testified the lawyers left the conference room they were in and went and spoke to the prosecutor, and when they returned, they wanted Applicant's decision on a plea or trial and stated they would call Applicant as a witness if he chose trial. Clayton stated he did not hear anything about the sex-offender registry when he was with Applicant and his attorneys.

Dave Anatra

Dave Anatra testified he was a licensed private investigator hired by PCR counsel to look into Applicant's case. Applicant proffered Anatra as an expert witness in investigations, and the State objected. The State argued anything regarding the investigation could be testified to by Counsel, and whether Counsel reasonably investigated was a legal conclusion for the Court to decide, not an expert witness. The Court declined to rule Anatra was an expert witness but allowed Anatra to testify.

Anatra testified he reviewed the plea transcript, the discovery, the video interviews, and looked into what witnesses Counsel investigated. Anatra testified he reviewed Counsel's entire case file. Anatra testified he attempted to speak to and interview the victims and Tova, but they all declined to speak to him. However, Anatra was able to interview the witnesses from the Sheriff's offices. Anatra also testified he contacted Meredith Suber, who did not testify, and Applicant's cousin who testified. Anatra testified Suber told him she was in school when Victim 2 made the allegations that Applicant had touched her in ways he should not have.

Anatra clarified that Suber heard from Victim 2 that Applicant had touched her, and Suber stated Victim 2 disclosed the abuse to her before she had sex with Applicant.

Applicant

Applicant testified he previously worked at VC Summer for nineteen years, and he currently works for Saluda Hill Landscapes, since 2017, where he is in a senior management position. Applicant recalled he and Counsel discussed the allegations and Applicant's version of events in their first meeting. Applicant also recalled Counsel discussing the charges against him and the exposure he faced. Applicant remembered Counsel moved for discovery and then provided him with the discovery so Applicant could make notes regarding it. Applicant also recalled Counsel provided him with the police interviews, and Counsel wanted Applicant to make a timeline of the events. Applicant stated he made a timeline from when he met Tova until his arrest, including when Tova and her children started visiting him, when Tova and her children moved into his home, and other significant events that occurred during that timeframe. Applicant stated that eventually, Tova wanted to move out and go out and party every weekend. Applicant stated he and Counsel met and compared their respective timelines.

Applicant testified that initially, Counsel told him he would not testify at trial. Applicant recalled he heard from Counsel every three months during Counsel's representation unless Counsel had something new to discuss with him. Applicant recalled Counsel would send him a letter if something new came up they needed to discuss. Applicant testified that during trial preparation, he provided Counsel with his divorce documents, his preliminary hearing documents, exhibits Tova introduced into evidence during the divorce proceeding, and some pictures. Applicant recalled meeting with Counsel to review the video interviews and compare notes.

However, Applicant stated Counsel did not want to introduce evidence at trial because Counsel wanted to preserve the last argument to the jury.

Applicant stated he told Counsel he had a number of witnesses he wanted called at trial, but calling those witnesses did not fit into Counsel's trial strategy. Applicant recalled Counsel informing him he planned on attacking the State's witnesses' inconsistencies to show reasonable doubt. Applicant did not think Counsel investigated any potential witnesses, and Counsel also did not discuss the possibility of hiring a personal investigator for the case. Applicant informed Counsel his mother, father, and aunt—who paid the retainer—could potentially be witnesses.

Applicant recalled meeting with Counsel several times the week before trial. Applicant stated he informed Counsel he would not take a plea deal that included a felony charge or required him to register as a sex-offender. Applicant recalled Counsel took a plea offer to the State for a plea to second-degree assault and battery, but the State rejected the offer.

Applicant stated that on the morning of trial, he was prepared to go to trial and not testify because Counsel had not prepped him to testify. However, the morning of trial, Counsel told Applicant that after speaking to his associate, Trey Cook, Esquire, Counsel thought Applicant would be a good witness and should testify. Applicant clarified Counsel wanted him to testify, but Applicant knew he did not have to testify at trial. Applicant also stated that Counsel was sure he could get the original plea deal back on the table that morning. Applicant believed the original plea offer was similar to the offer he accepted. Applicant felt as though Counsel "played [his] emotions" by telling Applicant he might not go home that night if they went to trial, which made Applicant emotional. Applicant recalled Counsel suggested that he take the plea offer, but Counsel also told him they stood a good chance at trial. However, Applicant asserted he was prepared to testify at trial but would have liked to have been prepped by Counsel to testify.

Applicant testified he was concerned because Counsel's trial strategy had changed the morning of trial but there were no other witnesses prepared to testify on his behalf. This led Applicant to question how much time Counsel put into preparing his case for trial, and made Applicant believe Counsel was not ready for trial because of the rapid change in strategy. Applicant stated the fear of not being able to go home affected his decision to enter the plea. Applicant stated that had he felt Counsel was prepared for trial, he would never have taken the plea. Further, he would have proceeded to trial if his witnesses had been present and ready to testify. Applicant opined he would have won at trial due to the inconsistencies in the State's witnesses' stories and his character witnesses.

Applicant testified Counsel did inform him he would have to register as a sex-offender; however, Counsel did not tell Applicant everything that went along with registering as a sex-offender. Specifically, Applicant complained he had to attend counseling for eighteen months. Applicant stated that his counseling required him to confess his crime, or he would not be allowed to continue the program. Applicant felt his counseling contradicted his taking of an *Alford* plea, but if he did not confess to something, he felt it would constitute a parole violation. Applicant stated he was unaware of the counseling aspect until the plea judge informed him of it during the plea colloquy. Applicant stated he was handed the sex-offender conditions after he entered his plea, and he never reviewed the conditions with Counsel. A document setting out Applicant's sex-offender conditions was entered into evidence without objection. (App's Ex. 8). However, Applicant recalled Counsel explaining to him his plea to second-degree CSC with a minor would not require him to be GPS monitored like a plea to first or third-degree CSC with a minor would. Applicant testified the State offered a plea to second-degree CSC with a minor because it knew he would not accept a plea offer requiring GPS monitoring.

Applicant recalled being sworn-in at the plea hearing. Applicant recalled waiving presentment of one of his charges. He recalled informing the plea court no one had promised him anything or threatened him into pleading. Applicant stated it was his decision to plead.

In sum, Applicant believed Counsel was not prepared for trial because: Counsel could not keep the names of the children straight; every time they met, Applicant had to go back over the basic facts of the case with Counsel; Counsel changed the trial strategy at the last minute; Applicant felt coerced to plead guilty in the moment; Counsel did not interview Tova; and they briefly discussed the Newberry charge, but it ended up being unfounded.

Counsel

Applicant called George Speedy, Esquire (Counsel), at the PCR hearing. Counsel has been practicing law in South Carolina since 1975. Counsel was retained in this case.

Counsel testified he first met with Applicant, then got the discovery. Counsel then tried to talk to people that knew about Applicant's case. Counsel testified he did not try and speak to Tova or the victims because he knew they would not speak to him about the case. Counsel stated he never likes to put his client on the stand and prefers not to put up any evidence. Counsel explained in this case, after reviewing everything and speaking to Applicant, he felt having the last word to the jury was the best strategy.

Counsel stated he reviewed his file prior to the PCR hearing and none of Applicant's PCR witnesses were in his file, indicating he was not asked to look into them as witnesses. However, Counsel testified he would not have called the witnesses presented at the PCR hearing because the risk of something damaging coming out was too great. Further, Counsel testified that a lot of the witnesses presented at PCR testified to things he would not have wanted to come out at trial. Specifically, Counsel asserted he would not have subpoenaed Tova had the case gone to trial.

Counsel testified he advised Applicant of the value of having witnesses; however, he told Applicant the trial would hinge on the victims' credibility—if the jury believed the victims, Applicant would be convicted.

Counsel stated he created a timeline as well for trial and highlighted the inconsistencies in the victims' statements throughout the timeline. Counsel testified he and Applicant compared each other's timelines and reviewed where the State's witnesses' stories changed. Counsel refuted Applicant's testimony that he changed the strategy just before trial. Counsel stated if he had changed the strategy, he would have done so during trial, not before. Counsel specifically refuted ever having a conversation with Applicant urging Applicant to testify.

Counsel recalled the Thursday before trial was scheduled to start, he got a call from the Solicitor's Office, and the possibility of a plea came up. Counsel could not recall how the offer specifically came up, but he remembered the State conveying the victims would go along with a probationary sentence for Applicant to plead to third-degree CSC with a minor. However, a third-degree CSC would entail mandatory GPS monitoring and sex-offender registry. Counsel recalled Applicant did not want to accept the offer, so they countered with second-degree assault and battery; however, the State refused their offer.

Counsel spent the weekend before trial preparing. Counsel brought in his associate, Trey Cook, to be his second chair and help with trial preparation. Counsel testified he was ready for trial, and he assured Applicant he was ready to go to trial. However, the day trial was scheduled to begin, the State reopened plea negotiations and reoffered the original offer. Counsel recalled Applicant's parents being present during their discussion of the plea offer, with Applicant's father in favor of the plea offer and his mother in favor of going to trial.

Counsel stated he contemplates hiring a personal investigator in every case, but he did not see the need to hire one in this case and chose not to. Counsel recalled advising Applicant there would be restrictions on where he could go and that he would have to have treatment. Counsel stated he spoke to Castles and made sure she had given him everything.

Counsel testified if he had changed his strategy, he would have investigated the character witnesses, but he did not investigate the character witnesses because he did not change his trial strategy. Counsel stated his trial strategy was to pick apart the case based on the witnesses' inconsistencies. Counsel recalled making checklists for each of the State's witnesses to prepare for his cross-examination and still had the checklists in his file.

Counsel reiterated he was ready for trial, but it was Applicant's decision to plead guilty. Counsel felt he conducted a reasonable investigation in gathering what he determined to be the relevant evidence, which he for hours. Based on what he had, Counsel did not see the need for further investigation. Counsel further testified he did not see the need to contact the victims, Tova, Suber, or the Newberry witnesses because they were all adverse witnesses. Counsel did not want to contact these witnesses because it risked them getting adversely involved in the case.

Counsel clarified he was aware of the Newberry report and had seen it was unfounded. Counsel stated he chose not to pursue it any further because he saw no value in the report, only risk. He and Applicant discussed the report and they both felt the allegations arose from the divorce situation because Applicant was arrested two days after the divorce was finalized.

Counsel stated he explained to Applicant his strategy of preserving the last closing argument, and he felt Applicant understood it was Applicant's decision whether to testify. Counsel reiterated that Tova was subpoenaed as a State's witness, and he planned to cross-examine her about her still allowing her sons to visit Applicant even after the allegations came out. Counsel did

not think he would have pursued a good character jury charge because he felt he would have needed to present character witnesses to support the charge, and he did not want to call any witnesses and lose the last closing argument. Counsel testified he would not have called Suber as a defense witness.

Counsel stated he advised Applicant he would have to register as a sex-offender by accepting the plea offer. Counsel also stated the plea court went along with the State's recommendation. Counsel testified he did not force Applicant to take the plea offer, he advised Applicant of his rights, and he recommended Applicant accept the plea offer.

V. DISCUSSION

This Court has reviewed the record and evidence introduced at the hearing. This Court has also observed the witnesses presented at the evidentiary hearing, judged their credibility, and weighed their testimony accordingly in its discussion below. Set forth below are findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2014).

1. Involuntary Guilty Plea

Applicant asserts he did not knowingly and voluntarily enter his *Alford* plea due to ineffective assistance of Counsel. An applicant who entered a plea on the advice of counsel may only attack the knowing and voluntary nature of the plea by showing ineffective assistance of counsel. *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989).

For deficiency, the applicant must show counsel's performance was not "within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). For prejudice in the context of a guilty plea, the applicant must show a reasonable probability he would not have pleaded guilty and would have insisted on going to trial absent plea counsel's alleged deficiency. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). "In assessing prejudice under *Strickland*, the question *is not* whether a court can be certain counsel's performance had no effect on the outcome" *Harrington v. Richter*, 562 U.S. 86, 111 (2011) (emphasis added). "Instead, *Strickland* asks whether it is 'reasonably likely' the result would have been different." *Id.* (quoting *Strickland*, 466 U.S. at 696). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112.

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *Alford*, 400 U.S. at 31. "To find a guilty plea is voluntary and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him." *Boykin v. Alabama*, 395 U.S. 238, 242 (1969). "[A] defendant must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers." *Roddy v. State*, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000). Further, "[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999).

"A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both." *Pittman*, 337 S.C. at 600, 524 S.E.2d at 625.

“[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). “When determining issues relating to guilty pleas, [courts] will consider the entire record, including the transcript of the guilty pleas and the evidence presented at the PCR hearing.” *Roddy*, 339 S.C. at 33, 528 S.E.2d at 420.

Investigation

First, Applicant alleges trial counsel was not prepared for trial because Counsel failed to investigate the case. Specifically, Counsel was ineffective for: (a) failing to investigate generally; (b) failing to interview critical witnesses who could have challenged the credibility of the State’s witness and could have undermined the State’s evidence when it was reasonable to do so in preparation for trial; (c) failing to interview potential character witnesses; (d) failing to review pictures Applicant possessed that would have contradicted portions of the victims’ statements to the police; and (e) failing to interview the Newberry County law enforcement officers who received the report filed by the victims’ biological father and for failing to further investigate the complaint when Newberry County law enforcement did not pursue charges against Applicant. The Court disagrees.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). However, no particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant.

Strickland, 466 U.S. at 688-689. “Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.” *Id.* at 691. Therefore, judicial scrutiny of counsel’s performance must be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel’s performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992).

Further, “Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel.” *Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992). In making a fair assessment of attorney performance, a court must make every effort to “eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.” *Strickland*, 466 U.S. at 689.

a. Failure to investigate generally

Applicant asserts Counsel failed to adequately investigate his case. However, the Court finds, based on the PCR testimony, it is clear Counsel diligently and reasonably investigated the case to prepare for trial. The Court finds credible Counsel’s testimony he reviewed all the discovery in the case, discussed the discovery with Applicant, viewed the police interviews, and looked into the Newberry County charges. Further, Applicant provided Counsel with the information and court documentation from Applicant and Tova’s divorce. Counsel then used the discovery and the divorce documents to create a timeline to formulate and prepare his trial strategy. Applicant also recalled Counsel asking him to create a similar timeline for the two to compare in preparation for trial. Then, Counsel decided his trial strategy would be to attack the victims’ and Tova’s credibility by showing the allegations were retaliation for the divorce. Based on the

foregoing, the Court finds Counsel's investigation and trial preparation well within the reasonable professional norms of criminal defense attorneys. Therefore, Counsel was not deficient for failing to reasonably investigate the case.

As for prejudice, the Court finds credible Applicant's testimony he entered the *Alford* plea because he feared not being able to go home. Applicant faced the choice of pleading and receiving a probationary sentence, or going to trial and risking imprisonment. Applicant chose to plead to avoid imprisonment. Therefore, he has failed to show prejudice. *See Goins v. State*, 397 S.C. 568, 575, 726 S.E.2d 1, 4 (2012) (noting an applicant cannot establish prejudice where the defendant did not choose to plead guilty on basis of erroneous advice, but rather on basis of the State's offer to dismiss two charges and recommend a ten year sentence).

Based on the foregoing, Counsel was not deficient for failing to investigate, and Applicant was not prejudiced by Counsel's alleged deficiency; therefore, Counsel was not constitutionally ineffective. As such, the Court denies relief and dismisses this allegation with prejudice.

b. Failure to interview key witnesses

Applicant contends Counsel was ineffective for failing to interview critical witnesses who could have challenged the credibility of the State's witnesses and could have undermined the State's evidence at trial. Specifically, Applicant contends Counsel should have interviewed Tova Clayton, Meredith Suber, Cindy Long, and Roger Long regarding the victims' disclosure of sexual abuse. The Court disagrees.

First, the only fact witness Counsel allegedly failed to interview who could have challenged the State's witnesses' credibility and undermined the State's evidence at trial presented at the PCR hearing was Tova Clayton. Therefore, Counsel cannot be constitutionally ineffective for failing to investigate Meredith Suber, Cindy Long, and Roger Long because Applicant has failed to show

any prejudice resulted from Counsel's alleged failure to investigate them. *See Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995) (stating a PCR applicant must produce the witnesses at the PCR hearing, or otherwise introduce the witnesses' testimony, to support a claim that counsel was ineffective for failing to interview potential witnesses because speculation as to how Counsel's failure to investigate said witnesses cannot satisfy the applicant's burden of showing prejudice).

As for Counsel's alleged failure to interview Tova, the Court finds reasonable Counsel's decision not to do so. As noted above, Counsel testified he did not interview Tova because he knew she would not speak to him about the case because she was an adverse witness. The Court finds, based on its observation of Tova's testimony at PCR, she was in fact an adverse witness who was not willing to aid in Applicant's defense. This finding is further supported by Applicant's PCR investigator's testimony that he unsuccessfully attempted to interview Tova. Therefore, Applicant has failed to show Counsel was deficient for failing to interview Tova because he correctly concluded she was an adverse witness who was unwilling to aid Applicant's defense.

As for prejudice, the Court finds credible Applicant's testimony he entered the *Alford* plea because he feared not being able to go home. Applicant faced the choice of pleading and receiving a probationary sentence, or going to trial and risking imprisonment. Applicant chose to plead to avoid imprisonment. Therefore, he has failed to show prejudice. *See Goins*, 397 S.C. at 575, 726 S.E.2d at 4 (noting an applicant cannot establish prejudice where the defendant did not choose to plead guilty on basis of erroneous advice, but rather on basis of the State's offer to dismiss two charges and recommend a ten year sentence).

Based on the foregoing, Counsel was not deficient for failing to interview key witnesses, and Applicant was not prejudiced by Counsel's alleged deficiency; therefore, Counsel was not

constitutionally ineffective. As such, the Court denies relief and dismisses this allegation with prejudice.

c. Failure to interview character witnesses

Applicant alleges Counsel was ineffective for failing to interview potential character witnesses. The Court disagrees.

As stated above, Applicant testified he told Counsel of witnesses he wanted called at trial, but Counsel explained to him that calling those witnesses did not fit into Counsel's trial strategy. Applicant recalled Counsel informing him he planned on attacking the State's witnesses' inconsistencies to show reasonable doubt. Applicant stated that on the morning of trial, he was prepared to go to trial and not testify or present any character witnesses. Applicant recalled Counsel suggested that he take the plea offer the morning of trial, but Counsel also told him they stood a good chance at trial.

Applicant testified, however, the morning of trial, Counsel told Applicant that after speaking to his associate, Trey Cook, Esquire, Counsel thought Applicant would be a good witness and should testify. Applicant clarified Counsel wanted him to testify, but he knew he did not have to testify at trial. However, Applicant stated he was concerned because Counsel's trial strategy had changed the morning of trial but there were no other witnesses prepared to testify on his behalf. This led Applicant to question how much time Counsel put into preparing his case for trial, and made Applicant believe Counsel was not ready for trial because of the rapid change in strategy. Applicant stated that had he felt Counsel was prepared for trial, he would never have taken the plea. Further, he would have proceeded to trial if his witnesses had been ready to testify.

Counsel stated he was fully prepared to go to trial, and he told Applicant he was prepared for trial the morning of trial. Counsel stated he reviewed his file prior to the PCR hearing and none

of Applicant's PCR witnesses were in his file indicating he was not asked to look into them as witnesses. However, Counsel testified he would not have called the witnesses presented at the PCR hearing because the risk of something damaging coming out was too great.

Counsel refuted Applicant's testimony that he changed the strategy just before trial. Counsel stated if he had changed the strategy, he would have done so during trial, not before. Counsel specifically refuted ever having a conversation with Applicant urging Applicant to testify.

The Court finds credible Counsel's testimony he did not change his trial strategy the morning of trial, and he assured Applicant he was prepared to go to trial. The Court finds not credible Applicant's assertion that Counsel changed his trial strategy the morning of trial. Additionally, the Court finds reasonable Counsel's articulated strategy of not presenting a defense, but rather attacking that State's case through cross-examination of its witnesses. *See Whitehead*, 308 S.C. at 122, 417 S.E.2d at 531 ("Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel."). Therefore, Counsel was not deficient for failing to investigate the character witnesses because Applicant agreed with Counsel's reasonable strategy, and Counsel did not change his trial strategy.

As for prejudice, the Court finds not credible Applicant's assertion he would have chosen to go to trial had his witnesses been present and ready to testify. Applicant's own testimony that he was prepared to go to trial without presenting any evidence or testimony conflicts this assertion. Additionally, while Applicant alleged Counsel wanted him to testify, Applicant knew he did not have to testify at trial. Therefore, even if Counsel had wanted to call Applicant as the only witness, Applicant knew he did not have to testify or put up any defense.

However, the Court finds credible Applicant's testimony he entered the *Alford* plea because he feared not being able to go home. Applicant faced the choice of pleading and receiving a probationary sentence, or going to trial and risking imprisonment. Applicant chose to plead to avoid imprisonment. Therefore, he has failed to show prejudice. *See Goins*, 397 S.C. at 575, 726 S.E.2d at 4 (noting an applicant cannot establish prejudice where the defendant did not choose to plead guilty on basis of erroneous advice, but rather on basis of the State's offer to dismiss two charges and recommend a ten year sentence).

Based on the foregoing, Counsel was not deficient for failing to interview character witnesses, and Applicant was not prejudiced by Counsel's alleged deficiency; therefore, Counsel was not constitutionally ineffective. As such, the Court denies relief and dismisses this allegation with prejudice.

d. Failure to review pictures Applicant possessed

Applicant alleges Counsel was ineffective for failing to review pictures Applicant possessed that would have contradicted portions of the victims' statements to the police. The Court disagrees.

Applicant introduced pictures of text messages between himself and Tova discussing their divorce. (App's Ex. 2). The pictures were included in the materials Applicant provided to Counsel from Applicant's divorce proceedings. Counsel testified he created a timeline of the events using the discovery and divorce materials for trial and highlighted the inconsistencies in the victims' statements throughout the timeline. Counsel testified he and Applicant compared each other's timelines and reviewed where their stories changed. As found above, Counsel articulated a reasonable strategy for attacking the victims' and Tova's credibility by preparing thorough cross-examinations. However, he never needed to employ his prepared cross-examinations because

Applicant chose to accept the State's plea offer. The Court finds Applicant has failed to show how Counsel was deficient because Counsel used the material's from Applicant's divorce, which included the pictures, to formulate his cross-examination to attack the victims' and Tova's credibility.

As for prejudice, the Court finds credible Applicant's testimony he entered the *Alford* plea because he feared not being able to go home. Applicant faced the choice of pleading and receiving a probationary sentence, or going to trial and risking imprisonment. Applicant chose to plead to avoid imprisonment. Therefore, he has failed to show prejudice. *See Goins*, 397 S.C. at 575, 726 S.E.2d at 4 (noting an applicant cannot establish prejudice where the defendant did not choose to plead guilty on basis of erroneous advice, but rather on basis of the State's offer to dismiss two charges and recommend a ten year sentence).

Based on the foregoing, Counsel was not deficient for failing to review the pictures/ text messages, and Applicant was not prejudiced by Counsel's alleged deficiency; therefore, Counsel was not constitutionally ineffective. As such, the Court denies relief and dismisses this allegation with prejudice.

e. Failure to look into Newberry County charge

Applicant alleges Counsel was ineffective for failing to look into Applicant's unfounded Newberry County charge. The Court disagrees.

Applicant testified he and Counsel briefly discussed the Newberry charge, but Counsel told him the charge was unfounded. Counsel testified he discussed the Newberry charge with Applicant and explained it would not help because it was unfounded. Counsel clarified he was aware of the Newberry report and had seen it was unfounded. Counsel stated he chose not to pursue it any further because he saw no value in the report, only risk. Inv. Robert Dennis explained the Newberry

charge was initiated by the victims' biological father. However, after further investigation, the report was unfounded because the allegations took place in Fairfield County, not Newberry County.

The Court finds credible Counsel's testimony he was aware of the report. Further, the Court finds valid Counsel's reasoning not to look further into the report because the report was declared unfounded not because the allegations were untrue, but because the allegations took place in a different jurisdiction—Fairfield County. Counsel felt digging into another jurisdiction's report presented no value to Applicant's case, only risk. The Court will not second guess Counsel's judgement. *See Whitehead*, 308 S.C. at 122, 417 S.E.2d at 531 ("Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel."). As such, Counsel was not deficient for failing to investigate the Newberry County charge, or interview the investigators that initiated the report.

As for prejudice, the Court finds credible Applicant's testimony he entered the *Alford* plea because he feared not being able to go home. Applicant faced the choice of pleading and receiving a probationary sentence, or going to trial and risking imprisonment. Applicant chose to plead to avoid imprisonment. Therefore, he has failed to show prejudice. *See Goins*, 397 S.C. at 575, 726 S.E.2d at 4 (noting an applicant cannot establish prejudice where the defendant did not choose to plead guilty on basis of erroneous advice, but rather on basis of the State's offer to dismiss two charges and recommend a ten year sentence).

Based on the foregoing, Counsel was not deficient for failing to look into Applicant's unfounded Newberry County charge, and Applicant was not prejudiced by Counsel's alleged

deficiency; therefore, Counsel was not constitutionally ineffective. As such, the Court denies relief and dismisses this allegation with prejudice.

Advice to plead under Alford

Applicant alleges Counsel coerced him into pleading guilty by playing on Applicant's emotions. Specifically, Applicant alleges Counsel advised him if he pleaded guilty, he would get to go home that night, but if he was convicted at trial, he would be sentenced to prison time. The Court disagrees and finds the plea transcript and Applicant's relevant PCR testimony dispositive of this issue.

The plea court conducted a thorough colloquy during the plea hearing, and Applicant, under oath, informed the plea court no one had promised, threatened, or forced him into entering the plea. (Plea Tr. 8). Additionally, at the PCR hearing, Applicant testified it was his decision to plead guilty. The Court finds Counsel did not force Applicant into pleading guilty based on the plea transcript, where Applicant stated he was not forced or threatened into pleading, and Applicant's PCR testimony it was his decision to plead guilty.

The Court also finds Counsel was not constitutionally ineffective for advising Applicant if he pleaded he would get to go home, but if he was convicted at trial he would go to prison. First, it was Counsel's duty to advise Applicant of the potential exposure he faced if convicted at trial. *See Pittman*, 337 S.C. at 599, 524 S.E.2d at 624 ("[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived."). Second, Counsel reasonably advised Applicant his opinion of the sentence Applicant would receive if convicted at trial. *See Bennett v. State*, 371 S.C. 198, 204–05, 638 S.E.2d 673, 676 (2006) (finding plea counsel not deficient for advising the applicant to plead guilty based on what plea counsel reasonably

believed the sentence would have been if convicted at trial). Counsel's sentencing advice was not coercive, it was reasonable. Counsel was not deficient for adequately advising Applicant of his sentencing exposure.

The Court also finds Applicant has failed to prove prejudice as to this allegation. The Court finds credible Applicant's testimony he entered the *Alford* plea because he feared not being able to go home. Applicant faced the choice of pleading and receiving a probationary sentence, or going to trial and risking imprisonment. Applicant chose to plead to avoid imprisonment. Therefore, he has failed to show prejudice. *See Goins*, 397 S.C. at 575, 726 S.E.2d at 4 (noting an applicant cannot establish prejudice where the defendant did not choose to plead guilty on basis of erroneous advice, but rather on basis of the State's offer to dismiss two charges and recommend a ten year sentence). Applicant has failed to show Counsel coerced him into pleading, and has failed to show he would not have pleaded guilty despite Counsel's alleged coercion. Therefore, the Court denies this allegation with prejudice.

Applicant also alleges Counsel failed to adequately advise him of the sentencing consequences of pleading to the charges. Specifically, Applicant alleges he was unaware he would be required to register as a sex-offender, comply with special conditions of supervision, and attend specific treatment demanding he accept responsibility for the offenses with polygraph testing. The Court disagrees.

"To find a guilty plea is voluntary and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him." *Boykin*, 395 U.S. at 242. Defendants must be advised of the direct consequences of their plea, but not the collateral consequences. *Smith v. State*, 329 S.C. 280, 283, 494 S.E.2d 626, 628 (1997). "The distinction between 'direct' and 'collateral' consequences of a plea, while sometimes

shaded in the relevant decisions, turns on whether the result represents a definite, immediate and largely automatic effect on the range of the defendant's punishment." *Cuthrell v. Dir., Patuxent Inst.*, 475 D.2d 1364, 1366 (4th Cir. 1973). "The imposition of a sentence may have a number of collateral consequences, however, and a plea of guilty is not rendered involuntary in a constitutional sense if the defendant is not informed of the collateral consequences." *Brown v. State*, 306 S.C. 381, 382-83, 412 S.E.2d 399, 400 (1991). However, if counsel chooses to advise the defendant of collateral consequences, he must provide correct advice. *Smith*, 329 S.C. at 283, 494 S.E.2d at 628.

Here, Applicant and Counsel both testified that Counsel advised Applicant he would have to register as a sex-offender, comply with special conditions of supervision, and attend specific treatment. Applicant's allegation focuses on his assertion that Counsel was deficient for not specifically explaining the treatment requirements—accepting responsibility for the charges. However, Applicant's conditions he register as a sex-offender, comply with special conditions of supervision, and attend specific treatment have no effect on the range of his punishment. Therefore, the conditions are a collateral consequence of sentencing. *See Williams v. State*, 378 S.C. 511, 515-16, 668 S.E.2d 615, 617-18 (Ct. App. 2008) (finding registration on the sex-offender registry is a collateral consequence of sentencing). Counsel had no duty to advise Applicant of these collateral consequences. However, Counsel did advise him of the consequences. Even so, the Court finds Counsel did not misadvise Applicant of the collateral consequences. Indeed, Applicant does not contend Counsel misadvised him at all, he alleges Counsel did not advise him as specifically as he wished, in hindsight. Therefore, because Counsel did not actively misadvise Applicant of the collateral consequences, Counsel was not deficient.

As for prejudice, the Court finds credible Applicant's testimony he entered the *Alford* plea because he feared not being able to go home. Applicant faced the choice of pleading and receiving a probationary sentence, or going to trial and risking imprisonment. Applicant chose to plead to avoid imprisonment. Therefore, he has failed to show prejudice. *See Goins*, 397 S.C. at 575, 726 S.E.2d at 4 (noting an applicant cannot establish prejudice where the defendant did not choose to plead guilty on basis of erroneous advice, but rather on basis of the State's offer to dismiss two charges and recommend a ten year sentence).

Based on the forgoing, Counsel did not deficiently advise Applicant, and Applicant has failed to establish prejudice resulted from Counsel's alleged deficiencies. Therefore, these allegations are denied and dismissed with prejudice.

VI. CONCLUSION

Based on the foregoing, Applicant knowingly and voluntarily pleaded guilty. Applicant knowingly and intelligently waived his constitutional rights, was aware of the nature and elements of the charges he faced, and knew the maximum and mandatory minimum penalty for the charges. Further, Applicant has failed to show Counsel was deficient in any way, or how Applicant was prejudiced by Counsel's alleged deficiencies. Importantly, the Court finds it was Applicant's decision to plead guilty to avoid imprisonment.

The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must

serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

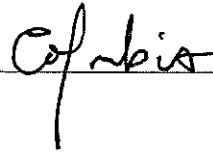
THEREFORE:

1. The Court denies relief and dismisses the action with prejudice; and
2. Applicant shall be remanded to the custody of the State.

AND IT IS SO ORDERED.



ROBERT E. HOOD
Presiding Judge
Sixth Judicial Circuit

, South Carolina

7/29, 2020.

THE STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF FAIRFIELD)
 Michael Clayton, Jr.,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

2020 AUG 10 AM 11:28
 FAIRFIELD COUNTY
 CLERK OF COURT
 JUDY N. BOND

SIXTH JUDICIAL CIRCUIT
 Case No.: 2019-CP-20-0109

**MOTION TO ALTER OR AMEND
 PURSUANT TO RULE 59(E), SCRPC**

TO: The Honorable Robert E. Hood

The Applicant, by and through the undersigned Counsel, moves this Court to alter or amend the "Order of Dismissal" filed on August 3, 2020, in the above-captioned case pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. *See Strickland v. Washington*, 466 U.S. 668 (1984); U.S. Const. amends. V, VI, XIV; S.C. Const. art. I, §§ 3 and 14; See S.C. Code § 17-27-20(A)(1), (4), and (6). Specifically, the Order of Dismissal does not contain specific findings of fact and conclusions of law regarding all the facts, claims, and exhibits presented at the evidentiary hearing and in Applicant's Memorandum in Support of Post-Conviction Relief. *See generally Reese v. State*, 425 S.C. 108, 820 S.E.2d 376 (2018); *Fishburne v. State*, 427 S.C. 505, 832 S.E.2d 584 (2019).

In support of this motion, Applicant submits the following arguments and does not abandon or waive any previous arguments or issues raised in the prior pleadings and evidentiary hearing in this PCR action:

- (1) Applicant incorporates by reference the Memorandum in Support of Post-Conviction Relief as if fully set forth verbatim into this motion. Notably, the facts

and arguments contained in that memorandum necessitate the granting of post-conviction relief.

- (2) Respectfully, although the Court allowed Applicant to submit a memorandum in support of PCR, the procedure followed by this Court denied Applicant an opportunity to have his PCR claims adjudicated by an independent judicial officer in violation of the separation of powers doctrine. See S.C. Art. I, § 8. Specifically, the Court did not provide the State with any basis for denying Applicant's claims other than delegating the responsibility of drafting a proposed order of dismissal. The Court adopted the State's adversarial proposed Order Denying Post-Conviction Relief despite that this independent judicial function cannot be delegated to an executive agency without providing specific instructions and rationale for omitting findings of fact and/or denying each claim. See *Marlar v. State*, 375 S.C. 407, 408, 653 S.E.2d 266 (2007) (holding, "Pursuant to S.C. Code Ann. § 17-27-80 . . . , the PCR judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented.").
- (3) The Order Denying Post-Conviction Relief fails to properly summarize all the testimony presented at the hearing. Fundamental fairness necessitates the importance of an accurate summation of the testimony and arguments to ensure the Court's Order contains all the relevant findings of fact and conclusions of law to conduct an objective and independent review and to preserve all issues for appellate review.
- (4) The Order Denying Post-Conviction Relief fails to properly address Applicant's claim that Plea Counsel provided ineffective assistance of counsel by failing to

interview Applicant's ex-wife, Tova Clayton. Specifically, the Order indicated that Counsel "did not interview Tova because he knew she would not speak to him about the case" yet Counsel made this speculative claim without attempting to contact this critical witness. This testimony should not be credible and considered deficient performance by failing to conduct a reasonable investigation of a material witness where credibility is the lynchpin of the Prosecution's case. See *Wiggins v. Smith*, 539 U.S. 510 (2003); *Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008); *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008); Cf. *Praylow v. Martin*, 761 F.2d 179 (4th Cir. 1985) (provides that a defendant's stated interest in pleading guilty does not relieve counsel of his duty to investigate possible defenses).

- a. Applicant also established prejudice based on Tova's testimony at the evidentiary hearing, which contained critical omissions and inconsistencies based on her video recorded statement with Investigator Karen Castles of the Fairfield County Sheriff's Office, and Minor Child 1's statements in her mental health records. See Exhibit Nos. 4 and 5 (mental health records and video recorded statements). These omissions and inconsistencies include but are not limited to Tova's knowledge of and failure to do anything about the abuse, Tova seeing Applicant leave her daughter's bedroom with an erection, her daughter's denials of the abuse, the timing of her daughter's disclosures to her and their maternal grandmother, and the living situation in the home (moving in-and-out of the home on numerous times by her, her daughters, and her family members).
- b. Tova also admitted that text messages between her and Applicant proved

she was shocked when Applicant texted her asking for a divorce. See Exhibit No. 2 (text messages). Tova also admitted that she “never expected this”, was “crying like a baby”, was “devasted”, and even asked Applicant on “what grounds?” was he seeking a divorce despite the existence of this allegations.

- c. Notably, Tova's affidavit from their divorce failed to mention any abuse, based the grounds for divorce on adultery (Applicant had cheated on her and had a child with another woman), and noted that Applicant was like an Angel sent from God and that she could not ask for a better partner. See Exhibit No. 1 (Affidavit of Tova Clayton).
 - d. Furthermore, Tova knew Minor Child 2 filed a complaint with the Fairfield County Sheriff's Office on June 23, 2016, two days after the divorce decree was issued on June 21, 2016. Tova also was not present on the morning of trial, which ultimately resulted in a plea hearing pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970).
- (5) The Order Denying Post-Conviction Relief fails to properly address Applicant's claim that Plea Counsel provided ineffective assistance of counsel by failing to interview and subpoena character witnesses on Applicant's behalf for trial. Specifically, Plea Counsel's deficient performance and prejudicial representation would have prevented Applicant from being able to request a jury instruction on good character and reputation by not subpoenaing these witnesses to trial. See *State v. Harrison*, 343 S.C. 165, 539 S.E.2d 71 (Ct. App. 2000); *Cf. Stalk v. State*, 383 S.C. 559, 681 S.E.2d 592 (2009); *see also Pantovich v. State*, 427 S.C. 555,

562-64, 832 S.E.2d 596, 600, 601 (2019), *reh'g denied*, (September 27, 2019) (finding for an ineffective assistance claim, the PCR court must “determine whether counsel was ineffective *at the time of the alleged error*. . . Thus, the court must consider the law as it existed at the time of trial and “not as it has evolved today . . .”).

- a. Plea Counsel claimed that he did not change his trial strategy the morning of trial and that he wanted Applicant to testify. If that is true, then Counsel’s strategy was not reasonable because he failed to have character witnesses available to testify on Applicant’s behalf.
- (6) Plea Counsel’s decision not to interview witness or conduct any investigation is not objectively reasonable given the type of case where credibility is the critical factor the jury’s determination of whether to find Applicant guilty or not guilty. See *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding “counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness, and where counsel articulates a strategy, it is measured under an objective standard of reasonableness”); *Hicks v. State*, 314 S.C. 280, 443 S.E.2d 907 (1994) (finding ineffective assistance of counsel when there is a reasonable probability the result would have been different had trial counsel introduced relevant and favorable evidence at trial).
 - (7) The Order Denying Post-Conviction Relief fails to properly address Applicant’s claim that Plea Counsel provided ineffective assistance of counsel by mischaracterizing Applicant’s testimony. Specifically, Applicant explained that he felt coerced into pleading guilty because Counsel was not prepared for trial,

changed his trial strategy the morning of trial, had not prepared him to testify, and did not have any character witnesses subpoenaed to corroborate his credibility. In other words, Applicant felt his chances of winning at trial were hopeless based on Counsel's deficient performance and prejudicial representation. *Cf. Boykin v. Alabama*, 395 U.S. 238 (1969) (finding a guilty plea is voluntarily and knowingly entered into when the accused has a full understanding of the consequences of his plea and the charges against him); *See Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999) (finding a defendant must understand the sentencing consequences of his plea for it to be considered voluntarily given); *see also United States v. Taylor*, 659 F.3d 339, 347 (4th Cir. 2011) (noting "[a]n *Alford* plea is an arrangement in which a defendant maintains his innocence but pleads guilty for reasons of self-interest.").

- (8) The Order Denying Post-Conviction Relief fails to properly address Applicant's claim that Plea Counsel abandoned his role as defense counsel by failing to conduct a reasonable investigation and adequately prepare for trial. *See United States v. Cronin*, 466 U.S. 648, 659 (1984); *See Nance v. Ozmint*, 367 S.C. 547, 548-52, 626 S.E.2d 878, 878-80 (2006) (holding that "pre-se prejudice occurs if there has been a constructive denial of counsel," which arises when defense counsel's deficient performance constitutes "a classic example of a complete breakdown in the adversarial process"); *see also Green v. State*, 351 S.C. 184, 196, 569 S.E.2d 318, 324 (2002) (holding that although an applicant "must ordinarily show actual prejudice, he may be relieved of that burden if counsel's ineffectiveness is so pervasive as to render a particularized prejudice inquiry

unnecessary").

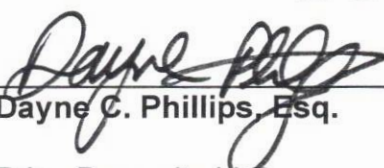
- (9) Therefore, this Court should reconsider its Order Denying Post-Conviction Relief (filed on April 23, 2019), withdraw that order, enter an order granting Applicant post-conviction relief, and remand this case to the Court of General Sessions for a new trial.

CONCLUSION

Based on the foregoing reasons, the undersigned Counsel respectfully requests that this Court reconsider the Order of Dismissal denying Post-Conviction Relief by conducting an objective review of the facts and law based on the arguments presented by the parties, and independently entering an Order Granting Post-Conviction Relief. See Rule 59(e), SCRCP; *Strickland v. Washington*, 466 U.S. 668 (1984); U.S. Const. amends. V, VI, XIV; S.C. Const. art. I, §§ 3 and 14; S.C. Code § 17-27-20(A)(1), (4), and (6).

IT IS SO MOVED.

Respectfully submitted,



Dayne C. Phillips, Esq.

Price Benowitz LLP
1614 Taylor Street, Suite D.
Columbia, SC 29201
O: 803-272-4503
C: 803-807-0234
F: 803-380-8035
dayne@pricebenowitz.com

ATTORNEY FOR THE APPLICANT

August 6, 2019

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the within and foregoing Motion to Alter or Amend pursuant to Rule 59(e), SCRCP, by depositing a true and correct copy of the same via first-class mail, postage prepaid, upon all parties as follows:

The Honorable Robert E. Hood
PO Box 192
Columbia, SC 29202

Samuel Key, Esq.
SC Attorney General's Office
1000 Assembly Street, Room 519
Columbia, SC 29201

The Honorable Judy M. Bonds
Fairfield County Clerk of Court
P.O. Drawer 299
Winnsboro, SC 29180

2020 AUG 10 AM 11:28
FAIRFIELD COUNTY
CLERK OF COURT
JUDY M. BONDS

By: Courtney Powers
Courtney Powers
Paralegal for Dayne C. Phillips, Esq.

1614 Taylor Street, Suite D.
Columbia, SC 29201
(803) 216-5561
courtney@pricebenowitz.com

August 6, 2020

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

323

CASE NO. 2019 CP-20-0109

Michael Clayton, Jr.

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Based on the hearing that took place, the arguments made, and the testimony taken, Applicant's Motion to Alter or Amend is hereby denied.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Samuel Key
AAG
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRPC.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON
PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

[illegible]

THE STATE OF SOUTH CAROLINA
In The Supreme Court

2020 AUG 31 AM 10:52

FAIRFIELD COUNTY
CLERK OF COURT
JUDY M BONDS

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

The Honorable Robert E. Hood, Circuit Court Judge

Case No. 2019-CP-20-0109

Michael Clayton,

Petitioner,

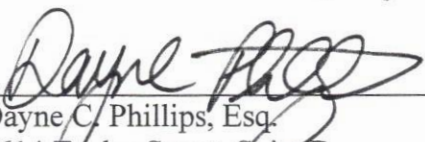
v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Petitioner Michael Clayton appeals the Honorable Robert E. Hood's Order Denying his Application for Post-Conviction Relief, and the Court's Order Denying Applicant's Motion to Alter or Amend Judgment (Rule 59(e), SCRCP) filed on **August 17, 2020**. The undersigned Counsel received written notice via email confirming the filed Order denying Applicant's Motion to Alter or Amend on **August 26, 2020**.


Dayne C. Phillips, Esq.
1614 Taylor Street, Suite D.
Columbia, SC 29201

August 26, 2020

ATTORNEY FOR PETITIONER

Other Counsel of Record:

Samuel Key, Assistant Attorney General
South Carolina Attorney General's Office
1000 Assembly Street, Room 519
Columbia, SC 29201

cc:

Judy M. Bonds, Fairfield County Clerk of Court
Michael Clayton

THE STATE OF SOUTH CAROLINA
In The Supreme Court

2020 AUG 31 AM 10:52
FAIRFIELD COUNTY
CLERK OF COURT
JUDY M BONDS

APPEAL FROM FAIRFIELD COUNTY
Court of Common Pleas

The Honorable Robert E. Hood, Circuit Court Judge

Case No. 2019-CP-20-0109

Michael Clayton,

Petitioner,

v.

State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Assistant Attorney General Samuel Key, and the Honorable Judy M. Bonds, by depositing a copy in the United States Mail, postage prepaid, on **August 26, 2020**, addressed to the following parties:

Samuel Key, Esquire, South Carolina Attorney General's Office
1000 Assembly Street, Room 519, Columbia, SC 29201

The Honorable Judy M. Bonds, Fairfield County Clerk of Court
P.O. Drawer 299, Winnsboro, SC 29180


Courtney Powers
Paralegal for Dayne Phillips, Esq.
1614 Taylor Street, Suite D.
Columbia, SC 29201

August 26, 2020

ARREST WARRANT

2016A2010100550

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Fairfield

THE STATE

16-4973

against

Michael Lee Clayton

Address:

Columbia, SC 29209-1717

Phone: _____ SSN: _____

Sex: M Race: B Height: 5 10 Weight: 250DL State: SC DL #: _____DOB: _____ Agency ORI #: SC0200000Prosecuting Agency: Fairfield County SheriffProsecuting Officer: Karen Castles - 1119Offense: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)Offense Code: 2468Code/Ordinance Sec: 16-15-0140

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant on _____

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
101 South Congress St
PO Drawer 299
Winnsboro, SC 29180

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Fairfield

Personally appeared before me the affiant Karen Castles whobeing duly sworn deposes and says that defendant Michael Lee Claytondid within this county and state on or about 12/20/2016 violate the criminal laws of theState of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Fairfield)

in the following particulars:

DESCRIPTION OF OFFENSE: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That between the years of 2004 and 2009, in the county of Fairfield, one Michael Lee Clayton did willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body, or its parts, of the victim, Minor Child 2 a person under sixteen years of age, by fondling the breast and vagina and digitally penetrating the vagina of the victim. The defendant is over the age of fourteen years. This incident did occur at 3067 Buckhead Road located in Blair, S.C. and is based on victim's statement and an investigation by the Fairfield County Sheriff's Office.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Fairfield

Affiant's Address P. O. Box 387Winnsboro 29180-

Affiant's Telephone _____

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/20/2016 defendant Michael Lee Clayton

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Fairfield) as set forth below:DESCRIPTION OF OFFENSE: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 12/20/2016

Signature of Issuing Judge

William D. Robinson III

Judge Code: 7243

(L.S.)

Judge's Address 115-B South Congress StreetWinnsboro, SC 29180-1103Judge's Telephone (803)635-4525Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

ARREST WARRANT

2016A2010100551

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Fairfield

THE STATE

16-4973

against

Michael Lee Clayton

Address:

Columbia, SC 29209-1717

Phone: _____ SSN: _____
Sex: M Race: B Height: 5 10 Weight: 250

DL State: SC DL #: _____

DOB: _____ Agency ORI #: SC0200000

Prosecuting Agency: Fairfield County Sheriff

Prosecuting Officer: Karen Castles - 1119

Offense: Sex / Lewd Act, committing or attempting lewd act
upon child under 16 (June 4, 1996)

Offense Code: 2468

Code/Ordinance Sec: 16-15-0140

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant _____
on _____

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
101 South Congress St
PO Drawer 299
Winnsboro, SC 29180

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Fairfield

Personally appeared before me the affiant Karen Castles who

being duly sworn deposes and says that defendant Michael Lee Clayton

did within this county and state on or about 12/20/2016 violate the criminal laws of the

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in the following particulars:

DESCRIPTION OF OFFENSE: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That between the years of 2004 and 2009, in the county of Fairfield, one Michael Lee Clayton did willfully and lewdly commit or
attempt to commit a lewd or lascivious act upon or with the body, or its parts, of the victim, Minor Child 1 a person under
sixteen years of age, by fondling the breast and vagina, digitally penetrating the vagina, and performing oral sex on the victim. The
defendant is over the age of fourteen years. This incident did occur at 3067 Buckhead Road located in Blair, S.C. and is based on
victim's statement and an investigation by the Fairfield County Sheriff's Office.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Fairfield

Affiant's Address P. O. Box 387

Winnsboro 29180-

Affiant's Telephone _____

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/20/2016

defendant Michael Lee Clayton

did violate the criminal laws of the State of South Carolina (or ordinance of

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her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me

on 12/20/2016

Signature of Issuing Judge
William D. Robinson III

Judge Code: 7243

Judge's Address 115-B South Congress Street

Winnsboro, SC 29180-1103

Judge's Telephone (803)635-4525

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

STATE OF SOUTH CAROLINA)

INDICTMENT

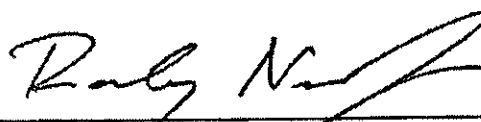
COUNTY OF FAIRFIELD)

At a Court of General Sessions, convened on August 21, 2018, the Grand Jurors of Fairfield County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR SECOND DEGREE

That Michael Clayton did in Fairfield County, between the years of 2005 and 2009 (during which time he had unlimited access to the victim as they resided in the same home), engage in sexual battery with [REDACTED] Minor Child 2 a minor 14 years of age or less but at least 11 years of age, in violation of Section 16-3-655(B)(1), (C)(3) of the Code of Laws of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Randy E. Newman, Jr., SOLICITOR

WITNESSES

✓ Castles-FCSO

DOCKET NO. 2018-GS-20-181
AMENDED

The State of South Carolina

County of Fairfield

2018 AUG 21 PM 12: 02

FAIRFIELD COUNTY
CLERK OF COURT
JUDY M BONDS

COURT OF GENERAL SESSIONS

AUGUST TERM 2018

ARREST WARRANT NUMBER/DOA

Direct Indictment

ACTION OF GRAND JURY

TRUE BILL

THE STATE

vs.

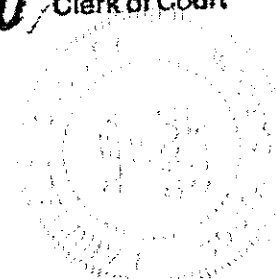
Michael Clayton

I, Judy M Bonds, Clerk of Court,
Fairfield County, South Carolina, do
hereby certify this is a true copy of
the original on file in this office.4-4-19 *Judy M Bonds*
Clerk of Court*William Z. Mat...*
Foreperson of Grand Jury
Date: *Aug 21, 2018*

VERDICT

Foreperson of Petit Jury
Date:

Indictment for

Criminal Sexual Conduct with a Minor
Second DegreeSC Code: § 16-3-655(B)(1), (C)(3)
CDR Code: 0396
Class: Felony C

STATE OF SOUTH CAROLINA)

COUNTY OF FAIRFIELD)

INDICTMENT

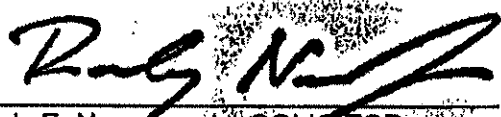
800001 01/01/18

At a Court of General Sessions, convened on June 19, 2018, the Grand Jurors of Fairfield County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR SECOND DEGREE

That Michael Clayton did in Fairfield County, between the years of 2005 and 2009, engage in sexual battery with [Minor Child 2] a minor 14 years of age or less but at least 11 years of age, in violation of Section 16-3-655(B)(1), (C)(3) of the Code of Laws of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Randy E. Newman, Jr., SOLICITOR

WITNESSES

Castles-FCSO

Dove

ARREST WARRANT NUMBER/DOA

Direct Indictment

ACTION OF GRAND JURY

TRUE BILL

Wallace Z Marti

Foreperson of Grand Jury

Date: 6-19-2018

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2018-GS-20-181

The State of South Carolina

County of Fairfield

COURT OF GENERAL SESSIONS

JUNE TERM 2018

THE STATE

vs.

Michael Clayton

Indictment for

Criminal Sexual Conduct with a Minor
Second Degree

SC Code: § 16-3-655(B)(1), (C)(3)

CDR Code: 0396

Class: Felony C

2018 JUN 19 AM 11:43
FAIRFIELD COUNTY
CLERK OF COURT
JUDY M BONDSI, Judy M Bonds, Clerk of Court,
Fairfield County, South Carolina, do
hereby certify this is a true copy of
the original on file in this office.

4-4-19

Clerk of Court



STATE OF SOUTH CAROLINA)

INDICTMENT

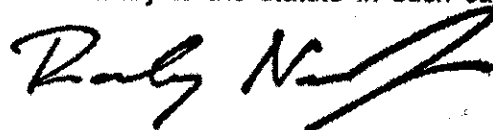
COUNTY OF FAIRFIELD)

At a Court of General Sessions, convened on October 16, 2018, the Grand Jurors of Fairfield County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR SECOND DEGREE

That Michael Clayton did in Fairfield County, Between the years of 2007 and 2009, engage in sexual battery with [Minor Child 1], a minor 14 years of age or less but at least 11 years of age, in violation of Section 16-3-655(B)(1), (C)(3) of the Code of Laws of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Randy E. Newman, Jr., SOLICITOR

WITNESSES

Castles-FCSO

[Handwritten signature]

ARREST WARRANT NUMBER/DOA

Direct Indictment

[Handwritten signature]

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2018-GS-20-265

The State of South Carolina

County of Fairfield

COURT OF GENERAL SESSIONS

AUGUST TERM 2018

THE STATE

vs.

Michael Clayton

Indictment for

Criminal Sexual Conduct with a Minor
Second Degree

SC Code: § 16-3-655(B)(1), (C)(3)

CDR Code: 0396

Class: Felony C

I, Judy M Bonds, Clerk of Court,
Fairfield County, South Carolina, do
hereby certify this is a true copy of
the original on file in this office.

4-4-19

[Handwritten signature: Judy M Bonds]
Clerk of Court



STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Fairfield

STATE

INDICTMENT/CASE#: 2018-GS-20-181

Michael vs. Clayton

AW#: DI Ref. 2016 A20101000550

AKA:

Date of Offense:

Race: B Sex: M Age: 34

S.C. Code §: 16-3-655(B)(1)(c)(3)

DOB: [REDACTED] SS#: [REDACTED]

CDR Code #: 0396

Address: [REDACTED]

City, State, Zip: Columbia SC 29209

SID#

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Criminal Sexual Conduct with a Minor, Second Degree

In violation of § 16-3-655(B)(1)(c)(3) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, MLC (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

[Signature] 6568 [Signature] 5206
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed 5 years and/or to pay a fine of \$ 0; provided that upon the service of 5 days/months/years and or payment of \$ 0; plus costs and assessments as applicable; the balance is suspended with probation for 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 8/27/18 1 day

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.

☒ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ 1,000.00 1,000.00 days/hours Public Service Employment

Payment Terms: 1,000.00 1,000.00
☐ Set by SCDPPPS hereby certify this is a true copy of the original file in this office.

Recipient: 4.4.19 [Signature]
[Signature] Clerk of Court

*Fine: \$
§14-1-206 (Assessments 107.5%) \$
§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00
§14-1-211 (A)(2)(DUI Surcharge) \$100 \$
§56-5-2995 (DUI Assessment) \$12 \$
§56-1-286 (DUI Breath Test) \$25 \$
Proviso (Public Def/Probation) \$500 \$
§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§14-1-213 (Drug Court Surcharge) \$150 \$
§50-21-114 (BUI Breath Test Fee) \$50 \$
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$
3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/Deputy Clerk [Signature]
Court Reporter: [Signature]

SCCA/217 (04/2018)

Obtain GED ☐
Attend Voc. Rehab. Or Job Corp.

May serve WE beginning
Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐
Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ Beginning
\$ Paid to Public Defender Fund

Other: Transfer to Redland County

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge [Signature]
Judge Code: 2017
Sentence Date 8/27/18

may have contact with his daughter Binaiah Lee Clayton JCH

STATE OF SOUTH CAROLINA

COUNTY OF

Fairfield

STATE

Michael Clayton VS.

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was,

☐ CONVICTED OF or ☒ PLEADS

TO:

In violation of §

16-3-655(B)(1)(C)

of the S.C. Code of Laws, bearing CDR Code #

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45

The charge is:

☐ As indicted,☐ Lesser Included Offense,☒ Defendant Waives Presentment to Grand Jury.

MLC (def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☒ Recommendation by the State.

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections☐ County Detention Center,

for a determinate term of

5 days/months/years or☐ under the Youthful Offender Act not to exceed5 years

and/or to pay a fine of \$

; provided that upon the service of

days/months/years and or payment

of \$

; plus costs and assessments as applicable; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are

incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc.☒ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered☐ Obtain GED ☐☐ Attend Voc. Rehab. Or Job Corp.☐ May serve WVE beginning☐ Substance Abuse Counseling☐ Random Drug/Alcohol Testing☐ Fine may be pd. in equal consecutive weekly/monthly☐ pmts. of \$ Beginning☐ \$ Paid to Public Defender Fund☐ Other: Transf to Richland County☐ No GPS monitoring☐ No contact with victim directly☐ Appointed PD or appointed other counsel, if

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before

any other fees.

Presiding Judge John C. HinesJudge Code: 2674Sentence Date 8/27/18TOTAL \$ 128.75Clerk of Court/Deputy Clerk Judy M BondsCourt Reporter: Susan Hedges

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018-GS-20-0345AW#: PI ref 2016A.20101000551

Date of Offense:

S.C. Code §: 16-3-655(B)(1)(C)(3)CDR Code #: 0396

SENTENCE SHEET

Alford

#1

☐ CONVICTED OF or ☒ PLEADS

TO:

In violation of §

16-3-655(B)(1)(C)

of the S.C. Code of Laws, bearing CDR Code #

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45

The charge is:

☐ As indicted,☐ Lesser Included Offense,☒ Defendant Waives Presentment to Grand Jury.

MLC (def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☒ Recommendation by the State.

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections☐ County Detention Center,

for a determinate term of

5 days/months/years or☐ under the Youthful Offender Act not to exceed5 years

and/or to pay a fine of \$

; provided that upon the service of

days/months/years and or payment

of \$

; plus costs and assessments as applicable; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are

incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc.☒ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

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during probation and shall be collected before

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Presiding Judge John C. HinesJudge Code: 2674Sentence Date 8/27/18TOTAL \$ 128.75Clerk of Court/Deputy Clerk Judy M BondsCourt Reporter: Susan Hedges

SCCA/217 (04/2018)

may have contact with
his daughter Abigail Zoe
Clayton John